START

VOL
64
ISS
62
AP
1
1999
UMI

4-1-99
Vol. 64

UMI

THE PAPER AND INK USED IN THE ORIGINAL PUBLICATION MAY AFFECT THE QUALITY OF THE MICROFORM EDITION.

United
Gover
Printin
SUPERIN
OF DOCU
Washingt
OFFICIAL
Penalty fo

4-1-99
Vol. 64 No. 62

federal register

Thursday
April 1, 1999

United States
Government
Printing Office
SUPERINTENDENT
OF DOCUMENTS
Washington, DC 20402

OFFICIAL BUSINESS
Penalty for private use, $300

PERIODICALS
Postage and Fees Paid
U.S. Government Printing Office
(ISSN 0097-6326)

**********3-DIGIT 481
A FR UMI 346U DEC 99 R
UMI
PERIODICALS CHECK IN
PO BOX 1346
ANN ARBOR MI 48106

VOL
64
ISS
62
AP
1
1999
UMI

4–1–
Vol.
Page

4–1–99
Vol. 64 No. 62
Pages 15633–15914

Federal Register

Thursday
April 1, 1999

Briefings on how to use the Federal Register
For information on briefings in Washington, DC, see announcement on the inside cover of this issue.

182-247 08 1

The **FEDERAL REGISTER** is published daily, Monday through Friday, except official holidays, by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). The Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 is the exclusive distributor of the official edition.

The **Federal Register** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders, Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress, and other Federal agency documents of public interest.

Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless the issuing agency requests earlier filing. For a list of documents currently on file for public inspection, see http://www.nara.gov/fedreg.

The seal of the National Archives and Records Administration authenticates the Federal Register as the official serial publication established under the Federal Register Act. Under 44 U.S.C. 1507, the contents of the **Federal Register** shall be judicially noticed.

The Federal Register is published in paper and on 24x microfiche. It is also available online at no charge as one of the databases on GPO Access, a service of the U.S. Government Printing Office.

The online edition of the **Federal Register** is issued under the authority of the Administrative Committee of the Federal Register as the official legal equivalent of the paper and microfiche editions (44 U.S.C. 4101 and 1 CFR 5.10). It is updated by 6 a.m. each day the **Federal Register** is published and it includes both text and graphics from Volume 59, Number 1 (January 2, 1994) forward.

GPO Access users can choose to retrieve online **Federal Register** documents as TEXT (ASCII text, graphics omitted), PDF (Adobe Portable Document Format, including full text and all graphics), or SUMMARY (abbreviated text) files. Users should carefully check retrieved material to ensure that documents were properly downloaded.

On the World Wide Web, connect to the **Federal Register** at http://www.access.gpo.gov/nara. Those without World Wide Web access can also connect with a local WAIS client, by Telnet to swais.access.gpo.gov, or by dialing (202) 512-1661 with a computer and modem. When using Telnet or modem, type swais, then log in as guest with no password.

For more information about GPO Access, contact the GPO Access User Support Team by E-mail at gpoaccess@gpo.gov; by fax at (202) 512–1262; or call (202) 512–1530 or 1–888–293–6498 (toll free) between 7 a.m. and 5 p.m. Eastern time, Monday–Friday, except Federal holidays.

The annual subscription price for the **Federal Register** paper edition is $555, or $607 for a combined **Federal Register**, Federal Register Index and List of CFR Sections Affected (LSA) subscription; the microfiche edition of the **Federal Register** including the Federal Register Index and LSA is $220. Six month subscriptions are available for one-half the annual rate. The charge for individual copies in paper form is $8.00 for each issue, or $8.00 for each group of pages as actually bound; or $1.50 for each issue in microfiche form. All prices include regular domestic postage and handling. International customers please add 25% for foreign handling. Remit check or money order, made payable to the Superintendent of Documents, or charge to your GPO Deposit Account, VISA, MasterCard or Discover. Mail to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954.

There are no restrictions on the republication of material appearing in the Federal Register.

How To Cite This Publication: Use the volume number and the page number. Example: 64 FR 12345.

Printed on recycled paper.

SUBSCRIPTIONS AND COPIES

PUBLIC
Subscriptions:
Paper or fiche 202–512–1800
Assistance with public subscriptions 512–1806
General online information 202–512–1530; 1–888–293–6498
Single copies/back copies:
Paper or fiche 512–1800
Assistance with public single copies 512–1803
FEDERAL AGENCIES
Subscriptions:
Paper or fiche 523–5243
Assistance with Federal agency subscriptions 523–5243

FEDERAL REGISTER WORKSHOP

THE FEDERAL REGISTER: WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: Sponsored by the Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:
1. The regulatory process, with a focus on the Federal Register system and the public's role in the development regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WASHINGTON, DC

WHEN: April 20, 1999 at 9:00 am.
WHERE: Office of the Federal Register
Conference Room
800 North Capitol Street, NW.
Washington, DC
(3 blocks north of Union Station Metro)
RESERVATIONS: 202–523–4538

Contents

Federal Register
Vol. 64, No. 62
Thursday, April 1, 1999

Agency for International Development
RULES
Organization, functions, and authority delegations:
Executive agency status, 15685
NOTICES
Organization, functions, and authority delegations:
Executive agency status, 15717

Agency for Toxic Substances and Disease Registry
NOTICES
Grants and cooperative agreements; availability, etc.:
Educational and community-based programs, 15768–15770
Human health studies applied research and development, 15770–15772
Meetings:
Inter-tribal Council on Hanford Health Projects, 15772
Public Health Service Citizens Advisory Committee, 15772–15773

Agricultural Marketing Service
RULES
Oranges, grapefruit, tangerines, and tangelos grown in—
Florida, 15634–15636

Agriculture Department
See Agricultural Marketing Service
See Commodity Credit Corporation
See Farm Service Agency
See Forest Service
See Grain Inspection, Packers and Stockyards Administration

Air Force Department
NOTICES
Patent licenses; non-exclusive, exclusive, or partially exclusive:
Laser Photonics Technology, Inc., 15732–15733

Antitrust Division
NOTICES
Competitive impact statements and proposed consent judgments:
Central Parking Corp. & Aliright Holdings, Inc., 15795–15803

Arms Control and Disarmament Agency
RULES
Repeal of CFR regulations, 15686

Centers for Disease Control and Prevention
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 15773–15774

Civil Rights Commission
NOTICES
Meetings; State advisory committees:
New York, 15725–15726
Pennsylvania, 15726
Virginia, 15726
Wyoming, 15726

Coast Guard
PROPOSED RULES
Boating safety:
Passenger Safety Act of 1998—
Uninspected passenger vessels safety, 15709–15711

Commerce Department
See Foreign-Trade Zones Board
See International Trade Administration
See National Oceanic and Atmospheric Administration

Commodity Credit Corporation
NOTICES
Agency information collection activities:
Proposed collection; comment request, 15717–15718

Corporation for National and Community Service
NOTICES
Agency information collection activities:
Proposed collection; comment request, 15731–15732

Customs Service
PROPOSED RULES
Foreign trade zones; weekly entry procedure; withdrawal
Correction, 15873
NOTICES
Tariff rate quotas:
Tuna fish, 15870–15871

Defense Department
See Air Force Department
See Navy Department
NOTICES
Meetings:
National Security Senior Advisory Board, 15732

Drug Enforcement Administration
NOTICES
Applications, hearings, determinations, etc.:
Ansys Diagnostics, Inc., 15803
Cadiz Thrift-T Drug, Inc., 15803–15805
Dietz, Nichael W., D.D.S., 15805–15806
Irix Pharmauticals, Inc., 15807
Johnson Matthey, Inc., 15807–15808
Knoll Pharmaceutical Co., 15808
Lilly Del Caribe, Inc., 15808
Mallinckrodt Chemical, Inc., 15808–15809
Noramco of Delaware, Inc., 15809
Nycomed, Inc., 15809
Prior, William Franklin, Jr. M.D., 15806–15807
PRODIM, 15809–15810
Roxane Laboratories, Inc., 15810–15811
Taro Pharmaceuticals U.S.A., Inc., 15811
Thomas, George, PA-C, 15811–15812

Education Department
NOTICES
Agency information collection activities:
Proposed collection; comment request, 15733–15734
Submission for OMB review; comment request, 15734
Grants and cooperative agreements; availability, etc.:
Safe Schools/Healthy Students Initiative, 15905–15909

Employment and Training Administration
NOTICES
Grants and cooperative agreements; availability, etc.:
Job Training Partnership Act—
Contextual learning demonstration program, 15819–15830

Energy Department
See Energy Information Administration
See Federal Energy Regulatory Commission
See Western Area Power Administration
NOTICES
Defense Nuclear Facilities Safety Board recommendations:
Intergrated safety management and DOE facilities, 15734–15735
Powerplant and industrial fuel use; new electric powerplant coal capability:
Self-certification filings—
Panda Guadalupe Power, L.P., et al., 15735

Energy Information Administration
NOTICES
Agency information collection activities:
Proposed collection; comment request, 15735–15736

Environmental Protection Agency
RULES
Air quality implementation plans; approval and promulgation; various States:
Missouri, 15688–15690
PROPOSED RULES
Air quality implementation plans; approval and promulgation; various States:
Missouri, 15711–15712
NOTICES
Superfund; response and remedial actions, proposed settlements, etc.:
Friedrichsohn's Cooperage, Inc. Site, 15746
Toxic and hazardous substances control:
Lead-based paint activities in target housing and child-occupied facilities; State and Indian Tribe authorization applications—
West Virginia, 15746–15749
Water pollution; discharge of pollutants (NPDES):
Saipan; reverse osmosis desalinization facilities; general permit, 15749–15753

Export-Import Bank
NOTICES
Meetings:
Sub-Saharan African Advisory Committee, 15753

Farm Service Agency
NOTICES
Agency information collection activities:
Proposed collection; comment request, 15717–15718

Federal Aviation Administration
RULES
Air traffic operating and flight rules, etc.:
Pilot responsibility for compliance with air traffic control clearances and instructions, 15911–15914
Airworthiness directives:
Bell Helicopter Textron, Inc., 15661–15669
Construcciones Aeronauticas, S.A., 15659–15660
McDonnell Douglas, 15657–15659
Sikorsky, 15669–15673
Class E airspace, 15673–15680
PROPOSED RULES
Class D airspace, 15708–15709
NOTICES
Meetings:
RTCA, Inc., 15868
Passenger facilities charges; applications, etc.:
Hagerstown Regional Airport, MD, 15868–15869
Applications, hearings, determinations, etc.:
RTCA, Inc., 15867–15868

Federal Communications Commission
PROPOSED RULES
Radio stations; table of assignments:
Iowa, 15714–15716, 15712
Nevada, 15713–15714
New York, 15714
South Dakota, 15713
Wyoming, 15713
NOTICES
Agency information collection activities:
Proposed collection; comment request, 15753–15754
Reporting and recordkeeping requirements, 15754–15755
Rulemaking proceedings; petitions filed, granted, denied, etc., 15755–15756
Applications, hearings, determinations, etc.:
Norcom Communications Corp., 15755

Federal Contract Compliance Programs Office
RULES
Affirmative action and nondiscrimination obligations of contractors:
Individuals with disabilities; special disabled veterans, 15690–15691

Federal Deposit Insurance Corporation
RULES
Deposit insurance coverage:
Joint accounts and payable-on-death accounts, 15653–15657
NOTICES
Agency information collection activities:
Proposed collection; comment request, 15756–15758

Federal Energy Regulatory Commission
NOTICES
Environmental statements; availability, etc.:
Alabama Power Co., 15740
Hydroelectric applications, 15740–15744
Applications, hearings, determinations, etc.:
AEE 2, L.L.C., 15736–15737
CNG Transmission Corp., 15737
Frontier Gas Storage Co., 15737
Midwestern Gas Transmission Co., 15737–15738
Natural Gas Pipeline Co. of America, 15738
Tennessee Gas Pipeline Co., 15738–15739
Texas Eastern Transmission Corp., 15739
TriState Pipeline, L.L.C., 15739–15740

Federal Maritime Commission
NOTICES
Agreements filed, etc., 15758

Financial Management Service
See Fiscal Service

Fiscal Service
NOTICES
Agency information collection activities:
Proposed collection; comment request, 15871

Fish and Wildlife Service
RULES
Endangered and threatened species:
Flatwoods salamander, 15691–15704
NOTICES
Endangered and threatened species permit applications, 15779–15780
Meetings:
Aquatic Nuisance Species Task Force, 15780–15781

Food and Drug Administration
RULES
Animal drugs, feeds, and related products:
New drug applications—
Dinoprost tromethamine sterile solution, 15685
Sponsor names and drug labeler codes, etc.; technical amendments, 15683–15684
Sulfadimethoxine tablets and boluses; technical amendment, 15684–15685
NOTICES
Food for human consumption:
Adulteration involving hard or sharp foreign objects; compliance policy guide; availability, 15774–15775

Foreign-Trade Zones Board
NOTICES
Applications, hearings, determinations, etc.:
Michigan
ESCO Co. L.P.; colorformer chemicals manufacturing facility, 15726–15727

Forest Service
NOTICES
Environmental statements; notice of intent:
Ouachita National Forest, OK, 15718–15723

Grain Inspection, Packers and Stockyards Administration
NOTICES
Agency designation actions:
Illinois, 15723
Nebraska, et al., 15724–15725

Health and Human Services Department
See Agency for Toxic Substances and Disease Registry
See Centers for Disease Control and Prevention
See Food and Drug Administration
See Health Care Financing Administration
See Health Resources and Services Administration
See National Institutes of Health
See Substance Abuse and Mental Health Services Administration
NOTICES
Grants and cooperative agreements; availability, etc.:
Temporary Assistance to Needy Families, 15758–15767
Health promotion and disease prevention objectives for Healthy People 2010 project; partnership initiative, 15767
Meetings:
Vital and Health Statistics National Committee, 15767–15768

Health Care Financing Administration
NOTICES
Agency information collection activities:
Proposed collection; comment request, 15775

Health Resources and Services Administration
NOTICES
Meetings:
Health Professions and Nurse Education Special Emphasis Panel, 15775
Infant Mortality Advisory Committee, 15775–15776

Housing and Urban Development Department
NOTICES
Environmental statements; availability, etc.:
Hartford, CT; section 108 loan gaurantee funded infrastructure project, 15777–15778
Grants and cooperative agreements; availability, etc.:
Public and Indian housing—
Proceeds of sales of former 1937 Act homeownership units; transition requirements revision, 15778–15779

Immigration and Naturalization Service
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 15812–15817
Temporary protected status program designations:
Nicaragua; correction, 15817

Interior Department
See Fish and Wildlife Service
See Land Management Bureau
See Minerals Management Service
See National Park Service

Internal Revenue Service
RULES
Employment taxes and collection of income taxes at source:
Federal Insurance Contributions Act (FICA); taxation of amounts under employee benefit plans
Correction, 15687–15688
Excise taxes:
Group health plans; continuation coverage requirements; correction, 15873
Income taxes:
Foreign partnerships and corporations; property transfers by U.S. persons; information reporting requirements
Correction, 15686–15687
Transfers of stock or securities by U.S. persons to foreign corporations and related reporting requirements; correction, 15687
Reporting and recordkeeping requirements
Correction, 15688
NOTICES
Meetings:
Information Reporting Program Advisory Committee, 15871–15872

International Trade Administration
NOTICES
Antidumping:
Tapered roller bearings and parts, four inches or less in outside diameter andcomponents from—
Japan, 15729–15730
Antidumping and countervailing duties:
Five-year (sunset) reviews—
Conduct policies, 15727–15728
Final results and revocations, 15728–15729
Cheese quota; foreign government subsidies:
Quarterly update, 15730–15731

Countervailing duties:
Tillage tools from—
Brazil; correction, 15731

International Trade Commission
NOTICES
Import investigations:
Bearings from—
China, et al., 15783–15786
Internal combustion forklift trucks from—
Japan, 15786–15788
Nitrile rubber from—
Japan, 15788–15790
Potassium chloride from—
Canada, 15790–15792

Judicial Conference of the United States
NOTICES
Judicial Conduct and Disability Act:
Petitions for review of circuit council orders, 15792–15794

Justice Department
See Antitrust Division
See Drug Enforcement Administration
See Immigration and Naturalization Service
See Juvenile Justice and Delinquency Prevention Office
NOTICES
Community Oriented Policing Services Office:
Safe Schools/Healthy Students Initiative, 15905–15909
Pollution control; consent judgments:
Butterfield Joint Venture, Ltd., 15794
Cantrel et al. and Ohio Power Co. et al., 15794–15795
Janssen Ortho LLC, 15795
Linda Carroll and Carroll Carolina Corp., 15795

Juvenile Justice and Delinquency Prevention Office
NOTICES
Grants and cooperative agreements; availability, etc.:
Safe Schools/Healthy Students Initiative, 15905–15909

Labor Department
See Employment and Training Administration
See Federal Contract Compliance Programs Office
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 15817–15819

Land Management Bureau
NOTICES
Realty actions; sales, leases, etc.:
Oregon, 15781
Recreation management rescrictions, etc.:
Vale District Baker Resource Area, OR; special permit, 15781
Withdrawal and reservation of lands:
Arizona, 15781
Wyoming; correction, 15873

Minerals Management Service
NOTICES
Agency information collection activities:
Reporting and recordkeeping requirements, 15781–15782

National Institutes of Health
NOTICES
Meetings:
National Institute of Mental Health, 15776
National Library of Medicine, 15776–15777

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
Northeastern United States fisheries—
Framework adjustment 28; harbor porpoise protection, 15704–15707

National Park Service
NOTICES
Native American human remains and associated funerary objects:
Pecos National Historical Park, NM; inventory Correction, 15873

Navy Department
NOTICES
Patent licenses; non-exclusive, exclusive, or partially exclusive:
Madison Technology International, Ltd., 15733

Nuclear Regulatory Commission
RULES
Classified information, access and protection; conformance to national policies, 15636–15653
PROPOSED RULES
Fee schedules revision; 100% fee recovery (1999 FY), 15897–15903
NOTICES
Environmental statements; availability, etc.:
Kerr-McGee Corp., 15831–15834
Meetings:
Reactor Safeguards Advisory Committee, 15834–15835
Petitions; Director's decisions:
Vermont Yankee Nuclear Power Corp., 15835–15836
Regulatory agreements:
Agreement State programs; policy statements, 15837–15841
Applications, hearings, determinations, etc.:
First Energy Nuclear Operating Co., 15831

Personnel Management Office
RULES
Health benefits, Federal employees:
Contributions and withholdings; weighted average of subscription charges, 15633

Public Debt Bureau
See Fiscal Service

Public Health Service
See Agency for Toxic Substances and Disease Registry
See Centers for Disease Control and Prevention
See Food and Drug Administration
See Health Resources and Services Administration
See National Institutes of Health
See Substance Abuse and Mental Health Services Administration

Railroad Retirement Board
NOTICES
Agency information collection activities:
Proposed collection; comment request, 15841–15842

Research and Special Programs Administration
NOTICES
Meetings:
Pipeline Safety Advisory Committees, 15869

Securities and Exchange Commission
RULES
Investment advisers:
Ohio investment advisers; transition rule, 15680–15683
NOTICES
Investment Company Act of 1940:
Deregistration applications—
Kemper Gold Fund, et al., 15852–15854
Self-regulatory organizations; proposed rule changes:
MBS Clearing Corp., 15854–15855
Municipal Securities Rulemaking Board, 15855–15856
Pacific Stock Exchange, Inc., 15856–15857
Philadelphia Stock Exchange, Inc., 15857–15866
Applications, hearings, determinations, etc.:
Manufactures Investment Trust et al., 15842–15844
PFL Life Insurance Co. et al., 15844–15846
Sun Capital Advisers Trust et al., 15846–15852

Small Business Administration
PROPOSED RULES
Small business size standards:
Manufacturer and remanufacturer; definitions as they apply to computer industry, 15708

Substance Abuse and Mental Health Services Administration
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 15777
Grants and cooperative agreements; availability, etc.:
Safe Schools/Healthy Students Initiative, 15905–15909

Surface Transportation Board
NOTICES
Railroad operation, acquisition, construction, etc.:
CSX Transportation, Inc., 15869–15870

Toxic Substances and Disease Registry Agency
See Agency for Toxic Substances and Disease Registry

Transportation Department
See Coast Guard
See Federal Aviation Administration
See Research and Special Programs Administration
See Surface Transportation Board
NOTICES
Agency information collection activities:
Proposed collection; comment request, 15866–15867

Treasury Department
See Customs Service
See Fiscal Service
See Internal Revenue Service
NOTICES
Meetings:
Community Adjustment and Investment Program Advisory Committee, 15870

Western Area Power Administration
NOTICES
Environmental statements; availability, etc.:
Calpine Corp., Southpoint Power Plant Project; record of decision, 15744–15746

Separate Parts In This Issue

Part II
Nuclear Regulatory Commission, 15875–15903

Part III
Department of Education; Department of Justice, Juvenile Justice and Deliquency Prevention Office, 15905–15909

Part IV
Department of Transportation, Federal Aviation Administration, 15911–15914

Reader Aids
Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

5 CFR
890.....15633

7 CFR
905.....15634
944.....15634

10 CFR
2.....15636
10.....15636
11.....15636
25.....15636
95.....15636

Proposed Rules:
170.....15876
171.....15876

12 CFR
330.....15653

13 CFR

Proposed Rules:
121.....15708

14 CFR
39 (4 documents).....15657, 15659, 15661, 15669
71 (7 documents).....15673, 15674, 15675, 15676, 15678, 15679
91.....15912

Proposed Rules:
71.....15708

17 CFR
275.....15680
279.....15680

19 CFR

Proposed Rules:
146.....15873

21 CFR
510.....15683
520 (2 documents).....15683, 15684
522 (2 documents).....15683, 15685
558.....15683

22 CFR
Ch. II.....15685
Ch. VI.....15686

26 CFR
1 (2 documents).....15686, 15687
7.....15687
31.....15687
602 (4 documents).....15687, 15688, 15873

33 CFR

Proposed Rules:
175.....15709
177.....15709
179.....15709
181.....15709
183.....15709

40 CFR
52.....15688

Proposed Rules:
52.....15711

41 CFR
60-250.....15690
60-999.....15690

46 CFR

Proposed Rules:
10.....15709
15.....15709
24.....15709
25.....15709
26.....15709
28.....15709
70.....15709
169.....15709
175.....15709

47 CFR

Proposed Rules:
73 (10 documents).....15712, 15713, 15714, 15715

50 CFR
17.....15691
648.....15704

Rules and Regulations

Federal Register
Vol. 64, No. 62
Thursday, April 1, 1999

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 890

RIN 3206–AI33

Federal Employees Health Benefits Program: Contributions and Withholdings

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing final regulations under the Federal Employees Health Benefits (FEHB) law that specify procedures for OPM's annual determination of the weighted average of subscription charges, for self only and for self and family FEHB enrollments respectively. The determinations are a requirement under recent amendments to the FEHB law that authorize a new method for adjusting Government contributions toward health plan enrollment charges. Effective with the FEHB contract year that begins in January 1999, the Government contribution generally amounts to 72 percent of the weighted average of subscription charges in effect for self only and for self and family enrollments respectively.

DATES: This final regulation is effective May 3, 1999.

FOR FURTHER INFORMATION CONTACT: Bonnie R. Rose (202) 606–0004.

SUPPLEMENTARY INFORMATION: On August 28, 1998, OPM published interim regulations in the **Federal Register** (63 FR 45933) that amended 5 CFR 890.501, in paragraphs (a) and (b), to provide for the administration of a new Government contribution formula under the Federal Employees Health Benefits (FEHB) law.

The Balanced Budget Act of 1997, approved on August 5, 1997 (Pub. L. 105–33, sec. 7002, 111 Stat. 662), amended the FEHB law to authorize a new Government contribution formula effective on the first day of the contract year that begins in January 1999. In place of the "Big-6" formula, which evolved under FEHB law during the early 1970's, the new formula bases Government contributions on the program-wide weighted average costs, for self only and for self and family enrollments, respectively.

The Big-6 formula provided a Government contribution for eligible enrollees in any FEHB plan or option equal to the lesser of: (1) 60 percent of the simple average of self only or self and family enrollment charges for the highest level of benefits offered under six large plans described in law, or (2) 75 percent of charges for the particular plan an individual elects to enroll in. The intent of the new FEHB contribution formula, which is referred to as the "Fair Share" formula, is to maintain a consistent level of Government contributions, as a percent of the total program costs, regardless of the configuration of participating health plans or FEHB enrollment patterns.

The Fair Share formula requires a determination by the Office of Personnel Management (OPM) in advance of each contract year of the weighted average of subscription charges that will be in effect during the year under all FEHB plans, for self only and for self and family types of enrollment, respectively. For employees and annuitants generally, the law provides a Government contribution equal to the lesser of: (1) 72 percent of the amount OPM determines is the program-wide weighted average of subscription charges for the type of enrollment the individual selects, or (2) 75 percent of the subscription charge for a particular plan (5 U.S.C. 8906 (a) and (b)).

The FEHB law, as amended, is very clear regarding the methodology for determining the program-wide weighted average of subscription charges in cases where health plans continue participation from year to year. OPM's regulations explain how we intend to treat individual plans for purposes of determining the program-wide weighted average of subscription charges when the conditions of a plan's FEHB participation change from one year to the next, including cases in which plans enter the FEHB Program, cease participation, or merge with another FEHB plan, and cases in which a health maintenance organization alters its previous rating structure.

Also, the interim regulation deleted outdated provisions in paragraph 5 CFR 890.501(b), and the reference to paragraph (b) in 5 CFR 890.501(a), which reflected FEHB law prior to 1974 amendments to the Government contribution formula (Pub. L. 93–246, section 1, 88 Stat. 3).

We received no comments on the interim rule.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because the regulations only affect Federal Government contributions toward enrollment costs under the Federal Employees Health Benefits Program.

Executive Order 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with Executive Order 12866.

List of Subjects in 5 CFR Part 890

Administrative practice and procedure, Government employees, Health facilities, Health insurance, Health professions, Hostages, Iraq, Kuwait, Lebanon, Reporting and recordkeeping requirements, Retirement.

Office of Personnel Management.

Janice R. Lachance,

Director.

Accordingly, under authority of 5 U.S.C. 8913, OPM is adopting its interim regulation amending 5 CFR part 890 as published on August 28, 1998 (63 FR 45933), as a final rule without change.

[FR Doc. 99–8011 Filed 3–31–99; 8:45 am]

BILLING CODE 6325–01–M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 905 and 944

[Docket No. FV99–905–1 FIR]

Oranges, Grapefruit, Tangerines, and Tangelos Grown in Florida and Imported Grapefruit; Relaxation of the Minimum Size Requirement for Red Seedless Grapefruit

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting, as a final rule, without change, the provisions of an interim final rule relaxing the minimum size requirement for red seedless grapefruit and for red seedless grapefruit imported into the United States from size 48 (3⁹⁄₁₆ inches diameter) to size 56 (3⁵⁄₁₆ inches diameter) under the Florida citrus marketing order. The marketing order regulates the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida and is administered locally by the Citrus Administrative Committee (Committee). This rule continues to allow handlers and importers to ship size 56 red seedless grapefruit through November 7, 1999, and is expected to maximize grapefruit shipments to fresh market channels.

EFFECTIVE DATE: May 3, 1999.

FOR FURTHER INFORMATION CONTACT: William G. Pimental, Southeast Marketing Field Office, Marketing Order Administration Branch, F&V, AMS, USDA, PO Box 2276, Winter Haven, Florida 33883; telephone: (941) 299–4770, Fax: (941) 299–5169; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, F&V, AMS, USDA, room 2522–S, PO Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–5698. Small businesses may request information on complying with this regulation, or obtain a guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, PO Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–5698, or E-mail: Jay__N__Guerber@usda.gov. You may also view the marketing agreements and orders small business compliance guide at the following web site: http://www.ams.usda.gov/fv/moab.html.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 84 and Marketing Order No. 905, both as amended (7 CFR part 905), regulating the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida, hereinafter referred to as the "order." The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

This rule is also issued under section 8e of the Act, which provides that whenever specified commodities, including grapefruit, are regulated under a Federal marketing order, imports of these commodities into the United States are prohibited unless they meet the same or comparable grade, size, quality, or maturity requirements as those in effect for the domestically produced commodities.

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of import regulations issued under section 8e of the Act.

The order for Florida citrus provides for the establishment of minimum grade and size requirements with the concurrence of the Secretary. The minimum grade and size requirements are designed to provide fresh markets with fruit of acceptable quality and size, thereby maintaining consumer confidence for fresh Florida citrus. This contributes to stable marketing conditions in the interest of growers, handlers, and consumers, and helps increase returns to Florida citrus growers. The current minimum grade standard for red seedless grapefruit is U.S. No. 1. The current minimum size requirement for domestic shipments is size 56 (at least 3⁵⁄₁₆ inches in diameter) through November 7, 1999, and size 48 (3⁹⁄₁₆ inches in diameter) thereafter. The current minimum size for export shipments is size 56 throughout the year.

This rule continues in effect changes to the order's rules and regulations relaxing the minimum size requirement for domestic shipments of red seedless grapefruit from size 48 (3⁹⁄₁₆ inches diameter) to size 56 (3⁵⁄₁₆ inches diameter) through November 7, 1999. This rule allows for the continued shipment of size 56 red seedless grapefruit. Absent this relaxation, the minimum size would be size 48 (3⁹⁄₁₆ inches diameter). The Committee met on September 3, 1998, and unanimously recommended this action.

Section 905.52 of the order, in part, authorizes the Committee to recommend minimum grade and size regulations to the Secretary. Section 905.306 (7 CFR 905.306) specifies minimum grade and size requirements for different varieties of fresh Florida grapefruit. Such requirements for domestic shipments are specified in § 905.306 in Table I of paragraph (a), and for export shipments in Table II of paragraph (b). This final rule continues the adjustment to Table I establishing a minimum size of 56 through November 7, 1999. Minimum grade and size requirements for grapefruit imported into the United States are currently in effect under § 944.106 (7 CFR 944.106). This final rule also continues the adjustment § 944.106 establishing a minimum size of 56 through November 7, 1999. Export requirements for Florida red seedless grapefruit are not changed by this rule.

In making its recommendation, the Committee considered estimated supply and demand. The supply of red seedless grapefruit is expected to be slightly higher than last season based on the Department's official crop estimate of 31,500,000 1⅗ bushel boxes as compared to last season's utilized supply of 30,600,000 boxes. The fruit is expected to be high quality with a good appearance. The Committee reports that it expects fresh market demand to be sufficient to permit the shipment of size 56 red seedless grapefruit grown in

Florida during the entire 1998–99 season.

This size relaxation will enable Florida grapefruit shippers to continue shipping size 56 red seedless grapefruit to the domestic market. This rule will have a beneficial impact on producers and handlers, since it will permit Florida grapefruit handlers to make available those sizes of fruit needed to meet consumer needs. This is consistent with current and anticipated demand in those markets for the 1998–99 season, and will provide for the maximization of shipments to fresh market channels.

The Committee believes that domestic markets have been developed for size 56 fruit and that the industry should continue to supply those markets. This minimum size change pertains to the domestic market, and does not change the minimum size for export shipments which will continue at size 56 throughout the season. The largest market for size 56 small red grapefruit is for export.

During the first 11 weeks of the season (September 21 through December 6) a volume regulation limited the volume of small red seedless grapefruit entering the fresh market. That action was successful in moving smaller-sized fruit to those markets demanding such sizes (63 FR 51511, September 28, 1998; 64 FR 3807, January 26, 1999). The Committee agreed that this regulation helped reduce the negative effects of size 56 on the domestic market.

In addition, the currency and economic problems currently facing the Pacific Rim countries remain a concern. These countries traditionally have been good markets for size 56 grapefruit. Current conditions there could reduce demand for grapefruit, and alternative outlets need to be available. It will be advantageous to have the ability to ship size 56 red seedless grapefruit to the domestic market should problems materialize in the export market.

Based on available information, the Committee unanimously recommended that the minimum size for shipping red seedless grapefruit to the domestic market should be size 56 through November 7, 1999. This rule will have a beneficial impact on producers and handlers because it will permit Florida grapefruit handlers to make available those sizes of fruit needed to meet anticipated market demand for the 1998–99 season. Additionally, importers will be favorably affected by this change since the relaxation of the minimum size regulation will also apply to imported grapefruit.

Section 8e of the Act provides that when certain domestically produced commodities, including grapefruit, are regulated under a Federal marketing order, imports of that commodity must meet the same or comparable grade, size, quality, and maturity requirements. Since this rule continues to relax the minimum size requirement under the domestic handling regulations, a corresponding change to the import regulations is necessary.

Minimum grade and size requirements for grapefruit imported into the United States are currently in effect under § 944.106. This rule continues the minimum size requirement for imported red seedless grapefruit at 3$^{5}/_{16}$ inches in diameter (size 56) until November 7, 1999, to reflect the relaxation under the order for red seedless grapefruit grown in Florida.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility. Import regulations issued under the Act are based on those established under Federal marketing orders.

There are approximately 80 grapefruit handlers subject to regulation under the order, approximately 11,000 growers of citrus in the regulated area, and about 25 grapefruit importers. Small agricultural service firms, which include handlers and importers, have been defined by the Small Business Administration (SBA) as those having annual receipts of less than $5,000,000, and small agricultural producers are defined as those having annual receipts of less than $500,000 (13 CFR 121.601).

Based on the industry and Committee data for the 1997–98 season, the average annual f.o.b. price for fresh Florida red seedless grapefruit during the 1997–98 season was around $6.30 per $^{4}/_{5}$ bushel cartons, and total fresh shipments for the 1997–98 season are estimated at 15.5 million cartons of red seedless grapefruit. Approximately 20 percent of all handlers handled 60 percent of Florida grapefruit shipments. In addition, many of these handlers ship other citrus fruit and products which are not included in Committee data but would contribute further to handler receipts. Using the average f.o.b. price, about 80 percent of the Florida grapefruit handlers could be considered small businesses under the SBA definition and about 20 percent of the handlers could be considered large businesses. The majority of grapefruit handlers, growers, and importers may be classified as small entities.

Florida handlers shipped approximately 42,410,000 $^{4}/_{5}$ bushel cartons of grapefruit to the fresh market during the 1997–98 season. Of these cartons, about 21,860,000 were exported. In the past three seasons, domestic shipments of Florida grapefruit averaged about 21,148,000 cartons. During the period 1991 through 1996, imports have averaged 734,800 cartons a season. Imports account for less than five percent of domestic shipments.

Section 905.52 of the order, in part, authorizes the Committee to recommend minimum grade and size regulations to the Secretary. Section 905.306 specifies minimum grade and size requirements for different varieties of fresh Florida grapefruit. This rule continues to relax the minimum size requirement for domestic shipments of red seedless grapefruit from size 48 (3$^{9}/_{16}$ inches diameter) to size 56 (3$^{5}/_{16}$ inches diameter) through November 7, 1999. No change is being made in the minimum size 56 requirement for export shipments. Absent this relaxation, the minimum size requirement for domestic shipments would be size 48. The motion to allow shipments of size 56 red seedless grapefruit through November 7, 1999, was passed by the Committee unanimously. In addition, there was a volume regulation in effect for the first 11 weeks of this season (September 21 through December 6) that limited the volume of small red seedless grapefruit entering the fresh market (63 FR 51511, September 28, 1998; 64 FR 3807, January 26, 1999).

This rule will have a positive impact on affected entities. This action allows for the continued shipment of size 56 red seedless grapefruit. This change is not expected to increase costs associated with the order requirements.

This rule continues to relax the minimum size from size 48 (3$^{9}/_{16}$ inches diameter) to size 56 (3$^{5}/_{16}$ inches diameter) through November 7, 1999. This change will allow handlers to continue to ship size 56 red seedless grapefruit to the domestic market. This rule will have a beneficial impact on producers and handlers, since it will permit Florida grapefruit handlers to make available those sizes of fruit needed to meet consumer needs. This is consistent with current and anticipated

demand in those markets for the 1998–99 season, and will provide for the maximization of shipments to fresh market channels.

The currency and economic problems currently facing the Pacific Rim countries remain a concern. These countries traditionally have been good markets for size 56 grapefruit. Current conditions there could reduce demand for grapefruit, and alternative outlets need to be available. It will be advantageous to have the ability to ship size 56 red seedless grapefruit to the domestic market should problems materialize in the export market.

This change will allow for the continued shipment of size 56 red seedless grapefruit. The opportunities and benefits of this rule are expected to be equally available to all grapefruit handlers, growers, and importers regardless of their size of operation.

In 1996, imports of grapefruit totaled 15,000 tons (approximately 705,880 cartons). The Bahamas were the principal source, accounting for 95 percent of the total. Remaining imports were supplied by the Dominican Republic and Israel. Imported grapefruit enters the United States from October through May. Imports account for less than five percent of domestic shipments.

Section 8e of the Act provides that when certain domestically produced commodities, including grapefruit, are regulated under a Federal marketing order, imports of that commodity must meet the same or comparable grade, size, quality and maturity requirements. Because this rule changes the minimum size for domestic red seedless grapefruit shipments, this change will also be applicable to imported grapefruit. This rule relaxes the minimum size to size 56. This regulation will benefit importers to the same extent that it benefits Florida grapefruit producers and handlers because it allows shipments of size 56 red seedless grapefruit into U.S. markets through November 7, 1999.

The Committee considered one alternative to this action. The Committee discussed relaxing the minimum size to size 56 on a permanent basis rather than just for a year. Members said that each season is different, and they prefer to consider this issue on a yearly basis. Therefore, this alternative was rejected.

This rule will not impose any additional reporting or recordkeeping requirements on either small or large red seedless grapefruit handlers or importers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information collection requirements and duplication by industry and public sectors.

In addition, the Department has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule. However, red seedless grapefruit must meet the requirements as specified in the U.S. Standards for Grades of Florida Grapefruit (7 CFR 51.760 through 51.784) issued under the Agricultural Marketing Act of 1946 (7 U.S.C. 1621 through 1627).

Further, the Committee's meeting was widely publicized throughout the citrus industry and all interested persons were invited to attend the meeting and participate in Committee deliberations. Like all Committee meetings, the September 3, 1998, meeting was a public meeting and all entities, both large and small, were able to express their views on this issue. Finally, interested persons were invited to submit information on the regulatory and informational impacts of this action on small businesses.

In accordance with section 8e of the Act, the United States Trade Representative has concurred with the issuance of this final rule.

An interim final rule concerning this action was published in the **Federal Register** on November 10, 1998 (63 FR 62919). Copies of the rule were mailed by the Committee's staff to all Committee members and grapefruit handlers. In addition, the rule was made available through the Internet by the Office of the Federal Register. That rule provided for a 60-day comment period which ended January 11, 1999. No comments were received.

After consideration of all relevant material presented, including the Committee's recommendation, and other information, it is found that finalizing the interim final rule, without change, as published in the **Federal Register** (63 FR 62919, November 10, 1998) will tend to effectuate the declared policy of the Act.

List of Subjects

7 CFR Part 905

Grapefruit, Marketing agreements, Oranges, Reporting and recordkeeping requirements, Tangelos, Tangerines.

7 CFR Part 944

Avocados, Food grades and standards, Grapefruit, Grapes, Imports, Kiwifruit, Limes, Olives, Oranges.

PART 905—ORANGES, GRAPEFRUIT, TANGERINES, AND TANGELOS GROWN IN FLORIDA

PART 944—FRUITS; IMPORT REGULATIONS

Accordingly, the interim final rule amending 7 CFR parts 905 and 944 which was published at 63 FR 62919 on November 10, 1998, is adopted as a final rule without change.

Dated: March 26, 1999.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 99–8067 Filed 3–31–99; 8:45 am]

BILLING CODE 3410–02–P

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 2, 10, 11, 25, and 95

RIN 3150–AF97

Conformance to National Policies For Access to and Protection of Classified Information

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations to conform the requirements for the protection of and access to classified information to new national security policy documents. This final rule is necessary to ensure that classified information in the possession of NRC licensees, certificate holders, and others under the NRC's regulatory requirements is protected in accordance with current national policies.

EFFECTIVE DATE: May 3, 1999.

FOR FURTHER INFORMATION CONTACT: James J. Dunleavy, Division of Facilities and Security, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001 telephone (301) 415–7404, E-mail JJD1@NRC.GOV.

SUPPLEMENTARY INFORMATION:

I. Background

On August 3, 1998 (63 FR 41206), the NRC published a proposed rule in the **Federal Register** to amend 10 CFR parts 10, 11, 25, and 95 to conform its requirements for the protection of classified Information at licensee, certificate holder and other facilities to new national security policy documents. The national requirements for the protection of and access to classified National Security Information were revised by the issuance of the

National Industrial Security Program Operating Manual (NISPOM), Executive Order 12958, "Classified National Security Information," dated April 17, 1995, and Executive Order 12968, "Access to Classified Information," dated August 2, 1995. The final rule amends the provisions of 10 CFR parts 2, 10, 11, 25, and 95 that deal with requirements for access to and protection of classified information that have been changed or added by the NISPOM, the executive orders, or new national guidelines on the scope and adjudication of personnel security investigations. Specifically, changes include a new definition in 10 CFR part 10 for the "Personnel Security Review Panel" and revisions to a number of definitions in parts 10, 11, 25, and 95 to reflect a change in the name of the Division of Security to the Division of Facilities and Security. Additionally, several changes to definitions were made to reflect: A change in responsibility for certain decisions from the Executive Director for Operations to the Deputy Executive Director for Management Services; revised due process procedures; a new requirement for a facility clearance for those licensees or others who require access to classified information at a facility other than their own; additional information on the scope and reporting requirements for the Foreign Ownership, Control, or Influence (FOCI) program; a requirement to resubmit an update to the Security Practice Procedures Plan every five years; a requirement for a visitor control program; and greater specificity as to when particular reports are required.

The rule also adopts new requirements in areas where the executive orders, the NISPOM, or the adjudicative guidelines require specific procedures not included in the previous versions of the rules. These new requirements include: The change to a three member Personnel Security Review Panel from three Review Examiners, acting individually, reviewing the record of a case where an individual's eligibility for access authorization or employment clearance is in question; an explicit notification that individuals whose eligibility for access authorization or employment clearance is in question have the right to be represented by counsel or other representative at their own expense and that they have a right to the documents, records, and reports which form the basis for the question of their eligibility to the extent they are unclassified and do not reveal a confidential source, and to the entire investigative file, as permitted by national security and other applicable law; a change to the period between reinvestigations for "L" and "R" access authorizations from five years to ten years; a change to the fee schedules of 10 CFR parts 11 and 25 due to a change in the investigative requirements for "Q," "L," "U," and "R" access authorizations; and changing the security classification markings to conform to Executive Order 12958.

The rule also eliminates the proposed changes to §§ 25.15 and 95.35 that would have permitted access to most Secret Restricted Data based on an "L" clearance rather than a "Q" clearance.

The rule also incorporates a change to §§ 25.11 and 95.11, "Specific exemptions," to clarify requirements for requesting and approving exemptions. This change was based on experience with exemption requests following publication of the proposed rule and is intended to follow more closely the language of § 50.12, "Specific exemptions."

Finally, the rule amends paragraph 11.15(e)(1) and appendix A to 10 CFR part 25 to reflect recent Office of Personnel Management investigative cost changes. Most of the changes have resulted in significant cost decreases for affected parties. For example, the cost of a single scope background investigation for a "U" or "Q" access authorization is reduced from $3275 to $2856. Where costs have increased, it has been on the order of two to three dollars.

II. Comments on the Proposed Rule

The Commission received three letters commenting on the proposed rule, one from the U.S. Enrichment Corporation, one from the Department of Defense (DoD), and one from the Department of Energy (DOE). Copies of the letters are available for public inspection and copying for a fee at the Commission's Public Document Room, located at 2120 L Street, NW. (Lower Level), Washington, DC.

Comments from the USEC

Comment: The commenter provided a comment on 10 CFR 2.790(d), "Public inspections, exemptions, requests for withholding." They stated that "10 CFR 2.790(d) now provides for protection of a licensee's physical security plan and material control and accounting program documents. It seems appropriate to protect classified matter protection plans from public disclosure in the same way as physical security plans and fundamental nuclear material controls plans are protected."

Response: Classified matter protection plans have always been considered as a part of the physical protection plan and have been protected from public disclosure. NRC, however, has no objection to clarifying this issue in the rulemaking and has adopted the recommendation by adding "classified matter protection" to § 2.790(d).

Comment: The commenter recommended that § 11.3 be clarified to indicate more prominently that the scope of the rule is only applicable to those licensees who possess formula quantities of strategic special nuclear material.

Response: Section 11.3 has been modified for clarity.

Comment: The commenter noted that "As currently described in 10 CFR 95.5, a container must have both a "Test Certification Label" *and* a "General Services Administration Approved Security Container" marking to qualify as a "Security Container." Since either reflects acceptable qualification, one or the other should be adequate and both should not be required."

Response: Section 95.5 has been modified for clarity.

Comment: The commenter stated that "It is unclear (to USEC) what constitutes a significant event or change affecting foreign ownership, control, or influence (FOCI). It is our understanding that the NRC is responsible for making FOCI determinations. Therefore, the NRC should establish criteria that licensees and certificate holders can use to make the determination of what events/changes should be reported to the NRC. For example, in 10 CFR 95.19(b) the NRC has described what 'minor, non-substantive changes' include."

Response: The rule language in 10 CFR 95.17 has been modified to describe the types of significant changes that will require NRC notification.

Comment: The commenter stated that "The language of 10 CFR 95.19(a) indicates that *any* change to the security procedures and controls would require the certificate holder to obtain prior Cognizant Security Agency (CSA) approval. The rule, however, only requires prior approval of *substantive* changes. Further, the language is inconsistent with other parts of the regulations with regard to the definition of "substantive." Section 50.54(p)(1), the process followed by the agency concerning the preparation and maintenance of safeguards contingency plan procedures for part 50 licensees, describe substantive changes as those that decrease the effectiveness of the security plan. Therefore, to (i) clarify that prior approval is only needed for substantive changes, and (ii) be consistent with other parts of the regulations, USEC requests that the rule

language in 10 CFR 95.19(a) be modified. * * *"

Response: It has always been NRC policy that only substantive changes require prior CSA approval. Section 95.19(a) clearly states, "Except as specified in paragraph (b) of this section each licensee * * * shall obtain prior approval * * *." Section 95.19(b) states "A licensee or other person may effect a minor, non-substantive change to an approved Standard Practice Procedures Plan for the safeguarding of classified matter without receiving prior CSA approval * * *." The current language is clear. The examples cited as substantive changes in § 95.19(a) fully qualify as changes affecting the security of NRC classified matter. If a licensee were to change a classified mailing address without notification to the CSA, it is likely that other facilities would continue to send classified information to the old classified mailing address which was no longer qualified to receive it. That would create a serious threat of compromise to the information. The change to a new location for the approved facility would have potential major impacts on the security of the classified matter. Facility approval is granted based on the physical and procedural safeguards at a given location. If a licensee could move the facility without prior approval, it would be very similar to granting the right to initially approve themselves. Therefore these comments have not been adopted.

Comment: The commenter indicated that "10 CFR 95.25(i) requires the inventory of a container found open. Because the NRC does not require an initial inventory of container contents, it is not clear what purpose the latter inventory serves. Regulations (10 CFR 95.41) were revised in 1996 to remove inventory requirements for classified documents, with the exception of external receipt and dispatch records. Further, inventories may no longer have much meaning since documents, computer disks, and other ADP media are easily copied with today's technology. Finally, 10 CFR 95.25(i) has reporting language that is unnecessary and should be eliminated. Finding an open security container would constitute an infraction and would, therefore, be reportable under 10 CFR 95.57."

Response: For the reasons cited by the commenter, the rule language in Section 95.25(i) has been modified to eliminate the requirements for an inventory and report.

Comment: The commenter stated that "10 CFR 95.25(j)(7) requires that keys and spare locks be changed or rotated every 12 months. It is not clear why locks and keys are treated differently than combinations. Combinations only require change out if evidence of compromise exists. Changing locks every 12 months can be an expensive procedure at a large facility employing several thousand people." Because both devices serve the same purpose (i.e., physical controls which deny access to classified matter), the commenter believes they should be treated consistently.

Response: Although the comment is not unreasonable, the national requirement, as reflected in section 5–310, "Supervision of Keys and Padlocks," of the NISPOM, is explicit. It states, "Use of key-operated padlocks are subject to the following requirements: (i) A key and lock custodian shall be appointed to ensure proper custody and handling of keys and locks used for protection of classified material; * * *; (vii) locks shall be changed or rotated at least annually, and shall be replaced after loss or compromise of their operable keys; * * *" The NRC requirement is a direct implementation of the national policy.

Comment: The commenter noted that "10 CFR 95.33(f) provides an example of the type of refresher briefing that would be appropriate to meet the requirements of this section, namely, the use of "audio/video materials and by issuing written materials." The example appears to preclude written or audio/video by themselves, both of which are adequate training tools. The commenter requests that the rule language in 10 CFR 95.33(f) be modified to permit either audio-visual or written materials.

Response: It has never been NRC's intent to require both audio-visual *and* written materials. We agree with the commenter that either alone, or both together, is an acceptable approach. The paragraph has been modified to clarify this point.

Comment: The commenter noted that "10 CFR 95.34(b)(1) requires that certain information concerning foreign visitors be provided to the NRC 60 days in advance of the visit. USEC operates a commercial uranium enrichment facility and already implements a security program which precludes the dissemination/exposure of classified information to Foreign Nationals. * * * As a commercial operation with extensive foreign customers, USEC cannot operate under such conditions. Our security program has already been reviewed and determined to be effective in precluding foreign nationals from gaining access to classified information. Security plans for all visits by foreign nationals are prepared, maintained, and available for review by the NRC. In this way, the NRC can still track the movement of foreign nationals and analyze potential threats. * * * Finally, the retention period for maintenance of records described in 10 CFR 95.34(b)(2) calls for five years. It does not appear that this change is related to the National Industrial Security Program."

Response: Although the NISPOM requires security controls for foreign nationals, it does not contain a requirement for a 60-day advance notification of visits by foreign nationals. NRC agrees that the proposed 60-day requirement is not needed and that the existing controls dealing with foreign nationals are adequate. However, the requirement to maintain the records of these visits for five years is consistent with the NRC requirements under § 95.36 for the International Atomic Energy Agency (IAEA) inspectors. NRC has modified § 95.34 to remove the 60-day notification requirement but is maintaining the five-year recordkeeping requirement.

Comment: The commenter noted that the proposed changes to § 95.35 ". * * * could save hundreds of thousands of dollars by essentially eliminating the need for "Q" clearances at our facilities. However, USEC clearances are maintained by the DOE and we are required to follow DOE personnel security regulations per NRC/DOE agreement. And although the Secretary of Energy signed the National Industrial Security Program required by Presidential Executive Order, it should be noted that, DOE's Office of Safeguards and Security does not endorse this concept. This discrepancy between the two agencies may result in complications for USEC."

Response: As noted below, DOE strongly objects to a reduction in the investigative requirements for access to Secret Restricted Data until such time as DOE and DoD reconcile their significant differences in the protection requirements of Secret Restricted Data. Because DOE rather than NRC maintains security clearances for the commenter, USEC apparently desires to avoid complications that may result from differing standards between NRC and DOE. The commenter is the organization that would be most affected by this change. No other licensee or certificate holder commented on this change. NRC has decided to withdraw the proposed change and allow the current requirements to remain in effect until DOE and DoD reconcile their significant differences in the protection requirements of Secret Restricted Data.

Comment: The commenter stated that "while the proposed regulations

(§ 95.57) should reduce the number of telephonic reports, it will not decrease the greater administrative burden on the certificate holder created by the required written reports. NRC should adopt a reporting system similar to that used by the power reactor industry and required by 10 CFR 73.71. Specifically, 10 CFR 95.57(a) should explain what type of event would require a one hour report (similar to 10 CFR 73.71(a)(1)). * * * Similarly, 10 CFR 95.57(b) should be revised to include those events not rising to the level of events described in 10 CFR 95.57(a). Events involving infractions, losses, or compromises should be logged for review. All loggable events should be sent to the NRC on a quarterly basis. * * * The requirement for 30 day written reports (follow up) should be eliminated for all except one hour reports. Experience has shown that these follow up reports involve extensive review by management and are time intensive. By using the logging process identified in 10 CFR 73.71, the NRC would still receive written indication of an event for inspection review or follow up. Such loggable events could show corrective actions or problem report numbers for further review if desired. Also, the NRC should consider a single point of contact for reportable events. The proposed reporting requirements require multiple reports within NRC. * * * Experience has shown that time delays may occur before the proper NRC individual can be located. This places severe time constraints on a licensee/certificate holder who must make a determination for reporting and notify two separate offices within the NRC of an event. USEC believes that the criteria for submission of NRC Form 790 more appropriately belongs in § 95.37, "Classification and Preparation of Documents." Additionally, NRC has changed the requirement for submission of Form 790 from monthly to "* * * as completed basis or every 30 days." Typically, the NRC has used the 30 day time period for submission of reports or events, not standard document submission. Because USEC files this form on a regular basis, we prefer to keep the current wording, * * * on a monthly basis. * * *"

Response: NRC agrees that examples of events requiring one-hour reporting should be included and § 95.57(a) has been revised to include these examples. NRC is also amenable to reducing the formal reporting requirements for security infractions to accommodate the logging procedure recommended by the commenter. We do not agree that quarterly reporting is adequate and have changed the rule to provide for submission of logs on a monthly basis. NRC does not agree that a single point of contact is practical for events of a high level of significance (note that we have agreed above to significantly reduce the number of events that will qualify for one-hour reporting). Because only truly serious events will now qualify, it is important that both the CSA and the NRC regional office be notified promptly. This change has not been adopted. NRC agrees that restoring the reporting requirement for the NRC Form 790 to "monthly" is acceptable and has so revised § 95.57(c). However, NRC will not remove the "as completed" option for those entities that prefer to submit information electronically as documents are classified. NRC does not see any particular advantage to moving the reporting requirement to a different paragraph and has not adopted that recommendation. The commenter also provided comments on the NRC document, "Standard Practice Procedures Plan Standard Format and Content for the Protection of Classified Matter for NRC Licensees, Certificate Holder, and Related Organizations," which is not a part of this rulemaking.

Comments From the DoD

Comment: The commenter noted that "During the development of the NISPOM, it became necessary to resolve dissimilar requirements for the handling of RD between the Department of Energy, the Commission, and this Department. For the past 40+ years, the Defense Department has successfully handled and stored RD according to its classification level, protecting SECRET/RD as SECRET national security information. * * * We have been working to resolve these differing requirements since 1995 * * * and that * * * in the interim, in (their) view * * * unnecessarily costly background investigations are continuing to be run in Energy and the Commission for access to the same information that is accessed based on a lesser investigation in the Defense Department. * * * Therefore, the Defense Department fully supports §§ 25.15 and 95.35 of the referenced proposed rule."

Response: NRC does not have significant numbers of licensee or certificate holder personnel with "Q" clearances. Most of those with "Q" clearances are at USEC. USEC commented that a discrepancy between DOE and NRC personnel security requirements for access to Secret Restricted Data may result in complications for USEC. As noted above, NRC has elected not to make these revisions to its rules until DOE and DoD reconcile their significant differences in the protection requirements of Secret Restricted Data.

Comments from the Department of Energy (DOE)

Comment: The commenter stated that they ". * * * have significant concerns that this rule, if amended as stated in your proposal, will compromise some of the nations most sensitive nuclear weapons information. Our position remains unchanged from our comment to the previous revision to this regulation. During the process of developing a single security standard for. * * * the protection of classified information, it was discovered that significant differences existed between the Department of Energy and the Department of Defense in the protection of Secret Restricted Data. * * * The two agencies agreed to work toward a solution. We are still in the process of reconciling those differences. * * * Neither the NISPOM nor the NISPOM Supplement allow for access to Secret Restricted Data based on an "L" access authorization. * * * When information is created, there is no distinction within Secret Restricted Data of "critical" or "nuclear weapons design, manufacturing, or vulnerability." Without the identification and marking of this type of information, the implementation of the requirement within NRC would be impossible. If this requirement were implemented, it poses a potential threat to Secret Restricted Data, that is, this country's most sensitive weapons design information being accessed by "L" cleared individuals."

Response: As stated above, because DOE strongly objects to changing the rule until DOE and DoD reconcile their significant differences in the protection requirements of Secret Restricted Data, and USEC, the organization most affected by this aspect of the rule, advised that a discrepancy between DOE and NRC on this issue may result in complications for them, NRC has decided not to modify §§ 25.15 and 95.35 at this time.

III. The Final Rule

With the exception of the items addressed under "Comments on the Proposed Rule," clarifying changes to §§ 25.11 and 95.11, "Specific exemptions," a slight change to fees charged for investigations in § 11.15 and Appendix A to 10 CFR part 25, and minor editorial and clarifying changes, the final rule is the same as the proposed rule. The specific changes from the proposed rule are—

- A slight modification to § 2.790(d) to clarify that it applies to plans for the protection of classified matter;
- A modification to § 10.22(d) to clarify what information may be provided to an individual whose eligibility for access authorization is in question;
- A slight modification to § 11.3 to clarify that it only applies to facilities posessing formula quantities of strategic special nuclear material;
- A change to the fees charged for personnel security investigations in § 11.15 and Appendix A to 10 CFR part 25;
- Modifications to §§ 25.11 and 95.11, "Specific exemptions," to clarify requirements for requesting and approving exemptions. This change is based on experience with exemption requests following publication of the proposed rule and more closely follows the language of § 50.12, "Specific exemptions."
- The proposed changes to §§ 25.15 and 95.35 have been withdrawn;
- A clarification of the definition of "Security Container" in § 95.5;
- The provision of several examples of what constitutes "significant events or changes" affecting the Foreign Ownership, Control or Influence status of a facility in § 95.17;
- Section 95.25(i) has been changed to eliminate the requirement to inventory the contents of a security container found open;
- Section 95.33 has been changed to permit either audio-visual or written materials for security education;
- Section 95.34 has been changed to eliminate the requirement for a 60-day advance notice to NRC visits by foreign nationals; and
- Section 95.57 has been changed to provide examples of the types of events that would require one-hour reporting, to reduce the number of events requiring one-hour reporting, and to replace some of the existing reports with a log maintained by a licensee/certificate holder.

Small Business Regulatory Enforcement Fairness Act

In accordance with the Small Business Regulatory Enforcement Fairness Act of 1996, the NRC has determined that this action is not a major rule and has verified this determination with the Office of Information and Regulatory Affairs of OMB.

Environmental Impact: Categorical Exclusion

The NRC has determined that this final rule is the type of action described as a categorical exclusion in 10 CFR 51.22(c)(1). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this final rule.

Paperwork Reduction Act Statement

This final rule amends information collection requirements that are subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, *et seq.*). These requirements were approved by the Office of Management and Budget, approval numbers 3150–0046, 3150–0047, 3150–0050, and 3150–0062. The public reporting burden for this information collection is estimated to average 12.5 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the information collection. The average burden hours per response for the proposed rule was estimated at 8.3 hours instead of 7.5 hours because the recordkeeping hours were not included in the burden estimate. The final rule burden increase includes the reduction of 8 responses and 4 burden hours because of the deletion of the requirement at 10 CFR 95.34(b)(1) for advance notification of foreign visitors. Send comments on any aspect of this information collection, including suggestions for reducing the burden, to the Records Management Branch (T–6 F33), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, or by Internet electronic mail at BJS1@NRC.GOV; and to the Desk Officer, Office of Information and Regulatory Affairs, NEOB–10202, (3150–0046, –0047, –0050, and –0062), Office of Management and Budget, Washington, DC 20503.

Public Protection Notification

If a means used to impose an information collection does not display a currently valid OMB control number, the NRC may not conduct or sponsor, and a person is not required to respond to, the information collection.

Regulatory Analysis

The Commission has prepared a regulatory analysis for this final regulation. The analysis examines the costs and benefits of the alternatives considered by the Commission. The analysis is available for inspection in the NRC Public Document Room, 2120 L Street, NW (Lower Level), Washington, DC. Single copies of the analysis may be obtained from James J. Dunleavy, Division of Facilities and Security, Office of Administration, U. S. Nuclear Regulatory Commission, Washington, DC 20555, telephone: (301) 415–7404, e-mail: JJD1@nrc.gov.

Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission certifies that this rule will not have a significant economic impact upon a substantial number of small entities. The NRC carefully considered the effect on small entities in developing this final rule on the protection of classified information and has determined that none of the facilities affected by this rule would qualify as a small entity under the NRC's size standards (10 CFR 2.810).

Backfit Analysis

The NRC has determined that the backfit rules in 10 CFR 50.109 and 76.76 apply to this rulemaking initiative because it falls within the criteria in 10 CFR 50.109(a)(1) and 76.76(a)(1). However, a backfit analysis is not required because this rulemaking falls under the 10 CFR 50.109(a)(4)(iii) and 76.76(a)(4)(iii) exceptions for a regulatory action that involves "redefining what level of protection to the . . . common defense and security should be regarded as adequate." Furthermore, the NRC has determined that this rulemaking does not constitute a backfit under the backfit rule in 10 CFR 72.62(a).

List of Subjects

10 CFR Part 2

Administrative practice and procedure, Antitrust, Byproduct material, Classified information, Environmental protection, Nuclear material, Nuclear power plants and reactors, Penalties, Sex discrimination, Source material, Special nuclear material, Waste treatment and disposal.

10 CFR Part 10

Administrative practice and procedure, Classified information, Criminal penalties, Investigations, Security measures.

10 CFR Part 11

Hazardous materials—transportation, Investigations, Nuclear Materials, Reporting and recordkeeping requirements, Security measures, Special nuclear material.

10 CFR Part 25

Classified information, Criminal penalties, Investigations, Reporting and recordkeeping requirements, Security measures.

10 CFR Part 95

Classified information, Criminal penalties, Reporting and recordkeeping requirements, Security measures.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 553; the NRC is adopting the following amendments to 10 CFR parts 2, 10, 11, 25, and 95.

PART 2—RULES OF PRACTICE FOR DOMESTIC LICENSING PROCEEDINGS AND ISSUANCE OF ORDERS

1. The authority citation for part 2 continues to read as follows:

Authority: Secs.161, 181, 68 Stat. 948, 953, as amended (42 U.S.C. 2201, 2231); sec. 191, as amended, Pub. L. 87–615, 76 Stat. 409 (42 U.S.C. 2241); sec. 201, 88 Stat.1242, as amended (42 U.S.C. 5841); 5 U.S.C. 552.

Section 2.101 also issued under secs. 53, 62, 63, 81, 103, 104, 105, 68 Stat. 930, 932, 933, 935, 936, 937, 938, as amended (42 U.S.C. 2073, 2092, 2093, 2111, 2133, 2134, 2135); sec. 114(f), Pub. L. 97–425, 96 Stat. 2213, as amended (42 U.S.C. 10134(f)); sec. 102, Pub. L. 91–190, 83 Stat. 853, as amended (42 U.S.C. 4332); sec. 301, 88 Stat. 1248 (42 U.S.C. 5871). Sections 2.102, 2.103, 2.104, 2.105, 2.721 also issued under secs. 102, 103, 104, 105, 183, 189, 68 Stat. 936, 937, 938, 954, 955, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2233, 2239). Section 2.105 also issued under Pub. L. 97–415, 96 Stat. 2073 (42 U.S.C. 2239). Sections 2.200–2.206 also issued under secs. 161 b, i, o, 182, 186, 234, 68 Stat. 948–951, 955, 83 Stat. 444, as amended (42 U.S.C. 2201 (b), (i), (o), 2236, 2282); sec. 206, 88 Stat 1246 (42 U.S.C. 5846). Sections 2.205(j) also issued under Pub. L. 101–410, 104 Stat. 890, as amended by section 31001(s), Pub. L. 104–134, 110 Stat. 1321–373 (28 U.S.C. 2461 note). Sections 2.600–2.606 also issued under sec. 102, Pub. L. 91–190, 83 Stat. 853, as amended (42 U.S.C. 4332). Sections 2.700a, 2.719 also issued under 5 U.S.C. 554. Sections 2.754, 2.760, 2.770, 2.780 also issued under 5 U.S.C. 557. Section 2.764 also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 2.790 also issued under sec. 103, 68 Stat. 936, as amended (42 U.S.C. 2133) and 5 U.S.C. 552. Sections 2.800 and 2.808 also issued under 5 U.S.C. 553. Section 2.809 also issued under 5 U.S.C. 553 and sec. 29, Pub. L. 85–256, 71 Stat. 579, as amended (42 U.S.C. 2039). Subpart K also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97–425, 96 Stat. 2230 (42 U.S.C. 10154). Subpart L also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239). Appendix A also issued under sec. 6, Pub. L. 91–560, 84 Stat. 1473 (42 U.S.C. 2135).

2. In § 2.790 paragraph (d)(1) is revised to read as follows:

§ 2.790 Public inspections, exemptions, requests for withholding.

* * * * *

(d) * * *

(1) Correspondence and reports to or from the NRC which contain information or records concerning a licensee's or applicant's physical protection, classified matter protection, or material control and accounting program for special nuclear material not otherwise designated as Safeguards Information or classified as National Security Information or Restricted Data.

* * * * *

PART 10—CRITERIA AND PROCEDURES FOR DETERMINING ELIGIBILITY FOR ACCESS TO RESTRICTED DATA OR NATIONAL SECURITY INFORMATION OR AN EMPLOYMENT CLEARANCE

3. The authority citation for part 10 is revised to read as follows:

Authority: Secs. 145, 161, 68 Stat. 942, 948, as amended (42 U.S.C. 2165, 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); E.O. 10450, 3 CFR parts 1949—1953 COMP., p. 936, as amended; E.O. 10865, 3 CFR 1959–1963 COMP., p. 398, as amended; 3 CFR Table 4.; E.O. 12968, 3 CFR 1995 COMP., p.396.

4. Section 10.1 is revised to read as follows:

§ 10.1 Purpose.

(a) This part establishes the criteria, procedures, and methods for resolving questions concerning:

(1) The eligibility of individuals who are employed by or applicants for employment with NRC contractors, agents, and licensees of the NRC, individuals who are NRC employees or applicants for NRC employment, and other persons designated by the Deputy Executive Director for Management Services of the NRC, for access to Restricted Data pursuant to the Atomic Energy Act of 1954, as amended, and the Energy Reorganization Act of 1974, or for access to national security information; and

(2) The eligibility of NRC employees, or the eligibility of applicants for employment with the NRC, for employment clearance.

(b) This part is published to implement the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, Executive Order 10865, 25 FR 1583 (February 24, 1960) Executive Order 10450, 18 FR 2489 (April 27, 1954), and Executive Order 12968, 60 FR 40245 (August 2, 1995).

5. In § 10.2, paragraph (d) is revised to read as follows:

§ 10.2 Scope.

* * * * *

(d) Any other person designated by the Deputy Executive Director for Management Services of the Nuclear Regulatory Commission.

6. In § 10.5, the introductory text is removed, the paragraph designations preceding each of the defined terms are removed, the definitions are rearranged in alphabetical order, and the definitions of *Access Authorization, Employment Clearance, National Security Information, are revised and the definition of NRC Personnel Security Review Panel* is added to read as follows:

§ 10.5 Definitions.

Access authorization means an administrative determination that an individual (including a consultant) who is employed by or an applicant for employment with the NRC, NRC contractors, agents, and licensees of the NRC, or other person designated by the Deputy Executive Director for Management Services, is eligible for a security clearance for access to Restricted Data or National Security Information.

* * * * *

Employment Clearance means an administrative determination that an individual (including a consultant) who is an NRC employee or applicant for NRC employment and other persons designated by the Deputy Executive Director for Management Services of the NRC is eligible for employment or continued employment pursuant to subsection 145(b) of the Atomic Energy Act of 1954, as amended.

* * * * *

National Security Information means information that has been determined pursuant to Executive Order 12958 or any predecessor order to require protection against unauthorized disclosure and that is so designated.

* * * * *

NRC Personnel Security Review Panel means an appeal panel appointed by the Deputy Executive Director for Management Services and consisting of three members, two of whom shall be selected from outside the security field. One member of the Panel shall be designated as Chairman.

* * * * *

7. In § 10.10 the introductory text of paragraph (d) is revised to read as follows:

§ 10.10 Application of the criteria.

* * * * *

(d) In resolving a question concerning the eligibility or continued eligibility of an individual for access authorization and/or employment clearance, the

following principles shall be applied by the Director, Division of Facilities and Security, Hearing Examiners, and the NRC Personnel Security Review Panel:

* * * * *

8. In § 10.12, paragraphs (a) and (c) are revised to read as follows:

§ 10.12 Interview and other investigation.

(a) The Director, Division of Facilities and Security, Office of Administration, may authorize the granting of access authorization and/or employment clearance on the basis of the information in the possession of the NRC or may authorize an interview with the individual, if the individual consents to be interviewed, or other investigation as the Director deems appropriate. On the basis of this interview and/or an investigation, the Director may authorize the granting of access authorization and/or employment clearance.

* * * * *

(c) If the Director, Division of Facilities and Security, cannot make a favorable finding regarding the eligibility of an individual for access authorization and/or employment clearance, the question of the individual's eligibility must be resolved in accordance with the procedures set forth in § 10.20 *et seq.*

9. Section 10.20 is revised to read as follows:

§ 10.20 Purpose of the procedures.

These procedures establish methods for the conduct of hearings and administrative review of questions concerning an individual's eligibility for an access authorization and/or an employment clearance pursuant to the Atomic Energy Act of 1954, as amended, and Executive Orders 10450, 10865, and 12968 when a resolution favorable to the individual cannot be made on the basis of the interview or other investigation.

10. Section 10.21 is revised to read as follows:

§ 10.21 Suspension of access authorization and/or employment clearance.

In those cases where information is received which raises a question concerning the continued eligibility of an individual for an access authorization and/or an employment clearance, the Director, Division of Facilities and Security, through the Director, Office of Administration, shall forward to the Deputy Executive Director for Management Services or other Deputy Executive Director, his or her recommendation as to whether the individual's access authorization and/or employment clearance should be suspended pending the final determination resulting from the operation of the procedures provided in this part. In making this recommendation the Director, Division of Facilities and Security, shall consider factors such as the seriousness of the derogatory information developed, the degree of access of the individual to classified information, and the individual's opportunity by reason of his or her position to commit acts adversely affecting the national security. An individual's access authorization and/or employment clearance may not be suspended except by the direction of the Executive Director for Operations, Deputy Executive Director for Management Services or other Deputy Executive Director.

11. Section 10.22 is revised to read as follows:

§ 10.22 Notice to individual.

A notification letter, prepared by the Division of Facilities and Security, approved by the Office of the General Counsel, and signed by the Director, Office of Administration, must be presented to each individual whose eligibility for an access authorization and/or an employment clearance is in question. Where practicable, the letter will be presented to the individual in person. The letter will be accompanied by a copy of this part and must state:

(a) That reliable information in the possession of the NRC has created a substantial doubt concerning the individual's eligibility for an access authorization and/or an employment clearance;

(b) The information that creates a substantial doubt regarding the individual's eligibility for an access authorization and/or an employment clearance, that must be as comprehensive and detailed as the national security interests and other applicable law permit;

(c) That the individual has the right to be represented by counsel or other representative at their own expense;

(d) That the individual may request within 20 days of the date of the notification letter, any documents, records and reports which form the basis for the question of their eligibility for an access authorization and/or an employment clearance. The individual will be provided within 30 days all such documents, records and reports to the extent they are unclassified and do not reveal a confidential source. The individual may also request the entire investigative file, which will be promptly provided, as permitted by the national security interests and other applicable law;

(e) That unless the individual files with the Director, Office of Administration, a written request for a hearing within 20 days of the individual's receipt of the notification letter or 20 days after receipt of the information provided in response to a request made under paragraph (d) of this section, whichever is later, the Director, Division of Facilities and Security, through the Director, Office of Administration, will submit a recommendation as to the final action to the Deputy Executive Director for Management Services on the basis of the information in the possession of the NRC;

(f) That if the individual files a written request for a hearing with the Director, Office of Administration, the individual shall file with that request a written answer under oath or affirmation that admits or denies specifically each allegation and each supporting fact contained in the notification letter. A general denial is not sufficient to controvert a specific allegation. If the individual is without knowledge, he or she shall so state and that statement will operate as a denial. The answer must also state any additional facts and information that the individual desires to have considered in explanation or mitigation of allegations in the notification letter. Failure to specifically deny or explain or deny knowledge of any allegation or supporting fact will be deemed an admission that the allegation or fact is true.

(g) That if the individual does not want to exercise his or her right to a hearing, but does want to submit an answer to the allegations in the notification letter, the individual may do so by filing with the Director, Office of Administration, within 20 days of receipt of the notification letter or 20 days after receipt of the information provided in response to a request made under paragraph (d) of this section, whichever is later, a written answer in accordance with the requirements of paragraph (f) of this section;

(h) That the procedures in § 10.24 *et seq.* will apply to any hearing and review.

12. In § 10.23, paragraph (a) is revised to read as follows:

§ 10.23 Failure of individual to request a hearing.

(a) In the event the individual fails to file a timely written request for a hearing pursuant to § 10.22, a recommendation as to the final action to be taken will be made by the Director,

Division of Facilities and Security, through the Director, Office of Administration, to the Deputy Executive Director for Management Services on the basis of the information in the possession of the NRC, including any answer filed by the individual.

* * * * *

13. In § 10.25, paragraphs (a) and (c) are revised to read as follows:

§ 10.25 NRC Hearing Counsel.

(a) Hearing Counsel assigned pursuant to § 10.24 will, before the scheduling of the hearing, review the information in the case and will request the presence of witnesses and the production of documents and other physical evidence relied upon by the Director, Division of Facilities and Security, in making a finding that a question exists regarding the eligibility of the individual for an NRC access authorization and/or an employment clearance in accordance with the provisions of this part. When the presence of a witness and the production of documents and other physical evidence is deemed by the Hearing Counsel to be necessary or desirable for a determination of the issues, the Director, Division of Facilities and Security, will make arrangements for the production of evidence and for witnesses to appear at the hearing by subpoena or otherwise.

* * * * *

(c) The individual is responsible for producing witnesses in his or her own behalf and/or presenting other evidence before the Hearing Examiner to support the individual's answer and defense to the allegations contained in the notification letter. When requested by the individual, however, the Hearing Counsel may assist the individual to the extent practicable and necessary. The Hearing Counsel may at his or her discretion request the Director, Division of Facilities and Security, to arrange for the issuance of subpoenas for witnesses to attend the hearing in the individual's behalf, or for the production of specific documents or other physical evidence, provided a showing of the necessity for assistance has been made.

14. In § 10.27 paragraph (c) is revised to read as follows:

§ 10.27 Prehearing proceedings.

* * * * *

(c) The parties will be notified by the Hearing Examiner at least ten days in advance of the hearing of the time and place of the hearing. For good cause shown, the Hearing Examiner may order postponements or continuances from time to time. If, after due notice, the individual fails to appear at the hearing, or appears but is not prepared to proceed, the Hearing Examiner shall, unless good cause is shown, return the case to the Director, Division of Facilities and Security, who shall make a recommendation on final action to be taken, through the Director, Office of Administration, to the Deputy Executive Director for Management Services on the basis of the information in the possession of the NRC.

15. In § 10.28, paragraph (n) is revised to read as follows:

§ 10.28 Conduct of hearing.

* * * * *

(n) A written transcript of the entire proceeding must be made by a person possessing appropriate NRC access authorization and/or employment clearance and, except for portions containing Restricted Data or National Security Information, or other lawfully withholdable information, a copy of the transcript will be furnished the individual without cost. The transcript or recording will be made part of the applicant's or employee's personnel security file.

16. Section 10.31 is revised to read as follows:

§ 10.31 Actions on the recommendations.

(a) Upon receipt of the findings and recommendation from the Hearing Examiner, and the record, the Director, Office of Administration, shall forthwith transmit it to the Deputy Executive Director for Management Services who has the discretion to return the record to the Director, Office of Administration, for further proceedings by the Hearing Examiner with respect to specific matters designated by the Deputy Executive Director for Management Services.

(b)(1) In the event of a recommendation by the Hearing Examiner that an individual's access authorization and/or employment clearance be denied or revoked, the Deputy Executive Director for Management Services shall immediately notify the individual in writing of the Hearing Examiner's findings with respect to each allegation contained in the notification letter, and that the individual has a right to request a review of his or her case by the NRC Personnel Security Review Panel and of the right to submit a brief in support of his or her contentions. The request for a review must be submitted to the Deputy Executive Director for Management Services within five days after the receipt of the notice. The brief will be forwarded to the Deputy Executive Director for Management Services, for transmission to the NRC Personnel Security Review Panel not later than 10 days after receipt of the notice.

(2) In the event the individual fails to request a review by the NRC Personnel Security Review Panel of an adverse recommendation within the prescribed time, the Deputy Executive Director for Management Services may at his or her discretion request a review of the record of the case by the NRC Personnel Security Review Panel. The request will set forth those matters at issue in the hearing on which the Deputy Executive Director for Management Services desires a review by the NRC Personnel Security Review Panel.

(c) Where the Hearing Examiner has made a recommendation favorable to the individual, the Deputy Executive Director for Management Services may at his or her discretion request a review of the record of the case by the NRC Personnel Security Review Panel. If this request is made, the Deputy Executive Director for Management Services shall immediately cause the individual to be notified of that fact and of those matters at issue in the hearing on which the Deputy Executive Director for Management Services desires a review by the NRC Personnel Security Review Panel. The Deputy Executive Director for Management Services will further inform the individual that within 10 days of receipt of this notice, the individual may submit a brief concerning those matters at issue for the consideration of the NRC Personnel Security Review Panel. The brief must be forwarded to the Deputy Executive Director for Management Services for transmission to the NRC Personnel Security Review Panel.

(d) In the event of a request for a review pursuant to paragraphs (b) and (c) of this section, the Hearing Counsel may file a brief within 10 days of being notified by the Deputy Executive Director for Management Services that a review has been requested. The brief will be forwarded to the Deputy Executive Director for Management Services for transmission to the NRC Personnel Security Review Panel.

(e) The Hearing Counsel may also request a review of the case by the NRC Personnel Security Review Panel. The request for review, which will set forth those matters at issue in the hearing on which the Hearing Counsel desires a review, will be submitted to the Deputy Director Executive for Management Services within five days after receipt of the Hearing Examiner's findings and recommendation. Within 10 days of the request for review, the Hearing Counsel may file a brief which will be forwarded to the Deputy Executive Director for Management Services for transmission

to the NRC Personnel Security Review Panel. A copy of the request for review, and a copy of any brief filed, will be immediately sent to the individual. If the Hearing Counsel's request is for a review of a recommendation favorable to the individual, the individual may, within 10 days of receipt of a copy of the request for review, submit a brief concerning those matters at issue for consideration of the NRC Personnel Security Review Panel. The brief will be forwarded to the Deputy Executive Director for Management Services for transmission to the NRC Personnel Security Review Panel and Hearing Counsel. A copy of the brief will be made a part of the applicant's personnel security file.

(f) The time limits imposed by this section for requesting reviews and the filing of briefs may be extended by the Deputy Executive Director for Management Services for good cause shown.

(g) In the event a request is made for a review of the record by the NRC Personnel Security Review Panel, the Deputy Executive Director for Management Services shall send the record, with all findings and recommendations and any briefs filed by the individual and the Hearing Counsel, to the NRC Personnel Security Review Panel. If neither the individual, the Deputy Executive Director for Management Services, nor the Hearing Counsel requests a review, the final determination will be made by the Deputy Executive Director for Management Services on the basis of the record with all findings and recommendations.

17. Section 10.32 is revised to read as follows:

§ 10.32 Recommendation of the NRC Personnel Security Review Panel.

(a) The Deputy Executive Director for Management Services shall designate an NRC Personnel Security Review Panel to conduct a review of the record of the case. The NRC Personnel Security Review Panel shall be comprised of three members, two of whom shall be selected from outside the security field. To qualify as an NRC Personnel Security Review Panel member, the person designated shall have an NRC "Q" access authorization and may be an employee of the NRC, its contractors, agents, or licensees. However, no employee or consultant of the NRC shall serve as an NRC Personnel Security Review Panel member reviewing the case of an employee (including a consultant) or applicant for employment with the NRC; nor shall any employee or consultant of an NRC contractor, agent or licensee serve as an NRC Personnel Security Review Panel member reviewing the case of an employee (including a consultant) or an applicant for employment of that contractor, agent, or licensee. No NRC Personnel Security Review Panel member shall be selected who has knowledge of the case or of any information relevant to the disposition of it, or who for any reason would be unable to issue a fair and unbiased recommendation.

(b) The NRC Personnel Security Review Panel shall consider the matter under review based upon the record supplemented by any brief submitted by the individual or the Hearing Counsel. The NRC Personnel Security Review Panel may request additional briefs as the Panel deems appropriate. When the NRC Personnel Security Review Panel determines that additional evidence or further proceedings are necessary, the record may be returned to the Deputy Executive Director for Management Services with a recommendation that the case be returned to the Director, Office of Administration, for appropriate action, which may include returning the case to the Hearing Examiner and reconvening the hearing to obtain additional testimony. When additional testimony is taken by the Hearing Examiner, a written transcript of the testimony will be made a part of the record and will be taken by a person possessing an appropriate NRC access authorization and/or employment clearance and, except for portions containing Restricted Data or National Security Information, or other lawfully withholdable information, a copy of the transcript will be furnished the individual without cost.

(c) In conducting the review, the NRC Personnel Security Review Panel shall make its findings and recommendations as to the eligibility or continued eligibility of an individual for an access authorization and/or an employment clearance on the record supplemented by additional testimony or briefs, as has been previously determined by the NRC Personnel Security Review Panel as appropriate.

(d) The NRC Personnel Security Review Panel shall not consider the possible impact of the loss of the individual's services upon the NRC program.

(e) If, after considering all the factors in light of the criteria set forth in this part, the NRC Personnel Security Review Panel is of the opinion that granting or continuing an access authorization and/or an employment clearance to the individual will not endanger the common defense and security and will be clearly consistent with the national interest, the NRC Personnel Security Review Panel shall make a favorable recommendation; otherwise, the NRC Personnel Security Review Panel shall make an adverse recommendation. The NRC Personnel Security Review Panel shall prepare a report of its findings and recommendations and submit the report in writing to the Deputy Executive Director for Management Services, who shall furnish a copy to the individual. The findings and recommendations must be fully supported by stated reasons.

18. Section 10.33 is revised to read as follows:

§ 10.33 Action by the Deputy Executive Director for Management Services.

(a) The Deputy Executive Director for Management Services, on the basis of the record accompanied by all findings and recommendations, shall make a final determination whether access authorization and/or employment clearance shall be granted, denied, or revoked, except when the provisions of § 10.28 (i), (j), or (l) have been used and the Deputy Executive Director for Management Services determination is adverse, the Commission shall make the final agency determination.

(b) In making the determination as to whether an access authorization and/or an employment clearance shall be granted, denied, or revoked, the Deputy Executive Director for Management Services or the Commission shall give due recognition to the favorable as well as the unfavorable information concerning the individual and shall take into account the value of the individual's services to the NRC's program and the consequences of denying or revoking access authorization and/or employment clearance.

(c) In the event of an adverse determination, the Deputy Executive Director for Management Services shall promptly notify the individual through the Director, Office of Administration, of his or her decision that an access authorization and/or an employment clearance is being denied or revoked and of his or her findings with respect to each allegation contained in the notification letter for transmittal to the individual.

(d) In the event of a favorable determination, the Deputy Executive Director for Management Services shall promptly notify the individual through the Director, Office of Administration.

19. In § 10.34, paragraph (a) is revised to read as follows:

§ 10.34 Action by the Commission.

(a) Whenever, under the provisions of § 10.28(i), (j), or (l) an individual has not been afforded an opportunity to confront and cross-examine witnesses who have furnished information adverse to the individual and an adverse recommendation has been made by the Deputy Executive Director for Management Services, the Commission shall review the record and determine whether an access authorization and/or an employment clearance should be granted, denied, or revoked, based upon the record.

* * * * *

20. Section 10.35 is revised to read as follows:

§ 10.35 Reconsideration of cases.

(a) Where, pursuant to the procedures set forth in §§ 10.20 through 10.34, the Deputy Executive Director for Management Services or the Commission has made a determination granting an access authorization and/or an employment clearance to an individual, the individual's eligibility for an access authorization and/or an employment clearance will be reconsidered only when subsequent to the time of that determination, new derogatory information has been received or the scope or sensitivity of the Restricted Data or National Security Information to which the individual has or will have access has significantly increased. All new derogatory information, whether resulting from the NRC's reinvestigation program or other sources, will be evaluated relative to an individual's continued eligibility in accordance with the procedures of this part.

(b) Where, pursuant to these procedures, the Commission or Deputy Executive Director for Management Services has made a determination denying or revoking an access authorization and/or an employment clearance to an individual, the individual's eligibility for an access authorization and/or an employment clearance may be reconsidered when there is a bona fide offer of employment and/or a bona fide need for access to Restricted Data or National Security Information and either material and relevant new evidence is presented, which the individual and his or her representatives are without fault in failing to present before, or there is convincing evidence of reformation or rehabilitation. Requests for reconsideration must be submitted in writing to the Deputy Executive Director for Management Services through the Director, Office of Administration. Requests must be accompanied by an affidavit setting forth in detail the information referred to above. The Deputy Executive Director for Management Services shall cause the individual to be notified as to whether his or her eligibility for an access authorization and/or an employment clearance will be reconsidered and if so, the method by which a reconsideration will be accomplished.

(c) Where an access authorization and/or an employment clearance has been granted to an individual by the Director, Division of Facilities and Security, without recourse to the procedures set forth in §§ 10.20 through 10.34, the individual's eligibility for an access authorization and/or an employment clearance will be reconsidered only in a case where, subsequent to the granting of the access authorization and/or employment clearance, new derogatory information has been received or the scope or sensitivity of the Restricted Data or National Security Information to which the individual has or will have access has significantly increased. All new derogatory information, whether resulting from the NRC's reinvestigation program or other sources, will be evaluated relative to an individual's continued eligibility in accordance with the procedures of this part.

PART 11—CRITERIA AND PROCEDURES FOR DETERMINING ELIGIBILITY FOR ACCESS TO OR CONTROL OVER SPECIAL NUCLEAR MATERIAL

21. The authority citation for part 11 continues to read as follows:

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

Section 11.15(e) also issued under sec. 501, 85 Stat. 290 (31 U.S.C. 483a).

22. Section 11.3(a) is revised to read as follows:

§ 11.3 Scope.

(a) The requirements, criteria, and procedures of this part apply to the establishment of and eligibility for special nuclear material access authorization for employees, contractors, consultants of, and applicants for employment with licensees or contractors of the Nuclear Regulatory Commission. This employment, contract, service, or consultation may involve any duties or assignments within the criteria of § 11.11 or § 11.13 requiring access to, or control over, formula quantities of special nuclear material (as defined in part 73 of this chapter).

* * * * *

23. In § 11.7 the paragraph designations are removed, the definitions are rearranged in alphabetical order, and the definitions of *NRC–"U" special nuclear material access authorization* and *NRC–"R" special nuclear material access authorization* are revised to read as follows:

§ 11.7 Definitions.

* * * * *

NRC–"U" special nuclear material access authorization means an administrative determination based upon a single scope background investigation, normally conducted by the Office of Personnel Management, that an individual in the course of employment is eligible to work at a job falling within the criterion of 11.11(a)(1) or 11.13.

NRC–"R" special nuclear material access authorization means an administrative determination based upon a national agency check with law and credit investigation that an individual in the course of employment is eligible to work at a job falling within the criterion of § 11.11(a)(2).

* * * * *

24. Section 11.15 is revised to read as follows:

§ 11.15 Application for special nuclear material access authorization.

(a)(1) Application for special nuclear material access authorization, renewal, or change in level must be filed by the licensee on behalf of the applicant with the Director, Division of Facilities and Security, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Applications for affected individuals employed on October 28, 1985, shall be submitted within 60 days of notification of Commission approval of the amended security plan.

(2) Licensees who wish to secure NRC–U or NRC–R special nuclear material access authorizations for individuals in possession of an active NRC Q or L access authorization or other security clearance granted by another Federal agency based on an equivalent investigation shall submit a "Security Acknowledgment" (NRC Form 176) and a "Request for Access Authorization" (NRC Form 237). NRC will process these requests by verifying the data on an NRC-cleared individual, or by contacting the Federal agency that granted the clearance, requesting certification of the security clearance, and determining the investigative basis and level of the clearance. Licensees may directly request the Federal agency that administered the security clearance, if other than NRC, to certify to the NRC

that it has on file an active security clearance for an individual and to specify the investigative basis and level of the clearance.

(b) Applications for special nuclear material access authorization for individuals, other than those qualifying under the provisions of § 11.15(a)(2), must be made on forms supplied by the Commission, including:

(1) Questionnaire for National Security Positions (SF–86, Parts 1 and 2);

(2) Two completed standard fingerprint cards (FD–258);

(3) Security Acknowledgment (NRC Form 176);

(4) Other related forms where specified in accompanying instruction (NRC–254); and

(5) A statement by the employer, prospective employer, or contractor identifying the job to be assigned to or assumed by the individual and the level of authorization needed, justified by appropriate reference to the licensee's security plan.

(c)(1) Except as provided in paragraph (c)(2) of this section, NRC–U special nuclear material access authorizations must be renewed every five years from the date of issuance. Except as provided in paragraph (c)(3) of this section, NRC–R special nuclear material access authorizations must be renewed every ten years from the date of issuance. An application for renewal must be submitted at least 120 days before the expiration of the five-year period for NRC–U and ten-year period for NRC–R, respectively, and must include:

(i) A statement by the licensee that at the time of application for renewal the individual's assigned or assumed job requires an NRC–U or an NRC–R special nuclear material access authorization, justified by appropriate reference to the licensee's security plan;

(ii) The Questionnaire for National Security Positions (SF–86, Parts 1 and 2);

(iii) Two completed standard fingerprint cards (FD–258); and

(iv) Other related forms specified in accompanying NRC instructions (NRC Form 254).

(2) An exception to the time for submission of NRC–U special nuclear material access authorization renewal applications and the paperwork required is provided for individuals who have a current and active DOE–Q access authorization and are subject to DOE Reinvestigation Program requirements. For these individuals, the submission to DOE of the SF–86 pursuant to DOE Reinvestigation Program requirements (generally every five years) will satisfy the NRC renewal submission and paperwork requirements even if less than five years has passed since the date of issuance or renewal of the NRC–U access authorization. Any NRC–U special nuclear material access authorization renewed in response to provisions of this paragraph will not be due for renewal until the date set by DOE for the next reinvestigation of the individual pursuant to DOE's Reinvestigation Program.

(3) An exception to the time for submission of NRC–R special nuclear material access authorization renewal applications and the paperwork required is provided for individuals who have a current and active DOE–L or DOE–Q access authorization and are subject to DOE Reinvestigation Program requirements. For these individuals, the submission to DOE of the SF–86 pursuant to DOE Reinvestigation Program requirements will satisfy the NRC renewal submission and paperwork requirements even if less than ten years have passed since the date of issuance or renewal of the NRC–R access authorization. Any NRC–R special nuclear material access authorization renewed pursuant to this paragraph will not be due for renewal until the date set by DOE for the next reinvestigation of the individual pursuant to DOE's Reinvestigation Program.

(4) Notwithstanding the provisions of paragraph (c)(2) of this section, the period of time for the initial and each subsequent NRC–U renewal application to NRC may not exceed seven years.

(5) Notwithstanding the provisions of paragraph (c)(3) of this section, the period of time for the initial and each subsequent NRC–R renewal application to NRC may not exceed twelve years. Any individual who is subject to the DOE Reinvestigation Program requirements but, for administrative or other reasons, does not submit reinvestigation forms to DOE within seven years of the previous submission, for a NRC–U renewal or twelve years of the previous submission for a NRC–R renewal, shall submit a renewal application to NRC using the forms prescribed in paragraph (c)(1) of this section before the expiration of the seven year period for NRC–U or twelve year period for NRC–R renewal.

(d) If at any time, due to new assignment or assumption of duties, a change in a special nuclear material access authorization level from NRC "R" to "U" is required, the individual shall apply for a change of level of special nuclear material access authorization. The application must include a description of the new duties to be assigned or assumed, justified by appropriate reference to the licensee's security plan.

(e)(1) Each application for a special nuclear material access authorization, renewal, or change in level must be accompanied by the licensee's remittance, payable to the U.S. Nuclear Regulatory Commission, according to the following schedule:

i. NRC–R	[1]$130
ii. NRC–R (expedited processing)	[1]203
iii. NRC–R based on certification of comparable investigation	[2]0
iv. NRC–R renewal	[1]130
v. NRC–U requiring single scope investigation.	2856
vi. NRC–U requiring single scope investigation (expedited processing)	3295
vii. NRC–U based on certification of comparable investigation	[2]0
viii. NRC–U renewal	[2]1705

[1] If the NRC determines, based on its review of available data, that a National Agency Check with law and credit investigation is necessary, a fee of $130 will be assessed prior to the conduct of the investigation; however, if a single scope investigation is deemed necessary by the NRC, based on its review of available data, a fee of $2,856 will be assessed prior to the conduct of the investigation.

[2] If the NRC determines, based on its review of available data, that a single scope investigation is necessary, a fee of $2,856 will be assessed prior to the conduct of the investigation.

(2) Material access authorization fees will be published each time the Office of Personnel Management notifies NRC of a change in the background investigation rate it charges NRC for conducting the investigation. Any changed access authorization fees will be applicable to each access authorization request received upon or after the date of publication. Applications from individuals having current Federal access authorizations

may be processed expeditiously at no cost because the Commission may accept the certification of access authorizations and investigative data from other Federal government agencies that grant personnel access authorizations.

(f)(1) Any Federal employee, employee of a contractor of a Federal agency, licensee, or other person visiting an affected facility for the purpose of conducting official business, who possesses an active NRC or DOE–Q access authorization or an equivalent Federal security clearance granted by another Federal agency ("Top Secret") based on a comparable single scope background investigation may be permitted, in accordance with § 11.11, the same level of unescorted access that an NRC–U special nuclear material access authorization would afford.

(2) Any Federal employee, employee of a contractor of a Federal agency, licensee, or other person visiting an affected facility for the purpose of conducting official business, who possesses an active NRC or DOE–L access authorization or an equivalent security clearance granted by another Federal agency ("Secret") based on a comparable or greater background investigation consisting of a national agency check with law and credit may be permitted, in accordance with § 11.11, the same level of unescorted access that an NRC–R special nuclear material access authorization would afford. An NRC or DOE–L access authorization or an equivalent security clearance ("Secret"), based on a background investigation or national agency check with credit granted or being processed by another Federal agency before January 1, 1998, is acceptable to meet this requirement.

25. Section 11.16 is revised to read as follows:

§ 11.16 Cancellation of request for special nuclear material access authorization.

When a request for an individual's access authorization is withdrawn or canceled, the licensee shall notify the Chief, Personnel Security Branch, NRC Division of Facilities and Security immediately, by telephone, so that the investigation may be discontinued. The caller shall provide the full name and date of birth of the individual, the date of request, and the type of access authorization originally requested ("U" or "R"). The licensee shall promptly submit written confirmation of the telephone notification to the Personnel Security Branch, NRC Division of Facilities and Security. A portion of the fee for the "U" special nuclear material access authorization may be refunded depending upon the status of the single scope investigation at the time of withdrawal or cancellation.

26. In § 11.21, paragraphs (c) and (d) are revised to read as follows:

§ 11.21 Application of the criteria.

* * * * *

(c) When the reports of an investigation of an individual contain information reasonably falling within one or more of the classes of derogatory information listed in § 10.11, it creates a question as to the individual's eligibility for special nuclear material access authorization. In these cases, the application of the criteria must be made in light of and with specific regard to whether the existence of the information supports a reasonable belief that the granting of a special nuclear material access authorization would be inimical to the common defense and security. The Director, Division of Facilities and Security, may authorize the granting of a special nuclear material access authorization on the basis of the information in the case or may authorize the conduct of an interview with the individual and, on the basis of the interview and other investigation as the Director deems appropriate, may authorize the granting of a special nuclear material access authorization. Otherwise, a question concerning the eligibility of an individual for a special nuclear material access authorization must be resolved in accordance with the procedures set forth in §§ 10.20 through 10.38 of this chapter.

(d) In resolving a question concerning the eligibility or continued eligibility of an individual for a special nuclear material access authorization by action of the Hearing Examiner or a Personnel Security Review Panel,[3] the following principle shall be applied by the Examiner and the Personnel Security Review Panel: Where there are sufficient grounds to establish a reasonable belief as to the truth of the information regarded as substantially derogatory and when the existence of this information supports a reasonable belief that granting access would be inimical to the common defense and security, this will be the basis for a recommendation for denying or revoking special nuclear material access authorization if not satisfactorily rebutted by the individual or shown to be mitigated by circumstance.

[3] The functions of the Hearing Examiner and the Personnel Security Review Panel are described in part 10 of this chapter.

PART 25—ACCESS AUTHORIZATION FOR LICENSEE PERSONNEL

27 The authority citation for Part 25 continues to read as follows:

Authority: Secs. 145, 161, 68 Stat. 942, 948, as amended (42 U.S.C. 2165, 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); E.O. 10865, as amended, 3 CFR 1959–1963 Comp., p. 398 (50 U.S.C. 401, note); E.O. 12829, 3 CFR, 1993 Comp. p. 570; E.O. 12958, 3 CFR, 1995 Comp., p .333; E.O. 12968, 3 CFR, 1995 Comp., p .396. Appendix A also issued under 96 Stat. 1051 (31 U.S.C. 9701).

28. In § 25.5 the definitions of *"L" access authorization, National Security Information, and "Q" access authorization are revised to read as follows:*

§ 25.5 Definitions.

* * * * *

"L" access authorization means an access authorization granted by the Commission that is normally based on a national agency check with a law and credit investigation (NACLC) or an access national agency check and inquiries investigation (ANACI) conducted by the Office of Personnel Management.

* * * * *

National Security Information means information that has been determined pursuant to Executive Order 12958 or any predecessor order to require protection against unauthorized disclosure and that is so designated.

* * * * *

"Q" access authorization means an access authorization granted by the Commission normally based on a single scope background investigation conducted by the Office of Personnel Management, the Federal Bureau of Investigation, or other U.S. Government agency which conducts personnel security investigations.

* * * * *

29. Section 25.9 is revised to read as follows:

§ 25.9 Communications.

Except where otherwise specified, all communications and reports concerning the regulations in this part should be addressed to the Director, Division of Facilities and Security, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

30. Section 25.11 is revised to read as follows:

§ 25.11 Specific exemptions.

The NRC may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of the regulations of this part, that are—

(a) Authorized by law, will not present an undue risk to the public health and safety, and are consistent with the common defense and security; or

(b) Coincidental with one or more of the following:

(1) An application of the regulation in the particular circumstances conflicts with other NRC rules or requirements;

(2) An application of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule;

(3) When compliance would result in undue hardship or other costs that significantly exceed those contemplated when the regulation was adopted, or that significantly exceed those incurred by others similarly situated;

(4) When the exemption would result in benefit to the common defense and security that compensates for any decrease in the security that may result from the grant of the exemption;

(5) When the exemption would provide only temporary relief from the applicable regulation and the licensee or applicant has made good faith efforts to comply with the regulation;

(6) When there is any other material circumstance present that was not considered when the regulation was adopted that would be in the public interest to grant an exemption. If this condition is relied on exclusively for satisfying paragraph (b) of this section, the exemption may not be granted until the Executive Director for Operations has consulted with the Commission.

31. Section 25.19 is revised to read as follows:

§ 25.19 Processing applications.

Each application for an access authorization or access authorization renewal must be submitted to the CSA. If the NRC is the CSA, the application and its accompanying fee must be submitted to the NRC Division of Facilities and Security. If necessary, the NRC Division of Facilities and Security may obtain approval from the appropriate Commission office exercising licensing or regulatory authority before processing the access authorization or access authorization renewal request. If the applicant is disapproved for processing, the NRC Division of Facilities and Security shall notify the submitter in writing and return the original application (security packet) and its accompanying fee.

32. In § 25.21, paragraph (c) is revised to read as follows:

§ 25.21 Determination of initial and continued eligibility for access authorization.

* * * * *

(c)(1) Except as provided in paragraph (c)(2) of this section, an NRC "Q" access authorization must be renewed every five years from the date of issuance. Except as provided in paragraph (c)(2) of this section, an NRC "L" access authorization must be renewed every ten years from the date of issuance. An application for renewal must be submitted at least 120 days before the expiration of the five-year period for a "Q" access authorization and the ten-year period for an "L" access authorization, and must include:

(i) A statement by the licensee or other person that the individual continues to require access to classified National Security Information or Restricted Data; and

(ii) A personnel security packet as described in § 25.17(d).

(2) Renewal applications and the required paperwork are not required for individuals who have a current and active access authorization from another Federal agency and who are subject to a reinvestigation program by that agency that is determined by the NRC to meet the NRC's requirements. (The DOE Reinvestigation Program has been determined to meet the NRC's requirements.) For these individuals, the submission of the SF–86 by the licensee or other person to the other Government agency pursuant to their reinvestigation requirements will satisfy the NRC's renewal submission and paperwork requirements, even if less than five years have passed since the date of issuance or renewal of the NRC "Q" access authorization, or if less than 10 years have passed since the date of issuance or renewal of the NRC "L" access authorization. Any NRC access authorization continued in response to the provisions of this paragraph will, thereafter, not be due for renewal until the date set by the other Government agency for the next reinvestigation of the individual pursuant to the other agency's reinvestigation program. However, the period of time for the initial and each subsequent NRC "Q" renewal application to the NRC may not exceed seven years or, in the case of an NRC "L" renewal application, twelve years. Any individual who is subject to the reinvestigation program requirements of another Federal agency but, for administrative or other reasons, does not submit reinvestigation forms to that agency within seven years for a "Q" renewal or twelve years for an "L" renewal of the previous submission, shall submit a renewal application to the NRC using the forms prescribed in § 25.17(d) before the expiration of the seven-year period for a "Q" renewal or twelve-year period for an "L" renewal.

(3) If the NRC is not the CSA, reinvestigation program procedures and requirements will be set by the CSA.

33. In § 25.23, paragraph (a) is revised to read as follows:

§ 25.23 Notification of grant of access authorization.

* * * * *

(a) In those cases when the determination was made as a result of a Personnel Security Hearing or by a Personnel Security Review Panel ; or

* * * * *

34. Section 25.25 is revised to read as follows:

§ 25.25 Cancellation of requests for access authorization.

When a request for an individual's access authorization or renewal of an access authorization is withdrawn or canceled, the requestor shall notify the CSA immediately by telephone so that the single scope background investigation, national agency check with law and credit investigation, or other personnel security action may be discontinued. The requestor shall identify the full name and date of birth of the individual, the date of request, and the type of access authorization or access authorization renewal requested. The requestor shall confirm each telephone notification promptly in writing.

35. In § 25.27, paragraph (b) is revised to read as follows:

§ 25.27 Reopening of cases in which requests for access authorizations are canceled.

* * * * *

(b) Additionally, if 90 days or more have elapsed since the date of the last Questionnaire for National Security Positions (SF–86), or CSA equivalent, the individual must complete a personnel security packet (see § 25.17(d)). The CSA, based on investigative or other needs, may require a complete personnel security packet in other cases as well. A fee, equal to the amount paid for an initial request, will be charged only if a new or updating investigation by the NRC is required.

36. In § 25.31, paragraphs (a), (b), and (c) are revised to read as follows:

§ 25.31 Extensions and transfers of access authorizations.

(a) The NRC Division of Facilities and Security may, on request, extend the authorization of an individual who possesses an access authorization in

connection with a particular employer or activity to permit access to classified information in connection with an assignment with another employer or activity.

(b) The NRC Division of Facilities and Security may, on request, transfer an access authorization when an individual's access authorization under one employer or activity is terminated, simultaneously with the individual being granted an access authorization for another employer or activity.

(c) Requests for an extension or transfer of an access authorization must state the full name of the person, date of birth, and level of access authorization. The Director, Division of Facilities and Security, may require a new personnel security packet (see § 25.17(c)) to be completed by the applicant. A fee, equal to the amount paid for an initial request, will be charged only if a new or updating investigation by the NRC is required.

* * * * *

37. In § 25.33, paragraphs (a) and (b) are revised to read as follows:

§ 25.33 Termination of access authorizations.

(a) Access authorizations will be terminated when:

(1) An access authorization is no longer required;

(2) An individual is separated from the employment or the activity for which he or she obtained an access authorization for a period of 90 days or more; or

(3) An individual, pursuant to 10 CFR part 10 or other CSA-approved adjudicatory standards, is no longer eligible for an access authorization.

(b) A representative of the licensee or other organization that employs the individual whose access authorization will be terminated shall immediately notify the CSA when the circumstances noted in paragraph (a)(1) or (a)(2) of this section exist; inform the individual that his or her access authorization is being terminated, and the reason; and that he or she will be considered for reinstatement of an access authorization if he or she resumes work requiring the authorization.

* * * * *

38. In § 25.35, paragraph (b) is revised to read as follows:

§ 25.35 Classified visits.

* * * * *

(b) Representatives of the Federal Government, when acting in their official capacities as inspectors, investigators, or auditors, may visit a licensee, certificate holder, or other facility without furnishing advanced notification, provided these representatives present appropriate Government credentials upon arrival. Normally, however, Federal representatives will provide advance notification in the form of an NRC Form 277, "Request for Visit or Access Approval," with the "need-to-know" certified by the appropriate NRC office exercising licensing or regulatory authority and verification of an NRC access authorization by the Division of Facilities and Security.

* * * * *

39. In § 25.37, paragraph (b) is revised to read as follows:

§ 25.37 Violations.

* * * * *

(b) National Security Information is protected under the requirements and sanctions of Executive Order 12958.

40. Appendix A to Part 25 is revised to read as follows:

APPENDIX A TO PART 25—FEES FOR NRC ACCESS AUTHORIZATION

Category	Fee
Initial "L" access authorization	[1] $130
Initial "L" access authorization (expedited processing)	[1] 203
Reinstatement of "L" access authorization	[2] 130
Extension or Transfer of "L" access authorization	[2] 130
Renewal of "L" access authorization	[1] 130
Initial "Q" access authorization	2856
Initial "Q" access authorization (expedited processing)	3295
Reinstatement of "Q" access authorization	[2] 2856
Reinstatement of "Q" access authorization (expedited processing)	[2] 3295
Extension or Transfer of "Q"	[2] 2856
Extension or Transfer of "Q" (expedited processing)	[2] 3295
Renewal of "Q" access authorization	[2] 1705

[1] If the NRC determines, based on its review of available data, that a single scope investigation is necessary, a fee of $2856 will be assessed before the conduct of the investigation.
[2] Full fee will only be charged if an investigation is required.

41. The heading of Part 95 is revised to read as follows:

PART 95—FACILITY SECURITY CLEARANCE AND SAFEGUARDING OF NATIONAL SECURITY INFORMATION AND RESTRICTED DATA

42. The authority citation for part 95 continues to read as follows:

Authority: Secs. 145, 161, 193, 68 Stat. 942, 948, as amended (42 U.S.C. 2165, 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); E.O. 10865, as amended, 3 CFR 1959–1963 Comp., p. 398 (50 U.S.C. 401, note); E.O. 12829, 3 CFR 1993 Comp., p. 570; E.O. 12958, as amended, 3 CFR 1995 Comp., p. 333; E.O. 12968, 3 CFR 1995 Comp., p. 391.

43. In § 95.5 the definitions of *NRC "L" access authorization, NRC "Q" access authorization,* and *Security container* are revised to read as follows:

§ 95.5 Definitions.

* * * * *

NRC "L" access authorization means an access authorization granted by the Commission normally based on a national agency check with law and credit investigation (NACLC) or an access national agency check and inquiries investigation (ANACI)) conducted by the Office of Personnel Management.

NRC "Q" access authorization means an access authorization granted by the Commission normally based on a single scope background investigation conducted by the Office of Personnel Management, the Federal Bureau of Investigation, or other U.S. Government agency that conducts personnel security investigations.

* * * * *

Security container includes any of the following repositories:

(1) A security filing cabinet—one that bears a Test Certification Label on the side of the locking drawer, inside wall adjacent to the locking drawer, or interior door plate, or is marked,

"General Services Administration Approved Security Container" on the exterior of the top drawer or door.

(2) A safe—burglar-resistive cabinet or chest which bears a label of the Underwriters' Laboratories, Inc. certifying the unit to be a TL–15, TL–30, or TRTL–30, and has a body fabricated of not less than 1 inch of steel and a door fabricated of not less than 1½ inches of steel exclusive of the combination lock and bolt work; or bears a Test Certification Label on the inside of the door, or is marked "General Services Administration Approved Security Container" and has a body of steel at least ½" thick, and a combination locked steel door at least 1" thick, exclusive of bolt work and locking devices; and an automatic unit locking mechanism.

(3) A vault—a windowless enclosure constructed with walls, floor, roof, and door(s) that will delay penetration sufficient to enable the arrival of emergency response forces capable of preventing theft, diversion, damage, or compromise of classified information or matter, when delay time is assessed in conjunction with detection and communication subsystems of the physical protection system.

(4) A vault-type room—a room that has a combination lock door and is protected by an intrusion alarm system that alarms upon the unauthorized penetration of a person anywhere into the room.

(5) Other repositories that would provide comparable physical protection in the judgment of the Division of Facilities and Security.

* * * * *

44. In § 95.8, paragraph (b) is revised to read as follows:

§ 95.8 Information collection requirements: OMB approval.

* * * * *

(b) The approved information collection requirements contained in this part appear in §§ 95.11, 95.15, 95.17, 95.18, 95.21, 95.25, 95.33, 95.34, 95.36, 95.37, 95.39, 95.41, 95.43, 95.45, 95.47, 95.53, and 95.57.

45. Section 95.9 is revised to read as follows:

§ 95.9 Communications.

Except where otherwise specified, all communications and reports concerning the regulations in this part should be addressed to the Director, Division of Facilities and Security, Nuclear Regulatory Commission, Washington, DC 20555.

46. Section 95.11 is revised to read as follows:

§ 95.11 Specific exemptions.

The NRC may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of the regulations of this part, that are—

(a) Authorized by law, will not present an undue risk to the public health and safety, and are consistent with the common defense and security; or

(b) Coincidental with one or more of the following:

(1) An application of the regulation in the particular circumstances conflicts with other rules or requirements of the NRC;

(2) An application of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule;

(3) When compliance would result in undue hardship or other costs that are significantly in excess of those contemplated when the regulation was adopted, or that are significantly in excess of those incurred by others similarly situated;

(4) When the exemption would result in benefit to the common defense and security that compensates for any decrease in security that may result from the grant of the exemption;

(5) When the exemption would provide only temporary relief from the applicable regulation and the licensee or applicant has made good faith efforts to comply with the regulation;

(6) When there is any other material circumstance not considered when the regulation was adopted for which it would be in the public interest to grant an exemption. If such a condition is relied on exclusively for satisfying paragraph (b) of this section, the exemption may not be granted until the Executive Director for Operations has consulted with the Commission.

47. In § 95.15, paragraph (a) is revised to read as follows:

§ 95.15 Approval for processing licensees and others for facility clearance.

(a) A licensee, certificate holder, or other person who has a need to use, process, store, reproduce, transmit, transport, or handle NRC classified information at any location in connection with Commission-related activities shall promptly request an NRC facility clearance. This specifically includes situations where a licensee, certificate holder, or other person needs a contractor or consultant to have access to NRC classified information. Also included are others who require access to classified information in connection with NRC regulated activities but do not require use, storage, or possession of classified information outside of NRC facilities. However, it is not necessary for a licensee, certificate holder, or other person to request an NRC facility clearance for access to another agency's classified information at that agency's facilities or to store that agency's classified information at their facility, provided no NRC classified information is involved and they meet the security requirements of the other agency. If NRC classified information is involved, the requirements of § 95.17 apply.

* * * * *

48. In § 95.17, the introductory text of paragraph (a) and paragraph (a)(1) are revised to read as follows:

§ 95.17 Processing facility clearance.

(a) Following the receipt of an acceptable request for facility clearance, the NRC will either accept an existing facility clearance granted by a current CSA and authorize possession of license or certificate related classified information, or process the facility for a facility clearance. Processing will include—

(1) A determination based on review and approval of a Standard Practice Procedures Plan that granting of the Facility Clearance would not be inconsistent with the national interest, including a finding that the facility is not under foreign ownership, control, or influence to such a degree that a determination could not be made. An NRC finding of foreign ownership, control, or influence is based on factors concerning the foreign intelligence threat, risk of unauthorized technology transfer, type and sensitivity of the information that requires protection, the extent of foreign influence, record of compliance with pertinent laws, and the nature of international security and information exchange agreements. The licensee, certificate holder, or other person must advise the NRC within 30 days of any significant events or changes that may affect its status concerning foreign ownership, control, or influence (e.g., changes in ownership; changes that affect the company's answers to original FOCI questions; indebtedness; and changes in the required form that identifies owners, officers, directors, and executive personnel).

* * * * *

49. Section 95.19 is revised to read as follows:

§ 95.19 Changes to security practices and procedures.

(a) Except as specified in paragraph (b) of this section, each licensee, certificate holder, or other person shall

obtain prior CSA approval for any proposed change to the name, location, security procedures and controls, or floor plan of the approved facility. A written description of the proposed change must be furnished to the CSA with copies to the Director, Division of Facilities and Security, Office of Administration, NRC, Washington, DC 20555–0001 (if NRC is not the CSA), and the NRC Regional Administrator of the cognizant Regional Office listed in appendix A of part 73 of this chapter. These substantive changes to the Standard Practice Procedures Plan that affect the security of the facility must be submitted to the NRC Division of Facilities and Security, or CSA, at least 30 days prior to the change so that they may be evaluated. The CSA shall promptly respond in writing to all such proposals. Some examples of substantive changes requiring prior CSA approval include—

(1) A change in the approved facility's classified mail address; or

(2) A temporary or permanent change in the location of the approved facility (e.g., moving or relocating NRC's classified interest from one room or building to another). Approved changes will be reflected in a revised Standard Practice Procedures Plan submission within 30 days of approval. Page changes rather than a complete rewrite of the plan may be submitted.

(b) A licensee or other person may effect a minor, non-substantive change to an approved Standard Practice Procedures Plan for the safeguarding of classified information without receiving prior CSA approval. These minor changes that do not affect the security of the facility may be submitted to the addressees noted in paragraph (a) of this section within 30 days of the change. Page changes rather than a complete rewrite of the plan may be submitted. Some examples of minor, non-substantive changes to the Standard Practice Procedures Plan include—

(1) The designation/appointment of a new facility security officer; or

(2) A revision to a protective personnel patrol routine, provided the new routine continues to meet the minimum requirements of this part.

(c) A licensee, certificate holder, or other person must update its NRC facility clearance every five years either by submitting a complete Standard Practice Procedures Plan or a certification that the existing plan is fully current to the Division of Facilities and Security.

50. Section 95.20 is revised to read as follows:

§ 95.20 Grant, denial or termination of facility clearance.

The Division of Facilities and Security shall provide notification in writing (or orally with written confirmation) to the licensee or other organization of the Commission's grant, acceptance of another agency's facility clearance, denial, or termination of facility clearance. This information must also be furnished to representatives of the NRC, NRC licensees, NRC certificate holders, NRC contractors, or other Federal agencies having a need to transmit classified information to the licensee or other person.

51. Section 95.21 is revised to read as follows:

§ 95.21 Withdrawal of requests for facility security clearance.

When a request for facility clearance is to be withdrawn or canceled, the requester shall notify the NRC Division of Facilities and Security in the most expeditious manner so that processing for this approval may be terminated. The notification must identify the full name of the individual requesting discontinuance, his or her position with the facility, and the full identification of the facility. The requestor shall confirm the telephone notification promptly in writing.

52. In § 95.25, the heading, the introductory text of paragraph (a), paragraphs (a)(2), (b), (c)(2), (f), (g), (h), (i), (j)(1), (j)(6), and (j)(7) are revised to read as follows:

§ 95.25 Protection of National Security Information and Restricted Data in storage.

(a) Secret matter, while unattended or not in actual use, must be stored in—

* * * * *

(2) Any steel file cabinet that has four sides and a top and bottom (all permanently attached by welding, rivets, or peened bolts so the contents cannot be removed without leaving visible evidence of entry) and is secured by a rigid metal lock bar and an approved key operated or combination padlock. The keepers of the rigid metal lock bar must be secured to the cabinet by welding, rivets, or bolts, so they cannot be removed and replaced without leaving evidence of the entry. The drawers of the container must be held securely so their contents cannot be removed without forcing open the drawer. This type of cabinet will be accorded supplemental protection during non-working hours.

(b) Confidential matter while unattended or not in use must be stored in the same manner as SECRET matter except that no supplemental protection is required.

(c) * * *

(2) Combinations must be changed by a person authorized access to the contents of the container, by the Facility Security Officer, or his or her designee.

* * * * *

(f) Combinations will be changed only by persons authorized access to Secret or Confidential National Security Information and/or Restricted Data depending upon the matter authorized to be stored in the security container.

(g) Posted information. Containers may not bear external markings indicating the level of classified matter authorized for storage. A record of the names of persons having knowledge of the combination must be posted inside the container.

(h) End of day security checks.

(1) Facilities that store classified matter shall establish a system of security checks at the close of each working day to ensure that all classified matter and security repositories have been appropriately secured.

(2) Facilities operating with multiple work shifts shall perform the security checks at the end of the last working shift in which classified matter had been removed from storage for use. The checks are not required during continuous 24-hour operations.

(i) Unattended security container found opened. If an unattended security container housing classified matter is found unlocked, the custodian or an alternate must be notified immediately. Also, the container must be secured by protective personnel. An effort must be made to determine if the contents were compromised not later than the next day.

(j) * * *

(1) A key and lock custodian shall be appointed to ensure proper custody and handling of keys and locks used for protection of classified matter;

* * * * *

(6) Keys and spare locks must be protected equivalent to the level of classified matter involved;

(7) Locks must be changed or rotated at least every 12 months, and must be replaced after loss or compromise of their operable keys; and

* * * * *

53. Section 95.27 is revised to read as follows:

§ 95.27 Protection while in use.

While in use, classified matter must be under the direct control of an authorized individual to preclude physical, audio, and visual access by persons who do not have the prescribed

access authorization or other written CSA disclosure authorization (see § 95.36 for additional information concerning disclosure authorizations).

54. In § 95.29, paragraphs (a), (c)(2), and (c)(4) are revised to read as follows:

§ 95.29 Establishment of restricted or closed areas.

(a) If, because of its nature, sensitivity or importance, classified matter cannot otherwise be effectively controlled in accordance with the provisions of §§ 95.25 and 95.27, a Restricted or Closed area must be established to protect this matter.

* * * * *

(c) * * *

(2) Access must be limited to authorized persons who have an appropriate security clearance and a need-to-know for the classified matter within the area. Persons without the appropriate level of clearance and/or need-to-know must be escorted at all times by an authorized person where inadvertent or unauthorized exposure to classified information cannot otherwise be effectively prevented.

* * * * *

(4) Open shelf or bin storage of classified matter in Closed Areas requires CSA approval. Only areas protected by an approved intrusion detection system will qualify for approval.

55. In § 95.33, paragraph (f) is revised to read as follows:

§ 95.33 Security education.

* * * * *

(f) Refresher Briefings. The licensee or other facility shall conduct refresher briefings for all cleared employees every 3 years. As a minimum, the refresher briefing must reinforce the information provided during the initial briefing and inform employees of appropriate changes in security regulations. This requirement may be satisfied by use of audio/video materials and/or by issuing written materials.

* * * * *

56. A new § 95.34 is added to read as follows:

§ 95.34 Control of visitors.

(a) *Uncleared visitors.* Licensees, certificate holders, or others subject to this part shall take measures to preclude access to classified information by uncleared visitors.

(b) *Foreign visitors.* Licensees, certificate holders, or others subject to this part shall take measures as may be necessary to preclude access to classified information by foreign visitors. The licensee, certificate holder, or others shall retain records of visits for 5 years beyond the date of the visit.

57. In § 95.36, paragraphs (a), (c), and (d) are revised to read as follows:

§ 95.36 Access by representatives of the International Atomic Energy Agency or by participants in other international agreements.

(a) Based upon written disclosure authorization from the NRC Division of Facilities and Security that an individual is an authorized representative of the International Atomic Energy Agency (IAEA) or other international organization and that the individual is authorized to make visits or inspections in accordance with an established agreement with the United States Government, a licensee, certificate holder, or other person subject to this part shall permit the individual (upon presentation of the credentials specified in § 75.7 of this chapter and any other credentials identified in the disclosure authorization) to have access to matter classified as National Security Information that is relevant to the conduct of a visit or inspection. A disclosure authorization under this section does not authorize a licensee, certificate holder, or other person subject to this part to provide access to Restricted Data.

* * * * *

(c) In accordance with the specific disclosure authorization provided by the Division of Facilities and Security, licensees or other persons subject to this part are authorized to release (i.e., transfer possession of) copies of documents that contain classified National Security Information directly to IAEA inspectors and other representatives officially designated to request and receive classified National Security Information documents. These documents must be marked specifically for release to IAEA or other international organizations in accordance with instructions contained in the NRC's disclosure authorization letter. Licensees and other persons subject to this part may also forward these documents through the NRC to the international organization's headquarters in accordance with the NRC disclosure authorization. Licensees and other persons may not reproduce documents containing classified National Security Information except as provided in § 95.43.

(d) Records regarding these visits and inspections must be maintained for 5 years beyond the date of the visit or inspection. These records must specifically identify each document released to an authorized representative and indicate the date of the release. These records must also identify (in such detail as the Division of Facilities and Security, by letter, may require) the categories of documents that the authorized representative has had access and the date of this access. A licensee or other person subject to this part shall also retain Division of Facilities and Security disclosure authorizations for 5 years beyond the date of any visit or inspection when access to classified information was permitted.

* * * * *

58. In § 95.37, paragraph (c)(1)(iv) is removed and paragraphs (c)(1)(i) and (h)(2) are revised to read as follows:

§ 95.37 Classification and preparation of documents.

* * * * *

(c) * * *

(1) * * *

(i) Derivative classifications of classified National Security Information must contain the identity of the source document or the classification guide, including the agency and office of origin, on the "Derived From" line and its classification date. If more than one source is cited, the "Derived From" line should indicate "Multiple Sources." The derivative classifier shall maintain the identification of each source with the file or record copy of the derivatively classified document.

* * * * *

(h) * * *

(2) In the event of a question regarding classification review, the holder of the information or the authorized classifier shall consult the NRC Division of Facilities and Security, Information Security Branch, for assistance.

* * * * *

59. In § 95.39, paragraphs (b)(3) and (c)(2) are revised to read as follows:

§ 95.39 External transmission of classified matter.

* * * * *

(b) * * *

(3) The outer envelope or wrapper must contain the addressee's classified mailing address. The outer envelope or wrapper may not contain any classification, additional marking or other notation that indicate that the enclosed document contains classified information. The Classified Mailing Address shall be uniquely designated for the receipt of classified information. The classified shipping address for the receipt of material (e.g., equipment) should be different from the classified

mailing address for the receipt of classified documents.

* * * * *

(c) * * *

(2) Confidential matter may be transported by one of the methods set forth in paragraph (c)(1) of this section, by U.S. express or certified mail. Express or certified mail may be used in transmission of Confidential documents to Puerto Rico or any United States territory or possession.

* * * * *

60. In § 95.45, paragraph (a) is revised to read as follows:

§ 95.45 Changes in classification.

(a) Documents containing classified National Security Information must be downgraded or declassified as authorized by the NRC classification guides or as determined by the NRC. Requests for downgrading or declassifying any NRC classified information should be forwarded to the NRC Division of Facilities and Security, Office of Administration, Washington, DC 20555–0001. Requests for downgrading or declassifying of Restricted Data will be forwarded to the NRC Division of Facilities and Security for coordination with the Department of Energy.

* * * * *

61. Section 95.47 is revised to read as follows:

§ 95.47 Destruction of matter containing classified information.

Documents containing classified information may be destroyed by burning, pulping, or another method that ensures complete destruction of the information that they contain. The method of destruction must preclude recognition or reconstruction of the classified information. Any doubts on methods should be referred to the CSA.

62. Section 95.53 is revised to read as follows:

§ 95.53 Termination of facility clearance.

(a) If the need to use, process, store, reproduce, transmit, transport, or handle classified matter no longer exists, the facility clearance will be terminated. The facility may deliver all documents and matter containing classified information to the Commission, or to a person authorized to receive them, or must destroy all classified documents and matter. In either case, the facility shall submit a certification of nonpossession of classified information to the NRC Division of Facilities and Security within 30 days of the termination of the facility clearance.

(b) In any instance where a facility clearance has been terminated based on a determination of the CSA that further possession of classified matter by the facility would not be in the interest of the national security, the facility shall, upon notice from the CSA, dispose of classified documents in a manner specified by the CSA.

63. Section 95.57 is revised to read as follows:

§ 95.57 Reports.

Each licensee or other person having a facility clearance shall report to the CSA and the Regional Administrator of the appropriate NRC Regional Office listed in 10 CFR part 73, appendix A:

(a) Any alleged or suspected violation of the Atomic Energy Act, Espionage Act, or other Federal statutes related to classified information (e.g., deliberate disclosure of classified information to persons not authorized to receive it, theft of classified information). Incidents such as this must be reported within 1 hour of the event followed by written confirmation within 30 days of the incident; and

(b) Any infractions, losses, compromises, or possible compromise of classified information or classified documents not falling within paragraph (a) of this section. Incidents such as these must be entered into a written log. A copy of the log must be provided to the NRC on a monthly basis. Details of security infractions including corrective action taken must be available to the CSA upon request.

(c) In addition, NRC requires records for all classification actions (documents classified, declassified, or downgraded) to be submitted to the NRC Division of Facilities and Security. These may be submitted either on an "as completed" basis or monthly. The information may be submitted either electronically by an on-line system (NRC prefers the use of a dial-in automated system connected to the Division of Facilities and Security) or by paper copy using NRC Form 790.

Dated at Rockville, MD, this 22nd day of March, 1999.

For the Nuclear Regulatory Commission.

William D. Travers,

Executive Director for Operations.

[FR Doc. 99–7842 Filed 3–31–99; 8:45 am]

BILLING CODE 7590–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 330

RIN 3064–AC16

Deposit Insurance Regulations; Joint Accounts and "Payable-on-Death" Accounts

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Final rule.

SUMMARY: The FDIC is amending its regulations governing the insurance coverage of joint ownership accounts and revocable trust (or payable-on-death) accounts. The amendments are almost identical to the amendments proposed by the FDIC in July 1998; they supplement other revisions that became effective in July. The purpose of the amendments is to increase the public's understanding of the insurance rules through simplification.

The final rule makes three changes to the deposit insurance regulations. First, it eliminates step one of the two-step process for determining the insurance coverage of joint accounts. Second, it changes the insurance coverage of "payable-on-death" accounts by adding parents and siblings to the list of "qualifying beneficiaries". Third, it makes certain technical amendments to the FDIC's rules regarding the coverage of accounts held by agents or fiduciaries.

DATES: Effective April 1, 1999.

FOR FURTHER INFORMATION CONTACT: Christopher L. Hencke, Counsel, (202) 898–8839, or Joseph A. DiNuzzo, Counsel, (202) 898–7349, Legal Division, Federal Deposit Insurance Corporation, 550 17th Street, NW, Washington, DC 20429.

SUPPLEMENTARY INFORMATION:

I. Simplifying the Insurance Regulations

Federal deposit insurance plays a critical role in assuring stability and public confidence in the nation's financial system. Deposit insurance cannot play this role, however, unless the rules governing the application of the $100,000 insurance limit are understood by depositors. Misunderstandings can lead to a loss of depositors' funds with a resulting loss of public confidence.

Unfortunately, some of the FDIC's insurance rules have been widely misunderstood. See 63 FR 38521 (July 17, 1998). This confusion prompted the FDIC to initiate a simplification effort. As a result of that effort, the FDIC issued

a final rule, effective July 1, 1998, to "clarify and simplify" the FDIC's deposit insurance regulations. See 63 FR 25750 (May 11, 1998). The final rule made numerous technical and substantive amendments to the insurance regulations, including the use of plainer language and examples. To further simplify and clarify the deposit insurance rules, in July 1998, the FDIC published a proposed rule to amend the regulations dealing with joint accounts and "payable-on-death" (or POD) accounts. See 63 FR 38521 (July 17, 1998). The proposed rule is described in detail below.

II. The Proposed Rule

A. Joint Accounts

Under the FDIC's insurance rules, qualifying joint accounts are insured separately from any single ownership accounts maintained by the co-owners at the same insured depository institution. See 12 CFR 330.9(a). A joint account is a "qualifying" joint account if it satisfies certain requirements: (1) The co-owners must be natural persons; (2) each co-owner must personally sign a deposit account signature card; and (3) the withdrawal rights of the co-owners must be equal. See 12 CFR 330.9(c)(1). The requirement involving signature cards is inapplicable if the account at issue is a certificate of deposit, a deposit obligation evidenced by a negotiable instrument, or an account maintained for the co-owners by an agent or custodian. See 12 CFR 330.9(c)(2).

Assuming these requirements are satisfied, the current rules (i.e., the rules in effect prior to the effective date of this final rule) provide that the $100,000 insurance limit shall be applied in a two-step process. First, all joint accounts owned by the same combination of persons at the same insured depository institution are added together and insured to a limit of $100,000. Second, the interests of each person in all joint accounts, whether owned by the same or some other combination of persons, are added together and insured to a limit of $100,000. See 12 CFR 330.9(b).

The two-step process for insuring joint accounts has been misunderstood by bank employees as well as depositors. This widespread confusion has resulted in the loss by some depositors of significant sums of money. For example, at one failed depository institution, three individuals held three joint accounts (and no other types of accounts). The interest of each individual was less than $100,000. The individuals chose to place all of their funds in joint accounts so that each of them would have access to the money in the event of an emergency or sudden illness. When the institution failed, step one of the two-step process required the aggregation of the three joint accounts. The amount in excess of $100,000 was uninsured.

In this example, all of the funds owned by the three joint owners could have been insured if the funds had been held in individual accounts as opposed to joint accounts. Thus, the depositors did not suffer a loss because they placed too much money in a single depository institution that failed. Rather, they suffered a loss simply because they misunderstood the FDIC's regulations. See also *Sekula* v. *FDIC*, 39 F.3d 448 (3d Cir. 1994).

In order to simplify the coverage of joint accounts, the FDIC proposed to eliminate the first step of the two-step process.

B. POD Accounts

Under the current rules (i.e., the rules in effect prior to the effective date of this final rule), qualifying revocable trust (or POD) accounts are insured separately from any other types of accounts maintained by either the owner or the beneficiaries at the same insured depository institution. See 12 CFR 330.10(a).

A POD account is a "qualifying" POD account if it satisfies certain requirements: (1) The beneficiaries must be the spouse, children or grandchildren of the owner; (2) the beneficiaries must be specifically named in the deposit account records; (3) the title of the account must include a term such as "in trust for" or "payable-on-death to" (or any acronym therefor); and (4) the intention of the owner of the account (as evidenced by the account title or any accompanying revocable trust agreement) must be that the funds shall belong to the named beneficiaries upon the owner's death. If the account has been opened pursuant to a formal "living trust" agreement, the fourth requirement means that the agreement must not place any conditions upon the interests of the beneficiaries that might prevent the beneficiaries (or their estates or heirs) from receiving the funds following the death of the owner. Such conditions are known as "defeating contingencies".

Assuming these requirements are satisfied, the $100,000 insurance limit is not applied on a "per owner" basis. Rather, the $100,000 insurance limit is applied on a "per beneficiary" basis to all POD accounts owned by the same person at the same insured depository institution. For example, a POD account owned by one person would be insured up to $500,000 if the account names five qualifying beneficiaries.

If one of the named beneficiaries of a POD account is not a qualifying beneficiary, the funds corresponding to that beneficiary are treated for insurance purposes as single ownership funds of the owner (i.e., the account holder). In other words, they are aggregated with any funds in any single ownership accounts of the owner and insured to a limit of $100,000. See 12 CFR 330.10(b).

On a number of occasions, depositors have lost money upon the failure of an insured depository institution because they believed that POD accounts are insured on a simple "per beneficiary" or "per family member" basis. They did not understand the difference between qualifying beneficiaries and non-qualifying beneficiaries. Typically, in such cases, the named beneficiary has been a parent or sibling. In the absence of a qualifying beneficiary, the POD account has been aggregated with the owner's single ownership accounts.

In response to such cases, the FDIC proposed adding siblings and parents to the list of qualifying beneficiaries. The purpose of this proposal was to protect most depositors who misunderstand the rules governing POD accounts without abandoning the basic concept that insurance for such accounts is provided up to $100,000 on a "per qualifying beneficiary" basis.

III. The Final Rule

The FDIC received forty-one comments on the proposed rule. The commenters can be divided into five categories: depository institutions (25); banking trade associations (9); bank holding companies (3); individuals (3); and other (1) (a computer software company). Of these comments, the vast majority supported the proposed amendments. Only two comments were critical of the proposed amendments.

The typical comment on the joint account revision praised the FDIC for proposing to eliminate the "most confusing and misunderstood" part of the current insurance regulations. The most pervasive comment on the POD account revision was that the amendment to add parents and siblings as qualified beneficiaries has been "long overdue".

Of the two critical comments, one suggested that the FDIC lacks the authority to eliminate step one of the two-step process for insuring joint accounts. In the commenter's opinion, the elimination of step one would violate the statutory mandate that the FDIC—in applying the $100,000 insurance limit—must "aggregate the amounts of all deposits in the insured

depository institution which are maintained by a depositor in the same capacity and the same right for the benefit of the depositor * * *." 12 U.S.C. 1821(a)(1)(C). Specifically, the commenter argued that an account held by a particular combination of co-owners represents a single "right and capacity". In other words, under this argument, the combinations of co-owners—and not the individual persons—are the "depositors" of joint accounts. Therefore, such an account cannot be insured for more than the statutory insurance limit of $100,000 (as prescribed by step one).

The argument above is consistent with the FDIC's approach toward insuring joint accounts prior to 1967. It is inconsistent, however, with the FDIC's creation in 1967 of step two of the two-step process. See 32 FR 10408 (July 14, 1967). Under step two, the FDIC has treated the individual persons as the "depositors". Nothing in the Federal Deposit Insurance Act precludes this longstanding interpretation.

Through the elimination of step one, the regulations provide a simple $100,000 insurance limit for the interest of each person (a depositor) in all joint accounts (an ownership right and capacity). The FDIC believes that this result will be consistent with the statutory limit of $100,000 for "the amounts of all deposits in the insured depository institution which are maintained by a depositor in the same capacity and the same right * * *." 12 U.S.C. 1821(a)(1)(C). Moreover, as recognized by the vast majority of commenters, this result will be much easier to understand than the two-step process. Accordingly, the Board has decided to adopt the proposed elimination of step one.

As a result of this final rule, the maximum insurance coverage of a particular joint account (or group of joint accounts owned by the same combination of persons) will no longer be $100,000. In the case of a joint account of $200,000 owned by two persons, for example, the maximum coverage will increase from $100,000 to $200,000 (or $100,000 for the interest of each owner). The maximum coverage that any one person can obtain for his/her interests in all qualifying joint accounts, however, will remain $100,000.

The second critical comment argued that the proposed amendments would not accomplish the objective of simplifying the regulations. In the case of the elimination of step one of the two-step process for insuring joint accounts (discussed above), this argument is unfounded. As recognized by the vast majority of commenters, a one-step process is simpler than a two-step process. In the case of the POD account amendment, the argument is stronger because the amendment will not eliminate the concept of "qualifying beneficiaries". By adding parents and siblings to the list of "qualifying beneficiaries", however, the amendment will reduce the number of cases in which a depositor's confusion results in a loss of funds. In other words, the amendment may not eliminate confusion but will protect most depositors from the negative consequences of such confusion. For this reason, the Board has decided to adopt the proposed amendment. Unlike the proposed rule, the final rule defines the terms "parents", "brothers" and "sisters".

The subject of "living trust" accounts should be mentioned. A "living trust" account is a POD account opened pursuant to a formal "living trust" agreement. By expanding the list of "qualifying beneficiaries", the final rule will not remove the complicated methodology for determining the insurance coverage of such accounts. This methodology requires a determination as to whether the interest of each beneficiary is subject to any conditions or contingencies (referred to by the FDIC as defeating contingencies) that might prevent the beneficiary from receiving his/her share of funds following the death of the owner. Most "living trust" agreements include defeating contingencies. As a result, most "living trust" accounts are classified by the FDIC for insurance purposes as single ownership accounts. In other words, the account is aggregated with any single ownership accounts of the owner at the same depository institution and insured to a limit of only $100,000. See 12 CFR 330.10(f).

IV. Technical Amendments

Under the FDIC's rules regarding the insurance coverage of accounts held by agents or fiduciaries, the funds in such accounts are insured to the same extent as if deposited in the names of the principals. See 12 CFR 330.7(a). In other words, the insurance coverage "passes through" the agent or custodian to the principal or actual owner. The account will not be entitled to such "pass-through" coverage, however, unless the agency or fiduciary relationship is disclosed in the deposit account records. See 12 CFR 330.5(b).

The necessity of disclosing fiduciary relationships in the account records has been referred to as a "recordkeeping requirement" in the insurance regulations. The term "recordkeeping requirement" may suggest to some depository institutions that they possess an affirmative duty to collect information regarding fiduciary relationships. In fact, no such duty exists. For this reason, the FDIC has decided to rephrase certain sections of the regulations.

The final rule removes "recordkeeping requirements" from the section heading at 12 CFR 330.5 and the paragraph headings at 12 CFR 330.5(b) and 12 CFR 330.5(b)(4). Also, the term is removed from 12 CFR 330.14(a).

The paragraph at 12 CFR 330.5(b)(1) provides that no claim for insurance coverage based on a fiduciary relationship will be recognized unless the fiduciary relationship is disclosed in the account records. The final rule revises this paragraph so as to remove any suggestion that depository institutions are subject to reporting requirements with respect to accounts held by agents or fiduciaries. Specifically, the final rule changes language resembling a command directed at depository institutions ("[t]he 'deposit account records' * * * of an insured depository institution must expressly disclose * * * the existence of any fiduciary relationship") to a statement describing the consequences of failing to disclose a fiduciary relationship ("[t]he FDIC will recognize a claim for insurance coverage based on a fiduciary relationship only if the relationship is expressly disclosed * * *").

These amendments are technical. Their sole purpose is clarification. For this reason, the Board finds "good cause" for adopting these amendments without the rulemaking procedures generally required by the Administrative Procedure Act. See 5 U.S.C. 553. Inasmuch as this amendment will have no effect upon the operation of the insurance regulations, these procedures are unnecessary.

V. Effective Date

The Administrative Procedure Act generally requires the publication of a substantive rule at least thirty days before its effective date. One of the exceptions is for "good cause". 5 U.S.C. 553(d). In the case of this final rule, the Board finds "good cause" to make the amendments effective immediately upon publication in the **Federal Register**. "Good cause" exists because the amendments will not prejudice any depositor or depository institution. On the contrary, the amendments will result in increased insurance coverage for some depositors who may misunderstand the current rules (for

example, two individuals with a qualifying joint account of $200,000; or an individual who has named a sibling as the beneficiary of a POD account). By making the amendments effective immediately, the Board will protect depositors of any FDIC-insured institutions that may fail within the thirty-day period following publication.

With certain exceptions, the Riegle Community Development and Regulatory Improvement Act of 1994 (Public Law 103–325) provides that the federal banking agencies may not impose new regulatory reporting requirements on insured depository institutions except on the first day of a calendar quarter after the date of publication. See 12 U.S.C. 4802(b). This rule is inapplicable because the final rule imposes no reporting, disclosure or other new requirements on insured depository institutions. .

VI. Paperwork Reduction Act

The final rule will simplify the FDIC's deposit insurance regulations governing joint accounts and POD accounts. It will not involve any collections of information under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). Consequently, no information has been submitted to the Office of Management and Budget for review.

VII. Regulatory Flexibility Act

The final rule will not have a significant impact on a substantial number of small businesses within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). The amendments to the deposit insurance rules will apply to all FDIC-insured depository institutions and will impose no new reporting, recordkeeping or other compliance requirements upon those entities. Accordingly, the Act's requirements relating to an initial and final regulatory flexibility analysis are not applicable.

VIII. Small Business Regulatory Enforcement Fairness Act

The Office of Management and Budget has determined that the final rule is not a "major rule" within the meaning of the relevant sections of the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) (5 U.S.C. 801 *et seq.*). As required by SBREFA, the FDIC will file the appropriate reports with Congress and the General Accounting Office so that the final rule may be reviewed.

List of Subjects in 12 CFR Part 330

Bank deposit insurance, Banks, banking, Reporting and recordkeeping requirements, Savings and loan associations, Trusts and trustees.

The Board of Directors of the Federal Deposit Insurance Corporation hereby amends part 330 of chapter III of title 12 of the Code of Federal Regulations as follows:

PART 330—DEPOSIT INSURANCE COVERAGE

1. The authority citation for part 330 continues to read as follows:

Authority: 12 U.S.C. 1813(l), 1813(m), 1817(i), 1818(q), 1819(Tenth), 1820(f), 1821(a), 1822(c).

2. In § 330.3, paragraph (h) is revised to read as follows:

§ 330.3 General principles.

* * * * *

(h) *Application of state or local law to deposit insurance determinations.* In general, deposit insurance is for the benefit of the owner or owners of funds on deposit. However, while ownership under state law of deposited funds is a necessary condition for deposit insurance, ownership under state law is not sufficient for, or decisive in, determining deposit insurance coverage. Deposit insurance coverage is also a function of the deposit account records of the insured depository institution and of the provisions of this part, which, in the interest of uniform national rules for deposit insurance coverage, are controlling for purposes of determining deposit insurance coverage.

* * * * *

3. In § 330.5, the section heading and paragraphs (b)(1), (b)(4) heading, and (b)(4)(i) are revised to read as follows:

§ 330.5 Recognition of deposit ownership and fiduciary relationships.

* * * * *

(b) *Fiduciary relationships*—(1) *Recognition.* The FDIC will recognize a claim for insurance coverage based on a fiduciary relationship only if the relationship is expressly disclosed, by way of specific references, in the "deposit account records" (as defined in § 330.1(e)) of the insured depository institution. Such relationships include, but are not limited to, relationships involving a trustee, agent, nominee, guardian, executor or custodian pursuant to which funds are deposited. The express indication that the account is held in a fiduciary capacity will not be necessary, however, in instances where the FDIC determines, in its sole discretion, that the titling of the deposit account and the underlying deposit account records sufficiently indicate the existence of a fiduciary relationship. This exception may apply, for example, where the deposit account title or records indicate that the account is held by an escrow agent, title company or a company whose business is to hold deposits and securities for others.

* * * * *

(4) *Exceptions*—(i) *Deposits evidenced by negotiable instruments.* If any deposit obligation of an insured depository institution is evidenced by a negotiable certificate of deposit, negotiable draft, negotiable cashier's or officer's check, negotiable certified check, negotiable traveler's check, letter of credit or other negotiable instrument, the FDIC will recognize the owner of such deposit obligation for all purposes of claim for insured deposits to the same extent as if his or her name and interest were disclosed on the records of the insured depository institution; provided, that the instrument was in fact negotiated to such owner prior to the date of default of the insured depository institution. The owner must provide affirmative proof of such negotiation, in a form satisfactory to the FDIC, to substantiate his or her claim. Receipt of a negotiable instrument directly from the insured depository institution in default shall, in no event, be considered a negotiation of said instrument for purposes of this provision.

* * * * *

4. In § 330.9, paragraph (b) is revised to read as follows:

§ 330.9 Joint ownership accounts.

* * * * *

(b) *Determination of insurance coverage.* The interests of each co-owner in all qualifying joint accounts shall be added together and the total shall be insured up to $100,000. (Example: "A&B" have a qualifying joint account with a balance of $60,000; "A&C" have a qualifying joint account with a balance of $80,000; and "A&B&C" have a qualifying joint account with a balance of $150,000. A's combined ownership interest in all qualifying joint accounts would be $120,000 ($30,000 plus $40,000 plus $50,000); therefore, A's interest would be insured in the amount of $100,000 and uninsured in the amount of $20,000. B's combined ownership interest in all qualifying joint accounts would be $80,000 ($30,000 plus $50,000); therefore, B's interest would be fully insured. C's combined ownership interest in all qualifying joint accounts would be $90,000 ($40,000 plus $50,000); therefore, C's interest would be fully insured.)

* * * * *

5. In § 330.10, paragraphs (a) and (e) are revised to read as follows:

§ 330.10 Revocable trust accounts.

(a) *General rule.* Funds owned by an individual and deposited into an account with respect to which the owner evidences an intention that upon his or her death the funds shall belong to one or more qualifying beneficiaries shall be insured in the amount of up to $100,000 in the aggregate as to each such named qualifying beneficiary, separately from any other accounts of the owner or the beneficiaries. For purposes of this provision, the term "qualifying beneficiaries" means the owner's spouse, child/children, grandchild/grandchildren, parent/parents, brother/brothers or sister/sisters. (Example: If A establishes a qualifying account payable upon death to his spouse, sibling and two children, assuming compliance with the rules of this provision, the account would be insured up to $400,000 separately from any other different types of accounts either A or the beneficiaries may have with the same depository institution.) Accounts covered by this provision are commonly referred to as tentative or "Totten trust" accounts, "payable-on-death" accounts, or revocable trust accounts.

* * * * *

(e) *Definition of "children", "grandchildren", "parents", "brothers" and "sisters".* For the purpose of establishing the qualifying degree of kinship identified in paragraph (a) of this section, the term "children" includes biological, adopted and step-children of the owner. The term "grandchildren" includes biological, adopted and step-children of any of the owner's children. The term "parents" includes biological, adoptive and step-parents of the owner. The term "brothers" includes full brothers, half brothers, brothers through adoption and step-brothers. The term "sisters" includes full sisters, half sisters, sisters through adoption and step-sisters.

* * * * *

6. In § 330.14, paragraph (a) is revised to read as follows:

§ 330.14 Retirement and other employee benefit plan accounts.

(a) *"Pass-through" insurance.* Except as provided in paragraph (b) of this section, any deposits of an employee benefit plan or of any eligible deferred compensation plan described in section 457 of the Internal Revenue Code of 1986 (26 U.S.C. 457) in an insured depository institution shall be insured on a "pass-through" basis, in the amount of up to $100,000 for the non-contingent interest of each plan participant, provided that the rules prescribed in § 330.5 are satisfied.

* * * * *

By order of the Board of Directors.

Dated at Washington, D.C., this 23rd day of March, 1999.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 99–7736 Filed 3–31–99; 8:45 am]

BILLING CODE 6714–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–166–AD; Amendment 39–11099; AD 99–07–14]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–9–80 Series Airplanes, and Model MD–88 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain McDonnell Douglas Model DC–9–80 series airplanes, and Model MD–88 airplanes, that requires a one-time inspection to detect corrosion of the lug bores and the surface of the hinge plates of the vertical-to-horizontal stabilizer; and corrective actions, if necessary. This amendment is prompted by reports of corrosion of the lug bores and the surface of the hinge plates of the vertical-to-horizontal stabilizer, apparently due to the improper brushing of cadmium on the hinge plates during manufacture. The actions specified by this AD are intended to detect and correct corrosion of the lug bores and the surface of the hinge plates of the vertical-to-horizontal stabilizer, which could result in reduced structural integrity of the airplane.

DATES: Effective May 6, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the **Federal Register** as of May 6, 1999.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1–L51 (2–60). This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the **Federal Register**, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Brent Bandley, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5237; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model DC–9–80 series airplanes, and Model MD–88 airplanes was published in the **Federal Register** on June 26, 1998 (63 FR 34832). That action proposed to require a one-time inspection to detect corrosion of the lug bores and the surface of the hinge plates of the vertical-to-horizontal stabilizer; and corrective actions, if necessary.

Comments Received

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Support for the Proposed Rule

Two commenters support the proposed rule.

Requests To Revise Initial Inspection Method

Several commenters request that the FAA require, within 18 months, an "external" visual inspection for evidence of corrosion of the hinge plates with fairings removed. If corrosion is found during the "external" visual inspection, the commenters suggest that, prior to further flight, the one-time visual inspection specified in paragraph (a) of the proposed AD then be accomplished. If no corrosion is found during the "external" visual inspection, the commenters suggest that operators repeat the "external" visual inspection thereafter at intervals not to exceed 18 months, until the one-time visual inspection is accomplished within 6 years. The commenters state that because removing the pivot pin and horizontal stabilizer to conduct the proposed one-time visual inspection is very time consuming, it will cause an

undue burden on operators. One commenter states that it will have to special schedule its fleet of airplanes to accomplish the proposed visual inspection within 18 months. In addition, one commenter states that Boeing supports its inspection procedures and is prepared to revise McDonnell Douglas Service Bulletin MD80–55–054, dated March 3, 1998 (which was referenced in the proposed AD as the appropriate source of service information for accomplishment of the proposed actions).

The FAA concurs partially. The FAA acknowledges that the procedures recommended by the commenters could be developed and implemented by the manufacturer in a revised service bulletin. However, because a revised service bulletin does not exist at this time, the FAA finds that no change to the final rule is warranted. When the manufacturer does revise the existing service bulletin, the FAA may approve that service bulletin as an alternative method of compliance (AMOC) to the requirements of this final rule.

Request To Include a Provision for Certain Inspections Performed Previously

One commenter requests that the FAA revise the proposed AD to include a provision for inspections of Significant Structural Items (SSI) 55.11.053, 55.11.054, and 55.51.066 accomplished previously within the last 18 months. The commenter states that the subject hinge plates are inspected when SSI's are inspected. The FAA does not concur. The FAA finds that the SSI inspections proposed by the commenter do not adequately address the identified unsafe condition of this AD, because they are much less rigorous than the inspections required in this AD. However, under the provisions of paragraph (c) of the final rule, the FAA may approve requests for alternative methods of compliance if data are submitted to substantiate that such an alternative would provide an acceptable level of safety.

Request To Delay Issuance of Final Rule

One commenter requests that the Structural Repair Manual (SRM) be revised prior to issuance of the final rule. The commenter contends that the SRM does not provide procedures for any protective finish after corrosion removal is accomplished. The commenter suggests a protective finish of fluid-resistant primer. The FAA concurs. The FAA has verified with the manufacturer that a Temporary Revision to Chapter 55 of the SRM has been issued, which describes procedures for a protective finish of fluid-resistant primer after corrosion removal and deletes cadmium plating from the repair procedures. Accordingly, no change to the final rule is necessary.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

There are approximately 1,059 airplanes of the affected design in the worldwide fleet. The FAA estimates that 706 airplanes of U.S. registry will be affected by this AD. It will take approximately 117 work hours per airplane (which includes removal and installation) to accomplish the required inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $4,956,120, or $7,020 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

99–07–14 McDonnell Douglas: Amendment 39–11099. Docket 98–NM–166–AD.

Applicability: Model DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), and DC–9–87 (MD–87) series airplanes, and Model MD–88 airplanes; as listed in McDonnell Douglas Service Bulletin MD80–55–054, dated March 3, 1998; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct corrosion of the lug bores and the surface of the hinge plates of the vertical-to-horizontal stabilizer, which could result in reduced structural integrity of the airplane, accomplish the following:

(a) Within 18 months after the effective date of this AD, perform a one-time visual inspection to detect corrosion of the lug bores and the surface of the hinge plates of the vertical-to-horizontal stabilizer, in accordance with McDonnell Douglas Service Bulletin MD80–55–054, dated March 3, 1998.

(1) *Condition 1:* If no corrosion is detected, no further action is required by this paragraph.

(2) *Condition 2:* If any corrosion is detected that is within the limits specified in the Structural Repair Manual, prior to further flight, remove the corrosion in accordance with the service bulletin.

(3) *Condition 3:* If any corrosion is detected that exceeds the limits specified in the

Structural Repair Manual, prior to further flight, replace the hinge plates with new parts, in accordance with the service bulletin.

(b) Within 10 days after accomplishing the inspection required by paragraph (a) of this AD, or within 10 days after the effective date of this AD, whichever occurs later, submit a report of the inspection results (both positive and negative findings) to the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate, 3960 Paramount Boulevard, Lakewood, California 90712–4137; fax (562) 627–5210. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) Except as provided by paragraph (b) of this AD, the actions shall be done in accordance with McDonnell Douglas Service Bulletin MD80–55–054, dated March 3, 1998. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1-L51 (2–60). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on May 6, 1999.

Issued in Renton, Washington, on March 23, 1999.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–7691 Filed 3–31–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–219–AD; Amendment 39–11098; AD 99–07–13]

RIN 2120–AA64

Airworthiness Directives; Construcciones Aeronauticas, S.A. (CASA) Model CN–235 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain CASA Model CN–235 series airplanes. This amendment requires a one-time visual inspection to detect relative movement or deformation of the joint areas of the rear attaching supports and lower skin of the left and right outer flaps; repetitive borescopic inspections to detect cracking of the spar and of the rear internal support fittings of the outer flaps; and corrective actions, if necessary. This amendment also provides for optional terminating action for the repetitive inspections. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to detect and correct fatigue cracking of the rear internal support fittings of the outer flap structure, which could result in failure of the outer flaps, and consequent reduced controllability of the airplane.

DATES: Effective May 6, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 6, 1999.

ADDRESSES: The service information referenced in this AD may be obtained from Construcciones Aeronauticas, S.A., Getafe, Madrid, Spain. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain CASA Model CN–235 series airplanes was published in the **Federal Register** on January 20, 1999 (64 FR 3052). That action proposed to require a one-time visual inspection to detect relative movement or deformation of the joint areas of the rear attaching supports and lower skin of the left and right outer flaps; repetitive borescopic inspections to detect cracking of the spar and of the rear internal support fittings of the outer flaps; and corrective actions, if necessary. That action also proposed to provide for optional terminating action for the repetitive inspections.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

The FAA estimates that 2 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the required visual inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the visual inspection required by this AD on U.S. operators is estimated to be $120, or $60 per airplane.

It will take approximately 4 work hours to accomplish the required borescopic inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the borescopic inspection required by this AD on U.S. operators is estimated to be $480, or $240 per airplane, per inspection cycle.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Should an operator elect to accomplish the terminating action that is provided by this AD action, it would take approximately 30 work hours to accomplish, at an average labor rate of $60 per work hour. The cost of required

parts would be approximately $123,204 per airplane. Based on these figures, the cost impact of the optional terminating action would be $125,004 per airplane.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

98–07–13 Construcciones Aeronauticas, S.A. (CASA): Amendment 39–11098. Docket 98–NM–219–AD.

Applicability: Model CN–235 series airplanes, as listed in CASA Service Bulletin SB–235–57–20, dated December 23, 1997; and Model CN–235 series airplanes having serial number C–011; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct fatigue cracking of the rear internal support fittings of the outer flap structure, which could result in failure of the outer flaps, and consequent reduced controllability of the airplane, accomplish the following:

(a) Prior to the accumulation of 4,000 total landings, or within 30 days after the effective date of this AD, whichever occurs later, perform a one-time detailed visual inspection to detect relative movement or deformation of the joint areas of the rear attaching supports and lower skin of the left and right outer flaps, in accordance with CASA Maintenance Instructions COM 235–123, Revision 01, dated October 7, 1997.

(1) If no relative movement or deformation is detected: Within 300 landings, perform the requirements of paragraph (b) of this AD.

(2) If any relative movement or deformation is detected: Prior to further flight, perform the requirements of paragraph (b) of this AD.

(b) Remove the rear support attach bolts, one at a time, and perform a borescopic inspection to detect cracking of the spar and of the rear internal support fittings of the outer flaps, in accordance with CASA Maintenance Instructions COM 235–123, Revision 01, dated October 7, 1997.

(1) If no crack is detected, repeat the borescopic inspection thereafter at intervals not to exceed 600 landings until the replacement specified in paragraph (c) of this AD is accomplished.

(2) If any crack is detected, prior to further flight, replace the cracked outer flap with a new outer flap on which modified rear internal support fittings are installed, in accordance with CASA Service Bulletin SB–235–57–20, dated December 23, 1997. Such replacement constitutes terminating action for the repetitive borescopic inspection required by paragraph (b) of this AD for the replaced outer flap only.

(c) Accomplishment of the replacement specified in CASA Service Bulletin SB–235–57–20, dated December 23, 1997, constitutes terminating action for the repetitive borescopic inspections required by paragraph (b) of this AD.

(d) As of the effective date of this AD, no person shall install on any airplane an outer flap having part number 35–15501–00.

Alternative Methods of Compliance

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(f) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(g) The inspections shall be done in accordance with CASA Maintenance

Instructions COM 235–123, Revision 01, dated October 7, 1997. The replacement, if accomplished, shall be done in accordance with CASA Service Bulletin SB–235–57–20, dated December 23, 1997, as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Construcciones Aeronauticas, S.A., Getafe, Madrid, Spain. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in Spanish airworthiness directive 01/97, dated March 19, 1997.

(h) This amendment becomes effective on May 6, 1999.

Issued in Renton, Washington, on March 23, 1999.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–7690 Filed 3–31–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–SW–31–AD; Amendment 39–11101; AD 99–07–15]

RIN 2120–AA64

Airworthiness Directives; Bell Helicopter Textron, Inc.-manufactured Model HH–1K, SW204, SW204HP, SW205, SW205A–1, TH–1F, TH–1L, UH–1A, UH–1B, UH–1E, UH–1F, UH–1H, UH–1L, and UH–1P Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to Bell Helicopter Textron, Inc. (BHTI)-manufactured Model HH–1K, SW204, SW204HP, SW205, SW205A–1, TH–1F, TH–1L, UH–1A, UH–1B, UH–1E, UH–1F, UH–1H, UH–1L, and UH–1P helicopters. This action requires inspecting the tail rotor yoke (yoke) assembly historical records to determine if the affected yoke assembly has been involved in any incidents that may have induced a bending load. It further requires replacement of the yoke assembly with a yoke assembly that has been x-ray diffraction inspected or has zero hours time-in-service (TIS); installing and inspecting an airworthy flapping stop or trunnion assembly to detect excessive bending loads; and revising the applicable Rotorcraft Flight Manual. This amendment is prompted by in-flight failures of yokes installed on civilian and military helicopters of similar type design, including three reported accidents. The actions specified in this AD are intended to detect static or dynamic overload on the yoke due to external bending forces, which could result in failure of the yoke, loss of the tail rotor, and subsequent loss of control of the helicopter.

DATES: Effective May 3, 1999.

Comments for inclusion in the Rules Docket must be received on or before June 1, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 98–SW–31–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

FOR FURTHER INFORMATION CONTACT: Charles Harrison, Aerospace Engineer, FAA, Rotorcraft Directorate, Rotorcraft Standards Staff, 2601 Meacham Blvd., Fort Worth, Texas 76137, telephone (817) 222–5128, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION: This amendment adopts a new AD that is applicable to BHTI-manufactured Model HH–1K, SW204, SW204HP, SW205, SW205A–1, TH–1F, TH–1L, UH–1A, UH–1B, UH–1E, UH–1F, UH–1H, UH–1L, and UH–1P helicopters. This action requires, before further flight, inspecting the yoke assembly historical records to determine if it has been involved in any incidents that may have induced a bending load in the yoke, and if so, immediately replacing the yoke assembly with a yoke assembly that has been x-ray diffraction inspected or has zero hours TIS as well as replacing the flapping stop or trunnion assembly. It further requires, within the next 180 calendar days, for yokes other than those that are required to be replaced before further flight, removing and replacing the yoke assembly with an airworthy assembly. This AD also requires inspection of the replaced trunnion assembly or flapping stop at intervals not to exceed 25 hours time-in-service (TIS), or before further flight, after any incident involving a hard landing, or any other incident involving excessive tail rotor flapping loads. Examples of bending loads include high wind gusts (such as those from prop blast), improper ground handling (in which the tail rotor blade has been used as a hand hold), improper feathering bearing removal (in which the yoke is not properly supported when pressing out bearings), or a static ground strike of some type (such as being struck by a vehicle). This amendment is prompted by reports of in-flight failures of yokes installed on civilian and military helicopters of similar type design, including 3 reported accidents. The actions specified in this AD are intended to detect static or dynamic overload on the yoke due to external bending forces, which could result in failure of the yoke, loss of the tail rotor, and subsequent loss of control of the helicopter.

Since an unsafe condition has been identified that is likely to exist or develop on other BHTI Model HH–1K, SW204, SW204HP, SW205, SW205A–1, TH–1F, TH–1L, UH–1A, UH–1B, UH–1E, UH–1F, UH–1H, UH–1L, and UH–1P helicopters of the same type design, this AD is being issued to detect static or dynamic overload on the yoke due to excessive bending forces, which could result in failure of the yoke, loss of the tail rotor, and subsequent loss of control of the helicopter. The short compliance time involved is required because the previously described critical unsafe condition can adversely affect the controllability and structural integrity of the helicopter tail rotor. Therefore, the actions contained in the AD are required prior to further flight, and this AD must be issued immediately.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Cost Impact

The FAA estimates that 75 helicopters will be affected by this AD, that it will take approximately 9 work hours to accomplish the inspections and installations, and that the average labor rate is $60 per work hour. Required parts will cost approximately $6,637 per yoke, and $936 per flapping stop or $1,028 per trunnion. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $608,475 to replace the yoke and flapping stop in the entire fleet, or $615,375 to replace the yoke and trunnion in the entire fleet.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 98–SW–31–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

AD. 99–07–15 California Department of Forestry; Firefly Aviation Helicopter Services (Previously Erickson Air-Crane); Garlick Helicopters; Hawkins & Powers Aviation, Inc.; International Helicopters, Inc.; Ranger Helicopter Services; Robinson Aircrane, Inc.; Scott Paper Co. (Formerly Off Shore); Smith Helicopters; Southern Helicopter, Inc.; Southwest Florida Aviation; Utah State University; UNC Helicopter Inc. (Formerly Williams Helicopter); US Helicopter, Inc.; and Western International Aviation Inc.: Amendment 39–11101. Docket No. 98–SW–31–AD. q

Applicability: Model HH–1K (Type Certificate Data Sheet (TCDS) H5NM), TH–1F (TCDS H12NM, and R0008AT), TH–1L (TCDS H5NM, H7SO, and H4NM), UH–1A (TCDS H3SO), UH–1B (TCDS H1RM, H3NM, H13WE, H3SO, H5SO, and R00012AT), UH–1E (TCDS H5NM, H7SO, H8NM, and H4NM), UH–1F (TCDS H2NM, H7NE, H11SW, H12NM, and R0008AT), UH–1H (TCDS H13WE, H3SO, and H15NM), UH–1L (TCDS H5NM, H7SO, and H4NM), UH–1P (TCDS H12NM, and R0008AT), and SW204 (TCDS H6SO), SW204HP (TCDS H6SO), SW205 (TCDS H6SO), and SW205A–1 (TCDS H6SO) helicopters, with tail rotor yoke, part number (P/N) 212–011–702-all dash numbers, P/N 212–010–704-all dash numbers, or P/N 212–010–744-all dash numbers, installed, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (g) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it. Compliance: Required as indicated, unless accomplished previously.

To detect static or dynamic overload on the tail rotor yoke (yoke) due to external bending for which could result in failure of the yoke, loss of the tail rotor, and subsequent loss of control of the helicopter, accomplish the following:

(a) Before further flight, review all historical records of the helicopter and the identified yoke assembly for any static or dynamic incident history that could have imposed an excessive bending load on the yoke. If such a history exists, before further flight, replace the yoke assembly with a yoke assembly specified in paragraph (c) and install the flapping stop or trunnion assembly as specified in paragraph (d).

Note 2: Examples of excessive bending loads include exposure to high wind gusts (such as those from rotor wash or prop blast), improper ground handling (in which the tail rotor blade has been used as a hand hold), improper feathering bearing removal (in which the yoke is not properly supported when pressing out bearings), or an incident in which a damaged tail rotor blade was replaced due to a static ground blade strike.

(b) Identify the trunnion assembly or flapping stop that is installed on the aircraft tail rotor assembly to determine if it is a flapping stop or trunnion and, if it is a flapping stop, to determine if the correct flapping stop is installed (see Figures 1 and 2).

Note 3: Helicopters with yoke assemblies, P/N 212–010–704-all dash numbers or P/N 212–010–744-all dash numbers, have trunnion assemblies installed that look similar. Trunnion assemblies, P/N 205–012–716–001 and P/N 212–010–703–001, are manufactured from machined material and do not have the proper characteristics to act as a yield indicators for the yoke assembly. When installed, these trunnion assemblies may be identified by the presence of a flanged bushing (split lines) at each bolt hole, readily visible externally when viewed inboard of the trunnion halves adjacent to each bearing. The trunnion assembly, P/N 212–010–738–001, is manufactured from a casting and does not incorporate bushings at the bolt locations. No bushing will be visible when viewing the assembled trunnion. Helicopters with yoke assemblies, P/N 212–011–702-all dash numbers, are assembled with a flapping stop configuration. The original flapping stop, P/N 212–011–713–001 has been redesigned. The redesigned flapping stop, P/N 212–011–713–103, will act as a yield indicator to provide visual verification of a yoke assembly that has been subjected to excessive out-of-plane bending loads (see Figure 5).

(c) Within the next 180 calendar days (for yokes not replaced immediately in accordance with paragraph (a) of this AD), remove the yoke assembly and replace it with an airworthy yoke assembly having zero hours time-in-service (TIS), or with an airworthy yoke assembly (regardless of TIS) that has passed an X-ray diffraction inspection in accordance with Part II of Bell Helicopter Textron, Inc. Alert Service Bulletin 212–96–100, Revision A, dated May 18, 1998.

(d) When the yoke assembly is replaced, for helicopters with a yoke assembly, P/N 212–011–702-all dash numbers, install an airworthy tail rotor flapping stop, P/N 212–011–713–103, and for helicopters with yoke assemblies, P/N 212–010–704-all dash numbers or P/N 212–010–744-all dash numbers, install an airworthy trunnion assembly, P/N 212–010–738–001. If any incident as described in paragraph (a) of this AD occurs after the effective date of this AD and prior to compliance with paragraph (c), then compliance with paragraphs (c) and (d) is required before further flight.

Note 4: Yoke assemblies that have passed an x-ray diffraction inspection at BHTI will have the letters "FM" vibro-etched on them following the serial number.

(e) After accomplishing the requirements of paragraphs (c) and (d) of this AD, thereafter,

at intervals not to exceed 25 hours TIS, or before further flight after any incident as described in paragraph (a) of this AD, inspect the trunnion assembly or flapping stop as follows:

(1) Gain access to the tail rotor assembly to allow close viewing of the inboard section of the trunnion assembly or flapping stop, whichever is installed. Perform a visual inspection of the inboard section of the trunnion assembly (see Figure 3) or the flapping stop (see Figure 4) for deformation. Inspect by gently placing the tail roter yoke against one flapping stop or trunnion stop, allowing full view of the opposite stop. Repeat in opposite direction to allow viewing of the opposite stop.

(2) If either the trunnion stop or flapping stop is deformed or bent as shown in Figure 3 or Figure 4, the yoke assembly and trunnion stop or flapping stop are no longer serviceable and must be replaced with an airworthy yoke assembly that has zero hours TIS or has passed x-ray diffraction inspection, and an airworthy flapping stop or trunnion stop.

BILLING CODE 4910-13-P

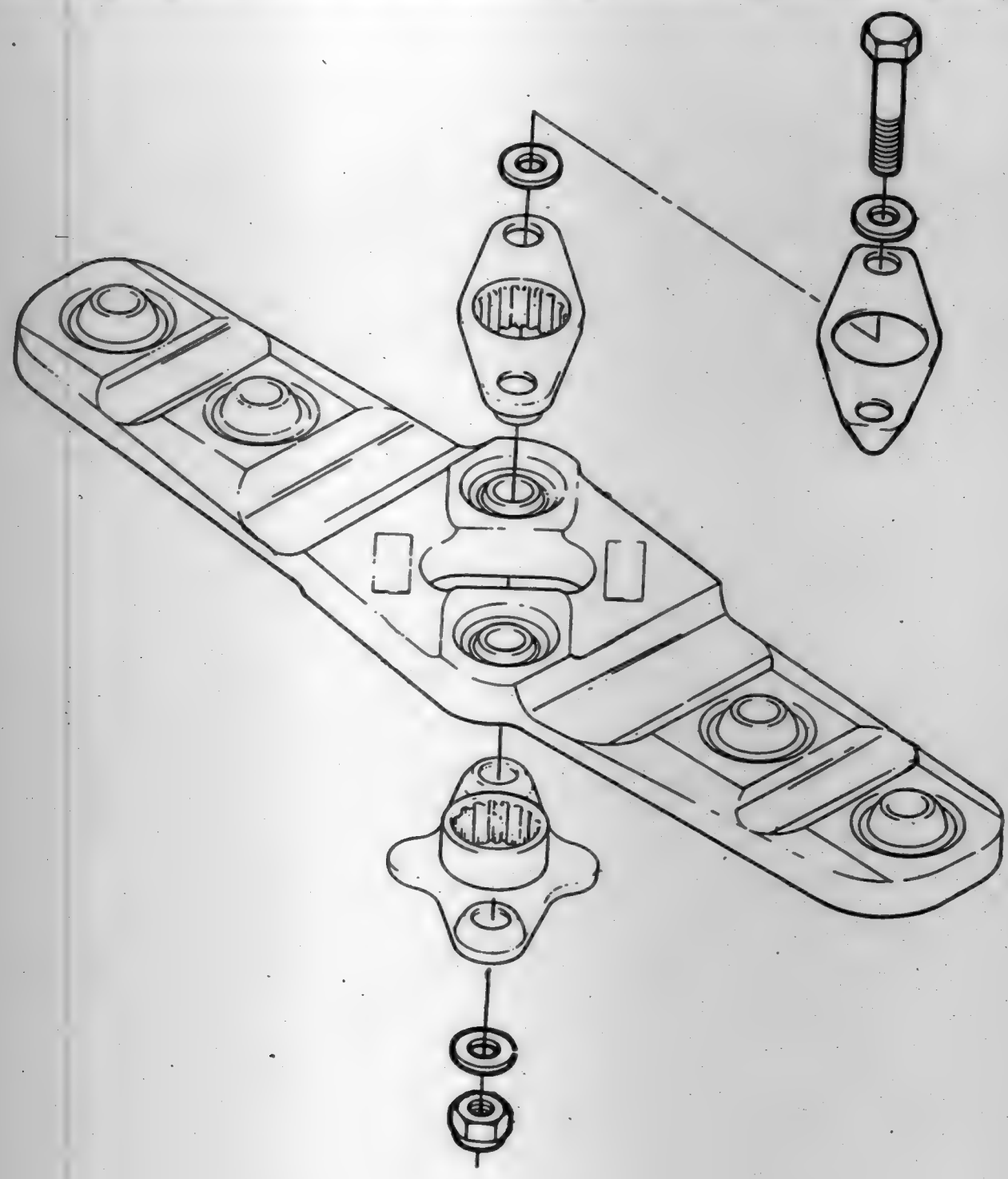

FIGURE 1. 212-010-704 and -744 Style Yoke Assy

VOL 64 ISS 62 APR 1 1999 UMI

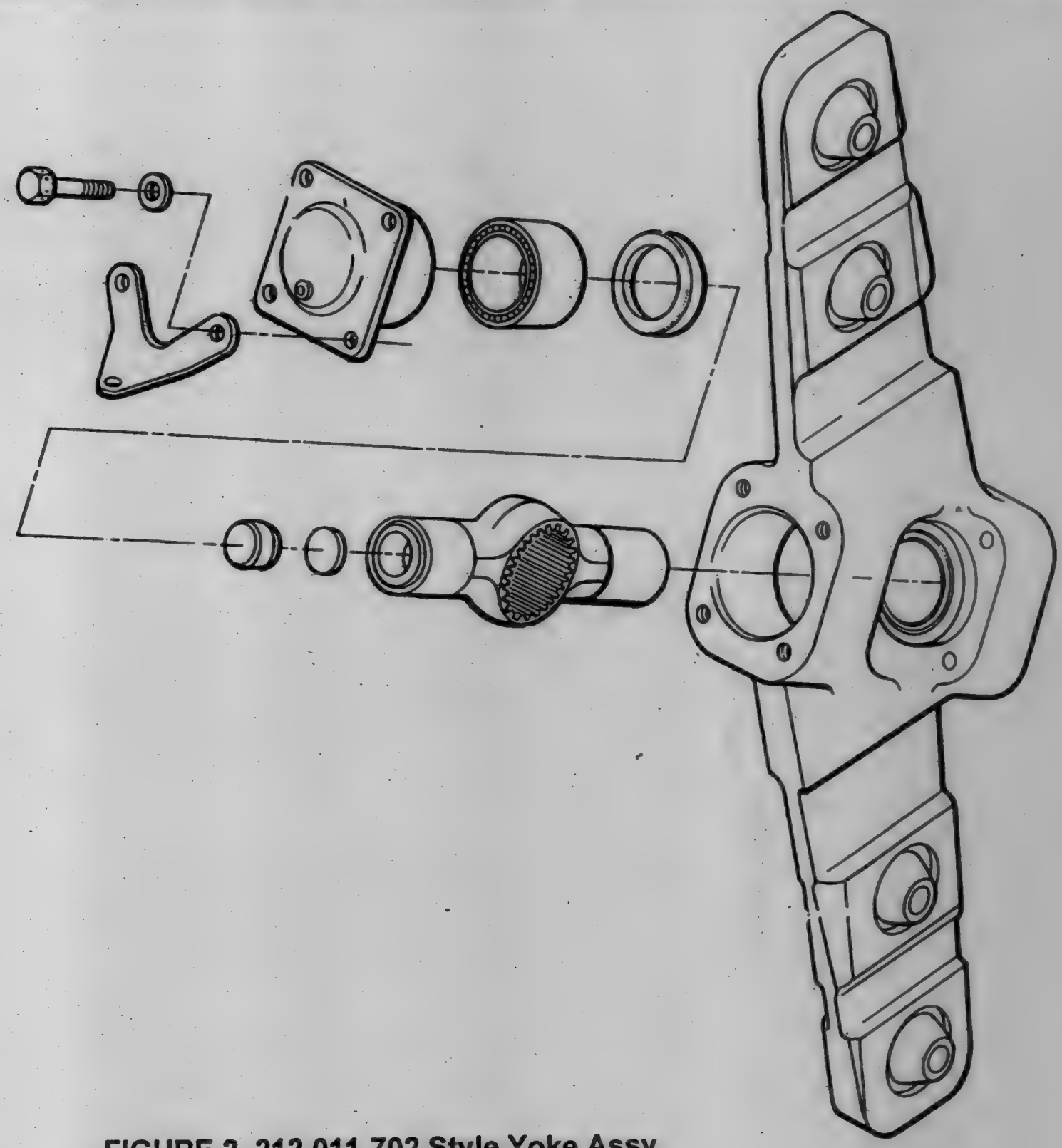

FIGURE 2. 212-011-702 Style Yoke Assy.

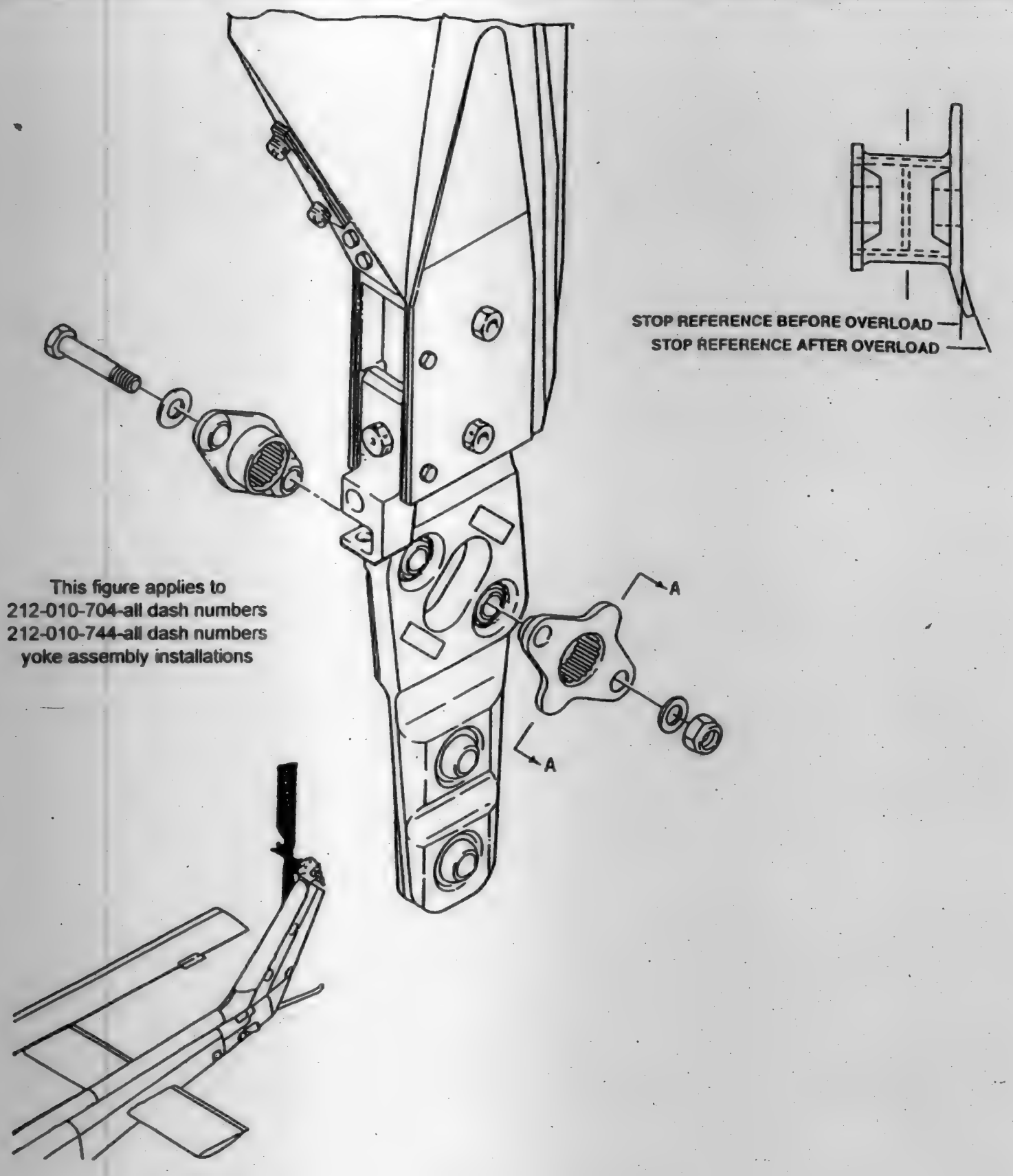

FIGURE 3. Inspection Criteria for 212-010-704 and -744 Style Yoke Assy.

VOL 64 ISS 62 APR 1 1999 UMI

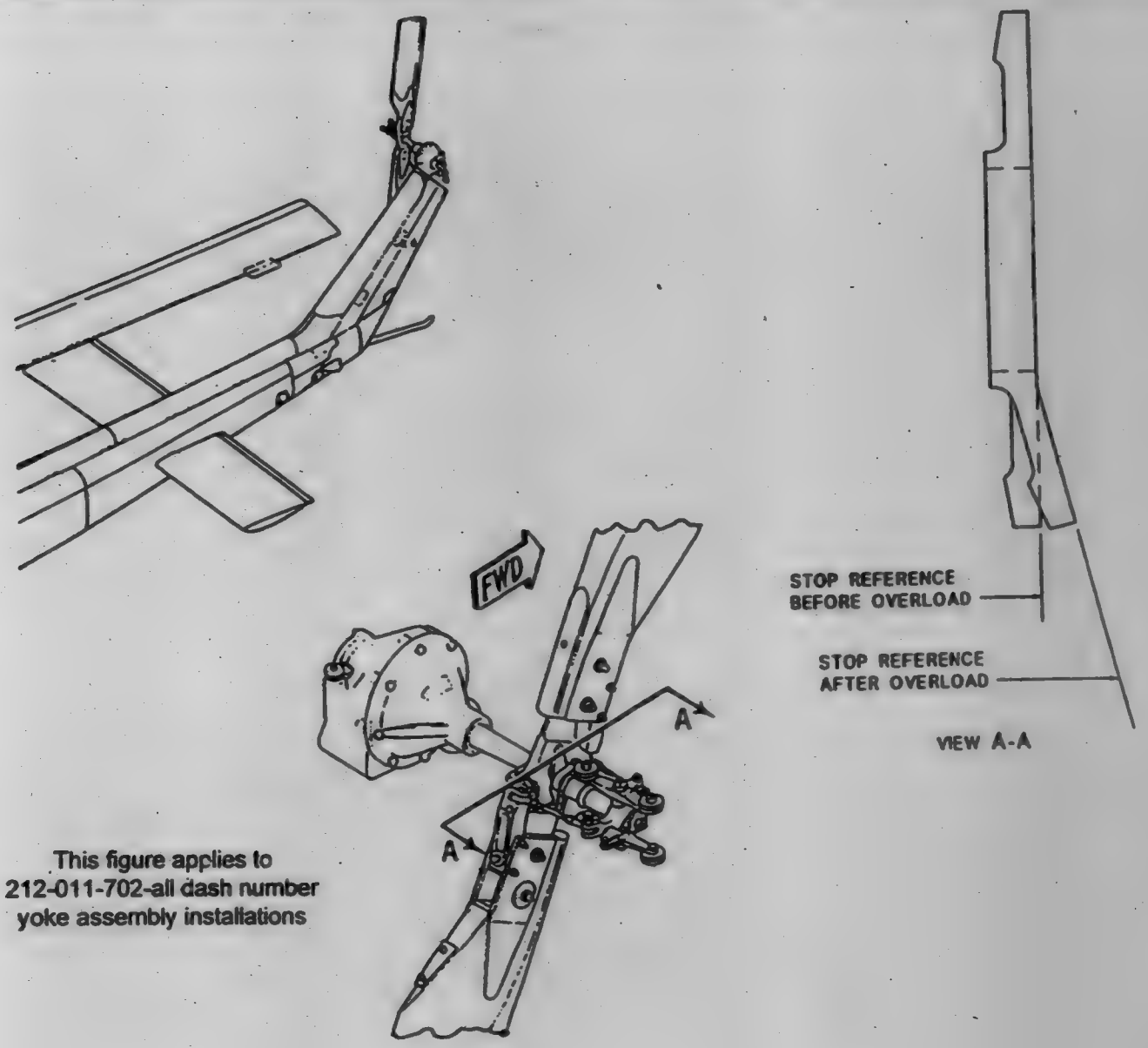

This figure applies to
212-011-702-all dash number
yoke assembly installations

FIGURE 4. Inspection Criteria for 212-011-702 Style Yoke Assy.

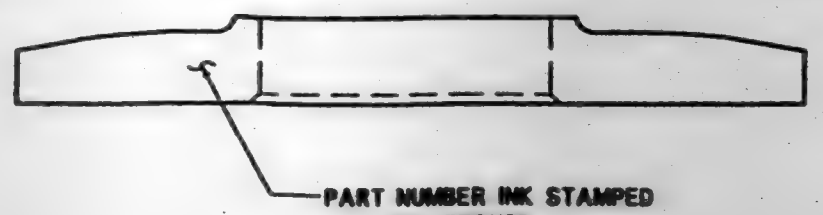

FLAPPING STOP
212-011-713-103

FIGURE 5. Flapping Stop Identification

BILLING CODE 4910-13-C

(f) Within 30 calendar days after the effective date of this AD, insert the following pen and ink changes under the Operating Procedures and Maneuvers Pre-Flight Checks section of the Rotorcraft Flight Manual or Operational Manual:

"Tail rotor yoke—Preflight visual check for static stop contact damage (deformed static stop or trunnion yield indicator)."

Note 5: Operators who use aircraft that have any of these affected yoke assemblies installed should use tail rotor tie downs when the aircraft is parked or stored.

(g) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Rotorcraft Standards Staff, Rotorcraft Directorate, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Rotorcraft Standards Staff.

Note 6: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Rotorcraft Certification Office.

(h) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the helicopter to a location where the requirements of this AD can be accomplished.

(i) This amendment becomes effective on May 3, 1999.

Issued in Fort Worth, Texas, on March 23, 1999.

Mark R. Schilling,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 99–7778 Filed 3–31–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–SW–60–AD; Amendment 39–11102; AD 99–07–16]

RIN 2120–AA64

Airworthiness Directives; Sikorsky Aircraft-manufactured Model CH–54A Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to Sikorsky Aircraft-manufactured Model CH–54A helicopters, that requires an initial and recurring inspections and rework or replacement, if necessary, of the second stage lower planetary plate (plate). This amendment is prompted by cracked plates that have been found during overhaul and inspections. The actions specified by this AD are intended to prevent failure of the plate due to fatigue cracking, which could result in failure of the main gearbox, failure of the drive system, and subsequent loss of control of the helicopter.

EFFECTIVE DATE: May 6, 1999.

FOR FURTHER INFORMATION CONTACT: Uday Garadi, Aerospace Engineer, FAA, Rotorcraft Directorate, Rotorcraft Certification Office, Fort Worth, Texas 76193–0170, telephone (817) 222–5157, fax (817) 222–5959.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to Sikorsky Aircraft-manufactured Model CH–54A helicopters was published in the **Federal Register** on February 10, 1998 (63 FR 6685). That action proposed to require an initial and recurring inspections and rework or replacement, if necessary, of the plate. It is believed that cracks on the plate, part number 6435–20229–102, initiate at and radiate from the lightening holes in the plate web due to fatigue.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comment received.

The sole commenter states that the inclusion of an Erickson Air-Crane Company Service Bulletin (SB) in the Compliance Section of the AD should be removed. The commenter states that the FAA does not have the authority to utilize Erickson Air-Crane Company documentation for continued airworthiness of CH–54A model helicopters or any other helicopters other than Erickson Air-Crane S–64E helicopters. The FAA concurs with the comment to the extent that the Erickson Air-Crane SB only applies to the Erickson Air-Crane Company Model S–64E series helicopters. However, Note 2 of the Notice of Proposed Rulemaking (NPRM) only stated that the Erickson Air-Crane SB pertained to the same subject as is addressed by the FAA in this rule. It was not incorporated by reference into the compliance procedures proposed by the NPRM. However, to avoid any confusion as to the model applicability, the FAA has deleted proposed Note 2 relating to the Erickson Air-Crane Company SB because the note is unnecessary. Also, the wording of Note 1 has changed from that published in the NPRM.

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes described previously. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

The FAA estimates that 9 helicopters of U.S. registry will be affected by this AD, that it will take approximately 8 work hours per helicopter to accomplish the proposed inspections and 56 hours to remove and replace the plate, and that the average labor rate is $60 per work hour. Required parts will cost approximately $8,000 per helicopter. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $106,560; $4,320 to accomplish the inspections and rework, and $102,240 to replace the plate in the main gearbox assembly in all 9 helicopters, if necessary.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

AD 99–07–16 Columbia Helicopter; Heavy Lift; Silver Bay Logging: Amendment 39–11102. Docket No. 97–SW–60–AD.

Applicability: Model CH–54A helicopters with lower planetary plate, part number (P/N) 6435–20229–102, installed, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the second stage lower planetary plate (plate), P/N 6435–20229–102, due to fatigue cracking, which could lead to failure of the main gearbox, failure of the drive system, and subsequent loss of control of the helicopter, accomplish the following:

(a) On or before accumulating 1,300 hours time-in-service (TIS), conduct a fluorescent magnetic particle inspection of the plate, P/N 6435–20229–102, in the circumferential and longitudinal directions using the wet continuous method. Pay particular attention to the area around the 9 lightening holes.

(1) If any crack is discovered, replace the plate with an airworthy plate.

(2) If no crack is discovered, rework the plate as follows:

(i) Locate the center of each 1.750 inch-diameter lightening hole and machine holes 0.015 to 0.020 oversize on a side (0.030 to 0.040 diameter oversize). Machined surface roughness must not exceed 63 microinches AA rating (see Figure 1).

(ii) Radius each hole 0.030 to 0.050 inches on each edge as shown in Figure 1.

(iii) Mask the top and bottom surfaces of the plate to expose 3.20 inch minimum width circumferential band as shown in Figure 1.

(iv) Vapor blast or bead exposed surfaces to remove protective finish. Use 220 aluminum oxide grit at a pressure of 80 to 90 pounds per square inch.

(v) Shot peen exposed surfaces and inside and edges of lightening holes to 0.008–0.012A intensity. Use cast steel shot, size 170; 200 percent coverage is required. Use the tracer dye inspection method to ensure the required coverage. Also, visually inspect the shot peened surfaces for correct shot peen coverage. Inspect the intensity of the shot by performing an Almen strip height measurement.

(vi) Clean reworked surfaces using acetone. Touch up the reworked areas using Presto Black or an equivalent touchup solution. Ensure that the touchup solution is at a temperature between 70° F to 120° F during use. Keep the reworked surfaces wet with touchup solution for 3 minutes to obtain a uniform dark color. Rinse and dry the reworked areas.

(vii) Polish the reworked surfaces with a grade 00 or finer steel wool and polish with a soft cloth. Coat the reworked surfaces with preservative oil.

(viii) Identify the reworked plate by adding "TS–107" after the part number using a low-stress depth-controlled impression-stamp with a full fillet depth of not more than 0.003 inch (see Figure 1).

BILLING CODE 4910–13–P

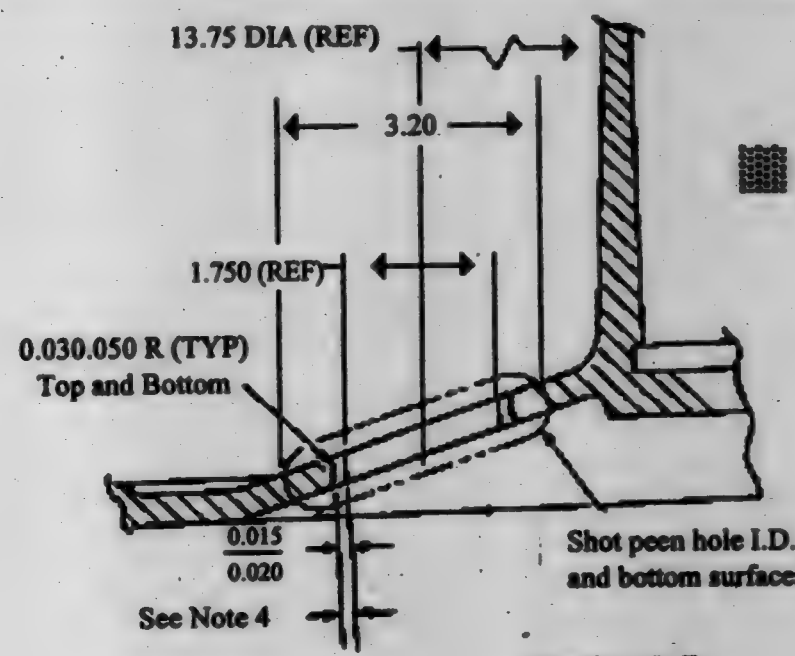

Notes:

1. Mask top and bottom areas to protect from liquid air-grit and shot peen.

2. Shaded area to be liquid air-grit blasted and shot peened includes plate top and bottom surfaces and I.D. of all lightening holes. Feather shot peened surface edges.

3. Use low-stress depth controlled impression-stamp with full fillet depth of no more than 0.003 inch.

4. Reworked machined surface roughness shall not exceed 63 microinches AA rating.

Section B-B

(Typical Nine Places)

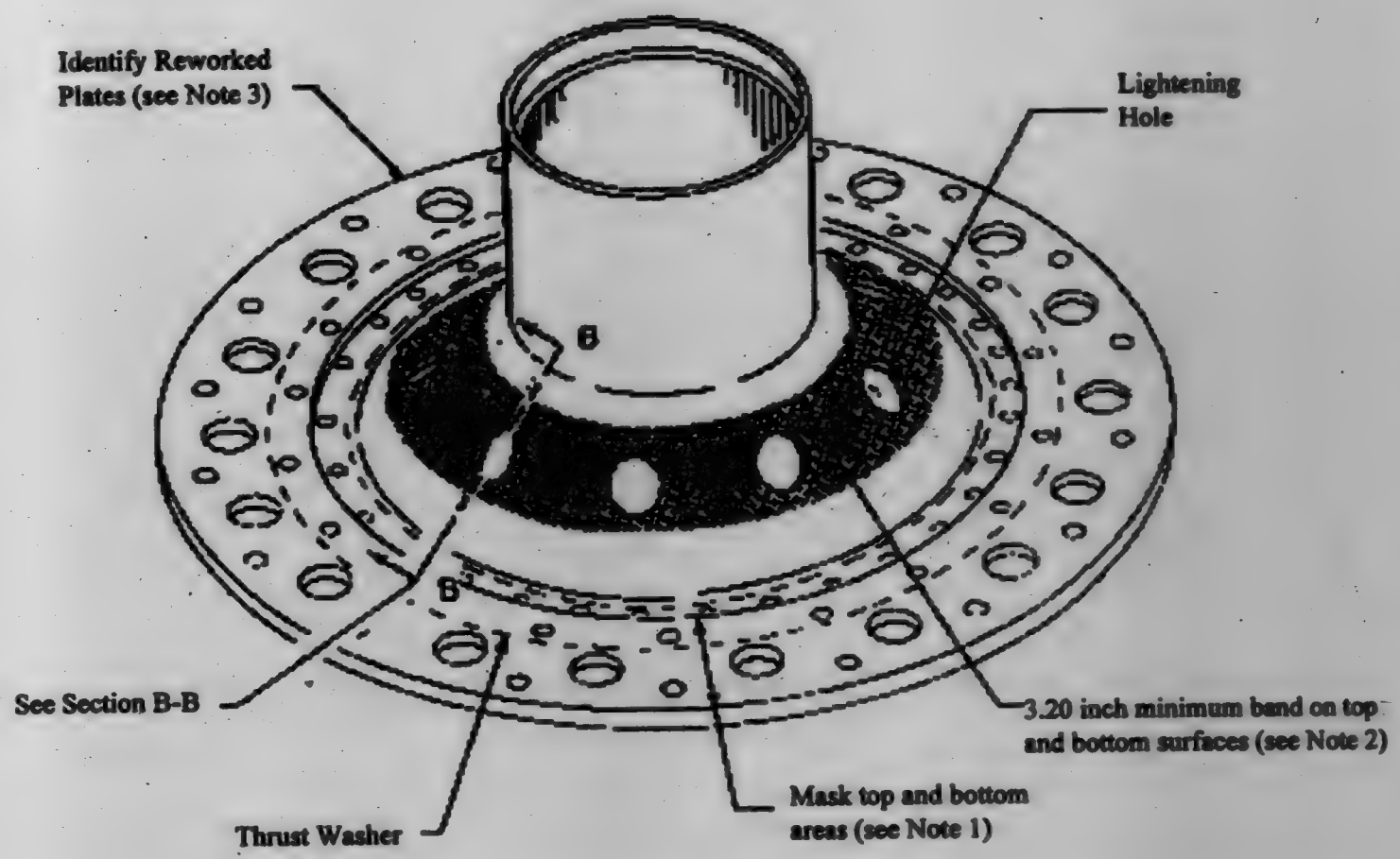

Rework of Second Stage
Lower Planetary Plate (6435-20229-102)
Figure 1

(b) For any plate, P/N 6435–20229–102, that has been reworked and identified with "TS–107," on or before the accumulation of 1,500 hours TIS and thereafter at intervals not to exceed 70 hours TIS, accomplish the following:

(1) Inspect the plate for a crack in the area around all nine lightening holes using a Borescope or equivalent inspection method (see Figure 2).

(2) If a crack is found, replace the plate with an airworthy plate.

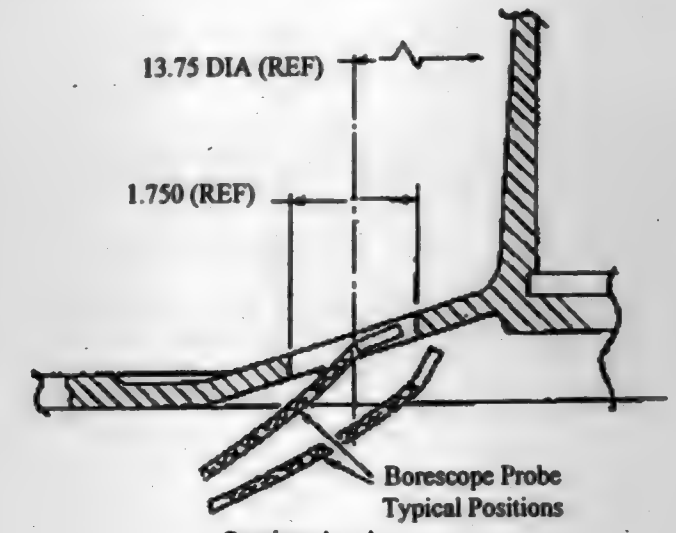

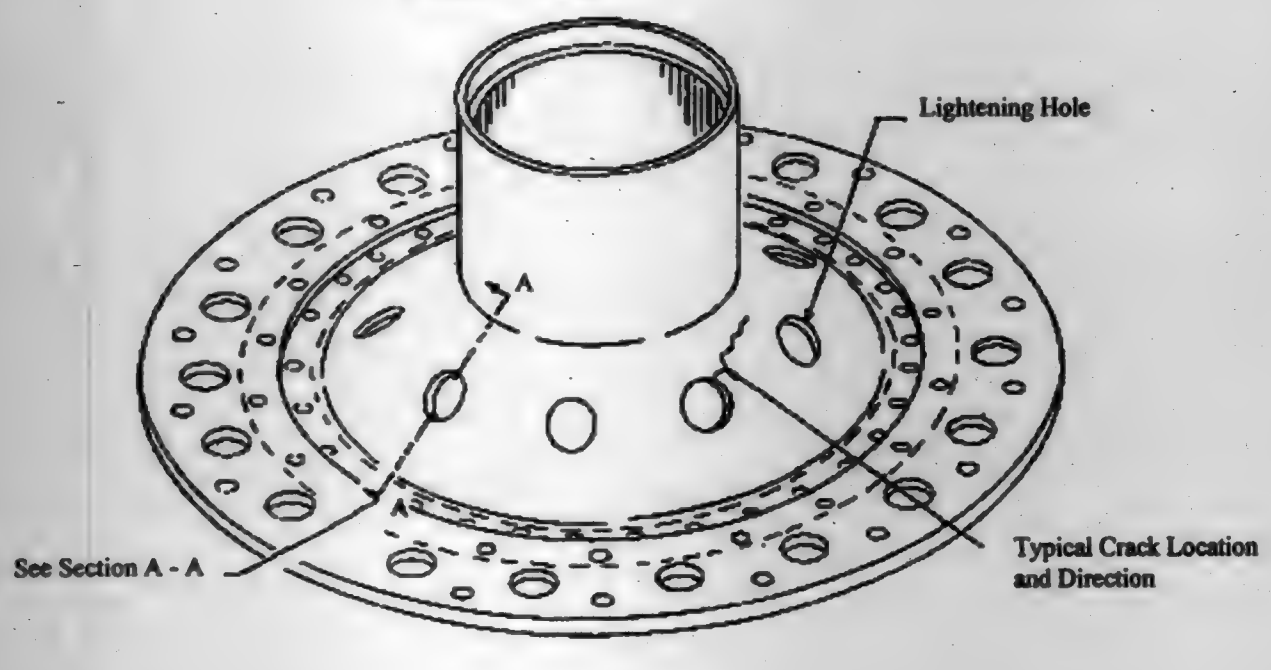

Borescope Inspection of
Second Stage Lower Planetary Plate
Figure 2

BILLING CODE 4910–13–C

(c) On or before the accumulation of 2,600 hours TIS, remove from service plates, P/N 6435–20229–102, reidentified as P/N 6435–20229–102–TS–107 after rework. This AD revises the airworthiness limitation section of the maintenance manual by establishing a retirement life of 2,600 hours TIS for the main gearbox assembly second stage lower planetary plate, P/N 6435–20229–102, reidentified as P/N 6435–20229–102–TS–107 after rework.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Rotorcraft Certification Office, FAA, Rotorcraft Directorate. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Rotorcraft Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Rotorcraft Certification Office.

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the helicopter to a location where the requirements of this AD can be accomplished.

(f) This amendment becomes effective on May 6, 1999.

Issued in Fort Worth, Texas, on March 25, 1999.

Mark R. Schilling,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 99–7978 Filed 3–31–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–ASW–07]

Revision of Class E Airspace; Shawnee, OK

AGENCY: Federal Aviation Administration, (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This amendment revises the Class E airspace at Shawnee, OK. The development of a Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP), at Seminole Municipal Airport, Seminole, OK has made this rule necessary. This action is intended to provide adequate controlled airspace extending upward from 700 feet or more above the surface for Instrument Flight Rules (IFR) operations to Seminole Municipal Airport, Seminole, OK.

DATES: Effective 0901 UTC, September 9, 1999. Comments must be received on or before May 17, 1999.

ADDRESSES: Send comments on the rule in triplicate to Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Docket No. 99–ASW–07, Fort Worth, TX 76193–0520.

The official docket may be examined in the Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, 2601 Meacham Boulevard, Room 663, Fort Worth, TX, between 9:00 AM and 3:00 PM, Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the Airspace Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Room 414, Fort Worth, TX.

FOR FURTHER INFORMATION CONTACT: Donald J. Day, Airspace Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, Fort Worth, TX 76193–0520, telephone 817–222–5593.

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR part 71 revises the Class E airspace at Shawnee, OK. The development of a GPS SIAP, at Seminole Municipal Airport, Seminole, OK has made this rule necessary. This action is intended to provide adequate controlled airspace extending upward from 700 feet or more above the surface for Instrument Flight Rules (IFR) operations to Seminole Municipal Airport, Seminole, OK.

Class E airspace designations are published in Paragraph 6005 of FAA Order 7400.9F, dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and therefore is issuing it as a direct final rule. A substantial number of previous opportunities provided to the public to comment on substantially identical actions have resulted in negligible adverse comments or objections. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Although this action is in the form of a final rule and was not preceded by a notice of proposed rulemaking, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended or withdrawn in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action is needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this action will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 99–ASW–07." The postcard will be date stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism

implications to warrant the preparation of a Federalism Assessment.

Further, the FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments and only involves an established body of technical regulations that require frequent and routine amendments to keep them operationally current. Therefore, I certify that this regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. Since this rule involves routine matters that will only affect air traffic procedures and air navigation, it does not warrant preparation of a Regulatory Flexibility Analysis because the anticipated impact is so minimal.

List of Subjects in 14 CFR part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854; 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9F, *Airspace Designations and Reporting Points*, dated September 10, 1998, and effective September 16, 1998, is amended ad follows:

Paragraph 6005: Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ASW OK E5 Shawnee, OK [Revised]

Shawnee Municipal Airport, OK
(Lat 35°21'26"N., long. 96°56'34"W.)
Semiinole Municipal Airport, OK
(Lat. 35°16'29"N., long. 96°40'31"W.)
Prague Municipal Airport, OK
(Lat 35°28'55"N., long. 96°43'07"W.)
Prague NDB
(Lat. 35°31'00"N., long. 96°43'07"W.)
Chandler Municipal Airport, OK
(Lat. 35°43'26"N., long. 96°49'13"W.)
Tilghman NDB
(Lat. 35°43'20"N., long. 96°49'07"W.)
Cushing Municipal Airport, OK
(Lat. 35°57'00"N., long. 96°46'23"W.)
Cushing NDB
(Lat. 35°53'24"N., long. 96°46'31"W.)
Cushing Regional Hospital Heliport, OK
Point In Space Coordinates
(Lat. 35°57'58"N., long. 96°45'12"W.)

That airspace extending upward from 700 feet above the surface within a 7-mile radius of Shawnee Municipal Airport and within a 6.6-mile radius of Seminole Municipal Airport and within a 6.5-mile radius of Prague Municipal Airport and within 2 miles each side of the 360° bearing from the Prague NDB extending from the 6.5-mile radius to 8.9 miles north of the airport and within a 6.4-mile radius of Chandler Municipal Airport and within 2.5 miles each side of the 352° bearing from the Tilghman NDB extending from the 6.4-mile radius to 7.3 miles north of the airport and within a 6.5-mile radius of Cushing Municipal Airport and within 2.1 miles each side of the 185° bearing from the Cushing NDB extending from the 6.5-mile radius to 9.3 miles south of the airport and that airspace within a 6-mile radius of the Point In Space serving Cushing Regional Hospital Heliport.

* * * * *

Issued in Forth Worth, TX, on March 24, 1999.

Albert L. Viselli,

Acting Manager, Air Traffic Division, Southwest Region.

[FR Doc. 99–8021 Filed 3–31–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–ASW–06]

Revision of Class E Airspace; Guthrie, OK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This amendment revises Class E airspace at Guthrie, OK. The development of a global positioning system (GPS) standard instrument approach procedure (SIAP) to Guthrie Municipal Airport, Guthrie, OK has made this rule necessary. This action is intended to provide adequate controlled airspace extending upward from 700 feet or more above the surface for instrument flight rules (IFR) operations to Guthrie Municipal Airport, Guthrie, OK.

DATES: Effective 0901 UTC, July 15, 1999. Comments must be received on or before May 17, 1999.

ADDRESSES: Send comments on the rule in triplicate to Manager, Airspace Branch, Air Traffic Division,Federal Aviation Administration, Southwest Region, Docket No. 99–ASW–06, Fort Worth, TX 76193–0520.

The official docket may be examined in the Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, 2601 Meacham Boulevard, Room 663, Fort Worth, TX, between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the Airspace Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Room 414, Fort Worth, TX.

FOR FURTHER INFORMATION CONTACT: Donald J. Day, Airspace Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, Fort Worth, TX 76193–0520, telephone 817–222–5593.

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR part 71 revises the Class E airspace at Guthrie, OK. The development of a GPS SIAP at Guthrie Municipal Airport, Guthrie, OK has made this rule necessary. This action is intended to provide adequate controlled airspace extending upward from 700 feet or more about the surface for instrument flight rules (IFR) operations to Guthrie Municipal Airport, Guthrie, OK.

Class E airspace designations are published in Paragraph 6005 of FAA Order 7400.9F, dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in any adverse or negative comment and therefore is issuing it as a direct final rule. A substantial number of previous opportunities provided to the public to comment on substantially identical actions have resulted in negligible adverse comments or objections. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment, is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or

negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment or written notice of intent to submit such comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Although this action is in the form of a final rule and was not preceded by a notice of proposed rulemaking, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended or withdrawn in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action is needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA public contact concerned with the substance of this action will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 99–ASW–06." The postcard will be date stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federal Assessment.

Further, the FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments and only involves and established body of technical regulations that require frequent and routine amendments to keep them operationally current. Therefore, I certify that this regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. Since this rule involves routine matters that will only affect air traffic procedures and air navigation, it does not warrant preparation of a Regulatory Flexibility Analysis because the anticipated impact is so minimal.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, The Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854; 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9F, *Airspace Designations and Reporting Points*, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ASW OK E5 Guthrie, OK [Revised]

Guthrie Municipal Airport, OK
(Lat. 35°50'59" N., long. 97°24'56" W.)
Logan County NDB
(Lat. 35°50'44" N., long. 97°24'57" W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Guthrie Municipal Airport and within 8 miles east and 4 miles west of the 348° bearing from the Logan County NDB extending from the 6.4-mile radius to 16 miles north of the NDB

* * * * *

Issued in Fort Worth, TX, on March 24, 1999.

Albert L. Viselli,

Acting Manager, Air Traffic Division, Southwest Region.

[FR Doc. 99–8020 Filed 3–31–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–ASW–05]

Establishment of Class E Airspace; Escobas, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This amendment establishes Class E airspace at Escobas, TX. The development of two global positioning system (GPS) standard instrument approach procedures (SIAP), to Zachry Ranch, Escobas, TX, has made this rule necessary. This action is intended to provide adequate controlled airspace extending upward from 700 feet or more above the surface for instrument flight rules (IFR) operations to Zachry Ranch, Escobas, TX.

DATES: Effective 0901 UTC, July 15, 1999. Comments must be received on or before May 17, 1999.

ADDRESSES: Send comments on the rule in triplicate to Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Docket No. 99–ASW–05, Fort Worth, TX 76193–0520.

The official docket may be examined in the Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, 2601 Meacham Boulevard, Room 663, Fort Worth, TX, between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the Airspace Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Room 414, Fort Worth, TX.

FOR FURTHER INFORMATION CONTACT: Donald J. Day, Airspace Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, Fort Worth, TX 76193–0520, telephone 817–222–5593.

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR part 71 establishes Class E airspace at Escobas, TX. The development of two GPS SIAP's, to Zachry Ranch, Escobas, TX, has made this rule necessary. This action is intended to provide adequate controlled airspace extending upward from 700 feet or more above the surface for IFR operations to Zachry Ranch, Escobas, TX.

Class E airspace designations are published in Paragraph 6005 of FAA Order 7400.9F, dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in any adverse or negative comment and therefore is issuing it as a direct final rule. A substantial number of previous opportunities provided to the public to comment on substantially identical actions have resulted in negligible adverse comments or objections. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment, is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Although this action is in the form of a final rule and was not preceded by a notice of proposed rulemaking, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended or withdrawn in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action is needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA public contact concerned with the substance of this action will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 99–ASW–05." The postcard will be date stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Further, the FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments and only involves an established body of technical regulations that require frequent and routine amendments to keep them operationally current. Therefore, I certify that this regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. Since this rule involves routine matters that will only affect air traffic procedures and air navigation, it does not warrant preparation of a Regulatory Flexibility Analysis because the anticipated impact is so minimal.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follow:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854; 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9F, *Airspace Designations and Reporting Points,* dated September 10, 1998, and effective September 16, 1998, is amended as follows:

Paragraph 6005 CLass E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ASW TX E5 Escobas, TX [New]

Zachry Ranch, TX
(Lat. 27°04'21"N., long. 98°56'19"W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Zachry Ranch and within 1.3 miles each side of the 322° bearing from the airport extending from the 6.4-mile radius to 9.0 miles northwest of the airport.

* * * * *

Issued in Fort Worth, TX, on March 24, 1999.

Albert L. Viselli,

Acting Manager, Air Traffic Division, Southwest Region.

[FR Doc. 99–8019 Filed 3–31–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–ASW–04]

Revision of Class E Airspace; Lake Charles, LA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This amendment revises Class E airspace at Lake Charles, LA. The development of a global positioning system (GPS) standard instrument approach procedure (SIAP) to

Chennault International Airport, Lake Charles, LA has made this rule necessary. This action is intended to provide adequate controlled airspace extending upward from 700 feet or more above the surface for instrument flight rules (IFR) operations to Chennault International Airport, Lake Charles, LA.

DATES: Effective 0901 UTC, July 15, 1999. Comment must be received on or before May 17, 1999.

ADDRESSES: Send comments on the rule in triplicate to Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Docket No. 99–ASW–04, Fort Worth, TX 76193–0520. The official docket may be examined in the Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, 2601 Meacham Boulevard, Room 663, Fort Worth, TX, between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the Airspace Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Room 414, Fort Worth, TX.

FOR FURTHER INFORMATION CONTACT: Donald J. Day, Airspace Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, Fort Worth, TX 76193–0520, telephone 817–222–5593.

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR part 71 revises the Class E airspace at Lake Charles, LA. The development of a GPS SIAP at Chennault International Airport, Lake Charles, LA has made this rule necessary. This action is intended to provide adequate controlled airspace extending upward from 700 feet or more above the surface for instrument flight rules (IFR) operations to Chennault International Airport, Lake Charles, LA.

Class E airspace designations are published in Paragraph 6005 of FAA Order 7400.9F, dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in any adverse or negative comment and therefore is issuing it as a direct final rule. A substantial number of previous opportunities provided to the public to comment on substantially identical actions have resulted in negligible adverse comments or objections. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment, is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, and adverse or negative comment or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comment Invited

Although this action is in the form of a final rule and was not preceded by a notice of proposed rulemaking, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended or withdrawn in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action is needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA public contact concerned with the substance of this action will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 99–ASW–04." The postcard will be date stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Further, the FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments and only involves an established body of technical regulations that require frequent and routine amendments to keep them operationally current. Therefore, I certify that this regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. Since this rule involves routine matters that will only affect air traffic procedures and air navigation, it does not warrant preparation of a Regulatory Flexibility Analysis because the anticipated impact is so minimal.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854; 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9F, *Airspace Designations and Reporting Points*, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ASW LA E5 Lake Charles, LA [Revised]

Lake Charles Regional Airport, LA
(Lat. 30°07′34″N., long. 93°13′24″W.)
Lake Charles, Chennault International Airport, LA
(Lat. 30°12′45″N., long. 93°08′37″W.)
Sulphur, Southland Field, LA
(Lat. 30°07′53″N., long. 93°22′34′W.)

That airspace extending upward from 700 feet above the surface within a 7.5-mile radius of Lake Charles Regional Airport and within a 7-mile radius of Chennault International Airport and within 3.5 miles each side of the 155° bearing from the airport extending from the 7-mile radius to 16.7 miles southeast of the airport and within a 5.9-mile radius of Southland Field.

* * * * *

Issued in Fort Worth, TX, on March 24, 1999.

Albert L. Viselli,

Acting Manager, Air Traffic Division, Southwest Region.

[FR Doc. 99–8018 Filed 3–31–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 95–ASW–18]

Revision of Class E Airspace; Farmington, NM

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action revises the Class E airspace extending upward from 700 feet above ground level (AGL) at Four Corners Regional Airport, Farmington, NM. The development of a global positioning system (GPS) standard instrument approach procedure (SIAP) to Runway (Rwy) 25 at Four Corners Regional Airport, Farmington, NM, has made this rule necessary. This action is intended to provide adequate controlled airspace extending upward from 700 feet or more above the surface for aircraft executing the GPS Rwy 25 SIAP at Four Corners Regional Airport, Farmington, NM.

EFFECTIVE DATE: 0901 UTC, May 20, 1999.

FOR FURTHER INFORMATION CONTACT: Donald J. Day, Airspace Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, Fort Worth, TX 76193–0520, telephone 817–222–5593.

SUPPLEMENTARY INFORMATION:

History

On January 24, 1996, a proposal to amend 14 CFR part 71 to revise Class E airspace at Farmington, NM, was published in the **Federal Register** (61 FR 1875). The development of a GPS SIAP to Rwy 25 at Four Corners Regional Airport, Farmington, NM, has made this rule necessary. The intended effect of the proposal was to provide adequate Class E airspace to contain aircraft executing the GPS SIAP at Four Corners regional Airport, Farmington, NM.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments to the proposal were received. The rule is adopted as proposed with the exception of minor editorial changes.

The coordinates for this airspace docket are based on North American Datum 83. Designated Class E airspace areas are published in Paragraph 6005 of FAA Order 7400.9F, dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the order.

The Rule

This amendment to 14 CFR part 71 revises Class E airspace at Farmington, NM, extending upward from 700 feet above the surface within a 6.7-mile radius of the Four Corners Regional Airport, Farmington, NM.

The FAA has determined that his regulation only involves an established body of technical regulations that require frequent and routine amendments to keep them operationally current. It therefore (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures, and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR Part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS, ROUTES; AND REPORTING POINTS [AMENDED]

1. The authority citation for 14 CFR Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854: 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9F, *Airspace Designations and Reporting Points,* dated September 10, 1998, and effective September 16, 1998, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ASW NM E5 Farmington, NM [Revised]

Farmington, Four Corners Regional Airport, NM
(Lat. 36°44′31″ N., long. 108°13′47″ W.)
Farmington VORTAC
(Lat. 36°44′54″ N., long. 108°05′56″ W.)

That airspace extending upward from 700 feet above the surface within a 6.7-radius of Four Corners Regional Airport, and within 1.7 miles each side of the 088° bearing from the airport extending from the 6.7-mile radius to 9 miles east of the airport and within 1.6 miles each side of the 266° radial of the Farmington VORTAC extending from the 6.7–mile radius to 10.7 miles west of the airport; and that airspace extending from 1,200 feet above the surface bounded by a line extending from lat. 37°04′00″ N., long. 108°56′54″ W.; to lat. 37°04′00″ N., long 108°27′03″ W.; thence clockwise within a 25.5-mile radius of the Farmington VORTAC to lat. 37°00′00″ N., long. 107°40′18″ W.; to lat. 37°00′00″ N., long. 107°12′58″ W.; then clockwise within a 45.1-mile radius of the Farmington VORTAC to point of beginning; excluding that airspace within the Durango, CO, Class E airspace area, that airspace within and underlying the Crownpoint, NM, Class E airspace area.

* * * * *

Issued in Fort Worth, TX, on March 24, 1999.

Albert L. Viselli,

Acting Manager, Air Traffic Division, Southwest Region.

[FR Doc. 99–8017 Filed 3–31–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–AEA–03]

Amendment to Class E Airspace; Palmyra, NY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action removes Class E airspace at Palmyra Airpark, Palmyra, NY. The airport has been reclassified from public to private use and instrument procedures to the airport have been cancelled. The need for Class E airspace no longer exists for Instrument Flight Rules (IFR) operations at the airport. This action will result in the airspace reverting to Class G airspace.

EFFECTIVE DATE: 0901 UTC, May 20, 1999.

FOR FURTHER INFORMATION CONTACT: Mr. Francis Jordan, Airspace Specialist, Airspace Branch, AEA–520, Air Traffic Division, Eastern Region, Federal Aviation Administration, Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430, telephone: (718) 553–4251.

SUPPLEMENTARY INFORMATION:

History

On February 19, 1999, a proposal to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to remove the Class E airspace extending upward from 700 feet above the surface at Palmyra Airpark, Palmyra, NY, was published in the **Federal Register** (64 FR 8272).

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments to the proposal were received. The rule is adopted as proposed.

The coordinates for this airspace docket are based on North American Datum 83. Class E airspace areas designations for airspace extending upward from 700 feet AGL are published in paragraph 6005 of FAA Order 7400.9F, dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be removed subsequently from the Order.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) removes Class E airspace at Palmyra, NY. The need for controlled airspace extending from 700 feet AGL at the Palmyra Airpark no longer exists. This area will be removed from the appropriate aeronautical charts.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation it is certified that this rule will not have significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; EO 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§71.1 [Amended]

The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth

* * * * *

AEA NY E5, Palmyra, NY [Removed]

* * * * *

Issued in Jamaica, New York on March 23, 1999.

Franklin D. Hatfield,

Manager, Air Traffic Division, Eastern Region.

[FR Doc. 99–8015 Filed 3–31–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–AEA–02]

Establishment of Class E Airspace; Logan, WV

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace extending upward from 700 feet Above Ground Level (AGL) at Logan, WV. The development of new Standards Instrument Approach Procedures (SIAP) based on the Global Positioning System (GPS) to Logan County Airport, Logan, WV, requires the establishment of controlled airspace extending upward from 700 feet Above Ground Level (AGL) to accommodate the SIAPs and for Instrument Flight Rules (IFR) operations to the airport. This action is intended to provide adequate Class E airspace to contain IFR operations to Logan County Airport at Logan, WV.

EFFECTIVE DATE: 0901 UTC, May 20, 1999.

FOR FURTHER INFORMATION CONTACT: Mr. Francis Jordan, Airspace Specialist, Airspace Branch, AEA–520, Air Traffic Division, Eastern Region, Federal Aviation Administration, Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430, telephone: (718) 553–4521.

SUPPLEMENTARY INFORMATION:

History

On February 19, 1999, a notice proposing to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to establish Class E airspace at Logan, WV, was published in the **Federal Register** (64 FR 8271). A GPS RWY 6 SIAP and GPS RWY 24 SIAP have been developed for Logan County Airport. Controlled airspace extending upward from 700 feet AGL is needed to accommodate the SIAPs and for IFR operations at the airport.

The notice proposed to establish controlled airspace extending upward from 700 feet AGL to contain IFR operations in controlled airspace during portions of the terminal operation and while transitioning between the enroute and terminal environments.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments to the proposal were

received. The rule is adopted as proposed.

The coordinated for this airspace docket are based on North American Datum 83. Class E airspace areas designations for airspace extending upward from 700 feet AGL are published in paragraph 6005 of FAA Order 7400.9F, dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations (14 CFR part 71) establishes Class E airspace at Logan, WV, to provide controlled airspace extending upward from 700 feet AGL for aircraft executing the GPS RWY 6 SIAP and GPS RWY 24 SIAP to Logan County Airport.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation it is certified that this rule will not have significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; EO 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AEA WV E5 Logan, WV [New]

Logan County Airport, WV
(Lat. 37°51'20" N., long. 81°54'57" W.)

That airspace extending upward from 700 feet above the surface within a 10-mile radius of Logan County Airport.

* * * * *

Issued in Jamaica, New York on March 23, 1999.

Franklin D. Hatfield,

Manager, Air Traffic Division, Eastern Region.

[FR Doc. 99–8014 Filed 3–31–99; 8:45 am]

BILLING CODE 4910–13–M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 275 and 279

[Release No. IA–1794; File No. S7–2–99]

RIN 3235–AH60

Transition Rule for Ohio Investment Advisers

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission ("Commission") is adopting a new rule and form amendments under the Investment Advisers Act of 1940 for investment advisers that will be subject to a new Ohio investment adviser statute. The new rule provides a transition process for these investment advisers to switch from Commission to state registration.

EFFECTIVE DATES: Rule 203A–6 (17 CFR 275. 203A–6) will become effective May 3, 1999. Amendments to Schedule I to Form ADV (279.1) will become effective on December 31, 1999.

FOR FURTHER INFORMATION CONTACT: Jeffrey O. Himstreet, Attorney, at (202) 942–0716, Task Force on Investment Adviser Regulation, Division of Investment Management, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0506.

SUPPLEMENTARY INFORMATION: The Commission is adopting rule 203A–6 (17 CFR 275.203A–6) and technical amendments to Schedule I of Form ADV (17 CFR 279.1 W), both under the Investment Advisers Act of 1940 (15 U.S.C. 80b)("Advisers Act" or "Act".

I. Background

Under the Advisers Act, as amended by the Investment Advisers Supervision Coordination Act ("Coordination Act"),[1] the Commission has regulatory responsibility for investment advisers that have at least $25 million of assets under management or advise a registered investment company.[2] The Commission also has regulatory responsibility for advisers that have their principal place of business in a state that has not enacted an investment adviser statute, regardless of their assets under management.[3] At the time the Coordination Act was adopted, Ohio was one of four states that did not have an investment adviser statute.[4] Recently, Ohio enacted investment adviser legislation that will become effective on March 18, 1999.[5]

On January 29, 1999, we issued a release proposing rule 203A–6 ("Proposing Release") to assist the Ohio Division of Securities and to facilitate the transition of regulatory responsibilities for smaller Ohio advisers.[6] We also proposed technical, corresponding changes to Schedule I to Form ADV. We received two comment letters in response to the proposal, both of which supported the new rule and form amendments.[7] The Commission is adopting rule 203A–6 and technical revisions to Schedule I to Form ADV as proposed.

II. Discussion

Under new rule 203A–6, new Ohio advisers (*i.e.*, those advisers that are not currently registered with the Commission) that would not be eligible for Commission registration would

---

[1] Title III of the National Securities Markets Improvement Act of 1996, Pub. L. No. 104–290, 110 Stat. 3416 (1996) (codified in scattered sections of the United States Code).

[2] 15 U.S.C. 80b–3A(a).

[3] *See* Rules implementing Amendments to the Investment Advisers Act of 1940, Investment Advisers Act Release No. 1633 (May 15, 1997) [64 FR 28112 (May 22, 1997)] at II.E.1.

[4] Colorado, Iowa and Wyoming also did not have investment adviser statutes at the time Congress enacted the Coordination Act. Since that time, Colorado and Iowa have enacted investment adviser legislation, and we recently amended Schedule I to Form ADV to reflect these developments. Technical Changes to Schedule I to Form ADV, Investment Advisers Act Release No. 1733A (Jan. 7, 1999) [64 FR 2120 (Jan. 13, 1999)].

[5] H.B. 695, 122d Gen. Ass., Reg. Sess. (Ohio 1997–1998).

[6] Transition Rule for Ohio Investment Advisers, Investment Advisers Act Release No. 1787 (Jan. 29, 1999) [64 FR 5722 (Feb. 5, 1999)].

[7] Letter from Thomas Geyer, Commissioner, Ohio Securities Division to Jonathan G. Katz, Secretary, SEC (Feb. 17, 1999), File No. S7–2–99; Letter from Peter C. Hildreth, President, North American Securities Administrators Association, Inc. to Johathan G. Katz, Secretary, SEC (Mar. 8, 1999), File No. S7–2–99.

register with the Ohio Division of Securities on or after the effective date of Ohio's implementing rules.[9] Smaller Ohio advisers (*i.e.* those that have less than $25 million in assets under management) that are currently registered with the Commission will switch over to registration with the Ohio Division of Securities between March 18,1999 and December 31, 1999.[9] These advisers may withdraw their Commission registration after they register with the Ohio Division of Securities, but not later than March 30, 2000.[10]

With the enactment of the Ohio law, smaller Ohio advisers may no longer rely on the location of their principal office and place of business as a basis for Commission registration. The Commission therefore is amending Schedule I by deleting the references to Ohio from both Schedule I and the Instructions to Schedule I. The amendments to Schedule I will become effective on December 31, 1999. As a result of the amendments to Schedule I, advisers will no longer be able to claim eligibility for Commission registration based on the location of their principal office and place of business in Ohio and must withdraw from Commission registration, unless otherwise eligible.

III. Cost/Benefit Analysis

New rule 203A–6 and the technical amendments to Schedule I to Form ADV are designed to facilitate the transition of certain advisers from Commission to state registration. This transition further implements congressional intent to reallocate regulatory responsibilities for investment advisers between the Commission and state securities authorities.

New rule 203A–6 will not have a significant effect on the regulatory burden borne by investment advisers. The Coordination Act imposes certain costs on advisers as a consequence of no longer being registered with the Commission, and, at the same time, confers benefits on these advisers, such as no longer requiring them to file amendments to Form ADV with the Commission. The costs the Advisers Act imposes on advisers withdrawing from Commission registration is estimated to be $10 per adviser (or, $5,400 in the aggregate).[11] The new rule does not alter these burdens and benefits, but merely establishes a time by which advisers are required to switch their registration from the Commission to the Ohio Division of Securities.[12] Therefore, the net costs imposed by the new rule and form amendments are negligible. Smaller Ohio advisers may withdraw from Commission registration at any time and avoid any potential burdens associated with new rule 203A–6.

In the Proposing Release, we requested comment on the cost/benefit analysis. No comments on the cost/benefit analysis were provided. The Commission believes that the costs imposed by the new rule are insignificant.

IV. Paperwork Reduction Act

As discussed in the Proposing Release, the amendments to Schedule I to Form ADV contain a "collection of information within the meaning of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 to 3520). The amendments to Schedule I to Form ADV are necessary to implement the Coordination Act with respect to advisers with their principal office in Ohio. The Commission received no public comment in response to its request for comments on the Paperwork Reduction Act analysis.

Under Office of Management and Budget rules, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the agency displays a valid OMB control number.[13] Therefore, we have submitted the collection of information requirements to the Office of Management and Budget for review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. The title for the collection of information is "Schedule I to Form ADV," under the Advisers Act. Schedule I to Form ADV contains a currently approved collection of information under OMB control number 3235–0490. OMB has approved the PRA request in accordance with 44 U.S.C. 3507(d), and has assigned control number 3235–0490 to Schedule I to Form ADV with an expiration date of March 31, 2002.

The Commission is adopting amendments to Schedule I to Form ADV that will delete references to Ohio contained in Schedule I and the Instructions to Schedule I. Each investment adviser must declare on Schedule I to Form ADV whether it is eligible for Commission registration. The rules imposing this collection of information are found at 17 CFR 275.203–1 and 17 CFR 279.1. Rule 204–1 (17 CFR 275.204–1) requires an investment adviser registered with the Commission to file an amended Schedule I to From ADV annually within 90 days after the end of the investment adviser's fiscal year. The Commission is amending Schedule I only, and not Form ADV.

There are no additional burdens associated with this filing that are not already imposed by the statutory requirement that advisers withdraw from Commission registration if no longer eligible for Commission registration. The withdrawal procedures impose no additional paperwork burdens on advisers. The new rule creates a March 30, 2000 deadline by which smaller Ohio advisers must withdraw from Commission registration. Additionally, smaller Ohio advisers may withdraw from Commission registration at any time prior to March 30, 2000 and not be subject to the new rule.

The Commission estimates that there are approximately 8,200 investment advisers registered with the Commission. Approximately 899 investment advisers with their principal office in Ohio that are registered with the Commission would respond annually to the information requirements of Schedule I. In addition, an estimated 760 new advisers will file Schedule I to Form ADV annually, approximately 83 of which are estimated to have their principal office in Ohio. Of these 83 advisers, an estimated 72 will file Schedule I to Form ADV an average of once a year, and the remaining 11 that rely on the exemption provided by rule 203A–2(d) (17 CFR 275.203A–d) will file Schedule I to Form ADV an average of twice each

---

[9] The Ohio Division of Securities estimates that its implementing rules would be effective by March 24, 1999.

[9] Ohio Legislation, *supra* note 5 (to be codified at section 1707.161(E) of the Ohio Revised Code). In addition, advisers ineligible for Commission registration may be required to register with other state securities authorities, subject to the Advisers Act. The Coordination Act amended the Advisers Act to add Section 222(d) [15 U.S.C. 80b–22(d)], which makes state investment adviser statues inapplicable to advisers that do not have a place of business in the state and have fewer than six clients who are residents of that state.

[10] New rule 203A–6(b). We recognize that Ohio investment advisers may be registered with, and regulated by, both the Ohio Divison of Securities and the Commission until the advisers withdraw from Commission registration. During this time, Ohio investment advisers may be subject to both federal and state regulatory requirements. Ohio investment advisers no longer eligible for Commission registration may avoid this "duplicate regulation" by withdrawing from Commission registration at any time after they registered with the State of Ohio.

[11] The Office of Management and Budget has approved a collection of information for Form ADV–W (OMB Control No. 3235–0313). The estimated burden is 1.0 hours, per response. Based on an average salary of $10 per hour, including benefits, the total costs imposed by the Advisers Act on Ohio advisers required to withdraw from Commission registration is approximately $5,400.

[12] Under current rules, advisers that are no longer eligible for Commission registration under section 203A(a) of the Act [15 U.S.C. 80b–3a(a)] must withdraw from registration within 90 days after the date the adviser is required by rule 204–1(a)[17 CFR 275.204–1(a)]. *See* 17 CFR 279.1 (Schedule I, instruction 6).

[13] 13 44 U.S.C. 3506(c)(1)(B)(v).

year. It is estimated that the Commission will receive approximately 993 total responses from investment advisers with their principal office in Ohio.

The form amendments will affect only investment advisers with their principal office in Ohio, and will not materially alter the number of burden hours for those advisers. It is estimated that the amendments to Schedule I to Form ADV imposes on Ohio investment advisers 852.75 total burden hours. This estimate would likely remain constant absent the new rule and form amendments. The collection of information required by Schedule I is mandatory, and responses are not kept confidential. The form amendments, as adopted, do not impose a greater paperwork burden upon respondents than that estimated and described in the Proposing Release.

V. Summary of Final Regulatory Flexibility Analysis

The Commission has prepared a Final Regulatory Flexibility Analysis ("FRFA") in accordance with the Regulatory Flexibility Act ("Reg. Flex. Act") (5 U.S.C. 604) in connection with the adoption of the rule described in this Release. An Initial Regulatory Flexibility Analysis ("IRFA") was prepared in accordance with 5 U.S.C. 603 in conjunction with the Proposing Release and was made available to the public. A summary of the IRFA was published in the Proposing Release. We received no comments on the IRFA.

The FRFA discusses both the need for, and objectives of, the rule and form amendments adopted by the Commission. The new rule and form amendments, as adopted, create a transition process for smaller Ohio advisers. The new rule (a) provides a one-year transition period for advisers to switch from Commission registration to state registration, and (b) requires smaller Ohio advisers to withdraw from Commission registration by March 30, 2000. The amendments to Schedule I delete references to Ohio to reflect that Ohio has recently enacted an investment adviser statute.

The FRFA also provides a description and an estimate of the number of small entities to which the rule amendments will apply. For the purposes of the Advisers Act and the Reg. Flex. Act, an investment adviser, under Commission rules, generally is a small entity if (i) it has assets under management of less than $25 million reported on its most recent Schedule I to Form ADV (17 CFR 279.1); (ii) it does not have total assets of $5 million or more on the last day of the most recent fiscal year; and (iii) it is not in a control relationship with another investment adviser that is not a small entity.[14]

It is estimated that approximately 1,000 Commission-registered advisers are small entities. It is estimated that approximately 540 of these small-entity advisers have their principal office in Ohio. Relatively few small entities thus will be affected by the new rule and form amendments. As explained in the FRFA, the majority of these advisers are smaller Ohio advisers that will be required by the Coordination Act to withdraw from Commission registration and register with the various state securities authorities. Absent Commission rulemaking, the Coordination Act requires smaller Ohio advisers to withdraw from Commission registration after the Ohio law is effective. It takes, on average, one hour to complete form ADV–W.[15] The costs associated with withdrawing from Commission registration would exist absent the new rule and form amendments. Therefore, the net costs imposed by the new rule and form amendments are negligible.

The FRFA states that the rule amendments will impose no new reporting or recordkeeping requirements and will eliminate certain other requirements. The new rule does, however, create a deadline for complying with an existing requirement. Smaller Ohio advisers no longer eligible for Commission registration will be required to withdraw from Commission registration by March 30, 2000. These advisers will no longer be required to file an amended Schedule I with the Commission each year, or the other annual updates to Form ADV.

The new rule and form amendments will not materially alter the time required for investment advisers to comply with these rules.[16] The new rule and form amendments also are necessary to implement the Coordination Act with respect to smaller Ohio advisers. The FRFA states that the burden to investment advisers subject to the rule should be outweighed by the benefits to the investment advisers subject to the new rule and form amendments. There are no rules that duplicate, overlap, or conflict with, the new rule and form amendments.

Finally, the FRFA states that, in adopting the new rule and form amendments, we considered (a) the establishment of differing compliance or reporting requirements or timetables that take into account resources available to small entities; (b) the clarification, consolidation, or simplification of compliance and reporting requirements under the new rule for small entities; (c) the use of performance rather than design standards; and (d) an exemption from coverage of the new rule, or any part of the new rule, for small entities. The FRFA explains that the Commission concluded that establishing different standards for small entities is unnecessary and inappropriate.

The FRFA is available for public inspection in File No. S7–2–99, and a copy may be obtained by contacting Jeffrey O. Himstreet, Attorney, Securities and Exchange Commission, 450 5th Street, NW, Washington, DC 20549–0506.

VI. Statutory Authority

The Commission is adopting new rule 203A–6 pursuant to the authority set forth in section 203(h) (15 U.S.C. 80b–3(h)); section 203A(c) (15 U.S.C. 80b–3a(c)); and section 211(a) (15 U.S.C. 80b–11(a)) of the Investment Advisers Act of 1940.

The Commission is adopting amendments to Form ADV pursuant to the authority set forth in section 203(c)(1) (15 U.S.C. 80b–3(c)(1)); and section 204 (15 U.S.C. 80b–4) of the Investment Advisers Act of 1940.

List of Subjects in 17 CFR Parts 275 and 279

Reporting and recordkeeping requirements, Securities.

Text of Rule and Form Amendments

For the reasons set out in the preamble, Title 17, Chapter II of the Code of Federal Regulations is amended as follows:

PART 275—RULES AND REGULATIONS, INVESTMENT ADVISERS ACT OF 1940

1. The authority citation for Part 275 continues to read in part as follows:

Authority: 15 U.S.C. 80b–2(a)(17), 80b–3, 80b–4, 80b–6(4), 80b–6a, 80b–11, unless otherwise noted.

* * * * *

---

[14] Rule 0–7 [17 CFR 275.0–7].

[15] The Office of Management and Budget has approved a collection of information for Form ADV–W (OMB Control No. 3235–0313). The estimated average burden is 1.0 hours, per response. Based on an average salary of $10 per hour, including benefits, the total costs imposed by the Advisers Act on Ohio advisers required to withdraw from Commission registration is approximately $5,400.

[16] Currently, investment advisers that are required to withdraw from Commission registration because they are no longer eligible under section 203A(a) of the Act [15 U.S.C. 80b–3a(a)] are required to withdraw from registration within 90 days after the date the adviser's Schedule I was required by rule 204–1(a) [17 CFR 275.204–1(a)] to have been filed with the Commission. *See* Schedule I, instruction 6 [17 CFR 279.1]

2. Section 275.203A–6 is added to read as follows:

§ 275.203A–6 Transition period for Ohio investment advisers.

(a) *Ohio Authority.* Notwithstanding section 203A(b) of the Act (15 U.S.C. 80b–3a(b)), the Ohio Revised Code, sections 1707.01 to 1707.99, is effective with respect to an investment adviser registered with the Commission that, but for having its principal office and place of business in Ohio, would be prohibited from registering with the Commission under section 203A of the Act (15 U.S.C. 80b–3a).

(b) *Withdrawal Required.* Every investment adviser that is registered with the Commission solely because its principal office and place of business is located in Ohio must withdraw from Commission registration by March 30, 2000.

PART 279—FORMS PRESCRIBED UNDER THE INVESTMENT ADVISERS ACT OF 1940

3. The authority citation for part 279 continues to read as follows:

Authority: The Investment Advisers Act of 1940, 15 U.S.C. 80b–1, *et seq.*

4. By amending Schedule I to Form ADV (referenced in § 279.1) to remove all references to "Ohio" and by amending the Instructions to Schedule I to Form ADV (referenced in § 279.1) to remove all references to "Ohio".

§ 279.1 [Amended]

Note: The text of Schedule I to Form ADV (§ 279.1) does not and the amendments will not appear in the Code of Federal Regulations.

Dated: March 25, 1999.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–7955 Filed 3–31–99; 8:45 am]

BILLING CODE 8010–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 510, 520, 522, and 558

Animal Drugs, Feeds, and Related Products; Technical Amendments

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; technical amendment.

SUMMARY: The Food and Drug Administration (FDA) is updating the animal drug regulations to reflect corrections of previously approved new animal drug applications (NADA's). Several sponsors currently specified in the list of sponsors of approved applications and in the animal drug approval regulations are incorrect. This action is being taken to improve the accuracy of the regulations.

EFFECTIVE DATE: April 1, 1999.

FOR FURTHER INFORMATION CONTACT: Judith M. O'Haro, Center for Veterinary Medicine (HFV–6), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–3664.

SUPPLEMENTARY INFORMATION: FDA has found several errors in the agency's regulations concerning approval of animal drugs, feeds, and related products including the list of sponsors of approved applications. To correct those errors, FDA is amending 21 CFR 510.600(c)(1) and (c)(2) to remove several sponsor names and drug labeler codes because the firms are no longer the holders of any approved NADA's. This document is also amending the animal drug approval regulations by correcting the nonsubstantive errors in 21 CFR 520.260, 520.2184, 520.2220b, 522.723, 522.800, 558.140, 558.485, and 558.635.

List of Subjects

21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

21 CFR Parts 520 and 522

Animal drugs.

21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR parts 510, 520, 522, and 558 are amended as follows:

PART 510—NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 510 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 379e.

2. Section 510.600 *Names, addresses, and drug labeler codes of sponsors of approved applications* is amended in the table in paragraph (c)(1) by removing the entries for "Affiliated Laboratories Division, Whitmoyer Laboratories, Inc.", "Albers Milling Co.", "Allied Pharmacal, Division of K.C. Pharmacal, Inc.", "Ayerst Laboratories, Division of American Home Products, Corp.", "Bristol Laboratories, Div. of Bristol-Myers Co.", "Cooper U.S.A., Inc.", "Cutter Laboratories, Inc.", "Dawes Laboratories, Inc.", "Feed Products, Inc.", "H. Clay Glover Co., Inc.", "Gooch Feed Mill Corp.", "Grain Processing Corp.", "ICI Americas, Inc.", "KASCO–EFCO Laboratories, Inc.", "Dr. LeGear, Inc.", "McNeil Laboratories, Inc.", "Triple "F", Inc.", "Tutag Pharmaceuticals, Inc.", and "Western Serum Co."; by alphabetically adding a new entry for "Equi Aid Products, Inc."; and in the table in paragraph (c)(2) by removing the entries for "000015, 000045, 000046, 000124, 000161, 000794, 010471, 010616, 011398, 011490, 011492, 011511, 011825, 011950, 012983, 013959, 017826, 021798, 022591, and 024264"; and by numerically adding a new entry for "062240" to read as follows:

§ 510.600 Names, addresses, and drug labeler codes of sponsors of approved applications.

* * * * *

(c) * * *

(1) * * *

Firm name and address	Drug labeler code
Equi Aid Products, Inc., 1517 West Knudsen Dr., Phoenix, AZ 85027	062240

(2) * * *

Drug labeler code	Firm name and address
062240	Equi Aid Products, Inc., 1517 West Knudsen Dr., Phoenix, AZ 85027

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

3. The authority citation for 21 CFR part 520 continues to read as follows:

Authority: 21 U.S.C. 360b.

§ 520.260 [Amended]

4. Section 520.260 *n-Butyl chloride capsules* is amended in paragraph (b)(2) by removing "012983" and adding in its place "038782".

§ 520.2184 [Amended]

5. Section 520.2184 *Sodium sulfachloropyrazine monohydrate* is amended in paragraph (b) by removing the phrase "Nos. 010042 and 053501" and adding in its place "No. 010042".

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

6–7. The authority citation for 21 CFR part 522 continues to read as follows:

Authority: 21 U.S.C. 360b.

§ 522.723 [Amended]

8. Section 522.723 *Diprenorphine hydrochloride injection* is amended in pargraph (c) by removing "010042" and adding in its place "053923".

§ 522.800 [Amended]

9. Section 522.800 *Droperidol and fentanyl citrate injection* is amended in pargraph (b) by removing "000045" and adding in its place "000061".

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

10. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: 21 U.S.C. 360b, 371.

§ 558.140 [Amended]

11. Section 558.140 *Chlortetracycline and sulfamethazine* is amended in paragraph (a) by removing "000004" and adding in its place "063238".

§ 558.485 [Amended]

12. Section 558.485 *Pyrantel tartrate* is amended by removing and reserving paragraph (a)(17).

§ 558.635 [Amended]

13. Section 558.635 *Virginiamycin* is amended in paragraph (b)(2) by removing "011490" and adding in its place "046573".

Dated: March 23, 1999.

Margaret Ann Miller,

Acting Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 99–7925 Filed 3–31–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 520

Oral Dosage Form New Animal Drugs; Sulfadimethoxine Tablets and Boluses; Technical Amendment

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; technical amendment.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to codify an approved new animal drug application (NADA) held by Pfizer, Inc. The NADA provides for use of sulfadimethoxine (SDM) tablets to treat bacterial infections of dogs and cats.

EFFECTIVE DATE: April 1, 1999.

FOR FURTHER INFORMATION CONTACT: Diane T. McRae, Center for Veterinary Medicine (HFV–102), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–0212.

SUPPLEMENTARY INFORMATION: Pfizer, Inc., 235 East 42d St., New York, NY 10017, is sponsor of NADA 15–102 that provides for oral use of SDM tablets for the treatment of SDM-susceptible bacterial infections of dogs and cats. The NADA was approved on December 14, 1964, for Hoffmann LaRoche, Inc. After several changes of sponsors, the current sponsor of the NADA, Pfizer, Inc., has filed a supplement to NADA 15–102 providing information supporting prior approval of their NADA and has requested codification. FDA concurs that NADA 15–102 was approved for use in dogs and cats on December 14, 1964, and therefore, amends 21 CFR 520.2220b to reflect the approval. Also, FDA is amending the regulation to add several editorial changes by removing paragraph (a), by redesignating paragraphs (b), (d), and (e) as paragraphs (a), (b), and (d), respectively, and by revising new paragraphs (a) and (d)(2) to reflect the codification.

Approval of this supplemental NADA does not require additional safety and effectiveness data. Therefore, a freedom of information summary is not required.

The agency has determined under 21 CFR 25.33(a)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subject 21 CFR Part 520

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 520 is amended as follows:

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 520 continues to read as follows:

Authority: 21 U.S.C. 360b.

2. Section 520.2220b is amended by removing paragraph (a), by redesignating paragraphs (b), (d), and (e) as paragraphs (a), (b), and (d), respectively, and by revising newly redesignated paragraphs (a) and (d)(2) to read as follows:

§ 520.2220b Sulfadimethoxine tablets and boluses.

(a) *Sponsors.* Approval to firms identified in § 510.600(c) of this chapter as follows:

(1) To 000069, approval for use as in paragraphs (d)(1), (d)(2), and (d)(3) of this section.

(2) To 000061, approval for use as in paragraph (d)(2).

* * * * *

(d) * * *

(2) *Dogs and cats.* (i) *Amount.* 12.5 to 25 milligrams per pound of body weight.

(ii) *Indications for use.* Treatment of sulfadimethoxine-susceptible bacterial infections.

(iii) *Limitations.* Administer 25 milligrams per pound of body weight on the first day followed by 12.5 milligrams per pound of body weight per day until the animal is free of symptoms for 48 hours. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

* * * * *

Dated: March 17, 1999.

Margaret Ann Miller,

Acting Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 99–7924 Filed 3–31–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 522

Implantation or Injectable Dosage Form New Animal Drugs; Dinoprost Tromethamine Sterile Solution

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of an abbreviated new animal drug application (ANADA) filed by Phoenix Scientific, Inc. The ANADA provides for intramuscular use of dinoprost tromethamine sterile solution in cattle, swine, and mares.

EFFECTIVE DATE: April 1, 1999

FOR FURTHER INFORMATION CONTACT: Lonnie W. Luther, Center For Veterinary Medicine (HFV–102), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–0209.

SUPPLEMENTARY INFORMATION: Phoenix Scientific, Inc., 3915 South 48th St. Terrace, P.O. Box 6457, St. Joseph, MO 64506–0457, filed ANADA 200–253 that provides for use of ProstaMate™ (dinoprost tromethamine injection) for intramuscular, veterinary prescription use for estrus synchronization, treatment of unobserved (silent) estrus and pyometra (chronic endometritis) in cattle; for abortion of feedlot and other nonlactating cattle; for parturition induction in swine; and for controlling the timing of estrus in estrous cycling mares and clinically anestrous mares that have a corpus luteum.

Approval of Phoenix's ANADA 200–253 for ProstaMate™ (dinoprost tromethamine injection) sterile solution is as a generic copy of Pharmacia & Upjohn's NADA 108–901 Lutalyse® (dinoprost tromethamine) sterile solution. ANADA 200–253 is approved as of February 12, 1999, and the regulations are amended in 21 CFR 522.690(b) to reflect the approval. The basis of approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of 21 CFR part 20 and 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.33(a)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 522

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 522 is amended as follows:

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 522 continues to read as follows:

Authority: 21 U.S.C. 360b.

§ 522.690 [Amended]

2. Section 522.690 *Dinoprost tromethamine sterile solution* is amended in paragraph (b) by removing "No. 000009" and adding in its place "Nos. 000009 and 059130".

Dated: March 18, 1999.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 99–7922 Filed 3–31–99; 8:45 am]

BILLING CODE 4160–01–F

AGENCY FOR INTERNATIONAL DEVELOPMENT

22 CFR Chapter II

Establishment of Agency for International Development as an Executive Agency

AGENCY: U.S. Agency for International Development.

ACTION: Final rule.

SUMMARY: The U.S. Agency for International Development ("USAID") is amending its chapter in the Code of Federal Regulations ("CFR") to delete the reference to the U.S. International Development Cooperation Agency ("IDCA"). Under the provisions of the Foreign Affairs Reform and Restructuring Act of 1998, IDCA was abolished and USAID was established as an Executive agency, effective April 1, 1999.

DATES: Effective April 1, 1999.

FOR FURTHER INFORMATION CONTACT: Jan Miller, Office of General Counsel, 202–712–4174; jmiller @usaid.gov.

SUPPLEMENTARY INFORMATION: Under the provisions of the Foreign Affairs Reform and Restructuring Act of 1998, as contained in Public Law 105–277, IDCA was abolished and USAID was established as an Executive agency, effective April 1, 1999.

The abolition of IDCA does not affect the status and validity of USAID regulations, directives, rulings, policies; they continue in effect.

This is a procedural rule exempt from notice and comment under 5 U.S.C. 533(b)(3)(a). This rule is not a significant rule for purposes of Executive Order 12866 and has not been reviewed by the Office of Management and Budget. This rule does not have a significant impact on small business entities under the Regulatory Flexibility Act.

For the reasons set forth in the preamble and under the authority of 22 U.S.C. 2381, revise the heading of chapter II of title 22 of the Code of Federal Regulations to read as follows:

CHAPTER II—AGENCY FOR INTERNATIONAL DEVELOPMENT

Singleton B. McAllister,

General Counsel.

[FR Doc. 99–7968 Filed 3–31–99; 8:45 am]

BILLING CODE 6116–01–M

ARMS CONTROL AND DISARMAMENT AGENCY

22 CFR Chapter VI

Repeal of the Arms Control and Disarmament Agency's Regulations

AGENCY: Arms Control and Disarmament Agency.

ACTION: Final rule.

SUMMARY: Pursuant to the consolidation of the Arms Control and Disarmament Agency ("ACDA") and the Department of State as mandated by the Foreign Affairs Agencies Consolidation Act of 1998, this rule repeals ACDA's public regulations in the Code of Federal Regulations (CFR).

DATES: Effective April 1, 1999.

FOR FURTHER INFORMATION CONTACT: Mary Elizabeth Hoinkes, (202)–647–4621.

SUPPLEMENTARY INFORMATION: In order to avoid having duplicative regulations after ACDA is consolidated with the Department of State pursuant to the Foreign Affairs Agencies Consolidation Act of 1998, Public Law 105–277, this rule repeals ACDA's public regulations, which appear in 22 CFR Chapter VI, upon the abolition of ACDA under the Act. This repeal shall take effect in accordance with the savings provisions at Section 1615(b)–(f) of the Act.

This rule involves agency management functions and, therefore, is not subject to the procedures required by 5 U.S.C 553 and 801. It is also exempt from review under Executive Order 12866 but has been reviewed internally by ACDA to ensure consistency with the purposes thereof. This amendment has been found to be a minor rule within the meaning of the Small Business Regulatory Enforcement Fairness Act of 1996, Public Law 104–121. It does not require analysis under the Regulatory Flexibility Act or the Unfunded Mandates Reform Act.

List of Subjects

22 CFR Part 601

Organization and functions (Government agencies).

22 CFR Part 602

Freedom of information.

22 CFR Part 603

Privacy.

22 CFR Part 604

Claims.

22 CFR Part 605

Classified information.

22 CFR Part 606

Conflict of interests.

22 CFR Part 607

Administrative practice and procedure, Civil rights, Equal employment opportunity, Federal buildings and facilities, Individuals with disabilities.

22 CFR Part 608

Administrative practice and procedure, Courts, Government employees.

Accordingly, for the reasons set forth above, upon the abolition of ACDA under Public Law 105–277, Parts 601 through 608 of Title 22, Code of Federal Regulations are hereby removed and chapter VI of Title 22 is vacated.

Dated: March 29, 1999.

John D. Holum,

Director, U.S. Arms Control and Disarmament Agency.

[FR Doc. 99–8129 Filed 3–31–99; 8:45 am]

BILLING CODE 8820–32–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8817]

RIN 1545–AV70

Notice of Certain Transfers to Foreign Partnerships and Foreign Corporations; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to final regulations.

SUMMARY: This document contains corrections to final income tax regulations that were published in the **Federal Register** on Friday, February 5, 1999 (64 FR 5713) relating to certain transfers to foreign partnerships and corporations by U.S. persons.

DATES: This correction is effective February 5, 1999.

FOR FURTHER INFORMATION CONTACT: Eliana Dolgoff (202)622–3860 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of this correction are under section 6038B of the Internal Revenue Code.

Need for Correction

As published, the final regulations contain errors that may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication of the final regulations (TD 8817), that were the subject of FR Doc. 99–2798, is corrected as follows:

§ 1.6038B–1 [Corrected]

1. On page 5715, column 1, amendatory instruction Par. 2, instruction 2. is corrected to read "2. In paragraph (b)(1)(i), the first sentence is removed and two new sentences are added in its place.".

1a. On page 5715, column 1, § 1.6038B–1(b)(1)(i), lines 4 through 7, the language "paragraph (b)(2) of this section, or cash, which is subject to special rules contained in paragraph (b)(3) of this section, any U.S. person that makes a" is corrected to read "paragraph (b)(2) of this section, any U.S. person that makes a". 1b. On page 5715, column 1, in § 1.6038B–1(b)(1)(i), a new sentence is added after the first sentence to read "For special rules regarding cash transfers made in tax years beginning after February 5, 1999, see paragraphs (b)(3) and (g) of this section.".

2. On page 5715, column 1, § 1.6038B–1(b)(3) introductory text, line 2, the language "foreign corporation must report the" is corrected to read "foreign corporation in a transfer described in section 6038B(a)(1)(A) must report the".

3. On page 5715, column 2, § 1.6038B–1(c), line 6, the language "section 6038B(a)(1)(A) (including cash" is corrected to read "section 6038B(a)(1)(A) (including cash transferred in taxable years beginning after February 5, 1999,".

4. On page 5715, column 2, § 1.6038B–1(g), lines 3 through 8, the language "July 20, 1998, except that the first sentence of paragraph (b)(1)(i), paragraph (b)(3), and the first sentence of paragraph (c) apply to transfers occurring in taxable years beginning after February 5, 1999. See § 1.6038B-" is corrected to read "July 20, 1998, except that transfers of cash made in taxable years beginning on or before February 5, 1999 are not required to be reported under section 6038B. See § 1.6038B-".

§ 1.6038B–2 [Corrected]

5. On page 5717, column 2, § 1.6038B–2(j)(1)(ii) line 1, the language, "Filing a Form 926 with the" is corrected to read "Filing a Form 926 (modified to reflect that the transferee is

a partnership, not a corporation) with the".

Cynthia E. Grigsby,

Chief, Regulations Unit, Assistant Chief Counsel (Corporate).

[FR Doc. 99–7793 Filed 3–31–99; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1, 7, and 602

[TD 8770]

RIN 1545–AP81 and 1545–AI32

Certain Transfers of Stock or Securities by U.S. Persons to Foreign Corporations and Related Reporting Requirements; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to final regulations.

SUMMARY: This document contains corrections to Treasury Decision 8770, which was published in the **Federal Register** on Friday, June 19, 1998 (63 FR 33550) relating to certain transfers of stock or securities by U.S. persons to foreign corporations pursuant to the corporate organization and reorganization provisions of the Internal Revenue Code, and the reporting requirements related to such transfers.

DATES: These corrections are effective July 20, 1998.

FOR FURTHER INFORMATION CONTACT: Philip L. Tretiak, (202) 622–3860 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of these corrections are under sections 367 and 6038B of the Internal Revenue Code.

Need for Correction

As published, TD 8770 contains errors which may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication of the final regulations (TD 8770), which was the subject of FR Doc. 98–15454, is corrected as follows:

1. On page 33555, column 2, in the preamble under the paragraph heading "Effective Dates", line 19, the language "a United States shareholder but does" is corrected to read "a United States shareholder but does not".

§ 1.367(a)–3 [Corrected]

2. On page 33556, column 1, § 1.367(a)–3(a), lines 22 through 24, the language "a U.S. person exchanges stock of one foreign corporation for stock of another foreign corporation in a reorganization" is corrected to read "a U.S. person exchanges stock of a foreign corporation in a reorganization".

3. On page 33556, column 1, § 1.367(a)–3(a), line 27, the language "domestic corporation for stock of a" is corrected to read "domestic or foreign corporation for stock of a".

4. On page 33559, column 1, § 1.367(a)–3(d)(3), paragraph (ii) of *Example 6*, line 10, the language "§ 1.367(a)–8(g)(3)(i) (which includes the" is corrected to read § 1.367(a)–8(g)(3) (which includes the".

§ 1.367(b)–4 [Corrected]

5. On page 33568, column 1, § 1.367(b)–4(b)(5)(i), line 4, the language "transaction described in paragraph (b)(1)" is corrected to read "transaction described in paragraph (a)".

6. On page 33568, column 2, § 1.367(b)–4(b)(5)(ii), paragraph (ii) of the *Example*, line 2, the language "an exchange described in paragraph (b) of" is corrected to read "an exchange described in paragraph (a) of".

§ 1.6038B–1 [Corrected]

7. On page 33569, column 1, § 1.6038B–1(b)(2)(i) introductory text, line 4, the language "in section 6038(a)(1)(A) will be" is corrected to read "in section 6038B(a)(1)(A) will be".

Cynthia E. Grigsby,

Chief, Regulations Unit, Assistant Chief Counsel (Corporate).

[FR Doc. 99–7792 Filed 3–31–99; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 31 and 602

[TD 8814]

RIN 1545–AF97

Federal Insurance Contributions Act (FICA) Taxation of Amounts Under Employee Benefit Plans; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to final regulations.

SUMMARY: This document contains corrections to Treasury Decision 8814, which was published in the **Federal Register** on Friday, January 29, 1999 (64 FR 4542) that provides guidance as to when amounts deferred under or paid from a nonqualified deferred compensation plan are taken into account as wages for purposes of the employment taxes imposed by the Federal Insurance Contributions Act (FICA).

DATES: This correction is effective January 29, 1999.

FOR FURTHER INFORMATION CONTACT: Janine Cook, Linda E. Alsalihi, or Margaret Owens, (202) 622–6040 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

ground

The final regulations that are the subject of these corrections are under section 3121 of the Internal Revenue Code.

Need for Correction

As published, TD 8814 contains errors which may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication of the final regulations (TD 8814), which were the subject of FR Doc. 99–1663, is corrected as follows:

1. On page 4542, column 1, in the regulation heading, line 5, the language "RIN 1545–AT27" is corrected to read "RIN 1545–AF97".

§ 31.3121(v)(2)–1 [Corrected]

2. On page 4550, column 3, § 31.3121(v)(2)–1(b)(5), paragraph (i) of *Example 10*, line 9, the language "employee's designated beneficiary in a single" is corrected to read "employee's designated beneficiary in a single lump".

3. On page 4551, column 1, § 31.3121(v)(2)–1(b)(5), paragraph (ii) of *Example 10*, line 3 from the bottom of the paragraph, the language "payable in the event of the Employee E's" is corrected to read "payable in the event of Employee E's".

4. On page 4551, column 1, § 31.3121(v)(2)–1(b)(5), paragraph (ii) of *Example 11*, line 4 from the bottom of the paragraph, the language "E under the plan during the Employee E's" is corrected to read "E under the plan during Employee E's".

5. On page 4566, column 3, § 31.3121(v)(2)–1(g)(5), paragraph (i) of *Example 8*, line 14, the language "Based Employer R's estimate that Employee" is corrected to read "Based on Employer R's estimate that Employee".

6. On page 4566, column 3, § 31.3121(v)(2)–1(g)(5), paragraph (i) of *Example 8*, line 5 from the bottom of the paragraph, the language "which Employee R has a legally binding right"

is corrected to read "which Employee F has a legally binding right".

Cynthia E. Grigsby,

Chief, Regulations Unit, Assistant Chief Counsel (Corporate).

[FR Doc. 99–7791 Filed 3–31–99; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 602

[TD 8011]

OMB Control Numbers Assigned Pursuant to the Paperwork Reduction Act; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correcting amendment.

SUMMARY: This document contains corrections to final regulations (TD 8011), which were published in the **Federal Register** on Thursday, March 14, 1985 (50 FR 10221) relating to the displaying of OMB control numbers on this agency's regulations that solicit or obtain information from the public.

DATES: This correction is effective November 12, 1996.

FOR FURTHER INFORMATION CONTACT: Marshall Feiring, (202) 622–3940, (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of these corrections displays this agency's control numbers and implemented requirements of regulations promulgated by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1980.

Need for Correction

As published, final regulations (TD 8011) contain errors which may prove to be misleading and are in need of clarification.

List of Subjects in 26 CFR Part 602

Reporting and recordkeeping requirements.

Correcting Amendment to Regulations

Accordingly, 26 CFR part 602 is corrected by making the following correcting amendments:

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Paragraph 1. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

§ 602.101 [Corrected]

Par. 2. In § 602.101, paragraph (a), second sentence, the language "(together with 26 CFR 601.9000)" is removed.

Par. 3. In § 602.101, paragraph (b) is removed and paragraph (c) is redesignated as paragraph (b).

Cynthia E. Grigsby,

Chief, Regulations Unit, Assistant Chief Counsel (Corporate).

[FR Doc. 99–7823 Filed 3–31–99; 8:45 am]

BILLING CODE 4830–01–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MO 067–1067a; FRL–6315–9]

Approval and Promulgation of Implementation Plans; State of Missouri

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is announcing direct final approval of revisions to Missouri's Open Burning Rule (10 CSR 10–3.030) and Sampling Methods Rule (10 CSR 10–6.030) as an amendment to the Missouri State Implementation Plan (SIP). This action will update the SIP rules to include revisions which add sampling methods and otherwise improve the clarity of the rules.

DATES: This direct final rule is effective on June 1, 1999 without further notice, unless EPA receives adverse comment by May 3, 1999. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: All comments should be addressed to Joshua A. Tapp at the Environmental Protection Agency, Air Planning and Development Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101.

Copies of the state submittals are available at the following addresses for inspection during normal business hours: Environmental Protection Agency, Air Planning and Development Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101; and the Environmental Protection Agency, Air and Radiation Docket and Information Center, Air Docket (6102), 401 M Street, SW, Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Joshua A. Tapp at (913) 551–7606.

SUPPLEMENTARY INFORMATION:

What Is an SIP?

Section 110 of the Clean Air Act (CAA) requires states to develop air pollution regulations and control strategies to ensure that state air quality meets the national ambient air quality standards established by EPA. These ambient standards are established under section 109 of the CAA, and they currently address six criteria pollutants. These pollutants are: carbon monoxide, nitrogen dioxide, ozone, lead, particulate matter, and sulfur dioxide.

Each state must submit these regulations and control strategies to EPA for approval and incorporation into the Federally enforceable SIP.

The CAA requires each state to have a Federally approved SIP which protects air quality primarily by addressing air pollution at its point of origin. These SIPs can be extensive, containing state regulations or other enforceable documents and supporting information such as emission inventories, monitoring networks, and modeling demonstrations.

What Is the Federal Approval Process for an SIP?

In order for state regulations to be incorporated into the Federally enforceable SIP, states must formally adopt the regulations and control strategies consistent with state and Federal requirements. This process generally includes a public notice, public hearing, public comment period, and a formal adoption by a state-authorized rulemaking body.

Once a state rule, regulation, or control strategy is adopted, the state submits it to EPA for inclusion into the SIP. EPA must provide public notice and seek additional public comment regarding the proposed Federal action on the state submission. If adverse comments are received, they must be addressed prior to any final Federal action by EPA.

All state regulations and supporting information approved by EPA under section 110 of the CAA are incorporated into the Federally approved SIP. Records of such SIP actions are maintained in the Code of Federal Regulations (CFR) at Title 40, Part 52 entitled "Approval and Promulgation of Implementation Plans." The actual state regulations which are approved are not reproduced in their entirety in the CFR but are incorporated by reference, which means that EPA has approved a given state regulation with a specific effective date.

What Does Federal Approval of a State Regulation Mean to Me?

Enforcement of the state regulation before and after it is incorporated into the Federally approved SIP is primarily a state responsibility. However, after the regulation is Federally approved, EPA is authorized to take enforcement action against violators. Citizens are also offered legal recourse to address violators as described in the CAA.

What Is Being Addressed in This Document?

On November 13, 1998, the Missouri Department of Natural Resources (MDNR) submitted revisions to rule 10 CSR 10–3.030 entitled "Open Burning Restrictions." A public hearing was held on the revisions to this rule on March 26, 1998. Following a response to comments, the Missouri Air Conservation Commission (MACC) adopted these revisions on April 30, 1998, and they became effective on August 30, 1998.

On December 7, 1998, the MDNR submitted revisions to rule 10 CSR 10–6.030 entitled "Sampling Methods for Air Pollution Sources." A public hearing was held on the revisions to this rule on June 25, 1998. No comments were submitted. Consequently, on July 30, 1998, the MACC adopted these revisions, and on November 30, 1998, they became effective.

In each of its submittal letters, MDNR has requested that EPA revise the Missouri SIP to include the changes incorporated into these rules.

The three most significant revisions incorporated by MDNR into rule 10 CSR 10–3.030 include: (1) A consolidation of the open burning restriction provisions into one section; (2) a new provision that requires certain sources which obtain a permit to conduct open burning to utilize an air curtain destructor; and (3) revisions which allow open burning during emergency response situations, to protect human health or for authorized natural resource management. It should be noted that this rule pertains to out-state Missouri only. It does not include Kansas City, St. Louis, or Springfield.

Missouri has made two basic types of revisions to rule 10 CSR 10–6.030 relating to reference sampling methods. The first type of revision is to clarify the meaning and intent of the reference method citations by making non-substantive word changes. The second type of revision that was made was to add certain Federal reference sampling methods to the Missouri rule.

Specifically, two test methods were added to the rule during this revision. MDNR has added the Federal reference test method for condensible particulate matter (method 202) to Subsection (5)(E). MDNR has also added the Federal reference test method for visible emissions (method 22) to Subsection (9)(B).

What Action Is Being Taken by EPA?

MDNR submitted the Out-State Open Burning Rule (10 CSR 10–3.030) and the Sampling Methods Rule (10 CSR 10–6.030) for incorporation into the Federally approved SIP on November 13, 1998, and on December 7, 1998, respectively.

EPA has reviewed these submittals which consolidate rule language, clarify rule language, and add Federal reference sampling methods. These submittals meet applicable statutory, regulatory, and policy guidelines.

EPA is therefore taking direct final action to approve these rule revisions as amendments to the Missouri SIP.

EPA is publishing this rule without prior proposal, because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should adverse comments be filed. This rule will be effective June 1, 1999 without further notice unless the Agency receives adverse comments by May 3, 1999.

If EPA receives such comments, then EPA will publish a document withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period. Parties interested in commenting should do so at this time. If no such comments are received, the public is advised that this rule will be effective on June 1, 1999 and no further action will be taken on the proposed rule.

Administrative Requirements

A. Executive Order (E.O.) 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866, entitled "Regulatory Planning and Review."

B. E.O. 12875

Under E.O. 12875, Enhancing the Intergovernmental Partnership, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local, or tribal government unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments or EPA consults with those governments. If EPA complies by consulting, E.O. 12875 requires EPA to provide to the OMB a description of the extent of EPA's prior consultation with representatives of affected state, local, and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, E.O. 12875 requires EPA to develop an effective process permitting elected officials and other representatives of state, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's rule does not create a mandate on state, local, or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

C. E.O. 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be "economically significant" as defined under E.O. 12866 and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to E.O. 13045, because it is not an economically significant regulatory action as defined by E.O. 12866 and does not concern an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children.

D. E.O. 13084

Under E.O. 13084, Consultation and Coordination with Indian Tribal Governments, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds

necessary to pay the direct compliance costs incurred by the tribal governments or EPA consults with those governments. If EPA complies by consulting, E.O. 13084 requires EPA to provide to the OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, E.O. 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities." This action does not significantly or uniquely affect tribal communities, so E.O. 13084 does not apply.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities, because SIP approvals under section 110 and Subchapter I, Part D of the CAA do not create any new requirements but simply approve requirements that the state is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-state relationship under the CAA, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co., v. U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to state, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either state, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under state or local law and imposes no new requirements. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, result from this action.

G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the U.S. Comptroller General prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

H. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 1, 1999. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review, nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. [See section 307(b)(2).]

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: March 16, 1999.

Dennis Grams,

Regional Administrator, Region VII.

Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 USC 7401–7671q.

Subpart AA—Missouri

2. Section 52.1320 is amended by adding new paragraph (c)(112) to read as follows:

§ 52.1320 Identification of plan.

* * * * *

(c) * * *

(112) Revisions submitted on November 13, 1998, and December 7, 1998, by the MDNR that modify Missouri's Out-state Open Burning Rule and add sampling methods to Missouri's Sampling Method Rule, respectively.

(i) Incorporation by reference:

(A) Revisions to Missouri rule 10 CSR 10–3.030 entitled "Open Burning Restrictions," effective August 30, 1998.

(B) Revisions to Missouri rule 10 CSR 10–6.030 entitled "Sampling Methods for Air Pollution Sources," effective November 30, 1998.

[FR Doc. 99–7905 Filed 3–31–99; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF LABOR

Office of Federal Contract Compliance Programs

41 CFR Parts 60–250 and 60–999

Affirmative Action and Nondiscrimination Obligations of Contractors and Subcontractors Regarding Special Disabled Veterans and Vietnam Era Veterans; OMB Control Numbers for OFCCP Information Collection Requirements

AGENCY: Office of Federal Contract Compliance Programs (OFCCP), Labor.

ACTION: Final rule.

SUMMARY: This rule informs the public that the Office of Management and Budget (OMB) has approved, under the Paperwork Reduction Act of 1995 (PRA), the collection of information requirements contained in the OFCCP

rule published on November 4, 1998, which revised the regulations implementing the affirmative action provisions of the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended (VEVRAA). OMB has approved of these revisions under existing PRA control numbers. This rule republishes the table of OMB central numbers in the Code of Federal Regulations.

DATES: This rule is effective April 1, 1999. Information collection requirements contained in the final rule which revised part 60–250 published at 63 FR 59630 have been approved by OMB and must be complied with as of April 1, 1999.

FOR FURTHER INFORMATION CONTACT: James I. Melvin, Director, Division of Policy, Planning, and Program Development, Office of Federal Contract Compliance Programs, Room N3424, 200 Constitution Avenue, NW, Washington DC 20210. Telephone: (202) 693–0102 (voice). Copies of this rule in alternate formats may be obtained by calling OFCCP at (202) 693–0102 (voice). The alternate formats available are large print, an electronic file on computer disk and audiotape. This document also is available on the Internet at http://www.dol.gov/dol/esa.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act Approval

On November 4, 1998, OFCCP published a final rule (63 FR 59630) revising its regulations at 41 CFR part 60–250 implementing the affirmative action provisions of the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended, 38 U.S.C. 4212 (VEVRAA). VEVRAA requires Government contractors and subcontractors to take affirmative action to employ and advance in employment qualified special disabled veterans, veterans of the Vietnam era, and other designated veterans.

OFCCP reviewed the collection of information aspects of the rule in accordance with the PRA and OMB implementing regulations published at 5 CFR part 1320. OFCCP believes that the rule will not result in an increase in paperwork burdens from what was previously required by the OFCCP regulations. In accordance with the PRA, OFCCP submitted to OMB the information collection requirements contained in the rule. OMB approved the information collection requirements in the rule as revisions to existing PRA control numbers 1215–0163 (Construction) and 1215–0072 (Supply and Service).

In accordance with OMB recommendations, 5 CFR 1320.3(f)(3), OFCCP publishes a single table in 41 CFR part 60–999 that lists the OMB-assigned control numbers for information collection requirements contained in OFCCP rules. The list of OMB-assigned control numbers published at 41 CFR Part 60–999 is republished and remains unchanged.

List of Subjects in 41 CFR Part 60–999

Reporting and recordkeeping requirements.

Signed at Washington, D.C. this 25th day of March, 1999.

Bernard E. Anderson,

Assistant Secretary for Employment Standards

Shirley J. Wilcher,

Deputy Assistant Secretary for Federal Contract Compliance.

Part 60–999 of title 41 of the Code of Federal Regulations is hereby amended as follows:

PART 60–999—[AMENDED]

1. The authority citation for part 60–999 continues to read as follows:

Authority: 44 U.S.C. Ch. 35.

2. Section 60–999.2 is republished further convenience of the reader to read follows:

§ 60–999.2 Display.

41 CFR Part where the information collection requirement is located	Current OMB control No.
Part 60–1	1215–0072, 1215–0131, 1215–0163.
Part 60–2	1215–0072.
Part 60–3	3046–0017
Part 60–4	1215–0163.
Part 60–20	1215–0072, 1215–0163.
Part 60–30	1215–0072, 1215–0163.
Part 60–40	1215–0072, 1215–0163.
Part 60–50	1215–0072, 1215–0163.
Part 60–250	1215–0072, 1215–0131, 1215–0163.
Part 60–741	1215–0072, 1215–0131, 1215–0163.

[FR Doc. 99–7835 Filed 3–31–99; 8:45 am]

BILLING CODE 4510–27–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AE38

Endangered and Threatened Wildlife and Plants; Final Rule To List the Flatwoods Salamander as a Threatened Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the Fish and Wildlife Service, determine the flatwoods salamander (*Ambystoma cingulatum*) to be a threatened species under the authority of the Endangered Species Act of 1973, as amended (Act). This salamander occurs in isolated populations scattered across the lower southeastern Coastal Plain in Florida, Georgia, and South Carolina. Habitat loss and degradation from agriculture, urbanization, and silvicultural practices have resulted in the loss of more than 80 percent of its pine flatwoods habitat. Surviving populations are currently threatened by the continued destruction and degradation of their habitat. This action extends the protection of the Act for the flatwoods salamander.

EFFECTIVE DATE: May 3, 1999.

ADDRESSES: The complete administrative file for this rule is available for inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, Jackson Field Office, 6578 Dogwood View Parkway, Jackson, Mississippi 39213.

FOR FURTHER INFORMATION CONTACT: Ms. Linda LaClaire at the above address, or telephone 601/965–4900, extension 26; facsimile 601/965–4340.

SUPPLEMENTARY INFORMATION:

Background

The earliest reference to the flatwoods salamander, *Ambystoma cingulatum*, was by Cope in 1867 from specimens he collected in Jasper County, South Carolina (referenced in Martof 1968). This salamander is a member of the family Ambystomatidae, the mole salamanders, which contains 15 North American species. Shaffer *et al.* 1991, conducted a phylogenetic (evolutionary history or genealogy) analysis of ambystomatid salamanders and determined that the flatwoods salamander is most closely related to the ringed salamander (*A. annulatum*), which occurs in portions of Arkansas, Missouri, and Oklahoma.

The flatwoods salamander is a slender, small-headed mole salamander that rarely exceeds 13 centimeters (cm) (approximately 5 inches (in)) in length when fully mature (Means 1986, Conant and Collins 1991, Ashton 1992). Adult dorsal color ranges from black to chocolate-black with highly variable, fine, light gray lines forming a netlike or cross-banded pattern across the back (Palis 1996). Undersurfaces are plain gray to black with a few creamy or pearl-gray blotches or spots. Sexual dimorphism (the existence of separable male and female forms) is only apparent in breeding males (swollen cloacal region) or in gravid (with fertilized eggs) females. Adults most closely resemble Mabee's salamander, *A. mabeei*, with which it shares part of its range in South Carolina (Martof 1968). Mabee's salamanders are often more brownish; have light flecking concentrated on their sides rather than the overall pattern of the flatwoods salamander; and have a single row of jaw teeth as opposed to multiple rows in the flatwoods salamander (Conant and Collins 1991).

Flatwoods salamander larvae are long and slender, broad-headed and bushy-gilled, with white bellies and striped sides (Means 1986, Ashton 1992, Palis 1995d). They have distinctive color patterns, typically a tan mid-dorsal (middle of upper surface) stripe followed by a grayish black dorsolateral (back and sides) stripe, a pale cream mid-lateral (side) stripe, a blue-black lower lateral stripe, and a pale yellow ventrolateral (belly) stripe (Palis 1995d). The head has a dark brown stripe passing through the eye from the nostril to the gills (Means 1986).

Optimum habitat for the flatwoods salamander is an open, mesic (moderate moisture) woodland of longleaf/slash pine (*Pinus palustris/P. elliottii*) flatwoods maintained by frequent fires. Pine flatwoods are typically flat, low-lying open woodlands that lie between the drier sandhill community upslope and wetlands down slope (Wolfe *et al.* 1988). An organic hardpan, 0.3 to 0.7 meters (m) (1 to 2 feet (ft)) into the soil profile, inhibits subsurface water penetration and results in moist soils with water often at or near the surface (Wolfe *et al.* 1988). Historically, longleaf pine generally dominated the flatwoods with slash pine restricted to the wetter areas (Wolfe *et al.* 1988). Wiregrasses (*Aristida* sp.), especially *A. beyrichiana*, are often the dominant grasses in the herbaceous (non-woody) ground cover (Wolfe *et al.* 1988). The ground cover supports a rich herbivorous invertebrate community that serves as a food source for the flatwoods salamander.

Adult and subadult flatwoods salamanders are fossorial (adapted for living underground) (Mount 1975). They enlarge crayfish burrows (Ashton 1992) or build their own. Captive flatwoods salamanders have been observed digging burrows and resting at night with just the tip of their heads exposed (Goin 1950). Preliminary data indicate that flatwoods salamander males first breed at 1 year of age and females at 2 years of age (Palis 1996). There are no data on survivorship by age class for the species. The longevity record for their close relative, *A. annulatum*, is 4 years, 11 months; however, many Ambystomatidae live 10 years or longer (Snider and Bowler 1992). An adult female flatwoods salamander has been maintained in captivity for 4 years, 4 months (R. Ashton pers. comm. 1998).

Adult flatwoods salamanders move to their wetland breeding sites during rainy weather, in association with cold fronts, from October to December (Palis 1997a). Breeding sites are isolated (not connected to any other water body) pond cypress (*Taxodium ascendens*), blackgum (*Nyssa sylvatica* var. *biflora*), or slash pine dominated depressions which dry completely on a cyclic basis. They are generally shallow and relatively small. Breeding sites in Florida have a mean size of 1.49 hectares (ha) (3.68 acres (ac)) and a mean depth of less than 39.2 cm (15.4 in) (Palis 1997b). These wetlands have a marsh-like appearance with sedges often growing throughout and wiregrasses (*Aristida* sp.), panic grasses (*Panicum* spp.), and other herbaceous species concentrated in the shallow water edges. Trees and shrubs grow both in and around the ponds. A relatively open canopy is necessary to maintain the herbaceous component, which serves as cover for flatwoods salamander larvae and their aquatic invertebrate prey. Sekerak *et al.* 1996, did not capture flatwoods salamander larvae in sample plots with a high proportion of detritus (loose material from the disintegration of rocks and organic material) or open water in a study on the Apalachicola National Forest in Florida. Ponds typically have a burrowing crayfish fauna (genus *Procambarus*) and a diverse macroinvertebrate fauna, but lack large predatory fish (e.g., *Lepomis* (sunfish), *Macropterus* (bass), *Amia calva* (bowfin)).

Before the breeding sites become flooded, the males and females court. The females lay their eggs (singly or in clumps) beneath leaf litter, under logs and sphagnum moss (grows in wet acid areas) mats, or at bases of bushes, small trees, or clumps of grass (Anderson and Williamson 1976, Means 1986). Egg masses have also been found at the entrances of and within crayfish burrows (Anderson and Williamson 1976). Embryos begin development immediately, but the egg must be inundated before it will hatch. Depending on when eggs are inundated, the larvae usually metamorphose (change into adult form) in March or April; the length of the larval period varies from 11 to 18 weeks (Palis 1995d).

The timing and frequency of rainfall are critical to the successful reproduction and recruitment of flatwoods salamanders. Fall rains are required to facilitate movements to the pond and winter rains are needed to ensure that ponds are filled sufficiently to allow hatching, development, and metamorphosis of larvae. In contrast, too much rainfall in the summer will keep pond levels from dropping below the grassy pond edge, as needed to provide dry substrate for egg deposition. This reliance on specific weather conditions results in unpredictable breeding events and reduces the likelihood that recruitment will occur every year.

Adult flatwoods salamanders leave the pond site after breeding. Studies have suggested a homing ability, based on data that salamanders exit the breeding pond near the point of their arrival (Palis 1997a). In a study by Ashton (1992), flatwoods salamanders were found greater than 1,700 m (1,859 yards (yd)) from their breeding pond. Thus, a flatwoods salamander population has been defined as those salamanders using breeding sites within 3.2 kilometers (km) (2 miles (mi)) of each other, barring an impassable barrier such as a perennial stream (Palis 1997b).

Flatwoods salamanders need to maintain moist skin for respiration and osmoregulation (to control the amounts of water and salts in their bodies) (Duellman and Trueb 1986). Since they may disperse long distances from their breeding ponds to upland sites where they live as adults, desiccation (drying out) can be a limiting factor in their movements. Thus, it is important that areas connecting their wetland and terrestrial habitats are protected in order to provide cover and appropriate moisture regimes during their migration. Using the available information on distances traveled by six species from their breeding sites to terrestrial habitats, Semlitsch (1998) determined the size area around a wetland needed to protect pond-breeding ambystomatid salamanders. The mean distance transversed by the six species was 164.3

m (534 ft). This value was used as a radius to generate a buffer zone surrounding a breeding site. Semlitsch estimated this area would encompass 95% of a population of any of the study species, but cautioned that this may be an underestimate of the habitat used by other species, including the flatwoods salamander. He further clarified that his definition of a buffer zone focused on the conservation of local populations and did not take into account habitat quality or the issues of metapopulation dynamics and landscape-level processes. A metapopulation is an interacting network of local subpopulations with varying frequencies of migration and gene flow among them. Local subpopulations may become extinct, but can be reestablished by individuals from other subpopulations.

High quality habitat for the flatwoods salamander includes a number of isolated wetland breeding sites within a landscape of longleaf pine/slash pine flatwoods having an abundant herbaceous ground cover (Sekerak 1994). Since temporary ponds are not likely permanent fixtures of the landscape due to succession, there will be inevitable extinctions of local populations (Semlitsch 1998). By maintaining a mosaic of ponds with varying hydrologies and by providing terrestrial habitats for use as colonization corridors, some protection against extinction can be achieved. A mosaic of ponds will ensure that appropriate breeding conditions will be achieved under different climatic regimes. Colonization corridors will allow movement of salamanders to new breeding sites or previously occupied ones (Semlitsch 1998).

The historical range of the flatwoods salamander included parts of the States of Alabama, Florida, Georgia, and South Carolina that are in the lower Coastal Plain of the southeastern United States. Knowledgeable researchers discounted a museum record from Mississippi that was previously thought to be a flatwoods salamander (Moler pers. comm. 1988). However, it is possible that flatwoods salamanders once occurred in extreme southeastern Mississippi due to similarities in habitat to historical sites in adjacent Alabama. Recent surveys (Kuss 1988, L. LaClaire pers. obs. 1995) have not documented the occurrence of flatwoods salamanders in Mississippi.

Historical records for the flatwoods salamander are limited. Longleaf pine/slash pine flatwoods historically occurred in a broad band across the lower southeastern Coastal Plain. The flatwoods salamander likely occurred in appropriate habitat throughout this area (Means pers. comm. 1995). The present distribution of the flatwoods salamander consists of isolated populations scattered across the remaining longleaf pine/slash pine flatwoods. We have compiled 110 historical records for the flatwoods salamander. Historical records are defined as those localities found before 1990. Localities consist of collections made either by sampling breeding sites or of individuals crossing highways on their way to or from breeding sites. During surveys of these localities over the last 8 years, 97 historical records were visited. Flatwoods salamanders were relocated at only 12 localities (12 percent). The exact site was located for 52 records (47 percent) and the general area (within several miles) was determined for 45 others (41 percent). Thirteen sites could not be located due to limited information in the record.

Range-wide surveys of available habitat in Alabama, Florida, Georgia, and South Carolina have been ongoing since 1990 in an effort to locate new populations. A total of at least 1,303 wetlands, which had a minimum of marginal suitability for the flatwoods salamander, were sampled, most of them multiple times. Of these, flatwoods salamanders were found at 110 sites (8 percent success rate). Most surveys were presence/absence searches for larvae in the grassy edges of ponds and we cannot infer an estimate of total population size or viability from these data.

Information on the current status of the flatwoods salamander by State follows:

In Alabama, there are five historical localities for the flatwoods salamander, all in the extreme southern portion of the State. Surveys conducted from 1992 to 1995 at the historical breeding ponds and from 1992 through 1998 at other potential breeding sites were unsuccessful at locating any flatwoods salamander populations (Godwin 1994, pers. comm.; Southeastern Amphibian Survey Cooperative 1998). The salamander was last observed in Alabama in 1981 (Jones *et al.* 1982).

Thirty-three historical records in 19 counties have been reported for Georgia (Goin 1950, Seyle 1994, Williamson and Moulis 1994); however, flatwoods salamanders have not been relocated at any of these sites in recent years. Surveys over the last 8 years of at least 478 wetlands with potential habitat for the flatwoods salamander have resulted in the location of 28 new breeding sites (6 percent success rate). These 28 breeding sites comprise 11 populations (sites within a 3.2 km (2 mi) radius of one another are considered the same population) (Seyle 1994; Jensen 1995; Moulis 1995a, 1995b; Jensen and Johnson 1998; K. Lutz, The Nature Conservancy of Georgia pers. comm. 1994; D. Stevenson, The Nature Conservancy of Georgia pers. comm. 1996; L. LaClaire pers. obs. 1995, 1997). Most of these breeding sites occur on Fort Stewart Military Installation.

In South Carolina, there are 29 historical records for the flatwoods salamander. Despite annual surveys since 1990, flatwoods salamanders have been relocated at only three of these sites (all sites represent a different population). One site is located on the Francis Marion National Forest and the other two are on private land. A new flatwoods salamander breeding site, representing a fourth population, was recently found on the Francis Marion National Forest (Moulis pers. comm. 1998) during state-wide surveys of approximately 118 wetlands considered to be potential habitat for this species.

In Florida, 39 of the 43 historical sites were relocated (or the general area thought to be the location). Nine (23 percent) contained flatwoods salamanders. Additional survey work over the past 8 years, in 23 counties and at least 530 wetlands with potential habitat, resulted in the location of 81 new breeding sites (15 percent of total sites surveyed). Fifty-six (69 percent) of these new breeding sites occur in Liberty and Okaloosa counties. These sites were found due to extensive surveys of the Apalachicola National Forest and Eglin Air Force Base, both of which contain some of the best remaining pine flatwoods habitat in the Southeast. The total number of extant flatwoods salamander populations known to occur in Florida is 36 with 15 (42 percent) occurring on the Apalachicola National Forest and Eglin Air Force Base (Palis 1993, 1994, 1995a, 1995b, 1995c; Printiss and Means 1996; Means 1998; Southeastern Amphibian Survey Cooperative 1998; H. Cooper, U.S. Fish and Wildlife Service pers. comm. 1998).

The combined State data from all survey work completed since 1990 indicate that 51 populations of flatwoods salamanders are known from across the historical range. Most of these occur in Florida (36 populations or 71 percent). Eleven populations have been found in Georgia, four in South Carolina, and none have been found in Alabama. Some of these populations are inferred from the capture of a single individual. Slightly more than half the known populations for the flatwoods salamander occur on public land (32 of 51, or 63 percent). Federal land holdings

that harbor flatwoods salamanders include the Apalachicola National Forest, Osceola National Forest, St. Marks National Wildlife Refuge, Eglin Air Force Base, Hurlburt Field, and Naval Air Station Whiting Field's Holley Out-lying Field in Florida; Fort Stewart Military Installation and Townsend Bombing Range in Georgia; and Francis Marion National Forest in South Carolina. State agencies manage three additional populations—in Florida, Pine Log State Forest and Pt. Washington State Forest harbor a single population each; and in Georgia, the Mayhaw Wildlife Management Area supports a recently discovered population. The remaining 19 populations are on private land.

Previous Federal Action

We identified the flatwoods salamander as a Category 2 candidate species in our notices of review for animals published in the **Federal Register** on December 30, 1982 (47 FR 58454), September 18, 1985 (50 FR 37958), January 6, 1989 (54 FR 554), November 21, 1991 (56 FR 58804), and November 15, 1994 (59 FR 58982). Before 1996, we defined a Category 2 candidate species as one that we were considering for possible addition to the Federal List of Endangered and Threatened Wildlife, but for which conclusive data on biological vulnerability and threat were not currently available to support a proposed rule. We discontinued designation of Category 2 species in the February 28, 1996, notice of review (61 FR 7956).

On May 18, 1992, we received a petition dated May 8, 1992, from the Biodiversity Legal Foundation, Boulder, Colorado, and Elizabeth Carlton, Gainesville, Florida, to list the flatwoods salamander as an endangered or threatened species throughout its historic range and to designate critical habitat. The petition stated that available evidence indicated that the flatwoods salamander had declined precipitously, that it was on the threshold of extirpation in many locations, and that it had been extirpated from a large portion of its historic range.

We announced a 90-day finding that the petition did not present substantial information that the requested action may be warranted in the **Federal Register** on May 12, 1993 (58 FR 27986). On August 23, 1993, attorneys representing the Biodiversity Legal Foundation, Jasper Carlton, the Director of the Biodiversity Legal Foundation, and Elizabeth Carlton notified us of their intent to sue the Service for violation of the Act. The petitioners felt that we had, in effect, already made a determination of "may be warranted" through the inclusion of the flatwoods salamander as a Category 2 species on the comprehensive notices of review for animals published before 1993. On April 25, 1994, the suit was filed. In response to an agreed upon settlement of this suit, and based upon our 1994 draft guidance relating to petitions for listing former Category 2 species, we rescinded the 90-day finding announced on May 12, 1993, and replaced it by a finding that the petitioned action may be warranted. We announced this finding in the **Federal Register** on September 21, 1994 (59 FR 48406), and included a request for comments and biological data on the status of the flatwoods salamander.

Section 4(b)(3)(B) of the Act and implementing regulations at 50 CFR 424.14, require the Secretary of the Interior, to the maximum extent practicable, within 12 months of receipt of a petition, to make a finding whether the action requested in the petition is (a) not warranted, (b) warranted, or (c) warranted but precluded. Because of budgetary constraints and the lasting effects of a congressionally imposed listing moratorium from April 1995 to April 1996, we processed petitions and other listing actions according to the listing priority guidance published in the **Federal Register** on December 5, 1996 (61 FR 64475). The guidance clarified the order in which we processed listing actions during fiscal year 1997. The guidance called for giving highest priority to handling emergency situations (Tier 1) and second highest priority (Tier 2) to resolving the status of outstanding proposed listings. We gave third priority (Tier 3) was given to resolving the conservation status of candidate species and processing administrative findings on petitions to add species to the lists or reclassify threatened species to endangered status. The processing of the petition and the proposed rule to list the flatwoods salamander fell under Tier 3. The proposal to list the flatwoods salamander as threatened was published in the **Federal Register** on December 16, 1997 (62 FR 65787).

On May 8, 1998, we published Listing Priority Guidance for fiscal years 1998 and 1999 (63 FR 25502). This guidance gives highest priority (Tier 1) to processing emergency rules to add species to the Lists of Endangered and Threatened Wildlife and Plants (Lists); second priority (Tier 2) to processing final determinations on proposals to add species to the Lists, processing new proposals to add species to the Lists, processing administrative findings on petitions (to add species to the Lists, delist species, or reclassify listed species), and processing a limited number of proposed or final rules to delist or reclassify species; and third priority (Tier 3) to processing proposed or final rules designating critical habitat. Processing of this final rule is a Tier 2 action.

Summary of Comments and Recommendations

In the December 16, 1997, proposed rule (62 FR 65787) and associated notifications, we requested all interested parties to submit factual reports or information that might contribute to the development of a final rule. We contacted appropriate Federal and State agencies, county governments, scientific organizations and other interested parties and requested their comments. Legal notices announcing the proposal and inviting public comment were published in newspapers across the range of the species. We published notices in *The Albany Herald* and *The Claxton Enterprise* on February 5, 1998; in *The Dothan Eagle* and the *Tallahassee Democrat* on February 6, 1998; in *The Florida Times-Union*, the *Mobile Press Register*, and the *Pensacola News Journal* on February 7, 1998; in the *Coastal Courier* and the *Savannah Morning News* on February 8, 1998; in *The Berkeley Independent* and the *Jasper County Sun* on February 11, 1998; and in *The Darien News* on February 12, 1998. The comment period for the proposal closed on February 17, 1998.

During the initial comment period, Rayonier (Southeast Forest Resources) and the Florida Forestry Association in Florida; Georgia-Pacific and Gilman Paper Company in Georgia; and the American Forest & Paper Association in Washington, D.C., submitted requests for a public hearing. As a result, on March 25, 1998, we published a notice in the **Federal Register** (63 FR 14414) announcing two public hearings and the reopening of the comment period until June 1, 1998. In addition, we announced the public hearings and invited public comment in *The Berkeley Independent* and the *Jasper County Sun* on April 8, 1998; in *The Claxton Enterprise* and *The Darien News* on April 9, 1998; in the *Coastal Courier*, the *Mobile Press Register*, and the *Savannah Morning News* on April 10, 1998; and in the *Tallahassee Democrat*, *The Florida Times-Union*, and the *Pensacola News Journal* on April 11, 1998. We conducted public hearings on April 14, 1998, at the Savannah Technical Institute in Savannah, Georgia, and on

April 15, 1998, at the Hermitage Centre in Tallahassee, Florida. Each hearing began with our opening comments followed by oral statements by the public. In Savannah, Georgia, 9 of the 44 people attending the hearing presented comments. In Tallahassee, Florida, 28 of the 110 people attending the hearing presented comments. At both hearings, the majority of comments concerned the effects listing the flatwoods salamander would have on private landowners.

We received 193 comments (letters and oral testimony) including 7 from State agencies and 186 from individuals, groups, and organizations. Of these, 136 opposed, 39 supported, and 18 were neutral on the proposed action. We received an additional 19 letters from a sixth grade class in Georgetown, South Carolina. The Georgia Department of Natural Resources and Alabama Department of Conservation and Natural Resources supported the listing action. The Florida Game and Fresh Water Fish Commission requested that we consider the development of a Candidate Conservation Agreement instead of listing. We received no comments from the South Carolina Department of Natural Resources. We have reviewed all written and oral comments received during the comment period and have incorporated comments updating the available data in the "Background" or "Summary of Factors Affecting the Species" sections of this rule. We have organized opposing comments and other substantive comments concerning the rule into specific issues, which may be paraphrased. We grouped comments of a similar nature together by issue and summarized as follows.

Issue 1: Status surveys for the flatwoods salamander were insufficient to make a listing determination. Commenters expressed concern over sampling methodologies (including lack of quantitative sampling), sites sampled, interpretation of historical data, and the difficulty in documenting the species' presence at sites. Commenters stated that surveys were not long-term or comprehensive enough to provide evidence for the decline of the species and that more surveys were needed during periods of optimum environmental conditions. Other commenters stated that more data are needed to determine if the remaining populations of the flatwoods salamander represent "normal" natural life cycles of a species without high population densities.

Response: Surveys were conducted during the breeding season using D-frame or flat-bottomed dip nets, a standardized field method for sampling larval amphibians (Shaffer *et al.* 1994). The Service, State wildlife agencies, and flatwoods salamander researchers recognize the difficulties associated with conducting flatwoods salamander surveys. For this reason, qualified surveyors repeatedly surveyed previously documented flatwoods salamander sites, that still bore evidence of potentially suitable habitat, before concluding that flatwoods salamanders were indeed extirpated from the site. In order to have the highest probability of finding flatwoods salamanders, most surveys for new populations targeted areas of remaining intact pine flatwoods habitat. We do not consider quantitative sampling essential to determine the status of rare species. Rare species, including the flatwoods salamander, are often distributed non-randomly. Random quantitative sampling is less efficient than choosing sites based on criteria such as available habitat.

Since 1990, numerous studies have addressed the status and distribution of the flatwoods salamander (see "Background" section). Weather conditions during these years have covered the range of extremes from drought to flooding. Scientists surveyed a total of at least 1,303 sites where flatwoods salamanders had not previously been documented to determine occupancy by the species, most multiple times. Only 8 percent of these sites were found to harbor the species. Limited access to private lands has hampered survey efforts at some locations; however, we believe that the information gathered during the field work is of sufficient extent and duration to document the rarity of the flatwoods salamander and a decline in its distribution due to habitat alteration or destruction.

Populations of most species are cyclic in nature, responding to such natural factors as weather events, disease, and predation. However, populations of the flatwoods salamander are small, fragmented, and isolated by various human-related factors including habitat conversion. Fifty-five percent of extant populations are widely separated from each other by unsuitable habitat. Only 18 percent of the original acreage of pine flatwoods habitat remains and much of it exists as isolated fragments imbedded in agricultural and urban-dominated landscapes (see "Background" section for more discussion). The isolated nature of flatwoods salamander populations makes them vulnerable to extirpation by random events. If their populations do cycle naturally at low densities, they will be less likely to rebound or become reestablished after a catastrophic event. Extinction becomes a possibility following a catastrophic event, if adjacent habitat is degraded or destroyed and no source populations to recolonize the area occur within dispersal distance.

Information, studies, field data, and site analyses provided by biologists and others familiar with the flatwoods salamander and its habitat provided adequate information on the distribution, habitat requirements, and threats to the species to warrant the present action. The listing process includes an opportunity for the public to comment and provide information that we evaluate and consider before making a final decision. The additional data provided by respondents during the comment period, and other appropriate information available to us, support our determination that listing is warranted.

Issue 2: More research on the flatwoods salamander's life history and habitat needs is necessary before a listing determination can be made.

Response: We agree that there is limited information on the flatwoods salamander's life history and specific environmental requirements. However, the information standard in section 4(b)(1)(A) of the Act—"A determination to list a species shall be based on the best available scientific and commercial information on the species' status" does not require us to possess detailed or extensive information about the general biology of the species or to make an actual determination of the causes for the species' status to make a listing determination. The Act's information standard requires only that the best available information must support a conclusion that the species meets the Act's definition for threatened or endangered after consideration of the five factors defined in section 4(a) of the Act (see discussion in the "Summary of Factors Affecting the Species" section). The most compelling threat to the flatwoods salamander is the severe reduction of available habitat and its continued loss from conversion, fragmentation, and degradation. Additional information on flatwoods salamander life history and habitat needs is not necessary to support a listing determination. However, this information will be important in the development of a recovery plan and management guidelines for the flatwoods salamander.

Issue 3: Timber harvesting and pine plantation management are not well documented as threats to the flatwoods salamander. The location of existing flatwoods salamander breeding sites adjacent to intensively managed forests indicates the species has some level of

compatibility with pine plantation management. Commenters felt that silvicultural activities considered by the Service to be detrimental or degrading to flatwoods salamander habitat are based on anecdotal or circumstantial evidence rather than data from controlled experiments. Other commenters recommended that the Service more completely describe silvicultural activities, especially those related to continued or future management of pine plantations, that would be likely or unlikely to result in section 9 violations on private lands.

Response: Land uses that have a dramatic adverse impact on flatwoods salamander habitat can present significant threats to the existence of the species. The relationships between timber management and flatwoods salamander populations are undoubtedly complex and need further study. The manner, timing, and extent of silvicultural activities all dictate what effects they may have on the flatwoods salamander and its habitat. We are aware of flatwoods salamander localities adjacent to pine plantations. However, the viability of these populations is unknown. The best available information on the effects of timber management on the flatwoods salamander, cited in the "Background" and "Summary of Factors Affecting the Species" sections, indicates that habitat alteration, including destruction of ground cover vegetation and alteration of hydrology at occupied sites, has been a causative factor in the decline of flatwoods salamander populations. We believe, however, that silvicultural activities that avoid adverse effects to important habitat characteristics (i.e., ground cover, hydrology) are compatible with maintenance of flatwoods salamander populations.

We have relied on the best available scientific and commercial data in making this listing determination. Silvicultural activities are included as just one of the threats identified in our analysis of the status of the species under the "Summary of Factors Affecting the Species" section of this rule. Using the best available information, we have developed guidelines for silvicultural practices that would not be likely to result in a violation of section 9 of the Act (see the "Available Conservation Measures" section). We look forward to working cooperatively with the timber industry, researchers, and others to refine these guidelines and determine what levels of timber extraction, site preparation, and other management activities are most beneficial to the recovery of the flatwoods salamander.

Issue 4: Documentation of historical flatwoods salamander occurrences is limited. In addition, there are no data showing a correlation between pine flatwoods conversion and loss of suitable flatwoods salamander habitat nor data indicating flatwoods salamanders were evenly distributed throughout historic pine flatwoods areas. As a result, commenters felt that the listing proposal was based on habitat trends without supporting data on declining population trends. In fact, new flatwoods salamander populations have been discovered in recent surveys. Therefore, even with the loss of historical sites, the number of known sites is stable or increasing.

Response: In assessing the status of the flatwoods salamander, we reviewed the best available information regarding past and present distribution of the species. In the past, this reclusive species was not frequently studied or collected. However, lack of historical data is not a consideration in determining whether a species is endangered or threatened. It has been well documented that the distribution of pine flatwoods has declined precipitously throughout the Southeast. Therefore, it is logical to assume that populations of animals associated with this habitat, including those of the flatwoods salamander, have also declined. Surveys of the known historical localities, conducted over the past 8 years, have resulted in the relocation of a limited number of populations (12 percent success rate). We believe that newly discovered localities, in counties where the species was not previously recorded, do not represent newly colonized sites but rather extant sites in areas not previously surveyed by field biologists. These newly discovered isolated populations, within the described range of the species, provide evidence of a broad historical distribution of the species across pine flatwoods habitat in the Southeast.

Issue 5: There is no range-wide estimate for the total number of flatwoods salamanders.

Response: We agree that an estimate of the total population is lacking for the flatwoods salamander. However, we considered several additional factors that also are important in developing a biologically accurate species status assessment. The biological security of many declining species is more a function of the number of healthy local populations than the total number of individuals in the wild. Besides considering the number of sites and distribution of subpopulations across the species' range, we also considered the historical and current rates of decline, distribution and proximity of subpopulations, quantity and quality of available habitat, and imminent and potential threats to the species and its habitat. Therefore, although quantitative sampling has not been completed for the species, pertinent and significant information regarding the other aspects of the species' status is available. The decreasing quality and quantity of flatwoods salamander sites throughout the species' historical and current range are a more accurate reflection of the salamander's status than is a rough estimate of total population.

Issue 6: The flatwoods salamander has always been a rare species and this rarity does not justify listing it as a threatened species.

Response: Historical rarity of the flatwoods salamander has not been quantitatively documented. It is true that historical collections of the species are limited; however, most amphibians have not been extensively surveyed, even species that are considered common. Surveys have confirmed the current rarity of the flatwoods salamander and also the decline in quantity and quality of the pine flatwoods habitat needed for its survival. This decline in habitat was a significant factor in determining that the flatwoods salamander warranted listing.

Issue 7: There is a need to research the impacts of predatory species, such as armadillos and coyotes, on the flatwoods salamander. The imported red fire ant may also be a potential threat to the species.

Response: While the flatwoods salamander has coexisted with a community of predators over time, little is known regarding the effect of predators on the species. Human development, for example, may increase the numbers of armadillos, coyotes, and fire ants that inhabit flatwoods salamander localities. However, there are no data to indicate predators are a significant threat to the flatwoods salamander.

Issue 8: Much of the data used in support of the proposed rule was not peer reviewed. The Service also relied on personal observations that were not part of any report for such subjects as optimum habitat, movements, and activity ranges.

Response: We consider all available information in making a listing determination. This includes reliable unpublished reports, non-literature documentation, and personal communications with experts. The public reviewed the proposed rule, which also was peer reviewed according

to our policy (see "Peer Review" section).

Issue 9: A buffer area defined by a 1.6-km (1-mi) radius around a known flatwoods salamander breeding site is not supported by the scientific literature. Placing a protective area around a breeding site should be on a site-specific basis.

Response: We have received new data (Semlitsch 1998) on protective buffer areas needed around salamander breeding ponds (see discussion in "Background" section). In addition, we have received information gathered from a meeting of herpetologists, State agency biologists, and other experts that was held to review management issues relative to the flatwoods salamander, including the applicability of Semlitsch's paper to the species (Jensen *in litt.* 1998). Of the six species reviewed by Semlitsch, the marbled salamander (*A. opacum*) was judged to be the most similar in habitat needs to the flatwoods salamander. The maximum recorded distance moved by the marbled salamander was 450 m (1,476 ft) (see Semlitsch 1998). Therefore, in order to estimate the dimensions of a buffer that would protect the majority of a flatwoods salamander population, a radius of 450 m (1,476 ft) out from the wetland edge was suggested. Forest management recommendations within the buffer included harvesting only in dry periods, clear-cutting if no more than 25 percent of the buffer is cut at each harvest, restricting the use of mechanical site preparation techniques or other actions that would disturb the upper soil layers, and restricting herbicides to use for control of woody shrub encroachment only when fire could not be employed. An inner zone within the buffer with a radius of 164 m (538 ft) out from the wetland edge, the area needed to protect 95 percent of an ambystomatid population as estimated by Semlitsch, was considered to be important. Within this inner zone, it was recommended that clear-cutting be excluded.

Based on this new information, we have revised the dimensions of the buffer area and associated management scenario that would *not* be considered "take" (see discussion of violations of section 9 under "Available Conservation Measures" section). Whether or not "take" is a consideration, we will work with any interested landowner to determine the specific set of conditions appropriate for protection of a known flatwoods salamander site on his or her property. Depending on the needs of the landowner, a protective area might be developed in conjunction with the issuance of an incidental take permit through the habitat conservation planning process.

Issue 10: The social and economic impacts of listing the flatwoods salamander were not considered. Timber harvest will be restricted in the Southeast and the timber industry will be negatively impacted. Listing will negatively affect the ability of non-industrial private landowners to make a profit from their lands and they should be compensated for any financial loss resulting from the listing of the flatwoods salamander. Without financial compensation, there is no incentive for landowners to keep land in timber, and habitat available for the flatwoods salamander will be lost through conversion to agriculture and urban development.

Response: Under section 4(b)(1)(A) of the Act, we must base a listing determination solely on the best scientific and commercial data available. The legislative history of this provision clearly states the intent of Congress to "ensure" that listing decision are ". . . based solely on biological criteria and to prevent nonbiological criteria from affecting such decisions . . ." H.R. Rep. No. 97–835, 97th Cong., 2d Sess. 19 (1982). As further stated in the legislative history, ". . . economic considerations have no relevance to determinations regarding the status of species . . ." *Id.* at 20. Because we are specifically precluded from considering economic impacts, either positive or negative, in a final decision on a proposed listing, we did not consider the economic impacts of listing the flatwoods salamander.

Issue 11: As an alternative to listing, populations of flatwoods salamanders should be established on Federal and State lands by using animals removed from private lands or bred through captive propagation.

Response: The purpose of the Act is to provide a means whereby the natural ecosystems upon which endangered and threatened species depend may be conserved. Loss of suitable habitat is the primary threat to the flatwoods salamander. Therefore, continued loss of habitat by removing the salamander from occupied sites would be counter to protection for the species and would accelerate its decline. We are working with the Department of Defense, the U.S. Forest Service, and States within the range of the salamander to ensure that conservation of the flatwoods salamander is carried out on all public lands where it currently exists. While several Federal land holdings support apparently stable populations of flatwoods salamanders, they represent widely separated sites that compose a small fraction of the total range of the species. We believe protection of these sites alone would not alleviate the need to list the flatwoods salamander.

Issue 12: The Florida Game and Fresh Water Fish Commission (Commission) proposed that the concept of a Candidate Conservation Agreement (CCA) be explored as an alternative to listing. The Commission stated that a CCA, involving voluntary cooperation by private landowners, would provide a greater benefit to the species than listing. The additional benefit of a CCA would result because more landowners would be willing to participate in the recovery of the flatwoods salamander if Federal intervention and regulation was minimized. Another governmental agency, the Florida Division of Forestry, expressed support for this concept. Many other commenters supported some type of voluntary public/private sector cooperation instead of listing.

Response: CCAs are formal agreements between the Service and one or more parties (e.g., landowners, land managers, or State fish and wildlife agencies) to address the conservation needs of proposed or candidate species. The participants take on the responsibility of developing the CCA, and voluntarily commit to implementing specific actions that will remove or reduce the threats to the subject species, thereby contributing to stabilizing or restoring the species. The ultimate goal of any CCA is to adequately remove threats to the species, so that the need for listing under the Act can be eliminated.

To preclude the need to list the flatwoods salamander, a sufficient number of CCAs on both public and private lands would have to be developed and implemented to adequately remove threats, so that we could conclude that protection under the Act was no longer be needed. Although the Commission suggested the development of such an agreement, they did not provide a specific plan. Also, the Commission would not have control over implementation of such a plan since they own or manage land containing only two of the approximately 50 known flatwoods salamander populations.

We fully realize that recovery of the flatwoods salamander will partially depend upon voluntary cooperation of private landowners, and welcome them as partners in the recovery effort. We will work to provide technical assistance to those property owners and land managers who wish to implement conservation measures for this species.

Although we cannot delay the listing process while an agreement or plan is

being developed, we still encourage their development subsequent to a final listing decision. Such plans may serve as a foundation for a recovery plan and could lead to earlier recovery and delisting.

Issue 13: The Commission requested that a listing decision be postponed for 12 months to allow development of a CCA in Florida. The Florida Division of Forestry also requested that a listing decision be postponed for 1 year.

Response: The Act requires that we use the best scientific and commercial information available to make a final determination on a proposed listing within 1 year of the date a species is proposed. The flatwoods salamander was proposed in December 16, 1997. The Act stipulates that this 1-year deadline may be extended for up to 6 months to solicit additional data only if there is substantial scientific disagreement among the scientists knowledgeable about the species regarding the sufficiency or accuracy of the data used in the proposed determination. We find no substantial disagreement among scientists knowledgeable about the flatwoods salamander that would serve as a basis for extension of the 1-year deadline.

Issue 14: Use of herbicides and fertilizers has not been proven to be detrimental to flatwoods salamanders. In fact, given the proper selection and use of herbicide, rate, method, and timing, herbicides may be useful in maintaining or enhancing habitat conditions for the flatwoods salamander.

Response: Management of flatwoods salamander habitat is best accomplished through a regime of growing season burns. In some cases though, burning may not be a viable option, due to smoke liability or other concerns, and herbicides may be needed to control woody vegetation. Amphibians have shown a vulnerability to herbicides and other chemicals in their environment (see factor E under "Summary of Factors Affecting the Species"). However, we agree there is likely a role for herbicides in the management of flatwoods salamander habitat if Best Management Practices (BMPs) are used and herbicides are carefully selected to target hardwood encroachment.

Issue 15: All private landowners who would be affected by a potential listing of the flatwoods salamander were not contacted. They should have a say in the listing decision.

Response: We published legal notices in 12 local newspapers. In addition, we contacted appropriate Federal and State agencies, county governments, scientific organizations, forestry associations, and other interested parties. The public had the opportunity to comment on the proposed rule for over 4 months. The Act requires listing be based solely on the five criteria in section 4(a).

Issue 16: If the flatwoods salamander is listed, Alabama should be omitted from the listed range. The Service can then concentrate recovery efforts in States where the species still occurs.

Response: We will concentrate recovery efforts in States where the species still occurs. It is possible, however, that isolated populations of the flatwoods salamander may still be extant in Alabama. Nevertheless, species may be listed in the States where they have been documented to occur historically, regardless of the current distribution of the species.

Issue 17: State BMPs designed to control water quality problems with chemical applications are already in place that would protect flatwoods salamander breeding ponds.

Response: Landowners who use State BMPs around existing flatwoods salamander breeding ponds will be benefitting the salamander. These BMPs do not protect against the conversion of upland sites, however. Thus, the use of BMPs does not completely alleviate the threat of habitat destruction to the flatwoods salamander.

Issue 18: The 3.2 km (2 mi) distance used as a basis for identifying separate populations of the flatwoods salamander is not justified based on the movement data from other ambystomatids. As a result, the actual number of populations may be higher than that reported by Service.

Response: The only movement data available for the flatwoods salamander indicate the species is capable of moving distances greater than 1,700 m (1,859 yd). Historically, the species was most likely distributed as metapopulations dispersed throughout available pine flatwoods habitat. We believe, based on the best available data on the flatwoods salamander, that the use of a 3.2 km (2 mi) distance as a basis for identifying separate populations is justified.

Issue 19: Listing the flatwoods salamander will halt timber sales on public lands.

Response: Section 7(a) of the Act states that Federal agencies have a responsibility to conserve endangered and threatened species and use their authorities to further the purposes of the Act. On Federal lands containing populations of flatwoods salamanders, modifications of some timber practices may be needed in the vicinity of known breeding sites to further the recovery of the species. However, we consider appropriate timber management to be the land use activity most compatible with the continued existence of the flatwoods salamander (see discussion of section 9 in "Available Conservation Measures" section).

Issue 20: The conversion of pine flatwoods habitats to pine plantations has been reduced and does not represent a threat to the flatwoods salamander. Since future conversion to plantations will be minimal, more flatwoods salamander sites will be threatened by urbanization and agricultural development.

Response: Most of the remaining pine flatwoods habitat is in private ownership. Many consulting foresters recommend that private landowners convert existing pine flatwoods sites to short rotation timber management with high stocking rates to maximize short-term financial gain. Data compiled through State forest inventories between 1989 and 1995 indicate that the loss of pine flatwoods through land use conversion is still occurring (see discussion in factor A of "Summary of Factors Affecting the Species"). Therefore, we consider conversion of existing flatwoods sites to pine plantations to be a continuing threat, along with conversion of habitat through urban and agricultural development.

Issue 21: The proposed rule did not provide compelling reasons for not designating critical habitat.

Response: We have determined that designation of critical habitat will not provide additional benefit beyond that achieved by the listing of the flatwoods salamander (see the "Critical Habitat" section). We may reevaluate designation of critical habitat at some future time if new information becomes available or circumstances change.

Peer Review

In conformance with our policy on information standards, published on July 1, 1994 (59 FR 34270), we solicited the expert opinions of independent specialists regarding pertinent scientific or commercial data and assumptions relating to the supportive biological and ecological information for the flatwoods salamander. The purpose of such review is to ensure that the listing decision is based on scientifically sound data, assumptions, and analyses, including input of appropriate experts and specialists.

Three peer reviewers commented upon the accuracy of the information presented within the proposed rule. We asked them to provide any relevant scientific data relating to taxonomy, distribution, or to the supporting

biological and ecological data used in the analysis of the factors for listing. All reviewers expressed their support for Federal listing of the flatwoods salamander. We have incorporated their comments into the final rule, as appropriate, and summarized their observations below.

All three reviewers discussed threats to the flatwoods salamander. Threats identified included loss of forested pine flatwoods habitat, alteration of hydrology of existing pine flatwoods sites, soil disturbance, fire suppression, and changes in ground cover that resulted in a sparse herbaceous component and a dense weedy shrub layer. Based on their field experience with the species, all three reviewers expressed the view that the decline of the flatwoods salamander was a result of loss of both wetland and forested habitat. One reviewer stated that Federal listing of the species was important, because at present there is no protection against the loss of the flatwoods salamander's habitat.

One reviewer stated that due to the cyclic nature of breeding in many amphibians, caution should be used in interpreting the absence of flatwoods salamanders at previously occupied sites. The reviewer felt that the status of amphibians, including the flatwoods salamander, should be evaluated based on the disappearance of known habitats (see discussion of habitat loss under factor A in "Summary of Factors Affecting the Species" section).

The reviewers discussed specific impacts to the flatwoods salamander. One reviewer, experienced with the species and its habitat in several States, described quality sites as fire-maintained, open, mature longleaf pine woodland with a well developed and diverse herbaceous ground cover. When these conditions were found, flatwoods salamanders could be abundant. On the other hand, when flatwoods sites were ditched and/or drained and converted to even-aged slash pine plantations with a sparse herbaceous component, flatwoods salamanders were rarely found. Another of the reviewers also agreed that hydrologic changes and heavy soil disturbance were a problem for the species. This reviewer pointed to drainage of habitat types as a threat to the species that probably reduces overall activities including feeding. He also stated that direct mechanical impact to upper soil layers likely destroys the burrow complexes required by this fossorial species.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, we determine that the flatwoods salamander should be classified as a threatened species. We followed procedures found at section 4(a)(1) of the Act and regulations (50 CFR part 424) implementing the listing provisions of the Act. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to the flatwoods salamander (Ambystoma cingulatum *Cope*) are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

The major threat to the flatwoods salamander is loss of both its longleaf pine/slash pine flatwoods terrestrial habitat and its isolated, seasonally ponded breeding habitat. The combined pine flatwoods (longleaf pine-wiregrass flatwoods and slash pine flatwoods) historical acreage was approximately 12.8 million ha (32 million ac) (Wolfe *et al.* 1988, Outcalt 1997). Today, the combined flatwoods acreage has been reduced to 2.3 million ha (5.6 million ac) or approximately 18 percent of its original extent. These remaining pine flatwoods (non-plantation forests) are typically fragmented, degraded, second-growth forests.

Land use conversions, primarily urban development and conversion to agriculture and pine plantations, eliminated large acreages of pine flatwoods (Schultz 1983, Stout and Marion 1993, Outcalt and Sheffield 1996, Outcalt 1997). Surveys of historical flatwoods salamander localities documented the destruction of nine sites from urban development or agriculture and loss of three additional sites due to their conversion to pine plantations. State forest inventories completed between 1989 and 1995 indicate that flatwoods losses through land use conversion are still occurring (Outcalt 1997). In Florida and Georgia, the States where flatwoods habitat is concentrated and where most flatwoods salamander populations occur, 52,600 ha (130,000 ac) were lost to urban and agricultural use during the survey cycle of 8 years (Outcalt 1997). Conversion of existing pine flatwoods second-growth forests to managed plantations is also continuing. In Georgia and Florida, there was a yearly loss of this habitat to pine plantations of nearly 20,200 ha (50,000 ac) in each State with a loss of 24 percent and 20 percent, respectively, during the 8-year survey interval (Outcalt 1997). Most of the remaining second-growth pine flatwoods (56 percent) occur on private non-industrial lands (Outcalt 1997). Many of these sites are converted after harvest to intensive management regimes (i.e., heavy mechanical site preparation, high stocking rates) similar to pine plantations. Urban development is expanding into forested areas, especially in rapidly developing areas of Florida and Georgia. If present rates of loss continue, in 25 years nearly all natural pine flatwoods stands could be destroyed in these two States (Outcalt 1997).

Flatwoods salamander wetland breeding sites have also been degraded and destroyed. Alterations in hydrology, agricultural and urban development, silvicultural practices (described in more detail below), dumping in or filling of ponds, conversion of wetlands to fish ponds, domestic animal grazing, and soil disturbance reduced the number and diversity of these small wetlands (Vickers *et al.* 1985, Ashton 1992). Hydrological alterations represent the primary threat to flatwoods salamander breeding sites. Size and suitability of wetlands as breeding sites depend on subsoil moisture, the permeability of the hardpan, the pond's drainage area, and other factors. Alterations to any of these factors can affect the pond's ability to hold water and function as a breeding site.

Forest management strategies commonly used on pine plantations contribute to degradation of flatwoods salamander forested and wetland habitat. These include soil-disturbing site preparation techniques, lowered fire frequencies and reductions in average area burned per fire event (see factor E), high seedling stocking rates, and herbicide use, which may reduce plant diversity in the understory. The result of these strategies is a forest that approaches even-age structure, has a dense understory, and low herbaceous cover. Forestry practices that directly affect wetland breeding sites include ditching ponds or low areas to drain water from a site, converting second-growth pine forests to bedded pine plantations, harvesting cypress from the ponds, disposing of slash in wetlands during timber operations, using ponds as part of ditched fire breaks, using fertilizers near wetlands which can result in eutrophication (water enriched in nutrients), and disturbing the soil at a wetland (Vickers *et al.* 1985; Ashton 1992; Means *et al.* 1996; Palis, 1997b).

Clear-cut harvesting of forested sites appears to be an additional threat. Studies have demonstrated negative short-term impacts on the density of local amphibian populations as a result of clear-cuts (deMaynadier and Hunter 1995), although amphibian species composition and richness may be unchanged (Enge and Marion 1986, Dominigue-O'Neill 1995). The decrease in density of some species of amphibians may be the result of alterations in hydroperiods, decreased relative humidity, and disturbance of plant litter, stumps, and fallen logs used as refugia (Enge and Marion 1986). Amphibians, especially salamanders, are vulnerable to habitat drying and reduction of refugia because their moist permeable skin acts as a respiratory organ and must remain moist to function properly (Duellman and Trueb 1986). Raymond and Hardy (1991) monitored the mole salamander (*A. talpodieum*) at a breeding site adjacent to a recent clear-cut. They found that salamanders were displaced from the cut side of the pond and that there was lowered survivorship in individuals of the breeding population that immigrated to the breeding pond from the clear-cut.

Means *et al.* 1996, implicated silvicultural practices affecting both upland and breeding habitats in the decline of a flatwoods salamander population monitored for over 20 years in the panhandle of western Florida. They attributed the decline at this site to habitat modifications resulting from clear-cutting, conversion of the site to a pine plantation, and fire suppression. Habitat modifications included soil disturbance, hydrologic changes, canopy closure, and loss of herbaceous ground cover.

Due to the cyclic nature of breeding in many amphibians, an analysis of habitat quality is important in providing information to be used in interpreting absence of a species from a site. LaClaire (1997) collected data on habitat quality from recent surveys of historical sites where flatwoods salamanders were not relocated (85 of 97, or 88 percent). Data combined aspects of both wetland and upland habitat attributes at each site. Habitat quality was characterized as none (site destroyed), low (flatwoods salamanders unlikely), moderate (salamanders possible but habitat degraded), or high (habitat appears suitable for flatwoods salamanders). Fifty-three of the unoccupied historical sites (53 of 85, or 62 percent) had been destroyed or were of low or moderate habitat quality. Contributing factors in the loss of habitat suitability included conversion of sites to agriculture, home sites, pastures, and highways. Conversion of sites to slash pine plantations was also an important factor in the loss of habitat suitability (L. LaClaire pers. obs. 1997).

In Florida, Palis (1997b) characterized habitat quality surrounding historical flatwoods salamander breeding ponds, where the species has been found in recent surveys. Each site was assigned a score based on pine species dominance and disturbance (second-growth flatwoods versus plantation sites) and the relative abundance of wiregrass (*Aristida* sp.) ground cover. Wiregrass was chosen as a factor of habitat quality because its loss has been used as an indicator of site degradation from fire suppression and/or soil disturbance (Clewell 1989). In Palis' study, approximately 70 percent of the active breeding sites were surrounded by second-growth longleaf or slash pine flatwoods with nearly undisturbed wiregrass ground cover. In general, Palis found that the extant populations of the flatwoods salamander principally occurred on forest lands managed for long rotation, saw-timber production, rather than on short rotation pine plantations managed for pulp production.

Road construction plays a part in habitat degradation and destruction. At least one historical flatwoods breeding site has been filled in association with the construction of a road (Palis 1993). Roads increase the accessibility of breeding ponds to off-road vehicle enthusiasts that use pond basins for "mud bogging," which disturbs the soil and vegetation and degrades the quality of a site for flatwoods salamander breeding. Roads may also alter the quality of isolated wetlands by draining, damming, or redirecting the water in a basin and contributing hydrocarbons and other chemical pollutants via runoff and sedimentation.

A number of habitat degradation factors are implicated in the decline of one South Carolina flatwoods salamander population monitored for over 20 years (Moulis 1987, Bennett pers. comm. 1997). The site is bisected by a road that flatwoods salamanders have to cross to reach their breeding site. Much of the upland area, in which the salamanders dwell as adults, has undergone urban development (Bennett pers. comm. 1997). In addition, fire suppression has resulted in the loss of the open, grassy pond edge associated with quality breeding sites. Habitat quality at this site has degraded to the point where successful reproduction and recruitment are infrequent and the population is at risk (LaClaire pers. obs. 1995).

Extensive surveys have been conducted over the past 8 years in Alabama, Georgia, Florida, South Carolina, and Mississippi to search for flatwoods salamanders at historical localities and at other potential sites. The low level of success of these surveys is believed to be a reflection of both the loss of upland and isolated wetland breeding habitat and the reduction in the quality of the remaining habitats.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Overcollecting for scientific purposes may have contributed to the decline of a South Carolina population, which was impacted also by habitat degradation. Between 1970 and 1976, a minimum of 84 adults and 870 larvae were collected in this area (Savannah Science Museum collection records). Only two flatwoods salamanders have been captured at this locality since 1990, in spite of annual monitoring.

Overcollecting does not presently appear to be a significant threat to the species; however, it may become a problem if the specific breeding locations become available to the general public. The rarity, uniqueness, and attractiveness of the species make the flatwoods salamander a candidate for the pet trade, should it become easy to obtain.

At some sites, Palis (1996) found that the harvest of crayfish for bait was associated with the killing of larval flatwoods salamanders. However, while this practice has caused the loss of some individuals, it is not currently thought to be a significant threat to the species as a whole.

C. Disease or Predation

Disease is currently unknown in the flatwoods salamander.

Exposure to increased predation from fish is a potential threat to the flatwoods salamander when isolated, seasonally ponded breeding sites are converted to more permanent wetlands inhabited by fish. Ponds may be modified specifically to serve as fish ponds or sites may be altered due to the construction of drainage ditches or firebreaks, which provide avenues for fish to enter the wetlands. Studies of other ambystomatid species have demonstrated a decline in larval survival in the presence of predatory fish (Semlitsch 1987, 1988). Ashton (*in litt.* 1998) witnessed predation on ornate chorus frogs (*Pseudacris ornata*) by fire ants and stated that fire ants may pose a threat to the flatwoods salamander.

D. The Inadequacy of Existing Regulatory Mechanisms

Regulatory mechanisms currently in effect do not provide adequate protection for the flatwoods salamander and its habitat. There are no existing regulatory mechanisms for the protection of the upland habitats where flatwoods salamanders spend most of their lives. Section 404 of the Clean Water Act is the primary Federal law that has the potential to provide some protection for the wetland breeding sites of the flatwoods salamander. Under section 404, nationwide permit 26 allows these wetlands to be filled with no review process if wetlands are less than 0.13 ha (1/3 ac), and with only minimal review if they are between 0.13 ha and 1.2 ha (3 ac) in size.

Some populations on Federal lands have benefitted where prescribed burning has been used as a regular management tool. However, multiple use priorities on public lands, such as timber production, and military and recreational use, make protection of the flatwoods salamander secondary. The National Environmental Policy Act requires an intensive environmental review of projects that may adversely affect a federally listed species, but project proponents are not required to avoid impacts to non-listed species.

At the State and local levels, regulatory mechanisms are also limited. The flatwoods salamander is listed as a rare protected species in the State of Georgia (Seyle 1994). This designation protects the species by prohibiting actions that cause direct mortality or the destruction of its habitat on lands owned by the State of Georgia and by preventing its sale, purchase, or possession (Jensen pers. comm. 1997). At present, there is only one known flatwoods salamander population on lands owned by the State of Georgia. In South Carolina, the flatwoods salamander is listed as endangered (Bennett 1995). Prohibitions extend only to the direct take of the flatwoods salamander (Bennett pers. comm. 1997). These regulations offer no protection against the most significant threat to the flatwoods salamander, which is loss of its habitat. The flatwoods salamander is considered rare in Florida by the Florida Committee on Rare and Endangered Plants and Animals (Ashton 1992); however, there are no protective regulations for this species or its habitat in the State (Moler 1990).

E. Other Natural or Manmade Factors Affecting Its Continued Existence

Fire is needed to maintain the natural pine flatwoods community. Ecologists consider fire suppression the primary reason for the degradation of remaining longleaf pine forest acreage. Wolfe *et al.* (1988) reported that pine flatwoods naturally burn every 3 to 4 years, probably most commonly in the summer months. Sampling of longleaf pine flatwoods sites in Florida indicated that less than 30 percent of sites on private lands received prescribed burning to mimic the effects of natural fire (Outcalt 1997). The disruption of the natural fire cycle has resulted in an increase in slash pine on sites formerly dominated by longleaf pine, an increase in hardwood understory, and a decrease in herbaceous ground cover (Wolfe *et al.* 1988; Means pers. comm. 1995). Ponds surrounded by pine plantations and protected from the natural fire regime become unsuitable flatwoods salamander breeding sites, due to canopy closure and the resultant reduction in emergent herbaceous vegetation needed for egg deposition and larval development sites (Palis 1993). Of the 13 historical flatwoods salamander localities altered to the point where the habitat was no longer suitable, fire suppression was a contributing factor in at least 5 (38 percent). Current forest management is moving away from burning as a management tool due to liability considerations and concerns that fire will damage the quality of the timber.

Habitat fragmentation of the longleaf pine ecosystem, resulting from habitat conversion, threatens the survival of the remaining flatwoods salamander populations. Fifty-one populations occur across four States. Fifty-five percent (28 of 51) of these populations are widely separated from each other by unsuitable habitat. Research conducted in Florida documented that 25 percent of remaining longleaf pine flatwoods sites were isolated fragments imbedded in agricultural and urban-dominated landscapes (Outcalt 1997). Studies have shown that the loss of small fragmented populations is common, and recolonization is critical for their regional survival (Fahrig and Merriam 1994, Burkey 1995). As patches of available habitat become separated beyond the dispersal range of a species, populations are more sensitive to genetic, demographic, and environmental variability and may be unable to recover (Gilpin 1987, Sjogren 1991). Amphibian populations may be unable to recolonize areas after local extinctions due to their physiological constraints, relatively low mobility, and site fidelity (Blaustein *et al.* 1994).

Roads contribute to habitat fragmentation by isolating blocks of remaining contiguous habitat. They may disrupt migration routes and dispersal of individuals to and from breeding sites. In addition, vehicles may also kill flatwoods salamanders when they are attempting to cross roads (Means 1996a).

Pesticides and herbicides may pose a threat to amphibians such as the flatwoods salamander, because their permeable eggs and skin readily absorb substances from the surrounding aquatic or terrestrial environment (Duellman and Trueb 1986). In frogs, use of agricultural pesticides has resulted in lower survival rates, deformities, and lethal effects on tadpoles (Sanders 1970, FROGLOG 1993). Other negative effects of commonly used pesticides and herbicides on amphibians include delayed metamorphosis, paralysis, reduced growth rates, and mortality (Bishop 1992). Herbicides may also alter the density and species composition of vegetation surrounding a breeding site and reduce the number of potential sites for egg deposition, larval development, or shelter for migrating salamanders.

Long-lasting droughts or frequent floods may affect local flatwoods salamander populations. Although these are natural processes, other threats, such as habitat fragmentation and habitat degradation, may stress a population to the point that it cannot recover or recolonize other sites.

We have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to make this rule final. Based on this evaluation, the preferred action is to list the flatwoods salamander as threatened. Activities associated with conversion of forests to agriculture and urban development, silvicultural practices, and the disruption of natural fire cycles have contributed to significantly reducing the range and habitat of this species. Remaining populations are vulnerable as suitable habitat continues to be lost or degraded by these activities. While not in immediate danger of extinction, the flatwoods salamander is likely to become an endangered species in the foreseeable future if the present trend continues.

Critical Habitat

Critical habitat is defined in section 3 of the Act as: (i) The specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management consideration or protection; and (ii) specific areas

outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. "Conservation" means the use of all methods and procedures needed to bring the species to the point at which listing under the Act is no longer necessary.

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time the species is determined to be endangered or threatened. Our regulations (50 CFR 424.12(a)(1)) state that designation of critical habitat is not prudent when one or both of the following situations exist: (i) The species is threatened by taking or other activity and the identification of critical habitat can be expected to increase the degree of threat to the species or (ii) Such designation of critical habitat would not be beneficial to the species. We find that designation of critical habitat is not prudent for the flatwoods salamander.

Critical habitat designation, by definition, directly affects only Federal agency actions. Activities that might affect the flatwoods salamander on Federal lands include forestry management, military activities, and Federal actions that would impact the hydrology of the wetlands used by the flatwoods salamander for reproduction. Such activities would be subject to review under section 7(a)(2) of the Act, whether or not critical habitat was designated.

Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not, likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. Common to definitions of the "jeopardy" and "adverse modification" standards is an appreciable detrimental effect on both survival and recovery of the species. We believe that any significant adverse modification or destruction of flatwoods salamander habitat, to the extent that survival and recovery are appreciably diminished, would likely jeopardize this species' continued existence. Therefore, habitat protection from Federal actions can be accomplished for the flatwoods salamander through application of the section 7 jeopardy standard. We are currently working with the appropriate Federal land managing agencies to identify, protect, and manage flatwoods salamander habitat.

Federal permit issuance on private lands would also be subject to review; however, the primary activities affecting habitat for the flatwoods salamander on private lands are silvicultural, and are not subject to the Federal review process under section 7. However, activities that may result in a taking of the flatwoods salamander that are not already authorized by a Federal agency under section 7, do require authorization under section 10 of the Act. Section 10(a)(1)(B) authorizes us to issue permits for take of listed species incidental to otherwise lawful activities such as agriculture, foresty, and urban development. A habitat conservation plan that is submitted by the applicant as part of the permit application would identify measures to be taken to conserve the species. We must also ensure, under section 7 of the Act, that the issuance of an incidental permit will not jeopardize the continued existence of the listed species. Thus, habitat protection on private lands may be accomplished through section 10 of the Act.

On private lands, industrial timber landowners are cooperating with us to conduct surveys for the flatwoods salamander and to develop management strategies to protect its habitat. We will continue to coordinate with State and Federal agencies, as well as private property owners and other affected parties through the recovery process to manage habitat for the flatwoods salamander.

We believe that any potential benefits to critical habitat designation are outweighed by additional threats to the species that would result from such designation. Collecting for scientific and recreational purposes is a potential threat to the survival of the flatwoods salamander (see factor B in the "Summary of Factors Affecting the Species" section). Flatwoods salamanders are a rare and attractive species, and these characteristics make them potentially valuable in the pet trade. The collection of amphibians and reptiles for the pet trade has increased in recent years. For example, all box turtles have been placed on Appendix II of the Convention on International Trade in Endangered Species of Wild Fauna and Flora due to the increased commercialization of these species. Collection of amphibians and reptiles for personal use and the pet trade is common in the vicinity of the most viable flatwoods salamander populations (K. Enge, Florida Game and Fresh Water Fish Commission, pers. comm. 1997). Permits are required for commercial collecting; however, collection regulations are difficult to monitor and enforce. Flatwoods salamanders concentrate for breeding and reproduction around breeding ponds, where they are most vulnerable to collecting. Publication of specific localities of breeding ponds would be required in the critical habitat designation process in order to obtain the notification benefit provided by such designation. The publication of breeding pond sites would increase the flatwoods salamander's level of vulnerability to illegal collecting.

Based on the above analysis, we conclude that critical habitat designation would provide little additional benefit for the flatwoods salamander, beyond that which would result from listing under the Act. We also conclude that an increased level of vulnerability to collecting would offset any potential benefit from such a designation.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain activities. Recognition through listing results in public awareness and conservation actions by Federal, State, and local agencies, private organizations, and individuals. The Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is listed as endangered or threatened and with respect to its critical habitat, if any is designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) requires Federal agencies to confer informally with us on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is subsequently listed, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of the species or destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with us.

The flatwoods salamander occurs on Federal lands administered by the

Department of Defense, Fish and Wildlife Service, and U.S. Forest Service. These land management agencies would be required to evaluate the potential adverse impacts to the flatwoods salamander from their activities. Federal activities that could affect the flatwoods salamander through destruction or modification of suitable habitat include, but are not limited to, forest management, military operations, and road construction. Other Federal agencies that may be involved in authorizing, funding, or permitting activities that may affect the flatwoods salamander include the Army Corps of Engineers, due to their review of dredge and fill of isolated wetlands under section 404 of the Clean Water Act, nationwide permit 26; the Federal Energy Regulatory Commission, due to their oversight of gas pipeline and power line rights-of-way; and the Federal Highway Administration, when Federal funds are involved in road construction. We have resolved nearly all section 7 consultations to protect the species and meet the project objectives.

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to all threatened wildlife. The prohibitions, codified at 50 CFR 17.31 for threatened wildlife, in part, make it illegal for any person subject to the jurisdiction of the United States to take (includes harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect; or to attempt any of these), import, export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It is also illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

We may issue permits to carry out otherwise prohibited activities involving threatened wildlife species under certain circumstances. Regulations governing permits are codified at 50 CFR 17.32 for threatened species. You may obtain permits for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful activities. For threatened species, you may also obtain permits for zoological exhibition, educational purposes, or special purposes consistent with the purposes of the Act.

It is our policy, published in the **Federal Register** on July 1, 1994 (59 FR 34272), to identify, to the maximum extent practicable at the time a species is listed, those activities that are or are not likely to constitute a violation of section 9 of the Act. The intent of this policy is to increase public awareness of the effects of the listing on proposed and ongoing activities within a species' range. We believe that, based upon the best available information, the following actions are not likely to result in a violation of section 9, provided these activities are carried out in accordance with existing regulations and permit requirements:

(1) Possession of legally acquired flatwoods salamanders;

(2) Lawful hunting activities;

(3) Lawful burning of habitat where the flatwoods salamander is known to occur, including winter burning;

(4) Federally approved projects that involve activities such as discharge of fill material, draining, ditching, tiling, bedding, diversion or alteration of surface or ground water flow into or out of a wetland (i.e., due to roads, impoundments, discharge pipes, etc.), when you conduct the activity in accordance with any reasonable and prudent measures given by the Service in accordance with section 7 of the Act;

(5) Conversion of pine flatwoods habitat where the flatwoods salamander does not occur;

(6) Timber harvesting in pine flatwoods habitat within a 450–m (1,476–ft) radius buffer zone surrounding a known flatwoods salamander breeding pond, in accordance with the following guidelines:

(a) Use selective harvest, only during dry periods and at a minimum of 10-year intervals, within an inner primary zone extending 164 m (538 ft) out from the edge of the breeding pond. Maintain a basal area of 4.2 to 4.7 square meters (sq m) per ha (45 to 50 square feet (sq ft) per ac) in the primary zone.

(b) Use a mix of clear-cutting and selective harvest, only during dry periods and at a minimum of 10-year intervals, in an outer secondary zone extending from 164 m (538 ft) to 450 m (1,476 ft) out from the edge of the breeding pond. Clear-cut up to 25 percent of this secondary zone at any given time, as long as you maintain 75 percent of the secondary zone in pine flatwoods habitat at a basal area of 4.2 to 4.7 sq m per ha (45 to 50 sq ft per ac). Do not separate the primary and secondary zone from each other by cleared or inappropriate habitat (e.g., non-pine flatwoods habitat such as agriculture, urban development or other forest types).

(c) Minimize skid trails and their effects through the use of prescription planning and techniques such as pallets and bridges. Locate skid trails parallel to, rather than perpendicular to, the wetland edge to reduce alterations in wetland hydrology. Locate all log landings outside the primary and secondary zones.

(d) Keep soil disturbance to a minimum. Do not conduct intensive mechanical site preparation (i.e., root-raking, discing, stumping, bedding) or any other actions that cause significant soil disturbance.

(e) Prescribed fire should be the preferred method for site preparation and control of woody vegetation. Limit herbicide use to manual application, following BMPs, when fire cannot be employed.

(7) Timber harvesting (including clear-cutting) in pine flatwoods habitat where the flatwoods salamander does not occur or outside the 450–m (1,476–ft) buffer zone described above; and

(8) Bait harvesting for crayfish in ephemeral ponds.

We believe the following activities would be likely to result in a violation of section 9; however, possible violations are not limited to these actions alone:

(1) Unauthorized collecting, handling, or harassing of individual flatwoods salamanders;

(2) Possessing, selling, transporting, or shipping illegally taken flatwoods salamanders;

(3) Unauthorized destruction or alteration of wetlands used as breeding sites by flatwoods salamanders. These actions would include discharge of fill material, draining, ditching, tiling, bedding, clear-cutting within the wetland, diversion or alteration of surface or ground water flow into or out of a wetland (i.e., due to roads, impoundments, discharge pipes, etc.), and operation of any vehicles within the wetland;

(4) Discharge or dumping of toxic chemicals, silt, or other pollutants (i.e., sewage, oil, and gasoline) into isolated wetlands or upland habitats supporting the species; and

(5) Unlawful destruction or alteration of suitable pine flatwoods habitat within a 450-m (1,476-ft) radius surrounding a known flatwoods salamander breeding pond. These actions would include, but are not limited to, conversion of habitat to agricultural or urban use, or ditching and draining a site.

(6) Use of pesticides or herbicides in violation of label restrictions.

We will review other activities not identified above on a case-by-case basis to determine whether they may be likely to result in a violation of section 9 of the Act. We do not consider these lists to be

exhaustive and provide them as information to the public.

You should direct questions regarding whether specific activities may constitute a future violation of section 9 to the Field Supervisor of the Service's Jackson Field Office (see **ADDRESSES** section). You may request copies of the regulations regarding listed wildlife from and address questions about prohibitions and permits to the U.S. Fish and Wildlife Service, 1875 Century Blvd., Suite 200, Atlanta, Georgia 30345, or telephone 404/679–7313; facsimile 404/679–7081.

Section 10(a)(1)(B) authorizes us to issue permits for the taking of listed species incidental to otherwise lawful activities such as agriculture, forestry, and urban development. A habitat conservation plan (HCP) identifying conservation measures that the permittee agrees to implement to conserve the species, is a requirement to obtaining this permit. A key element of our review of a HCP is a determination of the plan's effect upon the long-term conservation of the species. We would approve a HCP and issue a section 10(a)(1)(B) permit if the plan provides for minimization and mitigation of the impacts of the taking and for not appreciably reducing the likelihood of the survival and recovery of that species in the wild.

National Environmental Policy Act

We have determined that we do not need to prepare an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, in connection with regulations adopted pursuant to section 4(a) of the Act. A notice outlining our reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

Paperwork Reduction Act

This rule does not contain any new collections of information other than those already approved under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and assigned Office of Management and Budget clearance number 1018–0094. An agency may not conduct or sponsor, and a person is not required to respond to a collection of information, unless it displays a currently valid control number. For additional information concerning permit and associated requirements for threatened species, see 50 CFR 17.32.

References Cited

You may request a complete list of all references cited herein, as well as others, from the Jackson Field Office (see **ADDRESSES** section).

Author

The primary author of this final rule is Linda V. LaClaire, Jackson Field Office (see **ADDRESSES** section) (601/965–4900, ext. 26).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

Accordingly, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as follows:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

2. Amend section 17.11(h) by adding the following, in alphabetical order under AMPHIBIANS, to the List of Endangered and Threatened Wildlife:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*	*	*	*	*
AMPHIBIANS							
*	*	*	*	*	*	*	*
Salamander, flatwoods.	*Ambystoma cingulatum.*	U.S.A. (AL, FL,GA,SC).	Entire	T	658	NA	NA
*	*	*	*	*	*	*	*

Dated: March 18, 1999.

Jamie Rappaport Clark,

Director, Fish and Wildlife Service.

[FR Doc. 99–7942 Filed 3–31–99; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 990324080–9080–01; I.D. 031599D]

RIN 0648–AM10

Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Framework Adjustment 28

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to implement measures contained in Framework 28 of the Northeast Multispecies Fishery Management Plan (FMP). This final rule allows the use, at specified times, of gillnets in areas otherwise closed to gillnet gear, provided they are equipped with pingers; removes the pinger specifications currently contained in the regulations and references the pinger specifications found in the Harbor Porpoise Take Reduction Plan (HPTRP); extends the Cape Cod South and Massachusetts Bay Closure Areas (March 1–March 30) to December 1–May 31; modifies the Mid-Coast Closure

Area coordinates in the regulations to comport with those specified in the HPTRP; and replaces the framework adjustment procedure requiring the New England Fishery Management Council's (Council's) Harbor Porpoise Review Team to annually review harbor porpoise mortality goals with a procedure using the information and recommendations provided by the HPTRP's Harbor Porpoise Take Reduction Team. The intent of this action is to make the regulations to protect harbor porpoise in the Northeast multispecies fishery, issued under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) consistent, to the extent allowed by the Magnuson-Stevens Act, with the HPTRP and the regulations issued under the authority of the Marine Mammal Protection Act (MMPA) to implement the HPTRP.

DATES: Effective March 29, 1999.

ADDRESSES: Copies of Amendment 7 to the FMP, its regulatory impact review (RIR), and the final regulatory flexibility analysis contained within the RIR, its final supplemental environmental impact statement, and Framework Adjustment 28 documents are available on request from Paul J. Howard, Executive Director, New England Fishery Management Council, 5 Broadway, Saugus, MA 01906–1097.

FOR FURTHER INFORMATION CONTACT: David M. Gouveia, Fishery Management Specialist, 978–281–9280.

SUPPLEMENTARY INFORMATION: Framework Adjustment 28 was developed by the Council to make the regulations to protect harbor porpoise in the Northeast multispecies fishery, issued under the authority of the Magnuson-Stevens Act, consistent, to the extent allowed by the Magnuson-Stevens Act, with the HPTRP and the regulations issued under the authority of the MMPA to implement the HPTRP.

The 1994 amendments to the MMPA require the preparation and implementation of take reduction plans for strategic marine mammal stocks that interact with Category I or II fisheries. A fishery is designated by NMFS as a Category I fishery if it has frequent incidental mortality and serious injury of marine mammals while a fishery is designated by NMFS as a Category II fishery if it has occasional serious injuries and mortalities of marine mammals. Based on harbor porpoise bycatch information contained in the marine mammal stock assessment reports, the Northeast multispecies sink gillnet fishery was classified as a Category I fishery and the Mid-Atlantic coastal gillnet fishery was classified as a Category II fishery.

In response to MMPA mandates, on December 2, 1998 (63 FR 66464), NMFS issued regulations implementing the HPTRP. The HPTRP contains measures to reduce harbor porpoise takes in the Gulf of Maine Northeast multispecies gillnet fishery and the Mid-Atlantic coastal gillnet fishery. Regulations issued under the authority of the Magnuson-Stevens Act to implement the FMP also contain measures to achieve harbor porpoise mortality reduction goals. However, some of the FMP implementing regulations are inconsistent with the HPTRP and the regulations issued to implement the HPTRP. This action would eliminate the inconsistencies in the Magnuson-Stevens Act FMP implementing regulations, to the extent allowed by the Magnuson-Stevens Act, by allowing the use, at specified times, of gillnets in areas currently closed to gillnet gear, provided they are equipped with pingers; removing the pinger specifications currently contained in the regulations and referencing the pinger specifications found in the HPTRP; extending the Cape Cod South and Massachusetts Bay Closure Areas (March 1–March 30) to December 1–May 31; modifying the Mid-Coast Closure Area coordinates in the regulations to comport with those specified in the HPTRP; and replacing the framework adjustment procedure requiring the Council's Harbor Porpoise Review Team to annually review harbor porpoise mortality goals with a procedure using the information and recommendations provided by the HPTRP's Harbor Porpoise Take Review Team. Because of the limitations of NMFS authority in regulating fishing vessels without Federal permits that fish exclusively in state waters, the multispecies regulations cannot mirror state regulations on fishing activity as specified in the HPTRP and HPTRP implementing regulations.

Abbreviated Rulemaking

NMFS is making these revisions to the regulations under the framework abbreviated rulemaking procedure codified at 50 CFR part 648, subpart F. This procedure requires the Council, when making specifically allowed adjustments to the regulations, to develop and analyze the actions over the span of at least two Council meetings. The Council must provide the public with advance notice of both the proposals and the analysis, and with an opportunity to comment on them prior to and at a second Council meeting. Upon review of the analysis and public comment, the Council may recommend to the Administrator, Northeast Region, NMFS, that the measures be published as a final rule if certain conditions are met. NMFS may publish the measures as a final rule, or as a proposed rule if additional public comment is necessary.

The public was provided the opportunity to comment on the management measures contained in Framework 28 at the Council's January 28, 1999, and February 24, 1999, meetings. Documents summarizing the Council's proposed action and the analysis of biological and economic impacts of this and alternative actions were available for public review one week prior to the final February 24, 1999, meeting, as is required under the framework adjustment procedures. Written comments could be submitted up to and during that meeting. No comments were received.

Classification

This rule makes the regulations protecting harbor porpoise in the Northeast multispecies fishery in the FMP implementing regulations consistent, to the extent allowed by the Magnuson-Stevens Act, with the HPTRP and the regulations implementing the HPTRP. Notice and opportunity for public comment were provided to discuss the management measures implemented by this final rule. In addition, this framework needs to be filed with the Office of the Federal Register as soon as possible in order to allow gillnet vessels to fish in the Mid-Coast Closure Area, as allowed under the HPTRP. Therefore, the Assistant Administrator for Fisheries, NOAA (AA), finds for good cause, under 5 U.S.C. 553(b)(B), that additional prior notice and additional opportunity for public comment are unnecessary and contrary to the public interest.

Because Framework Adjustment 28 relieves more stringent measures by providing industry the opportunity to fish with gillnet gear equipped with pingers in areas currently closed to gillnet gear, under 5 U.S.C. 553(d)(1), it is not subject to a 30-day delay in effectiveness.

Because prior notice and an opportunity for public comment are not required to be provided for this rule by 5 U.S.C. 553, or by any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, are inapplicable. A Final Regulatory Flexibility Analysis (FRFA) was prepared as part of the referenced Environmental Assessment for the HPTRP. Although the FRFA indicates that the HPTRP is significant because of the increased operating costs caused by

the HPTRP, this analysis is not applicable to this framework action. This action merely results in eliminating a more stringent measure in order to achieve consistency with the HPTRP.

This final rule has been determined to be not significant for the purposes of E.O. 12866.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: March 29, 1999.

Andrew A. Rosenberg,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 648 is amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 648.14, paragraphs (a)(90) and (c)(10) are revised to read as follows:

§ 648.14 Prohibitions.

(a) * * *

(90) Use, set, haul back, fish with, fail to remove, or possess on board a vessel, unless stowed in accordance with § 648.81(e)(4), sink gillnets and other gillnet gear capable of catching multispecies, with the exception of pelagic gillnets (conforming to all requirements for the use of such gillnets in § 648.81(f)(2)(ii)) or gillnet gear equipped with pingers (as described in § 229.33(b) of this title), in the areas and for the times specified in § 648.87 (a) and (b), except as provided in § 648.81(f)(2)(ii) and § 648.87 (a) and (b), or unless otherwise authorized in writing by the Regional Administrator.

* * * * *

(c) * * *

(10) Enter, fail to remove sink gillnets and other gillnet gear capable of catching multispecies from, or be in the areas, and for the times, described in § 648.87 (a) and (b), except as provided in § 648.81(d), and (f)(2), and in § 648.87(a)(1)(ii), (a)(2)(ii), and (a)(3)(ii).

* * * * *

3. In § 648.87, paragraphs (a) and (c) are revised to read as follows:

§ 648.87 Gillnet requirements to reduce or prevent marine mammal takes.

(a) Areas closed to gillnet gear capable of catching multispecies to reduce harbor porpoise takes. Section 648.81(f) sets forth a closed area restriction to reduce the take of harbor porpoise consistent with the harbor porpoise mortality reduction goals. Further, all persons owning or operating vessels in the EEZ portion of the areas and times specified in paragraphs (a)(1), (a)(2), and (a)(3) of this section must remove all of their sink gillnets and other gillnet gear capable of catching multispecies, with the exception of pelagic gillnets (conforming to all requirements for the use of such gillnets in § 648.81(f)(2)(ii)) or gillnet gear equipped with pingers (as described in § 229.33(b) of this title), and may not use, set, haul back, fish with, or possess on board, unless stowed in accordance with the requirements of § 648.81(e)(4), sink gillnets and other gillnet gear capable of catching multispecies, with the exception of pelagic gillnets (conforming to all requirements for the use of such gillnets in § 648.81(f)(2)(ii)) or gillnet gear equipped with pingers (as described in § 229.33(b) of this title) in the EEZ portion of the areas and for the times specified in paragraphs (a)(1), (a)(2), and (a)(3) of this section. Also, all persons owning or operating vessels issued a limited access multispecies permit must remove all of their sink gillnets and other gillnet gear capable of catching multispecies, with the exception of pelagic gillnets (conforming to all requirements for the use of such gillnets in § 648.81(f)(2)(ii)) or gillnet gear equipped with pingers (as described in § 229.33(b) of this title), from the areas and for the times specified in paragraphs (a)(1), (a)(2), and (a)(3) of this section, and, may not use, set, haul back, fish with, or possess on board, unless stowed in accordance with the requirements of § 648.81(e)(4), sink gillnets and other gillnet gear capable of catching multispecies, with the exception of pelagic gillnets (conforming to all requirements for the use of such gillnets in § 648.81(f)(2)(ii)) or gillnet gear equipped with pingers (as described in § 229.33(b) of this title) in the areas and for the times specified in paragraphs (a)(1), (a)(2), and (a)(3) of this section.

(1) *Mid-coast Closure Area.* (i) From September 15 through May 31 of each fishing year, the restrictions and requirements specified in paragraph (a) of this section apply to the Mid-coast Closure Area (copies of a chart depicting this area are available from the Regional Administrator upon request), except as provided in paragraph (a)(1)(ii) of this section, which is the area bounded by straight lines connecting the following points in the order stated.

MID-COAST CLOSURE AREA

Point	N. latitude	W. longitude
MC1	42°30′	(1)
MC2	42°30′	70°15′
MC3	42°40′	70°15′
MC4	42°40′	70°00′
MC5	43°00′	70°00′
MC6	43°00′	69°30′
MC7	43°30′	69°30′
MC8	43°30′	69°00′
MC9	(2)	69°00′

[1] Massachusetts shoreline.
[2] Maine shoreline.

(ii) Vessels subject to the restrictions and regulations specified in paragraph (a) of this section may fish in the Mid-coast Closure Area, as defined under paragraph (a)(1)(i) of this section, from September 15 through May 31 of each fishing year, provided that pingers are used in accordance with the requirements found at § 229.33(b) of this title.

(2) *Cape Cod South Closure Area.* (i) From December 1 through May 31 of each fishing year, the restrictions and requirements specified in paragraph (a) of this section apply to the Cape Cod South Closure Area (copies of a chart depicting this area are available from the Regional Administrator upon request), except as provided in paragraph (a)(2)(ii) of this section, which is the area bounded by straight lines connecting the following points in the order stated.

CAPE COD SOUTH CLOSURE AREA

Point	N. latitude	W. longitude
CCS1	(1)	71°45′
CCS2	40°40′	71°45′
CCS3	40°40′	70°30′
CCS4	(2)	70°30′

[1] RI Shoreline.
[2] MA Shoreline.

(ii) Vessels subject to the restrictions and regulations specified in paragraph (a) of this section may fish in the Cape Cod South Closure Area, as defined under paragraph (a)(2)(i) of this section, from December 1 through the last day of February and April 1 through May 31 of each fishing year, provided that pingers are used in accordance with the requirements found at § 229.33(b) of this title.

(3) *Massachusetts Bay Closure Area.* (i) From December 1 through May 31 of each fishing year, the restrictions and requirements specified in paragraph (a) of this section apply to the Massachusetts Bay Closure Area (copies of a chart depicting this area are available from the Regional Administrator upon request), except as

provided in paragraph (a)(3)(ii) of this section, which is the area bounded by straight lines connecting the following points in the order stated.

MASSACHUSETTS BAY CLOSURE AREA

Point	N. latitude	W. longitude
MB1	42°30′	(1)
MB2	42°30′	70°30′
MB3	42°12′	70°30′
MB4	42°12′	70°00′
MB5	(2)	70°00′
MB6	42°00′	(2)
MB7	42°00′	(1)

[1] Massachusetts shoreline.
[2] Cape Cod shoreline.

(ii) Vessels subject to the restrictions and regulations specified in paragraph (a) of this section may fish in the Massachusetts Bay Closure Area, as defined under paragraph (a)(3)(i) of this section, from December 1 through the last day of February and April 1 through May 31 of each fishing year, provided that pingers are used in accordance with the requirements found at § 229.33(b) of this title.

* * * * *

(c) *Framework adjustment.* (1) The Harbor Porpoise Take Reduction Team will provide the NEFMC with the best available information on the status of Gulf of Maine harbor porpoise, including estimates of abundance and estimates of bycatch in the sink gillnet fishery.

(2) After receiving and reviewing the Harbor Porpoise Take Review Team's findings and recommendations, the NEFMC shall determine whether adjustments or additional management measures are necessary to avoid inconsistencies with the Harbor Porpoise Take Reduction Plan. If the NEFMC determines that adjustments or additional management measures are necessary, it shall develop and analyze appropriate management actions over the span of at least two NEFMC meetings.

(3) The NEFMC shall provide the public with advance notice of the availability of the proposals, appropriate rationale, economic and biological analyses, and opportunity to comment on them prior to and at the second NEFMC meeting. The NEFMC's recommendation on adjustments or additions to management measures must come from one or more of the categories specified under § 648.90(b)(1).

(4) If the NEFMC recommends that the management measures should be issued as a final rule, the NEFMC must consider at least the factors specified in § 648.90(b)(2).

(5) The Regional Administrator may accept, reject, or with NEFMC approval, modify the NEFMC's recommendation, including the NEFMC's recommendation to issue a final rule, as specified under § 648.90(b)(3).

[FR Doc. 99–8049 Filed 3–29–99; 3:08 pm]
BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 64, No. 62
Thursday, April 1, 1999

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

Small Business Size Standards; Request for Comments

AGENCY: Small Business Administration.

ACTION: Request for comments.

SUMMARY: The Small Business Administration (SBA) is requesting public comment on the definition "Manufacturer," which appears in SBA's regulations on small business size standards, as it applies to the computer industry. Because some in the computer industry have interpreted this definition too broadly, SBA's Nonmanufacturer Rule may have been applied inappropriately. The Nonmanufacturer Rule is intended to provide assurance that agency contract awards are directed solely for the purpose of assisting and developing small business manufacturers. In order to provide more precise guidance on the application of the Nonmanufacturer Rule, SBA, in conjunction with public input, wants to develop a modern definition of the term "Manufacturer" and to establish a new definition for the term "Remanufacturer."

DATES: Submit comments on or before June 1, 1999.

ADDRESSES: Submit comments to David Wm. Loines, Procurement Analyst, U.S. Small Business Administration, 409 3rd Street, SW., Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: David Wm. Loines, Procurement Analyst, (202) 205–6475, FAX (202) 205–7324.

SUPPLEMENTARY INFORMATION: The Small Business Administration (SBA) is requesting public comment on the definition "Manufacturer," which appears in SBA's regulations on small business size standards, as it applies to the computer industry. In 13 CFR 121.406(b)(2), SBA currently defines Manufacturer as "the concern which, with its own facilities, performs the primary activities in transforming inorganic or organic substances, including the assembly of parts and components, into the end item being acquired." Some computer industry businesses believe that SBA's definition of Manufacturer is too broad, and allows a firm that has made only minor modifications to a finished product (manufactured by another company) to be classified as a Manufacturer. This loose interpretation of the definition may have caused the inappropriate application of SBA's Nonmanufacturer Rule (13 CFR 121.406 (b)). The Nonmanufacturer Rule is intended to provide assurance that agency contract awards are directed solely for the purpose of assisting and developing small business manufacturers.

In order to provide more precise guidance on the application of the Nonmanufacturer Rule, SBA, in conjunction with public input, wants to develop a current definition of the term "Manufacturer," and a new definition for the term "Remanufacturer." SBA has developed the following description for Remanufacturer: "any person that processes, conditions, renovates, repackages, restores, or does any other act to a finished product that significantly changes the finished products performance or specification, or intended use." SBA would appreciate comments from the public.

The SBA also seeks public comment and industry-based data on the specific questions listed below. Commenters are not limited to, nor obligated to address, every question. In providing comments, please key your response to the number of the applicable question (e.g., "Response to question 1."). Please be industry specific. Comments should be as precise as possible. The use of examples is encouraged.

Comments are requested on the following issues:

1. Should small business concerns that make minor modifications to finished products be classified as manufacturers?
2. What is manufacturer in the computer industry (hardware, Value-added changes, Software)?
3. What classifies as minor modifications?
4. Should Value-Added Resellers (VARs) be considered manufacturers?
5. Should the definition for Remanufacturer be used to describe these small businesses?
6. Your recommendation(s) for classifying these types of small businesses as manufacturers.
7. The impact that a reclassification of these small businesses would have on the small business community.

Dated: March 5, 1999.

Richard L. Hayes,

Associate Deputy Administrator for Government Contracting and Minority Enterprise Development.

[FR Doc. 99–7740 Filed 3–31–99; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–AWS–08]

Proposed Revocation of Class D Airspace; Dallas NAS, Dallas, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to revoke the Class D airspace area at Dallas Naval Air Station (NAS), Dallas, TX. The FAA is taking this action due to the closure of Dallas NAS. The United States Navy no longer requires use of the airspace. The intended effect of this proposal is to revoke the Class D airspace at Dallas NAS since it is no longer needed.

DATES: Comments must be received on or before June 1, 1999.

ADDRESSES: Send comments on the proposal in triplicate to Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Docket No. 99–ASW–08, Fort Worth, TX 76193–0520. The official docket may be examined in the Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, 2601 Meacham Boulevard, Fort Worth, TX, between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. As informal docket may also be examined during normal business hours at the Airspace Branch, Air Traffic Division, Federal Aviation Administration, southwest Region, 2601 Meacham Boulevard, Fort Worth, TX.

FOR FURTHER INFORMATION CONTACT: Donald J. Day, Airspace Branch, Air

Traffic Division, Federal Aviation Administration, Southwest Region, Fort Worth, TX 76193–0520; telephone: (817) 222–5593.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed under the caption **ADDRESSES**. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit, with those comments, a self-addressed, stamped, postcard containing the following statement: "Comments to Airspace Docket No. 99–ASW–08." The postcard will be date and time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, 2601 Meacham Boulevard, Fort Worth, TX, bothe before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Operations Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Fort Worth, TX 76193–0520. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A that describes the application procedure.

The Proposal

The FAA is considering an amendment to 14 CFR part 71 to revoke the Class D airspace area at Dallas NAS, Dallas, TX. The FAA is taking this action due to the closure of Dallas NAS. The United States Navy no longer requires use of the airspace. The intended effect of this proposal is to revoke the Class D airspace at Dallas NAS since it is no longer needed.

The coordinates for this airspace docket are based on North American Datum 83. Designated Class D airspace areas are published in Paragraph 5000 of FAA Order 7400.9F, dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class D airspace designations listed in this document would be published subsequently in the order.

The FAA has determined that this proposed regulation only involves a revised body of technical regulations that require frequent and routine amendments to keep them operationally current. It, therefore—(1) is not a "significant rule" under "significant regulatory action" under Executive Order 12866; is not a DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120, E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9F, *Airspace Designations and Reporting Points*, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

Paragraph 5000 Class D airspace areas.

* * * * *

ASW TX D Dallas NAS Dallas, TX [Removed]

* * * * *

Issued in Fort Worth, TX on March 24, 1999.

Albert L. Viselli,

Acting Manager, Air Traffic Division, Southwest Region.

[FR Doc. 99–8022 Filed 3–31–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Parts 175, 177, 179, 181, and 183

46 CFR Parts 10, 15, 24, 25, 26, 28, 70, 169, and 175

[USCG–1999–5040]

RIN 2115–AF69

Safety of Uninspected Passenger Vessels Under the Passenger Vessel Safety Act of 1993 (PVSA)

AGENCY: Coast Guard, DOT.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Coast Guard will propose regulations that implement safety measures for uninspected passenger vessels under the Passenger Vessel Safety Act of 1993 (PVSA). These regulations will implement the new class of uninspected passenger vessel of at least 100 gross tons, address the confusion regarding bareboat charters, provide for the issuance of special permits to certain uninspected passenger vessels, and develop specific manning, structural fire protection, operating, and equipment requirements for a limited fleet of PVSA exempted vessels. To obtain information needed to develop appropriate rules, the Coast Guard asks for comments from the public on the questions listed in this document.

DATES: Comments must reach the Docket Management Facility on or before June 30, 1999.

ADDRESSES: You may mail your comments to the Docket Management Facility, (USCG–1999–5040), U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington DC 20590–0001, or deliver them to room PL–401 on the Plaza level of the Nassif Building at the same address between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

The Docket Management Facility maintains the public docket for this rulemaking. Comments and documents, as indicated in this preamble, will become part of this docket and will be available for inspection or copying at room PL–401 on the Plaza level of the Nassif Building at the same address between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also access this docket on the Internet at http://www.dms.gov.

FOR FURTHER INFORMATION CONTACT: For questions on this notice, contact Lieutenant Keith B. Janssen, Office of Operating and Environmental Standards, (G–MSO–2), U.S. Coast Guard, telephone 202–267–1055. For questions on viewing, or submitting material to, the docket, contact Dorothy Walker, Chief, Documentary Services Division, Department of Transportation, telephone 202–366–9329.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages you to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking (USCG–1999–5040) and the specific section of this document to which each comment applies, and give the reason for each comment. The Coast Guard will consider all comments received during the comment period. Please submit all comments and attachments in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing to the Docket Management Facility at the address under **ADDRESSES**. Persons wanting acknowledgment of receipt of comments should enclose stamped self-addressed postcards or envelopes.

The Coast Guard plans no public hearing. You may request a public hearing by writing to the Docket Management Facility at the address under **ADDRESSES**. The request should include the reasons why a hearing would be beneficial. If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

The Passenger Vessel Safety Act of 1993 (PVSA) (Pub. L. 103–206) was signed on December 20, 1993. The PVSA makes several changes to the laws for uninspected passenger vessels. First, the PVSA requires vessels less than 100 gross tons to be inspected as a small passenger vessel if they are:

- Carrying more than 6 passengers, at least one of whom is a passenger for hire, whether chartered or not;
- Carrying more than 6 passengers when chartered with the crew provided or specified; or
- Carrying more than 12 passengers when chartered with no crew provided.

Second, the PVSA establishes a new class of uninspected passenger vessel of at least 100 gross tons. This new class of uninspected passenger vessel is limited to:

- Carrying no more than 12 passengers, at least one of whom is a passenger for hire, whether chartered or not;
- Carrying no more than 12 passengers when chartered with the crew provided or specified; or
- Carrying no more than 12 passengers when chartered with no crew provided.

Uninspected passenger vessels, greater than 100 gross tons, that carry more than 12 passengers for hire are to be inspected as a passenger vessel under 46 CFR Subchapter H.

Third, the PVSA requires the Coast Guard to develop equipment, construction, and operating standards for uninspected passenger vessels greater than 100 gross tons.

Fourth, the PVSA allows the Coast Guard to develop regulations for special permits that allow the operation of uninspected passenger vessels as authorized in section 511 of the PVSA. These special circumstances and conditions were described in Senate Report 103–198 and include among other items that:

- Special permits for uninspected passenger vessels will only be issued for charitable purposes;
- That a certain vessel may only be granted a special permit a maximum of four times per year; and
- That an application for a special permit must be made to and approved by the cognizant Officer in Charge of Marine Inspection prior to the voyage.

Fifth, and finally, the PVSA eliminates confusion regarding the use of bareboat charter agreements for the carriage of passengers for hire. The previous statutory definition of 'passenger' did not limit a vessel from having an unlimited number of charterers (owners). Therefore, vessels that were not certificated by the Coast Guard were able to carry large numbers of people. The PVSA's narrow definition of 'passenger' subjected some formerly chartered vessels to Coast Guard inspection for certification for the first time. The PVSA allowed these vessels to apply for inspection with a phase-in period for compliance. The period for application expired June 21, 1994, and the period for compliance expired on December 21, 1996. With widespread public notification, several hundred charter vessels applied for and met the conditions for certification with the requirements of the PVSA and policy guidance of Navigation and Inspection Circular (NVIC) 7–94. This NVIC is available on the Internet at www.uscg.mil/hq/g-m/nvic/index90.htm. Additionally, the PVSA authorizes the Coast Guard to develop specific operating and equipment requirements for 16 charter vessels greater than 100 gross tons that met exemption criteria contained in the PVSA and NVIC 7–94.

The Coast Guard plans to develop regulations that will implement the new class of uninspected passenger vessel of at least 100 gross tons, address the confusion regarding bareboat charters, provide for the issuance of special permits to certain uninspected passenger vessels, and develop specific operating and equipment requirements for a limited fleet of PVSA exempted vessels.

Assistance for Small Entities

In accordance with section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), the Coast Guard wants to assist small entities in understanding this notice so that they can better evaluate the effects of any future rule on them and participate in the rulemaking process. If your small business or organization is affected by the PVSA and you have questions concerning its provisions or options for compliance, please contact Lieutenant Keith B. Janssen, Office of Operating and Environmental Standards, (G–MSO–2), U.S. Coast Guard, telephone 202–267–1055.

Questions

The Coast Guard asks the public for input on the issues discussed in this document. To help develop a proposed rule, the Coast Guard requests comments on the following questions, although comments on other issues addressed in this document are also welcome. When responding to questions, please explain your reasons for each answer and follow the instructions located under REQUEST FOR COMMENTS.

Questions 1 through 16 refer to uninspected passenger vessels of at least 100 gross tons

(1) The Coast Guard is seeking information regarding the size of the fleet of uninspected passenger vessels of

at least 100 gross tons. Therefore, the Coast Guard requests information regarding the total number of this type of vessel at port, regional, and national levels.

(2) At which ports are these vessels located? Do these vessels operate out of some specific port all year? If not, from which additional port(s) do they operate? Please identify some specific port(s) rather than a region. That helps the Coast Guard identify any port(s) with a large population of this class of vessel. Please indicate what percentage of the year these vessels are in each location.

(3) What type of safety equipment do these vessels ordinarily carry? What type of safety equipment, at a minimum, should the Coast Guard require these vessels to carry? Examples of safety equipment include, but are not limited to: Type I personal flotation devices; ring life buoys; life rafts; auxiliary vessels; emergency position indicating radio beacon (EPIRB); high water alarms; fire and smoke alarms/detectors; and other fire fighting equipment or systems. What standard(s) should the safety equipment meet? Examples of existing standards for safety equipment include, but are not limited to: American Yacht and Boat Council (AYBC); National Fire Protection Association (NFPA); or American Bureau of Shipping (ABS).

(4) What generally accepted construction standard(s) should these vessels meet? Examples of generally accepted construction standards include, but are not limited to: AYBC, NFPA, or ABS. Do any applications or systems on these vessels currently meet generally accepted standards? Which generally accepted standards normally apply to which application or systems? Examples of applications and systems include, but are not limited to: lifesaving equipment, heating/cooling facilities, marine sanitation devices, structural fire-protection devices, and electrical wiring.

(5) Do owners, operators, or charter brokers require a minimum level of licensing and experience for a vessel operator? If so, what are those requirements? What licensing requirements should the Coast Guard require for operators of uninspected passenger vessels of at least 100 gross tons?

(6) How many businesses operate a full-time or part-time charter or passenger-for-hire service operation for this type of vessel? What portion of these businesses employ less than 500 people?

(7) Are these vessels operated in passenger-for-hire service on a full-time or part-time basis? How often are these vessels used in personal or recreational service compared to the time these same vessels are used in passenger-for-hire service? Please indicate the time on an annual basis by days.

(8) What are current, advertised daily or weekly charter rates for this class of vessel? What are current, advertised daily or weekly passenger-for-hire service rates for this class of vessel? How will the implementation of the PVSA impact charter or passenger-for-hire service rates?

(9) How many days per year do these vessels currently operate in charter or passenger-for-hire service? How will the implementation of the PVSA impact the number of days per year that these vessels operate in charter or passenger-for-hire service?

(10) On average, how many hours per day do these vessels spend underway with at least one passenger for hire aboard?

(11) Are these vessels underway in the passenger-for-hire service more than 12 hours during a 24-hour period? If so, is this representative of normal operations or the occasional voyage? If possible, please identify the annual breakdown of passenger-for-hire service voyages less than and more than 12 hours duration in a 24-hour period. Please indicate this information by percentage.

(12) On which route(s) do these vessels operate routinely? On which route(s) do these vessels operate occasionally? Do traditional routes exist? If so, where?

(13) Are the majority of voyage itineraries for these vessels individually (custom) planned or are they regularly scheduled?

(14) What is the percentage breakdown between domestic and international voyages? Please indicate percentages on an annual basis.

(15) What are the major areas of concern regarding the impact that the implementation of the PVSA might have on the vessel fleet? Are there any generally recognized problems within the vessel fleet that should be addressed by regulation?

(16) What are other general areas of concern regarding possible regulatory action to implement the PVSA?

Question 17 refers to any uninspected passenger vessel

The PVSA allows the Coast Guard to develop regulations for special permits that allow the operation of uninspected passenger vessels as authorized in section 511 of the PVSA. These special circumstances and conditions were described in Senate Report 103–198 and include among other items that:

- Special permits for uninspected passenger vessels will only be issued for charitable purposes;
- That a certain vessel may only be granted a special permit a maximum of four times per year; and
- That an application for a special permit must be made to and approved by the cognizant Officer in Charge of Marine Inspection prior to the voyage.

(17) Based on this criteria, should the Coast Guard develop regulations to allow a special permit for uninspected passenger vessels? Please identify the reason(s) for your answer(s).

Dated: March 26, 1999.

R.C. North,

Assistant Commandant for Marine Safety and Environmental Protection.

[FR Doc. 99–8024 Filed 3–31–99; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MO 067–1067b; FRL–6315–8]

Approval and Promulgation of Implementation Plans; State of Missouri

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to approve the SIP revision submitted by the state of Missouri related to revisions to Missouri's Open Burning Rule (10 CSR 10–3.030) and Sampling Methods Rule (10 CSR 10–6.030). In the final rules section of this **Federal Register**, the EPA is approving the state's SIP submittal as a direct final rule without prior proposal, because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated. If the EPA receives adverse comments, the direct final rule will be withdrawn, and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

DATES: Written comments must be received on or before May 3, 1999.

ADDRESSES: All comments should be addressed to Joshua A. Tapp at the

Environmental Protection Agency, Air Planning and Development Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101.

Copies of the state submittals are available at the following addresses for inspection during normal business hours: Environmental Protection Agency, Air Planning and Development Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101; and the Environmental Protection Agency, Air and Radiation Docket and Information Center, Air Docket (6102), 401 M Street, SW, Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Joshua A. Tapp at (913) 551–7606.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule which is located in the rules section of this **Federal Register**.

Dated: March 16, 1999.

Dennis Grams,

Regional Administrator, Region VII.

[FR Doc. 99–7907 Filed 3–31–99; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99–94; RM–9532]

Radio Broadcasting Services; Hinton, IA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Mountain West Broadcasting proposing the allotment of Channel 267A at Hinton, Iowa, as the community's first local aural transmission service. Channel 267A can be allotted to Hinton in compliance with the Commission's minimum distance separation requirements with a site restriction of 1.8 kilometers (1.1 miles) south to avoid a short-spacing to the licensed site of Station KLQL(FM), Channel 266C2, Luverne, Minnesota. The coordinates for Channel 267A at Hinton are 42–36–43 North Latitude and 96–17–29 West Longitude.

DATES: Comments must be filed on or before May 17, 1999, and reply comments on or before June 1, 1999.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, his counsel, or consultant, as follows: Victor A. Michael, Jr., President, Mountain West Broadcasting, 6807 Foxglove Drive, Cheyenne, Wyoming 82009 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 99–94, adopted March 17, 1999, and released March 26, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 1231 20th Street, NW., Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–8048 Filed 3–31–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99–95; RM–9533]

Radio Broadcasting Services; Dunkerton, IA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Mountain West Broadcasting proposing the allotment of Channel 280A at Dunkerton, Iowa, as the community's first local aural transmission service. Channel 280A can be allotted to Dunkerton in compliance with the Commission's minimum distance separation requirements with a site restriction of 8.9 kilometers (5.6 miles) north to avoid a short-spacing to the licensed site of Station KLTI–FM, Channel 281C, Ames, Iowa. The coordinates for Channel 280A at Dunkerton are 42–38–59 North Latitude and 92–10–32 West Longitude.

DATES: Comments must be filed on or before May 17, 1999, and reply comments on or before June 1, 1999.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, his counsel, or consultant, as follows: Victor A. Michael, Jr., President, Mountain West Broadcasting, 6807 Foxglove Drive, Cheyenne, Wyoming 82009 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 99–95, adopted March 17, 1999, and released March 26, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 1231 20th Street, NW., Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–8050 Filed 3–31–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99–96; RM–9534]

Radio Broadcasting Services; Newell, SD

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Mountain West Broadcasting proposing the allotment of Channel 288C2 at Newell, South Dakota, as the community's first local aural transmission service. Channel 288C2 can be allotted to Newell in compliance with the Commission's minimum distance separation requirements at city reference coordinates. The coordinates for Channel 288C2 at Newell are 44–43–00 North Latitude and 103–25–18 West Longitude.

DATES: Comments must be filed on or before May 17, 1999, and reply comments on or before June 1, 1999.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, his counsel, or consultant, as follows: Victor A. Michael, Jr., President, Mountain West Broadcasting, 6807 Foxglove Drive, Cheyenne, Wyoming 82009 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 99–96, adopted March 17, 1999, and released March 26, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 1231 20th Street, NW., Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–8051 Filed 3–31–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99–97; RM–9535]

Radio Broadcasting Services; Manville, WY

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Mountain West Broadcasting proposing the allotment of Channel 255C1 at Manville, Wyoming, as the community's first local aural transmission service. Channel 255C1 can be allotted to Manville in compliance with the Commission's minimum distance separation requirements at city reference coordinates. The coordinates for Channel 255C1 at Manville are 42–46–45 North Latitude and 104–37–02 West Longitude.

DATES: Comments must be filed on or before May 17, 1999, and reply comments on or before June 1, 1999.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, his counsel, or consultant, as follows: Victor A. Michael, Jr., President, Mountain West Broadcasting, 6807 Foxglove Drive, Cheyenne, Wyoming 82009 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 99–97, adopted March 17, 1999, and released March 26, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 1231 20th Street, NW., Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–8052 Filed 3–31–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99–98, RM–9515]

Radio Broadcasting Services; Wells, NV

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Mountain West Broadcasting seeking the allotment of Channel 280C1 to Wells, NV, as the community's first local aural service. Channel 280C1 can be allotted to Wells in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction, at coordinates 41–06–42 NL; 114–57–48 WL.

DATES: Comments must be filed on or before May 17, 1999, and reply comments on or before June 1, 1999.

ADDRESSES: Federal Communications Commission, 445 12th Street, S.W., Room TW–A325, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or

consultant, as follows: Victor A. Michael, Jr., President, Mountain West Broadcasting, 6807 Foxglove Drive, Cheyenne, WY 82009 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 99–88, adopted March 17, 1999, and released March 26, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–8053 Filed 3–31–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99–89, RM–9516]

Radio Broadcasting Services; Caliente, NV

AGENCY: Federal Communications Commission.

SUMMARY: The Commission requests comments on a petition filed by Mountain West Broadcasting seeking the allotment of Channel 233C1 to Caliente, NV, as the community's first local aural service. Channel 233C1 can be allotted to Caliente in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction, at coordinates 37–36–54 NL; 114–30–48 WL.

DATES: Comments must be filed on or before May 17, 1999, and reply comments on or before June 1, 1999.

ADDRESSES: Federal Communications Commission, 445 12th Street, S.W., Room TW–A325, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Victor A. Michael, Jr., President, Mountain West Broadcasting, 6807 Foxglove Drive, Cheyenne, WY 82009 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 99–89, adopted March 17, 1999, and released March 26, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–8054 Filed 3–31–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 98–22; RM–9183]

Radio Broadcasting Services; DeRuyter and Chittenango, NY

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; dismissal of.

SUMMARY: The Commission, at the request of Cram Communications, LLC, dismisses its request to reallot Channel 286B from DeRuyter to Chittenango, NY, and modify its license for Station WVOA to specify Chittenango as its community of license. *See* 63 FR 11400, March 9, 1998. With this action, this proceeding is terminated.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 98–22, adopted March 17, 1999, and released March 26, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–8044 Filed 3–31–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99–91; RM–9529]

Radio Broadcasting Services; Manson, IA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Mountain West Broadcasting proposing the allotment of Channel 259A at

Manson, Iowa, as the community's first local aural transmission service. Channel 259A can be allotted to Manson in compliance with the Commission's minimum distance separation requirements at city reference coordinates. The coordinates for Channel 259A at Manson are 42–31–48 North Latitude and 94–32–00 West Longitude.

DATES: Comments must be filed on or before May 17, 1999, and reply comments on or before June 1, 1999.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, his counsel, or consultant, as follows: Victor A. Michael, Jr. President, Mountain West Broadcasting, 6807 Foxglove Drive, Cheyenne, Wyoming 82009 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 99–91, adopted March 17, 1999, and released March 26, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 1231 20th Street, NW., Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible ex parte contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–8045 Filed 3–31–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99–92; RM–9530]

Radio Broadcasting Services; Rudd, IA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Mountain West Broadcasting proposing the allotment of Channel 268A at Rudd, Iowa, as the community's first local aural transmission service. Channel 268A can be allotted to Rudd in compliance with the Commission's minimum distance separation requirements at city reference coordinates. The coordinates for Channel 268A at Rudd are 43–07–34 North Latitude and 92–54–20 West Longitude.

DATES: Comments must be filed on or before May 17, 1999, and reply comments on or before June 1, 1999.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, his counsel, or consultant, as follows: Victor A. Michael, Jr., President, Mountain West Broadcasting, 6807 Foxglove Drive, Cheyenne, Wyoming 82009 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 99–92, adopted March 17, 1999, and released March 26, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 1231 20th Street, NW., Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–8046 Filed 3–31–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99–93; RM–9531]

Radio Broadcasting Services; Pleasantville, IA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Mountain West Broadcasting proposing the allotment of Channel 242A at Pleasantville, Iowa, as the community's first local aural transmission service. Channel 242A can be allotted to Pleasantville in compliance with the Commission's minimum distance separation requirements with a site restriction of 4.9 kilometers (3.0 miles) east to avoid a short-spacing to the licensed site of Station KSOM(FM), Channel 243C1, Audubon, Iowa. The coordinates for Channel 242A at Pleasantville are 41–23–59 North Latitude and 93–14–36 West Longitude.

DATES: Comments must be filed on or before May 17, 1999, and reply comments on or before June 1, 1999.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, his counsel, or consultant, as follows: Victor A. Michael, Jr., President, Mountain West Broadcasting, 6807 Foxglove Drive, Cheyenne, Wyoming 82009 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 99–93, adopted March 17, 1999, and released March 26, 1999. The full text of this Commission decision is available for inspection and copying during

normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 1231 20th Street, NW., Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–8047 Filed 3–31–99; 8:45 am]

BILLING CODE 6712–01–P

Notices

Federal Register
Vol. 64, No. 62
Thursday, April 1, 1999

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

AGENCY FOR INTERNATIONAL DEVELOPMENT

Establishment of the U.S. Agency for International Development as an Executive Agency

AGENCY: U.S. Agency for International Development.

ACTION: Notice.

SUMMARY: The U.S. Agency for International Development ("USAID") gives notice of the establishment of USAID as an Executive agency and the abolition of the U.S. International Development Cooperation Agency ("IDCA"). Under the provisions of the Foreign Affairs Reform and Restructuring Act of 1998, as contained in Public Law 105–277, IDCA was abolished and USAID was established as an Executive agency, effective April 1, 1999.

DATES: Effective April 1, 1999.

FOR FURTHER INFORMATION CONTACT: Jan Miller, Office of General Counsel, 202–712–4174; jmiller @usaid.gov.

SUPPLEMENTARY INFORMATION: Under the provisions of the Foreign Affairs Reform and Restructuring Act of 1998, as contained in Public Law 105–277, IDCA was abolished and USAID was established as an Executive agency, effective April 1, 1999..

Elsewhere in this issue of the **Federal Register**, USAID has amended chapter II of title 22 of the Code of Federal Regulations to delete the reference to IDCA. The abolition of IDCA does not affect the status and validity of USAID regulations, directives, rulings, policies; they continue in effect.

Singleton B. McAllister,

General Counsel.

[FR Doc. 99–7969 Filed 3–31–99; 8:45 am]

BILLING CODE 6116–01–M

DEPARTMENT OF AGRICULTURE

Farm Service Agency

Commodity Credit Corporation

Notice of Request for Extension of a Currently Approved Information Collection

AGENCIES: Farm Service Agency and the Commodity Credit Corporation, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act, this notice announces the Farm Service Agency's (FSA) intention to request an extension for a currently approved information collection. This information is used to support payment eligibility determinations for the Conservation Reserve Program, the Price Support Program, and the Production Flexibility Contract Program authorized by the Agricultural Marketing Transition Act.

DATES: Comments on this notice must be received on or before June 1, 1999 to be assured consideration.

Additional Information and Comments: Contact James Baxa, Agricultural Program Specialist, Production, Emergencies, and Compliance Division, Farm Service Agency, United States Department of Agriculture, STOP 0517, 1400 Independence Avenue, SW, Washington, DC 20250–0517, (202) 720–4189, facsimile (202) 720–4941.

SUPPLEMENTARY INFORMATION:

Title: Payment Eligibility and Payment Limitation Determinations for the receipt of program benefits under the Conservation Reserve Program, Price Support Program, and the Production Flexibility Contract Program.

OMB Control Number: 0560–0096.

Expiration Date of Approval: April 30, 1999.

Type of Request: Extension and revision of a currently approved information collection.

Abstract: The collection of this information is necessary to determine the eligibility of individuals and entities for program payments for various programs administered by Farm Service Agency, on behalf of the Commodity Credit Corporation, including the Conservation Reserve Program, Price Support Programs, and the Production Flexibility Contract Program. The regulations at 7 CFR part 1400 provide for an "actively engaged in farming" determination be made for individuals or entities, with respect to a particular farming operation, in order to determine their eligibility for payments under covered programs. The regulations at 7 CFR part 1400 also require a determination of "person" as defined in the same regulations for the use in limiting payments to an amount specified in each of the covered programs. These programs impact a potential participant universe of 2,000,000 respondents. Forms CCC–502A, CCC–502B, CCC–502C, CCC–502D, CCC–502EZ, CCC–501A, and CCC–501B will continue to be used for making determinations under part 1400, as will ASCS–561, ASCS–561A, and ASCS–561B, which are used for these purposes in connection with the Conservation Reserve Program. The forms are not required to be completed on an annual basis. Once the appropriate forms are submitted and the corresponding determinations made, the producer is not required to provide this information again, unless there is a substantial change in the farming operation or status of the producer requesting program benefits that would affect the payment eligibility and payment limitation determinations previously made.

Estimate of Burden: Public reporting burden for this collection of information is estimated to be 52 minutes per response.

Respondents: Producers who, as owner, landlord, tenant, or sharecropper, are involved in the farming operations and who would seek benefits under the Conservation Reserve Program, Price Support and the Production Elexibility Contract Programs.

Estimated Number of Respondents: 351,960.

Estimated Number of Responses per Respondent: To determine initial eligibility or when a substantial change in operations or status occurs. .

Estimated Total Burden Hours: 305,032.

Proposed topics for comment include, but are not limited to: (1) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the

agency's estimate of burden including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; or (4) ways to minimize the burden of collection on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of informational technology. Comments regarding this information collection requirement should be directed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Agriculture, Washington, DC 20503, and to Diane Sharp, Director, Production, Emergencies, and Compliance Division, Farm Service Agency, United States Department of Agriculture, STOP 0517, Room 4754-South Building, 1400 Independence Avenue, SW, Washington, DC 20250–0517.

All responses to this notice will be summarized and included in the request for OMB approval. All comments also will become a matter of public record.

Signed at Washington, D.C., on March 24, 1999.

Parks Shackelford,

Acting Administrator, Farm Service Agency, and Acting Executive Vice President, Commodity Credit Corporation.

[FR Doc. 99–7873 Filed 3–31–99; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Forest Service

Significant Amendment of the Land and Resource Management Plan of the Ouachita National Forest for Managing Approximately 111,580 Acres of Acquired Lands in McCurtain County, OK

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: Pursuant to 16 U.S.C. 1604(f)(4), the Forest Service will prepare an environmental impact statement (EIS) for the decision to amend the Land and Resource Management Plan (Forest Plan) for the Ouachita National Forest. Comments should focus specifically on the preliminary proposal described below and on possible alternatives.

The current Forest Plan, which provides programmatic guidance for management of the Ouachita National Forest, was implemented in 1986 and subsequently has been amended 30 times (including a significant amendment in 1990 that resulted in the publication of a new Forest Plan.) As many as six primary decisions may be made in the amendment described in this notice: (a) Modification of forest-wide goals, objectives, standards, and/or guidelines (if needed); (b) allocation of lands and waters to management areas; (c) identification of lands suitable for timber production; (d) re-determination of forest-wide allowable sale quantity (ASQ) (if needed); (e) identification of lands suitable and potentially available for cattle grazing; and (f) determination of the eligibility and suitability of the Glover and Mountain Fork Rivers for possible Congressional designation under the National Wild and Scenic River System (NWSRS).

Significant amendments to Forest Plans follow the same procedures required for the development and approval of forest plans (36 CFR part 219.10(f)), including completion of an EIS. The Forest Service determined that the amendment discussed in this notice will be significant because (a) it will establish goals, objectives, management areas, standards, and guidelines for a block of approximately 111,580 acres of acquired lands newly added to the National Forest System (the "Broken Bow unit") and (b) as a result of allocating these lands to management areas, this amendment may change the overall desired future condition of the Ouachita National Forest. An EIS is also needed because the analysis conducted during the amendment process may result in a recommendation to Congress concerning possible additions to the NWSRS.

As part of the overall effort to ensure that treaty rights are honored and responsibilities to American Indian Tribes are met, the Forest Service will consult and exchange information routinely with affected and interested Tribes on a government-to-government basis throughout this amendment process. The Forest Service will also work closely with local governments, State and Federal agencies, and elected officials.

The environmental analysis and decision-making process will include the following opportunities for public participation and comment:

Estimated date	Step	Public involvement
Late March 1999	Publish formal Notice of Intent (with preliminary proposal).	30-day formal comment period; Newsletter; press releases, Web site.
Mid-May 1999	Summarize issues in response to the proposal and amendment.	Workshop Newsletter, Web page update.
By mid-June 1999	Develop alternatives	Mailing, Web page update; Workshop and informal meetings, if needed.
July 1999	Issue draft EIS	Invite public comment; 90-day formal review; Workshop and informal meetings; Newsletter, press releases, Web site update.
December 1999	Issue amendment and EIS	Newsletter, press releases, Web site update.

The Forest Service will meet with interested groups, organizations, and individuals to discuss the proposed amendment. The agency will also host at least one workshop in McCurtain County, Oklahoma, to present and clarify the preliminary proposal, describe ways the public can participate in the process, and accept comments from the public on the proposal for amending the Forest Plan. The Forest Service will also consider comments received at any time during the amendment process.

Following the publication of this Notice of Intent (NOI), a draft EIS will be prepared and published. The draft EIS will include a preferred alternative with specific language to amendment the Forest Plan. This preferred alternative will be developed based on issues that are raised in response to the preliminary proposal presented in this NOI. The Forest Service will then again actively seek information, comments, and assistance from Federal, State and local agencies and from individuals and organizations that may be interested in or affected by the preferred alternative in the draft EIS. It is very important that

those interested in this proposal participate at that time.

DATES: Comments responding to this Notice of Intent (NOI) should be received in writing (electronic mail acceptable) by April 30, 1999. The draft EIS should be available for public review in July 1999. The comment period for the draft EIS will commence on the day the Environmental Protection Agency publishes the Notice of Availability in the **Federal Register.** After a comment period of 90 days, the Final EIS and Forest Plan Amendment should be completed by December 1999.

ADDRESSES: Send written comments concerning this Notice to: Plan Amendment, Ouachita National Forest, P.O. Box 1270, Hot Springs, AR 71902, for send electronic mail to: <mcit/r8_ouachita@fs.fed.us>

All comments received about the Forest Plan amendment, including the names and addresses of those who comment, will be considered part of the public record concerning this proposed action and will be available for public inspection. Comments submitted anonymously will be accepted and considered; however, those who submit anonymous comments will not have standing to appeal the subsequent decision under 36 CFR part 217.

FOR FURTHER INFORMATION CONTACT: John Cleeves, Forest Planner, Ouachita National Forest, (501) 321–5251; or Bill Pell, Acting Team Leader for Planning and Recreation, (501) 321–5320; TDD (501) 321–5307.

SUPPLEMENTARY INFORMATION:

Purpose and Need To Amend the Forest Plan (Why Is the Forest Service Proposing To Amend the Ouachita National Forest Plan?

In November 1996, approximately 111,300 acres were added to the Ouachita National Forest in the north-central portion of McCurtain County, Oklahoma, as a result of a major land exchange. Approximately 28,093 acres of land in the southeastern corner of the county were subtracted from the National Forest System at the same time. As part of this land exchange, the Forest Service also acquired lands in Le Flore County, Oklahoma and several Arkansas counties and disposed of additional National Forest System lands in Arkansas. Lands added to the Ouachita National Forest in these counties were addressed in Amendment 30 to the Forest Plan. The amendment described in this NOI deals only with lands acquired in McCurtain County. (In addition to lands acquired through the exchange, the Ouachita National Forest purchased approximately 280 acres that are now included in the Broken Bow unit.)

The Federal legislation that authorized the land exchange (Omnibus Parks and Public Lands Management Act of 1996) specified that the Forest Service would manage these acquired lands and waters (here and in other counties) under the forestwide standards and guidelines in the existing Forest Plan until the acquired lands were incorporated in the Plan through a formal amendment process. The legislation further stipulated that the Forest Service would initiate the process to incorporate these lands and waters in the Forest Plan within 12 months after the exchange was completed. (An interdisciplinary team was formed and work began within the prescribed 12-month period.) The purpose of this amendment, then, is to establish the goals, objectives, management areas, standards, and guidelines under which the acquired lands in question will be managed.

Topics To Be Addressed (What Topics Will Be Addressed in the Forest Plan Amendment and How Were They Determined?)

Forest Plans provide programmatic frameworks for decision-making on each National Forest. Each Plan sets forth goals, objectives, advisable courses of action, and limitations to actions. These advisable courses and limitations to actions are called standards and guidelines. Some standards and guidelines apply forestwide. Others apply only to specific subdivisions of the National Forest called Management Areas. The National Forest Management Act and associated agency regulations (36 CFR part 219.10(f)) provide direction for amendment Forest Plans.

To set the stage for this amendment, the Forest Service developed a preliminary list of topics likely to be relevant to the decision-making process. This list was based on a review of legal requirements; current conditions in the Broken Bow unit, including social, cultural, economic, and environmental factors; and public interest. The interdisciplinary team also considered the results of monitoring and evaluation activities, Forest Plan and project level appeal issues and decisions, lawsuit issues and decisions, new scientific information, changing public demands, and Forest Service direction concerning ecosystem management and the Natural Resource Agenda. This amendment will address the following broad topics, among others: Recreation; Off-Road Vehicles; Threatened, Endangered, and Sensitive Species; Transportation System; Roadless Areas; Timber Suitability and Allowable Sale Quantity; Wild and Scenic Rivers; Range (cattle grazing) and Vegetation Patterns.

The Forest Service has prepared a brief discussion paper for each amendment topic. These papers (available at www.fs.fed.us/oonf/mccurtain/papers2.htm) define topics in the context of related Forest Plan decisions to be made, the existing situation on the Broken bow unit, and current Forest Plan direction. The proposal described later in this Notice is an attempt to integrate the concerns and opportunities presented by each of the broad topics summarized below.

Recreation: Public interest in enhancing recreation and tourism opportunities in southeastern Oklahoma was a strong factor in local and State support for the land exchange. Among the prominent features of the Broken Bow unit are 10 miles of the Mountain Fork River, more than 14 miles of the Glover River, proximity to the 14,000-acre Broken Bow lake, steep forested ridges, large areas of pine plantations, and an extensive road network. Rugged topography, natural stands of oak and pine, and lack of road access on the northwest, north, and east sides of the lake contrast with less severe topography, extensive pine plantations, and many miles of low standard roads on the west. These lands and waters offer a great variety of recreational opportunities.

Places of high visual sensitivity include those within the view of heavily traveled roads and trails, recreation areas, and other scenic vistas in the area. The U.S. Army Corps of Engineers manages Broken Bow Lake and much of its shoreline. The Oklahoma Tourism and Recreation Department and the Oklahoma Department of Wildlife Conservation manage other parts of the shoreline (some under lease arrangement with the Corps) and portions of the uplands around the lake, including McCurtain County Wilderness Area, which is nearly surrounded by National Forest land.

The general area already receives considerable recreation use from local residents and many people who travel from Texas, elsewhere in Oklahoma, and other states. Dallas/Ft. Worth, Tulsa, and Oklahoma City are within a half-day's drive of these lands. People are attracted to the area for its natural settings on both public and timber industry lands and for the various recreation facilities currently available. Beaver's Bend-Hochatown State Park, located on the west shore of the lake, is one of the most popular parks in Oklahoma; a Corps recreation area (managed by the State of Oklahoma) on

the lower Mountain Fork River provides an additional draw. Facilities at these State and Federal recreation areas include 8 campgrounds with nearly 400 campsites, the 40-room Lakeview Lodge, a nature/education center, 47 cabins, picnic and swimming areas, a marina, numerous boat launching ramps, a system of hiking trails, and a golf course.

Broken Bow Lake is a major attraction for fishing and boating enthusiasts. The lower part of the Mountain Fork is a stocked trout fishery, and the Glover River is considered the finest smallmouth bass fishery in Oklahoma. Both the Glover and Mountain Fork Rivers receive considerable use by anglers and floaters.

Off-road Vehicles: ORV use is a popular activity on the acquired lands, which have a high density of low standard roads that provide access to thousands of acres of pine plantations. These roads have traditionally been open to ORV riding (when they were in private ownership). However, current Oklahoma State law prohibits ORV riding on public roads, including National Forest roads. Because of the rugged terrain north and east of the lake and low road density, ORV use there is probably restricted to the road system and lake access points. Little is known about the extent or nature of any resource damage due to ORV use in the area. Some members of the public support allowing continued ORV use in the area; others would like to see some restrictions, such as limiting cross-country travel to that necessary to transport game.

Threatened, Endangered, Sensitive Species: Another selling point for the land exchange was that it would offer enhanced opportunities for conservation of threatened, endangered, and sensitive species on public lands, particularly in McCurtain County, Oklahoma. For starters, the sections of the Mountain Fork and Glover Rivers and their tributaries within the Broken Bow unit contain some of the richest aquatic faunas in Oklahoma, including populations of the threatened leopard darter (*Percina pantherina*), several species the Forest Service lists as "sensitive" or as candidates for listing as sensitive, and important sport fishes. The U.S. Fish and Wildlife Service has designated portions of the two rivers as Critical Habitat for the leopard darter.

The red-cockaded woodpecker (*Picoides borealis*) occurs in the McCurtain County Wilderness Area, which is owned by the state of Oklahoma and managed by the Oklahoma Department of Wildlife Conservation. This endangered species has been observed foraging on adjacent National Forest land but is not known to nest there. The Nature Conservancy found four sites showing evidence of occupation or offering prime habitat for red-cockaded woodpeckers during a 1995 ecological assessment of what are now national forest lands: Locust Mountain, Hee Mountain, Little White Oak Mountain, and Five Mile Hollow.

The endangered peregrine falcon (*Falco peregrinus anatum*) has been observed near Brokem Bow Lake as a transient during migration. There is a high probability that this species roosts on National Forest land near the lake. The threatened bald eagle (*Haliaeetus leucocephalus*) uses habitat along the Mountain Fork River in the vicinity of Broken Bow Lake in the winter, roosting on the National Forest. Based on recent summer observations, biologists suspect that bald eagles may also nest in the vicinity.

Another federally listed species that may occur in the Broken Bow unit is the endangered American burying beetle (*Nicrophorus americanus*). Due to the similarity of habitat types present on these lands to occupied habitats elsewhere on the National Forest, there is potential for this species to occur in the Broken Bow unit. Several other sensitive species occur within the unit. See the topic paper concerning Terrestrial Threatened, Endangered, and Sensitive Species for further information.

Transportation System: The acquired lands include an extensive road network that was developed by Weyerhaeuser Company for intensive timber management. The roads and associated drainage structures vary considerably in width, design standards, and general condition. An inventory of the existing roads on the Broken Bow unit identified about 566 miles on National Forest land (a road density of 3.26 miles per square mile).

Roadless Areas: The Forest Service maintains inventories of land areas that have few or no permanent roads. During Forest Plan revision, the agency conducts a public review of options for all "roadless areas," and one or more of these areas could eventually be recommended to Congress for wilderness designation. It is important to note that no wilderness determination will be made during the Forest Plan amendment process.

Areas of National Forest land that appear to fit current Forest Service criteria for roadless character are the 7,356-acre Ashford Peak area on the east side of Broken Bow Lake and the 7,285-acre Bee Mountain area on the west side of the lake. Weyerhaeuser reserved oil and gas rights until the year 2041 on the Ashford Peak area and on a small portion of the Bee Mountain area; all minerals are outstanding on the bulk of Bee Mountain. Reserved or outstanding mineral rights do not necessarily disqualify an area from being "roadless," especially if mineral rights are obtainable and/or there is no surface occupancy or development. Currently no development exists in either area. The State-owned McCurtain County Wilderness Area lies in the northern part of the block of National Forest lands under consideration here.

Vegetation Patterns: Based on analysis of satellite imagery from May 1998, the team estimated that there are about 61,600 acres where pines predominate the forest canopy and at lest 46,000 where hardwoods predominate. Roads and other nonforested conditions occupy about 4,000 acres. More than half of the pine-dominated acreage consists of loblolly pine plantations less than 30 years old; the remainder consists of more natural forest cover in which shortleaf pines predominate. The pine plantations average 110 acres in size, but several exceed 200 acres. As more detailed, ground-based forest inventories are completed, these estimates will be refined. The team recognizes that many members of the public are concerned about conserving hardwood trees and conserving or restoring older forests and woodlands of all kinds.

Timber Suitability and Allowable Sale Quantity (ASQ): Timber management on the Ouachita National Forest is designed to perpetuate native forests, sustain habitat for viable populations of native plants and animals (including sensitive species), protect water quality and aesthetic values, yield valuable timber products, and support local economic activity. National Forest lands "suitable" for timber production (as one element of their management) are those that are physically and legally capable of supporting timber harvests and timber regeneration activities on a regulated and sustained basis. The ASQ is the volume of timber that may be sold annually from the "suitable" lands covered by the Forest Plan. Prior to the exchange, the suitable land base was approximately 994,000 acres, and the ASQ was 29.2 million cubic feet (144 million board feet).

The Broken Bow unit includes a mix of cutover lands, loblolly pine plantations, and mixed pine-hardwood stands of varying densities and age classes, while the portions of the Tiak tract traded to Weyerhaeuser consisted mainly of well-stocked sawtimber stands on highly productive coastal

plain sites. These changes in the National Forest land base may result in a change of lands suitable for timber harvest and the corresponding ASQ.

Wild and Scenic Rivers: River eligibility studies are carried out in accordance with the Wild and Scenic Rivers Act and the Final Revised Guidelines for Eligibility, Classification, and Management of River Areas (Federal Register 9/7/82) of the U.S. Department of the Interior and the U.S. Department of Agriculture. To be eligible for inclusion in the National Wild and Scenic Rivers System, a river must be free flowing and have one or more outstanding remarkable scenic, recreational, geological, fish and wildlife, archeological/historical, or other features. The planning team has conducted eligibility studies for portions of the Glover and Mountain Fork Rivers.

Range (cattle grazing): Cattle grazing is a traditional use of the acquired lands that developed over many years when the lands were in private ownership. This activity and land use is a source of income for some local cattle owners. Cattle grazing has long been recognized as one of the important multiple uses of National Forest land when managed in a way that ensures protection of ecological values.

Curently 19 individuals have temporary permits to use portions of the acquired lands to graze about 1,000 head of cattle. (These permittees had grazing permits with Weyerhaeuser for these lands prior to the exchange.) Many of these are "on/off" permits, with the cattle grazing freely between private lands and National Forest lands. The majority of National Forest lands are included in the permit areas, but most of the grazing occurs on roadsides and in young plantations that have not reached crown closure. There are few fences on the property lines.

While some of the following additional topics will be discussed in the draft EIS, no specific decisions concerning them will be made in this amendment:

1. Location of grazing allotments, identification of individual grazing permittees, or specific conditions for grazing (such as number of animals allowed, permitted use periods, range improvements).
2. Project-level decisions such as construction of recreation facilities (e.g., trails or campgrounds) and identification of individual timber sales or road closures.
3. Level of funding the county will receive in any given year from "25 percent returns." (The Forest Service annually returns 25 percent of all gross revenues to counties with National Forest lands; the EIS will discuss the possible effects of the Forest Plan decisions on 25 percent returns.)
4. Ecological restoration of native forests in loblolly pine plantations. (Restoration will be the subject of another Forest Plan amendment.)
5. Relationships with neighboring landowners (including road easements and property lines).
6. Community development. (The Forest Service supports community development activities and recognizes that Forest Plan decisions may influence development opportunities and quality of life in local communities. The draft EIS will examine possible economic and social impacts to local communities and at a broader regional level.)

Preliminary Proposal

The Forest Service has prepared a preliminary proposal to address the six primary decisions and now seeks comments on this proposal. Comments received will be used to develop alternatives to the preliminary proposal.

(1) Modification of forest-wide goals, objectives, standards, and/or guidelines (if needed): The Forest Service does not believe that such modifications are warranted at this time. In other words, the preliminary proposal is to manage the acquired lands in the Broken Bow unit under the current forest-wide goals and objectives of the Forest Plan.

(2) Allocation of lands and waters to management areas: Allocate the approximately 111,580 acres of the Broken Bow unit as described below. (Unless noted otherwise, Management Area numbers refer to those in the current Forest Plan.). All acreage estimates are subject to change on the basis of future site-specific analysis and planning. Items (a) through (d) describe the Management Area allocations that can be readily displayed at the scale of a Forest map. Items (e) through (j) describe those Management Areas that cannot be displayed on a Forest map scale. A map displaying the four allocations (Management Areas 20, 22, and 23 and "General Forest") is available for public review at 100 Reserve Street, Federal Building, Second Floor, Hot Springs, Arkansas and on the Internet at: *www.fs.fed.us/oonf/mccurtain/*.

(a) General Forest (typically a combination of Management Areas 9, 10, 11, 12, 13, 14, and 18, but may also include others): approximately 29,885 acres. Management Area 14 (Lands Suitable for Timber Production, Ouachita Mountains) usually is the most prominent in this mix of Management Areas. This area includes lands of moderate to low productivity (e.g., site indices are at least 50 for shortleaf pine and 60 for hardwoods) that have not been assigned to more restrictive Management Areas. Much of the timber produced on the Ouachita National Forest comes from Management Area 14, but these lands also help meet vital wildlife habitat, watershed protection, and recreation needs.

(b) Management Area 20—Wild and Scenic River Corridors: approximately 6,735 acres (all unsuitable for timber production). Management Area 20 consists of corridors of rivers eligible or potentially eligible for inclusion in the National Wild and Scenic Rivers System. Within the Broken Bow unit, segments of the Mountain Fork and Glover Rivers would be included in this Management Area.

(c) Management Area 22-Shortleaf Pine-Bluestem Renewal and Red-Cockaded Woodpecker Habitat Management Area: approximately 51,110 acres (including lands suitable and unsuitable for timber production). Management Area 22 includes National Forest lands that historically provided or currently provide nesting and/or foraging habitat for the red-cockaded woodpecker and that are dedicated to renewal of the shortleaf pine-bluestem grass ecosystem. Forest management activities include periodic thinning, prescribed fire, and regeneration by the two-aged shelterwood method. No actions would be taken that would diminish the roadless characteristics of inventoried roadless areas within this Management Area.

(d) Management Area 23 (new to the Forest Plan)—Broken Bow Lake (area): approximately 23,850 acres (including lands suitable and unsuitable for timber production). Management Area 23 would include lands that can be seen from the main part of the lake and most other National Forest lands east of Highway 259 and south of the proposed boundary of Management Area 22. The emphasis would be on conserving and enhancing the area's unique combination of recreational,

aesthetic, wildlife habitat, and water quality values and benefits.

The following Management Areas cannot be displayed at the fairly coarse scale of a Forest map. Some of the ones likely to be applied to the Broken Bow Unit by the Forest Plan amendment include:

(e) Management Area 9—Water and Riparian Areas (ponds, lakes, streamside zones, and riparian areas; streamside zones have minimum widths of 100 feet to both sides of perennial streams and 30 feet both sides of all other streams), all considered unsuitable for timber production: approximately 12,600 acres plus approximately 11,550 acres of equivalent streamside management zones in Management Area 22 for a total of approximately 24,150 acres in streamside management zones.

(f) Management Area 10—Nonforest (consists of roads, rights-of-ways, and special uses located within other Management Areas): estimated acres will be supplied in the draft EIS.

(g) Management Area 11—Not Appropriate for Timber Production (lands of low productivity, i.e., 20 to 49 cubic feet of tree growth per acre per year; site index for hardwood generally less than 60 and for pine, less than 50): estimated acres will be supplied in the draft EIS.

(h) Management Area 12—Nonproductive (areas of rock outcrops or shallow soils on which tree growth is less than 20 cubic feet per year): estimated acres will be supplied in the draft EIS.

(i) Management Area 13—Unsuitable Lands Based on Other Resource Coordination (lands unsuitable for timber production that are not included in other Management Areas): estimated acres will be supplied in the draft EIS.

(j) Management Area 18—Visually Sensitive Foreground Areas, Roads and Trails (foreground area along sensitivity level 1 and 2 roads, e.g., major highways and major forest roads, and trails): estimated acres will be supplied in the draft EIS.

(3) Identification of lands suitable for timber production: Based upon an analysis of satellite imagery, slope and soils data, the preliminary assignment of lands and waters to four major Management Areas (described above), and estimates of streamside management zones, the interdisciplinary team estimates that approximately 54,000 acres of the Broken Bow unit may be suitable for timber production. Of these lands, at least 32,000 acres consist of loblolly pine plantations. The disposal of 28,093 acres of coastal plain lands (former portions of the Tiak Ranger District) and the addition of approximately 111,580 acres in the mountainous part of McCurtain County has resulted in an estimated net increase of about 25,750 acres of National Forest land suitable for timber production. Further analysis of timber suitability will be included in the draft EIS.

(4) Re-determination of forest-wide allowable sale quantity (ASQ) (if needed): The land base suitable for timber production for the Ouachita National Forest has increased as a result of the land exchange, but the average timber productivity of the acquired lands in Oklahoma is less than that of the former National Forest lands that are now in private ownership. The interdisciplinary team will conduct analyses to determine the net change, if any, in ASQ.

(5) Identification of lands suitable and potentially available for cattle grazing: Most of the acquired lands appear to be suitable for controlled grazing. The capability of these lands for producing forage for grazing animals will be analyzed and reported in the draft EIS.

(6) Determination of the eligibility and suitability of the Glover and Mountain Fork Rivers for possible congressional designation as Wild and Scenic Rivers: The interdisciplinary team has made a preliminary determination that the portion of the Glover River within National Forest boundaries should be recommended for inclusion in the National Wild and Scenic Rivers System; the team will not recommend the portions of the Mountain Fork River within National Forest boundaries for such inclusion at this time.

Glover River: **Segment I**—19.5 stream miles, beginning at the confluence of East and West Forks, T3S, R23E, Sec. 7, and extending south to the Forest proclamation boundary, T5S, R23E, Sec. 9 (about 0.8 mile downstream from the bridge on road 50000). This segment (and possibly lower portions of Cedar and Carter Creeks) is eligible because the stream is free flowing and has outstandingly remarkable scenic, recreational, fish and wildlife, geological and archaeological/historic values. It qualifies for classification as "scenic" because it is free of impoundments, has shorelines or watersheds still largely primitive and shorelines largely undeveloped, and has several access points and road crossings. The Forest Service will complete a report to determine if this segment of the Glover River is suitable for inclusion in the NWSR System. **Segment II**—12.5 stream miles, beginning at the southern limit of the Forest proclamation boundary south to the confluence with Little River. Because this segment of the Glover River is in private ownership and outside the National Forest proclamation boundary, the Forest Service will not conduct an eligibility and suitability study. Such a study would be more appropriately conducted by a State agency.

Mountain Fork River: **Segment I**—15.9 stream miles, including that part of the river from the Oklahoma-Arkansas State line, T1S, R27E, Sec. 3, downstream to the Forest proclamation boundary at the Oklahoma Highway 4 bridge, T1S, R25E, Sec. 24. This segment of the Mountain Fork is entirely in private ownership and outside the National Forest proclamation boundary. The Forest Service will not conduct an eligibility or suitability study of this stretch of river. Such a study would be more appropriately conducted by a State agency. **Segment II**—9.1 miles, including that part of the river from the Forest proclamation boundary at the Oklahoma Highway 4 bridge downstream to the upper end of Broken Bow Lake (600-foot elevation level). This segment is eligible for designation under the Wild and Scenic Rivers Act because it is free flowing and has outstandingly remarkable scenic, recreational, fish and wildlife, geological, and archaeological/historical values. It qualifies as "scenic" because it is free of impoundments, has shorelines or watersheds still largely primitive and shorelines largely undeveloped, and has several access points and road crossings. Because of limited National Forest ownership in this segment (2.3 miles), it would be more appropriate for a State agency to complete any further studies. **Segment III**—11.1 stream miles, beginning at the Broken Bow dam and extending downstream to the National Forest proclamation boundary at U.S. Highway 70, T6S,

R26E, Sec. 7. Although containing outstandingly remarkable scenic and recreational values, this segment of river is not considered free flowing and, therefore, is not eligible for inclusion in the NWSRS.

Possible Alternatives

The alternatives briefly summarized below have been discussed by the interdisciplinary team; others will be developed in response to public issues.

(1) Increase extent of Management Area 22. Increase Management Area 22 (renewal of the shortleaf pine-bluestem ecosystem) to encompass more acreage, including most of the land tentatively proposed for allocation to Management Areas 14 and 23.

(2) Establish a single Management Area 23 (Broken Bow Lake Management Area) east of Highway 259, divided into 23a (Habitat Management Area for Red-cockaded Woodpecker) and 23b [lower Lake area] instead of 22 and 23). This alternative would be developed to show a more integrated picture of management direction within the Broken Bow Lake/Mountain Fork River area. Standards and guidelines would change little.

(3) Increase the extent of Management Area 14. Allocate more land to the Management Area that yields most of the wood products from the Ouachita National Forest.

Further Information Concerning Public Comments on the Draft EIS

The Forest Service believes, at this early stage, that it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. Vermont Yankee *Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR part 1503.3 in addressing these points.

Responsible Official: The Responsible Official is Elizabeth Estill, Regional Forester, Southern Region of the USDA Forest Service, located at 1720 Peachtree Road, NW, Atlanta, GA 30367.

Dated: March 24, 1999.

George Wayne Kelley,

Deputy Regional Forester.

[FR Doc. 99–8010 Filed 3–31–99; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

Designation for the Central Illinois (IL) Area

AGENCY: Grain Inspection, Packers and Stockyards Administration (GIPSA).

ACTION: Notice.

SUMMARY: GIPSA announces designation of Central Illinois Grain Inspection, Inc. (Central Illinois) to provide official services under the United States Grain Standards Act, as amended (Act).

EFFECTIVE DATE: June 1, 1999.

ADDRESSES: USDA, GIPSA, Janet M. Hart, Chief, Review Branch, Compliance Division, STOP 3604, Room 1647–S, 1400 Independence Avenue, SW, Washington, DC 20250–3604.

FOR FURTHER INFORMATION CONTACT: Janet M. Hart, at 202–720–8525.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12866 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

In the October 1, 1998, **Federal Register** (63 FR 52678), GIPSA asked persons interested in providing official services in the geographic area assigned to Central Illinois to submit an application for designation. Applications were due by October 30, 1998. There were two applicants: Central Illinois and Turner Grain Services, Inc. (Turner). Central Illinois applied for designation to provide official services in the entire area currently assigned to them. Turner, currently operating an unofficial grain inspection business not designated by GIPSA under the authority of the Act, applied for designation to provide official services in a portion of the Central Illinois area. Turner applied for the area bounded on the North by Interstate 74; bounded on the East by Interstate 155; bounded on the South by Illinois Route 136; and bounded on the West by the western Tazewell County line, and the western Peoria County line north to Interstate 74.

The October 1, 1998, **Federal Register** also asked for comments on the services provided by Central Illinois. GIPSA did not receive any comments.

In the December 1, 1998, **Federal Register** (63 FR 66118), GIPSA asked for comments on the applicants for the Central Illinois area. GIPSA received two comments by the deadline: both were from grain companies that said they were familiar with the services provided by Central Illinois and Turner, and both supported designation of both organizations.

GIPSA evaluated all available information regarding the designation criteria in Section 7(f)(1)(A) of the Act and, according to Section 7(f)(1)(B), determined that Central Illinois is better able to provide official services in the geographic area for which they applied.

Effective June 1, 1999, and ending May 31, 2002, Central Illinois is designated to provide official services in the Central Illinois geographic area specified in the October 1, 1998, **Federal Register**.

Interested persons may obtain official services by contacting Central Illinois at 309–827–7121.

Authority: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*).

Dated: March 17, 1999.

Neil E. Porter,

Director, Compliance Division.

[FR Doc. 99–7995 Filed 3–31–99; 8:45 am]

BILLING CODE 3410–EN–P

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

Opportunity for Designation in the Hastings (NE), Aberdeen (SD), Missouri, Decatur (IL), Grand Forks (ND), McCrea (IA), and South Carolina Areas and Request for Comments on the Hastings, Aberdeen, Missouri, Decatur, Grand Forks, McCrea, and South Carolina Agencies

AGENCY: Grain Inspection, Packers and Stockyards Administration (GIPSA).

ACTION: Notice.

SUMMARY: The designations of the official agencies listed below will end in October, November, and December 1999. GIPSA is asking persons interested in providing official services in the areas served by these agencies to submit an application for designation. GIPSA is also asking for comments on the services provided by these currently designated agencies:

Hastings Grain Inspection, Inc. (Hastings);
Aberdeen Grain Inspection, Inc. (Aberdeen);
Missouri Department of Agriculture (Missouri);
Decatur Grain Inspection, Inc. (Decatur);
Grand Forks Grain Inspection Department, Inc. (Grand Forks);
John R. McCrea Agency, Inc. (McCrea); and
South Carolina Department of Agriculture (South Carolina).

DATES: Applications must be postmarked or sent by telecopier (FAX) on or before April 30, 1999. Comments must be postmarked or sent by telecopier (FAX) on or before May 31, 1999.

ADDRESSES: Applications and comments must be submitted to USDA, GIPSA, Janet M. Hart, Chief, Review Branch, Compliance Division, STOP 3604, Room 1647–S, 1400 Independence Avenue, SW, Washington, DC 20250–3604. Applications and comments may be submitted by FAX on 202–690–2755. If an application is submitted by FAX, GIPSA reserves the right to request an original application. All applications and comments will be made available for public inspection at this address located at 1400 Independence Avenue, SW, during regular business hours.

FOR FURTHER INFORMATION CONTACT: Janet M. Hart, at 202–720–8525.

SUPPLEMENTARY INFORMATION: This Action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12866 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this Action.

Section 7(f)(1) of the United States Grain Standards Act, as amended (Act), authorizes GIPSA's Administrator to designate a qualified applicant to provide official services in a specified area after determining that the applicant is better able than any other applicant to provide such official services.

Section 7(g)(1) of the Act provides that designations of official agencies shall end not later than triennially and may be renewed according to the criteria and procedures prescribed in section 7(f) of the Act.

1. Current Designations Being Announced for Renewal

Official agency	Main office	Designation start	Designation end
Hastings	Hastings, NE	11/1/1996	10/31/1999
Aberdeen	Aberdeen, SD	12/1/1996	11/30/1999
Missouri	Jefferson City, MO	12/1/1996	11/30/1999
Decatur	Decatur, IL	01/1/1997	12/31/1999
Grand Forks	Grand Forks, ND	01/1/1997	12/31/1999
McCrea	Clinton, IA	01/1/1997	12/31/1999
South Carolina	North Charleston, SC	01/1/1997	12/31/1999

a. Hastings

Pursuant to section 7(f)(2) of the Act, the following geographic area, in the State of Nebraska, is assigned to Hastings.

Bounded on the North by the northern Nebraska State line from the western Sioux County line east to the eastern Knox County line;

Bounded on the East by the eastern and southern Knox County lines; the eastern Antelope County line; the northern Madison County line east to U.S. Route 81; U.S. Route 81 south to the southern Madison County line; the southern Madison County line; the eastern Boone, Nance, and Merrick County lines; the Platte River southwest; the eastern Hamilton County line; the northern and eastern Fillmore County lines; the southern Fillmore County line west to U.S. Route 81; U.S. Route 81 south to State Highway 8; State Highway 8 west to the County Road 1 mile west of U.S. Route 81; the County Road south to southern Nebraska State line;

Bounded on the South by the southern Nebraska State line, from the County Road 1 mile west of U.S. Route 81, west to the western Dundy County line; and

Bounded on the West by the western Dundy, Chase, Perkins, and Keith County lines; the southern and western Garden County lines; the southern Morrill County line west to U.S. Route 385; U.S. Route 385 north to the southern Box Butte County line; the southern and western Sioux County lines north to the northern Nebraska State line.

The following grain elevators, located outside of the above contiguous geographic area, are part of this geographic area assignment: Farmers Coop and Big Springs Elevator, both in Big Springs, Deuel County (located inside Kansas Grain Inpsection Service, Inc.'s, area); and Huskers Cooperative Grain Company, Columbus, Platte County (located inside Fremont Grain Inspection Department, Inc.'s, area).

b. Aberdeen

Pursuant to section 7(f)(2) of the Act, the following geographic area, in the States of North Dakota and South Dakota, is assigned to Aberdeen.

Bounded on the North by U.S. Route 12 east to State Route 22; State Route 22 north to the Burlington-Northern (BN) line; the Burlington-Northern (BN) line east to State Route 21; State Route 21 east to State Route 49; State Route 49 south to the North Dakota-South Dakota State line; the North Dakota-South Dakota State line east to U.S. Route 83; U.S. Route 83 north to State Route 13; State Route 13 east and north to McIntosh County; the northern McIntosh County line east to Dickey County; the northern Dickey County line east to U.S. Route 281; U.S. Route 281 south to the North Dakota-South Dakota State line; the North Dakota-South Dakota State line east;

Bounded on the East by the eastern South Dakota State line (the Big Sioux River) to A54B;

Bounded on the South by A54B west to State Route 11; State Route 11 north to State Route 44 (U.S. 18); State Route 44 west to the Missouri River; the Missouri River south-southeast to the South Dakota State line; the southern South Dakota State line west; and

Bounded on the West by the western South Dakota State line north; the western North Dakota State line north to U.S. Route 12.

c. Missouri

Pursuant to section 7(f)(2) of the Act, the following geographic area, the entire State of Missouri, is assigned to Missouri.

d. Decatur

Pursuant to Section 7(f)(2) of the Act, the following geographic area, in the State of Illinois, is assigned to Decatur.

Bounded on the North by the northern and eastern DeWitt County lines; the eastern Macon County line south to Interstate 72; Interstate 72 northeast to the eastern Piatt County line;

Bounded on the East by the eastern Piatt, Moultrie, and Shelby County lines;

Bounded on the South by the southern Shelby County line; a straight line running along the southern Montgomery County line west to State Route 16 to a point approximately 1 mile northeast of Irving; and

Bounded on the West by a straight line from this point northeast to Stonington on State Route 48; a straight line from Stonington northwest to Elkhart on Interstate 55; a straight line from Elkhart northeast to the west side of Beason on State Route 10; State Route 10 east to DeWitt County; the western DeWitt County line.

Decatur's assigned geographic area does not include the following grain elevators inside Decatur's area which have been and will continue to be serviced by the following official agency: Champaign-Danville Grain Inspection Departments, Inc.: Moultrie Grain Association, Cadwell, Moultrie County; Tabor and Company, Weedman Grain Company, and Pacific Grain Company, all in Farmer City, DeWitt County; and Monticello Grain Company, Monticello, Piatt County.

e. Grand Forks

Pursuant to section 7(f)(2) of the Act, the following geographic area, in the State of North Dakota, is assigned to Grand Forks.

Bounded on the North by the North Dakota State line;

Bounded on the East by the North Dakota State line south to State Route 200;

Bounded on the South by State Route 200 west-northwest to the western Traill County line; the western Traill County line; the southern Grand Forks and Nelson County lines; the southern Eddy County line west to U.S. Route 281; U.S. Route 281 north to State Route 15; State Route 15 west to U.S. Route 52; U.S. Route 52 northeast to State Route 3; and

Bounded on the West by State Route 3 north to State Route 60; State Route 60 west-northwest to State Route 5; State Route 5 west to State Route 14; State Route 14 north to the North Dakota State line.

Grand Fork's assigned geographic area does not include the following grain elevators inside Grand Fork's area which have been and will continue to be serviced by the following official agencies:

1. Grain Inspection, Inc.: Farmers Coop Elevator, Fessenden; Farmers Union Elevator, and Manfred Grain, both in Manfred; all in Wells County; and

2. Minot Grain Inspection, Inc.: Harvey Farmers Elevator, Harvey, Wells County.

f. McCrea

Pursuant to section 7(f)(2) of the Act, the following geographic area, in the States of Illinois and Iowa, is assigned to McCrea.

Carroll and Whiteside Counties, Illinois.

Clinton and Jackson Counties, Iowa.

2. Opportunity for Designation

Interested persons, including Hastings, Aberdeen, Missouri, Decatur, Grand Forks, McCrea, and South Carolina, are hereby given the opportunity to apply for designation to provide official services in the geographic areas specified above under the provisions of section 7(f) of the Act and section 800.196(d) of the regulations issued thereunder.

DESIGNATION TERM

Hastings	11/01/1999 to 9/30/2002.
Aberdeen	12/01/1999 to 9/30/2002.
Missouri	12/01/1999 to 9/30/2002.
Decatur	01/01/2000 to 9/30/2002.
Grand Forks	01/01/2000 to 9/30/2002.
McCrea	01/01/2000 to 9/30/2002.
South Carolina	01/01/2000 to 9/30/2002.

Persons wishing to apply for designation should contact the Compliance Division at the address listed above for forms and information.

3. Request for Comments

GIPSA also is publishing this notice to provide interested persons the opportunity to present comments on the Hastings, Aberdeen, Missouri, Decatur, Grand Forks, McCrea, and South Carolina official agencies. Commenters are encouraged to submit pertinent data concerning the Hastings, Aberdeen, Missouri, Decatur, Grand Forks, McCrea, and South Carolina official agencies including information concerning the timeliness, cost, quality, and scope of services provided. All comments must be submitted to the Compliance Division at the above address.

Applications, comments, and other available information will be considered in determining which applicant will be designated.

Authority: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 et seq.).

Dated: March 11, 1999.

Neil E. Porter,

Director, Compliance Division.

[FR Doc. 99–7996 Filed 3–31–99; 8:45 am]

BILLING CODE 3410–EN–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the New York State Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the New York State Advisory Committee to the Commission will convene at 1:30 p.m. and adjourn at 5:30 p.m. on April 23, 1999, at the United Way of New York, 2nd Floor Conference Room 2A, Two Park Avenue, New York, New York 10016. The Committee will plan for the release of its report, Equal Housing Opportunities in New York: An Evaluation of Section 8 Housing Programs in Buffalo, Rochester, and Syracuse. The Committee will also discuss plans for a new project.

Persons desiring additional information, or planning a presentation to the Committee, should contact Ki-Taek Chun, Director of the Eastern Regional Office, 202–376–7533 (TDD 202–376–8116). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, March 24, 1999.
Carol-Lee Hurley,
Chief, Regional Programs Coordination Unit.
[FR Doc. 99–7945 Filed 3–31–99; 8:45 am]
BILLING CODE 6335–01–M

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Pennsylvania Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Pennsylvania Advisory Committee to the Commission will convene from 1:30 p.m. to 5:00 p.m. on April 23, 1999, at the Philadelphia Convention Center, Administrative Level Board Room, 12th and Arch Streets, Philadelphia, Pennsylvania 19107. The Committee will discuss the January 14, 1999 forum presentations, review staff's progress on the draft report of the event, and receive presentations from those organization representatives unable to attend the forum.

Persons desiring additional information, or planning a presentation to the Committee, should contract Ki-Taek Chun, Director of the Eastern Regional Office, 202–376–7533 (TDD 202–376–8116). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, March 23, 1999.
Carol-Lee Hurley,
Chief, Regional Programs Coordination Unit.
[FR Doc. 99–7946 Filed 3–31–99; 8:45 am]
BILLING CODE 6335–01–M

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Virginia Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Virginia Advisory Committee to the Commission will convene at 10:00 a.m. and adjourn at 3:00 p.m. on April 23, 1999, at the National Spa and Pool Institute, 2111 Eisenhower Avenue, Alexandria, Virginia 22314. The Committee will review its draft report on the treatment of African American males in Virginia's justice system, conduct an informational briefing on civil rights developments, and discuss new project proposals.

Persons desiring additional information, or planning a presentation to the Committee, should contact Ki-Taek Chun, Director of the Eastern Regional office, 202–376–7533 (TDD 202–376–8116). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, March 23, 1999.
Carol-Lee Hurley,
Chief, Regional Programs Coordination Unit.
[FR Doc. 99–7947 Filed 3–31–99; 8:45 am]
BILLING CODE 6335–01–M

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Wyoming Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Wyoming Advisory Committee to the Commission will convene at 5:30 p.m. and recess at 7:30 p.m. on Wednesday, May 5, 1999. The purpose of the meeting is to hold orientation for new members and a briefing on format and presenters for the community forum. The Committee will reconvene at 9:00 a.m. and adjourn at 9:00 p.m. on Thursday, May 6, 1999, to hold a community forum on education issues affecting minority students in the Wyoming public secondary schools with representatives of the U.S. Department of Education, Wyoming State government and school district officials, and community representatives and citizens. The meeting for both days will be located at the Radisson, 800 N. Poplar, Casper, Wyoming 86201.

Persons desiring additional information, or planning a presentation to the Committee, should contact John Dulles, Director of the Rocky Mountain Regional Office, 303–866–1040 (TDD 303–866–1049). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, March 23, 1999.
Carol-Lee Hurley,
Chief, Regional Programs Coordination Unit.
[FR Doc. 99–7948 Filed 3–31–99; 8:45 am]
BILLING CODE 6335–01–M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1025]

Grant of Authority for Subzone Status, ESCO Company Limited Partnership Plant, (Colorformer Chemicals), Muskegon, Michigan

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a-81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Foreign-Trade Zones Act provides for "* * * the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," and authorizes the Foreign-Trade Zones Board to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Board's regulations (15 CFR part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved;

Whereas, the KOM Foreign-Trade Zone Authority, grantee of Foreign-Trade Zone 189, has made application to the Board for authority to establish special-purpose subzone status at the colorformer chemical manufacturing facility of ESCO Company Limited Partnership, located in Muskegon, Michigan (FTZ Docket 57–96, filed July 8, 1996 amended on July 28, 1997; amendment withdrawn on March 13, 1997);

Whereas, notice inviting public comment was given in the **Federal Register** (61 FR 38137, July 23, 1996; 61 FR 59401, November 22, 1996 and 62 FR 11813, March 13, 1997); and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations would be satisfied and that approval of the application would be in the public interest if subject to restriction;

Now, therefore, the Board hereby grants authority for subzone status at the colorformer chemical manufacturing

facility of ESCO Company Limited Partnership, located in Muskegon, Michigan (Subzone 189B), at the location described in the application, and subject to the FTZ Act and the Board's regulations, including § 400.28, and further subject to a restriction requiring that any foreign status merchandise admitted to the subzone and manufactured or processed under zone procedures must be exported.

Signed at Washington, DC, this 23rd day of March 1999.

Robert S. LaRussa,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Attest: Dennis Puccinelli, Acting Executive Secretary.

[FR Doc. 99–8078 Filed 3–31–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Initiation of Five-Year ("Sunset") Reviews.

SUMMARY: In accordance with section 751(c) of the Tariff Act of 1930, as amended ("the Act"), the Department of Commerce ("the Department") is automatically initiating five-year ("sunset") reviews of the antidumping and countervailing duty orders or suspended investigations listed below. The International Trade Commission ("the Commission") is publishing concurrently with this notice its notices of *Institution of Five-Year Reviews* covering these same orders.

FOR FURTHER INFORMATION CONTACT: Melissa G. Skinner, Scott E. Smith, or Martha V. Douthit, Office of Policy, Import Administration, International Trade Administration, U.S. Department of Commerce, at (202) 482–1560, (202) 482–6397 or (202) 482–3207, respectively, or Vera Libeau, Office of Investigations, U.S. International Trade Commission, at (202) 205–3176.

SUPPLEMENTARY INFORMATION:

Initiation of Reviews

In accordance with 19 CFR 351.218 (*see Procedures for Conducting Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders*, 63 FR 13516 (March 20, 1998)), we are initiating sunset reviews of the following antidumping and countervailing duty orders or suspended investigations:

DOC Case No.	ITC Case No.	Country	Product
A–122–701	A–374	Canada	Potassium Chloride (Potash).
A–588–054	AA–143	Japan	Tapered Roller Bearings, 4 Inches and Under.
A–570–601	A–344	China, PR	Tapered Roller Bearings.
A–437–601	A–341	Hungary	Tapered Roller Bearings.
A–485–602	A–345	Romania	Tapered Roller Bearings.
A–588–604	A–343	Japan	Tapered Roller Bearings, 4 Inches and Over.
A–427–801	A–392	France	Cylindrical Roller Bearings.
A–427–801	A–392	France	Ball Bearings.
A–427–801	A–392	France	Spherical Plain Bearings.
A–428–801	A–391	Germany	Spherical Plain Bearings.
A–428–801	A–391	Germany	Cylindrical Roller Bearings.
A–428–801	A–391	Germany	Ball Bearings.
A–475–801	A–393	Italy	Ball Bearings.
A–475–801	A–393	Italy	Cylindrical Roller Bearings.
A–588–804	A–394	Japan	Cylindrical Roller Bearings.
A–588–804	A–394	Japan	Spherical Plain Bearings.
A–588–804	A–394	Japan	Ball Bearings.
A–485–801	A–395	Romania	Ball Bearings.
A–559–801	A–396	Singapore	Ball Bearings.
A–401–801	A–397	Sweden	Ball Bearings.
A–401–801	A–397	Sweden	Cylindrical Roller Bearings.
A–412–801	A–399	United Kingdom	Cylindrical Roller Bearings.
A–412–801	A–399	United Kingdom	Ball Bearings.
A–588–703	A–377	Japan	Forklift Trucks.
A–588–706	A–384	Japan	Nitrile Rubber.

Statute and Regulations

Pursuant to sections 751(c) and 752 of the Act, an antidumping ("AD") or countervailing duty ("CVD") order will be revoked, or the suspended investigation will be terminated, unless revocation or termination would be likely to lead to continuation or recurrence of (1) dumping or a countervailable subsidy, and (2) material injury to the domestic industry.

The Department's procedures for the conduct of sunset reviews are set forth in *Procedures for Conducting Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders*, 63 FR 13516 (March 20, 1998) ("*Sunset Regulations*"). Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department's Policy Bulletin 98:3—*Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin*, 63 FR 18871 (April 16, 1998) ("*Sunset Policy Bulletin*").

Filing Information

As a courtesy, we are making information related to sunset proceedings, including copies of the *Sunset Regulations* and *Sunset Policy Bulletin*, the Department's schedule of sunset reviews, case history information (*e.g.*, previous margins, duty absorption determinations, scope language, import volumes), and service lists, available to the public on the Department's sunset internet website at the following address: "http://www.ita.doc.gov/import_admin/records/sunset/".

All submissions in the sunset review must be filed in accordance with the Department's regulations regarding format, translation, service, and certification of documents. These rules

can be found at 19 CFR 351.303 (1998). Also, we suggest that parties check the Department's sunset website for any updates to the service list before filing any submissions. We ask that parties notify the Department in writing of any additions or corrections to the list. We also would appreciate written notification if you no longer represent a party on the service list.

Because deadlines in a sunset review are, in many instances, very short, we urge interested parties to apply for access to proprietary information under administrative protective order ("APO") immediately following publication in the **Federal Register** of the notice of initiation of the sunset review. The Department's regulations on submission of proprietary information and eligibility to receive access to business proprietary information under APO can be found at 19 CFR 351.304–306 (*see Antidumping and Countervailing Duty Proceedings: Administrative Protective Order Procedures; Procedures for Imposing Sanctions for Violation of a Protective Order*, 63 FR 24391 (May 4, 1998)).

Information Required From Interested Parties

Domestic interested parties (defined in 19 CFR 351.102 (1998)) wishing to participate in the sunset review must respond not later than 15 days after the date of publication in the **Federal Register** of the notice of initiation by filing a notice of intent to participate. The required contents of the notice of intent to participate are set forth in the *Sunset Regulations* at 19 CFR 351.218(d)(1)(ii). We note that the Department considers each of the orders listed above as separate and distinct orders and, therefore, requires order-specific submissions. Because the case numbers are the same for many of the orders covering differing classes or kinds of antifriction bearings, we request that all submissions clearly identify the order for which the submission is being made by country and product name as listed above. In accordance with the *Sunset Regulations*, if we do not receive a notice of intent to participate from at least one domestic interested party by the 15-day deadline, the Department will automatically revoke the order without further review.

If we receive an order-specific notice of intent to participate from a domestic interested party, the *Sunset Regulations* provide that *all parties* wishing to participate in the sunset review must file substantive responses not later than 30 days after the date of publication in the **Federal Register** of the notice of initiation. The required contents of a substantive response, on an order-specific basis, are set forth in the *Sunset Regulations* at 19 CFR 351.218(d)(3). Note that certain information requirements differ for foreign and domestic parties. Also, note that the Department's information requirements are distinct from the International Trade Commission's information requirements. Please consult the *Sunset Regulations* for information regarding the Department's conduct of sunset reviews.[1] Please consult the Department's regulations at 19 CFR part 351 (1998) for definitions of terms and for other general information concerning antidumping and countervailing duty proceedings at the Department.

This notice of initiation is being published in accordance with section 751(c) of the Act and 19 CFR 351.218(c).

Dated: March 26, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99–8070 Filed 3–31–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

January 1999 Sunset Reviews: Final Results and Revocations

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Final Results of Sunset Reviews and Revocation of Antidumping Duty Orders: Brazing Copper Wire & Rod from New Zealand (A–614–502), Brazing Copper Wire & Rod from South Africa (A–791–502), and Cellular Mobile Phones from Japan (A–588–405).

SUMMARY: On January 4, 1999, the Department of Commerce ("the Department") initiated sunset reviews of the antidumping duty orders on brazing copper wire and rod from New Zealand, brazing copper wire and rod from South Africa, and cellular mobile phones from Japan. Because no domestic party responded to the sunset review notice of initiation by the applicable deadline, the Department is revoking these orders.

EFFECTIVE DATE: January 1, 2000.

[1] A number of parties commented that these interim-final regulations provided insufficient time for rebuttals to substantive responses to a notice of initiation (*Sunset Regulations*, 19 CFR 351.218(d)(4)). As provided in 19 CFR 351.302(b) (1998), the Department will consider individual requests for extension of that five-day deadline based upon a showing of good cause.

FOR FURTHER INFORMATION CONTACT: Darla D. Brown or Melissa G. Skinner, Office of Policy, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–3207 or (202) 482–1560, respectively.

SUPPLEMENTARY INFORMATION:

Background

The Department issued antidumping duty orders on brazing copper wire and rod from New Zealand (50 FR 49740, December 4, 1985), brazing copper wire and rod from South Africa (51 FR 3640, January 29, 1986), and cellular mobile phones from Japan (50 FR 51724, December 19, 1985). Pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act"), the Department initiated sunset reviews of these orders by publishing notice of the initiation in the **Federal Register** (64 FR 364, January 4, 1999). In addition, as a courtesy to interested parties, the Department sent letters, via certified and registered mail, to each party listed on the Department's most current service list for these proceedings to inform them of the automatic initiation of a sunset review on these orders.

No domestic interested parties in the sunset reviews of these orders responded to the notice of initiation by the January 19, 1999, deadline (*see* section 351.218(d)(1)(i) of *Procedures for Conducting Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders*, 63 FR 13520 (March 20, 1998) ("*Sunset Regulations*")).

Determination To Revoke

Pursuant to section 751(c)(3)(A) of the Act and section 351.218(d)(1)(iii)(B)(*3*) of the *Sunset Regulations*, if no interested party responds to the notice of initiation, the Department shall issue a final determination, within 90 days after the initiation of the review, revoking the finding or order or terminating the suspended investigation. Because no domestic interested party responded to the notice of initiation by the applicable deadline, January 19, 1999, we are revoking these antidumping duty orders.

Effective Date of Revocation and Termination

Pursuant to section 751(c)(6)(A)(iv) of the Act, the Department will instruct the United States Customs Service to terminate the suspension of liquidation of the merchandise subject to these orders entered, or withdrawn from warehouse, on or after January 1, 2000.

Entries of subject merchandise prior to the effective date of revocation will continue to be subject to suspension of liquidation and antidumping duty deposit requirements. The Department will complete any pending administrative reviews of these orders and will conduct administrative reviews of all entries prior to the effective date of revocation in response to appropriately filed requests for review.

Dated: March 26, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99–8075 Filed 3–31–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–054]

Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan: Final Court Decisions and Amended Final Results of Antidumping Duty Administrative Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Final Court Decisions and Amended Final Results of Antidumping Duty Administrative Reviews.

SUMMARY: On December 16, 1991, the Department of Commerce (the Department) published the final results of its administrative review of the antidumping finding on tapered roller bearings (TRBs), finished and unfinished, and parts thereof, from Japan during the period August 1, 1988 through July 31, 1989. *See Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Certain Components Thereof, from Japan; Final Results of Antidumping Duty Administrative Review* 56 FR 65228. Subsequent to our publication of these final results, parties to the proceeding challenged certain aspects of our final results determinations before the Court of International Trade (CIT) (the Court) and, in certain instances, before the United States Court of Appeals for the Federal Circuit (CAFC).

The Court recently affirmed final remand results with respect to the 1988–89 final results. As there are now final and conclusive court decisions with respect to litigation for these final results, where applicable, we are amending our final results of review and will subsequently instruct customs to liquidate entries subject to these reviews.

EFFECTIVE DATE: April 1, 1999.

FOR FURTHER INFORMATION CONTACT: Ilissa Kabak or John Kugelman, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–1395 or (202) 482–0649, respectively.

SUPPLEMENTARY INFORMATION:

Background

Below is a summary of the litigation for the 1988–1989 final results for which the Court has issued final and conclusive decisions. It is important to note that, due to the fact that litigation for each TRBs final results was unconsolidated, the Court issued two or more orders throughout the course of litigation which required us to recalculate a respondent's final results margin several times. To ensure the accurate calculation of amended final results, any recalculation we performed for a given respondent pursuant to a specific order reflected all recalculations we performed for that respondent pursuant to earlier orders. As a result, the last Court order requiring a recalculation of a respondent's margin reflects the final amended margin for the respondent, provided that final and conclusive decisions have been made by the Court with respect to litigation which affected the respondent's final results.

On December 16, 1991, we published in the **Federal Register** our notice of the final results of administrative reviews for the 1988–89 period of review (POR). This notice covered the administrative reviews for (1) Koyo Seiko Co., Ltd. (Koyo), (2) NSK Ltd. (INSK), (3) Isuzu Motors, Ltd., (4) Toyota Motors Corporation, and (5) Nachi-Fujikoshi Corporation. Subsequent to the publication of these final results, Koyo, NSK, and The Timken Company (Timken), the petitioners in this case, challenged certain issues before the CIT (Court Nos. 92–01–00047, 92–01–00028, and 92–01–00031, respectively). The CIT has issued final and conclusive decisions with respect to each of these proceedings.

The decisions issued by the Court with respect to the Department's final results for Koyo were:

- *Koyo v. U.S.*, Slip Op. 93–87 (June 1, 1993) (The CIT ruled in favor of the Department on all issues and dismissed the case).
- *Timken v. U.S.*, Slip Op,. 94–107 (July 1, 1994) (The CIT ordered the Department to recalculate the foreign market value without a circumstance-of-sale adjustment and reconsider its treatment of commissions and home market pre-sale freight expenses where foreign market value was calculated using purchase price).
- *Timken v. U.S.*, Slip Op. 96–126 (August 7, 1996) (On December 28, 1994, the CIT granted a stay in the Timken proceedings pending a decision by the CAFC with respect to the Japanese value added tax (VAT) issue in *Koyo v. U.S.*, CAFC Nos. 94–1097, –1044. Based on a motion by plaintiff (Timken), in Slip Op. 96–126 the CIT lifted the stay in these proceedings and remanded the case to the Department to apply the tax-neutral VAT adjustment methodology approved by the CAFC in *Koyo v. U.S.*, 63 F.3d 1572 (Fed. Cir. 1995). The CIT affirmed these results and dismissed the 92–01–00031 litigation in Slip Op. 98–79 on June 17, 1998).

The decisions issued by the Court with respect to the Department's final results for NSK were:

- *NSK v. U.S.*, Slip OP. 93–211 (November 5, 1993) (The CIT ruled in favor of the Department on all issues and dismissed the case.
- *Timken v. U.S.*, Slip Op,. 94–107 (July 1, 1994) (The CIT ordered the Department to recalculate the foreign market value without a circumstance-of-sale adjustment and reconsider its treatment of commissions and home market pre-sale freight expenses where foreign market value was calculated using purchase price).
- *Timken v. U.S.*, Slip Op. 96–126 (August 7, 1996) (On December 28, 1994, the CIT granted a stay in the Timken proceedings pending a decision by the CAFC with respect to the Japanese value added tax (VAT) issue in *Koyo v. U.S.*, CAFC Nos. 94–1097, –1044. Based on a motion by plaintiff (Timken), in Slip Op. 96–126 the CIT lifted the stay in these proceedings and remanded the case to the Department to apply the tax-neutral VAT adjustment methodology approved by the CAFC in *Koyo v. U.S.*, 63 F.3d 1572 (Fed. Cir. 1995). The CIT affirmed these results and dismissed the 92–01–00031 litigation in Slip Op. 98–79 on June 17, 1998).

Status

All Other Firms: No firms except Koyo and NSK pursued litigation and the existing litigation had no impact on their final results. Because the Department has not yet issued instructions to Customs to liquidate entries made by these firms during the applicable period, where appropriate, we will issue instructions to Customs to liquidate entries of merchandise subject to the antidumping funding made by these firms pursuant to our December 16, 1991, 1988–89 final results.

Koyo: As there are now final and conclusive court decisions with respect to both the 92–01–00031 (Timken) and 92–01–00047 (Koyo) litigation, we are amending our final results of review for Koyo based on the last court order

which required a recalculation of Koyo's rate (*Timken v. U.S.*, Sip Op. 96–126). The amended final results margin for Koyo is 16.09%. We will issue instructions to Customs to liquidate entries of subject merchandise made by Koyo during this period pursuant to these amended final results.

NSK: As there are now final and conclusive court decisions with respect to both the 92–01–00031 (Timken) and 92–01–00028 (NSK) litigation, we are amending our final results of review for NSK based on the last court order which required a recalculation of NSK's rate (*Timken v. U.S.*, Slip Op. 96–126). The amended final results margin for NSK is 6.01%. We will issue instructions to Customs to liquidate entries of subject merchandise made by NSK during this period pursuant to these amended final results.

Amendment to Final Determinations

Pursuant to 19 U.S.C. 1516a(e), we are now amending the final results of the 1988–89 administrative review of the antidumping finding on TRBs from Japan. The weighted-average margins are:

Manufacturer/exporter	Margin (percent)
Koyo Seiko Company, Ltd	[1] 16.09
NSK Ltd	[1] 6.01
Isuzu Motors, Ltd	[2] 15.89
Toyota Motors Corporation	[2] 15.89
Nachi-Fujikoshi Corporation	[3] 18.07

[1] Pursuant to these amended final results.
[2] BIA rate-highest rate for any other reviewed firm.
[3] No shipments, margin from last review in which there were shipments.

The above rates will become the antidumping duty deposit rates for those firms that have not had a deposit rate established for them in subsequent reviews.

Accordingly, the Department will determine and Customs will assess appropriate antidumping duties on entries of the subject merchandise made by firms covered by the review of the period listed above. Individual differences between United States price and foreign market value may vary from the percentages listed above. The Department will issue appraisement instructions directly to Customs.

Dated: March 18, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99–8039 Filed 3–31–99; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

International Trade Administration

Quarterly Update to Annual Listing of Foreign Government Subsidies on Articles of Cheese Subject to an In-Quota Rate of Duty

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Publication of Quarterly Update to Annual Listing of Foreign Government Subsidies on Articles of Cheese Subject to an In-Quota Rate of Duty.

SUMMARY: The Department of Commerce, in consultation with the Secretary of Agriculture, has prepared its quarterly update to the annual list of foreign government subsidies on articles of cheese subject to an in-quota rate of duty during the period October 1, 1998 through December 31, 1998. We are publishing the current listing of those subsidies that we have determined exist.

EFFECTIVE DATE: April 1, 1999.

FOR FURTHER INFORMATION CONTACT: Russell Morris or Tipten Troidl, Office of AD/CVD Enforcement VI, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave., NW, Washington, DC 20230, telephone: (202) 482–2786.

SUPPLEMENTARY INFORMATION: Section 702(a) of the Trade Agreements Act of 1979 (as amended) (the Act) requires the Department of Commerce (the Department) to determine, in consultation with the Secretary of Agriculture, whether any foreign government is providing a subsidy with respect to any article of cheese subject to an in-quota rate of duty, as defined in section 702(g)(b)(4) of the Act, and to publish an annual list and quarterly updates of the type and amount of those subsidies. We hereby provide the Department's quarterly update of subsidies on cheeses that were imported during the period October 1, 1998 through December 31, 1998.

The Department has developed, in consultation with the Secretary of Agriculture, information on subsidies (as defined in section 702 (g)(b)(2) of the Act) being provided either directly or indirectly by foreign governments on articles of cheese subject to an in-quota rate of duty. The appendix to this notice lists the country, the subsidy program or programs, and the gross and net amounts of each subsidy for which information is currently available.

The Department will incorporate additional programs which are found to constitute subsidies, and additional information on the subsidy programs listed, as the information is developed.

The Department encourages any person having information on foreign government subsidy programs which benefit articles of cheese subject to an in-quota rate of duty to submit such information in writing to the Assistant Secretary for Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

This determination and notice are in accordance with section 702(a) of the Act.

Dated: March 26, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

APPENDIX—SUBSIDY PROGRAMS ON CHEESE SUBJECT TO AN IN-QUOTA RATE OF DUTY

Country	Program(s)	Gross [1] Subsidy	Net [2] Subsidy
Austria	European Union Restitution Payments	$0.25	$0.25
Belgium	EU Restitution Payments	0.10	0.10
Canada	Export Assistance on Certain Types of Cheese	0.22	0.22
Denmark	EU Restitution Payments	0.18	0.18
Finland	EU Restitution Payments	0.28	0.28
France	EU Restitution Payments	0.20	0.20
Germany	EU Restitution Payments	0.20	0.20
Greece	EU Restitution Payments	0.00	0.00
Ireland	EU Restitution Payments	0.18	0.18
Italy	EU Restitution Payments	0.03	0.03
Luxembourg	EU Restitution Payments	0.10	0.10
Netherlands	EU Restitution Payments	0.10	0.10

APPENDIX—SUBSIDY PROGRAMS ON CHEESE SUBJECT TO AN IN-QUOTA RATE OF DUTY—Continued

Country	Program(s)	Gross[1] Subsidy	Net[2] Subsidy
Norway	Indirect (Milk) Subsidy	0.33	0.33
	Consumer Subsidy	0.15	0.15
Total		0.48	0.48
Portugal	EU Restitution Payments	0.14	0.14
Spain	EU Restitution Payments	0.14	0.14
Switzerland	Deficiency Payments	0.24	0.24
U.K.	EU Restitution Payments	0.14	0.14

[1] Defined in 19 U.S.C. 1677(5).
[2] Defined in 19 U.S.C. 1677(6).

[FR Doc. 99–8077 Filed 3–31–99; 8:45 am]
BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

December 1998 Sunset Reviews: Corrected Final Results and Revocations

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Correction to Final Results and Revocations of December 1998 Sunset Reviews: Agricultural Tillage Tools from Brazil (C–351–406).

SUMMARY: On March 8, 1999, the Department of Commerce ("the Department") published in the **Federal Register** (64 FR 10993) the final results of the December 1998 sunset review of the countervailing duty order on tillage tools from Brazil and its revocation. Subsequent to the publication of the final results, we identified an inadvertent error in the action line of the notice. Specifically, the action was identified as concerning agricultural tillage tools from Argentina, not Brazil. Therefore, we are correcting this inadvertent error. As noted in the body of the original notice, the review addresses the countervailing duty order on agricultural tillage tools from Brazil.

FOR FURTHER INFORMATION CONTACT: Scott E. Smith or Melissa G. Skinner, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th St. & Constitution Ave., NW, Washington, DC 20230: telephone (202) 482–6397 or (202) 482–1560, respectively.

This amendment is issued and published in accordance with sections 751(h) and 777(i) of the Act.

Dated: March 26, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99–8076 Filed 3–31–99; 8:45 am]
BILLING CODE 3510–DS–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Proposed Information Collection; Comment Request

AGENCY: Corporation for National and Community Service.

ACTION: Notice and request for comments.

SUMMARY: The Corporation for National and Community Service (hereinafter the "Corporation"), as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirement on respondents can be properly assessed. Currently, the Corporation is soliciting comments concerning its request for approval of a new information collection from organizations that conduct literacy and tutoring activities under the sponsorship of Corporation grants. This information will be used by the Corporation to evaluate the nature and effectiveness of the programs. Copies of the proposed information collection request may be obtained by contacting the office listed below in the **ADDRESSES** section of this notice.

The Corporation is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Corporation, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Propose ways to enhance the quality, utility and clarity of the information to be collected; and
- Propose ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section by June 1, 1999.

ADDRESSES: Send comments to the Corporation for National and Community Service, Attn: Susan Labin, Office of Evaluation, 1201 New York Avenue, N.W., 9th floor, Washington, D.C. 20525.

FOR FURTHER INFORMATION CONTACT: Susan Labin, (202) 606–5000, ext. 160.

SUPPLEMENTARY INFORMATION:

Background

One of the six major legislative "findings" of the Corporation for National Service is that "Americans * * * become better citizens through service to the United States." Of the eight legislative purposes of the agency, educational development and civic responsibility are benefits that are intended to accrue to those who serve (42 U.S.C. 12501.(a)(b)). These purposes are reflected in the Corporation's vision statement which is expanding the sense of community and creating an active

citizenship where Americans feel greater responsibility toward others. Similarly the mission statement of the agency speaks directly to the benefits of service:

"In doing so [engaging in service], the Corporation will foster civic responsibility, strengthen the ties that bind us together as a people, and provide educational opportunity for those who make a substantial commitment to service."

Thus, a central purpose of the agency and its programs is to foster citizenship and development for those who serve. This study will look at the effects of service on the members who serve in the three Americorps programs: State/National, Volunteers in Service to America (VISTA), and National Civilian Community Corps (NCCC). Approximately 40,000 citizens serve in Americorps each year.

Current Action

The objectives of this study are to: describe the outcomes that are associated with serving and document changes in those outcomes over time; identify factors explaining variation in outcomes at different stages of time; and, to the degree possible, specify the causal influences of national service on its members. Outcome domains will include attitudes and behaviors for civic engagement, education, employment, and life skills.

To meet these objectives, the study will select a nationally representative sample of incoming AmeriCorps members from a sufficient number of programs to generalize overall population. It will collect data from a self-report survey measuring the above life outcomes for AmeriCorps members, as well as individual background characteristics. This will require baseline data at entry to the program as well as repeated measurements over a several years time period. In order to address the issue of causality, or the direct influence that service had on the outcomes, the study will include a comparison group for each of the three programs. The program's populations and service activities are very diverse and require separate sampling plans and separate comparison groups. In addition, the study will incorporate a smaller retrospective study of former AmeriCorps members carried out in combination with the main longitudinal study. In this way, information from previous members on outcomes over the past several years will be available sooner than the larger longitudinal study of new members.

The Corporation seeks approval of the survey that will be filled be responded to by the AmeriCorps members.

Type of Review: New approval.
Agency: Corporation for National and Community Service.
Title: Longitudinal Study of Member Outcomes.
OMB Number: None.
Agency Number: None.
Affected Public: Current and former Americorps members.
Total Respondents: Approximately 6,950.
Frequency: One time.
Average Time Per Response: 45 minutes.
Estimated Total Burden Hours: 5,213 hours.
Total Burden Cost (capital/startup): None.
Total Burden Cost (operating/maintenance): None.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: March 29, 1999.

Thomas L. Bryant,

Acting General Counsel.

[FR Doc. 99–8080 Filed 3–31–99; 8:45 am]

BILLING CODE 6050–28–U

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting of the Senior Advisory Board on National Security

AGENCY: Department of Defense, Office of the Under Secretary of Defense (Policy).

ACTION: Notice of partially closed meeting.

SUMMARY: This notice has been revised to reflect a new meeting location. Current world events necessitated moving the meeting site to accommodate key participants.

The Senior Advisory Board on National Security will meet in open and closed sessions on April 5–6, 1999. The Board was chartered by the Secretary of Defense to conduct a comprehensive review of the early twenty-first century global security environment; develop appropriate national security objectives and a strategy to attain these objectives; and recommend concomitant changes to the national security apparatus as necessary.

The Senior Advisory Board will meet in open session on the afternoon of 5 April with American business executives to discuss corporation forecasting methods and variables that corporations use in strategic planning. The closed session will occur on 6 April. At this session the Senior Advisory Board will review and discuss inputs for the Phase 1 report that the Study Group has prepared and that are based on classified material concerning global regional trends and possible conflict situations.

In accordance with section 10(d) of the Federal Advisory Committee Act, Public Law 92–463, as amended [5 U.S.C., Appendix II], it is anticipated that matters affecting national security, as covered by 5 U.S.C. 552b(c)(1)(1988), will be presented throughout the meeting on 6 April, and that, accordingly, the meeting will be closed to the public.

DATES: Monday, 5 April 1:30–5:00 p.m. (open); Tuesday, 6 April 8:30 a.m.–4:30 p.m. (Closed).

ADDRESSES: Crystal City Marriott Hotel, Salon E, 1999 Jefferson Davis Highway, Arlington, VA 22202; phone 703–413–5500.

FOR FURTHER INFORMATION CONTACT: Dr. Keith A. Dunn, National Security Study Group, Suite 532, Crystal Mall 3, 1931 Jefferson Davis Highway, Arlington, VA 22203–3805. Telephone 703–602–4175.

Dated: March 25, 1999.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 99–7845 Filed 3–31–99; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Department of the Air Force

Notice of Intent To Grant an Exclusive Patent License

Pursuant to the provisions of Part 404 of Title 37, Code of Federal Regulations, which implements Public Law 96–517, the Department of the Air Force announces its intention to grant Laser Photonics Technology, Inc. (hereafter Laser Photonics), a private company doing business in Amherst, NY, an exclusive license in any right, title and interest the Air Force has in: United States Patent No. 5,770,737 issued June 23, 1998 and filed in the name of Air Force employee Bruce A. Reinhardt and non-Air Force inventors Jayprakash C. Bhatt, Lawrence L. Brott, and Stephen J. Clarson for "An Asymmetrical Dye With Large Two-Photon Absorption Cross-Sections;" United States Patent No. 5,859,251 issued January 12, 1999 and filed in the name of Air Force employee Bruce A. Reinhardt and non-Air Force inventors Ramamurthi Kannan, Lawrence L. Brott, and Stephen J.

Clarson for "Symmetrical Dyes With Large Two-Photon Absorption Cross-Section;" and for Air Force Disclosure 332 filed in the United States Patent and Trademark Office on March 8, 1999 in the name of Air Force employee Bruce A. Reinhardt and non-Air Force inventor Ramamurthi Kannan for "Benzothiazole-Containing Two-Photon Chromophores Exhibiting Strong Frequency Up Conversion."

An exclusive license to the two patents and patent application described above will be granted unless an objection thereto, together with a request for an opportunity to be heard, if desired, is received in writing by the addressee set forth below within 60 days from the date of publication of this Notice. Information concerning the application may be obtained, on request, from the same addressee.

All communications concerning this Notice should be sent to Mr. Randy Heald, Patent Attorney, SAF/GCQ, 1740 Air Force Pentagon, Washington, DC 20330–1740, Telephone No. (703) 588–5091.

Carolyn A. Lunsford,

Air Force Federal Register Liaison Officer.

[FR Doc. 99–8037 Filed 3–31–99; 8:45 am]

BILLING CODE 5001–05–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Intent To Grant Exclusive Patent License; Madison Technology International, Ltd

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The Department of the Navy hereby gives notice of its intent to grant Madison Technology International, Ltd., a revocable, nonassignable, exclusive license in the United States, to practice the Government-owned inventions described in U.S. Patent No. 5,379,270 entitled "Acoustic-optic Sound Velocity Profiler" and U.S. Patent No. 5,339,285 entitled "Monolithic Low Noise Preamplifier for Piezoelectric Sensors" in the field of underwater acoustic systems.

DATES: Anyone wishing to object to the grant of this license must file written objections along with supporting evidence, if any, not later than June 1, 1999.

ADDRESSES: Written objections are to be filed with the Naval Undersea Warfare Center Division, Newport, 1176 Howell St., Bldg 112T, Code OOOC, Newport, Rhode Island 02841.

FOR FURTHER INFORMATION CONTACT: Mr. M.J. McGowan, Deputy Counsel-Patents, Naval Undersea Warfare Center Division, Newport, 1176 Howell St., Bldg 112T, Code OOOC, Newport, Rhode Island 02841, telephone (401) 832–4736.

(Authority: 35 U.S.C. 207, 37 CFR Part 404)

Dated: March 25, 1999.

Pamela A. Holden,

Lieutenant Commander, Judge Advocate General's Corps, United States Navy, Federal Register Liaison Officer.

[FR Doc. 99–8034 Filed 3–31–99; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Acting Leader, Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before June 1, 1999.

ADDRESSES: Written comments and requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 400 Maryland Avenue, S.W., Room 5624, Regional Office Building 3, Washington, D.C. 20202–4651, or should be electronically mailed to the internet address *Pat__Sherrill@ed.gov*, or should be faxed to 202–708–9346.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Leader, Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above. The Department of Education is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: March 26, 1999.

William E. Burrow,

Acting Leader, Information Management Group, Office of the Chief Information Officer.

Office of Postsecondary Education

Type of Review: New.
Title: Distance Education Demonstration Program Annual Evaluation.
Frequency: Annually.
Affected Public: Not-for-profit institutions; individuals or households; businesses or other for-profit.
Reporting and Recordkeeping Hour Burden:
Responses: 13,515.
Burden Hours: 1,485.
Abstract: The Distance Education Demonstration Program is a new program designed to test the quality and viability of expanded distance education programs that are currently restricted by provisions of the Higher Education Act (HEA). The HEA requires the Department to report to Congress annually on the results and specifies the areas which must be addressed.

Office of the Under Secretary

Type of Review: New.
Title: Evaluation of the Eisenhower Professional Development Program: State and Local Activities.

Frequency: One time.

Affected Public: State, local or Tribal Government; SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 800

Burden Hours: 600.

Abstract: Professional Development Program and to report on the progress of professional development activities supported by the program, the effects of the program participation on classroom teaching, and the quality of program planning and coordination. Clearance is sought for the National Profile, Teacher Activity Survey, to be conducted in the Spring of the 1998–99 school year. Respondents will be teachers.

[FR Doc. 99–8003 Filed 3–31–99; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

National Assessment Governing Board; Submission for OMB Review; Comment Request

AGENCY: National Assessment Governing Board, Education.

ACTION: Submission for OMB review; comment request.

SUMMARY: The Executive Director, National Assessment Governing Board invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before May 1, 1999.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Danny Werfel, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address Werfeld@a1.eop.gov. Requests for copies of the proposed information collection requests should be addressed to Steven Gorman, National Assessment Governing Board, 800 North Capitol Street, NW., Suite 825, Washington, DC 20002–4233 or should be electronically mailed to *Steven Gorman@ed.gov* or should be faxed to 202–275–6063.

FOR FURTHER INFORMATION CONTACT: Steven Gorman at 202–357–7502 by telephone, Steven__Gorman@ED.GOV by electronic mail, or Steven Gorman, National Assessment Governing Board, 800 North Capitol Street, NW., Suite 825, Washington, DC 20002–4233 by regular mail.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Executive Director, National Assessment Governing Board, publishes this notice containing proposed information collection requests prior to submission of this request to OMB. The proposed information collection contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are available from Steven Gorman at the address specified above.

Roy Truby,

Executive Director, National Assessment Governing Board.

Type of Review: New.

Title: Similarities Classification Validation Research Study for 1998 Civics National Assessment of Educational Progress.

Frequency: Once.

Affected Public: Individuals or households.

Reporting and Recordkeeping Hour Burden:

Responses: 1,500.

Burden Hours: 2,899.

Abstract: The student classification study involves teachers' estimates of the academic ability of their students and of their students' performance on the NAEP relative to each achievement level. Teachers will also classify performance of "anonymous" students represented in assessment booklets. These estimates are made with respect to the assessment framework and achievement levels descriptions. Teachers will not know how individual students performed on the assessment. The correspondence between classifications by teachers and classifications based on student performances will be measured.

[FR Doc. 99–8082 Filed 3–31–99; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Department of Energy Implementation Plan for Recommendation 98–1 of the Defense Nuclear Facilities Safety Board; Plan To Address and Resolve Safety Issues Identified by Internal Independent Oversight

AGENCY: Department of Energy.

ACTION: Notice.

SUMMARY: The Defense Nuclear Facilities Safety Board (DNFSB) published Recommendation 98–1, concerning the effectiveness of the Department of Energy (DOE) process to address and resolve the environment, safety and health issues identified by internal independent oversight, on October 6, 1998 (63 FR 53646). Under section 315(e) of the Atomic Energy Act of 1954, 42 U.S.C. 2286d(e), the DOE must transmit an implementation plan for Recommendation 98–1 to the DNFSB after acceptance of the Recommendation by the Secretary. The DOE's implementation plan was transmitted to the DNFSB on March 10, 1999, and is available for review in the DOE Public Reading Rooms.

ADDRESSES: Send comments, data, views, or arguments concerning the implementation plan to: U. S. Department of Energy, 1000 Independence Avenue, SW, Washington, DC, 20585.

FOR FURTHER INFORMATION CONTACT: Mr. Richard C. Crowe, Director, Safety Management Implementation Team, U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, D.C., 20585.

Issued in Washington, DC, on March 25, 1999.

Mark B. Whitaker, Jr.,

Departmental Representative to the Defense Nuclear Facilities Safety Board.

The Secretary of Energy,

Washington, DC 20585

March 10, 1999.

Hon. **John T. Conway,**

Chairman, Defense Nuclear Facilities Safety Board, Washington, DC 20004.

Dear Mr. Chairman: We are pleased to forward the enclosed Implementation Plan (Plan) for Defense Nuclear Facilities Safety Board's (Board) Recommendation 98–1, *Department of Energy Plan to Address and Resolve Safety Issues Identified by Internal Independent Oversight.*

This Plan addresses the Department's need for a clearly defined, systematic, and comprehensive process to address and resolve safety issues identified by internal independent oversight. Specifically, the Department is taking the following actions to address its needs:

- We are establishing a disciplined process and clarifying roles and responsibilities for the identification of, and response to, safety issues.
- We are establishing clearer direction on elevating any disputed issues for resolution to the Office of the Secretary, if necessary.
- We are establishing a tracking and reporting system to manage completion of corrective actions effectively.

The Plan directly supports implementation of Integrated Safety Management and was prepared by a cross-organizational team reporting directly to me. I have assigned Mr. Richard Crowe, Director of the Safety Management Implementation Team, as my Responsible Manager for executing this Plan. Mr. Crowe can be reached at (202) 586–1418.

We appreciate the advice and support provided by the Board and its staff during the development of this Plan.

Yours sincerely,

Bill Richardson.

Enclosure.

[FR Doc. 99–8059 Filed 3–31–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[Docket No. FE C&E 99–3, C&E 99–4, C&E 99–5 and C&E 99–6, Certification Notice—170]

Office of Fossil Energy; Notice of Filings of Coal Capability of Panda Guadalupe Power, L.P., Lake Road Generating Co., Sabine Cogen, L.P. and Rathdrum Power, LLC, Powerplant and Industrial Fuel Use Act

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of Filing.

SUMMARY: Panda Guadalupe Power, L.P., Lake Road Generating Company, L.P., Sabine Cogen, L.P. and Rathdrum Power, LLC have submitted coal capability self-certifications pursuant to section 201 of the Powerplant and Industrial Fuel Use Act of 1978, as amended.

ADDRESSES: Copies of self-certification filings are available for public inspection, upon request, in the Office of Coal & Power Im/Ex, Fossil Energy, Room 4G–039, FE–27, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Ellen Russell at (202) 586–9624.

SUPPLEMENTARY INFORMATION: Title II of the Powerplant and Industrial Fuel Use Act of 1978 (FUA), as amended (42 U.S.C. 8301 *et seq.*), provides that no new baseload electric powerplant may be constructed or operated without the capability to use coal or another alternate fuel as a primary energy source. In order to meet the requirement of coal capability, the owner or operator of such facilities proposing to use natural gas or petroleum as its primary energy source shall certify, pursuant to FUA section 201(d), to the Secretary of Energy prior to construction, or prior to operation as a base load powerplant, that such powerplant has the capability to use coal or another alternate fuel. Such certification establishes compliance with section 201(a) as of the date filed with the Department of Energy. The Secretary is required to publish a notice in the **Federal Register** that a certification has been filed. The following owners/operators of the proposed new baseload powerplants have filed a self-certification in acccordance with section 201(d).

Owner: Panda Guadalupe Power, L.P. (C&E 99–3).
Operator: Panda Guadalupe Power, L.P.
Location: Guadalupe County, TX.
Plant Configuration: Combined cycle.
Capacity: 1,000 megawatts.
Fuel: Natural gas.
Purchasing Entities: Unspecified wholesale power purchasers.
In-Service Date: December, 2000.

Owner: Lake Road Generating Company, L.P. (C&E 99–4).
Operator: Lake Road Generating Company, L.P.
Location: the Town of Killingly, CT.
Plant Configuration: Combined cycle.
Capacity: 792 megawatts.
Fuel: Natural gas.
Purchasing Entities: Unspecified wholesale power purchasers in New England.
In-Service Date: June, 2001.

Owner: Sabine Cogen, L.P. (C&E 99–5).
Operator: Air Liquide America Corporation (or an affiliate thereof).
Location: Orange County, TX.
Plant Configuration: Combined cycle.
Capacity: 100 megawatts.
Fuel: Natural gas.
Purchasing Entities: Bayer Chemical Company, Entergy Gulf States, Inc. and to wholesale power purchasers.
In-Service Date: November, 1999.

Owner: Rathdrum Power, LLC (C&E 99–6).
Operator: Rathdrum Operating Services, Inc.
Location: Rathdrum, Idaho.
Plant Configuration: Combined cycle.
Capacity: 270 megawatts.
Fuel: Natural gas.
Purchasing Entities: Avista Energy, Inc.
In-Service Date: October 1, 2001.

Issued in Washington, DC, March 26, 1999.

Anthony J. Como,

Manager, Electric Power Regulation, Office of Coal & Power Im/Ex, Office of Coal & Power Systems, Office of Fossil Energy.

[FR Doc. 99–8060 Filed 3–31–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Energy Information Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Energy Information Administration, DOE.

ACTION: Agency information collection activities: Proposed collection; comment request.

SUMMARY: The Energy Information Administration (EIA) is soliciting comments on the proposed extension to the forms listed below:

EIA–14, "Refiners' Monthly Cost Report;"
EIA–182, "Domestic Crude Oil First Purchase Report;"
EIA–782A, "Refiners'/Gas Plant Operators' Monthly Petroleum Product Sales Report;"
EIA–782B, "Resellers'/Retailers' Monthly Petroleum Product Sales Report;"
EIA–782C, "Monthly Report of Petroleum Products Sold Into States for Consumption;"
EIA–821, "Annual Fuel Oil and Kerosene Sales Report;"
EIA–856, "Monthly Foreign Crude Oil Acquisition Report;"
EIA–863, "Petroleum Product Sales Identification Survey;"
EIA–877, "Winter Heating Fuels Telephone Survey;"
EIA–878, "Motor Gasoline Price Survey," and
EIA–888, "On-Highway Diesel Fuel Price Survey;"

DATES: Written comments must be submitted on or before June 1, 1999. If you anticipate difficulty in submitting comments within the 60 days, contact the person identified below as soon as possible.

ADDRESSES: Send comments to Jacob Bournazian, Energy Information Administration, EI-42, Forrestal Building, U.S. Department of Energy, Washington, DC 20585. Alternatively, Jacob Bournazian may be reached by phone at (202) 586–1256, by e-mail

Jacob.Bournazian@eia.doe.gov, or by FAX (202) 586–4913.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the forms and instructions should be directed to Jacob Bournazian at the addresses listed above.

SUPPLEMENTARY INFORMATION:

I. Background
II. Current Actions
III. Request for Comments

I. Background

The Federal Energy Administration Act of 1974 (Pub. L. 93–275, 15 U.S.C. 761 *et seq.*) and the Department of Energy Organization Act (Pub. L. 95–91, 42 U.S.C. 7101 *et seq.*) requires the Energy Information Administration (EIA) to carry out a centralized, comprehensive, and unified energy information program. This program collects, evaluates, assembles, analyzes, and disseminates information on energy resource reserves, production, demand, technology, and related economic and statistical information. This information is used to assess the adequacy of energy resources to meet near and longer term domestic demands.

The EIA, as part of its effort to comply with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35), provides the general public and other Federal agencies with opportunities to comment on collections of energy information conducted by or in conjunction with the EIA. Any comments received help the EIA to prepare data requests that maximize the utility of the information collected, and to assess the impact of collection requirements on the public. Also, the EIA will later seek approval by the Office of Management and Budget (OMB) for the collections under section 3507(h) of the Paperwork Reduction Act of 1995.

The petroleum marketing survey forms collect information needed for determining the supply and demand of crude oil and refined petroleum products. These surveys provide a basic set of data pertaining to the structure, efficiency, and behavior of petroleum markets. These data are published by the Energy Information Administration in the *Monthly Energy Review, Annual Energy Review, Petroleum Marketing Monthly, Petroleum Marketing Annual, Weekly Petroleum Status Report,* and the *International Energy Outlook.*

II. Current Actions

EIA requests a one-year extension to the existing survey forms to collect data in calendar year 2000. EIA is requesting a one-year extension to minimize the cost and burden to survey respondents who are devoting significant resources during 1999 to make computer changes to their reporting systems for year 2000. In addition, EIA is also incurring computer system changes to prepare for year 2000.

III. Request for Comments

Prospective respondents and other interested persons are invited to comment on the actions discussed in item II. The following guidelines are provided to assist in the preparation of comments. Please indicate to which form(s) your comments apply.

General Issues

A. Is the proposed collection of information necessary for the proper performance of the functions of the agency and does the information have practical utility? Practical utility is defined as the actual usefulness of information to or for an agency, taking into account its accuracy, adequacy, reliability, timeliness, and the agency's ability to process the information it collects.

B. What enhancements can be made to the quality, utility, and clarity of the information to be collected?

As a Potential Respondent

A. Are the instructions and definitions clear and sufficient? If not, which instructions require clarification?

B. Can information be submitted by the due date?

C. Public reporting burdens for these collections are estimated to average per respondent:

EIA–14 = 1.6 hour; EIA–182 = 4.3 hours; EIA–782A = 15.0 hours; EIA–782B = 2.5 hours; EIA–782C = 2.1 hours; EIA–821 = 3.2 hours; EIA–856 = 6.1 hours; EIA–863 = 1.0; EIA–877 = 0.1 hour; EIA–878 = 0.05 hour; and EIA–888 = 0.05. The estimated burden includes the total time, effort, or financial resources expended to generate, maintain, retain, disclose and provide the information. Please comment on (1) the accuracy of the agency's estimate and (2) how the agency could minimize the burden of the collecting this information, including the use of information technology.

D. The agency estimates respondents will incur no additional costs for reporting other than the hours required to complete the collection. What is the estimated: (1) Total dollar amount annualized for capital and start-up costs; and (2) recurring annual costs of operation and maintenance, and purchase of services associated with this data collection?

E. Does any other Federal, State, or local agency collect similar information? If so, specify the agency, the data element(s), and the methods of collection.

As a Potential User

A. Is the information useful at the levels of detail indicated on the form?

B. For what purpose(s) would the information be used? Be specific.

C. Are there alternate sources for the information and are they useful? If so, what are their deficiencies and/or strengths?

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of the form. They also will become a matter of public record.

Statutory Authority: Section 3506 (c)(2)(A) of the Paperwork Reduction Act of 1995 (Pub. L. No. 104–13, 44 U.S.C. Chapter 35).

Issued in Washington, DC, March 26, 1999.

Renee H. Miller,

Acting Director, Statistics and Methods Group, Energy Information Administration.

[FR Doc. 99–8058 Filed 3–31–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG99–102–000]

AEE 2, L.L.C.; Notice of Filing

March 26, 1999.

On March 22, 1999, AEE 2, L.L.C. (AEE 2), c/o Mr. Henry Aszklar, Vice President, AES NY, L.L.C., 1001 North 19th Street, Arlington, VA 22209, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations. AEE 2 respectfully requests expedited action on this application by April 6, 1999.

AEE 2 is a Delaware limited liability company. AEE 2 intends to own, operate, and maintain the generating stations currently known as the Greenidge and Goudey stations, which are now owned by New York State Electric & Gas Corporation ("NYSEG") and its affiliate NGE Generation, Inc. (NGE). Electricity generated by the facilities will be sold at wholesale to one or more power marketers, utilities, cooperatives, or other wholesalers.

Any person desiring to be heard concerning the application for exempt wholesale generator status should file a motion to intervene or comments with the Federal Energy Regulatory Commission, 888 First Street, NE,

Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application. All such motions and comments should be filed on or before April 2, 1999, and must be served on the applicant. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection or on the Internet at http://www.ferc.fed.us/online/rims.htm (please call (202) 208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–7980 Filed 3–31–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM99–1–22–005]

CNG Transmission Corporation; Notice of Compliance Tariff Filing

March 26, 1999.

Take notice that on March 22, 1999, CNG Transmission Corporation (CNG), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheet, with an effective date of February 26, 1999:

Fifth Revised Sheet No. 354

CNG states that the purpose of this filing is to comply with directives of the Commission's February 26, 1999 Order on CNG's October 1, 1998 Transportation Cost Rate Adjustment (TCRA) filing. Specifically, CNG has modified language on its enclosed tariff sheet to reflect the Commission's directive to reinstate language requiring usage charge recovery of fuel costs in Section 16.5 of noted tariff sheet.

CNG states that copies of its letter of transmittal and enclosures are being mailed to parties of record in the captioned proceedings.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call (202) 208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–7981 Filed 3–31–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP85–221–108]

Frontier Gas Storage Company; Notice of Sale Pursuant to Settlement Agreement

March 26, 1999.

Take notice that on March 11, 1999, Frontier Gas Storage Company (Frontier), c/o Reid & Priest, Market Square, 701 Pennsylvania Ave., NW, Suite 800, Washington, DC 20004, in compliance with provisions of the Commission's February 13, 1985, Order in Docket No. CP82–487–000, *et al.*, submitted and executed Service Agreement, dated March 11, 1999, under Rate Schedule LVS–1 providing for the sale of all of Frontier's remaining storage gas inventory, not to exceed 6,850,000 MMBtu to WBI Production, Inc. on an "in place" basis. The sales price of the gas was not disclosed.

Under Subpart (b) of Ordering Paragraph (G) of the Commission's February 13, 1985, Order, Frontier is "authorized to consummate the proposed sale in place unless the Commission issues an order within 20 days after expiration of such notice period either directing that the sale not take place and setting it for hearing or permitting the sale to go forward and establishing other procedures for resolving the matter. Deliveries of gas sold in place shall be made pursuant to a schedule to be set forth in an exhibit to the executed service agreement."

Any person desiring to be heard or to make a protest with reference to said filing should, within 10 days of the publication of such notice in the **Federal Register**, file with the Federal Energy Regulatory Commission, 888 1st Street NE, Washington, DC 20426, a motion to intervene or protest in accordance with the requirements of the Commission's Rules of Practice and Procedures, 18 CFR 385.214 or 385.211. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at http://www.ferc.fed.us/online/rims.htm (please call (202) 208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–7983 Filed 3–31–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–258–001]

Midwestern Gas Transportation Company; Notice of Revised Cashout Report Refund Allocation Schedule

March 26, 1999.

Take notice that on March 12, 1999, Midwestern Gas Transmission Company (Midwestern) tendered for filing a revised Appendix C detailing the allocation of refunds associated with its annual report of cashout activity for the September 1995 through August 1996 period.

The 1995–1996 Cashout Report filed March 3, 1999, in Docket No. RP99–258–000 reflects that Midwestern's cashout operations for the 1995–1996 period experienced a net gain of $33,741. Midwestern will refund this gain to its firm shippers within 30 days of the Commission's acceptance of the cashout report through a demand surcharge. Midwestern has submitted a revised Appendix C to the 1995–1996 Cashout Report, which details the allocation of refunds associated with the cashout gain. The revisions to Appendix C to the cashout report affect the allocation of refunds to Midwestern's firm shippers but do not impact the total level of refunds to be credited.

Midwestern states that a copy of the report has been served upon affected customers, interested state commission, and all parties designated on the official service list.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 358.211 of the Commission's Rules and Regulations. All such protests must be filed on or before April 2, 1999. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings.

Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–7993 Filed 3–31–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–310–003]

Natural Gas Pipeline Company of America; Notice of Compliance Filing

March 26, 1999.

Take notice that on February 26, 1999, Natural Gas Pipeline Company of America (Natural) tendered for filing certain tariff sheets to be part of its FERC Gas Tariff, Sixth Revised Volume No. 1, to be effective August 1, 1998 and January 1, 1999.

Natural states that the filing is submitted pursuant to the Commission's order issued February 11, 1999 in Docket Nos. RP98–310–001 and 002, which approved tariff sheets that Natural filed on August 13, 1998 in Docket No. RP98–310–001 (August 13th Filing) subject to Natural filing revised tariff sheets that clarify that Natural may not enter into transactions like Natural described in its August 13th Filing under Natural's discount rate authority. Additionally, Natural States that it has also flowed through these changes to several corresponding tariff sheets filed and approved in Docket Nos. RP98–145–000, RP99–176–000 and 001 to be effective August 1, 1998 and January 1, 1999.

Natural requested any waivers which may be required to permit the tendered tariff sheets to become effective August 1, 1998 and January 1, 1999, consistent with the Commission's orders issued July 30, 1998 and December 30, 1998 in Docket Nos. RP98–310–000 and RP99–176–000, respectively.

Natural states that copies of the filing have been mailed to its customers, interested state regulatory agencies and all parties set out on the Commission's official service list in Docket No. RP98–310.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.W., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–7992 Filed 3–31–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–262–000]

Tennessee Gas Pipeline Company; Notice of Application

March 26, 1999.

Take notice that on March 17, 1999, Tennessee Gas Pipeline Company (Tennessee), 1001 Louisiana, Houston, Texas 77002, filed in Docket No. CP99–262–000 an application pursuant to Section 7(c) of the Natural Gas Act (NGA) and Part 157 of the Federal Energy Regulatory Commission's (Commission) Regulations, for a certificate of public convenience and necessity authorizing Tennessee to construct, install and operate compression and certain minor facilities in order to provide additional firm transportation service to customers in Zone 6 of its pipeline system (referred to as Eastern Express Project 2000—Zone 6 Receipts), all as more fully set forth in the application which is on file with the Commission and open to public inspection. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–222 for assistance).

Specifically, Tennessee proposes to: (1) install an additional 6150 horsepower compressor at its Compressor Station No. 261 in Hampden County, Massachusetts; (2) install an additional 7,170 horsepower compressor at its Compressor Station No. 266–A in Worcester County, Massachusetts; and (3) add an 8–inch delivery tap to its existing Southern Connecticut-Milford delivery point on Tennessee's 300 Line in New Haven County, Connecticut. Tennessee also proposes to construct and install certain facilities, in Worcester and Middlesex Counties, Massachusetts and in Hartford County, Connecticut, pursuant to Section 2.55(a) of the Commission's Regulations. The estimated total cost of the proposed facilities is $28,143,423.

Tennessee states that the proposed facilities will increase capacity on its Blackstone Lateral downstream of Compressor Station No. 266–A by 292,000 Dth/d, and will increase capacity on its 300 Line downstream of Compressor Station No. 261 by 83,000 Dth/d. Tennessee further states that, as the result of an open-season held from February 12, 1998 through March 24, 1998, Tennessee has entered into binding precedent agreements for firm transportation service to be rendered pursuant to Tennessee's Rate Schedule FT–A for 90,000 Dth/d of capacity associated with deliveries on its Blackstone Lateral and for 83,000 Dth/d of capacity associated with deliveries on its 300 Line. Tennessee requests approval of the service agreements for the project which contain certain provisions which are different from those contained in Tennessee's *pro forma* FT–A Agreement.

Shippers were given the option of selecting negotiated rates of recourse rates. Tennessee states that the negotiated rates provide for fixed reservation and commodity charges, for the primary term of the shipper's transportation agreement, in the amounts of $3.22 per Dth/month for the reservation charge, and, for the commodity charge, $0.0643 for the first five years and $0.0543 for the second five years. The recourse rates are the applicable maximum reservation and commodity rates for transportation service within Zone 6 under Tennessee's Rate Schedule FT–A. Tennessee states that all shippers selected negotiated rates, and that revenues collected during the primary terms of the contracts will exceed the incremental cost-of-service for the project over a 10-year period.

Tennessee states that the proposed project will enable gas supplies accessed by Portland Natural Gas Transmission System and Maritimes & Northeast Pipeline L.L.C. pipelines to be delivered to existing and new markets in New England. Tennessee requests that the Commission grant the requested authorizations by December 31, 1999, so that Tennessee can place the project in service by November 1, 2000.

Any person desiring to be heard or making any protest with reference to said application should on or before April 16, 1999, file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, a motion to intervene or a protest in

accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. The Commission's rules require that protestors provide copies of their protests to the party or person to whom the protests are directed. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

A person obtaining intervenor status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents issued by the Commission, filed by the applicant, or filed by all other intervenors. An intervenor can file for rehearing of any Commission order and can petition for court review of any such order. However, an intervenor must serve copies of comments or any other filing it makes with the Commission to every other intervenor in the proceeding, as well as filing an original and 14 copies with the Commission.

A person does not have to intervene, however, in order to have comments considered. A person, instead, may submit two copies of such comments to the Secretary of the Commission. Commenters will be placed on the Commission's environmental mailing list, will receive copies of environmental documents, and will be able to participate in meetings associated with the Commission's environmental review process. Commenters will not be required to serve copies of filed documents on all other parties. However, commenters will not receive copies of all documents filed by other parties or issued by the Commission, and will not have the right to seek rehearing or appeal the Commission's final order to a Federal court.

The Commission will consider all comments and concerns equally, whether filed by commenters or those requesting intervenor status.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the NGA and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on these applications if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Tennessee to appear or be represented at the hearing.

Linwood A. Watson, Jr.

Acing Secretary.

[FR Doc. 99–7985 Filed 3–31–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–270–000]

Texas Eastern Transmission Corporation; Notice of Request Under Blanket Authorization

March 26, 1999.

Take notice that on March 23, 1999, Texas Eastern Transmission Corporation (Texas Eastern), 5400 Westheimer Court, Houston, Texas 77056–5310, filed in Docket No. CP99–270–000 a request pursuant to Section 157.205 and 157.211 of the Commission's regulations under the Natural Gas Act (18 CFR 157.205 and 157.211). Texas Eastern requests authorization to construct a delivery point on Texas Eastern's existing 30-inch Line Nos. 10 and 25 in Choctaw County, Mississippi, to make natural gas deliveries to the Town of Weir (Town of Weir), a Mississippi corporation and municipality. Texas Eastern makes such request under its blanket certificate issued in Docket No. CP82–535–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection. The filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Texas Eastern proposes to construct and install a 10-inch tap valve, a 10-inch check valve and a 10-inch insulating flange (Tap), and electronic gas measurement equipment (EGM), at approximate Mile Post 32.04 in Choctow County, Mississippi.

It is stated that the Town of Weir will install, or cause to be installed a dual 10-inch meter run plus associated piping (Meter Station), and approximately 50 feet of 10-inch pipeline which will extend from the Meter Station to the Tap (Connecting Pipe).

It is indicated that the proposed facilities will be used to deliver up to 135,000 Mcf of natural gas per day to the Town of Weir. Texas Eastern estimates it's construction cost to be approximately $263,631.00 and states that the Town of Weir will reimburse it's cost.

Texas Eastern indicates that the transportation service will be rendered pursuant to Texas Eastern's open access Rate Schedules included in Texas Eastern's F.E.R.C. Ga Tariff, Sixth Revised Volume No. 1. It is averred that the transportation service to be rendered through the delivery point proposed herein will be performed utilizing existing capacity on Texas Eastern's system, and will have no effect on Texas Eastern's peak day or annual deliveries. Texas Eastern submits that its proposals will be accomplished without detriment or disadvantages to Texas Eastern's other customers.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205), a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc 99–7986 Filed 3–31–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP99–61–000 and CP99–64–000]

Tristate Pipeline, L.L.C.; Notice of Site Visit

March 26, 1999.

From April 19 to 22, 1999, the Office of Pipeline Regulation (OPR) staff will conduct an inspection of the route proposed by TriState Pipeline, L.L.C. (TriState) for its pipeline project. The

proposed route and route alternatives, crossing portions of Illinois, Indiana, and Michigan, will be inspected by helicopter and automobile.

The current itinerary is to conduct a ground and aerial inspection between Joliet, Illinois, and Valparaiso, Indiana on April 19; a ground and aerial inspection between Valparaiso, Indiana and White Pigeon, Michigan and April 20; a ground and aerial inspection in Oakland County and Macomb County, Michigan on April 21, and a ground inspection in Macomb County, Michigan on April 22. If weather conditions preclude an overflight, the inspection will be conducted by automobile only from a location to be determined. Representatives of TriState will accompany the OPR staff.

All parties may attend, although those planing to attend must provide their own transportation.

For further information, please contact Paul McKee of the Commission's Office of External Affairs at (202) 208–1088.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–7984 Filed 3–31–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2146–083 Alabama]

Alabama Power Company; Notice of Availability of Draft Environmental Assessment

March 26, 1999.

In accordance with the National Environmental Policy act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, the Office of Hydropower Licensing has reviewed the application for the proposed Amendment of License for the Coosa River Project, located in Talladega County, Alabama, and has prepared a Draft Environmental Assessment (DEA) for the proposed action.

In the DEA, the Commission's staff has analyzed the potential environmental impacts of The Utilities Board of the City of Sylacauga, Alabama (Board) constructing and operating a raw water intake and pumping station on Lay Reservoir. The staff has concluded that, given the mitigative measures proposed by the Board, approval of the action would not constitute a major federal action significantly affecting the quality of the human environment.

The EA was written by staff in the office of Hydropower Licensing, Federal Energy Regulatory Commission. Copies of the EA can be viewed at the Commission's Reference and Information Center, Room 2A, 888 First Street, N.E., Washington, D.C. 20426, or by calling (202) 208–1371. The DEA may be viewed on the Web at www.ferc.fed.us/online/rims.htm. Call (202) 208–2222 for assistance.

Any comments should be filed within 30 days from the date of this notice and should be addressed to Dave Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. Please Affix "Coosa River Project Amendment of License, Project No. 2146–083" to all comments. For further information, please contact Jim Haimes at (202) 219 2780

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–7987 Fild 3–31–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Extension of Time To File Comments, Recommendations, Terms and Conditions, and Prescriptions for License Application

March 26, 1999.

Take notice that the time limit for filing comments, recommendations, terms and conditions, and prescriptions for the following hydroelectric license applicaiton has been extended from March 26, 1999 to May 26, 1999. The extension was requested by the Vermont Department of Environmental Conservation to continue pursuing consensus of all the parties on measures needed to protect the environment, and no party has objected to a 60-day extension:

a. *Type of Application:* New Major License.

b. *Project No.:* 2731–020.

c. *Date Filed:* May 27, 1998.

d. *Applicant:* Central Vermont Public Service Corporation.

e. *Name of Project:* Weybridge Project.

f. *Location:* On Otter Creek, at river mile 19.5 from the confluence with Lake Champlain, in Addison County, Vermont. There are no federal lands located within the project area.

g. *Filed Pursuant to:* Fedral Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. John C. Greenan, P.E., Central Vermont Public Service Corporation, 77 Grove Street, Rutland, Vermont 05701, (802) 747–5707.

i. *FERC Contact:* Any questions on this notice should be addressed to Jack Duckworth, E-mail address, jack.duckworth@ferc.fed.us, or telephone (202) 219–2818.

j. *Deadline for comments, recommendations, terms and conditions, and prescriptions:* May 26, 1999.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Status of environmental analysis:* This application has been accepted for filing and is ready for environmental analysis at this time.

l. *Description of the Project:* The project consists of the following existing facilities: (1) a 30-foot-high, 302.6-foot-long concrete gravity dam consisting of two spillway sections, a 150-ft-long west spillway section, topped with a 6-foot-high hinged steel flashboard, and abutted by a 20-foot-wide and 10-foot-high Taintor gate, and a 116-foot-long east spillway section topped with an automatically inflated rubber weir; (2) a 1.5-mile-long, 62-acre impoundment with a normal water surface elevation of 174.3 feet above mean sea level (msl); (3) a powerhouse integral with the dam containing a single turbine generator with an installed capacity of 3,000 kilowatts (kW); (4) transmission facilities; and (5) appurtenant facilities.

m. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371. The application may be viewed on the web at www.ferc.fed.us. Call (202) 208–2222 for assistance. A copy is also available for inspection and reproduction at the address shown in item h.

n. *This notice also consists of the following standard paragraph:* D10.

D10. Filing and Service of Responsive Documents—The application is ready for environmental analysis at this time,

and the Commission is requesting comments, reply comments, recommendations, terms and conditions, and prescriptions.

The Commission directs, pursuant to section 4.34(b) of the Regulations (see Order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991) that all comments, recommendations, terms and conditions and prescriptions concerning the application be filed with the Commisison within 60 days from the issuance date of this notice. All reply comments must be filed with the Commisison within 105 days from the date of this notice.

Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

All filings must (1) bear in all capital letters the title "COMMENTS", "REPLY COMMENTS", RECOMMENDATIONS," "TERMS AND CONDITIONS," or "PRESCRIPTIONS;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commisison, at the above address. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commisison in this proceeding, in accordance with 18 CFR 4.34(b), and 385.2010.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–7982 Filed 3–31–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Surrender of License and Soliciting Comments, Motions To Intervene, and Protests

March 26, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Surrender of License.

b. *Project No:* 2585–002.

c. *Date Filed:* January 4, 1999.

d. *Applicant:* Northbrook Carolina Hydro, LLC.

e. *Name of Project:* Idols.

f. *Location:* On the Yadkin River, in Forsyth County, North Carolina near the City of Winston-Salem. The project does not utilize federal or tribal lands.

g. *Filed Pursuant to:* 18 CFR § 4.200.

h. *Applicant Contact:* Mr. Mark Sunquist, Northbrook Carolina Hydro, LLC, 225 W. Wacker Drive, Suite 2330, Chicago, IL 60606, (312) 553–2136.

i. *FERC Contact:* Any questions on this notice should be addressed to Tom Papsidero at (202) 291–2715, or e-mail address: Thomas.Papsidero@ferc.fed.us.

j. *Deadline for filing comments and/or motions:* May 6, 1999.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, Mail Code: DLC, HL–11.1, 888 First Street, NE., Washington, DC 20426.

Please include the project number (2585–002) on any comments or motions filed.

k. *Description of Surrender:* Northbrook Carolina Hydro, LLC, a corporation, requests to surrender the license for this constructed project for economic reasons following a fire in the project powerhouse on February 8, 1998.

l. *Location of the application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC. 20426, or by calling (202) 208–1371. This filing may be viewed on http:www.ferc.fed.us/online/rims.htm (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

m. *Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.*

n. *This notice also consists of the following standard paragraphs:* B, C1, D2.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C1. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTESTS", or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC. 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–7988 Filed 3–31–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Transfer of License and Soliciting Comments, Motions to Intervene, and Protest

March 26, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Transfer of License.

b. *Project No.:* 9690–044.

c. *Date Filed:* March 17, 1999.

d. *Applicant:* Orange and Rockland Utilities, Inc. and Southern Energy NY-Gen, L.L.C.

e. *Name of Project:* Rio Project.

f. *Location:* The project is located on the Mongaup River in Orange County, New York. The project does not utilize federal or tribal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. §§ 791(a)–825(r).

h. *Applicant Contact:* Jane J. Quin, Orange and Rockland Utilities, Inc., One Blue Hill Plaza, Pearl River, NY 10965, (914)–577–2439 and Craig S. Lesser, Southern Energy New York G.P., Inc., 900 Ashwood Drive, Suite 500, Atlanta, GA 20228, (770) 821–7838.

i. *FERC Contact:* Any questions on this notice should be addressed to Regina Saizan at (202) 219–2673, or e-mail address regina.saizan@ferc.fed.us.

j. *Deadline for filing comments, motions to intervene, or protests:* April 20, 1999.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, Mail Code: DLC, HL–11.1, 888 First Street, N.E., Washington, DC. 20426.

Please include the Project Number (9690–044) on any comments, protests, or motions filed.

k. *Description of Transfer:* The transfer will facilitate the implementation of a series of asset sales agreements pursuant to which Orange and Rockland Utilities, Inc. (ORU) intends to sell its electric generation assets to various subsidiaries of Southern Energy, Inc. (including Southern Energy NY-Gen). ORU has entered into these agreements in order to comply with the policies of the New York Public Service Commission mandating, in part, ORU's divestiture of these assets in order to implement the State of New York's desire to foster a competitive, regional electric generation market through retail competition.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street NE, Room 2A, Washington, DC, 20426, or by calling (202) 208–1371. This filing may be viewed on http://www.ferc.fed.us/online/rims.htm (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the addresses in item h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *This notice also consists of the following standard paragraphs:* B, C1, and D2.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C1. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–7989 Filed 3–31–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Transfer of License and Soliciting Comments, Motions to Intervene, and Protests

March 26, 1999.

a. *Application Type*: Transfer of License.

b. *Project No.:* 10481–022.

c. *Date Filed:* March 17, 1999.

d. *Applicant:* Orange and Rockland Utilities, Inc. and Southern Energy NY-Gen, L.L.C.

e. *Name of Project:* Mongaup Falls Project.

f. *Location:* The project is located on the Mongaup River in Sullivan County, New York. The project does not utilize federal or tribal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. § § 791 (a)-825(r).

h. *Applicant Contact:* Jane J. Quin, Orange and Rockland Utilities, Inc., One Blue Hill Plaza, Pearl River, NY 10965, (914)–577–2439 and Craig S. Lesser, Southern Energy New York G.P., Inc., 900 Ashwood Drive, Suite 500, Atlanta, GA 30338, (770) 821–7838.

i. *FERC Contact:* Any questions on this notice should be addressed to Regina Saizan at (202) 219–2673, or e-mail address regina.saizan@ferc.fed.us.

j. *Deadline for filing comments, motions to intervene, or protests:* April 20, 1999

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, Mail Code: DLC, HL–11.1, 888 First Street, N.E., Washington, DC 20426.

Please include the Project Number (10481–022) on any comments, protests, or motions filed.

k. *Description of Transfer:* The transfer will facilitiate the implementation of a series of asset sales agreements pursuant to which Orange and Rockland Utilities, Inc. (ORU) intends to sell its electronic generation asserts to various subsidiaries of Southern Energy, Inc. (includng Southern Energy NY-Gen). ORU has entered into these agreements in order to comply with the policies of the New York Public Service Commission mandating, in part, ORU's divestiture of

these assets in order to implement the State of New York's desire to foster a competitive, regional electric generation market through retail competition.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street NE, Room 2A, Washington, DC, 20426, or by calling (202) 208–1371. This filing may be viewed on http://www.ferc.fed.us/online/rims.htm (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the addresses in item h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *This notice also consists of the following standard paragraphs: B, C1, and D2.*

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C1. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", or "MOTIONS TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–7990 Filed 3–31–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Transfer of License and Soliciting Comments, Motions To Intervene, and Protests

March 26, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Applicaton Type:* Transfer of License.

b. *Project No.:* 10482–035.

c. *Date Filed:* March 17, 1999.

d. *Applicant:* Orange and Rockland Utilities, Inc. and Southern Energy NY-Gen, L.L.C.

e. *Name of Project:* Swinging Bridge Project.

f. *Location:* The project is located on the Mongaup River in Sullivan County, New York. The project does not utilize federal or tribal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Jane J. Quin, Orange and Rockland Utilities, Inc., One Blue Hill Plaza, Pearl River, NY 10965, (914) 577–2439, and Craig S. Lesser, Southern Energy New York G.P., Inc., 900 Ashwood Drive, Suite 500, Atlanta, GA 30338, (770) 821–7838.

i. *FERC Contact:* Any questions on this notice should be addressed to Regina Saizan at (202) 219–2673, or e-mail address regina.saizan@ferc.fed.us.

j. *Deadline for filing comments, motions to intervene, or protests:* April 20, 1999.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, Mail Code: DLC, HL–11.1, 888 First Street, N.E., Washington, DC 20426.

Please include the Project Number (10482–035) on any comments, protests, or motions filed.

k. *Description of Transfer:* The transfer will facilitate the implementation of a series of asset sales agreements pursuant to which Orange and Rockland Utilities, Inc. (ORU) intends to sell its electric generation assets to various subsidiaries of Southern Energy, Inc. (including Southern Energy NY-Gen). ORU has entered into these agreements in order to comply with the polices of the New York Public Service Commission mandating, in part, ORU's divestiture of these assets in order to implement the State of New York's desire to foster a competitive, regional electric generation market through retail competition.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371. This filing may be viewed on http://www.ferc.fed.us/online/rims.htm (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the addresses in item h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *This notice also consists of the following standard paragraphs:* B, C1, and D2.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, and .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C1. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20526. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, an local agencies are invited to file comments on the described application. A copy of the application may be

obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified or filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary,

[FR Doc. 99–7991 Filed 3–31–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Surrender of Exemption and Soliciting Comments, Motions To Intervene, and Protests

March 26, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Surrender of Exemption.

b. *Project No.:* 7108–001.

c. *Date Filed:* November 18, 1998.

d. *Applicant:* Virginia Hydro, Inc.

e. *Name of Project:* Grove Mill.

f. *Location:* On the Middle River, in Augusta County, Virginia. The project does not utilize federal or tribal lands.

g. *Filed Pursuant to:* 18 CFR 4.200.

h. *Applicant Contact:* Mr. John Pollack, P.O. Box 265, Batesville, VA 22924, (804) 823–7330.

i. *FERC Contact:* Any questions on this notice should be addressed to Tom Papsidero at (202) 219–2715, or e-mail address: Thomas.Papsidero@ferc.fed.us.

j. *Deadline for filing comments and/or motions:* May 3, 1999.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, Mail Code: DLC, HL–11.1, 888 First Street, NE., Washington, DC 20426.

Please include the project number (7108–001) on any comments or motions filed.

k. *Description of Surrender:* Virginia Hydro, Inc., a corporation, requests to surrender the exemption for economic reasons as a result of hurricane damage at the project.

l. *Locations of the application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 208–1371. This filing may be viewed on http://www.ferc.fed.us/online/rims.htm (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *This notice also consists of the following standard paragraphs:* B, C1, D2.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C1. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.

Acting Secretary.

[FR Doc. 99–7994 Filed 3–31–99; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF ENERGY

Western Area Power Administration

Record of Decision and Floodplain Statement for the Interconnection of the Southpoint Power Plant With the Western Area Power Administration's Parker-Davis No. 1 and No. 2, 230-kilovolt Transmission Lines (DOE/EIS–0308)

AGENCY: Western Area Power Administration, DOE.

ACTION: Record of Decision.

SUMMARY: Calpine Corporation (Calpine) applied for transmission service from the Western Area Power Administration (Western) for the Southpoint Power Plant Project. To accommodate the request, Western proposed to upgrade its transmission system in order to accommodate the incorporation of new generation into the system. This Record of Decision (ROD) and Statement of Findings has been prepared in accordance with Council on Environmental Quality regulations for implementing the National Environmental Policy Act (NEPA) (40 CFR parts 1500–1508) and Department of Energy (DOE) Procedures for Implementing NEPA (10 CFR part 1021), and DOE's Floodplain/Wetland Review Requirements (10 CFR 1022). Western's decision for its action considered the environmental ramifications of the Southpoint Power Plant Project. Western has determined that no significant environmental impacts will result from construction, operation and maintenance of Calpine Corporation's Southpoint Power Plant, the two natural gas pipelines, or the approximately 7 miles of high voltage transmission lines, or from the upgrade of the Parker-Davis No. 1 230-kilovolt (kV) transmission line. Therefore, Western has decided to provide an interconnection with the plant and Western's transmission system in west central Arizona. However, Calpine has yet to obtain a permit from the Bureau of Land Management (BLM) for the construction of the two natural gas pipelines. Western will reconsider this decision if Calpine fails to obtain the permit from the BLM.

FOR FURTHER INFORMATION CONTACT: Mr. John Holt, Environment Manager, Desert Southwest Customer Service Region, Western Area Power Administration, P.O. Box 6457, Phoenix, AZ 85005, telephone (602) 352–2592, email holt@wapa.gov. Copies of the Environmental Impact Statement (EIS) and the Bureau of Indian Affairs ROD are available from Ms. Amy Heuslein,

Area Environmental Protection Officer, Bureau of Indian Affairs, P.O. Box 10, Phoenix, AZ 85001.

SUPPLEMENTARY INFORMATION: Western based its decision on the information contained in the Bureau of Indian Affairs (BIA) Southpoint Power Plant Project EIS (BIA EIS 98–25; Final dated November 1998), the BLM's Topock Substation Environmental Assessment (EA) 1997 and South Point Natural Gas Pipeline draft EA. The Phoenix Area Office of the BIA prepared the Southpoint Power Plant Project EIS in considering the approval of a lease between Calpine and the Fort Mojave Indian Tribe (Tribe) for the project site. Western was designated a cooperating agency for the Southpoint Power Plant Project EIS by the BIA on November 24, 1998. After an independent review of the Final EIS, Western concluded that its comments and suggestions have been satisfied and adopted the BIA EIS for its participation in the Southpoint Power Plant Project. However, following the preparation of the Final EIS and based on system studies conducted for the proposed interconnection, Western identified a need to upgrade its existing Parker-Davis No. 1 230-kV transmission line between the Topock Substation and the Parker Substation. To determine whether a Supplemental EIS was required for the proposed upgrade, Western prepared a Supplement Analysis (DOE/EIS–0308–SA–1) pursuant to 10 CFR part 1021. Based on the Supplement Analysis, Western determined that no further NEPA documentation is required for the proposed upgrade. Therefore, Western has decided to provide an interconnection for the power plant with Western's Parker-Davis transmission system in west-central Arizona and enter into construction agreements with Calpine Corporation for new transmission lines described in the EIS.

The Southpoint Power Plant Project EIS addresses the effects of constructing and operating a 540-megawatt, natural gas-fired, combined cycle, electrical generation station on the Fort Mojave Indian Reservation in Mojave County, Arizona. Calpine proposes to lease the site from the Fort Mojave Indian Tribe (Tribe) to build the project. The project will include the construction of a natural gas transmission system for supplying fuel to the plant site, a water transmission system for cooling and on-site use, and an electric transmission system for delivering the power. The BIA ROD (March 1999) for the Southpoint Power Plant Project indicated that the environmentally preferred alternative was selected, and concluded that no significant, unmitigated impacts will occur.

The gas transmission system will include two pipelines, one connected to an El Paso Natural Gas pipeline and one to a Transwestern Gas Company pipeline. The second pipeline will ensure reliability. The BLM, Lake Havasu Field Office, is the lead Federal agency for the gas pipeline. A draft EA has been prepared for the grant of right-of-way for the gas pipeline. A review of the draft EA has shown that the pipeline will have no significant impacts. BLM's visual resource management requirements will be met, and impacts to soils and geology will be moderate due to the erosion potential. There will be no long-term impacts to air quality. Biological resources are rare to nonexistent in the project area, and the pipeline will not affect significant cultural properties. The project will impact floodplains but impacts will be minor. Only one Federally protected species, the southwestern willow flycatcher, has been documented in the area; however, there is no habitat for that species in the vicinity of the pipeline route.

The water transmission system will consist of a pipeline, which will carry water from the Tribe's existing pumping platform on the Colorado River to the power plant site. The system will be part of the Tribe's central irrigation pumping complex. A backup system consisting of two wells on site will be used only if river water becomes temporarily unavailable. Process wastewater will be handled separately from domestic wastewater. Domestic wastewater will be collected and trucked to the Tribe's wastewater treatment plant. Process wastewater, the waste stream created by operation of the power plant, will be discharged into a 30-acre evaporation pond located on the bluffs above the proposed plant.

The electric transmission system includes the Topock Substation, which is being built by the Arizona Electric Power Cooperative. The Topock facility includes the substation, two 69-kV transmission lines for local service, and two 230-kV transmission lines to tie into Western's Parker-Davis No. 1 and No. 2, 230-kV Transmission Lines. The Kingman Field Office of the BLM was the lead Federal agency for the EA. The BLM issued a finding of no significant impact for the substation project in 1997. Western will construct two 230-kV transmission lines to bring power from the Southpoint Power Plant to the Topock Substation.

Western will also be required to upgrade the existing Parker-Davis No. 1 Transmission Line in order to carry the additional load from the Southpoint Power Plant. The upgrade will require the replacement of the existing conductor and the addition of up to 15 new structures for that portion of the line from the Topock Substation to the Parker Dam Substation. These structures will add support to the line where additional ground clearance is required. The design of the new lines and the upgraded facilities is such that electrocutions of birds of prey will be minimized.

Description of Alternatives

The BIA evaluated three alternative power plant sites. The environmentally preferred location was selected. The No Action Alternative for the power plant was evaluated and found that it will not meet the needs of the Tribe. The natural gas pipeline draft EA evaluated two different routing locations and identified the environmentally preferred route. The gas pipeline No Action Alternative will not meet the need of providing natural gas to fuel the power plant. The Topock Substation EA, which is incorporated into the Southpoint Power Plant Project EIS by reference, evaluated two alternative substation locations, two system configurations, three routing alternatives, and two access alternatives. In each case, Western selected the environmentally preferred alternative. The No Action Alternative was not selected because it will not meet the needs defined in the Southpoint Power Plant Project EIS and the Supplement Analysis. Nor will the No Action Alternative allow Western to meet its obligations defined by its own Open Access Transmission Tariff which was implemented to meet the intent of the Federal Energy Regulatory Commission (FERC) order to open transmission line access (FERC Order Nos. 888 and 888–A).

Mitigation Measures

The BIA identified mitigation measures needed to reduce the impacts of Southpoint Power Plant to less than significant levels. The specific measures are discussed in the EIS on pages 229 to 231. In addition, mitigative measures associated with the Topock Substation EA are discussed on pages 3–3; 3–10; 3–14; 3–18; and Appendix A. Mitigative measures are suggested in the draft EA for the natural gas pipeline in Appendix A. Each agency will be required to monitor the project for compliance with its own mitigation measures. Table 3.1–4 of Western's Supplement Analysis lists the standard mitigative measures that are part of every Western

construction contract that will apply to this project. Some of the measures include restricting vehicular traffic to existing access roads or public roads, re-contouring and reseeding disturbed areas, environmental awareness training for all construction and supervisory personnel, and mitigation of radio and television interference generated by transmission lines. Mitigation for the desert tortoise is in Table 3.1–5 of the Supplement Analysis.

Specific mitigation that applies to the construction of the new lines and the upgrading of the existing lines is identified in the Supplement Analysis. These measures include the following provisions:

1. A desert tortoise mitigation plan which will include compensation for unmitigated impacts;
2. Restriction of construction and routine maintenance activities along the transmission lines in bighorn sheep lambing areas between January 1 and June 30;
3. When existing conductors are replaced, non-specular conductors will be used; and
4. High-pressure sodium lights will be turned on only when maintenance personnel are present.

Floodplain/Wetlands Statement of Findings

Construction of the Southpoint Power Plant will result in substantial alteration to the natural drainage patterns onsite. However, no significant impacts to off-site drainage patterns or stormwater volumes will result from the construction of the plant or the associated facilities. The existing volume of stormwater flows, prior to construction of the plant, will be retained on site in constructed basins to minimize sheet flows.

Only minor impacts from constructing the gas pipeline are anticipated to the floodplain of the unnamed wash in the southwest corner of Section 9, Township 17 North, Range 21 West. The ground surface will remain relatively unchanged from pre-development conditions.

The electric transmission system avoids floodplains to the extent practical. The Topock Substation and associated lines are not located in designated floodplains. The existing Parker-Davis No. 1 230-kV transmission line crosses some ephemeral washes, but few transmission structures were placed in the floodplains.

No wetlands or waters of the United States will be affected by the proposed action. The proposed facilities will conform to all Tribal, State, and local floodplain protection standards.

Dated: March 19, 1999.

Michael S. Hacskaylo,

Administrator.

[FR Doc. 99–8057 Filed 3–31–99; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6318–4]

Proposed Settlement Pursuant to Section 122(g) of the Comprehensive Environmental Response, Compensation, and Liability Act, Regarding the Friedrichsohn's Cooperage, Inc. Superfund Site, Waterford, Saratoga County, NY

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed administrative settlement and opportunity for public comment.

SUMMARY: In accordance with Section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. 9622(i), the U.S. Environmental Protection Agency ("EPA"), Region II, announces a proposed administrative *de minimis* settlement pursuant to Section 122(g)(4) of CERCLA, 42 U.S.C. 9622(g)(4), relating to the Friedrichsohn's Cooperage, Inc. Superfund Site ("Site"), located at 153–155 Saratoga Avenue in the Town of Waterford, Saratoga County, New York. This notice is being published pursuant to Section 122(i) of CERCLA to inform the public of the proposed settlement and give the public the opportunity to comment.

The proposed settlement, between EPA and Mohawk Paper Mills, Inc., Reliable Motor Parts Co., Monsey Products Co., and American Chemical and Equipment Co., Inc. ("Respondents"), has been memorialized in an Administrative Order on Consent (Index Number II–CERCLA–98–0210). This Agreement will become effective after the close of the public comment period, unless comments received disclose facts or considerations which indicate the Agreement is inappropriate, improper, or inadequate, and EPA, in accordance with Section 122(i)(3) of CERCLA, modifies or withdraws its consent to the Agreement. Under the settlement, Respondents will be obligated to make payment of $37,259.43 to the Hazardous Substance Superfund in reimbursement of EPA response costs relating to the Site. This payment is based on documentation indicating each company contributed minimal volumes of hazardous substances to the Site. In exchange, the settling companies will receive a covenant not to sue from EPA relating to liability for the Site under Sections 106 and 107(a) of CERCLA, 42 U.S.C. 9606 and 9607(a).

DATES: Comments must be provided on or before May 3, 1999.

ADDRESSES: Comments should be addressed to the U.S. Environmental Protection Agency, Office of Regional Counsel, New York/Caribbean Superfund Branch, 17th Floor, 290 Broadway, New York, New York 10007–1866, and should refer to: "Friedrichsohn's Cooperage, Inc. Superfund Site, U.S. EPA Index No. II–CERCLA–98–0210". For a copy of the settlement document, contact the individual listed below.

FOR FURTHER INFORMATION CONTACT: Elizabeth Leilani Davis, Assistant Regional Counsel, New York/Caribbean Superfund Branch, Office of Regional Counsel, U.S. Environmental Protection Agency, 17th Floor, 290 Broadway, New York, New York 10007. Telephone: (212) 637–3249.

Dated: March 9, 1999.

William J. Muszynski,

Acting Regional Administrator, Region II.

[FR Doc. 99–8085 Filed 3–31–99; 8:45 am]

BILLING CODE 6560–60–P

ENVIRONMENTAL PROTECTION AGENCY

[PB–402404–WV; FRL–6066–6]

Lead-Based Paint Activities in Target Housing and Child-Occupied Facilities; The State of West Virginia's Authorization Application

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; request for comments and opportunity for public hearing.

SUMMARY: On December 17, 1998, the State of West Virginia submitted an application for EPA approval to administer and enforce training and certification requirements, training program accreditation requirements, and work practice standards for lead-based paint activities in target housing and child-occupied facilities under section 402 of the Toxic Substances Control Act (TSCA). This notice announces the receipt of West Virginia's application, provides a 45–day public comment period, and provides an opportunity to request a public hearing on the application.

DATES: Comments on the authorization application must be received on or before May 17, 1999. Public hearing requests must be received on or before May 3, 1999.

ADDRESSES: Submit all written comments and/or requests for a public hearing identified by docket control number "PB–402404–WV" (in duplicate) to: Environmental Protection Agency, Region III, Waste and Chemicals Management Division, Toxics Programs and Enforcement Branch (3WC33), 1650 Arch St., Philadelphia, PA 19103–2029. Comments, data, and requests for a public hearing may also be submitted electronically to: johnson.artencia@epa.gov. Follow the instructions under Unit IV. of this document. No information claimed to be Confidential Business Information (CBI) should be submitted through e-mail.

FOR FURTHER INFORMATION CONTACT: Artencia R. Johnson (3WC33), Waste and Chemicals Management Division, Environmental Protection Agency, Region III, 1650 Arch St., Philadelphia, PA 19103–2029, telephone: (215) 814–5754; e-mail address: johnson.artencia@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On October 28, 1992, the Housing and Community Development Act of 1992, Pub. L. 102–550, became law. Title X of that statute was the Residential Lead-Based Paint Hazard Reduction Act of 1992. That Act amended TSCA (15 U.S.C. 2601 *et seq.*) by adding Title IV (15 U.S.C. 2681–2692), entitled "Lead Exposure Reduction."

Section 402 of TSCA authorizes and directs EPA to promulgate final regulations governing lead-based paint activities in target housing, public and commercial buildings, bridges, and other structures. Those regulations are to ensure that individuals engaged in such activities are properly trained, that training programs are accredited, and that individuals engaged in these activities are certified and follow documented work practice standards. Under section 404 of TSCA, a State may seek authorization from EPA to administer and enforce its own lead-based paint activities program.

On August 29, 1996 (61 FR 45777) (FRL–5389–9), EPA promulgated final TSCA section 402/404 regulations governing lead-based paint activities in target housing and child-occupied facilities (a subset of public buildings). Those regulations are codified at 40 CFR part 745, and allow both States and Indian Tribes to apply for program authorization. Pursuant to section 404(h) of TSCA, EPA is to establish the Federal program in any State or Tribal Nation without its own authorized program in place by August 31, 1998.

States and Tribes that choose to apply for program authorization must submit a complete application to the appropriate Regional EPA Office for review. Those applications will be reviewed by EPA within 180 days of receipt of the complete application. To receive EPA approval, a State or Tribe must demonstrate that its program is at least as protective of human health and the environment as the Federal program, and provides for adequate enforcement (section 404(b) of TSCA, 15 U.S.C. 2684(b)). EPA's regulations (40 CFR part 745, subpart Q) provide the detailed requirements a State or Tribal program must meet in order to obtain EPA approval.

A State may choose to certify that its lead-based paint activities program meets the requirements for EPA approval by submitting a letter signed by the Governor or Attorney General stating that the program meets the requirements of section 404(b) of TSCA. Upon submission of such certification letter, the program is deemed authorized. This authorization becomes ineffective, however, if EPA disapproves the application.

Pursuant to section 404(b) of TSCA, EPA provides notice and an opportunity for a public hearing on a State or Tribal program application before authorizing the program. Therefore, by this notice EPA is soliciting public comment on whether West Virginia's application meets the requirements for EPA approval. This notice also provides an opportunity to request a public hearing on the application. If a hearing is requested and granted, EPA will issue a **Federal Register** notice announcing the date, time, and place of the hearing. EPA's final decision on the application will be published in the **Federal Register**.

II. State Program Description Summary

The following summary of the State of West Virginia's proposed program has been provided by the applicant:

In September 1994, the Radiation, Toxics and Indoor Air Division created a Lead Program to provide environmental lead assessments in childhood lead poisoning cases, to: prepare grant submittals for Federal monies to support the program; promulgate legislation and regulations to meet Federal mandates; provide technical assistance to local and State agencies; and conduct lead hazard awareness and education outreach activities to inform the public of the dangers of lead poisoning.

The Lead Program has received Federal funding for the past 4 years. During this time, the program has conducted or coordinated over 230 environmental lead assessments in childhood lead poisoning cases. The Program sponsored creation of a Lead Advisory Committee to assist in drafting proposed legislation to meet Federal mandates. The Program continues to provide lead hazard awareness materials and technical assistance to local and State agencies and the public.

Beginning in January 1996, and also in January 1997, the Bureau for Public Health submitted proposed lead legislation for consideration by the Legislature. The proposed legislation would amend West Virginia's Health Code Chapter 16 by adding a new statute, Article 35, "Lead Abatement Act." It was not until January 1998, that the Legislature acted upon the proposed legislation. The bill passed on March 14, 1998, and became effective June 15, 1998. Subsequent emergency-filed rules were filed with the West Virginia Secretary of State on June 16, 1998.

West Virginia Code 16-35 requires lead abatement professionals conducting lead abatement in child-occupied buildings and target housing to be properly trained by an accredited training provider, certified by a State accredited examiner and licensed by the Bureau for Public Health. The licensing categories consist of lead abatement contractor, worker, supervisor, inspector, risk assessor and project designer.

Lead abatement projects are restricted to target housing (pre-1978) or residences that have known lead hazards. Notification of abatement projects and elevated blood lead levels are required. Home owners removing and handling lead on their own premises are exempt from notification and licensing requirements.

The Commissioner of the Bureau for Public Health will administer and enforce WV Code 16-35 and WV Title 64 Series 45, which includes: issuing licenses; assessing fees and fines; approving training providers; approving third party examiners; work practices; project clearance levels; and ordering reduction or abatement of lead hazards. In addition to the detailing of acceptable and non-acceptable abatement project work practices, the rules also incorporate by reference HUD and OSHA work practices and clearance levels.

The proposed statute establishes a special revenue account for implementing the article, allows for

reciprocity with other States with similar programs as stringent as West Virginia's, and provides for enforcement with civil penalties from $250 to $5,000. The statute also creates a misdemeanor offense for violations, and upon conviction, a fine of not less than $250 nor more than $50,000 and/or confinement in the county or regional jail for not more than 1 year may be imposed. Fines imposed must be paid by violators within 30 days of receipt of notification, failure to do so constitutes a separate violation. When non-compliance with this article or promulgated rules occurs at abatement projects, a Notice of Violation will be issued directing compliance with the law. When warranted, Cease and Desist-Orders may be issued on lead abatement projects, which if violated could result in civil penalties of not less than $10,000 nor more than $25,000 for initial violations and not less than $25,000 nor more than $50,000 for subsequent violations.

The Bureau for Public Health is committed to assuring that the Federal mandates are met through effective implementation of WV Code 16-35 and Title 64 Series 45, and through implementation of a mandated public awareness and education program. The necessary infrastructure is in place at the local and State level to implement an EPA-approved program for the licensing and certification of lead abatement professionals. The Bureau for Public Health has contracted with local health agencies to provide environmental lead assessments, public outreach and education at the local level for the past 2 years. Also, it is felt that the successful operation of the asbestos certification and licensure program, since 1989, has prepared the Bureau to assume the responsibility of operating another environmental certification and licensure program.

III. Federal Overfiling

TSCA section 404(b) makes it unlawful for any person to violate, or fail, or refuse to comply with, any requirement of an approved State or Tribal program. Therefore, EPA reserves the right to exercise its enforcement authority under TSCA against a violation of, or a failure or refusal to comply with, any requirement of an authorized State or Tribal program.

IV. Public Record and Electronic Submissions

The official record for this action, as well as the public version, has been established under docket control number "PB–402404–WV." Copies of this notice, the State of West Virginia's authorization application, and all comments received on the application are available for inspection in the Region III office, from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The docket is located at the Environmental Protection Agency, Region III, Waste and Chemicals Management Division, Toxics Programs and Enforcement Branch (3WC33), 1650 Arch St., Philadelphia, PA.

Electronic comments can be sent directly to EPA at:

johnson.artencia@epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect 5.1/6.1 or ASCII file format. All comments and data in electronic form must be identified by the docket control number "PB–402404–WV." Electronic comments on this document may be filed online at many Federal Depository Libraries. Information claimed as CBI should not be submitted electronically.

Commenters are encouraged to structure their comments so as not to contain information for which CBI claims would be made. However, any information claimed as CBI must be marked "confidential," "CBI," or with some other appropriate designation, and a commenter submitting such information must also prepare a nonconfidential version (in duplicate) that can be placed in the public record. Any information so marked will be handled in accordance with the procedures contained in 40 CFR part 2. Comments and information not claimed as CBI at the time of submission will be placed in the public record.

V. Regulatory Assessment Requirements

A. Certain Acts and Executive Orders

EPA's actions on State or Tribal lead-based paint activities program applications are informal adjudications, not rules. Therefore, the requirements of the Regulatory Flexibility Act (RFA, 5 U.S.C. 601 *et seq.*), Executive Order 12866 (Regulatory Planning and Review, 58 FR 51735, October 4, 1993), and Executive Order 13045 (Protection of Children from Environmental Health Risks and Safety Risks, 62 FR 1985, April 23, 1997), do not apply to this action. This action does not contain any Federal mandates, and therefore is not subject to the requirements of the Unfunded Mandates Reform Act (2 U.S.C.1531–1538). In addition, this action does not contain any information collection requirements and therefore does not require review or approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

B. Executive Order 12875

Under Executive Order 12875, entitled, *Enhancing Intergovernmental Partnerships* (58 FR 58093, October 28, 1993), EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or Tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to OMB a description of the extent of EPA's prior consultation with representatives of affected State, local, and Tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local, and Tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant mandates."

Today's action does not create an unfunded Federal mandate on State, local, or Tribal governments. This action does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this action.

C. Executive Order 13084

Under Executive Order 13084, entitled, *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998), EPA may not issue a regulation that is not required by statute and that significantly or uniquely effects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the Tribal governments. If the mandate is unfunded, EPA must provide OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected Tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal

governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's action does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this action.

Authority: 15 U.S.C. 2682, 2684.

List of Subjects

Environmental protection, Hazardous substances, Lead, Reporting and recordkeeping requirements.

Dated: March 23, 1999.

W. Michael McCabe,

Regional Administrator, Region III.

[FR Doc. 99–8087 Filed 3–31–99; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6313–6]

Proposed National Pollutant Discharge Elimination System (NPDES) General Permit for Reverse Osmosis Desalinization Facilities in Saipan, NPDES # MPG450000

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed NPDES General Permit for Reverse Osmosis Desalinization Facilities in Saipan.

SUMMARY: The Reverse Osmosis units are designed to remove dissolved solids from the water in order to provide potable water to the hotels. The source water may be brackish groundwater or seawater. The waste stream contains concentrated levels of total dissolved solids (TDS). Periodically, the filters are cleaned by backwashing or by adding chemicals to raise and lower the pH (from 2 to 12).

Due to the similarities between the discharges, a general permit is being proposed to cover all current and future discharges from hotel RO units meeting certain criteria (see permit).

PUBLIC COMMENT: If you need additional information, you may contact Mike Lee between the hours of 9:00 a.m. until 4:00 p.m. by calling (415) 744–1484 or by writing to: CWA Standards and Permits Office, Attn: Mike Lee (CMD–1), 75 Hawthorne Street, San Francisco, CA 94105–3901.

All comments upon or objections to the PROPOSED PERMIT and requests for a PUBLIC HEARING, pursuant to 40 CFR 124.12, must be transmitted or delivered in writing to Mike Lee, at the address shown above, within 30 days of the date of this notice. An extension of the 30 day comment period may be granted if the request for an extension adequately explains why more time is required to prepare comments.

A final decision to set the conditions and to issue the permit, or to deny the permit, shall be made after all comments have been considered: Notice of the final decisions shall be sent to each person who has transmitted or delivered written comments or requested notice of the final permit decisions. The decisions will become effective 30 days from the date of issuance unless:

1. A later effective date is specified in the decisions; or

2. An evidentiary hearing is requested pursuant to 40 CFR 124.74; or

3. There are no comments requesting a change to the PROPOSED PERMIT, in which case the final decisions shall become effective immediately upon issuance.

SUPPLEMENTARY INFORMATION:

I. Description of Facilities

There are approximately eight hotels in Saipan at this time that discharge or intend to discharge wastewater from a reverse osmosis water treatment unit(s) into waters of the U.S. Each discharges less than 0.5 MGD and into receiving water named Saipan Lagoon, either directly, or through a storm water conveyance channel.

II. Applicable Water Quality Standards

Water Quality Standards for the Commonwealth of the Northern Mariana Islands were adopted on January 20, 1997. The standards classify Garapan lagoon as a Class AA marine water. Under the CNMI Water Quality Standards, "It is the objective of this class that these waters remain in their natural pristine state as nearly as possible with an absolute minimum of pollution or alteration of water quality from any human-caused source or actions. To the extent practicable, the wilderness character of such areas shall be protected. No zone of mixing will be permitted."

Discharge in compliance with this NPDES permit should ensure achievement of all applicable Water Quality Standards. These Standards are designed to prevent degradation of water quality. Therefore, compliance with this NPDES permit should prevent any "unreasonable degradation" of the marine environment, and in accordance with section 403(c) of the Clean Water Act an NPDES permit may be issued.

III. Effluent limitations

Discharges from desalination processes are not subject to any effective EPA effluent limitations guidelines. Therefore, permit requirements were established using Best Professional Judgment (BPJ) and specific water quality standards in order to ensure protection of the beneficial uses of the receiving waters.

A. pH

The pH is limited in the permit between 6.5 and 8.6 standard units, based on water quality standards for Class AA waters. According to literature submitted by an applicant, the RO units are routinely cleaned by the addition of certain chemicals in order to raise and lower the pH from 2 to 12.

B. Formaldehyde

Some permit applications indicates that formalin (formaldehyde 37%) will be used for cleaning the R/O unit. Formaldehyde is a carcinogen, and its discharge into waters of the U.S. is prohibited.

C. Sodium Hexametaphosphate

Some permit applications indicate that Sodium Hexametaphosphate will also be used in the process. Data searches for toxicity of Sodium Hexametaphosphate performed on the Hazardous Substances Data Base suggest that "metaphosphates are toxic probably because of their excess alkalinity rather than from simple NA excess." (Venugopal, B. and T.D. Luckey, Metal Toxicity in Mammals, New York, Plenum Press, 1978, pg. 11). Wastewater with high alkalinity should have no adverse effect once mixed with seawater unless the pH is very high. For this reason, monitoring for pH is required and a limit for pH is in the permit. Furthermore, a limit for total phosphorous is included, based on the Saipan Water Quality Standards.

D. TDS

TDS testing is required in order to insure that the water quality standard of "no permanent change in isohaline patterns of the receiving water" is met. This data may be used for future modeling studies. There is no limit set at this time. Typically, discharges are around 50,000 mg/l.

F. Total Nitrogen, Sulfide (Undissociated), Ammonia (Un-ionized)

Data from existing reverse osmosis desalinization plants in Saipan indicate exceedances of the water quality

standards for these three pollutants. Limits will therefore be included in the permit.

G. Turbidity

The limit for turbidity, <2 NTU, is derived from CNMI water quality standards.

H. Ammonia

The limit for un-ionized ammonia, .02 mg/l, is derived from CNMI water quality standards.

I. Priority Pollutant Scan

If the source water is contaminated, the concentrated waste water will likely be even more so. For this reason, a priority pollutant scan of the wastewater is required within the first six months of obtaining general permit coverage and once every time the location of the source water changes.

J. Whole Effluent Toxicity Testing

At this time, no bioassays are required. However, the permit may be modified in the future to require WET testing.

IV. Monitoring Frequency

The permittee is required to monitor at the frequency specified in the permit. In addition, the permittee is required to monitor everytime the units are cleaned due to the possibility of increased pollutant loading during such periods.

V. Application Requirements

Permittees meeting the requirements specified in the permit may submit a notice of intent (NOI) which includes the required information. A NOI must be submitted at least 60 days prior to intended discharge and again at least 90 days prior to the expiration of this permit. EPA, upon reviewing the information submitted, will decide either to include the applicant under the general permit or to issue the applicant an individual permit. The applicant may assume coverage by the general permit if EPA does not respond within 60 days.

VII. Effects on Endangered Species

EPA believes that discharge in compliance with this permit will have no effect on endangered species. Endangered species in Saipan which could be impacted would be the green and hawksbill sea turtles. At the present time there has been no critical habitat designated for these species in Saipan Lagoon. Furthermore, discharges allowed under this permit may not be placed so that effluent directly impacts seagrass beds or live coral reef habitat, as these habitats are important to these species of sea turtles.

VIII. Economic Impact (Executive Order 12866)

Under Executive Order 12866 (58 FR 51735 (October 4, 1993)), the Agency must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

EPA has determined that this proposed general permit is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to formal OMB review prior to proposal.

IX. Unfunded Mandates Reform Act

Section 201 of the Unfunded Mandates Reform Act (UMRA), Pub. L. 104–4, generally requires Federal agencies to assess the effects of their "regulatory actions" on State, local, and tribal governments and the private sector. UMRA uses the term "regulatory actions" to refer to regulations. (*See*, e.g., UMRA section 201, "Each agency shall * * * assess the effects of Federal regulatory actions * * * (other than to the extent that such regulations incorporate requirements specifically set forth in law)"). UMRA section 102 defines "regulation" by reference to section 658 of Title 2 of the U.S. Code, which in turn defines "regulation" and "rule" by reference to section 601(2) of the Regulatory Flexibility Act (RFA). That section of the RFA defines "rule" as "any rule for which the agency publishes a notice of proposed rulemaking pursuant to section 553(b) of [the Administrative Procedure Act (APA)], or any other law * * *"

As discussed in the RFA section of this notice, NPDES general permits are not "rules" under the APA and thus not subject to the APA requirement to publish a notice of proposed rulemaking. NPDES general permits are also not subject to such a requirement under the Clean Water Act (CWA). While EPA publishes a notice to solicit public comment on draft general permits, it does so pursuant to the CWA section 402(a) requirement to provide "an opportunity for a hearing." Thus, NPDES general permits are not "rules" for RFA or UMRA purposes.

EPA has determined that the proposed general permit for Saipan does not contain a Federal requirement that may result in expenditures of $100 million or more for State, local and tribal governments, in the aggregate, or the private sector in any one year.

The Agency also believes that the proposed general permit will not significantly nor uniquely affect small governments. For UMRA purposes, "small governments" is defined by reference to the definition of "small governmental jurisdiction" under the RFA. (*See* UMRA section 102(1), referencing 2 U.S.C. 658, which references section 601(5) of the RFA.) "Small governmental jurisdiction" means governments of cities, counties, towns, etc., with a population of less than 50,000, unless the agency establishes an alternative definition.

The proposed general permit also will not uniquely affect small governments because compliance with the permit conditions affects small governments in the same manner as any other entities seeking coverage under the proposed general permit.

X. Paperwork Reduction Act

EPA has reviewed the requirements imposed on regulated facilities resulting from the proposed general permit under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq*. The information collection requirements of the proposed general permit have already been approved in previous submissions made for the NPDES permit program under the provisions of the CWA.

XI. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq*., EPA is required to prepare a Regulatory Flexibility Analysis to assess the impact of rules on small entities. Under 5 U.S.C. 605(b), no Regulatory Flexibility Analysis is required where the head of the Agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.

The Agency takes the position that NPDES general permits are not subject to rulemaking requirements under APA section 553 or any other law. The requirements of APA section 553 apply only to the issuance of "rules," which the APA defines in a manner that

excludes permits. *See* APA section 551(4), (6) and (8). The CWA also does not require publication of a general notice of proposed rulemaking for general permits. EPA publishes draft general NPDES permits for public comment in the **Federal Register** in order to meet the applicable CWA procedural requirement to provide "an opportunity for a hearing." *See* CWA section 402(a), 33 U.S.C. 1342(a).

Nevertheless, the Agency has considered the potential impact of the proposed general permit on small entities in a manner that meets the requirements of the RFA. Specifically, EPA has analyzed the potential impact of the proposed general permit on small entities and determined that the permit will not have a significant economic impact on a substantial number of small entities. The permit requirements have been designed to minimize significant administrative and economic impacts on small entities and should not have a significant impact on regulated sources in general. Moreover, the proposed general permit reduces a significant burden on regulated sources of applying for individual permits.

XII. Signature

Accordingly, I hereby find consistent with the provisions of the Regulatory Flexibility Act, that this proposed general permit will not have a significant impact on a substantial number of small entities. Authority: Clean Water Act, 33 U.S.C. 1251 *et seq.*

For the Regional Administrator.

Dated: February 22, 1999.

Michael G. Schulz,

Acting Director, Water Division, Region 9.

Authorization To Discharge Under the National Pollutant Discharge Elimination System General Permit for the Discharge of Reverse Osmosis Waste Water Into Marine Waters of the CNMI, NPDES #MPG450000

In compliance with the provisions of the Clean Water Act, as amended, (33 U.S.C. 1251 et seq., the "Act"), and with the Federal Regulations at 40 CFR 122.28, EPA issues a general permit to cover discharge of reverse osmosis wastewater from facilities located in the CNMI meeting the following criteria:

1. Facility operates a reverse osmosis (RO) unit or units designed specifically for the production of potable water; and

2. Discharge from individual RO unit is less than 0.5 million gallons per day (MGD); and

3. Discharge reaches marine surface waters (i.e. directly, through a stormwater conveyance channel, or through an injection well that may mix with marine surface waters); and

4. An individual 401 Water Quality Certification has been obtained from The Division of Environmental Quality, Commonwealth of the Northern Mariana Islands, which certifies that the discharge will not cause or contribute to violations of water quality standards, or impact seagrass beds or coral reef habitat.

If facility meets the above criteria, the facility may apply for coverage under the general permit by submitting a complete Notice of Intent (NOI) at least 90 days prior to the planned date of discharge. The NOI must include the following:

1. Completed NPDES application Forms 1 and Form 2C. If previously applied, please send any updated information/changes to application;

2. A cover letter indicating that the permittee is seeking coverage under this general permit, has read this general permit and will comply with all its conditions;

3. Individual Water Quality Certification from Division of Environmental Quality under Section 401 of the Act;

4. A list of all chemicals used (both generic name and chemical names) both during typical water treatment and during cleaning of units;

5. Name(s), location(s) and average Total Dissolved Solids of source waters; and

6. Description and location of monitoring stations(s).

The NOI must be submitted to USEPA and Commonwealth of Northern Marianas Islands at the addresses listed under section 3 of this permit.

Sixty (60) days after receipt of NOI by EPA, the applicant may discharge in accordance with conditions of this general permit and the individual 401 certification unless otherwise notified by EPA or CNMI DEQ. EPA reserves the right to deny the general permit to anyone at anytime and require coverage under an individual permit. Furthermore, in accordance with 122.28(b), this permit may be modified, revoked and reissued, or terminated in accordance with applicable requirements of part 124.

Permittees must submit another NOI 90 days prior to the expiration date of this general permit if the permittee intends to continue discharging beyond that date.

The discharge must be in accordance with effluent limitations, monitoring requirements and other conditions set forth herein, in the 401 certification, and in the attached EPA Region 9 "Standard Federal NPDES Permit Conditions."

This permit and the authorization to discharge shall expire at midnight five years after effective date.

1. Effluent Limits and Monitoring Requirements

a. Effluent shall be sampled at the point of discharge, prior to mixing with the receiving water. If discharge occurs into a stormwater conveyance channel or pipe, monitoring shall be performed before discharge into the channel or pipe. Monitoring shall be performed during the regular discharge of brine water and during the intermittent discharge of cleaning waste water. [1] During the discharge of brine water, monitoring will be performed at the frequency specified below. During the discharge of cleaning waste water, monitoring shall be performed every time cleaning waste water is discharged. Samples of cleaning waste water should be identical in characteristics to that which is discharged to the surface water. For example, if cleaning waste water is stored or mixed with brine waste water prior to discharge in order to reduce toxicity, samples should be taken of the stored or mixed effluent.

Such discharges shall be limited and monitored by the permittee as specified below:

Effluent characteristics	Limitations	Monitoring requirements	
	Daily max.	Measurement frequency [1]	Sample type
Flow		Continuous	N/A
Total Dissolved Solids		Once/Quarter	Discrete.
Total Nitrogen	0.4 mg/l	Once/Month	Discrete.

[1] Cleaning waste water includes backwash water or any other waste water with different chemical characteristics than the normal brackish reject water.

Effluent characteristics	Limitations	Monitoring requirements	
	Daily max.	Measurement frequency [1]	Sample type
Total Phosphorous	0.025 mg/l	Once/Month	Discrete.
Sulfide (undissociated)	0.002 mg/l	Once/Month	Discrete.
Ammonia (unionized)	0.02 mg/l	Once/Month	Discrete.
Turbidity	Not > 2 NTU	Once/Month	Discrete.
Total Residual Chlorine [2]	.01 mg/l	Once/Day	Discrete.
Priority Pollutant Scan		(3)	Discrete.
pH	(4)	Once/Day	Discrete.

[1] The frequency specified below applies only to the discharge of brine water. Monitoring shall be performed once/discharge during the discharge of cleaning waste water.
[2] Monitoring required only if products containing chlorine are used. Non-detects shall be considered compliance.
[3] Permittee shall conduct priority pollutant scans on the effluent (both the cleaning waste water and the brine water discharge) once within the first 6 months of general permit and again every time location of source water changes.
[4] (4) The pH of the effluent is limited between 6.5 and 8.6 standard units at all times.

b. The discharge shall be free of substances attributable to domestic, industrial, or other controllable sources of pollutants and shall be capable of supporting desirable aquatic life and be suitable for recreation in and on the water.

c. The discharge shall not cause floating debris, oils, grease, scum, or other floating materials.

d. The discharge shall be free from substances in amounts sufficient to produce taste or odor in the water or detectable off flavor in the flesh of fish, or in amounts sufficient to produce objectionable odor, turbidity, or other conditions in the receiving waters.

e. There shall be no discharge of cleaning wastes, biocides, pathogenic organisms, toxic, radioactive, corrosive, or other deleterious substances at levels or in combinations sufficient to be toxic or harmful to human, animal, plant or aquatic life, or in amounts sufficient to interfere with any beneficial use of the water.

f. There shall be no discharge of substances or conditions or combinations thereof in concentrations which produce undesirable aquatic life.

g. The discharge shall not cause the temperature of the receiving water to vary by more than 1.5°F (0.9°C) from ambient conditions.

h. The discharge shall not cause the dissolved oxygen level in the receiving water to drop below 6.0 mg/l.

i. The discharge shall not cause a change in channels, basic geometry or fresh water influx which would cause permanent changes in isohaline patterns of more than 10% from the natural conditions or which would otherwise adversely affect the indigenous biota and natural sedimentary patterns.

j. The use of products containing formaldehyde is prohibited.

2. Additional Conditions

a. The permittee shall also comply with all requirements included under their individual 401 certification.

b. If CNMI or USEPA believes, based on monitoring data, facility inspections, or receiving water quality that a permittee's discharge is, or may be causing or contributing to exceedances of water quality criteria, or in any way impacting seagrass beds or live coral reef habitat, USEPA may require the facility to obtain an individual permit. An individual permit may include additional, or more stringent effluent limitations, additional effluent and/or receiving water monitoring, including whole effluent toxicity testing and/or dye/tracer studies to determine the extent (if any) of the impacts.

3. Reporting and Monitoring

a. Reporting of Monitoring Results

Monitoring results obtained during the previous 3 months shall be summarized for each month and submitted on forms to be supplied by the Regional Administrator, to the extent that the information reported may be entered on the forms. The results of all monitoring required by this permit shall be submitted in such a format as to allow direct comparison with the limitations and requirements of this permit. Unless otherwise specified, discharge flows and pH shall be reported in terms of the average value over each 30-day period and the maximum recorded value over that 30-day period. Monitoring reports shall submitted on a quarterly basis and be postmarked no later than the 28th day of the month following the completed reporting period. The first report is due thirty days after the effective date of this permit. Duplicate signed copies of these, and all other reports required herein, shall be submitted to the Regional Administrator and the Commonwealth at the following addresses:

Regional Administrator, Environmental Protection Agency, Attention: CMD–1, 75 Hawthorne Street, San Francisco, CA 94105

Director, Div. of Environmental Quality, P.O. Box 1304, Saipan, MP 96950.

b. Twenty-Four Hour Reporting of Noncompliance

The permittee shall report any noncompliance which may endanger health or the environment. Any information shall be provided orally within 24 hours from the time the permittee becomes aware of the circumstances to the following person or their office: Director, Div. of Environmental Quality 670/664–8500 or 664–8501.

If the permittee is unsuccessful in contacting the person above, he/she shall report by 9 a.m. on the first business day following the noncompliance. A written submission shall also be provided within 5 days of the time the permittee becomes aware of the circumstances. The written submission shall contain a description of the noncompliance and its cause; the period of noncompliance, including dates and times, and, if the noncompliance has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.

c. Definitions

1. A "discrete" sample means any individual sample collected in less than 15 minutes. A "discrete" sample for enteric virus means any individual sample collected in less than 3 hours.

2. The "daily maximum" concentration means the measurement made on any single discrete sample or composite sample.

d. Monitoring Modification

Monitoring, analytical, and reporting requirements may be modified by the

Regional Administrator upon due notice.

4. EPA Region 9 Standard Conditions (Not Included)

[FR Doc. 99–7770 Filed 3–31–99; 8:45 am]

BILLING CODE 6560–50–P

EXPORT-IMPORT BANK OF THE UNITED STATES

Notice of Open Special Meeting of the Sub-Saharan African Advisory Committee of the Export-Import Bank of the United States (Export-Import Bank)

SUMMARY: The Sub-Saharan African Advisory Committee was established by Pub. L. 105–121, November 26, 1997, to advise the Board of Directors on the development and implementation of policies and programs designed to support the expansion of the Bank's financial commitments in Sub-Saharan Africa under the loan, guarantee and insurance programs of the Bank. Further, the committee shall make recommendations on how the Bank can facilitate greater support by U.S. commercial banks for trade with Sub-Saharan Africa.

TIME AND PLACE: Wednesday, April 21, 1999, at 9:30 a.m. to 12:00 noon. The meeting will be held at the Export-Import Bank in Room 1143, 811 Vermont Avenue, NW, Washington, DC 20571.

AGENDA: This meeting will include a discussion of the development and implementation of policies and programs designated to support the expansion of Ex-Im Bank's Financial commitments in Sub-Saharan Africa. The discussion will focus on analysis of competitive barriers to increased trade in Sub-Saharan Africa based on information gathered from other ECA's, exporters and banks.

PUBLIC PARTICIPATION: The meeting will be open to public participation, and the last 10 minutes will be set aside for oral questions or comments. Members of the public may also file written statement(s) before or after the meeting. If any person wishes auxiliary aids (such as a sign language interpreter) or other special accommodations, please contact, prior to April 14, 1999, Teri Stumpf, Room 1203, Vermont Avenue, NW, Washington, DC 20571, Voice: (202) 565–3502 or TDD (202) 565–3377.

FOR FURTHER INFORMATION CONTACT: Teri Stumpf, Room 1203, 811 Vermont Ave., NW, Washington, DC 20571, (202) 565–3502.

Elaine Stangland,

Acting General Counsel.

[FR Doc. 99–7867 Filed 3–31–99; 8:45 am]

BILLING CODE 6690–01–M

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collections Being Reviewed by the Federal Communications Commission

March 25, 1999.

SUMMARY: The Federal Communications Commissions, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before June 1, 1999. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commission, 445 12th Street, SW, Room 1–A804, Washington, DC 20554 or via the Internet to lesmith@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0236.

Title: Section 74.703, Interference.

Form Number: N/A.

Type of Review: Extension of currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 10.

Estimated Time per Response: 2 hours.

Frequency of Response: On occasion reporting requirements.

Total Annual Burden: 20.

Total Annual Costs: $12,000.

Needs and Uses: Section 74.703(f) requires licensees of low power TV or TV translator stations causing interference to other stations to submit a report to the FCC detailing the nature of interference, source of interfering signals, and remedial steps taken to eliminate the interference. This report is to be submitted after operation of the station has resumed. The data are used by FCC staff to determine that the licensee has eliminated all interference caused by operation of their station.

OMB Control Number: 3060–0248.

Title: Section 74.751, Modification of Transmission Systems.

Form Number: N/A.

Type of Review: Extension of currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 400.

Estimated Time Per Response: 0.5 hours.

Frequency of Response: Recordkeeping; on occasion reporting requirement.

Total annual burden: 200 hours.

Total annual costs: None.

Needs and Uses: Section 74.751(c) requires licensees of low power TV or TV translator stations to send written notification to the FCC of equipment changes which may be made at licensee's discretion without the use of a formal application. Section 74.751(d) requires that licensees of low power TV or TV translator stations place in the station records a certification that the installation of new or replacement transmitting equipment complies in all respects with the technical requirements of this section and the station authorization. The notifications and certifications of equipment changes are used by FCC staff to assure that the equipment changes made are in full compliance with the technical requirements of this section and the station authorizations and will not cause interference to other authorized stations.

Federal Communications Commission.
Magalie Roman Salas,
Secretary.
[FR Doc. 99–8042 Filed 3–31–99; 8:45 am]
BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) being Reviewed by the Federal Communications Commission.

March 24, 1999.

SUMMARY: The Federal Communications Commissions, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before June 1, 1999. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, S.W., Washington, DC 20554 or via the Internet to lesmith@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0878.
Title: Wireless Telecommunications Bureau Outlines Guidelines For Wireless E911 Rule Waivers For Handset-Based Approaches To Phase II Automatic Location Identification (ALI) Requirements, Public Notice, CC Docket No. 94–102.
Form Number: N/A.
Type of Review: New collection.
Respondents: Business or other for-profit entities.
Number of Respondents: 50.
Estimated Time per Response: 4 hours.
Frequency of Response: One time filing requirement.
Total Annual Burden: 200 hours.
Total Annual Costs: None.
Needs and Uses: The information filed as part of a petition for waiver will be used to ensure timely compliance with the Commission's E911 regulations, provide the Commission with current information on the status of ALI technology, and thus ensure the dependability and responsiveness of critical E911 services.

Federal Communications Commission.
Magalie Roman Salas,
Secretary.
[FR Doc. 99–8043 Filed 3–31–99; 8:45 am]
BILLING CODE 6717–01–P

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collections Approved by Office of Management and Budget

March 26, 1999.

The Federal Communications Commission (FCC) has received Office of Management and Budget (OMB) approval for the following public information collections pursuant to the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid control number. For further information contact Shoko B. Hair, Federal Communications Commission, (202) 418–1379.

The Commission has received OMB approval for the following ARMIS reports. ARMIS was implemented to facilitate the timely and efficient analysis of the carriers' operating costs and the appropriate revenue requirements, rates of return and price caps; to provide an improved basis for audits and other oversight functions; and to enhance the Commission's ability to quantify the effects of alternative policy. The following reports were revised to implement recent Commission orders, to clarify definitions and descriptions and to improve understanding of existing requirements. For copies of the procedures and formats for the ARMIS reports, please call Barbara Van Hagen at 202–418–0849. Copies of the procedures and formats may also be obtained via the internet at: http://www.fcc.gov/ccb/armis.

Federal Communications Commission

OMB Control No.: 3060–0395.
Expiration Date: 03/31/2002.
Title: The ARMIS USOA Report; The ARMIS Service Quality Report; and The ARMIS Infrastructure Report.
Form No.: FCC Report Nos. 43–02, 43–05, 43–07.
Respondents: Business or other for profit.
Estimated Annual Burden: 50 respondents; 1252.7 hours per response (avg.); 62,637 total annual burden hours.
Estimated Annual Reporting and Recordkeeping Cost Burden: $0.
Frequency of Response: Annual.
Description: FCC Report 43–02 contains company-wide data for each account specified in the Uniform System of Accounts ("USOA"). It provides the annual operating results of the carriers' activities for every account in the USOA. (FCC Report 43–02 has 50 respondents, 960 hours per response (avg), 48,000 total annual hours). FCC Report 43–05 collects data at the study area and holding company levels and is designed to capture trends in service quality under price cap regulation. It provides service quality information in the areas of interexchange access service installation and repair intervals, local service installation and repair intervals, trunk blockage and total switch downtime for price cap companies. (FCC Report 43–05 has 12 respondents, 849 hours per response (avg), 10,197.4 total annual hours). FCC Report 43–07 is designed to capture trends in telephone industry infrastructure development under price cap regulation. It provides switch deployment and capabilities data. (FCC Report 43–07 has 8 respondents, 555 hours per response (avg), 4,400 total annual hours). Obligation to respond: Mandatory.
OMB Control No.: 3060–0496.
Expiration Date: 03/31/2002.
Title: The ARMIS Operating Data Report.
Form No.: FCC Report 43–08.
Respondents: Business or other for profit.
Estimated Annual Burden: 50. respondents; 160 hours per response (avg.); 8,000 total annual burden hours.
Estimated Annual Reporting and Recordkeeping Cost Burden: $0.

Frequency of Response: Annual.
Description: The ARMIS Operating Data Report consists of statistical schedules which are needed by the Commission to monitor network growth, usage, and reliability. Obligation to respond: Mandatory.
OMB Control No.: 3060–0511.
Expiration Date: 03/31/2002.
Title: ARMIS Access Report
Form No.: FCC Report 43–04.
Respondents: Business or other for profit.
Estimated Annual Burden: 150. respondents; 1,150 hours per response (avg.); 172,500 total annual burden hours.
Estimated Annual Reporting and Recordkeeping Cost Burden: $0.
Frequency of Response: Annual.
Description: The Access Report is needed to administer the results of the FCC's jurisdictional separations and access charge procedures in order to analyze revenue requirements, joint cost allocations, jurisdictional separations and access charges. Obligation to respond: Mandatory.
OMB Control No.: 3060–0512.
Expiration Date: 03/31/2002.
Title: The ARMIS Annual Summary Report.
Form No.: FCC Report No. 43–01.
Respondents: Business or other for profit.
Estimated Annual Burden: 150. respondents; 220 hours per response (avg.); 33,000 total annual burden hours.
Estimated Annual Reporting and Recordkeeping Cost Burden: $0.
Frequency of Response: Annual.
Description: The ARMIS Annual Summary Report contains financial and operating data and is used to monitor the incumbent local exchange carriers and to perform routine analyses of costs and revenues on behalf of the Commission. Obligation to respond: Mandatory.
OMB Control No.: 3060–0513.
Expiration Date: 03/31/2002.
Title: ARMIS Joint Cost Report.
Form No.: FCC Report 43–03.
Respondents: Business or other for profit.
Estimated Annual Burden: 150. respondents; 200 hours per response (avg.); 30,000 total annual burden hours.
Estimated Annual Reporting and Recordkeeping Cost Burden: $0.
Frequency of Response: Annual.
Description: The Joint Cost Report is needed to administer our Part 64 joint cost rules and to analyze the regulated and nonregulated cost and revenue allocations by study area in order to prevent cross-subsidization of non-regulated operations by the regulated operations. Obligation to respond: Mandatory.
OMB Control No.: 3060–0763
Expiration Date: 03/31/2002
Title: The ARMIS Customer Satisfaction Report
Form No.: FCC Report 43–06
Respondents: Business or other for profit.
Estimated Annual Burden: 8 respondents; 720 hours per response (avg.); 5,760 total annual burden hours.
Estimated Annual Reporting and Recordkeeping Cost Burden: $0.
Frequency of Response: Annual.
Description: The Customer Satisfaction Report collects data from carrier surveys designed to capture trends in service quality. Obligation to respond: Mandatory.

Public reporting burden for the collections of information is as noted above. Send comments regarding the burden estimate or any other aspect of the collections of information, including suggestions for reducing the burden to Performance Evaluation and Records Management, Washington, DC 20554.

Federal Communications Commission.
Magalie Roman Salas,
Secretary.
[FR Doc. 99–8088 Filed 3–31–99; 8:45 am]
BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[WTB Docket No. 98–181; FCC 98–252]

License Revocation, Monetary Forfeiture, and License Application Proceedings

AGENCY: Federal Communications Commission.
ACTION: Notice.

SUMMARY: This order initiates license revocation and monetary forfeiture proceedings against the Norcom Communications Corporation ("Norcom"), the Association for East End Land Mobile Coverage ("East End"); the LMR 900 Association of Suffolk ("LMR 900"); the Metro NY LMR Association ("Metro") the NY LMR Association ("NY"); and the Wireless Communications Association of Suffolk ("Suffolk"). In addition, the action designates three license applications filed by Norcom for hearing. The order sets forth the following issues: to determine whether Norcom, East End, LMR 900, Metro, NY and/or Suffolk violated Section 310(d) of the Communications Act, 47 U.S.C. 310(b), by engaging in unauthorized transfers of control of Stations WPAT918, WNXT323, WPAZ643, WPAP734, and/or WPAT910; to determine whether Norcom, East End, LMR 900, Metro, NY and/or Suffolk violated section 90.179(f) of the Commission's rules, 47 CFR 90.179(f), by operating Stations WPAT918, WNXT323, WPAZ643, WPAP734, and/or WPAT910 on a for-profit basis; to determine whether Norcom has abused the Commission's processes in connection with the creation and/or control of the Associations and/or with the control and/or operation of the Associations' stations; to determine, in light of the evidence adduced pursuant to the foregoing issues, whether Norcom, East End, LMR 900, Metro, NY and/or Suffolk are basically qualified to be Commission licensees; to determine, in light of the evidence adduced pursuant to the preceding issues, whether the captioned licenses should be revoked; and to determine, in light of the evidence adduced pursuant to the preceding issues, whether the captioned applications should be granted. The actions taken by the order are authorized by sections 309(e), 312(a)(2), 312(a)(4), 312(c) and 503(b)(3)(A) of the Communications Act, 47 U.S.C. 309(e), 312(a)(2), 312(a)(4), 312(c), and 503(b)(3)(A), and section 1.227 of the Commission's rules, 47 CFR 1.227.

FOR FURTHER INFORMATION CONTACT: Thomas D. Fitz-Gibbon, Federal Communications Commission, Wireless Telecommunications Bureau, Enforcement and Consumer Information Division, 445 12th Street, SW, Room 3–C431, Washington, DC, 20554, (202) 418–0693.

Federal Communications Commission.
Magalie Roman Salas,
Secretary.
[FR Doc. 99–8040 Filed 3–31–99; 8:45 am]
BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2323]

Petitions for Reconsideration and Clarification of Action in Rulemaking Proceedings

March 25, 1999.

Petitions for Reconsideration have been filed in the Commission's rulemaking proceedings listed in this Public Notice and published pursuant to 47 CFR Section 1.429(e). The full text of these documents are available for viewing and copying in Room 239, 1919 M Street, N.W., Washington, D.C. or may be purchased from the Commission's copy contractor, ITS, Inc. (202) 857–3800. Oppositions to these petitions must be filed by April 16,

1999. See Section 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Provision of Aeronautical Services via the Inmarsat System via the Inmarsat System;

Provision of Aeronautical Services via the Inmarsat System Order on Reconsideration and Further Notice of Proposed Rulemaking (CC Docket No. 87–75);

Provision of Aeronautical Services via the Inmarsat System Notice of Proposed Rulemaking.

Number of Petitions Filed: 1.

Subject: 1998 Biennial Regulatory Review—Amendment of Part 2, 25 and 68 of the Commission's Rules to Further Streamline the Equipment Authorization Process for Radio Frequency Equipment, Modify the Equipment Authorization Process for Telephone Terminal Equipment, Implement Mutual Recognition Agreements and Begin Implementation of the Global Mobile Personal Communications by Satellite (GMPCS) Arrangements (GEN Docket No. 98–68).

Number of Petitions Filed: 1.

Subject: Satellite Delivery of Network Signals to Unserved Households for Purposes of the Satellite Home Viewer Act (CS Docket No. 98–201, RM No. 9335, 9345);

Part 73 Definition and Measurement of Signals of Grade B Intensity.

Number of Petitions Filed: 2.

Subject: Policy and Rules Concerning the Interstate Interexchange Marketplace (CC Docket No. 96–61);

Implementation of Section 254(g) of the Communications Act of 1934, as Amended.

Number of Petitions Filed: 1.

Subject: 1998 Biennial Regulatory Review—part 76 Cable Television Service Pleading and Complaint Rules (CS Docket No. 98–54);

Number of Petitions Filed: 1.

Subject: Allocation of Spectrum Below 5 GHz Transferred from Federal Government Use (ET Docket No. 94–32).

Number of Petitions Filed: 1.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–8041 Filed 3–31–99; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice and request for comment.

SUMMARY: The FDIC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35). Currently, the FDIC is soliciting comments concerning an information collection titled "Uniform Application/ Uniform Termination for Municipal Securities Principal or Representative."

DATES: Comments must be submitted on or before June 1, 1999.

ADDRESSES: Interested parties are invited to submit written comments to Tamara R. Manly, Management Analyst (Regulatory Analysis), (202) 898–7453, Office of the Executive Secretary, Room 4058, Attention: Comments/OES, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429. All comments should refer to "Uniform Application/Uniform Termination for Municipal Securities Principal or Representative." Comments may be hand-delivered to the guard station at the rear of the 17th Street Building (located on F Street), on business days between 7:00 a.m. and 5:00 p.m. [FAX number (202) 898–3838; Internet address: comments@fdic.gov].

A copy of the comments may also be submitted to the OMB desk officer for the FDIC: Alexander Hunt, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Tamara R. Manly, at the address identified above.

SUPPLEMENTARY INFORMATION:

Proposal to Renew the Following Currently Approved Collection of Information

Title: Uniform Application/Uniform Termination for Municipal Securities Principal or Representative.

OMB Number: 3064–0022.

Frequency of Response: Occasional.

Affected Public: Insured state nonmember banks serving as municipal securities dealers.

Estimated Number of Respondents: 75.

Estimated Time per Response: 1 hour.

Estimated Total Annual Burden: 75 hours.

General Description of Collection: An insured state nonmember bank which serves as a municipal securities dealer must file Form MSD–4 or Form MSD–5, as applicable, to permit an employee to become associated or to terminate the association with the municipal securities dealer. FDIC uses the form to ensure compliance with the professional requirements for municipal securities dealers in accordance with the rules of the Municipal Securities Rulemaking Board.

Request for Comment

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the estimates of the burden of the information collection, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

At the end of the comment period, the comments and recommendations received will be analyzed to determine the extent to which the collection should be modified prior to submission to OMB for review and approval. Comments submitted in response to this notice also will be summarized or included in the FDIC's requests to OMB for renewal of this collection. All comments will become a matter of public record.

Dated at Washington, D.C., this 26th day of March, 1999.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary,

[FR Doc. 99–7952 Filed 3–31–99; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice and request for comment.

SUMMARY: The FDIC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35). Currently, the FDIC is soliciting comments concerning an information collection titled "Deregistration from Registered Transfer Agents."

DATES: Comments must be submitted on or before June 1, 1999.

ADDRESSES: Interested parties are invited to submit written comments to Tamara R. Manly, Management Analyst (Regulatory Analysis), (202) 898–7453, Office of the Executive Secretary, Room 4058, Attention: Comments/OES, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429. All comments should refer to "Deregistration from Registered Transfer Agents." Comments may be hand-delivered to the guard station at the rear of the 17th Street Building (located on F Street), on business days between 7:00 a.m. and 5:00 p.m. [FAX number (202) 898–3838; Internet address: comments@fdic.gov].

A copy of the comments may also be submitted to the OMB desk officer for the FDIC: Alexander Hunt, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Tamara R. Manly, at the address identified above.

SUPPLEMENTARY INFORMATION:

Proposal To Renew the Following Currently Approved Collection of Information

Title: Deregistration from Registered Transfer Agents.

OMB Number: 3064–0027.

Frequency of Response: Occasional.

Affected Public: Registered transfer agents who wish to withdraw from registration.

Estimated Number of Respondents: 29.

Estimated Time per Response: 0.42 hours.

Estimated Total Annual Burden: 12 hours.

General Description of Collection: An insured nonmember bank that functions as a transfer agent may withdraw from registration as a transfer agent by filing a written notice of withdrawal with the FDIC as provided by 12 CFR 341.5.

Request for Comment

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the estimates of the burden of the information collection, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

At the end of the comment period, the comments and recommendations received will be analyzed to determine the extent to which the collection should be modified prior to submission to OMB for review and approval. Comments submitted in response to this notice also will be summarized or included in the FDIC's requests to OMB for renewal of this collection. All comments will become a matter of public record.

Dated at Washington, D.C., this 26th day of March, 1999.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 99–7953 Filed 3–31–99; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice and request for comment.

SUMMARY: The FDIC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35). Currently, the FDIC is soliciting comments concerning an information collection titled "Prompt Corrective Action."

DATES: Comments must be submitted on or before June 1, 1999.

ADDRESSES: Interested parties are invited to submit written comments to Tamara R. Manly, Management Analyst (Regulatory Analysis), (202) 898–7453, Office of the Executive Secretary, Room 4058, Attention: Comments/OES, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429. All comments should refer to "Prompt Corrective Action." Comments may be hand-delivered to the guard station at the rear of the 17th Street Building (located on F Street), on business days between 7:00 a.m. and 5:00 p.m. [FAX number (202) 898–3838; Internet address: comments@fdic.gov].

A copy of the comments may also be submitted to the OMB desk officer for the FDIC: Alexander Hunt, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Tamara R. Manly, at the address identified above.

SUPPLEMENTARY INFORMATION:

Proposal to Renew the Following Currently Approved Collection of Information

Title: Prompt Corrective Action.

OMB Number: 3064–0115.

Frequency of Response: Occasional.

Affected Public: Insured institutions requiring federal banking agency supervisory actions.

Estimated Number of Respondents: 10.

Estimated Time per Response: 4 hours.

Estimated Total Annual Burden: 40 hours.

General Description of Collection: The prompt corrective action provisions of FDICIA require or permit the FDIC and other federal financial regulators to take certain supervisory actions when FDIC-insured institutions fall within one of five categories. The collection consists of applications required to obtain FDIC exceptions to otherwise restricted activities.

Request for Comment

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the estimates of the burden of the information collection, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

At the end of the comment period, the comments and recommendations

received will be analyzed to determine the extent to which the collection should be modified prior to submission to OMB for review and approval. Comments submitted in response to this notice also will be summarized or included in the FDIC's requests to OMB for renewal of this collection. All comments will become a matter of public record.

Dated at Washington, D.C., this 26th day of March, 1999.

Federal Deposit Insurance Corporation

Robert E. Feldman,

Executive Secretary.

[FR Doc. 99–7954 Filed 3–31–99; 8:45 am]

BILLING CODE 6714–01–M

FEDERAL MARITIME COMMISSION

Notice of Agreements, Filed, etc.

The Commission gives notice that it has requested that the parties to the below listed agreement provide additional information pursuant to section 6(d) of the Shipping Act of 1984, 46 U.S.C. app. §§ 1701 *et seq.* The Commission has determined that further information is necessary to evaluate the impact of the proposed agreement. This action prevents the agreement from becoming effective as originally scheduled.

Agreement No.: 202–011650.
Title: North Atlantic Agreement.
Parties:
A.P. Moller-Maersk Line
APL Limited
Atlantic Cargo Services
Atlantic Container Line AB
China Ocean Shipping (Group) Co.
DSR-Senator Lines
Hanjin Shipping Co., Ltd.
Hapag-Lloyd Container Line GmbH
Hyundai Merchant Marine Co., Ltd.
Independent Container Line Europe NV
Kawasaki Kisen Kaisha, Ltd.
Lykes Lines Limited
Mediterranean Shipping Co., S.A.
Mexican Line Limited
Nippon Yusen Kaisha
Orient Overseas Container Line, Inc.
POL-Atlantic
P&O Nedlloyd Limited
Sea-Land Service, Inc.
Yangming Marine Transport Corp.

Dated: March 26, 1999.

By Order of the Federal Maritime Commission.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 99–7951 Filed 3–31–99; 8:45 am]

BILLING CODE 6730–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary, Assistant Secretary for Planning and Evaluation

Notice Inviting Applications for New Award for Fiscal Year 1999

AGENCY: The Office of the Assistant Secretary for Planning and Evaluation (ASPE), DHHS.

ACTION: Announcement of the availability of funds and request for applications from States and large counties to determine the status of applicants and potential applicants to the Temporary Assistance to Needy Families (TANF) program, individuals and families entering the TANF caseload, and individuals and families who leave TANF.

SUMMARY: The Office of the Assistant Secretary for Planning and Evaluation (ASPE) announces the availability of funds and invites applications for research into the status of applicants and potential applicants to the Temporary Assistance to Needy Families (TANF) program, individuals and families entering the TANF caseload, and individuals and families who leave TANF. Approximately four to six States or large counties will receive funding that will enable them to monitor and conduct research into the progress of individuals who apply for TANF benefits and their families. ASPE is particularly interested in targeting those applicants who apply for cash assistance but are never enrolled because of non-financial eligibility requirements, participation in up-front job search or other diversion programs, or failure to complete the application process. Proposed studies of new entrants onto the TANF program and of individuals leaving welfare also will be given consideration. Research topics could fall into the broad categories of employment and earnings, participation in government assistance programs, and child and family well-being. Grant applicants may choose any method for their proposed studies, including the linking of administrative data, surveys, or other methods as appropriate. The funds could either support a newly designed project or could be used to add new data sources and analyses to an existing project.

CLOSING DATE: The deadline for submission of applications under this announcement is May 17, 1999.

MAILING ADDRESS: Application instructions and forms should be requested from and submitted to: Adrienne Little, Grants Officer, Office of the Assistant Secretary for Planning and Evaluation, Department of Health and Human Services, Room 405F, Hubert H. Humphrey Building, 200 Independence Avenue, SW, Washington, DC 20201. Telephone: (202) 690–8794. Requests for forms and administrative questions will be accepted and responded to up to ten (10) working days prior to the closing date.

Copies of this program announcement and many of the required forms may also be obtained electronically at the ASPE World Wide Web Page: *http://aspe.hhs.gov.* You may fax your request to the attention of the Grants Officer at (202) 690–6518. Applications may not be faxed or submitted electronically.

The printed **Federal Register** notice is the only official program announcement. Although reasonable efforts are taken to assure that the files on the ASPE World Wide Web Page containing electronic copies of this program announcement are accurate and complete, they are provided for information only. The applicant bears sole responsibility to assure that the copy downloaded and/or printed from any other source is accurate and complete.

FOR FURTHER INFORMATION CONTACT: Administrative questions should be directed to the Grants Officer at the address or phone number listed above. Technical questions should be directed to Matthew Lyon, Office of the Assistant Secretary for Planning and Evaluation, Department of Health and Human Services, Room 404E, Hubert H. Humphrey Building, 200 Independence Avenue, SW, Washington, DC 20201. Telephone: (202) 401–3953. Questions may be faxed to (202) 690–6562 or e-mailed to *mlyon@osaspe.dhhs.gov.*

Part I. Supplemental Information

Legislative Authority

This grant is authorized by section 1110 of the Social Security Act (42 U.S.C. 1310) and awards will be made from funds appropriated under Pub.L. 105–277, Department of Health and Human Services Appropriations Act, 1999.

Eligible Applicants

Given the nature of the research involved, competition is open only to State agencies that administer TANF programs and to counties with total populations greater than 500,000 that administer TANF programs. Consortia of States and counties are also encouraged to apply, as long as their combined total populations exceed 500,000 and a single agency is identified as the lead to handle grant funds and

sub-granting. Public or private nonprofit organizations, including universities and other institutions of higher education, may collaborate with States in submitting an application, but the principal Grantee will be the State. Private for-profit organizations may also apply jointly with States, with the recognition that grant funds may not be paid as profit to any recipient of a grant or subgrant.

The Code of Federal Regulations, Title 45, Part 92 defines a State as: "Any of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any agency or instrumentality of a State exclusive of local governments. The term does not include any public and Indian housing agency under United States Housing Act of 1937."

Available Funds

Approximately $1,200,000 is available from ASPE, in funds appropriated for fiscal year 1999. ASPE anticipates providing approximately four to six awards of between $200,000 and $250,000 each. If additional funding becomes available in fiscal years 1999 or 2000, further projects may be funded or some projects may receive second year funding. However, applications for funding under this announcement should describe projects that can be completely carried out with one year of funding at the above anticipated level.

Background

Welfare caseloads have declined precipitously in recent years. Since January 1993, the number of people receiving federally funded assistance under Title IV–A of the Social Security Act has fallen from 14.1 million to just under 8 million recipients, a reduction of 44 percent. This decline has occurred in response to the Administration's grants of Federal waivers to 43 States, the provisions of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Pub.L. 104–193), and the strong economy. In response to the demand from the public and policymakers, many studies have been and are currently being carried out to study the circumstances of the large numbers of people who have left welfare. There has been less attention, however, to applicants and potential applicants to TANF, some of whom are formally or informally diverted from receiving cash assistance.

ASPE is interested in focusing on applicants and potential applicants to TANF for a number of reasons. First, some of the reduction in the welfare rolls has likely been caused by the reduced number of individuals and families applying for and enrolling in TANF. Little is known about the economic and employment status of applicants who are diverted from receiving assistance by new policies or procedures, or the well-being of their children and families. Moreover, the Department of Health and Human Services has a particular policy interest in learning about the degree to which TANF applicants are aware of their potential eligibility for Medicaid and other programs and services that are important in helping families make a successful transition to work. The extent to which low-income families diverted from or leaving cash welfare programs are receiving health insurance from private or public sources should also inform efforts to reduce the number of uninsured families.

The studies funded under this announcement build on previous ASPE-sponsored data-linkage and research projects to study the outcomes of welfare reform. These include projects involving linking of administrative data, research on state diversion programs, and an earlier round of grants to States and large counties to study the outcomes of welfare reform.

In FY 1996 and 1997, ASPE awarded grants to five States and one county for the purpose of linking administrative databases from multiple programs in order to study the interactions between programs and the use of multiple sources of assistance by recipients. As a result of this funding, the Grantees have significantly increased their ability to conduct research using administrative data.

In FY 1997, ASPE and the Administration for Children and Families (ACF) sponsored a study by the Center for Health Policy Research at The George Washington University to examine State diversion policies and practices and the potential effects of formal and informal TANF diversion programs on recipients and on participation in other government programs, particularly Medicaid. The study found that States are using three major methods to formally divert applicants from entering cash assistance: lump sum payment programs, mandatory applicant job search, and policies encouraging the use of alternative resources. In addition, some potential applicants are informally diverted, or discouraged from applying for TANF at all by strict expectations placed on recipients. Both the interim report, released in August 1998, and the final report, to be released in March 1999, raise questions about whether TANF diversion policies may reduce access to Medicaid for many low-income individuals who may be unaware of their eligibility for Medicaid under Section 1931 of the Social Security Act. The final report also stresses the need to gather more information about the population diverted from TANF and other public assistance programs.

Finally, the projects funded on this announcement will build closely on the ongoing ASPE-funded grants to study welfare outcomes. In FY 1998, ASPE awarded approximately $2.9 million in grants to study the outcomes of welfare reform on individuals and families who leave the TANF program, who apply for cash welfare but are never enrolled because of non-financial eligibility requirements or diversion programs, and/or who appear to be eligible but are not enrolled. These grants were funded by money earmarked by Congress for crosscutting research on the outcomes of welfare reform and interagency transfers from the Department of Agriculture, the Department of Labor, and the Administration for Children and Families.

Grants were awarded to ten States (including the District of Columbia), two counties, and one consortium of counties under the FY 1998 announcement. In addition, a grant was made to South Carolina under a different program announcement to conduct a similar study tracking welfare families. Families leaving welfare are being studied by all fourteen of the FY 1998 welfare outcome Grantees—Arizona, District of Columbia, Florida, Georgia, Illinois, Massachusetts, Missouri, New York, South Carolina, Washington, Wisconsin, Los Angeles County in California, Cuyahoga County in Ohio, and a consortium of three contiguous counties in the Bay Area of California (San Mateo, Santa Cruz, and Santa Clara). Research topics vary among Grantees, but include: employment and earnings, other income supports, health insurance, child care, child well-being, barriers to self-sufficiency, insecurity/deprivation, and other topics. In addition, five of the fourteen Grantees (Florida, South Carolina, Washington, Wisconsin, and the San Mateo County consortia) are including analysis of individuals who have been formally or informally diverted from receiving welfare.

The Wisconsin study, for example, includes an applicant diversion study undertaken by the Institute for Research on Poverty (IRP) at the University of Wisconsin-Madison. HHS funding has allowed IRP to expand a study of individuals applying for Wisconsin

Works (W–2) assistance in Milwaukee. The project focuses on three subgroups of applicants: (1) Those who request assistance and subsequently participate in the W–2 program; (2) those who request assistance but are determined to be ineligible for program participation; and, (3) those who request assistance, appear to be eligible, but do not participate in W–2. A six-month cohort of applicants is being tracked through a combination of linked administrative data (e..g, public assistance, quarterly earnings, child support, foster care, and mental health data) and two waves of surveys. In order to address the difficult issue of identifying and surveying individuals who never enroll in the program and thus may not be regularly entered in the state public assistance administrative database, IRP researchers are approaching individuals on the day that they apply for cash assistance, immediately after they have been screened for potential welfare eligibility and before they meet with employment specialists. By conducting in-person interviews with applicants while they are still in the welfare office, IRP hopes to achieve a response rate of 90 percent for the first wave of interviews and gather sufficient information to be able to locate respondents for a follow-up interview twelve months later. Analysis of the applicants will take place across a variety of sub-topics, including the local welfare office, respondent demographics, welfare status over the twelve months, prior welfare receipt, and receipt of any support services.

The study of applicants in San Mateo County, California, differs somewhat from the IRP study. San Mateo County is able to take advantage of California's Case Data System (CDS), which includes every TANF application that is initiated in the state. Researchers in San Mateo County and at the SPHERE Institute in Palo Alto are using this system both to link all applicants with other administrative databases and to draw their survey sample. Because the Case Data System includes all applications, and not just those individuals who received TANF, San Mateo County can study individuals who began the application process but were diverted, as well as individuals who leave TANF. The work plan calls for administrative data linkage and a two-wave survey, administered at six and twelve months after "case closure" (when either the applicant withdraws from the application process or the TANF recipient leaves the program).

Another approach to studying diversion is being taken in Florida, South Carolina, and Washington. In addition to studying individuals who complete their applications for welfare but do not enroll in the program, each of these states is using Food Stamps and/or Medicaid enrollment data to identify those individuals and their families that appear to be eligible for cash assistance but are not enrolled in TANF. These individuals will be tracked through administrative databases or, in some cases, studied through a combination of administrative data and surveys.

As stated above, all fourteen welfare outcomes Grantees receiving FY 1998 funding are analyzing families that leave the TANF program. Each of the "leavers" studies includes at least two cohorts: one for which administrative data is retrieved and the other for which the Grantee compiles both administrative and survey data. The most common administrative data sets being used are public assistance data (TANF, Medicaid, Food Stamps, etc.) and wage data (usually Unemployment Insurance). Several of the Grantees also are using child welfare, child support, child care, JOBS or JOBS successor, and other human services data sets.

To supplement the information gathered through data linking, all 1998 Grantees are surveying at least one cohort of leavers. Most surveys are mixed mode (telephone interviews with an in-person follow-up when necessary), and most of the Grantees have acknowledged that a response rate of at least 70 to 80 percent is needed to avoid potential biases of their studies' results. Grantees are each developing their own survey instruments, generally drawing items from national surveys developed by the Census Bureau (e.g., the Survey of Income and Program Participation (SIPP), the Survey of Program Dynamics (SPD), the Food Insecurity Module used on the Current Population Survey (CPS)), other national surveys, existing state instruments (e.g., a survey used in an early South Carolina study of welfare leavers), and items developed by their own researchers. Variation across the Grantees exists in terms of the timing of cohorts, administrative data sets, and survey instruments. However, the Grantees have come to agreement on certain issues, including a common definition of "leavers" as individuals who leave cash assistance for a period of two months or longer.

Part II. Purpose and Responsibilities

Purpose

The purpose of this announcement is to support the efforts of States and large counties to research the circumstances of applicants and potential applicants to the Temporary Assistance to Needy Families (TANF) program, individuals and families entering the TANF caseload, and individuals and families who leave TANF. ASPE is committed to using the research funds appropriated by Congress to help build state and local capacity to conduct studies of the outcomes of welfare reform. Through these grants, ASPE hopes to support State efforts to gather a variety of information about the above individuals and their families, including their economic and non-economic well-being and participation in government programs.

More specifically, ASPE hopes to learn what happens to families who apply for welfare but are formally or informally diverted before enrollment. How are such families faring economically and in other measures of well-being? To what extent are such families still participating in Medicaid, Food Stamp, and child support programs (and if not, why not)? Similar questions can be asked about individuals and families who have left TANF. Finally, a study of TANF entrants provides still another perspective from which to analyze the outcomes of welfare reform.

A proposed study should include at least one cohort of applicants/potential applicants (with an emphasis on those formally or informally diverted from receiving cash assistance), entrants, or leavers. The Grantee has the option of studying just one of these types of populations, or of studying two or more. However, preference will be given to those Grantees that include a study of applicants and potential applicants to TANF, including diverted individuals and families.

The Grantee should clearly identify how the study population is defined. For example, applicants and potential applicants could include one or more of the following groups, as defined by the Grantee:

- individuals participating in a State or county's formal diversion program (lump-sum payment, mandatory applicant job search, and/or alternative resources),
- individuals that begin the application process but fail to complete it,
- individuals that complete the process and are determined to be eligible for cash assistance, but who withdraw from the program before receiving any benefits, and
- individuals who apply for cash assistance but are determined to be ineligible based on non-financial requirements.

Grantees studying individuals and families that leave TANF are encouraged to use the "leaving cash assistance for two months or longer" definition being used by the fourteen grantees funded in 1998. Grantees studying families that enter TANF should clearly define that population, and should explain how they will study the experiences of welfare entrants while they are enrolled in the TANF program.

Each Grantee will be expected to use administrative records from multiple programs and/or other data-gathering techniques to identify and conduct research into the experiences of the study population (as defined by the Grantee) over time. For example, applicants and potential applicants could be tracked through the application process, after eligibility is determined, and in subsequent months; former recipients and their families could be monitored after the point of closure; and entrants onto TANF could be studied throughout their participation in the program. An administrative data analysis could be enhanced through the use of retrospective data (i.e., prior welfare receipt, employment history), as well as data on characteristics at the time of cohort identification (point of application, case entry, or case closure) and over subsequent months.

Applicants for the ASPE grants may propose to augment their administrative data by linking individual records with survey data or other data sources. For example, surveys of applicants and those that have been diverted from applying can determine the individual's perceptions of the application process and reasoning for participating or not participating in different benefit programs. The combination of linked administrative data sets and surveys provide researchers with the answers to a wide range of research questions. Another possible enrichment of the data might involve providing contextual information by briefly documenting or describing the application process facing TANF applicants in the county or State studied (or the case closure procedures, if appropriate). This might include the role of the TANF agency in ensuring that applicants for cash assistance are enrolled into the Medicaid, Food Stamps, and Child Support Enforcement programs, where appropriate. The richness of the data the Grantee is able to provide will be an important criterion under which proposals are evaluated.

Studies of applicants, entrants, and leavers will benefit from tracking individuals and families over time. To this end, applicants may submit proposals for studies lasting up to seventeen months from the date the grant is awarded. While ASPE will obligate funds for studies as lengthy as seventeen months, proposals that allot this maximum time period will receive no preference over shorter studies, including those that last the conventional twelve months. If additional funding becomes available in fiscal year 2000, some projects may be considered for second year funding, allowing for an even longer time frame.

ASPE understands that there is a great degree of variation in State programs, and in the amount and scope of data available to states. Grantees also will vary in their identification of a study population and in the types of subgroup analyses that can be conducted. Subgroup analyses contrasting different types of diverted cases (e.g., participants in formal diversion programs, nonparticipating eligible individuals and families, and those that are non-financially ineligible), different types of closed cases (e.g., because of earnings, sanctions, time limits), and special populations (e.g., the disabled, substance abusers) are of interest. ASPE also has a strong interest in studying urban and rural subgroups. Comparisons across other demographic characteristics, including race and age and number of children, would also be helpful.

Topical areas that applicants may wish to address, with examples of potential policy questions, are listed below, grouped in three general categories for ease of presentation. Given the diversity of expected proposals, it is highly unlikely that every applicant would be able to address all of the issues and policy questions. Further, while the list represents the topics that are most important to ASPE researchers and policymakers, the suggested questions are in no way meant to be exhaustive. However, we would expect that applicants for funding will cover each of these three broad areas in their applications. If prospective applicants have additional questions which they feel are relevant within the context of welfare reform, they are encouraged to raise them in their proposal. Please note that though many of the questions focus on TANF applicants and potential applicants, they may be suggestive of similar issues that could be investigated in studies that focus on TANF entrants or individuals and families that leave the TANF program. Again, richness of data is strongly encouraged and will be an important criterion under which proposals are evaluated.

1. Employment and Economic Well-being

- Employment and earnings: What is the employment status of individuals at time of application for welfare? At time of case closure? Six to twelve months later? What types of jobs are held? What level of wages do they receive and how much do they receive in total earnings? What sort of work schedules do they have? What, if any, employer-provided fringe benefits and training are available to them, including health insurance? What fringe benefits do they and their family members actually receive? If applicants/entrants/leavers are not employed, why not? What was the cause of the most recent job loss? How long between job loss and application for welfare?
- Household income: What is total household income? Does this income fall below the poverty threshold? Are there earnings or other income from other members of the applicant's household? What are the sources of this income? Do they include disability payments? What financial support do they receive from extended family members or friends that live outside of the household?
- Child support: Do families have child support orders? Do they receive regular child support payments? If so, what proportion of family income does child support income represent? Is there evidence that the non-custodial parent provides some financial support, including in-kind goods and services, even if there is no "formal" child support?
- Barriers to self-sufficiency: Do applicants appear to face any barriers to employment, including disability, illiteracy, limited English proficiency, domestic violence, mental illness, or substance abuse? Are barriers to employment identified at time of application and do they influence the applicants' placement or ability to participate in an up-front job search or other component to a work-based approach to welfare (see also Child care section below)?

2. Participation in Government Programs

- TANF: What types of families are placed in formal diversion programs and for what reason? What types of families are eligible but do not enroll? What families are enrolled? Are there differences in the experiences of single and two-parent families? What are patterns of prior receipt for TANF applicants? For individuals leaving TANF, what are the reasons for closure (as identified in case records and

reported by recipient)? How many families return to welfare, when, and why? For individuals entering TANF, what is their experience while receiving cash assistance? What services are they receiving, and how has their participation in the TANF program affected their ability to become self-sufficient?

• Medicaid and other health insurance: Are individuals and/or their children enrolled in Medicaid? To what extent are individuals aware of the eligibility guidelines and application procedures for Medicaid for themselves and/or their children? What information or guidance have they received from the State or local TANF or Medicaid agency? From other agencies or from health providers? Are applications for Medicaid routinely accepted and processed, even as applicants cooperate with work-search requirements to become eligible for TANF? Do adults and children in families have access to other health insurance, and if so, from what source? Are premiums or co-payments required? Are respondents aware of their children's potential eligibility for health coverage under the Children's Health Insurance Plan (CHIP)? Are those that are working aware of how to qualify for potential Transitional Medicaid benefits?

• Food Stamps: Do some or all family members participate in the Food Stamp program? To what extent are individuals aware of their potential eligibility for Food Stamps and of the application procedures? What information or guidance have they received from State or local agencies? Are Food Stamp applications processed, even as applicants cooperate with work-search requirements to become eligible for TANF?

• Child care: What child care arrangements are being used by families when parents are working, seeking work, or in employment and training programs? Does the family make any payments? Does the government or anyone else help pay for the child care? To what extent are families aware of their potential eligibility for child care subsidies and/or transitional child care, and of the application procedures? Did individuals lose any work because of child care problems, or conversely, lose child care due to work requirements? Do individuals require care for their children during non-traditional hours, such as weekends and after-school?

• Child Support Enforcement: Are all families, including those that are diverted from cash assistance, referred to Child Support Enforcement services? How are families that do not receive cash assistance treated by the Child Support Enforcement agency, as compared with TANF families (e.g., application fees, longer processing period, receipt of awards)? Are non-custodial parents being made aware of services that may be available to them?

• SSI and other government programs: Are TANF applicants referred to Supplemental Security Income (SSI)? What happens to applicants during the waiting period between referral and determination of SSI eligibility? To what extent are TANF applicants referred to and/or relying on other government programs, such as Unemployment Insurance, housing subsidies, free or reduced price school meals, WIC, and Head Start? Are applicants also referred to programs run by state and local governments or not-for-profit agencies?

• Attitudes: What are the attitudes of applicants, recipients, and former recipients toward the TANF application process, applicant job search and other diversion programs, TANF, work, and their current situation?

3. Family Well-being

• Food insecurity: Does the family have enough food to eat? Does the family run out of money to buy food? Were any family members forced to turn to food pantries for meals? Did any adults in the family skip meals? Did any children?

• Health insecurity: What is the health status of each family member? Do they have difficulties accessing health care? Did family members not get care or postpone getting care when they needed it for financial reasons? Has the family been forced to access emergency services, and if so, have they been able to obtain the needed assistance?

• Housing insecurity: Have families been forced to double-up or move in with relatives? Does the family run out of money to pay the rent? Have they been evicted or recently experienced periods of homelessness? Have families stayed in homeless shelters for any period of time?

• Family support: To what extent do individuals turn to extended family members, friends, and informal resource networks for support (including, but not limited to, the financial support discussed in the section relating to economic well-being)? During the application process, are applicants encouraged to seek the support of family members and friends as a potential alternative to welfare?

• Household composition and child living arrangements: How does household composition change over time, and how is this related to entry onto and exit from welfare? Are there changes in marital status? Changes in the number of adults living in the household? Pregnancies and births? Do any children enter or exit from foster care programs? Do children move to and from care between parents, or by relatives other than parents (e.g., informal arrangements, formal kinship care programs, child-only TANF cases)? How often have families moved?

• Child well-being: What are child health status and access to health care (see also Medicaid section above)? How are children faring in school? In child care? To what extent are there signs of positive behaviors/activities or behavior problems? What is the incidence of child abuse or neglect (see also Barriers to self-sufficiency section above)? Are there signs of maternal depression? Is there non-resident parent involvement with the child/children? If so, what types of involvement exist (e.g. amount of contact, participation in school, church, or other community events)?

Grantee Responsibilities

1. Prior to completion of the final work plan, the Grantee shall meet with relevant federal personnel, other Grantees, and invited experts in Washington, D.C., to discuss the preliminary methodology and design of the research project. As part of this process, the Grantees will take part in a joint discussion of their proposed study designs and research questions, and receive technical assistance from ASPE staff. This will allow for knowledge sharing across the various projects, as well as encourage peer-to-peer contacts among each of the Grantees.

2. No later than ninety (90) days after the date of award, the Grantee shall submit an outline of progress to date, if any, and a final work plan that is based on and updates the work plan submitted in the original application.

3. A second meeting may be planned later in the grant period in Washington, D.C., to discuss preliminary findings and the format for the final report (for Grantees outside the Washington, D.C. area, this may take place by telephone).

4. After completing the analysis, the Grantee shall prepare a final report describing the results of the study, including the procedures and methodology used to conduct the analysis, the research questions answered, the knowledge and information gained from the project, and any barriers encountered in completing the project. A draft of this report shall be delivered to the Federal Project Officer no later than thirty (30) days before the completion of the project. After receiving comments on the draft report from the Federal Project Officer,

the Grantee shall deliver at least three (3) copies of a final report to the Grants Officer before the completion of the project. One of these copies must be unbound, suitable for photocopying; if only one is the original (has the original signature, is attached to a cover letter, etc.), it should not be this copy.

5. To encourage wider analysis, the Grantee shall make all data available to the research community. ASPE prefers that this result in a public-use data file. In preparing the public-use data file, data shall be edited as appropriate to ensure confidentiality of individuals. If the applicant feels that provision of a public-use data file is impossible, the application should explain why and should fully articulate how the applicant will make the data available to qualified researchers and to ASPE. In either case, the plan for data dissemination will be evaluated and scored during the evaluation of proposals.

ASPE Responsibilities

1. ASPE shall convene one to two meetings of Grantees, federal personnel, and relevant experts in the areas the Grantees choose to address. The first meeting will allow for technical assistance and peer-to-peer contacts before final research design decisions have been made, and will assure that data constructs meet some standard of validity. A second meeting may be held approximately eight to ten months into the grant period to allow Grantees to meet, discuss and assess their progress to date, and receive assistance with any problems that have arisen.

2. ASPE shall provide consultation and technical assistance in the planning and operation of grant activities.

3. ASPE shall assist in information exchange and the dissemination of reports to appropriate Federal, State, and local entities.

Part III. Application Preparation and Evaluation Criteria

This section contains information on the preparation of applications for submission under this announcement, the forms necessary for submission, and the evaluation criteria under which the applications will be reviewed. Potential grant applicants should read this section carefully in conjunction with the information provided above. The application must contain the required Federal forms, title page, table of contents, and sections listed below. All pages of the narrative should be numbered.

The application should include the following elements:

1. *Abstract:* A one page summary of the proposed project.

2. *Goals and objective of the project:* An overview that describes (1) the project; (2) the specific research questions to be investigated; (3) proposed accomplishments; and (4) knowledge and information to be gained from the project by the applicant, the government, and the research community. If the proposal builds on any current project, the application should describe how funding under this announcement will enhance, not substitute for, current State or local efforts. Applications from States and counties that received funding from ASPE under the FY 1998 welfare outcomes grants are not precluded from submitting proposals under this announcement, provided they are proposing a new line of research, and not simply a continuation or extension of their current project. However, such proposals will be graded only on the Evaluation Criteria listed below and will receive no preferential treatment during the award process.

3. *Methodology and Design:* Provide a description and justification of how the proposed research project will be implemented, including methodologies, chosen approach, definition of study populations, data sources, and a research plan consistent with a descriptive, tabular analysis. The proposed research plan should:

(a) describe in detail how the applicant plans to define the study population, which should include one or more of the following: applicants and potential applicants to the TANF program (with an emphasis on those diverted from receiving cash assistance), individuals and families entering the TANF caseload, and individuals and families who leave TANF. Applications that propose studies of TANF applicants should include a description of the TANF application process in the State or large county to be sampled. This will assist reviewers in understanding when and how the sample population will be chosen.

(b) identify how the proposed data sets and variables will be used by the Grantee to answer each of the research questions described in the proposal.

(c) identify important issues for which data currently are not available, and strategies for dealing with this lack of data when it pertains to the research questions in the proposal.

(d) describe in detail the methodology the applicant will use to extract samples of TANF applicants and potential applicants, individuals and families entering the TANF caseload, and recipients who leave TANF. Grant applicants are encouraged to use a full population sample, but at a minimum, a successful applicant will use a scientifically acceptable probability sampling method in which every sampling unit in the population has a known, non-zero chance to be included in the sample and a sample size large enough to make statistically reliable comparisons between planned subgroups. If, however, the grant applicant proposes to sample applicants and potential applicants that live in certain geographic regions or are subject to a particular set of diversion programs, they may propose a sampling plan that covers only those regions in question.

(e) if administrative data-linking is planned, describe the criteria for the selection of existing data sets, as well as the methods used to clean, standardize and link the case-level data from the different sources. Applicants should discuss thoroughly how they intend to match case records from different data sources, and the internal validity checks that will be used to ensure the accuracy of the matches. The architecture for the resulting data set should also be discussed in detail.

(f) if survey data collection is planned, identify and describe the methodology used to gather survey data. In particular, identify the sampling plan, the survey mode (e.g., telephone, in-person, mail), and the steps that will be taken to address any biases inherent in each. These should include steps planned to ensure a high response rate, such as a mixed mode design, multiple attempts to contact sample members, or incentive payments to respondents, and steps taken to analyze differences between respondents and non-respondents, such as comparisons through linked administrative data. Because of the importance of a high response rate in ensuring reliability, these procedures will be an important part of the evaluation of proposals. In addition, grant applicants are encouraged, but not required, to include a draft of their proposed survey instrument as a supplement to their application.

(g) if qualitative research such as focus groups or a qualitative description of the TANF application, enrollment, and closure policies and procedures are planned, the application should include a complete plan for data collection procedures and analysis. This plan should include an approach for reviewing written documents, identification of key informants, the composition of any proposed focus groups, planned discussion topics, a plan for summarizing and organizing the results, and the value that this part

of the project will add to the final report. The application should demonstrate a familiarity with the difficulties and potential biases of qualitative research, and include plans to avoid or resolve them.

(h) identify the methodology the Grantee will use to analyze the data and organize the final report. Complex data analysis is neither expected nor preferred. Simple tabular analysis and descriptive statistics are appropriate. The description should include subgroup analyses planned, report organization and proposed tabulations, including table shells illustrating how the results will be presented. The application should explain how different data sources (e.g., data from administrative sources, survey data collection, other research) will be synthesized to enhance the proposed analyses.

To the extent that the analysis uses data on individuals from multiple, separate sources, such as administrative databases from several State agencies, the proposal should discuss measures taken to maintain confidentiality, as well as demonstrate that the Grantee has obtained authorized access to those data sources. The preferred form of proof is a signed interagency agreement with each of the relevant agencies/departments. Though not preferable, letters of support from the appropriate agencies are acceptable, provided that the letter clearly states that the proposing agency has the authorization to access and link all necessary data. Grant applicants must assure that the collected data will only be used for management and research purposes, and that all identifying information will be kept completely confidential, and should present the methods that will be used to ensure confidentiality of records and information once data are made available for research purposes.

4. *Experience, capacity, qualifications, and use of staff:* Briefly describe the grant applicant's organizational capabilities and experience in conducting pertinent research projects. If the proposal involves linking administrative databases from multiple programs, the proposal should detail the applicant's experience in conducting projects using linked administrative program data or identify key subcontractors with such experience. If the proposal involves survey work, the proposal should describe the applicant's experience in conducting relevant surveys or identify key subcontractors with such experience. Similarly, if the proposal involves qualitative data collection or analysis, the experience of the applicant or key subcontractors with this type of research and with these populations must be described in detail.

If the grant applicant plans to contract for any of the work (e.g., data-linking, survey design or administration, qualitative analysis), and the contractors have not been retained, the applicant should describe the process by which they will be selected. Identify the key staff who are expected to carry out the project and provide a résumé or curriculum vitae for each person. Provide a discussion of how key staff will contribute to the success of the project, including the percentage of each staff member's time that will be devoted to the project. Finally, applicants should demonstrate access to computer hardware and software for storing and analyzing the data necessary to complete this project.

5. *Work plan:* A work plan should be included which lists the start and end dates of the project, a time line which indicates the sequence of tasks necessary for the completion of the project, and the responsibilities of each of the key staff. The plan should identify the time commitments of key staff members in both absolute and percentage terms, including other projects and teaching or managerial responsibilities. Due to the complicated nature of the study of applicants and potential applicants for welfare, work plans with time lines of twelve to seventeen months will be accepted.

The work plan also should include plans for dissemination of the results of the study (e.g., articles in journals, presentations to State legislatures or at conferences). As noted above, ASPE prefers that the data be edited as appropriate for confidentiality and issued as a public-use data file. The work plan should detail how resulting data and analysis will be made available to qualified researchers and to ASPE. If the grant applicant believes that provision of a public-use file would be impossible, the application should explain why and should fully articulate how the applicant will make the data available to qualified researchers and to ASPE.

6. *Budget:* Grant applicants must submit a request for federal funds using Standard Form 424A and include a detailed breakdown of all Federal line items. A narrative explanation of the budget should be included that states clearly how the funds associated with this announcement will be used and describes the extent to which funds will be used for purposes that would not otherwise be incorporated within the project. The applicant should also document the level of funding from other sources and describe how these funds will be expended.

As noted above, all applicants must budget for two trips to the Washington, D.C., area, for at least two members of the research team. At the first meeting, Grantees will have the opportunity to meet, discuss their projects, and receive feedback from both the other Grantees and from ASPE staff and invited experts. The second meeting will be approximately eight to ten months into the grant period, and will provide Grantees with the ability to meet and discuss their progress to date, and assess and receive technical assistance with any problems that have arisen.

Review Process and Funding Information

Applications will initially be screened for compliance with the timeliness and completeness requirements. Three (3) copies of each application are required. One of these copies must be in an unbound format, suitable for copying. If only one of the copies is the original (i.e., carries the original signature and is accompanied by a cover letter) it should not be this copy. Applicants are encouraged to send an additional two (2) copies to ease processing, but the application will not be penalized if these extra copies are not included. The grant applicant's Standard Form 424 must be signed by a representative of the applicant who is authorized to act with full authority on behalf of the applicant.

A Federal review panel will review and score all applications submitted by the deadline date that meet the screening criteria (all information and documents as required by this announcement). The panel will use the evaluation criteria listed below to score each application. The panel results will be the primary element used by the ASPE when making funding decisions. The Department reserves the option to discuss applications with other Federal or State staff, specialists, experts and the general public. Comments from these sources, along with those of the reviewers, will be kept from inappropriate disclosure and may be considered in making an award decision.

As a result of this competition, between four and six grants of $200,000 to $250,000 each are expected to be made from funds appropriated for fiscal year 1999. Additional awards may be made depending on the policy relevance of proposals received and the available funding, including funds that may become available in fiscal years 1999 or 2000.

Reports

As noted in the Grantee Responsibilities, two substantive reports are required under the grant: a final work plan (due no later than ninety (90) days after the date of award), and a final report containing all results and analysis (draft version due no later than thirty (30) days before the end of the project and final version due at the conclusion of the project).

In addition, Grantees shall provide concise quarterly progress reports. The specific format and content for these reports will be provided by the Federal Project Officer.

State Single Point of Contact (E.O. No. 12372)

DHHS has determined that this program is not subject to Executive Order 12372, "Intergovernmental Review of Federal Programs." Applicants are not required to seek intergovernmental review of their applications within the constraints of E.O. 12372.

Deadline for Submission of Applications

The closing date for submission of applications under this announcement is May 17, 1999. Hand-delivered applications will be accepted Monday through Friday, excluding Federal holidays, during the working hours of 9:00 a.m. to 4:30 p.m. in the lobby of the Hubert H. Humphrey building, located at 200 Independence Avenue, SW in Washington, D.C. When hand-delivering an application, call (202) 690–8794 from the lobby for pick up. A staff person will be available to receive applications.

An application will be considered as having met the deadline if it is either received at, or hand-delivered to, the mailing address on or before May 17, 1999, or postmarked before midnight three days prior to May 17, 1999 and received in time to be considered during the competitive review process (within two weeks of the deadline).

When mailing applications, applicants are strongly advised to obtain a legibly dated receipt from the U.S. Postal Service or from a commercial carrier (such as UPS, Federal Express, etc.) as proof of mailing by the deadline date. If there is a question as to when an application was mailed, applicants will be asked to provide proof of mailing by the deadline date. If proof cannot be provided, the application will not be considered for funding. Private metered postmarks will not be accepted as proof of timely mailing. Applications which do not meet the deadline will be considered late applications and will not be considered or reviewed in the current competition. DHHS will send a letter to this effect to each late applicant.

DHHS reserves the right to extend the deadline for all proposals due to: (1) Natural disasters, such as floods, hurricanes, or earthquakes; (2) a widespread disruption of the mail; or, (3) if DHHS determines a deadline extension to be in the best interest of the Federal government. The Department will not waive or extend the deadline for any applicant unless the deadline is waived or extended for all applicants.

Application forms

Application instructions and forms should be requested from and submitted to: Adrienne Little, Grants Officer, Office of the Assistant Secretary for Planning and Evaluation, Department of Health and Human Services, Room 405F, Hubert H. Humphrey Building, 200 Independence Avenue, SW, Washington, DC 20201. Telephone: (202) 690–8794. Requests for forms and questions (administrative and technical) will be accepted and responded to up to ten (10) working days prior to closing date of receipt of applications.

Copies of this program announcement and many of the required forms may also be obtained electronically at the ASPE World Wide Web Page: *http://aspe.hhs.gov*. You may fax your request to the attention of the Grants Officer at (202) 690–6518. Grant applications may not be faxed or submitted electronically.

The printed **Federal Register** notice is the only official program announcement. Although reasonable efforts are taken to assure that the files on the ASPE World Wide Web Page containing electronic copies of this program announcement are accurate and complete, they are provided for information only. The applicant bears sole responsibility to assure that the copy downloaded and/or printed from any other source is accurate and complete.

Also see section entitled "Components of a Complete Application." All of these documents must accompany the application package.

Length of application

In no case shall an application for the ASPE grant (excluding the résumés, appendices and other appropriate attachments) be longer than thirty (30) single-spaced pages. Applications should not be unduly elaborate, but should fully communicate the applicant's proposal to the reviewers.

Selection process and evaluation criteria

Selection of successful applicants will be based on the technical and financial criteria described in this announcement. Reviewers will determine the strengths and weaknesses of each application in terms of the evaluation criteria listed below, provide comments, and assign numerical scores. The review panel will prepare a summary of all applicant scores, strengths and weaknesses, and recommendations and submit it to the ASPE for final decisions on the award.

The point value following each criterion heading indicates the maximum numerical weight that each section will be given in the review process. An unacceptable rating on any individual criterion may render the application unacceptable. Consequently, grant applicants should take care to ensure that all criteria are fully addressed in the applications. Applicants are reminded that preference will be given to those proposals that include a study of TANF applicants and/or potential TANF applicants. Grant applications will be reviewed as follows:

1. *Goals, Objectives, and Potential Usefulness of the Analyses* (25 points). The potential usefulness of the objectives and how the anticipated results of the proposed project will advance policy knowledge and development. If the proposed project builds on previous work, the application should explain how. Applications will be judged on the quality and policy relevance of the proposed research questions, study populations, and analyses (including subgroup analyses).

2. *Quality and Soundness of Methodology and Design* (30 points). The appropriateness, soundness, and cost-effectiveness of the methodology, including the research design, selection of existing data sets, data gathering procedures, statistical techniques, and analytical strategies. Richness of policy-relevant data will be an important scoring factor in this criterion.

If analysis of linked administrative data is planned, a critical scoring element will be the proposal's discussion of the methods used to clean, standardize, and link the individual-level or case-level data from different sources, including any proposed links between administrative data and surveys. Applicants should thoroughly discuss how they intend to match case records from different data sources, what internal validity checks will ensure the accuracy of the matches, and the architecture for the resulting data

set. Other design considerations include whether the applicant has already obtained authorization to obtain and use the data to be linked from State or local agencies, and how confidentiality of the records and information will be ensured. If applicants are unable to ensure the privacy and confidentiality of information included in the project, then it is highly unlikely that they will receive funding.

If surveys are planned, reviewers will also evaluate the methodology proposed to gather survey data. In particular, reviewers will evaluate the sampling plan, the survey mode (e.g., telephone, in-person, mail), and the steps that will be taken to address any biases inherent in each. This will include evaluating steps planned to ensure a high response rate, such as a mixed mode design, multiple attempts to contact sample members, or respondent payments, and steps planned to analyze differences between respondents and non-respondents, such as comparisons of linked administrative data. Because of the importance of a high response rate in ensuring reliability, these procedures will be an important part of the evaluation of proposals containing surveys.

If qualitative research such as focus groups or a qualitative description of the TANF application, enrollment and closure policies and procedures are planned, reviewers will evaluate the plan for data collection procedures and analysis, including the planned approach for reviewing written documents, identification of key informants, the composition of any proposed focus groups, planned discussion topics, a plan for summarizing and organizing the results, and the value that this part of the project is expected to add to the final report. The extent to which the application demonstrates a familiarity with the difficulties and potential biases of this approach, and plans to avoid or resolve them, will also be a scoring factor.

Reviewers also will evaluate the proposed data analysis, including the proposed tabulations and table shells, the planned organization of the final report, and the proposal's discussion of how different data sources (e.g., data from administrative sources, survey data collection, other research) will be synthesized to enhance the proposed analyses.

3. *Qualifications of Personnel and Organizational Capability.* (20 points). The qualifications of the project personnel for conducting the proposed research as evidenced by professional training and experience, and the capacity of the organization to provide the infrastructure and support necessary for the project. Reviewers will evaluate the principal investigator and staff on research experience and demonstrated research skills.

Proposals that involve linking of administrative data and assembling of large databases will be scored on the applicant's or subcontractor's experience with such linking efforts. Proposals that involve survey work will be evaluated in terms of the applicant's or subcontractor's experience in conducting relevant surveys, including experience in securing high response rates from welfare recipients or other low-income populations. Similarly, if the proposal involves qualitative data collection or analysis, it will be evaluated in terms of the experience of the applicant or key subcontractors with this type of research and with these populations. If the applicant plans to contract for any of the work (e.g., data-linking, survey design or administration, qualitative analysis), and the contractors have not been retained, reviewers will consider the process by which they will be selected.

Reviewers may consider references for work completed on prior research projects. Principal investigator and staff time commitments also will be a factor in the evaluation. Reviewers will rate the applicant's pledge and ability to work in collaboration with other scholars or organizations in search of similar goals. Reviewers also will evaluate the applicant's demonstrated capacity to work with a range of government agencies.

4. *Ability of the Work Plan and Budget to Successfully Achieve the Project's Objectives.* (20 points). Reviewers will examine if the work plan and budget are reasonable and sufficient to ensure timely implementation and completion of the study and whether the application demonstrates an adequate level of understanding by the applicant of the practical problems of conducting such a project. Adherence to the work plan is necessary in order to produce results in the time frame desired; demonstration of an applicant's ability to meet the schedule will therefore be an important part of this criterion. Reviewers will also examine the use of any additional funding and the role that funds provided under this announcement will play in the overall project.

The proposal should also discuss in detail how resulting data will be made available to qualified researchers and to ASPE. As noted above, ASPE prefers that the data be edited as appropriate for confidentiality and issued as a public-use data file. If the applicant believes that provision of a public-use file would be impossible, the application should explain why and should fully articulate how the applicant will make the data available to qualified researchers and to ASPE.

5. *Ability To Sustain Project After Funding* (5 points). One of the ASPE's goals is to help States and large counties build their capacity to study the outcomes of welfare reform. For projects requiring significant follow-up studies, especially those tracking applicants, potential applicants, and entrants, grant applicants should identify an ability to continue their studies after the funding period closes. To this end, reviewers will consider whether the proposal adequately addresses questions such as the following: What will happen to the linked administrative data sets after the project period expires? What agency(ies) will have responsibility for and jurisdiction over linked administrative data sets after they are created? Are there any sources of financial and staff support for maintaining the database? To what extent could the administrative data linkages performed on the cohort under study be duplicated for later cohorts? To what extent could additional data linkages be performed to follow the initial cohort for additional years?

Disposition of Applications

1. *Approval, disapproval, or deferral.* On the basis of the review of the application, the Assistant Secretary will either (a) approve the application as a whole or in part; (b) disapprove the application; or (c) defer action on the application for such reasons as lack of funds or a need for further review.

2. *Notification of disposition.* The Assistant Secretary for Planning and Evaluation will notify the applicants of the disposition of their applications. If approved, a signed notification of the award will be sent to the business office named in the ASPE checklist.

3. *The Assistant Secretary's Discretion.* Nothing in this announcement should be construed as to obligate the Assistant Secretary for Planning and Evaluation to make any awards whatsoever. Awards and the distribution of awards among the priority areas are contingent on the needs of the Department at any point in time and the quality of the applications that are received.

The Catalog of Federal Domestic Assistance number is 93–239.

Components of a Complete Application

A complete application consists of the following items in this order:

1. Application for Federal Assistance (Standard Form 424);
2. Budget Information—Non-construction Programs (Standard Form 424A);
3. Assurances—Non-construction Programs (Standard From 424B);
4. Table of Contents;
5. Budget Justification for Section B Budget Categories;
6. Proof of Non-profit Status, if appropriate;
7. Copy of the applicant's Approved Indirect Cost Rate Agreement, if necessary;
8. Project Narrative Statement, organized in five sections, addressing the following topics (limited to thirty (30) single-spaced pages):
   (a) Abstract,
   (b) Goals, Objectives and Usefulness of the Project,
   (c) Methodology and design,
   (d) Background of the Personnel and Organizational Capabilities and
   (e) Work plan (timetable);
9. Any appendices or attachments;
10. Certification Regarding Drug-Free Workplace;
11. Certification Regarding Debarment, Suspension, or other Responsibility Matters;
12. Certification and, if necessary, Disclosure Regarding Lobbying;
13. Supplement to Section II—Key Personnel;
14. Application for Federal Assistance Checklist.

Dated: March 26, 1999.

Margaret A. Hamburg,

Assistant Secretary for Planning and Evaluation.

[FR Doc. 99–8069 Filed 3–31–99; 8:45 am]

BILLING CODE 4150–04–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

The Office of Disease Prevention and Health Promotion, Office of Public Health and Science, Is Seeking a Partnership With a Not-for-Profit Organization To Coordinate Efforts in the Private Sector Related to the National Conference Launching Healthy People 2010

AGENCY: Office of Public Health and Science, Office of Disease Prevention and Health Promotion, DHHS.

ACTION: Notice of partnership initiative.

SUMMARY: Pursuant to Title XVII of the Public Health Service Act, notice is hereby given that the Office of Disease Prevention and Health Promotion, Office of Public Health and Science, is seeking a partnership with a not-for-profit organization to coordinate efforts in the private sector related to the national conference launching Healthy People 2010. Healthy People is a national initiative that sets decade-long targets for health improvement. It has been a major activity in ODPHP's mission since 1979, when the first Surgeon General's Report on Health Promotion and Disease Prevention was published. Healthy People 2000 has been adopted by 47 States and 70 percent of local health departments; it is used as a model by other countries. Healthy People 2010 will be official introduced through a national conference in January 2000. The goal of this partnership is to stimulate the engagement of private sector organizations in the conference and enlist their support for specific events related to the conference, such as satellite and Internet broadcasts, and for scholarships to permit community representatives to participate in the conference. Not-for-profit organizations with missions explicitly related to health but not associated with any single issue or activity and with experience mobilizing the private sector would be well positioned to lead this private-sector effort on behalf of the Healthy People 2010 conference.

Note: The partnership between ODPHP and the outside organization will be formalized through a Memorandum of Agreement that will be effective from the date of signing to March 31, 2000 and will not involve a grant or contract.

DATES: Effective date to receive consideration is the close of business April 30, 1999. Requests will meet the deadline if they are either (1) received on or before the deadline date; or (2) postmarked on or before the deadline date. Private metered postmarks will not be acceptable as proof of timely mailing. Hand delivered requests must be received by 5:00 pm on April 30, 1999. Requests that are received after the deadline date will be returned to the sender.

ADDRESSES: Department of Health and Human Services, Office of Disease Prevention and Health Promotion, 200 Independence Avenue, SW, Suite 738G, Washington, DC 20201.

FOR FURTHER INFORMATION CONTACT: Matthew Guidry, Ph.D., Senior Prevention Program Advisor, Office of Disease Prevention and Health Promotion, Hubert H. Humphrey Building, Suite 738G, 200 Independence Avenue, SW, Washington, DC 20201, 202–401–7780. The electronic mail address is: mguidry@osophs.dhhs.gov.

Dated: March 24, 1999.

Mary Jo Deering,

Acting Director, Office of Disease Prevention and Health Promotion.

[FR Doc. 99–7950 Filed 3–31–99; 8:45 am]

BILLING CODE 4160–17–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Committee on Vital and Health Statistics: Meetings

Pursuant to the Federal Advisory Committee Act, the Department of Health and Human Services announces the following advisory committee meeting.

Name: National Committee on Vital and Health Statistics (NCVHS), Executive Subcommittee.

Times and Dates: 10:00 a.m.–5:30 p.m., April 21, 1999.

Place: Conference Room 405A, Hubert H. Humphrey Building, 200 Independence Ave. S.W., Washington, D.C. 20201.

Status: Open.

Purpose: The Executive Subcommittee of the National Committee on Vital and Health Statistic (NCVHS) is scheduled to hold a meeting on Wednesday, April 21, 1999 in the Hubert H. Humphrey Building, Washington, DC. The NCVHS is the Department's statutory federal advisory committee on health data, privacy and health information policy. At the meeting, the Subcommittee plans to discuss NCVHS subcommittee and work group plans for 1999, review the status of committee projects, priorities and initiatives, and plan for the June 1999 meeting of the full committee. In addition, the Subcommittee is expected to review and finalize the NCVHS 1998 Annual Report to Congress on the Implementation of the Administrative Simplification Provisions of HIPAA, as well as the report to the Secretary on NCVHS activities and accomplishments during 1996–1998.

All topics are tentative and subject to change. Please check the NCVHS website for a detailed agenda prior to the meeting.

Contact Person for More Information: Substantive information as well as a roster of committee members may be obtained by visiting the NCVHS website (http://aspe.os.dhhs.gov/ncvhs), where an agenda will be posted prior to the meeting. You may also contact James Scanlon, NCVHS Executive Staff Director, Office of the Assistant Secretary for Planning and Evaluation, DHHS, Room 440–D, Humphrey Building, 200 Independence Avenue SW, Washington, DC 20201, telephone (202) 690–7100, or Marjorie S. Greenberg, Executive Secretary, NCVHS, NCHS, CDC, Room 1100, Presidential Building, 6525 Belcrest Road, Hyattsville, Maryland 20782, telephone (301) 436–4253.

Note: In the interest of security, the Department has instituted stringent procedures for entrance to the Hubert H. Humphrey Building by non-government employees. Thus, individuals without a

government identification card may need to have the guard call for an escort to the meeting room.

Date: March 25, 1999.

James Scanlon,

Director, Division of Data Policy, Office of Program Systems, Office of the Assistant Secretary for Planning and Evaluation.

[FR Doc. 99–7949 Filed 3–31–99; 8:45 am]

BILLING CODE 4151–04–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

[Program Announcement 99069]

Program to Build Environmental Public Health Capacity Within Tribal Colleges and Universities; Notice of Availability of Funds

A. Purpose

The Agency for Toxic Substances and Disease Registry (ATSDR) announces the availability of fiscal year (FY) 1999 funds for a cooperative agreement program to build environmental public health capacity within Tribal Colleges and Universities (TCU). This program addresses the "Healthy People 2000" priority areas of Educational and Community-Based Programs and Environmental Health. The purpose of the program is to undertake capacity building activities that will assist TCU programs, and TCU graduates, in addressing human health issues related to exposures to hazardous substances released into the environment which may affect American Indian and Alaska Native peoples. This five-year cooperative agreement program is designed to assist TCUs in the development of environmental health curriculum through the provisions of technical assistance in environmental health science, including toxicology, assistance with materials development, and internships in environmental health nursing, education, and science. The implementation of the program will assist American Indian and Alaska Native nations in: (1) Determining the public health implications from past, present, and potential future human health effects related to exposures from National Priorities List (NPL) sites and other hazardous substance environmental waste sites and releases on tribal lands and (2) determining and evaluating the technical and culturally-appropriate response to such exposures.

B. Eligible Applicants

This program is directed only to Federally recognized Tribal Colleges and Universities as defined in the Executive Order 13201. Thirty TCUs within the United States are thus qualified (see Attachment II in the application kit).

C. Availability of Funds

Approximately $200,000 is available in FY 1999 to fund approximately four awards. It is expected that the average award will be $50,000, ranging from $35,000 to $70,000. It is expected that the awards will begin on or about August 1, 1999, and will be made for a 12-month budget period within a project period of up to five years. Funding estimates may change.

Continuation awards within the approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

Use of Funds

The funds awarded may be expended for reasonable program purposes, such as personnel, travel, supplies and services. Funds are not to be used for the purchase of furniture or equipment.

The TCU, as the direct and primary recipient of the cooperative agreement program, must perform a substantive role in the project activities and not merely serve as a conduit for an award to another party or provide funds to an ineligible party. Indirect costs are limited as described in an approved indirect rate agreement or other evidence showing indirect rate; documentation on indirect rate must be included in the application.

D. Program Requirements

In conducting activities to achieve the purpose of the program, the recipient shall be responsible for conducting activities under 1., below, and ATSDR will be responsible for conducting activities under 2., below:

1. Recipient Activities

a. Define and develop environmental health curriculum to include, as appropriate for the recipient, environmental health science, health education, and nursing. Prepare project period and budget period work plans.

b. Develop internship programs within the scope of this project.

c. Determine potential collaborative relationships with tribal nations and their environmental health needs to optimize the outcomes of this program.

d. Define appropriate educational materials needed by tribal constituency (i.e., materials translated into native language, and incorporation of traditional cultural information into the curriculum).

e. Develop an evaluation plan to ascertain the effectiveness and impact of the environmental health curriculum and its utilization within the tribal community.

2. ATSDR Activities

a. Assist in the development of the assessment process, and the work plans.

b. Provide technical assistance in the development of the environmental health curriculum

c. Assist in the development of internship programs for TCU students in environmental health science, health education and nursing.

d. Provide technical assistance in the area of evaluation plans.

E. Application Content

Applicants should use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. In a narrative form, the application should include a discussion of items listed under "Evaluation Criteria" as they relate to the proposed program. Because these criteria serve as the basis for evaluating the application, omissions or incomplete information may affect the rating of the application. The narrative should be no more than 20 double-spaced pages, printed on one side, with one inch margins, and unreduced font.

Although this program does not require in-kind or matching funds, the applicant should include any in-kind support in the formal application. For example, if the in-kind support includes personnel, the applicant should provide the qualifying experience of the personnel, and clearly state the type of activity to be performed and the amount of time to be contributed.

F. Submission and Deadline

Submit the original and two copies of PHS 5161–1 (OMB Number 0937–0189) with your application. On or before June 1, 1999, submit the application to: Nelda Godfrey, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Announcement 99069, Centers for Disease Control and Prevention (CDC), 2920 Brandywine Road, Suite 3000, Atlanta, GA 30341–4146.

Deadline: Applications shall be considered as meeting the deadline if they are either:

(a) Received on or before the deadline date; or

(b) Sent on or before the deadline date and received in time for orderly processing. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or

U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

Late Applications: Applications which do not meet the criteria in (a) or (b) above are considered late applications, will not be considered, and will be returned to the applicant.

G. Evaluation Criteria

Each application will be evaluated individually against the following criteria by an independent review group appointed by ATSDR.

Proposed Program—40 Percent

a. Clearly stated understanding of environmental health capacity building needs within the TCU, and needs of the affiliated tribal community (where applicable). (10 percent)

b. Clear and reasonable project goals. (10 percent)

c. Extent to which stated project objectives are realistic, measurable, and related to program requirements. (5 percent)

d. Identification of specific target audiences who may benefit from this program. (10 percent)

e. Specificity and feasibility of the proposed time line for implementing project activities. (5 percent)

Proposed Personnel—25 Percent

a. Ability of the applicant to provide adequate program staff and support staff, including any proposed consultants or contractors. (10 percent)

b. Experience of proposed staff in developing materials, implementing activities, and conducting program evaluation related to environmental health curriculum. (7 percent)

c. Experience of staff in conducting culturally appropriate programs to benefit tribal communities, (8 percent)

Capability—35 Percent

a. Cultural appropriateness of the environmental health programs developed for the proposed target groups. (10 percent)

b. Thoroughness of the developed program in addressing environmental health needs of tribal peoples. (8 percent)

c. Extent to which the program may be evaluated to include measures of program outcome and effectiveness, such as changes in participants' technical knowledge, attitudes, and behaviors. (7 percent)

d. Plans for collaborative efforts, to include (where applicable) coordination with tribal staff working on hazardous waste sites and other environmental concerns. (10 percent)

Proposed Budget—(not Scored)

The extent to which the proposed budget is reasonable, clearly justified with a budget narrative, and consistent with the intended use of cooperative agreement funds.

H. Other Requirements

Technical Reporting Requirements

Provide ATSDR with original plus two copies of

1. Semi-annual program progress reports, due 30 days after the end of each six-month time period;

2. Annual progress report and financial status report, no more than 90 days after the end of the budget period; and;

3. Final financial status and performance reports, no more than 90 days after the end of the project period.

Send all reports to: Nelda Godfrey, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 2920 Brandywine Road, Suite 3000, Atlanta, GA 30341–4146.

The following additional requirements are applicable to this program. For a complete description of each, see Attachment I in the application kit.

AR–7	Executive Order 12372 Review.
AR–10	Smoke-Free Workplace Requirements.
AR–11	Healthy People 2000.
AR–12	Lobbying Restrictions.
AR–16	Security Clearance Requirement.
AR–19	Third Party Agreements—ATSDR.

I. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under sections 104(i)(14), and (15), and 126 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA) (42 U.S.C.9604 (i) (14), (15) and 9626). The Catalog of Federal Domestic Assistance number is 93.161

J. Where to Obtain Additional Information

Please refer to Program Announcement 99069 when you request information. For a complete program description, information on application procedures, an application package, and business management technical assistance, contact Nelda Godfrey, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Announcement 99069, Centers for Disease Control and Prevention (CDC), 2920 Brandywine Road, Suite 3000, Atlanta, GA 30341–4146, telephone (770) 488–2722, Email address: nag9@cdc.gov. See also the CDC home page on the Internet: http://www.cdc.gov.

For program technical assistance, contact Leslie Campbell, M.S., Acting Tribal Coordinator, Division of Health Assessment and Consultation, ATSDR, 1600 Clifton Road, Atlanta, GA 30333, telephone (404) 639–6337 or 1–888–42ATSDR.

Dated: March 26, 1999.

Georgi Jones,

Director, Office of Policy and External Affairs, Agency for Toxic Substances and Disease Registry.

Attachment II—Federally Recognized Tribal Colleges and Universities

1. Bay Mills Community College, Brimley, Michigan
2. Blackfeet Community College, Browning, Montana
3. Cheyenne River Community College, Eagle Butte, South Dakota
4. College of the Menominee Nation, Keshena, Wisconsin
5. Crownpoint Institute of Technology, Crownpoint, New Mexico
6. D-Q University, Davis, California
7. Dineh College/Navajo Community College, Tsaile, Arizona
8. Dull Knife Memorial College, Lame Deer, Montana
9. Fond du Lac Tribal and Community College, Cloquet, Minnesota
10. Fort Belknap Community College, Harlem, Montana
11. Fort Berthold Community College, New Town, North Dakota
12. Fort Peck Community College, Poplar, Montana
13. Haskell Indian Nations University, Lawrence, Kansas
14. Institute of American Indian Arts, Santa Fe, New Mexico
15. Lac Courte Oreilles Ojibwa Community College, Hayward, Wisconsin
16. Leech Lake Tribal College, Cass Lake, Minnesota
17. Little Big Horn College, Crow Agency, Montana
18. Little Hoop Community College, North Dakota
19. Little Priest Tribal College, Winnebago, Nebraska
20. Nebraska Indian Community College
21. Northwest Indian College, Bellingham, Washington
22. Oglala Lakota College, Kyle, South Dakota
23. Salish Kootenai College, Pablo, Montana
24. Sinte Gleska University, Rosebud, South Dakota
25. Sisseton Wahpeton Community College, Sisseton, South Dakota
26. Sitting Bull College, Fort Yates, South Dakota
27. Southwest Indian Polytechnic Institute, Albuquerque, New Mexico
28. Stone Child Community College, Box Elder, Montana

29. Turtle Mountain Community College, Belcourt, North Dakota
30. United Tribes Technical College Bismarck, North Dakota

[FR Doc. 99–8005 Filed 3–31–99; 8:45 am]
BILLING CODE 4163–70–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

[Program Announcement 99076]

Human Health Studies—Applied Research and Development; Notice of Availability of Funds

A. Purpose

The Agency for Toxic Substances and Disease Registry (ATSDR) announces the availability of fiscal year (FY) 1999 funds for a grant program entitled Human Health Studies—Applied Research and Development. This program addresses the "Healthy People 2000" priority area of Environmental Health.

The purpose of this program is to fill gaps in knowledge regarding human health effects of hazardous substances focusing on those health conditions prioritized by ATSDR. The ATSDR Priority Health Conditions are (in alphabetical order): (1) Birth defects and reproductive disorders; (2) cancers (selected anatomic sites); (3) immune function disorders; (4) kidney dysfunction; (5) liver dysfunction; (6) lung and respiratory diseases; and (7) neurotoxic disorders. The program will focus upon sensitive human populations (women, children and elderly), the use of innovative methodologies to fill data gaps identified through ATSDR's public health assessments and consultations at hazardous waste sites, ecologic studies using data from multiple sites to assess the health status of several communities, and analytical studies, including meta-analysis of existing sets of human data.

Research activities may include, but not be limited to the following: (1) Epidemiological studies, (2) health outcomes studies, (3) further analysis of existing human data sets, (4) identification, validation, and development of biomarkers of exposure, susceptibility, and effect, and (5) further evaluating the link or lack of linkage between specific hazardous substances and specific health effects.

B. Eligible Applicants

Assistance will be provided only to official public health agencies of states or their bona fide agents or instrumentalities. This includes the District of Columbia, American Samoa, the Commonwealth of Puerto Rico, the Virgin Islands, the Federated States of Micronesia, Guam, the Northern Mariana Islands, the Republic of the Marshall Islands, the Republic of Palau, and federally recognized Indian tribal governments. State organizations, including state universities, state colleges, and state research institutions, must establish that they meet their respective state's definition of a state entity or political subdivision to be considered an eligible applicant.

C. Availability of Funds

Approximately $350,000 is available in FY 1999 to fund one or two awards. The award(s) is expected to begin on or about September 30, 1999, and will be made for a 12-month budget period within a project period of up to three years. Funding estimates are subject to change.

Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

Use of Funds

Funds may be expended for reasonable program purposes, such as personnel, travel, supplies, and services. Funds for contractual services may be requested; however, the grantee, as the direct and primary recipient of grant funds, must perform a substantive role in carrying out project activities and not merely serve as a conduit for an award to another party or provide funds to an ineligible party. Equipment may be purchased with grant funds, however, justification must be provided which should include a cost comparison of purchase versus lease, and title will be retained by ATSDR.

This program does not require in-kind support or matching funds, however, the applicant should describe any in-kind support in the application.

Funding Priorities

Priority will be given for studies which address one or more of the following areas of investigation:

1. Evaluate the occurrence of adverse health effects in sensitive populations. This will include the evaluation of the incidence or prevalence of a disease, disease symptoms, self-reported health concerns, or biological markers of disease, susceptibility, or exposure. Sensitive populations are persons who are more susceptible to developing adverse health effects resulting from exposures to hazardous substances [e.g., extremes in age (children and the elderly), other medical conditions, genetic factors, dietary or nutritional deficiencies, poverty, or racial injustice].

2. Identify risk factors for adverse health effects in populations. This will include hypothesis generating cohort or case-control studies on potentially impacted populations to identify linkages between exposure to hazardous substances and adverse health effects and those risk factors which may be impacted by prevention actions.

D. Application Content

Use the information in the Other Requirements and Evaluation Criteria sections to develop the application content. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan.

The application should be presented in a manner that demonstrates the applicant's ability to address environmental health problems.

The applicant's protocol should contain (when applicable) consent forms and questionnaires, baseline morbidity and mortality information, procedures for collecting biological and environmental specimens and for conducting laboratory analysis and evaluation of the test results of biological specimens, statistical and epidemiological analysis of study information, and a description of the safeguards for protecting the confidentiality of individuals on whom data are collected.

The application pages must be clearly numbered, and a complete index to the application and its appendices must be included. A less than 200 word abstract of the proposed project should be supplied with the application. The original and two copies of the application must be submitted unstapled and unbound. All material must be typed single-spaced, with unreduced font on 8½" by 11" paper, printed on one side, and with one inch margins.

E. Submission and Deadline

Application

Submit the original and two copies of PHS 5161–1 (OMB Number 0937–0189). Forms are in the application kit. On or before June 18, 1999, submit the application to:

Nelda Godfrey, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Announcement 99076, Centers for Disease Control and Prevention (CDC), 2920 Brandywine Road, Suite 3000, Atlanta, GA 30341–4146.

Deadline: Applications shall be considered as meeting the deadline if they are either:

(a) Received on or before the deadline date; or

(b) Sent on or before the deadline date and received in time for orderly processing. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

Late Applications: Applications which do not meet the criteria in (a) or (b) above are considered late applications, will not be considered, and will be returned to the applicant.

F. Evaluation Criteria

Each application will be evaluated individually against the following criteria by an independent review group appointed by ATSDR.

Review Criteria

1. Appropriateness and Knowledge of Study Design (25 percent)

Extent to which the applicant's proposal addresses: (a) The scientific merit of the proposed project, including the novelty, originality and feasibility of the approach and the adequacy of the design; (b) the technical merit of the proposed project, including the degree to which the project can be expected to yield or demonstrate results that will be useful and desirable in furthering the program objectives; and (c) the proposed project schedule, including clearly established and obtainable project objectives for which progress toward attainment can and will be measured.

2. Proposed Study (25 percent)

Adequacy of the proposal relevant to: (a) The study purpose, objectives, and rationale; (b) the quality of program objectives in terms of specificity, measurability, and feasibility; (c) the specificity and feasibility of the applicant's timetable for implementing program activities and timely completion of the study; (d) the likelihood of the applicant agency completing proposed program activities and attaining proposed objectives based on the thoroughness and clarity of the overall program; and (e) the degree to which the applicant has met the CDC Policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed research. This includes:

1. The proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation.

2. The proposed justification when representation is limited or absent.

3. A statement as to whether the design of the study is adequate to measure differences when warranted.

4. A statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with community(ies) and recognition of mutual benefits.

3. Relationship to Initiative (15 percent)

Extent to which the application addresses the areas of investigation outlined.

4. Quality of Data Collection (15 percent)

Extent to which: (a) The study ascertains the information necessary to meet the objectives, including (but not limited to) information on pathways of exposure, confounding factors, and biomedical testing; (b) the quality control and quality assurance of questionnaire data are provided, including (but not limited to) interviewer training and consistency checks of data; (c) the laboratory tests (if applicable) are sensitive and specific for the analyte or disease outcome of interest; and (d) the quality control, quality assurance, precision and accuracy of information for the proposed tests are provided and acceptable.

5. Capability and Coordination Efforts (10 percent)

Extent to which the proposal has described: (a) The capability of the applicant's administrative structure to foster successful scientific and administrative management of a study; (b) the capability of the applicant to demonstrate an appropriate plan for interaction with the community; and (c) the suitability of facilities and equipment available or to be purchased for the project.

6. Program Personnel (10 percent)

Extent to which the proposed program staff is qualified and appropriate, and the time allocated for them to accomplish program activities is adequate.

7. Budget (Not scored)

Extent to which the budget is reasonable, clearly justified, and consistent with intended use of funds.

8. Human Subjects (Not scored)

Does the application adequately address the requirements of 45 CFR part 46 for the protection of human subjects? Are procedures adequate for the protection of human subjects? Recommendations on the adequacy of protections include: (1) Protections appear adequate and there are no comments to make or concerns to raise, or (2) protections appear adequate, but there are comments regarding the protocol, or (3) protections appear inadequate and the Objective Review Group (ORG) has concerns related to human subjects; or (4) disapproval of the application is recommended because the research risks are sufficiently serious and protection against the risks are inadequate as to make the entire application unacceptable.

G. Other Requirements

Technical Reporting Requirements

Provide CDC with original plus two copies of:

1. Progress reports (annual);
2. Financial status report, no more than 90 days after the end of the budget period; and
3. Final financial status and performance reports, no more than 90 days after the end of the project period.

Send all reports to: Nelda Y. Godfrey, Grants Management Specialist Grants Management Branch Procurement and Grants, Office, Grant Number: __, Centers for Disease Control and Prevention (CDC), 2920 Brandywine Road, Suite 3000, Atlanta, GA 30341–4146.

The following additional requirements are applicable to this program. For a complete description of each, see Attachment I in the application kit.

AR–1—Human Subjects Requirements
AR–2—Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research
AR–7—Executive Order 12372 Review
AR–9—Paperwork Reduction Act
AR–10—Smoke-Free Workplace Requirements
AR–11—Healthy People 2000
AR–12—Lobbying Restrictions
AR–17—Peer and Technical Reviews of Final Reports of Health Studies—ATSDR
AR–18—Cost Recovery—ATSDR
AR–19—Third Party Agreements—ATSDR

H. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under section 104(i)(1)(E), (7), and (15) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA) (42 U.S.C. 9604 (i)(1)(E), (7), and (15)). The

Catalog of Federal Domestic Assistance number is 93.161.

I. Where To Obtain Additional Information

To receive additional written information and to request an application kit, call 1–888–GRANTS4 (1–888–472–6874). You will be asked to leave your name and address and will be instructed to identify the announcement number of interest.

See also the CDC home page on the Internet for a complete copy of the announcement: http://www.cdc.gov.

If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from: Nelda Y. Godfrey, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Announcement 99076, Centers for Disease Control and Prevention (CDC), 2920 Brandywine Road, Suite 3000, Atlanta, GA 30341–4146, telephone (770) 488–2722, E-mail address NAG9@cdc.gov.

For program technical assistance, contact: Jeffrey A. Lybarger, M.D., Director, Division of Health Studies, Agency for Toxic Substances and Disease Registry, Executive Park, Building 4 Suite 2300, Atlanta, GA 30305, telephone (404) 639–6200, E-mail address JAL2@cdc.gov.

Dated: March 26, 1999.

Georgi Jones,

Director, Office of Policy and External Affairs, Agency for Toxic Substances and Disease Registry.

Background

Since 1993, ATSDR has applied this paradigm to the evaluation of seven priority health conditions. This purpose of these evaluations was to support the development of a body of knowledge about the interrelationships of the model parameters and thus the relationship between exposures to hazardous substances and adverse health effects. Health studies were conducted and supported predominantly evaluating a cross-section of the general public living near waste sites. It is possible, however, that the occurrence of adverse health effects and subclinical toxic effects are more common among a small number of sensitive people. People may be more likely to experience adverse health effects resulting from exposures to hazardous substances if they have underlying illnesses, suffer effects of poverty such as poor diet or education about health seeking behaviors, have limited physiological reserve of organ function due to being very young or very old, or are limited by environmental injustices. The application of this paradigm to selected groups of persons with hypothesized sensitivities would assist in identifying affected people and evaluating risk modifying factors.

[FR Doc. 99–8004 Filed 3–31–99; 8:45 am]

BILLING CODE 4163–70–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substance and Disease Registry

Inter-Tribal Council on Hanford Health Projects; Notice of Meeting

Public meeting of the Inter-tribal Council on Hanford Health Projects (ICHHP) in association with the Citizens Advisory Committee on Public Health Service (PHS) Activities and Research at Department of Energy (DOE) Sites: Hanford Health Effects Subcommittee (HHES).

The Agency for Toxic Substances and Disease Registry (ATSDR) and the Centers for Disease Control and Prevention (CDC) announce the following meeting.

Name: Public meeting of the ICHHP in association with the Citizens Advisory Committee on PHS Activities and Research at DOE Sites: HHES.

Time and Date: 9 a.m.–4 p.m., May 12, 1999.

Place: Tamastslikt Cultural Institute, Umatilla Indian Reservation, 72777 Highway 331, Pendleton, Oregon 97801.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 35 people.

Background: Under a Memorandum of Understanding (MOU) signed in October 1990 and renewed in November 1992 between ATSDR and DOE. The MOU delineates the responsibilities and procedures for ATSDR's public health activities at DOE sites required under sections 104, 105, 107, and 120 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or "Superfund"). These activities include health consultations and public health assessments at DOE sites listed on, or proposed for, the Superfund National Priorities List and at sites that are the subject of petitions from the public; and other health-related activities such as epidemiologic studies, health surveillance, exposure and disease registries, health education, substance-specific applied research, emergency response, and preparation of toxicological profiles.

In addition, under an MOU signed in December 1990 with DOE and replaced by an MOU signed in 1996, the Department of Health and Human Services (HHS) has been given the responsibility and resources for conducting analytic epidemiologic investigations of residents of communities in the vicinity of DOE facilities, workers at DOE facilities, and other persons potentially exposed to radiation or to potential hazards from non-nuclear energy production and use. HHS has delegated program responsibility to CDC.

Community Involvement is a critical part of ATSDR's and CDC's energy-related research and activities and input from members of the ICHHP is part of these efforts. The ICHHP will work with the HHES to provide input on American Indian health effects at the Hanford, Washington site.

Purpose: The purpose of this meeting is to address issues that are unique to tribal involvement with the HHES, including discussion on Hanford Thyroid Disease Study results, update on tribal cooperative agreements, and development of a National Research Agenda with tribal input.

Matters to Be Discussed: Agenda items will include a dialogue on issues that are unique to tribal involvement with the HHES. This will include updating tribal members of the cooperative agreement activities in environmental health capacity building and providing support for tribal involvement in and representation on the HHES.

Agenda items are subject to change as priorities dictate.

Contact Persons for More Information: Leslie C. Campbell, Executive Secretary HHES, or Marilyn Palmer, Committee Management Specialist, Division of Health Assessment and Consultation, ATSDR, 1600 Clifton Road, NE, M/S E–56, Atlanta, Georgia 30333, telephone 1–888/42-ATSDR (28737), fax 404/639–6075.

The Director, Management Analysis and Services office has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: March 25, 1999.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 99–8007 Filed 3–31–99; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

Citizens Advisory Committee on Public Health Service (PHS) Activities and Research at Department of Energy (DOE) Sites: Hanford Health Effects Subcommittee

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Agency for Toxic Substances and Disease Registry (ATSDR) and the Centers for Disease Control and Prevention (CDC) announce the following meeting.

Name: Citizens Advisory Committee on PHS Activities and Research at DOE Sites: Hanford Health Effects Subcommittee (HHES).

Times and Dates: 8:30 a.m.–5 p.m., May 13, 1999; 8:30 a.m.–4 p.m., May 14, 1999.

Place: Tamastslikt Cultural Institute, Umatilla Indian Reservation, 72777 Highway 331, Pendleton, Oregon 97801.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 100 people.

Background: Under a Memorandum of Understanding (MOU) signed in October 1990 and renewed in November 1992 between ATSDR and DOE. The MOU delineates the responsibilities and procedures for ATSDR's public health activities at DOE sites required under sections 104, 105, 107, and 120 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or "Superfund"). These activities include health consultations and public health assessments at DOE sites listed on, or proposed for, the Superfund National Priorities List and at sites that are the subject of petitions from the public; and other health-related activities such as epidemiologic studies, health surveillance, exposure and disease registries, health education, substance-specific applied research, emergency response, and preparation of toxicological profiles.

In addition, under an MOU signed in December 1990 with DOE and replaced by an MOU signed in 1996, the Department of Health and Human Services (HHS) has been given the responsibility and resources for conducting analytic epidemiologic investigations of residents of communities in the vicinity of DOE facilities, workers at DOE facilities, and other persons potentially exposed to radiation or to potential hazards from non-nuclear energy production and use. HHS has delegated program responsibility to CDC.

Purpose: This subcommittee is charged with providing advice and recommendations to the Director, CDC, and the Administrator, ATSDR, regarding community, American Indian Tribes, and labor concerns pertaining to CDC's and ATSDR's public health activities and research at this DOE site. The purpose of this meeting is to receive an update from the Inter-tribal Council on Hanford Health Projects; to review and approve the Minutes of the previous meeting; to receive updates from ATSDR/NCEH and NIOSH; to receive reports from the Outreach, Public Health Assessment, Public Health Activities, and the Studies Workgroups; and to address other issues and topics, as necessary.

Matters to be Discussed: Agenda items include a presentation and discussion on Native American Risk Scenario, question and answer session with Hanford Thyroid Disease Study researchers, and agency updates.

Agenda items are subject to change as priorities dictate.

Contact Persons for More Information: Leslie C. Campbell, Executive Secretary HHES, or Marilyn Palmer, Committee Management Specialist, Division of Health Assessment and Consultation, ATSDR, 1600 Clifton Road, NE, M/S E–56, Atlanta, Georgia 30333, telephone 1–888/42–ATSDR(28737), fax 404/639–6075.

The Director, Management Analysis and Services office has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: March 25, 1999.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 99–8008 Filed 3–31–99; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30DAY–10–99]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–7090. Send written comments to CDC, Desk Officer; Human Resources and Housing Branch, New Executive Office Building, Room 10235; Washington, DC 20503. Written comments should be received within 30 days of this notice.

Proposed Project:

1. Mammography Rescreening Rates and Risk Factor Assessment—New—The National Center for Chronic Disease Prevention and Health Promotion, Division of Cancer Control and Prevention proposes to conduct mammography research to reduce breast cancer deaths by detecting tumors while they are still small and easier to treat. Because new tumors can develop in women previously free of breast cancer, older women who face higher risks of developing breast cancer should complete mammography screening every one to two years. To provide cancer screening for low income women, Congress passed the Breast and Cervical Cancer Mortality Prevention Act (Pub. L. 101–354) in 1990. The Division of Cancer Prevention and Control (DCPC) in the National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC) was given funding to establish the National Breast and Cervical Cancer Early Detection Program (NBCCEDP). The NBCCEDP now provides mammography and cervical cancer screening services to low income and medically under-served women in all 50 states, the District of Columbia, 4 territories, and 13 tribes. To assist state, territorial, and tribal programs with efficient service delivery, new data are needed to (1) estimate scientifically valid, statistically precise estimates of mammography rescreening rates and (2) identify the factors associated with timely rescreening among NBCCEDP-enrollees.

To obtain data on mammography rescreening rates and risk factors, DCPC plans to conduct telephone interviews with a random sample of 2,250 NBCCEDP-enrollees from four states. Consenting women will complete a 35 minute telephone interview about their knowledge, attitudes, and experiences with mammography screening. Those who report having received a mammogram during the study period (April 1, 1997 through September 30, 2000) will be asked to sign a release of information form so a copy of the mammography report can be obtained to verify the date the procedure was completed. All women invited to participate in the survey will be 50–73 years of age. Each telephone interview will be scheduled for a time (day, evening, or weekend) and place that is convenient to the participant. The total annual burden hours are 2,223.

Respondents (forms)	No. of respondents	No. of responses/ respondent	Average burden/response (in hrs.)	Total burden (in hrs.)
Telephone Script for Project Coordination	2,500	1	0.167	417
Telephone Interview	2,250	1	0.50	1,125
Consent Form to Release Mammography Reports	1,350	1	0.167	225
Mammography Reports	1,215	1.5	0.25	456

2. Multistate Case-Control Study of Childhood Brain Cancers—New—The Agency for Toxic Substances and Disease Registry (ATSDR) is mandated pursuant to the 1980 Comprehensive Environmental Response Compensation and Liability Act (CERCLA), and its 1986 Amendments, The Superfund Amendments and Reauthorization Act (SARA), to prevent or mitigate adverse human health effects and diminished quality of life resulting from exposure to hazardous substances in the environment. Scientific knowledge is lacking concerning the reasons for the apparent rise in childhood brain cancer incidence during the last two decades in the U.S. and for explanations of childhood brain cancer in general. To date, most epidemiologic studies exploring the causes of childhood brain cancer have suffered from lack of statistical power due to the small numbers of cases available for the study. By combining recent childhood brain cancer data from multiple states, this study will help to better understand what environmental factors may be associated with childhood brain cancer, and therefore, to possibly develop well-focused prevention measures.

This study will examine the association between environmental exposures and risk of childhood brain cancers by employing a population based case-control study of childhood brain cancer. Information to be collected includes proximity of parental residence to hazardous waste sites and other known or suspected risk factors. Other known or purported risk factors identified from the literature, will include both environmental and host factors during the prenatal as well as postnatal periods: parental occupation, parents' and child's dietary habits, parental history of smoking and drinking, mother's and child's exposure to radiation through medical care, residential use of pesticides or herbicides, mother's and child's history of viral infection, and family history of cancer and neurological disorders. This request is for a three-year OMB approval. Total annual burden hours are 603.

Respondents	No. of respondents	No. of responses/ respondent	Avg. burden/ response (in hrs.)	Total burden (in hrs.)*
Screener for controls	16,000	1	0.05	800
Mothers of children with childhood brain cancers and controls (interview)	1,200	1	0.75	900
Mothers of children with early childhood brain cancers and controls (biological testing)	100	1	1.083	108

* 1,808 ÷ 3 years = 603 annualized burden hours.

Nancy Cheal,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention (CDC).

[FR Doc. 99–8006 Filed 3–31–99; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99D–0463]

Foods—Adulteration Involving Hard or Sharp Foreign Objects; Compliance Policy Guide; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a compliance policy guide (CPG) entitled "Foods—Adulteration Involving Hard or Sharp Foreign Objects." This CPG is intended to help FDA components and industry comply with FDA's internal enforcement process concerning foods that contain hard or sharp foreign objects.

DATES: Written comments on this CPG may be submitted at any time.

ADDRESSES: Submit written requests for single copies of Compliance Policy Guide (CPG) Sec. 555.425 "Foods—Adulteration Involving Hard or Sharp Foreign Objects" to the Director, Division of Compliance Policy (HFC–230), Office of Enforcement, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Send two self-addressed adhesive labels to assist that office in processing your request, or fax your request to 301–827–0482. Copies of the CPG may also be downloaded to a personal computer with access to the World Wide Web (WWW). The Office of Regulatory Affairs (ORA) home page includes the CPG and may be accessed at "http://www.fda.gov/ora". The CPG will be available on the Compliance References page for ORA.

Submit comments to MaryLynn A. Datoc, the second contact person listed in this document in the "**FOR FURTHER INFORMATION CONTACT**" section.

FOR FURTHER INFORMATION CONTACT:

Technical Questions Concerning Foreign Objects in Foods: Alan R. Olsen, Microanalytical Branch (HFS–315), Office of Plant, Dairy Foods, and Beverages, Center for Food Safety and Applied Nutrition, Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–4438, FAX 202–205–4091.

Questions Concerning Regulatory Actions and All Comments: MaryLynn A. Datoc, Division of Compliance Policy (HFC–230), Office of Enforcement, Office of Regulatory Affairs, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–0413, FAX 301–827–0482.

SUPPLEMENTARY INFORMATION: FDA has developed a CPG to provide guidance on FDA's internal enforcement process concerning foods that contain hard or sharp foreign objects. This guidance synthesizes FDA's case-by-case responses to the problem of hard or sharp foreign objects in food. The CPG is intended to provide clear policy and regulatory guidelines to FDA's field and headquarters staff with regard to such foods. It also contains information that may be useful to the regulated industry and to the public.

Therefore, FDA has prepared a CPG to describe its internal enforcement process. The CPG is being issued as a guidance document and represents the agency's current thinking on the subject. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public.

The agency has adopted good guidance practices (GGP's) that set forth the agency's policies and procedures for the development, issuance, and use of guidance documents (62 FR 8961, February 27, 1997). This CPG is being issued as a level 2 guidance consistent with GGP's.

Interested persons may submit to the second contact person listed in this document written comments regarding the CPG entitled "Foods—Adulteration Involving Hard or Sharp Foreign Objects." Two copies of any comments

are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. A copy of the CPG and received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: March 23, 1999.

Gary Dykstra,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 99–7923 Filed 3–31–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–R–0021]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Health Care Financing Administration.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: New collection; *Title of Information Collection:* Withholding Medicare Payments to Recover Medicaid Overpayments and Supporting Regulations in 42 CFR 447.31; *Form No.:* HCFA–R–0021 (OMB# 0938–0287); *Use:* Overpayments may occur in either the Medicare and Medicaid program, at times resulting in a situation where an institution or person that provides services owes a repayment to one program while still receiving reimbursement from the other. Certain Medicaid providers which are subject to offsets for the collection of Medicaid overpayments may terminate or substantially reduce their participation in Medicaid, leaving the State Medicaid Agency unable to recover the amounts due. These information collection requirements give HCFA the authority to recover Medicaid overpayments by offsetting payments due to a provider under the program; *Frequency:* On occasion; *Affected Public:* State, Local, or Tribal Government; *Number of Respondents:* 54; *Total Annual Responses:* 27; *Total Annual Hours:* 81.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address: HCFA, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards, Attention: Louis Blank, Room N2–14–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: March 25, 1999.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 99–8035 Filed 3–31–99; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Advisory Council; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), Correction to the **Federal Register** Notice dated August 31, 1998, are listed below for the Health Professions and Nurse Education Special Emphasis Panel (SEP) Meetings.

Name: Physician Assistants Program Review Group.

Date and Time: May 3–5, 1999, 8:00 a.m. to 6:00 p.m., New Session.

Place: Holiday Inn Silver Spring, 8777 Georgia Avenue, Silver Spring, Maryland 20910.

Open on: May 3, 1999, 8:00 a.m. to 10:00 a.m.

Closed on: May 3, 1999, 10:00 a.m. to 6:00 p.m.; May 4–5, 1999, 8:00 a.m. to 6:00 p.m.

Name: Health Careers Opportunity Program Review Group.

Date and Time: June 21–15, 1999, 8:00 a.m. to 6:00 p.m. Change from May 10–13, 1999.

Place: Holiday Inn Silver Spring, 8777 Georgia Avenue, Silver Spring, Maryland 20910.

Open on: June 21, 1999, 8:00 a.m. to 10:00 a.m.

Closed on: June 21, 1999, 10:00 a.m. to 6:00 p.m., June 22–25, 1999, 8:00 a.m. to 6:00 p.m.

Name: Health Careers Opportunity Program Review Group.

Date and Time: June 28–July 2, 1999, 8:00 a.m. to 6:00 p.m. Change from May 24–27, 1999.

Place: Holiday Inn Silver Spring, 8777 Georgia Avenue, Silver Spring, Maryland 20910.

Open on: June 28, 1999, 8:00 a.m. to 10:00 a.m.

Closed on: June 28, 1999, 10:00 a.m. to 6:00 p.m., June 29–July 2, 1999, 8:00 a.m. to 6:00 p.m.

Dated: March 19, 1999.

Jane M.Harrison,

Director, Division of Policy, Review and Coordination.

[FR Doc. 99–7927 Filed 3–31–99; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Advisory Council; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), announcement is made of the following national advisory body scheduled to meet during the month of April 1999.

Name: Advisory Committee on Infant Mortality.

Date and Time: April 12, 1999, 9:00 a.m.–5:00 p.m., April 13, 1999, 8:30 a.m.–3:00 p.m.

Place: Holiday Inn at Silver Spring, 8777 Georgia Avenue, Silver Spring, MD 20910, (301) 589–0800.

The meeting is open to the public.

Agenda: Topics that will be discussed include: Early Postpartum Discharge; Low-Birth Weight; Discrepancies in Infant Mortality; and the Healthy Start Program.

Anyone requiring information regarding the Committee should contact Dr. Peter C. van Dyck, Executive Secretary, Advisory Committee on Infant Mortality, Health Resources and Services Administration, Room 18–05, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, Telephone (301) 443–2170.

Persons interested in attending any portion of the meeting or having questions regarding the meeting should contact Ms. Kerry P.

Nesseler, Health Resources and Services Administration, Maternal and Child Health Bureau, Telephone (301) 443–2170.

Agenda items are subject to change as priorities dictate.

Dated: March 19, 1999.

Jane M. Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 99–7926 Filed 3–31–99; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: March 30, 1999.

Time: 1:30 p.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Robert H. Stretch, Phd, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6150, MSC 9608, Bethesda, MD 20892–9608, 301–443–4728.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: April 6, 1999.

Time: 11:30 a.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: St. James Hotel, 950 24th Street, N.W., Washington, DC 20037.

Contact Person: Jean G. Noronha, Phd, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6154, MSC 9609, Bethesda, MD 20892–9609, 301–443–6470.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: April 9, 1999.

Time: 8:30 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: River Inn, 924 25th Street, NW, Washington, DC 20037.

Contact Person: David Chananie, Phd, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Rm. 6150, MSC 9608, Bethesda, MD 20892–9608, 301–443–1340.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: April 12, 1999.

Time: 3:30 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Jack D. Maser, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6150, MSC 9608, Bethesda, MD 20892–9608, 301–443–1340.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: April 14, 1999.

Time: 12:30 p.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: River Inn, 924 25th Street, NW, Washington, DC 20037.

Contact Person: Jean G. Noronha, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6154, MSC 9609, Bethesda, MD 20892–9609, 301–443–6470.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: April 21, 1999.

Time: 8:30 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Sheraton Crystal City Hotel, 1800 Jefferson Davis Highway, Arlington, VA 22202.

Contact Person: Jack D. Maser, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6150, MSC 9608, Bethesda, MD 20892–9608, 301–443–1340.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: April 26, 1999.

Time: 12:00 p.m. to 1:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Jack D. Maser, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6150, MSC 9608, Bethesda, MD 20892–9608, 301–443–1340.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: March 25, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–7998 Filed 3–31–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Board of Scientific Counselors, National Center for Biotechnology Information, National Library of Medicine.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the NATIONAL LIBRARY OF MEDICINE, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, National Center for Biotechnology Information, National Library of Medicine.

Date: May 17–18, 1999.

Time: May 17, 1999, 7:00 p.m. to 10:00 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: The Hyatt Regency Hotel, 100 Bethesda Metro Center, Bethesda, MD 20814.

Time: May 18, 1999, 8:30 a.m. to 2:00 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Library of Medicine, 8600 Rockville Pike, Board Room, Bethesda, MD 20894.

Contact Person: David J. Lipman, MD, Director, Natl Ctr for Biotechnology Information, National Library of Medicine, Department of Health and Human Services, Bethesda, MD 20894.

(Catalogue of Federal Domestic Assistance Program Nos. 93.879, Medical Library Assistance, National Institutes of Health, HHS)

Dated: March 25, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–7997 Filed 3–31–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a list of information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer on (301)443–7978.

GPRA Client Outcomes for the Substance Abuse and Mental Health Services Administration (SAMHSA)

NEW—The mission of the Substance Abuse and Mental Health Services Administration (SAMHSA) is to improve the effectiveness and efficiency of substance abuse and mental health treatment and prevention services across the United States. All of SAMHSA's activities are designed to ultimately reduce the gap in the availability of substance abuse and mental health services and to improve their effectiveness and efficiency.

Data will be collected from all grantees under four Fiscal Year 1998 grant programs of the Center for Substance Abuse Treatment and from all SAMHSA knowledge development and application and targeted capacity expansion grants and contracts where client outcomes are to be assessed at intake and post-treatment beginning in Fiscal Year 1999. SAMHSA-funded projects will be required to submit this data as a contingency for their award. The analysis of the data will also help determine whether the goal of reducing health and social costs of drug use to the public is being achieved.

The primary purpose of the proposed data collection activity is to meet the reporting requirements of the Government Performance Review Act (GPRA) (Public Law 103–62) by allowing SAMHSA to quantify the effects and accomplishments of SAMHSA programs. In addition, the data will be useful in addressing goals and objectives outlined in ONDCP's *Performance Measures of Effectiveness.* Following is the estimated annual response burden for this effort.

Center	Number of clients	Responses/ client	Hours/ response	Annual burden hours
Center for Substance Abuse Treatment	3,750	3	.70	2,625
Center for Substance Abuse Prevention	12,150	3	.63	7,654
Center for Mental Health Services	13,837	3	.25	3,459
TOTAL				13,738

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: Daniel Chenok, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: March 25, 1999.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 99–8009 Filed 3–31–99; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FB–4491–N–01]

Draft Environmental Impact Statement: City of Hartford, CT; Section 108 Loan Guarantee/BEDI Grant

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: The Department of Housing and Urban Development gives this notice to the public that the City of Hartford, Connecticut intends to prepare an Environmental Impact Statement (EIS) for the Adriaen's Landing Project, which, among other components, includes a 68,000 person open-air stadium in the city of Hartford, Connecticut.

This Notice is in accordance with regulations of the Council on Environmental Quality as described in 40 CFR parts 1500–1508. Federal agencies having jurisdiction by law, special expertise, or other special interest should report their interests and indicate their readiness to aid in the EIS effort as a "Cooperating Agency."

A Draft Environmental Impact Statement will be completed for the proposed action described herein. Comments relating to the Draft EIS are requested and will be accepted by the contact person listed below. When the Draft EIS is completed, a notice will be sent to individuals and groups known to have an interest on the Draft EIS and particularly on the environmental impact issues identified therein. Any person or agency interested in receiving a notice and making comment on the Draft EIS should contact the person listed below.

ADDRESSES: All interested agencies, groups and persons are invited to submit written comments on the within-named project and the Draft Environment Impact Statement to the

following contact person. Such comments should be received by the office of the contact person and all comments so received will be considered prior to the preparation and distribution of the Draft Environmental Impact Statement.

Particularly solicited is information on reports or other environmental studies planned or completed in the project area, major issues and date which the EIS should consider and recommended mitigating measures and alternatives associated with the proposed project. Federal agencies having jurisdiction by law, special expertise or other special interest should report their interests and indicate their readiness to aid the EIS effort as a "cooperating agency".

FOR FURTHER INFORMATION CONTACT: Dennis J. Johnson, Contract Manager, City of Hartford, Division of Management & Budget, Office of Grants Management, Room 108, 550 Main Street, Hartford, Connecticut, 06103. Telephone: (860) 543–8650.

SUPPLEMENTARY INFORMATION: The City of Hartford, acting on behalf of the U.S. Department of Housing and Urban Development, in cooperation with the Capital City Economic Development Authority, the Federal Highway Administration, and other interested agencies will prepare an Environmental Impact Statement (EIS) to analyze potential impacts of constructing a 40-acre mixed use development complex including: (1) An entertainment/retail venue of approximately 426,000 square feet, (2) an approximately 68,000 person capacity open air stadium, (3) an approximately 200,000 square feet convention center, (4) an approximately 700-room convention center hotel, (5) an NFL pavilion for theme dining, interactive entertainment and other non-football business, (6) an interactive Connecticut River Discovery Center (aquarium/history museum, (7) approximately 350 residential apartments with some retail frontage, (8) an approximately 350-room business hotel, (9) parking facilities representing approximately 7,500 spaces, (10) relocation and modification of sewer, water, and other utility infrastructure and vehicular and pedestrian traffic access modifications. Adriaen's Landing will be located in downtown Hartford along the Connecticut River. The estimated cost for this project is 1.3 billion dollars.

The City of Hartford has been awarded a Brownfield Economic Development Initiative (BEDI) grant from the DHUD which will help with the costs associated with site preparation activities. The grant funds will be combined with up to $13 million in the Section 108 loan authority, $5 million of which will be specifically used in conjunction with the BEDI funds on the entertainment/retail component of the project.

The remaining $8 million will be used for eligible activities associated with the project. DHUD funds will not be used to support the stadium. Seven acres of the 40-acre development are air rights over Interstate 91 and the Whitehead Highway. The Federal Highway Administration would need to approve the use of this air space and will, therefore, be a cooperating agency.

To ensure that a full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties.

An information open house followed by a scoping meeting will be held on Thursday, April 15, 1999 at Betances School, 42 Charter Oak Avenue, Hartford, CT 06103. The open house will be held from 5–7 p.m. followed by the scoping meeting from 7–9 p.m. The scoping is for determining the scope of issues to be addressed in the EIS and for identifying the significant issues related to the proposed Adriaen's Landing project.

Need For the EIS

It has been determined that the project may constitute an action significantly effecting the quality of the human environment, and an Environmental Impact Statement will be prepared by the City of Hartford in cooperation with the Capital City Economic Development Authority in accordance with the National Environmental Policy Act of 1969 (Pub. L. 91–190) on such project.

Responses to this notice will be used to:

1. Determine significant environmental issues;
2. Identify data which the EIS should address; and
3. Identify agencies and other parties which will participate in the EIS process and the basis for their involvement.

This notice is in accordance with the regulations of the Council on Environmental Quality under its rule (40 CFR part 1500).

The Draft Environmental Impact Statement will be published and distributed about August 9, 1999 and a copy will be on file at the City of Hartford, Division of Management and Budget, Room 108, 550 Main Street, Hartford, CT 06103 and available for public inspection, or copies may be attained at the same address, upon request.

Scoping

This notice is part of the process used for scoping the EIS. Responses will help determine significant environmental issues, identify data which the EIS should address, and help identify cooperating agencies.

The Draft Environmental Impact Statement will be published upon completion and will be on file, and available for public inspection at the address listed above. Copies may also be obtained upon request, at the same address.

This Notice shall be in effect for one year. If one year after the publication of the Notice in the **Federal Register** a draft EIS has not been filed on the project, then the Notice for that project shall be cancelled. If a draft EIS is expected more than one year after the publication of this Notice, a new and updated Notice must be published.

Dated: March 26, 1999.

Richard H. Broun,

Director, Office of Community Viability.

[FR Doc. 99–8056 Filed 3–31–99; 8:45 am]

BILLING CODE 4210–29–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4170–N–19]

RIN 2577–AB74

Indian Housing Block Grant Program: Notice of Revision to Transition Requirements—Proceeds of Sales of Former 1937 Act Homeownership Units

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of revised transition requirements—proceeds of sales of former 1937 Act homeownership units.

SUMMARY: This notice provides additional and updated guidance relating to the sale of homeownership units and to cash management and investment policies and procedures. The purpose of this guidance is to facilitate the smooth transition from procedures and resources under the United States Housing Act of 1937 (1937 Act) to those under the Indian Housing Block Grant (IHBG) Program.

DATES: These transition requirements are effective upon publication.

FOR FURTHER INFORMATION CONTACT: Deborah M. Lalancette, National Office of Native American Programs, Department of Housing and Urban

Development, 1999 Broadway, Suite 3390, Denver, CO; telephone (303) 675–1600 (this is not a toll-free number). Hearing or speech-impaired individuals may access this number via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

The Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4101 *et seq.*) (NAHASDA) was enacted on October 26, 1996, and took effect on October 1, 1997. NAHASDA requires HUD to make grants on behalf of Indian tribes to carry out affordable housing activities. A final rule to implement NAHASDA and establish the IHBG Program was published on March 12, 1998, (63 FR 12334), with an effective date of April 13, 1998.

NAHASDA also required the publication of a notice in the **Federal Register** to establish any requirements necessary for the transition from the provision of assistance for Indian tribes and Indian housing authorities under the 1937 Act and other related provisions of law to the provision of assistance in accordance with NAHASDA. An initial transition notice was published on January 27, 1997 (62 FR 3972), with revisions published on February 24, 1997 (62 FR 8258), January 27, 1998 (63 FR 4076), April 15, 1998 (63 FR 18804), and October 2, 1998 (63 FR 53084).

This revision to the transition notice requirements addresses the treatment of proceeds from the sale of homeownership units. Question 42 in the transition notice revision published on January 27, 1998 treated proceeds from the sale of homeownership units the same as rental and homeownership operating reserves, mutual help equity accounts under the Mutual Help Homeownership Opportunity Program, and earned home payment accounts under the Turnkey III programs for purposes of section 210 of NAHASDA. Section 210 states that any funds for programs for low-income housing under the United States Housing Act of 1937 that, on the date of the applicability of NAHASDA, are owned by, or in the possession or under the control of, the IHA for the tribe, including all reserves not otherwise obligated, shall be considered assistance under NAHASDA and subject to the NAHASDA provisions relating to use of such assistance.

In response to inquiries, HUD has reconsidered Question 42 and determined that section 210 of NAHASDA does not apply to the proceeds from the sale of homeownership units. The purpose of the statutory requirement for the transition notice is to facilitate the transition from the 1937 Act programs to the IHBG program. Proceeds of sale of homeownership units under the 1937 Act are not characterized as program income under the IHBG regulation. By providing that the proceeds can be used for any housing activity, community facility, or economic development activity and are not subject to other Federal requirements, HUD is seeking to expedite the smooth transition to the IHBG program. Accordingly, Question 42 is amended by this notice to remove the reference to homeownership unit sales proceeds, and Questions 42A and 42B are added to provide guidance on the treatment of these proceeds.

In addition to addressing homeownership unit sales proceeds, this notice also revises Question 46 to extend and clarify the applicability of PIH Notice 96–33 to cash management and investment policies and procedures.

II. Revisions to the January 27, 1998 Transition Notice

Accordingly, FR Doc. 98–1939, the Indian Housing Block Grant Program—Revised Notice of Transition Requirements, published in the **Federal Register** January 27, 1998, 63 FR 4076, is amended as follows:

1. On page 4085, in column 3, Question 42 and Answer 42 are revised to read as follows:

Question 42. What happens to rental and homeownership operating reserves, mutual help equity accounts under the Mutual Help Homeownership Opportunity Program, and earned home payment accounts under the Turnkey III program?

Answer 42. Section 210 of NAHASDA states that any funds for programs for low-income housing under the United States Housing Act of 1937 that, on the date of the applicability of the Act, are owned by, or in the possession or under the control of, the IHA for the tribe, including all reserves not otherwise obligated, shall be considered assistance under the Act and subject to the provisions of this Act relating to use of such assistance. In other words, the funds are considered assistance under NAHASDA and are subject to NAHASDA requirements. The funds in the accounts are also subject to existing agreements with the homebuyers.

2. On page 4085, in column 3, a new Question 42A and Answer 42A are added to read as follows:

Question 42A. Can proceeds from the sale of homeownership units be used for purposes other than eligible NAHASDA activities?

Answer 42A. Yes. We have determined that section 210 of NAHASDA addresses only the 1937 Act funds provided by HUD and not the proceeds from the sale of homeownership units. Proceeds can be used for any housing activity, community facility or economic development activity that benefits the community. If the use of these funds is currently outlined in an Administrative Use Agreement, the Agreement can be terminated at the request of the Indian Housing Authority (or successor entity). The funds can then be used for any housing activity, community facility or economic development activity.

3. On page 4085, in column 3, a new Question 42B and Answer 42B are added to read as follows:

Question 42B. What Federal requirements would apply to the proceeds from the sale of homeownership units?

Answer 42B. The use of proceeds are not subject to any Federal requirements, except that the funds must be used for the activities set forth in Answer 42A.

4. On page 4086, in column 1, Answer 46 is revised to read as follows (Question 46 is republished for the convenience of readers):

Question 46. What cash management and investment policies and procedures are in effect as of October 1, 1997?

Answer 46. Current procedures outlined in PIH Notice 96–33 (HA) dated June 4, 1996, extended by Notice 98–46 (HA) dated September 1, 1998, titled "Required HA Cash Management and Investment Policies and Procedures" will continue to apply to 1937 Act funds which are held in reserve accounts until further notice. Please note, however, that sections 7(c) and 8 of Notice 98–46 do not apply to 1937 Act funds. Also, the limit on maturity dates outlined in section 6 of Notice 96–33 does not apply.

Authority: 25 U.S.C. 4116(a).

Dated: March 26, 1999.

Harold Lucas,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 99–8030 Filed 3–29–99; 2:09 pm]

BILLING CODE 4210–33–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain

activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*):

PRT–009261

Applicant: Arizona State University, Tempe, AZ

The applicant requests a permit to import DNA samples of mantled howler monkeys (*Alouatta palliatta*) from Costa Rica. Samples were collected from animals as part of a study on wild populations authorized by the Government of Costa Rica. This notice covers activities conducted by the applicant for a period of five years.

PRT–843425

Applicant: Nashville Zoo, Joelton, TN

The applicant requests a permit to export two captive born White tigers (*Panthera tigris*) to the Cango Wildlife Ranch, Oudtshoorn, South Africa for the purpose of enhancement of the survival of the species through conservation education.

PRT–008720

Applicant: Steig Johnson, Berkeley, CA

The applicant requests a permit in affiliation with the University of Texas, to import blood and hair samples from Brown lemurs (*Eulemur fulvus*) collected in the wild in Madagascar, for the purpose of scientific research.

PRT–009565

Applicant: Fort Worth Zoological Gardens, Fort Worth, TX

The applicant requests a permit to import one male and one female captive-born Indochinese tigers (*Panthera tigris corbetti*) from the Singapore Zoological Gardens, Singapore for the purpose of enhancement of the survival of the species through captive propagation.

PRT–009590

Applicant: Indianapolis Zoological Society, Inc., Indianapolis, IN

The applicant requests a permit to import two wild and two captive-bred Grand Cayman ground iguana (*Cyclura nubila lewisi*) from the National Trust for the Cayman Islands, Cayman Islands, British West Indies for the purpose of enhancement of the survival of the species through captive propagation.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

The public is invited to comment on the following applications for a permit to conduct certain activities with marine mammals. The applications were submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) and the regulations governing marine mammals (50 CFR 18).

PRT–835367

Applicant: Joseph Cavallaro, Frankford, WV

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport-hunted from the Lancaster Sound polar bear population, Northwest Territories, Canada for personal use.

PRT–009656

Applicant: Daniel L. Heyne, Coldwater, OH

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport-hunted from the Northern Beaufort Sea polar bear population, Northwest Territories, Canada for personal use.

PRT–009133

Applicant: John J. Jackson III, Metairie, LA

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport-hunted from the Lancaster Sound polar bear population, Northwest Territories, Canada for personal use.

Written data or comments, requests for copies of the complete application, or requests for a public hearing on this application should be sent to the U.S. Fish and Wildlife Service, Office of Management Authority, 4401 N. Fairfax Drive, Room 700, Arlington, Virginia 22203, telephone 703/358–2104 or fax 703/358–2281 and must be received within 30 days of the date of publication of this notice. Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such a hearing is at the discretion of the Director.

Documents and other information submitted with the application are available for review, *subject to the requirements of the Privacy Act and Freedom of Information Act*, by any party who submits a written request for a copy of such documents to the above address within 30 days of the date of publication of this notice.

Dated: March 26, 1999.

MaryEllen Amtower,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 99–8002 Filed 3–31–99; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Aquatic Nuisance Species Task Force Study

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability of report and request for comments.

SUMMARY: This notice announces the availability of the *Ballast Exchange Study: Consideration of Back-Up Exchange Zones and Environmental Effects of Ballast Exchange and Ballast Release* and requests comments as to its scientific and technical accuracy and completeness. In addition, comments are requested on whether the ballast exchange study on which the report is based can be adopted as fulfilling the requirements of section 1102(a)(1) of the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990.

DATES: Comments on the Report and whether the Ballast Exchange Study requirements of the Act have been met are requested by May 3, 1999.

ADDRESSES: Copies of the Report can be obtained from the Aquatic Nuisance Species Task Force, 4401 North Fairfax Drive, Suite 851, Arlington, Virginia 22203–1622. Comments should be sent to the same address..

FOR FURTHER INFORMATION CONTACT: Robert A. Peoples, Executive Secretary, Aquatic Nuisance Species Task Force at 703–358–2025 or by e-mail at: robert__peoples@fws.gov.

SUPPLEMENTARY INFORMATION: Section 1102(a)(1) of the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 (16 U.S.C. 4712(a)(1)) directs the Aquatic Nuisance Species Task Force established by that statute to conduct a Ballast Exchange Study. The purposes of the Study are to (1) assess the environmental effects of ballast water exchange on the diversity and abundance of native species in U.S. waters and (2) identify areas in U.S. waters and the Exclusive Economic Zone where ballast exchange is not likely to result in new infestations of nonindigenous species nor spread aquatic nuisance species.

In 1993, scientists with extensive experience studying biological invasions, including ballast water, proposed to the u.S. Environmental Protection Agency (EPA) and National Oceanic and Atmospheric Administration (NOAA) that those agencies fund a ballast exchange study. Although both agencies are represented on the ANS Task Force and Task Force staff were aware of the proposal, the

ANS Task Force did not commission the study. The principal investigators assembled a team of biological invasion scientists and physical oceanographers to conduct a study and submitted their report to the ANS Task Force and NOAA in November 1998. Both EPA and NOAA have accepted the report and authorized its release.

The ANS Task Force is now considering whether to adopt this volunteered study as fulfilling its responsibilities under section 1102(a)(1) of the Act (16 U.S.C. 4712(a)(1)). A key factor in those deliberations is the scientific and technical accuracy and completeness of the November 1998 report of the volunteered study.

Dated: March 26, 1999.

Hannibal Bolton,

Acting Co-Chair, Aquatic Nuisance Species Task Force, Acting Assistant Director—Fisheries.

[FR Doc. 99–7976 Filed 3–31–99; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–125–08–1430–00; GP9.–0148 ; OR 53620]

Notice of Realty Action: Direct Sale of Public Land in Coos County, Oregon

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Correction notice.

SUMMARY: In **Federal Register**, Volume 63, Page 70419, Number 244 of Monday, December 21, 1998, Notices, under the **SUMMARY** heading, add the following paragraph: The mineral interest being offered for conveyance have no known mineral values and may be conveyed simultaneously, in accordance with Section 209 of the Federal Land Policy and Management Act. Acceptance of the direct sale offer will qualify the purchaser to make application for conveyance of those mineral interests. Purchasers must submit a non refundable $50.00 filing fee for the conveyance of the mineral estate upon request by the Bureau of Land Management.

Dated: March 23, 1999.

Sue E. Richardson,

District Manager.

[FR Doc. 99–8031 Filed 3–31–99; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–030–09–1220–04:GP9–0129]

Notice of Special Recreation Permit Requirements, Wallowa/Grande Ronde Rivers

AGENCY: Bureau of Land Management, Interior, Vale District Baker Resource Area.

ACTION: Notice of Special Recreation Permit Requirements, Wallowa/Grande Ronde Rivers, Oregon and Washington.

SUMMARY: Withdrawn.

Additional Information

Federal Register Notice #OR–030–09–1220–04:GP9–0996 (64 FR 9347, Feb. 25, 1999), is withdrawn. New regulations regarding the permit system for the Wallowa/Grande Ronde Rivers will be forthcoming.

FOR FURTHER INFORMATION CONTACT: Baker Resource Area, 3165 10th St., Baker City, Oregon 97814, Telephone (541) 523–1256.

Penelope J. Woods,

Baker Resource Area Manager.

[FR Doc. 99–8032 Filed 3–31–99; 8:45 am]

BILLING CODE 4310–33–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ–930–1430–01; AZA–30620]

Notice of Proposed Withdrawal; Arizona

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice; Correction.

SUMMARY: In a notice published in the **Federal Register** December 14, 1998, the Secretary of the Interior proposed to withdraw approximately 605,350 acres of Federal lands and minerals to protect the native biodiversity and the ecological richness of the Shivwits Plateau area in northwestern Arizona. The document contained five legal description errors.

In the **Federal Register** issue of December 14, 1998, in FR Doc. 98–33046: (1) On page 68789, in the ninth line, add (Private Surface). (2) On page 68789, in the thirteenth line, change the SE¼ to the NE¼ to read: Sec. 10, NE¼, N½NW¼, SE¼NW¼, and S½; 600.00 acres. (3) On page 68790, in the forty second line, change S¼ to S½ to read: Sec. 5, lots 1 to 4, inclusive, S½N½ and S½; (Non-Federal Subsurface) 633.84 acres. (4) On page 68792, in the fifteenth line from the bottom, add E½ to read: Sec. 29, E½E½; (Non-Federal Surface and Federal Subsurface) 180.10 acres. (5) On page 68794, in the third line from the bottom, add NE¼SE¼ to read: Sec. 2, lot 4, S½NW¼, N½SE¼, SW¼SE¼; (State Surface and Subsurface) 237.42 acres.

FOR FURTHER INFORMATION CONTACT: Roger G. Taylor, Field Manager, Arizona Strip Field Office, 345-East Riverside Drive, St. George, Utah 84790, (435) 688–3200.

Dated: February 16, 1999.

Roger G. Taylor,

Arizona Strip Field Manager.

[FR Doc. 99–7970 Filed 3–31–99; 8:45 am]

BILLING CODE 4310–32–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Agency Information Collection Activities: Submission for Office of Management and Budget Review; Comment Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of extension of a currently approved information collection.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, MMS invites the public and other Federal agencies to comment on a proposal to extend the currently approved collection of information discussed below. The Paperwork Reduction Act of 1995 (PRA) provides that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number.

DATES: Submit written comments by May 3, 1999.

ADDRESSES: Submit comments and suggestions directly to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for the Department of the Interior (OMB Control Number 1010–0118), 725 17th Street, NW, Washington, DC 20503. Send a copy of your comments to the Minerals Management Service, Attention: Anne Ewell, Mail Stop 4024, 381 Elden Street, Herndon, Virginia 20170–4817.

FOR FURTHER INFORMATION CONTACT: For questions concerning the electronic spreadsheets, please contact Larry Barker, Division of Verification, telephone (303) 231–3157, FAX (303)

231–3189, e-mail address: Lawrence.Barker@mms.gov. For questions concerning this collection of information, please contact Anne Ewell, Royalty-in-Kind Study Team, telephone (703) 787–1584. You may also obtain copies of this collection of information by contacting MMS's Information Collection Clearance Officer at (202) 208–7744.

SUPPLEMENTARY INFORMATION:

Title: Royalty-in-Kind (RIK) Pilot Program Spreadsheets: Federal Oil and Gas Purchase System and Joint Effort—Royalty Oil and Gas Purchase System.

Abstract: The Secretary of the Interior, under the Mineral Leasing Act (30 U.S.C. 192) and the Outer Continental Shelf Lands Act (43 U.S.C. 1353), is responsible for the management of royalties on minerals produced from leased Federal lands. MMS carries out these responsibilities for the Secretary. The Report of Sales and Royalty Remittance, Form MMS–2014, is the only document used by MMS's automated Auditing and Financial System (AFS) to input royalty-related financial data from lessees, payors, and purchasers. MMS has undertaken several pilot programs to study the feasibility of taking the Government's royalty in the form of production, that is, as RIK. MMS has made available at no cost two versions of an electronic spreadsheet for RIK purchasers to use to simply create an electronic Form MMS–2014 to accompany their payments for Federal RIK, since they will not need to use the full range of reporting instructions and methods on the form.

MMS will use the information to conduct its automated accounting, verification, and distribution activities and to support disbursement of royalty revenues to the Treasury and States that have an interest in Federal revenues. MMS will protect proprietary information submitted on Form MMS–2014 under applicable Department regulations at 43 CFR part 2. No items of a sensitive nature are collected. The requirement to respond is mandatory.

Burden Statement: The reporting burden is estimated to average 2 minutes per response (line of data) including the time for reviewing the instructions, gathering and maintaining the data, entering the data on the spreadsheets, and reviewing the output—a completed Form MMS–2014.

This collection of RIK purchaser information represents a significant net reduction in burden compared to the collection of information on in-value transactions. While a few new companies may report, the overall number of respondents is greatly reduced. This is because only one purchaser need report one or two lines of data on aggregated volumes from a multi-lease property, rather than multiple lessee/producers each reporting at the detailed revenue source level that in-value royalty payments would require for the same properties. The electronic spreadsheets automatically allocate data needed by MMS to revenue source levels on Form MMS–2014, reducing complexity of reporting. This is made possible because MMS enters necessary reference data (e.g., ownership percentages) into the spreadsheets before providing them to purchasers. Further, the spreadsheet for joint Federal and State production will also automatically create a report acceptable to the State of Wyoming for production from properties offered jointly by MMS and the State.

On November 27, 1998, MMS published a 60-day **Federal Register** Notice (63 FR 65610) soliciting comments on using the optional electronic spreadsheets (both Federal only and joint Federal and State versions) to create a Form MMS–2014 when reporting purchases of the Government's royalty oil. Although the spreadsheets were in use before and during the comment period, no comments were received. However, during contact with purchasers in the Wyoming Pilot I, Phase 1, MMS found that the purchasers were pleased with the new process. Purchasers preferred MMS's electronic spreadsheets to any other method. Additionally, those reporting on properties combining Federal and State production located in the State of Wyoming were particularly pleased that, once sufficient data to prepare a report to MMS had been entered for those agreements, the electronic spreadsheets automatically calculated and produced reports acceptable to the State.

Estimated Number of Respondents: 4 in year 1; 5 in year 2; and 10 in year 3.

Estimated Total Annual Burden on Respondents: 49 hours in year 1; 330 in year 2; and 330 in year 3.

Frequency of Collection: Monthly.

Comments: In calculating the burden, we assume that respondents perform many of the requirements and maintain records in the normal course of their activities. We consider these usual and customary and take that into account in estimating the burden.

(1) We specifically solicit your comments on the following questions:

(a) Is the proposed collection of information necessary for us to properly perform our functions and will it be useful?

(b) Are the estimates of the burden hours of the proposed collection reasonable?

(c) Do you have any suggestions that would enhance the quality, clarity, or usefulness of the information to be collected?

(d) Is there a way to minimize the information collection burden on respondents, including through the use of appropriate automated electronic, mechanical, or other forms of information technology?

(2) In addition, the PRA requires agencies to estimate the total annual reporting and recordkeeping "cost" burden to respondents or recordkeepers resulting from the collection of information. We need to know if you have costs associated with the collection of this information for either total capital and startup cost components or annual operation, maintenance, and purchase of service components. Your estimates should consider the costs to generate, maintain, and disclose or provide the information. You should describe the methods you use to estimate major cost factors, including system and technology acquisition, expected useful life of capital equipment, discount rate(s), and the period over which you incur costs. Capital and startup costs include, among other items, computers and software you purchase to prepare for collecting information; monitoring, sampling, drilling, and testing equipment; and record storage facilities. Generally, your estimates should not include equipment or services purchased: (i) Before October 1, 1995; (ii) to comply with requirements not associated with the information collection; (iii) for reasons other than to provide information or keep records for the Government; or (iv) as part of customary and usual business or private practices.

MMS Information Collection Clearance Officer: Jo Ann Lauterbach (202) 208–7744.

Dated: March 22, 1999.

Lucy Querques Denett,

Associate Director for Royalty Management.

[FR Doc. 99–7967 Filed 3–31–99; 8:45 am]

BILLING CODE 4310-MR-P

INTERNATIONAL TRADE COMMISSION

[(Invs. Nos. AA1921–143 (Review) and 731-TA–341, 343–345, 391–397, and 399 (Review))]

Certain Bearings From China, France, Germany, Hungary, Italy, Japan, Rroania, Singapore, Sweden, and the United Kingdom

AGENCY: United States International Trade Commission.

ACTION: Institution of five-year reviews concerning the antidumping duty orders on certain bearings from China, France, Germany, Hungary, Italy, Japan, Romania, Singapore, Sweden, and the United Kingdom.

SUMMARY: The Commission hereby gives notice that it has instituted reviews pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act) to determine whether revocation of the antidumping duty orders on certain bearings from China, France, Germany, Hungary, Italy, Japan, Romania, Singapore, Sweden, and the United Kingdom would be likely to lead to continuation or recurrence of material injury. Pursuant to section 751(c)(2) of the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission;[1] to be assured of consideration, the deadline for responses is May 21, 1999. Comments on the adequacy of responses may be filed with the Commission by June 14, 1999.

For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207). Recent amendments to the Rules of Practice and Procedure pertinent to five-year reviews, including the text of subpart F of part 207, are published at 63 FR 30599, June 5, 1998, and may be downloaded from the Commission's World Wide Web site at http://www.usitc.gov/rules.htm.

EFFECTIVE DATE: April 1, 1999.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193) or Vera Libeau (202–205–3176), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION:

Background

On the dates listed below, antidumping duty orders were issued on the subject imports:

Order date	Product/country	Inv. No.	F.R. cite
8/18/76	Tapered roller bearings, 4" and under/Japan	AA1921–143	41 F.R. 34974
6/15/87	Tapered roller bearings/China	731–TA–344	52 F.R. 22667
6/19/87	Tapered roller bearings/Hungary	731–TA–341	52 F.R. 23319
6/19/87	Tapered roller bearings/Romania	731–TA–345	52 F.R. 23320
10/6/87	Tapered roller bearings, over 4"/Japan	731–TA–343	52 F.R. 37352
5/15/89	Ball, cylindrical roller, and spherical plain bearings/Germany	731–TA–391	54 F.R. 20900
5/15/89	Ball, cylindrical roller, and spherical plain bearings/France	731–TA–392	54 F.R. 20902
5/15/89	Ball and cylindrical roller bearings/Italy	731–TA–393	54 F.R. 20903
5/15/89	Ball, cylindrical roller, and spherical plain bearings/Japan	731–TA–394	54 F.R. 20904
5/15/89	Ball bearings/Romania	731–TA–395	54 F.R. 20906
5/15/89	Ball bearings/Singapore	731–TA–396	54 F.R. 20907
5/15/89	Ball and cylindrical roller bearings/Sweden	731–TA–397	54 F.R. 20907
5/15/89	Ball and cylindrical roller bearings/United Kingdom	731–TA–399	54 F.R. 20910

The Commission is conducting reviews to determine whether revocation of the orders would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. It will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct full reviews or expedited reviews. The Commission's determinations in any expedited reviews will be based on the facts available, which may include information provided in response to this notice.

Definitions.—The following definitions apply to these reviews:

(1) Subject Merchandise is the class or kind of merchandise that is within the scope of the five-year reviews, as defined by the Department of Commerce.

[1] No response to this request for information is required if a currently valid Office of Management and Budget (OMB) number is not displayed; the OMB number is 3117–0016/USITC No. 99–5–002, expiration date June 30, 1999. Public reporting burden for the request is estimated to average 7 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street, SW, Washington, DC 20436.

(2) The Subject Countries in these reviews are China, France, Germany, Hungary, Italy, Japan, Romania, . Singapore, Sweden, and the United Kingdom.

(3) The Domestic Like Product is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the *Subject Merchandise*. In its original determination concerning tapered roller bearings, 4 inches & under from Japan (Inv. No. AA1921–143), the Commission did not specifically define the Domestic Like Product; *however, in its original determinations concerning tapered roller bearings, over 4 inches from Japan (Inv. No. 731–TA–343) and tapered roller bearings from Hungary, China, and Romania (Invs. Nos. 341, 344, and 345), the Commission found one Domestic Like Product:* tapered roller bearings and parts thereof—finished or unfinished; flange, take-up cartridge, and hanger units incorporating tapered roller bearings, and tapered roller housings (except pillow blocks) incorporating tapered rollers, with or without spindles, and whether or not for automotive use. In its original determinations concerning antifriction bearings (other than tapered roller bearings) and parts thereof from Germany, France, Italy, Japan, Romania, Singapore, Sweden, and the United Kingdom (Investigations Nos. 731–TA–391–397 and 399), the Commission made affirmative determinations with respect to each of the following three Domestic Like Products: (1) ball bearings, (2) cylindrical roller bearings, and (3) spherical plain bearings. One Commissioner defined the Domestic Like Product differently. For purposes of this notice, you should report information separately on each of the following six Domestic Like Products: (1) tapered roller bearings, (2) tapered roller bearings, 4 inches and under, (3) tapered roller bearings, over 4 inches, (4) ball bearings, (5) cylindrical roller bearings, and (6) spherical plain bearings.

(4) The Domestic Industry is the U.S. producers as a whole of the Domestic Like Product, or those producers whose collective output of the Domestic Like Product constitutes a major proportion of the total domestic production of the product. In its original determination concerning tapered roller bearings, 4 inches & under from Japan (Inv. No. AA1921–143), the Commission did not specifically define the Domestic Industry; however, in its original determinations concerning tapered roller bearings, over 4 inches from Japan (Inv. No. 731–TA–343) and tapered roller bearings from Hungary, China, and Romania (Invs. Nos. 341, 344, and 345), the Commission found one Domestic Industry devoted to the production of the Domestic Like Product, as defined above. In its original determinations concerning antifriction bearings (other than tapered roller bearings) and parts thereof from Germany, France, Italy, Japan, Romania, Singapore, Sweden, and the United Kingdom (Investigations Nos. 731–TA–391–397 and 399), the Commission made affirmative determinations with respect to three Domestic Industries, each devoted to the production of one of the three Domestic Like Products, as defined above. One Commissioner defined the Domestic Industry differently. For purposes of this notice, you should report information on six Domestic Industries, each devoted to the production of one of the following six Domestic Like Products: (1) tapered roller bearings, (2) tapered roller bearings, 4 inches and under, (3) tapered roller bearings, over 4 inches, (4) ball bearings, (5) cylindrical roller bearings, and (6) spherical pl ain bearings.

(5) The Order Dates are the dates that the antidumping duty orders under review became effective. In these reviews, the Order Dates are as shown in the preceding tabulation.

(6) An Importer is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the Subject Merchandise into the United States from a foreign manufacturer or through its selling agent.

Participation in the Reviews and Public Service List

Persons, including industrial users of the Subject Merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the reviews as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the reviews.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and APO Service List

Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in these reviews available to authorized applicants under the APO issued in the reviews, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the reviews. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification

Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with these reviews must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will be deemed to consent, unless otherwise specified, for the Commission, its employees, and contract personnel to use the information provided in any other reviews or investigations of the same or comparable products which the Commission conducts under Title VII of the Act, or in internal audits and investigations relating to the programs and operations of the Commission pursuant to 5 U.S.C. Appendix 3.

Written Submissions

Pursuant to section 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is May 21, 1999. Pursuant to section 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct expedited or full reviews. The deadline for filing such comments is June 14, 1999. All written submissions must conform with the provisions of sections 201.8 and 207.3 of the Commission's rules and any submissions that contain BPI must also conform with the requirements of sections 201.6 and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means. Also, in accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the reviews must be served on all other parties to the reviews (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you

are not a party to the reviews you do not need to serve your response).

Inability To Provide Requested Information

Pursuant to section 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act in making its determinations in the reviews.

Information To Be Provided in Response to This Notice of Institution

Please provide the requested information separately for each Domestic Like Product, as defined above, and for each of the products identified by Commerce as Subject Merchandise. If you are a domestic producer, union/worker group, or trade/business association; import/export Subject Merchandise from more than one Subject Country; or produce Subject Merchandise in more than one Subject Country, you may file a single response. If you do so, please ensure that your response to each question includes the information requested for each pertinent Subject Country. As used below, the term "firm" includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address if available) and name, telephone number, fax number, and E-mail address of the certifying official.

(2) A statement indicating whether your firm/entity is a U.S. producer of the Domestic Like Product to which your response pertains, a U.S. union or worker group, a U.S. importer of the Subject Merchandise, a foreign producer or exporter of the Subject Merchandise, a U.S. or foreign trade or business association, or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in these reviews by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping duty orders on each Domestic Industry for which you are filing a response in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of Subject Merchandise on the Domestic Industry.

(5) A list of all known and currently operating U.S. producers of each Domestic Like Product for which you are filing a response. Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the Subject Merchandise and producers of the Subject Merchandise in the Subject Countries that currently export or have exported Subject Merchandise to the United States or other countries since the years the petitions were filed. The Subject Merchandise, the Subject Countries, and the years the petitions were filed are listed below:

Subject merchandise/ Subject country	Years
Tapered roller bearings, 4" & under/ Japan	1973
Tapered roller bearings/China, Hungary, and Romania	1986
Tapered roller bearings, over 4" Japan	1986
Ball, cylindrical roller, and spherical plain bearings/France	1988
Ball, cylindrical roller, and spherical plain bearings/Germany	1988
Ball and cylindrical roller bearings/ Italy	1988
Ball, cylindrical roller, and spherical plain bearings/Japan	1988
Ball bearings/Romania	1988
Ball bearings/Singapore	1988
Ball and cylindrical roller bearings/ Sweden	1988
Ball and cylindrical roller bearings/ United Kingdom	1988

(7) If you are a U.S. producer of a Domestic Like Product, provide the following information separately on your firm's operations on each product during calendar year 1998 (report quantity data in thousands of units and value data in thousands of U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/ which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of each Domestic Like Product accounted for by your firm's(s') production; and

(b) the quantity and value of U.S. commercial shipments of each Domestic Like Product produced in your U.S. plant(s).

(8) If you are a U.S. importer or a trade/business association of U.S. importers of the Subject Merchandise from the Subject Countries, provide the following information on your firm's(s') operations on that product during calendar year 1998 (report quantity data in thousands of units and value data in thousands of U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping or countervailing duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of Subject Merchandise from the Subject Countries accounted for by your firm's(s') imports; and

(b) the quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. commercial shipments of Subject Merchandise imported from the Subject Countries.

(9) If you are a producer, an exporter, or a trade/business association of producers or exporters of the Subject Merchandise in the Subject Countries, provide the following information on your firm's(s') operations on that product during calendar year 1998 (report quantity data in thousands of units and value data in thousands of U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping or countervailing duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the

percentage of total production of Subject Merchandise in the Subject Countries accounted for by your firm's(s') production; and

(b) the quantity and value of your firm's(s') exports to the United States of Subject Merchandise and, if known, an estimate of the percentage of total exports to the United States of Subject Merchandise from the Subject Countries accounted for by your firm's(s') exports.

(10) Identify significant changes, if any, in the supply and demand conditions or business cycle for each Domestic Like Product that have occurred in the United States or in the market for the Subject Merchandise in the Subject Countries since the Order Dates, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the Domestic Like Product produced in the United States, Subject Merchandise produced in the Subject Countries, and such merchandise from other countries.

(11) A statement of whether you agree with the above definitions of the Domestic Like Product and Domestic Industry; if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.61 of the Commission's rules.

Issued: March 25, 1999.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–8071 Filed 3–31–99; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–377 (Review)]

Internal Combustion Industrial Forklift Trucks From Japan

AGENCY: United States International Trade Commission.

ACTION: Institution of a five-year review concerning the antidumping duty order on internal combustion industrial forklift trucks from Japan.

SUMMARY: The Commission hereby gives notice that it has instituted a review pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act) to determine whether revocation of the antidumping duty order on internal combustion industrial forklift trucks from Japan would be likely to lead to continuation or recurrence of material injury. Pursuant to section 751(c)(2) of the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission;[1] to be assured of consideration, the deadline for responses is May 21, 1999. Comments on the adequacy of responses may be filed with the Commission by June 14, 1999.

For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207). Recent amendments to the Rules of Practice and Procedure pertinent to five-year reviews, including the text of subpart F of part 207, are published at 63 F.R. 30599, June 5, 1998, and may be downloaded from the Commission's World Wide Web site at http://www.usitc.gov/rules.htm.

EFFECTIVE DATE: April 1, 1999.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193) or Vera Libeau (202–205–3176), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION:

Background

On June 7, 1988, the Department of Commerce issued an antidumping duty order on imports of internal combustion industrial forklift trucks from Japan (53 F.R. 20882). The Commission is conducting a review to determine whether revocation of the order would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. It will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct a full review or an expedited review. The Commission's determination in any expedited review will be based on the facts available, which may include information provided in response to this notice.

Definitions

The following definitions apply to this review:

(1) Subject Merchandise is the class or kind of merchandise that is within the scope of the five-year review, as defined by the Department of Commerce.

(2) The Subject Country in this review is Japan.

(3) The Domestic Like Product is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the Subject Merchandise. In its original determination, the Commission found a single Domestic Like Product: industrial, operator-riding internal combustion engine forklift trucks with a weight-lift capacity of between 2,000 and 15,000 pounds (inclusive), with a U.S.-produced frame.

(4) The Domestic Industry is the U.S. producers as a whole of the Domestic Like Product, or those producers whose collective output of the Domestic Like Product constitutes a major proportion of the total domestic production of the product. In its original determination, the Commission defined a single Domestic Industry as U.S. producers of industrial, operator-riding internal combustion engine forklift trucks with a weight-lift capacity of between 2,000 and 15,000 pounds (inclusive), with a U.S.-produced frame.

[1] No response to this request for information is required if a currently valid Office of Management and Budget (OMB) number is not displayed; the OMB number is 3117–0016/USITC No. 99–5–003, expiration date June 30, 1999. Public reporting burden for the request is estimated to average 7 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street, SW, Washington, DC 20436.

(5) The Order Date is the date that the antidumping duty order under review became effective. In this review, the Order Date is June 7, 1988.

(6) An Importer is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the Subject Merchandise into the United States from a foreign manufacturer or through its selling agent.

Participation in the Review and Public Service List

Persons, including industrial users of the Subject Merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the review as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the review.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and APO Service List

Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in this review available to authorized applicants under the APO issued in the review, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. § 1677(9), who are parties to the review. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification

Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with this review must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will be deemed to consent, unless otherwise specified, for the Commission, its employees, and contract personnel to use the information provided in any other reviews or investigations of the same or comparable products which the Commission conducts under Title VII of the Act, or in internal audits and investigations relating to the programs and operations of the Commission pursuant to 5 U.S.C. Appendix 3.

Written Submissions

Pursuant to section 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is May 21, 1999. Pursuant to section 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct an expedited or full review. The deadline for filing such comments is June 14, 1999. All written submissions must conform with the provisions of sections 201.8 and 207.3 of the Commission's rules and any submissions that contain BPI must also conform with the requirements of sections 201.6 and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means. Also, in accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the review must be served on all other parties to the review (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the review you do not need to serve your response).

Inability to Provide Requested Information

Pursuant to section 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act in making its determination in the review.

Information To Be Provided in Response to This Notice of Institution

As used below, the term "firm" includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address if available) and name, telephone number, fax number, and E-mail address of the certifying official.

(2) A statement indicating whether your firm/entity is a U.S. producer of the Domestic Like Product to which your response pertains, a U.S. union or worker group, a U.S. importer of the Subject Merchandise, a foreign producer or exporter of the Subject Merchandise, a U.S. or foreign trade or business association, or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in this review by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping duty order on each Domestic Industry for which you are filing a response in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of Subject Merchandise on the Domestic Industry.

(5) A list of all known and currently operating U.S. producers of each Domestic Like Product for which you are filing a response. Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the Subject Merchandise and producers of the Subject Merchandise in the Subject Country that currently export or have exported Subject Merchandise to the United States or other countries since 1987.

(7) If you are a U.S. producer of a Domestic Like Product, provide the following information separately on your firm's operations on each product during calendar year 1998 (report quantity data in units and value data in thousands of U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the Domestic Like Product accounted for by your firm's(s') production; and

(b) the quantity and value of U.S. commercial shipments of the Domestic Like Product produced in your U.S. plant(s).

(8) If you are a U.S. importer or a trade/business association of U.S. importers of the Subject Merchandise from the Subject Country, provide the following information on your firm's(s') operations on that product during calendar year 1998 (report quantity data in units and value data in thousands of U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping or countervailing duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of Subject Merchandise from the Subject Country accounted for by your firm's(s') imports; and

(b) the quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. commercial shipments of Subject Merchandise imported from the Subject Country.

(9) If you are a producer, an exporter, or a trade/business association of producers or exporters of the Subject Merchandise in the Subject Country, provide the following information on your firm's(s') operations on that product during calendar year 1998 (report quantity data in units and value data in thousands of U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping or countervailing duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of Subject Merchandise in the Subject Country accounted for by your firm's(s') production; and

(b) the quantity and value of your firm's(s') exports to the United States of Subject Merchandise and, if known, an estimate of the percentage of total exports to the United States of Subject Merchandise from the Subject Country accounted for by your firm's(s') exports.

(10) Identify significant changes, if any, in the supply and demand conditions or business cycle for each Domestic Like Product that have occurred in the United States or in the market for the Subject Merchandise in the Subject Country since the Order Date, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the Domestic Like Product produced in the United States, Subject Merchandise produced in the Subject Country, and such merchandise from other countries.

(11) (OPTIONAL) A statement of whether you agree with the above definitions of the Domestic Like Product and Domestic Industry; if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.61 of the Commission's rules.

Issued: March 25, 1999.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–8073 Filed 3–31–99; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731-TA–384 (Review)]

Nitrile Rubber From Japan

AGENCY: United States International Trade Commission.

ACTION: Institution of a five-year review concerning the antidumping duty order on nitrile rubber from Japan.

SUMMARY: The Commission hereby gives notice that it has instituted a review pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act) to determine whether revocation of the antidumping duty order on nitrile rubber from Japan would be likely to lead to continuation or recurrence of material injury. Pursuant to section 751(c)(2) of the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission [1] to be assured of consideration, the deadline for responses is May 21, 1999. Comments on the adequacy of responses may be filed with the Commission by June 14, 1999.

For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207). Recent amendments to the Rules of Practice and Procedure pertinent to five-year reviews, including the text of subpart F of part 207, are published at 63 FR 30599, June 5, 1998, and may be downloaded from the Commission's World Wide Web site at http://www.usitc.gov/rules.htm.

EFFECTIVE DATE: April 1, 1999.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193) or Vera Libeau (202–205–3176), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION:

Background

On June 16, 1988, the Department of Commerce issued an antidumping duty order on imports of nitrile rubber from Japan (53 FR 22553). The Commission is conducting a review to determine whether revocation of the order would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. It will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct a full review or an expedited review. The Commission's determination in any expedited review will be based on the facts available, which may include information provided in response to this notice.

[1] No response to this request for information is required if a currently valid Office of Management and Budget (OMB) number is not displayed; the OMB number is 3117–0016/USITC No. 99–5–004, expiration date June 30, 1999. Public reporting burden for the request is estimated to average 7 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street, SW, Washington, DC 20436.

Definitions

The following definitions apply to this review:

(1) Subject Merchandise is the class or kind of merchandise that is within the scope of the five-year review, as defined by the Department of Commerce.

(2) The Subject Country in this review is Japan.

(3) The Domestic Like Product is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the Subject Merchandise. In its original determination, the Commission found a single Domestic Like Product: nitrile rubber, regardless of acrylonitrile content, excluding nitrile rubber products that contain additives, rubber processing chemicals, or other material that is used for functions beyond the copolymerization of acrylonitrile and butadiene.

(4) The Domestic Industry is the U.S. producers as a whole of the Domestic Like Product, or those producers whose collective output of the Domestic Like Product constitutes a major proportion of the total domestic production of the product. In its original determination, the Commission defined a single Domestic Industry as producers of nitrile rubber, regardless of acrylonitrile content, excluding nitrile rubber products that contain additives, rubber processing chemicals, or other material that is used for functions beyond the copolymerization of acrylonitrile and butadiene.

(5) The Order Date is the date that the antidumping duty order under review became effective. In this review, the Order Date is June 16, 1988.

(6) An Importer is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the Subject Merchandise into the United States from a foreign manufacturer or through its selling agent.

Participation in the Review and Public Service List

Persons, including industrial users of the Subject Merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the review as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the review.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and APO Service List

Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in this review available to authorized applicants under the APO issued in the review, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the review. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification

Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with this review must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will be deemed to consent, unless otherwise specified, for the Commission, its employees, and contract personnel to use the information provided in any other reviews or investigations of the same or comparable products which the Commission conducts under Title VII of the Act, or in internal audits and investigations relating to the programs and operations of the Commission pursuant to 5 U.S.C. Appendix 3.

Written Submissions

Pursuant to section 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is May 21, 1999. Pursuant to section 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct an expedited or full review. The deadline for filing such comments is June 14, 1999. All written submissions must conform with the provisions of sections 201.8 and 207.3 of the Commission's rules and any submissions that contain BPI must also conform with the requirements of sections 201.6 and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means. Also, in accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the review must be served on all other parties to the review (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the review you do not need to serve your response).

Inability To Provide Requested Information

Pursuant to section 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act in making its determination in the review.

Information To Be Provided In Response To This Notice of Institution

As used below, the term "firm" includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address if available) and name, telephone number, fax number, and E-mail address of the certifying official.

(2) A statement indicating whether your firm/entity is a U.S. producer of the Domestic Like Product to which your response pertains, a U.S. union or worker group, a U.S. importer of the Subject Merchandise, a foreign producer or exporter of the Subject Merchandise, a U.S. or foreign trade or business association, or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in this review by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping duty order on each Domestic Industry for which you are filing a response in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of

subject imports, likely price effects of subject imports, and likely impact of imports of Subject Merchandise on the Domestic Industry.

(5) A list of all known and currently operating U.S. producers of each Domestic Like Product for which you are filing a response. Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the Subject Merchandise and producers of the Subject Merchandise in the Subject Country that currently export or have exported Subject Merchandise to the United States or other countries since 1987.

(7) If you are a U.S. producer of a Domestic Like Product, provide the following information separately on your firm's operations on each product during calendar year 1998 (report quantity data in thousands of pounds and value data in thousands of U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the Domestic Like Product accounted for by your firm's(s') production; and

(b) the quantity and value of U.S. commercial shipments of the Domestic Like Product produced in your U.S. plant(s).

(8) If you are a U.S. importer or a trade/business association of U.S. importers of the Subject Merchandise from the Subject Country, provide the following information on your firm's(s') operations on that product during calendar year 1998 (report quantity data in thousands of pounds and value data in thousands of U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping or countervailing duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of Subject Merchandise from the Subject Country accounted for by your firm's(s') imports; and

(b) the quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. commercial shipments of Subject Merchandise imported from the Subject Country.

(9) If you are a producer, an exporter, or a trade/business association of producers or exporters of the Subject Merchandise in the Subject Country, provide the following information on your firm's(s') operations on that product during calendar year 1998 (report quantity data in thousands of pounds and value data in thousands of U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping or countervailing duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of Subject Merchandise in the Subject Country accounted for by your firm's(s') production; and

(b) the quantity and value of your firm's(s') exports to the United States of Subject Merchandise and, if known, an estimate of the percentage of total exports to the United States of Subject Merchandise from the Subject Country accounted for by your firm's(s') exports.

(10) Identify significant changes, if any, in the supply and demand conditions or business cycle for each Domestic Like Product that have occurred in the United States or in the market for the Subject Merchandise in the Subject Country since the Order Date, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the Domestic Like Product produced in the United States, Subject Merchandise produced in the Subject Country, and such merchandise from other countries.

(11) (OPTIONAL) A statement of whether you agree with the above definitions of the Domestic Like Product and Domestic Industry; if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.61 of the Commission's rules.

Issued: March 25, 1999.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–8074 Filed 3–31–99; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–374 (Review)]

Potassium Chloride (Potash) From Canada

AGENCY: United States International Trade Commission.

ACTION: Institution of a five-year review concerning the suspended investigation on potassium chloride (potash) from Canada.

SUMMARY: The Commission hereby gives notice that it has instituted a review pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act) to determine whether termination of the suspended investigation on potassium chloride (potash) from Canada would be likely to lead to continuation or recurrence of material injury. Pursuant to section 751(c)(2) of the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission; [1] to be assured of consideration, the deadline for responses is May 21, 1999. Comments on the adequacy of responses may be filed with the Commission by June 14, 1999.

For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207). Recent amendments to the Rules of Practice and Procedure pertinent to five-year reviews, including the text of subpart F of part 207, are published at 63 FR 30599, June 5, 1998, and may be downloaded from the Commission's World Wide Web site at http://www.usitc.gov/rules.htm.

EFFECTIVE DATE: April 1, 1999.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193) or Vera

[1] No response to this request for information is required if a currently valid Office of Management and Budget (OMB) number is not displayed; the OMB number is 3117–0016/USITC No. 99–5–001, expiration date June 30, 1999. Public reporting burden for the request is estimated to average 7 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street, SW, Washington, DC 20436.

Libeau (202–205-3176), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION:

Background

On January 19, 1988, the Department of Commerce suspended an antidumping duty investigation on imports of potassium chloride (potash) from Canada (53 FR 1393). The Commission is conducting a review to determine whether termination of the suspended investigation would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. It will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct a full review or an expedited review. The Commission's determination in any expedited review will be based on the facts available, which may include information provided in response to this notice.

Definitions

The following definitions apply to this review:

(1) Subject Merchandise is the class or kind of merchandise that is within the scope of the five-year review, as defined by the Department of Commerce.

(2) The Subject Country in this review is Canada.

(3) The Domestic Like Product is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the Subject Merchandise. In its original determination, the Commission defined the Domestic Like Product as potassium chloride.

(4) The Domestic Industry is the U.S. producers as a whole of the Domestic Like Product, or those producers whose collective output of the Domestic Like Product constitutes a major proportion of the total domestic production of the product. In its original determination, the Commission defined the Domestic Industry as producers of potassium chloride.

(5) The Order Date is the date that the investigation was suspended. In this review, the Order Date is January 19, 1988.

(6) An Importer is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the Subject Merchandise into the United States from a foreign manufacturer or through its selling agent.

Participation in the Review and Public Service List

Persons, including industrial users of the Subject Merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the review as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the review.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and APO Service List

Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in this review available to authorized applicants under the APO issued in the review, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the review. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification

Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with this review must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will be deemed to consent, unless otherwise specified, for the Commission, its employees, and contract personnel to use the information provided in any other reviews or investigations of the same or comparable products which the Commission conducts under Title VII of the Act, or in internal audits and investigations relating to the programs and operations of the Commission pursuant to 5 U.S.C. Appendix 3.

Written Submissions

Pursuant to section 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is May 21, 1999. Pursuant to section 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct an expedited or full review. The deadline for filing such comments is June 14, 1999. All written submissions must conform with the provisions of sections 201.8 and 207.3 of the Commission's rules and any submissions that contain BPI must also conform with the requirements of sections 201.6 and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means. Also, in accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the review must be served on all other parties to the review (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the review you do not need to serve your response).

Inability To Provide Requested Information

Pursuant to section 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act in making its determination in the review.

Information To Be Provided in Response to This Notice of Institution

As used below, the term "firm" includes any related firms.

(1) The name and address of your firm or entity (including World Wide

Web address if available) and name, telephone number, fax number, and E-mail address of the certifying official.

(2) A statement indicating whether your firm/entity is a U.S. producer of the Domestic Like Product to which your response pertains, a U.S. union or worker group, a U.S. importer of the Subject Merchandise, a foreign producer or exporter of the Subject Merchandise, a U.S. or foreign trade or business association, or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in this review by providing information requested by the Commission.

(4) A statement of the likely effects of the termination of the suspended investigation on each Domestic Industry for which you are filing a response in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of *Subject Merchandise* on the *Domestic Industry*.

(5) A list of all known and currently operating U.S. producers of each Domestic Like Product for which you are filing a response. Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the Subject Merchandise and producers of the Subject Merchandise in the Subject Country that currently export or have exported Subject Merchandise to the United States or other countries since 1987.

(7) If you are a U.S. producer of a Domestic Like Product, provide the following information separately on your firm's operations on each product during calendar year 1998 (report quantity data in short tons and value data in thousands of U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the Domestic Like Product accounted for by your firm's(s') production; and (b) the quantity and value of U.S. commercial shipments of the Domestic Like Product produced in your U.S. plant(s).

(8) If you are a U.S. importer or a trade/business association of U.S. importers of the Subject Merchandise from the Subject Country, provide the following information on your firm's(s') operations on that product during calendar year 1998 (report quantity data in short tons and value data in thousands of U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping or countervailing duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of Subject Merchandise from the Subject Country accounted for by your firm's(s') imports; and

(b) the quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. commercial shipments of Subject Merchandise imported from the Subject Country.

(9) If you are a producer, an exporter, or a trade/business association of producers or exporters of the Subject Merchandise in the Subject Country, provide the following information on your firm's(s') operations on that product during calendar year 1998 (report quantity data in short tons and value data in thousands of U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping or countervailing duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of Subject Merchandise in the Subject Country accounted for by your firm's(s') production; and

(b) the quantity and value of your firm's(s') exports to the United States of Subject Merchandise and, if known, an estimate of the percentage of total exports to the United States of Subject Merchandise from the Subject Country accounted for by your firm's(s') exports.

(10) Identify significant changes, if any, in the supply and demand conditions or business cycle for each Domestic Like Product that have occurred in the United States or in the market for the Subject Merchandise in the Subject Country since the Order Date, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the Domestic Like Product produced in the United States, Subject Merchandise produced in the Subject Country, and such merchandise from other countries.

(11) (OPTIONAL) A statement of whether you agree with the above definitions of the Domestic Like Product and Domestic Industry; if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.61 of the Commission's rules.

Issued: March 25, 1999.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–8072 Filed 3–31–99; 8:45 am]

BILLING CODE 7020–02–U

JUDICIAL CONFERENCE OF THE UNITED STATES

Proposed Amended Rules for the Processing of Petitions for Review of Circuit Council Orders Under the Judicial Conduct and Disability Act

AGENCY: Judicial Conference of the United States.

ACTION: Request for comments.

SUMMARY: The Judicial Conference Committee to Review Circuit Council Conduct and Disability Orders proposes an amendment to its Rules for the Processing of Petitions for Review of Circuit Council Orders under the Judicial Conduct and Disability Act, adopted in September 1989. The recommended change would amend Rule 6 to establish a 60-day time limit for filing a petition for review, with an additional 30 days for the filings of cross-petitions for review, by the Judicial Conference of action taken by the judicial council of a circuit in complaint proceedings under the Judicial Conduct and Disability Act, 28 U.S.C. 372(c). The existing rules do not impose any time limit upon the filing of a petition for review with the Judicial Conference.

DATES: Written comments on these rules should be received on or before April 30, 1999.

ADDRESSES: Comments should be mailed to the Office of the General Counsel, Suite 7–290, Administrative Office of the United States Courts, One Columbus Circle, NE., Washington, DC. 20544.

FOR FURTHER INFORMATION CONTACT: Jeffrey N. Barr, Assistant General Counsel, Suite 7–290, Administrative Office of the United States Courts, One Columbus Circle, NE., Washington, DC 20544, telephone: (202) 502–1100.

Rules of the Judicial Conference of the United States for the Processing of Petitions for Review of Circuit Council Orders Under the Judicial Conduct and Disability Act

The Judicial Conference of the United States prescribes these rules under the authority of section 372(c)(11) of title 28, United States Code, with respect to the processing of petitions for review submitted to the Conference under 28 U.S.C. 372(c)(10), seeking review of circuit council actions taken under 28 U.S.C. 372(c)(6) upon complaints of judicial conduct or disability:

1. Petition for review may be made by the filing of a written submission to the Judicial Conference addressed as follows: Loenidas Ralph Mecham, Secretary, Judicial Conference of the United States Administrative Office of the United States Courts, Washington, DC 20544, Attention: Office of the General Counsel.

2. No form is prescribed for the filing of a petition for review.

3. Such petition shall consist of a written submission in typewriting on plain paper of 8½ by 11 inch dimensions.

4. No formal limitation is imposed upon the length of the petition, but it is suggested that such petition should not normally exceed 20 pages in addition to the attachments required by Rule 8.

5. The petition shall contain a short and plain statement of the basic facts underlying the complaint, the history of its consideration before the appropriate circuit judicial council, and the premises upon which the petitioner asserts entitlement to relief from the action taken by the council.

6. A petition for review under these rules must be submitted within sixty (60) days following final action by the circuit judicial council under 28 U.S.C. 372(c)(6) and issuance of its implementing order under 28 U.S.C. 372(c)(15). Once a petition for review has been submitted, a cross-petition for review must be submitted with thirty (30) days following submission of the petition for review, or within sixty (60) days following final action by the circuit judicial council under 28 U.S.C. 372(c)(6) and issuance of its implementing order under 28 U.S.C. 372(c)(15), whichever is later.

7. Five copies of the petition for review shall be submitted, at least one of which shall bear the original ink signature of the petitioner or his or her attorney. If the petitioner submits a signed declaration of inability to pay the expense of duplicating the petition, the Administrative Office shall then accept the original petition alone and shall undertake necessary reproduction of copies at its expense.

8. The petition for review shall have attached thereto a copy of each of the following documents:

—The order of the circuit judicial council issued under 28 U.S.C. 372(c)(15), of which review is sought;
—The original complaint of judicial misconduct or disability that commenced the proceeding;
—Any other documents or correspondence arising in the course of the proceeding before the judicial council or its special committee which the petitioner deems essential or useful to the prompt disposition of the review petition.

9. Upon receipt of a petition for review that appears on its face to be coherent, in compliance with these rules, and appropriate for present disposition, the Administrative Office shall promptly acknowledge receipt of the petition and advise the chairman of the Judicial Conference Committee to Review Circuit Council Conduct and Disability Orders, a committee appointed by the Chief Justice of the United States as authorized by 28 U.S.C. 331.

10. Unless otherwise directed by the Executive Committee of the Judicial Conference, the Committee to Review Circuit Council Conduct and Disability Orders shall assume the consideration and disposition of all petitions for review, in conformity with the Judicial Conference statement of the Committee's jurisdiction.

11. The Administrative Office shall then distribute the petition and its attachment to the members of the Committee to Review Circuit Council Conduct and Disability Orders for their deliberation. The petition shall receive an eight-digit identifying number of which the initial two digits shall refer to the year of filing, the next three digits shall be "372," and the final three shall identify each individual petition. Unless otherwise directed by the chairman, the Administrative Office shall contact the circuit executive or clerk of the U.S. court of appeals for the appropriate circuit to obtain the record of circuit council consideration of the complaint for distribution to the Committee.

12. In recognition of the review nature of petition proceedings under 28 U.S.C. 372(c)(10), no additional investigation shall ordinarily be undertaken by the Judicial Conference or the Committee. If such investigation is deemed necessary, the Conference or Committee may remand the matter to the circuit judicial council that considered the complaint, or may undertake any investigation found to be required. If such investigation is undertaken by the Conference or Committee, (a) adequate prior notice shall be given in writing to the judge or magistrate whose conduct is the subject of the complaint, (b) such judge or magistrate shall be afforded an opportunity to appear at any investigative proceedings which might be conducted and to present argument orally or in writing, and (c) the complainant shall be afforded an opportunity to appear at any proceedings conducted if it is considered that the complainant could offer substantial new and relevant information.

13. Except where additional investigation is undertaken as provided in Rule 12, there shall be no arguments or personal appearances before the Committee. Unless the petition for review is amenable to disposition on the face thereof, the Committee may determine to receive written argument from the petitioner and from the other party to the complaint proceeding (the complainant or judge/magistrate complained against).

14. The decision on the petition shall be made by written order as provided by 28 U.S.C. 372(c)(15). Such order shall be

forwarded by the committee chairman to the Administrative Office, which shall distribute it as directed by the chairman. In accordance with section 372(c)(15), orders of the Committee shall be maintained as public documents by the Administrative Office and by the clerk of the United States court of appeals for the circuit in which the complaint arose.

15. In conformity with 28 U.S.C. 372(c)(10), all orders and determinations of the Judicial Conference or of the Committee on its behalf, including denials of petitions for review, shall be final and conclusive and shall not be judicially reviewable on appeal or otherwise.

Leonidas Ralph Mecham,

Secretary.

[FR Doc. 99–8025 Filed 3–31–99; 8:45 am]

BILLING CODE 2210–55–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980

In accordance with Departmental policy, 28 CFR 50.7, and 42 U.S.C. 9622(d)(2), notice is hereby given that on March 22, 1999, a Consent Decree was lodged in *United States* v. *Butterfield Joint Venture, Ltd.*, Civil Action No. 2:99CV–0182J with the United States District Court for the District of Utah.

The Complaint in this case was filed under Section 107 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. 9607, with respect to the Midvale Slag Superfund Site located in Midvale, Utah against Butterfield Joint Venture, Ltd. Pursuant to the terms of the Consent Decree, which resolves claims under the above-mentioned statute the settling defendant agrees to pay $125,000 to the United States to reimburse response costs incurred at the Site and the United States convenants not to sue the settling defendant for further response costs incurred by the United States at the Site.

The Department of Justice will receive comments relating to the proposed Consent Decree for a period of thirty days from the date of publication of this notice. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United* days from the date of publication of this notice. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Butterfield Joint Venture, Ltd.*, DOJ Ref. No. 90–11–3–1194.

The proposed Consent Decree may be examined at the office of the United States Attorney, District of Utah, 185 South Street, Suite 400, Salt Lake City 84111, or at the offices of the Environmental Protection Agency, Region VIII, 999 18th Street, Suite 500, Denver, Colorado, 80202. Copies of the proposed consent decree may be examined at the Consent Decree Library, 1120 G Street, NW, 3rd Floor, Washington, DC 20005, (202) 624–0892. A copy of the consent decree may also be obtained in person or by mail at the Consent Decree Library, 1120 G Street, NW, 3rd Floor, Washington, DC 20005. When requesting a copy of the decree by mail, please enclose a check in the amount of $6.16 for a copy (twenty-five cents per page reproduction costs) payable to the "Consent Decree Library."

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 99–7971 Filed 3–31–99; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decrees Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act

In accordance with Departmental policy, the Department of Justice gives notice that two proposed consent decrees in the consolidated cases captioned *United States* v. *Cantrell, et al.*, Civil Action No. C–1–97–981 (S.D. Ohio) and *United States* v. *Ohio Power Co., et al.*, Civil Action No. C–1–98–247 (S.D. Ohio), were lodged with the United States District Court for the Southern District of Ohio, Western Division, on March 18, 1999, pertaining to the Automatic Containers Superfund Site (the "Site"), located near Ironton, in Lawrence County, Ohio. The proposed consent decrees would resolve certain civil claims of the United States for recovery of more than $1.2 million in past response costs under Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended ("CERCLA"), 42 U.S.C. 9607, against two defendants in the consolidated cases.

The first proposed consent decree, captioned "Partial Consent Decree with Settling Defendant Ohio Power Company" would provide for Ohio Power Company's payment of $210,000 in reimbursement of past CERCLA response costs the United States incurred in connection with the Site. The second proposed consent decree, captioned "Partial Consent Decree with Settling Defendant AK Steel Corporation" would provide for AK Steel Corporation's payment of $15,000 in reimbursement of past CERCLA response costs the United States incurred in connection with the Site.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decrees. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, United States Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Cantrell, et al.*, Civil Action No. C–1–97–981 (S.D. Ohio) and *United States* v. *Ohio Power Co., et al.*, Civil Action No. C–1–98–247 (S.D. Ohio), and DOJ References No. 90–11–3–1756, and the proposed consent decree(s) which the comments address.

The proposed consent decrees may be examined at: (1) Office of the United States Attorney for the Southern District of Ohio, 220 U.S. Courthouse, 100 East Fifth Street, Cincinnati, Ohio 45202 (contact Gerald Kaminski (513–684–3711)); (2) the United States Environmental Protection Agency (Region 5), 77 West Jackson Boulevard, Chicago, Illinois 60604–3590 (contact Mony Chabria (312–886–6842)); and (3) the U.S. Department of Justice, Environment and Natural Resources Division Consent Decree Library, 1120 G Street, NW, 3rd Floor, Washington, DC 20005 (202–624–0892). Copies of the proposed consent decrees may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW, 3rd Floor, Washington, DC 20005. In requesting copies, please refer to the referenced case and DOJ Reference Number, the proposed consent decree(s), requested, and enclose a check for the amount(s) described below, made payable to the Consent Decree Library. The cost for a copy of the "Partial Consent Decree with Settling Defendant Ohio Power Company" only is $5.75 (23 pages at 25 cents per page reproduction costs), or $6.50 for that consent decree and all appendices (26 pages). The cost for a copy of the "Partial Consent Decree with Settling Defendant AK Steel Corporation" only is $6.00 (24 pages at 25 cents per page reproduction costs), or

$6.75 for that consent decree and all appendices (27 pages).

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 99–7972 Filed 3–31–99; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as Amended

Consistent with Departmental policy, 28 CFR 507.7, 38 FR 19029, and 42 U.S.C. 9622(d), notice is hereby given that on March 12, 1999, a proposed Consent Decree in *United States* v. *Janssen Ortho LLC*, Civil Action No. 99–1261 SEC, was lodged with the United States District Court for the District of Puerto Rico. The proposed Consent Decree will resolved the United States' claims under the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. 9601 *et seq.*, on behalf of the U.S. Environmental Protection Agency ("EPA") against defendant relating to the Janssen, Inc. Superfund Site ("Site") located in Gurabo, Puerto Rico. The Complaint alleges that the defendant is liable under section 107(a) of CERCLA, 42 U.S.C. 9607(a).

Pursuant to the Consent Decree, the settling defendant will implement the remedy selected in the September 30, 1997 Record of Decision ("ROD") for the Site, estimated to cost approximately $15 million, reimburse the United States for 100% of its past costs ($865,972.33) and pay all EPA future response costs, as defined in the Consent Decree.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed consent decree. Any comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Janssen Ortho LLC*, Civil Action No. 99–1261 SEC, D.J. Ref. 90–11–3–1768.

The proposed consent decree may be examined at the Office of the United States Attorney, District of Puerto Rico, Federal Building, Chardon Avenue, Hato Rey, Puerto Rico 00918 and at Region II, Office of the Environmental Protection Agency, 290 Broadway, New York, NY 10007–1866 and at the Consent Decree Library, 1120 G Street, NW, 3rd Floor, Washington, DC 20005, (202) 624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW, 3rd Floor, Washington, DC 20005. In requesting a copy, please enclose a check (there is a 25 cent per page reproduction cost) in the amount of $41.25 payable to the Consent Decree Library.

Bruce S. Gelber,

Deputy Chief, Environmental Enforcement Section, Environmental and Natural Resources Division.

[FR Doc. 99–7973 Filed 3–31–99; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed Consent Decree in *United States* v. *Linda Carroll and Carroll Carolina Corp.*, Civil Action No. 7:99–CV–44–F(1) was lodged with the United States District Court for the Eastern District of North Carolina on March 17, 1999. The proposed Consent Decree resolves the United States' claims against Linda Carroll and Carroll Carolina Corp. pursuant to Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA"), as amended. The settling defendants are alleged to be liable under section 107 of CERCLA for costs incurred and to be incurred by the United States Environmental Protection Agency and others during a cleanup of the Old ATC Refinery Site in Wilmington, North Carolina. Under the Consent Decree, the settling defendants agree to reimburse the United States in the amount of $85,000. The timing of such payment is dependent on various events outlined in the Decree.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, U.S. Department of Justice, P.O. Box 7611, Washington, DC 20044; and refer to *United States* v. *Linda Carroll et al.*, DOJ Ref. # 90–11–2–1192/2.

The proposed settlement agreement may be examined at the Office of the United States Attorney, 310 New Bern Ave., Suite 800, Raleigh, NC 27601; and at the office of the Environmental Protection Agency, Region 4, 61 Forsyth Street, S.W., Atlanta, GA 30303; and at the Consent Decree Library, 1120 G Street, NW, 3rd Floor, Washington, DC 20005, (202) 624–0892. A copy of the proposed Consent Decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW, 3rd Floor, Washington, DC 20005. In requesting a copy please refer to the referenced case and enclose a check in the amount of $7.50 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 99–7974 Filed 3–31–99; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Antitrust Division

United States v. Central Parking Corporation and Allright Holdings, Inc.; Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. section 16(b) through (h), that a proposed Final Judgment, Stipulation and Competitive Impact Statement have been filed with the United States District Court for the District of Columbia in *United States* v. *Central Parking Corporation and Allright Holdings, Inc.*, No. 1:99CV00652. On March 16, 1999, the United States filed a Complaint alleging that the proposed merger of Central Parking and Allright Holdings would violate section 7 of the Clayton Act, 15 U.S.C. 18. The proposed Final Judgment, filed the same time as the Complaint, requires the defendants to divest their interest in certain parking facilities in Cincinnati and Columbus, Ohio; Nashville, Knoxville, and Memphis, Tennessee; Dallas, Houston, El Paso, and San Antonio, Texas; Baltimore, Maryland; Denver, Colorado; Jacksonville, Tampa, and Miami, Florida; San Francisco, California; Kansas City, Missouri; New York, New York; and Philadelphia, Pennsylvania. Copies of the Complaint, proposed Final Judgment and Competitive Impact Statement are available for inspection on the Antitrust Division's web site (www.usdoj.gov/atr/cases.html); at the Antitrust Division, 325 7th Street, NW Room 215, Washington, DC 20530 (telephone: 202–514–2481); and at the Office of the Clerk of the United States District Court for the District of Columbia, Washington, DC.

Public comment is invited within 60 days of the date of this notice. Comments, with Antitrust Division responses, will be published in the **Federal Register** and filed with the Court. Comments should be directed to Craig Conrath, Chief, Merger Task Force, Antitrust Division, 1401 H Street, NW, Suite 4000, Washington, DC 20530 (Tel. 202–307–0001).

Constance K. Robinson,

Director of Operations and Merger Enforcement.

Stipulation

It is stipulated by and between the undersigned parties, by their respective attorneys, as follows:

1. The Court has jurisdiction over the subject matter of this action and over each of the parties hereto, and venue of this action is proper in the District Court for the District of Columbia;

2. The parties stipulate that a Final Judgment in the form hereto attached may be filed and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act (15 U.S.C. 16), and without further notice to any party or other proceedings, provided that the United States has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on defendants and by filing that notice with the Court;

3. The defendants (as defined in Section II of the proposed Final Judgment attached hereto) agree to abide by and comply with the provisions of the proposed Final Judgment pending entry of the Final Judgment by the Court, and shall, from the date of the signing of this Stipulation by the parties, comply with all the terms and provisions of the proposed Final Judgment as though the same were in full force and effect as an order of the Court;

4. In the event the United States withdraws its consent, as provided in paragraph 2 above, or if the proposed Final Judgment is not entered pursuant to this Stipulation, the time has expired for all appeals of any Court ruling declining entry of the proposed Final Judgment, and the Court has not otherwise ordered continued compliance with the terms and provisions of the proposed Final Judgment, this Stipulation shall be of no effect whatever, and the making of this Stipulation shall be without prejudice to any party in this or any other proceeding;

5. Central and Allright represent that the divestitures ordered in the proposed Final Judgment can and will be made, and that Central and Allright will later raise no claims of hardship or difficulty as grounds for asking the court to modify any of the divestiture provisions contained therein;

6. All parties agree that this agreement can be signed in multiple counterparts.

Dated: March 12, 1999.

For Plaintiff United States

Allee A. Ramadhan (162131),

John C. Filippini (165159),

Joseph M. Miller (439965),

U.S. Department of Justice, Antitrust Division, Merger Task Force, 1401 H Street, NW, Suite 4000, Washington, DC 20005, (202) 307–0001.

For Defendant Central Parking Corporation

David Marx, Jr.,

James H. Sneed (194803),

McDermott, Will & Emery, 227 West Monroe Street, Chicago, IL 60606, (312) 984–7668.

For Defendant Allright Holdings, Inc.

Michael L. Weiner,

Charles B. Crisman, Jr. (240135),

Skadden, Arps, Slate, Meagher & Flom L.L.P., 919 Third Avenue, New York, NY 10022, (212) 735–2632.

Final Judgment

Whereas, plaintiff, the United States of America, and defendants Central Parking Corporation ("Central") and Allright Holdings, Inc. ("Allright"), by their respective attorneys, having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein, and without this Final Judgment constituting any evidence against or an admission by any party with respect to any issue of law or fact herein:

And whereas, defendants have agreed to be bound by the provision of this Final Judgment pending its approval by the Court;

And whereas, the essence of this Final Judgment is the prompt and certain divestiture of parking facilities to ensure that competition is not substantially lessened;

And whereas, plaintiff requires defendants to make certain divestitures for the purpose of preserving competition in the off-street parking services markets specified in the Complaint;

And whereas, defendants have represented to the plaintiff that the divestitures ordered herein can and will be made and that defendants will later raise no claims of hardship or difficulty as grounds for asking the Court to modify any of the divestiture provisions contained below;

Now, therefore, before the taking of any testimony, and without trial or adjudication of any issue of fact or law herein, and upon consent of the parties hereto, it is hereby *ordered, adjudged, and decreed* as follows:

I. Jurisdiction

This Court has jurisdiction over each of the parties hereto and over the subject matter of this action. The Complaint states a claim upon which relief may be granted against defendants, as hereinafter defined, under section 7 of the Clayton Act, as amended, 15 U.S.C. 18.

II. Definitions

As used in this Final Judgment:

A. "Central" means defendant Central Parking Corporation, a Tennessee corporation with its headquarters in Nashville, Tennessee, and includes its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, joint ventures, directors, officers, managers, agents, and employees.

B. "Allright" means defendant Allright Holdings, Inc., a Delaware corporation with its headquarters in Houston, Texas, and includes its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, joint ventures, directors, officers, managers, agents, and employees.

C. "Owned Parking Facilities" shall consist of all assets and properties owned by defendants listed in Schedule A.

D. "Parking Facility Agreements" shall consist of all agreements between or among the defendants and the owner or manager of the parking facilities listed in Schedule B.

E. "Acquirer" means the entity or entities to whom the defendants divest the Parking Facilities, or that succeed to the defendants' interests in any Parking Facility Agreement that is transferred pursuant to this Final Judgment.

F. "Parking Facilities" means the properties listed in Schedules A and B.

G. "Divest" or "Divestiture" means, (1) in connection with the Owned Parking Facilities listed in Schedule A, their sale, and (2), in connection with the Parking Facilities listed in Schedule B, the transfer of the Parking Facility Agreements by termination or assignment.

III. Applicability

A. The provisions of this Final Judgment apply to the defendants, their successors and assigns, subsidiaries, directors, officers, managers, agents, and employees, and all other persons in

active concert or participation with any of them who shall have received actual notice of this Final Judgment by personal service or otherwise.

B. Defendant Central shall require, as a condition of the sale of all or substantially all of its assets, that the Acquirer or Acquirers agree to be bound by the provisions of this Final Judgment; however, defendant Central need not obtain such an agreement from an Acquirer in connection with the divestiture of the Parking Facilities.

IV. Divestitures

A. Defendants are hereby ordered and directed, in accordance with the terms of this Final Judgment, within one hundred and fifty (150) calendar days after the filing of the Complaint in this matter, or within five (5) days after notice of entry of the Final Judgment, whichever is later, to divest all Parking Facilities identified in Schedules A and B to this Final Judgment as viable, ongoing parking services businesses. The divestiture of Parking Facilities shall be to an Acquirer or Acquirers acceptable to the United States in its sole discretion.

B. In accomplishing the divestitures ordered by this Final Judgment, defendants promptly shall make known, by usual and customary means, the availability of the Parking Facilities to be divested. Defendants shall inform any person making an inquiry that the divestiture is being made pursuant to this Final Judgment and provide such person with a copy of this Final Judgment. Defendants shall also offer to furnish to all bona fide prospective Acquirers, subject to customary confidentiality assurances, all information regarding the Parking Facilities customarily provided in a due diligence process except such information subject to attorney-client privilege or attorney work-product privilege. Defendants shall make available such information to the United States at the same time that such information is made available to any other person.

C. Defendants shall permit prospective Acquirers of the Parking Facilities to have access to personnel and to any and all zoning, building, and other permit documents and information, and to make inspection of the Parking Facilities and of any and all financial, operational, or other documents and information customarily provided as part of a due diligence process.

D. Defendants shall use their best efforts to accomplish the divestitures ordered by this Final Judgment as expeditiously as possible. The United States, in its sole discretion, may extend the time period for any divestiture for two (2) additional thirty (30) day periods, not to exceed sixty (60) calendar days in total.

E. Defendants shall use all commercially practical means to enable the Acquirer of any Parking Facility to employ any person whose primary responsibility concerns any parking services business connected with the Parking Facilities. Defendants shall not interfere with any negotiations by any Acquirer to employ any Central or Allright (or former Central or Allright) employee where primary responsibility concerns any parking services business connected with the Parking Facilities. Defendants shall provide to any Acquirer information relating to such personnel to enable the Acquirer to make offers of employment, and defendants shall remove any impediments that may deter these employees from accepting such employment, including but not limited to, non-compete agreements.

F. Defendants shall not take any action, direct or indirect, that will impede in any way the operation of any parking business connected with the Parking Facilities, or take any action, direct or indirect, that would impede the divestiture of any Parking Facility.

G. Defendants may not enter into any agreement to operate any parking business at the facilities listed in Scheduled B within two (2) years of divestiture.

H. Unless the United States otherwise consents in writing, the divestitures pursuant to Section IV, or by trustee appointed pursuant to Section VI, shall include all the Parking Facilities and be accomplished by divesting the Parking Facilities to an Acquirer or Acquirers in such a way as to satisfy the United States, in its sole discretion, that the Parking Facilities can and will be used by the Acquirers as viable ongoing off-street parking services businesses, and the divestitures will remedy the harm alleged in the Complaint. The divestitures, whether pursuant to Section IV or Section VI of the Final Judgment, shall be made to an Acquirer or Acquirers that, in the United States' sole judgment, has the intent and capability (including the necessary managerial, operational, and financial capability) of competing effectively with the defendants in providing off-street parking services.

V. Notice of Proposed Divestitures

A. Within two (2) business days following execution of a definitive agreement, contingent upon compliance with the terms of this Final Judgment, to effect, in whole or in part, any proposed divestiture pursuant to Section IV or VI of this Final Judgment, defendants or the trustee, whichever is then responsible for effecting the divestiture, shall notify the United States of the proposed divestiture. If the trustee is responsible, it shall similarly notify defendants. The notice shall set forth the details of the proposed divestiture.

B. The notice of any proposed divestiture shall list the name, address, and telephone number of each person not previously identified who offered to, or expressed an interest in or a desire to, acquire any ownership, management or leasehold interest in the facility to be divested that is the subject of the binding contract, together with full details of same. Within fifteen (15) calendar days of receipt by the United States of a divestiture notice, the United States, in its sole discretion, may request from defendants, the proposed Acquirer, the trustee, or any other third party additional information concerning the proposed divestiture and the proposed Acquirer. Defendants and the trustee shall furnish any additional information requested from them within fifteen (15) calendar days of the receipt of the request, unless the parties shall otherwise agree. Within thirty (30) calendar days after receipt of the notice, or within twenty (20) calendar days after the United States has been provided the additional information requested from the defendants, the proposed Acquirer, the trustee, or any third party, whichever is later, the United States shall provide written notice to defendants and the trustee, if there is one, stating whether or not it objects to the proposed divestiture. If the United States provides written notice to defendants (and the trustee, if applicable) that it does not object, then the divestiture may be consummated, subject only to defendants' limited right to object to the sale under Section VI(F) of this Final Judgment.

C. Absent written notice that the United States does not object to the proposed Acquirer, or upon objection by the United States, a proposed divestiture under Section IV or Section VI may not be consummated. Upon objection by defendants under the provision in Section VI(F), a divestiture proposed under Section VI shall not be consummated unless approved by the Court.

VI. Appointment of Trustee

A. In the event that defendants have not divested the Parking Facilities as specified in Section IV of this Final Judgment, the Court shall appoint, on

application of the United States, a trustee selected by the United States, to effect the divestiture of each such Parking Facility.

B. After the appointment of a trustee becomes effective, only the trustee shall have the right to divest Parking Facilities.

C. The trustee shall have the power and authority to accomplish any and all divestitures of Parking Facilities at the best price then obtainable upon a reasonable effort by the trustee, subject to the provisions of Sections IV, V, and VI of this final Judgment, and shall have such other powers as the Court shall deem appropriate.

D. Subject to Section VI(G) of this Final Judgment,-the trustee shall have the power and authority to hire at the cost and expense of the defendants any investment bankers, attorneys, or other agents reasonably necessary in the judgment of the trustee to assist in the divestitures or terminations, and such professionals and agents shall be accountable solely to the trustee. The trustee shall have the power and authority to accomplish the divestitures at the earliest possible time.

E. The trustee shall have the authority to accomplish the divestitures of Parking Facilities to an Acquirer or Acquirers acceptable to the United States, in its sole discretion, and shall have such other powers as this Court shall deem appropriate.

F. Defendants shall not object to a divestiture by the trustee on any ground other than the trustee's malfeasance. Any such objections by defendants must be conveyed in writing to the United States and the trustee within ten (10) calendar days after the trustee has provided the notice required under Section V of this Final Judgment.

G. The trustee shall serve at the cost and expense of defendants, on such terms and conditions as the Court may prescribe, and shall account for all monies derived from the divestiture of each Parking Facility divested by the trustee. The trustee shall also account for all costs and expenses incurred to accomplish the divestitures. After approval by the Court of the trustee's accounting, including fees for its services and those of any professionals and agents retained by the trustee, all remaining money shall be paid to defendants and the trust shall then be terminated. The compensation of such trustee and of any professionals and agents retained by the trustee shall be reasonable in light of the value of the divested facility and based on a fee arrangement providing the trustee with an incentive based on the price and terms of the divestiture, and the speed with which it is accomplished.

H. Defendants shall use their best efforts to assist the trustee in accomplishing the required divestitures, including best efforts to effect all necessary regulatory approvals. The trustee and any consultants, accountants, attorneys, and other persons retained by the trustee shall have full and complete access to the personnel, books, records, and facilities of the Parking Facilities to be divested, and defendants shall develop financial or other information relevant to the businesses to be divested customarily provided in a due diligence process as the trustee may reasonably request, subject to customary confidentiality assurances. Defendants shall take no action to interfere with or impede the trustee's accomplishment of the divestitures. Defendants shall permit bona fide prospective Acquirers of the Parking Facilities to have reasonable access to personnel and to make such inspection of physical facilities and any and all financial, operational or other documents and other information as may be relevant to the divestitures required by this Final Judgment.

I. After its appointment, the trustee shall file monthly reports with the parties and the Court setting forth the trustee's efforts to accomplish the divestitures ordered under this Final Judgment; provided, however, that to the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. Such reports shall include the name, address and telephone number of each person who, during the preceding month, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the Parking Facilities to be divested, and shall describe in detail each contact with any such person during that period. The trustee shall maintain full records of all efforts made to divest the Parking Facilities.

J. If the trustee has not accomplished such divestitures within ninety (90) days after its appointment, the trustee thereupon shall file promptly with the Court a report setting forth (1) the trustee's efforts to accomplish the required divestitures, (2) the reasons, in the trustee's judgment, why the required divestitures have not been accomplished, and (3) the trustee's recommendations; provided, however, that to the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. The trustee shall at the same time furnish such report to the parties, who shall each have the right to be heard and to make additional recommendations consistent with the purpose of the trust. The Court shall enter thereafter such orders as it shall deem appropriate in order to carry out the purpose of the Final Judgment which may, if necessary, include extending the trust and the term of the trustee's appointment by a period requested by the United States.

VII. Affidavits

A. Within twenty (20) calendar days of the filing of the Complaint in this matter and every thirty (30) calendar days thereafter until the divestitures have been completed pursuant to Section IV or VI of this Final Judgment, defendants shall deliver to the United States an affidavit as to the fact and manner of compliance with Section IV or VI of this Final Judgment. Each such affidavit shall include, *inter alia*, the name, address, and telephone number of each person who, at any time after the period covered by the last such report, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the Parking Facilities to be divested, and shall described in detail each contact with any such person during that period. Each such affidavit shall also include a description of the efforts that defendants have taken to solicit an Acquirer for any and all Parking Facilities, to provide required information to prospective Acquirers, including the limitations, if any, on such information. Assuming the information set forth in the affidavit is true and complete, any objection by the United States to information provided by defendants, including limitations on information, shall be made within fourteen (14) days of receipt of such affidavit.

B. Until one year after all the divestitures have been completed, defendants shall preserve all records of all efforts made to effect each divestiture.

VIII. Compliance Inspection

For purposes of determining or securing compliance with the Final Judgment and subject to any legally recognized privilege, from time to time:

A. Duly authorized representatives of the United States Department of Justice, upon written request of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to defendants made to their principal offices, shall be permitted:

1. Access during office hours of defendants to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of defendants, who may have counsel present, relating to the matters contained in this Final Judgment; and

2. Subject to the reasonable convenience of defendants and without restraint or interference from them, to interview, either informally or on the record, their officers, employees, and agents, who may have counsel present, regarding any such matters.

B. Upon the written request of the Assistant Attorney General in charge of the Antitrust Division, defendants shall submit such written reports, under oath if requested, with respect to any matter contained in the Final Judgment.

C. No information or documents obtained by the means provided in Sections VII or VIII of this Final Judgment shall be divulged by a representative of the United States to any person other than a duly authorized representative of the Executive Branch of the United States, except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by defendants to United States, defendants represent and identify in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and defendants mark each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure," then ten (10) calendar days notice shall be given by the United States to defendants prior to divulging such material in any legal proceeding (other than a grand jury proceeding) to which defendants are not a party.

IX. Retention of Jurisdiction

Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the construction or carrying out of this Final Judgment, for the modification of any of the provisions hereof, for the enforcement of compliance herewith, and for the punishment of any violations hereof.

X. Financing

Defendants are ordered and directed not to finance all or part of any divestiture made pursuant to Sections IV or VI of this Final Judgment.

XI. Termination

Unless this Court grants an extension, this Final Judgment will expire upon the tenth anniversary of the date of its entry.

XII. Public Interest

Entry of this Final Judgment is in the public interest.

Dated _____, 1999.

Court approval subject to procedures of Antitrust Procedures and Penalties Act, 15 U.S.C. 16.

_____

United States District Judge

SCHEDULE A

City	Facility
San Antonio, TX	Allright Facility 45 at 408 Martin St.

SCHEDULE B

City	Facility
Baltimore, MD	Central Facility 40 at 1 South Street.
Cincinnati, OH	Allright Facility 81 at 312 Elm St.
	Central Facility 20 at 30 W. 4th St.
Columbus, OH	Allright Facility 33 at 503 S. Front St.
	Central Facility 117 at 329 State St.
Dallas, TX	Allright Facility 381 at 608 N. St Paul St.
	Allright Facility 382 at 2013 San Jacinto St.
	Allright Facility 383 at 502 N. St Paul St.
	Central Facility 61 at Corner of Routh St. and Ross St.
Denver, CO	Allright Facility 108 at 1801 Market St.
	Allright Facility 268 at 1735 Blake St.
	Allright Facility 269 at 1775 Blake St.
	Allright Facility 485 at 1670 Larimer St.
	Central Facility 21 at 17th and Blake St.
	Central Facility 50 at 1627 California St.
El Paso, TX	Allright Facility 208 at 149 Ochoa St.
	Allright Facility 205 at 605 Myrtle Ave.
Houston, TX	Allright Facility 589 at 1110 Lamar St.
	Central Facility 31 at 1111 Fannin St.
	Allright Facility 168 at 1204 Bagby St.
	Allright Facility 501 at 1000 Bell Ave.
Jacksonville, FL	Allright Facility 13 at 425 W. Adams St.
	Allright Facility 21 at 304 N. Pearl St.
	Allright Facility 22 at 325 N. Broad St.
	Allright Facility 82 at SW Corner Clay/Forsyth.
	Central Facility 107 at 213–4 Julie St.
Kansas City, MO	Allright Facility 155 at 714 E. 11th St.
Knoxville, TN	Allright Facility 110 at 505 Locust St S.W.
	Allright Facility 149 at 408 Church Ave. S.W.
	Allright Facility 181 at 508A Clinch Ave.
Memphis, TN	Allright Facility 335 at 215 Jefferson Ave.

SCHEDULE B—Continued

City	Facility
Miami, FL	Allright Facility 333 at 199 Jefferson Ave.
	Allright Facility 381 at 120 Union Ave.
	Allright Facility 141 at 188 South Main St.
	Central Facility 510 at 54 N. 2nd St.
	Central Facility 511 at 160 Court St.
	Central Facility 512 at 20 S. Front St.
	Central Facility 513 at 100 N. Front St.
	Central Facility 517 at 236 Adams St.
	Central Facility 525 at 444 North Main St.
	Allright Facility 161 at 153 SE 2nd St.
	Central Facility 6136 at 300 SE 3rd Ave.
	Central Facility 6137 at 301 SE 3rd Ave.
	Central Facility 6138 at 200 SE 3rd Ave.
Nashville, TN	Allright Facilities 64 and 118 at 210–220 4th Ave. S.
	Allright Facility 11 at 143 7th Ave. No.
	Allright Facility 34 at 719–721 Church St.
	Allright Facility 115 at 217 7th Ave. So.
	Allright Facility 70 at 703 3rd Ave. N.
	Allright Facility 6 at 168 8th Ave. N.
	Allright Facility 114 at SW Corner of 2nd Ave. S and Molloy St.
	Central Facility 89 at 501 Broadway.
	Central Facility 85 at 149 7th Ave. S.
	Central Facility 27 at 128 8th Ave. N.
	Central Facility 109 at 147 4th Avenue N.
	Central Facility 36 at 144 5th Avenue N.
	Central Facility 53 at 116 5th Avenue N.
New York, NY	Allright Facilities 35 and 48 at 411 Church St.
	Central Facility 2227 at 345 W. 58th St.
	Allright Facility 249 at 14–26 S. William St.
	Allright Facility 41 at 136 W. 40th St.
	Allright Facility 282 at 401–471 W. 42nd St.
Philadelphia, PA	Central Facility 27 at 210 W. Rittenhouse Sq.
	Allright Facility 81 at 1215 Walnut St.
San Antonio, TX	Allright Facility 38 at 422 Bonham St.
	Allright Facility 18 at 309 Elm St.
	Allright Facility 42 at 303 Blum St.
	Central Facility 709 at 300 East Houston St.
	Central Facility 789 at 240 Broadway St.
	Central Facility 790 at 110 Broadway St.
	Central Facility 794 at 213 Broadway St.
San Francisco, CA	Central Facility 135 at 3rd. and Brannan St.
Tampa, FL	Allright Facility 415 at 1001 N. Morgan St.

Certificate of Service

I hereby certify that on March 16, 1999, I served a copy of the Complaint, Final Judgment and Stipulation on each of the defendants listed below:

Counsel for Central Parking Corporation

David Marx, Jr., Esq.,

McDermott, Will & Emery, 227 West Monroe Street, Chicago, IL 60606, (312) 984–7668 (By facsimile and express mail).

Counsel for Allright Holdings, Inc.

Michael L. Weiner, Esq.,

Skadden, Arps, Slate, Meagher & Flom L.L.C., 919 Third Avenue, New York, NY 10022, (212) 735–3000 (By facsimile and express mail).

Joseph M. Miller,

DC Bar No. 439965, U.S. Department of Justice, Antitrust Division, 1401 H Street, NW, Suite 4000, Washington, D.C. 20530, (202) 305–8462.

Competitive Impact Statement

The United States, pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act ("APPA"), 15 U.S.C. 16(b)–(h), files this Competitive Impact Statement relating to be proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I. Nature and Purpose of the Proceeding

The plaintiff filed a civil antitrust Complaint in this Court on March 16, 1999, alleging that the proposed merger between Central Parking Corporation (Central) and Allright Holdings, Inc. (Allright) would violate section 7 of the Clayton Act, 15 U.S.C. 18. The Complaint alleges that Central and Allright own, lease, and manage off-street parking facilities for motorists in several cities of the United States, and that they are direct and substantial competitors of each other in certain local parking markets identified in the Complaint. The Complaint also states that Central is the largest parking management company, in terms of parking locations, spaces, and parking revenues, that Allright is the second largest parking management company in

the United States, and that they are two of only four such companies with a nationwide presence. The proposed acquisition would give Central a dominant market share of off-street parking facilities for motorists in local markets identified in the Complaint. In such markets, meaningful entry would be unlikely, untimely, and insufficient to undermine anticompetitive effects likely to result from the proposed merger.

The prayer for relief seeks: (a) adjudication that Central's proposed merger with Allright would violate section 7 of the Clayton Act; (b) permanent injunctive relief preventing the consummation of the proposed acquisition; (c) and such relief as is proper.

A proposed settlement has now been reached which is designed to eliminate the anticompetitive effects likely to result from the proposed merger. Within five months after the filng of the Complaint in this case, the defendants have agreed to divest their parking facilities in those local markets in which they are likely to be able to exert market power as a result of the proposed merger. A Stipulation and proposed Final Judgment embodying the settlement has been filed with the Court.

The proposed Final Judgment orders the defendants to divest certain of their off-street parking facilities which they operate, within five months after the filing of the Complaint in this case, unless the United States grants an extension of time. If the defendants fail to divest these parking properties within the five month period, the Court may appoint a trustee to divest the parking facilities identified in the Final Judgment. The proposed Final Judgment also prohibits the defendants from taking any action that would impede the operation of the parking facilities. The proposed Final Judgment also requires that the divestitures be made to an acquirer or acquirers that have the capability and intent to compete effectively in the provision of off-street parking services.

The plaintiff and the defendants have stipulated that the proposed Final Judgment may be entered after compliance with the APPA. Entry of the proposed Final Judgment would terminate this action, except that the Court would retain jurisdiction to construe, modify, or enforce the provisions of the proposed Final Judgment and to punish violations thereof.

II. The Alleged Violations

A. The Defendants

Central is headquartered in Nashville, Tennessee and provides off-street parking services to motorists in the United States, Canada, Mexico, Germany, Spain, and Malaysia. It is the largest company in the United States offering such services, in terms of the number of facilities. The company operates over 2,400 parking facilities containing over a million spaces. Its portfolio of parking facilities include owned, leased and managed properties. In fiscal year 1997, Central had revenues of $222,976,000.

Allright is headquartered in Houston, Texas and provides off-street parking services to motorists in the United States. The company is currently 44.5% owned by Apollo Real Estate Investment Fund II, L.P., 44.5% owned by AEW Partners L.P., 9.1% owned by management, and 1.9% owned by certain financial advisors to Apollo and AEW and one member of the previous Allright management team. It is the second largest parking company, in terms of the number of locations in the United States. Allright operates over 2,300 parking facilities containing nearly 600,000 spaces. Like Central, its portfolio of parking facilities includes owned, leased and managed properties. In fiscal year 1997, Allright had annual revenues of $178,637,000.

B. Description of the Events Giving Rise to the Alleged Violation

On or about September 21, 1998, Central and Allright entered into an agreement whereby Allright will become a wholly owned subsidiary of Central, which will continue as the surviving entity in structure and in name. Current Central shareholders will own approximately 80% of Central's common stock, and current Allright shareholders will own approximately 20% of Central's common stock. The total value of the proposed merger at the time it was announced was approximately $585 million.

C. Anticompetitive Consequences of the Proposed Merger

The Complaint alleges that off-street parking services for motorists constitutes a line of commerce, or relevant product market, for antitrust purposes. It also alleges that relevant geographic markets in which to measure the effects of the proposed merger are no larger than the central business districts (CBDs) of the cities identified in the Complaint. The Complaint further alleges that Central and Allright are direct and substantial competitors in offering off-street parking services to consumers.

Central and Allright establish parking prices, either unilaternally or in conjunction with the owners of parking facilities, on a location-by-location basis. In determining the appropriate price and service for any location, the defendants consider the prices charged by other providers of off-street parking services in the geographic market, as well as overall demand for parking services, and the availability of other off-street parking locations. The Complaint alleges that the proposed merger threatens competition by substantially increasing Central's market shares in the relevant markets, and accordingly, would allow Central to exercise substantial control over prices and services available to consumers.

Entry into the relevant markets is unlikely to occur in response to a small but significant price increase. To enter a relevant market and discipline a noncompetitive price increase, a firm must add to the supply of parking spaces that motorists view as substitutes. Creation of new parking spaces in a CBD, however, is most often a byproduct of construction or tearing down of buildings. Given the local character of competition, the cost of land, the limited availability of substitutable parking facilities, and the alternative options for the use of convenient land in the market, entry cannot be viewed as a likely and timely response that would undermine an anticompetitive price increase.

III. Explanation of the Proposed Final Judgment

The proposed Final Judgment would preserve competition in the relevant markets identified in the Complaint by reducing Central's market share where Central would be dominant as a result of the proposed merger. To that end, it requires the divestiture of 74 off-street parking facilities owned, leased or managed by Central and Allright in 18 cities. This relief is designed to ensure that the merger does not increase Central's market share in the local markets of the relevant cities to a level likely to lend to the exercise of market power.

Section IV of the proposed Final Judgment requires the defendants to divest those parking facilities identified in Schedules A and B of the Final Judgment as viable, ongoing businesses. Under the proposed Final Judgment, the defendants must take all reasonable steps necessary to accomplish quickly the divestiture of the specified assets, and shall cooperate with bona fide prospective purchasers by supplying all

information relevant to the proposed sale. Unless the United States grants an extension of time, the defendants must divest the parking facilities within 150 days after the Complaint is filed. Until the divestitures take place, the parking properties must continue to be operated as parking facilities.

The defendants are also prohibited from entering into any agreement to operate any of the leased or managed properties divested within two (2) years of the divestiture.

If the defendants fail to divest any of the parking facilities within the time period specified in the Final Judgment, or extension thereof, the Court, upon application of the United States, shall appoint a trustee to effect the required divestitures. If a trustee is appointed, Section VI of the proposed Final Judgment provides that the defendants will pay all costs and expenses of the trustee and any professionals and agents retained by the trustee. The compensation paid to the trustee and any persons retained by the trustee shall be reasonable and shall be based on a fee arrangement providing the trustee with an incentive based on the price and terms of the divestitures and the speed with which they are accomplished. After appointment, the trustee will file monthly reports with the United States, the defendants and the Court, setting forth the trustee's efforts to accomplish the divestitures ordered under the proposal Final Judgment. If the trustee has not accomplished the divestitures within ninety (90) days after its appointment, the trustee shall promptly file with the Court a report setting forth (1) the trustee's efforts to accomplish the required divestitures, (2) the reasons, in the trustee's judgment, why the required divestitures have not been accomplished, and (3) the trustee's recommendations. At the same time, the trustee will furnish such report to the United States and defendants, who will each have the right to be heard and to make additional recommendations consistent with the purpose of the trust.

The relief in the proposed Final Judgment is intended to remedy the likely anticompetitive effects of the proposed merger between Allright and Central. Nothing in the proposed Final Judgment is intended to limit the United States's ability to investigate or bring actions, where appropriate, challenging other past or future activities of the defendants.

IV. Remedies Available to Potential Private Litigants

Section 4 of the Clayton Act, 15 U.S.C. 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorneys' fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damage action. Under the provisions of Section 5(a) of the Clayton Act, 15 U.S.C. 16(a), the proposed Final Judgment has no *prima facie* effect in any subsequent private lawsuit that may be brought against defendants.

V. Procedures Available for Modification of the Proposed Final Judgment

The United States and the defendants have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the APPA, provided that the United States has not withdrawn its consent. The APPA conditions entry upon the Court's determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of at least sixty (60) days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within sixty (60) days of the date of publication of this Competitive Impact Statement in the **Federal Register**. The United States will evaluate and respond to the comments. All comments will be given due consideration by the Department of Justice, which remains free to withdraw its consent to the proposed Final Judgment at any time prior to its entry. The comments and the response of the United States will be filed with the Court and published in the **Federal Register**.

Any such written comments should be submitted to: Craig W. Conrath, Chief, Merger Task Force, Antitrust Division, United States Department of Justice, 1401 H Street, NW, Suite 4000, Washington, DC 20530.

The proposed Final Judgment provides that the Court retains jurisdiction over this action, and the parties may apply to the Court for any order necessary or appropriate for the modification, interpretation, or enforcement of the Final Judgment.

VI. Alternatives to the Proposed Final Judgment

The United States considered, as an alternative to the proposed Final Judgment, the filing of a complaint and a full trial on the merits of its complaint. The United States is satisfied, however, that the divestitures as called for by the proposed Final Judgment and other relief contained in the proposed Final Judgment will preserve viable competition in the relevant markets. Thus, the proposed Final Judgment would achieve the relief the Government would have sought through litigation, but avoids the time, expense and uncertainty of a full trial on the merits of the complaint.

VII. Standard of Review Under the APPA for Proposed Final Judgment

The APPA requires that proposed consent judgments in antitrust cases brought by the United States be subject to a sixty (60) day comment period, after which the court shall determine whether entry of the proposed Final Judgment "is in the public interest." In making that determination, the court may consider—

(1) The competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration or relief sought, anticipated effects of alternative remedies actually considered, and any other considerations bearing upon the adequacy of such judgment;

(2) The impact of entry of such judgment upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. 16(e). As the United States Court of Appeals for the D.C. Circuit recently held, this statute permits a court to consider, among other things, the relationship between the remedy secured and the specific allegations set forth in the government's complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the decree may positively harm third parties. *See United States* v. *Microsoft*, 56 F.3d 1448, 1461–62 (D.C. Cir. 1995).

In conducting this inquiry, "[t]he Court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process." [1] Rather,

[1] 119 Cong. Rec. 24598 (1973). *See United States* v. *Gillette Co.*, 406 F. Supp. 713, 715 (D. Mass. 1975). A "public interest" determination can be made properly on the basis of the Competitive Impact Statement and Response to Comments filed pursuant to the APPA. Although the APPA authorizes the use of additional procedures, 15 U.S.C. 16(f), those procedures are discretionary. A court need not invoke any of them unless it believes that the comments have raised significant issues and that further proceedings would aid the court in resolving those issues. *See* H.R. Rep. 93–1463, 93rd

[a]bsent a showing of corrupt failure of the government to discharge its duty, the Court, in making its public interest finding, should . . . carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances.

United States v. *Mid-America Dairymen, Inc.*, 1997–1 Trade Cas. ¶ 61,508, at 71.980 (W.D. Mo. 1997).

Accordingly, with respect to the adequacy of the relief secured by the decree, a court may not "engage in an unrestricted evaluation of what relief would best serve the public." *United States* v. *BNS, Inc.*, 858 F.2d 456, 462 (9th Cir. 1988), *citing United States* v. *Bechtel Corp.*, 648 F.2d 660, 666 (9th Cir. 1981); *see also Microsoft*, 56 F.3d at 1460–62. Precedent requires that

the balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is *"within the reaches of the public interest."* More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.[2]

The proposed Final Judgment, therefore, should not be reviewed under a standard of whether it is certain to eliminate every anticompetitive effect of a particular practice or whether it mandates certainty of free competition in the future. Court approval of a final judgment requires a standard more flexible and less strict than the standard required for a finding of liability. "[A] proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is within the reaches of public interest."[3]

This is strong and effective relief that should fully address the likely competitive harm posed by the proposed merger.

VIII. Determinative Documents

There are no determinative materials or documents within the meaning of the APPA that were considered by the United States in formulating the proposed Final Judgment.

Dated: March 23, 1999.

Respectfully submitted,

Allee A. Ramadhan, John C. Filippini, Joseph M. Miller,

Attorneys, Merger Task Force, U.S. Department of Justice, Antitrust Division, 1401 H Street, N.W., Suite 4000, Washington, D.C. 20530, (202) 307–0001.

[FR Doc. 99–7975 Filed 3–31–99; 8:45 am]

BILLING CODE 4410–11–M

Cong. 2d Sess. 8–9 (1974), *reprinted in* U.S.C.C.A.N. 6535, 6538.

[2] *Bechtel*, 648 F.2d at 666 (citations omitted)(emphasis added); *see BNS*, 858 F.2d at 463; *United States* v. *National Broadcasting Co.*, 449 F. Supp. 1127, 1143 (C.D. Cal. 1978); *Gillette*, 406 F. Supp. at 716. *See also Microsoft*, 56 F.3d at 1461 (whether "the remedies [obtained in the decree are] so inconsonant with the allegations charged as to fall outside of the 'reaches of the public interest' ")(citations omitted).

[3] *United States* v. *American Tel. and Tel Co.*, 552 F. Supp. 131, 151 (D.D.C. 1982), *aff'd. sub nom. Maryland* v. *United States*, 460 U.S. 1001 (1983), *quoting Gillette Co.*, 406 F. Supp. at 716 (citations omitted); *United States* v. *Alcan Aluminum Ltd.*, 605 F. Supp. 619, 622 (W.D. Ky. 1985).

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated October 1, 1998, and published in the **Federal Register** on October 9, 1998 (63 FR 54490), Ansys Diagnostics, Inc., 25200 Commercentre Drive, Lake Forest, California 92630, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Phencyclidine (7471)	II
1-Piperidinocyclohexane-carbonitrile (PCC) (8603)	II
Benzoylecgonine (9180)	II

The firm plans to manufacture the listed controlled substances to produce standards and controls for in-vitro diagnostic drug testing systems.

DEA has considered the factors in Title 21, United States Code, section 823(a) and determined that the registration of Ansys Diagnostics, Inc. to manufacture the listed controlled substances is consistent with the public interest at this time. DEA has investigated Ansys Diagnostics, Inc. on a regular basis to ensure that the company's continued registration is consistent with the public interest. These investigations have included inspection and testing of the company's physical security systems, audits of the company's records, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823 and 28 CFR 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basis classes of controlled substances listed above is granted.

Dated: March 17, 1999.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 99–7936 Filed 3–31–99; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 97–19]

Cadiz Thrift-T Drug, Inc., Termination of Registration

On June 3, 1997, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA) issued an Order to Show Cause to Cadiz Thrift-T Drug, Inc. (Respondent) of Cadiz, Kentucky, notifying it of an opportunity to show cause as to why DEA should not revoke its DEA Certificate of Registration BC5009421 pursuant to 21 U.S.C. 824(a)(1), (2) and (4), and deny any applications for renewal of such registration as a retail pharmacy pursuant to 21 U.S.C. 823(f), for reason that the pharmacy "falsified an application for registration, an owner-operator of the pharmacy was convicted of a felony related to controlled substances, and your continued registration is inconsistent with the public interest. . . ."

By letter dated June 30, 1997, Respondent filed a request for a hearing, and following prehearing procedures, a hearing was held in Nashville, Tennessee on October 29 and 30, 1997, before Administration Law Judge Gail A. Randall. At the hearing, both parties called witnesses to testify and introduced documentary evidence. After the hearing both parties filed proposed findings of fact, conclusions of law and argument. On July 31, 1998, Judge Randall issued her Opinion and Recommended Ruling, recommending that Respondent's DEA registration be revoked, but that the revocation be stayed for three years.

On August 20, 1998 both parties filed exceptions to the Opinion and Recommended Ruling of the Administrative Law Judge. In addition, on August 20, 1998, Respondent filed a Motion to Dismiss arguing that Respondent has ceased doing business

and surrendered its DEA Certificate of Registration and as a result these proceedings are moot. The Government filed its Response to Motion to Dismiss on August 25, 1998, arguing that the record is closed and any consideration of new evidence "ought to be rejected." The Government also argued that if Respondent's motion is considered it should be denied based upon a prior DEA decision. On September 10, 1998, Jude Randall transmitted the record of these proceedings to the then-Acting Deputy Administrator.

The Deputy Administrator concludes that it is proper to consider Respondent's Motion to Dismiss since it was filed before the record was transmitted to him and because it raises the issue of whether there is even a viable DEA registration capable of revocation in this matter. Accordingly, the Deputy Administrator has considered the record in its entirety, including Respondent's Motion to Dismiss and the Government's response thereto, and pursuant to 21 CFR 1316.67, hereby issues his final order based upon findings of fact and conclusions of law as hereinafter set forth.

Respondent was issued DEA Certificate of Registration BC5009421 on August 23, 1996. On June 30, 1997, DEA issued Respondent an Order to Show Cause proposing to revoke its DEA registration. Specifically, the Order to Show Cause alleged that:

1. On July 27, 1993, [Respondent] renewed its DEA registration, AC1370597, as a retail pharmacy at a registration location of 11 Hospital Street, Cadiz, Kentucky. The registrant held Kentucky Pharmacy permit #P01465. At that time, David C. Smith was the chief pharmacist, as well as a co-owner and corporate president.

2. On August 4, 1994, the DEA Louisville Resident Office conducted an inspection of the records of [Respondent], owned and operated by David C. Smith. The audit revealed that there were shortages and overages of Schedule II, III, and IV controlled substances. Such discrepancies indicate a failure to keep complete and accurate records in violation of 21 CFR 1304–21.

3. On or about September 15, 1994, David C. Smith admitted to an inspector of the Kentucky Board of Pharmacy that the pharmacy had dispensed or refilled prescriptions for patients without physician authorization.

4. On or about November 16, 1994, the Kentucky Board of Pharmacy entered an *Agreed Order* suspending the pharmacist's license of David C. Smith for three months.

5. Pursuant to an *Information* before the United States District Court for the Western District of Kentucky, David C. Smith was charged with two counts of distributing the Schedule IV controlled substances Xanax and propoxyphene on May 20, 1993, in violation of 21 U.S.C. 841(a)(1). On or about July 19, 1996, David C. Smith entered a plea agreement with the United States Attorney, agreeing to plead guilty to both felony counts.

6. Thomas C. Smith submitted, on behalf of [Respondent], an application for a DEA registration as a retail pharmacy dated July 30, 1996. The registered location was designated as 11 Hospital Street, Cadiz, Kentucky. The applicant indicated that it held Kentucky Pharmacy permit #P01465. Thomas C. Smith is a co-owner and corporate officer, and the father of David C. Smith. The DEA subsequently issued registration number BC5009421 to [Respondent].

7. The July 30, 1996, application contained a material falsification by indicating "no" to a question which asked, in part, "has any officer, partner, stockholder or proprietor . . . ever had a State professional license or controlled substance registration revoked, suspended, denied, restricted, or placed on probation." The corporation and its officers knew that on or about November 16, 1994, the Kentucky Board of Pharmacy entered an *Agreed Order* suspending the pharmacist's license of David C. Smith, President and chief pharmacist of [Respondent], for three months.

8. [Respondent's] Certificate of Registration, AC1370597, expired on August 31, 1996, and was not renewed.

9. On or about September 2, 1996, [Respondent] submitted information to the Kentucky Pharmacy Board indicating a "change in ownership." As a result, Kentucky Pharmacy permit #P01465 was "closed" and a new Kentucky Pharmacy permit #06246 was issued to [Respondent]. The DEA was not notified in accordance with the requirements of 21 CFR § 1307.14.

10. On November 25, 1996, David C. Smith, pursuant to the earlier plea agreement, was sentenced to two years probation by the United States District Court for the Western District of Kentucky.

11. [Respondent] has continued to employ David C. Smith as pharmacist-in-charge in violation of 21 CFR 1301.76(a).

Following a hearing regarding the allegations raised in the Order to Show Cause, Judge Randall issued her Opinion and Recommended Ruling on July 31, 1998, recommending that Respondent's registration be revoked but that the revocation be stayed for three years upon the condition that David Smith not be allowed to work in Respondent pharmacy without a DEA waiver of 21 CFR 1301.76(a).

Subsequently, on August 20, 1998, Respondent filed a Motion to Dismiss with attachments indicating that Respondent was sold on May 24, 1998 and its DEA Certificate of Registration was surrendered to DEA. Respondent argued that these proceedings are moot since Respondent pharmacy is no longer in business and is not using the DEA registration that is the subject of these proceedings. In its response to Respondent's motion, the Government argued that "the issue regarding Respondent's continued registration is not rendered moot by any unilateral decision of Respondent's officers to discontinue their corporate form of business." The Government further argued that "once an order to show cause has been initiated, there is continued jurisdiction over a registration consistent with DEA precedent." In support of its arguments, the Government cited the case of *Park and King Pharmacy*, 52 FR 13,136 (1987), where the then-Administrator revoked the DEA registration even though the pharmacy was sold in the midst of the proceedings.[1] The then-Administrator found that a registration subject to ongoing administrative proceedings cannot be unilaterally terminated pursuant to 21 CFR 1301.62[2] by the registrant by discontinuing business. Specifically, the then-Administrator noted that "permitting a registrant to terminate his registration unilaterally, during the eleventh hour of a proceeding to revoke that registration, would permit the registrant to avoid any of the collateral effects of revocation and could require the Administrator to grant the individual another full evidentiary hearing should he decide to re-establish his business or professional practice and apply for a new registration shortly thereafter."

In addition, the then-Administrator found in *Park and King Pharmacy* that 21 CFR 1301.37(a)[3] "effectively precludes an applicant's abrupt and unilateral termination of proceedings by requiring the Administrator's permission for withdrawal of an application at any time after issuance of the Order to Show Cause." The then-Administrator reasoned that it is the "application" and not the applicant that is the subject of the proceedings and found that it is similarly the "registration," and not the registrant who possessed it, that becomes the subject of revocation proceedings. As a result, the then-Administrator concluded that a registration cannot be withdrawn without the Administrator's prior approval.

The Government in its response to Respondent's motion also argued that Respondent did not "surrender" its DEA registration but merely tendered it to

[1] In *Park and King Pharmacy*, the pharmacy's DEA registration also expired during the proceedings, however that aspect of the case will not be discussed here since it is not relevant to the issues in this proceeding.

[2] At the time of the decision in *Park and King Pharmacy* the provision regarding the termination of a registration was found in 21 CFR 1301.62. That provision has since been renumbered and can now be found in 21 CFR 1301.52.

[3] This provision has since been renumbered as 21 CFR 1301.16(a).

DEA for retirement, "and that no action has been taken, nor is any action contemplated . . . for reason that Respondent's registration record currently has an administrative code "O" placed on it, which forecloses all administrative action pending the outcome of a show cause proceeding. Accordingly, DEA has not accepted this tender."

The Deputy Administrator agrees with the Government that the chronology of this case is similar to that of *Park and King Pharmacy*. Respondent was sold after the Order to Show Cause was issued. Therefore, according to the decision in *Park and King Pharmacy*, Respondent's registration should not be considered terminated and should be capable of revocation. However, the Deputy Administrator is troubled by the decision in *Park and King Pharmacy*. The Deputy Administrator can find nothing in the statute or regulations nor any other notice to the public that a registration does not terminate upon the sale of a pharmacy if an Order to Show Cause has been issued. Pursuant to 21 CFR 1301.16, permission is needed to amend or withdraw an application once an Order to Show Cause has been issued, but there is no similar provision regarding a registration. Therefore, no permission is needed to terminate a registration. In fact, 21 CFR 1301.52(a) specifically states that, "the registration of any person shall terminate if and when such person dies, ceases legal existence, or discontinues business or professional practice." (emphasis added)

The Deputy Administrator recognizes the then-Administrator's concerns in *Park and King Pharmacy* that to permit termination after an Order to Show Cause has been issued allows a registrant to avoid the consequences of a revocation. However, pursuant to 21 CFR 1301.52(a) a registration automatically terminates when a pharmacy ceases legal existence or discontinues business or professional practice. The Deputy Administrator can find no authority to support the prevention of a termination, and therefore finds no authority to support the then-Administrator's conclusion in *Park and King Pharmacy* that a registration does not terminate upon the sale of a pharmacy if an Order to Show Cause has been issued.

In fact in *AML Corporation, d/b/a G & O Pharmacy, and G & O Pharmacy*, 61 Fed. Reg. 8973 (1996), decided subsequent to *Park and King Pharmacy*, the then-Deputy Administrator concluded that a pharmacy's registration terminated upon the sale of the pharmacy even though the sale occurred in the midst of administrative proceedings regarding the registration.[4] The then-Deputy Administrator noted "that pursuant to 21 CFR 1301.62, the transfer of ownership of G & O Pharmacy to AML effectively terminated all authority granted under DEA Certificate of Registration, AG2999691, previously issued to G & O Pharmacy."

Accordingly, the Deputy Administrator concludes that DEA Certificate of Registration BC5009421, previously issued to Cadiz Thrif/T Drug, Inc. terminated as of May 24, 1996, when it discontinued business upon its sale to Hospital Street Pharmacy, Inc. Therefore there is no viable DEA Certificate of Registration capable of revocation as proposed in the June 3, 1997 Order to Show Cause. This order is effective immediately.

Dated: March 15, 1999.

Donnie R. Marshall,

Deputy Administrator.

[FR Doc. 99–7932 Filed 3–31–99; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Michael W. Dietz, D.D.S., Revocation of Registration

On September 23, 1998, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA) issued an Order to Show Cause to Michael W. Dietz, D.D.S. (Respondent) of Cookeville, Tennessee, notifying him of an opportunity to show cause as to why DEA should not revoke his DEA Certificate of Registration AD6561307 pursuant to 21 U.S.C. 824(a) (3) and (4), and deny any pending applications for renewal of such registration pursuant to 21 U.S.C. 823(f). Specifically, the Order to Show Cause alleged that:

"1. [Dr. Dietz'] continued registration is inconsistent with the public interest, as that term is issued in 21 U.S.C. § 823(f) and § 824(a)(4), as evidenced by, but not limited to, the following:

(a) On or about April 19, 1997, [Dr. Dietz] sold cocaine, a Schedule II controlled substance, to another person, and such sale was for no legitimate medical purpose and not in the usual course of [his] professional practice.

(b) On or about April 26, 1997, [Dr. Dietz] again sold cocaine to the same person, and such sale was for no legitimate medical purpose and not in the usual course of [his] professional practice.

(c) On or about May 7, 1997, [Dr. Dietz] and this same person used cocaine, and such use was for no legitimate medical practice and not in the usual course of [his] professional practice.

(d) On or about May 9, 1997, [Dr. Dietz] agreed to sell and attempted to deliver cocaine to this same person, and such sale and attempted deliver were for no legitimate medical purpose and not in the usual course of [his] professional practice.

2. On May 19, 1997, [Dr. Dietz was] indicted in the State of Tennessee, Putnam County, for two felony counts of unlawfully and knowingly selling cocaine, two felony counts of unlawfully and knowingly delivering cocaine, two felony counts of unlawfully and knowingly possessing cocaine with the intent to sell or deliver cocaine, two felony counts of unlawfully and knowingly conspiring to sell cocaine and one felony count of unlawfully and knowingly conspiring to possess cocaine with the intent to sell or deliver such cocaine. These criminal charges were based upon the allegations enumerated above.

3. Based upon the above events, the State of Tennessee, Department of Health, Tennessee Board of Dentistry, revoked [Dr. Dietz'] dental license, effective May 19, 1997. As a result, [Dr. Dietz is] no longer authorized by State law to handle controlled substances in the state in which [he is] registered with DEA. 21 U.S.C. § 824(a)(3).

By letter dated October 15, 1998, Respondent waived his opportunity for a hearing and submitted a written statement regarding his position on the issues raised in the Order to Show Cause. Therefore, the Deputy Administrator finds that Respondent has waived his opportunity for a hearing and hereby enters his final order in this matter based upon the investigative file and Respondent's written statement pursuant to 21 CFR 1301.43 (c) and (e) and 1301.46.

The Deputy Administrator finds that in an Order effective May 27, 1998, the State of Tennessee, Department of Health, Board of Dentistry (Board) revoked indefinitely Respondent's license to practice dentistry.[1] In his letter dated October 15, 1998, Respondent stated that "as a result of the actions taken by the Tennessee Board of Dentistry, I do not require a DEA Certificate of Registration at this time. I respectfully request a suspension of my Registration until re-licensure occurs. Respondent further stated that he "fully expect[s] re-instatement of my dental license during the spring [Board] meeting of 1999."

The Deputy Administrator finds that based upon the record before him, Respondent is not currently licensed to

[4] In that case, the Government also sought to revoke the new pharmacy's DEA registration and the proceedings were consolidated.

[1] The Deputy Administrator can find no Board order revoking Respondent's dental license effective May 19, 1997, as alleged in the Order to Show Cause.

THE PAPER AND INK USED IN THE ORIGINAL PUBLICATION MAY AFFECT THE QUALITY OF THE MICROFORM EDITION.

practice dentistry in the State of Tennessee and therefore, it is reasonable to infer that he is not currently authorized to handle controlled substances in that state. The DEA does not have the statutory authority under the Controlled Substances Act to issue or maintain a registration if the applicant or registrant is without state authority to handle controlled substances in the state in which he conducts his business. 21 U.S.C. 802(21), 823(f), and 824(a)(3). This prerequisite has been consistently upheld. See Romeo J. Perez, M.D., 62 FR 16193 (1997); Demetris A. Green, M.D., 61 FR 60,728 (1996); Dominick A. Ricci, M.D., 58 FR 51104 (1993).

While Respondent indicates that he expects reinstatement of his Tennessee dental license in the near future, this is merely speculation at this point in time and there is nothing in the record from the Board to indicate that Respondent's license will in fact be reinstated. The Deputy Administrator finds that it is clear that Respondent is not currently authorized to handle controlled substances in the State of Tennessee. As a result, Respondent is not entitled to a DEA registration in that state.

Since Respondent's DEA registration cannot be maintained in Tennessee based upon his lack of state authorization to handle controlled substances, the Deputy Administrator finds that it is unnecessary to determine whether Respondent's continued registration would be inconsistent with the public interest as alleged in the Order to Show Cause.

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 CFR 0.100(b) and 0.104, hereby orders that DEA Certificate of Registration AD6561307, previously issued to Michael Wayne Dietz, D.D.S., be, and it hereby is, revoked. The Deputy Administrator further orders that any pending applications for the renewal of such registration be, and they hereby are, denied. This order is effective May 3, 1999.

Dated: March 15, 1999.

Donnie R. Marshall,

Deputy Administrator.

[FR Doc. 99–7931 Filed 3–31–99; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 98–30]

William Franklin Prior, Jr., M.D. Denial of Application

On April 7, 1998, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA) issued an Order to Show Cause to William Franklin Prior, Jr., M.D. (Respondent) of South Carolina and New Mexico. The Order to Show Cause notified him of an opportunity to show cause as to why DEA should not revoke his DEA Certificate of Registration BP5105890 [1] issued to him in New Mexico and deny any pending applications for renewal of that registration, pursuant to 21 U.S.C. 823(f), 824(a)(1) and (a)(4), for reason that he materially falsified an application for registration and his continued registration would be inconsistent with the public interest. The Order to Show Cause also proposed to deny Respondent's pending application, executed on September 21, 1994, for registration as a practitioner with DEA in South Carolina, Pursuant to 21 U.S.C. 823(f) for reason that Respondent's registration would be inconsistent with the public interest.

By letter dated May 19, 1998, Respondent filed a request for a hearing regarding his New Mexico DEA Certificate of Registration and stating that "[t]he application for renewal in South Carolina has now been withdrawn. * * *" The matter was docketed before Administrative Law Judge Mary Ellen Bittner. On May 26, 1998, Judge Bittner issued an Order for Prehearing Statements. In lieu of filing a prehearing statement, on June 16, 1998, the Government filed a Motion to Terminate the Proceedings, Motion for Summary Disposition and Motion to Stay Proceedings. In its filing, the Government contended that pursuant to a criminal plea agreement entered into on April 14, 1998, Respondent agreed to surrender his New Mexico DEA Certificate of Registration and to withdraw any pending applications for registration with DEA. The Government argued that as a result, there is nothing to revoke or deny and therefore these proceedings should be terminated. In addition, the Government contended that Respondent's application for a DEA registration in South Carolina should be denied because he is not authorized to handle controlled substances in that state. In his response to the Government's motions, Respondent requested that his "credentials be returned," and asked Government counsel to help him "ask the ALJ to allow my placing of credentials with Judge Simons to be temporary."

On August 14, 1998, Judge Bittner issued her Opinion and Recommended Decision, terminating the proceedings regarding Respondent's New Mexico DEA Certificate of Registration; denying the Motion to Terminate the proceedings regarding Respondent's application for a DEA Certificate of Registration in South Carolina; finding that Respondent lacked authorization to handle controlled substances in the State of South Carolina; granting the Government's Motion for Summary Disposition regarding Respondent's application for a DEA registration in South Carolina; and recommending that Respondent's application be denied. Neither party filed exceptions to her opinion, and on September 14, 1998, Judge Bittner transmitted the record of these proceedings to the Acting Deputy Administrator.

The Deputy Administrator has considered the record in its entirety, and pursuant to 21 CFR 1316.67, hereby issues his final order based upon findings of fact and conclusions of law as hereinafter set forth. The Deputy Administrator adopts, in full, the Opinion and Recommended Decision of the Administrative Law Judge.

The Deputy Administrator finds that pursuant to a plea agreement entered into by Respondent on April 14, 1998, in the United States District Court for the District of South Carolina, Respondent agreed "to surrender any DEA registration number, especially number BP5105590. * * *" According to the affidavit of a DEA investigator dated June 12, 1998, Respondent surrendered his DEA Certificte of Registration to the judge who presided over the criminal proceedings against him, and on June 8, 1998, the investigator retrieved Respondent's Certificate of Registration from the judge's office.

Judge Bittner found that in light of the above and the fact that Respondent does not deny that he surrendered his New Mexico DEA registration, "the issue of whether or not to revoke it is moot." Accordingly, Judge Bittner terminated the proceedings with respect to DEA Certificate of Registration BP5105590. The Deputy Administrator agrees with Judge Bittner's conclusion regarding Respondent's DEA Certificate of

[1] While the Order to Show Cause listed BP5105890 as Respondent's DEA registration number in New Mexico, evidence in the record shows that Respondent's New Mexico DEA Certificate of Registration is BP5105590.

Registration issued to him in new Mexico.

The Deputy Administrator further finds that pursuant to the April 14, 1998 plea agreement, Respondent also agreed "to withdraw any application for a DEA registration number." In its motions, the Government asserted that pursuant to 21 CFR 1301.16(a), Respondent needed permission from DEA before he could withdraw his application since the Order to Show Cause had been previously issued on April 7, 1998. Consequently, the Government attached to its motions a copy of a letter from the DEA Deputy Assistant Administrator, Office of Diversion Control which stated that, "[i]n response to your plea agreement * * * you are hereby granted permission to withdraw your application dated September 21, 1994, for a Drug Enforcement Administration Certificate of Registration." As a result, the Government argued that the proceedings regarding Respondent's application for a DEA Certificate of Registration in South Carolina should be terminated in light of Respondent's plea agreement and DEA's granting of permission to withdraw the application.

However, Judge Bittner concluded that the record does not contain any evidence that Respondent in fact withdrew his September 14, 1994 application for registration. Pursuant to the plea agreement Respondent only agreed to withdraw any pending applications for registration. Further, while the letter from the Deputy Assistant Administrator granted Respondent permission to withdraw his application, he indicates that he did so in response to the plea agreement. Judge Bittner noted that in his request for a hearing Respondent stated that "[t]he application for renewal in South Carolina has now been withdrawn." However, Judge Bittner concluded that this is not sufficient evidence to support a finding that Respondent took any action to withdraw his application. As a result, Judge Bittner concluded, and the Deputy Administrator agrees, that Respondent has not withdrawn his September 21, 1994 application and therefore the proceedings regarding this application are not terminated.

With respect to the application for registration in South Carolina, the Government also argued that summary disposition should be granted based on Respondent's lack of authorization to handle controlled substances in South Carolina. The Deputy Administrator finds that by letter dated September 27, 1994, the South Carolina Department of Health and Environmental Control denied Respondent's application for a controlled substance registration. In his response to the Government's motions, Respondent did not deny that he is without authorization to handle controlled substances in South Carolina. Therefore, the Deputy Administrator concludes that Respondent is not currently authorized to handle controlled substances in South Carolina.

The DEA does not have the statutory authority under the Controlled Substances Act to issue or maintain a registration if the applicant or registrant is without state authority to handle controlled substances in the state in which he conducts his business. 21 U.S.C 802(21), 823(f) and 824(a)(3). This prerequisite has been consistently upheld. *See Romeo J. Perez, M.D.*, 62 FR 16193 (1997); *Demetris A. Green, M.D.* 61 FR 60728 (1996); *Dominick A. Ricci, M.D.*, 58 FR 51104 (1993).

Here it is clear that Respondent is not licensed to handle controlled substances in South Carolina. Therefore, he is not entitled to a DEA registration in that state.

In light of the above, Judge Bittner properly granted the Government's Motion for Summary Disposition regarding Respondent's application for registration in South Carolina. Here, there is no dispute that Respondent is without authorization to handle controlled substances in South Carolina. Therefore, it is well-settled that when no question of material fact is involved, a plenary, adversary administrative proceeding involving evidence and cross-examination of witnesses is not obligatory. *See Phillip E. Kirk, M.D.*, 48 FR 32887 (1983), *aff'd sub nom Kirk* v. *Mullen*, 749 F.2d 297 (6th Cir. 1984); *NLRB* v. *International Association of Bridge, Structural and Ornamental Ironworkers, AFL–CIO*, 549 F.2d 634 (9th Cir. 1977); *United States* v. *Consolidated Mines & Smelting Co.*, 44 F.2d (9th Cir. 1971).

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that the proceedings regarding DEA Certificate of Registration BP5105590, previously issued to William Franklin Prior, Jr., M.D., be, and they hereby are, terminated. The Deputy Administrator further orders that the September 14, 1994 application for registration submitted by William Franklin Prior, Jr., M.D., be, and it hereby is, denied. This order is effective April 1, 1999.

Dated: March 15, 1999.

Donnie R. Marshall,

Deputy Administrator.

[FR Doc. 99–7928 Filed 3–31–99; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances, Notice of Registration

By Notice dated December 10, 1998, and published in the Federal Register on December 23, 1998 (63 FR 71156), Irix Pharmaceuticals, Inc., 101 Technology Place, Forence, South Carolina 29501, made application to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of methylphenidate (1724), a basic class of controlled substance listed in Schedule II.

The firm plans to manufacture methylphenidate for demonstration purposes and for dosage form development and stability studies.

DEA has considered the factors in Title 21, United States Code, Section 823(a) and determined that the registration of Irix Pharmaceuticals, Inc. to manufacture the listed controlled substance is consistent with the public interest at this time. DEA has investigated Irix Pharmaceuticals, Inc. to ensure that the company's registration is consistent with the public interest. Therefore, pursuant to 21 U.S.C. 823 and 28 CFR. 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic class of controlled substance listed above is granted.

Dated: March 17, 1999.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 99–7937 Filed 3–31–99; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substance; Notice of Application

Pursuant to Section 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on December 23, 1998, Johnson Matthey, Inc., Custom Pharmaceuticals Department, 2003 Nolte Drive, West Deptford, New Jersey

08066, made application by renewal to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Difenoxin (9168)	I
Propiram (9649)	I
Amphetamine (1100)	II
Methamphetamine (1105)	II
Methylphenidate (1724)	II
Codeine (9050)	II
Oxycodone (9143)	II
Hydromorphone (9150)	II
Hydrocodone (9193)	II
Meperidine (9230)	II
Methadone (9250)	II
Methadone-intermediate (9254)	II
Morphine (9300)	II
Thebaine (9333)	II
Alfentanil (9737)	II
Sufentanil (9740)	II
Fentanyl (9801)	II

The firm plans to manufacture the listed controlled substances in bulk to supply final dosage form manufacturers.

Any other such applicant and any person who is presently registered with DEA to manufacture such substance may file comments or objections to the issuance of the proposed registration.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, D.C. 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than June 1, 1999.

Dated: March 18, 1999.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 99–7934 Filed 3–31–99; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated December 23, 1998, and published in the **Federal Register** on January 4, 1999, (64 FR 182), Knoll Pharmaceutical Company, 30 North Jefferson Road, Whippany, New Jersey 07981, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Dihydromorphine (9145)	I
Hydromorphone (9150)	II

The firm plans to produce bulk product and finished dosage units for distribution to its customers.

DEA has considered the factors in Title 21, United States Code, Section 823(a) and determined that the registration of Knoll Pharmaceutical Company to manufacture the listed controlled substances is consistent with the public interest at this time. DEA has investigated Knoll Pharmaceutical Company on a regular basis to ensure that the company's continued registration is consistent with the public interest. These investigations have included inspection and testing of the company's physical security systems, audits of the company's records, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823 and 28 CFR 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: March 18, 1999.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 99–7938 Filed 3–31–99; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to Section 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on January 20, 1999, Lilly Del Caribe, Inc., Chemical Plant, Kilometer 146.7, State Road 2, Mayaguez, Puerto Rico 00680, made application by renewal to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of dextropropoxyphene (9273), a basic of controlled substances listed in Schedule II.

The firm plans to manufacture bulk product for distribution to its customers.

Any other such applicant and any person who is presently registered with DEA to manufacture such substance may file comments or objections to the issuance of the proposed registration.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, D.C. 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than June 7, 1999.

Dated: March 1, 1999.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc 99–7933 Filed 3–31–99; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated December 2, 1998, and published in the **Federal Register** on December 11, 1998, (63 FR 68474), Mallinckrodt Chemical, Inc., Mallinckrodt & Second Streets, St. Louis, Missouri 6314, made application by letter to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of amphetamine (1100), a basic class of controlled substance listed in Schedule II.

The firm plans to bulk manufacture the listed controlled substance for product development.

DEA has considered the factors in Title 21, United States Code, Section 823(a) and determined that the registration of Mallinckrodt Chemical, Inc. to manufacture amphetamine is consistent with the public interest at this time. DEA has investigated Mallinckrodt Chemical, Inc. on a regular basis to ensure that the company's continued registration is consistent with the public interest. These investigations have included inspection and testing of the company's physical security systems, audits of the company's records, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823 and 28 CFR 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic class of controlled substance listed above is granted.

Dated: March 1, 1999.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 99–7939 Filed 3–31–99; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated December 14, 1998, and published in the **Federal Register** on December 23, 1998 (63 FR 71159), Noramco of Delaware, Inc., Division of McNeilab, Inc., 500 Old Swedes Landing Road, Wilmington, Delaware 19801, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Codeine (9050)	II
Oxycodone (9143)	II
Hydrocodone (9193)	II
Morphine (9300)	II
Thebaine (9333)	II

The firm plans to manufacture the listed controlled substances for distribution to its customers as bulk product.

DEA has considered the factors in Title 21, United States Code, Section 823 (a) and determined that the registration of Noramco of Delaware, Inc. to manufacture the listed controlled substances is consistent with the public interest at this time. DEA has investigated Noramco of Delaware, Inc. on a regular basis to ensure that the company's continued registration is consistent with the public interest. These investigations have included inspection and testing of the company's physical security systems, audits of the company's records, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823 and 28 CFR 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: March 17, 1999.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 99–7940 Filed 3–31–99; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated October 1, 1998, and published in the **Federal Register** on October 9, 1998, (63 FR 54492), Nycomed, Inc., 33 Riverside Avenue, Rensselaer, New York 12144, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Methylphenidate (1724)	II
Meperidine (9230)	II

The firm plans to manufacture meperidine as bulk product for distribution to it customers and to perform a chemical isolation process on methylphenidate which has been manufactured by another bulk manufacturer of methylphenidate.

DEA has considered the factors in Title 21, United States Code, section 823(a) and determined that the registration of Nycomed, Inc. to manufacture the listed controlled substances is consistent with the public interest at this time. DEA has investigated Mycomed, Inc. on a regular basis to ensure that the company's continued registration is consistent with the public interest. These investigations have included inspection and testing of the company's physical security systems, audits of the company's records, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823 and 28 CFR 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: March 1, 1999.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 99–7941 Filed 3–31–99; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Prodim Denial of Application

On June 5, 1998, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA) issued an Order to Show Cause to Prodim (Respondent) proposing to deny its application for registration as an exporter of Schedule II, III and IV controlled substances under 21 U.S.C. 958, for reason that its registration would be inconsistent with the public interest pursuant to 21 U.S.C. 823 (a) and (b).

The Order to Show Cause was ultimately received by Randall Tetzner who signed the application for registration on behalf of Respondent. By letter dated September 4, 1998, Respondent waived its opportunity for a hearing and instead submitted a written statement pursuant to 21 CFR 1301.43(c).

Therefore, the Deputy Administrator concludes that Respondent has waived its opportunity for a hearing and hereby enters his final order in this matter based upon the investigative file and Respondent's written statement pursuant to 21 CFR 1301.43 (c) and (e) and 1301.46.

The Deputy Administrator finds that Randall Tetzner, on behalf of Respondent, submitted an application dated October 7, 1995, for registration with DEA as an exporter of Schedule II, III and IV controlled substances. According to Mr. Tetzner, Respondent wants to be registered in order to send donated or purchased controlled substances to Honduras. In describing Respondent, Mr. Tetzner stated that "[t]he organization I volunteer with and work with supplies needed medications to rural villages in Honduras. * * * From a base camp in La Paz, a worker brings replacement medications via motorcycle to the villages."

After numerous discussions and correspondence between DEA and Mr. Tetzner, an Order to Show Cause was issued on June 5, 1998, proposing to deny Respondent's application for registration. Specifically, the Order to Show Cause alleges that Respondent's registration would be inconsistent with

the public interest based upon the following:

a. Mr. Tetzner is the sole representative of Prodim. On the application for DEA registration he provided as an address his trailer home. This location does not have secure controlled substance storage facilities and Prodim does not have an alternative location with which to securely store controlled substances, as required by 21 CFR § 1301.72. Therefore, Mr. Tetzner has not demonstrated that he can maintain effective controls against the diversion of controlled substances as required pursuant to 21 U.S.C. § 823(a)(1).

b. In a letter to DEA dated February 15, 1996, Mr. Tetzner, informed DEA that he had never before exported controlled substances. Therefore, Prodim has no experience in the export of controlled substances. 21 U.S.C. § 958(a) and § 823(a)(5) and (d)(5).

In his written statement dated September 4, 1998, Mr. Tetzner indicated that he never meant to store controlled substances at his home, but instead proposed that Respondent would "give DEA at least 30 days notice of our intent to send the medications, we purchase or recieve [sic] the medications at a hospital or drug company, then while on site we do the required paperwork and on site we ship the medications pursuant [sic] to DEA directives. * * * The medications would only go from an already registered facility, be transferred via paperwork, then the donating agency would then confirm the transfer and they would ship the drugs. In no manner shall PRODIM ever possess these drugs other than to count and verify on site." Further, Mr. Tetzner indicated that he has been a paramedic for a number of years and as such understands the importance of documenting the use of controlled substances.

Pursuant to 21 U.S.C. 958 and 823, the Deputy Administrator may deny an application for registration as an exporter of controlled substances if he finds that such registration would be inconsistent with the public interest. In determining the public interest, the Deputy Administrator shall consider the factors set forth in 21 U.S.C. 823(a) for registration to export Schedule II controlled substances and the factors set forth in 21 U.S.C. 823(d) for registration to export Schedule III and IV controlled substances. The factors in these two sections are essentially the same. Pursuant to 21 U.S.C. 823(d), the Deputy Administrator shall consider:

(1) Maintenance of effective controls against diversion of particular controlled substances and any controlled substances in Schedule III, IV, or V compounded therefrom into other than legitimate medical, scientific, or industrial channels;
(2) Compliance with applicable State and local law;
(3) Promotion of technical advances in the art of manufacturing these substances and the development of new substances;
(4) Prior conviction record of applicant under Federal or State laws relating to the manufacture, distribution, or dispensing of such substances;
(5) Past experience in the manufacture, distribution, and dispensing of controlled substances, and the existence in the establishment of effective controls against diversion; and
(6) Such other factors as may be relevant to and consistent with the public health and safety.

The Deputy Administrator finds that there is no evidence in the record regarding factors two, three or four. Regarding factor one, there is very little specific evidence in the record as to the controls Respondent will maintain against the diversion of controlled substances. In its written statement, Respondent maintains that it will not take possession of the controlled substances; that the substances would be sent from a location already registered with DEA, that the donating agency would confirm the transfer and ship the rugs, and that Respondent will only count and verify the drugs on site.

Pursuant to 21 CFR 1301.43(c), a written statement "shall be made a part of the record and shall be considered in light of the lack of opportunity for cross-examination in determining the weight to be attached to matters of fact asserted therein." The Deputy Administrator finds that the assertions in Respondent's written statement warrant little weight. The Deputy Administrator is unable to determine from Respondent's written statement who would be responsible for the controlled substances since the controlled substances would be stored at the donating agency and the donating agency would confirm the transfer and ship the drugs. Further, the Deputy Administrator is unable to determine what controls against diversion would be in place during the shipment of any controlled substances. Of even greater concern is that the Deputy Administrator is unable to determine from Respondent's written statement the identity or location of the donating agency or agencies, and is therefore unable to determine whether effective controls are maintained to prevent the diversion of exported controlled substances.

Regarding factor five while Mr. Tetzner indicates that he has handled controlled substances as a paramedic and a Navy corpsman, there is no evidence that he has any experience in exporting controlled substances, nor in the responsibilities of a DEA registrant in preventing the diversion of controlled substances.

As to factor six, the record indicates that Respondent and Mr. Tetzner do not have sufficient knowledge and understanding of the export requirements set forth in 21 U.S.C. 953 and 21 CFR 1312.21. In Respondent's written statement, Mr. Tetzner states that it will "give the DEA at least 30 days notice of our intent to send the medications. * * *" Respondent does not discuss whether its proposed exportations would meet the requirements of 21 U.S.C. 953, nor does it indicate that it will follow the procedures set forth in 21 CFR 1312.21 regarding obtaining the authorization to export specific shipments. Particularly troubling to the Deputy Administrator is that the record indicates that Mr. Tetzer was advised by DEA on several occasions of these requirements and was told where he could obtain a copy of the regulations, yet he did not do so.

The Deputy Administrator concludes that based upon the record currently before him Respondent's registration as an exporter of controlled substances would be inconsistent with the public interest. There is no evidence that Respondent would maintain effective controls against the diversion of controlled substances; that Respondent possesses relevant experience in the handling of controlled substances; and that Respondent understands the export requirements set forth in 21 U.S.C. 953 and 21 CFR 1312.21.

Accordingly, the Deputy Administrator of the Drug Enforcement Administration pursuant to the authority vested in him by 21 U.S.C. 823 and 958 and 28 CFR 0.100(b) and 0.104, hereby orders that the application for registration submitted by Prodim, be, and it hereby is, denied. This order is effective May 3, 1999.

Dated: March 15, 1999.

Donnie R. Marshall,

Deputy Administrator.

[FR Doc. 99–7929 Filed 3–31–99; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importation of Controlled Substances; Notice of Application

Pursuant to section 1008 of the Controlled Substances Import and

Export Act (21 U.S.C. 958(I)), the Attorney General shall, prior to issuing a registration under this Section to a bulk manufacturer of a controlled substance in Schedule I or II and prior to issuing a regulation under section 1002(a) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with section 1301.34 of Title 21, Code of Federal Regulations (CFR), notice is hereby given that on January 26, 1999, Roxane Laboratories, Inc., 1809 Wilson Road, P.O. Box 16532, Columbus, Ohio 43216–6532, made application by renewal to the Drug Enforcement Administration to be registered as an importer of cocaine (9041), a basic class of controlled substance listed in Schedule II.

The firm plans to import cocaine to make products for distribution to the firm's customers.

Any manufacturer holding, or applying for, registration as a bulk manufacturer of this basic class of controlled substance may file written comments on or objections to the application described above and may, at the same time, file a written request for a hearing on such application in accordance with 21 CFR 1301.43 in such form as prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, D.C. 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than (30 days from publication)

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1301.34(b), (c), (d), (e), and (f). As noted in a previous notice at 40 FR 43745–46 (September 23, 1975), all applicants for registration to import a basic class of any controlled substance in Schedule I or II are and will continue to be required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 CFR 1301.34(a), (b), (c), (d), (e), and (f) are satisfied.

Dated: March 3, 1999.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 99–7935 Filed 3–31–99; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importation of Controlled Substances; Notice of Application

Pursuant to section 1008 of the Controlled Substances Import and Export Act (21 U.S.C. 958(i)), the Attorney General shall, prior to issuing a registration under this Section to a bulk manufacturer of a controlled substance in Schedule I or II and prior to issuing a regulation under Section 1002(a) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with section 1301.34 of Title 21, Code of Federal Regulations (CFR), notice is hereby given that on November 30, 1998, Taro Pharmaceuticals U.S.A., Inc., 5 Skyline Drive, Hawthorne, New York 10532, made application to the Drug Enforcement Administration to be registered as a importer of the basic classes of controlled substances listed below:

Drug	Schedule
Pentobarbital (2270)	II
Codeine (9050)	II
Oxycodone (9143)	II
Hydrocodone (9193)	II

The firm plans to import finished product sample for evaluation and conducting clinical/Bio-equivalence testing.

Any manufacturer holding, or applying for, registration as a bulk manufacturer of these basic classes of controlled substances may file written comments on or objections to the application described above and may, at the same time, file a written request for a hearing on such application in accordance with 21 CFR 1301.43 in such form as prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, D.C. 20537, Attention: DEA Federal Register Representative (CCF), and must be filed no later than May 3, 1999.

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1301.34(b), (c), (d), (e), and (f). As noted in a previous notice at 40 FR 43745–46 (September 23, 1975), all applicants for registration to import a basic class of any controlled substance in Schedule I or II are and will continue to be required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration that the requirements for such registration pursuant to 21 U.S.C. 958(a) 21 U.S.C. 823(a), and 21 CFR 1301.34(a), (b), (c), (d), (e), and (f) are satisfied.

Dated: January 27, 1999.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 99–8055 Filed 3–31–99; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 98–25]

George Thomas, PA–C Denial of Application

On March 19, 1998, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA) issued an Order to Show Cause to George Thomas, PA–C (Respondent) of Richland, Washington. The Order to Show Cause notified him of an opportunity to show cause as to why DEA should not deny his application for registration as a mid-level practitioner pursuant to 21 U.S.C. 823(f) and 824(a)(3), for reason that his registration would be inconsistent with the public interest and that he is not currently authorized to handle controlled substances in the State of Washington.

By letter dated April 13, 1998, Respondent filed a request for a hearing and the matter was docketed before Administrative Law Judge Gail A. Randall. On April 20, 1998, Judge Randall issued an Order for Prehearing Statements. In lieu of filing a prehearing statement, the Government filed a Motion for Summary Disposition on May 5, 1998, alleging that Respondent was not authorized to handle controlled substances in the State of Washington and therefore DEA cannot issue him a registration in that state. Respondent

did not reply to the Government's motion.

On May 27, 1998, Judge Randall issued an Order denying the Government's motion. In doing so, Judge Randall agreed with the Government that DEA lacks authority to register a practitioner who is not authorized to handle controlled substances in the state in which he practices. However, Judge Randall found that the Government had not met its burden of proof for summary disposition since the Government failed to file a copy of Respondent's application or any other evidence indicating that Respondent had applied to be registered by DEA in the State of Washington. Thereafter, on June 9, 1998, the Government filed a Motion for Reconsideration of Summary Disposition Motion, arguing that it had met its burden of proof, but nonetheless attaching a copy of Respondent's application which reflected an address in Richland, Washington.

Respondent filed a response to the Government's motion on June 26, 1998. In his response, Respondent made three requests: (1) to withdraw the DEA application dated January 16, 1997; (2) that future applications be processed in an expedient and timely manner; and (3) that a future application will be handled favorably, as long as the Respondent holds the appropriate state license. On July 13, 1998, the Government contended that pursuant to 21 CFR 1301.16(a) and 28 CFR 0.100 and 0.104, Judge Randall lacked jurisdiction to grant Respondent's request to withdraw his pending application. In a footnote, the Government indicated that Respondent's request to withdraw his application had been forwarded to the DEA Deputy Assistnt Administrator, Office of Diversion Control.

On July 23, 1998, Judge Randall issued her Opinion and Recommended Ruling, concluding that she lacked jurisdiction to grant Respondent's request to withdraw his application; finding that Respondent lacked authorization to handle controlled substances in the State of Washington; granting the Government's Motion for Summary Disposition; and recommending that Respondent's application for registration be denied. Neither party filed exceptions to her opinion, and on September 1, 1998, Judge Randall transmitted the record of these proceedings to the Acting Deputy Administrator.

In a letter dated January 5, 1999 to DEA's Chief Counsel, the Deputy Administrator sought clarification regarding the status of Respondents application in light of Government counsel's representation that Respondent's request to withdraw his application had been forwarded to the DEA Deputy Assistant Administrator, Office of Diversion Control for a decision. The Deputy Administrator reasoned that if Respondent's request to withdraw his application had been granted then there is no application to deny and these proceedings are moot. By letter dated February 22, 1999, DEA's Chief Counsel indicated that Respondent's request to withdraw his application was denied and attached a copy of the August 12, 1998 letter from DEA's Deputy Assistant Administrator, Office of Diversion Control denying Respondent's request.

The Deputy Administrator has considered the record in its entirety, and pursuant to 21 CFR 1316.67, hereby issues his final order based upon findings of fact and conclusions of law as hereinafter set forth. The Deputy Administrator, adopts in full, the Opinion and Recommended Ruling of the Administrative Law Judge.

The Deputy Administrator finds that effective on or about October 5, 1997, Respondent entered into an Agreed Order with the State of Washington, Department of Health, Medical Quality Assurance Commission. As part of the Agreed Order, Respondent agreed that he shall not order, prescribe or dispense controlled substances. Based upon the evidence in the record this Agreed Order is still in effect and Respondent does not dispute that he is without authority to handle controlled substances in the State of Washington.

The DEA does not have statutory authority under the Controlled Substances Act to issue or maintain a registration if the applicant or registrant is without state authority to handle controlled substances in the state in which he conducts his business. 21 U.S.C. 802(21), 823(f) and 824(a)(3). This prerequisite has been consistently upheld. See Romeo J. Perez, M.D., 62 FR 16193 (1997); Demetris A. Green M.D., 61 FR 60728 (1996); Dominick A. Ricci, M.D., 58 FR 51104 (1993).

Here it is clear tht Respondent is not authorized to handle controlled substances in Washington. Therefore, he is not entitled to a DEA registration in that state.

The Deputy Administrator further finds that in light of the above, Judge Randall properly granted the Government's Motion for Summary Disposition. It is well settled that when no question of material fact is involved, or when the facts are agreed upon, there is no need for a plenary, administrative hearing. Congress did not intend for administrative agencies to perform meaningless tasks. See Gilbert Ross, M.D., 61 FR 8664 (1996); Philip E. Kirk, M.D., 48 FR 32887 (1983), aff'd sub nom *Kirk* v. *Mullen*, 749 F. 2d 297 (6th Cir. 1984). Here, there is no dispute that Respondent currently lacks state authority to handle controlled substances in Washington, where he has requested to be registered with DEA.

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that the application for a DEA Certificate of Registration submitted by George Thomas, PA–C, be, and it hereby is, denied. This order is effective May 3, 1999.

Dated: March 15, 1999.

Donnie R. Marshall,

Deputy Administrator.

[FR Doc. 99–7930 Filed 3–31–99; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of Information Collection under Review: Application for Certificate of Citizenship in Behalf of an Adopted Child.

The Department of Justice, Immigration and Naturalization Service (INS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on January 14, 1999 at 64 FR 2517, allowing for a 60-day public comment period. No comments were received by the INS on this proposed information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until May 3, 1999. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Stuart Shapiro, Department of Justice Desk Officer,

Room 10235, Washington, DC 20530; 202–395–7316.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of currently approved collection.

(2) *Title of the Form/Collection:* Application for Certificate of Citizenship in Behalf of an Adopted Child.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form N–643, Adjudications Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or Households. This information collection allows United States citizen parents to apply for a certificate of citizenship on behalf of their adopted alien children.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 11,159 responses at 1 hour per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 11,159 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 5307, 425 I Street, NW., Washington, DC 20536.

Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington, Center, 1001 G Street, NW, Washington, DC 20530.

March 26, 1999.

Richard A. Sloan,

Department Clearance Officer, United States Department of Justice Immigration and Naturalization Service.

[FR Doc. 99–7959 Filed 3–31–99; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of Information Collection Under Review: Notice to Student or Exchange Visitor.

The Department of Justice, Immigration and Naturalization Service (INS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on January 11, 1999 at 64 FR 1643, allowing for a 60-day public comment period. No comments were received by the INS on this proposed information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until May 3, 1999. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Stuart Shapiro, Department of Justice Desk Officer, Room 10235, Washington, DC 20530; 202–395–7316.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) Type of Information Collection: Reinstatement without change of a previously approved collection.

(2) Title of the Form/Collection: Notice to Student or Exchange Visitor.

(3) Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form I–515, Adjudications Division, Immigration and Naturalization Service.

(4) Affected public who will be asked or required to respond, as well as a brief abstract: Primary: Individuals or Households. This information collection will be used to notify students or exchange visitors admitted to the United States as nonimmigrants that they have been admitted without required forms and that they have 30 days to present the required forms and themselves to the appropriate office for correct processing.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: 3,000 responses at 5 minutes (.083 hours) per response.

(6) An estimate of the total public burden (in hours) associated with the collection: 249 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department

of Justice, Room 5307, 425 I Street, NW, Washington, DC 20536.

Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW, Washington, DC 20530.

Dated: March 26, 1999.

Richard A. Sloan,

Department Clearance Officer, United States Department of Justice, Immigration and Naturalization Service.

[FR Doc. 99–7960 Filed 3–31–99; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of Information Collection under Review: Application to Payoff or Discharge Alien Crewman.

The Department of Justice, Immigration and Naturalization Service (INS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on January 11, 1999 at 64 FR 1642, allowing for a 60-day public comment period. No comments were received by the INS on this proposed information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until May 3, 1999. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Stuart Shapiro, Department of Justice Desk Officer, Room 10235, Washington, DC 20530; 202–395–7316.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) Type of Information Collection: Reinstatement without change of a previously approved collection.

(2) Title of the Form/Collection: Application to Payoff or Discharge Alien Crewman.

(3) Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form I–408, Inspections Division, Immigration and Naturalization Service.

(4) Affected public who will be asked or required to respond, as well as a brief abstract: Primary: Individuals or Households. This information collection is required by section 256 of the Immigration and Nationality Act for use in obtaining permission from the Attorney General by master or commanding officer for any vessel or aircraft, to pay off or discharge any alien crewman in the United States.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: 85,000 responses at 25 minutes (.416 hours) per response.

(6) An estimate of the total public burden (in hours) associated with the collection: 35,360 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 5307, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington, Center, 1001 G Street, N.W., Washington, DC 20530.

Dated: March 26, 1999.

Richard A. Sloan,

Department Clearance Officer, United States Department of Justice, Immigration and Naturalization Service.

[FR Doc. 99–7961 Filed 3:31–99; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of Information Collection under Review: Supplementary Statement for Graduate Medical Trainees.

The Department of Justice, Immigration and Naturalization Service (INS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on January 11, 1999 at 64 FR 1643, allowing for a 60-day public comment period. No comments were received by the INS on this proposed information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until May 3, 1999. This process is conducted in accordance with 5 CFR 13120.10.

Written comments and/or suggestions regarding the items contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Stuart Shapiro, Department of Justice Desk Officer, Room 10235, Washington, DC 20530; 202–395–7316.

Written comments and suggestions from the public and affected agencies

concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) Type of Information Collection: Reinstatement without change of a previously approved collection.

(2) Title of the Form/Collection: Supplementary Statement for Graduate Medical Trainees.

(3) Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form I–644, Adjudications Division, Immigration and Naturalization Service.

(4) Affected public who will be asked or required to respond, as well as brief abstract: Primary: Individuals or Households. This information collection will be used by foreign exchange visitors who are seeking an extension of stay in order to complete a program of graduate education and training.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: 3,000 responses at 5 minutes (.083 hours) per response.

(6) An estimate of the total public burden (in hours) associated with the collection: 249 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instruments with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 5307, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW., Washington, DC 20530.

Dated: March 26, 1999.

Richard A. Sloan,

Department Clearance Officer, United States Department of Justice, Immigration and Naturalization Service.

[FR Doc. 99–7962 Filed 3–31–99; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of Information Collection Under Review: Application for Transfer of Petition for Naturalization.

The Department of Justice, Immigration and Naturalization Service (INS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on January 11, 1999 at 64 FR 1641, allowing for a 60-day public comment period. No comments were received by the INS on this proposed information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until May 3, 1999. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Stuart Shapiro, Department of Justice Desk Officer, room 10235, Washington, DC 20530; (202) 395–7316.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of response.

Overview of this information collection:

(1) Type of Information Collection: Reinstatement without change of a previously approved collection.

(2) Title of the Form/Collection: Application for Transfer of Petition for Naturalization.

(3) Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form N–455, Adjudications Division, Immigration and Naturalization Service.

(4) Affected public who will be asked or required to respond, as well as a brief abstract: Primary Individuals or Households. The form will be used by the applicant to request transfer of his or her petition to another court in accordance with section 405 of the Immigration and Nationality Act. The Service will also use this information to make recommendations to the court.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: 100 responses at 10 minutes (.166 hours) per response.

(6) An estimate of the total public burden (in hours) associated with the collection: 17 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan, (202) 514–3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 5307, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated

public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW., Washington, DC 20530.

Dated: March 26, 1999.

Richard A. Sloan,

Department Clearance Officer, United States Department of Justice, Immigration and Naturalization Service.

[FR Doc. 99–7963 Filed 3–31–99; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Comment Request

ACTION: Notice of Information Collection Under Review; Health and Human Services Statistical Data for Refugee/Asylee Adjusting Status.

The Department of Justice, Immigration and Naturalization Service has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for "sixty days" until June 1, 1999.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) Type of Information Collection: *Reinstatement without change of previously approved collection.*

(2) Title of the Form/Collection: Health and Human Services Statistical Data for Refugee/Asylee Adjusting Status.

(3) Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form I–643. Adjudications Division, Immigration and Naturalization Service.

(4) Affected public who will be asked or required to respond, as well as a brief abstract: Primary: Individuals or households. The primary purpose of the data collected on this form is for use in the Office of Refugee Resettlement Report to Congress (8 U.S.C. 1523). The Service is required to report on the status of refugees at the time of adjustment to lawful permanent resident.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: 195,000 responses at 30 minutes (.50 hours) per response.

(6) An estimate of the total public burden (in hours) associated with the collection: 97,500 annual burden hours

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 5307, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW., Washington, DC 20530.

Dated: March 26, 1999.

Richard A. Sloan,

Department Clearance Officer, United States Department of Justice, Immigration and Naturalization Service.

[FR Doc. 99–7964 Filed 3–31–99; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Comment Request

AGENCY: Notice of Information Collection Under Review; Application for Permission to Reapply for Admission into the United States after Deportation or Removal.

The Department of Justice, Immigration and Naturalization Service has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for "sixty days" until June 1, 1999.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) Type of Information Collection: *Reinstatement without change of previously approved collection.*

(2) Title of the Form/Collection: Application for Permission to Reapply for Admission into the United States after Deportation or Removal.

(3) Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form I–212. Adjudications Division, Immigration and Naturalization Service.

(4) Affected public who will be asked or required to respond, as well as a brief abstract: Primary: Individuals or

households. This form provides information to be used to determine eligibility for a waiver for an inadmissible alien who is applying for a visa to enter the United States.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: 7,250 responses at 20 minutes (.333) per response.

(6) An estimate of the total public burden (in hours) associated with the collection: 2,414 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 5307, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW., Washington, DC 20530.

Dated: March 26, 1999.

Richard A. Sloan,

Department Clearance Officer, United States Department of Justice, Immigration and Naturalization Service.

[FR Doc. 99–7965 Filed 3–31–99; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

[INS No. 1965–98]

Designation of Nicaragua Under Temporary Protected Status; Correction

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Notice of correction.

SUMMARY: On January 5, 1999, the Immigration and Naturalization Service (Service) published a notice in the **Federal Register** at 64 FR 526 which designated Nicaragua under the Temporary Protected Status (TPS) program for 18 months. In the supplemental information to the notice of January 5, 1999, the Service inadvertently misstated that a Nicaraguan who is eligible to apply for adjustment under section 202 of the Nicaraguan Adjustment and Central American Relief Act (NACARA) must apply for adjustment prior to April 1, 2002. It should have instead stated that a Nicaraguan who is eligible to apply for adjustment under section 202 of NACARA must apply prior to April 1, 2000. The purpose of this notice is to inform potential applicants of the correct date and prevent individuals from missing the filing deadline.

DATES: This notice is effective April 1, 1999.

FOR FURTHER INFORMATION CONTACT: Michael Valverde, Immigration and Naturalization Service, Adjudications Division, 425 I Street, NW, Room 3214, Washington, DC 20536, telephone (202) 514–4754.

Dated: March 24, 1999.

Doris Meissner,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 99–7966 Filed 3–31–99; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

March 25, 1999.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of the ICR, with applicable supporting documentation, may be obtained by contacting the Department of Labor, Acting Department Clearance Officer, Pauline Perrow at (202) 219–5096, ext. 165 or by E-Mail at Perrow-Pauline@dol.gov.

Comments should be sent to the Office of Information and Regulatory Affairs, Attn: Desk Officer for Pension and Welfare Benefits Administration, Office of Management and Budget, Room 10235, Washington, DC 20503 ((202) 395-7316) on or before May 3, 1999.

OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other firms of information technology, e.g., permitting electronic submission of responses.

Agency: Pension and Welfare Benefits Administration.

Title: Summary Plan Description (SPD) Requirements under the Employee Retirement Income Security Act of 1974 (ERISA).

Type: Extension of emergency clearance for provisions of the interim final rule relating to the disclosure requirements of the Newborns' and Mothers' Health Protection Act of 1996 (NMHPA) (63 FR 48372, September 9, 1998).

OMB Numbers: 1210–0039.

Frequency: On occasion.

Affected Public: Individuals or households; business or other for-profit, Not-for-profit institutions.

Total Respondents: 888,393.

Total Responses: 52,115,000.

Estimated Burden Hours, Total Annual Burden: 746,983.

Total annual cost (operating and maintenance: $99,898,000.

Description: NMHPA amended ERISA by adding a new section 711 requiring group health plans to discloser to participants and beneficiaries new federal law restrictions on the extent to which group health plans and health insurance issuers may limit hospital lengths of stay for mothers and newborn children following delivery. Disclosure was required to be provided not later than 60 days after the first day of the first plan year beginning on or after January 1, 1998. On April 8, 1997 the Department issued interim final rules (62 FR 16979) implementing provisions of section 711 by amending the existing SPD content rules (29 CFR 2520.102–3) by requiring group health plan SPDs to include specific disclosures concerning minimum hospital lengths of stay for mothers and newborn children following childbirth. In response to subsequent public comment, and in recognition of a need for further clarification, the Department issued an interim final rule (63 FR 48372,

September 9, 1998) clarifying disclosure requirements with respect to an exception to the minimum length of stay requirement.

Pauline Perrow,

Acting Department Clearance Officer.

[FR Doc. 99–7833 Filed 3–31–99; 8:45 am]

BILLING CODE 4510–27–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

March 25, 1999.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor, Departmental Clearance Officer, Pauline Perrow ({202} 219–5096, ext. 143), or by E-Mail to Perrow-Pauline@dol.gov.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officers for BLS, DM, ESA, ETA, MSHA, OSHA, PWBA, or VETS, Office of Management and Budget, Room 10235, Washington, DC 20503 ({202} 395–7316), on or before May 3, 1999.

OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronics submission of responses.

Agency: Employment Standards Administration.

Title: Claim for Continuance of Compensation.

OMB Number: 1215–0154 (Extension).

Frequency: Annually.

Affected Public: Individuals or households.

Number of Respondents: 6,054.

Estimated Time Per Respondent: 1/12 of an hour.

Total Burden Hours: 505.

Total Annualized capital/startup costs: 0.

Total annual costs (operating/maintaining systems or purchasing services): $2,000.

Description: This form is used to obtain information on marital status of beneficiaries in death cases, in order to determine continued entitlement to benefits under the provisions of the Federal Employees' Compensation Act. The information provided is used by OWCP claims examiners to ensure that death benefits being paid are correct, and that payments are not made to ineligible survivors.

Agency: Employment Standards Administration.

Title: (1) Miner's Claim for Benefits Under the Black Lung Benefits Act; (2) Employment History; (3) Miner Reimbursement Form.

OMB Number: 1215–0052 (Extension).

Frequency: On-occasion.

Affected Public: Individuals or households; Business or other for-profit.

Number of Respondents: 20,200.

Estimated Time Per Respondent:

	Minutes	Respondents	Hours
CM–911	45	4,800	3,600
CM–911a	40	5,900	3,933
CM–915	10	9,500	1,583

Total Burden Hours: 9,116.

Total Annualized capital/startup costs: 0.

Total annual costs (operating/maintaining systems or purchasing services): $4,000.

Description: CM–911 A miner who applies for black lung benefits must complete the CM–911 (applicant form). The completed form gives basic identifying information about the applicant, the years of coal mine employment, dependents, earned income and income received from state workers' compensation as a result of pneumoconiosis.

CM–915 of the standard data collection form completed by miner payees when requesting reimbursement for black lung related medical services that are covered under the program. Miner payees, i.e., miners, authorized survivors and representatives, are entitled to reimbursement for out-of-pocket medical expenses incurred as a result of treatment for a black lung related condition.

CM–915 provides a systematic approach for gathering data essential to processing miner submitted medical bills in accordance with the program objectives.

Agency: Employment Standards Administration.

Title: Pre-Hearing Statement.

OMB Number: 1215–0085 (Extension).

Frequency: On Occasion.

Affected Public: Individuals or households; Business or other for-profit.

Number of Respondents: 6,800.

Estimated Time Per Respondent: 10 minutes.

Total Burden Hours: 1,088.

Total Annualized capital/startup costs: 0.

Total annual costs (operating/maintaining systems or purchasing services): $2,500.

Description: This form is used to refer cases for formal hearings under the Act. The information obtained is used to establish and clarify the issues involved. The information is used by OWCP district offices to prepare cases for hearing.

Agency: Employment Standards Administration.

Title: Overpayment Recover Questionnaire.

OMB Number: 1215–0144 (Extension).

Frequency: On-Occasion.

Affected Public: Individuals or households.

Number of Respondents: 4,500.

Estimated Time Per Respondent: one hour each.

Total Burden Hours: 4,500 (FECA: 3,500 and Black Lung 1,000).

Total Annualized capital/startup costs: 0.

Total annual costs (operating/maintaining systems or purchasing services): 2,000.

Description: The information on this form is used by OWCP examiners to ascertain the financial condition of the beneficiary to see if the overpayment or

any part can be recovered; to identify the possible concealment or improper transfer of assets; and to identify and consider present and potential income and current assets for enforced collection proceedings.

Agency: Employment Standards Administration.

Title: Applications to Employ Special Industrial Home workers and Workers with Disabilities.

OMB Number: 1215–0005 (Extension).

Frequency: On-Occasion.

Affected Public: Individuals of households; Business or other for profit; Not-for-Profit institutions; Farms; State, Local, or Tribal Government.

Number of Respondents: 8,600.

Estimated Time Per Respondent:

	Minutes	Respondents
WH–2	30	100
WH–226–MIS	45	8,500
WH–226A–MIS	45	*8,500

*A total of 20,000 copies of this form will be completed by 8,500 respondents.

Total Burden Hours: 21,425.

Total Annualized capital/startup costs: 0.

Total annual costs (operating/maintaining systems or purchasing services): 3,000.

Description: The WH–2 is used by employers to obtain certificates to employ individual Home workers in one of the restricted homework industries: knitted outerwear, women's apparel, jewelry manufacturing, gloves and mittens, button and buckle manufacturing, handkerchief manufacturing and embroideries. Upon application by the home worker and the employer, certificates may be issued to the employer authorizing employment of an individual home worker, provided it is shown that the worker is unable to adjust to factory work because of age and physical or mental disability or is unable to leave home because the worker is required to care for an invalid in the home . . . etc.

The WH–226 and the supplemental data form WH–226A–MIS are used by employers to obtain authorization to employ workers with disabilities in competitive employment, in sheltered workshops, and in hospitals or institutions at subminimum wages which are commensurate with those paid to nondisabled workers.

Pauline D. Perrow,

Acting Departmental Clearance Officer.

[FR Doc. 99–7834 Filed 3–31–99; 8:45 am]

BILLING CODE 4510–29–M

DEPARTMENT OF LABOR

Employment and Training Administration

Job Training Partnership Act, Title III, Demonstration Program: Contextual Learning Demonstration Program

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice of Availability of Funds and Solicitation for Grant Applications (SGA).

SUMMARY: The U.S. Department of Labor (DOL), Employment and Training Administration (ETA), announces a demonstration program to test the viability of innovative training strategies in reducing the time required for individuals with low basic skills to develop the skills needed to qualify for quality jobs in occupations and industry settings with long-term growth potential. This demonstration program is targeting workers who have been dislocated from declining industries and who have not only non-transferrable, obsolete job skills, but also low basic skills. This demonstration program has two special emphases: The use of contextual learning strategies to develop basic literacy skills in conjunction with the development of vocational skills, and strategies to develop such skills with limited-English-speaking populations.

The program will be funded with Secretary's National Reserve funds appropriated for Title III of the Job Training Partnership Act (JTPA) and administered in accordance with 29 CFR part 95 and 97 as applicable.

This notice describes the application submission requirements, the process that eligible entities must use to apply for funds covered by this solicitation, how grantees are to be selected, and the responsibilities of grantees. It is anticipated that up to $10 million will be available for funding the projects covered by this solicitation, that seven to twelve projects will be selected for funding, and that the maximum grant award will not exceed $1 million.

All information required to submit a grant application under this solicitation is contained in this announcement.

DATES: The closing date for receipt of applications is May 10, 1999 at 2 p.m. (Eastern Time) at the address below. Except as provided below, grant applications received after this date and time will not be considered.

ADDRESSES: Applications shall be mailed to: U.S. Department of Labor; Employment and Training Administration; Division of Federal Assistance; Attention: Willie E. Harris, Reference: SGA/DAA 99–008; 200 Constitution Avenue, NW, Room S–4203; Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Mr. Willie E. Harris, Division of Federal Assistance. Telephone (202) 219–8706, extension 119 (this is not a toll-free number). Questions may also be faxed to Mr. Willie E. Harris, Grant Management Specialist, Fax Number: (202) 219–8739. All inquiries sent via fax should include the SGA number (DFA 99–008) and a contact name and phone number.

SUPPLEMENTARY INFORMATION:

This announcement consists of five parts. Part I describes the authorities and purpose of the demonstration program and identifies demonstration policy. Part II describes the application process and provides guidelines for use in applying for demonstration grants. There is no separate application package. Part III includes the Government Requirement/Statement of Work for the demonstration projects. Part IV describes the selection process, including the criteria that will be used in reviewing and evaluating applications. Part V describes the grantee's responsibilities related to program monitoring, reporting and evaluation.

Part I. Background

A. Authorities

Section 323 of JTPA (29 U.S.C. 1662b) authorizes the use for demonstration programs of funds reserved under section 302 of JTPA (29 U.S.C. 1652) and provided by the Secretary for that purpose under section 322 of JTPA (29 U.S.C. 1662a). Demonstration program grantees shall comply with all applicable federal and state laws and

regulations in setting up and carrying out their programs.

B. Purpose

Global competition and expanding technology are contributing to a dynamism in the workplace that presents significant challenges as well as opportunities for many workers. Skills related to continuous learning, communications, and independent problem-solving are critical to job and career success. As never before, basic literacy skills are a pre-requisite for most employment opportunities, and certainly for most jobs that pay a reasonable wage.

Projects funded through this solicitation are to provide retraining and related services—consistent with the allowable use of JPTA Title III funds as defined in sections 314(c), 314(d), and 314(e) of the Act—designed to help eligible dislocated workers with low basic skills transition into quality jobs with a 90 percent wage replacement rate for the workers. Projects must be designed to accomplish the following objectives:

- Develop (if necessary) and implement curricula that integrate the learning of basic literacy skills with the learning of vocational skills;
- Develop (if necessary) and implement training methods that accelerate the learning process and shorten the time period required to meet employer hiring requirements; and
- Implement training strategies for the acquisition of skills that are driven by the hiring requirements of local employers and that entail the development of skills—both basic and vocational—in a workplace setting.

Applications should incorporate curricula and training strategies that can be effectively used with limited English-speaking populations and that are transferrable for use in the broader workforce development system. Curricula should include aspects of contextual training, which integrates literacy into technical training in order that skills learned have an obvious payoff in terms of preparing workers for occupations. Both curricula developed and training strategies proposed may differ, depending upon whether basic skills combined with occupational training are taught to a native-English-speaking or non-native-English-speaking population. Applicants must justify the selection of a particular type of curriculum based upon citations of sound research findings and/or demonstrated experience, and the needs of the target population.

C. Demonstration Policy

1. Grant Awards

DOL anticipates awarding seven to twelve grants. Individual grant awards will not exceed $1 million. It is anticipated that awards will be made by June 30, 1999. Award decisions will be published on the Internet at ETA's Home Page at http://www.doleta.gov.

2. Eligible Applicants

Subject to the provisions of this section, any organization capable of fulfilling the terms and conditions of this solicitation may apply. Under Lobbying Disclosure Act of 1995, Section 18, an organization described in section 501(c)(4) of the Internal Revenue code of 1986 which engages in lobbying activities shall not be eligible for the receipt of Federal funds constituting an award grant or loan. This is a risk free Federal program; therefore, all for profit organizations that apply will not be able to receive a fee if awarded a grant.

Any applicant who is not a JTPA Title III substate grantee will be required to demonstrate evidence of partnership or coordination with the substate grantee(s) in the proposed service area for the delivery of comprehensive services to the target group. Such evidence may include memoranda of agreement or understanding and letters of commitment. Applicants are also encouraged to work with local Adult Basic Education providers.

3. Eligible Participants

All individuals receiving retraining and related services must be eligible dislocated workers as defined at JTPA section 301(a)(1), and 314(h)(1) of the Job Training Partnership Act. These sections of the law may be viewed at http://www.doleta.gov/regs/statutes/jtpalaw.htm.

Proposed projects should target subgroups of the eligible population based on factors such as (but not limited to) occupation, industry, and specific barriers to reemployment. Proposed projects will be expected to target individuals whose basic skills are low and well below the hiring standards of area employers.

4. Allowable Activities

Funds provided through this demonstration are limited to the costs of developing/refining training curricula in accordance with the requirements defined in this solicitation, providing services of the type described at section 314(c), (d) and (e) of JTPA, and administering the project. Supportive services are defined in section 4(24) of JTPA.

Grant funds may not be used for the cost of any services or activities that would have been provided in the absence of the requested grant. Applicants may budget limited amounts of grant funds to work with technical experts or consultants to provide advice and develop more complete project plans after a grant award. The level of detail in the project plan may affect the amount of funding provided.

5. Coordination

Applicants will be expected to plan and coordinate the delivery of services under this demonstration project with the delivery of services under other programs (public or private), available to all or part of the target group. At a minimum, projects will be expected to link or collaborate with any existing USDOL funded One-Stop/Career Center initiative and/or local JTPA Substate Grantee located within the project area. Applicants are encouraged to coordinate with local Adult Basic Education providers.

6. Period of Performance

The period of performance shall be 24 months from the date of execution by the Government. Delivery of services to participants shall commence within 90 days of execution of a grant.

7. Option to Extend

DOL may elect to exercise its option to extend these grants for an additional one (1) or two (2) years of operation, based on the availability of funds, successful program operation, and the needs of the Department.

Part II. Application Process and Guidelines

A. Submission of Applications

An original and three (3) copies of the application shall be submitted. The application shall consist of two (2) separate and distinct parts: Part I, the Financial Proposal, and Part II, the Technical Proposal.

Each grant application must follow the format outlined in this part and should include:

(1) Information that indicates adherence to the provisions described in Part I, Background (Authorities, Purpose, and Demonstration Policy) and Part II, Application Process and Guidelines, of this announcement; and

(2) Other information that the applicant believes will address the selection criteria identified in Part IV of this solicitation.

1. Financial Application

Part I, the Financial Proposal, shall contain the SF–424, "Application for

Federal Assistance" (Appendix A) and the "Budget Information" (Appendix B). The Federal Domestic Assistance Catalog number is 17.246.

The budget shall include on separate pages detailed breakouts of each proposed budget line item, including detailed administrative costs and costs for one or more of the following categories as applicable: basic readjustment services, supportive services, and retraining services. For each budget line item that includes funds or in-kind contributions from a source other than the grant funds, identify the source, the amount, and in-kind contributions, including any restrictions that may apply to these funds.

Applicants must justify that proposed costs are reasonable. The impact of innovation on costs should be explained. Grant applications will be evaluated for the reasonableness of proposed costs, considering the proposed target group, services, outcomes, management plan, and coordination with other entities.

2. Technical Proposal

Part II, the technical proposal, shall demonstrate the offeror's capabilities in accordance with the required elements of the proposal outlined below. The technical proposal should contain information sufficient to respond to the objectives of the solicitation, the statement of work and the evaluation criteria.

A grant application shall be limited to twenty (20) double-spaced, single-side, 8.5-inch x 11-inch pages with 1-inch margins. Attachments shall not exceed ten (10) pages. Text type shall be 11 point or larger. Applications that do not meet these requirements will not be considered. Each application shall include the Checklist provided as Appendix C, a Timeline outlining project activities, and an Executive Summary not to exceed two pages. No Cost Data or Reference to Price Shall be Included in The Technical Proposal.

Applicants are advised that discussions may be necessary in order to clarify any inconsistency or ambiguity in their applications. The final decision on awards will be based on what is most advantageous to the Federal Government as determined by the ETA Grant Officer. The Government may elect to award grant(s) without discussion with the applicant(s). The applicant's signature on the Application for Federal Assistance (Standard Form) S–424 constitutes a binding offer.

B. Hand-Delivered Applications

Applications should be mailed no later than five (5) days prior to the closing date for the receipt of applications. However, if applications are hand-delivered, they must be received at the designated place by 2 p.m., Eastern Time on the closing date for receipt of applications. All overnight mail will be considered to be hand-delivered and must be received at the designated place by the specified time and closing date. Telegraphed and/or faxed proposals will not be honored. Applications that fail to adhere to the above instructions will not be honored.

C. Late Applications

Any application received at the office designated in the solicitation after the exact time specified for receipt will not be considered unless it:

(1) Was sent by U.S. Postal Service registered or certified mail not later than the fifth calendar day before the closing date specified for receipt of applications (e.g., an offer submitted in response to a solicitation requiring receipt of application by the 30th of January must have been mailed by the 25th); or

(2) Was sent by U.S. Postal Service Express Mail Next Day Service—Post Office to Addressee, not later than 5 p.m. at the place of mailing two working days prior to the date specified for receipt of application. The term "working days" excludes weekends and U.S. Federal holidays.

The only acceptable evidence to establish the date of mailing of a late application sent by U.S. Postal Service registered or certified mail is the U.S. postmark on the envelope or wrapper and on the original receipt from the U.S. Postal Service. Both postmarks must show a legible date or the proposal shall be processed as if it had been mailed late. "Postmark" means a printed, stamped, or otherwise placed impression (exclusive of a postage meter machine impression) that is readily identifiable without further action as having been supplied and affixed by an employee of the U.S. Postal Service on the date of mailing. Therefore, applicants should request the postal clerk to place a legible hand cancellation "bull's eye" postmark on both the receipt and the envelope or wrapper.

The only acceptable evidence to establish the date of mailing of a late application sent by "Express Mail Next-Day Service—Post Office to Addressee" is the date entered by the post office receiving clerk on the "Express Mail Next Day Service—Post Office to Addressee" label and the postmarks on both the envelope and wrapper and the original receipt from the U.S. Postal Service. "Postmark" has the same meaning as defined above. Therefore, an applicant should request the postal clerk to place a legible hand cancellation "bull's eye" postmark on both the receipt and the envelope or wrapper.

D. Withdrawal of Applications

Applications may be withdrawn by written notice or telegram (including mailgram) received at any time before award. Applications may be withdrawn in person by the applicant or by an authorized representative thereof, if the representative's identity is made known and the representative signs a receipt for the proposal.

Part III Government Requirement/ Statement of Work

A. Project Service Area

Describe the area in which the project will operate. Projects funded through this solicitation will be expected to be based in local labor markets. Provide an explanation of the economic and labor market circumstances in the local area that make it an appropriate candidate for this demonstration program.

B. Target Population

Describe the proposed target population for the project. The description should include: number of individuals to be served through the project; date(s) of dislocation or the length of time the target group has been unemployed; occupations and wages of jobs from which they were dislocated; and specific barriers to reemployment. To the extent that the applicant expects to serve individuals who are not yet dislocated but are likely to be during the initial stages of the grant period, the applicant must justify why it believes that such dislocations are likely to occur. The description should also include information to support the planned level of participation in the project (i.e., number of eligibles within target group in the local area, indications of the need for assistance).

C. Available Jobs

Identify the occupations that are targeted for job placement of project participants and provide a brief explanation of the appropriateness of these occupations given local labor market conditions, wage replacement potential for the target group and upward mobility/job retention opportunities. Identify sources of the occupational information or data used. Anecdotal data should not be used. Information from the Bureau of Labor

Statistics (BLS) available through a variety of web sites including BLS, O*NET and America's Labor Market Information System (ALMIS), should be considered as a key source of documentation. In addition, State Occupational Information Coordinating Committee (SOICC) and JTPA Substate Grantee/One-Stop Center program information may be used.

D. Project Design

(1) Purpose. Describe the specific purpose or purposes of the proposed project and how these relate to the objectives of this solicitation. Describe how contextual learning will be integrated into the design of curricula and into training proposed.

(2) Outreach and recruitment. Identify the methods that will be used to contact and recruit members of the target group for participation in this project and the organizations who will be responsible for the outreach/recruitment activities. Describe why the methods and organizations will be effective in achieving the planned participation levels for the project. Applicants that are not JTPA Title III substate grantees should partner with the appropriate JTPA Title III substate grantee(s) to plan and implement effective outreach and recruitment strategies.

(3) Eligibility determination. Identify the organization which will responsible for determining the eligibility of individuals for participation in this project and the experience of the organization in determining the eligibility of individuals for JTPA Title III assistance. Applicants who are not JTPA Title III substate grantees should partner with the appropriate JTPA Title III substate grantee(s) to carry out eligibility determination.

(4) Selection criteria. Identify the criteria that will be used, and the organization(s) that will be responsible for selecting those individuals to be served by the project from among the total number of eligible persons recruited for the project. Describe how this process will achieve the specific purpose(s) of the proposed project, including, as appropriate, targeted assistance to individuals with limited English-speaking ability.

(5) Assessment. Identify assessment tools and/or methods that will be used to determine the skills and aptitudes of individual participants. Specifically identify the tools that will be used to measure English-speaking proficiency, and for limited English-speaking individuals, the basic skills levels of the individual. Describe the approaches or methods that will be used to relate prior experience(s) to employer hiring requirements. Describe the specific strategies and methods for measuring skills acquisition during the training process.

(6) Services to be provided. Describe the service process to be used on the project. The description should include identification of the services to be provided from the time of selection of participants through placement of those participants in jobs, the sequencing of services in the overall process, the criteria/decision points for determining the appropriateness of specific services for an individual participant, and the organization(s) which will be responsible for providing specific services. The process description may be supported by a participant flowchart.

(7) *Contextual learning training strategies.* Describe how experiential, integrated and other effective adult learning methods will be used in implementing education and training services to be provided to participants. Describe how these methods are expected to: (a) Shorten the calendar time required for individuals to acquire the skills needed to qualify for targeted employment opportunities; (b) increase the relevance/responsiveness of training to the job performance requirements of employers; and (c) increase the direct participation of employers in the training process. Specifically describe strategies that will be used to teach limited English-speaking individuals with low basic skills in their native language.

(8) *Supportive services.* Identify supportive services, including needs-related payments, to be provided to participants. Describe how the need for such services will be determined on an individual basis and why such services are expected to be needed to facilitate participation in the project by the target group. Also identify any limits on the amount of such services that can be received by any individual participant.

(9) *Post-placement services.* Identify any services to be provided subsequent to job placement. Describe the rationale for the services and why such services will be necessary for participants to be successfully placed into jobs and to retain those jobs. The identification should include services to be funded from sources other than the grant.

E. Planned Outcomes

Identify the specific project outcome measures that will be used to determine the success of the project. For each measure, identify the planned outcome level to be achieved by the project.

Outcome measures must include, but are not limited to:

(1) The number of participants to receive services through the project;

(2) The number of participants to receive training using contextual learning strategies;

(3) The number of participants to be placed into permanent employment [a minimum entered employment rate of 80 percent is required];

(4) The average wage at placement and the wage replacement rate for participants placed into permanent employment (a minimum wage replacement rate of 90 percent is required);

(5) Customer satisfaction with the project services (a minimum of 80 percent of participants must indicate satisfaction with the services received through the project).

The applicant may propose additional measurable, performance-based outcomes that are relevant to the project and that may be readily assessed during the period of performance of the project. When proposed, the applicant must provide an explanation of how such additional measures are relevant to the purpose of the demonstration program.

F. Implementation Plan

(1) Identify the critical activities, time frames and responsibilities for effectively implementing the project that will occur within the first 90 days after the award of the grant.

(2) Include a completed monthly schedule that shows the cumulative number of participants, enrollments in education and training activities, enrollments in contextual learning training activities, permanent placements into unsubsidized employment, receiving post-placement services, and terminations.

G. Collaboration/Leveraging of Resources

(1) Identify other State and local organization(s) which are collaborating and/or contributing resources to the design and implementation of the proposed project. Describe the role and contributions of each. Contributions may include but are not limited to such contributions as the development of training modules; payment of tuition costs for training; support for child care or transportation; and provision of staff time and training facilities, equipment and materials at no cost to the project. Particular attention should be paid to the potential contributions available through adult basic education and Trade Adjustment Assistance programs, if applicable.

(2) Provide evidence which indicates that the collaboration described can reasonably be expected to occur. Such

evidence could include letters of agreement, memoranda of understanding, or formally established advisory councils.

(3) Describe activities that may be undertaken to link activities to program interventions under this grant to employer, industry, or curriculum/ learning centers currently designing and developing occupational/job skill standards and certifications. Such activities should focus on linking employers involved in grant activities with any employer, industry, or trade and worker association that has already developed or is developing skill standards certifications in order to maximize the use of knowledge that has been gained about skills and their relationship to contextual learning.

H. Consultation

The application must describe the working relationship with the local JTPA substate grantee(s), or One-Stop/ Career Center entities where present. Prior to commencing operations, grant award recipients that are not JTPA substate grantees will be required to submit a jointly signed Memorandum of Understanding with substate grantees describing such working relationship. The application must also include evidence of consultation, such as a letter, on the project concept with applicable labor organizations where 20 percent or more of the targeted population is represented by one or more labor organizations, or where the training is for jobs in which a labor organization represents a substantial number of workers engaged in similar work.

I. Innovation

Identify any elements in the proposed project design that are innovative. Describe why the elements are considered to be innovative and how they are expected to improve current methods being used to provide reemployment services to the target group.

J. Project Management Plan

Applicants must be able to demonstrate that they have systems capable of satisfying the administrative and grant management requirements for the use of JTPA funds as defined in 20 CFR part 627 subpart D. The application must include the following information:

(1) *Structure.* Describe the management structure for the project. The description must include: (a) A staffing plan that describes each position and the percentage of time to be assigned to this project; (b) an organizational chart that clearly indicates the working and responsibility/ accountability relationships among project management and operational components, including, as appropriate, those at multiple sites of the project.

(2) Relationship to prior experience. Describe the specific experience of the applicant and other key organizations involved in the project with contextual learning training strategies and providing reemployment assistance to low skilled and/or limited English-proficient populations. Describe how proposed training provider(s) will be selected. Past performance of providers, qualifications of instructors, accreditation of curricula, and similar matters should be addressed as appropriate.

(3) *Accountability systems.* Describe the mechanisms to ensure financial accountability for grant funds and performance accountability relative to job placements, in accordance with standards for financial management and participant data systems in 29 CFR part 95 or 97, as appropriate, and 20 CFR 627.425. Explain the basis for the applicant's administrative authority over the management and operational components. Describe how information will be collected to determine the achievement of project outcomes as indicated in section E of this part; and report on participants, outcomes, and expenditures. (If the applicant is not a current DOL grantee, this information is subject to verification prior to grant award.)

(4) *Customer satisfaction measurement system.* Describe the process and procedures that will be used to obtain feedback from individual participants and from employers on the responsiveness and effectiveness of the services provided. The description should include an identification of the types of information to be obtained, the method(s) and frequency of data collection, and how the information will be used in implementing and managing the project.

(5) *Monitoring and performance management.* Describe the procedures that will be used to effectively control and management project performance and the use of grant funds. The description should identify areas to be reviewed, frequency, and responsibilities.

(6) *Grievance procedure.* Describe the grievance procedure to be used for grievances and complaints from participants, contractors, and other interested parties, consistent with the requirements at section 144 of JTPA and 20 CFR 631.64(b) and (c).

Part IV. Evaluation Criteria

Selection of grantees for awards will be made after careful evaluation of grant applications by a panel of experts. Panel results will be advisory in nature and not binding on the ETA Grant Officer. Panelists shall evaluate proposals for acceptability based upon overall responsiveness in accordance with the factors below.

A. Target Population. (20 points)

The description of the characteristics and reemployment barriers of the target group to be served is clear and meaningful, and sufficiently detailed to determine the potential participants' service need. A significant number of eligible dislocated workers who possess these characteristics are available for participation within the project area. Sufficient information is provided to explain how the number of dislocated workers to be enrolled in the project was determined. The recruitment plan supports the number of planned enrollments. The target population is appropriate for the specific purpose of the proposed project, including the relative literacy and numeracy deficiencies. Extent to which target population is characterized by limited-English-speaking ability.

B. Service Plan and Cost. (25 points)

The scope of services to be provided is consistent with the demonstration program and project purposes and goals. The scope of services to be provided is adequate to meet the needs of the target population given:

(1) Their characteristics and circumstances, including their English proficiency and other basic skill needs;

(2) The jobs in which they are to be placed relative to targeted wage at placement goals;

(3) The match between documented shortages in particular skills or industries and the training planned;

(4) The documentation provided specifying that training meets or is developed based on industry driven skill standards or certifications; and (5) the length of program participation planned prior to placement.

Documentation and reliability of job availability is based upon recognized, reliable and timely sources of information.

Identification is provided of the specific sources and amounts of other funds which will be used, in addition to funds provided through this grant, to implement the project. The application must include information on any non-JTPA resources committed to this project, including employer funds,

grants, and other forms of assistance, public and private. Value and level of external resources being contributed, including employer contributions, to achieve program goals will be taken into consideration in the rating process.

C. Experience and Management Capability. (15 points)

The applicant (as a part of a collaborative approach) has experience working with experiential and integrated learning strategies, specifically with a limited-English proficient population. The management structure and management plan for the proposed project will ensure the integrity of the funds requested. The project work plan demonstrates the applicant's ability to effectively track project progress with respect to planned performance and expenditures. Sufficient procedures are in place to use the information obtained by the project operator(s) to take corrective action if indicated. In addition, review by appropriate labor organizations, where applicable, is documented.

The proposal includes a method of assessing customer feedback for both participants and employers involved, and establishes a mechanism to take into account the results of such feedback as part of a continuous system of management and operation of the project.

D. Collaboration. (10 points)

The proposal includes information describing direct participation by JTPA substate grantees and One-Stop/Career Center entities (where present) in the planning and management of this grant. Evidence of participation of employers whose positions are targeted under the grant is present. Evidence of coordination with other appropriate programs and entities for project design or provision of services. Evidence is presented that ensures cooperation of coordinating entities, as applicable, for the life of the proposed project. The project includes a reasonable method of assessing and reporting on the impact of such coordination, relative to the demonstration purpose and goals and the specific purpose and goals of the proposed project.

E. Innovation. (20 points)

The proposal demonstrates innovation in the concept(s) to be tested, the project's design, and/or the services to be provided. "Innovation" refers to the degree to which such concept(s), design and/or services are not currently found in dislocated worker programs. The project includes a reasonable method of assessing and reporting on the impact of such innovation, relative to the demonstration program and project purposes and goals.

F. Replicability. (10 points)

The proposal provides evidence that, if successful, activities supported by the demonstration grant will be continued after the expiration date of the grant, using JTPA Title III formula-allotted funds or other public or private resources. Evidence that the strategies are usable in other local operating environments.

Part V. Monitoring, Reporting and Evaluation

A. Monitoring

The Department shall be responsible for ensuring effective implementation of each competitive grant project in accordance with the Act, the regulations, the provisions of this announcement and the negotiated grant agreement. Applicants should assume that at least one on-site project review will be conducted by Department staff, or their designees. This review will focus on the project's performance in meeting the grant's programmatic goals and participant outcomes, complying with the targeting requirements regarding participants who are served, expenditure of grant funds on allowable activities, collaboration with other organizations as required, and methods for assessment of the responsiveness and effectiveness of the services being provided. Grants may be subject to their additional reviews at the discretion of the Department.

B. Reporting

DOL will arrange for or provide technical assistance to grantees in establishing appropriate reporting and data collection methods and processes. An effort will be made to accommodate and provide assistance to grantees to be able to complete all reporting electronically.

Applicants selected as grantees will be required to provide the following reports:

1. Monthly and Quarterly Progress Reports
2. Standard Form 269, Financial Status Report Form, on a quarterly basis
3. Final Project Report including an assessment of project performance. This report will be submitted in hard copy and on electronic disk utilizing a format and instructions to be provided by the Department.

C. Evaluation

DOL will arrange for or conduct an independent evaluation of the outcomes, impacts, and benefits of the demonstration projects. Grantees must agree to make available records on participants and employers and to provide access to personnel, as specified by the evaluator(s) under the direction of the Department.

Signed at Washington, DC, this 25th day of March 1999.

Janice E. Perry,

Grant Officer, Division of Federal Assistance.

Appendices

1. Appendix A—Application for Federal Assistance (Standard Form 424) (Internet link)
2. Appendix B—Information (Internet link)
3. Appendix C—Application Checklist (Internet link)

Web site address is http://www.doleta.gov

BILLING 4510-30-P

APPLICATION FOR FEDERAL ASSISTANCE

OMB Approval No. 0348-0043

1. TYPE OF SUBMISSION: Application ☐ Construction ☐ Non-Construction / Preapplication ☐ Construction ☐ Non-Construction	2. DATE SUBMITTED	Applicant Identifier
	3. DATE RECEIVED BY STATE	State Application Identifier
	4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address (give city, county, State and zip code):	Name and telephone number of the person to be contacted on matters involving this application (give area code):

6. EMPLOYER IDENTIFICATION NUMBER (EIN):

☐☐-☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: (enter appropriate letter in box) ☐

A. State
B. County
C. Municipal
D. Township
E. Interstate
F. Intermunicipal
G. Special District
H. Independent School Dist.
I. State Controlled Institution of Higher Learning
J. Private University
K. Indian Tribe
L. Individual
M. Profit Organization
N. Other (Specify): _____

8. TYPE OF APPLICATION: ☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es): ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other (specify): _____

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER:

☐☐-☐☐☐

TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT (cities, counties, States, etc.):

13. PROPOSED PROJECT: Start Date	Ending Date	14. CONGRESSIONAL DISTRICTS OF: a. Applicant	b. Project

15. ESTIMATED FUNDING:		
a. Federal	$	.00
b. Applicant	$	.00
c. State	$	.00
d. Local	$	.00
e. Other	$	.00
f. Program Income	$	.00
g. TOTAL	$	.00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON

DATE _____

b. NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372

☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT. THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED.

a. Typed Name of Authorized Representative	b. Title	c. Telephone number
d. Signature of Authorized Representative		e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

INSTRUCTIONS FOR THE SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which ave established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item:	Entry:
1.	Self-explanatory.
2.	Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).
3.	State use only (if applicable)
4.	If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5.	Legal name of applicant, name of primary organizational unit which will undertake this assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6.	Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7.	Enter the appropriate letter in the space provided.
8.	Check appropriate box and enter appropriate letter(s) in the space(s) provided. - "New" means a new assistance award. - "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date. - "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9.	Name of Federal agency from which assistance is being requested with this application.
10.	Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is required.
11.	Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of the project.
12.	List only the largest political entities affected (e.g., State, counties, cities.
13.	Self-explanatory.
14.	List the applicant's Congressional District and any District(s) affected by the program or project.
15.	Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate only the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16.	Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17.	This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18.	To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

PART II - BUDGET INFORMATION

SECTION A - Budget Summary by Categories

	(A)	(B)	(C)
1. Personnel			
2. Fringe Benefits (Rate %)			
3. Travel			
4. Equipment			
5. Supplies			
6. Contractual			
7. Other			
8. Total, Direct Cost (Lines 1 through 7)			
9. Indirect Cost (Rate %)			
10. Training Cost/Stipends			
11. TOTAL Funds Requested (Lines 8 through 10)			

SECTION B - Cost Sharing/ Match Summary (if appropriate)

	(A)	(B)	(C)
1. Cash Contribution			
2. In-Kind Contribution			
3. TOTAL Cost Sharing / Match (Rate %)			

NOTE: Use Column A to record funds requested for the initial period of performance (i.e. 12 months, 18 months, etc.); Column B to record changes to Column A (i.e. requests for additional funds or line item changes; and Column C to record the totals (A plus B).

INSTRUCTIONS FOR PART II - BUDGET INFORMATION

SECTION A - Budget Summary by Categories

1. **Personnel:** Show salaries to be paid for project personnel.

2. **Fringe Benefits:** Indicate the rate and amount of fringe benefits.

3. **Travel:** Indicate the amount requested for staff travel. Include funds to cover at least one trip to Washington, DC for project director or designee.

4. **Equipment:** Indicate the cost of non-expendable personal property that has a useful life of more than one year with a per unit cost of $5,000 or more.

5. **Supplies:** Include the cost of consumable supplies and materials to be used during the project period.

6. **Contractual:** Show the amount to be used for (1) procurement contracts (except those which belong on other lines such as supplies and equipment); and (2) sub-contracts/grants.

7. **Other:** Indicate all direct costs not clearly covered by lines 1 through 6 above, including consultants.

8. **Total, Direct Costs:** Add lines 1 through 7.

9. **Indirect Costs:** Indicate the rate and amount of indirect costs. Please include a copy of your negotiated Indirect Cost Agreement.

10. **Training /Stipend Cost:** (If allowable)

11. **Total Federal funds Requested:** Show total of lines 8 through 10.

SECTION B - Cost Sharing/Matching Summary

Indicate the actual rate and amount of cost sharing/matching when there is a cost sharing/matching requirement. Also include percentage of total project cost and indicate source of cost sharing/matching funds, i.e. other Federal source or other Non-Federal source.

NOTE:

PLEASE INCLUDE A DETAILED COST ANALYSIS OF EACH LINE ITEM.

Application Checklist

Please complete and submit this checklist with your application. It should be used as a quick reference of key provisions of the Solicitation and whether or not these provisions have been included, complied with or addressed. This document is not intended to be comprehensive or address every aspect of the solicitation.

Organization Applying_____.

Contact Person_____.

Phone Number_____.

Date submitted_____.

Application Process

___Application is 20 pages or less.
___Attachments limited to 10 or fewer.
___An original and three copies submitted.
___SF424 (Appendix A) included.
___SF424a (Appendix B) included.
___Project Line-Item Budget Estimates (Appendix C) included.
___Checklist (Attachment D) included.
___Timeline included.
___Executive Summary of two pages or less included.

Financial and Technical Provisions

___Target Population identified, with supportive documentation.
___Underrepresented subgroup identified and services addressed.
___Number and type of targeted jobs, applicable skill sets and certifications/standards identified.
___Sources and credibility of labor market/job data cited.
___Approach to identifying and recruiting eligible participants included.
___Eligibility determination approach discussed.
___Process in selecting eligible participants discussed.
___Sequence of services and activities to be provided discussed.
___Justification and qualifications for each training provider (including instructors) discussed.
___Cost/Price analysis for use of specified training included.
___Relocation Assistance, if used, addressed.
___Flowchart of participant services included.
___Applicants' prior experience with dislocated workers addressed.

___All project outcomes and measures of success specified in Part III D addressed.
___Role and involvement in the project of employers experiencing skill shortages discussed and documented.

___Role of the local JTPA Substate Grantee for dislocated worker programs and One-Stop/Career Center system discussed and documented.
___Method of assessing and reporting continuation and impact of coordination included.
___Specific skill standards and certification for targeted occupations identified and discussed.
___Labor organization consultation, where applicable, discussed and documented.
___Coordination with other entities discussed.
___Innovation and impact of the project discussed.
___Management structure and staffing plan addressed and method of continuous oversight described.
___Organizational chart and relationships included.
___Mechanism to ensure financial accountability discussed.
___Basis for applicant*s administrative authority addressed.
___Applicant's Method/System to collect, track, manage, report, and utilize data on the project's progress and performance addressed.
___Ability to collect and submit SPIR data indicated.
___Benchmarks to indicate planned implementation schedule included.
___Method to obtain feedback from participants and employers discussed.
___Grievance procedure addressed.
___Past experience in managing grant funded projects discussed.
___Project's sustainability addressed.

[FR Doc. 99–7831 Filed 3–31–99; 8:45 am]
BILLING CODE 4510–30–C

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–440]

FirstEnergy Nuclear Operating Company (Perry Nuclear Power Plant, Unit 1); Exemption

I

The FirstEnergy Nuclear Operating Company (FENOC, the licensee) is the holder of Facility Operating License No. NPF–58, which authorizes operation of the Perry Nuclear Power Plant, Unit 1. The operating license states, among other things, that the licensee is subject to all rules, regulations, and orders of the U.S. Nuclear Regulatory Commission (the Commission) now or hereafter in effect.

The Perry Nuclear Power Plant is a boiling-water reactor facility located at the licensee's site in Lake County, Ohio.

II

By letter dated December 3, 1998, FENOC submitted an exemption request to the control room dose acceptance criteria of 10 CFR part 50, Appendix A, General Design Criterion (GDC) 19. The exemption request would permit use of a total effective dose equivalent (TEDE) acceptance criterion of 5-rem in place of the "5 rem whole body, or its equivalent to any part of the body" dose acceptance criterion that is currently specified in GDC 19.

The NRC has established control room dose acceptance criteria in 10 CFR part 50, Appendix A, GDC 19, for all light-water power reactors. GDC 19 requires, in part, that "Adequate radiation protection shall be provided to permit access and occupancy of the control room under accident conditions without personnel receiving radiation exposures in excess of 5 rem whole body, or its equivalent to any part of the body, for the duration of the accident." As described in SECY–96–242, "Use of the NUREG–1465 Source Term at Operating Reactors," the staff informed the Commission of its approach to allow the use of the revised accident source term described in NUREG–1465, "Accident Source Terms for Light-Water Nuclear Power Plants," at operating plants. In the SECY paper, the staff described its plans to review plant applications implementing this source term and indicated that the TEDE methodology would be incorporated in these reviews. The Commission approved these plans and directed the staff to commence rulemaking and requested the use of the TEDE methodology in the implementation of the revised accident source term. The TEDE guidelines, which are needed to support revised accident source term applications, are not currently provided in regulations governing operating reactors.

Pursuant to 10 CFR 50.12, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR part 50 when (1) the exemptions are authorized by law, will not present an undue risk to public health or safety, and are consistent with the common defense and security, and (2) when special circumstances are present. Special circumstances are present whenever, according to 10 CFR 50.12(a)(2)(ii), "Application of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule." The NRC staff examined the licensee's rationale to support the exemption request and concluded that the use of the TEDE acceptance criteria for the control room would meet the underlying intent of the regulations. The licensee's request for the exemption under the special circumstances of 10 CFR 50.12(a)(2)(ii) was found to be appropriate. Application of the control room dose acceptance criteria of GDC 19 is not necessary to achieve the underlying purpose of the rule because, as stated in the staff safety evaluation, dated March 26, 1999, the staff considers the TEDE methodology as an acceptable means of meeting the current regulatory requirement. Therefore, the staff has concluded that an exemption to the requirements of 10 CFR part 50, Appendix A, GDC 19, should be granted to allow FENOC to adopt the TEDE methodology for the purpose of implementing the revised accident source term of NUREG–1465.

IV

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a), an exemption is authorized by law, will not endanger life or property or common defense and security, and is otherwise in the public interest. Therefore, the Commission hereby grants an exemption from the requirements of 10 CFR part 50, Appendix A, GDC 19 to allow FENOC to adopt the TEDE methodology for the purpose of implementing the revised accident source term of NUREG–1465.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not have a significant effect on the quality of the human environment (64 FR 4906).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 26th day of March 1999.

For the Nuclear Regulatory Commission.

Samuel J. Collins,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 99–8027 Filed 3–31–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 70–3073; License No. SNM–1999]

Kerr-McGee Corporation—Environmental Assessment, Finding of No Significant Impact, and Notice of Opportunity for Hearing—Release of Portion of Cushing Refinery Site for Unrestricted Use

The U.S. Nuclear Regulatory Commission (NRC) is considering the Kerr-McGee Corporation's (Kerr-McGee or the licensee) request to have property released, for unrestricted use, from the Cushing Refinery Site (Cushing) License SNM–1999. This action is taken in response to Kerr-McGee's license amendment requests, dated August 30, 1996, and October 24, 1996, to release the four unaffected areas and the haul road corridor area for unrestricted use and to remove the areas from the license. These earlier requests were revised by the licensee's letter dated November 6, 1998. In that letter, the licensee requested that only Unaffected Area 1, the portion of Unaffected Area 2 south of Skull Creek, Unaffected Area 3, Unaffected area 4, and the portion of the haul road corridor area south of Skull Creek and partially surrounded by Unaffected Areas 2, 3, and 4 (hereafter referred to as requested released areas (RRA)) be released for unrestricted use. The boundaries of the licensed areas excluding the RRA are shown in Figure 1, "Cushing Site Map Showing Licensed Site Area," of the November 6, 1998, letter.

Introduction

On April 6, 1993, NRC issued Materials License SNM–1999 authorizing possession of contaminated soil, sludge, sediment, trash, building rubble, and any other contaminated material, at the licensee's Cushing site. The site contains four large areas, designated as the four unaffected areas, that were used for oil refining and storage during the years that nuclear processing and disposal took place. The haul road corridor area is located on portions of the site that were used for petroleum refining during the years that nuclear material processing was

performed. The haul roads located within the haul road corridor area are intended for transporting waste material during site remediation.

The licensee initially requested that the four unaffected areas and the haul road corridor be removed from the license and released for unrestricted use. The licensee revised its earlier requests to limit the areas to be removed from the license and released for unrestricted use to the RRA.

Proposed Action

The proposed action is the release for unrestricted use, and the removal from License SNM–1999, the RRA. The proposed boundary of the licensed areas excluding the RRA is shown in the licensee's letter dated November 6, 1998, Figure 1, "Cushing Site Map Showing Licensed Site Area."

The Need for Proposed Action

The licensee seeks to release property that is currently under license for unrestricted use. This action is requested to remove the current limitations on the future use of the property.

Alternatives to Proposed Action

The only alternative to the proposed action is to not release this area for unrestricted use and keep the area under license until all site radiological remediation is completed and the Cushing license is terminated. The environmental benefit of maintaining an NRC license for this portion of the Cushing Refinery Site is negligible, but would reduce options for future use of the property.

Environmental Justice

There are no environmental justice issues associated with this proposed action.

Environmental Impact of Proposed Action

An unaffected area, as defined in NUREG/CR–5849, "Manual for Conducting Radiological Surveys in Support of License Termination," is an area not expected to contain residual radioactivity from licensed operations. The unrestricted use guidelines for enriched uranium and natural thorium are the Option 1 values in the 1981 Branch Technical Position on "Disposal or Onsite Storage of Thorium or Uranium Wastes From Past Operations" (46 *FR* 52061). The Option 1 guidelines are 30 picoCuries per gram (pCi/g) for enriched uranium and 10 pCi/g for natural thorium.

The licensee performed final status surveys in the four unaffected areas and submitted the results to NRC in the "Final Radiation Survey of Four Unaffected Areas of the Cushing Refinery Site," dated April 17, 1995. Gamma radiation scans, gamma exposure rate measurements, soil radioactivity concentration measurements, and surface radioactivity survey were performed in each of the four unaffected areas. As a result of the surveys and analysis, one area of about one meter in diameter on the surface of the ground was found to be contaminated with Th-232. This spot was designated as a radioactive materials area and was removed from the areas that the licensee considered part of the four unaffected areas. The licensee's survey report provided data that indicated that the four unaffected areas meet NRC's guidelines for unrestricted use.

The licensee performed final status surveys in the haul road corridor area and submitted the results to NRC in the "Final Radiation Survey of Haul Road Corridor," dated May 30, 1996. The results of the exposure rate surveys of the haul road corridor area indicated that no location was more than 10 micoRoentgen per hour (μR/hr) above background. Gamma scans located areas of elevated activity. Biased soil samples were collected from these areas and analyzed using gamma spectroscopy. As a result of the analysis, two areas were designated as radioactive materials areas and were removed from the areas that the licensee considered part of the haul road corridor area. This licensee survey report provided data that indicated that the haul road corridor area meets NRC's guidelines for unrestricted use.

At the request of NRC, its contractor, the Oak Ridge Institute for Science and Education (ORISE), performed a confirmatory survey of the four unaffected areas during the period of September 11 through 13, 1995, and a confirmatory survey of the haul road corridor area during the period of August 26 through 29, 1996. The results of the ORISE confirmatory surveys were provided to NRC in "Confirmatory Survey for the Four Unaffected Areas of the Cushing Refinery Site," dated May 1996, and "Confirmatory Survey for the Haul Road Corridor at the Oklahoma Refinery Site," dated December 1996.

For both the four unaffected areas and the haul road corridor area, ORISE performed scan surveys of 50 to 100 percent of the surface area of each selected survey unit. ORISE also performed exposure rate measurements for at least five systematic locations within each survey unit. In addition, ORISE collected 20 soil samples from the four unaffected areas, and collected more than 60 surface soil samples and three subsurface soil samples from the haul road corridor area.

Concentrations of radionuclides in the soil samples from the four unaffected areas survey units are as follows: less than 0.1 to 0.5 pCi/g for U-235; 0.3 to 3.0 pCi/g for U-238; 0.6 to 9.0 pCi/g for Th-228; and less than 0.8 to 10.0 pCi/g for Th-232. One small area of thorium, in excess of the guidelines (9.0 pCi/g of Th-228 and 10.0 pCi/g of Th-232), is in unaffected area number 2. This area of elevated thorium levels, surveyed by ORISE, is the same area that the licensee designated as a radioactive materials area (about 400 m^2) after it performed its final radiation survey. Thus, this small radioactive materials area is not part of the licensee's request for unrestricted release. Of the areas that ORISE surveyed that were part of the licensee's request for unrestricted release, the concentrations of radionuclides in the soil samples are as follows: 0.6 to 3.8 pCi/g for Th-228; and less than 0.8 to 3.0 pCi/g for Th-232. The soil samples are within the Option 1 soil guideline for enriched uranium and natural thorium. Further, the portion of the haul road corridor that is being considered for release from the license would service only equipment transportation, at most, Option 1 material.

Concentrations of radionuclides in the soil samples from the haul road corridor area survey units are as follows: less than 0.8 pCi/g for U-235; less than 2.9 pCi/g for U-238; 0.5 to 2.9 pCi/g for Th-228; and less than 0.4 to 2.8 pCi/g for Th-232. For comparison purposes, radionuclide concentrations in background soil samples are as follows: less than 0.1 pCi/g for U-235; 1.0 to 1.6 pCi/g for U-238; 0.5 to 1.0 pCi/g for Th-228; and 0.6 to 0.9 pCi/g for Th-232. The soil samples yielded results indicating only background or slightly above background concentrations of uranium and thorium. The soil samples are within the Option 1 soil guideline for enriched uranium and natural thorium.

NRC considered the potential for contamination of areas within the haul road corridor once NRC authorized the licensee to conduct activities within the haul road corridor without implementation of the Cushing Radiation Safety procedures related to training.[1] The staff agreed with the licensee that the Cushing Radiation Safety Program which requires all material and equipment be surveyed before leaving a "radioactive materials area" would provide reasonable assurance that the haul road corridor

[1] Letter to Stuart [sic] Brown, NRC, from Jeff Lux, Kerr McGee Corporation, dated August 30, 1996.

area would not become contaminated as a result of decommissioning activity.[2]

Groundwater under the Cushing site can be found in one of three water-bearing zones. The water-bearing zones are the shallow water-bearing zone (unconsolidated soil and the upper portion of the Vanoss Group), the lower portion of the Vanoss Group, and Vamoosa-Ada aquifer. The Vamoosa-Ada aquifer is the regional groundwater aquifer. The licensee notes that it appears that there is not a significant groundwater flow between the shallow water-bearing zone and the lower portion of the Vanoss Group. Further, the licensee notes that the Vamoosa-Ada aquifer is isolated from the uppermost water-bearing zone by low-permeability strata within the Vanoss. Thus, the Vamoosa-Ada aquifer is unaffected by surface activities. The licensee based this finding on an evaluation of environmental tritium.

The State of Oklahoma, Department of Environmental Quality (DEQ)[3] found the following: (1) The shallow groundwater unit yields low quantities of poor quality water; (2) it is highly unlikely that future residential or commercial drinking water wells will be established from the shallow groundwater at this site; and (3) no known drinking water wells are screened in the Vanoss within a one-mile radius of the site. Further, DEQ stated that the Vanoss should not be considered a viable drinking water source for the area and that DEQ would consider water quality standards other than maximum contamination levels as set by the U.S. Environmental Protection Agency (EPA) as appropriate for the shallow groundwater at this site. Further, based on EPA's guidance[4] the Vanoss groundwater would be classified as a Class III—Groundwater Not a Potential Source of Drinking Water and of Limited Beneficial Use.

The staff has reviewed the site potentiometeric surface map of the upper zone[5] and found that all portions of the RRA are up-gradient of any known significant sources of contamination. Accordingly, it is very unlikely that the groundwater in these areas could have been contaminated. The assumption is supported by the results of the licensee's groundwater monitoring of several wells located either in the four unaffected areas or just down-gradient of these areas. The licensee provided these sampling results in its letter dated November 6, 1998. Based on its review of that data, the staff found no indication of groundwater contamination.

The Other Industrial Waste (OIW) disposal cell is located within the RRA. Material from the remediation of Waste Acid Sludge Pit 4 (Pit 4) that meets NRC's Option 1 criteria for unrestricted release will be disposed of in the OIW. NRC reviewed this disposal activity as part of its review of the Pit 4 remediation plan. On September 3, 1998, NRC approved the Pit 4 remediation plan, License Amendment No. 8.

Finally, a ditch in site grid blocks 132, 133, and 140 was filled with rubble from refinery demolition. Also, placed into this ditch were concrete blocks from the thorium processing building slab. The licensee in its letter dated November 13, 1998, provided the final survey data of these concrete slab blocks. Based on its review of these data NRC found that the concrete slab blocks met NRC's criteria for unrestricted release.[6]

ORISE's confirmatory survey results support the licensee's position that the four unaffected areas and the haul road corridor area meet NRC's unrestricted use criteria. Further, the licensee's groundwater monitoring sampling program results demonstrate that the groundwater under the RRA is not contaminated. Therefore, NRC finds that because the NRC's unrestricted release criteria have been met for these areas, there is no significant impact on the environment, and this portion of the property can be released for unrestricted use.

Other Agencies or Persons Consulted

This environmental assessment was prepared entirely by NRC. No other sources were used beyond those referenced in this environmental assessment. NRC provided a draft of this environmental assessment to DEQ for review. DEQ had no comments or suggestions on this environmental assessment.[7]

Conclusions

NRC finds that because the Commission's unrestricted release criteria have been met, there is no significant impact on the environment, and the property can be released for unrestricted use.

Finding of No Significant Impact

The Commission has prepared an Environmental Assessment related to the proposed unrestricted release, and removal from License SNM–1999, of the RRA on the Cushing Refinery Site, in Cushing Oklahoma. On the basis of the Environmental Assessment, the Commission has concluded that this licensing action would not significantly effect the quality of human environment and has determined not to prepare an environmental impact statement for this proposed action.

The above documents related to this proposed action are available for public inspection and copying, at the Commission's Public Document Room in the Gelman Building, 2120 L Street NW, Washington, DC.

Opportunity for a Hearing

NRC hereby provides notice that this is a proceeding on an application for a license amendment within the scope of Subpart L, Informal Hearing Procedures for Adjudication in Materials Licensing Proceedings, of NRC's rules and practice for licensing proceedings, of NRC's rules and practice for domestic licensing proceedings in 10 Code of Federal Regulations (CFR) part 2. Pursuant to § 2.1205(a), any person whose interest may be affected by this proceeding may file a request for a hearing in accordance with § 2.1205(d). A request for a hearing must be filed within thirty (30) days of the date of publication of this **Federal Register** notice.

The request for a hearing must be filed with the Office of the Secretary either:

1. By delivery to Docketing and Service Branch of the Office of the Secretary at One White Flint North, 11555 Rockville Pike, Rockville, MD 20852–2738; or

2. By mail or telegram addressed to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Attention: Docketing and Service Branch.

In addition to meeting other applicable requirements of 10 CFR Part 2 of the NRC's regulations, a request for a hearing by a person other than an applicant must describe in detail:

The interest of the requestor in the proceeding:

1. How that interest may be affected by the results of the proceeding,

---

[2] Letter to Jeff Lux, Kerr McGee Corporation, from Stewart Brown, NRC, dated October 22, 1998.

[3] Letter to Jeff Lux, Kerr McGee Corporation, from Darrell Shults, DEQ, dated September 19, 1997.

[4] "Guidelines for Ground-Water Classification Under the EPA Ground-Water Protection Strategy," Final Draft, dated November 1986, Office of Water, EPA.

[5] Figure 2.5, "Potentiometeric Surface Map of the Upper Zone," Kerr-McGee Corporation's Site Decommissioning Plan Cushing, Oklahoma, dated August 1998.

[6] U.S. Nuclear Regulatory Commission, "Guidelines for Decontamination of Facilities and Equipment Prior to Release for Unrestricted Use or Termination of License for Byproduct, Source, or Special Nuclear Material," dated August 1987.

[7] Letter to Stewart Brown, NRC, from H. A. Caves, DEQ, dated March 2, 1999.

including the reasons why the requestor should be permitted a hearing with particular reference to factors set out in § 2.1205(h);

2. The requestor's areas of concern about the licensing activity that is the subject matter of the proceeding; and

3. The circumstances establishing that the request for a hearing is timely in accordance with § 2.1205(d).

In accordance with 10 CFR 1205(f), each request for a hearing must also be served, by delivering it personally or by mail, to:

1. The applicant, Kerr-McGee Corporation, Kerr-McGee Center, P.O. Box 25861, Oklahoma City, OK 73125, Attention: Mr. Jeff Lux, and

2. The NRC staff, by delivery to the Executive Director for Operations, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852, or by mail, addressed to the Executive Director for Operations, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Dated at Rockville, Maryland, this 26th day of March 1999.

For the U.S. Nuclear Regulatory Commission.

John W.N. Hickey,

Chief, Low-Level Waste and Decommissioning Projects Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 99–8028 Filed 3–31–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Meeting Notice

In accordance with the purposes of Sections 29 and 182b. of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the Advisory Committee on Reactor Safeguards will hold a meeting on April 7–10, 1999, in Conference Room T–2B3, 11545 Rockville Pike, Rockville, Maryland. The date of this meeting was previously published in the **Federal Register** on Wednesday, November 18, 1998 (63 FR 64105).

Wednesday, April 7, 1999

1:00 p.m.–1:15 p.m.: Opening Remarks by the ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding the conduct of the meeting.

1:15 p.m.–2:45 p.m.: Draft Commission Paper on Proposed Improvements to the Generic Communications Process (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding the draft Commission Paper on proposed improvements to the Generic Communications Process.

3:00 p.m.–4:30 p.m.: Steam Generator Tube and Reactor Pressure Vessel Integrity Issues (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding the status of ongoing regulatory activities associated with steam generator tube integrity; the staff's draft safety evaluation of Boiling Water Reactor Vessel and Internals Project-14 (BWRVIP–14), "Evaluation of Crack Growth in BWR Stainless Steel Reactor Pressure Vessel Internals;" suggested changes to 10 CFR 50.61, pressurized thermal shock rule; and related matters.

4:45 p.m.–7:15 p.m.: Preparation of ACRS Reports and the ACRS Bylaws (Open)—The Committee will discuss proposed ACRS reports, including a proposed report on the NRC Safety Research Program. Also, the Committee will discuss proposed revisions to the ACRS Bylaws.

Thursday, April 8, 1999

8:30 a.m.–8:35 a.m.: Opening Remarks by the ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding the conduct of the meeting.

8:35 a.m.–10:00 a.m.: Insights Gained from the Risk-Informed Pilot Applications (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff and the Nuclear Energy Institute (NEI) regarding the insights gained from the risk-informed pilot applications, including those from the pilots for inservice inspection, extension of allowed outage times, and online maintenance.

10:15 a.m.–11:45 a.m.: Proposed Final Revision to 10 CFR 50.65(a) of the Maintenance Rule and an Associated Draft Regulatory Guide (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff and NEI regarding the proposed final revision to 10 CFR 50.65(a) of the Maintenance Rule that would require licensees to perform safety assessments prior to performing maintenance activities, and an associated draft Regulatory Guide.

12:45 p.m.–2:15 p.m.: Proposed Approach for Revising the Commission's Safety Goal Policy Statement (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding the staff's proposed approach for revising the Commission's Safety Goal Policy Statement.

2:30 p.m.–6:15 p.m.: Preparation of ACRS Reports (Open)—The Committee will discuss proposed ACRS reports.

Friday, April 9, 1999

8:30 a.m.–8:35 a.m.: Opening Remarks by the ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding the conduct of the meeting.

8:35 a.m.–10:00 a.m.: Preparation of ACRS Reports (Open)—The Committee will continue its discussion of proposed ACRS reports.

10:00 a.m.–10:30 a.m.: Subcommittee Report (Open)—The Committee will hear a report by the Chairman of the Thermal-Hydraulic Phenomena Subcommittee regarding matters discussed during the March 23, 1999 meeting.

10:45 a.m.–11:45 a.m.: Impact of the Use of High Burnup or Mixed Oxide Fuel on the Revised Source Term (Open)—The Committee will discuss the proposed ACRS response to a Commission request, included in the March 5, 1999 Staff Requirements Memorandum (SRM), that the ACRS consider the impact of the use of high burnup or mixed oxide fuel on the revised source term.

1:00 p.m.—2:00 p.m.: Relationship and Balance Between PRA Results and Defense-In-Depth (Open)—The Committee will discuss the proposed response to a Commission request, included in the March 5, 1999 SRM, that the ACRS consider the appropriate relationship and balance between PRA results and defense-in-depth in the context of risk-informed regulation.

2:00 p.m.—2:15 p.m.: Reconciliation of ACRS Comments and Recommendations (Open)—The Committee will discuss the responses from the NRC Executive Director for Operations (EDO) to comments and recommendations included in recent ACRS reports and letters. The EDO responses are expected to be provided to the ACRS prior to the meeting.

2:15 p.m.—3:00 p.m.: Report of the Planning and Procedures Subcommittee (Open/Closed)—The Committee will hear a report of the Planning and Procedures Subcommittee on matters related to the conduct of ACRS business, and organizational and personnel matters relating to the ACRS. [Note: A portion of this session may be closed to discuss organizational and personnel matters that relate solely to the internal personnel rules and practices

of this Advisory Committee, and information the release of which would constitute a clearly unwarranted invasion of personal privacy.]

3:15 p.m.—4:00 p.m.: Future ACRS Activities (Open)—The Committee will discuss the recommendations of the Planning and Procedures Subcommittee regarding items proposed for consideration by the full Committee during future meetings.

4:00 p.m.—7:00 p.m.: Preparation of ACRS Reports (Open)—The Committee will continue its discussion of proposed ACRS reports.

Saturday, April 10, 1999

8:30 a.m.–2:00 p.m.: Preparation of ACRS Reports (Open)—The Committee will continue its discussion of proposed ACRS reports.

2:00 p.m.—2:30 p.m.: Miscellaneous (Open)—The Committee will discuss matters related to the conduct of Committee activities and matters and specific issues that were not completed during previous meetings, as time and availability of information permit.

Procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on September 29, 1998 (63 FR 51968). In accordance with these procedures, oral or written views may be presented by members of the public, including representatives of the nuclear industry. Electronic recordings will be permitted only during the open portions of the meeting and questions may be asked only by members of the Committee, its consultants, and staff. Persons desiring to make oral statements should notify Dr. Richard P. Savio, Associate Director for Technical Support, five days before the meeting, if possible, so that appropriate arrangements can be made to allow necessary time during the meeting for such statements. Use of still, motion picture, and television cameras during this meeting may be limited to selected portions of the meeting as determined by the Chairman. Information regarding the time to be set aside for this purpose may be obtained by contacting the Associate Director for Technical Support prior to the meeting. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the Associate Director for Technical Support if such rescheduling would result in major inconvenience.

In accordance with Subsection 10(d) Pub. L. 92–463, I have determined that it is necessary to close portions of this meeting noted above to discuss matters that relate solely to the internal personnel rules and practices of this Advisory Committee per 5 U.S.C. 552b(c)(2), to discuss information provided in confidence by a foreign source per 5 U.S.C. 552b(c(4), and to discuss information the release of which would constitute a clearly unwarranted invasion of personal privacy per 5 U.S.C. 552b(c)(6).

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor, can be obtained by contacting Dr. Richard P. Savio, Associate Director for Technical Support (telephone 301/415–7363), between 7:30 a.m. and 4:15 p.m. EST.

ACRS meeting agenda, meeting transcripts, and letter reports are available for downloading or viewing on the internet at http://www.nrc.gov/ACRSACNW.

Videoteleconferencing service is available for observing open sessions of ACRS meetings. Those wishing to use this service for observing ACRS meetings should contact Mr. Theron Brown, ACRS Audio Visual Technician (301–415–8066), between 7:30 a.m. and 3:45 p.m. EST at least 10 days before the meeting to ensure the availability of this service. Individuals or organizations requesting this service will be responsible for telephone line charges and for providing the equipment facilities that they use to establish the videoteleconferencing link. The availability of videoteleconferencing services is not guaranteed.

Dated: March 25, 1999.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 99–7844 Filed 3–31–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–271]

Vermont Yankee Nuclear Power Corporation; Correction Notice

On February 25, 1999, the NRC published (64 FR 9360) "issuance of Director's Decision Under 10 CFR 2.206." The text of the actual Director's Decision should have followed the notice but did not. The text of "Director's Decision Pursuant to 10 CFR 2.206" (DD–99–04) follows this notice.

Dated at Rockville, Maryland this 25th day of March 1999.

For the Nuclear Regulatory Commission.

Elinor G. Adensam,

Director, Project Directorate 1–2, Division of Licensing Project Management Office of Nuclear Reactor Regulation.

Office of Nuclear Reactor Regulation, Samuel J. Collins, Director

In the Matter of Vermont Yankee Nuclear Power Corporation (Vermont Yankee Nuclear Power Station)

Docket No. 50–271

License No. DPR–28

(10 CFR 2.206)

Director's Decision Pursuant to 10 CFR 2.206

I. Introduction

By a Petition submitted pursuant to 10 CFR 2.206 on April 9, 1998, Michael J. Daley, on behalf of the New England Coalition on Nuclear Pollution, Inc., (Petitioner), requested that the U.S. Nuclear Regulatory Commission (NRC) take immediate action with regard to the Vermont Yankee Nuclear Power Station (VYNPS) operated by the Vermont Yankee Nuclear Power Corporation (licensee or Vermont Yankee).

The Petitioner requested that the NRC issue an order requiring that the licensee's administrative limits, which were in effect at the time and precluded VYNPS from operating with a torus water temperature above 80 °F or with a service water injection temperature greater than 50 °F, shall remain in force until certain conditions are met. The conditions listed include a complete reconstitution of the licensing basis for the maximum torus water temperature, submittal to the NRC of a technical specifications (TSs) amendment request establishing the correct maximum torus water temperature, and completion of NRC's review of the amendment request.

On May 13, 1998, the Director of the Office of Nuclear Reactor Regulation informed the Petitioner that he was denying the request for immediate action at VNYPS, that the Petition was being evaluated under 10 CFR 2.206 of the Commission's regulations, and that action would be taken in a reasonable time.

The NRC staff's review of the Petition is now complete. For the reasons set forth below, the Petitioner's remaining requests have been approximately addressed. The conditions associated with the Petitioner's request have been completed, including establishment of the correct licensing basis for the maximum torus temperature, submittal of a TS amendment request establishing the correct maximum torus water temperature limit, and completion of the NRC's review of the amendment request.

II. Background

In support of these requests, the Petitioner raised concerns about the licensee being unable to demonstrate an ability to either justify the operational limits for the maximum torus water temperature or to maintain operations within existing administrative limits (torus water temperature is critical to the proper functioning of the containment). The Petitioner asserted that since 1994, events have caused the licensee to question VYNPS's maximum torus water temperature limits four times, leading to the self-imposed administrative limits previously noted. The Petitioner stated that the NRC must move from a "wait and see" posture to active intervention, with immediate imposition of the order recommended by the Petitioner as a first step.

The staff notes that the limits proposed by the Petitioner were in effect at VYNPS on an interim basis while the licensee determined the correct maximum torus water temperature limits since it was determined that the TS limit of 100 °F was incorrect. The licensee subsequently completed the analysis and determined that the correct limit for the maximum torus water temperature is 90 °F. This administrative limit was then established at 90 °F and a TS amendment request was submitted to establish this as the maximum torus water temperature.

III. Discussion

As indicated in the May 13 letter, Petitioner's request for immediate action was denied. Although the NRC identified concerns regarding the licensee's handling of the torus water temperature issue in the past, as evidenced by the NRC's enforcement action (Notice of Violation and Proposed Imposition of Civil Penalty of $55,000 dated April 14, 1998), there was insufficient basis for concluding that the limits proposed by the Petitioner must be imposed on the licensee while the NRC reviewed the associated TS amendment request. The NRC took several actions in this area, including performing a design inspection and conducting several meetings with the licensee on this issue. The NRC concluded that the licensee's actions to resolve this issue were acceptable.

In May and June 1997, the NRC performed a design inspection to evaluate the capability of selected systems to perform their intended safety function as described in design-basis documentation. Also, the NRC assessed the licensee's adherence to its design and licensing basis for selected systems, and the consistency of the as-built configuration and system operations with the final safety analysis report. The team concluded that although some concerns were identified, the systems evaluated were capable of performing their intended functions and the design engineers had excellent knowledge and capabilities. The report findings were documented in NRC Inspection Report Number 50–271/97–201, which was provided with our May 13 letter to the Petitioner.

One of the concerns identified during the inspection was associated with the licensee's previous handling of the torus water temperature issue and resulted in enforcement action being taken on April 14, 1998, because of a failure to (1) properly translate the design basis of the plant into specifications, procedures, and instructions and (2) promptly correct design deficiencies once they were identified. However, credit was warranted for corrective actions because NRC considered the licensee's actions, once the violations were identified, to be prompt and comprehensive.

At the NRC's request, several public meetings were conducted to discuss issues, including the licensee's analysis to determine the appropriate torus water temperature limit. As a result of discussions with the licensee during public meetings on March 5, March 24, and April 7, 1998, the NRC concluded that the licensee was taking the appropriate actions to resolve this issue and to ensure that the appropriate maximum torus water temperature was specified in the TS and administratively controlled while the TS amendment was being reviewed by the NRC. During the April 7 meeting, the licensee committed to submit the TS amendment request to limit the torus water temperature to 90 °F, which is an input value to the containment analysis calculations, before restart. The calculations supporting the amendment request were subjected to the licensee's formal quality process for assuring accuracy and completeness and provided additional assurance that the 90 °F limit is correct. The more restrictive administrative limits (80 °F torus water temperature and 50 °F service water injection water temperature) were put in place by the licensee, while the detailed analysis was performed to verify that 90 °F was the correct limit.

The licensee proposed a TS amendment to establish a maximum torus water temperature limit of 90 °F by letter dated May 8, 1998, as supplemented on July 10 and October 2, 1998. The NRC reviewed the licensee's analysis and concluded, for the reasons specified in the safety evaluation, that the appropriate maximum torus water temperature is 90 °F. Therefore, imposition of the more restrictive administrative limits specified in the Petition are not necessary.

IV. Conclusion

The NRC staff has evaluated the information provided by the Petitioner as its basis for the actions requested. As indicated in the May 13 letter to the Petitioner, the NRC has concluded that issuing an immediate order, as requested, was unnecessary since the licensee took appropriate actions to determine the proper limit on torus water temperature, sought a TS amendment to impose the correct torus water temperature, and administratively implemented the limit while the NRC reviewed the analysis in support of the TS amendment. Although the NRC denied Petitioner's request to take immediate action to issue an order imposing certain limits on VYNPS, the conditions associated with the request have been completed, including establishment of the correct licensing basis for the maximum torus temperature, submittal of a TS amendment request establishing the correct maximum torus water temperature limit, and completion of the NRC's review of the amendment request.

Since the conditions listed in the Petition have been met and the NRC had previously addressed Petitioner's immediate request for imposition of an order, all actions associated with the request are complete. For the reasons contained in the safety evaluation, we have concluded that the appropriate limit for maximum torus water temperature is 90°F, making the limits requested in the Petition unnecessary. Accordingly, the staff has addressed the issues raised by the Petitioner and has completed its actions relating to the Petition.

As provided in 10 CFR 2.206(c), a copy of this Decision will be filed with the Secretary of the Commission for the Commission's review. This Decision will constitute the final action of the Commission 25 days after issuance unless the Commission, on its own motion, institutes review of the Decision within that time.

Dated at Rockville, Maryland, this 10th day of February 1999.

For the Nuclear Regulatory Commission.

Samuel J. Collins,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 99–8029 Filed 3–31–99; 8:45 am]

BILLING CODE 7590–01–M

NUCLEAR REGULATORY COMMISSION

State of Ohio: NRC Staff Assessment of a Proposed Agreement Between the Nuclear Regulatory Commission and the State of Ohio

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of a proposed Agreement with the State of Ohio.

SUMMARY: By letter dated June 22, 1998, former Governor George V. Voinovich of Ohio requested that the U. S. Nuclear Regulatory Commission (NRC) enter into an Agreement with the State as authorized by Section 274 of the Atomic Energy Act of 1954, as amended (Act). Under the proposed Agreement, the Commission would give up, and Ohio would take over, portions of the Commission's regulatory authority exercised within the State. As required by the Act, NRC is publishing the proposed Agreement for public comment. NRC is also publishing the summary of an assessment by the NRC staff of the Ohio regulatory program. Comments are requested on the proposed Agreement, especially its effect on public health and safety. Comments are also requested on the NRC staff assessment, the adequacy of the Ohio program staff, and the State's commitments concerning the program staff, as discussed in this notice.

The proposed Agreement would release (exempt) persons who possess or use certain radioactive materials in Ohio from portions of the Commission's regulatory authority. The Act requires that NRC publish those exemptions. Notice is hereby given that the pertinent exemptions have been previously published in the **Federal Register** and are codified in the Commission's regulations as 10 CFR part 150.

DATES: The comment period expires April 12, 1999. Comments received after this date will be considered if it is practical to do so, but the Commission cannot assure consideration of comments received after the expiration date.

ADDRESSES: Written comments may be submitted to Mr. David L. Meyer, Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, Washington, DC 20555–0001. Copies of comments received by NRC may be examined at the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC. Copies of the proposed Agreement, copies of the request for an Agreement by the Governor of Ohio including all information and documentation submitted in support of the request, and copies of the full text of the NRC staff assessment are also available for public inspection in the NRC's Public Document Room.

FOR FURTHER INFORMATION CONTACT: Richard L. Blanton, Office of State Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Telephone (301) 415–2322 or e-mail rlb@nrc.gov.

SUPPLEMENTARY INFORMATION: Since Section 274 of the Act was added in 1959, the Commission has entered into Agreements with 30 States. The Agreement States currently regulate approximately 16,000 agreement material licenses, while NRC regulates approximately 5800 licenses. Under the proposed Agreement, approximately 550 NRC licenses will transfer to Ohio. NRC periodically reviews the performance of the Agreement States to assure compliance with the provisions of Section 274.

Section 274e requires that the terms of the proposed Agreement be published in the **Federal Register** for public comment once each week for four consecutive weeks. This notice is being published in fulfillment of the requirement.

I. Background

(a) Section 274d of the Act provides the mechanism for a State to assume regulatory authority, from the NRC, over certain radioactive materials [1] and activities that involve use of the materials. In a letter dated June 22, 1998, Governor Voinovich certified that the State of Ohio has a program for the control of radiation hazards that is adequate to protect public health and safety within Ohio for the materials and activities specified in the proposed Agreement, and that the State desires to assume regulatory responsibility for these materials and activities. Included with the letter was the text of the proposed Agreement, which is shown in Appendix A to this notice.

The radioactive materials and activities (which together are usually referred to as the "categories of materials") which the State of Ohio requests authority over are: (1) the possession and use of byproduct materials as defined in Section 11e.(1) of the Act; (2) the generation, possession, use, and disposal of byproduct materials as defined in Section 11e.(2) of the Act; (3) the possession and use of source materials; (4) the possession and use of special nuclear materials in quantities not sufficient to form a critical mass; (5) the regulation of the land disposal of byproduct materials as defined in Section 11e.(1) of the Act, source, or special nuclear waste materials received from other persons; and (6) the evaluation of radiation safety information on sealed sources or devices containing byproduct materials as defined in Section 11e.(1) of the Act, source, or special nuclear materials and the registration of the sealed sources or devices for distribution, as provided for in regulations or orders of the Commission.

(b) The proposed Agreement contains articles that:

—Specify the materials and activities over which authority is transferred;
—Specify the activities over which the Commission will retain regulatory authority;
—Continue the authority of the Commission to safeguard nuclear materials and restricted data;
—Commit the State of Ohio and NRC to exchange information as necessary to maintain coordinated and compatible programs;
—Provide for the reciprocal recognition of licenses;
—Provide for the suspension or termination of the Agreement;
—Provide for the transfer of any financial surety funds collected by Ohio for reclamation or long-term surveillance of sites for the disposal of byproduct materials (as defined in Section 11e.(2) of the Act) to the United States if custody of the material and the disposal site are transferred; and
—Specify the effective date of the proposed Agreement. The Commission reserves the option to modify the terms of the proposed Agreement in response to comments, to correct errors, and to make editorial changes. The final text of the Agreement, with the effective date, will be published after the Agreement is approved by the Commission, and signed by the Chairman of the Commission and the Governor of Ohio.

(c) Ohio currently regulates the users of naturally-occurring and accelerator-produced radioactive materials. The regulatory program is authorized by law in Section 3748 of the Ohio Revised Code. Subsection 3748.03 provides the authority for the Governor to enter into an Agreement with the Commission.

[1] The radioactive materials, sometimes referred to as "agreement materials," are: (a) byproduct materials as defined in Section 11e.(1) of the Act; (b) byproduct materials as defined in Section 11e.(2) of the Act; (c) source materials as defined in Section 11z. of the Act; and (d) special nuclear materials as defined in Section 11aa. of the Act, restricted to quantities not sufficient to form a critical mass.

Ohio law contains provisions for the orderly transfer of regulatory authority over affected licensees from NRC to the State. After the effective date of the Agreement, licenses issued by NRC would continue in effect as Ohio licenses until the licenses expire or are replaced by State issued licenses. NRC licenses transferred to Ohio which contain requirements for decommissioning and express an intent to terminate the license when decommissioning has been completed in accordance with a Commission approved decommissioning plan will continue as Ohio licenses and will be terminated by Ohio when the Commission approved decommissioning plan has been completed.

(d) As described below, the proposed Agreement will be signed only after the fulfillment of commitments by Ohio to hire, train, and qualify a sufficient number of professional/technical staff. Contingent on the fulfilment of these commitments, the NRC staff assessment finds that the Ohio program is adequate to protect public health and safety, and is compatible with the NRC program for the regulation of agreement materials.

II. Summary of the NRC Staff Assessment of the Ohio Program for the Control of Agreement Materials

NRC staff has examined the Ohio request for an Agreement with respect to the ability of the radiation control program to regulate agreement materials. The examination was based on the Commission's policy statement "*Criteria for Guidance of States and NRC in Discontinuance of NRC Regulatory Authority and Assumption Thereof by States Through Agreement*" (referred to herein as the "NRC criteria") (46 FR 7540; January 23, 1981, as amended).

(a) *Organization and Personnel.* The agreement materials program will be located within the existing Bureau of Radiation Protection (Bureau) of the Ohio Department of Health. The program will be responsible for all regulatory activities related to the proposed Agreement.

The educational requirements for the Bureau staff members are specified in the Ohio State personnel position descriptions, and meet the NRC criteria with respect to formal education or combined education and experience requirements. All current staff members hold at least bachelor's degrees in physical or life sciences, or have a combination of education and experience at least equivalent to a bachelor's degree. Several staff members hold advanced degrees, and all staff members have had additional training plus working experience in radiation protection. Supervisory level staff have more than ten years working experience each in radiation protection.

The Bureau currently has staff vacancies, which it is actively recruiting to fill. In response to NRC comments, the Bureau performed, and NRC staff reviewed, an analysis of the expected Bureau workload under the proposed Agreement. Based on the analysis, Ohio has made three commitments. First, the Bureau will employ a staff of at least 21 full-time professional/technical employees for the agreement materials program. Second, the distribution of the qualifications of the individual staff members will be balanced to the distribution of categories of licensees transferred from NRC. For example, there will be enough inspectors trained and qualified to inspect industrial radiography operations that the program will be able to inspect all of the industrial radiography licensees transferred from NRC without developing a backlog of overdue inspections. Third, each individual on the staff will be qualified in accordance with the Bureau's training and qualification procedure (including use of interim qualification) to function in the areas of responsibility to which the individual is assigned. In the case of individuals assigned to review radiation safety information on sealed sources or devices containing byproduct materials as defined in Section 11e.(1) of the Act, source, or special nuclear materials, this commitment includes assuring that the individuals will be able to:

—Understand and interpret, if necessary, appropriate prototype tests that ensure the integrity of the products under normal, and likely accidental, conditions of use,
—Understand and interpret test results,
—Read and understand blueprints and drawings,
—Understand how the device works and how safety features operate,
—Understand and apply appropriate regulations,
—Understand the conditions of use,
—Understand external dose rates, source activities, and nuclide chemical form, and
—Understand and utilize basic knowledge of engineering materials and their properties.

(b) *Legislation and Regulations.* The Ohio Department of Health is designated by law in Chapter 3748 of the Ohio Revised Code to be the radiation control agency. The law provides the Department the authority to issue licenses, issue orders, conduct inspections, and to enforce compliance with regulations, license conditions, and orders. Licensees are required to provide access to inspectors. The Public Health Council is authorized to promulgate regulations.

The law requires the Public Health Council to adopt rules that are compatible with the equivalent NRC regulations and that are equally stringent to, or to the extent practicable more stringent than, the equivalent NRC regulations. The Council has adopted, by reference, the NRC regulations in Title 10 of the Code of Federal Regulations that were in effect on October 19, 1998. The adoption by reference is contained in Chapter 3701–39–021 of the Ohio Administrative Code (OAC). The Board of Health has extended the effect of the rules, where appropriate, to apply to naturally occurring radioactive materials and to radioactive materials produced in particle accelerators, in addition to agreement materials.

Ohio rule 3701–39–021(A) specifies that references to the NRC shall be construed as references to the Director of the Department of Health. It is noted, however, that Ohio has adopted most of the NRC regulations as entire Parts, including sections that address regulatory matters reserved to the Commission. Ohio has adopted a provision in Rule 3701–39–021(A) excepting such sections from being construed as enforced by the Director of the Department of Health. The OAC also contains a provision to avoid interference with licensees when they are complying with regulatory requirements which the Act specifies NRC must enforce and when they are complying with NRC regulatory requirements from which the State licensees have not been exempted by the proposed Agreement. The NRC staff concludes that Ohio will not attempt to enforce the regulatory matters reserved to the Commission. In accordance with NRC Management Directive 5.9, "Adequacy and Compatibility of Agreement State Programs," this approach is considered compatible.

The NRC staff review verified that the Ohio rules contain all of the provisions that are necessary in order to be compatible with the regulations of the NRC on the effective date of the Agreement between the State and the Commission. The adoption of the NRC regulations by reference assures that the standards will be uniform.

The Ohio regulations are different from the NRC regulations with respect to the decommissioning of a licensed facility and the termination of the license. Current NRC regulations permit

a license to be terminated when the facility has been decommissioned, i.e., cleaned of radioactive contamination, such that the residual radiation will not cause a total effective dose equivalent greater than 25 millirem per year to an average member of the group of individuals reasonably expected to receive the greatest exposure. Normally, the NRC regulations require that the 25 millirem dose constraint be met without imposing any restrictions regarding the future use of the land or buildings of the facility ("unrestricted release"). Under certain circumstances, NRC regulations in 10 CFR part 20, Subpart E, allow a license to be terminated if the 25 millirem dose constraint is met with restrictions on the future use ("restricted release"). Ohio law does not allow a license to be terminated under restricted release. Ohio will instead issue special "decommissioning-possession only" licenses as an alternative to license termination under restricted release. The Commission has concluded that Ohio's approach, although different, is compatible.

(c) *Storage and Disposal.* Ohio has also adopted, by reference, the NRC requirements for the storage of radioactive material, and for the disposal of radioactive material as waste. The waste disposal requirements cover both the disposal of waste generated by the licensee and the disposal of waste generated by and received from other persons.

(d) *Transportation of Radioactive Material.* Ohio has adopted the NRC regulations in 10 CFR part 71 by reference. Part 71 contains the requirements licensees must follow when preparing packages containing radioactive material for transport. Part 71 also contains requirements related to the licensing of packaging for use in transporting radioactive materials. Ohio will not attempt to enforce portions of the regulations related to activities, such as approving packaging designs, which are reserved to NRC.

(e) *Recordkeeping and Incident Reporting.* Ohio has adopted, by reference, the sections of the NRC regulations which specify requirements for licensees to keep records, and to report incidents or accidents involving materials.

(f) *Evaluation of License Applications.* Ohio has adopted, by reference, the NRC regulations that specify the requirements which a person must meet in order to get a license to possess or use radioactive materials. Ohio has also developed a licensing procedures manual, along with the accompanying regulatory guides, which are adapted from similar NRC documents and contain guidance for the program staff when evaluating license applications.

(g) *Inspections and Enforcement.* The Ohio radiation control program has adopted a schedule providing for the inspection of licensees as frequently as, or more frequently than, the inspection schedule used by NRC. The program has adopted procedures for the conduct of inspections, the reporting of inspection findings, and the report of inspection results to the licensees. The program has also adopted, by rule in the OAC, procedures for the enforcement of regulatory requirements.

(h) *Regulatory Administration.* The Ohio Department of Health is bound by requirements specified in State law for rulemaking, issuing licenses, and taking enforcement actions. The program has also adopted administrative procedures to assure fair and impartial treatment of license applicants. Ohio law prescribes standards of ethical conduct for State employees.

(i) *Cooperation with Other Agencies.* Ohio law deems the holder of an NRC license on the effective date of the proposed Agreement to possess a like license issued by Ohio. The law provides that these former NRC licenses will expire either 90 days after receipt from the radiation control program of a notice of expiration of such license or on the date of expiration specified in the NRC license, whichever is later. In the case of NRC licenses that are terminated under restricted conditions pursuant to 10 CFR 20.1403 prior to the effective date of the proposed Agreement, Ohio deems the termination to be final despite any other provisions of State law or rule. For NRC licenses that, on the effective date of the proposed Agreement, contain a license condition indicating intent to terminate the license upon completion of a Commission approved decommissioning plan, the transferred license will be terminated by Ohio in accordance with the plan so long as the licensee conforms to the approved plan.

Ohio also provides for "timely renewal." This provision affords the continuance of licenses for which an application for renewal has been filed more than 30 days prior to the date of expiration of the license. NRC licenses transferred while in timely renewal are included under the continuation provision. The OAC provides exemptions from the State's requirements for licensing of sources of radiation for NRC and U.S. Department of Energy contractors or subcontractors.

The proposed Agreement commits Ohio to use its best efforts to cooperate with the NRC and the other Agreement States in the formulation of standards and regulatory programs for the protection against hazards of radiation and to assure that Ohio's program will continue to be compatible with the Commission's program for the regulation of agreement materials. The proposed Agreement stipulates the desirability of reciprocal recognition of licenses, and commits the Commission and Ohio to use their best efforts to accord such reciprocity.

III. Staff Conclusion

Subsection 274d of the Act provides that the Commission shall enter into an agreement under subsection 274b with any State if:

(a) The Governor of the State certifies that the State has a program for the control of radiation hazards adequate to protect public health and safety with respect to the agreement materials within the State, and that the State desires to assume regulatory responsibility for the agreement materials; and

(b) The Commission finds that the State program is in accordance with the requirements of Subsection 274o, and in all other respects compatible with the Commission's program for the regulation of materials, and that the State program is adequate to protect public health and safety with respect to the materials covered by the proposed Agreement.

On the basis of its assessment, the NRC staff concludes that the State of Ohio meets the requirements of the Act, conditioned on completion of the commitments made in regard to the program staff. The State's program, as defined by its statutes, regulations, personnel, licensing, inspection, and administrative procedures, is compatible with the program of the Commission and adequate to protect public health and safety with respect to the materials covered by the proposed Agreement.

NRC will continue the formal processing of the proposed Agreement, however, the signing of the Agreement will be contingent upon the Bureau's completion of the staffing commitments.

IV. Small Business Regulatory Enforcement Fairness Act

In accordance with the Small Business Regulatory Enforcement Fairness Act of 1996, the NRC has determined that this action is not a major rule and has verified this determination with the Office of Information and Regulatory Affairs of the Office of Management and Budget (OMB).

Dated at Rockville, Maryland, this 5th day of March, 1999.

For the Nuclear Regulatory Commission.
Annette Vietti-Cook,
Secretary of the Commission.

An Agreement Between The United States Nuclear Regulatory Commission and the State of Ohio for the Discontinuance of Certain Commission Regulatory Authority and Responsibility Within the State Pursuant To Section 274 of the Atomic Energy Act of 1954, as Amended

Whereas, The United States Nuclear Regulatory Commission (hereinafter referred to as the Commission) is authorized under Section 274 of the Atomic Energy Act of 1954, as amended (hereinafter referred to as the Act), to enter into agreements with the Governor of any State providing for discontinuance of the regulatory authority of the Commission within the State under Chapters 6, 7, and 8, and Section 161 of the Act with respect to byproduct materials as defined in Sections 11e.(1) and (2) of the Act, source materials, and special nuclear materials in quantities not sufficient to form a critical mass; and

Whereas, The Governor of the State of Ohio is authorized under Chapter 3748. of the Ohio Revised Code to enter into this Agreement with the Commission; and

Whereas, The Governor of the State of Ohio certified on June 22, 1998, that the State of Ohio (hereinafter referred to as the State) has a program for the control of radiation hazards adequate to protect the health and safety of the public and to protect the environment with respect to the materials within the State covered by this Agreement, and that the State desires to assume regulatory responsibility for such materials; and

Whereas, The Commission found on (date to be determined) that the program of the State for the regulation of the materials covered by this Agreement is compatible with the Commission's program for the regulation of such materials and is adequate to protect public health and safety; and

Whereas, The State and the Commission recognize the desirability and importance of cooperation between the Commission and the State in the formulation of standards for protection against hazards of radiation and in assuring that State and Commission programs for protection against hazards of radiation will be coordinated and compatible; and

Whereas, The Commission and the State recognize the desirability of reciprocal recognition of licenses, and of the granting of limited exemptions from licensing of those materials subject to this Agreement; and

Whereas, This Agreement is entered into pursuant to the provisions of the Atomic Energy Act of 1954, as amended;

Now, Therefore, It is hereby agreed between the Commission and the Governor of the State of Ohio, acting in behalf of the State, as follows:

Article I

Subject to the exceptions provided in Articles II, IV, and V, the Commission shall discontinue, as of the effective date of this Agreement, the regulatory authority of the Commission in the State under Chapters 6, 7, and 8, and Section 161 of the Act with respect to the following materials:

1. Byproduct materials as defined in Section 11e.(1) of the Act;
2. Byproduct materials as defined in Section 11e.(2) of the Act;
3. Source materials;
4. Special nuclear materials in quantities not sufficient to form a critical mass;
5. The regulation of the land disposal of byproduct, source, or special nuclear waste materials received from other persons; and
6. The evaluation of radiation safety information on sealed sources or devices containing byproduct, source, or special nuclear materials and the registration of the sealed sources or devices for distribution, as provided for in regulations or orders of the Commission.

Article II

A. This Agreement does not provide for discontinuance of any authority and the Commission shall retain authority and responsibility with respect to:

1. The regulation of the construction and operation of any production or utilization facility or any uranium enrichment facility;
2. The regulation of the export from or import into the United States of byproduct, source, or special nuclear material, or of any production or utilization facility;
3. The regulation of the disposal into the ocean or sea of byproduct, source, or special nuclear waste materials as defined in the regulations or orders of the Commission;
4. The regulation of the disposal of such other byproduct, source, or special nuclear material as the Commission from time to time determines by regulation or order should, because of the hazards or potential hazards thereof, not be so disposed without a license from the Commission.

B. Notwithstanding this Agreement, the Commission retains the following authorities pertaining to byproduct material as defined in Section 11e.(2) of the Atomic Energy Act:

1. Prior to the termination of a State license for such byproduct material, or for any activity that results in the production of such material, the Commission shall have made a determination that all applicable standards and requirements pertaining to such material have been met.
2. The Commission reserves the authority to establish minimum standards governing reclamation, long-term surveillance or maintenance, and ownership of such byproduct material and of land used as a disposal site for such material.

Such reserved authority includes:

a. The authority to establish terms and conditions as the Commission determines necessary to assure that, prior to termination of any license for such byproduct material, or for any activity that results in the production of such material, the licensee shall comply with decontamination, decommissioning, and reclamation standards prescribed by the Commission; and with ownership requirements for such materials and its disposal site;

b. The authority to require that prior to termination of any license for such byproduct material or for any activity that results in the production of such material, title to such byproduct material and its disposal site be transferred to the United States or the State at the option of the State (provided such option is exercised prior to termination of the license);

c. The authority to permit use of the surface or subsurface estates, or both, of the land transferred to the United States or a State pursuant to paragraph 2.b. in this section in a manner consistent with the provisions of the Uranium Mill Tailings Radiation Control Act of 1978, provided that the Commission determines that such use would not endanger public health, safety, welfare, or the environment;

d. The authority to require, in the case of a license, if any, for any activity that produces such byproduct material (which license was in effect on November 8, 1981), transfer of land and material pursuant to paragraph 2.b. in this section taking into consideration the status of such material and land and interests therein, and the ability of the licensee to transfer title and custody thereof to the United States or the State;

e. The authority to require the Secretary of the Department of Energy, other Federal agency, or State, whichever has custody of such byproduct material and its disposal site, to undertake such monitoring, maintenance, and emergency measures as are necessary to protect public health

and safety, and other actions as the Commission deems necessary; and

f. The authority to enter into arrangements as may be appropriate to assure Federal long-term surveillance or maintenance of such byproduct material and its disposal site on land held in trust by the United States for any Indian Tribe or land owned by an Indian Tribe and subject to a restriction against alienation imposed by the United States.

Article III

Notwithstanding this Agreement, the Commission may from time to time by rule, regulation, or order, require that the manufacturer, processor, or producer of any equipment, device, commodity, or other product containing source, byproduct, or special nuclear material shall not transfer possession or control of such product except pursuant to a license or an exemption from licensing issued by the Commission.

Article IV

This Agreement shall not affect the authority of the Commission under Subsection 161b or 161i of the Act to issue rules, regulations, or orders to protect the common defense and security, to protect restricted data or to guard against the loss or diversion of special nuclear material.

Article V

The Commission will cooperate with the State and other Agreement States in the formulation of standards and regulatory programs of the State and the Commission for protection against hazards of radiation and to assure that State and Commission programs for protection against hazards of radiation will be coordinated and compatible. The State agrees to cooperate with the Commission and other Agreement States in the formulation of standards and regulatory programs of the State and the Commission for protection against hazards of radiation and to assure that the State's program will continue to be compatible with the program of the Commission for the regulation of materials covered by this Agreement.

The State and the Commission agree to keep each other informed of proposed changes in their respective rules and regulations, and to provide each other the opportunity for early and substantive contribution to the proposed changes.

The State and the Commission agree to keep each other informed of events, accidents, and licensee performance that may have generic implication or otherwise be of regulatory interest.

Article VI

The Commission and the State agree that it is desirable to provide reciprocal recognition of licenses for the materials listed in Article I licensed by the other party or by any other Agreement State. Accordingly, the Commission and the State agree to develop appropriate rules, regulations, and procedures by which such reciprocity will be accorded.

Article VII

The Commission, upon its own initiative after reasonable notice and opportunity for hearing to the State, or upon request of the Governor of the State, may terminate or suspend all or part of this Agreement and reassert the licensing and regulatory authority vested in it under the Act if the Commission finds that (1) such termination or suspension is required to protect public health and safety, or (2) the State has not complied with one or more of the requirements of Section 274 of the Act. The Commission may also, pursuant to Section 274j of the Act, temporarily suspend all or part of this Agreement if, in the judgement of the Commission, an emergency situation exists requiring immediate action to protect public health and safety and the State has failed to take necessary steps. The Commission shall periodically review actions taken by the State under this Agreement to ensure compliance with Section 274 of the Act which requires a State program to be adequate to protect public health and safety with respect to the materials covered by this Agreement and to be compatible with the Commission's program.

Article VIII

In the licensing and regulation of byproduct material as defined in Section 11e.(2) of the Act, or of any activity which results in production of such material, the State shall comply with the provisions of Section 274o of the Act. If in such licensing and regulation, the State requires financial surety arrangements for reclamation or long-term surveillance and maintenance of such material,

A. The total amount of funds the State collects for such purposes shall be transferred to the United States if custody of such material and its disposal site is transferred to the United States upon termination of the State license for such material or any activity which results in the production of such material. Such funds include, but are not limited to, sums collected for long-term surveillance or maintenance. Such funds do not, however, include monies held as surety where no default has occurred and the reclamation or other bonded activity has been performed; and

B. Such surety or other financial requirements must be sufficient to ensure compliance with those standards established by the Commission pertaining to bonds, sureties, and financial arrangements to ensure adequate reclamation and long-term management of such byproduct material and its disposal site.

Article IX

This Agreement shall become effective on July 22, 1999, and shall remain in effect unless and until such time as it is terminated pursuant to Article VIII.

Done at Columbus, Ohio this (date to be determined).

For the United States Nuclear Regulatory Commission.

Chairman

For the State of Ohio

Governor

[FR Doc. 99–8026 Filed 3–31–99; 8:45 am]

BILLING CODE 7590–01–P

RAILROAD RETIREMENT BOARD

Proposed Collection; Comment Request

SUMMARY: In accordance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 which provides opportunity for public comment on new or revised data collections, the Railroad Retirement Board (RRB) will publish periodic summaries of proposed data collections.

Comments are invited on: (a) Whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the RRB's estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden related to the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Title and Purpose of information collection: Request for Medicare payment; OMB 3220–0131. Under section 7(d) of the Railroad Retirement Act, the RRB administers the Medicare program for persons covered by the railroad retirement system. The collection obtains the information

needed by the United Healthcare Insurance Company, the Medicare carrier for railroad retirement beneficiaries, to pay claims for payments under Part B of the Medicare program. Authority for collecting the information is prescribed in 42 CFR 424.32.

The RRB currently utilizes Forms G–740S and HCFA 1500 to secure the information necessary to pay Part B Medicare Claims. One response is completed for each claim. Completion is required to obtain a benefit. No changes are proposed to RRB Form G–740S or HCFA Form 1500. The RRB estimates annual respondent burden associated with RRB Form G–740S as follows:

Estimated number of responses: 100.

Estimated completion time per response: 15 minutes.

Estimated annual burden hours: 25.

Additional Information or Comments: To request more information or to obtain a copy of the information collection justification, forms, and/or supporting material, please call the RRB Clearance Officer at (312) 751–3363. Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 N. Rush Street, Chicago, Illinois 60611–2092. Written comments should be received within 60 days of this notice.

Chuck Mierzwa,

Clearance Officer.

[FR Doc. 99–8036 Filed 3–31–99; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–23762; File No. 812–11400]

Manufacturers Investment Trust, et al.; Notice of Application

March 25, 1999.

AGENCY: Securities and Exchange Commission (the "Commission").

ACTION: Notice of application for an order under section 17(b) of the Investment Company Act of 1940 (the "Act").

SUMMARY OF APPLICATION: Applicants seek an order exempting them from the provisions of section 17(a) of the Act to the extent necessary to permit the merger of the Worldwide Growth Trust and the Capital Growth Bond Trust (collectively, the "Transferor Portfolios") of the Manufacturers Investment Trust ("Manulife Investment Trust" or the "Investment Trust") with and into the Global Equity Trust and the Investment Quality Bond Trust (collectively, the "Acquiring Portions"), respectively, of the Investment Trust.

APPLICANTS: Manulife Investment Trust, Manufacturers Securities Services, LLC ("Manulife Securities"), The Manufacturers Life Insurance Company of North America ("Manulife North America"), The Manufacturers Life Insurance Company of New York ("Manulife New York"), The Manufacturers Life Insurance Company ("Manulife"), The Manufacturers Life Insurance Company of America ("Manufacturers America"), The Manufacturers Life Insurance Company (U.S.A.) ("Manufacturers U.S.A."), and Manufacturers Adviser Corporation ("MAC").

FILING DATES: The application was filed on November 13, 1998, and amended on March 18, 1999.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Secretary of the Commission and serving Applicants with a copy of the request personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on April 19, 1999, and should be accompanied by proof of service on the Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Secretary of the Commission.

ADDRESSES: For the Commission: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. For the Applicants: Manulife Investment Trust and Manulife Securities, 73 Tremont Street, Boston, Massachusetts 02108; Manulife North America, 116 Huntington Avenue, Boston Massachusetts 02116; Manulife New York, International Corporate Center at Rye, 555 Theodore Fremd Avenue, Suite C–209, Rye, New York 10580; Manulife, Manufacturers America, Manufacturers U.S.A. and MAC at 200 Bloor Street East, Toronto, Ontario, Canada M4W 1E5.

FOR FURTHER INFORMATION CONTACT: Keith E. Carpenter, Senior Counsel, or Kevin M. Kirchoff, Branch Chief, Office of Insurance Products, Division of Investment Management, at (202) 942–0670.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee from the Commission's Public Reference Branch, 450 Fifth St., NW, Washington, DC (tel (202) 942–8090).

Applicants' Representations

1. Applicants state that Manulife Investment Trust is an open-end, series, management investment company registered under the Act, which currently offers 36 investment portfolios (collectively, the "Portfolios"). The Investment Trust receives investment advisory services from Manulife Securities. In addition, MAC serves as subadviser to the Capital Growth Bond Trust, one of the Portfolios involved in the proposed reorganization. The shares of Manulife Investment Trust are sold generally only to insurance companies and their separate accounts as the underlying investment medium for variable annuity and variable life insurance contracts issued by such insurance companies. Manulife North America, Manulife New York, Manufacturers America and Manufacturers U.S.A. and their separate accounts are the only shareholders of the Transferor Portfolios and the Acquiring Portfolios. Manulife North America is controlled by Manulife, a Canadian mutual life insurance company based in Toronto, Canada. Manulife New York, Manufacturers America and Manufacturers U.S.A. are indirect wholly-owned subsidiaries of Manulife.

2. Applicants state that it is proposed that the Transferor Portfolios merge with and into the Acquiring Portfolios, respectively, (the "Reorganization"), pursuant to the terms and conditions stated in the Agreement and Plan of Reorganization (the "Plan"). In the Reorganization, all of the assets of each Transferor Portfolio will be transferred to a corresponding Acquiring Portfolio having a substantially similar investment objective. In exchange, each Acquiring Portfolio will issue and deliver to the corresponding Transferor Portfolio shares of such Acquiring Portfolio. The total value of all shares of each Acquiring Portfolio issued in the Reorganization will equal the total value of the net assets of the corresponding Transferor Portfolio being acquired by such Acquiring Portfolio. In connection with the Reorganization, shares of each Acquiring Portfolio will be distributed to holders of the shares of the respective corresponding Transferor Portfolio in liquidation of the Transferor Portfolio. The number of full and fractional shares of an Acquiring Portfolio received by a shareholder of the corresponding Transferor Portfolio will be equal in value to the value of that shareholder's

shares of the corresponding Transferor Portfolio as of the close of regularly scheduled trading on the New York Stock Exchange on the closing date of the Reorganization. As a result of the Reorganization, each holder of shares of each Transferor Portfolio will become a holder of shares of the Acquiring Portfolio.

3. Applicants state that Reorganization will be affected in two distinct but contemporaneous transfers. The Global Equity Trust will acquire the assets and liabilities of the Worldwide Growth Trust and the Investment Quality Bond Trust will acquire the assets and liabilities of the Capital Growth Bond Trust.

4. Applicants state that the Reorganization will be submitted to a vote of the shareholders of the Transferor Portfolios for approval at a special shareholders' meeting in accordance with Massachusetts law, the Act and Commission rules. The shareholders of the Transferor Portfolios are Manulife North America, Manulife New York, Manufacturers America and Manufacturers U.S.A., through their registered and unregistered separate accounts. Manulife North America, Manulife New York, Manufacturers America and Manufacturers U.S.A. thus have the right to vote upon matters that are required by the Act to be approved or ratified by shareholders and to vote upon any other matters that may be voted upon at a special shareholders' meeting. However, each of Manulife North America, Manulife New York, Manufacturers America and Manufacturers U.S.A. will vote all shares of the Transferor Portfolios in accordance with and in proportion to timely instructions received from owners of the variable contracts issued by it participating in separate accounts registered under the Act, the values of which are invested in shares of the Transferor Portfolios through such separate accounts at the record date. Shares of each Transferor Portfolio for which properly executed voting instruction forms are not received, including shares not attributable to variable contracts, will be voted in the same proportion as that of shares of such Transferor Portfolio for which instructions are received. Prior to voting on the Reorganization, contractholders participating in registered separate accounts holding shares of the Transferor Portfolios will receive a Notice of Special Meeting of Shareholders and combined prospectus/proxy statement containing all material disclosures, including any material differences in investment objectives and policies.

5. Applicants represent that a description of the respective subadvisory fees for the Transferor Portfolios and the corresponding Acquiring Portfolios and a pro forma presentation of expenses after giving effect to the Reorganization were included in the materials presented to the Board of Trustees and will be included in the prospectus/proxy statement delivered to shareholders of the Transferor Portfolios, in each case in connection with their consideration of the Reorganization. It is anticipated that the investment management fees and the annualized expenses as a percentage of average net assets paid by the Acquiring Portfolios generally will be comparable to or lower than those paid by the corresponding Transferor Portfolios.

Applicants' Legal Analysis

1. Section 17(a) of the Act provides in part that it is unlawful for any affiliated person of a registered investment company, or any affiliated person of such an affiliated person, acting as principal, knowingly to sell to such investment company or to purchase from such investment company any securities or other property.

2. Applicants state that as a result of the relationships described above, the Transferor Portfolios and the Acquiring Portfolios may be deemed to be under common control, and therefore, affiliated persons of each other as defined by section 2(a)(3) of the Act, and for the purposes of the prohibitions of section 17(a) of the Act. Alternatively, they may be deemed to be affiliated persons of affiliated persons of each other.

3. Section 17(b) of the Act permits a person to file with the Commission an application for an order exempting a proposed transaction from one or more of the prohibitions of section 17(a). The Commission shall grant such application if evidence establishes that the terms of the proposed transaction are fair and reasonable and do not involve overreaching on the part of any person concerned, and the proposed transaction is consistent with the policy of each registered investment company concerned and with the general purposes of the Act. Applicants seek an order of the Commission, pursuant to section 17(b) of the Act, exempting them from the provisions of section 17(a) of the Act.

4. Rule 17a–8 under the Act provides, in part, that a merger of registered investment companies which are affiliated persons solely by reason of having a common investment adviser, directors, and/or officers is exempt from the prohibitions of Section 17(a). Applicants state that Rule 17a–8 is not availale because of the share ownership by the affiliated insurance companies. Applicants state that, as a substantive matter, the Reorganization is consistent with the routine mergers that otherwise do not require exemptive relief, as well as with the spirit of Rule 17a–8. Applicants state that the additional affiliations presented arise out of the nature of variable product investing and are negated by the fact that contractholders participating in registered separate accounts holding shares of the Transferor Portfolios will have the opportunity to provide voting instructions on the Reorganization and that all shares technically owned by Manulife North America, Manulife New York, Manufacturers America and Manufacturers U.S.A. will be vetoed in proportion to voting instructions received.

5. The Board of Trustees of Manulife Investment Trust, including the disinterested Trustees, has reviewed the contemplated transactions and determined that the participation by each Transferor Portfolio and each corresponding Acquiring Portfolio in the Reorganization is in the best interest of each Transferor Portfolio and each corresponding Acquiring Portfolio, as well as in the best interests of shareholders and the contractholders whose contract values are invested in shares of the Transferor Portfolios and the corresponding Acquiring Portfolios, and that the interests of existing shareholders and contractholders will not be diluted as a result of the Reorganization. Accordingly, if Rule 17a–8 were available, its conditions would be satisfied.

6. Applicants represent that the Plan will provide that the exchange of assets and liabilities of the Transferor Portfolios for shares of capital stock of the Acquiring Portfolios shall be accomplished on the basis of the net asset value of the respective Portfolios, and thus the Reorganization will not involve dilution of the interests of existing shareholders or contractholders. Applicants submit that the terms of the proposed transactions are fair and reasonable and do not involve overreaching on the part of any person concerned.

7. Applicants represent that the proposed transactions have been reviewed by the Board of Trustees for consistency with the policies of the Transferor Portfolios and the Acquiring Portfolios. Material differences, if any, between a Transferor Portfolio and its corresponding Acquiring Portfolio, including differences in investment

policies have been reviewed by the Board of Trustees and described in the prospectus/proxy statement. Applicants state that this is precisely the same process followed with respect to reorganizations that fit within the technical requirements of Rule 17a–8.

8. Applicants state that the proposed transactions are also consistent with the general purposes of the Act as stated in the Findings and Declaration of Policy in Section 1 of the Act, and that the proposed transactions do not result in any of the self-dealing abuses that the Act was designed to prevent.

9. Applicants represent that the terms of the proposed transactions are consistent with the provisions, policies and purposes of the Act in that they are reasonable and fair to all parties, do not involve overreaching, and are consistent with the investment objective and policies of each Transferor Portfolio and of each Acquiring Portfolio participating in the proposed transactions. The participation in the Reorganization by each portfolio is at respective net asset value, and not on a basis different or less advantageous than that of other participants. Contractholders will have the opportunity to provide voting instructions as to whether the Reorganization should be approved with respect to each Transferor Portfolio.

Conclusion

For the reasons stated herein, Applicants state that the terms of the contemplated transactions meet all the requirements of section 17(b) of the Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–7958 Filed 3–31–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–23764; File No. 812–11412]

PFL Life Insurance Company, *et al.*

March 26, 1999.

AGENCY: Securities and Exchange Commission (the "Commission").

ACTION: Notice of Application for Approval and Exemption under the Investment Company Act of 1940 (the "1940 Act" or "Act"). Order requested pursuant to section 26(b) of the 1940 approving the proposed substitution of securities and pursuant to section 17(b) of the 1940 Act Act exempting the proposed transaction from section 17(a) of the 1940 Act.

SUMMARY OF APPLICATION: Applicants seek an order approving the substitution of securities issued by the WRL Fund and held by the Accounts to support certain policies issued by the Companies (the "Policies"). Applicants also seek an order exempting them from Section 17(a) of the 1940 Act to the extent necessary to carry out the above-referenced substitution by redeeming securities in-kind or partly in-kind and using the redemption proceeds to purchase securities issued by the Endeavor Trust.

APPLICANTS: PFL Life Insurance Company ("PLF"), PLF Endeavor VA Separate Account (the "Endeavor Account"), AUSA Life Insurance Company, Inc. ("AUSA" and together with PLF the "Companies"), AUSA Endeavor Variable Annuity Account (the "AUSA Account" and together with the Endeavor Account the "Accounts"), Endeavor Series Trust (the "Endeavor Trust") and WRL Series Fund, Inc. (the "WRL Fund") (all collectively, the "Applicants").

FILING DATE: The application was filed on November 20, 1998, and amended and restated on February 16, 1999.

HEARING OR NOTIFICATION OF HEARING: An Order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing on this application by writing to the Secretary of the Commission and serving the Applicants with a copy of the request, personally or by mail. Hearing requests must be received by the Commission by 5:30 p.m. on April 20, 1999, and should be accompanied by proof of service on the Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the Commission.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Applicants, Frank A. Camp, Esquire, PFL Life Insurance Company, 4333 Edgewood Road, NE, Cedar Rapids, Iowa 52499, Vincent J. McGuinnes, Jr., Endeavor Series Trust, 2101 East Coast Highway, Suite 300, Corona del Mar, California 92625, Thomas E. Pierpan, Esquire, WRL Series Fund, Inc., 570 Carillon Parkway, St. Petersburg, Florida 33716. Copies to Frederick R. Bellamy, Esquire, Sutherland Asbill & Brennan LLP, 1275 Pennsylvania Avenue, NW, Washington, DC 20004–2415, Robert N. Hickey, Esquire, Sullivan & Worcester LLP, 1025 Connecticut Avenue, NW, Washington, DC 20036–5480.

FOR FURTHER INFORMATION CONTACT: Lorna MacLeod, Attorney, or Susan Olson, Branch Chief, Office of Insurance Products, Division of Investment Management, at (202) 942–0670.

SUPPLEMENTARY INFORMATION: Following is a summary of the application. The complete application is available for a fee from the Commission's Public Reference Branch, 450 Fifth Street, NW, Washington, DC 20549 (tel. 202–942–8090).

Applicants' Representations

1. PFL, a stock life insurance company incorporated under the laws of Iowa, is the depositor and sponsor of the Endeavor Account. PFL is a wholly-owned indirect subsidiary of AEGON USA, Inc., which is a wholly-owned subsidiary of AEGON n.v. of the Netherlands. AEGON n.v. is a holding company whose subsidiaries engage primarily in the insurance business.

2. AUSA, a stock life insurance company incorporated under the laws of New York, is the depositor and sponsor of AUSA Account. AUSA is a wholly-owned indirect subsidiary of AEGON USA, Inc.

3.The Endeavor Account is registered under the Act as a unit investment trust (File No. 811–6032). The assets of the Endeavor Account support certain flexible premium variable annuity policies, and interests in the Endeavor Account offered through such policies have been registered under the Securities Act of 1933 ("1933 Act") on Form N–4 (File Nos. 33–33085 and 33–56908). Thirteen sub-accounts are available under the policies that invest exclusively in corresponding portfolios of two management investment companies.

4. The AUSA Account is registered under the Act as a unit investment trust (File No. 811–8750). The assets of the AUSA Account support certain flexible premium variable annuity policies, and interests in the AUSA Account offered through such policies have been registered under 1933 Act on Form N–4 (File No. 33–83560). Eleven sub-accounts are available under the policies. The sub-accounts invest in eleven of the thirteen portfolios in which the Endeavor Account policies invest.

5. The Endeavor Trust is a diversified open-end management investment company, registered on Form N–1A, that offers a selection of managed investment portfolios. The following ten portfolios are current available to both Accounts: Endeavor Asset Allocation

Portfolio, Endeavor Money Market Portfolio, T. Rowe Price International Stock Portfolio, T. Rowe Price Equity Income Portfolio, T. Rowe Price Growth Stock Portfolio, Dreyfus Small Cap Value Portfolio, Dreyfus U.S. Government Securities Portfolio, Endeavor Value Equity Portfolio, Endeavor Opportunity Value Portfolio, and Endeavor Enhanced Index Portfolio. Two additional portfolios—Endeavor Select 50 Portfolio and Endeavor High Yield Portfolio—are available only to the Endeavor Account.

6. Since January 1, 1999, Endeavor Management Company has been the manager of the Endeavor Trust. Previously, the manager of the trust had been Endeavor Investment Advisers, which was a general partnership between Endeavor Management Company and AUSA Financial Markets, Inc. (an affiliate of PFL and AUSA). The manager contracts with sub-advisers to provide investment services to the portfolios of the trust.

7. The WRL Fund is a diversified open-end management investment company that is registered on Form N–1A. Of eighteen investment portfolios currently offered by the fund, only one—the WRL Growth Portfolio—is available to policies issued from the Accounts.

8. The investment adviser of the WRL Fund is WRL Investment Management, Inc., a subsidiary of Western Reserve. Western Reserve is a wholly-owned indirect subsidiary of AEGON USA and, therefore, an affiliate of PFL and AUSA. WRL Investment Management, Inc. has contracted with Janus Capital Corporation to provide investment services to the WRL Growth Portfolio.

9. The Policies reserve to PFL and AUSA, as applicable, the right, subject to Commission approval, to substitute shares of another open-end management investment company or portfolio for shares of an open-end management investment company held by a sub-account of the relevant Account. The Statement of Additional Information for the Endeavor Account policies and the Prospectus for the AUSA Account policies disclose this right.

10. Currently, an unlimited amount of transfers of cash value can be made among and between the sub-accounts available as investment options under the Policies without the imposition of a transfer charge. Transfers are subject to a minimum amount of the lesser of $500 or the entire sub-account value. All the Policies reserve to PFL or AUSA, as applicable, the right to restrict transfers, or to charge up to $10 for any transfer in excess of twelve per Policy year.

11. PFL and AUSA propose to substitute shares of the Endeavor Janus Growth Portfolio of the Endeavor Trust for shares of the WRL Growth Portfolio of the WRL Fund held in the Endeavor Account and the AUSA Account. The proposed substitutions will cause all the investment options available under the Policies to be consolidated into one series investment company—the Endeavor Trust.

12. The Endeavor Janus Growth Portfolio of the Endeavor Trust was created specifically for the proposed substitutions. The Endeavor Janus Growth Portfolio has identical investment objectives and substantially similar investment policies to those of the WRL Growth Portfolio. Like the WRL Growth Portfolio, it is sub-advised by Janus Capital Corporation and pays an advisory fee of 0.80% of average daily assets. The WRL Growth Portfolio's total expenses for the year ended December 31, 1997, were 0.87%. Endeavor Management Company has agreed to waive fees and reimburse expenses that exceed 0.87% of the Endeavor Janus Growth Portfolio's assets for at least one year.

13. By supplements to the prospectuses for the Policies, all owners and prospective owners of the Policies will be notified of PFL's and AUSA's intention to take the necessary actions, including seeking the order requested by this application, to substitute portfolios as described. The supplements will advise owners and prospective owners that after the date of the proposed substitution, the Endeavor Janus Growth Portfolio will replace the WRL Growth Portfolio as the underlying investment for such sub-accounts. In addition, the supplements will inform owners and prospective owners that neither PFL nor AUSA will exercise any right reserved by it under any of the Policies to impose restrictions or fees on transfers until at least thirty days after the proposed substitutions.

14. Before the date of the proposed substitutions, affected owners will be provided with a prospectus (or preliminary prospectus) for the Endeavor Janus Growth Portfolio. Thus, any owner affected by either substitution will have received prospectus disclosure for the Endeavor Janus Growth Portfolio in advance of the proposed substitutions.

15. On the date of the substitution, PFL and AUSA, on behalf of the Endeavor Account and the AUSA Account, respectively, will redeem shares of the WRL Growth Portfolio held by the Accounts. To the extent practical, redemptions will be effected substantially in-kind. The WRL Fund will transfer the redemption proceeds (securities and cash) to the Endeavor Trust, and shares of the Endeavor Janus Growth Portfolio of equal value will be issued to the Endeavor and AUSA Accounts. The purpose of transferring assets in-kind is to avoid commission expenses.

16. Applicants assert that the proposed in-kind transfers, including the consideration to be paid and received, are reasonable and fair and do not involve overreaching on the part of any person involved. The transfers will be based on the independent market price of the security valued as specified in paragraph (b) of Rule 17a–7 and the net asset value per share of the Endeavor Janus Growth Portfolio and the WRL Growth Portfolio valued in accordance with procedures disclosed in the portfolios' registration statements. Additionally, Applicants assert that the transfers will be effected in a manner consistent with the investment objectives and policies of the substituted portfolio. Endeavor Management Company and Janus Capital Corporation will examine the portfolio securities being offered to the Endeavor Janus Growth Portfolio and accept only those securities that could otherwise have been acquired for the portfolio in a cash transaction.

17. The proposed substitutions will take place at relative net asset value with no change in the amount of any Policy owner's cash value or death benefit or in the dollar value of his or her investment in any of the Accounts. Policy owners will not incur any additional fees or charges as a result of the proposed substitutions nor will their rights or PFL's and AUSA's obligations under the Policies be altered in any way. All expenses incurred in connection with the proposed substitutions, including legal, accounting and other fees and expenses, will be paid by PFL and/or Endeavor Management Company. In addition, the proposed substitutions will not impose any tax liability on Policy owners. The proposed substitutions will not cause the Policy fees and charges currently paid by existing Policy owners to be greater after the proposed substitutions than before the proposed substitutions. Neither PFL nor AUSA currently impose any restriction or fee on transfers under the Policies, and neither will exercise any right it may have under the Policies to impose restrictions on transfers under the Policies for a period of at least thirty days following the substitution.

18. Within five business days after the proposed substitutions any owner who was affected by the substitutions will be

sent a written notice stating that the substitutions were carried out and that they may transfer all cash value under a Policy invested in each of the affected sub-accounts to other available sub-account(s). The notice will reiterate that neither PFL nor AUSA will exercise any right reserved by it under any of the Policies to impose restrictions or fees on transfers until at least thirty days after the proposed substitutions.

Legal Analysis

1. Section 26(b) of the Act requires the depositor of a registered unit investment trust holding the securities of a single issuer to obtain Commission approval before substituting the securities held by the trust. Specifically, the section provides that "(i)t shall be unlawful for any depositor or trustee of a registered until investment trust holding the security of a single issuer to substitute another security for such security unless the Commission shall have approved such substitution." The section further provides that the Commission shall issue an order approving such substitution of the evidence establishes that it is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

2. Applicants request an order pursuant to section 26(b) of the 1940 Act approving the substitution. Applicants assert that the proposed substitutions meet the standards that the Commission and its staff have applied to substitutions that have been approved in the past and are consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

3. Section 17(a)(1) of the Act, in relevant part, prohibits any affiliated person of a registered investment company, or any affiliated person of such person, acting as principal, from knowingly selling any security or other property to that company. Section 17(a)(2) of the Act generally prohibits any of such affiliated persons, acting as principals, from knowingly purchasing any security or other property from the registered investment company. The transfer of proceeds emanating out of the redemption in-kind of shares of the WRL Growth Portfolio and the purchase of shares of the Endeavor Janus Growth Portfolio may be deemed to involve the purchase and sale of securities between the WRL Fund and the Endeavor Trust or more indirectly between the WRL Fund and the Accounts and between the Accounts and the Endeavor Trust. PFL, AUSA, the Accounts, the WRL Fund and the Endeavor Trust may all be considered affiliates or affiliates of affiliates of each other subject to the restrictions of section 17(a). PFl and AUSA, through various separate accounts, own of record a majority of shares of the Endeavor Trust and, along with Western Reserve, all of the shares of the WRL Fund. In addition, the Endeavor Trust and the WRL Fund may be under the control of (or under common control with) PFL and AUSA.

4. Section 17(b) provides that the Commission may grant an order exempting a proposed transaction provided: (i) The terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned; (ii) the proposed transaction is consistent with the policy of each registered investment company concerned, as recited in its registration statement and reports filed under the Act; and (iii) the proposed transaction is consistent with the general purposes of the Act.

5. Applicants request an order pursuant to section 17(b) of the Act exempting them from section 17(a) of the Act to the extent necessary to carry out the substitution by redeeming securities in-kind or partly in-kind. Applicants assert that the terms of the proposed substitutions as set forth herein, including the consideration to be paid and received, are reasonable and fair to: (1) The Endeavor Trust and the Endeavor Janus Growth Portfolio, (2) the WRL Fund and the WRL Growth Portfolio, and (3) policy owners invested in the WRL Growth Portfolio; and do not involve overreaching on the part of any person concerned. Applicants assert that the proposed substitution will conform to all the conditions of Rule 17a–7 and each fund's procedures thereunder, except that the consideration paid for securities being purchased or sold may not be entirely cash. To the extent that in-kind transactions do not comply with the requirements of Rule 17a–7, applicants assert that the proposed transactions provide the same degree of protection as provided by the conditions of the rule. Applicants further assert that the proposed transaction is consistent with the policy of: (1) the Endeavor Trust and the Endeavor Janus Growth Portfolio, and (2) the WRL Fund and the WRL Growth Portfolio, as recited in its current registration statement and are consistent with the general purposes of the 1940 Act.

6. Applicants assert that consolidating all investment options for the Policies under the Endeavor Trust will result in overall benefits to Policy owners, by simplifying the disclosure required in each Policy's prospectus and by making the Accounts less cumbersome to administer.

Conclusion

Applicants submit that, for all the reasons stated above, the proposed substitutions are consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–7957 Filed 3–31–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–23763; File No. 81–11464]

Sun Capital Advisers Trust, et. al

March 25, 1999.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of application for an order pursuant to section 6(c) of the Investment Company Act of 1940 ("1940 Act") granting exemptive relief from sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act and rules 6e–2(b)(15) and 6e–3(T)(b)(15) thereunder.

SUMMARY OF APPLICATION: Applicants seek an order to permit shares of Sun Capital Advisers Trust ("Trust") and any other similar investment companies that Sun Capital Advisers, Inc. ("Sun Advisers" or "Adviser") may in the future serve or manage as investment adviser, administrator, principal underwriter or sponsor (the Trust and these similar investment companies; the "Funds"), to be sold to and held by: (1) Separate accounts funding variable annuity and variable life insurance contracts issued by both affiliated life insurance companies; and (2) qualified pension and retirement plans outside of the separate account context for which shares of the Funds would be held by the trustees of those plans ("Qualified Plans" or "Plans").

APPLICANTS: Sun Capital Advisers Trust and Sun Capital Advisers, Inc.

FILING DATE: The application was filed on January 11, 1999.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by

mail. Hearing requests should be received by the Commission by 5:30 p.m. on April 19, 1999, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW, Washington, DC 20549–0609. Applicants, c/o Peter F. Demuth, Esq., Sun Life of Canada, One Sun Life Executive Park, Wellesley Hills, Massachusetts 02481.

FOR FURTHER INFORMATION CONTACT: Laura A. Novack, Senior Counsel, or Kevin M. Kirchoff, Branch Chief, Office of Insurance Products, Division of Investment Management, at (202) 942–0670.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch, 450 Fifth Street, NW, Washington, DC 20549 ((202) 942–8090).

Applicants' Representations

1. The Trust is an open-end management investment company organized as a Delaware business trust, registered under the Securities Act of 1933 and the 1940 Act. The Trust currently consists of three separate series of shares ("Series"), each of which has its own investment objectives and policies. The Trust may issue additional classes of shares in the future.

2. Sun Advisers is registered as an investment adviser under the Investment Advisers Act of 1940, as amended, and is the investment adviser for each Series.

3. The Funds would offer shares of its Series to separate accounts registered under the 1940 Act as unit investment trusts ("Separate Accounts") of multiple affiliated and unaffiliated life insurance companies to serve as the investment medium for variable contracts issued by the life insurance companies. Variable contracts may include variable annuity contracts and variable life insurance contracts (collectively, "Variable Contracts"). The Funds may in the future offer their shares to other separate accounts that are not registered as investment companies under the 1940 Act pursuant to the exceptions from registration in sections 3(c)(1) and 3(c)(11) of the 1940 Act. Insurance companies whose separate accounts would own shares of the Funds are referred to as "participating insurance companies."

4. Each participating insurance company will have the legal obligation to satisfy all requirements applicable to it under the federal securities laws in connection with any Variable Contract issued by such company. The Funds' role under this arrangement, so far as the federal securities laws are applicable, will be limited to that of offering their shares to separate accounts of participating insurance companies and fulfilling any conditions the Commission may impose upon granting the order requested herein.

5. The Funds also may offer shares directly to Qualified Plans outside of the separate account context. The Funds propose to offer shares to any Qualified Plans that can, consistent with applicable federal income tax law, invest in the Funds consistent with the Funds serving as investment vehicles for Variable Contracts.

6. It is anticipated that Qualified Plans may choose a Fund (or any one or more series thereof) as the sole investment under the Plan or as one of several investments. Plan participants may or may not be given an investment choice among available alternatives, depending on the Plan itself. Shares of the Funds sold to Qualified Plans would be held by the trustee(s) of these Plans as mandated by section 403(a) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"). Pass-through voting need not be, but may be, provided to the participants in such Qualified Plans pursuant to ERISA.

Applicants' Legal Analysis

1. In connection with the funding of scheduled premium variable life insurance contracts issued through Separate Accounts, Rule 6e–2(b)(15) provides partial exemptions from sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act. The exemptions granted by Rule 6e–2(b)(15)—are available only if the management investment company underlying the Separate Account ("underlying fund") offers its shares "*exclusively* to variable life insurance separate accounts of the life insurer, or any affiliated life insurance company" (emphasis added). Therefore, the relief granted by Rule 6e–2(b)(15) is not available for a scheduled premium variable life insurance separate account that owns shares of an underlying fund that also offers its shares to a variable annuity or flexible premium variable life insurance policy of the same company or of any affiliated life insurance company. The use of a common management investment company as the underlying investment medium for both variable annuity and variable life insurance separate accounts of the same life insurance company or of any affiliated life insurance company is referred to as "mixed funding."

2. The relief granted by Rule 6e–2(b)(15) also is not available for a scheduled premium variable life insurance separate account that owns shares of an underlying fund that also offers its shares to separate accounts funding Variable Contracts of one or more unaffiliated life insurance companies. The use of a common management investment company as the underlying investment medium for variable life insurance separate accounts of one insurance company and separate accounts funding Variable Contracts of one or more unaffiliated insurance companies is referred to as "shared funding."

3. Applicants assert that the relief granted by Rule 6e–2(b)(15) is in no way affected by the purchase of shares of the Funds by Qualified Plans. However, because the relief under Rule 6e–2(b)(15) is available only if shares are offered exclusively to separate accounts, additional exemptive relief is necessary if the shares of the Funds are also to be sold to Plans.

4. In connection with the funding of flexible premium variable life insurance contracts issued through a Separate Account, Rule 6e–3(T)(b)(15) provides partial exemptions from sections 9, 13(a), 15(a) and 15(b) of the 1940 Act. The exemptions granted by 6e–3(T) are available only if the Separate Account's underlying fund offers its shares "*exclusively* to separate accounts of the life insurer, or of any affiliated life insurance company, offering either scheduled [premium variable life insurance] contracts or flexible [premium variable life insurance] contracts, or both, or which also offer their shares to variable annuity separate accounts of the life insurer or of an affiliated life insurance company." (emphasis added). Thus, Rule 6e–3(T)(b)(15) permits mixed funding for a flexible premium variable life insurance separate account, subject to certain conditions. However, Rule 6e–3(T) does not permit shared funding because the relief is not available for a flexible premium variable life insurance separate account that owns shares of a management investment company that also offers its shares to separate accounts (including variable annuity and flexible premium and scheduled premium variable life insurance separate accounts) of unaffiliated life insurance companies.

5. Applicants assert that the relief granted by Rule 6e–3(T) is in no way affected by the purchase of shares of the Funds by Qualified Plans. However, because the relief under Rule 6e–3(T) is available only if shares are offered exclusively to separate accounts, additional exemptive relief is necessary if the shares of the funds are also to be sold to Plans.

6. Applicants state that section 817(h) of the Internal Revenue Code of 1986, as amended ("the Code"), imposes certain diversification standards on the underlying assets of the Variable Contracts held by series of the Funds. The Code provides that a Variable Contract will not be treated as an annuity contract or life insurance contract for any period (and any subsequent period) for which the investments of the segregated asset account on which the Variable Contract is based are not adequately diversified, in accordance with regulations prescribed by the Treasury Department. These diversification regulations are applied by taking into account the assets of an underlying investment company in which the account invests if all of the beneficial interests in the regulated investment company are held by certain designated persons. On March 2, 1989, the Treasury Department published regulations (Treas. Reg. § 1.817–5) which adopted in final form diversification requirements for the investments underlying Variable Contracts. The regulations provide that, in order to meet the diversification requirements, all of the beneficial interests in an underlying regulated investment company must be held by the segregated asset accounts of one or more insurance companies. However, the Regulations also contain certain exceptions to this requirement, one of which allows shares in such an investment company to be held by the trustee of a Qualified Plan. Thus, a fund that serves as an investment vehicle for Variable Contracts may also offer its shares to certain Qualified Plans without adversely affecting, for purposes of the diversification requirements under section 817(h), the ability of shares in the same investment company to also be held by the separate accounts of insurance companies in connection with their Variable Contracts. Treas. Reg. § 1.817–5(f)(3)(iii).

7. Applicants state that the promulgation of Rules 6e–2 and 6e–3(T) preceded the issuance of the Treasury Regulations which made it possible for shares of an investment company to be held by the trustee of a Qualified Plan without adversely affecting the ability of shares in the same investment company to be held by the separate accounts of insurance companies in connection with their Variable Contracts. Thus, the sale of shares of the same investment company to separate accounts and Qualified Plans could not have been envisioned at the time of the adoption of Rules 6e–2(b)(15) and 6e–3(T)(b)(15), given the then-current tax law.

8. Accordingly, Applicants request that the Commission issue an order pursuant to section 6(c) of the 1940 Act exempting variable life insurance separate accounts of participating insurance companies (and, to the extent necessary, any principal underwriter and depositor of such an account) and the Funds from section 9(a), 13(a), 15(a), and 15(b) of the 1940 Act, and sub-paragraph (b)(15) of Rules 6e–2 and 6e–3(T) thereunder, to the extent necessary to permit shares of the Funds to be offered and sold to, and held by: (a) variable annuity and variable life insurance separate accounts of the same life insurance company or of affiliated or unaffiliated life insurance companies, and (b) Qualified Plans.

9. In general, section 9(a) of the 1940 Act disqualifies any person convicted of certain offenses, and any company affiliated with that person, from acting or serving in various capacities with respect to a registered investment company. More specifically, section 9(a)(3) provides that it is unlawful for any company to serve as an investment adviser to, or principal underwriter for, any registered open-end investment company if an affiliated person of that company is subject to disqualification enumerated in sections 9(a)(1) or (2).

10. Rules 6e–2(b)(15)(i) and (ii) and 6e–3(T)(b)(15)(i) and (ii) provide exemptions from section 9(a) under certain circumstances, subject to the limitations discussed above on mixed and shared funding. These exemptions limit the application of the eligibility restrictions to affiliated individuals or companies that directly participate in the management of the underlying management company. The relief provided by the rules permits a person disqualified under section 9(a) to serve as an officer, director, or employee of the life insurer or its affiliates, so long as that person does not participate directly in the management or administration of the underlying investment company. Thus, an insurer shall be eligible to serve as the underlying fund's investment adviser or principal underwriter, provided that none of the insurer's personnel who are ineligible pursuant to section 9(a) are participating in the management of the fund.

11. Applicants state that the partial relief granted in Rules 6e–2 and 6e–3(T) from the requirements of section 9 of the 1940 Act limits, in effect, the amount of monitoring necessary to ensure compliance with Section 9 to that which is appropriate in light of the policy and purposes of that section. Applicants state that there is no regulatory purpose in extending the companies' monitoring requirements to embrace a full application of Section 9(a)'s eligibility restrictions because of mixed or shared funding. Those individuals who participate in the management or administration of the Funds will remain the same regardless of which separate accounts or insurance companies use the Funds. Applicants assert that applying the monitoring requirements of Section 9(a) because of investment by separate accounts of other insurers would be unjustified and would not serve any regulatory purpose. Furthermore, Applicants assert that the increased monitoring costs would reduce the net rates of return realized by contract owners. Applicants further assert that the relief requested will in no way be affected by the proposed sale of shares of the Funds to Qualified Plans, and that the insulation of the Funds from those individuals who are disqualified under the 1940 Act will remain intact even if shares of the Funds are sold to Qualified Plans. Since the Qualified Plans are not investment companies and will not be deemed to be affiliated persons of the participating insurance companies solely by virtue of their shareholdings in the Funds, they are not subject to Section 9(a) and thus no additional relief is necessary.

12. Subparagraph (b)(15)(iii) of Rules 6e–2 and 6e–3(T) under the 1940 Act assumes that contract owners are entitled to pass-through voting privileges with respect to investment company shares held by a separate account. However, subparagraph (b)(15)(iii) of Rules 6e–2 and 6e–3(T) provides exemptions from the pass-through voting requirement with respect to several significant matters.

13. Subparagraph (b)(15)(iii) of Rules 6e–2 and 6e–3(T) provides that an insurance company may disregard the voting instructions of its contract owners with respect to the investments of an underlying fund that would result in changes in the subclassification or investment objectives of the underlying fund, or with respect to any contract between a fund and its investment adviser, when an insurance regulatory authority so requires, subject to certain requirements. In addition, an insurance company may disregard the voting instructions of its contract owners if the

contract owners initiate any change in the underlying fund's investment policies, principal underwriter, or investment adviser (provided that disregarding such voting instructions is reasonable and complies with the other provisions of Rules 6e–2 and 6e–3(T)). Voting instructions with respect to a change in investment policies may be disregarded if the insurance company makes a good-faith determination that such change would: (a) Violate state law; or (b) result in investment that either would not be consistent with the investment objectives of the separate account, or would vary from the general quality and nature of investments and investment techniques used by other separate accounts of the company or of an affiliated life insurance company with similar investment objectives. Voting instructions with respect to a change in an investment adviser or principal underwriter may be disregarded if the insurance company makes a good-faith determination that: (a) The adviser's fees would exceed the maximum rate that may be charged against the separate account's assets; (b) the proposed adviser may be expected to employ investment techniques that vary from the general techniques used by the current adviser; or (c) the proposed adviser may be expected to manage the investments in a manner that would be inconsistent with the investment company's investment objectives or in a manner that would result in investments that vary from certain standards.

14. Applicants state that Rule 6e–2 recognizes that a variable life insurance policy is an insurance contract, has important elements unique to insurance contracts and is subject to extensive state regulation. Applicants maintain that in adopting Rule 6e–2(b)(15)(iii), the Commission expressly recognized that state insurance regulators have authority, pursuant to state insurance laws or regulations, to disapprove or require changes in investment polices, investment advisers or principal underwriters. Applicants also state that the Commission expressly recognized that state insurance regulators have authority to require an insurance company to draw from its general account to cover costs imposed upon the insurance company by a change approved by contract owners over the insurance company's objection. Therefore, the Commission deemed exemptions from pass-through voting requirements necessary "to assure the solvency of the life insurer and the performance of its contractual obligations by enabling an insurance regulatory authority or the life insurer to act when certain proposals reasonably could be expected to increase the risks undertaken by the life insurer." Applicants assert that in this respect, flexible premium variable life insurance contracts are identical to scheduled premium variable life insurance contracts; and that therefore the corresponding provisions of Rule 6e–3(T) undoubtedly were adopted in recognition of the same factors.

15. Applicants submit that state insurance regulators have much the same authority over variable annuity separate accounts as they have over variable life insurance separate accounts, and that variable annuity contracts pose some of the same kinds of risks to insurers as variable life insurance contracts. Applicants submit that while the Commission staff has not been called upon to address the general issue of state insurance regulators' authority over variable annuity contracts, perhaps this is because the Commission has not developed a single comprehensive exemptive rule for variable annuity contracts.

16. Applicants assert that these considerations are no less important or necessary in connection with mixed and shared funding. Applicants state that mixed and shared funding does not compromise the goals of state insurance regulatory authorities or of the Commission. Indeed, Applicants assert that by permitting these arrangements, the Commission eliminates needless duplication of start-up and administrative expenses and facilities the growth of underlying fund assets, thereby making effective portfolio management strategies easier to implement and promoting other economies of scale. Applicants further state that the sale of Fund shares to Plans will not have any impact on the relief requested in this regard. As previously noted, shares of the Funds will be held by the trustees of the Plans as required by section 403(a) of ERISA. Section 403(a) also provides that the trustees must have exclusive authority and discretion to manage and control the Plan investments with two exceptions: (a) When the Plan expressly provides that the trustees are subject to the direction of a named fiduciary who is not a trustee, in which case the trustees are subject to proper directions made in accordance with the terms of the plan and not contrary to ERISA; and (b) when the authority to manage, acquire or dispose of assets of the plan is delegated to one or more investment managers pursuant to section 402(c)(3) of ERISA. Unless one of the two exceptions stated in Section 403(a) applies, Plan trustees have the exclusive authority and responsibility for voting proxies. If a named fiduciary appoints an investment manager, the investment manager has the responsibility to vote the shares held unless the right to vote such shares is reserved to the trustees or the named fiduciary. Where a Qualified Plan does not provide participants with the right to give voting instructions, Applicants do not see any potential for material irreconcilable conflicts between or among contract holders and Plan participants with respect to voting of a Fund's shares. Accordingly, Applicants assert that unlike the case with insurance company separate accounts, the issue of the resolution of material irreconcilable conflicts with respect to voting is not present with respect to Qualified Plans since the Qualified Plans are not required to pass-through voting privileges.

17. Applicants submit that even if a Qualified Plan were to hold a controlling interest in a Fund, Applicants do not believe that such control would disadvantage other investors in the Fund to any greater extent than is the case when any institutional shareholder holds a majority of the voting securities of any open-end management investment company. In this regard, Applicants submit that investment in a Fund by a Plan will not create any of the voting issues occasioned by mixed funding or shared funding. Unlike mixed or shared funding, Plan participant voting rights cannot be frustrated by veto rights of insurers or state regulators. While a Qualified Plan may provide participants with the right to give voting instructions, Applicants assert that there is no reason to believe that participants in Qualified Plans generally, or those in a particular Plan, either as a single group or in combination with participants in other Plans, would vote in a manner that would disadvantage contract owners. In this regard, Applicants submit that the purchase of shares of Funds by Qualified Plans that provide voting rights to participants does not present any complications not otherwise occasioned by mixed and shared funding.

18. Applicants assert that no increased conflicts of interest would be presented by the granting of the requested relief. Applicants assert that shared funding by unaffiliated insurance companies should not present any issues that do not already exist for a single insurance company that is licensed to do business in several or all states. Applicants note that where an insurer is licensed to do business in several or all states, it is possible that a

particular state insurance regulatory body could require action that is inconsistent with the requirements of other states in which the insurance company offers its Variable contracts. Applicants submit that this possibility is not significantly different or greater than exists where different insurers may be domiciled in different states.

19. Applicants further submit that affiliation does not reduce the potential, if any exists, for differences in state regulatory requirements. Affiliated insurers may be domiciled in different states and be subject to differing state law requirements. In any event, the conditions (adapted from the conditions included in rule 6e–3(T)(b)(15)) discussed below are designed to safeguard against, and provide procedures for resolving, any adverse effects that differences among state regulatory requirements may produce. If a particular state insurance regulator's decision conflicts with the majority of other state regulators, the affected insurer will be required to withdraw its separate account's investment in the affected Fund. This requirement will be provided for in agreements that will be entered into by participating insurance companies with respect to their participation in the Funds ("participation agreements").

20. Applicants also argue that affiliation does not eliminate the potential, if any exists, for divergent judgments as to the advisability or legality of a change in investment policies, principal underwriter, or investment adviser initiated by contract owners. Potential disagreement is limited by the requirement that disregarding voting instructions be reasonable and based on specific good faith determinations. However, if an insurer's decision to disregard contract owner voting instructions represents a minority position or would preclude a majority vote, such insurer may be required, at a Fund's election, to withdraw its separate account's investment in the Fund, and no charge or penalty will be imposed as a result of such a withdrawal. This requirement will be provided for in the Fund's participation agreement.

21. Applicants submit that there is no reason why the investment policies of the Funds would or should be materially different from what these policies would or should be if the Funds funded only variable annuity contracts or variable life insurance contracts, whether flexible premium or scheduled premium contracts. Each type of insurance product is designed as a long-term investment program. Each Fund will be managed to attempt to achieve the Fund's investment objectives, and not to favor or disfavor any particular participating insurer or type of insurance product. Applicants assert that there is no reason to believe that different features of various types of contracts, including the "minimum death benefit" guarantee under certain variable life insurance contracts, will lead to different investment policies for different types of Variable Contracts. Applicants state that under existing statutes and regulations, an insurance company and its affiliates can offer a variety of variable annuity and life insurance contracts, some with death benefit guarantees, all funded by a single mutual fund.

22. Applicants also submit that no one investment strategy can be identified as appropriate to a particular insurance product. Each pool of Variable Contract owners is composed of individuals of diverse financial status, ages, insurance needs and investment goals. A Fund supporting even one type of insurance product must accommodate these diverse factors to attract and retain purchasers. Applicants also assert that permitting mixed and shared funding will provide economic support for the growth of the Funds and may encourage more insurance companies to offer Variable Contracts.

23. As noted above, section 817(h) of the Code imposes certain diversification standards on the assets underlying variable annuity contracts and variable life insurance contracts held in the portfolios of management investment companies. Treasury Regulation § 1.817–5(f)(3)(iii), which established diversification requirements for such portfolios, specifically permits "qualified pension or retirement plans" and separate accounts to invest in the same underlying management investment company. Therefore, Applicants assert that neither the Code, nor the Treasury regulations, nor the revenue rulings thereunder, present any inherent conflicts of interest if Qualified Plans, variable annuity separate accounts and variable life separate accounts all invest in the same management investment company.

24. Applicants note that while there may be differences in the manner in which distributions from variable annuity contracts, variable life insurance contracts and Qualified Plans are taxed, the tax consequences do not raise any conflicts of interest. When distributions are to be made, and the Separate Account or Qualified Plan cannot net purchase payments to make the distributions, the Separate Account or Qualified Plan will redeem shares of the Funds as their net asset value. The Qualified Plan will then make distributions in accordance with the terms of the Plan, and the life insurance company will make distributions in accordance with the terms of the Variable Contract. Distributions and dividends will be declared and paid by the Funds without regard to the character of the shareholder.

25. Applicants also state that it is possible to provide an equitable means of giving voting rights to Separate Account Contract owners and to the trustees of Qualified Plans. Each Fund or its agent will inform each participating insurance company of each Separate Account's ownership of Fund shares, as well as inform the trustees of Qualified Plans of their holdings. Each participating insurance company will then solicit voting instructions in accordance with Rules 6e–2 and 6e–3(T). Qualified Plans and Separate Accounts will each have the opportunity to exercise voting rights with respect to their Fund shares, although only the Separate Accounts are required to pass through their voting rights to contract owners.

26. Applicants submit that the ability of the Funds to sell their respective shares directly to Qualified Plans does not create a "senior security," as this term is defined under Section 18(g) of the 1940 Act, with respect to any Variable Contract owner as opposed to a participant in a Qualified Plan. Regardless of the rights and benefits of participants in the Qualified Plans, or Variable Contract owners, the Qualified Plans and the Separate Accounts have rights only with respect to their respective shares of the Funds. They can only redeem such shares at their net asset value. No shareholder of any of the Funds will have any preference over any other shareholder with respect to distribution of assets or payments of dividends.

27. Applicants state that there are no conflicts between the contract owners of the Separate Accounts and participants in the Qualified Plans with respect to the state insurance commissioners' veto power over investment objectives. The state insurance commissioners have been given the veto power in recognition of the fact that insurance companies usually cannot simply redeem their separate accounts out of one fund and invest in another. Time-consuming, complex transactions must be undertaken to accomplish these redemptions and transfer. On the other hand, trustees of Qualified Plans can make the decision quickly and implement the redemption of their shares from the Funds and reinvest in

another investment vehicle without the same regulatory impediments or, as is the case with most Qualified Plans, even hold cash pending a suitable investment. Based on the foregoing, Applicants represent that even if conflicts of interest arise between Variable Contract owners and Qualified plans, the issue can be almost immediately resolved because the trustees of the Qualified Plans can, on their own initiative, redeem their Fund shares.

28. Applicants assert that various factors have limited the number of insurance companies that offer variable annuities and variable life insurance policies. Applicants state that these factors include the costs of organizing and operating investment vehicles, the lack of expertise with respect to investment management ([principally with respect to stock and money market investments), and the lack of name recognition by the public of certain insurers as investment experts. Applicants assert that use of the Funds as common investment medium for Variable Contracts would help alleviate these concerns, because participating insurance companies will benefit not only from the investment and administrative expertise of the Adviser, but also from the cost efficiencies and investment flexibility afforded by pooling assets for multiple Variable Contracts and insurance companies in a single underlying Fund. Therefore, Applicants assert, making the Funds available should result in increased competition with respect to both Variable Contract design and pricing, which can be expected to result in more product variation and lower charges.

29. Applicants also submit that mixed and shared funding should provide benefits to Variable Contract owners by eliminating a significant portion of the costs of establishing and administering separate underlying funds. Furthermore, the sale of shares of the Funds to Qualified Plans should result in an increased amount of assets available for investment by the Funds. This may benefit Variable Contract owners by promoting economies of scale, by permitting increased safety through greater diversification, or by making the addition of new series more feasible. Applicants further believe that the sale of the Funds to Qualified Plans does not increase the risk of material irreconcilable conflicts to the Funds or the participating Separate Accounts.

30. Applicants assert that they believe that mixed and shared funding will have no adverse federal income tax consequences.

Applicants' Conditions

Applicants have consented to the following conditions:

1. A majority of the board of trustees (each a "Board") of each of the Funds will consist of persons who are not "interested persons" of the Funds, as defined by section 2(a)(19) of the 1940 Act and the rules thereunder and as modified by any applicable orders of the Commission. However, if this condition is not met by reason of the death, disqualification, or bona fide resignation of any trustee(s), then the operation of this condition shall be suspended: (a) For a period of 45 days, if the vacancy or vacancies may be filed by the Board; (b) for a period of 60 days, if a vote of shareholders is required to fill the vacancy or vacancies; or (c) for such longer period as the Commission may prescribe by order upon application.

2. The Board will monitor the Funds for the existence of any material irreconcilable conflict between the interests of the contract owners of all Separate Accounts investing in the Funds and all other persons investing in the Funds, including Qualified Plans, and determine what action, if any, should be taken in response to these conflicts. A material irreconcilable conflict may arise for a variety of reasons, including: (a) An action by any state insurance regulatory authority; (b) a change in applicable federal or state insurance, tax or securities laws or regulations, or a public ruling, private letter ruling, no-action or interpretive letter, or any similar action by insurance, tax, or securities regulatory authorities; (c) an administrative or judicial decision in any relevant proceeding; (d) the manner in which the investments of any series of the Funds are being managed; (e) a difference in voting instructions given by variable annuity contract owners, variable life insurance contract owners and Plan trustees; (f) a decision by an insurer to disregard the voting instructions of contract owners; or (g) if applicable, a decision by a Qualified Plan to disregard voting instructions of Plan participants.

3. Participating insurance companies and any Qualified Plan that executes a participation agreement with a Fund (collectively, "Participating Parties") and the Adviser will report any potential or existing conflicts of which it becomes aware to the Board of the relevant Fund. Participating Parties and the Adviser will be responsible for assisting the Board in carrying out its responsibilities under these conditions, by providing the Board with all information reasonably necessary for the Board to consider any issues raised. This includes, but is not limited to, an obligation by each participating insurance company to inform the Board whenever contract owner voting instructions are disregarded and, if pass-through voting is applicable, an obligation by each Qualified Plan that is a Participating Party to inform the Board whenever it has determined to disregard Plan participant voting instructions. The responsibility to report such information and conflicts and to assist the Board will be a contractual obligation of all Participating Parties under their participating agreements and these agreements will be carried out with a view only to the interests of the contract owners and Qualified Plan participants.

4. If it is determined by a majority of the Board of a Fund, or a majority of its disinterested trustees, that a material irreconcilable conflict exists, the relevant Participating Parties will, at their expense and to the extent reasonably practicable (as determined by a majority of the disinterested trustees), take whatever steps are necessary to remedy or eliminate the material irreconcilable conflict. These steps may include: (a) Withdrawing the assets allocable to some or all of the Separate Accounts of the participating insurance companies from the affected Fund or any series thereof and reinvesting these assets in a different investment medium (including another series, if any, of such Fund) or submitting the question of whether such segregation should be implemented to a vote of all affected contract owners and, as appropriate, segregating the assets of any appropriate group (*i.e.*, annuity contract owners, life insurance contract owners, or variable contract owners of one or more participating insurance companies) that votes in favor of such segregation, or offering to the affected contract owners the option of making such a change; (b) withdrawing the assets allocable to some or all of the participating Qualified Plans from the relevant Fund and reinvesting those assets in a different investment medium; and (c) establishing a new registered management investment company or managed separate account. If a material irreconcilable conflict arises because of an insurer's decision to disregard contract owner voting instructions and that decision represents a minority position or would preclude a majority vote, the insurer may be required, at the Fund's election, to withdraw its Separate Account's investment in the Fund, and no charge or penalty will be imposed as a result of the withdrawal.

The responsibility of taking remedial action in the event of a Board determination of a material irreconcilable conflict and to bear the cost of such remedial action will be a contractual obligation of all Participating Parties under their participation agreements and these responsibilities will be carried out with a view only to the interests of the contract owners and participants in Qualified Plans, as applicable.

5. For the purposes of condition 4, a majority of the disinterested members of the Board of the affected Fund will determine whether or not any proposed action adequately remedies any material irreconcilable conflict, but in no event will the Fund or the Advisor be required to establish a new funding medium for any Variable Contract or Qualified Plan. No participating insurance company will be required by condition 4 to establish a new funding medium if an offer to do so has been declined by a vote of a majority of contract owners materially adversely affected by the material irreconcilable conflict. No Qualified Plan will be required by condition 4 to establish a new funding medium for the Plan if: (a) a majority of Plan participants materially and adversely affected by the material irreconcilable conflict vote to decline the offer; or (b) pursuant to governing Plan documents and applicable law, the Plan makes the decision without a vote of Plan participants.

6. A Board's determination of the existence of a material irreconcilable conflict and its implications will be made known promptly in writing to the Adviser and all Participating Parties.

7. As to Variable Contracts issued by Separate Accounts, participating insurance companies will provide pass-through voting privileges to all contract owners so long as and to the extent that the Commission continues to interpret the 1940 Act to require pass-through voting privileges for Variable Contract owners. As to Variable Contracts issued by unregistered separate accounts, pass-through voting privileges will be extended to participants to the extent granted by the issuing insurance company. Participating insurance companies will be responsible for assuring that each of their registered Separate Accounts participating in a Fund calculate voting privileges as instructed by a Fund with the objective that each such participating insurance company calculate voting privileges in a manner consistent with other participating insurance companies. The obligation to calculate voting privileges in a manner consistent with all other Separate Accounts investing in a Fund will be a contractual obligation of all participating insurance companies under their participating agreements. Each participating insurance company will vote Fund shares held by Separate Accounts for which it has not received voting instructions, as well as shares attributable to it, in the same proportion as it votes shares for which it has received voting instructions. Each Qualified Plan will vote as required by applicable law and governing Plan documents.

8. Each Fund will comply with all provisions of the 1940 Act requiring voting by shareholders (which, for these purposes, will be the persons having a voting interest in the Fund's shares). In particular each Fund will either provide for annual meetings (except insofar as the Commission may interpret section 16 not to require such meetings) or, if annual meetings are not held, comply with section 16(c) of the 1940 Act (although the Trust is not, and the Funds may not be, one of the trusts described in section 16(c) of the 1940 Act), as well as sections 16(a) and, if and when applicable, 16(b). Further, the Funds will act in accordance with the Commission's interpretation of the requirements of Section 16(a) with respect to periodic elections of Trustees and with whatever rules the Commission may promulgate with respect thereto.

9. The Funds will notify all participating insurance companies that prospectus disclosure regarding potential risks of mixed and shared funding may be appropriate: A Fund will disclose in its prospectus that: (a) Shares of the Fund are offered to insurance company separate accounts offered by various participating insurance companies which fund both annuity and life insurance contracts and to Qualified Plans; (b) due to differences in tax treatment or other considerations, the interests of various contract owners participating in the Fund and the interests of Qualified Plans investing in the Fund might at some time conflict; and (c) the Board will monitor for any material conflicts and determine what action, if any, should be taken.

10. No less than annually, the Participating Parties and/or the Adviser will submit to the Boards such reports, materials or data as each Board may reasonably request so that the Boards may carry out fully the obligations imposed upon them by the conditions contained in the Application. These reports, materials and data shall be submitted more frequently if deemed appropriate by the Boards. The obligations of the Participating Parties to provide these reports, materials and data to the Boards will be a contractual obligation of all Participating Parties under the participation agreements.

11. All reports received by a Board of potential or existing conflicts, and all Board action with regard to determining the existence of a conflict, notifying the Adviser or Participating Parties of a conflict, and determining whether any proposed action adequately remedies a conflict, will be properly recorded in the minutes of the Board or other appropriate records, and these minutes or other records will be made available to the Commission upon request.

12. If and to the extent Rule 6e–2 and Rule 6e–3(T) are amended, or Rule 6e–3 is adopted, to provide exemptive relief from any provision of the 1940 Act or the rules thereunder with respect to mixed or shared funding on terms and conditions materially different from those of any exemptions granted in the order requested in the Application, then the Funds and/or the Participating Parties, as appropriate, shall take such steps as may be necessary to comply with Rule 6e–2 and Rule 6e–3(T), as amended, and Rule 6e–3, as adopted, to the extent these rules are applicable.

13. In the event that a Qualified Plan should ever become an owner of 10% or more of the assets of a Fund, such Qualified Plan will execute a participation agreement with the Fund. A Qualified Plan will execute a certification containing an acknowledgment of this condition at the time of its initial purchase of shares of each Fund.

Conclusion

For the reasons summarized above, Applicants assert that the requested exemptions are appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–7956 Filed 3–31–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITY AND EXCHANGE COMMISSION

[Docket No. IC–23765]

Notice of Application for Deregistration under Section 8(f) of the Investment Company Act of 1940

March 26, 1999.

The following is a notice of applications for deregistration under

section 8(f) of the Investment Company Act of 1940 for the month of March 1999. A copy of each application may be obtained for a fee at the SEC's Public Reference Branch, 450 Fifth St., N.W., Washington, DC 20549–0102 (tel. 202–942–8090). An order granting each application will be issued unless the SEC orders a hearing. Interested persons may request a hearing on any application by writing to the SEC's Secretary at the address below and serving the relevant applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on April 20, 1999, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Secretary, SEC, 450 Fifth Street, N.W., Washington, DC 20549–0609. For Further Information Contact: Diane L. Titus, at (202) 942–0564, SEC, Division of Investment Management, Office of Investment Company Regulation, Mail Stop 5–6, 450 Fifth Street, N.W., Washington, DC 20549–0506.

Kemper Gold Fund [File No. 811–6334]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On July 31, 1991, applicant made a liquidating distribution to its shareholders at net asset value per share. Expenses incurred in connection with the liquidation were $7,000 and were borne by applicant and Kemper Financial Services, Inc., the applicant's investment adviser.

Filing Dates: The application was filed on December 10, 1997, and amended on February 16, 1999.

Applicant's Address: 222 South Riverside Plaza, Chicago, IL 60606.

Kemper Environmental Services Fund [File No. 811–6060]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On August 26, 1994, applicant transferred all of its assets, less reserves for debt, to the Kemper Technology Fund in exchange for Class A shares based on net asset value per share. Expenses incurred in connection with the merger were $28,000 and were borne by applicant.

Filing Dates: The application was filed on December 10, 1997, and amended on February 16, 1999.

Applicant's Address: 222 South Riverside Plaza, Chicago, IL 60606–5808.

Kemper Government Money Market Fund [File No. 811–3316]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On November 14, 1986, applicant was reorganized into the Government Securities Portfolio of Kemper Money Market Fund (now Zurich Money Funds) and transferred all of its assets and liabilities to the Government Securities Portfolio in exchange for shares based on net asset value per share. Expenses incurred in connection with the reorganization were $30,000 and were borne by applicant.

Filing Dates: The application was filed on December 10, 1997, and amended on February 16, 1999.

Applicant's Address: 222 South Riverside Plaza, Chicago, IL 60606–5808.

Kemper New York Tax-Free Fund [File No. 811–4411]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. Applicant was reorganized as the New York Portfolio, a series of Kemper State Tax-Free Income Fund, and, on July 27, 1990, transferred all of its assets and liabilities to the New York Portfolio in exchange for shares based on net asset value per share. Expenses incurred in connection with the reorganization were $30,000 and were borne by applicant.

Filing Dates: The application was filed on December 10, 1997, and amended on February 16, 1999.

Applicant's Address: 222 South Riverside Plaza, Chicago, IL 60606–5808.

Dean Witter Retirement Series [File No. 811–6682]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. By September 14, 1998, each of applicant's eleven series had transferred all of its assets and liabilities to a corresponding series of Morgan Stanley Dean Witter Funds, based on the relative net asset value per share. Expenses of approximately $948,163 were incurred in connection with the reorganization and were borne by Morgan Stanley Witter Advisors Inc., the investment adviser of applicant and each acquiring fund.

Filing Dates: The application was filed on November 25, 1998, and amended on March 5, 1999.

Applicant's Address: Two World Trade Center, New York, New York 10048.

Oppenheimer Time Fund [File No. 811–2171]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On June 23, 1995, applicant transferred all of its assets to Oppenheimer Target Fund ("Target Fund"), in exchange for shares of Target Fund, based on the relative net asset values per share. Expenses of approximately $37,326 incurred in connection with the reorganization were paid equally by applicant and the Target Fund.

Filing Dates: The application was filed on November 20, 1998, and amended on March 12, 1999.

Applicant's Address: Two World Trade Center, New York, New York 10048–0203.

SBSF Funds, Inc. (dba Key Mutual Funds) [File No. 811–3792]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. By March 23, 1998, each of applicant's eight series had transferred all of their assets and liabilities to corresponding series of The Victory Portfolios (the "Company") in exchange for shares of the Company based on the relative net asset values. Approximately $107,000 in expenses were incurred in connection with the reorganization and were paid by KeyCorp, a holding company affiliated with Key Asset Management Inc., the investment adviser for applicant and the Company.

Filing Dates: The application was filed on December 8, 1998, and amended on March 8, 1999.

Applicant's Address: 3435 Stelzer Road, Columbus, Ohio 43219.

Dean Witter Global Asset Allocation Fund [File No. 811–7233]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On September 21, 1998, applicant transferred its assets and liabilities to Morgan Stanley Dean Witter Strategist Fund ("Strategist"), in exchange for shares of Strategies based on the relative net asset values. Expenses of approximately $88,000 were incurred in connection with the reorganization and were paid by applicant.

Filing Dates: The application was filed on January 19, 1999, and amended on March 19, 1999.

Applicant's Address: Two World Trade Center, New York, New York 10048.

Van Kampen Small Capitalization Fund [File No. 811–8421]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On February 12, 1999, applicant made a liquidating distribution to its sole shareholder. Expenses of approximately $450 incurred in connection with the liquidation were paid by Van Kampen Investments Inc., the holding company of applicant's adviser.

Filing Dates: The application was filed on March 4, 1999. Applicant has agreed to file an amendment during the notice period.

Applicant's Address: 1 Parkview Plaza, P.O. Box 5555, Oakbrook Terrace, Illinois 60181.

The Cardinal Group [File No. 811–7588]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On September 19, 1998, applicant transferred the assets and liabilities of its six series to corresponding series of Fountain Square Funds in exchange for shares of the corresponding acquiring fund based on net asset value. Expenses of approximately $550,000 were incurred in connection with the reorganization and were paid by Fifth Third Bank, the investment adviser to the acquiring funds.

Filing Dates: The application was filed on March 5, 1999. Applicant has agreed to file an amendment during the notice period.

Applicant's Address: 155 East Broad Street, Columbus, Ohio 43215.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–8063 Filed 3–31–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41211; File No. 600–22]

Self-Regulatory Organizations; MBS Clearing Corporation; Notice of Filing and Order Granting Approval of Extension of Temporary Registration as a Clearing Agency

Marach 24, 1999.

On March 11, 1999, the MBS Clearing Corporation ("MBSCC") filed[1] with the Securities and Exchange Commission ("Commission") an application pursuant to Section 19(a) of the Securities Exchange Act of 1934 ("Act")[2] requesting that the Commission grant MBSCC permanent registration as a clearing agency under Section 17A of the Act or in the alternative extend MBSCC's temporary registration until permanent registration is granted.[3] Because MBSCC's current temporary registration expires on March 31, 1999, the Commission is extending MBSCC's temporary registration as a clearing agency through March 31, 2000, while the Commission completes its review of MBSCC's application for permanent registration. The Commission is publishing this notice and order to solicit comments from interested persons and to extend MBSCC's temporary registration as a clearing agency through March 31, 2000.

On February 2, 1987, the Commission granted MBSCC's application for registration as a clearing agency pursuant to Sections 17A(b)[4] and 19(a)(1)[5] of the Act and Rule 17Ab2–1(c)[6] thereunder for a period of eighteen months.[7] Subsequently, the Commission has extended MBSCC's temporary registration as a clearing agency several times with the most current extension extending MBSCC's temporary registration through March 31, 1999.[8]

As discussed in detail in the original order granting MBSCC 's registration, one of the primary reasons for MBSCC's registration was to enable it to provide for the safe and efficient clearance and settlement of transactions in mortgage-backed securities. Since its original temporary registration order, MBSCC has implemented many improvements and continues to work towards enhancing the safety and efficiency of its operations. For example, during the past year, MBSCC modified its rules to strengthen its processes for liquidating open trades when MBSCC ceases to act for a participant.[9] In addition, MBSCC increased the number of directors on its board of directors from thirteen to fifteen, which allows two additional participants to be represented MBSCC's board.[10]

MBSCC has functioned effectively as a registered clearing agency for over ten years. Accordingly, in light of MBSCC's past performance and the need for continuity of the services MBSCC provides to its participants, the Commission believes that it is necessary and appropriate in the public interest and for the prompt and accurate clearance and settlement of securities transactions to extend MBSCC's temporary registration through March 31, 2000. During this temporary registration period, the Commission anticipates that it will act on MBSCC's application for permanent registration. Any comments received during MBSCC's temporary registration will be considered in conjunction with the Commission's review of MBSCC's request for permanent registration as a clearing agency under Section 17A of the Act.[11]

Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the request for permanent registration as a clearing agency that are filed with the Commission, and all written communications relating to the extension between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of MBSCC. All submissions should refer to File No. 600–22.

Conclusion

On the basis of the foregoing, the Commission finds the extending MBSCC's temporary registration as a clearing agency is consistent with the

[1] Letter from Anthony H. Davidson, Managing Director and General Counsel, MBSCC (March 11, 1999).

[2] 15 U.S.C. 78s(a).

[3] 15 U.S.C. 78q–1.

[4] 15 U.S.C. 78q–1(b).

[5] 15 U.S.C. 78s(a)(1).

[6] 17 CFR 240.17Ab2–1(c).

[7] Securities Exchange Act Release No. 24046 (February 2, 1987), 52 FR 4218.

[8] Securities Exchange Act Release Nos. 25957 (August 2, 1988), 53 FR 29537; 27079 (July 31, 1989), 54 FR 34212; 28492 (September 28, 1990), 55 FR 41148; 29751 (September 27, 1991), 56 FR 50602; 31750 (January 21, 1993), 58 FR 6424; 33348 (December 15, 1993), 58 FR 68183; 35132 (December 21, 1994), 59 FR 67743; 37372 (June 26, 1996), 61 FR 35281; 38784 (June 27, 1997) 62 FR 36587; and 39776 (March 20, 1998) 63 FR 14740.

[9] Securities Exchange Act Release No. 39747 (March 13, 1999), 63 FR 13712 [File No. FR–MBSCC–97–10].

[10] Securities Exchange Act Release No. 41104 (December 5, 1997), 62 FR 65466 [File No. FR–MBSCC–96–03].

[11] 15 U.S.C. 78q–1.

Act and in particular with Section 17A of the Act.[12]

It is therefore ordered, pursuant to Section 19(a) of the Act, that MBSCC's temporary registration as a clearing agency (File No. 600–22) be, and hereby is, extended through March 31, 2000.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Dos. 99–8064 Filed 3–31–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41217; File No. SR–MSRB–97–16]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the Municipal Securities Rulemaking Board Relating to Activities of Financial Advisors

March 26, 1999.

I. Introduction

On December 23, 1997, the Municipal Securities Rulemaking Board ("Board" or "MSRB"), submitted to the Securities and Exchange Commission ("Commission" or "SEC"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b-4 thereunder,[2] a proposed rule change relating to activities of financial advisors. The Board filed Amendments No. 1[3] and No. 2[4] to the proposed rule change on April 16, 1998 and January 14, 1999, respectively. The proposed rule change, as amended, was published for comment in the **Federal Register** on February 23, 1999.[5]

The Commission received one comment letter on the proposal.[6] the commenter objected to the proposed rule change because it does not require the financial advisor to inform the issuer of its intent to act as remarketing agent on an issue of securities prior to beginning work on that issue. In response, the MSRB stated that financial advisors may not know at the beginning stage of work on an issue whether the issue will be long or short term and whether it will be available to act as a remarketing agent for the issue when it is remarketed.[7] The Commission believes the proposal provides the issuer with sufficient information and time to select a suitable remarketing agent. For these reasons and those set forth below, this order approves the proposed rule change, as amended.

II. Description of the Proposal

Rule G–23,[8] on activities of financial advisors, establishes disclosure and other requirements for dealers that act as financial advisors to issuers of municipal securities. The rule is designed principally to minimize the *prima facie* conflict of interest that exists when a dealer acts as both financial advisor and underwriter with respect to the same issue of municipal securities. Specifically, Rule G–23 requires a financial advisor to alert the issuer to the potential conflict of interest that might lead the dealer to act in its own best interest as underwriter rather than the issuer's best interest.[9]

In certain instances, some financial advisors also have acted as remarketing agents for issues on which they advised the issuer. To address this situation and its potential conflict of interest, a proposed rule change was filed to require a financial advisor, prior to entering into a remarketing agreement for an issue on which it advised the issuer, to disclose in writing to the issuer the terms of the remuneration the financial advisor could earn as remarketing agent on such issue and that there may be a conflict of interest in changing from the capacity of financial advisor to remarketing agent. The proposed rule change also required that the financial advisor receive the issuer's acknowledgment in writing of receipt of such disclosures. Under the proposal, when these requirements are met, a dealer acting as financial advisor for an issue also could serve as remarketing agent for that issue.

Commission staff requested that the proposed rule change be revised to include a provision requiring issuer consent to the dealer's dual role, along with certain other technical language changes.[10] amendment No. 2 revises this proposal to require that a dealer that has a financial advisory relationship with an issuer with respect to a new issue of municipal securities, prior to acting as a remarketing agent for that issue, disclose in writing to the issuer that there may be a conflict of interest in acting as both financial advisor and remarketing agent for the securities with respect to which the financial advisory relationship exists and disclose the source and basis of the remuneration the dealer could earn as remarketing agent on such issue. This written disclosure to the issuer can be in a separate writing provided to the issuer prior to the execution of the remarketing agreement or the disclosure can be in the remarketing agreement. The issuer must expressly acknowledge in writing to the broker, dealer, or municipal securities dealer receipt of such disclosure and consent to the financial advisor acting in both capacities and to the source and basis of the remuneration. If the disclosure is made prior to the execution of the remarketing agreement, the amount of the specific fee paid by the issuer to the remarketing agent still may be negotiated in the remarketing agreement. If the disclosure is made in the remarketing agreement, the dealer will have negotiated the amount of its fee with the issuer.

III. Discussion

The Commission believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder.[11] In particular, the Commission finds that the proposed rule change is consistent with Section 15B(b)(2)(C)[12] of the Act. Section 15B(b)(2)(C) of the Act requires, among other things, that the rules of the Board be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market, and, in general, to protect investors and the public interest. Specifically, the Commission believes the proposed rule change will prevent fraudulent and manipulative acts and practices and promote just and equitable principles of trade by requiring a dealer that has a financial advisory

---

[12] 15 U.S.C. 78q–1.

[13] 17 CFR 200.30–3(a)(50)(i).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 made certain technical changes are revised statements concerning comments received on the draft amendment published by the Board for comment from its members.

[4] After discussion with Commission staff, the MSRB filed Amendment No. 2 to revise the language of Rule G–23 to address certain disclosure and consent issues raised by the proposed rule change.

[5] *See* Exchange Act Release No. 41053 (Feb. 12, 1999, 64 FR 8894.

[6] Letter from Robert E. Donovan, Executive Director, Rhode Island Health and Educational Building Corporation, to Secretary, SEC, dated March 15, 1999.

[7] Letter from Ronald W. Smith, Senior Legal Associate, MSRB, to Sonia Patton, Attorney, SEC, dated March 22, 1999.

[8] *MSRB Manual,* General Rules, Rule G–23 (CCH) ¶3611.

[9] *See supra* note 8.

[10] *See supra* note 4.

[11] In reviewing this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. The proposed rule change should improve efficiency and competition because it prevents all municipal securities dealers from acting as both financial advisor and remarketing agent with respect to a new issue of securities without first obtaining the issuer's consent. 15 U.S.C. 78f(b)(7).

[12] 15 U.S.C. 78o–4(b)(2)(C).

relationship with an issuer of securities, prior to acting as remarketing agent for the issuer's securities, to disclose in writing to the issuer that there may be conflict of interest and the source and basis of the remuneration the dealer expects to earn as remarketing agent. This will enable the issuer to assess the conflict of interest, and decide if it wishes to proceed or take other action. The Commission believes the proposed rule change further prevents fraudulent and manipulative acts and practices by requiring the issuer's consent to the dealer acting as remarketing agent and to the source and basis of remuneration. The Commission believes this requirement will enhance the likelihood that a financial advisor who wishes to act as remarketing agent for an issue on which it advised the issuer acts in the issuer's best interest and not its own best interest as remarketing agent.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) [13] of the Act, that the proposed rule change, as amended, (SR–MSRB–97–16) is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–8065 Filed 3–31–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41212; File No. SR–PCX–99–03]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Exchange, Inc., Relating to Fee Schedule Changes

March 24, 1999.

Pursuant to Section 19(b) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 11, 1999, the Pacific Exchange, Inc. ("PCX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On March 4, 1999, the Exchange filed as amendment ("Amendment No. 1") to the proposed rule change.[3] In Amendment No. 1, the Exchange designated the portion of the proposed rule change dealing with customer transaction charges as constituting a "non-controversial" rule change under Rule 19b–4(f)(6) under the Act,[4] which renders the part of the proposal effective upon receipt of this filing by the Commission.[5] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to change its Schedule of Fees and Charges for Exchange Services as discussed below. The text of the proposed rule change is available at the Office of the Secretary, PCX, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes four changes to its Schedule of Fees an Charges for Exchange Services by reducing its customer transaction charges, increasing its Market Maker transaction charges and fees, reducing its LMM Book transaction charges, and increasing its Member dues.

Customer Charges. Currently, for manual transactions, the Exchange charges its customers $0.15 per contract side for premiums less than one dollar and $0.35 per contract side for premiums one dollar or greater. For block transactions with premiums one dollar or greater, the Exchange charges its customers $0.35 per contract for the first four hundred contracts of a block trade and $0.25 per contract for all contracts over four hundred. The Exchange charges its customers $0.30 per contract side for Pacific Options Exchange Trading System ("POETS") transactions, with a minimum charge of $0.35 per trade. Also, the Exchange charges a Book execution fee of $0.45 per contract side for all customer Book executions. To simplify rates and reduce costs for customers, the Exchange proposes to reduce transaction charges for customers to $0.12 per contract side, which will apply to all manual transactions (including block transactions) and POETS automated transactions. Further, the Exchange proposes to reduce Book execution fees to $0.20 per contract side for all Book transactions, except accommodation/liquidation transactions,[6] which remain unchanged. The Exchange proposes to make these changes in an effort to remain competitive, attract customer order-flow, and reduce customer costs.

Market Maker Charges. The current transaction charges for Market Makers are $0.095 per contract site for equity options, $0.11 per contract side for index options, and $0.085 per contract side for POETS transactions. Also, the Exchange currently charges a monthly Market Maker fee of $660, which is applied to all Market Makers after a six-month initial waiver person. The Exchange proposes to increase transaction charges for Market Makers to $0.15 per contract side for all manual and POETS transactions. In addition,

---

[13] 15 U.S.C. 78s(b)(2).

[14] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Robert P. Pacileo, Staff Attorney, Regulatory Policy, PCX, to Michael A. Walinskas, Deputy Associate Director, Division of Market Regulation ("Division"), Commission, dated March 3, 1999. The Commission received a draft of the proposed amendment on February 26, 1999, which the Commission has accepted as a pre-filing pursuant to Rule 19b–4(f)(6).

[4] 17 CFR 240.19b–4(f)(6).

[5] The Exchange has represented that the proposed rule change will not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days after the date of this filing, unless otherwise accelerated by the Commission. The Exchange also has provided at least five business days notice to the Commission of its intent to file this proposed rule change, as required by Rule 19b–4(f)(6) under the Act. *See* note 3 above. Also, in a telephone conversation on February 26, 1999, between Robert P. Pacileo, Staff Attorney, Regulatory Policy, PCX, and David Sieradzki, Special Counsel, and Joseph Morra, Attorney, Division, SEC, the Exchange requested that the Commission waive the 30-day waiting period under Rule 19b–4(f)(6) for the portion of the filing relating to customer fees.

[6] An accommodation/liquidation transaction is a book-executed transaction for a premium less than 1/16th. Telephone conversation between Robert P. Pacileo, Staff Attorney, Regulatory Policy, PCX, and Joseph Morra, Attorney, Division, SEC, on March 23, 1999.

the Exchange proposes to increase Market Maker fees to $1,750 per month per Market Maker, and proposes to eliminate the initial six-month waiver period. The Exchange proposes these changes to offset revenues lost from customer rate reductions.

LMM Book Charges. The Exchange charges each Lead Market Maker ("LMM") $0.10 per Book contract for the first 15,000 contracts, $0.20 for 15,001 to 30,000 Book contracts, $0.30 for 30,001 to 55,000 Book contracts, and $0.20 for all Book contracts over 55,000. These charges are applied to the monthly total of all Book contracts in all options issues collectively traded by an LMM under the program. The Exchange proposes to reduce its per Book contract rates to $0.05 per Book contract for the first 15,000 contracts, $0.10 for 15,001 to 30,000 Book contracts, $0.15 for 30,001 to 55,000 Book contracts, and $0.10 for all Book contracts over 55,000. The Exchange proposes these fee changes to reduce charges consistent with the reduction in Book execution fees for customers. In addition, the fee reduction is intended to attract LMMs to participate in the LMM Book Program.

Member dues. Currently, monthly dues for Exchange Members are $250. The Exchange proposes to increase its monthly Member dues to $750 per month to maintain a revenue base for the operations of the Exchange.

2. Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Act,[7] in general, and furthers the objectives of Section 6(b)(4) of the Act,[8] in particular, because it provides for the equitable allocation of reasonable dues, fees and other charges among its Members and issuers and other persons using its facilities.[9]

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(4).

[9] In reviewing this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change relating to membership fees, transaction charges for Market Makers, LMM Book charges, Market Maker fees, and member dues became effective upon filing pursuant to Section 19(b)(3)(A)(ii) of the Act [10] and subparagraph (f)(2) of Rule 19b–4 thereunder.[11]

The portion of the proposed rule regarding customer transaction charges have been filed by the Exchange as a "non-controversial" rule change pursuant to Section 19(b)(3)(A)(ii) of the Act [12] and subparagraph (f)(6) of Rule 19b–4 thereunder.[13] Consequently, because the Exchange represents that the foregoing proposed rule change with respect to customer transaction changes: (1) does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and because the Exchange provided the Commission with written notice of its intent to file the proposed rule change at least five days prior to the filing date, it has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6) thereunder. The Commission finds good cause to permit the proposed rule change relating to customer fees to become operative prior to thirty days from the date of filing [14] because the Commission believes that those portions reducing the fees may increase competition between the options exchanges.

IV. Solicitation of Comments

Interested personal are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the PCX. All submissions should refer to File No. SR–PCX–99–03, and should be submitted by April 22, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–8062 Filed 3–31–99; 8:45 am]

BILLING CODE 8010–01–M

[10] 15 U.S.C. 78f(b)(3)(A)(ii).

[11] 17 CFR 240.19b–4(f)(2).

[12] 15 U.S.C. 78s(b)(3)(A)(ii).

[13] 17 CFR 240.19b–4(f)(6).

[14] The Exchange requested that the Commission waive the 30-day operative period under Rule 19b–4(f)(6) regarding the provision relating to customer fees. *See* footnote 5.

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41210; File No. SR–Phlx–98–14]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment Nos. 3 and 4 to Proposed Rule Change Relating to the Establishment of a Daily Pre-Opening Session for the Matching of Orders at the Volume Weighted Average Price

March 24, 1999.

I. Introduction

On April 29, 1996, the Philadelphia Stock Exchange, Inc. ("Exchange" or "Phlx") submitted to the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change that would establish a daily pre-opening order matching session ("Session") for the execution of large-sized stock orders at the volume weighted average price ("VWAP™").[3] The Session would be conducted through the VWAP Trading System ("VTS™"), which would be operated as a facility of the Exchange. The VTS is a system module of the Universal Trading System ("UTS™")[4] that was developed by Universal

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] VWAP™ is a registered trademark of the Dover Group, Inc.

[4] The VTS™ and UTS™ trademarks are the property of Universal Trading Technologies Corporation.

Trading Technologies Corporation ("UTTC").[5]

On July 26, 1996, the Exchange submitted Amendment No. 1 to the proposed rule change.[6] The proposed rule change, including Amendment No. 1, was published for comment in the **Federal Register** on September 11, 1996.[7] No comments were received on the proposal or Amendment No. 1. The Exchange submitted Amendment No. 2 to the proposed rule change on October 29, 1997.[8] The proposed rule change, as modified by Amendment No. 2, was published for comment in the **Federal Register** on December 31, 1997.[9] No comments were received on Amendment No. 2. On December 14, 1998, the Exchange submitted Amendment No. 3 to the proposed rule change.[10] Finally, on February 12, 1999, the Exchange submitted Amendment No. 4.[11] This order approves the proposed rule change, as amended, and Amendment Nos. 3 and 4 on an accelerated basis.

Under separate cover, the Exchange has requested from the Commission exemptive and interpretive relief regarding Rules 10a–1, 10b–18, 11a2–2(T), 11Aa3–2, and 11Ac1–1 under the Act.[12] The Commission has issued a letter separate from this order that grants the Exchange exemptive relief from Rule 10a–1 and provides interpretive relief regarding Rule 11a2–2(T).[13] In Section III of this order, the Commission addresses the Exchange's interpretive requests regarding Rules 11Aa3–2 and 11Ac1–1. With respect to the Exchange's request concerning Rule 10b–18, the Commission will respond to the Exchange at a later date.

II. Description of the Proposal

The Exchange seeks to adopt proposed Exchange Rule 237, "The Universal Trading System Morning Session," to govern the operation of the VTS or "System" [14] for a one year pilot period. During the Session, the System will electronically accept large-sized stock orders and match the orders for execution according to an algorithm developed by UTTC. The matched and executed orders will be assigned a final VWAP after the close of regular trading. UTTC developed the System pursuant to an agreement with the Exchange. The System will operate as a facility of the Exchange under Section 3(a)(2) of the Act.[15] Specifically, the System will utilize Exchange equipment and personnel,[16] floor trader participation, and the Stock Clearing Corporation of Philadelphia ("SCCP") to process System trades. Matches performed during the Session will be regulated and reported as Exchange trades. In addition, matches performed by the System will be subject to transaction and access fees as established in the Exchange's fees schedule.[17]

A. Stocks Eligible for Matching During the Session

Approximately 300 of the most highly-capitalized and highly-liquid securities that trade on the New Stock Exchange ("NYSE") will be eligible for matching during the Session. To select these stocks, the Exchange will use Standard and Poor's market data to identify the top 400 NYSE-listed issues in terms of market capitalization. Each stock selected must have a market price below $200 per share. Next, the Exchange will rank the 400 stocks according to their average dollar volumes over the previous 20 days of trading. The Exchange will designate the top 300 stocks as eligible for matching during the Session. The Exchange will repeat this screening process every six months to ensure that the stocks eligible for matching by the System are highly-capitalized and highly-liquid.

B. System Participants

Access to the System will be limited to "Committers" and "Users" (collectively "Participants"). Committers will be permitted to enter "Commitments" while Users will be allowed to enter "Orders." Although Exchange members may participate as either Committers or Users, they may not participate as both Committer and or Users, they may not participate as both Committer and User in the same security for the same account during the same Session.

1. Committer

"Committer" status will be restricted to Exchange members that are: (i) Phlx Floor Traders (*i.e,* Phlx Specialist or Phlx Alternate Specialist in the eligible stock that is the subject of the

---

[5] UTTC is a subsidiary of the Ashton Technology Group. UTTC has developed three electronic trading system modules as part of its UTS architecture: (i) the VWAP Trading System ("VTS™"); (ii) the Electronic Auction System ("eAS™"); and (iii) the Electronic Public Limit Order Book ("ePLOB™"). This proposed rule change relates only to the VTS.

[6] Amendment No. 1 discussed then proposed reporting procedures and mechanisms relating to Nasdaq Stock Market issues that would be matched during the Session. *See* Letter from Gerald D. O'Connell, Senior Vice President, Market Regulation and Trading Operations, Exchange, to Jennifer Choi, Attorney, Division of Market Regulation ("Division"), Commission, dated July 26, 1996. Amendment No. 1 is of no import because the proposed rule change has been revised such that Nasdaq Stock Market issues are no longer eligible for matching during the Session.

[7] Securities Exchange Act Release No. 37640 (Sept. 4, 1996), 61 FR 47993 (Sept. 11, 1996).

[8] In Amendment No. 2, the Exchange: (1) clarified the responsibilities and functions of the Exchange and the VTS; (2) excluded over-the-counter securities (*i.e.*, Nasdaq Stock Market issues) from matching during the Session; (3) proposed that a VTS terminal be located on the Exchange's equity trading floor; (4) prohibited Exchange floor members from VTS matching in non-specialty issues; (5) revised and detailed matching priority provisions; (6) updated order types and order entry procedures; (7) clarified participation and subscriber access; (8) defined the "extraordinary circumstances" under which the Exchange may modify the order entry time period; and (9) specified the liability of the Exchange with respect to the operation of the VTS. *See* Letter and attachment from Philip H. Becker, Senior Vice President and General Counsel, Exchange, to Belinda Blaine, Associate Director, Division, Commission, dated October 28, 1997.

[9] Securities Exchange Act Release No. 39481 (Dec. 22, 1997), 62 FR 68339 (Dec. 31, 1997).

[10] In Amendment No. 3, the Exchange represented that UTTC agreed to operate the VTS through UTTC's wholly-owned broker-dealer subsidiary, REB Securities ("REB"), and that REB would be responsible for conducting compliance activities relating to the VTS. In addition, the Exchange: (1) agreed to operate the VTS as a facility of the Exchange for a one year pilot period; (2) agreed to limit the securities eligible for matching through the VTS to 300 of the most highly-liquid and highly-capitalized issues listed on the New York Stock Exchange; (3) proposed to delete the required dissemination of a single volume print at 9:20 A.M.; (4) clarified the proposed definition of "institution"; (5) committed to prepare a report regarding the number of tape corrections and how they affect the VWAP values calculated by the Exchange; and (6) modified from 4:02 P.M. to 4:01:30 P.M. the cut-off time that is designed to capture trade reporting run-off and any sales that occur at the close of regular trading. *See* Letter and attachment from Edith Hallahan, First Vice President and Deputy General Counsel, Exchange, to Michael Walinskas, Deputy Associate Director, Division, Commission, dated December 11, 1998.

[11] In Amendment No. 4, the Exchange agreed to report pre-opening VWAP volumes for each eligible security in which matches had been effected during the Session. The Exchange also separately submitted confidential surveillance procedures. *See* Letter from Adrienne Y. Hart, Vice President, Market Surveillance, Exchange, to Michael Walinskas, Deputy Associate Director, Division, Commission, and John A. McCarthy, Assistant Director, Office of Compliance Inspections and Examinations ("OCIE", Commission, dated February 8, 1999; and letter from Kenneth J. Meaden, Senior Vice President, Exchange, to John McCarthy, OCIE, Commission, dated February 1, 1999.

[12] *See* Letter from Edith Hallahan, Associate General Counsel, Exchange, to Larry E. Bergmann, Associate Director, Division, Commission, dated June 5, 1998.

[13] *See* Letter from Larry E. Bergmann, Associate Director, Division, Commission, to Edith Hallahan, Associate General Counsel, Exchange, dated March 24, 1999 ("Exemptive Relief Letter").

[14] For ease of reference, the term "System" shall be used in place of VTS and UTS.

[15] 15 U.S.C. 78c(a)(2).

[16] UTTC technical personnel will assist the Exchange in operating the System.

[17] Apart from adopting proposed Exchange Rule 237, the Exchange also seeks to make a conforming change to Exchange Rule 101, "Hours of Business" to include the Session as an exception to regular trading hours.

Commitment); or (ii) Phlx Off-Floor Liquidity Providers (members that commit to provide contra-side liquidity). Committers agree to provide on a proprietary basis contra-side liquidity by specifying their Committments; however, Off-Floor Liquidity Providers can only engage as Committers for their proprietary accounts.

Exchange members must register with the Exchange prior to acting as a Committer. Committers will be permitted to designate the eligible issues for which they wish to make Commitments. For each eligible issue selected, Committers will be required to provide a minimum volume guarantee of 2,500 shares for each side of the market.[18] All Commitments must be entered in 500 share increments.

Commitments must be entered directly by System subscribers or through the System's trading floor terminal at the Exchange.[19] Commitments may be entered and modified during the "Order Entry Time Period" (5:00 A.M. to 9:15 A.M.).[20] and during any other periods the Exchange may specify.[21] Commitments may be entered as "day-Commitments" or "good-till-canceled ("GTC") Commitments." GTC Commitments remain in effect for each Session until canceled and must be established (and canceled) through the enrollment process.[22]

Commitments may be restricted to execution against non-members only. At no time will Commitments may be matched with other Commitments. Commitments are executable only through the System.

2. User

"User" status would be available to Exchange members and non-members. However, Exchange floor members could participate as Users only in their specialty issues. Under the proposal, Orders may only be placed by and for enrolled Users. Users may enter Orders for customer or proprietary (dealer or principal) accounts.

Orders will be eligible for matching by the System only on the day the Order is entered. The minimum size for individual Orders is 5,000 shares. Like Commitments, all Orders must be entered in 500 share increments.

Users may enter Orders directly into System terminals as subscribers or through subscribing brokers; subscribing brokers may be members or non-members. The Exchange has noted, however, that participation through subscribing brokers may affect matching priority.

All non-member Orders entered through a broker must be entered through an Exchange member or through a non-member broker with the appropriate "give-up agreement" [23] and "three-way agreement" [24] in place. Non-member Orders also may be entered directly by subscribing non-members who have in place with an Exchange member give-up and three-way agreements.[25]

As with all Exchange trades, System matches will require both a Phlx and SCCP member to be involved. Therefore, all Committers and Users must specify both an executing and clearing account during the enrollment process. The Exchange and the SCCP will perform trade reconciliation and confirmation functions. System trades will then be forwarded to the National Securities Clearing Corporation ("NSCC") for clearance and settlement.[26]

C. Entry of Orders and Commitments

Only Orders and Commitments that are entered through the System will be eligible for matching and execution by the System during the Session. Under no circumstances will Orders or Commitments migrate to the Exchange's regular equity trading session. Because all Orders and Commitments remain anonymous, the identity of Users and Committers will not be revealed to other Participants.

Orders and Commitments will only be accepted into the System from 5:00 A.M. to 9:15:00 A.M. ("Order Entry Time Period"). The Order Entry Time Period ends approximately 15 minutes prior to the opening of the Exchange's regular trading session (9:30 A.M.–4:00 P.M.). However, as previously mentioned, the Exchange may establish a different period for the entry of Orders and Commitments into System's equity trading floor terminal.[27] Orders and Commitments may be canceled [28] or modified before the end of the Order Entry Time Period. Confirmation of the placement and cancellation of an Order

[18] Although the minimum Commitment size on each side of the market is 2,500 shares, a Committer need to make identical Commitments on both sides of the market. For example, a Committer could agree to buy 2,500 shares and sell 5,000 shares at VWAP.

[19] To facilitate Floor Trader participation, the Exchange proposes to install a System terminal on the equity trading floor for the entry and reporting of Orders and Commitments.

[20] Unless otherwise indicated, all times referenced throughout this order are Eastern Standard Times.

[21] For example, the Exchange may allow the entry and modification of Commitments during certain times the previous day, effective for the next day's Session. Because matching occurs only during the Session, the additional period would simply provide extra time for the entry of Commitments.

[22] The enrollment process is the formal mechanism by which Participants enter into a contractual arrangement to use the System. System activation is dependent upon completing the enrollment process and submitting the requisite agreements and forms. Enrollment parameters, including GTC commitments, may be modified through procedures established by the Exchange. Prior to activation, all Users and Committers must provide proof of the review and approval of their enrollment parameters by their compliance officer.

[23] A clearing agreement or "give-up agreement" is intended to ensure that a SCCP member, who must also be an Exchange member, has assumed responsibility for the order. Give-up agreements with non-members must be submitted in advance to the Exchange's Examinations Department and must define the credit limits for the customer.

[24] The Exchange, the Exchange/SCCP member, and the non-member User are the parties to a "three-way agreement." Under the agreement, the Exchange member must agree to be jointly and severally liable for actions of the non-member User through the System. In return, the non-member User must agree to adhere to all applicable by-laws and rules of the Exchange. The Exchange clarified that neither it nor the SCCP approves credit limits established by an Exchange/SCCP member for its non-member customer as part of a three-way agreement. *See* Letter from Philip H. Becker, Senior Vice President and Chief Regulatory Officer, Exchange, to Ivette Lopez, Assistant Director, Division, Commission, dated December 10, 1996. The letter also clarified that an Exchange "clearing member" is an Exchange member that also is a member of the SCCP.

[25] The Exchange submitted to the Commission a letter stating that the Exchange did not intend for the sample three-way agreement, which was previously provided to the Commission, to be considered part of the Exchange's proposed rule change. *See* Letter from Edith Hallahan, First Vice President and Deputy General Counsel, Exchange, to Michael Walinskas, Deputy Associate Director, Division, Commission, dated March 24, 1999. The letter also represented that the Exchange will withdraw from any final three-way agreement language stating that the Exchange has the right to terminate a User's access to the System "without prior notice for any reasons or no reason whatsoever." The Commission notes that such language raises important issues concerning appropriate access to the System.

[26] The Exchange recently restructured the clearance and settlement business offered through its wholly owned subsidiary, SCCP. The SCCP no longer maintains its continuous net settlement system for conducting settlements between the SCCP and its members. As a result, the SCCP ceased providing the cash settlement services attendant to the settlement process of the Philadelphia Depository Trust Company. However, the SCCP continues to offer limited clearing and settlement services to Exchange members. *See* Securities Exchange Act Release No. 39444 (Dec. 11, 1997), 62 FR 66703 (Dec. 19, 1997).

[27] If the Exchange establishes any alternative time period for the entry of Orders and Commitments, the alternative time period should not allow Orders and Commitments placed through the System's equity trading floor terminal to be entered at a time after which all other methods of access to the System have been closed. For example, it would not be permissible to establish a general cut-off time for Order and Commitment entry of 9:15 A.M. but allow Orders and Commitments to be entered through the System's equity trading floor trading terminal until 9:16 A.M.

[28] Orders and Commitments may be canceled through the System until 9:15:00 A.M. by using the appropriate designator ("CXL").

or Commitment will occur electronically through the System.

When entering Orders or Commitments, Participants will be required to provide a description of the Order or Commitment, as well as account identification information needed to determine priority and eligibility. Participants must provide the following information when entering an Order or Commitment:

- Buy/Sell designation;
- Volume (number of shares). As previously stated, the minimum size for Commitments is 2,500 shares and the minimum size for Orders is 5,000 shares. All Commitments and Orders must be entered in 500 share increments;[29]
- Stock symbol;
- Participant status: Committer or User;
- Committer account status: Off-Floor Liquidity Provider, Specialist, or Alternate Specialist;
- User account status: Member or non-member, and Order type (basic, cross, facilitation, also including any constraints or restrictions);
- Clearing account number;
- Trade account information (Exchange executing account number); and
- Subscriber identification number.

D. Types of Orders

Users may enter three types of Orders: (i) basic; (ii) cross; and (iii) facilitation. A User may designate its basic and facilitation Orders as either unconstrained (meaning executable to the extent possible) or constrained.

1. Constraints

Two constraints are available to Users in connection with basic and facilitation Orders: all-or-none ("AON") and minimum-or-none ("MON"). The AON constraint means that the User wants to execute all shares of the Order or none at all. The MON constraint means that the User wants to execute at least a specified number of shares of the Order or none at all.

2. Basic Order

A basic Order is a standard, one-sided Order to buy or sell. A basic Order may be restricted, meaning it is executable against non-members only.

3. Cross Order

A cross Order is a two-sided Order, with both sides comprised of non-member interest, with instructions to match the identified buy-side with the identified sell-side. The two sides making up a cross can be entered separately, with the contra-side identified. If the sizes do not match, the remainder is left unexecuted.

4. Facilitation Order

A facilitation Order is a two-sided Order, with an identified Phlx member on the contra-side to act as a facilitator for that Order, and is known as a "Guarantor." The contra-side may be entered together with, or separate from, the facilitation Order; if the sizes do not match, the remainder is left unexecuted. Facilitation Orders can be submitted on behalf of Phlx members or non-members. Unlike basic orders, facilitation Orders may not be restricted.

Three types of facilitation orders are available to Users: (i) Unconditional facilitation: execute against an identified Guarantor or not at all. This Order is a type of cross involving a Phlx member Guarantor; (ii) conditional facilitation: execute against an identified Guarantor after attempting to be executed against non-members to the extent possible; and (iii) last resort facilitation: execute against an identified Guarantor only after attempting to execute against all other Orders and Commitments to the extent possible.

E. Execution Priority Rules

Orders and Commitments will be matched for execution by the System at approximately 9:16 a.m. Trades matched and executed through the System are printed and cleared as Exchange transactions, executed on the Exchange and processed through SCCP.

1. Orders

Generally, Orders are afforded priority by: (i) Account type (account types are based on status as a Phlx member or non-member, type of non-member account, constraints, and direct subscription versus broker access); (ii) Order size (largest first); and (iii) chronological basis measured by time-of-entry (for Orders of the same account type and size).

2. Commitments

Commitments are prioritized based on: (i) Sub-account types (Phlx Off-Floor Liquidity Providers first, then Specialists, and Alternate Specialists); and (ii) Commitment size (largest first). For Commitments of the same size, priority rotates among Committers with the fewest aggregate shares (in all eligible securities) matched through the System at that time.

3. Liquidity Rotation Parameter

Although priority is generally based on size, the "Liquidity Rotation Parameter" ("LRP") provides that Order and Commitment participation will rotate in 25,000 share increments, as opposed to filling the largest Order or Commitment first. The LRP is intended to ensure fair allocation. The LRP operates within each matching step (after Step 1) to match Orders/Commitments in 25,000 share increments, moving to the next Order/Commitment after 25,000 shares have been matched, and then, after all other Orders/Commitments have received their first 25,000 share match, returning to the unfilled portion of the first Order/Commitment. Under the proposal, the Exchange's Floor Procedure Committee may establish a different LRP size based on operational experience, practicality, and demonstrated market need.

F. The Matching Algorithm

Execution priority is determined in accordance with the matching algorithm that consists of 23 matching steps. In step 1, two-sided Orders are matched in the following order:

- Non-member/Non-member cross Orders.
- Non-member/Member unconditional facilitation Orders.
- Member/Member unconditional facilitation Orders.
- Any unmatched "residue" due to the excess size entered by one side remain unexecuted. It is important to remember that Step 1 matches unconditional facilitation Orders.

In step 2, non-member unconstrained Orders (basic and facilitation) are matched with non-member unconstrained Orders. As with all matching steps, priority is determined based on size and time of entry.

In step 3, remaining non-member unconstrained Orders are matched with non-member constrained (AON and MON) Orders. Any non-member constrained Orders not matched with the unconstrained Orders left over from step 1 are then matched with other non-member constrained Orders.

In step 4, remaining non-member Orders are matched with non-member institutions'[30] Orders participating

[29] The Exchange's Floor Procedures Committee may determine whether to establish: (i) alternative minimum sizes for Commitments and Orders; or (ii) alternative minimum increment sizes. Any adjustments to Order, Commitment, or increment sizes are required to be based on market and participant need, and are subject to prior written notice.

[30] The proposal defines an institution as "an entity not registered as a broker-dealer or doing business as a hedge fund that serves in a fiduciary capacity." The Exchange believes such entities include, but are not limited to: qualified pension plans, investment companies registered under the Investment Company Act of 1940, bank trust

through a broker. Such non-member institutions' Orders are then matched with each other. (Non-member institutions entering Orders directly would have participated in steps 2 and 3). It should be noted that constraints are not relevant to determining priority in step 4 among institutions participating through a broker.

In step 5, remaining non-member Orders are matched with non-member non-institution Orders participating through a broker. After non-member non-institution Orders participating through a broker are matched against the unmatched Orders of non-members, such non-member non-institution Orders are matched with each other. (Non-member non-institution Orders include non-member broker-dealer Orders as well as non-member, non-broker-dealer, non-institution Orders, such as retail customers).

In step 6, remaining non-member Orders are matched with Orders of non-member broker-dealers that subscribe directly. Orders of non-member broker-dealers that subscribe directly are then matched with each other. Thus, step 6 matches non-member Orders (both constrained and unconstrained) for non-member broker-dealers. (As opposed to dealer activity, if a non-member broker-dealer is acting as a broker, the Order would already be matched in steps 4 and 5).

By step 7, the matching process is ended with respect to non-member Orders. Any remaining non-member Orders that are restricted to matching with other non-members only are removed. The removed unmatched Orders may be matched later according to step 23.

In step 8, remaining non-member conditional facilitation Orders are matched with their conditional Guarantors (facilitating members). These conditional Orders—which were first subject to matching against other non-member Orders in prior steps—are now eligible for matching against the identified Guarantor (a Phlx member).

In step 9, remaining non-member Orders are matched with member Orders participating through brokers. Any unmatched member Orders participating through brokers are removed.

In step 10, remaining non-member Orders are matched with Orders of off-floor members. Any unmatched off-floor members' Orders are removed.

In step 11, remaining non-member Orders are matched with Orders of Exchange floor members. Any unmatched Exchange floor members' Orders are removed. This includes one-sided Orders (as opposed to Commitments) of Specialists and Alternate Specialists.

In step 12, remaining non-member Orders are matched with Commitments of Exchange Off-Floor Liquidity Providers. Any unmatched Commitments of Exchange Off-Floor Liquidity Providers are removed.

In step 13, remaining non-member Orders are matched with Commitments of Specialists. Any unmatched Specialist Commitments are removed.

In step 14, remaining non-member Orders are matched with Commitments of Alternate Specialists. Any unmatched Alternate Specialist Commitments are removed.

In step 15, remaining non-member Orders are matched with member facilitation Orders (those with conditional or last resort Guarantors). Note that unconditional facilitation Orders previously were matched in step 1.

In step 16, non-member last resort facilitation Orders are matched with their identified last resort Guarantors.

In step 17, non-member matching ends. Any remaining non-member Orders are unmatched, except as provided in step 23.

In step 18, Exchange member conditional facilitation Orders are matched with their identified conditional Guarantors.

In step 19, all remaining Exchange member Orders are matched with each other, provided they are not restricted to matching against non-members only. This includes the following Phlx member Orders: Phlx member Orders participating through brokers, Phlx off-floor member Orders, Phlx floor member Orders, and Phlx member last resort facilitation Orders.

In step 20, remaining Exchange member Orders are matched with Commitments that have not been restricted to matching against non-members only. First, remaining Exchange member Orders are matched with Commitments of Off-Floor Liquidity Providers, and then with Commitments of Specialists and Alternate Specialists. Unmatched Commitments are removed.

In step 21, Exchange member last resort facilitation Orders are matched with their identified last resort Guarantors.

In step 22, the whole matching "round" in an eligible security ends. Any remaining Exchange member Orders and Commitments are unmatched, except as provided in step 23.

In step 23, if any unmatched Orders remain, the largest unsatisfied constrained Order is permanently removed, the matches after step 1 are unmatched and the matching process starts again. Among unsatisfied Orders of the same size, Exchange member Orders would be removed before non-member Orders. Among two Exchange members, or among two non-members, the last in time would be removed first. Additional matching rounds would occur, each removing another unsatisfied constrained Order, until no unsatisfied constrained Orders remained. Matching rounds are intended to maximize the number of executions.

G. Calculation of VWAP

The exchange shall calculate a final VWAP value for each eligible security by: (i) using all regular way trades (including sold sales and late sales)[31] reported by the appropriate reporting authority from the opening of the regular trading session and printed prior to 4:15:00 P.M.,[32] (ii) multiplying each respective reported price by the total number of shares traded at that price; (iii) adding together each of these calculated values to compile an aggregate sum; and (iv) dividing the aggregate sum by the total number of reported shares that appear in the prints included in step (i) of the VWAP calculation process. The resulting VWAP value will be reported in the form of a fraction and will be rounded to the nearest 1/256th.[33] Any proposed changes that impact the manner in which the official VWAP is calculated are required to be submitted to the Commission for review under Section 19(b) of the Act.[34]

The exchange shall calculate and assign a final VWAP value to each security subject to a match during the Session.[35] The final VWAP value that the Exchange calculates and assigns to each eligible security shall be reported and publicly disseminated at 4:20 P.M. promptly following calculation. The

---

departments, corporations that purchase securities for corporate purposes, and insurance companies.

[31] A "late sale" is a transaction which is a correct last sale but is publicly disseminated later than is required. Generally, transactions are required to be publicly disseminated within 90 seconds of execution. A "sold sale" refers to a transaction appearing on the CTS out of its proper sequence.

[32] It should be noted that prints representing trades executed after regular trading hours (9:30 A.M. to 4:00 P.M.), such as prints reflecting trades executed during the Exchange's Post Primary Session, will only be included in the VWAP calculation until 4:01:30 P.M.

[33] The System software also allows Participants to convert VWAP prices into decimal form.

[34] 15 U.S.C. 78s(b).

[35] In addition, the Exchange will continuously calculate a non-final VWAP value throughout the trading day for each eligible issue.

final VWAP value will be available through the System to all Participants that had a commitment or Order matched during the Session.

The final VWAP value calculated and reported by the Exchange shall be the official VWAP value. Unless the Exchange directs otherwise, every VWAP value as initially reported by the reporting authority is conclusively presumed to be accurate and deemed to be final, even if the VWAP value is revised or subsequently determined to have been inaccurate.

Generally, all System matches create a binding contract. However, in the case where a match occurs during the Session in an eligible security that has not opened for primary market trading by 3:00 P.M., the match will be voided and a report to that effect will immediately be sent through the System to the Participants to the voided match. If an eligible security opens for trading but is the subject of a trading halt and does not resume trading for the remainder of the day, the final VWAP value for any match in that eligible security on that day will be based on the prints that occurred before the trading halt.

H. Reporting of System Transactions and VWAP

All System matches will first be reported to the reporting authority (*i.e.*, Consolidated Tape System or "CTS") at 9:20 A.M. as separate volume prints for each eligible security in which matching occurred. The morning print for all System matches will occur by way of an administrative message over the CTS reflecting the VWAP volume in each of the eligible securities. The morning print is intended to provide market participants with VWAP volumes before regular trading commences.

Under normal circumstances, Users and Committers will be notified of their matches by 9:20 A.M. System matches will be reported to the entering subscriber in the form of automated reports reflecting the number of shares matched for each Participant by the System in each issue.

Once the Exchange calculates and assigns a final VWAP value, each Session match constitutes a completed transaction for the purpose of reporting the trade to the appropriate reporting authority. End-of-day prints will normally be reported at 4:20 P.M. following calculation of the final VWAP at 4:15 P.M. The end-of-day prints will be printed on a trade-by-trade basis representing all matches made that morning. Each print will reflect a matched trade and the corresponding VWAP. These trades will be reported to the CTS with the sale condition "B" to indicate volume weighted average pricing (the "B" will distinguish VWAP trades from other transactions that may possibly be reported after the close such as after-hours, crossing session, or late sales transactions). The Exchange has represented that VWAP trades matched and executed through the System will not impact the determination of the last sale price in an eligible security listed on the NYSE.

The System will not disseminate or disclose Orders or Commitments, including System bid/ask sizes, prior to the Session match, nor System imbalances remaining after the Session match, except to entering Participants.

Because reporting is performed on a trade-by-trade basis, if no System match occurs in an eligible security, a final VWAP for that particular security will not be reported to the CTS for that day.

I. Access to the System

Access to the System for subscribers (both direct subscribers and subscribers acting as brokers) will be available by dial-up into the System utilizing software and log-on procedures that vary depending on whether the subscriber is accessing the System through a personal computer or a main-frame system. System access may include various types of computer hardware, software, and handheld devices.

J. Resolutions of Disputes

Disputes regarding Session participation or the eligibility of Orders, Commitments, or Participants will be resolved by the Exchange in accordance with Exchange Rule 124.

K. Liability of the Exchange

The Exchange shall not be liable for any damages, claims, losses or expenses sustained by a member or member organization caused by any errors, omissions or delays resulting from any act, condition or cause beyond the reasonable control of the Exchange, including but not limited to, an act of God; fire; flood; extraordinary weather conditions; war; insurrection; riot; stride; accident; action of government; communications or power failure; equipment or software malfunction arising from the use of the System, the calculation of the VWAP or any and all other matters respecting the operation of the System or Session.

L. Trading Halts in Eligible Securities

The proposed rule change does not limit the ability of the Exchange to otherwise halt or suspend trading in any eligible stock matched through the System.

M. Extraordinary Circumstances

In the case of "extraordinary circumstances," the Exchange's Floor Procedure Committee may determine to adjust or modify any of the times relating to Order Entry Time Period, the matching period, or any aspect of the transaction reporting procedures. The proposal defines "extraordinary circumstances" to include fast market conditions, systems malfunctions, and other circumstances that limit the Exchange's ability to receive, disseminate, or report System information in a timely and accurate manner.

N. Short Sales

Orders and Commitments must be appropriately marked pursuant to Exchange Rule 455 to indicate whether they are short sales. In addition, Orders and Commitments will be exempt from the short sale "tick test" restrictions of Exchange Rule 455. Positions resulting from Session matches will be effective for the purpose of determining long or short status for the remainder of the trading day, immediately upon notification of the Participant to a System match, notwithstanding that the VWAP has not yet been determined.

III. Discussion

For the reasons discussed below, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and with the requirements of Sections 6(b) and 11A under the Act.[36] In particular, the Commission believes the proposed rule change is consistent with the Section 6(b)(5) requirements that the rules of an exchange be designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest.[37]

The Commission believes the Exchange's proposed System will serve as an innovative complement to the Exchange's existing auction market. The Commission historically has encouraged innovation and the creation of new electronic trading systems so that investors are provided access to a variety of execution alternatives. At the

[36] 15 U.S.C. 78f(b) and 78k-1.

[37] In approving this proposed rule change, the Commission has considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

same time, the Commission believes it is important to ensure that a trading system which operates as a facility of a national securities exchange complies with the Act's standards regarding investor protection and fair and orderly markets. The Commission believes that the Exchange's proposal achieves this objective.

Some aspects of the proposal raise complicated regulatory issues. For example, the matching of Orders and Commitments during the Session includes some characteristics of a unitary call market and, therefore, represents a departure from the traditional auction market trading conducted on the Exchange floor. In addition, the System allows non-Exchange members to enter Orders. Other aspects of the proposal raise concerns regarding surveillance, reporting, transparency, control and access, and priority principles of an auction market. After careful review, and for the reasons discussed in more detail below, the Commission believes the proposal adequately addresses the areas of concern and is consistent with the maintenance of free and open markets and investor protection in accordance with Section 6(b)(5) of the Act.[38]

The Commission believes that the System is properly regulated as a facility of the Exchange.[39] The System will use Exchange equipment and personnel, involve the participation of Exchange floor traders, and rely on the SCCP to clear System trades. Furthermore, matches performed during the Session will be regulated and reported as Exchange trades. The Commission believes that because the System will be using the Exchange's premises, property, and services for effecting and reporting System matches, it will be using the facilities of an exchange as defined in Section 3(a)(2) of the Act.[40]

The Commission notes that the Exchange's use of UTTC personnel and equipment in operating the System does not alter the Commission's determination that the System is properly regulated as a facility of the Exchange. The Exchange retains regulatory control over the System and is fully responsible for ensuring that the System complies with the federal securities laws and all applicable rules and regulations. Although UTTC personnel shall assist the Exchange in operating the System, these assistants will be acting as agents of the Exchange. Therefore, the Exchange will maintain control of the System and will exercise authority over the non-Exchange employees that help operate the System.

The Commission believes that operation of the System as a facility of the Exchange raises important issues regarding surveillance of the System,[41] UTTC personnel, and Exchange personnel. The Commission believes the Exchange has adequately addressed these surveillance issues. In particular, the Exchange's surveillance group will be equipped with technology to create detailed audit trails that will track Orders and Commitments from entry to the confirmation of matching. The Exchange also will use technology to track Orders and Commitments through the matching algorithm; this will identify the exact point at which Orders and Commitments are matched, or alternatively, not matched. In addition, a corrections alert mechanism will provide notice of all corrections that occur in the CTS after the VWAP calculation period. Finally, Exchange surveillance personnel will use an electronic surveillance system to identify aberrant trading behavior in any eligible stock matched through the System.

The Commission also believes that operation of the System as a facility of the Exchange raises unique concerns regarding access to, and control of, the System.[42] For several reasons, the Commission believes that the Exchange the UTTC have adequately addressed these access and control concerns. First, the Commission notes that the Exchange will retain regulatory control over the System and that the Exchange will remain fully responsible for ensuring that the System complies with the federal securities laws and all applicable rules and regulations. Although the Exchange will use UTTC personnel and equipment to assist in operating the System, such UTTC assistance will be provided on an agency basis. More specifically, this assistance will be provided by REB securities, a wholly owner broker-dealer subsidiary of UTTC. REB will be assigned certain responsibilities for ensuring compliance with the monitoring and reporting of System access and control parameters. The Exchange represented that REB has developed a special compliance program to address these issues. Second, REB will not conduct any other securities business outside of its oversight of System access and control. This limitation on business activity will help focus REB's scrutiny on important compliance issues. This limitation on business activity will help focus REB's scrutiny on important compliance issues. The Exchange will require REB to conduct annual independent audits regarding the System compliance program. Finally, because REB is a broker-dealer registered under the Act, the Commission will have the authority to inspect and examine REB. For these reasons, the Commission believes the Exchange and UTTC have adequately addressed issues relating to control and access.

The Commission believes that in providing non-Exchange members limited access to the System, the Exchange's proposal does not contravene the Act. The Act contemplates that transactions on a national securities exchange will be conducted by "members."[43] In

---

[38] 15 U.S.C. 78f(b)(5).

[39] Section 3(a)(2) of the Act states that "[t]he term 'facility' when used with respect to an exchange includes its premises, tangible or intangible property whether on the premises or not, any right to the use of such premises or property or any service thereof for the purpose of effecting or reporting a transaction on an exchange (including, among other things, any system of communication to or from the exchange, by ticker or otherwise, maintained by or with the consent of the exchange), and any right of the exchange to the use of any property or service." 15U.S.C. 78c(a)(2).

[40] Regulating the System as a facility of the Exchange is consistent with the Commission's approach towards similar electronic matching systems. For example, the Chicago Stock Exchange ("CHX") operated the Chicago Match as a facility of the CHX. *See* Securities Exchange Act Release No. 35030 (Nov. 30, 1994), 59 FR 63141 (Dec. 7, 1994). The Chicago Match, which integrated an electronic order match system with a facility for brokering trades, no longer operates as a facility of the CHX.

[41] The System will link off-floor and on-floor computer terminals to the System's communications base unit. This unit will: (i) accept Orders and Commitments; (ii) match buyers with sellers; (iii) give execution reports to matched Participants; (iv) calculate the back-up VWAP for each matched security (separate Exchange systems will calculate the official VWAP; (v) report VWAP matches to the entering Participants (separate Exchange systems will report VWAP matches to the appropriate reporting authorities); and (vi) create an audit trail by recording Order and Commitment entry and execution.

[42] The VTS is the first electronic system offering VWAP that will operate as a facility of a national securities exchange. Although the Commission previously reviewed electronic systems that offered volume weighted average pricing features, they were operated as proprietary trading systems. *See* Letter from Alden S. Adkins, Chief, Office of Automation and International Markets, Division, Commission, to Charles R. Hood, Vice President and General Counsel, Instinet Corporation (Dec. 6, 1991) (providing no-action relief to Instinet's Market March crossing service) and letter from Alden S. Adkins, Chief, Office of Automation and International Markets, Division, commission, to Lloyd H. Feller, Morgan, Lewis & Bockius (Oct. 28, 1991) (providing no-action relief to POSIT regarding its volume weighted average pricing mechanism).

[43] Section 3(a)(3)(A) of the Act describes a member in terms of effecting transactions on a national securities exchange. The pertinent text defines a member as "any natural person permitted to effect transactions on the floor of the exchange

Continued

addition, Section 6(c)(1) of the Act states that a national securities exchange shall deny membership to any natural person who is not, or is not associated with, a registered broker or dealer.[44] The Commission believes the Exchange has established adequate controls over non-member access to the System. Specifically, a non-member may enter Orders through the System only after entering into a "give-up" agreement with an Exchange clearing member (*i.e.*, such Exchange member also is a SCCP member). The give-up agreement requires the Exchange clearing member to assume legal responsibility for the Orders of the non-member. The Exchange clearing member must submit the give-up agreement to the Exchange in advance of any activity by the non-member and must also specify the credit limits for the non-member.

Moreover, prior to obtaining permission to enter Orders through the System, each non-member must enter into a "three-way agreement" with the Exchange and an Exchange clearing member. The three-way agreement requires the non-member to agree to adhere to the applicable rules of the Exchange. Because the access of non-member Users is limited by the requirement that such Users be parties to valid give-up and three-way agreements,[45] and because the behavior of non-member Users is governed by the affirmative obligations contained in the mandated give-up and three-way agreements, the Commission believes the participation of non-members in the System does not violate the Act.

The Commission also believes that the Exchange's proposal is consistent with Section 11A of the Act.[46] Specifically, the Commission believes that the System will further the purposes of Section 11A and the development of a national market system by promoting economically efficient execution of securities transactions, fair competition among markets, best execution of customer orders, and an opportunity for orders to be executed without the participation of a dealer. The System provides a new and potentially efficient way to match and execute trading interests. It is principally designed to meet the demands of institutional traders and other market professionals that desire VWAP-based transactions. Use of the System may result in enhanced liquidity for investors and increase the ability of investor orders to interact directly with other investor orders.

The Commission believes the System may provide benefits to market participants, especially those who trade in large blocks. Specifically, Participants will enjoy complete end-to-end anonymity in their Orders and Commitments; as a result, their proprietary trading strategies will not be revealed to other market participants. Furthermore, because Participants receive notice of Order and Commitment matches before the NYSE opens for trading, those Participants not receiving matches will have the opportunity to enter orders during regular trading hours.

The Commission believes the proposal is consistent with Rule 11Aa3–1 of the Act.[47] Promptly after the System matches Orders and Commitments, each Participant will be notified of the issues and number of shares matched for that Participant. The Exchange also will report to the CTS at 9:20 A.M. the VWAP transaction volume in each eligible issue. For example, if during the Session matches were effected in all 300 eligible securities, the Exchange would report to the CTS the matched volume for each of the 300 securities (*i.e.*, 300 separate volume prints). Although the Final VWAP value for each eligible security will not be calculated until after the closing of trading, the Commission believes it is important that market participants have access to matched VWAP volume before regular trading begins.[48] Once of the final VWAP value has been calculated, each transaction will immediately be reported on a trade-by-trade basis, including the size and final VWAP value, over the Tape B network of the CTS[49] and to the Participants. Thus, the Exchange will provide for the collection and dissemination of transaction reports containing, among other things, the price of the security. The display of Orders and Commitments prior to matching would be impractical; in particular, it would counter the benefits of anonymity afforded by the System.[50] The Commission believes that the System's reporting mechanisms will provide investors with adequate transaction price information in accordance with Rule 11Aa3–1 under the Act.

In response to the Exchange's request for interpretive relief, the Commission confirms that the Exchange will not violate Rule 11Aa3–2 under the Act[51] if the Exchange disseminates last sale data for System matches at 4:20 P.M. Rule 11Aa3–2(d) requires self-regulatory organizations to comply with the terms of any effective national market system plan of which it is a sponsor or participant. The Commission believes that the Exchange will continue to comply with the terms of the CTS national market system plan if the Exchange disseminates reports containing price and volume information for System matches at 4:20 P.M. The Commission notes that a national market system plan is designed to ensure timely dissemination of last sale data. The Commission believes that the Exchange has reporting procedures in place to ensure the timely dissemination of preliminary and last sale data for System matches. In particular, as soon as the matching process has been completed at the end of the Session, the Exchange will report to the CTS the matched VWAP volumes for each eligible security. Furthermore, immediately after the final VWAP values have been determined and assigned, the Exchange will report to the CTS each transaction on a trade-by-trade basis, including the final VWAP value. In each instance, the Exchange has committed to make timely dissemination of important market information. Because the Exchange has arranged for the timely dissemination of preliminary and last sale data, the Commission believes the Exchange will remain in compliance with the CTS national market system plan and will not violate Rule 11Aa3–2.

The Commission believes that the System does not violate Rule 11Ac1–1

---

without the services of another person acting as broker." 15 U.S.C. 78c(a)(3)(A).

[44] 15 U.S.C. 78f(c)(1).

[45] If a non-member User's give-up or three-way agreement was terminated, the non-member User would not be permitted to access the System.

[46] 15 U.S.C. 78k–1.

[47] Rule 11Aa3–1, "Dissemination of Transaction Reports and Last Sale Data with Respect to Transactions in Reported Securities," governs the dissemination of transaction reports that contain price and volume information with respect to purchase or sale transactions involving one or more round lots of a security. *See* 17 CFR 240.11Aa3–1.

[48] The Exchange has informed the Commission that the operator of the CTS, the Consolidated Tape Authority ("CTA"), will not permit trade messages to be delivered over the CTS prior to the start of regular trading on the U.S. equities markets (*i.e.*, before 9:30 A.M.). Therefore, the pre-opening VWAP volumes reported over the CTS must take the form of administrative messages. The Commission urges the Exchange to work with the primary information vendors to ensure that the vendors disseminate the VWAP volumes as administrative message before the opening of trading.

[49] As presently configured, the CTS consists of two tape systems: Tape A and Tape B. The Tape A network displays only NYSE symbol information while Tape B displays information for issue listed on all other exchanges. Although each of the securities eligible for matching during the Session are listed on the NYSE, the VWAP matches will be reported on the Tape B network due to programming difficulties and project priorities.

[50] *Cf.* The OptiMark System. *See* Securities Exchange Act Release No. 39086 (Sept. 17, 1997), 62 FR 50036 (Sept. 24, 1997).

[51] 17 CFR 240.11Aa3–2.

under the Act ("Quote Rule").[52] The Quote Rule requires a national securities exchange to collect bids, offers, quotation sizes, and aggregate quotation sizes from "responsible brokers or dealers,"[53] for each reported security listed or admitted to unlisted trading privileges and to make them available to quotation vendors.[54] A bid or offer is defined in the Quote Rule as the "bid price and offer price communicated by an exchange member or OTC market maker to any broker or dealer, or to any customer."[55] To constitute a bid or offer, therefore, the underlying trading interest must have been communicated to at least one other potential counterparty. Bids and offers are intended to attract other parties to deal with the person publishing the bid or offer at the quoted price. In contrast, the essence of the System is its anonymity. Only the System is aware of the expressed trading interest until the matching and trade execution occur. Therefore, the System is not a mechanism by which Participants broadcast prices to other Participants and trade with one another at those prices. Accordingly, the Commission believes that the System does not violate the Quote Rule.

The Commission also believes that the matching algorithm and Liquidity Rotation Parameter are appropriate ways to ensure that Orders and Commitments are matched in accordance with the priority principles of an auction market. The Commission believes that the priority principles of the matching algorithm will not give rise to practices that are inconsistent with Section 11(a) of the Act.[56] Specifically, the matching algorithm is designed to provide public order preference and public order protection such that Exchange members must yield priority to non-members. Moreover, the Exchange has represented that Exchange Specialists will not be permitted to trade ahead of customers because Exchange Floor Traders will be last in terms of priority (*e.g.*, Off-Floor Liquidity Providers receive priority over Floor Traders). In addition, the Liquidity Rotation Parameter, or "anti-bully" rule is designed to ensure that order flow is fairly allocated. The LRP will include more Participants in the matching process because the largest Orders and Commitments will be filled in the course of several rotations rather than a single match.

The Commission believes the market characteristics of the eligible stocks will make it difficult to influence their intra-day prices and thus their final VWAP values. Specifically, the 300 stocks eligible for System matching during the one year pilot are among the most highly-capitalized and highly-liquid stocks listed on the NYSE. The significant daily transaction activity in each eligible stock should help to make it difficult and economically impractical to influence their prices. As a caveat, the Commission observes that manipulation concerns would be heightened in the VWAP transaction volume in an eligible security came to represent a substantial portion of the overall transaction volume in such security. The Commission expects the Exchange to closely monitor the VWAP trading volumes for each eligible security in relation to their overall trading volumes. The Commission believes that legitimate manipulation concerns would arise if the VWAP transaction volume in an eligible security exceeded 20% of the security's daily transaction volume.

Finally, the Commission believes it is appropriate that Orders and Commitments will be exempt from the short sale "tick test" restrictions of Exchange Rule 455. Separate from this approval order, the Commission has granted the Exchange exemptive relief from Rule 10a–1 under the Act.[57] Under the terms of the Rule 10a–1 exemptive relief, Participants may enter Commitments and Orders to sell short eligible securities provided that certain conditions are satisfied. Therefore, the Commission believes it is appropriate for the Exchange to likewise exempt Participants from the short sale restrictions that appear in Exchange Rule 455.

For the reasons discussed above, the Commission believes it is appropriate to approve the Exchange's proposal for a one year pilot period. As part of the pilot process, the Commission expects the Exchange to collect information pertaining to the operation and effectiveness of the System. The Commission requests that the Exchange use its ongoing research and surveillance to prepare a comprehensive report that: (i) addresses the overall reliability of the System and identifies any System outages or other technical problems, (ii) provides a summary of the Exchange's surveillance efforts regarding the System and identifies any Exchange investigations or enforcement actions involving the System; (iii) discusses the strategies employed by Users and Committers and evaluates whether the System is useful to market participants; (iv) provides feedback from Exchange members and non-members regarding their experiences with the System; and (v) measures the System's impact and effect on trading in the primary market of the eligible securities. In addition, because the Exchange has independently committed to prepare a report regarding the number of tape corrections and how they affect the final VWAP values calculated by the Exchange, that analysis should be included in the report. The Exchange is requested to submit its report on the System no later than two months before the end of the pilot period.

The Commission finds good cause for approving proposed Amendment Nos. 3 and 4 prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. The Commission notes that Amendment No. 3 revised the proposed rule change in several ways. First, the Exchange agreed to operate the System as a facility of the Exchange for a one year pilot period. The Commission believes it is appropriate for the Exchange to operate the System on a pilot basis for one year. The pilot period will provide the Exchange with the time necessary to evaluate the effectiveness of the System and to identify and remedy any problems or difficulties that may develop in its operation. Based on the results of the pilot period, the Exchange may propose an extension of the pilot period or seek permanent approval of the System. Second, the Exchange agreed to limit the securities eligible for matching through the System to 300 of the most highly-liquid and highly-capitalized issues listed on the NYSE. The Commission believes it is reasonable for the Exchange to limit the universe of eligible securities to highly-liquid and highly-capitalized securities. The Commission believes that the prices of large, actively traded securities are difficult to impact, and that as a result, the System's VWAP values should be

---

[52] 17 CFR 240.11Ac1–1.

[53] Rule 11Ac1–1 defines the term "responsible broker or dealer," when used with respect to bids or offers communicated on an exchange, to mean "any member of such exchange who communicates to another member on such exchange, to the location (or locations) designated by such exchange for trading in a covered [period] security, a bid or offer for such covered [reported] security, as either principal or agent." The Rule provides, however, that if "two or more members of an exchange have communicated on such exchange bids or offers for a covered [reported] security at the same price, each such member shall be considered, a 'responsible broker or dealer' for that bid or offer, subject to the rules of priority and precedence then in effect on that exchange." Furthermore, if a member of the exchange represents as agent the transmitted bid or offer of another exchange member, only the member representing the bid or offer as agent shall be considered the "responsible broker or dealer" for that bid or offer. 17 CFR 240.11Ac1–1(a)(21)(i).

[54] *See* 17 CFR 240.11Ac1–1(b).

[55] *See* 17 CFR 240.11Ac1–1(a)(4).

[56] 15 U.S.C. 78k(a).

[57] *See* Exemptive Relief Letter *supra* note 13.

less susceptible to manipulation. Third, the Exchange clarified the definition of an "institution," committed to prepare a report regarding the number of tape corrections and how they affect the VWAP values calculated by the Exchange, and modified from 4:02 P.M. to 4:01:30 P.M. the cut-off time designed to capture trade reporting run-off and sales that occur at the close of regular trading. Because each of these revisions strengthens the proposal, the Commission believes they are appropriate modifications.

In Amendment No. 4, the Exchange agreed to report pre-opening VWAP volumes for each eligible security in which matches have been effected during the Session. The Commission believes it is appropriate for the Exchange to report VWAP volumes for eligible securities individually before the start of regular trading. Despite the absence of a final price, the Commission believes that pre-opening volume prints will improve transparency and provide valuable information to market participants. The Commission continues to believe that a single, aggregate VWAP volume print encompassing all eligible securities, as previously proposed by the Exchange, provides little benefit to market participants. Amendment No. 4 also provided improved surveillance procedures. Although the surveillance measures cannot be discussed in specific terms because of their confidential nature, the Commission believes the measures will strengthen the oversight of the System and improve the proposal.

Based on the above, the Commission believes good cause exists, consistent with Sections 6(b) and 19(b) of the Act,[58] to accelerate approval of Amendment Nos. 3 and 4 to the proposed rule change.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment Nos. 3 and 4 to the proposal, including whether the proposed rule change as amended is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submissions, all subsequent amendment, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any persons, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–Phlx–96–14 and should be submitted by April 22, 1999.

V. Conclusion

The Commission believes the Exchange's proposal satisfies the standards of the Act that apply to national securities exchanges. The Commission recognizes that investors desire to trade large blocks of securities anonymously and free of the price movements that often accompany such transactions. By operating a facility that allows investors to anonymously effect block-sized trades at the day's volume weighted average price, the Exchange will be able to better accommodate the needs of investors.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[59] that the proposed rule change (SR–Phlx–96–14), as amended, is approved for a pilot period ending March 24, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[60]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–8061 Filed 3–31–99; 8:45 am]

BILLING CODE 8010–01–M

[58] 15 U.S.C. 78f(b) and 78s(b).

[59] 15 U.S.C. 78s(b)(2).

[60] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Docket No. OST–98–3648]

Reports, Forms and Recordkeeping Requirements; Agency Information Collection Activity Under OMB Review

AGENCY: Office of the Secretary, DOT.

ACTION: Notice of request for comments.

SUMMARY: Under the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended), before an agency submits a proposed collection of information to OMB for approval, it must publish a document in the **Federal Register** providing a 60-day comment period and otherwise consult with members of the public and affected agencies concerning each proposed collection of information. This notice announces the Department of Transportation's (DOT) intention to request approval of the following collection of information. Interested parties are invited to send comments regarding any aspect of this information collection, including: (1) the necessity and utility of the information collection; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the collected information; and (4) ways to minimize the collection burden without reducing the quality of the collected information. Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection.

DATES: Comments must be received on or before June 1, 1999.

ADDRESSES: Comments must refer to the docket and notice numbers cited at the beginning of this notice and be submitted to OST's Docket Management Facility, located on the Plaza Level of the Nassif Building at the U.S. Department of Transportation, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. The DOT Docket is open to the public from 10 am to 5 pm, Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Blane A. Workie, Office of the General Counsel, Department of Transportation, 400 7th Street, SW., Room 10424, Washington, D.C. 20590, (202) 366–4723.

SUPPLEMENTARY INFORMATION:

Office of the Secretary

Title: The DOT Final Rule on Accessibility of Over-the-Road Buses.

OMB Control Number: 2100–NEW.

Type of Request: Approval of a New Information Collection.

Abstract: The Department of Transportation (DOT), in conjunction with the U.S. Architectural and Transportation Barriers Compliance Board, issued final access regulations for privately-operated over-the-road buses (OTRBs) as required by the Americans with Disability Act (ADA) of 1990. The final rule has four different recordkeeping/reporting requirements. The first has to do with 48 hour advance notice and compensation. The second has to do with equivalent service and compensation. The third has to do with reporting information on ridership on accessible fixed-route buses. The fourth has to do with reporting information on the purchase and lease of accessible and inaccessible new and used buses. The purpose of the information collection requirements is to provide data that the Department can use in its regulatory review and to assist the Department in

its oversight of compliance by bus companies.

(1)(A) Requirement to fill out a form each time there is an advance notice request.

Respondents: Demand-responsive (i.e. charter/tour service) operators. Fixed route companies before fleet becomes fully accessible. Small mixed service operators that choose to provide 48 hour notice.

Estimated Annual Burden on Respondents: 3.3 (low estimate) to 5.0 (high estimate) hours for each of the 3,448 respondents.

Estimated Total Annual Burden: 11,378 (low estimate) to 17,240 (high estimate) hours.

Frequency: 15 times (low estimate) and 23 times (high estimate) in initial year.

(1)(B) Requirement to provide a copy of the form to the passenger when the operator receives a request for accessible bus service.

Respondents: Demand-responsive (i.e. charter/tour service) operators. Fixed route companies before fleet becomes fully accessible. Small mixed service operators that choose to provide 48 hour notice.

Estimated Annual Burden on Respondents: 3.2 (low estimate) to 4.8 hours (high estimate) for each of the 3,448 respondents.

Estimated Total Annual Burden: 11,034 (low estimate) to 16,550 (high estimate) hours.

Frequency: 15 times (low estimate) and 23 times (high estimate) in initial year.

(1)(C) Requirement to provide a copy of the form to the passenger on the scheduled date of trip if the requested accessible bus was not provided.

Respondents: Demand-responsive (i.e. charter/tour service) operators. Fixed route companies before fleet becomes fully accessible. Small mixed service operators that choose to provide 48 hour notice.

Estimated Annual Burden on Respondents: 0.3 (low estimate) to 0.5 hours (high estimate) for each of the 3,448 respondents.

Estimated Total Annual Burden: 1034 (low estimate) to 1724 (high estimate) hours.

Frequency: 1 time (low estimate) to 2 times (high estimate) in initial year.

(1)(D) Requirement to retain one copy of the form for 5 years.

Respondents: Demand-responsive (i.e. charter/tour service) operators. Fixed route companies before fleet becomes fully accessible. Small mixed service operators that choose to provide 48 hour notice.

Estimated Annual Burden on Respondents: 1.9 (low estimate) to 2.9 (high estimate) hours for each of the 3,448 respondents.

Estimated Total Annual Burden: 6,551 (low estimate) to 9,999 (high estimate) hours.

Frequency: 15 times (low estimate) and 23 times (high estimate) in initial year.

(1)(E) Requirement to submit a summary of its form to DOT.

Respondents: Demand-responsive (i.e. charter/tour service) operators. Fixed route companies before fleet becomes fully accessible. Small mixed service operators that choose to provide 48 hour notice.

Estimated Annual Burden on Respondents: 35.4 hours for each of the 3,448 respondents.

Estimated Total Annual Burden: 122,059 hours.

Frequency: Submit summary to DOT annually.

(2)(A) Requirement to fill out a form each time fixed route operator provides equivalent service.

Respondents: Small fixed route operators who choose to provide equivalent service to passengers with disabilities.

Estimated Annual Burden on Respondents: 4.0 (low estimate) to 6.3 (high estimate) hours for each of the 215 respondents.

Estimated Total Annual Burden: 860 (low estimate) to 1,355 (high estimate) hours.

Frequency: 18 times (low estimate) and 28 times (high estimate) in initial year.

(2)(B) Requirement to provide one copy of the form to the passenger.

Respondents: Small fixed route operators who choose to provide equivalent service to passengers with disabilities.

Estimated Annual Burden on Respondents: 3.8 (low estimate) to 5.9 (high estimate) hours for each of the 215 respondents.

Estimated Total Annual Burden: 409 (low estimate) to 1269 (high estimate) hours.

Frequency: 18 times (low estimate) and 28 times (high estimate) in initial year.

(2)(C) Requirement to retain copy for 5 years.

Respondents: Small fixed route operators who choose to provide equivalent service to passengers with disabilities.

Estimated Annual Burden on Respondents: 2.3 (low estimate) to 3.6 (high estimate) hours for each of the 215 respondents.

Estimated Total Annual Burden: 494.5 (low estimate) to 774 (high estimate) hours.

Frequency: 18 times (low estimate) and 28 times (high estimate) in initial year.

(2)(D) Requirement to submit a summary of its form to DOT.

Respondents: Small fixed route operators who choose to provide equivalent service to passengers with disabilities.

Estimated Annual Burden on Respondents: 35.4 hours for each of the 215 respondents.

Estimated Total Annual Burden: 7,611 hours.

Frequency: Submit summary to DOT annually.

(3) Requirement to submit a report to DOT on ridership on accessible fixed route buses.

Respondents: Fixed route operators.

Estimated Annual Burden on Respondents: 35.4 hours for each of the 448 respondents.

Estimated Total Annual Burden: 15,859 hours.

Frequency: Submit report to DOT annually.

(4) Requirement to submit a report to DOT listing the number of accessible and inaccessible new and used buses it has purchased or leased, as well as the total numbers of buses in operators' fleets.

Respondents: All operators.

Estimated Annual Burden on Respondents: 35.4 hours for each of the 3,448 respondents.

Estimated Total Annual Burden: 122,059 hours.

Frequency: Submit report to DOT annually.

The estimated total annual burden resulting from the collection of information in the DOT Final Rule on Accessibility of Over-the-Road Buses is between 298,682 hours (low estimate) to 315,001 hours (high estimate).

Issued in Washington, DC, on March 25, 1999.

Vanester M. Williams,

Clearance Officer, United States Department of Transportation.

[FR Doc. 99–8012 Filed 3–31–99; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA, Inc.; Government Industry Free Flight Steering Committee

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for an RTCA Government/Industry Free Flight Steering Committee meeting to be held

April 22, 1999, starting at 1 p.m. The meeting will be held at the Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC, 20591, in Conference Room 9ABC (ninth floor).

The agenda will include: (1) Welcome and Opening Remarks; (2) Review of Summary of the Previous Meeting; (3) Free Flight Phase 1; (4) Report from FAA Office of Communications, Navigation, Surveillance on (a) Integrated Data Link Schedule and (b) Safe Flight 21; (5) Reports and recommendations from the Free Flight Select Committee; (6) Other Business; (7) Date and Location of Next Meeting; (8) Closing Remarks.

Attendance is open to the interested public but limited to space availability. With the approval of the co-chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA, Inc., at (202) 833–9339 (phone), (202) 833–9434 (facsimile), or dclarke@rtca.org (e-mail). Members of the public may present a written statement at any time.

Issued in Washington, DC, on March 25, 1999.

Janice L. Peters,

Designated Official.

[FR Doc. 99–8013 Filed 3–31–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Special Committee 135; Environmental Conditions and Test Procedures for Airbone Equipment

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for Special Committee (SC)–135 meeting to be held April 15–16, 1999, starting at 9:00 a.m. The meeting will be held at RTCA, 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC 20036.

The agenda will include: (1) Chairman's Opening Remarks; (2) Introductions; (3) Review and Approval of Minutes of the Previous Meeting; (4) Review Section 8 Proposed Changes; (5) Review Section 16 Proposed Changes; (6) Review Status of Section 20 Working Group; (7) Develop a Milestone Schedule for Release of DO–160D Change 1; (8) New/Unfinished Business; (9) Establish Date for Next Meeting; (10) Closing.

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC 20036; (202) 833–9339 (phone); (202) 833–9434 (fax); or http://www.rtca.org (web site). Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on March 25, 1999.

Janice L. Peters,

Designated Official.

[FR Doc. 99–8023 Filed 3–31–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application (99–01–C–00–HGR) To Impose and Use a Passenger Facility Charge (PFC) at Hagerstown Regional Airport—Richard A. Henson Field, Hagerstown, MD

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use a passenger facility charge (PFC) at Hagerstown Regional Airport—Richard A. Henson Field under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before May 3, 1999.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Arthur Winder, Project Manager, Washington Airports District Office, PO Box 16780, Washington, DC 20041–6780.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Carolyn S. Motz, Airport Manager, Board of County Commissioners of Washington County, Maryland at the following address: Hagerstown Regional Airport—Richard A. Henson Field, 18434 Showalter Road, Hagerstown, Maryland 21742–1347.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Board of County Commissioners of Washington County, Maryland under § 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Arthur Winder, Program Manager, Washington Airport District Office, PO Box 16780, Washington, DC 20041–6780, (703) 661–1363. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use a PFC at Hagerstown Regional Airport—Richard A. Henson Field under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR part 158).

On January 28, 1999, the FAA determined that the application to impose and use a PFC submitted by Board of County Commissioners of Washington County, Maryland was substantially complete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than April 30, 1999.

The following is a brief overview of the application.

PFC Application No.: 99–01–C–00–HGR.

Level of the proposed PFC: $3.00.

Proposed charge effective date: July 1, 1999.

Proposed charge expiration date: November 1, 2003.

Total estimated PFC revenue: $360,000.

Brief description of proposed project(s):

Construct Snow and Equipment Maintenance Building (Impose Only)
Purchase Handicap Lift Device (Impose & Use)
Acquire Rotary Plow (Impose & Use)
Rehabilitate Taxiway G Edge Lighting System (Alternate Project)

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Air Charter.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the FAA Regional Airports Office located at: Fitzgerald Federal Building, #111, John F. Kennedy International Airport, Jamaica, New York, 11430.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the

application in person at the Hagerstown Regional Airport—Richard A. Henson Field.

Issued in Washington, DC, 20041–6780, March 18, 1999.

Terry J. Page,

Manager, Washington Airports District Office.

[FR Doc. 99–8016 Filed 3–31–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration (RSPA)

[Docket No. RSPA–98–4470]

Pipeline Safety: Meetings of Pipeline Safety Advisory Committees

AGENCY: Office of Pipeline Safety, Research and Special Programs Administration, DOT.

ACTION: Notice of advisory committee meetings.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C. App. 1) notice is hereby given of the following meetings of the Technical Pipeline Safety Standards Committee (TPSSC) and the Technical Hazardous Liquid Pipeline Safety Standards Committee (THLPSSC). Both the TPSSC and the THLPSSC are statutorily mandated advisory committees that assist RSPA's Office of Pipeline Safety in its consideration of proposed safety standards, risk assessments, and safety policies for hazardous liquid and natural gas pipelines. Each committee has an authorized membership of 15 persons, five each from government, industry, and the public. The committees meet in May and November of each year. Each Committee meeting, as well as a joint session of the two Committees, is held at the Department of Transportation, Nassif Building, 400 Seventh Street, SW, Washington, DC 20590. The May 4–5, 1999, meetings will be held in room 8236.

ADDRESSES: Comments on these meetings should be sent to the Dockets Facility, U.S. Department of Transportation, Plaza 401, 400 Seventh Street, SW, Washington, DC 20590–0001. Alternatively, comments may be e-mailed to ops.comments@rspa.dot.gov. All comments must reference Docket No. RSPA–98–4470. The Dockets Facility is located on the plaza level of the Nassif Building in Room 401, 400 Seventh Street, SW, Washington, DC. The Dockets Facility is open from 10:00 a.m. to 5:00 p.m., Monday through Friday, except on Federal holidays.

FOR FURTHER INFORMATION CONTACT: L.E. Herrick, OPS, (202) 366–5523 or Richard Huriaux, OPS, (202) 366–4565, regarding the subject matter of this notice.

SUPPLEMENTARY INFORMATION: On May 4, 1999, at 9:00 a.m., the Technical Hazardous Liquid Pipeline Safety Standards committee will meet in room 8236 of the Nassif Building. The preliminary agenda includes:

1. OPS Reorganization
2. Update on Usually Sensitive Areas (USA)
3. Pressure Testing of Older Hazardous Liquid Pipelines and Terminals
4. Overview of the OPA Program
5. Liquid Data Team Report

On May 4, 1999, at 11:30 a.m., the THLPSSC will be joined by members of the TPSSC for a joint session of the gas and hazardous liquid pipeline advisory committees. The preliminary agenda includes:

1. Qualification of Pipeline Personnel
2. Training Report: Pipeline Employee Performance Group (PEPG), Training of Minerals Management Service Personnel, and the Transportation Safety Institute (TSI) Curriculum
3. Compliance Program Directions: Inspection Procedures, Policy, and Federal/State Relationship
4. Gas and Hazardous Liquid Pipeline Repair
5. System Integrity Inspection Pilots
6. Marking of Water Crossings
7. National Pipeline Mapping System
8. Risk Management Demonstration
9. Corrosion Control on Gas and Hazardous Liquid Pipelines
10. Cost-Benefit Analysis Framework Working Group
11. Random Drug Testing Rates
12. Underground Damage Prevention Activities: Damage Quality Action Team (DAMQAT) and One Call Best Practices Study

On May 5, 1999, from 9:00 a.m. to 11:30 a.m., the Technical Pipeline Safety Standards Committee will meet. The preliminary agenda includes:

1. Gas Gathering Lines
2. Remotely Controlled Valves on Natural Gas Pipeline Facilities
3. Adoption of Industry Standards for Liquefied Natural Gas (LNG)
4. Plastic Pipeline Safety Standards and Research
5. Risk Management Local Distribution Company (LDC) Initiative

All three meetings will be open to the public. Members of the public will have an opportunity to make short statements on the topics under discussion. Anyone wishing to make an oral statement must notify Peggy Thompson, Room 7128, Department of Transportation, Nassif Building, 400 Seventh Street, SW, Washington, DC 20590, telephone (202) 366–1933, not later than April 15, 1999, on the topic of the statement and the time requested for presentation. The presiding officer at each meeting may deny any request to present an oral statement and may limit the time of any presentation.

Authority: 49 U.S.C. 60102, 60115.

Issued in Washington, DC on March 26, 1999.

Richard B. Felder,

Associate Administrator for Pipeline Safety.

[FR Doc. 99–7979 Filed 3–31–99; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33725]

CSX Transportation, Inc.—Trackage Rights Exemption—Consolidated Rail Corporation

Consolidated Rail Corporation (Conrail), has agreed to grant overhead trackage rights to CSX Transportation, Inc., (CSXT), to operate its trains, locomotives, cars and equipment with CSXT's own crews over Conrail's Olin Running Track between the Conrail/CSXT connection at milepost 0.5± and milepost 0.0±; and (2) Conrail's Pekin Running Track between milepost 0.0± and the limits of trackage being leased by CSXT at the connection to Conrail's Hillery Yard at milepost 1.85± in Danville, IL,[1] a distance of approximately 1.9 miles, including necessary head and tail room.

As noted in the agreement attached to CSXT's notice of exemption, this trackage rights arrangement is only temporary. The Conrail trackage that is the subject of the trackage rights is to be allocated to Conrail's subsidiary, New York Central Lines LLC, and operated by CSXT, after what is referred to as the "Split Date," or the date of the division of Conrail's assets, as authorized by the Board in *CSX Corporation and CSX Transportation, Inc., Norfolk Southern Corporation and Norfolk Southern Railway Company—Control and Operating Leases/Agreements—Conrail Inc., and Consolidated Rail Corporation,* STB Finance Docket No. 33388 (STB served July 23, 1998). CSXT states that

[1] Under a separate agreement, CSXT is leasing approximately 18,850 feet of yard track in Conrail's Hillery Yard for storage of railroad cars.

it expects the Split Date to occur on June 1, 1999. The parties intend for the trackage rights to terminate on the Split Date, but if the Split Date does not occur before June 30, 1999, the parties' agreement provides for termination of the trackage rights on June 30, 1999. Accordingly, on March 25, 1999, CSXT filed a petition for exemption in STB Finance Docket No. 33725 (Sub/No. 1), *CSX Transportation, Inc.—Trackage Rights Exemption—Consolidated Rail Corporation,* requesting that the Board permit the proposed overhead trackage rights arrangement described in the present proceeding to expire on the Split Date or June 30, 1999, whichever occurs first. That petition will be addressed by the Board in a separate decision.

The transaction was scheduled to be consummated on March 19, 1999.

The purpose of the trackage rights is to allow CSXT to access the tracks it is leasing from Conrail in Hillery Yard.

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN,* 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.-Lease and Operate,* 350 I.C.C. 753 (1980).

This notice is filed under 49 CFR 1180.2(d)(7). It it contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33725, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW, Washington, DC 20423–0001. In addition, one copy of each pleading must be served on Charles M. Rosenberger, Senior Counsel, CSX Transportation, Inc., 500 Water Street, J–150, Jacksonville, FL 32202.

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

Decided: March 26, 1999.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 99–8128 Filed 3–31–99; 8:45 am]

BILLING CODE 4915–00–M

DEPARTMENT OF THE TREASURY

Domestic Finance; Notice of Open Meeting of the Advisory Committee U.S. Community Adjustment and Investment Program

The Department of the Treasury, pursuant to the North American Free Trade Agreement ("NAFTA") Implementation Act (Pub. L. No. 103–182), established an advisory committee (the "Advisory Committee") for the community adjustment and investment program (the "Program"). The Program provides financing in communities adversely impacted by NAFTA to create or preserve jobs. The charter of the Advisory Committee has been filed in accordance with the Federal Advisory Committee Act of October 6, 1972 (Pub. L. No. 92–463), with the approval of the Secretary of the Treasury.

The Advisory Committee consists of nine members of the public, appointed by the President, who collectively represent: (1) Community groups whose constituencies include low-income families; (2) scientific, professional, business, nonprofit, or public interest organizations or associations, which are neither affiliated with, nor under the direction of, a government; and (3) for-profit business interests. There are currently two vacancies in the Advisory Committee.

The objectives of the Advisory Committee are to: (1) provide informed advice to the President regarding the implementation of the Program; and (2) review on a regular basis, the operation of the Program, and provide the President with the conclusions of its review. Pursuant to Executive Order No. 12916, dated May 13, 1994, the President established an interagency committee to implement the Program and to receive, on behalf of the President, advice of the Advisory Committee. The committee is chaired by the Secretary of the Treasury.

A meeting of the Advisory Committee, which will be open to the public, will be held in Washington, DC at the Madison Hotel, Executive Chambers, 15th and M Streets, NW, Washington, DC 20005 (Tel. 202–862–1600) from 9 a.m. to 4 p.m. on Friday, April 16, 1999. The meeting room will accommodate approximately 75 persons and seating is available on a first-come, first-serve basis, unless space has been reserved in advance. Due to limited seating, prospective attendees are encouraged to contact the person listed below prior to April 9, 1999. If you would like to have the Advisory Committee consider a written statement, material must be submitted to the U.S. Community Adjustment and Investment Program, Advisory Committee, Department of the Treasury, 1500 Pennsylvania Avenue, NW, Room 3041, Washington, DC 20220 no later than April 2, 1999. If you have any questions, please call Dan Decena at (202) 622–0637 (Please note that this telephone number is not toll-free.)

Lee Sachs,

Deputy Assistant Secretary, Government Financial Policy.

[FR Doc. 99–7866 Filed 3–31–99; 8:45 am]

BILLING CODE 4810–70–P

DEPARTMENT OF THE TREASURY

Customs Service

[T.D. 99–31]

Tuna Fish—Tariff-Rate Quota

The tariff-rate quota for Calendar Year 1999, on tuna classifiable under subheading 1604.14.20, Harmonized Tariff Schedule of the United States (HTSUS).

AGENCY: Customs Service, Department of the Treasury.

ACTION: Announcement of the quota quantity for tuna for Calendar Year 1999.

SUMMARY: Each year the tariff-rate quota for tuna fish described in subheading 1604.14.20, HTSUS, is based on the United States canned tuna production for the preceding calendar year. This document sets forth the quota for calendar year 1999.

EFFECTIVE DATES: The 1999 tariff-rate quota is applicable to tuna fish entered, or withdrawn from warehouse, for consumption during the period January 1, through December 31, 1999.

FOR FURTHER INFORMATION CONTACT:

Cynthia Porter, Chief, Quota, Import Operations, Trade Compliance, Office of Field Operations, U.S. Customs Service, Washington, DC 20229, (202) 927–5399.

Background

It has now been determined that 32,697,510 kilograms of tuna may be entered for consumption or withdrawn from warehouse for consumption during the Calendar Year 1999, at the rate of 6 percent ad valorem under subheading 1604.14.20, HTSUS. Any such tuna which is entered, or withdrawn from warehouse, for consumption during the current calendar year in excess of this quota will be dutiable at the rate of 12.5 percent ad valorem under subheading 1604.14.30 HTSUS.

Dated: March 24, 1999.
Raymond W. Kelly,
Commissioner.
[FR Doc. 99–8033 Filed 3–31–99; 8:45 am]
BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Fiscal Service

Financial Management Service; Proposed Collection of Information: Annual Letter—Certification of Authority

AGENCY: Financial Management Service, Fiscal Service, Treasury.
ACTION: Notice and request for comments.

SUMMARY: The Financial Management Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a continuing information collection. By this notice, the Financial Management Service solicits comments concerning the form "Annual Letter—Certification of Authority."

DATES: Written comments should be received on or before June 1, 1999.

ADDRESSES: Direct all written comments to Financial Management Service, 3361–L 75th Avenue, Landover, Maryland 20785.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to the Surety Bond Branch, 3700 East-West Highway, Hyattsville, Maryland 20782, (202) 874–6850.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)), the Financial Management Service solicits comments on the collection of information described below.

Title: Annual Letter—Certification of Authority.
OMB Number: 1510–0057.
Form Number: None.
Abstract: This letter is used to collect information from companies to determine their acceptability and solvency to write or reinsure federal surety bonds.
Current Actions: Extension of currently approved collection.
Type of Review: Regular.
Affected Public: Businesses or other for-profit.
Estimated Number of Respondents: 312.
Estimated Time Per Respondent: 62 hours 30 minutes.
Estimated Total Annual Burden Hours: 19,500.

Comments: Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance and purchase of services to provide information.

Dated: March 25, 1999.
Judith R. Tillman,
Assistant Commissioner.
[FR Doc. 99–8038 Filed 3–31–99; 8:45 am]
BILLING CODE 4810–35–M

DEPARTMENT OF TREASURY

Internal Revenue Service

Information Reporting Program Advisory Committee; Notice of Meeting

AGENCY: Internal Revenue Service (IRS), Treasury.
ACTION: Notice of open meeting of the Information Reporting Program Advisory Committee.

SUMMARY: In 1991 the IRS established the Information Reporting Program Advisory Committee (IRPAC) in response to a recommendation made by the United States Congress. The primary purpose of IRPAC is to provide an organized public forum for discussion of relevant information reporting issues between the officials of the IRS and representatives of the payer/practitioner community. IRPAC offers constructive observations about current or proposed policies, programs, and procedures and, when necessary, suggests ways to improve the operation of the Information Reporting Program (IRP).

There will be a meeting of IRPAC on Wednesday, April 28, 1999. The meeting will be held in Room 126 of the Senate Dirksen Office Building, which is located at Constitution Avenue and 1st Street, NE., Washington, DC. It is suggested that meeting attendees enter the building through the Constitution Avenue entrance. A summarized version of the agenda along with a list of topics that are planned to be discussed are listed below.

Summarized Agenda for Meeting on April 28, 1999

Wednesday, April 28, 1999

9:00—Meeting Opens
11:30—Break for Lunch
1:00—Meeting Resumes
5:00—Meeting Adjourns

The topics that are planned to be covered are as follows:

(1) Counting the Number of B–12 Notices
(2) Schedule K–1 (Form 1065) Substitute Statements
(3) Distributions from Conduit IRAs of Former U.S. Residents and NRA Withholding Rules
(4) Revision of the Form 5472
(5) Changes to IRS Instructions to Clarify Education IRA Reporting Requirements
(6) Resolving Excess Contributions in a Roth IRA after the Tax Filing Deadline
(7) Qualified Settlement Fund Proposed Guidance
(8) Form 1441 Requirements and the Form W–9
(9) Follow-up on Combined Filing of Information Returns by Paying Agents
(10) Follow-up on Guidance on Claiming Exemptions on Form W–4—Frivolous Non-Filers
(11) IRS Update on Martinsburg Computing Center Initiatives
(12) IRS Update on Electronic Tax Administration IRP Initiatives
(13) IRS Update on HOPE Credit/ Lifetime Learning Credit

Note: Last minute changes to these topics are possible and could prevent advance notice.

SUPPLEMENTARY INFORMATION: IRPAC reports to the National Director, Office of Specialty Taxes, who is the executive responsible for information reporting payer compliance.

IRPAC is instrumental in providing advice to enhance the IRP Program. Increasing participation by external stakeholders in the planning and improvement of the tax system will help achieve the goals of increasing voluntary compliance, reducing burden, and improving customer service. IRPAC is currently comprised of 20 representatives from various segments of the information reporting payer/ practitioner community. IRPAC members are not paid for their time or services, but consistent with Federal regulations, they are reimbursed for

their travel and lodging expenses to attend two public meetings each year.

DATES: The meeting will be open to the public, and will be in a room that accommodates approximately 100 people, including members of IRPAC and IRS officials. Seats are available to members of the public on a first-come, first-served basis. In order to get your name on the list of public attendees, *please call Ms. Gloria Wilson at 202–622–4393, no later than Friday, April 23, 1999.* Notification of intent to attend should include your name, organization and phone number. If you leave this information for Ms. Wilson in a voice-mail message, please spell out all names. A draft of the agenda will be available via facsimile transmission the week prior to the meeting. Please call Ms. Gloria Wilson at 202–622–4393 on or after Monday, April 19, 1999, to have a copy of the agenda faxed to you. Please note that a draft agenda will not be available until that date.

ADDRESSES: If you would like to have IRPAC consider a written statement at a future IRPAC meeting (not this upcoming meeting), please write to Ms. Kate LaBuda at the IRS, Office of Payer Compliance, OP:EX:ST:PC, Room 2013, 1111 Constitution Avenue, NW., Washington, DC, 20224.

FOR FURTHER INFORMATION CONTACT: To get on the list of public attendees for this meeting, or to have a copy of the agenda faxed to you (on or after April 19, 1999), call Ms. Gloria Wilson at 202–622–4393. For general information about IRPAC call Ms. Kate LaBuda at 202–622–3404.

Dated: March 23, 1999.

Kate LaBuda,

(Acting) Director, Office of Payer Compliance, Office of Examination.

[FR Doc. 99–7902 Filed 3–31–99; 8:45 am]

BILLING CODE 4830–01–P

Corrections

Federal Register

Vol. 64, No. 62

Thursday, April 1, 1999

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–930–4210–06; WYW 147234, WYW 142433]

Notice of Proposed Withdrawal and Opportunity for Public Meeting; Cancellation of Proposed Withdrawal; Wyoming

Correction

In notice document 99–5085 beginning on page 10720 in the issue of Friday, March 5, 1999, make the following correction:

On page 10720, in the third column, under **Sixth Principal Meridian, Wyoming**, in the 11th line, "M½" should read "N½".

[FR Doc. C9–5085 Filed 3–31–99; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects in the Possession of the National Park Service, Pecos National Historical Park, Pecos, NM

Correction

In notice document 99–6658, beginning on page 13444, in the issue of Thursday, March 18, 1999, make the following correction:

On page 13447, in the second column, the sixth line from the bottom, "[thirty days after publication in the Federal Register]" should read "April 19, 1999".

[FR Doc. C9–6658 Filed 3–31–99; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 146

RIN 1515–AC05

Weekly Entry Procedure for Foreign Trade Zones

Correction

In proposed rule document 99–6467, beginning on page 13142, in the issue of Wednesday, March 17, 1999, make the following correction(s):

1. On page 13142, in the third column, in the fourth line "fro" should read "for".

2. On page 13143, in the first column, under the heading **Withdrawal of Proposal**, in the 11th line, "or" should read "of".

[FR Doc. C9–6467 Filed 3–31–99; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 54 and 602

[TD 8812]

RIN 1545–AI93

Continuation Coverage Requirements Applicable to Group Health Plans

Correction

In rule document 99–1520 beginning on page 5160, in the issue of Wednesday, February 3, 1999, make the following correction:

On page 5161, in the second column, in the footnote, the second line from the bottom, "International" should read "Internal".

[FR Doc. C9–1520 Filed 3–31–99; 8:45 am]

BILLING CODE 1505–01–D

VOL
64
ISS
62
AP
1
1999
UMI

federal register

Thursday
April 1, 1999

Part II

Nuclear Regulatory Commission

10 CFR Parts 170 and 171
Revision of Fee Schedules; 100% Fee Recovery, FY 1999; Proposed Rule

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 170 and 171

RIN 3150–AG08

Revision of Fee Schedules; 100% Fee Recovery, FY 1999

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing to amend the licensing, inspection, and annual fees charged to its applicants and licensees. The proposed amendments are necessary to implement the Omnibus Budget Reconciliation Act of 1990 (OBRA–90), as amended, which mandates that the NRC recover approximately 100 percent of its budget authority in Fiscal Year (FY) 1999, less amounts appropriated from the Nuclear Waste Fund (NWF) and the General Fund. The amount to be recovered for FY 1999 is approximately $449.6 million.

DATES: The comment period expires May 3, 1999. Comments received after this date will be considered if it is practical to do so, but the NRC is able to ensure only that comments received on or before this date will be considered. Because OBRA–90 requires that NRC collect the FY 1999 fees by September 30, 1999, requests for extensions of the comment period will not be granted.

ADDRESSES: Mail written comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Rulemakings and Adjudications Staff. Hand deliver comments to: 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 am and 4:15 pm Federal workdays. (Telephone 301–415–1678). Comments may also be submitted via the NRC's interactive rulemaking website through the NRC home page (http://www.nrc.gov). From the NRC homepage, select "Rulemaking" from the tool bar. The interactive rulemaking website can then be accessed by selecting "Rulemaking Forum". This site provides the ability to upload comments as files (any format), if your web browser supports that function. For information about the interactive rulemaking site, contact Ms. Carol Gallagher, 301–415–5905; e-mail CAG@nrc.gov.

Copies of comments received and the agency workpapers that support these proposed changes to 10 CFR parts 170 and 171 may be examined at the NRC Public Document Room, 2120 L Street NW (Lower Level), Washington, DC 20555–0001. Comments received may also be viewed and downloaded electronically via the interactive rulemaking website established by the NRC for this rulemaking.

FOR FURTHER INFORMATION CONTACT: Glenda Jackson, Office of the Chief Financial Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Telephone 301–415–6057.

SUPPLEMENTARY INFORMATION:

I. Background.
II. Proposed Action.
III. Plain Language.
IV. Environmental Impact: Categorical Exclusion.
V. Paperwork Reduction Act Statement.
VI. Regulatory Analysis.
VII. Regulatory Flexibility Analysis.
VIII. Backfit Analysis.

I. Background

Public Law 101–508, the Omnibus Budget Reconciliation Act of 1990 (OBRA–90), enacted November 5, 1990, requires that the NRC recover approximately 100 percent of its budget authority, less the amount appropriated from the Department of Energy (DOE) administered Nuclear Waste Fund (NWF), for FYs 1991 through 1995 by assessing fees. OBRA–90 was amended in 1993 to extend the NRC's 100 percent fee recovery requirement through 1998. In 1998 OBRA–90 was amended to extend the NRC's 100 percent fee recovery requirement through FY 1999.

The NRC assesses two types of fees to recover its budget authority. First, license and inspection fees, established at 10 CFR part 170 under the authority of the Independent Offices Appropriation Act of 1952 (IOAA), 31 U.S.C. 9701, recover the NRC's costs of providing individually identifiable services to specific applicants and licensees. Examples of the services provided by the NRC for which these fees are assessed are the review of applications for the issuance of new licenses, approvals or renewals, and amendments to licenses or approvals. Second, annual fees, established in 10 CFR part 171 under the authority of OBRA–90, recover generic and other regulatory costs not recovered through 10 CFR part 170 fees.

II. Proposed Action

The NRC is proposing to amend its licensing, inspection, and annual fees to recover approximately 100 percent of its FY 1999 budget authority, including the budget authority for its Office of the Inspector General, less the appropriations received from the NWF and the General Fund. For FY 1999, the NRC's budget authority is $469.8 million, of which $17.0 million has been appropriated from the NWF. In addition, $3.2 million has been appropriated from the General Fund for activities related to regulatory reviews and other assistance provided to the DOE and other Federal agencies. The NRC's FY 1999 Appropriations Act states that this $3.2 appropriation shall be excluded from license fee revenues. Therefore, the NRC is required to collect approximately $449.6 million in FY 1999 through 10 CFR part 170 licensing and inspection fees and 10 CFR part 171 annual fees. The total amount to be recovered in fees for FY 1999 is $5.2 million less than the amount estimated for recovery in the NRC's FY 1998 fee rule.

The reduced budgeted costs to be recovered through fees for FY 1999 reflect several actions taken by the NRC. These actions include strategic planning, downsizing, and a more aggressive policy on seeking reimbursement for performing services that are not a required part of the agency's statutory mission. For example, for FY 1999, the NRC entered into an agreement with the U. S. Agency for International Development to fund NRC's staff costs associated with providing nuclear safety assistance to the countries of the former Soviet Union. As a result, NRC licensees are not required to pay for the costs of this activity in FY 1999. These costs were previously included in NRC's budget authority and the costs were recovered through annual fees assessed to NRC licensees.

The NRC estimates that approximately $107.7 million will be recovered in FY 1999 from fees assessed under Part 170 and other receipts, compared to $94.6 million in FY 1998. The increase from FY 1998 is primarily due to increased Part 170 collections largely attributable to changes in Commission policy included in the FY 1998 final fee rule, such as billing full cost under Part 170 for resident inspectors, and a $4.1 million carryover from additional collections in FY 1998 that were unanticipated at the time the final FY 1998 fee rule was published. In addition to the estimated Part 170 collections and other receipts, the NRC estimates a net adjustment of approximately $2.1 million for payments received in FY 1999 for FY 1998 invoices. The remaining $339.8 million would be recovered in FY 1999 through the 10 CFR part 171 annual fees, which is approximately $20.4 million less than in FY 1998.

Table I summarizes the budget and fee recovery amounts for FY 1999:

TABLE 1.—BUDGET AND FEE RECOVERY AMOUNTS FOR FY 1999

[Dollars in Millions]

Total Budget	$469.8
Less NWF	−17.0
Less General Fund (Reviews for DOE and other Federal agencies)	−3.2
Total Fee Base	449.6
Less Part 170 Fees	−103.5
Less other receipts	−4.2
Part 171 Fee Collections Required	341.9
Part 171 Billing Adjustment [1]	
Unpaid FY 1999 invoices	3.4
Less Payments received in FY 1999 for prior year invoices	−5.5
Subtotal	−2.1
Adjusted Part 171 Collections Required	339.8

[1] These adjustments are necessary to ensure that the "billed" amount results in the required collections. Positive amounts indicate amounts billed that will not be collected in FY 1999.

Because the final FY 1999 fee rule will be a "major" final action as defined by the Small Business Regulatory Enforcement Fairness Act of 1996, the NRC's fees for FY 1999 would become effective 60 days after publication of the final rule in the **Federal Register**.

The NRC announced in the FY 1998 proposed rule that the final rule would no longer be mailed to all licensees. However, because the NRC is soliciting public comments on two potential annual fee schedules for FY 1999, the FY 1999 final rule will be mailed to all licensees. As a cost-saving measure, the NRC does not plan to routinely mail future final fee rules to all licensees, but will send the final rules to any licensee or other person upon request. As a matter of courtesy, the NRC will continue to send the proposed fee rules to all licensees.

In addition to publication in the **Federal Register**, the final rule will be available on the internet at http://ruleforum.llnl.gov/. Copies of the final rule will also be mailed upon request. To request a copy, contact the License Fee and Accounts Receivable Branch, Division of Accounting and Finance, Office of the Chief Financial Officer, at 301–415–7554, or e-mail us at fees@nrc.gov. It is our intent to publish the final rule in June of 1999.

The NRC is proposing to make changes to 10 CFR parts 170 and 171 as discussed in Sections A. and B. below:

A. Amendments to 10 CFR Part 170: Fees for Facilities, Materials, Import and Export Licenses, and Other Regulatory Services Under the Atomic Energy Act of 1954, as Amended

The NRC is proposing four major amendments to 10 CFR part 170, and several administrative amendments to update information in certain sections and to accommodate the major proposed changes. These amendments further the underlying basis for the regulation—that fees be assessed to applicants, persons, and licensees for specific identifiable services rendered. The amendments also comply with the guidance in the Conference Committee Report on OBRA–90 that fees assessed under the IOAA recover the full cost to the NRC of identifiable regulatory services that each applicant or licensee receives.

The major changes to 10 CFR part 170 proposed by the NRC are:

1. Expanded Part 170 Cost Recovery

The NRC is proposing to expand the scope of part 170 to include incident investigations, performance assessments and evaluations (except those for which the licensee volunteers at NRC's request and which NRC accepts), reviews of reports and other submittals such as responses to Confirmatory Action Letters, and full cost recovery for time expended by Project Managers.

Part 170 fees are based on Title V of the IOAA, interpretations of that legislation by the Federal courts, and Commission guidance. These guidelines provide that part 170 fees may be assessed to persons who are identifiable recipients of "special benefits" conferred by specifically identified activities of the NRC. The term "special benefits" includes services rendered at the request of a recipient and all services necessary to the issuance of a required permit, license, certificate, approval, or amendment, or other services necessary to assist a recipient in complying with statutory obligations under the Commission's regulations.

Part 170 fees are currently assessed for:

(a) The review of applications for and the issuance of licensing actions or other approvals;

(b) The review and approval of topical reports;

(c) Preapplication consultations and reviews;

(d) Inspections; and

(e) The costs of maintaining resident inspectors.

The remainder of NRC's budget authority is recovered through annual fees assessed under part 171.

In the NRC's FY 1998 fee rulemaking, steps were taken to more appropriately recover costs for certain activities through part 170 fees rather than through part 171 fees. The NRC's proposals to further expand the scope of part 170 for FY 1999 would result in cost recovery for additional activities through part 170 fees rather than through part 171 fees.

a. Inspections

Under this proposed change, part 170 fees would be assessed for all inspections, including licensee-specific performance reviews, assessments, evaluations and incident investigations. Examples of activities that would be billable under part 170 are performance assessments of fuel facilities, Diagnostic

Evaluation Team assessments, and Incident Investigation Team investigations. Licensees who volunteer to participate in a performance review or assessment at NRC's request and which the NRC accepts would be exempted from these part 170 fees. The inspections that are proposed to be included in part 170 are "special benefits" provided to identifiable recipients, whether or not an inspection report is issued. For example, incident investigations are investigations of significant operational events involving power reactors and other facilities. Causes of the events are determined and corrective actions taken. Incident Investigation Teams investigate events of potentially major significance. Although the investigations may result in some generic lessons, the investigations are primarily a direct service provided to the specific licensee and assist the licensee in complying with NRC regulations. The costs of any generic efforts that may result from the investigations, such as the development of new regulatory requirements and guidance, would continue to be recovered through part 171 annual fees, not through part 170 fees assessed to the licensee. In addition, any time expended by our Office of Investigations on these activities will be recovered through part 171 fees. These proposed part 170 fees would not apply to materials licenses for which no inspection fee is specified in part 170 because the inspection costs are included in the part 171 annual fee for those fee categories.

b. Additional Document Reviews

The NRC is also proposing to expand the scope of part 170 to include reviews of documents submitted to the NRC that do not require formal or legal approvals or amendments to the technical specifications or license. Examples are certain financial assurance reviews, reviews of responses to Confirmatory Action Letters, reviews of uranium recovery licensees' land-use survey reports, and reviews of 10 CFR 50.71(e) final safety analysis reports (FSARs). part 170 fees are currently not assessed for these reviews because they do not result in an approval or amendment, and the costs are recovered through part 171 annual fees. Although no specific approval is issued, reviews of these submittals are services provided by the NRC to identifiable recipients that assist them in complying with NRC regulations.

c. Project Manager Time

Additionally, the NRC is proposing that all project managers time, excluding leave and time spent on generic activities such as rulemaking, be recovered through Part 170 fees assessed to the specific applicant or licensee to which the project manager is assigned. This change would be applicable to all licensees subject to full cost fees under Part 170 and to which project managers are assigned. Currently, only project manager time spent on a specific licensing action or inspection is billed under Part 170 and costs for the remaining project manager activities are recovered in the Part 171 annual fees. However, there are other project manager activities that also support and provide a direct benefit to the assigned licensee or site.

Examples of project manager activities which would be included in the Part 170 fee assessment are those associated with oversight of the assigned license or plant (e.g., setting work priorities, planning and scheduling review efforts, preparation and presentations of briefings for visits to NRC by utility officials, interfacing with other NRC offices, the public, and other Federal and state and local government agencies, and visits to the assigned site for purposes other than a specific inspection), and training. Examples of project manager generic activities that would not be subject to fee recovery under Part 170 are rulemaking and the development of regulatory guides, generic licensing guides, standard review plans, and generic letters and bulletins. If a project manager is assigned to more than one license or site, costs for activities other than licensee-specific licensing or inspection activities would be prorated to each of the licenses or sites to which the project manager is assigned. The concept of full cost recovery for project managers is similar to the concept of full cost recovery for resident inspectors, which was added to Part 170 in the FY 1998 final fee rule (June 10, 1998; 63 FR 31840).

d. Other

The NRC is also soliciting public comment in this proposed rule on whether to include the development of orders, evaluation of responses to orders, development of Notices of Violation (NOVs) accompanying escalated enforcement actions, and evaluation of responses to NOVs in next year's proposed fee rule. The costs of these activities are currently recovered through Part 171 annual fees.

Orders and Related Activities

Currently, Part 170 fees are not assessed for the development of orders issued under 10 CFR 2.202, or for the issuance of amendments specifically resulting from these orders. The primary basis for the current policy is that fees could be perceived as additional fines to the licensee, or in some cases, such as when a licensee requests a hearing on an enforcement order, fees could be viewed as a penalty for the licensee exercising its rights to challenge the NRC action. In addition, depending on the licensees' responses, orders may also be withdrawn or modified. Moreover, in cases of misconduct, an order may be issued to the individual rather than the licensee. On the other hand, the development of orders and the review of responses to orders are activities performed for specifically identifiable recipients.

Escalated Enforcement Actions

Although costs of inspections forming the basis for enforcement actions, except those arising from an allegation, are currently recovered through Part 170 fees assessed to the affected licensee, the costs for escalated enforcement actions (i.e., the development and issuance of Notices of Violations and orders imposing civil penalties) are not. Part 170 fees are not currently assessed for the escalated enforcement actions because they serve the generic purpose of industry-wide deterrence. In addition, some escalated enforcement actions are withdrawn. There also is concern that in some cases the fee could be much greater than the civil penalty, which is intended to encourage a licensee to comply with the NRC requirements. As with orders issued under 10 CFR 2.202, fees could be viewed as a penalty for the licensee exercising its rights to challenge the NRC action. However, escalated enforcement actions are activities performed by the NRC which pertain to identifiable licensees.

2. Amendment Fees Based on Average Costs

The NRC is proposing to revise 10 CFR 170.31 to eliminate the amendment fees for small materials licensees that are based on the average time to complete the reviews ("flat" fees) and include the amendment processing costs in the Part 171 annual fees assessed to the small materials licensees. This proposal would continue the NRC's initiatives to streamline its fee program. In a similar action, the inspection and renewal fees for these licensees were eliminated in the FY 1995 and FY 1996 fee rulemakings, respectively, and the costs included in the annual fees for these categories of licensees.

Although approximately 2500 requests for amendments to small

materials licenses are received and processed each year for fee recovery purposes, less than $900,000 in Part 170 fees is collected annually for these amendments. The number of amendments, as well as the Part 170 fee collections, will decrease as more states become Agreement States.

The current approach for assessing materials license amendment fees is complex and labor intensive. Approximately 25 percent of the amendment requests are submitted with incorrect fee payments. In the case of underpayment, the licensee must be notified and the license amendment held in abeyance until the correct fee is received. In the case of overpayments, refunds must be authorized and processed through the Department of the Treasury (Treasury). Because of Treasury requirements that all Federal payments (other than payments made under the Internal Revenue Code of 1986) made after January 1, 1999, must be made by electronic funds transfer, information on the payee's financial institution and bank accounts must be collected.

These administrative burdens for flat amendment fees would be eliminated by including the amendment costs in the Part 171 annual fee assessed to these licensees. This would result in an estimated $900,000 being added to the annual fees assessed to approximately 5700 materials licensees.

Amendment fees for these licensees currently range from $160 for an amendment to a custom sealed source evaluation (fee category 9D) to $1,100 for an amendment to a custom device evaluation (fee category 9B). The majority of the amendments are filed by licensees in fee category 3P, which includes licenses for possession and use of byproduct material in industrial measuring systems and gas chromatographs, and licenses for in-vitro studies, and by licensees in fee category 7C, which covers most licenses for human use of byproduct, source, and special nuclear material. The current amendment fee for fee category 3P is $340; the current amendment fee for fee category 7C is $450. Although not all materials licensees request amendments during a given fiscal year, approximately 80 percent request at least one amendment over a five-year period, and approximately 40 percent of these licensees request multiple amendments during a five-year period.

In addition to streamlining the NRC process, this proposed change would eliminate the steps licensees currently take to submit the payments for their amendment requests. It would also eliminate any delays in approving proposed amendments due to incorrect payments and would provide an efficient means of recovering these costs. The NRC believes that the efficiencies to be gained outweigh any inequities that may result because not all materials licenses are amended each fiscal year.

If we do not adopt this approach, amendment fees set forth in the final fee rule would likely approximate those set forth in the FY 1998 fee schedule, although there may be some variance as a result of the biennial fee review required by the Chief Financial Officers Act and the increase in the hourly rate for the materials program described below.

3. Hourly Rates

The NRC is proposing to revise the two professional hourly rates for NRC staff time established in § 170.20. These proposed rates would be based on the number of FY 1999 direct FTEs and the FY 1999 NRC budget, excluding direct program support costs and NRC's appropriations from the NWF and the General Fund. These rates are used to determine the Part 170 fees. The proposed hourly rate for the reactor program is $141 per hour ($250,403 per direct FTE). This rate would be applicable to all activities for which fees are based on full cost under § 170.21 of the fee regulations. The proposed hourly rate for the nuclear materials and nuclear waste program is $140 per hour ($248,728 per direct FTE). This rate would be applicable to all activities for which fees are based on full cost under § 170.31 of the fee regulations. In the FY 1998 final fee rule, these rates were $124 and $121, respectively. The FY 1998 rates represented a decrease from FY 1997 of $7 per hour for the reactor program from FY 1997, and $4 per hour for the materials program.

This proposed increase can be readily explained. In calculating the proposed FY 1999 hourly rates, the NRC staff discovered that a coding error in NRC's budget, which is used in the development of fees, occurred for FY 1998. This coding error contributed to the hourly rate decreases for that year. In addition, costs for direct FTEs and overhead are calculated for the reactor and materials programs and for the surcharge. Although the proposed FY 1999 hourly rates reflect an increase of $17—$19 per hour compared to FY 1998, the error was in the reduced FY 1998 hourly rate, not in the increased FY 1999 hourly rate. Specifically, 134 FTE and approximately $10 million in contract support for regional management and support were erroneously coded as direct resources for FY 1998 rather than as overhead. The correction of that error in FY 1999 results in substantial increases in the hourly rates compared to FY 1998, from $124 to $141 for the reactor program, and from $121 to $140 for the materials program. This is the result of the increased overhead costs to be allocated to the two programs, with fewer direct FTE to divide the costs among. In addition, the proportion of direct resources has shifted. The materials program now has a larger share. Therefore, the materials program must absorb more of the overhead and management and support costs.

Because of the error in FY 1998, the FY 1999 hourly rates are more appropriately compared to the FY 1997 hourly rates of $131 and $125 for the reactors and materials programs, respectively. Applying only the salary and benefit increases of 4.4 percent from FY 1997 to FY 1998, and 3.68 percent from FY 1998 to FY 1999, would result in FY 1998 hourly rates of $137 for the reactor program and $131 for the materials program, and 1999 hourly rates of $142 for the reactor program and $136 for the materials program. This does not consider the shift that has occurred in the proportion of direct resources from the reactor program to the materials program that results in the materials program having a larger share and therefore absorbing more of the overhead and management and support costs.

The method used to determine the two professional hourly rates is as follows:

a. Direct program FTE levels are identified for both the reactor program and the nuclear material and waste program.

b. Direct contract support, which is the use of contract or other services in support of the line organization's direct program, is excluded from the calculation of the hourly rate because the costs for direct contract support are charged directly through the various categories of fees.

c. All other direct program costs (i.e., Salaries and Benefits, Travel) represent "in-house" costs and are to be allocated by dividing them uniformly by the total number of direct FTEs for the program. In addition, salaries and benefits plus contracts for non-program direct management and support, and the Office of the Inspector General are allocated to each program based on that program's direct costs. This method results in the following costs which are included in the hourly rates.

TABLE II.—FY 1999 BUDGET AUTHORITY TO BE INCLUDED IN HOURLY RATES

	Reactor program	Materials program
Direct Program Salaries and Benefits	$99.2m	$26.4m
Overhead Salaries and Benefits, Program Travel and Other Support	$54.1m	$15.0m
Allocated Agency Management and Support	$104.2m	$28.1m
Subtotal	$257.5m	$69.5m
Less offsetting receipts	−.1m.	
Total Budget Included in Hourly Rate	$257.4m	$69.5m
Program Direct FTEs	1,028.0	279.7
Rate per Direct FTE	$250,403	$248,728
Professional Hourly Rate (Rate per direct FTE divided by 1,776 hours)	$141	$140

As shown in Table II above, dividing the $257.4 million (rounded) budget for the reactor program by the reactor program direct FTEs (1,028) results in a rate for the reactor program of $250,403 per FTE for FY 1999. The Direct FTE Hourly Rate for the reactor program would be $141 per hour (rounded to the nearest whole dollar). This rate is calculated by dividing the cost per direct FTE ($250,403) by the number of productive hours in one year (1,776 hours) as set forth in the revised OMB Circular A–76, "Performance of Commercial Activities." Dividing the $69.5 million (rounded) budget for the nuclear materials and nuclear waste program by the program direct FTEs (279.7) results in a rate of $248,728 per FTE for FY 1999. The Direct FTE Hourly Rate for the materials program would be $140 per hour (rounded to the nearest whole dollar). This rate is calculated by dividing the cost per direct FTE ($248,728) by the number of productive hours in one year (1,776 hours).

Any professional hours expended on or after the effective date of the final rule would be assessed at the FY 1999 hourly rates.

4. Fee Adjustments

The NRC is proposing to adjust the current Part 170 fees in §§ 170.21 and 170.31 to reflect both the changes in the revised hourly rates and the results of the biennial review of Part 170 fees required by the Chief Financial Officers (CFO) Act. To comply with the requirements of the CFO Act, the NRC has evaluated historical professional staff hours used to process a new license application for those materials licensees whose fees are based on the average cost method (flat fees). This review also included new license and amendment applications for import and export licenses.

Evaluation of the historical data shows that the fees based on the average number of professional staff hours needed to complete materials licensing actions should be increased in some categories and decreased in others to reflect the costs incurred in completing the licensing actions. The data for the average number of professional staff hours needed to complete licensing action were last updated in FY 1997 (62 FR 29194; May 29, 1997). Thus, the revised average professional staff hours reflect the changes in the NRC licensing review program that have occurred since FY 1997. The proposed licensing fees are based on the revised average professional staff hours needed to process the licensing actions multiplied by the proposed professional hourly rate for FY 1999.

The proposed licensing fees reflect an increase in average time for new license applications for 20 of the 33 materials fee categories included in the biennial review, a decrease in average time for 8 fee categories, and the same average time for the remaining 5 fee categories. The average time for export and import new license applications and amendments remained the same for 6 fee categories in §§ 170.21 and 170.31, and decreased for 4 fee categories.

The amounts of the materials licensing "flat" fees were rounded so that the amounts would be de minimis and the resulting flat fee would be convenient to the user. Fees under $1,000 are rounded to the nearest $10. Fees that are greater than $1,000 but less than $100,000 are rounded to the nearest $100. Fees that are greater than $100,000 are rounded to the nearest $1,000.

The proposed licensing "flat" fees are applicable to fee categories K.1 through K.5 of § 171.21, and fee categories 1.C, 1.D, 2.B, 2.C, 3.A through 3.P, 4.B through 9.D, 10.B, 15.A through 15.E, and 16 of § 171.16. Applications filed on or after the effective date of the final rule would be subject to the revised fees in this proposed rule.

5. Administrative Amendments

a. The NRC is proposing to amend § 170.2, Scope, and § 170.3, Definitions, to specifically include Certificates of Compliance (Certificates) issued pursuant to Part 76. The NRC issued two Certificates pursuant to Part 76 to the United States Enrichment Corporation for operation of the two gaseous diffusion uranium enrichment plants located at Paducah, Kentucky, and Piketon, Ohio. This proposal would add Part 76 certificates to the definition of Materials License in § 170.3 (Uranium enrichment facilities are already defined in § 170.3). These proposed changes are administrative changes to clarify the applicability of Part 170 fees to these Certificates.

b. The NRC is proposing to revise the definition of *Inspection*, to specifically include performance assessments, evaluations, and incident investigations. This change is needed to incorporate NRC's proposal to include these activities in Part 170.

c. The NRC is proposing to revise the definition of *Special projects* to include financial assurance submittals, responses to Confirmatory Action Letters, uranium recovery licensees' land-use survey reports, and 10 CFR 50.71 final safety analysis reports in the list of examples of documents submitted for review that would be subject to special project fees. This change is needed to incorporate NRC's proposal to include the review of these documents in Part 170.

d. The NRC is proposing to revise § 170.5, Communications, to indicate that all communications concerning Part 170 should be addressed to the Office of the Chief Financial Officer rather than the Executive Director for Operations. Effective with the January 5, 1997, NRC reorganization, the Executive Director for Operations no longer serves as the Chief Financial Officer. The Chief Financial Officer has been delegated authority to exercise all authority vested

in the Commission under 10 CFR parts 170 and 171.

e. The NRC is proposing to delete the current exemption in § 170.11(a)(11) which eliminates amendment fees for amendments to change the name of the Radiation Safety Officer for portable gauge licenses issued in accordance with NUREG–1556,[1] Volume 1. This proposed rule would eliminate the requirement for amendment fees for these licenses and thus the exemption would no longer be needed.

f. The NRC is proposing to add 170.11(a)(12) to provide an exemption from Part 170 fees for those licensee-specific performance assessments or evaluations for which the licensee volunteers at NRC's request. This change would accommodate NRC's proposal to include performance assessments and evaluations in Part 170, except those for which the licensee volunteers at NRC's request and which are accepted by the NRC.

g. The NRC is proposing to revise § 170.12, Payment of Fees, to reflect the NRC's proposals to expand Part 170 to include performance assessments, evaluations, and incident investigations, reviews of reports and other documents, and full cost recovery for project managers. This section would also be revised to delete references to amendment fees that are not based on full cost to reflect the NRC's proposal to eliminate these fees from Part 170 and include the costs in the Part 171 annual fee for these materials licensees.

Section 170.12(h), Method of Payment, would be redesignated as 170.12(f) and revised to specify the information the NRC needs to issue refunds. This change is necessitated by new Treasury requirements that were effective January 1, 1999.

In summary, the NRC is proposing to:

1. Assess Part 170 fees, for licenses subject to Part 170 full cost fees, to recover costs for all plant or licensee-specific inspections, including performance reviews, assessments, evaluations, and incident investigations, reviews of reports and other documents, and all of the project managers' time excluding time spent on generic activities and leave time;

2. Eliminate "flat" amendment fees for materials licenses and recover the amendment costs through Part 171 annual fees assessed to materials licensees;

3. Revise the two 10 CFR part 170 hourly rates; and

4. Revise the licensing fees assessed under 10 CFR part 170 to comply with the CFO Act's requirement that fees be revised to reflect the cost to the agency, and to reflect the revised hourly rates.

B. Amendments to 10 CFR Part 171: Annual Fees for Reactor Licenses, Fuel Cycle Licenses and Materials Licenses, Including Holders of Certificates of Compliance, Registrations, and Quality Assurance Program Approvals, and Government Agencies Licensed by the NRC

The NRC proposes three major amendments to 10 CFR part 171 and several administrative amendments to update information in certain sections and to incorporate the major proposed changes. These major changes would result in annual fees being assessed to licensees previously exempted from annual fees, increased annual fees for some licensees, and decreased annual fees for other licensees. To address concerns about potential significant fee increases for certain categories of licensees, the NRC is presenting two annual fee options for public comment, as described in 2. below. The Commission will determine which option to incorporate in its final rule after evaluating public comments.

The proposed changes are consistent with our statutory mandate; that is, charging a class of licensees for NRC costs attributable to that class of licensees. The changes are consistent with the Congressional guidance in the Conference Committee Report on OBRA–90, which states that the "conferees contemplate that the NRC will continue to allocate generic costs that are attributable to a given class of licensees to such class" and the "conferees intend that the NRC assess the annual charge under the principle that licensees who require the greatest expenditures of the agency's resources should pay the greatest annual fee" (136 Cong. Rec. at H12692–93). Costs not attributable to a class of licensees would be allocated following the conferees' guidance that "the Commission should assess the charges for these costs as broadly as practicable in order to minimize the burden for these costs on any licensee or class of licensees so as to establish as fair and equitable a system as is feasible." (136 Cong. Rec. at H12692–3). The Conference Report guidance also provides that: "These expenses may be recovered from such licensees as the Commission, in its discretion, determines can fairly, equitably and practicably contribute to their payment." As in the past, these costs would be allocated to the entire population of NRC licensees that pay annual fees, based on the amount of the budget directly attributable to a class of licensees. This results in a higher percentage of these costs being allocated to operating power reactor licensees as opposed to other classes of licensees.

The major proposed changes to Part 171 are in the following areas.

1. Reactor Decommissioning/spent Fuel Storage

The NRC is proposing to revise 10 CFR 171.15 to establish a spent fuel storage/reactor decommissioning annual fee to be assessed to all Part 50 power reactor licensees, regardless of their operating status, and to those Part 72 licensees who do not hold a Part 50 license. The full amount of the FY 1999 annual fee would be billed to those Part 50 licensees who are in a decommissioning or possession only status upon publication of the FY 1999 final rule. Payment would be due on the effective date of the FY 1999 rule. For operating power reactors and those Part 72 licensees who do not hold a Part 50 license, the new fee would be added to the fourth quarter FY 1999 annual fee bill. Any adjustments for prior payments during FY 1999 would be made in accordance with § 171.19(b). The current annual fees in 10 CFR 171.16 for Part 72 licenses for independent spent fuel storage would be eliminated.

This proposed change would affect two existing NRC annual fee policies:

(a) Costs for generic and other activities related to dry storage of spent fuel that are not recovered through Part 170 licensing and inspection fees are recovered through Part 171 annual fees assessed to all Part 72 licensees; and

(b) Part 171 annual fees are not assessed to reactor licensees in decommissioning or possession only status. Power reactor licensees who are in a decommissioning or possession only status would, for the first time, be subject to Part 171 annual fees for their Part 50 license. However, these licensees currently pay an annual fee for any Part 72 license they hold.

The current policy has raised three concerns:

(a) The fee structure could create a disincentive for licensees to pursue dry storage;

(b) The fairness of assessing multiple annual fees if a licensee holds multiple ISFSI licenses for different designs; and

(c) Not all affected licensees are being assessed the costs of NRC's generic decommissioning activities.

[1] Copies of NUREGS may be purchased from the Reproduction and Distribution Section, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Copies are also available from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161. A copy is also available for inspection and/or coping at the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC.

The NRC announced in the FY 1998 proposed fee rulemaking (April 1, 1998, 63 FR 16046) and final fee rulemaking (June 10, 1998, 63 FR 31840), that it planned to reexamine the current annual fee exemption policy for licensees in decommissioning or holding possession only licenses and the annual fee policy for reactors' storage of spent fuel and include any changes to the current fee policies in the FY 1999 fee rulemaking. One purpose of the review was to assure consistent fee treatment for both wet storage (i.e., spent fuel pool) and dry storage (i.e., independent spent fuel storage installations (ISFSIs)) of spent fuel. The Commission previously determined that both storage options are considered safe and acceptable forms of storage for spent fuel. Under current fee regulations, Part 50 licensees in decommissioning who store spent fuel in the spent fuel pool are not assessed an annual fee, but licensees who store spent fuel in an ISFSI under Part 72 are assessed an annual fee. The proposed change would give equivalent fee treatment to both storage options.

As indicated previously, Part 171 annual fees are not currently assessed to reactor licensees who have notified the NRC that they no longer want an NRC license and have permanently ceased operations. This policy is based on the premise that the primary benefit the NRC provides a licensee is the authority to use licensed facilities or material. Although NRC's generic decommissioning activities support both licenses authorizing operations and those limited to decommissioning or possession only, today only licensees with an operating license bear these costs. This becomes a larger problem for operating licensees because, as the number of operating licensees declines, the financial burden on the remaining active licensees increases. Thus, the proposed rule is intended to ensure that all power reactor licensees who benefit from NRC's generic activities bear a fair portion of these costs relating to decommissioning of reactors.

With regard to spent fuel storage, holders of licenses issued under Part 72 for ISFSIs are currently assessed annual fees for each Part 72 license they hold. Part 72 covers both general and specific licenses. Part 72 general licenses are granted to licensees who hold a Part 50 license. Part 72 specific licenses must be applied for and their issuance is not contingent upon the licensee holding a Part 50 license. Because the Part 72 general licenses are issued by regulation to all Part 50 licensees, these licenses are subject to annual fees only when they have been used (i.e, once spent fuel has been loaded into the generally-licensed ISFSI). If a licensee holds more than one Part 72 license, for example, a Part 72 general license and a Part 72 specific license for two different designs, they are assessed an annual fee for each license. Under the proposed change, only one annual fee would be charged.

Costs for generic activities associated with storage of spent fuel in the spent fuel pool (wet storage) are currently included in the annual fee assessed to operating power reactors because the Part 50 licenses cover this storage. Thus, if a Part 50 licensee is in decommissioning and stores spent fuel in the spent fuel pool, it is not assessed an annual fee. On the other hand, if a Part 50 licensee is in decommissioning and stores spent fuel in an ISFSI, it is assessed an annual fee for each Part 72 ISFSI license used.

Section 171.15 would be revised to include the spent fuel storage/reactor decommissioning annual fee to be assessed to Part 50 power reactor licensees and those Part 72 specific licensees who do not hold a Part 50 license. The annual fees in § 171.16 for fee categories 1B and 13B would be eliminated. This change would not affect the manner in which licensing and inspection costs are recovered (i.e., Part 170 fees would still be assessed to Part 72 licensees and to Part 50 licensees in decommissioning or possession only status for licensing and inspection services). The NRC would continue to include the costs for generic decommissioning/reclamation costs for nonpower reactors, fuel facilities, materials, and uranium recovery licensees in the surcharge assessed to operating licensees, including operating power reactors.

2. Annual Fees

The NRC is proposing to establish new baseline annual fees for FY 1999. The annual fees in §§ 171.15 and 171.16 would be revised for FY 1999 to recover approximately 100 percent of the FY 1999 budget authority, less fees collected under 10 CFR part 170 and funds appropriated from the NWF and the General Fund. The total amount to be recovered through annual fees for FY 1999 is $339.8 million, compared to $360.2 million for FY 1998.

In the FY 1995 final fee rule (June 20, 1995; 60 FR 32218), the NRC stated that it would stabilize annual fees as follows:

For FY 1996 through FY 1999, the NRC would adjust the annual fees only by the percentage change (plus or minus) in NRC's total budget authority unless there was a substantial change in the total NRC budget authority or the magnitude of the budget allocated to a specific class of licensees. If either condition occurred, the annual fee base would be recalculated. The percentage change would be adjusted based on changes in 10 CFR Part 170 fees and other adjustments as well as on the number of licensees paying the fees. This method of determining annual fees is the "percent change" method. The FY 1996, FY 1997, and FY 1998 annual fees were based on the percent change method.

Rebaselining

The NRC believes that it is appropriate to establish new baseline fees for FY 1999 based on the program changes that have taken place since the baseline fees were established in FY 1995, including those resulting from the agency's strategic planning efforts, downsizing, reorganization of agency resources, and the proposed addition of a new annual fee class (spent fuel storage/reactor decommissioning) as previously described. In addition, there have been several fee policy changes since FY 1995. Fee policy changes include the elimination of renewal fees in FY 1996 for most materials licensees, the proposed elimination of amendment fees for these licensees in FY 1999, and the inclusion of these costs in the materials licensees' annual fees.

Rebaselining Options

The NRC is specifically seeking public comment on two optional rebaselining methods for establishing the FY 1999 annual fees:

Option A, rebaselining without a cap; and

Option B, rebaselining with a cap so that no licensee's annual fee increases more than 50 percent from FY 1998.

Option A would result in a reduction in annual fees from FY 1998 of approximately 6.8 percent for each operating power reactor, which includes the proposed spent fuel storage/decommissioning annual fee to be assessed to these licensees, and reductions of approximately 7 to 49 percent for certain materials licensees. However, annual fees would increase dramatically for certain other licensees. For example, rebaselining without a cap would result in an increase of approximately 112 percent for conventional mills for extraction of uranium from uranium ores, 212 percent for solution mining licensees, 120 percent for transportation cask users, and up to approximately 57 percent for certain other materials licensees. Factors contributing to the annual fees increases are changes in budgeted costs for those classes of

licensees, the increased hourly rates, decreases in the numbers of licensees and, for the smaller materials licenses, the results of the biennial review of Part 170 fees required by the CFO Act. The biennial review shows that the average number of professional hours to conduct inspections and to review new license applications for materials licenses increased for some fee categories and decreased for other fee categories. The average time to conduct inspections and the average time to review new license applications for the smaller materials license fee categories are used to allocate the materials budget for rebaselining the annual fees because they reflect the complexity of the license. Increases in the average professional time for inspections and reviews of new license applications result in increased annual fees for the affected fee categories if all else remains the same. In addition, rebaselining reflects the renewal and amendment costs that would be included in the annual fee for these materials licensees, which were not included in FY 1995.

Option B would also result in annual fee decreases for FY 1999 for operating power reactor licensees and certain materials licensees and increases for other licensees. However, the increases would be no more than 50 percent of the FY 1998 annual fee. The decreases for certain licensees under Option B would be slightly less than under Option A because the 50 percent cap on annual fee increases would result in approximately $700,000 being added to the annual fee assessed to other licensees who pay annual fees. Because approximately 80 percent of the FY 1999 surcharge would be assessed to operating power reactors, the net result of Option B would be a reduction of approximately 6.75 percent in annual fees for FY 1999 for operating power reactors compared to a reduction of approximately 6.95 percent under Option A, a difference of approximately $6,000 for each power reactor. The decreases under both options include the new spent fuel storage and reactor decommissioning annual fee to be assessed to operating power reactor licensees. Other licensees whose rebaselined annual fees do not increase by 50 percent or more would also pay slightly more under Option B than they would under Option A.

Table III below shows the FY 1999 proposed annual fees under both rebaselining options for representative categories of licensees.

Table III

Class of licensees	Proposed FY 1999 annual fee	
	Option A (without a cap)	Option B (with a cap)
Power Reactors (including spent fuel storage/reactor decommissioning annual fee)	$2,769,000	$2,775,000
Spent fuel storage/reactor decommissioning	199,000	199,000
Nonpower Reactors	85,900	85,600
High Enriched Uranium Fuel Facility	3,281,000	3,288,000
Low Enriched Uranium Fuel Facility	1,100,000	1,103,000
UF_6 Conversion Facility	472,000	473,000
Uranium Mills	131,000	92,100
Solution Mining	109,000	52,100
Transportation:		
Users and Fabricators	66,700	66,800
Users only	2,200	1,500
Typical Materials Licenses:		
Radiographers	14,700	14,700
Well loggers	9,900	10,000
Gauge users	2,600	2,500
Broad scope medical	27,800	27,800
Broad scope manufacturers	26,000	24,800

The annual fees assessed to each class of licensees includes a surcharge to recover those NRC budgeted costs that are not directly or solely attributable to the classes of licensees but must be recovered from the licensees to comply with the requirements of OBRA–90. The FY 1999 budgeted costs that would be recovered in the surcharge from all licensees are shown in Table IV.

TABLE IV—SURCHARGE

Category of costs	FY 1999 budgeted costs ($, M)
1. Activities not attributable to an existing NRC licensee or class of licensee:	
a. International activities	6.3
b. Agreement State oversight	6.4
c. Low-level waste disposal generic activities, and	4.1
d. Site decommissioning management plan activities not recovered under Part 170	4.6
2. Activities not assessed Part 170 licensing and inspection fees or Part 171 annual fees based on existing law or Commission policy:	
a. Fee exemption for nonprofit education institutions	6.9
b. Licensing and inspection activities associated with other Federal agencies	2.8
c. Costs not recovered from small entities under 10 CFR 171.16(c)	5.3
3. Activities supporting NRC operating licensees and others:	
a. Regulatory support to Agreement States	14.6
b. Decommissioning/reclamation, except those related to power reactors	4.2

TABLE IV—SURCHARGE—Continued

Category of costs	FY 1999 budgeted costs ($, M)
Total Budgeted Costs	55.2

The NRC would continue to allocate the surcharge costs, except LLW surcharge costs, to each class of licensees based on the percent of budget for that class. The NRC would continue to allocate the LLW surcharge costs based on the volume disposed by the certain classes of licensees. The proposed surcharge costs allocated to each class are included in the annual fee that would be assessed to each licensee. The FY 1999 surcharge costs that would be allocated to each class of licensee are shown in Table V.

TABLE V.—ALLOCATION OF SURCHARGE

	LLW surcharge		Non-LLW surcharge		Total surcharge $,M
	Percent	$,M	Percent	$,M	
Operating power reactors	74	3.0	80.3	41.0	44.0
Spent fuel storage/reactor decommissioning			6.3	3.2	3.2
Nonpower reactors			0.1	0.0	0.0
Fuel facilities	8	0.4	5.0	2.6	2.9
Materials users	18	0.7	5.9	3.1	3.8
Transportation			1.0	0.5	0.5
Rare earth facilities			0.1	0.0	0.0
Uranium recovery			1.3	0.7	0.7
Total Surcharge		4.1		51.1	55.2

The budgeted costs allocated to each class of licensees and the calculation of the rebaselined fees are described in 3. and 4. below. The workpapers which support this proposed rule show in detail the allocation of NRC budgeted resources for each class of licensee and how the fees are calculated. The workpapers may be examined at the NRC Public Document Room, 2120 L Street NW (Lower Level), Washington, DC 20555–0001.

Because the final FY 1999 fee rule will be a "major" final action as defined by the Small Business Regulatory Enforcement Fairness Act of 1996, the NRC's fees for FY 1999 would become effective 60 days after publication of the final rule in the **Federal Register**. The NRC will send an invoice for the amount of the annual fee upon publication of the FY 1999 final rule to reactors and major fuel cycle facilities. For these licensees, payment would be due on the effective date of the FY 1999 rule. Those materials licensees whose license anniversary date during FY 1999 falls before the effective date of the final FY 1999 final rule would be billed during the anniversary month of the license and continue to pay annual fees at the FY 1998 rate in FY 1999. Those materials licensees whose license anniversary date falls on or after the effective date of the final FY 1999 final rule would be billed at the FY 1999 revised rates during the anniversary month of the license and payment would be due on the date of the invoice.

In addition to comments on the rebaselining method for determining FY 1999 annual fees, public comments are also being sought on whether the NRC should, in future years, continue to use the percent change method and rebaseline fees every several years as established in the FY 1995 fee rule statement of considerations, or return to a policy of rebaselining annual fees every year.

3. Revised Fuel Cycle and Uranium Recovery Matrixes

The NRC is proposing to use revised matrixes in the determination of annual fees for fuel facility and uranium recovery licensees. As part of the rebaselining efforts, the NRC is proposing to use a revised matrix depicting the categorization of fuel facility and uranium recovery licenses by authorized material and use/activity and the relative programmatic effort associated with each category.

a. Fuel Facility Matrix

The NRC is proposing to use a revised fuel facility matrix based on the commensurate level of regulatory effort related to the various fuel facility categories from both safety and safeguards perspectives. The revised matrix results in the annual fees more accurately reflecting our current costs of providing generic and other regulatory services to each fuel facility type.

The FY 1999 budgeted costs of approximately $16.3 million to be recovered in annual fees assessed to the fuel facility class is allocated to the individual fuel facility licensees based on the revised matrix. The revisions to the matrix take into account changes in process operations at certain fuel facilities. The revised matrix also explicitly recognizes the addition of the uranium enrichment plants to the fee base and a reduction of three licensees (B&W Parks Township, B&W Research and General Atomic) as the result of the termination of licensed activities. In the revised matrix (which is included in our workpapers that we are making public), licensees are grouped into five categories according to their licensed activities (i.e., nuclear material enrichment, processing operations and material form) and according to the level, scope, depth of coverage and rigor of generic regulatory programmatic effort applicable to each category from safety and safeguards perspectives. This methodology can be applied to determine fees for new licensees, current licensees, licensees in unique license situations, and certificate holders.

The methodology is amenable to changes in the number of licensees or certificate holders, licensed-certified material/activities, and total programmatic resources to be recovered through annual fees. When a license or certificate is modified, given that NRC

recovers approximately 100 percent of its generic regulatory program costs through fee recovery, this fuel facility fee methodology may result in a change in fee category and may have an effect on the fees assessed to other licensees and certificate holders. For example, if a fuel facility licensee amended its license/certificate in such a way that it resulted in them not being subject to Part 171 fees applicable to fuel facilities, the budget for the safety and/or safeguards component would be spread among those remaining licensees/certificate holders, resulting in a higher fee for those remaining in the fee category.

The methodology is applied as follows. First, a fee category is assigned based on the nuclear material and activity authorized by license or certificate. Although a licensee/certificate holder may elect not to fully utilize a license/certificate, the license/certificate is still used as the source for determining authorized nuclear material possession and use/activity. Next, the category and license/certificate information are used to determine where the licensee/certificate holder fits into the matrix. The matrix depicts the categorization of licensees/certificate holders by authorized material types and use/activities and the relative programmatic effort associated with each category. The programmatic effort (expressed as a value in the matrix) reflects the safety and safeguards risk significance associated with the nuclear material and use/activity, and the commensurate generic regulatory program (i.e., scope, depth and rigor).

The effort factors for the various subclasses of fuel facility licensees are as follows:

	No. of facilities	Effort factors	
		Safety	Safeguards
High Enriched Uranium Fuel	2	91 (33.1%)	76 (54.7%)
Enrichment	2	70 (25.5%)	34 (24.5%)
Low Enriched Uranium Fuel	4	88 (32.0%)	24 (17.3%)
UF6 Conversion	1	8 (2.9%)	3 (2.2%)
Limited Operations Facility	1	12 (4.4%)	0 (0%)
Others	1	6 (2.2%)	2 (1.4%)

These effort factors are applied to the $16.3 million total annual fee amount. This amount includes the low level waste (LLW) surcharge and other surcharges allocated to the fuel facility class.

b. Uranium Recovery Matrix

Of the $2.1 million total budgeted costs allocated to the uranium recovery class to be recovered through annual fees, approximately $870,000 would be assessed to the DOE to recover the costs associated with DOE facilities under the Uranium Mill Tailings Radiation Control Act of 1978 (UMTRCA). The remaining $1.3 million would be recovered through annual fees assessed to conventional mills, solution mining uranium mills, and mill tailings disposal facilities. Because the proposed FY 1999 annual fees would result in certain uranium recovery licensees going from an annual billing process based on the anniversary date of their license to quarterly billing, those licensees would be billed upon publication of the final FY 1999 rule for the balance of the full FY 1999 annual fee. Payment of the balance of the FY 1999 annual fee would be due on the effective date of the FY 1999 rule.

The NRC is proposing to revise the matrix established in FY 1995 for establishing the annual fees for the conventional mills, solution mining uranium mills, and mill tailings disposal facilities. The revised matrix reflects NRC's significantly increased efforts related to groundwater concerns for in-situ licenses and its somewhat increased efforts related to groundwater concerns for conventional mills. The revised matrix also reflects an increase in regulatory efforts related to waste operations for in-situ licenses. The matrix has also been updated to reflect the changes in the number of licensees within each fee category. The number of conventional mills has decreased from 4 in FY 1995 to 3 in FY 1999 and the number of licensees in the solution mining fee category has increased by 1.

The methodology for establishing Part 171 annual fees for uranium recovery licensees has not changed:

(1) The methodology identifies three categories of licenses: conventional uranium mills, solution mining uranium mills, and mill tailings disposal facilities. Each of these categories benefits from the generic uranium recovery program;

(2) The matrix relates the category and the level of benefit, by program element and subelement;

(3) The two major program elements of the generic uranium recovery program are activities related to facility operations and those related to facility closure;

(4) Each of the major program elements was further divided into three subelements;

(5) The three major subelements of generic activities related to uranium facility operations are activities related to the operation of the mill, activities related to the handling and disposal of waste, and activities related to prevention of groundwater contamination. The three major subelements of generic activities related to uranium facility closure are activities related to decommissioning of facilities and cleanup of land, reclamation and closure of the tailings impoundment, and cleanup of contaminated groundwater. Weighted factors were assigned to each program element and subelement.

The applicability of the generic program in each subelement to each uranium recovery category was qualitatively estimated as either significant, some, minor, or none.

The resulting relative weighted factor per facility for the various subclasses and the proposed FY 1999 annual fee for each are as follows:

	Number of facilities	Level of benefit		
		Category weight	Total weight	
			Value	Percent
Class I facilities	3	770	2310	31

	Number of facilities	Level of benefit		
		Category weight	Total weight	
			Value	Percent
Class II facilities	7	645	4515	61
11e(2) disposal	1	475	475	6
11e(2) disposal incidental to existing tailings sites	2	75	150	2

4. Annual Fee Determination for Other Classes

a. Power Reactor Licensees

The approximately $267.3 million in budgeted costs to be recovered through annual fees assessed to operating power reactors would be divided equally among the 104 operating reactors. This results in a proposed FY 1999 annual fee of $2,570,000 per reactor under Option A, or $2,576,000 under Option B. In addition, each operating reactor would be assessed the proposed spent fuel storage/reactor decommissioning annual fee, which for FY 1999 is $199,000 for each power reactor. This would result in a total FY 1999 annual fee of $2,769,000 under Option A, or $2,775,000 under Option B, for each operating power reactor.

b. Spent Fuel Storage/Reactor Decommissioning

For FY 1999, budgeted costs of approximately $24.8 million are to be recovered through annual fees assessed to Part 50 power reactors and to Part 72 licensees who do not hold a Part 50 license. The costs would be divided equally among the 125 licensees, resulting in a proposed FY 1999 annual fee of $199,000 for each licensee under both Option A and Option B.

c. Nonpower Reactors

Budgeted costs for FY 1999 of approximately $343,400 are to be recovered from four nonpower reactors subject to annual fees. This results in a proposed FY 1999 annual fee of $85,900 under Option A, or $85,600 under Option B.

d. Rare Earth Facilities

The FY 1999 budgeted costs of approximately $91,200 for rare earth facilities to be recovered through annual fees would be spread uniformly among the three licensees who have a specific license for receipt and processing of source material. This results in a proposed annual fee of $30,400 under Option A, or $30,500 under Option B for each rare earth facility.

e. Materials Users

To equitably and fairly allocate the $30.5 million in FY 1999 budgeted costs to be recovered in annual fees assessed to the approximately 5700 diverse material users and registrants, the NRC has continued the methodology used in FY 1995 to establish baseline annual fees for this class. The annual fee is based on the Part 170 application fees and an estimated cost for inspections. Because the application fees and inspection costs are indicative of the complexity of the license, this approach continues to provide a proxy for allocating the generic and other regulatory costs to the diverse categories of licensees based on how much it costs NRC to regulate each category. The fee calculation also continues to consider the inspection frequency (priority), which is indicative of the safety risk and resulting regulatory costs associated with the categories of licensees. The annual fee for these categories of licensees is developed as follows:

Annual fee = (Application Fee + (Average Inspection Cost divided by Inspection Priority)) multiplied by the constant + (Unique Category Costs).

The constant is the multiple necessary to recovery $30.5 million and is 1.3 for FY 1999. The unique category costs are any special costs that the NRC has budgeted for a specific category of licensees. For FY 1999, unique cost of approximately $955,400 were identified for the medical development program which is attributable to medical licensees. The proposed annual fees for each fee category under Option A and Option B are shown in § 171.16(d).

f. Transportation

Of the approximately $3.6 million in FY 1999 budgeted costs to be recovered through annual fees assessed to the transportation class of licensees, approximately $870,000 would be recovered from annual fees assessed to DOE based on the number of Part 71 Certificates of Compliance DOE holds. Of the remaining $2.7 million, approximately 10 percent would be allocated to holders of approved quality assurance plans authorizing use, and approximately 90 percent would be allocated to holders of approved quality assurance plans authorizing design, fabrication, and use. This results in proposed FY 1999 annual fees of $2,200 under Option A or $1,500 under Option B for holders of approved quality assurance plans for use only. The proposed FY 1999 annual fees for holders of approved quality assurance plans for design, fabrication, and use would be $66,700 under Option A, or $66,800 under Option B.

5. Administrative Amendments

a. Section 171.13 would be amended to establish an annual fee for power reactors in a decommissioning or possession only status.

b. Section 171.15 would be revised to as follows:

(1) The heading for § 171.15 would be revised to read: Section 171.15 Annual Fees: Reactor licenses and independent spent fuel storage licenses

(2) Paragraph (b) of § 171.15 would be revised in its entirety to establish the FY 1999 annual fees for operating power reactors, power reactors in decommissioning or possession only status, and Part 72 licensees who do not hold Part 50 licenses. Fiscal year references would be changed from FY 1998 to FY 1999. The activities comprising the base annual fees and the additional charge (surcharge) are listed in § 171.15(b) and (c) for convenience purposes.

Each operating power reactor would pay an FY 1999 annual fee of $2,769,000 under Option A or $2,775,000 under Option B, which includes the proposed annual fee of $199,000 for spent fuel storage/reactor decommissioning. Each power reactor in decommissioning or possession only status and each Part 72 licensee who does not hold a Part 50 license would pay the spent fuel storage/reactor decommissioning annual fee of $199,000 under Option A or Option B in FY 1999.

(3) Paragraph (e) of § 171.15 would be revised to show the amount of the FY 1999 annual fee for nonpower (test and research) reactors. The NRC would continue to grant exemptions from the annual fee to Federally-owned and State-owned research and test reactors that meet the exemption criteria specified in § 171.11(a)(2).

(4) Paragraph (f) of § 171.15 would be revised to change fiscal year date references.

c. Section 171.16 would be amended as follows:

(1) Section 171.16(c) covers the fees assessed for those licensees that can qualify as small entities under NRC size standards. A materials licensee may pay a reduced annual fee if the licensee qualifies as a small entity under the NRC's size standards and certifies that it is a small entity using NRC Form 526. This section would be revised to clarify that failure to file a small entity certification in a timely manner could form the basis for the denial of any refund that would otherwise be due. The NRC would continue to assess two fees for licensees that qualify as small entities under the NRC's size standards. In general, licensees with gross annual receipts of $350,000 to $5 million would pay a maximum annual fee of $1,800. A second or lower-tier small entity fee of $400 is in place for small entities with gross annual receipts of less than $350,000 and small governmental jurisdictions with a population of less than 20,000. No change in the amount of the small entity fees is being proposed because the small entity fees are not based on budgeted costs but are established at a level to reduce the impact of fees on small entities. The small entity fees are shown in the proposed rule for convenience.

(2) Section 171.16(d) would be revised to establish the FY 1999 annual fees for materials licensees, including Government agencies, licensed by the NRC. The amount or range of the proposed FY 1999 annual fees for materials licenses range from $600 for a license authorizing the use of source material for shielding, to $27,800 for a license of broad scope for human use of byproduct, source, or special nuclear material. Because of rounding, the fees for most materials licensees would be the same under Option A and Option B. The proposed annual fee for the "master" materials licenses of broad scope issued to Government agencies $351,000 under Option A or Option B.

(3) Footnote 1 of § 171.16(d) would be amended to provide a waiver of the annual fees for materials licensees, and holders of certificates, registrations, and approvals, who either filed for termination of their licenses or approvals or filed for possession only/storage only licenses before October 1, 1998, and permanently ceased licensed activities entirely by September 30, 1998. All other licensees and approval holders who held a license or approval on October 1, 1998, would be subject to the FY 1999 annual fees.

Holders of new licenses issued during FY 1999 would be subject to a prorated annual fee in accordance with the current proration provision of § 171.17. For example, those new materials licenses issued during the period October 1 through March 31 of the FY would be assessed one-half the annual fee in effect on the anniversary date of the license. New materials licenses issued on or after April 1, 1999, would not be assessed an annual fee for FY 1999. Thereafter, the full annual fee would be due and payable each subsequent fiscal year on the anniversary date of the license. Beginning June 11, 1996 (the effective date of the FY 1996 final rule), affected materials licensees are subject to the annual fee in effect on the anniversary date of the license. The anniversary date of the materials license for annual fee purposes is the first day of the month in which the original license was issued.

d. Section 171.19 Payment, would be amended as follows:

(1) Section 171.19(b) would be revised to update the fiscal year references, to include a billing process for those licensees whose annual fee for the previous fiscal year was based on the anniversary date of the license and whose revised annual fee for the current fiscal year would be based on quarterly billing, and to give credit for partial payments made by certain licensees in FY 1999 toward their FY 1999 annual fees. The NRC anticipates that the first, second, and third quarterly payments for FY 1999 will have been made by operating power reactor licensees and some large materials licensees before the final rule becomes effective. Therefore, the NRC would credit payments received for those quarterly annual fee assessments toward the total annual fee to be assessed. The NRC would adjust the fourth quarterly invoice to recover the full amount of the revised annual fee or to make refunds, as necessary. Payment of the annual fee is due on the date of the invoice and interest accrues from the invoice date. However, interest would be waived if payment is received within 30 days from the invoice date.

(2) Section 171.19(c) would be revised to update fiscal year references.

As in FY 1998, the NRC would continue to bill annual fees for most materials licenses on the anniversary date of the license (licensees whose annual fees are $100,000 or more would continue to be assessed quarterly). The annual fee assessed would be the fee in effect on the license anniversary date, unless the annual fee for the prior year was less than $100,000 and the revised annual fee for the current fiscal year is $100,000 or more. In this case, the revised amount would be billed to the licensees upon publication of the final rule in the **Federal Register**, adjusted for any annual fee payments already made for that fiscal year based on the anniversary month billing process. For FY 1999, the anniversary date billing process applies to those materials licenses in the following fee categories: 1C, 1D, 2A(2) Other, 2A(3), 2A(4), 2B, 2C, 3A through 3P, 4A through 9D, 10A, and 10B. For annual fee purposes, the anniversary date of the materials license is considered to be the first day of the month in which the original materials license was issued. For example, if the original materials license was issued on June 17 then, for annual fee purposes, the anniversary date of the materials license is June 1 and the licensee would continue to be billed in June of each year for the annual fee in effect on June 1. Materials licensees with anniversary dates in FY 1999 before the effective date of the FY 1999 final rule would be billed during the anniversary month of the license and continue to pay annual fees at the FY 1998 rate in FY 1999. Those materials licensees with license anniversary dates falling on or after the effective date of the FY 1999 final rule would be billed at the FY 1999 revised rates during the anniversary month of their license. Payment would be due on the date of the invoice.

The NRC reemphasizes that the annual fee will be assessed based on whether a licensee holds a valid NRC license that authorizes possession and use of radioactive material.

In summary, the NRC is proposing to:

1. Establish a new spent fuel storage/reactor decommissioning annual fee in 10 CFR 171.15, and eliminate the current annual fee in 10 CFR 171.16 for independent spent fuel storage licenses. The proposed annual fee would be assessed to all Part 50 power reactor licensees, including those in decommissioning or possession only status, and to those Part 72 licensees who do not hold a Part 50 license;

2. Establish new baseline annual fees for FY 1999. Because the rebaselined fees would result in significant increases for some licensees, the NRC is seeking public comment on two potential methods for establishing the FY 1999 annual fees: (1) rebaseline the fees without a cap on fee increases, or (2) rebaseline the annual fees with a cap so that no licensees' annual fee increases more than 50 percent from FY 1998; and

3. Use revised matrixes for allocating the fuel facility and uranium recovery budgeted costs to licensees in those fee classes.

III. Plain Language

The Presidential Memorandum dated June 1, 1998, entitled, "Plain Language

in Government Writing," directed that the Federal government's writing be in plain language (63 FR 31883; June 10, 1998). The NRC requests comments on this proposed rule specifically with respect to the clarity and effectiveness of the language used. Comments on the language used should be sent to the NRC as indicated under the **ADDRESSES** heading.

IV. Environmental Impact: Categorical Exclusion

The NRC has determined that this proposed rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(1). Therefore, neither an environmental impact statement nor an environmental impact assessment has been prepared for the proposed regulation. By its very nature, this regulatory action does not affect the environment, and therefore, no environmental justice issues are raised.

V. Paperwork Reduction Act Statement

This proposed rule contains no information collection requirements and, therefore, is not subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

VI. Regulatory Analysis

With respect to 10 CFR part 170, this proposed rule was developed pursuant to Title V of the Independent Offices Appropriation Act of 1952 (IOAA) (31 U.S.C. 9701) and the Commission's fee guidelines. When developing these guidelines the Commission took into account guidance provided by the U.S. Supreme Court on March 4, 1974, in its decision of *National Cable Television Association, Inc.* v. *United States*, 415 U.S. 36 (1974) and *Federal Power Commission* v. *New England Power Company*, 415 U.S. 345 (1974). In these decisions, the Court held that the IOAA authorizes an agency to charge fees for special benefits rendered to identifiable persons measured by the "value to the recipient" of the agency service. The meaning of the IOAA was further clarified on December 16, 1976, by four decisions of the U.S. Court of Appeals for the District of Columbia: *National Cable Television Association* v. *Federal Communications Commission*, 554 F.2d 1094 (D.C. Cir. 1976); *National Association of Broadcasters* v. *Federal Communications Commission*, 554 F.2d 1118 (D.C. Cir. 1976); *Electronic Industries Association* v. *Federal Communications Commission*, 554 F.2d 1109 (D.C. Cir. 1976) and *Capital Cities Communication, Inc.* v. *Federal Communications Commission*, 554 F.2d 1135 (D.C. Cir. 1976). These decisions of the Courts enabled the Commission to develop fee guidelines that are still used for cost recovery and fee development purposes.

The Commission's fee guidelines were upheld on August 24, 1979, by the U.S. Court of Appeals for the Fifth Circuit in *Mississippi Power and Light Co.* v. *U.S. Nuclear Regulatory Commission*, 601 F.2d 223 (5th Cir. 1979), *cert. denied*, 444 U.S. 1102 (1980). The Court held that—

(1) The NRC had the authority to recover the full cost of providing services to identifiable beneficiaries;

(2) The NRC could properly assess a fee for the costs of providing routine inspections necessary to ensure a licensee's compliance with the Atomic Energy Act and with applicable regulations;

(3) The NRC could charge for costs incurred in conducting environmental reviews required by NEPA;

(4) The NRC properly included the costs of uncontested hearings and of administrative and technical support services in the fee schedule;

(5) The NRC could assess a fee for renewing a license to operate a low-level radioactive waste burial site; and

(6) The NRC's fees were not arbitrary or capricious.

With respect to 10 CFR part 171, on November 5, 1990, the Congress passed Public Law 101–508, the Omnibus Budget Reconciliation Act of 1990 (OBRA–90) which required that for FYs 1991 through 1995, approximately 100 percent of the NRC budget authority be recovered through the assessment of fees. OBRA–90 was amended in 1998 to extend the 100 percent fee recovery requirement for NRC through FY 1999. To accomplish this statutory requirement, the NRC, in accordance with § 171.13, is publishing the proposed amount of the FY 1999 annual fees for operating reactor licensees, fuel cycle licensees, materials licensees, and holders of Certificates of Compliance, registrations of sealed source and devices and QA program approvals, and Government agencies. OBRA–90 and the Conference Committee Report specifically state that—

(1) The annual fees be based on the Commission's FY 1999 budget of $469.8 million less the amounts collected from Part 170 fees and the funds directly appropriated from the NWF to cover the NRC's high level waste program;

(2) The annual fees shall, to the maximum extent practicable, have a reasonable relationship to the cost of regulatory services provided by the Commission; and

(3) The annual fees be assessed to those licensees the Commission, in its discretion, determines can fairly, equitably, and practicably contribute to their payment.

In addition, the NRC's FY 1999 appropriations language provides that $3.2 million appropriated from the General Fund for activities related to regulatory reviews and other assistance provided to the Department of Energy and other Federal agencies be excluded from fee recovery.

10 CFR Part 171, which established annual fees for operating power reactors effective October 20, 1986 (51 FR 33224; September 18, 1986), was challenged and upheld in its entirety in *Florida Power and Light Company* v. *United States*, 846 F.2d 765 (D.C. Cir. 1988), *cert. denied*, 490 U.S. 1045 (1989).

The NRC's FY 1991 annual fee rule was largely upheld by the D.C. Circuit Court of Appeals in *Allied Signal* v. *NRC*, 988 F.2d 146 (D.C. Cir. 1993).

VII. Regulatory Flexibility Analysis

The NRC is required by the Omnibus Budget Reconciliation Act of 1990 to recover approximately 100 percent of its budget authority through the assessment of user fees. OBRA–90 further requires that the NRC establish a schedule of charges that fairly and equitably allocates the aggregate amount of these charges among licensees.

This proposed rule establishes the schedules of fees that are necessary to implement the Congressional mandate for FY 1999. The proposed rule would result in increases in the annual fees charged to certain licensees and holders of certificates, registrations, and approvals, and decreases in annual fees for others. The Regulatory Flexibility Analysis, prepared in accordance with 5 U.S.C. 604, is included as Appendix A to this proposed rule. The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) was signed into law on March 29, 1996. The SBREFA requires all Federal agencies to prepare a written compliance guide for each rule for which the agency is required by 5 U.S.C. 604 to prepare a regulatory flexibility analysis. Therefore, in compliance with the law, Attachment 1 to the Regulatory Flexibility Analysis is the small entity compliance guide for FY 1999.

VIII. Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR 50.109, does not apply to this proposed rule and that a backfit analysis is not required for this proposed rule. The backfit analysis is not required because these proposed amendments do not require the modification of or additions to systems, structures, components, or the design of

a facility or the design approval or manufacturing license for a facility or the procedures or organization required to design, construct or operate a facility.

List of Subjects

10 CFR Part 170

Byproduct material, Import and export licenses, Intergovernmental relations, Non-payment penalties, Nuclear materials, Nuclear power plants and reactors, Source material, Special nuclear material.

10 CFR Part 171

Annual charges, Byproduct material, Holders of certificates, registrations, approvals, Intergovernmental relations, Non-payment penalties, Nuclear materials, Nuclear power plants and reactors, Source material, Special nuclear material.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, and 5 U.S.C. 553, the NRC is proposing to adopt the following amendments to 10 CFR parts 170 and 171.

PART 170—FEES FOR FACILITIES, MATERIALS, IMPORT AND EXPORT LICENSES, AND OTHER REGULATORY SERVICES UNDER THE ATOMIC ENERGY ACT OF 1954, AS AMENDED

1. The authority citation for Part 170 continues to read as follows:

Authority: 31 U.S.C. 9701, 96 Stat. 1051; sec. 301, Pub. L. 92–314, 86 Stat. 222 (42 U.S.C. 2201w); sec. 201, Pub. L. 93–4381, 88 Stat. 1242, as amended (42 U.S.C. 5841); sec. 205, Pub. L. 101–576, 104 Stat. 2842, (31 U.S.C. 901).

2. In § 170.2, paragraph (r) is added to read as follows:

§ 170.2 Scope.

* * * * *

(r) An applicant for or a holder of a certificate of compliance issued under 10 CFR Part 76.

3. In § 170.3, the definition of the terms *Inspections, Materials license,* and *Special projects* are revised to read as follows:

§ 170.3 Definitions.

* * * * *

Inspection means:

(1) Routine inspections designed to evaluate the licensee's activities within the context of the licensee having primary responsibility for protection of the public and environment;

(2) Non-routine inspections in response or reaction to an incident, allegation, followup to inspection deficiencies or inspections to determine implementation of safety issues. A non-routine or reactive inspection has the same purpose as the routine inspection;

(3) Reviews and assessments of licensee performance;

(4) Evaluations, such as those performed by Diagnostic Evaluation Teams; or

(5) Incident investigations.

* * * * *

Materials license means a license, certificate, approval, registration, or other form of permission issued by the NRC under the regulations in 10 CFR parts 30, 32 through 36, 39, 40, 61, 70, 71, 72 and 76.

* * * * *

Special projects means those requests submitted to the Commission for review for which fees are not otherwise specified in this chapter. Examples of special projects include, but are not limited to, topical reports reviews, early site reviews, waste solidification facilities, route approvals for shipment of radioactive materials, services provided to certify licensee, vendor, or other private industry personnel as instructors for Part 55 reactor operators, reviews of financial assurance submittals that do not require a license amendment, reviews of responses to Confirmatory Action Letters, reviews of uranium recovery licensees' land-use survey reports, and reviews of 10 CFR 50.71 final safety analysis reports. As used in this part, special projects does not include requests/reports submitted to the NRC:

(1) In response to a Generic Letter or NRC Bulletin which does not result in an amendment to the license, does not result in the review of an alternate method or reanalysis to meet the requirements of the Generic Letter, or does not involve an unreviewed safety issue;

(2) In response to an NRC request (at the Associate Office Director level or above) to resolve an identified safety, safeguards or environmental issue, or to assist the NRC in developing a rule, regulatory guide, policy statement, generic letter, or bulletin; or

(3) As a means of exchanging information between industry organizations and the NRC for the purpose of supporting generic regulatory improvements or efforts.

* * * * *

4. Section 170.5 is revised to read as follows:

§ 170.5 Communications.

All communications concerning the regulations in this part should be addressed to the Chief Financial Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Communications may be delivered in person at the Commission's offices at 11555 Rockville Pike, Rockville, MD.

5. In § 170.11, paragraph (a)(11) is removed and reserved and paragraph (a)(12) is added to read as follows:

§ 170.11 Exemptions.

(a) * * *

(12) A performance assessment or evaluation for which the licensee volunteers at the NRC's request and which is selected by the NRC.

* * * * *

6. Section 170.12 is revised to read as follows:

§ 170.12 Payment of fees.

(a) *Application fees.* Each application for which a fee is prescribed must be accompanied by a remittance for the full amount of the fee. The NRC will not issue a new license or an amendment increasing the scope of an existing license to a higher fee category or adding a new fee category prior to receiving the prescribed application fee. The application fee(s) is charged whether the Commission approves the application or not. The application fee(s) is also charged if the applicant withdraws the application.

(b) *Licensing fees.* (1) Licensing fees will be assessed to recover full costs for—

(i) The review of applications for new licenses and approvals;

(ii) The review of applications for amendments to and renewal of existing licenses or approvals;

(iii) Preapplication consultations and reviews; and

(iv) The full cost for project managers assigned to a specific plant or facility, excluding leave time and time spent on generic activities (such as rulemaking).

(2) Full cost fees will be determined based on the professional staff time and appropriate contractual support services expended. The full cost fees for professional staff time will be determined at the professional hourly rates in effect the time the service was provided. The full cost fees are payable upon notification by the Commission.

(3) The NRC intends to bill each applicant or licensee at quarterly intervals for all accumulated costs for each application the applicant or licensee has on file for NRC review, until the review is completed, except for costs that were deferred before August 9, 1991. The deferred costs will be billed as described in paragraphs (b)(5), (b)(6) and (b)(7) of this section. Each bill will identify the applications and documents submitted for review and the costs related to each.

(4) The NRC intends to bill each applicant or licensee for costs related to project manager time on a quarterly basis. Each bill will identify the costs related to project manager time.

(5) Costs for review of an application for renewal of a standard design certification which have been deferred prior to the effective date of this rule must be paid as follows: The full cost of review for a renewed standard design certification must be paid by the applicant for renewal or other entity supplying the design to an applicant for a construction permit, combined license issued under 10 CFR part 52, or operating license, as appropriate, in five (5) equal installments. An installment is payable each of the first five times the renewed certification is referenced in an application for a construction permit, combined license, or operating license. The applicant for renewal shall pay the installment, unless another entity is supplying the design to the applicant for the construction permit, combined license, or operating license, in which case the entity shall pay the installment. If the design is not referenced, or if all of the costs are not recovered, within fifteen years after the date of renewal of the certification, the applicant for renewal shall pay the costs for the renewal, or remainder of those costs, at that time.

(6) Costs for the review of an application for renewal of an early site permit which have been deferred prior to the effective date of this rule will continue to be deferred as follows: The holder of the renewed permit shall pay the applicable fees for the renewed permit at the time an application for a construction permit or combined license referencing the permit is filed. If, at the end of the renewal period of the permit, no facility application referencing the early site permit has been docketed, the permit holder shall pay any outstanding fees for the permit.

(7) (i) The full cost of review for a standardized design approval or certification that has been deferred prior to the effective date of the rule must be paid by the holder of the design approval, the applicant for certification, or other entity supplying the design to an applicant for a construction permit, combined license issued under 10 CFR part 52, or operating license, as appropriate, in five (5) equal installments. An installment is payable each of the first five times the approved/certified design is referenced in an application for a construction permit, combined license issued under 10 CFR part 52, or operating license. In the case of a standard design certification, the applicant for certification shall pay the installment, unless another entity is supplying the design to the applicant for the construction permit, combined license, or operating license, in which case the other entity shall pay the installment.

(ii) In the case of a design which has been approved and for which an application for certification is pending, no fees are due until after the certification is granted. If the design is not referenced, or if all costs are not recovered, within fifteen years after the date of certification, the applicant shall pay the costs, or remainder of those, at the time.

(iii) In the case of a design for which a certification has been granted, if the design is not referenced, or if all costs are not recovered, within fifteen years after the date of the certification, the applicant shall pay the costs for the review of the application, or remainder of those costs, at that time.

(c) *Inspection fees.* (1) Inspection fees will be assessed to recover full cost for each resident inspector (including the senior resident inspector), assigned to a specific plant or facility. The fees assessed will be based on the number of hours that each inspector assigned to the plant or facility is in an official duty status (i.e., all time in a non-leave status will be billed), and the hours will be billed at the appropriate hourly rate established in 10 CFR 170.20. Resident inspectors' time related to a specific inspection will be included in the fee assessed for the specific inspection in accordance with paragraph (c)(2) of this section.

(2) Inspection fees will be assessed to recover the full cost for each specific inspection, including plant- or licensee-specific performance reviews and assessments, evaluations, and incident investigations. For inspections that result in the issuance of an inspection report, fees will be assessed for costs incurred up to approximately 30 days after the inspection report is issued. The costs for these inspections include preparation time, time on site, documentation time, and follow-up activities and any associated contractual service costs, but exclude the time involved in the processing and issuance of a notice of violation or civil penalty.

(3) The NRC intends to bill for resident inspectors' time and for specific inspections subject to full cost recovery on a quarterly basis. The fees are payable upon notification by the Commission.

(d) *Special project fees.* (1) Fees for special projects are based on the full cost of the review. Special projects includes activities such as—

(i) Topical reports;

(ii) Financial assurance submittals that do not require a license amendment;

(iii) Responses to Confirmatory Action Letters;

(iv) Uranium recovery licensees' land-use survey reports; and

(v) 10 CFR 50.71 final safety analysis reports.

(2) The NRC intends to bill each applicant or licensee at quarterly intervals until the review is completed. Each bill will identify the documents submitted for review and the costs related to each. The fees are payable upon notification by the Commission.

(e) *Part 55 review fees.* Fees for Part 55 review services are based on NRC time spent in administering the examinations and tests and any related contractual costs. The fees assessed will also include related activities such as preparing, reviewing, and grading of the examinations and tests. The NRC intends to bill the costs at quarterly intervals to the licensee employing the operators.

(f) *Method of payment.* All license fee payments are to be made payable to the U.S. Nuclear Regulatory Commission. The payments are to be made in U.S. funds by electronic funds transfer such as ACT (Automated Clearing House) using E.D.I. (Electronic Data Interchange), check, draft, money order, or credit card. Payment of invoices of $5,000 or more should be paid via ACT through NRC's Lockbox Bank at the address indicated on the invoice. Credit card payments should be made up to the limit established by the credit card bank at the address indicated on the invoice. Specific written instructions for making electronic payments and credit card payments may be obtained by contacting the License Fee and Accounts Receivable Branch at 301–415–7554. In accordance with Department of the Treasury requirements, refunds will only be made upon receipt of information on the payee's financial institution and bank accounts.

7. Section 170.20 is revised to read as follows:

§ 170.20 Average cost per professional staff-hour.

Fees for permits, licenses, amendments, renewals, special projects, Part 55 requalification and replacement examinations and tests, other required reviews, approvals, and inspections under §§ 170.21 and 170.31 will be calculated using the following applicable professional staff-hour rates:

Reactor Program.
(§ 170.21 Activities) ..... $141 per hour.

Nuclear Materials and Nuclear Waste Program (§ 170.31 Activities).	140 per hour.	

8. In § 170.21, the introductory text, Category K, and footnotes 1 and 2 to the table are revised to read as follows:

§ 170.21 Schedule of fees for production and utilization facilities, review of standard referenced design approvals, special projects, inspections and import and export licenses.

Applicants for construction permits, manufacturing licenses, operating licenses, import and export licenses, approvals of facility standard reference designs, requalification and replacement examinations for reactor operators, and special projects and holders of construction permits, licenses, and other approvals shall pay fees for the following categories of services.

SCHEDULE OF FACILITY FEES

[See footnotes at end of table]

Facility categories and type of fees	Fees [1] [2]
* * * * * * *	
K. Import and export licenses:	
Licenses for the import and export only of production and utilization facilities or the export only of components for production and utilization facilities issued under 10 CFR part 110:	
1. Application for import or export of reactors and other facilities and exports of components which must be reviewed by the Commissioners and the Executive Branch, for example, actions under 10 CFR 110.40(b):	
Application—new license	$9,100.
Amendment	$9,100.
2. Application for export of reactor and other components requiring Executive Branch review only, for example, those actions under 10 CFR 110.41(a)(1)–(8):	
Application—new license	$5,600.
Amendment	$5,600.
3. Application for export of components requiring foreign government assurances only:	
Application—new license	$1,700.
Amendment	$1,700.
4. Application for export of facility components and equipment not requiring Commissioner review, Executive Branch review, or foreign government assurances:	
Application—new license	$1,100.
Amendment	$1,100.
5. Minor amendment of any export or import license to extend the expiration date, change domestic information, or make other revisions which do not require in-depth analysis or review:	
Amendment	$210.

[1] Fees will not be charged for orders issued by the Commission under § 2.202 of this chapter or for amendments resulting specifically from the requirements of these types of Commission orders. Fees will be charged for approvals issued under a specific exemption provision of the Commission's regulations under Title 10 of the Code of Federal Regulations (e.g., §§ 50.12, 73.5) and any other sections in effect now or in the future, regardless of whether the approval is in the form of a license amendment, letter of approval, safety evaluation report, or other form. Fees for licenses in this schedule that are initially issued for less than full power are based on review through the issuance of a full power license (generally full power is considered 100 percent of the facility's full rated power). Thus, if a licensee received a low power license or a temporary license for less than full power and subsequently receives full power authority (by way of license amendment or otherwise), the total costs for the license will be determined through that period when authority is granted for full power operation. If a situation arises in which the Commission determines that full operating power for a particular facility should be less than 100 percent of full rated power, the total costs for the license will be at that determined lower operating power level and not at the 100 percent capacity.

[2] Full cost fees will be determined based on the professional staff time and appropriate contractual support services expended. For applications currently on file and for which fees are determined based on the full cost expended for the review, the professional staff hours expended for the review of the application up to the effective date of the final rule will be determined at the professional rates in effect at the time the service was provided. For those applications currently on file for which review costs have reached an applicable fee ceiling established by the June 20, 1984, and July 2, 1990, rules but are still pending completion of the review, the cost incurred after any applicable ceiling was reached through January 29, 1989, will not be billed to the applicant. Any professional staff-hours expended above those ceilings on or after January 30, 1989, will be assessed at the applicable rates established by § 170.20, as appropriate, except for topical reports whose costs exceed $50,000. Costs which exceed $50,000 for any topical report, amendment, revision or supplement to a topical report completed or under review from January 30, 1989, through August 8, 1991, will not be billed to the applicant. Any professional hours expended on or after August 9, 1991, will be assessed at the applicable rate established in § 170.20.

* * * * *

9. Section 170.31 is revised to read as follows:

§ 170.31 Schedule of fees for materials licenses and other regulatory services, including inspections, and import and export licenses.

Applicants for materials licenses, import and export licenses, and other regulatory services and holders of materials licenses, or import and export licenses shall pay fees for the following categories of services. This schedule includes fees for health and safety and safeguards inspections where applicable.

SCHEDULE OF MATERIALS FEES

[See footnotes at end of table]

Category of materials licenses and type of fees [1]	Fee [2] [3]
1. Special nuclear material:	

SCHEDULE OF MATERIALS FEES—Continued

[See footnotes at end of table]

Category of materials licenses and type of fees [1]	Fee [2 3]
A. Licenses for possession and use of 200 grams or more of plutonium in unsealed form or 350 grams or more of contained U–235 in unsealed form or 200 grams or more of U–233 in unsealed form. This includes applications to terminate licenses as well as licenses authorizing possession only:	
Licensing and Inspection	Full Cost.
B. Licenses for receipt and storage of spent fuel at an independent spent fuel storage installation (ISFSI):	
Licensing and inspection	Full Cost.
C. Licenses for possession and use of special nuclear material in sealed sources contained in devices used in industrial measuring systems, including x-ray fluorescence analyzers: [4]	
Application	$640.
D. All other special nuclear material licenses, except licenses authorizing special nuclear material in unsealed form in combination that would constitute a critical quantity, as defined in § 150.11 of this chapter, for which the licensee shall pay the same fees as those for Category 1A: [4]	
Application	$1,300
E. Licenses or certificates for construction and operation of a uranium enrichment facility.	
Licensing and inspection	Full Cost.
2. Source material:	
A.(1) Licenses for possession and use of source material in recovery operations such as milling, in-situ leaching, heap-leaching, refining uranium mill concentrates to uranium hexafluoride, ore buying stations, ion exchange facilities and in processing of ores containing source material for extraction of metals other than uranium or thorium, including licenses authorizing the possession of byproduct waste material (tailings) from source material recovery operations, as well as licenses authorizing the possession and maintenance of a facility in a standby mode:	
Licensing and inspection	Full Cost.
(2) Licenses that authorize the receipt of byproduct material, as defined in Section 11e(2) of the Atomic Energy Act, from other persons for possession and disposal except those licenses subject to fees in Category 2.A.(1):	
Licensing and inspection	Full Cost.
(3) Licenses that authorize the receipt of byproduct material, as defined in Section 11e(2) of the Atomic Energy Act, from other persons for possession and disposal incidental to the disposal of the uranium waste tailings generated by the licensee's milling operations, except those licenses subject to the fees in Category 2.A.(1):	
Licensing and inspection	Full Cost.
B. Licenses which authorize the possession, use, and/or installation of source material for shielding:	
Application	$150.
C. All other source material licenses:	
Application	$5,500.
3. Byproduct material:	
A. Licenses of broad scope for the possession and use of byproduct material issued under Parts 30 and 33 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution:	
Application	$6,600.
B. Other licenses for possession and use of byproduct material issued under Part 30 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution:	
Application	$2,400.
C. Licenses issued under §§ 32.72, 32.73, and/or 32.74 of this chapter that authorize the processing or manufacturing and distribution or redistribution of radiopharmaceuticals, generators, reagent kits, and/or sources and devices containing byproduct material. This category does not apply to licenses issued to nonprofit educational institutions whose processing or manufacturing is exempt under 10 CFR 170.11(a)(4). These licenses are covered by fee Category 3D:	
Application	$10,200.
D. Licenses and approvals issued under §§ 32.72, 32.73, and/or 32.74 of this chapter authorizing distribution or redistribution of radiopharmaceuticals, generators, reagent kits, and/or sources or devices not involving processing of byproduct material. This category includes licenses issued under §§ 32.72, 32.73, and/or 32.74 of this chapter to nonprofit educational institutions whose processing or manufacturing is exempt under 10 CFR 170.11(a)(4):	
Application	$2,400.
E. Licenses for possession and use of byproduct material in sealed sources for irradiation of materials in which the source is not removed from its shield (self-shielded units):	
Application	$1,700.
F. Licenses for possession and use of less than 10,000 curies of byproduct material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes. This category also includes underwater irradiators for irradiation of materials where the source is not exposed for irradiation purposes:	
Application	$3,300.
G. Licenses for possession and use of 10,000 curies or more of byproduct material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes. This category also includes underwater irradiators for irradiation of materials where the source is not exposed for irradiation purposes:	
Application	$3,400.
H. Licenses issued under Subpart A of Part 32 of this chapter to distribute items containing byproduct material that require device review to persons exempt from the licensing requirements of Part 30 of this chapter. The category does not include specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from the licensing requirements of Part 30 of this chapter:	
Application	$2,000.
I. Licenses issued under Subpart A of Part 32 of this chapter to distribute items containing byproduct material or quantities of byproduct material that do not require device evaluation to persons exempt from the licensing requirements of Part 30 of this chapter. This category does not include specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from the licensing requirements of Part 30 of this chapter:	
Application	$3,200.

SCHEDULE OF MATERIALS FEES—Continued

[See footnotes at end of table]

Category of materials licenses and type of fees[1]	Fee[2 3]
J. Licenses issued under Subpart B of Part 32 of this chapter to distribute items containing byproduct material that require sealed source and/or device review to persons generally licensed under Part 31 of this chapter. This category does not include specific licenses authorizing redistribution of items that have been authorized for distribution to persons generally licensed under Part 31 of this chapter:	
Application	$1,000.
K. Licenses issued under Subpart B of Part 32 of this chapter to distribute items containing byproduct material or quantities of byproduct material that do not require sealed source and/or device review to persons generally licensed under Part 31 of this chapter. This category does not include specific licenses authorizing redistribution of items that have been authorized for distribution to persons generally licensed under Part 31 of this chapter:	
Application	$600.
L. Licenses of broad scope for possession and use of byproduct material issued under Parts 30 and 33 of this chapter for research and development that do not authorize commercial distribution:	
Application	$5,500.
M. Other licenses for possession and use of byproduct material issued under Part 30 of this chapter for research and development that do not authorize commercial distribution:	
Application	$2,300.
N. Licenses that authorize services for other licensees, except:	
(1) Licenses that authorize only calibration and/or leak testing services are subject to the fees specified in fee Category 3P; and	
(2) Licenses that authorize waste disposal services are subject to the fees specified in fee Categories 4A, 4B, and 4C:	
Application	$2,300.
O. Licenses for possession and use of byproduct material issued under Part 34 of this chapter for industrial radiography operations:	
Application	$5,800.
P. All other specific byproduct material licenses, except those in Categories 4A through 9D:	
Application	$1,300.
4. Waste disposal and processing:	
A. Licenses specifically authorizing the receipt of waste byproduct material, source material, or special nuclear material from other persons for the purpose of contingency storage or commercial land disposal by the licensee; or licenses authorizing contingency storage of low-level radioactive waste at the site of nuclear power reactors; or licenses for receipt of waste from other persons for incineration or other treatment, packaging of resulting waste and residues, and transfer of packages to another person authorized to receive or dispose of waste material:	
Licensing and inspection	Full Cost.
B. Licenses specifically authorizing the receipt of waste byproduct material, source material, or special nuclear material from other persons for the purpose of packaging or repackaging the material. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material:	
Application	$1,700.
C. Licenses specifically authorizing the receipt of prepackaged waste byproduct material, source material, or special nuclear material from other persons. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material:	
Application	$2,500.
5. Well logging:	
A. Licenses for possession and use of byproduct material, source material, and/or special nuclear material for well logging, well surveys, and tracer studies other than field flooding tracer studies:	
Application	$6,000.
B. Licenses for possession and use of byproduct material for field flooding tracer studies:	
Licensing	Full Cost.
6. Nuclear laundries:	
A. Licenses for commercial collection and laundry of items contaminated with byproduct material, source material, or special nuclear material:	
Application	$11,200.
7. Medical licenses:	
A. Licenses issued under Parts 30, 35, 40, and 70 of this chapter for human use of byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices:	
Application	$6,100.
B. Licenses of broad scope issued to medical institutions or two or more physicians under Parts 30, 33, 35, 40, and 70 of this chapter authorizing research and development, including human use of byproduct material, except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices:	
Application	$4,400.
C. Other licenses issued under Parts 30, 35, 40, and 70 of this chapter for human use of byproduct material, source material, and/or special nuclear material, except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices:	
Application	$2,400.
8. Civil defense:	
A. Licenses for possession and use of byproduct material, source material, or special nuclear material for civil defense activities:	
Application	$320.
9. Device, product, or sealed source safety evaluation:	
A. Safety evaluation of devices or products containing byproduct material, source material, or special nuclear material, except reactor fuel devices, for commercial distribution:	
Application—each device	$5,200.

SCHEDULE OF MATERIALS FEES—Continued

[See footnotes at end of table]

Category of materials licenses and type of fees [1]	Fee [2 3]
B. Safety evaluation of devices or products containing byproduct material, source material, or special nuclear material manufactured in accordance with the unique specifications of, and for use by, a single applicant, except reactor fuel devices:	
Application—each device	$3,700.
C. Safety evaluation of sealed sources containing byproduct material, source material, or special nuclear material, except reactor fuel, for commercial distribution:	
Application—each source	$1,580.
D. Safety evaluation of sealed sources containing byproduct material, source material, or special nuclear material, manufactured in accordance with the unique specifications of, and for use by, a single applicant, except reactor fuel:	
Application—each source	$530.
10. Transportation of radioactive material:	
A. Evaluation of casks, packages, and shipping containers:	
Licensing and inspections	Full Cost.
B. Evaluation of 10 CFR part 71 quality assurance programs:	
Application	$390.
Inspections	Full Cost.
11. Review of standardized spent fuel facilities:	
Licensing and inspection	Full Cost.
12. Special projects: [5]	
Approvals and preapplication/Licensing activities	Full Cost.
Inspections	Full Cost.
13. A. Spent fuel storage cask Certificate of Compliance:	
Licensing	Full Cost.
B. Inspections related to spent fuel storage cask Certificate of Compliance	Full Cost.
C. Inspections related to storage of spent fuel under § 72.210 of this chapter	Full Cost.
14. Byproduct, source, or special nuclear material licenses and other approvals authorizing decommissioning, decontamination, reclamation, or site restoration activities under Parts 30, 40, 70, 72, and 76 of this chapter:	
Licensing and inspection	Full Cost.
15. Import and Export licenses:	
Licenses issued under 10 CFR part 110 of this chapter for the import and export only of special nuclear material, source material, tritium and other byproduct material, heavy water, or nuclear grade graphite:	
A. Application for export or import of high enriched uranium and other materials, including radioactive waste, which must be reviewed by the Commissioners and the Executive Branch, for example, those actions under 10 CFR 110.40(b). This category includes application for export or import of radioactive wastes in multiple forms from multiple generators or brokers in the exporting country and/or going to multiple treatment, storage or disposal facilities in one or more receiving countries:	
Application—new license	$9,100.
Amendment	$9,100.
B. Application for export or import of special nuclear material, source material, tritium and other byproduct material, heavy water, or nuclear grade graphite, including radioactive waste, requiring Executive Branch review but not Commissioner review. This category includes application for the export or import of radioactive waste involving a single form of waste from a single class of generator in the exporting country to a single treatment, storage and/or disposal facility in the receiving country:	
Application—new license	$5,600.
Amendment	$5,600.
C. Application for export of routine reloads of low enriched uranium reactor fuel and exports of source material requiring only foreign government assurances under the Atomic Energy Act:	
Application—new license	$1,700.
Amendment	$1,700.
D. Application for export or import of other materials, including radioactive waste, not requiring Commissioner review, Executive Branch review, or foreign government assurances under the Atomic Energy Act. This category includes application for export or import of radioactive waste where the NRC has previously authorized the export or import of the same form of waste to or from the same or similar parties, requiring only confirmation from the receiving facility and licensing authorities that the shipments may proceed according to previously agreed understandings and procedures:	
Application—new license	$1,100.
Amendment	$1,100.
E. Minor amendment of any export or import license to extend the expiration date, change domestic information, or make other revisions which do not require in-depth analysis, review, or consultations with other agencies or foreign governments:	
Amendment	$210.
16. Reciprocity:	
Agreement State licensees who conduct activities under the reciprocity provisions of 10 CFR 150.20:	
Application (initial filing of Form 241)	$1,200.
Revisions	$200.

[1] *Types of fees*—Separate charges, as shown in the schedule, will be assessed for preapplication consultations and reviews and applications for new licenses and approvals, issuance of new licenses and approvals, certain amendments and renewals to existing licenses and approvals, safety evaluations of sealed sources and devices, and certain inspections. The following guidelines apply to these charges:

(a) *Application fees.* Applications for new materials licenses and export and import licenses; applications to reinstate expired, terminated, or inactive licenses except those subject to fees assessed at full costs; applications filed by Agreement State licensees to register under the general license provisions of 10 CFR 150.20; and applications for amendments to materials licenses that would place the license in a higher fee category or add a new fee category must be accompanied by the prescribed application fee for each category.

(1) Applications for licenses covering more than one fee category of special nuclear material or source material must be accompanied by the prescribed application fee for the highest fee category.

(2) Applications for new licenses that cover both byproduct material and special nuclear material in sealed sources for use in gauging devices will pay the appropriate application fee for fee Category 1C only.

(b) *Licensing fees.* Fees for reviews of applications for new licenses and for renewals and amendments to existing licenses, for preapplication consultations and for reviews of other documents submitted to NRC for review, and for project manager time for fee categories subject to full cost fees (fee Categories 1A, 1B, 1E, 2A, 4A, 5B, 10A, 11, 12, 13A, and 14) are due upon notification by the Commission in accordance with § 170.12(b).

(c) *Amendment/revision fees.* Applications for amendments to export and import licenses and revisions to reciprocity initial applications must be accompanied by the prescribed amendment/revision fee for each license/revision affected. An application for an amendment to a license or approval classified in more than one fee category must be accompanied by the prescribed amendment fee for the category affected by the amendment unless the amendment is applicable to two or more fee categories in which case the amendment fee for the highest fee category would apply.

(d) *Inspection fees.* Inspections resulting from investigations conducted by the Office of Investigations and nonroutine inspections that result from third-party allegations are not subject to fees. Inspection fees are due upon notification by the Commission in accordance with § 170.12(c).

[2] Fees will not be charged for orders issued by the Commission under 10 CFR 2.202 or for amendments resulting specifically from the requirements of these types of Commission orders. However, fees will be charged for approvals issued under a specific exemption provision of the Commission's regulations under Title 10 of the Code of Federal Regulations (e.g., 10 CFR 30.11, 40.14, 70.14, 73.5, and any other sections in effect now in the future) regardless of whether the approval is in the form of a license amendment, letter of approval, safety evaluation report, or other form. In addition to the fee shown, an applicant may be assessed an additional fee for sealed source and device evaluations as shown in Categories 9A through 9D.

[3] Full cost fees will be determined based on the professional staff time multiplied by the appropriate professional hourly rate established in § 170.20 in effect at the time the service is provided, and the appropriate contractual support services expended. For applications currently on file for which review costs have reached an applicable fee ceiling established by the June 20, 1984, and July 2, 1990, rules, but are still pending completion of the review, the cost incurred after any applicable ceiling was reached through January 29, 1989, will not be billed to the applicant. Any professional staff-hours expended above those ceilings on or after January 30, 1989, will be assessed at the applicable rates established by § 170.20, as appropriate, except for topical reports whose costs exceed $50,000. Costs which exceed $50,000 for each topical report, amendment, revision, or supplement to a topical report completed or under review from January 30, 1989, through August 8, 1991, will not be billed to the applicant. Any professional hours expended on or after August 9, 1991, will be assessed at the applicable rate established in § 170.20.

[4] Licensees paying fees under Categories 1A, 1B, and 1E are not subject to fees under Categories 1C and 1D for sealed sources authorized in the same license except for an application that deals only with the sealed sources authorized by the license.

[5] Fees will not be assessed for requests/reports submitted to the NRC:

(a) In response to a Generic Letter or NRC Bulletin that does not result in an amendment to the license, does not result in the review of an alternate method or reanalysis to meet the requirements of the Generic Letter, or does not involve an unreviewed safety issue;

(b) In response to an NRC request (at the Associate Office Director level or above) to resolve an identified safety, safeguards, or environmental issue, or to assist NRC in developing a rule, regulatory guide, policy statement, generic letter, or bulletin; or

(c) As a means of exchanging information between industry organizations and the NRC for the purpose of supporting generic regulatory improvements or efforts.

10. The heading of Part 171 is revised to read as follows:

PART 171—ANNUAL FEES FOR REACTOR LICENSES AND FUEL CYCLE LICENSES AND MATERIALS LICENSES, INCLUDING HOLDERS OF CERTIFICATES OF COMPLIANCE, REGISTRATIONS, AND QUALITY ASSURANCE PROGRAM APPROVALS AND GOVERNMENT AGENCIES LICENSED BY THE NRC

11. The authority citation for Part 171 continues to read as follows:

Authority: Sec. 7601, Pub. L. 99–272, 100 Stat. 146, as amended by sec. 5601, Pub. L. 100–203, 101 Stat. 1330, as amended by Sec. 3201, Pub. L. 101–239, 103 Stat. 2106 as amended by sec. 6101, Pub. L. 101–508, 104 Stat. 1388, (42 U.S.C. 2213); sec. 301, Pub. L. 92–314, 86 Stat. 222 (42 U.S.C. 2201(w)); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); sec. 2903, Pub. L. 102–486, 106 Stat. 3125, (42 U.S.C. 2214 note).

12. Section 171.13 is revised to read as follows:

§ 171.13 Notice.

The annual fees applicable to any NRC licensee subject to this part and calculated in accordance with §§ 171.15 and 171.16, will be published as a notice in the **Federal Register** as soon as possible but no later than the third quarter of the fiscal year. The annual fees will become due and payable to the NRC as indicated in § 171.19. Quarterly payments of the annual fee of $100,000 or more will continue during the fiscal year and be based on the applicable annual fees as shown in §§ 171.15 and 171.16 until a notice concerning the revised amount of the fees for the fiscal year is published by the NRC. If the NRC is unable to publish a final fee rule that becomes effective during the current fiscal year, fees would be assessed based on the rates in effect for the previous fiscal year.

13. Section § 171.15 is revised to read as follows:

§ 171.15 Annual fees: Reactor licenses and spent fuel storage/reactor decommissioning.

(a) Each person licensed to operate a power, test, or research reactor; each person holding a Part 50 power reactor license that is in decommissioning or possession only status; and each person holding a Part 72 license who does not hold a Part 50 license shall pay the annual fee for each unit for each license held at any time during the Federal FY in which the fee is due. This paragraph does not apply to test and research reactors exempted under in § 171.11(a).

(b)(1) The FY 1999 annual fee for each operating power reactor would be the amount shown in Option A or Option B as presented in paragraphs (b)(1)(i) and (ii) of this section.

(i) Option A (Rebaselining without a cap): $2,769,000.

(ii) Option B (Rebaselining with a 50 percent cap): $2,775,000.

(2) The FY 1999 annual fee is comprised of a base operating power reactor annual fee, a base spent fuel storage/reactor decommissioning annual fee, and associated additional charges (surcharges). The activities comprising the spent storage/reactor decommissioning base annual fee are shown in paragraph (c)(2)(i) and (ii) of this section. The activities comprising the surcharge are shown in paragraph (d)(1) of this section. The activities comprising the base annual fee for operating power reactors are as follows:

(i) Power reactor safety and safeguards regulation except licensing and inspection activities recovered under Part 170 of this chapter and generic reactor decommissioning activities.

(ii) Research activities directly related to the regulation of power reactors except those activities specifically related to reactor decommissioning.

(iii) Generic activities required largely for NRC to regulate power reactors, e.g., updating Part 50 of this chapter, or operating the Incident Response Center. The base annual fee for operating power reactors does not include generic activities specifically related to reactor decommissioning.

(c)(1) The FY 1999 annual fee for each power reactor holding a Part 50 license that is in a decommissioning or possession only status and each independent spent fuel storage Part 72 licensee who does not hold a Part 50 license would be the amount shown in Option A or Option B as presented in paragraphs (c)(1)(i) and (ii) of this section.

(i) Option A (Rebaselining without a cap): $199,000.

(ii) Option B (Rebaselining with a 50 percent cap): $199,000.

(2) This fee is comprised of a base spent fuel storage/reactor decommissioning annual fee (this fee is also included in the operating power reactor annual fee show in paragraph (b) of this section), and an additional charge (surcharge). The activities comprising the surcharge are shown in paragraph (d)(1) of this section. The activities comprising the FY 1999 spent fuel storage/reactor decommissioning base annual fee are:

(i) Generic and other research activities directly related to reactor decommissioning and spent fuel storage; and

(ii) Other safety, environmental, and safeguards activities related to reactor decommissioning and spent fuel storage, except costs for licensing and inspection activities that are recovered under part 170 of this chapter.

(d)(1) The activities comprising the FY 1999 surcharge are as follows:

(i) Low level waste disposal generic activities;

(ii) Activities not attributable to an existing NRC licensee or class of licensees (e.g., international cooperative safety program and international safeguards activities; support for the Agreement State program, and site decommissioning management plan (SDMP) activities); and

(iii) Activities not currently subject to 10 CFR part 170 licensing and inspection fees based on existing law or Commission policy, e.g., reviews and inspections conducted of nonprofit educational institutions and licensing actions for Federal agencies, and costs that would not be collected from small entities based on Commission policy in accordance with the Regulatory Flexibility Act.

(2) The total FY 1999 surcharge allocated to operating power reactor class of licensees is $44 million, not including the amount allocated to the new fee class, spent fuel storage/reactor decommissioning. The FY 1999 operating power reactor surcharge to be assessed to each operating power reactor is $423,000. This amount is calculated by dividing the total operating power reactor surcharge ($44 million) by the number of operating power reactors (104).

(3) The FY 1999 surcharge allocated to spent fuel storage/reactor decommissioning class of licensees is $3.2 million. The FY 1999 spent fuel storage/reactor decommissioning surcharge to be added to each operating power reactor, each power reactor in decommissioning or possession only status, and to each independent spent fuel storage Part 72 licensee who does not hold a Part 50 license is $25,600. This amount is calculated by dividing the total surcharge costs allocated to this class by the total number of power reactor licensees and Part 72 licensees who do not hold a Part 50 license (125).

(e) The FY 1999 annual fees for licensees authorized to operate a nonpower (test and research) reactor licensed under Part 50 of this chapter, unless the reactor is exempted from fees under § 171.11(a), would be the amount shown under Option A or Option B below:

	Option A (rebaselining without a cap)	Option B (rebaselining with a 50 percent cap)
Research reactor	$85,900	$85,600
Test reactor	85,900	85,600

14. Section 171.16 is revised to read as follows:

§ 171.16 Annual Fees: Materials Licensees, Holders of Certificates of Compliance, Holders of Sealed Source and Device Registrations, Holders of Quality Assurance Program Approvals and Government Agencies Licensed by the NRC.

(a)(1) The provisions of this section apply to person(s) who are authorized to conduct activities under—

(i) 10 CFR part 30 for byproduct material;

(ii) 10 CFR part 40 for source material;

(iii) 10 CFR part 70 for special nuclear material;

(iv) 10 CFR part 71 for packaging and transportation of radioactive material; and

(v) 10 CFR part 76 for uranium enrichment.

(2) Each person identified in paragraph (a)(1) of this section shall pay an annual fee for each license the person holds at any time during the first six months of the Federal fiscal year (October 1 through March 31). Annual fees will be prorated for new licenses issued and for licenses for which termination is requested and activities permanently ceased during the period October 1 through March 31 of the fiscal year as provided in § 171.17 of this section. If a single license authorizes more than one activity (e.g., human use and irradiator activities), annual fees will be assessed for each fee category applicable to the license. If you hold more than one license, the total annual fee you will be assessed will be the cumulative total of the annual fees applicable to the licenses you hold.

(b) The annual fee is comprised of a base annual fee and an additional charge (surcharge). The activities comprising the surcharge are shown in paragraph (e) of this section. The activities comprising the base annual fee is the sum of the NRC budgeted costs for:

(1) Generic and other research activities directly related to the regulation of materials licenses as defined in this part; and

(2) Other safety, environmental, and safeguards activities for materials licenses, except costs for licensing and inspection activities that are recovered under Part 170 of this chapter.

(c) A licensee who is required to pay an annual fee under this section may qualify as a small entity. If a licensee qualifies as a small entity and provides the Commission with the proper certification with the annual fee payment, the licensee may pay reduced annual fees as shown below. Failure to file a small entity certification in a timely manner could result in the denial of any refund that might otherwise be due.

	Maximum annual fee per licensed category
Small Businesses Not Engaged in Manufacturing and Small Not-For-Profit Organizations (Gross Annual Receipts):	
$350,000 to $5 million	$1,800
Less than $350,000	400

	Maximum annual fee per licensed category
Manufacturing entities that have an average of 500 employees or less:	
35 to 500 employees	1,800
Less than 35 employees	400
Small Governmental Jurisdictions (Including publicly supported educational institutions) (Population):	
20,000 to 50,000	1,800
Less than 20,000	400
Educational Institutions that are not State or Publicly Supported, and have 500 Employees or Less:	
35 to 500 employees	1,800
Less than 35 employees	400

(1) A licensee qualifies as a small entity if it meets the size standards established by the NRC (See 10 CFR 2.810).

(2) A licensee who seeks to establish status as a small entity for purpose of paying the annual fees required under this section must file a certification statement with the NRC. The licensee must file the required certification on NRC Form 526 for each license under which it is billed. The NRC will include a copy of NRC Form 526 with each annual fee invoice sent to a licensee. A licensee who seeks to qualify as a small entity must submit the completed NRC Form 526 with the reduced annual fee payment.

(3) For purposes of this section, the licensee must submit a new certification with its annual fee payment each year.

(4) The maximum annual fee a small entity is required to pay is $1,800 for each category applicable to the license(s).

(d) The FY 1999 annual fees, including the surcharge shown in paragraph (e) of this section, for materials licensees subject to fees under this section would be the amounts shown under Option A. or Option B. below:

SCHEDULE OF MATERIALS ANNUAL FEES AND FEES FOR GOVERNMENT AGENCIES LICENSED BY NRC

[See footnotes at end of table]

Category of materials licenses	Annual fees [1] [2] [3]	
	Option A (rebaselining without a cap)	Option B (rebaselining with a 50 percent cap)
1. Special nuclear material:		
A.(1) Licenses for possession and use of U–235 or plutonium for fuel fabrication activities:		
(a) Strategic Special Nuclear Material:		
Babcock & Wilcox SNM–42	$3,281,000	$3,288,000
Nuclear Fuel Services SNM–124	3,281,000	3,288,000
(b) Low Enriched Uranium in Dispersible Form Used for Fabrication of Power Reactor Fuel:		
Combustion Engineering (Hematite) SNM–33	1,100,000	1,103,000
General Electric Company SNM–1097	1,100,000	1,103,000
Siemens Nuclear Power SNM–1227	1,100,000	1,103,000
Westinghouse Electric Company SNM–1107	1,100,000	1,103,000
(2) All other special nuclear materials licenses not included in Category 1.A.(1) which are licensed for fuel cycle activities:		
(a) Facilities with limited operations:		
Framatome Cogema SNM–1168	432,000	433,000
(b) All Others:		
General Electric SNM–960	314,000	315,000
B. Licenses for receipt and storage of spent fuel at an independent spent fuel storage installation (ISFSI). See 10 CFR part 171.15(c).		
C. Licenses for possession and use of special nuclear material in sealed sources contained in devices used in industrial measuring systems, including x-ray fluorescence analyzers	1,200	1,200
D. All other special nuclear material licenses, except licenses authorizing special nuclear material in unsealed form in combination that would constitute a critical quantity, as defined in § 150.11 of this chapter, for which the licensee shall pay the same fees as those for Category 1.A.(2)	3,300	3,400
E. Licenses or certificates for the operation of a uranium enrichment facility	2,043,000	2,048,000
2. Source material:		
A.(1) Licenses for possession and use of source material for refining uranium mill concentrates to uranium hexafluoride	472,000	473,000
(2) Licenses for possession and use of source material in recovery operations such as milling, in-situ leaching, heap-leaching, ore buying stations, ion exchange facilities and in processing of ores containing source material for extraction of metals other than uranium or thorium, including licenses authorizing the possession of byproduct waste material (tailings) from source material recovery operations, as well as licenses authorizing the possession and maintenance of a facility in a standby mode.		
Class I facilities [4]	131,000	92,100
Class II facilities [4]	109,000	52,100
Other facilities [4]	30,400	30,500

SCHEDULE OF MATERIALS ANNUAL FEES AND FEES FOR GOVERNMENT AGENCIES LICENSED BY NRC—Continued

[See footnotes at end of table]

Category of materials licenses	Annual fees [1 2 3]	
	Option A (rebaselining without a cap)	Option B (rebaselining with a 50 percent cap)
(3) Licenses that authorize the receipt of byproduct material, as defined in Section 11e.(2) of the Atomic Energy Act, from other persons for possession and disposal, except those licenses subject to the fees in Category 2.A.(2) or Category 2.A.(4)	81,000	67,600
(4) Licenses that authorize the receipt of byproduct material, as defined in Section 11e.(2) of the Atomic Energy Act, from other persons for possession and disposal incidental to the disposal of the uranium waste tailings generated by the licensee's milling operations, except those licenses subject to the fees in Category 2.A.(2)	13,000	11,900
B. Licenses that authorize only the possession, use and/or installation of source material for shielding	600	620
C. All other source material licenses	11,700	11,700
3. Byproduct material:		
A. Licenses of broad scope for possession and use of byproduct material issued under Parts 30 and 33 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution	26,000	24,800
B. Other licenses for possession and use of byproduct material issued under Part 30 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution	6,300	6,300
C. Licenses issued under §§ 32.72, 32.73, and/or 32.74 of this chapter authorizing the processing or manufacturing and distribution or redistribution of radiopharmaceuticals, generators, reagent kits and/or sources and devices containing byproduct material. This category also includes the possession and use of source material for shielding authorized under Part 40 of this chapter when included on the same license. This category does not apply to licenses issued to nonprofit educational institutions whose processing or manufacturing is exempt under 10 CFR 171.11(a)(1). These licenses are covered by fee Category 3D	15,300	15,400
D. Licenses and approvals issued under §§ 32.72, 32.73, and/or 32.74 of this chapter authorizing distribution or redistribution of radiopharmaceuticals, generators, reagent kits and/or sources or devices not involving processing of byproduct material. This category includes licenses issued under §§ 32.72, 32.73 and 32.74 of this chapter to nonprofit educational institutions whose processing or manufacturing is exempt under 10 CFR 171.11(a)(1). This category also includes the possession and use of source material for shielding authorized under Part 40 of this chapter when included on the same license	3,800	3,800
E. Licenses for possession and use of byproduct material in sealed sources for irradiation of materials in which the source is not removed from its shield (self-shielded units)	3,400	3,400
F. Licenses for possession and use of less than 10,000 curies of byproduct material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes. This category also includes underwater irradiators for irradiation of materials in which the source is not exposed for irradiation purposes	5,700	5,700
G. Licenses for possession and use of 10,000 curies or more of byproduct material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes. This category also includes underwater irradiators for irradiation of materials in which the source is not exposed for irradiation purposes	14,800	14,800
H. Licenses issued under Subpart A of Part 32 of this chapter to distribute items containing byproduct material that require device review to persons exempt from the licensing requirements of Part 30 of this chapter, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from the licensing requirements of Part 30 of this chapter	3,200	3,200
I. Licenses issued under Subpart A of Part 32 of this chapter to distribute items containing byproduct material or quantities of byproduct material that do not require device evaluation to persons exempt from the licensing requirements of Part 30 of this chapter, except for specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from the licensing requirements of Part 30 of this chapter	4,600	4,600
J. Licenses issued under Subpart B of Part 32 of this chapter to distribute items containing byproduct material that require sealed source and/or device review to persons generally licensed under Part 31 of this chapter, except specific licenses authorizing redistribution of terms that have been authorized for distribution to persons generally licensed under Part 31 of this chapter	2,100	2,100
K. Licenses issued under Subpart B of Part 31 of this chapter to distribute items containing byproduct material or quantities of byproduct material that do not require sealed source and/or device review to persons generally licensed under Part 31 of this chapter, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons generally licensed under Part 31 of this chapter	1,700	1,700
L. Licenses of broad scope for possession and use of byproduct material issued under Parts 30 and 33 of this chapter for research and development that do not authorize commercial distribution	11,200	11,200
M. Other licenses for possession and use of byproduct material issued under Part 30 of this chapter for research and development that do not authorize commercial distribution	5,000	5,000
N. Licenses that authorize services for other licensees, except:		
(1) Licenses that authorize only calibration and/or leak testing services are subject to the fees specified in fee Category 3P; and		
(2) Licenses that authorize waste disposal services are subject to the fees specified in fee Categories 4A, 4B, and 4C	5,200	5,200

SCHEDULE OF MATERIALS ANNUAL FEES AND FEES FOR GOVERNMENT AGENCIES LICENSED BY NRC—Continued

[See footnotes at end of table]

Category of materials licenses	Annual fees[1][2][3]	
	Option A (rebaselining without a cap)	Option B (rebaselining with a 50 percent cap)
O. Licenses for possession and use of byproduct material issued under Part 34 of this chapter for industrial radiography operations. This category also includes the possession and use of source material for shielding authorized under Part 40 of this chapter when authorized on the same license	14,700	14,700
P. All other specific byproduct material licenses, except those in Categories 4A through 9D	2,600	2,500
4. Waste disposal and processing:		
A. Licenses specifically authorizing the receipt of waste byproduct material, source material, or special nuclear material from other persons for the purpose of contingency storage or commercial land disposal by the licensee; or licenses authorizing contingency storage of low-level radioactive waste at the site of nuclear power reactors; or licenses for receipt of waste from other persons for incineration or other treatment, packaging of resulting waste and residues, and transfer of packages to another person authorized to receive or dispose of waste material	[5] N/A	.....
B. Licenses specifically authorizing the receipt of waste byproduct material, source material, or special nuclear material from other persons for the purpose of packaging or repackaging the material. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material	11,300	11,400
C. Licenses specifically authorizing the receipt of prepackaged waste byproduct material, source material, or special nuclear material from other persons. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material	8,400	8,400
5. Well logging:		
A. Licenses for possession and use of byproduct material, source material, and/or special nuclear material for well logging, well surveys, and tracer studies other than field flooding tracer studies	9,900	10,000
B. Licenses for possession and use of byproduct material for field flooding tracer studies	[5] N/A	
6. Nuclear laundries:		
A. Licenses for commercial collection and laundry of items contaminated with byproduct material, source material, or special nuclear material	18,900	19,000
7. Medical licenses:		
A. Licenses issued under Parts 30, 35, 40, and 70 of this chapter for human use of byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices. This category also includes the possession and use of source material for shielding when authorized on the same license	15,300	15,300
B. Licenses of broad scope issued to medical institutions or two or more physicians under Parts 30, 33, 35, 40, and 70 of this chapter authorizing research and development, including human use of byproduct material except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices. This category also includes the possession and use of source material for shielding when authorized on the same license.[9]	27,800	27,800
C. Other licenses issued under Parts 30, 35, 40, and 70 of this chapter for human use of byproduct material, source material, and/or special nuclear material except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices. This category also includes the possession and use of source material for shielding when authorized on the same license.[9]	5,800	5,800
8. Civil defense:		
A. Licenses for possession and use of byproduct material, source material, or special nuclear material for civil defense activities	1,200	1,200
9. Device, product, or sealed source safety evaluation:		
A. Registrations issued for the safety evaluation of devices or products containing byproduct material, source material, or special nuclear material, except reactor fuel devices, for commercial distribution	6,000	6,100
B. Registrations issued for the safety evaluation of devices or products containing byproduct material, source material, or special nuclear material manufactured in accordance with the unique specifications of, and for use by, a single applicant, except reactor fuel devices	4,300	4,300
C. Registrations issued for the safety evaluation of sealed sources containing byproduct material, source material, or special nuclear material, except reactor fuel, for commercial distribution	1,800	1,800
D. Registrations issued for the safety evaluation of sealed sources containing byproduct material, source material, or special nuclear material, manufactured in accordance with the unique specifications of, and for use by, a single applicant, except reactor fuel	600	620
10. Transportation of radioactive material:		
A. Certificates of Compliance or other package approvals issued for design of casks, packages, and shipping containers:		
Spent Fuel, High-Level Waste, and plutonium air packages	[6] N/A	.....
Other Casks	[6] N/A	.....
B. Quality assurance program approvals issued under 10 CFR part 71:		
Users and Fabricators	66,700	66,800
Users	2,200	1,500
11. Standardized spent fuel facilities	[6] N/A	.....
12. Special Projects	[6] N/A	.....
13. A. Spent fuel storage cask Certificate of Compliance	[6] N/A	

SCHEDULE OF MATERIALS ANNUAL FEES AND FEES FOR GOVERNMENT AGENCIES LICENSED BY NRC—Continued

[See footnotes at end of table]

Category of materials licenses	Annual fees[1][2][3]	
	Option A (rebaselining without a cap)	Option B (rebaselining with a 50 percent cap)
B. General licenses for storage of spent fuel under 10 CFR 72.210	*N/A	
14. Byproduct, source, or special nuclear material licenses and other approvals authorizing decommissioning, decontamination, reclamation, or site restoration activities under to 10 CFR parts 30, 40, 70, 72, and 76 of this chapter	[7]N/A	
15. Import and Export licenses	[6]N/A	
16. Reciprocity	[8]N/A	
17. Master materials licenses of broad scope issued to Government agencies	358,000	359,000
18. Department of Energy:		
A. Certificates of Compliance	872,000	873,000
B. Uranium Mill Tailing Radiation Control Act (UMTRCA) activities	869,000	870,000

*See 10 CFR 171.15(c).

[1] Annual fees will be assessed based on whether a licensee held a valid license with the NRC authorizing possession and use of radioactive material during the fiscal year. However, the annual fee is waived for those materials licenses and holders of certificates, registrations, and approvals who either filed for termination of their licenses or approvals or filed for possession only/storage licenses prior to October 1, 1998, and permanently ceased licensed activities entirely by September 30, 1998. Annual fees for licensees who filed for termination of a license, downgrade of a license, or for a POL during the fiscal year and for new licenses issued during the fiscal year will be prorated in accordance with the provisions of § 171.17. If a person holds more than one license, certificate, registration, or approval, the annual fee(s) will be assessed for each license, certificate, registration, or approval held by that person. For licenses that authorize more than one activity on a single license (e.g., human use and irradiator activities), annual fees will be assessed for each category applicable to the license. Licensees paying annual fees under Category 1A(1) are not subject to the annual fees for Category 1C and 1D for sealed sources authorized in the license.

[2] Payment of the prescribed annual fee does not automatically renew the license, certificate, registration, or approval for which the fee is paid. Renewal applications must be filed in accordance with the requirements of Parts 30, 40, 70, 71, 72, or 76 of this chapter.

[3] Each fiscal year, fees for these materials licenses will be calculated and assessed in accordance with § 171.13 and will be published in the FEDERAL REGISTER for notice and comment.

[4] A Class I license includes mill licenses issued for the extraction of uranium from uranium ore. A Class II license includes solution mining licenses (in-situ and heap leach) issued for the extraction of uranium from uranium ores including research and development licenses. An "other" license includes licenses for extraction of metals, heavy metals, and rare earths.

[5] There are no existing NRC licenses in these fee categories. Once NRC issues a license for these categories, the Commission will consider establishing an annual fee for that type of license.

[6] Standardized spent fuel facilities, 10 CFR parts 71 and 72 Certificates of Compliance, and special reviews, such as topical reports, are not assessed an annual fee because the generic costs of regulating these activities are primarily attributable to the users of the designs, certificates, and topical reports.

[7] Licensees in this category are not assessed an annual fee because they are charged an annual fee in other categories while they are licensed to operate.

[8] No annual fee is charged because it is not practical to administer due to the relatively short life or temporary nature of the license.

[9] Separate annual fees will not be assessed for pacemaker licenses issued to medical institutions who also hold nuclear medicine licenses under Categories 7B or 7C.

[10] This includes Certificates of Compliance issued to DOE that are not under the Nuclear Waste Fund.

(e) The activities comprising the surcharge are as follows:

(1) LLW disposal generic activities;

(2) Activities not attributable to an existing NRC licensee or classes of licensees; e.g., international cooperative safety program and international safeguards activities; support for the Agreement State program; site decommissioning management plan (SDMP) activities; and

(3) Activities not currently assessed licensing and inspection fees under 10 CFR part 170 based on existing law or Commission policy, e.g., reviews and inspections conducted of nonprofit educational institutions and reviews for Federal agencies; activities related to decommissioning and reclamation; and costs that would not be collected from small entities based on Commission policy in accordance with the Regulatory Flexibility Act.

15. Section 171.19 is revised to read as follows:

§ 171.19 Payment.

(a) Method of payment. Annual fee payments, made payable to the U.S. Nuclear Regulatory Commission, are to be made in U.S. funds by electronic funds transfer such as ACH (Automated Clearing House) using EDI (Electronic Data Interchange), check, draft, money order, or credit card. Federal agencies may also make payment by the On-line Payment and Collection System (OPAC's). Where specific payment instructions are provided on the invoices to applicants and licensees, payment should be made accordingly, e.g. invoices of $5,000 or more should be paid via ACH through NRC's Lockbox Bank at the address indicated on the invoice. Credit card payments should be made up to the limit established by the credit card bank, in accordance with specific instructions provided with the invoices, to the Lockbox Bank designated for credit card payments. In accordance with Department of the Treasury requirements, refunds will only be made upon receipt of information on the payee's financial institution and bank accounts.

(b) Annual fees in the amount of $100,000 or more and described in the **Federal Register** notice issued under § 171.13 must be paid in quarterly installments of 25 percent as billed by the NRC. The quarters begin on October 1, January 1, April 1, and July 1 of each fiscal year. The NRC will adjust the fourth quarterly invoice to recover the full amount of the revised annual fee. If the amounts collected in the first three quarters exceed the amount of the revised annual fee, the overpayment will be refunded. Licensees whose annual fee for FY 1998 was less than $100,000 (billed on the anniversary date of the license), and whose revised annual fee for FY 1999 would be $100,000 (subject to quarterly billing), would be issued a bill upon publication

of the final rule for the full amount of the FY 1999 annual fee, less any payments received for FY 1999 based on the anniversary date billing process.

(c) Annual fees that are less than $100,000 are billed on the anniversary date of the license. For annual fee purposes, the anniversary date of the license is considered to be the first day of the month in which the original license was issued by the NRC. Licensees that are billed on the license anniversary date will be assessed the annual fee in effect on the anniversary date of the license. Materials licenses subject to the annual fee that are terminated during the fiscal year but prior to the anniversary month of the license will be billed upon termination for the fee in effect at the time of the billing. New materials licenses subject to the annual fee will be billed in the month the license is issued or in the next available monthly billing for the fee in effect on the anniversary date of the license. Thereafter, annual fees for new licenses will be assessed in the anniversary month of the license.

(d) Annual fees of less than $100,000 must be paid as billed by the NRC. Materials license annual fees that are less than $100,000 are billed on the anniversary date of the license. The materials licensees that are billed on the anniversary date of the license are those covered by fee categories 1C, 1.D, 2(A)(2) other, 2A(3), 2A(4), 2B, 2C, 3A through 3P, 4B through 9D, 10A, and 10B.

(e) Payment is due on the invoice date and interest accrues from the date of the invoice. However, interest will be waived if payment is received within 30 days from the invoice date.

Dated at Rockville, Maryland, this 25th day of March, 1999.

For the Nuclear Regulatory Commission.

Peter J. Rabideau,

Acting Chief Financial Officer.

Note: This appendix will not appear in the Code of Federal Regulations.

Appendix A to this Proposed Rule—Draft Regulatory Flexibility Analysis for the Amendments to 10 CFR Part 170 (License Fees) and 10 CFR Part 171 (Annual Fees)

I. Background

The Regulatory Flexibility Act (RFA), as amended, (5 U.S.C. 601 *et seq.*) requires that agencies consider the impact of their rulemakings on small entities and, consistent with applicable statutes, consider alternatives to minimize these impacts on the businesses, organizations, and government jurisdictions to which they apply.

The NRC has established standards for determining which NRC licensees qualify as small entities (10 CFR 2.801). These size standards reflect the Small Business Administration's most common receipts-based size standards and include a size standard for business concerns that are manufacturing entities. The NRC uses the size standards to reduce the impact of annual fees on small entities by establishing a licensee's eligibility to qualify for a maximum small entity fee. The small entity fee categories in § 171.16(c) of this proposed rule are based on the NRC's size standards

The Omnibus Budget Reconciliation Act (OBRA–90), as amended, requires that the NRC recover approximately 100 percent of its budget authority, less appropriations from the Nuclear Waste Fund, by assessing license and annual fees. OBRA–90 requires that the schedule of charges established by rule should fairly and equitably allocate the total amount to recovered from NRC's licensees and be assessed under the principle that licensees who require the greatest expenditure of agency resources pay the greatest annual charges. The amount to be collected for FY 1999 is approximately $449.6 million.

Since 1991, the NRC has complied with OBRA–90 by issuing a final rule that amends its fee regulations. These final rules have established the methodology used by NRC in identifying and determining the fees to be assessed and collected in any given fiscal year.

Since FY 1996, the NRC stabilized annual fees by adjusting the annual fees only by the percentage change (plus or minus) in NRC's total budget authority. The percentage change would be adjusted based on changes in the 10 CFR part 170 fees and other adjustments as well as an adjustment for the number of licensees paying the fees. The NRC indicated that if there was a substantial change in the total NRC budget authority or the magnitude of the budget allocated to a specific class of licensees, the annual fee base would be recalculated. Because the NRC is proposing to establish a new annual fee class for FY 1999 and based on program changes that have occurred, the NRC is proposing to establish new baseline annual fees this fiscal year. This rebaselining would result in significant annual fee increases for certain classes of licensees. Therefore, the NRC is presenting for public comment two potential annual fee schedules, Option A-rebaselining without a cap, and Option B-rebaselining with a 50 percent cap. The NRC recognizes that under either option the rebaselined annual fees would result in an increase in the annual fees charged to some categories of materials licensees.

The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) is intended to reduce regulatory burdens imposed by Federal agencies on small businesses, nonprofit organizations, and governmental jurisdictions. SBREFA also provides Congress with the opportunity to review agency rules before they go into effect. Under this legislation, the NRC annual fee rule is considered a "major" rule and must be reviewed by Congress and the Comptroller General before the rule becomes effective. SBREFA also requires that an agency prepare a guide to assist small entities in complying with each rule for which final regulatory flexibility analysis is prepared. This Regulatory Flexibility Analysis and the small entity compliance guide (Attachment 1) have been prepared for the FY 1999 fee rule as required by law.

II. Impact on Small Entities

The fee rule results in substantial fees being charged to those individuals, organizations, and companies that are licensed by the NRC, including those licensed under the NRC materials program. The comments received on previous proposed fee rules and the small entity certifications received in response to previous final fee rules indicate that NRC licensees qualifying as small entities under the NRC's size standards are primarily materials licensees. Therefore, this analysis will focus on the economic impact of the annual fees on materials licensees. About 20 percent of these licensees (approximately 1,400 licensees) have requested small entity certification in the past. A 1993 NRC survey of its materials licensees indicated that about 25 percent of these licensees could qualify as small entities under the NRC's size standards.

The commenters on previous fee rulemakings consistently indicated that the following results would occur if the proposed annual fees were not modified.

1. Large firms would gain an unfair competitive advantage over small entities. Commenters noted that small and very small companies ("Mom and Pop" operations) would find it more difficult to absorb the annual fee than a large corporation or a high-volume type of operation. In competitive markets, such as soils testing, annual fees would put small licensees at an competitive extreme disadvantage with its much larger competitors because the proposed fees would be the same for a two-person licensee and for a large firm with thousands of employees.

2. Some firms would be forced to cancel their licenses. A licensee with receipts of less than $500,000 per year stated that the proposed rule would, in effect, force it to relinquish its soil density gauge and license, thereby reducing its ability to do its work effectively. Other licensees, especially well-loggers, noted that the unmitigated cost of the rule would force small businesses to get rid of the materials license altogether. Commenters stated that the proposed rule would result in about 10 percent of the well-logging licensees terminating their licenses immediately and approximately 25 percent terminating their licenses before the next annual assessment.

3. Some companies would go out of business.

4. Some companies would have budget problems. Many medical licensees noted that, along with reduced reimbursements, the proposed increase of the existing fees and the introduction of additional fees would significantly affect their budgets. Others noted that, in view of the cuts by Medicare and other third party carriers, the fees would produce a hardship and some facilities would experience a great deal of difficulty in meeting this additional burden.

Since annual fees were first established, approximately 3,000 license, approval, and registration terminations have been requested. Although some of these

terminations were requested because the license was no longer needed or licenses or registrations could be combined, indications are that other termination requests were due to the economic impact of the fees.

The NRC continues to receive written and oral comments from small materials licensees indicating that the monetary threshold for small entities was not representative of small businesses with gross receipts in the thousands of dollars. These commenters believe that even the $1,800 maximum annual fee represents a relatively high percentage of gross annual receipts for these "Mom and Pop" type businesses. Therefore, even the reduced annual fee could have a significant impact on the ability of these types of businesses to continue to operate.

To alleviate the significant impact of the annual fees on a substantial number of small entities, the NRC considered the following alternatives, in accordance with the RFA, in developing each of its fee rules since 1991.

1. Base fees on some measure of the amount of radioactivity possessed by the licensee (e.g., number of sources).

2. Base fees on the frequency of use of the licensed radioactive material (e.g., volume of patients).

3. Base fees on the NRC size standards for small entities.

The NRC has reexamined its previous evaluations of these alternatives and continues to believe that establishment of a maximum fee for small entities is the most appropriate and effective option for reducing the impact of its fees on small entities.

The NRC established, and intends to continue for FY 1999, a maximum annual fee for small entities. The RFA and its implementing guidance do not provide specific guidelines on what constitutes a significant economic impact on a small entity. Therefore, the NRC has no benchmark to assist it in determining the amount or the percent of gross receipts that should be charged to a small entity. For FY 1999, the NRC will rely on the analysis previously completed that established a maximum annual fee for a small entity and the amount of costs that must be recovered from other NRC licensees as a result of establishing the maximum annual fees.

The NRC continues to believe that the 10 CFR part 170 application fees, or any adjustments to these licensing fees during the past year, do not have a significant impact on small entities.

By maintaining the maximum annual fee for small entities at $1,800, the annual fee for many small entities is reduced while at the same time materials licensees, including small entities, would pay for most of the FY 1999 costs attributable to them. The costs not recovered from small entities are allocated to other materials licensees and to power reactors. However, the amount that must be recovered from other licensees as a result of maintaining the maximum annual fee is not expected to increase significantly. Therefore, the NRC is proposing to continue, for FY 1999, the maximum annual fee (base annual fee plus surcharge) for certain small entities at $1,800 for each fee category covered by each license issued to a small entity.

While reducing the impact on many small entities, the Commission agrees that the maximum annual fee of $1,800 for small entities, when added to the Part 170 license fees, may continue to have a significant impact on materials licensees with annual gross receipts in the thousands of dollars. Therefore, as in each year since 1992, the NRC is continuing the lower-tier small entity annual fee of $400 for small entities with relatively low gross annual receipts. The lower-tier small entity fee of $400 also applies to manufacturing concerns, and educational institutions not State or publicly supported, with less than 35 employees. Therefore, even though the proposed rebaselined annual fees would increase the annual fees charged to several categories of materials licensees, licensees who qualify as small entities would not be adversely affected.

III. Summary

The NRC has determined that the 10 CFR part 171 annual fees significantly impact a substantial number of small entities. A maximum fee for small entities strikes a balance between the requirement to collect 100 percent of the NRC budget and the requirement to consider means of reducing the impact of the fee on small entities. On the basis of its regulatory flexibility analyses, the NRC concludes that a maximum annual fee of $1,800 for small entities and a lower-tier small entity annual fee of $400 for small businesses and not-for-profit organizations with gross annual receipts of less than $350,000, small governmental jurisdictions with a population of less than 20,000, small manufacturing entities that have less than 35 employees and educational institutions that are not State or publicly supported and have less than 35 employees reduces the impact on small entities. At the same time, these reduced annual fees are consistent with the objectives of OBRA–90. Thus, the fees for small entities maintain a balance between the objectives of OBRA–90 and the RFA. Therefore, the analysis and conclusions established in previous fee rules remain valid for FY 1999.

Attachment 1 to Appendix A

U.S. Nuclear Regulatory Commission, Small Entity Compliance Guide, Fiscal Year 1999

Contents

Introduction
NRC Definition of Small Entity
NRC Small Entity Fees
Instructions for Completing NRC Form

Introduction

The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) requires all Federal agencies to prepare a written guide for each "major" final rule as defined by the Act. The NRC's fee rule, published annually to comply with the Omnibus Budget Reconciliation Act of 1990 (OBRA–90) requires the NRC to collect approximately 100 percent of its budget authority each year through fees. This rule is considered a "major" rule under this law. This compliance guide has been prepared to assist NRC material licensees comply with the FY 1999 fee rule.

Licensees may use this guide to determine whether they qualify as a small entity under NRC regulations and are eligible to pay reduced FY 1999 annual fees assessed under 10 CFR part 171. The NRC has established two tiers of separate annual fees for those materials licensees who qualify as small entities under NRC's size standards.

Licensees who meet NRC's size standards for a small entity must complete NRC Form 526 to qualify for the reduced annual fee. This form accompanies each annual fee invoice mailed to materials licensees. The completed form, the appropriate small entity fee, and the payment copy of the invoice, should be mailed to the U.S. Nuclear Regulatory Commission, License Fee and Accounts Receivable Branch, to the address indicated on the invoice. Failure to file a small entity certification in a timely manner may result in the denial of any refund that might otherwise be due.

NRC Definition of Small Entity

The NRC has defined a small entity for purposes of compliance with its regulations (10 CFR 2.810) as follows:

1. Small business—a for-profit concern that provides a service or a concern not engaged in manufacturing with average gross receipts of $5 million or less over its last 3 completed fiscal years;

2. Manufacturing industry—a manufacturing concern with an average number of 500 or fewer employees based upon employment during each pay period for the preceding 12 calendar months;

3. Small organization—a not-for-profit organization which is independently owned and operated and has annual gross receipts of $5 million or less;

4. Small governmental jurisdiction—a government of a city, county, town, township, village, school district or special district with a population of less than 50,000;

5. Small educational institution—an educational institution supported by a qualifying small governmental jurisdiction, or one that is not state or publicly supported and has 500 or fewer employees; [2]

NRC Small Entity Fees

In 10 CFR 171.16(c), the NRC has established two tiers of small-entity fees for licensees that qualify under the NRC's size standards. Currently, these fees are as follows:

[2] An educational institution referred to in the size standards is an entity whose primary function is education, whose programs are accredited by a nationally recognized accrediting agency or association, who is legally authorized to provide a program of organized instruction or study, who provides an educational program for which it awards academic degrees, and whose educational programs are available to the public.

	Maximum annual fee per licensed category
Small Business Not Engaged in Manufacturing and Small Not-For Profit Organizations (Gross Annual Receipts):	
$350,000 to $5 million	$1,800
Less than $350,000	400
Manufacturing entities that have an average of 500 employees or less:	
35 to 500 employees	1,800
Less than 35 employees	400
Small Governmental Jurisdictions (Including publicly supported educational institutions) (Population):	
20,000 to 50,000	1,800
Less than 20,000	400
Educational Institutions that are not State or Publicly Supported, and have 500 Employees or Less:	
35 to 500 employees	1,800
Less than 35 employees	400

To pay a reduced annual fee, a licensee must use NRC Form 526, enclosed with the fee invoice, to certify that it meets NRC's size standards for a small entity. Failure to file NRC Form 526 in a timely manner may result in the denial of any refund that might otherwise be due.

Instructions for Completing NRC Form 526

1. File a separate NRC Form 526 for each annual fee invoice received.

2. Complete all items on NRC Form 526 as follows:

a. The license number and invoice number must be entered exactly as they appear on the annual fee invoice.

b. The Standard Industrial Classification (SIC) Code should be entered if it is known.

c. The licensee's name and address must be entered as they appear on the invoice. Name and/or address changes for billing purposes must be annotated on the invoice. Correcting the name and/or address on NRC Form 526 or on the invoice does not constitute a request to amend the license. Any request to amend a license is to be submitted to the respective licensing staffs in the NRC Regional or Headquarters Offices.

d. Check the appropriate size standard under which the licensee qualifies as a small entity. Check one box only. Note the following:

(1) The size standards apply to the licensee, not the individual authorized users listed in the license.

(2) Gross annual receipts as used in the size standards includes all revenue in whatever form received or accrued from whatever sources, not solely receipts from licensed activities. There are limited exceptions as set forth at 13 CFR 121.104. These are: the term receipts excludes net capital gains or losses, taxes collected for and remitted to a taxing authority if included in gross or total income, proceeds from the transactions between a concern and its domestic or foreign affiliates (if also excluded from gross or total income on a consolidated return filed with the IRS), and amounts collected for another by a travel agent, real estate agent, advertising agent, or conference management service provider.

(3) A licensee who is a subsidiary of a large entity does not qualify as a small entity.

(4) The owner of the entity, or an official empowered to act on behalf of the entity, must sign and date the small entity certification.

The NRC sends invoices to its licensees for the full annual fee, even though some entities qualify for reduced fees as a small entity. Licensees who qualify as a small entity and file NRC Form 526, which certifies eligibility for small entity fees, may pay the reduced fee, which for a full year is either $1,800 or $400 depending on the size of the entity, for each fee category shown on the invoice. Licensees granted a license during the first six months of the fiscal year and licensees who file for termination or for a possession only license and permanently cease licensed activities during the first six months of the fiscal year pay only 50 percent of the annual fee for that year. Such an invoice states the "Amount Billed Represents 50% Proration." This means the amount due from a small entity is not the prorated amount shown on the invoice but rather one-half of the maximum annual fee shown on NRC Form 526 for the size standard under which the licensee qualifies, resulting in a fee of either $900 or $200 for each fee category billed instead of the full small entity annual fee of $1,800 or $400.

A new small entity form (NRC Form 526) must be filed with the NRC each fiscal year to qualify for reduced fees for that fiscal year. Because a licensee's "size," or the size standards, may change from year to year, the invoice reflects the full fee and a new Form must be completed and returned for the fee to be reduced to the small entity fee. LICENSEES WILL NOT BE ISSUED A NEW INVOICE FOR THE REDUCED AMOUNT. The completed NRC Form 526, the payment of the appropriate small entity fee, and the "Payment Copy" of the invoice should be mailed to the U.S. Nuclear Regulatory Commission, License Fee and Accounts Receivable Branch at the address indicated on the invoice.

If you have questions about the NRC's annual fees, please call the license fee staff at 301–415–7554, e-mail the fee staff at fees@nrc.gov, or write to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Office of the Chief Financial Officer.

False certification of small entity status could result in civil sanctions being imposed by the NRC under the Program Fraud Civil Remedies Act, 31 U.S.C. 3801 *et. seq.* NRC's implementing regulations are found at 10 CFR part 13.

[FR Doc. 99–7843 Filed 3–31–99; 8:45 am]

BILLING CODE 7590–01–P

UMI
VOL
64
ISS
62
AP
1
1999
UMI

Federal Register

Thursday
April 1, 1999

Part III

Department of Education

Office of Elementary and Secondary Education

Department of Justice

Office of Juvenile Justice and Delinquency Prevention

Department of Health and Human Services

Substance Abuse and Mental Health Services Administration

Safe and Drug-Free Schools and Communities National Programs; Federal Activities Grants Program—Safe Schools/Healthy Students Initiative; Final Priority and Selection Criteria; Inviting Applications for New Awards for Fiscal Year 1999; Notices

DEPARTMENT OF EDUCATION

Office of Elementary and Secondary Education

DEPARTMENT OF JUSTICE

Office of Juvenile Justice and Delinquency Prevention

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Office of Juvenile Justice and Delinquency Prevention; Center for Mental Health Services; Safe and Drug-Free Schools and Communities National Programs; Federal Activities Grants Program—Safe Schools/ Healthy Students Initiative; Notice of Final Priority and Selection Criteria

AGENCY: Department of Education.

ACTION: Notice of final priority and selection criteria for fiscal year 1999.

SUMMARY: The Secretary of Education (the Secretary), with the Secretary of Health and Human Services and the Attorney General, announces a final priority and selection criteria for fiscal year (FY) 1999. Under this priority, the Departments of Education (ED), Health and Human Services (HHS), and Justice (DOJ) will fund the implementation and enhancement of comprehensive community-wide strategies for creating safe and drug-free schools and promoting healthy childhood development.

To be funded, local comprehensive plans must address the following six elements and may address other elements as determined by the needs of the community: (1) Safe school environment; (2) youth alcohol and drug prevention, violence prevention, and early intervention; (3) school and community mental health preventive and treatment intervention programs; (4) early childhood psychosocial and emotion development services; (5) educational reform; and (6) safe school policies.

EFFECTIVE DATE: This notice takes effect April 1, 1999.

FOR FURTHER INFORMATION CONTACT: Detailed information regarding the Safe Schools/Healthy Students Initiative is available at the following sites on the World Wide Web:

http://www.ed.gov/offices/OESE/SDFS
http://www.ojjdp.ncjrs.org
http://www.usdoj.gov/cops
http://www.samhsa.gov
http://www.mentalhealth.org

Individuals who use a telecommunications devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m. Eastern Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: More than a generation of research has provided a solid knowledge base of the complex risk processes that lead to violent outcomes for children, families, schools, and communities. Antisocial behaviors of children and adolescents at highest risk arise from the interaction of multiple environmental and individual antecedents that begin early in the child's life. They include (1) stressful family environments; (2) lack of parenting skills; (3) alienation between family and school (and other community institutions); and (4) individual characteristics of the child that may be biologically based (e.g., irritability, impulsivity), that interfere with critical early attachment and nurturing relationships and later make the child's behavior difficult to control. This results in the early onset of aggressive behaviors, an increase in behavior problems at home, and the continuation and escalation of problems with peers and teachers when the child reaches school age. Unless interrupted, antisocial behavior persists throughout the school career and on into adulthood. High risk converges in middle school and accelerates into adolescence. Risk is exacerbated by exposure to negative peer pressure and a noxious environment where few protective factors are available. This, in turn, increases the likelihood of interpersonal violence and other antisocial behavior, substance abuse and addiction, potential drug dealing, the emergence of disorders such as depression and anxiety, academic failure, risky sexual behaviors leading to increased risk for HIV and other sexually-transmitted diseases, and teen pregnancy.

The Safe Schools/Healthy Students Initiative draws on the best practices of the education, justice, social service, and mental health systems to promote a comprehensive, integrated framework for use by communities in planning, designing, and implementing programs to prevent school violence and youth alcohol and other drug use. This comprehensive framework includes: (1) Establishing school-community partnerships; (2) identifying and measuring the problem; (3) setting measurable goals and objectives; (4) identifying appropriate research-based programs and strategies; (5) implementing the programs and strategies in an integrated fashion; (6) evaluating the outcomes of the programs and strategies; and (7) revising the comprehensive plan on the basis of evaluation information.

The goal of the Safe Schools/Healthy Students Initiative is to help students develop the skills and emotional resilience necessary to promote positive mental health and engage in pro-social behavior, and, thereby prevent violent behavior and alcohol and other drug use to ensure that all students who attend the schools served by this initiative are able to learn in a safe, disciplined, and drug-free environment. Successful applicants will provide students, schools, and families within the targeted geographic area to be served a network of effective comprehensive services, supports, and activities that promote healthy development and safety.

Eligible Applicants: Local educational agencies.

The Secretary, with the Secretary of HHS and the Attorney General, will award approximately 50 grants in fiscal year 1999 to local educational agencies. To be eligible for funding applicants must:

(a) Demonstrate that they have developed a comprehensive, integrated, community-wide Safe Schools/Healthy Students Plan in partnership with, at a minimum, their local public mental health authority and law enforcement agency, students and members of their families, teachers, and juvenile justice officials, and that the plan addresses at least the following six elements:

(1) safe school environment;

(2) youth alcohol and drug prevention, violence prevention, and early intervention;

(3) school and community mental health preventive and treatment intervention services;

(4) early childhood psychosocial and emotional development services;

(5) educational reform; and

(6) safe school policies;

(b) Submit a written agreement signed by the school superintendent, the head of the local public mental health authority, and the chief law enforcement executive adopting the plan that describes (1) the goals and objectives of the partnership, and (2) a delineation of the roles and responsibilities of the partners;

(c) Submit a written agreement signed by the school superintendent and head of the local public mental health organization that describes the procedures the signatories will use for referral, treatment, and follow-up by the appropriate mental health system for children and adolescents with serious mental health problems;

(d) Provide a baseline assessment of risk factors among students and within the community, and resources and services available to students and their families, including:

(1) Risk factors among students such as the number of students engaged in alcohol and drug use and violent behavior; incidence and prevalence of alcohol and drug use by youth; weapon carrying or possessing in schools; incidents of serious and violent crime in schools; truancy and other unauthorized absences; suicidal behaviors; student suspensions and/or expulsions for drug use or violent behavior; students on probation; students in juvenile justice placements; students in foster care and child protective services; children abused and neglected; students with emotional and behavioral disorders; and data on school attendance and student academic performance.

(2) Community risk factors such as socioeconomic conditions as measured by the percentage of families at or below the poverty level and the percentage of students receiving free and reduced cost meals at schools; population turnover; racial and ethnic heterogeneity; housing density; household composition; crime and delinquency rates, including domestic violence and rape; and suicide rates.

(3) Resources and services available to students and their families such as number of after-school programs; number of youth served by programs to build social skills; number and quality of community mental health and social service organizations available to provide services to children, adolescents, and families; number of youth participating in academic readiness programs; number and types of early intervention services and programs; number and types of law enforcement prevention programs; number of substance abuse programs, and presence of a community anti-drug coalition.

(e) Agree to participate in a national evaluation of the Initiative that will collect data on student risk indicators and outcomes of the program(s) implemented across sites on an annual basis.

(f) Provide a local plan for evaluating the community-wide strategy and agree to set aside sufficient funds (not less than 5 percent of the project budget) to fund a local evaluator to assist with a range of evaluation activities.

(g) In the comprehensive plan, provide for mental health services for all students.

(h) Show that Federal regulations regarding possession of firearms and reporting of firearm offenses to appropriate law enforcement officials and regulations regarding tobacco use are being enforced.

In making awards under this grant program, the Secretary, with the Secretary of HHS and the Attorney General, may (1) take into consideration the geographic distribution and diversity of activities addressed by the projects, in addition to the rank order of applicants, and (2) in accordance with Section 75.217(d) of the Education Department General Administrative Regulations, ensure equitable distribution of grants under this program among urban, suburban, and rural LEAs.

Contingent upon the availability of funds, the Secretary, with the Secretary of HHS and the Attorney General, may make additional awards in fiscal year 2000 from the rank-ordered list of unfunded applicants from this competition.

Note: This notice of final priority and selection criteria does not solicit applications. A notice inviting applications under this competition is published in a separate notice in this issue of the **Federal Register**.

Applications for this competition must be received at the address specified in the notice inviting applications for this competition no later than 5 p.m. on June 1, 1999. Applications received after that time will not be eligible for funding. Postmarked dates will not be accepted.

Absolute Priority

Under 34 CFR 75.105(c)(3), the Safe and Drug-Free Schools and Communities Act, and the Omnibus Consolidated and Emergency Supplemental Appropriation Act of 1999, Public law 105–277, enacted October 21, 1998, the Secretary, with the Secretary of HHS and the Attorney General, gives an absolute preference to applications that meet the following priority.

Absolute Priority—Enhancing and implementing comprehensive community-wide strategies for creating safe and drug-free schools and promoting healthy childhood development.

Applicants proposing a project under this priority must demonstrate how the funds they are requesting support or enhance a comprehensive, integrated strategy for an entire school district. In circumstances where implementation of the strategy for an entire school district is not possible, applicants must provide a full explanation of how the chosen schools will receive all 6 elements of the plan, and why district-wide implementation is not feasible or appropriate.

Selection Criteria

The Secretary, with the Secretary of HHS and the Attorney General, uses the following selection criteria to evaluate applications for new grants under this competition.

The maximum total score for all of these criteria is 100 points.

The maximum score for each criterion or factor under that criterion is indicated in parentheses.

(a) *Problem(s) to be addressed (20 points).*

In assessing the extent to which the application is based on a clear and accurate statement of a significant problem faced by the target community, the following factors are considered. (Note: Applicants from Federal Empowerment Zones or Enterprise Communities will have five points added to their score under this criterion, with the total number of points awarded not to exceed 20).

(1) The magnitude or severity of the problem(s) to be addressed by the proposed strategy.

(2) The extent to which existing gaps in services and resources exist, the magnitude of those gaps and weaknesses, and the extent to which the community is ready to improve current conditions.

(3) The factual basis for the problem statement based on data including, at a minimum but not limited to, the rates of the following:

—students engaged in alcohol and drug use and violent behavior;
—incidence and prevalence of alcohol and drug use among youth;
—weapon carrying or possessing in schools;
—incidents of serious and violent crime in schools;
—truancy and other unauthorized absences;
—suicidal behaviors;
—student suspensions and expulsions;
—students on probation;
—students in juvenile justice placements;
—students in foster care and child protective services;
—children abused and neglected;
—students with emotional and behavioral disorders; and
—student attendance and academic performance data.

(4) Evidence of community risk factors including:

—socioeconomic conditions as measured by the percentage of families at or below the poverty level and percentage of students receiving free and reduced cost meals at school;

—population turnover;
—racial and ethnic heterogeneity;
—housing density;
—household composition;
—crime and delinquency rates including domestic violence and rape; and
—suicide rates.

(5) The extent to which the problem statement includes an assessment of the community resources available for children and adolescents, including:
—number of after-school programs;
—number of youth served by programs to build social skills;
—number and quality of community mental health and social service organizations available to provide services to children, adolescents, and families;
—number of youth participating in academic readiness programs;
—number and types of early intervention services and programs;
—number and types of law enforcement prevention programs;
—number and quality of substance abuse prevention programs; and
—presence of a community anti-drug coalition.

(b) *Goals and objectives (10 points).*

In assessing the goals and objectives of the proposed comprehensive plan, the following factors are considered.

(1) The extent to which the goals and objectives for the proposed strategy are clearly defined, measurable, and attainable.

(2) The extent to which the proposed strategy will meet the established goals and objectives and lead to healthy childhood development and positive mental health, and safe, disciplined, and alcohol and drug-free learning environments.

(3) The extent to which the objectives identified are related to measurable action steps needed to achieve the goal(s).

(c) *Design of Proposed Strategy (30 points).*

In assessing the design of the proposed strategy, the following factors are considered. (Note: Ten of the 30 points available for this criterion will be awarded for item 9, extent to which activities/interventions are evidence-based, for those strategies that propose activities under program elements 2,3, and/or 4 of the comprehensive plan.)

(1) The extent to which the proposed strategy represents a comprehensive network in which each element of the Safe Schools/Healthy Students Initiative is addressed and incorporated in an integrated fashion;

(2) The extent to which the intervention is appropriate for the age and developmental levels, gender, and ethnic and cultural diversity of the target population;

(3) The extent to which the application clearly describes the programs, activities, and services that comprise the proposed strategy;

(4) The extent to which the application demonstrates a linkage between program activities and objectives of the strategy;

(5) The adequacy of the identified performance measures to demonstrate whether and to what extent the proposed strategy is meeting its short-term, intermediate, and long-term objectives;

(6) The extent to which the proposed strategy will be coordinated with similar or related efforts and will establish linkages with other appropriate agencies and organizations providing services to the target population including community, State, and Federal resources.

(7) Adequacy and appropriateness of the plan to collect data related to violence from a variety of sources such as mental health services, social services, schools, law enforcement agencies, and the juvenile justice system.

(8) The potential for continued support of the strategy after Federal funding ends, including, as appropriate, the demonstrated commitment of appropriate entities to such support.

(9) The extent to which the activities/interventions proposed under program elements 2, 3, and/or 4 of the comprehensive plan are evidence-based; that is, they have a solid base of research evidence demonstrating effectiveness. (10 points)

(10) The extent to which the program is adequately documented so that both the process and positive outcome can be easily replicated.

(11) The extent to which the program selected is designed to help meet the goals and objectives of the community's comprehensive plan.

(d) (*Evaluation Plan (10 points)*

In determining the quality of the evaluation plan, the following factors will be considered:

(1) The extent to which the plan provides information for increasing the effectiveness of management and administration of the comprehensive plan, documents that objectives have been met, and determines the overall effectiveness of the plan, its programs, and strategies.

(2) The extent to which the methods of evaluation are thorough, feasible, and appropriate to the goals, objectives, and outcomes of the proposed strategy.

(3) The extent to which the methods of evaluation will provide timely guidance for quality assurance.

(e) *Management and Organizational Capability (20 points).*

In determining the quality of management and organizational capability, the following factors are considered:

(1) The level of commitment proposed by the written agreements signed by the school superintendent, the head of the local public mental health authority, and the chief law enforcement executive, as well as written agreements with other community partners.

(2) The relevance and demonstrated commitment of each partner in the proposed strategy to the implementation and success of the strategy.

(3) The adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks.

(4) The adequacy of procedures for communicating and sharing information among all partners to ensure feedback and continuous improvement in the operation of the strategy.

(5) The skills, experience, time commitments, and educational requirements of key staff and relevance of the objectives of the proposed strategy.

(6) The extent to which staff and the training of those staff reflect the needs of the population to be served.

(f) *Budget (10 points).*

In determining the quality of the budget, the following factors will be considered:

(1) The extent to which the costs are reasonable in relation to the number of students to be served and to the anticipated benefits and results; and

(2) The extent to which fiscal control and accounting procedures will ensure prudent use, proper and timely disbursement and accurate accounting of funds received under the grant.

Waiver of Proposed Rulemaking

It is the Secretary's practice, in accordance with the Administrative Procedure Act (5 U.S.C. 553), to offer interested parties the opportunity to comment on proposed rules. Section 437(d)(1) of the General Education Provisions Act (GEPA), however, exempts from this requirement rules that apply to the first competition under a new or substantially revised program. Funding was provided for this new initiative in the fiscal year 1999 appropriations act enacted October 21, 1998. The Secretary, in accordance with

section 437(d)(1) of GEPA, has decided to forego public comment in order to ensure timely grant awards.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 (Intergovernmental Review of Federal Programs) and the regulations in 34 CFR Part 79. The objective of the Executive order is to foster an intergovernmental partnership and to strengthen federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Federal Departments' specific plans and actions for this program.

Electronic Access to This Document

Anyone may view this document on the World Wide Web at the following sites:

http://ocfo.ed/gov/fedreg.htm
http://www.ed.gov/OESE/SDFS
http://www.ojjdp.ncjrs.org
http://www.usdoj.gov/cops
http://www.samhsa.gov
http://www.mentalhealth.org

Note: The official version of this document is the document published in the **Federal Register**.

Dated: March 25, 1999.

Judith Johnson,

Acting Assistant Secretary, Office of Elementary and Secondary Education.

Shay Bilchik,

Administrator, Office of Juvenile Justice and Delinquency Prevention.

Joseph Brann,

Director, Office of Community Oriented Policing Services.

Nelba Chavez,

Administrator, Substance Abuse and Mental Health Services Administration.

(Catalog of Federal Domestic Assistance Number 84.184L, Safe and Drug-Free Schools and Communities Act National Programs—Federal Activities Grants Program.)

[FR Doc. 99–7943 Filed 3–31–99; 8:45 am]

BILLING CODE 4000–01–U

DEPARTMENT OF EDUCATION

Office of Elementary and Secondary Education

DEPARTMENT OF JUSTICE

Office of Juvenile Justice and Delinquency Prevention

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Office of Juvenile Justice and Delinquency Prevention; Center for Mental Health Services; Safe and Drug-Free Schools and Communities National Programs; Federal Activities Grant Program—Safe School/Healthy Students Initiative; Notice Inviting Applications for New Awards for Fiscal Year 1999

Purpose of Program: To fund the implementation and enhancement of comprehensive community-wide strategies for creating safe and drug-free schools and promoting healthy childhood development.

Eligible Applicants: Local educational agencies.

Applications Available: April 1, 1999.

Deadline for Receipt of Applications: June 1, 1999.

Note: All applications must be received by 5 p.m. Eastern Time on or before the deadline date. Applications received after that time will not be eligible for funding. Postmarked dates will not be accepted. Applications by mail should be sent to: OJJDP, c/o Juvenile Justice Resource Center, 2277 Research Blvd, Mail Stop 2K, Rockville, MD 20850; (301) 519–5535.

Deadline for Intergovernmental Review: July 31, 1999.

Available Funds: $180,000,000.

Estimated Average Size of Awards: Up to $3 million for LEAs in urban areas; up to $2 million for LEAs in suburban areas; up to $1 million for LEAs in rural area or tribal schools.

Estimated Number of Awards: 50.

Note: The Departments of Education, Justice, and Health and Human Services are not bound by any estimates in this notice.

Project Period: Up to 36 months.

Applicable Regulations:

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, 98, and 99; and

(b) The Notice of final priority and selection criteria for FY 1999 published elsewhere in this issue of the **Federal Register**.

For Applications or Information Contact:

Electronic access to this document and the application package is available at:

http://ocfo.ed.gov/fedreg.htm
http://www.ed.gov/offices/OESE/SDFS
http://www.ojjdp.ncjrs.org
http://www.usdoj.gov/cops
http://www/samhsa.gov
http:/www.mentalhealth.org

To request a copy of the application package by mail, call 800–638–8736, select Option 2 and ask for SL 336, Safe Schools/Healthy Students Initiative Application Package. To request the application via Fax-on-Demand (available 24 hours a day, seven days a week), call 800–638–8736, select Option 1, select Option 2, and follow instructions to enter the following 4 digit numbers:

9081, Safe Schools/Healthy Students Instructions and Checklist;

9082, Safe Schools/Healthy Students Program Announcement and Appendices.

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Individuals with disabilities may obtain this document in an alternative formation (e.g. Braille, large print, audio tape, or computer diskette) upon request to the contact listed above. However, the Departments of Education, Justice, and Health and Human Services are not able to reproduce in an alternative format the standard forms included in the application package.

Note: The official version of this document is the document published in the **Federal Register**. Program Authority: 20 U.S.C. 7131 and the Omnibus Consolidated and Emergency Supplemental Appropriation Act of 1999, Public Law 105–277, enacted October 21, 1998.

Dated: March 25, 1999.

Judith Johnson,

Acting Assistant Secretary, Office of Elementary and Secondary Education.

Shay Bilchik,

Administrator, Office of Juvenile Justice and Delinquency Prevention.

Joseph Brann,

Director, Office of Community Oriented Policing Services.

Nelba Chavez,

Administrator, Substance Abuse and Mental Health Services Administration.

(Catalogue of Federal Domestic Assistance Number 84.184L, Safe and Drug-Free Schools and Communities Act National Programs—Federal Activities Grants Program.)

[FR Doc. 99–7944 Filed 3–31–99; 8:45 am]

BILLING CODE 4000–01–U

VOL
64
ISS
62
AP
1
1999
UMI

federal register

Thursday
April 1, 1999

Part IV

Department of Transportation

Federal Aviation Administration

14 CFR Part 91

Pilot Responsibility for Compliance With Air Traffic Control Clearances and Instructions; Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 91

Pilot Responsibility for Compliance With Air Traffic Control Clearances and Instructions

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Interpretive rule.

SUMMARY: Pilots operating in areas in which air traffic control is exercised are required by regulation to comply with the clearances and instructions of air traffic controllers except in very narrow circumstances. The FAA has consistently construed and enforced this requirement as ascribing to pilots a high level of responsibility to monitor air traffic control communications attentively. Under normal circumstances, the FAA has expected pilots to understand and to comply with clearly transmitted and reasonably phrased clearances and instructions that govern their operations. Nevertheless, a series of recent National Transportation Safety Board (NTSB) enforcement decisions has raised a question regarding the regulatory responsibility of pilots to hear and to comply with air traffic control clearances and instructions. This interpretive rule confirms the FAA's historical construction of its regulations that require compliance with air traffic control clearances and instructions.

EFFECTIVE DATE: This document is effective March 26, 1999.

FOR FURTHER INFORMATION CONTACT: Eric Harrell, Air Traffic Operations Program, ATO–100, Federal Aviation Administration, 800 Independence Avenue, SW, Washington, DC 20591, (202) 267–9155 or James Tegtmeier, Office of the Chief Counsel, AGC–300, Federal Aviation Administration, 800 Independence Avenue, SW, Washington, DC 20591, (202) 267–3137.

SUPPLEMENTARY INFORMATION:

History

The FAA's general operating and flight rules require pilots to comply with the clearances and instructions of air traffic control, unless they are amended, except in an emergency or in response to a traffic alert and collision avoidance system resolution advisory. Although a number of aviation regulations are based on this requirement, the general responsibility of pilots to comply with air traffic control clearances and instructions is presently located at 14 CFR 91.123 (a) and (b). Aviation regulations according the same responsibility as section 91.123 have existed in similar terms for many decades.

As a practical matter, air traffic control communications rely heavily on accurate verbal radio communication. As a result, the FAA has long considered that aviation safety requires air traffic control to function as a cooperative system, in which all participants must share the responsibility for accurate communication. In the FAA's view, the duty of pilots and air traffic controllers alike is adherence to a high standard in communicating clearly, listening attentively, and understanding reasonably.

Bearing in mind these shared responsibilities, when a miscommunication or misunderstanding occurs, the FAA deems responsible the participant who is the initiating or principal cause of the error. For example, the use of unclear terminology, a failure to hear accurately, or a failure to understand a clear transmission can be the initiating or principal cause of a miscommunication. An example in which an air traffic controller's role excuses the pilot might arise from the controller's issuance of an ambiguous clearance or use of misleading terminology that reasonably causes the pilot's misunderstanding. An example in which neither air traffic control nor the pilot is to blame for a miscommunication might exist when the aircraft's radio fails.

With respect to the level of attention and comprehension expected of pilots, an interpretation of a regulatory predecessor to 14 CFR 91.123 was published with the regulation from 1955 through 1962.[1] This interpretation reflects an expectation that pilots will pay particular attention to the transmissions of air traffic control, because air traffic controllers frequently must issue clearances that differ from those that pilots anticipate.

It is important that pilots pay particular attention to the air traffic clearance and not assume that the route and altitude are the same as requested in the flight plan. It is suggested that pilots make a written record of clearances at the time they are received [] and verify the clearance with Air Traffic Control if any doubt exists.

This interpretative language captures the general responsibility of pilots to remain attentive to the content of air traffic control transmissions, as well as the duty of pilots to resolve any confusion they perceive by contacting air traffic control. The FAA's codification of the latter aspect of these responsibilities currently appears in 14 CFR 91.123(a), which requires pilots to request clarification in the event that they are uncertain about an air traffic control clearance or instruction.

With respect to the more general duty of pilots to remain attentive to and to comprehend air traffic control transmissions, the FAA considers responsibility to hinge on the circumstances. It is air traffic control's practice not to presume that a pilot has received a clearance or instruction unless the pilot first acknowledges receipt of the radio transmission. When a clearance or instruction is issued and acknowledged but the pilot nevertheless fails to comply with the transmission, the FAA construes its regulations to indicate pilot responsibility where neither air traffic control involvement nor a mechanical problem causes the pilot's lapse. Thus, when air traffic control transmits a clearance or instruction that is properly acknowledged and there is no evidence of radio malfunction or similar interference with receipt, the FAA presumes that the radio transmission is received in the aircraft cockpit. Based on the pilot's duty to listen attentively to air traffic control transmissions and to construe them reasonably, if a clearance or instruction is reasonably phrased and received in the cockpit, the pilot's failure to hear or to understand it is the result of the pilot's negligence.

In reviewing the FAA's enforcement of FAA regulations, the NTSB has historically agreed with the FAA's construction of the air traffic control regulations. In *Administrator* v. *Wolfenbarger*, for example, an NTSB administrative law judge dismissed the FAA's allegation that a pilot did not comply with an air traffic control instruction to stop his aircraft short of the active runway. Noting that the pilot's radios were working and that air traffic control's radio transmissions were being broadcast, the NTSB granted the FAA's appeal.

Whether radio frequencies are mis-selected, whether a pilot does not hear because his attention is elsewhere, or whether he hears a transmission but chooses to ignore it, is irrelevant. * * * As the Administrator points out * * *, the law judge's construction (that a pilot might excusably miss an air traffic control transmission without reason) would lead to avoidance of all (air traffic control) instruction violations simply by claiming that they were not received. Not only is this

[1] 20 FR 2512, 2523 & n.3 (1955) (promulgating 14 CFR 60.21–1); *see, e.g.*, 14 CFR 60.21–1 n.3 (1962).

a strained reading, but it is inconsistent with our prior interpretation of the rule.[2] Similarly, in *Administrator* v. *Nelson*, the NTSB agreed that the text of an air traffic control clearance supported the conclusion that the pilot did not exercise the high level of care and attention expected of him when he mistakenly took a clearance, because it was directed to another aircraft. Although a portion of the clearance may have been blocked and therefore not received by the pilot, the NTSB found that the pilot should not have construed the clearance to be directed to his aircraft.[3]

Related to the responsibilities of pilots and air traffic controllers in conducting radio communications, the NTSB has added to a pilot's full and complete readback—or verbal repetition—of an air traffic control clearance or instruction offers a level of redundancy that reduces the risk of miscommunication.[4] At the same time, the NTSB acknowledged that FAA regulations do not require pilots to give a full and complete readback. The NTSB observed that there is concern that full readbacks can lead to the congestion of radio frequencies and in some instances disserve air safety.[5]

Nevertheless, when pilots incorrectly repeat air traffic control transmissions, the NTSB's apparent preference for full readbacks has led to two inconsistent lines of case law. The first line of NTSB reasoning generally accords with the FAA's interpretation of FAA regulations. In these cases, the NTSB concludes that an air traffic controller's failure to identify and to correct a pilot's erroneous readback contributes to the pilot's error and warrants a mitigation of the sanction for the pilot's regulatory violation.[6]

A second line of NTSB decisions, which diverges from the FAA's longstanding construction of FAA regulations, suggests that providing a readback will excuse the pilot even if the pilot is the initiating or principal cause of a miscommunication. In *administrator* v. *Frohmuth*, the NTSB appeared to base its decision on a finding the air traffic controller initiated and then supported the two pilots' misunderstanding.[7] In language not directly required for its legal conclusion, the NTSB added that the pilots' full readback placed responsibility to correct the error on air traffic control.[8] Regardless, the NTSB acknowledged the importance of pilots' careful attention to air traffic control transmissions and specified that pilots will, as a general rule, be held responsible for their mistakes.[9]

Despite the limiting language in *Frohmuth*, the NTSB recast the decision the following year in *Administrator* v. *Atkins*, developing a line of reasoning that does not hold pilots responsible for the errors that they initiate.

> (In *Frohmuth*), we clarified [our] precedent by explaining that even if a deviation from a clearance is initiated by an inadvertent mistake on the pilot's part, that mistake will be excused and no violation will be found if, after the mistake, the pilot takes actions that, but for [air traffic control], would have exposed the error and allowed for it to be corrected.[10]

The NTSB expanded this reasoning to excuse pilots based on certain partial readbacks in its decision in *Administrator* v *Rolund*.[11] In *Rolund*, the NTSB accepted that a pilot, without explanation, did not hear the altitude portion of his clearance, although he correctly read back another portion of the clearance.[12] The NTSB excused the pilot from responsibility despite his failure to provide a full and complete readback, concluding that the air traffic controller should have questioned the pilot about the part of the clearance that the pilot failed to read back.[13]

More recently, in *Administrator* v *Merrell*, the NTSB excused a miscommunication for which the pilot was the initiating or principal cause due to an unexplained "error of perception," resulting in the pilot's acceptance of a clearance for another aircraft and a loss of separation between two commercial flights.[14] The NTSB agreed that the pilot's unexplained error caused the miscommunication and also seemingly agreed that there was no prior or subsequent air traffic control contribution to the pilot's error.[15] The NTSB excused the pilot's error based on his readback, although the pilot's readback was blocked by another radio transmissions and could not have been received and corrected by air traffic control.[16]

The NTSB's line of reasoning originating in *Frohmuth* and presently culminating in *Merrell*, in effect, substitutes a duty to provide a full or, in some cases, a partial readback for a pilot's duty to listen carefully to and understand reasonably the air traffic control transmissions received in his or her aircraft. The NTSB's interpretation does not correspond to the FAA's construction of FAA regulations and requires correction.

Interpretation

The NTSB's *Frohmuth*-based line of decisions deviates from an accurate construction of the FAA's regulations governing air traffic control communications. These FAA regulations require pilots to comply with air traffic control clearances and instructions. Contrary to the NTSB's reasoning, pilots do not meet this regulatory imperative by offering a full and complete readback or by taking other action that would tend to expose their error and allow for it to be corrected. Readbacks are a redundancy in that they supply a check on the exchange of information transmitted through the actual clearance or instruction. Full and complete readbacks can benefit safety when the overall volume of radio communications is relatively light; however, they can be detrimental during periods of concentrated communications.

Giving a full readback of an air traffic control transmission could result in the mitigation of sanction for a regulatory violation when the air traffic controller, under the circumstances, reasonably should correct the pilot's error but fails to do so. Accordingly, the FAA may take this factor into consideration in setting the amount of sanction in FAA enforcement orders. However, the simple act of giving a readback does not shift full responsibility to air traffic control and cannot insulate pilots from their primary responsibility under 14 CFR 91.123 and related regulations to listen attentively, to hear accurately, and to construe reasonably in the first instance.

---

[2] *Wolfenbarger*, No. EA–3684, 1992 WL 289055, at *3 (N.T.S.B. Oct. 8, 1992) (citation omitted).

[3] *Nelson*, 2 N.T.S.B. at 1900, 1902 (1975).

[4] *See, e.g., Administrator* v. *Hinkle*, 5 N.T.S.B. 2423, 2425–26 (1987).

[5] *Hinkle*, 2 N.T.S.B. at 2426.

[6] *See Administrator* v. *Swafford*, No. EA–4117, 1994 WL 108069, at *2–3 (N.T.S.B. Mar. 31, 1994) (reversing the administrative law judge's initial decision dismissing the FAA's complaint, reinstating two pilots' regulatory violations, and reducing the sanction for the violations).

[7] No. EA–3816, 1993 WL 75479, at *2 (N.T.S.B. Mar. 18, 1993).

[8] *Frohmuth*, No. EA–3816, 1993 WL 75479, at *2–3.

[9] *Frohmuth*, No. EA–3816, 1993 WL 75479, at *2.

[10] *Atkins*, No. EA–4078, 1994 WL 49589, at *2 (N.T.S.B. Feb. 16, 1994).

[11] No. EA–4123, 1994 WL 132539, (N.T.S.B. Apr. 8, 1994) (order denying reconsideration), *aff'd*, 57 F.3d 1144 (D.C. Cir. 1995).

[12] *Rolund*, No. EA–4123, 1994 WL 132539, at *2.

[13] *Rolund*, No. EA–4123, 1994 WL 132539, at *2.

[14] No. EA–4530, 1997 WL 335741, at *2 (N.T.S.B. Mar. 12, 1997), *recon. denied*, No. EA–4670, 1998 WL 309790 (N.T.S.B. June 11, 1998), *petition for review docketed*, No. 98–1365 (D.C. Cir. Aug. 7, 1998).

[15] *Merrell*, No. EA–4530, 1997 WL 335741, at *2; *Merrell*, No. EA–4670, 1998 WL 309790, at *1 & 3 n.4.

[16] *Merrell*, No. EA–4530, 1997 WL 335741, at *1, 2; *Merrell*, No. EA–4670, 1998 WL 309790, at *1 & 3 n.4.

Economic Considerations

This interpretation is not a change to the subject regulation that must undergo the economic analyses prescribed in Executive Order 12866 or the Regulatory Flexibility Act of 1980. It is not "a significant regulatory action" as defined in the Executive Order or the Department of Transportation Regulatory Policies and Procedures. This interpretive rule will not have a significant impact on a substantial number of small entities and will not constitute a barrier to international trade. Because this interpertive rule merely provides the correct interpretation of a regulation as the FAA has enforced it, it does not impose a separate economic impact, and no further economic evaluation is warranted.

Issued in Washington, DC, on March 26, 1999.

Jane F. Garvey,

Administrator.

[FR Doc. 99–8081 Filed 3–31–99; 8:45 am]

BILLING CODE 4910–13–M

Reader Aids

Federal Register

Vol. 64, No. 62

Thursday, April 1, 1999

CUSTOMER SERVICE AND INFORMATION

Federal Register/Code of Federal Regulations	
General Information, indexes and other finding aids	202–523–5227
Laws	523–5227
Presidential Documents	
Executive orders and proclamations	523–5227
The United States Government Manual	523–5227
Other Services	
Electronic and on-line services (voice)	523–4534
Privacy Act Compilation	523–3187
Public Laws Update Service (numbers, dates, etc.)	523–6641
TTY for the deaf-and-hard-of-hearing	523–5229

ELECTRONIC RESEARCH

World Wide Web

Full text of the daily Federal Register, CFR and other publications:

http://www.access.gpo.gov/nara

Federal Register information and research tools, including Public Inspection List, indexes, and links to GPO Access:

http://www.nara.gov/fedreg

E-mail

PENS (Public Law Electronic Notification Service) is an E-mail service that delivers information about recently enacted Public Laws. To subscribe, send E-mail to

listproc@lucky.fed.gov

with the text message:

subscribe publaws-l <firstname> <lastname>

Use listproc@lucky.fed.gov only to subscribe or unsubscribe to PENS. We cannot respond to specific inquiries at that address.

Reference questions. Send questions and comments about the Federal Register system to:

info@fedreg.nara.gov

The Federal Register staff cannot interpret specific documents or regulations.

FEDERAL REGISTER PAGES AND DATES, APRIL

15633–15914..... 1

CFR PARTS AFFECTED DURING APRIL

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT APRIL 1, 1999

AGENCY FOR INTERNATIONAL DEVELOPMENT
Organization, functions, and authority delegations:
Executive agency status; published 4-1-99

ARMS CONTROL AND DISARMAMENT AGENCY
Repeal of CFR regulations; published 4-1-99

COMMERCE DEPARTMENT
National Oceanic and Atmospheric Administration
Marine mammals:
Commercial fishing operations; incidental taking—
Atlantic large whale take reduction plan; published 2-16-99

EDUCATION DEPARTMENT
Postsecondary education:
Gaining Early Awareness and Readiness for Undergraduate Programs; published 3-2-99

FEDERAL DEPOSIT INSURANCE CORPORATION
Deposit insurance coverage:
Joint accounts and payable-on-death accounts; published 4-1-99
Risk-based capital:
Construction loans on presold residential properties, junior liens on 1- to 4-family residential properties, etc.; published 3-2-99

FEDERAL LABOR RELATIONS AUTHORITY
Negotiability proceedings; meetings; published 12-2-98

FEDERAL RESERVE SYSTEM
Availability of funds and collection of checks (Regulation CC):
Software changes related to mergers; time to implement; published 3-26-99
Risk-based capital:
Construction loans on presold residential properties, junior liens on 1- to 4-family residential properties, etc.; published 3-2-99

GENERAL SERVICES ADMINISTRATION
Federal travel:
Privately owned automobile mileage reimbursement; published 3-31-99

HEALTH AND HUMAN SERVICES DEPARTMENT
Food and Drug Administration
Animal drugs, feeds, and related products:
New drug applications—
Dinoprost tromethamine sterile solution; published 4-1-99
Sponsor names and drug labeler codes, etc.; technical amendments; published 4-1-99
Sulfadimethoxine tablets and boluses; technical amendment; published 4-1-99
Biological products:
Pediatric studies requirements; safety and effectiveness of drugs and biological products for children; published 12-2-98

LABOR DEPARTMENT
Federal Contract Compliance Programs Office
Affirmative action and nondiscrimination obligations of contractos:
Individuals with disabilities; special disabled veterans; published 4-1-99

PENSION BENEFIT GUARANTY CORPORATION
Single-employer plans:
Allocation of assets—
Interest assumptions for valuing benefits; published 3-15-99

TRANSPORTATION DEPARTMENT
Coast Guard
Drawbridge operations:
Florida; published 3-2-99

TREASURY DEPARTMENT
Comptroller of the Currency
Risk-based capital:
Construction loans on presold residential properties, junior liens on 1- to 4-family residential properties, etc.; published 3-2-99

TREASURY DEPARTMENT
Thrift Supervision Office
Consumer credit classified as loss, slow consumer credit, and slow loans; definitions removed; published 2-10-99
Risk-based capital:
Construction loans on presold residential properties, junior liens on 1- to 4-family residential properties, etc.; published 3-2-99
Savings associations:
Capital distributions; published 1-19-99

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT
Animal and Plant Health Inspection Service
Plant-related quarantine, domestic:
Karnal bunt disease—
Regulated areas reclassification; comments due by 4-8-99; published 3-9-99

AGRICULTURE DEPARTMENT
Federal Crop Insurance Corporation
Crop insurance regulations:
Onions; comments due by 4-5-99; published 2-18-99

AGRICULTURE DEPARTMENT
Food Safety and Inspection Service
Meat and poultry inspection:
Inspection services; fee increase; comments due by 4-5-99; published 3-4-99

COMMERCE DEPARTMENT
Economic Development Administration
Economic Development Reform Act of 1998; implementation; comments due by 4-5-99; published 2-3-99

COMMERCE DEPARTMENT
Export Administration Bureau
Export licensing:
Commerce control list—
Missile technology controls changes; comments due by 4-9-99; published 2-8-99

COMMERCE DEPARTMENT
International Trade Administration
North American Free Trade Agreement (NAFTA); binational panel reviews:
Circular welded non-alloy steel pipe and tube from—
Mexico; comments due by 4-5-99; published 1-6-99

COMMERCE DEPARTMENT
National Oceanic and Atmospheric Administration
Fishery conservation and management:
West Coast States and Western Pacific fisheries—
West Coast salmon; comments due by 4-5-99; published 3-4-99

COMMODITY FUTURES TRADING COMMISSION
Reporting requirements:
Large trader reports; reporting levels changes; comments due by 4-5-99; published 2-3-99

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE
Privacy Act; implementation; comments due by 4-5-99; published 3-5-99

ENERGY DEPARTMENT
Federal Energy Regulatory Commission
Electric utilities (Federal Power Act):
Open access same-time information systems (OASIS) and standards of conduct; implementation
Uniform business practices; comments due by 4-5-99; published 2-3-99

ENVIRONMENTAL PROTECTION AGENCY
Air pollutants, hazardous; national emission standards:
Polymer and resin production facilities (Groups I and IV) and volatile organic compound (VOC) emissions from polymer manufacturing industry; comments due by 4-8-99; published 3-9-99
Polymer and resin √2√production facilities (Groups I and IV) and volatile organic compound (VOC) emissions from polymer manufacturing industry; comments due by 4-8-99; published 3-9-99
Air pollution control; new motor vehicles and engines:
New nonroad spark-ignition engines at or below 19 kilowatts; phase 2 emission standards; comments due by 4-5-99; published 2-3-99
Air quality implementation plans; approval and promulgation; various States:

Connecticut; comments due by 4-9-99; published 3-10-99

Air quality implementation plans; √A√approval and promulgation; various States; air quality planning purposes; designation of areas:

Colorado; comments due by 4-9-99; published 3-10-99

Connecticut; comments due by 4-9-99; published 3-10-99

Hazardous waste:

Identification and listing—

Exclusions; comments due by 4-5-99; published 2-19-99

Superfund program:

Toxic chemical release reporting; community-right-to-know—

Persistent bioaccumulative toxic (PBT) chemicals; reporting thresholds lowered, etc.; comments due by 4-7-99; published 3-1-99

Water programs:

Pollutants analysis test procedures; guidelines—

Mercury; measurement method; comments due by 4-5-99; published 3-5-99

FARM CREDIT ADMINISTRATION

Freedom of Information Act; implementation; comments due by 4-7-99; published 3-8-99

FEDERAL COMMUNICATIONS COMMISSION

Radio services, special:

Personal radio services—

Medical implant communications service in 402-405 MHz band; establishment; comments due by 4-9-99; published 3-3-99

Radio stations; table of assignments:

California; comments due by 4-5-99; published 2-23-99

Colorado; comments due by 4-5-99; published 2-23-99

Illinois; comments due by 4-5-99; published 2-23-99

Iowa; comments due by 4-5-99; published 2-23-99

Kansas; comments due by 4-5-99; published 2-23-99

Kentucky; comments due by 4-5-99; published 2-23-99

Montana; comments due by 4-5-99; published 2-23-99

Pennsylvania; comments due by 4-5-99; published 2-23-99

Texas; comments due by 4-5-99; published 2-23-99

West Virginia; comments due by 4-5-99; published 2-23-99

Wyoming; comments due by 4-5-99; published 2-23-99

FEDERAL ELECTION COMMISSION

Freedom of Information Act; implementation; comments due by 4-5-99; published 3-4-99

HEALTH AND HUMAN SERVICES DEPARTMENT

Children and Families Administration

Head Start Program:

Authorization of use of grant funds to finance construction and major renovation of facilities; comments due by 4-9-99; published 2-8-99

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration

Food for human consumption:

Food labeling—

Dietary supplements; use of health claims based on authoritative statements; comments due by 4-6-99; published 1-21-99

Medical devices:

External penile rigidity devices; proposed classification; comments due by 4-5-99; published 1-4-99

INTERIOR DEPARTMENT

Land Management Bureau

Minerals management:

Oil and gas leasing—

Federal oil and gas resources; protection against drainage by operations on nearby lands resulting in lower royalties from Federal leases; correction; comments due by 4-5-99; published 1-13-99

INTERIOR DEPARTMENT

Surface Mining Reclamation and Enforcement Office

Permanent program and abandoned mine land reclamation plan submissions:

Indiana; comments due by 4-9-99; published 2-8-99

LEGAL SERVICES CORPORATION

Audit services:

Debarment, suspension, and removal of recipient auditors; comments due by 4-6-99; published 2-5-99

POSTAL SERVICE

Domestic Mail Manual:

Flat-size periodicals and standard mail; packaging material standards; comments due by 4-8-99; published 3-9-99

SECURITIES AND EXCHANGE COMMISSION

Securities:

Publication or submission of quotations without specified information; comments due by 4-7-99; published 3-8-99

Securities offerings, regulatory structure; modernization and clarification; comments due by 4-5-99; published 12-4-98

Takeovers and security holder communications; regulation modernization; comments due by 4-5-99; published 12-4-98

TRANSPORTATION DEPARTMENT

Disadvantaged business enterprise participation in DOT financial assistance programs; comments due by 4-5-99; published 2-2-99

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:

Allison Engine Co., Inc.; comments due by 4-5-99; published 2-4-99

Boeing; comments due by 4-5-99; published 2-4-99

McDonnell Douglas; comments due by 4-8-99; published 2-22-99

Raytheon; comments due by 4-8-99; published 2-5-99

Textron Lycoming; comments due by 4-5-99; published 2-3-99

Class E airspace; comments due by 4-9-99; published 3-10-99

TRANSPORTATION DEPARTMENT

National Highway Traffic Safety Administration

American Automobile Labeling Act; implementation:

Motor vehicle content labeling; domestic and foreign parts content information; comments due by 4-9-99; published 2-8-99

Motor vehicle safety standards:

Air brake systems—

Air brake standard rulemaking petition; partial grant/partial denial; comments due by 4-5-99; published 2-3-99

TREASURY DEPARTMENT

Fiscal Service

Financial management services:

Federal payments by electronic funds transfer; access to accounts at financial institutions through payment service providers; comments due by 4-8-99; published 1-8-99

TREASURY DEPARTMENT

Internal Revenue Service

Income taxes:

Education tax credits; Hope scholarship credit and lifetime learning credit; guidance; comments due by 4-6-99; published 1-6-99

Fast-pay stock; recharacterizing financing arrangements; comments due by 4-6-99; published 1-6-99

TREASURY DEPARTMENT

Thrift Supervision Office

Regulated activities:

Exempt savings and loan holding companies and grandfathered activities; comments due by 4-9-99; published 2-8-99

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–523–6641. This list is also available online at http://www.nara.gov/fedreg.

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at http://www.access.gpo.gov/nara/index.html. Some laws may not yet be available.

H.R. 808/P.L. 106–5

To extend for 6 additional months the period for which

chapter 12 of title 11, United States Code, is reenacted. (Mar. 30, 1999; 113 Stat. 9)

Last List March 29, 1999

Public Laws Electronic Notification Service (PENS)

PENS is a free electronic mail notification service of newly enacted public laws. To subscribe, send E-mail to **listproc@lucky.fed.gov** with the text message:

subscribe PUBLAWS-L Your Name.

Note: This service is strictly for E-mail notification of new public laws. The text of laws is not available through this service. **PENS** cannot respond to specific inquiries sent to this address.

CFR ISSUANCES 1999
January 1999 Editions and Projected April, 1999 Editions

This list sets out the CFR issuances for the January 1999 editions and projects the publication plans for the **April, 1999** quarter. A projected schedule that will include the **July, 1999** quarter will appear in the first **Federal Register** issue of July.

For pricing information on available 1998–1999 volumes consult the CFR checklist which appears every Monday in the Federal Register.

Pricing information is not available on projected issuances. The weekly CFR checklist and the monthly List of CFR Sections Affected will continue to provide a cumulative list of CFR titles and parts, revision date and price of each volume.

Normally, CFR volumes are revised according to the following schedule:

Titles 1–16—January 1
Titles 17–27—April 1
Titles 28–41—July 1
Titles 42–50—October 1

All volumes listed below will adhere to these scheduled revision dates unless a notation in the listing indicates a different revision date for a particular volume.

Titles revised as of January 1, 1999:

Title	
CFR Index	700–899
	900–999
1–2 (Cover only)	1000–1199
	1200–1599
3 (Compilation)	1600–1899
	1900–1939
4 (Cover only)	1940–1949
	1950–1999
5 Parts:	2000–End
1–699	
700–1199	**8**
1200–End	
	9 Parts:
6 [Reserved]	1–199
	200–End
7 Parts:	
1–26	**10 Parts:**
27–52	1–50
53–209	51–199
210–299	200–499
300–399	500–End
400–699	
11	60–139
	140–199
12 Parts:	200–1199
1–199	1200–End
200–219	
220–299	**15 Parts:**
300–499	0–299
500–599	300–799
600–End	800–End
13	**16 Parts:**
	0–999
14 Parts:	1000–End
1–59	

Projected April 1, 1999 editions:

Title	
17 Parts:	
1–199	**24 Parts:**
200–239	0–199
240–End	200–499
	500–699
18 Parts:	700–1699
1–399	1700–End
400–End	
	25
19 Parts:	
1–140	**26 Parts:**
141–199	1 (§§ 1.0-1–1.60)
200–End	1 (§§ 1.61–1.169)
	1 (§§ 1.170–1.300)
20 Parts:	1 (§§ 1.301–1.400)
1–399	1 (§§ 1.401–1.440)
400–499	1 (§§ 1.441–1.500)
500–End (possible cover only)	1 (§§ 1.501–1.640) (possible cover only)
21 Parts:	1 (§§ 1.641–1.850)
1–99	1 (§§ 1.851–1.907)
100–169	1 (§§ 1.908–1.1000)
170–199	1 (§§ 1.1001–1.1400)
200–299	1 (§ 1.1401–End)
300–499	2–29
500–599	30–39
600–799	40–49
800–1299	50–299
1300–End	300–499
	500–599
22 Parts:	600–End
1–299	
300–End	**27 Parts:**
	1–199
23	200–End

TABLE OF EFFECTIVE DATES AND TIME PERIODS—APRIL 1999

This table is used by the Office of the Federal Register to compute certain dates, such as effective dates and comment deadlines, which appear in agency documents. In computing these dates, the day after publication is counted as the first day.

When a date falls on a weekend or holiday, the next Federal business day is used. (See 1 CFR 18.17)

A new table will be published in the first issue of each month.

DATE OF FR PUBLICATION	15 DAYS AFTER PUBLICATION	30 DAYS AFTER PUBLICATION	45 DAYS AFTER PUBLICATION	60 DAYS AFTER PUBLICATION	90 DAYS AFTER PUBLICATION
April 1	April 16	May 3	May 17	June 1	June 30
April 2	April 19	May 3	May 17	June 1	July 1
April 5	April 20	May 5	May 20	June 4	July 6
April 6	April 21	May 6	May 21	June 7	July 6
April 7	April 22	May 7	May 24	June 7	July 6
April 8	April 23	May 10	May 24	June 7	July 7
April 9	April 26	May 10	May 24	June 8	July 8
April 12	April 27	May 12	May 27	June 11	July 12
April 13	April 28	May 13	May 28	June 14	July 12
April 14	April 29	May 14	June 1	June 14	July 13
April 15	April 30	May 17	June 1	June 14	July 14
April 16	May 3	May 17	June 1	June 15	July 15
April 19	May 4	May 19	June 3	June 18	July 19
April 20	May 5	May 20	June 4	June 21	July 19
April 21	May 6	May 21	June 7	June 21	July 20
April 22	May 7	May 24	June 7	June 21	July 21
April 23	May 10	May 24	June 7	June 22	July 22
April 26	May 11	May 26	June 10	June 25	July 26
April 27	May 12	May 27	June 11	June 28	July 26
April 28	May 13	May 28	June 14	June 28	July 27
April 29	May 14	June 1	June 14	June 28	July 28
April 30	May 17	June 1	June 14	June 29	July 29

VOL 64 ISS 62 AP 1 1999 UMI

the

VOL
64
ISS
62
AP
1
1999
UMI

Printed on recycled paper

VOL
64
ISS
63
AP
2
1999
UMI

4–2–99
Vol. 64 N

UMI

THE PAPER AND INK USED IN THE ORIGINAL PUBLICATION MAY AFFECT THE QUALITY OF THE MICROFORM EDITION.

United Stat
Governmen
Printing Off
SUPERINTENDEN
OF DOCUMENTS
Washington, DC 2
OFFICIAL BUSINE
Penalty for private

4–2–99
Vol. 64 No. 63

federal register

Friday
April 2, 1999

United States
Government
Printing Office
SUPERINTENDENT
OF DOCUMENTS
Washington, DC 20402

OFFICIAL BUSINESS
Penalty for private use, $300

PERIODICALS
Postage and Fees Paid
U.S. Government Printing Office
(ISSN 0097–6326)

**********3-DIGIT 481
A FR UMI 346U DEC 99 R
UMI
PERIODICALS CHECK IN
PO BOX 1346
ANN ARBOR MI 48106

VOL
64
ISS
63
AP
2
1999
UMI

4-2-99
Vol. 64
Pages 159

4–2–99
Vol. 64 No. 63
Pages 15915–16332

federal register

Friday
April 2, 1999

Briefings on how to use the Federal Register
For information on briefings in Washington, DC, see announcement on the inside cover of this issue.

The **FEDERAL REGISTER** is published daily, Monday through Friday, except official holidays, by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). The Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 is the exclusive distributor of the official edition.

The **Federal Register** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders, Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress, and other Federal agency documents of public interest.

Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless the issuing agency requests earlier filing. For a list of documents currently on file for public inspection, see http://www.nara.gov/fedreg.

The seal of the National Archives and Records Administration authenticates the Federal Register as the official serial publication established under the Federal Register Act. Under 44 U.S.C. 1507, the contents of the **Federal Register** shall be judicially noticed.

The **Federal Register** is published in paper and on 24x microfiche. It is also available online at no charge as one of the databases on GPO Access, a service of the U.S. Government Printing Office.

The online edition of the **Federal Register** is issued under the authority of the Administrative Committee of the Federal Register as the official legal equivalent of the paper and microfiche editions (44 U.S.C. 4101 and 1 CFR 5.10). It is updated by 6 a.m. each day the **Federal Register** is published and it includes both text and graphics from Volume 59, Number 1 (January 2, 1994) forward.

GPO Access users can choose to retrieve online **Federal Register** documents as TEXT (ASCII text, graphics omitted), PDF (Adobe Portable Document Format, including full text and all graphics), or SUMMARY (abbreviated text) files. Users should carefully check retrieved material to ensure that documents were properly downloaded.

On the World Wide Web, connect to the **Federal Register** at http://www.access.gpo.gov/nara. Those without World Wide Web access can also connect with a local WAIS client, by Telnet to swais.access.gpo.gov, or by dialing (202) 512-1661 with a computer and modem. When using Telnet or modem, type swais, then log in as guest with no password.

For more information about GPO Access, contact the GPO Access User Support Team by E-mail at gpoaccess@gpo.gov; by fax at (202) 512–1262; or call (202) 512–1530 or 1–888–293–6498 (toll free) between 7 a.m. and 5 p.m. Eastern time, Monday–Friday, except Federal holidays.

The annual subscription price for the **Federal Register** paper edition is $555, or $607 for a combined **Federal Register**, Federal Register Index and List of CFR Sections Affected (LSA) subscription; the microfiche edition of the **Federal Register** including the Federal Register Index and LSA is $220. Six month subscriptions are available for one-half the annual rate. The charge for individual copies in paper form is $8.00 for each issue, or $8.00 for each group of pages as actually bound; or $1.50 for each issue in microfiche form. All prices include regular domestic postage and handling. International customers please add 25% for foreign handling. Remit check or money order, made payable to the Superintendent of Documents, or charge to your GPO Deposit Account, VISA, MasterCard or Discover. Mail to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954.

There are no restrictions on the republication of material appearing in the **Federal Register.**

How To Cite This Publication: Use the volume number and the page number. Example: 64 FR 12345.

Printed on recycled paper.

SUBSCRIPTIONS AND COPIES

PUBLIC

Subscriptions:

Paper or fiche	202–512–1800
Assistance with public subscriptions	512–1806
General online information	202–512–1530; 1–888–293–6498

Single copies/back copies:

Paper or fiche	512–1800
Assistance with public single copies	512–1803

FEDERAL AGENCIES

Subscriptions:

Paper or fiche	523–5243
Assistance with Federal agency subscriptions	523–5243

FEDERAL REGISTER WORKSHOP

THE FEDERAL REGISTER: WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: Sponsored by the Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WASHINGTON, DC

WHEN: April 20, 1999 at 9:00 am.

WHERE: Office of the Federal Register
Conference Room
800 North Capitol Street, NW.
Washington, DC
(3 blocks north of Union Station Metro)

RESERVATIONS: 202–523–4538

Contents

Federal Register
Vol. 64, No. 63
Friday, April 2, 1999

Agricultural Marketing Service
PROPOSED RULES
Cotton classing, testing, and standards:
Classification services to growers; 1999 user fees, 15937–15938
Milk marketing orders:
New England et al., 16025–16296

Agriculture Department
See Agricultural Marketing Service
See Animal and Plant Health Inspection Service
See Food and Nutrition Service
See Forest Service
See Grain Inspection, Packers and Stockyards Administration
See Natural Resources Conservation Service

Animal and Plant Health Inspection Service
RULES
Animal welfare:
Marine mammals—
Swim-with-the-dolphin interactive programs, 15918–15920
Plant-related quarantine, domestic:
Pine shoot beetle, 15916–15918

Army Department
NOTICES
Privacy Act:
Systems of records, 15956–15958

Blind or Severely Disabled, Committee for Purchase From People Who Are
See Committee for Purchase From People Who Are Blind or Severely Disabled

Committee for Purchase From People Who Are Blind or Severely Disabled
NOTICES
Procurement list; additions and deletions, 15954–15956

Defense Department
See Army Department
NOTICES
Meetings:
Science and Technology Advisory Board, 15956

Education Department
NOTICES
Meetings:
National Educational Research Policy and Priorities Board, 15958

Employment and Training Administration
NOTICES
Grants and cooperative agreements; availability, etc.:
Job Training Partnership Act—
Migrant and seasonal farmworker housing programs, 15991–15998

Employment Standards Administration
NOTICES
Minimum wages for Federal and federally-assisted construction; general wage determination decisions, 15999–16000

Energy Department
See Federal Energy Regulatory Commission

Environmental Protection Agency
RULES
Air quality implementation plans; approval and promulgation; various States:
California, 15922–15926
Superfund program:
National oil and hazardous substances contingency plan—
National priorities list update, 15926
PROPOSED RULES
Air quality implementation plans; approval and promulgation; various States:
California, 15949–15950
NOTICES
Environmental statements; availability, etc.:
Agency statements—
Comment availability, 15969–15970
Weekly receipts, 15969
Meetings:
EPA-USDA Tolerance Reassessment Advisory Committee, 15970–15971

Executive Office of the President
See Management and Budget Office

Federal Aviation Administration
RULES
Airworthiness directives:
Boeing, 15920–15922
Class E airspace; correction, 16024
PROPOSED RULES
Air carrier certification and operations:
Aging airplane safety, 16297–16320
Class E airspace; correction, 16024
NOTICES
Advisory circulars; availability, etc.:
Aging airplane records reviews and inspections, 16321
Transport category airplanes—
Continued airworthiness of older small transport and commuter airplanes; establishment of damage-tolerance-based inspections and procedures, 16321

Federal Energy Regulatory Commission
NOTICES
Electric rate and corporate regulation filings:
Central Piedra Buena, S.A., et al., 15959–15961
MidAmerican Energy Co. et al., 15961–15963
PJM Interconnection, L.L.C., et al., 15963–15965
Woodstock Hills, LLC, et al., 15965–15968
Hydroelectric applications, 15968–15969
Applications, hearings, determinations, etc.:
AES Redondo Beach, L.L.C., et al., 15958–15959
Central Vermont Public Service Corp., 15959
Cincinnati Gas & Electric, 15959

Federal Maritime Commission
NOTICES
Investigations, hearings, petitions, etc.:
Coalition for Fair Play in Ocean Shipping, 15971

Federal Procurement Policy Office
NOTICES
Acquisition regulations:
Small disadvantaged business procurement—
Affirmative action in federal procurement; policy letter, 16003–16005
Promoting subcontracting opportunities and administering plans; policy letter, 16001–16003

Federal Reserve System
NOTICES
Banks and bank holding companies:
Formations, acquisitions, and mergers, 15971–15972
Permissible nonbanking activities, 15972
Meetings; Sunshine Act, 15972

Federal Retirement Thrift Investment Board
NOTICES
Meetings; Sunshine Act, 15972

Federal Trade Commission
NOTICES
Premerger notification waiting periods; early terminiation, 15972–15976

Fish and Wildlife Service
NOTICES
Comprehensive conservation plans; availability, etc.:
Arid Lands National Wildlife Refuge Complex, OR, 15986–15987

Food and Drug Administration
PROPOSED RULES
Food for human consumption:
Food labeling—
Dietary supplements; use of health claims based on authoritative statements; meeting; correction, 15948–15949
General enforcement regulations:
Exports; notification and recordkeeping requirements, 15944–15948
NOTICES
Reports and guidance documents; availability, etc.:
Ready-to-eat foods; Food Code prohibition against bare hand contact by food preparation employees; scientific data and information request, 15978–15979

Food and Nutrition Service
NOTICES
Child nutrition programs:
Income eligibility guidelines, 15951–15952

Forest Service
NOTICES
Environmental statements; notice of intent:
Umpqua National Forest, OR, 15953
Meetings:
Northwest Sacramento Provincial Advisory Committee, 15954

General Services Administration
NOTICES
Federal travel:
Centralized household goods traffic management program (CHAMP)—
Move management services continuation, 15976–15978

Geological Survey
NOTICES
Meetings:
Water Information Advisory Committee, 15987

Grain Inspection, Packers and Stockyards Administration
PROPOSED RULES
Packers and stockyards regulations:
Feed weights, 15938–15942

Health and Human Services Department
See Food and Drug Administration
See National Institutes of Health
See Public Health Service
See Substance Abuse and Mental Health Services Administration

Housing and Urban Development Department
RULES
Fair housing:
Housing for Older Persons Act of 1995; implementation, 16323–16332
NOTICES
Grants and cooperative agreements; availability, etc.:
Facilities to assist homeless—
Excess and surplus Federal property, 15985–15986

Immigration and Naturalization Service
NOTICES
Agency information collection activities:
Proposed collection; comment request, 15990–15991

Interior Department
See Fish and Wildlife Service
See Geological Survey
See Land Management Bureau
See Minerals Management Service
See National Park Service

Justice Department
See Immigration and Naturalization Service
NOTICES
Pollution control; consent judgments:
Hamm's Holiday Harbor, Inc., et al., 15990

Labor Department
See Employment and Training Administration
See Employment Standards Administration

Land Management Bureau
NOTICES
Closure of public lands:
Nevada, 15987
Oregon, 15987–15988
Meetings:
Resource advisory councils—
Montana, 15988
Realty actions; sales, leases, etc.:
Alaska, 15988
Colorado, 15988–15989

Legal Services Corporation
NOTICES
Meetings:
Aliens; presence in U.S. required to be eligible for legal assistance from Corporation-funded programs; hearings and comment request, 16000–16001

Management and Budget Office
See Federal Procurement Policy Office
NOTICES
Budget rescissions and deferrals
Cumulative reports, 16013–16016

Merit Systems Protection Board
RULES
Organization, functions, and authority delegations:
Human resources management functions, 15916

Minerals Management Service
PROPOSED RULES
Royalty management:
Federal and Indian leases; oil valuation, 15949

National Institutes of Health
NOTICES
Grants and cooperative agreements; availability, etc.:
National Cancer Institute—
Multidrug resistant HIV-infected population; new treatments and diagnostic methods; joint evaluation and development, 15979–15980
Meetings:
Advisory Committee to Director, 15980
Center for Scientific Review, 15980–15982
National Institute of Diabetes and Digestive and Kidney Diseases, 15982–15983
National Institute of General Medical Sciences, 15983
National Institute of Mental Health, 15982

National Park Service
NOTICES
Meetings:
National Capital Memorial Commission, 15989
National Register of Historic Places:
Pending nominations, 15990

Natural Resources Conservation Service
NOTICES
Field office technical guides; changes:
Wisconsin, 15954

Nuclear Regulatory Commission
RULES
Practice rules:
Domestic licensing proceedings—
High-level radioactive waste disposal at geologic repository; correction, 15920
NOTICES
Meetings:
Reactor Safeguards Advisory Committee, 16006–16007
Petitions; Director's decisions:
Tennessee Valley Authority, 16007–16013
Applications, hearings, determinations, etc.:
Duke Energy Corp., 16005–16006

Office of Management and Budget
See Management and Budget Office

Personnel Management Office
RULES
Prevailing rate systems, 15915–15916

Public Health Service
See Food and Drug Administration
See National Institutes of Health
See Substance Abuse and Mental Health Services Administration
NOTICES
National toxicology program:
Carcinogens Report, Tenth Edition—
Substances, mixtures and exposure circumstances for listing or delisting, 15983–15984

Research and Special Programs Administration
RULES
Pipeline safety:
Hazardous liquid transportation—
Breakout tanks; industry standards adoption, 15926–15936

Securities and Exchange Commission
NOTICES
Meetings; Sunshine Act, 16017
Self-regulatory organizations; proposed rule changes:
Chicago Board Options Exchange, Inc., 16017–16018
National Securities Clearing Corp., 16018–16019
Philadelphia Stock Exchange, Inc., 16019–16021

Small Business Administration
PROPOSED RULES
Business loans:
Certified development companies; fees limitation, 15942–15944
NOTICES
Business loan programs:
Securitization of Section 7(a) loans; initial benchmark number, establishment, 16021
Disaster loan areas:
Tennessee, 16021
Washington, 16021–16022

Substance Abuse and Mental Health Services Administration
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 15984–15985

Surface Transportation Board
NOTICES
Railroad services abandonment:
Aberdeen & Rockfish Railroad Co., 16022

Transportation Department
See Federal Aviation Administration
See Research and Special Programs Administration
See Surface Transportation Board

Treasury Department
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 16022–16023

Separate Parts In This Issue

Part II
Department of Agriculture, Agricultural Marketing Service, 16025–16296

Part III
Department of Transportation, Federal Aviation Administration, 16297–16321

Part IV
Department of Housing and Urban Development, 16323–16332

Reader Aids
Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

VOL 64 ISS 63 AP 2 1999 UMI

CFR PA
A cumulati
Reader Aid
5 CFR
532
1200
7 CFR
301
Proposed R
28
1000
1001
1002
1004
1005
1006
1007
1012
1013
1030
1032
1033
1036
1040
1044
1046
1049
1050
1064
1065
1068
1076
1079
1106
1124
1126
1131
1134
1135
1137
1138
1139
9 CFR
1
3
Proposed R
201
10 CFR
2
13 CFR
Proposed R
120
14 CFR
39
71 (3 docu
Proposed R
71
119
121
129
135
183
21 CFR
Proposed R
1
101
24 CFR
100
30 CFR
Proposed R
206
40 CFR
52
300
Proposed R
52

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

5 CFR
532.....15915
1200.....15916

7 CFR
301.....15916

Proposed Rules:
28.....15937
1000.....16026
1001.....16026
1002.....16026
1004.....16026
1005.....16026
1006.....16026
1007.....16026
1012.....16026
1013.....16026
1030.....16026
1032.....16026
1033.....16026
1036.....16026
1040.....16026
1044.....16026
1046.....16026
1049.....16026
1050.....16026
1064.....16026
1065.....16026
1068.....16026
1076.....16026
1079.....16026
1106.....16026
1124.....16026
1126.....16026
1131.....16026
1134.....16026
1135.....16026
1137.....16026
1138.....16026
1139.....16026

9 CFR
1.....15918
3.....15918

Proposed Rules:
201.....15938

10 CFR
2.....15920

13 CFR

Proposed Rules:
120.....15942

14 CFR
39.....15920
71 (3 documents) 16024

Proposed Rules:
71.....16024
119.....16298
121.....16298
129.....16298
135.....16298
183.....16298

21 CFR

Proposed Rules:
1.....15944
101.....15948

24 CFR
100.....16324

30 CFR

Proposed Rules:
206.....15949

40 CFR
52.....15922
300.....15926

Proposed Rules:
52.....15949

49 CFR
195.....15926

UMI

VOL 64 ISS 63 AP 2 1999

Rule

This sectio
contains re
applicability
are keyed t
Federal Re
50 titles pu

The Code
the Superin
new books
REGISTER

**OFFICE O
MANAGE**

5 CFR Pa

RIN 3206–

**Prevailing
Environm
Working**

AGENCY: O
Managem

ACTION: F

SUMMARY:
Managem
regulation
environm
category f
employee
worksites
meters (1
provided
to commu
same day
altitude u
the rapid
in acclima
creating t
Federal ag
compensa
are expos
caused by

DATES: *Eff*
effective d
Date: This
day of the
beginning

FOR FURTH
Jennifer H
send an e
jdhopkin@

SUPPLEME
October 1
Personnel
published
54616) to
environm
category f
employee

Rules and Regulations

Federal Register
Vol. 64, No. 63
Friday, April 2, 1999

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 532

RIN 3206–AI36

Prevailing Rate Systems; Environmental Differential Pay for Working at High Altitudes

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing a final regulation to establish an 8 percent environmental differential pay (EDP) category for Federal Wage System (FWS) employees who work at land-based worksites located higher than 3900 meters (12,795 feet) in altitude, provided such employees are required to commute to their worksites on the same day from a substantially lower altitude under circumstances in which the rapid change in altitude may result in acclimation problems. OPM is creating this new EDP category so that Federal agencies may provide additional compensation to FWS employees who are exposed to unusual health risks caused by these working conditions.

DATES: *Effective Date:* This regulation is effective on April 2, 1999. *Applicability Date:* This regulation applies on the first day of the first applicable pay period beginning on or after April 2, 1999.

FOR FURTHER INFORMATION CONTACT: Jennifer Hopkins at (202) 606–2848, or send an email message to jdhopkin@opm.gov.

SUPPLEMENTARY INFORMATION: On October 13, 1998, the Office of Personnel Management (OPM) published a proposed rule (63 FR 54616) to establish an 8 percent environmental differential pay (EDP) category for Federal Wage System (FWS) employees who work at land-based worksites located higher than 3900 meters (12,795 feet), provided such employees are required to commute to their worksites on the same day from a substantially lower altitude under circumstances in which the rapid change in altitude may result in acclimation problems. This proposal was similar to a proposed regulation issued on June 30, 1998, to establish a hazard pay differential for General Schedule employees.

The Smithsonian Institution requested that we establish an EDP category for FWS employees who must work at the Smithsonian Astrophysical Observatory (SAO) near the 4206 meter (13,800 foot) summit of Mauna Kea, an extinct volcano on the Island of Hawaii. The Smithsonian Institution stated that suitable employee housing is available only near sea level and that SAO employees must therefore commute back and forth from their homes to the SAO worksite each workday. The Smithsonian Institution submitted research evidence that indicates work at high altitudes may have negative physiological effects such as impaired judgment, increased heart rates, and nausea, especially if employees have not had time to acclimate to lower atmospheric pressures and oxygen levels that exist at high altitudes. In addition, employees are exposed to the possibility of experiencing severe health problems such as high altitude pulmonary edema, high altitude cerebral edema, and acute mountain sickness.

Under 5 U.S.C. 5343(c)(4), OPM is responsible for establishing EDP categories that Federal agencies may use to provide additional compensation to FWS employees whose duties involve unusually severe working conditions or unusually severe hazards. This final regulation will authorize a new EDP category for FWS employees who must work at land-based worksites higher than 3900 meters (12,795 feet), provided such employees are required to commute to the worksite on the same day from a substantially lower altitude under circumstances in which the rapid change in altitude could result in acclimation problems. The establishment of this new EDP category will not relieve an agency of its responsibility to take whatever measures are feasible to minimize the harmful effects of commuting to work at high altitudes.

The proposed regulation for the establishment of a new EDP category for FWS employees provided a 30-day period for public comment, during which we received one comment from a labor organization. The labor organization recognized and agreed that a need exists for the establishment of a new EDP category for FWS employees, but recommended that we consider establishing a 25 percent differential instead of the proposed 8 percent differential. The proposed differential was throughly reviewed by the Federal Prevailing Rate Advisory Committee (FPRAC), the national labor-management committee responsible for advising OPM on matters that affect the pay of FWS employees. After careful consideration, the Committee recommended by consensus that the differential be set at 8 percent, an amount in line with other EDP categories and also in line with prevailing non-Federal practices, as reported by the Smithsonian Institution. Based on FPRAC's recommendation, we are establishing the new EDP category with an 8 percent differential.

Waiver of Delay in Effective Date

Pursuant to 5 U.S.C. 553(d)(3), I find that good cause exists to make these regulations effective in less than 30 days. Some FWS employees of the Smithsonian Institution are currently commuting from near sea level to a work site near the 4206 meter (13,800 foot) summit of Mauna Kea on the Island of Hawaii. These employees currently meet the criteria in this final regulation for the environmental differential. In addition, the Smithsonian Institution has asked that this authority be made effective as soon as possible.

E.O. 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with E.O. 12866.

Regulatory Flexibility Act

I certify that these regulations will not have a significant impact on a substantial number of small entities because they will apply only to Federal agencies and employees.

List of Subjects in 5 CFR Part 532

Administrative practice and procedure, Freedom of information, Government employees, Reporting and recordkeeping requirements, Wages.

Office of Personnel Management.

Janice R. Lachance,

Director.

Accordingly, the Office of Personnel Management is amending 5 CFR part 532 as follows:

PART 532—PREVAILING RATE SYSTEMS

Subpart E—Premium Pay and Differentials

1. The authority citation for part 532 continues to read as follows:

Authority: 5 U.S.C. 5343.

2. Appendix A to subpart E of part 532 is amended by adding a new category to the schedule of environmental differentials at the end of Part II of the appendix to read as follows:

Appendix A to Subpart E of Part 532—Schedule of Environmental Differentials Paid for Exposure to Various Degrees of Hazards, Physical Hardships, and Working Conditions of an Unusual Nature

PART II.—PAYMENT ON BASIS OF HOURS IN PAY STATUS

Differential rate (percent)	Category for which payable	Effective date
8	*17. Working at high altitudes.* Performing work at a land-based work site more than 3900 meters (12,795 feet) in altitude, provided the employee is required to commute to the work site on the same day from a substantially lower altitude under circumstances in which the rapid change in altitude may result in acclimation problems.	April 2, 1999.

[FR Doc. 99–8107 Filed 4–1–99; 8:45 am]

BILLING CODE 6325–01–U

MERIT SYSTEMS PROTECTION BOARD

5 CFR Part 1200

Board Organization

AGENCY: Merit Systems Protection Board.

ACTION: Final rule.

SUMMARY: The Merit Systems Protection Board (MSPB or the Board) is amending its organization and functions statement to reflect a change in responsibilities for performance of its human resources management functions.

EFFECTIVE DATE: April 2, 1999.

FOR FURTHER INFORMATION CONTACT: Robert E. Taylor, Clerk of the Board, (202) 653–7200.

SUPPLEMENTARY INFORMATION: Effective September 28, 1998, the Board entered into a cross-servicing arrangement with APHIS Business Services (ABS), a unit of the U.S. Department of Agriculture's Animal and Plant Health Inspection Service, under which ABS provides most human resources management services to MSPB. The MSPB Financial and Administrative Management Division (FAMD) administers the cross-servicing arrangement with ABS and has direct responsibility for certain personnel functions, including policy, training, drug testing, and the Employee Assistance Program. FAMD also administers the cross-servicing arrangement with USDA's National Finance Center (NFC) for accounting and payroll services. The NFC continues to process personnel actions, which are now entered by ABS. This amendment to 5 CFR part 1200 reflects these changes by removing all references to the Human Resources Management Division and by revising the description of FAMD functions.

The Board is publishing this rule as a final rule pursuant to 5 U.S.C. 1204(h).

List of Subjects in 5 CFR Part 1200

Organization and functions (Government agencies).

Accordingly, the Board amends 5 CFR part 1200, subpart B, as follows:

PART 1200—[AMENDED]

Subpart B—Offices of the Board—[Amended]

1. The authority citation for part 1200, subpart B, continues to read as follows:

Authority: 5 U.S.C. 1204(h) and (j).

2. Section 1200.10 is amended by removing paragraph (a)(9) in its entirety, by redesignating paragraph (a)(10) as paragraph (a)(9), by removing paragraph (b)(9) in its entirety, by redesignating paragraph (b)(10) as paragraph (b)(9), and by revising paragraph (b)(8) to read as follows:

§ 1200.10 Staff Organizations and Functions.

* * * * *

(b) * * *

* * * * *

(8) *Financial and Administrative Management Division.* The Financial and Administrative Management Division administers the budget, procurement, property management, physical security, and general services functions of the Board. It develops and coordinates internal management programs and projects, including review of internal controls agencywide. It performs certain personnel functions, including policy, training, drug testing, and the Employee Assistance Program. It also administers the agency's cross-servicing arrangements with the U.S. Department of Agriculture's National Finance Center for accounting, payroll, and personnel action processing services and with the U.S. Department of Agriculture's APHIS Business Services for most human resources management services.

* * * * *

Dated: March 26, 1999.

Robert E. Taylor,

Clerk of the Board.

[FR Doc. 99–8091 Filed 4–1–99; 8:45 am]

BILLING CODE 7400–01–U

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 98–113–2]

Pine Shoot Beetle; Addition to Quarantined Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule as final rule.

SUMMARY: We are adopting as a final rule, without change, an interim rule that amended the pine shoot beetle regulations to add 19 counties in Indiana, Michigan, New York, Ohio, Pennsylvania, and West Virginia to the list of quarantined areas. This action was necessary to prevent the spread of

the pine shoot beetle, a pest of pine products, into noninfested areas of the United States.

EFFECTIVE DATE: The interim rule became effective on December 29, 1998.

FOR FURTHER INFORMATION CONTACT: Ms. Christine K. Markham, Regional Program Manager, PPQ, APHIS, 505 South Lenola Road, Suite 201, Moorestown, NJ, 08057–1549; (609) 757–5073; e-mail: Christine.Markham@usda.gov; or Ms. Coanne O'Hern, Operations Officer, Domestic and Emergency Programs, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1236; (301) 734–8247; e-mail: Coanne.E.O'Hern@usda.gov.

SUPPLEMENTARY INFORMATION:

Background

In an interim rule effective December 29, 1998, and published in the **Federal Register** on January 5, 1999 (64 FR 385–387, Docket No. 98–113–1), we amended the pine shoot beetle regulations in 7 CFR 301.50 by designating Hancock, Howard, and Tipton Counties, IN; Chippewa, Delta, Leelanau, Marquette, and Schoolcraft Counties, MI; Cortland, Chemung, and Onondaga Counties, NY; Belmont, Coshocton, Morgan, Noble, and Paulding Counties, OH; Blair and Greene Counties, PA; and Tyler County, WV, as quarantined areas, and adding them to the list of quarantined areas provided in § 301.50–3(c). In addition, we removed paragraph (d) of § 301.50–3 from the regulations. Paragraph (d) contained a map that showed the quarantined counties listed in § 301.50–3(c).

Comments on the interim rule were required to be received on or before March 8, 1999. We did not receive any comments. Therefore, for the reasons given in the interim rule, we are adopting the interim rule as a final rule.

This action also affirms the information contained in the interim rule concerning Executive Orders 12372 and 12988, and the Paperwork Reduction Act.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review process required by Executive Order 12866.

This document makes final an interim rule effective December 29, 1998, and published in the **Federal Register** on January 5, 1999 (64 FR 385–387, Docket No. 98–113–1). As part of the interim rule, we performed an Initial Regulatory Flexibility Analysis, in which we invited comments about the interim rule as it related to small entities. In particular, we asked for information on the benefits or costs that small entities may incur from the implementation of this interim rule and the economic impact of those benefits or costs. We did not receive any comments on the interim rule, and therefore, received no information of the type we requested. We have therefore based this Final Regulatory Flexibility Analysis on the data available to us. Based on the information we have, there is no basis to conclude that this rule will result in any significant economic impact on a substantial number of small entities.

Under the Plant Quarantine Act and the Federal Plant Pest Act (7 U.S.C. 150bb, 150dd, 150ee, 150ff, 161, 162, and 164–167), the Secretary of Agriculture is authorized to regulate the interstate movement of articles to prevent the spread of injurious plant pests in the United States.

The PSB regulations impose restrictions on the interstate movement of certain regulated articles from quarantined areas in order to prevent the spread of PSB into noninfested areas of the United States. The interim rule amended these regulations by adding 19 counties in IN, MI, NY, OH, PA, and WV to the list of quarantined areas. This action was necessary to prevent the spread of PSB, a pest of pine products, into noninfested areas of the United States.

Currently, there are approximately 223 entities in the 19 newly regulated counties that may be affected by the quarantine. Of those, 82 are Christmas tree growers, 85 are tree nurseries, and 28 are commercial timber companies or commercial sawmills. Approximately 212 of the 223 entities are considered small. The following table shows these entities by type and state.

DISTRIBUTION OF AFFECTED ENTITIES IN 19 COUNTIES THAT WERE ADDED TO THE QUARANTINED AREA FOR PINE SHOOT BEETLE

Entities	State						Total
	NY	PA	IN	MI	OH	WV	
Christmas tree farms	14	3	3	46	16	0	82
Tree nurseries	15	2	1	45	22	0	85
Commercial timber companies or commercial sawmills	12	5	0	7	4	0	28
Other types	0	23	2	0	0	3	28
Total entities	41	33	6	98	42	3	223
Small entities	41	25	6	95	42	3	212

The Small Business Administration (SBA) defines tree nurseries with annual sales of less than $150,000 as small entities. Most tree nurseries specialize in production of deciduous landscape products, but some also produce pine nursery stock and some produce rooted pine Christmas trees. For most of the tree nurseries that produce pine nursery stock and rooted pine Christmas trees, these commodities comprise a minor share of their products or they service largely local populations within the quarantined area. Therefore, we do not expect that they will be notably affected by this rule.

The SBA defines Christmas tree farms with annual sales of less than $500,000 as small entities. Most of the Christmas tree farms in the newly regulated counties are small entities. Of the 82 Christmas tree farms that are in the newly regulated counties, most sell locally to choose-and-cut markets. Therefore, they would not be affected by this rule. Those Christmas tree farms that ship their Christmas trees and tree products outside of the quarantined area would be most affected by the quarantine. In some newly quarantined areas, up to 5 percent of the Christmas trees are sold through the wholesale market. Christmas tree farms in the newly quarantined areas in Michigan, New York, and Ohio shipped 6 percent, 12 percent, and 10 percent, respectively,

of their Christmas trees and tree products to markets outside the quarantined areas in 1997. In Pennsylvania, Christmas tree farms in the newly quarantined counties shipped all of their Christmas trees and tree products outside the quarantined area in 1997. Therefore, the Christmas tree farms in the newly quarantined counties in Pennsylvania will be most affected by the quarantine.

Affected businesses can maintain markets outside the regulated areas by arranging for inspections and the issuance of certificates or limited permits or by fumigating or cold treating the regulated articles. Inspection is provided at no cost during normal business hours. However, there may be imputed costs to the businesses in preparing for the inspections and possible marketing delays. Such costs and inconveniences may be more likely for producers of live pine nursery stock, since inspection is required of each live plant before it may be moved to a nonregulated area. For producers in these counties who already have their trees inspected for other pests, another inspection may be a relatively small burden, especially when compared to the societal benefits of minimizing the human-assisted movement of PSB.

The alternative to the interim rule was to make no changes in the regulations. After consideration, we rejected this alternative because the quarantine of the 19 counties listed in this document is necessary to prevent the artificial spread of PSB.

This rule contains no reporting or recordkeeping requirements.

List of Subjects in 7 CFR Part 301

Agricultural commodities, Incorporation by reference, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, we are adopting as a final rule, without change, the interim rule that amended 7 CFR 301 and that was published at 64 FR 385–387 on January 5, 1999.

Authority: 7 U.S.C. 147a, 150bb, 150dd, 150ee, 150ff, 161, 162, and 164–167; 7 CFR 2.22, 2.80, and 371.2(c).

Done in Washington, DC, this 29th day of March 1999.

Craig A. Reed,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 99–8154 Filed 4–1–99; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Parts 1 and 3

[Docket No. 93–076–13]

RIN 0579–AA59

Animal Welfare; Marine Mammals; Swim-with-the-Dolphin Programs

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Reconsideration of final rule and suspension of enforcement.

SUMMARY: We are hereby suspending the enforcement of those provisions of the Animal Welfare regulations and standards that deal with "swim-with-the-dolphin programs." In addition, we are soliciting public comment on all aspects of the suspended regulations and on all human/marine mammal interactive programs.

DATES: This suspension of enforcement is effective April 2, 1999. We invite you to comment on this docket. We will consider all comments that we receive by June 1, 1999.

ADDRESSES: Please send your comment and three copies to: Docket No. 93–076–13, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 93–076–13.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Ave., SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS rules, are available on the Internet at http://www.aphis.usdaa.gov/ppd/rad/webrepor.html.

FOR FURTHER INFORMATION CONTACT: Dr. Barbara Kohn, Senior Staff Veterinarian, Animal Care, APHIS, 4700 River Road Unit 84, Riverdale, MD 20737–1234; (301) 734–7833.

SUPPLEMENTARY INFORMATION:

Background

Under the Animal Welfare Act (AWA) (7 U.S.C. 2131 *et seq.*), the Secretary of Agriculture is authorized to promulgate standards and other requirements regarding the humane handling, care, treatment, and transportation of certain animals by dealers, research facilities, exhibitors, and carriers and intermediate handlers. The Secretary has delegated responsibility for administering the AWA to the Animal and Plant Health Inspection Service (APHIS) of the U.S. Department of Agriculture (USDA). Regulations established under the AWA are contained in the Code of Federal Regulations (CFR) in 9 CFR parts 1, 2, and 3. Part 1 contains definitions for terms used in parts 2 and 3; part 2 contains general requirements for regulated parties; and part 3 contains specific requirements for the care and handling of certain animals.

On January 23, 1995, we published in the **Federal Register** a proposal (60 FR 4383–4389, Docket No. 93–076–2) to amend the regulations in 9 CFR part 3, subpart E (referred to below as the regulations), by establishing standards for "swim-with-the-dolphin" (SWTD) programs. After reviewing comments from the public on the proposal, we published a final rule in the **Federal Register** on September 4, 1998 (63 FR 47128–47151, Docket No. 93–076–10), that made final certain of the proposed provisions, along with changes we made based on the comments received. The final rule became effective October 5, 1998.

Following publication of the final rule, a number of parties affected by the rule contacted us and asked us to address issues not specifically raised in the final rule or the proposed rule regarding shallow water interactive programs. We are using the term "shallow water interactive program" because it has come to our attention that a number of facilities have different names for their programs in which a member of the public enters the primary enclosure of an SWTD cetacean to interact with the animal and in which the participants remain primarily stationary and non-buoyant. For purposes of this notice, it is our intent that the term "shallow water interactive program" encompass wade programs, encounter programs, or any other program as described above.

The regulated parties stated that it had not been clear to them that we intended the provisions of the rule to apply to shallow water interactive programs, and that, because of this misunderstanding, they had not been able to participate fully in the rulemaking process.

Although the definition of an SWTD program set forth in the proposed rule

did not exclude shallow water interactive programs, our use in the proposal of the word "swim" may have led a segment of the regulated industry to assume that the regulations would not apply to shallow water interactive programs in which the participants remain primarily stationary and non-buoyant. In addition, the confusion of the regulated parties may have been heightened by our not specifically referring to "wading" until the final rule.

It was always our intent to include shallow water interactive programs within the scope of the rule. However, between publication of the proposed rule and the final rule, a number of facilities began new shallow water interactive programs, which we were not aware of. Therefore, we did not specifically address the potential economic impact of the rule on these new shallow water interactive programs.

We recognize that the number and makeup of shallow water interactive programs may have changed since we initiated SWTD rulemaking several years ago, and that the industry has gained more experience in operating such programs. The parties who contacted us following publication of the final rule expressed concern that the final rule did not fully reflect, among other things, the current issues involved in shallow water interactive programs.

In response to these concerns, on October 14, 1998, we published a notice in the **Federal Register** (63 FR 55012, Docket No. 93–076–12) in which we announced that, as of the effective date of the final rule and until further notice, we would not apply to wading programs (referenced in this document as shallow water interactive programs) the standards in § 3.111(a) of the final rule for space for the interactive area in a SWTD program, or the standards in § 3.111(e)(4) for human participant/attendant ratio. We stated that, for the purposes of that notice, we considered wading programs to be those in which human participants interact with cetaceans by remaining stationary and non-buoyant. Additionally, we expressed our intention to examine more fully the issue of interactive space requirements and human participant/attendant ratios for programs in which contact between humans and cetaceans is limited and controlled, with negligible movement of humans within the enclosure.

Additionally, we were made aware of concerns regarding the specificity of the experience and training requirements for SWTD program personnel, including the attending veterinarian. Some parties expressed concern regarding the nature of the veterinary care requirements and the issue of interactive session time limits for the animals.

We also have become aware of two unintentional consequences concerning the exclusions contained in the definition of an SWTD program. First, our intent was to exclude from regulation feeding and petting pools where the participant *does not enter* the primary enclosure of the animal. However, the wording we used in the rule does not make clear the narrow exclusion we intended.

Second, we intended to exclude from regulation the participation of a limited number of members of a larger public audience that are part of a presentation or performance (e.g., when one or two members of an audience are invited to interact with an animal as part of the overall presentation or performance). Contrary to our intent, however, by inserting the exclusion in the definition of an SWTD program, we inadvertently allowed this exclusion to apply to shallow water interactive programs where all or a significant number of program participants are provided the opportunity to enter the primary enclosure to interact with the animal.

While we could attempt to address these issues by responding individually to each concern or point, we believe that the most effective way to address the concerns and confusion surrounding the SWTD rule is to suspend enforcement of the provisions and seek new, additional, and more current scientific, documentable, or other information on human/marine mammal interactive programs. This information will aid the agency in determining the most appropriate action regarding the regulation of human/marine mammal interactive programs.

In this notice, we are soliciting information from the public on all aspects of human/marine mammal interactive programs, and are asking that commenters give special consideration to the issues set forth below. We request that commenters submit scientific, documentable, or other information to support their positions.

1. Based on past and present experience with human/marine mammal interactive programs, is there a need to have regulations specific to these programs under the Animal Welfare Act?

2. Should shallow water interactive programs be regulated in the same way as other regulated interactive programs?

3. How much space (length, width, and depth) is needed in the interactive area for shallow water interactive programs? Is there a need for deeper water somewhere in the interactive area?

4. For shallow water interactive programs, what participant-to-attendant and participant-to-animal ratios have been or can be used safely?

5. For the purposes of this notice, we consider shallow water interactive programs to be those in which human participants enter the primary enclosure of the marine mammal to interact with the animal, but in which human participants remain primarily stationary and non-buoyant. Do you believe this definition adequately describes shallow water interactive programs? If not, what definition do you consider satisfactory?

6. If shallow water interactive programs are regulated in the same way as other programs, should the heading for § 3.111 of the regulations, which currently reads "Swim-with-the-dolphin programs," be amended to read "Human/marine mammal interactive programs" or something similar?

7. In the final rule, we explained that the requirement set forth in the proposed rule that the attending veterinarian for an SWTD program have at least 2 years of full-time experience with cetacean medicine meant that the veterinarian needed at least 4,160 hours of experience. This inclusion of a specific number of hours generated a number of questions and concerns from regulated parties. Is the SWTD rule the appropriate place to address this issue? If so, do you think we should remove the reference to a specific number of hours (while retaining the requirement for at least 2 years of experience)? Is there a better way to make the experience requirement clear? In this notice, we are soliciting information on whether there are alternative requirements that would assure an adequate level of experience and knowledge to achieve the purposes of the regulations.

8. In the final rule, we required that certain employees at a SWTD facility have a specified minimum number of years of experience or training, as follows:

Licensee or manager: At least 6 years experience in a professional or managerial position dealing with captive cetaceans.

Head trainer/behaviorist: At least 6 years experience in training cetaceans for SWTD behaviors in the past 10 years, or an equivalent amount of experience involving in-water training of cetaceans.

Trainer/supervising attendant: At least 3 years training and/or handling experience involving human/cetacean interaction programs.

In this notice, we are soliciting information on whether there are alternative requirements that would assure an adequate level of experience and knowledge to achieve the purposes of the regulations.

9. Should therapy sessions (i.e., interactive sessions involving a therapist or established programs that deal with mentally or physically handicapped persons) be excluded from or covered by regulation? Why do you consider therapy sessions different from or the same as other shallow water interactive programs? Should regulation of therapy sessions be based on the frequency of sessions at the facility or other criteria? If based on frequency, what should be the threshold for regulation?

Accordingly, effective April 2, 1999, in 9 CFR part 1, § 1.1, the definitions of *buffer area, interactive area, interactive session, sanctuary area,* and *swim-with-the dolphin (SWTD) program* are suspended, and, in 9 CFR part 3, § 3.111 is suspended.

Authority: 7 U.S.C. 2131–2159; 7 CFR 2.22, 2.80, and 371.2(g).

Done in Washington, DC, this 29th day of March 1999.

Craig A. Reed,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 99–8153 Filed 4–1–99; 8:45 am]

BILLING CODE 3410–34–P

NUCLEAR REGULATORY COMMISSION

10 CFR PART 2

RIN 3150–AF88

Procedures Applicable to Proceedings for the Issuance of Licenses for the Receipt of High-Level Radioactive Waste at a Geologic Repository; Correction

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule: correction.

SUMMARY: This document corrects a final rule published in the **Federal Register** on December 30, 1998 (63 FR 71729), that amended the Nuclear Regulatory Commission's regulations on procedures applicable to proceedings for the issuance of licenses for the receipt of high-level radioactive waste at a geologic repository. The action is necessary to correct a typographical error.

EFFECTIVE DATE: May 3, 1999.

FOR FURTHER INFORMATION CONTACT: Kathryn L. Winsberg, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415–1641, e-mail KLW@nrc.gov.

SUPPLEMENTARY INFORMATION:

§ 2.1006 [Corrected]

On page 71738, first column, in § 2.1006, the first sentence of paragraph (a), the reference to "§ 2.1003(c)" should be corrected to read "§ 2.1003(a)(4)."

Dated at Rockville, Maryland, this 26th day of March, 1999.

For the Nuclear Regulatory Commission.

Annette Vietti-Cook,

Secretary of the Commission.

[FR Doc. 99–8161 Filed 4–1–99; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–38–AD; Amendment 39–11107; AD 99–08–03]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–600, –700, and –800 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to all Boeing Model 737–600, –700, and –800 series airplanes. This action requires an inspection of the power distribution panels (PDP) to verify proper installation of the power feeder terminals and associated hardware, and corrective actions, if necessary. This action also requires repetitive torque checks of the terminal attachment screws. This amendment is prompted by reports indicating the loss of electrical power from the engine-driven generators or the auxiliary power unit due to overheating, melting, and subsequent failure of the power feeder terminals. The actions specified in this AD are intended to prevent such conditions, which could result in increased risk of fire and the loss of electrical power from the associated alternating current power source.

DATES: Effective April 19, 1999.

Comments for inclusion in the Rules Docket must be received on or before June 1, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–38–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Information pertaining to this amendment may be obtained from or examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Stephen S. Oshiro, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2793; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: The FAA has recently received several reports indicating the loss of electrical power from the engine-driven generators or the auxiliary power unit on Boeing Model 737 series airplanes, due to failure of the power feeder terminals located in power distribution panels (PDP) P91 and P92. This failure is attributed to an overheat condition caused by loosening of the screws that fasten the power feeder terminals to the PDP rigid bus assembly. Investigation revealed that inadequate support of the power feeder terminal allows movement of the terminal during the power feeder wire installation and removal procedures. The consequent loosening of the screws may result in increased electrical resistance and the generation of heat between the power feeder terminal and the rigid busbar at the terminal-to-busbar interface. This condition, if not corrected, may cause overheating and melting of the power feeder terminals, which could result in increased risk of fire and the loss of electrical power from the associated alternating current (AC) power source.

Explanation of the Requirements of the Rule

Since an unsafe condition has been identified that is likely to exist or develop on other Boeing Model 737–600, –700, and –800 series airplanes of the same type design, this AD is being issued to prevent overheating, melting, and subsequent failure of the power feeder terminals, which could result in increased risk of fire and the loss of electrical power from the associated AC power source. This AD requires an inspection of the PDP's to verify proper installation of the power feeder terminals and associated hardware, and corrective actions, if necessary. This action also requires repetitive torque checks of the terminal attachment screws.

Interim Action

This is considered to be interim action. The FAA is currently considering further rulemaking action to supersede this AD to require repetitive replacement of the PDP rigid bus assembly for all Boeing Model 737–600, –700, and –800 series airplanes. However, the planned compliance time for the repetitive replacement is sufficiently long so that notice and opportunity for prior public comment will be practicable.

Determination of Rule's Effective Date

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 99–NM–38–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

99–08–03 Boeing: Amendment 39–11107. Docket 99–NM–38–AD.

Applicability: All Boeing Model 737–600, –700, and –800 series airplanes; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent overheating, melting, and subsequent failure of the power feeder terminals, which could result in increased risk of fire and the loss of electrical power from the associated alternating current (AC) power source, accomplish the following:

Initial Inspection

(a) Within 90 days after the effective date of this AD: Perform a one-time general visual inspection to verify proper installation of the power feeder terminals and associated hardware located in power distribution panels (PDP) P91 and P92, in accordance with the following procedures.

Using a flashlight, inspect each of the six power feeder terminals by looking into the access holes located in the plastic cover of the rigid bus assembly. The holes are located on the aft face of PDP's P91 and P92. [Refer to the Boeing 737–600, –700, –800, –900 Airplane Maintenance Manual (AMM), Section 24–21–71/401, Figure 401 (Sheet 1), for the location of PDP P91 and P92.] On PDP P91, the holes are adjacent to terminal blocks TB5001 and TB5002. On PDP P92, the holes are adjacent to terminal blocks TB5005 and TB5006. There are a total of six holes per PDP. [Refer to the Boeing 737–600, –700, –800, –900 AMM, Section 24–21–71/401, Figure 401 (Sheet 2), for the location of the access holes on the PDP's.] Note that although each PDP has nine power feeder terminals, only the six terminals adjacent to the access holes require inspection. Verify that the power feeder terminal is properly installed and held in place on the busbar by the No. 8 socket head cap screw, and verify that the cap screw is inserted into the hole in the terminal. For the proper power feeder terminal and screw buildup, refer to the Boeing 737–600, –700, –800, –900 AMM, Chapter 24–21–71/401, Figure 401 (Sheet 4). The subject power feeder terminal is identified as item [7] and the cap screw as item [12]. This visual inspection does not require loosening or removing any fasteners. The inspection may require looking through the access hole at a slight angle to see the terminal clearly. The terminal can be identified by its shiny metal finish; the current transformer behind the terminal block is made of plastic with a flat black finish. If the power feeder terminal and No. 8 socket head cap screw are not assembled as shown in Boeing 737–600, –700, –800, –900 AMM, Section 24–21–71/401, Figure 401 (Sheet 4): Prior to further flight, replace the rigid bus assembly with a new assembly, in accordance with the procedures specified in Boeing 737–600, –700, –800, –900 AMM, Section 24–21–22.

Repetitive Torque Check

(b) Concurrent with the accomplishment of the requirements of paragraph (a) of this AD: Perform a torque check of the attachment screws of the power feeder terminals in accordance with the procedures specified in Boeing Maintenance Tip 737 MT 24–003, dated May 14, 1998. Repeat the torque check thereafter at intervals not to exceed 1,000 flight hours, in accordance with the maintenance tip.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) This amendment becomes effective on April 19, 1999.

Issued in Renton, Washington, on March 29, 1999.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–8133 Filed 4–1–99; 8:45 am]

BILLING CODE 4910–13–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 195–0101a FRL–6235–8]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision, Yolo-Solano Air Quality Management District, Monterey Bay Unified Air Pollution Control District, South Coast Air Quality Management District, Santa Barbara County Air Pollution Control District, Sacramento Metropolitan Air Quality Management District, and Kern County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action on revisions to the California State Implementation Plan. The revisions concern rules from the following Districts: Yolo-Solano Air Quality Management District (YSAQMD), Monterey Bay Unified Air Pollution Control District (MBUAPCD), South Coast Air Quality Management District (SCAQMD), Santa Barbara County Air Pollution Control District (SBCAPCD), Sacramento Metropolitan Air Quality Management District (SMAQMD), and Kern County Air Pollution Control District (KNCAPCD). This approval action will incorporate these rules into the federally approved SIP. The intended effect of approving these rules is to regulate emissions of volatile organic compounds (VOCs) in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). The revised rules control VOC emissions from organic solvent cleaning, and surface preparation and cleanup. Thus, EPA is finalizing the approval of these revisions into the California SIP under provisions of the CAA regarding EPA action on SIP submittals, SIPs for national primary and secondary ambient air quality standards and plan requirements for nonattainment areas.

DATES: This rule is effective on June 1, 1999 without further notice, unless EPA receives adverse comments by May 3, 1999. If EPA receives such comment, it will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: Comments must be submitted to Andrew Steckel at the Region IX office listed below. Copies of the rule revisions and EPA's evaluation report for each rule are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted rule revisions are available for inspection at the following locations:

Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105

Environmental Protection Agency, Air Docket (6102), 401 "M" Street, S.W., Washington, D.C. 20460

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 "L" Street, Sacramento, CA 95812

Yolo-Solano Air Quality Management District, 1947 Galileo Court, Suite 103, Davis, CA 95616

Monterey Bay Unified Air Pollution Control District, 24580 Silver Cloud Court, Monterey, CA 93940

South Coast Air Quality Management District, 21865 E. Copley Drive, Diamond Bar, CA 91765

Santa Barbara County Air Pollution Control District, 26 Castilian Drive B–23, Goleta, CA 93117

Sacramento Air Quality Management District, 8411 Jackson Road, Sacramento, CA 95826

Kern County Air Pollution Control District, 2700 M Street, Suite 302, Bakersfield, CA 93301

FOR FURTHER INFORMATION CONTACT: Andrew Steckel, Rulemaking Office, AIR–4, Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744–1185.

SUPPLEMENTARY INFORMATION:

I. Applicability

The part of this **Federal Register** action which applies to the South Coast Air Quality Management District excludes the Los Angeles County portion of the Southeast Desert AQMA, otherwise known as the Antelope Valley Region in Los Angeles County, which is now under the jurisdiction of the Antelope Valley Air Pollution Control District as of July 1, 1997.

The rules being approved into the California SIP include: YSAQMD Rule 2.31—Surface Preparation and Cleanup, MBUAPCD Rule 433—Organic Solvent Cleaning, SCAQMD Rule 1122—Solvent Degreasers, SBCAPCD Rule 321—Solvent Cleaning Operations, SMAQMD Rule 454—Degreasing Operations, and KNCAPCD Rule 410.3—Organic Solvent Cleaning Operations. These rules were submitted by the California Air Resources Board (CARB) to EPA on November 30, 1994, June 3, 1997, September 8, 1997, March 10, 1998, May 18, 1998, and June 23, 1998 respectively.

II. Background

On March 3, 1978, EPA promulgated a list of ozone nonattainment areas under the provisions of the Clean Air Act, as amended in 1977 (1977 Act or pre-amended Act), that included the Sacramento Metro Area, which includes Yolo County and part of Solano County, the Monterey Bay Area, the South Coast Air Basin, the Santa Barbara-Santa Maria-Lompoc Area, and the Southeast Desert Modified Air Quality Management Area. 43 FR 8964, 40 CFR 81.305. On May 26, 1988, EPA notified the Governor of California, pursuant to section 110(a)(2)(H) of the 1977 Act, that the above districts' portions of the California SIP were inadequate to attain and maintain the ozone standard and requested that deficiencies in the existing SIP be corrected (EPA's SIP—Call). On November 15, 1990, the Clean

Air Act Amendments of 1990 were enacted. Pub. L. 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q. In amended section 182(a)(2)(A) of the CAA, Congress statutorily adopted the requirement that nonattainment areas fix their deficient reasonably available control technology (RACT) rules for ozone and established a deadline of May 15, 1991 for states to submit corrections of those deficiencies.

Section 182(a)(2)(A) applies to areas designated as nonattainment prior to enactment of the amendments and classified as marginal or above as of the date of enactment. It requires such areas to adopt and correct RACT rules pursuant to pre-amended section 172 (b) as interpreted in pre-amendment guidance.[1] EPA's SIP-Call used that guidance to indicate the necessary corrections for specific nonattainment areas. The Sacramento Metro Area is classified as severe, the Monterey Bay Area as serious, the South Coast Air Basin as extreme, the Santa Barbara-Santa Maria-Lompoc Area as serious, therefore, these areas were subject to the RACT fix-up requirement and the May 15, 1991 deadline. However, the Southeast Desert Air Basin portion of Kern County was not a pre-amendment nonattainment area and, therefore, was not designated and classified upon enactment of the amended ACT. For this reason KNCAPCD is not subject to section 182(a)(2)(A) RACT fix-up requirement. The KNCAPCD is, however, still subject to the requirements of EPA's SIP-Call, because the SIP-Call included all of Kern County.[2]

The State of California submitted many revised RACT rules for incorporation into its SIP on November 30, 1994, June 3, 1997, September 8, 1997, March 10, 1998, May 18, 1998, and June 23, 1998, including the rules being acted on in this document. This document addresses EPA's direct-final action for YSAQMD Rule 2.31—Surface Preparation and Cleanup, MBUAPCD Rule 433—Organic Solvent Cleaning, SCAQMD Rule 1122—Solvent Degreasers, SBCAPCD Rule 321—Solvent Cleaning Operations, SMAQMD Rule 454—Degreasing Operations, and KNCAPCD Rule 410.3—Organic Solvent Cleaning Operations. YSAQMD adopted Rule 2.31 on April 27, 1994, MBUAPCD adopted Rule 433 on March 26, 1997, SCAQMD adopted Rule 1122 on July 11, 1997, SBCAPCD adopted Rule 321 on September 18, 1997, SMAQMD adopted Rule 454 on April 3, 1997, and KNCAPCD adopted Rule 410.3 on May 7, 1998. These submitted rules were found to be complete on January 30, 1995 (2.31), September 5, 1997 (433), October 20, 1997 (1122), July 17, 1998 (454) and August 25, 1998 (410.3) pursuant to EPA's completeness criteria that are set forth in 40 CFR part 51 Appendix V[3] and is being finalized for approval into the SIP.

These rules regulate VOC emissions from organic solvent cleaning operations, and surface preparation and clean-up activities. VOCs contribute to the production of ground level ozone and smog. This rules were originally adopted as part of these Districts' effort to achieve the National Ambient Air Quality Standard (NAAQS) for ozone and in response to EPA's SIP-Call and the section 182(a)(2)(A) CAA requirement. The following is EPA's evaluation and final action for this rule.

III. EPA Evaluation and Action

In determining the approvability of a VOC rule, EPA must evaluate the rule for consistency with the requirements of the CAA and EPA regulations, as found in section 110 and part D of the CAA and 40 CFR part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans). The EPA interpretation of these requirements, which forms the basis for today's action, appears in the various EPA policy guidance documents listed in footnote 1. Among those provisions is the requirement that a VOC rule must, at a minimum, provide for the implementation of RACT for stationary sources of VOC emissions. This requirement was carried forth from the pre-amended Act.

For the purpose of assisting state and local agencies in developing RACT rules, EPA prepared a series of Control Technique Guideline (CTG) documents. The CTGs are based on the underlying requirements of the Act and specify the presumptive norms for what is RACT for specific source categories. Under the CAA, Congress ratified EPA's use of these documents, as well as other Agency policy, for requiring States to "fix-up" their RACT rules. See section 182(a)(2)(A). The CTG applicable to MBUAPCD Rule 433, SCAQMD Rule 1122, SBCAPCD Rule 321, SMAQMD Rule 454, and KNCAPCD Rule 410.3 is entitled, Control of Volatile Organic Emissions from Solvent Metal Cleaning, EPA–450/2–77–022, November 1977. YSAQMD Rule 2.31 controls emissions from a source category for which EPA has not issued a CTG. Accordingly this rule was evaluated against the general RACT requirements of the Clean Air Act (CAA section 110 and part D). The rule was also compared with other district rules covering the same source category to ensure consistency. Further interpretation of EPA policy are found in the Blue Book, referred to in footnote 1. In general, these guidance documents have been set forth to ensure that VOC rules are fully enforceable and strengthen or maintain the SIP.

There is currently no version of YSAQMD Rule 2.31, Surface Preparation and Cleanup SIP. The submitted rule includes the following provisions:

- Applicability section defining who is subject to the rule,
- Exemptions for dry cleaning and solvent cleaning operations, which are subject to other district rules. Wipe cleaning, automated spray systems, aerosol products and cleaning of high precision optics are exempted from specific provisions of this rule.
- Standard VOC limits for solvents to perform cleaning activities,'
- Monitoring and record keeping section containing the description of records that must be kept and a listing of test methods to be used in determining compliance.

On February 26, 1996, EPA approved into the SIP a version of Rule 433—Organic Solvent Cleaning that had been adopted by MBUAPCD on June 15, 1994. MBUAPCD submitted Rule 433—Organic Solvent Cleaning includes the following significant changes from the current SIP:

- A revised applicability section with an added reference to the National Emission Standard for Hazardous Air Pollutants (NESHAP),

[1] Among other things, the pre-amendment guidance consists of those portions of the proposed Post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044 (November 24, 1987); "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations, Clarification to Appendix D of November 24, 1987 **Federal Register** Notice" (Blue Book) (notice of availability was published in the **Federal Register** on May 25, 1988); and the existing control technique guidelines (CTGs).

[2] The Sacramento Metro Area, the Monterey Bay Area, the South Coast Air Basin, the Monterey Bay Area, and the Santa Barbara-Santa Maria-Lompoc Area retained their designation and were classified by operation of law pursuant to sections 107(d) and 181(a) upon the date of enactment of the CAA. The Southeast Desert Air Basin Portion of Kern County was designated nonattainment on November 6, 1991 (56 FR 56649). On April 25, 1995, EPA published a final rule granting the State's request to reclassify the Sacramento Metro Area to severe from serious (60 FR 20237). This reclassification became effective on June 1, 1995. On December 10, 1997, EPA published a final rule reclassifying the Santa Barbara-Santa Maria-Lompoc Area to serious from moderate. This reclassification became effective on January 9, 1998.

[3] EPA adopted the completeness criteria on February 16, 1990 (55 FR 5830) and, pursuant to section 110(k)(1)(A) of the CAA, revised the criteria on August 26, 1991 (56 FR 42216).

• A revised rule effectiveness date which coincides with the rule adoption date,

• A reference to MBUAPCD Rule 101—Definitions, in lieu of a detailed listing of exempt compounds, and

• an added reference to EPA's Guidelines for Determining Capture Efficiency, dated January 9, 1995.

On November 4, 1996, EPA approved into the SIP a version of Rule 1122—Solvent Degreasers that had been adopted by SCAQMD on April 5, 1991. SCAQMD submitted Rule 1122—Solvent Degreasers includes the following significant changes from the current SIP:

• The rule language was modified to eliminate ambiguities between Rule 1122—Solvent Degreasers, and 1171—Solvent Cleaning Operations,

• The requirements covering remote reservoir cold cleaners were removed from this rule to be regulated under Rule 1171,

• Limits the VOC content of cleaning material for batch loaded cold cleaners to 50 grams per liter, or less,

• Augmented methods of controlling emissions from open top vapor degreasers by adding the requirements of a superheated vapor zone, and an automated parts handling system,

• Added design requirements and control standards for Air-tight and air-less cleaning systems,

• Added and defined "clean air solvent" and describes how to obtain clean air solvent certification, which, when displayed, qualifies for an exemption from the requirements of this rule,

• Exempts degreasing operations using halogenated solvents, which are regulated under 40 CFR Part 63, Subpart T (NESHAP), and

• Requires monthly records to be kept in the format shown in appendix A to this rule.

There is currently no version of SBCAPCD Rule 321—Solvent Cleaning Operations in the SIP. The submitted Rule includes the following provisions:

• An applicability section,

• Exempts cleaning operations employing solvents with 2% or less VOC content, and cleaning operations using halogenated solvents regulated under 40 CFR Part 63, Subpart T (NESHAP).

• Definitions of pertinent terms,

• General and specific design and operating requirements covering all types of solvent cleaning operation.

• Test methods to be used to determine compliance with the requirements of this rule, and

• Record keeping requirements.

On August 4, 1994, EPA approved into the SIP a version of Rule 454—Degreasing Operations that had been adopted by SMAQMD on February 23, 1993. SMAQMD submitted Rule 454—Degreasing Operations includes the following significant changes from the current SIP:

• Added an exemption for cleaning solvents with VOC content of 5% or less, by weight,

• Exempts solvent cleaning operations using halogenated solvents which fall under the requirements of 40 CFR Part 63, Subpart T (NESHAP), and

• Referenced SMAQMD Rule 101—General Provisions and Definitions in lieu of the detailed listing of exempt components.

On October 7, 1996, EPA approved into the SIP a version of Rule 410.3—Organic Solvent Degreasing Operations that had been adopted by KNCAPCD on March 7, 1996. KNCAPCD submitted Rule 410.3—Organic Solvent Degreasing Operations includes the following significant changes from the current SIP:

• Added the definition of "low volatility solvents" and provided an exemption from the free-board height requirement, when using this type of solvents, and

• Added an exemption for degreasers using halogenated solvents which must comply with the requirements of 40 CFR Part 63, Subpart T (NESHAP).

EPA has evaluated the submitted rules and has determined that they are consistent with the CAA, EPA regulations, and EPA policy. Therefore, YSAQMD Rule 2.31—Surface Preparation and Cleanup, MBUAPCD Rule 433—Organic Solvent Cleaning, SCAQMD Rule 1122—Solvent Degreasers, SBCAPCD Rule 321—Solvent Cleaning Operations, SMAQMD Rule 454—Degreasing Operations, and KNCAPCD Rule 410.3—Organic Solvent Cleaning Operations are being approved under section 110(k)(3) of the CAA as meeting the requirements of section 110(a) and part D.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should adverse comments be filed. This rule will be effective June 1, 1999 without further notice unless the Agency receives adverse comments by May 3, 1999.

If the EPA receives such comments, then EPA will publish a timely withdrawal of the direct final rule informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on this rule. Any parties interested in commenting on this rule should do so at this time. If no such comments are received, the public is advised that this rule will be effective on June 1, 1999 and no further action will be taken on the proposed rule.

IV. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order (E.O.) 12866, entitled "Regulatory Planning and Review."

B. Executive Order 12875

Under Executive Order 12875, Enhancing the Intergovernmental Partnership, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected state, local, and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, E.O. 12875 requires EPA to develop an effective process permitting elected officials and other representatives of state, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's rule does not create a mandate on state, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

C. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to E.O. 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

D. Executive Order 13084

Under Executive Order 13084, Consultation and Coordination with Indian Tribal Governments, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co., v. U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major" rule as defined by 5 U.S.C. 804(2).

H. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 1, 1999. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Note: Incorporation by reference of the State Implementation Plan for the State of California was approved by the Director of the **Federal Register** on July 1, 1982.

Dated: February 16, 1999.

Laura Yoshii,

Deputy Regional Administrator, Region IX.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart F—California

2. Section 52.220 is amended by adding paragraphs (c)(207)(i)(C)(*7*),

(249), (254)(i)(C)(*3*), (255)(i)(A)(*3*), (256)(i)(C) and (258), to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(207) * * *

(i) * * *

(C) * * *

(*7*) Rule 2.31, adopted on April 27, 1994.

* * * * *

(249) New and amended regulations for the following APCD's were submitted on September 8, 1997, by the Governor's designee.

(i) Incorporation by reference.

(A) South Coast Air Quality Management District.

(*1*) Rule 1122, adopted on March 2, 1979 and amended on July 11, 1997.

* * * * *

(254) * * *

(i) * * *

(C) * * *

(*3*) Rule 321, adopted on February 24, 1971 and revised on September 18, 1997.

* * * * *

(255) * * *

(i) * * *

(A) * * *

(*3*) Rule 454, adopted on June 5, 1979 and amended on April 3, 1997.

* * * * *

(256) * * *

(i) * * *

(C) Kern County Air Pollution Control District.

(*1*) Rule 410.3, adopted on June 26, 1979 and revised on May 7, 1998.

* * * * *

(258) New and amended regulations for the following APCD's were submitted on June 3, 1997, by the Governor's designee.

(i) Incorporation by reference.

(A) Monterey Bay Unified Air Pollution Control District.

(*1*) Rule 433, adopted on June 15, 1994 and revised on March 26, 1997.

* * * * *

[FR Doc. 99–8083 Filed 4–1–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–6317–6]

National Oil and Hazardous Substance Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Notice of deletion of the Williams Pipe Line Disposal Pit Site from the National Priorities List (NPL).

SUMMARY: The U.S. Environmental Protection Agency (EPA) announces the deletion of the Williams Pipe Line Disposal Pit Site (Site) in Minnehaha County, Sioux Falls, South Dakota, from the National Priorities List(NPL). The NPL is Appendix B of Title 40 of the Code of Federal Regulations (40 CFR) part 300 which is the National Oil and Hazardous Substances Contingency Plan (NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended. EPA in consultation with the state of South Dakota has determined that the Site poses no significant threat to public health or the environment and, therefore, no further remedial measures pursuant to CERCLA are appropriate.

EFFECTIVE DATE: April 2, 1999.

FOR FURTHER INFORMATION CONTACT: Dennis Jaramillo, U.S. Environmental Protection Agency, Region 8, 999 18th Street, Suite 500, Mailcode: 8EPR–SR, Denver, CO 80202, telephone (303) 312–6580.

SUPPLEMEMTARY INFORMATION: The site to be deleted from the NPL is: the Williams Pipe Line Disposal Pit in Minnehaha County, Sioux Falls, South Dakota.

A Notice of Intent to Delete for this site was published on November 25, 1998, (63 FR 65161). The closing date for comments on the Notice of Intent to Delete was January 4, 1999. No comments were received during the comment period. In response, since no comments were received EPA is going forward with the Site deletion from the NPL.

EPA identifies sites that appear to present a significant risk to public health, welfare, and the environment and it maintains the NPL as a list of those sites. Any site deleted from the NPL remains eligible for Fund-financed remedial actions in the unlikely event that conditions at the site warrant such action in the future, NCP § 300.425(e)(3). Deletion of a site from the NPL does not affect the responsible party of liability or impede agency efforts to recover cost associated with response efforts.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous substances, Hazardous waste, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: March 24, 1999.

William P. Yellowtail,

Regional Administrator, Region VIII.

For reasons set out in the preamble 40 CFR part 300 is amended as follows:

PART 300—[AMENDED]

1. The authority citation for part 300 continues to read as follows:

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p 193.

Appendix B [Amended]

2. Table 1 of appendix B to part 300 is amended by removing the site Williams Pipe Line Co. Disposal Pit, Sioux Falls, SD".

[FR Doc. 99–7908 Filed 4–1–99; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 195

[Docket No. RSPA–97–2095; Amendment 195–66]

[RIN 2137–AC 11]

Pipeline Safety: Adoption of Consensus Standards for Breakout Tanks

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Final Rule.

SUMMARY: This final rule incorporates by reference consensus standards for aboveground steel storage tanks into the hazardous liquid pipeline safety regulations. These standards apply to the design, construction, and testing of new tanks, and the repairs, alterations and replacement of existing tanks. All new and existing breakout tanks are also subject to the operating and maintenance requirements specified in this rule. The incorporation by reference of these thirteen standards will significantly improve the minimum level of safety applicable to the transportation and storage of petroleum and petroleum products at breakout tanks throughout the United States.

DATES: *Effective Date:* This final rule takes effect May 3, 1999. The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register May 3, 1999.

Compliance date: Except under § 195.432, compliance with consensus

standards that are incorporated by reference is not required until October 2, 2000.

FOR FURTHER INFORMATION CONTACT: Mike Israni, Office of Pipeline Safety (OPS), telephone: (202) 366–4571, FAX: (202) 366–4566, e-mail: mike.israni@rspa.dot.gov, regarding the subject matter of this rule; or the Docket Facility, telephone (202) 366–9329, regarding copies of this final rule or other material in the docket.

Comments may be accessed electronically at http://dms.dot.gov. General information about the RSPA/Office of Pipeline Safety programs can be obtained by accessing OPS's Internet home page at http://ops.dot.gov.

SUPPLEMENTARY INFORMATION:

Background

The failure of a storage tank not associated with pipeline transportation provided much of the incentive to improve consensus standards for aboveground steel storage tanks. On January 2, 1988, at a barge terminal in Floreffe, Pennsylvania, a newly recommissioned storage tank suddenly collapsed and released 3.9 million gallons of diesel oil. Although the earthen dike contained most of the diesel oil, an estimated 750,000 gallons were spilled into the Monongahela River and eventually flowed into the Ohio River.

The publicity and costly consequences of this failure caused widespread concern about the safety of all aboveground storage tanks. Responding to the aftermath of this event, petroleum industry engineers and the American Petroleum Institute considerably updated existing standards and developed several new standards.

In the 10-year period from 1987–1996, operators of breakout tanks reported 152 accidents to RSPA. These accidents caused no deaths; three injuries to pipeline personnel; $12,422,894 of property damage; and 153,972 spilled barrels. The causes were reported as: 25 leaks in the tank floor; 30 incorrect operations; 8 outside forces; and 26 malfunctions of control or relief equipment. The remaining 63 were related to problems with floating roof water drain lines, lightning, and miscellaneous other causes.

The pipeline safety regulations have not been revised to reflect the updating and development of new consensus standards for aboveground steel storage tanks. Instead, they remain very limited in scope and too general to address many safety-related aspects.

Consequently, RSPA recognizes the need to update the safety regulations for breakout tanks. The most appropriate means of updating is the incorporation by reference into Part 195 of selected consensus standards. They are widely understood and have been extensively implemented by the operators of breakout tanks.

RSPA provided operators of breakout tanks, the petroleum industry and the general public the opportunity to provide early input on RSPA's intent to incorporate consensus standards for storage tanks through public meetings.

RSPA contracted with the Texas Transportation Institute (TTI) to obtain professional assistance in the selection of consensus standards to be incorporated into the breakout tank regulations. TTI is associated with Texas A&M University at College station, Texas.

All consensus standards are being adopted on a prospective basis, meaning design, construction and testing requirements apply to new tank construction and future repairs, alterations or replacements of existing tanks. Operating and maintenance requirements apply to future operating and maintenance activities. The deadlines for compliance with the new requirements are specified in the appropriate sections of this rule.

For additional background information regarding this rule please refer to the Notice of Proposed Rulemaking (NPRM) [63 FR 27903; May 21,1998].

Proposed Rule

RSPA published an NPRM (63 FR 27903; May 21, 1998), proposing to incorporate 12 consensus standards for aboveground breakout storage tanks into 49 CFR Part 195. In addition, a 13th consensus standard, API 510, has been added for inspection of high pressure vessels built to API standard 2510. The NPRM requested interested persons to submit comments by July 20, 1998. It was also stated that late filed comments would be considered as far as practicable. We received comments from nine sources including American Petroleum Institute (API) and U.S. Environmental Protection Agency (EPA) prior to 7/20/98. After which, API and EPA filed second set of comments on 10/19/98 and 12/3/98 respectively.

Final Rule

This final rule incorporates consensus standards for aboveground breakout storage tanks into 49 CFR Part 195. Currently § 195.3 lists 18 publications that have been incorporated by reference into Part 195. This rule now incorporates all or parts of an additional six API standards (510, 620, 650, 653, 2000 and 2510), one API Specification (12F), four API Recommended Practices (651, 652, 2003 and 2350), one API Publication (2026), and NFPA 30.

Subpart A—General.

Revised § 195.1(c) explains the applicability of Part 195 to breakout tanks. It further explains that anhydrous ammonia breakout tanks need not comply with certain requirements in Part 195.

Listed below are 13 standards incorporated by reference wholly or partially. For further information about these documents please refer to the NPRM [63 FR 27903; May 21, 1998] or the individual standards.

1. API SPECIFICATION 12F—Specification for Shop Welded Tanks for Storage of Production Liquids, Eleventh Edition, November 1, 1994.

2. API 510—Pressure Vessel Inspection Code: Maintenance Inspection, Rating, Repair, and Alteration, Eighth Edition, June 1997.

API 510 has been added for purposes of inspection of high pressure breakout tanks built to API standard 2510.

3. API STANDARD 620—Design and Construction of Large, Welded, Low-Pressure Storage Tanks, Ninth Edition, February 1996 (Including Addenda 1 and 2).

4. API STANDARD 650—Welded Steel Tanks for Oil Storage, Ninth Edition, July 1993 (Including Addenda 1 through 4).

5. API RECOMMENDED PRACTICE 651—Cathodic Protection of Aboveground Petroleum Storage Tanks, Second Edition, Dec. 1997.

6. API RECOMMENDED PRACTICE 652—Lining of Aboveground Petroleum Storage Tank Bottoms, Second Edition, December 1997.

7. API STANDARD 653—Tank Inspection, Repair, Alteration, and Reconstruction, Second Edition, December 1995 (Including Addenda 1 and 2).

8. API STANDARD 2000—Venting Atmospheric and Low-Pressure Storage Tanks, Fourth Edition, September 1992.

9. API RECOMMENDED PRACTICE 2003—Protection Against Ignitions Arising Out of Static, Lightning, and Stray Currents, Sixth Edition, September 1998.

10. API PUBLICATION 2026—Safe Access/Egress Involving Floating Roofs of Storage Tanks in Petroleum Service, Second Edition, April 1998.

11. API RECOMMENDED PRACTICE 2350—Overfill Protection for Storage Tanks In Petroleum Facilities, Second Edition, Jan. 1996.

12. API STANDARD 2510—Design and Construction of LPG Installations, Seventh Edition, May 1995.

13. NFPA 30—Flammable and Combustible Liquids Code, 1996 Edition.

Subpart C—Design Requirements

The revised § 195.132 now includes requirements for critical engineering subjects, such as materials, design, fabrication, erection, methods of inspecting joints, welding procedure and welder qualifications, and marking. It also contains other important topics including foundations, external floating roofs, seismic design, aluminum dome roofs, internal floating roofs, inspection and testing, and requirements for operating at elevated temperatures. These topics are typical of the engineering subjects covered by incorporating by reference the following standards:

(1) API Specification 12F for shop-fabricated tanks with vapor space pressure that are approximately atmospheric with capacity of 90 to 750 barrels.

(2) API Standard 650 for atmospheric pressure tanks with pressures not greater than 2.5 psig.

(3) API Standard 620 for low pressure tanks with vapor space pressures not greater than 15 psig.

(4) API Standard 2510 for LPG tanks with capacity of 2000 gallons or more and pressures greater than 15 psig.

Subpart D—Construction

A new § 195.205 on Repair, alteration and reconstruction of breakout tanks that have been in service requires that tanks built to API 650 and API 12C are to be modified in accordance with API Standard 653. Also, tanks built to API 620 may be modified by the design, welding examination and testing provisions of API standard 653 in proper conformance with the stresses, joint efficiencies, material and other provisions in API standard 620. For tanks built to API 2510 modifications are to be performed in accordance with the API 510.

In § 195.242 requirements for cathodic protection have been amended for the aboveground tanks by referencing API Recommended Practices 651 for the bottoms of the tanks and API Recommended Practices 652 for the internal lining of the tank bottom.

In § 195.264, requirements for impoundment, protection against entry, normal/emergency venting and pressure/vacuum relief for the above ground breakout tanks have been revised. In addition some requirements of NFPA 30 have been added for impoundment by diking.

Subpart E—Pressure Testing

A new § 195.307 requires pressure testing of breakout tanks newly placed in service or returned to service after 18 months. Testing requirements reference specified tank standards.

Subpart F—Operation and Maintenance

A new § 195.405 requires protection against ignitions and safe access/egress involving floating roofs in accordance with API RP 2003.

Section 195.416 has been amended by adding a provision for the inspection of cathodic protection systems for breakout tanks in accordance with API RP 651.

Section 195.428 has been amended by adding provisions for the installation of over pressure safety devices and overfill protection systems in accordance with API RP 2350 and API Standard 2510.

Section 195.432 has been revised to provide maintenance inspection of breakout tanks and diking in accordance with the provisions of API Standard 653, and API Standard 2510.

Discussion of Comments

We received comments from the following sources in response to the NPRM:

Trade associations: American Petroleum Institute (API); The Fertilizer Institute (TFI); Steel Tank Institute (STI); and Independent Liquid Terminals Association (ILTA)

Standards organization: National Fire Protection Association (NFPA)

Pipeline operators: Conoco Pipeline Company (CONOCO); TE Products Pipeline Company (TEPPCO); and Amoco Pipeline Company (AMOCO)

Federal agency: United States Environmental Protection Agency (EPA)

In addition, as discussed under another heading below, the Technical Hazardous Liquid Pipeline Safety Standards Committee considered and submitted a report on the proposed rules.

Five of the nine commenters (API, AMOCO, CONOCO, TEPPCO, NFPA) generally supported the NPRM, but expressed concerns or suggested changes, CONOCO by endorsing API's views. EPA opposed our regulatory approach of referencing consensus standards, but nevertheless submitted comments on specific issues. Of the remaining three commenters, TFI and ILTA raised particular points about the NPRM, and STI recommended additional standards to incorporate by reference.

We did not consider the additional consensus standards STI suggested because the suggestions were not tied to any particular aspect of the NPRM. All other significant comments on the NPRM are summarized in this section of the preamble, where we also explain our response to those comments.

Organization of Breakout Tank Rules

API commented that all substantive regulations on breakout tanks should be consolidated in a single subpart in Part 195, rather than scattered among several subparts.

We did not adopt this suggestion because we consider it impractical. Part 195 defines a "pipeline system" to include breakout tanks. Breakout tanks also come within the meaning of "pipeline facility" as defined in Part 195. Consequently, apart from the final rules in this document, there are many substantive regulations in Part 195 governing pipeline facilities or pipeline systems that apply to breakout tanks. For example, the accident reporting requirements in Subpart B, the operations and maintenance manual requirements in § 195.402, and the training requirements in § 195.403 apply to breakout tanks because these regulations cover all parts of a pipeline system. So to combine all the substantive requirements for breakout tanks in a single subpart would require duplicating many regulations or making many cross references, and neither approach is desirable.

Still we believe readers could benefit from more direction on how to recognize which Part 195 regulations apply to breakout tanks. So we have replaced § 195.1(c) to explain the applicability of Part 195 to breakout tanks. We also revised § 195.1(c) by deleting certain compliance deadlines that have expired.

Incorporation by Reference

Two commenters indicated there is possibly some confusion over the exact composition of matter incorporated by reference. First, TEPPCO asked whether a document or part of a document that is referenced by material incorporated by reference is similarly incorporated by reference. AMOCO declared that such internal references have no regulatory force. On the contrary, we believe if a document part that is incorporated by reference refers to a separate part of the same document or another document, compliance with that separate part is required if it is necessary for compliance with the original referenced document part. If the internal reference is informational or advisory and not necessary for compliance, then operators are not obliged to comply with it.

TEPPCO and API suggested that we amend the section in Part 195 that lists referenced documents (§ 195.3) to state which parts of the documents are incorporated by reference if the whole document is not incorporated. Section 195.3(a) now provides that an entire document is not incorporated by reference in Part 195 when only a part of the document is referenced. Whether an entire document or only part of a document is referenced depends on the scope of the reference in the Part 195 section that states the reference. For example, under proposed § 195.132, certain breakout tanks would have to be designed and constructed in accordance with certain API documents. Thus, all provisions of the API documents that apply to design and construction of breakout tanks would be incorporated by reference. If those provisions are found in only parts of the documents, then only those parts would be incorporated by reference. But if an entire document governs design and construction, the entire document would be incorporated by reference. Although we do not think it would be practical to duplicate in § 195.3 the scope of the various references included throughout Part 195, we are amending the lead-in to § 195.3(c) to clarify that the listed publications may be referenced in whole or in part in Part 195.

Engineering Judgment

API commented that its consensus standards were developed as an aid to engineering judgment, not as a replacement for it. It said that its consensus standards may not fit every tank situation and were not intended to be strictly met. Therefore, API suggested that in enforcing the standards, we recognize the need for engineering judgment and look for attainment of objectives (such as tank integrity and release prevention) rather than strict adherence to the terms of the standards.

On this issue, EPA noted that in many of API's consensus standards the requirements are optional. A document's foreword may permit operators not to meet sections they consider unnecessary to follow in particular circumstances. As an example, EPA cited API 653 (referenced in proposed §§ 195.205, 195.307, and 195.432) in which the foreword states "If tanks are inspected, repaired, altered, or reconstructed in accordance with this standard, the owner/operator may elect to modify, delete, or amplify sections of this standard."

In the NPRM, we proposed the following levels of compliance for the different types of API and NFPA documents that would be incorporated by reference:

- Standard, Specification or Code—An operator would be expected to comply with the provisions.
- Recommended Practice—An operator would be expected to follow the provisions unless the operator notes in the procedural manual the reasons why compliance with all or certain provisions is not necessary for the safety of a particular breakout tank or tanks.
- Publication—These provisions provide guidelines, safety practices and precautions for the operator's review and consideration for inclusion in the procedural manual.

By this proposal we meant that operators would have to meet the referenced parts of standards, specifications, and codes according to the terms of those parts. Although operators could decide not to abide by referenced parts of recommended practices or publications, we did not intend for them to have this same discretion regarding compliance with referenced parts of standards, specifications, or codes. Therefore, in the final rules, none of the references to parts of standards, specifications, or codes may be interpreted to include a statement in the document's foreword or elsewhere outside the referenced part that would absolve the operator of its responsibility to comply with the referenced part. For example, the statement in section 1–1.3 of NFPA 30 that the code does not apply to "[t]ransportation of flammable and combustible liquids, as governed by the U. S. Department of Transportation" does not nullify the references to particular sections of NFPA 30 in final § 195.264.

Nonetheless, if the referenced part of a standard, specification, or code allows or calls for the use of engineering judgment, in determining compliance with the referenced part, we will not object to the use of judgment. We will, however, compare the judgment used against what is reasonable under the circumstances. If an operator wishes to achieve a particular objective in a way that differs from the referenced part of a standard, specification, or code or falls outside the range of allowable judgment, it can request permission to do so by applying to us or the appropriate state agency, as applicable, for a waiver of the referenced part (see 49 U.S.C. 60118).

EPA also raised an enforcement issue with regard to the proposed references to API recommended practices (§§ 195.242 (c) and (d), 195.405, 195.416(j), and 195.428(c)). EPA said that although an operator would have to include in its procedural manual its reason for not applying a practice to a particular tank, the proposal did not provide a way for us to order compliance with the practice if we do not agree with the operator's reason.

This additional provision is not needed, however, because operators' procedural manuals are subject to review and amendment by our enforcement personnel. Under the enforcement procedures in 49 CFR 190.237, if our enforcement personnel have reason to believe an operator's operations and maintenance procedures are inadequate for safety, they conduct proceedings to determine the adequacy and can order the operator to change any procedures found inadequate. In addition, under 49 CFR 190.233, we can order immediate corrective action for any pipeline facility that we believe poses a serious threat to life or property.

Performance Standards v. Consensus Standards

EPA stated that requiring operators to apply consensus standards would lock them into present-day technologies and practices, and prevent them from using innovative techniques until we grant special approvals or reference a later consensus standard that permits the new techniques. As an alternative approach, EPA recommended that we adopt tank rules that establish the level of performance to be achieved, leaving operators free to use the latest technologies and practices to achieve it.

In contrast, API pointed out that its standards are regularly revised and reflect constant improvement by committees of experts, so that use of new technologies is not discouraged. API also noted that we have been amending our pipeline safety standards to stay apace with changes to referenced consensus standards.

We recognize the advantage of performance standards, and Part 195 has many standards of this kind. But it also has standards that incorporate consensus standards by reference. Consensus standards have been referenced when performance standards were not available or could not be developed soon enough to meet the need for safety regulation. Still, in our experience, referencing consensus standards has not stymied the use of new pipeline technologies. As API said about its own standards, most of the referenced standards are updated regularly. Moreover, our pipeline safety regulations allow operators to use new technologies permitted under the latest editions of referenced consensus standards as long as the new technology does not result in less safety than

required by the referenced edition (see § 195.101).

Environmental Protection

EPA said that regulations other than the proposed referenced standards would be needed to protect the environment adequately against potential tank spills. It said operators should be required to evaluate breakout tank areas and provide facilities, equipment, or practices at critical locations to prevent possible major oil discharges from leaving the breakout tank area. EPA also recommended that we require proper security measures to protect against releases from vandalism.

This comment did not acknowledge our many existing regulations for breakout tanks that require evaluation and preventive practices to guard against environmental damage. For instance, § 195.402(c)(4) requires operators, as part of their detailed operations and maintenance plan, to determine which facilities would require an immediate response to prevent hazards. § 195.403(a)(3) requires training to recognize conditions likely to cause emergencies in the event of malfunctions or failures; and under § 195.436, operators must protect breakout tank areas against vandalism and unauthorized entry. Further regulations in 49 CFR Part 194 require operators to develop and follow contingency plans for responding to spills from breakout tanks, and to provide adequate resources for oil spill response. Even more environmental protection would be required by the proposed rules that reference consensus standards, especially those standards for corrosion control of tank bottoms and spill impoundment. Therefore, we think the combination of existing breakout tank regulations and those we are adopting in this final rule will result in an adequate level of environmental protection. But we will continue to monitor the safety and environmental record of breakout tanks and take any further action that is warranted by new circumstances.

Overlapping Federal Regulation of Breakout Tanks

ILTA voiced concern about the dual federal regulation of storage tanks at for-hire and marketing terminals. This commenter noted correctly that a storage tank comes under the definition of "breakout tank" in Part 195 if it receives a petroleum product by pipeline and then reinjects it into a pipeline for continued transportation. It said the tank would be subject to EPA's Spill Prevention Control and Countermeasure (SPCC) regulations if it can also transfer the product to another mode of transit serving the terminal. ILTA also pointed out that our present definition of "breakout tank" is not supported by the 1971 memorandum of understanding (MOU) between DOT (U.S. Coast Guard) and EPA on transportation-related facilities (40 CFR Part 112, App. A), and urged us to continue to work with EPA to lessen the problems of overlapping jurisdiction. In its comment on this subject, EPA asked that we amend our definition of "breakout tank" to adhere to the Congressional intent that we regulate only those storage tanks that are "incidental to pipeline transportation." The agency suggested that doing so would require us to exclude tanks that serve non-pipeline modes of transportation.

First, it is important to point out that our current definition of "breakout tank" was adopted with full cognizance that our statutory authority over hazardous liquid storage tanks is limited to tanks that are incidental to pipeline transportation (46 FR 38358; July 27, 1981). We continue to consider this limitation to bar the regulation of storage tanks used exclusively in non-pipeline modes of transportation, but not to bar the regulation of tanks used intermodally with pipelines, such as breakout tanks that also serve cargo vessels, tank cars, or tank trucks. The application of Part 195 to intermodal breakout tanks was an issue in the case of *Exxon Corporation* v. *United States Secretary of Transportation* (978 F.Supp. 946), and the court concluded the tank in question was subject to Part 195.

Indeed, we believe that safety and environmental protection are enhanced under our definition of "breakout tank". The regulations we are issuing today incorporate up-to-date pipeline industry safety practices that were recently developed by expert engineers to prevent significant storage tank accidents. For this reason, we think these regulations may be more appropriate than EPA's SPCC rules to prevent pipeline breakout tank accidents. And excluding certain categories of tanks from the regulations as a way of minimizing regulatory overlap may not be in the public interest. The members of our Technical Hazardous Liquid Pipeline Safety Standards Committee who represent environmental interests supported the NPRM's approach to environmental protection when the committee discussed the merits of the NPRM.

Nevertheless, we are concerned that the industry faces overlapping federal storage tank regulations at intermodal transportation terminals. While the 1971 MOU applies to the Coast Guard's and EPA's regulatory authority under the Federal Water Pollution Control Act, we cannot ignore its spillover effect on our own regulatory program. Therefore, we will continue to talk to EPA officials hopefully to reach agreement on the best way for each agency to exercise its regulatory authority at intermodal transportation terminals without creating undue burdens on industry. In this regard, we will work to (1) clarify each agency's jurisdiction to issue pollution prevention and response planning regulations, and define which facilities are jointly regulated and which are exclusively subject to EPA or RSPA regulations; (2) develop a way to resolve site-specific jurisdictional disputes; (3) develop information that explains each agency's jurisdiction at intermodal facilities; (4) jointly oversee operator compliance; (5) address response preparedness issues at certain facilities; and (6) commit additional resources to regional response activities.

Anhydrous Ammonia Tanks

TFI argued that many of the proposed rules were not appropriate for anhydrous ammonia breakout tanks. It said that because of their unique characteristics, anhydrous ammonia breakout tanks are not treated the same as petroleum breakout tanks in matters of design, construction, operation, and maintenance. TFI listed various problems it saw with the proposed rules and, in some cases, recommended alternative consensus standards. This commenter advised that we either exclude anhydrous ammonia breakout tanks from the final rules or adopt appropriate requirements for these tanks.

Because the existing Part 195 standards that apply to breakout tanks apply equally to anhydrous ammonia and petroleum tanks, we did not question whether the proposed references to API and NFPA standards would be suitable for both types of tanks. Now, however, in view of TFI's comment and having no information to the contrary, we are hesitant to impose on operators of anhydrous ammonia breakout tanks any of the proposed rules that we believe might not be wholly appropriate for such tanks. Therefore, we are adding a sentence to the new § 195.1(c) to exclude anhydrous ammonia breakout tanks from final §§ 195.132(b), 195.205(b), 195.242(c) and (d), 195.264(b) and (e), 195.307, 195.428(c) and (d), and 195.432(b) and (c). At the same time, we will continue to monitor the safety performance of anhydrous ammonia breakout tanks and

take any further rulemaking action that is warranted, including referencing appropriate consensus standards.

Riveted and Bolted Tanks

EPA said the proposed rules do not sufficiently address problems on riveted and bolted tanks. These tanks, it said, are usually older and more susceptible to leaks and their bottoms require different inspection methods. API, however, pointed out that API Standard 653 covers the integrity maintenance of riveted tanks and specifically addresses older tanks. API also said most transportation tanks are welded and that bolted tanks are used in the exploration and production sector of the oil industry.

Besides API Standard 653, we believe several other consensus standards we proposed to reference apply to riveted tanks: API Recommended Practice 651, API Recommended Practice 652, API Recommended Practice 2003, API Recommended Practice 2350, API Standard 2000, API Publication 2026, and NFPA 30. Moreover, our safety data do not indicate that additional requirements are needed to combat leakage problems in older riveted tanks. For example, in its breakout tank report (discussed in the NPRM), the Texas Transportation Institute found that the general condition and appearance of the older riveted tanks it investigated were excellent. Although EPA correctly observed that riveted tank inspection differs from welded tank inspection, the NPRM did not propose rules for the methods of inspecting either welded or riveted tanks.

As to bolted tanks, our experience shows that these tanks are used primarily to store field production, and few, if any, of these tanks are used as breakout tanks subject to Part 195. Any bolted breakout tanks that do exist are covered by existing Part 195 requirements and are subject to inspection by federal and state pipeline safety enforcement personnel.

Operator Error

EPA stated that API standards do not address the problem of operator error, which accounts for a large percentage of pipeline spills. EPA suggested operator personnel should receive proper training, and after a spill, operators should review their training practices to see if changes are needed to prevent spills from recurrence based on operator error.

The NPRM did not propose training requirements because existing § 195.403 requires breakout tank operators to have a detailed training program for operating and maintenance personnel. Under this program, operators periodically review personnel performances and change the training as necessary to make it effective. In addition, in a separate proceeding, we have proposed new rules on the qualification of personnel to perform safety-related tasks (63 FR 57269; Oct. 27, 1998). We intend to issue a final rule on the qualification of personnel in the near future.

Section 195.205(b)(2)

In this section, we proposed that the repair, alteration, and reconstruction of breakout tanks built to API Specification 12F, API Standard 620, or API Standard 2510 be done in accordance with those respective standards. API commented that because API Standard 2510 applies to the design and construction of new tanks and has limited application to existing tanks, the reference to API Standard 2510 may be confusing. It suggested that the references in proposed § 195.205(b)(2) be stated more specifically to refer to the "design, welding, examination, and material requirements of those respective standards." API also suggested that we add a sentence to proposed § 195.205(b)(2) to refer to API 510, "Pressure Vessel Inspection Code: Maintenance Inspection, Rating, Repair, and Alteration," for regulation on the repairs and alteration of tanks built to API Standard 2510.

Based on this comment, final § 195.205(b)(2) contains more specific references. And we have added a new paragraph under § 195.205(b)(3) regarding use of API 510 for repairs, alteration and reconstruction of high pressure tanks.

Section 195.264

We proposed to increase the present requirements of § 195.264 related to spill containment and relief venting. In proposed § 195.264(b)(1)(i), we referenced section 2–3.4.3 of NFPA 30 for secondary containment by impounding around a breakout tank. But we proposed to apply the specific requirements in section 2–3.4.3 concerning "Class I [flammable] liquids" to all "hazardous liquids" subject to Part 195. API objected to this proposed expansion of the Class I-specific requirements as inappropriate because these requirements are long-standing, well understood, and technically sound. NFPA pointed out that our Class I proposal created the false impression that section 2–3.4.3 of NFPA 30 is limited to Class I liquids, when, in fact, other hazardous liquids are covered as well. Upon reconsideration, we believe the proposed expansion of specific Class I liquid requirements was not consistent with the intent of the NPRM to require the industry to follow consensus standards. Therefore, we have not adopted our proposal replacing "hazardous liquids" in the final rule.

API also objected to the term "secondary containment" in proposed § 195.264(b). It said section 2–3.4.3 of NFPA 30 applies to impoundment, which better describes the function of diked areas around tanks. We agree and have substituted "impoundment" for "secondary containment" in the final rule.

NFPA suggested we reference additional sections of NFPA 30 in § 195.264: section 2–9.3 for security, and sections 2–3.5 and 2-3.6 for normal and emergency venting. The latter two sections, NFPA said, would eliminate the need for references to API documents in proposed § 195.264(e)(1)-(3). Since the NPRM did not propose to substantively change the existing breakout tank security requirement (§ 195.264(b)), we did not consider referencing section 2–9.3 of NFPA 30 in the final rule. Further, even though the suggested NFPA 30 sections may yield comparable results, in the absence of negative comments about the proposed references to API documents for normal and emergency venting, we are leaving these API references in the final rule.

EPA described what it called "inherent weaknesses" in the spill control provisions of NFPA 30. Specifically, EPA said NFPA 30 limits dike height, does not require free board space for precipitation, and allows alternatives that can compromise environmental protection. It also noted the lack of requirements for certification by a professional engineer, spill history records, predictions of spill rate and direction, inspection of impoundment, and response plans with commitment of personnel and equipment. EPA suggested we adopt its SPCC regulations instead of the NFPA requirements. Doing so, EPA said, would result in better environmental protection. But API contended the SPCC regulation is inappropriate for pipeline breakout tanks because it addresses entire plants and contains specific requirements for non-transportation facilities.

The weaknesses EPA found with the spill control provisions of NFPA 30 either do not exist or are mitigated by other considerations. Section 2–3.4.3(f) allows dikes of any height that provide normal access to the enclosure. The need for free board must be considered as required by appendix A–2–3.4.3(b). Although section 1–4 permits equivalent alternatives, as we discussed above under the "Engineering

Judgment" heading, this provision is not included in the parts of NFPA 30 incorporated by reference in § 195.264. None of the Part 195 rules require operators to obtain professional engineer certifications to demonstrate compliance, and we do not consider the lack of such a requirement in NFPA 30 to be a shortcoming in the regulation of spill control. Breakout tank operators have to keep records of spills under § 195.404(b), and § 195.402(c)(4) requires operators to consider potential spill characteristics in determining which facilities may require immediate response in the event of a failure or malfunction. The construction of impoundment must be inspected as required by § 195.204, and spill response plans backed by committed resources are required by § 195.402(e) and 49 CFR Part 194. In conclusion, we are including the proposed references to NFPA 30 in final § 195.264. As we said above in the discussion on overlapping federal regulation, because the final rules are directed primarily at preventing breakout tank accidents, we do not think the SPCC regulations would result in better environmental protection.

Section 195.307

API suggested we take the word "pressure" out of the title of proposed § 195.307, "Pressure testing breakout tanks." API said not all testing under the section is pressure testing.

This comment probably arose because pressure testing is mentioned only in paragraph (e), while paragraphs (a)-(d) deal with pneumatic or hydrostatic testing. However, since pneumatic and hydrostatic testing are forms of pressure testing, we have kept the proposed title in the final rule.

Section 195.405

We proposed, under § 195.405(b), to reduce the hazards associated with maintenance of tank floating roofs by requiring operators to consider adding the safety practices of API Publication 2026 to their operation and maintenance manuals. AMOCO contended this proposal was unnecessary because it duplicates similar requirements in the Occupational Safety and Health Administration's confined space regulation (29 CFR 1910.146).

We considered this comment and decided to adopt the proposed rule as final. OSHA's regulation has general application to a variety of confined spaces, but API Publication 2026 deals specifically with entering and exiting floating roofs. Also, if AMOCO's assessment is correct, operators's existing procedures should already satisfy the guidelines in API Publication 2026. Moreover, as 29 CFR 1910.5(b) indicates, OSHA's confined space requirements do not apply to employee working conditions for which another federal agency prescribes regulations affecting occupational safety or health. This provision reduces the potential for problems to result from duplication of any OSHA requirement in 29 CFR Part 1910.

Section 195.428 (c)–(e)

We proposed, under § 195.428(c) and (d), that within 18 months of the final rule certain tanks have overfill protection systems that meet API Recommended Practice 2350, or meet API Standard 2510 if the tank was built to that standard. API, AMOCO, and TEPPCO argued that we should not require existing tanks to have these systems. It said applying the proposed rule retroactively to tanks without such systems would require significant expenditures for conduit, wiring, possibly degassing, and temporary removal of the tank from service.

For these same reasons, we did not intend to apply proposed § 195.428(c) and (d) retroactively. Consistent with our statement that the proposed rules would result in minimal or no cost for operators (63 FR 27908), we intended that operators install overfill protection systems as they customarily do: when constructing new tanks or significantly altering existing tanks. Therefore, the final rule clarifies this limited application, which begins 18 months from today. In addition, for clarity and simplification, we have combined proposed paragraphs (c) and (d) into final paragraph (c). Final paragraph (d) restates proposed paragraph (e) concerning inspecting and testing overfill protection systems.

Section 195.432

In this section we proposed that starting 18 months after the final rule is published, the annual inspection now required by existing § 195.432 for all breakout tanks include, for carbon and low alloy steel, welded or riveted, non-refrigerated tanks, an integrity inspection under section 4 of API Standard 653.

API, AMOCO, and EPA noted a potential conflict between the annual inspection deadline and the different intervals that section 4 of API Standard 653 provides for various types of inspections. Of particular concern were the inspection intervals based on corrosion rate, which in some cases could be up to 20 years. API recommended that we drop the annual inspection requirement and merely require operators to inspect breakout tanks according to section 4 of API Standard 653. EPA also questioned the annual inspection requirement because it does not define the required inspections.

We agree that the existing and proposed requirements could create a conflict of inspection intervals. So final § 195.432(a) includes an exception for tanks that are subject to the other inspection requirements of § 195.432. We did not eliminate the existing annual inspection requirement as API suggested, because it provides for maintenance inspection of breakout tanks that are not subject to the new integrity inspection requirements, such as anhydrous ammonia tanks and non-steel tanks.

API also pointed out that some tank bottoms cannot be inspected under API Standard 653 because the steel bottom has been repaired by a concrete cover. API recommended that in cases like this we allow operators to use an alternative method, such as a risk-based analysis, to assess bottom integrity. Under final § 195.432(b), operators must inspect the integrity of atmospheric and low-pressure tanks according to section 4 of API Standard 653. However, in view of API's comment, the final rule allows an operator to use an assessment technique included in its operations and maintenance manual for tank bottoms to which access is prevented by structural conditions.

In another comment on proposed § 195.432, API suggested that we incorporate by reference API 510, "Pressure Vessel Inspection Code: Maintenance Inspection, Rating, Repair, and Alteration," as the inspection standard for high-pressure tanks built to API Standard 2510. API said API 510 is the appropriate inspection standard for such tanks. We agree that this standard is more appropriate than API Standard 653 for such tanks and it is incorporated by reference in final § 195.432(c).

The references to consensus standards do not include parts of those standards that are not directly related to carrying out inspections. For example, parts of section 4 of API Standard 653 concerning records, reports, and inspector qualifications (Sections 4.8–4.10) are not incorporated by reference because these parts do not govern the process of inspection. In addition, § 195.404(c)(3) requires inspection records. And, as previously mentioned, personnel qualification is covered by § 195.403 and is the subject of rules proposed in Docket No. RSPA–98–3783 (63 FR 57269; Oct. 27, 1998).

AMOCO was concerned about the application of inspection intervals to

tanks already in compliance with the new integrity inspection requirements and tanks not in compliance. To clarify this matter, final § 195.432(d) provides that a particular interval begins on the date this final rule document takes effect, May 3, 1999, or the operator's last recorded date of the inspection, whichever is earlier. We dropped the proposed 18-month compliance time from the final § 195.432 because we considered it unnecessary in view of the inspection intervals specified by the referenced standards.

Advisory Committee

- On May 6, 1998, in Washington, DC, we briefed the Technical Hazardous Liquid Pipeline Safety Standards Committee (THLPSSC) about this rule. This committee voted to accept the NPRM provided that we consider adopting API Publication 340.
- On November 6, 1998, in Washington, DC, we briefed THLPSSC about comments received and changes to expect in the final rule. Also at this time, we reviewed a five page report on API publication 340 prepared by SPEC Consulting Services for API's Health and Environment Affairs Department. This report was sent to the THLPSSC committee on May 14, 1998. This report concluded that API publication 340 need not be adopted in this rulemaking. We agreed because, (1) the scope of API publication 340 is too broad for this rulemaking; (2) four API standards referenced in API 340 are already adopted in this rulemaking; (3) this rulemaking goes beyond API Publication 340, and adopts six other API consensus standards. The THLPSSC agreed with our conclusion. A copy of this report is in the docket.

Regulatory Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

The Department of Transportation (DOT) does not consider this action to be a significant regulatory action under Section 3(f) of Executive Order 12866 (58 FR 51735; October 4, 1993) and this rule was not reviewed by the Office of Management and Budget. DOT does not consider this action significant under DOT's regulatory policies and procedures (44 FR 11034; February 26, 1979).

This rule would amend the regulations for breakout tanks to include the incorporation by reference of certain of the latest consensus standards for above ground storage tanks. The adoption of consensus standards is consistent with the President's goal of regulatory reinvention and improvement of customer service to the American people. There is minimal or no cost for operators of breakout tanks to comply with this rule because these consensus standards have been developed and implemented by industry organizations to ensure the safety of above ground petroleum storage tanks.

The standards for steel storage tanks were specifically developed by the API. API is the major petroleum industry trade organization and many of its members are operators of petroleum pipelines with tank farms. Additionally, the standard for secondary containment is taken from an NFPA code that is a widely used consensus standard for the design of diking (containment by impounding) for above ground storage tanks. The NFPA is an association with a membership of more than 67,000 individuals and over 100 national trade and professional organizations. Its mission is to reduce the burden of fire on the quality of life by advocating scientifically based consensus codes and standards, research, and education for fire and safety issues.

The operators of breakout tanks storing hazardous liquids are very familiar with these API storage tank and NFPA diking standards because they have been extensively implemented at pipeline terminals throughout the United States. Conversations with an industry storage tank organization representing medium and smaller operators of breakout tanks confirm that most of their members are already complying with the tank standards. Because the economic impact of this rule is minimal, the incorporation by reference of these industry standards does not warrant preparation of a Regulatory Evaluation.

For several years, OMB Circular A–119, "Federal Participation in the Development and Use of Voluntary Standards", encouraged, but did not require, agencies to participate in consensus standards bodies and to adopt voluntary consensus standards whenever possible. The National Technology Transfer and Advancement Act of 1995 (NTTAA, Pub. L. 104–113) codified and expanded the participation and reporting requirement of OMB Circular A–119. Federal agencies and departments are now required to use technical standards that are developed and adopted by voluntary consensus bodies, where practicable. RSPA prescribed API and NFPA standards for petroleum storage tanks meets the goals and requirements set forth in both OMB Circular A–119 and NTTAA.

B. Regulatory Flexibility Act

As discussed above, RSPA is incorporating consensus standards that were developed and published by authoritative organizations associated with the petroleum industry. Consequently, these safety standards are well known and have been implemented by operators of aboveground storage tanks at hazardous liquid pipeline terminals throughout the United States. RSPA has had conversations with an operators' association representing these tank farms and with other persons and those parties do not expect this rule to have a significant economic impact on the smaller operators of breakout tanks. Moreover, in the event that some operators of breakout tanks have not yet implemented all the safety-related items in these consensus standards, the regulations prescribed in this final rule would allow operators 18 months for compliance after the date of publication of the final rule.

Therefore, based on the facts available which indicate the anticipated minimal impact of this rulemaking action, I certify, pursuant to Section 605 of the Regulatory Flexibility Act (5 U.S.C. 605), that this rulemaking action will not have a significant economic impact on a substantial number of small entities.

RSPA, in the proposed rule, had requested comments from small entities which might be impacted by this rule. We received one comment from an association which includes small operators. This association stated that most, if not all, members already adhere to the consensus tank standards adopted by this rulemaking. This supports our earlier conclusion that this rule will have no significant impact on substantial number of small entities.

C. Executive Order 126120

This rule will not have substantial direct effects on states, on the relationship between the federal government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with the Executive Order 12612 (52 FR 41685; Oct. 30, 1987), RSPA has determined that the action does not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

D. Executive Order 13084

This rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13084 ("Consultation and Coordination

with Indian Tribal Governments"). Because this rule would not significantly or uniquely affect the communities of the Indian tribal governments, the funding and consultation requirements of this Executive Order do not apply.

E. Unfunded Mandates

This rule does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It does not result in costs of over $100 million or more to either state, local, or tribal governments, in the aggregate, or to the private sector, and is the least burdensome alternative that achieves the objective of the rule.

F. Paperwork Reduction Act

The API Standard 653 includes sample checklists, provided for the operators' periodic inspection of welded or riveted, non-refrigerated, atmospheric pressure, aboveground steel storage tanks. The checklists identify the tank components and auxiliary items that should be considered for inspection and provide blank spaces for insertion of the inspection date and notation of the inspector's comments (if any). The use of the checklists improves the effectiveness and minimizes the paperwork burden associated with the existing inspection requirements in 49 CFR 195.432. This API standard has been published for several years and during that time it has been available to all operators of petroleum storage tanks (i.e. refinery, marketing, production and pipeline).

For the API Recommended Practices referred to in this rulemaking, it is stated that the operator would be expected to follow the provisions unless the operator notes in the procedural manual the reasons why compliance with all or certain provisions is not necessary for the safety of a particular breakout tank or tanks. Each operator's procedural manual already requires the inclusion and updating of similar safety-related procedures and practices, so that such annotation is consistent with the long standing function of the procedural manual. Moreover, most operators already follow the API Recommended Practices that are prescribed for adoption and would not need to make such an annotation in the procedural manual.

Therefore, there is little or no additional burden and no paperwork analysis is required for this rule.

G. National Environmental Policy Act

RSPA has analyzed this action for purposes of the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) and has determined that this action would not significantly affect the quality of the human environment. An Environmental Assessment and a Finding of No Significant Impact are in the docket.

H. Impact on Business Processes and Computer Systems

Many computers that use two digits to keep track of dates will, on January 1, 2000, recognize "double zero" not as 2000 but as 1900. This glitch, the Year 2000 problem, could cause computers to stop running or to start generating erroneous data. The Year 2000 problem poses a threat to the global economy in which Americans live and work. With the help of the President's Council on Year 2000 Conversion, Federal agencies are reaching out to increase awareness of the problem and to offer support. We do not want to impose new requirements that would mandate business process changes when the resources necessary to implement those requirements would otherwise be applied to the Year 2000 problem.

This rule does not specify business process changes or require modifications to computer systems. Because this rule apparently does not affect organizations' ability to respond to the Year 2000 problem, we do not intend to delay the effectiveness of the requirements in this rule.

List of Subjects in 49 CFR Part 195

Incorporation by reference, Breakout tanks, Hazardous liquids, Carbon dioxide, Petroleum, Pipeline safety, Reporting and recordkeeping requirements.

In consideration of the foregoing, RSPA amends part 195 of title 49 of the Code of Federal Regulations as follows:

PART 195—TRANSPORTATION OF HAZARDOUS LIQUIDS BY PIPELINE

1. The authority citation for part 195 continues to read as follows:

Authority: 49 U.S.C. 5103, 60102, 60104, 60108, 60109, 60118; and 49 CFR 1.53.

2. Section 195.1(c) is revised to read as follows:

§ 195.1 Applicability.

* * * * *

(c) Breakout tanks subject to this part must comply with requirements that apply specifically to breakout tanks and, to the extent applicable, with requirements that apply to pipeline systems and pipeline facilities. If a conflict exists between a requirement that applies specifically to breakout tanks and a requirement that applies to pipeline systems or pipeline facilities, the requirement that applies specifically to breakout tanks prevails. Anhydrous ammonia breakout tanks need not comply with §§ 195.132(b), 195.205(b), 195.242 (c) and (d), 195.264 (b) and (e), 195.307, 195.428 (c) and (d), and 195.432 (b) and (c).

3. Section 195.3 is amended by adding paragraph (b)(7), by revising the introductory text of paragraph (c), by revising paragraphs (c)(2) and (c)(3)(v), and by adding paragraph (c)(6), to read as follows:

§ 195.3 Matter incorporated by reference.

* * * * *

(b) * * *

(7) National Fire Protection Association (NFPA), 11 Tracy Drive, Avon, MA 02322.

(c) The full titles of publications incorporated by reference wholly or partially in this part are as follows. Numbers in parentheses indicate applicable editions:

* * * * *

(2) American Petroleum Institute (API):

(i) API 510 "Pressure Vessel Inspection Code: Maintenance Inspection, Rating, Repair, and Alteration" (8th edition, June 1997).

(ii) API Publication 2026 "Safe Access/Egress Involving Floating Roofs of Storage Tanks in Petroleum Service" (2nd edition, April 1998).

(iii) API Recommended Practice 651 "Cathodic Protection of Aboveground Petroleum Storage Tanks" (2nd edition, December 1997).

(iv) API Recommended Practice 652 "Lining of Aboveground Petroleum Storage Tank Bottoms" (2nd edition, December 1997).

(v) API Recommended Practice 2003 "Protection Against Ignitions Arising out of Static, Lightning, and Stray Currents" (6th edition, December 1998).

(vi) API Recommended Practice 2350 "Overfill Protection for Storage Tanks In Petroleum Facilities" (2nd edition, January 1996).

(vii) API Specification 5L "Specification for Line Pipe" (41st edition, 1995).

(viii) API Specification 6D "Specification for Pipeline Valves (Gate, Plug, Ball, and Check Valves)" (21st edition, 1994).

(ix) API Specification 12F "Specification for Shop Welded Tanks for Storage of Production Liquids" (11th edition, November 1994).

(x) API Standard 1104 "Welding Pipelines and Related Facilities" (18th edition, 1994).

(xi) API Standard 620 "Design and Construction of Large, Welded, Low-Pressure Storage Tanks" (9th edition, February 1996, Including Addenda 1 and 2).

(xii) API Standard 650 "Welded Steel Tanks for Oil Storage" (9th edition, July 1993 (Including Addenda 1 through 4).

(xiii) API Standard 653 "Tank Inspection, Repair, Alteration, and Reconstruction" (2nd edition, December 1995, including Addenda 1, December 1996).

(xiv) API Standard 2000 "Venting Atmospheric and Low-Pressure Storage Tanks" (4th edition, September 1992).

(xv) API Standard 2510 "Design and Construction of LPG Installations" (7th edition, May 1995).

(3) * * *

(v) ASME Boiler and Pressure Vessel Code, Section VIII "Pressure Vessels," Divisions 1 and 2 (1995 edition with 1995 Addenda).

* * * * *

(6) National Fire Protection Association (NFPA):

(i) ANSI/NFPA 30 "Flammable and Combustible Liquids Code," (1996).

(ii) [Reserved]

4. Section 195.132 is revised to read as follows:

§ 195.132 Design and construction of aboveground breakout tanks.

(a) Each aboveground breakout tank must be designed and constructed to withstand the internal pressure produced by the hazardous liquid to be stored therein and any anticipated external loads.

(b) For aboveground breakout tanks first placed in service after October 2, 2000, compliance with paragraph (a) of this section requires one of the following:

(1) Shop-fabricated, vertical, cylindrical, closed top, welded steel tanks with nominal capacities of 90 to 750 barrels (14.3 to 119.2 m^3) and with internal vapor space pressures that are approximately atmospheric must be designed and constructed in accordance with API Specification 12F.

(2) Welded, low-pressure (i.e., internal vapor space pressure not greater than 15 psig (103.4 kPa)), carbon steel tanks that have wall shapes that can be generated by a single vertical axis of revolution must be designed and constructed in accordance with API Standard 620.

(3) Vertical, cylindrical, welded steel tanks with internal pressures at the tank top approximating atmospheric pressures (i.e., internal vapor space pressures not greater than 2.5 psig (17.2 kPa), or not greater than the pressure developed by the weight of the tank roof) must be designed and constructed in accordance with API Standard 650.

(4) High pressure steel tanks (i.e., internal gas or vapor space pressures greater than 15 psig (103.4 kPa)) with a nominal capacity of 2000 gallons (7571 liters) or more of liquefied petroleum gas (LPG) must be designed and constructed in accordance with API Standard 2510.

5. Section 195.205 is added to read as follows:

§ 195.205 Repair, alteration and reconstruction of aboveground breakout tanks that have been in service.

(a) Aboveground breakout tanks that have been repaired, altered, or reconstructed and returned to service must be capable of withstanding the internal pressure produced by the hazardous liquid to be stored therein and any anticipated external loads.

(b) After October 2, 2000, compliance with paragraph (a) of this section requires the following for the tanks specified:

(1) For tanks designed for approximately atmospheric pressure constructed of carbon and low alloy steel, welded or riveted, and non-refrigerated and tanks built to API Standard 650 or its predecessor Standard 12C, repair, alteration, and reconstruction must be in accordance with API Standard 653.

(2) For tanks built to API Specification 12F or API Standard 620, the repair, alteration, and reconstruction must be in accordance with the design, welding, examination, and material requirements of those respective standards.

(3) For high pressure tanks built to API Standard 2510, repairs, alterations, and reconstruction must be in accordance with API 510.

6. Section 195.242 is amended by adding paragraphs (c) and (d) to read as follows:

§ 195.242 Cathodic protection system.

* * * * *

(c) For the bottoms of aboveground breakout tanks with greater than 500 barrels (79.5 m^3) capacity built to API Specification 12F, API Standard 620, or API Standard 650 (or its predecessor Standard 12C), the installation of a cathodic protection system under paragraph (a) of this section after October 2, 2000, must be in accordance with API Recommended Practice 651, unless the operator notes in the procedural manual (§ 195.402(c)) why compliance with all or certain provisions of API Recommended Practice 651 is not necessary for the safety of a particular breakout tank.

(d) For the internal bottom of aboveground breakout tanks built to API Specification 12F, API Standard 620, or API Standard 650 (or its predecessor Standard 12C), the installation of a tank bottom lining after October 2, 2000, must be in accordance with API Recommended Practice 652, unless the operator notes in the procedural manual (§ 195.402(c)) why compliance with all or certain provisions of API Recommended Practice 652 is not necessary for the safety of a particular breakout tank.

7. Section 195.264 is revised to read as follows:

§ 195.264 Impoundment, protection against entry, normal/emergency venting or pressure/vacuum relief for aboveground breakout tanks.

(a) A means must be provided for containing hazardous liquids in the event of spillage or failure of an aboveground breakout tank.

(b) After October 2, 2000, compliance with paragraph (a) of this section requires the following for the aboveground breakout tanks specified:

(1) For tanks built to API Specification 12F, API Standard 620, and others (such as API Standard 650 or its predecessor Standard 12C), the installation of impoundment must be in accordance with the following sections of NFPA 30:

(i) Impoundment around a breakout tank must be installed in accordance with Section 2–3.4.3; and

(ii) Impoundment by drainage to a remote impounding area must be installed in accordance with Section 2–3.4.2.

(2) For tanks built to API Standard 2510, the installation of impoundment must be in accordance with Section 3 or 9 of API Standard 2510.

(c) Aboveground breakout tank areas must be adequately protected against unauthorized entry.

(d) Normal/emergency relief venting must be provided for each atmospheric pressure breakout tank. Pressure/vacuum-relieving devices must be provided for each low-pressure and high-pressure breakout tank.

(e) For normal/emergency relief venting and pressure/vacuum-relieving devices installed on aboveground breakout tanks after October 2, 2000, compliance with paragraph (d) of this section requires the following for the tanks specified:

(1) Normal/emergency relief venting installed on atmospheric pressure tanks built to API Specification 12F must be in accordance with Section 4, and Appendices B and C, of API Specification 12F.

(2) Normal/emergency relief venting installed on atmospheric pressure tanks (such as those built to API Standard 650 or its predecessor Standard 12C) must be in accordance with API Standard 2000.

(3) Pressure-relieving and emergency vacuum-relieving devices installed on low pressure tanks built to API Standard 620 must be in accordance with Section 7 of API Standard 620 and its references to the normal and emergency venting requirements in API Standard 2000.

(4) Pressure and vacuum-relieving devices installed on high pressure tanks built to API Standard 2510 must be in accordance with Sections 5 or 9 of API Standard 2510.

8. Section 195.307 is added to read as follows:

§ 195.307 Pressure testing aboveground breakout tanks.

(a) For aboveground breakout tanks built to API Specification 12F and first placed in service after October 2, 2000, pneumatic testing must be in accordance with section 5.3 of API Specification 12F.

(b) For aboveground breakout tanks built to API Standard 620 and first placed in service after October 2, 2000, hydrostatic and pneumatic testing must be in accordance with section 5.18 of API Standard 620.

(c) For aboveground breakout tanks built to API Standard 650 and first placed in service after October 2, 2000, hydrostatic and pneumatic testing must be in accordance with section 5.3 of API Standard 650.

(d) For aboveground atmospheric pressure breakout tanks constructed of carbon and low alloy steel, welded or riveted, and non-refrigerated and tanks built to API Standard 650 or its predecessor Standard 12C that are returned to service after October 2, 2000, the necessity for the hydrostatic testing of repair, alteration, and reconstruction is covered in section 10.3 of API Standard 653.

(e) For aboveground breakout tanks built to API Standard 2510 and first placed in service after October 2, 2000, pressure testing must be in accordance with ASME Boiler and Pressure Vessel Code, Section VIII, Division 1 or 2.

9. Section 195.405 is added to read as follows:

§ 195.405 Protection against ignitions and safe access/egress involving floating roofs.

(a) After October 2, 2000, protection provided against ignitions arising out of static electricity, lightning, and stray currents during operation and maintenance activities involving aboveground breakout tanks must be in accordance with API Recommended Practice 2003, unless the operator notes in the procedural manual (§ 195.402(c)) why compliance with all or certain provisions of API Recommended Practice 2003 is not necessary for the safety of a particular breakout tank.

(b) The hazards associated with access/egress onto floating roofs of in-service aboveground breakout tanks to perform inspection, service, maintenance or repair activities (other than specified general considerations, specified routine tasks or entering tanks removed from service for cleaning) are addressed in API Publication 2026. After October 2, 2000, the operator must review and consider the potentially hazardous conditions, safety practices and procedures in API Publication 2026 for inclusion in the procedure manual (§ 195.402(c)).

10. Section 195.416 (j) is added to read as follows:

§ 195.416 External corrosion control.

* * * * *

(j) For aboveground breakout tanks where corrosion of the tank bottom is controlled by a cathodic protection system, the cathodic protection system must be inspected to ensure it is operated and maintained in accordance with API Recommended Practice 651, unless the operator notes in the procedure manual (§ 195.402(c)) why compliance with all or certain provisions of API Recommended Practice 651 is not necessary for the safety of a particular breakout tank.

11. Section 195.428 is amended by revising the title and by adding paragraphs (c) and (d) to read as follows:

§ 195.428 Overpressure safety devices and overfill protection systems.

* * * * *

(c) Aboveground breakout tanks that are constructed or significantly altered according to API Standard 2510 after October 2, 2000, must have an overfill protection system installed according to section 5.1.2 of API Standard 2510. Other aboveground breakout tanks with 600 gallons (2271 liters) or more of storage capacity that are constructed or significantly altered after October 2, 2000, must have an overfill protection system installed according to API Recommended Practice 2350. However, operators need not comply with any part of API Recommended Practice 2350 for a particular breakout tank if the operator notes in the manual required by § 195.402 why compliance with that part is not necessary for safety of the tank.

(d) After October 2, 2000, the requirements of paragraphs (a) and (b) of this section for inspection and testing of pressure control equipment apply to the inspection and testing of overfill protection systems.

12. Section 195.432 is revised to read as follows:

§ 195.432 Inspection of in-service breakout tanks.

(a) Except for breakout tanks inspected under paragraphs (b) and (c) of this section, each operator shall, at intervals not exceeding 15 months, but at least once each calendar year, inspect each in-service breakout tank.

(b) Each operator shall inspect the physical integrity of in-service atmospheric and low-pressure steel aboveground breakout tanks according to section 4 of API Standard 653. However, if structural conditions prevent access to the tank bottom, the bottom integrity may be assessed according to a plan included in the operations and maintenance manual under § 195.402(c)(3).

(c) Each operator shall inspect the physical integrity of in-service steel aboveground breakout tanks built to API Standard 2510 according to section 6 of API 510.

(d) The intervals of inspection specified by documents referenced in paragraphs (b) and (c) of this section begin on May 3, 1999, or on the operator's last recorded date of the inspection, whichever is earlier.

Issued in Washington, D.C. on March 22, 1999.

Kelley S. Coyner,

Administrator.

[FR Doc. 99–7442 Filed 4–1–99; 8:45 am]

BILLING CODE 4910–60–P

Proposed Rules

Federal Register
Vol. 64, No. 63
Friday, April 2, 1999

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 28

[CN–99–001]

RIN 0581–AB57

Revision of User Fees for 1999 Crop Cotton Classification Services to Growers

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Agricultural Marketing Service (AMS) is proposing to raise user fees for cotton producers for 1999 crop cotton classification services under the Cotton Statistics and Estimates Act in accordance with the formula provided in the Uniform Cotton Classing Fees Act of 1987. The 1998 user fee for this classification service was $1.30 per bale. This proposal would raise the fee for the 1999 crop to $1.35 per bale. The proposed increase in fees resulted from the significant drop in cotton production for the 1998 crop. The proposed fee and the existing reserve are sufficient to cover the costs of providing classification services, including costs for administration, supervision, and development and maintenance of standards.

DATES: Comments must be received by May 3, 1999.

ADDRESSES: Comments and inquiries should be addressed to, Cotton Programs, AMS, USDA, Room 2641–S, P.O. Box 96456, Washington, DC 20090–6456. Comments will be available for public inspection during regular business hours at the above office in Rm. 2641–South Building, 14th & Independence Avenue, SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Lee Cliburn, 202–720–2145.

SUPPLEMENTARY INFORMATION: This proposed rule has been determined to be not significant for purposes of Executive Order 12866, and it has not been reviewed by the Office of Management and Budget (OMB).

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. This rule would not preempt any state or local laws, regulations, or policies unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

The Administrator, Agricultural Marketing Service (AMS), has considered the economic impact of this proposal on small entities pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*). It has been determined that the implementation of this proposed rule would not have a significant economic impact on a substantial number of small businesses.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be disproportionately burdened. There are an estimated 35,000 cotton growers in the U.S. who voluntarily use the AMS cotton classing services annually, and the majority of these cotton growers are small businesses under the criteria established by the Small Business Administration (13 CFR § 121.601). The Administrator of AMS has certified that this action will not have a significant economic impact on a substantial number of small entities as defined in the RFA because:

(1) The fee increase reflects a very small increase in the cost-per-unit currently borne by those entities utilizing the services (the 1998 user fee for classification services was $1.30 per bale; the fee for the 1999 crop would be increased to $1.35 per bale; the 1999 crop is estimated at 16,810,410 bales);

(2) The cost reduction will not affect competition in the marketplace; and

(3) The use of classification services is voluntary. For the 1998 crop, 13,467,012 bales were classed out of 13,790,000 bales produced.

(4) Based on the average price paid to growers for cotton from the 1997 crop of 65.2 cents per pound, 500 pound bales of cotton are worth an average of $326.00 each. The proposed user fee for classification services, $1.35 per bale, is less than one percent of the value of an average bale of cotton.

In compliance with OMB regulations (5 CFR part 1320) which implement the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), the information collection requirements contained in the provisions to be amended by this proposed rule have been previously approved by OMB and were assigned OMB control number 0581–0009 under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

It is anticipated that the proposed changes, if adopted, would be made effective July 1, 1999, as provided by the Cotton Statistics and Estimates Act.

Fees for Classification under the Cotton Statistics and Estimates Act of 1927

The user fee charged to cotton producers for High Volume Instrument (HVI) classification services under the Cotton Statistics and Estimates Act (7 U.S.C. 473a) was $1.30 per bale during the 1998 harvest season as determined by using the formula provided in the Uniform Cotton Classing Fees Act of 1987, as amended by Pub. L. 102–237. The fees cover salaries, costs of equipment and supplies, and other overhead costs, including costs for administration, supervision, and development and maintenance of cotton standards.

This proposed rule establishes the user fee charged to producers for HVI classification at $1.35 per bale during the 1999 harvest season.

Public Law 102–237 amended the formula in the Uniform Cotton Classing Fees Act of 1987 for establishing the producer's classification fee so that the producer's fee is based on the prevailing method of classification requested by producers during the previous year. HVI classing was the prevailing method of cotton classification requested by producers in 1998. Therefore, the 1999 producer's user fee for classification service is based on the 1998 base fee for HVI classification.

The fee was calculated by applying the formula specified in the Uniform Cotton Classing Fees Act of 1987, as amended by Pub. L. 102–237. The 1998 base fee for HVI classification exclusive of adjustments, as provided by the Act, was $2.12 per bale. A one percent, or two cents per bale increase due to the implicit price deflator of the gross domestic product added to the $2.12 would result in a 1999 base fee of $2.14

per bale. The formula in the Act provides for the use of the percentage change in the implicit price deflator of the gross national product (as indexed for the most recent 12-month period for which statistics are available). However, this has been replaced by the gross domestic product by the Department of Commerce as a more appropriate measure for the short-term monitoring and analysis of the U.S. economy.

The number of bales to be classed by the United States Department of Agriculture from the 1999 crop is estimated at 16,810,410 bales. The 1999 base fee was decreased 15 percent based on the estimated number of bales to be classed (one percent for every 100,000 bales or portion thereof above the base of 12,500,000, limited to a maximum adjustment of 15 percent). This percentage factor amounts to a 32 cents per bale reduction and was subtracted from the 1999 base fee of $2.14 per bale, resulting in a fee of $1.82 per bale.

With a fee of $1.82 per bale, the projected operating reserve would be 46.66 percent. The Act specifies that the Secretary shall not establish a fee which, when combined with other sources of revenue, will result in a projected operating reserve of more than 25 percent. Accordingly, the fee of $1.82 must be reduced by 47 cents per bale, to $1.35 per bale, to provide an ending accumulated operating reserve for the fiscal year of 25 percent of the projected cost of operating the program. This would establish the 1999 season fee at $1.35 per bale.

Accordingly, § 28.909, paragraph (b) would be revised to reflect the increase in the HVI classification fees.

As provided for in the Uniform Cotton Classing Fees Act of 1987, as amended, a five cent per bale discount would continue to be applied to voluntary centralized billing and collecting agents as specified in § 28.909(c).

Growers or their designated agents requesting classification data provided on computer punched cards will continue to be charged the fee of 10 cents per card in § 28.910(a) to reflect the costs of providing this service. Requests for punch card classification data represented only 0.7 percent of the total bales classed from the 1998 crop, down from 2.6 percent in 1997. Growers or their designated agents receiving classification data by methods other than computer punched cards would continue to incur no additional fees if only one method of receiving classification data was requested. The fee for each additional method of receiving classification data in § 28.910 would remain at five cents per bale, and it would be applicable even if the same method was requested. However, if computer punched cards were requested, a fee of ten cents per card would be charged. The fee in § 28.910(b) for an owner receiving classification data from the central database would remain at five cents per bale, and the minimum charge of $5.00 for services provided per monthly billing period would remain the same. The provisions of § 28.910(c) concerning the fee for new classification memoranda issued from the central database for the business convenience of an owner without reclassification of the cotton will remain the same.

The fee for review classification in § 28.911 would be increased from $1.30 per bale to $1.35 per bale.

The fee for returning samples after classification in § 28.911 would remain at 40 cents per sample.

A thirty-day comment period is provided for public comments. This period is appropriate because it is anticipated that the proposed changes, if adopted, would be made effective July 1, 1999, as provided by the Cotton Statistics and Estimates Act.

List of Subjects in 7 CFR Part 28

Administrative practice and procedure, Cotton, Cotton samples, Grades, Market news, Reporting and recordkeeping requirements, Standards, Staples, Testing, Warehouses.

For the reasons set forth in the preamble, 7 CFR Part 28 is proposed to be amended as follows:

PART 28—[Amended]

1. The authority citation for 7 CFR part 28, subpart D, continues to read as follows:

Authority: 7 U.S.C. 471–476.

2. In § 28.909, paragraph (b) is revised to read as follows:

§ 28.909 Costs.

* * * * *

(b) The cost of High Volume Instrument (HVI) cotton classification service to producers is $1.35 per bale.

* * * * *

3. In § 28.911, the last sentence of paragraph (a) is revised to read as follows:

§ 28.911 Review classification.

(a) * * * The fee for review classification is $1.35 per bale.

* * * * *

Dated: March 30, 1999.

Enrique E. Figueroa,

Administrator, Agricultural Marketing Service.

[FR Doc. 99–8160 Filed 4–1–99; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

9 CFR Part 201

RIN 0580–AA64

Regulations Issued Under the Packers and Stockyards Act

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA.

ACTION: Proposed Rule.

SUMMARY: The Grain Inspection, Packers and Stockyards Administration (GIPSA) is proposing to amend existing scales and weighing regulations under the Packers and Stockyards (P&S) Act to include requirements regarding the weighing of feed whenever the weight of feed is a factor in determining payment or settlement to a livestock grower or poultry grower when livestock or poultry is produced under a livestock or poultry growing arrangement. The current regulations do not contain any requirements regarding the weighing of feed although, in some circumstances, feed weight affects payment or settlement to livestock growers and poultry growers. The proposed amendment to the current regulations will provide livestock growers and poultry growers with a measure of assurance that feed is accurately weighed or reasonably determined and feed weight is properly documented whenever feed weight affects payment or settlement to livestock growers or poultry growers.

DATES: Comments must be received on or before June 1, 1999.

ADDRESSES: Comments may be mailed to the U.S. Department of Agriculture, Deputy Administrator, Grain Inspection, Packers and Stockyards Administration, Packers and Stockyards Programs, Stop 3641, 1400 Independence Avenue, SW, Washington, DC 20250–3641; Fax: 202–205–3941; E-mail: PSP.GIPSA@usda.gov. Comments received may be inspected during normal business hours in the Office of the Deputy Administrator, Packers and Stockyards Programs.

FOR FURTHER INFORMATION CONTACT: Michael Caughlin, Director, Office of Policy/Litigation Support, (202) 720–6951.

SUPPLEMENTARY INFORMATION: GIPSA is proposing to amend existing scales and weighing regulations under the P&S Act to include requirements regarding the weighing of feed when the weight of feed is a factor in determining payment or settlement to livestock growers and

poultry growers when livestock or poultry is produced under a livestock or poultry growing arrangement.

In February 1997, GIPSA issued an Advance Notice of Proposed Rulemaking (ANPRM) (62 FR 5935–37) soliciting comments from poultry growers, integrators, and other interested parties on the need for and the possible wording of regulations regarding comparison contracts, feed weighing procedures, and live poultry weighing.[1] GIPSA received 3,415 comments, of which 1,129 expressed concerns regarding feed weighing procedures including concerns that feed is not properly weighed; the weight should be printed electronically and not handwritten; the truck delivering the feed should be sealed to secure each individual lot of feed; and excess feed that is returned should be reasonably determined and properly documented to credit the grower for the unused feed.

Many of those comments also suggested that feed scales should be better regulated by requiring semiannual testing by competent testing agencies or companies as is currently required for scales used to weigh live poultry. In addition, GIPSA received comments prior to initiating this rulemaking process from livestock growers and continues to receive complaints that indicate that these same concerns exist in the livestock industry. Furthermore, GIPSA continues to receive complaints from individual livestock growers and poultry growers concerning feed weights both with respect to feed deliveries and excess feed picked up or returned at the end of the growing cycle.

This proposed rulemaking would address the concerns of livestock growers and poultry growers by requiring those firms supplying feed to growers, either directly or indirectly, to weigh feed accurately, reasonably determine the weight of excess feed and properly account for feed weight when the weight of the feed is a factor in determining payment or settlement to livestock growers or poultry growers when livestock or poultry is produced under a livestock or poultry growing arrangement. "Growing arrangements" with respect to poultry means "growing arrangements" as defined in section 2(a)(9) of the Act (7 U.S.C. 183(a)(9)). The term "livestock growing arrangement" means any growing or feeding arrangement under which a livestock grower raises and cares for livestock for delivery, in accord with a market agency, dealer, or packer's instructions. Feed weight is reasonably determined when the manner of determining the feed weight is mutually acceptable to both the feed provider and the livestock grower or poultry grower.

Extending existing regulations governing weighing practices and technical requirements for scales to include weighing feed will result in uniform requirements for weighing that affect payment and settlement to livestock growers and poultry growers. Since feed weights are an integral part of the payment or settlement calculation in many livestock and poultry growing arrangements, basic scale requirements and weighing procedures are critical to assure payment or settlement based on accurate weights. Most States do not consider feed scales as commercial devices unless the feed is sold directly to the general public. Therefore, feed scales that would fall under the purview of this proposed rule, which are not generally used to sell feed directly to the general public, are usually not required to be tested by State weights and measures officials. Thus, State regulatory oversight of the weighing of feed delivered to livestock growers or poultry growers is not adequate to address the concerns of these industries.

This proposed rule would modify §§ 201.49, 201.71, 201.72, and 201.73 of the regulations to include requirements regarding the weighing of feed whenever feed weight is used as a factor in determining payment or settlement to a livestock grower or poultry grower when livestock or poultry is produced under a livestock or poultry growing arrangement. The proposed modifications in these sections will make the requirements for feed weighing consistent with the requirements for the weighing of livestock and live poultry.

Specifically, § 201.49 would be amended to include a paragraph (c) which would require a scale ticket be issued with specified information pertaining to the weight and identification of the lot of feed consistent with the other scale ticket requirements included in this section. Section 201.71 would be amended to require that scales weighing feed: (1) Be installed, maintained, operated and tested in accordance with the National Institute of Standards and Technology (NIST) Handbook 44, 1996 edition, entitled "Specifications, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices"; (2) be equipped with a printing device used for recording weight; (3) be of sufficient length and capacity to weigh an entire load when feed is weighed on a vehicle scale; and (4) be found, upon test and inspection, to be in a condition to provide accurate weight. Section 201.72 would be amended to include scales used to weigh feed in the requirement that scales be tested twice during each calendar year at intervals of approximately 6 months by competent persons and that copies of test reports be furnished to the P&S Programs regional office. Section 201.73 would be amended to require that scales used to weigh feed be operated by qualified persons in accordance with the regulations.

Section 201.55 would be amended to require that the actual weight of feed be shown on scale tickets or otherwise be explained and that the weight of picked up or returned excess feed be reasonably determined, documented and credited back to the livestock grower or poultry grower. Feed weight is reasonably determined when the manner of determining the feed weight is mutually acceptable to both the feed provider and the livestock grower or poultry grower.

The proposed rulemaking should not impose any significant additional regulatory burden on the affected industries since the feed scales of many subject firms are routinely tested, whether by State weights and measures organizations or by private scale companies as a normal business practice. Recordkeeping under the proposed regulations would impose little burden upon subject firms since a majority of the affected entities utilize adequate weighing and documentation procedures. Under current regulations, firms subject to the P&S Act are not required to file copies of their feed scale test reports with P&S, although the proposed regulations will require firms subject to the P&S Act to file copies of the scale test reports with the appropriate P&S regional office.

Executive Order 12866

This rule has been determined to be significant for the purpose of E.O. 12866 and, therefore, has been reviewed by the Office of Management and Budget.

Executive Order 12988

This rule has been reviewed under E.O. 12988, Civil Justice Reform, and is not intended to have retroactive effect. This amendment will not pre-empt State or local laws, regulations, or policies unless they present an irreconcilable conflict with this rule.

Effects on Small Entities

GIPSA proposes to amend §§ 201.49, 201.55, 201.71, 201.72, and 201.73 to include feed weighing when the weight of feed is a factor in determining payment or settlement to livestock

[1] Comments on the other two issues addressed by the ANPRM (comparison contracts and live poultry weighing) are still being analyzed by GIPSA.

growers or poultry growers. The additional information collection is required to provide such growers assurance that feed scales are being tested and maintained properly, that feed is accurately weighed or reasonably determined, and that recipients of feed are receiving proper and adequate documentation of the feed weight.

The economic impact of the proposed regulations will be minimal. Approximately 260 poultry integrators currently supply feed to poultry growers and an estimated 50 additional entities operating subject to the P&S Act currently supply feed to livestock growers where the weight of feed is an integral factor in determining payment or settlement to livestock growers or poultry growers. Most subject firms deliver feed directly from their own feed mills, but a few order feed from independent feed mills for delivery to livestock growers or poultry growers. In each case, subject firms would be responsible for ensuring that scales used to determine the weights of feed have a printing device and conform to the specifications of the NIST Handbook 44 (H–44), 1996 edition. Currently, most feed scales have a weight printing device and conform with H–44 requirements. Scale installation companies usually do not install a scale system that is not approved or appropriate for weighing feed under the proposed amended regulations. Therefore, we do not anticipate any significant economic impact.

Under the proposed regulation, subject firms would be required to test their scales twice a year and submit a copy of the test reports to the appropriate P&S regional office. Most entities currently have their scales tested at least twice a year either by State weights and measures officials or by private scale companies which would satisfy the semiannual testing requirement. Those entities not conducting two scale tests a year would be required to employ a scale company to test the scale a second time during the year or request a second test from the State. Feed manufacturers, as is customary in most industries dealing in bulk commodities, have their scales tested frequently to ensure accurate weights, prevent system malfunction, and avoid down time.

There would be a minimal recordkeeping burden on the industry to submit a copy of the scale test report, on a semiannual basis, to the P&S regional office. This burden would entail obtaining a copy of the scale test report, which is completed by either the State or private scale company as a matter of routine documentation, and mailing it to the P&S regional office. Many States and scale companies mail the copies of the scale test reports to the P&S regional office for the customer.

Compliance with the requirements for scale tickets is projected to cause minimal burden on the industry. Those companies that do not print a scale ticket for feed or that print scale tickets that do not include all the information proposed in the amendment would have to change their procedures to include the required information. However, the additional time to add the required information, such as truck or trailer numbers, grower's name, and whether the truck driver was on or off at the time of weighing, is insignificant.

In addition, subject firms would be required to retain weight records in accordance with the provisions of the proposed regulatory amendment. In general, this does not entail any retention burden beyond that of normal and customary business practices.

GIPSA has determined that this proposed rule will not have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The proposed rule will affect entities in contractual relationships with livestock growers or poultry growers when those entities supply feed, either directly or indirectly, to livestock growers or poultry growers and the weight of the feed is a factor in payment or settlement to growers. Presently, most of the entities that will be affected by this proposed rule are poultry slaughterers and processors of chickens with more than 500 employees and thus do not meet the requirements for small entities as defined in Section 3 the Small Business Act (13 CFR part 121(3)). Even though there may be some affected entities that could be considered small entities, the proposed rule, in most cases, would not require any substantial incurrence of expense or change in the routine operations for entities of any size.

Information Collection and Recordkeeping Requirements

The reporting and recordkeeping requirements in Part 201 have been previously approved by the Office of Management and Budget under control number 0580–0015. Currently, §§ 201.49 and 201.72 require, in brief, that: (1) Scale tickets with certain required information be retained with the accounting files, and (2) scale test reports be sent to the P&S regional office. The additional requirements proposed herein would require persons subject to the P&S Act, where the weight of the feed is a factor in determining payment or settlement to livestock growers or poultry growers, to produce scale tickets in accordance with the same requirements that are imposed on those operating livestock, poultry, and monorail scales and to provide copies of scale test reports to the P&S regional office.

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection and recordkeeping requirements included in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB). Please send written comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for GIPSA, Washington , DC 20503. Please state that your comments refer to Regulations issued under the Packers and Stockyards Act, RIN 0580–AA64. Please send a copy of your comments to (1) Deputy Administrator, Packers and stockyards Programs, GIPSA, USDA, Stop 3641, 1400 Independence Avenue, SW, Washington, DC 20250–3641; and (2) Clearance Officer, OCIO, USDA, Room 404–W, 1400 Independence Avenue, SW, Washington, DC 20250. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this proposed rule. All comments will become a matter of public record.

The estimated 300 firms that will be affected by this proposed amendment are expected to spend an estimated 10 additional hours per year complying with the semiannual scale testing requirements and the routine completion of scale tickets, resulting in a total increase of 3,000 hours per year in the reporting burden of these firms. These estimates were derived from previously approved burden hours for the same regulatory report and recordkeeping requirements for weighing livestock and live poultry.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are required to comply, including through the use of appropriate automated, electronic, mechanical, or other technological collection

techniques or forms of information technology.

Implementing this proposed rule would change burdens in the currently approved collection of information to:

Estimate of burden: Public reporting and recordkeeping burden for this collection of information is estimated to average 8.5 hours per response.

Respondents: Livestock auction markets, livestock dealers, packer buyers, meat packers, and live poultry dealers.

Estimated annual number of responses per respondent: 3.2.

Estimated annual number of responses: 24,815.

Estimated total annual burden on respondents: 304,106.

The hours above (304,106) reflect the total burden hours for the current information collection in conjunction with the proposed amendment to the weighing regulations. The amended weighing regulation is calculated to add only an additional 3,000 burden hours.

Copies of this information collection can be obtained from Clearance Officer, OCIO, USDA, room 404–W, 1400 Independence Avenue, Washington, DC 20250.

List of Subjects in 9 CFR Part 201

Reporting and recordkeeping requirements, Trade practices

For the reasons set forth in the preamble, 9 CFR part 201 is amended to read as follows:

PART 201—[Amended]

1. The authority citation for Part 201 would be revised to read as follows:

Authority: 7 U.S.C. 204, 228; 7 CFR 2.22, 2.81.

2. Section 201.49 would be amended by revising the heading and adding paragraph (c) to read as follows:

§ 201.49 Requirements regarding scale tickets evidencing weighing of livestock, live poultry, and feed.

* * * * *

(c) *Feed.* (1) Whenever feed is weighed by or on behalf of a stockyard owner, market agency, dealer, packer, or live poultry dealer where the weight of feed is a factor in determining payment or settlement to a livestock grower or poultry grower, a scale ticket shall be issued which shall show:

(i) The name of the agency performing the weighing service or the name and location of the firm responsible for supplying the feed;

(ii) The name and address of the livestock grower or poultry grower;

(ii) The name or initials or number of the person who weighed the feed, or if required by State law, the signature of the weigher;

(iv) The location of the scale;

(v) The gross weight, tare weight, and net weight of each lot assigned to an individual grower, if applicable;

(vi) The date and time gross weight and tare weight, if tare weight is applicable, are determined;

(vii) The identification of each lot assigned to an individual grower by vehicle or trailer compartment number and seal numbers, if applicable;

(viii) Whether the driver was on or off the truck at the time of weighing, if applicable; and

(ix) The license number or other identification numbers of the truck and trailer, if weighed together, or trailer if only the trailer is weighed, if applicable.

(2) Scale tickets issued under this paragraph shall be at least in duplicate form and shall be serially numbered and used in numerical sequence. One copy shall be retained by the person subject to the P&S Act, and a second copy shall be furnished to the livestock grower or poultry grower.

(Approved by the Office of Management and Budget under control number 0580–0015)

3. Section 201.55 would be revised to read as follows:

§ 201.55 Purchases, sales, acquisitions, payments and settlements to be made on actual weights.

(a) Except as provided in paragraph (b) of this section, whenever livestock or live poultry is bought, sold, acquired, paid, or settled on a weight basis, or whenever the weight of feed is a factor in determining payment or settlement to a livestock grower or poultry grower by a stockyard owner, market agency, dealer, packer, or live poultry dealer, payment or settlement shall be on the basis of the actual weight of the livestock, live poultry, and/or feed shown on the scale ticket. If the actual weight used is not obtained on the date and at the place of transfer of possession, this information shall be disclosed with the date and location of the weighing on the accountings, bills, or statements issued. Any adjustment to the actual weights shall be fully and accurately explained on the accountings, bills or statements issued, and records shall be maintained to support such adjustment.

(b) Every stockyard owner, market agency, dealer, packer, and live poultry dealer shall reasonably determine, document, and account for the weight of any feed that is picked up from or returned by a livestock grower or poultry grower whenever the weight of the feed is a factor in determining the payment or settlement due to such livestock grower or poultry grower.

(Approved by the Office of Management and Budget under control number 0580–0015)

4. Section 201.71 would be revised to read as follows:

§ 201.71 Scales; accurate weights, repairs, adjustments or replacements after inspection.

(a) All scales used by stockyard owners, market agencies, dealers, packers, and live poultry dealers to weigh livestock, livestock carcasses, live poultry, or feed for the purposes of purchase, sale, acquisition, payment, or settlement shall be installed, maintained, and operated to ensure accurate weights. Such scales shall meet applicable requirements contained in the General Code, Scale Code, and Weights Code of the 1996 edition of National Institute of Standards and Technology (NIST) Handbook 44, "Specifications, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices," which is hereby incorporated by reference. This incorporation by reference was approved by the Director of the Federal Register on January 11, 1989. These materials are incorporated as they exist on the date of approval and a notice of any change in these materials will be published in the **Federal Register**. This handbook is for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402. It is also available for inspection at the Office of the Federal Register Information Center, 800 North Capitol Street, N.W., Suite 700, Washington, DC 20408.

(b) All scales used by stockyard owners, market agencies, dealers, packers, and live poultry dealers to weigh livestock, livestock carcasses, live poultry or feed for the purpose of purchase, sale, acquisition, payment, or settlement of livestock or live poultry and all scales used for the purchase, sale, acquisition, payment, or settlement of livestock on a carcass weight basis shall be equipped with a printing device which shall record weight values on a scale ticket or other document.

(c) All vehicle scales used to weigh livestock, live poultry or feed for purposes of purchase, sale, acquisition, payment, or settlement of livestock or live poultry shall be of sufficient length and capacity to weigh the entire vehicle as a unit: Provided, That a trailer may be uncoupled from the tractor and weighed as a single unit.

(d) No scale shall be operated or used by any stockyard owner, market agency, dealer, packer, or live poultry dealer to

weigh livestock, livestock carcasses, live poultry, or feed for purposes of purchase, sale, acquisition, payment, or settlement of livestock, livestock carcasses or live poultry unless it has been found upon test and inspection, as specified in § 201.72, to be in a condition to give accurate weight. If a scale is inspected or tested and found to be in a condition to give incorrect or inaccurate weights or if any repairs, adjustments or replacements are made to a scale, it shall not be used until it has been inspected and tested and determined to meet all accuracy requirements specified in the regulations.

5. Section 201.72 would be revised to read as follows:

§ 201.72 Scales; testing of.

(a) Each stockyard owner, market agency, dealer, packer, or live poultry dealer who weighs livestock, live poultry, or feed for purposes of purchase, sale, acquisition, payment, or settlement of livestock or live poultry, or who weighs livestock carcasses for the purpose of purchase on a carcass weight basis, or who furnishes scales for such purposes, shall cause such scales to be tested by competent persons in accordance with the regulations at least twice during each calendar year at intervals of approximately 6 months. More frequent testing will be required in cases where the scale does not maintain accuracy between tests.

(b) Each stockyard owner, market agency, dealer, packer, or live poultry dealer who weighs livestock, livestock carcasses, live poultry or feed for purposes of purchase, sale, acquisition, payment, or settlement of livestock, livestock carcasses or live poultry shall furnish reports of such tests and inspections on forms prescribed by the Administrator. The stockyard owner, market agency, dealer, packer or live poultry dealer shall retain one copy of the test and inspection report and shall file one copy with the P&S regional office for the region in which the scale is located.

(c) When scales used for weighing livestock, livestock carcasses, live poultry, or feed are tested and inspected by an agency of a State or municipality or other governmental subdivision, the forms ordinarily used by such agency for reporting test and inspection of scales shall be accepted in lieu of the forms prescribed for this purpose by the Deputy Administrator if such forms contain substantially the same information.

(Approved by the Office of Management and Budget under control number 0580–0015)

6. Section 201.73 would be revised to read as follows:

§ 201.73 Scale operators to be qualified.

Stockyard owners, market agencies, dealers, packers, and live poultry dealers shall employ qualified persons to operate scales for weighing livestock, livestock carcasses, live poultry, or feed for the purposes of purchase, sale, acquisition, payment, or settlement of livestock, livestock carcasses, or live poultry and they shall require such employees to operate the scales in accordance with the regulations.

Done at Washington, DC, this March 26, 1999.

Harold W. Davis,

Acting Administrator, Grain Inspection, Packers and Stockyards Administration.

[FR Doc. 99–8068 Filed 4–1–99; 8:45 am]

BILLING CODE 3410–EN–P

SMALL BUSINESS ADMINISTRATION

13 CFR part 120

Business Loan Program

AGENCY: Small Business Administration (SBA).

ACTION: Proposed rule.

SUMMARY: SBA proposes to limit the fees that a Certified Development Company (CDC) can charge a Borrower or Third Party Lender in connection with the processing of a 504 financing to the 1.5 percent processing fee currently authorized by SBA regulations. SBA invites comment on this proposed change and the policies underlying the change.

DATES: Submit comments on or before May 3, 1999.

ADDRESSES: Comments should be mailed to Jane Palsgrove Butler, Associate Administrator for Financial Assistance, Small Business Administration, 409 Third Street, SW, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Michael J. Dowd, 202–205–6660.

SUPPLEMENTARY INFORMATION: SBA proposes to delete § 120.926 (13 CFR 120.926) and amend § 120.971 (13 CFR 120.971) of its regulations. The proposed amendments would clarify SBA's policy prohibiting a CDC from charging a Borrower more than 1.5 percent of the net debenture proceeds for all services related to processing a 504 financing. SBA invites comment on this policy. In addition, SBA proposes to amend its regulations to prohibit a CDC from charging a Third Party Lender for any services related to the processing or packaging of a 504 financing. SBA also invites comment on this proposed policy change.

Before March 1, 1996, the fees that SBA permitted a CDC to charge a Borrower for services related to a 504 financing were contained in SBA's regulations, 13 CFR 108.503–6. In addition to a fee from the Borrower of up to 1.5 percent of the net debenture proceeds to cover CDC costs for loan packaging, processing, and non-legal staff functions, the regulations permitted a CDC to charge the Borrower or Third-Party Lender an additional fee of up to 1.5 percent of the third party financing for services actually rendered by the CDC under a written agreement.

On December 15, 1995, in response to directives from the President for Federal agencies to streamline their regulations, SBA published proposed regulations (60 FR 64356) which consolidated parts 108, 116, 120, 122, and 131 of its regulations into a revised part 120. Former § 108.503–6 (except paragraph (c)) became § 120.971 in the proposed regulations under the heading "Post-closing fees paid by Borrower." Proposed § 120.971 listed the fees that a CDC could charge a Borrower in connection with a 504 financing. Paragraph 108.503–6(c) became paragraph 120.961(b) in the proposed regulations. Proposed paragraph 120.961(b) allowed CDCs to charge a "finder's fee" which either the Borrower or Third Party Lender could pay.

On January 31, 1996, SBA published final regulations in the **Federal Register** with an effective date of March 1, 1996 (61 FR 3226) (the "new regulations"). The heading of § 120.971 was changed to "Allowable fees paid by Borrower," but in all other respects remained as proposed. Proposed paragraph 120.961(b) became § 120.926 in the new regulations. It allowed CDCs to charge only the Third Party Lender, and allowed a CDC to receive that fee from the Third Party Lender if the CDC secured the lender for the Borrower under a written contract. Section 120.926 of the new regulations, specifically prohibited a CDC from obtaining that fee directly from the Borrower.

SBA now proposes to prohibit a CDC from charging a Borrower or a Third Party Lender a referral fee or *any* other fee related to processing or packaging a 504 financing other than the 1.5 percent processing fee a CDC may charge a Borrower pursuant to § 120.971, whatever the CDC may call the fee. Specifically named as prohibited are application fees, finder's fees, referral fees, packaging fees, and additional fees of any kind ("Additional Fees"),

although the proposed rule makes clear that this prohibition applies to any fee the CDC might charge to the Borrower, regardless of what it would be called.

SBA intends that Borrowers not pay Additional Fees either directly or indirectly. SBA believes that Third Party Lenders sometimes pass Additional Fees on to Borrowers in the form of higher interest rates, points, or other charges. SBA considers it good public policy to prohibit a CDC from directly charging a Borrower Additional Fees, or from charging a Third Party Lender Additional Fees which may get passed along to a Borrower, because SBA believes a finder's fee or referral fee is not necessary since there is an established Third Party Lender community readily available to potential 504 borrowers and CDCs.

When the program first began in 1980, it was sometimes difficult for CDCs to locate Third Party Lenders willing to participate in a new program. So, SBA permitted CDCs to charge Additional Fees under former § 108.503–6(c) for services rendered in connection with obtaining a Third Party Loan. Today most CDCs have developed working relationships with one or more lender(s) who regularly participate in 504 financings. In fact, in many instances, the Borrower goes first to a Third Party Lender who refers the Borrower to the CDC. On most other occasions, a CDC refers a Borrower to a Third Party Lender that has participated with the CDC in previous 504 financings; or rarely, a CDC will use a packager to obtain a Third Party Lender. However this Third Party financing is placed, SBA no longer believes that the effort necessary to get a Third Party Lender justifies allowing a CDC to charge a small business Borrower Additional Fees.

SBA believes the compensation for any actions a CDC performs in connection with the origination and processing of a 504 financing is adequately covered by the 1.5 percent processing fee permitted to be paid by a Borrower pursuant to § 120.971(a)(1). A 504 financing includes the CDC loan, Third Party Loan, and Borrower injection (see 13 CFR 120.801). A CDC cannot process a 504 financing unless there is a qualified Third Party Lender. The participation of a Third Party Lender is an integral part of a CDC's processing of a 504 financing. Without it, a 504 financing cannot occur. SBA concludes that a CDC should not receive an Additional Fee of any kind for any actions related to obtaining a Third Party Lender, or processing the Third Party Loan, because the fee a CDC receives under § 120.971(a)(1) covers those actions. Whether a Borrower pays an Additional Fee directly to a CDC or indirectly to a Third Party Lender in the form of higher interest rates, points, or other charges, the Borrower is essentially paying twice for the same services—the processing of its 504 financing. SBA believes that the fee a CDC may charge under § 120.971(a)(1) is the all-inclusive processing fee for a CDC and that this fee covers any services performed by the CDC related to the processing of a 504 financing.

SBA emphasizes that the proposed regulatory amendments would prevent a CDC from charging a Borrower or Third Party Lender *any* fees related to processing or packaging a 504 financing other than the 1.5 percent processing fee a CDC may charge a Borrower pursuant to § 120.971. For example, a CDC would not be able to receive fees from a Borrower or Third Party Lender for (1) referring a Borrower to a Third Party Lender (or the reverse); (2) referring a Borrower to a packager; or (3) helping to process the Third Party Loan.

Since it is proposing to prohibit Additional Fees, SBA proposes to delete § 120.926 in its entirety. As was the case prior to March 1, 1996, all fees which a CDC would be able to charge with respect to a 504 financing would be found in one section of SBA's regulations, § 120.971. SBA proposes to change the heading of § 120.971 to "Fees Which a CDC May Charge," and to add the word "only" to § 120.971(a) to make clear that a CDC may charge a Borrower only the fees enumerated in that paragraph.

SBA invites comments on any aspect of these proposed regulations and on the underlying policies as discussed in this preamble. Specifically, SBA invites comment on (but not limited to) the following issues:

1. Whether the fees now permitted to be charged to the borrower, 1.5 percent of the net debenture proceeds, is adequate compensation for processing a 504 financing.

2. Whether a CDC should be able to charge either a Borrower or a Third Party Lender Additional Fees when the fees are clearly itemized and the fees are for special and non-routine work performed in connection with obtaining a Third Party Lender or processing a Third Party Loan.

3. Whether there is any need for a CDC to receive an Additional Fee for its efforts relating to the Third Party Loan in specific situations, such as in urban and rural areas, or with respect to the CDC's efforts to increase the number of loans to New Market small businesses.

4. Whether SBA should establish separate fee limitations depending on whether the CDC is a for-profit or a not-for-profit entity.

Compliance With Executive Orders 12612, 12778, and 12866, the Regulatory Flexibility Act (5 U.S.C. 601–612) and the Paperwork Reduction Act (44 U.S.C. Ch. 35)

SBA certifies that this proposed rule does not constitute a significant rule within the meaning of Executive Order 12866, since it is not likely to have an annual effect on the economy of $100 million or more, result in a major increase in costs or prices, or have a significant adverse effect on competition or the U.S. economy.

SBA certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601–612. Last year, SBA made approximately four thousand 504 loans. Currently there are approximately 270 CDCs.

SBA certifies that this proposed rule does not impose any additional reporting or recordkeeping requirements under the Paperwork Reduction Act, 44 U.S.C., chapter 35.

For purposes of Executive Order 12778, SBA certifies that this proposed rule is drafted, to the extent practicable, to accord with the standards set forth in paragraph 2 of that Order.

List of Subjects in 13 CFR part 120

Loan programs—business, Small Businesses.

For the reasons stated in the preamble, the Small Business Administration proposes to amend 13 CFR part 120 as follows:

PART 120—BUSINESS LOANS

1. The authority citation for part 120 continues to read as follows:

Authority: 15 U.S.C. 634(b)(6) and 636(a) and (h).

§ 120.926 [Remove]

2. Remove § 120.926.

3. Amend § 120.971 to revise the heading, to revise paragraph (a), to redesignate paragraphs (b), (c), (d), and (e) as paragraphs (c), (d), (e), and (f), respectively, and to add new paragraph (b) as follows:

§ 120.971 Fees a CDC may charge.

(a) *Fees a CDC may charge a Borrower.* A CDC may charge only the following fees to a Borrower:

* * * * *

(b) *Fees a CDC may charge a Third Party Lender.* None.

* * * * *

Dated: March 24, 1999.
Aida Alvarez,
Administrator.
[FR Doc. 99–8148 Filed 4–1–99; 8:45 am]
BILLING CODE 8025–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 1

[Docket No. 98N–0583]

RIN 0910–AB16

Exports: Notification and Recordkeeping Requirements

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing new regulations that would establish the notification and recordkeeping requirements for persons exporting human drugs, biologics, devices, animal drugs, food, and cosmetics that may not be marketed or sold in the United States. These regulations would implement recent changes in the statutory requirements applicable to certain exports, and would also codify recordkeeping requirements for exports of products that cannot be marketed or sold in the United States generally.

DATES: Submit written comments by June 16, 1999. Submit written comments on the information collection requirements by May 3, 1999.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit written comments on the information collection requirements to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20502, Attn: Desk Officer for FDA.

FOR FURTHER INFORMATION CONTACT: Philip L. Chao, Office of Policy (HF–23), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–3380.

SUPPLEMENTARY INFORMATION:

I. Introduction

Enacted and later amended in 1996, the FDA Export Reform and Enhancement Act (Pub. L. 104–134, as amended by Pub. L. 104–180) significantly changed the export requirements for unapproved human drugs, biologics, devices, and animal drugs. For example, before the law was enacted, most exports of unapproved new drug products could only be made to the 21 countries then identified in section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382), and these exports were subject to numerous restrictions. The FDA Export Reform and Enhancement Act amended section 802 of the act to allow, among other things, the export of unapproved new human drugs to any country in the world if the drug complies with the laws of the importing country and has valid marketing authorization from any of the following countries: Australia, Canada, Israel, Japan, New Zealand, Switzerland, South Africa, and the countries in the European Union (EU) and the European Economic Area (EEA) and certain other requirements are met (see section 802(b)(1)(A) of the act). Currently, the EU countries are Austria, Belgium, Denmark, Germany, Greece, Finland, France, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain, Sweden, and the United Kingdom. The EEA countries are the EU countries, Iceland, Liechtenstein, and Norway. The list of countries will expand automatically if any country accedes to the EU or becomes a member of the EEA. This provision of section 802 of the act also applies to the export of certain devices that cannot be sold or marketed in the United States.

The FDA Export Reform and Enhancement Act also modified the export authority in section 801 of the act (21 U.S.C. 381). Before enactment of the FDA Export Reform and Enhancement Act, section 801(e)(1) of the act applied to the exportation of certain foods, drugs, devices, and cosmetics. Products exported under section 801(e) of the act are not considered adulterated or misbranded if the product intended for export: (1) Meets the foreign purchaser's specifications, (2) is not in conflict with the laws of the country to which it is being exported, (3) is labeled on the outside of the shipping package that the product is intended for export, and (4) is not sold or offered for sale in domestic commerce (see section 801(e)(1) of the act). Additional requirements apply to certain devices (see section 801(e)(2) of the act). The FDA Export Reform and Enhancement Act extended these four basic requirements to all exports under sections 801 and 802 of the act, and to exports of partially processed biologics under section 351(h) of the Public Health Service Act (the PHS Act) (see section 801(e) and (f) of the act); section 802(f)(3) of the act; and section 351(h) of the PHS Act (42 U.S.C. 262(h))), and made section 801(e) of the act the principal export authority for the exportation of unapproved animal drugs other than animal drugs banned in the United States. It also imposed additional labeling requirements on certain exports of approved drugs (see section 801(f) of the act).

The FDA Export Reform and Enhancement Act also established recordkeeping and notification requirements. Products exported under section 802 of the act are subject to certain requirements under section 802(f) and (g) of the act. Section 802(f) of the act prohibits a drug or device from being exported under section 802 of the act if it: (1) Does not conform with current good manufacturing practices, (2) is adulterated under certain provisions in section 501 of the act (21 U.S.C. 351), (3) does not comply with section 801(e)(1) of the act, (4) is the subject of a determination by FDA or the United States Department of Agriculture (with respect to veterinary biologics) that the probability of reimportation of the exported drug or device would present an imminent hazard to the public health and safety of the United States, (5) would present an imminent hazard to the public health of the foreign country, (6) fails to comply with labeling requirements in the country receiving the exported drug or device, or (7) is not promoted in accordance with labeling requirements.

Section 802(g) of the act requires an exporter of a drug or device under section 802(b)(1)(A) of the act to provide a "simple notification" to the agency "identifying the drug or device when the exporter first begins to export such drug or device" to any of the 25 countries identified in section 802(b)(1)(A) of the act. For exports to other, nonlisted countries, section 802(g) of the act requires the exporter to provide a simple notification "identifying the drug or device and the country to which such drug or device is being exported." This section also requires persons export under any provision of section 802 of the act to "maintain records of all drugs or devices exported and the countries to which they were exported."

II. Description of the Proposed Rule

The proposed rule would amend 21 CFR part 1 to create a new § 1.101 entitled "Notification and recordkeeping."

Proposed § 1.101(a) would describe the provision's scope as covering notifications and records required for human drug, biologic, device, animal drug, food, and cosmetic exports under

sections 801 or 802 of the act or section 351 of the PHS Act. In general, the export provisions in sections 801 and 802 of the act and section 351 of the PHS Act apply to persons exporting unapproved or otherwise violative products, products approved in the United States that will be used for unapproved uses in the foreign country, and partially processed biologics. Products that meet all applicable requirements of the act or the PHS Act for marketing and sale in the United States and are exported for the same approved indications are not subject to the export restrictions in sections 801 and 802 of the act and section 351 of the PHS Act.

Proposed § 1.101(b) would establish the recordkeeping requirements for human drugs, biologics, devices, animal drugs, foods, and cosmetics exported under or subject to section 801(e)(1) of the act. These recordkeeping requirements are intended to facilitate an evaluation of whether a person has complied with section 801(e)(1) of the act, and would apply to all products exported under sections 801 or 802 of the act. For example, to demonstrate that the exported product meets the foreign purchaser's specifications, proposed § 1.101(b)(1) would require records describing or listing the product specifications requested by the foreign purchaser, including details about the product (e.g., dosage strength, dosage form, purity, quality, operating parameters, composition, etc.) and any manufacturing specifications requested by the foreign purchaser (e.g., type of sterilization process to be used, compliance with a particular manufacturing standard, etc.). Proposed § 1.101(b)(2) would require the exporter to maintain documentation that demonstrates that the exported product does not conflict with the importing country's laws, such as a letter from the appropriate foreign government agency, department, or other authorized body stating that the product has marketing approval from the foreign government or does not conflict with that country's laws. The proposal would not consider letters or other documents from nongovernmental bodies or persons, such as company officials or attorneys in the foreign country, to be satisfactory for this purpose. Proposed § 1.101(b)(3) would require the records to include copies of any labels or labeling statements that are placed on the shipping packages that show that the packages are intended for export. Statements such as "For export only" may be sufficient for this purpose. Proposed § 1.101(b)(4) would require records showing that the product is not sold or offered for sale in the United States; these records could pertain to the product, its labeling, and similar products sold in the United States. Proposed § 1.101(b) would require the records to be maintained for at least 5 years from the date of exportation, and would require that the records be made available to FDA, upon request, during an inspection for review and copying.

Proposed § 1.101(c) would establish recordkeeping requirements, in addition to those required under proposed § 1.101(b), for partially processed biologics exported under section 351(h) of the PHS Act. Proposed § 1.101(c)(1) would require persons exporting a partially processed biologic under section 351(h) of the PHS Act to maintain records demonstrating that the product for export is a partially processed biological product, that is, "not in a form applicable to the prevention, treatment, or cure of disease or injuries of man." This may consist of evidence showing the product's need for inactivation, fractionation, purification, or significant chemical modification before it can be used in the formulation of a final finished product for use outside the United States. Proposed § 1.101(c)(2) would require records to demonstrate that the product was manufactured in conformity with applicable good manufacturing practice requirements. Such records could include manufacturing records that allow the partially processed biological product to be traced from the assignment of a batch or lot numbering system at the U.S. firm, temperature stability data for the product during conditions of transit, and records of periodic checks of the capacity of shipping containers. Proposed § 1.101(c)(3) would require distribution records of the exported partially processed biologics, while proposed § 1.101(c)(4) would require copies of all labeling that accompanies the partially processed biological product for export, such as a container label with the statement, "Caution: For Further Manufacturing Use Only," and any package insert. As in the case of records under proposed § 1.101(b), proposed § 1.101(c) would require these records to be maintained for at least 5 years from the date of exportation and that the records be made available to FDA, upon request, during an inspection for review and copying.

Proposed § 1.101(d) would establish the notification requirements for drugs, biologics, and devices exported under section 802 of the act. In brief, proposed § 1.101(d)(1) would require exporters to provide written notification to the agency that identifies the article's name, identifies its generic name if the article is a drug or the article's type if the product is a device, describes the product's strength and dosage form (if the product is a drug or biologic) or the product's model number (if the product is a device), and identifies the country that is to receive the exported article. Proposed § 1.101(d)(2) would list the addresses to which the notifications should be sent. However, these notification requirements would not apply to investigational drugs or devices exported under section 802(c) of the act. FDA published a final rule regarding investigational device exports in the **Federal Register** of May 13, 1997 (62 FR 26228).

The proposed rule would require persons exporting a product in anticipation of market authorization in a list country under section 802(d) of the act to comply with the notification requirements in proposed § 1.101(d)(1). This requirement would be consistent with an interpretation of section 802(g) of the act that considers the nexus between section 802(b)(1) and (d) of the act. Section 802(g) of the act requires exporters of drugs, biologics, and devices to provide a simple notification to the agency when they export a product to a listed country or to an unlisted country under section 802(b)(1) of the act. Section 802(b)(1) of the act permits exports when the drug, biologic, or device has received market authorization in a listed country, whereas section 802(d) of the act permits exports to a listed country in anticipation of market authorization. A literal interpretation of section 802(g) of the act would not require an exporter to notify FDA when it shipped a product to a listed country in anticipation of market authorization, but would instead require the exporter to notify FDA when the exporter shipped the same product to the same country once it receives market authorization. The agency has concluded that it would be more simple and efficient, both for exporters and FDA, if exporters notify FDA when they export a product in anticipation of market authorization under section 802(d) of the act, rather than wait for market authorization in the listed country and then notify FDA when the product is exported under section 802(b)(1) of the act. This interpretation is consistent with section 802 of the act as a whole, as well as section 701(a) of the act (21 U.S.C. 371), which authorizes regulations for the efficient enforcement of the act.

The agency acknowledges that, for exports to listed countries under section 802(b)(1) of the act, section 802(g) of the

act requires the notification to identify only the drug, biologic, or device being exported and does not expressly require the notification to identify the country to which the drug, biologic, or device is being exported. (In contrast, for drugs, biologics, or devices exported to nonlisted countries under section 802 of the act, section 802(g) of the act requires both identification of the exported product and the country to which the product is being exported.) Nevertheless, FDA is proposing to require that all export notifications under section 802(g) of the act identify the product and the importing country. FDA is taking this action because section 802(a)(2) of the act requires FDA to notify the "appropriate public health official" in the foreign country receiving an exported drug, biologic, or device if FDA disapproves a marketing application for the drug, biologic, or device. Additionally, section 802(f) of the act requires FDA to consult with the "appropriate public health official in the affected country" in the event that an exported drug, biologic, or device presents an imminent hazard to the public health. Similar consultation obligations exist if the product's labeling is not in accordance with the requirements and conditions for use in the country in which the drug, biologic, or device has valid marketing authorization and the country to which the drug, biologic, or device is being exported or if the drug, biologic, or device is not promoted in accordance with the labeling requirements of section 802(f) of the act. Thus, to facilitate these notifications and consultations with foreign officials (particularly in the event that FDA disapproves a drug, biologic, or device that has been exported, or the exported product presents an imminent hazard to the public health of the receiving country), FDA must know where the products have been exported. Consequently, proposed § 1.101(d)(1)(iv) would require all notifications to identify the country or countries that are to receive the exported product.

FDA, however, invites comment on possible alternatives to this notification requirement that would satisfy the consultation, notification, and recordkeeping obligations and requirements in section 802 of the act. The agency is especially interested in alternatives that would reduce the paperwork burden, such as electronic submissions and recordkeeping or periodic notifications (e.g., monthly, quarterly, etc.), and the details of such alternatives.

Proposed § 1.101(e) would establish additional recordkeeping requirements for exported drugs, biologics, and devices subject to section 802(g) of the act. These records would include, but not be limited to, records concerning the product's name; its generic name if the product is a drug or a biologic or the type of device if the product is a device; a description of its strength and dosage form and the product's lot or control number (if the product is a drug or biologic) or the product's model number (if the product is a device); the consignee's name and address; and the date on which the product was exported and the quantity of product exported. The proposal would require these records to be kept at the site from which the products were exported and be maintained for 5 years after the date of exportation. The proposal would require that these records be made readily available for review and copying by FDA during an inspection, and these records would be in addition to those records required under proposed § 1.101(b).

III. Environmental Impact

The agency has determined under 21 CFR 25.30(h) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

IV. Paperwork Reduction Act of 1995

This proposed rule contains information collection requirements which are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (the PRA). The title, description, and respondent description of the information collection requirements are shown as follows, with an estimate of the annual reporting and recordkeeping burden. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Title: Exports: Notification and Recordkeeping Requirements.

Description: The proposed rule would establish the notification and recordkeeping requirements for persons exporting a human drug, biologic, device, animal drug, food, or cosmetic under section 801(e) or 802 of the act or section 351(h) of the PHS Act.

Description of Respondents: Businesses.

TABLE 1.—ESTIMATED ANNUAL REPORTING AND RECORDKEEPING BURDEN[1]

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
1.101(b)	316	2.8	885	1	885
1.101(c)	8	2	16	2	32
1.101(d)	244	2.4	586	1	586
1.101(e)	175	3.3	578	2	1,156
Total					2,659

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

The estimates are based on the number of notifications received by the relevant FDA centers in 1996 or 1997 (depending on the last year for which figures were available) as well as consultations with industry sources.

As required by section 3507(d) of the PRA, FDA has submitted a copy of this proposed rule to OMB for its review of these previously approved information collection requirements. The agency solicits comments on the information collection requirements in order to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those

who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of reports.

V. Analysis of Impacts

FDA has examined the impacts of this proposed rule under Executive Order 12866 and the Regulatory Flexibility Act (Pub. L. 96–354). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize new benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes this proposed rule is consistent with the regulatory philosophy and the principles identified in the Executive Order. In addition, the proposed rule is a significant regulatory action as defined in the Executive Order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant economic impact of a rule on small entities. The proposed rule will not have a significant economic impact on a substantial number of small entities, but FDA has conducted an initial regulatory flexibility analysis to ensure that impacts on small entities were assessed and to alert any potentially impacted small entities to the opportunity to submit comments to FDA.

The proposed rule would implement the notification and recordkeeping aspects of the FDA Export Reform and Enhancement Act. The proposal requires firms that export unapproved new drugs, biologics, and devices under section 802 to notify FDA. The notification would identify the product being exported (name and description) and the product's destination. The proposal would also require firms that export human drugs, biologics, devices, animal drugs, foods, and cosmetics to maintain records demonstrating their compliance with the statutory requirements in sections 801(e) or 802 of the act or section 351(h) of the PHS Act (whichever is applicable).

FDA's initial determination that the rule will not have a significant economic impact on a substantial number of small entities is based on the estimated reporting and recordkeeping costs for the rule. Industry sources suggest that an average notification under the rule would require 1 hour to prepare and that the average wage is $30 per hour. Combining this information with information from FDA's export records (which suggest approximately 2.4 exports per firm), an exporting firm's notification cost would be $72 ($30 x 2.4).

FDA's export records also suggest that the average number of records varies (depending on the product involved) from 2.8 to 5.1 records per firm. Industry sources project the average recordkeeping cost to be $100 per record, so the recordkeeping cost per firm ranges from $280 for firms exporting products that are subject only to section 801(e) of the act to $510 for firms exporting products under section 802 of the act and to $480 for firms exporting products under section 351(h) of the PHS Act.

Thus, because the estimated proposed notification and recordkeeping costs are low, the proposed rule, if finalized, should not have a significant economic impact on a substantial number of small entities.

FDA considered alternatives that would require less information to be retained in the required records. For example, one alternative would be to require the notification to provide only the product's name and destination. However, because drug products may vary in dosage strength and size and yet still share the same name, a notice that merely named the product would not be sufficiently revealing to inform FDA about the exported drug. Another alternative would be to shorten the recordkeeping period, but because FDA's inspection resources have a wide range of obligations, from factory inspections to examining imports, a shorter time period would increase the likelihood of records being lost or destroyed before FDA could inspect an exporting firm.

The Unfunded Mandates Reform Act (Pub. L. 104–114) requires that agencies prepare an assessment of anticipated costs and benefits before proposing any rule that may result in an expenditure in any 1 year by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation). FDA estimates that the total recordkeeping costs for industry under the proposed rule would be $207,300. This estimate is based on a projected 2,073 records per year, multiplied by an industry cost of $100 per record. The total estimated reporting cost to industry is $17,580. This estimate is derived from the estimated total burden hours for reports (586) multiplied by a wage of $30 per hour per report. Because these expenditures will not result in a 1-year expenditure of $100 million or more, FDA is not required to perform a cost-benefit analysis under the Unfunded Mandates Reform Act.

VI. Requests for Comments

Interested persons may, on or before June 16, 1999, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs (address above).

List of Subjects in 21 CFR Part 1

Cosmetics, Drugs, Exports, Food labeling, Imports, Labeling, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 1 be amended as follows:

PART 1—GENERAL ENFORCEMENT REGULATIONS

1. The authority citation for 21 CFR part 1 is revised to read as follows:

Authority: 15 U.S.C. 1453, 1454, 1455; 21 U.S.C. 321, 343, 352, 355, 360b, 362, 371, 374, 381, 382, 393; 42 U.S.C. 216, 241, 243, 262, 264.

2. Section 1.101 is added to subpart E to read as follows:

§ 1.101 Notification and recordkeeping.

(a) *Scope.* This section pertains to notifications and records required for human drug, biologic, device, animal drug, food, and cosmetic exports under sections 801 or 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 381 and 382) or section 351 of the Public Health Service Act (42 U.S.C. 262) .

(b) *Recordkeeping requirements for human drugs, biologics, devices, animal drugs, foods, and cosmetics exported under or subject to section 801(e)(1) of the act.* Persons exporting an article under section 801(e)(1) of the act or an article otherwise subject to section 801(e)(1) of the act shall maintain records as enumerated in paragraphs (b)(1) through (b)(4) of this section demonstrating that the product meets the requirements of section 801(e)(1) of the act. Such records shall be

maintained for at least 5 years from the date of exportation. The records shall be made available to the Food and Drug Administration (FDA), upon request, during an inspection for review and copying by FDA.

(1) Records demonstrating that the product meets the foreign purchaser's specifications. Such records shall include descriptions or lists of product specifications requested by the foreign purchaser, such as product details (e.g., dosage strength, dosage form, purity, quality, operating parameters, composition, etc.) and manufacturing specifications requested by the foreign purchaser (e.g., type of sterilization process to be used, compliance with a particular manufacturing standard, etc.);

(2) Records demonstrating that the product does not conflict with the laws of the importing country, such as a letter from an appropriate foreign government agency, department, or other authorized body stating that the product has marketing approval from the foreign government or does not conflict with that country's laws. Letters or other documents from nongovernmental bodies or persons, such as company officials or attorneys in the foreign country, are not acceptable. If the letter or other document from the foreign government is not in English, the person exporting the article must have an English-language translation of that document or be prepared to translate the document into English at the time of any FDA inspection;

(3) Records demonstrating that the product is labeled on the outside of the shipping package that it is intended for export, including copies of any labels or labeling statements, such as "For export only," that are placed on the shipping packages; and

(4) Records demonstrating that the product is not sold or offered for sale in the United States, such as documentation concerning the product, its labeling, and similar products sold in the United States.

(c) *Additional recordkeeping requirements for partially processed biologics exported under section 351(h) of the Public Health Service Act.* In addition to the requirements in paragraph (b) of this section, persons exporting a partially processed biologic under section 351(h) of the Public Health Service Act shall maintain, for at least 5 years from the date of exportation and make available to FDA, upon request, during an inspection for review and copying by FDA, the following records:

(1) Records demonstrating that the product for export is a partially processed biological product and not in a form applicable to the prevention, treatment, or cure of diseases or injuries of man;

(2) Records that demonstrate that the partially processed biological product was manufactured in conformity with current good manufacturing practice requirements;

(3) Distribution records of the exported partially processed biological products; and

(4) Copies of all labeling that accompanies the exported partially processed biological product, such as a container label with the statement, "Caution: For Further Manufacturing Use Only" and any package insert.

(d) *Notification requirements for drugs, biologics, and devices exported under section 802 of the Federal Food, Drug, and Cosmetic Act.* (1) Persons exporting a human drug, biologic, or device under section 802 of the Federal Food, Drug, and Cosmetic Act, other than a drug or a device for investigational use exported under section 802(c) of the Federal Food, Drug, and Cosmetic Act, shall provide written notification to the Food and Drug Administration. The notification shall identify:

(i) The product's name;

(ii) If the product is a drug or biologic, the product's generic name or, if the product is a device, the type of device;

(iii) If the product is a drug or biologic, a description of the product's strength and dosage form or, if the product is a device, the product's model number; and

(iv) The country that is to receive the exported article.

(2) The notification shall be sent to the following addresses:

(i) For biological drug products and devices regulated by the Center for Biologics Evaluation and Research—Division of Case Management (HFM–610), Office of Compliance, Center for Biologics Evaluation and Research, Food and Drug Administration, 1401 Rockville Pike, rm. 200N, Rockville, MD 20852–1448;

(ii) For human drug products—Division of Labeling and Nonprescription Drug Compliance (HFD–310), Center for Drug Evaluation and Research, Food and Drug Administration, 7520 Standish Pl., Rockville, MD 20855–2737;

(iii) For devices—Division of Program Operations (HFZ–305), Center for Devices and Radiological Health, Food and Drug Administration, 2094 Gaither Rd., Rockville, MD 20850.

(e) *Recordkeeping requirements for products subject to section 802(g) of the act.* (1) Any person exporting a product under any provision of section 802 of the act shall maintain records of all drugs, biologics, and devices exported and the countries to which the products were exported. In addition to the requirements in paragraph (b) of this section, such records include, but are not limited to, the following:

(i) The product's name;

(ii) If the product is a drug or biologic, the product's generic name or, if the product is a device, the type of device;

(iii) If the product is a drug or biologic, a description of its strength and dosage form and the product's lot or control number or, if the product is a device, the product's model number;

(iv) The consignee's name and address; and

(v) The date on which the product was exported and the quantity of product exported.

(2) These records shall be kept at the site from which the products were exported and be maintained at least 5 years after the date of exportation. The records shall be made available to FDA, upon request, during an inspection for review and copying by FDA.

Dated: December 23, 1998.

William K. Hubbard,

Acting Deputy Commissioner for Policy.

[FR Doc. 99–8159 Filed 4–1–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 101

[Docket No. 99N–0554]

Implementation of the Food and Drug Administration Modernization Act; Provisions for Use in Food Labeling of Health Claims and Nutrient Content Claims Based on Authoritative Statements; Public Meeting; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Announcement of public meeting; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a document that appeared in the **Federal Register** of March 24, 1999 (56 FR 14178). This document announced a forthcoming public meeting concerning implementation of sections 303 and 304 of the FDA Modernization Act of 1997. The document published with an incorrect title. This document corrects that error.

FOR FURTHER INFORMATION CONTACT: Joyce A. Strong, Office of Policy (HF–

27), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–7010.

In FR Doc. 99–7115, appearing on page 14178 in the **Federal Register** of March 24, 1999, the following correction is made:

On page 14178, in the second column, the title "How to Use Health Claims and Nutrient Content Claims in Food Labeling; Public Meeting" is corrected to read "Implementation of the Food and Drug Administration Modernization Act; Provisions for Use in Food Labeling of Health Claims and Nutrient Content Claims Based on Authoritative Statements; Public Meeting".

Dated: March 25, 1999.

William K. Hubbard,

Acting Deputy Commissioner for Policy.

[FR Doc. 99–8094 Filed 4–1–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 206

RIN 1010–AC09

Workshops on Proposed Rule—Establishing Oil Value for Royalty Due on Federal Leases

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of extended workshops.

SUMMARY: The Minerals Management Service is extending the April 6, 1999, Federal oil royalty valuation workshop (Workshop 3). On March 12, 1999 (64 FR 12267), MMS announced it would reopen the comment period and hold three workshops to discuss unresolved issues pertaining to the proposed Federal oil valuation rule. The workshops were scheduled in Houston, Texas, March 24; Albuquerque, New Mexico, March 25; and Washington, D.C., April 6. Based on the various proposals and questions that surfaced during the Houston and Albuquerque workshops, the workshop participants agreed that additional time would be needed to resolve those questions and evaluate the proposals. Therefore, MMS is extending the workshop in Washington, D.C., to 2 days.

DATES: April 6–7, 1999, beginning at 9 a.m. and ending 5 p.m. Eastern time.

ADDRESSES: Workshop 3 will be held at the Main Interior Building, 1849 C Street, N.W., Washington, D.C. 20240 (large buffet room adjacent to the cafeteria in the basement). Phone: (202) 208–3512.

FOR FURTHER INFORMATION CONTACT: David S. Guzy, Chief, Rules and Publications Staff, Minerals Management Service, Royalty Management Program, P.O. Box 25165, MS 3021, Denver, Colorado 80225–0165, telephone (303) 231–3432; fax number (303) 231–3385, e-Mail David.Guzy@mms.gov.

SUPPLEMENTARY INFORMATION: The workshops will be open to the public without advance registration. Public attendance may be limited to the space available. We encourage a workshop atmosphere; members of the public are encouraged to participate in a discussion of the alternatives. For building security measures, each person may be required to present a picture identification to gain entry to the meetings.

Dated: March 29, 1999.

Dale Fazio,

Acting Associate Director for Royalty Management.

[FR Doc. 99–8132 Filed 4–1–99; 8:45 am]

BILLING CODE 4310–MR–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 195–0101b FRL–6235–7]

Approval and Promulgation of State Implementation Plans; California State Implementation Plan Revision, Yolo-Solano Air Quality Management District, Monterey Bay Unified Air Pollution Control District, South Coast Air Quality Management District, Santa Barbara County Air Pollution Control District, Sacramento Metropolitan Air Quality Management District, and Kern County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the California State Implementation Plan (SIP) which concern the control of volatile organic compound (VOC) emissions from organic solvent cleaning, and surface preparation and clean-up.

The intended effect of proposing approval of these rules is to regulate emissions of VOCs in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). In the Final Rules Section of this **Federal Register**, the EPA is approving the state's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision and anticipates no adverse comments. A detailed rationale for this approval is set forth in the direct final rule. If no adverse comments are received, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will not take effect and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing by May 3, 1999.

ADDRESSES: Written comments should be addressed to: Andrew Steckel, Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Copies of the rule revisions and EPA's evaluation report of each rule are available for public inspection at EPA's Region 9 office during normal business hours. Copies of the submitted rule revisions are also available for inspection at the following locations:

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 "L" Street, Sacramento, CA 95812

Yolo-Solano Air Quality Management District, 1947 Galileo Court, Suite 103, Davis, CA 95616

Monterey Bay Unified Air Pollution Control District, 24580 Silver Cloud Court, Monterey, CA 93940

South Coast Air Quality Management District, 21865 E. Copley Drive, Diamond Bar, CA 91765

Santa Barbara County Air Pollution Control District, 26 Castilian Drive B–23, Goleta, CA 93117

Sacramento Air Quality Management District, 8411 Jackson Road, Sacramento, CA 95826

Kern County Air Pollution Control District, 2700 M Street, Suite 302, Bakersfield, CA

FOR FURTHER INFORMATION CONTACT: Andrew Steckel, Rulemaking Office, (AIR–4), Air Division, U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105–3901, Telephone: (415) 744–1185.

SUPPLEMENTARY INFORMATION:

This document concerns Yolo-Solano Air Quality Management District Rule 2.31—Surface Preparation and Cleanup, Monterey Bay Unified Air Pollution Control District Rule 433—Organic Solvent Cleaning, South Coast Air Quality Management District Rule 1122—Solvent Degreasers, Santa Barbara County Air Pollution Control

District Rule 321—Solvent Cleaning Operations, Sacramento Metropolitan Air Quality Management District Rule 454—Degreasing Operations, and Kern County Air Pollution Control District Rule 410.3—Organic Solvent Cleaning, submitted to EPA on November 30, 1994, June 3, 1997, September 8, 1997, March 10, 1998, May 18, 1998, and June 23, 1998, respectively, by the California Air Resources Board. For further information, please see the information provided in the direct final action that is located in the rules section of this **Federal Register**.

Dated: February 16, 1999.

Laura Yoshii,

Deputy Regional Administrator, Region IX.

[FR Doc. 99–8084 Filed 4–1–99; 8:45 am]

BILLING CODE 6560–50–P

VOL 64 ISS 63 AP 2 1999 UMI

Notic

This sectio
contains d
proposed
public. Not
committee
rulings, de
petitions a
statements
examples
section.

DEPART

Food an

Child Nu
Eligibilit

AGENCY:
USDA.

ACTION: N

SUMMARY
Departm
Income F
in deter
reduced
period fr
30, 2000
schools,
participa
Lunch Pr
Program,
Children
Program
Program
required
School L
intended
children
annually
Consume

EFFECTIV

FOR FURT
Robert M
Program
Nutritio
Alexand
at (703)

SUPPLEM
action is
Regulato
601–612
provisio

In acc
Reductio
no new
requirem
are subje
of Manag

Notices

Federal Register
Vol. 64, No. 63
Friday, April 2, 1999

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Child Nutrition Programs—Income Eligibility Guidelines

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: This Notice announces the Department's annual adjustments to the Income Eligibility Guidelines to be used in determining eligibility for free and reduced price meals or free milk for the period from July 1, 1999 through June 30, 2000. These guidelines are used by schools, institutions, and centers participating in the National School Lunch Program, School Breakfast Program, Special Milk Program for Children, Child and Adult Care Food Program and Commodity School Program. The annual adjustments are required by section 9 of the National School Lunch Act. The guidelines are intended to direct benefits to those children most in need and are revised annually to account for changes in the Consumer Price Index.

EFFECTIVE DATE: July 1, 1999.

FOR FURTHER INFORMATION CONTACT: Mr. Robert M. Eadie, Chief, Policy and Program Development Branch, Child Nutrition Division, FNS, USDA, Alexandria, Virginia 22302, or by phone at (703) 305–2620.

SUPPLEMENTARY INFORMATION: This action is not a rule as defined by the Regulatory Flexibility Act (5 U.S.C. 601–612) and thus is exempt from the provisions of that Act.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), no new recordkeeping or reporting requirements have been included that are subject to approval from the Office of Management and Budget.

This action is exempted from review by the Office of Management and Budget under Executive Order 12866.

These programs are listed in the Catalog of Federal Domestic Assistance under No. 10.553, No. 10.555, No. 10.556 and No. 10.558 and are subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V, and the final rule related notice published at 48 FR 29114, June 24, 1983.)

Background

Pursuant to sections 9(b)(1) and 17(c)(4) of the National School Lunch Act (42 U.S.C. 1758(b)(1) and 42 U.S.C. 1766(c)(4)), and sections 3(a)(6) and 4(e)(1)(A) of the Child Nutrition Act of 1966 (42 U.S.C. 1772(a)(6) and 1773(e)(1)(A)), the Department annually issues the Income Eligibility Guidelines for free and reduced price means in the National School Lunch Program (7 CFR part 210), School Breakfast Program (7 CFR part 220), Child and Adult Care Food Program (7 CFR part 226), and Commodity School Program (7 CFR part 210), and the guidelines for free milk in the Special Milk Programs for Children (7 CFR part 215). These eligibility guidelines are based on the Federal income poverty guidelines and are stated by household size.

The Department requires schools and institutions which charge for meals separately from other fees to serve *free meals* to all children from any household with income at or below *130* percent of the poverty guidelines. The Department also requires such schools and institutions to serve *reduced price meals* to all children from any household with income higher than *130* percent of the poverty guidelines, but at or below *185* percent of the poverty guidelines. Schools and institutions participating in the Special Milk Program for Children may, at local option, serve free milk to all children from any household with income at or below 130 percent of the poverty guidelines.

Definition of Income

"Income," as the term is used in this Notice, means income before any deductions such as income taxes, Social Security taxes, insurance premiums, charitable contributions and bonds. It includes the following: (1) Monetary compensation for services, including wages, salary, commissions or fees; (2) net income from nonfarm self-employment; (3) net income from farm self-employment; (4) Social Security; (5) dividends or interest on savings or bonds or income from estates or trusts; (6) net rental income; (7) public assistance or welfare payments; (8) unemployment compensation; (9) government civilian employee or military retirement, or pensions or veterans payments; (10) private pensions or annuities; (11) alimony or child support payments; (12) regular contributions from persons not living in the household; (13) net royalties; and (14) other cash income. Other cash income would include cash amounts received or withdrawn from any source including savings, investments, trust accounts and other resources which would be available to pay the price of a child's meal.

"Income," as the term is used in this Notice, does not include any income or benefits received under any Federal programs which are excluded from consideration as income by any legislative prohibition. Furthermore, the value of meals or milk to children shall not be considered as income to their households for other benefit programs in accordance with the prohibitions in section 12(e) of the National School Lunch Act and section 11(b) of Child Nutrition Act of 1966 (42 U.S.C. 1760(e) and 1780(b)).

The Income Eligibility Guidelines

The following are the Income Eligibility Guidelines to be effective from July 1, 1999 through June 30, 2000. The Department's guidelines for free meals and milk and reduced price means were obtained by multiplying the 1999 Federal income poverty guidelines by *1.30* and *1.85*, respectively, and by rounding the result upward to the next whole dollar. Weekly and monthly guidelines were computed by dividing annual income by 52 and 12, respectively, and by rounding upward to the next whole dollar.

BILLING CODE 3410-30-M

INCOME ELIGIBILITY GUIDELINES
(Effective from July 1, 1999 to June 30, 2000)

Household size	Federal Poverty Guidelines			Reduced Price Meals - 185%			Free Meals - 130%		
	Annual	Month	Week	Annual	Month	Week	Annual	Month	Week
48 CONTIGUOUS UNITED STATES, DISTRICT OF COLUMBIA, GUAM AND TERRITORIES									
1	8,240	687	159	15,244	1,271	294	10,712	893	206
2	11,060	922	213	20,461	1,706	394	14,378	1,199	277
3	13,880	1,157	267	25,678	2,140	494	18,044	1,504	347
4	16,700	1,392	322	30,895	2,575	595	21,710	1,810	418
5	19,520	1,627	376	36,112	3,010	695	25,376	2,115	488
6	22,340	1,862	430	41,329	3,445	795	29,042	2,421	559
7	25,160	2,097	484	46,546	3,879	896	32,708	2,726	629
8	27,980	2,332	539	51,763	4,314	996	36,374	3,032	700
For each add'l family member add	+2,820	+235	+55	+5,217	+435	+101	+3,666	+306	+71
ALASKA									
1	10,320	860	199	19,092	1,591	368	13,416	1,118	258
2	13,840	1,154	267	25,604	2,134	493	17,992	1,500	346
3	17,360	1,447	334	32,116	2,677	618	22,568	1,881	434
4	20,880	1,740	402	38,628	3,219	743	27,144	2,262	522
5	24,400	2,034	470	45,140	3,762	869	31,720	2,644	610
6	27,920	2,327	537	51,652	4,305	994	36,296	3,025	698
7	31,440	2,620	605	58,164	4,847	1,119	40,872	3,406	786
8	34,960	2,914	673	64,676	5,390	1,244	45,448	3,788	874
For each add'l family member add	+3,520	+294	+68	+6,512	+543	+126	+4,576	+382	+88
HAWAII									
1	9,490	791	183	17,557	1,464	338	12,337	1,029	238
2	12,730	1,061	245	23,551	1,963	453	16,549	1,380	319
3	15,970	1,331	308	29,545	2,463	569	20,761	1,731	400
4	19,210	1,601	370	35,539	2,962	684	24,973	2,082	481
5	22,450	1,871	432	41,533	3,462	799	29,185	2,433	562
6	25,690	2,141	495	47,527	3,961	914	33,397	2,784	643
7	28,930	2,411	557	53,521	4,461	1,030	37,609	3,135	724
8	32,170	2,681	619	59,515	4,960	1,145	41,821	3,486	805
For each add'l family member add	+3,240	+270	+63	+5,994	+500	+116	+4,212	+351	+81

Authority: (42 U.S.C. 1758(b)(1))

Dated: March 26, 1999.

Samuel Chambers, Jr.,

Administrator.

[FR Doc. 99–8127 Filed 4–1–99; 8:45 am]

BILLING CODE 3410–30–C

UMI

DEPARTMENT OF AGRICULTURE

Forest Service

Drew Creek, Diamond Rock, and Divide Cattle Allotments, Tiller Ranger District, Umpqua National Forest, Douglas County, OR

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The USDA, Forest Service, will prepare an environmental impact statement (EIS) on a proposal to issue term grazing permits to graze three livestock allotments on the Tiller Ranger District. The three allotments are called Drew Creek, Diamond Rock, and Divide. The proposed action is to issue ten-year term grazing permits to allow 216 cow/calf pairs to graze on these three allotments. The allotment areas are located approximately 35 miles north of Medford, Oregon. If the proposed action or another action alternative is selected, activities under the selected action are expected to be implemented in the year 2000. The agency gives notice of the full environmental analysis and decision-making process that will occur on the proposal so that interested and affected people may become aware of how they may participate in the process and contribute to the final decision.

DATES: Comments concerning the scope of the analysis should be received in writing by April 30, 1999.

ADDRESSES: Send written comments and suggestions concerning this proposal to Jill Dufour, District Ranger, Tiller Ranger District, 27812 Tiller Trail Highway, Tiller, Oregon 97484.

FOR FURTHER INFORMATION CONTACT: Direct questions about the proposed action, allotment areas, or EIS to Wes Yamamoto, Resource Assistant, Tiller Ranger District, 27812 Tiller Trail Highway, Tiller, Oregon 97484, or (541) 825–3201.

SUPPLEMENTARY INFORMATION: The current grazing program on the Tiller Ranger District allows 3,953 head months of use on six grazing allotments covering approximately 129,350 acres. The proposed action is to permit 1,288 head months (HM's) to graze on three allotments encompassing approximately 36,230 acres of the Tiller Ranger District. Under the proposed action, 90 HM's would be permitted on the Drew Creek Allotment, 680 HM's on the Diamond Rock Allotment, and 418 HM's on the Divide Allotment.

This proposal represents a significant decrease in the level of grazing from the historical use of the Tiller Ranger District. The proposal removes cattle grazing for the majority of sensitive earthflow landforms and reduces the season of use for fifty percent of the permitted numbers during the fall. The reduced landbase, reduced numbers of cattle, and reduced season will allow for a grazing program that is consistent with the Aquatic Conservation Strategy (ACS) objectives of the Umpqua National Forest Plan, as amended.

Initial scoping for the preparation of an environmental assessment (EA), titled "Range Permit Reissuance", began with a notice in the Umpqua National Forest's Schedule of Proposed Actions (SOPA) dated July, 1995. The scoping conducted since that initial notice includes an open house for the community (September 12, 1996), numerous meetings with permittees beginning in 1996, field trips with the public and specialists, and a press release to the media in 1998. Discussion of the grazing issue with subject matter experts, including representatives from the Oregon State University Extension Service, the National Marine Fisheries Service, and the U.S. Fish and Wildlife Service, has been occurring since 1996. This extensive scoping has identified a number of issues, alternatives, and environmental effects that will facilitate preparation of the draft EIS.

Preliminary issues identified to date include potential effects to unique characteristics of the geographic area, endangered and threatened species and their habitats, and the significant incremental economic impact that this proposal would have to a small, economically-depressed rural community. These preliminary issues demonstrate to the decisionmaker that this proposal has potential to have significant effects on the human environment. Preliminary discussions have also produced scientific controversy pertaining to interpretations of the Aquatic Conservation Strategy in the 1994 Northwest Forest Plan. Based on all of above, the Responsible Official has determined that it is appropriate to proceed with an environmental impact statement.

Public comments are appreciated throughout the analysis process. The draft EIS is expected to be filed with the Environmental Protection Agency (EPA) and be available for public review by July, 1999. The comment period on the draft EIS will be 45 days from the date the EPA publishes the notice of availability in the **Federal Register**. The final EIS is scheduled to be available in October, 1999.

The Forest Service believes it is important to give reviewers notice of this early stage of public participation and of several court rulings related to public participation in the environmental review process. First, reviewers of a draft EIS must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could have been raised at the draft stage may be waived or dismissed by the court if not raised until after completion of the final EIS. *City of Angoon* v. *Hodel*, 803 f.2d 1016, 1022 (9th Cir., 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider and respond to them in the final EIS.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft EIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft EIS or the merits of the alternatives formulated and discussed in the statement. (Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act of 40 CFR 1503.3 in addressing these points.)

In the final EIS, the Forest Service is required to respond to substantive comments and responses received during the comment period that pertain to the environmental consequences discussed in the draft EIS and applicable laws, regulations, and policies considered in making a decision regarding the proposal. The Responsible Official is Don Ostby, Forest Supervisor for the Umpqua National Forest. The Responsible Official will document the decision and rationale for the decision in a Record of Decision. That decision will be subject to appeal under 36 CFR Part 215.

Dated: March 24, 1999.

Bernie Rios,

Acting Forest Supervisor.

[FR Doc. 99–8136 Filed 4–1–99; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Northwest Sacramento Provincial Advisory Committee (PAC)

AGENCY: Forest Service, USDA.
ACTION: Notice of Meeting.

SUMMARY: The Northwest Sacramento Provincial Advisory Committee (PAC) will meet on April 7, 1999, at the Whiskeytown Environmental School, Whiskeytown National Park, California. The meeting will begin at 9:30 am and adjourn at 4:00 pm Agenda items include: (1) Update on the Clear Creek Watershed—update on grant proposals (CalFed); (2) Owl baseline—management implications (USFWS presentation); and (3) Update on Northwest Forest Plan activities in Portland, Oregon. All PAC meetings are open to the public. Interested citizens are encouraged to attend.

FOR FURTHER INFORMATION CONTACT: Connie Hendryx, USDA, Klamath National Forest, 1312 Fairlane Road, Yreka, California 96097; telephone 530–841–4468; TDD (530) 841–4573; email: chendryx/r5_klamath@fs.fed.us.

Dated: March 29, 1999.

Nancy J. Gibson,

Acting Forest Supervisor.

[FR Doc. 99–8139 Filed 4–1–99; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Notice of Proposed Changes to Section IV of the Field Office Technical Guide (FOTG) of the Natural Resources Conservation Service in Wisconsin

AGENCY: Natural Resources Conservation Service (NRCS) in Wisconsin, US Department of Agriculture.
ACTION: Notice of availability of a proposed change in Section IV of the FOTG of the NRCS in Wisconsin for review and comment.

SUMMARY: It is the intention of NRCS in Wisconsin to issue a revised conservation practice standard in Section IV of the FOTG. The revised standard is Nutrient Management (Code 590). This practice may be used in conservation systems that treat highly erodible land.

DATES: Comments will be received on or before May 3, 1999.

FOR FURTHER INFORMATION CONTACT: Inquire in writing to Donald A. Baloun, Assistant State Conservationist, Natural Resources Conservation Service (NRCS), 6515 Watts Road, Suite 200 Madison, WI 53719–2726. Copies of this standard will be made available upon written request. You may submit electronic requests and comments to dbaloun@wi.nrcs.usda.gov.

FOR FURTHER INFORMATION CONTACT: Donald A. Baloun, 608–276–8732.

SUPPLEMENTARY INFORMATION: Section 343 of the Federal Agriculture Improvement and Reform Act of 1996 states that revisions made after enactment of the law, to NRCS state technical guides used to carry out highly erodible land and wetland provisions of the law, shall be made available for public review and comment. For the next 30 days, the NRCS in Wisconsin will receive comments relative to the proposed change. Following that period, a determination will be made by the NRCS in Wisconsin regarding disposition of those comments and a final determination of change will be made.

Dated: March 10, 1999.

Patricia S. Leavenworth,

State Conservationist, Madison, Wisconsin.

[FR Doc. 99–8144 Filed 4–1–99; 8:45 am]

BILLING CODE 3410–16–M

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List Proposed Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled
ACTION: Proposed Additions to and Deletions from Procurement List.

SUMMARY: The Committee has received proposals to add to the Procurement List commodities and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and to delete a commodity and a service previously furnished by such agencies.

COMMENTS MUST BE RECEIVED ON OR BEFORE: May 3, 1999.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Gateway 3, Suite 310, 1215 Jefferson Davis Highway, Arlington, Virginia 22202–4302.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a) (2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

Additions

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodities and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities. I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and services to the Government.
2. The action will result in authorizing small entities to furnish the commodities and services to the Government.
3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities and services proposed for addition to the Procurement List. Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following commodities and services have been proposed for addition to Procurement List for production by the nonprofit agencies listed:

Commodities

Stapler

7520–00–240–5727
7520–00–281–5895
7520–00–281–5896
7520–00–139–6170
7520–00–243–1780
NPA: Occupations, Inc., Middletown, New York.

Services

Administrative Services

Department of Veterans Affairs Medical Center, 700 South 19th Street, Birmingham, Alabama.
NPA: Alabama Goodwill Industries, Inc., Birmingham, Alabama.

Administrative Services

U.S. Department of Housing & Urban Development, Richard B. Russell Federal Building, 75 Spring Street, SW, Atlanta, Georgia.

NPA: Blind & Low Vision Services of North Georgia, Smyma, Georgia.

Grounds Maintenance at the Following Locations in El Paso, Texas:

Sequra USAR Center, 301 Ascarate Drive, Dyer USAR Center.

NPA: Goodwill Industries of El Paso, El Paso, Texas.

Janitorial/Custodial

Dobbins Air Reserve Base, Georgia, NPA: Nobis Enterprises, Inc., Marietta, Georgia.

Janitorial/Custodial

Sequra USAR Center, 301 Ascarate Drive, El Paso, Texas.

NPA: Goodwill Industries of El Paso, El Paso, Texas.

Deletions

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action will result in authorizing small entities to furnish the commodity and service to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodity and service proposed for deletion from the Procurement List.

The following commodity and service have been proposed for deletion from the Procurement List:

Commodity

Clamp, Panel

5450–00–297–5271

Service

Janitorial/Custodial

Grenier Field USARC, Manchester, New Hampshire.

Louis R. Bartalot,

Deputy Director (Operations).

[FR Doc. 99–8233 Filed 4–2–99; 8:45 am]

BILLING CODE 6353–01–U

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to the procurement list.

SUMMARY: This action adds to the Procurement List commodities and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: May 3, 1999.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Gateway 3, Suite 310, 1215 Jefferson Davis Highway, Arlington, Virginia 22202–4302.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: On December 11, 1998, January 15 and 29, and February 19, 1999, the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (63 F.R. 68428, 64 F.R. 2623, 4638, and 8291) of proposed additions to the Procurement List.

The Following Comments Pertain to Strap, Webbing

Comments were received from one of the current contractors in response to a Committee request for corporate sales data. The contractor indicated that it is a small company with a significant portion of its business coming from Government sales of webbing straps. It noted that the nonprofit agency which will produce the straps being added to the Procurement List also produces other straps which the Government formerly procured competitively. The contractor requested that the Committee not take these webbing straps or any more out of the competitive procurement arena.

In making a decision to add a commodity to the Procurement List, the Committee assesses the impact of its decision on the current contractor for the commodity. The straps at issue here represent only a small part of the contractor's sales, well below the level which the Committee normally considers to be severe adverse impact. In addition, the commenting contractor was not the current contractor for any of the other straps mentioned when they were added to the Procurement List. As no contractor is guaranteed a contract under the competitive procurement system, the Committee does not consider the loss of a chance to bid on contracts, by itself, to constitute severe adverse impact on a potential bidder. Consequently, the Committee does not believe that addition of the straps at issue to the Procurement List will have a severe adverse impact on the commenting contractor.

The following Material Pertains to All of the Items Being Added to the Procurement List

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the commodities and services and impact of the additions on the current or most recent contractors, the Committee has determined that the commodities and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and services to the Government.

2. The action will not have a severe economic impact on current contractors for the commodities and services.

3. The action will result in authorizing small entities to furnish the commodities and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities and services proposed for addition to the Procurement List.

Accordingly, the following commodities and services are hereby added to the Procurement List:

Commodities

Strap, Webbing

5340–00–753–3740
5340–00–543–3271
5340–00–543–3398
5340–00–052–9481
5340–00–664–0364
5340–00–543–7110
5340–00–543–3173
5340–00–479–2949
5340–00–751–9013
5340–00–543–3557
5340–00–403–7674
5340–00–664–0365
5340–00–001–4837
5340–00–854–6737

5340–00–020–5067
5340–00–034–4835
5340–00–454–5967
5340–00–454–5969

SuperDisk Drive

7045–01–454–8199

Cup, Paper, Disposable, Hot

7350–00–205–1182
7350–00–290–0588
7350–00–988–6498

Paper, Tabulating Machine

7530–00–800–0996

(Requirements of Burlington, New Jersey only)

Services

Mail and Messenger Service

Security Assistance Management Directorate (SAMD), Buildings 7611, 7612 and 7613, Redstone Arsenal, Alabama.

Mailroom Operation

U.S. Coast Guard Yard, 2401 Hawkins Point Road, Baltimore, Maryland.

This action does not affect current contracts awarded prior to the effective date of this addition or options that may be exercised under those contracts.

Louis R. Bartalot,

Deputy Director (Operations).

[FR Doc. 99–8234 Filed 4–2–99; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Intelligence Agency, Science and Technology Advisory Board Closed Panel Meeting

AGENCY: Department of Defense, Defense Intelligence Agency.

ACTION: Notice.

SUMMARY: Pursuant to the provisions of Subsection (d) of Section 10 Pub. L. 92–463, As amended by Section 5 of Pub. L. 94–409, notice is hereby given that a closed meeting of the DIA Science and Technology Advisory Board has been scheduled as follows:

DATES: 20–21 April 1999, (8:00 a.m. to 16:00 p.m.).

ADDRESSES: The Defense Intelligence Agency, Bolling AFB, Washington, DC 20340.

FOR FURTHER INFORMATION CONTACT: Maj Donald R. Culp, Jr., USAF, Executive Secretary, DIA Science and Technology Advisory Board, Washington, DC 20340–1328, (202) 231–4930.

SUPPLEMENTARY INFORMATION: The entire meeting is devoted to the discussion of classified information as defined in Section 552b(c)(l), Title 5 of the U.S. Code, and therefore will be closed to the public. The Board will receive briefings on and discuss several current critical intelligence issues and advise the Director, DIA, on related scientific and technical matters.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 99–8143 Filed 4–1–99; 8:45 am]

BILLING CODE 5000–01–M

DEPARTMENT OF DEFENSE

Department of the Army

Privacy Act of 1974; System of Records

AGENCY: Department of the Army, DoD.

ACTION: Notice to amend systems of records.

SUMMARY: The Department of the Army is amending two systems of records notices in its existing inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on May 3, 1999, unless comments are received which result in a contrary determination.

ADDRESSES: Privacy Act Officer, Records Management Program Division, Army Records Management and Declassification Agency, ATTN: TAPC-PDD-RP, Stop C55, Ft. Belvoir, VA 22060–5576.

FOR FURTHER INFORMATION CONTACT: Ms. Janice Thornton at (703) 806–4390 or DSN 656–4390.

SUPPLEMENTARY INFORMATION: The Department of the Army systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the record systems being amended are set forth below followed by the notices, as amended, published in their entirety. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: March 26, 1999.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

A0600o TAPC

SYSTEM NAME:

Army Career and Alumni Program, Pre-separation and Job Assistance Counseling *(March 17, 1998, 63 FR 13038).*

Changes:

* * * * *

SYSTEM NAME:

Delete entry and replace with 'Army Career and Alumni Management Information System, Pre-separation and Job Assistance Counseling.'

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Delete the routine use 'To Commission on Servicemembers and Veterans Transition Assistance or its contractors, for purposes of carrying out those functions as set forth in Pub. L. 104–275, section 702.'

* * * * *

A0600o TAPC

SYSTEM NAME:

Army Career and Alumni Management Information System, Pre-separation and Job Assistance Counseling.

SYSTEM LOCATION:

Primary location: Headquarters, U.S. Total Army Personnel Command, ATTN: TAPC-PDT-O, 200 Stoval Street, Alexandria, VA 22332–0476.

Secondary locations: Army Career and Alumni Program Centers. A complete list of ACAP centers may be obtained by writing to the system manager.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Department of Defense military personnel (active/reserve duty) and their spouses; U.S. Coast Guard personnel and their spouses; Department of Defense civilian employees and their spouses; U.S. Army National Guard personnel and their spouses; DoD personnel who retired no earlier than ninety (90) days prior to the date they requested ACAP services; and widows and widowers of deceased active duty military personnel.

CATEGORIES OF RECORDS IN THE SYSTEM:

Files contain individual's name, home address, Social Security Number, date of

birth, job qualifications, DD Form 2648 (Pre-Separation Counseling Checklist), and similar or pre-separation/transition counseling related documents.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; 10 U.S.C., Chapter 58; DoD Directive 1332.35; and E.O. 9397 (SSN).

PURPOSE(S):

To provide transition planning/counseling for individuals so that they may re-enter the civilian job market.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Information is stored electronically on computers and on paper in file folders.

RETRIEVABILITY:

By name or Social Security Number.

SAFEGUARDS:

All records are maintained in secured areas, accessible only to designated personnel whose official duties require they have access. The personal computer system can only be accessed through a system of passwords known only to the individual and the system administrator/supervisor. Paper files are secured in locked file cabinets. The areas where the personal computer and paper files are located are secured after duty hours in locked buildings.

RETENTION AND DISPOSAL:

Disposition pending.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, U.S. Total Army Personnel Command, ATTN: TAPC-PDT-O, 200 Stovall Street, Alexandria, VA 22332–0476.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in the system should address written inquiries to the Director of the ACAP Center where transition assistance was obtained or contact the system manager.

Requesting individual must submit full name and Social Security Number.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system should address written inquiries to the Director of the ACAP Center where transition assistance was obtained or contact the system manager.

Requesting individual must submit full name and Social Security Number.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual, Army records and reports, and the U.S. Coast Guard records.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A0635–200 TAPC

SYSTEM NAME:

Separations: Administrative Board Proceedings *(February 22, 1993, 58 FR 10002).*

Changes:

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Add the following to the entry '10 U.S.C. 3013, Secretary of the Army; and E.O. 9397 (SSN).'

PURPOSE(S):

Delete the last four words and replace with 'for retention or separation'.

* * * * *

STORAGE:

Add to entry 'and electronic storage media.'

RETRIEVABILITY:

Add to entry 'or Social Security Number.'

* * * * *

A0635–200 TAPC

SYSTEM NAME:

Separations: Administrative Board Proceedings.

SYSTEM LOCATION:

U.S. Total Army Personnel Command, ATTN: TAPC-PDT-P, 200 Stovall Street Alexandria, VA 22332–0478. Segments exist at Major Army Commands and subordinate commands, field operating agencies, and activities exercising general courts-martial jurisdiction. Official mailing addresses are published as an appendix to the Army's compilation of record systems notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Military members on whom allegations of defective enlistment/agreement/fraudulent entry/alcohol or other drug abuse rehabilitation failure/unsatisfactory performance/misconduct/homosexuality under the provisions of Chapters 7, 9, 13, 14, or 15 of Army Regulation 635–200, Enlisted Personnel, result in administrative board proceedings.

CATEGORIES OF RECORDS IN THE SYSTEM:

Notice to service member of allegations on which proposed separation from the Army is based; supporting documentation; DA Form 2627, Records of Proceedings under Article 15, UCMJ; DD Form 493, Extract of Military Records of Previous Convictions; medical evaluations; military occupational specialty evaluation and aptitude scores; member's statements, testimony, witness statements, affidavits, rights waiver record; hearing transcript; board findings and recommendations for separation or retention; final action.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 1169, 10 U.S.C. 3013, Secretary of the Army; and E.O. 9397 (SSN).

PURPOSE(S):

Information is used by processing activities and the approval authority to determine if the member meets the requirements for retention or separation.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders and electronic storage media.

RETRIEVABILITY:

By individual's surname or Social Security Number.

SAFEGUARDS:

Records are accessed only by designated persons having official need; in locked cabinets, in locked rooms within secure buildings.

RETENTION AND DISPOSAL:

The original of board proceedings becomes a permanent part of the member's Official Military Personnel Record. When separation is ordered, a copy is sent to member's commander where it is retained for two years before being destroyed. When separation is not ordered, board proceedings are filed at the headquarters of the separation authority for two years, then destroyed. A copy of board proceedings in cases where the final authority is the U.S. Total Army Personnel Command, pursuant to Army Regulation 635–200, is retained by that headquarters (TAPC-PDT) for one year following decision.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, U.S. Total Army Personnel Command, ATTN: TAPC-PDT-P, 200 Stovall Street, Alexandria, VA 22332–0478.

NOTIFICATION PROCEDURE:

Individuals seeking to determine if information about themselves is contained in this record system should address written inquiries to the commander of the installation where administrative board convened or to the Commander, U.S. Total Army Personnel Command, ATTN: TAPC-PDT-P, 200 Stovall Street, Alexandria, VA 22332–0478.

Individual should provide the full name, details concerning the proposed or actual separation action to include location and date, and signature.

RECORD ACCESS PROCEDURES:

If individual has been separated from the Army, address written inquiries to the National Personnel Records Center, General Services Administration, 9700 Page Avenue, St Louis, MO 63132–5200: proceedings will be part of the Official Military Personnel Record.

If member is on active duty, address written inquiries to the commander of the installation where administrative board convened.

Individual should provide the full name, details concerning the proposed or actual separation action to include location and date, and signature.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual; individual's commander; Army personnel, medical, and/or investigative records; witnesses; the Administrative Separation Board; federal, state, local, and/or foreign law enforcement agencies.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 99–8172 Filed 4–1–99; 8:45 am]

BILLING CODE 5000–04–F

DEPARTMENT OF EDUCATION

National Educational Research Policy and Priorities Board; Meeting

AGENCY: National Educational Research Policy and Priorities Board; Education.

ACTION: Notice of Meeting by Teleconference.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting by teleconference of the National Educational Research Policy and Priorities Board. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend the meeting. The public is being given less than 15 days' notice because of the need to accommodate the schedules of the members.

Date: April 5, 1999.

Time: 10 a.m. to noon, EST.

Location: Room 100, 80 F St., NW, Washington, DC 20208–7564.

FOR FURTHER INFORMATION CONTACT: Thelma Leenhouts, Designated Federal Official, National Educational Research Policy and Priorities Board, Washington, DC 20208–7564. Tel.: (202) 219–2065; fax: (202) 219–1528; e-mail: Thelma__Leenhouts@ed.gov, or nerppb@ed.gov. The main telephone number for the Board is (202) 208–0692.

SUPPLEMENTARY INFORMATION: The National Educational Research Policy and Priorities Board is authorized by section 921 of the Educational Research, Development, Dissemination, and Improvement Act of 1994. The Board works collaboratively with the Assistant Secretary for the Office of Educational Research and Improvement (OERI) to forge a national consensus with respect to a long-term agenda for educational research, development, and dissemination, and to provide advice and assistance to the Assistant Secretary in administering the activities of the Office. The teleconference is open to the public. The Board will discuss and give final approval to a policy statement on issues relating to the reauthorization of the Office of Educational Research and Improvement. A final agenda is available from the Board office.

Records are kept of all Board proceedings and are available for public inspection at the office of the National Educational Research Policy and Priorities Board, Suite 100, 80 F St., NW, Washington, DC 20208–7564.

Dated: March 29, 1999.

Eve M. Bither,

Executive Director.

[FR Doc. 99–8090 Filed 4–1–99; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER98–2843–007, ER98–2844–007, ER98–2883–007 (Not Consolidated); ER98–2972–008, ER98–2971–007 (Not Consolidated); ER98–2977–006; ER98–3106–004; ER98–3416–006, ER98–3417–006, ER98–3418–006 (Not Consolidated)]

AES Redondo Beach, LLC; AES Huntington Beach, LLC; AES Alamitos, LLC; Long Beach Generation, LLC; El Segundo Power, LLC; Ocean Vista Power Generation, LLC; Mountain Vista Power Generation, LLC; Alta Power Generation, LLC; Oeste Power Generation, LLC; Ormond Beach Power Generation, LLC; Williams Energy Services Company; Duke Energy Oakland, LLC; Duke Energy Morro Bay, LLC; Duke Energy Moss Landing, LLC; Notice of Filing

March 29, 1999.

Take notice that on March 25, 1999, the Market Surveillance Committee (MSC) of the California Independent System Operator Corporation (ISO) filed with the Federal Energy Regulatory Commission its "Report on Redesign of Markets for Ancillary Services and Real-Time Energy" prepared in compliance with the Commission's October 28, 1998 Order and March 22, 1999 letter order in the above-captioned proceedings. The MSC has requested confidential treatment, on a temporary basis, of certain information contained in the report in accordance with Section 388.112 of the Commission's regulations (18 CFR 388.112). The ISO has served public versions of the report, which do not contain the information for which temporary confidential treatment is sought, upon each person on the official service list in the above-captioned proceedings.

Any person desiring to be heard or to protest such filing should file a motion

to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before April 12, 1999. Once the ISO releases the entire report to the public, parties will have an opportunity to supplement their comments and/or protests. Protests will be considered by the Commission to determine the appropriate action to be taken but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–8117 Filed 4–1–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Feberal Energy Regulatory Commission

[Docket No. EC99–55–000]

Central Vermont Public Service Corporation; Notice of Filing

March 29, 1999.

Take notice that on March 23, 1999, Central Vermont Public Service Corporation (Central Vermont) filed an application under Section 203 of the Federal Power Act and Part 33 of the Commission's regulations for expedited authorization to acquire a security from its wholly-owned subsidiary, Connecticut Valley Electric company, Inc. (Connecticut Valley). Central Vermont seeks authorization to purchase a note and its related loan agreement between Connecticut Valley and Citizens Bank New Hampshire (Citizens Bank) in a face amount of $3.75 million. Central Vermont states that Connecticut Valley is in default on the note payments and that Central Vermont must purchase the note and loan agreement to prevent acceleration and attachment and foreclosure proceedings against Connecticut Valley. Unless Central Vermont acts quickly to cure the default, Connecticut Valley may become insolvent, and Central Vermont's credit rating will be adversely affected.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before April 8, 1999. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to made protetants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–8118 Filed 4–1–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR99–11–000]

The Cincinnati Gas & Electric; Notice of Rate Election

March 29, 1999.

Take notice that on March 1, 1999, The Cincinnati Gas & Electric Company (Cincinnati) filed a rate election, pursuant to 284.123(b)(1)(ii) of the Commission's regulations. Cincinnati proposes an effective date of March 1, 1999. The filing contains the Operating Statement required by Section 284.224 of the Commission's regulations

Pursuant to 284.123(b)(1)(ii) of the Commission's regulations, Cincinnati proposes to utilize a cost-based rate that has been approved by the Public Service Commission of Ohio, in this instance Cincinnati's currently effective Rate IT for comparable interruptible transportation service.

Cincinnati's commodity charge included in the Rate IT (currently $0.544 per MCF) would supplant the rate previously accepted by the Commission. This commodity charge will be the sole charge applicable to the service rendered pursuant to Cincinnati's Order No. 63 blanket certificate, thereby excluding the incremental charges otherwise applicable under Rate IT that are intended to recover costs associated with Cincinnati's retail distribution service.

Any person desiring to be heard or to make any protest with reference to said application should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C., in accordance with 385.211 and 385.214 of the Commission's Rules of Practice and Procedure. All such motions or protests must be filed on or before April 12, 1999. All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party to this proceeding or to participate as a party in any hearing herein must file a motion to intervene in accordance with the Commission's Rules. The petition for rate election is available for inspection in the Public Reference Room. This filing may also be viewed on the web at http://www.ferc.us/online/rims.htm [Call (202) 208–2222 for assistance].

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–8115 Filed 4–1–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG99–99–000, et al.]

Central Piedra Buena, S.A., et al.; Electric Rate and Corporate Regulation Filings

March 26, 1999.

Take notice that the following filings have been made with the Commission:

1. Central Piedra Buena S.A.

[Docket No. EG99–99–000]

Take notice that on March 23, 1999, Central Piedra Buena S.A. (Applicant), Av. Alicia Moreau de Justo 240, 3 Piso, Buenos Aires, Argentina 1107, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Applicant, formed under the laws of the Republic of Argentina, wholly owns the Piedra Buena Station. Corporacion Independiente de Energia S.A., which is a wholly-owned subsidiary of the Independent Power International Ltd., owns 39% of the equity of Central Piedra Buena S.A. New Century International, Inc. owns a 21.6% interest in Independent Power International Ltd. New Century International, Inc. is a

wholly-owned subsidiary of NC Enterprises, Inc., which in turn is a wholly-owned subsidiary of New Century Energies, Inc., a registered holding company. Applicant intends to indirectly through an affiliate own or operate, or both own and operate, all or part of the Piedra Buena Station. This facility is a 620 MW steam power station, capable of burning natural gas, oil, or coal, and consists of two generating units, and associated equipment, buildings, and land. Applicant states that the facility may be repowered to add approximately 500 MW of additional capacity.

Comment date: April 16, 1999, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

2. Independent Power International Ltd.

[Docket No. EG99–100–000]

On March 23, 1999, Independent Power International Ltd. (Applicant), Akara Building, 24 Castro Street, Wickhams Cay 1, Road Town, Tortola, British Virgin Islands, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Applicant, formed under the laws of the Jersey Isles, wholly owns Corporacion Independiente de Energia S.A., an Argentine corporation, which in turn owns a 39% equity interest in Central Piedra Buena S.A., also an Argentine corporation. Central Piedra Buena S.A. owns the Piedra Buena Station. New Century International, Inc. owns a 21.6% interest in Applicant. New Century International, Inc. is a wholly-owned subsidiary of NC Enterprises, Inc., which in turn is a wholly-owned subsidiary of New Century Energies, Inc., a registered holding company. Applicant intends to indirectly through an affiliate own or operate, or both own and operate, all or part of the Piedra Buena Station. This facility is a 620 MW steam power station, capable of burning natural gas, oil, or coal, and consists of two generating units, and associated equipment, buildings, and land. Applicant states that the facility may be repowered to add approximately 500 MW of additional capacity.

Comment date: April 16, 1999, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

3. Corporacion Independiente de Energia S.A.

[Docket No. EG99–101–000]

Take notice that on March 23, 1999, Corporacion Independiente de Energia S.A. (Applicant), Alsina 495, Piso 10, Capital Federal, Buenos Aires, Argentina 1107, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Applicant, formed under the laws of the Republic of Argentina, owns a 39% equity interest in Central Piedra Buena S.A., also an Argentine corporation, which wholly owns the Piedra Buena Station. Applicant is wholly owned by Independent Power International Ltd., which is organized under the laws of the Jersey Isles. New Century International, Inc. owns a 21.6% interest in Independent Power International Ltd.

New Century International, Inc. is a wholly-owned subsidiary of NC Enterprises, Inc., which in turn is a wholly-owned subsidiary of New Century Energies, Inc., a registered holding company. Applicant intends to indirectly through an affiliate own or operate, or both own and operate, all or part of the Piedra Buena Station. This facility is a 620 MW steam power station, capable of burning natural gas, oil, or coal, and consists of two generating units, and associated equipment, buildings, and land. Applicant states that the facility may be repowered to add approximately 500 MW of additional capacity.

Comment date: April 16, 1999, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

4. Gregory R. Swecker v. Midland Power Cooperative

[Docket No. EL99–41–000]

Take notice that on March 15, 1999, Gregory R. Swecker filed an amendment to his complaint against Midland Power Cooperative.

Comment date: April 23, 1999, in accordance with Standard Paragraph E at the end of this notice.

5. Fresno Irrigations District

[Docket No. EL99–50–000]

Take notice that on March 22, 1999, Fresno Irrigation District (Fresno) tendered for filing an Application for an Order Directing the Establishment of Physical Interconnection of Facilities Pursuant to Sections 202 and 210 of the Federal Power Act and Part 32 of the Commission Regulations, 18 CFR Part 32. The application seeks an order requiring Pacific Gas and Electric Company to interconnect its transmission system with Fresno's 12 kV distribution system at points identified in Fresno's application.

Fresno also seeks an order requiring Pacific Gas and Electric Company to file an interconnection agreement or electric tariff establishing just and reasonable terms, conditions and charges under which such interconnection shall be operated and maintained.

Comment date: April 21, 1999, in accordance with Standard Paragraph E at the end of this notice.

6. Florida Power Corporation

[Docket No. ER97–4573–002]

Take notice that on March 19, 1999, Florida Power Corporation tendered for filing a refund compliance report in compliance with the Commission's November 2, 1998, letter order.

Comment date: April 8, 1999, in accordance with Standard Paragraph E at the end of this notice.

7. Allegheny Power Service Corp.

[Docket Nos. ER99–1002–000 and ER99–1050–000]

Take notice that on March 22, 1999, Allegheny Power Service Corporation tendered for filing an amendment to its filing in these dockets to comply with Commission requirements.

Comment date: April 9, 1999, in accordance with Standard Paragraph E at the end of this notice.

8. New York State Electric & Gas Corporation

[Docket No. ER99–2225–000]

Take notice that on March 23, 1999, New York State Electric & Gas Corporation (NYSEG), tendered filing a Service Agreements between NYSEG and Carolina Power & Light and Edison Mission Energy (Customer). These Service Agreements specify that the Customer has agreed to the rates, terms and conditions of the NYSEG open access transmission tariff filed July 9, 1997 and effective on November 27, 1997, in Docket No. ER97–2353–000.

NYSEG requests waiver of the Commission's sixty-day notice requirements and an effective date of March 22, 1999, for the Service Agreements.

NYSEG has served copies of the filing on The New York State Public Service Commission and on the Customer.

Comment date: April 9, 1999, in accordance with Standard Paragraph E at the end of this notice.

9. Virginia Electric and Power Company

[Docket No. ER99–2227–000]

Take notice that on March 19, 1999, Virginia Electric and Power Company (Virginia Power), tendered for filing a Service Agreement for Firm Point-to-Point Transmission Service with Delmarva Power & Light Company under the Open Access Transmission Tariff to Eligible Purchasers dated July 14, 1997. Under the tendered Service Agreement, Virginia Power will provide firm point-to-point service to the Transmission Customer under the rates, terms and conditions of the Open Access Transmission Tariff.

Virginia Power requests an effective date of March 19, 1999, the date of filing the Service Agreement.

Copies of the filing were served upon Delmarva Power & Light Company, the Virginia State Corporation Commission and the North Carolina Utilities Commission.

Comment date: April 12, 1999, in accordance with Standard Paragraph E at the end of this notice.

10. Southwestern Public Service Company

[Docket No. ER99–2228–000]

Take notice that on March 23, 1999, Southwestern Public Service Company (Southwestern), tendered for filing proposed amendments to its rate schedule with Farmers' Electric Cooperative, Inc., a full requirements wholesale customer.

The amendment allows this customer to participate in the interruptible load program available to all of Southwestern's full requirements wholesale customers.

Comment date: April 12, 1999, in accordance with Standard Paragraph E at the end of this notice.

11. California Power Exchange Corporation

[Docket No. ER99–2229–000]

Take notice that on March 23, 1999, California Power Exchange Corporation (Power Exchange), on behalf of soon-to-be established division (CalPX Trading Services, or CTS), tendered for filing with the Commission an application seeking Commission authorization to conduct a "Block-Forward Market" for the sales and purchases of energy for delivery through the Power Exchange Day Ahead Market, and seeking Commission treatment similar to that of an unaffiliated power marketer with respect to the Block-Forward Market. CTS also seeks various blanket waivers and authorizations similar to those customarily granted to power marketers.

Comment date: April 12, 1999, in accordance with Standard Paragraph E at the end of this notice.

12. Central Vermont Public Service Corporation

[Docket No. ER99–2230–000]

Take notice that on March 22, 1999, Central Vermont Public Service Corporation (Central Vermont), tendered for filing a Service Agreement with Enserch Energy Services, Inc., under its FERC Electric Tariff No. 8.

Central Vermont requests waiver of the Commission's Regulations to permit the service agreement to become effective on March 22, 1999.

Comment date: April 12, 1999, in accordance with Standard Paragraph E at the end of this notice.

13. Wisconsin Electric Power Company

[Docket No. ER99–2232–000]

Take notice that on March 23, 1999, Wisconsin Electric Power Company tendered for filing notice that effective sixty days from the date of filing, Service Agreement Nos. 2 and 23 under Wisconsin Electric Power Company's Coordination Sales Tariff, FERC Electric Tariff Original Volume No. 2 are to be canceled as a result of MidCon Power Services Corp. (MidCon) and Energy Masters International (EMI) f/k/a Cenergy, Inc., recent FERC filings stating they are no longer functioning as power marketers.

Copies of the filing have been served on MidCon, EMI, Michigan Public Service Commission, and the Public Service Commission of Wisconsin.

Comment date: April 12, 1999, in accordance with Standard Paragraph E at the end of this notice.

14. New York State Electric & Gas Corporation

[Docket No. ER99–2234–000]

Take notice that on March 23, 1999, New York State Electric & Gas Corporation (NYSEG), tendered for filing an Agreement with Steuben Rural Electric Cooperative, Inc. (SREC), for facilities Agreement.

NYSEG has served copies of the filing on The New York State Public Service Commission and on the Customer.

Comment date: April 12, 1999, in accordance with Standard Paragraph E at the end of this notice.

15. Aquila Energy Marketing Corp.

[Docket No. ER99–2235–000]

Take notice that on March 23, 1999, Aquila Energy Marketing Corporation (AEMC) and UtiliCorp United Inc. (UtiliCorp), on behalf of its Missouri Public Service (MPS) operating division, jointly filed a Unit Power Sales Agreement between AEMC and UtiliCorp (MPS) dated February 16, 1999.

Comment date: April 12, 1999, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–8157 Filed 4–1–99; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99–202–001, et al.]

MidAmerican Energy Company, et al.; Electric Rate and Corporate Regulation Filings

March 25, 1999.

Take notice that the following filings have been made with the Commission:

1. MidAmerican Energy Company

[Docket No. ER99–202–001]

Take notice that on March 22, 1999, MidAmerican Energy Company (MidAmerican), P.O. Box 657, 666 Grand Avenue, Des Moines, Iowa 50303 tendered for filing changes to its Open Access Transmission Tariff (OATT), for the purpose of complying with the Order Accepting For Filing, As Modified, Revisions To Open Access Tariff issued in this proceeding on February 25, 1999.

Copies of the filing were served on all customers having service agreements with MidAmerican under the OATT, the Iowa Utilities Board, the Illinois

Commerce Commission, the South Dakota Public Utilities Commission and all parties to this proceeding.

Comment date: April 9, 1999, in accordance with Standard Paragraph E at the end of this notice.

2. South Carolina Electric & Gas Company

[Docket No. ER99–2105–000]

Take notice that on March 22, 1999, South Carolina Electric & Gas Company (SCE&G), tendered for filing an amendment to the original filing establishing Tractebel Energy Marketing as a customer under the terms of SCE&G's Negotiated Market Sales Tariff. The service agreement inadvertently left out of the filing package was resubmitted and a request was made to amend the application filing to include this document.

SCE&G requests an effective date of one day subsequent to the date of filing. Accordingly, SCE&G requests waiver of the Commission's notice requirements. Copies of this amendment request and the service agreement document were served upon Tractebel Energy Marketing and the South Carolina Public Service Commission.

Comment date: April 9, 1999, in accordance with Standard Paragraph E at the end of this notice.

3. Cinergy Services, Inc.

[Docket No. ER99–2212–000]

Take notice that on March 22, 1999, Cinergy Services, Inc. (Cinergy), tendered for filing on behalf of its operating companies, The Cincinnati Gas & Electric Company (CG&E) and PSI Energy, Inc. (PSI), changes to its Cost-Based Power Sales Tariff, Original Volume No. 6 and its Market-Based Power Sales Tariff, Original Volume No. 7 to become effective March 22, 1999.

Cinergy Operating Companies respectively request that these changes to the Tariffs become effective on the date of this filing March 22, 1999.

Copies of the filing were served on parties to FERC Docket No. ER99–962–000, wholesale customers under the Tariffs, and the public service commissions of Indiana, Ohio and Kentucky.

Comment date: April 9, 1999, in accordance with Standard Paragraph E at the end of this notice.

4. Dayton Power and Light Company

[Docket No. ER99–2213–000]

Take notice that on March 22, 1999, Dayton Power and Light Company (Dayton) tendered for filing service agreements establishing Koch Energy Trading, Inc., as customers under the terms of Dayton's Open Access Transmission Tariff.

Dayton requests an effective date of one day subsequent to this filing for the service agreements. Accordingly, Dayton requests waiver of the Commission's notice requirements.

Copies of this filing were served upon Koch Energy Trading, Inc., and the Public Utilities Commission of Ohio.

Comment date: April 9, 1999, in accordance with Standard Paragraph E at the end of this notice.

5. PacifiCorp

[Docket No. ER99–2214–000]

Take notice that on March 22, 1999, PacifiCorp, tendered for filing in accordance with 18 CFR 35 of the Commission's Rules and Regulations, Mutual Netting/Closeout Agreements between PacifiCorp and ACN Power, Inc., Clark Public Utilities, Englehard Power Marketing, Flathead Electric Cooperative, Inc. & Energy Northwest, Inc., Koch Energy Trading, Inc., Merchant Energy Group of the Americas, Public Service Company of Colorado, and Tri-State Generation & Transmission Association Inc.

Copies of this filing were supplied the Washington Utilities and Transportation Commission and the Public Utility Commission of Oregon.

Comment date: April 9, 1999, in accordance with Standard Paragraph E at the end of this notice.

6. PacifiCorp

[Docket No. ER99–2215–000]

Take notice that on March 22, 1999, PacifiCorp, tendered for filing in accordance with 18 CFR 35 of the Commission's Rules and Regulations, the fully executed Generation Control, Storage, and Firm Power Supply Agreement between PacifiCorp and Eugene Water & Electric Board under PacifiCorp's FERC Electric Tariff, First Revised Volume No. 12. This agreement replaces the unexecuted agreement previously accepted for filing by the Commission.

Copies of this filing were supplied to the Washington Utilities and Transportation Commission and the Public Utility Commission of Oregon.

Comment date: April 9, 1999, in accordance with Standard Paragraph E at the end of this notice.

7. Florida Power Corporation

[Docket No. ER99–2216–000]

Take notice that on March 22, 1999, Florida Power Corporation (FPC), tendered for filing Amendment No. 2 to Contract for Interchange Service Between Florida Power Corporation and Seminole Electric Cooperative, Inc.

Florida Power requests that the amendment be accepted for filing to become effective on March 22, 1999.

Comment date: April 9, 1999, in accordance with Standard Paragraph E at the end of this notice.

8. Southern California Edison Company

[Docket No. ER99–2217–000]

Take notice that on March 22, 1999, Southern California Edison Company (SCE), tendered for filing Amendment No. 2 (Amendment No. 2) to the Edison-Vernon 1997 Restructuring Agreement between SCE and the City of Vernon, California. Included in Amendment No. 2 as Attachment Nos. 1, 2 and 3 are: Amendment No. 3 to the Edison-Vernon Firm Transmission Service Agreement, Amendment No. 4 to the Edison-Vernon Mead Firm Transmission Service Agreement, and Amendment No. 3 to the Edison-Vernon Victorville-Lugo Firm Transmission Service Agreement.

Amendment No. 2 permanently converts the transmission loss methodology under existing transmission contracts to the Independent System Operator Tariff loss methodology.

Copies of this filing were served upon the Public Utilities Commission of the State of California and all interested parties.

Comment date: April 9, 1999, in accordance with Standard Paragraph E at the end of this notice.

9. The Detroit Edison Company

[Docket No. ER99–2218–000]

Take notice that on March 22, 1999, The Detroit Edison Company (Detroit Edison), tendered for filing forms of retail transmission service agreement under Detroit Edison's open access transmission tariff (the Detroit Edison Transmission Tariff) and the joint open access transmission tariff of Consumers Energy Company and Detroit Edison (the Joint Transmission Tariff). Detroit Edison submits these forms of service agreement for use in providing retail transmission service under the Detroit Edison Transmission Tariff and the Joint Transmission Tariff to retail electric customers and their designated agents taking retail service under Detroit Edison's Electric Choice retail access program.

Detroit Edison requests an effective date of the proposed forms of retail transmission service agreement of sixty days after the date of this filing.

Comment date: April 9, 1999, in accordance with Standard Paragraph E at the end of this notice.

10. Wisconsin Electric Power Company

[Docket No. ER99–2220–000]

Take notice that on March 22, 1999, Wisconsin Electric Power Company, tendered for filing notice that hereby effective sixty days from date of filing, Service Agreement Nos. 7, 96 and 100, under Wisconsin Energy Corporation Operating Companies' FERC Electric Tariff, Original Volume No. 1, are to be canceled. The affected customers are IUC Power Services, Kimball Power Services, and Energy Masters, International.

Copies of the filing have been served on the Michigan Public Service Commission and the Public Service Commission of Wisconsin.

Comment date: April 9, 1999, in accordance with Standard Paragraph E at the end of this notice.

11. South Carolina Electric & Gas Company

[Docket No. ER99–2221–000]

Take notice that on March 22, 1999, South Carolina Electric & Gas Company (SCE&G), tendered service agreements establishing Southern Company Energy Marketing, L.P. and Statoil Energy Trading, Inc., as customers under the terms of SCE&G's Open Access Transmission Tariff.

SCE&G requests an effective date of one day subsequent to the filing of the service agreements. Accordingly, SCE&G requests waiver of the Commission's notice requirements.

Copies of this filing were served upon Southern Company Energy Marketing, L.P. and Statoil Energy Trading, Inc., and the South Carolina Public Service Commission.

Comment date: April 9, 1999, in accordance with Standard Paragraph E at the end of this notice.

12. South Carolina Electric & Gas Company

[Docket No. ER99–2222–000]

Take notice that on March 22, 1999, South Carolina Electric & Gas Company (SCE&G) tendered a service agreement for Firm Point-to-Point Transmission service establishing Southern Company Energy Marketing, L.P. as a customer under the terms of SCE&G's Open Access Transmission Tariff.

SCE&G requests an effective date of one day subsequent to the filing of the service agreement. Accordingly, SCE&G requests waiver of the Commission's notice requirements.

Copies of this filing were served upon Southern Company Energy Marketing, L.P. and the South Carolina Public Service Commission.

Comment date: April 9, 1999, in accordance with Standard Paragraph E at the end of this notice.

13. Great Bay Power Corporation

[Docket No. ER99–2223–000]

Take notice that on March 22, 1999, Great Bay Power Corporation (Great Bay), tendered for filing a service agreement between Enserch Energy Services, Inc., and Great Bay for service under Great Bay's revised Tariff for Short Term Sales. This Tariff was accepted for filing by the Commission on July 24, 1998, in Docket No. ER98–3470–000.

The service agreement is proposed to be effective March 17, 1999.

Comment date: April 9, 1999, in accordance with Standard Paragraph E at the end of this notice.

14. New York State Electric & Gas Corporation

[Docket No. ER99–2224–000]

Take notice that on March 22, 1999, New York State Electric & Gas Corporation (NYSEG), tender for filing an executed Network Service and Network Operating Agreements between NYSEG and two energy service companies participating in its retail access program. The energy service companies are Columbia Energy, Inc., and DukeSolutions, Inc. These Agreements specify that the Transmission Customer has agreed to the rates, terms and conditions of NYSEG's currently effective open access transmission tariff and other revisions to the OATT applicable to all customers who take service under its retail access program.

NYSEG requests waiver of the Commission's 60-day notice requirements and an effective date for the Agreements of one day after the filing of the Service Agreements by NYSEG with the Commission. NYSEG has served copies of the filing on the New York State Public Service Commission and the Transmission Customers.

Comment date: April 9, 1999, in accordance with Standard Paragraph E at the end of this notice.

15. Central Vermont Public Service Corporation

[Docket No. ER99–2231–000]

Take notice that on March 22, 1999, Central Vermont Public Service Corporation (Central Vermont), tendered for filing a service agreement with Merchant Energy Group of the Americas, Inc., under its FERC Electric Tariff No. 8

Central Vermont requests waiver of the Commission's Regulations to permit the service agreement to become effective on March 22, 1999.

Comment date: April 9, 1999, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–8120 Filed 4–1–99; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL98–71–000, et al.]

PJM Interconnection, L.L.C., et al.; Electric Rate and Corporate Regulation Filings

March 23, 1999.

Take notice that the following filings have been made with the Commission:

1. PJM Interconnection, L.L.C.

[Docket No. EL98–71–000]

Take notice that on March 16, 1998, PJM Interconnection, L.L.C. (PJM), tendered for filing an Amendment To Petition For Temporary Waiver Of Annual Charges.

Copies of this filing were served upon all members of PJM and the parties listed on the official service list compiled by the Federal Energy Regulatory Commission in this docket.

Comment date: April 15, 1999, in accordance with Standard Paragraph E at the end of this notice.

2. Allegheny Power Service Corporation, on behalf of Monongahela Power Co., The Potomac Edison Company and West Penn Power Company (Allegheny Power)

[Docket No. ER99–884–000]

Take notice that on March 17, 1999, Allegheny Power Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power) tendered for filing a request to withdraw its filing submitted in Docket No. ER99–884–000. Allegheny Power will not seek authorization at this time to include ancillary services in its cost-based generation tariff.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission, and all parties of record.

Comment date: April 6, 1999, in accordance with Standard Paragraph E at the end of this notice.

3. Wisconsin Public Service Corp. and Upper Peninsula Power Co.

[Docket No. ER99–2159–000]

Take notice that on March 17, 1999, Wisconsin Public Service Corporation (WPSC) and Upper Peninsula Power Company (UPPCo) tendered for filing a revised code of conduct between WPSC and UPPCo filed on March 15, 1999, in the above-referenced docket.

Comment date: April 6, 1999, in accordance with Standard Paragraph E at the end of this notice.

4. Puget Sound Energy, Inc.

[Docket No. ER99–2189–000]

Take notice that on March 16, 1999, Puget Sound Energy, Inc., tendered for filing notification of its withdrawal from the Northwest Regional Transmission Association effective immediately.

Comment date: April 5, 1999, in accordance with Standard Paragraph E at the end of this notice.

5. Consolidated Edison Company Of New York, Inc.

[Docket No. ER99–2190–000]

Take notice that on March 18, 1999, Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing amendments to Con Edison's FERC Electric Rate Schedule No. 1 which is Con Edison's Open Access Transmission tariff (OATT). The proposed modifications have been approved by the New York State Public Service Commission (PSCNY) in conjunction with Con Edison's retail access program.

Con Edison has requested that the Commission waive its prior notice and filing requirements so that the amendments can be effective on March 19, 1999.

Con Edison states that a copy of this filing has been served by mail upon the PSCNY, all parties that have executed service agreements under Con Edison's OATT, and all parties to PSCNY Case 96–E–0897.

Comment date: April 7, 1999, in accordance with Standard Paragraph E at the end of this notice.

6. Consolidated Edison Company Of New York, Inc.

[Docket No. ER99–2191–000]

Take notice that on March 18, 1999, Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing amendments to Con Edison's FERC Electric Rate Schedule No. 3 which is Con Edison's Retail Access tariff. Con Edison has requested that the Commission waive its prior notice and filing requirements so that these amendments can be effective on March 19, 1999.

Con Edison states that a copy of this filing has been served by mail upon the New York State Public Service Commission, parties to Con Edison's service restructuring proceeding before the New York State Department of Public Service and all parties that have executed agreements under Con Edison's Open Access Transmission Tariff.

Comment date: April 7, 1999, in accordance with Standard Paragraph E at the end of this notice.

7. Southern California Edison Co.

[Docket No. ER99–2192–000]

Take notice that on March 18, 1999, Southern California Edison Company (SCE) tendered for filing a revision to Exhibit A, Specifications for Wholesale Distribution Service, to the Service Agreement for Wholesale Distribution Service with SCE's Generation Business Unit under the Wholesale Distribution Access Tariff.

Copies of the filing were served upon the Public Utilities Commission of the State of California and all interested parties.

Comment date: April 7, 1999, in accordance with Standard Paragraph E at the end of this notice.

8. Carolina Power & Light Company

[Docket No. ER99–2193–000]

Take notice that on March 18, 1999, Carolina Power & Light Company (CP&L) tendered for filing an executed Service Agreement with Dayton Power and Light Company under the provisions of CP&L's Market-Based Rates Tariff, FERC Electric Tariff No. 4. This Service Agreement supersedes the un-executed Agreement originally filed in Docket No. ER98–3385–000 and approved effective May 18, 1998.

Copies of the filing were served upon the North Carolina Utilities Commission and the South Carolina Public Service Commission.

Comment date: April 7, 1999, in accordance with Standard Paragraph E at the end of this notice.

9. Florida Power & Light Company

[Docket No. ER99–2194–000]

Take notice that on March 18, 1999, Florida Power & Light Company (FPL) tendered for filing a notice of cancellation of Service Agreement with the City of Starke, Florida, under FPL's FERC Electric Tariff, Third Revised Volume No. 1.

Comment date: April 7, 1999, in accordance with Standard Paragraph E at the end of this notice.

10. PacifiCorp

[Docket No. ER99–2195–000]

Take notice that on March 18, 1999, PacifiCorp tendered for filing in accordance with 18 CFR 35 of the Commission's Rules and Regulations, a Notice of Termination of PacifiCorp's Rate Schedule FERC No. 312 with Nevada Power Company.

Copies of this filing were supplied to the Washington Utilities and Transportation Commission and the Public Utility Commission of Oregon.

Comment date: April 7, 1999, in accordance with Standard Paragraph E at the end of this notice.

11. Ohio Valley Electric Corporation

[Docket No. ER99–2196–000]

Take notice that on March 18, 1999, Ohio Valley Electric Corporation (including its wholly-owned subsidiary; Indiana-Kentucky Electric Corporation) (OVEC), tendered for filing a service agreement for Non-Firm Point-to-Point Transmission Service, dated March 2, 1999 (the Service Agreement) between PG&E Energy Trading-Power, L.P. (PG&E Energy Trading) and OVEC.

OVEC proposes an effective date of March 2, 1999, and requests waiver of the Commission's notice requirement to allow the requested effective date. The Service Agreement provides for non-firm transmission service by OVEC to PG&E Energy Trading.

Copies of this filing were served upon the California Public Utilities Commission and PG&E Energy Trading.

Comment date: April 7, 1999, in accordance with Standard Paragraph E at the end of this notice.

12. Central Hudson Gas and Electric Corporation

[Docket No. ER99–2197–000]

Take notice that on March 18, 1999, Central Hudson Gas and Electric Corporation (CHG&E) tendered for filing pursuant to Section 35.12 of the Federal Energy Regulatory Commission's (Commission) Regulations a Service Agreement between CHG&E and Tractebel Energy Marketing, Inc. The terms and conditions of service under this Agreement are made pursuant to CHG&E's FERC Electric Rate Schedule, Original Volume No. 1 (Power Sales Tariff) accepted by the Commission in Docket No. ER97–890–000.

CHG&E also has requested waiver of the 60-day notice provision pursuant to 18 CFR Section 35.11.

A copy of this filing has been served on the Public Service Commission of the State of New York.

Comment date: April 7, 1999, in accordance with Standard Paragraph E at the end of this notice.

13. Otter Tail Power Company

[Docket No. ER99–2198–000]

Take notice that on March 18, 1999, Otter Tail Power Company (Otter Tail) tendered for filing with the Federal Energy Regulatory Commission its FERC Electric Rate Schedule, an application for blanket authorizations and for certain waivers of the Commission's Regulations. Otter Tail intends to engage in transactions in which Otter Tail sells electricity at rates and on terms and conditions that are negotiated with the purchasing party.

Otter Tail has requested expedited action on its filing so that the Commission may accept Otter Tail's rate schedule for filing to become effective as soon as possible.

Otter Tail has also served a copy of the application on the state utility commissions in which it provides retail electric service, the Minnesota Public Utilities Commission, the North Dakota Public Service Commission, and the South Dakota Public Utilities Commission.

Comment date: April 7, 1999, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–8119 Filed 4–1–99; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG99–71–000, et al.]

Woodstock Hills, LLC, et al.; Electric Rate and Corporate Regulation Filings

March 24, 1999.

Take notice that the following filings have been made with the Commission:

1. Woodstock Hills LLC

[Docket No. EG99–71–000]

Take notice that on March 22, 1999, Woodstock Hills LLC filed an amended Application for Determination of Exempt Wholesale Generator Status.

Comment date: April 14, 1999, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

2. FirstEnergy Operating Companies: The Cleveland Electric Illuminating Company; Ohio Edison Company; Pennsylvania Power Company; The Toledo Edison Company Transferors; American Transmission Systems, Inc., Transferee

[Docket No. EC99–53–000]

Take notice that on March 19, 1999, the FirstEnergy Operating Companies filed an application pursuant to Section 203 of the Federal Power Act, 16 U.S.C. 824b, for authorization to transfer ownership and operational control of their jurisdictional transmission facilities to American Transmission Systems, Inc. (ATSI). The applicants state that ATSI is a wholly-owned subsidiary of FirstEnergy Corp., and that ATSI does not currently own or operate any facilities subject to the jurisdiction of the Commission. The applicants state further that upon the grant of Commission authorization, ATSI will own and operate all transmission facilities of the FirstEnergy Operating Companies subject to the jurisdiction of the Commission, and will provide transmission services pursuant to the terms and conditions set forth in its own Open Access Transmission Tariff to be submitted in a separate filing under section 205 of the Federal Power Act, 16 U.S.C. 824d.

Comment date: April 23, 1999, in accordance with Standard Paragraph E at the end of this notice.

3. Sahacogen (Chonburi) Co. Ltd.

[Docket No. EG99–96–000]

Take notice that on March 18, 1999, Sahacogen (Chonburi) Co. Ltd. (Sahacogen) filed with the Federal Energy Regulatory Commission (Commission) an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Sahacogen will acquire a 122 MW eligible facility located in Sriracha, Thailand. Sahacogen states that, following the close of the acquisition, it will be engaged directly and exclusively in the business of owning and/or operating all or part of an eligible facility (as defined in Section 32(a)(1) of the Public Utility Holding Company Act); selling electricity at wholesale to the Electricity Generating Authority of Thailand, a government corporation operating under the laws of Thailand; and at wholesale to Saha Pathana Inter-Holdings Plc., a Thai corporation, which will on-sell to industrial and commercial consumers in an industrial park in which the Facility is situated; and, possibly, selling electricity at retail to customers none of which will be located within the United States.

Comment date: April 14, 1999, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

4. UAE Lowell Power LLC

[Docket No. EG99–98–000]

Take notice that on March 19, 1999, UAE Lowell Power LLC (ULP) filed with the Federal Energy Regulatory Commission (Commission) an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

ULP is a Delaware Limited Liability Company which was organized

exclusively for the purpose of developing, owning, and operating an electric generating facility in Lowell, Massachusetts. ULP's facility is an 82 MW net capacity, gas-fired cogeneration facility. ULP states that no rate or charge in connection with this facility was in effect under the laws of any state as of October 24, 1992 or any time thereafter. ULP further states that copies of the application were served upon the Securities and Exchange Commission and the Massachusetts Department of Telecommunications and Energy.

Comment date: April 14, 1999, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

5. Torco Energy Marketing, Inc.; INFINERGY Services, LLC

[Docket Nos. ER92–429–018 and ER98–3478–002]

Take notice that on March 15, 1999, the above-mentioned power marketers filed quarterly reports with the Commission in the above-mentioned proceedings for information only. These filings are available for public inspection and copying in the Public Reference Room or on the internet at www.ferc.fed.us/online/rims.htm for viewing and downloading (call 202–208–2222 for assistance).

6. J. Anthony & Associates Ltd; Electrion Incorporated

[Docket Nos. ER95–784–015 and ER98–3171–002]

Take notice that on March 17, 1999, the above-mentioned power marketers filed quarterly reports with the Commission in the above-mentioned proceedings for information only. These filings are available for public inspection and copying in the Public Reference Room or on the internet at www.ferc.fed.us/online/rims.htm for viewing and downloading (call 202–208–2222 for assistance).

7. Revelation Energy Resources Corporation

[Docket No. ER97–765–002]

Take notice that on March 16, 1999, the above-mentioned power marketer filed a quarterly report with the Commission in the above-mentioned proceeding for information only. This filing is available for public inspection and copying in the Public Reference Room or on the Internet at www.ferc.fed.us/online/rims.htm for viewing and downloading (call 202–208–2222 for assistance).

8. Zapco Power Marketers, Inc.; Tri-Valley Corporation; Industrial Gas & Electric Services Company; Enpower Inc.

[Docket Nos. ER98–689–004; ER97–3428–005; ER95–257–017; and ER95–1752–009]

Take notice that on March 22, 1999, the above-mentioned power marketers filed quarterly reports with the Commission in the above-mentioned proceedings for information only. These filings are available for public inspection and copying in the Public Reference Room or on the internet at www.ferc.fed.us/online/rims.htm for viewing and downloading (call 202–208–2222 for assistance).

9. DTE Edison America, Inc.

[Docket No. ER98–3026–002]

Take notice that on March 18, 1999, the above-mentioned power marketer filed a quarterly report with the Commission in the above-mentioned proceeding for information only. This filing is available for public inspection and copying in the Public Reference Room or on the internet at www.ferc.fed.us/online/rims.htm for viewing and downloading (call 202–208–2222 for assistance).

10. Reliable Energy, Inc.

[Docket No. ER98–3261–001]

Take notice that on March 19, 1999, the above-mentioned power marketer filed a quarterly report with the Commission in the above-mentioned proceeding for information only. This filing is available for public inspection and copying in the Public Reference Room or on the internet at www.ferc.fed.us/online/rims.htm for viewing and downloading (call 202–208–2222 for assistance).

11. Jersey Central Power & Light Company; Metropolitan Edison Company; Pennsylvania Electric Company

[Docket No. ER99–2167–000]

Take notice that on March 15, 1999, the above-referenced public utilities filed their quarterly transaction report for the quarter ending December 31, 1998.

Comment date: April 13, 1999, in accordance with Standard Paragraph E at the end of this notice.

12. EnergyChoice, LLC

[Docket No. ER99–2188–000]

Take notice that on March 17, 1999, EnergyChoice, LLC (EnergyChoice), tendered for filing notice that it became insolvent, terminated all operations and filed a final tax return for the year ending December 13, 1997. EnergyChoice requests that the Commission cancel all applicable FERC rate schedules and remove EnergyChoice from the Commission's records and data base.

Comment date: April 6, 1999, in accordance with Standard Paragraph E at the end of this notice.

13. Duquesne Light Company

[Docket No. ER99–2199–000]

Take notice that on March 19, 1999, Duquesne Light Company (DLC), tendered for filing a Service Agreement dated March 18, 1999 with Statoil Energy Trading, Inc., under DLC's Open Access Transmission Tariff (Tariff). The Service Agreement adds Statoil Energy Trading, Inc., as a customer under the Tariff.

DLC requests an effective date of March 18, 1999, for the Service Agreement.

Comment date: April 8, 1999, in accordance with Standard Paragraph E at the end of this notice.

14. Green Mountain Power Corporation

[Docket No. ER99–2200–000]

Take notice that on March 19, 1999, Green Mountain Power Corporation tendered for filing a Power Sales Agreement with Green Mountain Energy Resources, L.L.C.

Green Mountain requests an effective date of March 22, 1999.

Comment date: April 8, 1999, in accordance with Standard Paragraph E at the end of this notice.

15. Consumers Energy Company

Docket No. ER99–2201–000

Take notice that on March 19, 1999, Consumers Energy Company (Consumers) tendered for filing an executed Service Agreement for Network Integration Transmission Service and an executed Network Operating Agreement, pursuant to Consumers' Open Access Transmission Service Tariff, with Delphi Energy and Engine Management Systems—Coopersville (Customer). The agreements have an effective date of March 15, 1999.

Copies of the filed agreements were served upon the Michigan Public Service Commission and the Customer.

Comment date: April 8, 1999, in accordance with Standard Paragraph E at the end of this notice.

16. Kansas City Power & Light Company

[Docket No. ER99–2202–000]

Take notice that on March 19, 1999, Kansas City Power & Light Company (KCPL), tendered for filing a Service

Agreement dated March 2, 1999 by KCPL. This Agreement provides for the rates and charges for Firm Transmission Service by KCPL for wholesale transactions. In its filing, KCPL states that the rates included in the above-mentioned Service Agreement are KCPL's rates and charges in the compliance filing to FERC Order 888–A in Docket No. OA97–636–000.

KCPL proposes an effective date of January 1, 2000.

Comment date: April 8, 1999, in accordance with Standard Paragraph E at the end of this notice.

17. Kansas City Power & Light Company

[Docket No. ER99–2203–000]

Take notice that on March 19, 1999, Kansas City Power & Light Company (KCPL), tendered for filing a Service Agreement dated March 2, 1999 by KCPL. This Agreement provides for the rates and charges for Firm Transmission Service by KCPL for wholesale transactions. In its filing, KCPL states that the rates included in the above-mentioned Service Agreement are KCPL's rates and charges in the compliance filing to FERC Order 888–A in Docket No. OA97–636–000.

KCPL proposes an effective date of April 1, 1999.

Comment date: April 8, 1999, in accordance with Standard Paragraph E at the end of this notice.

18. Kansas City Power & Light Company

[Docket No. ER99–2204–000]

Take notice that on March 19, 1999, Kansas City Power & Light Company (KCPL), tendered for filing two Service Agreements dated March 2, 1999 by KCPL. This Agreement provides for the rates and charges for Firm Transmission Service by KCPL for wholesale transactions. In its filing, KCPL states that the rates included in the above-mentioned Service Agreement are KCPL's rates and charges in the compliance filing to FERC Order 888–A in Docket No. OA97–636–000.

KCPL proposes an effective date of June 1, 1999.

Comment date: April 8, 1999, in accordance with Standard Paragraph E at the end of this notice.

19. PacifiCorp

[Docket No. ER99–2205–000]

Take notice that on March 19, 1999, PacifiCorp tendered for filing in accordance with 18 CFR 35 of the Commission's Rules and Regulations, the Power Sales Agreement with Flathead Electric Cooperative, Inc., and Energy Northwest Inc., under PacifiCorp's FERC Electric Tariff, First Revised Volume No. 12.

Copies of this filing were supplied to the Washington Utilities and Transportation Commission and the Public Utility Commission of Oregon.

Comment date: April 8, 1999, in accordance with Standard Paragraph E at the end of this notice.

20. PacifiCorp

[Docket No. ER99–2206–000]

Take notice that on March 19, 1999, PacifiCorp, tendered for filing in accordance with 18 CFR 35 of the Commission's Rules and Regulations, the Bigfork Output Power Sales Agreement with Flathead Electric Cooperative, Inc., under PacifiCorp's FERC Electric Tariff, First Revised Volume No. 12.

PacifiCorp requests that the Commission grant a waiver of prior notice and accept for filing the enclosed Power Sales Agreement and assign an effective date of May 5, 1999.

Copies of this filing were supplied to the Washington Utilities and Transportation Commission and the Public Utility Commission of Oregon.

Comment date: April 8, 1999, in accordance with Standard Paragraph E at the end of this notice.

21. Carolina Power & Light Company

[Docket No. ER99–2207–000]

Take notice that on March 19, 1999, Carolina Power & Light Company (CP&L), tendered for filing Service Agreements for Short-Term Firm Point-to-Point Transmission Service and Non-Firm Point-to-Point Transmission Service with Energy Transfer Group, L.L.C., Service to this Eligible Customer will be in accordance with the terms and conditions of Carolina Power & Light Company's Open Access Transmission Tariff.

CP&L is requesting an effective date of March 10, 1999, for these Agreements.

Copies of the filing were served upon the North Carolina Utilities Commission and the South Carolina Public Service Commission.

Comment date: April 8, 1999, in accordance with Standard Paragraph E at the end of this notice.

22. Southern California Edison Co.

[Docket No. ER99–2208–000]

Take notice that on March 19, 1999, Southern California Edison Company (SCE), tendered for filing a revision to Exhibit A, Specifications for Wholesale Distribution Service, to the Service Agreement for Wholesale Distribution Service between SCE–QF Resources and SCE Power Grid Business Unit under the Wholesale Distribution Access Tariff.

Copies of this filing were served upon the Public Utilities Commission of the State of California and all interested parties.

Comment date: April 8, 1999, in accordance with Standard Paragraph E at the end of this notice.

23. PacifiCorp

[Docket No. ER99–2209–000]

Take notice that on March 19, 1999, PacifiCorp, tendered for filing in accordance with 18 CFR 35 of the Commission's Rules and Regulations, umbrella Service Agreements with ACN Power, Inc., Eugene Water & Electric Board, Morgan Stanley Capital Group Inc., Southern California Edison Company, and Utah Associated Municipal Power Systems under PacifiCorp's FERC Electric Tariff, First Revised Volume No. 12. In connection therewith, a Certificate of Concurrence by Southern California Edison Company was also tendered.

Copies of this filing were supplied to the Public Utility Commission of Oregon and the Washington Utilities and Transportation Commission.

Comment date: April 8, 1999, in accordance with Standard Paragraph E at the end of this notice.

24. New England Power Company

[Docket No. ER99–2210–000]

Take notice that on March 19, 1999, New England Power Company (NEP), tendered for filing a Notice of Cancellation of the Unit Power Contracts between NEP and Hingham Municipal Lighting Plant, North Attleborough Electric Department, Middleton Electric Light Department and Groton Electric Light Department.

NEP requests that cancellation be effective on February 28, 1999.

Comment date: April 8, 1999, in accordance with Standard Paragraph E at the end of this notice.

25. Duquesne Light Company

[Docket No. ER99–2211–000]

Take notice that on March 19, 1999, Duquesne Light Company (Duquesne), tendered for filing under Duquesne's pending Market-Based Rate Tariff, (Docket No. ER98–4159–000) executed Service Agreement at Market-Based Rates with Enserch Energy Services, Inc., (Customer).

Duquesne has requested the Commission waive its notice requirements to allow the Service Agreement to become effective as of March 18, 1999.

Copies of this filing were served upon Customer.

Comment date: April 8, 1999, in accordance with Standard Paragraph E at the end of this notice.

26. Geysers Power Company, LLC

[Docket No. ES99–35–000]

Take notice that on March 22, 1999, Geysers Power Company, LLC (Geysers Power) filed an application for authorization to issue securities and assume liabilities and motion for expedited consideration in connection with a leveraged lease financing of the Geysers geothermal generating facilities. Geysers Power requests the Commission to waive the 30-day notice period generally provided for in granting blanket authorization under Section 204 to permit Geysers Power to enter a sale leaseback financing transaction on April 30, 1999, or, in the alternative, to grant Geysers Power specific Section 204 authority to execute the sale leaseback financing transaction described in the Application on that date. Geysers Power also requests certain exemptions from and waivers of Sections 34.2 and 34.4 of the Commission's regulations.

Comment date: April 15, 1999, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/ online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–8121 Filed 4–1–99; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Scoping Meetings and Site Visit and Soliciting Scoping Comments

March 29, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Major New License.

b. *Project No.:* 372–008.

c. *Date filed:* June 12, 1998.

d. *Applicant:* Southern California Edison Company.

e. *Name of Project:* Lower Tule River Hydrolectric Project.

f. *Location:* On the North and South Forks of the Middle Fork Tule River in Tulare County, California, partially within the boundaries of the Sequoia National Forest.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Wesley Moody, Southern California Edison Company, 2244 Walnut Grove Avenue, P.O. Box 800, Rosemead, CA 91770, (626) 302–1564.

i. *FERC Contact:* Nan Allen, Nan.Allen@ferc.fed.us, 202–219–2938.

j. *Deadline for filing scoping comments:* May 27, 1999.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Status of environmental analysis:* This application is not ready for environmental analysis at this time.

l. *Description of the Project:* The existing project consists of: (1) a 15-foot-high, concrete dam; (2) a 5-foot-high, rubble masonry dam; (3) a 31,802-foot-long flow line; (4) a 2,815-foot-long steel penstock; (5) a 3.37 acre-foot forebay; (6) a powerhouse containing two turbine-generator units with a total installed capacity of 2,520 kilowatts (kW); and (7) a 2,352-foot-long tailrace.

m. *Locations of the application:* A copy of the application is available for inspection or reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, D.C. 20426, or by calling (202) 208–1371. This filing may be viewed on http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

n. *Scoping Process:* The Commission intends to prepare an Environmental Assessment (EA) on the project in accordance with the National Environmental Policy Act. The EA will consider both site-specific and cumulative environmental impacts and reasonable alternatives to the proposed action.

Scoping Meetings

The Commission will hold scoping meetings, one in the daytime and one in the evening, to help us identify the scope of issues to be addressed in the EA.

The daytime scoping meeting will focus on resource agency concerns, while the evening scoping meeting is primarily for public input. All interested individuals, organizations, and agencies are invited to attend one or both of the meetings, and to assist the staff in identifying the scope of the environmental issues that should be analyzed in the EA. The times and locations of these meetings are as follows:

Daytime Meeting

Tuesday, April 27, 1999
1:00 pm
Springville Veterans Memorial Building
35944 Highway 190
Springville, California

Evening Meeting

Tuesday, April 27, 1999
7:00 pm
Springville Veterans Memorial Building
35944 Highway 190
Springville, California

To help focus discussions, we will distribute a Scoping Document (SD1) outlining the subject areas to be addressed in the EA to the parties on the Commission's mailing list. Copies of the SD1 also will be available at the scoping meetings.

Site Visit

The applicant and Commission staff will conduct a project site visit to the Lower Tule Project on Tuesday, April 27, 1999. We will meet at 9:00 am at the US Forest Service, Tule River Ranger District, 32588 Highway 190, Springville, California. Those who wish to attend should contact John W. Irwin,

909–394–8715 by Friday, April 23, 1999.

Objectives

At the scoping meetings, the staff will: (1) summarize the environmental issues tentatively identified for analysis in the EA; (2) solicit from the meeting participants all available information, especially quantifiable data, on the resources at issue; (3) encourage statements from experts and the public on issues that should be analyzed in the EA, including viewpoints in opposition to, or in support of, the staff's preliminary views; (4) determine the resource issues to be addressed in the EA; and (5) identify those issues that require a detailed analysis, as well as those issues that do not require a detailed analysis.

Procedures

The meetings will be recorded by a stenographer and will become part of the formal record of the Commission proceeding on the project. Individuals presenting statements at the meetings will be asked to sign in before the meeting starts and to clearly identify themselves for the record.

Individuals, organizations, and agencies with environmental expertise and concerns are encouraged to attend the meetings and to assist the staff in defining and clarifying the issues to be addressed in the EA.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–8116 Filed 4–1–99; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6241–3]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 OR (202) 564–7153. Weekly receipt of Environmental Impact Statements Filed March 22, 1999 Through March 26, 1999 Pursuant to 40 CFR 1506.9.

EIS No. 990093, LEGISLATIVE FINAL EIS, UAF, AZ, Barry M. Goldwater Ranger (BMGR), Renewal of the Military Land Withdrawal, Yuma, Pima and Maricopa Counties, AZ, Due: May 03, 1999, Contact: Jack Bush (703) 604–0553.

EIS No. 990094, FINAL SUPPLEMENTAL, TVA, TN, Kingston Fossil Plant Alternative Coal Receiving Systems, New Rail Spur Construction near the Cities of Kingston and Harriman, Roane County, TN, Due: May 03, 1999, Contact: Harold M. Draper (423) 632–6889.

EIS No. 990095, LEGISLATIVE FINAL EIS, UAF, NV, Nellis Air Force Range (NAFR), Renewal of the Land Withdrawal to Provide a Safe and Secure Location to Test Equipment and Train Military Personnel, Clark, Lincoln and Nye Counties, NV, Due: May 03, 1999, Contact: Jack Bush (703) 604–0553.

EIS No. 990096, DRAFT EIS, USA, NJ, Military Ocean Terminal (MOTBY), Disposal and Reuse, Implementation, in the City of Bayonne, Bergen, Essex and Hudson Counties, NJ, Due: May 17, 1999, Contact: Theresa Persick-Arnold (703) 697–0216.

EIS No. 990097, FINAL EIS, DOE, AZ, Griffith Energy Project, Construction and Operation, 520-Megawatt (MW) Natural Gas-Fired and Combined Cycle Power Plant, Right-of-Way Grant, Operating Permit and COE Section 404 Permit, Kingman, AZ, Due: May 03, 1999, Contact: John Holt (602) 352–2692.

EIS No. 990098, DRAFT SUPPLEMENTAL, JUS, Programmatic EIS—U.S. Immigration and Naturalization Service (INS) and U. S. Joint Task Force-Six (JTF–6) Implementation, Construction and Operation of Integrated Surveillance Intelligence System Project (ISIS) and Drug Law Enforcement Agencies (DLEA), Continental U.S., TX, NM, AZ, CA, Due: May 17, 1999, Contact: Eric Verwers (817) 978–0202.

Amended Notices

EIS No. 990081, DRAFT EIS, UAF, LA, TX, NM, Realistic Bomber Training Initiative, Improve the B–52 and B–1 Aircrews Mission Training and Maximize Combat Training Time, Barksdale Air Force Base, La, NM and TX , Due: June 16, 1999, Contact: Major Brent Adams (915) 696–2863. Published FR–03–19–99 Review Period Extended.

Dated: March 30, 1999.

William D. Dickerson,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 99–8182 Filed 4–1–99; 8:45 am]

BILLING CODE 6560–60–U

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6241–4]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared March 8, 1999 through March 12, 1999 pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal activities at (202) 564–7167.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in the **Federal Register** dated April 10, 1998 (63 FR 17856).

Draft EISs

ERP No. D–AFS–B65005–NH Rating EC2, Appalachian Mountain Club (AMC) Huts and Pinkham Notch Visitor Center (PNVC) Continued Operations, Special Use Permit and Possible COE Permit Issuance, White Mountain National Forest, Grafton and Coos Counties, NH.

Summary: EPA expressed environmental concerns with regard to the analysis of impacts to water supply, ground water and wetlands and asked that those issues be addressed in the final EIS in order to fully evaluate the environmental acceptability of the proposed project.

ERP No. D–AFS–B65008–VT Rating EC2, Mount Snow/Haystack Resort, Expansion of Snowmaking Coverage and Development of Alternative Water Supplies, Special-Use-Permit and COE Section 404 Permit, Green Mountain National Forest, Manchester Ranger District, Windham County, VT.

Summary: EPA expressed environmental concerns pertaining to water quality impacts and asked for a more complete discussion of cumulative effects associated with the development of the proposed snowmaking infrastructure. EPA supported the proposed changes that would bring existing water withdrawals in line with established flow criteria and encouraged the Forest Service to use the comments on the DEIS to frame discussions about modifications to the existing water withdrawal settlement agreement.

ERP No. D–AFS–J65217–UT Rating EC2, Brighton Ski Resort Master Development Plan Updated, Implementation, Wasatch-Cache National Forest, Salt Lake City, UT.

Summary: EPA expressed environmental concerns from based primarily on the need for identifying potential adverse impacts to wetlands resources from snow storage. The final EIS should include additional mitigation measures to reduce impacts to the aquatic ecosystem.

ERP No. D–AFS–J65293–MT Rating EC2, Taylor Fork Timber Sale and Road Restoration, Implementation, Buck Creek, Taylor Fork Creek and Eldridge Creek, Gallatin National Forest, Madison Ranger, Hebgen Lake Ranger District, Yellow Stone, Gallatin County, MT.

Summary: EPA expressed environmental concerns due to lack of information regarding wetlands, existing watershed conditions, and potential impacts to westslope cutthroat trout.

ERP No. D–AFS–J65298–CO Rating EC2, South Fork Salvage Analysis Area, Implementation, Routt Divide Blowdown, Land and Resource Management Plan, Medicine Bow-Routt National Forests, Hahns Peak/Bears Ears Ranger District, Rounty County, CO.

Summary: EPA expressed environmental concerns and requested information on impacts from road reconstruction actions and identification of any roads in Streamline Management Zones (SMZs).

ERP No. D–AFS–L61218–ID Rating EC2, Frank Church—River of No Return Wilderness (FC–RONRW), Implementation for the Future Management of Land and Water Resource, Bitterroot, Boise, Nez Perce, Payette and Salmon-Challis National Forests, ID.

Summary: EPA expressed environmental concerns related to the potential adverse of using herbicides to manage noxious weeds in wilderness areas.

ERP No. D–AFS–L65313–ID Rating EC2, Silver Creek Integrated Resource Project, Implementation, Middle Fork Payette River, Boise National Forest, Boise and Valley Counties, ID.

Summary: EPA expressed environmental concerns with potential adverse impacts to water quality, air quality and wilderness habitat.

ERP No. D–AFS–L65314–OR Rating EO2, Mill Creek Watershed Timber Sales Project, Implementation, Ochoco National Forest, Crook County, OR.

Summary: EPA expressed environmental objections with the proposed alternative and with potential adverse impacts to water quality, wildlife and riparian conservation areas.

ERP No. D–AFS–L65315–ID Rating EO2, West Fork Potlatch Timber Harvesting, Road Construction, Reforestation and Watershed Restoration, Palouse Ranger District, Latah County, ID.

Summary: EPA expressed environmental concerns related to the lack of an adequate water quality analysis, impacts associated with road construction, and the failure to treat the Potlatch basin as a key watershed. EPA recommends that the Forest Service consider the value of withdrawing the EIS and issuing a revised document.

ERP No. D–AFS–L65320–00 Rating EC2, Targhee National Forest Open Road and Open Motorized Trail Analysis, To Implement a new Travel Plan, several counties, ID and Lincoln and Teton Counties, WY.

Summary: EPA expressed environmental concerns with potential impacts to water quality, cutthroat trout, canada lynx and their habitat.

ERP No. D–BLM–K65214–AZ Rating EC2, Dos Pobres/San Juan Mining Plan and Land Exchange, Implementation of two Open Pit Copper Mines and one Central Ore Facility, NPDES and COE Section 404 Permits, Graham County, AZ.

Summary: EPA expressed environmental concerns over potential impacts to air resources, water resources and quality, and water-related biologic resources. EPA expect that additional mitigation measures of clarification of planned mitigation and monitoring, and inclusion of other additional requested information in the Final EIS may alleviate or reduce these concerns. EPA level of concern over potential impacts to air and water resources has also been raised by the physical magnitude and potential long time line of the Proposed Action.

ERP No. D–NPS–L61222–WA Rating LO, Lake Roosevelt National Recreation Area, General Management Plan, Implementation, Ferry, Grant, Lincoln, Okanogan and Stevens Counties, WA.

Summary: EPA had no objection to the preferred alternative. EPA did request further discussion about how the Lake Roosevelt Management Agreement affects development of a new plan; the effect of lake level fluctuations on recreation facilities: water resources; geology; and sustain ability.

Final EISs

ERP No. F–AFS–K65176–CA Sequoia National Forest Trail System Plan, Implementation, Amendment to the Sequoia National Forest Land and Resource Management Plan, Fresno, Kern and Tulare Counties, CA.

Summary: EPA expressed environmental concerns with the final plan. Elements of the plan may conflict the moratorium on construction in road-less areas, and the Clean Water Action Plan, and EPA requested that the Forest Service suspend evaluation and construction of new motorized trails pursuant to the Forest Plan amendment pending the release or the Forest Service's long-term transportation policy and the completion of the Sierra Nevada Forest Plan Amendment NEPA process.

ERP No. F-BLM-L61219-AK Squirrel River Wild and Scenic River Suitability Study, Designation and Non-Designation, National Wild and Scenic Rivers System, AK.

Summary: Review of the Final EIS was not deemed necessary. No formal comment letter was sent to the preparing agency.

ERP No. F-NPS-E61038-TN Stones River National Battlefield General Management Plan and Development Concept Plan, Implementation, Ruthford County, TN.

Summary: EPA recommends that new building construction and renovations meet energy efficiency strategies, as outlined in the American Society for Heating, Refrigeration and Air Conditioning Efficiency guidelines. Any contractors working in the Stones River floodplain should be required to conform to "Floodplain Management Guidelines", which were issued as NPS "Special Directive 93–4" in 1993.

Dated: March 30, 1999.

William D. Dickerson,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 99–8183 Filed 4–1–99; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[OPP–00592; FRL–6073–2]

EPA-USDA Tolerance Reassessment Advisory Committee: Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The EPA-U.S. Department of Agriculture (USDA) Tolerance Reassessment Advisory Committee (TRAC) will hold a meeting of Workgroup II to discuss the status of the organophosphate pilot process and transition strategies. On April 27–28, 1999, the TRAC "Full Committee" will meet to provide status reports on recent policy developments, organophosphate risk assessments and refinements, the overall status of tolerance reassessments, and transition strategies. TRAC was established in 1998 as a

subcommittee under the auspices of the EPA National Advisory Council for Environmental Policy and Technology (NACEPT) in response to Vice President Gore's request for EPA and the USDA to work together to ensure implementation of the Food Quality Protection Act (FQPA).

DATES: The TRAC Workgroup II meeting will be held on Thursday April 8, 1999, from 9:00 a.m.–5:30 p.m., and Friday, April 9, 1999, from 9:00 a.m. to 3:00 p.m.

The TRAC "Full Committee" meeting will be held on Tuesday April 27, 1999, from 9:00 a.m. to 5:30 p.m., and Wednesday, April 28, 1999, from 9:00 a.m. to 3:00 p.m.

ADDRESSES: The TRAC Workgroup II will be held on April 8–9 at the Ramada Plaza Hotel Old Town, 901 N. Fairfax Street, Alexandria, VA (703–683–6000).

The TRAC "Full Committee" meeting will be held on April 27–28, 1999, at the National Rural Electric Cooperative Association Conference Center, 4301 Wilson Blvd., Arlington, VA (703–907–5934; across from Ballston Metro stop).

The official record is available in the Docket for inspection during normal business hours, Monday-Friday, excluding Federal holidays, at the Office of Pesticide Program, U.S. Environmental Protection Agency, Crystal Mall 2 (CM 2,) Rm. 101, 1921 Jefferson Davis Highway, Arlington, VA 22202, telephone: 703–305–5805.

FOR FURTHER INFORMATION CONTACT: By Mail: Margie Fehrenbach or Terria Northern, Office of Pesticide Programs (7501–C), Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Office location, telephone number and e-mail address: CM 2, Rm. 1119, 1921 Jefferson Davis Highway, Arlington, VA; telephone number 703–305–7090; e-mail addresses: Fehrenbach.Margie@epa.gov or Northern.Terria@epa.gov.

SUPPLEMENTARY INFORMATION: The Food Quality Protection Act (FQPA) (Pub. L. 104–170) was passed in 1996. This new law strengthens the nation's system for regulating pesticides on food. The TRAC was established by EPA and USDA to provide policy guidance on sound science, ways to increase transparency in decision-making, strategies for a reasonable transition for agriculture and ways to enhance consultations with stakeholders, as pesticide tolerances are reassessed, including those for organophosphates.

The TRAC is co-chaired by EPA Acting Deputy Administrator Peter Roberston and USDA Deputy Secretary Richard Rominger. The TRAC is a diverse group of stakeholders representing a broad range of interests, including farmers and growers; environmental and public interest groups; public health officials; pediatric experts; pesticide companies and trade associations; food processors and distributors; academicians; Federal agencies; tribal, State and local governments.

The TRAC meetings are open to the public under section 10(a)(2) of the Federal Advisory Committee Act, Pub. L. 92–463. Outside statements will be limited to 3–5 minutes by each person or organization. Any person who wishes to file a written statement may do so before or after a TRAC meeting. These statements will become part of the official record and will be provided to the TRAC members. The official record will be available for public inspection at the address listed under **ADDRESSES** at the beginning of this document.

An agenda and background information are being developed and will be posted on the Agency's website one week prior to each meeting at: http://www.epa.gov/pesticides/trac.

List of Subjects

Environmental protection, Agriculture, Chemical, Foods, Pesticides and pests.

Dated: March 26, 1999.

Marcia E. Mulkey,

Director, Office of Pesticide Programs.

[FR Doc. 99–8235 Filed 3-31-99; 12:41 pm]

BILLING CODE 6560–50–F

FEDERAL MARITIME COMMISSION

[Petition No. P2–99]

In Re: Request that the Commission Issue Section 15 Orders to the Members of the Transpacific Stabilization Agreement; Notice of Filing of Petition

Notice is given that a petition requesting the Commission to issue a section 15 order to the members of the Transpacific Stabilization Agreement has been filed by the Coalition for Fair Play in Ocean Shipping. Members of the Coalition are alleged to be currently negotiating service contracts in the Far East in-bound trade lanes for the shipping season commencing May 1, 1999, and are asking the Commission to seek certain information through section 15 order. Petitioner claims that TSA warrants oversight during the negotiating period for the 1999 shipping season.

Interested persons are requested to reply to the petition no later than April 9, 1999. Replies shall be directed to the Secretary, Federal Maritime Commission, Washington, DC 20573–0001, shall consist of an original and 15 copies, and shall be served on counsel for Petitioner, Carlos Rodriguez, Esq., Carlos Rodriguez & Associates, 1710 Rhode Island Avenue, NW., Washington, DC 20036.

Copies of the petition are available for examination at the Office of the Secretary of the Commission, 800 N. Capitol Street, NW, Room 1046, Washington, DC.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 99–8111 Filed 4–1–99; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 26, 1999.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63102–2034:

1. MHBC Investments Limited Partnership, Little Rock, Arkansas; to become a bank holding company by acquiring at least 57 percent of the

voting shares of Bank of England, England, Arkansas.

B. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198–0001:

1. BOK Financial Corporation, and Park Cities Bancshares, Inc., both of Tulsa, Oklahoma; to acquire 100 percent of the voting shares of Mid-Cities Bancshares, Inc., and thereby indirectly acquire Mid-Cities National Bank, both of Hurst, Texas.

Board of Governors of the Federal Reserve System, March 29, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–8105 Filed 4–1–99; 8:45 am]

BILLING CODE 6210–01–M

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 26, 1999.

A. Federal Reserve Bank of Chicago (Philip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1413:

1. Republic Bancorp, Inc., Grand Rapids, Michigan; to acquire D & N Financial Corporation; D & N Bank; D & N Capital Corporation; and D & N Mortgage Corporation, all of Hancock, Michigan; and thereby engage in operating a savings association pursuant to § 225.28(b)(4)(ii) of Regulation Y; extending credit and servicing loans pursuant to § 225.28(b)(1) of Regulation Y; and activities related to extending credit pursuant to § 225.25(b)(2) of Regulation Y.

Board of Governors of the Federal Reserve System, March 29, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–8106 Filed 4–1–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

TIME AND DATE: 10:00 a.m., Wednesday, April 7, 1999.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, N.W., Washington, D.C. 20551.

STATUS: Closed

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any matters carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Lynn S. Fox, Assistant to the Board; 202–452–3204.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at http://www.federalreserve.gov for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: March 31, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–8184 Filed 3–31–99; 10:42 am]

BILLING CODE 6210–01–P

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

Sunshine Act Meeting

TIME AND DATE: 10:00 a.m. (EDT), April 12, 1999.

PLACE: 4th Floor, Conference Room 4506, 1250 H Street, N.W., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Approval of the minutes of the March 8, 1999, Board member meeting.

2. Thrift Savings Plan activity report by the Executive Director.

3. Review of Arthur Andersen annual financial audit:

CONTACT PERSON FOR MORE INFORMATION: Thomas J. Trabucco, Director, Office of External Affairs, (202) 942–1640.

John J. O'Meara,

Secretary to the Board, Federal Retirement Thrift Investment Board.

[FR Doc. 99–8176 Filed 3–31–99; 10:42 am]

BILLING CODE 6760–01–M

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register**.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

TRANSACTION GRANTED EARLY TERMINATION

ET date	Transaction No.	ET req status	Party name
02-MAR-99	19991466	G	Vodafone Group Public Limited Company
		G	Air Touch Communications, Inc.
		G	Air Touch Communications, Inc.
	19991490	G	Curtis L. Carlson
		G	Westdeutsche Landesbank Girozentrale
		G	Thomas Cook Holdings, Limited
	19991509	G	John J. Rigas
		G	Gannett Co., Inc.
		G	Multimedia Telecommunications, Inc.
	19991524	G	Asbury Automotive Group, L.L.C.
		G	George R. Francis
		G	Damerow Ford Co.
	19991544	G	Republic Industries, Inc.
		G	Eugene Calabrese
		G	DisposAll, Inc. of Orlando
		G	All Rite Recycling, Inc.
		G	DisposAll, Inc. of Polk
		G	DisposAll, Inc. & Tampa Service, Inc.
		G	Metro Recycling, Inc.
	19991587	G	K-V Pharmaceutical Company
		G	American Home Products Corporation
		G	American Home Products Corporation
	19991602	G	Bayer AG
		G	DSM N.V.
		G	DSM Engineering Plastic Products, Inc.
	19991640	G	Joyce Johnson-Miller
		G	Kanematsu Corporation
		G	Diemakers, Inc.
03-MAR-99	19990962	G	BBA Group, PLC
		G	AMR Corporation
		G	AMR Combs, Inc.
	19991432	G	Tele-Communications, Inc. or (AT&T Corp.)
		G	SBC Communications, Inc.
		G	Pacific Bell
	19991584	G	Supreme International Corporation
		G	The PEI Trust
		G	Perry Ellis International, Inc.
	19991639	G	Nokia Corporation
		G	Diamond Lane Communications Corporation
		G	Diamond Lane Communications Corporation
	19991645	G	Audio Book Club, Inc.
		G	Reinhard Mohn
		G	Doubleday Direct, Inc.
	19991668	G	Ritchie Bros. Auctioneers Incorporated
		G	Forke, Inc.
		G	Forke, Inc.
05-MAR-99	19983918	G	Medtronic, Inc.
		G	Avecor Cardiovascular Inc.
		G	Avecor Cardiovascular Inc.
	19991171	G	Bowthorpe plc
		G	Wireless Telecom Group, Inc.
		G	Wireless Telecom Group, Inc.
	19991623	G	MDC Communications Corporation
		G	Colle & McVoy, Inc. Employee Stock Ownership Tru
		G	Colle & McVoy, Inc.
	19991641	G	Summer M. Redstone
		G	Capitol Entertainment of Prince William County, Inc.
		G	Capitol Entertainment of Northern Virginia, Ltd.
		G	Capitol Entertainment Video, Ltd.
	19991808	G	Grupo Industrial Bimbo, S.A., de C.V.
		G	Four-S Employee Stock Ownership Trust
		G	Four-S Baking Company
06-MAR-99	19991443	G	American Oncology Resources, Inc.
		G	Physician Reliance Network, Inc.
		G	Physician Reliance Network, Inc.
	19991650	G	Barry L. MacLean
		G	JPE, Inc.
		G	Industrial & Automotive Fasteners, Inc.
09-MAR-99	19991378	G	Vivendi S.A.
		G	Stanley M. Herzog
		G	Herzog Transit Services, Inc.

TRANSACTION GRANTED EARLY TERMINATION—Continued

ET date	Transaction No.	ET req status	Party name
	19991400	G	The Southern Company
		G	Consolidated Edison, Inc.
		G	Consolidated Edison of New York, Inc.
	19991572	G	Wells Fargo & Company
		G	Metapath Software International, Inc.
		G	Metapath Software International, Inc.
	19991576	G	O. Bruton Smith
		G	Launa White Crocker
		G	Sam White Corp., Sam White's Motor City, Inc.
		G	SWI–RE Holdings, Inc.
	19991598	G	Monitronics International, Inc.
		G	BankOne Corporation
		G	Dealers Monitoring Acquisition, L.P.
	19991608	G	The Allstate.Corporation
		G	Dennis Berman
		G	Denitech Corporation
		G	Texas Business Systems
		G	Denitech Fort Worth, Inc.
	19991620	G	Ford Motor Company
		G	Charles Gilchrist
		G	Southwest Ford, Inc.
	19991649	G	Georgia-Pacific Corporation
		G	Carl M. Tucker, III
		G	C.M. Tucker Lumber Corporation of North Carolina
	19991652	G	The Dow Chemical Company
		G	Illinois Foundation Seeds, Inc.
		G	Illinois Foundation Seeds, Inc.
	19991656	G	Electra Investment Trust PLC
		G	Inchcape PLC
		G	Inchcape Shipping Services, Inc.
	19991657	G	Highfields Capital II LP
		G	Reynolds Metals Company
		G	Reynolds Metals Company
	19991658	G	Highfields Capital I LP
		G	Reynolds Metals Company
	19991658	G	Reynolds Metals Company
	19991659	G	Highfields Capital Ltd.
		G	Reynolds Metals Company
		G	Reynolds Metals Company
	19991671	G	Vornado Operating Company
		G	Steven Roth
		G	AmeriCold Logistics, LLC
		G	AmeriCold Logistics, II, LLC
		G	URS Logistics, Inc.
		G	AmeriCold Services Corporation
	19991675	G	Meyer Luskin
		G	Darling International Inc.
		G	International Processing Corporation
		G	International Transportation Services, Inc.
	19991676	G	RailWorks Corporation
		G	Frank & Victoria Marrazzo
		G	F&V Metro Contracting Corp.
	19991677	G	John P. Miller
		G	David P. Bornhoeft
		G	Columbia Graphics Corporation, an Illinois Corporation
	19991678	G	Philip F. Anschutz
		G	Roy M. Speer
		G	RMS Limited Partnership
		G	Speer Productions Limited Partnership
		G	Speer Virtual Media Limited Partnership
		G	Speer Communication Holding Limited Partnership
		G	Speer World Wide Digital Limited Partnership
		G	Professional Video Services Corporation
		G	Enhanced Services of Nevada, Inc.
		G	Innovative Holding Corporation ("IHC")
	19991685	G	Madison Dearborn Capital Partners II, L.P.
		G	Allegiance Telecom, Inc.
		G	Allegiance Telecom, Inc.
	19991686	G	Royce J. Holland
		G	Allegiance Telecom, Inc.
		G	Allegiance Telecom, Inc.

TRANSACTION GRANTED EARLY TERMINATION—Continued

ET date	Transaction No.	ET req status	Party name
	19991687	G	Frontenac VII Limited Partnership
		G	Allegiance Telecom, Inc.
		G	Allegiance Telecom, Inc.
	19991688	G	Battery Ventures IV, L.P.
		G	Allegiance Telecom, Inc.
		G	Allegiance Telecom, Inc.
	19991694	G	JR Shaw
		G	Terayon Communication Systems, Inc.
		G	Terayon Communication Systems, Inc.
	19991695	G	Unitrin, Inc.
		G	Fund America Enterprises Holdings, Inc.
		G	Valley Group, Inc.
	19991696	G	Amazon.com, Inc.
		G	drugstore.com Inc.
		G	drugstore.com Inc.
	19991697	G	Morgan Stanley Capital Partners III, L.P.
		G	Allegiance Telecom, Inc.
		G	Allegiance Telecom, Inc.
		G	Allegiance Telecom, Inc.
		G	Allegiance Telecom, Inc.
	19991703	G	Pfizer, Inc.
		G	Cardinal Health, Inc.
		G	R.P. Scherer Corporation
	19991705	G	Richard J. Kostyra
		G	Snyder Communications, Inc.
		G	Snyder Communications, Inc.
	19991709	G	Anthony L. Soave
		G	Horst Schwab
		G	Aristocrat Motor Company, Inc.
	19991710	G	John C. Snyder
		G	Santa Fe Energy Resources, Inc.
		G	Santa Fe Energy Resources, Inc.
	19991714	G	Kleiner Perkins Caufield & Byer VIII, L.P.
		G	drugstore.com Inc.
		G	drugstore.com Inc.
	19991718	G	The Williams Companies, Inc.
		G	Atlantic Richfield Company
		G	Union Texas Petrochemicals Corporation
10–MAR–99	19991166	G	AT&T Corp./Tele-Communications, Inc.
		G	International Business Machines Corporation
		G	International Business Machines Corporation
	19991624	G	Waste Connections, Inc.
		G	Wesley J. Hickey
		G	Management Environmental National, Inc., RH Financial Corp.
	19991689	G	The SKM Equity Fund II, L.P.
		G	Gary J. Buehler
		G	Certified Fabricators, Inc.
		G	Certified Design, Inc.
	19991727	G	Wind Point Partners III, L.P.
		G	The Ross-Willoughby Company
		G	The Ross-Willoughby Company
	19991730	G	Health Management Associates, Inc.
		G	Methodist Healthcare
		G	Methodist Healthcare—Jackson Hospitals
	19991733	G	Aurora Equity Partners II L.P.
		G	Madison A. Self
		G	Tioga International, Inc.
	19991736	G	ONEOK, Inc.
		G	Texaco Inc.
		G	Texaco Exploration and Producing Inc.
		G	Getty Gas Gathering, Inc.
	19991741	G	CSM nv
		G	Frank A. Serio & Sons, Inc.
		G	Frank A. Serio & Sons, Inc.
	19991742	G	Bacou, S.A.
		G	Frank A. Stucke
		G	Perfect Fit Glove Co., Inc.; SCHAS Circular Industries Inc.
	19991744	G	Entergy Corporation
		G	BEC Energy
		G	Boston Edison Company
	19991745	G	Ingersoll-Rand Company
		G	Harrow Industries, Inc.
		G	Harrow Industries, Inc.

TRANSACTION GRANTED EARLY TERMINATION—Continued

ET date	Transaction No.	ET req status	Party name
	19991748	G	ABRY Broadcast Partners, III, L.P.
	19991748	G	Hicks, Muse, Tate & Furst Equity Fund III, L.P.
		G	Capstar Broadcasting Corporation
	19991749	G	kSecuritas AB
		G	Pinkerton's Inc.
		G	Pinkerton's Inc., a Delaware corporation
	19991753	G	General Electric Company
		G	Metamor Worldwide, Inc.
		G	Metamor Worldwide, Inc.
	19991754	G	Metamor Worldwide, Inc.
		G	General Electric Company
		G	General Electric Capital Consulting, Inc.
	19991755	G	Madison Dearborn Capital Partners II, L.P.
		G	Family Christian Stores, Inc.
		G	Family Christian Stores, Inc.
	19991756	G	AT&T Corp.
		G	SmarTalk TeleServices, Inc.
		G	SmarTalk TeleServices, Inc.
	19991757	G	Core Laboratories, N.V.
		G	Tech-Sym Corporation
		G	GeoScience Corporation
	19991758	G	Tech-Sym Corporation
		G	Core Laboratories, N.V.
		G	Core Laboratories, N.V.
	19991760	G	Golder, Thomas, Cressey, Rauner Fund V, L.P.
		G	Frank J. Hammant, Jr., and Mary Youngblood Hamm
		G	Mayer-Hammant Equipment, L.L.C.
	19991772	G	Spartan Stores, Inc.
		G	Donald J. Koop
		G	Family Fare, Inc., Family Fare Management Service
		G	Family Fare Trucking, Inc.
11–MAR–99	19991542	G	McLeodUSA Incorporated
		G	Media/Communications Partners III Limited Partners
		G	Ovation Communications, Inc.
	19991543	G	Media/Communications Partners III Limited Partners
		G	McLeodUSA Incorporated
		G	McLeodUSA Incorporated
	19991560	G	Paul G. Allen
		G	Providence Equity Partners, L.P.
		G	American Cable Entertainment Co., LLC
12–MAR–99	19991614	G	Advance Paradigm, Inc.
		G	Foundation Health Systems, Inc.
		G	Foundation Health Systems, Inc.

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay or Parcellena P. Fielding, Contact Representatives, Federal Trade Commission, Premerger Notification Office, Bureau of Competition, Room 303, Washington, D.C. 20580, (202) 326–3100.

By Direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 99–8152 Filed 4–1–99; 8:45 am]

BILLING CODE 6750–01–M

GENERAL SERVICES ADMINISTRATION

Federal Supply Service; Move Management Services (MMS) and the General Services Administration's (GSA's) Centralized Household Goods Traffic Management Program (CHAMP)

AGENCY: Federal Supply Service, GSA.

ACTION: Notice of proposed program changes for comment.

SUMMARY: This notice invites comments on GSA's "draft" Statement of Work (SOW) for use in transitioning MMS, by October 31, 1999, from CHAMP to the Governmentwide Employee Relocation Services Schedule as a separate line item. The transition will occur during a continuous open season instituted on March 1, 1999 for the schedule. This notice also addresses comments received on a more general July 17, 1998 **Federal Register** notice GSA published on this subject (63 FR 38653). Under the transition plan GSA will continue to be able to meet customer household goods service needs while shifting MMS to a Federal Acquisition Regulation (FAR) contract procurement method.

DATES: Please submit your comments by May 3, 1999.

ADDRESSES: Mail comments to the Transportation Management Division, (FBF), General Services Administration, Washington, DC 20406, Attn: **Federal Register** Notice. GSA will consider your comments prior to implementing these proposals.

FOR FURTHER INFORMATION CONTACT: Larry Tucker, Senior Program Analyst, Transportation Management Division, FSS/GSA, 703–305–5745.

SUPPLEMENTARY INFORMATION: GSA published a notice for comment in the **Federal Register** on July 17, 1998 (63 FR 38653) announcing its plan to transition MMS from CHAMP to the Governmentwide Employee Relocation Services Schedule. GSA fully expected to transition MMS to the schedule as a separate line item at the beginning of a continuous open season that began on March 1, 1999. We determined, however, that it would better serve the interests of all affected parties to first allow another comment period on transition details before adding MMS to the schedule. The draft SOW provides these details and was posted on February 19, 1999, to GSA's website for you to review and comment on in response to this notice. You may access the SOW at the following GSA website address: http://r6.gsa.gov/fsstt/.

GSA received comments on the July 17th **Federal Register** notice from a carrier association, two individual carriers, and two representatives of third party MMS providers. We have carefully considered those comments in further developing our MMS transition plan and drafting the SOW. The comments we received fall within several general groupings and are addressed as follows.

Underlying Basis for Transitioning MMS to the Schedule

One respondent questioned the legal basis for GSA's decision to transition MMS from CHAMP to the Governmentwide Employee Relocation Services Schedule. The basis for our decision derives from the statute that authorizes transportation service providers to transport household goods for the U.S. Government at a rate reduced from the applicable commercial rate (49 U.S.C. 13712). This statute provides that only a carrier or freight forwarder may provide such transportation outside a FAR procurement—a "broker" does not meet the definition of carrier or freight forwarder for purposes of this statute (see 49 U.S.C. 13702). Additionally, not all move management services inherently fall within the scope of providing transportation services (as addressed in greater detail below), and it is not appropriate for these services to remain indefinitely in CHAMP. Abrupt removal of MMS from CHAMP, however, would have negatively impacted the operations of some Federal activities since they have come to rely on these services. We therefore developed the approach announced in the **Federal Register** to allow for the orderly transitioning of MMS from CHAMP to the Governmentwide Employee Relocation Services Schedule.

As a first step in initiating the transition, GSA asked current Relocation Services Schedule vendors to submit offers to provide MMS as part of their bundled relocation services. The next step will be to afford all qualified MMS providers opportunity to compete under a uniform set of criteria for provision of MMS as an unbundled (separate) service under the continuous open season for the schedule. The open season for real estate associated relocation services offered under the schedule began on March 1, 1999, and MMS will be added as a separate line item as soon as we receive and reconcile comments on this **Federal Register** notice.

Many agencies wish to purchase MMS independently of other bundled relocation services and want a wide choice of service providers.

Service Fees

Several respondents addressed fee issues, among them pricing of services under the schedule including whether the factoring of line-haul charges into the pricing will be permitted, as well as payment of commissions to a carrier and whether such payments constitute a "kickback".

MMS will be offered under the schedule on a flat fee basis and will not include line-haul transportation because of the associated difficulties of determining price reasonableness. The schedule will not address commissions, a common commercial practice between a carrier and a broker.

Concerning whether commissions constitute a kickback, the General Accounting Office's analysis in its PHH Homequity Corporation decision (B–240145.3; B–241988, February 1, 1991) placed a great deal of emphasis on the value of the services a broker performs compared to the size of the broker's commission. While the utility of such an analysis may be arguable, it is not the definitive analysis on what constitutes a kickback under the Anti-Kickback Act of 1986.

Commissions, per se, do not constitute a kickback, and they occur in many different instances of GSA procurements. For example, GSA's contractor-issued charge card program involves a commission paid by a merchant to the bank that administers the charge card, and GSA's Travel Management Center program involves a commission paid by an airline to the travel agent. In neither instance does the commission paid constitute a kickback because the selection of the subcontractor paying the commission is based on criteria unrelated in any way to the size of the commission payment. Once it is established that a commission is not a kickback, there is no need to determine whether the subcontractor is satisfied by the commercial transaction, or to perform any complicated analysis of the value of the work performed by the contractor vis-a-vis the amount of the commission.

GSA Nonmandatory Supply Source for Transportation Services

One respondent expressed particular concern that GSA-issued regulations do not correctly reflect GSA's status as a nonmandatory source for transportation services. GSA's Office of Governmentwide Policy currently is processing a regulatory change for issuance in the near future to reflect our status as a nonmandatory source. Because GSA no longer is a mandatory source, in designing and developing transportation programs for the Federal community, we must weigh customer requirements, cost reasonableness, and quality service. The services we offer must not only meet customer needs but also provide value and exceed quality expectations. Consequently, although we support the use of commercial best practices to the maximum extent possible, it is necessary for us to require the use of CHAMP participating carriers under the schedule. The schedule nevertheless will permit an MMS provider to use a commercial rate arrangement it has with a carrier if the arrangement results in a cost advantage to the shipping agency and provides the agency and the relocating employee CHAMP-equivalent benefits and protections, including cargo liability insurance/performance bond protections.

Designation of Certain Services as Either an MMS or a General Transportation Activity

Three carrier respondents took issue with certain services historically provided by carriers as part of their routine transportation activities also qualifying as move management services when performed by an MMS provider. The cited activities associated with arranging and executing a household goods move are administrative in nature and may be performed by either. Some GSA customers are satisfied with carriers providing the services. Others, however, wish to disengage themselves from managing the services and delegate the responsibility to a third party. Services described in the draft SOW that may be provided by either are: carrier selection, shipment booking; storage in transit (SIT) arranging/monitoring; management information reports;

customer service; employee pre-move counseling; preparation of shipment documentation; on-site quality control service (at additional cost if provided by carrier); and claims preparation, filing, and settlement assistance. However, service performance audit and carrier evaluation would create a conflict of interest situation if performed by a carrier and must be performed by an MMS provider.

Meetings Re: MMS

A third party MMS provider respondent suggested that GSA officials have met privately with carrier industry groups and subsequently made decisions that advantaged carriers and disadvantaged third party MMS providers. The respondent recommended that future meetings be all inclusive. The respondent also stated that GSA has tended to announce significant program changes without consulting with all groups involved and recommended GSA involve affected parties earlier in the change process.

GSA's Transportation Management Division has met with third party providers as well as with representatives from the carrier industry. While we consider all input we do not permit meetings with individual groups to drive our program decisions. In the future, however, we will include all affected parties in industry meetings held for the purpose of discussing MMS program-related issues. We also will continue to publish proposed program changes in the **Federal Register** for comment by interested parties.

Appropriateness of Transition Plan

Without having the benefit of transition details contained in the draft SOW incorporated by reference in this notice, all respondents expressed in varying degrees reticence to the transition plan. GSA believes the phased transition plan we have developed is a fair one. Under this plan the current Domestic Household Goods Tender of Service will remain in effect until October 31, 1999, and all MMS providers will have opportunity to compete under a uniform set of criteria for providing MMS as a separate service under the relocation schedule.

GSA appreciates the interest demonstrated in our July 17th **Federal Register** notice through the comments we received, and we look forward to continued partnership with our customers and service providers as we endeavor to mold our household goods program into a model for the future.

Dated: March 25, 1999.

Barbara Vogt,

Deputy Assistant Commissioner, Office of Transportation and Property Management.

[FR Doc. 99–8156 Filed 4–1–99; 8:45 am]

BILLING CODE 6820–24–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99N–0438]

Food Code Prohibition Against Bare Hand Contact With Ready-to-Eat Foods; Preparation of a White Paper for Review by the National Advisory Committee on Microbiological Criteria for Foods

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; request for data and information.

SUMMARY: The Food and Drug Administration (FDA) is announcing a request for scientific data and information to aid in the development of a white paper, or summary of current information, on the contamination of ready-to-eat foods associated with food preparation employees. FDA will present the white paper to the National Advisory Committee on Microbiological Criteria for Foods (NACMCF) for its review and recommendations. FDA is seeking NACMCF input on this food contamination issue at the request of the Conference for Food Protection (CFP).

DATES: Submit data and information by June 1, 1999.

ADDRESSES: Submit written data and information to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: John J. Guzewich, Center for Food Safety and Applied Nutrition (HFS–605), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–260–3847.

SUPPLEMENTARY INFORMATION:

I. Background

FDA provides assistance to local, State, and Federal governmental bodies to ensure that the food that is provided to consumers by retail food establishments is not a vehicle of communicable diseases. One mechanism for providing that assistance is the publication entitled *Food Code 1999* (1999 Food Code), which provides guidance on food safety, sanitation, and fair dealing that can be uniformly adopted by jurisdictions for regulating the retail segment of the food industry. The 1999 Food Code, which is published by FDA, is the cumulative result of the efforts and recommendations of many contributing individuals, agencies, and organizations, and it is developed under the auspices of the CFP.

The CFP, which is an organization of government, industry, consumer, and academic members, meets every 2 years to discuss retail food safety issues and to make recommendations on changes to be made to the 1999 Food Code. Delegates of State regulatory agencies vote on these recommendations that, if passed, are shared with organizations interested in amending or adopting the code. Recommendations with which FDA concurs are incorporated in the following year's edition of the Food Code.

In the 1998 CFP meeting, a number of issues were submitted for the CFP's consideration regarding section 3–301.11 of the 1999 Food Code, entitled "Preventing Contamination from Hands." Section 3–301.11 states, in part, that "food employees may not contact exposed, ready-to-eat food with their bare hands." The 1999 Food Code contains: A prohibition against ill or infected employees preparing food, a hand-washing regimen, and a blanket prohibition against bare hand contact with ready-to-eat foods in order to ensure that the person-to-food fecal-oral transmission cycle is broken.

Section 3–301.11 was added to the 1999 Food Code some years ago in response to outbreaks of food-borne illness caused by food that had been contaminated with pathogens transmitted by food preparation workers. Indeed, it is estimated that as many as one-third of the cases of food-borne illness can be attributed to contamination of food from food preparation workers. FDA believes that the significant number of illnesses transmitted by worker contamination of food demand vigorous and rigorous intervention measures.

A number of the 1998 CFP issues opposed the current requirements in section 3–301.11 as too restrictive. In response, FDA proposed that the CFP defer consideration of many of the issues related to bare hand contact with ready-to-eat food and ask the NACMCF to review the issues and provide recommendations regarding unresolved scientific questions in time for FDA to report them to the 2000 CFP meeting. The delegates at the 1998 CFP meeting accepted the FDA recommendation.

II. Request for Data and Information

FDA is preparing for presentation of this issue to the NACMCF by developing a white paper, i.e., a summary of current information from scientific literature and other sources, that identifies and evaluates both the risks related to microbiological contamination of ready-to-eat food by food preparation workers and the effectiveness of different interventions to prevent or minimize that risk (e.g., hand washing, hand sanitizers, disposable gloves, no bare hand contact). In order to ensure that this white paper contains all available data relating to the risks and effectiveness of interventions to prevent or minimize contamination of ready-to-eat food, FDA is requesting scientific data, studies, or other information related to the following questions and issues:

1. FDA seeks scientific data or information on the risk of transmitting bacterial, viral, or parasitic pathogens from food preparation workers, via ready-to-eat food, to consumers, including scientific data and information relating to:

a. The amount of hand contact that can result in the transfer of pathogens;

b. Whether transient contact, such as might occur when placing a garnish on a plate or glass, can transfer pathogens;

c. Whether pathogens can be transferred to raw produce while washing it, if bare hands are used; and

d. Whether bare hands can transmit pathogens to dry food like toast or rolls.

2. FDA seeks scientific data or information on the effectiveness of alternative interventions, either alone or in combination, including scientific data and information relating to:

a. Hand washing with soap:

i. What constitutes a properly done hand wash;

• How long should the hand-washing process last;

• What is the optimum temperature of the water;

• Whether the use of a nailbrush increases removal of pathogens;

• Whether it is likely that a nailbrush would become a fomite, that is, become contaminated, and transmit bloodborne or enteric pathogens to subsequent users;

• How long before subdermal pathogens recontaminate the skin's surface; and

• Whether hand-drying methods have an impact on microbial reduction.

ii. Whether a double hand wash is significantly better than a properly done single wash.

b. Hand-washing machines; whether the use of a hand-washing machine can be the "equivalent" to a properly done hand wash, and if so, under what conditions.

c. Use of "hand sanitizers:"

i. Whether human skin can be "sanitized;"

ii. Whether chemical hand sanitizers are effective against all pathogens of concern;

iii. Whether subdermal pathogens can recontaminate the skin and, if so, how long it would take; and

iv. Whether the use of hand sanitizers can increase the number of pathogens on hands.

d. Use of disposable gloves:

i. Whether pathogens can increase in numbers on gloved hands;

ii. Whether gloves are likely to become fomites themselves even when properly used, e.g., as they are being put on; and

iii. Whether glove use procedures used in other venues are applicable in retail food establishments.

e. Whether there are other interventions that should be considered to prevent or minimize microbial contamination of ready-to-eat food by food preparation employees.

Finally, FDA is also interested in views on whether additional studies, either microbiological or epidemiological, are needed to fill existing knowledge gaps; and, if so, what kind of studies should be done.

Interested persons may, on or before June 1, 1999, submit to the Dockets Management Branch (address above) the required data and information. Two copies of the data and information should be submitted, except that individuals may submit one copy. Data and information are to be identified with the docket number found in brackets in the heading of this document. Received data and information may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: March 25, 1999.

William K. Hubbard,

Acting Deputy Commissioner for Policy.

[FR Doc. 99–8095 Filed 4–1–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Grants and Cooperative Agreements Availability

AGENCY: National Cancer Institute, National Institutes of Health, PHS, DHHS.

ACTION: Notice for CRADA Opportunities.

SUMMARY: New HIV treatments and diagnostic methods: Opportunities for Cooperative Research and Development Agreements (CRADAs) for the joint evaluation and development of inhibitors for multidrug resistant HIV and of methods to measure the biological and biochemical fitness of HIV protease mutants, and to assay new protease inhibitors using these methods.

Pursuant to the Federal Technology Transfer Act of 1986 (FTTA, 15 U.S.C. § 3710; and Executive Order 12591 of April 10, 1987, as amended by the National Technology Transfer and Advancement Act of 1995), the National Cancer Institute (NCI) of the National Institutes of Health (NIH) of the Public Health Service (PHS) of the Department of Health and Human Services (DHHS) seeks Cooperative Research and Development Agreements (CRADAs) with pharmaceutical or biotechnology companies to evaluate and develop new treatments and diagnostic methods for the multidrug resistant HIV-infected population. Any CRADA for the biomedical use of this technology will be considered. The CRADA would have an expected duration of one (1) to five (5) years. The goals of the CRADA include the rapid publication of research results and timely commercialization of products, diagnostics and treatments that result from the research. The CRADA Collaborator will have an option to elect a non-exclusive or exclusive commercialization license to subject inventions arising under the CRADA and which are subject of the CRADA Research Plan.

ADDRESSES: Proposals and questions about this CRADA opportunity may be addressed to Dr. Bjarne Gabrielsen, Technology Development & Commercialization Branch, National Cancer Institute—Frederick Cancer Research & Development Center, Fairview Center, Room 502, Frederick, MD 21701 (phone: 301–846–5465, fax: 301–846–6820).

Scientific inquiries—Dr. John Erickson, Director, Structural Biochemistry Program, National Cancer Institute—Frederick Cancer Research & Development Center, P.O. Box B, Building 560, Room 12–68, Frederick MD, 21702–1201 (phone: 301–846–1979; FAX: 301–846–6066).

EFFECTIVE DATE: Inquiries regarding CRADA proposals and scientific matters may be forwarded at any time. Confidential CRADA proposals, preferably two pages or less, must be submitted to the NCI on or before May

3, 1999. Guidelines for preparing full CRADA proposals will be communicated shortly thereafter to all respondents who have been selected.

SUPPLEMENTARY INFORMATION:

Technology Available

DHHS scientists in the Structural Biochemistry Program, NCI-Frederick Cancer Research and Development Center (SBP) have developed certain structural and biochemically-based technologies that are believed to be of value in the diagnosis and treatment of drug resistant HIV. Using these technologies, SBP scientists have developed strategies for designing inhibitors to multidrug resistant HIV, and for predicting resistance-potentials of HIV protease inhibitors. Recent evidence indicates that multidrug resistant HIV strains are appearing in the drug-naïve population at an increasing rate. Thus, the SBP research is believed to be at a stage that is ripe for the development of new treatments and diagnostic methods for the multidrug resistant HIV-infected population. SBP is interested in a multi-disciplinary but highly focussed approach to the biochemical and virologic evaluation of protease inhibitors against clinically-derived drug resistant mutant viruses, as well as in the structure-based design and chemical synthesis of new protease inhibitors for testing.

The successful Collaborator should possess experience in the following areas at a minimum: Experience with pre-clinical and clinical drug development for antiretroviral compounds; ability to generate site-directed mutant viruses for measurement of phenotypic resistance with specific expertise in HIV; application of automation and robotics technologies to cell culture-based antiviral assays and to enzyme-based biochemical assays with specific expertise in HIV; application of automation and robotics technologies to cell culture-based assays designed to measure phenotypic resistance; application of database and bioinformatics technologies for the manipulation, storage and analysis of high throughput assay data, including the development of software as required; and, the use of high throughput assay methods to evaluate protease inhibitors against multidrug resistant HIV mutants.

DHHS now seeks collaborative arrangements for the joint evaluation and development of methods to biochemical and virologic evaluate protease inhibitors against clinically-derived drug resistant mutant viruses, as well as in the structure-based design and chemical synthesis of new protease inhibitors for further analysis. For collaborations with the commercial sector, a Cooperative Research and Development Agreement (CRADA) will be established to provide equitable distribution of intellectual property rights developed under the CRADA. CRADA aims will include rapid publication of research results as well as full and timely exploitation of any commercial opportunities.

The role of the National Cancer Institute in this CRADA will include, but not be limited to:

1. Providing intellectual, scientific, and technical expertise and experience to the research project.
2. Providing the Collaborator with HIV drug resistant gene sequences and protease inhibitors for evaluation.
3. Planning research studies and interpreting research results.
4. Publishing research results.

The role of the CRADA Collaborator may include, but not be limited to:

1. Providing significant intellectual, scientific, and technical expertise or experience to the research project.
2. Planning research studies and interpreting research results.
3. Providing technical expertise and/or financial support (e.g. facilities, personnel and expertise) for CRADA-related Government activities.
4. Accomplishing objectives according to an appropriate timetable to be outlined in the CRADA Collaborator's proposal.
5. The willingness to commit best effort and demonstrated resources to the research, development and commercialization of this technology.
6. The demonstration of expertise in the commercial development, production, marketing and sales of products related to this area of technology.
7. The willingness to cooperate with the National Cancer Institute in the timely publication of research results.
8. The agreement to be bound by the appropriate DHHS regulations relating to human subjects, and all PHS policies relating to the use and care of laboratory animals.
9. The willingness to accept the legal provisions and language of the CRADA with only minor modifications, if any. These provisions govern patent rights to CRADA inventions.

Dated: March 25, 1999.

Kathleen Sybert,

Director, Technology Development & Commercialization Branch, National Cancer Institute, National Institutes of Health.

[FR Doc. 99–8097 Filed 4–1–99; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Notice of Meeting of the Working Group To Advise the ACD on Guidelines and Oversight Process for Research Involving Human Pluripotent Stem Cells

Notice is hereby given that the Working Group of the Advisory Committee to the Director (ACD), NIH to advise the ACD on guidelines and oversight for research involving human pluripotent stem cells, will meet in public session at the Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, Maryland 20814, on April 8, 1999. The meeting will begin at approximately 9:00 a.m. and end at approximately 5:30 p.m.

The goal of the Working Group is to provide advice to the ACD about the scientific, ethical, legal, and social issues relevant to guidelines for the conduct of research utilizing human pluripotent stem cells (cells that can form most of the cells and tissues of the body) and to consider oversight options for this research.

A limited amount of meeting time will be allotted for public testimony. Individuals who wish to give five minute public testimony may sign up at the meeting site the morning of the meeting on a first come, first served basis. Written testimony may be submitted to: the Office of Science Policy, Bldg. 1, Room 218, NIH, 9000 Rockville Pike, Bethesda 20892.

Attendance may be limited to seat availability.

Ruth L. Kirschstein,

Deputy Director, NIH.

[FR Doc. 99–8096 Filed 4–1–99; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center For Scientific Review; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Center for Scientific Review Advisory Committee.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should

notify the Contact Person listed below in advance of the meeting.

Name of Committee: Center for Scientific Review Advisory Committee.
Date: May 10–11, 1999.
Time: 8:30 AM to 1 PM.
Agenda: Recent experiments and experiences with the peer review process.
Place: National Institutes of Health, Two Rockledge Center, Conference Room 9104, 6701 Rockledge Drive, Bethesda, MD 20892.
Contact Person: Samuel Joseloff, PHD, Executive Secretary, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6160, MSC 7892, Bethesda, MD 20892, (301) 435–1040.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: March 26, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, National Institutes of Health.

[FR Doc. 99–8102 Filed 4–1–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C. as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: April 5, 1999.
Time: 1 pm to 2 pm.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Gloria B. Levin, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3166, MSC 7848, Bethesda, MD 20892, (301) 435–0692.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date : April 7, 1999.
Time: 11:30 AM to 1 PM.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Cheryl M. Corsaro, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6712, MSC 7890, Bethesda, MD 20892, (301) 435–1045.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: April 8, 1999.
Time: 8:30 AM to 4:30 PM.
Agenda: To review and evaluate grant applications.
Place: Hyatt Regency Hotel, One Bethesda Metro Center, Bethesda, MD 20814.
Contact Person: Michael A. Lang, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5210, MSC 7850, Bethesda, MD 20892, (301) 435–1265.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: April 8, 1999.
Time: 11 AM to 1 PM.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Cheri Wiggs, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5194, MSC 7848, Bethesda, MD 20892, (301) 435–1261.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Review, Special Emphasis Panel.
Date: April 8, 1999.
Time: 1 PM to 2 PM.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Jo Pelham, BA, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4106, MSC 7814, Bethesda, MD 20892, (301) 435–1786.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: April 8, 1999.
Time: 1 PM to 3 PM.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Calbert Laing, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4210, MSC 7812, Bethesda, MD 20892, (301) 435–1221.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review, Special Emphasis Panel.
Date: April 8, 1999.
Time: 2 PM to 2:30 PM.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Alexander D. Politis, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4204, MSC 7812, Bethesda, MD 20892, (301) 435–1225, politisa@drg.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review, Special Emphasis Panel. ZRG–1 AARR–4 (03).
Date: April 8, 1999.
Time: 2 PM to 3:30 PM.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Mohindar Poonian, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5110, MSC 7852, Bethesda, MD 20892, 301–435–1168, poonianm@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: April 8, 1999.
Time: 2:35 PM to 4 PM.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Alexander D. Politis, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4204, MSC 7812, Bethesda, MD 20892, (301) 435–1225, politisa@drg.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: April 9, 1999.
Time: 9 AM to 5 PM.
Agenda: To review and evaluate grant applications.
Place: American Inn of Bethesda, 8130 Wisconsin Ave., Bethesda, MD 20814.
Contact Person: David J. Remondini, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6154, MSC 7890, Bethesda, MD 20892, (301) 435–1038.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: March 26, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, National Institutes of Health.

[FR Doc. 99–8103 Filed 4–1–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.
Date: April 1, 1999.
Time: 9 AM to 5 PM.
Agenda: To review and evaluate grant applications.
Place: One Washington Circle, 1 Washington Circle, NW, Washington, DC 20037.
Contact Person: Laurence R. Stanford, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6138, MSC 9606, Bethesda, MD 20892–9606, 301–443–6470.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.
Date: April 16, 1999.
Time: 8:30 AM to 5 PM.
Agenda: To review and evaluate grant applications.
Place: The Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.
Contact Person: Gerald E. Calderone, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Rm 6150, MSC 9608, Bethesda, MD 20892-9608, 301–443–1340.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Reserach Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: March 29, 1999.

Anna P. Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 99–8099 Filed 4–1–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, ZDK1 GRB–5 (M–1).
Date: May 6–7, 1999.
Time: May 6, 1999, 8:00 AM to Adjournment.
Agenda: To review and evaluate grant applications.
Place: DoubleTree Hotel, 1750 Rockville Pike, Rockville, MD 20852.
Contact Person: Francisco O. Calvo, PhD, Chief, Special Emphasis Panel, Review Branch, DEA, NIDDK, National Institutes of Health, Room 6AS37D, BLDG. 45, Bethesda, MD 20892, 301–594–8897.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: March 26, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, National Institutes of Health.

[FR Doc. 99–8100 Filed 4–1–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, ZDK1 GRB–2 (M2).
Date: April 23, 1999.
Time: 3 PM to Adjournment.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Natcher Bldg., 45 Center Drive, Room 6AS–37, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Shan S Wong, PhD. Scientific Review Administrator Review Branch, DEA, NIDDK, Natcher Building, Room 6 AS 25, National Institutes of Health Bethesda, MD 20892, (301) 594–7797.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: March 26, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, National Institutes of Health.

[FR Doc. 99–8101 Filed 4–1–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel Trauma and Burn.

Date: April 6, 1999.

Time: 2 pm to 5 pm.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Baltimore, on the Inner Harbor, 300 Light Street, Baltimore, MD 21202.

Contact Person: Bruce K. Wetzel, PhD., Scientific Review Administrator, Office of Scientific Review, NIGMS, Natcher Building, Room 1AS–19, Bethesda, MD 20892, (301) 594–3907.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: March 26, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, National Institutes of Health.

[FR Doc. 99–8104 Filed 4–1–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

National Toxicology Program: Call for Public Comment on 11 Substances, Mixtures and Exposure Circumstances To Be Reviewed in 1999 for Listing in or Delisting (Removing) From the Report on Carcinogens, Tenth Edition

Background

The National Toxicology Program (NTP) announces its intent to review additional substances, mixtures and exposure circumstances for possible listing in or delisting (removing) from the Report on Carcinogens, Tenth Edition which is scheduled for publication in 2001. This Report (previously known as the Annual Report on Carcinogens) is a Congressionally-directed listing of known human carcinogens and reasonable anticipated human carcinogens and its preparation is delegated to the National Toxicology Program by the Secretary, Department of Health and Human Services (DHHS). Section 301(b)(4) of the Public Health Service Act, as amended, provides that the Secretary, (DHHS), shall publish a report which contains a list of all substances (1) which either are known to be a human carcinogen or reasonable anticipated to be a human carcinogen, and (2) to which a significant number of persons residing in the United States (US) are exposed. The law also states that the reports should provide available information on the nature of exposures, the estimated number of persons exposed and the extent to which the implementation of Federal regulations decreases the risk to public health from exposure to these chemicals.

The scientific review of the substances, mixtures or exposure circumstances involves three separate reviews, which include two Federal review groups and one non-government peer review body (a subcommittee of the NTP Board of Scientific Counselors) which will meet in an open, public meeting and provide for public comments. All available data and public comments received that are relevant to the application of the criteria for inclusion or removal of candidate agents, substances, mixtures or exposure circumstances or for a change in the classification in the Report will be evaluated. The criteria to be used in the review process are described below:

1. Known to be Human Carcinogens:

There is sufficient evidence of carcinogenicity from studies in humans which indicates a causal relationship between exposure to the agent, substance or mixture and human cancer.

2. Reasonably Anticipated to be Human Carcinogens:

There is limited evidence of carcinogenicity from studies in humans which indicates that causal interpretation is credible but that alternative explanations such as chance, bias or confounding factors could not adequately be excluded; *or*

There is sufficient evidence of carcinogenicity from studies in experimental animals which indicates there is an increased incidence of malignant and/or a combination of malignant and benign tumors: (1) In multiple species, or at multiple tissue sites, or (2) by multiple routes of exposure, or (3) to an unusual degree with regard to incidence, site or type of tumor or age at onset; *or*

There is less than sufficient evidence of carcinogenicity in humans or laboratory animals, however; the agent, substance or mixture belongs to a well defined, structurally-related class of substances whose members are listed in a previous Report on Carcinogens as either a known to be human carcinogen, or reasonably anticipated to be human carcinogen or there is convincing relevant information that the agent acts through mechanisms indicating it would likely cause cancer in humans.

Conclusions regarding carcinogenicity in humans or experimental animals are based on scientific judgment, with consideration given to all relevant information. Relevant information includes, but is not limited to dose response, route of exposure, chemical structure, metabolism, pharmacokinetics, sensitive sub populations, genetic effects, or other data relating to mechanism of action or factors that may be unique to a given substance. For example, there may be substances for which there is evidence of carcinogenicity in laboratory animals but there are compelling data indicating that the agent acts through mechanisms which do not operate in humans and would therefore not reasonably be anticipated to cause cancer in humans.

Clarification of the Criteria

Some questions have arisen regarding information from studies involving humans and how this is applied to the listing of a substance determined to be a "known human carcinogen". The "known human carcinogen" category *requires* evidence from studies of humans. This can include traditional cancer epidemiology studies, data from clinical studies, and/or data derived from the study of tissues from humans exposed to the substance in question and useful for evaluating whether a relevant cancer mechanism is operating in people.

Public Comment Requested

Nominations for the Report on Carcinogens to be reviewed in 1999 are provided in the following table with their Chemical Abstracts Services (CAS) Registry numbers (where available) and pending review action. NTP invites public comment on any of these nominations. In addition, NTP requests relevant information on the carcinogenic properties of the substances from completed or ongoing experimental animal or human epidemiology studies, as well as current production data, use patterns, and human exposure information. Comments received by April 30, 1999 will allow the time for their consideration by the initial review groups and by the NTP in the preparation of the background document prepared for each substance. Comments or questions should be directed to Dr. C. W. Jameson at the address listed below.

Public Nominations for Delisting or Listing Encouraged

The NTP solicits and encourages the broadest participation form interested individuals or parties in nominating agents, substances, mixtures or exposure circumstances for listing in or delisting from the Reports on Carcinogens. Nominations from the public should contain a rationale for listing or delisting. Appropriate background information and relevant data (e.g. Journal articles, NTP Technical Reports, IARC listings, exposure surveys, release inventories, etc.) which support a nomination should be provided or referenced when possible.

A detailed description of the review procedures, including the steps in the formal review process, is available at http://*ntp-server.niehs.nih.gov* and can be obtained by contacting: Dr. C. W. Jameson, National Toxicology Program, Report on Carcinogens, MD EC–14, P.O. Box 12233, Research Triangle Park, NC 27709; phone: (919) 541–4096, fax: (919) 541–0947, email: jameson@niehs.nih.gov.

Dated: March 22, 1999.

Kenneth Olden,

Director, National Toxicology Program.

SUMMARY FOR AGENTS, SUBSTANCES, MIXTURES OR EXPOSURE CIRCUMSTANCES TO BE REVIEWED IN 1999, FOR CONSIDERATION OF LISTING IN OR DELISTING FROM THE TENTH REPORT ON CARCINOGENS

Nomination to be reviewed/CAS No.	Primary uses or exposures	To be reviewed for
Beryllium and Beryllium Compounds/7440–41–7	Fiber optics and cellular network communications systems, aerospace, defense and other industry applications.	Possible updating of current listing of beryllium and certain beryllium compounds to a known human carcinogen.
2,2–bis-(bromomethyl) – 1,3–propanediol/3296–90–9	Used as a fire retardant in unsaturated polyester resins, in molded products, and in rigid polyurethane foam.	Listing in the 10th Report.
2,3–Dibromo–1–Propanol/96–13–9	Used as a flame retardant, as an intermediate in the preparation of the flame retardant tris(2,3–dibromopropyl) phosphate, and as an intermediate in the manufacture of pesticides and pharmaceutical preparations.	Listing in the 10th Report.
Dyes Metabolized to Dimethoxybenzidine (Dimethoxybenzidine Dyes as a Class).	Dyes widely used for leather, paper, plastics, rubber, and textile industries.	Listing in the 10th Report.
Dyes Metabolized to Dimethoxybenzidine (Dimethoxybenzidine Dyes as a Class).	Dyes widely used for leather, paper, plastics, rubber, and textile industries.	Listing in the 10th Report.
IQ (2–Amino–3–methylimidazo[4,5–f]quinoline)/76180–96–6.	Found in cooked meat and fish	Listing in the 10th Report.
Styrene=7,8=oxide/96–09–3	Used mainly in the preparation of fragrances and in some epoxy resin formulations.	Listing in the 10th Report.
Toluene Diisocyanate/26471–62–5	Commercially produced as an approximately 80:20 mixture of the 2,4– and 2,6–isomers it is primarily for use in the manufacture of flexible polyurethane foams.	Delisting from the Report on Carcinogens.
UV Radiation/separate consideration of three segments of the wavelength spectrum; UVA (315–400 nm), UVB (280–315 nm), and UVC (100–280 nm).	Soloar and artifical sources of ultraviolet radiation	Listing in the 10th Report.
Vinyl Bromide/593–60–2	Used commercial since 1968, primarily in the manufacture of flame retardant synthetic fibers.	Listing in the 10th Report.
Vinyl Fluoride/75–02–5	Used commercially since the 1960's, in the production of polyvinylfuoride which is used for plastics.	Listing in the 10th Report.

[FR Doc. 99–8098 Filed 4–1–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a list of information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer on (301) 443–7978.

Drug and Alcohol Services Information System (DASIS) (OMB No. 0930–0106)—Revision—The DASIS consists of three related data systems: the National Master Facility Inventory (NMFI), the Uniform Facility Data Set (UFDS), and the Treatment Episode Data

Set (TEDS). The NMFI includes all known substance abuse treatment facilities, and those substance abuse prevention facilities identified by State agencies. The UFDS is an annual survey of all facilities listed in the NMFI. The TEDS is a compilation of client-level admission data submitted by States on clients treated in facilities that receive State funds. Together, they provide information on the location, scope and characteristics of all known drug and alcohol treatment and prevention facilities in the United States, and the characteristics of clients receiving services. This information is needed to assess the nature and extent of these resources, to identify gaps in services, and to provide a database for treatment referrals.

This request for OMB approval of DASIS activities includes the following changes in the ongoing DASIS activities:

TEDS: Voluntary reporting of discharge data will be added to the current reporting of admission data for those States that are able to provide linked admission and discharge records. The discharge data set will include the following client-level data: Provider ID; Client ID; Co-dependent/Collateral flag; Services at discharge; Date of last contact; Date of discharge; and Reason for discharge, transfer, or discontinuance of treatment.

NMFI: The forms used by States to update information on facilities in the NMFI have been automated and will be available on the Internet through the DASIS home page. The on-line version of the update forms will include the following new items: Detoxification services (to be added to the checklist of services, FDA (Methadone) ID, EIN, Director's phone number, and TEDS eligibility dates.

UFDS: Beginning in 1999, the UFDS survey will be conducted by telephone using CATI technology. The questionnaire will be significantly shortened; client counts for most demographic subgroups, services provided (except for programs for special populations), revenue data, and selected other items will not be asked. Sample augmentation activities, which involve searching directories and other sources for substance abuse treatment facilities not included in the NMFI, will not be conducted prior to the 1999 UFDS but will be conducted in preparation for the 2000 and 2001 UFDS.

Proposed changes will be distributed each year to State substance abuse agencies to obtain their comments and suggestions.

Estimated annual burden is as follows:

Type of respondent and activity	Number of respondents	Responses per respondent	Hours per response	Total burden hours
STATES				
TEDS Admission Data [1]	52	4	6	1,248
TEDS Discharge Data [1]	13	4	6	312
TEDS Discharge Crosswalks	5	1	10	50
NFR Update [2]				
Additions	56	17	.08	76
Revisions	56	24	.0	67
Solicitation of Comments on UFDS revisions	56	1	.5	28
State Subtotal	56			1,781
FACILITIES				
Network Update	1,000	1	.1	100
UFDS Survey	21,000	1	.3	6,300
Augmentation Screening	2,000	1	.12	240
Pretests of UFDS revisions [3]	100	1	.75	75
Facility Subtotal	23,000			6,715
TOTAL	23,056			8,496

[1] This includes time for reformatting data received from facilities and submitting it to SAMHSA.
[2] States forward to SAMHSA information they receive from facilities on changes in facility name, address, status, etc. This will now be done electronically.
[3] Two pretests of 50 facilities each are proposed.

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: Daniel Chenok, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, D.C. 20503.

Dated: March 29, 1999.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 99–8137 Filed 4–1–99; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4432–N–13]

Federal Property Suitable as Facilities to Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

EFFECTIVE DATE: April 2, 1999.

FOR FURTHER INFORMATION CONTACT: Mark Johnston, Department of Housing and Urban Development, Room 7256, 451 Seventh Street SW, Washington, DC 20410; telephone (202) 708–1226; TTY number for the hearing- and speech-impaired (202) 708–2565, (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless v. Veterals Adminstration*, No. 88–2503–OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been

determined suitable or unsuitable this week.

Dated: March 25, 1999.

Fred Karnas, Jr.,

Deputy Assistant Secretary for Economic Development.

[FR Doc. 99–7825 Filed 4–1–99; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Arid Lands National Wildlife Refuge Complex, Arid Lands Ecology Reserve

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of Intent to Prepare a Comprehensive Conservation Plan and Associated Environmental Assessment for the Arid Lands Ecology Reserve in the Arid Lands National Wildlife Refuge Complex.

SUMMARY: This notice advises the public that the U.S. Fish and Wildlife Service (Service) intends to gather information necessary to prepare a Comprehensive Conservation Plan (CCP) and an Environmental Assessment (EA) for the Arid Lands Ecology (ALE) Reserve. The Service manages the ALE Reserve pursuant to a Memorandum of Understanding, and an associated permit, with the Department of Energy (DOE). The Service is furnishing this notice in compliance with Service CCP policy and the National Environmental Policy Act (NEPA) and implementing regulations to accomplish the following: (1) advise other agencies and the public of our intentions; (2) obtain suggestions and information on the scope of issues to include in the plan and environmental document; and (3) provide notice that the Service is proposing an administrative boundary to incorporate lands it manages for DOE into the National Wildlife Refuge System.

DATES: Written comments should be received on or before May 3, 1999.

ADDRESSES: Address comments and requests for more information to: Dave Goeke, Refuge Manager, Arid Lands National Wildlife Refuge Complex, 3250 Port of Benton Blvd., Richland, WA 99352.

FOR MORE INFORMATION CONTACT: Dave Goeke, Refuge Manager, at (509) 371–1801.

SUPPLEMENTARY INFORMATION: The ALE Reserve, formally known as the Fitzner-Eberhardt Arid Lands Ecology Reserve, is being managed by the Service under agreement with DOE. The Service entered into a 25-year Memorandum of Understanding (MOU) on June 20, 1997, for the protection and management of the Hanford Site area known as the ALE Reserve. Pursuant to the MOU, the FWS is to prepare a comprehensive plan to govern management activities on the ALE Reserve. DOE is a cooperating agency on the CCP/EA. The CCP/EA will be prepared by the Service, which will consult with DOE during the process.

Concurrent with the planning process, the FWS will evaluate public comments on the EA and determine whether to establish a refuge boundary. The refuge boundary would permit the Service to administer inclusive areas as part of the NWRS once acquired or when overlaying management authority has been granted by permit from DOE. The refuge boundary would include the ALE Reserve, but final delineation of a boundary will depend on additional information and public involvement.

The Service started the comprehensive conservation planning process for the ALE Reserve study area in June, 1998. Several internal Service meetings were conducted to develop a timeline and strategy for involving the public in the planning process. Since then, the Service has met with the Benton County Commission and with the Washington Department of Fish and Wildlife to discuss issues and concerns regarding management of the ALE Reserve. Also, the Service conducted a public meeting and open house in Richland, Washington, on January 14, 1999. Approximately 60 people attended the open house and approximately 120 participated in the public meeting. Information from those meetings can be provided by Refuge staff at the address given above. A newsletter has been distributed and approximately 80 people have provided written comments in response.

The CCP guides management decisions and identifies refuge goals, long-range objectives, and strategies for achieving wildlife and habitat management purposes. Public input into the process is encouraged. The CCP will provide other agencies and the public with a clear understanding of the desired conditions for the ALE Reserve and how the Service will implement management strategies.

The CCP will support the requirements of the MOU and will address the following topics:

(A) Habitat management;

(B) Wildlife population management, including federally-listed endangered and threatened species, migratory birds, and other native wildlife species;

(C) Public use management, including hunting, wildlife observation and photography, and environmental education and interpretation

(D) Cultural resource identification and protection

The ALE Reserve is a 120 square-mile tract of land in the southwestern portion of the Hanford Site. The Hanford Site was acquired by the U.S. Government in 1943 as a national security area for the production of weapons-grade plutonium. The ALE Reserve was managed for many years for DOE by the Pacific Northwest National Laboratory. The ALE Reserve generally is inaccessible to the public, though limited access is occasionally granted. Although part of the Hanford Site, the ALE Reserve was established to preserve a vegetation type that once covered great expanses in the West. The site is also designated as the Rattlesnake Hills Research Natural Area.

Alternatives (and their effects) that address issues and management strategies associated with the CCP topics will be included in the environmental document. With the publication of this notice, the public is encouraged to send written comments on these and other issues, courses of action that the Service should consider, and potential impacts that could result from implementation of the CCP on the ALE Reserve. All comments received from individuals on environmental documents become part of the official public record. Requests for such comments will be handled in accordance with the Freedom of Information Act, the Council on Environmental Quality's NEPA regulations [40 CFR 1506.6(f)], and other Service and Departmental policy and procedures. When requested, the Service generally will provide the names and addresses of individuals who wrote comments. However, telephone numbers will not be provided in response to such requests to the extent permissible by law. Additionally, public comment letters are not required to identify the author or the author's address. Such comments may be submitted anonymously to the Service.

The environmental review of this project will be conducted in accordance with the requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*), NEPA Regulations (40 CFR 1500–1508), other appropriate Federal laws and regulations, the National Wildlife Refuge System Improvement Act of 1997, and Service policies and procedures for compliance with those regulations.

Dated: March 26, 1999.

Cynthia U. Barry,

Acting Regional Director, Region 1.

[FR Doc. 99–8135 Filed 4–1–99; 8:45 am]

BILLING CODE 4310–65–P

DEPARTMENT OF THE INTERIOR

United States Geological Survey

Advisory Committee on Water Information (ACWI)

AGENCY: United States Geological Survey, Interior.

ACTION: Notice of an open meeting of the Advisory Committee on Water Information (ACWI).

SUMMARY: Notice is hereby given of a meeting of the ACWI. This meeting of the ACWI is to discuss broad policy-related topics relating to national water initiatives, and to hear reports from ACWI subgroups. The proposed agenda will include a series of discussions concerning various U.S. Government policies and programs related to the development and dissemination of water information.

The ACWI has been established under the authority of the Office of Management and Budget Memorandum 92–01 and the Federal Advisory Committee Act. The purpose of the ACWI is to provide a forum for water-information users and professionals to advise the Federal Government of activities and plans which may improve the effectiveness of meeting the Nation's water information needs. More than 30 organizations have been invited by the Secretary of the Interior to name representatives to the ACWI. These include Federal departments, State, local, and tribal government organizations, industry, academia, agriculture, environmental organizations, professional societies, and volunteer groups.

DATES: The formal meeting will convene at 8:00 a.m., on May 18, 1999, and will adjourn on May 19, 1999 at 3:30 p.m.

ADDRESSES: Sheraton Reston Hotel, 11810 Sunrise Valley Drive, Reston, Virginia.

FOR FURTHER INFORMATION CONTACT: Dr. Ethan T. Smith (Executive Secretary), Chief, Water Information Coordination Program, U.S. Geological Survey, 12201 Sunrise Valley Drive, 417 National Center, Reston, VA 20192. Telephone: 703–648–5022; Fax: 703–648–5295.

SUPPLEMENTARY INFORMATION: This meeting is open to the public. A half hour will be set aside for public comment. Persons wishing to make a brief presentation (up to 5 minutes) are asked to provide a written request with a description of the general subject to Dr. Smith at the above address no later than noon, April 27, 1999. It is requested that 40 copies of a written statement be submitted at the time of the meeting for distribution to members of the ACWI and placement in the official file. Any member of the public may submit written information and (or) comments to Dr. Smith for distribution at the ACWI.

Dated: March 26, 1999.

Lewis V. Wade,

Assistant Chief Hydrologist for Information, U.S. Geological Survey.

[FR Doc. 99–8110 Filed 4–1–99; 8:45 am]

BILLING CODE 4310–31–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–030–1220–00; Closure Notice No. NV–030–99–001]

Emergency Closure of Federal Lands

SUMMARY: Notice is hereby given that certain public lands in the vicinity of the Peterson Mountain Natural Area, Washoe County, Nevada, are closed to all motorized vehicles. This closure is necessary due to unauthorized road construction and off-road vehicle use which is causing considerable adverse effects to soil, vegetation and wildlife habitat in the area. It is possible that cultural resources also are being impacted.

DATES: This closure goes into effect on April 1, 1999, and will remain in effect until the Manger, Carson City Field Office, determines it is no longer needed.

FOR FURTHER INFORMATION CONTACT: Margaret Jensen, Assistant Manager, Division of Nonrenewable Resources, Carson City Field Office, 5665 Morgan Mill Road, Carson City, Nevada 89701. Telephone (775) 885–6100.

SUPPLEMENTARY INFORMATION: The authorities for this closure are 43 CFR 8341.2, 43 CFR 8342.3 and 43 CFR 8364.1. Any person who fails to comply with a closure order is subject to arrest and fines in accordance with applicable provisions of 18 USC 3571 and/or imprisonment not to exceed 12 months.

This closure applies to all motorized vehicles excluding (1) any emergency or law enforcement vehicles while being used for emergency purposes, and (2) any vehicle whose use is expressly authorized in writing by the Manager, Carson City Field Office. The public lands affected by this closure are located just east of Petersen Mountain and, while excluding main access roads in this area, include all lands being used as an unauthorized motorcycle race course within:

Mt. Diablo Meridian

T.22N., R.18E.
Sec. 11

A map of the area closed to motorized vehicles is posted in the Carson City Field Office.

Dated: March 23, 1999.

John O. Singlaub,

Manager, Carson City Field Office.

[FR Doc. 99–8109 Filed 4–1–99; 8:45 am]

BILLING CODE 4310–HC–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–025–09–1430–01; G–0156]

Temporary Closure of Public Land

AGENCY: Bureau of Land Management (BLM), DOI.

ACTION: Notice of Temporary Closure of Public Land.

The following described public land is being temporarily closed to motorized vehicular traffic pursuant to 43 CFR 8364.1:

Willamette Meridian

T.23S., R.26E.,
Sec. 28, SW¼SW¼;
Sec. 29, SE¼.

Those portions of the above-described land west of the Chickahominy Reservoir Access Road; south and west of the waterline of Chickahominy Reservoir; and, north of U.S. Highway 20.

The following exceptions apply:

1. Law enforcement, emergency personnel, and Bureau of Land Management and Oregon Department of Fish and Wildlife employees while engaged in official duties without a written waiver.

2. Motorized water craft without a written waiver.

3. Other individuals in the possession of a written waiver who, as determined by the Authorized Officer, have a demonstrated need to travel by motorized vehicle in the area being closed.

The closure is necessary to prevent damage to roads and adjacent resources during extremely wet springtime conditions. Unrestricted traffic during this time of year is creating excessive impacts to soil and vegetative resources resulting in erosion and sedimentation of the reservoir. Additionally, funds are

not readily available to routinely repair and maintain roads in the area damaged by vehicular traffic.

The closure will take effect upon posting of this notice on the land and remain effective until, as determined by the Authorized Officer, the land is suitable for continued motorized vehicular traffic.

Failure to comply with this temporary closure may result in a fine of not more than $1,000 or imprisonment not to exceed 12 months, or both, in accordance with 43 CFR 8360.0–7.

FOR FURTHER INFORMATION CONTACT: Requests for additional information, including an analysis of the closure, and for waivers should be directed to Craig M. Hansen or Skip Renchler, Bureau of Land Management, HC 74–12533, Hwy 20 West, Hines, Oregon 97738, phone (541) 573–4400.

Dated: March 25, 1999.

Rudolph J. Hefter,

Supervisory Natural Resource Specialist.

[FR Doc. 99–8168 Filed 4–1–99; 8:45 am]

BILLING CODE 4310–33–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–020–1220–00]

Notice of Meeting

AGENCY: Bureau of Land Management (BLM), Montana, Billings and Miles City Field Offices, Interior.

ACTION: Notice of meeting.

SUMMARY: The Miles City District Resource Advisory Council will have a meeting April 28 and 29, 1999 in Miles City, Montana at the Range Riders Museum meeting room west of Miles City. Agenda topics include access, back-country by-ways, and the Terry Badlands Wilderness Study Area, with updates on Pompeys Pillar and the noxious weeds program. On Wednesday the meeting starts at 1:00 p.m. and is expected to adjourn about 5:00 p.m. The Council will reconvene at 8:00 a.m. on Thursday and adjourn at noon.

The meeting is open to the public and the public comment period is set for 8:00 a.m. on April 29. The public may make oral statements before the Council or file written statements for the Council to consider. Depending on the number of persons wishing to make an oral statement, a per person time limit may be established. Summary minutes of the meeting will be available for public inspection and copying during regular business hours.

FOR FURTHER INFORMATION CONTACT: Marilyn Krause, Public Affairs Specialist, Miles City Field Office, 111 Garryowen Road, Miles City, Montana 59301, telephone (406) 233–2831.

SUPPLEMENTARY INFORMATION: The purpose of the Council is to advise the Secretary of the Interior, through the BLM, on a variety of planning and management issues associated with public land management. The 15 member Council includes individuals who have expertise, education, training or practical experience in the planning and management of public lands and their resources and who have a knowledge of the geographical jurisdiction of the Council.

Dated: March 17, 1999.

Timothy M. Murphy,

Miles City Field Manager.

[FR Doc. 99–8169 Filed 4–1–99; 8:45 am]

BILLING CODE 4310–DN–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–040–99–1410–00; AA–75642]

Realty Action; FLPMA Lease of Public Lands, Near Akiachak, Alaska

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice of realty action, lands are within the boundary of the Alaska Southwest Area Management Framework Plan (MFP), dated November 1981.

SUMMARY: This Notice of realty action involves converting a permit to a lease on public lands administered by the BLM. The lease is intended to authorize continued use of one acre of land for a commercial trapping cabin approximately 60 miles west of Bethel, Alaska. This land has been examined and found suitable for leasing under the provisions of Section 302 of the Federal Land Policy and Management Act (FLPMA), of 1976, and 43 CFR Part 2920.

Seward Meridian, Alaska

T. 8 N., R. 61 W., Sec. 2

The above land aggregates one acre.

DATES: Interested parties may submit comments until May 17, 1999.

ADDRESSES: Comments must be submitted to the Anchorage Field Manager, Anchorage Field Office, 6881 Abbott Loop Road, Anchorage, Alaska 99507–2599.

FOR FURTHER INFORMATION CONTACT: Dorothy J. Bonds, BLM, Anchorage Field Office, 6881 Abbott Loop Road, Anchorage, Alaska 99507–2599, 907–267–1239, or 1–800–478–1263.

SUPPLEMENTARY INFORMATION: The BLM proposes to lease the surface of approximately one acre of public land to Brian W. Latham of Akiachak, Alaska, under a renewable twenty (20) year lease. The appraised rental on the land is fair market rental value. In addition, the lessee shall reimburse the United States for reasonable administrative and other costs incurred by the United States in processing and monitoring the lease. The general terms and conditions for leases are found in 43 CFR 2920.7.

Nicholas E. Douglas,

Anchorage Field Manager.

[FR Doc. 99–8108 Filed 4–1–99; 8:45 am]

BILLING CODE 1410–00–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–050–1430–01, COC–49757, COC–62293, COC–62759]

Notice of Realty Action; Recreation and Public Purposes (R&PP)

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action.

SUMMARY: The following public lands in Boulder, Gilpin and Chaffee Counties have been examined and found suitable for classification for lease or conveyance under the provisions of the Recreation and Public Purpose Act, as amended (43 U.S.C. 869 *et seq.*)

COC–49757—The Colorado State Division of Parks and Outdoor Recreation proposes to amend their existing Recreation and Public Purpose lease to include the following 52 acres in the Big Bend area. The lands will be managed as part of the Arkansas Headwaters Recreation Area (AHRA). The area to be leased lies adjacent to lands owned and managed by Colorado State as part of the AHRA.

New Mexico Principal Meridian

T. 50 N., R. 8 E.,

Sec. 21: That portion of the E½E½NE¼SE¼ lying east of Highway 285,

Sec. 22: NW¼SW¼

Consisting of approximately 52 acres in Chaffee County

COC–62293—The Colorado Division of Parks and Outdoor Recreation proposes to lease and/or patent the following lands to be included in the exiting Eldorado Canyon State Park:

Sixth Principal Meridian

T. 1 S., R. 71 W.,

Sec. 26: Tracts 142 and 147
Sec. 35: Tract 130A

Consisting of 122.97 acres in Boulder County

COC–62759—Gilpin County proposes to lease and/or patent the following lands for the purpose of a fire station, ambulance crew quarters with garage and potentially for administration offices for a local clinic:

Sixth Principal Meridian

T. 3 S., R. 73 W.,
Sec. 2: Lot 40 (within)

Consisting of approximately 20 acres

The lands are not needed for Federal purposes. Lease or conveyance for recreational use or for public purposes is consistent with current BLM land use planning and would be in the public interest.

Upon publication of this notice in the **Federal Register**, the lands will be segregated from all forms of appropriation under the public land laws, including the general mining laws, except for lease or conveyance under the Recreation and Public Purposes Act.

DATES: Interested parties may submit comments regarding the proposed lease/conveyance or classification of the lands before June 4, 1999. Reference the applicable serial number in all correspondence. In the absence of any adverse comments, the classification will become effective June 4, 1999.

ADDRESSES: District Manager, Canon City District Office, or Area Manager, Royal George Resource Area, 3170 East Main, Canon City, Colorado 81212; Telephone (719) 269–8500; TDD (719) 269–8597.

FOR FURTHER INFORMATION CONTACT: Chaffee County: Dave Hallock, Realty Specialist, at (719) 269–8536. Boulder County: Jan Fackrell, Realty Specialist at (719) 269–8525. Gilpin County: Lindell Greer, Realty Specialist at (719) 269–8532.

SUPPLEMENTARY INFORMATION: Classification comments—interested parties may submit comments involving the suitability of the land for the purposes stated. Comments are on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

Application comments—interested parties may submit comments regarding the specific use proposed in the application and plan of development, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for the proposals.

This action is in response to applications by the Colorado State Division of Parks and Outdoor Recreations and Gilpin County. Lease of the lands will not be authorized until after the classification becomes effective. Lease or patent of the lands for recreational or public purpose use would be subject to the following terms, conditions, and reservations:

1. Provisions of the Recreation and Public Purposes Act and to all applicable regulations of the Secretary of the Interior.
2. All valid existing rights documented on the official public and records at the time of lease/patent issuance.
3. All minerals shall be reserved to the United States, together with the right to prospect for, mine, and remove the minerals.
4. Any other reservations that the authorized officer determines appropriate to ensure public access and proper management of Federal lands and interests therein.

Donnie R. Sparks,
District Manager.

[FR Doc. 99–8170 Filed 4–1–99; 8:45 am]
BILLING CODE 4310–JB–M

DEPARTMENT OF THE INTERIOR

National Park Service

National Capital Region; National Capital Memorial Commission; Notice of Public Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the National Capital Memorial Commission (the Commission) will be held at 1:30 p.m., on Tuesday, April 13, 1999, at the National Building Museum, Room 312, 5th and F Streets, NW., Washington, D.C.

The purpose of the meeting will be to discuss currently authorized and proposed memorials in the District of Columbia and environs.

In addition to discussing general matters and routine business, the agenda is expected to include the following:

I. Consultation: Memorial proponents will consult with the Commission on aspects of these authorized memorials:

Site selection alternatives and design concepts for the Mahatma Gandhi Memorial across Massachusetts Avenue from the Embassy of India (bordered by 21st Street, Q Street, and Massachusetts Avenue, NW.).

The Commission will consider these matters and take action as appropriate in order to advise the Secretary of the Interior (the Secretary).

II. Review of Legislation: The Commission will review the following legislative proposal:

A. S. 311 (1/26/99), a bill to authorize the Disabled Veterans LIFE Foundation to establish a memorial in the District of Columbia or its environs to honor veterans who became disabled while serving in the Armed Forces of the United States.

The Commission was established by Public Law 99–652, the Commemorative Works Act, to advise the Secretary and the Administrator, General Services Administration, (the Administrator) on policy and procedures for establishment of (and proposals to establish) commemorative works in the District of Columbia and its environs, as well as such other matters as it may deem appropriate concerning commemorative works.

The Commission examines each memorial proposal for conformance to the Commemorative Works Act, and makes recommendations to the Secretary and the Administrator and to Members and Committees of Congress. The Commission also serves as a source of information for persons seeking to establish memorials in Washington, D.C., and its environs.

The members of the Commission are as follows:

Director, National Park Service
Chairman, National Capital Planning Commission
Architect of the Capitol
Chairman, American Battle Monuments Commission
Chairman, Commission of Fine Arts
Mayor of the District of Columbia
Administrator, General Services Administration
Secretary of Defense

The meeting will be open to the public. Any person may file with the Commission a written statement concerning the matters to be discussed. Persons who wish to file a written statement or testify at the meeting or who want further information concerning the meeting may contact Ms. Nancy Young, Executive Secretary to the Commission, at (202) 619–7097.

Dated: March 29, 1999

Joseph M. Lawler,
Regional Director, National Capital Region.

[FR Doc. 99–8131 Filed 4–1–99; 8:45 am]
BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before March 27, 1999. Pursuant to section 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, 1849 C St. NW, NC400, Washington, DC 20240. Written comments should be submitted by April 19, 1999.

Beth Boland,

Acting Keeper of the National Register.

ALABAMA

Bibb County

Blocton Italian Catholic Cemetery, Primitive Ridge Rd., West Blocton, 99000464

Dallas County

Pleasant Hill Presbyterian Church, 0.2 mi. E of jct. of Cty. Rd. 7 and Cty. Rd. 12, Pleasant Hill, 99000465

Jefferson County

Birmingham—Southern College, Arkadelphia Rd. bet. 8th Ave. W and I–20/59, Birmingham, 99000466

Howard College Estates Historic District, Roughly along 77th Way, 77th Place, Vanderbilt St., 8th Court, 8th, Rugby, and Belmont Aves., Birmingham, 99000467

Marshall County

Snead Junior College Historic District, 220 N. Walnut St., 308 W. Mann Ave., 201 College Ave., and 300 and 301 Elder St., Boaz, 99000468

Morgan County

Hartselle Downtown Commercial Historic District, Roughly along Main, Railroad, Hickory, and Sparkman Sts., Hartselle, 99000469

ARKANSAS

Desha County

Temple Meir Chayim (Ethnic and Racial Minority Settlement of the Arkansas Delta MPS) Jct. of 4th and Holly Sts., McGehee, 99000470

CALIFORNIA

Yolo County

Downtown Woodland Historic District, Roughly along Main St. from Elm St. to Third St., Woodland, 99000471

FLORIDA

Hendry County

Scharnberg House, 325 E. Del Monte Ave., Clewiston, 99000472

GEORGIA

Ben Hill County

Kimball, Charles W., House, 137 Hudson St., Fitzgerald vicinity, 99000473

MICHIGAN

Oakland County

Sprague, Rollin, Building—Old Stone Store, 300 Main St., Rochester, 99000474

MISSISSIPPI

Bolivar County

Downtown Cleveland Historic District, Roughly along Central Ave., from approx. Coleman St. to Collins St., Cleveland, 99000477

Jackson County

Back Bay of Biloxi Shipwreck Site, Address Restricted, Ocean Springs vicinity, 99000476

MISSOURI

Cole County

Tergin Apartment Building, 201 W. McCarty St., Jefferson City, 99000475

NEBRASKA

Knox County

Argo Hotel, 211 Kansas St., Crofton, 99000478

NORTH CAROLINA

Nash County

Rocky Mount Mills Village Historic District, Bounded by Tar R., Columbia Ave., Spring St., and Carr St., Rocky Mount, 99000479

Orange County

Cabe—Pratt—Harris House, NC 1567, 0.9 mi. N. of Eno River Bridge, Hillsborough vicinity, 99000481

Stanly County

Pfeiffer University Historic District, US 52, 1.0 mi. N. of jct. with NC 49, Misenheimer, 99000480

[FR Doc. 99–8151 Filed 4–1–99; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF JUSTICE

Notice of Lodging Consent Decree Pursuant to the Clean Water Act

In accordance with Departmental Policy, 28 CFR 50.7, notice is hereby given that a Third Consent Decree Modifying First and Second Consent Decrees in *United States* v. *Hamm's Holiday Harbor, Inc. and Richard E. Hamm*, No. 89–1287 (C.D. Ill.), was lodged with the United States District Court for the Central District of Illinois on March 15, 1999. This Consent Decree modifies two existing consent decrees entered into by the Plaintiff United States and Defendants Hamm's Holiday Harbor, Inc. and Richard E. Hamm pursuant to section 309 of the Clean Water Act, 33 U.S.C. 1319, and section 12 of the Rivers and Harbors Act, 33 U.S.C. 406, providing for injunctive relief and imposing civil penalties upon the Defendants for discharge of dredged or fill material in violation of section 301(a) of the Clean Water Act, 33 U.S.C. 1311(a), and sections 10 and 13 of the Rivers and Harbors Act, 33 U.S.C. 403, 407, at two sites along the Illinois River in Peoria County and Marshall County, Illinois.

The Consent Decree prohibits additional illegal discharges by the Defendants, and requires Defendants to, among other things: (1) Forfeit in fee a 90-acre parcel in Marshall County, Illinois to the Illinois Department of Natural Resources ("IDNR"); (2) pay money to be used for environmental restoration on a portion of the Marshall County site; (3) pay stipulated penalties to the United States for Defendants' violations of the two previous consent decrees; and (4) complete all outstanding environmental remedial tasks at the Peoria County site that were required under the first of the previous consent decrees.

The Department of Justice will accept written comments relating to this proposed Consent Decree for thirty (30) days from the date of publication of this notice. Please address comments to Assistant Attorney General, Environment and Natural Resources Division, United States Department of Justice, Attention: Seth M. Barsky, P.O. Box 23986, Washington, DC 20026–3986 and refer to *United States* v. *Hamm's Holiday Harbor, Inc. and Richard E. Hamm*, DJ #90–5–1–1–4444.

The proposed Consent Decree may be examined at the Clerk's Office, United States District Court for the Central District of Illinois, 305 Federal Building, 100 N.E. Monroe Street, Peoria, Illinois 61602.

Anna L. Wolgast,

Deputy Chief, Environmental Defense Section, Environment & Natural Resources Division.

[FR Doc. 99–8141 Filed 4–1–99; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Comment Request

ACTION: Request OMB emergency approval; HRIFA supplement to Form I–485 instructions.

The Department of Justice, Immigration and Naturalization Service

(INS) has submitted an emergency information collection request (ICR) utilizing emergency review procedures, to the Office of Management and Budget (OMB) for review and clearance in accordance with section 1320.13(a)(1)(ii) and (a)(2)(iii) of the Paperwork Reduction Act of 1995. The INS has determined that it cannot reasonably comply with the normal clearance procedures under this part because normal clearance procedures are reasonably likely to prevent or disrupt the collection of information. Therefor, OMB approval has been requested by April 12, 1999. If granted, the emergency approval is only valid for 180 days. All comments and/or questions pertaining to this pending request for emergency approval must be directed to OMB, Office of Information and Regulatory Affairs, Attention: Mr. Stuart Shapiro, 202–395–7316, Department of Justice Desk Officer, Washington, DC 20503. Comments regarding the emergency submission of this information collection may also be submitted via facsimile to Mr. Shaprio at 202–395–6974.

During the first 60 days of this same period, a regular review of this information collection is also being undertaken. During the regular review period, the INS requests written comments and suggestions from the public and affected agencies concerning this the information collection. Comments are encouraged and will be accepted until June 1, 1999. During 60-day regular review, all comments and suggestions, or questions regarding additional information, to include obtaining a copy of the information collection instrument with instructions, should be directed to Mr. Richard A.Sloan, 202–514–3291, Director, Policy directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 5307, 425 I Street, NW., Washington, DC 20536. Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* New collection.

(2) *Title of Form/Collection:* HRIFA Supplement to Form I–485 Instructions.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form I–485C. Office of Programs, Adjudications Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households. The information collected on this application will be used to determine whether an alien applying for adjustment of status under the provisions of section 902 of Division A, Title IX of Public law 105–277 is eligible to become a permanent resident of the United States.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 50,000 responses at 15 minutes (.25 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 12,500 annual burden hours.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW., Washington, DC 20530.

Dated: March 29, 1999.

Richard A. Sloan,

Department Clearance Officer, United States Department of Justice, Immigration and Naturalization Service.

[FR Doc. 99–8124 Filed 4–1–99; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF LABOR

Employment and Training Administration

Job Training Partnership Act, Section 402: Migrant and Seasonal Farmworker Program and Workforce Investment Act of 1998; Section 167: Migrant and Seasonal Farmworker Programs

AGENCY: Employment and Training Administration, U.S. Department of Labor.

ACTION: Notice of Solicitation for Grant Applications (SGA) for Migrant and Seasonal Farmworker Programs under the Job Training Partnership Act for Transitioning to the Workforce Investment Act.

SUMMARY: The U.S. Department of Labor (the Department or DOL) announces the availability of funds under Solicitation for Grant Applications (SGA–DFA–99–009), for Migrant and Seasonal Farmworker (MSFW) Programs for Program Year (PY) 1999, and procedures for selection of designated grantees for PY 1999 and PY 2000 (July 1, 1999 through June 30, 2001). This SGA is under the authority of Section 402 of the Job Training Partnership Act (JTPA), 29 U.S.C. 1672, and Section 167 of the Workforce Investment Act (WIA), 29 U.S.C. 9201. Applicants selected will be designated as PY 1999/2000 grantees to deliver appropriate workforce investment activities, and related assistance, to eligible migrant and seasonal farmworkers. Section 402 of JTPA and Section 167 of WIA require that the eligible entities be selected using a process consistent with Federal competitive procurement policies.

DATES: The closing date for receipt of applications is May 7, 1999, by 4:00 p.m. (Eastern Time). No exceptions to the mailing and hand-delivery conditions set forth in this notice will be granted. Applications that do not meet the conditions set forth in this notice will not be considered.

ADDRESSES: Applications must be mailed or hand-delivered to: Ms. Lorraine Saunders, U.S. Department of Labor, Employment and Training Administration, Division of Federal Assistance, Room S–4203, 200 Constitution Avenue, NW, Washington, D.C. 20210. Reference: SGA/DFA 99–009.

FOR FURTHER INFORMATION CONTACT: Ms. Lorraine Saunders at 202–219-8702 × 145 (this is not a toll-free number).

Part A—Introduction and Background

Introduction: During PY 1999, the MSFW program will transition its

operating authority from the JTPA to the WIA so that full implementation of WIA occurs on or before the July 1, 2000 (the beginning of PY 2000). Grantees have the authority under WIA during PY 1999 to take the steps necessary to transition from JTPA operating authority to WIA operating authority. This authority facilitates moving jointly with the States and in conjunction with the Local Workforce Investment Boards, as appropriate. Grantees may submit proposals to operate under WIA or under JTPA in PY 1999 or may transition from JTPA to WIA during that year.

In addition, the Department intends to exercise its option to waive competition for the succeeding two-year period (PY 2001 and PY 2002) for grantees who perform satisfactorily during PY 1999 and PY 2000. In accordance with WIA Section 167(c)(4)(B), the Department will establish criteria for making a determination of satisfactory performance upon which to base the anticipated waivers of competition for the second two-year period. The Department will advise the grantees of its determination and will include the criteria to be used for determining satisfactory performance.

The proposals submitted must consist of six (6) sections as follows: Section I—covering the applicant's understanding of the problems of eligible migrant and seasonal farmworkers (including dependents). Section II—capacity for utilizing the existing service environment (and familiarity with the area to be served). Section III—proposed major activities (including approach in transitioning from JTPA to WIA implementation within the proposed service area). Section IV—programmatic experience. Section V—general administrative/financial management capability. Section VI is a place holder for the applicant's attachments. The statement of programmatic experience must reflect the applicant's capacity to administer effectively a diversified program of workforce investment activities and related assistance (an employability development program under JTPA) for eligible migrant and seasonal farmworkers.

For rating purposes, Sections I–V are assigned a range of possible points, and the sum of the maximum possible points for all five sections totals 100. The most heavily weighted criteria is for Section III which covers the proposed program design, plans for serving the target MSFW population and proposed strategy for successfully transitioning to full WIA implementation. The applicant's proposal for Section III should be a description of an operational plan that is appropriate to the service environment described by the proposer in Sections I and II.

Background:

The objective of the Migrant and Seasonal Farmworker Program under section 402 of the Job Training Partnership Act is to provide services to meet the employment and training needs of migrant and seasonal farmworkers through such public and private nonprofit organizations as determined by the Secretary to have an understanding of the problems of migrant and seasonal farmworkers, a familiarity with the area to be served, and a previously demonstrated capability to administer effectively a diversified employability development program for migrant and seasonal farmworkers.

Section 167 of WIA specifies that the MSFW program provide workforce investment activities and related assistance for eligible migrant and seasonal farmworkers through eligible entities that demonstrate an understanding of the problems of eligible migrant and seasonal farmworkers, a familiarity with the area to be served, and a capacity to administer effectively a diversified program of workforce investment activities and related assistance for eligible migrant and seasonal farmworkers (MSFWs).

The MSFW program is subject to all applicable provisions of the JTPA regulations at 20 CFR 633, the WIA Interim Final Regulations, and to the Department's regulations at 29 CFR Parts 93 (New Restrictions on Lobbying), 96 (Audit Requirements), and 98 (Debarment, Suspension and Drug-free Workplace requirements), and the Department's nondiscrimination regulations at 29 CFR 34 and the nondiscrimination regulations implementing WIA Section 188. Should the regulations at Part 669 conflict with regulations elsewhere in 20 CFR, the regulations at Part 669 will control. The WIA interim final regulations will be published soon. Further, should any instructions in this notice conflict with WIA Interim Final Rules, the WIA regulations control. Applicants should consult and be familiar with WIA regulations at 20 CFR Parts 660 through 671.

Consultation With Governors and Local Boards

Executive Order No. 12372, "Intergovernmental Review of Federal Programs," and the implementing regulations at 29 CFR Part 17, are applicable to this program. Under these requirements, the applicant must provide a copy of the application for comment to the States that have established a consultation process under the Executive Order. Applications must be submitted to the State's Single Point of Contact (SPOC) no later than the deadline for submission of the application to the Department.

For States that have not established a consultative process under Executive Order No. 12372, and have established a State Workforce Investment Board (State Board), the State Board will be the SPOC. For WIA implementation purposes, this consultation process fulfills the requirement of WIA Section 167(e) concerning consultation with Governors and local Boards. To strengthen the implementation of Executive Order No.12372, the Department establishes the following time-frame for its treatment of comments from the State's SPOC on WIA Section 167 applications:

1. The SPOC must submit comments, if any, to the Department and to the applicant, no later than 30 days after the deadline date for submission of application;

2. The applicant's response to the SPOC comments, if any, must be submitted to the Department no later than 15 days after the post-marked date of the comments from the SPOC;

3. The Department will notify the SPOC of its decision regarding the SPOC comments and applicant response; and

4. The Department will implement that decision within 10 days after it has notified the SPOC.

State Area Allocation Estimates

State area planning estimates will be published in a separate issue of the **Federal Register**.

Part B—Solicitation for Grant Application

To provide training, employment opportunities, and related services to eligible migrant and seasonal farmworkers under JTPA section 402 and WIA section 167, the Department selects the grantee for each service area from among the competing eligible entities that apply for the grant to serve the area. Both WIA and JTPA provide that organizations eligible to operate MSFW programs must:

- Have an understanding of the problems of eligible migrant and seasonal farmworkers (including dependents),
- Have a familiarity with the area to be served, and
- Have a demonstrated capacity to administer effectively a diversified program of workforce investment

activities are related assistance for eligible migrant and seasonal farmworkers.

Submittal of the Grant Application Package

Applicants must submit an original and three (3) copies of the complete application package for review. Applications must be mailed no later than five (5) days prior to the closing date for the receipt of applications. However, if application are hand-delivered, they must be received at the designated place by 4:00 p.m. Eastern Time on the closing date for receipt of applications. All overnight mail will be considered to be hand-delivered and must be received at the designated place by the specified time and closing date. Telegraphed and/or faxed proposals will not be honored. Applications that fail to adhere to the above instructions will not be honored.

Late Applications

Any application received at the office designated in the solicitation after the exact time specified for receipt will not be considered unless it:

(a) Was sent by U.S. Postal Service registered or certified mail not later than the fifth calendar day before the closing date specified for receipt of applications (e.g., an offer submitted in response to a solicitation requiring receipt of application by the 30th of January must have been mailed by the 25th); or

(b) Was sent by U.S. Postal Service Express Mail Next Day Service—Post Office to Addressee, not later than 5 p.m. at the place of mailing two working days prior to the date specified for receipt of application. The term "working days" excludes weekends and U.S. Federal holidays.

The only acceptable evidence to establish the date of mailing of a late application sent by U.S. Postal Service registered or certified mail is the U.S. postmark on the envelop or wrapper and on the original receipt from the U.S. Postal Service. Both postmarks must show a legible date or the proposal shall be processed as if it had been mailed late. "Postmark" means a printed, stamped, or otherwise placed impression (exclusive of a postage meter machine impression) that is readily identifiable without further action as having been supplied and affixed by an employee of the U.S. Postal Service on the date of mailing. Therefore, applicants should request the postal clerk to place a legible hand cancellation "bull's eye" postmark on both the receipt and the envelope or wrapper.

The only acceptable evidence to establish the date of mailing of a late application sent by "Express Mail Next-Day Service-Post Office to Addressee" is the date entered by the post office receiving clerk on the "Express Mail Next Day Service-Post Office to Addressee" label and the postmarks on both the envelope and wrapper and the original receipt from the U.S. Postal Service. "Postmark" has the same meaning as defined above. Therefore, an applicant should request the postal clerk to place a legible hand cancellation "bull's eye" postmark on both the receipt and the envelope or wrapper.

Withdrawal of Applications

Applications may be withdrawn by written notice or telegram (including mailgram__) received at any time before award. Applications may be withdrawn in person by the applicant or by an authorized representative thereof, if the representative's identity is made known and the representative signs a receipt for the proposal.

The Grant Application Package

The Application package must consist of:

(1) A Standard Form 424 found in OMB Circular A–102 and as an attachment to this Solicitation;

(2) A certification prepared within the last six months, attesting to the adequacy of the entity's fiscal management and accounting systems to account for and safeguard Federal funds properly. The Certification is to be obtained as follows:

(a) for incorporated organizations, a certification from a Certified Public Accountant, or

(b) for a public agency, a certification by its Chief Fiscal Officer;

(3) A statement indicating the entity's legally constituted authority under which the organization functions. A nonprofit organization should submit a copy of its Charter or Articles of Incorporation, including proof of the organization's nonprofit status;

(4) The entity's employer identification number (EIN) issued by the Internal Revenue Service;

(5) If the applicant is a current JTPA 402 grantee, a summary of program performance for PY 97 and for PY 98 (through the 3rd Quarter); and

(6) The entity's application for grant funding (an original and 3 copies with original signatures) as described below.

Format and Content of Grant Application

The grant application is limited to 75 numbered pages, double-spaced, in 12-point type. This page limitation does not include any letters of support or the required attachments. Do not include detailed budgets and program planning estimates in this grant application package. Planning and budget documents will be provided to selected applicants, as appropriate. To ensure full consideration, the application must follow the numerical sequence of the Sections I through V as listed below, include all attachments under Section VI, and include a Table of Contents.

To facilitate the applicant's understanding of the application process the rating criteria for each Section is included. Section VI serves as the holding place in the application for the applicant's attachments.

CONTENTS OF APPLICATION

Section I—Understanding MSFW Population of the Service Area

In this section, applicants should describe the problems that are faced by MSFWs over the course of a year in the specific local geographic areas proposed to be served. An understanding of the local economy and the problems faced by MSFWs working within that economy is important to formulating an effective service strategy.

Applicants must provide the following information in this section:

(1) A description of the socio-economic characteristics, problems and needs of eligible migrant and seasonal farmworkers (and their dependents) in the proposed service delivery area. (**Note:** For applicants that are current JTPA Section 402 grant recipients, a recapitulation solely of the socio-economic characteristics of past or current participants will not adequately address this requirement); and

(2) A description of the types of workforce investment activities necessary to respond to the needs of the eligible population described in paragraph (1) above, explaining how the proposed activities will address those needs.

Rating Criteria for Section I—0 to 15 Points

The scoring will be based on the applicant's (1) described understanding of the socio-economic characteristics and needs of the MSFW population and (2) whether the applicant's analysis of how the needs described will be addressed through its proposed program mix of workforce training activities and supportive services.

Section II—Capacity for Utilizing the Existing Service Environment

In this section applicants should describe their current or planned programmatic ties within the proposed service area to appropriate entities, including those entities that provide educational, health and child care

services to eligible farmworkers. Those entities may include: State and Local Workforce Investment Boards, the local One-Stop Centers, State and Local Offices of Migrant Education and Migrant Health, Farmworker Housing Programs, eligible providers of training services as described in WIA section 122, and other local service organizations. (**Note:** Letters of commitment documenting appropriate programmatic ties should be attached to the application in Section VI.)

Applicants that are not a current MSFW program grantee may demonstrate their potential to enter a new market by describing community ties related to service to farmworkers from its experiences in other areas and/or programs and anticipated ties in the specific community applied for.

Applicants must provide the following information in this section:

(1) A labor market assessment of the proposed service area with projections for employment needs, projected skill shortages based on new or changing industry growth, as well as those created by emerging technologies, and specific job opportunities that are available in the service area;

(2) A general description of the current service environment in the proposed service delivery area. Include existing and proposed working relationships and agreements with agencies, organizations and institutions within the service area;

(3) A description of the area-wide strategy proposed or underway for implementing the requirement of WIA to make core services of the local One-Stop Center available to the MSFWs served under the grant. This transition should occur in tandem with the State's implementation schedule; and

(4) A description of the applicant's proposed delivery system, including a list of the field/regional office locations and any other delivery agents, and a description of the range of services proposed for each office location.

Rating Criteria for Section II—0 to 15 Points

The scoring will be based on the applicant's (1) understanding of local conditions, of the range of resources within the community, (2) the applicant's potential for participating in workforce investment system partnerships, evidenced through its demonstrated capacity to develop ties with appropriate agencies derived from current and/or proposed relationships, and (3) the demonstrated appropriateness of these relationships to labor market and MSFW needs.

Section III—Major Activities Proposed for the Service Area

This section addresses the program approach that the applicant will use to address the needs of the MSFW population described above. The plan should describe the major program activities proposed for the service area in detail, covering the biennial period for PYs 1999 and 2000 (July 1, 1999—June 30, 2001). PY 1999 is the transition year from JTPA to WIA. Thus, the proposal should describe the plan under JTPA and the implementation activities proposed during the course of PY 1999 to ensure successful WIA implementation on or before July 1; 2000. For PY 2000 and early WIA implementation during PY 1999, identify and describe the workforce investment activities and related assistance proposed under WIA for eligible migrant and seasonal farmworkers that will be available as (a) core services, (b) intensive services, and (c) training services. The applicant should include its rationale for the approach and proposed mix of workforce investment activities and services.

Applicants must provide the following information about the services proposed to be provided for MSFWs and propose a strategy designed to provide a smooth transition from JTPA authorization to a successful implementation of WIA:

(1) JTPA program—A description of each major component of the program proposed for funding under JTPA that includes the following:

(a) A discussion of outreach and recruitment, targeting of the hard-to-serve, eligibility determination and verification, initial assessment, and the criteria used for enrollment in training or referral to other service providers; and

(b) A description of the proposed case management approach under JTPA, generally showing the proposed application of objective assessment techniques and reliance on community resources (for counseling, testing, work experience host sites, etc.) for developing individual service strategies (ISS) for each participant;

(2) WIA transitional strategy

(a) A description that primarily addresses how the negotiation strategy with the local workforce investment boards is expected to produce a successful agreement on the terms of a Memorandum of Understanding (MOU). (The executed MOU fulfills the mandatory partner requirements of the One-Stop centers under WIA.)

(b) A description of any operating arrangements with One-Stop partner agencies for those areas where some of the partners are operating prior to implementation;

(3) WIA Program—A description of each major component of the program proposed for funding under WIA that includes the following:

(a) A description of how the applicant expects to provide core services in partnership with the local One-Stop Center and the workforce investment delivery system in the service area;

(b) A description of any additional outreach to farmworkers intended by the applicant and how it anticipates making the core services of the One-Stop Center available to all who enter its field offices;

(c) When applicable, a description of endeavors to develop linkages through electronic or other means with One-Stop Centers serving farmworkers in rural areas where there are no field offices;

(d) A description of the intensive services proposed under WIA. Intensive services are defined in WIA section 134(d)(3)(C) and include such activities as group and individual counseling, skill assessment, case management of participants seeking training, objective assessment, and supportive services;

(e) A description of training activities/services proposed to be available to participants and showing that it is consistent with the skills needed by employers. This description may be a single combined JTPA and WIA description indicating only any differences proposed. Training services are defined in WIA section 134(d)(4)(D) and include occupational skills training, OJT, and entrepreneurial training; and

(f) Since WIA intensive services and WIA training services may be combined under the MSFW program, describe how a combined approach will provide for an enhanced service delivery strategy;

(4) Provide flow charts separate for JTPA and WIA, that illustrate the flow of services to participants, including outreach, intake and assessment, provision of service/enrollment in workforce investment activities, placement, and follow-up. The charts should show the participant flow when the applicant/job seeker enters through the One-Stop Center and when he/she enters through the applicant's outreach system at a local field office; and

(5) A summary of the changes to the workforce investment activities to be offered under fully implemented WIA from those to be provided under JTPA. Include a description of any youth activities proposed under the authority of WIA Section 167(d).

Rating Criteria for Section III—0 to 40 Points

The scoring will be based on the effectiveness of the proposed workforce investment activities in addressing the described farmworker needs in the proposed service areas for the biennial period with respect to (1) the program strategy to be provided under JTPA prior to WIA implementation will serve MSFWs, (2) the proposed transitional strategy to be pursued will achieve WIA implementation by showing how it is anticipated to lead to the provision of One-Stop core services to farmworkers, (3) the strategy of proposed intensive and training services to be provided under the WIA and (4) how the proposed training activities are consistent with the employer's demands for occupations within the service area.

Section IV—Program Experience

In section IV the applicant describes organization's experience (for a minimum of the two years prior to application) in administering employment and training programs both within as well as outside the proposed service area.

The information to be provided in this section should include the following for each program:

(1) The type of program;

(2) Grant, contract or agreement number;

(3) Name of the funding agency;

(4) Amount of funding, period of performance and area served;

(5) A description of the major activities of the program;

(6) Proposed and actual outcomes for each activity described; and

(7) Performance standards and actual performance results for each program listed.

Rating Criteria for Section IV—0 to 15 Points

The scoring will be based on the applicant's (1) capacity for providing the employment and training and other workforce development services that are appropriate for MSFWs, and (2) past performance of all the relevant program experience.

Section V—Administration and Staff

This section describes the applicant's organizational structure and staffing patterns.

Applicants must provide the following information in this section:

(1) An organizational chart that includes current administrative and local field offices with staffing patterns, and a description of the respective roles of staff in the context of delivering services in the proposed MSFW program. Applicants should include any provisions show any anticipated staffing changes resulting from full WIA implementation. Also include any planned provisions for hiring members of the client population and (as an attachment in section VI) relevant position descriptions.

(2) A description of administrative and program management processes which include the fiscal management systems and the program management systems (including management information systems (MIS)). For program management, be sure to include participant tracking and follow-up, program monitoring and oversight, and technical support for front line staff;

(3) For applicants that currently operate multi-state JTPA 402 programs, briefly describe which of the above program or management activities are centrally managed/processed and the benefits (fiscal and programmatic) attributed to the centralization of these activities.

Rating Criteria for Section V—0 to 15 Points

This section rates the applicant's managerial experience, and the potential for efficient and effective administration of the proposed program.

Section VI—Attachments

Include the attachments to the grant application in this section. No rating criteria apply to this section.

Part C—Review Process of Grant Applications

Panel Review

The Grant Officer will select potential grantees utilizing all information available to him/her. A review panel will rate each proposal using the specific criteria cited above. Panel results are advisory in nature and are not binding on the Grant Officer. The Grant Officer may, at his/her discretion, request an applicant to submit additional or clarifying information if deemed necessary to make a selection. However, selections may be made without further contact with the applicants.

Responsibility Review

Prior to awarding a grant to any applicant, the Department will conduct a responsibility review of available records. The responsibility review relies on tests of available records to determine if the applicant has established a satisfactory history of accounting for Federal funds and property. The responsibility review is independent of the panel review process. Applicants failing to meet the requirements of this section may be disqualified for selection as grantees, irrespective of their standing in the competition. Any applicant that is not selected as a result of the Grant Officer's responsibility review will be advised of its appeal rights. The responsibility tests that will be considered are presented in the WIA regulations.

Areas not competed

In the event that,

1. No grant applications are received for a specific service delivery area; or

2. All applications received are determined unacceptable; or

3. Where a grant agreement is not successfully negotiated with the selected grantee; the Department will offer the Governor of the State, if that State had not applied, a first right to submit an acceptable application. If the Governor does not accept this offer within 15 days after being notified, the Department may:

1. Designate another organization; or

2. Reopen the service delivery area for competitive bidding; or

3. Allocate the area's funds by formula to all other service areas; or

4. Transfer the funds for that service area to national account activities.

Notification of Non-Selection

Any applicant that is not selected as a potential grantee, or that has its grant application denied in whole or in part by the Department for receipt of funds, will be notified in writing by the Grant Officer and will be advised of all appeal rights.

Notification of Selection

The following conditions are applicable to notification of selection:

(a) Applicants selected as potential grantees will be notified in writing by the Grant Officer;

(b) The notification will invite each potential grantee to negotiate the final terms and conditions of the grant as applicable, will establish a reasonable time and place for such negotiations, and will indicate the specific service delivery area and amount of funds to be allocated under the grant;

(c) PY 99 funds will be awarded for the performance period July 1, 1999 to June 30, 2000 and PY 2000 funds (subject to continued Federal appropriation) will be awarded without competition for the period July 1, 2000 to June 30, 2001; and

(d) Grantees will be selected for a two year period ending June 30, 2001.

Annual Plan and Grant Agreement

All applicants will be provided instructions for completion of the

MSFW annual plan. This document must be completed by the selected applicants only and submitted for approval prior to the execution of the grant.

Signed at Washington, D.C., this 29 day of March, 1999.

E. Fred Tello,

Grant Officer, Division of Federal Assistance.

BILLING CODE 4510-30-U

APPLICATION FOR FEDERAL ASSISTANCE

OMB Approval No. 0348-0043

		2. DATE SUBMITTED	Applicant Identifier
1. TYPE OF SUBMISSION: Application ☐ Construction ☐ Non-Construction; Preapplication ☐ Construction ☐ Non-Construction		3. DATE RECEIVED BY STATE	State Application Identifier
		4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address *(give city, county, State, and zip code)*:	Name and telephone number of person to be contacted on matters involving this application *(give area code)*

6. EMPLOYER IDENTIFICATION NUMBER *(EIN)*:

☐☐ – ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: *(enter appropriate letter in box)* ☐

A. State
B. County
C. Municipal
D. Township
E. Interstate
F. Intermunicipal
G. Special District
H. Independent School Dist.
I. State Controlled Institution of Higher Learning
J. Private University
K. Indian Tribe
L. Individual
M. Profit Organization
N. Other (Specify) _____

8. TYPE OF APPLICATION:

☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es) ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other *(specify)*:

_____

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER:

☐☐ – ☐☐☐

TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT *(Cities, Counties, States, etc.)*:

13. PROPOSED PROJECT		**14. CONGRESSIONAL DISTRICTS OF:**	
Start Date	Ending Date	a. Applicant	b. Project

15. ESTIMATED FUNDING:		**16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?**
a. Federal	$ .00	a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON: DATE _____
b. Applicant	$ .00	
c. State	$ .00	
d. Local	$ .00	b. No. ☐ PROGRAM IS NOT COVERED BY E. O. 12372 ☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW
e. Other	$ .00	
f. Program Income	$ .00	**17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?**
g. TOTAL	$ .00	☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED.

a. Type Name of Authorized Representative	b. Title	c. Telephone Number
d. Signature of Authorized Representative		e. Date Signed

Previous Edition Usable
Authorized for Local Reproduction

Standard Form 424 (Rev. 7-97)
Prescribed by OMB Circular A-102

INSTRUCTIONS FOR THE SF-424

Public reporting burden for this collection of information is estimated to average 45 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0043), Washington, DC 20503.

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item:	Entry:
1.	Self-explanatory.
2.	Date application submitted to Federal agency (or State if applicable) and applicant's control number (if applicable).
3.	State use only (if applicable).
4.	If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5.	Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6.	Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7.	Enter the appropriate letter in the space provided.
8.	Check appropriate box and enter appropriate letter(s) in the space(s) provided: -- "New" means a new assistance award. -- "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date. -- "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9.	Name of Federal agency from which assistance is being requested with this application.
10.	Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
11.	Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.
12.	List only the largest political entities affected (e.g., State, counties, cities).
13.	Self-explanatory.
14.	List the applicant's Congressional District and any District(s) affected by the program or project.
15.	Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16.	Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17.	This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18.	To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

SF-424 (Rev. 7-97) Back

[FR Doc. 99–8114 Filed 4–1–99; 8:45 am]
BILLING CODE 4510–30–C

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedes decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decisions together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, N.W., Room S–3014, Washington, D.C. 20210.

New General Wage Determination Decisions

The number of the decisions added to the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and related Acts" are listed by Volume and States:

Volume IV:

OHIO
H990039 (APR. 2, 1999)

Volume VI:

MONTANA
MT990033 (APR. 2, 1999)
MT990034 (APR. 2, 1999)
MT990035 (APR. 2, 1999)

Withdrawn General Wage Determination Decisions

This is to advise all interested parties that the Department of Labor is withdrawing, from the date of this notice, the following General Wage Determinations:

OH990013—Belmont County (See OH990008)
OH990030—Jefferson County (See OH990008)
OH990014—Stark County (See OH990008)

Contracts for which bids have been opened shall not be affected by this notice. Also, consistent with 29 CFR 1.6(c)(2)(i)(A), when the opening of bids is less than ten (10) days from the date of this notice, this action shall be effective unless the agency finds that there is insufficient time to notify bidders of the change and the finding is documented in the contract file.

Please Note: OH990001 no longer covers residential for Portage and Summit counties. See OH990008.

OH990003 no longer covers residential for Mahoning and Trumbull counties. See OH990039

Modifications to General Wage Determination Decisions

The number of decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis—Bacon and Related Acts" being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I:

NEW HAMPSHIRE
NH990001 (MAR. 12, 1999)
NH990003 (MAR. 12, 1999)
NH990005 (MAR. 12, 1999)
NH990007 (MAR. 12, 1999)
NEW JERSEY
NJ990002 (MAR. 12, 1999)
NJ990003 (MAR. 12, 1999)
NJ990005 (MAR. 12, 1999)
NJ990007 (MAR. 12, 1999)

Volume II:

DISTRICT OF COLUMBIA
DC990001 (MAR. 12, 1999)
DC990003 (MAR. 12, 1999)
MARYLAND
MD990001 (MAR. 12, 1999)
MD990002 (MAR. 12, 1999)
MD990010 (MAR. 12, 1999)
MD990021 (MAR. 12, 1999)
MD990028 (MAR. 12, 1999)
MD990029 (MAR. 12, 1999)
MD990034 (MAR. 12, 1999)
MD990036 (MAR. 12, 1999)
MD990037 (MAR. 12, 1999)
MD990042 (MAR. 12, 1999)
MD990046 (MAR. 12, 1999)
MD990048 (MAR. 12, 1999)
MD990056 (MAR. 12, 1999)
MD990057 (MAR. 12, 1999)
MD990058 (MAR. 12, 1999)
VIRGINIA
VA990014 (MAR. 12, 1999)
VA990025 (MAR. 12, 1999)
VA990046 (MAR. 12, 1999)
VA990048 (MAR. 12, 1999)
VA990052 (MAR. 12, 1999)
VA990078 (MAR. 12, 1999)
VA990079 (MAR. 12, 1999)
VA990092 (MAR. 12, 1999)
VA990099 (MAR. 12, 1999)

Volume III:

ALABAMA
AL990004 (MAR. 12, 1999)
AL990006 (MAR. 12, 1999)
AL990008 (MAR. 12, 1999)
AL990017 (MAR. 12, 1999)
AL990033 (MAR. 12, 1999)
GEORGIA

GA990003 (MAR. 12, 1999)
GA990050 (MAR. 12, 1999)
GA990065 (MAR. 12, 1999)
GA990073 (MAR. 12, 1999)
GA990085 (MAR. 12, 1999)
GA990086 (MAR. 12, 1999)
GA990087 (MAR. 12, 1999)
GA990088 (MAR. 12, 1999)
KENTUCKY
KY990001 (MAR. 12, 1999)
KY990002 (MAR. 12, 1999)
KY990003 (MAR. 12, 1999)
KY990004 (MAR. 12, 1999)
KY990006 (MAR. 12, 1999)
KY990007 (MAR. 12, 1999)
KY990025 (MAR. 12, 1999)
KY990027 (MAR. 12, 1999)
KY990028 (MAR. 12, 1999)
KY990032 (MAR. 12, 1999)
KY990035 (MAR. 12, 1999)
KY990039 (MAR. 12, 1999)
KY990044 (MAR. 12, 1999)

Volume IV:

ILLINOIS
IL990001 (MAR. 12, 1999)
IL990002 (MAR. 12, 1999)
IL990003 (MAR. 12, 1999)
IL990004 (MAR. 12, 1999)
IL990005 (MAR. 12, 1999)
IL990006 (MAR. 12, 1999)
IL990007 (MAR. 12, 1999)
IL990008 (MAR. 12, 1999)
IL990009 (MAR. 12, 1999)
IL990011 (MAR. 12, 1999)
IL990012 (MAR. 12, 1999)
IL990013 (MAR. 12, 1999)
IL990014 (MAR. 12, 1999)
IL990015 (MAR. 12, 1999)
IL990016 (MAR. 12, 1999)
IL990017 (MAR. 12, 1999)
IL990021 (MAR. 12, 1999)
IL990022 (MAR. 12, 1999)
IL990024 (MAR. 12, 1999)
IL990025 (MAR. 12, 1999)
IL990027 (MAR. 12, 1999)
IL990028 (MAR. 12, 1999)
IL990029 (MAR. 12, 1999)
IL990031 (MAR. 12, 1999)
IL990032 (MAR. 12, 1999)
IL990033 (MAR. 12, 1999)
IL990034 (MAR. 12, 1999)
IL990035 (MAR. 12, 1999)
IL990036 (MAR. 12, 1999)
IL990037 (MAR. 12, 1999)
IL990038 (MAR. 12, 1999)
IL990039 (MAR. 12, 1999)
IL990040 (MAR. 12, 1999)
IL990041 (MAR. 12, 1999)
IL990042 (MAR. 12, 1999)
IL990043 (MAR. 12, 1999)
IL990044 (MAR. 12, 1999)
IL990045 (MAR. 12, 1999)
IL990046 (MAR. 12, 1999)
IL990047 (MAR. 12, 1999)
IL990049 (MAR. 12, 1999)
IL990050 (MAR. 12, 1999)
IL990051 (MAR. 12, 1999)
IL990052 (MAR. 12, 1999)
IL990054 (MAR. 12, 1999)
IL990055 (MAR. 12, 1999)
IL990056 (MAR. 12, 1999)
IL990057 (MAR. 12, 1999)
IL990058 (MAR. 12, 1999)
IL990059 (MAR. 12, 1999)
IL990060 (MAR. 12, 1999)
IL990061 (MAR. 12, 1999)
IL990062 (MAR. 12, 1999)
IL990063 (MAR. 12, 1999)
IL990064 (MAR. 12, 1999)
IL990065 (MAR. 12, 1999)
IL990066 (MAR. 12, 1999)
IL990067 (MAR. 12, 1999)
IL990068 (MAR. 12, 1999)
IL990069 (MAR. 12, 1999)
IL990070 (MAR. 12, 1999)
INDIANA
IN990001 (MAR. 12, 1999)
IN990002 (MAR. 12, 1999)
IN990003 (MAR. 12, 1999)
IN990004 (MAR. 12, 1999)
IN990005 (MAR. 12, 1999)
IN990006 (MAR. 12, 1999)
IN990016 (MAR. 12, 1999)
IN990017 (MAR. 12, 1999)
IN990018 (MAR. 12, 1999)
IN990020 (MAR. 12, 1999)
IN990021 (MAR. 12, 1999)
IN990024 (MAR. 12, 1999)
IN990059 (MAR. 12, 1999)
IN990060 (MAR. 12, 1999)
IN990061 (MAR. 12, 1999)
OHIO
OH990001 (MAR. 12, 1999)
OH990002 (MAR. 12, 1999)
OH990003 (MAR. 12, 1999)
OH990007 (MAR. 12, 1999)
OH990008 (MAR. 12, 1999)
OH990028 (MAR. 12, 1999)
OH990029 (MAR. 12, 1999)
OH990034 (MAR. 12, 1999)
OH990035 (MAR. 12, 1999)
OH990036 (MAR. 12, 1999)

Volume V:

NEBRASKA
NE990001 (MAR. 12, 1999)
NE990003 (MAR. 12, 1999)
NE990009 (MAR. 12, 1999)
NE990011 (MAR. 12, 1999)
NE990019 (MAR. 12, 1999)

Volume VI:

IDAHO
ID990001 (MAR. 12, 1999)
MONTANA
MT990003 (MAR. 12, 1999)
MT990006 (MAR. 12, 1999)
MT990007 (MAR. 12, 1999)
MT990008 (MAR. 12, 1999)
NORTH DAKOTA
ND990002 (MAR. 12, 1999)
ND990004 (MAR. 12, 1999)
OREGON
OR990001 (MAR. 12, 1999)
OR990017 (MAR. 12, 1999)
WASHINGTON
WA990005 (MAR. 12, 1999)
WA990008 (MAR. 12, 1999)

Volume VII:

HAWAII
HI990001 (MAR. 12, 1999)

General Wage Determination Publication

General wage determination issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon and Related Acts." This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

The general wage determination issued under the Davis-Bacon and related Acts are available electronically by subscription to the FedWorld Bulletin Board System of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at 1–800–363–2068.

Hard-copy subscription may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the seven separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the State covered by each volume. Throughout the remainder of the year, regular weekly updates are distributed to subscribers.

Signed at Washington, DC, this 25th day of March 1999.

Carl J. Poleskey,

Chief, Branch of Construction Wage Determinations.

[FR Doc. 99–7829 Filed 4–1–99; 8:45 am]

BILLING CODE 4510–27–M

LEGAL SERVICES CORPORATION

Meetings

AGENCY: Legal Services Corporation.

ACTION: Notice of public hearings of Commission authorized by the Legal Services Corporation ("LSC" or "Corporation") to study the issue of when aliens must be present in the United States to be eligible for legal assistance from Corporation-funded programs.

SUMMARY: The Corporation has formed and authorized a Commission, known as the Erlenborn Commission, to hold public hearings and study the meaning of a statutory requirement in the Corporation's appropriations act that an alien be present in the United States in order to be eligible for legal assistance from LSC-funded programs (hereinafter referred to as "the presence requirement"). The first hearing of the Commission was held at Duke University in Raleigh, North Carolina on

March 27, 1999. This notice provides information on the second public hearing and seeks written requests from individuals and organizations to provide testimony at the hearing. The public hearings are intended to aid the Commission compile a factual record and prepare findings to be transmitted to the Corporation's Board of Directors, along with recommendations, to inform the Corporation's interpretation of the presence requirement and to provide the basis for any necessary and appropriate remedial action, such as a rulemaking or a request for legislative action by the Congress.

DATES: The second public hearing will be held by the Commission on April 10, 1999, at Stanford University, in Palo Alto, California. Requests to provide oral testimony at the second public hearing are due on or before April 5, 1999.

ADDRESSES: Requests to provide oral testimony may be submitted to the Office of the General Counsel, Legal Services Corporation, 750 First St. NE., 11th Floor, Washington, DC 20002–4250. Requests may be faxed at 202–336–8952 or e-mailed to adawayn@smtp.lsc.gov.

FOR FURTHER INFORMATION CONTACT: Suzanne B. Glasow, 202–336–8817.

SUPPLEMENTARY INFORMATION: On February 18, 1999, the Corporation published a notice in the **Federal Register** of the formation of a Commission to study the issue of when aliens must be present in the United States to be eligible for legal assistance from Corporation-funded programs. See 64 FR 8140 (Feb. 18, 1999). The February notice requested written comments on the alien eligibility matter and gave notice that comments were due at the Corporation on or before March 22, 1999. Id. The Corporation published a second notice on March 15, 1999, which provided information on the first hearing that was held by the Commission on March 27, 1999. See 64 FR 12822 (March 15, 1999). This notice provides information on the second hearing and solicits requests to provide oral testimony. Oral testimony at the hearing will be at the invitation of the Commission.

The second hearing has been scheduled for Saturday, April 10, 1999, and will be held in Building 60, Room 61H at Stanford University, located at 450 Serra Mall, Stanford, California.

Requests to provide oral testimony at the second hearing must be submitted in writing and are due at the Corporation on or before April 5, 1999.

Dated: March 30, 1999.

Suzanne B. Glasow,

Senior Assistant General Counsel.

[FR Doc. 99–8222 Filed 3–31–99; 12:41 pm]

BILLING CODE 7050–01–P

OFFICE OF MANAGEMENT AND BUDGET

Office of Federal Procurement Policy

Policy Letter 99–X on Promoting Subcontracting Opportunities and Administering Subcontracting Plans

AGENCY: Executive Office of the President, Office of Management and Budget (OMB), Office of Federal Procurement Policy (OFPP).

ACTION: OFPP is requesting comments on a policy letter supplementing the Federal Acquisition Regulation (FAR) to further promote subcontracting opportunities for small, small disadvantaged, and women-owned small business concerns.

SUMMARY: This policy letter supersedes and cancels OFPP Policy Letters 80–1, 80–2, and 80–4. It supplements FAR coverage of subcontracting opportunities for small, small disadvantaged, and women-owned small business concerns. The current trend toward contract consolidation may impact these small business concerns' ability to compete as prime contractors. We are issuing this policy letter to enhance subcontracting opportunities for such concerns.

COMMENT DATE: Comments must be received on or before June 1, 1999.

ADDRESSES: Please submit comments to Deidre A. Lee, Administrator, Office of Federal Procurement Policy, Old Executive Office Building, Room 352, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Linda Williams at 202–395–3302.

Deidre A. Lee,

Administrator.

Policy Letter 99–X to the Heads of Executive Departments and Establishments

Subject: Policy on Promoting Subcontracting Opportunities and Administering Subcontracting Plans

1. *Purpose.* This directive supplements Federal Acquisition Regulation (FAR) coverage of subcontracting plans required by section 8(d) of the Small Business Act (15 U.S.C. 637(d)) as amended by the Federal Acquisition Streamlining Act of 1994 (FASA).

2. *Supersession Information.* This Policy Letter supersedes and cancels OFPP Policy Letter 80–1, "P.L. 95–507, Section 211, Subcontracting: Agency Coordination with the Small Business Administration Resident Procurement Center Representatives," dated January 24, 1980; OFPP Policy Letter 80–2, "Regulatory Guidance on Section 211 of Public Law 95–507," dated April 29, 1980; Supplement No. 1 to Policy Letter 80–2, dated May 29, 1981; and OFPP Policy Letter 80–4, "Women's Business Enterprise Program," dated April 29, 1980.

3. *Authority.* This Policy Letter is issued pursuant to section 6 of the Office of Federal Procurement Policy Act, as amended, 41 U.S.C. 405.

4. *Definitions.*

a. The definitions of commercial plan, failure to make a good faith effort to comply with the subcontracting plan, individual contract plan, master plan, small business concern, small business subcontractor, small disadvantaged business concern, and women-owned small business concern have the same meaning as that provided by FAR Part 19.

b. The term commercial item has the same meaning as that provided by FAR section 2.101.

c. The term subcontract has the same meaning as that provided by FAR section 19.701. However, purchases from a corporation, company or division of a prime contractor that are affiliates as defined in 13 C.F.R. 121.103 are not considered "subcontracts."

5. *Policy.* This document establishes policies for promoting subcontracting opportunities and administering subcontracting plans for small business, small disadvantaged business, and women-owned small business concerns. Nothing in this Policy Letter precludes an agency from establishing additional requirements regarding subcontracting plans.

6. *Solicitation and Subcontracting Plan Requirements.*

a. Determining the Need for a Subcontracting Plan. In addition to the requirements contained at FAR section 19.705–2, the solicitation shall inform prospective offerors that the estimated value of indefinite delivery contracts/task order and delivery order contracts will be used to determine if a subcontracting plan is required.

b. Reviewing the Subcontracting Plan. In addition to the procedures contained at FAR section 19.705–4, contracting officers shall take the following actions:

(1) Require an offeror that proposes lower goals than the target goals stated in the solicitation to explain why it cannot achieve the stated goals.

(2) Advise offerors of the availability of the following sources of information on potential small, small disadvantaged, and women-owned small business concern subcontractors:

(a) The U.S. Small Business Administration (SBA) Procurement Marketing and Access Network (PRONet) (http://pro-net.sba.gov/), a free on-line internet-based search engine that provides access to the profiles of more than 170,000 small businesses.

(b) The Department of Commerce, Minority Business Development Agency's (MBDA) Phoenix Data Base or the Opportunity Data Base at www.mbda.gov.

THE PAPER AND INK USED IN THE ORIGINAL PUBLICATION MAY AFFECT THE QUALITY OF THE MICROFORM EDITION

(c) State, county, and city government minority business offices.

(d) Small, minority, and women business associations.

(e) Local chambers of commerce.

(f) DOD's Centralized Contractor Registration Data Base.

(3) Encourage offerors to synopsize in the Commerce Business Daily (CBD) or advertise in trade newspapers, journals, or other communication media.

(4) Require offerors to identify other contracts that had subcontracting plans. Contact the contracting officers who administered those earlier plans to determine whether the objectives were realized and required reports were submitted on time. Overall compliance should be considered, not merely whether the goals were met.

(5) Ensure that subcontracting master plans meet the following conditions:

(a) The SBA procurement center representative has been given an opportunity to comment on the master plan and,

(b) The subcontract goals for small, small disadvantaged, and women-owned small business concerns are specifically set forth in each contract or modification.

(6) Follow the requirements of FAR clause 52.219.9 entitled "Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan" if the award is expected to exceed $500,000 ($1 million for construction of a public facility), unless the acquisition is reserved for small business concerns, no subcontracting opportunities exist, the contract will be performed entirely outside of any state, territory, or possession of the United States, the District of Columbia, and the Commonwealth of Puerto Rico, or the contract is with Federal Prison Industries or the blind or severely disabled and is awarded under the provisions of the Javits-Wagner-O'Day Act. The clause shall apply to all other entities including large businesses; state and local governments; non-profit organizations; public utilities; educational institutions, including Historically Black Colleges and Universities (HBCUs), Minority Institutions (MIs), and foreign-owned firms that receive federal contracts if the portion of the contract to be performed in the United States exceeds the above thresholds. However, subcontracting plans are not required from HBCUs and MIs that receive contract awards above the thresholds from the Department of Defense (DOD), the Coast Guard, and the National Aeronautics and Space Administration (NASA).

(7) Ensure that small disadvantaged and women-owned small business concern dollars are included in the small business category. This means, for example, that a small disadvantaged business concern owned by a woman is counted as a small business concern, a small disadvantaged business concern, and a women-owned small business concern.

(8) Ensure that the actual achievements on the SF 294, Subcontracting Report for Individual Contracts, are reported on the same basis as the goals set forth in the contract.

(9) When subcontractors are required to adopt subcontracting plans (see FAR section 19.704(a)(9)), require offerors to review, approve, and monitor their subcontractors' compliance with such plans. Copies of subcontractors' plans must be retained by the prime contractor until subcontract completion. A "certificate of compliance" or statement from the subcontractor that it has a subcontracting plan does not satisfy this requirement.

c. Award of Contracts or Contract Modifications.

(1) The Small Business Act treats contracts and modifications separately. The following policies apply to contract modifications other than options. If a subcontracting plan is not required at the time of award because the contract value is below the threshold, a subcontracting plan will not be required even if a subsequent modification increases the contract value to an amount exceeding the threshold. The only exception to this rule is when the contract modification itself exceeds the threshold. Moreover, it is not necessary to obtain another subcontracting plan for a modification exceeding the applicable threshold if the contract already includes a subcontracting plan. However, the original plan must be modified to adjust the goals to account for the new effort.

(2) The following policies apply to contractors and subcontractors that no longer meet the size or ownership criteria for a small, small disadvantaged, or women-owned small business concern as a result of growth, a buy-out, or a merger during the period of contract performance:

(a) A subcontracting plan is not required of any former small business prime contractor that, during contract performance, no longer meets the definition of a small business concern. Similarly, the requirement to submit periodic reports does not apply. However, a subcontracting plan is required if a prime contractor erroneously considered itself small at the time of contract award. Under this circumstance, the contracting officer should request a subcontracting plan from the contractor and the responsibility to submit periodic reports applies.

(b) A prime contractor may continue to report subcontract dollars as a small, small disadvantaged, or women-owned small business concern award for the duration of the subcontract, including all option years.

d. Contract Awards Involving Commercial Plans.

(1) Commercial plans, as described in FAR section 19.704(d), are useful for companies that normally rely on their existing network of suppliers for all of their business and do not enter into specific subcontracts to fill Government contracts. Commercial plans may apply to the production of the offeror's entire company, or may be limited to a corporation, company, division, plant or product line.

(2) Commercial plans are recognized as one way to reduce the burden of government-unique requirements for companies that provide commercial items under Government contracts and subcontracts.

(3) Agencies shall inform prospective offerors in solicitations expected to trigger the requirements for a subcontracting plan of the opportunity for them and/or their subcontractors to develop commercial plans if they are supplying commercial items.

(4) Offerors shall state if there is a pre-approved plan and for which item(s) and/or service(s) the plan has been approved.

(5) The contracting officer shall obtain a copy of the plan and approval document from a contractor who has a commercial plan previously approved by another agency's contracting activity or another federal agency.

e. Contract Administration of Subcontracting Plans. In addition to the requirements at FAR section 19.706, administrative contracting officers shall:

(1) Monitor a contractor's compliance with the SF 294 report requirements. The SF 294 is used to evaluate the contractor's progress toward meeting the subcontracting goals established in an individual contract plan. The contracting officer shall pay particular attention to reviewing the SF 294 required at contract completion. The SF 294 is not required for contracts with an approved commercial plan.

(2) Ensure receipt of and review the SF 295 (Summary Subcontracting Report). The SF 295 is used to evaluate the contractor's progress toward meeting the subcontracting goals in commercial plans. The SF 295 also is used for both commercial plans and individual plans to summarize all subcontract awards under contracts with a particular federal agency.

7. *Best Practices.* For purposes of this Policy Letter, best practices are practical techniques gained from experience that agencies may use to improve subcontracting plans. The best practices are not mandatory and should not form the basis for Inspector General or other audit reviews.

a. Subcontract Plan Evaluation.

(1) DOD, Coast Guard, and NASA regulations require that the subcontracting plan be a factor in evaluating bids or competitive proposals (10 U.S.C. 2323(h)(2)) under solicitations that require a plan. Other agencies may use this approach as appropriate. For example, the offeror's subcontracting plan may be a separate factor/subfactor in complex, large dollar negotiated acquisitions, or consolidated procurements, where substantial subcontracting opportunities exist. As a separate evaluation factor/subfactor (apart from the offeror's technical, management, and cost proposal), the subcontracting plan should account for a meaningful percentage or weight of the total evaluation. In cases where small businesses are bidding against large contractors and small businesses are not required to have a plan, contracting officers shall give small businesses a rating equal to the maximum points available for those evaluation factors/subfactors.

(2) Agencies should define the parameters by which a subcontracting plan will be evaluated. The parameters may include the following:

(a) The extent to which the plan expresses definitive commitments to subcontracting with small, small disadvantaged, and women-owned small business concerns. Greater credit may be given to an offeror who identifies the names of the intended small, small disadvantaged, and women-owned small business concerns with the initial submission of its plan, and/or provides

"letters of commitment" to subcontract with such firms.

(b) The extent to which the plan provides a significant share of subcontracting dollars to small, small disadvantaged, and women-owned small business concerns.

(c) The quality of the offeror's overall plan, including its goals and methods for achieving those goals.

(d) For individual contract plans, the offeror's procedures for reviewing, approving, and monitoring its subcontractors' compliance with subcontracting plans.

(e) The extent to which the offeror utilizes small business incumbents with proven performance records as subcontractors under consolidated contracts for services. Utilizing incumbents allows the government to retain institutional knowledge, and small businesses to continue providing quality services at advantageous prices.

(f) For mission-specific contracts such as high technology and research, the extent to which the offeror plans to award subcontracts for other than routine support services.

(g) The extent to which prime contractors have excelled in achieving subcontracting goals or participated in a Mentor Protégé Program.

b. Use of Past Performance in Source Selection.

(1) The contracting officer may obtain information from the cognizant contract administration office concerning an offeror's past performance with respect to subcontracting with small, small disadvantaged, and women-owned small business concerns. In addition, the contracting officer may seek the advice of the agency's small business representative and/or check with the SBA Area Director for Government Contracting or the Defense Contract Management Command to determine the offeror's current subcontracting performance rating.

(2) In evaluating past performance, the contracting officer may consider the following:

(a) The extent to which goals were achieved on contracts completed during the current fiscal year and the two previous fiscal years, with greater weight assigned to those contracts completed most recently.

(b) The extent to which the offeror's subcontracting efforts were consistent with its subcontracting plan or the extent to which the offeror made a good faith effort to comply with its plan.

(c) The extent to which the offeror required its large business subcontractors to adopt similar plans under the contract flow-down requirement.

(d) The extent to which an offeror complied with the timely and accurate submission of the required SF 294 and SF 295.

(e) The extent to which the offeror participates in a Mentor Protégé Program.

c. Awards and Incentives.

(1) Contracting activities, in conjunction with Heads of Offices of Small and Disadvantaged Business Utilization, may establish an awards program for contracting officials and prime contractors who do an outstanding job of promoting small, small disadvantaged, and women-owned small business concerns as subcontractors. Recognition may be in the form of plaques, certificates, monetary awards, etc. The awards program may, among other things, recognize:

(a) Prime contractors that exceed all of their subcontracting goals;

(b) Contracting officials who are exemplary in administering and enforcing compliance with subcontracting plans, and

(c) Small business and contracting specialists who demonstrate outstanding outreach efforts to promote the use of small, small disadvantaged, and women-owned small business concerns as subcontractors.

(2) In addition to an awards program, contracting activities may consider incentives such as:

(a) In contracts containing the Liquidated Damages clause at FAR section 52.219–16, requiring that a certain percentage of the contract value be subcontracted to small business concerns. If the percentage is not met, the contracting activity may assess liquidated damages.

(b) Making the administration and enforcement of subcontracting plans a critical factor in the contracting officer's performance appraisal.

(c) Negotiating alternative payment schedules with prime contractors that offer to provide substantial subcontracting opportunities to small, small disadvantaged, and women-owned small business concerns. This incentive also could be applied to prime contractors that agree to mentor small business concerns under a Mentor Protégé Program.

(d) Reducing inspection, monitoring, and auditing of subcontracting compliance for prime contractors that have an outstanding past performance record. For example, a contractor that receives an outstanding rating on a subcontracting compliance review could receive a follow-up review the next year that consists of a statistical desk audit only. The SBA has authorized its field office staff to exempt outstanding contractors from a formal compliance review for three years as long as the SF 295 shows no deterioration in the dollars awarded to small, small disadvantaged, and women-owned small business concerns during that period.

d. Goals.

(1) The contracting officer may use target goals in solicitations to inform potential offerors of what the Government expects in an acceptable subcontracting plan.

(2) The contracting officer may specify subcontracting percentage goals to increase small, small disadvantaged, and women-owned business concern participation in newly consolidated contracts for non-commercial items/services. The percentages may be determined on a contract-by-contract basis based on market research and requests for information from potential offerors and potential small business subcontractors.

(3) In addition to the statutory goals for small, small disadvantaged, and women-owned small business concerns, which are based on the projected value of the prime and subcontract awards proposed by the offeror, the contracting officer may also establish subcontracting goals based on the overall value of the procurement. (Note: In some cases, this may not be a realistic approach. The dollar value of the contract may have no effect on the potential for subcontracting.)

(4) The contracting officer may consider increasing the small, small disadvantaged, and women-owned small business concern participation goals commensurate with the size of the contract. For example, the larger the degree of contract aggregation, the higher the goals for small, small disadvantaged and women-owned small business concern participation may be set.

8. *Responsibilities.* The Federal Acquisition Regulatory Council shall ensure that the policies established herein are incorporated in the FAR within 210 days from the date this Policy Letter is published in final form in the **Federal Register**. Promulgation of final regulations within that 210-day period shall be considered issuance in a "timely manner" as prescribed in 41 U.S.C. 405(b).

9. *Information Contact.* Questions regarding this Policy Letter should be directed to Linda Williams, Deputy Associate Administrator, Office of Federal Procurement Policy, 725 17th Street, NW, Washington, DC 20503, telephone 202–395–3302, facsimile 202-395–5105.

10. *Judicial Review.* This Policy Letter only provides policy guidance to agencies in the exercise of their discretion concerning Federal contracting. It does not interpret the Constitution or any law. It is not intended to create any legal right or any basis on which to sue the United States or its representatives.

11. *Effective Date.* The Policy Letter is effective 30 days after the date of issuance.

[FR Doc. 99–8122 Filed 4–1–99; 8:45 am]

BILLING CODE 3110–01–P

OFFICE OF MANAGEMENT AND BUDGET

Office of Federal Procurement Policy

OFPP Policy Letter 99–1 on Government-Wide Small Business, HUBZone Small Business, Small Disadvantaged Business, and Women-Owned Small Business Goals for Procurement Contracts

AGENCY: Executive Office of the President, Office of Management and Budget (OMB), Office of Federal Procurement Policy (OFPP).

ACTION: Notice of proposed policy letter.

SUMMARY: OFPP is requesting comments on proposed OFPP Policy Letter 99–1. This letter contains guidance on implementing government-wide goals for procurement contracts awarded to small businesses, HUBZone small businesses, small disadvantaged businesses, and women-owned small businesses. The Policy Letter also provides guidance on reporting requirements that will help the Small Business Administration (SBA)

determine whether executive agencies are reaching these goals. This Policy Letter, when issued in final, will supersede OFPP Policy Letter 91–1.

COMMENT DATE: We must receive comments on or before June 1, 1999.

ADDRESSES: Send your comments to Deidre A. Lee, Administrator, Office of Federal Procurement Policy, Old Executive Office Building, Room 352, Washington, DC 20503. Send e-mail comments to Keith Coleman at kcoleman@oa.eop.gov.

FOR FURTHER INFORMATION CONTACT: Keith Coleman at 202–395–7209 or Linda Williams at 202–395–3302.

SUPPLEMENTARY INFORMATION: We issued an earlier Policy Letter, 91–1, entitled "Government-Wide Small Business and Small Disadvantaged Business Goals for Procurement Contracts" on March 11, 1991. That policy letter addressed sections 502 and 503 of the Business Opportunity Development Act of 1988. Section 502 establishes government-wide goals for contract awards to small business concerns and small disadvantaged businesses. Section 503 requires the President to include the agencies' actual goal achievements in the "State of Small Business" report. The report also includes an analysis of an agency's failure to achieve the goals, and the number and dollar value of prime contracts awarded to small firms through noncompetitive negotiated procurements, restricted and unrestricted competitions, and information on subcontract awards.

We need to issue this new policy letter because of statutory changes made in 1994 and 1997. Section 7106 of the Federal Acquisition Streamlining Act of 1994 (FASA) establishes a 5 percent women-owned small business goal. Section 603 of the Small Business Reauthorization Act of 1997 increases the annual government-wide goal for prime contract awards to small business concerns from not less than 20 percent to not less than 23 percent. The Act also adds a 3 percent HUBZone small business goal phased-in over the next 5 years.

This Policy Letter, when issued in final, will supersede OFPP Policy Letter 91–1. This proposed Policy Letter supports the Small Business Administration's (SBA) policies of establishing its own guidance on the new goals, establishing with each agency mutually acceptable prime contract goals for awards made under section 8(a) of the Small Business Act, and using procurement data in the Federal Procurement Data System to measure accomplishments rather than requiring agencies to provide this information in separate reports.

We request comments on the proposed policy letter.

Deidre A. Lee,

Administrator.

Policy Letter 99–1

To the Heads of Executive Departments and Establishments

Subject: Government-Wide Small Business, HUBZone Small Business, Small Disadvantaged Business, and Women-Owned Small Business Goals for Procurement Contracts.

1. *Purpose.* This Policy Letter provides guidance to Executive branch departments and agencies on government-wide goals for procurement contracts awarded to small businesses, HUBZone small businesses, small disadvantaged businesses and women-owned small businesses ("small businesses"). It also provides guidance on reporting requirements that will help the Small Business Administration (SBA) determine whether agencies are reaching these goals.

2. *Supersession Information.* This Policy Letter replaces OFPP Policy Letter 91–1, "Government-Wide Small Business and Small Disadvantaged Business Goals for Procurement Contracts," dated March 11, 1991.

3. *Authority.* This policy letter is based on the Small Business Act, the Office of Federal Procurement Policy Act, the Business Opportunity Development Reform Act of 1988, the Federal Acquisition Streamlining Act of 1994, and the Small Business Reauthorization Act of 1997.

4. *Background.* The Small Business Act requires executive agencies, in consultation with SBA, to develop annual goals for contract awards to small businesses. SBA monitors agency performance and reports their achievements to the President. The Office of Federal Procurement Policy Act, 41 U.S.C. 405, empowers the Administrator for Federal Procurement Policy to prescribe government-wide procurement policies.

The Business Opportunity Development Reform Act establishes government-wide goals for small businesses and small disadvantaged businesses and requires the President to include the agencies' actual goal achievements in the "State of Small Business" report. The report must also include an analysis of any failure to achieve the goals, and the number and dollar value of prime contracts awarded to small businesses through noncompetitive negotiated procurements, restricted and unrestricted competitions, and information on subcontract awards. The Federal Acquisition Streamlining Act of 1994 (FASA) establishes a 5 percent women-owned small business goal. The Small Business Reauthorization Act of 1997 (SBRA) adds a 3 percent HUBZone small business goal phased-in over the next 5 years. It also increases the annual government-wide goal for prime contract awards to small business concerns to not less than 23 percent.

In March 1991, the OFPP issued Policy Letter 91–1 to implement government-wide goals for small businesses and small disadvantaged businesses. This proposed Policy Letter includes the guidance from Policy Letter 91–1, and also implements the more recent statutory provisions of FASA and SBRA.

This proposed Policy Letter also supports the Small Business Administration's (SBA) policies of establishing its own guidance on the new goals, establishing with each agency mutually acceptable prime contract goals for awards made under section 8(a) of the Small Business Act, and using procurement data in the Federal Procurement Data System to measure accomplishments rather than requiring agencies to provide this information in separate reports.

5. *Policy.* Prior to the beginning of each fiscal year, the SBA will mutually establish with each agency goals for participation by small business, small disadvantaged business, HUBZone small business, and women-owned small businesses. The agencies' cumulative goals shall count toward accomplishment of the government-wide goals.

6. *Goals.*

a. The government-wide small business goal is not less than 23 percent of the total value of all prime contracts awarded for the fiscal year. This includes all the goals for the specific categories of small business.

b. The following table lists the specific goals for small disadvantaged and women-owned small businesses.

The goal for...	is...
small disadvantaged business prime contracts.	not less than 5 percent of the value of all prime contract awards.
small disadvantaged business subcontracts.	not less than 5 percent of the value of all subcontract awards.
women-owned small business prime contracts.	not less than 5 percent of the value of all prime contract awards.

The goal for...	is:...
women-owned small business subcontracts.	not less than 5 percent of the value of all subcontract awards.

c. The following table lists the specific goals for HUBZone small businesses.

For FY...	the percentage goal is at least...
1999	1 percent of the value of all prime contract awards
2000	1.5 percent of the value of all prime contract awards
2001	2 percent of the value of all prime contract awards
2002	2.5 percent of the value of all prime contract awards
2003 and after	3 percent of the value of all prime contract awards.

d. There is no specific statutory requirement to establish goals for awards made pursuant to section 8(a) of the Small Business Act. However, agencies must mutually establish with SBA acceptable goals for awards to 8(a) firms.

e. Agencies may count prime contract awards to small businesses toward more than one goal. Prime contract awards to small businesses, women-owned small businesses, small disadvantaged businesses, 8(a) firms, and HUBZone small businesses count toward the government-wide small business goal.

7. *Responsibilities.*

a. Agency Responsibilities.

(1) Each department or agency must negotiate annually in good faith with the SBA to establish its specific goals for small business, woman-owned small business, small disadvantaged business, HUBZone small business, and 8(a) firms. These goals should provide the maximum practicable opportunity for all these types of small businesses to participate in contracts let by the agency. SBA's annual guidance on establishing small business goals, entitled "Guidelines on Goals Under Procurement Preference Programs," covers the goal-setting process.

(2) At the end of the fiscal year, agencies must submit a narrative report to SBA analyzing its achievements and any failures to achieve its small business goals for the year. The report must also include plans for improving performance in the next year.

(3) Agencies must ensure that their prime and subcontract data in the Federal Procurement Data System is accurate and complete in order to measure their small business goal accomplishments.

b. SBA Responsibilities.

(1) Prior to the beginning of each fiscal year, the SBA will work with each agency to establish mutually acceptable goals for the different categories of small business.

(2) SBA must ensure that the mutually established cumulative goals for all agencies meet or exceed the government-wide small business goal of 23 percent.

(3) SBA must compile and analyze agencies' achievements against their individual small business procurement goals and report the results to the President.

(4) SBA will use data in the Federal Procurement Data System to determine:

(i) agencies' success in reaching their procurement goals for prime and subcontracts;

(ii) the number and dollar value of prime contracts awarded to small business concerns, HUBZone small business concerns, small disadvantaged business concerns, and women-owned small business concerns through:

- Noncompetitive negotiation,
- Competition restricted to small disadvantaged business concerns,
- Competition restricted to small business concerns and HUBZone small business concerns, and
- Unrestricted competitions; and

(iii) the dollar value of subcontracts awarded to small business concerns, HUBZone small business concerns, small disadvantaged business concerns, and women-owned small business concerns.

8. *Information Contact.* Direct any questions regarding this Policy Letter to Linda Williams (202–395–3302), or Keith Coleman (202–395–7209).

9. *Effective Date.* The Policy Letter is effective 30 days after issuance.

[FR Doc. 99–8123 Filed 4–1–99; 8:45 am]
BILLING CODE 3110–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–269, 50–270, and 50–287]

In the Matter of Duke Energy Corporation; (Oconee Nuclear Station, Units 1, 2, and 3); Exemption

I

The Duke Energy Corporation (Duke/the licensee) is the holder of Facility Operating License Nos. DPR–38, DPR–47, and DPR–55, that authorize operation of the Oconee Nuclear Station, Units 1, 2, and 3 (Oconee), respectively. The licenses provide, among other things, that the facilities are subject to all rules, regulations, and orders of the U.S. Nuclear Regulatory Commission (the Commission) now or hereafter in effect.

The facilities consist of pressurized water reactors located on Duke's Oconee site in Seneca, Oconee County, South Carolina.

II

Title 10 of the *Code of Federal Regulations* (10 CFR) part 50, appendix G requires that pressure-temperature (P–T) limits be established for reactor pressure vessels (RPVs) during normal operating and hydrostatic or leak rate testing conditions. Specifically, 10 CFR part 50, appendix G states that "[t]he appropriate requirements on * * * the pressure-temperature limits and minimum permissible temperature must be met for all conditions." Pressurized water reactor licensees have installed cold overpressure mitigation systems/low temperature overpressure protection (LTOP) systems in order to protect the reactor coolant pressure boundaries (RCPBs) from being operated outside of the boundaries established by the P–T limit curves and to provide pressure relief of the RCPBs during low temperature overpressurization events. The licensee is required by the Oconee Units 1, 2, and 3 Technical Specifications (TSs) to update and submit the changes to its LTOP setpoints whenever the licensee is requesting approval for amendments to the P–T limit curves in the Oconee Units 1, 2, and 3 TSs.

In the submittal of October 15, 1998, the licensee requested that the staff exempt Oconee Units 1, 2, and 3 from the application of specific requirements of 10 CFR part 50, § 50.60 and appendix G. Specifically, the licensee proposed to use the American Society of Mechanical Engineers (ASME) Code Case N–514 to permit setting the pressure setpoint of the facility's LTOP such that the P–T limits required by 10 CFR part 50, appendix G could be exceeded by 10 percent during a low temperature overpressure transient.

The licensee noted that the underlying purpose of the subject regulations is to establish limits to protect the RPVs from brittle failure during low temperature operation and the LTOP provides a physical means of protecting these limits.

The Reactor Coolant System P–T operating window at low temperatures is defined by the LTOP setpoint. Implementation of an LTOP setpoint without the additional margin of 10

percent allowed by the ASME Code Case N–514 would restrict the P–T operating window and would potentially result in undesired actuation of the LTOP system. This constitutes an unnecessary burden that can be alleviated by the application of the Code Case and reduce the potential for an undesired lift of the LTOP valve.

The licensee stated that establishing the LTOP pressure setpoints in accordance with the provisions in Code Case N–514 would provide an acceptable level of safety against overpressurization events of the Oconee RPVs. The licensee stated that establishing the LTOP setpoints in accordance with N–514 provisions such that the vessel pressure would not exceed 110 percent of the P–T limit allowables would still provide an acceptable level of safety and mitigate the potential for an inadvertent actuation of the LTOP. The Code Case dictates that when the LTOP system is enabled, the peak pressure resulting from an LTOP design-basis transient will not exceed 110 percent of the pressure limits established by the P–T limit curves for the plant, as required by 10 CFR part 50, appendix G, and by appendix G to the Code. The Code Case also requires that the LTOP system be enabled at a temperature of 200 °F or at a temperature value equivalent to the sum of the limiting adjusted reference temperature (ART) + 50 °F, whichever is greater. The staff has previously found for several other nuclear power plants that Code Case N–514 provides an "acceptable level of safety" based on the amount of conservatism that has been explicitly incorporated into the methodologies for generating P–T limit curves, as prescribed in 10 CFR part 50, appendix G; appendix G to the Code; and RG 1.99, Revision 2. The conservatism includes: (1) a safety factor of 2 on the pressure stresses; (2) a margin factor applied to the calculation of ART values in accordance with the methodology of RG 1.99, Revision 2; (3) an assumed flaw of one-fourth of the vessel section thickness from the inside wetted surface in the vessel beltline region with a 6:1 aspect ratio; and (4) a limiting material toughness based on dynamic crack arrest data. The staff has reviewed the proposed application of this Code Case to Oconee Units 1, 2, and 3, and found it to be acceptable.

III

Pursuant to 10 CFR 50.12, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR part 50, when (1) the exemptions are authorized by law, will not present an undue risk to public health or safety, and are consistent with the common defense and security; and (2) when special circumstances are present. As stated in 10 CFR 50.12(a)(2)(ii), special circumstances exist when application of the regulation would not serve or is not necessary to achieve the underlying purpose of the rule. The staff has determined that an exemption would be required to approve the use of Code Case N–514. The staff has further determined that special circumstances are present, in that application of the regulation under these circumstances is not necessary to achieve the underlying purpose of the rule and use of Code Case N–514 would meet the underlying intent of the regulation. Based upon a consideration of the conservatism that is explicitly incorporated into the methodologies of 10 CFR part 50, appendix G; appendix G of the Code; and RG 1.99, Revision 2, the staff concluded that permitting the LTOP setpoints to be established at the level specified in the Code Case (e.g., less than or equal to 110 percent of the limit defined by the P–T limit curves) would provide an adequate margin of safety against brittle failure of the RPVs. This is also consistent with the determination that the staff has reached for other licensees under similar conditions based on the same considerations. Therefore, the staff concludes that requesting the exemption under the special circumstances of 10 CFR 50.12(a)(2)(ii) is appropriate and that the methodology of Code Case N–514 may be used to establish the LTOP setpoints for the Oconee Units 1, 2, and 3 reactor coolant system.

IV

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a), the exemption is authorized by law, will not endanger life or property or common defense and security, and is, otherwise, in the public interest. Therefore, the Commission hereby grants Duke an exemption from the requested specific requirements of 10 CFR part 50, § 50.60 and appendix G, for Oconee Nuclear Station, Units 1, 2, and 3.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not result in any significant effect on the quality of the human environment (64 FR 14950, dated March 29, 1999).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 29th day of March 1999.

For the Nuclear Regulatory Commission.

Samuel J. Collins,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 99–8163 Filed 4–1–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Subcommittee Meeting on Severe Accident Managemet; Notice of Meeting

The ACRS Subcommittee on Severe Accident Management will hold a meeting on April 30, 1999, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

Portions of this meeting may be closed to public attendance to discuss Westinghouse proprietary information pursuant to 5 U.S.C. 552(b)(c)(4).

The agenda for the subject meeting shall be as follows:

Friday, April 30, 1999—8:30 a.m. Until the Conclusion of Business

The Subcommittee will discuss the Westinghouse Owners Group's proposed revisions to the Core Damage Assessment guidelines and Post Accident Sampling System requirements for Westinghouse Electric Company nuclear power plants. The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman. Written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the cognizant ACRS staff engineer named below five days prior to the meeting, if possible, so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the Westinghouse Owners Group, the NRC

staff, and other interested persons regarding this review. Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, the scheduling of sessions which are open to the public, and the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor, can be obtained by contacting the cognizant ACRS staff engineer, Mr. Paul A. Boehnert (telephone 301/415–8065) between 7:30 a.m. and 4:15 p.m. (EST). Persons planning to attend this meeting are urged to contact the above named individual one or two working days prior to the meeting to be advised of any potential changes to the agenda, etc., that may have occurred.

Dated: March 25, 1999.

Richard P. Savio,

Associate Director for Technical Support, ACRS/ACNW.

[FR Doc. 99–8162 Filed 4–1–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Tennessee Valley Authority

[Docket No. 50–259]

Browns Ferry Nuclear Plant, Unit 1; Issuance of Director's Decision Under 10 CFR 2.206

Notice is hereby given that the Director, Office of Nuclear Reactor Regulation, has issued a Director's Decision concerning a Petition dated April 5, 1998, filed on behalf of the Union of Concerned Scientists (Petitioner) by Mr. David A. Lochbaum, pursuant to Title 10 of the *Code of Federal Regulations*, Section 2.206 (10 CFR 2.206). The Petition requests the U.S. Nuclear Regulatory Commission (NRC) to (1) revoke the operating license for Browns Ferry Nuclear Plant, Unit 1; (2) require the Tennessee Valley Authority (TVA) to submit either a decommissioning plan or a lay-up plan for Unit 1; (3) conduct NRC inspections at Browns Ferry Unit 1 against the decommissioning plan or the lay-up plan; and (4) hold a hearing in the Washington, DC, area.

The Director, Office of Nuclear Reactor Regulation, has determined to deny in part and grant in part the Petition, for the reasons stated in the "Director's Decision Under 10 CFR 2.206" (DD–99–06). The complete text that follows this notice is available for public inspection and copying in the Commission's Public Document Room, the Gelman Building, 2210 L Street, NW., Washington, D.C., and at the local public document room for the Browns Ferry Nuclear Plant at the Athens Public Library, 405 E. South Street, Athens, Alabama 35611.

A copy of this decision has been filed with the Secretary of the Commission for the Commission's review. As provided for by 10 CFR 2.206(c), the decision will constitute the final action of the Commission 25 days after issuance, unless the Commission, on its own motion, institutes a review of the decision within that time.

Dated at Rockville, Maryland, this 29th day of March 1999.

For the Nuclear Regulatory Commission.

Samuel J. Collins,

Director, Office of Nuclear Reactor Regulation. 9

Director's Decision Pursuant to 10 CFR 2.206 (DD–99–06)

I. Introduction

On April 5, 1998, Mr. David A. Lochbaum filed a petition [1], pursuant to Title 10 of the *Code of Federal Regulations* (10 CFR 2.206), on behalf of the Union of Concerned Scientists (Petitioner).

Petitioner requested the Nuclear Regulatory Commission (NRC) to (1) revoke the operating license for Browns Ferry Nuclear Plant, Unit 1; (2) require the Tennessee Valley Authority (TVA) to submit either a decommissioning plan or a lay-up plan for Unit 1; (3) conduct NRC inspections at Browns Ferry Unit 1 against the decommissioning plan or the lay-up plan; and (4) hold a hearing in the Washington, DC, area.

As the basis for the request, Petitioner asserts that because Unit 1 has been on "administrative hold" since June 1, 1985, and has not operated since then, revoking the operating license and requiring relicensing if TVA later decides to restart Unit 1 is a better and safer process than is the current restart process of Inspection Manual Chapter (IMC) 0350. Further, a decommissioning plan would provide assurance that the irradiated fuel is stored safely and that Units 2 and 3 are sufficiently independent of Unit 1 for safe operation.

Petitioner notes that while Unit 1 has been in administrative hold status, the NRC has issued numerous bulletins, generic letters, and information notices. TVA's typical action in response to these NRC communications is to delay addressing the issues until prior to returning the unit to service. Petitioner notes a similar response was provided by TVA to the NRC's letter of October 9, 1996, which requested information pertaining to the adequacy, availability, and control of design-basis information [2, 3]. Petitioner speculates that the configuration management problems and plant material condition that led to the shutdown in 1985 only could have worsened since then. Thus, Petitioner believes that requiring relicensing for Unit 1 if the decision is made to restart would "wipe the licensing slate clean and allow TVA, the NRC, and the public to examine restarting the plant without the burden of unraveling the mess caused by more than a decade of licensing limbo." Petitioner further asserts that the NRC cannot meaningfully inspect a facility in a degraded condition and in an uncertain licensing status.

On April 29, 1998, the NRC acknowledged receipt of the petition and informed Petitioner that the petition had been assigned to the Office of Nuclear Reactor Regulation (NRR) for response. Petitioner was informed that the request for a hearing was denied because the petition did not provide new information that raised the potential for a significant safety issue and did not allege any violations of NRC requirements. Petitioner was advised that any new information that should be considered by the NRC in evaluating the issues raised in the petition should be provided promptly to the NRC in writing.

On June 5, 1998, Petitioner reiterated the request for a hearing and cited NRC Bulletin 94–01, "Potential Fuel Pool Draindown Caused by Inadequate Maintenance Practices at Dresden Unit

[1] The petition can be viewed and downloaded from the NRC World Wide Web page (http://www.nrc.gov/NRC/PUBLIC/2206/petitions/g980199/g980199.html). Copies of the petition also are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555–0001, and at the local public document room located at the Athens Public Library, South Street, Athens, Alabama 35611.

[2] NRC letter from James M. Taylor, Executive Director for Operations, to Craven Crowell, Chairman, TVA Board of Directors, dated October 9, 1996.

[3] This letter was sent to TVA on Browns Ferry Units 2 and 3, Sequoyah Units 1 and 2, and Watts Bar Units 1 and 2 dockets. It was not sent on the Browns Ferry Unit 1 docket because that facility was not operating, and it was known to the NRC that extensive design-basis reconstitution will be required before the facility may be restarted.

[4] The NRC concluded that the petition raised novel issues with respect to maintaining an operating license for a facility for which there are no plans for future operation and that the information that might be presented during an informal public hearing could constitute a valuable resource for the NRC in reaching a decision with regard to the petition.

1," as an example of what could involve one or more significant safety issues. Bulletin 94–01 was sent to (1) all holders of operating licenses or construction permits for nuclear power reactors (for information) and (2) all holders (except Shoreham) of licenses for nuclear power reactors that are permanently shutdown with spent fuel in the spent fuel pool (for action). Petitioner argued that Bulletin 94–01 should have been sent to the Unit 1 licensee for action instead of merely for information because Unit 1 is more nearly like a permanently shutdown facility than an operating facility and the conditions described in the bulletin could have existed at Unit 1.

By letter dated August 7, 1998, Petitioner was informed that the NRC had reconsidered its earlier denial of the request for a hearing and had decided that holding an informal public hearing would be appropriate[4], even though such a hearing was not required under the criteria for such hearings as provided in NRC Management Directive 8.11, "Review Process for 10 CFR 2.206 Petitions." The August 7 letter also addressed the issues surrounding Bulletin 94–01 and its applicability to Browns Ferry Unit 1. The hearing was held on October 26, 1998, in the Browns Ferry Nuclear Plant Training Center.[5]

II. Background

TVA is the holder of operating licenses for three nuclear power units at the Browns Ferry site. In March 1985, TVA voluntarily shut down Units 1 and 3 because of questions relating to primary containment isolation testing at Unit 1 and reactor water level instrumentation at Unit 3. Unit 2 was in a refueling outage, but TVA voluntarily decided not to restart the unit as scheduled because other questions and concerns arose about the adequacy of TVA's nuclear program. In September 1985,[6] the NRC requested TVA to submit its plans for correcting problems and improving performance in its overall nuclear program and at Browns Ferry. The Commission did not order TVA to obtain its approval before restarting the plants because of prior verbal agreement between TVA and NRC to that effect; however, TVA was required, pursuant to 10 CFR 50.54(f), to inform the NRC if TVA intended to change this commitment. In late 1985, TVA submitted its corporate nuclear performance plan (CNPP) to address weaknesses in the TVA corporate nuclear program. The CNPP was followed by the Browns Ferry Nuclear Performance Plan to address site-specific weaknesses and to resolve additional concerns raised by the NRC. These plans formed the regulatory framework for the restart of Unit 2.

In July 1987, the NRC concluded[7] that organizational, staffing, and programmatic improvements already in place or under way would resolve the problems at the corporate level. In January 1991, the NRC concluded[8] that TVA's commitments and corrective action programs for Unit 2 were acceptable, and in April 1991, the Commission approved Unit 2 restart. Unit 2 restarted May 24, 1991. TVA submitted its corrective action plan for returning Units 1 and 3 to service in 1991,[9] and generally used the same methods, criteria, and technical positions for Unit 3 that were approved for the restart of Unit 2. In February 1992, an NRC Restart Panel was formed in accordance with NRC IMC 0350. TVA completed the recovery of Browns Ferry Unit 3 in 1995, and the Commission authorized the Regional Administrator to approve restart of Unit 3 upon completion of certain open issues. The NRC Administrator for Region II issued restart approval on November 19, 1995. Units 2 and 3 have operated well since their respective restarts, and this performance is reflected in the NRC systematic assessment of licensee performance reports issued since the restart of Unit 2.

In April 1996, TVA requested removal[10] of Browns Ferry Unit 1 as a Category 3 plant from the NRC's list of problem plants. TVA stated that no decision had been reached on the long-term operational status of Unit 1, and the unit is defueled and maintained in lay-up status. Those shared systems that support operation of Units 2 and 3, however, will continue to be kept in service. TVA noted that there are no plans for equipment refurbishing or recovery activities at Unit 1. TVA committed to inform the NRC immediately of a decision to return Unit 1 to service, to implement the same programs used for the Unit 3 recovery, and to not restart Unit 1 without prior Commission approval. Unit 1 was removed from the list of problem plants[11] on June 21, 1996.

III. Discussion

The hearing provided Petitioner the opportunity to present information related to issues that have a bearing upon the actions requested in the petition. Petitioner, represented by Mr. David Lochbaum, was joined in presenting information to support the petition by Ms. Ann Harris, a representative of We the People of Tennessee and spokesperson for the National Nuclear Safety Network. The NRC staff has reviewed the transcript of the hearing to identify the relevant issues to be considered in addition to the filing of April 5, 1998. The following paragraphs discuss the issues raised in the petition and in the hearing. Related issues have been grouped together and are addressed in the following paragraphs.

Petitioner Issues

- The NRC does not inspect Browns Ferry Unit 1.
- The NRC cannot meaningfully inspect Browns Ferry Unit 1 because the NRC does not have an "Administrative Hold" category.
- The NRC cannot meaningfully inspect Browns Ferry Unit 1 because it is not in compliance with NRC regulations, including the "Maintenance Rule."

Petitioner asserts that, contrary to a statement made in a letter[12] to him by

[5] The hearing transcript can be obtained from the NRC World Wide Web page (http://www.nrc.gov/NRC/PUBLIC/2206trans.html). Copies of the transcript are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555–0001, and at the local public document room located at the Athens Public Library, 504 E. South Street, Athens, Alabama 35611.

[6] NRC letter from William J. Dircks, Executive Director for Operations, to Charles Dean, Chairman,TVA Board of Directors, dated September 17, 1985.

[7] NUREG–1232, Volume 1, "Safety Evaluation Report on Tennessee Valley Authority Revised Corporate Nuclear Performance Plan," July 1987.

[8] NUREG–1232, Volume 3, Supplement 2, "Safety Evaluation Report on Tennessee Valley Authority: Browns Ferry Nuclear Performance Plan. Browns Ferry Unit 2 Restart," January 1991.

Building, 2120 L Street, NW., Washington, DC 20555–0001, and at the local public document room located at the Athens Public Library, 504 E. South Street, Athens, Alabama 35611.

[6] NRC letter from William J. Dircks, Executive Director for Operations, to Charles Dean, Chairman,TVA Board of Directors, dated September 17, 1985.

[7] NUREG–1232, Volume 1, "Safety Evaluation Report on Tennessee Valley Authority Revised Corporate Nuclear Performance Plan," July 1987.

[8] NUREG–1232, Volume 3, Supplement 2, "Safety Evaluation Report on Tennessee Valley Authority: Browns Ferry Nuclear Performance Plan. Browns

[10] Letter from Oliver D. Kingsley, President and Chief Nuclear Officer, TVA, dated April 16, 1996, to James M. Taylor, NRC Executive Director for Operations.

[11] NRC letter from James A. Taylor, Executive Director for Operations, to Oliver D. Kingsley, President and Chief Nuclear Officer, TVA, dated June 21, 1996.

[12] NRC letter from Albert W. De Agazio, Browns Ferry Project Manager, to David A. Lochbaum, Union of Concerned Scientists, dated January 23,

the NRC Project Manager for Browns Ferry, he has information that shows that NRC inspectors do not look at Browns Ferry Unit 1 at all. Petitioner asserted further, that NRC inspectors could not meaningfully inspect Unit 1 because NRC regulations recognize only two categories of power plants: operating plants and permanently closed plants.

Browns Ferry Unit 1 is sometimes referred to as being in an "Administrative Hold" [13] status, but this is a TVA designation and it is irrelevant for regulatory purposes. Browns Ferry Unit 1 is an operating reactor subject to all the terms and conditions that are specified in Operating License DPR–33,[14] the uncertainty of its return to service notwithstanding. The Unit 1 Technical Specifications (TSs) are maintained, are in force, and must be complied with. The operating license and associated TSs are amended periodically, usually in concert with similar changes for Units 2 and 3.

Some Unit 1 systems or components [15] are required to support the unit in its current defueled condition, or they directly support the safe operation of Units 2 or 3. These systems and components are maintained and operated as required under applicable plant programs or TSs. The remaining systems and components [16] have been placed in lay-up status to protect their economic value and to preserve the equipment in the event a decision is made to restart the unit.

Unit 1 is subject to both routine and reactive NRC inspection, and the unit is inspected by NRC inspectors. However, the operational status of the facility is considered when determining the frequency, type, and scope of inspections, and the amount of inspection effort is substantially less than for a comparable facility in active service because much of the equipment and systems serve no safety function while the unit is shutdown and defueled. Thus, the NRC inspection effort for Unit 1 is focused mostly upon those areas that have a direct bearing upon safety. Generally, this includes those structures, systems, and components (SSCs) that are necessary to ensure the safe storage of Unit 1 irradiated fuel and to support the safe operation of Units 2 and 3. The inspection effort includes no or little effort for SSCs that are not needed to provide a safety function for the current plant operating status.

Petitioner, in the original petition and during the hearing, relied upon information compiled by the NRC that led him to conclude that Unit 1 is not inspected at all. The sources of the tables used by Petitioner, though not fully identified, appear to be taken from certain NRC documents that were intended primarily for internal management use, but the information has been released through at least one Freedom of Information Act request, and similar information has been presented at several of the annual Regulatory Information Conferences sponsored by NRR. We acknowledge that the NRC documents are misleading and could lead a person to that conclusion regarding Unit 1 inspection. Until 1997, NRR compiled quarterly various program and management information in a "White Book," intended for internal purposes. The documents included data on inspection efforts expended at single-, dual-, and triple-unit sites. In those documents, Browns Ferry was shown as a dual unit site, though it is actually a triple unit site. Unit 1 was not included because it was not in operational service. This was done so that the data could be used for comparison purposes to other dual-unit sites. Although these documents [17] have described incorrectly the Browns Ferry site as a dual-unit site, the fact remains that Unit 1 is inspected by NRC inspectors. This inspection activity is adequately demonstrated by the results of a review of NRC inspection reports for Browns Ferry issued for the 3-year period 1996 through 1998. Of 32 inspection reports issued for that period, 10 refer to NRC inspection of Unit 1 issues (Table I). Table I does not include inspection activities associated with the systems "shared" between the units or inspection of common buildings; those items are routinely inspected as support for Units 2 and/or 3.

NRC IMC 0030, "Policy and Guidance for Development of NRC Inspection Manual Programs," provides guidance for the development of the NRC inspection program, and the inspection program at Browns Ferry has been developed in accordance with this guidance. For the 12 month period from October 1, 1997, through September 30, 1998, the actual NRC inspection effort expended at Unit 1 was approximately 12 percent of the effort expended at either of the other units. On a site basis, Unit 1 received approximately 6 percent of the total inspection hours for the site. Thus, the greater inspection effort at the operating units allows the NRC to adequately assess the licensee's performance and to focus its efforts into areas that have the greater safety significance as opposed to inspecting in areas of Unit 1 that have little or no safety significance.

Petitioner asserts that Browns Ferry Unit 1 is not in compliance with NRC regulations. To support this contention, Petitioner states that usually TVA has deferred taking actions with respect to Browns Ferry Unit 1 requested by numerous generic communications issued since 1985. TVA typically has committed to completing the actions before returning the unit to service, if such a decision is made. As additional support for this contention, Petitioner notes that there is an outstanding issue regarding Unit 1 compliance with 10 CFR 50.65, commonly referred to as the maintenance rule.

IMC 0720 provides guidance with regard to NRC generic communications on nuclear reactor issues. Generic communications consist of bulletins, generic letters, and information notices. Bulletins may transmit information to the addressees, request specified actions, and require a written response. Generic letters request that analyses be performed or descriptions of proposed corrective actions be submitted regarding matters of safety, safeguards, or environmental significance. The addressees may be asked to accomplish the actions and report their completion by letter. Information relating to these actions may be requested on a voluntary basis or in accordance with Section 182a, Atomic Energy Act of 1954, as amended, and 10 CFR 50.54(f). Usually, this type of generic letter requests new or revised licensee commitments or other continuing actions but may not explicitly or coercively solicit licensee commitments. Information notices provide information regarding safety, safeguards, or environmental issues. Information notices normally are used to bring significant, recently identified safety, security, or environmental information to the attention of licensees. Addressees are expected to review the

---

1998. This letter also was an attachment to the April 5, 1998, submitted by Mr. Lochbaum.

[13] "Administrative Hold" is a TVA designation that denotes that while no decision has been made regarding future operation of the facility, the option for restart at an unspecified future date is being retained.

[14] Operating License No. DPR–33 was issued to TVA for the operation of Browns Ferry Unit 1 on December 20, 1973. The license expires on midnight October 20, 2013.

[15] This includes such systems (or portions thereof) as spent fuel pool cooling and cleanup, raw water, fire protection, reactor /refuel zone ventilation, radiation monitoring, residual heat removal, reactor building closed cooling water, certain electrical systems, and emergency diesel generators.

[16] Many of these systems and components have been drained, deenergized, and disassembled, as appropriate.

[17] Publication of these documents was discontinued at the end of 1998.

information for applicability to their facilities and consider actions, as appropriate, to avoid similar problems.

IMC 0720 states that the various types of generic communications are not used to impose regulatory requirements, and they are not to be used as a substitute for the rule-making process. Thus, the fact that a licensee merely provides the written response required by the Atomic Energy Act and/or NRC rules and regulations but does not, or will not, implement other requested action(s) does not, by itself, constitute being in non-compliance with a regulatory requirement and does not constitute a basis for suspension or revocation of the operating license. In such circumstances, the NRC, may take other action commensurate with the safety significance of the issues. Such actions could vary in severity from acceptance by the NRC that the licensee has a valid basis for not taking the requested actions up to the NRC's issuing an Order to shut down (or to remain shutdown) until the particular safety issue is resolved in an acceptable manner. With regard to Browns Ferry Unit 1, the licensee has either taken the requested actions in the generic communications when necessary or has committed to address the issues raised before the unit can be restarted. Furthermore, although TVA has no announced plans for restarting the facility, TVA has agreed not to restart it without specific approval from the Commission. Thus, any Commission action taken with regard to revoking the Unit 1 operating license merely because of TVA's deferral of actions requested in generic communications pending a decision to restart Unit 1 would serve no useful purpose.

With the possible exception of 10 CFR 50.65, the Commission is not aware of any non-compliance issues with applicable NRC rules and regulations at Browns Ferry Unit 1. Furthermore, Petitioner has not offered any contradictory credible information, either in the original petition or during the hearing. However, the issue of Unit 1 compliance with 10 CFR 50.65 is still undergoing review by the NRC staff, and no final decision has been made.

The issue regarding 10 CFR 50.65 arose from an inspection of the implementation of 10 CFR 50.65 at the Browns Ferry plant from April 4 through April 8, 1997.[18] The inspection team found that the licensee considered Unit 1 status (shutdown and defueled) for implementing 10 CFR 50.65. Thus, a number of Unit 1 systems, such as high pressure coolant injection, which normally would be included within the scope of 10 CFR 50.65 for an operating plant, were not included, and performance monitoring, data collection, and trending were not being performed on these systems. However, those Unit 1 systems that support Unit 2 and/or Unit 3 operation, systems that are common to Unit 2 or Unit 3, or systems required to maintain safe shutdown of Unit 1, such as spent fuel pool cooling, were properly scoped under 10 CFR 50.65, and performance monitoring, data collection, and trending were being performed on these systems.

At issue is whether scoping Unit 1 SSCs by considering the defueled and indefinite shutdown condition of Unit 1 satisfies 10 CFR 50.65. The staff has informed the licensee that the issue can be resolved by one of three approaches, namely, certify per 10 CFR 50.82(a)(1) that Unit 1 operations have ceased permanently, submit a request for exemption from those aspects of 10 CFR 50.65 that currently are not being met, or revise the scope of the Unit 1 maintenance program to meet the requirements of the rule. On February 4, 1999, TVA submitted a request for a temporary partial exemption from the requirements of 10 CFR 50.65. The staff currently is reviewing the proposed exemption request.

Petitioner Issues

- TVA would exceed its statutory debt limit if Browns Ferry Unit 1 is closed prematurely.
- TVA may lack the money needed to put Browns Ferry Unit 1 into the operating category, or the permanently closed category.
- TVA does not have the necessary funds for decommissioning funding assurance.

Petitioner has made a number of assertions regarding the ability of TVA to fund operations and/or decommissioning of Unit 1 but has not provided any facts in support thereof. The NRC, however, has no regulatory authority with regard to issues related to TVA's statutory debt limit or other financial matters and decisions other than decommissioning funding assurance.

On November 23, 1998, the Commission's amended rules for "Financial Assurance Requirements for Decommissioning Nuclear Power Reactors" became effective.[19] The amendments require power reactor licensees to report periodically on the status of their decommissioning funds, and on changes in their external trust agreements and other financial assurance mechanisms, and also allow licensees to take credit for certain earnings on decommissioning trust funds. The amendments also added a definition of the term "Federal Licensee" to address the issue of which licensees may use statements of intent. As now defined in 10 CFR 50.2, a Federal Licensee means any NRC licensee, the obligations of which are guaranteed by and supported by the full faith and credit of the United States Government. In the past, TVA has relied upon statements of intent to have decommissioning funds available. The purpose of the statement of intent is to obtain a commitment by another, and superior, governmental entity that the obligations of the subordinate governmental entity will be paid by the superior entity if the subordinate entity cannot pay them. Such a commitment represents support for the obligations by the full faith and credit of the United States. TVA agrees[20] that the revised definition excludes TVA from relying upon this funding mechanism and has informed the NRC that statements of intent will no longer be relied upon for decommissioning funding assurance. TVA has provided documentation for three external Master Decommissioning Trusts that were established in 1996. TVA has stated that the external trusts arrangements meet the requirements for an external sinking fund (10 CFR 50.75(e)(ii)). The trust arrangements meet the requirement that the account be segregated from licensee assets and placed outside the licensee's administrative control. During the hearing on October 26, 1998, a representative of the TVA's Office of the General Counsel stated that the external trust fund arrangements exceeded several hundreds of millions of dollars. As required by 10 CFR 50.75(f)(1), TVA is to report to the NRC by March 31, 1999, and at least once every 2 years thereafter, the status of its decommissioning funding, including the amount of decommissioning funds estimated to be required, the amount accumulated to the end of the calendar year preceding the date of the report, and a schedule of the annual amounts remaining to be collected. The NRC will review the status of TVA's decommissioning funding report, and if necessary, appropriate action will be

[18] NRC Inspection Report 50–259/97–04, 50–260/97–04, and 50–296/97–04, issued May 21, 1997.

[19] Final rule changes to 10 CFR Parts 30 and 50 on financial assurance requirements for the decommissioning of nuclear power plants were published in the **Federal Register** on September 22, 1998 (63 FR 50465).

[20] Letter from Mark J. Burzynski, Manager, Nuclear Licensing, TVA, dated December 21, 1998, to NRC.

taken to ensure compliance with NRC regulations.

Petitioner Issue

• A decommissioning plan would ensure safe storage of Browns Ferry Unit 1 irradiated fuel and would ensure sufficient independence of Units 2 and 3 from Unit 1.

Petitioner contends that Unit 1 irradiated fuel stored in its spent fuel pool will continue to represent a threat to public health for many years. The probability of an accident involving stored fuel is considered to be sufficiently small to make the overall risk to the public from an accident acceptable; however, Petitioner contends that the probability is small only because NRC regulations for design features and administrative controls at both permanently closed plants and operating plants minimize the chances of an accident. Petitioner asserts that there are no regulations for plants in Administrative Hold status, and, thus, there are no regulations that apply to Unit 1.

As previously stated, Administrative Hold is a TVA designation, not an NRC designation, and, thus, for NRC regulatory purposes, Browns Ferry Unit 1 is an operating reactor and is subject to all terms and conditions of the Unit 1 operating license, TSs, and all applicable NRC regulations, contrary to Petitioner's assertion that Unit 1 is unregulated.

Each of the reactors at Browns Ferry has its own spent fuel storage pool, but the pools of Units 1 and 2 are joined by a transfer canal that allows fuel assemblies to be transferred between the Unit 1 and Unit 2 fuel storage pools. The fuel storage facilities are shared only for Units 1 and 2, and the transfer canal is the only shared feature. The Unit 1 spent fuel storage pool is located on a common refueling floor with and in the same structure that houses the Units 2 and 3 spent fuel storage pools.

Units 2 and 3 are in active operational status, thus, each unit is refueled periodically, requiring discharge of recently irradiated fuel into the storage pools. Compared to Unit 1 fuel that was last discharged in 1985, recently discharged fuel from Unit 2 or Unit 3 is substantially more radioactive and produces greater decay heat. Thus, the consequences of an accident involving recently discharged irradiated fuel would be more severe than the same accident involving Unit 1 fuel. It follows that TSs, administrative controls, technical requirements, and design features that are adequate to ensure the safe storage of Unit 2 or Unit 3 spent fuel are also adequate to ensure safe storage of Unit 1 irradiated fuel.

Thus, whether or not Unit 1 was to be declared permanently shut down, the fuel storage requirements would not be changed. Requiring the licensee to declare the permanent shutdown of Unit 1 and to submit a post-shutdown decommissioning activities report, as requested by Petitioner, would have no effect upon the risk to the public from a potential fuel-handling accident or from accidental draining of the fuel storage pool because the existing technical specifications and administrative controls would not be changed, and existing design features to preclude draining of the storage pools would be maintained. Additionally, the SSCs required to ensure safe storage of irradiated fuel in the Unit 1 storage pool are operated, tested, and maintained to ensure that they are capable of performing their function.

With regard to Petitioner's assertion that a decommissioning plan would ensure sufficient independence of Units 2 and 3 from Unit 1, it is not at all clear which safety issue would be addressed. As currently licensed, the Browns Ferry units incorporate some sharing of certain structures and systems to obtain redundancy and improve reliability, but aside from the shared and common features, each unit is capable of operating independently of the other units, and each unit's TSs and technical requirements take into account the shared and common features that must be operable to support safe operation of that unit. Requiring the licensee to declare the permanent shutdown of Unit 1 and to submit a post-shutdown decommissioning activities report would require retaining those sections of the Unit 1 TSs that are necessary to support the safe operation of Units 2 and 3.

Continuing Operational Safety of Browns Ferry Unit 1

The Browns Ferry Unit 1 TSs are maintained and amended periodically as necessary, as is the case with Units 2 and 3, and TVA is required to operate Unit 1 in conformance with the TSs and technical requirements. Inasmuch as Unit 1 is shutdown and defueled, a number of safety and non-safety systems and components are not required to be operational. These systems and components have been drained, deenergized, and disassembled, as appropriate, and have been placed in a lay-up condition to protect and preserve the equipment pending a decision to resume power operations. The lay-up program is described in plant procedures and includes periodic monitoring of the condition of the equipment and lay-up status.

Unit 1 systems and components required to perform a function while the unit is in its current defueled status or that are required to support Units 2 and 3 operations are operated, maintained, and periodically tested in conformance with applicable TSs, and are included within the scope of the maintenance rule (10 CFR 50.65) program. Design and configuration control is maintained for these systems, and modifications or temporary alterations are performed under the provisions of 10 CFR 50.59.

Certain systems and components not required to perform a function while Unit 1 is shutdown and defueled may not now conform to the design basis or may not have been modified to meet the actions requested by various NRC generic communications issued since the unit shut down. This, by itself, does not constitute a basis for revoking the license since the facility is in an operational mode in which the equipment is not required to be operable. TVA has committed to implementing a Design Baseline Verification Program for Unit 1 prior to returning Unit 1 to service.

Units 1 and 2 share a common control room that is staffed continually by licensed reactor operators, and the Unit 1 control boards are given regular attention similar to the operating units. Operators and engineers routinely tour areas of Unit 1 containing the systems and equipment that the TSs require to be operable to ensure safe storage of irradiated fuel and to support operation of the other units.

Relicensing Versus Applying the IMC 0350 Process

Petitioner asserts that revoking the operating license and requiring relicensing if TVA later decides to restart Unit 1 is a better and safer process than is the current restart process in IMC 0350. Petitioner believes that this would "wipe the licensing slate clean and allow TVA, the NRC, and the public to examine restarting the plant without the burden of unraveling the mess caused by more than a decade of licensing limbo."

NRC IMC 0350 provides staff guidelines for approving restart of nuclear power plants that have been shut down either voluntarily or involuntarily because of a significant operating event, complex equipment problems, or serious licensee management deficiencies. The guidelines have been used successfully for the restart of Browns Ferry Unit 3, Crystal River Unit 3, and Millstone Unit 3 and are being used for the D. C. Cook

reactors and Millstone Unit 2. In each case, a plant-specific restart plan is developed using the IMC for guidance. The restart action plan identifies expected NRC actions to be taken before approving restart and includes an inspection plan to ensure that an adequate inspection record is created to support the restart decision. IMC 0350 specifies that the NRC Commissioners are to be adequately informed of staff restart actions on a continuing basis through Commission papers or through the Executive Director for Operations, and as necessary, the staff will brief the Commissioners. IMC 0350 provides the opportunity for public participation through public meetings. Through such meetings, the public may hear and comment on the licensee's restart plans and the results of NRC reviews of the restart activities. Public comments and concerns are considered by the NRC and may be factored into the restart review, as appropriate.

During the hearing on October 26, 1998, Petitioner was questioned by an NRC representative regarding why it is believed that the processes used by TVA and NRC to recover Units 2 and 3 would not work for recovery of Unit 1. Petitioner indicated that the process is "not very objective and it's basically up to the whims of the restart team as to what is safe, where the lines are drawn." However, when asked if there would be an issue if the process is applied correctly with openness and public involvement, Petitioner responded by referencing the use of the process at Millstone and indicating that it [IMC 0350] is a good process, but that it wasn't followed [at Millstone]. Thus, Petitioner's issue does not appear to be the process but its implementation. Petitioner conceded that the IMC 0350 process is working very well in the case of the D.C. Cook plant, and that if it were used at Browns Ferry Unit 1 as it is being used at D. C. Cook, there would be reasonable expectation that a good product would be realized.

IV. Summary and Conclusions

The NRC has determined that—

• Petitioner has not identified any credible safety concern that has been created by the current "Administrative Hold" status of the unit that would not otherwise exist if the operating license were to be revoked. Absent a credible safety concern, there is no regulatory basis for suspending or revoking an operating license merely because the licensee chooses not to operate the unit.

• The licensee is required to comply with and is, with one possible exception to the staff's knowledge, in compliance with all current applicable regulations for operating reactors and is required to comply with Unit 1 TSs and other technical requirements for the current operational mode of the unit. The issue of compliance of Unit 1 with 10 CFR 50.65 is the subject of an ongoing review, and resolution is expected soon.

• Unit 1 is inspected by NRC inspectors, but at a reduced scope that is appropriate for the status of the unit.

• Decommissioning Unit 1 would not provide any greater degree of safety for the Unit 1 irradiated fuel, for radiation control, or for Units 2 and 3 than is currently provided by the requirements of the operating license, TSs, and the Technical Requirements Manual.

• There is no demonstrated credible basis for the assertion that facility restart based upon IMC 0350 is a less reliable process for resolving the safety concerns of a problem plant than the relicensing process. The IMC 0350 process has been demonstrated by a number of restart efforts, including those for Browns Ferry Unit 3.

For the reasons stated herein Petitioner's requests for the NRC to revoke the Browns Ferry Unit 1 operating license and to require TVA to submit a decommissioning plan or a lay-up plan for Unit 1, and for the NRC to conduct inspections against the decommissioning plan are denied.

As provided for in 10 CFR 2.206(c), a copy of this decision will be filed with the Secretary of the Commission for the Commission's review. This decision will constitute the final action of the Commission 25 days after issuance unless the Commission, on its own motion, institutes review of the Decision at that time.

Dated at Rockville, Maryland, this 29th day of March 1999.

For the Nuclear Regulatory Commission.

Samuel J. Collins,

Director, Office of Nuclear Reactor Regulation.

Attachment to Director's Decision 99–06

TABLE 1.—BROWNS FERRY UNIT 1 INSPECTION ACTIVITIES

[1996 through 1998]

Inspection report	Date	Inspection activity
50–259/96–01	02/29/96	Radioactive material postings.
50–259/96–03	04/15/96	Connection of Unit 1 and Unit 2 spent fuel pool volumes, spent fuel pool design-basis and operating information.
50–259/96–05	06/18/96	Udated final safety analysis report description of spent fuel pool systems.
50–259/96–06	08/15/96	Continuous air monitoring systems.
50–259/96–10	11/07/96	Housekeeping issues.
50–259/96–12	12/20/96	Lay-up and preventive maintenance program implementation.
50–259/97–03	04/22/97	Spent fuel pool cooling system walkdown, identification that Unit 1 pool makeup valve operator had been removed.
50–259/97–04	05/21/97	Maintenance rule implementation.
50–259/97–08	08/29/97	Sampling of a raw cooling water discharge.
50–259/97–12	02/12/98	Repairs to a radiation monitoring system valve.

[FR Doc. 99–8164 Filed 4–1–99; 8:45 am]
BILLING CODE 7500–01–P

OFFICE OF MANAGEMENT AND BUDGET

Cumulative Report on Rescissions and Deferrals

March 1, 1999.

This report is submitted in fulfillment of the requirement of Section 1014(e) of the Congressional Budget and Impoundment Control Act of 1974 (Public Law 93–344). Section 1014(e) requires a monthly report listing all budget authority for the current fiscal year for which, as of the first day of the month, a special message had been transmitted to Congress.

This report gives the status, as of March 1, 1999, of three rescission proposals that have been pending for less than 45 days and three deferrals contained in two special messages for FY 1999. These messages were transmitted to Congress on October 22, 1998, and February 1, 1999.

Rescissions (Attachments A and C)

As of March 1, 1999, three rescission proposals totaling $35 million have been transmitted to the Congress. Attachment C shows the status of the FY 1999 rescission proposals.

Deferrals (Attachments B and D)

As of March 1, 1999, $1.5 billion in budget authority was being deferred from obligation. Attachment D shows the status of each deferral reported during FY 1999.

Information From Special Messages

The special messages containing information on the rescission proposals and deferrals that are covered by this cumulative report are printed in the editions of the **Federal Register** cited below:

63 FR 63949, Tuesday, November 17, 1998
64 FR 6721, Wednesday, February 10, 1999

Jacob J. Lew,
Director.

BILLING CODE 3110–01P

ATTACHMENT A

STATUS OF FY 1999 RESCISSIONS
(in millions of dollars)

	Budgetary Resources
Rescissions proposed by the President	35.0
Rejected by the Congress	---
Currently before the Congress	35.0

ATTACHMENT B

STATUS OF FY 1999 DEFERRALS
(in millions of dollars)

	Budgetary Resources
Deferrals proposed by the President	1,680.7
Routine Executive releases through March 1999. (OMB/Agency releases of $222.1 million)	-222.1
Overturned by the Congress	---
Currently before the Congress	1,458.6

ATTACHMENT C
Status of FY 1999 Rescission Proposals - As of March 1, 1999
(Amounts in thousands of dollars)

Agency/Bureau/Account	Rescission Number	Amounts Pending Before Congress: Less than 45 days	Amounts Pending Before Congress: More than 45 days	Date of Message	Previously Withheld and Made Available	Date Made Available	Amount Rescinded	Congressional Action
DEPARTMENT OF THE INTERIOR								
Bureau of Land Management								
Management of Lands and Resources	R99-1	6,800		2-1-99	*			
EXECUTIVE OFFICE OF THE PRESIDENT								
Unanticipated Needs								
Unanticipated Needs for Natural Disasters	R99-2	10,000		2-1-99	*			
INTERNATIONAL ASSISTANCE PROGRAMS								
International Security Assistance								
Foreign Military Financing Loan Program Account	R99-3	18,240		2-1-99	*			
TOTAL, RESCISSIONS		35,040						

* No funds are being withheld.

UMI
APR 2 1999
63
ISSUE
64
VOL

ATTACHMENT D
Status of FY 1999 Deferrals - As of March 1, 1999
(Amounts in thousands of dollars)

Agency/Bureau/Account	Deferral Number	Amounts Transmitted: Original Request	Amounts Transmitted: Subsequent Change (+)	Date of Message	Releases(-): Cumulative OMB/ Agency	Releases(-): Congressionally Required	Congressional Action	Cumulative Adjustments	Amount Deferred as of 3-1-99
DEPARTMENT OF STATE									
Other									
United States Emergency Refugee and Migration Assistance Fund	D99-1	82,858	17,724	10-22-98	32,724				67,858
INTERNATIONAL ASSISTANCE PROGRAMS									
International Security Assistance									
Economic Support Fund	D99-2	64,777	1,310,376	10-22-98 2-1-99	71,377				1,323,776
Agency for International Development									
International Disaster Assistance	D99-3	185,000		2-1-99	118,000				67,000
TOTAL, DEFERRALS		352,635	1,328,100		222,101				1,458,634

[FR Doc. 99-8089 Filed 4-1-99; 8:45 am]
BILLING CODE 3110-01-C

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given pursuant to the provisions of the Government in the Sunshine Act, Public Law 94-409, that the Securities and Exchange Commission will hold the following meeting during the week of April 5, 1999:

A closed meeting will be held on Tuesday, April 6, 1999, at 11:00 a.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretary will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(5), (7), (8), (9)(A) and (10), permit consideration of the scheduled matter at the closed meeting.

Commissioner Unger, as duty officer, voted to consider the item listed for the closed meeting in closed session.

The subject matter of the closed meeting scheduled for Tuesday, April 6, 1999, at 11:00 a.m. will be:

Institution of administrative and injunctive proceedings of an enforcement nature.

Institution of injunctive proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: The Office of the Secretary at (202) 942-7070.

Dated: March 30, 1999.

Jonathan G. Katz,

Secretary.

[FR Doc. 99-8089 Filed 4-1-99; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meeting during the week of April 5, 1999.

A closed meeting will be held on Tuesday, April 6, 1999, at 10:00 a.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matters at the closed meeting.

Commissioner Unger, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matter of the closed meeting scheduled for Tuesday, April 6, 1999, at 10:00 a.m., will be:

Institution and settlement of administrative proceedings of an enforcement nature.

Institution and settlement of injunctive actions.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: The Office of the Secretary at (202) 942–7070.

Dated: March 30, 1999.

Jonathan G. Katz,

Secretary.

[FR Doc. 99–8237 Filed 3–31–99; 12:33 pm]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41214; File No. SR–CBOE–99–02]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment No. 1 by the Chicago Board Options Exchange, Inc. Relating to the Definition of Expiration Month for Purposes of Determining Log-On Obligations for the Retail Automatic Execution System

March 25, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 14, 1999, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") a proposed rule change. The Exchange filed an amendment to its proposal on February 23, 1999.[3] The proposed rule change, as amended, is described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice and order to solicit comments on the proposed rule change and Amendment No. 1 from interested persons and to approve the proposal, as amended, on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to codify the definition of an expiration month for purposes of determining compliance with the Retail Automatic Execution System ("RAES") log-on requirement for market-makers of options on the Standard & Poor's 100 Index ("OEX") and the Dow Jones Industrial Average ("DJX"), as detailed in Exchange Rule 24.17. The text of the proposed rule change is available at the Office of the Secretary, CBOE and at the Commission.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Letter from Stephanie C. Mullins, Attorney, CBOE, to Richard Strasser, Assistant Director, Division of Market Regulation, Commission, dated February 22, 1999 ("Amendment No. 1"). Amendment No. 1 redesignated the proposal pursuant to Section 19(b)(2) and requested accelerated approval of the proposed rule change. In addition, the amendment added language to CBOE Rule 24.17 defining expiration month for options on both the Standard & Poor's 100 Index and the Dow Jones Industrial Average.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to codify the definition of an expiration month for purposes of determining compliance with the RAES log-on requirement for market-makers of OEX and DJX options, as detailed in Exchange Rule 24.17. Pursuant to Exchange Rule 24.17(b)(iii), once a market-maker has logged on to RAES at any time during an expiration month, he or she must continue to do so each time he or she is present in the trading crowd until the next expiration. For this purpose, the Exchange is codifying the definition of an expiration month for OEX options as the period from the Monday immediately following an expiration Saturday through the Friday immediately preceding the next successive expiration Saturday.[4]

When DJX RAES obligations were first established in October 1997, the Exchange applied the same RAES log-on obligations as those for OEX options.[5] In consideration of the fact that expiring DJX options contracts cease trading at the close of business on the Thursday immediately preceding an expiration and that the new near-term series become the RAES eligible series on that Friday, however, the Exchange has determined that applying the same definition of an expiration month for options on both OEX and DJX is unworkable. Accordingly, the Exchange is codifying the definition of an expiration month for DJX RAES log-on obligation purposes as the period from the Friday immediately preceding an expiration Saturday through the

[4] *See* Amendment No. 1.

[5] *See* Securities Exchange Act Release No. 39202 (October 3, 1997) 62 FR 53358 (October 14, 1997).

Thursday immediately preceding the next successive expiration Saturday.

2. Statutory Basis

The Exchange believes the proposed rule change is consisting with Section 6(b) of the Act,[6] in general, and furthers the objectives of Section 6(b)(5),[7] in particular, in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, and processing information with respect to, and facilitating transactions in securities, and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should be refer to File No. SR–CBOE–99–02 and should be submitted by April 23, 1999.

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations under the Act applicable to a national securities exchange and, in particular, with the requirements of Section 6(b) of the Act.[8] Specifically, the Commission believes the proposal is consistent with the Section 6(b)(5)[9] requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and national market system and, in general, to protect investors and the public interest.[10]

RAES log-on obligations attempt to ensure continued adequate RAES participation by market-makers in every type of market situation, without the Exchange having to assign an inordinate number of RAES trades to any particular market-maker.[11] The Commission notes that market-makers who violate the RAES log-on obligations are subject to disciplinary action by the Exchange, including fines and suspension from participation in RAES.[12] Accordingly, the Commission believes it is appropriate for the Exchange to provide a precise and appropriate definition of an expiration month for both OEX and DJX options. Based on the differing expiration date for OEX and DJX options, the Commission believes it is reasonable to use different definitions for expiration month as it relates to RAES obligations.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. As CBOE notes, the definition of an expiration month is used solely as an internal rule within the Exchange to determine whether members are meeting their RAES log-on requirements.[13] Accelerated approval of the proposal will help facilitate the market-makers' compliance with their RAES log-on obligations and the Exchange's regulatory overview of its members without delay. The Commission approved a similar rule change by CBOE regarding options on Standard & Poor's 500 Stock Index.[14] Accordingly, the Commission does not believe that the current filing raises any novel regulatory issues. For the foregoing reasons, the Commission believes it is consistent with Section 6(b)(5)[15] and Section 19(b)(2)[16] of the Act to grant accelerated approval to the proposed rule change.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR–CBOE–99–02) is approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[17]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–8145 Filed 4–1–99; 8:45 am]

BILLING CODE 8010–01–M

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

[10] In approving this rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[11] *See* Securities Exchange Act Release No. 37313 (June 14, 1996) 61 FR 32470 (June 21, 1996).

[12] *See* Securities Exchange Act Release No. 37464 (June 22, 1996) 61 FR 39175 (July 26, 1996); Exchange Rules 24.17(f) and (g).

[13] *See* Amendment No. 1.

[14] *See* Securities Exchange Act Release No. 37349 (June 21, 1996) 61 FR 33787 (June 28, 1996).

[15] 15 U.S.C. 78f(b)(5).

[16] 15 U.S.C. 78s(b)(2).

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41219; File No. SR–NSCC–98–11]

Self-Regulatory Organizations; National Securities Clearing Corporation; Order Approving a Proposed Rule Change to Modify Rules Regarding Mutual Fund Services Transfer Service

March 26, 1999.

On July 30, 1998, National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") a proposed rule change (File No. SR–NSCC–98–11) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").[1] Notice of the proposal was published in the **Federal Register** on October 21, 1998.[2] No comment letters were received. For the reasons discussed below, the Commission is approving the proposed rule change.

I. Description

The rule change modifies NSCC's rules relating to its Mutual Fund

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 40549 (October 14, 1998), 63 FR 56280.

Services transfer service.[3] The Mutual Fund Services transfer service enables fund members and mutual fund processors to transfer between each other the value of Fund/SERV eligible mutual fund shares or UIT units on an automated basis.

Currently, a delivering fund member that has acknowledged a transfer request must confirm the value of the Fund/SERV eligible mutual fund shares or UIT units to be transferred by submitting a confirmation to NSCC no earlier than two days and no later than sixty business days after the submission of an acknowledgment. The rule change will permit the delivering fund member to submit a confirmation no earlier than one day and, as is the case today, no later than sixty business days after the submission of an acknowledgment. NSCC will notify members by Important Notice of the specific implementation.

II. Discussion

Section 17A(b)(3)(F) of the Act[4] requires, among other things, that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions. The Commission believes that the proposed rule change is consistent with NSCC's obligations under Section 17A(b)(3)(F) because the rule change facilitates faster transfers.

Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act[5] and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[6] that the proposed rule change (File No. SR–NSCC–98–11) be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–8126 Filed 4–1–99; 8:45 am]

BILLING CODE 8010–01–M

[3] Specifically, NSCC is amending Rule 52, A. Fund/Serv, SEC 21. Transfers of Fund/Serv Eligible Mutual Fund Shares and UIT Units.

[4] 15 U.S.C. 78q–1(b)(3)(F).

[5] 15 U.S.C. 78q–1.

[6] 15 U.S.C. 78s(b)(2).

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41216; File No. SR–Phlx–98–55]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to an Increase in Position and Exercise Limits for Certain Broad-Based Index Options

March 26, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act" or "Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 21, 1998, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes to amend Phlx Rule 1001A(a)(i)-(ii) by increasing broad-based ("market") index option position limits on the Value Line Composite Index ("VLE"), the US Top 100 Index ("TPX"), and the National Over-the-Counter Index ("XOC").[3] Specifically, the current levels of 25,000 contracts total and 15,000 contracts in the nearest expiration month for the VLE and the TPX, and 25,000 contracts for the XOC, are proposed to be tripled to 75,000 contracts total and 45,000 contracts in the nearest expiration month for VLE and TPX, and 75,000 contracts for XOC.

Exchange exercise limits,[4] which are expressed in Phlx Rule 1002A, are established by reference to position limits, such that any increase in position limits would also increase exercise limits. Accordingly, the Phlx is proposing to increase its exercise limits to correspond to the proposed increases in position limits.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Position limits impose a ceiling on the number of option contracts in each class on the same side of the market (*i.e.*, aggregating long calls and short puts or long puts and short calls) that can be held or written by an investor or group of investors acting in concert.

[4] Exercise limits prohibit an investor or group of investors acting in concert from exercising more than a specified number of puts or calls in a particular class within five consecutive business days.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to increase position and exercise limits for the market index options currently traded on the Exchange in order to attract additional trading interest and, thus, promote depth and liquidity in Phlx market index options. The Exchange believes that the current limits constrain certain investors from trading index options. Pursuant to Rules 1001A and 1002A, the position and exercise limits for the VLE and TPX are 25,000 contracts with no more than 15,000 contracts expiring in the nearest expiration month. The position and exercise limits for the XOC is 25,000 contracts with no additional restrictions for the nearest expiration month. For the reasons given below, the Exchange proposes tripling the limits or the VLE and TPX to 75,000 contracts overall with no more than 45,000 contracts expiring in the nearest expiration month. Further, the Exchange proposed to triple the limits for XOC to three times the current level, or 75,000 contracts.

The Exchange believes that the proposed increase is appropriate at this time, in light of the Exchange's nearly 13 years experience trading market index options. In 1985, the National Over-the-Counter Index, XOC, was the first market index option to be traded on the Phlx.[5] Since that time, the Exchange has listed additional market index options. Additionally, the market for index options has also evolved, as more investors are familiar with the product and it uses. Currently, the Phlx lists

[5] Exchange Act Release No. 22044 (May 17, 1985), 50 FR 21532 (May 24, 1985) (order approving File No. SR–Phlx–84–28).

options on the following three market indexes, noting the current position limits.[6]

(1) US Top 100 Index ("TPX") 25,000 contracts (no more than 15,000 contracts can be in the nearest expiration month);

(2) Value Line Composite Index ("VLE") 25,000 contracts (no more than 15,000 contracts can be in the nearest expiration month); and

(3) National Over-the-Counter Index ("XOC") 25,000 contracts.

The Exchange recognizes that the purposes of these limits are to prevent manipulation and to protect against disruption of the markets for both the option as well as the underlying securities. The Exchange has considered the effects of increased position limits on the marketplace, and believes that manipulation and disruption concerns are addressed by a tripled position limits and are offset by the market need for the increased limits. Specifically, the Phlx continues to monitor the markets for evidence of manipulation or disruption caused by investors with positions at or near current position or exercise limits; the new limits will not diminish the surveillance function in this regard.

The current levels have been in place since October 1996,[7] such that a review of the current position limits is appropriate. Position and exercise limits for the National Over-the-Counter Index were raised from 17,000 to 25,000 contracts or 47% in 1996. Position and exercise limits for the Value Line Composite Index were raised from approximately 13,000 contracts, based on a position limit based on monetary value, to 25,000 contracts or 92% in 1988. The US Top 100 Index were created with limits of 25,000 contracts in 1995.

In prior releases approving increased position limits, the Commission acknowledged that a gradual, evolutionary approach has been adopted by the Commission and the various options exchanges in increasing position and exercise limits. In light of the nearly two years since limits were changed, the Exchange believes that these increases are reasonable. Recently, the options exchanges have filed similar proposals respecting equity options.[8]

The Phlx also believes that higher position limits would further accommodate the hedging needs of Exchange market makers and specialists, who are also restricted by current levels. The Exchange continues to believe that increases are needed for traders and investors. The Exchange has been requested by its members and customers, who have repeatedly expressed that these limits hamper the ability to execute investment strategies, to again propose an increase in position limits. Such requests emphasize that institutional hedging needs and trading objectives may exceed current limits, in view of the large portfolios common to institutional trading and that certain sized transactions are required to execute complicated, cross-market strategies. Phlx also notes that floor members have expressed the resulting deleterious effect on index options trading in an exchange environment. Based on such member and customer requests, the Exchange believes that the current position limit levels continue to discourage market participation by large investors and the institutions that compete to facilitate the trading interests of large investors. Accordingly, this proposal aims to also accommodate the liquidity and hedging needs of large investors and the facilitators of those investors.

Concurrent with the proposed increase to position limits, the Exchange is also proposing a corresponding increase to market index option exercise limits. The Exchange believes that this increase is necessary and appropriate for the same reasons as the rationale cited herein for the proposed position limit increases. Furthermore, the Exchange believes that exercise limits constrict trading strategies by preventing investors from exercising positions larger than the limit within five consecutive business days. The Exchange also notes that all of the market index options currently trade on the Exchange are European style, exercisable only during a specified period at expiration, such that the manipulation and market disruption concerns associated with large exercises will be limited. Finally, since index options are settled in cash, not in securities, the Phlx believes the underlying securities would experience very little price movement or increased volume, if any, due to the exercise of the index options.[9]

2. Basis

The Exchange believes that the proposal to increase market index option position limits is consistent with Section 6 of the Act in general,[10] and in particular, with Section 6(b)(5), in that it is design to promote just and equitable principles of trade, prevent fraudulent and manipulative acts and practices, as well as to protect investors and the public interest. The Exchange believes that the proposal should remove impediments to and perfect the mechanism of a free and open market by providing market opportunity to investors constricted by current position limit levels.

The Phlx also believes that by stimulating market participation and thereby increasing option market depth and liquidity, the proposed rule change should promote just and equitable principles of trade. At the same time, the Phlx believes that the proposed position limits should continue to prevent fraudulent and manipulative acts and practices as well as protect investors and the public interest by limiting the ability to disrupt and manipulate the markets for options as well as the underlying securities. The Exchange believes that the proposal represents a balance between creating a disincentive to manipulate or disrupt the marketplace consistent with the purposes of such limits, and setting such limits so low so as to discourage market participation or liquidity providing activity.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

[6] Please note that the Big Cap Index is being removed from the text of both Rule 1001A as well as 1101A, in order to correct both rules to reflect its delisting.

[7] *See* Exchange Act Release No. 36745 (January 19, 1996), 61 FR 2561 (January 26, 1996) (SR–Phlx–95–38) (establishing XOC position and exercise limits); Exchange Act Release No. 35591 (April 11, 1995), 60 FR 19423 (April 18, 1995) (SR–Phlx–95–07) (establishing TPX position and exercise limits); Exchange Act Release No. 25644 (May 3, 1988) 53 FR 16829 (May 11, 1988) (SR–Phlx–88–06) (establishing VLE position and exercise limits).

[8] *See* Exchange Act Release No. 40172 (July 6, 1998), 63 FR 37913 (July 14, 1998) (SR–PCX–98–33); Exchange Act Release No. 40160 (July 1, 1998), 63 FR 37155 (July 9, 1998) (SR–CBOE–98–25); and Exchange Act Release No. 40159 (July 1, 1998), 63 FR 37151 (July 9, 1998) (SR–Amex–98–22). The Commission notes that these proposed rule changes were approved in January 1999. *See* Exchange Act Release No. 40875 (December 31, 1998), 64 FR 1842 (January 12, 1999) (order approving PCX–98–33, CBOE–98–25 and Amex–98–22).

[9] The Commission notes that, depending on the trading strategy used by an investor in trading index options, the underlying securities could experience significant price movement and increased volume regardless of the fact that such index options are cash-settled.

[10] 15 U.S.C. 78f(b).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reason for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, located at the above address. Copies of such filing will also be available for inspection and copying at the principal office of the self-regulatory organization. All submissions should refer to File No. SR–Phlx–98–55 and should be submitted by April 23, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–8146 Filed 4–1–99; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

Business Loan Programs; Notice of Initial Benchmark Number

AGENCY: Small Business Administration.

ACTION: Notice.

SUMMARY: SBA regulations governing the securitization of Section 7(a) loans require that from time to time the SBA publish in the **Federal Register** the "Benchmark Number" to be used in overseeing securitizing lenders. The Benchmark Number is the number of percentage points that a securitizing lender's Currency Rate may decline before SBA takes action. The purpose of this Notice is to establish an initial Benchmark Number of 2.5 percentage points.

SUPPLEMENTARY INFORMATION: In February of 1999, SBA published its final rule governing the securitization of the unguaranteed portions of 7(a) loans in the **Federal Register**. Section 120.420 of the rule requires the SBA to publish the "Benchmark Number" for securitizations in the **Federal Register** from time to time. The Benchmark Number will be used in the oversight of securitizing lenders. The Benchmark Number is the number of percentage points that a securitizing lender's Currency Rate may decline before SBA takes action.

The 2.5 percentage point Benchmark was proposed in comments to the May 1998 proposed securitization rule (63 FR 27221). SBA considers a 2.5 percentage point decline in Currency Rate a significant event warranting action. SBA will monitor the Benchmark Number and, if economic conditions or policy considerations warrant, SBA may modify it to protect the safety and soundness of the 7(a) program. SBA will publish any modifications to the Benchmark Number in the **Federal Register** at least 30 days before the effective date.

DATES: Effective April 2, 1999.

FOR FURTHER INFORMATION CONTACT: James W. Hammersley, Director, Secondary Market Sales, 202–205–7505, U.S. Small Business Administration, 409 Third Street, S.W., Suite 8200, Washington, D.C. 20416.

Aida Alvarez,

Administrator.

[FR Doc. 99–8147 Filed 4–1–99; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3164]

State of Tennessee

Loudon County and the contiguous counties of Anderson, Blount, Knox, McMinn, Monroe, and Roane in the State of Tennessee constitute a disaster area as a result of damages caused by a fire that occurred on March 6, 1999 in Lenoir City. Applications for loans for physical damages as a result of this disaster may be filed until the close of business on May 21, 1999 and for economic injury until the close of business on December 22, 1999 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with credit available elsewhere	6.375
Homeowners without credit available elsewhere	3.188
Business with credit available elsewhere	8.000
Business and non-profit organizations without credit available elsewhere	4.000
Others (including non-profit organizations) with credit available elsewhere	7.000
For Economic Injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	4.000

The number assigned to this disaster for physical damage is 316405 and for economic injury the number is 9B4600.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: March 22, 1999.

Aida Alvarez,

Administrator.

[FR Doc. 99–8149 Filed 4–1–99; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Economic Injury Disaster #9B45]

State of Washington

Ferry and Okanogan Counties and the contiguous counties of Chelan, Douglas, Grant, Lincoln, Skagit, Stevens, and Whatcom constitute an economic injury disaster area as a result of flooding that occurred in May of 1998. Eligible small businesses and small agricultural cooperatives without credit available elsewhere may file applications for economic injury assistance for this disaster until the close of business on *December 23, 1999* at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 4 Office, P.O. Box 13795, Sacramento, CA 95853–4795. The interest rate for eligible small businesses and small agricultural cooperatives is 4 percent.

[11] 17 CFR 200.30–3(a)(12).

(Catalog of Federal Domestic Assistance Program No. 59002)

Dated: March 23, 1999.

Fred P. Hochberg,

Acting Administrator.

[FR Doc. 99–8150 Filed 4–1–99; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–560 (Sub-No. 1X)]

Aberdeen & Rockfish Railroad Company d/b/a Dunn-Erwin Railway—Abandonment and Discontinuance Exemption—In Harnett County, NC

On March 15, 1999, Aberdeen & Rockfish Railroad Company d/b/a Dunn-Erwin Railway (DER) filed with the Surface Transportation Board (Board) a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10903 to abandon a line of railroad that it owns and discontinue service over a line of railroad that it leases from CSX Transportation, Inc., in Harnett County, NC. The line to be abandoned is approximately 5.488 miles long[1] and extends from milepost SDS 53.00 near Erwin to milepost SDS 56.66 at Dunn, and from milepost SDE 0.00 near Erwin to milepost SDE 2.02 at Erwin. The line over which DER's operations are to be discontinued is approximately 3,093 feet long and consists of approximately 1,700 feet of track between milepost SDS 56.66 and milepost SDS 57.01, and includes two adjoining spur tracks, D&S No. 3 and No. 11, which are 600 and 793 feet, respectively. The lines traverse U.S. Postal Service Zip Codes 28334, 28335 and 28339, and include the stations of Dunn and Erwin, located at the two end points of DER's line.

The lines do not contain federally granted rights-of-way. Any documentation in DER's possession will be made available promptly to those requesting it.

The interest of railroad employees will be protected by the conditions set forth in *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979).

By issuance of this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision will be issued by July 2, 1999.

Any offer of financial assistance (OFA) under 49 CFR 1152.27(b)(2) will be due no later than 10 days after service of a decision granting the petition for exemption. Each OFA must be accompanied by a $1,000 filing fee. *See* 49 CFR 1002.2(f)(25).

All interested persons should be aware that, following abandonment of rail service and salvage of DER's line, the line may be suitable for other public use, including interim trail use. Any request for a public use condition under 49 CFR 1152.28 or for trail use/rail banking under 49 CFR 1152.29 will be due no later than April 22, 1999. Each trail use request must be accompanied by a $150 filing fee. *See* 49 CFR 1002.2(f)(27).

All filings in response to this notice must refer to STB Docket No. AB–560 (Sub-No. 1X) and must be sent to: (1) Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001; and (2) Jo A. DeRoche, Weiner, Brodsky, Sidman & Kider, P.C., Suite 800, 1350 New York Ave., N.W., Washington, DC 20005–4797. Replies to the DER petition are due on or before April 22, 1999.

Persons seeking further information concerning abandonment and discontinuance procedures may contact the Board's Office of Public Services at (202) 565–1592 or refer to the full abandonment and discontinuance regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis (SEA) at (202) 565–1545. [TDD for the hearing impaired is available at (202) 565–1695.]

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by SEA will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Other interested persons may contact SEA to obtain a copy of the EA (or EIS). EAs in these abandonment proceedings normally will be made available within 60 days of the filing of the petition. The deadline for submission of comments on the EA will generally be within 30 days of its service.

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

Decided: March 25, 1999.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 99–8066 Filed 4–1–99; 8:45 am]

BILLING CODE 4915–00–P

[1] DER avers that the mileposts are not accurately placed. Accordingly, it states that the line is actually 5.488 miles in length not 5.66 miles as interpolated from the milepost designations.

DEPARTMENT OF THE TREASURY

Submission for OMB review; comment request

March 26, 1999.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before May 3, 1999 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–0146.

Form Number: IRS Form 2553.

Type of Review: Extension.

Title: Election by a Small Business Corporation.

Description: Form 2553 is filed by a qualifying corporation to elect to be an S corporation as defined in Code section 1361. The information obtained is necessary to determine if the election should be accepted by the IRS. When the election is accepted, the qualifying corporation is classified as an S corporation and the corporation's income is taxed to the shareholders of the corporation.

Respondents: Business or other for-profit.

Estimated Number of Respondents/Recordkeepers: 500,000.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping—8 hr., 37 min.

Learning about the law or the form—3 hr., 11 min.

Preparing, copying, assembling and sending the form to the IRS—3 hr., 28 min.

Frequency of Response: Other (once).

Estimated Total Reporting/Recordkeeping Burden: 7,625,000 hours.

OMB Number: 1545–1375.

Regulation Project Number: IA–5–92 Final.

Type of Review: Extension.

Title: Carryover of Passive Activity Losses and Credits and At Risk Losses to Bankruptcy Estates of Individuals.

Description: These regulations provide for a joint election to have the regulations apply to certain bankruptcy cases. In a chapter 7 case, the written consent of the trustee must be obtained.

In chapter 11 cases, the election must be in the reorganization plan or in a court order.

Respondents: Individuals or households.

Estimated Number of Respondents: 600,000.

Estimated Burden Hours Per Respondent: 1 hour.

Frequency of Response: Annually.

Estimated Total Reporting Burden: 600,000 hours.

OMB Number: 1545–1394.

Form Number: IRS Form 1120–SF.

Type of Review: Extension.

Title: U.S. Income Tax Return for Settlement Funds (Under Section 468B).

Description: Form 1120–SF is used by settlement funds to report income and taxes on earnings of the fund. The fund may be established by court order, a breach of contract, a violation of law, an arbitration panel, or the Environmental Protection Agency. The IRS uses Form 1120–SF to determine if income and taxes are correctly computed.

Respondents: Business or other for-profit.

Estimated Number of Respondents/ Recordkeepers: 1,000.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping—18 hr., 25 min.

Learning about the law or the form—2 hr., 43 min.

Preparing the form—5 hr., 0 min.

Copying, assembling, and sending the form to the IRS—32 min.

Frequency of Response: Annually.

Estimated Total Reporting/ Recordkeeping Burden: 26,670 hours.

OMB Number: 1545–1420.

Form Number: IRS Form 8849.

Type of Review: Extension.

Title: Claim for Refund of Excise Tax.

Description: Internal Revenue Code (IRC) sections 6402, 6204, and sections 301.6402–2, 301.6064–1, and 301–6404–3 of the regulations, allow for refunds of taxes (except income taxes) or refund, abatement, or credit of interest, penalties, and additions to tax in the event of errors or certain actions by IRS. Form 8849 is used by taxpayers to claim refunds of excise taxes.

Respondents: Business or other for-profit, Individuals or household, Not-for-profit institutions, Farms, Federal Government, State, Local or Tribal Government.

Estimated Number of Respondents/ Recordkeepers: 125,292.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping—42 hr., 49 min.

Learning about the law or the form—36 min.

Preparing, copying, assembling and sending the form to the IRS—1 hr., 19 min.

Frequency of Response: Quarterly.

Estimated Total Reporting/ Recordkeeping Burden: 1,838,901 hours.

OMB Number: 1545–1638.

Form Number: IRS Form 12196 (formerly Form 7130–A).

Type of Review: Extension.

Title: Small Business Office Order Blank.

Description: Form 12196 is to be used by small business outlets to order IRS tax forms and publications. The form can be faxed directly to the IRS Area Distribution Center for order fulfillment, packaging and mailing.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 45.

Estimated Burden Hours Per Respondent: 3 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 2 hours.

Clearance Officer: Garrick Shear, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW, Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 99–8113 Filed 4–1–99; 8:45 am]

BILLING CODE 4830–01–P

Corrections

Federal Register
Vol. 64, No. 63
Friday, April 2, 1999

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–AGL–18]

Proposed Modification of Class E Airspace; Hamilton, OH

Correction

In proposed rule document 99–7449, beginning on page 15140, in the issue of Tuesday, March 30, 1999, make the following correction:

§ 71.1 [Corrected]

On page 15141, in the third column, in § 71.1, under the heading **AGL OH E5 Hamilton, OH [Revised]**, in the second line, "long. 84° 34′ 29″W." should read "long. 84° 31′ 29″W."

[FR Doc. C9–7449 Filed 4–1–99; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98-AGL-69]

Modification of Class E Airspace; Lima, OH

Correction

In rule document 99–7453, beginning on page 14597, in the issue of Friday, March 26, 1999, make the following correction(s):

§ 71.1 [Corrected]

1. On page 14598, in the second column, under the heading **AGL OH E5 Lima, OH Revised**, in the first line "Country" should read "County".

2. On page 14598, in the second column, under the heading **AGL OH E5 Lima, OH Revised**, in the third line, "Country" should read "County".

3. On page 14598, in the second column, under the heading **AGL OH E5 Lima, OH Revised**, in the 10th line, "Country" should read "County".

[FR Doc. C9–7453 Filed 4–1–99; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98-AGL-72]

Modification of Class E Airspace; Napoleon, OH

Correction

In rule document 99–7455 appearing on page 14596, in the issue of Friday, March 26, 1999, make the following correction:

§ 71.1 [Corrected]

On page 14596, in the third column, under the heading **AGL OH E5 Napoleon, OH [Revised]**, in the first line, "Count" should read "County".

[FR Doc. C9–7455 Filed 4–1–99; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98-AGL-70]

Modification of Class E Airspace; Tiffin, OH

Correction

In rule document 99–7454, appearing on page 14597, in the issue of Friday, March 26, 1999, make the following correction(s):

§ 71.1 [Corrected]

1.On page 15497, in the third column, the second line, "Merch" should read "Mercy".

2. On page 15497, in the third column, in the sixth line, "7.9" should read "7.0".

[FR Doc. C9–7454 Filed 4–1–99; 8:45 am]

BILLING CODE 1505–01–D

federal register

Friday
April 2, 1999

Part II

Department of Agriculture

Agricultural Marketing Service

7 CFR Part 1000, et al.
Milk in the New England and Other Marketing Areas; Decision on Proposed Amendments to Marketing Agreements and to Orders; Proposed Rule

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 1000, 1001, 1002, 1004, 1005, 1006, 1007, 1012, 1013, 1030, 1032, 1033, 1036, 1040, 1044, 1046, 1049, 1050, 1064, 1065, 1068, 1076, 1079, 1106, 1124, 1126, 1131, 1134, 1135, 1137, 1138 and 1139

[DA–97–12]

Milk in the New England and Other Marketing Areas; Decision on Proposed Amendments to Marketing Agreements and to Orders

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

7 CFR Part	Marketing area
1000	General Provisions of Federal Milk Marketing Orders.
1001	New England.
1002	New York-New Jersey.
1004	Middle Atlantic.
1005	Carolina.
1006	Upper Florida.
1007	Southeast.
1012	Tampa Bay.
1013	Southeastern Florida.
1030	Chicago Regional.
1032	Southern Illinois-Eastern Missouri.
1033	Ohio Valley.
1036	Eastern Ohio-Western Pennsylvania.
1040	Southern Michigan.
1044	Michigan Upper Peninsula.
1046	Louisville-Lexington-Evansville.
1049	Indiana.
1050	Central Illinois.
1064	Greater Kansas City.
1065	Nebraska-Western Iowa.
1068	Upper Midwest.
1076	Eastern South Dakota.
1079	Iowa.
1106	Southwest Plains.
1124	Pacific Northwest.
1126	Texas.
1131	Central Arizona.
1134	Western Colorado.
1135	Southwestern Idaho-Eastern Oregon.
1137	Eastern Colorado.
1138	New Mexico-West Texas.
1139	Great Basin.

SUMMARY: This final decision consolidates the current 31 Federal milk marketing orders into 11 orders. This consolidation complies with the 1996 Farm Bill which mandates that the current Federal milk orders be consolidated into between 10 to 14 orders. This decision also conforms to the Omnibus Consolidated and Emergency Supplemental Appropriations Bill, which requires that this decision be issued between February 1 and April 4, 1999, and extends the time for implementing Federal milk order reform amendments to October 1, 1999. This decision sets forth a replacement for the Class I price structure and replaces the basic formula price with a multiple component pricing system. This decision also establishes a new Class IV which would include milk used to produce nonfat dry milk, butter, and other dry milk powders; reclassifies eggnog; and addresses other minor classification changes. Part 1000 is expanded to include sections that are identical to all of the consolidated orders to assist in simplifying and streamlining the orders.

This decision does not provide for conducting referendums of producers to determine if they approve of the issuance of the consolidated orders.

DATES: A notice to conduct a referendum on each of the consolidated orders will be published separately at a future date.

FOR FURTHER INFORMATION CONTACT: John F. Borovies, Branch Chief, USDA/AMS/Dairy Programs, Order Formulation Branch, Room 2971, South Building, PO Box 96456, Washington, DC 20090–6456, (202) 720–6274, e-mail address John_F_Borovies@usda.gov (after

April 19, 1999, the e-mail address will change to John.Borovies@usda.gov).

For specific information on the Final Regulatory Impact Analysis and the Civil Rights Impact Analysis contact: John R. Mengel, Chief Economist, USDA/AMS/Dairy Programs, Office of Chief Economist, Room 2753, South Building, PO Box 96456, Washington, DC 20090–6456, (202) 720–4664, e-mail address John_R_Mengel@usda.gov (after April 19, 1999, the e-mail address will change to John.Mengel@usda.gov).

SUPPLEMENTARY INFORMATION:

Major changes from the proposed rule issued on January 21, 1998, are as follows:

1. Consolidation of Marketing Areas

(a) The Western New York State order was removed from the proposed Northeast marketing area.

(b) Six currently-unregulated counties were removed from the consolidated Central marketing area.

(c) The current Western Colorado order was moved from the consolidated Western order to the consolidated Central marketing area along with 7 currently-unregulated Colorado counties.

2. Basic Formula Price Replacement

(a) The proposed Class III and Class IV pricing formulas are revised to adjust for product yields and make allowances that result in lowering the Class III and IV prices.

(b) Barrel cheese prices (NASS survey) are included in the Class III price formula.

(c) The basis for measuring the protein content in milk is changed from a test for total nitrogen to a test for true protein.

(d) Advance pricing for Class I will continue to be provided, but with a shorter time period (7 days vs. 25 days) prior to the effective month. The proposed rule had suggested a 6-month declining average mover.

(e) Provides for advance pricing for skim milk in Class II uses in the same manner as for Class I.

3. Class I Price Structure

Adopts a Class I price structure that uses the generally higher differential levels as proposed in Option 1A while retaining the pricing surface of the Department's preferred option.

4. Classification

(a) Cream cheese is moved from Class II to Class III.

(b) Shrinkage calculations are revised.

Table of Contents

I. Prior documents
II. Legislative and Background Requirements
Legislative Requirements
Background
Actions Completed During Developmental Phase
Actions Completed During Rulemaking Phase
Public Interaction and Input
Executive Order 12988
Executive Order 12866
Civil Rights Analysis Executive Summary
The Regulatory Flexibility Act and the Effects on Small Businesses
Paperwork Reduction Act of 1995
Request for Public Input on Analyses
Preliminary Statement
III. Discussion of Material Issues and Proposed Amendments to the Orders
Consolidation of marketing areas
Basic formula price replacement and other class price issues
Class I pricing structure
Classification of milk and related issues
Provisions applicable to all orders
Regional Issues:
Northeast Region
Southeast Region
Midwest Region
Western Region
Miscellaneous and Administrative
Consolidation of the marketing service, administrative expense, and producer-settlement funds
Consolidation of the transportation credit balancing funds
General findings
IV. Order Language
General provisions
Northeast order provisions
Appalachian order provisions
Florida order provisions
Southeast order provisions
Upper Midwest order provisions
Central order provisions
Mideast order provisions
Pacific Northwest order provisions
Southwest order provisions
Arizona-Las Vegas order provisions
Western order provisions
V. Appendix
A: Summary of Preliminary Suggested Order Consolidation Report
B: Summary of Pricing Options
C: Summary of Classification Report
D: Summary of Identical Provisions Report
E: Summary of Basic Formula Price Report
F: Summary of Revised Preliminary Suggested Order Consolidation Report

I. Prior Documents

Prior documents in this proceeding include:

Proposed Rule: Issued January 21, 1998; published January 30, 1998 (63 FR 4802).

Correction: Issued February 19, 1998; published February 25, 1998 (63 FR 9686).

Extension of Time: Issued March 10, 1998; published March 13, 1998 (63 FR 12417).

II. Legislative and Background Requirements

Legislative Requirements

Section 143 of the Federal Agriculture Improvement and Reform Act of 1996 (Farm Bill), 7 USC 7253, required that by April 4, 1999,[1] the current Federal milk marketing orders issued under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), be consolidated into between 10 to 14 orders[2]. The Secretary of Agriculture (Secretary) is also directed to designate the State of California as a Federal milk order if California dairy producers petition for and approve such an order. In addition, the Farm Bill provided that the Secretary may address related issues such as the use of utilization rates and multiple basing points for the pricing of fluid milk and the use of uniform multiple component pricing when developing one or more basic prices for manufacturing milk.[3]

Besides designating a date for completion of the required consolidation, the Farm Bill further required that no later than April 1, 1997, the Secretary shall submit a report to Congress on the progress of the Federal order reform process that included: a description of the progress made toward implementation, a review of the Federal order system in light of the reforms

[1] Section 143(b)(2) requires that a proposed rule be published by April 4, 1998, and Section 143(b)(3) provides that "in the event that the Secretary is enjoined or otherwise restrained by a court order from publishing or implementing the consolidation and related reforms under subsection (a), the length of time for which that injunction or other restraining order is effective shall be added to the time limitations specified in paragraph (2) thereby extending those time limitations by a period of time equal to the period of time for which the injunction or other restraining order is effective."

[2] Since this proceeding was initiated on May 2, 1996, the Black Hills, South Dakota and the Tennessee Valley orders have been terminated. Effective October 1, 1996, the operating provisions of the Black Hills order were terminated (61 FR 47038), and the remaining administrative provisions were terminated effective December 31, 1996 (61 FR 67927). Effective October 1, 1997, the operating provisions of the Tennessee Valley order were terminated (62 FR 47923). The remaining administrative provisions of the Tennessee Valley order will be terminated before this consolidation process is completed.

[3] The Omnibus Consolidated and Emergency Supplemental Appropriations Bill, passed in October 1998, extended the time frame for implementing Federal milk order reform amendments from April 4, 1999, to October 1, 1999. The extension specifies that the final decision, defined as the final rule for purposes of this legislation, will be issued between February 1 and April 4, 1999, with the new amendments becoming effective on October 1, 1999. The legislation also provides that California has from the date of issuance of the final decision until September 30, 1999, to become a separate Federal milk marketing order.

required, and any recommendations considered appropriate for further improvements and reforms. This report was submitted to Congress on April 1, 1997.[4]

Finally, the 1996 Farm Bill specified that USDA use informal rulemaking to implement these reforms.

Background

The authorization of informal rulemaking to achieve the mandated reforms of the Farm Bill has resulted in a rulemaking process that is substantially different from the formal rulemaking process required to promulgate or amend Federal orders. The formal rulemaking process requires that decisions by USDA be based solely on the evidentiary record of a public hearing held before an Administrative Law Judge. Formal rulemaking involves the presentation of sworn testimony, the cross-examination of witnesses, the filing of briefs, the issuance of a recommended decision, the filing of exceptions, the issuance of a final decision that is voted on by affected producers, and upon approval by producers, the issuance of a final order.

The informal rulemaking process does not require these procedures. Instead, informal rulemaking provides for the issuance of a proposed rule by the Agricultural Marketing Service, a period of time for the filing of comments by interested parties, and the issuance of a final decision by the Secretary. Referendums will be conducted to determine approval of the final decision by the requisite number of producers before the new orders will become effective.

Full participation by interested parties has been essential in the reform of Federal milk orders. The issues are too important and complex to be developed without significant input from all facets of the dairy industry. The experience, knowledge, and expertise of the industry and public have been integral to the development of the rule. To ensure that maximum public input into the process was received, USDA developed a plan of action and projected time line. The plan of action developed consists of three phases: *Developmental, rulemaking,* and *implementation.*

The first phase of the plan was the *developmental* phase. The use of a *developmental* phase allowed USDA to interact freely with the public to develop viable proposals that accomplished the Farm Bill mandates, as well as related reforms. The USDA met with interested parties to discuss the reform process, assisted in developing ideas or provided data and analysis on various possibilities, issued program announcements, and requested public input on all aspects of the Federal order program. The *developmental* phase began on April 4, 1996, and concluded with the issuance of the proposed rule on January 21, 1998 (68 FR 4802).

The second phase of the plan is the *rulemaking* phase. The *rulemaking* phase began with the issuance and publication of the proposed rule. The proposed rule provided the public 60 days to submit written comments on the reform proposals to USDA. On March 10, 1998, (68 FR 12417) the comment period was extended for an additional 30 days until April 30, 1998. In addition to requests for written comments, four listening sessions were held to receive verbal comments on the proposed rule. All comments were reviewed and considered prior to the issuance of this rule.

The third and final phase of the plan is the *implementation* phase. The *implementation* phase begins after this rule is published in the **Federal Register**. This phase consists of informational meetings conducted by Market Administrator personnel and referendums.[5] The objective of the informational meetings is to inform producers and handlers about the newly consolidated orders and explain the projected effects on producers and handlers in the new marketing order areas. After informational meetings are held, the referendums will be conducted. Upon approval of the consolidated orders and related reforms by the required number of producers in each marketing area, a final order implementing the new orders will be issued and published in the **Federal Register**.

Although all of the issues regarding Federal milk order reform are interrelated, USDA established several committees to address specific issues. The use of committees allowed the reform process to be divided into more manageable tasks. The committees worked throughout the *developmental* and *rulemaking* phases. The committees established were: Price Structure, Basic Formula Price, Identical Provisions, Classification, and Regional. The Regional committee was divided into four subcommittees: Midwest, Northeast, Southeast, and West. Committee membership consisted of both field and headquarters Dairy Programs personnel. The committees were given specific assignments related to their designated issue and began meeting in May 1996.

In addition to utilizing USDA personnel, partnerships were established with two university consortia to provide expert analyses on the issues relating to price structure and basic formula price options. Dr. Andrew Novakovic of Cornell University led the analysis on price structure and published a staff paper entitled "U.S. Dairy Sector Simulator: A Spatially Disaggregated Model of the U.S. Dairy Industry" and a research bulletin entitled "An Economic and Mathematical Description of the U.S. Dairy Sector Simulator"[6] Dr. Ronald Knutson of Texas A&M University led the analysis on basic formula price options and published three working papers entitled "An Economic Evaluation of Basic Formula Price (BFP) Alternatives", "The Modified Product Value and Fresh Milk Base Price Formulas as BFP Alternatives", and "Evaluation of 'Final' Four Basic Formula Price Options".[7]

Actions Completed During Developmental Phase

USDA maintained frequent contact with the industry regarding the reform process. To begin, on May 2, 1996, the Agricultural Marketing Service (AMS) Dairy Division issued a memorandum to interested parties announcing the planned procedures for implementing the Farm Bill[8]. In this memorandum, all interested parties were requested to submit ideas on reforming Federal milk orders, specifically as to the consolidation and pricing structure of orders. Input was requested by July 1, 1996.

On June 24, 1996, USDA issued a press release announcing that a public forum would be held in Madison, Wisconsin, on July 29, 1996. The forum would address price discovery techniques for the value of milk used in

[4] Copies of the Report to Congress can be obtained from Dairy Programs at (202) 720–4392 or via the Internet at http://www.ams.usda.gov/dairy/.

[5] As previously noted, this is also the time period in which California can consider becoming a Federal order based on the Omnibus Consolidated and Emergency Supplemental Appropriations Bill provisions.

[6] Copies of these reports may be obtained by contacting Ms. Wendy Barrett, Cornell University, ARME, 348 Warren Hall, Ithaca, NY 14853–7801, (607) 255–1581.

[7] Copies of these reports may be obtained by contacting Dr. Ronald Knutson, Agricultural and Food Policy Center, Dept. of Ag. Economics, Texas A&M University, College Station, TX 77843–2124, (409) 845–5913.

[8] Copies of this announcement and all subsequent announcements and reports can be obtained from Dairy Programs at (202) 720–4392, any Market Administrator office, or via the Internet at http://www.ams.usda.gov/dairy/.

manufactured dairy products. Thirty-one Senators, Congressmen, university professors, representatives of processor and producer organizations, and dairy farmers made presentations at the forum.

On October 24, 1996, AMS Dairy Division issued a memorandum to interested parties requesting input regarding all aspects of Federal milk order reform and specifically as to its impact on small businesses. USDA anticipated that the consolidation of Federal orders would have an economic impact on handlers and producers affected by the program, and USDA wanted to ensure that, while accomplishing their intended purpose, the newly consolidated Federal orders would not unduly inhibit the ability of small businesses to compete.

On December 3, 1996, AMS Dairy Division issued a memorandum to interested parties announcing the release of the preliminary report on Federal milk order consolidation. The report suggested the consolidation of the then current 32 Federal milk orders into ten orders. (See Appendix A for report summary.) The memorandum requested input from all interested parties on the suggested consolidated orders and on any other aspect of the milk marketing order program by February 10, 1997.

On March 7, 1997, AMS Dairy Division issued a memorandum to interested parties announcing the release of three reports that addressed the Class I price structure, the classification of milk, and the identical provisions contained in a Federal milk order. The price structure report consisted of a summary report and a technical report and discussed several options for modifying the Class I price structure. (See Appendix B for report summary.) The classification report recommended the reclassification of certain dairy products, including the removal of Class III-A pricing for nonfat dry milk. (See Appendix C for report summary.) The identical provisions report recommended simplifying, modifying, and eliminating unnecessary differences in Federal order provisions. (See Appendix D for report summary.) Comments on the contents of these reports, as well as on any other aspect of the program, were requested from interested parties by June 1, 1997.

On April 18, 1997, AMS Dairy Division issued a memorandum to interested parties announcing the release of the preliminary report on Alternatives to the Basic Formula Price (BFP). The report contained suggestions, ideas, and initial findings for BFP alternatives. Over eight categories of options were identified with four options recommended for further review and discussion. (See Appendix E for report summary.) The memorandum requested input from all interested parties on a BFP alternative and on any other aspect of the milk marketing order program by June 1, 1997.

On May 20, 1997, AMS Dairy Division issued a memorandum to interested parties announcing the release of a revised preliminary report on Federal milk order consolidation. The revisions were based on the input received from interested parties in response to the initial preliminary report on order consolidation. (See Appendix F for report summary.) Instead of suggesting 10 consolidated orders as in the first report, the revised report suggested 11 consolidated orders and suggested the inclusion of some currently unregulated territory. The memorandum requested comments from all interested parties on the suggested consolidated orders and on any other aspect of the milk marketing order program by June 15, 1997.

To elicit further input on the role of the National Cheese Exchange price in calculating the basic formula price, on January 29, 1997, the Secretary issued a press release announcing steps being taken by USDA to address concerns raised by dairy producers about how milk prices are calculated. In the press release, the Secretary requested further comments from interested parties about the use of the National Cheese Exchange in the determination of the basic formula price, which is the minimum price that handlers must pay dairy farmers for milk used to manufacture Class III products (butter and cheese) and the price used to establish the Class I and Class II prices. These comments were requested by March 31, 1997, and were useful in analyzing alternatives to the basic formula price in context of the order reform process.

Actions Completed During Rulemaking Phase

On January 21, 1998, USDA issued a proposed rule (68 FR 4802) that recommended consolidating the current 31 orders into 11 orders, proposed two options for consideration as a replacement for the Class I price structure, and recommended replacing the basic formula price. The proposed rule also recommended establishing a new Class IV which would include milk used to produce nonfat dry milk, butter, and other dry milk powders; recommended reclassifying eggnog and cream cheese, addressing other minor classification issues; and recommended expanding part 1000 to include sections that are identical to all of the consolidated orders. A Preliminary Regulatory Impact Analysis (PRIA) was also issued that evaluated the costs and benefits of the proposed rule contents and alternatives. Comments were requested on the proposed rule and the PRIA on or before March 31, 1998. An informational packet describing the contents of the proposed rule was sent to interested parties.

On March 10, 1998, USDA issued a document that extended the time for filing comments on the proposed rule an additional 30 days, until April 30, 1998. The document also announced that USDA would conduct four listening sessions to assist interested parties in submitting comments to USDA. The listening sessions were held on March 30 in Atlanta, Georgia; Liverpool, New York; and Dallas, Texas; and on March 31 in Green Bay, Wisconsin.

On April 15, 1998, AMS Dairy Programs announced the issuance of a report entitled "Report on the Impacts of the Federal Order Reform Proposals on Food and Nutrition Service Programs, Participants, and Administering Institutions" by the Food and Nutrition Service of USDA. The report analyzed the potential impacts of the milk order reform pricing proposals contained in the proposed rule on the Food Stamp Program, the Women, Infants, and Children Program, and the National School Lunch and Breakfast Programs.[9] The report indicated that adoption of the proposed rule with either Class I price structure would have minimal economic impact on these programs. Comments on the report were requested by April 30, 1998. No comments were received.

Public Interaction and Input

As a result of the developmental phase announcements and forum, more than 1,600 individual comments were received by USDA. In addition to the individual comments, more than 2,000 form letters were received. As a result of the rulemaking phase proposed rule and listening sessions, nearly 4,500 additional comments were received. A further breakdown of the rulemaking comments by issue is as follows: 1,273 consolidation; 376 basic formula price; 4,224 Class I price structure; 101 classification; and 79 provisions applicable to all orders.

The proposed rule provided interested parties an opportunity to file comments until March 31, 1998. This period was later extended to April 30, 1998. Over 205 comments were

[9] Copies of this report can be obtained from Dairy Programs at (202) 720–4392, or via the Internet at http://www.ams.usda.gov/dairy/.

postmarked after the April 30th deadline. Most of these comments did not raise any issues that were not previously addressed by comments timely submitted and considered in this rulemaking.

All comments that were reviewed by USDA personnel were available for public inspection at USDA. To assist the public in accessing the comments, USDA contracted to have the comments scanned and published on compact discs. The use of this technology allowed interested parties throughout the United States access to the information received by USDA.

USDA also made all publications and requests for information available on the Internet. A separate page under the Dairy Programs section of the AMS Homepage was established to provide information about the reform process. To assist in transmitting correspondence to USDA, a special electronic mail account—Milk_Order_Reform@usda.gov—was opened to receive input on Federal milk order reforms.

USDA personnel met frequently with interested parties from May 1996 through the issuance of the proposed rule to gather information and ideas on the consolidation and reform of Federal milk orders. During this time period, USDA personnel addressed over 250 groups comprised of more than 22,000 individuals on various issues related to Federal order reform.

USDA personnel also conducted in-person briefings for both the Senate and House Agricultural Committees on the progress of Federal milk order reforms. Since May 1996, nine briefings were conducted for the committees. The briefings advised the committees of the plan of action for implementing the Farm Bill mandates; explained the preliminary report on the consolidation of Federal milk orders; explained the contents of the reports addressing Class I price structure, classification of milk, identical provisions and basic formula price; discussed the congressional report; and explained the proposed rule contents.

To ensure the involvement of all interested parties, particularly small businesses as defined in the Initial Regulatory Flexibility Analysis (IRFA), in the process of Federal order reform, three primary methods of contact were used: direct written notification, publication of notices through various media forms, and speaking and meeting with organizations and individuals regarding the issue of Federal order reforms. In addition, information has been made available to the public via the Internet. USDA also made one written program announcement specifically requesting information from small businesses. Comments were also specifically requested on the IRFA published in the January 21, 1998, proposed rule. More than 1,000 comments were received from interested parties that specifically stated or documented they were small businesses. However, this number may not be fully representative of the number of small businesses that actually submitted comments because a majority of commenters did not indicate their size. A few comments specifically addressed the IRFA, Executive Order 12866, and the paperwork reduction analysis.

All announcements and an information packet summarizing the proposed rule were mailed to over 20,000 interested parties, State Governors, State Department of Agriculture Secretaries or Commissioners, and the national and ten regional Small Business Administration offices. In addition, most dairy producers under the orders were notified through regular market service bulletins published by Market Administrators on a monthly basis. Press releases were issued by USDA for the May 2, 1996, December 3, 1996, January 29, 1997, March 7, 1997, and May 20, 1997, announcements; for the July 31, 1996, public forum; for the January 21, 1998, proposed rule; and for the March 30 and 31, 1998, listening sessions and extension of time for submitting comments.[10] These press releases were distributed to approximately 33 wire services and trade publications and to each State Department of Agriculture Communications Officer. These methods of notification helped to ensure that virtually all identified small businesses were contacted.

Departmental personnel, both in the field and from Washington, actively met with interested parties to gather input and to clarify and refine ideas already submitted. Formal presentations, round table discussions, and individually scheduled meetings between industry representatives and Departmental personnel were held. Over 250 organizations and more than 22,000 individuals were reached through this method. Of these individuals, approximately 13,400 were identified as small businesses.

[10] Copies of these press releases may be obtained from Dairy Programs at (202) 720–4392, or via the Internet at http://www.ams.usda.gov/news/newsrel.htm.

Executive Order 12988

This final decision has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have a retroactive effect. If adopted, this rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with the rule.

The Agricultural Marketing Agreement Act of 1937 (AMAA), as amended, provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may request modification or exemption from such order by filing with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law. A handler is afforded the opportunity for a hearing on the petition. After a hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has its principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Executive Order 12866

The Department is issuing the final decision in conformance with Executive Order 12866. The final decision is determined to be economically significant for the purposes of Executive Order 12866. When adopting regulations which are determined to be economically significant, agencies are required, among other things, to: Assess the costs and benefits of available regulatory alternatives; base regulatory decisions on the best reasonably-obtainable technical, economic, and other information; avoid duplicative regulations; and tailor regulations to impose the least burden on society consistent with obtaining regulatory objectives. Therefore, to assist in fulfilling the objectives of Executive Order 12866, the Department prepared a final Regulatory Impact Analysis (RIA) for this action. Information contained in the RIA pertains to the costs and benefits of the revised regulatory structure and is summarized in the following analysis. Copies of the RIA can be obtained from Dairy Programs at (202) 720–4392, any Market Administrator office, or via the Internet at http://www.ams.usda.gov/dairy.

This regulatory action is in accordance with section 143 of the

Federal Agriculture Improvement and Reform Act of 1996, 7 U.S.C. 7253, (the Farm Bill) which required the Secretary of Agriculture (Secretary) to consolidate the existing 31 Federal milk marketing orders, as authorized by the AMAA, into between 10 and 14 orders. The Farm Bill further provided that the Secretary may address related issues such as the use of utilization rates and multiple basing points for the pricing of fluid milk and the use of uniform multiple component pricing when developing one or more basic formula prices for manufacturing milk. The Secretary was also directed to designate the State of California as a Federal milk order if California dairy producers petition for and approve such an order. Finally, the Farm Bill specified that the Department of Agriculture use informal rulemaking to implement these reforms.

The Farm Bill required that a proposed rule be published by April 4, 1998, and all reforms of the Federal milk order program be completed by April 4, 1999. However, the Omnibus Consolidated and Emergency Supplemental Appropriations Bill, passed in October 1998, extended the time frame for implementing Federal milk order reform amendments from April 4, 1999, to October 1, 1999. The extension specified that the final decision, defined as the final rule for purposes of this legislation, be issued between February 1 and April 4, 1999, with the new amendments becoming effective on October 1, 1999. The legislation also provides that California has from the date of issuance of the final decision until September 30, 1999, to become a separate Federal milk marketing order.

The final decision sets forth the consolidation of the current 31 Federal milk orders into 11 orders. The marketing areas are: Northeast, Mideast, Upper Midwest, Central, Appalachian, Southeast, Florida, Southwest, Arizona-Las Vegas, Western, and Pacific Northwest. Several issues related to the consolidation of Federal milk orders are also addressed. The final decision contains a replacement for the current Class I price structure and the basic formula price (BFP). The final decision adopts a Class I price structure that uses the proposed Option 1B price surface as modified to provide for better alignment of Class I prices and increases the differential level by 40 cents. The current BFP is replaced with a multiple component pricing system that derives component values from surveyed prices of manufactured dairy products. These changes set the stage for increasing efficiencies in supplying the milk needs of Class I markets and address concerns that the BFP is no longer a statistically significant measure of the value of manufacturing milk.

The rule also classifies milk into four classes according to the products made from such milk. Milk used to produce defined fluid milk products is classified as Class I milk. Milk used to produce defined soft manufactured products is classified as Class II milk. Class III milk is milk used to produce cream cheese and defined hard manufactured cheeses, and Class IV milk is milk used to produce butter and all milk powders.

The minimum monthly price for milk classified as Class I is equal to the Class I differential specified for each marketing order plus the Class I price mover announced on or before the 23rd day of the month preceding the month for which the price is being announced. The Class I price mover is equal to the higher result from the formulas used to establish Class III and Class IV prices using weighted average prices for manufactured products as published by the National Agricultural Statistics Service (NASS) for the most recent two weeks preceding the 23rd of the month. Weekly prices are weighted by sales volumes reported by NASS.

Finally, this rule expands Part 1000 to include provisions that are identical within each consolidated order to assist in simplifying the regulations. These provisions include the definitions of route disposition, plant, distributing plant, supply plant, nonpool plant, handler, other source milk, fluid milk product, fluid cream product, cooperative association, and commercial food processing establishment. In addition, the milk classification section, pricing provisions, and most of the provisions relating to payments have been included in the General Provisions. These changes adhere with the efforts of the National Performance Review—Regulatory Reform Initiative to simplify, modify, and eliminate unnecessary repetition of regulations. Unique regional issues or marketing conditions have been considered and included in each market's order provisions.

In the summary of the initial RIA for the January 21, 1998, proposed rule, the economic impact of certain individual sections of the regulations were discussed that were considered to be economically significant. Not all of the changes contained in the proposed rule were considered economically significant. The sections individually addressed in the January 21st proposed rule were marketing area consolidation, the BFP, the Class I pricing structure and classification provisions. Since these are adopted together in the final decision, this analysis reviews the impacts of adopting all of the provisions simultaneously on the dairy industry. The analysis also reviews the impacts of adopting the provisions contained in the January 21st proposed rule with two alternative Class I pricing structures.

The final RIA and the final decision explain in detail the components adopted in the Federal order regulations and analyzed by the model. A review of the projected economic impacts of the final decision and the projected economic impacts of the alternatives that were considered on dairy producers, processors, consumers, and international trade follows. The projected impacts are compared to the baseline projections over a 6-year period from the years of 2000–2005. The baseline assumes that the Class III price would be the BFP, the Class II price would be the BFP plus 30 cents, each region's Class I price would be the BFP plus the current Class I differential and the Class III-a price would continue. The RIA details the impacts of the final decision and the other options considered on each current order, the Federal orders combined, the State of California, and the United States.

The following table summarizes the impacts of adopting the newly consolidated orders and their specific provisions, including the Class I price structure adopted in this final decision. The table also provides data detailing the projected impacts of the consolidated orders and the specific provisions utilizing the two alternative Class I price structures—Location-Specific Differentials (Option 1A) and Relative-Value Specific Differentials (Option 1B). Since adopting new Federal milk order provisions affect both the regulated dairy industry and associated producers, as well as the unregulated and State regulated dairy industries, a comparison of the impacts both Federally and U.S.-wide are included where possible.

COMPARISONS OF CERTAIN IMPACTS OF CONSOLIDATED ORDER CHANGES UTILIZING THREE PRICE STRUCTURES ON FEDERAL ORDER (FED) AND U.S. DATA: 6-YEAR AVERAGES (2000–2005)[1]

	Unit	Baseline	Change from baseline		
			Final decision	Modified option 1B	Modified option 1A
Class I Diff. (Fed)	$/cwt	2.56	−0.29	−0.69	0.04
Class I price (Fed)	$/cwt	16.22	−0.19	−0.49	0.08
Class I price (U.S.)	$/cwt	16.26	−0.14	−0.38	0.06
All-Milk Price (Fed)	$/cwt	15.23	−0.02	−0.10	0.03
All-Milk Price (U.S.)	$/cwt	14.73	0.00	−0.05	0.04
Milk Marketings (Fed)[2]	mil lbs	111,182.0	8.3	−130.8	149.0
Milk Marketings (U.S.)	mil lbs	165,142.2	15.2	−90.9	128.7
Class I use (Fed)	mil lbs	46,955.7	42.0	106.7	−16.6
Class I use (U.S.)	mil lbs	58,782.2	37.7	98.8	−14.9
Cash Receipts (Fed)[3]	mil $	16,944.5	−2.5	−128.4	104.9
Cash Receipts (U.S.)[4]	mil $	24,347.9	3.5	−89.9	77.0
Retail Price (Fed)	$/gal	.....	−0.02	−0.04	0.01
Fluid Expend. (Fed)	mil $	7,617.8	−80.2	−215.4	36.4
Fluid Expend. (U.S.)	mil $	9,562.0	−79.1	−209.7	31.3
Manufac. Expend. (Fed)	mil $	9,326.7	77.7	87.0	68.5
Manufac. Expend. (U.S.)	mil $	14,785.9	82.5	119.8	45.7

[1] Includes the effects of the Class II, III, and IV pricing formulas.
[2] Changes in the Final Decision and Modified Option 1A marketings do not include the additional milk from the Upper Midwest and Chicago Regional orders that is expected to be pooled under these options.
[3] Cash receipts do not reflect the termination of the $0.15 per hundredweight transportation credit in the New York-New Jersey order and exclude the income from additional pooled milk in the consolidated Upper Midwest order for the Final Decision and Modified Option 1A.
[4] Cash receipts do not reflect the termination of the $0.15 per hundredweight transportation credit in the New York-New Jersey order and exclude the income from additional pooled milk in the consolidated Upper Midwest order for the Final Decision and Modified Option 1A.

As is evidenced by the summary table, the economic impacts resulting from the adoption of the final decision are minimal when compared to the total values included in the Federal order system and in the U.S. This is also true with the alternative options that were considered. Changes in the all-milk price, milk marketings, Class I use, and cash receipts all represent less than one percent of the total baseline projections. Although the total impacts are minimal from a national perspective, producers, processors, and consumers may experience a greater impact on a more localized level as is described in the RIA.

The consolidation of Federal milk orders into 11 orders with the adopted price structure and all other provision modifications of the final decision best adheres to the requirements of the Farm Bill while fulfilling the objectives of the AMAA. The changes adopted in the final decision enhance the efficiencies of fluid milk markets while maintaining equity among processors of fluid milk selling in marketing order areas and among dairy farmers supplying the areas' fluid demands. The final decision provisions achieve this while having minor overall impacts on the Federal order system and on the U.S. dairy industry. Although both of the alternatives considered also have minimal impacts, the final decision best achieves economic efficiencies, equity, and program objectives.

Final Decision

A brief review of the impacts that are projected to occur with the implementation of the final decision are:

Producers. In general, producers in markets located in the western, southwestern, and northeastern areas of the U.S. may not fare as well as producers located in other parts of the country, as measured by the all-milk price and cash receipts from milk marketings. The average all-milk price for the combined Federal order markets is expected to average $0.02 per hundredweight lower than the baseline. The average all-milk price is projected to increase in 13 current markets from $0.01 to $0.52 per hundredweight and decrease in 19 markets from $0.01 to $0.50. One market is estimated to average unchanged. The average all-milk price throughout the entire U.S. is projected to remain unchanged. It is important to recognize that the all-milk price can be impacted considerably by the change in the Class I utilization due to consolidation and the necessary alignment of Class I prices within consolidated areas.

Over the 2000–2005 period, gross cash receipts within the Federal order system are expected to increase an estimated $222.3 million primarily because of changes in transportation payments and the pooling of additional milk under the Federal order system. After adjusting for these changes, annual cash receipts are projected to decline from the baseline an average of $2.5 million during the 6-year period. With the baseline cash receipts averaging $16,944.5 million this represents a very insignificant reduction. Fifteen markets are projected to have increases with 18 markets projected to have decreases.

Processors. Since the final decision is expected to have little effect on where milk is produced, little impact is expected on fluid milk processors or manufacturers of dairy products. Impacts on fluid milk processors will likely result from changes in the minimum Class I and Class II prices that are the handler's obligation under the Federal order system. Fluid processors in 14 of the current Federal order markets will experience increased differentials, while processors in 17 of the markets will see decreases. Fluid processors in two markets will see no change. The estimated weighted average Class I differential for all current Federal order markets would decrease $0.29 per hundredweight. The all-market average Federal order Class I price would decrease $0.19 per hundredweight when compared to the baseline during the years of 2000–2005. The value of manufacturing milk would be increased, on average, $82.5 million per year during the six-year period.

Consumers. Since adoption of the final decision is projected to result in a slight decrease in the average Class I

price for the years of 2000–2005, it is expected that average retail prices will decrease about $0.02 per gallon. On an individual order basis, the changes in the average retail price per gallon may range from an increase of $0.06 to a decrease of $0.09. Although consumers will be spending less on fluid milk products, consumption is projected to remain relatively unchanged.

International Trade. Adopting the final decision is not expected to have a significant impact on domestic butter and nonfat dry milk prices and therefore, little change in international trade is expected. International trade of raw milk and fluid milk products between the United States, Mexico, and Canada should be unaffected. However, the increase in the Class II price could negatively affect the Mexican market for those products.

Other Alternatives

Although implementation of the consolidated orders with either the Option 1B or Option 1A price surface would still result in less than a projected one percent change in overall Federal order and U.S. prices, cash receipts, and marketings, these two alternatives do not promote market efficiencies, equity or program objectives as well as the provisions adopted and would not result in the most preferable allocation of resources over time. A brief review of the impacts that were projected to occur with the implementation of these two alternatives are:

Producers. In general, Option 1B would have reduced producer income in total and would have reduced the proportion of the Class I value represented in Federal order pools. Mainly producers located in the Upper Midwest and Florida areas would have benefitted while producers throughout the rest of the U.S. would have been negatively impacted. The all-milk price for all Federal order markets combined was expected to average $0.10 per hundredweight lower than the baseline during the years of 2000–2005. The average all-milk price was projected to increase in 10 current markets from $0.06 to $0.42 per hundredweight and decrease in 23 markets from $0.01 to $0.61 during this time period. This would have resulted in changing the gross cash receipts on an individual order basis during this period ranging from an annual average decrease of $48.4 million to an increase of $38.5 million. Overall, gross cash receipts would have averaged $128.4 million less than currently received.

Under Option 1A the all-milk price for all Federal order markets combined was expected to average $0.03 per hundredweight higher than the baseline during the years of 2000–2005. The average all-milk price was projected to increase in 15 current markets from $0.01 to $0.34 per hundredweight and decrease in 18 markets from $0.01 to $0.66. These changes would have resulted in changing the gross cash receipts on an individual order basis during this period ranging from an annual average decrease of $10.3 million to an increase of $48.4 million. Overall, gross cash receipts would have averaged $104.9 million higher than currently received.

Processors. Since Option 1B would have lowered the Class I differentials by a weighted average of $0.69 per hundredweight, the all-market average Class I price charged to fluid handlers would have declined by $0.49 per hundredweight when compared to the baseline during the years of 2000–2005. Lower Class I prices would have been expected to increase sales of fluid milk within the Federal order system by an annual average of 106.7 million pounds, representing less than a one percent increase. Similar responses would have occurred throughout the U.S. Fluid processors would have benefitted from lower fluid milk prices and increased fluid milk sales.

Option 1A would have increased Class I differentials by a weighted average of $0.04 per hundredweight resulting in the all-market average Class I price charged to fluid handlers increasing by $0.08 per hundredweight when compared to the baseline during the years of 2000–2005. Since the impact of the increased Class I prices would have resulted in an insignificant decrease in fluid milk consumption within the Federal order system, a decrease of 16.6 million pounds, and within the U.S., a decrease of 14.9 million pounds, this option would have little expected overall effect on processors or manufacturers of dairy products.

Consumers. Since adoption of Option 1B was projected to result in a decrease in the average Class I price for the period 2000–2005, it was expected that retail prices would decrease an average of $0.04 per gallon. On an individual order basis the changes in the average retail price per gallon would have ranged from an increase of $0.03 to a decrease of $0.12. As a result of the overall price decrease, consumers would have spent less on fluid milk products while increasing consumption. The increase in fluid consumption was estimated to be less than one percent.

Since adoption of Option 1A was projected to result in an increase in the average Class I price for the period of the years 2000–2005, it was expected to minimally increase retail prices an average of $0.01 per gallon. On an individual order basis the changes in the average retail price per gallon would have ranged from an increase of $0.05 to a decrease of $0.01. As a result of the price increase, consumers would have spent slightly more on fluid milk products and purchased about the same amount of milk for fluid use.

International Trade. Options 1B or 1A were not expected to have a significant impact on domestic butter and nonfat dry milk prices and therefore, little change in international trade would have resulted. International trade of raw milk and fluid milk products between the United States, Mexico, and Canada would have been unaffected.

In response to the final decision, the Food and Nutrition Service updated the analysis on the impacts of Federal Order reform provisions on Food and Nutrition Service programs, participants, and administering institutions. The updated report analyzes the potential impacts of the milk order reform pricing provisions contained in the final decision on the Food Stamp Program, the Women, Infants, and Children Program, and the National School Lunch and Breakfast Programs. The report also analyzes impacts of adopting either of the alternative Class I price structure options. The report indicates that adoption of the final decision provisions, as well as either of the alternatives considered, will have minimal economic impact on these programs. This report is included in the final RIA appendix.

The impacts of the provisions adopted in the final decision or either of the alternatives considered are minimal when compared to the total marketings and revenue generated in the dairy industry both on a national and Federal order basis. However, neither of the alternative options considered would appear to improve market efficiencies or equity as well as adopting the provisions contained in the final decision. Based on the analyses completed, the final decision regulations have been tailored to impose the least burden on society while meeting regulatory objectives. In doing so, these regulations will replace current regulations and will not duplicate any current regulations that may exist.

Civil Rights Impact Analysis Executive Summary

Pursuant to Departmental Regulation (DR) 4300–4, a Civil Rights Impact Analysis (CRIA) reviews the final

decision regarding reforms to the Federal Milk Marketing Order program to identify any provisions within the final decision with actual or potential adverse effects for minorities, women, and persons with disabilities.

The CRIA includes descriptions of (1) the purpose of performing a CRIA; (2) the civil rights policy of the U.S. Department of Agriculture (USDA); and (3) basics of the Federal milk marketing order program are provided for background information. The civil rights impact analysis of Federal Order Reform meets the requirements prescribed by DR 4300–4. As part of the analysis, the extensive outreach efforts of USDA through the entire reform process and after the final decision is published are highlighted. Additionally, statistical detail is provided of the characteristics of the dairy producer and general populations located within the current and consolidated marketing areas.

The analysis discloses no potential for affecting dairy farmers with specific characteristics differently than the general population of dairy farmers. All producers, regardless of race, national origin, or disability choosing to deliver milk to a Federal order regulated handler will receive the minimum blend price.

Copies of the Civil Rights Impact Analysis can be obtained from Dairy Programs at (202) 720–4392; any Market Administrator office; or via the Internet at http://www.ams.usda.gov/dairy/.

The Regulatory Flexibility Act and the Effects on Small Businesses

Pursuant to the requirements set forth in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Agricultural Marketing Service (AMS) has considered the economic impact of the rule on small entities and has prepared this final regulatory flexibility analysis. The Regulatory Flexibility Act provides, in summary, that when preparing such analysis an agency shall address: The need for and objectives of the rule; summary of the significant issues raised in public comments, agency assessment of the issues raised, and changes made to the proposed rule based on these issues; the kind and number of small entities affected; the recordkeeping, reporting, and other requirements; and steps taken to minimize the economic impact on small entities.

This regulatory action is in accordance with section 143 of the Federal Agriculture Improvement and Reform Act of 1996, 7 U.S.C. 7253, (the Farm Bill) which required the Secretary of Agriculture (Secretary) to consolidate the existing 31 Federal milk marketing orders, as authorized by the Agricultural Marketing Agreement Act of 1937 (AMAA), into between 10 and 14 orders. The Farm Bill further provided that the Secretary may address related issues such as the use of utilization rates and multiple basing points for the pricing of fluid milk and the use of uniform multiple component pricing when developing one or more basic prices for manufacturing milk. The Secretary was also directed to designate the State of California as a Federal milk order if California dairy producers petition for and approve such an order. Finally, the Farm Bill specified that the Department of Agriculture use informal rulemaking to implement these reforms.

The Farm Bill required that a proposed rule be published by April 4, 1998, and all reforms of the Federal milk order program be completed by April 4, 1999. However, the Omnibus Consolidated and Emergency Supplemental Appropriations Bill, passed in October 1998, extended the time frame for implementing Federal milk order reform amendments from April 4, 1999, to October 1, 1999. The extension specified that the final decision, defined as the final rule for purposes of this legislation, be issued between February 1 and April 4, 1999, with the new amendments becoming effective on October 1, 1999. The legislation also provides that California has from the date of issuance of the final decision until September 30, 1999, to become a separate Federal milk marketing order.

The final decision sets forth the consolidation of the current 31 Federal milk orders into 11 orders. Several issues related to the consolidation of Federal milk orders are also addressed. The final decision contains a replacement for the Class I price structure and the basic formula price. These changes set the stage for increasing efficiencies in supplying the milk needs of Class I markets and address concerns that the BFP is no longer a statistically significant measure of the value of manufacturing milk. The final decision also changes the classification of milk by (1) establishing Class IV provisions which would include milk used to produce nonfat dry milk, butter, and other dry milk powders; (2) reclassifying eggnog; and (3) making other minor classification changes. These changes recognize the position of butter and milk powders as residual products that balance the supply of milk with overall demand, and equalize the cost of competing products. Finally, this final decision expands part 1000 to include provisions that are identical within each consolidated order to assist in simplifying the regulations. These provisions include the definitions of route disposition, plant, distributing plant, supply plant, nonpool plant, handler, other source milk, fluid milk product, fluid cream product, cooperative association, and commercial food processing establishment. In addition, the milk classification section, pricing provisions, and some of the provisions relating to payments have been included in the General Provisions. These changes adhere with the efforts of the National Performance Review—Regulatory Reform Initiative to simplify, modify, and eliminate unnecessary repetition of regulations. Unique regional issues or marketing conditions have been considered and included in each market's order provisions.

The purpose of the Regulatory Flexibility Act is to fit regulatory actions to the scale of business subject to the actions in order that small businesses are not unduly or disproportionately burdened. To accomplish this purpose, it first is necessary to define a small business. According to the Small Business Administration's definition of a "small business," a dairy farm is a "small business" if it has an annual gross revenue of less than $500,000 and a handler is a "small business" if it has fewer than 500 employees. For the purposes of determining which dairy farms are "small businesses," the $500,000 per year criterion was used to establish a production guideline of 326,000 pounds per month. Although this guideline does not factor in additional monies that may be received by dairy producers, it should be an inclusive standard for most "small" dairy farmers. For purposes of determining a handler's size, if the plant is part of a larger company operating multiple plants that collectively exceed the 500-employee limit, the plant will be considered a large business even if the local plant has fewer than 500 employees.

Based on 1996 data, USDA identified approximately 80,000 of the 83,000 dairy producers (farmers) that had their milk pooled under a Federal order as small businesses. Thus, small businesses represent approximately 96 percent of the producers in the United States. By 1997 the total number of dairy producers that had their milk pooled under a Federal order had declined to about 79,000. It is estimated that nearly 76,000 are small businesses.

During 1997, 78,590 dairy farmers delivered over 105.2 billion pounds of milk to handlers regulated under the milk orders. This volume represents 68 percent of all milk marketed in the U.S.

and 70 percent of the milk of bottling quality (Grade A) sold in the country. The value of the milk delivered to Federal milk order handlers at minimum order blend prices was nearly $14.0 billion. Producer deliveries of milk used in Class I products (fluid milk products) totaled 44.9 billion pounds—42.7 percent of total Federal order producer deliveries. More than 200 million Americans reside in Federal order marketing areas—77 percent of the total U.S. population.

On the processing side, there are over 1,200 individual plants associated with Federal orders, and of these plants, approximately 700 qualify as "small businesses" representing about 55 percent of the total. During October 1997, there were more than 485 fully regulated handlers (306 distributing plants of which 111 were small businesses and nearly 180 supply plants of which about 50 percent were small businesses), 51 partially regulated handlers of which 28 were small businesses and 111 producer-handlers of which all were considered small businesses for purposes of this final RFA, submitting reports under the Federal milk marketing order program.

The Federal milk order program is designed to set forth the terms of trade between buyers and sellers of fluid milk. A Federal order enforces the minimum price that processors (handlers) in a given marketing area must pay producers for milk according to how it is utilized. A Federal order further requires that the payments for milk be pooled and paid to individual dairy producers or cooperative associations on the basis of a uniform or average price. It is important to note that a Federal milk order, including the pricing and all other provisions, only becomes effective after approval, through a referendum, by dairy producers associated with the order.

Development of this final decision began with the premise that no additional burdens should be placed on the industry as a result of Federal order consolidation and reform. As a step in accomplishing the goal of imposing no additional regulatory burdens, a review of the current reporting requirements was completed pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). In light of this review, it was determined that this final decision would have little impact on reporting, recordkeeping, or other compliance requirements because these would remain almost identical to the current Federal order program. No new forms are required; however, some additional reporting will be necessary in the orders that are adopting multiple component pricing if the current orders do not contain these provisions. Overall, there would be slight change in the burdens placed on the dairy industry.

There are two principal reporting forms for handlers to complete each month that are needed to administer the Federal milk marketing orders. The forms are used to establish the quantity of milk used and received by handlers, the pooling status of the handler, the class-use of the milk used by the handler, the butterfat content and amounts of other components of the milk. This information is used to compute the monthly uniform price paid to producers in each of the markets. Handlers in the marketing areas adopting multiple component pricing will be required to complete additional information regarding the components of the milk and to assure that proper payments are made to producers. This information is necessary to establish the values of milk on the basis of milk components and to assure that producers are paid correctly. Many handlers already collect and report this information.

This rule does not involve additional information collection that requires clearance by the Office of Management and Budget beyond the currently approved information collection. The primary sources of data used to complete the forms are routinely used in most business transactions. Forms require only a minimal amount of information which can be supplied without data processing equipment or a trained statistical staff. Thus, the information collection and reporting burden is relatively small. Requiring the same reports for all handlers does not significantly disadvantage any handler that is smaller than the industry average.

New territory, or pockets of unregulated territory within and between current order areas has been included in the consolidated marketing areas where such expansion will not have the effect of fully regulating plants that are not now regulated. The addition of these areas benefits regulated handlers by eliminating the necessity of reporting sales outside the Federal order marketing area for the purpose of determining pool qualification. Where such areas can be added to a consolidated area without having the effect of causing the regulation of any currently-unregulated handler, they are added.

Handlers not currently fully regulated under Federal orders may become regulated for two main reasons: first, in the process of consolidating marketing areas, some handlers who currently are partially regulated may become fully regulated because their sales in the combined marketing areas meet the pooling standards of a consolidated order area. Second, a previously unregulated area in New York, Vermont, New Hampshire and Massachusetts was added on the basis of supporting information. As a result, previously unregulated handlers would become fully regulated. Because of these two reasons, 11 additional plants are expected to become fully regulated under the program. Of these 11 plants, it is estimated that 5 are small businesses that would need to comply with the reporting, recordkeeping, and compliance requirements. The completion of these reports will require a person knowledgeable about the receipt and utilization of milk and milk products handled at the plant. This most likely will be a person already on the payroll of the business such as a bookkeeper, controller or plant manager. The completion of the necessary reporting, recordkeeping, and compliance requirements does not require any highly specialized skills and should not require the addition of personnel to complete. In fact, much of the information that handlers report to the market administrator is readily available from normally maintained business records, and as such, the burden on handlers to complete these recordkeeping and reporting requirements is minimal. In addition, assistance in completing forms is readily available from market administrator offices. A description of the forms and a complete Paperwork Reduction Act analysis follows this section.

No other burdens are expected to fall upon the dairy industry as a result of overlapping Federal rules. The regulations contained in this final decision do not duplicate, overlap or conflict with any existing Federal rules.

Public Comments

More than 1,000 comments were received from interested parties that specifically stated or documented they were small businesses. However, this number may not be fully representative of the number of small businesses that actually submitted comments because a majority of commenters did not indicate their size. Of the comments submitted, the majority were received from dairy producers. The comments from the producers primarily addressed the issues of Class I pricing and consolidation.

A few comments were received that specifically addressed the initial regulatory flexibility analysis (IRFA).

These comments also addressed the issues of Class I pricing and consolidation and further addressed the issue of producer-handler regulation. The Small Business Administration submitted views specifically addressing exempt plant status and requesting further analysis of the impact of consolidation on previously unregulated entities, if possible.

Nearly all of the 1,000 comments addressed Class I pricing and discussed the impact of Option 1A or Option 1B on dairy producers' income. A majority of these comments supported Option 1A because it would maintain the revenue necessary to stay in business. Many commenters opposing Option 1B argued that the Class I differential decreases that would occur under this option would result in financial losses that would force many dairy farmers out of business. Comments filed by service providers such as feed and implement stores that claimed to be small businesses commented on the negative impact lower prices received by dairy producers had on surrounding community businesses. One commenter supporting Option 1A further stated that in order to comply with the purposes and objectives of the Regulatory Flexibility Act, as stated in the IRFA, a Class I price structure that avoids a burdensome financial impact on dairy farmers must be adopted.

About 200 of the comments received from declared small businesses addressed consolidation issues. These comments focused on the impact of including or excluding currently-unregulated areas. A majority of the comments focused on the Northeast order and the inclusion or exclusion of the currently-unregulated territories in New York, Pennsylvania, and Maryland. Comments supporting the inclusion of currently-unregulated territory discussed the need to include this territory to prevent inequitable, unfair and disorderly marketing conditions. One supporting commenter noted that the expansion into unregulated areas would result in more small businesses becoming subject to Federal order regulation but the commenter did not believe that it would unduly impact their ability to compete. Commenters opposing the inclusion of currently-unregulated Pennsylvania territory argued that producer returns would decline if handlers in this area were subject to Federal order regulations.

A few comments were received addressing the extent of regulation applied to producer-handlers. One commenter, a small business producer-handler, indicated that the combination of new definitions and classification of milk provisions will result in its regulation. The commenter argued that this effect is contrary to the IRFA that stated "no additional regulatory burdens should be placed on the industry" and to the intent of the proposed rule that stated the changes were not intended to fully regulate any producer-handler that is currently exempt from regulation. Other commenters suggested that producer-handlers should not be exempt from regulation if their route disposition of Class I products at wholesale exceeds 500,000 pounds per month or if they have retail sales other than at a retail establishment located on the premises of the producer-handler's plant. They argued that producer-handlers with route disposition above this limit cannot be considered small businesses and should be subject to regulation.

After reviewing the public comments filed by small businesses in combination with updated marketing data and information and updated analyses, changes were made to the provisions contained in the proposed rule. Not all of the changes requested by small businesses were feasible but when changes were beneficial to small businesses without affecting the objectives of the rule, they were incorporated. The changes made to the proposed rule, based in part on small business comments, are discussed below by issue.

Consolidation

The proposed rule advanced 11 consolidated Federal milk marketing orders. The marketing areas of these orders were expanded to include currently-unregulated areas if this did not result in the regulation of any currently-unregulated handlers or was not an area in which handlers are subject to minimum Class I pricing provisions under State regulations. After reviewing the issue in light of the public comments and updating the initial analysis based on more recent marketing data, 11 consolidated orders are adopted in the final decision, the same number as proposed in the January 21, 1998, rule, but with significant modifications being made to the marketing areas of the proposed Northeast and Western orders, and minor modifications to the marketing areas of the proposed Southeast, Mideast, Upper Midwest and Central orders. The final decision continues to omit currently-unregulated areas specified in the January 21st proposed rule and also omits currently-unregulated areas that comprise a significant distribution area for currently-unregulated handlers, some of which were proposed to be included in consolidated areas.

Numerous comments were received from small businesses supporting the inclusion of currently-nonregulated areas in the Northeast order. However, after considering the requirements of the Farm Bill, the consolidation of the existing orders does not necessitate expansion of the consolidated orders into unregulated areas or areas in which handlers are subject to minimum Class I pricing under State regulation, especially when the states' Class I prices exceed or equal those that would be established under Federal milk order regulation. Such regulation could have the effect of reducing returns to producers already included under State regulation without significantly affecting prices paid by handlers who compete with Federally-regulated handlers.

Two changes made to the prior proposed rule as a result of comments submitted by small businesses related to the exclusion of territory in the consolidated marketing areas. These changes occurred in the Mideast and Central orders. The changes ensure that two currently-unregulated handlers maintain this status.

One change occurred in the Mideast order. Based on a comment received from Toft Dairy, Incorporated (Toft Dairy), a small business dairy processor, and Sandusky County Milk Producers Association, a dairy cooperative representing dairy farmers classified as small businesses, one partial and three entire counties in north Central Ohio are excluded from the Mideast marketing area. These areas are currently unregulated. The proposed rule had suggested including this currently-unregulated territory in the Mideast marketing area which would have resulted in the regulation of Toft Dairy. Since the intent of the consolidating marketing orders was not to cause the regulation of any currently-unregulated handler, these areas have been removed from the marketing area of the Mideast order. Toft Dairy will remain an unregulated processor unless its sales area changes significantly.

Another change occurred in the Central order. Based on a comment received from Central Dairy, Incorporated (Central Dairy), a small business dairy processor, six currently-unregulated counties in northeast Missouri that were proposed to be included in the Central order are excluded from the marketing area. These areas are currently unregulated. Central Dairy opposed inclusion of these six counties because the handler plans to expand its distribution into this

area. Again, since the intent of consolidating marketing orders was not to cause the regulation of any currently-unregulated handler these areas have been removed from the marketing area of the Central order.

Producer-Handlers

Another change to the proposed rule resulting from public comments involves producer-handlers. Since the intent of the proposed rule was not to increase regulation to any currently-unregulated producer-handlers, minor modifications have been made to the classification of milk provisions applicable to all orders and to the producer-handler definition in certain individual orders.

A comment submitted by Promised Land Dairy, a producer-handler defined as a small business, stated that the change in the classification of milk provisions combined with other order changes would result in their regulation. Promised Land Dairy argues that the addition of the words "or acquired for distribution" in § 1000.44(a)(3)(iv) would force milk delivered by a producer-handler to any store associated with a regulated handler to be sold at no more than the Class III price because it would be considered a receipt from a producer-handler. Promised Land Dairy argued that this would force producer-handlers to become fully regulated. In addition, they argued that changes made to the Southwest order's producer-handler definition are not warranted and would further result in the regulation of Promised Land Dairy.

The changes in the proposed rule were not intended to fully regulate any producer-handler that is currently exempt from regulation. Producer-handlers have been exempt from the pricing and pooling provisions of the orders for several reasons. First, the care and management of the dairy farm and other resources necessary for own-farm production and the management and operation of the processing are the personal enterprise and risk of the owner. Second, typically producer-handlers are small businesses that operate in a self-sufficient manner. Finally, producer-handlers do not have an advantage as either producers or handlers so long as they are responsible for balancing their fluid milk needs and cannot transfer balancing costs to other market participants.

While the provisions objected to by Promise Land Dairy would not directly regulate this entity, they could have a very serious negative economic impact on its continued operations as a producer-handler. Because it is still the intent of the Department to allow currently-unregulated producer-handlers to maintain this status, changes have been made to § 1000.44(a)(3)(iv) in the general provisions by removing the words "or acquired for distribution" and re-adding these words to § 1124.44, and changes have been made to the individual order definitions of producer-handlers. Hence, no changes are made in the final decision to regulate a producer-handler that is currently exempt from regulation.

Additional comments submitted by small businesses regarding producer-handlers advocated implementing a limitation on the exemption of producer-handlers based on size. The commenters suggested that the producer-handler exemption should be limited to those whose Class I route disposition is 500,000 pounds or less, or whose entire Class I disposition of fluid milk is made as retail sales from a retail establishment located on the premises of the producer-handler's processing plant.

Since the intent of the final decision is not to regulate any currently-unregulated producer-handlers, these requests have been denied. A review of October 1997 producer-handler route disposition data indicates that if a 500,000 pound Class I route disposition limit were implemented, 20 producer-handlers out of 111 producer-handlers, would become regulated. The Department's reasons for exempting producer-handlers as discussed previously have not changed and the intent of this rule is not to make changes to regulate currently-unregulated producer-handlers regardless of size. Consequently, these suggested changes have not been included in the final decision.

Class I Price Structure

Another change to the proposed rule, resulting in part from the public comments received, involves the Class I price structure. In the proposed rule the Department advanced two main price options—1A and 1B. The Department indicated a preference for Option 1B because it was more market-oriented. However, the Department recognized in the proposed rule that Option 1B would result in lower Class I prices and lower blend prices which would have a significant economic impact on small businesses, particularly producers. To lessen the impact, three phase-in program options were proposed to be adopted in conjunction with Option 1B. The objective of the phase-in programs was to provide dairy producers and processors the opportunity to adjust marketing practices to adapt to more market-determined Class I prices.

A majority of the public comments received from small businesses supported Option 1A. Many of the commenters opposing Option 1B indicated that the price levels established under this price structure would be significantly lower than present levels, and as a result, they—primarily dairy producers—would be forced out of business. Of the commenters supporting Option 1B, few supported the adoption of a phase-in program.

Option 1B was preferred by the Department because it would move the dairy industry into a more market-determined pricing system. Establishing a national Class I price structure based on results from the U.S. Dairy Sector Simulator model,[11] developed and administered by Cornell University, may increase market efficiencies in the dairy industry and lowering the differentials would allow marketing conditions to have a greater impact on actual Class I prices paid to producers who service the Class I market. The Department recognized that this would impact small businesses, both producer and processors, because less of the actual value of Class I milk would be regulated. In the proposed rule the Department stated the following:

"Smaller, less efficient producers would likely have a greater responsibility to bargain with processors for over-order premiums that adequately cover their costs. With processors less likely to face similar raw product costs, less efficient small processors may have to negotiate and/or sustain over-order price levels necessary to attract and maintain a sufficient supply of milk. Large businesses, both producers and processors, may be in a better competitive position to do this." (63 FR 4912)

After reviewing the public comments and updating marketing data and analyses of Option 1A and Option 1B, the Department adopted a Class I price structure that provides greater structural efficiencies in the assembly and shipment of milk and dairy products. The adopted Class I pricing structure establishes a price surface that utilizes USDSS model results adjusted for all known plant locations and establishes differential levels that will result in prices that generate sufficient revenue to assure an adequate supply of milk. The differential levels will better maintain equity by raising the level 40 cents per hundredweight higher than the level proposed in Option 1B. The higher differential level reduces the likelihood

[11] The U.S. Dairy Sector Simulator model is used to evaluate the geographic or "spatial" value of milk and milk components across the U.S. under the assumption of globally efficient markets. A more detailed description of the model is contained in the decision.

of class-price inversions, where the Class I prices are below the manufacturing milk prices for the month. Updated analysis conducted by the Interagency Dairy Analysis Team in the final Regulatory Impact Analysis [12] indicates that increasing the differential level lessens the economic impact of moving toward more market-orientation on small businesses.

Exempt Plant Limits

The Office of the Chief Counsel for Advocacy (Office of Advocacy) of the U.S. Small Business Administration submitted views on the IRFA pursuant to its authority under the Regulatory Flexibility Act, 5 U.S.C. 601, as amended by the Small Business Regulatory Enforcement Fairness Act, Pub. L. 104–121, 110 Stat. 866 (1996). With regard to the impact of the order consolidation and pricing formulae, the Office of Advocacy stated that these issues should be left to the regulated community and the Department. The Office of Advocacy did comment that a system that "best resembles the free market and imposes the least burden on the industry would be the best alternative."

The Office of Advocacy requested an explanation of how the 150,000 pound handler exemption was derived and a determination of whether this exemption could be increased. They questioned whether a greater number of small entities would benefit from an increase in the limit. The Office of Advocacy further requested additional analysis on the impact of the consolidation of orders on previously unregulated entities, if possible.

The 150,000 pound handler exemption was determined after reviewing provisions currently contained in the Federal milk marketing orders. The 150,000 pound exemption was the highest level currently utilized, with some orders containing no such exemption. A review of the impact of this exemption level on distributing plants that were fully regulated in October 1997 indicated that 15 plants, 14 of which are small businesses, would become exempt from regulation based on this provision. In addition, five partially-regulated plants, four of which are small businesses, would also become exempt. No public comments were received addressing this issue.

Federal milk order regulations must balance the interests of small business dairy producers versus small business dairy processors. Although only processors are regulated under Federal milk orders, producers receive benefits from the regulations. Thus, whenever dairy processors are exempt from Federal order regulations they are not required to pay dairy producers minimum Federal order prices. Exempting processors from regulation directly impacts dairy producers.

Based on October 1997 data, a review of the impacts of increasing the exemption levels on processors was completed. As expected, increasing the level would allow additional processors to become exempt. In October 1997, 54 handlers had route disposition equal to or less than 150,000 pounds. An additional 57 handlers had route disposition between 150,000 to 1,000,000 pounds and 327 handlers had route disposition greater than 1 million pounds.

Although it may appear that increasing the exemption level would not result in exempting many additional plants, these plants receive milk from a significant number of producers, a majority of whom are small businesses. In addition, contrary to the intent of benefitting small businesses by increasing the exemption level, more handlers that are considered large businesses could become exempt from regulation. Implementing the 150,000 pound level results in two large businesses currently regulated (one fully-regulated and one partially-regulated) becoming exempt plants. When more large businesses become exempt it not only impacts producers, but also impacts other regulated handlers.

In an attempt to maintain a balance between the interests of both small handlers and small dairy producers, the 150,000 pound exemption is maintained. Based on previous experience, the exemption of plants of this size poses no economic threat to the order's regulated handlers.

Minimization of Significant Economic Impacts on Small Businesses

The Department developed the final decision aware of the impacts of its adoption on small businesses, both dairy producers and processors. In the final decision, the Department has minimized the significant economic impacts of these regulations on small entities to the fullest extent reasonably possible while adhering to the stated objectives. The Department reviewed the regulatory and financial burdens resulting from these regulations and determined, to the fullest extent possible, the impact on small businesses' abilities to compete in the market place. The Department reviewed the regulations from both the small producer and small processor perspectives attempting to maintain a balance between these competing interests.

The Farm Bill mandated that the current 31 orders be consolidated into between 10 to 14 orders. The Farm Bill also specified that other issues could be addressed. Eleven orders are adopted in the final decision as well as a new Class I price structure, a basic formula price replacement, classification of milk provisions, and the establishment of identical provisions in all orders where possible. The objectives of the final decision are (1) to comply with the requirements of the Farm Bill and (2) to make other changes in order provisions consistent with the goals and requirements of the AMAA. The focus of these changes is to enhance the efficiencies of fluid milk markets while maintaining equity among processors of fluid milk selling in marketing order areas and among dairy producers supplying the areas' fluid demands.

Federal milk order regulations do not disparately apply to small and large businesses. If a handler is regulated under a Federal milk order, the provisions of that order apply the same to all handlers regardless of size. Likewise, if a producer's milk is associated with a Federal order pool, the same pricing and payment provisions will be utilized for all producers regardless of size. This final decision addresses several issues and adopts provisions that will continue to apply equally to all businesses, both large and small. The provisions adopted herein attempt to reduce the economic impact of Federal milk order regulations on small businesses to the most reasonable extent possible.

After reviewing submitted comments and updating marketing data and analyses, changes were made to the provisions contained in the proposed rule. The IRFA discussed the projected impacts of the primary components of the proposed rule on small entities. These included consolidation, basic formula price, Class I price structure, and classification. Because Federal order provisions are interrelated, it was difficult to determine the overall impact of each component on small entities because the proposed rule contained two pricing options. To the fullest extent possible, such estimations were set forth in the proposed rule.

Below is a description of the primary components contained in the final decision that were discussed in the IRFA. For comparison purposes, impacts resulting from each component

[12] Copies of the Regulatory Impact Analysis can be obtained from Dairy Programs at (202) 720–4392, any Market Administrator office, or via the Internet at http://www.ams.usda.gov/dairy.

are briefly discussed. Because this rule establishes the specific provisions to be contained in Federal milk marketing orders, analysis of the impacts of the consolidated orders on small businesses is provided.

Consolidation

The IRFA discussed three order consolidation options: (1) The consolidated marketing areas suggested in the December 1996 Initial Preliminary Report on Order Consolidation; (2) the consolidated marketing areas suggested in the May 1997 Revised Preliminary Report on Order Consolidation; and (3) the consolidated marketing areas suggested in the proposed rule. Determining the specific economic impacts of marketing area consolidation on handlers, producers, and consumers is difficult. The IRFA detailed the assumptions utilized to quantify the economic effects of consolidation. The IRFA included an analysis of each of the three consolidation options on the weighted average use value to determine the potential impacts of each option on producers. The IRFA also included projections regarding the number of handlers that would be regulated under the consolidation options and the number of these handlers that are small businesses.

The consolidation of orders adopted in the final decision is a result of the examination and analysis of more recent marketing data in combination with the comments received on the proposed rule. This resulted in modifying significantly from the proposed rule the marketing areas of the Northeast and Western orders, and in making minor modifications to the marketing areas of the proposed Southeast, Mideast, Upper Midwest and Central orders. The consolidated orders adopted in the final decision are as follows (* denotes changes made from the proposed rule):

*1. NORTHEAST—current marketing areas of the New England, New York-New Jersey and Middle Atlantic Federal milk orders, with the addition of: the contiguous unregulated areas of New Hampshire, northern New York and Vermont; and the non-Federally regulated portions of Massachusetts. *The Western New York State order area (ten entire and 5 partial western New York counties) proposed to be included in the expanded Northeast order area has been omitted.

2. APPALACHIAN—Current marketing areas of the Carolina and Louisville-Lexington-Evansville (minus Logan County, Kentucky) Federal milk orders plus the marketing area of the former Tennessee Valley order, with the addition of 21 currently-unregulated counties in Indiana and Kentucky.

3. FLORIDA—current marketing areas of the Upper Florida, Tampa Bay, and Southeastern Florida Federal milk orders.

*4. SOUTHEAST—current marketing area of the Southeast Federal milk order, plus 1 county from the Louisville-Lexington-Evansville Federal milk order marketing area; plus 11 northwest Arkansas counties and 22 entire Missouri counties that currently are part of the Southwest Plains marketing area; plus 6 Missouri counties that currently are part of the Southern Illinois-Eastern Missouri marketing area; plus 16 currently unregulated southeast Missouri counties (including 4 that were part of the former Paducah marketing area); plus 20 currently-unregulated Kentucky counties (including 5 from the former Paducah marketing area).

*A partial Missouri county that has been part of the Southwest Plains marketing area will become completely unregulated.

*5. MIDEAST—current marketing areas of the Ohio Valley, Eastern Ohio-Western Pennsylvania, Southern Michigan and Indiana Federal milk orders, plus Zone 2 of the Michigan Upper Peninsula Federal milk order, and most currently-unregulated counties in Michigan, Indiana and Ohio. *One partial and 3 entire counties in north central Ohio are left unregulated, as they represent the distribution area of a currently-partially regulated distributing plant (Toft Dairy in Sandusky, Ohio).

*6. UPPER MIDWEST—current marketing areas of the Chicago Regional, Upper Midwest, Zones I and I(a) of the Michigan Upper Peninsula Federal milk orders, and unregulated portions of Wisconsin. *The Iowa Federal order marketing area portion of one Illinois county is added to the consolidated Upper Midwest marketing area and the Chicago Regional portion of another Illinois county is removed and added to the consolidated Central area.

7. CENTRAL—current marketing areas of the Southern Illinois-Eastern Missouri, Central Illinois, Greater Kansas City, Southwest Plains, Eastern Colorado, Nebraska-Western Iowa, Eastern South Dakota, Iowa (less the portion of an Illinois county that will become part of the consolidated Upper Midwest area) and *Western Colorado Federal milk orders, * plus the portion of an Illinois county currently in the Chicago Regional Federal order area, minus 11 northwest Arkansas counties and 1 partial and 22 entire Missouri counties that are part of the current Southwest Plains marketing area, minus 6 Missouri counties that are part of the current Southern Illinois-Eastern Missouri marketing area, plus 54 currently-unregulated counties in Kansas, Missouri, Illinois, Iowa, Nebraska and Colorado, plus 8 counties in central Missouri *(six fewer than in the proposed rule) that are not considered to be part of the distribution area of an unregulated handler in central Missouri, *plus 7 currently unregulated Colorado counties located between the current Western and Eastern Colorado order areas.

8. SOUTHWEST—current marketing areas of Texas and New Mexico-West Texas Federal milk orders, with the addition of two currently-unregulated northeast Texas counties and 47 currently-unregulated counties in southwest Texas.

9. ARIZONA-LAS VEGAS—current marketing area of Central Arizona, plus the Clark County, Nevada, portion of the current Great Basin marketing area, plus eight currently-unregulated Arizona counties.

*10. WESTERN—current marketing areas of the Southwestern Idaho-Eastern Oregon and Great Basin Federal milk orders, minus Clark County, Nevada. *The Western Colorado order area, proposed to be included in the Western order area, is instead included in the consolidated Central order.

11. PACIFIC NORTHWEST—current marketing area of the Pacific Northwest Federal milk order plus 1 currently-unregulated county in Oregon.

The consolidated orders presented herein reflect the most appropriate boundaries for the purpose of implementing the requirements of the Farm Bill. These orders attempt to avoid extending regulation to handlers whose primary sales areas are outside current Federal order marketing areas and who are not subject to Federal order regulation. These orders also minimize the regulatory burden placed on handlers.

Based on October 1997 data, it is projected that 306 distributing plants will be fully regulated and 32 distributing plants will be exempt. The number of fully-regulated small businesses will be 111. The number of fully-regulated small businesses is down from 164, a 32 percent decline from the proposed rule. This is mainly a result from either large business acquisitions of these small businesses or because they have gone out of business. Two small businesses that are currently unregulated will become regulated and, as mentioned previously, 14 fully regulated and four partially-regulated small businesses will become exempt.

Basic Formula Price

The IRFA reviewed the basic formula price replacement options considered. These options included pricing components based on their value in manufactured products which was proposed and is adopted in the final decision, economic formulas, futures markets, cost of production, competitive pay pricing, and pricing differentials only.

The rule closely follows the pricing plan described in the proposed rule by replacing the current basic formula price (BFP) with a multiple component pricing system that derives component values from surveyed prices of manufactured dairy products. The adopted pricing system determines butterfat prices for milk used in Class II, Class III and Class IV products from a butter price; protein and other solids prices for milk used in Class III products from cheese and whey prices; and nonfat solids prices for milk used in Class II and Class IV products from nonfat dry milk product prices. The specific formulas used to calculate the prices are described in complete detail in the final decision.

All market participants, both large and small, would be affected by the BFP replacement in the same manner. There would be no uneven impact on market participants on the basis of size. However, the existence of minimum order pricing serves to assure that large handlers pay no less for their milk than smaller entities, and that small producers receive at least the same minimum uniform price for the milk or components of milk they produce as large producers. Consumers can be assured that the prices generally charged for dairy products are prices that reflect, as closely as possible, the forces of supply and demand in the market.

Impact of Multiple Component Pricing Provisions on Small Entities

As set forth in the proposed rule, seven of the 11 orders adopted in the final decision provide for milk to be paid for on the basis of its components—multiple component pricing (MCP).

Five of the seven MCP orders also provide for milk values to be adjusted according to the somatic cell count of producer milk. The equipment needed for testing milk for its component content can be very expensive to purchase, and requires highly-skilled personnel to maintain and operate. The cost of infra-red analyzers ranges from just under $100,000 to $200,000. The infra-red machines that are used by most laboratories would test for total solids and somatic cells at the same time the butterfat and protein tests are done.

No new report forms are needed under multiple component pricing; however, some additional reporting is necessary to enable handlers' values of milk to be determined on the basis of components, and to assure that producers are paid correctly. For the market administrators to compute the producer price differential, handlers would need to supply additional information on their currently-required monthly reports of receipts and utilization. In addition to the product pounds and butterfat currently reported, handlers would be required to report pounds of protein, pounds of other solids, and, in 5 of the orders, somatic cell information. This data would be required from each handler for all producer receipts, including milk diverted by the handler, receipts from cooperatives as 9(c) handlers (that is, the cooperative acts as a handler); and, in some cases, receipts of bulk milk received by transfer or diversion.

Since producers would be receiving payments based on the component levels of their milk, the payroll reports that handlers supply to producers must reflect the basis for such payment. Therefore the handler would be required to supply the producer not only with the information currently supplied, but also, (a) the pounds of butterfat, the pounds of protein, and the pounds of other solids contained in the producer's milk, as well as the producer's average somatic cell count, and (b) the minimum rates that are required for payment for each pricing factor and, if a different rate is paid, the effective rate also. Many handlers already report this additional information. It should be noted that handlers already are required to report information relative to pounds of production, butterfat and rates of payment for butterfat and hundredweight of milk to the appropriate Market Administrator.

Of over 74,000 producers whose milk was pooled in December 1996 under 23 of the current orders that would be part of consolidated orders providing for multiple component pricing, the milk of 52,500 of these producers was pooled under 13 current orders that have MCP. Handlers in these markets already have incurred the initial costs of testing milk for its component content, and have made the needed transition to reporting the component contents of milk receipts on their handler reports to the market administrators, and on their reports of what they have paid producers.

Of the remaining 21,750 producers who would be affected by MCP provisions under a Federal order (including an estimated 20,650 producers qualifying as small businesses), the milk of approximately 13,000, or 60 percent, currently is received by handlers who test or have the capability of testing for multiple components and, in many cases, somatic cells. Many of these handlers also report component results to the producers with their payments. Almost all of the producers whose milk currently is not being tested or paid for on the basis of components are located in the New England and New York-New Jersey marketing areas, which would be consolidated with the Middle Atlantic area into the Northeast order.

Accommodation has been made to ameliorate handlers' expenses of testing producer milk for component content. As component pricing plans have been adopted under a number of the present Federal milk orders since 1988, the component testing needed to implement these pricing plans has been performed by the market administrators responsible for the administration of the orders involved for handlers who have not been equipped to make all of the determinations required under the amended orders. It has been made clear in the decisions under which these plans have been adopted that handlers who would find it unduly burdensome to obtain the equipment and personnel needed to accomplish the required testing may rely on the market administrators to verify or establish the tests under which producers are paid. As noted above, however, many handlers not now subject to MCP provisions under Federal orders have nevertheless already undertaken multiple component testing and payment programs.

Class I Price Structure

The IRFA discussed two price structure options—location-specific differentials (Option 1A) and relative-value specific differentials (Option 1B). The IRFA set forth the projected impacts that these two price structures would have on producers and processors.

The price structure adopted in this final decision resulted from an examination and review of more recent marketing data in combination with the comments received on the proposed rule. As discussed previously, the Department adopted a Class I price structure that provides greater structural efficiencies in the assembly and shipment of milk and dairy products. The adopted Class I pricing structure establishes a price surface that utilizes

USDSS model results adjusted for all known plant locations and establishes differential levels that will result in prices that generate sufficient revenue to assure an adequate supply of milk. The differential levels will better maintain equity by raising the level 40 cents per hundredweight higher than the level proposed in Option 1B. The higher differential level reduces the likelihood of class-price inversions, where the Class I prices are below the manufacturing milk prices for the month. Updated analysis conducted by the Interagency Dairy Analysis Team in the final Regulatory Impact Analysis [13] indicates that increasing the differential level lessens the economic impact of moving toward more market-orientation on small businesses.

The adopted Class I price structure reduces Class I differentials from current levels in 17 markets ranging from $0.04 per hundredweight in the Ohio Valley order to $1.18 per hundredweight in the Eastern Colorado order. Option 1B would have reduced differentials from current levels in 29 markets ranging from $0.01 in Central Illinois order to $1.58 in the Eastern Colorado order. The adopted Class I price structure will increase Class I differentials in 14 markets ranging from $0.08 in the Greater Kansas City order to $0.57 in the Southeastern Florida order and leaves two orders unchanged. Option 1B would have increased Class I differentials in only two markets—$0.15 in Chicago Regional and $0.17 in Southeastern Florida—and would have left two orders unchanged. Option 1A would have increased differentials in 21 markets ranging from $0.01 per hundredweight in New England, New York-New Jersey, and Unregulated New York and New England to $0.50 in the Upper Midwest order, lowered differentials in seven markets from $0.04 in Ohio Valley to $0.18 in Eastern Colorado, and left four markets unchanged.

Although the adopted Class I price structure will result in price changes that affect both large and small entities, this option best meets the objectives of the AMAA. The adopted Class I price structure recognizes that there are limitations in the extent that the marketplace can be relied upon to establish prices to producers that are equitable and reasonable given marketing conditions. Similarly, it recognizes that handlers will be assured a higher degree of price equity. The adopted Class I price structure best provides the incentives necessary for increased efficiency in the organization and distribution of the milk supply and dairy products.

Classification Provisions

The IRFA discussed the classification of milk provisions contained in the proposed rule. The IRFA concluded that the classification of milk provisions would not have a significant economic impact on a substantial number of small entities. With two primary exceptions, these changes are adopted in the final decision. The two exceptions are: (1) Leaving cream cheese as a Class III product as currently classified, and (2) leaving the fluid milk product exclusion standard for products packaged in "all-metal, hermetically-sealed containers" as currently classified. In addition, other minor changes have been made including revising the shrinkage provisions to more closely resemble current provisions, re-adding the provision for milk that is dumped or used for animal feed, and classifying inventory of fluid milk products and fluid cream products in bulk form in Class IV. One additional change, as previously discussed in the comment section, was made to ensure that producer-handlers that are not currently regulated by the Federal order program will maintain this status. The provisions improve reporting and accounting procedures for handlers and provide for greater market efficiencies.

Conclusion

A review of the impacts on small entities of consolidating the current Federal milk orders into 11 orders in conjunction with the basic formula price replacement, classification provisions, and the three different Class I price structure options, indicates that the provisions set forth in the final decision adhere to the mandates of the Farm Bill, and provides more market efficiencies while minimizing the impact of these regulations on small entities. Since the Federal order program serves to benefit dairy producers by regulating dairy processors through classified pricing, provisions must be established that maintain a balance between the interests of small dairy producers and processors. The provisions contained in the final decision best maintain this balance.

The adoption of the consolidated orders and the provisions contained therein, including the adopted Class I price structure, will affect some small entities. Producers located in the western, southwestern, and northeastern areas may not fare as well as producers in other parts of the country when comparing the all-milk prices and cash receipts from milk marketings to current baseline projections. These producers represent approximately one-third of the total producers associated with Federal orders. Of these producers, about 30 percent are considered small businesses. When compared to the baseline, over a 6-year period from the years of 2000–2005, the all-milk price for all Federal orders is expected to decrease an average of $0.02 per hundredweight. Changes in the all-market price on an individual order basis is projected to range from a decrease of $0.50 per hundredweight to an increase of $0.52 per hundredweight. Cash receipts are expected to increase by an estimated $222.3 million primarily because of changes in transportation payments and the pooling of additional milk. After adjusting for these changes, cash receipts are projected to decline from the baseline an average of $2.5 million during the 6-year period. With the baseline cash receipts averaging $16,944.5 million this represents a very small reduction.

Since the final decision is projected to have minor effects on where milk is produced, little impact is expected on processors or manufacturers of dairy products. A majority of the fully-regulated processors associated with Federal orders will benefit from a decrease in Class I prices. About 209 processors, 74 of which are small businesses, would experience decreases ranging from $0.04 to $1.18 per hundredweight. About 69 processors, 22 of which are small businesses, located primarily in the Midwest and Florida areas, would experience Class I price increases ranging from $0.08 to $0.57 per hundredweight. About 28 processors, 14 of which are small businesses, would experience no change in Class I prices.

Implementing the consolidated orders with the modified Option 1B price structure would have a significant impact on many small entities, both producers and processors. Producers located everywhere except the Midwest and Florida regions would have been negatively impacted. When compared to the baseline, over a 6-year period from the years of 2000–2005, the all-milk price for all Federal orders was projected to annually average $0.09 per hundredweight lower, with individual order changes ranging from −$0.61 per hundredweight to $0.42 per hundredweight. Cash receipts were expected to annually average over $100 million less than the baseline, a .01 percent decrease.

[13] Copies of the Regulatory Impact Analysis can be obtained from Dairy Programs at (202) 720–4392, any Market Administrator office, or via the Internet at http://www.ams.usda.gov/dairy.

Most fully-regulated fluid processors would have benefitted from the decrease in Class I differentials. Lower differentials would have reduced Class I prices in 29 of the current markets from between $0.01 to $1.58 per hundredweight. Two markets would have had increases of $0.15 and $0.17 per hundredweight in Class I prices. When compared to the baseline, the Class I price for all Federal orders was projected to average $0.49 per hundredweight lower over a 6-year period from the years of 2000–2005. Lower Class I prices would have been expected to increase U.S. sales of fluid milk by 98.8 million pounds annually. Most fluid processors would have benefitted from the lower fluid milk prices and increased fluid milk sales.

Although most fluid processors would have benefitted from the consolidation of orders with the modified Option 1B price surface, only about one-third of the fully-regulated plants are small businesses and these plants may have been negatively impacted. With less of the actual value of fluid milk represented by the minimum prices established by Federal orders, more emphasis would have been placed on processors' and producers' abilities to negotiate and/or sustain over-order prices that might be necessary to maintain an adequate supply of milk. This would have resulted in less handler equity which could have placed small processors at a disadvantage in competing for a supply of milk.

Adoption of this option would have resulted in large fluid processors benefitting from the regulations at the expense of more than 50 percent of the total producers who would have experienced price decreases. Additionally, small processors would not have been assured equity in competing with large businesses for a milk supply. Hence, the Department determined the impact of consolidating orders with the modified Option 1B price structure would have had a more burdensome financial impact on a significant number of small businesses.

Implementing the consolidated orders with the Option 1A price structure would have minimal overall impact on small businesses. When compared to the baseline, the all-milk price for all Federal orders was projected to average $0.03 per hundredweight higher, with individual order changes ranging from −$0.66 per hundredweight to $0.34 per hundredweight over a 6-year period from the years of 2000–2005. Cash receipts were expected to average over $482.1 million more than the baseline, a .02 percent increase. Nearly 50 percent of the producers would have benefitted from this modest increase.

Since this option is projected to have minor effects on where milk is produced, little impact would have been expected on processors or manufacturers of dairy products. Option 1A would have increased Class I differentials by an average of $0.04 per hundredweight resulting in the all-market average Class I price charged to fluid handlers increasing by $0.08 per hundredweight when compared to the baseline during the years of 2000–2005. Processors would have experienced a Class I price increase in 21 of the current orders ranging from $0.01 to $0.50 per hundredweight, affecting nearly 190 fully-regulated processors of which about one-third are small businesses. Since the impact of the increased Class I prices would have resulted in an insignificant decrease in fluid milk consumption within the Federal order system, a decrease of 17.1 million pounds, and within the U.S., a decrease of 14.9 million pounds, this option would have little expected effect on processors or manufacturers of dairy products.

Implementing the consolidated orders with the Option 1A price structure would likely have minimized the financial impact of Federal milk orders on small entities. However, this option does not facilitate the movement towards a more efficient system of supplying fluid milk to meet market demands within the Federal order regulatory program. Although this option minimizes the impact of regulations on small businesses, it does not best meet the desired outcomes and objectives of the final decision.

The provisions adopted in the final decision best fulfill the requirements of the AMAA while minimizing the regulatory burdens on small businesses. The consolidated orders, with the adopted Class I price structure and other provisions, ensures that the Federal order program will continue to establish and maintain market stability and orderly marketing conditions for milk. The adopted provisions will further provide that milk prices are established at levels high enough to generate sufficient revenue for producers to maintain adequate supplies of milk while providing equity to handlers. The provisions contained in the final decision do not unduly or disproportionately burden small businesses.

Paperwork Reduction Act of 1995

The information collection requirements contained in this decision previously were approved by the Office of Management and Budget (OMB) pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35) under OMB control number 0581–0032, through September 30, 2001.

The amendments set forth in the final decision do not contain additional information collections that require clearance by the OMB under the provisions of 44 U.S.C. Chapter 35. Following is a general description of the reporting and recordkeeping requirements, reasons for these requirements and an estimate of the annual burden on the dairy industry.

Title: Report Forms Under Federal Milk Orders (From Milk Handlers and Milk Marketing Cooperatives).

OMB Control Number: 0581–0032.

Expiration Date of Approval: September 30, 2001.

Type of Request: Extension and revision of a currently approved information collection.

Abstract: Federal Milk Marketing Order regulations authorized under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), require milk handlers to report in detail the receipt and utilization of milk and milk products handled at each of their plants that are regulated by a Federal Order. The data are needed to administer the classified pricing system and related requirements of each Federal Order.

Rulemaking amendments to the orders must be approved in referenda conducted by the Secretary.

The terms of each of the current milk marketing orders are found at 7 CFR parts 1001–1199; the terms of each of the proposed orders in this document are found at 7 CFR parts 1001–1135. The authority for requiring reports is found at 8c(5) and (7) and 8d of the Act. The current authority for requiring records to be kept is found in the general provisions at 7 CFR part 1000.5. In the final decision, this authority is found in the general provisions at 7 CFR part 1000.27. The Act also provides for milk marketing agreements, but there are none in effect.

A Federal milk marketing order is a regulation issued by the Secretary of Agriculture that places certain requirements on the handling of milk in the area it covers. It requires that handlers of milk for a marketing area pay not less than certain minimum class prices according to how the milk is used. These prices are established under an order on the basis of evidence concerning the supply and demand conditions for milk in the market. A milk order requires that payments for milk be pooled and paid to individual farmers or cooperative associations of

farmers on the basis of a uniform or average price. Thus, all eligible farmers (producers) share in the market wide use-values of milk by regulated handlers.

The Report of Receipts and Utilization and the Producer Payroll Report are completed by regulated milk handlers and milk marketing cooperatives and are the principal reporting forms needed to administer Federal milk marketing orders.

The orders also provide for the public dissemination of market statistics and other information for the benefit of producers, handlers, and consumers. Each milk order is administered by a market administrator who is an agent of the Secretary of Agriculture. Part of the market administrator's duties are to prescribe reports required of each handler, and to assure that handlers properly account for milk and milk products, and that such handlers pay producers and associations of producers according to the provisions of the order. The market administrator employs a staff that verifies handlers' reports by examining records to determine that the required payments are made to producers. Most reports required from handlers are submitted monthly to the market administrator. Confidentiality of information collection is assured through section 608(d) of the Act, which imposes substantial penalties on anyone violating these confidentiality requirements.

The forms used by the market administrators are required by the respective milk orders that are authorized by the Act. The forms are authorized either in the general provisions (Part 1000) or in the sections of the respective orders. The forms are used to establish the quantity of milk received by handlers, the pooling status of handlers, the class-use of the milk used by the handler and the butterfat content and amounts of other components of the milk.

The frequency of performing these recordkeeping and reporting duties varies according to the form; the frequency ranges from "on occasion" to "annually" but "monthly" is perhaps most common. In general, most of the information that handlers report to the market administrator is readily available from normally maintained business records. Thus, the burden on handlers to complete these recordkeeping and reporting requirements is expected to be minimal. In addition, assistance in completing forms is readily available from market administrator offices.

Regarding the use of improved information technology to reduce the reporting and recordkeeping burden, the information requested is the minimum necessary to carry out the program. Since the type of information required to be collected and the certification and reporting of that information is required, no other alternative to the mode of information collection has been found. However, where possible, reported information is accepted using computer tapes or diskettes as alternatives to submitting the requested information on these report forms. Comments were requested to help assess the number of handlers using computers, word processors and other electronic equipment to create and store documents, as well as the extent to which the Internet is used to exchange information.

We are confident that the information we collect does not duplicate information already available. Dairy Programs has an ongoing relationship with many organizations in the dairy industry that also respond to other governmental agencies. Thus, we are aware of the reports dairy industry organizations are submitting to other government agencies.

Information collection requirements have been reduced to the minimum requirements of the orders, thus minimizing the burden on all handlers—those considered to be small as well as large entities. Forms require only a minimal amount of information which can be supplied without data processing equipment or a trained statistical staff. The primary source of data used to complete the forms are routinely used in all business transactions. Thus, the information collection and reporting burden is relatively small. Requiring the same reporting requirements for all handlers does not significantly disadvantage any handler that is smaller than industry average.

If the collection of this information were conducted less frequently, data needed to keep the Secretary informed concerning industry operations would not be available. Timing and frequency of the various reports are such to meet the needs of the industry and yet minimize the burden of the reporting public.

The collection of the required information is conducted in a manner consistent with guidelines in 5 CFR 1320.6. The orders require that the market administrator compute monthly minimum prices to producers based on monthly information. Without monthly information, the market administrator, for example, would not have the information to compute each monthly price, nor to know if handlers were paying producers on dates prescribed in the order, such as the partial payment for milk received the first 15 days of the month and the final payment which is payable after the end of the month. The Act imposes penalties for order violations, such as the failure to pay producers not later than prescribed dates. The orders require payments to and from the producer-settlement fund to be made monthly. Also, class prices are based on the monthly Basic Formula price series.

Annual Reporting and Recordkeeping Burden

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 0.87 hours per response.

Respondents: Milk Handlers and Milk Marketing Cooperatives.

Estimated Number of Respondents: 772.

Estimated Number of Responses per Respondent: 35.

Estimated Total Annual Burden on Respondents: 23,858 hours.

Estimated annual cost to respondents for report preparation: $276,514 (23,858 hours at $11.59 per hour). Although hourly rates vary among handlers in various localities, the wage paid to clerical workers engaged in report preparation is estimated to be comparable to about a grade GS–7, step 1.

It is important to note that the burden being reported is an estimate of the amount of time that would be required of current program participants.

It is expected that the final decision should have little impact on the reporting and recordkeeping burden on handlers regulated under the Federal milk marketing order program. In fact, as a result of the consolidation of Federal orders from 31 to 11 as proposed, an overall reduction in reporting and recordkeeping requirements may occur due to greater uniformity in forms used and fewer "special" forms that currently apply to one or a few orders. There should also be a reduction in the burden on handlers that currently file reports for individual orders that are being consolidated.

Non-substantial changes would be necessary on the required reports and records to correctly identify the new Federal market order (e.g. the current—and separate—reports for the Upper Florida, Tampa Bay and Southeastern Florida marketing areas would be combined into one report for the Florida marketing area).

Request for Public Input on Analyses

Comments on the Executive Order 12866 analysis, the initial regulatory flexibility analysis, and the paperwork reduction analysis were requested in the proposed rule, which was published in the **Federal Register** on January 30, 1998. Specifically, interested parties were invited to submit comments on the regulatory and informational impacts of this proposed rule on small businesses. More than 1,000 comments were received from interested parties that specifically stated or documented they were small businesses. However, this number may not be fully representative of the number of small businesses that actually submitted comments because a majority of commenters did not indicate their size. A few comments specifically addressed the initial regulatory flexibility analysis (IRFA), the Executive Order 12866, and the Paperwork Reduction Analysis. These comments have been considered and addressed above.

Preliminary Statement

The material issues in this rule relate to:

1. Consolidation of marketing areas.
2. Basic formula price replacement and other class price issues.
3. Class I pricing structure.
4. Classification of milk and related issues.
5. Provisions applicable to all orders.
6. Regional issues:
   a. Northeast Region.
   b. Southeast Region.
   c. Midwest Region.
   d. Western Region.
7. Miscellaneous and administrative matters.
   a. Consolidation of the marketing service, administrative expense, and producer-settlement funds.
   b. Consolidation of the transportation credit balancing funds.
   c. General findings.

II. Discussion of Material Issues and Amendments to the Orders

A discussion and explanation of the material issues and determinations contained in this rule are as follows:

1. Consolidation of Marketing Areas

Subtitle D, Chapter 1 of the 1996 Farm Bill, entitled "Consolidation and Reform of Federal Milk Marketing Orders," requires, among other things, that the Federal milk marketing orders be limited to not less than 10 and not more than 14. Nearly 1,300 public comments received in response to the proposed rule addressed the subject of order consolidation. Preceding the proposed rule, two preliminary reports on order consolidation were issued by the Agricultural Marketing Service's Dairy Division, in December 1996 and May 1997. The proposed rule, issued in January 1998, included consideration of public comments received in response to these preliminary reports.

The 1996 Farm Bill specifically provides for the inclusion of California as a separate Federal milk order, but the provision is contingent upon petition and approval by California producers. The Omnibus Consolidated and Emergency Supplemental Appropriations Bill, passed in October 1998, extended the time for implementing Federal milk order reform amendments from April 4, 1999 to October 1, 1999. The legislation provides that California has from the date of issuance of this final decision until September 30, 1999, to become a separate Federal milk order. This additional time is intended to allow California dairy interests the opportunity review this final decision to determine whether a Federal milk order for California, consistent with the provisions adopted for the consolidated orders, would best meet their milk marketing regulatory needs.

Over 150 comments were received that addressed the issue of a Federal milk order for California, with approximately 120 of them being a form letter advocating a California Federal milk order. These comments, and a number of additional individual comments, came primarily from commenters outside California who expressed a need for California and Federal order prices for milk used in manufactured products to be in closer alignment to eliminate California manufacturers' perceived competitive advantage in product prices.

Interest in a Federal milk order has been expressed by some California producers, but for the most part California commenters expressed a desire to have a chance to study and comment on this final decision before deciding whether to pursue a proposal for a California Federal order.

The preliminary reports, the proposed rule, and this final decision concerning order consolidation were prepared using data gathered about receipts and distribution of fluid milk products by all known distributing plants located in the 47 contiguous states, not including the State of California. Data describing the sources and disposition of fluid milk products for the month of October 1995 were used to compile the initial Preliminary Report. In response to comments and questions about certain marketing area boundaries and changes in marketing conditions in some of the markets after publication of the initial Preliminary Report, data concerning those markets was updated to January 1997, and more detailed information was gathered regarding the geographic distribution of route sales by individual handlers and their specific sources of producer milk. The updated and more detailed data were used in re-examining the appropriate boundaries of the initially-suggested Northeast, Appalachian, Southeast, Mideast, Central, and Western marketing areas for the Revised Preliminary Report on Order Consolidation. The Revised Preliminary Report, in turn, was modified on the basis of comments received for development of the proposed rule.

Nearly 1,300 comments filed in response to the proposed rule had some applicability to the topic of order consolidation. Approximately 750 of these comments were received as 6 form letters, one of which (filed by approximately 120 commenters) advocated a national marketing area map comprised of 10 order areas covering all of the contiguous 48 states. The other form letters advocated the addition of currently-unregulated area to the Northeast area. Another 350 comments also addressed the desirability of adding unregulated areas to the proposed consolidated marketing areas (primarily the Northeast), with only about 55 of these being opposed to the inclusion of unregulated areas.

The comments specifically applicable to each of the consolidated marketing areas are described in the sections dealing with the individual consolidated areas.

In combination with consideration of the comments received, data similar to that gathered for October 1995 were compiled for October 1997 to determine whether the consolidated marketing areas delineated in the proposed rule continued to represent the most appropriate boundaries for the purpose of implementing the requirements of the 1996 Farm Bill.

The October 1997 data allowed a "snapshot" of the marketing patterns of fluid milk processors for that month. The regulatory status of distributing plants for October 1997 is known, and the regulatory status of each plant could be projected on the basis of the plant's receipts and dispositions, and where its milk was distributed. The information in the sections entitled "Distributing Plants" within the description of each marketing area are based on the October data, as are the lists of plants and pool plant status following the consolidation portion of this decision. It should be

understood that the regulatory status of any plant can change whenever its operations or areas of distribution change.

The result of the examination and analysis of the more recent data in combination with the comments on the proposed rule was to modify significantly from the proposed rule the marketing areas of the proposed Northeast and Western orders, and to make very minor modifications to the marketing areas of the proposed Southeast, Mideast, Upper Midwest and Central orders.

As in the case of data referring to the operations of less than three handlers or producers in the preliminary reports and proposed rule, some of the data used to determine the consolidated areas is restricted from use by the public because it refers to individual fluid milk distributing plants and the origins of producer milk supply for those plants. However, the basis for the marketing area boundaries is described as specifically as possible without divulging such proprietary information.

The same seven primary criteria as were used in the two preliminary reports and the proposed rule were used to determine which markets exhibit a sufficient degree of association in terms of sales, procurement, and structural relationships to warrant consolidation. The criteria are as follows:

1. Overlapping route disposition. The movement of packaged milk between Federal orders indicates that plants from more than one Federal order are in competition with each other for Class I sales. In addition, a degree of overlap that results in the regulatory status of plants shifting between orders creates disorderly conditions in changing price relationships between competing handlers and neighboring producers. This criterion is considered to be the most important.

2. Overlapping areas of milk supply. This criterion applies principally to areas in which major proportions of the milk supply are shared between more than one order. The competitive factors affecting the cost of a handler's milk supply are influenced by the location of the supply. The pooling of milk produced within the same procurement area under the same order facilitates the uniform pricing of producer milk. Consideration of the criterion of overlapping procurement areas does not mean that all areas having overlapping areas of milk procurement should be consolidated. An area that supplies a minor proportion of an adjoining area's milk supply with a minor proportion of its own total milk production while handlers located in the area are engaged in minimal competition with handlers located in the adjoining area likely does not have a strong enough association with the adjoining area to require consolidation.

For a number of the consolidated areas it would be very difficult, if not impossible, to find a boundary across which significant quantities of milk are not procured for other marketing areas. In such cases, analysis was done to determine where the minimal amount of route disposition overlap between areas occurred, and the criterion of overlapping route disposition generally was given greater weight than overlapping areas of milk supply. Some analysis also was done to determine whether milk pooled on adjacent markets reflects actual movements of milk between markets, or whether the variations in amounts pooled under a given order may indicate that some milk is pooled to take advantage of price differences rather than because it is needed for Class I use in the other market.

3. Number of handlers within a market. Formation of larger-size markets is a stabilizing factor. Shifts of milk and/or plants between markets becomes less of a disruptive factor in larger markets. Also, the existence of Federal order markets with handlers too few in number to allow meaningful statistics to be published without disclosing proprietary information should be avoided.

4. Natural boundaries. Natural boundaries and barriers such as mountains and deserts often inhibit the movement of milk between areas, and generally reflect a lack of population (limiting the range of the consumption area) and lack of milk production. Therefore, they have an effect on the placement of marketing area boundaries. In addition, for the purposes of market consolidation, large unregulated areas and political boundaries also are considered a type of natural barrier.

5. Cooperative association service areas. While not one of the first criteria used to determine marketing areas, cooperative membership often may be an indication of market association. Therefore, data concerning cooperative membership can provide additional support for combining certain marketing areas.

6. Features or regulatory provisions common to existing orders. Markets that already have similar regulatory provisions that recognize similar marketing conditions may have a head start on the consolidation process. With calculation of the basic formula price replacement on the basis of components, however, this criterion becomes less important. The consolidation of markets having different payment plans will be more dependent on whether the basic formula component pricing plan is appropriate for a given consolidated market, or whether it would be more appropriate to adopt a pricing plan using hundredweight pricing derived from component prices.

7. Milk utilization in common dairy products. Utilization of milk in similar manufactured products (cheese vs. butter-powder) was also considered to be an important criterion in determining how to consolidate the existing orders.

Comments on Consolidation Criteria

Most of the comments relative to order consolidation criteria were submitted prior to publication of the proposed rule. It was the overall opinion of the commenters that overlapping route disposition and milk procurement are the most important criteria to consider in the consolidation process. In addition, Class I use percentages and regulation on the basis of handler location were noted as important criteria to consider. To some extent, the consolidated marketing areas included in this final decision do combine markets with similar Class I utilization rates rather than markets that would result in Class I use percentages being more uniform between markets. This result occurs because adjoining markets, where most of the sales and procurement competition takes place between handlers regulated under different orders, tend to have similar utilization rates rather than because the criterion is one that should be used to determine appropriate consolidations. Also, Class I utilization rates are a function of how much milk is pooled on an order with a given amount of Class I use. Differences in rates, to the extent they result in differences in blend prices paid to producers, provide an incentive for milk to move from markets with lower Class I utilization percentages to markets with higher Class I use.

Regulation of processors on the basis of their location rather than their sales areas has largely been incorporated in the consolidated orders by a provision that would pool a handler under the order for the area in which the handler is located unless more than 50 percent of the handler's Class I route dispositions are distributed in another order area. This provision should help to assure that the order under which a distributing plant is pooled will not change from month to month, and that a plant operator is subject to the same provisions, such as producer pay prices, as are its primary competitors.

The consolidated orders also include provisions that lock plants processing primarily ultra-high temperature (UHT) or extended shelf-life milk into regulation under the order for the area in which the plant is located. Such plants often have widely dispersed route sales into a number of order areas, with sporadic deliveries to different areas. Without some type of lock-in provision, such a plant may be pooled in several different orders in as many months. At the same time, the plant's milk supply generally is procured from a given group of producers located in the same area as the UHT (or extended shelf-life) plant. Having the plant pooled under a succession of different orders with widely varying blend prices creates a disorderly condition for the producers involved.

On the basis of the distributing plant pooling standards included for all eleven orders in this final decision, there are three non UHT pool distributing plants that would have more sales in an order area other than the one in which they are regulated. Two of these plants are the Superbrand Dairy Products distributing plant in Greenville, South Carolina, and the Kroger Dairy distributing plant in Winchester, Kentucky, both located in the Appalachian order, but which likely will qualify for pooling under the Southeast and Mideast orders. In addition, the Hiland Dairy plant in Fayetteville, Arkansas, in the Southeast consolidated area, likely will qualify for pooling under the Central order. In cases in which these plants compete almost entirely for a producer milk supply in the area in which they are located, lock-in provisions are incorporated to assure that the plant is pooled where located for the purpose of competitive equity.

Some changes in regulatory status are expected to occur because of the addition of regulated area (in the Northeast), the consolidation of marketing areas, changes in pooling standards, and changes in the definitions of types of plants. The expected changes are based on data collected for October 1997 and may differ in some respects at the time the consolidated orders go into effect.

The regulatory status of three Vermont handlers is expected to change from partially regulated to fully regulated because a significant percentage of their sales is in areas that will be added to the Northeast consolidated marketing area, and a partially-regulated New York handler is expected to meet the pooling standards because of the consolidation of marketing areas. Two other currently partially regulated handlers, one in New York and one in Vermont, are expected to become fully regulated because the pooling provisions of the consolidated order will be more like those of all the other orders than is currently the case in the New York-New Jersey order. Two plants that currently are fully regulated on the basis of the "grandfather" clause of the New York-New Jersey order will become partially regulated when this provision ceases to exist.

In the consolidated Appalachian marketing area, two distributing plants, one currently unregulated and one partially regulated, would become fully regulated as a result of including the marketing area of the Tennessee Valley order, terminated in October 1997. These plants both were fully regulated under the Tennessee Valley order, and lost their regulatory status as a result of the termination.

A plant currently partially regulated under the Southeast order would become fully regulated as a result of "locking in" to regulation plants that distribute primarily UHT or extended shelf-life products. Another Southeast distributing plant, currently fully regulated, would become partially regulated because of failure to meet the consolidated order's pooling standards.

Two distributing plants that currently are partially regulated under the Chicago Regional order would become fully regulated under the consolidated Upper Midwest order because of a change in the definition of receipts that are used in the calculation of percentage of total receipts used in route disposition for the determination of pool status.

Three plants, one in each of the consolidated Upper Midwest, Central, and Pacific Northwest marketing areas, would change regulatory status as depicted in the attached list of distributing plants and regulatory status. These plants are distributing plants that are listed as being fully regulated in October 1997 and becoming either partially regulated or exempt under the consolidated orders. These plants, having small amounts of route dispositions, actually were pooled on the basis of their performance as supply plants or as part of supply plant units. It is unknown whether they will continue to qualify as pool supply plants, but will not meet the pool distributing plant standards of the consolidated orders.

In the Pacific Northwest, the Oregon and Washington State prison systems both operate fluid processing plants that have route distribution in commercial channels, competing with regulated handlers. These plants are not currently fully regulated. Under the consolidated order, one of the plants will be partially regulated only with respect to its commercial sales, and the other will be exempt on the basis of size.

Several comments advocated that all of a state's territory should be included in one Federal order to assure that all producers in a state are paid on an equitable basis, or to make it easier to maintain state statistical data. One of the primary reasons for Federal milk orders is that milk marketing occurs readily across state boundaries, making state milk marketing regulation more difficult to enforce. It is important that Federal milk marketing areas continue to recognize the free interstate movement of milk to and from milk plants. There are cases where natural boundaries such as mountains or rivers may result in part of a state having a closer marketing relationship with an adjoining state than with other areas of the same state.

Although the Revised Preliminary Report suggested that several currently non-Federally regulated areas be added to some consolidated marketing areas, the proposed rule omitted areas in which handlers are subject to minimum Class I pricing under State regulation unless the affected handlers or States requested inclusion. This final decision continues to omit such areas, and also omits currently-unregulated areas that comprise a significant distribution area for currently-unregulated handlers, some of which were proposed to be included in consolidated areas.

Considering the requirements of the 1996 Farm Bill, consolidation of the existing orders does not necessitate expansion of the consolidated orders into unregulated areas or areas in which handlers are subject to minimum Class I pricing under State regulation, especially when the states' Class I prices exceed or equal those that would be established under Federal milk order regulation. Such regulation could have the effect of reducing returns to producers already included under State regulation without significantly affecting prices paid by handlers who compete with Federally-regulated handlers.

However, there are numerous counties and portions of counties located within and between Federal order marketing areas that have not been included in the defined order areas during the course of the more than 60 years the program has developed. In some cases, these small areas were left unregulated many years ago to maintain the unregulated status of a small handler. In others, these areas probably formed a "buffer" between separate

smaller order areas and were not incorporated when the smaller orders were merged. Some of these areas form "buffer" zones today between current order areas that will be consolidated in the course of this process. These areas should be included in the defined consolidated marketing areas if their inclusion would not have the effect of regulating any unregulated handlers who currently distribute milk in these areas. The issue of whether to regulate currently-unregulated areas is discussed in more detail with regard to the individual consolidated marketing areas in the sections of this decision dealing with those areas, especially the Northeast area.

The occurrence of partial counties in marketing area definitions should be minimized for the purpose of simplifying handlers' reporting burden. The continued existence of these unregulated areas, partially regulated counties, and counties split between marketing areas serves only to complicate the reporting of route dispositions outside the marketing area by regulated distributing plant handlers for the purpose of determining pool qualifications and increase the costs of administering the orders.

In order to avoid extending Federal regulation to handlers whose primary sales areas are outside current Federal order marketing areas and who currently are not subject to Federal order regulation, it has been determined that the appropriate in-area Class I disposition percentage portion of the pool distributing plant definition is 25 percent for all orders. Discussion of this provision is included in the section of this decision dealing with identical provisions. The 25-percent level of in-area sales will assure that currently-regulated handlers retain their pool status. At the same time, increasing from current levels the percentage of in-area sales required for pool status under the consolidated orders will allow State-regulated and most other non-Federally regulated handlers to operate at their current level of sales within Federal order areas without being subject to full Federal order regulation.

Cornell University Study

In addition to AMS' analysis of the receipt and distribution data in the development of this decision, researchers at Cornell University also provided input on potential consolidated marketing areas early in the Federal order reform process. This input was part of Cornell's partnership agreement with AMS to provide alternative analyses on Federal order reform issues. These researchers used an economic model (the Cornell U.S. Dairy Sector Simulator, or USDSS), to determine 10–14 optimal marketing areas. Cornell's first options for 10–14 marketing areas were presented at an October 1996 invitational workshop for dairy economists and policy analysts held in Atlanta, Georgia. Based on USDSS model results, these options would result in minimum cost flows of milk using the known concentrations of milk production and population, without considering the location of milk plants. The marketing area maps that were circulated using these first results were those referenced by interested persons who cited the Cornell results in their comments on the Preliminary Reports on Order Consolidation and on the proposed rule.

A second set of options was presented by Cornell researchers in spring 1997. These options were generated with a further-developed USDSS model. In updating the model, the researchers enhanced the inputs to its model as a means of better reflecting the actual structure of the national market for fluid milk products. These model updates allowed for determination of the minimum cost flows of: milk, intermediate and final products from producers to plants; from plants to plants; and from plants to consumers on the basis of the locations of milk supplies, dairy product processing plants, and consumers. The enhanced model is intended to provide for geographic market definition on the basis of a resulting set of optimal, efficient simulated flows of milk and dairy products between locations.

Although the USDSS model considers important factors such as milk supply and demand locations and transportation constraints in determining the optimal consolidated marketing areas, it aggregates processing locations, sometimes at locations that are not representative of where substantial volumes of milk are processed. In addition, the model does not consider several important factors such as large areas that are not Federally regulated and certain economic factors which influence the movement of milk.

AMS is unaware of any other analyses performed to determine or suggest consolidated marketing areas.

As noted before, AMS' analysis focused initially on distributing plant receipts and distribution information for October 1995, updated as needed for further analysis during development of the proposed rule. Equivalent data was gathered for October 1997 to assure that the consolidated marketing areas continue to represent actual marketing relationships between the current order areas, with more current information used as needed for further analysis. The data gathered by the Dairy Division from Federal Milk Market Administrators reflects actual movements of milk, both from production areas to processing plants, and from processing plants to consumption areas. This final decision considers this data, the seven criteria described fully above, and information provided by the USDSS model analysis.

The consolidated marketing area options presented by Cornell are not adopted because the USDSS model does not adequately reflect issues or factors that strongly affect which current marketing areas are most closely related. For this reason, this decision is based on data reflecting actual distribution and procurement by fluid milk processing plants.

Marketing Areas

Following are maps of the current marketing areas and the 11 consolidated marketing areas, followed by brief descriptions of the marketing areas (with those modified from the Proposed Rule, and the modifications, marked by*) and the major reasons for consolidation. A more detailed description of each consolidated order follows this summary.

At the end of the Order Consolidation portion of this decision is appended a list of distributing plants associated with each consolidated marketing area, with each plant's expected regulatory status, determined on the basis of data describing the plants' operations during October 1997.

BILLING CODE 3410-02-P

VOL 64 ISSUE 63 APR 2 1999 UMI

CURRENT
FEDERAL MILK MARKETING ORDER AREAS

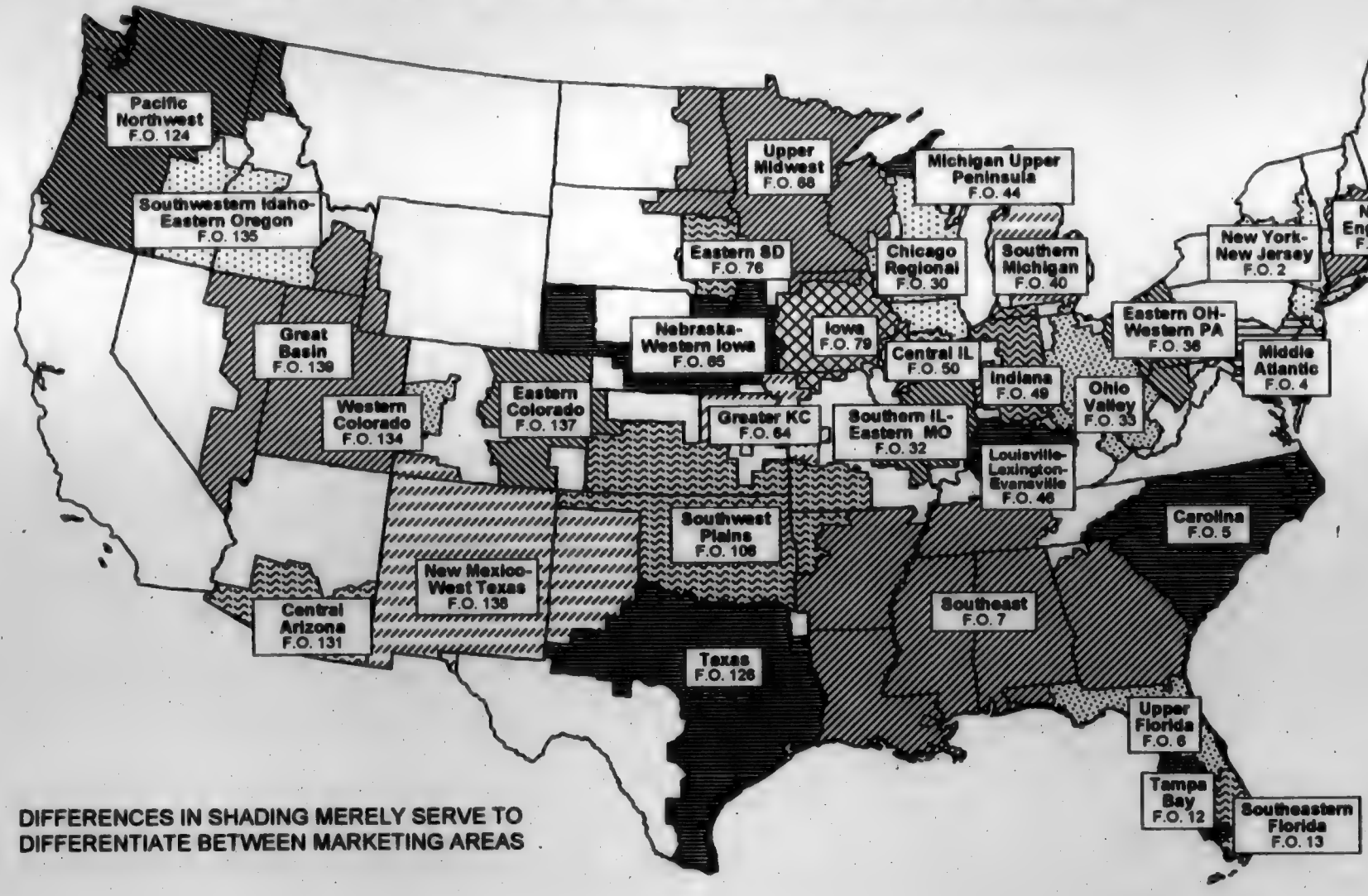

DIFFERENCES IN SHADING MERELY SERVE TO DIFFERENTIATE BETWEEN MARKETING AREAS

BILLING CODE 3410-02-C

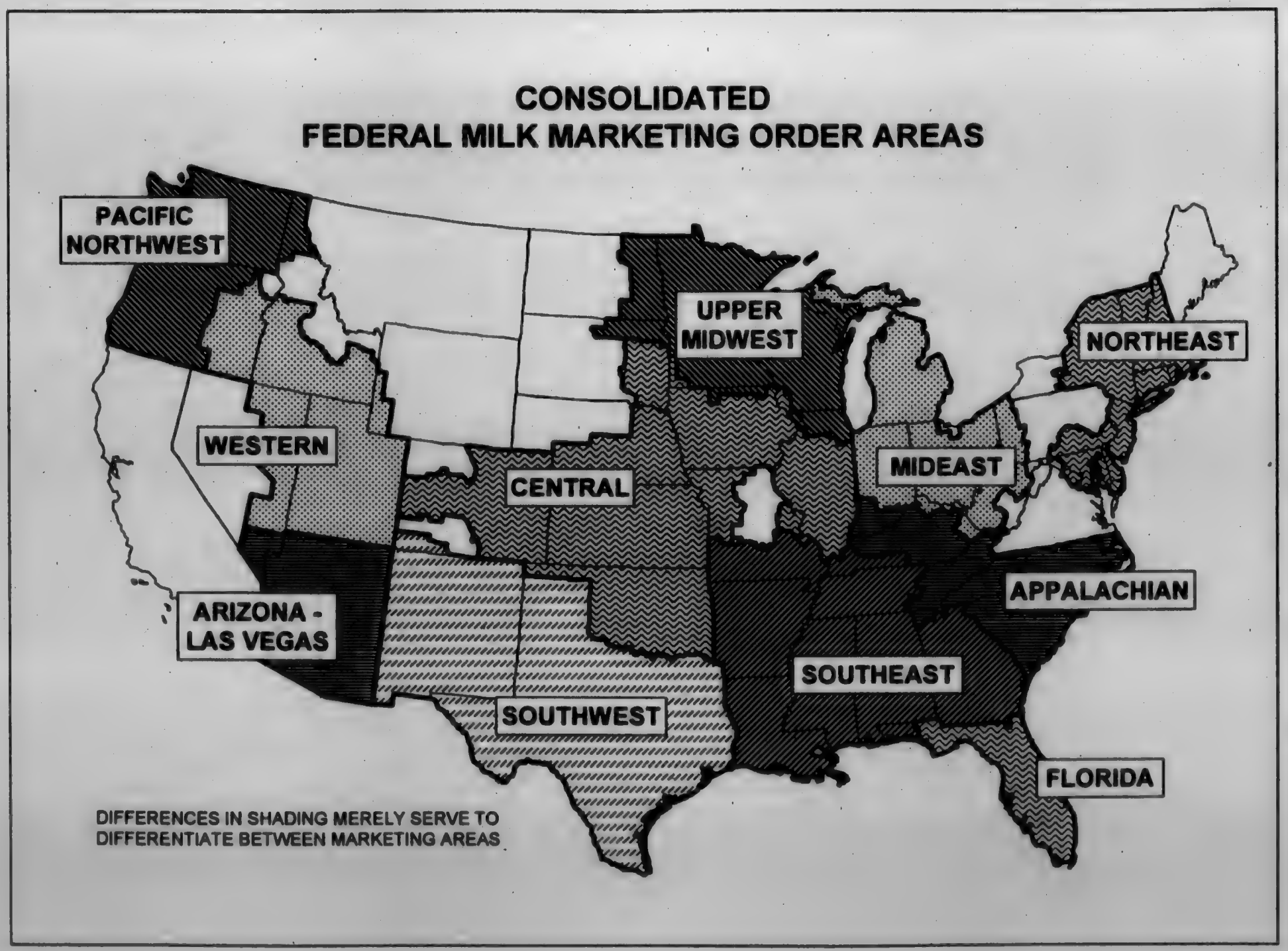

BILLING CODE 3410–02–C

Eleven Consolidated Marketing Areas

*1. NORTHEAST—current marketing areas of the New England, New York-New Jersey and Middle Atlantic Federal milk orders, with the addition of: the contiguous unregulated areas of New Hampshire, northern New York and Vermont; and the non-Federally regulated portions of Massachusetts. *The Western New York State order area (ten entire and 5 partial western New York counties) proposed to be included in the expanded Northeast order area has been omitted. The handlers who would be added to those currently fully regulated under the three separate orders either have a sufficient percentage of their route disposition within the consolidated marketing area to meet the pooling requirements or are located in the area to be added.

Reasons for consolidation include the existence of overlapping sales and procurement areas between New England and New York-New Jersey and between New York-New Jersey and Middle Atlantic. An important measure of association is evidenced by industry efforts to study and pursue consolidation of the three Federal orders prior to the 1996 Farm Bill.

2. APPALACHIAN—Current marketing areas of the Carolina and Louisville-Lexington-Evansville (minus Logan County, Kentucky) Federal milk orders plus the marketing area of the former Tennessee Valley order, with the addition of 21 currently-unregulated counties in Indiana and Kentucky.

Overlapping sales and procurement areas between these marketing areas are major factors for this consolidation.

3. FLORIDA—current marketing areas of the Upper Florida, Tampa Bay, and Southeastern Florida Federal milk orders.

Natural boundary limitations and overlapping sales and procurement areas among the three orders are major reasons for consolidation, as well as a measure of association evidenced by cooperative association proposals to consolidate these three marketing areas. Further, the cooperative associations in this area have worked together for a number of years to accommodate needed movements of milk between the three Florida Federal orders.

*4. SOUTHEAST—current marketing area of the Southeast Federal milk order, plus 1 county from the Louisville-Lexington-Evansville Federal milk order marketing area; plus 11 northwest Arkansas counties and 22 entire Missouri counties that currently are part of the Southwest Plains marketing area; plus 6 Missouri counties that currently are part of the Southern Illinois-Eastern Missouri marketing area; plus 16 currently unregulated southeast Missouri counties (including 4 that were part of the former Paducah marketing area); plus 20 currently-unregulated Kentucky counties (including 5 from the former Paducah marketing area).

*A partial Missouri county that has been part of the Southwest Plains marketing area will become completely unregulated to minimize the reporting complications caused by partially regulated counties.

Major reasons for this consolidation include sales and procurement area overlaps between the Southeast order and these counties.

*5. MIDEAST—current marketing areas of the Ohio Valley, Eastern Ohio-Western Pennsylvania, Southern Michigan and Indiana Federal milk orders, plus Zone 2 of the Michigan Upper Peninsula Federal milk order, and most currently-unregulated counties in Michigan, Indiana and Ohio. *One partial and 3 entire counties in north central Ohio are left unregulated, since they represent the distribution area of a currently-partially regulated distributing plant (Toft Dairy in Sandusky, Ohio).

Major criteria for this consolidation include the overlap of fluid sales in the Ohio Valley marketing area by handlers from the other areas to be consolidated. With the consolidation, most route disposition by handlers located within the Mideast order would be within the marketing area. Also, nearly all milk produced within the area would be pooled under the consolidated order. The portion of the Michigan Upper Peninsula marketing area included in the Mideast consolidated area has sales and milk procurement areas in common with the Southern Michigan area and has minimal association with the western end of the current Michigan Upper Peninsula marketing area.

*6. UPPER MIDWEST—current marketing areas of the Chicago Regional, Upper Midwest, Zones I and I(a) of the Michigan Upper Peninsula Federal milk orders, and unregulated portions of Wisconsin. *The Iowa Federal order marketing area portion of one Illinois county, in which Chicago Regional handlers have the preponderance of sales, is added to the consolidated Upper Midwest marketing area, and the Chicago Regional portion of another Illinois county, in which Iowa order handlers have the preponderance of sales, is removed and added to the consolidated Central area. These changes will reduce overlapping route disposition between the two consolidated orders and reduce the incidence of partial counties in marketing areas.

Major consolidation criteria include an overlapping procurement area between the Chicago Regional and Upper Midwest orders and overlapping procurement and route disposition area between the western end of the Michigan Upper Peninsula order and the Chicago Regional order. A number of the same cooperative associations market member milk throughout the consolidated area.

7. CENTRAL—current marketing areas of the Southern Illinois-Eastern Missouri, Central Illinois, Greater Kansas City, Southwest Plains, Eastern Colorado, Nebraska-Western Iowa, Eastern South Dakota, Iowa (less the portion of an Illinois county that will become part of the consolidated Upper Midwest area) and *Western Colorado Federal milk orders, * plus the portion of an Illinois county currently in the Chicago Regional Federal order area, minus 11 northwest Arkansas counties and 1 partial and 22 entire Missouri counties that are part of the current Southwest Plains marketing area, minus 6 Missouri counties that are part of the current Southern Illinois-Eastern Missouri marketing area, plus 54 currently-unregulated counties in Kansas, Missouri, Illinois, Iowa, Nebraska and Colorado, plus 8 counties in central Missouri *(six fewer than in the proposed rule) that are not considered to be part of the distribution area of an unregulated handler in central Missouri, *plus 7 currently unregulated Colorado counties located between the current Western and Eastern Colorado order areas.

This configuration would leave 31 unregulated counties in central Missouri that are intended to delineate the distribution area of Central Dairy at Jefferson City, Missouri, which has limited distribution in Federal order territory.

Major criteria on which this consolidation is based include overlapping route disposition and procurement between the current orders. The consolidation would result in a concentration of both the sales and supplies of milk within the consolidated marketing area. The consolidation would combine several relatively small orders and provide for the release of market data without revealing proprietary information. In addition, many of the producers in these areas share membership in several common cooperatives. The Western Colorado area has become more closely associated with the Eastern Colorado area than with the Great Basin area since issuance of the proposed rule.

8. SOUTHWEST—current marketing areas of Texas and New Mexico-West Texas Federal milk orders, with the addition of two currently-unregulated northeast Texas counties and 47 currently-unregulated counties in southwest Texas.

Major criteria supporting this consolidation include sales and procurement area overlaps and common cooperative association membership between the Texas and New Mexico-West Texas marketing areas, and similar marketing concerns with respect to trade with Mexico for both orders. Addition of the currently-unregulated Texas counties will result in the regulation of no additional handlers, and will reduce handlers' recordkeeping and reporting burden and the market administrator's administrative costs.

9. ARIZONA-LAS VEGAS—current marketing area of Central Arizona, plus the Clark County, Nevada, portion of the current Great Basin marketing area, plus eight currently-unregulated Arizona counties.

The major criterion on which the consolidation is based is sales overlap between the sole Las Vegas, Nevada, handler and handlers regulated under the Central Arizona order in both Clark County, Nevada, and unregulated portions of northern Arizona. The Grand Canyon and sparsely populated areas in the northwest part of Arizona, and the sparsely populated desert region of eastern Arizona constitute natural barriers between this and adjacent marketing areas. In addition, the most significant relationship between this area and any other is represented by the substantial volumes of bulk and packaged milk exchanged between the Arizona-Las Vegas area and Southern California.

*10. WESTERN—current marketing areas of the Southwestern Idaho-Eastern Oregon and Great Basin Federal milk orders, minus Clark County, Nevada.

*The Western Colorado order area, proposed to be included in the Western order area, is instead included in the consolidated Central order. The major criteria on which the consolidation is based include overlapping sales between Southwestern Idaho-Eastern Oregon and Great Basin, as well as a significant overlap in procurement for the two orders in five Idaho counties. The two orders also have similar multiple component pricing plans and most of the milk used in nonfluid products under both orders is used in cheese.

Collection of detailed data for individual handlers indicates that the strength of earlier relationships between the former Great Basin and Lake Mead orders that justified their 1988 merger have dwindled significantly, with the Las Vegas area now more closely related to a combination of southern California and Central Arizona handlers.

11. PACIFIC NORTHWEST—current marketing area of the Pacific Northwest Federal milk order plus 1 currently-unregulated county in Oregon. The degree of association with other marketing areas is insufficient to warrant consolidation.

TABLE 1.—MARKET INFORMATION: POPULATION, UTILIZATION, PRODUCER MILK AND WEIGHTED AVERAGE UTILIZATION VALUE (WAUV) IN CONSOLIDATED MARKETING AREAS

Market	Population [1] (millions)	Class I utilization [2] (percent)	Producer milk [2] (1000 lbs.)	WAUV [2 3] (per cwt)
Northeast	49.0	48.6	1,962,335	$13.97
Appalachian	17.3	85.0	410,372	13.35
Florida	14.1	90.6	217,952	15.69
Southeast	26.9	85.6	482,499	13.60
Mideast	31.0	58.9	1,040,112	13.42
Upper Midwest	18.5	24.1	1,597,232	12.94
Central	21.5	50.1	868,443	13.29
Southwest	21.3	53.4	649,872	13.97
Arizona-Las Vegas	5.7	46.3	195,943	13.84
Western	3.2	32.5	304,129	13.14
Pacific Northwest	9.0	35.6	539,987	13.33
Total	217.5	N/A	7,756,390	N/A

[1] Based on July 1, 1997 estimates.
[2] Based on October 1997 information, for plants which would be fully regulated under assumptions used in this decision.
[3] Not a blend price—shown solely for the purpose of showing impact of consolidation on utilization.

TABLE 2.—MARKET INFORMATION: NUMBER OF PLANTS IN CONSOLIDATED MARKETING AREAS

Market	Distributing plants [1]			Manufacturing and supply plants [3]
	Fully regulated (FR)	Exempt [2]	FR small businesses	
Northeast	64	9	31	95
Appalachian	25	3	4	13
Florida	12	1	2	4
Southeast	36	1	3	37
Mideast	51	4	27	59
Upper Midwest	27	3	13	301
Central	35	3	7	84
Southwest	21	2	5	17
Arizona-Las Vegas	5	1	2	3
Western	11	1	5	18
Pacific Northwest	19	4	12	27

TABLE 2.—MARKET INFORMATION: NUMBER OF PLANTS IN CONSOLIDATED MARKETING AREAS—Continued

Market	Distributing plants [1]			Manufacturing and supply plants [3]
	Fully regulated (FR)	Exempt [2]	FR small businesses	
Total	306	32	111	669

[1] Based on October 1997 information. Excludes: (1) out-of-business plants through December 1998; and (2) new plants since October 1997.
[2] Exempt based on size (less than 150,000 lbs. route distribution per month).
[3] Based on May 1997 information.

Descriptions of Consolidated Marketing Areas

Each of the consolidated order areas is described in the text following this introduction. The criteria which were used to determine which areas should be consolidated are explained. For each consolidated area, the following information is included:

Geography. The political units (states, counties, and portions of counties) included in each area, the topography, and the climatic conditions are described for the purpose of delineating the territory to be incorporated in each consolidated marketing area and describing its characteristics pertaining to milk production and consumption. This information was derived principally from Microsoft® Encarta® 96 Encyclopedia, and augmented by several U.S. atlases.

Population. The total population of each area and its distribution within the area is included for the purpose of identifying where milk is consumed. July 1, 1997, population estimates were obtained from "CO–97–1 Estimates of the Population of Counties," Population Estimates Program, Population Division of the U.S. Bureau of the Census.

Metropolitan Statistical Area (MSA) information is provided by the United States Office of Management and Budget (OMB), which defines metropolitan areas according to published standards that are applied to Census Bureau data. To be described as an MSA, an area (one or more counties) must include at least one city with 50,000 or more inhabitants, or a Census Bureau-defined urbanized area (of at least 50,000 inhabitants) and a total metropolitan population of at least 100,000 (75,000 in New England). Areas with more than 1 million population may be described as "consolidated metropolitan statistical areas" (CMSAs) made up of component parts designated as primary metropolitan statistical areas (PMSAs). For purposes of the marketing area descriptions in this decision, the term "MSA" also includes CMSAs and PMSAs.

Per capita consumption. Available data pertaining to per capita consumption is discussed to help describe how much milk is needed to supply the fluid needs of the population of each marketing area. Per capita consumption numbers were estimated by state using data from a report on "Per Capita Sales of Fluid Milk Products in Federal Order Markets," published in the December 1992 issue of Federal Milk Order Market Statistics, #391, issued May 1993. This data was the most recent available.

Production. A description of the amount and sources of milk production for the market is included for the purpose of identifying the supply area for each consolidated marketing area. Production data by state and county for each Federal milk order was compiled from information collected by the offices administering the current Federal milk orders (market administrators' offices). For most of the consolidated marketing areas, production data has been updated to October 1997. For several of the consolidated areas, however, October 1997 data is difficult to compile and, when compared with previously published statistics, may yield confidential information. For these areas, the data cited in the proposed rule has been used to describe the sources of milk for the consolidated market.

Distributing plants. For each marketing area the number and types of distributing plants expected to be associated with each marketing area are included, with the locations of plants by population centers, to identify where milk must be delivered. This information was collected by market administrators' offices. The expected regulatory status was determined on the basis of each plant's receipts and route distribution of fluid milk during October 1997. Changes in plant operations or distribution patterns could change the expected status.

Utilization. The utilization percentages of the current individual orders and the effect of consolidation on the consolidated orders are described for each marketing area, with an estimate of the effect of consolidation on each current individual order's blend price. The current utilization data is published each month for each Federal milk order market. Pool data was used to calculate the effects of consolidation on utilization.

Other plants. The presence of manufacturing and supply plants in and near the consolidated order areas, and the products processed at these plants, are described for each consolidated area. This information was collected by market administrators' offices for May 1997, and has been changed from the proposed rule only where changes from the proposed marketing areas have occurred.

Cooperative Associations. The number of cooperative associations pooling member milk under each of the current individual orders included in each consolidated area, and the number that pool milk in more than one of the areas is identified. This information was obtained from market administrators' offices, updated to December 1997 from the proposed rule. For purposes of the consolidation discussion, the four cooperative associations that combined to create Dairy Farmers of America (DFA) are considered to be a single organization.

Criteria for Consolidation. The extent to which the criteria used in identifying markets to be consolidated are supported by the marketing conditions present in each of the consolidated areas is discussed.

Discussion of comments and alternatives. Comments filed in response to the consolidation section of the proposed rule and alternatives considered are summarized and discussed for each consolidated area.

Northeast

The consolidated Northeast marketing area is comprised of the current New England, New York-New Jersey, and Middle Atlantic Federal milk order marketing areas (Orders 1, 2, and 4), with currently-unregulated areas in northern New York, Vermont and New Hampshire added. The entire areas of the States of Connecticut (8 counties), Delaware (3 counties), Massachusetts (14 counties), New Hampshire (10 counties), New Jersey (21 counties),

Rhode Island (5 counties), and Vermont (14 counties) are contained within the consolidated Northeast order area. In addition, the District of Columbia, 21 counties and the City of Baltimore in Maryland, 41 complete and 3 partial counties and the 5 boroughs of New York City in New York, the 15 Pennsylvania counties currently included in the Middle Atlantic marketing area, and 4 counties and 5 cities in Virginia are included in the consolidated order. There are 156 complete and 3 partial counties and 8 cities, including the District of Columbia, in the consolidated Northeast marketing area.

The Western New York State order area, proposed to be included in the consolidated Northeast area, is not included at the request of the business entity that would be most affected by its inclusion because the currently-unregulated portions of Pennsylvania are not included.

Geography

The Northeast marketing area extends from the Canadian border on the north, south to northern Virginia, eastern Maryland and Delaware, with its eastern edge along the western border of Maine at the northern end of the marketing area, and along the Atlantic Ocean for the remainder. The total northeast-southwest extent of the marketing area is approximately 600 miles. The marketing area extends westward to Lake Ontario in New York State (about 350 miles east to west), goes only as far west as the northern part of New Jersey (about 60 miles), and expands westward again across the eastern half of southern Pennsylvania, taking in a small part of northeast Virginia, eastern Maryland, and Delaware (about 230 miles east to west). There is a large State-regulated area in Pennsylvania just to the west of the Northeast marketing area; and most of the State of Virginia to the south of the marketing area also is regulated under a State order. The consolidated Northeast marketing area is contiguous to no other consolidated marketing areas, but parts of it, in south central New York State and south central Pennsylvania, are very close to the consolidated Mideast area.

The northern and northwestern parts of the Northeast area are large areas of coniferous forests that are somewhat mountainous. To the south and southeast of the forested areas are areas where dairy farming predominates as the primary type of agriculture. In fact, for 4 of the 10 states that are located in the Northeast marketing area (New Hampshire, New York, Pennsylvania and Vermont) dairy products were the number 1 agricultural commodity in terms of cash receipts during 1996. Principally along the Atlantic coastline is a flatter area where other agricultural activities, including greenhouse and nursery, fruit, truck and mixed farming, take place. A near-continuous strip along the east coast of the area, from northeast Massachusetts southwest to the Baltimore area, is a major industrial area and is heavily populated.

Population

According to July 1, 1997, population estimates, the total population in the consolidated Northeast marketing area is 49 million. The area is very densely populated, especially along a coastal strip extending from Boston, Massachusetts, in the northeast to Washington, D.C., in the southwest. In this consolidated marketing area of approximately 160 counties, 106 are included within Metropolitan Statistical Areas (MSAs). The 20 Metropolitan Statistical Areas in the consolidated Northeast marketing area account for 93.7 percent of the total market area population.

Almost sixty percent of the marketing area population is located in 6 interconnected MSAs in 48 counties, extending from central New Jersey to southern New Hampshire. The six MSAs are: Springfield, Massachusetts; Boston-Worcester-Lawrence, Massachusetts/New Hampshire/Maine/Connecticut; Providence-Fall River-Warwick, Rhode Island/Massachusetts; New London-Norwich, Connecticut/Rhode Island; Hartford, Connecticut; and New York-Northern New Jersey-Long Island, New York/New Jersey/Connecticut/Pennsylvania. The population in this northeastern portion of the marketing area is concentrated most heavily at its northern and southern ends—the New York City area has a population of approximately 20 million, and the Boston area's population is approximately 5.5 million. Two of the other MSAs, Hartford and Providence, each have over 1 million population. Although each of these six MSAs is described as a separate area in the population data, many of the counties involved are divided between separate MSAs.

Just southwest of the New York City MSA is the Philadelphia-Wilmington-Atlantic City, Pennsylvania/New Jersey/Delaware/Maryland MSA, with a population of 6 million. Some counties of these two MSAs are adjacent. Southwest of the Philadelphia MSA and separated from it by only one county is the Washington, DC/Baltimore, Maryland/northern Virginia MSA, with a population in the consolidated marketing area of 6.8 million.

Of the 12 other MSAs in the consolidated marketing area, 6 are located in New York State, with an average population of nearly 400,000 each. Two are located in Pennsylvania, with populations of .6 and .45 million. One MSA in Vermont, 1 in Delaware, and 2 in Massachusetts have average populations of 163,000.

Fluid Per Capita Consumption

Fluid per capita consumption estimates vary within the Northeast from 16.7 pounds per month in the more southern parts of the region to 20 pounds per month in New England. These rates would result in a weighted average of 18 pounds per month, and an estimated total fluid milk consumption rate of 882 million pounds per month for the Northeast marketing area. Approximately 752 million pounds of this fluid milk consumption would be required along the heavily-populated coastal area extending from northeast Massachusetts southwest through Washington, D.C. and northern Virginia. Handlers who would have been fully regulated under the consolidated Northeast order during October 1997 distributed 828.1 million pounds within the consolidated marketing area. October 1997 sales within the marketing area by handlers that would be regulated by other orders totaled 6.2 million pounds, and sales by handlers who would have been partially regulated were 18.9 million pounds. Sales in the marketing area by exempt and government plants, and by producer-handlers totaled 6.6 million pounds.

Milk Production

In October 1997, nearly 19,000 producers from 13 states pooled 1.9 billion pounds of milk on the three orders comprising the consolidated Northeast order. With the addition of several currently-unregulated handlers, it is probable that approximately 2 billion pounds of milk per month will be pooled under the Northeast order.

Eleven of the 13 states supplying milk to the three Federal order pools are at least partly in the marketing area, and 84 percent of the producer milk pooled under the three orders in October 1997 came from just 3 states—New York (41.5 percent), Pennsylvania (32.2 percent), and Vermont (10.3 percent). Over 10 million pounds of milk was produced in each of fifty-one counties: 1 county in northeast Connecticut, 3 in the most northwestern of the Maryland portion of the marketing area, 30 spread over most of New York, 1 on the western edge of

northern Virginia, and 16 in southeast to south central Pennsylvania and in the eastern part of the northern tier of Pennsylvania counties, with an additional Pennsylvania county, Lancaster, accounting for over 150 million pounds of milk. Over seventy percent of the markets' total producer milk was produced within the consolidated marketing area.

Less than one-third of the milk production for the consolidated market was produced within 100 miles of the heavily populated coastal corridor. Although the Northeast area contains two out of the top five milk-producing states in the U.S. (New York and Pennsylvania), the population of the marketing area is nearly 20 million more than the next most-populated consolidated area (the Mideast area, with 31 million people). The Northeast, therefore, is a very significant milk production area with a very high demand for fluid milk and dairy products.

Distributing Plants

Using distributing plant lists included in the proposed rule, with the pooling standards at 25 percent of route dispositions as in-area sales, and updated for known plant closures through December 1998, 141 distributing plants would be expected to be associated with the Northeast marketing area. On the basis of data collected for October 1997, the plants associated would include 64 fully regulated distributing plants (58 currently fully regulated, 5 currently partially regulated, and 1 currently unregulated), 15 partially regulated (2 currently fully regulated and 13 currently partially regulated). Nine exempt plants having less than 150,000 pounds of total route disposition per month (3 currently fully regulated, 2 currently partially regulated, 2 currently exempt based on size, and 2 currently unregulated) and 47 producer-handlers (45 currently producer-handlers, 1 currently partially regulated, and 1 currently unregulated) would have been associated with the market during October 1997. Three handlers who currently are exempt based on institutional status would continue to be exempt on the same basis, and 3 handlers located in the Western New York order area who would have been fully regulated under the proposed rule would continue to be unregulated under any Federal order.

Since October 1997, 14 distributing plants (3 in New York, 2 in each of the States of Massachusetts, Maryland, New Jersey, Pennsylvania and Vermont, and 1 in Connecticut), have gone out of business.

Less than half (60) of the Northeast distributing plants which were identified as being in business as of December 1998 were located in the 6 Northeast MSAs that have over a million people each. This number includes 31 of the pool distributing plants. Under the consolidated order, it is anticipated that there would be 5 pool distributing plants in the Boston-Worcester-Lawrence area, 6 in the Philadelphia-Wilmington-Atlantic City area, and 11 in the New York-Northern New Jersey-Long Island area. The Hartford, Connecticut, area would have 2 pool distributing plants, Providence-Fall River-Warwick would have 3, and the Washington-Baltimore area would have 4 pool distributing plants.

Of the remaining 81 distributing plants, 14 pool distributing plants were located in other MSAs as follows: 8 in New York; 4 in Pennsylvania; and 2 in Massachusetts. Sixty-seven distributing plants, including 19 pool distributing plants, were not located in MSAs.

Utilization

According to October 1997 pool statistics for handlers who would be fully regulated under this Northeast order, the Class I utilization percentages for the New England, New York-New Jersey, and Middle Atlantic markets were 52, 45, and 53 percent, respectively. Based on calculated weighted average use values for (1) the current order with current use of milk, and (2) the current order with projected use of milk in the consolidated Northeast order, the potential impact of this decision on producers who supply the current market areas is estimated to be: New England, a 9-cent per cwt decrease (from $14.09 to $14.00); New York-New Jersey, a 8-cent per cwt increase (from $13.91 to $13.99); and Middle Atlantic, a 10-cent per cwt decrease (from $14.00 to $13.90). The weighted average use value for the consolidated Northeast order market is estimated to be $13.97 per cwt. For October 1997, combined Class I utilization for Orders 1, 2 and 4 was 47.7 percent based on 917.3 million pounds of producer milk used in Class I out of 1.922 billion total producer milk pounds.

The Northeast area is one of two consolidated marketing areas that would have a significantly higher-than-average percentage of its milk used in Class II. Currently, all three of the orders have Class II utilization between 15 and 25 percent. When the markets are combined the average for the consolidated market will be approximately 18 percent.

Other Plants

Located within the consolidated Northeast marketing area during May 1997 were 95 supply or manufacturing plants: 13 in Vermont (4 in the Burlington area), 1 in New Hampshire and 10 in Massachusetts (all in the Boston-Worcester-Lawrence area), 1 in Rhode Island (in the Providence-Fall River-Warwick area), 7 in Connecticut (3 in the Hartford area and 4 in the New York-Northern New Jersey-Long Island area), 12 in New Jersey (all in the New York-Northern New Jersey-Long Island area), 2 in Delaware (one in the Philadelphia-Wilmington-Atlantic City area), 7 in Maryland (four in the Washington-Baltimore area), 13 in Pennsylvania (5 in the Philadelphia-Wilmington-Atlantic City area), and 29 in New York (9 in the New York-Northern New Jersey-Long Island area).

Fifteen of the 95 plants are pool plants. Of these pool plants, 7 are manufacturing plants—5 manufacture primarily powder, 1 manufactures primarily cheese and 1 manufactures primarily other products. There are 8 pool supply plants—1 has no primary product, but ships only to distributing plants; 5 are supply plants that manufacture primarily Class II products, and 2 supply plants manufacture primarily cheese. Of the remaining 80 nonpool plants in the Northeast marketing area, 73 are manufacturing plants—37 manufacture primarily Class II products, 1 manufactures primarily butter, 33 manufacture primarily cheese and 2 manufacture primarily other products. Seven of the remaining nonpool plants are supply plants—2 are supply plants that manufacture primarily Class II products and 5 are supply plants that manufacture primarily cheese.

There are also six supply or manufacturing plants in the unregulated area of New York—one in the unregulated county of Chautauqua, one in the unregulated portion of Cattaraugus County, two in the unregulated portion of Allegany County, and two in the unregulated portion of Steuben County. Two are pool supply plants—one manufactures primarily Class II products and the other manufactures primarily cheese. The remaining four are nonpool manufacturing plants—three manufacture primarily cheese and one manufactures primarily Class II products.

Cooperative Associations

During December 1997, 76 cooperative associations pooled their members' milk on the three Northeast orders. Three of the cooperatives pooled milk on all three orders, 3 pooled milk on both the New England and New York-New Jersey orders, and 3 others pooled milk on both the New York-New Jersey and Middle Atlantic orders. The 9 cooperative associations that pooled milk on more than one of the Northeast orders represented 72.6 percent of cooperative milk pooled under the 3 orders and 55 percent of the total milk. Seventy-six percent of the milk pooled in the Northeast is cooperative association milk, with 80 percent of Federal Order 1 milk, 68.4 percent of Federal Order 2 milk, and 87 percent of Federal Order 4 milk pooled by cooperatives.

The 5 cooperatives that market milk only under Order 1 account for 26.7 percent of the milk marketed under that order by cooperative associations, and 21.3 percent of total milk marketed under Order 1. In Order 2, only 40.4 percent of cooperative association milk is marketed by the 59 co-ops that market milk only under Order 2. Milk marketed by these cooperatives represents 27.6 percent of the total milk pooled for December 1997. Three cooperative associations that marketed milk only on the Order 4 portion of the Northeast order marketed 8.2 percent of the milk marketed by cooperatives under this order. This amount of milk represented 7.2 percent of total milk pooled under Order 4 in December 1997.

Criteria for Consolidation

The current New England, New York-New Jersey, and Middle Atlantic Federal milk order marketing areas (Orders 1, 2, and 4) should be consolidated because of the interrelationship between Orders 1 and 2 and between Orders 2 and 4 regarding route disposition and milk supply. Eighty percent of fluid milk disposition by handlers who would be fully regulated under the consolidated order is distributed within the consolidated marketing area. Fully regulated handlers account for 96 percent of the fluid milk products distributed within the consolidated marketing area. The utilization of the three markets is similar, and several cooperative associations market their members' milk in all three markets. The three markets are surrounded by State-regulated and unregulated areas to the west and south, the Atlantic ocean to the east, and Canada to the north. The adjoining Maine State milk order also serves as somewhat of a barrier to milk marketing in the northeast by limiting the association of non-Maine milk with the Maine pool.

The merger of these markets has been previously proposed by interested parties. A committee comprised chiefly of Northeast region cooperatives was formed over three years ago to study a merger of the three Federal orders. In support of a Northeast consolidation, the committee and other interested parties, including handlers and regulatory agencies, have noted: overlapping sales and procurement areas; a trend toward consolidation of cooperative processors and handlers in the region (leaving the remaining handlers with larger distributing areas and volumes); and regulation of plants by an order in which they are not located. The proponents of consolidation have indicated that consolidation would tend to solve some of the presently existing inequities and would lead to greater efficiency for handlers and order administration.

Discussion of Comments and Alternatives

Prior to issuance of the proposed rule, alternatives to the consolidation of the order areas included in the Northeast marketing area that were considered included the addition of all currently unregulated and State-regulated area adjoining the Order 1, 2 and 4 marketing areas. These considerations included Pennsylvania Milk Marketing Board (PMMB) Areas 2, 3, and 6, some or all of the non-Federally regulated part of the State of Virginia, the unregulated areas of West Virginia and Maryland, the Western New York State order area and northern New York, northern Vermont and New Hampshire, pockets of unregulated area in Massachusetts, and the State of Maine. The proposed rule would have included in the consolidated Northeast marketing area the unregulated areas of Vermont, New Hampshire, Massachusetts, northern New York, and the Western New York State order area.

Nearly 1,150 comments that dealt to some extent with the consolidation of the Northeast order area were received in response to the proposed rule. Approximately 125 of these comments favored adoption of a national marketing area map that would include all U.S. territory in the 48 contiguous states in one of ten Federal order areas. Over 950 comments favored the expansion of the Northeast area into all of Pennsylvania, with more than 600 of these comments also favoring expansion into some combination of the unregulated areas of New York, Maryland, West Virginia, Vermont, Massachusetts, New Hampshire, and Maine. More than 50 commenters urged the continued omission of Pennsylvania Milk Marketing Board Areas 2, 3, and 6 from any of the consolidated Federal order areas.

Most of the comments supporting expansion of the Northeast consolidated marketing area into non-federally regulated areas, especially Pennsylvania, argued that handlers in the non-federally regulated areas compete for milk supplies in the same milksheds and for fluid milk sales in the same markets as Federally-regulated handlers, with the surrounding federal order pool(s) carrying the necessary reserve milk supplies for the Class I sales distributed by non-regulated handlers. In addition, the comments argued that dairy farmers whose milk is priced in individual handler pools at primarily-fluid handlers under PMMB regulation have a competitive advantage over neighboring producers whose milk is included in marketwide pools that blend the cost of balancing milk supplies for fluid use with returns from the fluid market.

Nearly 60 comments, many from Pennsylvania dairy farmers, opposed expansion of the consolidated Northeast order area into Pennsylvania. Comments stated that the PMMB individual handler pools result in greater returns to producers, and producer returns would decline if handlers are required to pay the additional fluid value into the marketwide pool to subsidize cheese/powder plants.

As stated in the introduction to the consolidation discussion, consolidation of the existing orders does not necessitate expansion of the consolidated orders into currently-unregulated areas, especially if such expansion would result in the regulation of currently-unregulated handlers. Handlers located in PMMB areas 2, 3, and 6 are regulated under the State of Pennsylvania if they do not have enough sales in any Federal order area to meet an order's pooling standards. These PMMB handlers are subject to minimum Class I pricing, sometimes at price levels that exceed those that would be established under Federal milk order regulation. When such plants do meet Federal order pooling standards, the State of Pennsylvania continues to enforce some of its regulations in addition to Federal order regulations. Inclusion of the Pennsylvania-regulated handlers in the consolidated marketing area would have little effect on handlers' costs of Class I milk (or might reduce them), and would reduce returns to a few producers. In

view of these considerations, it appears that stable and orderly marketing conditions can be maintained without extending full Federal regulation to State-regulated handlers.

There are significant differences between PMMB regulation and Federal order regulation that make it difficult to determine whether PMMB regulation gives State-regulated handlers a cost advantage over Federally-regulated plants distributing milk in the same areas. Some of the differences between PMMB and Federal order regulation are: (1) The number of classes of use (two versus four); (2) the location at which milk is priced (where it is distributed for sale to consumers versus where it is received from producers for processing); (3) individual handler pooling versus marketwide pooling; and (4) State regulatory treatment of milk sold in interstate commerce, including milk distributed outside the State and received from outside the State. In addition to creating different costs among similarly-located State- and Federally-regulated handlers, PMMB regulation may result in different costs between similarly-located PMMB-regulated handlers. However, since the main focus of this rulemaking process has been to consolidate existing Federal marketing areas, it would be more appropriate to consider this issue of marketing area expansion in Pennsylvania at a future time.

Maine has been and continues to be excluded from Federal order regulation. Three comments, two from New York State Dairy Foods and one from Crowley Foods, Inc., a fluid milk processor with distributing plants regulated under the New York-New Jersey and New England orders, suggested including Maine in the consolidated Northeast order on the basis that Maine regulation depends on balancing seasonal reserves on the New England order, and that the inclusion of Maine would allow similarly situated handlers equal opportunities. Five comments supported Maine's exclusion from Federal orders because of its geographic separation from other areas, its long history of successful milk marketing regulation, and the limited impact of its pricing system on other regulated areas.

There appears to be little reason to add the State of Maine to the consolidated Northeast order area. Maine handlers with significant distribution in the Federal order areas can be and are pooled under Federal orders, limiting the extent of any competitive advantage. Inclusion of Maine-regulated handlers in the consolidated marketing area would have little effect on handlers' costs of Class I milk (or might reduce them), and would reduce returns to a few producers. When not pooled under Federal orders, Maine handlers are subject to minimum prices paid for milk, and producers are assured minimum prices in payment for milk. There is no compelling reason to extend Federal order regulation to encompass this State-regulated marketing area.

The Western New York State order area, proposed to be added to the consolidated Northeast area because the persons regulated under that order had so requested, is not included. Upstate Milk Producers Cooperative (Upstate), the entity that would be most affected by the inclusion of this area, had supported its addition prior to issuance of the proposed rule. Because the proposed rule failed to include the State-regulated Pennsylvania areas in the consolidated Northeast area, however, Upstate determined that it would be faced with unfair competition from PMMB-regulated handlers and requested that the Western New York order area be left out of the consolidated Northeast order area.

All of the comments received that dealt with the inclusion of unregulated area in the States of Massachusetts, New Hampshire, and Vermont and the currently-unregulated northern area of New York State in the consolidated Northeast order area supported the addition of this area. According to the comments, inclusion of the currently unregulated areas will assure that distributing plant operators that currently are fully regulated would be placed on an equal competitive footing with handlers currently unregulated, while having no negative effect on the producers who would be affected. Inclusion of these currently unregulated areas would lighten handlers' reporting burden and the market administrator's administrative burden in keeping separate data on sales in this small unregulated area. The number of handlers who would be affected by these additions is minimal, and the additions would enhance the efficiency of Federal order administration while easing the reporting burden of regulated handlers.

In addition to the northern portions of New Hampshire, Vermont, and New York, and the small area of Massachusetts, the offshore Massachusetts counties of Dukes and Nantucket are added to the marketing area. The only entity currently operating in those counties (a producer-handler on Martha's Vineyard) would be exempt from the pooling and pricing provisions of the order by virtue of its status as a producer-handler and by having fewer than 150,000 pounds of route disposition per month. Mainland handlers distributing milk in these two counties would find their reporting burden eased if these counties become part of the marketing area.

Appalachian

The consolidated Appalachian marketing area is comprised of the current Carolina (Order 5) and Louisville-Lexington-Evansville (Order 46) marketing areas (less one Kentucky county that is included in the consolidated Southeast marketing area) as well as 64 counties and 2 cities formerly comprising the marketing area of the Tennessee Valley Federal Order (Order 11), terminated in October 1997, and currently-unregulated counties in Indiana and Kentucky. There are 297 counties and 2 cities in this consolidated marketing area. This area remains unchanged from the proposed rule.

Geography

The Appalachian market is described geographically as follows: 7 unregulated Georgia counties (formerly part of Order 11), 20 Indiana counties (17 currently in Order 46 and 3 currently unregulated), 81 Kentucky counties (47 currently in Order 46, 16 formerly part of Order 11, and 18 currently unregulated), all North Carolina and South Carolina counties (100 and 46, respectively, and all currently in Order 5), 33 Tennessee counties (formerly part of Order 11), 8 counties and 2 cities in Virginia (formerly part of Order 11), and 2 West Virginia counties (formerly part of Order 11).

The consolidated Appalachian market reaches from the Atlantic coastline westward to southern Indiana and western Kentucky's border with Illinois. It is surrounded by Illinois on the west, Indiana, northeastern Kentucky, West Virginia and Virginia to the north, the Atlantic Ocean on the east, and Georgia, Alabama, western Tennessee and southwestern Kentucky to the south. Measuring the extreme dimensions, this market extends about 625 miles from its northwest corner in Indiana to its southeastern corner on the South Carolina-Georgia border, about 300 miles south-to-north from the South Carolina-Georgia border to the North Carolina-Virginia border, about 500 miles west-to-east from the Appalachian-Southeast markets' border in Tennessee to eastern North Carolina, and about 375 miles west-to-east from the Illinois-Indiana border to West Virginia and Virginia.

The Appalachian market is contiguous to 3 other consolidated

marketing areas: the Southeast area to the southwest and south, the Central area to the west and the Mideast area to the north. Unregulated counties in West Virginia and State-regulated area in Virginia also border this market to the north. North and South Carolina have almost 500 miles of coastline on the Atlantic Ocean.

In terms of physical geography, similarities exist across the states or areas included in this market. Southern Indiana and central Kentucky are in the Interior Low Plateau region where valleys and steep hillsides are typical. In this market, the Appalachian or Cumberland and Alleghany Plateaus are found in West Virginia, Virginia, Kentucky, Tennessee and northwestern Georgia on the western edge of the Appalachian Mountains. Eastern Tennessee and both western North and South Carolina are in the Blue Ridge region, which is part of the Appalachian Mountain range. Moving eastward toward the Atlantic Ocean, the central part of the Carolinas are in the Piedmont Plateau, with the Atlantic Coastal Plain covering approximately the remaining eastern half of both these states.

Climatic types in this region vary somewhat. Humid subtropical climates are typical in most of North and South Carolina, as well as Virginia (which is affected by elevation differences) and southern Indiana. Humid continental climates are typical for northwestern Georgia, western North and South Carolina and southern West Virginia. Temperate climates are common in eastern Tennessee and central Kentucky.

Much of the consolidated Appalachian area does not provide a hospitable climate or topography for dairy farming. As an agricultural pursuit, dairy farming is far down the list in the area, accounting for an average of less than five percent of all receipts from farm commodities for the states involved. Crops such as tobacco, corn and soybeans, and other livestock commodities such as cattle/calves, turkeys and broiler chickens are more prevalent in this region.

Population

According to July 1, 1997, population estimates, the total population in the Appalachian marketing area is 17.3 million. There are 24 Metropolitan Statistical Areas (MSAs) within the consolidated marketing area, containing 62.3 percent of the area's population. The largest 17 contain 57 percent of the population of the market. Charlotte, North Carolina, is the largest MSA in the marketing area with a population of 1.35 million. Charlotte is located near the South Carolina border about at the mid point of the North and South Carolina border, and about 250 miles west of the Atlantic coast. Less than 100 miles to the north lies the second-largest MSA of Greensboro-Winston-Salem-High Point, North Carolina, with a population of 1.15 million. About 50 miles east of Greensboro is the third-largest MSA, Raleigh-Durham-Chapel Hill, with 1.05 million people. The Raleigh MSA abuts the Greensboro MSA. An additional four North Carolina MSAs are among the largest of the 17 MSAs containing 57 percent of the population of the consolidated marketing area, for a combined population of one million. North Carolina is the most populous state in the consolidated marketing area with 7.4 million; over sixty percent of the population of North Carolina is located in these seven MSAs.

South Carolina is the second-most populous state in the consolidated area, with 3.8 million people. The Carolinas contain nearly two-thirds of the consolidated market's population. Greenville is the largest MSA in the state with a population of 905,000. Greenville is located in the northwest corner of the state. Charleston, the second-largest MSA in South Carolina, with over half a million people, is approximately at the midpoint of South Carolina's coast.

The Tennessee portion of the consolidated Appalachian market has a population of 2 million, with three MSA's that are included in the largest 17 in the market. These three areas contain 1.6 million, or just under 80 percent of the population in that part of Tennessee that is included in the Appalachian marketing area. The largest Tennessee MSA is Knoxville, which is in the eastern end of Tennessee near North Carolina. Six counties make up the Knoxville MSA with a combined population of 650,000. The Johnson City-Kingsport-Bristol area, the second-largest Tennessee MSA, is located in the northeastern tip of Tennessee along the Virginia and North Carolina border, and contains 460,000 people. Chattanooga, the third-largest MSA in Tennessee, is located on the Tennessee-Georgia border, and has a population of 447,000. The three MSAs run northeast to southwest just west of the North Carolina border.

The Kentucky portion of the consolidated Appalachian market contains 2.7 million people. There are two MSAs within the state that are included in the largest 17 in the market. The largest is Louisville, which lies on the border with Indiana and has a population of one million. Lexington, the second-largest Kentucky MSA, is located in the center of the state and has just under half a million people. Generally, the Kentucky counties in the Appalachian marketing area are not heavily populated. Only two have populations over 100,000. They are Jefferson county, where Louisville is located, and Fayette county, home to Lexington.

Indiana counties in the Appalachian market have a population of .8 million. Only Vanderburgh county has a population over 100,000. Evansville, the only MSA in the portion of Indiana included in the Appalachian market, is in Vanderburgh county. Evansville's MSA contains 289,000 and is located on the Indiana-Kentucky border, near the Illinois state line.

There are seven Georgia counties within the consolidated Appalachian marketing area, with a total population of .3 million. Three of them, Catoosa, Dade, and Walker, are part of the Chattanooga MSA. These three counties have a combined population of 124,000. The 10 Virginia counties in the Appalachian market have a population of .3 million. Three of the counties, Scott, Washington and Bristol City, are part of the Johnson City-Kingsport-Bristol MSA. The two West Virginia counties within the Appalachian market have a total population of .1 million.

Fluid Per Capita Consumption

Estimates of fluid per capita consumption within the consolidated Appalachian marketing area vary from 15.8 per month for South Carolina to 20.4 pounds per month for Indiana. Use of 17 pounds per month as a weighted average results in an estimated 294 million pounds of fluid milk consumption for the Appalachian marketing area. Appalachian handlers' route disposition within the area during October 1997 totaled 283 million pounds, with another 21 million distributed by other order plants, partially regulated plants, and plants exempt both for reasons of both size and institutional status.

Milk Production

Milk production data for the Appalachian consolidated order area has not been updated from December 1996 to October 1997 as have the data for most of the other consolidated order areas. The Tennessee Valley order was terminated October 1997. As a result, on the basis of 10 percent of receipts distributed within the Southeast order area, three of the Tennessee Valley-regulated handlers became pool plants under the Southeast order. Consequently, milk production data for

the consolidated Appalachian and Southeast orders based on October 1997 pool data would not be representative of the milk that would be pooled on those consolidated orders. Available information indicates that the sources of milk for the consolidated Appalachian market have not changed in any significant way from the December 1996 data.

In December 1996, over 4,000 producers from 359 counties in 15 states pooled 443.3 million pounds of producer milk on Orders 5, 11 and 46. Approximately 71 percent of the milk pooled on the three orders was produced within the proposed consolidated marketing area.

North and South Carolina are the only States that are located entirely within the consolidated marketing area, and provided nearly all of their producers' milk to Order 5 (encompassing the entire States of North and South Carolina), with 103.7 and 34 million pounds, respectively. Neither of these states produces enough milk to meet even the fluid milk requirements of its population. Kentucky producers pooled 101.1 million pounds on the three orders, with 89 percent produced within the consolidated marketing area. Tennessee producers pooled 69.9 million pounds on the three orders, principally on Order 11, with 84 percent produced within the consolidated marketing area. Although Virginia is primarily outside the marketing area, producers from 40 Virginia counties supplied 68.5 million pounds of milk for the Tennessee Valley and Carolina order markets in December 1996. Georgia producers pooled 27.6 million pounds and Indiana producers pooled 21 million pounds in December, with the balance of the milk pooled on the three orders originating in Alabama, Connecticut, Illinois, Maryland, Massachusetts, New Mexico, Pennsylvania, and West Virginia.

Thirty-four counties each supplied over 3 million pounds of milk to the three markets consolidated in this area. One such county was located in New Mexico, and another in Pennsylvania. Eight were located in Kentucky, south and southwest of Lexington, and southeast of Louisville. Eleven were located in North Carolina west of the Raleigh-Durham area, with all but one located near Greensboro, Winston-Salem, Asheville, Charlotte or Durham. Of the two South Carolina counties that supplied over 3 million pounds each, one was located northwest of Columbia, and the other northwest of Charleston. The five Tennessee counties that pooled over 3 million pounds of milk on the three orders are located in northeast and southeast Tennessee; two in the Johnson City-Kingsport-Bristol area and three southwest of Knoxville. Only one of the six counties in Virginia that supplied over 3 million pounds to Orders 5 and 11 is located within the marketing area. Five of the six are located in southwest Virginia, with the other in the northwest part of the State.

Distributing Plants

Using distributing plant lists included in the proposed rule, with the pooling standards adjusted to 25 percent of route dispositions as in-area sales and updated for known plant closures through December 1998, 31 distributing plants would be expected to be associated with the Appalachian marketing area, including 25 fully regulated distributing plants (23 currently fully regulated, 1 currently partially regulated, and 1 currently unregulated), 2 partially regulated (both currently partially regulated), 3 exempt plants, on the basis of having less than 150,000 pounds of total route disposition per month (2 currently fully regulated and 1 currently unregulated), and 1 government agency plant (currently a government agency plant).

Four of the 31 distributing plants expected to be associated with the consolidated area are located in Virginia, with only one located within the marketing area. The plant in the marketing area currently is fully regulated and is expected to remain so, and one of the other Virginia plants, currently partially regulated, also is expected to be fully regulated. The other two Virginia plants, both currently partially regulated, are expected to remain in that status. Since October 1997, 2 distributing plants in the marketing area have gone out of business.

Under the consolidated Appalachian order, there would be 18 distributing plants in the largest Appalachian MSAs having distributing plants. There would be 3 pool distributing plants in the Greensboro-Winston-Salem-High Point area. The Charleston area would have 2 pool distributing plants. The Johnson City-Kingsport-Bristol, Tennessee, area would have 2 pool distributing plants. The Greenville-Spartanburg-Anderson, South Carolina, area would have 2 pool distributing plants. The Knoxville area would have 1 pool distributing plant and 1 exempt plant, with less than 150,000 pounds of total route disposition per month. The Charlotte, Chattanooga, Lexington, Louisville, and Evansville areas would each have 1 pool distributing plant. The Raleigh-Durham area would have one government agency plant and one plant exempt on the basis of size.

Of the remaining 13 distributing plants associated with the market, one pool plant would be located in a North Carolina MSA and one pool plant would be located in a South Carolina MSA. The eleven remaining distributing plants, eight of which are expected to be pool plants, would not be located in MSAs. Three (2 pool, 1 exempt) would be in North Carolina, and 3 would be in Virginia (1 pool and 2 partially regulated). Three plants in Kentucky, 1 in Indiana, and 1 in Tennessee are expected to be pool plants.

The 25 plants expected to be fully regulated under the Appalachian order had distribution totaling 365 million pounds in October 1997, with 78 percent within the consolidated marketing area.

A South Carolina plant included above in the description of fully regulated distributing plants—Superbrand Dairy Products, Inc., in Greenville (about 140 miles northeast of Atlanta)—has a greater proportion of its sales in the Southeast market than in the Appalachian market. This plant currently is locked into regulation under the Carolina order based on its need to procure a milk supply in the Carolina order, although it has greater route disposition in the Southeast. This lock-in is included in the Appalachian order provisions.

Utilization

As in the case of milk production data, October 1997 data for the three markets consolidated in the Appalachian order are not available because of the termination that month of the Tennessee Valley order. Instead of using October 1995 data from the proposed rule, however, September 1997 data is used as representative for this section.

According to September 1997 pool statistics for handlers who would be fully regulated under this Appalachian order, the Class I utilization percentages for the Carolina and Louisville-Lexington-Evansville markets and the former Tennessee Valley market were 86, 80, and 87 percent, respectively. Based on calculated weighted average use values for (1) the current order with current use of milk, and (2) the current order with projected use of milk in the consolidated Appalachian order, the potential impact of this decision on producers who supply the current market areas is estimated to be: Carolina, unchanged (from $13.59); Louisville-Lexington-Evansville, a 3-cent per cwt increase (from $12.73 to $12.76); and Tennessee Valley, a 6-cent

per cwt decrease (from $13.38 to $13.32). The weighted average use value for the consolidated Appalachian order market is estimated to be $13.35 per cwt. For September 1997, combined Class I utilization for Orders 5, 11 and 46 was 85.0 percent based on 349.0 million pounds of producer milk used in Class I out of 410.4 million total producer milk pounds pooled.

Other Plants

Also located within the consolidated Appalachian marketing area during May 1997 were 13 supply or manufacturing plants: 4 in Kentucky (1 in the Louisville area), 5 in North Carolina (1 in the Charlotte-Gastonia-Rock Hill area and one in the Greensboro-Winston-Salem-High Point area), 1 in Tennessee, and 3 nonpool cheese plants in Indiana (1 in the Lexington area and one in the Louisville area). Three of the 13 plants are pool plants, or have a "pool side." Two of the three pool plants (one in Kentucky and the one in Tennessee) are "split plants," that is, one side of a plant is a manufacturing facility, and the other side receives and ships Grade A milk, and accounting is done separately. Of these pool plants, the pool sides of the 2 split plants have no primary product, shipping only to distributing plants. The nonpool side of one of these plants manufactures cheese, while the nonpool side of the other manufactures powder. The other pool plant is a supply plant that manufactures primarily Class II products. Of the other nonpool plants in the Appalachian marketing area, 5 manufacture primarily cheese and 5 manufacture primarily Class II products.

Cooperative Associations

Using September 1997 cooperative association information for the former Tennessee Valley order area and December 1997 information for the Carolina and Louisville-Lexington-Evansville (Order 46) orders, it can be estimated that approximately 75 percent of the milk in the consolidated Appalachian area was supplied by 12 cooperatives. Dairymen's Marketing Cooperative, Inc., and cooperative associations that merged to form Dairy Farmers of America supplied nearly half of the milk pooled on all three markets during these months. Carolina-Virginia Milk Producers Association, Inc., supplied approximately 20 percent of the milk pooled on both the Carolina and Tennessee Valley markets.

Five cooperative associations supplied 16 percent of the milk pooled under the Carolina order in December 1997, but supplied no milk to the other two markets. Three of these cooperatives pooled no milk on any other Federal order market, while one also pooled milk on the two Ohio orders, the New York-New Jersey order, and the Middle Atlantic order. In addition to the Carolina order, the fifth cooperative pooled the milk of Texas producers on the Texas, Southern Illinois-Eastern Missouri, Chicago, and Southeast orders.

In addition to the 55 percent of the September 1997 Tennessee Valley milk supply from cooperative associations pooling milk on the other two Appalachian markets, one cooperative that also pooled milk on the Southeast order in December 1997 supplied approximately 15 percent of the milk pooled on the Tennessee Valley order.

Three cooperative associations that supplied less than 2 percent of the milk pooled under Order 46 did not supply milk to either the Carolina or Tennessee Valley markets.

Criteria for Consolidation

Overlapping route disposition and procurement are the primary criteria on which this consolidation is based. There is a stronger relationship between the three marketing areas involved than between any one of them and any other marketing area on the basis of both criteria. Route dispositions within the Appalachian area by handlers who would be regulated under this order account for 93 percent of the total fluid milk products distributed in the area. The primary sources of the remaining 7 percent are four other consolidated order areas, with no more than 3 percent distributed by any of the four. Handlers to be regulated under the Appalachian order distributed nearly 80 percent of their route dispositions within the marketing area.

Over two-thirds of the milk supply for the Appalachian market is produced within the marketing area, with a large part of the rest of the milk supply coming from unregulated areas to the north (Virginia and Pennsylvania). The Appalachian order area supplies a significant minority of the milk supply for the Southeast market, but in October 1997 this amount was less than the amount supplied to the Southeast area from the Southwest area. In addition, a large proportion of the milk produced in the Appalachian order area that was pooled on the Southeast order in October 1997 was received at plants that formerly were pooled under the terminated Tennessee Valley order, and will be pooled under the consolidated Appalachian order. There is also common cooperative association affiliation between the markets.

Discussion of Comments and Alternatives

Prior to issuance of the proposed rule, alternatives that were considered included combining all of the current Florida, Carolina, Tennessee Valley and Southeast order areas, consolidating the Southeast and proposed Appalachian areas, and including all of the State of Kentucky in one order, specifically the Southeast. These alternative consolidations were examined at length and were found to have less overlap in sales and procurement than the Appalachian marketing area.

Thirteen comments that pertained specifically to the proposed Appalachian area were filed by 12 commenters in response to the proposed rule. Six of these comments supported the consolidation of the Appalachian marketing area as described in the proposed rule, including comments filed by several affected dairy farmers, the North Carolina Department of Agriculture, the North Carolina Dairy Producers Association, and a comment filed on behalf of Piedmont Milk Sales, Inc., Hunter Farms, Land O'Sun Dairies and Milkco, Inc. This last comment stated that the Appalachian and Southeast areas should not be combined because a separate milk order area should exist between the consolidated Northeast and Southeast order areas. The comment argued that existence of the Appalachian area would be expected to result in blend price differences between and among the Northeast, Mideast, Appalachian, Southeast and Florida orders such that milk supplies will move South and East as needed.

Seven comments supported the combination of the Appalachian and Southeast areas, or at least the inclusion of more territory in the Appalachian area. The Kentucky Farm Bureau Federation urged that all Kentucky counties and the proposed Appalachian area be combined with the Southeast. The comment stated that this further consolidation would make milk utilization rates more similar across the order, would facilitate and encourage milk flow to deficit areas and minimize any negative price impacts on producers. According to the Carolina-Virginia Milk Producers Association, the existence of separate Southeast and Appalachian order areas could result in disorderly marketing conditions on the eastern side of the proposed Southeast order area. Comments filed by Trauth Dairy urged the inclusion of the northern areas of Kentucky, including the Newport, Kentucky, area containing Louis Trauth Dairy, Inc., in the

proposed Appalachian area rather then in the proposed Mideast area.

A comment filed by DFA supported the inclusion of Charleston, West Virginia, and areas of West Virginia south of Charleston, as well as the Ohio counties surrounding Cincinnati and the northern counties of Kentucky, in the Appalachian market rather than the Mideast market to promote orderly marketing of milk. The DFA comment stated that adequate milk supplies do not exist in close proximity to processors in the greater Cincinnati, Ohio, and Charleston, West Virginia, markets, and that an economic incentive must be provided to assure a milk supply to those processors. A second DFA comment recommended that the Southeast and Appalachian order areas be combined because the primary supplemental milk supply for both areas is in more western states (Texas, New Mexico and Missouri). The comment stated that it is likely that these supplemental supplies would be likely to be associated with the Southeast order because of its greater proximity, and eastern Southeast milk would be "stair-stepped" across to the Appalachian order to reduce hauling costs. According to DFA, during the market's flush production month, the Appalachian order would not bear the burden of surplus milk since the distant surplus milk would be associated with the Southeast order in addition to the eastern Southeast milk supplies that also would be associated with the Southeast order to avoid inefficient milk movements, resulting in a disproportionate burden of surplus milk pooled on the Southeast order.

For the month of October 1997, a month when some supplemental supplies usually are required for short markets, nearly one-quarter of the producer milk pooled on the current Southeast order originated in the States of Missouri, New Mexico, and Texas. For the same month, just over 1 percent of the producer milk pooled on the Louisville-Lexington-Evansville and Carolina orders was produced in those more western States. It is clear that the western milk is a much more important source of supply for the Southeast area than for the Appalachian area, and that the magnitude of this difference is an indication of how much these two consolidated markets differ. The ability to pool surplus milk on the Southeast order is directly related to the addition of the southern Missouri/northwest Arkansas area to the Southeast marketing area, an addition that was strongly urged by DFA. Concerns about the ability of handlers in the eastern part of the Southeast area to attract a supply of milk could be addressed more appropriately by the inclusion of transportation credits in the Southeast order than by consolidation with the Appalachian area.

A dairy farmer in West Virginia urged that the State of West Virginia be added to the Appalachian order area because milk usage for Class I milk and cost of production would then become similar to the other states in the Appalachian area. Another dairy farmer referred to a comment filed earlier to include Maryland in the Appalachian area instead of the Northeast.

As discussed in the proposed rule, consolidating the Carolina and Tennessee Valley markets with the Southeast does not represent the most appropriate consolidation option because of the minor degree of overlapping route disposition and producer milk between these areas. That conclusion continued to be supported by data gathered for distributing plants for October 1997.

The northern Kentucky/southern Ohio and West Virginia area was examined in painstaking detail with updated data to determine whether or where this area could be divided to reflect handlers' sales areas and supply procurement areas better than in the proposed rule. No support for such a modification to the proposed rule could be found. Only one Appalachian handler has significant route disposition within the Ohio Valley order area, while a very small volume of Class I sales moves from the Ohio Valley area into the Order 46 area. There is even less overlap between either West Virginia or Maryland and the Appalachian area, and no justification for changing the marketing area of either of these States.

Florida

The consolidated Florida marketing area is comprised of the three current Federal order marketing areas contained wholly in the state of Florida: Upper Florida (Order 6), Tampa Bay (Order 12) and Southeastern Florida (Order 13). There are 63 counties in this consolidated area (40 in Order 6, 13 in Order 12, and 10 in Order 13). This area remains unchanged from the proposed rule.

Geography

The consolidated Florida marketing area is described geographically as all counties in the State of Florida, with the exception of the four westernmost counties in the Florida Panhandle. This marketing area is a large peninsula, ranging from about 140 miles in width in the north to about 50 miles in width in the south, that extends south from the southeast U.S. about 400 miles between the Atlantic Ocean and the Gulf of Mexico. Also included in the Florida market is approximately 150 miles of the Panhandle, a narrow strip of land extending west along the Gulf of Mexico from the northern part of the peninsula. The water surrounding most of Florida's peninsula constitutes a natural boundary, as east-to-west travel is limited.

Almost all of Florida has a humid subtropical climate. The southern end of the state and the islands south of the peninsula have a tropical wet and dry climate. In general, the state's climate can and does affect levels of milk production negatively. Seasonal variation in production for this market typically is greater than for most other U.S. regions. The importance of dairy farming as an agricultural pursuit in Florida is relatively minor (7 percent of total receipts from agricultural commodities), with several crops contributing more total receipts to the State's income. However, no livestock commodity is as important in Florida as dairy farming.

Population

According to July 1, 1997, population estimates, the total population in the consolidated Florida marketing area is 14.1 million. Ninety-three percent of the population of the marketing area is located in Metropolitan Statistical Areas (MSAs). The two largest MSAs are Miami-Fort Lauderdale (Miami) on the eastern side of the southern end of the peninsula, and Tampa-St. Petersburg-Clearwater (Tampa) midway on the western side of the peninsula. Broward and Dade Counties comprise the Miami population center (currently in Order 13) with a population of 3.5 million. The Tampa population center (currently in Order 12) is comprised of Hernando, Hillsborough, Pasco and Pinellas counties with a population of 2.2 million. The six counties in these two population centers represent about 41 percent of the total marketing area population.

Fluid Per Capita Consumption

Florida customarily is considered a deficit milk production state. For much of the year, milk needs to be imported from other states in order to meet the demand for fluid consumption. Based on the population figure of 14.1 million and an estimated per capita fluid milk consumption rate of 17 pounds of fluid milk per month, total fluid milk consumption in the Florida marketing area is estimated at 239.7 million pounds per month.

During October 1997, 216 million pounds of milk were disposed of in the consolidated marketing area by all Florida distributing plants expected to be fully regulated under the Florida order. Other order plants had route disposition within Florida of 14.2 million pounds. Another 1.3 million pounds of milk was distributed within the consolidated area by partially regulated handlers, producer-handlers, and exempt plants. The discrepancy between the actual total route disposition of 231.5 million pounds and the estimated consumption level of 239.7 million pounds may be explained by the older than average population in Florida.

Milk Production

In October 1997, 175.8 million pounds of milk produced in Florida were pooled in four Federal orders; 98.5 percent of this milk was pooled on the three current Florida orders. About 340 producers located in Florida (96 percent of all Florida producers having association with Federal orders) had producer milk pooled on at least one of the three Florida markets. A small number of Florida producers had producer milk associated with Order 7, while more than 100 Georgia producers had producer milk associated with the Florida markets. Additionally, 44.7 million pounds of Georgia milk was pooled on the three Florida markets; 89 percent of this milk went to Order 12.

There are 40 counties in Florida that pooled milk in at least one of the three current Florida orders. Eight of these counties produced 66.5 percent of the milk pooled.

Three counties (Gilchrist, Lafayette and Suwannee, about 75 miles west of Jacksonville) had 42.3 million pounds of producer milk. For these three counties, 72.6 percent of the October 1997 producer milk was pooled on the Tampa Bay order, which is located approximately 150 miles southeast of the counties.

Nearly 90 percent of Clay County's producer milk was pooled in Order 6. This county is in the Jacksonville MSA, which is the largest population center in Order 6.

Twenty-two and one-half million pounds of producer milk came from Hillsborough, Highlands, and Manatee Counties, all part of the Order 12 market. However, 64 percent of this milk was pooled on Order 13, with the rest pooled on Order 12.

Okeechobee County, located in the Order 13 marketing area about 125 miles northwest of the Miami area, is by far the largest milk producing county in Florida. The county had 43.8 million pounds of producer milk in October 1997, almost all of which was pooled on Order 13.

Distributing Plants

Using plant lists included in the proposed rule, with pooling standards adjusted to 25 percent of route dispositions as in-area sales, updated for known plant closures through December 1998, 12 plants would be expected to be fully regulated under the consolidated Florida market. Four of these plants are located in the Miami MSA and three in the Tampa MSA. Three plants are located in mid-Florida, one in the Orlando area and two in the Lakeland-Winter Haven area. Two more are located in northeast Florida: one in the Jacksonville area, and one in Daytona Beach. One plant in the Tampa MSA, currently fully regulated, would be exempt on the basis of size. One partially regulated plant in the Jacksonville area would be expected to continue its partially regulated status, and one producer-handler is not located within an MSA.

Slightly less than two-thirds of the consolidated market's population is contained in the MSAs where fully regulated plants are located.

Utilization

According to October 1997 pool statistics for handlers who would be fully regulated under this Florida order, the Class I utilization percentages for the Upper Florida, Tampa Bay, and Southeastern Florida markets were 91, 88, and 94 percent, respectively. Based on calculated weighted average use values for (1) the current order with current use of milk, and (2) the current order with projected use of milk in the consolidated Florida order, the potential impact of this rule on producers who supply the current market areas is estimated to be: Upper Florida, a 4-cent per cwt decrease (from $15.39 to $15.35); Tampa Bay, a 8-cent per cwt increase (from $15.54 to $15.62); and Southeastern Florida, a 13-cent per cwt decrease (from $16.03 to $15.90). The weighted average use value for the consolidated Florida order market is estimated to be $15.69 per cwt. For October 1997, combined Class I utilization for the three Florida markets was 90.6 percent based on 197.5 million pounds of producer milk used in Class I out of 218.0 million total producer milk pounds.

Other Plants

Also located within the Florida marketing area during May 1997 were four supply or manufacturing plants, three of which are not associated with the current markets' pools. Three ice cream plants are located in the Tampa area and one pool supply plant is in the Jacksonville area.

Cooperative Associations

In December 1997, three cooperatives marketed milk in the Florida markets, representing nearly 100 percent of the milk marketed. Effective October 1, 1998, Florida Dairy Farmers Association, which marketed milk under all three Florida orders, and Tampa Independent Dairy Farmers' Association, Inc., which marketed milk only under the Tampa Bay order, merged to create Southeast Milk, Inc. The December 1997 production marketed by these two cooperatives in all three Florida orders comprised 93 percent of the producer milk associated with the three markets. Dairy Farmers of America, Inc. (DFA), members marketed nearly 7 percent of producer milk associated with the three Florida orders on the Tampa Bay and Southeastern Florida pools.

Criteria for Consolidation

The consolidated Florida market should encompass the current marketing areas of the Upper Florida, Tampa Bay and Southeastern Florida Federal milk orders. Natural boundary limitations and overlapping sales and procurement areas among the three orders are major reasons for consolidation, as well as a measure of association evidenced by cooperative association proposals to consolidate these three marketing areas. Further, the cooperative associations in this area have worked together for a number of years to accommodate needed movements of milk between the three Florida Federal orders, and into and out of the area.

Discussion of Comments and Alternatives

Prior to the issuance of the proposed rule, the inclusion of other Federal order marketing areas with the consolidated Florida area was considered because of the existence of some overlap of sales, procurement of producer milk, and dispositions of surplus milk. However, because of the closeness of the relationship between the current Florida markets and the lack of significant overlap of sales or production with other order areas no basis was seen for expanding the consolidation any further.

Only three comments were received that pertained specifically to the consolidated Florida area. These comments, filed by the three cooperative associations with

membership in the consolidated Florida marketing area, supported the consolidation of the current three Florida order areas without any additional territory.

Southeast

The consolidated Southeast marketing area is comprised of the current Southeast (Order 7) marketing area, portions of the current Southwest Plains (Order 106) marketing area in northwest Arkansas and southern Missouri, and six southeastern Missouri counties from the current Southern Illinois-Eastern Missouri (Order 32) marketing area. Also included are 16 currently unregulated Missouri counties, 21 currently unregulated Kentucky counties, and 1 Kentucky county that currently is part of the Louisville-Lexington-Evansville (Order 46) marketing area. There are 572 counties in this consolidated area. A partial county in Missouri that was proposed to be included in the Southeast area has been omitted.

Geography

The Southeast market is described geographically as follows: all counties or parishes in Alabama, Arkansas, Louisiana, and Mississippi (67, 75, 64, and 82 counties, respectively), 4 in Florida, 152 in Georgia, 44 in Missouri, 62 in Tennessee and 22 in Kentucky (one—Logan County—currently is in Order 46, and 21 currently are unregulated). Of these 21 counties, 14 were part of the former Paducah, Kentucky (Order 99) marketing area. Eleven Arkansas and 22 Missouri counties are part of the current Order 106 marketing area. Six Missouri counties are part of the current Order 32 marketing area. Sixteen southeastern Missouri counties currently are unregulated (4 of these were part of the former Paducah Federal milk order). A partial Missouri county that was proposed to be part of the Southeast area is omitted for the purpose reducing the incidence of partially regulated counties.

The Southeast market spans the southeastern area of the United States from the Gulf of Mexico and the Alabama/Georgia-Florida border north to central Missouri, Kentucky, Tennessee, and South Carolina, and from the Atlantic Ocean west to Texas, Oklahoma, and Kansas. Measuring the extreme dimensions, this market extends about 575 miles north to south from central Missouri to southern Louisiana and 750 miles west to east from Louisiana's border with Texas to the Atlantic Ocean coast in southern Georgia.

The Southeast marketing area is contiguous to 4 other consolidated marketing areas: Florida to the southeast, the Southwest to the west, the Central to the northwest and the Appalachian to the northeast and east. Georgia's coastline on the Atlantic Ocean is about 100 miles in length, while western Florida, Alabama, Mississippi, and Louisiana extend about 600 miles along the Gulf of Mexico coastline. Also contiguous to the current Southeast market are currently unregulated counties in Texas, Missouri, Kentucky (and as of October 1, 1997, the Tennessee Valley [Order 11] marketing area). The consolidated marketing areas would encompass all of these counties in the Southwest, Central, Appalachian or Southeast marketing areas, with some currently-unregulated counties in central Missouri remaining unregulated under this proposal.

In terms of physical geography, the Southeast region is generally flat or gently rolling low-lying land. Relatively higher elevations which might potentially form natural barriers or obstruct easy transportation exist in northwest Arkansas and northeast Georgia.

Moving from the south to the north of the Southeast market, climates range from humid subtropical in coastal areas to warm and humid or humid continental to temperate in Tennessee and Kentucky. Warm, humid summers and mild winters are typical in the Southeast. These types of climates can severely limit the production level of dairy herds in the summer.

Population

According to July 1, 1997, population estimates, the total population in the consolidated Southeast marketing area is 26.9 million. The 42 Metropolitan Statistical Areas (MSAs) in the market account for 62.3 percent of the total marketing area population. Almost half of the Southeast population is located in the 17 most populous MSAs. Eight MSAs have populations greater than 500,000 each; their total population is about 36 percent of the Southeast population. Because of the large number of MSAs in the Southeast market and also because no large (i.e., greater than 500,000) population centers are added to this market, only those areas with populations greater than 500,000 are described in greater detail.

Over 25 percent of the Southeast market's population is located in Georgia, the most populous of the Southeast market states, with 7.2 million people. Almost half of Georgia's population is concentrated in the Atlanta MSA, located about 60 miles south of the Southeast-Appalachian marketing area boundary in the northwest portion of the state. Atlanta is the largest city in the Southeast market with a population of 3.6 million.

With 4.3 million people, Alabama is the Southeast market area's third most populous state. Birmingham and Mobile, the state's two largest MSA regions, are among the top eight in population in the Southeast. The Birmingham area has a population of about 900,000 and ranks 5th in size among all Southeast area MSAs. Birmingham is located about 150 miles west of Atlanta in north central Alabama. The Mobile area is a Gulf of Mexico port city in southwestern Alabama. With a population of 527,000, Mobile is the 8th largest population center in the Southeast market area.

Louisiana is the second most populated state in the Southeast market area with 4.4 million people. Two of the Southeast's 8 largest MSAs are located in Louisiana—New Orleans, the second largest MSA with 1.3 million people and Baton Rouge, the 6th largest MSA with almost .6 million people. New Orleans is located in the state's "toe" in southeastern Louisiana. Baton Rouge also is located in Louisiana's "toe," about 80 miles west of New Orleans.

Arkansas has a total population of 2.5 million—2 million from the current Southeast marketing area and an additional 500,000 from the Arkansas portion of the Southwest Plains marketing area. The Little Rock-North Little Rock, Arkansas (Little Rock) MSA, in the center of Arkansas, has the 7th largest population concentration in the Southeast market area with 552,000.

The portion of Tennessee in the Southeast marketing area is the fourth most populated with 3.4 million people and is home to the third and fourth largest MSAs in the Southeast. The Nashville area, with a population of 1.1 million, is located in central Tennessee. The Memphis, Tennessee/Arkansas/Mississippi MSA, also with a population of 1.1 million, is located near these three states' borders.

Other states or portions of states in the Southeast marketing area do not have MSAs with greater than 500,000 population. Mississippi, the Southeast's 5th most populous state, has a total population of 2.7 million. The Missouri, Florida, and Kentucky counties in the Southeast market have populations of 1.3 million, 602,000 and 529,000, respectively.

Fluid Per Capita Consumption

Fluid per capita consumption estimates vary throughout the Southeast

market from a low of 16 pounds of fluid milk per month in Mississippi to a high of 19 pounds in Arkansas and Kentucky. Multiplying the individual states' consumption rates by their population results in an estimated fluid milk consumption rate of 468 million pounds of fluid milk per month for the Southeast marketing area.

Route distribution in the consolidated Southeast area by handlers expected to be regulated under the consolidated Southeast order (including the 3 Arkansas and Missouri plants) equaled 380 million pounds within the Southeast marketing area in October 1997. Other fluid milk dispositions in the consolidated Southeast marketing area came from plants expected to be regulated under other orders (66.7 million pounds) and from partially regulated, exempt and producer-handler plants (2 million pounds).

Milk Production

Milk production data for the Southeast consolidated order area have not been updated from January 1997 to October 1997 as have the data for most of the other consolidated order areas. As a result of terminating the Tennessee Valley order as of October 1997, three of the Tennessee Valley-regulated handlers became pool plants under the Southeast order, on the basis of having at least 10% of their sales in the Southeast order marketing area. These handlers will become regulated under the consolidated Appalachian order when the consolidated orders become effective. Consequently, milk production data for the consolidated Southeast order area based on October 1997 pool data would not be representative of the consolidated Southeast market. Available information indicates that the sources of milk for the consolidated Southeast market have not changed significantly from the January 1997 data.

In January 1997, 4,180 producers from 388 counties pooled 477.4 million pounds of producer milk on the current Southeast market. Over 85 percent of the Southeast's producer milk came from Southeast market area counties. Of the 388 counties, 19 pooled over 5 million pounds each, accounting for 39 percent of Order 7's producer milk. Of these 19 counties, 2 Texas counties are located outside the Southeast marketing area. Because of the large number of counties, only the locations for those top 19 production counties are described in greater detail. However, the volume of producer milk, number of producers (farms) and number of counties is provided for each state within the market area.

Almost 73 million pounds of milk were pooled on the Southeast market from 581 producers in 28 Louisiana parishes in January 1997. Top production parishes are Tangipahoa, Washington and St. Helena, all located in the state's "toe," north of New Orleans and northeast of Baton Rouge, each bordering Mississippi. Another high production area is centered on De Soto Parish in northwestern Louisiana. These four parishes account for over 62 million pounds of producer milk, with 76 percent coming from Tangipahoa and Washington parishes.

Almost 67 million pounds of milk were pooled on the Southeast market from 331 producers in 68 Georgia counties in January 1997. Of this volume, 64 million came from 312 producers in 64 Georgia counties in the Order 7 marketing area. The balance is associated with Georgia producers located in the marketing area of the former Order 11 (Tennessee Valley). Top production counties are Putnam, Morgan and Macon, which pooled 27 million pounds of producer milk on Order 7.

About 65 million pounds of milk were pooled on the Southeast market from 580 producers in 46 Tennessee counties in January 1997. Of this volume, 62 million came from 562 producers in 42 Tennessee counties in the Order 7 marketing area. The balance is associated with Tennessee producers located in the marketing area of the former Federal Order 11. Two high production counties in the state are Marshall and Lincoln, located in south central Tennessee. These counties contributed over 12 million pounds of producer milk to the Order 7 pool in January 1997.

About 61 million pounds of milk were pooled on the Southeast market from 443 producers in 48 Mississippi counties in January 1997. Top production counties are Walthall and Pike, in southern Mississippi on the state's border with Louisiana. These two counties adjoin the heavy milk production area in Louisiana. The counties contributed 15 million pounds of producer milk to the Order 7 pool in January 1997.

About 32 million pounds of milk were pooled on the Southeast market from 408 producers in 19 Kentucky counties in January 1997. Additionally, 116 producers in 15 of these counties pooled almost 9 million pounds of producer milk on Orders 11 and 46 (Louisville-Lexington-Evansville). Two counties, Barren and Monroe, contributed over 13 million pounds of producer milk. These contiguous counties are in south central Kentucky about 80 miles northeast of Nashville, Tennessee.

Four Missouri counties—Wright, Texas, Laclede and Howell—pooled 33 million pounds of producer milk on Order 7. All of these counties currently are located in the Order 106 (Southwest Plains) marketing area in southern Missouri.

Other Southeast marketing area states or areas contribute producer milk to the Southeast marketwide pool. About 37 million pounds of milk were pooled on the Southeast market from 205 producers in 51 Alabama counties, and 25 million pounds were pooled from 343 producers in 39 Arkansas counties. Sixteen Florida producers from 6 counties (2 in the Southeast market area) pooled 3.5 million pounds on Order 7 in January 1997.

In January 1997, Order 7 producer milk also originated in Missouri counties not included in the Southeast marketing area, Texas, New Mexico, Indiana and Oklahoma. Large amounts of milk from Missouri (21 million pounds in addition to the 33 million described previously) and Texas (46 million pounds—20 million from Hopkins and Erath Counties) were associated with the Order 7 pool.

Distributing Plants

Using distributing plant lists included in the proposed rule, with the pooling standards adjusted to 25 percent of route disposition as in-area sales, updated for known plant closures through December 1998, 48 distributing plants located in the consolidated Southeast marketing area would be expected to be associated with the Southeast market (including the added territory in northwestern Arkansas and southern Missouri). These plants include 36 fully regulated distributing plants, 3 of which are currently regulated under the Southwest Plains order and one of which is currently partially regulated. In addition, it is expected that 3 plants would be partially regulated (one of which currently is fully regulated and two of which are partially regulated), and 7 plants that are, and are expected to be, exempt—1 on the basis of size and 6 on the basis of institutional status. An additional currently regulated plant is expected to be exempt on the basis of institutional status. Of the 36 fully regulated plants, 16 are located in the largest eight MSA regions. One distributing plant located in the consolidated Appalachian marketing area that has more than half of its route disposition within the Southeast marketing area would be locked into regulation under the Appalachian order.

Since October 1997, it is known that 2 pool distributing plants have gone out of business. One of these plants was located in Louisiana and the other in Missouri.

Of the 48 distributing plants, Georgia has 9; Louisiana, 10; Mississippi, 6; Alabama, 8; Arkansas, 6; Tennessee, 5; Missouri, 2; and Kentucky, 2. No distributing plants are located in the Florida counties included in the Southeast market area.

In Georgia, three pool distributing plants and one producer-handler are located in the Atlanta area, with 3 others elsewhere in the State. Georgia also has 1 partially regulated handler and 1 government agency (state prison) plant.

Eight of Louisiana's 10 distributing plants currently are and would continue to be fully regulated (pool plants) in this consolidated marketing area. Four of these 8 are located in either the New Orleans or Baton Rouge areas (2 in each). Four other pool distributing plants are located in Louisiana. The remaining two plants are affiliated with educational institutions.

Four of Mississippi's 6 currently operational distributing plants would be fully regulated pool plants in the Southeast market. Two educational institutions also have plants.

Seven of Alabama's distributing plants are fully regulated. One is located in the Birmingham area and 2 are located in the Mobile area. Of the remaining four, 2 are in northern Alabama, one is in central Alabama, and one is in the state's southeastern corner.

Four of Arkansas' 6 currently operational distributing plants are fully regulated; two are in the Little Rock area, and the other 2 are located in northwest Arkansas. Also located within Arkansas are 2 exempt distributing plants—one on the basis of size and one that is a state prison plant. Four of Tennessee's 5 distributing plants are, and are expected to be, fully regulated. Three of the 4 are located in the Nashville area and one fully regulated plant and one partially regulated plant are located in the Memphis area.

Two distributing plants that would be fully regulated under the Southeast market are located in the currently unregulated Kentucky counties that are added to this marketing area. One is located in Fulton in the southwest corner of Kentucky on the Tennessee border, and the other about 30 miles east of Fulton.

Two Missouri distributing plants are located in the consolidated Southeast area. One is a pool plant located in Springfield, and the other a plant exempt on the basis of institutional status located just south of the Springfield MSA.

Utilization

As in the case of milk production data, October 1997 data for the consolidated Southeast order are not used because of the termination that month of the Tennessee Valley order. Instead of using October 1995 data from the proposed rule, however, September 1997 data is used as representative for this section.

According to September 1997 pool statistics for handlers who are expected to be fully regulated under the Southeast order, the Class I utilization for the Southeast market was 84 percent. Based on calculated weighted average use values for (1) the current order with current use of milk, and (2) the current order with projected use of milk in the consolidated Southeast order, the potential impact of this rule on producers who supply the current market area is estimated to be a 3-cent per hundredweight increase (from $13.60 to $13.63).

For September 1997, Class I utilization for the Southeast market was 83.9 percent based on 357.2 million pounds of producer milk used in Class I out of 426 million total producer milk pounds.

Other Plants

Also located within the Southeast marketing area during May 1997 were 37 supply or manufacturing plants: 1 in Kentucky, 5 in Alabama (including 1 in the Birmingham area), 5 in Arkansas (including 1 in the Little Rock area), 7 in Georgia (including 4 in the Atlanta area), 3 in Louisiana (including 1 in the Baton Rouge area), 11 in Missouri, 2 in Mississippi, and 3 in Tennessee (including 1 each in the Memphis and Nashville areas). Eight of the 37 plants are pool plants. Of these pool plants, 2 primarily ship to distributing plants, 3 manufacture cheese, 1 manufactures Class II products, 1 manufactures powder and 1 primarily manufactures other products. Of the Southeast marketing area's 28 nonpool plants, 13 manufacture primarily Class II products, 3 manufacture cheese, 10 manufacture primarily other products, and 1 each manufacture primarily butter and cheese. One plant is a "split plant," with one side serving as a manufacturing facility primarily for Class II products, while the other side receives and ships Grade A milk.

Cooperative Associations

In December 1997, thirteen cooperative associations, including 3 of those that merged to become Dairy Farmers of America (DFA), represented members marketing 73 percent of the milk pooled on the Southeast market.

This number of cooperative associations is more than twice the number (six) that pooled milk on the Southeast order in December 1995. Of those six, National Farmers Organization (NFO) ceased marketing milk in the Southeast. Milk Marketing, Inc., headquartered in Strongsville, Ohio, and one of the cooperatives that formed DFA, marketed a small amount of milk in the Southeast in December 1997, and two cooperatives began marketing milk after December 1995. In addition, 5 cooperative associations representing Texas and New Mexico producers pooled milk on the Southeast order in December 1997.

The DFA cooperatives represented 71 percent of co-op milk and 52 percent of the total milk supply pooled under the Southeast order during December 1997. For the same month, Carolina-Virginia Milk Producers Association, Inc., represented 9 percent of the milk pooled by cooperative associations; the two new cooperatives pooled 8 percent of co-op milk; and the five Texas/New Mexico cooperatives pooled 7 percent.

Criteria for Consolidation

Retention of the Southeast marketing area as a single area is based on overlapping route dispositions within the marketing area to a greater extent than with other marketing areas. Procurement of producer milk also overlaps between states within the market. There is also a seasonal need for milk from outside the marketing area. However, the amount of supplemental seasonal supplies is not as great as the amount of milk that is actually pooled under the order from distant areas. There is common cooperative association membership within the marketing area.

As noted in the proposed rule, the addition of northwest Arkansas and southern Missouri to the marketing area is primarily in response to comments received during the public comment period.

Discussion of Comments and Alternatives

Prior to issuance of the proposed rule, alternatives that were considered included incorporating all of the State of Kentucky in the Southeast area, dividing the Southeast area on the state line between Mississippi and Alabama, combining the Florida, Carolina, Tennessee Valley and Southeast order areas, and adding the eastern part of the Texas order area to the Southeast. These

alternatives were analyzed in detail for the proposed rule and determined not to result in a configuration of marketing areas as appropriate as those proposed for reasons discussed in the proposed rule.

Seven comments filed in response to the proposed rule specifically addressed the consolidated Southeast marketing area. A comment filed on behalf of Piedmont Milk Sales, Inc., Hunter Farms, Land O'Sun, and Milkco, Inc., supported and endorsed the portion of the proposed rule that would maintain separate order areas for the Southeast and Appalachian areas. Comments filed by DFA and by Carolina-Virginia Milk Producers Association favored combining the proposed Southeast and Appalachian order areas. In addition, the Kentucky Farm Bureau Federation urged that all Kentucky counties and the proposed Appalachian order be combined with the Southeast. The comment stated that such a configuration would make milk utilization rates more similar across the order, would facilitate and encourage milk to flow to deficit areas and minimize any negative price impacts on producers. These comments were considered in the discussion of comments and alternatives under the Appalachian area.

Comments from Carolina-Virginia Milk Producers Association and Missouri Farm Bureau Federation support the inclusion, as proposed, of southern Missouri/northwest Arkansas in the Southeast marketing area. The Carolina-Virginia Milk Producers' comment noted that this area is a crucial part of the supply area for the southeast region, and that the exclusion of the area from the consolidated Southeast order area could have a detrimental impact on the over-order premium structure of that area. The comment stated that the correction of producer blend prices and creation of a unified marketing area in that part of the southeast region is justified. With regard to southern Missouri, a representative of the Subcommittee on Livestock of the U.S. House of Representatives Committee on Agriculture supported adding southeastern Missouri to the Southeast order area, as proposed. A comment filed by Barber Pure Milk Company opposed adding northwest Arkansas/southern Missouri to the Southeast marketing area on the basis of the minimal overlapping route disposition and potential of diluting the Southeast pool.

A substantial share of the milk production from the portions of Missouri and Arkansas that are added to the Southeast marketing area is pooled under the Southeast order, and this milk represents a substantial share of the total milk production that is pooled under the Southeast market.

Route disposition by distributing plants located within this area would become in-area dispositions from Southeast pool distributing plants. More than half of the dispositions from the three plants that would become Southeast pool distributing plants would be within the consolidated Southeast marketing area.

Mideast

The consolidated Mideast marketing area is comprised of the current Ohio Valley (Order 33), Eastern Ohio-Western Pennsylvania (Order 36), Southern Michigan (Order 40), part of the Michigan Upper Peninsula (Order 44), and Indiana (Order 49) marketing areas plus 6 currently unregulated Indiana counties, 2 whole and 3 partial currently unregulated Michigan counties, and 3 whole and 2 partial currently unregulated Ohio counties. There would be 301 whole and 1 partial county in this consolidated area. Three whole and one partial currently-unregulated Ohio counties that were proposed to be part of the Mideast area are not included.

Geography

The Mideast market is described geographically as follows:

Indiana—72 counties (64 currently in Order 49, 2 currently in Order 33, and 6 currently unregulated on the western edge of the State, just south of the northwest corner) Kentucky—18 counties (all currently in Order 33).

Michigan—77 counties. Two whole and 3 partial counties currently are unregulated. The rest of the area currently is included in Orders 40, 44, 49, and 33. Of the total 83 Michigan counties, only 6 in the western end of the Upper Peninsula are not included in the consolidated Mideast marketing area.

Ohio—84 whole and 1 partial county. Three whole and 2 partial counties to be included currently are unregulated. All of the State currently is included in Orders 33 and 36, except for 3 partial and 6 whole counties.

Pennsylvania—12 whole and 2 partial counties, currently in the Order 36 area.

West Virginia—37 counties; 20 currently in Order 33, 17 currently in Order 36.

The consolidated Mideast marketing area lies directly south of the Great Lakes, with the State of Michigan enclosed on the east and west sides by Lakes Huron and Michigan. On the eastern border of the marketing area, between the Mideast and Northeast marketing areas, is Pennsylvania State-regulated territory and the Allegheny and Appalachian Mountains. On the northeast border is the Western New York State order area.

The east-to-west distance across the consolidated marketing area is approximately 450 miles, from locations on the eastern edge of the area in western Pennsylvania to the border of Indiana and Illinois. Northwest to southeast, from Marquette, Michigan, in the Upper Peninsula to the northeast area of Kentucky in the marketing area is just over 800 miles. From the northern tip of lower Michigan to southern Indiana the more direct north-south distance is 530 miles.

The consolidated Mideast marketing area is contiguous to 3 other consolidated marketing areas. The consolidated Central marketing area would provide the western border of the Mideast marketing area along the Indiana-Illinois border, and the consolidated Appalachian area would provide the southern boundary. The western end of Michigan's Upper Peninsula, part of the consolidated Upper Midwest area, would adjoin the Mideast portion of the Upper Peninsula.

In terms of physical geography, most of the consolidated Mideast marketing area is at low elevations, and relatively flat. The climate and topography are favorable to milk production, with dairy being the number one agricultural commodity in terms of financial receipts in the State of Michigan in 1996. Dairy also ranks high in terms of financial receipts in the rest of the area; 3rd in Ohio and West Virginia, and 5th in Indiana.

Population

According to July 1, 1997, population estimates, the total population in the consolidated marketing area is 31 million. The 34 MSAs in the consolidated Mideast marketing area include 79.8 percent of the area's population. Over 55 percent of the area's population is contained in the 8 most populous MSAs, which each have over 950,000 people. Two-thirds of the population is located in the states of Michigan and Ohio.

The Mideast area's largest and 7th largest of the 34 MSAs are located in Michigan. Detroit-Ann Arbor-Flint, with 5.4 million population, is the largest MSA, and is located in the southeast portion of the state between Lakes Huron and Erie. Grand Rapids-Muskegon-Holland is the 7th largest Mideast MSA, is located approximately 150 miles west-northwest of Detroit, and has a population of 1 million. These two

MSAs contain two-thirds of the population of Michigan. There are 5 other MSAs in Michigan. Two have approximately 450,000 population each, one has approximately 400,000 population, and the other two average approximately 160,000 apiece. Eighty-four percent of the population of Michigan is located in these 7 MSAs, all in the lower half of southern Michigan.

Four of the 8 largest Mideast MSAs are located in the State of Ohio. These are: (1) Cleveland-Akron, the second-largest, with a population of 2.9 million, located on Lake Erie in northwestern Ohio; (2) Cincinnati-Hamilton, OH–KY–IN, the 4th largest, with a population of 1.9 million, located in the southwest corner of Ohio; (3) Columbus, the 6th largest, with a population of 1.5 million, located approximately midway between Cincinnati and Cleveland; and (4) Dayton, the 8th largest, with a population of .95 million.

There are 6 additional MSAs in Ohio, 2 with populations of approximately .6 million each, 1 with a population of .4 million, and 3 that average just over 150,000 each. Eighty-two percent of the population of Ohio is located in MSAs, most in the northern part of the State.

The third-largest MSA in the Mideast area is Pittsburgh, Pennsylvania, with a population of 2.4 million. Pittsburgh is 127 miles southeast of Cleveland. There are two smaller MSAs in the Pennsylvania portion of the consolidated Mideast marketing area, having an average population of about 200,000 each. Eighty-seven percent of the population of the Pennsylvania portion of the Mideast area is located in MSAs.

Indianapolis, Indiana, is the 5th largest MSA in the consolidated Mideast marketing area, with a population of 1.5 million. Indiana contains 9 additional MSAs, 2 with populations of .5 and .6 million, and 7 others that average 155,000 population. All but 2 of the 9 smaller MSAs are located north of Indianapolis. Seventy-four percent of the population of the portion of Indiana that is in the consolidated Mideast area is located in MSAs.

The portion of West Virginia that is within the consolidated Mideast area contains 4 MSAs, 3 of which are located on the West Virginia-Ohio border, along the Ohio River. The population of these MSAs averages just over 200,000. Forty-five percent of the population of the West Virginia portion of the consolidated Mideast area is located in MSAs.

Fluid Per Capita Consumption.

Estimates of fluid per capita consumption within the consolidated Mideast area vary from 18.75 pounds per month for Michigan to 20.4 pounds per month for Indiana. Use of 19 pounds per month as a weighted average results in an estimated 589 million pounds of fluid milk consumption for the Mideast marketing area. Mideast handlers' route disposition within the area during October 1997 totaled 544 million pounds, with another 36 million distributed by 23 handlers fully regulated under other orders. An additional 4.5 million pounds was distributed by partially regulated handlers, producer-handlers, and handlers that would be exempt under this rule on the basis of each having less than 150,000 pounds of route disposition per month.

Milk Production

In October 1997, nearly 11,000 producers from 335 counties in 12 states pooled 1 billion pounds of milk on Federal Orders 33, 36, 40, 44 and 49. Over 90 percent of this producer milk came from Mideast marketing area counties. The States of Indiana, Michigan, Ohio and Pennsylvania supplied 95 percent of the milk (13%, 39.6%, 30.6% and 11.9%, respectively), with 90 percent coming from counties that would be in the consolidated Mideast area. Just over two-thirds of the milk pooled under these orders was produced in Michigan and Ohio counties located within the consolidated marketing area.

Other states pooling milk on the orders consolidated in the Mideast area were Illinois (0.5%), Iowa (0.1%), Kentucky (0.1%), Maryland (0.4%), New York (2.7%), Virginia (0.1%), West Virginia (1.0%), and Wisconsin (0.1%). These states contributed a total of 4.9 percent of the milk pooled on the 5 orders.

Sixty-two of the counties that had production pooled under the five current orders supplied more than 5 million pounds of milk each during October 1997. Six of the counties were in northern and northeast Indiana, over 100 miles from Indianapolis; 11 were in western Pennsylvania—7 of them within 100 miles of Pittsburgh, and the others, including those with the most production (10–22 million pounds), in the northwest corner of the state, within 100 miles of Cleveland, Ohio. Twenty-eight Michigan counties pooled more than 5 million pounds each under the 5 orders, including 14 counties with more than 10 million pounds and 4 counties with more than 20 million pounds. All of these counties are located within 110 miles of Detroit or Grand Rapids, the two largest MSAs in Michigan. The heaviest milk production area of Ohio is the northeast quadrant of the State and within 50 miles of the Akron-Cleveland MSA, including 5 counties supplying over 10 million pounds each during October 1997, and 1 county pooling over 40 million pounds. A smaller production area in Ohio is located in the central portion of the western edge of the State within 80 miles of the Dayton MSA, and includes two counties with over 10 million pounds production and 1 county with over 20 million. The only population centers of the marketing area that do not appear to have adequate supplies of nearby milk are Indianapolis and Cincinnati, in the southern portion of the area.

Distributing Plants

Using distributing plant lists included in the proposed rule, with the pooling standards adjusted to 25 percent of route disposition as in-area sales, updated for known plant closures through January 1998, 72 distributing plants would be expected to be associated with the Mideast marketing area, including 51 fully regulated distributing plants (all currently fully regulated), 4 partially regulated (all currently partially regulated), 4 exempt plants that would have less than 150,000 pounds of total route disposition per month (all currently fully regulated), and 13 producer-handlers (all currently producer-handlers). Since October 1997, 5 distributing plants (1 fully regulated plant in Indiana and 1 in Michigan; 2 partially regulated plants in Pennsylvania; and a producer-handler in Pennsylvania), have gone out of business.

There would be 40 distributing plants in the 8 Mideast MSA's that each have over a million people (including Dayton-Springfield which has .95 million). Twenty-seven of these plants would be pool plants—5 in the Pittsburgh area, 6 in the Detroit area, 4 in the Cleveland area, 3 each in the Grand Rapids, Indianapolis and Cincinnati areas, 2 in Columbus and 1 in Dayton. Nine of the plants in the large MSA areas would be producer-handlers, 3 would be exempt on the basis of having less than 150,000 pounds of milk per month in Class I route dispositions, and 1 would be partially regulated.

Of the remaining 29 distributing plants located in the marketing area, 18 would be located in other MSA's as follows: 5 pool plants and 1 producer-handler in Ohio; 4 pool plants in Indiana; 4 pool plants in Michigan; 2 pool plants in Pennsylvania; 1 pool plant in Kentucky; and 1 pool plant in

West Virginia. The ten remaining distributing plants located in the marketing area would not be located in MSA's. Three of these pool plants and 2 producer-handlers would be located in Michigan; 2 pool plants and 1 plant exempt on the basis of size would be located in Ohio; 2 pool plants would be located in Indiana; and 1 producer-handler would be located in West Virginia.

There are 3 distributing plants that would be outside the marketing area. These would be 1 partially regulated plant in Pennsylvania, and 1 in Virginia. In addition, a small pocket of unregulated area within Ohio would contain one partially regulated plant.

The in-area route disposition standard, proposed to be 30 percent of route dispositions, will instead be 25 percent—the same percentage as in other consolidated orders. This percentage should not result in the full regulation of any handler not currently fully regulated unless they increase sales in the marketing area.

Utilization

According to October 1997 pool statistics for handlers who would be fully regulated under this Mideast order, the Class I utilization percentages for the Ohio Valley, Eastern Ohio-Western Pennsylvania, Southern Michigan, Michigan Upper Peninsula, and Indiana markets were 58, 58, 55, 89, and 70 percent, respectively. Based on calculated weighted average use values for (1) the current order with current use of milk, and (2) the current order with projected use of milk in the consolidated Mideast order, the potential impact of this consolidation on producers who supply the current market areas is estimated to be: Ohio Valley, a 4-cent per cwt increase (from $13.46 to $13.50); Eastern Ohio-Western Pennsylvania, a 4-cent per cwt decrease (from $13.51 to $13.47); Southern Michigan, a 6-cent per cwt increase (from $13.27 to $13.33); Michigan Upper Peninsula, a 25-cent per cwt decrease (from $13.34 to $13.09); and Indiana, a 11-cent per cwt decrease (from $13.52 to $13.41). The large decrease for Michigan Upper Peninsula is a result of changing from its current individual handler pool provisions to a marketwide pool (very little reserve milk is pooled under Order 44—instead, it is pooled on the Southern Michigan order). For October 1997, combined Class I utilization for Orders 33, 36, 40, 44 and 49 was 58.7 percent based on 601.6 million pounds of producer milk used in Class I out of 1.025 billion total producer milk pounds pooled. The weighted average use value for the consolidated Mideast market is estimated to be $13.42 per hundredweight.

The Mideast is one of two consolidated marketing areas that has a significantly higher-than-average percentage of its milk used in Class II. Currently, the Southern Michigan, Ohio Valley and Indiana markets have Class II utilization over 20 percent. When the markets are combined the average for the consolidated market will be just under 20 percent.

Other Plants

Also located within the Mideast marketing area during May 1997 were 59 supply or manufacturing plants: 1 in Charleston, West Virginia, 4 in Pennsylvania, 18 in Michigan, 9 in Indiana and 27 in Ohio. Nine of the 59 plants are pool plants. Of these pool plants, 6 are supply plants—1 manufactures primarily Class II products, 3 manufacture primarily powder, and 2 have no primary product, only shipping to distributing plants. Three pool plants are manufacturing plants, manufacturing primarily cheese. Of the 50 nonpool plants in the Mideast marketing area, one is a supply plant that manufactures primarily cheese. The other 49 nonpool plants are manufacturing plants. In this area of high Class II use, 28 of the nonpool plants manufacture primarily Class II products. In addition, 1 manufactures primarily butter, 1 manufactures primarily powder, 27 manufacture primarily cheese, and 2 manufacture primarily other products.

There are also two manufacturing plants in the currently-unregulated area of Ohio—a nonpool plant that manufactures primarily Class II products in the unregulated county of Erie, Ohio and a nonpool plant that manufactures primarily cheese in the unregulated area of Sandusky, Ohio.

Cooperative Associations

In December 1997, 20 cooperative associations pooled member milk under the 5 orders to be consolidated (considering Milk Marketing, Inc., and Mid-America Dairymen, Inc., as one entity—DFA). Two of the cooperatives pooled milk on the four principal orders, 3 cooperatives had member milk pooled on 3 of the principal orders, 3 cooperatives pooled milk on 2 of the principal orders, and 12 of the cooperatives pooled milk on only one of the orders. The percentage of cooperative member milk pooled on each of the orders varied from 44 percent under Order 36 to 86.5 percent under Order 40. Of the total milk pooled on the 5 orders in December 1997, 68 percent was marketed by cooperative associations.

Criteria for Consolidation

Overlapping route disposition, overlapping production areas, natural boundaries, and multiple component pricing are all criteria that support the consolidation of these current order areas into a consolidated Mideast marketing area. Handlers who would be fully regulated under the consolidated order distribute approximately 90 percent of their route dispositions within the consolidated marketing area, and 93 percent of the milk distributed within the marketing area is from handlers who would be regulated under the order.

Many of the counties from which milk was pooled on the individual orders supplied milk to three or four of those orders. For instance, milk from a number of the same Michigan counties was pooled on the Ohio Valley, Indiana and Southern Michigan orders; milk from several of the same Indiana counties was pooled on the Ohio Valley, Southern Michigan and Indiana counties; and milk from some of the same Ohio counties was pooled on the Ohio Valley, Indiana, and Southern Michigan orders.

The Great Lakes serve as natural boundaries on the northern edge of the area and on the eastern and western sides of Michigan, as do the mountains in central Pennsylvania. All of the orders involved in the consolidated Mideast area contain multiple component pricing provisions. Instead of the Southern Michigan component pricing plan, proposed for the consolidated Mideast order in the proposed rule, the same component pricing provisions adopted for the other consolidated orders have been incorporated in the Mideast order.

Discussion of Comments and Alternatives

Prior to issuance of the proposed rule, alternatives to the consolidation of the Ohio Valley, Eastern Ohio-Western Pennsylvania, Southern Michigan, Indiana, and partial Michigan Upper Peninsula marketing areas that were considered included the addition of Pennsylvania Milk Marketing Board (PMMB) Area 6 to the consolidated Mideast area, with some consideration being given to the addition of currently-unregulated areas of Maryland and West Virginia, and moving the southern part of Ohio and part of West Virginia to the Appalachian order area.

Ten comments that pertained specifically to the consolidated Mideast marketing area were filed by ■

commenters in response to the proposed rule. Three of the comments, from Michigan Milk Producers Association, United Dairy, Inc., and DFA, plus a very large number of comments that did not specifically mention the Mideast area, addressed the inclusion of unregulated areas in consolidated Federal order areas. The DFA comment included the signatures of 600 producers to a "Petition to Eliminate all Unregulated Market Areas in Pennsylvania." Although the large number of comments that did not specifically mention the Mideast area were unclear about exactly what additional area should be added to the marketing area, they appeared to favor the addition of PMMB Area 6, with perhaps some western Maryland and West Virginia territory, to the eastern edge of the Mideast area.

As stated in the introduction to the consolidation discussion, consolidation of the existing orders does not necessitate expansion of the consolidated orders into currently-unregulated areas, especially if such expansion would result in the regulation of currently-unregulated handlers. Therefore, PMMB Area 6 and the unregulated portions of Maryland and West Virginia should not be added to the consolidated Mideast order area.

Two comments from DFA recommended including Charleston, West Virginia, and areas of West Virginia south of Charleston, as well as the Ohio counties surrounding Cincinnati and the northern counties of Kentucky, in the Appalachian market to help provide an economic incentive through the expected higher blend prices to producers to supply milk to the plants in that area. A comment by Trauth Dairy in Newport, Kentucky, also urged the inclusion of the northern areas of Kentucky in the Appalachian area instead of the Mideast area. These comments are addressed in the description of comments and alternatives considered for the Appalachian order area.

Schneider's Dairy suggested that a pass-through provision similar to that of the current New York-New Jersey order be incorporated in the Mideast order to assure that regulated handlers distributing fluid milk products in unregulated areas where they compete with unregulated handlers are not disadvantaged. As discussed in the section of this decision dealing with Northeast regional issues, Class I prices are determined by the need to attract milk supplies to the location of the processing plant, and not by where the fluid products are distributed. Therefore, a pass-through provision is not incorporated in either the Northeast order or this order.

Independent Cooperative Milk Producers Association and Schneider's Dairy supported the consolidation of order areas to form the Mideast area as proposed.

Upper Midwest

The consolidated Upper Midwest marketing area is comprised of the current Upper Midwest (Order 68) and Chicago Regional (Order 30) marketing areas, with the addition of the western portion of the Michigan Upper Peninsula (Order 44) marketing area. There are 204 counties in this consolidated area. One partial Illinois county proposed to be part of the Central order area has been added to this area, and another partial Illinois county proposed to be part of this area has been changed to the Central order area.

Geography

The consolidated Upper Midwest marketing area is described geographically as follows: 15 counties in Illinois (all currently in Order 30), 6 counties in Iowa (all currently in Order 68), 6 counties in Michigan (all currently in Zones I and IA of Order 44), 83 counties in Minnesota (all currently in Order 68), 16 counties in North Dakota (all currently in Order 68), 8 counties in South Dakota (all currently in Order 68), and 70 counties in Wisconsin (43 currently in Order 30, 20 currently in Order 68, and 7 currently unregulated). This market is about 600 miles east to west and about the same distance north to south.

The area described above is contiguous to the consolidated Central market to the south, a small corner of the consolidated Mideast market to the southeast, and the eastern portion of Michigan's Upper Peninsula, also part of the consolidated Mideast market, to the northeast. North of the Upper Midwest market is Lake Superior and the Canadian border, and west of the market is a large sparsely-populated and unregulated area. Most of the eastern border of the marketing area is Lake Michigan.

The consolidated Upper Midwest marketing area is generally low-lying, with some local differences in elevation in Wisconsin and the upper peninsula of Michigan. Natural vegetation in the western part of the area is tall-grass prairie, with the eastern two-thirds of the northern portion being broadleaf forest, coniferous forest, and mixed broadleaf and coniferous forest. Annual precipitation averages 30–35 inches per year. Most of the area experiences summer temperatures that average about 75 degrees; the northern and western portions average winter temperatures are in the low 'teens, while the southern and more eastern portions experience average winter temperatures in the 20's. The far western part of the market predominantly grows mixed field crops, with cattle and soybeans more to the southwest. Both Minnesota and Wisconsin are included in the top five milk-producing states, and dairy is the number 1 agricultural enterprise in Wisconsin, generating over half of the State's income derived from agricultural commodities.

Population

According to July 1, 1997, population estimates, the total population of the consolidated Upper Midwest marketing area is approximately 18.5 million. Using Metropolitan Statistical Areas (MSAs), there are 3 population centers over 1 million. The Chicago-Gary-Kenosha area, primarily in northeastern Illinois, is the largest, with a 7.9 million population in the marketing area. The Minneapolis-St. Paul area, located mostly in Minnesota, is next with 2.8 million; and the third-largest MSA is Milwaukee-Racine, Wisconsin, with a population of 1.6 million. The Chicago area is located in the southeast corner of the marketing area, on the west side of the southern end of Lake Michigan, with Milwaukee approximately 85 miles north, also along Lake Michigan. Minneapolis is located 400 miles northwest of Chicago, along the Minnesota-Wisconsin border.

Approximately two-thirds of the population of the consolidated marketing area is within the three largest MSAs, with 81 percent of the population contained within the area's 17 MSA's (with the 14 smaller MSAs averaging 196,000 population).

Sixty percent of the population of the market is concentrated in the Illinois and southeast Wisconsin portion of the marketing area. In Wisconsin, nearly 90 percent of the population is located in the southern two-thirds of the state, and in Minnesota 85 percent of the population is in the southern half of the state.

Fluid Per Capita Consumption

Based on the population figure of 18.5 million and an estimated per capita fluid milk consumption rate of 20 pounds of fluid milk per month, total fluid milk consumption in the consolidated Upper Midwest marketing area is estimated at 370 million pounds per month. Plants that would be fully regulated distributing plants under the Upper Midwest order had route

disposition within the market of 343 million pounds in October 1997. Handlers fully regulated under other Federal orders distributed 43 million pounds in the consolidated marketing area during October 1997, while partially regulated plants distributed 1.7 million pounds. Producer-handlers and exempt plants operating in the combined marketing areas during this month had a combined route disposition of less than .5 million pounds.

Milk Production

In October 1997, 2.4 billion pounds of milk were associated with the Chicago Regional and Upper Midwest markets, but only 1.6 billion pounds of milk were pooled because of class price relationships. The 2.4 billion pounds were produced by 27,250 producers located in 13 states from Tennessee to Minnesota, and from New Mexico to Michigan. However, over 93 percent of the producer milk was produced within the consolidated marketing area, and 91.4 percent was produced within the states of Wisconsin and Minnesota. As with population density and milk plant density, most milk production in Minnesota and Wisconsin occurs in the southern parts of these states. Over 85 percent of Wisconsin milk associated with the combined Chicago Regional-Upper Midwest orders in October 1997 was produced in the southern two-thirds of the State, while 84 percent of the Minnesota milk associated with the two orders was produced in the southern half of Minnesota.

Fifty-two counties, 10 in Iowa, 15 in Minnesota, and 27 in Wisconsin supplied milk to both the current Chicago Regional and Upper Midwest orders during October 1997. The largest part of the common production area is in Wisconsin, where 27 counties supply 25 percent of the milk associated with Order 30, and 30 percent of the milk associated with Order 68. When data for the 52 counties is combined, 26 percent of the Chicago Regional market and 42 percent of the Upper Midwest market is supplied by this common production area.

Distributing Plants

Using distributing plant lists included in the proposed rule, with the pooling standards adjusted to 25 percent of route disposition as in-area sales, updated for known plant closures through December 1998, 35 distributing plants would be expected to be associated with the Upper Midwest marketing area, including 27 fully regulated distributing plants (2 currently partially regulated and 25 currently pool plants), 4 partially regulated (3 currently partially regulated and 1 currently fully regulated), 1 producer-handler, and 3 exempt plants, based on distributing less than 150,000 pounds of total route disposition per month (1 new, 1 currently partially regulated, and 1 currently unregulated). Since October 1997, one pool distributing plant and one partially regulated plant have gone out of business.

There would be 6 distributing plants in the Chicago area (5 pool plants and 1 exempt plant). The Milwaukee-Racine area would have 2 pool distributing plants. There would be 7 distributing plants in the Minneapolis-St. Paul area (6 pool plants and 1 partially regulated plant). Of the remaining 20 distributing plants, 16 are located in other MSAs as follows: 4 pool plants in Minnesota, 2 pool plants and 2 partially regulated plants in North Dakota, 1 pool plant in Illinois, and 5 pool plants, 1 partially regulated plant, and 1 exempt plant in Wisconsin. Four of the remaining distributing plants are not located in MSAs: 1 pool plant and 1 exempt plant in Minnesota, 1 producer-handler in Wisconsin and 1 pool plant in Michigan.

Utilization

According to October 1997 pool statistics for handlers who would be fully regulated under this Upper Midwest order, the Class I utilization percentages for the Chicago Regional and Upper Midwest were 29 and 19 percent, respectively. Based on calculated weighted average use values for (1) the current order with current use of milk, and (2) the current order with projected use of milk in the consolidated Upper Midwest order, the potential impact of this consolidation on producers who supply the current market areas is estimated to be: Chicago Regional, a 3-cent per cwt decrease (from $12.98 to $12.95), and Upper Midwest, a 2-cent per cwt increase (from $12.89 to $12.91). The weighted average use value for the consolidated Upper Midwest market, based on October 1997 data, is estimated to be $12.94 per hundredweight. However, a substantial amount of milk was omitted from both pools for October 1997 because of unusual class price relationships. Annual Class I utilization percentages may be considered more representative for these markets. For the year 1997, the annual Class I utilization percentage for the Chicago Regional market was 21.5, with 18.7 for the Upper Midwest. The Class I use percentage for the entire Michigan Upper Peninsula market, which has a individual handler pool and represents a very small portion of the producer milk that would be expected to be pooled under the consolidated Upper Midwest order, was 89 percent. It is estimated that the Class I use percentage for the consolidated order would be in the neighborhood of 20 percent.

Other Plants

Located within the consolidated Upper Midwest marketing area during May 1997 were 301 supply or manufacturing plants: 1 in South Dakota, 3 in Iowa, 28 in Illinois (12 in the Chicago area), 39 in Minnesota (over three-quarters of which are located in the southeastern quarter of the State), and 230 in Wisconsin (over 90 percent of which are scattered throughout the southern three-quarters of the state). One hundred five of the plants are pool plants, or have a "pool side." Eighty-five of the 105 pool plants (1 in Iowa, 4 in Illinois, 16 in Minnesota and 64 in Wisconsin) are "split plants;" that is, one side of a plant is a manufacturing facility and the other side receives and ships Grade A milk, and accounting is done separately. In most cases, the nonpool portion of such a plant is a manufacturing operation, primarily cheese-making. Most of the other pool plants are pool supply plants, located primarily in Wisconsin, that ship milk to pool distributing plants.

The 196 nonpool plants in the consolidated Upper Midwest marketing area are manufacturing plants—103 manufacture primarily cheese, 16 manufacture primarily Class II products, 15 manufacture primarily butter, 23 manufacture primarily milk powders, and 39 manufacture primarily other products.

Also associated with the Upper Midwest order, but not within the marketing area, are 2 pool supply plants and 6 manufacturing plants (3 manufacturing primarily cheese, 2 making Class II products, and 1 butter plant) in North Dakota.

Cooperative Associations

In December 1997, 67 cooperative associations pooled member milk on the Chicago Regional and Upper Midwest orders, providing 99 percent of the milk pooled under each of the two orders. Nine of the cooperatives marketed milk in both orders, accounting for nearly half of the milk pooled in the Upper Midwest (and 42.9 percent of the cooperative member milk), and 66.8 percent of the milk pooled in the Chicago Regional market (67.5 percent of total cooperative member milk). In the two markets, 16 cooperatives pooled milk only under Order 30, and 42

cooperatives pooled milk only under Order 68.

Criteria for Consolidation

As in the proposed rule, the Chicago Regional, Upper Midwest, and the western end of the Michigan Upper Peninsula marketing areas should be combined into a consolidated Upper Midwest Federal order marketing area. Although these areas do not have a considerable degree of overlapping fluid milk disposition, they do have an extensive overlapping procurement area. Handlers regulated under the Chicago Regional and Upper Midwest markets (the predominant markets in this consolidation) distribute milk into markets further south, and approximately 10 percent of the fluid milk distributed within the consolidated area is distributed by handlers regulated under other orders. However, these other orders are more closely related to markets to the south than to the consolidated Upper Midwest order area. On that basis, it is more appropriate to include them in other consolidated marketing areas.

Other aspects of the consolidation also fit the criteria set forth. The consolidated Upper Midwest area is bounded on three sides by Lakes Michigan and Superior, the international border with Canada, and a large unregulated area. A significant portion of both the Chicago Regional and Upper Midwest markets' milk is supplied by the same cooperative associations. The two predominant markets have identical multiple component pricing plans, and both have large reserves of milk that normally is used in manufactured products, primarily cheese. Approximately 90 percent of the milk used in manufacturing in these markets is used to make cheese. The amount of cheese manufactured from milk pooled under these milk orders is enough to supply a population 3 times greater than that of the consolidated marketing area. Fluid milk handlers in both markets must compete with cheese manufacturers for a milk supply, and marketing order provisions for both markets must provide for attracting an adequate supply of milk for fluid use.

Discussion of Comments and Alternatives

Prior to issuance of the proposed rule, alternatives to the consolidation of the order areas included in the Upper Midwest marketing area that were considered included combining the Iowa, Nebraska-Western Iowa, and Eastern South Dakota order areas with those of the Chicago Regional and Upper Midwest areas in a consolidated Upper Midwest order. Also considered was a consolidation of even more marketing areas (up to 10; including Indiana, Illinois, parts of Kentucky, Missouri, and Kansas) that would increase the population and Class I use of the consolidated Upper Midwest area.

Over 160 comments received in response to the proposed rule concerned the proposed consolidated Upper Midwest marketing area. Nearly 140 of these comments (including approximately 120 form letters) supported a consolidation of 10 marketing areas for the purpose of increasing the Class I utilization of the consolidated Upper Midwest order area to a level closer to the U.S. national average or, at the very least, including the Iowa, Eastern South Dakota, and Nebraska-Western Iowa marketing areas in the consolidated Upper Midwest area.

No justification on the basis of the criteria of overlapping sales and procurement areas could be found for any increase in a consolidated marketing area that would be comprised of the Chicago Regional and Upper Midwest order areas beyond the addition of the Iowa, Eastern South Dakota, and Nebraska-Western Iowa marketing areas. The collection of more detailed data concerning the overlap in route disposition and milk procurement showed clearly that those three areas are more closely related to markets to the south than to the north, with approximately 85 percent of the total fluid milk distributed by handlers regulated under the three orders disposed of in the consolidated Central market.

The numerous markets recommended by upper midwest producer groups to be consolidated with the Chicago Regional and Upper Midwest order areas have very little distribution or procurement overlap with those areas, aside from occasional need for reserve milk supplies. When reserve supplies are needed by the other markets, upper midwest milk can be, and is, pooled on the more southern markets and shares in their pools. The potential gain of adding areas recommended by upper midwest producer groups would be much less than the loss to producers whose milk is pooled under orders to be consolidated in the Central, Mideast and Appalachian marketing areas.

Approximately 10 comments, including some from cooperative associations representing large numbers of producers, advocated the addition of the northeast portion of the Iowa marketing area to the consolidated Upper Midwest area based on the extensive overlap of producers, Class I sales, and geographic similarities between that area and the adjoining consolidated Upper Midwest area. An equivalent number of comments, most from Iowa interests, argued that the consolidated Upper Midwest order should remain as proposed. This issue is more fully discussed in the "Comments and Alternatives" section of the description of the Central order area, as is the assignment to consolidated areas of 3 counties, each in its entirety, that currently are split between orders.

One comment advocated the addition of the Gary, Indiana, area to the consolidated Upper Midwest area instead of the Mideast area on the basis that Gary, Indiana, is part of the greater Chicago market. This portion of the current Indiana order area historically has been part of the Indiana marketing area, and there is no data supporting its separation from that area. The single pool distributing plant located in Gary has ceased to process milk. Any distribution in the Gary area acquired by Chicago handlers as a result will be pooled as Class I use under the consolidated Upper Midwest order.

Based on the considerations of the most recent data available, comments received, and the stated consolidation criteria, limiting the extent of the consolidated Upper Midwest marketing area to the areas of the current Chicago Regional and Upper Midwest marketing areas, with the addition of the western part of the Michigan Upper Peninsula marketing area, represents the most appropriate marketing area configuration for the north central area of the U.S.

Central

The consolidated Central order marketing area merges the current 9 Federal order marketing areas of Central Illinois, most of Southern Illinois-Eastern Missouri, most of Southwest Plains, Greater Kansas City, Iowa, Eastern South Dakota, Nebraska-Western Iowa, Western Colorado, and Eastern Colorado (Federal orders 50, 32, 106, 64, 79, 76, 65, 134, and 137, respectively). Moving to the consolidated Southeast marketing area are 6 Missouri counties currently in Federal order 32 and, from Order 106, 11 northwest Arkansas counties and 22 southern Missouri counties. Order 106 counties in Kansas and Oklahoma remain in the Central market. In addition, some counties in Colorado, Illinois, Iowa, Kansas, Missouri and Nebraska that currently are not part of any order area are included in the consolidated Central market. There are 543 counties and the City of St. Louis,

Missouri, in this consolidated area. The marketing area has changed from the proposed rule by the addition of the Western Colorado marketing area and seven currently-unregulated Colorado counties, the elimination of 6 currently-unregulated Missouri counties, the addition of two partial counties and the deletion of one partial county for the purpose of eliminating the inclusion of partial counties.

Geography

The consolidated Central marketing area would include the following territory:

Colorado—44 counties, including the 30 Colorado counties currently in the Eastern Colorado marketing area and the 4 Colorado counties in the Western Colorado marketing area. Ten currently-unregulated counties, 3 in the southeast corner of the state between the Eastern Colorado and Southwest Plains marketing areas, and 7 in the central part of the State between the Eastern Colorado and Western Colorado marketing areas, are added.

Illinois—87 counties, including the 5 of the 6 counties currently in the Iowa marketing area (of the 2 partial Illinois counties in the Iowa marketing area, all of Whiteside and none of Jo Daviess are included in the Central area), the 19 counties currently in the Central Illinois marketing area, the 49 counties currently in the Southern Illinois-Eastern Missouri marketing area and 8 currently-unregulated adjacent counties in southern Illinois, and 6 currently-unregulated counties in western Illinois located between the current Central Illinois and Southern Illinois-Eastern Missouri order areas and the Mississippi River.

Iowa—93 counties, including the 68 counties currently in the Iowa marketing area, the 17 counties currently in the Nebraska-Western Iowa marketing area, the 1 county currently in the Eastern South Dakota marketing area, 6 currently unregulated counties in the northwestern part of Iowa, and 1 currently unregulated county in the southeastern corner of Iowa.

Kansas—the entire State (105 counties).

Minnesota—the 4 southwestern Minnesota counties that currently are in the Eastern South Dakota marketing area.

Missouri—39 counties and 1 city, including 6 of the counties and 1 city that currently are in the Southern Illinois-Eastern Missouri marketing area, the 20 counties that currently are in the Greater Kansas City marketing area, the 5 counties that currently are in the Iowa marketing area; and 8 currently-unregulated counties distributed around the center area proposed to remain unregulated.

Nebraska—66 counties in the southern and eastern parts of Nebraska; omitting the 11 counties in the panhandle that currently are part of the Nebraska-Western Iowa marketing area, and adding 5 currently-unregulated counties in the southwest corner of the State between the Nebraska-Western Iowa and Eastern Colorado marketing areas and 3 currently-unregulated counties in the southeast corner of the State between the Nebraska-Western Iowa and Greater Kansas City marketing areas.

Oklahoma—the entire State (77 counties).

South Dakota—the 26 eastern South Dakota counties (including the portion of Union County that currently is in the Nebraska-Western Iowa marketing area) that currently are in the Eastern South Dakota marketing area.

Wisconsin—the 2 southwest Wisconsin counties that currently are in the Iowa marketing area.

The consolidated Central marketing area is adjacent to the consolidated Upper Midwest order area on the north and northeast, the consolidated Mideast and Appalachian areas on the east, and the northwest corner of the Southeast order area and the consolidated Southwest area on the south and the consolidated Western order area on the west. The area north of approximately the western half of the consolidated Central area also is unregulated. The north-south distance covered by the area is approximately 800 miles, from Watertown, South Dakota, to Ardmore, Oklahoma. The east-west extent of the area, from the Indiana-Illinois border to the Colorado/Utah border, is approximately 1,200 miles.

Geographically, the Central marketing area includes a wide range of topography and climate types, ranging from the Colorado Plateau and the Rocky Mountains in the west to the central section of the Mississippi River Valley toward the eastern part of the area. Precipitation ranges from less than 15 inches per year in Denver, Colorado, to more than 30 inches at St. Louis, Missouri. Most of the area experiences fairly hot summer temperatures, while winter temperatures vary somewhat more than summer, with colder winter temperatures occurring in the northern and western parts of the Central area. The natural vegetation ranges from desert and desert scrub in western Colorado through coniferous forest in the Rocky Mountains to short grass prairie in eastern Colorado through tall grass prairie in eastern South Dakota, Nebraska, Kansas and Oklahoma, and much of Illinois; to broadleaf forest on both sides of the Mississippi River.

Population

According to July 1, 1997, population estimates, the total population in the consolidated Central marketing area is approximately 21.5 million. Using Metropolitan Statistical Areas (MSAs), there are four population centers over 1 million. The St. Louis, Missouri/Illinois, area is the largest, with over 2.6 million population, and the Denver-Boulder-Greeley, Colorado, area is next with approximately 2.3 million. Kansas City, Missouri/Kansas, has a population of 1.7 million, and Oklahoma City, Oklahoma, is just over 1 million. Approximately thirty-five percent of the population of the consolidated marketing area is within these four largest MSAs, with nearly two-thirds of the population contained within the area's 32 MSA's (with the 28 smaller MSAs averaging 228,559 population). The Colorado portion of the marketing area has 91.3 percent of its population concentrated in 5 MSA's. The Missouri portion has 94.4 percent concentrated in 3 MSA's.

Fluid Per Capita Consumption

Based on the population figure of 21.5 million and a per-capita fluid milk consumption rate of 19 pounds of fluid milk per month (a weighted average based on state populations in the marketing area and fluid per capita consumption estimates for each state), total fluid milk consumption in the consolidated Central marketing area would be approximately 408.5 million pounds per month. Plants that would be fully regulated distributing plants in the Central order had route disposition within the nine marketing areas included in the consolidated Central area of 366 million in October 1997. It is likely that most of the milk distributed within formerly unregulated areas by Central order handlers would be distributed within the consolidated Central marketing area. The 11 producer-handlers and 3 exempt plants operating in the Central market during October 1997 had a combined in-area route disposition of 3 million pounds, partially regulated plants distributed 2 million pounds in the marketing area, and plants that are expected to be fully regulated under other consolidated orders distributed 59 million pounds in the Central marketing area during October 1997.

Milk Production

In October 1997, 996.7 million pounds of milk were associated with the

orders consolidated in the Central market (including all of the milk pooled under Orders 32 and 106). However, because of class price relationships in the Iowa and Nebraska-Western Iowa markets, only 893.2 million pounds of the milk was pooled. The 996.7 million pounds were produced by 9,900 producers located in 17 states from Idaho to Kentucky, and from Texas to Minnesota. Three-quarters of the milk associated with the Central market was produced within the consolidated marketing area. The states contributing the most producer milk were, in descending order of volume, Iowa, Colorado, Missouri, Kansas, Illinois and Oklahoma. However, 68 percent of the Missouri producer milk came from farms in counties which are included in the consolidated Southeast marketing area. These 6 States accounted for 71 percent of the producer milk associated with the nine current orders to be consolidated. All of the states having substantial portions of their areas in the consolidated Central market contribute producer milk to at least two of the current nine individual orders, with five of the states (Iowa, Kansas, Minnesota, Missouri, and Nebraska) supplying milk to five of the order areas each.

Distributing Plants

Using distributing plant lists included in the proposed rule and the pooling standards adjusted to 25 percent of route dispositions as in-area sales, updated for known plant closures through December 1998, 57 distributing plants would be expected to be associated with the Central marketing area, including 35 fully regulated distributing plants (all currently pool plants), 1 partially regulated (currently partially regulated), 3 plants exempt on the basis of size (currently pool plants but have less than 150,000 pounds of total route disposition per month), 13 producer-handlers (all currently producer-handlers), 1 unregulated plant (located in the unregulated central portion of Missouri), and 4 government agency plants (all currently government agency plants). Since October 1997, it is known that 1 pool distributing plant (in Illinois) and 1 partially regulated plant (in Wyoming) have gone out of business.

There would be 10 distributing plants in the Denver area (7 pool plants and 3 producer-handlers). The Kansas City area would have 1 pool distributing plant. The St. Louis area would have 6 distributing plants (4 pool plants, 1 exempt plant, and one producer-handler). There would be 1 pool distributing plant and 2 producer-handlers in the Oklahoma City area. Of the remaining 37 distributing plants, 19 are located in other MSAs as follows: 1 pool plant, 1 exempt plant (on the basis of size) and 1 producer-handler in Colorado; 1 pool plant in Illinois; 4 pool plants, 1 producer-handler and 1 exempt plant in Iowa; 1 pool plant in Kansas; 3 pool plants in Nebraska; 1 pool plant and 1 producer-handler in Oklahoma; 1 pool plant and 1 partially regulated plant in South Dakota, and 1 pool plant in Wyoming.

Eighteen of the remaining distributing plants are not located in MSAs. They are: 1 pool plant and 1 government agency plant in Colorado; 4 pool plants and 1 government agency plant in Illinois; 1 pool plant and 1 producer-handler in Iowa; 1 pool plant and 1 government agency plant in Kansas; 1 unregulated and 2 producer-handlers in Missouri; 1 producer-handler in Nebraska; 2 pool plants in Oklahoma; and 1 government agency plant in South Dakota.

Utilization

According to October 1997 pool statistics for handlers who would be fully regulated under this Central order, the Class I utilization percentages for the individual markets ranged from 38 percent for the Southwest Plains market to 87 percent for the Central Illinois market. Class I (and Class II) receipts and utilization data for Iowa and the combination of Greater Kansas City and Eastern South Dakota markets are restricted to protect the confidentiality of individual handler information. Data for Eastern Colorado and Western Colorado markets are combined in order to mask restricted data. Combined utilization for the nine markets would result in a Class I percentage of 50 percent.

Based on calculated weighted average use values for (1) the current order with current use of milk, and (2) the current order with projected use of milk in the consolidated Central order, the potential impact of this consolidation on producers who supply the current market areas is estimated to be: Southern Illinois-Eastern Missouri, a 27-cent per cwt decrease (from $13.49 to $13.22); Central Illinois, a 50-cent per cwt decrease (from $13.56 to $13.06); Greater Kansas City, a 69-cent per cwt decrease (from $13.91 to $13.22); Nebraska-Western Iowa, a 10-cent decrease (from $13.23 to $13.13); Eastern South Dakota, a 32-cent decrease (from $13.33 to $13.01); Iowa, a 5-cent decrease (from $13.08 to $13.03); Southwest Plains, a 70-cent increase (from $12.94 to $13.64); Western Colorado, a 65-cent decrease (from $13.88 to $13.23); and Eastern Colorado, an 11-cent decrease (from $13.70 to $13.59). The weighted average use value for the consolidated Central order market is estimated to be $13.29 per cwt.

Other Plants

Located within the Central marketing area during May 1997 were 84 supply or manufacturing plants: 8 in Colorado (4 in the Denver area), 15 in Illinois (2 in the Decatur area), 23 in Iowa (2 in the Des Moines area and 1 in the Dubuque area), 6 in Kansas, 7 in Missouri (5 in the St. Louis area), 7 in Nebraska, 7 in South Dakota (1 in the Sioux Falls area), 4 in Oklahoma (1 in the Tulsa area), and 7 in Wisconsin. Twenty-two of the 84 plants are pool plants, or have a "pool side." Twelve of the 22 pool plants (6 in Iowa, 1 in Nebraska, 2 in South Dakota, and 3 in Wisconsin) are "split plants;" that is, one side of a plant is a manufacturing facility, and the other side receives and ships Grade A milk, and accounting is done separately. In most cases, the nonpool portion of such a plant is a manufacturing peration, primarily cheese-making. Of the pool plants, 8 have no primary product, but are only shipping to distributing plants, and 6 are pooled manufacturing plants.

Of the 62 nonpool plants in the consolidated Central marketing area, 59 are manufacturing plants—24 are plants that manufacture primarily Class II products, 3 manufacture primarily butter, 6 manufacture primarily powder, 25 manufacture primarily cheese, and 1 manufactures primarily other products.

Also associated with the consolidated Central order, but not within the marketing area, are 2 nonpool cheese plants and a nonpool supply plant located in South Dakota.

Cooperative Associations

Twenty-five cooperative associations pooled milk in December 1997 under the nine orders consolidated in the Central market. Of these cooperatives, 1 pooled milk under 7 of the orders, 5 cooperatives associated producer milk with 3 orders each, and 2 others pooled milk under 2 orders each. Seventeen of the 25 cooperatives pooled milk under only one order, and for 10 of these organizations that was the Iowa order.

The percentage of cooperative milk pooled under the eight orders was 95, with a range of 80.7 percent cooperative milk under the Southwest Plains order to 100 percent cooperative member milk under the Central Illinois, Greater Kansas City and Eastern South Dakota orders.

Criteria for Consolidation

Most of the criteria used in determining the optimum consolidation

of order areas apply to the Central marketing area. The Federal order markets consolidated in the Central area are strongly related to each other through overlapping route disposition. The great majority of sales by handlers who would be regulated under the consolidated Central order are distributed within the marketing area, and the consolidated markets have a greater relationship in terms of overlapping sales areas than with any other markets. In addition, sales within the currently-unregulated areas included in the consolidated Central area are overwhelmingly from handlers that would be pooled under the Central order. Inclusion of these areas would reduce handlers' burden of reporting out-of-area sales and take in pockets of currently-unregulated counties that occur between the current order areas. As discussed above, the milk procurement areas for the consolidated markets also have a significant degree of overlap.

The Western Colorado order is included because the more recent data collected for this final decision indicates that since the proposed rule the Western Colorado marketing area has developed a closer relationship with the Eastern Colorado market than with any other market, even across the Continental Divide. A benefit of combining Western Colorado with other markets is that it is a small market where data cannot be released without revealing confidential information unless combined with data pertaining to another marketing area. Consolidation of the area will allow publication of meaningful statistics without disclosing proprietary information. In addition, several comments supported the combination of the Western Colorado area with the consolidated Central market in view of the large negative effect of lower producer pay prices on the small number of producers involved if the Western Colorado area were consolidated with the Southwestern Idaho-Eastern Oregon and Great Basin marketing areas.

Some of the currently-unregulated counties in western Illinois and central Missouri have been added to the Central marketing area. The omission from the marketing area of the counties in central Missouri that are not included in the consolidated Central marketing area are based on an estimation of the marketing area of Central Dairy, located in Jefferson City, Missouri. This handler has not been previously regulated. As discussed earlier, it is not the intent of this decision to include currently-unregulated area in the consolidated order areas where such inclusion would have the effect of regulating previously-unregulated handlers.

An additional benefit of the consolidation of these nine order areas is that data will be able to be made public without disclosing proprietary information. Four of the current Federal order markets (Central Illinois, Greater Kansas City, Eastern South Dakota, and Western Colorado) included in this consolidated area have too few pool plants to be able to publish market data without revealing confidential information. In addition to these three markets, the number of handlers regulated under each of the Nebraska-Western Iowa, Iowa and Eastern Colorado orders is in the single digits.

Discussion of Comments and Alternatives

Prior to issuance of the proposed rule, alternatives to the consolidation of the order areas included in the Central marketing area that were considered included combining the Iowa, Nebraska-Western Iowa, and Eastern South Dakota order areas with those of the Chicago Regional and Upper Midwest areas in a consolidated Upper Midwest order. The collection of more detailed data concerning the overlap in route disposition and milk procurement showed clearly that these marketing areas are more closely related to markets to the south than to the north.

Approximately 85 percent of the total fluid milk dispositions distributed by handlers regulated under the three order areas that were suggested to be included in the Central area in the initial Preliminary Report, and in the Upper Midwest area in the Revised Preliminary Report, are disposed of in the consolidated Central market. The disposition by other Central marketing area handlers within the consolidated Central area is somewhat greater than the proportion for the three more northern order areas.

Also considered was the exclusion of 14 Nebraska counties, in addition to the 11 already excluded, from the Central marketing area to expand the unregulated area in which Gillette Dairy could distribute milk without becoming regulated. There was no data indicating that Gillette distributes milk in those counties. In the early stages of the study of appropriate order consolidation, it was assumed that the southern Missouri and northwest Arkansas portions of the Southwest Plains order area would remain with the rest of that area. This area was included with the consolidated Southeast order area in the proposed rule, and remains there.

Eighteen comments that pertained specifically to the proposed Central marketing area were filed by 17 commenters in response to the proposed rule. Four of these comments advocated moving the Western Colorado order area from the consolidated Western order to the consolidated Central order. These comments expressed concern about the expected reduction in the blend price to Western Colorado producers under the Western order. An examination of updated data on route dispositions and bulk milk movements resulted in making this change which is explained in greater detail in the description of comments and alternatives under the section of this decision dealing with the Western area.

A comment filed by the American Farm Bureau Federation recommended that the central area of Missouri that was proposed to be unregulated be included in the Central order area. A comment filed on behalf of Central Dairy, the handler who is located and distributes milk in the unregulated Missouri area opposed the addition of any presently unregulated territory to Federal order marketing areas, and specifically opposed the addition of six currently-unregulated northeast Missouri counties into which the handler expects to expand its distribution.

There is no intention of causing the regulation of this handler. As discussed earlier with regard to the Northeast and Mideast marketing areas, consolidation of the existing orders does not necessitate expansion of the consolidated orders into currently-unregulated areas, especially if such expansion would result in the regulation of currently-unregulated handlers. At the same time, minimizing the extent of the unregulated counties in the middle of the consolidated marketing area would help to reduce the reporting burden on handlers in determining which route dispositions are inside, and which are outside the marketing area. The administrative burden of verifying such reporting also would be eliminated. Six currently-unregulated northeast Missouri counties that were proposed to be added to the Central order area have been removed on the basis of comments received from the Jefferson City handler, who indicated that regulation of the six counties may result in a change in the handler's regulatory status. No urgency on the part of regulated handlers having sales in the unregulated area to include that area in the consolidated order area was apparent from comments. In fact, none of the comments received from affected handlers advocated that the unregulated area be included in the consolidated area.

A comment by Gillette Dairy, a handler located in Rapid City, South Dakota, in the former Black Hills Federal order area, supported excluding the 11 counties of the Nebraska panhandle, currently part of the Nebraska-Western Iowa order area, from the consolidated Central area. Gillette has some sales in this area and competes there with regulated handlers, but requested that the panhandle area be excluded to lessen Gillette's likelihood of becoming fully regulated under the Central order. This area was excluded in the proposed rule, and its exclusion was unopposed by any interested persons who filed comments before the deadline for doing so. Although Gillette's sales in the panhandle area do not represent an overwhelming majority of the total sales there, the volume of sales in this sparsely-populated area should not affect the competitive status of any regulated handlers. Therefore, the area will be excluded from the consolidated area as proposed.

Several comments, from the Iowa Department of Agriculture, Wells' Dairy, and Anderson-Erickson Dairy, as well as Swiss Valley Farms, supported the inclusion of the Iowa order area in the consolidated Central area, stating that the attraction of a supply of milk for fluid needs requires such a consolidation.

Comments were received on dividing the current Iowa marketing area by adding the eastern edge of the Iowa marketing area to the proposed consolidated Upper Midwest order. Such a division would result in the Swiss Valley Farms distributing plant in Dubuque, Iowa, qualifying as a pool plant under the consolidated Upper Midwest order (as it now does during some months under the current Chicago Regional order). The Swiss Valley plant comprises a large majority of the Iowa market sales in the Chicago Regional and Upper Midwest order areas, and the movement of a half-dozen counties would assure its pool status in the consolidated Upper Midwest order and its location in that order area.

Comments by Lakeshore Federated Dairy Cooperative argued that the extensive overlap of producers, Class I sales, and geographic similarities between the northeast portion of the Iowa marketing area and the adjoining consolidated Upper Midwest area should be considered compelling reasons for making such a change. Lakeshore's comments were supported by Prairie Farms, Foremost Farms, and DFA. In addition, Grande Cheese Company, a Wisconsin cheesemaker, filed comments supporting Lakeshore's position.

In its comments, Swiss Valley argued that the 2 southwest Wisconsin counties proposed to be included in the consolidated Central marketing area were removed from the Chicago Regional area and added to the Iowa area on the basis of a formal rulemaking proceeding in the late 1980's, at which time it was determined that the principal competition for fluid sales and milk supply in this area occurred between Iowa handlers rather than with Chicago Regional handlers. It is therefore Swiss Valley's position that the two counties should remain with the rest of the Iowa area, in the consolidated Central marketing area.

On the basis of data gathered for this decision, the primary source of route disposition in Grant and Crawford Counties, Wisconsin, and Dubuque County, Iowa, is the Swiss Valley plant in Dubuque, and most of the rest of the milk distributed in these counties is from handlers regulated under the Chicago Regional order. The data also shows that the Dubuque plant procures most of its milk supply from counties that also supply milk to the Chicago Regional and Upper Midwest orders, as well as to other plants pooled under the Iowa order.

One of the problems in this marketing area has been the ability of the Swiss Valley plant to choose the order under which it is regulated. As a result of differences between the current pool plant definitions of the two orders, Swiss Valley has been able to switch regulation between the Iowa and Chicago Regional orders as its price advantage shifted, and has done so frequently during 1997 and 1998. The pool plant definitions of the consolidated Upper Midwest and Central orders, which are very similar, will require that the Swiss Valley plant be regulated under the order for the area in which it has the greater volume of route disposition.

If, under the consolidated orders, the Dubuque plant distributes a greater share of its sales in the consolidated Upper Midwest area than in the consolidated Central area, the plant will be pooled under the Upper Midwest order. The only appropriate change to be made to the current Iowa marketing area is to eliminate the partial counties from the marketing area definitions of the consolidated Central and Upper Midwest orders.

The Illinois Counties of Jo Daviess and Whiteside currently are split between the Iowa and Chicago Regional order areas. More than half of the sales in Whiteside County are supplied by Iowa handlers (including Swiss Valley), so Whiteside County will be located entirely within the consolidated Central area. More than half of the sales in Jo Daviess County are supplied by Chicago Regional handlers (not including Swiss Valley), and that county will be located entirely within the consolidated Upper Midwest area. The Iowa County of Mitchell currently is located in the Upper Midwest area except for the City of Osage, which is defined as part of the current Iowa marketing area. All of Mitchell County will be included in the consolidated Upper Midwest area.

After considering all comments and other relevant information, it is determined that the territory encompassed in the Central marketing area best meets the criteria used.

Southwest

The consolidated Southwest marketing area is comprised of the current Texas (Order 126) and New Mexico-West Texas (Order 138) marketing areas as well as 49 currently unregulated Texas counties. There are 290 counties in this area. This area remains unchanged from the proposed rule.

Geography

The consolidated Southwest market is described geographically as follows: three counties in Colorado (currently in Order 138), all New Mexico counties (33, currently in Order 138) and all 254 Texas counties (162 currently in Order 126, 43 currently in Order 138, and 49 currently unregulated). Two currently unregulated counties are located in northeast Texas, while the remaining 47 are in southwest Texas.

The Southwest market spans the south central area of the United States. It is surrounded by Arizona on the west, Colorado and Oklahoma on the north, Arkansas, Louisiana and the Gulf of Mexico in the northeast, east, and southeast, and Mexico to the south. Measuring the extreme dimensions, this market extends about 800 miles north to south from southern to northern Texas and about 875 miles east to west from Texas' border with Louisiana and Arkansas to New Mexico's border with Arizona.

The Southwest market is contiguous to 3 consolidated marketing areas: Arizona-Las Vegas to the west, Central to the north and Southeast to the east. Unregulated counties in Colorado also form a relatively small border in the northwest corner of the market. Texas has over 350 miles of coastline on the Gulf of Mexico, while Texas and New Mexico share about 970 miles of boundary with northern Mexico.

In terms of physical geography, diverse topographic relief exists in the

Southwest market area, particularly in New Mexico (ranging from deserts to high mountain ranges). Northwest New Mexico is part of the Colorado Plateau, an area of broad valleys and plains as well as deep canyons and mesas. The Rocky Mountains extend into the north central area of the state. The Basin and Range region, generally characterized by ranges or isolated mountains interspersed with valleys, desert basins or high plains, is located in central and southwestern New Mexico, as well as western Texas. The Great Plains cover the eastern third of New Mexico and extend through the Texas Panhandle in north Texas and much of central Texas. This area is characteristically dry and treeless and also encompasses Texas hill country and the Edwards Plateau. The Osage Plains covers the area in Texas from the Oklahoma-Texas border into the south central part of the state and the low and flat West Gulf Coastal Plain covers the eastern two-fifths of the state.

Climates in this region also vary. The western part of the region, including New Mexico, southwest Texas and the Texas Panhandle, is semi-arid to arid with wide ranges in both daily and annual temperatures. The southern tip of Texas and the Gulf coast are more humid and subtropical. For some of the area there are few agricultural uses other than dairy farming. Dairy products were the 2nd and 3rd highest revenue-producing agricultural commodities in New Mexico and Texas, respectively, in 1996, accounting for nearly one-third of agricultural receipts in New Mexico, but less than 10 percent in Texas.

Population

According to July 1, 1997, population estimates, the total population in the consolidated marketing area is 21.3 million. The 26 Metropolitan Statistical Areas (MSA) in the consolidated Southwest market account for 81.3 percent of the total market area population. About 55 percent of the Southwest population is located in the 4 most populous MSAs. Seven MSAs have populations greater than 500,000; their total population is 63.4 percent of the Southwest population. Because of the large number of MSAs in the Southwest market, only those areas with populations greater than 500,000 are described in detail.

Almost 92 percent of the Southwest market's population is located in Texas, which has 19.5 million people. Twenty-three of the 26 Southwest market MSAs are in Texas. About 66 percent of Texas' population is concentrated in 6 areas, which include the Southwest area's top 5 population centers: the Dallas-Fort Worth (Dallas) MSA in northeastern Texas, with a population of 4.7 million; the Houston-Galveston-Brazoria (Houston) MSA in southeastern Texas near the Gulf of Mexico, with a population of 4.3 million; the San Antonio MSA in south central Texas, with a population of 1.5 million; the Austin-San Marcos (Austin) MSA in central Texas, with a population of 1 million; the El Paso MSA located in the far western corner of Texas on the Texas-New Mexico-Mexico border, with a population of 702,000; and the McAllen-Pharr-Edinburg MSA located at the southern tip of Texas, with a population of 511,000.

New Mexico's population is about 1.7 million. The remaining 3 of the 26 Southwest market MSAs are located in New Mexico. About 40 percent of the state's population is located in the Albuquerque area, just northwest of central New Mexico.

In the remainder of the Southwest marketing area, the 3 Colorado counties have a population of about 71,000.

Fluid Per Capita Consumption

Estimates of fluid per capita consumption vary from 17.1 pounds of fluid milk per month per person in Texas to 17.5 in New Mexico to 18.8 in Colorado. Multiplying the individual states' consumption rate by its population in the consolidated marketing area results in a fluid milk consumption rate of 364.5 million pounds of fluid milk per month for the consolidated Southwest marketing area.

In October 1997, the fully regulated plants in Orders 126 and 138 had route distribution totaling 342.5 million pounds. Ninety-eight percent, or 328 million pounds, was distributed within the consolidated Southwest marketing area. Handlers fully regulated under other Federal orders had about 21 million pounds of route distribution into the Southwest market area. Producer-handlers in the Southwest area distributed about 5 million pounds of route distribution in the Southwest marketing area in October 1997, while partially-regulated plants and plants that would be exempt on the basis of size distributed approximately .5 million pounds.

Production

In October 1997, 1,570 producers from 144 counties in 5 states pooled 650 million pounds of producer milk on Orders 126 and 138. Over 99 percent of this producer milk came from counties included in the consolidated Southwest marketing area. About 55 percent of the combined market's producer milk was provided by producers in six counties.

About 455 million pounds of milk were pooled on either Order 126 or 138 from 1,345 producers in 118 Texas counties in October 1997. Three Texas counties were among the top 6 in volume pooled: Erath (1st), Hopkins (4th) and Comanche (6th). Erath County—located about 75 miles west of Dallas—pooled 104.5 million pounds on Order 126 (and an additional 9 million pounds on 3 other Federal orders). Hopkins County—located about 50 miles east of Dallas—pooled 34 million pounds on Order 126 and another 15 million pounds on 4 other Federal orders. Contiguous to and lying southwest of Erath County, Comanche County pooled 33 million pounds on Order 126 and about .5 million pounds on 3 other Federal orders.

Of the 271 million pounds of milk pooled on either Order 126 or 138 from 185 producers in 12 New Mexico counties, 69 percent was produced in the following three counties, all among the top 6 in volume pooled: Chaves (2nd), Dona Ana (3rd) and Roosevelt (5th). Chaves County—located about 200 miles southeast of Albuquerque—pooled 92 million pounds on Orders 126 and 138 in October 1997 and an additional 28 million pounds on 3 other Federal orders. Dona Ana County, located over 200 miles south of Albuquerque, contiguous to El Paso County, TX, and the U.S.-Mexico border, pooled 61 million pounds of producer milk on Order 138. Contiguous to and lying northeast of Chaves County, Roosevelt County pooled 33 million pounds on Orders 126 and 138 and another 6.6 million on 4 other Federal orders.

In October 1997, producer milk for Orders 126 and 138 also originated in one of the Colorado counties in the Southwest marketing area, and in counties in Arkansas and Oklahoma. However, the combined amount of producer milk pooled from these areas is less than 1 percent of the total producer milk pooled in these Orders.

Distributing Plants

Using distributing plant lists included in the proposed rule, with the pooling standards adjusted to 25 percent of route disposition as in-area sales, updated for known plant closures through December 1998, 31 distributing plants located in the consolidated Southwest marketing area would be expected to be associated with the Southwest market, including 21 fully regulated distributing plants, 2 partially regulated, 2 exempt and 6 producer-handlers. None of these plants' regulatory status is expected to change as a result of the consolidation process.

Of the 21 fully regulated plants, 17 are located in the top six MSA regions.

Since October 1997, it is known that 3 plants (2 fully regulated and 1 producer-handler) have gone out of business. The fully regulated plants were located in El Paso, Texas, and in Albuquerque, New Mexico. The producer-handler was located in Hobbs, New Mexico.

Of the 31 distributing plants that would be located in the consolidated Southwest marketing area, 24 are in Texas, and 7 are in New Mexico. Twenty of the Texas plants would be fully regulated. They are as follows: 6 in the Dallas area, 3 in the Houston area, 2 in the San Antonio area, 1 in the Austin area, and 2 in the El Paso area, and 6 located throughout the state. One of the Texas distributing plants was associated with Order 30 (Chicago Regional) in October 1997, and is expected to be partially regulated in the Southwest market. Two producer-handlers are located in Texas, one in the El Paso area and the other in the central part of the state.

Just over half of New Mexico's 7 distributing plants are located in the Albuquerque area. One fully regulated handler and 3 producer-handlers are located in this population center. Of the remaining 3 plants located in New Mexico, there are 2 plants that would be exempt on the basis of size (both located in central New Mexico) and 1 producer-handler (located southeast of Albuquerque).

Utilization

According to October 1997 pool statistics, the Class I utilization percentages for the Texas and New Mexico-West Texas markets were 56 and 44 percent, respectively. Based on calculated weighted average use values for (1) the current order with current use of milk, and (2) the current order with projected use of milk in the consolidated Southwest order, the potential impact of this consolidation on producers who supply the current market areas is estimated to be: Texas, a 5-cent per cwt decrease (from $14.09 to $14.04), and New Mexico-West Texas, a 10-cent per cwt increase (from $13.51 to $13.61). The weighted average use value for the consolidated Southwest order market is estimated to be $13.97 per cwt. For October 1997, combined Class I utilization for Orders 126 and 138 was 53.4 percent based on 347.0 million pounds of producer milk used in Class I out of 649.9 million total producer milk pounds.

Other Plants

Located within the Southwest marketing area during May 1997 were 17 manufacturing plants: 11 in Texas (2 in the Dallas MSA and 1 in the El Paso MSA) and six in New Mexico. Six of the 17 plants were pool plants. All of these pool plants were manufacturing plants—one manufactured primarily Class II products, two manufactured primarily powder, two manufactured primarily cheese and one manufactured primarily other products. Of the 11 nonpool plants in the Southwest marketing area, all were manufacturing plants—one manufactured primarily powder, four manufactured primarily cheese, one manufactured primarily other products and five manufactured primarily Class II products.

Cooperative Associations

In December 1997, three cooperative associations marketed about 95 percent of the milk pooled under both of the orders consolidated in the Southwest area: Dairy Farmers of America (DFA); and Select Milk Producers, Inc. (Select); and Elite Milk Producers, Inc. (Elite).

Criteria for Consolidation

Nearly all of the route disposition by Order 126 and 138 handlers is distributed within the consolidated marketing area. In addition, nearly all of the milk that would be pooled under the consolidated order, based on October 1997 data, originates within the marketing area. Two cooperatives market the vast majority of milk within the consolidated area.

Discussion of Comments and Alternatives

Prior to issuance of the proposed rule, alternatives to the consolidation of the Texas and New Mexico-West Texas order areas that were considered included the consolidation of east Texas with the Southeast area. This alternative consolidation was examined at length and found to have little overlap of either fluid milk product disposition or producer milk movements.

Only one comment pertained specifically to the consolidated Southwest marketing area. This was a comment from DFA that discussed general support for the marketing areas proposed by USDA, with no objection to the Southwest marketing area, as proposed.

Arizona-Las Vegas

The consolidated Arizona-Las Vegas marketing area is comprised of the current Central Arizona (Order 131) marketing area, one county in Nevada which currently is in the Great Basin (Order 139) marketing area, and currently unregulated counties in Arizona. There are 16 counties in this consolidated marketing area. This area remains unchanged from the proposed rule.

Geography

The Arizona-Las Vegas market is described geographically as follows: All counties (15) in Arizona (6 whole and 1 partial currently are part of Order 131, and 8 whole and 1 partial currently are unregulated) and Clark County, Nevada, which currently is part of the Great Basin marketing area. The market extends about 400 miles north to south from Arizona's border with Utah (and Nevada's southernmost county) to the U.S.-Mexico border. The market ranges from 300 to 375 miles east to west from the Arizona-New Mexico border to the Arizona/southern Nevada-California border.

The Arizona-Las Vegas marketing area is contiguous to two other consolidated marketing areas, the Great Basin portion of the Western area to the north and the New Mexico-West Texas portion of the Southwest area to the east. California, which is not part of the Federal order system, lies to the west and Mexico is south of this marketing area.

Arizona can be divided into three geographic regions—the Sonoran Desert, in the southwest; the Colorado Plateau, in the north; and the Mexican Highland, mainly in the central and southeastern parts of the state. With each of these regions, three distinct climatic zones exist: The Sonoran Desert is hot in the summer but can experience frost in the winter; the Colorado Plateau is hot and dry in the summer and cold and windy in the winter; and the Mexican Highland receives significant precipitation in both summer and winter. This region is cooler in both summer and winter than the Sonoran Desert region.

These topographical and climatic conditions apparently are conducive to milk production. Dairy products represent one of the principal agricultural commodities (2nd and 3rd) in the States of Arizona and Nevada, respectively, representing 16.6 and 21.7 percent of total agricultural receipts of the two States in 1996.

Population

Arizona is one the fastest-growing states in the United States. According to July 1, 1997, population estimates, the total population in the consolidated marketing area is 5.7 million. Using Metropolitan Statistical Areas (MSAs), the largest population center is the Phoenix-Mesa (Phoenix) area, located in

central Arizona approximately 125 miles north of the U.S.-Mexico border in the Sonoran Desert region. About 250 miles to the northwest of Phoenix is the Las Vegas, Nevada, area, the second-largest population center in this marketing area. The Las Vegas MSA is comprised of three counties: Clark and Nye counties in Nevada and Mohave County in Arizona. Almost half of this market's population is in the Phoenix area, and over 70 percent is accounted for when Las Vegas is added.

Fluid Per Capita Consumption

Based on the population figure of 5.7 million and an estimated per capita fluid milk consumption rate of 20 pounds of fluid milk per month, total fluid milk consumption in the Arizona-Las Vegas marketing area is estimated at 114 million pounds per month. In October 1997, plants that would have been fully regulated distributing plants in the Arizona-Las Vegas order had route disposition within the market of approximately 95 million pounds, representing 94 percent of their route disposition. Another 6.5 million pounds of milk was distributed in the consolidated marketing area by 2 handlers expected to be fully regulated under the consolidated Western Federal order and by 10 California plants that are partially regulated under the Central Arizona and Great Basin orders.

Milk Production

In October 1997, almost 196 million pounds of milk was pooled in the Central Arizona market, supplied by over 100 producers located in fewer than 10 counties in Arizona and California. Over 95 percent of the Central Arizona milk was produced within the marketing area. Further, over 90 percent of the producer milk produced within the Order 131 area was produced in Maricopa County, Arizona, where Phoenix, this market's largest city, also is located. With 177 million pounds of producer milk for October 1997, Maricopa County produces almost twice the amount of milk required to meet the fluid milk needs of the entire marketing area. Arizona producers did not supply milk to any other Federal order; however, it is known that producer milk moves from both Arizona and Clark County, Nevada, to southern California. These figures do not reflect the producer milk associated with Anderson Dairy, the Las Vegas handler who has been pooled on Order 139. There is only one producer located in Clark County, Nevada. Anderson's milk supply comes from a cooperative association in southern California.

Distributing Plants

Using distributing plant lists included in the proposed rule, with the pooling standards adjusted to 25 percent of route disposition as in-area sales, updated for known plant closures through December 1998, 8 distributing plants would be expected to be associated with the consolidated Arizona-Las Vegas marketing area, including 5 fully regulated distributing plants (all currently pool plants), 1 exempt plant and 2 producer-handlers. There are 4 distributing plants in the Phoenix area (all pool plants). Located in the Las Vegas MSA are one pool plant and a producer-handler. Another producer-handler is located in the Yuma area and the exempt plant is located in a currently-unregulated Arizona county, and has total route disposition of less than 150,000 pounds. All of the plants that are expected to be fully regulated under this consolidated order are located in areas that contain over 70 percent of the market's population.

Utilization

According to October 1997 pool statistics, the Class I utilization for the Central Arizona market was 46 percent. Due to restricted information, this calculation excludes receipts for the Las Vegas handler who currently is regulated under Order 139, but would be regulated under this order. Because the degree of consolidation for this market is very minor, little change in the Class I utilization percentage, and thus little change in producer returns, is expected in the Arizona-Las Vegas area as a result of the consolidation. For October 1997, Class I utilization for the Central Arizona market was 46.3 percent based on the use of 90.8 pounds of producer milk in Class I out of 195.9 total pounds of producer milk. The weighted average use value for the Arizona-Las Vegas market is estimated to be $13.84 per hundredweight.

Other Plants

For May 1997, 3 supply or manufacturing plants were located within the Arizona-Las Vegas marketing area: 2 in Arizona (both in the Phoenix area) and 1 in Nevada (in the Las Vegas area). One Arizona plant was a pool plant operated by the cooperative, manufacturing primarily cheese, while the other plants were nonpool plants manufacturing primarily Class II products.

Cooperative Associations

For December 1997, the only cooperative pooling milk under the Central Arizona order was United Dairymen of Arizona, which represented over 90 percent of the milk pooled under the Central Arizona order. Security Milk Producers Association, a cooperative based in California, supplies milk to the Las Vegas handler.

Criteria for Consolidation

Market data indicate that there are sales into the Las Vegas area by Central Arizona pool plants, and sales by both Phoenix and Las Vegas handlers into the unregulated areas along the southern part of the Nevada-Arizona border. Rapid population growth in the area between the two areas has greatly increased competition between the handlers in Phoenix and Las Vegas. In addition, both areas exchange significant volumes of bulk and packaged milk with Southern California. At the same time, the strength of the earlier relationship between the Las Vegas area and Utah clearly has declined since the merger of the Lake Mead and Great Basin order areas in 1988, which was based on data compiled up to 1986.

The Grand Canyon serves as a natural barrier in northwestern Arizona between this area and Great Basin. Although the actual consolidated order area extends to the Utah border, the portion of Arizona between the Grand Canyon and Utah is very sparsely populated, and is included in the consolidated marketing area primarily for the purpose of simplifying the marketing area description and easing handlers' burden of reporting out-of-area sales. The Colorado River forms much of the western boundary with California and Nevada. A north-south strip along the eastern edge of Arizona constituting approximately 30 percent of the State's territory is very sparsely populated, containing just over 5 percent of the population of the consolidated marketing area. This lightly populated desert area can be seen as another form of natural barrier to the movement of bulk and packaged milk.

Discussion of Comments and Alternatives

Prior to issuance of the proposed rule, alternatives to the consolidation of the Central Arizona marketing area and the southern Nevada portion of the Great Basin order area included retaining the Las Vegas area with the rest of the current Great Basin order area in the consolidated Western marketing area.

Twelve comments that pertained specifically to the proposed Arizona-Las Vegas area were filed by 10 commenters in response to the proposed rule. Anderson Dairy in Las Vegas advocated that Clark County, Nevada, in which Las

Vegas is located, be left out of any consolidated marketing area to better enable Anderson to compete with milk distributed from California and from the Salt Lake City area. Two comments from the Nevada Dairy Commission, suggesting that prices could be set within the State, and from a U.S. Senator from Nevada, requested that Clark County be excluded from any Federal order marketing area. Security Milk Producers Association, a cooperative that supplies milk to Anderson, first filed a comment supporting the proposed Arizona-Las Vegas area, and then filed a later comment urging that if Clark County cannot be deregulated and California does not become a Federal order, Clark County should be reunited with the rest of the consolidated Western order area. A commenter in the southern Nevada dairy industry supported the cooperative's view.

A comment from DFA suggested that the Great Basin marketing area be consolidated with the proposed Arizona-Las Vegas area rather than the proposed Western area, arguing that the price/utilization relationships of the Great Basin area are more similar to the Arizona-Las Vegas area than to the rest of the Western area. Darigold, Inc., urged that Las Vegas be reunited with Utah due to its proximity to the major production areas in Utah. Darigold suggested that if there is a linkage between the Phoenix and Las Vegas markets, those areas both should be included in the Western area.

A comment filed by the American Farm Bureau Federation recommended that the consolidation of the Central Arizona and Clark County areas be reconsidered in favor of a return to the consolidation of the Central Arizona area with the Southwest area, suggested in the Initial Preliminary Report on Order Consolidation.

A comment filed by the Dairy Institute of California supported the consolidation of the Las Vegas area with Arizona because such a combination would eliminate competitive distortions between these areas and California caused by the Las Vegas raw milk price levels. The Utah Farm Bureau stated that it does not oppose removing the Clark County, Nevada, area from the Great Basin order area and combining it with Arizona.

An increase in sales by Central Arizona pool plants into the Las Vegas area, and increased sales by both Phoenix and Las Vegas handlers into the unregulated area of rapidly-increasing population along the southern part of the Nevada-Arizona border, are factors that have greatly increased overlapping route distribution in these two areas. Mohave County, Arizona (currently-unregulated), and Clark County, Nevada, are two of the fastest-growing areas in the United States in terms of population. These two counties adjoin each other in southern Nevada and northwestern Arizona, and both are increasing in population significantly faster than the growth rates for their states. From 1990 to 1997, a period during which the population of the United States increased by 7.6 percent, the population of Arizona increased by 24.3 percent, while Mohave County's population increased by 37.8 percent. Over the same period, Clark County, Nevada, experienced a population increase of 49.2 percent, while the Nevada population increased by 39.5 percent. The rapidly-growing area between Phoenix and Las Vegas represents a growing market which can be expected to be served by both of the major population centers.

Ninety-five percent of the route dispositions of handlers who would be regulated under this order were distributed within the consolidated marketing area in October 1997, and approximately the same percentage of route disposition within the marketing area was by handlers who would be regulated under this consolidated order. Similarly, over 95 percent of the milk pooled under the current Central Arizona order is produced within the marketing area, and there is no indication of movements of producer milk between Utah and Nevada, as was the case when the Great Basin and Lake Mead orders were merged.

In addition, both areas exchange significant volumes of bulk and packaged milk with Southern California, a relationship that does not pertain to any of the other areas in the region. The Las Vegas area's earlier relationship with southern Utah was based primarily on Utah as an important milk supply area for Las Vegas at the time of the merger of the Lake Mead and Great Basin order areas in 1988. That relationship clearly has ceased to exist. Therefore, the assertion by commenters that the Las Vegas, Nevada, area should continue to be included in the same marketing area with Utah or be unregulated does not reflect current marketing conditions.

Western

The consolidated Western marketing area is comprised of the current Southwestern Idaho-Eastern Oregon (Order 135) and Great Basin (Order 139) marketing areas, less one Nevada county (Clark) in Order 139 that is added to the Arizona-Las Vegas marketing area. There are 67 counties in this consolidated area. The Western Colorado (Order 134) marketing area, proposed to be part of the Western consolidated area, was changed to become part of the Central consolidated area.

Geography

The Western market is described geographically as follows: 28 counties in Idaho (18 currently in Order 135 and 10 in Order 139), 3 in eastern Nevada (all currently in Order 139), 5 in eastern Oregon (all currently in Order 135), all counties (29) in Utah (currently in Order 139) and 2 in the southwest corner of Wyoming (currently in Order 139). Measuring the extreme dimensions, this market extends about 625 miles north to south from Oregon and Idaho to Utah's boundary with Arizona. This market's east-to-west dimension is approximately 550 miles from the westernmost edge in central/eastern Oregon to the easternmost edge of the Utah/Colorado border.

The consolidated Western marketing area is contiguous to four of the consolidated marketing areas, the Pacific Northwest to the west and north of the Oregon portion of this market, Arizona-Las Vegas to the south, the Central market on the east, and the Southwest to the extreme southeast corner. Non-Federally regulated territory borders the Western market on the west-southwest (Nevada) and the north-northeast (Idaho and Wyoming).

In terms of physical geography, the Western marketing area has several regions: The Columbia Plateau in southern Idaho and northeastern Nevada, characterized by fertile soils; the Great Basin in southeast Idaho, nearly all of Nevada and the western third of Utah, described by ranges and parallel valleys; and the Colorado Plateau in the eastern half of Utah, characterized by gorges. In general, the Western market is quite dry, with temperatures tending to be extreme and affected by elevation.

Population

According to July 1, 1997, population estimates, the total population in the consolidated marketing area is 3.2 million. Using Metropolitan Statistical Areas (MSAs), the largest population center is the Salt Lake City-Ogden, Utah area (Salt Lake City). Salt Lake City is located in north central Utah. The Boise City, Idaho, area (Boise), the second largest population center in this marketing area, is located about 300 miles to the northwest of Salt Lake City. Provo-Orem, Utah, (Provo) the third largest population center, lies 40 miles

south of Salt Lake City. Forty percent of the market's population is in the Salt Lake City area, and over 60 percent is accounted for when Boise and Provo are added.

Fluid Per Capita Consumption

Based on the population figure of 3.2 million and an estimated per capita fluid milk consumption rate of 23 pounds of fluid milk per month, total fluid milk consumption in the Western marketing area is estimated at 73.6 million pounds per month. Plants that would have been fully regulated distributing plants in the Western order had route disposition within the market of 74 million pounds in October 1997; approximately 80 percent of this total is from Order 139 pool plants. The 7 producer handlers operating during this month had a combined route disposition of 1.6 million pounds. Additionally, 1.1 million pounds of route disposition came from other order plants, with about .5 million from partially regulated handlers and exempt plants.

Milk Production

In October 1997, over 457 million pounds of milk was associated with the Great Basin and Southwestern Idaho-Eastern Oregon markets, but only 304 million pounds of this milk was pooled because of class price relationships. The 457 million pounds of milk were produced by 952 dairy farmers located in 51 counties in California, Idaho, Nevada, Oregon, Utah and Wyoming. Over 95 percent of the milk associated with the market was produced within the marketing area. Four counties produced more than 50 percent of the milk available to be pooled. The three top producing counties in Idaho, Jerome, Gooding and Twin Falls counties, are all located in southwestern Idaho, about 130 miles southeast of Boise and 230 miles northwest of Salt Lake City. Jerome and Gooding counties each provided approximately twice as much milk as Twin Falls County, the third-largest county in terms of milk production in the Western market. The fourth-largest production county was Cache County in northeastern Utah, located about 80 miles north of Salt Lake City.

The three Idaho counties, part of the marketing area of the current Southwestern Idaho-Eastern Oregon order, are the top three milk-producing counties for Order 135 and among the top seven milk-producing counties for Order 139 in October 1997. Five counties in the current Southwestern Idaho-Eastern Oregon marketing area supplied one-quarter of the milk associated with the Great Basin order in October 1997.

Distributing Plants

Using the distributing plant list included in the proposed rule, with the pooling standards adjusted to 25 percent of route disposition as in-area sales, updated for known plant closures through December 1998, 25 distributing plants would be expected to be associated with the Western marketing area, including 11 fully regulated distributing plants (all currently pool plants), 2 partially regulated (currently partially regulated), 1 exempt plant based on size (currently a pool plant), 7 producer-handlers, and 4 exempt plants based on institutional status (all were exempt as defined under current federal orders). Since October 1997, it is known that 2 distributing plants (1 fully regulated and 1 exempt plant) in Utah and 1 producer-handler in Arizona have gone out of business.

There would be 9 distributing plants in the Salt Lake City area (5 pool plants, 2 producer-handlers and 2 exempt plants). The Boise area would have 2 pool distributing plants, the Provo area would have 1 exempt plant and the Pocatello area would have 1 pool plant. The remaining 12 distributing plants are located in Idaho (4 plants: 2 pool, 1 exempt, and 1 producer-handler), Nevada (1 partially regulated plant), and Utah (7 plants: 1 pool, 1 partial, 1 exempt, 4 producer-handlers).

Fully regulated distributing plants are located in MSAs containing about half of the consolidated market's population, including the Pocatello, Idaho, MSA, with 2.2 percent of this market's population.

Utilization

According to October 1997 pool statistics, the Class I utilization percentages for the Southwestern Idaho-Eastern Oregon and Great Basin markets were 16 and 41 percent, respectively. Based on calculated weighted average use values for (1) the current order with current use of milk, and (2) the current order with projected use of milk in the consolidated Western order, the potential impact of this market consolidation on producers who supply the current market areas is estimated to be an 11-cent per cwt increase (from $12.92 to $13.03) for Southwestern Idaho-Eastern Oregon, and a 9-cent per cwt decrease (from $13.25 to $13.16) for Great Basin. The weighted average use value for the consolidated Western order market is estimated to be $13.14 per cwt. For October 1997, combined Class I utilization for Orders 135 and 139 was 32.5 percent based on 98.8 million pounds of producer milk used in Class I out of 304.1 million total producer milk pounds.

A substantial amount of milk was omitted from the Southwestern Idaho-Eastern Oregon pool for October because of unusual price relationships. The annual Class I utilization percentage may be considered more representative for this market. For the year 1997, the annual Class I utilization for Southwestern Idaho-Eastern Oregon was 8.3 percent. It is estimated that the Class I use percentage for the consolidated market would be about 23 percent.

Other Plants

Eighteen supply or manufacturing plants were located within the consolidated Western marketing area during May 1997: 8 in Idaho (3 in the Boise area), 9 in Utah (2 in the Salt Lake City area) and 1 in Wyoming. Two of the 18 plants were pool plants; both manufacture primarily cheese. Of the 16 nonpool plants, 12 manufacture primarily cheese and 5 manufacture primarily soft or Class II products (including ice cream). Of the 8 Idaho plants, all but one manufacture cheese, while of the 9 Utah plants, 6 manufacture cheese and 3 manufacture soft products.

Cooperative Associations

For December 1997, four cooperatives representing 77 percent of the milk pooled under the two orders had membership in the consolidated Western marketing area. Western Dairymen Cooperative, Inc., a cooperative association that became part of Dairy Farmers of America, Inc., had membership in both the Southwestern Idaho-Eastern Oregon and Great Basin marketing areas. Magic Valley Quality Milk Producers, Inc., also had membership in Orders 135 and 139; Darigold Farms had membership in Order 135, and Security Milk Producers' Association had membership in Order 139.

Criteria for Consolidation

The consolidated Western market is composed of the current marketing areas of the Southwestern Idaho-Eastern Oregon and Great Basin markets, minus the Clark County, Nevada, portion of the Great Basin area. Sales overlap exists between Southwestern Idaho-Eastern Oregon and Great Basin, as well as a significant overlap in procurement for the two orders in Idaho. The two orders also share similar multiple component pricing plans. The Western Colorado order, proposed for inclusion in the Western area, was shown on the basis of October 1997 data to have developed a

closer relationship with the Eastern Colorado area than with the Great Basin order, and has been included in the consolidated Central area instead of the Western area.

Discussion of Comments and Alternatives

Prior to issuance of the proposed rule, alternatives to the consolidation of the Southwestern Idaho-Eastern Oregon, Great Basin (minus Clark County, Nevada) and Western Colorado marketing areas that were considered included leaving the Southwestern Idaho-Eastern Oregon area as a separate order and consolidating the Great Basin market with the Central Arizona, Western Colorado, and Eastern Colorado marketing areas, leaving both the Southwestern Idaho-Eastern Oregon and Great Basin areas as separate order areas, and combining the Western Colorado area with the Eastern Colorado area and other areas to the east. These alternative consolidations were examined at length and found to be less appropriate than the marketing areas delineated in the proposed rule in terms of overlap of either fluid milk product disposition or producer milk movements.

Fifteen comments that pertained specifically to the proposed Western marketing area were filed by 12 commenters in response to the proposed rule. Several of these comments objected to the separation of the Las Vegas area from the Great Basin portion of the Western area. These comments are addressed in the discussion of comments and alternatives considered for the consolidated Arizona-Las Vegas area.

Comments filed by Dairy Farmers of America, Southern Foods Group, and a western Colorado dairy farmer advocated consolidating the Western Colorado order area with the consolidated Central area instead of the Western area. DFA's comment stated that the Western Colorado milkshed is more similar to the Central area than to the Western area. The comments filed by Southern Foods Group and the dairy farmer expressed concern about an expected reduction in the blend price paid to producers supplying the Western Colorado area.

October 1997 data show an increased relationship between Western Colorado and Eastern Colorado, and reduced milk movements between Western Colorado and Great Basin. On the basis of the change in the relationships between Western Colorado and its two nearest neighbor order areas, the Western Colorado area should become part of the consolidated Central area instead of the Western area.

Five Farm Bureau organizations (Michigan, Utah, Iowa, Ohio and American), a Pennsylvania producer and Dairy Farmers of America filed eight comments opposing the consolidation of the Southwestern Idaho-Eastern Oregon order area with the Great Basin marketing area. One DFA comment suggested combining Utah with the Arizona-Las Vegas area instead of with Idaho. A primary basis for opposition to the consolidation is the disparity in the two regions' utilization of Class I fluid milk: The Southwestern Idaho-Eastern Oregon order has a very low percentage of Class I use, which varies from less than 10 percent to over 20 percent, while the Great Basin order's Class I use percentage is higher at about 35 percent. Commenters fear that the consolidation of these orders would result in lower returns to producers who currently are pooled under the Great Basin order. Most of the comments suggest that the Southwestern Idaho-Eastern Oregon marketing area should remain under a separate order.

A major source of milk production for both the Southwestern Idaho-Eastern Oregon and Great Basin orders is a 5-county area located within the Federal order 135 marketing area, supplying one-quarter of the milk pooled on the Great Basin order in October 1997. The Southwestern Idaho-Eastern Oregon area should be consolidated with some other order area because of the small number of handlers pooled under the order, and this close relationship with Great Basin makes that consolidation the only viable possibility.

Pacific Northwest

The Pacific Northwest marketing area is comprised of the current Pacific Northwest (Order 124) marketing area and one currently-unregulated county in southwest Oregon. There are 75 counties in this marketing area. This area remains unchanged from the proposed rule.

Geography

The Pacific Northwest market is described geographically as follows: All counties (39) in Washington, 30 counties in Oregon (29 currently are part of Order 124 and one, Curry County, is unregulated) and six counties in northwestern Idaho. The market extends about 490 miles north-to-south from Washington's northern border with the Canadian province of British Columbia to Oregon's southern border with California and Nevada. East-to-west, the market ranges from about 450 miles in the northern half of the market (covering territory from Washington's western boundary with the Pacific Ocean to the eastern border of Idaho with Montana) to about 250 miles in the southern half of the market (covering approximately two-thirds of Oregon from the state's western border with the Pacific Ocean to central Oregon).

The Pacific Northwest marketing area is contiguous with the consolidated Western Federal order marketing area in eastern Oregon. The remainder of the marketing area is surrounded by currently non-Federally regulated areas (California and northwestern Nevada to the south and Montana, Idaho, and one northeastern Oregon county to the east), political boundaries (Canada to the north), and the Pacific Ocean to the west.

Along the Oregon and Washington coasts lies the Coast Range. The Cascade Range is located further inland in both states. Both ranges are north-south in direction, and the Cascade Range effectively divides both states into two distinct climates: a year-round mild, humid climate with abundant precipitation predominates in the western part of the states, and a dry climate with little precipitation but greater temperature extremes prevails east of the Cascade Range. The mild climate of the western portion results in longer growing seasons. The Columbia River flows south through eastern Washington, turns west, and becomes the western two-thirds of the border between Oregon and Washington. The portion of Idaho included in the Pacific Northwest marketing area is within the Rocky Mountains. This area has a generally continental climate with the higher elevations having long and severe winters.

Much of the area is conducive to the production of milk and many other agricultural commodities. Although dairy products ranked 2nd among receipts of agricultural commodities in the State of Washington in 1996, and 4th in Oregon, they accounted for only 13.8 percent and 7.9 percent, respectively, of such receipts. Apples (in Washington) and greenhouse/nursery, wheat, and cattle and calves (in Oregon) ranked ahead of dairy, accounting for 19.8 percent and 33.8 percent, respectively, of agricultural commodity receipts.

Population

According to July 1, 1997, population estimates, the total population in the marketing area is 9 million. Seventy-seven percent of the marketing area population is located in Metropolitan Statistical Areas (MSAs). The two

largest MSAs are located on the western side of the Cascade Range. The Seattle-Tacoma-Bremerton (Seattle) area, with a population of 3.4 million (37.6% of the marketing area population), is in northwestern Washington. Over seventy percent of the population of the State of Washington is located west of the Cascade Mountains, in the western third of the State. Another 14.5% of the State's population is contained in 3 MSA's east of the Cascades.

The Portland-Salem (Portland) area in northwestern Oregon is located on the Oregon-Washington border, with Portland just south of the Columbia River. The population of this MSA is 2.1 million, or 23.6% of the marketing area population. Ninety percent of the population of Oregon is concentrated in the western one-third of the State, or in the western half of the Oregon portion of the marketing area.

Fluid Per Capita Consumption

Based on the population figure of 9 million and an estimated per capita fluid milk consumption rate of 22 pounds of fluid milk per month, total fluid milk consumption in the Pacific Northwest marketing area is estimated at 198 million pounds per month. For October 1997, plants that would be fully regulated distributing plants under the Pacific Northwest order had route disposition within the market of 170 million pounds. In addition, the 18 producer-handlers operating during this month had a combined route disposition of 18 million pounds. Additionally, slightly over 1 million pounds of route disposition (less than one percent of total route disposition in the marketing area) came from handlers outside the market. Because the handlers associated with this market are able to fulfill the market's Class I or fluid needs, and because of the somewhat geographic isolation of the market, maintaining the current Pacific Northwest order as a separate market is appropriate.

Milk Production

In October 1997, the 540 million pounds of milk pooled in the Pacific Northwest market were produced by 1,211 producers located in 57 counties in California, Idaho, Oregon, and Washington. Five counties produced 57 percent of the milk pooled. Four of these counties are in Washington State. They are Whatcom, Skagit, and Snohomish counties, which are less than 100 miles north of Seattle; and Yakima County, which is located in central Washington about 100 miles southeast of Seattle on the eastern side of the Cascade Range. The fifth county is in Oregon. It is Tillamook County, which borders the Pacific Ocean, about 60 miles west of the Portland area on the western side of the Coast Range.

Less than two percent of the milk pooled in the Pacific Northwest was produced outside of the marketing area, in Idaho and California. The largest portion is from producers in two northern California counties who pooled nearly 6 million pounds of milk or 89.8 percent of the pooled milk produced outside the Pacific Northwest marketing area.

Distributing Plants

Using distributing plant lists included in the proposed rule, with the pooling standards adjusted to 25 percent of route disposition as in-area sales, updated for known plant closures through December 1998, 35 distributing plants would be expected to be associated with the Pacific Northwest market, including 19 fully regulated distributing plants (all currently fully regulated), 2 partially regulated plants, 4 exempt plants (below 150,000 pounds in total route disposition), and 10 producer-handlers. It is known that 3 distributing plants (all producer-handlers) have gone out of business since October 1997.

There are 11 distributing plants within the Portland area, including 7 pool plants, 2 exempt plants and 2 producer-handlers. The Seattle/Tacoma MSAs have 4 pool plants, 1 partially regulated plant, and 4 producer-handlers. In addition to these two main population centers, the Spokane, Washington, MSA, located in the eastern area of the state near the Idaho border with a population of 405,000, has 2 pool plants.

Two smaller MSA's in western Oregon contain 2 pool plants, 1 producer-handler, and 1 plant exempt on the basis of size. Of the 5 distributing plants that would be operating in Oregon outside of MSAs, 3 would be fully regulated, 1 partially regulated, and 1 exempt of the basis of size. All but one, in central Oregon, are located in western Oregon.

One producer-handler is located in a northwest Washington MSA, and 1 pool plant, 2 producer-handlers and 1 partially regulated plant are located in the southeast quadrant of the State of Washington outside any MSA.

Since October 1997, three producer-handlers are known to have gone out of business, two in the State of Washington, and one in Oregon.

Distributing plants fully regulated under the Pacific Northwest order are located in MSAs where 71 percent of the market's population is concentrated.

Utilization

According to October 1997 pool statistics, the Class I utilization percentage for the Pacific Northwest market was 36 percent. Because this market is to remain separate, expected utilization changes due to the reform process result only from potential changes in plants' regulatory status; thus very little change in producer returns under the Pacific Northwest order is expected as a result of consolidation. For October 1997, Class I utilization for the Pacific Northwest market was 35.6 percent based on 192 million pounds of producer milk used in Class I out of 540 million total producer milk pounds. The weighted average use value for the Pacific Northwest market is estimated to be $13.33 per hundredweight.

Other Plants

Located within the Pacific Northwest marketing area in May 1997 were 27 supply or manufacturing plants; 12 in Oregon (5 in the Portland area), 15 in Washington (7 in the Seattle area) and none in Idaho. Two of the 27 plants (both in Oregon) were Order 124 pool supply plants, one of which manufactured primarily cheese, and the other nonfat dry milk. Of the 10 nonpool manufacturing plants located in Oregon, 8 manufactured primarily Class II products (including ice cream), 1 manufactured butter, and the other made cheese.

The 15 manufacturing/supply plants located in the State of Washington were all nonpool plants. Three manufactured primarily Class II products, 3 manufactured primarily butter, 2 manufactured primarily powder, and 7 manufactured primarily cheese.

Cooperative Associations

Five cooperative associations had members in the Pacific Northwest market in December 1997. Darigold Farms is the largest, and the only cooperative that had membership affiliated with another order (Order 135) in December 1997. Other cooperatives in this market are Farmers Cooperative Creamery, Tillamook County Creamery Association, Northwest Independent Milk Producers Association, and Portland Independent Milk Producers Association. These five cooperatives pooled 85 percent of the total producer milk pooled under the Pacific Northwest order in December 1997.

Criteria for Consolidation

The consolidated Pacific Northwest market adds one currently unregulated Oregon county to the Pacific Northwest milk order. The degree of association of

this market with other Federal order marketing areas is insufficient under any criteria to warrant consolidation with any other order areas.

Discussion of Comments and Alternatives

Prior to issuance of the proposed rule, alternatives to the leaving the Pacific Northwest area as a separate order area that were considered included the consolidation of the current Pacific Northwest, Southwestern Idaho-Eastern Oregon and Great Basin order areas. Because there is virtually no relationship with regard to either overlapping route dispositions or overlapping milk procurement between the Pacific Northwest and Southwestern Idaho-Eastern Oregon milk marketing areas, and none at all with Great Basin, these alternatives were not pursued.

Only two comments pertained specifically to the "consolidated" Pacific Northwest marketing area. Darigold Farms, Inc., commented that the Pacific Northwest marketing area should remain unchanged except for the addition of the one southwestern Oregon county proposed to be added. Darigold stated that the addition of this county would not cause the regulation of any plant. A comment filed by an individual from Utah stated that Idaho should be included in the Pacific Northwest area or be a separate order. As noted before, there is almost no relationship between the Pacific Northwest and Southwestern Idaho-Eastern Oregon marketing areas, and no basis for such a consolidation.

BILLING CODE 3410-02-P

LIST OF PLANTS AND REGULATORY STATUS

Plant name	City	State	October 1997	Order/ status [1]	Expected status [1]
Northeast					
ARMSTRONG, DAVID F. (SUNSET DAIRY)	WHITESBORO	NY	NY–NJ	1	1
ARRUDA, GEORGIANNA (ESTATE OF)	TIVERTON	RI	New England	4	4
BANGMA, LEONARD & DONALD	UXBRIDGE	MA	New England	4	4
BECHTEL DAIRIES, INC	ROYERSFORD	PA	Mid Atlantic	1	OOB 4/98
BOICE BROS. DAIRY (RICHARD P. BOICE)	KINGSTON	NY	NY–NJ	1	1
BRIGGS, ROBERT A	WEST MEDWAY	MA	New England	4	4
BROOKSIDE DAIRY	FITCHBURG	MA	New England	4	4
BYRNE DAIRY, INC	SYRACUSE	NY	NY–NJ	1	1
CAMPHILL VILLAGE	KIMBERTON	PA	Mid Atlantic	4	4
CHRISTIANSEN DAIRY CO., INC	NO. PROVIDENCE	RI	New England	1	1
CHROME DAIRY FARMS	OXFORD	PA	Mid Atlantic	1	1
CIENIEWICZ, JOSEPH	BERLIN	CT	New England	4	4
CLINTON MILK CO	NEWARK	NJ	NY–NJ	1	OOB 10/98
CLOVER FARMS DAIRY COMPANY	READING	PA	NY–NJ	1	1
CLOVERLAND/GREEN SPRING DAIRY	BALTIMORE	MD	Mid Atlantic	1	1
CLOVERLAND/GREEN SPRING DAIRY	BALTIMORE	MD	Mid Atlantic	1	OOB 2/98
COOPER'S HILLTOP DAIRY FARM	ROCHDALE	MA	New England	4	4
CORNELL UNIVERSITY	ITHACA	NY		6A	6B
CRESCENT RIDGE DAIRY, INC	SHARON	MA	New England	4	4
CROWLEY FOODS, INC	ALBANY	NY	NY–NJ	1	1
CROWLEY FOODS, INC	BINGHAMTON	NY	NY–NJ	1	1
CROWLEY FOODS, INC	CONCORD	NH	New England	1	1
CUMBERLAND DAIRY, INC	BRIDGETON	NJ	Mid Atlantic	2	2
CUMBERLAND FARMS, INC	CANTON	MA	New England	1	OOB 8/98
DAIRY MAID DAIRY, INC	FREDERICK	MD	Mid Atlantic	1	1
DUNAJSKI DAIRY, INC	PEABODY	MA	New England	4	4
DUTCH VALLEY FOOD CO., INC	SUNBURY	PA	Mid Atlantic	1	1
DUTCH WAY FARM MARKET	MYERSTOWN	PA	Mid Atlantic	4	4
EDWARDS, CHARLES & KURT & KEITH (MODEL DAIRY FARM).	GLOVERSVILLE	NY	NY–NJ	4	4
ELMHURST DAIRY, INC	JAMAICA	NY	NY–NJ	1	1
EMBASSY DAIRY, INC	WALDORF	MD	Mid Atlantic	1	OOB 3/98
EMMONS WILLOW BROOK FARM, INC	PEMBERTON	NJ	Mid Atlantic	4	4
FAIRDALE FARMS, INC	BENNINGTON	VT	New England	2	1
FARMLAND DAIRIES, INC. &/OR FAIRDALE MILK – COMPANY, INC.	WALLINGTON	NJ	NY–NJ	1	1
FISH FAMILY FARM, INC	BOLTON	CT	New England	4	4
FLINT, PETER	CHELSEA	VT	New England	1	1
FREDDY HILL FARM DAIRY	LANSDALE	PA	Mid Atlantic	4	4
FRIENDSHIP DAIRIES, INC	FRIENDSHIP	NY	NY–NJ	1	2
GARELICK FARMS, INC. WAS: CUMBERLAND FARMS, INC.	EAST GREENBUSH	NY	NY–NJ	1	1
GARELICK FARMS, INC. WAS: CUMBERLAND FARMS, INC.	FLORENCE	NJ	NY–NJ	1	1
GARELICK FARMS, INC	FRANKLIN	MA	New England	1	1
GIANT FOOD, INC	LANDOVER	MD	Mid Atlantic	1	1
GRANT'S DAIRY, INC	BANGOR	ME	New England	2	2
GRATERFORD STATE	GRATERFORD	PA	Mid Atlantic	6A	6B
GUERS DY., INC	POTTSVILLE	PA	Mid Atlantic	2	2
GUIDA-SEIBERT DAIRY CO	NEW BRITAIN	CT	New England	1	1
HALO FARM, INC	TRENTON	NJ	Mid Atlantic	1	1
HARRISBURG DAIRIES	HARRISBURG	PA	Mid Atlantic	1	1

LIST OF PLANTS AND REGULATORY STATUS—Continued

Plant name	City	State	October 1997	Order/ status [1]	Expected status [1]
HATCH, HOWARD	N. HAVERHILL	NH	New England	1	1
HATCHLAND DAIRY	N. HAVERHILL	NH	New England	4	4
HERITAGE'S DAIRY, INC	THOROFARE	NJ	Mid Atlantic	1	OOB 5/98
HERMANY FARMS, INC	BRONX	NY	NY–NJ	1	1
HIGHLAWN FARM	LEE	MA		5	3B
HILL FARM OF VERMONT	PLAINFIELD	VT		5	3B
HILLCREST DAIRY, INC. (MICHAEL J. JANAS)	MORAVIA	NY	NY–NJ	4	4
HINE, FREDRICK DBA: FIELD VIEW DAIRY FARM.	ORANGE	CT	New England	4	4
HOGAN, FRANCIS J. & ANDREW J. & SEAN P.—HOGAN'S DAIRY.	HUDSON FALLS	NY	NY–NJ	4	OOB 5/97
HOMESTEAD DAIRIES, INC	MASSENA	NY		5	OOB 6/98
HOOVER DAIRY	SANBORN	NY		5	5
HY POINT DAIRY FARMS, INC	WILMINGTON	DE	Mid Atlantic	1	1
H.E.A., INC	CRANSTON	RI	New England	1	1
H.P. HOOD, INC	AGAWAM	MA	New England	1	1
H.P. HOOD, INC. WAS: BOOTH BROTHERS DAIRY, INC.	BARRE	VT	New England	2	1
H.P. HOOD, INC	BURLINGTON	VT	New England	2	OOB 10/97
H.P. HOOD, INC	NEWINGTON	CT	New England	2	2
H.P. HOOD, INC	ONEIDA	NY	NY–NJ	[illegible]	1
H.P. HOOD, INC	PORTLAND	ME	New England	1	1
KEMPS FOODS, INC	LANCASTER	PA	Mid Atlantic	1	1
KOLB'S FARM STORE	SPRING CITY	PA	Mid Atlantic	4	4
KREIDER DAIRY FARMS, INC	MANHEIM	PA	NY–NJ	2	4
KRISCO FARMS, INC	CAMPBELL HALL	NY	NY–NJ	4	OOB 5/98
LAPP VALLEY FARM	NEW HOLLAND	PA	Mid Atlantic	4	4
LEESBURG STATE PRISON FARM	LEESBURG	NJ	Mid Atlantic	6A	6B
LEONARD, STEWART J	NORWALK	CT	New England	1	1
LEWES DAIRY, INC	LEWES	DE	Mid Atlantic	1	1
LEWIS COUNTY DAIRY CORP	LOWVILLE	NY	NY–NJ	1	1
LONGACRE'S MODERN DAIRY, INC	BARTO	PA	NY–NJ	1	1
MANINO, ROSE (DARI-DELL)	FRANKFORT	NY	NY–NJ	2	3B
MAPLE HILL FARMS, INC	BLOOMFIELD	CT	New England	1	OOB 9/97
MAPLEHOFE DAIRY, INC	QUARRYVILLE	PA	Mid Atlantic	4	4
MARCUS DAIRY, INC	DANBURY	CT	NY–NJ	1	1
MCNAMARA, PATRICK	WEST LEBANON	NH	New England	4	4
MEADOW BROOK FARMS, INC	POTTSTOWN	PA	Mid Atlantic	1	1
MERCERS DAIRY, INC	BOONVILLE	NY	NY–NJ	2	3B
BMERRYMEAD FARM	LANSDALE	PA	Mid Atlantic	4	4
MOHAWK DAIRY (Z & R CORP.)	AMSTERDAM	NY	NY–NJ	1	1
MONUMENT FARMS, INC	MIDDLEBURY	VT		5	1
MOUNT WACHUSETT DAIRY, INC	W. BOYLSTON	MA	New England	1	OOB 12/98
MOUNTAINSIDE FARMS, INC	ROXBURY	NY	NY–NJ	1	1
MUNROE, A B DAIRY, INC	EAST PROVIDENCE	RI	New England	1	1
NEW ENGLAND DAIRIES, INC	HARTFORD	CT	New England	1	1
NICASTRO FARMS, INC. DBA: RIVERSIDE FARMS.	FRANKFORT	NY	NY–NJ	4	4
NICHOLS, DAVID	CHESTERFIELD	MA	New England	4	4
NIP N TUCK FARMS	VINEYARD HAVEN	MA		5	4
OAK TREE FARM DAIRY, INC	EAST NORTHPORT	NY	NY–NJ	1	1
OAKHURST DAIRY	PORTLAND	ME	New England	2	2
OREGON DAIRY FARM MKT	LITITZ	PA	Mid Atlantic	4	4
PARMALAT WELSH FARMS, INC. WAS: WELSH FARMS, INC.	LONG VALLEY	NJ	NY–NJ	1	1
PARMALAT WEST DAIRIES, INC	SPRING CITY	PA	Mid Atlantic	2	OOB 5/97
PEACEFUL MEADOWS ICE CREAM, INC	WHITMAN	MA	New England	4	4
PEARSON, ROBERT L	WEST MILLBURY	MA	New England	4	4
PEDRO, JOSEPH	FALL RIVER	MA	New England	4	4
PENNVIEW FARMS	PERKASIE	PA	Mid Atlantic	4	4
PERRYDELL FARMS	YORK	PA	Mid Atlantic	4	4
PINE VIEW ACRES, INC	LANCASTER	PA	Mid Atlantic	4	4
PIONEER DAIRY, INC	SOUTHWICK	MA	New England	1	1
POTOMAC FARMS DAIRY, INC	CUMBERLAND	MD	Mid Atlantic	2	2
PULEO'S DAIRY	SALEM	MA	New England	1	3B
QUALITY MILK, INC	WARE	MA	New England	1	3B
QUEENSBORO FARM PRODUCTS,INC	CANASTOTA	NY	NY–NJ	1	2
READINGTON FARMS, INC	WHITEHOUSE	NJ	NY–NJ	1	1
READY FOODS, INC	PHILADELPHIA	PA	Mid Atlantic	2	3B
RICHARDSON FARMS, INC	MIDDLETON	MA	New England	4	4
RICHARDSONS G. H. DAIRY	DRACUT	MA	New England	3A	3B

LIST OF PLANTS AND REGULATORY STATUS—Continued

Plant name	City	State	October 1997	Order/ status [1]	Expected status [1]
RICHFOOD DAIRY	RICHMOND	VA	Mid Atlantic	1	1
RIDGE VIEW FARMS	ELIZABETHTOWN	PA	Mid Atlantic	4	4
RITCHEY'S DAIRY	MARTINSBURG	PA	Mid Atlantic	2	2
RONNYBROOK FARM DAIRY, INC	ANCRAMDALE	NY	NY–NJ	4	4
ROSENBERGER'S DAIRY, INC	HATFIELD	PA	Mid Atlantic	1	1
RUDOLPH STEINER EDUCATION & FARMING ASSOC., INC.	GHENT	NY	NY–NJ	4	4
RUTTER BROS. DAIRY, INC	YORK	PA	Mid Atlantic	1	1
SALEM VALLEY FARMS, INC	SALEM	CT	New England	4	4
SARATOGA DAIRY, INC. (STEWART'S PROCESSING CORP.).	SARATOGA SPRINGS	NY	NY–NJ	1	1
SCHNEIDER/VALLEY FARMS, INC	WILLIAMSPORT	PA	NY–NJ	2	2
SEWARD DAIRY, INC	RUTLAND	VT	New England	2	OOB 8/98
SHAW FARM DAIRY, INC	DRACUT	MA	New England	4	4
STEARNS, WILLARD J. & SONS, INC	STORRS	CT	New England	4	4
STOP & SHOP COMPANIES, INC	READVILLE	MA	New England	1	1
SULOMAN'S MILK	GILBERTSVILLE	PA	Mid Atlantic	4	4
SUNNYDALE FARMS, INC	BROOKLYN NY		NY–NJ	1	1
SYNAKOWSKI WALTER J (VALLEY SIDE FARM)	REMSEN	NY	NY–NJ	4	4
TANNER BROS. DAIRY	WARMINSTER	PA	Mid Atlantic	4	4
THOMAS, ORIN & SONS, INC	RUTLAND	VT	New England	2	1
TRINITY FARM	ENFIELD	CT	New England	4	4
TURKEY HILL DAIRY, INC	CONESTOGA	PA	Mid Atlantic	1	1
TURNER'S DAIRY, INC	SALEM	NH	New England	1	1
TUSCAN DAIRY FARMS, INC	FRASER	NY	NY–NJ	2	2
TUSCAN DAIRY FARMS, INC	UNION	NJ	NY–NJ	1	1
TUSCAN/LEHIGH DAIRIES, LP WAS: LEHIGH VALLEY DAIRIES, INC.	LANSDALE	PA	Mid Atlantic	1	1
TUSCAN/LEHIGH DAIRIES, LP WAS: LEHIGH VALLEY DAIRIES, INC.	SCHUYLKILL HAVEN	PA	NY–NJ	2	2
UPSTATE MILK COOPERATIVES, INC	BUFFALO	NY	NY–NJ	2	1
UPSTATE MILK COOPERATIVES, INC	JAMESTOWN	NY		5	5
UPSTATE MILK COOPERATIVES, INC	ROCHESTER	NY	NY–NJ	2	2
VALLEY OF VIRGINIA COOP. DBA SHENANDOAH'S PRIDE.	MT. CRAWFORD	VA	Mid Atlantic	2	2
VALLEY OF VIRGINIA COOP. DBA SHENANDOAH'S PRIDE.	SPRINGFIELD	VA	Mid Atlantic	1	1
VAN WIE, CHARLES F. (MEADOWBROOK FARMS DAIRY).	CLARKSVILLE	NY	NY–NJ	4	4
WALSH, WILLIAM	SIMSBURY	CT	New England	4	4
WAWA DAIRY FARMS	WAWA	PA	Mid Atlantic	1	1
WAY-HAR FARMS	BERNVILLE	PA	NY–NJ	3A	3B
WENDTS DAIRY DIV NIAGARA CO	NIAGARA FALLS	NY		5	5
WENGERTS DAIRY, INC	LEBANON	PA	Mid Atlantic	1	1
WEST LYNN CREAMERY, INC	LYNN	MA	New England	1	1
WHITTIER CREAMERY COMPANY, INC	SHREWSBURY	MA	New England	1	1
WINSOR, S. B. DAIRY, INC	JOHNSTON	RI	New England	1	3B
WRIGHT'S DAIRY FARM, INC	NORTH SMITHFIELD	RI	New England	4	4
Appalachian					
BROADACRE DAIRIES	POWELL	TN		5	1
CAROLINA DAIRIES	KINSTON	NC	Carolina	1	OOB 5/98
COBURG DAIRY, INC	N. CHARLESTON	SC	Carolina	1	1
DAIRY FRESH, LP	WINSTON-SALEM	NC	Carolina	1	1
DEAN MILK CO	LOUISVILLE	KY	Louis-Lex-Evans	1	1
FLAV-O-RICH, INC	BRISTOL	VA	Carolina	2	1
FLAV-O-RICH, INC	FLORENCE	SC	Carolina	1	1
FLAV-O-RICH, INC	LONDON	KY	Louis-Lex-Evans	1	1
FLAV-O-RICH, INC	WILKESBORO	NC	Carolina	1	1
GOLDEN GALLON, INC	CHATTANOOGA	TN	Southeast	1	1
HOOSIER DAIRY, INC. WAS: HOLLAND DAIRIES, INC.	HOLLAND	IN	Louis-Lex-Evans	1	1
HUNTER FARMS	CHARLOTTE	NC	Carolina	1	1
HUNTER FARMS	HIGHPOINT	NC	Carolina	1	1
IDEAL AMERICAN DAIRY	EVANSVILLE	IN	Louis-Lex-Evans	1	1
JACKSON DAIRY	DUNN	NC	Carolina	1	3B
JERSEY RIDGE DAIRY, INC	KNOXVILLE	TN		5	3B
LAND-O-SUN DAIRIES, INC	KINGSPORT	TN	Carolina	1	1
LAND-O-SUN DAIRIES, INC	PORTSMOUTH	VA	Carolina	2	2
LAND-O-SUN DAIRIES, INC	SPARTANBURG	SC	Carolina	1	1

LIST OF PLANTS AND REGULATORY STATUS—Continued

Plant name	City	State	October 1997	Order/ status [1]	Expected status [1]
MAOLA MILK & ICE CREAM CO	NEW BERN	NC	Carolina	1	1
MAPLEVIEW FARMS	HILLSBORO	NC	Carolina	1	3B
MARVA MAID DAIRY	NEWPORT NEWS	VA	Carolina	2	2
MAYFIELD DAIRY FARMS, INC	ATHENS	TN	Southeast	1	1
MILKCO, INC	ASHEVILLE	NC	Carolina	1	1
NORTH CAROLINA ST. UNIV.	RALEIGH	NC	Carolina	6A	6B
PEELER JERSEY FARMS, INC	GAFFNEY	SC	Carolina	1	OOB 10/98
REGIS MILK CO	CHARLESTON	SC	Carolina	1	1
SOUTHERN BELLE DAIRY, INC	SOMERSET	KY	Southeast	1	1
SUPERBRAND DY. PRODS., INC	GREENVILLE	SC	Carolina	1	1
SUPERBRAND DAIRY, INC	HIGHPOINT	NC	Carolina	1	1
U C MILK CO	MADISONVILLE	KY	Louis-Lex-Evans	1	1
WESTOVER DAIRIES	LYNCHBURG	VA	Carolina	1	1
WINCHESTER FARMS DAIRY	WINCHESTER	KY	Louis-Lex-Evans	1	1
Florida					
BORDEN, INC. (TRI-STATE DAIRY)	MIAMI	FL	Southeast Florida	1	OOB 4/97
FARM STORES, INC. (REW JB DAIRY PLANT ASSOCIATES dba FARM STORES).	MIAMI	FL	Southeast Florida	1	OOB 10/98
GOLDEN FLEECE DAIRY	LECANTO	FL	Tampa Bay	4	4
GUSTAFSON'S DAIRY, INC	GREEN COVE	FL	Upper Florida	1	1
M&B DAIRY PRODUCTS, INC	TAMPA	FL	Tampa Bay	1	3B
MCARTHUR DAIRY, INC	MIAMI	FL	Southeast Florida	1	1
PUBLIX SUPER MKTS., INC	DEERFIELD BEACH	FL	Southeast Florida	1	1
PUBLIX SUPER MKTS., INC	LAKELAND	FL	Tampa Bay	1	1
RYAN FOODS COMPANY, WAS: LONGLIFE DAIRY PRODUCTS, INC.	JACKSONVILLE	FL	Southeast	2	2
SUPERBRAND DAIRY PRODUCTS, INC	MIAMI	FL	Southeast Florida	1	1
SUPERBRAND DAIRY PRODUCTS, INC	PLANT CITY	FL	Tampa Bay	1	1
T.G. LEE FOODS, INC., WAS: LIFE STYLE/DIV TG LEE FOODS.	ORANGE CITY	FL	Upper Florida	1	1
T.G. LEE FOODS, INC	ORLANDO	FL	Tampa Bay	1	1
VELDA FARMS, INC	MIAMI	FL	Southeastern Florida	1	1
VELDA FARMS, INC	ST. PETERSBURG	FL	Tampa Bay	1	1
VELDA FARMS, INC	WINTER HAVEN	FL	Tampa Bay	1	1
WIGGINS DAIRY PRODUCTS, INC	PLANT CITY	FL	Tampa Bay	1	1
Southeast					
ALCORN STATE UNIVERSITY	LORMAN	MS	Southeast	6A	6B
ARKANSAS DEPT. OF CORREC	GRADY	AR	Southeast	6A	6B
AVENT'S DAIRY NC	OXFORD	MS	Southeast	1	1
BARBER PURE MILK CO	BIRMINGHAM	AL	Southeast	1	1
BARBER PURE MILK CO	MOBILE	AL	Southeast	1	1
BARBER PURE MILK CO	MONTGOMERY	AL	Southeast	1	1
BARBE'S DAIRY, INC	WESTWEGO	LA	Southeast	1	1
BORDEN, INC	BATON ROUGE	LA	Southeast	1	OOB 10/98
BORDEN MILK PRODUCTS, LLC	LAFAYETTE	LA	Southeast	1	1
BORDEN MILK PRODUCTS, LLC	MONROE	LA	Southeast	1	1
BROWNS VELVET DAIRY PRODUCTS (SOUTHERN FOODS GROUP, LP).	NEW ORLEANS	LA	Southeast	1	1
CENTENNIAL FARMS DAIRY, INC	ATLANTA	GA	Southeast	1	1
COLLEGE OF THE OZARKS	POINT LOOKOUT	MO	Southwest Plains	1	6B
COUNTRY DELITE FARMS, INC	NASHVILLE	TN	Southeast	1	1
DAIRY FRESH CORP	BAKER	LA	Southeast	1	1
DAIRY FRESH CORP	COWARTS	AL	Southeast	1	1
DAIRY FRESH CORP	HATTIESBURG	MS	Southeast	1	1
DAIRY FRESH CORP	PRICHARD	AL	Southeast	1	1
DASI PRODUCTS, INC	DECATUR	AL	Southeast	2	2
ETOWAH MAID DAIRIES, INC	CANTON	GA	Southeast	4	4
FLAV-O-RICH, INC	CANTON	MS	Southeast	1	1
FOREMOST DAIRY, INC	SHREVEPORT	LA	Southeast	1	1
GEORGIA STATE PRISON	REIDSVILLE	GA	Southeast	6A	6B
GOLD STAR DAIRY	LITTLE ROCK	AR	Southeast	1	1
HERITAGE FARMS DAIRY	MURFREESBORO	TN	Southeast	1	1
HILAND DAIRY CO	FAYETTEVILLE	AR	Southwest Plains	1	1
HILAND DAIRY CO	FORT SMITH	AR	Southwest Plains	1	1
HILAND DAIRY CO	SPRINGFIELD	MO	Southwest Plains	1	1
HUMPHREY DAIRY	HOT SPRINGS	AR	Southeast	3A	3B
KINNETT DAIRIES, INC	COLUMBUS	GA	Southeast	1	1

LIST OF PLANTS AND REGULATORY STATUS—Continued

Plant name	City	State	October 1997	Order/ status [1]	Expected status [1]
KLEINPETER DAIRY, INC	BATON ROUGE	LA	Southeast	1	1
LOUISIANA STATE PENITENTIARY	ANGOLA	LA	Southeast		OOB 12/95
LOUISIANA TECH	RUSTON	LA	Southeast	6A	6B
LUVEL DAIRY PRODUCTS, INC	KOSCIUSKO	MS	Southeast	1	1
MAYFIELD DAIRY	BRASELTON	GA	Southeast	1	1
MEADOW GOLD DAIRIES, INC. (SOUTHERN FOODS GROUP, LP).	HUNTSVILLE	AL	Southeast	1	1
MID-AMERICA DAIRYMEN, INC	LEBANON	MO	Southwest Plains	1	OOB 8/98
MISSISSIPPI STATE UNIVERSITY	MISS. STATE	MS	Southeast	6A	6B
NEW ATLANTA DAIRIES, INC	ATLANTA	GA	Southeast	1	1
PEELER JERSEY FARMS, INC	ATHENS	GA	Southeast	1	1
PUBLIX SUPERMARKETS, INC	LAWRENCEVILLE	GA	Southeast	1	1
PURITY DAIRIES, INC	NASHVILLE	TN	Southeast	1	1
RYAN FOODS COMPANY	MURRAY	KY	Southeast	2	1
SAVANNAH MANUFACTURING COMPANY—A HERSHEY FOODS COMPANY.	SAVANNAH	GA	Southeast	2	2
SOUTHERN UNIVERSITY	BATON ROUGE	LA	Southeast	6A	6B
SUPERBRAND DY. PRODS., INC	HAMMOND	LA	Southeast	1	1
SUPERBRAND DY. PRODUCTS, INC	MONTGOMERY	AL	Southeast	1	1
TURNER HOLDINGS, LLC	COVINGTON	TN	Southeast	1	2
TURNER HOLDINGS, LLC	FULTON	KY	Southeast	1	1
TURNER HOLDINGS, LLC WAS: COLEMAN DAIRY, INC.	LITTLE ROCK	AR	Southeast	1	1
TURNER HOLDINGS, LLC WAS: FOREST HILL DAIRY.	MEMPHIS	TN	Southeast	1	1
Mideast					
ARPS DAIRY, INC	DEFIANCE	OH	Ohio Valley	1	1
BAREMAN DAIRY, INC	HOLLAND	MI	Southern Michigan	1	1
BARKER'S FARM DAIRY, INC	PECKS MILL	WV	Ohio Valley	4	4
BROUGHTON FOODS CO	MARIETTA	OH	Ohio Valley	1	1
BRUNTON DAIRY	ALIQUIPPA	PA	E Ohio-W Penn	4	4
BURGER DAIRY CO	NEW PARIS	IN	Indiana	1	1
BURGER, C.F., CREAMERY, INC	DETROIT	MI	Southern Michigan	2	2
CALDER BROTHERS DAIRY	LINCOLN PARK	MI	Southern Michigan	1	1
COLTERYAHN DAIRY, INC.	PITTSBURGH	PA	E Ohio-W Penn	1	1
CON-SUN FOOD INDUSTRIES, INC	ELYRIA	OH	E Ohio-W Penn	1	1
COOK'S FARM DAIRY, INC	ORTONVILLE	MI	Southern Michigan	4	4
COUNTRY DAIRY	NEW ERA	MI	Southern Michigan	4	4
COUNTY FRESH, INC	GRAND RAPIDS	MI	Southern Michigan	1	1
CROOKED CREEK FARM DAIRY	ROMEO	MI	Southern Michigan	4	4
DEAN DAIRY PRODUCTS CO	SHARPSVILLE	PA	E Ohio-W Penn	1	1
DEAN FOODS COMPANY	ROCHESTER	IN	Indiana	1	1
DIXIE DAIRY CO	GARY	IN	Indiana	1	OOB 4/98
EASTSIDE JERSEY DAIRY, INC	ANDERSON	IN	Indiana	1	1
ELMVIEW DAIRY	COLUMBUS	PA	E Ohio-W Penn	4	OOB 1/97
EMBEST, INC	LIVONIA	MI	Southern Michigan	1	1
FIKE, R BRUCE & SONS DAIRY	UNIONTOWN	PA	E Ohio-W Penn	1	1
FISHER'S DAIRY, R.V. FISHER	PORTERSVILLE	PA	E Ohio-W Penn	4	4
FLEMINGS DAIRY	UTICA	OH	Ohio Valley	1	1
GALLIKER DAIRY CO	JOHNSTOWN	PA	E Ohio-W Penn	2	2
GLEN EDEN FARM-DIANNE TEETS	ROCHESTER	PA	E Ohio-W Penn	4	OOB 11/98
GOSHEN DAIRY COMPANY	NEW PHILADELPHIA	OH	E Ohio-W Penn	1	1
GREEN VALE FARM	COOPERSVILLE	MI	Southern Michigan	4	4
GREEN VALLEY DAIRY	GEORGETOWN	PA	E Ohio-W Penn	1	3B
GUERNSEY FARMS DAIRY	NORTHVILLE	MI	Southern Michigan	1	1
HARTZLER FAMILY DAIRY	WOOSTER	OH	E Ohio-W Penn	1	3B
HILLSIDE DAIRY CO	CLEVELAND HGHTS	OH	E Ohio-W Penn	1	1
HUTTER FARM DAIRY	MT. PLEASANT	PA	E Ohio-W Penn.	4	4
INVERNESS DAIRY, INC	CHEBOYGAN	MI	Michigan U P	1	1
JACKSON FARMS	NEW SALEM	PA	E Ohio-W Penn	4	4
JILBERT DAIRY, INC	MARQUETTE	MI	Michigan U P	1	1
JOHNSON'S DAIRY, INC	ASHLAND	KY	Ohio Valley	1	OOB 5/97
KERBER'S DAIRY	N. HUNTINGDON	PA	E Ohio-W Penn	1	3B
KROGER COMPANY, THE	INDIANAPOLIS	IN	Indiana	1	1
LANSING DAIRY, INC (MELODY FARMS, INC.)	LANSING	MI	Southern Michigan	1	1
LIBERTY DAIRY CO	EVART	MI	Southern Michigan	1	1
LONDON'S FARM DAIRY, INC	PORT HURON	MI	Southern Michigan	1	1
MAPLEHURST FARMS, INC	INDIANAPOLIS	IN	Indiana	1	1
MARBURGER FARM DAIRY, INC	EVANS CITY	PA	E Ohio-W Penn	1	1

LIST OF PLANTS AND REGULATORY STATUS—Continued

Plant name	City	State	October 1997	Order/ status [1]	Expected status [1]
MCDONALD DAIRY COMPANY	FLINT	MI	Southern Michigan	1	1
MCMAHONS DAIRY, INC	ALTOONA	PA		5	OOB
MEADOW BROOK DAIRY	ERIE	PA	E Ohio-W Penn	1	1
MEYER H & SONS DAIRY	CINCINNATI	OH	Ohio Valley	1	1
MICHIGAN DAIRY	LIVONIA	MI	Southern Michigan	1	1
ALBERT MIHALY & SON DAIRY	LOWELLVILLE	OH	E Ohio-W Penn	4	4
OBERLIN FARMS DAIRY, INC	CLEVELAND	OH	E Ohio-W Penn	1	1
OSBORN DAIRY	SAULT STE MARIE	MI	Michigan U P	4	4
PLEASANT VIEW DAIRY CORP	HIGHLAND	IN	Indiana	1	1
PRAIRIE FARMS DAIRY, INC	FT. WAYNE	IN	Indiana	1	1
PRAIRIE FARMS DAIRY, INC WAS: ROELOF DAIRY.	GALESBURG	MI	Southern Michigan	1	1
QUALITY CREAMERY, INC	COMSTOCK PARK	MI	Southern Michigan	1	OOB 7/98
QUALITY DAIRY CO B.T.U	LANSING	MI	Southern Michigan	1	1
REITER DAIRY CO	SPRINGFIELD	OH	Ohio Valley	1	1
REITER DAIRY, INC	AKRON	OH	E Ohio-W Penn	1	1
SANI DAIRY	JOHNSTOWN	PA	E Ohio-W Penn	2	OOB 1/99
SCHENKEL'S ALL-STAR DAIRY, INC	HUNTINGTON	IN	Indiana	1	1
SCHIEVER FARM DAIRY	HARMONY	PA	E Ohio-W Penn	1	3B
SCHNEIDERS DAIRY, INC	PITTSBURGH	PA	E Ohio-W Penn	1	1
SMITH DAIRY PRODUCTS CO	ORRVILLE	OH	Ohio Valley	1	1
SMITH DAIRY PRODUCTS CO	RICHMOND	IN	Ohio Valley	1	1
STERLING MILK CO	WAUSEON	OH	Ohio Valley	1	1
SUPERIOR DAIRIES, INC	SAGINAW	MI	Southern Michigan	1	1
SUPERIOR DAIRY, INC	CANTON	OH	E Ohio-W Penn	1	1
TAMARACK FARMS	NEWARK	OH	Ohio Valley	1	1
TAYLOR MILK CO., INC	AMBRIDGE	PA	E Ohio-W Penn	2	OOB 11/98
THE SPRINGHOUSE	EIGHTY FOUR	PA	E Ohio-W Penn	4	4
TOFT DAIRY INC	SANDUSKY	OH	Ohio Valley	2	2
TOLEDO MILK PROCESSING, INC. (COUNTRY FRESH OF OHIO).	MAUMEE	OH	Ohio Valley	1	1
TRAUTH, LOUIS DAIRY	NEWPORT	KY	Ohio Valley	1	1
TURNER DAIRY FARMS, INC	PITTSBURGH	PA	E Ohio-W Penn	1	1
UNITED DAIRY FARMERS	CINCINNATI	OH	Ohio Valley	1	1
UNITED DAIRY, INC	CHARLESTON	WV	Ohio Valley	1	1
UNITED DAIRY, INC	MARTINS FERRY	OH	E Ohio-W Penn	1	1
VALLEY RICH DAIRY	ROANOKE	VA	Ohio Valley	2	2
WHITE KNIGHT PACKAGING CORP. (PARMALAT WHITE KNIGHT PKG. CORP.).	WYOMING	MI	Southern Michigan	1	1
YOUNG'S JERSEY DAIRY, INC	YELLOW SPRINGS	OH	Ohio Valley	4	4
Upper Midwest					
AYSTA DAIRY, INC	VIRGINIA	MN	Upper Midwest	1	1
CASS-CLAY CREAMERY, INC	FARGO	ND	Upper Midwest	1	1
CASS-CLAY CREAMERY, INC	GRAND FORKS	ND	Upper Midwest	1	1
CASS-CLAY CREAMERY, INC	MANDAN	ND	Upper Midwest	2	2
CENTRAL MINNESOTA	SAUK CENTRE	MN	Upper Midwest	1	1
COUNTRY LAKE FOODS, INC. (LAND O'LAKES, INC.).	BISMARCK	ND	Upper Midwest	2	2
COUNTRY LAKE FOODS, INC. (LAND O'LAKES, INC.).	THIEF RIVER FALLS	MN	Upper Midwest	1	1
COUNTRY LAKE FOODS, INC. (LAND O'LAKES, INC.).	WOODBURY	MN	Upper Midwest	1	1
DEAN FOODS CO	HARVARD	IL	Chicago Regional	1	1
DEAN FOODS CO	HUNTLEY	IL	Chicago Regional	1	1
FOREMOST FARMS USA	DEPERE	WI	Chicago Regional	1	1
FOREMOST FARMS USA	WAUKESHA	WI	Chicago Regional	1	1
FOREMOST FARMS USA	WAUSAU	WI	Chicago Regional	1	1
FRANKLIN FOODS	DULUTH	MN	Upper Midwest	1	1
HANSENS DAIRY, INC	GREEN BAY	WI	Chicago Regional	2	OOB 1/99
HASTINGS COOPERATIVE	HASTINGS	MN	Upper Midwest	1	1
KOHLER MIX SPECIALTIES, INC	WHITE BEAR LAKE	MN	Upper Midwest	2	2
KWIK TRIP DAIRY	LA CROSSE	WI	Chicago Regional	1	1
LAMERS DAIRY, INC	KIMBERLY	WI	Chicago Regional	2	1
LIFEWAY FOODS, INC	SKOKIE	IL	Chicago Regional	2	1
MARIGOLD FOODS, INC	CEDARBURG	WI	Chicago Regional	1	1
MARIGOLD FOODS, INC	MINNEAPOLIS	MN	Upper Midwest	1	1
MARIGOLD FOODS, INC	ROCHESTER	MN	Upper Midwest	1	1
MEYER BROTHERS DAIRY	WAYZATA	MN	Upper Midwest	1	1
MOM'S DAIRY	GIBBON	MN	Upper Midwest	2	3B

LIST OF PLANTS AND REGULATORY STATUS—Continued

Plant name	City	State	October 1997	Order/ status [1]	Expected status [1]
MULLER-PINEHURST, INC	ROCKFORD	IL	Chicago Regional	1	1
NORTH BRANCH DAIRY, INC	NORTH BRANCH	MN	Upper Midwest	1	OOB 7/98
OAK GROVE DAIRY	NORWOOD	MN	Upper Midwest	1	1
OBERWEIS DAIRY, INC	AURORA	IL	Chicago Regional	1	1
POLLARD DAIRY, INC	NORWAY	MI	Michigan U P	1	1
SCHROEDER MILK CO., INC	ST PAUL	MN	Upper Midwest	1	1
STAR SPECIALTY FOODS, INC. (MORNING-STAR FOODS, INC.).	MADISON	WI	Chicago Regional	1	2
SWISS VALLEY FARMS CO	CHICAGO	IL	Chicago Regional	1	1
TETZNER DAIRY	WASHBURN	WI	Upper Midwest	4	4
UNITED WORLD IMPORTS	CHICAGO	IL	Chicago Regional	2	3B
VERIFINE DAIRY PRODUCTS CO	SHEBOYGAN	WI	Chicago Regional	1	1
WEBERS, INC	MARSHFIELD	WI		5	3B
Central					
ALBERS DAIRY	BARTELSO	IL	S Ill-E Missouri	[2]	4
ANDERSON-ERICKSON DAIRY CO	DES MOINES	IA	Iowa	1	1
W.H. BRAUM, INC	TUTTLE	OK	Southwest Plains	1	1
CENTRAL DAIRY & ICE CREAM	JEFFERSON CITY	MO		5	5
CHESTER DAIRY CO	CHESTER	IL	S Ill-E Missouri	1	1
DAIRY GOLD FOODS CO	CHEYENNE	WY	Eastern Colorado	1	1
DEPT. OF CORRECTIONS	CANON CITY	CO	Eastern Colorado	4	6B
DILLON DAIRY CO	DENVER	CO	Eastern Colorado	1	1
ELDON MOSS	IOWA CITY	IA	Iowa	4	4
FARM FRESH DAIRY, INC	CHANDLER	OK	Southwest Plains	1	1
GALESBURG CORR. CENTER	GALESBURG	IL	Central Illinois	6A	6B
GILLETTE DAIRY OF BLACK HILLS	RAPID CITY	SD		2	2
GRAFF DAIRY, LLC	GRAND JUNCTION	CO	Western Colorado	1	3B
GRAVES DAIRY	BELLVUE	CO	Eastern Colorado	4	4
HILAND DAIRY CO	NORMAN	OK	Southwest Plains	1	1
HILAND DAIRY CO	WICHITA	KS	Southwest Plains	1	1
JACKSON ICE CREAM CO	HUTCHINSON	KS	Southwest Plains	1	1
KANSAS STATE UNIV	MANHATTAN	KS	Greater Kansas City	6A	6B
KARL'S FARM DAIRY, INC	NORTH GLENN	CO	Eastern Colorado	4	4
LAESCH DAIRY CO	BLOOMINGTON	IL	S Ill-E Missouri	1	OOB 6/98
LAND O'LAKES, INC. FLUID DAIRY DIVISION	SIOUX FALLS	SD	E South Dakota	1	1
LAND–O–SUN DAIRIES, INC	O'FALLON	IL	S Ill-E Missouri	1	1
LENZ DAIRY	PRAIRIE HOME	MO	Greater Kansas City	4	4
LONGMONT DAIRY FARM	LONGMONT	CO	Eastern Colorado	4	4
LOWELL–PAUL DAIRY, INC	GREELEY	CO	Eastern Colorado	4	4
MARTIN DAIRY, INC	HUMANSVILLE	MO	S Ill-E Missouri	[2]	4
MEADOW GOLD DAIRIES, INC	DELTA	CO	Western Colorado	1	1
MEADOW GOLD DAIRIES, INC	ENGLEWOOD	CO	Eastern Colorado	1	1
MEADOW GOLD DAIRIES, INC	GREELEY	CO	Eastern Colorado	1	1
MEADOW GOLD DAIRIES, INC	LINCOLN	NE	Nebraska-W Iowa	1	1
MEADOW GOLD DAIRIES, INC	TULSA	OK	Southwest Plains	1	1
MID–STATES DAIRY COMPANY	HAZELWOOD	MO	S Ill-E Missouri	1	1
PATKE FARM DAIRY	WASHINGTON	MO	S Ill-E Missouri	1	3B
PEVELY DAIRY CO	ST LOUIS	MO	S Ill-E Missouri	1	1
PRAIRIE FARM DAIRIES, INC	CARLINVILLE	IL	S Ill-E Missouri	1	1
PRAIRIE FARMS DAIRY, INC	GRANITE CITY	IL	S Ill-E Missouri	1	1
PRAIRIE FARMS DAIRY, INC	OLNEY	IL	S Ill-E Missouri	1	1
PRAIRIE FARMS DAIRY, INC	PEORIA	IL	Central Illinois	1	1
PRAIRIE FARMS DAIRY, INC	QUINCY	IL	S Ill-E Missouri	1	1
RADIANCE DAIRY	FAIRFIELD	IA	Iowa	4	4
ROBERTS DAIRY CO	DES MOINES	IA	Iowa	1	1
ROBERTS DAIRY CO	IOWA CITY	IA	Iowa	1	1
ROBERTS DAIRY CO	KANSAS CITY	MO	Greater Kansas City	1	1
ROBERTS DAIRY CO	OMAHA	NE	Nebraska-W Iowa	1	1
ROBINSON DAIRY, INC	DENVER	CO	Eastern Colorado	1	1
ROYAL CREST DAIRY, INC	DENVER	CO	Eastern Colorado	1	1
SAFEWAY STORES, INC	DENVER	CO	Eastern Colorado	1	1
SCHRANT ROADSIDE DAIRY (ROADSIDE DAIRY).	WINSIDE	NE	Nebraska-W Iowa	4	4
SHOENBERG FARMS, INC. DBA FARM FRESH, INC.	ARVADA	CO	Eastern Colorado	1	1
SINTON DAIRY FOODS CO., LLC	COLORADO SPRINGS	CO	Eastern Colorado	1	1
SOUTH DAKOTA STATE UNIV	BROOKINGS	SD	E South Dakota	6A	6B
STAR DAIRY, INC	MULHALL	OK	Southwest Plains	([2])	4
SWAN BROS. DAIRY, INC	CLAREMORE	OK	Southwest Plains	4	4

LIST OF PLANTS AND REGULATORY STATUS—Continued

Plant name	City	State	October 1997	Order/ status [1]	Expected status [1]
SWISS VALLEY FARMS CO	CEDAR RAPIDS	IA	Chicago Regional	1	3B
SWISS VALLEY FARMS CO	DUBUQUE	IA	Chicago Regional	1	1
WELLS DAIRY, INC	LE MARS	IA	Nebraska-W Iowa	1	1
WELLS DAIRY, INC	OMAHA	NE	Nebraska-W Iowa	1	1
WESTERN DAIRYMEN COOP, INC	RIVERTON	WY	Eastern Colorado	2	OOB 11/97
WILD'S BROTHER'S DAIRY	EL RENO	OK	Southwest Plains	4	4
Southwest					
BELL DAIRY PRODUCTS, INC	LUBBOCK	TX	New Mex-W Texas	1	1
CREAMLAND DAIRIES	ALBUQUERQUE	NM	New Mex-W Texas	1	1
DAVID'S SUPERMARKETS, INC	GRANDVIEW	TX	Texas	1	1
FARMERS DAIRIES	EL PASO	TX	New Mex-W Texas	1	1
HOBBS DRIVE IN DAIRY	HOBBS	NM	New Mex-W Texas	4	OOB 8/98
HYGEIA DAIRY	CORPUS CHRISTI	TX	Texas	1	1
H. E. BUTTS GROCERY CO	HOUSTON	TX	Texas	1	1
H. E. BUTTS GROCERY CO	SAN ANTONIO	TX	Texas	1	1
LAND O' PINES	LUFKIN	TX	Texas	1	OOB 3/97
LANE'S DAIRY	EL PASO	TX	New Mex-W Texas	4	4
LILLY DAIRY PRODUCTS, INC	BYRAN	TX	Texas	1	1
LOS LUNAS DAIRY	ALBUQUERQUE	NM	New Mex-W Texas	4	4
MICKEY'S DRIVE IN DAIRY	ALBUQUERQUE	NM	New Mex-W Texas	4	4
MIDWEST MIX CO	SULPHUR SPRINGS	TX	Texas	2	2
MILK PRODUCTS, LLC WAS: BORDEN, INC	ALBUQUERQUE	NM	New Mex-W Texas	1	OOB 6/98
MILK PRODUCTS, LLC WAS: BORDEN, INC	AUSTIN	TX	Texas	1	1
MILK PRODUCTS, LLC WAS: BORDEN, INC	CONROE	TX	Texas	1	1
MILK PRODUCTS, LLC WAS: BORDEN, INC	DALLAS	TX	Texas	1	1
MILK PRODUCTS, LLC WAS: BORDEN, INC	EL PASO	TX	New Mex-W Texas	1	OOB 7/87
MORNINGSTAR SPECIALTY	SULPHUR SPRINGS	TX	Texas	2	2
MOUNTAIN GOLD DAIRY	CARRIZOZO	NM	New Mex-W Texas	3A	3B
NATURE'S DAIRY, INC	ROSWELL	NM	New Mex-W Texas	4	4
OAK FARMS DAIRIES	DALLAS	TX	Texas	1	1
OAK FARMS DAIRIES	HOUSTON	TX	Texas	1	1
OAK FARMS DAIRIES	SAN ANTONIO	TX	Texas	1	1
OAK FARMS DAIRIES WAS: PURE MILK COMPANY.	WACO	TX	Texas	1	1
PLAINS CREAMERY	AMARILLO	TX	New Mex-W Texas.	1	1
PRICES CREAMERY, INC	EL PASO	TX	New Mex-W Texas	1	1
PROMISED LAND DAIRY	FLORESVILLE	TX	Texas	4	4
RANCHO LAS LAGUNAS	SANTA FE	NM	New Mex-W Texas	3A	3B
RASBAND DAIRY	ALBUQUERQUE	NM	New Mex-W Texas	4	4
SCHEPPS DAIRY, INC	DALLAS	TX	Texas	1	1
SOUTHWEST DAIRY	TYLER	TX	Texas	1	1
SUPERBRAND DAIRY PRODS, INC	FT WORTH	TX	Texas	1	1
VANDERVOORTS DAIRY	FT WORTH	TX	Texas	1	1
Arizona-Las Vegas					
ANDERSON DAIRY, INC	LAS VEGAS	NV	Great Basin	1	1
GOLDEN WEST DAIRIES	WELLTON	AZ	Central Arizona	4	OOB 9/98
HETTINGA, HEIN & ELLEN	YUMA	AZ	Central Arizona	4	4
JACKSON & COMPANY	PHOENIX	AZ	Central Arizona	1	1
MEADOWWAYNE DAIRY	COLORADO CITY	AZ	Central Arizona	5	4
SAFEWAY STORES, INC	TEMPE	AZ	Central Arizona	1	1
SHAMROCK FOODS COMPANY	PHOENIX	AZ	Central Arizona	1	1
SMITH'S FOOD & DRUG CENTERS, INC	TOLLESON	AZ	Central Arizona	1	1
SUNRISE DAIRY	TAYLOR	AZ		5	3B
Western					
BRIGHAM YOUNG UNIVERSITY	PROVO	UT	Great Basin	6A	6B
BROWN DAIRY, INC	HOYTSVILLE	UT	Great Basin	4	4
CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS.	SALT LAKE CITY	UT	Great Basin	6A	6B
COUNTRY BOY DAIRY	OGDEN	UT	Great Basin	4	4
CREAM O'WEBER DAIRY, INC	SALT LAKE CITY	UT	Great Basin	1	1
DARIGOLD, INC	BOISE	ID	SW Idaho-E Oregon	1	1
FALCONHURST DAIRY, INC	BUHL	ID	Great Basin	1	1
FARM FRESH	SALEM	UT	Great Basin	1	OOB 8/98
GOSSNER FOODS, INC	LOGAN	UT	Great Basin	1	1
IDEAL DAIRY, INC	RICHFIELD	UT	Great Basin	4	4

LIST OF PLANTS AND REGULATORY STATUS—Continued

Plant name	City	State	October 1997	Order/ status [1]	Expected status [1]
JOHNNY'S DAIRY	SOUTH WEBER	UT	Great Basin	4	4
JONES DAIRY & HEALTH FOODS	TAYLORSVILLE	UT	Great Basin	3A	OOB 12/98
KDK, INC	DRAPER	UT	Great Basin	1	1
MEADOW GOLD DAIRIES, INC	BOISE	ID	SW Idaho-E Oregon	1	1
MEADOW GOLD DAIRIES, INC	POCATELLO	ID	Great Basin	1	1
MEADOW GOLD DAIRIES, INC	SALT LAKE CITY	UT	Great Basin	1	1
MODEL DAIRY	RENO	NV	Great Basin	2	2
REED'S DAIRY, INC	IDAHO FALLS	ID	Great Basin	4	4
ROSEHILL DAIRY	MORGAN	UT	Great Basin	4	4
SLADES DAIRY WAS: DALE BARKER	MOUNT PLEASANT	UT	Great Basin	4	4
SMITH FOOD & DRUG CENTERS, INC	LAYTON	UT	Great Basin	1	1
SMITH'S DAIRY	BUHL	ID	SW Idaho-E Oregon	1	3B
STOKER WHOLESALE, INC	BURLEY	ID	SW Idaho-E Oregon	1	1
UTAH STATE PRISON	DRAPER	UT	Great Basin	6A	6B
UTAH STATE UNIVERSITY	LOGAN	UT	Great Basin	3A	6B
WESTERN QUALITY FOOD PRODUCTS	CEDAR CITY	UT	Great Basin	2	2
WINDER DAIRY	SALT LAKE CITY	UT	Great Basin	1	1
Pacific Northwest					
ALLISON HARDY	ELMA	WA	Pacific Northwest	4	OOB 5/98
ALPENROSE DAIRY	PORTLAND	OR	Pacific Northwest	1	1
ANDERSEN DAIRY, INC	BATTLE GROUND	WA	Pacific Northwest	1	1
BRANDSMA, EDWARD & AILEEN	LYNDEN	WA	Pacific Northwest	4	4
CURLY'S DAIRY, INC	SALEM	OR	Pacific Northwest	1	1
DARIGOLD, INC	MEDFORD	OR	Pacific Northwest	1	1
DARIGOLD, INC	PORTLAND	OR	Pacific Northwest	1	1
DARIGOLD, INC	SEATTLE	WA	Pacific Northwest	1	1
DE JONG, WALTER	MONROE	WA	Pacific Northwest	4	OOB 8/98
EBERHARD CREAMERY, INC	REDMOND	OR	Pacific Northwest	1	1
ECHO SPRING DAIRY, INC	EUGENE	OR	Pacific Northwest	1	1
EVERGREEN DAIRY, INC. (WEIKS)	OLYMPIA	WA	Pacific Northwest	4	OOB 5/96
FAITH DAIRY, INC	TACOMA	WA	Pacific Northwest	4	4
FRED MEYER, INC	PORTLAND	OR	Pacific Northwest	1	1
GILBERT, GERALD, ET AL	OTHELLO	WA	Pacific Northwest	4	4
GRAAFSTRA DAIRY, INC	ARLINGTON	WA	Pacific Northwest	4	4
HARVEY, MIKE	VANCOUVER	WA	Pacific Northwest	4	4
INLAND NORTHWEST DAIRIES, LLC	SPOKANE	WA	Pacific Northwest	1	1
KROPF, ROY	HALSEY	OR	Pacific Northwest	4	OOB 9/98
LOCHMEAD FARMS, INC	JUNCTION CITY	OR	Pacific Northwest	4	4
MALLORIE'S DAIRY, INC	SILVERTON	OR	Pacific Northwest	4	4
PACIFIC FOODS OF OREGON, INC	CLACKAMAS	OR	Pacific Northwest	1	3B
SAFEWAY 85, INC	MOSES LAKE	WA	Pacific Northwest	1	1
SAFEWAY STORES, INC	BELLEVUE	WA	Pacific Northwest	1	1
SAFEWAY STORES, INC	CLACKAMAS	OR	Pacific Northwest	1	1
SMITH BROTHERS FARMS, INC	KENT	WA	Pacific Northwest	4	4
SPRINGFIELD CREAMERY	EUGENE	OR		3A	3B
STATE OF OREGON DEPARTMENT OF CORRECTIONS.	SALEM	OR	Pacific Northwest	2	3B
STATE OF WASHINGTON DEPARTMENT OF CORRECTIONS.	MONROE	WA	Pacific Northwest	4	2
STRATTON, WARD	PULLMAN	WA	Pacific Northwest	4	4
SUNSHINE DAIRY, INC	PORTLAND	OR	Pacific Northwest	1	1
TILLAMOOK COUNTY CREAMERY ASSN	TILLAMOOK	OR	Pacific Northwest	1	2
UMPQUA DAIRY PRODUCTS CO., INC	ROSEBURG	OR	Pacific Northwest	1	1
VENN, WILLIAM (TIMOTHY & SUSAN BERNDT)	NORTH BEND	WA	Pacific Northwest	4	4
VITAMILK DAIRY, INC	SEATTLE	WA	Pacific Northwest	1	1
WAGNER, PAUL B. & SHARON	PORT ORFORD	OR		5	3B
WILCOX DAIRY FARMS, LLC	CHENEY	WA	Pacific Northwest	1	1
WILCOX DAIRY FARMS, LLC	ROY	WA	Pacific Northwest	1	1
WINEGAR, GARY & MARGO	ELLENSBURG	WA	Pacific Northwest	1	OOB 7/97
PALMER ZOTTOLA DBA VALLEY OF THE ROGUE DAIRY.	GRANTS PASS	OR	Pacific Northwest	1	1

[1] Distributing plant status (as determined from October 1997 Data):
1: Pool.
2: Partially Regulated.
3: Exempt based on size:
A. As defined under current federal orders.
B. As defined under proposed rule; with route disposition less than 150,000 lbs. per month.
4: Producer-Handler.
5: UNREGULATED.
6: Exempt based on institutional status:

A. As defined under current Federal orders.
B. As defined under proposed orders (Government, university, and charitable).
[2] New—No data for October 1997: Information not included in analysis.

2. Basic Formula Price Replacement and Other Class Price Issues

This rule closely follows the pricing plan described in the proposed rule by replacing the current basic formula price (BFP) with a multiple component pricing system that derives component values from surveyed prices of manufactured dairy products. The adopted pricing system determines butterfat prices for milk used in Class II, Class III and Class IV products from a butter price; protein and other solids prices for milk used in Class III products from cheese and whey prices; and nonfat solids prices for milk used in Class II and Class IV products from nonfat dry milk product prices.

The calculation of the Class I skim milk and butterfat prices for each order, determined in the proposed rule by computing a six month declining average of the higher of the Class III or Class IV skim milk prices for the second preceding month and adding a fixed Class I differential to the result, has been changed to reflect more closely the value of milk used in manufacturing. The Class I skim price for a month will be determined by adding the fixed Class I differential for each order to the higher of a Class III or IV skim value, calculated from product prices reported by NASS for the most recent two-week period for which prices are available on the 23rd day of the previous month. Similarly, the Class I butterfat price will be calculated by adding the fixed Class I differential divided by 100 to a butterfat value computed by using product prices for the same two-week period.

The price of Class II skim milk for a month will be computed by the sum of a Class IV skim price per hundredweight, calculated from product prices reported by NASS for the most recent two-week period for which prices are available on the 23rd day of the previous month, and the 70-cent Class II differential. The Class II butterfat price will be determined from the NASS-reported butter price, as in Classes III and IV, plus .7 cents per pound to incorporate the Class II differential. This price will be announced on the 5th day of the month and apply to butterfat in Class II during the previous month.

A table showing current and re-calculated prices for the period 1994 through 1997 appears at the end of this discussion of the BFP replacement. The basis for re-calculating the prices is described later in this discussion.

Provisions for Federal milk orders regulating the handling of milk in areas for which a multiple component pricing system has not been adopted will maintain a hundredweight skim/butterfat pricing system instead of the component pricing plan. The hundredweight prices will be determined by using the component price formulas contained in this decision to compute corresponding hundredweight prices using standard component levels.

Background

The proposed rule described in some detail the development in the early 1960's of the Minnesota-Wisconsin manufacturing grade milk price series (M–W) as a means of identifying a price determined by supply and demand for milk used in manufactured dairy products. Also described were the developments that have made the M–W less representative of the value of milk used in manufactured products. The two primary trends making the M–W less representative over the last four decades are the declining volume of Grade B (manufacturing grade) milk and the declining numbers of plants from which payments could be reported to update the base month price.

The problem of the declining number of plants from which payments could be reported to update the base month M–W survey of two months previous was addressed in 1995 by using an updating formula that uses changes from the base month to the next month in prices paid for butter, nonfat dry milk, and cheese. However, the problem of using a declining volume of Grade B milk to accurately represent the value of milk used for manufacturing was not solved with the implementation of the current BFP. The decision based on the basic formula price hearing recognized that "the adoption of the base month M–W price, or any Grade B milk series, is only a short term solution, since the amount of Grade B milk production is expected to continue declining."

Process

The Basic Formula Price Replacement Committee was one of several committees formed to deal with specific issues involved in restructuring the Federal milk order system pursuant to the 1996 Farm Bill. The Committee established goals and criteria for a new BFP, hosted a July 1996 public forum on dairy price discovery techniques in Madison, Wisconsin, and considered over 1,600 comments submitted by interested persons relative to the basic formula price in response to the May 1996 invitation to comment on Federal Order restructuring. The Committee conducted extensive study and analysis, worked with a University Study Committee (USC) commissioned to conduct objective analysis of the performance of numerous alternatives to the current basic formula price, and issued a preliminary report on BFP replacement in April 1997. The Committee studied the comments responding to the preliminary report, as well as those received earlier, in the development of the BFP replacement portion of the proposed rule, which was published in January 1998.

The goals and criteria to be met by a replacement for the basic formula price were discussed in detail in the proposed rule. Briefly, the goals are: (a) Meet the supply and demand criteria set forth in the Agricultural Marketing Agreement Act of 1937 (the Act), (b) not deviate greatly from the general level of the current BFP, and (c) demonstrate the ability to change in reaction to changes in supply and demand.

The criteria established to evaluate the various alternatives were: (a) Stability and predictability; (b) simplicity, uniformity, and transparency; (c) sound economics—e.g., consistency with market conditions; and (d) reduced regulation.

Comments

Of the more than 1,600 comments received relative to the basic formula price in response to the May 1996 invitation to comment on Federal Order restructuring, most favored one or more of five categories of alternatives to the current BFP. These five alternatives were: Economic formulas, futures markets, cost of production, competitive pay price, and product price and component formulas. In addition, numerous comments were received relative to the use of National Cheese Exchange prices in particular and exchange prices in general in the determination of a basic formula price.

After publication of the proposed rule in January 1998, nearly 600 comments were received relating to some aspect of the basic formula price replacement. Approximately 450 of these comments were form letters or very general in nature. For the most part, comments that related specifically to the proposal

supported the use of product price formulas and the use of surveyed product prices to calculate component prices in determining the value of milk. Many of the comments, however, suggested modifications to the proposed rule. These comments are addressed in the discussion of each of the individual topics involved in these pricing issues.

The only alternative previously considered that retained considerable support from producer organizations was a competitive pay price. In addition, many individual producer comments continued to advocate cost of production or a floor for the BFP ranging from $14.50 to $18.00. Some producers also suggested letting the market determine prices, and a few suggested supply management to ensure that farmers receive fair milk prices. One processor opposed product price formulas, suggesting that futures are the preferred tool used by markets to manage risk. Several producers supported basing producer prices on retail prices, while a state senator from Wisconsin suggested paying producers on the quality and quantity of their milk.

As noted in the proposed rule, the reason the USC dropped cost of production from consideration was that cost of production represents only the supply side of the market, ignoring factors underlying demand or changes in demand for milk and milk products.

Competitive Pay Price

Although some producer groups submitted comments on the proposed rule that continued to support use of a competitive pay price for determining the BFP replacement, a number of these comments stated that the pricing proposal contained in the proposed rule was one they could support. Other commenters continued to express the view that a competitive pay price is the best indicator of the national supply and demand for milk and that continuing to use such a price would provide a simple, economically defensible method of calculating the true value of milk used in manufactured dairy products.

Several proponents suggested including a competitive pay price for Grade A milk, with some adjustments, as a way to improve the size and representativeness of the competitive pay price.

As described in the proposed rule, a competitive pay price to be used as a BFP must represent the result of open market negotiation between dairy farmers (or their cooperatives) and milk processors. Competition requires sufficient numbers of buyers and sellers so that no one participant or group of participants can unduly influence the price. In addition, the price cannot be a Federal- or State-regulated price, such as the price for Grade A milk currently priced under Federal milk orders.

Identification of a competitive pay price in today's dairy industry, where 70 percent of the milk is currently covered under Federal milk marketing orders, appears to be an unsurmountable challenge. After accounting for state regulations, only about two percent of Grade A milk is unregulated, and it is unlikely that even this small amount of milk is not affected by regulated prices. Only about five percent of the total milk marketed in the U.S. is Grade B or unregulated, and 42 percent of that milk is located in Minnesota and Wisconsin. The remainder is scattered among 23 states in amounts too small and delivered to too few processing plants to generate a competitive pay price. In areas where alternative markets exist, the price for unregulated milk likely is not below the price paid for regulated milk, since producers would prefer to sell their milk to regulated handlers to receive the higher regulated price. Thus, unregulated handlers are compelled to meet the regulated price in order to attract sufficient supplies of milk. The circular result is that the regulated price ultimately becomes the competitive price. This process does not lead to a representative competitive pay price for milk.

The concept of a competitive pay price has appeal from the standpoint of sound economics. However, serious concerns must be raised about the degree of competition reflected in a price based on the declining volume of Grade B milk produced and purchased, or the introduction of Grade A milk that, even if unregulated, is significantly influenced by minimum order prices and therefore suspect as a "competitive" price.

The proposed rule contained a description of a BFP Replacement Committee attempt to determine a competitive pay price series that included nine states' pay prices for Grade A milk used in manufacturing, with the prices adjusted for protein content, performance premiums, over-order premiums, and hauling subsidies. The nine states accounted for approximately 75% of the Grade A milk used for manufacturing in the U.S.

The reduced price level that resulted from the study was explained in terms of currently effective pay prices in the states included in the survey and the heavier weighting of milk used in butter/powder production than in the current BFP. In addition to the negative aspects of the reduced price level and the uncertainty of being able to identify prices paid to producers that are not influenced by regulated prices, the USC analysis found that two competitive pay price series that passed the USC's level one criteria were questionable in their ability to reflect the manufactured milk market. Neither performed well when tested using the level two criteria and therefore were dropped from further consideration.

Product Price Formulas and Component Pricing

Most comments filed in response to the proposed rule supported adoption of the use of product price formulas to derive multiple component prices for most markets as a viable market-oriented alternative to the current basic formula price. Favorable comments expressed the opinion that a price determined from the national finished product markets more accurately reflects the value of milk for manufacturing than other methods of determining a milk price. The price handlers can afford to pay for milk is determined by the price for which the finished product can be sold. Therefore, a pricing system that translates finished product prices to a price for raw milk results in a representative raw milk price for both producers and handlers. Component pricing, with prices determined for butterfat, protein, nonfat solids, and "other solids" (solids other than protein), can best be accomplished through product price formulas, to reflect the value of each component in finished product prices. The product price formulas adopted in this rule are relatively easy to use and understand, and the value of milk may be computed on an on-going basis by everyone in the dairy industry by following commodity markets.

Because milk used in manufactured products obtains its value from the components of milk, it is the components that should be priced; particularly butterfat and protein, and to a lesser extent the other solids contained in the milk.

Opposition to product price formulas was directed primarily at the need for establishing product yields and make allowances in determining a milk price or component prices. Opponents expressed the view that yields and make allowances would not reflect actual processing yields and costs in manufacturing plants, and therefore would not yield an accurate price for milk. Opponents further explained that when yields and make allowances are determined, they would be difficult to adjust and would not react to changes

in manufacturing conditions. Opponents also argued that when an incorrect make allowance is established, plants are guaranteed a return, or profit, to the detriment of dairy farmers. Some comments even described the make allowance as an unfair charge paid by dairy farmers to processors to have their milk made into products. Other opponents explained that an incorrect yield or make allowance may force payment for milk at a level that would not allow a return to the manufacturing plant.

The USC tested several product price formulas, including a one-class multiple component pricing formula and a set of formulas similar to the formulas recommended in this decision. Based on the results of the USC analysis measured against several criteria, the multiple component pricing formulas had the best overall performance of any of the alternatives considered.

Commodity Prices

As recommended in the proposed rule and contained in this final decision, commodity prices determined by surveys conducted by the USDA's National Agricultural Statistics Service (NASS) will be used in the formulas that replace the BFP. A considerable number of comments were received concerning the use of commodity prices in determining prices for milk used in manufactured dairy products. Most of those commenting supported use of a price survey, but many commenters urged that participation be mandatory and reported prices audited, with the survey enlarged to include plants representing the entire nation so that the prices are truly representative.

Proponents of the NASS surveys explained that the NASS data is unbiased and would yield accurate representative prices of the products that are being marketed. Several comments contained specific recommendations for product categories to be surveyed to obtain the most accurate representative result.

NASS data traditionally have been collected via a survey with voluntary participation. The price information in the current cheese price survey, like most NASS data, is not audited. NASS applies various statistical techniques and cross-checking with other sources to provide the most reliable information available.

At the present time there appears to be no need for the suggested changes to the proposed surveys. The scope of the surveys that have been undertaken by NASS, and their geographic representation, appears to be comprehensive. Unless there is some indication that the prices gathered by the survey process are not representative, the very significant increase in regulation required to audit those prices and the steps that would need to be taken to make participation mandatory would be excessive and are not anticipated to be undertaken at this time.

Several alternatives to a NASS price survey were considered. There is a weekly cash butter contract trading on the Chicago Mercantile Exchange (CME). This contract is currently used to establish the butterfat differential and butterfat price in all federal milk orders. This price series has been criticized due to the "thinness" of trading. Dairy Market News (DMN) publishes regional wholesale butter prices. However, since DMN price series cover cash or short-term contract transactions, they may not be representative of the predominant long-term contracts. Criticism of cheese exchange trading, including inaccurate representation of cheese prices and accusations of market manipulation, reached the point that the National Cheese Exchange (NCE) discontinued trading, and cash trading of cheese moved to the CME. The CME also has received some criticism for thinness of trading.

There is very limited exchange trading of nonfat dry milk. Other alternatives to a NASS survey for nonfat dry milk and dry whey are limited to prices published by Dairy Market News (DMN). The prices reported by DMN are generally considered to be representative of the dry product markets. However, the prices are reported as a range. A simple average of the prices is used to compute a monthly price and may not reflect the weighted average price at which the product moved. The DMN prices are not intended to establish prices but are provided for market information.

The NASS "Dairy Products Prices" reports wholesale cheese prices which are used to compute the current BFP. The NASS survey requests prices for cheddar cheese. The instructions for the survey specify what should and should not be included in the reported prices. The instructions state that a sale occurs when a transaction is completed, cheese is "shipped out", or title transfer occurs. Prices for cheddar cheese only are to be reported f.o.b. the processing plant/storage center. Prices should be for "bare" or "naked" cheese with only the minimum packaging required for 40-pound blocks. Processors are asked to include all sales transactions of 40-pound blocks and barrel cheese 4–30 days old, the total volume sold, the total dollars received, or price per pound, and the moisture content of barrel cheese when it is sold. Intra-company sales, forward pricing sales, resales, transportation charges, clearing charges, and block cheese that will be aged should not be included.

At the time the proposed rule was published the NASS survey included prices for cheddar cheese only. Since publication of the proposed rule, NASS has begun surveys of Grade AA butter prices, dry whey prices, and nonfat dry milk prices. These surveys incorporate input from the dairy industry on appropriate types of products, packaging, and package sizes to be included for the purpose of obtaining unbiased representative prices. A sale is considered to occur when a transaction is completed, the product is shipped out or title transfer occurs. In addition, all prices are f.o.b. the processing plant/storage center, with the processor reporting total volume sold and total dollars received or price per pound.

Butter prices are for USDA Grade AA butter with 80 percent butterfat, salted, fresh or "storage," in 25-kilogram and 68-pound boxes. Processors are instructed not to include transportation charges, unsalted butter, Grade A butter, intra-company sales, forward pricing sales, and resales.

Nonfat dry milk prices are for USDA Extra Grade or USPH Grade A non-fortified dry milk in 25-kilogram bags, 50-pound bags, or "totes," and tanker sales. Several commenters suggested excluding nonfat dry milk processed with high heat treatment since such product is a higher-cost specialty product, making its price unrepresentative of the nonfat dry milk market. As a result of the comments, it was determined that only low and medium heat process nonfat dry milk should be included in the price survey. The instructions inform processors to exclude transportation charges, sales of product more than 180 days old, instant nonfat dry milk, dry buttermilk, intra-company sales, forward pricing sales, and resales.

Dry whey prices are for USDA Extra Grade edible nonhygroscopic dry whey in 25-kilogram bags, 50-pound bags, "totes," and tanker sales. As is the case with the other commodities, transportation charges, intra-company sales, forward pricing sales, and resales are to be excluded as well as sales of product more than 180 days old.

Several comments expressed concern about the "circularity" of survey pricing that could be caused by including sales whose price is based on previous survey information. According to this view, NASS-reported prices would cease to reflect market supply and demand, with

market prices reflecting NASS-reported prices instead. These comments stated that the current pricing system relies on the market (in the form of the base month M-W survey) to correct survey results.

Under any method of discovering prices, whether those paid to producers or those paid for manufactured dairy products, prices currently known will be used as one of the determinants of prices for the following period. Under the current pricing system, it is inconceivable that handlers paying Grade B producers for their milk used in manufactured products do not consider the most recently announced prices as a starting point for determining what prices to pay their producers. When butter and cheese prices are determined at an exchange, both buyers and sellers use the exchange prices in arriving at the prices at which products will move. Ultimately, prices move in response to supply and demand conditions in the marketplace.

Basic Formula Price Replacement

Application of the BFP and USC Committees' criteria for BFP replacement to the various BFP alternatives and consideration of comments received in response to the proposed rule resulted in the determination that the component pricing product price formulas contained in this final rule best meet the stated goals and criteria for the replacement of the BFP.

A BFP based on commodity prices is subject to the same problems of stability as the underlying commodity prices. For the most part product price formulas do not reduce the volatility in producer milk prices.

Product price formulas are relatively simple to compute and understand, and may be applied uniformly, or on a regional basis, accommodating differences in yields or make allowances. Product prices established in a relatively free and open interaction between supply and demand directly translate the value of the finished products to the value of milk and its components. Therefore, they have a sound economic underpinning.

Product price formulas can require increased data collection, particularly if industry insists that data used in the formulas be audited.

The predictability of prices computed from product price formulas should be reasonably good, or at least no worse than predictability of the underlying commodity prices. Short run predictability may improve since all information needed to compute prices is reported on an ongoing basis. This contrasts with the present BFP computation in which the base month Minnesota-Wisconsin price is not reported until the actual basic formula price is announced.

Product price formulas are transparent, since the information to compute the price is available, and the effect of a change in commodity prices or one of the other factors may be observed and quantified.

This final rule replaces the current BFP with a multiple component pricing (MCP) system which will determine butterfat, protein, and other solids prices for milk used in Class III products and butterfat and nonfat solids prices for milk used in Class IV products.

Numerous comments were received, primarily before issuance of the proposed rule, concerning whether the revised orders should keep Class III–A (i.e. a four class market) or whether all hard manufactured products should be priced in Class III. The opposition to Class III–A centered around two issues: (1) The integrity of the classified pricing system, and (2) the perception that a butter/nonfat dry milk class would reduce producer pay prices. The supply/demand for butter and nonfat dry milk is sufficiently different from the supply/demand for cheese to justify separate classification and pricing. In addition, the decision to use the higher of the Class III or Class IV price for determining the Class I price, and base the Class II price on the Class IV price, should more accurately reflect the value of these different categories of use.

Changes in the cheese market have a major impact on the dairy industry. The cheese industry has evolved from cheese production being a means of surplus milk storage and removal to a competitive consumer demand-driven industry. More milk is used in cheese production nationally than is used in Class I. The nonfat dry milk industry is now one which balances surplus milk storage and removals. This category is also evolving, with increasing commercial uses for nonfat dry milk, and dry milk products formulated for specific needs. Increasing quantities of nonfat dry milk are being produced for use in other dairy products and the food and pharmaceutical industries.

The separation of manufacturing milk into two classes will assure that shifts in demand for any one manufactured product will not lower the prices for milk used in all other classifications, including Class I prices. Recent milk price increases have been attributed to increased cheese values. Many people expect that per capita cheese consumption will continue to grow. However, some warn of impending market saturation as more cheese plant capacity materializes and consumer tastes and preferences change. Cheese consumption patterns are based on many factors outside the dairy industry's control. Health concerns relating to changing demographics, changes in pizza consumption and income growth, as well as retail and wholesale inventory decisions, etc., will impact consumption and prices. A recent report by the Food and Agricultural Policy Research Institute noted that "anything that results in demand weakness for cheese will likely result in a markedly different outlook for the entire dairy sector." The adopted pricing system will allow other manufactured products (i.e. Class IV) to move Class I prices, helping to reduce the volatility in milk prices.

Over the last six years cheese prices, and to a lesser extent butter prices, have shown considerable fluctuation while the nonfat dry milk price remained relatively stable. Price changes for these finished products are indicative of varying supply/demand situations over time. The stable nonfat dry milk prices and the butter prices prior to the fall of 1995 were a reflection of large stocks being carried in storage and flat demand. Prices for nonfat dry milk and butter became more volatile once government inventories were depleted and were no longer a factor in stabilizing prices. Butter prices increased during May and June of 1997 in response to demand for cream, while both cheese and nonfat dry milk prices remained relatively flat. These differences in price movements indicate separate supply and demand balances for different manufactured dairy products.

Research cited in the proposed rule supports the conclusion that the different supply and demand characteristics for the cheese and butter/nonfat dry milk market segments warrant separate classification and prices. This pricing plan will allow the market-clearing price level of each of these manufactured products to be achieved independent of the other products. As a result, dairy farmers will be paid a price which is more representative of the level at which the market values their milk in its different uses.

The importance of using minimum prices that are market-clearing for milk used to make cheese and butter/nonfat dry milk cannot be overstated. The prices for milk used in these products must reflect supply and demand, and must not exceed a level that would require handlers to pay more for milk

than needed to clear the market and make a profit.

The current BFP serves two functions: (1) A fixed differential is added to the current BFP to establish the Class I and Class II prices for the second succeeding month; and (2) the current BFP serves as the Class III price. In some Federal milk orders, a seasonal adjuster is added to the BFP to determine the Class III price. The BFP replacement will function in a similar fashion, using component prices. Class IV (butter and dry milk products) will be priced on a butterfat and nonfat solids basis. Class III (hard cheese) will be priced on a butterfat, protein, and other solids basis. The price of butterfat will be the same in Class III and Class IV. Class II will use the same butterfat price as Class III and Class IV with an adjustment to reflect the addition of the Class II differential. Payments to producers under MCP will be based on butterfat, protein, and other solids contained in the producers' milk, in addition to the producer price differential. Most Federal milk orders with MCP will also contain an adjustment to producer pay prices for the somatic cell counts of producers' milk.

The producer price differential reflects the collective value of participation in the marketwide pool. Primarily, it represents the producer's pro rata share of the additional value of Class I and Class II use in the market. The butterfat, protein, and other solids prices are component prices based on the value of the use of milk in manufacturing.

The Class I price will consist of a Class I butterfat price and a Class I skim milk price. As modified from the proposed rule, the Class I butterfat price will be determined by adding a fixed Class I differential divided by 100 to an advanced butterfat price computed using product prices for the most recent two-week period for which prices are available on the 23rd day of the month and will apply to the following month. The Class I skim milk price will be determined by adding the fixed Class I differential for each order to the higher of an advanced Class III or IV skim milk price, calculated by using product prices for the same two-week period. The calculation of Class I prices will be the same for both MCP and non-MCP markets.

Announcement of Class I butterfat and skim milk prices in advance eliminates current problems caused by calculating the butterfat differential after the month for which it is effective. Handlers will have true advance Class I pricing. There will be three different butterfat prices each month (Class I, Class II, and other classes) but no butterfat differential. The separate Class I butterfat price should present no administrative or verification problems since Class I butterfat testing and reporting currently exists.

The prices for butterfat, protein, and other solids used in Class III will be computed as follows:

Butterfat price = ((NASS AA Butter survey price—0.114)/0.82)

Protein price = ((NASS cheese survey price—0.1702) × 1.405) + ((((NASS cheese survey price—0.1702) × 1.582)—butterfat price) × 1.28)

Other solids price = ((NASS dry whey survey price—.137)/0.968).

For milk used in Class IV products the butterfat price is the same as the Class III butterfat price, while the nonfat solids price will be computed as follows:

Nonfat solids price = ((NASS nonfat dry milk survey price—0.137)/1.02).

This system of pricing best fits the three established goals and criteria, discussed previously, for a replacement to the BFP.

The first goal, that a replacement for the basic formula price meet the supply/demand criteria set forth in the Act, may be the most difficult to evaluate definitively since the Act specifically mentions minimum prices to producers. The BFP, as part of a classified pricing system, does contribute to minimum prices to producers. However, the basic formula price does not need to be set at a level to "assure an adequate supply of wholesome milk" since the BFP makes up only a portion of the minimum price paid to farmers. The minimum price to farmers is a weighted average of the value of all of the milk in the market place, of which the BFP is a part. The BFP replacement meets the supply and demand criteria for milk used in butter/nonfat dry milk and cheese even though the component prices are established from finished product commodity prices. The commodity prices are based on a competitive marketplace and reflect the supply and demand for those products (Class III and Class IV) that utilize approximately 50% of the Grade A milk supply.

The supply and demand for Grade A milk is not limited to one category of products. The same milk may be used for fluid or soft manufactured products as well as the Class III and Class IV products used to determine the BFP. As a result, the minimum prices established for Class III and Class IV reflect supply and demand for the milk used in all products.

In several comments received in response to the proposed rule, commenters expressed the view that the proposed product price formulas did not meet the requirements of the Act, and that an updated competitive pay price resembling the current BFP would be the appropriate replacement for the current BFP. For a price to be competitively established there must be a large number of willing buyers and sellers. The current base month price is established from a survey of pay prices for Grade B or manufacturing grade milk in Minnesota and Wisconsin. Whether prices paid for Grade B milk are representative of the value of Grade A milk is debatable. In addition, the volume of Grade B milk involved represents a declining production base from which to gather pay prices, and the number of plants buying manufacturing grade milk is continuing to decline, with many plants refusing to buy manufacturing grade milk even when they need milk and Grade A milk is more expensive. In other situations the manufacturing grade milk is procured because the seller of the milk is a member of the cooperative purchasing the milk and the cooperative will not deny market access to its member. Such a situation clearly is not competitive.

The Act stipulates that the price of feeds and the availability of feeds be taken into account in the determination of milk prices. This requirement currently is fulfilled by the BFP. If the price of feed increases the quantity of milk produced would be reduced due to lower profit margins. As the milk supply declines, plants buying manufacturing milk would pay a higher price to maintain an adequate supply of milk to meet their needs. As the resulting farm profit margins increase, so should the supply of milk. Likewise, the reverse would occur if the price of feed declines. The price of feed is not directly included in the determination of the price for milk, but rather causes a situation in which the price of milk may increase or decrease. A change in feed prices may not necessarily result in a change in milk prices. For instance, if the price of feed increases but the demand for cheese declines, the milk price may not increase since milk plants would need less milk and therefore would not bid the price up in response to lower milk supplies.

The pricing system contained in this decision will function in the same manner as the current pricing system by accounting for changes in feed costs and feed supplies indirectly. The product price formulas adopted in this rule should reflect accurately the market values of the products made from producer milk used in manufacturing. As feed costs increase with a resulting

decline in production, commodity prices would increase as a result of manufacturers attempting to secure enough milk to meet their needs. Such increases in commodity prices would mean higher prices for milk. The opposite would be true if feed costs were declining. Additionally, since Federal order prices are minimum prices, handlers may increase their pay prices in response to changing supply/demand conditions even when Federal order prices do not increase.

The second goal for a BFP replacement is that it should not deviate greatly from the price level of the current BFP. In effect, prices established by the current BFP formula in the past were used as a benchmark to compare how well the product price formulas adopted in this decision tracked the supply and demand conditions exhibited by the BFP. Several comparisons of the basic formula price replacement were made to the current BFP to determine whether the price computation formulas result in a price level for milk used in manufactured products that is reasonably close to the current BFP. It must be recognized that after the initial implementation of the revised prices, supply and demand factors will interact to adjust the actual price level to reflect the market for milk used in manufactured dairy products.

Protein, butterfat, and other solids values were combined to compute a Class III hundredweight price using standard factors of 3.1 for protein and 5.9 for other solids contained in skim milk, and 3.5 for butterfat. The resulting price averaged $0.47 or 3.7 percent below the current BFP for the 60-month period of January 1994 through December 1998. The Class IV hundredweight price, computed from the butterfat price times 3.5 and the nonfat solids price using a standard factor of 9 for nonfat solids contained in skim milk, averaged $0.50 or 3.9 percent below the current BFP during the same period. The replacement Class III and Class IV prices were both highly correlated with the current basic formula price. The Class III price had a .981 correlation coefficient while the Class IV price had a .744 correlation coefficient.

The above comparisons are based on applying the component pricing formulas to commodity prices that were in effect during the period examined. Therefore, price level comparisons can only provide an indication of how the BFP replacement prices may have behaved. The current BFP has been responding to changing market conditions, while the replacement formulas are applied to historic data which has exhibited changes over time in response to existing price levels, rather than marketing conditions that would have occurred under the BFP replacement. Additionally, the current BFP may have a greater tendency to reflect supply and demand conditions in Minnesota and Wisconsin rather than national supply/demand conditions. The formulas in this decision use national commodity price series, thereby reflecting the national supply and demand for dairy products and the national demand for milk.

The basic formula price replacement also meets the third primary goal. The formulas have the ability to respond to supply/demand changes. The Class III and Class IV prices should respond appropriately since the formulas use NASS-surveyed commodity prices that reflect national supply and demand for these commodities.

Overall, the BFP replacement formulas (for Class III and Class IV) meet the established criteria necessary for a BFP replacement. The formulas are relatively simple to use and can be applied uniformly. The formulas are transparent and the Class III and Class IV formulas meet the sound economics criterion.

In the near term, the use of NASS survey prices may reduce the ability to predict Federal order class prices since there is a limited history of using NASS survey prices. Predictability should improve over time as the relationship between the survey prices and easily-tracked exchange prices becomes apparent to industry observers.

The formulas used in the basic formula price replacement likely will result in prices that are less stable than the current BFP. Unlike the current BFP, in which commodity updates are used to adjust the producer pay price survey, changes in product prices will be the sole determinants of changes in component prices. Past observation of competitive pay prices and commodity prices indicates that generally competitive pay prices do not move as quickly as commodity prices. Since the current BFP is based primarily on the base month survey price, the commodity-driven price series adopted in this rule will react more quickly to changes in the commodity markets than the current BFP reacts.

Make Allowances

Use of an economic engineering approach to determine appropriate make allowances was investigated. Neither the time nor the resources are available to construct models for determining appropriate make allowances at this time. As an alternative, various sources were used to determine appropriate make allowances for the basic formula price replacement. Research by Stephenson and Novakovic of Cornell University indicates that results obtained by using an economic engineering approach can be comparable to a survey of plants. Resources may need to be devoted to developing an economic engineering model, a survey, or a combination of the two.

The make allowances contained in the proposed rule were developed primarily from make allowance studies conducted at and published by Cornell University and an analysis of manufacturing plant size in relationship to the data contained in the Cornell studies. Audited cost of production data published by the California Department of Food and Agriculture was also used in determining a reasonable level of make allowances.

The proposed rule make allowances used in computing the component prices for Class III and Class IV resulted in per hundredweight prices which did not deviate greatly on average from the current BFP over the period analyzed, one of the criteria for a basic formula price replacement. During the September 1991 through May 1997 period on which the analysis in the proposed rule was based, the proposed Class III price level would have averaged $0.26 per hundredweight above the current BFP, with Class IV prices averaging $0.22 per hundredweight below.

Nearly all comments received relating to make allowances asserted that the proposed rule allowances were understated. Both handler and producer interests argued that failure to cover processors' costs of converting milk to finished products results in a disincentive to produce finished dairy products. They expressed concern that the disincentive would discourage investment in the manufacturing sector, leading to reduced manufacturing capacity and reduced outlets for producers' milk. A few commenters stated that make allowances should cover the costs of only the most efficient processors, and others objected to the inclusion of any make allowances, which they characterized as a charge against producers to pay processors for processing milk.

Producers objected to the inclusion of manufacturing allowances for milk processors while no allowance is made for producers to recognize any fixed recovery of the cost of producing milk. The current pricing system, using the BFP, also does not assure producers a fixed rate of return. However, because

the BFP is based on a competitive pay price of what manufacturers pay dairy farmers for milk, the manufacturers' make allowance has, in effect, been deducted from prices received from the sale of manufactured products before the pay prices are reported. Therefore the differences between the current pricing system using the BFP and the pricing system contained in this decision with respect to make allowances deals with the level and stability of make allowances rather than their existence.

National Milk Producers Federation (NMPF) supported use of a survey of dairy product manufacturing costs that has been conducted by the Rural Cooperative Business Service (RCBS), with some modifications, to establish Federal order make allowances. Many other comments supported the NMPF position. NMPF suggested adding a marketing cost allowance of $0.015 per pound of product to the manufacturing costs. NMPF explained that the addition of the marketing allowance was necessary since the NASS price data that will be used in the formulas includes the marketing costs covered by the $0.015.

The RCBS survey contains data for six cheese plants, six nonfat dry milk plants and five butter plants. In addition, the survey results include manufacturing data from three dry whey plants. The plants included in the survey represent a wide geographic representation of the United States. Given the limited number of plants involved in the study, however, regional information is unavailable. The survey results also represent a range of packaging types which can affect the final make allowance.

International Dairy Foods Association (IDFA) suggested that make allowances be determined by computing weighted averages of the results of the RCBS survey and the California audited make allowances. IDFA also included a $0.015 marketing cost adjustment as well as adjusting the RCBS make allowance to incorporate the same return on investment that is included in the California make allowance. IDFA and numerous other commenters explained that a return on investment is necessary for manufacturers to continue to invest in plants and equipment.

A number of comments were filed urging that make allowances be determined by auditing manufacturing plants in the same manner practiced by the State of California. Proponents explained that California has had long and successful experience with auditing make allowances and that a similar procedure could and should be implemented in Federal orders.

At this time the use of the RCBS study and the California data are deemed to be adequate for determining the initial make allowances contained in this decision. Several problems exist with auditing make allowances. First, the Federal milk order system currently is not equipped to handle the type of audits necessary for determining appropriate make allowances. An increase in market administrator administrative fees would be required to acquire and train auditors to conduct the make allowance audits, since these audits would have to be done in addition to the current audit program. Since most Class III and Class IV manufacturing is done in plants that currently are unregulated, authority to audit these plants to obtain make allowance data would need to be obtained. In addition, the industry may request a hearing on an expedited basis and present relevant data to justify changing make allowances. Therefore, there is no current plan to begin auditing manufacturing plants for the purpose of obtaining make allowance data.

The level of the make allowances included in this decision is based on input by all sectors of the dairy industry. If the make allowances are established at too low a level, manufacturers will fail to invest in plants and equipment, and reduced production capacity will result. If the make allowances are established at too high a level there will be unwarranted incentive to increase capacity above the needs of the industry, leading to overcapacity and resulting losses to manufacturers. Either scenario would not be in the best interest of the dairy industry. Manufacturing plant operators who find the level of make allowances inadequate compared to their actual costs also have the alternative to not participate in a Federal order marketwide pool.

Most commenters agreed with NMPF and IDFA that the make allowances proposed to be used for the butterfat and nonfat solids prices were too low, and the resulting prices too high. NMPF suggested that a make allowance of $.1327 per pound of butter (plus the $.0015 marketing cost, or $.1342) would be appropriate for use in the butterfat price calculation, and IDFA favored a make allowance of $.114, compared to the proposed make allowance of $.079. Several commenters suggested use of California make allowances.

The formula for determining the butterfat price for butterfat used in Class III and Class IV products will be computed using the following formula:

Butterfat price = ((NASS AA Butter survey price − 0.114)/82).

The make allowance of $0.114 per pound of butter is determined by adding to the RCBS survey make allowance a marketing cost of $0.015 and a return on investment of $.0068, which is the same return on investment included with the California butter processing cost. The RCBS make allowance included packaging costs for print butter; therefore, $0.0175 was deducted from the make allowance to adjust for the difference between print and bulk butter packaging. The California butter processing cost was also adjusted by the $0.015 marketing cost. A weighted average make allowance was then computed using the adjusted RCBS make allowance and pounds of butter contained in the RCBS survey and the adjusted California butter processing cost and the pounds of butter represented by the California butter plant audit. The resulting make allowance of $0.114 is $0.035 greater than the $0.079 make allowance contained in the proposed rule. An increase in the butter price formula make allowance will allow plants to recover a larger percentage of the costs of producing butter than under the proposed rule.

Comments on the computation of a nonfat solids price included suggestions by NMPF that the nonfat dry milk make allowance level should be $.1245 plus the $.0015 marketing cost, or $.126, and by IDFA that $.137 would be an appropriate level, compared to the $.125 used in the proposed rule. Several other commenters favored the California make allowance, suggesting something in the $.135–$.14 per pound range for nonfat dry milk.

The formula for computing the nonfat solids prices for milk used in Class IV will be as follows:

Nonfat solids price = ((NASS nonfat dry milk survey price − 0.137)/1.02).

As in the case of computing the butterfat make allowance, the nonfat solids make allowance is a weighted average of the RCBS survey and the California processing costs. A marketing cost of $0.015 and a return on investment of $0.0159 was added to the RCBS survey while the $0.015 marketing cost was added to the California price. The resulting make allowance of $0.137 per pound of nonfat dry milk is $0.012 more than the proposed rule make allowance of $0.125. The resulting increase in the make allowance will allow plants to recover a larger percentage of the cost of

producing nonfat dry milk than they would have using the make allowance included in the proposed rule.

In addition to revising the make allowance for computing the nonfat solids price, the yield factor is also adjusted. In the proposed rule a yield factor of .96 was used in the nonfat solids formula. The .96 was intended to represent the 96 pounds of solids in 100 pounds of nonfat dry milk. Most parties, including IDFA and NMPF, commented that the .96 was inappropriate and that a factor of 1.02 was more appropriate. Since buttermilk powder is also a product of manufacturing butter and nonfat dry milk, its value needs to be addressed. Because the proposed rule did not account for the yield of buttermilk, the .96 factor was appropriate. However, failing to account for buttermilk powder resulted in overstating the nonfat solids price since the pounds of nonfat solids were understated. Use of the 1.02 factor allows the nonfat solids contained in nonfat dry milk and buttermilk powder to be accounted for, and the value of all nonfat solids to be accurately reflected in the nonfat solids price.

The results of the revisions made to the butterfat and nonfat solids formulas yield a Class IV hundredweight price that would have averaged four cents below the current Class III–A price and fourteen cents above the California 4a price over the period of January 1994 through December 1998. These results address the major concern of many of the comments that the Class IV prices in the proposed rule were too far out of alignment with California 4a prices for Federal order plants to be competitive. The more important criteria of reflecting supply and demand is also met by the revised formulas. Research by Knutson, Anderson, Awokuse, and Siebert showed that the formulas contained in the proposed rule outperformed the current basic formula price in reflecting supply and demand. Under the revised formulas the level of prices will be changed, but not their relationship to supply and demand.

Nearly all comments on the cheese make allowance proposed for use in computation of the protein price described the proposed $ .127 make allowance as too low, resulting in a too-high protein price. NMPF supported use of the RCBS survey results ($ .1421), which were somewhat higher than the proposal. IDFA supported using an average of the RCBS survey and California make allowances, which generally are higher still ($ .152). A number of other commenters argued that the proposed cheese make allowance would cover the cost of making none of the cheese made in California. The Dairy Institute of California advocated make allowances of at least $.17 for blocks and $.14 for barrels.

Many commenters insisted that barrel cheddar cheese prices should be included in a weighted average with block cheddar prices since much more barrel cheese is produced than block cheese. NMPF urged that the barrel price not be included because barrels don't have uniform composition, and because the use of such prices would have the effect of unnecessarily reducing prices to producers. Other commenters suggested that if barrel prices are included, they should be increased by 3 cents per pound to make up for the difference in packaging costs. Still other commenters argued that all varieties of cheese should be included in the NASS price survey to assure that all cheese value is captured.

The formula for computing the protein price for milk used in Class III is as follows:

Protein price = ((NASS cheese survey price − 0.1702) × 1.405) + ((((NASS cheese survey price − 0.1702) × 1.582) − butterfat price) × 1.28)

The NASS cheese survey price will be determined by adding three cents to the moisture-adjusted barrel price and then computing a weighted average price using the block cheese price and the adjusted barrel price times the pounds of each cheese type in the NASS survey and dividing by the total pounds of block and barrel cheese in the NASS survey. Including both block and barrel cheese in the price computation increases the sample size by about 150 percent, giving a better representation of the cheese market. Since the make allowance of $0.1702 is for block cheese, the barrel cheese price must be adjusted to account for the difference in cost for making block versus barrel cheese. The three cents that is added to the barrel cheese price is generally considered to be the industry standard cost difference between processing barrel cheese and processing block cheese.

The make allowance used in computing the protein price, $0.1702, was established by computing a weighted average make allowance using the RCBS survey and the California processing costs. The RCBS survey was adjusted by adding a marketing cost of $0.015 and a return on investment of $0.0104 for a total of $0.1540 while the California processing costs were increased by a marketing cost of $0.015 for a total of $0.1855. The weighted average was then computed by multiplying the pounds of cheese represented in each study by the respective prices. The resulting total was divided by the total pounds of cheese represented by the studies.

The factors used in the formulas for computing component prices are determined by the quantity of the component in the commodity, except for protein, for which the Van Slyke yield formula is used. In the protein formula, the 1.405 and 1.582 are yield factors derived from the Van Slyke cheese yield formula. Both the 1.405 and 1.582 factors are determined by calculating the change in cheese yield if an additional tenth of a pound of protein or butterfat is contained in the milk, holding everything else constant.

The proposed rule used a 1.32 factor times the cheese price for use in computing the protein price. The change to a factor of 1.405 reflects the use of true protein as the basis for payments for protein rather than using a measurement of "total nitrogen" for the protein content of milk. The resulting protein price will be for a pound of "true protein."

Total nitrogen protein content and true protein content both result from chemical (Kjeldahl) testing methods approved for determining the protein content of dairy products by the Association of Official Analytical Chemists. When expressing protein based on total nitrogen, the protein percentage is over-stated by the amount of non-protein nitrogen (which has little or no effect on dairy product yields) present in the milk. Therefore, when milk is priced on the basis of its true protein content rather than its content of protein measured by total nitrogen, the price per pound of protein should be higher.

Currently, nearly all testing of milk for payment purposes is performed using infrared electronic testing equipment. At the wave-length filter at which protein is measured, only true protein is detectable. To calibrate for total nitrogen a bias factor has to be used to compensate for the non-protein nitrogen. It is also likely that the level of non-protein nitrogen will vary in every set of calibration samples, creating more problems in accurately calibrating electronic infrared instruments. Calibration for the true protein content of milk is more accurate than the calibration for total nitrogen protein. Because the accuracy of testing for true protein is higher than for total nitrogen protein, which has relatively little value, Federal milk orders should price milk on the basis of its true protein content rather than its total nitrogen protein content.

Comments on the proposed rule included discussion of the proposal to incorporate the difference in butterfat value between cheese and butter within the protein price. NMPF suggested that the .90 factor that results in a 1.582 multiplier should, instead, be .91 and result in a 1.60 multiplier because that factor more closely reflects the current retention of butterfat in cheddar cheese manufacturing. The IDFA comment argued that using the 1.60 multiplier would increase an already-high protein price. Another comment urged that the Grade A butter price be used instead of the AA price, because the value of butterfat in cheese shouldn't be increased over its value in butter. Further, the comment argued that the additional value of butterfat in cheese is added by the cheesemakers, and shouldn't be used to increase prices to producers.

Since Class III includes other types of cheese, such as mozzarella that has a lower fat retention than cheddar cheese, increasing the value attributed to that retention is not appropriate. Increasing the protein price for all milk used in Class III based on only a portion of the products included in Class III would put the other Class III products at a competitive disadvantage. Calculation of a minimum price will enable handlers to adjust prices paid to producers to account for additional value above the minimum Federal order prices. Therefore, the 1.582 factor will be used in the protein price formula contained in this decision.

Since Class III and Class IV use the same butterfat price, accounting for the difference in value of butterfat in cheese versus the value of butterfat in butter is necessary. This difference in value is included with the protein price calculation as a means of quantifying the amount by which the value of butterfat in cheese varies from the value of butterfat in butter. Attributing the additional value to protein is possible because it is the casein in protein that forms the molecular matrix that retains the butterfat in cheese. Without enough protein in milk to retain the butterfat in cheese, the butterfat would have a lower value in whey butter in most months. The ratio of butterfat to protein, 1:1.28, is calculated from the protein and butterfat yield factors of 1.405 and 1.582.

An alternative to incorporating the butterfat value in cheese with the protein price is to compute a separate butterfat price for Class III. This would be a relatively simple formula to compute. However, having multiple butterfat prices would require full plant accountability of components in all manufacturing plants. The resulting increased accounting, reporting, and administrative costs were determined to not be warranted when viewed against the small gain from having an additional butterfat price.

Use of the protein price formula adopted in this decision will increase the protein price by approximately 15 cents per pound when compared with calculating the protein price on the basis of total nitrogen protein. However, the increase is almost entirely negated by the lower content of true protein than of total nitrogen protein in milk. On a hundredweight basis, the change to true protein results in an increase to the Class III price of an average of 2 cents when compared to the formula using total nitrogen protein.

Use of true protein instead of total nitrogen protein for determining payments to producers should have a minimal impact on producer revenues. Producers with relatively high levels of non-protein nitrogen in their milk could see a slight drop in their revenue derived from the protein content of their milk.

In addition to changing the coefficients in the protein price formula to adjust for the use of true protein, the fixed protein and other solids values used in computing a per hundredweight Class III price must be adjusted. Accordingly, the Class III price will be computed by multiplying the butterfat price by 3.5 and adding the result of multiplying .965 times the sum of 3.1 times the protein price and 5.9 times the other solids price.

In comments filed in response to the proposed rule, NMPF suggested a $.1575 whey make allowance plus the $.0015 marketing cost, for $.1590, rather than the $.10 proposed. IDFA argued that a $.171 make allowance would be more appropriate. Wisconsin Cheesemakers indicated that the Class III price should not include a value for whey, as it frequently represents a cost to manufacturers. The Dairy Institute of California agreed that a whey factor should not be included, but that if it is, the yield factor (divisor) should be .98 (instead of .968).

The formula used for computing the other solids price is:

Other solids price = ((NASS dry whey survey price − .137)/0.968).

The determination of the $0.137 make allowances was based on several factors. Whereas the other make allowances were based on a weighted average of the RCBS study and California make allowances, the other solids make allowance is based primarily on the Cornell study of dry whey and whey protein concentrate make allowances. The Cornell study was used since California does not audit dry whey manufacturing costs and the RCBS survey has very limited data on dry whey manufacturing costs. The data on dry whey in the RCBS study expresses the costs on a per pound of cheese basis rather than on a per pound of dry whey basis. The $0.137 figure is slightly above the average cost of the model plants in the Cornell study and the same as was used for nonfat solids.

A value for other solids is included in Class III to assure that the Class III price reflects most of the value of milk used in Class III products. In the Federal milk orders currently pricing three components, the other solids price is determined by subtracting the value of butterfat and protein from the BFP. In this final rule the other solids price is established independently of the butterfat and protein price. Even though there is not a market for other solids as such, the dry whey price was determined to be the best indicator of value for other solids and provides a method of accounting for and distributing the value in Class III milk that is not accounted for in the protein and butterfat components. Other potential price series that could be used to determine the value of other solids were whey protein concentrate and lactose. Under present market conditions, dry whey offers more market activity with less specialization than either whey protein concentrate or lactose, and therefore constitutes a better price series for determining a minimum Federal order price. Comments filed by several parties supported the use of dry whey for the determination of the other solids price. The 0.968 factor in the formula represents the pounds of solids contained in a pound of dry whey.

Since the make allowances are applied on a component basis rather than on a hundredweight of milk basis comparisons to traditional make allowances may be difficult. Also, a make allowance that may seem reasonable when applied to a component may be seen as inappropriate when combined with the other components in the finished product. To evaluate the make allowances on a per hundredweight basis the Class III and Class IV milk prices were compared to the value of cheese and butter/powder using the CCC yield factors. These results were compared to the same calculation using the current BFP and the CCC yield factors. A comparison over time between the current level of class prices paid for producer milk and the value of

the manufactured products made from that price class of milk shows a reasonably stable difference between the two levels. This difference is the implied make allowance.

The implied make allowance for butter/powder using the current BFP for the period January 1994 through July 1998 was $0.83 per hundredweight, while the implied make allowance for butter/powder versus the Class III–A price was $1.37 per hundredweight. The implied make allowance calculated for the Class IV price, based on historical prices, would have been $1.41 per hundredweight. With the implied make allowance for the Class IV price being only $0.04 from the actual implied Class III–A make allowance, the butter make allowance and the nonfat dry milk make allowance, in combination, appear to approximate the current implied make allowance.

Determination of the make allowance for Class III is more difficult than for Class IV, in which butterfat and skim solids make two unique finished products. In cheese manufacture, most of the butterfat remains in the cheese with most of the protein, and a portion of the protein, butterfat and remaining nonfat solids are contained in the whey, which can be made into various products. The combination of the butterfat, protein, and other solids make allowances resulted in an implied make allowance of $2.72 for Class III (cheese) compared to the implied make allowance of $2.21 for the current BFP. Even though the implied make allowance using the Class III formulas in this decision is greater than the current implied make allowance it is appropriate since the CCC formula is basically a cheddar cheese yield formula whereas Class III contains multiple varieties of cheese and certain other products. A slightly larger make allowance in Class III will not place makers of products that have significantly different cost structures than cheddar cheese at a competitive disadvantage when participating in Federal orders relative to handlers who do not participate in the Federal orders.

Changes in make allowances will affect component prices and per hundredweight milk values. A one-cent per pound change in the butter make allowance will affect the butterfat price in the opposite direction by $0.0122 per pound. This would be $0.0427 per hundredweight for milk at 3.5 percent butterfat. The butterfat price also is used in the computation of the protein price. The protein price will change inversely to the butter make allowance by $0.0146 per pound or $0.046 per hundredweight for milk with 3.15 percent protein. A positive make allowance change for nonfat dry milk will result in a decline in the nonfat solids price. A one-cent change in the nonfat dry milk make allowance will result in a $0.0098 per pound or $0.0882 per hundredweight opposite change in the nonfat solids price. A one-cent change in the protein make allowance will cause an opposite change in the protein price by $0.0322 per pound or $0.1014 per hundredweight for milk with 3.15 percent protein. Finally, a one-cent change in the other solids (dry whey) make allowance will change the other solids price by $0.0103 per pound or $0.0567 per hundredweight in the opposite direction.

This pricing system eliminates the need for regional yields based on regional differences in milk composition. The value of milk will be adjusted automatically based on the level of components contained in the milk in each order even though the component prices are the same nationally. This automatic adjustment means that handlers will pay the same price per pound of component but may have differing per hundredweight values based on the milk component levels, creating equity in the minimum cost of milk used for manufacturing purposes.

Several comments were received suggesting that regional BFP replacement prices be used rather than a national BFP replacement. The commenters explained that cheese, butter, and nonfat dry milk have different values in different regions of the country, and that the Cornell study described a price surface for milk used in manufactured products across the United States. Therefore, they concluded, the replacement BFP also should be determined regionally.

This decision replaces the current BFP with a national Class III price and a national Class IV price. Although there may be some justification for regional pricing, there are two principal reasons for using national pricing. First, pricing milk on the basis of the pounds of components contained in the milk eliminates some of the regional differences in milk prices. Second, regional commodity price data, and for that matter regional competitive pay price data, are unavailable. Resulting attempts to estimate regional differences, with the ensuing regional differences of opinion, would yield minimal benefits.

An analysis of the basic formula price replacement requires several assumptions. Historical commodity price surveys are not available for all of the commodities. Prices used as substitutes for historical price survey data in this analysis include a cheese price computed by comparing the current NASS cheese price series to the comparable NCE/CME price series for the purpose of determining a historical protein price. The NCE/CME series was then adjusted by means of a regression analysis to reflect the differences between the NASS prices and the exchanges. The resulting price series simulates the use of the NASS series for the time period studied. For the butter price, the data from the "BFP Committee Commodity Price Study" was compared to the CME Grade AA cash butter price series. The CME Grade AA price series was then adjusted accordingly to make it more comparable with the Committee Price Study. Available survey prices used were nonfat dry milk prices and dry whey prices, both of which are published monthly by NASS in "Dairy Products". While a nonfat dry milk price and dry whey price are published in "Dairy Products" at the beginning of each month for the second previous month, the new weekly NASS survey discussed earlier is necessary to determine prices on a more current basis.

One of the initial requirements of a basic formula price replacement, based on the assumption that the national supply and demand for manufacturing milk as reflected in the current BFP is in relatively good balance, is that the price level not deviate greatly from the current basic formula price. The examples contained in the proposed rule resulted in the Class III portion of the BFP replacement averaging $0.45 per hundredweight above the current Class III price, and the Class IV portion of the BFP replacement averaging $0.13 per hundredweight above the current Class III price, both for the 48-month period January 1994 through December 1997.

In addition to comparing the Class III and Class IV price series to the current BFP, the Class III price was also compared to the California 4b price, while the Class IV price was compared to the Class III–A price and to the California 4a price. Comparisons to the California prices are included because many commenters expressed the view that the proposed rule resulted in prices that put plants regulated by Federal orders at a competitive disadvantage to California plants and that alignment with California pricing was essential. Most commenters did not express the view that Federal order prices should equal California prices, but that Federal order prices should be in alignment, i.e. "reasonably close". For comparison purposes all prices are expressed on a

per hundredweight basis with 3.5 percent butterfat. The Class III price was determined by using 3.1 pounds of protein and 5.9 pounds of other solids in 100 pounds of skim milk. To compute a 3.5 percent hundredweight price the skim milk value was multiplied by .965 and added to the butterfat price that was multiplied by 3.5. The same procedure was used for the Class IV price, with 9 pounds of nonfat solids in a hundred pounds of skim milk.

For the period January 1994 through December 1998, the Class III price averaged $0.47 below the current BFP and $0.20 above the California 4b price, while the Class IV price averaged $0.50 cents below the current BFP, $.04 cents below the current Class III–A price, and $0.15 above the California 4a price.

In addition to comparing the value differences between the Class III and Class IV prices and the current BFP, it is important to compare the relationship in price movements between the Class III and Class IV prices and the current basic formula price. Correlation coefficients were computed to statistically test the relationships between the Class III and Class IV prices, the current basic formula price, and the California prices. The correlation coefficient between the Class III price and the current basic formula price is above .98 while the correlation coefficient between the Class IV price and the current basic formula price is approximately .74. The correlation between the Class IV price and the current Class III–A price is .99. The correlations between the Class III and Class IV prices and California prices are also quite high, with the Class III price and the California 4b price having a correlation coefficient of .97 while the Class IV price and the California 4a price show a correlation coefficient of .99. These relationships are expected since the current basic formula price is weighted more heavily on milk used for the manufacture of cheese than on the value of milk used in the manufacture of butter and nonfat dry milk.

The Class III and Class IV formulas are computed from product prices representing the use of milk in each class. That is, the Class III price is derived from the value of cheese while the Class IV price is derived from the value of butter and nonfat dry milk. Therefore the Class III and Class IV prices can be expected to vary significantly from the current BFP in individual months, reflecting the economic (supply and demand) conditions for cheese, butter, and nonfat dry milk. This situation is particularly true of the Class IV price. For example, during 1993 and 1994 the price of butter and nonfat dry milk was relatively low and stable compared to the price of cheese. The degree of variability of individual months' prices from the average for the year is expressed by a standard deviation. A lower standard deviation indicates that individual observations (in this case, monthly product prices) vary less from the mean than would be indicated by higher standard deviations. These statistical descriptions indicate the difference in variability of prices between butter/powder and cheese in 1993 and 1994.

During 1994 the Class IV price would have averaged $10.26 with a standard deviation of $0.11, compared to the 1994 BFP average of $12.00 with a standard deviation of $0.57, and the average Class III price of $11.47 with a standard deviation of $0.69. For 1998, when the economic conditions for butter and nonfat dry milk had changed and prices became more volatile, the Class IV price would have averaged $14.79 with a standard deviation of $2.13 versus the 1998 BFP average of $14.20 with a standard deviation of $1.97, and the Class III average price calculation of $13.84 with a standard deviation of $2.14.

The Class III and Class IV prices clearly reflect the value of the milk used in the respective manufactured products, whereas the current basic formula price reflects primarily the value of milk used to manufacture cheese in a particular region of the U.S. (Minnesota and Wisconsin).

Class I

As in the proposed rule and currently, the basic formula price replacement will act as a mover for the Class I price in addition to establishing prices for milk used in Class III and Class IV. Also as proposed, the Class I value will be separated into two parts: skim milk and butterfat. However, instead of the proposed six-month declining average of the higher of each month's Class III and Class IV skim and butterfat prices, the Class I price mover will be determined by the most recent manufacturing product prices available. The advanced price aspect of the Class I price mover will also be shortened from the current and proposed timing of the Class I price announcement. Both the Class I skim and butterfat components will be announced on the 23rd day of the preceding month using advance pricing factors based on product prices for the most recent two weeks. The Class II skim milk price will be announced similarly. This change from the proposed rule is being made to respond to numerous handler comments on the proposed rule and to address class price inversion that occurred during the second half of 1998.

Comments relating to replacement of the BFP as a Class I price mover that were filed before issuance of the proposed rule ranged from favoring continuation of the current system to establishment of the Class I price independently of the basic formula price(s) for milk used in manufactured products. One comment suggested eliminating the basic formula price and pooling only the Class I and Class II differentials. These comments were fully considered in the proposed rule.

Numerous comments received in response to the proposed rule favored advance pricing of Class I skim and butterfat separately. However, a number of commenters expressed concern that use of the higher of the Class III or Class IV prices in the calculation of the Class I price mover would result in undue enhancement of Class I prices. The most controversial aspect of the Class I price mover proposal was the use of a 6-month declining average. Many of the comments received concerning the Class I mover expressed the view that the Class I price must be closely and directly linked to the manufacturing price in the same manner that occurs currently. Commenters expressed the view that the current system, two-month advance pricing, closely links the manufacturing value of milk to Class I and therefore gives appropriate price signals to producers. They opposed the six-month declining average on the basis that the delay in linkage with the Class I price would be too long and that Class I pricing would be counter cyclical. Some who opposed the time lag built into the 6-month declining average suggested that a 3-month average would do as well at attaining some stability without as much "de-linking."

Several commenters opposed building less volatility into Class I prices than into manufacturing class prices. Among the reasons given were that added stability for Class I would mean greater volatility in prices for manufactured products, and that added stability would favor producers in high Class I markets.

Other comments on the proposed rule supported variations of a 12-month rolling average Class I price mover, some with seasonal adjustments. A number of comments favored the stability of the longer-term basis for Class I prices. One graph submitted shows a very close relationship between the 6-month declining average mover and the current BFP.

There are several conflicting issues that must be balanced when establishing the Class I price mover. First, the retail demand for Class I milk is independent of the demand for manufactured dairy products. Second, the raw material used in both Class I products and manufactured dairy products is the same and therefore the separate uses must compete for the given supply of milk. Third, the elasticity of demand for the various dairy products is significantly different, creating different consumer responses to the changing prices for various dairy products. The Federal milk orders have attempted to address these issues through classified pricing. This system allows a higher price to be applied to milk used for Class I uses due to inelastic demand for Class I products. This higher price also allows Class I uses of milk to compete for the raw milk supply against manufactured dairy products. At the same time, marketers of Class I products support some degree of forward pricing, requiring processors of Class I products to know the Class I price in advance.

Most of those commenting on the proposed rule and the Department perceive the need to reflect changes in the prices for milk used in manufactured products in the price of milk used in fluid products. Since Class I handlers must compete with manufacturing plants for a supply of milk, the Class I price must be related to the price of milk used for manufacturing.

It is apparent from the price patterns of a large part of 1998 that the current two-month lag between manufacturing and fluid pricing does not establish as close a relationship between the two price levels as is desirable. Indeed, from an analysis of the differences between prices generated by a six-month declining average and the current pricing system, it is clear that the current two-month lag does not accomplish any closer relationship between manufacturing and fluid prices than would the six-month declining average.

When manufactured dairy product prices are relatively stable the advance pricing of Class I milk works quite well. However, since 1988 the volatility in the manufactured dairy product market has caused problems with the advance pricing of Class I milk. The first problem is readily evident in class price relationships during the latter part of 1998. The frequent occurrence of price inversions during that period indicates that some alteration to both the proposed and current methods of computing and announcing Class I prices may be necessary. Class price inversion occurs when a markets's regulated price for milk used in manufacturing exceeds the Class I (fluid) milk price in a given month, and causes serious competitive inequities among dairy farmers and regulated handlers. Advanced pricing of Class I milk actually causes this situation when manufactured product prices are increasing rapidly.

Since the Class I price is announced in advance, in a rapidly changing market the Class I price may not reflect the value needed to compete for the necessary raw milk supply or the Class I price may be overvalued relative to the raw milk price. Undervaluing Class I milk is a particular problem since it reduces producers' pay prices at a time when the producers should be receiving a positive price signal. As an example, in July 1998 the Class I price in every Federal order market except one was below the Class III price. Although July is not a period of very high Class I demand, it is a time when Class I demand is starting to increase in some regions relative to total milk production. At this same time producers in these regions received lower pay prices. Many Federal milk orders also experienced a Class I price below the Class III price in August as a result of two-month advance pricing of Class I. Demand for Class I milk increases substantially in August. While producer prices rose in August, the increase would have been larger had Class I prices been based on more current Class III prices. Under these pricing relationships, the Class I handler may have a more difficult time acquiring milk as the minimum Federal order Class I price puts the handler at a disadvantage to handlers demanding milk for manufacturing purposes. Since Class I handlers must compete with manufacturing plants for a supply of milk, the Class I price must be related to the price of milk for manufacturing.

Another problem inherent in the current method of announcing Class I prices in advance is that the price for milk established in advance is for milk containing 3.5 percent butterfat. The current system does not determine the price of butterfat in advance, therefore the Class I handler does not know the value of milk at butterfat contents other than 3.5, until the butterfat differential is announced in the month following sale of the processed product. Under this final decision, Class I handlers will have advanced price information for both the skim and butterfat portions of the Class I price.

The purpose of the minimum Class I differential is to generate enough revenue to assure that the fluid market is adequately supplied. As a result of advance pricing, the effective Class I differential—that is, the actual difference between the Class I and manufacturing use prices in a month—is not the same as the Class I differential stated in an order. While the effective Class I differential varies monthly, it generally has remained positive. Recent increased volatility in the manufactured product markets has resulted in more instances in which the effective Class I differential has been negative, especially in markets with low minimum Class I differentials.

In the past when price inversions have occurred, the industry has contended with them by taking a loss on the milk that had to be pooled because of commitments to the Class I market, and by choosing not to pool large volumes of milk that normally would have been associated with Federal milk order pools. When the effective Class I differential is negative, it places fluid milk processors and dairy farmers or cooperatives who service the Class I market at a competitive disadvantage relative to those who service the manufacturing milk market.

Milk used in Class I in Federal order markets must be pooled, but milk for manufacturing is pooled voluntarily and will not be pooled if the returns from manufacturing exceed the blend price of the marketwide pool. Thus, an inequitable situation has developed where milk for manufacturing is pooled only when associating it with a marketwide pool increases returns.

Illustrative of the worsening class price inversion problem are the growing volumes of milk that, while normally associated with Federal milk orders, are not being pooled due to price inversion problems. When the Class II, III, and/or III–A prices are higher than a handler's blend price adjusted for location, it becomes disadvantageous for handlers processing soft and hard manufactured products to pool milk. That is, instead of drawing money out of the pool, they have to pay money into the pool. In 1995, the volume of milk not pooled due to class price inversion was 5.3 billion pounds. In 1997, nearly 7.8 billion pounds were not pooled for this reason. In 1998, 14.1 billion pounds were not pooled due to class price inversions. During each of five of the seven months of June through December 1998, the volume of milk not pooled exceeded 2 billion pounds. In July 1998, class price inversion occurred in all Federal order markets except Southeastern Florida, and in 19 markets some milk was not pooled due to class price inversion.

Since volatility in the manufactured product markets is expected to

continue, the Class I price mover developed as part of this Federal milk order reform process should address this disorderly marketing situation.

The advanced pricing procedure provided in this final decision results in a Class I price that is based on a more recent manufacturing use price, thus reducing (but not eliminating) the time lag that contributes to class price inversion. For example, the January 1999 Class I price for each market would be announced on December 23, 1998 and would be based on product prices reported on December 10 and 17. (The prices reported on these dates are for the weeks ending December 4 and 11.) Under the current procedure, the January Class I price was announced on December 3, 1998 and was based on product prices reported for weeks ending November 6, 13, 20, and 27.

While the advance pricing procedure in this decision reduces the time period of advance notice by about 18 days, the reduction in advance notice of Class I and II prices should not add significant risk or burden to handlers. The pricing formulas are based solely on product prices which are announced weekly; therefore, handlers can update formulas on a weekly basis to estimate what the Class I price will be before the price is announced. Also, as more NASS product price survey observations become available, basis differences from earlier traded/issued product price surveys such as those from the Chicago Mercantile Exchange or Dairy Market News will be more predictable and, therefore, should provide for more accurate predictions of future price levels. In addition, futures markets have been established for the four dairy products in the NASS price surveys. While trading to date in these contracts has not been large, interest in these markets may increase as the industry learns to use them as effective hedges to the component values determined under this final decision. These markets also will assist handlers in estimating the Class I price.

Using the current two-month advance pricing system, but substituting for the current BFP the higher of the Class III or IV prices as defined under this rule, markets with a Class I differential of $1.60 per hundredweight or less would have faced a price inversion in four of the last seven months of 1998. The range of the price inversion would have been $.21 to $1.49. In a fifth month, price inversion would have occurred at a Class I differential of $1.49 or lower. In September 1998, price inversion would have occurred in all Federal order markets except Florida. However, using the shortened advance period adopted in this decision, for markets with a Class I differential of $1.60 per cwt., price inversion would have occurred in only two of the last seven months of 1998. The range of the price inversion would have been $.02 to $.86. The shortened period of advance pricing reduces both the occurrences and level of price inversion.

To further illustrate that the advance pricing procedure in this final decision provides a Class I price level that is less likely to be below the manufacturing use price, the following analysis was done. Averages of the 1998 NASS product prices for the current month, the second preceding month, and the two-week period available on the 23rd of the preceding month were computed and compared. For all four products, the preceding month two-week average provided a better estimate of the current month average than did the average for the second preceding month. Looking at the Cheddar cheese price series, the two-week preceding month price was $.03 closer to the current month on a simple average basis, and $.04 closer on an absolute average basis. This means that using preceding month two-week average Cheddar cheese price would result in a Class III skim milk price that would be about $.40 per cwt. closer to the following month's Class III skim milk price than if the second preceding month's price is used.

As stated earlier, advance pricing affects the function of the minimum Class I differential. The advance pricing procedure in this decision reduces the difference between the manufacturing use price used to establish the Class I price and the manufacturing use price in the current month. This procedure will result in an effective Class I differential that would be closer to the Class I differential stated in each order. Thus, reducing the time lag of the Class I pricing advance improves the functionality of the minimum Class I differential.

Comments filed by some southern interests indicated that stability in pricing in the southeast U.S. should incorporate seasonal price incentive programs as a necessary part of adequately supplying the fluid markets of the southeast. According to the commenters, such a program would encourage balancing production with fluid milk demand. The comments state that because such a pricing plan would be revenue neutral, it would allow for more price stability and more reliable price signals than is currently available for producers in high Class I utilization areas.

Addition of seasonal adjustments for marketing areas would disrupt the uniformity in pricing between marketing areas that is a goal of this pricing plan. The seasonal patterns of milk production and consumption are not the same between regions, and it would be difficult, if not impossible, to attempt to work out seasonal pricing as a part of the BFP replacement.

As discussed previously, the price link between Class I use and Grade A milk used to manufacture Class III and Class IV products should be maintained since Grade A milk can be used for fluid uses as well as for manufacturing uses. Because handlers compete for the same milk for different uses, Class I prices should exceed Class III and Class IV prices to assure an adequate supply of milk for fluid use. Federal milk orders traditionally have viewed fluid use as having a higher value than manufacturing use. The replacement Class I price mover reflects this philosophy by using the higher of the Class III or Class IV price for computing the Class I price.

In some markets the use of a simple or even weighted average of the various manufacturing values may inhibit the ability of Class I handlers to procure milk supplies in competition with those plants that make the higher-valued of the manufactured products. Use of the higher of the Class III or Class IV price will make it more difficult to draw milk away from Class I uses for manufacturing. For example, if the Class IV price were used as the Class I price mover there would be months in which the Class III price would be more than two dollars above the Class IV price. As a result, the Class I differential would have to be well over two dollars for the Class I price to remain above the Class III price. If the Class III price is used as the Class I price mover, the reverse situation of having the Class IV price well above the Class III price would result in the same problem. The potential of having a Class III or IV price in excess of the Class I price is not entirely eliminated by using the higher of the Class III or Class IV price because of the advance Class I pricing feature. However, reducing the time period for which Class I pricing is advanced should reduce the potential considerably, allowing Class I handlers to compete more effectively with manufacturing plants for fluid milk.

Class II

Under this final decision, the value of Class II skim milk will be computed by multiplying the hundredweight of producer skim milk allocated to Class II by the sum of an advanced Class IV skim price, calculated from nonfat dry milk product prices reported by NASS

for the most recent two-week period for which prices are available on the 23rd day of the preceding month, and the 70-cent Class II differential. The price used for valuing Class II butterfat will be the current month's butterfat price determined from the NASS-reported butter price, as in Classes III and IV, plus .7 cents per pound to incorporate the Class II differential.

Generally, the source of inputs alternative to producer milk for the manufacture of Class II products is dry milk products and butterfat that otherwise would be used in butter. Basing the price of milk used to make Class II products on these alternative ingredients should help considerably to remedy a situation in which it is perceived that a separate product class for dry milk (Class III–A) has resulted in a competitive advantage over producer milk used to produce Class II products. The 70-cent differential between the Class IV and Class II skim milk prices is an estimate of the cost of drying condensed milk and re-wetting the solids to be used in Class II products. One commenter suggested that there should be a $1.00 difference between Class IV and Class II.

Comments filed in response to the proposed rule generally supported basing the Class II price on the Class IV price. However, many commenters, including operators of plants manufacturing food products, argued that the proposed $0.70 differential is too high. In many cases they stated that the cost for rehydration is substantially lower than $0.70, if the nonfat dry milk is rehydrated at all.

Only a small portion of the $0.70 differential is intended to represent the cost of rehydration. The majority of the $0.70, $0.57, represents the cost of drying condensed milk. Comments filed by Kraft, Inc., stated that the cost of using nonfat dry milk (NFDM) in Class II is 0–3 cents per pound. At a rate of 9 pounds of NFDM per hundredweight of skim milk, this cost could represent as much as 27 cents per hundredweight. When added to the 57-cent cost of drying condensed milk, the 70-cent differential appears to be justified. It should be noted that the cost to purchase or manufacture NFDM for use in Class II products would include not only the cost of milk at the Class IV price, but the cost of making NFDM (in excess of $1.20 per hundredweight of skim milk when the make allowance for a pound of NFDM is multiplied by the yield).

Many of the commenters suggested that a rate of $0.30 is appropriate since that is what is used currently in the Federal orders. The current Class II differential, $0.30, was established by a national hearing conducted in 1991. At that hearing proponents of a $0.30 Class II differential explained that the average difference between Class II prices and Class III prices over a recent time period had averaged $0.30. The $0.30 difference was not based on the actual cost differences between existing classes of milk.

The Class II price level determined under this final rule should not, on average, be higher than its predecessor. The concern of commenters that the level of the proposed Class II price would be excessive should be mitigated somewhat by the reduction in the level of the Class IV formula adopted in this rule. For the period January 1994 through December 1998, the Class II price as determined in this final rule averaged $0.01 higher than the current Class II price. There is a very large variation from year to year in the differences between the current and adopted Class II prices. In 1994, the current Class II price averaged $1.50 more than the Class II price calculated according to this decision. For 1998, however, with butter prices at record levels, the Class II price computed from butter and powder prices averaged $1.58 higher than the current Class II price. These price differences illustrate the result of pricing Class II milk on the basis of manufactured ingredients instead of on the basis of cheese.

Many of the comments received concerning the Class II price opposed the proposal to price Class II on a current basis rather than on an advance basis as is currently the case. The commenters argued that since Class II products are sold on an advance basis similar to Class I products the continuation of advance pricing of Class II is essential. Other commenters expressed the view that the skim portion of Class II could be forward priced but butterfat should be priced on a current basis since competing uses for butterfat such as cheese and butter would be priced on a current basis. Class II products high in butterfat, such as ice cream, could be placed at a competitive disadvantage in procuring butterfat if the current month's butterfat prices are substantially different than the advanced priced butterfat price.

The Class II price adopted under this rule will result in forward pricing the skim milk portion of Class II while pricing butterfat on a current basis. Butterfat used in Class II products competes on a current-month basis with butterfat for used in cheese and butter, and its price should be determined on the basis of the same month's values. Forward pricing of skim milk will, of course, eliminate some of the desired direct linkage between the nonfat solids price in Class II and the nonfat solids price in Class IV. However, especially with the shortened period of advanced pricing, in most cases the linkage should remain close enough so that the Class II differential does not encourage the drying of milk for Class II uses just to receive a price advantage. This alignment also should reduce perceived problems in the use of nonfat dry milk to make Class II products. Tying the Class II price to the Class IV price by this fixed differential, even with advanced pricing for Class II skim, should reduce the incentive to produce nonfat dry milk for use in Class II products.

Quality Adjustments

This final decision provides for the adjustment of producer payments for the somatic cell count of producers' milk under most orders using multiple component pricing. Payments made by handlers for milk used in Class II, Class III, and Class IV also will be adjusted on the basis of the somatic cell count of the milk.

A somatic cell count (SCC) adjustment is appropriate for several reasons. First, SCCs are not only an indicator of general milk quality, but also are an indicator of the potential yield of milk in cheese and other products that require casein for their structure and body. Research has shown a direct link between increased SCCs and decreased cheese yields.

Second, many producers currently are subject to some type of multiple component pricing plan or quality premium program that adjusts their pay prices for somatic cell levels even if the order in which their milk is pooled does not incorporate such adjustments. Although many producers' returns are affected by the SCC of the milk, there is little, if any, oversight of the testing for somatic cells if the order does not include pricing adjustments. Fair and accurate testing can be assured by incorporating multiple component pricing and somatic cell adjustments into Federal orders.

The somatic cell adjustment will apply on a hundredweight basis and be computed by subtracting the SCC (in thousands) from 350 and multiplying the result by the product of .0005 times the monthly average cheese price used to compute the protein price. This level of adjustment has worked well in orders currently containing somatic cell adjustments, and is supported by data and research contained in Federal milk order hearing records.

There was not a great deal of agreement on how to determine which orders should provide for SCC adjustments. Some commenters favored their inclusion in all markets and some favored a SCC adjustment on all milk priced under multiple component pricing. NMPF favored SCC adjustments for regions that want them. A Northeast producer group argued that the limited effect of SCCs on Class II and Class IV uses makes them unsuitable for use as an adjustment factor for milk in the Northeast. One fluid milk handler opposed their application to Class I use, while several others opposed excluding Class I milk from using somatic cell count as a cost component because such an adjustment could result in fluid handlers receiving lower-quality milk.

The application of somatic cell adjustments will be limited to orders providing for multiple component pricing, since the detrimental economic effect of somatic cells has been shown to occur principally with respect to the protein component of milk. SCCs unquestionably do have detrimental effects on the flavor and keeping quality of fluid milk products, and undoubtedly on other dairy products as well, but the economic quantification of those effects is not part of the information available for this decision. There are three order areas in which producer sentiment is opposed to the inclusion of SCC adjustments, and these adjustments are not adopted for the three orders. In the case of the Pacific Northwest and Western consolidated orders, most producers already are covered under very effective SCC payment programs, and the average SCC in these markets is less than 250,000 (below the neutral level for SCC value adjustments). There would seem to be little reason to require additional SCC programs for these orders. In addition, the Northeast order does not contain a SCC adjustment. Comments filed by Northeast interested persons argued that the predominant use of milk for manufacturing in that area is nonfat dry milk and butter, and that yields of these products are not affected by SCCs. A somatic cell value adjustment is not, therefore, included in the Northeast order.

As in the proposed rule, for the orders containing a somatic cell adjustment provision the adjustment will be applied to milk used in Classes II, III and IV for handler billings, and to all producer milk for payment to producers. This application of a SCC adjustment has worked well in the orders currently providing for it, and should result in no additional marketing, testing or accounting requirements in those orders. At least some portions of most of the consolidated orders for which the SCC adjustment is provided already contain such provisions.

Several comments suggested including a maximum count of 25,000 psychrotrophic bacteria as a criterion for payment of positive SCC adjustments. Even though there may be a valid reason for including psychrotrophic bacteria for payment purposes, bacteria counts will not be included with this decision. Somatic cell counts are the only quality adjustments in this final decision. The issue of whether to include psychrotropic bacteria as a payment criteria is better left to a Federal order hearing that specifically addresses the issue. In contrast to a somatic cell adjustment, which already is contained in many of the orders with multiple component pricing, none of the orders currently provide for adjustments for bacteria counts.

Application of the Replacement Basic Formula Price(s)

Under this final rule, producers in most Federal order markets will be paid on a multiple component basis since the basic formula price replacement is based on individual milk component prices. Producers will be paid for the pounds of butterfat, pounds of protein, pounds of other solids, a per hundredweight price known as the producer price differential, and a per hundredweight somatic cell adjustment. The producer price differential returns to producers their pro rata share of the proceeds of the classified pricing system. The butterfat, protein, and other solids prices paid to producers will be the same as the prices for those components announced for Class III use regardless of the utilization of the milk. Handler obligations and producer payments under the Federal orders that do not provide for component pricing will be based on hundredweight prices computed from these component prices.

Although several comments supported the proposal that multiple component pricing (MCP) be applied only to milk used in Classes II, III and IV, several comments from the Southwest area argued that it should be applied to all milk or not adopted at all. National Farmers Organization (NFO) also favored the adoption of component pricing for all classes of milk, and other comments favored the adoption of MCP for all Federal milk orders.

Several New York comments stated that MCP would not benefit producers, would serve only to impose higher costs on handlers, and shouldn't be adopted for the Northeast. Michigan Milk Producers expressed concern that the adjustment of protein value to reflect the effect of additional butterfat in cheese would increase costs in the Mideast because of the high percentage of milk used in (lowfat) Italian and Swiss cheese in that market, and requested that the Mideast market provide for the same kind of MCP pricing currently used in the Southern Michigan market.

All Federal orders outside of the three southeast orders with relatively high Class I use (Appalachian, Florida and Southeast) and Arizona-Las Vegas should contain the same component pricing plan. The affected orders have a large portion of their milk used in manufactured products, and the components in that milk that determine the yield of product available for handlers to sell are the most appropriate basis for determining its value. At the same time, there is no indication that MCP should apply to Class I milk, and it is difficult to justify pricing fluid milk on an MCP basis in terms of the economic value of components in those products.

Although the proposed rule included provisions for the Mideast order that would continue elements of the current Southern Michigan MCP plan, further study supports the conclusion that there is no benefit to establishing a component pricing plan under one order that differs significantly from the rest of the consolidated orders. This issue is discussed more thoroughly in the Mideast section of this decision.

All of the Federal milk orders will require changes to accommodate replacement of the current BFP with the multiple component pricing plan or with its hundredweight price equivalent. There will no longer be a butterfat differential under any order, but butterfat prices. The same butterfat price will be used for butterfat in Class II (with an addition of .7 cents per pound to reflect the Class II differential), Class III, and Class IV, while a separate butterfat price, announced in advance, will apply to butterfat used in Class I.

For purposes of allocation of producer receipts the assumption will be made that the total nonfat solids, protein and other (nonfat) solids cannot be separated easily from skim milk. These nonfat solids will therefore be allocated proportionately with the skim milk based on the percentage of protein and other solids in the skim milk received from producers.

For the Market Administrator to compute the producer price differential, handlers will need to supply additional information on their monthly reports of receipts and utilization. Handlers that are filing reports in orders that currently

have multiple component pricing and a somatic cell adjustment will see little or no change in their reporting requirements. Under orders that are adopting component pricing for the first time, the pounds of protein, the pounds of other solids, and somatic cell information will be needed in addition to the product pounds and the butterfat currently reported. This data will be required from each handler for all producer receipts, including milk diverted by the handler, receipts from cooperatives as 9(c) handlers and, in some cases, receipts of bulk milk received by transfer or diversion.

Payments by handlers to cooperative associations for Class I milk will be calculated on the basis of the hundredweight of Class I skim milk times the Class I skim price plus the pounds of Class I butterfat times the Class I butterfat price. Payment for Class II milk will be determined on the basis of the Class II pounds of nonfat solids times the Class II nonfat solids price (or, in non-MCP orders, the Class II skim milk price times the hundredweight of Class II skim milk), and the pounds of butterfat in Class II times the Class II butterfat price. The Class II nonfat solids price is computed by dividing the Class II skim milk price by 9. Class III milk will be paid for based on the pounds of protein in Class III times the protein price, the pounds of other solids in Class III times the other solids price, and the pounds of butterfat in Class III times the butterfat price. The pounds of nonfat solids in Class IV times the nonfat solids price, and the pounds of butterfat in Class IV times the butterfat price will be used to calculate obligations for Class IV milk. Milk used in Classes III and IV in orders that do not include MCP will be paid for on the basis of the butterfat price per pound and the applicable skim milk price per hundredweight. The appropriate somatic cell adjustment will apply to milk in Class II, Class III, and Class IV.

The Class I value of milk to handlers will be calculated by multiplying the hundredweight of producer skim milk in Class I times the Class I skim price plus the pounds of Class I butterfat times the Class I butterfat price. Class II milk value will be computed on the basis of the Class II nonfat solids price times the pounds of total nonfat solids in skim milk allocated to Class II and the pounds of butterfat in Class II times the Class II butterfat price. Class III milk value will be computed based on the pounds of protein in Class III times the protein price, the pounds of other solids in Class III times the other solids price, and the pounds of butterfat in Class III times the butterfat price. The pounds of nonfat solids in Class IV times the nonfat solids price, and the pounds of butterfat in Class IV times the butterfat price will comprise the value of Class IV producer milk. Milk used in Classes III and IV in orders that do not include MCP will be paid for on the basis of the butterfat price per pound and the applicable skim milk price per hundredweight. Also included will be the appropriate somatic cell adjustment applied to milk in Class II, Class III, and Class IV, the value of overage, the value of inventory reclassification, the value of other source receipts and receipts from unregulated supply plants allocated to Class I, and the value of handler location adjustments.

For each marketwide pool using MCP, a producer price differential price per hundredweight will be computed that will represent producers' shares of the value of the pool. The total value of milk to handlers in excess of the value of producer protein, other nonfat solids and butterfat at the applicable component prices will be determined by dividing that value by the hundredweight of milk in the pool. For orders without MCP, the value of milk to handlers will be divided by the hundredweight of producer milk to compute a uniform price per hundredweight to producers.

The handler's obligation to the producer settlement fund under MCP orders will be determined by subtracting from the handler's value of milk the following values: (a) The total pounds of producer milk times the producer price differential adjusted for location, (b) the total pounds of butterfat times the butterfat price, (c) the total pounds of protein times the protein price, (d) the total pounds of other solids times the other solids price, (e) the total value of the somatic cell adjustments to producers' milk, and (f) the value of other source milk in Class I at the producer price differential with any applicable location adjustment at the plant from which the milk was shipped deducted from the handler's value of milk. In orders without MCP, handler obligations will be computed by subtracting the value of producer milk at the uniform price per hundredweight from the value of milk to the handler.

Payments to producers traditionally have been made in two payments, a partial payment based, in most cases, on the prior month's Class III price and a final payment at the uniform price to producers. This traditional payment system will continue, with any exceptions for local marketing practices noted in the regional discussions. The partial payment will be paid on a per hundredweight basis with the price equaling the combined value of the skim and butterfat prices for the lowest-priced class in the previous month. By computing the partial payment on a hundredweight basis, confusion about the use of partial month component test averages will be eliminated and handler's partial payroll processing costs should not be affected. Final payments to producers and for 9(c) milk will be based on: (a) the hundredweight of milk times the producer price differential adjusted for location, (b) the pounds of protein times the protein price, (c) the pounds of other solids times the other solids price, (d) the pounds of butterfat times the butterfat price, and (e) the somatic cell adjustment rate times the hundredweight of milk.

Since producers will be receiving payments based on the component levels of their milk, the payroll reports that handlers supply to producers and to the Market Administrator must reflect the basis for such payment. Therefore the handler will be required to supply the producer not only with the information currently supplied, but also: (a) The pounds of butterfat, protein, and other solids in the producer's milk, as well as the average somatic cell count of the producer's milk, and (b) the minimum rates that are required for payment for each pricing factor and, if a different rate is paid, the effective rate also. The requirement that payment factors be reported to producers when producers are paid currently exists in all of the orders. Addition of the component information is purely a conforming change. Administration of these provisions should not be changed from current practices.

With advance pricing of Class I and the inherent instability of the commodity markets there may be occasions when the computation of the producer price differential results in a value of zero or below. The orders should contain no provision to prevent the producer price differential from being a negative value.

The following tables contain the prices computed based on the formulas and data series described in this final decision for the period of January 1994 through December 1998. The prices are shown for information purposes only. These prices result from the strict application of the formulas to prior marketing situations. These prices should not be interpreted as prices that would have actually occurred throughout the data period because industry participants likely would have reacted differently to the price levels that would have resulted from the

revised pricing plan than they reacted to the actual price levels.

BILLING CODE 3410-02-P

ACTUAL CLASS PRICES AND FINAL DECISION CLASS PRICES AND CLASS I PRICE MOVER,* BY MONTH, JANUARY 1994 THROUGH DECEMBER 1998

[Dollars per cwt.]

Year and month	Basic formula price	Final class I price mover*	Final class III price	Class III–A price	Final class IV price	Class II price	Final class II price
1994							
January	$12.41	$11.72	$11.49	$10.22	$10.22	$13.25	$11.05
February	12.41	11.73	11.64	10.23	10.19	12.26	10.90
March	12.77	12.02	12.33	10.32	10.33	12.61	11.01
April	12.99	12.90	12.89	10.34	10.41	13.19	11.10
May	11.51	12.15	11.05	10.24	10.17	13.88	11.06
June	11.25	10.56	10.37	10.09	10.10	12.18	10.72
July	11.41	11.10	10.90	10.13	10.18	10.35	10.80
August	11.73	11.63	11.06	10.38	10.42	11.84	11.03
September	12.04	11.84	11.76	10.35	10.32	12.95	10.93
October	12.29	11.92	11.74	10.36	10.31	12.15	10.90
November	11.86	11.80	11.49	10.40	10.36	12.53	11.01
December	11.38	10.91	10.88	10.17	10.16	12.24	10.87
Average	12.00	11.69	11.47	10.27	10.26	12.45	10.95
1995							
January	11.35	10.64	10.66	10.06	10.07	11.02	10.71
February	11.79	11.19	11.33	10.12	10.23	11.35	10.85
March	11.89	11.59	11.49	10.22	10.25	12.20	10.85
April	11.16	11.07	11.08	10.27	10.28	12.09	10.89
May	11.12	10.74	10.55	10.21	10.29	12.19	10.89
June	11.42	10.78	10.56	10.37	10.36	11.46	11.04
July	11.23	11.10	10.64	10.61	10.60	11.42	11.23
August	11.55	11.00	10.88	10.82	10.94	11.72	11.52
September	12.08	12.51	12.37	10.90	10.89	11.53	11.52
October	12.61	12.93	12.69	11.66	11.46	11.85	12.09
November	12.87	13.19	12.96	12.40	11.95	12.38	12.52
December	12.91	13.34	12.84	11.24	11.13	12.91	11.61
Average	11.83	11.67	11.50	10.74	10.70	11.84	11.31
1996							
January	12.73	12.82	12.32	11.16	11.15	13.17	11.84
February	12.59	12.62	12.37	10.39	10.70	13.21	11.63
March	12.70	12.66	12.52	10.32	10.49	13.03	11.17
April	13.09	12.84	13.15	10.52	10.65	12.89	11.29
May	13.77	13.68	13.12	11.90	11.74	13.00	12.12
June	13.92	14.28	13.31	15.12	14.25	13.39	14.07
July	14.49	15.41	13.41	16.01	15.32	14.07	15.95
August	14.94	15.32	14.02	15.82	15.44	14.22	16.35
September	15.37	15.74	15.17	15.85	16.09	14.79	15.89
October	14.13	15.28	13.54	14.94	14.82	15.24	15.62
November	11.61	12.33	11.33	12.18	12.10	15.67	13.03
December	11.34	11.06	10.68	11.75	11.76	14.43	12.67
Average	13.39	13.67	12.91	13.00	12.88	13.93	13.47
1997							
January	11.94	11.62	11.05	11.50	11.68	11.91	12.52
February	12.46	11.95	11.56	12.36	12.34	11.64	13.02
March	12.49	12.74	11.55	12.78	12.80	12.24	13.33
April	11.44	12.65	11.23	12.10	12.13	12.76	12.87
May	10.70	11.20	10.23	11.56	11.58	12.79	12.53
June	10.74	11.95	9.96	12.22	12.06	11.74	12.77
July	10.86	11.98	10.13	12.06	11.93	11.00	12.54
August	12.07	11.97	11.50	11.88	11.91	11.04	12.63
September	12.79	12.42	12.32	11.87	11.83	11.16	12.55
October	12.83	12.76	12.54	13.50	13.29	12.37	13.98
November	12.96	13.80	12.59	14.01	13.86	13.09	14.56
December	13.29	13.81	12.55	12.46	12.72	13.13	13.43
Average	12.05	12.40	11.43	12.36	12.34	12.07	13.06
1998							
January	13.25	12.76	12.51	12.04	12.29	13.26	13.02
February	13.32	13.03	12.87	12.89	13.07	13.59	13.78
March	12.81	12.75	12.50	12.67	12.79	13.55	13.49

ACTUAL CLASS PRICES AND FINAL DECISION CLASS PRICES AND CLASS I PRICE MOVER,* BY MONTH, JANUARY 1994 THROUGH DECEMBER 1998—Continued

[Dollars per cwt.]

Year and month	Basic formula price	Final class I price mover*	Final class III price	Class III–A price	Final class IV price	Class II price	Final class II price
April	12.01	12.69	11.50	12.88	12.90	13.62	13.59
May	10.88	13.27	10.65	13.96	13.54	13.11	14.24
June	13.10	14.20	12.65	15.38	14.89	12.31	15.54
July	14.77	15.35	14.12	15.59	15.62	11.18	16.15
August	14.99	16.25	14.21	16.52	16.38	13.40	16.96
September	15.10	18.32	14.66	19.81	18.71	15.07	19.28
October	16.04	18.06	16.05	18.13	18.19	15.29	18.67
November	16.84	16.82	16.90	14.87	15.71	15.40	16.39
December	17.34	17.44	17.51	13.48	13.39	16.34	13.98
Average	14.20	15.08	13.84	14.85	14.79	13.84	15.42
60-Month Avg	12.70	12.90	12.23	12.24	12.20	12.83	12.84

*Developed for informational purposes only. Advanced skim milk and butterfat prices will be used to calculate Class I price for succeeding month.

BILLING CODE 3410-02-M

3. Class I Pricing Structure

This decision adopts a Class I pricing structure that provides incentives for greater structural efficiencies in the assembly and shipment of milk and dairy products. In conjunction with other reforms discussed in this decision, the adopted Class I price structure provides the necessary changes needed to improve milk pricing in the consolidated markets. The adopted Class I pricing structure results from additional quantitative and qualitative analyses of Option 1A and Option 1B that were presented in the proposed rule issued January 21, 1998 (the PR), consideration of public comments received to these options, and the legislative requirements of the AMAA. The adopted Class I pricing structure utilizes USDSS model results adjusted for all known plant locations and establishes differential levels that will generate sufficient revenue to assure an adequate supply of milk while maintaining equity among handlers in the minimum prices they pay for milk bought from dairy farmers.

Background

Although not required by the 1996 Farm Bill, the legislation provided authorization for the Secretary to review the Class I price structure as part of the consolidation of the orders including the consideration of utilization rates and multiple basing points for developing a pricing system. In any event, the consolidation of orders requires the review of the pricing system because historically, Class I pricing provisions, as well as other Federal order provisions, have been reviewed primarily on an individual market basis. The reform effort provides the opportunity to consider and establish a nationally coordinated Class I pricing surface that uses location adjustments to the differential levels to price milk for fluid use in every county in the United States.

The PR provided an extensive review of 7 options that were developed and considered. After qualitative and/or quantitative analysis, all but Option 1A and Option 1B were preliminarily eliminated for various stated reasons. Nonetheless, the PR invited comments on any of the seven pricing options or any other pricing ideas. Also, the Department indicated a preference for Option 1B for a number of reasons. Nearly all of the public comments received in response to the PR on Class I price structure focused on the relative merits of Option 1A and Option 1B. No persuasive comments were received to cause the Department to further consider the other five options.

The USDSS Model

Option 1A and Option 1B were based to a significant degree on the U.S. Dairy Sector Simulator Model (USDSS). The USDSS was used to evaluate the geographic or "spatial" value of milk and milk components across the U.S. Using 240 supply locations, 334 consumption locations, 622 dairy processing plant locations, 5 product groups, 2 milk components (fat and solids-not-fat) and transportation and distribution costs among all locations, USDSS determines economic efficient location values for milk and milk components. The model initially used data from May and October 1995, and for this decision used updated data from May and October 1997.

The supply and consumption of milk used by the model are aggregated to geographic points—consumption points and supply points—to simplify a very complex problem. The production of milk and the consumption of dairy products are *fixed* at the various supply and consumption points used by the model. Plant locations were restricted to those presently processing products but plant processing locations were not constrained with respect to the volume processed. Processing costs were assumed to be uniform between locations and across plant volumes (no economies of scale). Therefore, the model allowed processing to move among available locations to find the least cost solution in terms of assembly from supply points through distribution to consumption points.

Transportation costs in the model include costs of raw milk assembly, interplant bulk shipment, and the cost of hauling finished products. Transportation costs among regions reflected not only distance traveled, but also differences in wage rates and State highway weight limit restrictions. While assembly costs and interplant bulk shipments were calculated using a linear cost function, the finished product functions were non-linear. In fact, finished product hauling costs (e.g., packaged milk) fell below raw milk assembly and hauling costs on an equivalent unit basis in many cases at distances more than 900 miles. Previous spatial modeling had assumed constantly higher finished product transportation costs versus raw milk assembly and shipping costs for all distances. The updated model results were based on transportation cost analyses, particularly the reduction in distribution costs for finished products resulting in distribution costs for these products on par with bulk milk assembly and hauling costs.

The output from the USDSS model provided information as to optimal processing locations and volumes at those locations, milk assembly, and intermediate and finished product distribution flows. It represented a least cost, or "most efficient" organization of the industry. Importantly for the research, the model provided the marginal values (i.e., the value of one more unit) of milk at each location. These values, technically known as shadow prices, are indicative of values that are consistent with the optimized solution. A shadow price on one unit of milk at any processing location can be interpreted as follows: If the processor at a particular location had one more unit of milk, the entire pattern of milk assembly, and product transportation could be reorganized in such a way that marketing costs, equal to the shadow price, could be saved. This notion of marginal value is consistent with economic theory on how prices are determined in a competitive market.

The significance of the shadow value in terms of milk price regulation may be stated: If the regulated price, or cost of milk, is arbitrarily set higher than the shadow price at a particular processing location, a lower cost solution could be found by processing more milk at another location. This would imply higher transportation costs for either raw milk assembly, finished product distribution, or both. Such a result clearly leads to a higher cost, less efficient system. It is also contrary to what is generally thought of as the "orderly marketing" of milk which is a fundamental reason for the existence and goal of Federal milk marketing orders.

It should be stressed that the calculated shadow prices of the model output provide information regarding the relationship of the prices among geographic locations. They do not provide guidance regarding the overall level of Class I prices or differential values. That is, the model does not help us understand whether the Class I differential should arrive at a Class I price of $14 in Minneapolis and $15 in New York City, or $15 in Minneapolis and $16 in New York City. However, it does tell us that the resulting Class I price difference between the two locations should be about one dollar.

A positive aspect of the USDSS model is the degree of detail available in the output. This detail is achieved through the careful assembly of spatially disaggregated data. However, it should be remembered that by its construction, the USDSS is a "model" and thus a simplification of a complex dairy industry. That notwithstanding, the USDSS model does provide an objective and quantitative guidepost from which to compare current federal order differentials and in considering possible alternatives.

Several factors were considered in selecting a replacement for the current [14] Class I price structure that served to form the criteria used to examine options. First, a Class I price structure must be considered from a national, as well as a local or regional, perspective. Many comments from industry addressed Class I pricing issues from a local or regional perspective in the development of options presented in the PR. These comments provided valuable information about particular markets but generally did not consider the feasibility or impact of a local or regional issue on a national basis. While remaining mindful of local and regional concerns, USDA has also evaluated alternative Class I pricing structures from a national perspective, as should be expected, given the national concerns expressed about milk pricing.

Second, a Class I price structure must recognize the location value of milk. Results from the USDSS model confirm that milk has value at location. As described earlier, the model provided shadow prices reflecting the relative values of milk and milk components at geographic locations. While the model shadow prices did not suggest Class I differentials for specific locations, they do provide a means to evaluate price relationships among locations.

Third, a Class I price structure must recognize all uses of milk. The classified pricing system contained in the Federal milk order program values milk for fluid use higher than milk used for soft or hard manufactured products. The higher Class I price encourages all milk to be used first to satisfy Class I needs. At the point where the cost of moving milk from an alternate location for Class I use is equal to the cost to supply milk for manufactured products, demand for manufactured products influences a market's ability to procure milk for Class I needs. Thus, all uses of milk must be considered when evaluating a national Class I pricing structure.

Finally, a Class I price structure must meet the requirements of the AMAA. The broad tenet of the AMAA is to establish and maintain orderly marketing conditions. For the Federal milk order program, this is achieved primarily through classified pricing and pooling. With regard to pricing, it is recognized that the objective of the AMAA is to stabilize the marketplace with minimum prices, not to set market prices. The pricing criterion of the AMAA, section 608c(18), requires prices that are reflective of economic conditions affecting supply and demand for milk and its products. In this regard, consideration was given to whether the proposed prices would generate sufficient revenue for producers necessary to maintain an adequate supply of milk. Equally important, the prices need to provide equity to handlers with regard to raw product costs as required by section 608c(5) of the AMAA.

Evaluation Criteria

In evaluating the final Class I pricing options, nine performance criteria, based upon regulatory objectives and requirements of the AMAA, were again used as they were in the PR. The evaluation criteria are divided into two categories, objective and administrative. The objective criteria are as follows:

1. Ensure an adequate supply of milk for fluid use. Class I price levels need to provide a sufficient price signal to maintain an adequate supply of milk for fluid use. This supply level can be achieved through either the movement of milk to where it is needed, increased production, or some combination of both.

2. Recognize quality (Grade A) value of milk. Grade A milk is required for fluid use. Additional costs of obtaining and maintaining Grade A status need to be reflected in Class I prices.

3. Provide appropriate market signals. A Class I price should send timely signals to the market regarding supply/demand conditions.

4. Recognize value of milk at location. Basic economic theory, validated by actual market observations and University-based research, affirms that milk for Class I use has a different value at different locations. This value needs to be reflected in the Class I price in order for the system to recognize and resemble the market rather than interfere with the market.

5. Facilitate orderly marketing with coordinated system of prices. A system of Class I prices needs to be coordinated on a national level. Appropriate levels of prices will provide alignment both within and among marketing areas. This coordination is necessary for the efficient and orderly marketing of milk.

6. Recognize handler equity with regard to raw product costs. Appropriate levels of Class I prices provide known and visible prices at all locations thereby ensuring that handlers

[14] Any references to the "current" system of Class I prices or the "current" price structure are to be interpreted as those established in or after the final decision based on the 1990 national hearing issued March 5, 1993 (58 FR 12634).

are able to compete for available milk supplies on an equitable basis.

Three administrative criteria are identified and described as follows:

1. Minimize regulatory burden. The Class I price structure should not significantly increase the burden on handlers, particularly small businesses. This would include increased reporting requirements and record keeping, as well as possible increases in administrative assessments should Market Administrators be required to manage a more complex regulatory system.

2. Minimize impact on small businesses. The Class I price should be set at a level that does not disadvantage small businesses in competition with large businesses.

3. Provide long-term viability. The Class I price structure should be expected to operate for an extended time period without major modifications.

The nine evaluation criteria listed above are used to qualitatively evaluate each of the options. Each option is evaluated based on how the option performed compared to the current system, either better than, worse than, or the same as, for each performance criterion. The results of the qualitative analysis provided a preliminary framework for quantitative analysis using a multi-regional model developed by the Economic Research Service (ERS) of the Department.

As previously indicated, Option 2—Relative Use Differentials, Option 3A—Flat Differentials, Option 3B—Modified Flat Differentials, Option 4—Demand-Based Differentials, and Option 5—Decoupled Baseline Class I Prices with Adjustors, were eliminated from further consideration. They were eliminated for various reasons including failure to adhere to AMAA requirements, the likelihood of creating disorderly marketing conditions, and impacts on small businesses. A discussion of the five eliminated options, including the evaluation against the criteria and/or quantitative analysis were described in detail in the PR.

The Final Options

Three options formed the basis for final consideration and are described below. All options present national Class I pricing structures developed utilizing the USDSS model. The options continue to vary in their reliance and application of the USDSS model but all remain based on economic principles contained within the model. These options include Option 1A, a modified Option 1B, and the adopted Class I pricing structure.

Option 1A: Location-Specific Differentials

Option 1A establishes a $1.60 per hundredweight fixed differential for three surplus zones (Upper Midwest, West, and Southwest) within a nine-zone national price surface, and for the other six zones, an added component that reflects regional differences in the value of fluid and manufacturing milk. This option emphasized current supply and demand conditions with the USDSS model output.

Some minor changes were made to the Option 1A differential levels presented in the PR. The changes only involved adjusting certain county specific differentials to provide for more appropriate price alignment in several counties in the northeast, seven counties in Florida, and one county in North Carolina. Other than these minor changes, Option 1A is the same as published in the PR.

Modified Option 1B: Relative Value-Specific Differentials

This option continues to establish Class I differentials based on a relationship between prices and geographic location as indicated by the USDSS model, but uses more current data. Modifications were made to Option 1B with respect to how adjusted Class I differentials were established for each county in the United States. This modified version of Option 1B continues to establish differential levels by setting and equating the relative value-specific differential of $1.20 per hundredweight in Minneapolis, Minnesota. The Option 1B differentials in the PR relied on an algorithm to set location adjusted differentials in every county. The modified Option 1B price surface takes into full account all known plant locations as was done in the development of Option 1A. This approach ensures that all plants similarly located would have similar prices.

The Adopted Class I Price Structure

The adopted Class I pricing structure establishes a price surface that also utilizes USDSS model results adjusted for all known plant locations and establishes differential levels that will result in prices that generate sufficient revenue to assure an adequate supply of milk. The differential levels will better maintain equity by raising the level 40 cents per hundredweight higher than the level proposed in Option 1B and in modified Option 1B. The higher differential level reduces the likelihood of class-price inversions, where the Class I prices are below the manufacturing milk prices for the month.

The USDA Multi-Regional Dairy Sector Model

Option 1A, modified Option 1B and the adopted Class I pricing structure were evaluated qualitatively against the evaluation criteria and quantitatively utilizing the USDA multi-regional dairy sector model. This model was developed to answer some very specific questions about possible changes in the dairy sector, particularly changes being considered in milk marketing orders. The main focus of the model's development and use was to quantitatively examine the impacts of the changes under consideration in the classified pricing of milk and dairy products in the milk order system on an order-by-order and regional basis, and for other areas of the country not currently a part of the milk order system.

The multi-regional model establishes a baseline consistent with the USDA official baseline projections for the dairy sector. It assumes 36 regions. These include: 32 Federal Milk Marketing Order areas (including Tennessee Valley that was terminated on October 1, 1997) and four non-Federally regulated areas (California, Other Unregulated Western Counties, Unregulated Northern New York and New England and Other Unregulated Eastern Counties) and projects baseline information through the year 2005. The demarcation between the unregulated Western and Eastern counties follows a line extending north to south on the eastern State borders of North Dakota, South Dakota, Nebraska, Kansas, Oklahoma and Texas.

The model baseline also assumes that the Class III price would be the Basic Formula Price (BFP), the Class II price would be the BFP plus 30 cents, each region's Class I price would be the BFP plus the current Class I differential and the Class III-a price would continue. All other changes to milk order provisions together with the three price surface alternatives are presented as changes from the baseline over the period of the years 2000 through 2005. Each of the alternatives include the impact of consolidation into 11 regional markets and moving to wholesale product price formulas in setting the class prices.

From its baseline, the model has the ability to quantify the impacts of pricing changes in the consolidated regions and in estimating how the end use of milk may be expected to change with the changes in how the order program will price milk. The model can generate long-term supply, demand, and price

projections that are consistent with the USDA official baseline projections.

The model estimates regional milk production based estimates of milk-per-cow and number-of-cows for the 36 defined areas. The milk cow inventory and milk-per-cow estimates for each area is based upon reported state data. Changes in the inventory of cow numbers and output-per-cow for each region are related to regional farm milk prices and feed costs, and past regional net returns to dairy farmers (a measure of profitability). Milk marketings in the region are in direct relationship to milk production in the region.

Once the volume of regional milk marketings is determined, marketings are distributed to seven uses: bottled whole milk, bottled low-fat milk, soft manufactured dairy products, American cheese, other cheese, butter, and nonfat dry milk. Each of the seven uses has a retail demand equation. Generally, the demand for the specific product is a function of per capita income, the retail price or the Consumer Price Index (CPI) of the product, and the price or CPI of a substitute product (e.g. margarine for butter).

Demands for raw milk for use in fluid milk products and soft manufactured dairy products have priority in the model and such demands are filled regionally from the region's raw milk supply before the national demands of the hard manufactured product markets are met. The Class I and Class II uses of milk in each region are based upon differences in prices and population by region. A CPI for fluid milk and other dairy products are estimated for each region based upon a margin mark-up equation and the region's Class I and Class II prices. These values are used to estimate regional per capita use, and when multiplied by projected population for each region, determine the amount of milk allocated to Class I and Class II uses.

The sum of each region's raw milk supply less the milk used in Class I and Class II results in a measure of the national manufacturing milk supply. The model solves for equilibrium in supply and demand by solving for wholesale prices of cheese, butter, and nonfat dry milk that equate the supply and demand in the hard manufactured dairy product markets. The hard manufactured product markets, the Class I markets, the Class II markets, and the farm level raw milk supply are linked through price equations that relate the changes in wholesale product prices to changes in prices for milk used in Class I, Class II, Class III, Class III-a (or Class IV) and the farm level all-milk price.

A Class III and Class III-a (or Class IV) price is calculated from the model's estimates of wholesale cheese, butter, and nonfat dry milk prices; and these Class III and Class III-a (or Class IV) prices are used to predict Class I and Class II prices. Changes in Class I and Class II prices affect demand for Class I and Class II products and the amount of milk available nationally for cheese, butter, and nonfat dry milk production. Likewise, the amount of milk used in each class in each region and the regional class prices affect the farm level all-milk price and the supply of raw milk in the region and therefore the amount of milk available nationally for cheese, butter, and nonfat dry milk production. The model iterates until an equilibrium is achieved for the year in the wholesale product markets and then advances to the next year.

A brief summary of the quantitative impacts of each alternative price surface is included with the qualitative analysis presented below. A detailed description of the USDA multi-regional dairy model, as well as a complete discussion of the impacts of the pricing alternatives are contained in the Final RIA.

Option 1A: Location-Specific Differentials

Option 1A would establish a nationally coordinated system of location-specific Class I differentials reflecting the relative economic value of milk by location. An important feature of the option is the location adjustments that geographically align minimum Class I milk prices paid by fluid milk processors nationwide regardless of the defined milk marketing area boundaries or order pooling provisions. A basic premise of Option 1A is that the value of milk varies according to location across the United States.

Compared to the modified Option 1B and the adopted Class I price structure, this option tends to most reflect the current Class I pricing surface. Although extremely similar to the current Class I price surface, there are distinct differences. Option 1A would establish a nationally coordinated price surface that uses location adjustments to adjust the price of milk for fluid use for every county of the United States.

Under Option 1A, Class I differentials are the lowest in geographical areas evidencing the largest supplies of milk relative to local/regional fluid milk needs. The differentials become progressively higher as they move from these areas to markets with less production relative to demand for fluid milk. Nine differential zones provide the basis for establishing the price structure. These zones were established based on results of the USDSS model, knowledge of current supply and demand conditions, and recognition of other marketing conditions such as fluid versus manufacturing markets, urban versus rural areas, and surplus versus deficit markets.

Class I differentials under this option range from a low of $1.60 per hundredweight in the lowest valued zones of the Upper Midwest, Southwest, and West, where there are abundant supplies of milk in excess of fluid milk use, to a high of $4.30 per hundredweight in Florida, where there are deficit supplies of milk for fluid use.

Analysis Based on Evaluation Criteria. Option 1A performs equal to or better than the current Class I system in each of the evaluation criteria. This is largely explained by the adjustments, improvements, and fine-tuning made to the current system of Class I differentials Option 1A was evaluated against the objective criteria as follows:

1. Ensure an adequate supply of milk for fluid use. Option 1A performs essentially the same as the current price structure in ensuring an adequate supply of milk for fluid use. Option 1A changes current differential levels in some regions to more accurately reflect current milk supply-demand conditions. Option 1A will have minimal impacts on farm level milk prices and should ensure adequate supplies of milk for fluid use.

2. Recognize quality (Grade A) value of milk. Option 1A recognizes the quality value (Grade A) of milk through the addition of a differential that begins at $1.60 per hundredweight in the base zone.

3. Provide appropriate market signals. Option 1A adjusts and refines the existing Class I price structure to provide appropriate market signals. In some geographical areas, Class I differentials would be increased. These changes indicate that current Class I differential levels are not high enough to attract adequate supplies of milk to the applicable fluid milk markets. In certain other areas, Class I differentials would be lowered, indicating that they exceed levels necessary to adequately supply the associated markets with their fluid milk needs.

4. Recognize value of milk at location. The spatial values of milk reflected in Option 1A recognize the value of milk at location more accurately than the current system for two principal considerations. First, in structuring the differentials in Option 1A, the effect of current Class I differential levels on milk supplies, demand, and dairy farmer returns regionally during the past decade were considered. Second, the

relative values of milk and milk components at geographic locations throughout the United States from the USDSS model results were considered.

5. Facilitate orderly marketing with coordinated system of prices. Option 1A provides a comprehensive national pricing surface for Class I milk that establishes a value for Class I milk in every county. Thus the price any processor would pay for milk would be the same regardless of which order the processor is regulated under. As such, Option 1A is an improvement over the current price structure which evolved in a piecemeal fashion. Additionally, the Class I differentials and location adjustments in Option 1A would facilitate more efficient and orderly marketing of milk for fluid use through the nationwide coordination of prices when compared to the current system.

6. Recognize handler equity with regard to raw product costs. Class I differentials proposed under Option 1A are consistent with the inherent economic value of milk at location. The coordination and alignment of prices, based upon cost differences and current marketing conditions, better ensures handlers of equity in competing for available milk supplies.

Option 1A was evaluated against the objective criteria as follows:

1. Minimize regulatory burden. Option 1A would not change the regulatory burden of the Federal order program. Option 1A would not result in increased reporting, record keeping, compliance, or administrative costs to handlers.

2. Minimize impact on small businesses. In regions where more of the actual value of fluid milk would be reflected in the differentials than is currently reflected, small businesses may have a marginal improvement in their relative competitive bargaining position vis-a-vis large businesses. This is based on the concept that large businesses (producers, cooperatives or handlers) are better able to negotiate premiums above minimum order prices due to advantages attained from their size. Overall, this option is not expected to materially impact small businesses differently than the current price structure.

3. Provide long-term viability. To the extent the location adjusted Class I differentials under Option 1A will correct instances of price misalignment and more accurately reflect the economic value of milk by location, the long-term viability of Option 1A is expected to exceed that of the current price structure.

Because the USDSS model only determines the relative value differences for fluid milk between location, it could not be used for determining an appropriate differential level. Option 1A utilizes $1.60 per hundredweight as the minimum differential level. A complete explanation of the factors that developed and explain this differential level was set forth in the PR. In summary of those reasons, the $1.60 per hundredweight differential level is used in Option 1A because it would ensure a sufficient supply of milk for fluid uses in the most surplus regions.

Option 1A will have little impact on small businesses, either producers and processors. In certain situations, it may improve a small business' competitive marketing position as compared to current levels. Because the $1.60 base zone differential includes a competitive factor as discussed previously, more of the actual value of fluid milk will be reflected in the minimum Federal order price. This may decrease the level of the over-order value that must be negotiated between processors and producers. Doing this would provide small businesses with a more equitable competitive position.

Quantitative analysis of Option 1A using the USDA multi-regional model evaluated the various impacts of this pricing option. Overall, the magnitude of price and income changes under Option 1A is relatively small when compared to the baseline. Option 1A results in an 8-cent increase in the average Class I price for all current Federal orders. Further details of the impact of these Class I price changes, and others, that are based on the USDA model results are available in the final Regulatory Impact Analysis (RIA).

Modified Option 1B—Relative Value-Specific Differentials

Modified Option 1B would also establish a nationally coordinated system of Class I differentials and adjustments that recognizes several low pricing areas. Modified Option 1B more directly applies the USDSS model's optimal solution in developing the Class I price structure.

The modified Option 1B differentials differ from those published in the PR. The differences are explained largely by a more complete consideration of all known plant locations. The Option 1B differential values published in the PR relied on an algorithm to establish differential levels for those counties that were not part of the optimal solution. However, all plant locations need to be considered for setting prices at these locations and prices must be aligned between locations. This has been done in modified Option 1B and results in a "zoned" structure of relative price differences that are aligned.

Modified 1B Differential Level

As pointed out in the Option 1A discussion, the USDSS model only provided information regarding relative differences in prices between geographic locations and offers no information for determining the level of Class I differentials used in setting Class I prices. The same is true for modified Option 1B. Modified Option 1B relies much more directly on the geographic price relationship results of the USDSS model in defining the structure and relative differences represented in its differential schedule for all locations.

While modified Option 1A establishes a $1.70 Class I differential at Minneapolis, adjusted from a minimum level of $1.60 (the lowest differential level at any location in Option 1A), modified Option 1B sets a Class I differential at Minneapolis at the current level of $1.20 per hundredweight. It is important to note that any modified Option 1B zone could be discussed as the "starting" point differential. This decision only refers to and references Minneapolis at the $1.20 level for illustrative purposes since it provides a degree of continuity in how Option 1B was presented and discussed in the PR.

Because Option 1B was expected to result in a significant change to the industry in both the pricing surface and the level of Class I differentials, it was proposed in the PR in conjunction with three alternative transitional phase-in programs. However, none of the phase-in programs received public support.

The final RIA statement provides the full measure of the USDA multi-regional model analysis of this option. In short, modified Option 1B is rejected because the differential levels it would set would result in minimum prices that would not generate sufficient revenue to assure an adequate milk supply. Additionally, for markets with lower differential levels, there is a greater potential for class-price inversions that would increase the likelihood of disorderly marketing conditions.

The Adopted Class I Price Structure

The adopted Class I pricing structure results from additional quantitative and qualitative analyses of Option 1A and Option 1B, consideration of public comments received to these options, and the legislative requirements of the AMAA. The adopted Class I pricing structure utilizes USDSS model results adjusted for all known plant locations and establishes differential levels that will generate sufficient revenue to

assure an adequate supply of milk and better maintain equity among handlers by raising the level 40 cents per hundredweight higher than the level used in modified Option 1B.

The Class I differential level was set by determining the differential level that results in prices which will generate sufficient revenue to bring forth an adequate supply of milk throughout the Federal order system. As in both Option 1A and modified Option 1B, the adopted Class I pricing structure adds a differential value to the basic formula price in setting Class I milk prices. Additionally, it is set at a level that minimizes the likelihood of class-price inversions, discussed in the BFP section of this decision. The $1.60 Class I differential level (at Minneapolis) achieves these objectives for a nationally coordinated Class I pricing structure.

Increasing the differential level by 40 cents per hundredweight at all locations does diminish the reliance on the marketplace and over-order premiums in establishing market prices inherent in modified Option 1B. However, the adopted Class I pricing structure retains the more efficient pricing structure that offers increased cost savings in the organization of the nation's milk supply and in the transportation of milk and dairy products.

The adopted Class I pricing structure moves the dairy industry into a better organized and aligned pricing system while continuing to assure orderly marketing conditions for producers and handlers. Restructuring the relative-value differential relationships at the level specified will, among other things, generate sufficient revenue in the national system of Federal orders to bring forth an adequate supply of milk. The higher level will also minimize instances of class-price inversions. The location adjusted differentials established for each county are set forth in the Class I Price Structure Maps, and in the General Provisions § 1000.52. The following table sets forth the location adjusted differentials at selected cities.

COMPARATIVE CLASS I DIFFERENTIALS AT SELECTED CITIES UNDER THE ADOPTED CLASS I PRICE STRUCTURE

[Dollars per hundredweight]

City	Current	Adopted	Difference
New York City, NY	3.14	2.50	(0.64)
Charlotte, NC	3.08	2.55	(0.53)
Atlanta, GA	3.08	2.90	(0.18)
Tampa, FL	3.88	4.20	0.32
Cleveland, OH	2.00	2.00	0.00
Kansas City, MO	1.92	1.90	(0.02)
Minneapolis, MN	1.20	1.60	0.40
Chicago, IL	1.40	1.95	0.55
Dallas, TX	3.16	2.10	(1.06)
Salt Lake City, UT	1.90	1.50	(0.40)
Phoenix, AZ	2.52	1.55	(0.97)
Seattle, WA	1.90	1.45	(0.45)

The adopted Class I pricing structure was evaluated against the objective criteria as follows:

1. Ensure an adequate supply of milk for fluid use. The adopted Class I pricing structure establishes lower differentials than current levels in many of the proposed markets. Because the differential level is higher than under modified Option 1B, the adopted Class I pricing structure relies less on the use of over-order premiums as the method to attract adequate milk supplies for fluid purposes. While over-order premiums will remain useful for allowing the market to find the final value of Class I milk, the higher-level differentials of the adopted Class I pricing structure will better serve to ensure that the minimum prices set by the orders will attract an adequate supply of milk for fluid use.

2. Recognize quality (Grade A) value of milk. As with Option 1A and modified Option 1B, the adopted Class I pricing structure similarly recognizes the quality (Grade A) value of milk through the use of a differential added to the basic formula price.

3. Provide appropriate market signals. The adopted Class I pricing structure provides appropriate market signals in all markets even though the adopted Class I pricing structure lowers differentials in some markets. Over-order pricing will likely function in most, if not all markets, even with the higher-level differentials. However, the higher differential level better ensures that the minimum prices established under the orders will generate a sufficient supply of milk and better ensures equitable minimum prices among regulated handlers than does modified Option 1B. Additionally, because class-price inversions are mitigated, more appropriate price signals are provided to the marketplace.

4. Recognize value of milk at location. The adopted Class I pricing structure appropriately recognizes the value of milk at location. It is based on the location value of milk as determined by the May 1997 results of the USDSS model. It also aligns the relative-value differences while adhering to spatial-value differences determined by the model giving full consideration to all plant locations. Thus, in utilizing the model results that determine the most efficient spatial value of milk for fluid use to establish the price surface, the adopted Class I pricing structure should perform better than the current system.

5. Facilitate orderly marketing with coordinated system of prices. The adopted Class I pricing structure establishes a coordinated system of differentials with appropriate location adjustments. Like the other two options, a comprehensive national pricing surface has been developed that establishes a value for Class I milk in every county. As a result, a processor's regulated price will be the same regardless of the order regulating it.

6. Recognize handler equity with regard to raw product costs. With the 40-cent per hundredweight increase in the differential level, processor equity is better maintained under the adopted Class I pricing structure. With price increases or decreases in some areas, the markets will need to adapt to the new pricing structure. While it is not the intent of the Federal order system to set market prices, the reflection of a larger portion of the price under regulation provided by the adopted Class I pricing structure, better assures handlers a reasonable degree of equity with regard to raw product costs.

The adopted Class I pricing structure was evaluated against the administrative criteria as follows:

1. Minimize regulatory burden. The adopted Class I pricing structure would not change the regulatory burden of the Federal order program in terms of reporting, recordkeeping, compliance, and administrative costs to handlers.

2. Minimize impact on small businesses. Under the adopted Class I pricing structure, a fuller measure of the Class I value needed to attract adequate milk supplies will come from regulated prices. Reliance on over-order payments negotiated outside the Federal order system is diminished, but continues to be recognized as in either the current system or in Option 1A. As a result, it is likely that small handlers who might have been disadvantaged by the original Option 1B will not be under this modified version.

Federal order Class I prices are mandatory and affect processors in a specific area equally as minimum enforced price levels. Since more of the actual value of Class I milk is represented in regulated prices, the potential for large handlers to have an advantage over small handlers is mitigated in competing for a supply of milk under the adopted Class I pricing structure. Large processors often have advantages related to economies of scale and may be able to temporarily inflate over-order prices they are willing to pay until they have forced smaller businesses out of business who could not afford to pay higher prices.

Additionally, with higher differentials and resulting higher producer blend prices, the balance of market power between producers and processors is better maintained. Producers will not need to negotiate with processors to obtain a better price for their milk to the extent that would have been expected under modified Option 1B. Small dairy farmers have less production volume, and typically have higher per hundredweight production costs. Hence, small producers who are less able to negotiate for prices that may be higher than the Federal order minimum price will be better served under the adopted Class I pricing structure. When too much reliance is placed on the use of over-order premiums (as in modified Option 1B), it is likely that dairy farmers defined as small businesses would benefit less from the regulation of milk marketing.

Small businesses may be impacted under the adopted Class I pricing structure as adjustments are made in response to the new pricing structure. However, to the extent that small producers may not be able to bargain with processors for over-order premiums to adequately cover their costs, the increased differential level in the adopted Class I pricing structure minimizes this potential outcome. The inability of small processors to compete with large processors at price levels above Federal order minimums is similarly eased.

3. Provide long-term viability. The adopted Class I pricing structure provides for a more efficient pricing structure. This option is an alternative from the current way the Federal order program has approached Class I pricing. Historically the Class I price established under Federal orders represented the minimum value of Class I milk in the marketplace based on the cost of maintaining Grade A milk and associated marketing costs together with the cost of alternative milk supplies. The adopted Class I pricing structure provides the opportunity for increased marketing efficiencies by promoting a more optimal organization in the assembly and distribution of milk products while establishing prices that will assure an adequate milk supply. In this way, it is expected to have long-term viability.

Quantitative analysis of the adopted Class I pricing structure using the USDA multi-regional model evaluated the various impacts of this pricing option. The evaluation assumed the eleven market order consolidation, four classes of milk use, and the BFP replacement presented earlier in this decision. Class I differentials are reduced from current levels in about half of the marketing orders. The reductions range from 4 cents per hundredweight in the Ohio Valley order to as much as $1.18 per hundredweight in the Eastern Colorado order. The Class I differential for the Eastern Ohio-Western Pennsylvania order would be unchanged. For the other markets, the Class I differential is increased, ranging from 8 cents per hundredweight in the Greater Kansas City order, to 57 cents in the Southeastern Florida order.

Under the adopted Class I pricing structure, six current milk orders would have Class I differentials lower than the differential established at Minneapolis. This gives explicit recognition that these other areas have adequate milk supplies to satisfy Class I demands at lower costs. For areas needing supplemental supplies of milk for fluid use, the Class I differentials are reflective of transportation costs from the closest alternative supply area.

According to the USDA model analysis, the adopted Class I pricing structure differential level would increase order marketings over the six-year analytical period of the years 2000–2005 when compared to the baseline. Raising the differential, in conjunction with shortening the advance pricing notice of Class I prices by 18 days as discussed in the BFP section of this decision, minimizes class-price inversions. The rise in the all-milk price in the first year of implementation is expected to stimulate additional milk production in the milk order system. This additional milk production results primarily from Class I prices being established by using the expected higher Class IV prices in the year 2000. Over the six-year analytical period, the annual all-milk price is expected to drop by about two cents per hundredweight, but the annual average of marketings in the entire milk order system is expected to increase by about 8.3 million pounds when compared to the baseline. This increase in marketings is largely explained by the pooling of milk that was not pooled in recent years because of class-price inversions.

The USDA analytical model suggests that annual cash receipts, or revenue, for producers under the adopted Class I pricing structure will increase in many markets when compared to the baseline. The marketing areas expected to have the largest average annual increases in producer revenue include the following orders: Chicago Regional—$43.1 million, New York-New Jersey—$18.7 million, Iowa—$17.5 million, Southern Michigan—$14.1 million, and Tampa Bay—$12.2 million. Other markets would be expected to have lower estimated annual cash receipts over a six-year analytical period of the years 2000–2005 from the baseline. The marketing orders with the largest reductions include: Texas (−$39.7 million), Middle Atlantic (−$39.5 million), Eastern Colorado (−$11.4 million), Southwest Plains (−$11.3 million) and Central Arizona (−$10.4 million).

The USDA analytical model suggests that as the adopted Class I pricing structure results in lower Class I prices in many markets, the average annual impact on retail prices to the consumer for fluid milk will be about 2 cents per gallon less, on average, over the six-year period of the years 2000–2005 when compared to the baseline. From a national perspective, this translates into consumer savings of about $79 million for fluid milk products annually. Sales of manufactured dairy products over the same time period are expected to decrease somewhat, but expenditures for these products will be higher.

While only summarized here, the complete USDA multi-regional model analysis of Options 1A, modified Option 1B and the adopted Class I pricing

structure are included in the final RIA statement.

Comparison of Option 1A and the Adopted Class I Price Structure

Option 1A and the adopted Class I pricing structure have similarities but rely on differing methods in constructing a nationally coordinated Class I price structure. Both recognize that milk has a location value. Both utilized the USDSS model results to establish the price surface. Both establish Class I prices by adding a fixed differential to the implied value of milk used in manufacturing. Both establish a price surface that assigns a price to every county in the United States and would assure that a price at any particular location will not vary depending upon the marketing order under which the milk is pooled.

Although similar in the above respects, they also differ. First, they differ in the method of determining the level of the Class I differential. Option 1A relies on finding that Class I differentials would be established at a level that more fully reflects the additional value of Class I milk in the most surplus regions. The adopted Class I pricing structure relies on the finding that the national system of milk order needs to result in prices that will generate sufficient revenue to bring forth an adequate milk supply.

Secondly, they differ in how the price surface should be established regardless of the level. Option 1A provides for the alignment of resulting Class I prices by evaluating the cost of alternative supplies based upon the current Class I differential structure. This results in a surface that is smoother and flows primarily from north to south and west to east. However, the adopted Class I pricing structure relies on a cost minimization model to provide for a more efficient organization and structure in milk supply and distribution. Thus, it results in more limited relative price differences and in a price surface that is flatter.

Thirdly, they differ in their reliance on the USDSS model results. Option 1A recognizes the value associated with the model results but relies on knowledge of specific marketing conditions and practices to make adjustments to existing differentials. The adopted Class I pricing structure, on the other hand, relies more directly on the USDSS model results that indicate the optimal spatial values for fluid milk which serve to promote market efficiencies, and implements this structure to encourage market efficiency within the dairy industry.

Public Comments

The majority of comments received in response to the PR dealt with the Class I price structure. In all, 4,217 comments were received on this issue. Of this number, 3,579 comments indicated support for the adoption of Option 1A and 436 comments supported the adoption of Option 1B. Some support USDA of both Class I pricing options called for changes in each of the Option's details. No comments were received that supported any sort of transition programs suggested in adopting Option 1B. Some comments, while supporting Option 1B in its general theme, proposed adopting Option 1A initially and phasing in the adoption of Option 1B over an extended time period.

It is clear from the comments received that there is broad-based support for adopting Option 1A. These commenters explained what they thought were and should be the most important goals of the milk marketing order program, the pricing policies and features that it should contain to achieve these goals, and their view of the legislative requirements that must be incorporated into milk orders. Such was similarly expressed in explaining both the support for, and opposition to, Option 1B.

Supporters for Option 1A generally saw it as the best Class I pricing option that would properly reflect the fullest measure of the AMAA's articulated goals and requirements. These supporters expressed the limitations of relying too much on the free market in setting milk prices. For example, supporters of Option 1A indicated that milk marketing orders exist because dairy farmers are at a distinct disadvantage in their marketing relationship with handlers who buy their milk. They cited the characteristics of milk—that it is highly perishable, bulky, is produced daily and must be marketed nearly as often, and is expensive to transport—as making it a unique commodity. Unlike other commodities, grains for example, milk cannot be withheld from the market in the hope for a better price, nor can it be shipped long distances in search of a higher price because transportation costs quickly erode the benefits of a higher price. Dairy farmers don't even know the price they will receive for their milk in advance of having to ship to market, they noted.

Also, supporters of Option 1A were of the opinion that marketing conditions faced by dairy farmers today are fundamentally no different than they were when the order program first began. They point out that even though there are fewer and larger dairy farms with greater milk production, the number of plants at which to sell milk are fewer than when the order program first began. Implicit in this relationship, they said, is the degree of uneven market power that handlers have over producers. One commenter noted that the ratio of dairy farmers to milk plants today has increased threefold since 1960, an indicator of the growth in the concentration of market power among handlers. Even the prominence of dairy farmer cooperatives over the years has had little significant impact on the relative bargaining power of dairy farmers, noted many commenters. While these organizations have served with varying degrees of success in negotiating for higher milk prices for their members, they said, cooperatives do not and cannot have the ability to significantly impact prices because no entity can control or limit the supply of milk to the marketplace. Because dairy farmers face such a skewed marketing situation, most commenters view milk marketing orders as the only practicable tool to assure farmers receive a fair price for their milk.

Supporters of Option 1A indicated that because of the continuing marketing situation they face, no basis exists for concluding that more emphasis should be placed on a dairy farmer's ability to negotiate prices with handlers. According to these commenters, relying too much on the marketplace would only provide the incentive for producers to needlessly compete with each other to supply the higher-valued fluid market. Those that are successful might receive more for their milk than those who could not, but to this end, there is no guarantee that all handlers would pay the same price for milk. Nor is there a guarantee that handlers would share the higher-valued use of milk equitably with those producers. This, they said, results in disorderly marketing conditions and the pitting of farmer against farmer in unnecessary and destructive price competition. It was these conditions, they note, that led to creation of milk orders and justified the marketwide pooling and minimum pricing provisions contained in milk orders today. Only Option 1A, say its supporters, best establishes the proper value of milk that, together with classified pricing and marketwide pooling, assures the highest degree of equity for both producers and handlers.

Supporters of Option 1A agreed and recognized that it is important to have a Class I pricing structure that is national and more reflective of

marketing conditions for milk. Some commenters were of the opinion that the geographic pattern of milk production can be expected to remain as it is today. They noted further that Option 1A gives explicit recognition to more than a single reserve supply area in the country, and that Option 1A would assign the lowest differential in each of these reserve supply areas, what many supporters of Option 1A viewed as significant pricing reform.

Option 1A supporters also thought that the USDSS model served as an excellent tool in developing a Class I price structure. However, they also recognized the limitations of relying too much on this analytical model because it does not bring into consideration all of the other necessary judgements and factors that cannot be included in a model. For example, many commenters pointed out that while Option 1A used the USDSS model as a guide, it cannot be relied upon for making adjustments to conform with known relationships between and among geographic and actual plant locations. Further, said supporters of Option 1A, the model is static, and cannot estimate the dynamics of changes that may result in supply and demand conditions over time.

In summary, Option 1A supporters indicated Option 1A best assures the continuation of dairy farmers receiving a fair price for their milk. Processors, they also pointed out, would not see a significant change in their ability to compete for a milk supply since most of the value of fluid milk would be contained in the regulated minimum price. They concluded that any changes to milk orders that would diminish these outcomes would be harmful to the dairy industry and to the public interest.

Opponents to Option 1A view it as maintaining too much of the status quo and not addressing the reform needed in Class I pricing. The opponents of Option 1A also view the current Class I pricing structure as seriously flawed. In their view, the current system relies on recognizing the Upper Midwest region as the reserve supply of milk for the country when this is no longer the case. They see Option 1A as largely maintaining this viewpoint.

Opponents to Option 1A and the current Class I pricing structure are of the opinion that today's differential levels and Option 1A differential levels are too high, or at least higher than necessary to attract adequate milk supplies in many areas. Because Class I differentials are too high, they said, improper economic incentives exist in many areas for increased milk production—in fact overproduction—beyond what is needed to meet Class I demand. When this happens, opponents to the current system and Option 1A said, all producers nationally are negatively impacted because the overproduced milk supply drives down prices for milk used in manufactured dairy products which compete in a national market. They noted this is especially injurious to dairy farmers in markets where most of the milk produced is used in manufactured dairy products.

Adding to this, the opponents of the current Class I pricing system and Option 1A are also of the opinion that technology is available today to meet the supplemental milk needs of any milk-deficit area. Not only do they think that higher-than-necessary Class I differentials result in artificially-induced overproduction, they also believe that resulting high Class I prices may be reducing fluid milk consumption by consumers. They are of the opinion that it is more appropriate and efficient to attract milk to meet fluid demands by compensating those who incur the cost of shipping milk from surplus areas rather than paying a high price to local producers in milk-deficit areas to bring forth a sufficient supply of local milk to meet fluid demands.

Supporters of Option 1B indicated support for the more market-oriented theme reflected in this Class I pricing option. These supporters commented that Option 1B will allow milk prices to respond more appropriately to changing supply and demand conditions. Because of this, they said, the milk order program will become more market-oriented. The overall pricing structure offered in Option 1B, they say, flattens the resulting level of Class I prices throughout a larger portion of the country, thereby providing more of a level playing field for producers everywhere.

Supporters of Option 1B view the increased market-oriented theme as the proper direction in which to bring the Class I pricing structure as the milk order program is reformed. Not only is it consistent, in their view, with the reform mandates established by Congress in enacting the 1996 Farm Bill, the movement to a more market-oriented milk order program will provide incentives for private sector innovations that will benefit dairy farmers and consumers.

Supporters of Option 1B take a fundamentally different view than supporters of Option 1A on the appropriate level of the Class I differential. Supporters of Option 1A are of the opinion that Class I differential levels should be set high enough to assure the least amount of price inequity among handlers and should also be at levels high enough to not lower returns to producers. However, the supporters of Option 1B think that Class I differential levels should be set at minimum levels that will allow the effective price for milk to be much more determined by the marketplace. In this way, they said, milk production and prices would respond more effectively to changing supply and demand conditions. By taking this approach, they say, Option 1B Class I differential levels will provide a sufficient degree of the structure needed for producers and handlers, while reducing market distortions that result from regulation-induced prices that discriminate against producers, especially in the Upper Midwest region.

As mentioned above, supporters of Option 1B called for certain modifications. The most significant change included the lowering of the Class I differential level for Minneapolis, Minnesota. These commenters offered a $1.08 per hundredweight Class I differential level for this location. They based this recommendation on their own study and survey of prevailing conditions in the Minneapolis area. This proposal is consistent with their view that Class I differential levels should be set at minimum levels. This level included, they said, premiums above the Upper Midwest's order blend price, quantity and quality premiums, and hauling subsidies. From this level, all other differential levels should be set and adjusted.

These commenters also cited the USDSS model's limitation in determining the proper alignment of Class I differential levels, a similar criticism voiced by Option 1A supporters. These commenters are also of the opinion that, due to more than 60 years of Federal regulation, the relative value differences implied in the model results were too much like existing value differences than would be the case in an unregulated market. They indicated that the USDSS model's optimal solution values should be used conservatively as maximums in setting relative geographic differences to the Class I pricing structure. Some commenters suggested that because the model establishes geographic values for all milk uses, a bias results toward higher Class I values relative to manufacturing values in many markets.

Opponents to Option 1B did not like the idea of making the milk order program more market-oriented by reducing Class I differentials in setting Class I milk prices. If this is done, say Option 1B opponents, a cascading series

of events will result that seem not only contrary to why marketing orders exist, but will return the dairy industry to the marketing situations that led to their establishment. Most important, they said, Option 1B would result in, and in fact calls for, the altering of current supply and demand conditions for milk. These commenters are of the opinion that the Department should not act to cause changes in either prices or marketing conditions. Additionally, they are also of the opinion that it was not the intent of Congress to have milk order reform result in either an increase or decrease in returns to dairy farmers.

Opponents of Option 1B were of the opinion that too much reliance was placed on directly applying the USDSS model results as the Class I pricing structure, and that inappropriate reliance was also placed on the role of over-order premiums in achieving a more market-oriented pricing plan for the milk order program. Opponents argued that today's over-order premiums are directly tied to the differential levels and the alignment of Class I prices established under the existing orders. Additionally noted, current and consolidated markets have, and will continue to have, different circumstances that will disproportionately affect the ability of producers to negotiate over-order premiums, especially in those markets where Class I differentials are lowered most from current levels.

Because Option 1B calls for reductions from current differential levels nearly everywhere, they observed, less of a minimum order price is assured to producers. In those markets where minimum order Class I prices are reduced the most, a greater burden is placed on producers and handlers in negotiating actual prices relative to those orders where price levels are not as affected, they said. In other words, noted one commenter, producers in milk-deficit areas would have Class I differentials reduced the most and would be required to be much more market-oriented than producers in milk-surplus area where the differential level is maintained or increased. One commenter noted, that once over-order premiums are established, they can easily collapse because no one has the ability to control or limit milk production or the flow of milk to market. Very small additional volumes of milk to a market can destroy over-order premiums, this commenter added. On the producer side of relying too much on over-order premiums, they said, prices received would be much less equitably shared and uniform, and would tend to force dairy farmers to engage in ruinous price competition in seeking Class I outlets. On the handler side, they noted, order prices will not be high enough to bring forth that mix of local and distant milk supplies to meet Class I needs. Related to this, some commenters noted that the relative differences in prices that would be set under Option 1B would not provide enough of a price difference to cause milk to move from surplus to deficit areas as would be provided in Option 1A. Relying too much on over-order premiums will benefit large handlers to the competitive disadvantage of small handlers, they said. Because actual milk prices paid by handlers would increasingly be determined outside of the order's minimum pricing provisions, they concluded, handlers would be much less assured of the price their competitors are paying for milk.

Conclusion

Milk is a unique agricultural commodity and faces unique marketing circumstances. It is highly perishable, is produced daily and therefore needs to be marketed in a very committed and continuous production-and-marketing cycle. These characteristics, together with the fact that there are many more dairy farmers than milk buyers, presents the opportunity for marketing problems to occur that can be disruptive and destructive to dairy farmers. This sort of marketing situation places producers at a marketing disadvantage relative to handlers, and without some government involvement, equitable terms of trade between these two entities can be difficult to achieve. These unique features of milk and the marketing situation faced by dairy farmers were noted in public comments and are reflected in the legislation authorizing milk marketing orders. Milk marketing orders, using the tools of classified pricing and marketwide pooling, can significantly mitigate the undesirable effects of this marketing situation and still satisfy the public interest by having an adequate supply of milk at reasonable prices.

As noted in public comments, the structure of today's dairy industry, characterized by many dairy farmers and relatively few buyers, is basically the same as it was when the milk order program first began. No dairy farmer, dairy farmer cooperative or bargaining organization can effectively serve to either control milk production or limit the supply of milk to the marketplace to achieve a measure of reasonable price certainty. This can, from time-to-time, be achieved but such instances are generally short-lived and cannot be relied upon for serving the public's interest in having a sustainable, stable and reliable milk supply at reasonable prices.

It is clear from the many public comments received that dairy farmers are largely content with the current way the Federal milk order program has approached Class I milk pricing, both in its structure and the degree to which it is has returned equitable prices to producers and handlers. But some changes are needed to assure that this program remains viable to serve the needs of the dairy industry and the public well into the 21st century.

The need to reform the milk order program is clearly and uniformly recognized by industry participants and the public. To this end, most producers and handler entities are of the opinion that the reform effort should result in limited change in the prices that are established under the orders, and that any changes to the system be governed by a minimum of change in the prices and the terms of trade between producers and handlers. Other producer and handler entities are of the opinion that the "traditional" methods of Class I milk pricing are seriously flawed, resulting in a program that has become viewed as economically discriminatory to dairy farmers in certain regions of the country and is institutionally resistant to change. The public too, expects that the program should be operated in a manner that will provide and promote efficiency and offer the potential for a less expensive milk supply.

It is the Class I pricing structure that provides additional revenue above the basic value for milk to producers. Because of this, Class I pricing is often viewed as the cornerstone of the milk order program's pricing policy. This is so because the Class I fluid use of milk commands the highest-valued use in the marketplace and is the preferred outlet for milk by producers. It is also this use of milk that has the greatest effect on determining the location value of all milk and in determining the differences in blend prices that are received by producers.

Because milk value varies by location, it is appropriate, in using a classified pricing plan, to establish Class I prices that reflect these location value differences. Supporters of Option 1A and Option 1B agree this is best accomplished with a system of Class I differentials that properly links and aligns milk value. In evaluating how best to accomplish this, it is also important to recognize the significant changes that have taken place within the dairy industry since the full measure of Class I pricing was last undertaken at a 43-day national hearing in 1990.

Today, and as evidenced in the hearing record of 1990, there was general satisfaction with the way Class I milk pricing was developed and employed in a system of orders that had evolved over nearly 60 years. The record of that hearing evidenced that technological and structural changes were underway, but the record did not contain sufficient evidence for changes at that time. The Upper Midwest region of the country can no longer be considered the single reserve supply of milk that the country can rely upon for a supply of milk to meet fluid needs in deficit areas. In fact, the reform effort has clearly revealed that there are several reserve supply areas, and the Class I pricing structure changes adopted are reflective of this change. Other issues—technological factors, improved assembly and distribution systems allowing for sales competition of ever-larger geographic areas, the growing importance of milk value based on the value of its components—all speak to the need for reforming the Federal order system.

The PR preliminarily narrowed the Class I pricing structure to two options. Both have similarities and differences that have been discussed in detail. The adopted Class I pricing structure will work in conjunction with other reforms to milk order provisions, especially the more transparent product price formulas and the reduced amount of advance notice for Class I and Class II prices. Taken as a whole, the package of reforms retain the features that are desired and needed to achieve the goals of the AMAA articulated by Option 1A supporters while also providing the appropriate changes needed to obtain greater economic efficiency and equity—an objective voiced by supporters of Option 1B. The adopted class I pricing structure will establish Class I milk prices that will result in a sufficient supply of milk for the national system of reformed and consolidated milk orders.

The adopted Class I pricing structure recognizes and addresses the concerns of Option 1A supporters in their view of the limitations of relying on the marketplace in establishing milk prices to producers that are equitable and reasonable given the marketing situation they face. Similarly, the adopted Class I pricing structure recognizes that handlers will be assured a higher degree of minimum price equity. As importantly, the adopted Class I pricing structure provides the necessary structural reform needed in the dairy industry. The adopted structure provides the incentives necessary for increased efficiency in the organization and distribution of the milk supply and dairy products that is not offered by the price structure of Option 1A.

As discussed earlier, it is important and appropriate that the Class I price structure recognize all uses of milk. The classified pricing system of the Federal milk order program will continue to value fluid milk in the highest-priced class. The higher-priced classification encourages all milk to first satisfy Class I needs and the adopted Class I pricing structure accomplishes this. Additionally, it continues to consider the cost of moving milk from an alternate location for Class I use, a consideration important to both Option 1A and Option 1B supporters. This is reflected in its aligned structure, recognizing that in supplying milk for manufactured products, demand for manufactured products influences a market's ability to procure milk for Class I needs. In this way, the adopted Class I pricing structure appropriately considers all uses of milk as a national Class I pricing structure.

Finally, the adopted Class I pricing structure meets the requirements of the AMAA. The broad tenet of the AMAA is to establish and maintain marketing stability and orderly marketing conditions for milk. The Federal milk order program will continue to achieve these goals primarily through classified pricing and marketwide pooling. As to pricing requirements, the AMAA objective to stabilize the marketplace with minimum prices and not set market prices is also achieved. As a national Class I pricing structure, it specifically addresses, and adequately sets, appropriate Class I differential levels that will result in milk prices that are high enough to generate sufficient revenue for producers so that an adequate supply of milk can be maintained while continuing to provide equity to handlers.

BILLING CODE 3410-02-P

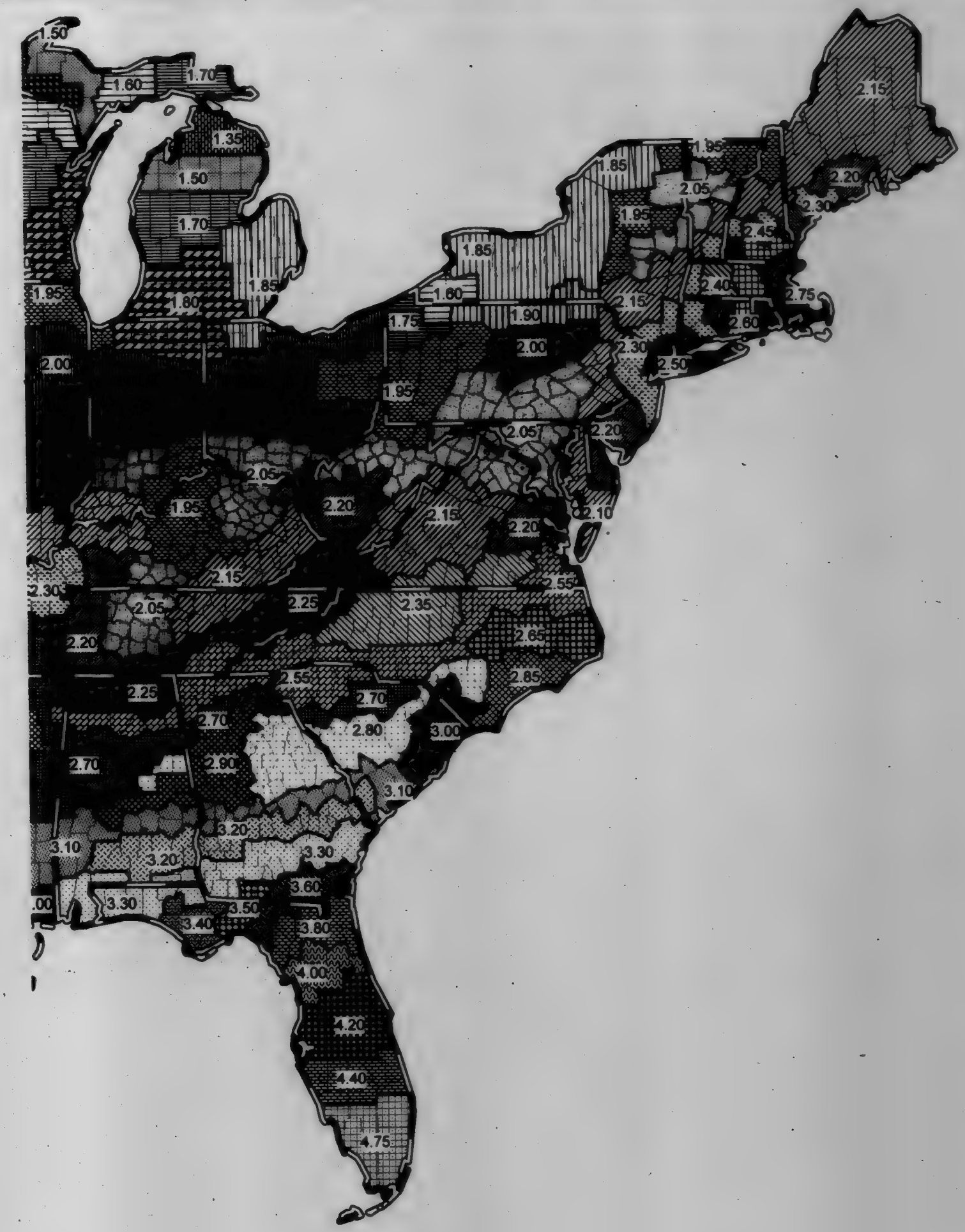
1.50
1.60
1.70
1.35
1.50
1.70
1.85
1.95
1.80
1.85
1.60
1.75
1.90
2.00
2.00
1.95
2.05
2.20
2.05
1.95
2.20
2.15
2.10
2.20
2.15
2.30
2.05
2.25
2.35
2.55
2.20
2.65
2.25
2.55
2.70
2.85
2.70
2.80
3.00
2.70
2.90
3.10
3.20
3.10
3.20
3.30
3.60
.00
3.30
3.50
3.40
3.80
4.00
4.20
4.40
4.75
1.85
1.95
2.05
2.20
2.30
1.95
2.45
1.85
2.40
2.75
2.15
2.60
2.30
2.50
2.15

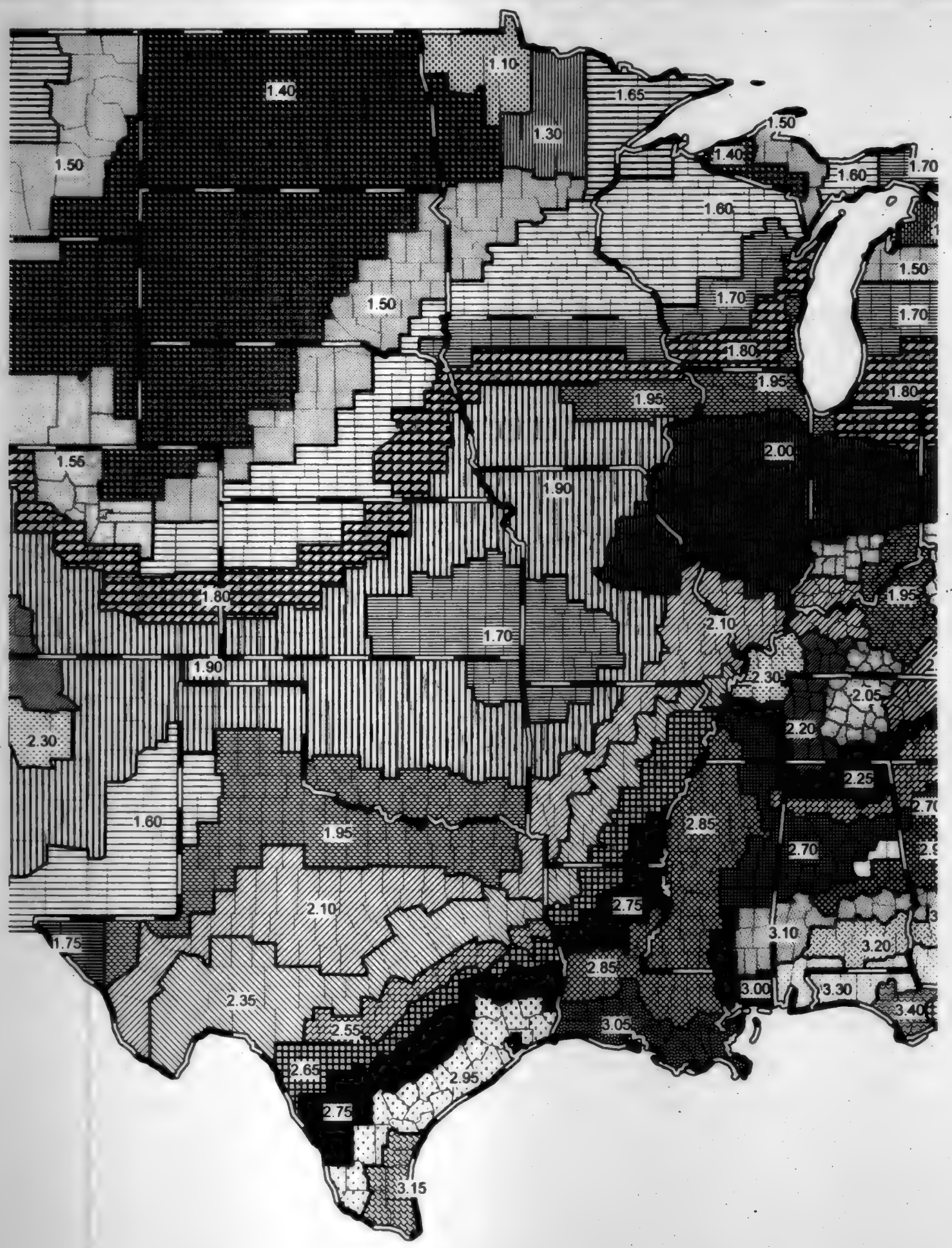
1.10
1.40
1.65
1.30
1.50
1.50
1.40
1.70
1.60
1.60
1.50
1.70
1.70
1.50
1.80
1.95
1.95
1.80
2.00
1.55
1.90
1.80
1.95
1.70
2.10
1.90
2.30
2.05
2.20
2.30
2.25
1.60
1.95
2.85
2.70
2.10
2.75
3.10
1.75
3.20
2.85
3.00
3.30
2.35
3.40
3.05
2.55
2.65
2.95
2.75
3.15

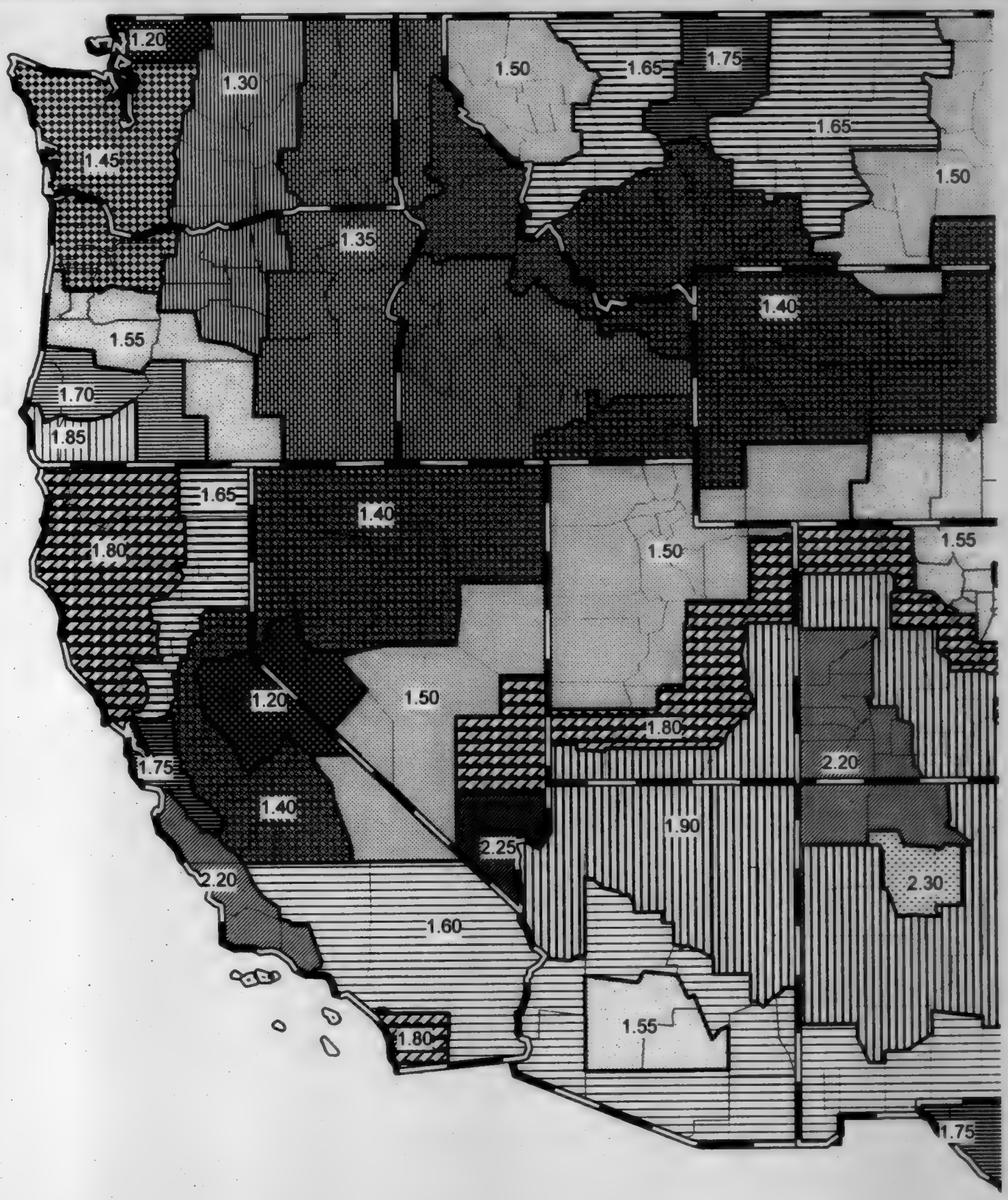

BILLING CODE 3410-02-C

4. Classification of Milk and Related Issues

The Federal milk order system should continue to contain uniform classification provisions, but with some modification. The proposed modifications are consistent with the Agricultural Marketing Agreement Act of 1937, which requires that milk must be classified "in accordance with the form in which or the purpose for which it is used."

The uniform provisions contained in this final decision provide for 4 classes of use. They are similar to the uniform classification provisions contained in the proposed rule, but with some modifications. In particular, cream cheese has been moved from Class II to Class III, and the proposed fluid milk product exclusion for products packaged in "all-metal, hermetically-sealed containers" has been changed back to the present standard: "formulas especially prepared for infant feeding or dietary use (meal replacement) that are packaged in hermetically-sealed containers."

In addition to these changes, the proposed shrinkage provisions have been revised to more closely resemble the provisions that are now in the orders, and the provision for milk that is dumped or used for animal feed has been added back to the orders, but has been moved from Class III to a new paragraph, § 1000.40(e), which specifies other uses of milk that are to be priced at the "lowest class price for the month," be it I, II, III, or IV. Milk that is lost in an accident, flood, or fire (i.e., § 1000.40(c)(3) in the proposed rule published on January 30, 1998, at 63 FR 4972) has been combined with milk that is dumped or used for animal feed in the new paragraph (e). Finally, the classification for inventory of fluid milk products and fluid cream products in bulk form has been moved from Class III to Class IV.

Changes in the proposed rule that have been carried forward to this final decision include the reclassification of eggnog from Class II to Class I, the formation of a new Class IV which includes milk used to produce butter and any milk product in dried form, and elimination of the term *filled milk* from the orders.

In addition to changes in the class uses of milk, this final decision modifies the definitions of *fluid milk* and *commercial food processing establishment*. Also, this decision contains modified administrative rules related to the classification of milk. These include rules for classifying skim milk and butterfat that is transferred or diverted between plants, general rules pertaining to the classification of producer milk (including the determination of shrinkage and overage), rules describing how to allocate a handler's receipts of skim milk and butterfat to the handler's utilization of such receipts, and provisions concerning the market administrator's reports and announcements concerning classification. The classification and classification-related provisions have been restructured, in part, to standardize and simplify the regulatory program.

Further details concerning these changes are explained in the following discussion.

4a. Fluid Milk Product (§ 1000.15)

The new orders contain a modified *fluid milk product* definition in § 1000.15. The changes to the fluid milk product definition include eliminating the term *filled milk*, including eggnog in the list of specified fluid milk products, and revising the word *buttermilk* to read *cultured buttermilk*. The revised fluid milk product definition reads "any milk products in fluid or frozen form containing less than 9 percent butterfat and more than 6.5% nonfat milk solids that are intended to be used as beverages. Such products include, but are not limited to, milk, skim milk, lowfat milk, milk drinks, eggnog, and cultured buttermilk, including any such beverage products that are flavored, cultured, modified with added nonfat milk solids, sterilized, concentrated (to not more than 50% total milk solids), or reconstituted."

The term "buttermilk," as used in the fluid milk product definition, is changed to read "cultured buttermilk." The revised term clearly distinguishes the "beverage" buttermilk product from the buttermilk byproduct which is produced from a continuous churning operation.

The fluid milk product definition also is modified to exclude "filled milk" and to include eggnog in its list of products. Although it is apparent that eggnog is a beverage milk product and clearly meets many of the criteria for being considered a fluid milk product, it is not now included in the list of products identified as fluid milk products. The addition of eggnog to the list of fluid milk products results in a change of the product's classification from a Class II product to a Class I product. The elimination of the term "filled milk" from the fluid milk product definition is discussed later.

In the proposed rule, certain changes were proposed for section 15(b)(1) of the fluid milk product definition. Currently, this section exempts from the fluid milk product definition "formulas especially prepared for infant feeding or dietary use that are packaged in hermetically-sealed containers." As contained in the proposed rule, this exemption would have applied to "formulas especially prepared for infant feeding or meal replacement'—without regard to the type of container—and "any products packaged in all-metal, hermetically-sealed containers." These changes were not widely supported and have been dropped because they could result in reclassifying certain fluid milk products from Class I to Class II. The language in this final decision is identical to Section 15(b)(1) of the present orders.

4b. Fluid Cream Product (§ 1000.16)

No change has been made to the *fluid cream product* definition. The current definition is uniform under all the orders and should be used in the newly merged orders. There were no comments supporting a change in this provision.

4c. Filled Milk

The definition of *filled milk* has been eliminated from all milk orders and the term has been removed from the fluid milk product definition and other provisions within the orders. Filled milk is a product that contains a combination of nonmilk fat or oil with skim milk (whether fresh, cultured, reconstituted, or modified by the addition of nonfat milk solids). Filled milk was first produced and marketed in the 1960s. In 1968, the orders were amended to provide a definition of filled milk. Currently, there is little or no filled milk being produced under Federal orders. The term filled milk is used 18 times in each of the milk orders. It serves little purpose today except to complicate and lengthen the regulatory language. For this reason, any reference to filled milk has been removed from all orders.

The form of filled milk and purpose for which it is used are the same as the form and purpose for which whole milk is used. Filled milk is marketed by handlers in the same types of packages and in the same trade channels as whole milk, and is mainly intended to be used as a beverage substitute for milk. Whether made from vegetable fat and fresh or reconstituted skim milk, or any combination thereof, the resulting product resembles whole milk in appearance. Therefore, any filled milk produced and marketed in the future will be classified as a Class I product under the revised fluid milk product definition.

No letters were received commenting on this change.

4d. Commercial Food Processing Establishment (§ 1000.19)

The definition of *commercial food processing establishment* (CFPE) has been revised by removing the filled milk reference, for the reasons previously discussed, and by removing the word "bulk" from the definition. The removal of the word "bulk" will allow a CFPE to receive fluid milk products and fluid cream products for Class II use in certain sized packages as well as in bulk.

Presently, the CFPE definition prohibits the receipt of fluid milk products for Class II use in relatively small pre-measured packages that might reduce the CFPE's production costs. While packaged fluid milk products should be permitted to be transferred to a CFPE in any size, only those products that are shipped in larger-than-consumer-sized packages (i.e., larger than one gallon) should be eligible for a Class II classification. If milk is received in gallon containers or smaller, the milk should be priced as Class I milk since there is no way of guaranteeing that such products will not be sold for fluid use. Permitting milk in any sized container to be sold to a CFPE for Class II use if the container had a special label, such as "for commercial food processing use only," was considered, but such a provision would be impractical and it would be prohibitively expensive for a handler to prepare specially labeled products for small accounts. The current restriction barring a CFPE from having any disposition of fluid milk products other than those in consumer-sized packages (one gallon or less) should be retained under the new orders.

These two restrictions are based upon practical considerations. The integrity of the classified pricing system would be much more difficult to maintain if the market administrator were forced to audit every CFPE on a regular basis. By prohibiting the sale of fluid milk products in consumer-sized packages to a CFPE for anything but Class I use, there would be less need to regularly audit CFPE's to be sure that such products are not being sold to the public. Similarly, since packaged fluid milk products in containers larger than one gallon are rarely, if ever, found in retail outlets, it is unlikely that such products will be sold for fluid use. By restricting fluid milk product disposition by CFPE's to packaged products not larger than one gallon in size, there is reasonable assurance that milk priced as Class II will not be disposed of as fluid milk sold by the glass from a bulk dispenser.

There were no comment letters that addressed these recommendations in response to the proposed rule.

4e. Classes of Utilization (§ 1000.40)

Historically, the fluid or beverage uses of milk have been classified in the highest-priced class (Class I), and soft or spoonable products, those from which some of the moisture has been removed, have been classified in the intermediate class of milk (Class II). The final decision issued on February 5, 1993 (58 FR 12634) provided 3 uniform classes of milk for all orders. Classes I and II continued the traditional classification of milk, while the lowest-priced class (Class III) contained the hard, storable products. In a final decision that became effective December 1993, a fourth class—Class III–A (actually a sub-section of Class III)—was established for most orders for milk used to produce nonfat dry milk.

This final decision continues to provide a Class I classification for milk used for fluid and beverage use, with certain exceptions for formulas especially prepared for infant feeding or dietary use in hermetically-sealed containers and products with less than 6.5 percent nonfat milk solids. Soft or spoonable products, most soft cheeses, and milk that is used in the manufacture of other food products or sweetened condensed milk will continue to be classified as Class II. Class III will continue to apply to milk used in hard cheeses, cream cheese, and other spreadable cheese, but will no longer apply to butter. Finally, the new Class IV applies to all skim milk and butterfat used to produce butter or any milk product in dried form. Class IV will also apply to bulk milk that is in inventory at the end of the month.

A new paragraph (e) has been added to § 1000.40 that classifies other uses of milk that are priced at the "lowest-priced class" for the month.

Under the pricing formulas proposed for the new orders, it is not certain whether the Class III price or the Class IV price will be the lowest class price for the month. In view of this price uncertainty, a new paragraph has been added to § 1000.40 to guarantee that milk that is lost in an accident, dumped, or used for livestock feed is accounted for at the month's lowest class price.

Comments filed regarding the number of classes of utilization for the proposed merged orders varied from supporters of one class, which would eliminate all manufacturing classes, to supporters of 5 classes of milk. Comments concerning the addition of an export class were also received. However, a large majority of the comments on this issue supported 4 classes of utilization as proposed.

4f. Class I Milk

In this final decision, Class I milk includes all skim milk and butterfat contained in milk products that are intended to be consumed in fluid form as beverages, with certain exceptions. These exceptions include plain or sweetened evaporated or condensed milk, milk that is used in formulas especially prepared for infant feeding or meal replacement if such products are packaged in hermetically-sealed containers, and any product that contains by weight less than 6.5 percent nonfat milk solids.

Under this final decision, eggnog will join lowfat eggnog as a Class I product. Class I products are generally classified on the basis of their fluid form and intended use. Eggnog, a highly seasonal product, is clearly intended to be consumed as a beverage. Since this product is manufactured, packaged and distributed to the consumer as a drinkable beverage, it should be classified as a Class I product. Comments received regarding the reclassification of eggnog were generally in support of its reclassification into Class I, although a few handlers submitted comments opposing this change, arguing that it would increase the cost of eggnog and, therefore, reduce consumer demand for this product.

Class I Used-to-Produce. In order to simplify the accountability for milk products classified as Class I that may contain nonmilk ingredients and/or previously processed and priced skim milk and butterfat, the proposed rule recommended adding a "used-to-produce" category to Class I. The proposed rule stated that the used-to-produce accountability method would preclude the need to develop and maintain nonstandard conversion factors and non-milk credits (i.e., salt, flavoring, stabilizers) for milk product accountability and would improve the accuracy of handler reporting and minimize audit corrections without sacrificing any statistical information, pricing considerations, or classification criteria.

Several comment letters were received arguing that the proposed Class I used-to-produce category would not simplify the accounting system but instead would complicate it. No comments were received endorsing this proposal.

Our analysis of the proposed Class I used-to-produce category generally supports those who argued against it. If there were no need to follow a pool

distributing plant's route disposition to its ultimate source to determine under which order the plant would be regulated, it would be possible to simplify accounting by adopting a Class I used-to-produce category. However, with the pooling standards adopted in this final decision, the proposed used-to-produce category would simply require dual accounting with no offsetting benefit. Accordingly, the Class I used-to-produce proposal has been dropped from this final decision.

4g. Class II, III, and IV Milk

The classification of milk used in Class II, III, and IV uses and products is essentially the same as contained in the proposed rule with a few exceptions.

First, cream cheese is moved from Class II to Class III, where it has been for many years.

Second, fluid milk products and bulk fluid cream products in inventory at the end of the month have been moved from Class III to Class IV.

Third, the skim milk equivalent of nonfat solids used to modify a fluid milk product that has not been accounted for in Class I has been moved from Class III to Class IV.

Fourth, the proposed Class II classification for any fluid product in an "all-metal, hermetically-sealed container" is changed to what is now in the orders: i.e., "formulas especially prepared for infant feeding or dietary use (meal replacement) that are packaged in hermetically-sealed containers".

Finally, the surplus classification for milk that is dumped or used for animal feed is added back to the orders, but, as described earlier, it has been placed in a new paragraph (e) of § 1000.40 which prices milk in the lowest-priced class for the month. For the same reasons cited previously, milk which is lost in a fire, flood, or accident also has been moved from Class III to the "other uses" class.

Under the proposed rule, the classification of cream cheese would have been changed from Class III to Class II. The rationale for this change was that the milk used in Class II products is used to process or manufacture products for which handlers know a consumer demand exists and that such products are neither as perishable as fluid products nor perform a balancing function for the market, as do butter, powder, and the hard cheeses.

This proposal was not well received by a large majority of the handlers and producer organizations that commented on it. The International Dairy Foods Association argued that the pricing of milk used for cream cheese under California's state order is below the Federal order Class II or III price and moving cream cheese from Class III to Class II would create a huge competitive disadvantage for milk used in cream cheese under Federal milk orders. The National Milk Producers Federation, Dairy Farmers of America, and numerous individual handlers repeated essentially the same argument.

Some comments addressed the classification of cottage cheese and ricotta cheese, in addition to cream cheese. A national manufacturer of cheese argued that milk used in cottage cheese and ricotta cheese should be reclassified from Class II to Class III. The handler stated that due to falling demand for cottage cheese, it should be placed with other cheeses in Class III. Another cottage cheese manufacturer made the same suggestion. Several comment letters also pointed out that ricotta cheese was priced under California's Class 4–b, giving California processors an advantage over processors making ricotta from milk priced under Federal milk orders. While these comments may have some merit, we believe that more information is needed before these changes can be considered.

Ending inventory of fluid milk products and fluid cream products in bulk form should be moved to Class IV. Since the Class IV price is expected to be the lowest class price in the long run, it is logical to classify ending inventory in Class IV. Also, paragraph (c)(4) of § 1000.40, should be moved from Class III to Class IV. This paragraph prices the skim milk equivalent of nonfat milk solids used to modify a fluid milk product. With the inclusion of a Class IV classification for all products in dried form, the nonfat milk solids used to modify a fluid milk product should be priced as Class IV, together with other dried products, rather than Class III.

Products lost by a handler in a fire, flood, or vehicular accident and products that are dumped or used for animal feed have been moved from Class III to a new paragraph (§ 1000.40(e)) which would price skim milk and butterfat in such uses at the lowest class price for the month. Under the pricing formulas proposed for the new orders, the Class III price or Class IV price is likely to be the lowest class price for the month, but it is possible under some orders that the Class I or II price could be the lowest class price for the month if component values were increasing rapidly. In view of this price uncertainty, a new paragraph has been added to § 1000.40 to guarantee that milk that is lost in an accident, dumped, or used for livestock feed is accounted for at the month's lowest class price.

As previously noted, formulas especially prepared for infant feeding or dietary use (meal replacement) that are packaged in hermetically-sealed containers should continue to be classified as Class II products. Although the proposed rule suggested a modification of this exemption, there was insufficient support to move forward with this suggestion. Accordingly, no change was made from the language that is now in the orders.

The treatment of buttermilk should remain unchanged from the proposed rule. No comments were received in opposition to the proposed distinction between buttermilk for drinking purposes and buttermilk for baking purposes. As set forth in the proposed rule, drinking buttermilk would have to be labeled as "cultured buttermilk" while buttermilk for baking must contain food starch in excess of 2% of the total solids in the product and the product must be labeled to indicate the food starch content.

The proposal to account for all Class II products on a used-to-produce basis was unopposed. Accordingly, this accounting method, which now applies to all Class II products, except for some fluid cream products, is extended to the remaining Class II products that are currently accounted for on a disposition basis.

As noted above, a large majority of the comment letters supported the 4 classes of utilization as set forth in the proposed rule, including the separate Class IV for butter and milk products in dried form. Therefore, no change has been made to Class IV in this final decision except for the addition of the items already discussed.

Several commenters reiterated requests made prior to the proposed rule to reclassify bulk sweetened condensed milk from Class II to Class IV. The commenters explained that sweetened condensed milk is primarily used in commercial food processing establishments and in the confections industry and that it is interchangeable with powdered milk products and sugar in ingredient markets for processed foods and candy. They argued that manufacturers of sweetened condensed milk are currently at a competitive disadvantage with manufacturers of nonfat dry milk and urged that the 2 products be classified identically. According to one commenter, the Galloway Company, the current system of classification places sweetened condensed milk at a significant disadvantage and has virtually

destroyed the market for sweetened condensed milk.

Hershey Foods Corporation filed a comment letter objecting to the difference in classification for fresh milk used to make chocolate compared to fresh milk used to make powder that is used to make chocolate. Specifically, Hershey argued that the Class II classification for fresh milk used to make chocolate, compared to the Class IV classification for milk used to make powder that is subsequently used in chocolate violates the Act because such milk starts out in the same form and is used for the same purpose.

Hershey explained that whole milk, sugar, cocoa butter, and chocolate liquor are used to make "chocolate crumb," which is further processed to make chocolate. According to Hershey, the chocolate crumb has a moisture content of only 1 percent, which means that if a manufacturer receives fresh whole milk, it must remove 99 percent of the water from it in order for the milk to perform its function in the chocolate. An alternative to starting with whole milk and drying it is to purchase whole milk powder and mix it with the sugar, cocoa butter, and chocolate liquor to make the chocolate crumb.

Hershey argues that maintaining the current disparate classifications for fresh milk used to make chocolate and fresh milk that is first dried and then used to make chocolate, in combination with the proposed 70-cent Class II differential, will pressure manufacturers to change their manufacturing processes and formulas, reduce the use of fresh milk and increase the use of milk powders, reduce milk solids in product formulas, replace milk solids with lower cost alternatives, and might even influence the location of chocolate manufacturing plants. Hershey also notes that the State of California does not discriminate between manufacturers of chocolate, but instead prices all milk used to manufacture chocolate in the same class whether the chocolate manufacturer begins its process with fluid milk, sweetened condensed milk, evaporated milk, nonfat dry milk, or whole milk powder.

Galloway and Hershey conclude that there is no justification for pricing milk used to make sweetened condensed milk or chocolate crumb in a higher class than milk used to produce powdered milk. However, Galloway states, if sweetened condensed milk is kept in a class higher than powder, the differential for that class should be no more than 30 cents per hundredweight.

Bulk sweetened condensed milk/skim milk is used as an intermediate product in ice cream, candy, and other manufactured products. However, these manufactured products can also be made from powdered milk. When powder prices are low relative to the Class II price, there is an economic incentive for powder to be substituted for bulk sweetened condensed milk. As a result, there must be an economic relationship between the Class II price and the cost of using alternative dry or concentrated products to make Class II products. Under current pricing provisions, the Class II price can be excessive relative to using nonfat dry milk since the Class II price is a measure of the value of milk in cheese (the Class III price) plus a differential.

Conceptually, we do not believe that the value of milk used in demand-driven products like chocolate and sweetened condensed milk that is used in food products is the same as milk that is sometimes made into powder for lack of any other use. The major point of the ability to substitute among forms of milk, sweetened condensed milk, and nonfat dry milk in certain uses is that there is a fixed relationship between the Class II and Class IV price. The appropriate price relationship is discussed in the Class II pricing section of this decision.

In the proposed rule, no allowance was provided for dumped milk or milk used for animal feed, and a Class III classification was recommended for milk lost in a fire, flood, or accident. Many handlers and the National Milk Producers Federation objected to the removal of the Class III classification for milk that is dumped or used as animal feed.

On the basis of the comments filed on this issue, a surplus use has been established for milk that is dumped or used as animal feed. The price applicable to such use will be the lowest class price for the month.

4h. Shrinkage and Overage

Shrinkage is experienced by handlers in milk processing operations and in the receipt of farm bulk tank milk at receiving stations and processing plants. Milk is unavoidably lost as it remains in pipe lines, adheres to tanker walls and/or other plant equipment, and is washed away in the cleaning operations. In addition, unexpected losses, including spillage or leaking packages, also contribute to shrinkage.

In the proposed rule, we proposed a pro rata assignment of shrinkage based on a handler's utilization. In other words, each handler's shrinkage would have been classified according to the handler's use of milk that was not lost in transit or processing. We believed that the adoption of such a provision would have simplified both order language and accounting procedures, and we thought that it would be acceptable to handlers because, although in some cases it increased their costs slightly, the change applied equally to everyone.

There were very few comment letters that supported the proposal and an overwhelming number of comments urging us to keep the current provision. Many of the opponents were high Class I utilization handlers who complained that the proposed change would reclassify their shrinkage from Class III to Class I, increasing their costs for this lost milk.

It was not only handlers that disliked the proposed shrinkage provision. Several producer organizations, including Dairy Farmers of America and the National Milk Producers Federation, also voiced their opposition to the proposal. Most of the comment letters urged us to retain the key features of the present shrinkage provision, but there were comments suggesting a simpler provision.

Based on the comments received, this final decision retains, in large part, the present method of calculating shrinkage allowances and pricing shrinkage, but with certain modifications. Just as in the current provisions, there are specified allowances for shrinkage. The major difference is that shrinkage is not automatically assigned to a specified class, as it is now, but rather is assigned to the "lowest-priced class." This change was made to conform with the new 4-class pricing system and, more importantly, to recognize that there is no fixed relationship between class prices because of the different formulas used to compute them. For example, because the formulas for Class III and IV prices are not directly related, it cannot be known in advance which class price will be lowest. Since the relationship between class prices will vary from one month to the next, under the provision adopted here shrinkage may be priced in Class III one month and in Class IV the next. It is necessary to price shrinkage in the lowest-priced class to avoid the situation where a cheese plant, for example, would have to pay more for its shrinkage than it would for milk used in cheese. Such would be the case if shrinkage was always priced in Class IV and the Class IV price exceeded the Class III price. Pricing shrinkage in the lowest-priced class prevents this problem.

As noted, the current shrinkage allowances has been retained in the revised provision. Thus, a pool plant operator would receive a lowest-priced class shrinkage allowance based on 2

percent of the total quantity of milk physically received at the plant directly from producers' farms on the basis of farm weights and tests, plus 1.5 percent of bulk milk received on a basis other than farm weights and tests, and minus 1.5 percent of the quantity of bulk milk transferred to other plants, excluding concentrated milk transferred to another plant for an agreed-upon use other than Class I. A cooperative association handler that delivers milk to pool plants on a basis other than farm weights and tests would receive a shrinkage allowance of .5 percent of the total quantity of milk picked up at producers' farms. Shrinkage in excess of these allowances will be assigned in series starting with Class I to the extent of available utilization.

The shrinkage provision adopted for the new orders contains language to accommodate shrinkage associated with "concentrated milk." Prior to the 1993 classification decision, condensed milk, which is made for use in ice cream and other manufactured products, was not a fluid milk product. Hence, it was not addressed by the shrinkage provision. This changed after the decision, however, when condensed milk became a fluid milk product. In making this change to the fluid milk product definition, certain conforming changes that should have been made in the shrinkage provisions were overlooked. The current proceeding involving all Federal orders has been the first opportunity to rectify this oversight. During the interim period, the unique problem associated with condensed milk has been handled administratively. Thus, the new language added to the shrinkage provision does not represent a change from the way the rules have been administered but merely codifies them.

Some plants receive milk from producers, condense (i.e., concentrate) the milk into a product that contains not more than 50 percent total milk solids, and then transfer this product on an agreed-upon basis to another plant for use in some product other than a fluid milk product (e.g., ice cream). In this case, the first plant should retain the full 2 percent shrinkage allowance because it incurs processing shrinkage in the course of concentrating—i.e., most likely condensing—the milk. The plant purchasing this concentrated (i.e., condensed) milk should get no shrinkage allowance on this milk since the designated use of this milk is for non-fluid use. Accordingly, the value of any shrinkage incurred in further processing this concentrated milk would not be much less than its use value.

As noted elsewhere in this decision, a recent development in milk processing is the use of on-farm filtering equipment (e.g., reverse osmosis or ultra-filtration) to concentrate milk before it is shipped to a plant for use in a variety of milk products. Although this milk falls under the same broad "concentrated milk" category as condensed milk, it is actually a very different product which can conceivably be used for fluid use as well as in a manufactured product such as cheese or ice cream. Thus, language is needed in the shrinkage provision to differentiate this type of concentrated milk from condensed milk. We have accommodated these 2 types of concentrated milk by allowing the shipping and receiving handlers to agree on the use of this milk. Accordingly, if a handler receives concentrated milk from another plant by agreement for use in Class II, III, or IV, the receiving handler will get no shrinkage on this milk. If no such agreement is specified, however, the receiving handler will get the 1.5 percent shrinkage allowance, just as would be the case for unconcentrated milk that was received from another plant.

For example, milk may be concentrated at a plant by using reverse osmosis or ultra-filtration techniques and then be transferred to a 2nd plant for use in a fluid milk product. In such case, the milk will not be transferred by agreement for other than Class I use, but instead will be allocated to use at the 2nd plant receiving this concentrated milk. In this instance, it is appropriate to treat this milk just like unconcentrated milk that is received at a plant and then transferred to a 2nd plant. Thus, the first plant will initially get a 2 percent shrinkage allowance for the milk received from producers, but will be required to subtract 1.5 percent from the 2 percent when the milk, even though concentrated, is transferred to the 2nd plant. The 2nd plant will get a shrinkage allowance based on 1.5 percent of the reconstituted volume of the concentrated milk. In other words, for accounting purposes the water that was initially removed from the milk will be added back to the concentrated milk before computing the 1.5 percent shrinkage allowance for the 2nd plant.

In the example above, the concentrated milk will likely be from a farm plant which concentrates its milk before shipping it using either reverse osmosis (RO) or ultra-filtration (UF). As explained in the uniform provision discussion in this final decision, milk from a single farm with RO or UF equipment will be treated as producer milk of the first pool plant receiving this milk. However, when the milk of 2 or more producers is commingled on a farm with RO or UF equipment, that farm will be treated as a plant and the dairy farmer owning or leasing the farm will be the responsible handler for all of the milk processed that month.

The shrinkage provision in this final decision differs from the current shrinkage provisions in one other respect. At the present time, when a manufacturing facility that has absolutely no Class I utilization has "excess shrinkage" (i.e., shrinkage that exceeds its 2 percent shrinkage allowance) the excess shrinkage is assigned to Class I even though the plant has no Class I utilization. Thus, the milk that is "lost" by the plant is actually priced higher than the milk that is "used" by the plant.

Under the proposed provision, such excess shrinkage would be assigned to whatever utilization the plant has, starting with Class I. In the case of a cheese plant that has no utilization other than Class III, the excess shrinkage would be assigned to Class III.

After shrinkage is assigned pursuant to § 1000.43(b) of the proposed orders, it will be added to a handler's reported utilization to arrive at the "gross utilization in each class." The gross utilization in each class will then be carried over to § 1000.44, where it will be used to allocate the handler's receipts to its gross utilization of such receipts.

Overage occurs when the reported utilization of producer milk exceeds the reported quantity of producer milk received. Overage, as well as shrinkage, can occur for a number of reasons but is usually the result of record-keeping and measurement errors.

As set forth in the proposed rule, overage would have been classified by being prorated to a handler's reported utilization. It then would have been subtracted from the handler's reported utilization to arrive at the gross utilization in each class which would have been used to allocate a handler's receipts in § 1000.44.

No comments were received specifically focusing on the proposed treatment of overage, undoubtedly because the proration of overage does not have the same financial impact as the proration of shrinkage. Nevertheless, in conjunction with the change in the treatment of shrinkage, the treatment of overage also should remain the same as it is now in the orders. Accordingly, in this final decision, overage is classified in § 1000.44(a)(11) by subtracting the excess pounds of skim milk and butterfat from each class, beginning with Class IV. This treatment is identical to the way overage is classified under the present orders in section

44(a)(14), except for the fact that now—since there is no Class IV—the allocation begins with Class III.

4i. Classification of Transfers and Diversions (§ 1000.42)

Certain changes have been made to the classification of transfers and diversions section of the orders to simplify and clarify order language. The changes discussed in this final decision are virtually identical to those contained in the proposed rule, except for minor corrections and conforming changes necessitated by other changes in order provisions. There were very few comments pertaining to this section of the proposed rule. Those that were received supported the changes proposed.

At the present time, in many orders if any milk that is diverted from one order to another for requested Class II or III use is assigned to Class I, the dairy farmer who shipped that milk is defined as a producer under the order receiving the milk with respect to that portion of the milk assigned to Class I. In other orders under similar conditions, the dairy farmer becomes a producer on the receiving order for all of the milk diverted even though only a portion of the milk was classified as Class I. When this type of adjustment is necessary, the diverting handler is informed by the market administrator's office that there is not enough Class II or III use remaining in the receiving plant to absorb all of the milk diverted. In such case, the diverting handler may pick which load or loads of diverted milk will become producer milk under the receiving order.

Since the orders are not precisely clear on how inter-order diverted milk should be handled, some modification is needed in the order language. Under most orders, and as provided in this final decision, milk may be diverted from one order to another for a requested use other than Class I. However, if there is not enough Class II, III, or IV utilization in the receiving plant to be assigned to the diverted milk, some milk may have to be assigned to Class I. When this happens, the practical administrative problems involve determining which milk of which dairy farmers and which loads of milk will be shifted as producer milk from one order to another.

Market administrators should be given some flexibility to handle these administrative problems on a market-by-market and case-by-case basis. As a practical matter, most milk diverted between orders is diverted by cooperative associations that reblend proceeds to their members. In most cases, it makes little difference to a cooperative association whether a dairy farmer is a producer on one order or another order; any differences in blend prices between the orders will be washed out in the reblending process. In the case of milk of nonmember producers that is diverted between orders, however, differences could arise in a producer's net proceeds for the month depending upon how much milk was pooled in each order. Therefore, these situations should be handled in such a way as to be least disruptive to individual dairy farmers.

A market administrator does not know until handlers' reports have been received that some portion of milk reported as diverted to another order cannot be absorbed by the amount of non-Class I utilization in the receiving order's plant. In such case, the diverting handler should be given the option of designating the entire load of diverted milk as producer milk at the plant physically receiving the milk. Alternatively, if the diverting handler wishes, it may designate which dairy farmers on the diverted load of milk will be designated as producers under the order physically receiving the milk. As a last resort, the market administrator will prorate the portion of diverted milk among all the dairy farmers whose milk was received from the diverting handler on the last day of the month, then the second-to-last day, and continuing in that fashion until the diverted milk that is in excess of Class II, III, and IV use has been assigned as producer milk under the receiving order.

A conforming change that should be made in each order relates to milk that is transferred or diverted for Class II or III use. Presently, milk may be transferred or diverted on a requested Class II or III basis. However, with 4 classes of utilization in the new orders, milk could be diverted for requested Class IV use also. Rather than specifying "Class II, III, or IV," however, the orders should simply state "other than Class I" to accommodate a system of more than 3 classes. This language is simpler, shorter, and accomplishes the same end.

To simplify and clarify the classification of transfers and diversions of bulk fluid milk products and bulk fluid cream products from a pool plant to a nonpool plant, which are classified by assigning the nonpool plant's utilization to its receipts, the phrase, "excluding the milk equivalent of both nonfat milk solids and concentrated milk used in the plant during the month," has been added in § 1000.42(d)(2)(i). This language will help to clarify the steps to be followed in verifying the utilization of bulk fluid milk and cream at the nonpool plant. It has been added to ensure administrative consistency and does not represent a change in the application of this provision.

In § 1000.42(d)(2)(vi), the allocation process for bulk fluid milk transferred from pool plants to nonpool plants is modified such that any remaining unassigned receipts of bulk fluid products be assigned, pro rata among such plants, to the extent possible first to any remaining Class I utilization and then to all other utilization, in sequence beginning with the lowest class at the nonpool plant. This change returns the order language to the assignment sequence that was adopted in the Uniform Classification Decision of 1974. Receipts from pool plants should not be given preference by assigning such milk to the available Class II use before assigning receipts from dairy farmers who constitute the regular source of milk for such nonpool plant. Generally, milk transferred or diverted from pool plants to nonpool plants is surplus milk and would be used in storable manufactured products, such as nonfat dry milk and butter. By assigning transferred or diverted milk to a nonpool plant's Class II utilization first, the pool plant operator is forced to account for this milk at the Class II price, even though the nonfat dry milk or other surplus product that was made with the milk is of a lesser value. This process will prevent the assignment of receipts at a higher utilization than the actual utilization.

Receipts of bulk fluid cream products at nonpool plants from pool plants and plants regulated under other Federal orders, similarly, will be assigned to the lowest class utilization first. Generally, a plant operator will use its regular source of supply in the highest valued uses before using alternative supplies. Thus, if a nonpool plant receives cream from a pool plant or a plant regulated under another Federal order, it is likely that the regulated plants were trying to dispose of their excess cream. The nonpool plant receiving the cream will most likely use it for manufacturing purposes; therefore, it should be assigned to the lowest class first. The priority given to regular source supplies is recognized and the provision modified to reflect this.

4j. General Classification Rules (§ 1000.43)

For classification purposes, the milk of a cooperative bulk tank handler—i.e., a "9(c) handler"—that is delivered to a pool plant will be treated as "producer milk" of the pool plant operator. This

change will shorten and simplify the allocation section.

The computation and classification of shrinkage and overage have been added to this section. This will eliminate Section 41, the section previously used for this purpose. Also, the last paragraph of Section 43 has been removed because milk for Class IV use now would be classified in Section 44 of the orders.

No comments were received pertaining to this section.

4k. Classification of Producer Milk (§ 1000.44)

A handler may receive milk from a producer, a cooperative association acting as a handler on bulk tank milk, by transfer from another pool plant, or from "other sources" such as nonpool plants, partially regulated plants, and plants that are regulated under other orders. Because of this diversity in sources of receipt, it is necessary in a milk order to go through an allocation sequence to determine which source of milk gets priority to a particular class of utilization and to determine how producer milk was used. In some orders, this allocation sequence is done on a system-wide basis; in others, it is done for each plant receiving producer milk.

Section 44 is one of the most complicated and difficult-to-understand sections in a milk order. Consequently, an attempt has been made to simplify and shorten it. Part of this task was made easier by proposed changes to other sections (e.g., elimination of filled milk, elimination of individual handler pools, and modification of the treatment of inter-order transfers and diversions).

All orders are not now uniform in the classification of producer milk. For example, some orders (e.g., Chicago Regional) provide for system allocation while others allocate receipts on a plant-by-plant basis for a multiple plant handler.

Under the consolidated orders, milk will be allocated on a plant-by-plant basis, as modified to reflect other changes proposed herein. The system allocation method that is found in some orders is based upon a set of marketing conditions concerning the locations of handlers' plants and the market's available milk supply in relation to those plants. These provisions were intended to stop abuses that occurred when milk was transferred from one market to another. Rather than permit an inter-order transfer to be assigned at a handler's high Class I utilization plant, while the handler's producer milk was assigned to lower use value at another of its plants, the system allocation provisions assigned the transfers on the basis of the handler's utilization at all plants combined. The objective was to prevent more distant other order milk from being assigned to Class I use at the expense of producers who were located nearer to the city markets and who represented the normal source of supply for the markets' fluid milk needs.

The 11 new orders do not fit within the parameters of the classical model where a major consumption area is surrounded by production areas. The marketing areas proposed for the consolidated orders span several states and have a number of major population centers. They also have pockets of milk production that, in a number of cases, are in higher-priced areas than some of the fluid milk plants within the marketing area. This milk may not be economically available to a fluid milk plant several hundred miles away. In fact, it may be that a plant near the periphery of a multi-state market may find its closest and cheapest source of supply from outside the market rather than from within the marketing area. Accordingly, the system allocation rules are not supported by current marketing conditions. Therefore, all orders have been modified to allocate milk only on a plant-by-plant basis rather than on a system basis.

Another change that has been made in the allocation section concerns the "98/2" rule. At the present time, only 98 percent of the packaged fluid milk products transferred between orders is allocated to Class I; the remaining 2 percent is allocated to Class III. This provision, originating from the June 19, 1964, "compensatory payment" decision, was adopted to provide an allowance for "route returns." According to that decision, "it is reasonable to expect some route returns will be associated with inter-market transfers just as there are in connection with milk locally processed in the receiving market . . . a small allowance of 2 percent for such returns, which must fall into surplus use, should be included to avoid such over-assignment in Class I." (29 FR 9120).

This final decision classifies route returns based upon the use of such returns. If route returns are used for animal feed, an "other use" classification is provided and such milk is priced at the lowest class price for the month. If route returns are used to make another product, such as cottage cheese for example, the milk would be reclassified as Class II. This classification not only applies to packaged products made from producer milk, but also includes packaged products that were received from other plants, distributed on routes, and then returned to the last plant of receipt.

A handler transferring packaged fluid milk products to another handler's plant may incur some lost product en route to the buying handler's plant. In such case, the transferring handler may report such product as route returns and account for the milk used in such product at the lowest class price.

In view of the reclassification for route returns for either handler involved in an inter-order transfer who reports such returns, subject to market administrator verification, it is not necessary to classify interorder transfers of fluid milk products at 98 percent Class I and 2 percent Class III because this rule overcompensates handlers for route returns and unfairly reduces income to producers. For these reasons, the "98/2" rule has been eliminated.

In addition to the changes discussed above, Section 44 has been shortened and simplified by removing unnecessary references that serve to confuse the language rather than make it easier to understand. Where possible, simpler language has been used to replace lengthy section references.

No comments were received supporting or opposing these recommendations.

4l. Conforming Changes to Other Sections (§§ ——.14, ——.41, and ——.60).

Paragraph (b) of the other source milk definition has been removed to reflect the fact that all packaged fluid cream products now would be accounted for on a used-to-produce basis. Also, as previously noted, the simpler and shorter treatment for shrinkage shortens the existing shrinkage provision to the point where it is no longer necessary to keep a separate section for it. Therefore, a separate section for shrinkage is eliminated and the revised contents of that section are now incorporated as a new paragraph (b) in § 1000.43. Finally, conforming changes have been made to § ——.60 (Handler's value of milk for computing the uniform price) to reflect the elimination of filled milk from the order, and to reflect changes in references due to other modifications such as the changes in the treatment of shrinkage and overage.

4m. Organic milk

During the development stage of the order reform process, a proposal was received from Horizon Foods to exempt organic milk from pricing and pooling under Federal milk orders.

In 1990, Congress passed, and the President signed into law, the *Organic Food Production Act of 1990* (7 U.S.C.

6501 *et seq.*), establishing the first Federal standards for organic food products. A proposed rule was issued on December 5, 1997, and published in the **Federal Register** on December 16, 1997 (62 FR 65849), to implement the National Organic Program.

Organic dairy products can now be found in many, if not most, major grocery chains in metropolitan areas. The retail price of organic dairy products is well above non-organic products. In addition to carrying organic milk, many supermarkets now also carry organic yogurt, sour cream, butter, and other organic dairy products. All of these products are priced well above their non-organic counterparts.

Processors of organic milk have asked for exemption from Federal regulation. In a May 20, 1997, letter to the Department, Horizon Foods argued that (1) organic milk is a different commodity; (2) the market for organic dairy products is a niche market; and (3) Federal order regulation of organic milk is contrary to the intent of the Organic Foods Production Act because it does not "facilitate interstate commerce in fresh and processed food that is organically produced." Horizon's proposed solution was to exempt organic milk from the producer milk definition if the milk is produced on a certified organic farm and if the broker pays the producer at least 110% of the month's Class I price for such milk.

The proposal to exempt organic milk from Federal order pricing is denied for several reasons. First, contrary to the assertions of Horizon Foods that all organic milk is priced at 110% of the Class I price, regardless of how the milk is used, there is evidence that some organic milk has been pooled and priced as non-organic milk under some orders, including the Chicago Regional and Southern Michigan orders, for example. Second, although the retail price of organic milk is well above non-organic milk, we believe that organic milk competes with the regulated market and, therefore, also must be fully regulated. Third, if Congress wished to exempt organic milk from Federal milk order regulation, they could have done so either in the Organic Foods Production Act or in the 1996 Federal Agricultural Improvement and Reform Act; but they did not. Fourth, there is no indication that all processors of organic milk price their receipts the same way as Horizon Foods. Even if they did, however, the one class/one price system currently used by Horizon could be a temporary phenomenon due to the rapidly expanding market for organic products. The day may come when the organic market becomes saturated and milk in excess of fluid needs must be disposed of at competitive prices. If and when this happens, it is likely that some form of classified pricing will be implemented. Finally, the Act provides for classifying and pricing milk on the basis of its form and use. As a result, different costs that may be associated with producing organic milk or other types of milk are not relevant. For these reasons, it would be inappropriate at this time to exempt organic milk from pooling or to provide any other type of special treatment for it under the guise of Federal order reform.

No comments were filed concerning this issue with the exception of Horizon Foods, which continued to support its proposal.

4n. Allocation of Location Adjustment Credits

A provision that is now common to most orders has not been carried forward to the consolidated orders. This provision, which allocates location adjustment credits that are applied to transfers of bulk fluid milk products between pool plants, is commonly found in Section 52 of most current orders (See, for example, §§ 1001.53(h), 1007.52(b), 1030.52(c), or 1079.52(d)).

Under most orders, intra market shipments of milk between handlers are assigned to Class I use, unless both handlers agree on a lower classification. Milk that is assigned to Class I use is priced at the receiving plant subject to a location adjustment credit that may apply if it is demonstrated that such milk is actually needed for Class I use. If the credit is applied, the milk is priced at the transferring plant. This assignment of location adjustment credits is intended to prevent the use of pool proceeds to pay the hauling cost for the transfer of bulk milk between pool plants when the intended use of the milk is for other than Class I use.

To carry out this concept, the provision typically assigns a pool distributing plant's Class I use first to its milk receipts directly from producers, then to bulk milk received from a cooperative bulk tank handler, then to milk received by diversion from another pool plant, and then to packaged fluid milk products received from other pool plants. The remaining Class I use in the distributing plant is then assigned to bulk milk received by transfer from other pool plants. In some orders, this remaining Class I use is assigned pro rata to all of the pool plants from which bulk milk was obtained. In other orders, the remaining Class I milk is first assigned to pool plants with the same Class I price and then, in sequence, to pool plants with progressively lower Class I prices.

This final decision is based on the premise that Class I milk does not have the same value at every location. For this reason, Class I differentials have been established for each order with location adjustments that result in establishing a unified Class I price structure that applies to every county and city in the contiguous 48 states. Given this approach, it is no longer appropriate to classify a bulk movement of milk as Class I milk in one section of the order and then in another section of the order depart from the principle of pricing such Class I milk at the plant where it was physically received.

In actual practice, a distributing plant does not receive a fixed amount of milk each day of the week. Some days are heavy bottling days when more milk is needed for Class I use. On such days, a distributing plant may not be able to obtain enough local milk to meet its Class I needs and may have to import plant milk from more distant locations. At the end of the month, however, when the allocation of location adjustment credits takes place, it may appear that there was more than enough local milk to meet the distributing plant's fluid needs, even though this was not the case when recapped on a daily basis. Nevertheless, the allocation provision allocates location adjustment credits based on monthly volumes of milk, not daily volumes, so the supply plant could be in a position where it receives no Class I location adjustment credit even though the milk was indeed shipped for Class I use.

Some of the new orders have transportation credit provisions that provide for hauling credits on bulk milk received by transfer from a plant regulated under another Federal order and assigned to Class I use at the receiving plant. To arrive at the classification of such milk, the milk is assigned to the lower of the receiving plant's or the receiving market's Class I utilization. When milk is purchased in this manner, the transportation cost of the milk assigned to Class I is absorbed, for the most part, by the transportation credit that is provided for the handler purchasing the milk without regard to whether milk could have been purchased from a closer source of supply.

Finally, the current application of the provision in question can result in a situation where there is more incentive to receive bulk milk transferred from a plant regulated under another Federal order than from a plant regulated under the same order, whether or not any other transportation credits are

involved. Should this occur, it can result in a transfer of Class I sales to the transferring plant's Federal order market.

For all of the reasons cited above, the allocation of location adjustment credits has been removed from the orders. Several comment letters were received supporting this change; none were received in opposition to it.

5. Provisions Applicable to All Orders

In addition to the terms and conditions of milk orders previously described, there are a number of other provisions common to all milk orders that describe and define those persons and plants affected by the regulatory plan of the program. Different marketing conditions in the consolidated areas, together with institutional factors, do not lend themselves to an entirely uniform set of provisions for all orders. Consequently, in each of the consolidated orders there are provisions that are unique to each order.

This part of the final decision discusses the nature of these common order provisions, their purpose, and whether or not a provision can be uniformly applied to all orders. When a provision does not lend itself to uniform application, it is discussed in subsequent sections of this final rule together with the provisions unique to each of the individual orders.

To the extent that provisions can be uniformly applicable for all of the consolidated orders, they are included in Part 1000, the General Provisions of Federal Milk Marketing Orders which are, by reference, already a part of each milk order. Thus, as provided here, the General Provisions include the definitions of *route disposition, plant, distributing plant, supply plant, nonpool plant, handler, other source milk, fluid milk product, fluid cream product, cooperative association, and commercial food processing establishment.* In addition, the General Provisions include the milk classification section of the order, pricing provisions, and some of the provisions relating to payments. These additions to the General Provisions should make milk order provisions more understandable to the general public by removing the differences that now exist and by consolidating uniform provisions in one place. Thus, an interested person would only have to read one "nonpool plant" section, for instance, to understand how that term is applied to all orders. By contrast, at the present time, "nonpool plant" is defined in every order and there are slight differences in the definition from one order to the next.

No comments to the proposed rule were received with regard to most of the provisions discussed in this section. To the extent that there were comments, they are specifically discussed below. Most of the provisions in the proposed rule are adopted without substantive change. Any substantive changes are specifically discussed below.

The Concept of Pooling Milk Proceeds

All Federal milk orders today, save one, provide for the marketwide pooling of milk proceeds among all producers supplying the market. The one exception to this form of pooling is found in the Michigan Upper Peninsula market, where individual handler pooling has been used.

Marketwide sharing of the classified use value of milk among all producers in a market is one of the most important features of a Federal milk marketing order. It ensures that all producers supplying handlers in a marketing area receive the same uniform price for their milk, regardless of how their milk is used. This method of pooling is widely supported by the dairy industry and has been universally adopted for the 11 consolidated orders.

There were a number of proposals and public comments considered in determining how Federal milk orders should pool milk and which producers should be eligible to have their milk pooled in the consolidated orders. Many of these comments advocated a policy of liberal pooling, thereby allowing the greatest number of dairy farmers to share in the economic benefits that arise from the classified pricing of milk.

A number of comments supported identical pooling provisions in all orders, but others stated that pooling provisions should reflect the unique and prevailing supply and demand conditions in each marketing area. Fundamental to most pooling proposals and comments was the notion that the pooling of producer milk should be *performance-oriented* in meeting the needs of the fluid market. This, of course, is logical since a purpose of the Federal milk order program is to ensure an adequate supply of milk for fluid use.

A suggestion for "open pooling," where milk can be pooled anywhere, has not been adopted, principally because open pooling provides no reasonable assurance that milk will be made available in satisfying the fluid needs of a market. Proposals to create and fund "stand-by" pools are similarly rejected for the same reason.

The pooling provisions for the consolidated orders provide a reasonable balance between encouraging handlers to supply milk for fluid use and ensuring orderly marketing by providing a reasonable means for producers within a common marketing area to establish an association with the fluid market. Obviously, matching these goals to the very disparate marketing conditions found in different parts of the country requires customized provisions to meet the needs of each market. For example, in the Florida marketing area, where close to 90 percent of the milk in the pool will be used for fluid use, pooling standards will require a high degree of association with the fluid market and will permit a relatively small amount of milk to be sent to manufacturing plants for use in lower-valued products. In the Upper Midwest market, on the other hand, a relatively small percentage of milk will be needed for fluid use. Accordingly, under the pooling standards for that order smaller amounts of milk will be required to be delivered to fluid milk plants and larger amounts of milk will be permitted to be sent to manufacturing plants for use in storable products such as butter, nonfat dry milk, and hard cheese. The specific pooling provisions adopted for each order are discussed in detail in the sections of this document pertaining to each of the consolidated orders.

Route Disposition

Route disposition is a measure of fluid milk sales in commercial channels. It is defined to mean the amount of milk delivered by a distributing plant to a retail or wholesale outlet (except a plant), either directly or through any distribution facility (including disposition from a plant store, vendor or vending machine), of a fluid milk product in consumer-type packages or dispenser units that is classified as Class I milk.

The route disposition definition adopted here differs from the definition contained in some current orders. Presently, the route disposition definition of several orders makes reference to plant movements of packaged fluid milk products between distributing plants with respect to determining if such transfers should be considered "route disposition" of the transferring plant or the receiving plant. As provided here, however, this issue is addressed in section 7(a) of the pool plant section, which essentially treats such transfers as if they were route disposition.

Plant

A *plant* definition is included in all orders to specify what constitutes an operating entity for pricing and regulatory purposes. As provided in

§ 1000.4 of the General Provisions, a *plant* is the land, buildings, facilities, and equipment constituting a single operating unit or establishment at which milk or milk products are received, processed, or packaged. This is meant to encompass all departments, including those where milk products are stored, such as a cooler. The plant definition does not include a physically separate facility without stationary storage tanks that is used only as a reload point for transferring bulk milk from one tank to another, or a physically separate facility that is used only as a distribution point for storing packaged fluid milk products in transit for route disposition.

To account for regional differences and practices in transporting milk, some of the consolidated orders provide for the use of reload points for transporting bulk milk that do not have stationary storage tanks.

Farm-Separated Milk

With the advent of new technology for on-farm separation of milk into its components, some additional regulatory language has been added to the plant definition to specify who is the responsible handler for the milk or milk components leaving the farm and how these components will be classified and priced. This determination will be based, in part, on whether the farm processing facility is a plant.

Ultrafiltration (UF) is a membrane process that transfers water and low-molecular weight compounds through a membrane while retaining suspended solids, colloids, and large organic molecules. It selectively fractionates some milk solids components and selectively concentrates other solids components of milk.

When a UF membrane is used, water, lactose, uncomplexed minerals and other low-molecular-weight organic compounds pass through the membrane. For example, if unaltered milk containing 3.5 percent fat, 3.1 percent protein, and 4.9 percent lactose is run through a UF membrane until half of the original volume is eliminated, the remaining product not passing through the membrane (i.e., *retentate*) will contain all of the fat and protein but only half of the lactose. The *permeate* (i.e., that part of the original milk that does pass through the membrane) will contain water, lactose, non-protein nitrogen, and about one-sixth of the minerals.

Reverse osmosis (RO) is also a membrane process, but the membranes have much smaller pores than UF membranes, allowing only the water to pass through. The end product essentially is concentrated milk.

At the present time, both reverse osmosis and ultrafiltration systems are being utilized on some farms, principally large farms in the southwestern United States. The product shipped from these farms (i.e., the *retentate*) currently is sent to processing plants for use in manufactured products but it could be used in a range of milk products.

The retentate received from a farm with a UF or RO system will be treated as producer milk at the pool plant at which the milk is physically received or, if the retentate is shipped to a nonpool plant, as producer milk diverted to a nonpool plant. In either case, the milk or milk components will be priced at the pool plant or nonpool plant where the milk is physically received.

To be considered a farm and a producer, as opposed to a plant and a handler, an RO or UF unit must be under the same ownership as the farm on which it is located and only milk from that farm or other farms under the same ownership may be processed through the unit. The producer operating the unit shall be responsible for providing records of the daily weights of the milk going through the unit. Also, the producer must provide samples for each load of milk going through the unit and must furnish the receiving plant with a manifest on each load of retentate showing the scale weight along with samples of the retentate. Finally, the producer operating the RO or UF unit must maintain records of all transactions which must be available to the Market Administrator upon request. If the producer does not meet these recordkeeping and reporting requirements, the unit will be considered to be a plant.

RO and UF retentate will be considered to be producer milk at the plant which receives it. The pounds of RO and UF retentate received will be priced according to the skim-equivalent pounds of such milk. The skim-equivalent pounds for RO retentate will be determined by dividing the solids-not-fat pounds in the retentate by the average producer solids-not-fat in the skim portion of the producer milk used in the product. The butterfat pounds would then be added to this number to arrive at the product skim-equivalent pounds.

In computing the fluid equivalent of UF retentate, the fluid equivalent factor should be computed by dividing the true protein test in the skim milk portion of the retentate by the true protein test in the skim milk portion of the producer milk used in the product. Adding the butterfat pounds to this computation will yield the product equivalent pounds.

In addition to having UF and RO equipment, some farms today may have a separator to separate skim milk from cream before they leave the farm. Rules are also established for this type of operation.

Skim milk and cream going through a farm separator also should be treated as producer milk if received at a pool plant or diverted to a nonpool plant. The producer will be required to obtain scale weights and tests on each load of skim and cream shipped along with samples of each. The same ownership, recordkeeping, sampling and reporting requirements that apply to RO and UF units will also be applicable.

In formulating a policy for the treatment of RO and UF retentate, it is important to recognize that the milk produced on a farm with RO or UF equipment is fully available to meet the needs of the fluid market, either before or after passing through such units. Therefore, there should be no question concerning the propriety of pooling this milk along with other producers' milk.

At this writing, the Food and Drug Administration (FDA) has not yet decided whether UF retentate can be reconstituted and sold as fluid milk. However, FDA has approved the use of UF retentate in certain cheese products on a trial basis. Therefore, before receiving UF retentate for use in any product, handlers should be certain that such use has been approved by the FDA.

Distributing Plant

A *distributing plant* is defined as a plant that is approved by a duly constituted regulatory agency to handle Grade A milk and at which fluid milk products are processed or packaged and from which there is route disposition or transfers of packaged fluid milk products to other plants. This definition, and the following supply plant definition, are essentially the same as those found in present orders, except for minor changes made to conform with the pool plant provisions adopted for the consolidated orders.

Supply Plant

A *supply plant* is a regular or reserve supplier of bulk milk for the fluid market that helps to coordinate the supply of milk with the demand for milk in a market. As defined in this decision, a supply plant is a plant approved by a duly constituted regulatory agency for the handling of Grade A milk that receives milk directly from dairy farmers and transfers or diverts fluid milk products to other

plants or manufactures dairy products on its premises.

Pool Plant

The *pool plant* definition of each order describes those plants which receive milk that shares in the marketwide pool. It provides standards to identify those plants engaged in serving the fluid needs of the marketing area. Pool plants serve the fluid market to a degree that warrants their producers sharing in the added value that derives from the classified pricing of milk. While the pool plant definition in every consolidated order provides for a set of common principles, the standards applicable to pool plants differ among the consolidated orders, reflecting the fact that marketing conditions vary across the country. The goal in drafting pooling standards is to ensure both an adequate supply of milk for fluid use and orderly marketing by allowing all milk in a marketing area the opportunity to serve the fluid market and thereby share in the pool.

There are 2 performance standards applicable to *pool distributing plants* in the consolidated orders. The first standard, which varies among orders, requires a distributing plant to have a minimum Class I utilization. Since *route disposition* includes only Class I milk, the specific standard is a measure of a distributing plant's route disposition as a percent of its total receipts of fluid milk products. This standard is generally directly related to the market's Class I utilization. Accordingly, in the higher Class I utilization markets in the Southeast, the overall route disposition standard is 50 percent. In a market such as the Upper Midwest, on the other hand, where Class I utilization will be much lower, the overall route disposition standard is only 15 percent. The specific standards for each consolidated order are discussed in Section 6 of this decision.

One change common to all orders from the proposed rule to this final decision is the substitution of "total receipts of fluid milk products" for "receipts of bulk fluid milk products" in computing the total and in-area disposition for a distributing plant. This change was made to achieve consistency in accounting for packaged receipts at a distributing plant that are subsequently disposed of as route disposition or transferred to another plant. Since all such disposition will count towards meeting an order's specified pooling standards, receipts of such products from another plant also should be counted as part of the plant's receipts.

Once it is determined that a distributing plant is sufficiently associated with the fluid market to share in the pool, a second standard determines if the plant is sufficiently associated with a particular market to share in the pool applicable to that market. The "in-area" standard adopted for the consolidated orders requires that a distributing plant have 25 percent of its route disposition within a marketing area before it can be fully regulated by the order covering that marketing area.

The 15 percent in-area standard in the proposed rule has been changed to 25 percent for all orders to reflect the larger, merged marketing areas that are adopted. This change should not affect the regulatory status of any current distributing plant.

At the present time, some orders describe the in-area route disposition standard as a percent of plant receipts, while in other orders it is described as a percent of route disposition. For the new orders, the in-area standard for all orders is expressed as a percent of total route disposition. This methodology will ensure that the in-area route disposition standard never exceeds the total route disposition standard, a situation that is now possible under the terms of the present Upper Midwest order. For most orders, this change will make little difference and should not result in regulating any plant that is now unregulated.

Under the consolidated orders, a distributing plant that has sales in more than one Federal order marketing area will be regulated, for the most part, under the order in which it has the most sales. There are certain exceptions to this rule, however, particularly in the 3 Southeast orders, where the shifting of plants among markets has created disorderly marketing conditions in recent times. In the Florida, Southeast, and Appalachia orders, a distributing plant that is located within the marketing area and that meets the order's pooling standards will be regulated under that order even though it might have more route disposition in some other marketing area.

When the regulation of a plant does shift from one order to another, the shift will only occur after the plant has had greater sales in such other market for 3 consecutive months. This provision will provide some stability to avoid the frequent shifting of regulation between orders.

To facilitate proper administration and accounting, all orders currently provide that packaged fluid milk products transferred from one handler to another be treated as inter-handler transfers, with each transaction properly identified and specifically reported to affected market administrators. This should continue in the consolidated orders. However, for the single purpose of qualifying a plant as a pool distributing plant, the pool distributing plant definition has been modified to treat transfers of packaged fluid milk products to other plants as if they were route disposition of the transferring plant for the purpose of identifying the plant's association with the fluid market. This is necessary to preclude a plant from becoming partially regulated if the plant shipped significant quantities of packaged fluid milk products to another distributing plant. A conforming change has been made to the distributing plant definition in § 1000.5 to reflect this change.

A special pool distributing plant provision (i.e., Section 7(b) of the consolidated orders) has been adopted for distributing plants that distribute ultra-pasteurized or aseptically-processed fluid milk products. Such plants must be located in the marketing area and must process a certain percentage of their milk receipts into ultra-pasteurized or aseptically-processed fluid milk products during the month. The minimum percentage used for each order in Section 7(b) is equal to the total route disposition percentage required in Section 7(a) of the order for distributing plants processing standard shelf-life fluid milk products. However, unlike the standards for a 7(a) plant, there is no route disposition standard for a 7(b) plant to meet.

Plants specializing in ultra-pasteurized or aseptically-processed fluid milk products tend to have erratic processing and distribution patterns reflecting the long-life nature of the product they process. In some months, they may process fluid milk products but have little or no route disposition because the products are stored in inventory. In addition, these plants often have much wider distribution patterns than do other distributing plants and, under current orders, frequently shift regulation from one order to another. This shifting regulation is disruptive to the producers and/or cooperatives supplying these plants and is an additional regulatory burden to the plant operator.

To provide regulatory stability for these plants, they will be treated as a fully regulated plant if they process a minimum percent of their milk receipts into ultra-pasteurized or aseptically-processed fluid milk products during the month. Having met this standard, which varies among orders, they will not shift regulation to another order simply because they have more route disposition in such other order's

marketing area. In fact, they need not have any route disposition in the order in which they are located to remain regulated. However, if they do not meet the processing standard of the order in which they are located but do meet the 7(a) standards for a distributing plant under one or more other orders, they will become regulated under the order in which they have the most route disposition. If they continue to qualify for pool status on this basis, they may be subject to regulatory shifts depending upon the pattern of their route disposition.

Pool Supply Plant

Performance standards for *pool supply plants* are designed to attract an adequate supply of milk to meet the demands for fluid milk in a market. Pool supply plants move milk to pool distributing plants that service the marketing area.

The pool supply plant definition, like the distributing plant definition, does not lend itself to uniform application in all consolidated orders. Consequently, pool supply plant performance standards should be established according to regional needs. The specific standards adopted in each order are described in section 7(c) of each new order and are explained in more detail in the regional discussions of this document.

In most current orders, a pool supply plant does not include any portion of a plant that is not approved for handling Grade A milk and that is physically separated from a portion of the plant that has such approval. Some inspection agencies render only one type of approval for an operation. To accommodate those areas where split operations are permitted, some of the consolidated orders provide for a physically separated portion of the plant as a "nonpool plant."

Pooling Options

Unit Pooling

Unit pooling allows 2 or more plants located in the marketing area and operated by the same handler to qualify for pool status as a *unit* by meeting the total and in-area route disposition standard as if they were a single pool distributing plant. To qualify as a *unit*, at least one of the plants in the *unit*—i.e., the primary plant—must qualify as a pool distributing plant on its own standing and the other plants in the unit must process only Class I or Class II milk products.

Unit pooling serves to accommodate and provide a flexible regulatory approach in addressing the specialization of plant operations. It also minimizes unintended regulatory effects that may cause the uneconomical and inefficient movement of milk for the sole purpose of retaining pool status. However, some conditions need to be satisfied for unit pooling. The "other" plant(s) of the pool unit—i.e., the plants that would not qualify for pool status as a single plant—must be located in an equivalent or a lower price zone than the primary pool distributing plant. This condition is required to assure that the transportation of milk for Class II uses will not be subsidized through the marketwide pool and to assure pricing equity to all handlers processing Class II products that do not use unit pooling. Unit pooling status must be requested in writing and approved by the market administrator for its proper implementation and administration.

System Pooling

Supply plants and reserve supply plants provide a benefit to the market because they are required to meet certain performance standards in supplying the needs of the fluid market. They also serve to balance the market. Because handlers often operate more than one supply plant within the market, some of the merged orders allow a single proprietary handler or one or more cooperative associations to combine their plants into systems for the purpose of meeting the order's performance standards for pooling. Under system pooling, 2 or more plants in a system can qualify for pool status by meeting the applicable performance standards in the same manner as a single plant. However, not all plants in a system of supply plants must transfer or divert milk to a distributing plant. In recognition of this fact, the supply plant definition in § 1000.6 has been modified to conform with this provision.

Adjustment of Pooling Standards

The consolidated orders provide the market administrator with authority to adjust shipping standards for supply plants, reserve supply plants, balancing plants, and supply plant units if he/she finds that such revision is necessary to encourage needed shipments or to prevent uneconomic shipments of milk. A finding by the market administrator that adjustments are warranted would follow an investigation conducted on the market administrator's own initiative or at the request of interested parties. Before making a finding that revisions are warranted, the market administrator would notify interested parties of this possibility and invite data, views, and arguments. If the market administrator determines that a revision is warranted, he/she shall provide written notification to interested parties of such revision at least one day before the revision goes into effect.

This provision allows the market administrator to respond promptly to changes in local marketing conditions and should result in better service to the dairy industry and to the public. The authority given to the market administrator to make needed adjustments in the manner specified is commensurate with the authorities already delegated by the Secretary to the market administrator.

As provided in the proposed rule, the market administrator would have had the authority to adjust pooling standards for distributing plants as well as supply plants. However, such authority has not been provided in any of the current marketing orders except for the Southeast, and in that market it has never been needed. Consequently, it was concluded that any changes that may need to be made to pool distributing plant standards can best be handled through normal amendatory and suspension procedures.

Treatment of Concentrated Milk

An issue related to pooling that should be clarified with the issuance of new orders is the treatment of concentrated milk that is shipped between plants.

Prior to the 1993 classification decision, condensed milk was not defined as a fluid milk product. Accordingly, when condensed milk was shipped from a supply plant to a distributing plant it was not counted as a qualifying shipment for the purpose of determining the pool status of the supply plant. By the same token, when a distributing plant received a shipment of condensed milk from another plant, the condensed milk was excluded from the distributing plant's receipts for the purpose of computing the pool plant status of the distributing plant.

In the 1993 classification decision, condensed milk was redefined as concentrated milk[15] and was included in the fluid milk product definition. An unintended consequence of this change was that certain plants which had never been pool plants before suddenly became pool plants because of their shipments of condensed milk, and

[15] As used in parts 1000 through 1135, the term *concentrated milk* means milk that contains not less than 25.5 percent, and not more than 50 percent, total milk solids. It may include milk that has been condensed or milk that has been filtered using such methods as reverse osmosis and ultra-filtration. Concentrated milk may be pasteurized and it may be homogenized.

certain distributing plants that had been pool plants suddenly found themselves unable to qualify as pool plants because their receipts of "fluid milk products" were enlarged to include their condensed milk receipts. When handlers complained about these unforseen and unexplained changes, it was decided administratively to continue the previous treatment for condensed milk until the orders could be amended.

The consolidated orders should continue this special treatment for condensed milk. Although condensed milk conceivably may be reconstituted for fluid use, as a practical matter this is rarely, if ever, done. Sometimes, condensed milk is used to fortify fluid milk, but for the most part condensed milk is made to be used in ice cream mix or some other manufactured dairy product.

When condensed milk is transferred from the plant of origin to a distributing plant in the same or another order, it is generally transferred, by agreement, for Class II or III use. Using this criteria as a distinguishing feature of this product, the pool supply plant provision of each order should exclude from qualifying shipments to distributing plants "concentrated milk transferred, by agreement, for other than Class I use." By the same token, a distributing plant also should exclude from its receipts, for pooling purposes, "concentrated milk received, by agreement, for other than Class I use."

Using this language will preserve the regulatory treatment that has applied to condensed milk for many years. At the same time, however, this language allows flexibility for different treatment in the case of concentrated milk that is not destined for Class II or III use.

In recent years, there has been much greater use of filtering equipment to remove water from milk at the farm. This technology may be used to reduce hauling costs in shipping milk long distances for use as fluid milk products. Although this concentrated milk is not at present being used for fluid use, this situation may change in the future. For this reason, it is reasonable to provide some flexibility in handling this type of product for both shrinkage and pooling purposes. At this point in time, we believe that the best way to provide this flexibility is to allow the handlers involved in making and using this product to decide among themselves how it will be used and reported, knowing ahead of time the shrinkage and pooling implications involved with these decisions. Thus, if concentrated milk is purchased from another plant by agreement for other than Class I use, the buying handler understands that there will be no shrinkage allowance allowed on the milk. The buying handler also knows that the volume of concentrated milk received will not be counted as a plant receipt for the purpose of determining its pool status.

A supply plant shipping concentrated milk for Class II use may or may not wish to be pooled under a Federal order. If the plant wished to be treated as a nonpool plant, concentrated milk could be transferred for Class II or III use by agreement with the receiving handler. In such case, the transfer of concentrated milk would not be counted as a qualifying shipment in meeting the pool supply plant shipping standards and the receipt of concentrated milk at the distributing plant would not be counted as part of the distributing plant's receipts for purposes of computing its total route disposition. Of course, the agreement to transfer milk for a pre-arranged use is contingent upon the receiving distributing plant having sufficient Class II or III utilization to absorb these receipts.

On the other hand, if a supply plant making concentrated milk wished to qualify for pool status, it could simply transfer concentrated milk to a pool distributing plant without specifying its designated use. In such case, the shipment would count as a qualifying shipment for the purpose of meeting the order's pool supply plant shipping requirements provided that the distributing plant receiving the concentrated milk was a pool plant. Since the receipt of concentrated milk would be counted as part of the receiving distributing plant's receipts in determining the distributing plant's pool status under the order, the plant would have to have sufficient Class I sales to maintain its identity with the fluid market. If the distributing plant did not have sufficient Class I use to meet the order's pooling standards, it would not be qualified to have its receipts pooled under the order and, by extension, neither would the supply plant that shipped the concentrated milk to the distributing plant.

This regulatory flexibility for concentrated milk should accommodate varied situations in the consolidated orders. It will follow the historical treatment for condensed milk but, at the same time, it will provide for new uses and treatment for other types of concentrated milk.

Nonpool Plant

A definition is provided in all orders describing plants which receive, process or package milk, but which do not satisfy the standards for being a pool plant. While providing for such a definition may appear redundant, this provision is useful to more clearly define the extent of regulation applicable to plants.

Nonpool plants should include a plant that is fully regulated under another Federal order, a producer-handler plant, a partially regulated distributing plant, an unregulated supply plant, and an exempt plant. The definitions for these nonpool plants are not materially different than those provided in the current orders with the possible exception of an "exempt plant."

Certain plants are exempt from regulation under Federal milk orders. These plants fall into 4 categories: (1) Plants that are operated by a governmental agency which have no route disposition in commercial channels; (2) plants operated by a college or university that dispose of fluid milk products only through their own facilities with no route disposition in commercial channels; (3) plants from which the total route disposition is for individuals or institutions for charitable purposes without remuneration; and (4) plants that have route disposition of 150,000 pounds or less during the month. These types of plants have little impact on the regulated market and need not be regulated to ensure the integrity of the regulatory plan.

A number of Federal orders exempt from regulation small distributing plants which, because of their size, do not significantly impact competitive relationships among handlers in the market. The level of route disposition required before an exempt plant becomes regulated varies in the current orders. As adopted for the merged orders, any plant with route disposition during the month of 150,000 pounds or less would be exempt from regulation. This limit reflects the maximum amount of fluid milk products allowed by an exempt plant in any current Federal milk order and ensures that plants currently exempt from regulation will remain exempt.

Many current Federal orders also provide regulatory exemption for a plant operated by a state or Federal governmental agency. For example, some states have dairy farm and plant operations that provide milk for their prison populations. As provided herein, regulatory exemption would be continued under the consolidated orders unless pool plant status is requested.

Regulatory exemption also should apply to colleges, universities, and charitable institutions because these institutions generally handle fluid milk

products internally and have no impact in the mainstream commercial market. However, in the event that these entities distribute fluid milk through commercial channels, route sales by such entities, including government agencies, will be monitored to determine if Federal regulation should apply.

The determination and verification of exempt plant status will, from time to time, necessitate the need for the market administrator to require reports and information deemed appropriate for the sole purpose of making this determination. Such authority is currently provided in orders and should continue.

Handler

Federal milk orders regulate those persons who buy milk from dairy farmers. Such persons are called *handlers* under the order. These persons have a financial responsibility for payments to dairy farmers for milk in accordance with its classified use. They must file reports with the market administrator detailing their receipts and utilization of milk.

The handler definition adopted for the consolidated orders includes the operator of a pool plant, a cooperative association that diverts milk to nonpool plants or delivers milk to pool plants for its account, and the operator of a "nonpool plant," which would encompass a producer-handler, a partially regulated distributing plant, a plant fully regulated under another Federal order, an unregulated supply plant, and an exempt plant.

In addition, "third party" organizations that are not otherwise regulated under provisions of an order are included in the handler definition. This category includes any person who engages in the business of receiving milk from any plant for resale and distribution to wholesale and retail outlets, brokers or others who negotiate the purchase or sale of fluid milk products or fluid cream products from or to any plant, and persons who, by purchase or direction, cause the milk of producers to be picked up at the farm and/or moved to a plant. Such intermediaries provide a service to the dairy industry. These persons are not, however, recognized or regulated as entities required to make minimum payments to producers. The expanded marketing chain brought about by such intermediaries has made it increasingly difficult for the market administrator to track the movement of milk from farms to consumers. The revised handler definition enables the market administrator to more readily identify those entities.

Producer-Handler

It has been a long-standing policy to exempt from full regulation many of those entities that operate as both a producer and a handler. Generally, a *producer-handler* is any person who provides satisfactory proof to the market administrator that the care and management of the dairy farm and other resources necessary for own-farm production and the management and operation of the processing plant are the personal enterprise and risk of such person. A primary basis for exempting producer-handlers from the pricing and pooling provisions of a milk order is that these entities are customarily small businesses that operate essentially in a self-sufficient manner. Also, during the history of producer-handler exemption from full regulation there has been no demonstration that such entities have an advantage as either producers or handlers so long as they are responsible for balancing their fluid milk needs and cannot transfer balancing costs, including the cost of disposing of reserve milk supplies, to other market participants.

The current orders have varying producer-handler definitions that address specific marketing conditions and circumstances. For example, they specify different limits on the amount of milk that producer-handlers may purchase and retain their exempt status. Some modifications have been made to the producer-handler provisions in the consolidated orders for standardization. However, no changes have been made that would intentionally regulate a producer-handler that is currently exempt from regulation under their current operating procedures. Because the producer-handler provision is slightly different from one order to the next, the specific details regarding each definition are described in the regional discussions that follow. Any general provision in the proposed rule, such as the phrase "or acquired for distribution" in § 1000.44(a)(3)(iv), that would have changed the status of a current producer-handler has been eliminated.

Public comments were received regarding the extent of regulation that should apply to producer-handlers. The majority of public comments supported the status-quo regarding the regulatory treatment of producer-handlers, emphasizing that they should remain exempt from regulation in accordance with current order provisions and that the provisions should be regional in nature so as not to affect or change the current regulatory status of producer-handlers.

One of the public comments received proposed that the exemption of producer-handlers from the regulatory plan of milk orders be eliminated. This proposal is denied. In the legislative actions taken by the Congress to amend the AMAA since 1965, the legislation has consistently and specifically exempted producer-handlers from regulation. The 1996 Farm Bill, unlike previous legislation, did not amend the AMAA and was silent on continuing to preserve the exemption of producer-handlers from regulation. However, past legislative history is replete with the specific intent of Congress to exempt producer-handlers from regulation. If it had been the intent of Congress to remove the exemption, Congress would likely have spoken directly to the issue rather than through omission of language that had, for over 30 years, specifically addressed the regulatory treatment of producer-handlers.

Since producer-handlers are intended to be exempt from most regulation, some means must be provided to determine and to verify producer-handler status. Accordingly, the market administrator is provided with the authority to require reports and other information deemed appropriate to determine that an entity satisfies the requirements for producer-handler status. Such authority is currently provided in the orders and should continue.

Producer

Under all orders, *producers* are dairy farmers that supply the market with milk for fluid use or who are at least capable of doing so if necessary. Producers are eligible to share in the revenue that accrues from marketwide pooling of milk. The producer definitions of the individual orders are described under the regional discussions later in this document. Responding to regional needs, producer definitions will differ by order with respect to the degree of association that a dairy farmer must demonstrate with a market.

A dairy farmer may not be considered a producer under more than one Federal milk order with respect to the same milk. If a dairy farmer's milk is diverted by a handler regulated under one Federal order to a plant regulated under another Federal order, and the milk is allocated at the receiving plant (by request of the diverting handler) to Class II, III or IV, the dairy farmer will maintain producer status in the original order from which milk was diverted.

Since producer-handlers and exempt plants are specifically exempt from Federal order pricing provisions, the term producer should not include a producer-handler as defined in any Federal order. Likewise, the term producer should not apply to any person whose milk is delivered to an exempt plant, excluding producer milk diverted to such exempt plant. Some of the new orders (See Orders 1001, 1124, 1131, and 1134) also exclude from producer status a dairy farmer whose milk is received at a nonpool plant as other than producer milk. The reasons for including this provision are explained in the regional discussions describing those orders.

Producer Milk

The *producer milk* definition identifies the milk of producers which is eligible for inclusion in a particular marketwide pool. This definition is specific to each consolidated order, reflecting the fact that marketing conditions differ among regions.

In general, the definition of *producer milk* for all consolidated orders continues to include the milk of a producer which is received at a pool plant or which is received by a cooperative association in its capacity as a handler. Most current orders consider milk to be "received" when it is physically unloaded at the plant and the consolidated orders would continue that treatment.

In order to promote the efficient handling of milk, all orders currently allow a handler to move producer milk, within certain specified limits, from a producer's farm to a plant other than the handler's own plant. This is referred to as a "diversion" of milk. Under the consolidated orders, the definition of producer milk allows unlimited diversions to other pool plants, thereby providing maximum flexibility in efficiently supplying the fluid market.

Under some orders, unlimited diversions to nonpool plants would also be allowed once a dairy farmer has become associated with a particular order. Under other orders, however, a producer would be required to "touch base" at a pool plant one or more times each month and, in addition, aggregate diversion limits may be applied to a handlers' total diversions. The specific touch base and diversion limits are described in the regional discussions pertaining to each order.

Even for orders without any diversion limits, there is a practical limit to how much milk may be diverted from a pool plant because of the pooling standards that must be met. For a pool supply plant, for example, there is a standard computed by dividing the amount of milk shipped to distributing plants by a plant's total receipts. As provided in the orders, "receipts" include milk that is physically received at the plant as well as diverted to nonpool plants. This inclusion of diverted milk in a plant's receipts automatically limits the amount of milk that may be diverted by those plants. Thus, the maximum quantity of milk that such plants would be able to divert and still maintain their pool plant status would be 100 percent less the pool plant shipping standards for the month.

This treatment of diverted milk will mitigate the need for suspending order diversion limitations, an action that is quite common in some of the current orders. Unlimited diversions for many of the new orders will allow for maximum efficiency in balancing the market's milk supply. The market administrator's ability to adjust shipping percentages for pool supply plants, pool reserve supply plants, and balancing plants will ensure that an adequate supply of milk is available for the fluid market without the imposition of diversion limits.

While a one-time producer "touch base" standard and virtually unlimited diversions are appropriate for most of the consolidated Federal orders, they are not appropriate for certain "deficit" markets in the Southeast. For these orders, touch base requirements and diversion limits provide another tool to ensure that an adequate supply of fluid milk is available to meet the markets' needs. The specific standards for these orders are discussed in the regional section of this document.

In order to provide regulatory flexibility and marketing efficiencies, all of the new orders having diversion limits allow the market administrator to increase or decrease these limits on relatively short notice. This provision currently exists in some Federal orders and has proven to be a responsive, efficient, and effective way to deal with rapidly changing marketing conditions.

Cooperative Association

All current orders provide a definition for dairy farmer cooperative associations that market milk on behalf of their dairy farmer members. Providing for a uniform definition of a cooperative association facilitates the administration of the various order provisions as they apply to such producer organizations and recognizes the unique standing granted to dairy farmer cooperatives under the Capper-Volstead Act. Dairy farmer cooperatives are responsible for marketing the majority of the milk supplied to regulated handlers under the Federal order system.

As provided herein, a cooperative association means any cooperative marketing association of producers which the Secretary determines, after application for such recognition by the cooperative, is qualified as such under the provisions of the Act of Congress of February 18, 1922, as amended, known as the "Capper-Volstead Act". Additionally, the new orders continue to require that a cooperative association have full authority in the sale of the milk of its members and that it be engaged in making collective sales or marketings of milk or milk products for its dairy farmer members.

Several current orders provide a definition for a federation of 2 or more cooperative associations. As adopted here, all consolidated orders recognize a federation of cooperatives as satisfying the cooperative definition for the purposes of determining milk payments and pooling. Individual cooperatives of a federation of cooperatives must also meet the criteria as set forth for individual cooperative associations and their federations as incorporated under state laws.

Handler Reports

All current orders require handlers to submit monthly reports detailing the sources and uses of milk and milk products so that market average use values, or blend prices, can be determined and administered. Payroll reports and other reports required by the market administrator are also provided for in the orders. The order language for the consolidated orders is similar to that contained in current orders. The dates when reports are due in the market administrator's office differ slightly by order according to custom and industry practice.

Announcements by the Market Administrator

In the course of administering the order, the market administrator is required to make several announcements each month with respect to classification, class prices and component prices, an "equivalent price" when necessary, and various producer prices. As adopted here, these provisions are uniform and are nearly identical to current order provisions, with the exception of section 62 (Announcement of producer prices), which differs to some extent among orders depending on the degree of component pricing used in the order.

Producer-Settlement Fund

In all of the current and consolidated orders, handlers are required to pay minimum class prices for the milk received from producers. These proceeds are blended through the marketwide pool so that producers are returned a uniform, or blend, price for their milk. The mechanism for the equalization of a handler's use value of milk is the *producer-settlement fund*. It is established and administered by the market administrator for each order.

The producer-settlement fund ensures that all handlers are able to return the market blend price to producers whose milk was pooled under the order. Payments into the producer-settlement fund are made each month by handlers whose total classified use value of milk exceeds the value of such milk calculated at the uniform price (or at component prices for those orders with component pricing). Similarly, payments out of the producer-settlement fund are made each month to any handler whose use value is below the value of milk at the uniform price or component prices, as the case may be. The transfer of funds enables handlers with a use value below the average for the market to pay their producers the same uniform price as handlers whose Class I utilization exceeds the market average. This provision is uniform for all consolidated orders.

The consolidated orders vary with respect to dates for payments to the producer-settlement fund, due largely to industry practices and regional preferences. Each consolidated order provides for payment dates, and they are specific for each consolidated order.

In view of the need to make timely payment to handlers from the producer-settlement fund, it is essential that money due the fund be received by the due date. Accordingly, under all of the new orders payment to the producer-settlement fund will be considered made upon receipt by the market administrator.

The new orders specify that payment cannot be received on a nonbusiness day. Therefore, if the due date for a payment, including a payment to or from the producer-settlement fund, falls on a Saturday, Sunday, or national holiday, the payment would not be due until the next business day. This is specified in § 1000.90 of the General Provisions.

Payments to Producers and Cooperative Associations

The AMAA provides that handlers must pay to all producers and producer associations the uniform price. The existing orders generally allow proper deductions authorized by the producer in writing. Proper deductions are those that are unrelated to the minimum value of milk in the transaction between the producer and handler. Producer associations are allowed by the statue to "reblend" their payments to their producer members. The Capper Volstead Act and the AMAA make it clear that cooperative associations have a unique role in this regard.

The payment provisions to producers and cooperatives for the consolidated orders vary with respect to payment frequency, timing, and amount. These differences are generally consistent with current order provisions and with industry practices and customs in each of the new marketing areas.

Each of the new orders will require handlers to make at least one partial payment to producers in advance of the announcement of the applicable uniform prices. The Florida order will require 2 partial payments, mirroring the payment schedule now provided in the 3 separate Florida orders.

The amount of the partial payment varies among the new orders, reflecting the anticipated uniform price. Thus, for example, in the Upper Midwest order, the partial payment rate for milk received during the first 15 days of the month will be not less than the lowest announced class price for the preceding month. By comparison, the partial payment for the Florida order for milk received during the first 15 days of the month will be at a rate that is not less than 85 percent of the preceding month's uniform price, adjusted for plant location.

The final payment for milk under the new orders will be required to be made so that it is received by producers no later than 2 days after the required pay-out date of monies from the producer-settlement fund.

Cooperatives will be paid by handlers for bulk milk and skim milk on the terms described for individual producers except that payment will be due one day earlier. Providing for an earlier payment date for cooperative associations is warranted because it will permit the cooperative association the time needed to distribute payments to individual producer members. The cooperative payment language in each of the consolidated orders has been expanded to include bulk milk and skim sold by cooperatives from their pool plants as well as by cooperatives acting as handlers for milk delivered directly from producers' farms.

When bulk milk is received by transfer from a cooperative's pool plant, a minimum payment should be required for such milk just as if it were producer milk received directly from producers' farms. Many, but not all, of the current orders have such a provision.

For Class I bulk milk that is received from a cooperative's pool plant, the minimum Class I price level for such milk should be the price applicable at the location of the receiving handler's plant. In the case of such transfers, it is presumed that milk will move from lower-priced areas to higher-priced areas. Under these circumstances, part of the transportation cost in moving the milk is covered by the difference in the Class I prices at the receiving plant and shipping plant.

Pricing Class I transfers at the receiving plant's location ensures that a handler would not have an incentive to receive more distant plant milk instead of closer milk directly from producers' farms. It also ensures that all similarly-located pool plants will pay the same minimum prices for their receipts regardless of whether the milk comes from another plant or directly from producers. Finally, it ensures that the handler receiving transferred milk pays at least a portion of the transportation cost to move the milk to its plant. Since transportation cost is likely to exceed the difference in prices between the transferor and transferee plants, the difference in cost will have to be made up through over-order premiums.

All of the payment dates are receipt dates. Since payment cannot be received on a non-business day, payment dates that fall on a Saturday, Sunday, or national holiday will be delayed until the next business day. While this has the effect of delaying payment to cooperatives and producers, the delay is offset by the shift from "date of payment" to "date of payment receipt."

Minimum Payments to Producers

In a proceeding involving the current Carolina, Southeast, Louisville-Lexington-Evansville, and the former Tennessee Valley Federal milk orders (Orders 5, 7, 46, and 11, respectively), a proposal was made to clarify what constitutes a minimum payment to producers. The proposal was recommended by Hunter Farms (Hunter) and Milkco Inc. (Milkco), 2 handlers regulated under the current Carolina order. Under the proposal, a handler (except a cooperative acting in its capacity as a handler pursuant to paragraph 9(b) or 9(c)) may not reduce its obligations to producers or cooperatives by permitting producers or cooperatives to provide services which are the responsibility of the handler. According to the Hunter/Milkco proposal, such services include: (1)

Preparation of producer payroll; (2) conduct of screening tests of tanker loads of milk; and (3) any services for processing or marketing of raw milk or marketing of packaged milk by the handler.

At the May 1996 hearing, representatives of Hunter and Milkco testified that both handlers receive milk from cooperative associations and Piedmont Milk Sales, a marketing agent handling the milk of non-member producers. The Hunter representative explained that due to competitive marketing conditions in the Southeast in late 1994 and early 1995 handlers were able to purchase milk supplies at Federal order minimum prices without any over-order premiums being charged. As a result of the absence of over-order premiums, the representative stated, Hunter received underpayment notices from the market administrator on milk that it had received from Piedmont Milk Sales.

Hunter argued that the problem of what constitutes a minimum payment to producers should be clarified to preclude another underpayment situation should premiums again disappear in the future. If this issue is not resolved, according to Hunter, it will suffer a loss of milk sales and its producers will receive lower prices. Hunter stated that the current policy is discriminatory and unfair and that everyone would benefit from a clarification of the rules defining Federal order minimum prices.

Based on the testimony presented at the public hearing and comments received, the Department issued a final decision on July 16, 1998 (63 FR 39039), denying the Hunter/Milkco proposal. However, the decision stated that this issue should be revisited as part of Federal order reform.

In the proposed rule for Federal order reform, interested parties were invited to comment on this issue. Only one Federal order reform comment, besides Hunter/Milkco's, discussed this issue. This comment letter, filed by the same law firm that represents Hunter/Milkco, expressed sentiments nearly identical to those that have been expressed by Hunter/Milkco.

Based on our review of these comments, we continue to believe that incorporation of Hunter/Milkco's proposed language in the consolidated Federal orders will not necessarily solve the handler equity problem but could create a host of additional problems. For the reasons stated in the aforementioned final decision, the proposal is again denied for the consolidated orders.

Payment Obligation of a Partially Regulated Distributing Plant

All current and consolidated orders provide a method for determining the payment obligations due to producers by handlers that operate plants which are not fully regulated under any Federal order. These unregulated handlers are not required under the scope of Federal milk order regulation to account to dairy farmers for their milk at classified prices or to return a minimum uniform price to producers who have supplied the handler with milk. However, such handlers may sell fluid milk on routes in a regulated area in competition with handlers who are fully regulated. Therefore, the regulatory plan of Federal milk orders provides a minimum degree of regulation to all handlers who have routes sales in a regulated marketing area. This is necessary so that classified pricing and pooling provisions of an order can be maintained. It is also necessary so that orderly marketing conditions can be assured with respect to handlers being charged the classified value under an order for the milk they purchase from dairy farmers. Without this provision, milk prices in an order would not be uniform among handlers competing for sales in the marketing area, a milk pricing requirement of the AMAA.

There are 3 regulatory options available to a partially regulated handler. First, the handler can purchase Class I milk that is priced under a Federal order in an amount equal to, or in excess of, quantities sold in the marketing area. Second, a payment may be made by the partially regulated handler into the producer-settlement fund of the regulated market at a rate equal to the difference between the Class I price and the uniform price of the regulated market. Finally, the operator of a partially regulated plant can demonstrate that the payment for its total supply of milk received from dairy farmers was equal to the amount which the partially regulated plant would have been required to pay if the plant had been fully regulated. This amount may be paid entirely to the dairy farmers that supplied the handler or in part to those dairy farmers with the balance paid into the producer-settlement fund of the regulated market.

The regulatory options described above and the payment option for reconstituted milk have worked well in the current orders and are continued uniformly in § 1000.76 for the consolidated orders.

Adjustment of Accounts

All current orders provide for the market administrator to adjust, based on verification of a handler's reports, books, records, or accounts, any amount due to or from the market administrator, or to a producer or a cooperative association. This provision is continued in the consolidated orders. The provision requires the market administrator to provide prompt notification to a handler of any amount so due and requires payment adjustment to be made on or before the next date for making payments as set forth in the provisions under which the error(s) occurred.

Charges on Overdue Accounts

All current orders provide for an additional charge to handlers who fail to make required payments to the producer-settlement fund when due. Such payments include payments to the producer-settlement fund, payments to producers and cooperative associations, payments by a partially regulated distributing plant, assessments for order administration and marketing service, and certain other payment obligations in orders with specialized provisions such as transportation credits. This should continue to be provided for in the consolidated orders.

In order to discourage late payments, a 1.0 percent charge per month is incorporated in the consolidated orders. This rate represents the mid-point in the range of charges by all orders presently. Overdue charges shall begin the day following the date an obligation was due. Any remaining amount due will be increased at the rate of 1.0 percent on the corresponding day of each month until the obligation is paid in full.

All overdue charges would accrue to the administrative assessment fund. The late-payment charge is to be a penalty that is meant to induce compliance with the payment terms of the order. If late-payment charges for monies due on producer milk were to accrue to the balance owed to either producers, cooperatives or producers/cooperatives via the producer-settlement fund, it could result in such producers and cooperatives being less concerned whether they are paid on time. By placing late-payment charges in the administrative fund, however, cooperatives and producers would not be placed in a position where they would prefer to be paid several days late so that they would receive the late-payment charges (or increase the level of producer prices due to late payment fee accrual to the producer-settlement fund). This is of particular concern in

markets with a single dominant cooperative. Additionally, by having late-payment fees accrue to the administrative fund, monies are made available to enforce late-payment provisions that would otherwise have to be generated through handlers' administrative assessments.

Assessment for Order Administration

The AMAA provides that the cost of order administration shall be financed by an assessment on handlers. Under the consolidated orders, a maximum rate of 5 cents per hundredweight is provided. This assessment would apply to all of a handler's receipts pooled under the order.

Deduction for Marketing Services

As in most current orders, the consolidated orders provide for the furnishing of marketing services to producers for whom cooperative associations do not perform services. Such services include providing market information and establishing or verifying weights, samples, and tests of milk received from such producers. In accordance with the Act, a marketing services provision must benefit all nonmember producers under the order.

The market administrator may contract with a qualified agent, including a cooperative association, to provide such services. The cost of such services should be borne by the producers for whom the services are provided. Accordingly, each handler will be required to deduct a maximum of 7 cents per hundredweight from amounts due each producer for whom a cooperative association is not providing such services. All amounts deducted must be paid to the market administrator not later than the due date for payments to the producer-settlement fund.

6a. Northeast Region

The Northeast Marketing Area

The recommended consolidated Northeast order differs significantly from other consolidated orders. In addition to merging three existing Federal milk orders, the Northeast order also calls for expansion in the northern region of New York state, and all currently unregulated areas of the New England states (except Maine).

While the current New England (Order 1) and Middle Atlantic (Order 4) orders have similar provisions for adjusting producer blend prices in a manner identical to plant price adjustments for location, the current New York-New Jersey (Order 2) order employs a "farm-point" pricing method. This decision adopts a plant-point pricing methodology in the consolidated Northeast order. This method is used in every other current marketing area and in every consolidated marketing area. This represents a considerable change in how milk will be priced for those handlers and producers whose milk currently is priced under the provisions of the New York-New Jersey order.

In addition to the different pricing provisions of the three existing orders, other important differences and related provisions need to be addressed in the Northeast regional order that will accomplish the goals of the AMAA. These include what is commonly referred to in the New York-New Jersey order as the "pass through" provision; the need for providing marketwide service payments in the form of cooperative service payments and balancing payments that currently exist in the New York-New Jersey order and do not exist in either the current New England or Middle Atlantic orders. Additionally, the three current northeast orders also provide for seasonal adjustments to the Class III and IIIA price.

It is fair to observe that the current order most affected by the consolidation is the New York-New Jersey order. In addition to the differences already described, certain terms and provisions of the Northeast order are also different in how they are described and presented but are nevertheless consistent with existing provisions that accomplish the goals of the AMAA. This is less of an issue for those entities that are accustomed to the terminology of provisions used in the New England and Middle Atlantic orders. The following presents a discussion of the recommended order provisions and issues that are unique to the consolidated Northeast order.

Plant

The plant definition for the consolidated Northeast order should differ from that of the other consolidated orders by allowing stationary storage tanks to be used as reload points. This exception to the plant definition is warranted for the consolidated Northeast order due to certain unique conditions that affect the ability of handlers and haulers to assemble milk in an efficient manner and subsequently transport it to a plant that actually processes milk into finished dairy products, including fluid milk products. This exception would not consider the reload point or facility as a point from which to price producer milk. Rather, milk once assembled would be shipped to a processing plant where it would be priced.

A portion of the Northeast milk supply is derived from some 200 small dairy farms located in Maine. Because much of this state is serviced by secondary and rural winding roads, the current New England order has provided for reload points as a workable solution to the inherent hauling difficulties in transporting relatively small loads of milk from the countryside to reload points and facilities with stationary storage tanks that do not serve as a pricing point. This should continue to be provided for in the consolidated Northeast order. Not to provide this accommodation would adversely affect a substantial number of small producers and the milk haulers that service them.

Pool Plant

The *pool distributing* and *pool supply plant* definitions of the consolidated Northeast order use the standard order language format used in other orders, combined with performance standards that are adapted to marketing conditions in the Northeast.

The pool distributing plant definition specifies that a pool distributing plant must have 25 percent or more of its total physical receipts of fluid milk distributed as route disposition and that at least 25 percent of route disposition be within the marketing area. The 25 percent level of total receipts distributed on routes is reasonably high enough to establish a distributing plant's association with the fluid milk market. The in-area route distribution performance standard level of 25 percent is adopted because it tends to minimize changing the regulatory status of handlers from their current regulatory status by the Federal order program that may result from the consolidation of existing orders. The 25 percent in-area sales standard is also a reasonable measure for identifying a level at which a distributing plant is sufficiently associated with the marketing area.

As already discussed, the consolidated Northeast order and other nearby consolidated marketing orders do not call for expansion to include certain currently unregulated areas. This includes areas in the states of New York, Pennsylvania, Virginia, and the entire state of Maine. Some distributing plants in these areas are not currently regulated, or are only partially regulated to the extent they have some Class I sales in regulated areas. A 25 percent in-area route distribution level will serve to ensure or minimize any changes in their current regulatory status under the Federal program that result from

consolidation of the three northeast marketing areas into a single new order.

Unit pooling, wherein two or more plants operated by the same handler located in the marketing area can qualify for pooling as a unit by meeting the total and in-area route distribution requirements of a pool distributing plant, is included in the consolidated Northeast order. Providing for unit pooling provides a degree of regulatory flexibility for handlers by recognizing specialization of plant operations.

Due primarily to positions offered by many of the major Northeast dairy cooperatives and their recommendations on appropriate pool supply plant performance requirements, the consolidated Northeast order supply plant performance requirements initially should be set to require that in the months of August and December, at least 10 percent of the total quantity of bulk milk that is received at a supply plant be shipped to distributing plants. For the months of September through November, such shipments by pool supply plants should be at least 20 percent. To the extent that a supply plant has met these performance requirements, no performance requirement is recommended for the months of January through July. However, a supply plant that has not met these performance requirements will need to meet a 10 percent performance requirement in each of the months of January through July in order to qualify as a pool supply plant.

This decision also provides for a system of supply plants for the consolidated Northeast order. This provision allows two or more supply plants operated by the same handler, or by one or more cooperative associations to be qualified for pool plant status by meeting the shipping standards in the same manner as a single supply plant subject to certain conditions. These conditions include written notification to the market administrator of the plants that will be included in the system, how pool status of plants will be affected if individual plants are removed from the system, and provisions for adding plants to the system.

Producer-Handler

The producer-handler definition for the consolidated Northeast order limits receipts to no more than 150,000 pounds of fluid milk products from handlers fully regulated under any Federal order. While the proposed rule addressed significant limitations on producer-handlers with respect to how it distributes their milk, this decision removes such limitations. The intent of providing an appropriate producer-handler definition was to cause no change in the regulatory status of any known producer-handler currently in operation in the Northeast order region. However, the three orders being consolidated have significant differences in the extent of control a producer-handler must retain over its distribution practices. The current Middle Atlantic region does not limit the distribution facilities that may be used by a producer-handler. Thus, any limitation with respect to distribution could either cause a current producer-handler to loose such status, or may cause the need for a producer-handler to modify its business practices. Therefore, the producer-handler definition adopted herein removes any restrictions on how it distributes its products.

Also removed from the producer-handler definition is the provision that a producer-handler would not include any producer who also operates a distributing plant if it is requested that their dairy farm and plant be operated as separate entities. Removing this component of the producer-handler definition tends to strengthen the principle that producer-handlers rely primarily on their own farm production to bear the burden of balancing their fluid sales and to find outlets for their surplus production.

Producer

The producer definition of the consolidated Northeast order defines and describes those dairy farmers who are properly associated with the Northeast marketing area and who will share in the benefits that accrue from the marketwide pooling of milk under the order.

The producer definition establishes seasonal limitations for determining if a dairy farmer is considered to be a producer under the order. Basically, the order prohibits a dairy farmer from being a producer under the order during the flush production period if the dairy farmer did not supply the market during the months of relatively short production when milk supplies are needed most to meet fluid demands. Accordingly, the producer definition does not include dairy farmers whose milk during any month of December through June is received at a pool plant or by a cooperative association handler if the operator of the pool plant or the cooperative association caused the milk from such producer's farm to be delivered to any plant as other than producer milk as defined in the producer milk provision of the Northeast order, or any other Federal milk order during the same month, in either of the two preceding months, or during any of the months of July through November.

Similarly, a dairy farmer would not be considered a producer under the order for any month of July through November if any milk of the dairy farmer is received at a pool plant or by a cooperative association handler if the pool plant operator or the cooperative association caused the dairy farmer's milk to be delivered to any plant as other than producer milk, as defined in this proposed order, or in any other Federal milk order during the same month.

Producer Milk

The producer milk definition of the consolidated Northeast order follows the general structure and format of other consolidated orders. It differs from other consolidated orders in that it requires cooperative handlers to organize reports of producer receipts that originate outside of the states included in the marketing area, or the states of Maine or West Virginia, into reporting units with each unit separately reporting receipts.

No diversion limits are established as they are in other consolidated orders. However, diversions are limited in functional terms. The maximum quantity of milk that a supply plant would be able to divert and still maintain pool plant status would be 100 percent minus the applicable shipping standard. This should provide for a maximum amount of flexibility in marketing milk in the most efficient manner to balance fluid milk needs.

Component Pricing

The consolidated Northeast order will employ a component pricing plan in the classified pricing of milk under the order as previously discussed in the BFP section of this decision. This is consistent with positions taken and proposals offered by major cooperative groups in the Northeast who supply a large percentage of the milk needs of the market. However, on the basis of public comments, the consolidated Northeast order will not contain a somatic-cell adjustor.

In response to the proposed rule, one major association representing primarily milk processors and dairy product manufacturers in New York expressed opposition to employing a multiple component pricing plan in the Northeast order. Their objection to its adoption is that it will be burdensome for handlers. This was expressed primarily as burdens associated with changing from farm-point pricing to plant-point pricing of milk and changes that handlers would need to make for producer pay-roll purposes and in the

accounting software that they contend would entail considerable cost outlays. Also expressed in opposition to its adoption was that multiple component pricing does not favor fluid milk handlers, that it is designed primarily for high-solids producers and manufacturers, that it may result in manufacturers having to pay premiums to attract high-solids milk, and that it rewards some producers while reducing pay prices to others.

These objections are unpersuasive. Multiple component pricing is a method for determining, among other things, how producer milk will be priced under the order on a basis beyond just skim milk and butterfat. Components of milk have values that are recognized by the marketplace and producers have expressed the desire for having their pay prices adjusted according to such values. Nevertheless, it does not affect the total per hundredweight value of milk. Additionally, multiple component pricing does not either favor or disfavor fluid milk handlers as the multiple component pricing plan adopted for the Northeast order will continue to price Class I milk on the basis of skim milk and butterfat.

It should be noted that there are many multiple component pricing plans operated by many handlers in the northeast region. The existence of such plans provides evidence that it is appropriate and reasonable to formalize a multiple component pricing plan for the consolidated Northeast marketing order, especially when there is strong support for it by producers. To the extent that there are so many similar plans, it should not be particularly burdensome for a one-time change by handlers in their accounting systems for determining producer payroll.

Farm-Point vs. Plant Point Pricing

At issue in merging the three northeast marketing areas is the use of two distinct pricing methods for milk. The Middle Atlantic and New England marketing areas employ a system of plant-point pricing. This pricing method is also employed in every other marketing area in the Federal order system. Only the New York-New Jersey marketing area uses what is called "farm-point" pricing. This decision adopts plant-point pricing as the pricing method for the consolidated Northeast order.

Plant-point pricing of milk that is pooled under an order prices milk f.o.b. the plant of first receipt. The cost of hauling from the farm to the plant is the responsibility of the producer. When the receiving handler is also the hauler, orders permit the handlers in making payments to each producer to deduct hauling costs up to the full amount authorized in writing by the producer.

As originally employed in the New York-New Jersey order (Order 2), farm-point pricing establishes the price for milk by the zone (distance from market computed from the nearer of the basing points) of the township in which a producer's milkhouse is located. While termed "farm-point," farms are grouped by their township location because this is the nearest practicable proxy for actual farm location. In functional terms, when a handler picks up milk at a producer's farm, the handler takes title of the milk at the time and point of pickup. Accordingly, there were no adjustments in payments to producers to cover any part of the cost of pickup or hauling in moving milk to the handler's plant. Farm-point pricing fundamentally shifts the cost of transporting milk from the producer to the handler. Farm-point pricing has been in effect in Order 2 since 1961. While the fundamental concept of farm-point pricing has been retained with respect to its overall structure of mileage zones, other order provisions were adopted subsequent to its establishment and modified over time so that farm-point pricing could remain viable while allowing handlers to charge some of the cost of hauling producers' milk to the plant of first receipt.

In the decision that established farm-point pricing (25 FR 8610, Sept. 7, 1960), prevailing marketing conditions served to warrant this type of pricing system. At that time, the emergence of bulk-tank milk began to take on a degree of prominence in the milk supply of Order 2. Prior to the adoption of farm-point pricing (1959), about 8 percent of the producers had bulk tanks, accounting for at least 14 percent of the volume of milk associated with the market. About 92 percent of producers delivered their milk at their own expense directly to plants in 40 quart cans. Most of the milk can-delivered was from farms within a radius of not more than 15 miles from the plant. The milk of producers who had converted to bulk tanks, in some instances, was hauled more than 200 miles from farm to city plants, but the majority of bulk tank milk was moved much shorter distances to country receiving plants. The decision cited that in October, 1959, milk was received from 49,719 producers at 691 plants.

When milk was delivered in cans to a handler's plant, the plant was the location at which milk was weighed, sampled for butterfat and quality, and where cans were washed. It was at the plant that milk was accepted or rejected. It was the place where milk was cooled and co-mingled with other individual producer's milk. More importantly, it was the place where control of the milk passed from producer to the plant operator or from which the milk was moved by the plant to other plants for fluid or manufacturing uses. Minimum prices required by the order to be paid by handlers were adjusted for the location of the plant at which milk was received from dairy farmers.

Bulk tank milk brought a set of new factors. When milk was transferred from a producer's bulk tank to the hauler, the point of transfer was also the point where several functions are performed. Milk in a producer's bulk tank has already been cooled, and therefore is not subject to the early delivery deadlines. The weight of milk was determined at the bulk tank, and samples were taken for butterfat and quality. It was also here that the individual producer's milk was rejected or accepted and lost its identity by being co-mingled with other milk.

Numerous problems arose in regulating the handling of bulk tank milk in an order where pooling depended upon direct delivery from the farm to a pool plant and under which minimum class prices and the uniform prices to be paid to producers was reflective of the location of the plant where delivery was made:

1. Administrative problems associated with bulk tank handling arose, particularly where and when milk was regarded to have been received. Bulk tank milk provided the opportunity to deliver milk to different plants, some pool and some nonpool. Where a given tank load of milk was unloaded if it went to two or more plants of the same or different handlers on the same day was difficult to determine.

2. The incentive arose (because of the administrative difficulty of determining when and where milk was received) for handlers to behave in a way that would result in the maximum exclusion of milk from the pool for fluid use outside the marketing area.

3. The incentive arose for the maximum inclusion in the pool of milk in fluid and manufacturing uses.

4. The incentive and opportunity arose for handlers to select one of several plants for receipt of bulk tank milk, with or without manipulation of hauling charges. This distorted and impinged upon the effectiveness of the minimum price provisions of the order, especially in the case of relatively long hauls of bulk tank milk.

The 1961 decision that established farm-point pricing provided eight scenarios that demonstrated how handlers behaved so as to minimize

their pricing obligations to producers. Most of the scenarios arose from the inability to determine when milk was received at a plant. In order to mitigate such circumstances, several things were done. Foremost was the establishment of farm-point pricing on the basis of bulk tank units and the designation of each bulk tank unit as either a pool or nonpool unit and defining the circumstances under which such designations could be changed.

The pricing of milk at the farm eliminated the incentive for handlers to attempt to make it appear that the plant of receipt was other than the plant where milk is actually received and handled. It was made crystal clear that delivery and receipt of bulk milk takes place at the farm. Once acquired by the handler, the plant or plants to which the milk may be delivered depended on decision of the handler, not the producer. Under these circumstances, where the milk was actually used was not a factor to be reflected in the minimum producer price. The operator of the bulk tank unit was defined as the handler and the point of receipt of milk. This entity was responsible for establishing the unit, and it held the responsibility for reporting, accounting, pooling and paying producers. Additionally, the decision concluded that the price at which the farm bulk tank is accounted for to the pool should be the minimum class price adjusted for location of the farm, and that payments by handlers directly to producers be adjusted to reflect all location differentials based on where farms are located and where bulk tank milk was received.

A proposal that would have allowed a tank truck service charge authorized by the producer but not in excess of 20 cents per hundredweight (cwt.), and establish that payments to cooperatives which serve as handlers operating a bulk tank unit should be at the price reflecting transportation and (the then existing) direct delivery differential applicable at the handler's plant where milk is delivered by the cooperative was not incorporated into the order. At that time, it was found that plant hauling charges averaged nearly 20 cents per cwt. This was offered as rationale for a negotiable 20 cent per cwt. charge by handlers for hauling. Arguments not withstanding, the underlying concepts embodied in farm-point pricing caused the Department to not allow for any hauling deduction by handlers.

Shortly after the implementation of farm-point pricing, the need to amend the order to keep farm-point pricing viable arose. The first occurrence was in 1963. In the 1963 decision (28 FR 11956, Oct. 31, 1963), it was noted that there had been significant changes in marketing conditions that arose from establishing farm-point pricing in 1961. These included the reduction in premiums to bulk tank producers in general; the reluctance of proprietary handlers to receive bulk tank milk from individual producers because of the hauling costs they would incur; the differences in pricing can and bulk tank milk; and a slowdown in the trend of conversion from can milk to bulk tank milk. The 1963 decision, in acknowledgment of changing marketing conditions, incorporated an authorized 10-cent per cwt. charge for hauling under the Order, provided that producers authorized this maximum level in writing.

In the 1963 decision, the Secretary found that allowing for a limited authorized service charge for hauling bulk tank milk at a maximum rate of 10 cents per cwt. was sufficient. This was largely based on the fact that handlers were not then charging for bulk tank pickup and hauling, but rather were paying premiums for bulk tank milk. Additionally, can-milk direct delivered by producers to plants was still very much the norm. While bulk tank milk was growing, it had not yet accounted for a majority of milk pooled on the order.

This decision raised, for the first time with respect to farm-point pricing, the maintenance of orderly conditions and uniform pricing to handlers on all milk priced and pooled under the order. Because bulk tank milk is priced by township zone, (the best proxy for a farm's location) all farms in any particular township have the same value assigned to their milk. However, the decision found it necessary to reflect appropriate uniform pricing of bulk tank milk because it has differing values dependent on the accessibility and relative location of individual farms within the township. With this finding, it was determined that responsibility for hauling to the township pricing point should be borne by the producer with appropriate safeguards to protect the producer. Therefore, a maximum negotiable hauling charge from handlers of 10 cents per cwt. was brought under the order.

By 1970, marketing conditions in the New York-New Jersey market had changed to the point where handlers were authorized to receive a full 10-cent hauling credit for each cwt. of bulk tank milk which was disposed of for manufacturing uses. Additionally, the negotiable 10-cent hauling charge to producers for a handler's cost offset established by the 1963 decision was retained. However, the 10-cent negotiable limit was limited to manufacturing milk. Can-milk at this time represented about 25 percent of the total amount of milk pooled in Order 2, with the balance being bulk tank milk.

Proponents supporting this change to the order claimed, and the decision affirmed, that the manufacturing price for milk in Order 2 was not properly aligned with manufacturing class prices in adjacent Federal orders. In this decision (35 FR 15927, Oct. 9, 1970) the Secretary found that to the extent that Order 2 handlers had borne the transportation costs associated with the pickup and movement of bulk tank milk used in manufacturing from the farm to the plant, Order 2 handler costs exceeded the price which handlers in adjacent order markets were required to pay for milk used in manufacturing. By adopting this transportation credit for handlers, there was no need to adopt other proposals that would have lowered the manufacturing price for milk under the other northeastern orders or lower the Class I price for milk in Order 2 as had been proposed.

By 1977, some 16 years after the adoption of farm-point pricing, marketing conditions had changed again and the issue of providing for more equitable competition among handlers both within the Order 2 market and between other orders took on primary importance. By this time, can-milk was about 3 percent of the market, with the balance represented by bulk tank milk; the near inverse of the marketing conditions prevailing in 1961. The transportation credit that had been established for handlers in the 1970 decision for manufacturing milk was now extended to *all milk* received by handlers. The transportation credit was increased to 15 cents per cwt., plus an additional 15-cent maximum negotiable credit above the "automatic" 15 cents because total average transportation costs were found to be about 30 cents per cwt. For reasons nearly identical to the 1963 and 1970 decisions, "formalizing" the negotiable hauling charge was not adopted because of needed flexibility in accounting for milk movements from the farm to the township pricing point (42 FR 41582, Aug. 17, 1977). In that decision the Secretary also raised the direct delivery differential from 5 cents to 15 cents per cwt. in the 1–70 mile zone for can-milk delivered by farmers to plants within this zone, and changed the transportation adjustment rate from 1.2 cents per cwt. for each 10 miles to 1.5 cents per cwt. for each 10-mile zone beyond the 201–210 zone, and 1.8 cents

per cwt. for each 10-mile zone within the 201–210 mile zone.

Cooperatives were of the strong opinion that the cost of milk assembly and transportation are the marketing costs of the handler and not producers. However, they also indicated that changes were warranted in the order because of the failure of neighboring markets to adopt farm-point pricing.

Comparative examples of handler price inequities with respect to their cost of milk was amply demonstrated for both intra and inter market situations. With respect to inappropriate price alignment between orders, the competitive relationships between Order 2 and Order 4 were closely examined. On intra-order movements of milk, it was shown that Class I handlers in New York City had a significantly lower procurement cost for direct-ship over bulk tank milk because bulk tank milk from "distant" supply plants had higher transfer and over-the-road hauling costs. Supply plant milk at the city represented about 80 percent of milk receipts at city plants. The inter-market situation demonstrated that handlers in Philadelphia accounted for milk at prices lower than New York handlers. Order 4 handlers were in a position to establish lower resale prices for fluid milk than their competitors in the New York market because the burden of increased hauling costs fell largely on Order 2 handlers. As in 1970, other proposals were denied in light of adopting the 15-cent hauling credit for handlers. These other proposals included lowering Class I and the manufacturing price for milk in the order by 15 cents per cwt.

By 1981, bulk tank milk accounted for nearly the entire milk supply pooled on Order 2—about 99.6 percent. As the result of a hearing held in June 1980, in the final decision (FR 46 33008, June 25, 1981) the Secretary again amended the transportation credit provisions of the order. The 15 cents per cwt credit for handlers was retained; however, the 15-cent negotiable transportation service charge was modified to allow handlers to negotiate with producers for any farm-to-first plant hauling cost in excess of the 15-cent transportation credit, plus "the amount that the class use value of the milk at the location of the plant of first receipt was in excess of its class use value at the location where milk was received in the bulk tank unit from which the milk was transferred." According to the 1981 decision, this amendment would adjust hauling allowances for handlers to more closely relate the location value of milk to the costs incurred in transporting milk from farms and country plants to distributing plants in the major consumption areas of the market. Additionally, the decision indicated that this change was necessary to reflect current marketing conditions and permit a more equitable competitive situation for regulated handlers, both on an intra market and inter market basis. The decision also applied a 15-cent direct delivery differential for bulk tank milk received at plants within 70 miles of New York City on the basis that a direct delivery differential is applicable to milk received in cans at a plant in the 1–70 mile zone.

In the 1981 decision, the Secretary found that the majority of milk moved to distributing plants in 1979 from the 1–70 mile zone moved directly from farms. This accounted for about 58 percent of the milk in this zone with 48 percent being reloaded. Moreover, the decision found that Order 2 plants located in northern New Jersey received direct shipped milk as did handlers located in Order 4. Thus, inter market price alignment needed to be structured primarily on the basis of handlers obtaining direct shipped milk.

A federation of cooperative associations representing Order 4 producers proposed that Order 2 be amended to return to plant-point pricing, with the direct delivery differential being reduced to 10 cents per cwt, and that the Class I differential at the base zone of Order 2 be increased from the $2.25 level then in effect, to $2.40. This federation of cooperatives believed that this "package" of order modifications would provide for proper price alignment between Order 2 and Order 4. While the decision did apply different transportation rates at a rate of 1.8 cents per cwt. outside the base zone of the Order (201–210) and a rate of 2.2 cents per cwt. inside the base zone, it did not provide for a return to plant-point pricing.

While the decision did not adopt plant point pricing, the decision did acknowledge that *the amendments adopted tended to establish plant pricing with respect to the classified prices to handlers.* However, farm-point pricing was retained with respect to how producers were paid. With this being the case, the basic substantive difference between the amendments and plant pricing is the impact on the movement of milk to higher-priced zones for manufacturing use. Under plant pricing, the minimum uniform price payable to producers applies at the location of the plant of first receipt and handlers receive a credit from the producer settlement fund at such uniform price. The decision also concluded that plant-point pricing for producers would provide a greater incentive to haul direct-shipped milk to city plants for manufacturing uses, since there would be a credit from the pool for the full amount by which the uniform price transportation differential at the city plant exceeds the transportation differential for the zone of the bulk tank unit. Adopting plant-point pricing for producers would have had the effect of encouraging milk to move long distances to city plants for manufacturing uses when transportation savings could be realized if such milk stayed nearer to manufacturing plants generally located in the milkshed.

Farm-point pricing has undergone many evolutionary changes from its inception in 1961. The original rationale for farm-point pricing, free hauling and the administrative difficulty of determining when milk from bulk tank units was received seems far removed from present-day marketing conditions and the rationale for continuing it. There were a number of years that hearings were necessary to first recognize that the burden of transportation costs rested with handlers. This resulted in handlers being able to successfully argue that with this burden, it became much more difficult for the order to establish and maintain uniform prices to handlers as required by section 608(5)(c) of the AMAA. This is evidenced by the nature of the decisions of 1963, 1970, 1977, and 1981. Much "repair" to other order provisions were also needed to retain farm-point pricing.

Few comments were received in response to the recommended adoption of plant-point pricing by current Order 2 entities. One New Jersey entity thought that its elimination would eventually lead to increased hauling costs borne by producers. Another comment received from a trade organization representing fluid milk processors and dairy product manufacturers, thought that too much emphasis was placed on the "free-hauling" to the detriment of other desirable features embodied in farm-point pricing. Most important was this entity's view that farm-point pricing provides for increased flexibility and in providing for automatic incentives for the most efficient hauls of milk for/by handlers in assembling and moving milk while not affecting the price paid to dairy farmers.

The arguments for retaining farm-point pricing are not persuasive in light of the detailed discussion on the entire life-cycle of its history discussed above. This is not to discount the importance of the certain desirable features of farm-point pricing that led to its adoption and that have been articulated over the

years for its retention in the New York-New Jersey marketing area. Nevertheless, farm-point pricing has outlived its intended purpose and the Secretary determines that it will not be retained in a consolidated Northeast order.

The Need for a Producer-Price Mechanism

As discussed above, farm-point pricing for producers did provide some rational pricing incentives to promote efficiency within the Order 2 marketing area. This can reasonably be summed up by concluding that farm-point pricing would not provide, as plant-point pricing would, incentives to haul direct-shipped milk to city plants for manufacturing uses, since there would not be a credit from the pool for the full amount by which a uniform price transportation differential at the city plant exceeds the transportation differential for the zone of the bulk tank unit. Adopting plant pricing would have had the effect of encouraging milk to move long distances to city plants for manufacturing uses when transportation savings could be realized if such milk stayed nearer to manufacturing plants generally located in the milkshed.

In an effort to address the dairy industry structures that have evolved over the past four decades in the three current northeast marketing areas, efforts were undertaken by a major group of dairy farmer cooperatives in the northeast to address what the pricing implications are to producers and handlers as the region moves to a unified plant-point pricing method. This has resulted in a proposal by the Association of Dairy Cooperatives in the Northeast (ADCNE) that include St. Albans Cooperative Creamery, Inc., Land O'Lakes, Upstate Farms Cooperative, Inc., Agri-Mark, Inc., Dairy Farmers of America, Inc., Dairylea Cooperative Inc., and Maryland & Virginia Milk Producers Cooperative Association Inc. These dairy farmer cooperatives account for well over half of the milk that would be pooled and priced under the proposed consolidated Northeast order. Their proposal calls for establishing a producer differential structure that would "overlay" the Class I differential structure that would apply in the consolidated Northeast order.

The structure proposed is a county-based plant-point price structure, providing for 14 zones that accommodate the need to reflect existing and longstanding competitive price relationships among plants, while integrating the farm and plant point pricing systems currently used in Orders 1, 2, and 4 and with currently state-regulated areas that fall outside of the proposed marketing area. Further, the ADCNE proposed prices at the major cities in the Northeast, including Boston, New York City, Philadelphia, Baltimore, and Washington, D.C., included specific Class I differential levels that are somewhat different from those presented in the Option 1A Class I price surface. For example, the recommended decision recommended a New York City Class I differential of $3.15, while ADCNE proposed $3.20. In general, the ADCNE proposal assumed that the Class I differential structure that would be adopted was Option 1A, which is the Class I pricing option they strongly support, and also is the Class I pricing option overwhelmingly supported in public comments received from interested parties from the northeast.

With respect to a producer differential surface, the ADCNE proposed that a debit of 5 cents per cwt. be made to the blend price applicable at non-distributing plants in certain zones. The need for the debit, according to the ADCNE proposal, is to make deliveries to distributing plants somewhat more attractive to producers, while decreasing the amount by which manufacturing plants draw on the marketwide pool for transportation values, offering also that such a debit is economically justified and authorized by the AMAA. According to ADCNE, it is distributing plants that provide the revenue—in the form of Class I values—which form the blend price paid to producers. Deliveries to manufacturing plants do not contribute to increasing the value to the marketwide pool. The debit, according to ADCNE, is a reflection in part of the Order 2 system, which has priced some 50 percent of the milk in the northeast region, and which does not provide location-based transportation payments for movements from farms to manufacturing plants. The ADCNE proposal provides that deliveries to Class I plants are rewarded under this system with an additional 5-cent payment from the pool for the marketwide benefit conferred by a distributing plant's utilization.

For the Western New York State order area, ADCNE also proposed a broad area in which a producer differential of $2.40 per cwt. to producers would be payable on deliveries of producer milk at all plant locations in this area. This portion of the price surface proposed by ADCNE purports to be reflective of the major historical movements of milk from east to west in the region which returned the eastern farm point price to dairy farmers under Order 2's farm-point price system, and that the Western New York State order has not had any location differentials, thereby establishing a "flat" price surface in the area. If those plants, for producer pricing purposes, were zoned lower in value reflecting the westerly and northerly distance from New York City or Philadelphia, ADCNE is of the view that the ability of both distributing and supply plants to attract an adequate supply of milk could be in jeopardy. Furthermore, the expectation that Class I utilization of the proposed Mideast order will be nearly 10 percent higher than the Class I utilization in the Northeast order was also offered in support of the ADCNE-proposed producer differential level in this area.

The ADCNE proposal also recommended producer differential levels in areas that they believed should be included in either the consolidated Northeast order or the Mideast order. Additionally, the ADCNE proposal also addressed producer differential levels at other locations outside of the Northeast region.

Additional supporting and amplifying comments were also provided by Dairylea. These comments supported the major themes offered in the ADCNE proposal for a producer differential overlay to Class I differential levels. Dairylea stated that moving directly to a plant-point pricing method would accentuate "existing inequities and market dysfunctions." Dairylea further commented that a plant-point differential schedule would maintain current inter-plant price differences in the current New England and Middle Atlantic orders, but would worsen them for New York manufacturing plants, many of which are cooperatively owned. Their view of the ADCNE pricing proposal was that it maintains economic incentives for milk to move to Class I distributing plants, would provide for more balanced procurement equity among competing manufacturing plants, maintains equitable producer pricing when milk is marketed by transporting it from a higher priced zone to a lower priced zone, and provides a structure that allows for adequate blend price levels in all areas of the Northeast milkshed.

Dairylea further commented that under plant-point pricing, existing "near-in" manufacturing plants (plants located in a relatively high differential location) would enjoy a procurement advantage relative to their competitors that are located in a lower-priced location. Dairylea recommended narrowing the price differences between manufacturing plants that compete for producer milk. To do this, Dairylea supported lowering producer differentials for manufacturing plants

that are located in high-valued locations and increasing those differentials at manufacturing plants in areas that have lower location values. Dairylea advocated the ADCNE proposal for a producer differential that is 5 cents lower than those of Class I plants when such plants are located in the same pricing zones. Dairylea's view of this design results in maintaining, or slightly increasing, producer differentials applicable at Class I plants and reducing those applicable at "near-in" manufacturing plants. At the same time, this would provide for increasing producer differentials at manufacturing plants in central, western, and northern New York. According to Dairylea, this producer pricing surface would present a more equitable marketing environment than strict plant-point pricing currently employed in Orders 1 and 4, while at the same time not threatening the viability of manufacturing plants in those areas of a consolidated Northeast marketing area.

A major theme of Dairylea was its view that Federal milk orders and their provisions should foster an environment under which manufacturing plants are provided equal cost and procurement ability, and not disfavor such manufacturing plants located in high milk production areas where Class I differentials are lower. Dairylea also stated that the final rule of 1991 that realigned intra-order prices in Order 2 resulted in harm to producers in northern and western New York. While it is not appropriate to specifically revisit this issue and decision here, official notice is taken of the final decision (55 FR 50934, December 11, 1990) that realigned Class I differentials in the three existing northeast marketing areas.

Comments supporting the ADCNE proposal for a producer pricing surface were also offered by Upstate Farms Cooperative, Inc. The Upstate Farms views served to reiterate the major themes developed in the ADCNE proposal.

Agri-Mark, a part of ADCNE, filed separate and dissenting views on the ADCNE proposal. Conceptually, Agri-Mark noted that plant and farm-point pricing are different, but noted further that the differences are not always unfavorable. Agri-Mark submitted that under plant-point pricing, all producers shipping to the same plant receive the same minimum order blend price regardless of where their farm is located. Under farm-point pricing, farmers shipping to the same plant receive different prices under the order depending on where their farm is located. Farms closer to New York City, Agri-Mark noted, receive a higher price than farms farther from the city, even though their milk ends up in the same place.

Agri-Mark noted that most manufacturing plants, especially cheese plants, were built in the northeast prior to the adoption of farm-point pricing and not in response to it. Rather, says Agri-Mark, these plants were built at their present locations because of their proximity to abundant milk supplies. The procurement problems for manufacturing plants that Order 2 entities alert us to did not arise in New England manufacturing plants under plant-point pricing even though these plants were located as far north as possible within the milkshed for New England.

Simply put, Agri-Mark believes that rather than decreasing the differential between manufacturing plants and city distributing plants, an increase is justified. They are also of the opinion that manufacturing plants located far from higher-priced zones will maintain an advantage even with the adoption of strict plant-point pricing because this milk does not need to travel long distances to reach manufacturing plants. Agri-Mark indicates that the ADCNE proposal would cause Agri-Mark producers to receive lower prices that competitive price relationships do not warrant.

The Agri-Mark view of Federal milk marketing orders differed substantially from the views expressed by Dairylea. Agri-Mark stated that the role of Federal milk marketing orders is to treat all producers equitably relative to how their milk is used and not to weaken price integrity by causing destructive competition among producers for sale to Class I outlets. This is best accomplished, according to Agri-Mark, with appropriate pooling requirements and Class I differentials to satisfy the Class I demands of the market. Agri-Mark fears that if the regulatory pricing plan gives a distributing plant an advantage over a cooperative manufacturing/balancing plant in the same zone, that plant can use this advantage for itself instead of passing it along to farmers to offset transporting their milk to market.

Lastly, in their opposition to the ADCNE proposal, Agri-Mark noted that no manufacturing plant has been built in any city zone for decades, noting that the only significant plants in such areas for the northeast are older plants producing nonfat dry milk and butter and which serve to balance the Class I needs of city markets, concluding that such plants are there for common sense and efficiency reasons. In support of this observation, Agri-Mark noted that existing Class I differentials have not been adjusted to more fully account for increases in hauling costs.

A producer pricing differential structure that differs from a Class I differential is denied. The issue before the Department is to minimize the impact of the change from farm-point to plant-point pricing on producers as part of adopting plant-point pricing for the new consolidated order. The change to plant-point pricing will affect approximately one-half of the producers in the consolidated marketing area and is a significant departure from historical methods of distributing the revenue that accrues from classified pricing to producers whose milk is pooled under the current New York-New Jersey order. Plants, however, will not experience significant change since plants currently regulated under Order 2 already account to the marketwide pool at the Class I location differential value. The issue then, tends to focus on how to pool and distribute the revenue as equitably as possible to producers. Of the few public comments that were received on this issue in response to the January 30, 1998, proposed rule, it was requested that this issue be reconsidered. However, no new or persuasive arguments were advanced that would cause a change in denying this proposal.

Competitive equity between manufacturing plants is already ensured by the classified prices applicable to handlers who operate such plants. In fact, this decision adopts uniform Class III and Class IV prices that are applicable for all locations. The more appropriate issue this proposal seems to address is that manufacturing plants are often cooperatively owned. All entities, including cooperatives in their capacity as handlers, account to the marketwide pool at the manufacturing price for milk received at their plants. The price paid to producers is the blend price for all milk pooled on the market that was priced according to its use. Cooperatively owned manufacturing plants located in higher priced areas will pay a higher blend price to producers who deliver milk to that location provided they meet the performance requirements for being pooled, thereby demonstrating the appropriate degree of association with the market. In this regard, it is worthy to note that not all manufacturing plants in the high-valued zones in the New York marketing area are pool plants. Blend prices are adjusted everywhere according to the location value of the plant. Adjusting producer blend prices on the basis of whether or not milk was delivered to a distributing plant or to a

manufacturing plant seems to create a form of producer price discrimination that classified pricing and the mechanism of marketwide pooling and its related provisions attempt to mitigate. Such marketwide pooling provisions provide a degree of equity to producers in the form of a uniform blend price adjusted only for the location value on all milk pooled on the market. Classified pricing and marketwide pooling have served well to mitigate the price competition between producers seeking preferred higher-valued outlets for their milk, while at the same time ensuring handlers uniform prices, adjusted only for location, in the prices they pay for milk.

Marketwide Service Payments

Cooperative Service Payments—Cooperative service payments, as part of a marketwide service payment provision for the consolidated Northeast order, should not be included in a consolidated Northeast order. As originally proposed by ADCNE, a 2-cent per cwt. payment would be made out of the marketwide pool to cooperatives and non-cooperative entities for funding information-gathering and services related to amending Federal milk marketing order provisions that would be of marketwide benefit. Cooperative service payments of this sort currently are provided for under terms of the New York-New Jersey order, but are not provided for in either the New England or Middle Atlantic orders. However, under the New York-New Jersey order, cooperative service payments are made only to qualified cooperatives that meet the conditions specified under the order and does not provide for such payments to non-cooperative entities. In comments provided in response to the proposed rule published on January 30, 1998, the ADCNE withdrew this component of their marketwide service payment proposal.

Rationale offered in support of a cooperative service type payment to cooperatives and non-cooperative entities was based on recognizing that in a regulatory pool structure, private parties provide important services that are of benefit to everyone involved in the marketwide pool, including the promulgation, amendments to, and administration of the order. Not to provide a mechanism for the recovery of a portion of the expense involved in providing such services would disadvantage those incurring these expenses while everyone in the market benefits as a result of these services.

Qualification criteria presented for entities eligible to receive this payment included a demonstration to the market administrator that it provides information with respect to market order prices and marketing conditions, that it has retained legal and economic staff or consulting personnel available to participate in marketing order amendatory proceedings, to consult with the market administrator with respect to marketing order issues, and that the entity pool at least 2.5 percent of the order's total milk volume.

There is not a compelling reason to adopt this sort of compensatory plan to reimburse those entities that incur these costs. Market administrators and their staffs make themselves available to meet with, discuss, and aid in formulating positions that reflect marketing conditions as a normal part of their duties. Additionally, there are numerous provisions in the order that require as a matter of course the issuance of reports, prices, and other information that affect all marketing order participants and that provide a service to the entities affected by the regulatory plan of the order. Finally, no other current or consolidated order provides for such cost compensation. Cooperative and proprietary handlers in the New England and Middle Atlantic marketing areas included in the consolidated Northeast order, as well as entities in all other marketing areas have not experienced or have demonstrated any of the harm or "disadvantage" that arises, or may arise, if such costs are not shared by the entire pool of producers in the marketing area. This decision can only assume that industry participants that have an interest in developing the promulgation and amendments to marketing orders would be willing to do so at their own expense. The positions and arguments offered are largely issues of the self-interest of entities. As such, self-interest may or may not be of marketwide benefit.

Balancing Payments—A marketwide service payment plan which would compensate qualified handlers that perform market balancing should not be included in the consolidated Northeast order at this time.

The original proposal for providing balancing payments from the marketwide pool was intended to reflect the additional costs that handlers incur in balancing the Class I needs of the market and clearing the market of temporary milk surpluses. According to the proponents, these balancing costs are not fully recoverable from Class I handlers; however, the benefit that results from this service being provided is a benefit of all producers in the market.

Handlers that incur the costs would be those handlers that would receive partial cost reimbursement of 4 cents per cwt. Cooperatives would be eligible to form common marketing agencies or federations for purposes of qualifying for balancing payments. Such handlers would include those who: (1) Demonstrate ownership or operation of a balancing plant with the capacity to process a million pounds of milk per day into storable products such as cheese, butter, and nonfat dry milk and who also represent at least 2.5 percent of the total volume of milk pooled under the order; (2) have under contract, and the obligation to pool on a year-round basis, at least 8 percent of the market's milk volume; (3) own a balancing plant that must be made available to other handlers or cooperatives at the request of the market administrator; (4) qualify to provide pool producers with a temporary market for their milk for up to 30 days at the request of the market administrator; and (5) demonstrate to the market administrator that their utilization of milk in Class I uses is greater than the minimum shipments required for pool plant qualification under the order.

ADCNE modified the above described original proposal for balancing payments. The modified proposal calls for a balancing payment of 6 cents per cwt. and revised criteria for those entities eligible to receive balancing payments from the marketwide pool. As with their original proposal, they are of the opinion that a system of reimbursement is necessary to offset costs associated with absorbing, or balancing, the daily, weekly, and seasonal fluctuation in Class I demand in the market. Balancing payments would be made on qualifying pounds of pooled milk delivered to manufacturing milk plants. Additionally, this milk would be subject to a "call" by the market administrator during times when there is additional need for milk by distributing plants in the market.

The modified proposal would provide balancing payments to any handler in any month in which the handler's deliveries of milk to distributing plants are greater than 20 percent but less than 65 percent of its total pooled milk volume. According to ADCNE, the lower percentage requires handlers to maintain a constant, significant association with the Class I market and is higher than the level required by other handlers for pooling qualification. Additionally, the 65 percent, says ADCNE, serves to limit participation to handlers with substantial quantities of reserve milk not dedicated to the Class I market. Qualifying deliveries would be determined on a "net shipment" basis to prevent the reshipment of milk

deliveries that would otherwise qualify for balancing payments. Payment would be made on the reserve volumes of milk. In the event that the market administrator issues a "call" for additional milk deliveries to distributing plants, the volume of milk delivered to non-distributing plants in the prior month by handlers subject to the call would be used as a basis for requiring handlers to make additional shipments to distributing plants on a pro-rata basis. For example, if participating handlers in the prior month had delivered 100 million pounds of milk to non-distributing plants and the market needed 10 million pounds of milk delivered to distributing plants, each handler subject to the call would be obligated to deliver an additional volume of milk to distributing plants equal to 10 percent of its deliveries to non-distributing plants in the prior month. ADCNE viewed their balancing payment provision as establishing a "standby pool" of milk among qualifying handlers who elect to participate. Participation in the pool would entitle the qualified handler to a payment of 6 cents per hundredweight, determined monthly, on the handler's deliveries to manufacturing plants, but would also obligate the handler to deliver additional quantities in the event of a "call" for up to one year after a balancing payment has been received.

According to ADCNE, the costs involved with matching the demands of the Class I market with the total production of milk are costs which marketing handlers, proprietary and cooperative alike, must absorb. These costs are neither fully reflected in Class I prices, nor in over-order handling charges and are not uniformly shared throughout the market, while the Class I value is shared equally within the marketwide pool, says ADCNE. The unique structural characteristics of the northeast's markets and the preponderance of producers delivering directly to proprietary Class I handlers on a regular basis, says ADCNE, prevents supplying handlers from recovering these costs from Class I handlers.

According to the ADCNE, the proposed Northeast marketing area will comprise the largest Class I market in the Federal order system and also represent the largest pool in the country in terms of producer milk. According to ADCNE, monthly Class I sales will be approximately 900 million pounds and will be more than 65 percent greater than the next largest consolidated order's Class I pool. ADCNE says this huge Class I market presents significant challenges to its suppliers with respect to balancing daily, weekly and seasonal needs and sets the Northeast order apart from other orders.

The ADCNE offers additional justification for balancing payments, in part, by drawing on the example of other orders providing for marketwide service payments for offsetting the additional costs of moving milk from assembly areas and for plant-to-plant movements of milk. ADCNE notes that such payments from the marketwide pool are provided for in recognition of the marketwide benefit that accrues to all market participants when the costs of milk assembly and the movement of milk are shared by all producers.

Other public comments similarly articulated the uniqueness of the current New York market and its role as part of the consolidated Northeast marketing area. One commenter observed that the Northeast marketing area, and New York in particular, is unique in terms of the mix of producers who are represented by cooperative membership and those that are not. According to this commenter, about 65 percent of the producers in New York are represented by cooperatives, while the remaining 35 percent are independent producers to the market. Further, noted this commenter, it has been cooperatives that have, since the 1960's, taken over the role of balancing the Class I needs of the market by moving milk around on a daily basis between distributing and manufacturing plants. According to this commenter, such was and should continue to be an important factor to consider for the larger consolidated market that expects to need about two thirds of its milk supply balanced between an expected 45 percent Class I and about 20 percent Class II utilization. This commenter was of the opinion that markets characterized by very high cooperative membership already spread the costs of balancing uniformly over a large pool of producers.

All other public comments supported inclusion of balancing payments in the consolidated Northeast order. These comments similarly called attention to the unique structure of the Northeast marketing area, primarily in terms of the number of producers represented by cooperatives and the relatively high number of independent milk producers and the unequal costs that would be incurred by producers who incur the additional costs of balancing the fluid needs of the market. While there was specific recognition of the important role that cooperatives play in balancing the market, it was generally thought that if balancing payments would be provided for in the consolidated order, they should be made available to cooperative and proprietary handlers alike.

The consolidated Northeast marketing area is expected to retain a unique feature of the existing New York-New Jersey marketing area—a relatively high percentage of producers who are not members of cooperatives. As of December 1997, the current New York-New Jersey market had about 68 percent of its milk and about 69 percent of its producers represented by cooperatives. In the consolidated Northeast marketing area, the expected amount of milk represented by cooperatives will increase to about 76 percent with about 75 percent of the number of producer represented by cooperatives. While the percent of milk volume and number of producers represented by cooperatives is growing, the volume of milk and number of independent producers remains significant. This is especially important given the role of cooperatives who operate manufacturing plants and who provide and incur the costs associated with balancing the Class I needs of the market. Without providing for some cost offset for balancing, about 26 percent of the milk and about 25 percent of the producers would not be sharing in the burden of balancing the market.

The revised criteria presented by the ADCNE seem reasonable in determining which handlers would be eligible to receive balancing payments from the marketwide pool. The qualification standards for receiving balancing payments (to any handler that ships at least 20 percent, but less than 65 percent of the total volume of milk pooled on the market to distributing plants) also seems reasonable in light of the order's pooling standards. Further, determining qualifying shipments on a "net shipment" basis is similarly a prudent safeguard to reasonably assure that milk is delivered into, and not shipped back out of distributing plants and supply plants for the sole purpose of qualifying for balancing payments. It also provides for ensuring a temporary market (up to 31 days) to any producers who would have lost their normal market outlet as a condition for eligibility in receiving balancing payments.

However, the revised proposal would have payments made only on milk used in manufacturing products. In practice this would mean that handlers with the greatest volume of milk going to manufacturing plants would receive a larger share of balancing payments while at the same time would be required to provide the least additional Class I milk to the market. Observed

another way, the less commitment a handler has to the Class I market, the larger the balancing payments. Additionally, basing balancing payments criteria on only manufacturing milk seems to provide a disincentive to handlers in serving the Class I market needs because handlers that would provide additional Class I milk would lose 6 cents per cwt. Lastly, basing balancing payments on just manufacturing milk seems to provide an unwarranted monetary incentive to cause additional milk to associate with the marketwide pool for the sole purpose of receiving an additional 6 cents per cwt.

In addition to the above concern on limiting balancing payments to manufacturing milk, the reasons for not recommending balancing payments for the consolidated Northeast order articulated in the proposed rule were not all sufficiently addressed. The proposed Northeast order consolidates two current orders, New England and the Middle Atlantic, that do not currently provide for balancing cost offsets to handlers for such purposes. These markets have not experienced any undue harm or disadvantage by not providing for this sort of cost offset. To the extent that further analysis on the need for balancing payments can rest upon the high percentage of independent milk that is expected to be represented in the consolidated Northeast order, such analysis does provide a legitimate and important factor in further considering the appropriateness of a balancing payment provision.

The proposed rule also indicated that balancing payments should not be adopted because an appropriate class price has been provided for market clearing purposes—the Class IIIA price. It is a price that is applicable in all current northeast orders, and is continued in this decision as the Class IV price. While these two class prices are not the same, (as explained in the BFP section of this decision) they are conceptually similar in that handlers have been provided with a market clearing price and further compensation beyond this does not appear to be warranted.

Lastly, the proposed rule indicated that the original 4-cent per cwt. balancing payment level was unexplained with respect to how adequately it tends to offset balancing costs. The same is also observed for the modified payment level of 6 cents per cwt. Subsequent to the publication of the proposed rule, public comments received in letters and from public forums and "listening sessions" did result in being able to extrapolate a single cooperative entity's cost for balancing, however, this measure may or may not be appropriate for characterizing or determining the proposed payment level.

The "Pass-Through" Provision

Currently, the New York order provides for what is commonly referred to as the "pass-through" provision. The intent of this provision is to provide for a degree of competitive equity for handlers that must pay at least the order's Class I price for milk so that they can compete with handlers in unregulated areas that do not. This provision has been in place in the New York order since 1957 and is a part of how the order allocates and classifies milk. In functional terms, the pass-through provision removes the amount of milk distributed outside of the marketing area from the full Class I allocation provisions of the order, thereby providing a degree of price relief to handlers who compete with other handlers who are not held to the pricing provisions of the order in unregulated areas. Regulated New York handlers currently compete with unregulated handlers in the unregulated areas of Pennsylvania and other areas in the northeast region.

The current provisions of the New England and Middle Atlantic orders do not have this provision although they too adjoin similar non-Federally regulated areas. Handlers regulated by these two orders also compete with these same unregulated handlers for Class I sales. The merging and expansion of these three northeast orders continue to result in areas that adjoin the recommended Northeast order that would not be regulated.

While there were proposals both for and against retaining a pass-through provision in the consolidated order, the need for it was expressed on the basis of the extent to which the Northeast consolidated order would be expanded to include currently unregulated areas. Generally, handlers support continuing to provide for a pass-through provision, and this position can only be considered reinforced given the limited degree of expansion of the consolidated Northeast order. If the entire Northeast region would fall under Federal milk order regulation, the need for the pass-through would be moot. These observations remain valid in light of the public comments received in response to the proposed rule published on January 30, 1998.

The pass-through provision, notwithstanding the limited extent of marketing area expansion, or in light of few public comments supporting its continuation, is not included in the consolidated Northeast order for the same compelling reasons articulated in the proposed rule published on January 30, 1998. Class I prices charged to handlers that compete within the marketing area for fluid sales are determined by the location value of milk delivered to their plants. The Class I differential structure adopted in this decision recognizes the location value of milk for Class I uses and is designed to cause milk to be delivered to bottling plants to satisfy fluid demands. Accordingly, handlers located in high-valued pricing areas will be charged for the location value of Class I milk at their plant locations regardless of whether or not they compete with other handlers for fluid sales in areas where the location value of Class I milk at these plant locations are lower. This location value pricing principle is extended to handlers competing for sales with handlers who do not pay the same price for Class I milk in unregulated areas.

Seasonal Adjustments to the Class III and Class IV Prices

The three northeast orders to be consolidated into a single Northeast order currently provide for a seasonal adjustor on Class III and Class IIIA milk prices. These provisions have been a part of these three orders for more than 30 years. Prior to the adoption of the Minnesota-Wisconsin (M–W) price series in the mid-1970's, these markets established the equivalent of the modern Class III price on the basis of what was known as the U.S. Average Manufacturing Grade Milk Price Series (U.S. Average Price Series).

The U.S. Average Price Series was a competitive pay price series, but differed from the M–W in that it recorded price averages consistently below the M–W that was rapidly being adopted elsewhere in the country as the appropriate price for surplus uses of milk and used as a price mover for higher-valued class prices. Given the national marketplace in which surplus dairy products compete for sales, a mechanism was needed to align these two differing price series. Accordingly, seasonal adjustments to the Class III price were developed and made a part of these orders. These seasonal adjustors were found not only to be warranted for better price coordination between these two price series, but also served to encourage handlers to dispose of the maximum amount of milk in Class I uses.

By the mid-1970's, the M–W was adopted to replace the U.S. Average Price Series and the seasonal adjustors

were retained. The reason for retaining these adjustments were to encourage handlers to make more milk readily available for fluid use in the short production months and to facilitate the orderly disposition of excess reserve milk supplies in flush production months. Although some regional price disparity was acknowledged to result from retaining these adjustments, they were nevertheless retained because there was no evidence that providing for such adjustment had led to any interregional problems in the marketing of the reserve milk supply.

Agri-Mark, a major cooperative in the northeast, proposed that seasonal adjustments continue in the consolidated Northeast order. The main thrust of their proposal was that markets with relatively high Class I use create a burden on the manufacturing sector in their areas. They view seasonal adjustments as also assisting in sending the proper economic signal to manufacturers. This is important, according to Agri-Mark, because the seasonal adjustment provides an economic "disincentive" for Class III and Class IV manufacturers to use milk in the fall when less producer milk is available and additional supplies are needed for Class I uses.

Seasonal adjustors to the Class III and Class IV prices are not incorporated into the provisions of the consolidated Northeast order. This decision provides a much more permanent replacement for the current BFP. Because Class III and Class IV product price formulas are incorporated in all consolidated orders, there is no compelling reason offered to contemplate continuing seasonal adjustments to Class III and Class IV prices. They are also not provided in orders that are expected to have Class I utilizations similar to that anticipated in the consolidated Northeast order and who similarly have important manufacturing activity.

6b. Southeast Region

The 3 proposed orders for the Southeastern United States—Florida, Southeast, and Appalachian—are faced with a different set of marketing conditions than other orders. The Southeastern United States is one of the fastest growing areas of the country in terms of population growth and is the most deficit area in terms of milk production per capita. From 1988 to 1997, the population of the 12 Southeastern states rose from 57.9 million to 65.1 million.

While population has been increasing in the Southeast, milk production in the 12 Southeast States (i.e., Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, Virginia, and West Virginia) has been decreasing—from 15.4 billion pounds in 1988 to 13.6 billion pounds in 1997. The net result of these opposite trends is a widening gap between the local supply of milk for fluid use and the demand for such milk. This is evident by the drop in per capita milk production for these 12 states, from 265 pounds per capita in 1988 to 210 pounds per capita in 1997.

Unlike other parts of the country, the Southeast has few facilities for handling surplus milk. Consequently, surplus production during the months of January through June must, in some cases, be shipped hundreds of miles for processing at manufacturing plants generally to the north. For this reason, the provisions in these orders must be aimed at the twin goals of encouraging supplemental milk to move to these markets during the short production months—generally July through December—and they must also discourage supplemental milk from moving to these markets when it is not needed in the flush production months—generally January through June—because such milk would simply displace local milk and increase the cost of disposing of such milk for surplus use.

Very few comments were received with respect to the order provisions proposed for the Appalachian, Florida, and Southeast orders. Most of the comments that were received endorsed the proposed provisions. A few comment letters stated that seasonal pricing provisions should be included in the Southeast orders and a few comment letters suggested that the Class I price mover for the Southeast should be a 12-month moving average rather than the proposed 6-month moving average. These comments are discussed in the pricing sections of this final decision. Other comments received are discussed below.

Transportation credits. As a result of the need to import milk to the Southeast from many areas outside the Southeast during certain months of the year, transportation credit provisions were incorporated in the Carolina, Southeast, Tennessee Valley, and Louisville-Lexington-Evansville orders in August 1996. These provisions provide credits to handlers who incur additional costs to import supplemental milk for fluid use for markets during the short production months of July through December. The provisions restrict the use of credits by handlers to milk received from producers and plants located outside of the marketing areas. The credits are also restricted to milk received from producers who supply the markets only during the short season and are not applicable to milk of producers who supply the market throughout the year.

Following the initial implementation of transportation credits in August 1996, the provisions were modified in a final decision issued on May 12, 1997. The amendments became effective on August 1, 1997.

Transportation credit provisions are retained in the new Southeast and Appalachian orders but have not been included in the Florida order.

Only a few comments filed in response to the proposed rule specifically addressed the issue of transportation credits. Two producers requested that transportation credits be removed from the orders because they have not performed as expected. A handler who supported transportation credits for the Southeast and Appalachian orders suggested that the provisions also be included in the Florida order.

In the past 5 years, dairy cooperatives representing the large majority of producers in the Southeast have strongly supported transportation credit provisions for the Southeast and Appalachian orders because the provisions have been helpful in obtaining supplemental supplies of milk for fluid use and in sharing the costs associated with those supplemental supplies more equitably among all handlers in the market. They have not, however, been supported by the 2 cooperative associations which supply the Florida market and there is no indication that such provisions are needed to more equitably share the costs of supplying that market with supplemental milk. There was no indication from the public comments that were received that these cooperative positions have changed.

With the addition of northwest Arkansas and southern Missouri to the Southeast marketing area, milk from these 2 areas will be ineligible for transportation credits under the Southeast and Appalachian orders. This change in the application of the credits is consistent with the logic for incorporating these 2 areas in the Southeast marketing area. Specifically, northwest Arkansas and southern Missouri are regular sources of supply for handlers in the Southeast marketing area and, in addition, include plants that compete for sales with handlers regulated under the Southeast order. Accordingly, the producers in these 2 areas will share in the pool proceeds of the Southeast market. Of course, since

transportation credits are designed to attract supplemental milk to the market for fluid use from producers who are not regularly associated with the market, transportation credits should not apply to a farm or a plant in northwest Arkansas or that portion of southern Missouri that is to be included in the Southeast marketing area.

Two other changes have been made in the transportation credit provisions of Orders 5 and 7. First, at the present time, if a dairy farmer is a producer under the order for more than 2 months of the January through June period and more than 50 percent of the dairy farmer's milk is received as producer milk under the order during those 2 months, the dairy farmer's milk is ineligible for transportation credits during the following months of July through December. This rule should be modified.

Experience with the transportation credit provision in the Southeast indicates that the months of January and June are transition months. In some years, supplemental milk is needed during those months, but in other years it is not. Indeed, it is for this reason that the market administrator has been given the authority to extend transportation credits to these months upon finding that the extension is necessary to assure the market of an adequate supply of milk for fluid use. When the market administrator makes a finding that January or June should be included in the transportation credit period, these months are excluded from the restriction of the orders, as described above. Sometimes, however, in these 2 months it is not apparent that supplemental milk will be needed until after the month begins. In this case, it is too late for the market administrator to include these months in the transportation credit period, but it is not too late for a cooperative association or handler needing supplemental milk from arranging for such milk to be brought into the market. The problem in doing so, however, is that without being very careful it is easy to disqualify a dairy farmer's milk for transportation credits by receiving producer milk from the dairy farmer for more than 2 months or by exceeding the 50 percent limit.

In view of this problem, the months during which a dairy farmer may not be a producer have been changed from January through June to February through May. This will provide greater flexibility to receive supplemental milk when needed without disqualifying a dairy farmer's milk from transportation credits.

The other change that has been made to the transportation credit provisions has to do with the computation of the credit with respect to milk shipped directly from producers' farms. At present, the market administrator must determine an origination point for this milk and once the point is determined ascertain what the Class I differential, adjusted for location, would be at that point. If the origination point is within a Federal order marketing area, the applicable Class I differential is the one that would apply at the origination point under the order regulating that area. However, if the origination point is in an unregulated county, a Class I differential, adjusted for location, is computed based upon the provisions of the order receiving the milk (i.e., at present Order 5, 7, or 46).

The different methods now used to compute the Class I differential at the origination point for a load of milk occasionally leads to very different transportation credits for a load of milk originating within a Federal order marketing area compared to another load of milk that originates from a point just outside of that marketing area. At the time when the transportation credit provisions were adopted, there was not a better way of determining the Class I differential at an origination point outside of a marketing area because there was no single Class I pricing surface. Consequently, with 31 different orders, there were probably 31 different Class I differentials that would have applied in that unregulated county based on the location adjustments provided in the 31 different orders. Under the circumstances, it appeared to be most reasonable to use the Class I differential that would apply under the order receiving the milk.

With the national Class I price surface adopted in this final decision, there is a single Class I differential for every county in the 48 states. Consequently, § 1005.82(d)(3)(v) and § 1007.82(d)(3)(v) have been changed to use the Class I differential specified in § 1000.52 for purposes of determining the price to be used at the origination point of a load of milk shipped directly from producers' farms. This change will remove the large disparities that can now exist in computing transportation credits for similarly-located milk.

One final change has been made in paragraph (d)(3)(i) of §§ 1005.82 and 1007.82. At the present time, 2 methods are provided for determining the origination point for a load of supplemental milk directly from producers' farms. The origination point may be the city nearest to the farm of the last producer whose milk is on a tank truck. Alternatively, the hauler may stop at an independently-operated truck stop and obtain a weight certificate indicating the weight of the truck and its contents, the date and time of weighing, and the location of the truck stop.

The latter option has never been used to establish an origination point during the life of this provision, perhaps because it is not cost effective to stop and weigh a load of milk. For this reason, it should be removed from the order.

Pooling standards. Several comment letters from producers and producer organizations expressed support for the pooling provisions recommended in the proposed rule for the proposed southeast orders. The comments emphasized the necessity to incorporate strict performance standards in these orders. Commentors argued that such standards would ensure that the markets are adequately supplied throughout the year in an orderly manner and prevent opportunistic pooling which, they contend, would lower the blend prices to producers serving these markets throughout the year, thereby decreasing production in these already-deficit markets and forcing handlers to pay higher prices to obtain supplementary milk.

The comments leading to the proposed rule and those submitted in response to it endorsed pooling standards at levels that are as strict or stricter than current regulations and emphasized that the southeastern milk marketing orders should provide pooling standards that reflect the deficit nature of these markets. These comments are embodied in the standards adopted for these orders.

The pool plant provisions adopted for the Appalachian, Florida, and Southeast orders closely follow the provisions now contained in the southeast orders. These provisions are appropriate for the needs of these seasonally-deficit markets.

Section 7(a) of each Federal milk order describes the pooling standards for a distributing plant. To qualify for pooling under each of the 3 orders, a distributing plant must have route disposition equal to at least 50 percent of the total fluid milk products physically received at the plant. In addition, at least 25 percent of the plant's receipts must be disposed of as route disposition in the marketing area. These standards will ensure that a distributing plant meeting them is closely associated with the fluid market and, therefore, should be part of the marketwide pool.

At the present time, the Carolina order has a 15 percent in-area route disposition standard, while the

Southeast, Upper Florida, Tampa Bay, Southeastern Florida, and Louisville-Lexington-Evansville orders have a 10 percent standard. This level is raised to 25 percent under the merged orders. The reason for raising this standard to 25 percent is to better identify those plants which should be fully regulated under the larger, merged orders. With 11 large markets, instead of 31 smaller markets, the higher 25 percent standard, which is uniform for all 11 markets, will better maintain the regulatory status of plants throughout the country. It will leave unregulated, or partially regulated, those plants which have only a small amount of their sales within a Federal order marketing area.

Paragraph (b) of section 7 will accommodate the pooling of plants that specialize in extended shelf-life fluid milk products (i.e., 60–90 days) requiring refrigeration. There are at least 3 such plants in the southeast markets: the Ryan Foods Company plants in Jacksonville, Florida, and Murray, Kentucky, and the Dasi Products plant in Decatur, Alabama.

Unlike a typical distributing plant, a plant specializing in extended shelf-life products may have a more erratic processing schedule, reflecting the longer shelf life of the products packaged at the plant. Consequently, a plant's Class I utilization may vary considerably from month to month. In the past, such variability has resulted in shifting pool status for some of these plants from one order to another. In some months, the plant may have been partially regulated, even though all of the milk received at the plant was priced under the order. This type of regulatory instability is not conducive to orderly marketing. To provide greater regulatory stability for these plants, they should be fully regulated pool plants if they are located in the marketing area, have route disposition in the marketing area during the month, and process a majority of their milk receipts into fluid milk products. This provision will not guarantee that a plant qualifies as a fully-regulated pool plant every month; some months a plant may fail to process a "majority" of its milk receipts into fluid milk products. Nevertheless, the provision will guarantee that when a plant qualifies for pool plant status, it will be qualified under the same order all the time unless it fails to have any route disposition in the marketing area in which it is located.

One change in section 7(a) and (b) of each order will help to stabilize the pool status of an extended shelf-life plant. At the present time in most orders, when packaged fluid milk products that are transferred from one plant to another plant are ultimately delivered from the 2nd plant to a retail or wholesale outlet, these sales are considered to be the route disposition of the 2nd plant. However, as adopted in this final decision, such transfers will be treated as route disposition from the 1st plant for the purpose of determining its pool status. Since some plants specializing in extended shelf-life products transfer such products between plants, this change will make it more likely that such plants will have route disposition in the marketing area.

Almost all of the dairy product manufacturing plants in the Southeast are "balancing plants" operated by cooperative associations. These "balancing plants" qualify for pooling based upon the performance of the cooperative association, not upon shipments from the plant alone.

A balancing plant may qualify for pool plant status based upon shipments directly from producers' farms as well as shipments from the plant. To qualify as a balancing plant, the plant must be located within the order's marketing area. This requirement ensures that milk pooled through the balancing plant is economically available to processors of fluid milk if needed. However, in the case of the Appalachian order only, a balancing plant also may be located in the State of Virginia. This provision has been in the Carolina order and should be continued in the Appalachian order. The performance standards for a balancing plant require that 60 percent of a cooperative's producer receipts be delivered to pool distributing plants every month of the year. This provision is identical under the 3 southeast orders.

Each of the 3 orders also contains pooling standards for a supply plant. For the Appalachian and Southeast orders, a supply plant must ship at least 50 percent of the milk received during the month from dairy farmers and cooperative bulk tank handlers. The plant's receipts include milk that is diverted from the plant as well as milk physically received at the plant. In the case of the Florida order, the shipping percentage is slightly higher at 60 percent.

Unlike supply plant provisions in other orders, the supply plant provisions in the 3 southeast orders do not recognize shipments directly from producers' farms as qualifying shipments for a supply plant. At the present time, there are no plants qualifying as "pool supply plants" under any of the southeast orders.

Kraft Foods, Inc., submitted a comment in opposition to the supply plant provision proposed for the Southeast order, arguing that it should be permitted to pool its Bentonville, Arkansas, cheese plant based on milk diverted from this plant directly from producers' farms to pool distributing plants. Kraft argues that the proposed pool supply plant provision of Order 7 would require it to physically receive milk at its plant, reload it onto a truck, and ship it to pool distributing plants in order for the Bentonville plant to meet the supply plant shipping standards of Order 7.

Currently, there are no pool supply plants on the Southeast, Appalachian, or Florida orders. When supplemental milk is needed for these markets, most of the milk comes directly from producers' farms, some of which can fill an over-the-road tank truck several times a day. With farms of this size, there is obviously no need to aggregate the milk from several farms at a supply plant.

A primary mission of most cooperatives supplying the Southeast is to provide milk to handlers for fluid use and to dispose of milk when not needed for fluid use efficiently. The order provisions should accommodate and encourage efficient milk handling practices.

The cooperative balancing plant provision is intended to allow cooperatives to supply the fluid market in the most efficient manner possible and also to process milk efficiently when such milk is not needed for fluid use. In the Southeast region, the dominant cooperative operates butter-powder plants in Kentucky and Louisiana and one cheese plant in Tennessee. Oftentimes during the year, these plants are completely idle when all available milk is needed for Class I and II use.

In the Southeast, where fluid handlers are subject to relatively high Class I prices, order provisions should aid them in procuring milk supplies by providing stringent pooling standards. This will help to ensure that the Class I prices applicable to these handlers will serve their purpose in generating uniform prices that will attract milk for fluid use. The supply plant provisions proposed by Kraft are neither needed nor supported by the vast majority of participants in these markets and therefore are not adopted.

It is not necessary to seasonally adjust the supply plant and balancing plant shipping requirements for the 3 southeast orders because the standards proposed are flexible enough to accommodate the disposal of surplus milk during the flush production season. In addition, each of the 3 orders contains a provision to allow the market

administrator to increase or decrease shipping requirements and other pooling standards by up to 10 percentage points. This provision also is included in the producer milk section of all 3 orders with respect to the percentage of milk that may be diverted and in the number of days that a producer's milk must be received at a pool plant.

In addition to the provisions described above, each of the southeast orders contains a provision to allow unit pooling of distributing plants operated by the same handler. This provision has been in the Southeast order since 1995.

Some distributing plants may meet the pooling standards of more than one order. Consequently, it is necessary to specify the rules for determining where a plant will be regulated. Under the southeast orders, if a plant meets the pooling standards of the order and is located in the order's respective marketing area, the plant will be regulated under that order even if it has greater sales in some other order's marketing area. This provision has evolved as a result of several price alignment problems in the Southeast involving a plant located in one marketing area but regulated under another order. In every such case, a plant's supply of milk was put in jeopardy as a result of a lower blend price under the order in which it became regulated based on its sales. Notwithstanding the merging of several of the smaller markets in the Southeast, this provision should be retained for the southeast orders to preclude a repetition of this problem. There was widespread support in comment letters for retention of this provision.

In the case of a distributing plant that is not located within any order's marketing area, a different standard should apply. Since, in this case, it cannot be presumed with certainty that a plant is most closely associated with the market in which it is located, its association with a market should be determined based upon where it has the most sales.

Producer-handler. The producer-handler provision for the 3 southeast orders is very similar to the current provisions. There were no comments received in opposition to this provision.

To qualify as a producer-handler, a dairy farmer would have to have route disposition in excess of 150,000 pounds per month; otherwise, the producer's plant would be exempt from regulation pursuant to a provision that has been uniformly adopted for all orders. In addition, a dairy farmer may receive no fluid milk products from sources other than his or her farm. Finally, the dairy farmer must provide proof satisfactory to the market administrator that the care and management of the dairy animals and other resources necessary to produce all Class I milk handled, and the processing and packaging operations, are his/her own enterprise and are operated at his/her own risk.

At the present time, there are fewer than 5 producer-handlers operating in the southeast markets. The status of these handlers occasionally fluctuates between being fully regulated plants in some months and producer-handlers in other months. None of these operations would lose their status as producer-handlers under the provision adopted for the new southeast orders.

Producer/Producer milk. The producer and producer milk definitions adopted for the 3 southeast orders are nearly identical to the provisions now in the individual orders. These provisions define which dairy farmers are eligible to share in the proceeds of the marketwide pool.

A *producer* is defined as a dairy farmer whose milk is received at a pool plant, diverted to a nonpool plant, or received by a cooperative association acting as a bulk tank handler. It excludes a producer-handler, a dairy farmer whose milk is delivered to an exempt plant, or a dairy farmer whose milk is reported as diverted milk under the provisions of another Federal order.

The diversion limits that are specified in the producer milk section of the new orders are slightly different among the 3 southeast orders. To qualify for diversion to a nonpool plant, a minimum amount of a producer's milk must be received at a pool plant during the month (i.e., this is called a "touch-base" requirement). Under the Appalachian order, 6 days" production must be received at a pool plant during each of the months of July through December, and 2 days' production must be received at a pool plant during each of the other months of the year. Under the Southeast order, 10 days' production is required to be delivered to a pool plant during each of the months of July through December to qualify a producer's milk for diversion to a nonpool plant. During the months of January through June, 4 days' production is be required to be delivered to a pool plant.

Under the proposed Florida order, which will have a higher Class I utilization and less need to divert milk, a producer is required to deliver at least 10 days' production to a pool plant during every month of the year in order to be eligible for diversion to a nonpool plant. These proposed standards are comparable to those required under the separate Florida orders.

The total quantity of milk which may be diverted by a pool plant operator or cooperative association during the month also varies by market as well as by month. Under the Appalachian order, a pool plant operator or cooperative association is permitted to divert 25 percent of its producer milk during the months of July through November, January and February. During the months of December and March through June, the total diversion limit increases to 40 percent of producer milk receipts. In the Southeast order, a total diversion limit of 33 percent is provided during the months of July through December, and 50 percent during the other months. The diversion limits under the Florida order are 20 percent during the months of July through November, 25 percent during the months of December through February, and 40 percent during all other months.

The "touch base" requirements and gross diversion limits described above are adjustable by the market administrator to assure orderly marketing and/or efficient handling of milk in the marketing area. This procedure is described in §§ 1005.13(d)(7), 1006.13(d)(6), and 1007.13(d)(7).

Although a "dairy farmer for other markets" provision was requested for the new orders by some producer organizations, it was opposed by others. This provision is not included in the 3 southeast orders at this time. Such a provision could restrict the free movement of milk as needed among markets. The proposed diversion limits and touch-base requirements in the southeast orders should preclude the association of milk with these markets when such milk is not needed at pool plants.

Reports of receipts and utilization. To accommodate the payment schedule desired for the 3 southeast orders, the handler's report of receipts and utilization must be in the market administrator's office no later than the 7th day of the month. The producer payroll report will be required by the 20th day of the month. The information to be included in these proposed reports is essentially identical to the current order provisions.

Payments for milk. The southeast orders provide uniform payment schedules for payments to and from the producer-settlement fund. Payment to the producer-settlement fund must be made by the 12th day of the month and payment from the producer-settlement fund must be made one day later.

In the case of payments to producers and cooperative associations, the merged Florida order will maintain the longstanding 3-payment schedule that has been part of the present Florida orders for many years. The partial payments to producers under the new Florida order must be made on the 20th day of the month for milk received during the first 15 days of the month and on the 5th day of the following month for milk received during the remainder of the month. The rate of payment will be at not less than 85 percent of the preceding month's uniform price, adjusted for plant location and for proper deductions authorized in writing by the producer. The final payment for milk received during the previous month must be made on or before the 15th day of the month.

The Appalachian and Southeast orders adopted here have identical payment schedules. The partial payment for milk received during the first 15 days of the month must be made on the 26th day of the month, and the rate of payment must be 90 percent of the preceding month's uniform price. The final payment must be received by the producer on or before the 14th day of the following month. The rate of final payment for all 3 orders is the preceding month's uniform price adjusted for butterfat, plant location, partial payments, marketing services, and proper deductions authorized in writing by the producer. Each order will require payment to a cooperative association to be made one day earlier than the payment to an individual producer.

It should be noted that the payment dates described above may be delayed if the payment is due on a Saturday, Sunday, or national holiday. In such case, the payment will be due on the next day that the market administrator's office is open for business. This new rule is provided in § 1000.90.

6c. Midwest Region

Upper Midwest Order

Pool Plant

The pool distributing and pool supply plant definitions of the consolidated Upper Midwest order should use the standard order language used in other orders, adapted to marketing conditions in the Upper Midwest.

The *pool distributing plant* definition specifies that for a plant to be a pool distributing plant, it must have 15 percent or more of its total receipts of fluid milk distributed as route disposition. This percentage is considerably lower than the percentage used in the Chicago Regional order, which varies from 30 percent to 45 percent depending on the month. However, the current Upper Midwest order uses a percentage based on the marketwide Class I percentage for the same month of the previous year. During "normal" months this percentage is approximately 15 percent. When some milk is held off the pool for economic reasons (primarily unusual price differences between classes), the percentage may vary considerably, ranging from the "normal" 15 percent to over 50 percent.

In addition to specifying the route disposition percentage at 15 percent, the percentage would be calculated on the basis of the total receipts of fluid milk products physically received at the distributing plant. Currently both the Chicago Regional and Upper Midwest orders include milk diverted from the distributing plant in the total bulk receipts used to compute the route disposition percentage. Use of a constant percentage at approximately the market Class I percentage, and removing diverted milk from a distributing plant's receipts in determining its regulatory status, will reduce the current opportunities available to distributing plants to become partially regulated by manipulating their reported receipts and diversions of milk. In addition, the language adopted should eliminate month-to-month uncertainty caused by basing handlers' regulatory status on the market's fluctuating utilization percentage.

The Identical Provisions Committee recommended that the in-area distribution criteria for pool distributing plants be 15 percent of total route disposition, and that percentage was included in the proposed rule. However, it was determined that a 25-percent standard for in-area sales would be appropriate for all markets to assure that handlers not already regulated would not become regulated solely because of order consolidation. The Committee explained that use of total route disposition rather than bulk receipts as the denominator would reduce opportunities for handlers to manipulate the manner in which they may report their operations to avoid regulation. Currently in the Chicago Regional and Upper Midwest orders the in-area route disposition standard (10 percent in Chicago Regional and 15 percent in Upper Midwest) is computed using the same basis (bulk receipts, including diversions) as is used to determine whether a plant meets the definition of a pool distributing plant.

Provision is made for a single handler to form a unit of distributing plants and manufacturing plants, all of which must be located within the marketing area. The unit would have to meet the requirements for a pool distributing plant and at least one of the plants in the unit must meet the pool distributing plant requirements as a separate plant. Plants not meeting the pool distributing plant definition will be required to have disposition of packaged fluid milk products, packaged fluid cream products, or cottage cheese and other soft manufactured products of at least half of their receipts of Grade A bulk fluid milk products, including milk diverted by the plant operator.

Manufacturing plants traditionally have been included in units with distributing plants because the manufacturing plants produced products such as packaged fluid cream, sour cream, and cottage cheese that are marketed in conjunction with bottled fluid milk products. In addition, some of these plants produce a limited quantity of fluid milk products. Handlers have argued that the operator of a free-standing manufacturing plant that manufactures these complementary products should be able to pool its milk supply for both (or for several) plants as if all of the products were made in the bottling plant.

Both the Chicago Regional and Upper Midwest orders contain a provision for a distributing plant unit. Although the current Chicago Regional order does not specify the types of products that may be manufactured at plants in the unit, the Upper Midwest order does. It is reasonable to place restrictions on the types of products that are disposed of from the manufacturing plants in the unit, since these plants will receive the benefits reserved for pool distributing plants and shipments from supply plants to the plants in the unit will be considered in determining pool supply plant qualifications.

A *pool supply plant* operator should ship as qualifying shipments at least 10 percent of the plant's receipts of milk from producers, including milk diverted by the handler, each month. As in the current Chicago Regional order, such shipments may be made to pool distributing plants, pool distributing plant units, plants of producer-handlers, partially regulated distributing plants, or distributing plants fully regulated by other Federal milk orders. The extent of shipments to partially regulated distributing plants to be used for qualification would be limited to the quantity classified as Class I. Qualifying shipments to distributing plants regulated by other Federal milk orders should be limited to the quantity shipped to pool distributing plants, and

may not be agreed-upon Class II, Class III or Class IV utilization. Shipments directly from farms to pool distributing plants and to plants contained in pool distributing plant units should be included as shipments that help to meet the percentage qualification standard.

The 10 percent shipping requirement adopted in this decision is approximately 5 percentage points less than the anticipated Class I percentage for the consolidated Upper Midwest order. The 10 percent shipping standard is greater than the current individual supply plant shipping standard and equal to the maximum shipping percentage required of pool units during the qualifying period in the current Chicago Regional order. The standard under the current Upper Midwest order, which uses the Class I use percentage of the same month in the previous year as the supply plant shipping percentage, would exceed the adopted percentage. Also under the current Upper Midwest order, a reserve supply plant must ship 10 percent of its receipts to pool distributing plants during January through June, and the marketwide Class I percentage for the same months of the preceding year for the months of July through December.

Several handlers, including a large cooperative association, a cheesemakers' organization, and a fluid milk handler, filed comments stating that the 10 percent shipping standard for supply plants is too high for this market with a Class I utilization percentage that rarely would exceed 20 percent.

The 10-percent shipping percentage is below the estimated Class I percentage for the consolidated Upper Midwest order and should be appropriate, even in view of the fact that many distributing plants have a supply of milk from their own producers. In September 1997, approximately 27 percent of the milk pooled or received at distributing plants in the Chicago Regional order was pooled as producer milk with the distributing plant operators as the handlers, rather than as producer milk pooled by cooperatives and other handlers. The milk pooled by distributing plant handlers accounted for approximately 12 percent of the total milk pooled in September 1997 (or approximately 5 percent of the total milk that would have been pooled if all of the milk eligible to be pooled in September 1997 had been pooled). Approximately 7 percent of the Class I producer milk, or approximately 2 percent of the total producer milk, pooled under the Upper Midwest order is pooled by distributing plant operators. The combination of the supply plant shipping percentage and the percentage of milk pooled directly by distributing plant handlers would appear sufficient to meet anticipated Class I needs in the consolidated Upper Midwest order. The 10 percent supply plant shipping percentage also should be appropriate to avoid unnecessary and uneconomic shipments.

It should be remembered that the provisions adopted in this decision will allow the market administrator to increase or decrease the required shipping percentage on a marketwide or selected area basis if deemed necessary to assure an adequate supply of milk to pool distributing plants or to prevent uneconomic shipments of milk. If the shipping percentage is increased by the market administrator, shipments made for the purpose of meeting the increased percentage may be made only to pool distributing plants or plants contained in pool distributing plant units.

A comment filed by a cheesemakers' organization expressed concern about the potential competitive inequities of a provision enabling the market administrator to change the shipping percentage for a selected portion of the marketing area. This provision has existed in the current Upper Midwest order for some time without resulting in any controversy. The provision probably will be more useful with the considerable enlargement of the marketing area through consolidation. It may be more inequitable to require increased shipments from plants in, for instance, Grand Forks, North Dakota, to supply deficits in the Chicago area (700 miles distant) than it currently would be to require those plants to increase qualifying shipments so that distributing plants in the Twin Cities area (300 miles away) will be able to obtain needed supplies. It should be remembered that there are plentiful supplies of milk produced within 100–200 miles of any part of this marketing area. Certainly care will be taken to assure that handlers are not placed at significant competitive disadvantage.

Groups of two or more supply plants will be allowed to form *systems of supply plants* for the purpose of meeting the shipping requirements, by shipping the same percentage as that required for individual pool supply plants that are not part of such a system. These pool supply plant systems may consist of plants of the same handler or more than one handler, and may contain both proprietary and cooperative handlers. The only requirement affecting an individual plant within the unit is that the plant must be physically located within the marketing area. This restriction is necessary to prevent distant plants from receiving the benefits of participating in the marketwide pool without having an actual association with the market.

Several plants located outside the boundaries of the consolidated marketing area currently are included in supply plant units by a "grandfather clause" in the Upper Midwest order. The order will provide that these plants may continue to be included in a supply plant system if they so desire as long as they maintain continuous pool plant status.

Handlers may form supply plant systems by filing a written request by July 15, listing the plants to be in the system. Such a system will remain in effect from August 1 through July 31 of the following year. These dates deviate from those provided for other orders because of the difference in seasonal production variations between this and other orders. The handler or handlers establishing the system may also delete a plant from the system or dissolve the system by submitting a written request to the market administrator. Any plant deleted from a system, or plants that were part of a system that was discontinued, may not be part of a system until the following August.

Provisions that allow handlers to add plants to a system under certain circumstances and to allow systems to reorganize in the event a plant changes ownership or in the event of a business failure by a handler are also incorporated in the order. A system failing to meet pooling standards will be allowed to drop plants from the system until the system does qualify. The handler responsible for assuring that the system qualifies must notify the market administrator of which plants are to be deleted from the system. If the handler does not notify the market administrator, the market administrator will exclude plants from the system beginning with the plant at the bottom of the list of plants submitted by the handler responsible for qualifying the system, and continuing up the list until the system qualifies.

The provisions for supply plant systems are very similar to the provisions currently contained in both the Chicago Regional and Upper Midwest orders. Unlike the Chicago Regional and the Upper Midwest orders, however, this order does not contain a specific shipping requirement for individual plants within a supply plant system. In the current Chicago Regional order, pool supply plant systems have twice the percentage shipping standard of individual supply plants, with individual plants within the systems required to ship 47,000 pounds or three percent of their producer receipts,

whichever is less, in five of the six months of August through January. The current Upper Midwest order requires handlers with supply plants in a supply plant system to ship five percent of each handler's Grade A receipts, including milk diverted by the handler to nonpool plants, during one of the months of August through December.

This decision does not provide for the category of supply plants referred to as reserve supply plants. Reserve supply plants ceased to be included in the Chicago Regional order in 1987, while the Upper Midwest continues to provide for them. With year-round shipping requirements, the unlimited ability of the market administrator to change shipping percentages both in level and in area, and the ability of supply plants to form systems, there is no compelling reason to have two categories of supply plants.

A provision to allow plants to remain qualified for up to two consecutive months due to unavoidable circumstances, such as a natural disaster, fire, breakdown of equipment, or work stoppage is included in this decision. The provision is contained in the Chicago Regional order and has worked quite well in giving handlers some administrative relief in the face of certain unavoidable circumstances.

Comments filed by a cooperative association and a fluid milk handler urged that the unit reporting, accounting and allocation provisions of the Chicago Regional order be retained in the consolidated order. This issue is considered and addressed in the Classification section of this decision.

Producer Milk

The definition of producer milk determines which milk will be eligible to participate in the Federal order pool. This decision provides that milk received at a pool plant directly from producers or from a cooperative association acting as a handler should be eligible to be producer milk. Milk for which the operator of a pool plant is the handler that is delivered directly from the farm to another pool plant should also be considered producer milk. Under certain circumstances, milk delivered to a nonpool plant may also be considered producer milk. Milk delivered directly from a farm to a nonpool plant may be considered producer milk if at least one day's production is received at a pool plant during the dairy farmer's first month as a producer.

In order to qualify as producer milk the milk pooled by a cooperative association acting as a handler described in § 1030.9(c), the cooperative must deliver at least 10 percent of the milk for which it is the handler pursuant to § 1030.9(c) to pool distributing plants, units of pool distributing plants, plants of producer-handlers, or partially regulated distributing plants. The shipments to partially regulated distributing plants are limited to the quantity classified as Class I. These are the same performance requirements that apply to supply plants, with the exception of the treatment of milk shipped direct from farms to distributing plants regulated under other orders. If such milk is allocated to Class I under the other order, it will become producer milk under that order. The same performance requirements that apply to supply plants apply to cooperative associations acting as handlers if the market administrator adjusts the shipping percentages.

No significant differences in the treatment of milk received at pool plants are provided under this decision than under the current Chicago Regional or Upper Midwest orders. There are, however, several differences relating to diverted milk. This decision allows the operator of a pool plant to divert, or ship milk directly from the farm to another pool plant, the milk of producers for which it is the handler, and account for the milk as producer milk at the shipping plant. Allowing either a proprietary pool plant or a cooperative pool plant to divert milk to another pool plant is consistent with the Chicago Regional order. In the Upper Midwest order, milk that is received at a pool plant and for which a cooperative association is the handler is considered producer milk at the receiving plant. The Upper Midwest order specifies that a proprietary handler may divert milk to another pool plant and that such milk will be considered producer milk of the diverting proprietary handler. The language adopted under this decision leaves to the discretion of the cooperative association the option of diverting milk to another pool plant from its own pool plant or delivering the milk to the pool plant in its capacity as a handler of producer milk pursuant to § 1030.9(c).

The consolidated Upper Midwest order requires that a new producer or a producer who has broken association with the market have at least one day's production received at a pool plant during the first month in which the producer's milk is reported as producer milk. Currently the Chicago Regional order requires a new producer on the market or a producer who has broken association with the market to have at least one day's production received at the pool plant at which the milk is reported during the first month in which the producer's milk is considered to be producer milk eligible for diversion to a nonpool plant. In addition, at least one day's production of a producer's milk must be received at a pool plant in each of the months of August through January to be eligible for diversion to a nonpool plant. The current Upper Midwest order requires that a new producer or a producer who has broken association with the market be received at a pool plant prior to the milk being diverted to a nonpool plant.

There is little or no justification for forcing producer milk to be received at a pool plant to maintain or prove association with the market. Supply plants and cooperatives will be required to ship a fixed percentage of their total milk supply, not just that portion received at their plants, to the fluid market. Since both cooperatives and proprietary handlers can move milk directly from the farm to the fluid market there is little reason to force milk into a pool plant solely for regulatory purposes. Certainly the extra cost to the handler of moving milk for regulatory purposes does not enhance economic efficiency or milk quality and in fact decreases economic efficiency and milk quality to the detriment of the entire market.

This decision provides that producer milk be priced in the month in which it is delivered to the plant of first receipt, although the proposed rule would have priced milk in the month in which it is picked up at the farm. Some orders have allowed milk picked up on the last day of a month but delivered to a plant in the next month to be priced in the month in which it was picked up. A comment filed by Wisconsin Cheesemakers favored continuation of this regulatory treatment. For purposes of uniformity between the consolidated orders (which apply to many handlers, cooperative and proprietary, who operate in more than one order area) and clarity of plant accounting for milk received and used during each month all orders now will provide that producer milk is not received until it actually enters a plant.

Under the consolidated order, as in the proposed rule, producer milk will be priced at the location of the plant at which the milk is physically unloaded into processing facilities or a storage tank. In the current Chicago Regional order milk is priced where milk is pumped within the confines of a plant. The adopted order language will eliminate the pricing of milk where it is pumped from truck to truck and price the milk where it is eventually unloaded

into processing facilities or a storage tank.

Location Adjustments and Transportation Credits

To help move milk to the fluid market a transportation credit and an assembly/ procurement credit for Class I milk are contained in the Upper Midwest order. The *transportation credit* will be computed by multiplying the hundredweight of milk contained in transfers of bulk fluid milk from pool plants to pool distributing plants and used in Class I by the value obtained by multiplying .0028 times the number of miles between the transferor plant and transferee plants with an offset for a positive difference between the Class I prices at the transferee and transferor plants. The transportation credit should be paid to the receiving handler, as the milk will be pooled at the location from which it is shipped and the credit will, to some extent, duplicate the function of the location adjustment in helping to cover the cost of moving it from supply plants to fluid milk handlers.

The transportation credit is similar to the transportation credit currently contained in the Chicago Regional order. Both the transportation credit adopted in this decision and the current credit, which uses the same .0028 rate, are applied to Class I milk only. However, in the current Chicago Regional order the credit is based on 110 percent of the Class I milk received at the pool distributing plant. The proposed rule would have provided that the transportation credit be paid to the shipping handler on the basis of Class I milk transferred to fluid milk plants.

Several interested persons commented on the use of transportation credits and assembly credits in this consolidated order, with most favoring such provisions but disagreeing to some extent with their proposed application. There was disagreement between the comments on whether the credit should apply to the shipping or the receiving handler and whether it should apply to all Class I milk, both direct-shipped and from plants, or just to milk transferred from plants and used in Class I. One commenter also stated that the proposed rate did not cover enough of the actual cost of moving milk.

In the case of milk received at a distributing plant from a supply plant operated by a cooperative association, the order provides that a distributing plant pay the supply plant from which it receives milk at not less than the price applicable at the distributing plant. The shipping plant must account to the marketwide pool at the price applicable at the shipping plant, where the milk was first received. Payment of the distributing plant's Class I price for milk in Class I uses will assure that cooperative associations are being paid the order minimum price for such milk. The distributing plant, then, is responsible for the cost of getting the milk from the supply plant location to its own, with some assistance from the transportation credit to the extent that the calculated cost exceeds the difference in the Class I prices between the shipping and receiving plants.

There must be some contribution from consumers to the cost of moving milk to deficit locations. However, incorporating the entire cost of hauling milk in the transportation credit could have the effect of encouraging handlers to procure milk from greater distances than necessary. If milk is moved from a higher-priced zone to a lower-priced zone (which may be necessary to obtain needed supplies of milk at outlying distributing plants), there will be no offset for differences in Class I prices between the shipping and receiving plants.

Unlike the transportation credit, which is based on mileage and paid only on transfers of bulk milk to pool distributing plants, the *assembly/ procurement credit* is paid at the rate of 8 cents per hundredweight of Class I milk transferred or diverted by a pool plant to a pool distributing plant. An assembly/ procurement credit also will be applied to milk received from producers and from cooperative associations acting as handlers pursuant to § 1030.9(c) based on the pro rata share of producer milk delivered to a pool distributing plant and allocated to Class I.

A comment filed by a cooperative association stated that assembly credits should not apply to distributing plants' own milk supplies, but only to milk obtained from supply plants or cooperatives. If such a change were made, distributing plant operators who have arranged for their own milk supplies would have an 8-cent disadvantage in procuring milk in comparison with their competitors who obtain milk only from supply plants and cooperatives.

A transportation credit and procurement credit are incorporated in the order to assist handlers in supplying the Class I market. These transportation and procurement credits, to be paid on Class I milk only in combination with the Class I price surface discussed elsewhere in this final decision, will help handlers move milk to the fluid market by distributing the cost of supplying the fluid market to all market participants who share in the marketwide pool. Handlers and producers who supply the Class I market on a regular basis should not be expected to bear the entire cost of supplying the Class I market while handlers and producers who meet only the minimum requirements derive the benefits of marketwide pooling. Incorporation of a transportation credit and procurement credit on Class I milk in the marketwide pool will assure that at least some of the cost of supplying the Class I market is shared among all market participants.

Reporting and Payment Dates

Comments filed by two handlers opposed changing the reporting dates for the consolidated order from the 10th to the 9th of the month following receipt and use of the milk. It should be apparent, especially to the cooperative association that filed this comment, that payment to producers cannot be determined until the marketwide pooling process is completed and minimum producer pay prices calculated. The earlier the pooling process can begin, the sooner producers can be paid. The reporting date of the 9th, adopted in this decision, is the latest date for filing handler reports in any of the consolidated orders. Two other orders specify the 9th, with one order requiring reporting on the 8th and the other seven orders specifying that handler reports be filed on or before the 7th of the following month. Because reporting should be somewhat more uniform among the Upper Midwest handlers after consolidation of the orders, their reporting burdens should be reduced accordingly. Further, technology certainly has improved the ability of all businesses to keep records and organize data for reporting purposes since the current reporting dates were established (over 35 years ago).

Wisconsin Cheesemakers' comment opposed reducing the time lag between when producers deliver milk to handlers and when they are paid for that milk. The current dates for paying producers for the milk delivered in the first half of each month (the 3rd and 4th of the following month) under these two orders are among the latest, if not the latest, in the entire Federal milk order system. The date adopted in this decision, the 26th of the same month, is the same as in three other consolidated orders, later than in five of the other orders, and earlier than in two of the orders (none of which is later than the last day of the month). The date specified for final payment to producers ranks similarly. Producers need to be paid for the milk they've delivered several weeks before on as timely a basis

as possible. The adopted provisions will accomplish that goal.

Central Order

Many of the provisions of the consolidated Central order are explained in the "Identical Provisions" portion of this decision, and need not be addressed here. The provisions that deviate somewhat from those adopted for other order areas are the provisions dealing with standards for determining the pool status of producers and handlers. An effort is made to explain significant differences between the pooling provisions of the 9 individual orders included in this consolidation and those of the consolidated order.

Pool Plant

The Central *pool distributing plant* definition follows closely the provisions contained in most of the other consolidated orders. The provisions adopted would make no difference in the pool status of distributing plants currently pooled under the individual orders.

Specifically, the percentage of a handler's total route disposition distributed within the marketing area that will result in the handler being fully regulated under the Central order is the same 25-percent standard adopted for all of the other 10 orders. The minimum percentage of a pool distributing plant's actual physical receipts of fluid milk products that would have to be distributed on routes is 25. Currently most of the orders included in the consolidated Central order include milk diverted from the distributing plant in the total bulk receipts used to compute the route disposition percentages.

The consolidated Central order provides that a single handler be allowed to form a unit of distributing plants and Class II manufacturing plants, all of which must be located within the marketing area. The unit must meet the requirements for a pool distributing plant, and at least one of the plants in the unit is required to meet the pool distributing plant requirements as a separate plant. Plants in the unit that do not meet the pool distributing plant definition are required to have disposition of packaged fluid milk products, packaged fluid cream products, or cottage cheese and other Class II products of at least half of their receipts of Grade A bulk fluid milk products, including milk diverted by the plant operator.

Class II manufacturing plants are included in units with distributing plants because the manufacturing plants produce products such as packaged fluid cream, sour cream, and cottage cheese that are marketed in conjunction with bottled fluid milk products. In addition, some of these plants produce a limited quantity of fluid milk products. Handlers have argued that the operator of a free-standing manufacturing plant that manufactures these complementary products should be able to pool its milk supply for both (or for several) plants as if all of the products were made in the bottling plant.

The *pool supply plant* definition of the consolidated Central order contains provisions that assure continued pool qualification for any handlers or milk currently associated with the markets included in the consolidated Central market. The Iowa order contains no limit on the amount of direct-shipped milk that can be used to qualify a supply plant, and several of the other orders allow such deliveries to make up a portion of qualifying shipments. The consolidated order allows direct-shipped milk to be counted as pool qualifying shipments without limit.

The Greater Kansas City, Nebraska-Western Iowa, Southern Illinois-Eastern Missouri, and Southwest Plains orders contain cooperative balancing plant provisions, allowing cooperative-operated plants to be pooled if the cooperative delivers a given percentage of the milk for which it is the handler to pool distributing plants. The consolidated Central order also contains such a provision, including in the pool plant definition a plant operated by a cooperative association that supplies at least 35 percent of the milk for which it is the handler to pool distributing plants, either during the current month or for the immediately preceding 12-month period. The deliveries to pool distributing plants may include deliveries directly from the farms of producers for whom the co-op is the handler, as well as transfers from the cooperative's plant.

Cooperative association "balancing plants" serve the market as the outlet of last resort. When surplus milk has no other place to go on weekends, holidays, or during months of surplus production, it moves to cooperative association "balancing plants" where it is manufactured into storable products. When production decreases, these plants operate at minimal capacity or may be shut down completely. Cooperative members assume the burden and cost of processing surplus milk through such plants.

Most of the Central orders allow a period during which supply plants do not have to meet shipping percentages if they have done so for the months during which milk production levels are low and demand for fluid milk is high. The Iowa order has reduced shipping standards for such months. The order provisions adopted with this decision include a period during which supply plants that have served the needs of the market when milk supplies are tight are not required to meet shipping standards, but it is reduced from the 5–7 month period existing in the current orders to a 3-month period from May through July.

The percentage of receipts as qualifying shipments to distributing plants currently ranges from 30 to 50 percent for these orders, with the Iowa percentage reduced to 20 for the months of December through August. The adopted shipping standards for pool supply plants under the consolidated Central order are 35 percent for the months of September through November and January and 25 percent for all other months, with plants meeting the percentage standard for the months of August through April being allowed to retain their pool status for the immediately following months of May through July.

Groups of two or more supply plants are allowed to form systems of supply plants for the purpose of meeting the shipping requirements by shipping the same percentage as that required for individual pool supply plants that are not part of such a system. These pool supply plant systems may consist of plants of the same handler or more than one handler, and may contain both proprietary and cooperative handlers. The only requirement affecting each plant within the system is that the plant must be physically located within the marketing area. This restriction is necessary to prevent distant plants from receiving the benefits of participating in the marketwide pool without having an actual association with the market.

As in the other consolidated orders, the market administrator will have the authority to increase or reduce the required shipping percentage as marketing conditions change for the purpose of assuring that an adequate supply of milk will be available for fluid use, or to assure that the order does not require handlers to undertake uneconomic movements of milk to maintain the pool status of their plants.

In addition, as in the consolidated Upper Midwest order, the provisions adopted in this decision will allow the market administrator to increase or decrease the required shipping percentage on a selected area basis, as well as a marketwide basis, if deemed necessary to reflect needed milk movements within this geographically

extensive marketing area. This provision has existed in the current Upper Midwest order for some time without resulting in any controversy, and is expected to be useful in view of the considerable enlargement of the marketing area through consolidation. Care in using the provision must be exercised to avoid placing handlers in areas in which shipping percentages are temporarily increased or decreased at a competitive disadvantage or advantage to handlers in areas that have not been so affected. However, it would be more inequitable to require increased shipments from plants in, for instance, Eastern Colorado, to ship milk to plants in eastern Illinois to supply deficits in that portion of the marketing area.

Producer Milk

The *producer* and *producer milk* provisions of the orders consolidated in the Central order are quite similar to each other and differ little from those to be incorporated in the other consolidated orders. The principal difference between some of the individual orders and the consolidated order is the limit on the percentage of a handler's pooled producer milk that may be diverted to nonpool plants. The percentage of a handler's milk that may be diverted to nonpool plants varies under the individual orders from 20 percent of milk received at pool plants during some months under the Eastern Colorado order to 70 percent for some months under the Nebraska-Western Iowa and Iowa orders. Most of the orders require each producer's milk to be received at a pool plant at least once each month. The consolidated Central order requires that a new producer or a producer who has broken association with the market have at least one day's production physically received as producer milk at a pool plant before the producer's milk is eligible to be diverted to nonpool plants.

In order to assure that all of the milk that has been pooled under these orders continues to qualify for pooling, the diversion limit adopted for the Central order is 65 percent for the months of September through November and January, and 75 percent for the months of February through April and December. Allowable diversions for the months of May through July are unlimited. There is no requirement that each producer's milk be received at pool plants for a minimum number of days per month. At the same time, the market administrator is authorized to increase or reduce the diversion limit as needed to maintain orderly marketing and efficient handling of milk in the marketing area.

Multiple Component Pricing

The reporting and payment provisions of the consolidated Central order include those common to other orders with multiple component pricing. These markets have a significant amount of milk used in manufactured products, and component pricing will enable producers to be paid according to the valuable components of their milk.

Mideast Order

Many of the provisions of the order for the consolidated Mideast marketing area are explained in the "Identical Provisions" portion of this final decision, and need not be addressed here. The provisions that deviate somewhat from those provided for other order areas are the provisions dealing with standards for determining the pool status of producers and handlers. A significant change from the proposed rule is that the uniform multiple component pricing plan provided for the six other orders that use multiple component pricing is also incorporated into the Mideast order, in place of the proposed pricing plan that differed slightly from the one common to the other orders with multiple component pricing provisions. This change is discussed more fully later in this section of this decision.

For the most part, pooling provisions have less effect on the current Michigan Upper Peninsula market than on the 4 other markets included in this consolidated order because Michigan Upper Peninsula is the only remaining individual handler pool in the current Federal order system. Therefore, pooling provisions are discussed in relation to the 4 principal markets included in the consolidated Mideast order.

Pool Plant

The Mideast *pool distributing plant* definition, in which the in-area route disposition qualification was proposed to exceed that contained in most of the other proposed orders (30 percent instead of 15 percent) to make less likely the full Federal regulation of three State-regulated plants, will instead use the same 25-percent standard of in-area route dispositions of receipts that is being provided in all of the other orders.

Several comments opposed use of an in-area standard higher than 15 percent, arguing that the standard in the Mideast area should not be higher than in other areas, and that handlers outside the market should be held to the "current" 15-percent standard. The adoption of a uniform 25-percent standard of in-area sales as a percentage of total route dispositions for all orders is discussed in the section of this decision dealing with Provisions Common to all Orders.

As in the other consolidated orders, the total route disposition percentage will be calculated on the basis of the total receipts of fluid milk products physically received at the distributing plant. Currently all four of the larger orders to be included in the consolidated Mideast order include milk diverted from the distributing plant in the total receipts used to compute the total route disposition percentage.

One comment urged that a pass-through provision similar to that in the current New York-New Jersey order (Order 2) be incorporated in the consolidated order to deal with the in-area route dispositions of handlers who do not meet the order's pooling requirements. Continuation of such a provision in Order 2 was considered and rejected in this decision, in the regional discussion of the Northeast order. There would be no valid basis for adopting such a provision in the Mideast order when it has been found not appropriate for use in the Northeast.

To assure continued pool qualification for all of the handlers who currently are associated with the Mideast markets, the *pool supply plant* definition of the consolidated Mideast order provides for all of the types of supply plants that currently qualify for pooling under the 4 principal orders. The Eastern Ohio-Western Pennsylvania pool plant provision includes a plant operated by a cooperative if the cooperative association delivers to distributing plants at least 35 percent of the milk for which it is the handler during the current month or over the preceding 12 months. The Southern Michigan order (Order 40) includes as pool supply plants: (a) A plant that has been a pool plant for 12 consecutive months and has a marketing agreement with a cooperative association, and (b) a system of supply plants operated by one or more handlers. Order 40 also includes some shipments to other Federal order plants and partially regulated distributing plants, in addition to pool distributing plants, as qualifying shipments by supply plants.

The percentage of receipts as qualifying shipments to distributing plants currently ranges from 30 to 40 percent for these orders, with direct deliveries from farms rather than plant transfers limited to half of the required deliveries under three of the orders. All four of the orders require performance of pooling standards by supply plants for the months of September through February, followed by a "free ride" period during which shipping

percentages need not be met by supply plants that met the shipping standards during the required period. The Indiana order contains a provision allowing the continued pooling of a plant that fails to meet pooling standards because of circumstances beyond the handler's control.

The shipping standards adopted under this decision for pool supply plants are 30 percent for all months, with plants meeting the standard for the months of September through February being allowed to retain their pool status for the immediately following months of March through August. For the purpose of making the 30 percent level of shipping standard less burdensome, up to 90 percent of required shipments are allowed to be made directly from farms to distributing plants. The cooperative association plant defined as a pool plant in the Eastern Ohio-Western Pennsylvania order is retained, as are the supply plant provisions peculiar to the Southern Michigan order. These provisions reflect marketing conditions specific to these current areas, and will assure that plants currently qualified for pooling will retain such status.

Producer Milk

The *producer* and *producer milk* provisions of the orders consolidated in the Mideast order are quite similar to and differ little from those incorporated in the other consolidated orders. The principal difference between some of the individual orders and the consolidated order would be the limit on the percentage of a handler's pooled producer milk that may be diverted to nonpool plants. The Ohio Valley, Indiana and Eastern Ohio-Western Pennsylvania orders all contain 50 percent diversion limits for the months of September through November, January and February and a 60 percent limit for the month of December, with no diversion limit for the months of March through August. The Southern Michigan order contains a 60-percent diversion limit for the months of September through February, with no limit for the months of March through August. In order to assure that all of the milk that has been pooled under these orders continues to qualify for pooling, the diversion limit adopted for the Mideast order is 60 percent for the months of September through February, with no limit for the March through August period. At the same time, the market administrator is authorized to increase or reduce the diversion limit as needed to maintain orderly marketing and efficient handling of milk in the marketing area.

Multiple Component Pricing

In a change from the proposed rule, the reporting and payment provisions of the consolidated Mideast order adopted in this decision now conform to those of the other consolidated orders that provide for multiple component pricing (MCP). The proposed rule would have incorporated a pricing plan similar to the current Southern Michigan MCP plan in the consolidated order instead of the MCP plan proposed for the other consolidated orders. The Southern Michigan MCP plan differs from that included in the other current MCP orders only by pricing "fluid carrier" instead of "other solids."

The Farm Bill authorizes adoption of a "uniform" multiple component pricing plan. As a result, the component pricing plan has been modified to be the same as the plan contained in other MCP orders. The differences between the adopted MCP plan and that originally proposed for the consolidated Mideast order are not significant. The same prices would be used to compute component values, the same protein and butterfat prices would be used, and the proposed "fluid carrier" price was derived directly from the "other solids" price. The Mideast order language is changed accordingly, and will result in very little difference in total payments, either by handlers or to producers whose milk is pooled under the differing provisions.

Somatic Cell Adjustment

Michigan Milk Producers Association (MMPA), a large cooperative association in Michigan, opposed changing the present Southern Michigan (Order 40) somatic cell count (SCC) adjustment schedule to the adjustment schedule proposed uniformly for all of the MCP orders with SCC adjustments. Changing the current Michigan SCC adjustment schedule to the uniform schedule included in the proposed rule would have the effect of reducing (from the current Order 40 level) the positive value adjustments on milk containing less than 200,000 SCCs and reducing the negative value adjustments on milk containing more than 700,000 SCCs. Incorporating the proposed adjustment in all of the consolidated orders that have somatic cell adjustments will make for a more uniform system of pricing and may better reflect measurable differences in value.

Reporting and Payment Dates

MMPA proposed that handler reports be submitted one day earlier (on the 6th instead of the 7th day after the end of each month) so that producers can be paid a day earlier. The cooperative also advocated that producers be paid with two partial payments instead of one (on the 21st day of the month for the first 15 days' production and the 6th of the next month for the second half of the month's production instead of one partial payment on the 26th day of the month for the first 15 days' production, as proposed). Final payment for each month's milk would then be made no later than the 16th of the following month, instead of the 17th. The cooperative stated that reducing the time lag between delivering milk and being paid for it would better accommodate the cash flow requirements of modern larger dairy farms.

The Southern Michigan order currently requires that handler reports be filed no later than the 5th of the next month, and that nonmember producers be paid on the 15th. These dates are very early compared to most other Federal orders. Two of the orders included in the consolidated Mideast order currently have a reporting date of the 8th and payment dates of the 18th.

The dates included in the proposed rule and adopted in this decision represent an effort to find a middle ground between significant differences in the orders to be consolidated. The desire to accelerate payment to producers, both by increasing the number of partial payments and advancing the final payment date, is understandable. However, other interested parties in the consolidated area had no opportunity to indicate agreement with or opposition to such changes. These proposals would more properly be addressed in a formal rulemaking proceeding after this proceeding is completed.

6d. Western Region

This final decision adopts four Federal milk orders (i.e., Southwest, Arizona-Las Vegas, Western, and Pacific Northwest orders) for the western region. A number of comments were received in response to the proposed rule. These comments are addressed below under the applicable order discussion.

A number of changes have been made to the consolidated orders since the proposed rule. The significant changes that have been made to all or most of the consolidated orders are explained at the end of this regional discussion, whereas, those modifications that are unique to an individual order are discussed under the applicable order.

Southwest Order

The consolidated Southwest marketing area is comprised principally of the current Texas and New Mexico-West Texas marketing areas. With regard to milk production and population (consumption), these areas are both in the process of change, but in different ways. Texas has one of the fastest-growing populations in the U.S., and until recently has been able to maintain milk production on a per capita basis. After a significant increase in milk production during the 1988–1994 period, Texas milk production has been declining somewhat, accompanied by the exit of approximately 29 percent of the State's Grade A dairy farmers. If the current trend continues, the Texas market could come to resemble more closely those of the Southeast portion of the U.S., relying significantly on more distant milk supplies to meet the market's Class I and II needs. This situation currently exists for the southern parts of Texas.

The State of New Mexico has experienced relatively slow population growth, but dramatic increases in milk production—from 1.099 billion pounds in 1988 to an estimated 4.020 billion pounds in 1997. With the declining production in Texas, the New Mexico milk-shed will be drawn upon more often to supply Class I and II needs in the Texas demand centers, 500–600 miles distant. Procurement costs would be expected to increase dramatically. In light of these circumstances, provisions in the Southwest order must provide flexibility to cooperatives and handlers supplying the market to prevent inefficient movements of milk and unnecessary costs of operation incurred for the purpose of participating in the market-wide pool.

Prior to enactment of the 1996 Farm Bill, cooperatives operating in the southwestern markets had determined that the two milk orders in the region were being operated as one and should be merged. Much discussion took place, and proposed order provisions were developed by the principal cooperatives involved. These comments, with numerous others, were considered in the development of this final decision for the Southwest marketing area.

Pooling standards

Most of the pooling standards in the Texas and New Mexico-West Texas orders have been suspended for some time. The rapid expansion of milk production in the region during the late 1980's created a situation in which cooperatives and handlers operating in the region could not meet the provisions of the orders while pooling all of their milk supplies. For this reason, the pooling standards for the Southwest order have been relaxed.

As adopted in this final decision, the pooling standards for a distributing plant require the plant to have route disposition equal to at least 25 percent of its fluid milk receipts at the plant during the month. In addition, at least 25 percent of the plant's route disposition must be in the marketing area.

One partially regulated plant located in the Texas marketing area will become fully regulated under this provision. The plant has been partially regulated under the Texas order and, periodically, fully regulated under the Chicago Regional order. The lowering from 50 percent to 25 percent of total route disposition for a pool distributing plant by the Southwest order will cause this plant to become fully regulated under the Southwest order and, thereby, alleviate the disorderly conditions caused by its shifts in regulation. There should be no change in the plant's costs, since their supply of milk comes from Southwest pool sources.

The pool plant provisions of the Southwest order have been revised in this final decision. The modification provides for the pooling of plants that specialize in ultra-pasteurized or aseptically-processed fluid milk products. A detailed explanation of the changes is located at the end of the western regional discussion.

There are no pool supply plants regulated under the present Texas and New Mexico-West Texas orders. Nevertheless, as recommended in the proposed rule and adopted in this final decision, provision is made for such an operation under the Southwest order. As proposed, to qualify as a pool plant, a supply plant must ship 50 percent or more of the total quantity of milk that is physically received during the month from dairy farmers and handlers described in § 1000.9(c) to pool distributing plants. The supply plant provisions have been modified in this final decision to include milk that is diverted to other plants as well as milk physically received at the plant to allow for more efficient movement of milk to distributing plants when needed.

A provision for the pooling of cooperative association balancing plants is also included in the consolidated order. A plant located within the marketing area that is operated by a cooperative association would qualify as a pool plant if pool plant status is requested for such plant by the cooperative association and during the month at least 30 percent of the producer milk of members of such cooperative association is delivered directly from farms to pool distributing plants or is transferred to such plants as a fluid milk product from the cooperative's plant. The requirement that the plant be located in the marketing area ensures that milk pooled through the balancing plant is economically available to processors of fluid milk if needed.

One comment was received regarding the proposed pooling standards for supply plants. Kraft Foods, Inc. (Kraft), stated that the Southwest order should adopt all the options and pooling efficiencies contained in Section 7 of the proposed Central marketing order. Kraft asserts that the two markets have virtually identical populations (21 million) and Class I utilization (48 percent–49 percent). In addition, the handler contends that the pool supply plant provisions of the Southwest order provide intra-market inequity among handlers in the Southwest market. Kraft indicated that a proprietary supply plant could qualify for pooling only by transferring 50 percent of milk physically received at the plant and noted that no farm to plant shipments are permitted to count towards qualifying. However, the handler stated, a plant in the marketing area operated by a cooperative association may make qualifying shipments directly from farms. The performance level, Kraft indicates, is 30 percent of all milk pooled by the cooperative.

A primary mission of most cooperatives supplying the Southwest market is to provide milk to handlers for fluid use and to dispose of milk efficiently when not needed for fluid use. The order provisions should accommodate and encourage efficient milk handling practices. The cooperative balancing plant provision is intended to allow cooperatives to supply the fluid market in the most efficient manner possible and also to process milk efficiently when such milk is not needed for fluid use. Almost all of the dairy product manufacturing plants in the current Texas and New Mexico-West Texas marketing orders are operated by cooperatives.

As stated in the proposed rule, the pooling provisions for the Southwest order are similar to the provisions in the present Texas and New Mexico-West Texas orders. The pool supply plant standards are consistent with and reflect the current marketing conditions of the consolidated Southwest order. The standards should ensure that milk of producers servicing the Class I needs of the market will be pooled. The provisions for a supply plant in this

final decision does not recognize shipments directly from producers' farms as qualifying shipments for a supply plant. However, there currently are no supply plants regulated under the Texas or New Mexico-West Texas orders. Accordingly, the provisions should not place proprietary handlers at a competitive disadvantage and are appropriate to meet the needs of the market.

It is not necessary to seasonally adjust the supply plant and balancing plant shipping requirements for the Southwest order because the standards proposed are flexible enough to accommodate the disposal of surplus milk during the flush production season. Also, this order, like the other new consolidated orders, contains a provision to allow the market administrator to increase or decrease these shipping requirements.

In addition to the provisions described above, the Southwest order contains a provision to allow unit pooling of distributing plants operated by the same handler.

Producer-Handler

The producer-handler provisions that were proposed have been revised in this final decision to be very similar to the provisions in the current Texas and New Mexico-West Texas orders. The revisions should assure that the status of current producer-handlers will be unchanged.

Producer Milk

The current Texas and New Mexico-West Texas orders have provisions that require a producer's milk to be received at a pool plant, or touch base, before milk of the producer is eligible to be diverted. The proposed rule indicated that milk produced by producers located in the marketing area should be eligible for pooling without a particular percentage or number of days' production being required to be received at a pool plant. For producers located outside the marketing area the touch base provision of the proposed rule required that at least 15 percent of the production of producers be delivered to pool plants during the month in order to be eligible for pooling. Based on comments and a review of the different touch base requirements for producers both in and out of the area, the provision in the final decision has been changed. The provision in the final decision will allow diversion of producer milk of a new producer, provided there is a delivery of at least 40,000 pounds or one day's milk production, which ever is less, to a pool plant during the month (rather than before diversions are allowed). This dual "touch base" standard has been developed to accommodate a market that is characterized by substantial differences in size among dairy farmers. The requirement that one day's production be delivered to a pool plant, is appropriate for many producers but is unreasonable for those who produce as much as seven tanker loads a day.

The current Texas order allows an amount equal to one-third of the milk delivered to pool plants to be diverted (this provision is currently suspended), while the (currently suspended) New Mexico-West Texas provision allows 50 percent of a handler's total milk supply to be diverted. In addition, the current Texas order provisions base allowable diversions on deliveries to individual pool plants, greatly exacerbating the time and effort required to keep track of milk movements. In the proposed rule the provision set the limit on diversions of producer milk on the basis of at least 50 percent of the milk pooled by a handler being received at pool plants for the handler's entire milk supply to be pooled. The diversion limit in this final decision is continued at 50 percent of a handler's total milk supply. The total performance standard will allow handlers to meet diversion limits more easily with more efficient movements of milk. In addition, the increased percentage of allowable diversions will assure that all of the producers whose milk would qualify for pooling under either of the two orders being consolidated will continue to meet pooling qualifications. A provision to allow the market administrator to make adjustments is included in the producer milk section of the order with respect to the percentage of milk that may be diverted.

Multiple Component Pricing

The reporting and payment provisions of the consolidated Southwest order in the final decision include those common to other orders with multiple component pricing. The multiple component pricing plan does include a somatic cell adjustment for milk used in Classes II, III, and IV. The current Texas and New Mexico-West Texas orders do not provide multiple component pricing. However, the proposed provisions that were developed by the cooperatives involved in discussions to merge the current orders did include a multiple component pricing plan. As stated above, those comments were considered in the development of this final decision.

A comment was received from Leprino Foods Company (Leprino) regarding the inclusion of multiple component pricing in the consolidated Southwest order. Leprino strongly supports multiple component pricing for both handlers and producers and states that it has a direct interest in the consolidated Southwest order. Thus, there is support on both the producer, as represented by cooperative associations, and handler side of the Southwest dairy industry.

Transportation Credits for Surplus Milk

The Texas order currently has a market-wide service payment provision that gives credits for hauling surplus milk located in certain zones in Texas to nonpool plants outside the State for use in manufactured products. The provision has not been included in the consolidated Southwest order language because of declining production and increasing balancing plant capacity in the affected areas of Texas.

Payment Provision

The Texas order is one of only a few marketing orders that requires handlers to remit the full classified value during the month to the Market Administrator. In turn, the Market Administrator acts as a clearing house and forwards these proceeds on to the respective organizations. Interested persons have expressed an interest in retaining these provisions, not only for the proposed Southwest order, but for all other orders.

The current Texas payment provision was found necessary because of problems encountered in assuring timely payments by pooled handlers. The provision has been in the Texas order since 1979, and the earlier payment problems have been remedied. Such a provision involves a rather large degree of regulatory intervention between milk processors and their suppliers that should be shown to be necessary to correct existing problems. There is no indication that such problems currently exist, or would exist in the absence of the provision. Nearly all of the milk that will be pooled under the consolidated Southwest order is produced by cooperative members and pooled by the cooperatives. These large, business-oriented organizations should be able to assure that they receive full payment for their members' milk in a timely manner. In addition, there are provisions in the General provisions (Part 1000) that provide for enforcement of late or under-payment charges at one percent per month of the amount due.

Arizona-Las Vegas Order

Many of the provisions of the consolidated Arizona-Las Vegas order

are explained in the "Identical Provisions" portion of this final decision and need not be addressed here. Those provisions that deviate to some extent from the "Identical Provisions" are addressed in this discussion.

Pool Plant

The *pool distributing plant* definition is similar to that contained in most of the other consolidated orders. The minimum percentage of a pool distributing plant's physical receipts of bulk fluid milk products that are disposed of as route disposition is 25 percent. The percentage of a handler's total route disposition into the marketing area that would result in a distributing plant becoming fully regulated under the Arizona-Las Vegas order is also 25 percent. While this definition differs slightly from the current order language, it provides uniformity with other consolidated orders and should result in no additional distributing plants being pooled under the Arizona-Las Vegas order or any change in the pool status of distributing plants currently pooled.

The pool plant provisions of the Arizona-Las Vegas order have been revised in this final decision. The modification provides for the pooling of plants that specialize in ultra-pasteurized or aseptically-processed fluid milk products. A detailed explanation of the changes is located at the end of the western regional discussion.

The proposed *pool supply plant* definition would have required a supply plant to ship at least 50 percent of its physical receipts of milk from dairy farmers to pool distributing plants during the month in order to be a pool supply plant. In the proposed rule it was indicated that this definition would provide for easy, effective order administration and would result in no additional handlers being regulated under the order. The supply plant definition has been modified in this final decision to include milk that is diverted from the plant as well as milk physically received at the plant. There are currently no pool supply plants in the proposed marketing area.

The current Central Arizona order permits a manufacturing plant located in the marketing area that is operated by a cooperative association to be a pool plant, provided that the cooperative ships at least 50 percent of its member milk to pool plants of other handlers during the current month or the previous 12-month period ending with the current month. This percentage requirement is currently suspended. The proposed order suggested reducing this percentage to 35 percent and authorizing the market administrator to increase or reduce the percentage in response to market conditions. The 35 percent and the authorization to make adjustments in the level is contained in this final decision. The reduced performance standard should enable the continued pooling of producer milk that currently is pooled without resulting in uneconomic handling or disorderly marketing. The Arizona-Las Vegas order provides that a single handler be allowed to form a unit of distributing plants and Class II manufacturing plants provided each plant is located within the marketing area. The unit in total would be required to meet the requirements for a pool distributing plant and at least one of the plants in the unit would be required to meet the pool distributing plant definition individually. This provision would provide uniformity with other federal orders and would not change the status of any plants currently pooled. Class II manufacturing plants are included for unit pooling with distributing plants operated by the same handler because such plants produce products that are marketed in conjunction with fluid milk products.

A provision permitting the market administrator to adjust the percentages specified in the pool plant definition will provide the flexibility to respond in a timely manner to changing marketing conditions without the need for a formal hearing process.

Producer-Handler

The producer-handler provisions that were proposed have been revised in this final decision to be very similar to the provisions in the current Arizona order. The revisions should assure that the status of current producers-handlers will be unchanged.

Producer

The consolidated order contains a *dairy farmer for other markets* definition. A producer could not be pooled under the Arizona-Las Vegas order unless all of the milk from the same farm was pooled under this or some other federal order or unless such non-pooled milk went to a plant with only Class III or Class IV utilization. This differs slightly from the current definition in the Central Arizona order. Such a provision is needed in the consolidated order to prevent dairy farms whose milk is regularly used for fluid disposition in other markets from pooling the surplus portion of their production under the Arizona-Las Vegas order.

Producer Milk

The percentage of a handler's pooled milk that may be diverted to nonpool plants is 50 percent in any month. The proposed rule recommended a diversion limit of 20 percent in any month. Currently, diversions under the Central Arizona order are limited to eight days' production of a producer during four months of the year, with unlimited diversions the remainder of the year. The recommended 20 percent diversion limit was suggested because it was thought that this would have resulted in the amount of milk eligible for diversion being approximately equivalent to eight days' production and would have been easier to administer than the current order provisions. In addition, the proposed rule stated that the 20 percent limit year round would have assured that pooled milk will have a close association with the market's fluid processing plants.

Security Milk Producers Association (SMPA) expressed concern regarding the recommended 20 percent limit on the volume of a handler's pooled milk that may be diverted during any month. SMPA states that diversion requirements set at anything less than 50 percent would be financially detrimental to its producers. The cooperative requests that a limit be implemented that will not detract from the orderly flow of milk.

Based on the comments received by SMPA and an reevaluation of the marketing conditions in the consolidated Arizona-Las Vegas order, and noting that eight days production is about 40 percent, this final decision adopts for the Arizona-Las Vegas order a diversion limit of 50 percent for each month of the year. The 50 percent diversion limit year round is more flexible than the current order and the 20 percent limit recommended in the proposed rule and it would be easy to administer. In addition, the 50 percent diversion limit is consistent with the diversion limit included in the Southwest order, which is adjacent to the Arizona-Las Vegas Order. Thus, the 50 percent diversion limit each month should allow the Class I needs of the market to be met while ensuring the orderly disposition of milk. In addition, the market administrator will have the authority to adjust the diversion percentage.

Multiple Component Pricing

The Arizona-Las Vegas order does not provide for multiple component pricing (MCP). There are six plants that are expected to be regulated under the consolidated order: five proprietary

distributing plants, and one manufacturing plant operated by a cooperative association. The Class I utilization for the order is expected to be less than 50 percent, a level that would, in some other orders, be an indication that component pricing would be appropriate. However, the Class I utilization at the five distributing plants is more than 80 percent. With the exception of the one cooperative balancing plant, the handlers to be regulated constitute predominantly a Class I market.

Prior to the issuance of the proposed rule, there were no comments received in support of MCP for the Arizona-Las Vegas order. However, Schreiber Foods, Inc. (Schreiber), Leprino, and SMPA have indicated support for MCP in the consolidated order. Schreiber agrees with National Milk Producers Federation that MCP is important in some but not all orders, and the rule to adopt such a plan and quality adjustments to minimum prices should be based on the dairy industry's preference in each area. The handler asserts that its Class III utilization of over 50 percent of the milk from the Arizona-Las Vegas market is a strong indication for the need of MCP in the order.

Leprino indicates that less than half of the milk in the proposed Arizona-Las Vegas order is used for Class I purposes. The handler argues that competitive inequities due to differences between fat-skim and MCP across manufacturers operating in different orders will become more significant as the manufacturing sector grows. It claims that the lack of MCP in the order will stimulate some disorderly marketing conditions as low component milk from New Mexico seeks higher revenue that will be available through the fat-skim pricing to the west. Additionally, SMPA strongly suggests that a system that prices the butterfat and protein components be incorporated in the order because it is in the best interest of producers.

This final decision does not adopt MCP for the consolidated Arizona-Las Vegas order. The current Central Arizona order does not contain a multiple component pricing plan. The handlers proposed to be regulated under the consolidated order are currently all, with one exception, regulated under the current Central Arizona order. The manufacturing of milk in the consolidated order is anticipated to be done primarily by Schreiber, at a non-pool plant. Schreiber is almost totally supplied by United Dairymen of Arizona (UDA). Due to these marketing situations (i.e., one buyer and one seller), the implementation of MCP in the consolidated Arizona-Las Vegas order would only benefit some of the producers of the order. All of the producers in the marketing area would not share equitably. As stated in the proposed rule and explained above, the fluid nature of much of the market and the current marketing situations do not warrant MCP at this time.

Payment Obligation of a Partially Regulated Distributing Plant

SMPA recommended a proposal designed to equalize Class I costs between California distributing plants and handlers fully regulated under the proposed Arizona-Las Vegas order. SMPA explained that the proposal is essentially a modification of the "Wichita Option," which represents a reasonable method for computing a partially regulated distributing plant's obligation to the producer-settlement fund.

The "Wichita Option" compares the amounts paid to producers for milk received by a nonpool distributing plant with the full class-use value of milk that would have applied if the plant were fully regulated under the order. To equalize the competitive positions of both fully regulated plants and those plants not regulated under an order, any amount by which the class-use value exceeds the value paid to producers is due to the producer-settlement fund or can be paid to the producers who supplied the handler. However, this option does not function appropriately to handle milk from plants regulated under a State order that provides for market-wide pooling. Thus, the modified "Wichita Option" includes payment provisions for any plant regulated under such a State-operated program.

The current Great Basin order provides payment provisions for any handler operating a State-regulated distributing plant having route disposition in the Great Basin order. This provision has been incorporated in Section 76 of the General provisions in this final decision and is applicable to all orders.

Western Order

Many of the provisions of the consolidated Western order are explained in the "Identical Provisions" portion of this final decision and need not be addressed here. Those provisions that differ from those explained in the "Identical Provisions," or those currently contained in the orders to be consolidated, are discussed below.

Pool plant

The *pool distributing plant* definition is similar to that contained in most of the other orders. The minimum percentage of a pool distributing plant's physical receipts of bulk fluid milk products that are disposed of as route disposition is 25 percent. The percentage of a handler's total route disposition distributed into the marketing area that would result in a distributing plant becoming fully regulated under the Western order is also 25 percent. While this definition differs slightly from the current language of the orders included in this consolidated Western order, it provides uniformity with other consolidated orders and should result in no additional distributing plants being pooled under the order or any change in the pool status of distributing plants currently pooled.

The pool plant provisions of the Western order have been revised in this final decision. The modification to the pool plant definition provides for the pooling of plants that specialize in ultra-pasteurized or aseptically-processed fluid milk products. A detailed explanation of the changes is located at the end of the western regional discussion.

The proposed *pool supply plant* definition would have required a supply plant operator to ship at least 35 percent of the milk pooled at the supply plant, either by transfer or diversion, to pool distributing plants during the month in order to qualify for pooling. The 35 percent level is included in the final decision. The percentage is slightly higher than that contained in the current Southwest Idaho-Eastern Oregon order and slightly lower than that contained in the current Great Basin order. This change should result in no milk that is currently associated with either of the two orders losing such association.

The pool supply plant definition in the final decision includes provision for a March through August period during which a supply plant that has met the order's shipping percentages for the preceding months of September through February to be able to continue to be a pool plant without meeting the shipping standards. As with other consolidated orders, the market administrator will have the authority to increase or decrease the order's supply plant pooling standards as marketing conditions change.

The Western order final decision contains a provision that would permit a manufacturing plant operated by a cooperative association and located in

the marketing area to be a pool plant if 35 percent of the milk for which the cooperative is the handler is received at pool distributing plants during the month or during the immediately preceding 12-month period. This provision is similar to one currently contained in the Great Basin order and in some of the other consolidated orders.

Although the two current orders that have been consolidated do not contain such a provision, the Western order would provide that a single handler be allowed to form a unit of distributing plants and Class II manufacturing plants provided each plant is located within the marketing area, as suggested by the Identical Provisions committee. The unit in total would be required to meet the requirements for a pool distributing plant and at least one of the plants in the unit would be required to meet the pool distributing plant definition individually. This provision would provide uniformity with other federal orders and would not change the status of any plants currently pooled. Class II manufacturing plants are proposed to be included for unit pooling with distributing plants operated by the same handler because such plants produce products that are marketed in conjunction with fluid milk products.

Proprietary Bulk Tank Handler

The consolidated Western order final decision retains the *bulk tank handler* provision that is currently in the Southwestern Idaho-Eastern Oregon order, permitting a handler other than a cooperative association to divert milk to nonpool plants for the handler's account based on shipments of milk to pool plants of other handlers.

Producer-Handler

The producer-handler provisions that were proposed have been revised in this final decision to be very similar to the provisions in the current Great Basin and Southwestern Idaho-Eastern Oregon orders. The revisions should assure that the status of current producers-handlers will be unchanged.

Producer

The Western order contains a *dairy farmer for other markets* definition. A producer would not qualify for pooling under the Western order unless all of the milk from the same farm was pooled under this or some other federal order or unless such non-pooled milk went to a plant with only Class III or Class IV utilization. This differs slightly from the current definition in the Great Basin order. Such a provision is contained in the Western order to prevent dairy farmers whose milk is regularly used for fluid disposition in other markets from pooling the surplus portion of their production on the consolidated order. Security Milk Producers Association supports this provision and states that it is needed to prevent the pooling of surplus milk from farms whose milk is regularly associated with other markets.

Producer Milk

The percentage of a handler's pooled milk for the Western order final decision that may be diverted to non-pool plants is 90 percent in any month. The proposed rule recommended a limit of 80 percent, which is identical to the percentage currently included in the Southwestern Idaho-Eastern Oregon order and is only slightly higher than that for the present Great Basin order (i.e., 75 percent for cooperatives and 70 percent for proprietary handlers).

Avonmore West Inc. (Avonmore), a handler in the Southwestern Idaho-Eastern Oregon order in Twin Falls, Idaho, favors the more liberal qualification rules proposed for the Western Order whereby only one day's production of producer milk has to be received at a pool plant. However, the handler opposed the 80 percent standard of a handler's pooled milk that may be diverted to non-pool plants as recommended in the proposed rule. Avonmore indicated that the 80 percent diversion limitation is identical to the one currently in the Southwestern Idaho-Eastern Oregon Federal order and stated that this standard was suspended indefinitely in December 1989. The handler contends that the argument that the 80 percent diversion limitation caused uneconomic movements of milk is still valid today.

In 1997, Avonmore notes, an average of 217 million pounds of producer milk was diverted to nonpool plants each month. Accordingly, Avonmore argues that the reintroduction of the 80 percent diversion limitation would allow only 80 million pounds of producer milk to be diverted to nonpool plants. The handler contends this would preclude many dairy producers in Idaho from having their milk associated with the Western order, which could cause significant price disparities between producers and create disorderly marketing conditions that Federal orders are intended to prevent.

Utah Farm Bureau Federation filed a comment regarding the consolidation of the Great Basin and Southwestern Idaho-Eastern Oregon orders into the Western order. In their comments the federation states that the pooling provisions of the current Great Basin order must be maintained to prohibit opportunistic entry of outside milk into the Utah Class I pool.

As adopted in this final decision, the 90 percent diversion limitation is the same as that adopted in the consolidated Upper Midwest order. The 90 percent limitation on movements of pooled milk to nonpool plants should permit all milk associated with the market that is not needed at pool plants during the month to be pooled and priced under the order. The 90 percent standard provides handlers more flexibility to efficiently move milk. Although unlimited diversions are not incorporated in the consolidated order, the 90 percent standard should not preclude most producers associated with the current individual orders from having their milk pooled under the consolidated Western order. The 90 percent standard is an appropriate level for the consolidated order given the provisions contained in the current individual orders and should not create any disorderly marketing conditions. The recommended standard also should ensure that additional amounts of unneeded milk would not be pooled. In addition, as contained in other consolidated orders the market administrator will have the authority to adjust the diversion percentage.

The order language allowing two or more cooperative associations to jointly met the diversion limits was inadvertently excluded from the proposed rule. Order language to allow this to occur has been included in this final decision.

Darigold Farms opposes the touch-base requirement that was recommended in the proposed rule. The cooperative contends that the exclusion of this provision may present an opportunity to obtain unified support for a provision that would prevent or reduce opportunistic pooling.

The current Southwestern Idaho-Eastern Oregon and Great Basin orders contain such a touch-base provision. The provision ensure that a producer whose milk is pooled on the order is indeed servicing the Class I needs of the market. Accordingly, the touch-base provision recommended in the proposed rule is adopted in this final decision. The provision provides that during the month at least one day's milk production of a dairy farmer new to the order must be physically received at a pool plant so that milk of such producer is eligible for diversion.

Reports of Receipts and Utilization and Payroll Reports

The Western order requires pool handlers to file a "report of receipts and utilization" on or before the seventh day

after the end of the month. This is identical to the current reporting date in the Great Basin order but two days earlier than the same provision in the Southwestern Idaho-Eastern Oregon order. Almost all handlers currently file reports by FAX or some other form of electronic data transfer, which eliminates delays due to mail handling. A seven-day reporting period should allow adequate time for handlers to prepare reports and will allow the computation and release of producer price information to occur on or before the 12th day after the end of the month.

The date on which the report of payments to producers is due to the market administrator under the Western order is on or before the 21st day after the end of the month. This is the same date as that under the Great Basin order, but one day earlier than under the Southwestern Idaho-Eastern Oregon order. The earlier reporting date and announcement of producer prices should assure that an earlier payroll reporting date would not be burdensome.

Multiple Component Pricing

Both the Great Basin order and the Southwestern Idaho-Eastern Oregon order currently have multiple component pricing based on protein without a somatic cell adjustment. The multiple component pricing provisions of the consolidated Western order should be the same as those for other proposed orders that provide for multiple component pricing based on protein but without a somatic cell adjustment. The Western order has a significant amount of milk used in manufactured products, especially cheese, and component pricing will enable producers to be paid according to the value of the components of their milk. However, the somatic cell adjustment included in some of the consolidated orders for which component pricing is proposed is not warranted by marketing conditions under the Western order, and such an adjustment is not included in the final decision.

Avonmore expressed support for the use of multiple component pricing in the Western Order and strongly recommended the inclusion of a somatic cell count price adjuster. Avonmore states the SCC adjuster is necessary because the manufacture of cheese is the predominant use of milk in the Western Order. Avonmore notes that it has been documented that elevated levels of SCC impact cheese yield. In addition, the handler contends that dairy products (i.e., cheese, NFDM, butter, whey products) exported to the European Union must be made with milk containing less than 400,000 SCC.

Darigold Farms, a cooperative that will have milk on the order has expressed the opinion that an adjustment for somatic cells is a quality issue that may be better dealt with between the buyer and seller. In addition, the nearby Pacific Northwest order will not have a somatic cell adjustment. The somatic cell count of milk produced in the western U.S. is at an average level of 250,000. This level is significantly lower than the 350,000 level, which provides no adjustment in the consolidated orders that adjust for somatic cell count. For the reasons stated above and due to the high quality of milk produced in the consolidated Western marketing area, a quality adjustment is unnecessary and need not be included in the order.

Payments To and From the Producer Settlement Fund

Payments to the producer settlement fund under the consolidated order are due on or before the 14th day after the end of the month. This is two days after the announcement of uniform producer prices, which is an identical time period to that which exists in the two current orders that are being consolidated.

Payments from the producer settlement fund under the consolidated order would be due on or before the 15th day after the end of the month. This is the same date as under the current Great Basin order and three days earlier than under the Southwestern Idaho-Eastern Oregon order. This payment date should be practicable, given the use of current banking and transmission techniques.

Payments to Producers and Cooperative Associations

Under the Western order, partial payments would be due from handlers to producers who are not members of cooperative associations on or before the 25th day of the month in an amount not less than 1.2 times the lowest class price for the preceding month multiplied by the hundredweight of milk received from such producers during the first 15 days of the month. Final payments would be due on or before the 17th day after the end of the month.

Partial payments to cooperative associations would be due on or before the 24th day of the month at the same rate as above, with final payments due on or before the 16th day after the end of the month. These final payment dates represent very little or no change from the orders' present payment dates. The partial payment dates are earlier than those required under the current orders, but are very close to those suggested by the Identical Provisions committee, and compliance should present no hardship to handlers who would already have had the use of the producers' milk for 9 to 23 days.

Pacific Northwest Order

Many of the provisions of the Pacific Northwest order are explained in the "Identical Provisions" portion of this final decision, and need not be addressed here. The provisions that deviate somewhat from those incorporated in other order areas are the provisions dealing with standards for determining the pool status of producers and handlers, the definition of producer-handlers, the factors upon which payments to producers are calculated, and reporting and payment dates. Because this order is not proposed to be consolidated with any other orders, there is little reason for changing the substance of many of the provisions that are not included in the General Provisions.

Pool Distributing Plant

The pool distributing plant provisions of the proposed Pacific Northwest Order are changed from the current definition to one that more closely resembles the definition suggested in the identical provisions report. Rather than basing the identification of a pool distributing plant on only 10 percent of the plant's receipts as in-area route dispositions, the order should specify that such a plant have at least 25 percent of its physical receipts distributed as route disposition, and at least 25 percent of its route disposition distributed within the marketing area.

It is expected that the modified pooling standard will not affect the pool status of any plant that currently does or does not meet the pooling standard of the Pacific Northwest order. In addition, it would remedy a provision that could result in fully regulating a plant that has minimal association with the marketing area.

The pool plant provisions of the Pacific Northwest order have been revised in this final decision. One modification provides for the pooling of plants that specialize in ultra-pasteurized or aseptically-processed fluid milk products. A detailed explanation of the changes is located at the end of the western regional discussion.

Pool Supply Plant

For the most part, the current pool supply plant definition of the Pacific Northwest order and the performance standard of shipping 20 percent of the

milk is appropriate to the marketing conditions in the area. However, the provision that currently *requires* a handler to include producer milk moved directly to pool distributing plants in the shipments on which pool plant performance is calculated is changed to *allow* the handler to include such movements if the handler wants to qualify its plant for pooling. A plant operator who receives milk at a plant only for manufacturing use also will be able to supply producer milk directly to distributing plants without a requirement that the manufacturing plant be a supply plant.

In the Pacific Northwest order the current March through August period during which supply plants do not have to ship the minimum percentage to distributing plants if they have done so during the previous September through February period is included in the pool supply plant definition.

As in the other consolidated orders, the market administrator will have the authority to increase or decrease the order's pooling provisions as marketing conditions change for the purpose of assuring that an adequate supply of milk will be available for fluid use, or to assure that the order does not require handlers to undertake uneconomic movements of milk to maintain: (1) The pool status of their plants, or (2) the pooling of producers who have historically been associated with the market and who help serve Class I needs.

Nonpool Plant

The current definition and exemption for milk produced and processed by state institutions, as contained in the present order's producer-handler definition, is expanded and moved to be included in the "Nonpool plant" definition contained in the General Provisions. Such entities, along with colleges and universities and charitable organizations, will not be subject to the orders' pricing and pooling provisions as long as they have no sales in commercial channels.

The present Pacific Northwest order provisions allow a state institution to avoid any regulation on the portion of its milk that is used only within the institution, and apply some pricing regulation to that portion that is distributed in commercial channels. In some respects, this arrangement is similar to the situation of partially regulated distributing plants. However, partially regulated distributing plant operators, to avoid obligations under Federal orders, must show that they pay the dairy farmers who ship milk to them at a rate at least commensurate with that paid to producers whose milk is pooled under the order. In any case, they must procure a milk supply in the competitive market. State institutions may have any number of cost advantages over regulated handlers in the production and processing of milk, such as not having to pay a minimum wage and not having to pay property taxes. It would be unjust to allow such institutions to compete with fully regulated handlers in regular commercial channels as if the playing field were level. Therefore, state and other institutions that compete with regulated handlers in regular commercial channels, such as bids for school milk programs, would be regulated on those sales.

Producer-Handler

The current Pacific Northwest producer-handler provisions remain essentially untouched. Some of the "Identical Provisions" features of the producer-handler definition, such as the 150,000-pound thresholds for route dispositions, own farm production, and receipts from pool plants are adopted in this final decision. The rest of the current producer-handler provisions remain in effect for administrative purposes.

Producer-handlers represent a much larger portion of the Class I dispositions in the Pacific Northwest marketing area than in most other Federal order areas. In many marketing areas, producer-handlers supply one percent or less of the Class I sales. In the Pacific Northwest area, however, they furnish almost 10 percent of the market's Class I dispositions. The larger average size of the dairy farms in the western United States makes more likely the existence of a producer-handler that is a significant factor in the market.

The current order's producer–handler provisions are based on the history of producer–handler operations in the marketing area, reflecting difficulties encountered in order administration, attempts to circumvent order provisions, and court challenges.

In addition to the current order provisions, the producer–handler definition contains language clarifying that milk received by the producer–handler at a location other than the producer–handler's processing plant for distribution on routes will be included as a receipt from another handler.

Reserve Supply Unit

The Pacific Northwest order will continue to provide for a cooperative reserve supply unit. The existing provision has many similarities to a reserve supply plant, which is not provided in this order but which is included in several of the consolidated orders.

Under the terms of the present provision, the cooperative members of the reserve supply unit must be located near a pool distributing plant, as a reserve supply plant must be located in the marketing area. Both the reserve supply unit and the reserve supply plant provisions require that the plant or unit operator request prior approval of the market administrator to initiate and cancel their status, both require long-term association with the market, and both provide substantial penalties for failing to meet all required conditions. Although the cooperative unit does not have monthly qualification requirements, it is subject to a call by the market administrator after the market administrator's investigation of the need for supplemental supplies of milk. Because of the current existence of this provision, based on the need shown at a public hearing, and its similarities to a pooling mechanism suggested for other orders, provision for the cooperative reserve supply unit will continue to be included in the Pacific Northwest order.

The order language regarding the exemption from diversion limits for a cooperative reserve supply unit was inadvertently excluded from the proposed rule. The order language for this exemption has been included in this final decision.

The order language allowing two or more cooperative associations to jointly met the diversion limits was also inadvertently excluded from the proposed rule. Order language to allow this to occur has been included in this final decision.

Producer and Producer Milk

The consolidated Pacific Northwest order would contain a "dairy farmer for other markets" provision for each month of the year. The large volume of milk production in California and California's quota system give dairy farmers an incentive to pool production in a volume equal to their quota pounds on the California order, and then attempt to share in the Pacific Northwest Class I market with their over-quota production, for which returns under the California order are much less. At the same time, none of the California Class I returns would be shared with Pacific Northwest producers. Similarly, producers subject to other state programs should not be allowed to pool the reserve supplies from the State-regulated markets and share in returns from the Pacific

Northwest pool while enjoying the benefits of the State orders' Class I returns.

The current provisions of the Pacific Northwest order do not require that a producer's milk be received at pool plants for the producer's first pooled delivery on the market or for any specified period. If a handler meets its overall performance requirements for supplying milk to the market, it should make no difference which individual producer's milk is actually delivered to pool plants as long as the milk of each producer participating in the pool is Grade A and available to the market if and when needed. It is expensive, inefficient, and unnecessary to move milk from areas close to nonpool manufacturing plants to bottling plants in the city markets when that milk is not needed for bottling. For the above reasons and furthermore because there are often great distances and mountainous terrain between plants and farms in the more sparsely populated West, no "touch base" requirements should be included. As stated previously, Darigold Farms supports the exclusion of "touch base" requirements. The cooperative states that the exclusion may present an opportunity to obtain unified support for a provision that would prevent or reduce opportunistic pooling.

This order and other western orders have allowed producers to pool milk on more than one order during the same month. Because of the locations of a number of dairy farmers, their milk may be used by pool plants regulated under more than one order in a single month. These producers also represent a reserve supply for more than one market. Large, multi-market handlers should be given the flexibility to market and transport their milk to fulfill the needs of their customers in the most efficient way possible.

The small changes in the final decision from the current pooling provisions of the Pacific Northwest order result in very little change in the order's diversion limits. The limit of 80 percent of the handler's supply of producer milk remains unchanged, with the months during which the percentage is effective changed from September through April to September through February. These months will correspond to the months during which supply plants must ship 20 percent of their receipts to pool distributing plants.

In the current order there is no limit on diversions during May through August. In this final decision there will be a limit of 99 percent on diversions of producer milk for the months of March through August. The current delivery standards have not been overly restrictive nor associated unneeded supplies with the market and should be allowed to continue basically unchanged. However, the change from without limit to a percentage amount will allow the market administrator, as provided for in other orders the authority to adjust the percentage of milk that may be diverted.

Payments to Producers and Cooperative Associations

Although the current Pacific Northwest order contains a multiple component pricing plan very like that proposed to be standard for the consolidated orders, it does not now and would not under this reform process contain a somatic cell adjustment provision. The level of somatic cells in the western U.S. is generally lower than in the east, with an overall average of approximately 250,000 instead of 350,000. This lower somatic cell count would seem to reduce the need for such a provision. Historically, the principal argument for a somatic cell adjuster has been the negative effect of somatic cells on the cheese yields. Although cheese manufacturing in the Northwest is increasing, most cheese manufacturing is done by cooperative associations who have expressed the opinion that an adjustment for somatic cells is a quality issue best dealt with internally. The somatic cell adjustments in the consolidated orders of the final decision are not incorporated in the Pacific Northwest order.

Announcement of Producer Prices

The dates on which handler reports, market administrator's announcement of producer prices, and payment to producers would remain unchanged from those of the current order.

General Comment Related to Orders

Darigold Farms suggests that the new orders provide some performance requirements attached to each individual market, but recommends that a producer, once qualified, should be locked into the pool for a minimum of four months. This recommendation has not been incorporated in the final decision for any of the western orders. The provisions adopted in each order should ensure that the Class I needs of the markets are met.

Major Changes to Orders From the Proposed Rule

The pool plant provisions of the orders in the western region have been revised. Paragraph (b) of section 7 will accommodate the pooling of plants that specialize in ultra-pasteurized or aseptically-processed fluid milk products (i.e., fluid milk products with a shelf life of at least 60–90 days without refrigeration.) At the present time, there are no plants processing this type of product in the Southwest, Arizona-Las Vegas, or Pacific Northwest marketing areas. However, there is one plant in the Western order market area.

Unlike a typical distributing plant, a plant specializing in extended shelf-life products may have a more erratic processing schedule, reflecting the longer shelf life of the products packaged at the plant. Consequently, a plant's Class I utilization may vary considerably from month to month. In certain areas of the country, such variability has resulted in shifting pool status for this type of plant from one order to another. Such regulatory instability is not conducive to orderly marketing. To provide greater regulatory stability for these plants, they should be fully regulated pool plants if they are located in the marketing area and process at least 25 percent of their fluid milk product receipts during the month into ultra-pasteurized or aseptically-processed fluid milk products. This provision will not guarantee that a plant qualifies as a fully-regulated pool plant every month; some months a plant may fail to process 25 percent of its milk receipts into ultra-pasteurized or aseptically-processed fluid milk products. Nevertheless, the provision will guarantee that if a plant meets the 25 percent standard described above, it will be qualified under the same order all the time.

7. Miscellaneous and Administrative

(a) Consolidation of the marketing service, administrative expense, and producer-settlement funds. To complete the consolidation of the present 31 Federal orders effectively and equitably, the reserve balances in the marketing service, administrative expense, and producer-settlement funds that have resulted under the individual orders would be combined.

The balances in these three funds should be combined on the same basis that the marketing areas are consolidated into regional orders herein. For instance, the Texas and New Mexico-West Texas marketing areas are merged into a new regional Southwest order. Accordingly, the reserve balances in the marketing service, administrative expense and producer-settlement funds of the two individual orders likewise should be combined into three separate funds established under the consolidated Southwest order.

The marketing areas of the 11 consolidated orders essentially represent the territory covered by the 31 individual orders plus the territory included in the former Tennessee Valley marketing area. Because of this, the handlers and producers servicing the milk needs of the individual markets will continue to furnish the milk needs of the applicable regional market for the most part.

In that regard, the reserve balances in the funds that have resulted under the 31 individual orders should be combined on a marketing area basis into the appropriate separate fund established for each of the 11 regional orders. Any liabilities of such funds under the individual orders would be paid from the appropriate newly established fund of the applicable regional order. Similarly, obligations that are due the separate funds under the individual orders would be paid to the appropriate combined fund of the applicable consolidated order.

In most cases, the entire marketing area of an order or orders is included in the consolidated marketing area of one of the 11 regional orders. Four present marketing areas would be split between two consolidated orders. One county of the present Louisville-Lexington-Evansville (Order 46) marketing area would be included in the Southeast order, and the rest of the territory in the Order 46 marketing area would be included under the Appalachian order. Even though one Order 46 county is included in the consolidated Southeast order, all of the present Order 46 producers and handlers are expected to be covered under the consolidated Appalachian order. Accordingly, the balances in the Order 46 marketing service, administrative expense, and producer settlement funds should be consolidated into the three separate funds established for the consolidated Appalachian market.

Different regulatory situations, however, will occur in the other three instances where a current marketing area is divided between two consolidated orders. The southwest Missouri and northwest Arkansas portions of the current Southwest Plains order area are included in the consolidated Southeast marketing area, while the remainder of the Southwest Plains area is combined with the marketing areas of eight other orders in the consolidated Central marketing area. Similarly, one county of the current Great Basin (Order 139) marketing area is included in the consolidated Arizona-Las Vegas order and the rest of the Order 139 marketing area is included in the consolidated marketing area for the West. In the third instance, two zones of the Michigan Upper Peninsula (Order 44) marketing area are included in the consolidated Upper Midwest marketing area and the other zone of the Order 44 marketing area is included in the marketing area for the Mideast regional order.

In each of these 3 cases, some of the producers and handlers of each of the current order areas that are being divided will become pooled under one consolidated order, while the other producers and handlers of each of these areas will become pooled under another regional order. Accordingly, any reserve balances in the marketing service, administrative expense and producer-settlement funds of these three individual orders should be divided equitably among the applicable consolidated orders.

The money accumulated in the marketing service funds of the individual orders is that which has been paid by producers for whom the market administrators are performing such services. Since the marketing areas of the 11 regional orders encompass the territory covered by the individual orders, for the most part, the producers who have contributed to the marketing service funds of the individual orders are expected to continue supplying milk for the consolidated orders. Since marketing service programs will be continued for these producers under the regional orders, it would be appropriate to combine the reserve balances in the marketing service funds of the order or orders that are represented in the consolidation of each of the 11 regional orders.

When the consolidated marketing area includes the marketing area of one or more individual orders, any remaining balance in the marketing service fund of the individual order or orders should be combined in the marketing service fund established for the applicable consolidated order. If a current marketing area is split between two consolidated markets and the regulatory status of producers and handlers is divided between the two regional orders, as is the case with the Michigan Upper Peninsula, Southwest Plains, and Great Basin orders, any balance in the marketing service fund of the individual order should be prorated between the two consolidated orders on the basis of the amount of milk subject to the marketing service deduction that will be covered by each respective regional order (using producer deliveries in the last month the individual orders are in effect but assuming that the marketing areas had been consolidated).

The money paid to the administrative expense fund is each handler's proportionate share of the cost of administering the order. For the most part, handlers currently regulated under the individual orders will continue to be regulated under the consolidated orders. In view of this, it would be an unnecessary administrative and financial burden to allocate the reserve funds of the individual orders back to handlers and then accumulate an adequate reserve for each of the consolidated orders. It would be as equitable and more efficient to combine the remaining administrative monies accumulated under the individual orders in the same manner as the marketing areas are combined.

For the orders where the consolidated marketing area includes the regulated territory of one or more of the individual orders, any remaining balance in the administrative expense fund of the individual order or orders would be combined into the administrative expense fund established for the applicable consolidated order. In the situations where the current individual marketing area is split and the regulatory status of producers and handlers is divided (as in the case of the Michigan Upper Peninsula, Southwest Plains, and Great Basin orders) between two consolidated marketing areas, the remaining balance in the administrative expense fund should be prorated between the two regional orders on the basis of the amount of milk that would be pooled and priced under each respective consolidated order (using producer milk deliveries during the last month the individual orders are in effect but assuming that the orders had been consolidated).

Likewise, the producer-settlement fund balances of the individual orders should be combined. They should be combined on the same basis as the marketing areas are consolidated herein. This will enable the producer-settlement funds of the consolidated orders to continue without interruption.

The producers currently supplying the individual markets are expected to supply milk for the consolidated markets. Thus, monetary balances in the producer-settlement funds of the individual orders now would be reflected in the pay prices of the producers who will benefit from the applicable consolidated orders. The combined fund for each consolidated order also would serve as a contingency fund from which money would be available to meet obligations (resulting from audit adjustments and otherwise) occurring under the individual orders.

The same procedure used in combining the remaining balances in the marketing service and administrative expense funds of the individual orders should be followed in combining the producer-settlement fund balances when the individual orders are consolidated. For orders where the consolidated marketing area includes the marketing area of one or more orders, any remaining balance in the producer-settlement fund of the individual order or orders would be combined into the producer-settlement fund established for the applicable consolidated order. In the three situations (Michigan Upper Peninsula, Southwest Plains, and Great Basin) where the marketing area of a current order is split between two consolidated orders and some of the individual market's producers and handlers would be regulated under one consolidated order and others would be regulated under another consolidated order, the balance in the producer-settlement fund should be divided equitably between the two consolidated orders. Since the Michigan Upper Peninsula order is an individual-handler pool market, no producer-settlement fund is provided. In the 2 remaining instances in which current marketing areas are divided between 2 consolidated orders, the remaining balance in the producer-settlement funds of the Southwest Plains and Great Basin orders should be prorated between the consolidated orders on the basis of the amount of milk that will be pooled and priced under each respective consolidated order (using producer milk deliveries during the last month the individual orders are in effect but assuming that the orders had been consolidated).

(b) Consolidation of the transportation credit balancing funds. To complete the consolidation process, the reserve balances in the transportation credit balancing funds that are in effect now under three Southeast orders (Carolina, Order 5; Southeast, Order 7; and Louisville-Lexington-Evansville, Order 46) also should be consolidated. These funds should be combined on a marketing area basis. In that regard, the reserve balances in the transportation credit balancing funds of the Carolina and Louisville-Lexington-Evansville orders should be consolidated into a newly established transportation credit balancing fund for the consolidated Appalachian order, which also includes the current marketing areas of these two orders with the exception of one county. Similarly, the reserve balance in the transportation credit balancing fund of the present Southeast order should be transferred to the consolidated Southeast order, which includes all of the marketing area of the present Southeast order. These procedures will enable the transportation credits to continue without interruption under these two consolidated orders.

(c) General findings.

The findings and determinations hereinafter set forth supplement those that were made when the aforesaid orders were first issued and when they were amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

(1) The tentative marketing agreements and the orders, as hereby proposed to be amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk as determined pursuant to section 2 of the Act are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in each of the aforesaid marketing areas, and the minimum prices specified in the tentative marketing agreements and the orders, as hereby proposed to be amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest;

(3) The tentative marketing agreements and the orders, as hereby proposed to be amended, will regulate the handling of milk in the same manner as, and will be applicable only to persons in the respective classes of industrial and commercial activity specified in the marketing agreements;

(4) All milk and milk products handled by handlers, as defined in the tentative marketing agreements and the orders as hereby proposed to be amended, are in the current of interstate commerce or directly burden, obstruct, or affect interstate commerce in milk or its products; and

(5) It is hereby found that the necessary expense of the market administrator for the maintenance and functioning of such agency will require the payment by each handler, as his pro rata share of such expense, 5 cents per hundredweight or such lesser amount as the Secretary may prescribe, with respect to milk specified in § 1000.85 of the General Provisions.

Comments

In arriving at the findings and conclusions, and the regulatory provisions of this decision, each of the comments received was carefully and fully considered in conjunction with the rulemaking record.

Marketing Agreements and Order Amending the Orders

The marketing agreements regulating the handling of milk in each of the consolidated orders are not included in this final decision because the regulatory provisions thereof would be the same as those contained in the orders, as hereby amended. The following order amending the orders regulating the handling of milk in the respective marketing areas of these orders is proposed as the detailed and appropriate means by which the foregoing conclusions may be carried out.

Referendum Order to Determine Producer Approval

This decision does not provide for conducting referendums of producers to determine if they approve of the issuance of the consolidated orders. A notice to conduct a referendum on each of the consolidated orders will be issued at a future date.

List of Subjects in 7 CFR Parts 1000, 1001, 1002, 1004, 1005, 1006, 1007, 1012, 1013, 1030, 1032, 1033, 1036, 1040, 1044, 1046, 1049, 1050, 1064, 1065, 1068, 1076, 1079, 1106, 1124, 1126, 1131, 1134, 1135, 1137, 1138 and 1139

Milk marketing orders.

Dated: March 12, 1999.

Michael V. Dunn,

Under Secretary, Marketing and Regulatory Programs.

Order Amending the Orders Regulating the Handling of Milk in the Northeast and Other Marketing Areas

This order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.

Findings and Determinations

The findings and determinations hereinafter set forth supplement those that were made when the orders were first issued and when they were amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

(a) The said orders as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(b) The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the

price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the aforesaid marketing areas. The minimum prices specified in the orders as hereby amended are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(c) The said orders as hereby amended regulate the handling of milk in the same manner as, and are applicable only to persons in the respective classes of industrial or commercial activity specified in, the marketing agreements;

(d) All milk and milk products handled by handlers, as defined in the orders as hereby amended, are in the current of interstate commerce or directly burden, obstruct, or affect interstate commerce in milk or its products; and

(e) It is hereby found that the necessary expense of the market administrators for the maintenance and functioning of such agency will require the payment by each handler, as his pro rata share of such expense, 5 cents per hundredweight or such lesser amount as the Secretary may prescribe, with respect to milk specified in § 1000.85 of the General Provisions.

Order Relative to Handling

It is therefore ordered, that on and after the effective date hereof, the handling of milk in the Northeast and other marketing areas shall be in conformity to and in compliance with the terms and conditions of the orders, as amended, and as hereby amended, as follows:

The provisions of the proposed marketing agreements and order amending the orders contained in the proposed rule issued by the Administrator, Agricultural Marketing Service, on January 21, 1998, and published in the **Federal Register** on January 31, 1998 (63 FR 4802), as modified herein, shall be and are the terms and provisions of this order, amending the orders, and are set forth in full herein.

For the reasons set forth in the preamble and under the authority of Title 7, chapter X, parts 1000, 1001, 1005, 1006, 1007, 1030, 1032, 1033, 1124, 1126, 1131, and 1135 are revised and parts 1002, 1004, 1012, 1013, 1036, 1040, 1044, 1046, 1049, 1050, 1064, 1065, 1068, 1076, 1079, 1106, 1134, 1137, 1138 and 1139 are removed and reserved as follows:

PART 1000—GENERAL PROVISIONS OF FEDERAL MILK MARKETING ORDERS

Subpart A—Scope and Purpose

Sec.
1000.1 Scope and purpose of this Part 1000.

Subpart B—Definitions

1000.2 General definitions.
1000.3 Route disposition.
1000.4 Plant.
1000.5 Distributing plant.
1000.6 Supply plant.
1000.8 Nonpool plant.
1000.9 Handler.
1000.14 Other source milk.
1000.15 Fluid milk product.
1000.16 Fluid cream product.
1000.17 [Reserved]
1000.18 Cooperative association.
1000.19 Commercial food processing establishment.

Subpart C—Rules of Practice and Procedure Governing Market Administrators

1000.25 Market administrator.

Subpart D—Rules Governing Order Provisions

1000.26 Continuity and separability of provisions.

Subpart E—Rules of Practice and Procedure Governing Handlers

1000.27 Handler responsibility for records and facilities.
1000.28 Termination of obligations.

Subpart F—Classification of Milk

1000.40 Classes of utilization.
1000.41 [Reserved]
1000.42 Classification of transfers and diversions.
1000.43 General classification rules.
1000.44 Classification of producer milk.
1000.45 Market administrator's reports and announcements concerning classification.

Subpart G—Class Prices

1000.50 Class prices, component prices, and advanced pricing factors.
1000.51 [Reserved]
1000.52 Adjusted Class I differentials.
1000.53 Announcement of class prices, component prices, and advanced pricing factors.
1000.54 Equivalent price.

Subpart H—Payments for Milk

1000.70 Producer-settlement fund.
1000.76 Payments by a handler operating a partially regulated distributing plant.
1000.77 Adjustment of accounts.
1000.78 Charges on overdue accounts.

Subpart I—Administrative Assessment and Marketing Service Deduction

1000.85 Assessment for order administration.
1000.86 Deduction for marketing services.

Subpart J—Miscellaneous Provisions

1000.90 Dates.
1000.91 [Reserved]
1000.92 [Reserved]
1000.93 OMB control number assigned pursuant to the Paperwork Reduction Act.

Authority: 7 U.S.C. 601—674.

Subpart A—Scope and Purpose

§ 1000.1 Scope and purpose of this Part 1000.

This part sets forth certain terms, definitions, and provisions which shall be common to and part of each Federal milk marketing order in 7 CFR, chapter X, except as specifically defined otherwise, or modified, or otherwise provided, in an individual order in 7 CFR, chapter X.

Subpart B—Definitions

§ 1000.2 General definitions.

(a) *Act* means Public Act No. 10, 73d Congress, as amended and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*).

(b) *Order or Federal milk order* means the applicable part of 7 CFR, chapter X, issued pursuant to section 8c of the Act as a Federal milk marketing order (as amended).

(c) *Department* means the U.S. Department of Agriculture.

(d) *Secretary* means the Secretary of Agriculture of the United States or any officer or employee of the Department to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in his stead.

(e) *Person* means any individual, partnership, corporation, association, or other business unit.

§ 1000.3 Route disposition.

Route disposition means a delivery to a retail or wholesale outlet (except a plant), either directly or through any distribution facility (including disposition from a plant store, vendor, or vending machine) of a fluid milk product in consumer-type packages or dispenser units classified as Class I milk.

§ 1000.4 Plant.

(a) Except as provided in paragraph (b) of this section, *plant* means the land, buildings, facilities, and equipment constituting a single operating unit or establishment at which milk or milk products are received, processed, or packaged, including a facility described in paragraph (b)(2) of this section if the facility receives the milk of more than one dairy farmer.

(b) Plant shall not include:

(1) A separate building without stationary storage tanks that is used only as a reload point for transferring bulk

milk from one tank truck to another or a separate building used only as a distribution point for storing packaged fluid milk products in transit for route disposition; or

(2) An on-farm facility operated as part of a single dairy farm entity for the separation of cream and skim or the removal of water from milk.

§ 1000.5 Distributing plant.

Distributing plant means a plant that is approved by a duly constituted regulatory agency for the handling of Grade A milk at which fluid milk products are processed or packaged and from which there is route disposition or transfers of packaged fluid milk products to other plants.

§ 1000.6 Supply plant.

Supply plant means a plant approved by a duly constituted regulatory agency for the handling of Grade A milk that receives milk directly from dairy farmers and transfers or diverts fluid milk products to other plants or manufactures dairy products on its premises.

§ 1000.8 Nonpool plant.

Nonpool plant means any milk receiving, manufacturing, or processing plant other than a pool plant. The following categories of nonpool plants are further defined as follows:

(a) *A plant fully regulated under another Federal order* means a plant that is fully subject to the pricing and pooling provisions of another Federal order.

(b) *Producer-handler plant* means a plant operated by a producer-handler as defined under any Federal order.

(c) *Partially regulated distributing plant* means a nonpool plant that is not a plant fully regulated under another Federal order, a producer-handler plant, or an exempt plant, from which there is route disposition in the marketing area during the month.

(d) *Unregulated supply plant* means a supply plant that does not qualify as a pool supply plant and is not a plant fully regulated under another Federal order, a producer-handler plant, or an exempt plant.

(e) *An exempt plant* means a plant described in this paragraph that is exempt from the pricing and pooling provisions of any order provided that the operator of the plant files reports as prescribed by the market administrator of any marketing area in which the plant distributes packaged fluid milk products to enable determination of the handler's exempt status:

(1) A plant that is operated by a governmental agency that has no route disposition in commercial channels;

(2) A plant that is operated by a duly accredited college or university disposing of fluid milk products only through the operation of its own facilities with no route disposition in commercial channels;

(3) A plant from which the total route disposition is for individuals or institutions for charitable purposes without remuneration; or

(4) A plant that has route disposition and packaged sales of fluid milk products to other plants of 150,000 pounds or less during the month.

§ 1000.9 Handler.

Handler means:

(a) Any person who operates a pool plant or a nonpool plant.

(b) Any person who receives packaged fluid milk products from a plant for resale and distribution to retail or wholesale outlets, any person who as a broker negotiates a purchase or sale of fluid milk products or fluid cream products from or to any pool or nonpool plant, and any person who by purchase or direction causes milk of producers to be picked up at the farm and/or moved to a plant. Persons who qualify as handlers only under this paragraph under any Federal milk order are not subject to the payment provisions of §§ ____.70, ____.71, ____.72, ____.73, ____.76, and ____.85 of that order.

(c) Any cooperative association with respect to milk that it receives for its account from the farm of a producer and delivers to pool plants or diverts to nonpool plants pursuant to § ____.13 of the order. The operator of a pool plant receiving milk from a cooperative association may be the handler for such milk if both parties notify the market administrator of this agreement prior to the time that the milk is delivered to the pool plant and the plant operator purchases the milk on the basis of farm bulk tank weights and samples.

§ 1000.14 Other source milk.

Other source milk means all skim milk and butterfat contained in or represented by:

(a) Receipts of fluid milk products and bulk fluid cream products from any source other than producers, handlers described in § 1000.9(c) and § 1135.11, or pool plants;

(b) Products (other than fluid milk products, fluid cream products, and products produced at the plant during the same month) from any source which are reprocessed, converted into, or combined with another product in the plant during the month; and

(c) Receipts of any milk product (other than a fluid milk product or a fluid cream product) for which the handler fails to establish a disposition.

§ 1000.15 Fluid milk product.

(a) Except as provided in paragraph (b) of this section, *fluid milk product* means any milk products in fluid or frozen form containing less than 9 percent butterfat that are intended to be used as beverages. Such products include, but are not limited to: Milk, fat-free milk, lowfat milk, light milk, reduced fat milk, milk drinks, eggnog and cultured buttermilk, including any such beverage products that are flavored, cultured, modified with added nonfat milk solids, sterilized, concentrated, or reconstituted. As used in this part, the term *concentrated milk* means milk that contains not less than 25.5 percent, and not more than 50 percent, total milk solids.

(b) The term fluid milk product shall not include:

(1) Plain or sweetened evaporated milk/skim milk, sweetened condensed milk/skim milk, formulas especially prepared for infant feeding or dietary use (meal replacement) that are packaged in hermetically-sealed containers, any product that contains by weight less than 6.5 percent nonfat milk solids, and whey; and

(2) The quantity of skim milk equivalent in any modified product specified in paragraph (a) of this section that is greater than an equal volume of an unmodified product of the same nature and butterfat content.

§ 1000.16 Fluid cream product.

Fluid cream product means cream (other than plastic cream or frozen cream), including sterilized cream, or a mixture of cream and milk or skim milk containing 9 percent or more butterfat, with or without the addition of other ingredients.

§ 1000.17 [Reserved]

§ 1000.18 Cooperative association.

Cooperative association means any cooperative marketing association of producers which the Secretary determines is qualified under the provisions of the Capper-Volstead Act, has full authority in the sale of milk of its members, and is engaged in marketing milk or milk products for its members. A federation of 2 or more cooperatives incorporated under the laws of any state will be considered a cooperative association under any Federal milk order if all member cooperatives meet the requirements of this section.

§ 1000.19 Commercial food processing establishment.

Commercial food processing establishment means any facility, other than a milk plant, to which fluid milk products and fluid cream products are disposed of, or producer milk is diverted, that uses such receipts as ingredients in food products and has no other disposition of fluid milk products other than those received in consumer-type packages (1 gallon or less). Producer milk diverted to commercial food processing establishments shall be subject to the same provisions relating to diversions to plants, including, but not limited to, §§ ____.13 and ____.52 of each Federal milk order.

Subpart C—Rules of Practice and Procedure Governing Market Administrators

§ 1000.25 Market administrator.

(a) *Designation.* The agency for the administration of the order shall be a market administrator selected by the Secretary and subject to removal at the Secretary's discretion. The market administrator shall be entitled to compensation determined by the Secretary.

(b) *Powers.* The market administrator shall have the following powers with respect to each order under his/her administration:

(1) Administer the order in accordance with its terms and provisions;

(2) Maintain and invest funds outside of the United States Department of the Treasury for the purpose of administering the order;

(3) Make rules and regulations to effectuate the terms and provisions of the order;

(4) Receive, investigate, and report complaints of violations to the Secretary; and

(5) Recommend amendments to the Secretary.

(c) *Duties.* The market administrator shall perform all the duties necessary to administer the terms and provisions of each order under his/her administration, including, but not limited to, the following:

(1) Employ and fix the compensation of persons necessary to enable him/her to exercise the powers and perform the duties of the office;

(2) Pay out of funds provided by the administrative assessment, except expenses associated with functions for which the order provides a separate charge, all expenses necessarily incurred in the maintenance and functioning of the office and in the performance of the duties of the office, including the market administrator's compensation;

(3) Keep records which will clearly reflect the transactions provided for in the order and upon request by the Secretary, surrender the records to a successor or such other person as the Secretary may designate;

(4) Furnish information and reports requested by the Secretary and submit office records for examination by the Secretary;

(5) Announce publicly at his/her discretion, unless otherwise directed by the Secretary, by such means as he/she deems appropriate, the name of any handler who, after the date upon which the handler is required to perform such act, has not:

(i) Made reports required by the order;

(ii) Made payments required by the order; or

(iii) Made available records and facilities as required pursuant to § 1000.27;

(6) Prescribe reports required of each handler under the order. Verify such reports and the payments required by the order by examining records (including such papers as copies of income tax reports, fiscal and product accounts, correspondence, contracts, documents or memoranda of the handler, and the records of any other persons that are relevant to the handler's obligation under the order), by examining such handler's milk handling facilities, and by such other investigation as the market administrator deems necessary for the purpose of ascertaining the correctness of any report or any obligation under the order. Reclassify skim milk and butterfat received by any handler if such examination and investigation discloses that the original classification was incorrect;

(7) Furnish each regulated handler a written statement of such handler's accounts with the market administrator promptly each month. Furnish a corrected statement to such handler if verification discloses that the original statement was incorrect; and

(8) Prepare and disseminate publicly for the benefit of producers, handlers, and consumers such statistics and other information concerning operation of the order and facts relevant to the provisions thereof (or proposed provisions) as do not reveal confidential information.

Subpart D—Rules Governing Order Provisions

§ 1000.26 Continuity and separability of provisions.

(a) *Effective time.* The provisions of the order or any amendment to the order shall become effective at such time as the Secretary may declare and shall continue in force until suspended or terminated.

(b) *Suspension or termination.* The Secretary shall suspend or terminate any or all of the provisions of the order whenever he/she finds that such provision(s) obstructs or does not tend to effectuate the declared policy of the Act. The order shall terminate whenever the provisions of the Act authorizing it cease to be in effect.

(c) *Continuing obligations.* If upon the suspension or termination of any or all of the provisions of the order there are any obligations arising under the order, the final accrual or ascertainment of which requires acts by any handler, by the market administrator or by any other person, the power and duty to perform such further acts shall continue notwithstanding such suspension or termination.

(d) *Liquidation.* (1) Upon the suspension or termination of any or all provisions of the order the market administrator, or such other liquidating agent designated by the Secretary, shall, if so directed by the Secretary, liquidate the business of the market administrator's office, dispose of all property in his/her possession or control, including accounts receivable, and execute and deliver all assignments or other instruments necessary or appropriate to effectuate any such disposition; and

(2) If a liquidating agent is so designated, all assets and records of the market administrator shall be transferred promptly to such liquidating agent. If, upon such liquidation, the funds on hand exceed the amounts required to pay outstanding obligations of the office of the market administrator and to pay necessary expenses of liquidation and distribution, such excess shall be distributed to contributing handlers and producers in an equitable manner.

(e) *Separability of provisions.* If any provision of the order or its application to any person or circumstances is held invalid, the application of such provision and of the remaining provisions of the order to other persons or circumstances shall not be affected thereby.

Subpart E—Rules of Practice and Procedure Governing Handlers

§ 1000.27 Handler responsibility for records and facilities.

Each handler shall maintain and retain records of its operations and make such records and its facilities available to the market administrator. If

adequate records of a handler, or of any other persons, that are relevant to the obligation of such handler are not maintained and made available, any skim milk and butterfat required to be reported by such handler for which adequate records are not available shall be considered as used in the highest-priced class.

(a) *Records to be maintained.* (1) Each handler shall maintain records of its operations (including, but not limited to, records of purchases, sales, processing, packaging, and disposition) as are necessary to verify whether such handler has any obligation under the order and if so, the amount of such obligation. Such records shall be such as to establish for each plant or other receiving point for each month:

(i) The quantities of skim milk and butterfat contained in, or represented by, products received in any form, including inventories on hand at the beginning of the month, according to form, time, and source of each receipt;

(ii) The utilization of all skim milk and butterfat showing the respective quantities of such skim milk and butterfat in each form disposed of or on hand at the end of the month; and

(iii) Payments to producers, dairy farmers, and cooperative associations, including the amount and nature of any deductions and the disbursement of money so deducted.

(2) Each handler shall keep such other specific records as the market administrator deems necessary to verify or establish such handler's obligation under the order.

(b) *Availability of records and facilities.* Each handler shall make available all records pertaining to such handler's operations and all facilities the market administrator finds are necessary to verify the information required to be reported by the order and/or to ascertain such handler's reporting, monetary, or other obligation under the order. Each handler shall permit the market administrator to weigh, sample, and test milk and milk products and observe plant operations and equipment and make available to the market administrator such facilities as are necessary to carry out his/her duties.

(c) *Retention of records.* All records required under the order to be made available to the market administrator shall be retained by the handler for a period of 3 years to begin at the end of the month to which such records pertain. If, within such 3-year period, the market administrator notifies the handler in writing that the retention of such records, or of specified records, is necessary in connection with a proceeding under section 8c(15)(A) of the Act or a court action specified in such notice, the handler shall retain such records, or specified records, until further written notification from the market administrator. The market administrator shall give further written notification to the handler promptly upon the termination of the litigation or when the records are no longer necessary in connection therewith.

§ 1000.28 Termination of obligations.

(a) Except as provided in paragraphs (b) and (c) of this section, the obligation of any handler to pay money required to be paid under the terms of the order shall terminate 2 years after the last day of the month during which the market administrator receives the handler's report of receipts and utilization on which such obligation is based, unless within such 2-year period, the market administrator notifies the handler in writing that such money is due and payable. Service of such written notice shall be complete upon mailing to the handler's last known address and it shall contain, but need not be limited to, the following information:

(1) The amount of the obligation;

(2) The month(s) on which such obligation is based; and

(3) If the obligation is payable to one or more producers or to a cooperative association, the name of such producer(s) or such cooperative association, or if the obligation is payable to the market administrator, the account for which it is to be paid.

(b) If a handler fails or refuses, with respect to any obligation under the order, to make available to the market administrator all records required by the order to be made available, the market administrator may notify the handler in writing, within the 2-year period provided for in paragraph (a) of this section, of such failure or refusal. If the market administrator so notifies a handler, the said 2-year period with respect to such obligation shall not begin to run until the first day of the month following the month during which all such records pertaining to such obligation are made available to the market administrator.

(c) Notwithstanding the provisions of paragraphs (a) and (b) of this section, a handler's obligation under the order to pay money shall not be terminated with respect to any transaction involving fraud or willful concealment of a fact, material to the obligation, on the part of the handler against whom the obligation is sought to be imposed.

(d) Unless the handler files a petition pursuant to section 8c(15)(A) of the Act and the applicable rules and regulations (7 CFR 900.50 *et seq.*) within the applicable 2-year period indicated below, the obligation of the market administrator:

(1) To pay a handler any money which such handler claims is due under the terms of the order shall terminate 2 years after the end of the month during which the skim milk and butterfat involved in the claim were received; or

(2) To refund any payment made by a handler (including a deduction or offset by the market administrator) shall terminate 2 years after the end of the month during which payment was made by the handler.

Subpart F—Classification of Milk

§ 1000.40 Classes of Utilization.

Except as provided in § 1000.42, all skim milk and butterfat required to be reported pursuant to § _____.30 of each Federal milk order shall be classified as follows:

(a) *Class I milk* shall be all skim milk and butterfat:

(1) Disposed of in the form of fluid milk products, except as otherwise provided in this section;

(2) In packaged fluid milk products in inventory at the end of the month; and

(3) In shrinkage assigned pursuant to § 1000.43(b).

(b) *Class II milk* shall be all skim milk and butterfat:

(1) In fluid milk products in containers larger than 1 gallon and fluid cream products disposed of or diverted to a commercial food processing establishment if the market administrator is permitted to audit the records of the commercial food processing establishment for the purpose of verification. Otherwise, such uses shall be Class I;

(2) Used to produce:

(i) Cottage cheese, lowfat cottage cheese, dry curd cottage cheese, ricotta cheese, pot cheese, Creole cheese, and any similar soft, high-moisture cheese resembling cottage cheese in form or use;

(ii) Milkshake and ice milk mixes (or bases), frozen desserts, and frozen dessert mixes distributed in half-gallon containers or larger and intended to be used in soft or semi-solid form;

(iii) Aerated cream, frozen cream, sour cream, sour half-and-half, sour cream mixtures containing nonmilk items, yogurt, and any other semi-solid product resembling a Class II product;

(iv) Custards, puddings, pancake mixes, coatings, batter, and similar products;

(v) Buttermilk biscuit mixes and other buttermilk for baking that contain food starch in excess of 2% of the total

solids, provided that the product is labeled to indicate the food starch content;

(vi) Formulas especially prepared for infant feeding or dietary use (meal replacement) that are packaged in hermetically-sealed containers;

(vii) Candy, soup, bakery products and other prepared foods which are processed for general distribution to the public, and intermediate products, including sweetened condensed milk, to be used in processing such prepared food products;

(viii) A fluid cream product or any product containing artificial fat or fat substitutes that resembles a fluid cream product, except as otherwise provided in paragraph (c) of this section; and

(ix) Any product not otherwise specified in this section; and

(3) In shrinkage assigned pursuant to § 1000.43(b).

(c) *Class III milk* shall be all skim milk and butterfat:

(1) Used to produce:

(i) Cream cheese and other spreadable cheeses, and hard cheese of types that may be shredded, grated, or crumbled;

(ii) Plastic cream, anhydrous milkfat, and butteroil; and

(iii) Evaporated or sweetened condensed milk in a consumer-type package; and

(2) In shrinkage assigned pursuant to § 1000.43(b).

(d) *Class IV milk* shall be all skim milk and butterfat:

(1) Used to produce:

(i) Butter; and

(ii) Any milk product in dried form;

(2) In inventory at the end of the month of fluid milk products and fluid cream products in bulk form;

(3) In the skim milk equivalent of nonfat milk solids used to modify a fluid milk product that has not been accounted for in Class I; and

(4) In shrinkage assigned pursuant to § 1000.43(b).

(e) *Other uses.* Other uses include skim milk and butterfat used in any product described in this section that is dumped, used for animal feed, destroyed, or lost by a handler in a vehicular accident, flood, fire, or similar occurrence beyond the handler's control. Such uses of skim milk and butterfat shall be assigned to the lowest priced class for the month to the extent that the quantities destroyed or lost can be verified from records satisfactory to the market administrator.

§ 1000.41 [Reserved]

§ 1000.42 Classification of transfers and diversions.

(a) *Transfers and diversions to pool plants.* Skim milk or butterfat transferred or diverted in the form of a fluid milk product or transferred in the form of a bulk fluid cream product from a pool plant or a handler described in § 1135.11 to another pool plant shall be classified as Class I milk unless the handlers both request the same classification in another class. In either case, the classification shall be subject to the following conditions:

(1) The skim milk and butterfat classified in each class shall be limited to the amount of skim milk and butterfat, respectively, remaining in such class at the receiving plant after the computations pursuant to § 1000.44(a)(9) and the corresponding step of § 1000.44(b);

(2) If the transferring plant received during the month other source milk to be allocated pursuant to § 1000.44(a)(3) or the corresponding step of § 1000.44(b), the skim milk or butterfat so transferred shall be classified so as to allocate the least possible Class I utilization to such other source milk; and

(3) If the transferring handler received during the month other source milk to be allocated pursuant to § 1000.44(a)(8) or (9) or the corresponding steps of § 1000.44(b), the skim milk or butterfat so transferred, up to the total of the skim milk and butterfat, respectively, in such receipts of other source milk, shall not be classified as Class I milk to a greater extent than would be the case if the other source milk had been received at the receiving plant.

(b) *Transfers and diversions to a plant regulated under another Federal order.* Skim milk or butterfat transferred or diverted in the form of a fluid milk product or transferred in the form of a bulk fluid cream product from a pool plant to a plant regulated under another Federal order shall be classified in the following manner. Such classification shall apply only to the skim milk or butterfat that is in excess of any receipts at the pool plant from a plant regulated under another Federal order of skim milk and butterfat, respectively, in fluid milk products and bulk fluid cream products, respectively, that are in the same category as described in paragraph (b)(1) or (2) of this section:

(1) As Class I milk, if transferred as packaged fluid milk products;

(2) If transferred or diverted in bulk form, classification shall be in the classes to which allocated under the other order:

(i) If the operators of both plants so request in their reports of receipts and utilization filed with their respective market administrators, transfers in bulk form shall be classified as other than Class I to the extent that such utilization is available for such classification pursuant to the allocation provisions of the other order;

(ii) If diverted, the diverting handler must request a classification other than Class I. If the plant receiving the diverted milk does not have sufficient utilization available for the requested classification and some of the diverted milk is consequently assigned to Class I use, the diverting handler shall be given the option of designating the entire load of diverted milk as producer milk at the plant physically receiving the milk. Alternatively, if the diverting handler so chooses, it may designate which dairy farmers whose milk was diverted during the month will be designated as producers under the order physically receiving the milk. If the diverting handler declines to accept either of these options, the market administrator will prorate the portion of diverted milk in excess of Class II, III, and IV use among all the dairy farmers whose milk was received from the diverting handler on the last day of the month, then the second-to-last day, and continuing in that fashion until the excess diverted milk has been assigned as producer milk under the receiving order; and

(iii) If information concerning the classes to which such transfers or diversions were allocated under the other order is not available to the market administrator for the purpose of establishing classification under this paragraph, classification shall be Class I, subject to adjustment when such information is available.

(c) *Transfers and diversions to producer-handlers and to exempt plants.* Skim milk or butterfat that is transferred or diverted from a pool plant to a producer-handler under any Federal order or to an exempt plant shall be classified:

(1) As Class I milk if transferred or diverted to a producer-handler;

(2) As Class I milk if transferred to an exempt plant in the form of a packaged fluid milk product; and

(3) In accordance with the utilization assigned to it by the market administrator if transferred or diverted in the form of a bulk fluid milk product or transferred in the form of a bulk fluid cream product to an exempt plant. For this purpose, the receiving handler's utilization of skim milk and butterfat in each class, in series beginning with Class IV, shall be assigned to the extent possible to its receipts of skim milk and butterfat, in bulk fluid cream products, and bulk fluid milk products, respectively, pro rata to each source.

(d) *Transfers and diversions to other nonpool plants.* Skim milk or butterfat

transferred or diverted in the following forms from a pool plant to a nonpool plant that is not a plant regulated under another order, an exempt plant, or a producer-handler plant shall be classified:

(1) As Class I milk, if transferred in the form of a packaged fluid milk product; and

(2) As Class I milk, if transferred or diverted in the form of a bulk fluid milk product or transferred in the form of a bulk fluid cream product, unless the following conditions apply:

(i) If the conditions described in paragraphs (d)(2)(i)(A) and (B) of this section are met, transfers or diversions in bulk form shall be classified on the basis of the assignment of the nonpool plant's utilization, excluding the milk equivalent of both nonfat milk solids and concentrated milk used in the plant during the month, to its receipts as set forth in paragraphs (d)(2)(ii) through (viii) of this section:

(A) The transferring handler or diverting handler claims such classification in such handler's report of receipts and utilization filed pursuant to § _____.30 of each Federal milk order for the month within which such transaction occurred; and

(B) The nonpool plant operator maintains books and records showing the utilization of all skim milk and butterfat received at such plant which are made available for verification purposes if requested by the market administrator;

(ii) Route disposition in the marketing area of each Federal milk order from the nonpool plant and transfers of packaged fluid milk products from such nonpool plant to plants fully regulated thereunder shall be assigned to the extent possible in the following sequence:

(A) Pro rata to receipts of packaged fluid milk products at such nonpool plant from pool plants;

(B) Pro rata to any remaining unassigned receipts of packaged fluid milk products at such nonpool plant from plants regulated under other Federal orders;

(C) Pro rata to receipts of bulk fluid milk products at such nonpool plant from pool plants; and

(D) Pro rata to any remaining unassigned receipts of bulk fluid milk products at such nonpool plant from plants regulated under other Federal orders;

(iii) Any remaining Class I disposition of packaged fluid milk products from the nonpool plant shall be assigned to the extent possible pro rata to any remaining unassigned receipts of packaged fluid milk products at such nonpool plant from pool plants and plants regulated under other Federal orders;

(iv) Transfers of bulk fluid milk products from the nonpool plant to a plant regulated under any Federal order, to the extent that such transfers to the regulated plant exceed receipts of fluid milk products from such plant and are allocated to Class I at the receiving plant, shall be assigned to the extent possible in the following sequence:

(A) Pro rata to receipts of fluid milk products at such nonpool plant from pool plants; and

(B) Pro rata to any remaining unassigned receipts of fluid milk products at such nonpool plant from plants regulated under other Federal orders;

(v) Any remaining unassigned Class I disposition from the nonpool plant shall be assigned to the extent possible in the following sequence:

(A) To such nonpool plant's receipts from dairy farmers who the market administrator determines constitute regular sources of Grade A milk for such nonpool plant; and

(B) To such nonpool plant's receipts of Grade A milk from plants not fully regulated under any Federal order which the market administrator determines constitute regular sources of Grade A milk for such nonpool plant;

(vi) Any remaining unassigned receipts of bulk fluid milk products at the nonpool plant from pool plants and plants regulated under other Federal orders shall be assigned, pro rata among such plants, to the extent possible first to any remaining Class I utilization and then to all other utilization, in sequence beginning with Class IV at such nonpool plant;

(vii) Receipts of bulk fluid cream products at the nonpool plant from pool plants and plants regulated under other Federal orders shall be assigned, pro rata among such plants, to the extent possible to any remaining utilization, in sequence beginning with Class IV at such nonpool plant; and

(viii) In determining the nonpool plant's utilization for purposes of this paragraph, any fluid milk products and bulk fluid cream products transferred from such nonpool plant to a plant not fully regulated under any Federal order shall be classified on the basis of the second plant's utilization using the same assignment priorities at the second plant that are set forth in this paragraph.

§ 1000.43 General classification rules.

In determining the classification of producer milk pursuant to § 1000.44, the following rules shall apply:

(a) Each month the market administrator shall correct for mathematical and other obvious errors all reports filed pursuant to § _____.30 of each Federal milk order and shall compute separately for each pool plant, for each handler described in § 1000.9(c) and § 1135.11, the pounds of skim milk and butterfat, respectively, in each class in accordance with §§ 1000.40 and 1000.42, and paragraph (b) of this section.

(b) *Shrinkage and overage.* For purposes of classifying all milk reported by a handler pursuant to § _____.30 of each Federal milk order the market administrator shall determine the shrinkage or overage of skim milk and butterfat for each pool plant and each handler described in § 1000.9(c) and § 1135.11 by subtracting total utilization from total receipts. Any positive difference shall be shrinkage, and any negative difference shall be overage.

(1) Shrinkage incurred by pool plants qualified pursuant to § ——.7 of any Federal milk order shall be assigned to the lowest-priced class to the extent that such shrinkage does not exceed:

(i) Two percent of the total quantity of milk physically received at the plant directly from producers' farms on the basis of farm weights and tests;

(ii) Plus 1.5 percent of the quantity of bulk milk physically received on a basis other than farm weights and tests, excluding concentrated milk received by agreement for other than Class I use;

(iii) Plus .5 percent of the quantity of milk diverted by the plant operator to another plant on a basis other than farm weights and tests; and

(iv) Minus 1.5 percent of the quantity of bulk milk transferred to other plants, excluding concentrated milk transferred by agreement for other than Class I use.

(2) A handler described in § 1000.9(c) or § 1135.11 that delivers milk to plants on a basis other than farm weights and tests shall receive a lowest-priced-class shrinkage allowance of .5 percent of the total quantity of such milk picked up at producers' farms.

(3) Shrinkage in excess of the amounts provided in paragraphs (b)(1) and (2) of this section shall be assigned to existing utilization in series starting with Class I. The shrinkage assigned pursuant to this paragraph shall be added to the handler's reported utilization and the result shall be known as the *gross utilization in each class.*

(c) If any of the water contained in the milk from which a product is made is removed before the product is utilized or disposed of by the handler, the pounds of skim milk in such product that are to be considered under this part as used or disposed of by the handler

shall be an amount equivalent to the nonfat milk solids contained in such product plus all of the water originally associated with such solids.

(d) Skim milk and butterfat contained in receipts of bulk concentrated fluid milk and nonfluid milk products that are reconstituted for fluid use shall be assigned to Class I use, up to the reconstituted portion of labeled reconstituted fluid milk products, on a pro rata basis (except for any Class I use of specific concentrated receipts that is established by the handler) prior to any assignments under § 1000.44. Any remaining skim milk and butterfat in concentrated receipts shall be assigned to uses under § 1000.44 on a pro rata basis, unless a specific use of such receipts is established by the handler.

§ 1000.44 Classification of producer milk.

For each month the market administrator shall determine for each handler described in § 1000.9(a) for each pool plant of the handler separately and for each handler described in § 1000.9(c) and § 1135.11 the classification of producer milk by allocating the handler's receipts of skim milk and butterfat to the handler's gross utilization of such receipts pursuant to § 1000.43(b)(3) as follows:

(a) Skim milk shall be allocated in the following manner:

(1) Subtract from the pounds of skim milk in Class I the pounds of skim milk in:

(i) Receipts of packaged fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk disposed of to such plant by handlers fully regulated under any Federal order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

(ii) Packaged fluid milk products in inventory at the beginning of the month. This paragraph shall apply only if the pool plant was subject to the provisions of this paragraph or comparable provisions of another Federal order in the immediately preceding month;

(iii) Fluid milk products received in packaged form from plants regulated under other Federal orders; and

(iv) To the extent that the receipts described in paragraphs (a)(1)(i) through (iii) of this section exceed the gross Class I utilization of skim milk, the excess receipts shall be subtracted pursuant to paragraph (a)(3)(vi) of this section.

(2) Subtract from the pounds of skim milk in Class II the pounds of skim milk in the receipts of skim milk in bulk concentrated fluid milk products and in other source milk (except other source milk received in the form of an unconcentrated fluid milk product or a fluid cream product) that is used to produce, or added to, any product in Class II (excluding the quantity of such skim milk that was classified as Class IV milk pursuant to § 1000.40(d)(3)). To the extent that the receipts described in this paragraph exceed the gross Class II utilization of skim milk, the excess receipts shall be subtracted pursuant to paragraph (a)(3)(vi) of this section.

(3) Subtract from the pounds of skim milk remaining in each class, in series beginning with Class IV, the pounds of skim milk in:

(i) Receipts of bulk concentrated fluid milk products and other source milk (except other source milk received in the form of an unconcentrated fluid milk product);

(ii) Receipts of fluid milk products and bulk fluid cream products for which appropriate health approval is not established and from unidentified sources;

(iii) Receipts of fluid milk products and bulk fluid cream products from an exempt plant;

(iv) Fluid milk products and bulk fluid cream products received from a producer-handler as defined under this order or any other Federal order;

(v) Receipts of fluid milk products from dairy farmers for other markets; and

(vi) The excess receipts specified in paragraphs (a)(1)(iv) and (a)(2) of this section.

(4) Subtract from the pounds of skim milk remaining in all classes other than Class I, in sequence beginning with Class IV, the receipts of fluid milk products from an unregulated supply plant that were not previously subtracted in this section for which the handler requests classification other than Class I, but not in excess of the pounds of skim milk remaining in these other classes combined.

(5) Subtract from the pounds of skim milk remaining in all classes other than Class I, in sequence beginning with Class IV, receipts of fluid milk products from an unregulated supply plant that were not subtracted in previous paragraphs, and which are in excess of the pounds of skim milk determined pursuant to paragraphs (a)(5)(i) and (ii) of this section;

(i) Multiply by 1.25 the pounds of skim milk remaining in Class I at this allocation step; and

(ii) Subtract from the above result the pounds of skim milk in receipts of producer milk and fluid milk products from other pool plants.

(6) Subtract from the pounds of skim milk remaining in all classes other than Class I, in sequence beginning with Class IV, the pounds of skim milk in receipts of bulk fluid milk products from a handler regulated under another Federal order that are in excess of bulk fluid milk products transferred or diverted to such handler, if other than Class I classification is requested, but not in excess of the pounds of skim milk remaining in these classes combined.

(7) Subtract from the pounds of skim milk remaining in each class, in series beginning with Class IV, the pounds of skim milk in fluid milk products and bulk fluid cream products in inventory at the beginning of the month that were not previously subtracted in this section.

(8) Subtract from the pounds of skim milk remaining in each class at the plant receipts of skim milk in fluid milk products from an unregulated supply plant that were not previously subtracted in this section and that were not offset by transfers or diversions of fluid milk products to the unregulated supply plant from which fluid milk products to be allocated at this step were received. Such subtraction shall be pro rata to the pounds of skim milk in Class I and in Classes II, III, and IV combined, with the quantity prorated to Classes II, III, and IV combined being subtracted in sequence beginning with Class IV.

(9) Subtract in the manner specified below from the pounds of skim milk remaining in each class the pounds of skim milk in receipts of bulk fluid milk products from a handler regulated under another Federal order that are in excess of bulk fluid milk products transferred or diverted to such handler that were not subtracted in paragraph (a)(6) of this section. Such subtraction shall be pro rata to the pounds of skim milk in Class I and in Classes II, III, and IV combined, with the quantity prorated to Classes II, III, and IV combined being subtracted in sequence beginning with Class IV, with respect to whichever of the following quantities represents the lower proportion of Class I milk:

(i) The estimated utilization of skim milk of all handlers in each class as announced for the month pursuant to § 1000.45(a); or

(ii) The total pounds of skim milk remaining in each class at this allocation step.

(10) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in receipts of fluid milk products and bulk fluid cream products from another pool plant and from a handler described in § 1135.11 according to the classification of such products pursuant to § 1000.42(a).

(11) If the total pounds of skim milk remaining in all classes exceed the pounds of skim milk in producer milk, subtract such excess from the pounds of skim milk remaining in each class in series beginning with Class IV.

(b) Butterfat shall be allocated in accordance with the procedure outlined for skim milk in paragraph (a) of this section.

(c) The quantity of producer milk in each class shall be the combined pounds of skim milk and butterfat remaining in each class after the computations pursuant to paragraphs (a) and (b) of this section.

§ 1000.45 Market administrator's reports and announcements concerning classification.

(a) Whenever required for the purpose of allocating receipts from plants regulated under other Federal orders pursuant to § 1000.44(a)(9) and the corresponding step of § 1000.44(b), the market administrator shall estimate and publicly announce the utilization (to the nearest whole percentage) in Class I during the month of skim milk and butterfat, respectively, in producer milk of all handlers. The estimate shall be based upon the most current available data and shall be final for such purpose.

(b) The market administrator shall report to the market administrators of other Federal orders as soon as possible after the handlers' reports of receipts and utilization are received, the class to which receipts from plants regulated under other Federal orders are allocated pursuant to §§ 1000.43(d) and 1000.44 (including any reclassification of inventories of bulk concentrated fluid milk products), and thereafter any change in allocation required to correct errors disclosed on the verification of such report.

(c) The market administrator shall furnish each handler operating a pool plant and each handler described in § 1135.11 who has shipped fluid milk products or bulk fluid cream products to a plant fully regulated under another Federal order the class to which the shipments were allocated by the market administrator of the other Federal order on the basis of the report by the receiving handler and, as necessary, any changes in the allocation arising from the verification of such report.

(d) The market administrator shall report to each cooperative association which so requests, the percentage of producer milk delivered by members of the association that was used in each class by each handler receiving the milk. For the purpose of this report, the milk so received shall be prorated to each class in accordance with the total utilization of producer milk by the handler.

Subpart G—Class Prices

§ 1000.50 Class prices, component prices, and advanced pricing factors.

Class prices per hundredweight of milk containing 3.5 percent butterfat, component prices, and advanced pricing factors shall be as follows. The prices and pricing factors described in paragraphs (a), (b), (c), (e), (f), and (q) of this section shall be based on a weighted average of the most recent 2 weekly prices announced by the National Agricultural Statistical Service (NASS) before the 24th day of the month. These prices shall be announced on or before the 23rd day of the month and shall apply to milk received during the following month. The prices described in paragraphs (g)–(p) of this section shall be based on a weighted average for the preceding month of weekly prices announced by NASS on or before the 5th day of the month and shall apply to milk received during the preceding month. The price described in paragraph (d) of this section shall be derived from the Class II skim milk price announced on or before the 23rd day of the month preceding the month to which it applies and the butterfat price announced on or before the 5th day of the month following the month to which it applies.

(a) *Class I price.* The Class I price per hundredweight, rounded to the nearest cent, shall be .965 times the Class I skim milk price plus 3.5 times the Class I butterfat price.

(b) *Class I skim milk price.* The Class I skim milk price per hundredweight shall be the adjusted Class I differential specified in § 1000.52 plus the higher of the advanced pricing factors computed in paragraph (q)(1) or (2) of this section.

(c) *Class I butterfat price.* The Class I butterfat price per pound shall be the adjusted Class I differential specified in § 1000.52 divided by 100, plus the advanced butterfat price computed in paragraph (q)(3) of this section.

(d) *The Class II price* per hundredweight, rounded to the nearest cent, shall be .965 times the Class II skim milk price plus 3.5 times the Class II butterfat price.

(e) *Class II skim milk price.* The Class II skim milk price per hundredweight shall be the advanced Class IV skim milk price computed in paragraph (q)(2) of this section plus 70 cents.

(f) *Class II nonfat solids price.* The Class II nonfat solids price per pound, rounded to the nearest one-hundredth cent, shall be the Class II skim milk price divided by 9.

(g) *Class II butterfat price.* The Class II butterfat price per pound shall be the butterfat price plus $.007.

(h) *Class III price.* The Class III price per hundredweight, rounded to the nearest cent, shall be .965 times the Class III skim milk price plus 3.5 times the butterfat price.

(i) *Class III skim milk price.* The Class III skim milk price per hundredweight, rounded to the nearest cent, shall be the protein price per pound times 3.1 plus the other solids price per pound times 5.9.

(j) *Class IV price.* The Class IV price per hundredweight, rounded to the nearest cent, shall be .965 times the Class IV skim milk price plus 3.5 times the butterfat price.

(k) *Class IV skim milk price.* The Class IV skim milk price per hundredweight, rounded to the nearest cent, shall be the nonfat solids price per pound times 9.

(l) *Butterfat price.* The butterfat price per pound, rounded to the nearest one-hundredth cent, shall be the U.S. average NASS AA Butter survey price reported by the Department for the month less 11.4 cents, with the result divided by 0.82.

(m) *Nonfat solids price.* The nonfat solids price per pound, rounded to the nearest one-hundredth cent, shall be the U.S. average NASS nonfat dry milk survey price reported by the Department for the month less 13.7 cents, with the result divided by 1.02.

(n) *Protein price.* The protein price per pound, rounded to the nearest one-hundredth cent, shall be computed as follows:

(1) Compute a weighted average of the amounts described in paragraphs (n)(1)(i) and (ii) of this section:

(i) The U.S. average NASS survey price for 40-lb. block cheese reported by the Department for the month; and

(ii) The U.S. average NASS survey price for 500-pound barrel cheddar cheese (39 percent moisture) reported by the Department for the month plus 3 cents;

(2) Subtract 17.02 cents from the price computed pursuant to paragraph (n)(1) of this section and multiply the result by 1.405;

(3) Add to the amount computed pursuant to paragraph (n)(2) of this section an amount computed as follows:

(i) Subtract 17.02 cents from the price computed pursuant to paragraph (n)(1) of this section and multiply the result by 1.582;

(ii) Subtract the butterfat price computed pursuant to paragraph (l) of this section from the amount computed pursuant to paragraph (n)(3)(i) of this section; and

(iii) Multiply the amount computed pursuant to paragraph (n)(3)(ii) of this section by 1.28.

(o) *Other solids price.* The other solids price per pound, rounded to the nearest one-hundredth cent, shall be the U.S. average NASS dry whey survey price reported by the Department for the month minus 13.7 cents, with the result divided by 0.968.

(p) *Somatic cell adjustment.* The somatic cell adjustment per hundredweight of milk shall be determined as follows:

(1) Multiply .0005 by the weighted average price computed pursuant to paragraph (n)(1) of this section and round to the 5th decimal place;

(2) Subtract the somatic cell count of the milk (reported in thousands) from 350; and

(3) Multiply the amount computed in paragraph (p)(1) of this section by the amount computed in paragraph (p)(2) of this section and round to the nearest full cent.

(q) *Advanced pricing factors.* For the purpose of computing the Class I skim milk price, the Class II skim milk price, the Class II nonfat solids price, and the Class I butterfat price for the following month, the following pricing factors shall be computed using the weighted average of the 2 most recent NASS U.S. average weekly survey prices announced before the 24th day of the month:

(1) An advanced Class III skim milk price per hundredweight, rounded to the nearest cent, shall be computed as follows:

(i) Following the procedure set forth in paragraphs (n) and (o) of this section, but using the weighted average of the NASS U.S. average weekly survey prices announced before the 24th day of the month, compute a protein price and another solids price;

(ii) Multiply the protein price computed in paragraph (q)(1)(i) of this section by 3.1;

(iii) Multiply the other solids price per pound computed in paragraph (q)(1)(i) of this section by 5.9; and

(iv) Add the amounts computed in paragraphs (q)(1)(ii) and (iii) of this section.

(2) An advanced Class IV skim milk price per hundredweight, rounded to the nearest cent, shall be computed as follows:

(i) Following the procedure set forth in paragraph (m) of this section, but using the weighted average of the 2 most recent NASS U.S. average weekly survey prices announced before the 24th day of the month, compute a nonfat solids price; and

(ii) Multiply the nonfat solids price computed in paragraph (q)(2)(i) of this section by 9.

(3) An advanced butterfat price per pound, rounded to the nearest one-hundredth cent, shall be calculated by computing a weighted average of the 2 most recent U.S. average NASS AA Butter survey prices announced before the 24th day of the month, subtracting 11.4 cents from this average, and dividing the result by 0.82.

§ 1000.51 [Reserved]

§ 1000.52 Adjusted Class I differentials.

The Class I differential adjusted for location to be used in § 1000.50(b) and (c) shall be as follows:

County/Parish/City	State	FIPS_Code	Class I differential adjusted for location
AUTAUGA	AL	01001	2.90
BALDWIN	AL	01003	3.30
BARBOUR	AL	01005	3.20
BIBB	AL	01007	2.70
BLOUNT	AL	01009	2.55
BULLOCK	AL	01011	3.10
BUTLER	AL	01013	3.20
CALHOUN	AL	01015	2.70
CHAMBERS	AL	01017	2.90
CHEROKEE	AL	01019	2.55
CHILTON	AL	01021	2.70
CHOCTAW	AL	01023	3.10
CLARKE	AL	01025	3.10
CLAY	AL	01027	2.80
CLEBURNE	AL	01029	2.70
COFFEE	AL	01031	3.20
COLBERT	AL	01033	2.25
CONECUH	AL	01035	3.20
COOSA	AL	01037	2.80
COVINGTON	AL	01039	3.20
CRENSHAW	AL	01041	3.20
CULLMAN	AL	01043	2.55
DALE	AL	01045	3.20
DALLAS	AL	01047	2.90
DE KALB	AL	01049	2.25
ELMORE	AL	01051	2.90
ESCAMBIA	AL	01053	3.30
ETOWAH	AL	01055	2.55
FAYETTE	AL	01057	2.70
FRANKLIN	AL	01059	2.25
GENEVA	AL	01061	3.30
GREENE	AL	01063	2.70
HALE	AL	01065	2.70
HENRY	AL	01067	3.20
HOUSTON	AL	01069	3.30
JACKSON	AL	01071	2.25
JEFFERSON	AL	01073	2.70
LAMAR	AL	01075	2.70
LAUDERDALE	AL	01077	2.20

County/Parish/City	State	FIPS_Code	Class I differential adjusted for location
LAWRENCE	AL	01079	2.25
LEE	AL	01081	2.90
LIMESTONE	AL	01083	2.25
LOWNDES	AL	01085	3.10
MACON	AL	01087	3.10
MADISON	AL	01089	2.25
MARENGO	AL	01091	3.10
MARION	AL	01093	2.55
MARSHALL	AL	01095	2.25
MOBILE	AL	01097	3.30
MONROE	AL	01099	3.20
MONTGOMERY	AL	01101	3.10
MORGAN	AL	01103	2.25
PERRY	AL	01105	2.70
PICKENS	AL	01107	2.70
PIKE	AL	01109	3.20
RANDOLPH	AL	01111	2.80
RUSSELL	AL	01113	3.10
ST. CLAIR	AL	01115	2.70
SHELBY	AL	01117	2.70
SUMTER	AL	01119	2.70
TALLADEGA	AL	01121	2.70
TALLAPOOSA	AL	01123	2.90
TUSCALOOSA	AL	01125	2.70
WALKER	AL	01127	2.70
WASHINGTON	AL	01129	3.10
WILCOX	AL	01131	3.10
WINSTON	AL	01133	2.55
APACHE	AZ	04001	1.90
COCHISE	AZ	04003	1.60
COCONINO	AZ	04005	1.90
GILA	AZ	04007	1.60
GRAHAM	AZ	04009	1.60
GREENLEE	AZ	04011	1.60
LA PAZ	AZ	04012	1.60
MARICOPA	AZ	04013	1.55
MOHAVE	AZ	04015	1.90
NAVAJO	AZ	04017	1.90
PIMA	AZ	04019	1.60
PINAL	AZ	04021	1.55
SANTA CRUZ	AZ	04023	1.60
YAVAPAI	AZ	04025	1.60
YUMA	AZ	04027	1.60
ARKANSAS	AR	05001	2.65
ASHLEY	AR	05003	2.75
BAXTER	AR	05005	1.90
BENTON	AR	05007	1.70
BOONE	AR	05009	1.70
BRADLEY	AR	05011	2.65
CALHOUN	AR	05013	2.65
CARROLL	AR	05015	1.70
CHICOT	AR	05017	2.75
CLARK	AR	05019	2.35
CLAY	AR	05021	2.35
CLEBURNE	AR	05023	2.10
CLEVELAND	AR	05025	2.65
COLUMBIA	AR	05027	2.35
CONWAY	AR	05029	2.10
CRAIGHEAD	AR	05031	2.65
CRAWFORD	AR	05033	1.90
CRITTENDEN	AR	05035	2.65
CROSS	AR	05037	2.65
DALLAS	AR	05039	2.35
DESHA	AR	05041	2.75
DREW	AR	05043	2.75
FAULKNER	AR	05045	2.35
FRANKLIN	AR	05047	1.90
FULTON	AR	05049	2.10
GARLAND	AR	05051	2.10
GRANT	AR	05053	2.35
GREENE	AR	05055	2.35
HEMPSTEAD	AR	05057	2.10

County/Parish/City	State	FIPS_Code	Class I differential adjusted for location
HOT SPRING	AR	05059	2.35
HOWARD	AR	05061	2.10
INDEPENDENCE	AR	05063	2.35
IZARD	AR	05065	2.10
JACKSON	AR	05067	2.35
JEFFERSON	AR	05069	2.65
JOHNSON	AR	05071	1.90
LAFAYETTE	AR	05073	2.35
LAWRENCE	AR	05075	2.35
LEE	AR	05077	2.65
LINCOLN	AR	05079	2.65
LITTLE RIVER	AR	05081	2.10
LOGAN	AR	05083	1.90
LONOKE	AR	05085	2.35
MADISON	AR	05087	1.70
MARION	AR	05089	1.90
MILLER	AR	05091	2.10
MISSISSIPPI	AR	05093	2.65
MONROE	AR	05095	2.65
MONTGOMERY	AR	05097	2.10
NEVADA	AR	05099	2.35
NEWTON	AR	05101	1.90
OUACHITA	AR	05103	2.35
PERRY	AR	05105	2.10
PHILLIPS	AR	05107	2.65
PIKE	AR	05109	2.10
POINSETT	AR	05111	2.65
POLK	AR	05113	2.10
POPE	AR	05115	1.90
PRAIRIE	AR	05117	2.65
PULASKI	AR	05119	2.35
RANDOLPH	AR	05121	2.10
ST. FRANCIS	AR	05123	2.65
SALINE	AR	05125	2.35
SCOTT	AR	05127	1.90
SEARCY	AR	05129	1.90
SEBASTIAN	AR	05131	1.90
SEVIER	AR	05133	2.10
SHARP	AR	05135	2.10
STONE	AR	05137	2.10
UNION	AR	05139	2.65
VAN BUREN	AR	05141	2.10
WASHINGTON	AR	05143	1.70
WHITE	AR	05145	2.35
WOODRUFF	AR	05147	2.65
YELL	AR	05149	2.10
ALAMEDA	CA	06001	1.75
ALPINE	CA	06003	1.20
AMADOR	CA	06005	1.20
BUTTE	CA	06007	1.65
CALAVERAS	CA	06009	1.20
COLUSA	CA	06011	1.80
CONTRA COSTA	CA	06013	1.75
DEL NORTE	CA	06015	1.80
EL DORADO	CA	06017	1.20
FRESNO	CA	06019	1.40
GLENN	CA	06021	1.80
HUMBOLDT	CA	06023	1.80
IMPERIAL	CA	06025	1.60
INYO	CA	06027	1.50
KERN	CA	06029	1.60
KINGS	CA	06031	1.40
LAKE	CA	06033	1.80
LASSEN	CA	06035	1.65
LOS ANGELES	CA	06037	1.60
MADERA	CA	06039	1.40
MARIN	CA	06041	1.80
MARIPOSA	CA	06043	1.20
MENDOCINO	CA	06045	1.80
MERCED	CA	06047	1.40
MODOC	CA	06049	1.65
MONO	CA	06051	1.20

County/Parish/City	State	FIPS_Code	Class I differential adjusted for location
MONTEREY	CA	06053	2.20
NAPA	CA	06055	1.80
NEVADA	CA	06057	1.40
ORANGE	CA	06059	1.60
PLACER	CA	06061	1.40
PLUMAS	CA	06063	1.65
RIVERSIDE	CA	06065	1.60
SACRAMENTO	CA	06067	1.40
SAN BENITO	CA	06069	1.75
SAN BERNARDINO	CA	06071	1.60
SAN DIEGO	CA	06073	1.80
SAN FRANCISCO	CA	06075	1.75
SAN JOAQUIN	CA	06077	1.40
SAN LUIS OBISPO	CA	06079	2.20
SAN MATEO	CA	06081	1.75
SANTA BARBARA	CA	06083	2.20
SANTA CLARA	CA	06085	1.75
SANTA CRUZ	CA	06087	1.75
SHASTA	CA	06089	1.80
SIERRA	CA	06091	1.40
SISKIYOU	CA	06093	1.80
SOLANO	CA	06095	1.65
SONOMA	CA	06097	1.80
STANISLAUS	CA	06099	1.40
SUTTER	CA	06101	1.65
TEHAMA	CA	06103	1.80
TRINITY	CA	06105	1.80
TULARE	CA	06107	1.40
TUOLUMNE	CA	06109	1.20
VENTURA	CA	06111	2.20
YOLO	CA	06113	1.65
YUBA	CA	06115	1.65
ADAMS	CO	08001	1.55
ALAMOSA	CO	08003	1.90
ARAPAHOE	CO	08005	1.55
ARCHULETA	CO	08007	2.20
BACA	CO	08009	1.90
BENT	CO	08011	1.80
BOULDER	CO	08013	1.55
CHAFFEE	CO	08015	1.90
CHEYENNE	CO	08017	1.60
CLEAR CREEK	CO	08019	1.55
CONEJOS	CO	08021	1.90
COSTILLA	CO	08023	1.90
CROWLEY	CO	08025	1.80
CUSTER	CO	08027	1.90
DELTA	CO	08029	2.20
DENVER	CO	08031	1.55
DOLORES	CO	08033	2.20
DOUGLAS	CO	08035	1.55
EAGLE	CO	08037	1.80
ELBERT	CO	08039	1.55
EL PASO	CO	08041	1.80
FREMONT	CO	08043	1.90
GARFIELD	CO	08045	1.90
GILPIN	CO	08047	1.55
GRAND	CO	08049	1.55
GUNNISON	CO	08051	1.90
HINSDALE	CO	08053	2.20
HUERFANO	CO	08055	1.90
JACKSON	CO	08057	1.55
JEFFERSON	CO	08059	1.55
KIOWA	CO	08061	1.80
KIT CARSON	CO	08063	1.60
LAKE	CO	08065	1.90
LA PLATA	CO	08067	2.20
LARIMER	CO	08069	1.55
LAS ANIMAS	CO	08071	1.90
LINCOLN	CO	08073	1.60
LOGAN	CO	08075	1.40
MESA	CO	08077	2.20
MINERAL	CO	08079	2.20

County/Parish/City	State	FIPS_Code	Class I differential adjusted for location
MOFFAT	CO	08081	1.80
MONTEZUMA	CO	08083	2.20
MONTROSE	CO	08085	2.20
MORGAN	CO	08087	1.40
OTERO	CO	08089	1.80
OURAY	CO	08091	2.20
PARK	CO	08093	1.80
PHILLIPS	CO	08095	1.50
PITKIN	CO	08097	1.90
PROWERS	CO	08099	1.80
PUEBLO	CO	08101	1.80
RIO BLANCO	CO	08103	1.90
RIO GRANDE	CO	08105	1.90
ROUTT	CO	08107	1.80
SAGUACHE	CO	08109	1.90
SAN JUAN	CO	08111	2.20
SAN MIGUEL	CO	08113	2.20
SEDGWICK	CO	08115	1.40
SUMMIT	CO	08117	1.80
TELLER	CO	08119	1.80
WASHINGTON	CO	08121	1.50
WELD	CO	08123	1.40
YUMA	CO	08125	1.50
FAIRFIELD	CT	09001	2.50
HARTFORD	CT	09003	2.50
LITCHFIELD	CT	09005	2.30
MIDDLESEX	CT	09007	2.50
NEW HAVEN	CT	09009	2.30
NEW LONDON	CT	09011	2.60
TOLLAND	CT	09013	2.50
WINDHAM	CT	09015	2.60
KENT	DE	10001	2.20
NEW CASTLE	DE	10003	2.20
SUSSEX	DE	10005	2.20
DISTRICT OF COLUMBIA	DC	11001	2.05
ALACHUA	FL	12001	4.00
BAKER	FL	12003	3.80
BAY	FL	12005	3.40
BRADFORD	FL	12007	3.80
BREVARD	FL	12009	4.20
BROWARD	FL	12011	4.75
CALHOUN	FL	12013	3.40
CHARLOTTE	FL	12015	4.40
CITRUS	FL	12017	4.00
CLAY	FL	12019	3.80
COLLIER	FL	12021	4.75
COLUMBIA	FL	12023	3.80
DADE	FL	12025	4.75
DE SOTO	FL	12027	4.40
DIXIE	FL	12029	3.80
DUVAL	FL	12031	3.80
ESCAMBIA	FL	12033	3.30
FLAGLER	FL	12035	4.00
FRANKLIN	FL	12037	3.40
GADSDEN	FL	12039	3.40
GILCHRIST	FL	12041	3.80
GLADES	FL	12043	4.40
GULF	FL	12045	3.40
HAMILTON	FL	12047	3.60
HARDEE	FL	12049	4.40
HENDRY	FL	12051	4.75
HERNANDO	FL	12053	4.20
HIGHLANDS	FL	12055	4.40
HILLSBOROUGH	FL	12057	4.20
HOLMES	FL	12059	3.30
INDIAN RIVER	FL	12061	4.40
JACKSON	FL	12063	3.30
JEFFERSON	FL	12065	3.50
LAFAYETTE	FL	12067	3.80
LAKE	FL	12069	4.20
LEE	FL	12071	4.75
LEON	FL	12073	3.50

County/Parish/City	State	FIPS Code	Class I differential adjusted for location
LEVY	FL	12075	4.00
LIBERTY	FL	12077	3.40
MADISON	FL	12079	3.60
MANATEE	FL	12081	4.40
MARION	FL	12083	4.00
MARTIN	FL	12085	4.40
MONROE	FL	12087	4.75
NASSAU	FL	12089	3.80
OKALOOSA	FL	12091	3.30
OKEECHOBEE	FL	12093	4.40
ORANGE	FL	12095	4.20
OSCEOLA	FL	12097	4.20
PALM BEACH	FL	12099	4.75
PASCO	FL	12101	4.20
PINELLAS	FL	12103	4.20
POLK	FL	12105	4.20
PUTNAM	FL	12107	4.00
ST. JOHNS	FL	12109	3.80
ST. LUCIE	FL	12111	4.40
SANTA ROSA	FL	12113	3.30
SARASOTA	FL	12115	4.40
SEMINOLE	FL	12117	4.20
SUMTER	FL	12119	4.20
SUWANNEE	FL	12121	3.80
TAYLOR	FL	12123	3.60
UNION	FL	12125	3.80
VOLUSIA	FL	12127	4.20
WAKULLA	FL	12129	3.50
WALTON	FL	12131	3.30
WASHINGTON	FL	12133	3.40
APPLING	GA	13001	3.30
ATKINSON	GA	13003	3.30
BACON	GA	13005	3.30
BAKER	GA	13007	3.30
BALDWIN	GA	13009	2.80
BANKS	GA	13011	2.70
BARROW	GA	13013	2.90
BARTOW	GA	13015	2.70
BEN HILL	GA	13017	3.30
BERRIEN	GA	13019	3.30
BIBB	GA	13021	2.80
BLECKLEY	GA	13023	3.10
BRANTLEY	GA	13025	3.60
BROOKS	GA	13027	3.50
BRYAN	GA	13029	3.30
BULLOCH	GA	13031	3.20
BURKE	GA	13033	2.80
BUTTS	GA	13035	2.90
CALHOUN	GA	13037	3.20
CAMDEN	GA	13039	3.60
CANDLER	GA	13043	3.20
CARROLL	GA	13045	2.90
CATOOSA	GA	13047	2.55
CHARLTON	GA	13049	3.60
CHATHAM	GA	13051	3.30
CHATTAHOOCHEE	GA	13053	3.10
CHATTOOGA	GA	13055	2.55
CHEROKEE	GA	13057	2.70
CLARKE	GA	13059	2.80
CLAY	GA	13061	3.20
CLAYTON	GA	13063	2.90
CLINCH	GA	13065	3.60
COBB	GA	13067	2.90
COFFEE	GA	13069	3.30
COLQUITT	GA	13071	3.30
COLUMBIA	GA	13073	2.80
COOK	GA	13075	3.30
COWETA	GA	13077	2.90
CRAWFORD	GA	13079	2.90
CRISP	GA	13081	3.20
DADE	GA	13083	2.55
DAWSON	GA	13085	2.70

County/Parish/City	State	FIPS_Code	Class I differential adjusted for location
DECATUR	GA	13087	3.30
DE KALB	GA	13089	2.90
DODGE	GA	13091	3.20
DOOLY	GA	13093	3.20
DOUGHERTY	GA	13095	3.20
DOUGLAS	GA	13097	2.90
EARLY	GA	13099	3.30
ECHOLS	GA	13101	3.60
EFFINGHAM	GA	13103	3.20
ELBERT	GA	13105	2.80
EMANUEL	GA	13107	3.10
EVANS	GA	13109	3.20
FANNIN	GA	13111	2.55
FAYETTE	GA	13113	2.90
FLOYD	GA	13115	2.55
FORSYTH	GA	13117	2.90
FRANKLIN	GA	13119	2.70
FULTON	GA	13121	2.90
GILMER	GA	13123	2.55
GLASCOCK	GA	13125	2.80
GLYNN	GA	13127	3.60
GORDON	GA	13129	2.55
GRADY	GA	13131	3.30
GREENE	GA	13133	2.80
GWINNETT	GA	13135	2.90
HABERSHAM	GA	13137	2.70
HALL	GA	13139	2.90
HANCOCK	GA	13141	2.80
HARALSON	GA	13143	2.70
HARRIS	GA	13145	2.90
HART	GA	13147	2.70
HEARD	GA	13149	2.90
HENRY	GA	13151	2.90
HOUSTON	GA	13153	3.10
IRWIN	GA	13155	3.30
JACKSON	GA	13157	2.80
JASPER	GA	13159	2.80
JEFF DAVIS	GA	13161	3.30
JEFFERSON	GA	13163	2.80
JENKINS	GA	13165	3.10
JOHNSON	GA	13167	3.10
JONES	GA	13169	2.80
LAMAR	GA	13171	2.90
LANIER	GA	13173	3.60
LAURENS	GA	13175	3.10
LEE	GA	13177	3.20
LIBERTY	GA	13179	3.30
LINCOLN	GA	13181	2.80
LONG	GA	13183	3.30
LOWNDES	GA	13185	3.60
LUMPKIN	GA	13187	2.70
MCDUFFIE	GA	13189	2.80
MCINTOSH	GA	13191	3.30
MACON	GA	13193	3.10
MADISON	GA	13195	2.80
MARION	GA	13197	3.10
MERIWETHER	GA	13199	2.90
MILLER	GA	13201	3.30
MITCHELL	GA	13205	3.30
MONROE	GA	13207	2.90
MONTGOMERY	GA	13209	3.20
MORGAN	GA	13211	2.80
MURRAY	GA	13213	2.55
MUSCOGEE	GA	13215	3.10
NEWTON	GA	13217	2.80
OCONEE	GA	13219	2.80
OGLETHORPE	GA	13221	2.80
PAULDING	GA	13223	2.90
PEACH	GA	13225	2.90
PICKENS	GA	13227	2.70
PIERCE	GA	13229	3.30
PIKE	GA	13231	2.90

County/Parish/City	State	FIPS_Code	Class I differential adjusted for location
POLK	GA	13233	2.70
PULASKI	GA	13235	3.20
PUTNAM	GA	13237	2.80
QUITMAN	GA	13239	3.20
RABUN	GA	13241	2.55
RANDOLPH	GA	13243	3.20
RICHMOND	GA	13245	2.80
ROCKDALE	GA	13247	2.90
SCHLEY	GA	13249	3.10
SCREVEN	GA	13251	3.10
SEMINOLE	GA	13253	3.30
SPALDING	GA	13255	2.90
STEPHENS	GA	13257	2.70
STEWART	GA	13259	3.10
SUMTER	GA	13261	3.20
TALBOT	GA	13263	2.90
TALIAFERRO	GA	13265	2.80
TATTNALL	GA	13267	3.20
TAYLOR	GA	13269	2.90
TELFAIR	GA	13271	3.20
TERRELL	GA	13273	3.20
THOMAS	GA	13275	3.50
TIFT	GA	13277	3.30
TOOMBS	GA	13279	3.20
TOWNS	GA	13281	2.55
TREUTLEN	GA	13283	3.20
TROUP	GA	13285	2.90
TURNER	GA	13287	3.30
TWIGGS	GA	13289	2.80
UNION	GA	13291	2.55
UPSON	GA	13293	2.90
WALKER	GA	13295	2.55
WALTON	GA	13297	2.80
WARE	GA	13299	3.60
WARREN	GA	13301	2.80
WASHINGTON	GA	13303	2.80
WAYNE	GA	13305	3.30
WEBSTER	GA	13307	3.20
WHEELER	GA	13309	3.20
WHITE	GA	13311	2.70
WHITFIELD	GA	13313	2.55
WILCOX	GA	13315	3.20
WILKES	GA	13317	2.80
WILKINSON	GA	13319	2.80
WORTH	GA	13321	3.30
ADA	ID	16001	1.35
ADAMS	ID	16003	1.35
BANNOCK	ID	16005	1.40
BEAR LAKE	ID	16007	1.40
BENEWAH	ID	16009	1.35
BINGHAM	ID	16011	1.35
BLAINE	ID	16013	1.35
BOISE	ID	16015	1.35
BONNER	ID	16017	1.35
BONNEVILLE	ID	16019	1.35
BOUNDARY	ID	16021	1.35
BUTTE	ID	16023	1.35
CAMAS	ID	16025	1.35
CANYON	ID	16027	1.35
CARIBOU	ID	16029	1.40
CASSIA	ID	16031	1.40
CLARK	ID	16033	1.40
CLEARWATER	ID	16035	1.40
CUSTER	ID	16037	1.35
ELMORE	ID	16039	1.35
FRANKLIN	ID	16041	1.40
FREMONT	ID	16043	1.40
GEM	ID	16045	1.35
GOODING	ID	16047	1.35
IDAHO	ID	16049	1.40
JEFFERSON	ID	16051	1.35
JEROME	ID	16053	1.35

County/Parish/City	State	FIPS_Code	Class I differential adjusted for location
KOOTENAI	ID	16055	1.35
LATAH	ID	16057	1.35
LEMHI	ID	16059	1.40
LEWIS	ID	16061	1.35
LINCOLN	ID	16063	1.35
MADISON	ID	16065	1.40
MINIDOKA	ID	16067	1.35
NEZ PERCE	ID	16069	1.35
ONEIDA	ID	16071	1.40
OWYHEE	ID	16073	1.35
PAYETTE	ID	16075	1.35
POWER	ID	16077	1.40
SHOSHONE	ID	16079	1.40
TETON	ID	16081	1.40
TWIN FALLS	ID	16083	1.35
VALLEY	ID	16085	1.35
WASHINGTON	ID	16087	1.35
ADAMS	IL	17001	2.00
ALEXANDER	IL	17003	2.10
BOND	IL	17005	2.00
BOONE	IL	17007	1.95
BROWN	IL	17009	2.00
BUREAU	IL	17011	2.00
CALHOUN	IL	17013	2.00
CARROLL	IL	17015	1.95
CASS	IL	17017	2.00
CHAMPAIGN	IL	17019	2.00
CHRISTIAN	IL	17021	2.00
CLARK	IL	17023	2.00
CLAY	IL	17025	2.00
CLINTON	IL	17027	2.00
COLES	IL	17029	2.00
COOK	IL	17031	1.95
CRAWFORD	IL	17033	2.00
CUMBERLAND	IL	17035	2.00
DE KALB	IL	17037	1.95
DE WITT	IL	17039	2.00
DOUGLAS	IL	17041	2.00
DU PAGE	IL	17043	1.95
EDGAR	IL	17045	2.00
EDWARDS	IL	17047	2.00
EFFINGHAM	IL	17049	2.00
FAYETTE	IL	17051	2.00
FORD	IL	17053	2.00
FRANKLIN	IL	17055	2.10
FULTON	IL	17057	2.00
GALLATIN	IL	17059	2.10
GREENE	IL	17061	2.00
GRUNDY	IL	17063	2.00
HAMILTON	IL	17065	2.10
HANCOCK	IL	17067	2.00
HARDIN	IL	17069	2.10
HENDERSON	IL	17071	2.00
HENRY	IL	17073	2.00
IROQUOIS	IL	17075	2.00
JACKSON	IL	17077	2.10
JASPER	IL	17079	2.00
JEFFERSON	IL	17081	2.00
JERSEY	IL	17083	2.00
JO DAVIESS	IL	17085	1.95
JOHNSON	IL	17087	2.10
KANE	IL	17089	1.95
KANKAKEE	IL	17091	2.00
KENDALL	IL	17093	2.00
KNOX	IL	17095	2.00
LAKE	IL	17097	1.95
LA SALLE	IL	17099	2.00
LAWRENCE	IL	17101	2.00
LEE	IL	17103	1.95
LIVINGSTON	IL	17105	2.00
LOGAN	IL	17107	2.00
MCDONOUGH	IL	17109	2.00

County/Parish/City	State	FIPS_Code	Class I differential adjusted for location
MCHENRY	IL	17111	1.95
MCLEAN	IL	17113	2.00
MACON	IL	17115	2.00
MACOUPIN	IL	17117	2.00
MADISON	IL	17119	2.00
MARION	IL	17121	2.00
MARSHALL	IL	17123	2.00
MASON	IL	17125	2.00
MASSAC	IL	17127	2.10
MENARD	IL	17129	2.00
MERCER	IL	17131	2.00
MONROE	IL	17133	2.10
MONTGOMERY	IL	17135	2.00
MORGAN	IL	17137	2.00
MOULTRIE	IL	17139	2.00
OGLE	IL	17141	1.95
PEORIA	IL	17143	2.00
PERRY	IL	17145	2.10
PIATT	IL	17147	2.00
PIKE	IL	17149	2.00
POPE	IL	17151	2.10
PULASKI	IL	17153	2.10
PUTNAM	IL	17155	2.00
RANDOLPH	IL	17157	2.10
RICHLAND	IL	17159	2.00
ROCK ISLAND	IL	17161	2.00
ST. CLAIR	IL	17163	2.10
SALINE	IL	17165	2.10
SANGAMON	IL	17167	2.00
SCHUYLER	IL	17169	2.00
SCOTT	IL	17171	2.00
SHELBY	IL	17173	2.00
STARK	IL	17175	2.00
STEPHENSON	IL	17177	1.95
TAZEWELL	IL	17179	2.00
UNION	IL	17181	2.10
VERMILION	IL	17183	2.00
WABASH	IL	17185	2.00
WARREN	IL	17187	2.00
WASHINGTON	IL	17189	2.10
WAYNE	IL	17191	2.00
WHITE	IL	17193	2.00
WHITESIDE	IL	17195	1.95
WILL	IL	17197	2.00
WILLIAMSON	IL	17199	2.10
WINNEBAGO	IL	17201	1.95
WOODFORD	IL	17203	2.00
ADAMS	IN	18001	2.00
ALLEN	IN	18003	1.80
BARTHOLOMEW	IN	18005	2.05
BENTON	IN	18007	2.00
BLACKFORD	IN	18009	2.00
BOONE	IN	18011	2.00
BROWN	IN	18013	2.05
CARROLL	IN	18015	2.00
CASS	IN	18017	2.00
CLARK	IN	18019	1.95
CLAY	IN	18021	2.00
CLINTON	IN	18023	2.00
CRAWFORD	IN	18025	2.10
DAVIESS	IN	18027	2.05
DEARBORN	IN	18029	1.95
DECATUR	IN	18031	1.95
DE KALB	IN	18033	1.80
DELAWARE	IN	18035	2.00
DUBOIS	IN	18037	2.10
ELKHART	IN	18039	1.80
FAYETTE	IN	18041	2.00
FLOYD	IN	18043	1.95
FOUNTAIN	IN	18045	2.00
FRANKLIN	IN	18047	1.95
FULTON	IN	18049	2.00

County/Parish/City	State	FIPS_Code	Class I differential adjusted for location
GIBSON	IN	18051	2.10
GRANT	IN	18053	2.00
GREENE	IN	18055	2.05
HAMILTON	IN	18057	2.00
HANCOCK	IN	18059	2.00
HARRISON	IN	18061	1.95
HENDRICKS	IN	18063	2.00
HENRY	IN	18065	2.00
HOWARD	IN	18067	2.00
HUNTINGTON	IN	18069	2.00
JACKSON	IN	18071	2.05
JASPER	IN	18073	2.00
JAY	IN	18075	2.00
JEFFERSON	IN	18077	1.95
JENNINGS	IN	18079	1.95
JOHNSON	IN	18081	2.00
KNOX	IN	18083	2.05
KOSCIUSKO	IN	18085	1.80
LAGRANGE	IN	18087	1.80
LAKE	IN	18089	1.95
LA PORTE	IN	18091	1.80
LAWRENCE	IN	18093	2.05
MADISON	IN	18095	2.00
MARION	IN	18097	2.00
MARSHALL	IN	18099	1.80
MARTIN	IN	18101	2.05
MIAMI	IN	18103	2.00
MONROE	IN	18105	2.05
MONTGOMERY	IN	18107	2.00
MORGAN	IN	18109	2.00
NEWTON	IN	18111	2.00
NOBLE	IN	18113	1.80
OHIO	IN	18115	1.95
ORANGE	IN	18117	2.05
OWEN	IN	18119	2.00
PARKE	IN	18121	2.00
PERRY	IN	18123	2.10
PIKE	IN	18125	2.10
PORTER	IN	18127	1.95
POSEY	IN	18129	2.10
PULASKI	IN	18131	2.00
PUTNAM	IN	18133	2.00
RANDOLPH	IN	18135	2.00
RIPLEY	IN	18137	1.95
RUSH	IN	18139	2.00
ST. JOSEPH	IN	18141	1.80
SCOTT	IN	18143	1.95
SHELBY	IN	18145	2.00
SPENCER	IN	18147	2.10
STARKE	IN	18149	1.80
STEUBEN	IN	18151	1.80
SULLIVAN	IN	18153	2.05
SWITZERLAND	IN	18155	1.95
TIPPECANOE	IN	18157	2.00
TIPTON	IN	18159	2.00
UNION	IN	18161	2.00
VANDERBURGH	IN	18163	2.10
VERMILLION	IN	18165	2.00
VIGO	IN	18167	2.00
WABASH	IN	18169	2.00
WARREN	IN	18171	2.00
WARRICK	IN	18173	2.10
WASHINGTON	IN	18175	1.95
WAYNE	IN	18177	2.00
WELLS	IN	18179	2.00
WHITE	IN	18181	2.00
WHITLEY	IN	18183	1.80
ADAIR	IA	19001	1.90
ADAMS	IA1	19003	1.90
ALLAMAKEE	IA	19005	1.70
APPANOOSE	IA	19007	1.90
AUDUBON	IA	19009	1.90

County/Parish/City	State	FIPS_Code	Class I differential adjusted for location
BENTON	IA	19011	1.95
BLACK HAWK	IA	19013	1.80
BOONE	IA	19015	1.90
BREMER	IA	19017	1.80
BUCHANAN	IA	19019	1.80
BUENA VISTA	IA	19021	1.80
BUTLER	IA	19023	1.80
CALHOUN	IA	19025	1.80
CARROLL	IA	19027	1.90
CASS	IA	19029	1.90
CEDAR	IA	19031	1.95
CERRO GORDO	IA	19033	1.70
CHEROKEE	IA	19035	1.80
CHICKASAW	IA	19037	1.70
CLARKE	IA	19039	1.90
CLAY	IA	19041	1.70
CLAYTON	IA	19043	1.70
CLINTON	IA	19045	1.95
CRAWFORD	IA	19047	1.90
DALLAS	IA	19049	1.90
DAVIS	IA	19051	1.90
DECATUR	IA	19053	1.90
DELAWARE	IA	19055	1.80
DES MOINES	IA	19057	1.90
DICKINSON	IA	19059	1.70
DUBUQUE	IA	19061	1.80
EMMET	IA	19063	1.70
FAYETTE	IA	19065	1.70
FLOYD	IA	19067	1.70
FRANKLIN	IA	19069	1.80
FREMONT	IA	19071	1.90
GREENE	IA	19073	1.90
GRUNDY	IA1	9075	1.80
GUTHRIE	IA	19077	1.90
HAMILTON	IA	19079	1.80
HANCOCK	IA	19081	1.70
HARDIN	IA	19083	1.80
HARRISON	IA	19085	1.90
HENRY	IA	19087	1.90
HOWARD	IA	19089	1.70
HUMBOLDT	IA	19091	1.80
IDA	IA	19093	1.80
IOWA	IA	19095	1.95
JACKSON	IA	19097	1.95
JASPER	IA	19099	1.95
JEFFERSON	IA	19101	1.90
JOHNSON	IA	19103	1.95
JONES	IA	19105	1.95
KEOKUK	IA	19107	1.90
KOSSUTH	IA	19109	1.70
LEE	IA	19111	1.90
LINN	IA	19113	1.95
LOUISA	IA	19115	1.90
LUCAS	IA	19117	1.90
LYON	IA	19119	1.70
MADISON	IA	19121	1.90
MAHASKA	IA	19123	1.90
MARION	IA	19125	1.90
MARSHALL	IA	19127	1.95
MILLS	IA	19129	1.90
MITCHELL	IA	19131	1.70
MONONA	IA	19133	1.80
MONROE	IA	19135	1.90
MONTGOMERY	IA	19137	1.90
MUSCATINE	IA	19139	1.90
O'BRIEN	IA	19141	1.70
OSCEOLA	IA	19143	1.70
PAGE	IA	19145	1.90
PALO ALTO	IA	19147	1.70
PLYMOUTH	IA	19149	1.70
POCAHONTAS	IA	19151	1.80
POLK	IA	19153	1.90

County/Parish/City	State	FIPS_Code	Class I differential adjusted for location
POTTAWATTAMIE	IA	19155	1.90
POWESHIEK	IA	19157	1.95
RINGGOLD	IA	19159	1.90
SAC	IA	19161	1.80
SCOTT	IA	19163	1.95
SHELBY	IA	19165	1.90
SIOUX	IA	19167	1.70
STORY	IA	19169	1.95
TAMA	IA	19171	1.95
TAYLOR	IA	19173	1.90
UNION	IA	19175	1.90
VAN BUREN	IA	19177	1.90
WAPELLO	IA	19179	1.90
WARREN	IA	19181	1.90
WASHINGTON	IA	19183	1.90
WAYNE	IA	19185	1.90
WEBSTER	IA	19187	1.80
WINNEBAGO	IA	19189	1.70
WINNESHIEK	IA	19191	1.70
WOODBURY	IA	19193	1.80
WORTH	IA	19195	1.70
WRIGHT	IA	19197	1.80
ALLEN	KS	20001	1.70
ANDERSON	KS	20003	1.70
ATCHISON	KS	20005	1.90
BARBER	KS	20007	1.90
BARTON	KS	20009	1.90
BOURBON	KS	20011	1.70
BROWN	KS	20013	1.90
BUTLER	KS	20015	1.70
CHASE	KS	20017	1.70
CHAUTAUQUA	KS	20019	1.70
CHEROKEE	KS	20021	1.70
CHEYENNE	KS	20023	1.60
CLARK	KS	20025	1.90
CLAY	KS	20027	1.90
CLOUD	KS	20029	1.80
COFFEY	KS	20031	1.70
COMANCHE	KS	20033	1.90
COWLEY	KS	20035	1.70
CRAWFORD	KS	20037	1.70
DECATUR	KS	20039	1.60
DICKINSON	KS	20041	1.90
DONIPHAN	KS	20043	1.90
DOUGLAS	KS	20045	1.70
EDWARDS	KS	20047	1.90
ELK	KS	20049	1.70
ELLIS	KS	20051	1.80
ELLSWORTH	KS	20053	1.90
FINNEY	KS	20055	1.80
FORD	KS	20057	1.90
FRANKLIN	KS	20059	1.70
GEARY	KS	20061	1.90
GOVE	KS	20063	1.60
GRAHAM	KS	20065	1.60
GRANT	KS	20067	1.90
GRAY	KS	20069	1.90
GREELEY	KS	20071	1.80
GREENWOOD	KS	20073	1.70
HAMILTON	KS	20075	1.80
HARPER	KS	20077	1.70
HARVEY	KS	20079	1.70
HASKELL	KS	20081	1.90
HODGEMAN	KS	20083	1.80
JACKSON	KS	20085	1.90
JEFFERSON	KS	20087	1.90
JEWELL	KS	20089	1.80
JOHNSON	KS	20091	1.90
KEARNY	KS	20093	1.80
KINGMAN	KS	20095	1.70
KIOWA	KS	20097	1.90
LABETTE	KS	20099	1.70

County/Parish/City	State	FIPS_Code	Class I differential adjusted for location
LANE	KS	20101	1.80
LEAVENWORTH	KS	20103	1.90
LINCOLN	KS	20105	1.80
LINN	KS	20107	1.70
LOGAN	KS	20109	1.60
LYON	KS	20111	1.70
MCPHERSON	KS	20113	1.90
MARION	KS	20115	1.70
MARSHALL	KS	20117	1.90
MEADE	KS	20119	1.90
MIAMI	KS	20121	1.70
MITCHELL	KS	20123	1.80
MONTGOMERY	KS	20125	1.70
MORRIS	KS	20127	1.90
MORTON	KS	20129	1.90
NEMAHA	KS	20131	1.90
NEOSHO	KS	20133	1.70
NESS	KS	20135	1.80
NORTON	KS	20137	1.60
OSAGE	KS	20139	1.70
OSBORNE	KS	20141	1.80
OTTAWA	KS	20143	1.90
PAWNEE	KS	20145	1.90
PHILLIPS	KS	20147	1.60
POTTAWATOMIE	KS	20149	1.90
PRATT	KS	20151	1.90
RAWLINS	KS	20153	1.60
RENO	KS	20155	1.70
REPUBLIC	KS	20157	1.80
RICE	KS	20159	1.90
RILEY	KS	20161	1.90
ROOKS	KS	20163	1.60
RUSH	KS	20165	1.80
RUSSELL	KS	20167	1.80
SALINE	KS	20169	1.90
SCOTT	KS	20171	1.80
SEDGWICK	KS	20173	1.70
SEWARD	KS	20175	1.90
SHAWNEE	KS	20177	1.90
SHERIDAN	KS	20179	1.60
SHERMAN	KS	20181	1.60
SMITH	KS	20183	1.60
STAFFORD	KS	20185	1.90
STANTON	KS	20187	1.90
STEVENS	KS	20189	1.90
SUMNER	KS	20191	1.70
THOMAS	KS	20193	1.60
TREGO	KS	20195	1.80
WABAUNSEE	KS	20197	1.90
WALLACE	KS	20199	1.60
WASHINGTON	KS	20201	1.90
WICHITA	KS	20203	1.80
WILSON	KS	20205	1.70
WOODSON	KS	20207	1.70
WYANDOTTE	KS	20209	1.90
ADAIR	KY	21001	1.95
ALLEN	KY	21003	2.05
ANDERSON	KY	21005	1.95
BALLARD	KY	21007	2.30
BARREN	KY	21009	2.05
BATH	KY	21011	2.05
BELL	KY	21013	2.15
BOONE	KY	21015	1.95
BOURBON	KY	21017	2.05
BOYD	KY	21019	2.20
BOYLE	KY	21021	1.95
BRACKEN	KY	21023	2.05
BREATHITT	KY	21025	2.15
BRECKINRIDGE	KY	21027	2.10
BULLITT	KY	21029	1.95
BUTLER	KY	21031	2.20
CALDWELL	KY	21033	2.30

County/Parish/City	State	FIPS_Code	Class I differential adjusted for location
CALLOWAY	KY	21035	2.30
CAMPBELL	KY	21037	2.05
CARLISLE	KY	21039	2.30
CARROLL	KY	21041	1.95
CARTER	KY	21043	2.20
CASEY	KY	21045	1.95
CHRISTIAN	KY	21047	2.20
CLARK	KY	21049	2.05
CLAY	KY	21051	2.15
CLINTON	KY	21053	2.15
CRITTENDEN	KY	21055	2.30
CUMBERLAND	KY	21057	2.05
DAVIESS	KY	21059	2.10
EDMONSON	KY	21061	2.05
ELLIOTT	KY	21063	2.05
ESTILL	KY	21065	2.05
FAYETTE	KY	21067	2.05
FLEMING	KY	21069	2.05
FLOYD	KY	21071	2.15
FRANKLIN	KY	21073	1.95
FULTON	KY	21075	2.30
GALLATIN	KY	21077	1.95
GARRARD	KY	21079	1.95
GRANT	KY	21081	1.95
GRAVES	KY	21083	2.30
GRAYSON	KY	21085	2.10
GREEN	KY	21087	1.95
GREENUP	KY	21089	2.20
HANCOCK	KY	21091	2.10
HARDIN	KY	21093	1.95
HARLAN	KY	21095	2.15
HARRISON	KY	21097	2.05
HART	KY	21099	1.95
HENDERSON	KY	21101	2.10
HENRY	KY	21103	1.95
HICKMAN	KY	21105	2.30
HOPKINS	KY	21107	2.20
JACKSON	KY	21109	1.95
JEFFERSON	KY	21111	1.95
JESSAMINE	KY	21113	1.95
JOHNSON	KY	21115	2.15
KENTON	KY	21117	2.05
KNOTT	KY	21119	2.15
KNOX	KY	21121	2.15
LARUE	KY	21123	1.95
LAUREL	KY	21125	2.15
LAWRENCE	KY	21127	2.15
LEE	KY	21129	2.05
LESLIE	KY	21131	2.15
LETCHER	KY	21133	2.15
LEWIS	KY	21135	2.05
LINCOLN	KY	21137	1.95
LIVINGSTON	KY	21139	2.30
LOGAN	KY	21141	2.20
LYON	KY	21143	2.30
MCCRACKEN	KY	21145	2.30
MCCREARY	KY	21147	2.15
MCLEAN	KY	21149	2.10
MADISON	KY	21151	2.05
MAGOFFIN	KY	21153	2.15
MARION	KY	21155	1.95
MARSHALL	KY	21157	2.30
MARTIN	KY	21159	2.15
MASON	KY	21161	2.05
MEADE	KY	21163	1.95
MENIFEE	KY	21165	2.05
MERCER	KY	21167	1.95
METCALFE	KY	21169	2.05
MONROE	KY	21171	2.05
MONTGOMERY	KY	21173	2.05
MORGAN	KY	21175	2.05
MUHLENBERG	KY	21177	2.20

County/Parish/City	State	FIPS_Code	Class I differential adjusted for location
NELSON	KY	21179	1.95
NICHOLAS	KY	21181	2.05
OHIO	KY	21183	2.10
OLDHAM	KY	21185	1.95
OWEN	KY	21187	1.95
OWSLEY	KY	21189	2.15
PENDLETON	KY	21191	2.05
PERRY	KY	21193	2.15
PIKE	KY	21195	2.15
POWELL	KY	21197	2.05
PULASKI	KY	21199	2.15
ROBERTSON	KY	21201	2.05
ROCKCASTLE	KY	21203	1.95
ROWAN	KY	21205	2.05
RUSSELL	KY	21207	1.95
SCOTT	KY	21209	2.05
SHELBY	KY	21211	1.95
SIMPSON	KY	21213	2.05
SPENCER	KY	21215	1.95
TAYLOR	KY	21217	1.95
TODD	KY	21219	2.20
TRIGG	KY	21221	2.30
TRIMBLE	KY	21223	1.95
UNION	KY	21225	2.10
WARREN	KY	21227	2.05
WASHINGTON	KY	21229	1.95
WAYNE	KY	21231	2.15
WEBSTER	KY	21233	2.10
WHITLEY	KY	21235	2.15
WOLFE	KY	21237	2.05
WOODFORD	KY	21239	1.95
ACADIA	LA	22001	3.05
ALLEN	LA	22003	2.85
ASCENSION	LA	22005	2.85
ASSUMPTION	LA	22007	3.05
AVOYELLES	LA	22009	2.85
BEAUREGARD	LA	22011	2.85
BIENVILLE	LA	22013	2.65
BOSSIER	LA	22015	2.35
CADDO	LA	22017	2.35
CALCASIEU	LA	22019	3.05
CALDWELL	LA	22021	2.75
CAMERON	LA	22023	3.05
CATAHOULA	LA	22025	2.85
CLAIBORNE	LA	22027	2.65
CONCORDIA	LA	22029	2.85
DE SOTO	LA	22031	2.65
EAST BATON ROUGE	LA	22033	2.85
EAST CARROLL	LA	22035	2.75
EAST FELICIANA	LA	22037	2.85
EVANGELINE	LA	22039	2.85
FRANKLIN	LA	22041	2.75
GRANT	LA	22043	2.75
IBERIA	LA	22045	3.05
IBERVILLE	LA	22047	2.85
JACKSON	LA	22049	2.75
JEFFERSON	LA	22051	3.05
JEFFERSON DAVIS	LA	22053	3.05
LAFAYETTE	LA	22055	3.05
LAFOURCHE	LA	22057	3.05
LA SALLE	LA	22059	2.75
LINCOLN	LA	22061	2.65
LIVINGSTON	LA	22063	2.85
MADISON	LA	22065	2.75
MOREHOUSE	LA	22067	2.75
NATCHITOCHES	LA	22069	2.75
ORLEANS	LA	22071	3.05
OUACHITA	LA	22073	2.75
PLAQUEMINES	LA	22075	3.05
POINTE COUPEE	LA	22077	2.85
RAPIDES	LA	22079	2.85
RED RIVER	LA	22081	2.65

County/Parish/City	State	FIPS_Code	Class I differential adjusted for location
RICHLAND	LA	22083	2.75
SABINE	LA	22085	2.75
ST. BERNARD	LA	22087	3.05
ST. CHARLES	LA	22089	3.05
ST. HELENA	LA	22091	2.85
ST. JAMES	LA	22093	2.85
ST. JOHN THE BAPTIST	LA	22095	2.85
ST. LANDRY	LA	22097	3.05
ST. MARTIN	LA	22099	3.05
ST. MARY	LA	22101	3.05
ST. TAMMANY	LA	22103	2.85
TANGIPAHOA	LA	22105	2.85
TENSAS	LA	22107	2.85
TERREBONNE	LA	22109	3.05
UNION	LA	22111	2.85
VERMILION	LA	22113	3.05
VERNON	LA	22115	2.85
WASHINGTON	LA	22117	2.85
WEBSTER	LA	22119	2.35
WEST BATON ROUGE	LA	22121	2.85
WEST CARROLL	LA	22123	2.75
WEST FELICIANA	LA	22125	2.85
WINN	LA	22127	2.75
ANDROSCOGGIN	ME	23001	2.20
AROOSTOOK	ME	23003	2.15
CUMBERLAND	ME	23005	2.30
FRANKLIN	ME	23007	2.15
HANCOCK	ME	23009	2.15
KENNEBEC	ME	23011	2.20
KNOX	ME	23013	2.20
LINCOLN	ME	23015	2.20
OXFORD	ME	23017	2.15
PENOBSCOT	ME	23019	2.15
PISCATAQUIS	ME	23021	2.15
SAGADAHOC	ME	23023	2.30
SOMERSET	ME	23025	2.15
WALDO	ME	23027	2.20
WASHINGTON	ME	23029	2.15
YORK	ME	23031	2.45
ALLEGANY	MD	24001	2.05
ANNE ARUNDEL	MD	24003	2.05
BALTIMORE	MD	24005	2.05
CALVERT	MD	24009	2.05
CAROLINE	MD	24011	2.10
CARROLL	MD	24013	2.05
CECIL	MD	24015	2.10
CHARLES	MD	24017	2.05
DORCHESTER	MD	24019	2.10
FREDERICK	MD	24021	2.05
GARRETT	MD	24023	2.05
HARFORD	MD	24025	2.05
HOWARD	MD	24027	2.05
KENT	MD	24029	2.10
MONTGOMERY	MD	24031	2.05
PRINCE GEORGE'S	MD	24033	2.05
QUEEN ANNE'S	MD	24035	2.10
ST. MARY'S	MD	24037	2.05
SOMERSET	MD	24039	2.10
TALBOT	MD	24041	2.10
WASHINGTON	MD	24043	2.05
WICOMICO	MD	24045	2.10
WORCESTER	MD	24047	2.10
BALTIMORE CITY	MD	24510	2.05
BARNSTABLE	MA	25001	2.75
BERKSHIRE	MA	25003	2.30
BRISTOL	MA	25005	2.75
DUKES	MA	25007	2.75
ESSEX	MA	25009	2.75
FRANKLIN	MA	25011	2.40
HAMPDEN	MA	25013	2.40
HAMPSHIRE	MA	25015	2.40
MIDDLESEX	MA	25017	2.75

County/Parish/City	State	FIPS_Code	Class I differential adjusted for location
NANTUCKET	MA	25019	2.75
NORFOLK	MA	25021	2.75
PLYMOUTH	MA	25023	2.75
SUFFOLK	MA	25025	2.75
WORCESTER	MA	25027	2.60
ALCONA	MI	26001	1.50
ALGER	MI	26003	1.60
ALLEGAN	MI	26005	1.80
ALPENA	MI	26007	1.35
ANTRIM	MI	26009	1.35
ARENAC	MI	26011	1.70
BARAGA	MI	26013	1.50
BARRY	MI	26015	1.80
BAY	MI	26017	1.70
BENZIE	MI	26019	1.50
BERRIEN	MI	26021	1.80
BRANCH	MI	26023	1.80
CALHOUN	MI	26025	1.80
CASS	MI	26027	1.80
CHARLEVOIX	MI	26029	1.35
CHEBOYGAN	MI	26031	1.35
CHIPPEWA	MI	26033	1.70
CLARE	MI	26035	1.70
CLINTON	MI	26037	1.80
CRAWFORD	MI	26039	1.50
DELTA	MI	26041	1.60
DICKINSON	MI	26043	1.40
EATON	MI	26045	1.80
EMMET	MI	26047	1.35
GENESEE	MI	26049	1.85
GLADWIN	MI	26051	1.70
GOGEBIC	MI	26053	1.40
GRAND TRAVERSE	MI	26055	1.50
GRATIOT	MI	26057	1.70
HILLSDALE	MI	26059	1.80
HOUGHTON	MI	26061	1.50
HURON	MI	26063	1.85
INGHAM	MI	26065	1.80
IONIA	MI	26067	1.80
IOSCO	MI	26069	1.50
IRON	MI	26071	1.40
ISABELLA	MI	26073	1.70
JACKSON	MI	26075	1.80
KALAMAZOO	MI	26077	1.80
KALKASKA	MI	26079	1.50
KENT	MI	26081	1.70
KEWEENAW	MI	26083	1.50
LAKE	MI	26085	1.70
LAPEER	MI	26087	1.85
LEELANAU	MI	26089	1.50
LENAWEE	MI	26091	1.80
LIVINGSTON	MI	26093	1.85
LUCE	MI	26095	1.70
MACKINAC	MI	26097	1.70
MACOMB	MI	26099	1.85
MANISTEE	MI	26101	1.50
MARQUETTE	MI	26103	1.50
MASON	MI	26105	1.70
MECOSTA	MI	26107	1.70
MENOMINEE	MI	26109	1.50
MIDLAND	MI	26111	1.70
MISSAUKEE	MI	26113	1.50
MONROE	MI	26115	1.85
MONTCALM	MI	26117	1.70
MONTMORENCY	MI	26119	1.35
MUSKEGON	MI	26121	1.70
NEWAYGO	MI	26123	1.70
OAKLAND	MI	26125	1.85
OCEANA	MI	26127	1.70
OGEMAW	MI	26129	1.50
ONTONAGON	MI	26131	1.40
OSCEOLA	MI	26133	1.70

County/Parish/City	State	FIPS__Code	Class I differential adjusted for location
OSCODA	MI	26135	1.50
OTSEGO	MI	26137	1.35
OTTAWA	MI	26139	1.70
PRESQUE ISLE	MI	26141	1.35
ROSCOMMON	MI	26143	1.50
SAGINAW	MI	26145	1.85
ST. CLAIR	MI	26147	1.85
ST. JOSEPH	MI	26149	1.80
SANILAC	MI	26151	1.85
SCHOOLCRAFT	MI	26153	1.60
SHIAWASSEE	MI	26155	1.85
TUSCOLA	MI	26157	1.85
VAN BUREN	MI	26159	1.80
WASHTENAW	MI	26161	1.85
WAYNE	MI	26163	1.85
WEXFORD	MI	26165	1.50
AITKIN	MN	27001	1.30
ANOKA	MN	27003	1.60
BECKER	MN	27005	1.40
BELTRAMI	MN	27007	1.10
BENTON	MN	27009	1.50
BIG STONE	MN	27011	1.50
BLUE EARTH	MN	27013	1.60
BROWN	MN	27015	1.60
CARLTON	MN	27017	1.65
CARVER	MN	27019	1.60
CASS	MN	27021	1.30
CHIPPEWA	MN	27023	1.50
CHISAGO	MN	27025	1.60
CLAY	MN	27027	1.40
CLEARWATER	MN	27029	1.10
COOK	MN	27031	1.85
COTTONWOOD	MN	27033	1.60
CROW WING	MN	27035	1.30
DAKOTA	MN	27037	1.60
DODGE	MN	27039	1.60
DOUGLAS	MN	27041	1.50
FARIBAULT	MN	27043	1.60
FILLMORE	MN	27045	1.60
FREEBORN	MN	27047	1.60
GOODHUE	MN	27049	1.60
GRANT	MN	27051	1.50
HENNEPIN	MN	27053	1.60
HOUSTON	MN	27055	1.60
HUBBARD	MN	27057	1.30
ISANTI	MN	27059	1.60
ITASCA	MN	27061	1.30
JACKSON	MN	27063	1.60
KANABEC	MN	27065	1.50
KANDIYOHI	MN	27067	1.50
KITTSON	MN	27069	1.10
KOOCHICHING	MN	27071	1.30
LAC QUI PARLE	MN	27073	1.50
LAKE	MN	27075	1.65
LAKE OF THE WOODS	MN	27077	1.10
LE SUEUR	MN	27079	1.60
LINCOLN	MN	27081	1.50
LYON	MN	27083	1.50
MCLEOD	MN	27085	1.60
MAHNOMEN	MN	27087	1.40
MARSHALL	MN	27089	1.10
MARTIN	MN	27091	1.60
MEEKER	MN	27093	1.60
MILLE LACS	MN	27095	1.50
MORRISON	MN	27097	1.50
MOWER	MN	27099	1.60
MURRAY	MN	27101	1.60
NICOLLET	MN	27103	1.60
NOBLES	MN	27105	1.60
NORMAN	MN	27107	1.40
OLMSTED	MN	27109	1.60
OTTER TAIL	MN	27111	1.40

County/Parish/City	State	FIPS_Code	Class I differential adjusted for location
PENNINGTON	MN	27113	1.10
PINE	MN	27115	1.65
PIPESTONE	MN	27117	1.60
POLK	MN	27119	1.40
POPE	MN	27121	1.50
RAMSEY	MN	27123	1.60
RED LAKE	MN	27125	1.10
REDWOOD	MN	27127	1.60
RENVILLE	MN	27129	1.60
RICE	MN	27131	1.60
ROCK	MN	27133	1.60
ROSEAU	MN	27135	1.10
ST. LOUIS	MN	27137	1.65
SCOTT	MN	27139	1.60
SHERBURNE	MN	27141	1.60
SIBLEY	MN	27143	1.60
STEARNS	MN	27145	1.50
STEELE	MN	27147	1.60
STEVENS	MN	27149	1.50
SWIFT	MN	27151	1.50
TODD	MN	27153	1.50
TRAVERSE	MN	27155	1.50
WABASHA	MN	27157	1.60
WADENA	MN	27159	1.30
WASECA	MN	27161	1.60
WASHINGTON	MN	27163	1.60
WATONWAN	MN	27165	1.60
WILKIN	MN	27167	1.40
WINONA	MN	27169	1.60
WRIGHT	MN	27171	1.60
YELLOW MEDICINE	MN	27173	1.50
ADAMS	MS	28001	2.85
ALCORN	MS	28003	2.70
AMITE	MS	28005	2.85
ATTALA	MS	28007	2.85
BENTON	MS	28009	2.70
BOLIVAR	MS	28011	2.85
CALHOUN	MS	28013	2.85
CARROLL	MS	28015	2.85
CHICKASAW	MS	28017	2.85
CHOCTAW	MS	28019	2.85
CLAIBORNE	MS	28021	2.85
CLARKE	MS	28023	3.10
CLAY	MS	28025	2.85
COAHOMA	MS	28027	2.85
COPIAH	MS	28029	2.85
COVINGTON	MS	28031	3.00
DE SOTO	MS	28033	2.85
FORREST	MS	28035	3.10
FRANKLIN	MS	28037	2.85
GEORGE	MS	28039	3.00
GREENE	MS	28041	3.10
GRENADA	MS	28043	2.85
HANCOCK	MS	28045	3.00
HARRISON	MS	28047	3.00
HINDS	MS	28049	2.85
HOLMES	MS	28051	2.85
HUMPHREYS	MS	28053	2.85
ISSAQUENA	MS	28055	2.85
ITAWAMBA	MS	28057	2.55
JACKSON	MS	28059	3.00
JASPER	MS	28061	3.10
JEFFERSON	MS	28063	2.85
JEFFERSON DAVIS	MS	28065	3.00
JONES	MS	28067	3.10
KEMPER	MS	28069	2.70
LAFAYETTE	MS	28071	2.85
LAMAR	MS	28073	3.00
LAUDERDALE	MS	28075	2.70
LAWRENCE	MS	28077	2.85
LEAKE	MS	28079	2.70
LEE	MS	28081	2.70

County/Parish/City	State	FIPS_Code	Class I differential adjusted for location
LEFLORE	MS	28083	2.85
LINCOLN	MS	28085	2.85
LOWNDES	MS	28087	2.70
MADISON	MS	28089	2.85
MARION	MS	28091	3.00
MARSHALL	MS	28093	2.85
MONROE	MS	28095	2.70
MONTGOMERY	MS	28097	2.85
NESHOBA	MS	28099	2.70
NEWTON	MS	28101	2.70
NOXUBEE	MS	28103	2.70
OKTIBBEHA	MS	28105	2.70
PANOLA	MS	28107	2.85
PEARL RIVER	MS	28109	3.00
PERRY	MS	28111	3.10
PIKE	MS	28113	2.85
PONTOTOC	MS	28115	2.85
PRENTISS	MS	28117	2.70
QUITMAN	MS	28119	2.85
RANKIN	MS	28121	2.85
SCOTT	MS	28123	2.70
SHARKEY	MS	28125	2.85
SIMPSON	MS	28127	2.85
SMITH	MS	28129	3.00
STONE	MS	28131	3.00
SUNFLOWER	MS	28133	2.85
TALLAHATCHIE	MS	28135	2.85
TATE	MS	28137	2.85
TIPPAH	MS	28139	2.70
TISHOMINGO	MS	28141	2.50
TUNICA	MS	28143	2.85
UNION	MS	28145	2.70
WALTHALL	MS	28147	2.85
WARREN	MS	28149	2.85
WASHINGTON	MS	28151	2.85
WAYNE	MS	28153	3.10
WEBSTER	MS	28155	2.85
WILKINSON	MS	28157	2.85
WINSTON	MS	28159	2.70
YALOBUSHA	MS	28161	2.85
YAZOO	MS	28163	2.85
ADAIR	MO	29001	1.90
ANDREW	MO	29003	1.90
ATCHISON	MO	29005	1.90
AUDRAIN	MO	29007	2.00
BARRY	MO	29009	1.70
BARTON	MO	29011	1.70
BATES	MO	29013	1.70
BENTON	MO	29015	1.90
BOLLINGER	MO	29017	2.10
BOONE	MO	29019	2.00
BUCHANAN	MO	29021	1.90
BUTLER	MO	29023	2.10
CALDWELL	MO	29025	1.90
CALLAWAY	MO	29027	2.00
CAMDEN	MO	29029	1.90
CAPE GIRARDEAU	MO	29031	2.10
CARROLL	MO	29033	1.90
CARTER	MO	29035	2.10
CASS	MO	29037	1.90
CEDAR	MO	29039	1.70
CHARITON	MO	29041	1.90
CHRISTIAN	MO	29043	1.70
CLARK	MO	29045	1.90
CLAY	MO	29047	1.90
CLINTON	MO	29049	1.90
COLE	MO	29051	2.00
COOPER	MO	29053	1.90
CRAWFORD	MO	29055	1.90
DADE	MO	29057	1.70
DALLAS	MO	29059	1.70
DAVIESS	MO	29061	1.90

County/Parish/City	State	FIPS_Code	Class I differential adjusted for location
DE KALB	MO	29063	1.90
DENT	MO	29065	1.90
DOUGLAS	MO	29067	1.70
DUNKLIN	MO	29069	2.35
FRANKLIN	MO	29071	2.00
GASCONADE	MO	29073	2.00
GENTRY	MO	29075	1.90
GREENE	MO	29077	1.70
GRUNDY	MO	29079	1.90
HARRISON	MO	29081	1.90
HENRY	MO	29083	1.70
HICKORY	MO	29085	1.70
HOLT	MO	29087	1.90
HOWARD	MO	29089	1.90
HOWELL	MO	29091	1.90
IRON	MO	29093	2.10
JACKSON	MO	29095	1.90
JASPER	MO	29097	1.70
JEFFERSON	MO	29099	2.10
JOHNSON	MO	29101	1.90
KNOX	MO	29103	1.90
LACLEDE	MO	29105	1.70
LAFAYETTE	MO	29107	1.90
LAWRENCE	MO	29109	1.70
LEWIS	MO	29111	1.90
LINCOLN	MO	29113	2.00
LINN	MO	29115	1.90
LIVINGSTON	MO	29117	1.90
MCDONALD	MO	29119	1.70
MACON	MO	29121	1.90
MADISON	MO	29123	2.10
MARIES	MO	29125	1.90
MARION	MO	29127	2.00
MERCER	MO	29129	1.90
MILLER	MO	29131	1.90
MISSISSIPPI	MO	29133	2.10
MONITEAU	MO	29135	2.00
MONROE	MO	29137	2.00
MONTGOMERY	MO	29139	2.00
MORGAN	MO	29141	1.90
NEW MADRID	MO	29143	2.35
NEWTON	MO	29145	1.70
NODAWAY	MO	29147	1.90
OREGON	MO	29149	2.10
OSAGE	MO	29151	2.00
OZARK	MO	29153	1.90
PEMISCOT	MO	29155	2.35
PERRY	MO	29157	2.10
PETTIS	MO	29159	1.90
PHELPS	MO	29161	1.90
PIKE	MO	29163	2.00
PLATTE	MO	29165	1.90
POLK	MO	29167	1.70
PULASKI	MO	29169	1.90
PUTNAM	MO	29171	1.90
RALLS	MO	29173	2.00
RANDOLPH	MO	29175	1.90
RAY	MO	29177	1.90
REYNOLDS	MO	29179	2.10
RIPLEY	MO	29181	2.10
ST. CHARLES	MO	29183	2.00
ST. CLAIR	MO	29185	1.70
STE. GENEVIEVE	MO	29186	2.10
ST. FRANCOIS	MO	29187	2.10
ST. LOUIS	MO	29189	2.10
SALINE	MO	29195	1.90
SCHUYLER	MO	29197	1.90
SCOTLAND	MO	29199	1.90
SCOTT	MO	29201	2.10
SHANNON	MO	29203	1.90
SHELBY	MO	29205	1.90
STODDARD	MO	29207	2.10

County/Parish/City	State	FIPS_Code	Class I differential adjusted for location
STONE	MO	29209	1.70
SULLIVAN	MO	29211	1.90
TANEY	MO	29213	1.70
TEXAS	MO	29215	1.90
VERNON	MO	29217	1.70
WARREN	MO	29219	2.00
WASHINGTON	MO	29221	2.10
WAYNE	MO	29223	2.10
WEBSTER	MO	29225	1.70
WORTH	MO	29227	1.90
WRIGHT	MO	29229	1.70
ST. LOUIS CITY	MO	29510	2.10
BEAVERHEAD	MT	30001	1.40
BIG HORN	MT	30003	1.50
BLAINE	MT	30005	1.65
BROADWATER	MT	30007	1.40
CARBON	MT	30009	1.40
CARTER	MT	30011	1.40
CASCADE	MT	30013	1.75
CHOUTEAU	MT	30015	1.75
CUSTER	MT	30017	1.50
DANIELS	MT	30019	1.50
DAWSON	MT	30021	1.50
DEER LODGE	MT	30023	1.40
FALLON	MT	30025	1.40
FERGUS	MT	30027	1.65
FLATHEAD	MT	30029	1.50
GALLATIN	MT	30031	1.40
GARFIELD	MT	30033	1.65
GLACIER	MT	30035	1.65
GOLDEN VALLEY	MT	30037	1.65
GRANITE	MT	30039	1.65
HILL	MT	30041	1.75
JEFFERSON	MT	30043	1.40
JUDITH BASIN	MT	30045	1.65
LAKE	MT	30047	1.50
LEWIS AND CLARK	MT	30049	1.65
LIBERTY	MT	30051	1.75
LINCOLN	MT	30053	1.50
MCCONE	MT	30055	1.50
MADISON	MT	30057	1.40
MEAGHER	MT	30059	1.40
MINERAL	MT	30061	1.50
MISSOULA	MT	30063	1.50
MUSSELSHELL	MT	30065	1.65
PARK	MT	30067	1.40
PETROLEUM	MT	30069	1.65
PHILLIPS	MT	30071	1.65
PONDERA	MT	30073	1.65
POWDER RIVER	MT	30075	1.40
POWELL	MT	30077	1.65
PRAIRIE	MT	30079	1.50
RAVALLI	MT	30081	1.65
RICHLAND	MT	30083	1.50
ROOSEVELT	MT	30085	1.50
ROSEBUD	MT	30087	1.50
SANDERS	MT	30089	1.50
SHERIDAN	MT	30091	1.50
SILVER BOW	MT	30093	1.40
STILLWATER	MT	30095	1.40
SWEET GRASS	MT	30097	1.40
TETON	MT	30099	1.65
TOOLE	MT	30101	1.65
TREASURE	MT	30103	1.50
VALLEY	MT	30105	1.65
WHEATLAND	MT	30107	1.65
WIBAUX	MT	30109	1.40
YELLOWSTONE	MT	30111	1.65
YELLOWSTONE NATIONAL PARK	MT	30113	1.40
ADAMS	NE	31001	1.60
ANTELOPE	NE	31003	1.60
ARTHUR	NE	31005	1.40

County/Parish/City	State	FIPS_Code	Class I differential adjusted for location
BANNER	NE	31007	1.40
BLAINE	NE	31009	1.50
BOONE	NE	31011	1.60
BOX BUTTE	NE	31013	1.40
BOYD	NE	31015	1.50
BROWN	NE	31017	1.50
BUFFALO	NE	31019	1.60
BURT	NE	31021	1.80
BUTLER	NE	31023	1.80
CASS	NE	31025	1.90
CEDAR	NE	31027	1.60
CHASE	NE	31029	1.50
CHERRY	NE	31031	1.40
CHEYENNE	NE	31033	1.40
CLAY	NE	31035	1.80
COLFAX	NE	31037	1.80
CUMING	NE	31039	1.80
CUSTER	NE	31041	1.50
DAKOTA	NE	31043	1.80
DAWES	NE	31045	1.40
DAWSON	NE	31047	1.60
DEUEL	NE	31049	1.40
DIXON	NE	31051	1.60
DODGE	NE	31053	1.80
DOUGLAS	NE	31055	1.90
DUNDY	NE	31057	1.60
FILLMORE	NE	31059	1.80
FRANKLIN	NE	31061	1.60
FRONTIER	NE	31063	1.60
FURNAS	NE	31065	1.60
GAGE	NE	31067	1.90
GARDEN	NE	31069	1.40
GARFIELD	NE	31071	1.50
GOSPER	NE	31073	1.60
GRANT	NE	31075	1.40
GREELEY	NE	31077	1.60
HALL	NE	31079	1.60
HAMILTON	NE	31081	1.80
HARLAN	NE	31083	1.60
HAYES	NE	31085	1.60
HITCHCOCK	NE	31087	1.60
HOLT	NE	31089	1.50
HOOKER	NE	31091	1.40
HOWARD	NE	31093	1.60
JEFFERSON	NE	31095	1.80
JOHNSON	NE	31097	1.90
KEARNEY	NE	31099	1.60
KEITH	NE	31101	1.40
KEYA PAHA	NE	31103	1.50
KIMBALL	NE	31105	1.40
KNOX	NE	31107	1.60
LANCASTER	NE	31109	1.80
LINCOLN	NE	31111	1.50
LOGAN	NE	31113	1.50
LOUP	NE	31115	1.50
MCPHERSON	NE	31117	1.50
MADISON	NE	31119	1.60
MERRICK	NE	31121	1.60
MORRILL	NE	31123	1.40
NANCE	NE	31125	1.60
NEMAHA	NE	31127	1.90
NUCKOLLS	NE	31129	1.60
OTOE	NE	31131	1.90
PAWNEE	NE	31133	1.90
PERKINS	NE	31135	1.50
PHELPS	NE	31137	1.60
PIERCE	NE	31139	1.60
PLATTE	NE	31141	1.80
POLK	NE	31143	1.80
RED WILLOW	NE	31145	1.60
RICHARDSON	NE	31147	1.90
ROCK	NE	31149	1.50

County/Parish/City	State	FIPS__Code	Class I differential adjusted for location
SALINE	NE	31151	1.80
SARPY	NE	31153	1.90
SAUNDERS	NE	31155	1.80
SCOTTS BLUFF	NE	31157	1.40
SEWARD	NE	31159	1.80
SHERIDAN	NE	31161	1.40
SHERMAN	NE	31163	1.60
SIOUX	NE	31165	1.40
STANTON	NE	31167	1.60
THAYER	NE	31169	1.80
THOMAS	NE	31171	1.40
THURSTON	NE	31173	1.80
VALLEY	NE	31175	1.60
WASHINGTON	NE	31177	1.90
WAYNE	NE	31179	1.60
WEBSTER	NE	31181	1.60
WHEELER	NE	31183	1.60
YORK	NE	31185	1.80
CHURCHILL	NV	32001	1.40
CLARK	NV	32003	2.25
DOUGLAS	NV	32005	1.20
ELKO	NV	32007	1.40
ESMERALDA	NV	32009	1.50
EUREKA	NV	32011	1.40
HUMBOLDT	NV	32013	1.40
LANDER	NV	32015	1.40
LINCOLN	NV	32017	1.80
LYON	NV	32019	1.20
MINERAL	NV	32021	1.20
NYE	NV	32023	1.50
PERSHING	NV	32027	1.40
STOREY	NV	32029	1.20
WASHOE	NV	32031	1.40
WHITE PINE	NV	32033	1.50
CARSON CITY	NV	32510	1.20
BELKNAP	NH	33001	2.30
CARROLL	NH	33003	2.15
CHESHIRE	NH	33005	2.50
COOS	NH	33007	1.95
GRAFTON	NH	33009	2.15
HILLSBOROUGH	NH	33011	2.60
MERRIMACK	NH	33013	2.45
ROCKINGHAM	NH	33015	2.60
STRAFFORD	NH	33017	2.45
SULLIVAN	NH	33019	2.30
ATLANTIC	NJ	34001	2.20
BERGEN	NJ	34003	2.50
BURLINGTON	NJ	34005	2.20
CAMDEN	NJ	34007	2.20
CAPE MAY	NJ	34009	2.20
CUMBERLAND	NJ	34011	2.20
ESSEX	NJ	34013	2.50
GLOUCESTER	NJ	34015	2.20
HUDSON	NJ	34017	2.50
HUNTERDON	NJ	34019	2.30
MERCER	NJ	34021	2.30
MIDDLESEX	NJ	34023	2.30
MONMOUTH	NJ	34025	2.30
MORRIS	NJ	34027	2.30
OCEAN	NJ	34029	2.30
PASSAIC	NJ	34031	2.50
SALEM	NJ	34033	2.20
SOMERSET	NJ	34035	2.30
SUSSEX	NJ	34037	2.30
UNION	NJ	34039	2.50
WARREN	NJ	34041	2.30
BERNALILLO	NM	35001	2.30
CATRON	NM	35003	1.90
CHAVES	NM	35005	1.60
CIBOLA	NM	35006	1.90
COLFAX	NM	35007	1.90
CURRY	NM	35009	1.60

County/Parish/City	State	FIPS_Code	Class I differential adjusted for location
DE BACA	NM	35011	1.60
DONA ANA	NM	35013	1.60
EDDY	NM	35015	1.60
GRANT	NM	35017	1.60
GUADALUPE	NM	35019	1.90
HARDING	NM	35021	1.90
HIDALGO	NM	35023	1.60
LEA	NM	35025	1.60
LINCOLN	NM	35027	1.90
LOS ALAMOS	NM	35028	2.30
LUNA	NM	35029	1.60
MCKINLEY	NM	35031	1.90
MORA	NM	35033	1.90
OTERO	NM	35035	1.60
QUAY	NM	35037	1.60
RIO ARRIBA	NM	35039	2.20
ROOSEVELT	NM	35041	1.60
SANDOVAL	NM	35043	2.30
SAN JUAN	NM	35045	2.20
SAN MIGUEL	NM	35047	1.90
SANTA FE	NM	35049	2.30
SIERRA	NM	35051	1.90
SOCORRO	NM	35053	1.90
TAOS	NM	35055	1.90
TORRANCE	NM	35057	1.90
UNION	NM	35059	1.90
VALENCIA	NM	35061	1.90
ALBANY	NY	36001	2.15
ALLEGANY	NY	36003	1.85
BRONX	NY	36005	2.50
BROOME	NY	36007	1.90
CATTARAUGUS	NY	36009	1.60
CAYUGA	NY	36011	1.85
CHAUTAUQUA	NY	36013	1.60
CHEMUNG	NY	36015	1.85
CHENANGO	NY	36017	1.85
CLINTON	NY	36019	1.95
COLUMBIA	NY	36021	2.15
CORTLAND	NY	36023	1.85
DELAWARE	NY	36025	2.15
DUTCHESS	NY	36027	2.30
ERIE	NY	36029	1.85
ESSEX	NY	36031	2.05
FRANKLIN	NY	36033	1.85
FULTON	NY	36035	2.05
GENESEE	NY	36037	1.85
GREENE	NY	36039	2.15
HAMILTON	NY	36041	1.95
HERKIMER	NY	36043	1.95
JEFFERSON	NY	36045	1.85
KINGS	NY	36047	2.50
LEWIS	NY	36049	1.85
LIVINGSTON	NY	36051	1.85
MADISON	NY	36053	1.85
MONROE	NY	36055	1.85
MONTGOMERY	NY	36057	2.05
NASSAU	NY	36059	2.50
NEW YORK	NY	36061	2.50
NIAGARA	NY	36063	1.85
ONEIDA	NY	36065	1.85
ONONDAGA	NY	36067	1.85
ONTARIO	NY	36069	1.85
ORANGE	NY	36071	2.30
ORLEANS	NY	36073	1.85
OSWEGO	NY	36075	1.85
OTSEGO	NY	36077	1.95
PUTNAM	NY	36079	2.30
QUEENS	NY	36081	2.50
RENSSELAER	NY	36083	2.15
RICHMOND	NY	36085	2.50
ROCKLAND	NY	36087	2.50
ST. LAWRENCE	NY	36089	1.85

County/Parish/City	State	FIPS__Code	Class I differential adjusted for location
SARATOGA	NY	36091	2.05
SCHENECTADY	NY	36093	2.15
SCHOHARIE	NY	36095	2.05
SCHUYLER	NY	36097	1.85
SENECA	NY	36099	1.85
STEUBEN	NY	36101	1.85
SUFFOLK	NY	36103	2.50
SULLIVAN	NY	36105	2.15
TIOGA	NY	36107	1.90
TOMPKINS	NY	36109	1.85
ULSTER	NY	36111	2.15
WARREN	NY	36113	1.95
WASHINGTON	NY	36115	2.05
WAYNE	NY	36117	1.85
WESTCHESTER	NY	36119	2.50
WYOMING	NY	36121	1.85
YATES	NY	36123	1.85
ALAMANCE	NC	37001	2.35
ALEXANDER	NC	37003	2.35
ALLEGHANY	NC	37005	2.35
ANSON	NC	37007	2.55
ASHE	NC	37009	2.25
AVERY	NC	37011	2.25
BEAUFORT	NC	37013	2.65
BERTIE	NC	37015	2.65
BLADEN	NC	37017	2.80
BRUNSWICK	NC	37019	2.85
BUNCOMBE	NC	37021	2.55
BURKE	NC	37023	2.35
CABARRUS	NC	37025	2.55
CALDWELL	NC	37027	2.35
CAMDEN	NC	37029	2.55
CARTERET	NC	37031	2.85
CASWELL	NC	37033	2.35
CATAWBA	NC	37035	2.35
CHATHAM	NC	37037	2.35
CHEROKEE	NC	37039	2.55
CHOWAN	NC	37041	2.55
CLAY	NC	37043	2.55
CLEVELAND	NC	37045	2.55
COLUMBUS	NC	37047	3.00
CRAVEN	NC	37049	2.85
CUMBERLAND	NC	37051	2.80
CURRITUCK	NC	37053	2.55
DARE	NC	37055	2.65
DAVIDSON	NC	37057	2.35
DAVIE	NC	37059	2.35
DUPLIN	NC	37061	2.85
DURHAM	NC	37063	2.35
EDGECOMBE	NC	37065	2.65
FORSYTH	NC	37067	2.35
FRANKLIN	NC	37069	2.55
GASTON	NC	37071	2.55
GATES	NC	37073	2.55
GRAHAM	NC	37075	2.56
GRANVILLE	NC	37077	2.55
GREENE	NC	37079	2.65
GUILFORD	NC	37081	2.35
HALIFAX	NC	37083	2.55
HARNETT	NC	37085	2.55
HAYWOOD	NC	37087	2.55
HENDERSON	NC	37089	2.55
HERTFORD	NC	37091	2.55
HOKE	NC	37093	2.80
HYDE	NC	37095	2.65
IREDELL	NC	37097	2.35
JACKSON	NC	37099	2.55
JOHNSTON	NC	37101	2.65
JONES	NC	37103	2.85
LEE	NC	37105	2.55
LENOIR	NC	37107	2.85
LINCOLN	NC	37109	2.35

County/Parish/City	State	FIPS__Code	Class I differential adjusted for location
MCDOWELL	NC	37111	2.35
MACON	NC	37113	2.55
MADISON	NC	37115	2.25
MARTIN	NC	37117	2.65
MECKLENBURG	NC	37119	2.55
MITCHELL	NC	37121	2.25
MONTGOMERY	NC	37123	2.55
MOORE	NC	37125	2.55
NASH	NC	37127	2.65
NEW HANOVER	NC	37129	2.85
NORTHAMPTON	NC	37131	2.55
ONSLOW	NC	37133	2.85
ORANGE	NC	37135	2.35
PAMLICO	NC	37137	2.85
PASQUOTANK	NC	37139	2.55
PENDER	NC	37141	2.85
PERQUIMANS	NC	37143	2.55
PERSON	NC	37145	2.35
PITT	NC	37147	2.65
POLK	NC	37149	2.55
RANDOLPH	NC	37151	2.35
RICHMOND	NC	37153	2.55
ROBESON	NC	37155	3.00
ROCKINGHAM	NC	37157	2.35
ROWAN	NC	37159	2.35
RUTHERFORD	NC	37161	2.55
SAMPSON	NC	37163	2.80
SCOTLAND	NC	37165	2.80
STANLY	NC	37167	2.55
STOKES	NC	37169	2.35
SURRY	NC	37171	2.35
SWAIN	NC	37173	2.25
TRANSYLVANIA	NC	37175	2.55
TYRRELL	NC	37177	2.65
UNION	NC	37179	2.55
VANCE	NC	37181	2.55
WAKE	NC	37183	2.55
WARREN	NC	37185	2.55
WASHINGTON	NC	37187	2.65
WATAUGA	NC	37189	2.25
WAYNE	NC	37191	2.65
WILKES	NC	37193	2.35
WILSON	NC	37195	2.65
YADKIN	NC	37197	2.35
YANCEY	NC	37199	2.25
ADAMS	ND	38001	1.40
BARNES	ND	38003	1.40
BENSON	ND	38005	1.40
BILLINGS	ND	38007	1.40
BOTTINEAU	ND	38009	1.40
BOWMAN	ND	38011	1.40
BURKE	ND	38013	1.40
BURLEIGH	ND	38015	1.40
CASS	ND	38017	1.40
CAVALIER	ND	38019	1.40
DICKEY	ND	38021	1.40
DIVIDE	ND	38023	1.40
DUNN	ND	38025	1.40
EDDY	ND	38027	1.40
EMMONS	ND	38029	1.40
FOSTER	ND	38031	1.40
GOLDEN VALLEY	ND	38033	1.40
GRAND FORKS	ND	38035	1.40
GRANT	ND	38037	1.40
GRIGGS	ND	38039	1.40
HETTINGER	ND	38041	1.40
KIDDER	ND	38043	1.40
LA MOURE	ND	38045	1.40
LOGAN	ND	38047	1.40
MCHENRY	ND	38049	1.40
MCINTOSH	ND	38051	1.40
MCKENZIE	ND	38053	1.40

County/Parish/City	State	FIPS_Code	Class I differential adjusted for location
MCLEAN	ND	38055	1.40
MERCER	ND	38057	1.40
MORTON	ND	38059	1.40
MOUNTRAIL	ND	38061	1.40
NELSON	ND	38063	1.40
OLIVER	ND	38065	1.40
PEMBINA	ND	38067	1.40
PIERCE	ND	38069	1.40
RAMSEY	ND	38071	1.40
RANSOM	ND	38073	1.40
RENVILLE	ND	38075	1.40
RICHLAND	ND	38077	1.40
ROLETTE	ND	38079	1.40
SARGENT	ND	38081	1.40
SHERIDAN	ND	38083	1.40
SIOUX	ND	38085	1.40
SLOPE	ND	38087	1.40
STARK	ND	38089	1.40
STEELE	ND	38091	1.40
STUTSMAN	ND	38093	1.40
TOWNER	ND	38095	1.40
TRAILL	ND	38097	1.40
WALSH	ND	38099	1.40
WARD	ND	38101	1.40
WELLS	ND	38103	1.40
WILLIAMS	ND	38105	1.40
ADAMS	OH	39001	2.05
ALLEN	OH	39003	2.00
ASHLAND	OH	39005	2.00
ASHTABULA	OH	39007	2.00
ATHENS	OH	39009	2.00
AUGLAIZE	OH	39011	2.00
BELMONT	OH	39013	2.00
BROWN	OH	39015	2.05
BUTLER	OH	39017	2.05
CARROLL	OH	39019	1.95
CHAMPAIGN	OH	39021	2.00
CLARK	OH	39023	2.00
CLERMONT	OH	39025	2.05
CLINTON	OH	39027	2.05
COLUMBIANA	OH	39029	1.95
COSHOCTON	OH	39031	1.95
CRAWFORD	OH	39033	2.00
CUYAHOGA	OH	39035	2.00
DARKE	OH	39037	2.00
DEFIANCE	OH	39039	1.80
DELAWARE	OH	39041	2.00
ERIE	OH	39043	2.00
FAIRFIELD	OH	39045	2.00
FAYETTE	OH	39047	2.00
FRANKLIN	OH	39049	2.00
FULTON	OH	39051	1.85
GALLIA	OH	39053	2.20
GEAUGA	OH	39055	2.00
GREENE	OH	39057	2.00
GUERNSEY	OH	39059	2.00
HAMILTON	OH	39061	2.05
HANCOCK	OH	39063	2.00
HARDIN	OH	39065	2.00
HARRISON	OH	39067	1.95
HENRY	OH	39069	1.85
HIGHLAND	OH	39071	2.05
HOCKING	OH	39073	2.00
HOLMES	OH	39075	1.95
HURON	OH	39077	2.00
JACKSON	OH	39079	2.05
JEFFERSON	OH	39081	1.95
KNOX	OH	39083	2.00
LAKE	OH	39085	2.00
LAWRENCE	OH	39087	2.20
LICKING	OH	39089	2.00
LOGAN	OH	39091	2.00

County/Parish/City	State	FIPS_Code	Class I differential adjusted for location
LORAIN	OH	39093	2.00
LUCAS	OH	39095	1.85
MADISON	OH	39097	2.00
MAHONING	OH	39099	1.95
MARION	OH	39101	2.00
MEDINA	OH	39103	2.00
MEIGS	OH	39105	2.05
MERCER	OH	39107	2.00
MIAMI	OH	39109	2.00
MONROE	OH	39111	2.00
MONTGOMERY	OH	39113	2.00
MORGAN	OH	39115	2.00
MORROW	OH	39117	2.00
MUSKINGUM	OH	39119	2.00
NOBLE	OH	39121	2.00
OTTAWA	OH	39123	1.85
PAULDING	OH	39125	1.80
PERRY	OH	39127	2.00
PICKAWAY	OH	39129	2.00
PIKE	OH	39131	2.05
PORTAGE	OH	39133	2.00
PREBLE	OH	39135	2.00
PUTNAM	OH	39137	2.00
RICHLAND	OH	39139	2.00
ROSS	OH	39141	2.05
SANDUSKY	OH	39143	2.00
SCIOTO	OH	39145	2.05
SENECA	OH	39147	2.00
SHELBY	OH	39149	2.00
STARK	OH	39151	1.95
SUMMIT	OH	39153	2.00
TRUMBULL	OH	39155	2.00
TUSCARAWAS	OH	39157	1.95
UNION	OH	39159	2.00
VAN WERT	OH	39161	2.00
VINTON	OH	39163	2.05
WARREN	OH	39165	2.05
WASHINGTON	OH	39167	2.00
WAYNE	OH	39169	1.95
WILLIAMS	OH	39171	1.80
WOOD	OH	39173	1.85
WYANDOT	OH	39175	2.00
ADAIR	OK	40001	1.90
ALFALFA	OK	40003	1.90
ATOKA	OK	40005	1.95
BEAVER	OK	40007	1.90
BECKHAM	OK	40009	1.90
BLAINE	OK	40011	1.90
BRYAN	OK	40013	1.95
CADDO	OK	40015	1.90
CANADIAN	OK	40017	1.90
CARTER	OK	40019	1.95
CHEROKEE	OK	40021	1.90
CHOCTAW	OK	40023	1.95
CIMARRON	OK	40025	1.90
CLEVELAND	OK	40027	1.90
COAL	OK	40029	1.95
COMANCHE	OK	40031	1.95
COTTON	OK	40033	1.95
CRAIG	OK	40035	1.70
CREEK	OK	40037	1.90
CUSTER	OK	40039	1.90
DELAWARE	OK	40041	1.70
DEWEY	OK	40043	1.90
ELLIS	OK	40045	1.90
GARFIELD	OK	40047	1.90
GARVIN	OK	40049	1.95
GRADY	OK	40051	1.90
GRANT	OK	40053	1.90
GREER	OK	40055	1.95
HARMON	OK	40057	1.95
HARPER	OK	40059	1.90

County/Parish/City	State	FIPS_Code	Class I differential adjusted for location
HASKELL	OK	40061	1.90
HUGHES	OK	40063	1.90
JACKSON	OK	40065	1.95
JEFFERSON	OK	40067	1.95
JOHNSTON	OK	40069	1.95
KAY	OK	40071	1.90
KINGFISHER	OK	40073	1.90
KIOWA	OK	40075	1.95
LATIMER	OK	40077	1.90
LE FLORE	OK	40079	1.90
LINCOLN	OK	40081	1.90
LOGAN	OK	40083	1.90
LOVE	OK	40085	1.95
MCCLAIN	OK	40087	1.90
MCCURTAIN	OK	40089	1.95
MCINTOSH	OK	40091	1.90
MAJOR	OK	40093	1.90
MARSHALL	OK	40095	1.95
MAYES	OK	40097	1.70
MURRAY	OK	40099	1.95
MUSKOGEE	OK	40101	1.90
NOBLE	OK	40103	1.90
NOWATA	OK	40105	1.70
OKFUSKEE	OK	40107	1.90
OKLAHOMA	OK	40109	1.90
OKMULGEE	OK	40111	1.90
OSAGE	OK	40113	1.90
OTTAWA	OK	40115	1.70
PAWNEE	OK	40117	1.90
PAYNE	OK	40119	1.90
PITTSBURG	OK	40121	1.90
PONTOTOC	OK	40123	1.95
POTTAWATOMIE	OK	40125	1.90
PUSHMATAHA	OK	40127	1.95
ROGER MILLS	OK	40129	1.90
ROGERS	OK	40131	1.70
SEMINOLE	OK	40133	1.90
SEQUOYAH	OK	40135	1.90
STEPHENS	OK	40137	1.95
TEXAS	OK	40139	1.90
TILLMAN	OK	40141	1.95
TULSA	OK	40143	1.90
WAGONER	OK	40145	1.90
WASHINGTON	OK	40147	1.70
WASHITA	OK	40149	1.90
WOODS	OK	40151	1.90
WOODWARD	OK	40153	1.90
BAKER	OR	41001	1.35
BENTON	OR	41003	1.55
CLACKAMAS	OR	41005	1.45
CLATSOP	OR	41007	1.45
COLUMBIA	OR	41009	1.45
COOS	OR	41011	1.70
CROOK	OR	41013	1.30
CURRY	OR	41015	1.85
DESCHUTES	OR	41017	1.55
DOUGLAS	OR	41019	1.70
GILLIAM	OR	41021	1.30
GRANT	OR	41023	1.35
HARNEY	OR	41025	1.35
HOOD RIVER	OR	41027	1.45
JACKSON	OR	41029	1.85
JEFFERSON	OR	41031	1.30
JOSEPHINE	OR	41033	1.85
KLAMATH	OR	41035	1.70
LAKE	OR	41037	1.55
LANE	OR	41039	1.55
LINCOLN	OR	41041	1.55
LINN	OR	41043	1.55
MALHEUR	OR	41045	1.35
MARION	OR	41047	1.45
MORROW	OR	41049	1.30

County/Parish/City	State	FIPS_Code	Class I differential adjusted for location
MULTNOMAH	OR	41051	1.45
POLK	OR	41053	1.45
SHERMAN	OR	41055	1.30
TILLAMOOK	OR	41057	1.45
UMATILLA	OR	41059	1.35
UNION	OR	41061	1.35
WALLOWA	OR	41063	1.35
WASCO	OR	41065	1.30
WASHINGTON	OR	41067	1.45
WHEELER	OR	41069	1.30
YAMHILL	OR	41071	1.45
ADAMS	PA	42001	2.05
ALLEGHENY	PA	42003	1.95
ARMSTRONG	PA	42005	1.95
BEAVER	PA	42007	1.95
BEDFORD	PA	42009	2.05
BERKS	PA	42011	2.05
BLAIR	PA	42013	2.05
BRADFORD	PA	42015	1.90
BUCKS	PA	42017	2.10
BUTLER	PA	42019	1.95
CAMBRIA	PA	42021	2.05
CAMERON	PA	42023	1.95
CARBON	PA	42025	2.10
CENTRE	PA	42027	2.00
CHESTER	PA	42029	2.10
CLARION	PA	42031	1.95
CLEARFIELD	PA	42033	1.95
CLINTON	PA	42035	2.00
COLUMBIA	PA	42037	2.00
CRAWFORD	PA	42039	1.75
CUMBERLAND	PA	42041	2.05
DAUPHIN	PA	42043	2.05
DELAWARE	PA	42045	2.20
ELK	PA	42047	1.95
ERIE	PA	42049	1.75
FAYETTE	PA	42051	1.95
FOREST	PA	42053	1.75
FRANKLIN	PA	42055	2.05
FULTON	PA	42057	2.05
GREENE	PA	42059	1.95
HUNTINGDON	PA	42061	2.05
INDIANA	PA	42063	1.95
JEFFERSON	PA	42065	1.95
JUNIATA	PA	42067	2.00
LACKAWANNA	PA	42069	2.00
LANCASTER	PA	42071	2.05
LAWRENCE	PA	42073	1.95
LEBANON	PA	42075	2.05
LEHIGH	PA	42077	2.10
LUZERNE	PA	42079	2.00
LYCOMING	PA	42081	2.00
MCKEAN	PA	42083	1.85
MERCER	PA	42085	1.75
MIFFLIN	PA	42087	2.00
MONROE	PA	42089	2.10
MONTGOMERY	PA	42091	2.10
MONTOUR	PA	42093	2.00
NORTHAMPTON	PA	42095	2.10
NORTHUMBERLAND	PA	42097	2.00
PERRY	PA	42099	2.05
PHILADELPHIA	PA	42101	2.20
PIKE	PA	42103	2.15
POTTER	PA	42105	1.90
SCHUYLKILL	PA	42107	2.05
SNYDER	PA	42109	2.00
SOMERSET	PA	42111	2.05
SULLIVAN	PA	42113	2.00
SUSQUEHANNA	PA	42115	1.90
TIOGA	PA	42117	1.90
UNION	PA	42119	2.00
VENANGO	PA	42121	1.75

County/Parish/City	State	FIPS_Code	Class I differential adjusted for location
WARREN	PA	42123	1.60
WASHINGTON	PA	42125	1.95
WAYNE	PA	42127	2.15
WESTMORELAND	PA	42129	1.95
WYOMING	PA	42131	2.00
YORK	PA	42133	2.05
BRISTOL	RI	44001	2.75
KENT	RI	44003	2.75
NEWPORT	RI	44005	2.75
PROVIDENCE	RI	44007	2.75
WASHINGTON	RI	44009	2.75
ABBEVILLE	SC	45001	2.70
AIKEN	SC	45003	2.80
ALLENDALE	SC	45005	3.10
ANDERSON	SC	45007	2.55
BAMBERG	SC	45009	3.10
BARNWELL	SC	45011	2.80
BEAUFORT	SC	45013	3.10
BERKELEY	SC	45015	3.00
CALHOUN	SC	45017	2.80
CHARLESTON	SC	45019	3.10
CHEROKEE	SC	45021	2.55
CHESTER	SC	45023	2.70
CHESTERFIELD	SC	45025	2.70
CLARENDON	SC	45027	2.80
COLLETON	SC	45029	3.10
DARLINGTON	SC	45031	2.80
DILLON	SC	45033	3.00
DORCHESTER	SC	45035	3.10
EDGEFIELD	SC	45037	2.80
FAIRFIELD	SC	45039	2.70
FLORENCE	SC	45041	3.00
GEORGETOWN	SC	45043	3.00
GREENVILLE	SC	45045	2.55
GREENWOOD	SC	45047	2.70
HAMPTON	SC	45049	3.20
HORRY	SC	45051	3.00
JASPER	SC	45053	3.20
KERSHAW	SC	45055	2.70
LANCASTER	SC	45057	2.70
LAURENS	SC	45059	2.55
LEE	SC	45061	2.80
LEXINGTON	SC	45063	2.80
MCCORMICK	SC	45065	2.80
MARION	SC	45067	3.00
MARLBORO	SC	45069	2.80
NEWBERRY	SC	45071	2.70
OCONEE	SC	45073	2.55
ORANGEBURG	SC	45075	2.80
PICKENS	SC	45077	2.55
RICHLAND	SC	45079	2.80
SALUDA	SC	45081	2.80
SPARTANBURG	SC	45083	2.55
SUMTER	SC	45085	2.80
UNION	SC	45087	2.55
WILLIAMSBURG	SC	45089	3.00
YORK	SC	45091	2.55
AURORA	SD	46003	1.50
BEADLE	SD	46005	1.50
BENNETT	SD	46007	1.40
BON HOMME	SD	46009	1.50
BROOKINGS	SD	46011	1.50
BROWN	SD	46013	1.40
BRULE	SD	46015	1.50
BUFFALO	SD	46017	1.40
BUTTE	SD	46019	1.40
CAMPBELL	SD	46021	1.40
CHARLES MIX	SD	46023	1.50
CLARK	SD	46025	1.50
CLAY	SD	46027	1.70
CODINGTON	SD	46029	1.50
CORSON	SD	46031	1.40

County/Parish/City	State	FIPS_Code	Class I differential adjusted for location
CUSTER	SD	46033	1.40
DAVISON	SD	46035	1.50
DAY	SD	46037	1.40
DEUEL	SD	46039	1.50
DEWEY	SD	46041	1.40
DOUGLAS	SD	46043	1.50
EDMUNDS	SD	46045	1.40
FALL RIVER	SD	46047	1.40
FAULK	SD	46049	1.40
GRANT	SD	46051	1.50
GREGORY	SD	46053	1.50
HAAKON	SD	46055	1.40
HAMLIN	SD	46057	1.50
HAND	SD	46059	1.40
HANSON	SD	46061	1.50
HARDING	SD	46063	1.40
HUGHES	SD	46065	1.40
HUTCHINSON	SD	46067	1.50
HYDE	SD	46069	1.40
JACKSON	SD	46071	1.40
JERAULD	SD	46073	1.50
JONES	SD	46075	1.40
KINGSBURY	SD	46077	1.50
LAKE	SD	46079	1.50
LAWRENCE	SD	46081	1.40
LINCOLN	SD	46083	1.60
LYMAN	SD	46085	1.40
MCCOOK	SD	46087	1.50
MCPHERSON	SD	46089	1.40
MARSHALL	SD	46091	1.40
MEADE	SD	46093	1.40
MELLETTE	SD	46095	1.40
MINER	SD	46097	1.50
MINNEHAHA	SD	46099	1.60
MOODY	SD	46101	1.50
PENNINGTON	SD	46103	1.40
PERKINS	SD	46105	1.40
POTTER	SD	46107	1.40
ROBERTS	SD	46109	1.50
SANBORN	SD	46111	1.50
SHANNON	SD	46113	1.40
SPINK	SD	46115	1.40
STANLEY	SD	46117	1.40
SULLY	SD	46119	1.40
TODD	SD	46121	1.40
TRIPP	SD	46123	1.40
TURNER	SD	46125	1.60
UNION	SD	46127	1.70
WALWORTH	SD	46129	1.40
YANKTON	SD	46135	1.60
ZIEBACH	SD	46137	1.40
ANDERSON	TN	47001	2.15
BEDFORD	TN	47003	2.05
BENTON	TN	47005	2.20
BLEDSOE	TN	47007	2.25
BLOUNT	TN	47009	2.25
BRADLEY	TN	47011	2.55
CAMPBELL	TN	47013	2.15
CANNON	TN	47015	2.05
CARROLL	TN	47017	2.50
CARTER	TN	47019	2.25
CHEATHAM	TN	47021	2.05
CHESTER	TN	47023	2.70
CLAIBORNE	TN	47025	2.15
CLAY	TN	47027	2.05
COCKE	TN	47029	2.25
COFFEE	TN	47031	2.05
CROCKETT	TN	47033	2.70
CUMBERLAND	TN	47035	2.15
DAVIDSON	TN	47037	2.05
DECATUR	TN	47039	2.20
DE KALB	TN	47041	2.05

County/Parish/City	State	FIPS_Code	Class I differential adjusted for location
DICKSON	TN	47043	2.20
DYER	TN	47045	2.50
FAYETTE	TN	47047	2.85
FENTRESS	TN	47049	2.15
FRANKLIN	TN	47051	2.25
GIBSON	TN	47053	2.50
GILES	TN	47055	2.20
GRAINGER	TN	47057	2.25
GREENE	TN	47059	2.25
GRUNDY	TN	47061	2.25
HAMBLEN	TN	47063	2.25
HAMILTON	TN	47065	2.55
HANCOCK	TN	47067	2.25
HARDEMAN	TN	47069	2.70
HARDIN	TN	47071	2.50
HAWKINS	TN	47073	2.25
HAYWOOD	TN	47075	2.70
HENDERSON	TN	47077	2.50
HENRY	TN	47079	2.30
HICKMAN	TN	47081	2.20
HOUSTON	TN	47083	2.20
HUMPHREYS	TN	47085	2.20
JACKSON	TN	47087	2.05
JEFFERSON	TN	47089	2.25
JOHNSON	TN	47091	2.25
KNOX	TN	47093	2.25
LAKE	TN	47095	2.30
LAUDERDALE	TN	47097	2.70
LAWRENCE	TN	47099	2.20
LEWIS	TN	47101	2.20
LINCOLN	TN	47103	2.25
LOUDON	TN	47105	2.25
MCMINN	TN	47107	2.55
MCNAIRY	TN	47109	2.70
MACON	TN	47111	2.05
MADISON	TN	47113	2.70
MARION	TN	47115	2.25
MARSHALL	TN	47117	2.05
MAURY	TN	47119	2.05
MEIGS	TN	47121	2.55
MONROE	TN	47123	2.55
MONTGOMERY	TN	47125	2.20
MOORE	TN	47127	2.25
MORGAN	TN	47129	2.15
OBION	TN	47131	2.30
OVERTON	TN	47133	2.15
PERRY	TN	47135	2.20
PICKETT	TN	47137	2.15
POLK	TN	47139	2.55
PUTNAM	TN	47141	2.15
RHEA	TN	47143	2.25
ROANE	TN	47145	2.25
ROBERTSON	TN	47147	2.05
RUTHERFORD	TN	47149	2.05
SCOTT	TN	47151	2.15
SEQUATCHIE	TN	47153	2.25
SEVIER	TN	47155	2.25
SHELBY	TN	47157	2.85
SMITH	TN	47159	2.05
STEWART	TN	47161	2.20
SULLIVAN	TN	47163	2.25
SUMNER	TN	47165	2.05
TIPTON	TN	47167	2.85
TROUSDALE	TN	47169	2.05
UNICOI	TN	47171	2.25
UNION	TN	47173	2.15
VAN BUREN	TN	47175	2.15
WARREN	TN	47177	2.05
WASHINGTON	TN	47179	2.25
WAYNE	TN	47181	2.20
WEAKLEY	TN	47183	2.30
WHITE	TN	47185	2.15

County/Parish/City	State	FIPS_Code	Class I differential adjusted for location
WILLIAMSON	TN	47187	2.05
WILSON	TN	47189	2.05
ANDERSON	TX	48001	2.35
ANDREWS	TX	48003	1.95
ANGELINA	TX	48005	2.65
ARANSAS	TX	48007	2.95
ARCHER	TX	48009	1.95
ARMSTRONG	TX	48011	1.95
ATASCOSA	TX	48013	2.75
AUSTIN	TX	48015	2.75
BAILEY	TX	48017	1.60
BANDERA	TX	48019	2.55
BASTROP	TX	48021	2.65
BAYLOR	TX	48023	1.95
BEE	TX	48025	2.95
BELL	TX	48027	2.35
BEXAR	TX	48029	2.65
BLANCO	TX	48031	2.55
BORDEN	TX	48033	2.10
BOSQUE	TX	48035	2.35
BOWIE	TX	48037	2.10
BRAZORIA	TX	48039	2.95
BRAZOS	TX	48041	2.65
BREWSTER	TX	48043	2.35
BRISCOE	TX	48045	1.95
BROOKS	TX	48047	3.15
BROWN	TX	48049	2.10
BURLESON	TX	48051	2.65
BURNET	TX	48053	2.35
CALDWELL	TX	48055	2.65
CALHOUN	TX	48057	2.95
CALLAHAN	TX	48059	2.10
CAMERON	TX	48061	3.15
CAMP	TX	48063	1.95
CARSON	TX	48065	1.95
CASS	TX	48067	2.10
CASTRO	TX	48069	1.60
CHAMBERS	TX	48071	2.95
CHEROKEE	TX	48073	2.35
CHILDRESS	TX	48075	1.95
CLAY	TX	48077	1.95
COCHRAN	TX	48079	1.60
COKE	TX	48081	2.10
COLEMAN	TX	48083	2.10
COLLIN	TX	48085	1.95
COLLINGSWORTH	TX	48087	1.95
COLORADO	TX	48089	2.75
COMAL	TX	48091	2.55
COMANCHE	TX	48093	2.10
CONCHO	TX	48095	2.10
COOKE	TX	48097	1.95
CORYELL	TX	48099	2.35
COTTLE	TX	48101	1.95
CRANE	TX	48103	2.10
CROCKETT	TX	48105	2.35
CROSBY	TX	48107	1.95
CULBERSON	TX	48109	1.95
DALLAM	TX	48111	1.90
DALLAS	TX	48113	2.10
DAWSON	TX	48115	1.95
DEAF SMITH	TX	48117	1.60
DELTA	TX	48119	1.95
DENTON	TX	48121	1.95
DE WITT	TX	48123	2.75
DICKENS	TX	48125	1.95
DIMMIT	TX	48127	2.75
DONLEY	TX	48129	1.95
DUVAL	TX	48131	2.95
EASTLAND	TX	48133	2.10
ECTOR	TX	48135	2.10
EDWARDS	TX	48137	2.35
ELLIS	TX	48139	2.10

County/Parish/City	State	FIPS_Code	Class I differential adjusted for location
EL PASO	TX	48141	1.75
ERATH	TX	48143	2.10
FALLS	TX	48145	2.35
FANNIN	TX	48147	1.95
FAYETTE	TX	48149	2.75
FISHER	TX	48151	2.10
FLOYD	TX	48153	1.95
FOARD	TX	48155	1.95
FORT BEND	TX	48157	2.95
FRANKLIN	TX	48159	1.95
FREESTONE	TX	48161	2.35
FRIO	TX	48163	2.75
GAINES	TX	48165	1.95
GALVESTON	TX	48167	2.95
GARZA	TX	48169	1.95
GILLESPIE	TX	48171	2.35
GLASSCOCK	TX	48173	2.10
GOLIAD	TX	48175	2.95
GONZALES	TX	48177	2.75
GRAY	TX	48179	1.95
GRAYSON	TX	48181	1.95
GREGG	TX	48183	2.10
GRIMES	TX	48185	2.75
GUADALUPE	TX	48187	2.65
HALE	TX	48189	1.95
HALL	TX	48191	1.95
HAMILTON	TX	48193	2.10
HANSFORD	TX	48195	1.90
HARDEMAN	TX	48197	1.95
HARDIN	TX	48199	2.95
HARRIS	TX	48201	2.95
HARRISON	TX	48203	2.10
HARTLEY	TX	48205	1.90
HASKELL	TX	48207	1.95
HAYS	TX	48209	2.55
HEMPHILL	TX	48211	1.90
HENDERSON	TX	48213	2.35
HIDALGO	TX	48215	3.15
HILL	TX	48217	2.35
HOCKLEY	TX	48219	1.95
HOOD	TX	48221	2.10
HOPKINS	TX	48223	1.95
HOUSTON	TX	48225	2.55
HOWARD	TX	48227	2.10
HUDSPETH	TX	48229	1.75
HUNT	TX	48231	1.95
HUTCHINSON	TX	48233	1.90
IRION	TX	48235	2.35
JACK	TX	48237	1.95
JACKSON	TX	48239	2.95
JASPER	TX	48241	2.75
JEFF DAVIS	TX	48243	2.10
JEFFERSON	TX	48245	2.95
JIM HOGG	TX	48247	2.95
JIM WELLS	TX	48249	2.95
JOHNSON	TX	48251	2.10
JONES	TX	48253	2.10
KARNES	TX	48255	2.75
KAUFMAN	TX	48257	2.10
KENDALL	TX	48259	2.55
KENEDY	TX	48261	3.15
KENT	TX	48263	2.10
KERR	TX	48265	2.55
KIMBLE	TX	48267	2.35
KING	TX	48269	1.95
KINNEY	TX	48271	2.65
KLEBERG	TX	48273	3.15
KNOX	TX	48275	1.95
LAMAR	TX	48277	1.95
LAMB	TX	48279	1.60
LAMPASAS	TX	48281	2.35
LA SALLE	TX	48283	2.75

County/Parish/City	State	FIPS_Code	Class I differential adjusted for location
LAVACA	TX	48285	2.75
LEE	TX	48287	2.65
LEON	TX	48289	2.55
LIBERTY	TX	48291	2.95
LIMESTONE	TX	48293	2.35
LIPSCOMB	TX	48295	1.90
LIVE OAK	TX	48297	2.95
LLANO	TX	48299	2.35
LOVING	TX	48301	1.95
LUBBOCK	TX	48303	1.95
LYNN	TX	48305	1.95
MCCULLOCH	TX	48307	2.10
MCLENNAN	TX	48309	2.35
MCMULLEN	TX	48311	2.75
MADISON	TX	48313	2.65
MARION	TX	48315	2.10
MARTIN	TX	48317	2.10
MASON	TX	48319	2.35
MATAGORDA	TX	48321	2.95
MAVERICK	TX	48323	2.65
MEDINA	TX	48325	2.65
MENARD	TX	48327	2.35
MIDLAND	TX	48329	2.10
MILAM	TX	48331	2.55
MILLS	TX	48333	2.10
MITCHELL	TX	48335	2.10
MONTAGUE	TX	48337	1.95
MONTGOMERY	TX	48339	2.95
MOORE	TX	48341	1.90
MORRIS	TX	48343	1.95
MOTLEY	TX	48345	1.95
NACOGDOCHES	TX	48347	2.55
NAVARRO	TX	48349	2.35
NEWTON	TX	48351	2.75
NOLAN	TX	48353	2.10
NUECES	TX	48355	3.15
OCHILTREE	TX	48357	1.90
OLDHAM	TX	48359	1.90
ORANGE	TX	48361	2.95
PALO PINTO	TX	48363	2.10
PANOLA	TX	48365	2.35
PARKER	TX	48367	2.10
PARMER	TX	48369	1.60
PECOS	TX	48371	2.35
POLK	TX	48373	2.75
POTTER	TX	48375	1.95
PRESIDIO	TX	48377	2.10
RAINS	TX	48379	1.95
RANDALL	TX	48381	1.95
REAGAN	TX	48383	2.35
REAL	TX	48385	2.55
RED RIVER	TX	48387	1.95
REEVES	TX	48389	2.10
REFUGIO	TX	48391	2.95
ROBERTS	TX	48393	1.90
ROBERTSON	TX	48395	2.55
ROCKWALL	TX	48397	1.95
RUNNELS	TX	48399	2.10
RUSK	TX	48401	2.35
SABINE	TX	48403	2.65
SAN AUGUSTINE	TX	48405	2.65
SAN JACINTO	TX	48407	2.75
SAN PATRICIO	TX	48409	2.95
SAN SABA	TX	48411	2.10
SCHLEICHER	TX	48413	2.35
SCURRY	TX	48415	2.10
SHACKELFORD	TX	48417	2.10
SHELBY	TX	48419	2.55
SHERMAN	TX	48421	1.90
SMITH	TX	48423	2.35
SOMERVELL	TX	48425	2.10
STARR	TX	48427	2.95

County/Parish/City	State	FIPS_Code	Class I differential adjusted for location
STEPHENS	TX	48429	2.10
STERLING	TX	48431	2.10
STONEWALL	TX	48433	2.10
SUTTON	TX	48435	2.35
SWISHER	TX	48437	1.95
TARRANT	TX	48439	2.10
TAYLOR	TX	48441	2.10
TERRELL	TX	48443	2.35
TERRY	TX	48445	1.95
THROCKMORTON	TX	48447	1.95
TITUS	TX	48449	1.95
TOM GREEN	TX	48451	2.10
TRAVIS	TX	48453	2.55
TRINITY	TX	48455	2.65
TYLER	TX	48457	2.75
UPSHUR	TX	48459	2.10
UPTON	TX	48461	2.35
UVALDE	TX	48463	2.65
VAL VERDE	TX	48465	2.35
VAN ZANDT	TX	48467	2.10
VICTORIA	TX	48469	2.95
WALKER	TX	48471	2.75
WALLER	TX	48473	2.75
WARD	TX	48475	2.10
WASHINGTON	TX	48477	2.75
WEBB	TX	48479	2.75
WHARTON	TX	48481	2.95
WHEELER	TX	48483	1.90
WICHITA	TX	48485	1.95
WILBARGER	TX	48487	1.95
WILLACY	TX	48489	3.15
WILLIAMSON	TX	48491	2.55
WILSON	TX	48493	2.75
WINKLER	TX	48495	1.95
WISE	TX	48497	1.95
WOOD	TX	48499	1.95
YOAKUM	TX	48501	1.95
YOUNG	TX	48503	1.95
ZAPATA	TX	48505	2.95
ZAVALA	TX	48507	2.65
BEAVER	UT	49001	1.50
BOX ELDER	UT	49003	1.50
CACHE	UT	49005	1.50
CARBON	UT	49007	1.80
DAGGETT	UT	49009	1.50
DAVIS	UT	49011	1.50
DUCHESNE	UT	49013	1.50
EMERY	UT	49015	1.80
GARFIELD	UT	49017	1.80
GRAND	UT	49019	1.90
IRON	UT	49021	1.80
JUAB	UT	49023	1.50
KANE	UT	49025	1.90
MILLARD	UT	49027	1.50
MORGAN	UT	49029	1.50
PIUTE	UT	49031	1.50
RICH	UT	49033	1.50
SALT LAKE	UT	49035	1.50
SAN JUAN	UT	49037	1.90
SANPETE	UT	49039	1.50
SEVIER	UT	49041	1.50
SUMMIT	UT	49043	1.50
TOOELE	UT	49045	1.50
UINTAH	UT	49047	1.80
UTAH	UT	49049	1.50
WASATCH	UT	49051	1.50
WASHINGTON	UT	49053	1.90
WAYNE	UT	49055	1.80
WEBER	UT	49057	1.50
ADDISON	VT	50001	2.05
BENNINGTON	VT	50003	2.15
CALEDONIA	VT	50005	1.95

County/Parish/City	State	FIPS_Code	Class I differential adjusted for location
CHITTENDEN	VT	50007	2.05
ESSEX	VT	50009	1.95
FRANKLIN	VT	50011	1.95
GRAND ISLE	VT	50013	1.95
LAMOILLE	VT	50015	1.95
ORANGE	VT	50017	2.05
ORLEANS	VT	50019	1.95
RUTLAND	VT	50021	2.05
WASHINGTON	VT	50023	2.05
WINDHAM	VT	50025	2.30
WINDSOR	VT	50027	2.15
ACCOMACK	VA	51001	2.10
ALBEMARLE	VA	51003	2.15
ALLEGHANY	VA	51005	2.15
AMELIA	VA	51007	2.20
AMHERST	VA	51009	2.15
APPOMATTOX	VA	51011	2.15
ARLINGTON	VA	51013	2.05
AUGUSTA	VA	51015	2.15
BATH	VA	51017	2.15
BEDFORD	VA	51019	2.15
BLAND	VA	51021	2.25
BOTETOURT	VA	51023	2.15
BRUNSWICK	VA	51025	2.35
BUCHANAN	VA	51027	2.25
BUCKINGHAM	VA	51029	2.15
CAMPBELL	VA	51031	2.15
CAROLINE	VA	51033	2.20
CARROLL	VA	51035	2.25
CHARLES CITY	VA	51036	2.20
CHARLOTTE	VA	51037	2.15
CHESTERFIELD	VA	51041	2.20
CLARKE	VA	51043	2.05
CRAIG	VA	51045	2.15
CULPEPER	VA	51047	2.05
CUMBERLAND	VA	51049	2.15
DICKENSON	VA	51051	2.25
DINWIDDIE	VA	51053	2.35
ESSEX	VA	51057	2.20
FAIRFAX	VA	51059	2.05
FAUQUIER	VA	51061	2.05
FLOYD	VA	51063	2.15
FLUVANNA	VA	51065	2.15
FRANKLIN	VA	51067	2.15
FREDERICK	VA	51069	2.05
GILES	VA	51071	2.15
GLOUCESTER	VA	51073	2.20
GOOCHLAND	VA	51075	2.20
GRAYSON	VA	51077	2.25
GREENE	VA	51079	2.15
GREENSVILLE	VA	51081	2.35
HALIFAX	VA	51083	2.35
HANOVER	VA	51085	2.20
HENRICO	VA	51087	2.20
HENRY	VA	51089	2.35
HIGHLAND	VA	51091	2.15
ISLE OF WIGHT	VA	51093	2.55
JAMES CITY	VA	51095	2.55
KING AND QUEEN	VA	51097	2.20
KING GEORGE	VA	51099	2.05
KING WILLIAM	VA	51101	2.20
LANCASTER	VA	51103	2.20
LEE	VA	51105	2.25
LOUDOUN	VA	51107	2.05
LOUISA	VA	51109	2.15
LUNENBURG	VA	51111	2.35
MADISON	VA	51113	2.15
MATHEWS	VA	51115	2.20
MECKLENBURG	VA	51117	2.35
MIDDLESEX	VA	51119	2.20
MONTGOMERY	VA	51121	2.15
NELSON	VA	51125	2.15

County/Parish/City	State	FIPS_Code	Class I differential adjusted for location
NEW KENT	VA	51127	2.20
NORTHAMPTON	VA	51131	2.10
NORTHUMBERLAND	VA	51133	2.20
NOTTOWAY	VA	51135	2.35
ORANGE	VA	51137	2.15
PAGE	VA	51139	2.05
PATRICK	VA	51141	2.35
PITTSYLVANIA	VA	51143	2.35
POWHATAN	VA	51145	2.20
PRINCE EDWARD	VA	51147	2.15
PRINCE GEORGE	VA	51149	2.35
PRINCE WILLIAM	VA	51153	2.05
PULASKI	VA	51155	2.15
RAPPAHANNOCK	VA	51157	2.05
RICHMOND	VA	51159	2.20
ROANOKE	VA	51161	2.15
ROCKBRIDGE	VA	51163	2.15
ROCKINGHAM	VA	51165	2.15
RUSSELL	VA	51167	2.25
SCOTT	VA	51169	2.25
SHENANDOAH	VA	51171	2.05
SMYTH	VA	51173	2.25
SOUTHAMPTON	VA	51175	2.55
SPOTSYLVANIA	VA	51177	2.15
STAFFORD	VA	51179	2.05
SURRY	VA	51181	2.55
SUSSEX	VA	51183	2.35
TAZEWELL	VA	51185	2.25
WARREN	VA	51187	2.05
WASHINGTON	VA	51191	2.25
WESTMORELAND	VA	51193	2.05
WISE	VA	51195	2.25
WYTHE	VA	51197	2.25
YORK	VA	51199	2.55
ALEXANDRIA CITY	VA	51510	2.05
BEDFORD CITY	VA	51515	2.15
BRISTOL CITY	VA	51520	2.25
BUENA VISTA CITY	VA	51530	2.15
CHARLOTTESVILLE CITY	VA	51540	2.15
CHESAPEAKE CITY	VA	51550	2.55
CLIFTON FORGE CITY	VA	51560	2.15
COLONIAL HEIGHTS CITY	VA	51570	2.30
COVINGTON CITY	VA	51580	2.15
DANVILLE CITY	VA	51590	2.35
EMPORIA CITY	VA	51595	2.35
FAIRFAX CITY	VA	51600	2.05
FALLS CHURCH CITY	VA	51610	2.05
FRANKLIN CITY	VA	51620	2.55
FREDERICKSBURG CITY	VA	51630	2.15
GALAX CITY	VA	51640	2.25
HAMPTON CITY	VA	51650	2.55
HARRISONBURG CITY	VA	51660	2.15
HOPEWELL CITY	VA	51670	2.35
LEXINGTON CITY	VA	51678	2.15
LYNCHBURG CITY	VA	51680	2.15
MANASSAS CITY	VA	51683	2.05
MANASSAS PARK CITY	VA	51685	2.05
MARTINSVILLE CITY	VA	51690	2.35
NEWPORT NEWS CITY	VA	51700	2.55
NORFOLK CITY	VA	51710	2.55
NORTON CITY	VA	51720	2.25
PETERSBURG CITY	VA	51730	2.35
POQUOSON CITY	VA	51735	2.55
PORTSMOUTH CITY	VA	51740	2.55
RADFORD CITY	VA	51750	2.15
RICHMOND CITY	VA	51760	2.20
ROANOKE CITY	VA	51770	2.15
SALEM CITY	VA	51775	2.15
STAUNTON CITY	VA	51790	2.15
SUFFOLK CITY	VA	51800	2.55
VIRGINIA BEACH CITY	VA	51810	2.55
WAYNESBORO CITY	VA	51820	2.15

County/Parish/City	State	FIPS_Code	Class I differential adjusted for location
WILLIAMSBURG CITY	VA	51830	2.55
WINCHESTER CITY	VA	51840	2.05
ADAMS	WA	53001	1.35
ASOTIN	WA	53003	1.35
BENTON	WA	53005	1.30
CHELAN	WA	53007	1.30
CLALLAM	WA	53009	1.45
CLARK	WA	53011	1.45
COLUMBIA	WA	53013	1.35
COWLITZ	WA	53015	1.45
DOUGLAS	WA	53017	1.30
FERRY	WA	53019	1.35
FRANKLIN	WA	53021	1.35
GARFIELD	WA	53023	1.35
GRANT	WA	53025	1.30
GRAYS HARBOR	WA	53027	1.45
ISLAND	WA	53029	1.45
JEFFERSON	WA	53031	1.45
KING	WA	53033	1.45
KITSAP	WA	53035	1.45
KITTITAS	WA	53037	1.30
KLICKITAT	WA	53039	1.30
LEWIS	WA	53041	1.45
LINCOLN	WA	53043	1.35
MASON	WA	53045	1.45
OKANOGAN	WA	53047	1.30
PACIFIC	WA	53049	1.45
PEND OREILLE	WA	53051	1.35
PIERCE	WA	53053	1.45
SAN JUAN	WA	53055	1.45
SKAGIT	WA	53057	1.20
SKAMANIA	WA	53059	1.45
SNOHOMISH	WA	53061	1.45
SPOKANE	WA	53063	1.35
STEVENS	WA	53065	1.35
THURSTON	WA	53067	1.45
WAHKIAKUM	WA	53069	1.45
WALLA WALLA	WA	53071	1.35
WHATCOM	WA	53073	1.20
WHITMAN	WA	53075	1.35
YAKIMA	WA	53077	1.30
BARBOUR	WV	54001	2.05
BERKELEY	WV	54003	2.05
BOONE	WV	54005	2.20
BRAXTON	WV	54007	2.20
BROOKE	WV	54009	1.95
CABELL	WV	54011	2.20
CALHOUN	WV	54013	2.05
CLAY	WV	54015	2.20
DODDRIDGE	WV	54017	2.05
FAYETTE	WV	54019	2.20
GILMER	WV	54021	2.05
GRANT	WV	54023	2.05
GREENBRIER	WV	54025	2.15
HAMPSHIRE	WV	54027	2.05
HANCOCK	WV	54029	1.95
HARDY	WV	54031	2.05
HARRISON	WV	54033	2.05
JACKSON	WV	54035	2.05
JEFFERSON	WV	54037	2.05
KANAWHA	WV	54039	2.20
LEWIS	WV	54041	2.05
LINCOLN	WV	54043	2.20
LOGAN	WV	54045	2.20
MCDOWELL	WV	54047	2.20
MARION	WV	54049	1.95
MARSHALL	WV	54051	1.95
MASON	WV	54053	2.05
MERCER	WV	54055	2.15
MINERAL	WV	54057	2.05
MINGO	WV	54059	2.20
MONONGALIA	WV	54061	1.95

County/Parish/City	State	FIPS_Code	Class I differential adjusted for location
MONROE	WV	54063	2.15
MORGAN	WV	54065	2.05
NICHOLAS	WV	54067	2.20
OHIO	WV	54069	1.95
PENDLETON	WV	54071	2.15
PLEASANTS	WV	54073	2.05
POCAHONTAS	WV	54075	2.15
PRESTON	WV	54077	1.95
PUTNAM	WV	54079	2.20
RALEIGH	WV	54081	2.20
RANDOLPH	WV	54083	2.05
RITCHIE	WV	54085	2.05
ROANE	WV	54087	2.20
SUMMERS	WV	54089	2.15
TAYLOR	WV	54091	1.95
TUCKER	WV	54093	2.05
TYLER	WV	54095	2.05
UPSHUR	WV	54097	2.05
WAYNE	WV	54099	2.20
WEBSTER	WV	54101	2.05
WETZEL	WV	54103	1.95
WIRT	WV	54105	2.05
WOOD	WV	54107	2.05
WYOMING	WV	54109	2.20
ADAMS	WI	55001	1.70
ASHLAND	WI	55003	1.60
BARRON	WI	55005	1.60
BAYFIELD	WI	55007	1.65
BROWN	WI	55009	1.80
BUFFALO	WI	55011	1.60
BURNETT	WI	55013	1.60
CALUMET	WI	55015	1.80
CHIPPEWA	WI	55017	1.60
CLARK	WI	55019	1.60
COLUMBIA	WI	55021	1.70
CRAWFORD	WI	55023	1.70
DANE	WI	55025	1.80
DODGE	WI	55027	1.80
DOOR	WI	55029	1.80
DOUGLAS	WI	55031	1.65
DUNN	WI	55033	1.60
EAU CLAIRE	WI	55035	1.60
FLORENCE	WI	55037	1.60
FOND DU LAC	WI	55039	1.80
FOREST	WI	55041	1.60
GRANT	WI	55043	1.80
GREEN	WI	55045	1.80
GREEN LAKE	WI	55047	1.70
IOWA	WI	55049	1.80
IRON	WI	55051	1.60
JACKSON	WI	55053	1.60
JEFFERSON	WI	55055	1.80
JUNEAU	WI	55057	1.70
KENOSHA	WI	55059	1.95
KEWAUNEE	WI	55061	1.80
LA CROSSE	WI	55063	1.60
LAFAYETTE	WI	55065	1.80
LANGLADE	WI	55067	1.60
LINCOLN	WI	55069	1.60
MANITOWOC	WI	55071	1.80
MARATHON	WI	55073	1.60
MARINETTE	WI	55075	1.60
MARQUETTE	WI	55077	1.70
MENOMINEE	WI	55078	1.70
MILWAUKEE	WI	55079	1.95
MONROE	WI	55081	1.60
OCONTO	WI	55083	1.70
ONEIDA	WI	55085	1.60
OUTAGAMIE	WI	55087	1.70
OZAUKEE	WI	55089	1.95
PEPIN	WI	55091	1.60
PIERCE	WI	55093	1.60

County/Parish/City	State	FIPS_Code	Class I differential adjusted for location
POLK	WI	55095	1.60
PORTAGE	WI	55097	1.60
PRICE	WI	55099	1.60
RACINE	WI	55101	1.95
RICHLAND	WI	55103	1.70
ROCK	WI	55105	1.80
RUSK	WI	55107	1.60
ST. CROIX	WI	55109	1.60
SAUK	WI	55111	1.70
SAWYER	WI	55113	1.60
SHAWANO	WI	55115	1.70
SHEBOYGAN	WI	55117	1.95
TAYLOR	WI	55119	1.60
TREMPEALEAU	WI	55121	1.60
VERNON	WI	55123	1.70
VILAS	WI	55125	1.60
WALWORTH	WI	55127	1.80
WASHBURN	WI	55129	1.60
WASHINGTON	WI	55131	1.80
WAUKESHA	WI	55133	1.80
WAUPACA	WI	55135	1.70
WAUSHARA	WI	55137	1.70
WINNEBAGO	WI	55139	1.70
WOOD	WI	55141	1.60
ALBANY	WY	56001	1.55
BIG HORN	WY	56003	1.40
CAMPBELL	WY	56005	1.40
CARBON	WY	56007	1.55
CONVERSE	WY	56009	1.40
CROOK	WY	56011	1.40
FREMONT	WY	56013	1.40
GOSHEN	WY	56015	1.40
HOT SPRINGS	WY	56017	1.40
JOHNSON	WY	56019	1.40
LARAMIE	WY	56021	1.55
LINCOLN	WY	56023	1.40
NATRONA	WY	56025	1.40
NIOBRARA	WY	56027	1.40
PARK	WY	56029	1.40
PLATTE	WY	56031	1.55
SHERIDAN	WY	56033	1.50
SUBLETTE	WY	56035	1.40
SWEETWATER	WY	56037	1.50
TETON	WY	56039	1.40
UINTA	WY	56041	1.50
WASHAKIE	WY	56043	1.40
WESTON	WY	56045	1.40

§ 1000.53 Announcement of class prices, component prices, and advanced pricing factors.

(a) On or before the 5th day of the month, the market administrator for each Federal milk marketing order shall announce the following prices (as applicable to that order) for the preceding month:

(1) The Class II price;
(2) The Class II butterfat price;
(3) The Class III price;
(4) The Class III skim milk price;
(5) The Class IV price;
(6) The Class IV skim milk price;
(7) The butterfat price;
(8) The nonfat solids price;
(9) The protein price;
(10) The other solids price; and
(11) The somatic cell adjustment rate.

(b) On or before the 23rd day of the month, the market administrator for each Federal milk marketing order shall announce the following prices and pricing factors for the following month:

(1) The Class I price;
(2) The Class I skim milk price;
(3) The Class I butterfat price;
(4) The Class II skim milk price;
(5) The Class II nonfat solids price; and
(6) The advanced pricing factors described in § 1000.50(q).

§ 1000.54 Equivalent price.

If for any reason a price or pricing constituent required for computing the prices described in § 1000.50 is not available, the market administrator shall use a price or pricing constituent determined by the Deputy Administrator, Dairy Programs, Agricultural Marketing Service, to be equivalent to the price or pricing constituent that is required.

Subpart H—Payments for Milk

§ 1000.70 Producer-settlement fund.

The market administrator shall establish and maintain a separate fund known as the producer-settlement fund into which the market administrator shall deposit all payments made by handlers pursuant to §§ _____.71, _____.76, and _____.77 of each Federal milk order and out of which the market administrator shall make all payments pursuant to §§ _____.72 and _____.77 of each Federal milk order. Payments due any handler shall

be offset by any payments due from that handler.

§ 1000.76 Payments by a handler operating a partially regulated distributing plant.

On or before the 25th day after the end of the month (except as provided in § 1000.90), the operator of a partially regulated distributing plant, other than a plant that is subject to marketwide pooling of producer returns under a State government's milk classification and pricing program, shall pay to the market administrator for the producer-settlement fund the amount computed pursuant to paragraph (a) of this section or, if the handler submits the information specified in §§ _____.30(b) and _____.31(b) of the order, the handler may elect to pay the amount computed pursuant to paragraph (b) of this section. A partially regulated distributing plant that is subject to marketwide pooling of producer returns under a State government's milk classification and pricing program shall pay the amount computed pursuant to paragraph (c) of this section.

(a) The payment under this paragraph shall be an amount resulting from the following computations:

(1) From the plant's route disposition in the marketing area:

(i) Subtract receipts of fluid milk products classified as Class I milk from pool plants, plants fully regulated under other Federal orders, and handlers described in § 1000.9(c) and § 1135.11, except those receipts subtracted under a similar provision of another Federal milk order;

(ii) Subtract receipts of fluid milk products from another nonpool plant that is not a plant fully regulated under another Federal order to the extent that an equivalent amount of fluid milk products disposed of to the nonpool plant by handlers fully regulated under any Federal order is classified and priced as Class I milk and is not used as an offset for any payment obligation under any order; and

(iii) Subtract the pounds of reconstituted milk made from nonfluid milk products which are disposed of as route disposition in the marketing area;

(2) For orders with multiple component pricing, compute a Class I differential price by subtracting Class III price from the current month's Class I price. Multiply the pounds remaining after the computation in paragraph (a)(1)(iii) of this section by the amount by which the Class I differential price exceeds the producer price differential, both prices to be applicable at the location of the partially regulated distributing plant except that neither the adjusted Class I differential price nor the adjusted producer price differential shall be less than zero;

(3) For orders with skim milk and butterfat pricing, multiply the remaining pounds by the amount by which the Class I price exceeds the uniform price, both prices to be applicable at the location of the partially regulated distributing plant except that neither the adjusted Class I price nor the adjusted uniform price differential shall be less than the lowest announced class price; and

(4) Unless the payment option described in paragraph (d) is selected, add the amount obtained from multiplying the pounds of labeled reconstituted milk included in paragraph (a)(1)(iii) of this section by any positive difference between the Class I price applicable at the location of the partially regulated distributing plant (less $1.00 if the reconstituted milk is labeled as such) and the Class IV price.

(b) The payment under this paragraph shall be the amount resulting from the following computations:

(1) Determine the value that would have been computed pursuant to § _____.60 of the order for the partially regulated distributing plant if the plant had been a pool plant, subject to the following modifications:

(i) Fluid milk products and bulk fluid cream products received at the plant from a pool plant, a plant fully regulated under another Federal order, and handlers described in § 1000.9(c) and § 1135.11 shall be allocated at the partially regulated distributing plant to the same class in which such products were classified at the fully regulated plant;

(ii) Fluid milk products and bulk fluid cream products transferred from the partially regulated distributing plant to a pool plant or a plant fully regulated under another Federal order shall be classified at the partially regulated distributing plant in the class to which allocated at the fully regulated plant. Such transfers shall be allocated to the extent possible to those receipts at the partially regulated distributing plant from the pool plant and plants fully regulated under other Federal orders that are classified in the corresponding class pursuant to paragraph (b)(1)(i) of this section. Any such transfers remaining after the above allocation which are in Class I and for which a value is computed pursuant to § _____.60 of the order for the partially regulated distributing plant shall be priced at the statistical uniform price or uniform price, whichever is applicable, of the respective order regulating the handling of milk at the receiving plant, with such statistical uniform price or uniform price adjusted to the location of the nonpool plant (but not to be less than the lowest announced class price of the respective order); and

(iii) If the operator of the partially regulated distributing plant so requests, the handler's value of milk determined pursuant to § _____.60 of the order shall include a value of milk determined for each nonpool plant that is not a plant fully regulated under another Federal order which serves as a supply plant for the partially regulated distributing plant by making shipments to the partially regulated distributing plant during the month equivalent to the requirements of section 7(c) of the order subject to the following conditions:

(A) The operator of the partially regulated distributing plant submits with its reports filed pursuant to §§ _____.30(b) and _____.31(b) of the order similar reports for each such nonpool supply plant;

(B) The operator of the nonpool plant maintains books and records showing the utilization of all skim milk and butterfat received at the plant which are made available if requested by the market administrator for verification purposes; and

(C) The value of milk determined pursuant to § _____.60 for the unregulated supply plant shall be determined in the same manner prescribed for computing the obligation of the partially regulated distributing plant; and

(2) From the partially regulated distributing plant's value of milk computed pursuant to paragraph (b)(1) of this section, subtract:

(i) The gross payments that were made for milk that would have been producer milk had the plant been fully regulated;

(ii) If paragraph (b)(1)(iii) of this section applies, the gross payments by the operator of the nonpool supply plant for milk received at the plant during the month that would have been producer milk if the plant had been fully regulated; and

(iii) The payments by the operator of the partially regulated distributing plant to the producer-settlement fund of another Federal order under which the plant is also a partially regulated distributing plant and, if paragraph (b)(1)(iii) of this section applies, payments made by the operator of the nonpool supply plant to the producer-settlement fund of any order.

(c) The operator of a partially regulated distributing plant that is subject to marketwide pooling of returns under a milk classification and pricing program that is imposed under the authority of a State government shall pay on or before the 25th day after the end of the month (except as provided in § 1000.90) to the market administrator for the producer-settlement fund an amount computed as follows:

After completing the computations described in paragraphs (a)(1)(i) and (ii) of this section, determine the value of the remaining pounds of fluid milk products disposed of as route disposition in the marketing area by multiplying the hundredweight of such pounds by the amount, if greater than zero, that remains after subtracting the State program's class prices applicable to such products at the plant's location from the Federal order Class I price applicable at the location of the plant.

(d) Any handler may elect partially regulated distributing plant status for any plant with respect to receipts of nonfluid milk ingredients that are reconstituted for fluid use. Payments may be made to the producer-settlement fund of the order regulating the producer milk used to produce the nonfluid milk ingredients at the positive difference between the Class I price applicable under the other order at the location of the plant where the nonfluid milk ingredients were processed and the Class IV price. This payment option shall apply only if a majority of the total milk received at the plant that processed the nonfluid milk ingredients is regulated under one or more Federal orders and payment may only be made to the producer-settlement fund of the order pricing a plurality of the milk used to produce the nonfluid milk ingredients. This payment option shall not apply if the source of the nonfluid ingredients used in reconstituted fluid milk products cannot be determined by the market administrator.

§ 1000.77 Adjustment of accounts.

Whenever audit by the market administrator of any handler's reports, books, records, or accounts, or other verification discloses errors resulting in money due the market administrator from a handler, or due a handler from the market administrator, or due a producer or cooperative association from a handler, the market administrator shall promptly notify such handler of any amount so due and payment thereof shall be made on or before the next date for making payments as set forth in the provisions under which the error(s) occurred.

§ 1000.78 Charges on overdue accounts.

Any unpaid obligation due the market administrator, producers, or cooperative associations from a handler pursuant to the provisions of the order shall be increased 1.0 percent each month beginning with the day following the date such obligation was due under the order. Any remaining amount due shall be increased at the same rate on the corresponding day of each succeeding month until paid. The amounts payable pursuant to this section shall be computed monthly on each unpaid obligation and shall include any unpaid charges previously computed pursuant to this section. The late charges shall accrue to the administrative assessment fund. For the purpose of this section, any obligation that was determined at a date later than prescribed by the order because of a handler's failure to submit a report to the market administrator when due shall be considered to have been payable by the date it would have been due if the report had been filed when due.

Subpart I—Administrative Assessment and Marketing Service Deduction

§ 1000.85 Assessment for order administration.

On or before the payment receipt date specified under § _____.71 of each Federal milk order each handler shall pay to the market administrator its pro rata share of the expense of administration of the order at a rate specified by the market administrator that is no more than 5 cents per hundredweight with respect to:

(a) Receipts of producer milk (including the handler's own production) other than such receipts by a handler described in § 1000.9(c) that were delivered to pool plants of other handlers;

(b) Receipts from a handler described in § 1000.9(c);

(c) Receipts of concentrated fluid milk products from unregulated supply plants and receipts of nonfluid milk products assigned to Class I use pursuant to § 1000.43(d) and other source milk allocated to Class I pursuant to § 1000.44(a)(3) and (8) and the corresponding steps of § 1000.44(b), except other source milk that is excluded from the computations pursuant to § _____.60(d) and (e) of parts 1005, 1006, and 1007 or § _____.60(h) and (i) of parts 1001, 1030, 1032, 1033, 1124, 1126, 1131, and 1135; and

(d) Route disposition in the marketing area from a partially regulated distributing plant that exceeds the skim milk and butterfat subtracted pursuant to § 1000.76(a)(1)(i)and (ii).

§ 1000.86 Deduction for marketing services.

(a) Except as provided in paragraph (b) of this section, each handler in making payments to producers for milk (other than milk of such handler's own production) pursuant to § _____.73 of each Federal milk order shall deduct an amount specified by the market administrator that is no more than 7 cents per hundredweight and shall pay the amount deducted to the market administrator not later than the payment receipt date specified under § _____.71 of each Federal milk order. The money shall be used by the market administrator to verify or establish weights, samples and tests of producer milk and provide market information for producers who are not receiving such services from a cooperative association. The services shall be performed in whole or in part by the market administrator or an agent engaged by and responsible to the market administrator.

(b) In the case of producers for whom the market administrator has determined that a cooperative association is actually performing the services set forth in paragraph (a) of this section, each handler shall make deductions from the payments to be made to producers as may be authorized by the membership agreement or marketing contract between the cooperative association and the producers. On or before the 15th day after the end of the month (except as provided in § 1000.90), such deductions shall be paid to the cooperative association rendering the services accompanied by a statement showing the amount of any deductions and the amount of milk for which the deduction was computed for each producer. These deductions shall be made in lieu of the deduction specified in paragraph (a) of this section.

Subpart J—Miscellaneous Provisions

§ 1000.90 Dates.

If a date required for a payment contained in a Federal milk order falls on a Saturday, Sunday, or national holiday, such payment or announcement will be due on the next day that the market administrator's office is open for public business.

§ 1000.91 [Reserved]

§ 1000.92 [Reserved]

§ 1000.93 OMB control number assigned pursuant to the Paperwork Reduction Act.

The information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of Title 44 U.S.C. chapter 35 and have been assigned OMB control number 0581–0032.

PART 1001—MILK IN THE NORTHEAST MARKETING AREA

Subpart—Order Regulating Handling

General Provisions

Sec.
1001.1 General provisions.

Definitions

1001.2 Northeast marketing area.
1001.3 Route disposition.
1001.4 Plant.
1001.5 Distributing plant.
1001.6 Supply plant.
1001.7 Pool plant.
1001.8 Nonpool plant.
1001.9 Handler.
1001.10 Producer-handler.
1001.11 [Reserved]
1001.12 Producer.
1001.13 Producer milk.
1001.14 Other source milk.
1001.15 Fluid milk product.
1001.16 Fluid cream product.
1001.17 [Reserved]
1001.18 Cooperative association.
1001.19 Commercial food processing establishment.

Handler Reports

1001.30 Reports of receipts and utilization.
1001.31 Payroll reports.
1001.32 Other reports.

Classification of Milk

1001.40 Classes of utilization.
1001.41 [Reserved]
1001.42 Classification of transfers and diversions.
1001.43 General classification rules.
1001.44 Classification of producer milk.
1001.45 Market administrator's reports and announcements concerning classification.

Class Prices

1001.50 Class prices, component prices, and advanced pricing factors.
1001.51 Class I differential and price.
1001.52 Adjusted Class I differentials.
1001.53 Announcement of class prices, component prices, and advanced pricing factors.
1001.54 Equivalent price.

Producer Price Differential

1001.60 Handler's value of milk.
1001.61 Computation of producer price differential.
1001.62 Announcement of producer prices.

Payments for Milk

1001.70 Producer-settlement fund.
1001.71 Payments to the producer-settlement fund.
1001.72 Payments from the producer-settlement fund.
1001.73 Payments to producers and to cooperative associations.
1001.74 [Reserved]
1001.75 Plant location adjustments for producer milk and nonpool milk.
1001.76 Payments by a handler operating a partially regulated distributing plant.
1001.77 Adjustment of accounts.
1001.78 Charges on overdue accounts.

Administrative Assessment and Marketing Service Deduction

1001.85 Assessment for order administration.
1001.86 Deduction for marketing services.

Authority: 7 U.S.C. 601–674.

Subpart—Order Regulating Handling

General Provisions

§ 1001.1 General provisions.

The terms, definitions, and provisions in part 1000 of this chapter apply to and are hereby made a part of this order. In this part 1001, all references to sections in part 1000 refer to part 1000 of this chapter.

Definitions

§ 1001.2 Northeast marketing area.

The marketing area means all the territory within the bounds of the following states and political subdivisions, including all piers, docks and wharves connected therewith and all craft moored thereat, and all territory occupied by government (municipal, State or Federal) reservations, installations, institutions, or other similar establishments if any part thereof is within any of the listed states or political subdivisions:

Connecticut, Delaware, Massachusetts, New Hampshire, New Jersey, Rhode Island, Vermont and District of Columbia

All of the States of Connecticut, Delaware, Massachusetts, New Hampshire, New Jersey, Rhode Island, Vermont and the District of Columbia.

Maryland Counties

All of the State of Maryland except the counties of Allegany and Garrett.

New York Counties, Cities, and Townships

All counties within the State of New York except Allegany, Cattaraugus, Chatauqua, Erie, Genessee, Livingston, Monroe, Niagara, Ontario, Orleans, Seneca, Wayne, and Wyoming; the townships of Conquest, Montezuma, Sterling and Victory in Cayuga County; the city of Hornell, and the townships of Avoca, Bath, Bradford, Canisteo, Cohocton, Dansville, Fremont, Pulteney, Hartsville, Hornellsville, Howard, Prattsburg, Urbana, Wayland, Wayne and Wheeler in Steuben County; and the townships of Italy, Middlesex, and Potter in Yates County.

Pennsylvania Counties

Adams, Bucks, Chester, Cumberland, Dauphin, Delaware, Franklin, Fulton, Juniata, Lancaster, Lebanon, Montgomery, Perry, Philadelphia, and York.

Virginia Counties and Cities

Arlington, Fairfax, Loudoun, and Prince William, and the cities of Alexandria, Fairfax, Falls Church, Manassas, and Manassas Park.

§ 1001.3 Route disposition.

See § 1000.3.

§ 1001.4 Plant.

(a) Except as provided in paragraph (b) of this section, plant means the land, buildings, facilities, and equipment constituting a single operating unit or establishment at which milk or milk products are received, processed, or packaged, including a facility described in paragraph (b)(2) of this section if the facility receives the milk of more than one dairy farmer.

(b) Plant shall not include:

(1) A separate building without stationary storage tanks that is used only as a reload point for transferring bulk milk from one tank truck to another or a separate building used only as a distribution point for storing packaged fluid milk products in transit for route disposition;

(2) An on-farm facility operated as part of a single dairy farm entity for the separation of cream and skim milk; or

(3) Bulk reload points where milk is transferred from one tank truck to another while en route from dairy farmers' farms to a plant. If stationary storage tanks are used for transferring milk at the premises, the operator of the facility shall make an advance written request to the market administrator that the facility shall be treated as a reload point. The cooling of milk, collection of samples, and washing and sanitizing of tank trucks at the premises shall not disqualify it as a bulk reload point.

§ 1001.5 Distributing plant.

See § 1000.5.

§ 1001.6 Supply plant.

See § 1000.6.

§ 1001.7 Pool plant.

Pool plant means a plant, unit of plants, or system of plants as specified in paragraphs (a) through (f) of this section, but excluding a plant described in paragraph (h) of this section. The pooling standards described in paragraphs (c) and (f) of this section are subject to modification pursuant to paragraph (g) of this section.

(a) A distributing plant, other than a plant qualified as a pool plant pursuant to paragraph (b) of this section or section 7(b) of any other Federal milk order, from which during the month 25 percent or more of the total quantity of fluid milk products physically received at the plant (excluding concentrated milk received from another plant by agreement for other than Class I use) are disposed of as route disposition or are transferred in the form of packaged fluid milk products to other distributing plants. At least 25 percent of such route disposition and transfers must be to outlets in the marketing area.

(b) Any distributing plant located in the marketing area which during the month processed at least 25 percent of the total quantity of fluid milk products physically received at the plant (excluding concentrated milk received from another plant by agreement for other than Class I use) into ultra-pasteurized or aseptically-processed fluid milk products.

(c) A supply plant from which fluid milk products are transferred or diverted to plants described in paragraph (a) or (b) of this section subject to the additional conditions described in this paragraph. In the case of a supply plant operated by a cooperative association handler described in § 1000.9(c), fluid milk products that the cooperative delivers to pool plants directly from producers' farms shall be treated as if transferred from the cooperative association's plant for the purpose of meeting the shipping requirements of this paragraph.

(1) During the months of August and December, such shipments must equal not less than 10 percent of the total quantity of milk that is received at the plant or diverted from it pursuant to § 1001.13 during the month;

(2) During the months of September through November, such shipments must equal not less than 20 percent of the total quantity of milk that is received at the plant or diverted from it pursuant to § 1001.13 during the month;

(3) A plant which meets the shipping requirements of this paragraph during each of the months of August through December shall be a pool plant during the following months of January through July unless the milk received at the plant fails to meet the requirements of a duly constituted regulatory agency, the plant fails to meet a shipping requirement instituted pursuant to paragraph (f) of this section, or the plant operator requests nonpool status for the plant. The shipping requirement for any plant which has not met the requirements of paragraphs (c)(1) and (c)(2) of this section must equal not less than 10 percent of the total quantity of milk that is received at the plant or diverted from it pursuant to § 1001.13 during each of the months of January through July in order for the plant to be a pool plant in each of those months;

(4) If milk is delivered directly from producers' farms that are located outside of the states included in the marketing area or outside Maine or West Virginia, such producers must be grouped by state into reporting units and each reporting unit must independently meet the shipping requirements of this paragraph; and

(5) Concentrated milk transferred from the supply plant to a distributing plant for an agreed-upon use other than Class I shall be excluded from the supply plant's shipments in computing the percentages in paragraphs (c)(1) and (2) of this section.

(d) [Reserved]

(e) Two or more plants that are located in the marketing area and operated by the same handler may qualify as a unit by meeting the total and in-area route distribution requirements specified in paragraph (a) of this section subject to the following additional requirements:

(1) At least one of the plants in the unit qualifies as a pool plant pursuant to paragraph (a) of this section;

(2) Other plants in the unit must process only Class I or Class II products and must be located in a pricing zone providing the same or a lower Class I price than the price applicable at the distributing plant included in the unit; and

(3) A written request to form a unit, or to add or remove plants from a unit, or to cancel a unit, must be filed with the market administrator prior to the first day of the month for which unit formation is to be effective.

(f) Two or more supply plants operated by the same handler, or by one or more cooperative associations, may qualify for pooling as a system of plants by meeting the applicable percentage requirements of paragraph (c) of this section in the same manner as a single plant subject to the following additional requirements:

(1) A supply plant system will be effective for the period of August 1 through July 31 of the following year. Written notification must be given to the market administrator listing the plants to be included in the system prior to the first day of July preceding the effective date of the system. The plants included in the system shall be listed in the sequence in which they shall qualify for pool plant status based on the minimum deliveries required. If the deliveries made are insufficient to qualify the entire system for pooling, the last listed plant shall be excluded from the system, followed by the plant next-to-last on the list, and continuing in this sequence until remaining listed plants have met the minimum shipping requirements; and

(2) Each plant that qualifies as a pool plant within a system shall continue each month as a plant in the system through the following July unless the plant subsequently fails to qualify for pooling, the handler submits a written notification to the market administrator prior to the first day of the month that the plant be deleted from the system, or that the system be discontinued. Any plant that has been so deleted from the system, or that has failed to qualify as a pool plant in any month, will not be part of the system for the remaining months through July. For any system that qualifies in August, no plant may be added in any subsequent month through the following July unless the plant replaces another plant in the system that has ceased operations and the market administrator is notified of such replacement prior to the first day of the month for which it is to be effective.

(g) The applicable shipping percentages of paragraphs (c) and (f) of this section may be increased or decreased by the market administrator if the market administrator finds that such adjustment is necessary to encourage needed shipments or to prevent uneconomic shipments. Before making such a finding, the market administrator shall investigate the need for adjustment either on the market administrator's own initiative or at the request of interested parties if the request is made in writing at least 15 days prior to the month for which the requested revision is desired effective. If the investigation shows that an adjustment of the shipping percentages might be appropriate, the market administrator shall issue a notice stating that an adjustment is being considered and invite data, views and arguments. Any decision to revise an applicable shipping percentage must be issued in writing at least one day before the effective date.

(h) The term pool plant shall not apply to the following plants:

(1) A producer-handler plant;
(2) An exempt plant as defined in § 1000.8(e);
(3) A plant qualified pursuant to paragraph (a) of this section that is located within the marketing area if the plant also meets the pooling requirements of another Federal order and more than 50 percent of its route distribution has been in such other Federal order marketing area for 3 consecutive months;
(4) A plant qualified pursuant to paragraph (a) of this section which is not located within any Federal order marketing area that meets the pooling requirements of another Federal order and has had greater route disposition in such other Federal order's marketing area for 3 consecutive months;
(5) A plant qualified pursuant to paragraph (a) of this section that is located in another Federal order marketing area if the plant meets the pooling requirements of such other Federal order and does not have a majority of its route distribution in this marketing area for 3 consecutive months or if the plant is required to be regulated under such other Federal order without regard to its route disposition in any other Federal order marketing area;
(6) A plant qualified pursuant to paragraph (c) of this section which also meets the pooling requirements of another Federal order and from which greater qualifying shipments are made to plants regulated under the other Federal order than are made to plants regulated under this order, or the plant has automatic pooling status under the other Federal order; and
(7) That portion of a pool plant designated as a "nonpool plant" that is physically separate and operated separately from the pool portion of such plant. The designation of a portion of a regulated plant as a nonpool plant must be requested in writing by the handler and must be approved by the market administrator.

§ 1001.8 Nonpool plant.

See § 1000.8.

§ 1001.9 Handler.

See § 1000.9.

§ 1001.10 Producer-handler.

Producer-handler means a person who:
(a) Operates a dairy farm and a distributing plant from which there is monthly route disposition in the marketing area during the month;
(b) Receives milk solely from own farm production or receives milk that is fully subject to the pricing and pooling provisions of this or any other Federal order;
(c) Receives at its plant or acquires for route disposition no more than 150,000 pounds of fluid milk products from handlers fully regulated under any Federal order. This limitation shall not apply if the producer-handler's own farm production is less than 150,000 pounds during the month;
(d) Disposes of no other source milk as Class I milk except by increasing the nonfat milk solids content of the fluid milk products; and
(e) Provides proof satisfactory to the market administrator that the care and management of the dairy animals and other resources necessary to produce all Class I milk handled (excluding receipts from handlers fully regulated under any Federal order) and the processing and packaging operations are the producer-handler's own enterprise and at its own risk.

§ 1001.11 [Reserved]

§ 1001.12 Producer.

(a) Except as provided in paragraph (b) of this section, *producer* means any person who produces milk approved by a duly constituted regulatory agency for fluid consumption as Grade A milk and whose milk (or components of milk) is:
(1) Received at a pool plant directly from the producer or diverted by the plant operator in accordance with § 1001.13; or
(2) Received by a handler described in § 1000.9(c).
(b) Producer shall not include a dairy farmer described in paragraphs (b)(1) through (6) of this section. A dairy farmer described in paragraphs (b)(5) or (6) of this section shall be known as a *dairy farmer for other markets.*
(1) A producer-handler as defined in any Federal order;
(2) A dairy farmer whose milk is received at an exempt plant, excluding producer milk diverted to the exempt plant pursuant to § 1001.13(d);
(3) A dairy farmer whose milk is received by diversion at a pool plant from a handler regulated under another Federal order if the other Federal order designates the dairy farmer as a producer under that order and that milk is allocated by request to a utilization other than Class I;
(4) A dairy farmer whose milk is reported as diverted to a plant fully regulated under another Federal order with respect to that portion of the milk so diverted that is assigned to Class I under the provisions of such other order;
(5) For any month of December through June, any dairy farmer whose milk is received at a pool plant or by a cooperative association handler described in § 1000.9(c) if the pool plant operator or the cooperative association caused milk from the same farm to be delivered to any plant as other than producer milk, as defined under this order or any other Federal milk order, during the same month, either of the 2 preceding months, or during any of the preceding months of July through November; and
(6) For any month of July through November, any dairy farmer whose milk is received at a pool plant or by a cooperative association handler described in § 1000.9(c) if the pool plant operator or the cooperative association caused milk from the same farm to be delivered to any plant as other than producer milk, as defined under this order or any other Federal milk order, during the same month.

§ 1001.13 Producer milk.

Producer milk means the skim milk (or the skim equivalent of components of skim milk) and butterfat contained in milk of a producer that is:
(a) Received by the operator of a pool plant directly from a producer or from a handler described in § 1000.9(c). Any milk which is picked up from the producer's farm in a tank truck under the control of the operator of a pool plant or a handler described in § 1000.9(c) but which is not received at a plant until the following month shall be considered as having been received by the handler during the month in which it is picked up at the farm. All milk received pursuant to this paragraph shall be priced at the location of the plant where it is first physically received;
(b) Received by the operator of a pool plant or a handler described in § 1000.9(c) in excess of the quantity delivered to pool plants subject to the following conditions:
(1) The producers whose farms are outside of the states included in the marketing area and outside the states of Maine or West Virginia shall be organized into state units and each such unit shall be reported separately; and
(2) For pooling purposes, each reporting unit must satisfy the shipping standards specified for a supply plant pursuant to § 1001.7(c);
(c) Diverted by a proprietary pool plant operator to another pool plant. Milk so diverted shall be priced at the location of the plant to which diverted; or
(d) Diverted by the operator of a pool plant or by a handler described in § 1000.9(c) to a nonpool plant, subject to the following conditions:
(1) Milk of a dairy farmer shall not be eligible for diversion unless milk of

such dairy farmer was physically received as producer milk at a pool plant and the dairy farmer has continuously retained producer status since that time. If a dairy farmer loses producer status under this order (except as a result of a temporary loss of Grade A approval), the dairy farmer's milk shall not be eligible for diversion until milk of the dairy farmer has been physically received as producer milk at a pool plant; and

(2) Diverted milk shall be priced at the location of the plant to which diverted.

§ 1001.14 Other source milk.

See § 1000.14.

§ 1001.15 Fluid milk product.

See § 1000.15.

§ 1001.16 Fluid cream product.

See § 1000.16.

§ 1001.17 [Reserved]

§ 1001.18 Cooperative association.

See § 1000.18.

§ 1001.19 Commercial food processing establishment.

See § 1000.19.

Handler Reports

§ 1001.30 Reports of receipts and utilization.

Each handler shall report monthly so that the market administrator's office receives the report on or before the 9th day after the end of the month, in the detail and on prescribed forms, as follows:

(a) Each pool plant operator shall report for each of its operations the following information:

(1) Product pounds, pounds of butterfat, pounds of protein, and pounds of nonfat solids other than protein (other solids) contained in or represented by:

(i) Receipts of producer milk, including producer milk diverted by the reporting handler, from sources other than handlers described in § 1000.9(c); and

(ii) Receipts of milk from handlers described in § 1000.9(c);

(2) Product pounds and pounds of butterfat contained in:

(i) Receipts of fluid milk products and bulk fluid cream products from other pool plants;

(ii) Receipts of other source milk; and

(iii) Inventories at the beginning and end of the month of fluid milk products and bulk fluid cream products;

(3) The utilization or disposition of all milk and milk products required to be reported pursuant to this paragraph; and

(4) Such other information with respect to the receipts and utilization of skim milk, butterfat, milk protein, and other nonfat solids as the market administrator may prescribe.

(b) Each handler operating a partially regulated distributing plant shall report with respect to such plant in the same manner as prescribed for reports required by paragraph (a) of this section. Receipts of milk that would have been producer milk if the plant had been fully regulated shall be reported in lieu of producer milk. The report shall show also the quantity of any reconstituted skim milk in route disposition in the marketing area.

(c) Each handler described in § 1000.9(c) shall report:

(1) The product pounds, pounds of butterfat, pounds of protein, and the pounds of solids-not-fat other than protein (other solids) contained in receipts of milk from producers; and

(2) The utilization or disposition of such receipts.

(d) Each handler not specified in paragraph (a) or (b) of this section shall report with respect to its receipts and utilization of milk and milk products in such manner as the market administrator may prescribe.

§ 1001.31 Payroll reports.

(a) On or before the 22nd day after the end of each month, each handler that operates a pool plant pursuant to § 1001.7 and each handler described in § 1000.9(c) shall report to the market administrator its producer payroll for the month, in detail prescribed by the market administrator, showing for each producer the information specified in § 1001.73(e).

(b) Each handler operating a partially regulated distributing plant who elects to make payment pursuant to § 1000.76(b) shall report for each dairy farmer who would have been a producer if the plant had been fully regulated in the same manner as prescribed for reports required by paragraph (a) of this section.

§ 1001.32 Other reports.

In addition to the reports required pursuant to §§ 1001.30 and 1001.31, each handler shall report any information the market administrator deems necessary to verify or establish each handler's obligation under the order.

Classification of Milk

§ 1001.40 Classes of utilization.

See § 1000.40.

§ 1001.41 [Reserved]

§ 1001.42 Classification of transfers and diversions.

See § 1000.42.

§ 1001.43 General classification rules.

See § 1000.43.

§ 1001.44 Classification of producer milk.

See § 1000.44.

§ 1001.45 Market administrator's reports and announcements concerning classification.

See § 1000.45.

Class Prices

§ 1001.50 Class prices, component prices, and advanced pricing factors.

See § 1000.50.

§ 1001.51 Class I differential and price.

The Class I differential shall be the differential established for Suffolk County, Massachusetts, which is reported in § 1000.52. The Class I price shall be the price computed pursuant to § 1000.50(a) for Suffolk County, Massachusetts.

§ 1001.52 Adjusted Class I differentials.

See § 1000.52.

§ 1001.53 Announcement of class prices, component prices, and advanced pricing factors.

See § 1000.53.

§ 1001.54 Equivalent price.

See § 1000.54.

Producer Price Differential

§ 1001.60 Handler's value of milk.

For the purpose of computing a handler's obligation for producer milk, the market administrator shall determine for each month the value of milk of each handler with respect to each of the handler's pool plants and of each handler described in § 1000.9(c) with respect to milk that was not received at a pool plant by adding the amounts computed in paragraphs (a) through (h) of this section and subtracting from that total amount the value computed in paragraph (i) of this section. Unless otherwise specified, the skim milk, butterfat, and the combined pounds of skim milk and butterfat referred to in this section shall result from the steps set forth in § 1000.44(a), (b), and (c), respectively, and the nonfat components of producer milk in each class shall be based upon the proportion of such components in producer skim milk. Receipts of nonfluid milk products that are distributed as labeled reconstituted milk for which payments are made to the producer-settlement

fund of another Federal order under § 1000.76(a)(4) or (d) shall be excluded from pricing under this section.

(a) Class I value.

(1) Multiply the pounds of skim milk in Class I by the Class I skim milk price; and

(2) Add an amount obtained by multiplying the pounds of butterfat in Class I by the Class I butterfat price.

(b) Class II value.

(1) Multiply the pounds of nonfat solids in Class II skim milk by the Class II nonfat solids price; and

(2) Add an amount obtained by multiplying the pounds of butterfat in Class II times the Class II butterfat price.

(c) Class III value.

(1) Multiply the pounds of protein in Class III skim milk by the protein price;

(2) Add an amount obtained by multiplying the pounds of other solids in Class III skim milk by the other solids price; and

(3) Add an amount obtained by multiplying the pounds of butterfat in Class III by the butterfat price.

(d) Class IV value.

(1) Multiply the pounds of nonfat solids in Class IV skim milk by the nonfat solids price; and

(2) Add an amount obtained by multiplying the pounds of butterfat in Class IV by the butterfat price.

(e) Multiply the pounds of skim milk and butterfat overage assigned to each class pursuant to § 1000.44(a)(11) and the corresponding step of § 1000.44(b) by the skim milk prices and butterfat prices applicable to each class.

(f) Multiply the difference between the current month's Class I, II, or III price, as the case may be, and the Class IV price for the preceding month by the hundredweight of skim milk and butterfat subtracted from Class I, II, or III, respectively, pursuant to § 1000.44(a)(7) and the corresponding step of § 1000.44(b);

(g) Multiply the difference between the Class I price applicable at the location of the pool plant and the Class IV price by the hundredweight of skim milk and butterfat assigned to Class I pursuant to § 1000.43(d) and the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1000.44(a)(3)(i) through (vi) and the corresponding step of § 1000.44(b), excluding receipts of bulk fluid cream products from a plant regulated under other Federal orders and bulk concentrated fluid milk products from pool plants, plants regulated under other Federal orders, and unregulated supply plants.

(h) Multiply the difference between the Class I price applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received and the Class III price by the pounds of skim milk and butterfat in receipts of concentrated fluid milk products assigned to Class I pursuant to § 1000.43(d) and § 1000.44(a)(3)(i) and the corresponding step of § 1000.44(b) and the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1000.44(a)(8) and the corresponding step of § 1000.44(b), excluding such skim milk and butterfat in receipts of fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order.

(i) For reconstituted milk made from receipts of nonfluid milk products, multiply $1.00 (but not more than the difference between the Class I price applicable at the location of the pool plant and the Class IV price) by the hundredweight of skim milk and butterfat contained in receipts of nonfluid milk products that are allocated to Class I use pursuant to § 1000.43(d).

§ 1001.61 Computation of producer price differential.

For each month, the market administrator shall compute a producer price differential per hundredweight. The report of any handler who has not made payments required pursuant to § 1001.71 for the preceding month shall not be included in the computation of the producer price differential, and such handler's report shall not be included in the computation for succeeding months until the handler has made full payment of outstanding monthly obligations. Subject to the aforementioned conditions, the market administrator shall compute the producer price differential in the following manner:

(a) Combine into one total the values computed pursuant to § 1001.60 for all handlers required to file reports prescribed in § 1001.30;

(b) Subtract the total of the values obtained by multiplying each handler's total pounds of protein, other solids, and butterfat contained in the milk for which an obligation was computed pursuant to § 1001.60 by the protein price, other solids price, and the butterfat price, respectively;

(c) Add an amount equal to the sum of the location adjustments computed pursuant to § 1001.75;

(d) Add an amount equal to not less than one-half of the unobligated balance in the producer-settlement fund;

(e) Divide the resulting amount by the sum of the following for all handlers included in these computations:

(1) The total hundredweight of producer milk; and

(2) The total hundredweight for which a value is computed pursuant to § 1001.60(h); and

(f) Subtract not less than 4 cents nor more than 5 cents from the price computed pursuant to paragraph (e) of this section. The result, rounded to the nearest cent, shall be known as the *producer price differential* for the month.

§ 1001.62 Announcement of producer prices.

On or before the 13th day after the end of the month, the market administrator shall announce the following prices and information:

(a) The producer price differential;

(b) The protein price;

(c) The nonfat solids price;

(d) The other solids price;

(e) The butterfat price;

(f) The average butterfat, protein, nonfat solids, and other solids content of producer milk; and

(g) The statistical uniform price for milk containing 3.5 percent butterfat computed by combining the Class III price and the producer price differential.

Payments for Milk

§ 1001.70 Producer-settlement fund.

See § 1000.70.

§ 1001.71 Payments to the producer-settlement fund.

Each handler shall make payment to the producer-settlement fund in a manner that provides receipt of the funds by the market administrator no later than the 15th day after the end of the month (except as provided in § 1000.90). Payment shall be the amount, if any, by which the amount specified in paragraph (a) of this section exceeds the amount specified in paragraph (b) of this section:

(a) The total value of milk to the handler for the month as determined pursuant to § 1001.60.

(b) The sum of:

(1) An amount obtained by multiplying the total hundredweight of producer milk as determined pursuant to § 1000.44(c) by the producer price differential as adjusted pursuant to § 1001.75;

(2) An amount obtained by multiplying the total pounds of protein, other solids, and butterfat contained in producer milk by the protein, other solids, and butterfat prices respectively; and

(3) An amount obtained by multiplying the pounds of skim milk and butterfat for which a value was computed pursuant to § 1001.60(h) by the producer price differential as adjusted pursuant to § 1001.75 for the location of the plant from which received.

§ 1001.72 Payments from the producer-settlement fund.

No later than the 16th day after the end of each month (except as provided in § 1000.90), the market administrator shall pay to each handler the amount, if any, by which the amount computed pursuant to § 1001.71(b) exceeds the amount computed pursuant to § 1001.71(a). If, at such time, the balance in the producer-settlement fund is insufficient to make all payments pursuant to this section, the market administrator shall reduce uniformly such payments and shall complete the payments as soon as the funds are available.

§ 1001.73 Payments to producers and to cooperative associations.

(a) Each pool plant operator that is not paying a cooperative association for producer milk shall pay each producer as follows:

(1) *Partial payment.* For each producer who has not discontinued shipments as of the 23rd day of the month, payment shall be made so that it is received by the producer on or before the 26th day of the month (except as provided in § 1000.90) for milk received during the first 15 days of the month at not less than the lowest announced class price for the preceding month, less proper deductions authorized in writing by the producer.

(2) *Final payment.* For milk received during the month, payment shall be made so that it is received by each producer no later than the day after the payment date required in § 1001.72 in an amount computed as follows:

(i) Multiply the hundredweight of producer milk received by the producer price differential for the month as adjusted pursuant to § 1001.75;

(ii) Multiply the pounds of butterfat received by the butterfat price for the month;

(iii) Multiply the pounds of protein received by the protein price for the month;

(iv) Multiply the pounds of other solids received by the other solids price for the month; and

(v) Add the amounts computed in paragraphs (a)(2)(i) through (iv) of this section, and from that sum:

(A) Subtract the partial payment made pursuant to paragraph (a)(1) of this section;

(B) Subtract the deduction for marketing services pursuant to § 1000.86;

(C) Add or subtract for errors made in previous payments to the producer; and

(D) Subtract proper deductions authorized in writing by the producer.

(b) One day before partial and final payments are due pursuant to paragraph (a) of this section, each pool plant operator shall pay a cooperative association for milk received as follows:

(1) *Partial payment to a cooperative association for bulk milk received directly from producers' farms.* For bulk milk (including the milk of producers who are not members of such association and who the market administrator determines have authorized the cooperative association to collect payment for their milk) received during the first 15 days of the month from a cooperative association in any capacity, except as the operator of a pool plant, the payment shall be equal to the hundredweight of milk received multiplied by the lowest announced class price for the preceding month.

(2) *Partial payment to a cooperative association for milk transferred from its pool plant.* For bulk milk/skimmed milk products received during the first 15 days of the month from a cooperative association in its capacity as the operator of a pool plant, the partial payment shall be at the pool plant operator's estimated use value of the milk using the most recent class prices available at the receiving plant's location.

(3) *Final payment to a cooperative association for milk transferred from its pool plant.* Following the classification of bulk fluid milk products and bulk fluid cream products received during the month from a cooperative association in its capacity as the operator of a pool plant, the final payment for such receipts shall be determined as follows:

(i) Multiply the hundredweight of Class I skim milk by the Class I skim milk price for the month at the receiving plant;

(ii) Multiply the pounds of Class I butterfat by the Class I butterfat price for the month at the receiving plant;

(iii) Multiply the pounds of nonfat solids in Class II skim milk by the Class II nonfat solids price;

(iv) Multiply the pounds of butterfat in Class II times the Class II butterfat price;

(v) Multiply the pounds of nonfat solids in Class IV milk by the nonfat solids price for the month;

(vi) Multiply the pounds of butterfat in Class III and IV milk by the butterfat price for the month;

(vii) Multiply the pounds of protein in Class III milk by the protein price for the month;

(viii) Multiply the pounds of other solids in Class III milk by the other solids price for the month; and

(ix) Add together the amounts computed in paragraphs (b)(3)(i) through (viii) of this section and from that sum deduct any payment made pursuant to paragraph (b)(2) of this section.

(4) *Final payment to a cooperative association for bulk milk received directly from producers' farms.* For bulk milk received from a cooperative association during the month, including the milk of producers who are not members of such association and who the market administrator determines have authorized the cooperative association to collect payment for their milk, the final payment for such milk shall be an amount equal to the sum of the individual payments otherwise payable for such milk pursuant to paragraph (a)(2) of this section.

(c) If a handler has not received full payment from the market administrator pursuant to § 1001.72 by the payment date specified in paragraph (a) or (b) of this section, the handler may reduce payments pursuant to paragraphs (a) and (b) of this section, but by not more than the amount of the underpayment. The payments shall be completed on the next scheduled payment date after receipt of the balance due from the market administrator.

(d) If a handler claims that a required payment to a producer cannot be made because the producer is deceased or cannot be located, or because the cooperative association or its lawful successor or assignee is no longer in existence, the payment shall be made to the producer-settlement fund, and in the event that the handler subsequently locates and pays the producer or a lawful claimant, or in the event that the handler no longer exists and a lawful claim is later established, the market administrator shall make the required payment from the producer-settlement fund to the handler or to the lawful claimant as the case may be.

(e) In making payments to producers pursuant to this section, each pool plant operator shall furnish each producer, except a producer whose milk was received from a cooperative association handler described in § 1000.9(a) or (c), a supporting statement in such form that it may be retained by the recipient which shall show:

(1) The name, address, Grade A identifier assigned by a duly constituted regulatory agency, and the payroll number of the producer;

(2) The month and dates that milk was received from the producer, including the daily and total pounds of milk received;

(3) The total pounds of butterfat, protein, and other solids contained in the producer's milk;

(4) The minimum rate or rates at which payment to the producer is required pursuant to this order;

(5) The rate used in making payment if the rate is other than the applicable minimum rate;

(6) The amount, or rate per hundredweight, or rate per pound of component, and the nature of each deduction claimed by the handler; and

(7) The net amount of payment to the producer or cooperative association.

§ 1001.74 [Reserved]

§ 1001.75 Plant location adjustments for producer milk and nonpool milk.

For purposes of making payments for producer milk and nonpool milk, a plant location adjustment shall be determined by subtracting the Class I price specified in § 1001.51 from the Class I price at the plant's location. The difference, plus or minus as the case may be, shall be used to adjust the payments required pursuant to §§ 1001.73 and 1000.76.

§ 1001.76 Payments by a handler operating a partially regulated distributing plant.

See § 1000.76.

§ 1001.77 Adjustment of accounts.

See § 1000.77.

§ 1001.78 Charges on overdue accounts.

See § 1000.78.

Administrative Assessment and Marketing Service Deduction

§ 1001.85 Assessment for order administration.

See § 1000.85.

§ 1001.86 Deduction for marketing services.

See § 1000.86.

PART 1005—MILK IN THE APPALACHIAN MARKETING AREA

Subpart—Order Regulating Handling

General Provisions

Sec.
1005.1 General provisions.

Definitions

1005.2 Appalachian marketing area.
1005.3 Route disposition.
1005.4 Plant.
1005.5 Distributing plant.
1005.6 Supply plant.
1005.7 Pool plant.
1005.8 Nonpool plant.
1005.9 Handler.
1005.10 Producer-handler.
1005.11 [Reserved]
1005.12 Producer.
1005.13 Producer milk.
1005.14 Other source milk.
1005.15 Fluid milk product.
1005.16 Fluid cream product.
1005.17 [Reserved]
1005.18 Cooperative association.
1005.19 Commercial food processing establishment.

Handler Reports

1005.30 Reports of receipts and utilization.
1005.31 Payroll reports.
1005.32 Other reports.

Classification of Milk

1005.40 Classes of utilization.
1005.41 [Reserved]
1005.42 Classification of transfers and diversions.
1005.43 General classification rules.
1005.44 Classification of producer milk.
1005.45 Market administrator's reports and announcements concerning classification.

Class Prices

1005.50 Class prices, component prices, and advanced pricing factors.
1005.51 Class I differential and price.
1005.52 Adjusted Class I differentials.
1005.53 Announcement of class prices, component prices, and advanced pricing factors.
1005.54 Equivalent price.

Uniform Prices

1005.60 Handler's value of milk.
1005.61 Computation of uniform prices.
1005.62 Announcement of uniform prices.

Payments for Milk

1005.70 Producer-settlement fund.
1005.71 Payments to the producer-settlement fund.
1005.72 Payments from the producer-settlement fund.
1005.73 Payments to producers and to cooperative associations.
1005.74 [Reserved]
1005.75 Plant location adjustments for producer milk and nonpool milk.
1005.76 Payments by a handler operating a partially regulated distributing plant.
1005.77 Adjustment of accounts.
1005.78 Charges on overdue accounts.

Marketwide Service Payments

1005.80 Transportation credit balancing fund.
1005.81 Payments to the transportation credit balancing fund.
1005.82 Payments from the transportation credit balancing fund.

Administrative Assessment and Marketing Service Deduction

1005.85 Assessment for order administration.
1005.86 Deduction for marketing services.

Authority: 7 U.S.C. 601–674.

Subpart—Order Regulating Handling

General Provisions

§ 1005.1 General provisions.

The terms, definitions, and provisions in part 1000 of this chapter apply to and are hereby made a part of this order. In this part 1005, all references to sections in part 1000 refer to part 1000 of this chapter.

Definitions

§ 1005.2 Appalachian marketing area.

The marketing area means all the territory within the bounds of the following states and political subdivisions, including all piers, docks and wharves connected therewith and all craft moored thereat, and all territory occupied by government (municipal, State or Federal) reservations, installations, institutions, or other similar establishments if any part thereof is within any of the listed states or political subdivisions:

Georgia Counties

Catoosa, Chattooga, Dade, Fannin, Murray, Walker, and Whitfield.

Indiana Counties

Clark, Crawford, Daviess, Dubois, Floyd, Gibson, Greene, Harrison, Knox, Martin, Orange, Perry, Pike, Posey, Scott, Spencer, Sullivan, Vanderburgh, Warrick, and Washington.

Kentucky Counties

Adair, Anderson, Bath, Bell, Bourbon, Boyle, Breathitt, Breckinridge, Bullitt, Butler, Carroll, Carter, Casey, Clark, Clay, Clinton, Cumberland, Daviess, Edmonson, Elliott, Estill, Fayette, Fleming, Franklin, Gallatin, Garrard, Grayson, Green, Hancock, Hardin, Harlan, Hart, Henderson, Henry, Hopkins, Jackson, Jefferson, Jessamine, Knott, Knox, Larue, Laurel, Lee, Leslie, Letcher, Lincoln, Madison, Marion, McCreary, McLean, Meade, Menifee, Mercer, Montgomery, Morgan, Muhlenberg, Nelson, Nicholas, Ohio, Oldham, Owen, Owsley, Perry, Powell, Pulaski, Rockcastle, Rowan, Russell, Scott, Shelby, Spencer, Taylor, Trimble, Union, Washington, Wayne, Webster, Whitley, Wolfe, and Woodford.

North Carolina and South Carolina

All of the States of North Carolina and South Carolina.

Tennessee Counties

Anderson, Blount, Bradley, Campbell, Carter, Claiborne, Cocke, Cumberland, Grainger, Greene, Hamblen, Hamilton, Hancock, Hawkins, Jefferson, Johnson, Knox, Loudon, Marion, McMinn, Meigs, Monroe, Morgan, Polk, Rhea, Roane, Scott, Sequatchie, Sevier, Sullivan, Unicoi, Union, and Washington.

Virginia Counties and Cities

Buchanan, Dickenson, Lee, Russell, Scott, Tazewell, Washington, and Wise; and the cities of Bristol and Norton.

West Virginia Counties

McDowell and Mercer.

§ 1005.3 Route disposition.

See § 1000.3.

§ 1005.4 Plant.

See § 1000.4.

§ 1005.5 Distributing plant.

See § 1000.5.

§ 1005.6 Supply plant.

See § 1000.6.

§ 1005.7 Pool plant.

Pool plant means a plant specified in paragraphs (a) through (d) of this section, or a unit of plants as specified in paragraph (e) of this section, but excluding a plant specified in paragraph (g) of this section. The pooling standards described in paragraphs (c) and (d) of this section are subject to modification pursuant to paragraph (f) of this section:

(a) A distributing plant, other than a plant qualified as a pool plant pursuant to paragraph (b) of this section or section 7(b) of any other Federal milk order, from which during the month 50 percent or more of the fluid milk products received at such plant (excluding concentrated milk received from another plant by agreement for other than Class I use) are disposed of as route disposition or are transferred in the form of packaged fluid milk products to other distributing plants. At least 25 percent of such route disposition and transfers must be to outlets in the marketing area.

(b) Any distributing plant located in the marketing area which during the month processed at least 50 percent of the total quantity of fluid milk products received at the plant (excluding concentrated milk received from another plant by agreement for other than Class I use) into ultra-pasteurized or aseptically-processed fluid milk products.

(c) A supply plant from which 50 percent or more of the total quantity of milk that is received during the month from dairy farmers and handlers described in § 1000.9(c), including milk that is diverted from the plant, is transferred to pool distributing plants. Concentrated milk transferred from the supply plant to a distributing plant for an agreed-upon use other than Class I shall be excluded from the supply plant's shipments in computing the plant's shipping percentage.

(d) A plant located within the marketing area or in the State of Virginia that is operated by a cooperative association if pool plant status under this paragraph is requested for such plant by the cooperative association and during the month at least 60 percent of the producer milk of members of such cooperative association is delivered directly from farms to pool distributing plants or is transferred to such plants as a fluid milk product (excluding concentrated milk transferred to a distributing plant for an agreed-upon use other than Class I) from the cooperative's plant.

(e) Two or more plants operated by the same handler and that are located within the marketing area may qualify for pool status as a unit by meeting the total and in-area route disposition requirements specified in paragraph (a) of this section and the following additional requirements:

(1) At least one of the plants in the unit must qualify as a pool plant pursuant to paragraph (a) of this section;

(2) Other plants in the unit must process only Class I or Class II products and must be located in a pricing zone providing the same or a lower Class I price than the price applicable at the distributing plant included in the unit pursuant to paragraph (e)(1) of this section; and

(3) A written request to form a unit, or to add or remove plants from a unit, must be filed with the market administrator prior to the first day of the month for which it is to be effective.

(f) The applicable shipping percentages of paragraphs (c) and (d) of this section may be increased or decreased by the market administrator if the market administrator finds that such adjustment is necessary to encourage needed shipments or to prevent uneconomic shipments. Before making such a finding, the market administrator shall investigate the need for adjustment either on the market administrator's own initiative or at the request of interested parties if the request is made in writing at least 15 days prior to the date for which the requested revision is desired effective. If the investigation shows that an adjustment of the shipping percentages might be appropriate, the market administrator shall issue a notice stating that an adjustment is being considered and invite data, views and arguments. Any decision to revise an applicable shipping percentage must be issued in writing at least one day before the effective date.

(g) The term pool plant shall not apply to the following plants:

(1) A producer-handler plant;

(2) An exempt plant as defined in § 1000.8(e);

(3) A plant qualified pursuant to paragraph (a) of this section which is not located within any Federal order marketing area, meets the pooling requirements of another Federal order, and has had greater route disposition in such other Federal order marketing area for 3 consecutive months;

(4) A plant qualified pursuant to paragraph (a) of this section which is located in another Federal order marketing area, meets the pooling standards of the other Federal order, and has not had a majority of its route disposition in this marketing area for 3 consecutive months or is locked into pool status under such other Federal order without regard to its route disposition in any other Federal order marketing area;

(5) A plant qualified pursuant to paragraph (c) of this section which also meets the pooling requirements of another Federal order and from which greater qualifying shipments are made to plants regulated under such other order than are made to plants regulated under this order, or such plant has automatic pooling status under such other order; and

(6) That portion of a pool plant designated as a "nonpool plant" that is physically separate and operated separately from the pool portion of such plant. The designation of a portion of a regulated plant as a nonpool plant must be requested in writing by the handler and must be approved by the market administrator.

§ 1005.8 Nonpool plant.

See § 1000.8.

§ 1005.9 Handler.

See § 1000.9.

§ 1005.10 Producer-handler.

Producer-handler means a person who:

(a) Operates a dairy farm and a distributing plant from which there is monthly route disposition in the marketing area;

(b) Receives no fluid milk products, and acquires no fluid milk products for route disposition, from sources other than own farm production;

(c) Disposes of no other source milk as Class I milk except by increasing the nonfat milk solids content of the fluid milk products received from own farm production; and

(d) Provides proof satisfactory to the market administrator that the care and management of the dairy animals and other resources necessary to produce all Class I milk handled, and the processing and packaging operations are the producer-handler's own enterprise and are operated at the producer-handler's own risk.

§ 1005.11 [Reserved]

§ 1005.12 Producer.

(a) Except as provided in paragraph (b) of this section, *producer* means any person who produces milk approved by a duly constituted regulatory agency for fluid consumption as Grade A milk and whose milk (or components of milk) is:

(1) Received at a pool plant directly from the producer or diverted by the plant operator in accordance with § 1005.13; or

(2) Received by a handler described in § 1000.9(c).

(b) Producer shall not include:

(1) A producer-handler as defined in any Federal order;

(2) A dairy farmer whose milk is received at an exempt plant, excluding producer milk diverted to the exempt plant pursuant to § 1005.13(d);

(3) A dairy farmer whose milk is received by diversion at a pool plant from a handler regulated under another Federal order if the other Federal order designates the dairy farmer as a producer under that order and that milk is allocated by request to a utilization other than Class I; and

(4) A dairy farmer whose milk is reported as diverted to a plant fully regulated under another order with respect to that portion of the milk so diverted that is assigned to Class I under the provisions of such other order.

§ 1005.13 Producer milk.

Producer milk means the skim milk (or the skim equivalent of components of skim milk) and butterfat contained in milk of a producer that is:

(a) Received by the operator of a pool plant directly from a producer or a handler described in § 1000.9(c). All milk received pursuant to this paragraph shall be priced at the location of the plant where it is first physically received;

(b) Received by a handler described in § 1000.9(c) in excess of the quantity delivered to pool plants;

(c) Diverted by a pool plant operator to another pool plant. Milk so diverted shall be priced at the location of the plant to which diverted; or

(d) Diverted by the operator of a pool plant or a handler described in § 1000.9(c) to a nonpool plant, subject to the following conditions:

(1) In any month of July through December, not less than 6 days' production of the producer whose milk is diverted is physically received at a pool plant during the month;

(2) In any month of January through June, not less than 2 days' production of the producer whose milk is diverted is physically received at a pool plant during the month;

(3) The total quantity of milk so diverted during the month by a cooperative association shall not exceed 25 percent during the months of July through November, January, and February, and 40 percent during the months of December and March through June, of the producer milk that the cooperative association caused to be delivered to, and physically received at, pool plants during the month;

(4) The operator of a pool plant that is not a cooperative association may divert any milk that is not under the control of a cooperative association that diverts milk during the month pursuant to paragraph (d) of this section. The total quantity of milk so diverted during the month shall not exceed 25 percent during the months of July through November, January, and February, and 40 percent during the months of December and March through June, of the producer milk physically received at such plant (or such unit of plants in the case of plants that pool as a unit pursuant to § 1005.7(d)) during the month, excluding the quantity of producer milk received from a handler described in § 1000.9(c);

(5) Any milk diverted in excess of the limits prescribed in paragraphs (d)(3) and (4) of this section shall not be producer milk. If the diverting handler or cooperative association fails to designate the dairy farmers' deliveries that will not be producer milk, no milk diverted by the handler or cooperative association shall be producer milk;

(6) Diverted milk shall be priced at the location of the plant to which diverted; and

(7) The delivery day requirements and the diversion percentages in paragraphs (d)(1) through (4) of this section may be increased or decreased by the market administrator if the market administrator finds that such revision is necessary to assure orderly marketing and efficient handling of milk in the marketing area. Before making such a finding, the market administrator shall investigate the need for the revision either on the market administrator's own initiative or at the request of interested persons. If the investigation shows that a revision might be appropriate, the market administrator shall issue a notice stating that the revision is being considered and inviting written data, views, and arguments. Any decision to revise an applicable percentage must be issued in writing at least one day before the effective date.

§ 1005.14 Other source milk.

See § 1000.14.

§ 1005.15 Fluid milk product.

See § 1000.15.

§ 1005.16 Fluid cream product.

See § 1000.16.

§ 1005.17 [Reserved]

§ 1005.18 Cooperative association.

See § 1000.18.

§ 1005.19 Commercial food processing establishment.

See § 1000.19.

Handler Reports

§ 1005.30 Reports of receipts and utilization.

Each handler shall report monthly so that the market administrator's office receives the report on or before the 7th day after the end of the month, in the detail and on prescribed forms, as follows:

(a) With respect to each of its pool plants, the quantities of skim milk and butterfat contained in or represented by:

(1) Receipts of producer milk, including producer milk diverted by the reporting handler, from sources other than handlers described in § 1000.9(c);

(2) Receipts of milk from handlers described in § 1000.9(c);

(3) Receipts of fluid milk products and bulk fluid cream products from other pool plants;

(4) Receipts of other source milk;

(5) Receipts of bulk milk from a plant regulated under another Federal order, except Federal Order 1007, for which a transportation credit is requested pursuant to § 1005.82;

(6) Receipts of producer milk described in § 1005.82(c)(2), including the identity of the individual producers whose milk is eligible for the transportation credit pursuant to that paragraph and the date that such milk was received;

(7) For handlers submitting transportation credit requests, transfers of bulk milk to nonpool plants, including the dates that such milk was transferred;

(8) Inventories at the beginning and end of the month of fluid milk products and bulk fluid cream products; and

(9) The utilization or disposition of all milk and milk products required to be reported pursuant to this paragraph.

(b) Each handler operating a partially regulated distributing plant shall report with respect to such plant in the same manner as prescribed for reports required by paragraph (a) of this section. Receipts of milk that would have been producer milk if the plant had been fully regulated shall be reported in lieu of producer milk. The report shall show

also the quantity of any reconstituted skim milk in route disposition in the marketing area.

(c) Each handler described in § 1000.9(c) shall report:

(1) The quantities of all skim milk and butterfat contained in receipts of milk from producers;

(2) The utilization or disposition of all such receipts; and

(3) With respect to milk for which a cooperative association is requesting a transportation credit pursuant to § 1005.82, all of the information required in paragraphs (a)(5), (a)(6), and (a)(7) of this section.

(d) Each handler not specified in paragraphs (a) through (c) of this section shall report with respect to its receipts and utilization of milk and milk products in such manner as the market administrator may prescribe.

§ 1005.31 Payroll reports.

(a) On or before the 20th day after the end of each month, each handler that operates a pool plant pursuant to § 1005.7 and each handler described in § 1000.9 (c) shall report to the market administrator its producer payroll for the month, in detail prescribed by the market administrator, showing for each producer the information specified in § 1005.73(e).

(b) Each handler operating a partially regulated distributing plant who elects to make payment pursuant to § 1000.76(b) shall report for each dairy farmer who would have been a producer if the plant had been fully regulated in the same manner as prescribed for reports required by paragraph (a) of this section.

§ 1005.32 Other reports.

(a) On or before the 20th day after the end of each month, each handler described in § 1000.9(a) and (c) shall report to the market administrator any adjustments to transportation credit requests as reported pursuant to § 1005.30(a)(5), (6), and (7).

(b) In addition to the reports required pursuant to §§ 1005.30, 1005.31, and 1005.32(a), each handler shall report any information the market administrator deems necessary to verify or establish each handler's obligation under the order.

Classification of Milk

§ 1005.40 Classes of utilization.

See § 1000.40.

§ 1005.41 [Reserved]

§ 1005.42 Classification of transfers and diversions.

See § 1000.42.

§ 1005.43 General classification rules.

See § 1000.43.

§ 1005.44 Classification of producer milk.

See § 1000.44.

§ 1005.45 Market administrator's reports and announcements concerning classification.

See § 1000.45.

Class Prices

§ 1005.50 Class prices, component prices, and advanced pricing factors.

See § 1000.50.

§ 1005.51 Class I differential and price.

The Class I differential shall be the differential established for Mecklenburg County, North Carolina, which is reported in § 1000.52. The Class I price shall be the price computed pursuant to § 1000.50(a) for Mecklenburg County, North Carolina.

§ 1005.52 Adjusted Class I differentials.

See § 1000.52.

§ 1005.53 Announcement of class prices, component prices, and advanced pricing factors.

See § 1000.53.

§ 1005.54 Equivalent price.

See § 1000.54.

Uniform Prices

§ 1005.60 Handler's value of milk.

For the purpose of computing a handler's obligation for producer milk, the market administrator shall determine for each month the value of milk of each handler with respect to each of the handler's pool plants and of each handler described in § 1000.9(c) with respect to milk that was not received at a pool plant by adding the amounts computed in paragraphs (a) through (e) of this section and subtracting from that total amount the value computed in paragraph (f) of this section. Receipts of nonfluid milk products that are distributed as labeled reconstituted milk for which payments are made to the producer-settlement fund of another Federal order under § 1000.76(a)(4) or (d) shall be excluded from pricing under this section.

(a) Multiply the pounds of skim milk and butterfat in producer milk that were classified in each class pursuant to § 1000.44(c) by the applicable skim milk and butterfat prices, and add the resulting amounts;

(b) Multiply the pounds of skim milk and butterfat overage assigned to each class pursuant to § 1000.44(a)(11) by the respective skim milk and butterfat prices applicable at the location of the pool plant;

(c) Multiply the difference between the Class IV price for the preceding month and the current month's Class I, II, or III price, as the case may be, by the hundredweight of skim milk and butterfat subtracted from Class I, II, or III, respectively, pursuant to § 1000.44(a)(7) and the corresponding step of § 1000.44(b);

(d) Multiply the difference between the Class I price applicable at the location of the pool plant and the Class IV price by the hundredweight of skim milk and butterfat assigned to Class I pursuant to § 1000.43(d) and the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1000.44(a)(3)(i) through (vi) and the corresponding step of § 1000.44(b), excluding receipts of bulk fluid cream products from a plant regulated under other Federal orders and bulk concentrated fluid milk products from pool plants, plants regulated under other Federal orders, and unregulated supply plants;

(e) Multiply the Class I price applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received by the pounds of skim milk and butterfat in receipts of concentrated fluid milk products assigned to Class I pursuant to § 1000.43(d) and § 1000.44(a)(3)(i) and the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1000.44(a)(8) and the corresponding step of § 1000.44(b), excluding such skim milk and butterfat in receipts of fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order; and

(f) For reconstituted milk made from receipts of nonfluid milk products, multiply $1.00 (but not more than the difference between the Class I price applicable at the location of the pool plant and the Class IV price) by the hundredweight of skim milk and butterfat contained in receipts of nonfluid milk products that are allocated to Class I use pursuant to § 1000.43(d).

§ 1005.61 Computation of uniform prices.

On or before the 11th day of each month, the market administrator shall compute a uniform butterfat price, a uniform skim milk price, and a uniform price for producer milk receipts reported for the prior month. The report of any handler who has not made payments required pursuant to

§ 1005.71 for the preceding month shall not be included in the computation of these prices, and such handler's report shall not be included in the computation for succeeding months until the handler has made full payment of outstanding monthly obligations.

(a) *Uniform butterfat price.* The uniform butterfat price per pound, rounded to the nearest one-hundredth cent, shall be computed by multiplying the pounds of butterfat in producer milk allocated to each class pursuant to § 1000.44(b) by the respective class butterfat prices and dividing the sum of such values by the total pounds of such butterfat.

(b) *Uniform skim milk price.* The uniform skim milk price per hundredweight, rounded to the nearest cent, shall be computed as follows:

(1) Combine into one total the values computed pursuant to § 1005.60 for all handlers;

(2) Add an amount equal to the sum of the location adjustments computed pursuant to § 1005.75;

(3) Add an amount equal to not less than one-half of the unobligated balance in the producer-settlement fund;

(4) Subtract the value of the total pounds of butterfat for all handlers. The butterfat value shall be computed by multiplying the pounds of butterfat by the butterfat price computed in paragraph (a) of this section;

(5) Divide the resulting amount by the sum of the following for all handlers included in these computations:

(i) The total skim pounds of producer milk; and

(ii) The total skim pounds for which a value is computed pursuant to § 1005.60(e); and

(6) Subtract not less than 4 cents and not more than 5 cents.

(c) *Uniform price.* The uniform price per hundredweight, rounded to the nearest cent, shall be the sum of the following:

(1) Multiply the uniform butterfat price for the month pursuant to paragraph (a) of this section times 3.5 pounds of butterfat; and

(2) Multiply the uniform skim milk price for the month pursuant to paragraph (b) of this section times 96.5 pounds of skim milk.

§ 1005.62 Announcement of uniform prices.

On or before the 11th day after the end of the month, the market administrator shall announce the uniform prices for the month computed pursuant to § 1005.61.

§ 1005.62 Announcement of uniform price, uniform butterfat price and uniform skim milk price.

On or before the 11th day after the end of the month, the market administrator shall announce the following prices and information:

(a) The uniform price pursuant to § 1005.61 for such month;

(b) The uniform butterfat price pursuant to § 1005.61(b) for such month; and

(c) The uniform skim milk price pursuant to § 1005.61(c) for such month.

Payments for Milk

§ 1005.70 Producer-settlement fund.

See § 1000.70.

§ 1005.71 Payments to the producer-settlement fund.

Each handler shall make a payment to the producer-settlement fund in a manner that provides receipt of the funds by the market administrator no later than the 12th day after the end of the month (except as provided in § 1000.90). Payment shall be the amount, if any, by which the amount specified in paragraph (a) of this section exceeds the amount specified in paragraph (b) of this section:

(a) The total value of milk of the handler for the month as determined pursuant to § 1005.60; and

(b) The sum of the value at the uniform prices for skim milk and butterfat, adjusted for plant location, of the handler's receipts of producer milk; and the value at the uniform price, as adjusted pursuant to § 1005.75, applicable at the location of the plant from which received of other source milk for which a value is computed pursuant to § 1005.60(e).

§ 1005.72 Payments from the producer-settlement fund.

No later than one day after the date of payment receipt required under § 1005.71, the market administrator shall pay to each handler the amount, if any, by which the amount computed pursuant to § 1005.71(b) exceeds the amount computed pursuant to § 1005.71(a). If, at such time, the balance in the producer-settlement fund is insufficient to make all payments pursuant to this section, the market administrator shall reduce uniformly such payments and shall complete the payments as soon as the funds are available.

§ 1005.73 Payments to producers and to cooperative associations.

(a) Each pool plant operator that is not paying a cooperative association for producer milk shall pay each producer as follows:

(1) *Partial payment.* For each producer who has not discontinued shipments as of the 23rd day of the month, payment shall be made so that it is received by the producer on or before the 26th day of the month (except as provided in § 1000.90) for milk received during the first 15 days of the month at not less than 90 percent of the preceding month's uniform price, adjusted for plant location pursuant to § 1005.75 and proper deductions authorized in writing by the producer.

(2) *Final payment.* For milk received during the month, a payment computed as follows shall be made so that it is received by each producer one day after the payment date required in § 1005.72:

(i) Multiply the hundredweight of producer skim milk received times the uniform skim milk price for the month;

(ii) Multiply the pounds of butterfat received times the uniform butterfat price for the month;

(iii) Multiply the hundredweight of producer milk received times the plant location adjustment pursuant to § 1005.75; and

(iv) Add the amounts computed in paragraph (a)(2)(i), (ii), and (iii) of this section, and from that sum:

(A) Subtract the partial payment made pursuant to paragraph (a)(1) of this section;

(B) Subtract the deduction for marketing services pursuant to § 1000.86;

(C) Add or subtract for errors made in previous payments to the producer; and

(D) Subtract proper deductions authorized in writing by the producer.

(b) One day before partial and final payments are due pursuant to paragraph (a) of this section, each pool plant operator shall pay a cooperative association for milk received as follows:

(1) *Partial payment to a cooperative association for bulk milk received directly from producers' farms.* For bulk milk (including the milk of producers who are not members of such association and who the market administrator determines have authorized the cooperative association to collect payment for their milk) received during the first 15 days of the month from a cooperative association in any capacity, except as the operator of a pool plant, the payment shall be equal to the hundredweight of milk received multiplied by 90 percent of the preceding month's uniform price, adjusted for plant location pursuant to § 1005.75.

(2) *Partial payment to a cooperative association for milk transferred from its pool plant.* For bulk fluid milk products and bulk fluid cream products received during the first 15 days of the month

from a cooperative association in its capacity as the operator of a pool plant, the partial payment shall be at the pool plant operator's estimated use value of the milk using the most recent class prices available for skim milk and butterfat at the receiving plant's location.

(3) *Final payment to a cooperative association for milk transferred from its pool plant.* For bulk fluid milk products and bulk fluid cream products received during the month from a cooperative association in its capacity as the operator of a pool plant, the final payment shall be the classified value of such milk as determined by multiplying the pounds of skim milk and butterfat assigned to each class pursuant to § 1000.44 by the class prices for the month at the receiving plant's location, and subtracting from this sum the partial payment made pursuant to paragraph (b)(2) of this section.

(4) *Final payment to a cooperative association for bulk milk received directly from producers' farms.* For bulk milk received from a cooperative association during the month, including the milk of producers who are not members of such association and who the market administrator determines have authorized the cooperative association to collect payment for their milk, the final payment for such milk shall be an amount equal to the sum of the individual payments otherwise payable for such milk pursuant to paragraph (a)(2) of this section.

(c) If a handler has not received full payment from the market administrator pursuant to § 1005.72 by the payment date specified in paragraph (a) or (b) of this section, the handler may reduce payments pursuant to paragraphs (a) and (b) of this section, but by not more than the amount of the underpayment. The payments shall be completed on the next scheduled payment date after receipt of the balance due from the market administrator.

(d) If a handler claims that a required payment to a producer cannot be made because the producer is deceased or cannot be located, or because the cooperative association or its lawful successor or assignee is no longer in existence, the payment shall be made to the producer-settlement fund, and in the event that the handler subsequently locates and pays the producer or a lawful claimant, or in the event that the handler no longer exists and a lawful claim is later established, the market administrator shall make the required payment from the producer-settlement fund to the handler or to the lawful claimant as the case may be.

(e) In making payments to producers pursuant to this section, each pool plant operator shall furnish each producer, except a producer whose milk was received from a cooperative association described in § 1000.9(a) or (c), a supporting statement in such form that it may be retained by the recipient which shall show:

(1) The name, address, Grade A identifier assigned by a duly constituted regulatory agency, and the payroll number of the producer;

(2) The month and dates that milk was received from the producer, including the daily and total pounds of milk received;

(3) The total pounds of butterfat in the producer's milk;

(4) The minimum rate or rates at which payment to the producer is required pursuant to this order;

(5) The rate used in making payment if the rate is other than the applicable minimum rate;

(6) The amount, or rate per hundredweight, and nature of each deduction claimed by the handler; and

(7) The net amount of payment to the producer or cooperative association.

§ 1005.74 [Reserved]

§ 1005.75 Plant location adjustments for producer milk and nonpool milk.

For purposes of making payments for producer milk and nonpool milk, a plant location adjustment shall be determined by subtracting the Class I price specified in § 1005.50 from the Class I price at the plant's location. The difference, plus or minus as the case may be, shall be used to adjust the payments required pursuant to §§ 1005.73 and 1000.76.

§ 1005.76 Payments by a handler operating a partially regulated distributing plant.

See § 1000.76.

§ 1005.77 Adjustment of accounts.

See § 1000.77.

§ 1005.78 Charges on overdue accounts.

See § 1000.78.

Marketwide Service Payments

§ 1005.80 Transportation credit balancing fund.

The market administrator shall maintain a separate fund known as the *Transportation Credit Balancing Fund* into which shall be deposited the payments made by handlers pursuant to § 1005.81 and out of which shall be made the payments due handlers pursuant to § 1005.82. Payments due a handler shall be offset against payments due from the handler.

§ 1005.81 Payments to the transportation credit balancing fund.

(a) On or before the 12th day after the end of the month (except as provided in § 1000.90), each handler operating a pool plant and each handler specified in § 1000.9(c) shall pay to the market administrator a transportation credit balancing fund assessment determined by multiplying the pounds of Class I producer milk assigned pursuant to § 1005.44 by $0.065 per hundredweight or such lesser amount as the market administrator deems necessary to maintain a balance in the fund equal to the total transportation credits disbursed during the prior June–January period. In the event that during any month of the June–January period the fund balance is insufficient to cover the amount of credits that are due, the assessment should be based upon the amount of credits that would have been disbursed had the fund balance been sufficient.

(b) The market administrator shall announce publicly on or before the 5th day of the month (except as provided in § 1000.90) the assessment pursuant to paragraph (a) of this section for the following month.

§ 1005.82 Payments from the transportation credit balancing fund.

(a) Payments from the transportation credit balancing fund to handlers and cooperative associations requesting transportation credits shall be made as follows:

(1) On or before the 13th day (except as provided in § 1000.90) after the end of each of the months of July through December and any other month in which transportation credits are in effect pursuant to paragraph (b) of this section, the market administrator shall pay to each handler that received, and reported pursuant to § 1005.30(a)(5), bulk milk transferred from a plant fully regulated under another Federal order as described in paragraph (c)(1) of this section or that received, and reported pursuant to § 1005.30(a)(6), milk directly from producers' farms as specified in paragraph (c)(2) of this section, a preliminary amount determined pursuant to paragraph (d) of this section to the extent that funds are available in the transportation credit balancing fund. If an insufficient balance exists to pay all of the credits computed pursuant to this section, the market administrator shall distribute the balance available in the transportation credit balancing fund by reducing payments pro rata using the percentage derived by dividing the balance in the fund by the total credits that are due for the month. The amount of credits

resulting from this initial proration shall be subject to audit adjustment pursuant to paragraph (a)(2) of this section.

(2) The market administrator shall accept adjusted requests for transportation credits on or before the 20th day of the month following the month for which such credits were requested pursuant to § 1005.32(a). After such date, a preliminary audit will be conducted by the market administrator, who will recalculate any necessary proration of transportation credit payments for the preceding month pursuant to paragraph (a) of this section. Handlers will be promptly notified of an overpayment of credits based upon this final computation and remedial payments to or from the transportation credit balancing fund will be made on or before the next payment date for the following month.

(3) Transportation credits paid pursuant to paragraphs (a)(1) and (2) of this section shall be subject to final verification by the market administrator pursuant to § 1000.77. Adjusted payments to or from the transportation credit balancing fund will remain subject to the final proration established pursuant to paragraph (a)(2) of this section.

(4) In the event that a qualified cooperative association is the responsible party for whose account such milk is received and written documentation of this fact is provided to the market administrator pursuant to § 1005.30(c)(3) prior to the date payment is due, the transportation credits for such milk computed pursuant to this section shall be made to such cooperative association rather than to the operator of the pool plant at which the milk was received.

(b) The market administrator may extend the period during which transportation credits are in effect (i.e., the transportation credit period) to the months of January and June if a written request to do so is received 15 days prior to the beginning of the month for which the request is made and, after conducting an independent investigation, finds that such extension is necessary to assure the market of an adequate supply of milk for fluid use. Before making such a finding, the market administrator shall notify the Director of the Dairy Division and all handlers in the market that an extension is being considered and invite written data, views, and arguments. Any decision to extend the transportation credit period must be issued in writing prior to the first day of the month for which the extension is to be effective.

(c) Transportation credits shall apply to the following milk:

(1) Bulk milk received from a plant regulated under another Federal order, except Federal Order 1007, and allocated to Class I milk pursuant to § 1000.44(a)(9); and

(2) Bulk milk received directly from the farms of dairy farmers at pool distributing plants subject to the following conditions:

(i) The quantity of such milk that shall be eligible for the transportation credit shall be determined by multiplying the total pounds of milk received from producers meeting the conditions of this paragraph by the lower of:

(A) The marketwide estimated Class I utilization of all handlers for the month pursuant to § 1000.45(a); or

(B) The Class I utilization of all producer milk of the pool plant operator receiving the milk after the computations described in § 1000.44;

(ii) The dairy farmer was not a "producer" under this order during more than 2 of the immediately preceding months of February through May and not more than 50 percent of the production of the dairy farmer during those 2 months, in aggregate, was received as producer milk under this order during those 2 months; and

(iii) The farm on which the milk was produced is not located within the specified marketing area of this order or the marketing area of Federal Order 1007.

(d) Transportation credits shall be computed as follows:

(1) The market administrator shall subtract from the pounds of milk described in paragraphs (c)(1) and (2) of this section the pounds of bulk milk transferred from the pool plant receiving the supplemental milk if milk was transferred to a nonpool plant on the same calendar day that the supplemental milk was received. For this purpose, the transferred milk shall be subtracted from the most distant load of supplemental milk received, and then in sequence with the next most distant load until all of the transfers have been offset.

(2) With respect to the pounds of milk described in paragraph (c)(1) of this section that remain after the computations described in paragraph (d)(1) of this section, the market administrator shall:

(i) Determine the shortest hard-surface highway distance between the shipping plant and the receiving plant;

(ii) Multiply the number of miles so determined by 0.35 cent;

(iii) Subtract the applicable Class I differential in § 1000.52 for the county in which the shipping plant is located from the Class I differential applicable for the county in which the receiving plant is located;

(iv) Subtract any positive difference computed in paragraph (d)(2)(iii) of this section from the amount computed in paragraph (d)(2)(ii) of this section; and

(v) Multiply the remainder computed in paragraph (d)(2)(iv) of this section by the hundredweight of milk described in paragraph (d)(2) of this section.

(3) For the remaining milk described in paragraph (c)(2) of this section after computations described in paragraph (d)(1) of this section, the market administrator shall:

(i) Determine an origination point for each load of milk by locating the nearest city to the last producer's farm from which milk was picked up for delivery to the receiving pool plant;

(ii) Determine the shortest hard-surface highway distance between the receiving pool plant and the origination point;

(iii) Subtract 85 miles from the mileage so determined;

(iv) Multiply the remaining miles so computed by 0.35 cent;

(v) Subtract the Class I differential specified in § 1000.52 applicable for the county in which the origination point is located from the Class I differential applicable at the receiving pool plant's location;

(vi) Subtract any positive difference computed in paragraph (d)(3)(v) of this section from the amount computed in paragraph (d)(3)(iv) of this section; and

(vii) Multiply the remainder computed in paragraph (d)(3)(vi) of this section by the hundredweight of milk described in paragraph (d)(3) of this section.

Administrative Assessment and Marketing Service Deduction

§ 1005.85 Assessment for order administration.

See § 1000.85.

§ 1005.86 Deduction for marketing services.

See § 1000.86.

PART 1006—MILK IN THE FLORIDA MARKETING AREA

Subpart—Order Regulating Handling

General Provisions

Sec.

1006.1 General provisions.

Definitions

1006.2 Florida marketing area.
1006.3 Route disposition.
1006.4 Plant.
1006.5 Distributing plant.
1006.6 Supply plant.
1006.7 Pool plant.
1006.8 Nonpool plant.

1006.9 Handler.
1006.10 Producer-handler.
1006.11 [Reserved]
1006.12 Producer.
1006.13 Producer milk.
1006.14 Other source milk.
1006.15 Fluid milk product.
1006.16 Fluid cream product.
1006.17 [Reserved]
1006.18 Cooperative association.
1006.19 Commercial food processing establishment.

Handler Reports

1006.30 Reports of receipts and utilization.
1006.31 Payroll reports.
1006.32 Other reports.

Classification of Milk

1006.40 Classes of utilization.
1006.41 [Reserved]
1006.42 Classification of transfers and diversions.
1006.43 General classification rules.
1006.44 Classification of producer milk.
1006.45 Market administrator's reports and announcements concerning classification.

Class Prices

1006.50 Class prices, component prices, and advanced pricing factors.
1006.51 Class I differential and price.
1006.52 Adjusted Class I differentials.
1006.53 Announcement of class prices, component prices, and advanced pricing factors.
1006.54 Equivalent price.

Uniform Prices

1006.60 Handler's value of milk.
1006.61 Computation of uniform prices.
1006.62 Announcement of uniform prices.

Payments for Milk

1006.70 Producer-settlement fund.
1006.71 Payments to the producer-settlement fund.
1006.72 Payments from the producer-settlement fund.
1006.73 Payments to producers and to cooperative associations.
1006.74 [Reserved]
1006.75 Plant location adjustments for producer milk and nonpool milk.
1006.76 Payments by a handler operating a partially regulated distributing plant.
1006.77 Adjustment of accounts.
1006.78 Charges on overdue accounts.

Administrative Assessment and Marketing Service Deduction

1006.85 Assessment for order administration.
1006.86 Deduction for marketing services.

Authority: 7 U.S.C. 601–674.

Subpart—Order Regulating Handling

General Provisions

§ 1006.1 General provisions.

The terms, definitions, and provisions in part 1000 of this chapter apply to and are hereby made a part of this order. In this part 1006, all references to sections in part 1000 refer to part 1000 of this chapter.

Definitions

§ 1006.2 Florida marketing area.

The marketing area means all the territory within the State of Florida, except the counties of Escambia, Okaloosa, Santa Rosa, and Walton, including all piers, docks and wharves connected therewith and all craft moored thereat, and all territory occupied by government (municipal, State or Federal) reservations, installations, institutions, or other similar establishments if any part thereof is within any of the listed states or political subdivisions.

§ 1006.3 Route disposition.

See § 1000.3.

§ 1006.4 Plant.

See § 1000.4.

§ 1006.5 Distributing plant.

See § 1000.5.

§ 1006.6 Supply plant.

See § 1000.6.

§ 1006.7 Pool plant.

Pool plant means a plant specified in paragraphs (a) through (d) of this section, or a unit of plants as specified in paragraph (e) of this section, but excluding a plant specified in paragraph (g) of this section. The pooling standards described in paragraphs (c) and (d) of this section are subject to modification pursuant to paragraph (f) of this section:

(a) A distributing plant, other than a plant qualified as a pool plant pursuant to paragraph (b) of this section or section 7(b) of any other Federal milk order, from which during the month 50 percent or more of the fluid milk products received at such plant (excluding concentrated milk received from another plant by agreement for other than Class I use) are disposed of as route disposition or are transferred in the form of packaged fluid milk products to other distributing plants. At least 25 percent of such route disposition and transfers must be to outlets in the marketing area.

(b) Any distributing plant located in the marketing area which during the month processed at least 50 percent of the total quantity of fluid milk products received at the plant (excluding concentrated milk received from another plant by agreement for other than Class I use) into ultra-pasteurized or aseptically-processed fluid milk products.

(c) A supply plant from which 60 percent or more of the total quantity of milk that is received during the month from dairy farmers and handlers described in § 1000.9(c), including milk that is diverted from the plant, is transferred to pool distributing plants. Concentrated milk transferred from the supply plant to a distributing plant for an agreed-upon use other than Class I shall be excluded from the supply plant's shipments in computing the plant's shipping percentage.

(d) A plant located within the marketing area that is operated by a cooperative association if pool plant status under this paragraph is requested for such plant by the cooperative association and during the month 60 percent of the producer milk of members of such cooperative association is delivered directly from farms to pool distributing plants or is transferred to such plants as a fluid milk product (excluding concentrated milk transferred to a distributing plant for an agreed-upon use other than Class I) from the cooperative's plant.

(e) Two or more plants operated by the same handler and that are located within the marketing area may qualify for pool status as a unit by meeting the total and in-area route disposition requirements specified in paragraph (a) of this section and the following additional requirements:

(1) At least one of the plants in the unit must qualify as a pool plant pursuant to paragraph (a) of this section;

(2) Other plants in the unit must process only Class I or Class II products and must be located in a pricing zone providing the same or a lower Class I price than the price applicable at the distributing plant included in the unit pursuant to paragraph (e)(1) of this section; and

(3) A written request to form a unit, or to add or remove plants from a unit, must be filed with the market administrator prior to the first day of the month for which it is to be effective.

(f) The applicable shipping percentages of paragraphs (c) and (d) of this section may be increased or decreased by the market administrator if the market administrator finds that such adjustment is necessary to encourage needed shipments or to prevent uneconomic shipments. Before making such a finding, the market administrator shall investigate the need for adjustment either on the market administrator's own initiative or at the request of interested parties if the request is made in writing at least 15 days prior to the date for which the requested revision is desired effective. If the investigation shows that an adjustment of the shipping percentages might be appropriate, the market administrator

shall issue a notice stating that an adjustment is being considered and invite data, views and arguments. Any decision to revise an applicable shipping percentage must be issued in writing at least one day before the effective date.

(g) The term pool plant shall not apply to the following plants:

(1) A producer-handler plant;

(2) An exempt plant as defined in § 1000.8(e);

(3) A plant qualified pursuant to paragraph (a) of this section which is not located within any Federal order marketing area, meets the pooling requirements of another Federal order, and has had greater route disposition in such other Federal order marketing area for 3 consecutive months;

(4) A plant qualified pursuant to paragraph (a) of this section which is located in another Federal order marketing area, meets the pooling standards of the other Federal order, and has not had a majority of its route disposition in this marketing area for 3 consecutive months or is locked into pool status under such other Federal order without regard to its route disposition in any other Federal order marketing area; and

(5) A plant qualified pursuant to paragraph (c) of this section which also meets the pooling requirements of another Federal order and from which greater qualifying shipments are made to plants regulated under such other order than are made to plants regulated under this order, or such plant has automatic pooling status under such other order.

§ 1006.8 Nonpool plant.

See § 1000.8.

§ 1006.9 Handler.

See § 1000.9.

§ 1006.10 Producer-handler.

Producer-handler means a person who:

(a) Operates a dairy farm and a distributing plant from which there is monthly route disposition in the marketing area;

(b) Receives no fluid milk products, and acquires no fluid milk products for route disposition, from sources other than own farm production;

(c) Disposes of no other source milk as Class I milk except by increasing the nonfat milk solids content of the fluid milk products received from own farm production; and

(d) Provides proof satisfactory to the market administrator that the care and management of the dairy animals and other resources necessary to produce all Class I milk handled, and the processing and packaging operations, are the producer-handler's own enterprise and are operated at the producer-handler's own risk.

§ 1006.11 [Reserved]

§ 1006.12 Producer.

(a) Except as provided in paragraph (b) of this section, *producer* means any person who produces milk approved by a duly constituted regulatory agency for fluid consumption as Grade A milk and whose milk (or components of milk) is:

(1) Received at a pool plant directly from the producer or diverted by the plant operator in accordance with § 1006.13; or

(2) Received by a handler described in § 1000.9(c).

(b) Producer shall not include:

(1) A producer-handler as defined in any Federal order;

(2) A dairy farmer whose milk is received at an exempt plant, excluding producer milk diverted to the exempt plant pursuant to § 1006.13(d);

(3) A dairy farmer whose milk is received by diversion at a pool plant from a handler regulated under another Federal order if the other Federal order designates the dairy farmer as a producer under that order and that milk is allocated by request to a utilization other than Class I; and

(4) A dairy farmer whose milk is reported as diverted to a plant fully regulated under another Federal order with respect to that portion of the milk so diverted that is assigned to Class I under the provisions of such other order.

§ 1006.13 Producer milk.

Producer milk means the skim milk (or the skim equivalent of components of skim milk) and butterfat contained in milk of a producer that is:

(a) Received by the operator of a pool plant directly from a producer or a handler described in § 1000.9(c). All milk received pursuant to this paragraph shall be priced at the location of the plant where it is first physically received;

(b) Received by a handler described in § 1000.9(c) in excess of the quantity delivered to pool plants;

(c) Diverted by a pool plant operator to another pool plant. Milk so diverted shall be priced at the location of the plant to which diverted; or

(d) Diverted by the operator of a pool plant or a handler described in § 1000.9(c) to a nonpool plant, subject to the following conditions:

(1) In any month, not less than 10 days' production of the producer whose milk is diverted is physically received at a pool plant during the month;

(2) The total quantity of milk so diverted during the month by a cooperative association shall not exceed 20 percent during the months of July through November, 25 percent during the months of December through February, and 40 percent during all other months, of the producer milk that the cooperative association caused to be delivered to, and physically received at, pool plants during the month;

(3) The operator of a pool plant that is not a cooperative association may divert any milk that is not under the control of a cooperative association that diverts milk during the month pursuant to paragraph (d) of this section. The total quantity of milk so diverted during the month shall not exceed 20 percent during the months of July through November, 25 percent during the months of December through February, and 40 percent during all other months, of the producer milk physically received at such plant (or such unit of plants in the case of plants that pool as a unit pursuant to § 1006.7(d)) during the month, excluding the quantity of producer milk received from a handler described in § 1000.9(c);

(4) Any milk diverted in excess of the limits prescribed in paragraphs (d)(3) and (4) of this section shall not be producer milk. If the diverting handler or cooperative association fails to designate the dairy farmers' deliveries that will not be producer milk, no milk diverted by the handler or cooperative association shall be producer milk;

(5) Diverted milk shall be priced at the location of the plant to which diverted; and

(6) The delivery day requirements and the diversion percentages in paragraphs (d)(1) through (3) of this section may be increased or decreased by the market administrator if the market administrator finds that such revision is necessary to assure orderly marketing and efficient handling of milk in the marketing area. Before making such a finding, the market administrator shall investigate the need for the revision either on the market administrator's own initiative or at the request of interested persons. If the investigation shows that a revision might be appropriate, the market administrator shall issue a notice stating that the revision is being considered and inviting written data, views, and arguments. Any decision to revise an applicable percentage must be issued in writing at least one day before the effective date.

§ 1006.14 Other source milk.
See § 1000.14.

§ 1006.15 Fluid milk product.
See § 1000.15.

§ 1006.16 Fluid cream product.
See § 1000.16.

§ 1006.17 [Reserved]

§ 1006.18 Cooperative association.
See § 1000.18.

§ 1006.19 Commercial food processing establishment.
See § 1000.19.

Handler Reports

§ 1006.30 Reports of receipts and utilization.

Each handler shall report monthly so that the market administrator's office receives the report on or before the 7th day after the end of the month, in the detail and on prescribed forms, as follows:

(a) With respect to each of its pool plants, the quantities of skim milk and butterfat contained in or represented by:

(1) Receipts of producer milk, including producer milk diverted by the reporting handler, from sources other than handlers described in § 1000.9(c);

(2) Receipts of milk from handlers described in § 1000.9(c);

(3) Receipts of fluid milk products and bulk fluid cream products from other pool plants;

(4) Receipts of other source milk;

(5) Inventories at the beginning and end of the month of fluid milk products and bulk fluid cream products; and

(6) The utilization or disposition of all milk and milk products required to be reported pursuant to this paragraph.

(b) Each handler operating a partially regulated distributing plant shall report with respect to such plant in the same manner as prescribed for reports required by paragraph (a) of this section. Receipts of milk that would have been producer milk if the plant had been fully regulated shall be reported in lieu of producer milk. The report shall show also the quantity of any reconstituted skim milk in route disposition in the marketing area.

(c) Each handler described in § 1000.9(c) shall report:

(1) The quantities of all skim milk and butterfat contained in receipts of milk from producers; and

(2) The utilization or disposition of all such receipts.

(d) Each handler not specified in paragraphs (a) through (c) of this section shall report with respect to its receipts and utilization of milk and milk products in such manner as the market administrator may prescribe.

§ 1006.31 Payroll reports.

(a) On or before the 20th day after the end of each month, each handler that operates a pool plant pursuant to § 1006.7 and each handler described in § 1000.9(c) shall report to the market administrator its producer payroll for the month, in detail prescribed by the market administrator, showing for each producer the information specified in § 1006.73(e).

(b) Each handler operating a partially regulated distributing plant who elects to make payment pursuant to § 1000.76(b) shall report for each dairy farmer who would have been a producer if the plant had been fully regulated in the same manner as prescribed for reports required by paragraph (a) of this section.

§ 1006.32 Other reports.

In addition to the reports required pursuant to §§ 1006.30 and 1006.31, each handler shall report any information the market administrator deems necessary to verify or establish each handler's obligation under the order.

Classification of Milk

§ 1006.40 Classes of utilization.
See § 1000.40.

§ 1006.41 [Reserved]

§ 1006.42 Classification of transfers and diversions.
See § 1000.42.

§ 1006.43 General classification rules.
See § 1000.43.

§ 1006.44 Classification of producer milk.
See § 1000.44.

§ 1006.45 Market administrator's reports and announcements concerning classification.
See § 1000.45.

Class Prices

§ 1006.50 Class prices, component prices, and advanced pricing factors.
See § 1000.50.

§ 1006.51 Class I differential and price.

The Class I differential shall be the differential established for Hillsborough County, Florida, which is reported in § 1000.52. The Class I price shall be the price computed pursuant to § 1000.50(a) for Hillsborough County, Florida.

§ 1006.52 Adjusted Class I differentials.
See § 1000.52.

§ 1006.53 Announcement of class prices, component prices, and advanced pricing factors.
See § 1000.53.

§ 1006.54 Equivalent price.
See § 1000.54.

Uniform Prices

§ 1006.60 Handler's value of milk.

For the purpose of computing a handler's obligation for producer milk, the market administrator shall determine for each month the value of milk of each handler with respect to each of the handler's pool plants and of each handler described in § 1000.9(c) with respect to milk that was not received at a pool plant by adding the amounts computed in paragraphs (a) through (e) of this section and subtracting from that total amount the value computed in paragraph (f) of this section. Receipts of nonfluid milk products that are distributed as labeled reconstituted milk for which payments are made to the producer-settlement fund of another Federal order under § 1000.76(a)(4) or (d) shall be excluded from pricing under this section.

(a) Multiply the pounds of skim milk and butterfat in producer milk that were classified in each class pursuant to § 1000.44(c) by the applicable skim milk and butterfat prices, and add the resulting amounts;

(b) Multiply the pounds of skim milk and butterfat overage assigned to each class pursuant to § 1000.44(a)(11) by the respective skim milk and butterfat prices applicable at the location of the pool plant;

(c) Multiply the difference between the Class IV price for the preceding month and the current month's Class I, II, or III price, as the case may be, by the hundredweight of skim milk and butterfat subtracted from Class I, II, or III, respectively, pursuant to § 1000.44(a)(7) and the corresponding step of § 1000.44(b);

(d) Multiply the difference between the Class I price applicable at the location of the pool plant and the Class IV price by the hundredweight of skim milk and butterfat assigned to Class I pursuant to § 1000.43(d) and the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1000.44(a)(3)(i) through (vi) and the corresponding step of § 1000.44(b), excluding receipts of bulk fluid cream products from a plant regulated under other Federal orders and bulk concentrated fluid milk products from pool plants, plants regulated under other Federal orders, and unregulated supply plants;

(e) Multiply the Class I price applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received by the pounds of skim milk and butterfat

in receipts of concentrated fluid milk products assigned to Class I pursuant to § 1000.43(d) and § 1000.44(a)(3)(i) and the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1000.44(a)(8) and the corresponding step of § 1000.44(b), excluding such skim milk and butterfat in receipts of fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order; and

(f) For reconstituted milk made from receipts of nonfluid milk products, multiply $1.00 (but not more than the difference between the Class I price applicable at the location of the pool plant and the Class IV price) by the hundredweight of skim milk and butterfat contained in receipts of nonfluid milk products that are allocated to Class I use pursuant to § 1000.43(d).

§ 1006.61 Computation of uniform prices.

On or before the 11th day of each month, the market administrator shall compute a uniform butterfat price, a uniform skim milk price, and a uniform price for producer milk receipts reported for the prior month. The report of any handler who has not made payments required pursuant to § 1006.71 for the preceding month shall not be included in the computation of these prices, and such handler's report shall not be included in the computation for succeeding months until the handler has made full payment of outstanding monthly obligations.

(a) *Uniform butterfat price.* The uniform butterfat price per pound, rounded to the nearest one-hundredth cent, shall be computed by multiplying the pounds of butterfat in producer milk allocated to each class pursuant to § 1000.44(b) by the respective class butterfat prices and dividing the sum of such values by the total pounds of such butterfat.

(b) *Uniform skim milk price.* The uniform skim milk price per hundredweight, rounded to the nearest cent, shall be computed as follows:

(1) Combine into one total the values computed pursuant to § 1005.60 for all handlers;

(2) Add an amount equal to the sum of the location adjustments computed pursuant to § 1006.75;

(3) Add an amount equal to not less than one-half of the unobligated balance in the producer-settlement fund;

(4) Subtract the value of the total pounds of butterfat for all handlers. The butterfat value shall be computed by multiplying the pounds of butterfat by the butterfat price computed in paragraph (a) of this section;

(5) Divide the resulting amount by the sum of the following for all handlers included in these computations:

(i) The total skim pounds of producer milk; and

(ii) The total skim pounds for which a value is computed pursuant to § 1006.60(e); and

(6) Subtract not less than 4 cents and not more than 5 cents.

(c) *Uniform price.* The uniform price per hundredweight, rounded to the nearest cent, shall be the sum of the following:

(1) Multiply the uniform butterfat price for the month pursuant to paragraph (a) of this section times 3.5 pounds of butterfat; and

(2) Multiply the uniform skim milk price for the month pursuant to paragraph (b) of this section times 96.5 pounds of skim milk.

§ 1006.62 Announcement of uniform prices.

On or before the 11th day after the end of the month, the market administrator shall announce the uniform prices for the month computed pursuant to § 1006.61.

Payments for Milk

§ 1006.70 Producer-settlement fund.

See § 1000.70.

§ 1006.71 Payments to the producer-settlement fund.

Each handler shall make a payment to the producer-settlement fund in a manner that provides receipt of the funds by the market administrator no later than the 12th day after the end of the month (except as provided in § 1000.90). Payment shall be the amount, if any, by which the amount specified in paragraph (a) of this section exceeds the amount specified in paragraph (b) of this section:

(a) The total value of milk of the handler for the month as determined pursuant to § 1006.60; and

(b) The sum of the value at the uniform prices for skim milk and butterfat, adjusted for plant location, of the handler's receipts of producer milk; and the value at the uniform price, as adjusted pursuant to § 1006.75, applicable at the location of the plant from which received of other source milk for which a value is computed pursuant to § 1006.60(e).

§ 1006.72 Payments from the producer-settlement fund.

No later than one day after the date of payment receipt required under § 1006.71, the market administrator shall pay to each handler the amount, if any, by which the amount computed pursuant to § 1006.71(b) exceeds the amount computed pursuant to § 1006.71(a). If, at such time, the balance in the producer-settlement fund is insufficient to make all payments pursuant to this section, the market administrator shall reduce uniformly such payments and shall complete the payments as soon as the funds are available.

§ 1006.73 Payments to producers and to cooperative associations.

(a) Each pool plant operator that is not paying a cooperative association for producer milk shall pay each producer as follows:

(1) *Partial payments.* (i) For each producer who has not discontinued shipments as of the 15th day of the month, payment shall be made so that it is received by the producer on or before the 20th day of the month (except as provided in § 1000.90) for milk received during the first 15 days of the month at not less than 85 percent of the preceding month's uniform price, adjusted for plant location pursuant to § 1006.75 and proper deductions authorized in writing by the producer; and

(ii) For each producer who has not discontinued shipments as of the last day of the month, payment shall be made so that it is received by the producer on or before the 5th day of the following month (except as provided in § 1000.90) for milk received from the 16th to the last day of the month at not less than 85 percent of the preceding month's uniform price, adjusted for plant location pursuant to § 1006.75 and proper deductions authorized in writing by the producer.

(2) *Final payment.* For milk received during the month, a payment computed as follows shall be made so that it is received by each producer one day after the payment date required in § 1006.72:

(i) Multiply the hundredweight of producer skim milk received times the uniform skim milk price for the month;

(ii) Multiply the pounds of butterfat received times the uniform butterfat price for the month;

(iii) Multiply the hundredweight of producer milk received times the plant location adjustment pursuant to § 1006.75; and

(iv) Add the amounts computed in paragraphs (a)(2)(i), (ii), and (iii) of this section, and from that sum:

(A) Subtract the partial payments made pursuant to paragraph (a)(1) of this section;

(B) Subtract the deduction for marketing services pursuant to § 1000.86;

(C) Add or subtract for errors made in previous payments to the producer; and

(D) Subtract proper deductions authorized in writing by the producer.

(b) One day before partial and final payments are due pursuant to paragraph (a) of this section, each pool plant operator shall pay a cooperative association for milk received as follows:

(1) *Partial payment to a cooperative association for bulk milk received directly from producers' farms.* For bulk milk (including the milk of producers who are not members of such association and who the market administrator determines have authorized the cooperative association to collect payment for their milk) received from a cooperative association in any capacity, except as the operator of a pool plant, the payment shall be equal to the hundredweight of milk received multiplied by 90 percent of the preceding month's uniform price, adjusted for plant location pursuant to § 1006.75.

(2) *Partial payment to a cooperative association for milk transferred from its pool plant.* For bulk fluid milk products and bulk fluid cream products received during the first 15 days of the month from a cooperative association in its capacity as the operator of a pool plant, the partial payment shall be at the pool plant operator's estimated use value of the milk using the most recent class prices available for skim milk and butterfat at the receiving plant's location.

(3) *Final payment to a cooperative association for milk transferred from its pool plant.* For bulk fluid milk products and bulk fluid cream products received during the month from a cooperative association in its capacity as the operator of a pool plant, the final payment shall be the classified value of such milk as determined by multiplying the pounds of skim milk and butterfat assigned to each class pursuant to § 1000.44 by the class prices for the month at the receiving plant's location, and subtracting from this sum the partial payment made pursuant to paragraph (b)(2) of this section.

(4) *Final payment to a cooperative association for bulk milk received directly from producers' farms.* For bulk milk received from a cooperative association during the month, including the milk of producers who are not members of such association and who the market administrator determines have authorized the cooperative association to collect payment for their milk, the final payment for such milk shall be an amount equal to the sum of the individual payments otherwise payable for such milk pursuant to paragraph (a)(2) of this section.

(c) If a handler has not received full payment from the market administrator pursuant to § 1006.72 by the payment date specified in paragraph (a) or (b) of this section, the handler may reduce payments pursuant to paragraphs (a) and (b) of this section, but by not more than the amount of the underpayment. The payments shall be completed on the next scheduled payment date after receipt of the balance due from the market administrator.

(d) If a handler claims that a required payment to a producer cannot be made because the producer is deceased or cannot be located, or because the cooperative association or its lawful successor or assignee is no longer in existence, the payment shall be made to the producer-settlement fund, and in the event that the handler subsequently locates and pays the producer or a lawful claimant, or in the event that the handler no longer exists and a lawful claim is later established, the market administrator shall make the required payment from the producer-settlement fund to the handler or to the lawful claimant as the case may be.

(e) In making payments to producers pursuant to this section, each pool plant operator shall furnish each producer, except a producer whose milk was received from a cooperative association described in § 1000.9(a) or (c), a supporting statement in such form that it may be retained by the recipient which shall show:

(1) The name, address, Grade A identifier assigned by a duly constituted regulatory agency, and the payroll number of the producer;

(2) The month and dates that milk was received from the producer, including the daily and total pounds of milk received;

(3) The total pounds of butterfat in the producer's milk;

(4) The minimum rate or rates at which payment to the producer is required pursuant to this order;

(5) The rate used in making payment if the rate is other than the applicable minimum rate;

(6) The amount, or rate per hundredweight, and nature of each deduction claimed by the handler; and

(7) The net amount of payment to the producer or cooperative association.

§ 1006.74 [Reserved]

§ 1006.75 Plant location adjustments for producer milk and nonpool milk.

For purposes of making payments for producer milk and nonpool milk, a plant location adjustment shall be determined by subtracting the Class I price specified in § 1006.50 from the Class I price at the plant's location. The difference, plus or minus as the case may be, shall be used to adjust the payments required pursuant to §§ 1006.73 and 1000.76.

§ 1006.76 Payments by a handler operating a partially regulated distributing plant.

See § 1000.76.

§ 1006.77 Adjustment of accounts.

See § 1000.77.

§ 1006.78 Charges on overdue accounts.

See § 1000.78.

Administrative Assessment and Marketing Service Deduction

§ 1006.85 Assessment for order administration.

See § 1000.85.

§ 1006.86 Deduction for marketing services.

See § 1000.86.

PART 1007—MILK IN THE SOUTHEAST MARKETING AREA

Subpart—Order Regulating Handling

General Provisions

Sec.
1007.1 General provisions.

Definitions

1007.2 Southeast marketing area.
1007.3 Route disposition.
1007.4 Plant.
1007.5 Distributing plant.
1007.6 Supply plant.
1007.7 Pool plant.
1007.8 Nonpool plant.
1007.9 Handler.
1007.10 Producer-handler.
1007.11 [Reserved]
1007.12 Producer.
1007.13 Producer milk.
1007.14 Other source milk.
1007.15 Fluid milk product.
1007.16 Fluid cream product.
1007.17 [Reserved]
1007.18 Cooperative association.
1007.19 Commercial food processing establishment.

Handler Reports

1007.30 Reports of receipts and utilization.
1007.31 Payroll reports.
1007.32 Other reports.

Classification of Milk

1007.40 Classes of utilization.
1007.41 [Reserved]

1007.42 Classification of transfers and diversions.
1007.43 General classification rules.
1007.44 Classification of producer milk.
1007.45 Market administrator's reports and announcements concerning classification.

Class Prices

1007.50 Class prices, component prices, and advanced pricing factors.
1007.51 Class I differential and price.
1007.52 Adjusted Class I differentials.
1007.53 Announcement of class prices, component prices, and advanced pricing factors.
1007.54 Equivalent price.

Uniform Prices

1007.60 Handler's value of milk.
1007.61 Computation of uniform prices.
1007.62 Announcement of uniform prices.

Payments for Milk

1007.70 Producer-settlement fund.
1007.71 Payments to the producer-settlement fund.
1007.72 Payments from the producer-settlement fund.
1007.73 Payments to producers and to cooperative associations.
1007.74 [Reserved]
1007.75 Plant location adjustments for producer milk and nonpool milk.
1007.76 Payments by a handler operating a partially regulated distributing plant.
1007.77 Adjustment of accounts.
1007.78 Charges on overdue accounts.

Marketwide Service Payments

1007.80 Transportation credit balancing fund.
1007.81 Payments to the transportation credit balancing fund.
1007.82 Payments from the transportation credit balancing fund.

Administrative Assessment and Marketing Service Deduction

1007.85 Assessment for order administration.
1007.86 Deduction for marketing services.

Authority: 7 U.S.C. 601–674.

Subpart—Order Regulating Handling

General Provisions

§ 1007.1 General provisions.

The terms, definitions, and provisions in part 1000 of this chapter apply to and are hereby made a part of this order. In this part 1007, all references to sections in part 1000 refer to part 1000 of this chapter.

Definitions

§ 1007.2 Southeast marketing area.

The marketing area means all territory within the bounds of the following states and political subdivisions, including all piers, docks and wharves connected therewith and all craft moored thereat, and all territory occupied by government (municipal, State or Federal) reservations, installations, institutions, or other similar establishments if any part thereof is within any of the listed states or political subdivisions:

Alabama, Arkansas, Louisiana, and Mississippi

All of the States of Alabama, Arkansas, Louisiana, and Mississippi.

Florida Counties

Escambia, Okaloosa, Santa Rosa, and Walton.

Georgia Counties

All of the State of Georgia except for the counties of Catoosa, Chattooga, Dade, Fannin, Murray, Walker, and Whitfield.

Kentucky Counties

Allen, Ballard, Barren, Caldwell, Calloway, Carlisle, Christian, Crittenden, Fulton, Graves, Hickman, Livingston, Logan, Lyon, Marshall, McCracken, Metcalfe, Monroe, Simpson, Todd, Trigg, and Warren.

Missouri Counties

Barry, Barton, Bollinger, Butler, Cape Girardeau, Carter, Cedar, Christian, Crawford, Dade, Dallas, Dent, Douglas, Dunklin, Greene, Howell, Iron, Jasper, Laclede, Lawrence, Madison, McDonald, Mississippi, New Madrid, Newton, Oregon, Ozark, Pemiscot, Perry, Polk, Reynolds, Ripley, Scott, Shannon, St. Francois, Stoddard, Stone, Taney, Texas, Vernon, Washington, Wayne, Webster, and Wright.

Tennessee Counties

All of the State of Tennessee except for the counties of Anderson, Blount, Bradley, Campbell, Carter, Claiborne, Cocke, Cumberland, Grainger, Greene, Hamblen, Hamilton, Hancock, Hawkins, Jefferson, Johnson, Knox, Loudon, Marion, McMinn, Meigs, Monroe, Morgan, Polk, Rhea, Roane, Scott, Sequatchie, Sevier, Sullivan, Unicoi, Union, and Washington.

§ 1007.3 Route disposition.

See § 1000.3.

§ 1007.4 Plant.

See § 1000.4.

§ 1007.5 Distributing plant.

See § 1000.5.

§ 1007.6 Supply plant.

See § 1000.6.

§ 1007.7 Pool plant.

Pool plant means a plant specified in paragraphs (a) through (d) of this section, or a unit of plants as specified in paragraph (e) of this section, but excluding a plant specified in paragraph (g) of this section. The pooling standards described in paragraphs (c) and (d) of this section are subject to modification pursuant to paragraph (f) of this section:

(a) A distributing plant, other than a plant qualified as a pool plant pursuant to paragraph (b) of this section or section 7(b) of any other Federal milk order, from which during the month 50 percent or more of the fluid milk products received at such plant (excluding concentrated milk received from another plant by agreement for other than Class I use) are disposed of as route disposition or are transferred in the form of packaged fluid milk products to other distributing plants. At least 25 percent of such route disposition and transfers must be to outlets in the marketing area.

(b) Any distributing plant located in the marketing area which during the month processed at least 50 percent of the total quantity of fluid milk products received at the plant (excluding concentrated milk received from another plant by agreement for other than Class I use) into ultra-pasteurized or aseptically-processed fluid milk products.

(c) A supply plant from which 50 percent or more of the total quantity of milk that is received during the month from dairy farmers and handlers described in § 1000.9(c), including milk that is diverted from the plant, is transferred to pool distributing plants. Concentrated milk transferred from the supply plant to a distributing plant for an agreed-upon use other than Class I shall be excluded from the supply plant's shipments in computing the plant's shipping percentage.

(d) A plant located within the marketing area that is operated by a cooperative association if pool plant status under this paragraph is requested for such plant by the cooperative association and during the month at least 60 percent of the producer milk of members of such cooperative association is delivered directly from farms to pool distributing plants or is transferred to such plants as a fluid milk product (excluding concentrated milk transferred to a distributing plant for an agreed-upon use other than Class I) from the cooperative's plant.

(e) Two or more plants operated by the same handler and located within the marketing area may qualify for pool status as a unit by meeting the total and in-area route disposition requirements specified in paragraph (a) of this section and the following additional requirements:

(1) At least one of the plants in the unit must qualify as a pool plant pursuant to paragraph (a) of this section;

(2) Other plants in the unit must process only Class I or Class II products and must be located in a pricing zone providing the same or a lower Class I price than the price applicable at the distributing plant included in the unit

pursuant to paragraph (e)(1) of this section; and

(3) A written request to form a unit, or to add or remove plants from a unit, must be filed with the market administrator prior to the first day of the month for which it is to be effective.

(f) The applicable shipping percentages of paragraphs (c) and (d) of this section may be increased or decreased by the market administrator if the market administrator finds that such adjustment is necessary to encourage needed shipments or to prevent uneconomic shipments. Before making such a finding, the market administrator shall investigate the need for adjustment either on the market administrator's own initiative or at the request of interested parties if the request is made in writing at least 15 days prior to the date for which the requested revision is desired effective. If the investigation shows that an adjustment of the shipping percentages might be appropriate, the market administrator shall issue a notice stating that an adjustment is being considered and invite data, views and arguments. Any decision to revise an applicable shipping percentage must be issued in writing at least one day before the effective date.

(g) The term pool plant shall not apply to the following plants:

(1) A producer-handler plant;

(2) An exempt plant as defined in § 1000.8(e);

(3) A plant qualified pursuant to paragraph (a) of this section which is not located within any Federal order marketing area, meets the pooling requirements of another Federal order, and has had greater route disposition in such other Federal order marketing area for 3 consecutive months;

(4) A plant qualified pursuant to paragraph (a) of this section which is located in another Federal order marketing area, meets the pooling standards of the other Federal order, and has not had a majority of its route disposition in this marketing area for 3 consecutive months or is locked into pool status under such other Federal order without regard to its route disposition in any other Federal order marketing area; and

(5) A plant qualified pursuant to paragraph (c) of this section which also meets the pooling requirements of another Federal order and from which greater qualifying shipments are made to plants regulated under such other order than are made to plants regulated under this order, or such plant has automatic pooling status under such other order.

§ 1007.8 Nonpool plant.

See § 1000.8.

§ 1007.9 Handler.

See § 1000.9.

§ 1007.10 Producer-handler.

Producer-handler means a person who:

(a) Operates a dairy farm and a distributing plant from which there is monthly route disposition in the marketing area;

(b) Receives no fluid milk products, and acquires no fluid milk products for route disposition, from sources other than own farm production;

(c) Disposes of no other source milk as Class I milk except by increasing the nonfat milk solids content of the fluid milk products received from own farm production; and

(d) Provides proof satisfactory to the market administrator that the care and management of the dairy animals and other resources necessary to produce all Class I milk handled, and the processing and packaging operations, are the producer-handler's own enterprise and are operated at the producer-handler's own risk.

§ 1007.11 [Reserved]

§ 1007.12 Producer.

(a) Except as provided in paragraph (b) of this section, *producer* means any person who produces milk approved by a duly constituted regulatory agency for fluid consumption as Grade A milk and whose milk (or components of milk) is:

(1) Received at a pool plant directly from the producer or diverted by the plant operator in accordance with § 1007.13; or

(2) Received by a handler described in § 1000.9(c).

(b) Producer shall not include:

(1) A producer-handler as defined in any Federal order;

(2) A dairy farmer whose milk is received at an exempt plant, excluding producer milk diverted to the exempt plant pursuant to § 1007.13(d);

(3) A dairy farmer whose milk is received by diversion at a pool plant from a handler regulated under another Federal order if the other Federal order designates the dairy farmer as a producer under that order and that milk is allocated by request to a utilization other than Class I; and

(4) A dairy farmer whose milk is reported as diverted to a plant fully regulated under another Federal order with respect to that portion of the milk so diverted that is assigned to Class I under the provisions of such other order.

§ 1007.13 Producer milk.

Producer milk means the skim milk (or the skim equivalent of components of skim milk) and butterfat contained in milk of a producer that is:

(a) Received by the operator of a pool plant directly from a producer or a handler described in § 1000.9(c). All milk received pursuant to this paragraph shall be priced at the location of the plant where it is first physically received;

(b) Received by a handler described in § 1000.9(c) in excess of the quantity delivered to pool plants;

(c) Diverted by a pool plant operator to another pool plant. Milk so diverted shall be priced at the location of the plant to which diverted; or

(d) Diverted by the operator of a pool plant or a handler described in § 1000.9(c) to a nonpool plant, subject to the following conditions:

(1) In any month of January through June, not less than 4 days' production of the producer whose milk is diverted is physically received at a pool plant during the month;

(2) In any month of July through December, not less than 10 days' production of the producer whose milk is diverted is physically received at a pool plant during the month;

(3) The total quantity of milk so diverted during the month by a cooperative association shall not exceed 33 percent during the months of July through December, and 50 percent during the months of January through June, of the producer milk that the cooperative association caused to be delivered to, and physically received at, pool plants during the month;

(4) The operator of a pool plant that is not a cooperative association may divert any milk that is not under the control of a cooperative association that diverts milk during the month pursuant to paragraph (d) of this section. The total quantity of milk so diverted during the month shall not exceed 33 percent during the months of July through December, or 50 percent during the months of January through June, of the producer milk physically received at such plant (or such unit of plants in the case of plants that pool as a unit pursuant to § 1007.7(e)) during the month, excluding the quantity of producer milk received from a handler described in § 1000.9(c);

(5) Any milk diverted in excess of the limits prescribed in paragraphs (d)(3) and (4) of this section shall not be producer milk. If the diverting handler or cooperative association fails to designate the dairy farmers' deliveries that will not be producer milk, no milk

diverted by the handler or cooperative association shall be producer milk;

(6) Diverted milk shall be priced at the location of the plant to which diverted; and

(7) The delivery day requirements and the diversion percentages in paragraphs (d)(1) through (4) of this section may be increased or decreased by the market administrator if the market administrator finds that such revision is necessary to assure orderly marketing and efficient handling of milk in the marketing area. Before making such a finding, the market administrator shall investigate the need for the revision either on the market administrator's own initiative or at the request of interested persons. If the investigation shows that a revision might be appropriate, the market administrator shall issue a notice stating that the revision is being considered and inviting written data, views, and arguments. Any decision to revise an applicable percentage must be issued in writing at least one day before the effective date.

§ 1007.14 Other source milk.

See § 1000.14.

§ 1007.15 Fluid milk product.

See § 1000.15.

§ 1007.16 Fluid cream product.

See § 1000.16.

§ 1007.17 [Reserved]

§ 1007.18 Cooperative association.

See § 1000.18.

§ 1007.19 Commercial food processing establishment.

See § 1000.19.

Handler Reports

§ 1007.30 Reports of receipts and utilization.

Each handler shall report monthly so that the market administrator's office receives the report on or before the 7th day after the end of the month, in the detail and on prescribed forms, as follows:

(a) With respect to each of its pool plants, the quantities of skim milk and butterfat contained in or represented by:

(1) Receipts of producer milk, including producer milk diverted by the reporting handler, from sources other than handlers described in § 1000.9(c);

(2) Receipts of milk from handlers described in § 1000.9(c);

(3) Receipts of fluid milk products and bulk fluid cream products from other pool plants;

(4) Receipts of other source milk;

(5) Receipts of bulk milk from a plant regulated under another Federal order, except Federal Order 1005, for which a transportation credit is requested pursuant to § 1007.82;

(6) Receipts of producer milk described in § 1007.82(c)(2), including the identity of the individual producers whose milk is eligible for the transportation credit pursuant to that paragraph and the date that such milk was received;

(7) For handlers submitting transportation credit requests, transfers of bulk milk to nonpool plants, including the dates that such milk was transferred;

(8) Inventories at the beginning and end of the month of fluid milk products and bulk fluid cream products; and

(9) The utilization or disposition of all milk and milk products required to be reported pursuant to this paragraph.

(b) Each handler operating a partially regulated distributing plant shall report with respect to such plant in the same manner as prescribed for reports required by paragraphs (a)(1), (a)(2), (a)(3), (a)(4), and (a)(8) of this section. Receipts of milk that would have been producer milk if the plant had been fully regulated shall be reported in lieu of producer milk. The report shall show also the quantity of any reconstituted skim milk in route disposition in the marketing area.

(c) Each handler described in § 1000.9(c) shall report:

(1) The quantities of all skim milk and butterfat contained in receipts of milk from producers;

(2) The utilization or disposition of all such receipts; and

(3) With respect to milk for which a cooperative association is requesting a transportation credit pursuant to § 1007.82, all of the information required in paragraphs (a)(5), (a)(6), and (a)(7) of this section.

(d) Each handler not specified in paragraphs (a) through (c) of this section shall report with respect to its receipts and utilization of milk and milk products in such manner as the market administrator may prescribe.

§ 1007.31 Payroll reports.

(a) On or before the 20th day after the end of each month, each handler that operates a pool plant pursuant to § 1007.7 and each handler described in § 1000.9(c) shall report to the market administrator its producer payroll for the month, in detail prescribed by the market administrator, showing for each producer the information specified in § 1007.73(e).

(b) Each handler operating a partially regulated distributing plant who elects to make payment pursuant to § 1000.76(b) shall report for each dairy farmer who would have been a producer if the plant had been fully regulated in the same manner as prescribed for reports required by paragraph (a) of this section.

§ 1007.32 Other reports.

(a) On or before the 20th day after the end of each month, each handler described in § 1000.9(a) and (c) shall report to the market administrator any adjustments to transportation credit requests as reported pursuant to § 1007.30(a)(5), (6), and (7).

(b) In addition to the reports required pursuant to §§ 1007.30, 31, and 32(a), each handler shall report any information the market administrator deems necessary to verify or establish each handler's obligation under the order.

Classification of Milk

§ 1007.40 Classes of utilization.

See § 1000.40.

§ 1007.41 [Reserved]

§ 1007.42 Classification of transfers and diversions.

See § 1000.42.

§ 1007.43 General classification rules.

See § 1000.43.

§ 1007.44 Classification of producer milk.

See § 1000.44.

§ 1007.45 Market administrator's reports and announcements concerning classification.

See § 1000.45.

Class Prices

§ 1007.50 Class prices, component prices, and advanced pricing factors.

See § 1000.50.

§ 1007.51 Class I differential and price.

The Class I differential shall be the differential established for Fulton County, Georgia, which is reported in § 1000.52. The Class I price shall be the price computed pursuant to § 1000.50(a) for Fulton County, Georgia.

§ 1007.52 Adjusted Class I differentials.

See § 1000.52.

§ 1007.53 Announcement of class prices, component prices, and advanced pricing factors.

See § 1000.53.

§ 1007.54 Equivalent price.

See § 1000.54.

Uniform Prices

§ 1007.60 Handler's value of milk.

For the purpose of computing a handler's obligation for producer milk,

the market administrator shall determine for each month the value of milk of each handler with respect to each of the handler's pool plants and of each handler described in § 1000.9(c) with respect to milk that was not received at a pool plant by adding the amounts computed in paragraphs (a) through (e) of this section and subtracting from that total amount the value computed in paragraph (f) of this section. Receipts of nonfluid milk products that are distributed as labeled reconstituted milk for which payments are made to the producer-settlement fund of another Federal order under § 1000.76(a)(4) or (d) shall be excluded from pricing under this section.

(a) Multiply the pounds of skim milk and butterfat in producer milk that were classified in each class pursuant to § 1000.44(c) by the applicable skim milk and butterfat prices, and add the resulting amounts;

(b) Multiply the pounds of skim milk and butterfat overage assigned to each class pursuant to § 1000.44(a)(11) by the respective skim milk and butterfat prices applicable at the location of the pool plant;

(c) Multiply the difference between the Class IV price for the preceding month and the current month's Class I, II, or III price, as the case may be, by the hundredweight of skim milk and butterfat subtracted from Class I, II, or III, respectively, pursuant to § 1000.44(a)(7) and the corresponding step of § 1000.44(b);

(d) Multiply the difference between the Class I price applicable at the location of the pool plant and the Class IV price by the hundredweight of skim milk and butterfat assigned to Class I pursuant to § 1000.43(d) and the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1000.44(a)(3) (i) through (vi) and the corresponding step of § 1000.44(b), excluding receipts of bulk fluid cream products from a plant regulated under other Federal orders and bulk concentrated fluid milk products from pool plants, plants regulated under other Federal orders, and unregulated supply plants;

(e) Multiply the Class I price applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received by the pounds of skim milk and butterfat in receipts of concentrated fluid milk products assigned to Class I pursuant to § 1000.43(d) and § 1000.44(a)(3)(i) and the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1000.44(a)(8) and the corresponding step of § 1000.44(b), excluding such skim milk and butterfat in receipts of fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order; and

(f) For reconstituted milk made from receipts of nonfluid milk products, multiply $1.00 (but not more than the difference between the Class I price applicable at the location of the pool plant and the Class IV price) by the hundredweight of skim milk and butterfat contained in receipts of nonfluid milk products that are allocated to Class I use pursuant to § 1000.43(d).

§ 1007.61 Computation of uniform prices.

On or before the 11th day of each month, the market administrator shall compute a uniform butterfat price, a uniform skim milk price, and a uniform price for producer milk receipts reported for the prior month. The report of any handler who has not made payments required pursuant to § 1007.71 for the preceding month shall not be included in the computation of these prices, and such handler's report shall not be included in the computation for succeeding months until the handler has made full payment of outstanding monthly obligations.

(a) *Uniform butterfat price.* The uniform butterfat price per pound, rounded to the nearest one-hundredth cent, shall be computed by multiplying the pounds of butterfat in producer milk allocated to each class pursuant to § 1000.44(b) by the respective class butterfat prices and dividing the sum of such values by the total pounds of such butterfat.

(b) *Uniform skim milk price.* The uniform skim milk price per hundredweight, rounded to the nearest cent, shall be computed as follows:

(1) Combine into one total the values computed pursuant to § 1005.60 for all handlers;

(2) Add an amount equal to the sum of the location adjustments computed pursuant to § 1007.75;

(3) Add an amount equal to not less than one-half of the unobligated balance in the producer-settlement fund;

(4) Subtract the value of the total pounds of butterfat for all handlers. The butterfat value shall be computed by multiplying the pounds of butterfat by the butterfat price computed in paragraph (a) of this section;

(5) Divide the resulting amount by the sum of the following for all handlers included in these computations:

(i) The total skim pounds of producer milk; and

(ii) The total skim pounds for which a value is computed pursuant to § 1007.60(e); and

(6) Subtract not less than 4 cents and not more than 5 cents.

(c) *Uniform price.* The uniform price per hundredweight, rounded to the nearest cent, shall be the sum of the following:

(1) Multiply the uniform butterfat price for the month pursuant to paragraph (a) of this section times 3.5 pounds of butterfat; and

(2) Multiply the uniform skim milk price for the month pursuant to paragraph (b) of this section times 96.5 pounds of skim milk.

§ 1007.62 Announcement of uniform prices.

On or before the 11th day after the end of the month, the market administrator shall announce the uniform prices for the month computed pursuant to § 1007.61.

Payments for Milk

§ 1007.70 Producer-settlement fund.

See § 1000.70.

§ 1007.71 Payments to the producer-settlement fund.

Each handler shall make a payment to the producer-settlement fund in a manner that provides receipt of the funds by the market administrator no later than the 12th day after the end of the month (except as provided in § 1000.90). Payment shall be the amount, if any, by which the amount specified in paragraph (a) of this section exceeds the amount specified in paragraph (b) of this section:

(a) The total value of milk of the handler for the month as determined pursuant to § 1007.60; and

(b) The sum of the value at the uniform prices for skim milk and butterfat, adjusted for plant location, of the handler's receipts of producer milk; and the value at the uniform price, as adjusted pursuant to § 1007.75, applicable at the location of the plant from which received of other source milk for which a value is computed pursuant to § 1007.60(e).

§ 1007.72 Payments from the producer-settlement fund.

No later than one day after the date of payment receipt required under § 1007.71, the market administrator shall pay to each handler the amount, if any, by which the amount computed pursuant to § 1007.71(b) exceeds the amount computed pursuant to § 1007.71(a). If, at such time, the balance

in the producer-settlement fund is insufficient to make all payments pursuant to this section, the market administrator shall reduce uniformly such payments and shall complete the payments as soon as the funds are available.

§ 1007.73 Payments to producers and to cooperative associations.

(a) Each pool plant operator that is not paying a cooperative association for producer milk shall pay each producer as follows:

(1) *Partial payment.* For each producer who has not discontinued shipments as of the 23rd day of the month, payment shall be made so that it is received by the producer on or before the 26th day of the month (except as provided in § 1000.90) for milk received during the first 15 days of the month at not less than 90 percent of the preceding month's uniform price, adjusted for plant location pursuant to § 1007.75 and proper deductions authorized in writing by the producer.

(2) *Final payment.* For milk received during the month, a payment computed as follows shall be made so that it is received by each producer one day after the payment date required in § 1007.72:

(i) Multiply the hundredweight of producer skim milk received times the uniform skim milk price for the month;

(ii) Multiply the pounds of butterfat received times the uniform butterfat price for the month;

(iii) Multiply the hundredweight of producer milk received times the plant location adjustment pursuant to § 1007.75; and

(iv) Add the amounts computed in paragraph (a)(2)(i), (ii), and (iii) of this section, and from that sum:

(A) Subtract the partial payment made pursuant to paragraph (a)(1) of this section;

(B) Subtract the deduction for marketing services pursuant to § 1000.86;

(C) Add or subtract for errors made in previous payments to the producer; and

(D) Subtract proper deductions authorized in writing by the producer.

(b) One day before partial and final payments are due pursuant to paragraph (a) of this section, each pool plant operator shall pay a cooperative association for milk received as follows:

(1) *Partial payment to a cooperative association for bulk milk received directly from producers' farms.* For bulk milk (including the milk of producers who are not members of such association and who the market administrator determines have authorized the cooperative association to collect payment for their milk) received during the first 15 days of the month from a cooperative association in any capacity, except as the operator of a pool plant, the payment shall be equal to the hundredweight of milk received multiplied by 90 percent of the preceding month's uniform price, adjusted for plant location pursuant to § 1007.75.

(2) *Partial payment to a cooperative association for milk transferred from its pool plant.* For bulk fluid milk products and bulk fluid cream products received during the first 15 days of the month from a cooperative association in its capacity as the operator of a pool plant, the partial payment shall be at the pool plant operator's estimated use value of the milk using the most recent class prices available for skim milk and butterfat at the receiving plant's location.

(3) *Final payment to a cooperative association for milk transferred from its pool plant.* For bulk fluid milk products and bulk fluid cream products received during the month from a cooperative association in its capacity as the operator of a pool plant, the final payment shall be the classified value of such milk as determined by multiplying the pounds of skim milk and butterfat assigned to each class pursuant to § 1000.44 by the class prices for the month at the receiving plant's location, and subtracting from this sum the partial payment made pursuant to paragraph (b)(2) of this section.

(4) *Final payment to a cooperative association for bulk milk received directly from producers' farms.* For bulk milk received from a cooperative association during the month, including the milk of producers who are not members of such association and who the market administrator determines have authorized the cooperative association to collect payment for their milk, the final payment for such milk shall be an amount equal to the sum of the individual payments otherwise payable for such milk pursuant to paragraph (a)(2) of this section.

(c) If a handler has not received full payment from the market administrator pursuant to § 1007.72 by the payment date specified in paragraph (a) or (b) of this section, the handler may reduce payments pursuant to paragraphs (a) and (b) of this section, but by not more than the amount of the underpayment. The payments shall be completed on the next scheduled payment date after receipt of the balance due from the market administrator.

(d) If a handler claims that a required payment to a producer cannot be made because the producer is deceased or cannot be located, or because the cooperative association or its lawful successor or assignee is no longer in existence, the payment shall be made to the producer-settlement fund, and in the event that the handler subsequently locates and pays the producer or a lawful claimant, or in the event that the handler no longer exists and a lawful claim is later established, the market administrator shall make the required payment from the producer-settlement fund to the handler or to the lawful claimant as the case may be.

(e) In making payments to producers pursuant to this section, each pool plant operator shall furnish each producer, except a producer whose milk was received from a cooperative association described in § 1000.9(a) or (c), a supporting statement in such form that it may be retained by the recipient which shall show:

(1) The name, address, Grade A identifier assigned by a duly constituted regulatory agency, and the payroll number of the producer;

(2) The month and dates that milk was received from the producer, including the daily and total pounds of milk received;

(3) The total pounds of butterfat in the producer's milk;

(4) The minimum rate or rates at which payment to the producer is required pursuant to this order;

(5) The rate used in making payment if the rate is other than the applicable minimum rate;

(6) The amount, or rate per hundredweight, and nature of each deduction claimed by the handler; and

(7) The net amount of payment to the producer or cooperative association.

§ 1007.74 [Reserved]

§ 1007.75 Plant location adjustments for producer milk and nonpool milk.

For purposes of making payments for producer milk and nonpool milk, a plant location adjustment shall be determined by subtracting the Class I price specified in § 1007.50 from the Class I price at the plant's location. The difference, plus or minus as the case may be, shall be used to adjust the payments required pursuant to §§ 1007.73 and 1000.76.

§ 1007.76 Payments by a handler operating a partially regulated distributing plant.

See § 1000.76.

§ 1007.77 Adjustment of accounts.

See § 1000.77.

§ 1007.78 Charges on overdue accounts.

See § 1000.78.

Marketwide Service Payments

§ 1007.80 Transportation credit balancing fund.

The market administrator shall maintain a separate fund known as the *Transportation Credit Balancing Fund* into which shall be deposited the payments made by handlers pursuant to § 1007.81 and out of which shall be made the payments due handlers pursuant to § 1007.82. Payments due a handler shall be offset against payments due from the handler.

§ 1007.81 Payments to the transportation credit balancing fund.

(a) On or before the 12th day after the end of the month (except as provided in § 1000.90), each handler operating a pool plant and each handler specified in § 1000.9(c) shall pay to the market administrator a transportation credit balancing fund assessment determined by multiplying the pounds of Class I producer milk assigned pursuant to § 1000.44 by $0.07 per hundredweight or such lesser amount as the market administrator deems necessary to maintain a balance in the fund equal to the total transportation credits disbursed during the prior June-January period. In the event that during any month of the June-January period the fund balance is insufficient to cover the amount of credits that are due, the assessment should be based upon the amount of credits that would have been disbursed had the fund balance been sufficient.

(b) The market administrator shall announce publicly on or before the 5th day of the month (except as provided in § 1000.90) the assessment pursuant to paragraph (a) of this section for the following month.

§ 1007.82 Payments from the transportation credit balancing fund.

(a) Payments from the transportation credit balancing fund to handlers and cooperative associations requesting transportation credits shall be made as follows:

(1) On or before the 13th day (except as provided in § 1000.90) after the end of each of the months of July through December and any other month in which transportation credits are in effect pursuant to paragraph (b) of this section, the market administrator shall pay to each handler that received, and reported pursuant to § 1007.30(a)(5), bulk milk transferred from a plant fully regulated under another Federal order as described in paragraph (c)(1) of this section or that received, and reported pursuant to § 1007.30(a)(6), milk directly from producers' farms as specified in paragraph (c)(2) of this section, a preliminary amount determined pursuant to paragraph (d) of this section to the extent that funds are available in the transportation credit balancing fund. If an insufficient balance exists to pay all of the credits computed pursuant to this section, the market administrator shall distribute the balance available in the transportation credit balancing fund by reducing payments pro rata using the percentage derived by dividing the balance in the fund by the total credits that are due for the month. The amount of credits resulting from this initial proration shall be subject to audit adjustment pursuant to paragraph (a)(2) of this section;

(2) The market administrator shall accept adjusted requests for transportation credits on or before the 20th day of the month following the month for which such credits were requested pursuant to § 1007.32(a). After such date, a preliminary audit will be conducted by the market administrator, who will recalculate any necessary proration of transportation credit payments for the preceding month pursuant to paragraph (a) of this section. Handlers will be promptly notified of an overpayment of credits based upon this final computation and remedial payments to or from the transportation credit balancing fund will be made on or before the next payment date for the following month;

(3) Transportation credits paid pursuant to paragraphs (a)(1) and (2) of this section shall be subject to final verification by the market administrator pursuant to § 1000.77. Adjusted payments to or from the transportation credit balancing fund will remain subject to the final proration established pursuant to paragraph (a)(2) of this section; and

(4) In the event that a qualified cooperative association is the responsible party for whose account such milk is received and written documentation of this fact is provided to the market administrator pursuant to § 1007.30(c)(3) prior to the date payment is due, the transportation credits for such milk computed pursuant to this section shall be made to such cooperative association rather than to the operator of the pool plant at which the milk was received.

(b) The market administrator may extend the period during which transportation credits are in effect (i.e., the transportation credit period) to the months of January and June if a written request to do so is received 15 days prior to the beginning of the month for which the request is made and, after conducting an independent investigation, finds that such extension is necessary to assure the market of an adequate supply of milk for fluid use. Before making such a finding, the market administrator shall notify the Director of the Dairy Division and all handlers in the market that an extension is being considered and invite written data, views, and arguments. Any decision to extend the transportation credit period must be issued in writing prior to the first day of the month for which the extension is to be effective.

(c) Transportation credits shall apply to the following milk:

(1) Bulk milk received from a plant regulated under another Federal order, except Federal Order 1005, and allocated to Class I milk pursuant to § 1000.44(a)(9); and

(2) Bulk milk received directly from the farms of dairy farmers at pool distributing plants subject to the following conditions:

(i) The quantity of such milk that shall be eligible for the transportation credit shall be determined by multiplying the total pounds of milk received from producers meeting the conditions of this paragraph by the lower of:

(A) The marketwide estimated Class I utilization of all handlers for the month pursuant to § 1000.45(a); or

(B) The Class I utilization of all producer milk of the pool plant operator receiving the milk after the computations described in § 1000.44;

(ii) The dairy farmer was not a "producer" under this order during more than 2 of the immediately preceding months of February through May and not more than 50 percent of the production of the dairy farmer during those 2 months, in aggregate, was received as producer milk under this order during those 2 months; and

(iii) The farm on which the milk was produced is not located within the specified marketing area of this order or the marketing area of Federal Order 1005.

(d) Transportation credits shall be computed as follows:

(1) The market administrator shall subtract from the pounds of milk described in paragraphs (c)(1) and (2) of this section the pounds of bulk milk transferred from the pool plant receiving the supplemental milk if milk was transferred to a nonpool plant on the same calendar day that the supplemental milk was received. For this purpose, the transferred milk shall be subtracted from the most distant load of supplemental milk received, and then in sequence with the next most distant load until all of the transfers have been offset;

(2) With respect to the pounds of milk described in paragraph (c)(1) of this section that remain after the computations described in paragraph (d)(1) of this section, the market administrator shall:

(i) Determine the shortest hard-surface highway distance between the shipping plant and the receiving plant;

(ii) Multiply the number of miles so determined by 0.35 cent;

(iii) Subtract the applicable Class I differential in § 1000.52 for the county in which the shipping plant is located from the Class I differential applicable for the county in which the receiving plant is located;

(iv) Subtract any positive difference computed in paragraph (d)(2)(iii) of this section from the amount computed in paragraph (d)(2)(ii) of this section; and

(v) Multiply the remainder computed in paragraph (d)(2)(iv) of this section by the hundredweight of milk described in paragraph (d)(2) of this section.

(3) For the remaining milk described in paragraph (c)(2) of this section after computations described in paragraph (d)(1) of this section, the market administrator shall:

(i) Determine an origination point for each load of milk by locating the nearest city to the last producer's farm from which milk was picked up for delivery to the receiving pool plant;

(ii) Determine the shortest hard-surface highway distance between the receiving pool plant and the origination point;

(iii) Subtract 85 miles from the mileage so determined;

(iv) Multiply the remaining miles so computed by 0.35 cent;

(v) Subtract the Class I differential specified in § 1000.52 applicable for the county in which the origination point is located from the Class I differential applicable at the receiving pool plant's location;

(vi) Subtract any positive difference computed in paragraph (d)(3)(v) of this section from the amount computed in paragraph (d)(3)(iv) of this section; and

(vii) Multiply the remainder computed in paragraph (d)(3)(vi) of this section by the hundredweight of milk described in paragraph (d)(3) of this section.

Administrative Assessment and Marketing Service Deduction

§ 1007.85 Assessment for order administration.

See § 1000.85.

§ 1007.86 Deduction for marketing services.

See § 1000.86.

PART 1030—MILK IN THE UPPER MIDWEST MARKETING AREA

Subpart—Order Regulating Handling

General Provisions

Sec.
1030.1 General provisions.

Definitions

1030.2 Upper Midwest marketing area.
1030.3 Route disposition.
1030.4 Plant.
1030.5 Distributing plant.
1030.6 Supply plant.
1030.7 Pool plant.
1030.8 Nonpool plant.
1030.9 Handler.
1030.10 Producer-handler.
1030.11 [Reserved]
1030.12 Producer.
1030.13 Producer milk.
1030.14 Other source milk.
1030.15 Fluid milk product.
1030.16 Fluid cream product.
1030.17 [Reserved]
1030.18 Cooperative association.
1030.19 Commercial food processing establishment.

Handler Reports

1030.30 Reports of receipts and utilization.
1030.31 Payroll reports.
1030.32 Other reports.

Classification of Milk

1030.40 Classes of utilization.
1030.41 [Reserved]
1030.42 Classification of transfers and diversions.
1030.43 General classification rules.
1030.44 Classification of producer milk.
1030.45 Market administrator's reports and announcements concerning classification.

Class Prices

1030.50 Class prices, component prices, and advanced pricing factors.
1030.51 Class I differential and price.
1030.52 Adjusted Class I differentials.
1030.53 Announcement of class prices, component prices, and advanced pricing factors.
1030.54 Equivalent price.
1030.55 Transportation credits and assembly credits.

Producer Price Differential

1030.60 Handler's value of milk.
1030.61 Computation of producer price differential.
1030.62 Announcement of producer prices.

Payments for Milk

1030.70 Producer-settlement fund.
1030.71 Payments to the producer-settlement fund.
1030.72 Payments from the producer-settlement fund.
1030.73 Payments to producers and to cooperative associations.
1030.74 [Reserved]
1030.75 Plant location adjustments for producer milk and nonpool milk.
1030.76 Payments by a handler operating a partially regulated distributing plant.
1030.77 Adjustment of accounts.
1030.78 Charges on overdue accounts.

Administrative Assessment and Marketing Service Deduction

1030.85 Assessment for order administration.
1030.86 Deduction for marketing services.

Authority: 7 U.S.C. 601–674.

Subpart—Order Regulating Handling

General Provisions

§ 1030.1 General provisions.

The terms, definitions, and provisions in part 1000 of this chapter apply to and are hereby made a part of this order. In this part 1030, all references to sections in part 1000 refer to part 1000 of this chapter.

Definitions

§ 1030.2 Upper Midwest marketing area.

The marketing area means all territory within the bounds of the following states and political subdivisions, including all piers, docks, and wharves connected therewith and all craft moored thereat, and all territory occupied by government (municipal, State, or Federal) reservations, installations, institutions, or other similar establishments if any part thereof is within any of the listed states or political subdivisions:

Illinois Counties

Boone, Carroll, Cook, De Kalb, Du Page, Jo Daviess, Kane, Kendall, Lake, Lee, McHenry, Ogle, Stephenson, Will, and Winnebago.

Iowa Counties

Howard, Kossuth, Mitchell, Winnebago, Winneshiek, and Worth.

Michigan Counties

Delta, Dickinson, Gogebic, Iron, Menominee, and Ontonagon.

Minnesota

All counties except Lincoln, Nobles, Pipestone, and Rock.

North Dakota Counties

Barnes, Cass, Cavalier, Dickey, Grand Forks, Griggs, La Moure, Nelson, Pembina, Ramsey, Ransom, Richland, Sargent, Steele, Traill, and Walsh.

South Dakota Counties

Brown, Day, Edmunds, Grant, Marshall, McPherson, Roberts, and Walworth.

Wisconsin Counties

All counties except Crawford and Grant.

§ 1030.3 Route disposition.

See § 1000.3.

§ 1030.4 Plant.

See § 1000.4.

§ 1030.5 Distributing plant.

See § 1000.5.

§ 1030.6 Supply plant.

See § 1000.6.

§ 1030.7 Pool plant.

Pool plant means a plant, unit of plants, or system of plants as specified in paragraphs (a) through (f) of this section, but excluding a plant specified in paragraph (h) of this section. The pooling standards described in paragraphs (c) and (f) of this section are subject to modification pursuant to paragraph (g) of this section:

(a) A distributing plant, other than a plant qualified as a pool plant pursuant to paragraph (b) of this section or section 7(b) of any other Federal milk order, from which during the month 15 percent or more of the total quantity of fluid milk products physically received at the plant (excluding concentrated milk received from another plant by agreement for other than Class I use) are disposed of as route disposition or are transferred in the form of packaged fluid milk products to other distributing plants. At least 25 percent of such route disposition and transfers must be to outlets in the marketing area.

(b) Any distributing plant located in the marketing area which during the month processed at least 15 percent of the total quantity of fluid milk products physically received at the plant (excluding concentrated milk received from another plant by agreement for other than Class I use) into ultra-pasteurized or aseptically-processed fluid milk products.

(c) A supply plant from which the quantity of bulk fluid milk products shipped to (and physically unloaded into) plants described in paragraph (c)(1) of this section is not less than 10 percent of the Grade A milk received from dairy farmers (except dairy farmers described in § 1030.12(b)) and handlers described in § 1000.9(c), including milk diverted pursuant to § 1030.13, subject to the following conditions:

(1) Qualifying shipments may be made to plants described in paragraphs (c)(1)(i) through (iv) of this section, except that whenever shipping requirements are increased pursuant to paragraph (g) of this section, only shipments to pool plants described in paragraphs (a), (b), and (e) of this section shall count as qualifying shipments for the purpose of meeting the increased shipments:

(i) Pool plants described in § 1030.7(a), (b) and (e);

(ii) Plants of producer-handlers;

(iii) Partially regulated distributing plants, except that credit for such shipments shall be limited to the amount of such milk classified as Class I at the transferee plant; and

(iv) Distributing plants fully regulated under other Federal orders, except that credit for shipments to such plants shall be limited to the quantity shipped to pool distributing plants during the month and credits for shipments to other order plants shall not include any such shipments made on the basis of agreed-upon Class II, Class III, or Class IV utilization.

(2) The operator of a supply plant may include as qualifying shipments under this paragraph milk delivered directly from producers' farms pursuant to §§ 1000.9(c) or 1030.13(c) to plants described in paragraphs (a), (b), and (e) of this section.

(3) Concentrated milk transferred from the supply plant to a distributing plant for an agreed-upon use other than Class I shall be excluded from the supply plant's shipments in computing the supply plant's shipping percentage.

(d) [Reserved]

(e) Two or more plants operated by the same handler and located in the marketing area may qualify for pool status as a unit by meeting the total and in-area route disposition requirements of a pool distributing plant specified in paragraph (a) of this section and subject to the following additional requirements:

(1) At least one of the plants in the unit must qualify as a pool plant pursuant to paragraph (a) of this section;

(2) Other plants in the unit must process Class I or Class II products, using 50 percent or more of the total Grade A fluid milk products received in bulk form at such plant or diverted therefrom by the plant operator in Class I or Class II products; and

(3) The operator of the unit has filed a written request with the market administrator prior to the first day of the month for which such status is desired to be effective. The unit shall continue from month-to-month thereafter without further notification. The handler shall notify the market administrator in writing prior to the first day of any month for which termination or any change of the unit is desired.

(f) A system of 2 or more supply plants operated by one or more handlers may qualify for pooling by meeting the shipping requirements of paragraph (c) of this section in the same manner as a single plant subject to the following additional requirements:

(1) Each plant in the system is located within the marketing area or was a pool supply plant pursuant to § 1030.7(c) for each of the 3 months immediately preceding the effective date of this paragraph so long as it continues to maintain pool status. Cooperative associations may not use shipments pursuant to § 1000.9(c) to qualify plants located outside the marketing area;

(2) The handler(s) establishing the system submits a written request to the market administrator on or before July 15 requesting that such plants qualify as a system for the period of August through July of the following year. Such request will contain a list of the plants participating in the system in the order, beginning with the last plant, in which the plants will be dropped from the system if the system fails to qualify. Each plant that qualifies as a pool plant within a system shall continue each month as a plant in the system through the following July unless the handler(s) establishing the system submits a written request to the market administrator that the plant be deleted from the system or that the system be discontinued. Any plant that has been so deleted from a system, or that has failed to qualify in any month, will not be part of any system for the remaining months through July. The handler(s) that established a system may add a plant operated by such handler(s) to a system if such plant has been a pool plant each of the 6 prior months and would otherwise be eligible to be in a system, upon written request to the market administrator no later than the 15th day of the prior month. In the event of an ownership change or the business failure of a handler that is a participant in a system, the system may be reorganized to reflect such changes if a written request to file a new marketing agreement is submitted to the market administrator; and

(3) If a system fails to qualify under the requirements of this paragraph, the handler responsible for qualifying the system shall notify the market administrator which plant or plants will be deleted from the system so that the remaining plants may be pooled as a system. If the handler fails to do so, the market administrator shall exclude one or more plants, beginning at the bottom of the list of plants in the system and continuing up the list as necessary until the deliveries are sufficient to qualify the remaining plants in the system.

(g) The applicable shipping percentages of paragraphs (c) and (f) of this section and the diversion limits described in § 1030.13(d)(2) may be increased or decreased, for all or part of the marketing area, by the market administrator if the market administrator finds that such adjustment is necessary to encourage needed shipments or to prevent uneconomic shipments. Before making such a finding, the market administrator shall investigate the need for adjustment either on the market administrator's

own initiative or at the request of interested parties if the request is made in writing at least 15 days prior to the month for which the requested revision is desired effective. If the investigation shows that an adjustment of the shipping percentages might be appropriate, the market administrator shall issue a notice stating that an adjustment is being considered and invite data, views and arguments. Any decision to revise an applicable shipping or diversion percentage must be issued in writing at least one day before the effective date.

(h) The term pool plant shall not apply to the following plants:

(1) A producer-handler as defined under any Federal order;

(2) An exempt plant as defined in § 1000.8(e);

(3) A plant located within the marketing area and qualified pursuant to paragraph (a) of this section which meets the pooling requirements of another Federal order, and from which more than 50 percent of its route disposition has been in the other Federal order marketing area for 3 consecutive months;

(4) A plant located outside any Federal order marketing area and qualified pursuant to paragraph (a) of this section that meets the pooling requirements of another Federal order and has had greater route disposition in such other Federal order's marketing area for 3 consecutive months;

(5) A plant located in another Federal order marketing area and qualified pursuant to paragraph (a) of this section that meets the pooling requirements of such other Federal order and does not have a majority of its route distribution in this marketing area for 3 consecutive months or if the plant is required to be regulated under such other Federal order without regard to its route disposition in any other Federal order marketing area;

(6) A plant qualified pursuant to paragraph (c) of this section which also meets the pooling requirements of another Federal order and from which greater qualifying shipments are made to plants regulated under the other Federal order than are made to plants regulated under this order, or the plant has automatic pooling status under the other Federal order; and

(7) That portion of a regulated plant designated as a nonpool plant that is physically separate and operated separately from the pool portion of such plant. The designation of a portion of a regulated plant as a nonpool plant must be requested in advance and in writing by the handler and must be approved by the market administrator.

(i) Any plant that qualifies as a pool plant in each of the immediately preceding 3 months pursuant to paragraph (a) of this section or the shipping percentages in paragraph (c) of this section that is unable to meet such performance standards for the current month because of unavoidable circumstances determined by the market administrator to be beyond the control of the handler operating the plant, such as a natural disaster (ice storm, wind storm, flood), fire, breakdown of equipment, or work stoppage, shall be considered to have met the minimum performance standards during the period of such unavoidable circumstances, but such relief shall not be granted for more than 2 consecutive months.

§ 1030.8 Nonpool plant.

See § 1000.8.

§ 1030.9 Handler.

See § 1000.9.

§ 1030.10 Producer-handler.

Producer-handler means a person who:

(a) Operates a dairy farm and a distributing plant from which there is route disposition in the marketing during the month;

(b) Receives fluid milk from own farm production or milk that is fully subject to the pricing and pooling provisions of this or any other Federal order;

(c) Receives at its plant or acquires for route disposition no more than 150,000 pounds of fluid milk products from handlers fully regulated under any Federal order. This limitation shall not apply if the producer-handler's own farm production is less than 150,000 pounds during the month;

(d) Disposes of no other source milk as Class I milk except by increasing the nonfat milk solids content of the fluid milk products; and

(e) Provides proof satisfactory to the market administrator that the care and management of the dairy animals and other resources necessary to produce all Class I milk handled (excluding receipts from handlers fully regulated under any Federal order) and the processing and packaging operations are the producer-handler's own enterprise and at its own risk.

§ 1030.11 [Reserved]

§ 1030.12 Producer.

(a) Except as provided in paragraph (b) of this section, *producer* means any person who produces milk approved by a duly constituted regulatory agency for fluid consumption as Grade A milk and whose milk is:

(1) Received at a pool plant directly from the producer or diverted by the plant operator in accordance with § 1030.13; or

(2) Received by a handler described in § 1000.9(c).

(b) Producer shall not include:

(1) A producer-handler as defined in any Federal order;

(2) A dairy farmer whose milk is received at an exempt plant, excluding producer milk diverted to the exempt plant pursuant to § 1030.13(d);

(3) A dairy farmer whose milk is received by diversion at a pool plant from a handler regulated under another Federal order if the other Federal order designates the dairy farmer as a producer under that order and that milk is allocated by request to a utilization other than Class I; and

(4) A dairy farmer whose milk is reported as diverted to a plant fully regulated under another Federal order with respect to that portion of the milk so diverted that is assigned to Class I under the provisions of such other order.

§ 1030.13 Producer milk.

Producer milk means the skim milk (or the skim equivalent of components of skim milk), including nonfat components, and butterfat in milk of a producer that is:

(a) Received by the operator of a pool plant directly from a producer or a handler described in § 1000.9(c). All milk received pursuant to this paragraph shall be priced at the location of the plant where it is first physically received;

(b) Received by a handler described in § 1000.9(c) in excess of the quantity delivered to pool plants;

(c) Diverted by a pool plant operator to another pool plant. Milk so diverted shall be priced at the location of the plant to which diverted; or

(d) Diverted by the operator of a pool plant or a cooperative association described in § 1000.9(c) to a nonpool plant, subject to the following conditions:

(1) Milk of a dairy farmer shall not be eligible for diversion unless at least one day's production of such dairy farmer is physically received as producer milk at a pool plant during the first month the dairy farmer is a producer. If a dairy farmer loses producer status under this order (except as a result of a temporary loss of Grade A approval or as a result of the handler of the dairy farmer's milk failing to pool the milk under any order), the dairy farmer's milk shall not be eligible for diversion unless at least one day's production of the dairy farmer has been physically received as

producer milk at a pool plant during the first month the dairy farmer is re-associated with the market;

(2) The quantity of milk diverted by a handler described in § 1000.9(c) may not exceed 90 percent of the producer milk receipts reported by the handler pursuant to § 1030.30(c) provided that not less than 10 percent of such receipts are delivered to plants described in § 1030.7(c)(1)(i) through (iii). These percentages are subject to any adjustments that may be made pursuant to § 1030.7(g); and

(3) Diverted milk shall be priced at the location of the plant to which diverted.

§ 1030.14 Other source milk.

See § 1000.14.

§ 1030.15 Fluid milk product.

See § 1000.15.

§ 1030.16 Fluid cream product.

See § 1000.16.

§ 1030.17 [Reserved]

§ 1030.18 Cooperative association.

See § 1000.18.

§ 1030.19 Commercial food processing establishment.

See § 1000.19.

Handler Reports

§ 1030.30 Reports of receipts and utilization.

Each handler shall report monthly so that the market administrator's office receives the report on or before the 9th day after the end of the month, in the detail and on the prescribed forms, as follows:

(a) Each handler that operates a pool plant shall report for each of its operations the following information:

(1) Product pounds, pounds of butterfat, pounds of protein, pounds of solids-not-fat other than protein (other solids), and the value of the somatic cell adjustment pursuant to § 1000.50(p), contained in or represented by:

(i) Receipts of producer milk, including producer milk diverted by the reporting handler, from sources other than handlers described in § 1000.9(c); and

(ii) Receipts of milk from handlers described in § 1000.9(c);

(2) Product pounds and pounds of butterfat contained in:

(i) Receipts of fluid milk products and bulk fluid cream products from other pool plants;

(ii) Receipts of other source milk; and

(iii) Inventories at the beginning and end of the month of fluid milk products and bulk fluid cream products;

(3) The utilization or disposition of all milk and milk products required to be reported pursuant to this paragraph; and

(4) Such other information with respect to the receipts and utilization of skim milk, butterfat, milk protein, other nonfat solids, and somatic cell information, as the market administrator may prescribe.

(b) Each handler operating a partially regulated distributing plant shall report with respect to such plant in the same manner as prescribed for reports required by paragraph (a) of this section. Receipts of milk that would have been producer milk if the plant had been fully regulated shall be reported in lieu of producer milk. The report shall show also the quantity of any reconstituted skim milk in route disposition in the marketing area.

(c) Each handler described in § 1000.9(c) shall report:

(1) The product pounds, pounds of butterfat, pounds of protein, pounds of solids-not-fat other than protein (other solids), and the value of the somatic cell adjustment pursuant to § 1000.50(p), contained in receipts of milk from producers; and

(2) The utilization or disposition of such receipts.

(d) Each handler not specified in paragraphs (a) through (c) of this section shall report with respect to its receipts and utilization of milk and milk products in such manner as the market administrator may prescribe.

§ 1030.31 Payroll reports.

(a) On or before the 22nd day after the end of each month, each handler that operates a pool plant pursuant to § 1030.7 and each handler described in § 1000.9(c) shall report to the market administrator its producer payroll for the month, in the detail prescribed by the market administrator, showing for each producer the information described in § 1030.73(f).

(b) Each handler operating a partially regulated distributing plant who elects to make payment pursuant to § 1000.76(b) shall report for each dairy farmer who would have been a producer if the plant had been fully regulated in the same manner as prescribed for reports required by paragraph (a) of this section.

§ 1030.32 Other reports.

In addition to the reports required pursuant to §§ 1030.30 and 1030.31, each handler shall report any information the market administrator deems necessary to verify or establish each handler's obligation under the order.

Classification of Milk

§ 1030.40 Classes of utilization.

See § 1000.40.

§ 1030.41 [Reserved]

§ 1030.42 Classification of transfers and diversions.

See § 1000.42.

§ 1030.43 General classification rules.

See § 1000.43.

§ 1030.44 Classification of producer milk.

See § 1000.44.

§ 1030.45 Market administrator's reports and announcements concerning classification.

See § 1000.45.

Class Prices

§ 1030.50 Class prices, component prices, and advanced pricing factors.

See § 1000.50.

§ 1030.51 Class I differential and price.

The Class I differential shall be the differential established for Cook County, Illinois, which is reported in § 1000.52. The Class I price shall be the price computed pursuant to § 1000.50(a) for Cook County, Illinois.

§ 1030.52 Adjusted Class I differentials.

See § 1000.52.

§ 1030.53 Announcement of class prices, component prices, and advanced pricing factors.

See § 1000.53.

§ 1030.54 Equivalent price.

See § 1000.54.

§ 1030.55 Transportation credits and assembly credits.

(a) Each handler operating a pool distributing plant described in § 1030.7(a), (b), or (e) that receives bulk milk from another pool plant shall receive a transportation credit for such milk computed as follows:

(1) Determine the hundredweight of milk eligible for the credit by completing the steps in paragraph (c) of this section;

(2) Multiply the hundredweight of milk eligible for the credit by .28 cents times the number of miles between the transferor plant and the transferee plant;

(3) Subtract the effective Class I price at the transferor plant from the effective Class I price at the transferee plant;

(4) Multiply any positive amount resulting from the subtraction in paragraph (a)(3) of this section by the hundredweight of milk eligible for the credit; and

(5) Subtract the amount computed in paragraph (a)(4) of this section from the

amount computed in paragraph (a)(2) of this section. If the amount computed in paragraph (a)(4) of this section exceeds the amount computed in paragraph (a)(2) of this section, the transportation credit shall be zero.

(b) Each handler operating a pool distributing plant described in § 1030.7(a), (b), or (e) that receives milk from dairy farmers, each handler that transfers or diverts bulk milk from a pool plant to a pool distributing plant, and each handler described in § 1000.9(c) that delivers producer milk to a pool distributing plant shall receive an assembly credit on the portion of such milk eligible for the credit pursuant to paragraph (c) of this section. The credit shall be computed by multiplying the hundredweight of milk eligible for the credit by 8 cents.

(c) The following procedure shall be used to determine the amount of milk eligible for transportation and assembly credits pursuant to paragraphs (a) and (b) of this section:

(1) At each pool distributing plant, determine the aggregate quantity of Class I milk, excluding beginning inventory of packaged fluid milk products;

(2) Subtract the quantity of packaged fluid milk products received at the pool distributing plant from other pool plants and from nonpool plants if such receipts are assigned to Class I;

(3) Subtract the quantity of bulk milk shipped from the pool distributing plant to other plants to the extent that such milk is classified as Class I milk;

(4) Subtract the quantity of bulk milk received at the pool distributing plant from other order plants and unregulated supply plants that is assigned to Class I pursuant to §§ 1000.43(d) and 1000.44; and

(5) Assign the remaining quantity pro rata to physical receipts during the month from:

(i) Producers;

(ii) Handlers described in § 1000.9(c); and

(iii) Other pool plants.

(d) For purposes of this section, the distances to be computed shall be determined by the market administrator using the shortest available state and/or Federal highway mileage. Mileage determinations are subject to redetermination at all times. In the event a handler requests a redetermination of the mileage pertaining to any plant, the market administrator shall notify the handler of such redetermination within 30 days after the receipt of such request. Any financial obligations resulting from a change in mileage shall not be retroactive for any periods prior to the redetermination by the market administrator.

Producer Price Differential

§ 1030.60 Handler's value of milk.

For the purpose of computing a handler's obligation for producer milk, the market administrator shall determine for each month the value of milk of each handler with respect to each of the handler's pool plants and of each handler described in § 1000.9(c) with respect to milk that was not received at a pool plant by adding the amounts computed in paragraphs (a) through (i) of this section and subtracting from that total amount the values computed in paragraphs (j) and (k) of this section. Unless otherwise specified, the skim milk, butterfat, and the combined pounds of skim milk and butterfat referred to in this section shall result from the steps set forth in § 1000.44(a), (b), and (c), respectively, and the nonfat components of producer milk in each class shall be based upon the proportion of such components in producer skim milk. Receipts of nonfluid milk products that are distributed as labeled reconstituted milk for which payments are made to the producer-settlement fund of another Federal order under § 1000.76(a)(4) or (d) shall be excluded from pricing under this section.

(a) Class I value.

(1) Multiply the pounds of skim milk in Class I by the Class I skim milk price; and

(2) Add an amount obtained by multiplying the pounds of butterfat in Class I by the Class I butterfat price.

(b) Class II value.

(1) Multiply the pounds of nonfat solids in Class II skim milk by the Class II nonfat solids price; and

(2) Add an amount obtained by multiplying the pounds of butterfat in Class II times the Class II butterfat price.

(c) Class III value.

(1) Multiply the pounds of protein in Class III skim milk by the protein price;

(2) Add an amount obtained by multiplying the pounds of other solids in Class III skim milk by the other solids price; and

(3) Add an amount obtained by multiplying the pounds of butterfat in Class III by the butterfat price.

(d) Class IV value.

(1) Multiply the pounds of nonfat solids in Class IV skim milk by the nonfat solids price; and

(2) Add an amount obtained by multiplying the pounds of butterfat in Class IV by the butterfat price.

(e) Compute an adjustment for the somatic cell content of producer milk by multiplying the values reported pursuant to § 1030.30(a)(1) and (c)(1) by the percentage of total producer milk allocated to Class II, Class III, and Class IV pursuant to § 1000.44(c);

(f) Multiply the pounds of skim milk and butterfat overage assigned to each class pursuant to § 1000.44(a)(11) and the corresponding step of § 1000.44(b) by the skim milk prices and butterfat prices applicable to each class.

(g) Multiply the difference between the current month's Class I, II, or III price, as the case may be, and the Class IV price for the preceding month and by the hundredweight of skim milk and butterfat subtracted from Class I, II, or III, respectively, pursuant to § 1000.44(a)(7) and the corresponding step of § 1000.44(b);

(h) Multiply the difference between the Class I price applicable at the location of the pool plant and the Class IV price by the hundredweight of skim milk and butterfat assigned to Class I pursuant to § 1000.43(d) and the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1000.44(a)(3)(i) through (vi) and the corresponding step of § 1000.44(b), excluding receipts of bulk fluid cream products from plants regulated under other Federal orders and bulk concentrated fluid milk products from pool plants, plants regulated under other Federal orders, and unregulated supply plants.

(i) Multiply the difference between the Class I price applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received and the Class III price by the pounds of skim milk and butterfat in receipts of concentrated fluid milk products assigned to Class I pursuant to § 1000.43(d) and § 1000.44(a)(3)(i) and the corresponding step of § 1000.44(b) and the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1000.44(a)(8) and the corresponding step of § 1000.44(b), excluding such skim milk and butterfat in receipts of fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order.

(j) For reconstituted milk made from receipts of nonfluid milk products, multiply $1.00 (but not more than the difference between the Class I price applicable at the location of the pool plant and the Class IV price) by the hundredweight of skim milk and butterfat contained in receipts of

nonfluid milk products that are allocated to Class I use pursuant to § 1000.43(d).

(k) Compute the amount of credits applicable pursuant to § 1030.55.

§ 1030.61 Computation of producer price differential.

For each month the market administrator shall compute a producer price differential per hundredweight. The report of any handler who has not made payments required pursuant to § 1030.71 for the preceding month shall not be included in the computation of the producer price differential, and such handler's report shall not be included in the computation for succeeding months until the handler has made full payment of outstanding monthly obligations. Subject to the aforementioned conditions, the market administrator shall compute the producer price differential in the following manner:

(a) Combine into one total the values computed pursuant to § 1030.60 for all handlers required to file reports prescribed in § 1030.30;

(b) Subtract the total values obtained by multiplying each handler's total pounds of protein, other solids, and butterfat contained in the milk for which an obligation was computed pursuant to § 1030.60 by the protein price, the other solids price, and the butterfat price, respectively, and the total value of the somatic cell adjustment pursuant to § 1030.30(a)(1) and (c)(1);

(c) Add an amount equal to the sum of the location adjustments computed pursuant to § 1030.75;

(d) Add an amount equal to not less than one-half of the unobligated balance in the producer-settlement fund;

(e) Divide the resulting amount by the sum of the following for all handlers included in these computations:

(1) The total hundredweight of producer milk; and

(2) The total hundredweight for which a value is computed pursuant to § 1030.60(i); and

(f) Subtract not less than 4 cents nor more than 5 cents from the price computed pursuant to paragraph (e) of this section. The result shall be known as the *producer price differential* for the month.

§ 1030.62 Announcement of producer prices.

On or before the 13th day after the end of each month, the market administrator shall announce publicly the following prices and information:

(a) The producer price differential;

(b) The protein price;

(c) The nonfat solids price;

(d) The other solids price;

(e) The butterfat price;

(f) The somatic cell adjustment rate;

(g) The average butterfat, nonfat solids, protein and other solids content of producer milk; and

(h) The statistical uniform price for milk containing 3.5 percent butterfat, computed by combining the Class III price and the producer price differential.

Payments for Milk

§ 1030.70 Producer-settlement fund.

See § 1000.70.

§ 1030.71 Payments to the producer-settlement fund.

Each handler shall make payment to the producer-settlement fund in a manner that provides receipt of the funds by the market administrator no later than the 15th day after the end of the month (except as provided in § 1000.90). Payment shall be the amount, if any, by which the amount specified in paragraph (a) of this section exceeds the amount specified in paragraph (b) of this section:

(a) The total value of milk to the handler for the month as determined pursuant to § 1030.60.

(b) The sum of:

(1) An amount obtained by multiplying the total hundredweight of producer milk as determined pursuant to § 1000.44(c) by the producer price differential as adjusted pursuant to § 1030.75;

(2) An amount obtained by multiplying the total pounds of protein, other solids, and butterfat contained in producer milk by the protein, other solids, and butterfat prices respectively;

(3) The total value of the somatic cell adjustment to producer milk; and

(4) An amount obtained by multiplying the pounds of skim milk and butterfat for which a value was computed pursuant to § 1030.60(i) by the producer price differential as adjusted pursuant to § 1030.75 for the location of the plant from which received.

§ 1030.72 Payments from the producer-settlement fund.

No later than the 16th day after the end of each month (except as provided in § 1000.90), the market administrator shall pay to each handler the amount, if any, by which the amount computed pursuant to § 1030.71(b) exceeds the amount computed pursuant to § 1030.71(a). If, at such time, the balance in the producer-settlement fund is insufficient to make all payments pursuant to this section, the market administrator shall reduce uniformly such payments and shall complete the payments as soon as the funds are available.

§ 1030.73 Payments to producers and to cooperative associations.

(a) Each handler shall pay each producer for producer milk for which payment is not made to a cooperative association pursuant to paragraph (b) of this section, as follows:

(1) *Partial payment.* For each producer who has not discontinued shipments as of the date of this partial payment, payment shall be made so that it is received by each producer on or before the 26th day of the month (except as provided in § 1000.90) for milk received during the first 15 days of the month from the producer at not less than the lowest announced class price for the preceding month, less proper deductions authorized in writing by the producer.

(2) *Final payment.* For milk received during the month, payment shall be made so that it is received by each producer no later than the 17th day after the end of the month (except as provided in § 1000.90) in an amount equal to not less than the sum of:

(i) The hundredweight of producer milk received times the producer price differential for the month as adjusted pursuant to § 1030.75;

(ii) The pounds of butterfat received times the butterfat price for the month;

(iii) The pounds of protein received times the protein price for the month;

(iv) The pounds of other solids received times the other solids price for the month;

(v) The hundredweight of milk received times the somatic cell adjustment for the month;

(vi) Less any payment made pursuant to paragraph (a)(1) of this section;

(vii) Less proper deductions authorized in writing by such producer, and plus or minus adjustments for errors in previous payments to such producer subject to approval by the market administrator; and

(viii) Less deductions for marketing services pursuant to § 1000.86.

(b) *Payments for milk received from cooperative association members.* On or before the day prior to the dates specified in paragraphs (a)(1) and (a)(2) of this section (except as provided in § 1000.90), each handler shall pay to a cooperative association for milk from producers who market their milk through the cooperative association and who have authorized the cooperative to collect such payments on their behalf an amount equal to the sum of the individual payments otherwise payable for such producer milk pursuant to

paragraphs (a)(1) and (a)(2) of this section.

(c) *Payment for milk received from cooperative association pool plants or from cooperatives as handlers pursuant to § 1000.9(c).* On or before the day prior to the dates specified in paragraphs (a)(1) and (a)(2) of this section (except as provided in § 1000.90), each handler who receives fluid milk products at its plant from a cooperative association in its capacity as the operator of a pool plant or who receives milk from a cooperative association in its capacity as a handler pursuant to § 1000.9(c), including the milk of producers who are not members of such association and who the market administrator determines have authorized the cooperative association to collect payment for their milk, shall pay the cooperative for such milk as follows:

(1) For bulk fluid milk products and bulk fluid cream products received from a cooperative association in its capacity as the operator of a pool plant and for milk received from a cooperative association in its capacity as a handler pursuant to § 1000.9(c) during the first 15 days of the month, at not less than the lowest announced class prices per hundredweight for the preceding month;

(2) For the total quantity of bulk fluid milk products and bulk fluid cream products received from a cooperative association in its capacity as the operator of a pool plant, at not less than the total value of such products received from the association's pool plants, as determined by multiplying the respective quantities assigned to each class under § 1000.44, as follows:

(i) The hundredweight of Class I skim milk times the Class I skim milk price for the month plus the pounds of Class I butterfat times the Class I butterfat price for the month. The Class I price to be used shall be that price effective at the location of the receiving plant;

(ii) The pounds of nonfat solids in Class II skim milk by the Class II nonfat solids price;

(iii) The pounds of butterfat in Class II times the Class II butterfat price;

(iv) The pounds of nonfat solids in Class IV times the nonfat solids price;

(v) The pounds of butterfat in Class III and Class IV milk times the butterfat price;

(vi) The pounds of protein in Class III milk times the protein price;

(vii) The pounds of other solids in Class III milk times the other solids price;

(viii) The hundredweight of Class II, Class III, and Class IV milk times the somatic cell adjustment; and

(ix) Add together the amounts computed in paragraphs (c)(2)(i) through (viii) of this section and from that sum deduct any payment made pursuant to paragraph (c)(1) of this section; and

(3) For the total quantity of milk received during the month from a cooperative association in its capacity as a handler under § 1000.9(c) as follows:

(i) The hundredweight of producer milk received times the producer price differential as adjusted pursuant to § 1030.75;

(ii) The pounds of butterfat received times the butterfat price for the month;

(iii) The pounds of protein received times the protein price for the month;

(iv) The pounds of other solids received times the other solids price for the month;

(v) The hundredweight of milk received times the somatic cell adjustment for the month; and

(vi) Add together the amounts computed in paragraphs (c)(3)(i) through (v) of this section and from that sum deduct any payment made pursuant to paragraph (c)(1) of this section.

(d) If a handler has not received full payment from the market administrator pursuant to § 1030.72 by the payment date specified in paragraph (a), (b) or (c) of this section, the handler may reduce pro rata its payments to producers or to the cooperative association (with respect to receipts described in paragraph (b) of this section, prorating the underpayment to the volume of milk received from the cooperative association in proportion to the total milk received from producers by the handler), but not by more than the amount of the underpayment. The payments shall be completed on the next scheduled payment date after receipt of the balance due from the market administrator.

(e) If a handler claims that a required payment to a producer cannot be made because the producer is deceased or cannot be located, or because the cooperative association or its lawful successor or assignee is no longer in existence, the payment shall be made to the producer-settlement fund, and in the event that the handler subsequently locates and pays the producer or a lawful claimant, or in the event that the handler no longer exists and a lawful claim is later established, the market administrator shall make the required payment from the producer-settlement fund to the handler or to the lawful claimant, as the case may be.

(f) In making payments to producers pursuant to this section, each handler shall furnish each producer, except a producer whose milk was received from a cooperative association handler described in § 1000.9(a) or (c), a supporting statement in a form that may be retained by the recipient which shall show:

(1) The name, address, Grade A identifier assigned by a duly constituted regulatory agency, and payroll number of the producer;

(2) The daily and total pounds, and the month and dates such milk was received from that producer;

(3) The total pounds of butterfat, protein, and other solids contained in the producer's milk;

(4) The somatic cell count of the producer's milk;

(5) The minimum rate or rates at which payment to the producer is required pursuant to this order;

(6) The rate used in making payment if the rate is other than the applicable minimum rate;

(7) The amount, or rate per hundredweight, or rate per pound of component, and the nature of each deduction claimed by the handler; and

(8) The net amount of payment to the producer or cooperative association.

§ 1030.74 [Reserved]

§ 1030.75 Plant location adjustments for producer milk and nonpool milk.

For purposes of making payments for producer milk and nonpool milk, a plant location adjustment shall be determined by subtracting the Class I price specified in § 1030.51 from the Class I price at the plant's location. The difference, plus or minus as the case may be, shall be used to adjust the payments required pursuant to §§ 1030.73 and 1000.76.

§ 1030.76 Payments by a handler operating a partially regulated distributing plant.

See § 1000.76.

§ 1030.77 Adjustment of accounts.

See § 1000.77.

§ 1030.78 Charges on overdue accounts.

See § 1000.78.

Administrative Assessment and Marketing Service Deduction

§ 1030.85 Assessment for order administration.

See § 1000.85.

§ 1030.86 Deduction for marketing services.

See § 1000.86.

PART 1032—MILK IN THE CENTRAL MARKETING AREA

Subpart—Order Regulating Handling

General Provisions

Sec.
1032.1 General provisions.

Definitions

1032.2 Central marketing area.
1032.3 Route disposition.
1032.4 Plant.
1032.5 Distributing plant.
1032.6 Supply plant.
1032.7 Pool plant.
1032.8 Nonpool plant.
1032.9 Handler.
1032.10 Producer-handler.
1032.11 [Reserved]
1032.12 Producer.
1032.13 Producer milk.
1032.14 Other source milk.
1032.15 Fluid milk product.
1032.16 Fluid cream product.
1032.17 [Reserved]
1032.18 Cooperative association.
1032.19 Commercial food processing establishment.

Handler Reports

1032.30 Reports of receipts and utilization.
1032.31 Payroll reports.
1032.32 Other reports.

Classification of Milk

1032.40 Classes of utilization.
1032.41 [Reserved]
1032.42 Classification of transfers and diversions.
1032.43 General classification rules.
1032.44 Classification of producer milk.
1032.45 Market administrator's reports and announcements concerning classification.

Class Prices

1032.50 Class prices, component prices, and advanced pricing factors.
1032.51 Class I differential and price.
1032.52 Adjusted Class I differentials.
1032.53 Announcement of class prices, component prices, and advanced pricing factors.
1032.54 Equivalent price.

Producer Price Differential

1032.60 Handler's value of milk.
1032.61 Computation of producer price differential.
1032.62 Announcement of producer prices.

Payments for Milk

1032.70 Producer-settlement fund.
1032.71 Payments to the producer-settlement fund.
1032.72 Payments from the producer-settlement fund.
1032.73 Payments to producers and to cooperative associations.
1032.74 [Reserved]
1032.75 Plant location adjustments for producer milk and nonpool milk.
1032.76 Payments by a handler operating a partially regulated distributing plant.
1032.77 Adjustment of accounts.
1032.78 Charges on overdue accounts.

Administrative Assessment and Marketing Service Deduction

1032.85 Assessment for order administration.
1032.86 Deduction for marketing services.

Authority: 7 U.S.C. 601—674.

Subpart—Order Regulating Handling

General Provisions

§ 1032.1 General provisions.

The terms, definitions, and provisions in part 1000 of this chapter apply to and are hereby made a part of this order. In this part 1032, all references to sections in part 1000 refer to part 1000 of this chapter.

Definitions

§ 1032.2 Central marketing area.

The marketing area means all territory within the bounds of the following states and political subdivisions, including all piers, docks, and wharves connected therewith and all craft moored thereat, and all territory occupied by government (municipal, State, or Federal) reservations, installations, institutions, or other similar establishments if any part thereof is within any of the listed states or political subdivisions:

Colorado Counties

Adams, Arapahoe, Baca, Bent, Boulder, Chaffee, Clear Creek, Cheyenne, Crowley, Custer, Delta, Denver, Douglas, Eagle, El Paso, Elbert, Freemont, Garfield, Gilpin, Gunnison, Huerfano, Jefferson, Kiowa, Kit Carson, Lake, Larimer, Las Animas, Lincoln, Logan, Mesa, Montrose, Morgan, Otero, Park, Phillips, Pitkin, Prowers, Pueblo, Sedgwick, Summit, Teller, Washington, Weld, and Yuma.

Illinois Counties

Adams, Alexander, Bond, Brown, Bureau, Calhoun, Cass, Champaign, Christian, Clark, Clay, Clinton, Coles, Crawford, Cumberland, De Witt, Douglas, Edgar, Edwards, Effingham, Fayette, Ford, Franklin, Fulton, Gallatin, Greene, Grundy, Hamilton, Hancock, Hardin, Henderson, Henry, Iroquois, Jackson, Jasper, Jefferson, Jersey, Johnson, Kankakee, Knox, La Salle, Lawrence, Livingston, Logan, McDonough, McLean, Macon, Macoupin, Madison, Marion, Marshall, Mason, Massac, Menard, Mercer, Monroe, Montgomery, Morgan, Moultrie, Peoria, Perry, Piatt, Pike, Pope, Pulaski, Putnam, Randolph, Richland, Rock Island, Saline, Sangamon, Schuyler, Scott, Shelby, St. Clair, Stark, Tazewell, Union, Vermilion, Wabash, Warren, Washington, Wayne, White, Whiteside, Williamson, and Woodford.

Iowa Counties

All Iowa counties except Howard, Kossuth, Mitchell, Winnebago, Winneshiek, and Worth.

Kansas

All of the State of Kansas.

Minnesota Counties

Lincoln, Nobles, Pipestone, and Rock.

Missouri Counties and Cities

The counties of Andrew, Atchison, Bates, Buchanan, Caldwell, Carroll, Cass, Clay, Clinton, Daviess, De Kalb, Franklin, Gentry, Grundy, Harrison, Henry, Hickory, Holt, Jackson, Jefferson, Johnson, Lafayette, Lincoln, Livingston, Mercer, Nodaway, Pettis, Platte, Putnam, Ray, Saline, Schuyler, St. Charles, St. Clair, Ste. Genevieve, St. Louis, Sullivan, Warren, and Worth; and the city of St. Louis.

Nebraska Counties

Adams, Antelope, Boone, Buffalo, Burt, Butler, Cass, Cedar, Chase, Clay, Colfax, Cuming, Custer, Dakota, Dawson, Dixon, Dodge, Douglas, Dundy, Fillmore, Franklin, Frontier, Furnas, Gage, Gosper, Greeley, Hall, Hamilton, Harlan, Hayes, Hitchcock, Howard, Jefferson, Johnson, Kearney, Keith, Knox, Lancaster, Lincoln, Madison, Merrick, Nance, Nemaha, Nuckolls, Otoe, Pawnee, Perkins, Phelps, Pierce, Platte, Polk, Red Willow, Richardson, Saline, Sarpy, Saunders, Seward, Sherman, Stanton, Thayer, Thurston, Valley, Washington, Wayne, Webster, and York.

Oklahoma

All of the State of Oklahoma.

South Dakota Counties

Aurora, Beadle, Bon Homme, Brookings, Clark, Clay, Codington, Davison, Deuel, Douglas, Hamlin, Hanson, Hutchinson, Jerauld, Kingsbury, Lake, Lincoln, McCook, Miner, Minnehaha, Moody, Sanborn, Spink, Turner, Union, and Yankton.

Wisconsin Counties

Crawford and Grant.

§ 1032.3 Route disposition.

See § 1000.3.

§ 1032.4 Plant.

See § 1000.4.

§ 1032.5 Distributing plant.

See § 1000.5.

§ 1032.6 Supply plant.

See § 1000.6.

§ 1032.7 Pool plant.

Pool plant means a plant, unit of plants, or system of plants as specified in paragraphs (a) through (f) of this section, but excluding a plant specified in paragraph (h) of this section. The pooling standards described in paragraphs (c), (d), and (f) of this section are subject to modification pursuant to paragraph (g) of this section:

(a) A distributing plant, other than a plant qualified as a pool plant pursuant to paragraph (b) of this section or section 7(b) of any other Federal milk order, from which during the month 25 percent or more of the total quantity of fluid milk products physically received

at the plant (excluding concentrated milk received from another plant by agreement for other than Class I use) are disposed of as route disposition or are transferred in the form of packaged fluid milk products to other distributing plants. At least 25 percent of such route disposition and transfers must be to outlets in the marketing area.

(b) Any distributing plant located in the marketing area which during the month processed at least 25 percent of the total quantity of fluid milk products physically received at the plant (excluding concentrated milk received from another plant by agreement for other than Class I use) into ultra-pasteurized or aseptically-processed fluid milk products.

(c) A supply plant from which the quantity of bulk fluid milk products transferred or diverted to plants described in paragraph (a) or (b) of this section during each of the months of September through November and January is 35 percent or more of the total Grade A milk received at the plant from dairy farmers (except dairy farmers described in § 1032.12(b)) and handlers described in § 1000.9(c), including milk diverted by the plant operator, and 25 percent for all other months, subject to the following conditions:

(1) A supply plant that has qualified as a pool plant during each of the immediately preceding months of August through April shall continue to so qualify in each of the following months of May through July, unless the plant operator files a written request with the market administrator that such plant not be a pool plant, such nonpool status to be effective the first month following such request and thereafter until the plant qualifies as a pool plant on the basis of milk shipments;

(2) A pool plant operator may include as qualifying shipments milk diverted to pool distributing plants pursuant to § 1032.13(c);

(3) Concentrated milk transferred from the supply plant to a distributing plant for an agreed-upon use other than Class I shall be excluded from the supply plant's shipments in computing the supply plant's shipping percentage;

(4) The operator of a supply plant may include as qualifying shipments transfers of fluid milk products to distributing plants regulated under any other Federal order, except that credit for such transfers shall be limited to the amount of milk, including milk shipped directly from producers' farms, delivered to distributing plants qualified as pool plants pursuant to paragraphs (a) or (b) of this section; and

(5) No plant may qualify as a pool plant due to a reduction in the shipping percentage pursuant to paragraph (g) of this section unless it has been a pool supply plant during each of the immediately preceding 3 months.

(d) A plant located in the marketing area and operated by a cooperative association if, during the month or the immediately preceding 12-month period, 35 percent or more of the producer milk of members of the association (and any producer milk of nonmembers and members of another cooperative association which may be marketed by the cooperative association) is physically received in the form of bulk fluid milk products (excluding concentrated milk transferred to a distributing plant for an agreed-upon use other than Class I) at plants specified in paragraph (a) or (b) of this section either directly from farms or by transfer from supply plants operated by the cooperative association and from plants of the cooperative association for which pool plant status has been requested under this paragraph subject to the following conditions:

(1) The plant does not qualify as a pool plant under paragraph (a), (b) or (c) of this section or under comparable provisions of another Federal order; and

(2) The plant is approved by a duly constituted regulatory agency for the handling of milk approved for fluid consumption in the marketing area.

(e) Two or more plants operated by the same handler and located in the marketing area may qualify for pool status as a unit by meeting the total and in-area route disposition requirements of a pool distributing plant specified in paragraph (a) of this section subject to the following additional requirements:

(1) At least one of the plants in the unit must qualify as a pool plant pursuant to paragraph (a) of this section;

(2) Other plants in the unit must process Class I or Class II products, using 50 percent or more of the total Grade A fluid milk products received in bulk form at such plant or diverted therefrom by the plant operator in Class I or Class II products, and must be located in a pricing zone providing the same or a lower Class I price than the price applicable at the distributing plant included in the unit pursuant to paragraph (e)(1) of this section; and

(3) The operator of the unit has filed a written request with the market administrator prior to the first day of the month for which such status is desired to be effective. The unit shall continue from month to month thereafter without further notification. The handler shall notify the market administrator in writing prior to the first day of any month for which termination or any change of the unit is desired.

(f) A system of supply plants may qualify for pooling if 2 or more plants operated by one or more handlers meet the applicable percentage requirements of paragraph (c) of this section in the same manner as a single plant, subject to the following additional requirements:

(1) Each plant in the system is located within the marketing area;

(2) The handler(s) establishing the system submits a written request to the market administrator on or before September 1 requesting that such plants qualify as a system for the period of September through August of the following year. Such request will contain a list of the plants participating in the system;

(3) Each plant included within a pool supply plant system shall continue each month as a plant in the system through the following August unless the handler(s) establishing the system submits a written request to the market administrator that the plant be deleted from the system or that the system be discontinued. Any plant that has been so deleted from a system, or that has failed to qualify in any month, will not be part of any system for the remaining months through August. No plant may be added in any subsequent month through the following August to a system that qualifies in September; and

(4) If a system fails to qualify under the requirements of this paragraph, the handler responsible for qualifying the system shall notify the market administrator which plant or plants will be deleted from the system so that the remaining plants may be pooled as a system. If the handler fails to do so, the market administrator shall exclude one or more plants, beginning at the bottom of the list of plants in the system and continuing up the list as necessary until the deliveries are sufficient to qualify the remaining plants in the system.

(g) The applicable shipping percentages of paragraphs (c), (d), and (f) of this section may be increased or decreased, for all or part of the marketing area, by the market administrator if the market administrator finds that such adjustment is necessary to encourage needed shipments or to prevent uneconomic shipments. Before making such a finding, the market administrator shall investigate the need for adjustment either on the market administrator's own initiative or at the request of interested parties if the request is made in writing at least 15 days prior to the month for which the requested revision is desired effective. If the investigation shows that an adjustment of the shipping percentages might be

appropriate, the market administrator shall issue a notice stating that an adjustment is being considered and invite data, views and arguments. Any decision to revise an applicable shipping percentage must be issued in writing at least one day before the effective date.

(h) The term pool plant shall not apply to the following plants:

(1) A producer-handler as defined under any Federal order;

(2) An exempt plant as defined in § 1000.8(e);

(3) A plant located within the marketing area and qualified pursuant to paragraph (a) of this section which meets the pooling requirements of another Federal order, and from which more than 50 percent of its route disposition has been in the other Federal order marketing area for 3 consecutive months. On the basis of a written application made by the plant operator at least 15 days prior to the date for which a determination of the market administrator is to be effective, the market administrator may determine that the route disposition in the respective marketing areas to be used for purposes of this paragraph shall exclude (for a specified period of time) route disposition made under limited term contracts to governmental bases and institutions;

(4) A plant located outside any Federal order marketing area and qualified pursuant to paragraph (a) of this section that meets the pooling requirements of another Federal order and has had greater route disposition in such other Federal order's marketing area for 3 consecutive months;

(5) A plant located in another Federal order marketing area and qualified pursuant to paragraph (a) of this section that meets the pooling requirements of such other Federal order and does not have a majority of its route distribution in this marketing area for 3 consecutive months or if the plant is required to be regulated under such other Federal order without regard to its route disposition in any other Federal order marketing area;

(6) A plant qualified pursuant to paragraph (c) of this section which also meets the pooling requirements of another Federal order and from which greater qualifying shipments are made to plants regulated under the other Federal order than are made to plants regulated under this order, or the plant has automatic pooling status under the other Federal order; and

(7) That portion of a regulated plant designated as a nonpool plant that is physically separate and operated separately from the pool portion of such plant. The designation of a portion of a regulated plant as a nonpool plant must be requested in advance and in writing by the handler and must be approved by the market administrator.

§ 1032.8 Nonpool plant.

See § 1000.8.

§ 1032.9 Handler.

See § 1000.9.

§ 1032.10 Producer-handler.

Producer-handler means a person who:

(a) Operates a dairy farm and a distributing plant from which there is route disposition in the marketing area during the month;

(b) Receives fluid milk from own farm production or milk that is fully subject to the pricing and pooling provisions of this or any other Federal order;

(c) Receives at its plant or acquires for route disposition no more than 150,000 pounds of fluid milk products from handlers fully regulated under any Federal order. This limitation shall not apply if the producer-handler's own farm production is less than 150,000 pounds during the month;

(d) Disposes of no other source milk as Class I milk except by increasing the nonfat milk solids content of the fluid milk products; and

(e) Provides proof satisfactory to the market administrator that the care and management of the dairy animals and other resources necessary to produce all Class I milk handled (excluding receipts from handlers fully regulated under any Federal order) and the processing and packaging operations are the producer-handler's own enterprise and at its own risk.

§ 1032.11 [Reserved]

§ 1032.12 Producer.

(a) Except as provided in paragraph (b) of this section, producer means any person who produces milk approved by a duly constituted regulatory agency for fluid consumption as Grade A milk and whose milk (or components of milk) is:

(1) Received at a pool plant directly from the producer or diverted by the plant operator in accordance with § 1032.13; or

(2) Received by a handler described in § 1000.9(c).

(b) Producer shall not include:

(1) A producer-handler as defined in any Federal order;

(2) A dairy farmer whose milk is received at an exempt plant, excluding producer milk diverted to the exempt plant pursuant to § 1032.13(d);

(3) A dairy farmer whose milk is received by diversion at a pool plant from a handler regulated under another Federal order if the other Federal order designates the dairy farmer as a producer under that order and that milk is allocated by request to a utilization other than Class I; and

(4) A dairy farmer whose milk is reported as diverted to a plant fully regulated under another Federal order with respect to that portion of the milk so diverted that is assigned to Class I under the provisions of such other order.

§ 1032.13 Producer milk.

Producer milk means the skim milk (or the skim equivalent of components of skim milk), including nonfat components, and butterfat in milk of a producer that is:

(a) Received by the operator of a pool plant directly from a producer or a handler described in § 1000.9(c). All milk received pursuant to this paragraph shall be priced at the location of the plant where it is first physically received;

(b) Received by a handler described in § 1000.9(c) in excess of the quantity delivered to pool plants;

(c) Diverted by a pool plant operator to another pool plant. Milk so diverted shall be priced at the location of the plant to which diverted; or

(d) Diverted by the operator of a pool plant or a cooperative association described in § 1000.9(c) to a nonpool plant, subject to the following conditions:

(1) Milk of a dairy farmer shall not be eligible for diversion until at least one day's production of such dairy farmer has been physically received as producer milk at a pool plant and the dairy farmer has continuously retained producer status since that time. If a dairy farmer loses producer status under this order (except as a result of a temporary loss of Grade A approval), the dairy farmer's milk shall not be eligible for diversion until milk of the dairy farmer has been physically received as producer milk at a pool plant;

(2) Of the quantity of producer milk received during the month (including diversions, but excluding the quantity of producer milk received from a handler described in § 1000.9(c)) the handler diverts to nonpool plants not more than 65 percent during the months of September through November and January, and not more than 75 percent during the months of February through April and December;

(3) Diverted milk shall be priced at the location of the plant to which diverted;

(4) Any milk diverted in excess of the limits prescribed in paragraph (d)(2) of

this section shall not be producer milk. If the diverting handler or cooperative association fails to designate the dairy farmers' deliveries that are not to be producer milk, no milk diverted by the handler or cooperative association during the month to a nonpool plant shall be producer milk; and

(5) The applicable diversion limits in paragraph (d)(2) of this section may be increased or decreased by the market administrator if the market administrator finds that such revision is necessary to assure orderly marketing and efficient handling of milk in the marketing area. Before making such a finding, the market administrator shall investigate the need for the revision either on the market administrator's own initiative or at the request of interested persons if the request is made in writing at least 15 days prior to the month for which the requested revision is desired effective. If the investigation shows that a revision might be appropriate, the market administrator shall issue a notice stating that the revision is being considered and inviting written data, views, and arguments. Any decision to revise an applicable percentage must be issued in writing at least one day before the effective date.

§ 1032.14 Other source milk.

See § 1000.14.

§ 1032.15 Fluid milk product.

See § 1000.15.

§ 1032.16 Fluid cream product.

See § 1000.16.

§ 1032.17 [Reserved]

§ 1032.18 Cooperative association.

See § 1000.18.

§ 1032.19 Commercial food processing establishment.

See § 1000.19.

Handler Reports

§ 1032.30 Reports of receipts and utilization.

Each handler shall report monthly so that the market administrator's office receives the report on or before the 7th day after the end of the month, in the detail and on the prescribed forms, as follows:

(a) Each handler that operates a pool plant pursuant to § 1032.7 shall report for each of its operations the following information:

(1) Product pounds, pounds of butterfat, pounds of protein, pounds of solids-not-fat other than protein (other solids), and the value of the somatic cell adjustment pursuant to § 1000.50(p), contained in or represented by:

(i) Receipts of producer milk, including producer milk diverted by the reporting handler, from sources other than handlers described in § 1000.9(c); and

(ii) Receipts of milk from handlers described in § 1000.9(c);

(2) Product pounds and pounds of butterfat contained in:

(i) Receipts of fluid milk products and bulk fluid cream products from other pool plants;

(ii) Receipts of other source milk; and

(iii) Inventories at the beginning and end of the month of fluid milk products and bulk fluid cream products;

(3) The utilization or disposition of all milk and milk products required to be reported pursuant to this paragraph; and

(4) Such other information with respect to the receipts and utilization of skim milk, butterfat, milk protein, other nonfat solids, and somatic cell information, as the market administrator may prescribe.

(b) Each handler operating a partially regulated distributing plant shall report with respect to such plant in the same manner as prescribed for reports required by paragraph (a) of this section. Receipts of milk that would have been producer milk if the plant had been fully regulated shall be reported in lieu of producer milk. The report shall show also the quantity of any reconstituted skim milk in route disposition in the marketing area.

(c) Each handler described in § 1000.9(c) shall report:

(1) The product pounds, pounds of butterfat, pounds of protein, pounds of solids-not-fat other than protein (other solids), and the value of the somatic cell adjustment pursuant to § 1000.50(p), contained in receipts of milk from producers; and

(2) The utilization or disposition of such receipts.

(d) Each handler not specified in paragraphs (a) through (c) of this section shall report with respect to its receipts and utilization of milk and milk products in such manner as the market administrator may prescribe.

§ 1032.31 Payroll reports.

(a) On or before the 20th day after the end of each month, each handler that operates a pool plant pursuant to § 1032.7 and each handler described in § 1000.9(c) shall report to the market administrator its producer payroll for the month, in the detail prescribed by the market administrator, showing for each producer the information described in § 1032.73(f).

(b) Each handler operating a partially regulated distributing plant who elects to make payment pursuant to § 1000.76(b) shall report for each dairy farmer who would have been a producer if the plant had been fully regulated in the same manner as prescribed for reports required by paragraph (a) of this section.

§ 1032.32 Other reports.

In addition to the reports required pursuant to §§ 1032.30 and 1032.31, each handler shall report any information the market administrator deems necessary to verify or establish each handler's obligation under the order.

Classification of Milk

§ 1032.40 Classes of utilization.

See § 1000.40.

§ 1032.41 [Reserved]

§ 1032.42 Classification of transfers and diversions.

See § 1000.42.

§ 1032.43 General classification rules.

See § 1000.43.

§ 1032.44 Classification of producer milk.

See § 1000.44.

§ 1032.45 Market administrator's reports and announcements concerning classification.

See § 1000.45.

Class Prices

§ 1032.50 Class prices, component prices, and advanced pricing factors.

See § 1000.50.

§ 1032.51 Class I differential and price.

The Class I differential shall be the differential established for Jackson County, Missouri, which is reported in § 1000.52. The Class I price shall be the price computed pursuant to § 1000.50(a) for Jackson County, Missouri.

§ 1032.52 Adjusted Class I differentials.

See § 1000.52.

§ 1032.53 Announcement of class prices, component prices, and advanced pricing factors.

See § 1000.53.

§ 1032.54 Equivalent price.

See § 1000.54.

Producer Price Differential

§ 1032.60 Handler's value of milk.

For the purpose of computing a handler's obligation for producer milk, the market administrator shall determine for each month the value of milk of each handler with respect to each of the handler's pool plants and of each handler described in § 1000.9(c)

with respect to milk that was not received at a pool plant by adding the amounts computed in paragraphs (a) through (i) of this section and subtracting from that total amount the value computed in paragraph (j) of this section. Unless otherwise specified, the skim milk, butterfat, and the combined pounds of skim milk and butterfat referred to in this section shall result from the steps set forth in § 1000.44(a), (b), and (c), respectively, and the nonfat components of producer milk in each class shall be based upon the proportion of such components in producer skim milk. Receipts of nonfluid milk products that are distributed as labeled reconstituted milk for which payments are made to the producer-settlement fund of another Federal order under § 1000.76(a)(4) or (d) shall be excluded from pricing under this section.

(a) Class I value.

(1) Multiply the pounds of skim milk in Class I by the Class I skim milk price; and

(2) Add an amount obtained by multiplying the pounds of butterfat in Class I by the Class I butterfat price.

(b) Class II value.

(1) Multiply the pounds of nonfat solids in Class II skim milk by the Class II nonfat solids price; and

(2) Add an amount obtained by multiplying the pounds of butterfat in Class II times the Class II butterfat price.

(c) Class III value.

(1) Multiply the pounds of protein in Class III skim milk by the protein price;

(2) Add an amount obtained by multiplying the pounds of other solids in Class III skim milk by the other solids price; and

(3) Add an amount obtained by multiplying the pounds of butterfat in Class III by the butterfat price.

(d) Class IV value.

(1) Multiply the pounds of nonfat solids in Class IV skim milk by the nonfat solids price; and

(2) Add an amount obtained by multiplying the pounds of butterfat in Class IV by the butterfat price.

(e) Compute an adjustment for the somatic cell content of producer milk by multiplying the values reported pursuant to § 1032.30(a)(1) and (c)(1) by the percentage of total producer milk allocated to Class II, Class III, and Class IV pursuant to § 1000.44(c);

(f) Multiply the pounds of skim milk and butterfat overage assigned to each class pursuant to § 1000.44(a)(11) and the corresponding step of § 1000.44(b) by the skim milk prices and butterfat prices applicable to each class.

(g) Multiply the difference between the current month's Class I, II, or III price, as the case may be, and the Class IV price for the preceding month by the hundredweight of skim milk and butterfat subtracted from Class I, II, or III, respectively, pursuant to § 1000.44(a)(7) and the corresponding step of § 1000.44(b);

(h) Multiply the difference between the Class I price applicable at the location of the pool plant and the Class IV price by the hundredweight of skim milk and butterfat assigned to Class I pursuant to § 1000.43(d) and the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1000.44(a)(3)(i) through (vi) and the corresponding step of § 1000.44(b), excluding receipts of bulk fluid cream products from a plant regulated under other Federal orders and bulk concentrated fluid milk products from pool plants, plants regulated under other Federal orders, and unregulated supply plants.

(i) Multiply the difference between the Class I price applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received and the Class III price by the pounds of skim milk and butterfat in receipts of concentrated fluid milk products assigned to Class I pursuant to § 1000.43(d) and § 1000.44(a)(3)(i) and the corresponding step of § 1000.44(b) and the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1000.44(a)(8) and the corresponding step of § 1000.44(b), excluding such skim milk and butterfat in receipts of fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order.

(j) For reconstituted milk made from receipts of nonfluid milk products, multiply $1.00 (but not more than the difference between the Class I price applicable at the location of the pool plant and the Class IV price) by the hundredweight of skim milk and butterfat contained in receipts of nonfluid milk products that are allocated to Class I use pursuant to § 1000.43(d).

§ 1032.61 Computation of producer price differential.

For each month the market administrator shall compute a producer price differential per hundredweight. The report of any handler who has not made payments required pursuant to § 1032.71 for the preceding month shall not be included in the computation of the producer price differential, and such handler's report shall not be included in the computation for succeeding months until the handler has made full payment of outstanding monthly obligations. Subject to the aforementioned conditions, the market administrator shall compute the producer price differential in the following manner:

(a) Combine into one total the values computed pursuant to § 1032.60 for all handlers required to file reports prescribed in § 1032.30;

(b) Subtract the total values obtained by multiplying each handler's total pounds of protein, other solids, and butterfat contained in the milk for which an obligation was computed pursuant to § 1032.60 by the protein price, the other solids price, and the butterfat price, respectively, and the total value of the somatic cell adjustment pursuant to § 1032.30(a)(1) and (c)(1);

(c) Add an amount equal to the sum of the location adjustments computed pursuant to § 1032.75;

(d) Add an amount equal to not less than one-half of the unobligated balance in the producer-settlement fund;

(e) Divide the resulting amount by the sum of the following for all handlers included in these computations:

(1) The total hundredweight of producer milk; and

(2) The total hundredweight for which a value is computed pursuant to § 1032.60(i); and

(f) Subtract not less than 4 cents nor more than 5 cents from the price computed pursuant to paragraph (e) of this section. The result shall be known as the *producer price differential* for the month.

§ 1032.62 Announcement of producer prices.

On or before the 11th day after the end of each month, the market administrator shall announce publicly the following prices and information:

(a) The producer price differential;

(b) The protein price;

(c) The nonfat solids price;

(d) The other solids price;

(e) The butterfat price;

(f) The somatic cell adjustment rate;

(g) The average butterfat, protein, nonfat solids, and other solids content of producer milk; and

(h) The statistical uniform price for milk containing 3.5 percent butterfat, computed by combining the Class III price and the producer price differential.

Payments for Milk

§ 1032.70 Producer-settlement fund.

See § 1000.70.

§ 1032.71 Payments to the producer-settlement fund.

Each handler shall make payment to the producer-settlement fund in a manner that provides receipt of the funds by the market administrator no later than the 14th day after the end of the month (except as provided in § 1000.90). Payment shall be the amount, if any, by which the amount specified in paragraph (a) of this section exceeds the amount specified in paragraph (b) of this section:

(a) The total value of milk to the handler for the month as determined pursuant to § 1032.60.

(b) The sum of:

(1) An amount obtained by multiplying the total hundredweight of producer milk as determined pursuant to § 1000.44(c) by the producer price differential as adjusted pursuant to § 1032.75;

(2) An amount obtained by multiplying the total pounds of protein, other solids, and butterfat contained in producer milk by the protein, other solids, and butterfat prices respectively;

(3) The total value of the somatic cell adjustment to producer milk; and

(4) An amount obtained by multiplying the pounds of skim milk and butterfat for which a value was computed pursuant to § 1032.60(i) by the producer price differential as adjusted pursuant to § 1032.75 for the location of the plant from which received.

§ 1032.72 Payments from the producer-settlement fund.

No later than the 15th day after the end of each month (except as provided in § 1000.90), the market administrator shall pay to each handler the amount, if any, by which the amount computed pursuant to § 1032.71(b) exceeds the amount computed pursuant to § 1032.71(a). If, at such time, the balance in the producer-settlement fund is insufficient to make all payments pursuant to this section, the market administrator shall reduce uniformly such payments and shall complete the payments as soon as the funds are available.

§ 1032.73 Payments to producers and to cooperative associations.

(a) Each handler shall pay each producer for producer milk for which payment is not made to a cooperative association pursuant to paragraph (b) of this section, as follows:

(1) *Partial payment.* For each producer who has not discontinued shipments as of the date of this partial payment, payment shall be made so that it is received by each producer on or before the 26th day of the month (except as provided in § 1000.90) for milk received during the first 15 days of the month from the producer at not less than the lowest announced class price for the preceding month, less proper deductions authorized in writing by the producer.

(2) *Final payment.* For milk received during the month, payment shall be made so that it is received by each producer no later than the 17th day after the end of the month (except as provided in § 1000.90) in an amount equal to not less than the sum of:

(i) The hundredweight of producer milk received times the producer price differential for the month as adjusted pursuant to § 1032.75;

(ii) The pounds of butterfat received times the butterfat price for the month;

(iii) The pounds of protein received times the protein price for the month;

(iv) The pounds of other solids received times the other solids price for the month;

(v) The hundredweight of milk received times the somatic cell adjustment for the month;

(vi) Less any payment made pursuant to paragraph (a)(1) of this section;

(vii) Less proper deductions authorized in writing by such producer and plus or minus adjustments for errors in previous payments to such producer; and

(viii) Less deductions for marketing services pursuant to § 1000.86.

(b) *Payments for milk received from cooperative association members.* On or before the day prior to the dates specified in paragraphs (a)(1) and (a)(2) of this section (except as provided in § 1000.90), each handler shall pay to a cooperative association for milk from producers who market their milk through the cooperative association and who have authorized the cooperative to collect such payments on their behalf an amount equal to the sum of the individual payments otherwise payable for such producer milk pursuant to paragraphs (a)(1) and (a)(2) of this section.

(c) *Payment for milk received from cooperative association pool plants or from cooperatives as handlers pursuant to § 1000.9(c).* On or before the day prior to the dates specified in paragraphs (a)(1) and (a)(2) of this section (except as provided in § 1000.90), each handler who receives fluid milk products at its plant from a cooperative association in its capacity as the operator of a pool plant or who receives milk from a cooperative association in its capacity as a handler pursuant to § 1000.9(c), including the milk of producers who are not members of such association and who the market administrator determines have authorized the cooperative association to collect payment for their milk, shall pay the cooperative for such milk as follows:

(1) For bulk fluid milk products and bulk fluid cream products received from a cooperative association in its capacity as the operator of a pool plant and for milk received from a cooperative association in its capacity as a handler pursuant to § 1000.9(c) during the first 15 days of the month, at not less than the lowest announced class prices per hundredweight for the preceding month;

(2) For the total quantity of bulk fluid milk products and bulk fluid cream products received from a cooperative association in its capacity as the operator of a pool plant, at not less than the total value of such products received from the association's pool plants, as determined by multiplying the respective quantities assigned to each class under § 1000.44 as follows:

(i) The hundredweight of Class I skim milk times the Class I skim milk price for the month plus the pounds of Class I butterfat times the Class I butterfat price for the month. The Class I prices to be used shall be the prices effective at the location of the receiving plant;

(ii) The pounds of nonfat solids in Class II skim milk by the Class II nonfat solids price;

(iii) The pounds of butterfat in Class II times the Class II butterfat price;

(iv) The pounds of nonfat solids in Class IV times the nonfat solids price;

(v) The pounds of butterfat in Class III and Class IV milk times the butterfat price;

(vi) The pounds of protein in Class III milk times the protein price;

(vii) The pounds of other solids in Class III milk times the other solids price;

(viii) The hundredweight of Class II, Class III, and Class IV milk times the somatic cell adjustment; and

(ix) Add together the amounts computed in paragraphs (c)(2)(i) through (viii) of this section and from that sum deduct any payment made pursuant to paragraph (c)(1) of this section; and

(3) For the total quantity of milk received during the month from a cooperative association in its capacity as a handler under § 1000.9(c) as follows:

(i) The hundredweight of producer milk received times the producer price differential as adjusted pursuant to § 1032.75;

(ii) The pounds of butterfat received times the butterfat price for the month;

(iii) The pounds of protein received times the protein price for the month;

(iv) The pounds of other solids received times the other solids price for the month;

(v) The hundredweight of milk received times the somatic cell adjustment for the month; and

(vi) Add together the amounts computed in paragraphs (c)(3)(i) through (v) of this section and from that sum deduct any payment made pursuant to paragraph (c)(1) of this section.

(d) If a handler has not received full payment from the market administrator pursuant to § 1032.72 by the payment date specified in paragraph (a), (b) or (c) of this section, the handler may reduce pro rata its payments to producers or to the cooperative association (with respect to receipts described in paragraph (b) of this section, prorating the underpayment to the volume of milk received from the cooperative association in proportion to the total milk received from producers by the handler), but not by more than the amount of the underpayment. The payments shall be completed on the next scheduled payment date after receipt of the balance due from the market administrator.

(e) If a handler claims that a required payment to a producer cannot be made because the producer is deceased or cannot be located, or because the cooperative association or its lawful successor or assignee is no longer in existence, the payment shall be made to the producer-settlement fund, and in the event that the handler subsequently locates and pays the producer or a lawful claimant, or in the event that the handler no longer exists and a lawful claim is later established, the market administrator shall make the required payment from the producer-settlement fund to the handler or to the lawful claimant, as the case may be.

(f) In making payments to producers pursuant to this section, each handler shall furnish each producer, except a producer whose milk was received from a cooperative association handler described in § 1000.9(a) or (c), a supporting statement in a form that may be retained by the recipient which shall show:

(1) The name, address, Grade A identifier assigned by a duly constituted regulatory agency, and payroll number of the producer;

(2) The daily and total pounds, and the month and dates such milk was received from that producer;

(3) The total pounds of butterfat, protein, and other solids contained in the producer's milk;

(4) The somatic cell count of the producer's milk;

(5) The minimum rate or rates at which payment to the producer is required pursuant to this order;

(6) The rate used in making payment if the rate is other than the applicable minimum rate;

(7) The amount, or rate per hundredweight, or rate per pound of component, and the nature of each deduction claimed by the handler; and

(8) The net amount of payment to the producer or cooperative association.

§ 1032.74 [Reserved]

§ 1032.75 Plant location adjustments for producer milk and nonpool milk.

For purposes of making payments for producer milk and nonpool milk, a plant location adjustment shall be determined by subtracting the Class I price specified in § 1032.51 from the Class I price at the plant's location. The difference, plus or minus as the case may be, shall be used to adjust the payments required pursuant to §§ 1032.73 and 1000.76.

§ 1032.76 Payments by a handler operating a partially regulated distributing plant.

See § 1000.76.

§ 1032.77 Adjustment of accounts.

See § 1000.77.

§ 1032.78 Charges on overdue accounts.

See § 1000.78.

Administrative Assessment and Marketing Service Deduction

§ 1032.85 Assessment for order administration.

See § 1000.85.

§ 1032.86 Deduction for marketing services.

See § 1000.86.

PART 1033—MILK IN THE MIDEAST MARKETING AREA

Subpart—Order Regulating Handling

General Provisions

Sec.

1033.1 General provisions.

Definitions

1033.2 Mideast marketing area.
1033.3 Route disposition.
1033.4 Plant.
1033.5 Distributing plant.
1033.6 Supply plant.
1033.7 Pool plant.
1033.8 Nonpool plant.
1033.9 Handler.
1033.10 Producer-handler.
1033.11 [Reserved]
1033.12 Producer.
1033.13 Producer milk.
1033.14 Other source milk.
1033.15 Fluid milk product.
1033.16 Fluid cream product.
1033.17 [Reserved]
1033.18 Cooperative association.
1033.19 Commercial food processing establishment.

Handler Reports

1033.30 Reports of receipts and utilization.
1033.31 Payroll reports.
1033.32 Other reports.

Classification of Milk

1033.40 Classes of utilization.
1033.41 [Reserved]
1033.42 Classification of transfers and diversions.
1033.43 General classification rules.
1033.44 Classification of producer milk.
1033.45 Market administrator's reports and announcements concerning classification.

Class Prices

1033.50 Class prices, component prices, and advanced pricing factors.
1033.51 Class I differential and price.
1033.52 Adjusted Class I differentials.
1033.53 Announcement of class prices, component prices, and advanced pricing factors.
1033.54 Equivalent price.

Producer Price Differential

1033.60 Handler's value of milk.
1033.61 Computation of producer price differential.
1033.62 Announcement of producer prices.

Payments for Milk

1033.70 Producer-settlement fund.
1033.71 Payments to the producer-settlement fund.
1033.72 Payments from the producer-settlement fund.
1033.73 Payments to producers and to cooperative associations.
1033.74 [Reserved]
1033.75 Plant location adjustments for producer milk and nonpool milk.
1033.76 Payments by a handler operating a partially regulated distributing plant.
1033.77 Adjustment of accounts.
1033.78 Charges on overdue accounts.

Administrative Assessment and Marketing Service Deduction

1033.85 Assessment for order administration.
1033.86 Deduction for marketing services.

Authority: 7 U.S.C. 601–674.

Subpart—Order Regulating Handling

General Provisions

§ 1033.1 General provisions.

The terms, definitions, and provisions in part 1000 of this chapter apply to and are hereby made a part of this order. In this part 1033, all references to sections in part 1000 refer to part 1000 of this chapter.

Definitions

§ 1033.2 Mideast marketing area.

The marketing area means all territory within the bounds of the following states and political subdivisions, including all piers, docks, and wharves connected therewith and all craft moored thereat, and all territory occupied by government (municipal, State, or Federal) reservations, installations, institutions, or other similar establishments if any part thereof is within any of the listed states or political subdivisions:

Ohio

The townships of Woodville and Madison in Sandusky County and all other counties in Ohio except Erie, Huron, and Ottawa.

Indiana Counties

Adams, Allen, Bartholomew, Benton, Blackford, Boone, Brown, Carroll, Cass, Clay, Clinton, Dearborn, Decatur, De Kalb, Delaware, Elkhart, Fayette, Fountain, Franklin, Fulton, Grant, Hamilton, Hancock, Hendricks, Henry, Howard, Huntington, Jackson, Jasper, Jay, Jefferson, Jennings, Johnson, Kosciusko, Lagrange, Lake, La Porte, Lawrence, Madison, Marion, Marshall, Miami, Monroe, Montgomery, Morgan, Newton, Noble, Ohio, Owen, Parke, Porter, Pulaski, Putnam, Randolph, Ripley, Rush, Shelby, St. Joseph, Starke, Steuben, Switzerland, Tippecanoe, Tipton, Union, Vermillion, Vigo, Wabash, Warren, Wayne, Wells, White, and Whitley.

Kentucky Counties

Boone, Boyd, Bracken, Campbell, Floyd, Grant, Greenup, Harrison, Johnson, Kenton, Lawrence, Lewis, Magoffin, Martin, Mason, Pendleton, Pike, and Robertson.

Michigan Counties

All counties except Delta, Dickinson, Gogebic, Iron, Menominee, and Ontonagon.

Pennsylvania Counties

Allegheny, Armstrong, Beaver, Butler, Crawford, Erie, Fayette, Greene, Lawrence, Mercer, Venango, and Washington.

In Clarion County only the townships of Ashland, Beaver, Licking, Madison, Perry, Piney, Richland, Salem, and Toby.

All of Westmoreland County except the townships of Cook, Donegal, Fairfield, Ligonier, and St. Clair, and the boroughs of Bolivar, Donegal, Ligonier, New Florence, and Seward.

West Virginia Counties

Barbour, Boone, Brooke, Cabell, Calhoun, Doddridge, Fayette, Gilmer, Hancock, Harrison, Jackson, Kanawha, Lewis, Lincoln, Logan, Marion, Marshall, Mason, Mingo, Monongalia, Ohio, Pleasants, Preston, Putnam, Raleigh, Randolph, Ritchie, Roane, Taylor, Tucker, Tyler, Upshur, Wayne, Wetzel, Wirt, Wood, and Wyoming.

§ 1033.3 Route disposition.

See § 1000.3.

§ 1033.4 Plant.

See § 1000.4.

§ 1033.5 Distributing plant.

See § 1000.5.

§ 1033.6 Supply plant.

See § 1000.6.

§ 1033.7 Pool plant.

Pool plant means a plant, unit of plants, or a system of plants as specified in paragraphs (a) through (f) of this section, but excluding a plant specified in paragraph (h) of this section. The pooling standards described in paragraphs (c) through (f) of this section are subject to modification pursuant to paragraph (g) of this section:

(a) A distributing plant, other than a plant qualified as a pool plant pursuant to paragraph (b) of this section or section 7(b) of any other Federal milk order, from which during the month 30 percent or more of the total quantity of fluid milk products physically received at the plant (excluding concentrated milk received from another plant by agreement for other than Class I use) are disposed of as route disposition or are transferred in the form of packaged fluid milk products to other distributing plants. At least 25 percent of such route disposition and transfers must be to outlets in the marketing area.

(b) Any distributing plant located in the marketing area which during the month processed at least 30 percent of the total quantity of fluid milk products physically received at the plant (excluding concentrated milk received from another plant by agreement for other than Class I use) into ultra-pasteurized or aseptically-processed fluid milk products.

(c) A supply plant from which the quantity of bulk fluid milk products shipped to, received at, and physically unloaded into plants described in paragraph (a) or (b) of this section as a percent of the Grade A milk received at the plant from dairy farmers (except dairy farmers described in § 1033.12(b)) and handlers described in § 1033.9(c), as reported in § 1033.30(a), is not less than 30 percent of the milk received from dairy farmers, including milk diverted pursuant to § 1033.13, subject to the following conditions:

(1) Qualifying shipments pursuant to this paragraph may be made to the following plants, except whenever the authority provided in paragraph (g) of this section is applied to increase the shipping requirements specified in this section, only shipments to pool plants described in § 1033.7(a) and (b), shall count as qualifying shipments for the purpose of meeting the increased shipments:

(i) Pool plants described in § 1033.7(a) and (b);

(ii) Plants of producer-handlers;

(iii) Partially regulated distributing plants, except that credit for such shipments shall be limited to the amount of such milk classified as Class I at the transferee plant; and

(iv) Distributing plants fully regulated under other Federal orders, except that credit for transfers to such plants shall be limited to the quantity shipped to pool distributing plants during the month. Qualifying transfers to other order plants shall not include transfers made on the basis of agreed-upon Class II, Class III, or Class IV utilization.

(2) The operator of a supply plant may include deliveries to pool distributing plants directly from farms of producers pursuant to § 1033.13(c) as up to 90 percent of the supply plant's qualifying shipments.

(3) Concentrated milk transferred from the supply plant to a distributing plant for an agreed-upon use other than Class I shall be excluded from the supply plant's shipments in computing the supply plant's shipping percentage.

(4) A supply plant that meets the shipping requirements of this paragraph during each of the immediately preceding months of September through February shall be a pool plant during the following months of March through August unless the milk received at the plant fails to meet the requirements of a duly constituted regulatory agency, the plant fails to meet a shipping requirement instituted pursuant to paragraph (g) of this section, or the plant operator requests nonpool status for the plant. Such nonpool status shall be effective on the first day of the month following the receipt of such request and thereafter until the plant again qualifies as a pool plant on the basis of its deliveries to a pool distributing plant(s). The automatic pool qualification of a plant can be waived if the handler or cooperative requests in writing to the market administrator the nonpool status of such plant. The request must be made prior to the beginning of any month during the March through August period. The plant shall be a nonpool plant for such month and thereafter until it requalifies under paragraph (c) of this section on the basis of actual shipments therefrom. To requalify as a pool plant under paragraph (d), (e) or (f) of this section, such plant must first have met the percentage shipping requirements of paragraph (c) of this section for 6 consecutive months.

(5) A supply plant that does not meet the minimum delivery requirements specified in this paragraph to qualify for pool status in the current month because a distributing plant to which the supply plant delivered its fluid milk products during such month failed to qualify as a pool plant pursuant to paragraph (a) or (b) of this section shall continue to be a pool plant for the current month if such supply plant qualified as a pool plant in the 3 immediately preceding months.

(d) A plant operated by a cooperative association if, during the month, 30 percent or more of the producer milk of members of the association is delivered to a distributing pool plant(s) or to a nonpool plant(s), and classification other than Class I is not requested. Deliveries for qualification purposes may be made directly from the farm or by transfer from such association's plant, subject to the following conditions:

(1) The cooperative requests pool status for such plant;

(2) The 30-percent delivery requirement may be met for the current month or it may be met on the basis of deliveries during the preceding 12-month period ending with the current month;

(3) The plant is approved by a duly constituted regulatory authority to handle milk for fluid consumption; and

(4) The plant does not qualify as a pool plant under paragraph (a), (b), or (c) of this section or under the similar provisions of another Federal order applicable to a distributing plant or supply plant.

(e) A plant located inside the marketing area which has been a pool plant under this order or its predecessor orders for twelve consecutive months, but is not otherwise qualified under this paragraph, if it has a marketing agreement with a cooperative association and it fulfills the following conditions:

(1) The aggregate monthly quantity supplied by all parties to such an agreement as a percentage of the producer milk receipts included in the unit during the month is not less than 35 percent; and

(2) Shipments for qualification purposes shall include both transfers from supply plants to plants described in paragraph (c)(1) of this section, and deliveries made direct from the farm to plants qualified under paragraph (a) of this section.

(f) A system of supply plants may qualify for pooling if 2 or more plants operated by one or more handlers meet the applicable percentage requirements of paragraph (c) of this section in the same manner as a single plant subject to the following additional requirements:

(1) Each plant in the system is located within the marketing area, or was a pool supply plant for each of the 3 months immediately preceding the effective date of this paragraph so long as it continues to maintain pool status. Cooperative associations may not use shipments pursuant to § 1033.9(c) to qualify plants located outside the marketing area;

(2) A written notification to the market administrator listing the plants to be included in the system and the handler that is responsible for meeting the performance requirements of this paragraph under a marketing agreement certified to the market administrator by the designated handler and any others included in the system, and the period during which such consideration shall apply. Such notice, and notice of any change in designation, shall be furnished on or before the 5th working day following the month to which the notice applies. The listed plants included in the system shall also be in the sequence in which they shall qualify for pool plant status based on the minimum deliveries required. If the deliveries made are insufficient to qualify the entire system for pooling, the last listed plant shall be excluded from the system, followed by the plant next-to-last on the list, and continuing in this sequence until remaining listed plants have met the minimum shipping requirements; and

(3) Each plant that qualifies as a pool plant within a system shall continue each month as a plant in the system unless the plant subsequently fails to qualify for pooling, or the responsible handler submits a written notification to the market administrator prior to the first day of the month that the plant is to be deleted from the system, or that the system is to be discontinued. In any month of March through August, a system shall not contain any plant which was not qualified under this paragraph, either individually or as a member of a system, during the previous September through February.

(g) The applicable shipping percentages of paragraphs (c) through (f) of this section may be increased or decreased by the market administrator if the market administrator finds that such adjustment is necessary to encourage needed shipments or to prevent uneconomic shipments. Before making such a finding, the market administrator shall investigate the need for adjustment either on the market administrator's own initiative or at the request of interested parties if the request is made in writing at least 15 days prior to the month for which the requested revision is desired effective. If the investigation shows that an adjustment of the shipping percentages might be appropriate, the market administrator shall issue a notice stating that an adjustment is being considered and invite data, views and arguments. Any decision to revise an applicable shipping percentage must be issued in writing at least one day before the effective date.

(h) The term pool plant shall not apply to the following plants:

(1) A producer-handler as defined under any Federal order;

(2) An exempt plant as defined in § 1000.8(e);

(3) A plant located within the marketing area and qualified pursuant to paragraph (a) of this section that meets the pooling requirements of another Federal order, and from which more than 50 percent of its route disposition has been in the other Federal order marketing area for 3 consecutive months;

(4) A plant located outside any Federal order marketing area and qualified pursuant to paragraph (a) of this section that meets the pooling requirements of another Federal order and has had greater route disposition in such other Federal order's marketing area for 3 consecutive months;

(5) A plant located in another Federal order marketing area and qualified pursuant to paragraph (a) of this section that meets the pooling requirements of such other Federal order and does not have a majority of its route distribution in this marketing area for 3 consecutive months or if the plant is required to be regulated under such other Federal order without regard to its route disposition in any other Federal order marketing area;

(6) A plant qualified pursuant to paragraph (c) of this section that also meets the pooling requirements of another Federal order and from which greater qualifying shipments are made to plants regulated under the other Federal order than are made to plants regulated under this order, or the plant has automatic pooling status under the other Federal order; and

(7) That portion of a regulated plant designated as a nonpool plant that is physically separate and operated separately from the pool portion of such plant. The designation of a portion of a regulated plant as a nonpool plant must be requested in advance and in writing by the handler and must be approved by the market administrator.

(i) Any plant that qualifies as a pool plant in each of the immediately preceding 3 months pursuant to

paragraph (a) of this section or the shipping percentages in paragraph (c) of this section that is unable to meet such performance standards for the current month because of unavoidable circumstances determined by the market administrator to be beyond the control of the handler operating the plant, such as a natural disaster (ice storm, wind storm, flood), fire, breakdown of equipment, or work stoppage, shall be considered to have met the minimum performance standards during the period of such unavoidable circumstances, but such relief shall not be granted for more than 2 consecutive months.

§ 1033.8 Nonpool plant.

See § 1000.8.

§ 1033.9 Handler.

See § 1000.9.

§ 1033.10 Producer-handler.

Producer-handler means a person who:

(a) Operates a dairy farm and a distributing plant from which there is route disposition in the marketing area during the month;

(b) Receives fluid milk from own farm production or that is fully subject to the pricing and pooling provisions of this or any other Federal order;

(c) Receives at its plant or acquires for route disposition no more than 150,000 pounds of fluid milk products from handlers fully regulated under any Federal order. This limitation shall not apply if the producer-handler's own farm production is less than 150,000 pounds during the month;

(d) Disposes of no other source milk as Class I milk except by increasing the nonfat milk solids content of the fluid milk products; and

(e) Provides proof satisfactory to the market administrator that the care and management of the dairy animals and other resources necessary to produce all Class I milk handled (excluding receipts from handlers fully regulated under any Federal order) and the processing and packaging operations are the producer-handler's own enterprise and at its own risk.

§ 1033.11 [Reserved]

§ 1033.12 Producer.

(a) Except as provided in paragraph (b) of this section, *producer* means any person who produces milk approved by a duly constituted regulatory agency for fluid consumption as Grade A milk and whose milk is:

(1) Received at a pool plant directly from the producer or diverted by the plant operator in accordance with § 1033.13; or

(2) Received by a handler described in § 1033.9(c).

(b) Producer shall not include:

(1) A producer-handler as defined in any Federal order;

(2) A dairy farmer whose milk is received at an exempt plant, excluding producer milk diverted to the exempt plant pursuant to § 1033.13(d);

(3) A dairy farmer whose milk is received by diversion at a pool plant from a handler regulated under another Federal order if the other Federal order designates the dairy farmer as a producer under that order and that milk is allocated by request to a utilization other than Class I; and

(4) A dairy farmer whose milk is reported as diverted to a plant fully regulated under another Federal order with respect to that portion of the milk so diverted that is assigned to Class I under the provisions of such other order.

§ 1033.13 Producer milk.

Producer milk means the skim milk (or the skim equivalent of components of skim milk), including nonfat components, and butterfat in milk of a producer that is:

(a) Received by the operator of a pool plant directly from a producer or a handler described in § 1000.9(c). All milk received pursuant to this paragraph shall be priced at the location of the plant where it is first physically received;

(b) Received by a handler described in § 1000.9(c) in excess of the quantity delivered to pool plants;

(c) Diverted by a pool plant operator to another pool plant. Milk so diverted shall be priced at the location of the plant to which diverted; or

(d) Diverted by the operator of a pool plant or by a cooperative association described in § 1033.9(c) to a nonpool plant, subject to the following conditions:

(1) Milk of a dairy farmer shall not be eligible for diversion until milk of such dairy farmer has been physically received as producer milk at a pool plant and the dairy farmer has continuously retained producer status since that time. If a dairy farmer loses producer status under this order (except as a result of a temporary loss of Grade A approval), the dairy farmer's milk shall not be eligible for diversion until milk of the dairy farmer has been physically received as producer milk at a pool plant;

(2) The equivalent of at least one day's production is caused by the handler to be physically received at a pool plant in each of the months of September through November;

(3) Of the total quantity of producer milk received during the month (including diversions but excluding the quantity of producer milk received from a handler described in § 1000.9(c)), the handler diverted to nonpool plants not more than 60 percent during the months of September through February;

(4) Diverted milk shall be priced at the location of the plant to which diverted;

(5) Any milk diverted in excess of the limits set forth in paragraph (d)(3) of this section shall not be producer milk. The diverting handler shall designate the dairy farmer deliveries that shall not be producer milk. If the handler fails to designate the dairy farmer deliveries which are ineligible, producer milk status shall be forfeited with respect to all milk diverted to nonpool plants by such handler; and

(6) The delivery day requirements and the diversion percentages in paragraphs (d)(2) and (d)(3) of this section may be increased or decreased by the market administrator if the market administrator finds that such revision is necessary to assure orderly marketing and efficient handling of milk in the marketing area. Before making such a finding, the market administrator shall investigate the need for the revision either on the market administrator's own initiative or at the request of interested persons if the request is made in writing at least 15 days prior to the month for which the requested revision is desired effective. If the investigation shows that a revision might be appropriate, the market administrator shall issue a notice stating that the revision is being considered and inviting written data, views, and arguments. Any decision to revise an applicable percentage must be issued in writing at least one day before the effective date.

§ 1033.14 Other source milk.

See § 1000.14.

§ 1033.15 Fluid milk products.

See § 1000.15.

§ 1033.16 Fluid cream product.

See § 1000.16.

§ 1033.17 [Reserved]

§ 1033.18 Cooperative association.

See § 1000.18.

§ 1033.19 Commercial food processing establishment.

See § 1000.19.

Handler Reports

§ 1033.30 Reports of receipts and utilization.

Each handler shall report monthly so that the market administrator's office receives the report on or before the 7th day after the end of the month, in the detail and on the prescribed forms, as follows:

(a) Each handler that operates a pool plant pursuant to § 1033.7 shall report for each of its operations the following information:

(1) Product pounds, pounds of butterfat, pounds of protein, pounds of solids-not-fat other than protein (other solids), and the value of the somatic cell adjustment pursuant to § 1000.50(p), contained in or represented by:

(i) Receipts of producer milk, including producer milk diverted by the reporting handler, from sources other than handlers described in § 1000.9(c); and

(ii) Receipts of milk from handlers described in § 1000.9(c);

(2) Product pounds and pounds of butterfat contained in:

(i) Receipts of fluid milk products and bulk fluid cream products from other pool plants;

(ii) Receipts of other source milk; and

(iii) Inventories at the beginning and end of the month of fluid milk products and bulk fluid cream products;

(3) The utilization or disposition of all milk and milk products required to be reported pursuant to this paragraph; and

(4) Such other information with respect to the receipts and utilization of skim milk, butterfat, milk protein, other nonfat solids, and somatic cell information as the market administrator may prescribe.

(b) Each handler operating a partially regulated distributing plant shall report with respect to such plant in the same manner as prescribed for reports required by paragraph (a) of this section. Receipts of milk that would have been producer milk if the plant had been fully regulated shall be reported in lieu of producer milk. The report shall show also the quantity of any reconstituted skim milk in route disposition in the marketing area.

(c) Each handler described in § 1000.9(c) shall report:

(1) The product pounds, pounds of butterfat, pounds of protein, pounds of solids-not-fat other than protein (other solids), and the value of the somatic cell adjustment pursuant to § 1000.50(p), contained in receipts of milk from producers; and

(2) The utilization or disposition of such receipts.

(d) Each handler not specified in paragraphs (a) through (c) of this section shall report with respect to its receipts and utilization of milk and milk products in such manner as the market administrator may prescribe.

§ 1033.31 Payroll reports.

(a) On or before the 22nd day after the end of each month, each handler that operates a pool plant pursuant to § 1033.7 and each handler described in § 1000.9(c) shall report to the market administrator its producer payroll for the month, in the detail prescribed by the market administrator, showing for each producer the information described in § 1033.73(e).

(b) Each handler operating a partially regulated distributing plant who elects to make payment pursuant to § 1000.76(b) shall report for each dairy farmer who would have been a producer if the plant had been fully regulated in the same manner as prescribed for reports required by paragraph (a) of this section.

§ 1033.32 Other reports.

In addition to the reports required pursuant to §§ 1033.30 and 1033.31, each handler shall report any information the market administrator deems necessary to verify or establish each handler's obligation under the order.

Classification of Milk

§ 1033.40 Classes of utilization.

See § 1000.40.

§ 1033.41 [Reserved]

§ 1033.42 Classification of transfers and diversions.

See § 1000.42.

§ 1033.43 General classification rules.

See § 1000.43.

§ 1033.44 Classification of producer milk.

See § 1000.44.

§ 1033.45 Market administrator's reports and announcements concerning classification.

See § 1000.45.

Class Prices

§ 1033.50 Class prices, component prices, and advanced pricing factors.

See § 1000.50.

§ 1033.51 Class I differential and price.

The Class I differential shall be the differential established for Cuyahoga County, Ohio which is reported in § 1000.52. The Class I price shall be the price computed pursuant to § 1000.50(a) for Cuyahoga County, Ohio.

§ 1033.52 Adjusted Class I differentials.

See § 1000.52.

§ 1033.53 Announcement of class prices, component prices, and advanced pricing factors.

See § 1000.53.

§ 1033.54 Equivalent price.

See § 1000.54.

Producer Price Differential

§ 1033.60 Handler's value of milk.

For the purpose of computing a handler's obligation for producer milk, the market administrator shall determine for each month the value of milk of each handler with respect to each of the handler's pool plants and of each handler described in § 1000.9(c) with respect to milk that was not received at a pool plant by adding the amounts computed in paragraphs (a) through (i) of this section and subtracting from that total amount the value computed in paragraph (j) of this section. Unless otherwise specified, the skim milk, butterfat, and the combined pounds of skim milk and butterfat referred to in this section shall result from the steps set forth in § 1000.44(a), (b), and (c), respectively, and the nonfat components of producer milk in each class shall be based upon the proportion of such components in producer skim milk. Receipts of nonfluid milk products that are distributed as labeled reconstituted milk for which payments are made to the producer-settlement fund of another Federal order under § 1000.76(a)(4) or (d) shall be excluded from pricing under this section.

(a) Class I value.

(1) Multiply the pounds of skim milk in Class I by the Class I skim milk price; and

(2) Add an amount obtained by multiplying the pounds of butterfat in Class I by the Class I butterfat price.

(b) Class II value.

(1) Multiply the pounds of nonfat solids in Class II skim milk by the Class II nonfat solids price; and

(2) Add an amount obtained by multiplying the pounds of butterfat in Class II times the Class II butterfat price.

(c) Class III value.

(1) Multiply the pounds of protein in Class III skim milk by the protein price;

(2) Add an amount obtained by multiplying the pounds of other solids in Class III skim milk by the other solids price; and

(3) Add an amount obtained by multiplying the pounds of butterfat in Class III by the butterfat price.

(d) Class IV value.

(1) Multiply the pounds of nonfat solids in Class IV skim milk by the nonfat solids price; and

(2) Add an amount obtained by multiplying the pounds of butterfat in Class IV by the butterfat price.

(e) Compute an adjustment for the somatic cell content of producer milk by multiplying the values reported pursuant to § 1033.30(a)(1) and (c)(1) by the percentage of total producer milk allocated to Class II, Class III, and Class IV pursuant to § 1000.44(c);

(f) Multiply the pounds of skim milk and butterfat overage assigned to each class pursuant to § 1000.44(a)(11) and the corresponding step of § 1000.44(b) by the skim milk prices and butterfat prices applicable to each class.

(g) Multiply the difference between the current month's Class I, II, or III price, as the case may be, and the Class IV price for the preceding month by the hundredweight of skim milk and butterfat subtracted from Class I, II, or III, respectively, pursuant to § 1000.44(a)(7) and the corresponding step of § 1000.44(b);

(h) Multiply the difference between the Class I price applicable at the location of the pool plant and the Class IV price by the hundredweight of skim milk and butterfat assigned to Class I pursuant to § 1000.43(d) and the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1000.44(a)(3)(i) through (vi) and the corresponding step of § 1000.44(b), excluding receipts of bulk fluid cream products from a plant regulated under other Federal orders and bulk concentrated fluid milk products from pool plants, plants regulated under other Federal orders, and unregulated supply plants.

(i) Multiply the difference between the Class I price applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received and the Class III price by the pounds of skim milk and butterfat in receipts of concentrated fluid milk products assigned to Class I pursuant to § 1000.43(d) and § 1000.44(a)(3)(i) and the corresponding step of § 1000.44(b) and the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1000.44(a)(8) and the corresponding step of § 1000.44(b), excluding such skim milk and butterfat in receipts of fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order.

(j) For reconstituted milk made from receipts of nonfluid milk products, multiply $1.00 (but not more than the difference between the Class I price applicable at the location of the pool plant and the Class IV price) by the hundredweight of skim milk and butterfat contained in receipts of nonfluid milk products that are allocated to Class I use pursuant to § 1000.43(d).

§ 1033.61 Computation of producer price differential.

For each month the market administrator shall compute a producer price differential per hundredweight. The report of any handler who has not made payments required pursuant to § 1033.71 for the preceding month shall not be included in the computation of the producer price differential, and such handler's report shall not be included in the computation for succeeding months until the handler has made full payment of outstanding monthly obligations. Subject to the aforementioned conditions, the market administrator shall compute the producer price differential in the following manner:

(a) Combine into one total the values computed pursuant to § 1033.60 for all handlers required to file reports prescribed in § 1033.30;

(b) Subtract the total values obtained by multiplying each handler's total pounds of protein, other solids, and butterfat contained in the milk for which an obligation was computed pursuant to § 1033.60 by the protein price, the other solids price, and the butterfat price, respectively, and the total value of the somatic cell adjustment pursuant to § 1033.30(a)(1) and (c)(1);

(c) Add an amount equal to the sum of the location adjustments computed pursuant to § 1033.75;

(d) Add an amount equal to not less than one-half of the unobligated balance in the producer-settlement fund;

(e) Divide the resulting amount by the sum of the following for all handlers included in these computations:

(1) The total hundredweight of producer milk; and

(2) The total hundredweight for which a value is computed pursuant to § 1033.60(i); and

(f) Subtract not less than 4 cents nor more than 5 cents from the price computed pursuant to paragraph (e) of this section. The result shall be known as the *producer price differential* for the month.

§ 1033.62 Announcement of producer prices.

On or before the 13th day after the end of each month, the market administrator shall announce publicly the following prices and information:

(a) The producer price differential;

(b) The protein price;

(c) The nonfat solids price;

(d) The other solids price;

(e) The butterfat price;

(f) The somatic cell adjustment rate;

(g) The average butterfat, protein, nonfat solids, and other solids content of producer milk; and

(h) The statistical uniform price for milk containing 3.5 percent butterfat, computed by combining the Class III price and the producer price differential.

Payments for Milk

§ 1033.70 Producer-settlement fund.

See § 1000.70.

§ 1033.71 Payments to the producer-settlement fund.

Each handler shall make payment to the producer-settlement fund in a manner that provides receipt of the funds by the market administrator no later than the 15th day after the end of the month (except as provided in § 1000.90). Payment shall be the amount, if any, by which the amount specified in paragraph (a) of this section exceeds the amount specified in paragraph (b) of this section:

(a) The total value of milk to the handler for the month as determined pursuant to § 1033.60.

(b) The sum of:

(1) An amount obtained by multiplying the total hundredweight of producer milk as determined pursuant to § 1000.44(c) by the producer price differential as adjusted pursuant to § 1033.75;

(2) An amount obtained by multiplying the total pounds of protein, other solids, and butterfat contained in producer milk by the protein, other solids, and butterfat prices, respectively;

(3) The total value of the somatic cell adjustment to producer milk; and

(4) An amount obtained by multiplying the pounds of skim milk and butterfat for which a value was computed pursuant to § 1033.60(i) by the producer price differential as adjusted pursuant to § 1033.75 for the location of the plant from which received.

§ 1033.72 Payments from the producer-settlement fund.

No later than the 16th day after the end of each month (except as provided in § 1000.90), the market administrator shall pay to each handler the amount, if any, by which the amount computed pursuant to § 1033.71(b) exceeds the amount computed pursuant to § 1033.71(a). If, at such time, the balance in the producer-settlement fund is insufficient to make all payments pursuant to this section, the market administrator shall reduce uniformly

such payments and shall complete the payments as soon as the funds are available.

§ 1033.73 Payments to producers and to cooperative associations.

(a) Each handler shall pay each producer for producer milk for which payment is not made to a cooperative association pursuant to paragraph (b) of this section, as follows:

(1) *Partial payment.* For each producer who has not discontinued shipments as of the date of this partial payment, payment shall be made so that it is received by each producer on or before the 26th day of the month (except as provided in § 1000.90) for milk received during the first 15 days of the month from the producer at not less than the lowest announced class price for the preceding month, less proper deductions authorized in writing by the producer.

(2) *Final payment.* For milk received during the month, payment shall be made so that it is received by each producer no later than the 17th day after the end of the month (except as provided in § 1000.90) in an amount equal to not less than the sum of:

(i) The hundredweight of producer milk received times the producer price differential for the month as adjusted pursuant to § 1033.75;

(ii) The pounds of butterfat received times the butterfat price for the month;

(iii) The pounds of protein received times the protein price for the month;

(iv) The pounds of other solids received times the other solids price for the month;

(v) The hundredweight of milk received times the somatic cell adjustment for the month;

(vi) Less any payment made pursuant to paragraph (a)(1) of this section;

(vii) Less proper deductions authorized in writing by such producer and plus or minus adjustments for errors in previous payments to such producer; and

(viii) Less deductions for marketing services pursuant to § 1000.86.

(b) *Payments for milk received from cooperative associations.* On or before the day prior to the dates specified in paragraphs (a)(1) and (a)(2) of this section (except as provided in § 1000.90), each handler shall pay to a cooperative association for milk received as follows:

(1) *Partial payment to a cooperative association.* For bulk fluid milk/skimmed milk received during the first 15 days of the month from a cooperative association in any capacity, except as the operator of a pool plant, the partial payment shall be equal to the hundredweight of milk received multiplied by the lowest announced class price for the preceding month.

(2) *Partial payment to a cooperative association for milk transferred from its pool plant.* For bulk fluid milk/skimmed milk products received during the first 15 days of the month from a cooperative association in its capacity as the operator of a pool plant, the partial payment shall be at the pool plant operator's estimated use value of the milk using the most recent class prices available at the receiving plant's location.

(3) *Final payment to a cooperative association for milk transferred from its pool plant.* Following the classification of bulk fluid milk products and bulk fluid cream products received during the month from a cooperative association in its capacity as the operator of a pool plant, the final payment for such receipts shall be determined as follows:

(i) The hundredweight of Class I skim milk times the Class I skim milk price for the month plus the pounds of Class I butterfat times the Class I butterfat price for the month. The Class I prices to be used shall be the prices effective at the location of the receiving plant;

(ii) The pounds of nonfat solids in Class II skim milk by the Class II nonfat solids price;

(iii) The pounds of butterfat in Class II times the Class II butterfat price;

(iv) The pounds of nonfat solids in Class IV times the nonfat solids price;

(v) The pounds of butterfat in Class III and Class IV milk times the butterfat price;

(vi) The pounds of protein in Class III milk times the protein price;

(vii) The pounds of other solids in Class III milk times the other solids price;

(viii) The hundredweight of Class II, Class III, and Class IV milk times the somatic cell adjustment; and

(ix) Add together the amounts computed in paragraphs (b)(3)(i) through (viii) of this section and from that sum deduct any payment made pursuant to paragraph (b)(2) of this section; and

(4) *Final payment to a cooperative association for bulk milk received directly from producers' farms.* For bulk milk received from a cooperative association during the month, including the milk of producers who are not members of such association and who the market administrator determines have authorized the cooperative association to collect payment for their milk, the final payment for such milk shall be an amount equal to the sum of the individual payments otherwise payable for such milk pursuant to paragraph (a)(2) of this section.

(c) If a handler has not received full payment from the market administrator pursuant to § 1033.72 by the payment date specified in paragraph (a) or (b) of this section, the handler may reduce payments pursuant to paragraphs (a) and (b) of this section, but not by more than the amount of the underpayment. The payments shall be completed on the next scheduled payment date after receipt of the balance due from the market administrator.

(d) If a handler claims that a required payment to a producer cannot be made because the producer is deceased or cannot be located, or because the cooperative association or its lawful successor or assignee is no longer in existence, the payment shall be made to the producer-settlement fund, and in the event that the handler subsequently locates and pays the producer or a lawful claimant, or in the event that the handler no longer exists and a lawful claim is later established, the market administrator shall make the required payment from the producer-settlement fund to the handler or to the lawful claimant, as the case may be.

(e) In making payments to producers pursuant to this section, each handler shall furnish each producer, except a producer whose milk was received from a cooperative association handler described in § 1000.9(a) or (c), a supporting statement in a form that may be retained by the recipient which shall show:

(1) The name, address, Grade A identifier assigned by a duly constituted regulatory agency, and payroll number of the producer;

(2) The daily and total pounds, and the month and dates such milk was received from that producer;

(3) The total pounds of butterfat, protein, and other solids contained in the producer's milk;

(4) The somatic cell count of the producer's milk;

(5) The minimum rate or rates at which payment to the producer is required pursuant to this order;

(6) The rate used in making payment if the rate is other than the applicable minimum rate;

(7) The amount, or rate per hundredweight, or rate per pound of component, and the nature of each deduction claimed by the handler; and

(8) The net amount of payment to the producer or cooperative association.

§ 1033.74 [Reserved]

§ 1033.75 Plant location adjustments for producer milk and nonpool milk.

For purposes of making payments for producer milk and nonpool milk, a plant location adjustment shall be determined by subtracting the Class I price specified in § 1033.51 from the Class I price at the plant's location. The difference, plus or minus as the case may be, shall be used to adjust the payments required pursuant to §§ 1033.73 and 1000.76.

§ 1033.76 Payments by a handler operating a partially regulated distributing plant.

See § 1000.76.

§ 1033.77 Adjustment of accounts.

See § 1000.77.

§ 1033.78 Charges on overdue accounts.

See § 1000.78.

Administrative Assessment and Marketing Service Deduction

§ 1033.85 Assessment for order administration.

See § 1000.85.

§ 1033.86 Deduction for marketing services.

See § 1000.86.

PART 1124—MILK IN THE PACIFIC NORTHWEST MARKETING AREA

Subpart—Order Regulating Handling

General Provisions

Sec.
1124.1 General provisions.

Definitions

1124.2 Pacific Northwest marketing area.
1124.3 Route disposition.
1124.4 Plant.
1124.5 Distributing plant.
1124.6 Supply plant.
1124.7 Pool plant.
1124.8 Nonpool plant.
1124.9 Handler.
1124.10 Producer-handler.
1124.11 Cooperative reserve supply unit.
1124.12 Producer.
1124.13 Producer milk.
1124.14 Other source milk.
1124.15 Fluid milk product.
1124.16 Fluid cream product.
1124.17 [Reserved]
1124.18 Cooperative association.
1124.19 Commercial food processing establishment.

Handler Reports

1124.30 Reports of receipts and utilization.
1124.31 Payroll reports.
1124.32 Other reports.

Classification of Milk

1124.40 Classes of utilization.
1124.41 [Reserved]
1124.42 Classification of transfers and diversions.
1124.43 General classification rules.
1124.44 Classification of producer milk.
1124.45 Market administrator's reports and announcements concerning classification.

Class Prices

1124.50 Class prices, component prices, and advanced pricing factors.
1124.51 Class I differential and price.
1124.52 Adjusted Class I differentials.
1124.53 Announcement of class prices, component prices, and advanced pricing factors.
1124.54 Equivalent price.

Producer Price Differential

1124.60 Handler's value of milk.
1124.61 Computation of producer price differential.
1124.62 Announcement of producer prices.

Payments for Milk

1124.70 Producer-settlement fund.
1124.71 Payments to the producer-settlement fund.
1124.72 Payments from the producer-settlement fund.
1124.73 Payments to producers and to cooperative associations.
1124.74 [Reserved]
1124.75 Plant location adjustments for producer milk and nonpool milk.
1124.76 Payments by a handler operating a partially regulated distributing plant.
1124.77 Adjustment of accounts.
1124.78 Charges on overdue accounts.

Administrative Assessment and Marketing Service Deduction

1124.85 Assessment for order administration.
1124.86 Deduction for marketing services.

Authority: 7 U.S.C. 601–674.

Subpart—Order Regulating Handling

General Provisions

§ 1124.1 General provisions.

The terms, definitions, and provisions in part 1000 of this chapter apply to and are hereby made a part of this order. In this part 1124, all references to sections in part 1000 refer to part 1000 of this chapter.

Definitions

§ 1124.2 Pacific Northwest marketing area.

The marketing area means all territory within the bounds of the following states and political subdivisions, including all piers, docks, and wharves connected therewith and all craft moored thereat, and all territory occupied by government (municipal, State, or Federal) reservations, installations, institutions, or other similar establishments if any part thereof is within any of the listed states or political subdivisions:

Washington

All of the State of Washington.

Idaho Counties

Benewah, Bonner, Boundary, Kootenai, Latah, and Shoshone.

Oregon Counties

Benton, Clackamas, Clatsop, Columbia, Coos, Crook, Curry, Deschutes, Douglas, Gilliam, Hood River, Jackson, Jefferson, Josephine, Klamath, Lake, Lane, Lincoln, Linn, Marion, Morrow, Multnomah, Polk, Sherman, Tillamook, Umatilla, Wasco, Washington, Wheeler, and Yamhill.

§ 1124.3 Route disposition.

See § 1000.3.

§ 1124.4 Plant.

See § 1000.4.

§ 1124.5 Distributing plant.

See § 1000.5.

§ 1124.6 Supply plant.

See § 1000.6.

§ 1124.7 Pool plant.

Pool plant means a plant, unit of plants, or a system of plants as specified in paragraphs (a) through (f) of this section, but excluding a plant specified in paragraph (h) of this section. The pooling standards described in paragraph (c) of this section are subject to modification pursuant to paragraph (g) of this section:

(a) A distributing plant, other than a plant qualified as a pool plant pursuant to paragraph (b) of this section or section 7(b) of any other Federal milk order, from which during the month 25 percent or more of the total quantity of fluid milk products physically received at the plant (excluding concentrated milk received from another plant by agreement for other than Class I use) are disposed of as route disposition or are transferred in the form of packaged fluid milk products to other distributing plants. At least 25 percent of such route disposition and transfers must be to outlets in the marketing area.

(b) Any distributing plant located in the marketing area which during the month processed at least 25 percent of the total quantity of fluid milk products physically received at the plant (excluding concentrated milk received from another plant by agreement for other than Class I use) into ultra-pasteurized or aseptically-processed fluid milk products.

(c) A supply plant from which during any month not less than 20 percent of the total quantity of milk that is physically received at such plant from dairy farmers eligible to be producers pursuant to § 1124.12 (excluding milk received at such plant as diverted milk

from another plant, which milk is classified other than Class I under this order and is subject to the pricing and pooling provisions of this or another order issued pursuant to the Act) or diverted as producer milk to another plant pursuant to § 1124.13, is shipped in the form of a fluid milk product (excluding concentrated milk transferred by agreement for other than Class I use) to a pool distributing plant or is a route disposition in the marketing area of fluid milk products processed and packaged at such plant;

(1) A supply plant that has qualified as a pool plant during each of the immediately preceding months of September through February shall continue to so qualify in each of the following months of March through August, unless the plant operator files a written request with the market administrator that such plant not be a pool plant, such nonpool status to be effective the first month following such request and thereafter until the plant qualifies as a pool plant on the basis of milk shipments;

(2) A cooperative association that operates a supply plant may include as qualifying shipments its deliveries to pool distributing plants directly from farms of producers pursuant to § 1000.9(c);

(3) A pool plant operator may include as qualifying shipments milk diverted to pool distributing plants pursuant to § 1124.13(d);

(4) No plant may qualify as a pool plant due to a reduction in the shipping percentage pursuant to paragraph (g) of this section unless it has been a pool supply plant during each of the immediately preceding 3 months.

(d)—(f) [Reserved]

(g) The applicable shipping percentage of paragraph (c) of this section may be increased or decreased by the market administrator if the market administrator finds that such adjustment is necessary to encourage needed shipments or to prevent uneconomic shipments. Before making such a finding, the market administrator shall investigate the need for adjustment either on the market administrator's own initiative or at the request of interested parties if the request is made in writing at least 15 days prior to the month for which the requested revision is desired effective. If the investigation shows that an adjustment of the shipping percentages might be appropriate, the market administrator shall issue a notice stating that an adjustment is being considered and invite data, views and arguments. Any decision to revise an applicable shipping percentage must be issued in writing at least one day before the effective date.

(h) The term pool plant shall not apply to the following plants:

(1) A producer-handler as defined under any Federal order;

(2) An exempt plant as defined in § 1000.8(e);

(3) A plant located within the marketing area and qualified pursuant to paragraph (a) of this section which meets the pooling requirements of another Federal order, and from which more than 50 percent of its route disposition has been in the other Federal order marketing area for 3 consecutive months;

(4) A plant located outside any Federal order marketing area and qualified pursuant to paragraph (a) of this section that meets the pooling requirements of another Federal order and has had greater route disposition in such other Federal order's marketing area for 3 consecutive months;

(5) A plant located in another Federal order marketing area and qualified pursuant to paragraph (a) of this section that meets the pooling requirements of such other Federal order and does not have a majority of its route distribution in this marketing area for 3 consecutive months or if the plant is required to be regulated under such other Federal order without regard to its route disposition in any other Federal order marketing area; and

(6) A plant qualified pursuant to paragraph (c) of this section which also meets the pooling requirements of another Federal order and from which greater qualifying shipments are made to plants regulated under the other Federal order than are made to plants regulated under this order, or the plant has automatic pooling status under the other Federal order.

§ 1124.8 Nonpool plant.

See § 1000.8.

§ 1124.9 Handler.

See § 1000.9.

§ 1124.10 Producer-handler.

Producer-handler means a person who operates a dairy farm and a distributing plant from which there is route disposition within the marketing area during the month and who the market administrator has designated a producer-handler after determining that all of the requirements of this section have been met.

(a) *Requirements for designation.* Designation of any person as a producer-handler by the market administrator shall be contingent upon meeting the conditions set forth in paragraphs (a)(1) through (4) of this section. Following the cancellation of a previous producer-handler designation, a person seeking to have his/her producer-handler designation reinstated must demonstrate that these conditions have been met for the preceding month.

(1) The care and management of the dairy animals and other resources and facilities designated in paragraph (b)(1) of this section necessary to produce all Class I milk handled (excluding receipts from handlers fully regulated under any Federal order) are under the complete and exclusive control and management of the producer-handler and are operated as the producer-handler's own enterprise and at its own risk.

(2) The plant operation designated in paragraph (b)(2) of this section at which the producer-handler processes and packages, and from which it distributes, its own milk production is under the complete and exclusive control and management of the producer-handler and is operated as the producer-handler's own enterprise and at its sole risk.

(3) The producer-handler neither receives at its designated milk production resources and facilities nor receives, handles, processes, or distributes at or through any of its designated milk handling, processing, or distributing resources and facilities other source milk products for reconstitution into fluid milk products or fluid milk products derived from any source other than:

(i) Its designated milk production resources and facilities (own farm production);

(ii) Pool handlers and plants regulated under any Federal order within the limitation specified in paragraph (c)(2) of this section; or

(iii) Nonfat milk solids which are used to fortify fluid milk products.

(4) The producer-handler is neither directly nor indirectly associated with the business control or management of, nor has a financial interest in, another handler's operation; nor is any other handler so associated with the producer-handler's operation.

(b) *Designation of resources and facilities.* Designation of a person as a producer-handler shall include the determination of what shall constitute the person's milk production, handling, processing, and distribution resources and facilities, all of which shall be considered an integrated operation.

(1) Milk production resources and facilities shall include all resources and facilities (milking herd(s), buildings housing such herd(s), and the land on which such buildings are located) used for the production of milk which are

directly or indirectly, solely or partially, owned, operated, or controlled by the producer-handler, in which the producer-handler in any way has an interest, including any contractual arrangement, or which are directly, indirectly, or partially owned, operated, or controlled by any partner or stockholder of the producer-handler. However, for purposes of this paragraph, any such milk production resources and facilities which do not constitute an actual or potential source of milk supply for the producer-handler's operation shall not be considered a part of the producer-handler's milk production resources and facilities.

(2) Milk handling, processing, and distribution resources and facilities shall include all resources and facilities (including store outlets) used for handling, processing, and distributing fluid milk products which are solely or partially owned by, and directly or indirectly operated or controlled by, the producer-handler or in which the producer-handler in any way has an interest, including any contractual arrangement, or over which the producer-handler directly or indirectly exercises any degree of management or control.

(3) All designations shall remain in effect until canceled pursuant to paragraph (c) of this section.

(c) *Cancellution.* The designation as a producer-handler shall be canceled upon determination by the market administrator that any of the requirements of paragraphs (a)(1) through (4) of this section are not continuing to be met, or under any of the conditions described in paragraphs (c)(1) and (2) of this section. Cancellation of a producer-handler's status pursuant to this paragraph shall be effective on the first day of the month following the month in which the requirements were not met or the conditions for cancellation occurred.

(1) Milk from the milk production resources and facilities of the producer-handler, designated in paragraph (b)(1) of this section, is delivered in the name of another person as producer milk to another handler.

(2) The producer-handler handles fluid milk products derived from sources other than the milk production facilities and resources designated in paragraph (b)(1) of this section, except that it may receive at its plant, or acquire for route disposition, fluid milk products from fully regulated plants and handlers under any Federal order if such receipts do not exceed 150,000 pounds monthly. This limitation shall not apply if the producer-handler's own farm production is less than 150,000 pounds during the month.

(d) *Public announcement.* The market administrator shall publicly announce:

(1) The name, plant location(s), and farm location(s) of persons designated as producer-handlers;

(2) The names of those persons whose designations have been canceled; and

(3) The effective dates of producer-handler status or loss of producer-handler status for each. Such announcements shall be controlling with respect to the accounting at plants of other handlers for fluid milk products received from any producer-handler.

(e) *Burden of establishing and maintaining producer-handler status.* The burden rests upon the handler who is designated as a producer-handler to establish through records required pursuant to § 1000.27 that the requirements set forth in paragraph (a) of this section have been and are continuing to be met, and that the conditions set forth in paragraph (c) of this section for cancellation of designation do not exist.

§ 1124.11 Cooperative reserve supply unit.

Cooperative reserve supply unit means any cooperative association or its agent that is a handler pursuant to § 1000.9(c) that does not own or operate a plant, if such cooperative has been qualified to receive payments pursuant to § 1124.73 and has been a handler of producer milk under this or its predecessor order during each of the 12 previous months, and if a majority of the cooperative's member producers are located within 125 miles of a plant described in § 1124.7(a). A cooperative reserve supply unit shall be subject to the following conditions:

(a) The cooperative shall file a request with the market administrator for cooperative reserve supply unit status at least 15 days prior to the first day of the month in which such status is desired to be effective. Once qualified as a cooperative reserve supply unit pursuant to this paragraph, such status shall continue to be effective unless the cooperative requests termination prior to the first day of the month that change of status is requested, or the cooperative fails to meet all of the conditions of this section.

(b) The cooperative reserve supply unit supplies fluid milk products to pool distributing plants located within 125 miles of a majority of the cooperative's member producers in compliance with any announcement by the market administrator requesting a minimum level of shipments as further provided below:

(1) The market administrator may require such supplies of bulk fluid milk from cooperative reserve supply units whenever the market administrator finds that milk supplies for Class I use are needed for plants defined in § 1124.7(a) or (b). Before making such a finding, the market administrator shall investigate the need for such shipments either on the market administrator's own initiative or at the request of interested persons if the request is made in writing at least 15 days prior to the month for which the requested revision is desired effective. If the market administrator's investigation shows that such shipments might be appropriate, the market administrator shall issue a notice stating that a shipping announcement is being considered and inviting data, views and arguments with respect to the proposed shipping announcement. Any decision on the required shipment of bulk fluid milk from cooperative reserve supply units must be made in writing at least one day before the effective date.

(2) Failure of a cooperative reserve supply unit to comply with any announced shipping requirements, including making any significant change in the unit's marketing operation that the market administrator determines has the impact of evading or forcing such an announcement, shall result in immediate loss of cooperative reserve supply unit status until such time as the unit has been a handler pursuant to § 1000.9(c) for at least 12 consecutive months.

§ 1124.12 Producer.

(a) Except as provided in paragraph (b) of this section, *producer* means any person who produces milk approved by a duly constituted regulatory agency for fluid consumption as Grade A milk and whose milk (or components of milk) is:

(1) Received at a pool plant directly from the producer or diverted by the plant operator in accordance with § 1124.13; or

(2) Received by a handler described in § 1000.9(c).

(b) Producer shall not include:

(1) A producer-handler as defined in any Federal order;

(2) A dairy farmer whose milk is received at an exempt plant, excluding producer milk diverted to the exempt plant pursuant to § 1124.13(e);

(3) A dairy farmer whose milk is received by diversion at a pool plant from a handler regulated under another Federal order if the other Federal order designates the dairy farmer as a producer under that order and that milk is allocated by request to a utilization other than Class I;

(4) A dairy farmer whose milk is reported as diverted to a plant fully regulated under another Federal order with respect to that portion of the milk so diverted that is assigned to Class I under the provisions of such other order; and

(5) A dairy farmer whose milk was received at a nonpool plant during the month from the same farm as other than producer milk under this or any other Federal order. Such a dairy farmer shall be known as a *dairy farmer for other markets.*

§ 1124.13 Producer milk.

Producer milk means the skim milk (or the skim equivalent of components of skim milk), including nonfat components, and butterfat in milk of a producer that is:

(a) Received by the operator of a pool plant directly from a producer or a handler described in § 1000.9(c). All milk received pursuant to this paragraph shall be priced at the location of the plant where it is first physically received;

(b) Received by a cooperative reserve supply unit described in § 1124.11. All milk received pursuant to this paragraph shall be priced at the location of the plant where it is first physically received and shall not be subject to the conditions specified in paragraph (e) of this section;

(c) Received by a handler described in § 1000.9(c) in excess of the quantity delivered to pool plants;

(d) Diverted by a pool plant operator to another pool plant. Milk so diverted shall be priced at the location of the plant to which diverted; or

(e) Diverted by the operator of a pool plant or a cooperative association described in § 1000.9(c), excluding a cooperative reserve supply unit described in § 1124.11, to a nonpool plant, subject to the following conditions:

(1) Of the quantity of producer milk received during the month (including diversions, but excluding the quantity of producer milk received from a handler described in § 1000.9(c)) the handler diverts to nonpool plants not more than 80 percent during the months of September through February, and not more than 99 percent during the months of March through August;

(2) Two or more handlers described in § 1000.9(c) may have their allowable diversions computed on the basis of their combined deliveries of producer milk which they caused to be delivered to pool plants or diverted during the month if each has filed a request in writing with the market administrator before the first day of the month the agreement is to be effective. The request shall specify the basis for assigning overdiverted milk to the producer deliveries of each according to a method approved by the market administrator.

(3) Diverted milk shall be priced at the location of the plant to which diverted;

(4) Any milk diverted in excess of the limits prescribed in paragraph (e)(1) of this section shall not be producer milk. If the diverting handler or cooperative association fails to designate the dairy farmers' deliveries that are not to be producer milk, no milk diverted by the handler or cooperative association during the month to a nonpool plant shall be producer milk. In the event some of the milk of any producer is determined not to be producer milk pursuant to this paragraph, other milk delivered by such producer as producer milk during the month will not be subject to § 1124.12(b)(5); and

(5) The applicable diversion limits in paragraph (e)(1) of this section may be increased or decreased by the market administrator if the market administrator finds that such revision is necessary to assure orderly marketing and efficient handling of milk in the marketing area. Before making such a finding, the market administrator shall investigate the need for the revision either on the market administrator's own initiative or at the request of interested persons if the request is made at least 15 days prior to the month for which the requested revision is desired effective. If the investigation shows that a revision might be appropriate, the market administrator shall issue a notice stating that the revision is being considered and inviting written data, views, and arguments. Any decision to revise an applicable percentage must be issued in writing at least one day before the effective date.

§ 1124.14 Other source milk.

See § 1000.14.

§ 1124.15 Fluid milk product.

See § 1000.15.

§ 1124.16 Fluid cream product.

See § 1000.16.

§ 1124.17 [Reserved]

§ 1124.18 Cooperative association.

See § 1000.18.

§ 1124.19 Commercial food processing establishment.

See § 1000.19.

Handler Reports

§ 1124.30 Reports of receipts and utilization.

Each handler shall report monthly so that the market administrator's office receives the report on or before the 9th day after the end of the month, in the detail and on the prescribed forms, as follows:

(a) Each handler that operates a pool plant pursuant to § 1124.7 shall report for each of its operations the following information:

(1) Product pounds, pounds of butterfat, pounds of protein, and pounds of solids-not-fat other than protein (other solids) contained in or represented by:

(i) Receipts of producer milk, including producer milk diverted by the reporting handler, from sources other than handlers described in § 1000.9(c); and

(ii) Receipts of milk from handlers described in § 1000.9(c);

(2) Product pounds and pounds of butterfat contained in:

(i) Receipts of fluid milk products and bulk fluid cream products from other pool plants;

(ii) Receipts of other source milk; and

(iii) Inventories at the beginning and end of the month of fluid milk products and bulk fluid cream products;

(3) The utilization or disposition of all milk and milk products required to be reported pursuant to this paragraph; and

(4) Such other information with respect to the receipts and utilization of skim milk, butterfat, milk protein, and other nonfat solids, as the market administrator may prescribe.

(b) Each handler operating a partially regulated distributing plant shall report with respect to such plant in the same manner as prescribed for reports required by paragraph (a) of this section. Receipts of milk that would have been producer milk if the plant had been fully regulated shall be reported in lieu of producer milk. The report shall show also the quantity of any reconstituted skim milk in route disposition in the marketing area.

(c) Each handler described in § 1000.9(c) shall report:

(1) The product pounds, pounds of butterfat, pounds of protein, and the pounds of solids-not-fat other than protein (other solids) contained in receipts of milk from producers; and

(2) The utilization or disposition of such receipts.

(d) Each handler not specified in paragraphs (a) through (c) of this section shall report with respect to its receipts and utilization of milk and milk products in such manner as the market administrator may prescribe.

§ 1124.31 Payroll reports.

(a) On or before the 20th day after the end of each month, each handler that operates a pool plant pursuant to § 1124.7 and each handler described in § 1000.9(c) shall report to the market administrator its producer payroll for the month, in the detail prescribed by the market administrator, showing for each producer the information described in § 1124.73(f).

(b) Each handler operating a partially regulated distributing plant who elects to make payment pursuant to § 1000.76(b) shall report for each dairy farmer who would have been a producer if the plant had been fully regulated in the same manner as prescribed for reports required by paragraph (a) of this section.

§ 1124.32 Other reports.

In addition to the reports required pursuant to §§ 1124.30 and 1124.31, each handler shall report any information the market administrator deems necessary to verify or establish each handler's obligation under the order.

Classification of Milk

§ 1124.40 Classes of utilization.

See § 1000.40.

§ 1124.41 [Reserved]

§ 1124.42 Classification of transfers and diversions.

See § 1000.42.

§ 1124.43 General classification rules.

See § 1000.43.

§ 1124.44 Classification of producer milk.

In addition to the provisions provided in § 1000.44, the words ", or acquired for distribution," are inserted following the word "received" in § 1000.44(a)(3)(iv).

§ 1124.45 Market administrator's reports and announcements concerning classification.

See § 1000.45.

Class Prices

§ 1124.50 Class prices, component prices, and advanced pricing factors.

See § 1000.50.

§ 1124.51 Class I differential and price.

The Class I differential shall be the differential established for King County, Washington, which is reported in § 1000.52. The Class I price shall be the price computed pursuant to § 1000.50(a) for King County, Washington.

§ 1124.52 Adjusted Class I differentials.

See § 1000.52.

§ 1124.53 Announcement of class prices, component prices, and advanced pricing factors.

See § 1000.53.

§ 1124.54 Equivalent price.

See § 1000.54.

Producer Price Differential

§ 1124.60 Handler's value of milk.

For the purpose of computing a handler's obligation for producer milk, the market administrator shall determine for each month the value of milk of each handler with respect to each of the handler's pool plants and of each handler described in § 1000.9(c) with respect to milk that was not received at a pool plant by adding the amounts computed in paragraphs (a) through (h) of this section and subtracting from that total amount the value computed in paragraph (i) of this section. Unless otherwise specified, the skim milk, butterfat, and the combined pounds of skim milk and butterfat referred to in this section shall result from the steps set forth in § 1000.44(a), (b), and (c), respectively, and the nonfat components of producer milk in each class shall be based upon the proportion of such components in producer skim milk. Receipts of nonfluid milk products that are distributed as labeled reconstituted milk for which payments are made to the producer-settlement fund of another Federal order under § 1000.76(a)(4) or (d) shall be excluded from pricing under this section.

(a) Class I value.

(1) Multiply the hundredweight of skim milk in Class I by the Class I skim milk price; and

(2) Add an amount obtained by multiplying the pounds of butterfat in Class I by the Class I butterfat price.

(b) Class II value.

(1) Multiply the pounds of nonfat solids in Class II skim milk by the Class II nonfat solids price; and

(2) Add an amount obtained by multiplying the pounds of butterfat in Class II times the Class II butterfat price.

(c) Class III value.

(1) Multiply the pounds of protein in Class III skim milk by the protein price;

(2) Add an amount obtained by multiplying the pounds of other solids in Class III skim milk by the other solids price; and

(3) Add an amount obtained by multiplying the pounds of butterfat in Class III by the butterfat price.

(d) Class IV value.

(1) Multiply the pounds of nonfat solids in Class IV skim milk by the nonfat solids price; and

(2) Add an amount obtained by multiplying the pounds of butterfat in Class IV by the butterfat price.

(e) Multiply the pounds of skim milk and butterfat overage assigned to each class pursuant to § 1000.44(a)(11) and the corresponding steps of § 1000.44(b) by the skim milk prices and butterfat prices applicable to each class.

(f) Multiply the difference between the current month's Class I, II, or III price, as the case may be, and the Class IV price for the preceding month by the hundredweight of skim milk and butterfat subtracted from Class I, II, or III, respectively, pursuant to § 1000.44(a)(7) and the corresponding step of § 1000.44(b);

(g) Multiply the difference between the Class I price applicable at the location of the pool plant and the Class IV price by the hundredweight of skim milk and butterfat assigned to Class I pursuant to § 1000.43(d) and the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1000.44(a)(3)(i) through (vi) and the corresponding step of § 1000.44(b), excluding receipts of bulk fluid cream products from plants regulated under other Federal orders and bulk concentrated fluid milk products from pool plants, plants regulated under other Federal orders, and unregulated supply plants.

(h) Multiply the difference between the Class I price applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received and the Class III price by the pounds of skim milk and butterfat in receipts of concentrated fluid milk products assigned to Class I pursuant to § 1000.43(d) and § 1000.44(a)(3)(i) and the corresponding step of § 1000.44(b) and the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1000.44(a)(8) and the corresponding step of § 1000.44(b), excluding such skim milk and butterfat in receipts of fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order.

(i) For reconstituted milk made from receipts of nonfluid milk products, multiply $1.00 (but not more than the difference between the Class I price applicable at the location of the pool plant and the Class IV price) by the hundredweight of skim milk and butterfat contained in receipts of nonfluid milk products that are allocated to Class I use pursuant to § 1000.43(d).

§ 1124.61 Computation of producer price differential.

For each month the market administrator shall compute a producer price differential per hundredweight. The report of any handler who has not made payments required pursuant to § 1124.71 for the preceding month shall not be included in the computation of the producer price differential, and such handler's report shall not be included in the computation for succeeding months until the handler has made full payment of outstanding monthly obligations. Subject to the aforementioned conditions, the market administrator shall compute the producer price differential in the following manner:

(a) Combine into one total the values computed pursuant to § 1124.60 for all handlers required to file reports prescribed in § 1124.30;

(b) Subtract the total values obtained by multiplying each handler's total pounds of protein, other solids, and butterfat contained in the milk for which an obligation was computed pursuant to § 1124.60 by the protein price, the other solids price, and the butterfat price, respectively;

(c) Add an amount equal to the sum of the location adjustments computed pursuant to § 1124.75;

(d) Add an amount equal to not less than one-half of the unobligated balance in the producer-settlement fund;

(e) Divide the resulting amount by the sum of the following for all handlers included in these computations:

(1) The total hundredweight of producer milk; and

(2) The total hundredweight for which a value is computed pursuant to § 1124.60(h); and

(f) Subtract not less than 4 cents nor more than 5 cents from the price computed pursuant to paragraph (e) of this section. The result shall be known as the *producer price differential* for the month.

§ 1124.62 Announcement of producer prices.

On or before the 14th day after the end of each month, the market administrator shall announce publicly the following prices and information:

(a) The producer price differential;

(b) The protein price;

(c) The nonfat solids price;

(d) The other solids price;

(e) The butterfat price;

(f) The average butterfat, protein, nonfat solids, and other solids content of producer milk; and

(g) The statistical uniform price for milk containing 3.5 percent butterfat, computed by combining the Class III price and the producer price differential.

Payments for Milk

§ 1124.70 Producer-settlement fund.

See § 1000.70.

§ 1124.71 Payments to the producer-settlement fund.

Each handler shall make payment to the producer-settlement fund in a manner that provides receipt of the funds by the market administrator no later than the 16th day after the end of the month (except as provided in § 1000.90). Payment shall be the amount, if any, by which the amount specified in paragraph (a) of this section exceeds the amount specified in paragraph (b) of this section:

(a) The total value of milk to the handler for the month as determined pursuant to § 1124.60.

(b) The sum of:

(1) An amount obtained by multiplying the total hundredweight of producer milk as determined pursuant to § 1000.44(c) by the producer price differential as adjusted pursuant to § 1124.75;

(2) An amount obtained by multiplying the total pounds of protein, other solids, and butterfat contained in producer milk by the protein, other solids, and butterfat prices, respectively; and

(3) An amount obtained by multiplying the pounds of skim milk and butterfat for which a value was computed pursuant to § 1124.60(h) by the producer price differential as adjusted pursuant to § 1124.75 for the location of the plant from which received.

§ 1124.72 Payments from the producer-settlement fund.

No later than the 18th day after the end of each month (except as provided in § 1000.90), the market administrator shall pay to each handler the amount, if any, by which the amount computed pursuant to § 1124.71(b) exceeds the amount computed pursuant to § 1124.71(a). If, at such time, the balance in the producer-settlement fund is insufficient to make all payments pursuant to this section, the market administrator shall reduce uniformly such payments and shall complete the payments as soon as the funds are available.

§ 1124.73 Payments to producers and to cooperative associations.

(a) Each handler shall pay each producer for producer milk for which payment is not made to a cooperative association pursuant to paragraph (b) of this section, as follows:

(1) *Partial payment.* For each producer who has not discontinued shipments as of the 18th day of the month, partial payment shall be made so that it is received by each producer on or before the last day of the month (except as provided in § 1000.90) for milk received during the first 15 days of the month from the producer at not less than the lowest announced class price for the preceding month, less proper deductions authorized in writing by the producer.

(2) *Final payment.* For milk received during the month, payment shall be made so that it is received by each producer no later than the 19th day after the end of the month (except as provided in § 1000.90) in an amount equal to not less than the sum of:

(i) The hundredweight of producer milk received times the producer price differential for the month as adjusted pursuant to § 1124.75;

(ii) The pounds of butterfat received times the butterfat price for the month;

(iii) The pounds of protein received times the protein price for the month;

(iv) The pounds of other solids received times the other solids price for the month;

(v) Less any payment made pursuant to paragraph (a)(1) of this section;

(vi) Less proper deductions authorized in writing by such producer and plus or minus adjustments for errors in previous payments to such producer subject to approval by the market administrator; and

(vii) Less deductions for marketing services pursuant to § 1000.86.

(b) *Payments for milk received from cooperative association members.* On or before the 2nd day prior to the dates specified in paragraphs (a)(1) and (a)(2) of this section (except as provided in § 1000.90), each handler shall pay to a cooperative association for milk from producers who market their milk through the cooperative association and who have authorized the cooperative to collect such payments on their behalf an amount equal to the sum of the individual payments otherwise payable for such producer milk pursuant to paragraphs (a)(1) and (a)(2) of this section.

(c) *Payment for milk received from cooperative association pool plants or from cooperatives as handlers pursuant to § 1000.9(c).* On or before the 2nd day prior to the dates specified in paragraphs (a)(1) and (a)(2) of this section (except as provided in § 1000.90), each handler who receives fluid milk products at its plant from a cooperative association in its capacity as the operator of a pool plant or who receives milk from a cooperative association in its capacity as a handler pursuant to § 1000.9(c), including the

milk of producers who are not members of such association and who the market administrator determines have authorized the cooperative association to collect payment for their milk, shall pay the cooperative for such milk as follows:

(1) For bulk fluid milk products and bulk fluid cream products received from a cooperative association in its capacity as the operator of a pool plant and for milk received from a cooperative association in its capacity as a handler pursuant to § 1000.9(c) during the first 15 days of the month, at not less than the lowest announced class price per hundredweight for the preceding month.

(2) For the total quantity of bulk fluid milk products and bulk fluid cream products received from a cooperative association in its capacity as the operator of a pool plant, at not less than the total value of such products received from the association's pool plants, as determined by multiplying the respective quantities assigned to each class under § 1000.44, as follows:

(i) The hundredweight of Class I skim milk times the Class I skim milk price for the month plus the pounds of Class I butterfat times the Class I butterfat price for the month. The Class I prices to be used shall be the prices effective at the location of the receiving plant;

(ii) The pounds of nonfat solids in Class II skim milk by the Class II nonfat solids price;

(iii) The pounds of butterfat in Class II times the Class II butterfat price;

(iv) The pounds of nonfat solids in Class IV times the nonfat solids price;

(v) The pounds of butterfat in Class III and Class IV milk times the butterfat price;

(vi) The pounds of protein in Class III milk times the protein price;

(vii) The pounds of other solids in Class III milk times the other solids price; and

(viii) Add together the amounts computed in paragraphs (c)(2)(i) through (vii) of this section and from that sum deduct any payment made pursuant to paragraph (c)(1) of this section; and

(3) For the total quantity of milk received during the month from a cooperative association in its capacity as a handler under § 1000.9(c) as follows:

(i) The hundredweight of producer milk received times the producer price differential as adjusted pursuant to § 1124.75;

(ii) The pounds of butterfat received times the butterfat price for the month;

(iii) The pounds of protein received times the protein price for the month;

(iv) The pounds of other solids received times the other solids price for the month; and

(v) Add together the amounts computed in paragraphs (c)(3)(i) through (iv) of this section and from that sum deduct any payment made pursuant to paragraph (c)(1) of this section.

(d) If a handler has not received full payment from the market administrator pursuant to § 1124.72 by the payment date specified in paragraph (a), (b) or (c) of this section, the handler may reduce pro rata its payments to producers or to the cooperative association (with respect to receipts described in paragraph (b) of this section, prorating the underpayment to the volume of milk received from the cooperative association in proportion to the total milk received from producers by the handler), but not by more than the amount of the underpayment. The payments shall be completed on the next scheduled payment date after receipt of the balance due from the market administrator.

(e) If a handler claims that a required payment to a producer cannot be made because the producer is deceased or cannot be located, or because the cooperative association or its lawful successor or assignee is no longer in existence, the payment shall be made to the producer-settlement fund, and in the event that the handler subsequently locates and pays the producer or a lawful claimant, or in the event that the handler no longer exists and a lawful claim is later established, the market administrator shall make the required payment from the producer-settlement fund to the handler or to the lawful claimant, as the case may be.

(f) In making payments to producers pursuant to this section, each handler shall furnish each producer, except a producer whose milk was received from a cooperative association handler described in § 1000.9(a) or (c), a supporting statement in a form that may be retained by the recipient which shall show:

(1) The name, address, Grade A identifier assigned by a duly constituted regulatory agency, and payroll number of the producer;

(2) The daily and total pounds, and the month and dates such milk was received from that producer;

(3) The total pounds of butterfat, protein, and other solids contained in the producer's milk;

(4) The minimum rate or rates at which payment to the producer is required pursuant to this order;

(5) The rate used in making payment if the rate is other than the applicable minimum rate;

(6) The amount, or rate per hundredweight, or rate per pound of component, and the nature of each deduction claimed by the handler; and

(7) The net amount of payment to the producer or cooperative association.

§ 1124.74 [Reserved]

§ 1124.75 Plant location adjustments for producer milk and nonpool milk.

For purposes of making payments for producer milk and nonpool milk, a plant location adjustment shall be determined by subtracting the Class I price specified in § 1124.51 from the Class I price at the plant's location. The difference, plus or minus as the case may be, shall be used to adjust the payments required pursuant to §§ 1124.73 and 1000.76.

§ 1124.76 Payments by a handler operating a partially regulated distributing plant.

See § 1000.76.

§ 1124.77 Adjustment of accounts.

See § 1000.77.

§ 1124.78 Charges on overdue accounts.

See § 1000.78.

Administrative Assessment and Marketing Service Deduction

§ 1124.85 Assessment for order administration.

See § 1000.85.

§ 1124.86 Deduction for marketing services.

See § 1000.86.

PART 1126—MILK IN THE SOUTHWEST MARKETING AREA

Subpart—Order Regulating Handling

General Provisions

Sec.

1126.1 General provisions.

DEFINITIONS

1126.2 Southwest marketing area.
1126.3 Route disposition.
1126.4 Plant.
1126.5 Distributing plant.
1126.6 Supply plant.
1126.7 Pool plant.
1126.8 Nonpool plant.
1126.9 Handler.
1126.10 Producer-handler.
1126.11 [Reserved]
1126.12 Producer.
1126.13 Producer milk.
1126.14 Other source milk.
1126.15 Fluid milk product.
1126.16 Fluid cream product.
1126.17 [Reserved]
1126.18 Cooperative association.
1126.19 Commercial food processing establishment.

Handler Reports

1126.30 Reports of receipts and utilization.
1126.31 Payroll reports.
1126.32 Other reports.

Classification of Milk

1126.40 Classes of utilization.
1126.41 [Reserved]
1126.42 Classification of transfers and diversions.
1126.43 General classification rules.
1126.44 Classification of producer milk.
1126.45 Market administrator's reports and announcements concerning classification.

Class Prices

1126.50 Class prices, component prices, and advanced pricing factors.
1126.51 Class I differential and price.
1126.52 Adjusted Class I differentials.
1126.53 Announcement of class prices, component prices, and advanced pricing factors.
1126.54 Equivalent price.

Producer Price Differential

1126.60 Handler's value of milk.
1126.61 Computation of producer price differential.
1126.62 Announcement of producer prices.

Payments for Milk

1126.70 Producer-settlement fund.
1126.71 Payments to the producer-settlement fund.
1126.72 Payments from the producer-settlement fund.
1126.73 Payments to producers and to cooperative associations.
1126.74 [Reserved]
1126.75 Plant location adjustments for producer milk and nonpool milk.
1126.76 Payments by a handler operating a partially regulated distributing plant.
1126.77 Adjustment of accounts.
1126.78 Charges on overdue accounts.

Administrative Assessment and Marketing Service Deduction

1126.85 Assessment for order administration.
1126.86 Deduction for marketing services.

Authority: 7 U.S.C. 601–674.

Subpart—Order Regulating Handling

General Provisions

§ 1126.1 General provisions.

The terms, definitions, and provisions in part 1000 of this chapter apply to and are hereby made a part of this order. In this part, 1126, all references to sections in part 1000 refer to part 1000 of this chapter.

Definitions

§ 1126.2 Southwest marketing area.

The marketing area means all territory within the bounds of the following states and political subdivisions, including all piers, docks and wharves connected therewith and all craft moored thereat, and all territory occupied by government (municipal, State or Federal) reservations, installations, institutions, or other similar establishments if any part thereof is within any of the listed states or political subdivisions:

New Mexico and Texas

All of the States of New Mexico and Texas.

Colorado Counties

Archuleta, LaPlata, and Montezuma.

§ 1126.3 Route disposition.

See § 1000.3.

§ 1126.4 Plant.

See § 1000.4.

§ 1126.5 Distributing plant.

See § 1000.5.

§ 1126.6 Supply plant.

See § 1000.6.

§ 1126.7 Pool plant.

Pool plant means a plant specified in paragraphs (a) through (d) of this section, or a unit of plants as specified in paragraph (e) of this section, but excluding a plant specified in paragraph (g) of this section. The pooling standards described in paragraphs (c) and (d) of this section are subject to modification pursuant to paragraph (f) of this section:

(a) A distributing plant, other than a plant qualified as a pool plant pursuant to paragraph (b) of this section or section 7(b) of any other Federal milk order, from which during the month 25 percent or more of the total quantity of fluid milk products physically received at the plant (excluding concentrated milk received from another plant by agreement for other than Class I use) are disposed of as route disposition or are transferred in the form of packaged fluid milk products to other distributing plants. At least 25 percent of such route disposition and transfers must be to outlets in the marketing area.

(b) Any distributing plant located in the marketing area which during the month processed at least 25 percent of the total quantity of fluid milk products physically received at the plant (excluding concentrated milk received from another plant by agreement for other than Class I use) into ultra-pasteurized or aseptically-processed fluid milk products.

(c) A supply plant from which 50 percent or more of the total quantity of milk that is physically received during the month from dairy farmers and handlers described in § 1000.9(c), including milk that is diverted as producer milk to other plants, is transferred to pool distributing plants. Concentrated milk transferred from the supply plant to a distributing plant for an agreed-upon use other than Class I shall be excluded from the supply plant's shipments in computing the plant's shipping percentage.

(d) A plant located within the marketing area that is operated by a cooperative association if pool plant status under this paragraph is requested for such plant by the cooperative association and during the month at least 30 percent of the producer milk of members of such cooperative association is delivered directly from farms to pool distributing plants or is transferred to such plants as a fluid milk product (excluding concentrated milk transferred to a distributing plant for an agreed-upon use other than Class I) from the cooperative's plant.

(e) Two or more plants operated by the same handler and located within the marketing area may qualify for pool status as a unit by meeting the total and in-area route disposition requirements specified in paragraph (a) of this section and the following additional requirements:

(1) At least one of the plants in the unit must qualify as a pool plant pursuant to paragraph (a) of this section;

(2) Other plants in the unit must process only Class I or Class II products and must be located in a pricing zone providing the same or a lower Class I price than the price applicable at the distributing plant included in the unit pursuant to paragraph (e)(1) of this section; and

(3) A written request to form a unit, or to add or remove plants from a unit, must be filed with the market administrator prior to the first day of the month for which it is to be effective.

(f) The applicable shipping percentages of paragraphs (c) and (d) of this section may be increased or decreased by the market administrator if the market administrator finds that such adjustment is necessary to encourage needed shipments or to prevent uneconomic shipments. Before making such a finding, the market administrator shall investigate the need for adjustment either on the market administrator's own initiative or at the request of interested parties if the request is made in writing at least 15 days prior to the month for which the requested revision is desired effective. If the investigation shows that an adjustment of the shipping percentages might be appropriate, the market administrator shall issue a notice stating that an adjustment is being considered and invite data, views and arguments. Any decision to revise an applicable shipping percentage must be issued in

writing at least one day before the effective date.

(g) The term pool plant shall not apply to the following plants:

(1) A producer-handler plant;

(2) An exempt plant as defined in § 1000.8(e);

(3) A plant qualified pursuant to paragraph (a) of this section that is located within the marketing area if the plant also meets the pooling requirements of another Federal order, and more than 50 percent of its route distribution has been in such other Federal order marketing area for 3 consecutive months;

(4) A plant qualified pursuant to paragraph (a) of this section which is not located within any Federal order marketing area that meets the pooling requirements of another Federal order and has had greater route disposition in such other Federal order's marketing area for 3 consecutive months;

(5) A plant qualified pursuant to paragraph (a) of this section that is located in another Federal order marketing area if the plant meets the pooling requirements of such other Federal order and does not have a majority of its route distribution in this marketing area for 3 consecutive months or if the plant is required to be regulated under such other Federal order without regard to its route disposition in any other Federal order marketing area;

(6) A plant qualified pursuant to paragraph (c) or (d) of this section which also meets the pooling requirements of another Federal order and from which greater qualifying shipments are made to plants regulated under the other Federal order than are made to plants regulated under this order, or the plant has automatic pooling status under the other Federal order; and

(7) That portion of a pool plant designated as a nonpool plant that is physically separate and operated separately from the pool portion of such plant. The designation of a portion of a regulated plant as a nonpool plant must be requested in writing by the handler and must be approved by the market administrator.

§ 1126.8 Nonpool plant.

See § 1000.8.

§ 1126.9 Handler.

See § 1000.9.

§ 1126.10 Producer-handler.

Producer-handler means a person who:

(a) Operates a dairy farm and a distributing plant from which there is route disposition in the marketing area during the month;

(b) Receives fluid milk products from own farm production or milk that is fully subject to the pricing and pooling provisions of this or another Federal order;

(c) Receives no more than 150,000 pounds of fluid milk products from handlers fully regulated under any Federal order, including such products received at a location other than the producer-handler's processing plant for distribution on routes. This limitation shall not apply if the producer-handler's own farm production is less than 150,000 pounds during the month;

(d) Disposes of no other source milk as Class I milk except by increasing the nonfat milk solids content of the fluid milk products; and

(e) Provides proof satisfactory to the market administrator that the care and management of the dairy animals and other resources necessary to produce all Class I milk handled (excluding receipts from handlers fully regulated under any Federal order) and the processing and packaging operations are the producer-handler's own enterprise and at its own risk.

§ 1126.11 [Reserved]

§ 1126.12 Producer.

(a) Except as provided in paragraph (b) of this section, *producer* means any person who produces milk approved by a duly constituted regulatory agency for fluid consumption as Grade A milk and whose milk (or components of milk) is:

(1) Received at a pool plant directly from the producer or diverted by the plant operator in accordance with § 1126.13; or

(2) Received by a handler described in § 1000.9(c).

(b) Producer shall not include:

(1) A producer-handler as defined in any Federal order;

(2) A dairy farmer whose milk is received at an exempt plant, excluding producer milk diverted to the exempt plant pursuant to § 1126.13(d);

(3) A dairy farmer whose milk is received by diversion at a pool plant from a handler regulated under another Federal order if the other Federal order designates the dairy farmer as a producer under that order and the milk is allocated by request to a utilization other than Class I; and

(4) A dairy farmer whose milk is reported as diverted to a plant fully regulated under another Federal order with respect to that portion of the milk so diverted that is assigned to Class I under the provisions of such other order.

§ 1126.13 Producer milk.

Producer milk means the skim milk (or the skim equivalent of components of skim milk), including nonfat components, and butterfat contained in milk of a producer that is:

(a) Received by the operator of a pool plant directly from a producer or a handler described in § 1000.9(c). All milk received pursuant to this paragraph shall be priced at the location of the plant where it is first physically received;

(b) Received by a handler described in § 1000.9(c) in excess of the quantity delivered to pool plants;

(c) Diverted by a pool plant operator for the account of the handler operating such plant to another pool plant. Milk so diverted shall be priced at the location of the plant to which diverted; or

(d) Diverted by the operator of a pool plant or a handler described in § 1000.9(c) to a nonpool plant, subject to the following conditions:

(1) Milk of a dairy farmer shall not be eligible for diversion unless a delivery of at least 40,000 pounds or one day's milk production, whichever is less, of such dairy farmer has been physically received as producer milk at a pool plant and the dairy farmer has continuously retained producer status since that time;

(2) The total quantity of milk diverted during the month by a cooperative association shall not exceed 50 percent of the total quantity of producer milk that the cooperative association caused to be received at pool plants and diverted;

(3) The operator of a pool plant that is not a cooperative association may divert any milk that is not under the control of a cooperative association that diverts milk during the month pursuant to this paragraph. The total quantity of milk so diverted during the month shall not exceed 50 percent of the total quantity of the producer milk physically received at such plant (or such unit of plants in the case of plants that pool as a unit pursuant to § 1126.7(e)) and diverted;

(4) Any milk diverted in excess of the limits prescribed in paragraphs (d)(2) and (3) of this section shall not be producer milk. If the diverting handler or cooperative association fails to designate the dairy farmers' deliveries that will not be producer milk, no milk diverted by the handler or cooperative association shall be producer milk;

(5) Diverted milk shall be priced at the location of the plant to which diverted; and

(6) The delivery requirement in paragraph (d)(1) and the diversion

percentages in paragraphs (d)(2) and (3) of this section may be increased or decreased by the market administrator if there is a finding that such revision is necessary to assure orderly marketing and efficient handling of milk in the marketing area. Before making such a finding, the market administrator shall investigate the need for the revision either on the market administrator's own initiative or at the request of interested persons if the request is made in writing at least 15 days prior to the month for which the requested revision is desired effective. If the investigation shows that a revision might be appropriate, the market administrator shall issue a notice stating that the revision is being considered and inviting written data, views, and arguments. Any decision to revise the delivery day requirement or any diversion percentage must be issued in writing at least one day before the effective date.

§ 1126.14 Other source milk.

See § 1000.14.

§ 1126.15 Fluid milk product.

See § 1000.15.

§ 1126.16 Fluid cream product.

See § 1000.16.

§ 1126.17 [Reserved]

§ 1126.18 Cooperative association.

See § 1000.18.

§ 1126.19 Commercial food processing establishment.

See § 1000.19.

Handler Reports

§ 1126.30 Reports of receipts and utilization.

Each handler shall report monthly so that the market administrator's office receives the report on or before the 8th day after the end of the month, in the detail and on prescribed forms, as follows:

(a) Each pool plant operator shall report for each of its operations the following information:

(1) Product pounds, pounds of butterfat, pounds of protein, pounds of nonfat solids other than protein (other solids), and the value of the somatic cell adjustment pursuant to § 1000.50(p) contained in or represented by:

(i) Receipts of producer milk, including producer milk diverted by the reporting handler, from sources other than handlers described in § 1000.9(c); and

(ii) Receipts of milk from handlers described in § 1000.9(c);

(2) Product pounds and pounds of butterfat contained in:

(i) Receipts of fluid milk products and bulk fluid cream products from other pool plants;

(ii) Receipts of other source milk; and

(iii) Inventories at the beginning and end of the month of fluid milk products and bulk fluid cream products;

(3) The utilization or disposition of all milk and milk products required to be reported pursuant to this paragraph; and

(4) Such other information with respect to the receipts and utilization of skim milk, butterfat, milk protein, other nonfat solids, and somatic cell information, as the market administrator may prescribe.

(b) Each handler operating a partially regulated distributing plant shall report with respect to such plant in the same manner as prescribed for reports required by paragraph (a) of this section. Receipts of milk that would have been producer milk if the plant had been fully regulated shall be reported in lieu of producer milk. The report shall show also the quantity of any reconstituted skim milk in route disposition in the marketing area.

(c) Each handler described in § 1000.9(c) shall report:

(1) The product pounds, pounds of butterfat, pounds of protein, pounds of solids-not-fat other than protein (other solids), and the value of the somatic cell adjustment pursuant to § 1000.50(p), contained in receipts of milk from producers; and

(2) The utilization or disposition of such receipts.

(d) Each handler not specified in paragraphs (a) through (c) of this section shall report with respect to its receipts and utilization of milk and milk products in such manner as the market administrator may prescribe.

§ 1126.31 Payroll reports.

(a) On or before the 20th day after the end of each month, each handler that operates a pool plant pursuant to § 1126.7 and each handler described in § 1000.9(c) shall report to the market administrator its producer payroll for the month, in the detail prescribed by the market administrator, showing for each producer the information specified in § 1126.73(e).

(b) Each handler operating a partially regulated distributing plant who elects to make payment pursuant to § 1000.76(b) shall report for each dairy farmer who would have been a producer if the plant had been fully regulated in the same manner as prescribed for reports required by paragraph (a) of this section.

§ 1126.32 Other reports.

In addition to the reports required pursuant to §§ 1126.30 and 1126.31, each handler shall report any information the market administrator deems necessary to verify or establish each handler's obligation under the order.

Classification of Milk

§ 1126.40 Classes of utilization.

See § 1000.40.

§ 1126.41 [Reserved]

§ 1126.42 Classification of transfers and diversions.

See § 1000.42.

§ 1126.43 General classification rules.

See § 1000.43.

§ 1126.44 Classification of producer milk.

See § 1000.44.

§ 1126.45 Market administrator's reports and announcements concerning classification.

See § 1000.45.

Class Prices

§ 1126.50 Class prices, component prices, and advanced pricing factors.

See § 1000.50.

§ 1126.51 Class I differential and price.

The Class I differential shall be the differential established for Dallas County, Texas, which is reported in § 1000.52. The Class I price shall be the price computed pursuant to § 1000.50(a) for Dallas County, Texas.

§ 1126.52 Adjusted Class I differentials.

See § 1000.52.

§ 1126.53 Announcement of class prices, component prices, and advanced pricing factors.

See § 1000.53.

§ 1126.54 Equivalent price.

See § 1000.54.

Producer Price Differential

§ 1126.60 Handler's value of milk.

For the purpose of computing a handler's obligation for producer milk, the market administrator shall determine for each month the value of milk of each handler with respect to each of the handler's pool plants and of each handler described in § 1000.9(c) with respect to milk that was not received at a pool plant by adding the amounts computed in paragraphs (a) through (i) of this section and subtracting from that total amount the value computed in paragraph (j) of this section. Unless otherwise specified, the

skim milk, butterfat, and the combined pounds of skim milk and butterfat referred to in this section shall result from the steps set forth in § 1000.44(a), (b), and (c), respectively, and the nonfat components of producer milk in each class shall be based upon the proportion of such components in producer skim milk. Receipts of nonfluid milk products that are distributed as labeled reconstituted milk for which payments are made to the producer-settlement fund of another Federal order under § 1000.76(a)(4) or (d) shall be excluded from pricing under this section.

(a) Class I value.

(1) Multiply the pounds of skim milk in Class I by the Class I skim milk price; and

(2) Add an amount obtained by multiplying the pounds of butterfat in Class I by the Class I butterfat price.

(b) Class II value.

(1) Multiply the pounds of nonfat solids in Class II skim milk by the Class II nonfat solids price; and

(2) Add an amount obtained by multiplying the pounds of butterfat in Class II times the Class II butterfat price.

(c) Class III value.

(1) Multiply the pounds of protein in Class III skim milk by the protein price;

(2) Add an amount obtained by multiplying the pounds of other solids in Class III skim milk by the other solids price; and

(3) Add an amount obtained by multiplying the pounds of butterfat in Class III by the butterfat price.

(d) Class IV value.

(1) Multiply the pounds of nonfat solids in Class IV skim milk by the nonfat solids price; and

(2) Add an amount obtained by multiplying the pounds of butterfat in Class IV by the butterfat price.

(e) Compute an adjustment for the somatic cell content of producer milk by multiplying the values reported pursuant to § 1126.30(a)(1) and (c)(1) by the percentage of total producer milk allocated to Class II, Class III, and Class IV pursuant to § 1000.44(c);

(f) Multiply the pounds of skim milk and butterfat overage assigned to each class pursuant to § 1000.44(a)(11) and the corresponding step of § 1000.44(b) by the skim milk prices and butterfat prices applicable to each class.

(g) Multiply the difference between the current month's Class I, II, or III price, as the case may be, and the Class IV price for the preceding month by the hundredweight of skim milk and butterfat subtracted from Class I, II, or III, respectively, pursuant to § 1000.44(a)(7) and the corresponding step of § 1000.44(b);

(h) Multiply the difference between the Class I price applicable at the location of the pool plant and the Class IV price by the hundredweight of skim milk and butterfat assigned to Class I pursuant to § 1000.43(d) and the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1000.44(a)(3)(i) through (vi) and the corresponding step of § 1000.44(b), excluding receipts of bulk fluid cream products from plants regulated under other Federal orders and bulk concentrated fluid milk products from pool plants, plants regulated under other Federal orders, and unregulated supply plants.

(i) Multiply the difference between the Class I price applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received and the Class III price by the pounds of skim milk and butterfat in receipts of concentrated fluid milk products assigned to Class I pursuant to § 1000.43(d) and § 1000.44(a)(3)(i) and the corresponding step of § 1000.44(b) and the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1000.44(a)(8) and the corresponding step of § 1000.44(b), excluding such skim milk and butterfat in receipts of fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order.

(j) For reconstituted milk made from receipts of nonfluid milk products, multiply $1.00 (but not more than the difference between the Class I price applicable at the location of the pool plant and the Class IV price) by the hundredweight of skim milk and butterfat contained in receipts of nonfluid milk products that are allocated to Class I use pursuant to § 1000.43(d).

§ 1126.61 Computation of producer price differential.

For each month the market administrator shall compute a producer price differential per hundredweight. The report of any handler who has not made payments required pursuant to § 1126.71 for the preceding month shall not be included in the computation of the producer price differential, and such handler's report shall not be included in the computation for succeeding months until the handler has made full payment of outstanding monthly obligations. Subject to the aforementioned conditions, the market administrator shall compute the producer price differential in the following manner:

(a) Combine into one total the values computed pursuant to § 1126.60 for all handlers required to file reports prescribed in § 1126.30;

(b) Subtract the total of the values obtained by multiplying each handler's total pounds of protein, other solids, and butterfat contained in the milk for which an obligation was computed pursuant to § 1126.60 by the protein price, other solids price, and the butterfat price, respectively, and the total value of the somatic cell adjustment pursuant to § 1126.30(a)(1) and (c)(1);

(c) Add an amount equal to the sum of the location adjustments computed pursuant to § 1126.75;

(d) Add an amount equal to not less than one-half of the unobligated balance in the producer-settlement fund;

(e) Divide the resulting amount by the sum of the following for all handlers included in these computations:

(1) The total hundredweight of producer milk; and

(2) The total hundredweight for which a value is computed pursuant to § 1126.60(i); and

(f) Subtract not less than 4 cents nor more than 5 cents from the price computed pursuant to paragraph (e) of this section. The result shall be known as the *producer price differential* for the month.

§ 1126.62 Announcement of producer prices.

On or before the 13th day after the end of each month, the market administrator shall announce the following prices and information:

(a) The producer price differential;

(b) The protein price;

(c) The nonfat solids price;

(d) The other solids price;

(e) The butterfat price;

(f) The somatic cell adjustment rate;

(g) The average butterfat, protein, nonfat solids, and other solids content of producer milk; and

(h) The statistical uniform price for milk containing 3.5 percent butterfat, computed by combining the Class III price and the producer price differential.

Payments for Milk

§ 1126.70 Producer-settlement fund.

See § 1000.70.

§ 1126.71 Payments to the producer-settlement fund.

Each handler shall make payment to the producer-settlement fund in a manner that provides receipt of the funds by the market administrator no later than the 16th day after the end of the month (except as provided in

§ 1000.90). Payment shall be the amount, if any, by which the amount specified in paragraph (a) of this section exceeds the amount specified in paragraph (b) of this section:

(a) The total value of milk to the handler for the month as determined pursuant to § 1126.60.

(b) The sum of:

(1) An amount obtained by multiplying the total hundredweight of producer milk as determined pursuant to § 1000.44(c) by the producer price differential as adjusted pursuant to § 1126.75;

(2) An amount obtained by multiplying the total pounds of protein, other solids, and butterfat contained in producer milk by the protein, other solids, and butterfat prices respectively;

(3) The total value of the somatic cell adjustment to producer milk; and

(4) An amount obtained by multiplying the pounds of skim milk and butterfat for which a value was computed pursuant to § 1126.60(i) by the producer price differential as adjusted pursuant to § 1126.75 for the location of the plant from which received.

§ 1126.72 Payments from the producer-settlement fund.

No later than the 17th day after the end of each month (except as provided in § 1000.90), the market administrator shall pay to each handler the amount, if any, by which the amount computed pursuant to § 1126.71(b) exceeds the amount computed pursuant to § 1126.71(a). If, at such time, the balance in the producer-settlement fund is insufficient to make all payments pursuant to this section, the market administrator shall reduce uniformly such payments and shall complete the payments as soon as the funds are available.

§ 1126.73 Payments to producers and to cooperative associations.

(a) Each handler shall pay each producer for producer milk for which payment is not made to a cooperative association pursuant to paragraph (b) of this section, as follows:

(1) *Partial payment.* For each producer who has not discontinued shipments as of the 23rd day of the month, payment shall be made so that it is received by the producer on or before the 26th day of the month (except as provided in § 1000.90) for milk received during the first 15 days of the month at not less than the lowest announced class price for the preceding month, less proper deductions authorized in writing by the producer.

(2) *Final payment.* For milk received during the month, payment shall be made so that it is received by each producer no later than the 18th day after the end of the month (except as provided in § 1000.90) in an amount computed as follows:

(i) Multiply the hundredweight of producer milk received times the producer price differential for the month as adjusted pursuant to § 1126.75;

(ii) Multiply the pounds of butterfat received times the butterfat price for the month;

(iii) Multiply the pounds of protein received times the protein price for the month;

(iv) Multiply the pounds of other solids received times the other solids price for the month;

(v) Multiply the hundredweight of milk received times the somatic cell adjustment for the month;

(vi) Add the amounts computed in paragraphs (a)(2)(i) through (v) of this section, and from that sum:

(A) Subtract the partial payment made pursuant to paragraph (a)(1) of this section;

(B) Subtract the deduction for marketing services pursuant to § 1000.86;

(C) Add or subtract for errors made in previous payments to the producer subject to approval by the market administrator; and

(D) Subtract proper deductions authorized in writing by the producer.

(b) On or before the day prior to the dates specified for partial and final payments pursuant to paragraph (a) of this section (except as provided in § 1000.90), each pool plant operator shall pay a cooperative association for milk received as follows:

(1) *Partial payment to a cooperative association for bulk milk received directly from producers' farms.* For bulk milk (including the milk of producers who are not members of such association and who the market administrator determines have authorized the cooperative association to collect payment for their milk) received during the first 15 days of the month from a cooperative association in any capacity, except as the operator of a pool plant, the payment shall be equal to the hundredweight of milk received multiplied by the lowest announced class price for the preceding month.

(2) *Partial payment to a cooperative association for milk transferred from its pool plant.* For bulk milk/skimmed milk products received during the first 15 days of the month from a cooperative association in its capacity as the operator of a pool plant, the partial payment shall be at the pool plant operator's estimated use value of the milk using the most recent class prices available at the receiving plant's location.

(3) *Final payment to a cooperative association for milk transferred from its pool plant.* Following the classification of bulk fluid milk products and bulk fluid cream products received during the month from a cooperative association in its capacity as the operator of a pool plant, the final payment for such receipts shall be determined as follows:

(i) The hundredweight of Class I skim milk times the Class I skim milk price for the month plus the pounds of Class I butterfat times the Class I butterfat price for the month. The Class I prices to be used shall be the prices effective at the location of the receiving plant;

(ii) The pounds of nonfat solids in Class II skim milk by the Class II nonfat solids price;

(iii) The pounds of butterfat in Class II times the Class II butterfat price;

(iv) The pounds of nonfat solids in Class IV times the nonfat solids price;

(v) The pounds of butterfat in Class III and Class IV milk times the butterfat price;

(vi) The pounds of protein in Class III milk times the protein price;

(vii) The pounds of other solids in Class III milk times the other solids price;

(viii) The hundredweight of Class II, Class III, and Class IV milk times the somatic cell adjustment; and

(ix) Add together the amounts computed in paragraphs (b)(3)(i) through (viii) of this section and from that sum deduct any payments made pursuant to paragraph (b)(2) of this section.

(4) *Final payment to a cooperative association for bulk milk received directly from producers' farms.* For bulk milk received from a cooperative association during the month, including the milk of producers who are not members of such association and who the market administrator determines have authorized the cooperative association to collect payment for their milk, the final payment for such milk shall be an amount equal to the sum of the individual payments otherwise payable for such milk pursuant to paragraph (a)(2) of this section.

(c) If a handler has not received full payment from the market administrator pursuant to § 1126.72 by the payment date specified in paragraph (a) or (b) of this section, the handler may reduce pro rata its payments to producers or to cooperative associations pursuant to paragraphs (a) and (b) of this section, but by not more than the amount of the underpayment. The payments shall be

completed on the next scheduled payment date after receipt of the balance due from the market administrator.

(d) If a handler claims that a required payment to a producer cannot be made because the producer is deceased or cannot be located, or because the cooperative association or its lawful successor or assignee is no longer in existence, the payment shall be made to the producer-settlement fund, and in the event that the handler subsequently locates and pays the producer or a lawful claimant, or in the event that the handler no longer exists and a lawful claim is later established, the market administrator shall make the required payment from the producer-settlement fund to the handler or to the lawful claimant as the case may be.

(e) In making payments to producers pursuant to this section, each pool plant operator shall furnish each producer, except a producer whose milk was received from a cooperative association handler described in § 1000.9(a) or (c), a supporting statement in a form that may be retained by the recipient which shall show:

(1) The name, address, Grade A identifier assigned by a duly constituted regulatory agency, and the payroll number of the producer;

(2) The month and dates that milk was received from the producer, including the daily and total pounds of milk received;

(3) The total pounds of butterfat, protein, and other solids contained in the producer's milk;

(4) The somatic cell count of the producer's milk;

(5) The minimum rate or rates at which payment to the producer is required pursuant to this order;

(6) The rate used in making payment if the rate is other than the applicable minimum rate;

(7) The amount, or rate per hundredweight, or rate per pound of component, and the nature of each deduction claimed by the handler; and

(8) The net amount of payment to the producer or cooperative association.

§ 1126.74 [Reserved]

§ 1126.75 Plant location adjustments for producer milk and nonpool milk.

For purposes of making payments for producer milk and nonpool milk, a plant location adjustment shall be determined by subtracting the Class I price specified in § 1126.51 from the Class I price at the plant's location. The difference, plus or minus as the case may be, shall be used to adjust the payments required pursuant to §§ 1126.73 and 1000.76.

§ 1126.76 Payments by a handler operating a partially regulated distributing plant.

See § 1000.76.

§ 1126.77 Adjustment of accounts.

See § 1000.77.

§ 1126.78 Charges on overdue accounts.

See § 1000.78.

Administrative Assessment and Marketing Service Deduction

§ 1126.85 Assessment for order administration.

See § 1000.85.

§ 1126.86 Deduction for marketing services.

See § 1000.86.

PART 1131—MILK IN ARIZONA-LAS VEGAS MARKETING AREA

Subpart—Order Regulating Handling

General Provisions

Sec.
1131.1 General provisions.

Definitions

1131.2 Arizona-Las Vegas marketing area.
1131.3 Route disposition.
1131.4 Plant.
1131.5 Distributing plant.
1131.6 Supply plant.
1131.7 Pool plant.
1131.8 Nonpool plant.
1131.9 Handler.
1131.10 Producer-handler.
1131.11 [Reserved]
1131.12 Producer.
1131.13 Producer milk.
1131.14 Other source milk.
1131.15 Fluid milk product.
1131.16 Fluid cream product.
1131.17 [Reserved]
1131.18 Cooperative association.
1131.19 Commercial food processing establishment.

Handler Reports

1131.30 Reports of receipts and utilization.
1131.31 Payroll reports.
1131.32 Other reports.

Classification of Milk

1131.40 Classes of utilization.
1131.41 [Reserved]
1131.42 Classification of transfers and diversions.
1131.43 General classification rules.
1131.44 Classification of producer milk.
1131.45 Market administrator's reports and announcements concerning classification.

Class Prices

1131.50 Class prices, component prices, and advanced pricing factors.
1131.51 Class I differential and price.
1131.52 Adjusted Class I differentials.
1131.53 Announcement of class prices, component prices, and advanced pricing factors.
1131.54 Equivalent price.

Uniform Prices

1131.60 Handler's value of milk.
1131.61 Computation of uniform prices.
1131.62 Announcement of uniform prices.

Payments for Milk

1131.70 Producer-settlement fund.
1131.71 Payments to the producer-settlement fund.
1131.72 Payments from the producer-settlement fund.
1131.73 Payments to producers and to cooperative associations.
1131.74 [Reserved]
1131.75 Plant location adjustments for producers and nonpool milk.
1131.76 Payments by a handler operating a partially regulated distributing plant.
1131.77 Adjustment of accounts.
1131.78 Charges on overdue accounts.

Administrative Assessment and Marketing Service Deduction

1131.85 Assessment for order administration.
1131.86 Deduction for marketing services.

Authority: 7 U.S.C. 601—674.

Subpart—Order Regulating Handling

General Provisions

§ 1131.1 General provisions.

The terms, definitions, and provisions in part 1000 of this chapter apply to and are hereby made a part of this order. In this part, 1131, all references to sections in part 1000 refer to part 1000 of this chapter.

Definitions

§ 1131.2 Arizona-Las Vegas marketing area.

The marketing area means all territory within the bounds of the following states and political subdivisions, including all piers, docks and wharves connected therewith and all craft moored thereat, and all territory occupied by government (municipal, State or Federal) reservations, installations, institutions, or other similar establishments if any part thereof is within any of the listed states or political subdivisions:

Arizona

All of the State of Arizona.

Nevada Counties

Clark.

§ 1131.3 Route disposition.

See § 1000.3.

§ 1131.4 Plant.

See § 1000.4.

§ 1131.5 Distributing plant.

See § 1000.5.

§ 1131.6 Supply plant.

See § 1000.6.

§ 1131.7 Pool plant.

Pool Plant means a plant or unit of plants specified in paragraphs (a) through (e) of this section, but excluding a plant specified in paragraph (g) of this section. The pooling standards described in paragraphs (c) and (d) of this section are subject to modification pursuant to paragraph (f) of this section.

(a) A distributing plant, other than a plant qualified as a pool plant pursuant to paragraph (b) of this section or section 7(b) of any other Federal milk order, from which during the month 25 percent or more of the total quantity of fluid milk products physically received at the plant (excluding concentrated milk received from another plant by agreement for other than Class I use) are disposed of as route disposition or are transferred in the form of packaged fluid milk products to other distributing plants. At least 25 percent of such route disposition and transfers must be to outlets in the marketing area.

(b) Any distributing plant located in the marketing area which during the month processed at least 25 percent of the total quantity of fluid milk products physically received at the plant (excluding concentrated milk received from another plant by agreement for other than Class I use) into ultra-pasteurized or aseptically-processed fluid milk products.

(c) A supply plant from which 50 percent or more of the total quantity of milk that is physically received at such plant from dairy farmers and handlers described in § 1000.9(c), including milk that is diverted as producer milk to other plants, is transferred to pool distributing plants. Concentrated milk transferred from the supply plant to a distributing plant for an agreed-upon use other than Class I shall be excluded from the supply plant's shipments in computing the plant's shipping percentage.

(d) A plant located within the marketing area and operated by a cooperative association if, during the month, or the immediately preceding 12-month period ending with the current month, 35 percent or more of the producer milk of members of the association (and any producer milk of nonmembers and members of another cooperative association which may be marketed by the cooperative association) is physically received in the form of bulk fluid milk products (excluding concentrated milk transferred to a distributing plant for an agreed-upon use other than Class I) at plants specified in paragraph (a) or (b) of this section either directly from farms or by transfer from supply plants operated by the cooperative association and from plants of the cooperative association for which pool plant status has been requested under this paragraph subject to the following conditions:

(1) The plant does not qualify as a pool plant under paragraph (a), (b) or (c) of this section or under comparable provisions of another Federal order; and

(2) The plant is approved by a duly constituted regulatory agency for the handling of milk approved for fluid consumption in the marketing area.

(e) Two or more plants operated by the same handler and located in the marketing area may qualify for pool plant status as a unit by together meeting the requirements specified in paragraph (a) of this section and subject to all of the following additional requirements:

(1) At least one of the plants in the unit must qualify as a pool plant pursuant to paragraph (a) of this section;

(2) Other plants in the unit must process Class I or Class II products, using 50 percent or more of the total Grade A fluid milk products received in bulk form at such plant or diverted therefrom by the plant operator in Class I or Class II products, and must be located in a pricing zone providing the same or lower Class I price than the price applicable at the distributing plant included in the unit pursuant to paragraph (e)(1) of this section; and

(3) A written request to form a unit must be filed by the handler with the market administrator prior to the first day of the month for which such status is desired to be effective. The unit shall continue from month to month thereafter without further notification. The handler shall notify the market administrator in writing prior to the first day of any month for which termination or any change of the unit is desired.

(f) The applicable shipping percentages of paragraphs (c) and (d) of this section may be increased or decreased by the market administrator if the market administrator finds that such adjustment is necessary to encourage needed shipments or to prevent uneconomic shipments. Before making such a finding, the market administrator shall investigate the need for adjustment either on the market administrator's own initiative or at the request of interested parties if the request is made in writing at least 15 days prior to the month for which the requested revision is desired effective. If the investigation shows that an adjustment of the shipping percentages might be appropriate, the market administrator shall issue a notice stating that an adjustment is being considered and invite data, views and arguments. Any decision to revise an applicable shipping percentage must be issued in writing at least one day before the effective date.

(g) The term pool plant shall not apply to the following plants:

(1) A producer-handler as defined under any Federal order;

(2) An exempt plant as defined in § 1000.8(e);

(3) A plant located within the marketing area and qualified pursuant to paragraph (a) of this section which meets the pooling requirements of another Federal order, and from which more than 50 percent of its route disposition has been in the other Federal order marketing area for 3 consecutive months;

(4) A plant located outside any Federal order marketing area and qualified pursuant to paragraph (a) of this section that meets the pooling requirements of another Federal order and has had greater route disposition in such other Federal order's marketing area for 3 consecutive months;

(5) A plant located in another Federal order marketing area and qualified pursuant to paragraph (a) of this section that meets the pooling requirements of such other Federal order and does not have a majority of its route distribution in this marketing area for 3 consecutive months or if the plant is required to be regulated under such other Federal order without regard to its route disposition in any other Federal order marketing area;

(6) A plant qualified pursuant to paragraph (c) of this section which also meets the pooling requirements of another Federal order and from which greater qualifying shipments are made to plants regulated under the other Federal order than are made to plants regulated under this order, or the plant has automatic pooling status under the other Federal order; and

(7) That portion of a regulated plant designated as a nonpool plant that is physically separate and operated separately from the pool portion of such plant. The designation of a portion of a regulated plant as a nonpool plant must be requested in advance and in writing by the handler and must be approved by the market administrator.

§ 1131.8 Nonpool plant.

See § 1000.8.

§ 1131.9 Handler.

See § 1000.9.

§ 1131.10 Producer-handler.

Producer-handler means a person who:

(a) Operates a dairy farm and a distributing plant from which there is route disposition in the marketing area during the month;

(b) Receives fluid milk products from own farm production or milk that is fully subject to the pricing and pooling provisions of this or another Federal order;

(c) Receives at its plant or acquires for route disposition no more than 150,000 pounds of fluid milk products from handlers fully regulated under any Federal order. This limitation shall not apply if the producer-handler's own farm production is less than 150,000 pounds during the month;

(d) Disposes of no other source milk as Class I milk except by increasing the nonfat milk solids content of the fluid milk products;

(e) Does not distribute fluid milk products to a wholesale customer who also is serviced by a plant described in § 1131.7(a), (b), or (e), or a handler described in § 1000.8(c) that supplied the same product in the same-sized package with a similar label to the wholesale customer during the month; and

(f) Provides proof satisfactory to the market administrator that the care and management of the dairy animals and other resources necessary to produce all Class I milk handled (excluding receipts from handlers fully regulated under any Federal order) and the operation of the distributing plant are the personal enterprise of, and at the personal risk of, such person in his/her capacity as a producer-handler.

§ 1131.11 [Reserved]

§ 1131.12 Producer.

(a) Except as provided in paragraph (b) of this section, *producer* means any person who produces milk approved by a duly constituted regulatory agency for fluid consumption as Grade A milk and whose milk (or components of milk) is:

(1) Received at a pool plant directly from the producer or diverted by the plant operator in accordance with § 1131.13; or

(2) Received by a handler described in § 1000.9(c).

(b) Producer shall not include:

(1) A producer-handler as defined in any Federal order;

(2) A dairy farmer whose milk is received at an exempt plant, excluding producer milk diverted to the exempt plant pursuant to § 1131.13(d);

(3) A dairy farmer whose milk is received by diversion at a pool plant from a handler regulated under another Federal order if the other Federal order designates the dairy farmer as a producer under that order and that milk is allocated by request to a utilization other than Class I;

(4) A dairy farmer whose milk is reported as diverted to a plant fully regulated under another Federal order with respect to that portion of the milk so diverted that is assigned to Class I under the provisions of such other order; and

(5) A dairy farmer whose milk is received at a pool plant if during the month milk from the same farm is received at a nonpool plant (except a nonpool plant that has no utilization of milk products in any class other than Class III or Class IV) other than as producer milk under this or some other Federal order. Such a dairy farmer shall be known as a *dairy farmer for other markets.*

§ 1131.13 Producer milk.

Producer milk means the skim milk (or the skim equivalent of components of skim milk) and butterfat in milk of a producer that is:

(a) Received by the operator of a pool plant directly from a producer or a handler described in § 1000.9(c). All milk received pursuant to this paragraph shall be priced at the location of the plant where it is first physically received;

(b) Received by a handler described in § 1000.9(c) in excess of the quantity delivered to pool plants;

(c) Diverted by a pool plant operator to another pool plant. Milk so diverted shall be priced at the location of the plant to which diverted; or

(d) Diverted by the operator of a pool plant or a cooperative association described in § 1000.9(c) to a nonpool plant, subject to the following conditions:

(1) Milk of a dairy farmer shall not be eligible for diversion unless at least one day's production of such dairy farmer is physically received at a pool plant during the month;

(2) The total quantity of milk diverted by a handler in any month shall not exceed 50 percent of the total producer milk caused by the handler to be received at pool plants and diverted;

(3) Diverted milk shall be priced at the location of the plant to which diverted;

(4) Any milk diverted in excess of the limits prescribed in paragraph (d)(2) of this section shall not be producer milk. If the diverting handler or cooperative association fails to designate the dairy farmers' deliveries that are not to be producer milk, no milk diverted by the handler or cooperative association during the month to a nonpool plant shall be producer milk. In the event some of the milk of any producer is determined not to be producer milk pursuant to this paragraph, other milk delivered by such producer as producer milk during the month will not be subject to § 1131.12(b)(5); and

(5) The delivery day requirement in paragraph (d)(1) of this section and diversion percentage in paragraph (d)(2) of this section may be increased or decreased by the market administrator if the market administrator finds that such revision is necessary to assure orderly marketing and efficient handling of milk in the marketing area. Before making such a finding, the market administrator shall investigate the need for the revision either on the market administrator's own initiative or at the request of interested persons if the request is made in writing at least 15 days prior to the month for which the requested revision is desired effective. If the investigation shows that a revision might be appropriate, the market administrator shall issue a notice stating that the revision is being considered and inviting written data, views, and arguments. Any decision to revise the delivery day requirement or the diversion percentage must be issued in writing at least one day before the effective date.

§ 1131.14 Other source milk.

See § 1000.14.

§ 1131.15 Fluid milk product.

See § 1000.15.

§ 1131.16 Fluid cream product.

See § 1000.16.

§ 1131.17 [Reserved]

§ 1131.18 Cooperative association.

See § 1000.18.

§ 1131.19 Commercial food processing establishment.

See § 1000.19.

Handler Reports

§ 1131.30 Reports of receipts and utilization.

Each handler shall report monthly so that the market administrator's office receives the report on or before the 7th day after the end of the month, in the detail and on the forms prescribed by the market administrator, as follows:

(a) With respect to each of its pool plants, the quantities of skim milk and butterfat contained in or represented by:

(1) Receipts of producer milk, including producer milk diverted by the reporting handler, from sources other than handlers described in § 1000.9(c);

(2) Receipts of milk from handlers described in § 1000.9(c);

(3) Receipts of fluid milk products and bulk fluid cream products from other pool plants;

(4) Receipts of other source milk;

(5) Inventories at the beginning and end of the month of fluid milk products and bulk fluid cream products; and (6) The utilization or disposition of all milk and milk products required to be reported pursuant to this paragraph.

(b) Each handler operating a partially regulated distributing plant shall report with respect to such plant in the same manner as prescribed for reports required by paragraph (a) of this section. Receipts of milk that would have been producer milk if the plant had been fully regulated shall be reported in lieu of producer milk. Such report shall show also the quantity of any reconstituted skim milk in route disposition in the marketing area.

(c) Each handler described in § 1000.9(c) shall report:

(1) The quantities of all skim milk and butterfat contained in receipts of milk from producers; and

(2) The utilization or disposition of all such receipts.

(d) Each handler described in § 1131.10 shall report:

(1) The pounds of milk received from each of the handler's own-farm production units, showing separately the production of each farm unit and the number of dairy cows in production at each farm unit;

(2) Fluid milk products and bulk fluid cream products received at its plant or acquired for route disposition from pool plants, other order plants, and handlers described in § 1000.9(c);

(3) Receipts of other source milk not reported pursuant to paragraph (d)(2) of this section;

(4) Inventories at the beginning and end of the month of fluid milk products and fluid cream products; and (5) The utilization or disposition of all milk and milk products required to be reported pursuant to this paragraph.

(e) Each handler not specified in paragraphs (a) through (d) of this section shall report with respect to its receipts and utilization of milk and milk products in such manner as the market administrator may prescribe.

§ 1131.31 Payroll reports.

(a) On or before the 20th day after the end of each month, each handler that operates a pool plant pursuant to § 1131.7 and each handler described in § 1000.9(c) shall report to the market administrator its producer payroll for such month, in the detail prescribed by the market administrator, showing for each producer:

(1) The month;

(2) The producer's name and address;

(3) The daily and total pounds of milk received from the producer;

(4) The total butterfat content of such milk; and

(5) The price per hundredweight, the gross amount due, the amount and nature of any deductions, and the net amount paid.

(b) Each handler operating a partially regulated distributing plant who elects to make payment pursuant to § 1000.76(b) shall report for each dairy farmer who would have been a producer if the plant had been fully regulated in the same manner as prescribed for reports required by paragraph (a) of this section.

§ 1131.32 Other reports.

In addition to the reports required pursuant to § 1131.30 and § 1131.31, each handler shall report any information the market administrator deems necessary to verify or establish each handler's obligation under the order.

Classification of Milk

§ 1131.40 Classes of utilization.

See § 1000.40.

§ 1131.41 [Reserved]

§ 1131.42 Classification of transfers and diversions.

See § 1000.42.

§ 1131.43 General classification rules.

See § 1000.43.

§ 1131.44 Classification of producer milk.

See § 1000.44.

§ 1131.45 Market administrator's reports and announcements concerning classification.

See § 1000.45.

Class Prices

§ 1131.50 Class prices, component prices, and advanced pricing factors.

See § 1000.50.

§ 1131.51 Class I differential and price.

The Class I differential shall be the differential established for Maricopa County, Arizona, which is reported in § 1000.52. The Class I price shall be the price computed pursuant to § 1000.50(a) for Maricopa County, Arizona.

§ 1131.52 Adjusted Class I differentials.

See § 1000.52.

§ 1131.53 Announcement of class prices, component prices, and advanced pricing factors.

See § 1000.53.

§ 1131.54 Equivalent price.

See § 1000.54.

Uniform Prices

§ 1131.60 Handler's value of milk.

For the purpose of computing a handler's obligation for producer milk, the market administrator shall determine for each month the value of milk of each handler with respect to each of the handler's pool plants and of each handler described in § 1000.9(c) with respect to milk that was not received at a pool plant by adding the amounts computed in paragraphs (a) through (e) of this section and subtracting from that total amount the value computed in paragraph (f) of this section. Receipts of nonfluid milk products that are distributed as labeled reconstituted milk for which payments are made to the producer-settlement fund of another Federal order under § 1000.76(a)(4) or (d) shall be excluded from pricing under this section.

(a) Multiply the pounds of skim milk and butterfat in producer milk that were classified in each class pursuant to § 1000.44(c) by the applicable skim milk and butterfat prices, and add the resulting amounts;

(b) Multiply the pounds of skim milk and butterfat overage assigned to each class pursuant to § 1000.44(a)(11) and the corresponding steps of § 1000.44(b) by the respective skim milk and butterfat prices applicable at the location of the pool plant;

(c) Multiply the difference between the current month's Class I, II, or III price, as the case may be, and the Class IV price for the preceding month by the hundredweight of skim milk and butterfat subtracted from Class I, II, or III, respectively, pursuant to § 1000.44(a)(7) and the corresponding step of § 1000.44(b);

(d) Multiply the difference between the Class I price applicable at the location of the pool plant and the Class IV price by the hundredweight of skim milk and butterfat assigned to Class I pursuant to § 1000.43(d) and the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1000.44(a)(3)(i) through (vi) and the corresponding step of § 1000.44(b), excluding receipts of bulk fluid cream products from plants regulated under other Federal orders and bulk concentrated fluid milk products from pool plants, plants regulated under other Federal orders, and unregulated supply plants;

(e) Multiply the Class I price applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received by the pounds of skim milk and butterfat in receipts of concentrated fluid milk products assigned to Class I pursuant to

§ 1000.43(d) and § 1000.44(a)(3)(i) and the corresponding steps of § 1000.44(b) and the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1000.44(a)(8) and the corresponding step of § 1000.44(b), excluding such skim milk and butterfat in receipts of fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order; and

(f) For reconstituted milk made from receipts of nonfluid milk products, multiply $1.00 (but not more than the difference between the Class I price applicable at the location of the pool plant and the Class IV price) by the hundredweight of skim milk and butterfat contained in receipts of nonfluid milk products that are allocated to Class I use pursuant to § 1000.43(d).

§ 1131.61 Computation of uniform prices.

On or before the 11th day of each month, the market administrator shall compute a uniform butterfat price, a uniform skim milk price, and a uniform price for producer milk receipts reported for the prior month. The report of any handler who has not made payments required pursuant to § 1131.71 for the preceding month shall not be included in the computation of these prices, and such handler's report shall not be included in the computation for succeeding months until the handler has made full payment of outstanding monthly obligations.

(a) *Uniform butterfat price.* The uniform butterfat price per pound, rounded to the nearest one-hundredth cent, shall be computed by multiplying the pounds of butterfat in producer milk allocated to each class pursuant to § 1000.44(b) by the respective class butterfat prices and dividing the sum of such values by the total pounds of such butterfat.

(b) *Uniform skim milk price.* The uniform skim milk price per hundredweight, rounded to the nearest cent, shall be computed as follows:

(1) Combine into one total the values computed pursuant to § 1131.60 for all handlers;

(2) Add an amount equal to the sum of the location adjustments computed pursuant to § 1131.75;

(3) Add an amount equal to not less than one-half of the unobligated balance in the producer-settlement fund;

(4) Subtract the value of the total pounds of butterfat for all handlers. The butterfat value shall be computed by multiplying the pounds of butterfat by the butterfat price computed in paragraph (a) of this section;

(5) Divide the resulting amount by the sum of the following for all handlers included in these computations:

(i) The total skim pounds of producer milk; and

(ii) The total skim pounds for which a value is computed pursuant to § 1131.60(e); and

(6) Subtract not less than 4 cents and not more than 5 cents.

(c) *Uniform price.* The uniform price per hundredweight, rounded to the nearest cent, shall be the sum of the following:

(1) Multiply the uniform butterfat price for the month pursuant to paragraph (a) of this section times 3.5 pounds of butterfat; and

(2) Multiply the uniform skim milk price for the month pursuant to paragraph (b) of this section times .965.

§ 1131.62 Announcement of uniform prices.

On or before the 11th day after the end of the month, the market administrator shall announce the uniform prices for the month computed pursuant to § 1131.61.

Payments for Milk

§ 1131.70 Producer-settlement fund.

See § 1000.70.

§ 1131.71 Payments to the producer-settlement fund.

Each handler shall make payment to the producer-settlement fund in a manner that provides receipt of the funds by the market administrator no later than the 13th day after the end of the month (except as provided in § 1000.90). Payments due the market administrator shall be deemed not to have been made until the money owed has been received at the market administrator's office, or deposited into the market administrator's bank account. Payment shall be the amount, if any, by which the amount specified in paragraph (a) of this section exceeds the amount specified in paragraph (b) of this section:

(a) The total value of milk to the handler for the month as determined pursuant to § 1131.60.

(b) The sum of:

(1) The value at the uniform prices for skim milk and butterfat, adjusted for plant location, of the handler's receipts of producer milk; and

(2) The value at the uniform price as adjusted pursuant to § 1131.75 applicable at the location of the plant from which received of other source milk for which a value is computed pursuant to § 1131.60(e).

§ 1131.72 Payments from the producer-settlement fund.

No later than the 14th day after the end of each month (except as provided in § 1000.90), the market administrator shall pay to each handler the amount, if any, by which the amount computed pursuant to § 1131.71(b) exceeds the amount computed pursuant to § 1131.71(a). If, at such time, the balance in the producer-settlement fund is insufficient to make all payments pursuant to this section, the market administrator shall reduce uniformly such payments and shall complete the payments as soon as the funds are available.

§ 1131.73 Payments to producers and to cooperative associations.

(a) Except as provided in paragraphs (b) and (c) of this section, each handler shall make payment to each producer from whom milk is received during the month as follows:

(1) *Partial payment.* For each producer who has not discontinued shipments as of the 25th day of the month, payment shall be made so that it is received by the producer on or before the 27th day of each month (except as provided in § 1000.90) for milk received from such producer during the first 15 days of the month at not less than 1.3 times the lowest class price for the preceding month less proper deductions authorized in writing by the producer.

(2) *Final payment.* For milk received during the month, a payment computed as follows shall be made so that it is received by each producer one day after the payment date required in § 1131.72:

(i) Multiply the hundredweight of producer skim milk received times the uniform skim milk price for the month;

(ii) Multiply the pounds of producer butterfat received times the uniform butterfat price for the month;

(iii) Multiply the hundredweight of producer milk received times the plant location adjustment pursuant to § 1131.75; and

(iv) Add the amounts computed in paragraph (a)(2)(i), (ii), and (iii) of this section, and from that sum:

(A) Subtract the partial payment made pursuant to paragraph (a)(1) of this section;

(B) Subtract the deduction for marketing services pursuant to § 1000.86;

(C) Add or subtract for errors made in previous payments to the producer,

subject to approval by the market administrator; and

(D) Subtract proper deductions authorized in writing by the producer.

(b) Two days prior to the dates on which partial and final payments are due pursuant to paragraph (a) of this section, each pool plant operator shall pay a cooperative association for milk received as follows:

(1) *Partial payment to a cooperative association for bulk milk received directly from producers' farms.* For bulk milk (including the milk of producers who are not members of such association and who the market administrator determines have authorized the cooperative association to collect payment for their milk) received during the first 15 days of the month from a cooperative association in any capacity except as the operator of a pool plant, the payment shall be an amount not less than 1.3 times the lowest class price for the preceding month multiplied by the hundredweight of milk.

(2) *Partial payment to a cooperative association for milk transferred from its pool plant.* For bulk fluid milk products and bulk fluid cream products received during the first 15 days of the month from a cooperative association in its capacity as the operator of a pool plant, the partial payment shall be at the pool plant operator's estimated use value of the milk using the most recent class prices available for skim milk and butterfat at the receiving plant's location.

(3) *Final payment to a cooperative association for milk transferred from its pool plant.* For bulk fluid milk products and bulk fluid cream products received during the month from a cooperative association in its capacity as the operator of a pool plant, the final payment shall be the classified value of such milk as determined by multiplying the pounds of skim milk and butterfat assigned to each class pursuant to § 1000.44 by the class prices for the month at the receiving plant's location, and subtracting from this sum the partial payment made pursuant to paragraph (b)(2) of this section.

(4) *Final payment to a cooperative association for bulk milk received directly from producers' farms.* For bulk milk received from a cooperative association during the month, including the milk of producers who are not members of such association and who the market administrator determines have authorized the cooperative association to collect payment for their milk, the final payment for such milk shall be an amount equal to the sum of the individual payments otherwise payable for such milk pursuant to paragraph (a)(2) of this section.

(c) If a handler has not received full payment from the market administrator pursuant to § 1131.72 by the payment date specified in paragraph (a) or (b) of this section, the handler may reduce pro rata his payments pursuant to such paragraphs, but by not more than the amount of such underpayment. Payments to producers shall be completed on the next scheduled payment date after receipt of the balance due from the market administrator.

(d) If a handler claims that a required payment to a producer cannot be made because the producer is deceased or cannot be located, or because the cooperative association or its lawful successor or assignee is no longer in existence, the payment shall be made to the producer-settlement fund. In the event the handler subsequently locates and pays the producer or a lawful claimant, or in the event that the handler no longer exists and a lawful claim is later established, the market administrator shall make the required payment from the producer-settlement fund to the handler or the lawful claimant, as the case may be.

(e) In making payments to producers pursuant to this section, each pool plant operator shall furnish each producer, except a producer whose milk was received from a cooperative association described in § 1000.9(a) or (c), a supporting statement in such form that it may be retained by the recipient which shall show:

(1) The month, and identity of the producer;

(2) The daily and total pounds and the total pounds of butterfat content of producer milk;

(3) The minimum rate at which payment to the producer is required pursuant to this order;

(4) The rate used in making payments if the rate is other than the applicable minimum rate;

(5) The amount, rate per hundredweight, and nature of each deduction claimed by the handler; and

(6) The net amount of payment to the producer or cooperative association.

§ 1131.74 [Reserved]

§ 1131.75 Plant location adjustments for producers and on nonpool milk.

For purposes of making payments for producer milk and nonpool milk, a plant location adjustment shall be determined by subtracting the Class I price specified in § 1131.51 from the Class I price at the plant's location. The difference, plus or minus as the case may be, shall be used to adjust the payments required pursuant to §§ 1131.73 and 1000.76.

§ 1131.76 Payments by handler operating a partially regulated distributing plant.

See § 1000.76.

§ 1131.77 Adjustment of accounts.

See § 1000.77.

§ 1131.78 Charges on overdue accounts.

See § 1000.78.

Administrative Assessment and Marketing Service Deduction

§ 1131.85 Assessment for order administration.

See § 1000.85.

§ 1131.86 Deduction for marketing services.

See § 1000.86.

PART 1135—MILK IN THE WESTERN MARKETING AREA

Subpart—Order Regulating Handling

General Provisions

Sec.
1135.1 General provisions.

Definitions

1135.2 Western marketing area.
1135.3 Route disposition.
1135.4 Plant.
1135.5 Distributing plant.
1135.6 Supply plant.
1135.7 Pool plant.
1135.8 Nonpool plant.
1135.9 Handler.
1135.10 Producer-handler.
1135.11 Proprietary bulk tank handler.
1135.12 Producer.
1135.13 Producer milk.
1135.14 Other source milk.
1135.15 Fluid milk product.
1135.16 Fluid cream product.
1135.17 [Reserved]
1135.18 Cooperative association.
1135.19 Commercial food processing establishment.

Handler Reports

1135.30 Reports of receipts and utilization.
1135.31 Payroll reports.
1135.32 Other reports.

Classification of Milk

1135.40 Classes of utilization.
1135.41 [Reserved]
1135.42 Classification of transfers and diversions.
1135.43 General classification rules.
1135.44 Classification of producer milk.
1135.45 Market administrator's reports and announcements concerning classification.

Class Prices

1135.50 Class prices, component prices, and advanced pricing factors.
1135.51 Class I differential and price.
1135.52 Adjusted Class I differentials.

1135.53 Announcement of class prices, component prices, and advanced pricing factors.
1135.54 Equivalent price.

Producer Price Differential

1135.60 Handler's value of milk.
1135.61 Computation of producer price differential.
1135.62 Announcement of producer prices.

Payments for Milk

1135.70 Producer-settlement fund.
1135.71 Payments to the producer-settlement fund.
1135.72 Payments from the producer-settlement fund.
1135.73 Payments to producers and to cooperative associations.
1135.74 [Reserved]
1135.75 Plant location adjustments for producer milk and nonpool milk.
1135.76 Payments by a handler operating a partially regulated distributing plant.
1135.77 Adjustment of accounts.
1135.78 Charges on overdue accounts.

Administrative Assessment and Marketing Service Deduction

1135.85 Assessment for order administration.
1135.86 Deduction for marketing services.

Authority: 7 U.S.C. 601–674.

Subpart—Order Regulating Handling

General Provisions

§ 1135.1 General provisions.

The terms, definitions, and provisions in part 1000 of this chapter apply to and are hereby made a part of this order. In this part 1135, all references to sections in part 1000 refer to part 1000 of this chapter.

Definitions

§ 1135.2 Western marketing area.

The marketing area means all territory within the bounds of the following states and political subdivisions, including all piers, docks and wharves connected therewith and all craft moored thereat, and all territory occupied by government (municipal, State or Federal) reservations, installations, institutions, or other similar establishments if any part thereof is within any of the listed states or political subdivisions:

Utah

All of the State of Utah.

Idaho Counties

Ada, Adams, Bannock, Bear Lake, Bingham, Blaine, Boise, Bonneville, Camas, Canyon, Caribou, Cassia, Elmore, Franklin, Gem, Gooding, Jefferson, Jerome, Lincoln, Madison, Minidoka, Oneida, Owyhee, Payette, Power, Twin Falls, Valley, and Washington.

Nevada Counties

Elko, Lincoln, and White Pine.

Oregon Counties

Baker, Grant, Harney, Malheur, and Union.

Wyoming Counties

Lincoln and Uinta.

§ 1135.3 Route disposition.

See § 1000.3.

§ 1135.4 Plant.

See § 1000.4.

§ 1135.5 Distributing plant.

See § 1000.5.

§ 1135.6 Supply plant.

See § 1000.6.

§ 1135.7 Pool plant.

Pool Plant means a plant or unit of plants specified in paragraphs (a) through (e) of this section, but excluding a plant specified in paragraph (g) of this section. The pooling standards described in paragraphs (c) and (d) of this section are subject to modification pursuant to paragraph (f) of this section.

(a) A distributing plant, other than a plant qualified as a pool plant pursuant to paragraph (b) of this section or section 7(b) of any other Federal milk order, from which during the month 25 percent or more of the total quantity of fluid milk products physically received at the plant (excluding concentrated milk received from another plant by agreement for other than Class I use) are disposed of as route disposition or are transferred in the form of packaged fluid milk products to other distributing plants. At least 25 percent of such route disposition and transfers must be to outlets in the marketing area.

(b) Any distributing plant located in the marketing area which during the month processed at least 25 percent of the total quantity of fluid milk products physically received at the plant (excluding concentrated milk received from another plant by agreement for other than Class I use) into ultra-pasteurized or aseptically-processed fluid milk products.

(c) A supply plant from which during the month the quantity of bulk fluid milk products transferred or diverted to plants described in paragraph (a) or (b) of this section is 35 percent or more of the total Grade A milk received at the plant from dairy farmers (except dairy farmers described in § 1135.12(b)) and handlers described in § 1000.9(c) and § 1135.11, including milk diverted by the plant operator, subject to the following conditions:

(1) A supply plant that has qualified as a pool plant during each of the immediately preceding months of September through February shall continue to so qualify in each of the following months of March through August unless the plant operator files a written request with the market administrator that such plant not be a pool plant, such nonpool status to be effective the first month following such request. A plant withdrawn from pool supply plant status may not be reinstated for any subsequent month of the March through July period unless it qualifies as a pool plant on the basis of milk shipments;

(2) A pool plant operator may include as qualifying shipments milk diverted to pool distributing plants pursuant to § 1135.13(c);

(3) Concentrated milk transferred from the supply plant to a distributing plant for an agreed-upon use other than Class I shall be excluded from the supply plant's shipments in computing the plant's shipping percentage; and

(4) No plant may qualify as a pool plant due to a reduction in the shipping percentage pursuant to paragraph (f) of this section unless it has been a pool supply plant during each of the immediately preceding 3 months.

(d) A milk manufacturing plant located within the marketing area that is operated by a cooperative association if, during the month or the immediately preceding 12-month period ending with the current month, 35% or more of such cooperative's member producer milk (and any producer milk of nonmembers and members of another cooperative association which may be marketed by the cooperative association) is physically received in the form of bulk fluid milk products (excluding concentrated milk transferred to a distributing plant for an agreed-upon use other than Class I) at plants specified in paragraph (a) or (b) of this section either directly from farms or by transfer from supply plants operated by the cooperative association and from plants of the cooperative association for which pool plant status has been requested under this paragraph subject to the following conditions:

(1) The plant does not qualify as a pool plant under paragraph (a), (b) or (c) of this section or under comparable provisions of another Federal order; and

(2) The plant is approved by a duly constituted regulatory agency for the handling of milk approved for fluid consumption in the marketing area.

(e) Two or more plants located in the marketing area and operated by the same handler may qualify for pool plant status as a unit by together meeting the requirements specified in paragraph (a)

of this section and subject to the following additional requirements:

(1) At least one of the plants in the unit must individually qualify as a pool plant pursuant to paragraph (a) of this section;

(2) Other plants in the unit must process Class I or Class II products, using 50 percent or more of the total Grade A fluid milk products received in bulk form at such plant or diverted therefrom by the plant operator in Class I or Class II products, and must be located in a pricing zone providing the same or a lower Class I price than the price applicable at the distributing plant included in the unit pursuant to paragraph (e)(1) of this section; and

(3) A written request to form a unit must be filed by the handler with the market administrator prior to the first day of the month for which such status is to be effective. The unit shall continue from month to month thereafter without further notification. The handler shall notify the market administrator in writing prior to the first day of any month for which termination or any change of the unit is desired.

(f) The applicable shipping percentages of paragraphs (c) and (d) of this section may be increased or decreased by the market administrator if the market administrator finds that such adjustment is necessary to encourage needed shipments or to prevent uneconomic shipments. Before making such a finding, the market administrator shall investigate the need for adjustment either on the market administrator's own initiative or at the request of interested parties if the request is made in writing at least 15 days prior to the month for which the requested revision is desired effective. If the investigation shows that an adjustment of the shipping percentages might be appropriate, the market administrator shall issue a notice stating that an adjustment is being considered and invite data, views and arguments. Any decision to revise an applicable shipping percentage must be issued in writing at least one day before the effective date.

(g) The term pool plant shall not apply to the following plants:

(1) A producer-handler as defined under any Federal order;

(2) An exempt plant as defined in 1000.8(e);

(3) A plant located within the marketing area and qualified pursuant to paragraph (a) of this section which meets the pooling requirements of another Federal order, and from which more than 50 percent of its route disposition has been in the other Federal order marketing area for 3 consecutive months;

(4) A plant located outside any Federal order marketing area and qualified pursuant to paragraph (a) of this section that meets the pooling requirements of another Federal order and has had greater route disposition in such other Federal order's marketing area for 3 consecutive months;

(5) A plant located in another Federal order marketing area and qualified pursuant to paragraph (a) of this section that meets the pooling requirements of such other Federal order and does not have a majority of its route distribution in this marketing area for 3 consecutive months or if the plant is required to be regulated under such other Federal order without regard to its route disposition in any other Federal order marketing area;

(6) A plant qualified pursuant to paragraph (c) of this section which also meets the pooling requirements of another Federal order and from which greater qualifying shipments are made to plants regulated under the other Federal order than are made to plants regulated under this order, or the plant has automatic pooling status under the other Federal order; and

(7) That portion of a regulated plant designated as a nonpool plant that is physically separate and operated separately from the pool portion of such plant. The designation of a portion of a regulated plant as a nonpool plant must be requested in advance and in writing by the handler and must be approved by the market administrator.

§ 1135.8 Nonpool plant.

See § 1000.8.

§ 1135.9 Handler.

In addition to the handlers defined in § 1000.9, handler shall include a person meeting the standards set forth in § 1135.11.

§ 1135.10 Producer-handler.

Producer-handler means a person who:

(a) Operates a dairy farm and a distributing plant from which there is route disposition in the marketing area during the month;

(b) Receives fluid milk products from own farm production or milk that is fully subject to the pricing and pooling provisions of this or another Federal order;

(c) Receives at its plant or acquires for route disposition no more than 150,000 pounds of fluid milk products from handlers fully regulated under any Federal order. This limitation shall not apply if the producer-handler's own farm production is less than 150,000 pounds during the month;

(d) Disposes of no other source milk as Class I milk except by increasing the nonfat milk solids content of the fluid milk products; and

(e) Provides proof satisfactory to the market administrator that the care and management of the dairy animals and other resources necessary to produce all Class I milk handled (excluding receipts from handlers fully regulated under any Federal order) and the processing and packaging operations are the producer-handler's own enterprise and are operated at its own risk.

§ 1135.11 Proprietary bulk tank handler.

Any person, except a cooperative association, with respect to milk that it receives for its account from the farm of a producer in a tank truck owned and operated by, or under the control of, such person and which is delivered during the month for the account of such person to the pool plant of another handler or diverted pursuant to § 1135.13, subject to the following conditions:

(a) Such person must operate a plant located in the marketing area at which milk is processed only into Class II, Class III, or Class IV products; and

(b) Prior to operating as a handler pursuant to this paragraph, such person must submit to the marker administrator a statement signed by the applicant and the operator of the pool plant to which the milk will be delivered specifying that the applicant will be the responsible handler for the milk.

§ 1135.12 Producer.

(a) Except as provided in paragraph (b) of this section, *producer* means any person who produces milk approved by a duly constituted regulatory agency for fluid consumption as Grade A milk and whose milk (or components of milk) is:

(1) Received at a pool plant directly from the producer or diverted by the plant operator in accordance with § 1135.13; or

(2) Received by a handler described in § 1000.9(c) or § 1135.11.

(b) Producer shall not include:

(1) A producer-handler as defined in any Federal order;

(2) A dairy farmer whose milk is delivered to an exempt plant, excluding producer milk diverted to the exempt plant pursuant to § 1135.13(d);

(3) A dairy farmer whose milk is diverted to a pool plant by a handler regulated under another Federal order if the other Federal order designates the dairy farmer as a producer under that order and that milk is allocated by request to a utilization other than Class I;

(4) A dairy farmer whose milk is reported as diverted to a plant fully regulated under another Federal order with respect to that portion of the milk so diverted that is assigned to Class I under the provisions of such other order; and

(5) A dairy farmer whose milk was received at a nonpool plant during the month from the same farm (except a nonpool plant that has no utilization of milk products in any Class other than Class III or Class IV) as other than producer milk under this or any other Federal order. Such a dairy farmer shall be known as a *dairy farmer for other markets.*

§ 1135.13 Producer milk.

Producer milk means the skim milk (or the skim equivalent of components of skim milk), including nonfat components, and butterfat in milk of a producer that is:

(a) Received by the operator of a pool plant directly from a producer, a handler described in § 1000.9(c), or a handler described in § 1135.11. All milk received pursuant to this paragraph shall be priced at the location of the plant where it is first physically received;

(b) Received by a handler described in § 1000.9(c) or in § 1135.11 in excess of the quantity delivered to pool plants;

(c) Diverted by a pool plant operator to another pool plant. Milk so diverted shall be priced at the location of the plant to which diverted; or

(d) Diverted by the operator of a pool plant, a cooperative association described in § 1000.9(c), or a proprietary bulk tank handler described in § 1135.11, to a nonpool plant, subject to the following conditions:

(1) Milk of a dairy farmer shall not be eligible for diversion unless at least one day's milk production of such dairy farmer has been physically received as producer milk at a pool plant and the dairy farmer has continuously retained producer status since that time. If a dairy farmer loses producer status under this order (except as a result of a temporary loss of Grade A approval), the dairy farmer's milk shall not be eligible for diversion until one day's milk production has been physically received as producer milk at a pool plant;

(2) Of the quantity of producer milk received during the month (including diversions) the handler diverts to nonpool plants not more than 90 percent;

(3) Two or more handlers described in § 1000.9(c) may have their allowable diversions computed on the basis of their combined deliveries of producer milk which they caused to be delivered to pool plants or diverted during the month if each has filed a request in writing with the market administrator before the first day of the month the agreement is to be effective. The request shall specify the basis for assigning overdiverted milk to the producer deliveries of each according to a method approved by the market administrator.

(4) Diverted milk shall be priced at the location of the plant to which diverted;

(5) Any milk diverted in excess of the limits prescribed in paragraph (d)(2) of this section shall not be producer milk. If the diverting handler, cooperative association, or proprietary bulk tank handler fails to designate the dairy farmers' deliveries that are not to be producer milk, no milk diverted by the handler, cooperative association, or proprietary bulk tank handler during the month to a nonpool plant shall be producer milk. In the event some of the milk of any producer is determined not to be producer milk pursuant to this paragraph, other milk delivered by such producer as producer milk during the month will not be subject to § 1135.12(b)(5); and

(6) The delivery day requirement in paragraph (d)(1) of this section and the diversion percentage in paragraph (d)(2) of this section may be increased or decreased by the market administrator if the market administrator finds that such revision is necessary to assure orderly marketing and efficient handling of milk in the marketing area. Before making such a finding, the market administrator shall investigate the need for the revision either on the market administrator's own initiative or at the request of interested persons if the request is made in writing at least 15 days prior to the month for which the requested revision is desired effective. If the investigation shows that a revision might be appropriate, the market administrator shall issue a notice stating that the revision is being considered and inviting written data, views, and arguments. Any decision to revise the delivery day requirement or the diversion percentage must be issued in writing at least one day before the effective date.

§ 1135.14 Other source milk.

See § 1000.14.

§ 1135.15 Fluid milk product.

See § 1000.15.

§ 1135.16 Fluid cream product.

See § 1000.16.

§ 1135.17 [Reserved]

§ 1135.18 Cooperative association.

See § 1000.18.

§ 1135.19 Commercial food processing establishment.

See § 1000.19

Handler Reports

§ 1135.30 Reports of receipts and utilization.

Each handler shall report monthly so that the market administrator receives the report on or before the 7th day after the end of each month, in the detail and on the forms prescribed by the market administrator, as follows:

(a) Each handler that operates a pool plant pursuant to § 1135.7 shall report for each of its operations the following information:

(1) Product pounds, pounds of butterfat, pounds of protein, and pounds of solids-not-fat other than protein (other solids), contained in or represented by:

(i) Receipts of producer milk, including producer milk diverted by the reporting handler, from sources other than handlers described in § 1000.9(c) and § 1135.11; and

(ii) Receipts of milk from handlers described in § 1000.9(c) and § 1135.11;

(2) Product pounds and pounds of butterfat contained in:

(i) Receipts of fluid milk products and bulk fluid cream products from other pool plants;

(ii) Receipts of other source milk; and

(iii) Inventories at the beginning and end of the month of fluid milk products and bulk fluid cream products;

(3) The utilization or disposition of all milk and milk products required to be reported pursuant to this paragraph; and

(4) Such other information with respect to the receipts and utilization of skim milk, butterfat, milk protein, and other nonfat solids, as the market administrator may prescribe.

(b) Each handler operating a partially regulated distributing plant shall report with respect to such plant in the same manner as prescribed for reports required by paragraph (a) of this section. Receipts of milk that would have been producer milk if the plant had been fully regulated shall be reported in lieu of producer milk. The report shall show also the quantity of any reconstituted skim milk in route disposition in the marketing area.

(c) Each handler described in §§ 1000.9(c) or 1135.11 shall report:

(1) The product pounds, pounds of butterfat, pounds of protein, and the pounds of solids-not-fat other than protein (other solids) contained in receipts of milk from producers; and

(2) The utilization or disposition of such receipts.

(d) Each handler not specified in paragraphs (a) through (c) of this section shall report with respect to its receipts and utilization of milk and milk products in such manner as the market administrator may prescribe.

§ 1135.31 Payroll reports.

(a) On or before the 21st day after the end of each month, each handler that operates a pool plant pursuant to § 1135.7 and each handler described in § 1000.9(c) and in § 1135.11 shall report to the market administrator its producer payroll for the month, in the detail prescribed by the market administrator, showing for each producer the information described in § 1135.73(e).

(b) Each handler operating a partially regulated distributing plant who elects to make payment pursuant to § 1000.76(b) shall report for each dairy farmer who would have been a producer if the plant had been fully regulated in the same manner as prescribed for reports required by paragraph (a) of this section.

§ 1135.32 Other reports.

In addition to the reports required pursuant to §§ 1135.30 and 1135.31, each handler shall report any information the market administrator deems necessary to verify or establish each handler's obligation under the order.

Classification of Milk

§ 1135.40 Classes of utilization.

See § 1000.40.

§ 1135.41 [Reserved]

§ 1135.42 Classification of transfers and diversions.

See § 1000.42.

§ 1135.43 General classification rules.

See § 1000.43.

§ 1135.44 Classification of producer milk.

See § 1000.44.

§ 1135.45 Market administrator's reports and announcements concerning classification.

See § 1000.45.

Class Prices

§ 1135.50 Class prices, component prices, and advanced pricing factors.

See § 1000.50.

§ 1135.51 Class I differential and price.

The Class I differential shall be the differential established at Salt Lake County, Utah, which is reported in § 1000.52. The Class I price shall be the price computed pursuant to § 1000.50(a) for Salt Lake County, Utah.

§ 1135.52 Adjusted Class I differentials.

See § 1000.52.

§ 1135.53 Announcement of class prices, component prices, and advanced pricing factors.

See § 1000.53.

§ 1135.54 Equivalent price.

See § 1000.54.

Producer Price Differential

§ 1135.60 Handler's value of milk.

For the purpose of computing a handler's obligation for producer milk, the market administrator shall determine for each month the value of milk of each handler with respect to each of the handler's pool plants, and of each handler described in § 1000.9(c) and each handler described in § 1135.11, with respect to milk that was not received at a pool plant, by adding the amounts computed in paragraphs (a) through (h) of this section and subtracting from that total amount the value computed in paragraph (i) of this section. Unless otherwise specified, the skim milk, butterfat, and the combined pounds of skim milk and butterfat referred to in this section shall result from the steps set forth in § 1000.44(a), (b), and (c), respectively, and the nonfat components of producer milk in each class shall be based upon the proportion of such nonfat components in producer skim milk. Receipts of nonfluid milk products that are distributed as labeled reconstituted milk for which payments are made to the producer-settlement fund of another Federal order under § 1000.76(a)(4) or (d) shall be excluded from pricing under this section.

(a) Class I value.

(1) Multiply the hundredweight of skim milk in Class I by the Class I skim milk price; and

(2) Add an amount obtained by multiplying the pounds of butterfat in Class I by the Class I butterfat price.

(b) Class II value.

(1) Multiply the pounds of nonfat solids in Class II skim milk by the Class II nonfat solids price; and

(2) Add an amount obtained by multiplying the pounds of butterfat in Class II times the Class II butterfat price.

(c) Class III value.

(1) Multiply the pounds of protein in Class III skim milk by the protein price;

(2) Add an amount obtained by multiplying the pounds of other solids in Class III skim milk by the other solids price; and

(3) Add an amount obtained by multiplying the pounds of butterfat in Class III by the butterfat price.

(d) Class IV value.

(1) Multiply the pounds of nonfat solids in Class IV skim milk by the nonfat solids price; and

(2) Add an amount obtained by multiplying the pounds of butterfat in Class IV by the butterfat price.

(e) Multiply the pounds of skim milk and butterfat overage assigned to each class pursuant to § 1000.44(a)(11) and the corresponding step of § 1000.44(b) by the skim milk prices and butterfat prices applicable to each class.

(f) Multiply the difference between the current month's Class I, II, or III price, as the case may be, and the Class IV price for the preceding month by the hundredweight of skim milk and butterfat subtracted from Class I, II, or III, respectively, pursuant to § 1000.44(a)(7) and the corresponding step of § 1000.44(b);

(g) Multiply the difference between the Class I price applicable at the location of the pool plant and the Class IV price by the hundredweight of skim milk and butterfat assigned to Class I pursuant to § 1000.43(d) and the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1000.44(a)(3)(i) through (vi) and the corresponding step of § 1000.44(b), excluding receipts of bulk fluid cream products from plants regulated under other Federal orders and bulk concentrated fluid milk products from pool plants, plants regulated under other Federal orders, and unregulated supply plants.

(h) Multiply the difference between the Class I price applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received and the Class III price by the pounds of skim milk and butterfat in receipts of concentrated fluid milk products assigned to Class I pursuant to § 1000.43(d) and § 1000.44(a)(3)(i) and the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1000.44(a)(8) and the corresponding step of § 1000.44(b), excluding such skim milk and butterfat in receipts of fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order.

(i) For reconstituted milk made from receipts of nonfluid milk products, multiply $1.00 (but not more than the difference between the Class I price applicable at the location of the pool plant and the Class IV price) by the hundredweight of skim milk and

butterfat contained in receipts of nonfluid milk products that are allocated to Class I use pursuant to § 1000.43(d).

§ 1135.61 Computation of producer price differential.

For each month the market administrator shall compute a producer price differential per hundredweight. The report of any handler who has not made payments required pursuant to § 1135.71 for the preceding month shall not be included in the computation of the producer price differential, and such handler's report shall not be included in the computation for succeeding months until the handler has made full payment of outstanding monthly obligations. Subject to the aforementioned conditions, the market administrator shall compute the producer price differential in the following manner:

(a) Combine into one total the values computed pursuant to § 1135.60 for all handlers required to file reports prescribed in § 1135.30;

(b) Subtract the total values obtained by multiplying each handler's total pounds of protein, other solids, and butterfat contained in the milk for which an obligation was computed pursuant to § 1135.60 by the protein price, the other solids price, and the butterfat price, respectively;

(c) Add an amount equal to the sum of the location adjustments computed pursuant to § 1135.75;

(d) Add an amount equal to not less than one-half of the unobligated balance in the producer-settlement fund;

(e) Divide the resulting amount by the sum of the following for all handlers included in these computations:

(1) The total hundredweight of producer milk; and

(2) The total hundredweight for which a value is computed pursuant to § 1135.60(h); and

(f) Subtract not less than 4 cents nor more than 5 cents from the price computed pursuant to paragraph (e) of this section. The result shall be known as the *producer price differential* for the month.

§ 1135.62 Announcement of producer prices.

On or before the 12th day after the end of each month, the market administrator shall announce publicly the following prices and information:

(a) The producer price differential;

(b) The protein price;

(c) The nonfat solids price;

(d) The other solids price;

(e) The butterfat price;

(f) [Reserved]

(g) The average butterfat, protein, nonfat solids, and other solids content of producer milk; and

(h) The statistical uniform price for milk containing 3.5 percent butterfat, computed by combining the Class III price and the producer price differential.

Payments for Milk

§ 1135.70 Producer-settlement fund.

See § 1000.70.

§ 1135.71 Payments to the producer-settlement fund.

Each handler shall make payment to the producer-settlement fund in a manner that provides receipt of the funds by the market administrator no later than the 14th day after the end of the month (except as provided in § 1000.90). Payment shall be the amount, if any, by which the amount specified in paragraph (a) of this section exceeds the amount specified in paragraph (b) of this section:

(a) The total value of milk to the handler for the month as determined pursuant to § 1135.60.

(b) The sum of:

(1) An amount obtained by multiplying the total hundredweight of producer milk as determined pursuant to § 1000.44(c) by the producer price differential as adjusted pursuant to § 1135.75;

(2) An amount obtained by multiplying the total pounds of protein, other solids, and butterfat contained in producer milk by the protein, other solids, and butterfat prices respectively;

(3) [Reserved]

(4) An amount obtained by multiplying the pounds of skim milk and butterfat for which a value was computed pursuant to § 1135.60(h) by the producer price differential as adjusted pursuant to § 1135.75 for the location of the plant from which received.

§ 1135.72 Payments from the producer-settlement fund.

No later than the 15th day after the end of each month (except as provided in § 1000.90), the market administrator shall pay to each handler the amount, if any, by which the amount computed pursuant to § 1135.71(b) exceeds the amount computed pursuant to § 1135.71(a). If, at such time, the balance in the producer-settlement fund is insufficient to make all payments pursuant to this section, the market administrator shall reduce uniformly such payments and shall complete the payments as soon as the funds are available.

§ 1135.73 Payments to producers and to cooperative associations.

(a) Except as provided in paragraph (b) of this section, each handler shall make payment to each producer from whom milk is received during the month as follows:

(1) *Partial Payment.* On or before the 25th day of each month (except as provided in § 1000.90) to each producer an amount not less than 1.2 times the lowest class price for the preceding month multiplied by the hundredweight of milk received from such producer during the first 15 days of the month, less proper deductions authorized in writing by such producer to be made from payments due pursuant to this paragraph.

(2) *Final Payment.* On or before the 17th day of the following month (except as provided in § 1000.90), not less than an amount computed by the sum of the following:

(i) The hundredweight of producer milk received times the producer price differential for the month as adjusted pursuant to § 1135.75;

(ii) The pounds of butterfat in producer milk received times the butterfat price for the month;

(iii) The pounds of protein in producer milk received times the protein price for the month;

(iv) The pounds of other solids in producer milk received times the other solids price for the month;

(v) [Reserved]

(vi) Less any payments made pursuant to paragraph (a)(1) of this section;

(vii) Less proper deductions authorized in writing by such producer and plus or minus adjustments for errors in previous payments to such producer subject to approval by the market administrator; and

(viii) Less deductions made for marketing service pursuant to § 1000.86.

(b) One day prior to the dates on which partial and final payments are due pursuant to paragraph (a) of this section, each pool plant operator shall pay a cooperative association for milk received as follows:

(1) *Partial payment to a cooperative association for bulk milk received directly from producers' farms.* For bulk milk (including the milk of producers who are not members of such association and who the market administrator determines have authorized the cooperative association to collect payment for their milk) received during the first 15 days of the month from a cooperative association in any capacity, except as the operator of a pool plant, the payment shall be an amount not less than 1.2 times the lowest class price for the preceding

month multiplied by the hundredweight of milk.

(2) *Partial payment to a cooperative association for milk transferred from its pool plant.* For bulk fluid milk products and bulk fluid cream products received during the first 15 days of the month from a cooperative association in its capacity as the operator of a pool plant, the partial payment shall be at the pool plant operator's estimated use value of the milk using the most recent class prices available at the receiving plant's location.

(3) *Final payment to a cooperative association for milk transferred from its pool plant.* For the total quantity of bulk fluid milk products and bulk fluid cream products received from a cooperative association in its capacity as the operator of a pool plant, the final payment shall be at not less than the total value of such products received from the association's pool plants, as determined by multiplying the respective quantities assigned to each class under § 1000.44, as follows:

(i) The hundredweight of Class I skim milk times the Class I skim milk price for the month plus the pounds of Class I butterfat times the Class I butterfat price for the month. The Class I prices to be used shall be the prices effective at the location of the receiving plant;

(ii) The pounds of nonfat solids in Class II skim milk by the Class II nonfat solids price;

(iii) The pounds of butterfat in Class II times the Class II butterfat price;

(iv) The pounds of nonfat solids in Class IV times the nonfat solids price;

(v) The pounds of butterfat in Class III and Class IV milk times the butterfat price;

(vi) The pounds of protein in Class III milk times the protein price;

(vii) The pounds of other solids in Class III milk times the other solids price; and (viii) Add together the amounts computed in paragraphs (b)(3)(i) through (vii) of this section and from that sum deduct any payment made pursuant to paragraph (b)(1) of this section.

(4) *Final payment to a cooperative association for bulk milk received directly from producers' farms.* For bulk milk received from a cooperative association during the month, including the milk of producers who are not members of such association and who the market administrator determines have authorized the cooperative association to collect payment for their milk, the final payment for such milk shall be an amount equal to the sum of the individual payments otherwise payable for such milk pursuant to paragraph (a)(2) of this section.

(c) If a handler has not received full payment from the market administrator pursuant to § 1135.72 by the payment date specified in paragraph (a) or (b) of this section, the handler may reduce pro rata its payments to producers or to the cooperative association by not more than the amount of such underpayment. The payments shall be completed on the next scheduled payment date after receipt of the balance due from the market administrator.

(d) If a handler claims that a required payment to a producer cannot be made because the producer is deceased or cannot be located, or because the cooperative association or its lawful successor or assignee is no longer in existence, the payment shall be made to the producer settlement fund, and in the event the handler subsequently locates and pays the producer or a lawful claimant, or in the event that the handler no longer exists and a lawful claim is later established, the market administrator shall make the required payment from the producer-settlement fund to the handler or to the lawful claimant, as the case may be.

(e) In making payments to producers pursuant to this section, each handler shall furnish each producer, except a producer whose milk was received from a cooperative association handler described in § 1000.9 (a) or (c), a supporting statement in a form that may be retained by the recipient which shall show:

(1) The name, address, Grade A identifier assigned by a duly constituted regulatory agency, and payroll number of the producer;

(2) The daily and total pounds, and the month and dates such milk was received from that producer;

(3) The total pounds of butterfat, protein, and other solids contained in the producer's milk;

(4) [Reserved]

(5) The minimum rate or rates at which payment to the producer is required pursuant to this order;

(6) The rate used in making payment if the rate is other than the applicable minimum rate;

(7) The amount, or rate per hundredweight, or rate per pounds of component, and the nature of each deduction claimed by the handler; and

(8) The net amount of payment to the producer or cooperative association.

§ 1135.74 [Reserved]

§ 1135.75 Plant location adjustments for producer milk and nonpool milk.

For purposes of making payments for producer milk and nonpool milk, a plant location adjustment shall be determined by subtracting the Class I price specified in § 1135.51 from the Class I price at the plant's location. The difference, plus or minus as the case may be, shall be used to adjust the payments required pursuant to §§ 1135.73 and 1000.76.

§ 1135.76 Payments by a handler operating a partially regulated distributing plant.

See § 1000.76.

§ 1135.77 Adjustment of accounts.

See § 1000.77.

§ 1135.78 Charges on overdue accounts.

See § 1000.78.

Administrative Assessment and Marketing Service Deduction

§ 1135.85 Assessment for order administration.

See § 1000.85.

§ 1135.86 Deduction for marketing services.

See § 1000.86.

Note: Appendices A through F are to the Preamble and will not be condified in Title 7 of the Code of Federal Regulations.

Appendix A: Summary of Preliminary Suggested Order Consolidation Report

Ten marketing areas are suggested in the preliminary consolidation report. As a means of determining where interrelationships among the current marketing areas are strongest, data relating to the receipts and distribution of fluid milk products by distributing plants were gathered for all known distributing plants located in the 47 contiguous States, not including the State of California, for the month of October 1995. At this time, California is not included as a suggested order area. The 1996 Farm Bill allows for the inclusion of a California Federal milk order if California producers petition for and approve an order. If a California order were included in the suggested Federal order structure at a later time, it would encompass the entire State and would include no area outside the State of California. Although interest in a Federal order has been expressed by some California producer groups, no definite action has been taken.

An analysis of the distribution and procurement patterns of the fluid processing plants, along with other factors, was used to determine which order areas were most closely related. Proposals submitted by the public were also taken into account. The primary criteria used in determining which markets exhibit a sufficient degree of association in terms of sales, procurement, and structural relationships to warrant consolidation were:

1. Overlapping route disposition.
2. Overlapping areas of milk supply.
3. Number of handlers within a market.
4. Natural boundaries.
5. Cooperative association service areas.

6. Features common to existing orders, such as similar multiple component pricing payment plans.

7. Milk utilization in common dairy products.

The requirement to consolidate existing marketing areas does not specify expansion of regulation to previously nonfederally regulated areas where such expansion would have the effect of regulating handlers not currently regulated. However, a number of the current marketing areas enclose unregulated areas. These "pockets" are included in the suggested merged marketing areas only if their inclusion does not change the current regulatory status of a plant. In the process of consolidating marketing areas, some handlers who currently are partially regulated may become fully regulated because their sales in a combined marketing area will likely meet the pooling standards of a suggested consolidated order. Further expansion of the marketing areas, which would result in regulating additional handlers, is an issue that should be addressed by the industry. Proposals to take such action should be accompanied by supporting data, views, and arguments concerning the need and basis for any such expansion.

The 10 suggested consolidated marketing areas and the major reasons for consolidation are:

1. NORTHEAST—*current marketing areas of the New England, New York-New Jersey, and Middle Atlantic Federal milk orders.* Reasons for consolidation include the existence of overlapping sales and procurement areas between New England and New York-New Jersey and between New York-New Jersey and Middle Atlantic. The orders are also surrounded by nonfederally regulated territory. A further measure of association is evident by industry efforts to study and pursue consolidation of the three Federal orders, as well as some of the nonfederally regulated territory, prior to the 1996 Farm Bill.

2. APPALACHIAN—*current marketing areas of the Carolina and Tennessee Valley Federal milk orders, and a portion of the Louisville-Lexington-Evansville Federal milk order.* Overlapping sales and procurement areas between these marketing areas are major factors for supporting such a consolidation.

3. FLORIDA—*current marketing areas of the Upper Florida, Tampa Bay, and Southeastern Florida Federal milk orders.* Natural boundary limitations and overlapping sales and procurement areas among the three orders are major reasons for consolidation, as well as a measure of association evidenced by cooperative association proposals to consolidate these three marketing areas. Further, the cooperative associations in this area have worked together for a number of years to accommodate needed movements of milk between the three Florida Federal orders.

4. SOUTHEAST—*current marketing area of the Southeast Federal milk order, plus 1 county from the Louisville-Lexington-Evansville Federal milk order marketing area, 15 currently unregulated Kentucky counties, and 2 currently unregulated northeast Texas counties.* Major reasons for this consolidation include sales and procurement area overlaps between the Southeast order and the Kentucky and Texas counties suggested for inclusion. There is minimal sales area overlap with handlers regulated under other Federal orders.

5. MIDEAST—*current marketing areas of the Ohio Valley, Eastern Ohio-Western Pennsylvania, Southern Michigan, and Indiana Federal milk orders, plus most of the current marketing area of the Louisville-Lexington-Evansville Federal milk order, Zone 2 of the Michigan Upper Peninsula Federal milk order, and 12 counties of the Southern Illinois-Eastern Missouri Federal milk order.* Major criteria suggesting this consolidation include the overlap of fluid sales in the Ohio Valley marketing area by handlers from the other areas suggested to be consolidated. With the consolidation, most route disposition by handlers located within the suggested Mideast order would be within the marketing area. Also, nearly all milk produced within the area would be pooled under the consolidated order. The portion of the Michigan Upper Peninsula marketing area suggested to be included in the Mideast consolidated area has sales and milk procurement areas in common with the Southern Michigan area and has minimal association with the western end of the current Michigan Upper Peninsula marketing area.

6. UPPER MIDWEST—*current marketing areas of the Chicago Regional and Upper Midwest Federal milk orders, plus Zones I and I(a) of the Michigan Upper Peninsula Federal milk order and seven unregulated or partly unregulated Wisconsin counties.* Major consolidation criteria include an overlapping procurement area between the Chicago Regional and Upper Midwest orders, overlapping procurement and route disposition area between the western end of the Michigan Upper Peninsula order and the Chicago Regional order, natural boundary limitations, and the prevalence of cheese as a major manufactured product for the substantial reserve milk supplies that exceed fluid milk needs.

7. CENTRAL—*current marketing areas of the Southern Illinois-Eastern Missouri (less 12 counties included in the suggested Mideast marketing area), Central Illinois, Greater Kansas City, Nebraska-Western Iowa (less 11 currently-regulated counties suggested to be unregulated), Eastern South Dakota, Iowa, Southwest Plains, and Eastern Colorado Federal milk orders, plus 63 currently-unregulated counties in seven of the states.* Major criteria suggesting this consolidation include the overlapping procurement and route disposition between the current orders. The suggested consolidation would result in a concentration of both the sales and supplies of milk within the consolidated marketing area. The suggested consolidation would combine several relatively small orders and provide for the release of market data without revealing proprietary information. In addition, most of the producers in these areas share membership in several common cooperatives.

8. SOUTHWEST—*current marketing areas of the Texas, New Mexico-West Texas, and Central Arizona Federal milk orders.* Major criteria suggesting consolidation include sales and procurement area overlaps and common cooperative association membership between the Texas and New Mexico-West Texas marketing areas, and similar marketing concerns with respect to trade with Mexico for all three orders. In addition, there is some route disposition by Central Arizona handlers into the New Mexico-West Texas marketing area, and the Central Arizona market contains a small number of handlers.

9. WESTERN—*current marketing areas of the Western Colorado, Southwestern Idaho-Eastern Oregon, and Great Basin Federal milk orders.* Major criteria suggesting consolidation include overlapping sales between Southwestern Idaho-Eastern Oregon and Great Basin, as well as a significant overlap in procurement for the two orders in five Idaho counties. The two orders also share a similar multiple component pricing plan. The Western Colorado order is included because it is a small market where data cannot be released without revealing confidential information unless combined with the adjacent Great Basin order.

10. PACIFIC NORTHWEST—*current marketing area of the Pacific Northwest Federal milk order plus 1 currently-unregulated county in Oregon.* The degree of association with other marketing areas is insufficient to warrant consolidation.

Following is a table summarizing relevant data for the consolidated markets:

CONSOLIDATED MARKET SUMMARY

[Based on October 1995 data]

Consolidated order	Total producer milk (1,000 lbs.)	Number of fully regulated distributing plants	Combined class I utilization (percent)
Northeast	1,934,833	85	46.7
Appalachian	320,198	25	82.5
Florida	200,397	18	88.3
Southeast	443,921	38	84.3

CONSOLIDATED MARKET SUMMARY—Continued

[Based on October 1995 data]

Consolidated order	Total producer milk (1,000 lbs.)	Number of fully regulated distributing plants	Combined class I utilization (percent)
Mideast	[1]1,140,952	68	57.8
Upper Midwest	[2]1,046,539	27	[4]34.2
Central	932,929	42	50.6
Southwest	861,307	31	48.3
Western	304,793	14	[5]31.7
Pacific Northwest	501,257	23	36.3
Total	7,687,126	371	n/a

[1] Producer milk for F.O. 44 is included. Producer milk for a F.O. 32 handler who would be pooled under the suggested Mideast market is included in the Central consolidated market.

[2] Producer milk for F.O. 30 and F.O. 68 only.

[3] Producer milk for a F.O. 32 handler that would be in the Mideast consolidated market is included.

[4] A significant amount of producer milk was not pooled in October 1995. Estimated total producer milk would result in a 15.3% combined Class I utilization.

[5] A significant amount of producer milk was not pooled in October 1995. Estimated total producer milk would result in a 21.8% combined Class I utilization.

Appendix B: Summary of Pricing Options

Several options for modifying Class I pricing under the Federal milk market order program, representing a spectrum of views, are discussed in this summary report. The accompanying technical report summarizes all of the comments and proposals received by the Department related to Class I pricing under Federal orders.

Most Class I pricing concepts that were suggested would continue to employ a market-driven basic formula price (BFP) with an added differential. Differentials are a composite of one or more of the following elements: (1) A fixed component, (2) a location adjustment, (3) an adjustor relating to utilization, or (4) the cost of balancing the market. Based on the pricing concepts received, the following options were developed:

Option 1A: Location-Specific Differential—$1.60 per hundredweight fixed differential for three surplus regions (Upper Midwest, West, and Southwest) within a nine-zone national price surface, plus for the other six zones an added component that reflects regional differences in the value of fluid and manufacturing milk.

Option 1B: Modified Location-Specific Differential Option—$1.00 per hundredweight fixed differential plus an added component that reflects the cost of moving bulk milk to deficit markets.

Option 2: Relative Use Differential—$1.60 per hundredweight fixed differential plus a formula-based differential driven by the ratio of Class I milk to all other uses of milk.

Option 3A: Flat Differential Option—$1.60 per hundredweight flat differential, uniformly applied across all orders to generate an identical minimum Class I price.

Option 3B: Flat Differential Modified by Class I Use—$2.00 per hundredweight differential in markets where Class I utilization is less than 70 percent on an annual basis and a differential equal to $2.00 + $0.075(Class I use %—70%) in markets where the Class I utilization is equal to or exceeds 70 percent.

Option 4: Demand-Based Differential—$1.00 per hundredweight fixed differential plus a transportation credit based on location of reserve milk supplies.

Estimated Class I differentials are presented for each option to provide a preliminary basis for determining impacts that may occur. The report provides estimated differentials for the suggested 10 consolidated orders and for the current 32 Federal milk marketing orders.

The report concludes by soliciting comments on the options presented and poses a series of questions for the public to address when submitting comments back to the Department on the issue of Class I pricing.

Appendix C: Summary of Classification Report

The Agricultural Marketing Agreement Act of 1937 provides that all milk should be classified "in accordance with the form in which or the purpose for which it is used." This has resulted in a system of uniform classification provisions that places milk used for fluid purposes in the highest use class, Class I, and other manufactured products in lower classes, Classes II, III, and III–A.

Currently products packaged for fluid consumption such as whole milk, skim milk, buttermilk, and flavored milk drinks are classified as Class I products. Class II products include ice cream, yogurt, cottage cheese, and cream. Class III and Class III–A products include cheese, butter, and nonfat dry milk.

Among the changes in classification recommended in the technical report are the following:

- Eggnog would be reclassified from Class II to Class I.
- Any fluid beverage having less than 6.5 percent nonfat milk solids would be reclassified from Class II to Class I.
- Cream cheese would be reclassified from Class III to Class II.

The technical report recommends changing the classification of milk used in nonfat dry milk from Class III–A to Class III. The report recommends that if Class III–A pricing is not eliminated, the following four alternatives be considered:

- Place a floor beneath the Class III–A price;
- Restrict III–A pricing to certain months or to certain markets;
- Provide an up-charge for nonfat dry milk used in higher-valued products; or
- Provide for a combination of these options.

Maintaining the classification of milk used to make nonfat dry milk in Class III–A is also an option, although not discussed in the technical report.

The technical report addresses Class III–A pricing because of industry concerns about the substitution of nonfat dry milk for fluid milk in Class II and III uses when the Class III–A price is substantially below the Class III price.

Appendix D: Summary of Identical Provisions Report

Federal milk marketing orders contain numerous provisions that establish the regulations for the operation of the orders. Over the years, the orders have been individualized to account for specific situations associated with a given marketing area. However, there are several provisions within the orders that are similar or that could be similar and still provide for efficient and orderly marketing of milk.

The technical report does the following:

- Suggests a model for establishing the consolidated orders and provides suggestions on the order language that can be adopted uniformly throughout all orders.
- Reviewed, simplified, modified, and eliminated differences in order provisions that:
- Define various terms used in the orders.
- Establish regulatory standards for plants and handlers.
- Provide for uniform reporting dates of milk receipts and utilization.
- Provide for uniform dates for payment of milk.
- Provide for computation of a uniform price.
- Reduces performance standards to make it easier for producers to associate with a market.

At this time, it is impossible to determine if there would be any financial impact on producers, handlers, or consumers as a result of any of these suggested provision revisions. It is projected that there will be little impact on the overall program because the changes primarily provide for uniformity. There may be minimal impact on selected individual producers, handlers, or consumers, but this cannot be determined until more specific information is developed regarding the orders (i.e., marketing area and pricing). The suggested identical provisions will be applied to each of the suggested consolidated orders and determinations will be based on the marketing conditions of the given region.

One suggested change in the report that may stimulate some debate is the definition of a producer-handler. The technical report suggests applying the most liberal standard to the producer-handler definition to prevent any producer-handler from becoming regulated as a result of milk order reform. Producer-handlers have been exempt from full regulation because they assume the full risks associated with being a producer and a distributor of milk produced with only occasional and small volumes of milk being purchased from other dairy farmers.

Appendix E: Summary of Basic Formula Price Report

The basic formula price (BFP) is used to determine Federal order prices for milk used in manufactured products and, with the addition of differentials, to determine minimum Class I and II prices for milk pooled under the Federal orders. The current BFP is based on a survey of prices paid for manufacturing grade (Grade B) milk by plants in Minnesota and Wisconsin, updated by month-to-month changes in commodity prices (especially cheese). The continuing decline in the volume of Grade B milk produced in the upper Midwest and nationally is an indication that, in the near future, the M–W price series may not be statistically reliable as an indicator of the value of milk used in manufactured products.

The BFP Committee has received input provided during a public BFP Forum held in Madison, Wisconsin, and from over 200 written public comments, and conducted a survey of transaction prices for manufactured dairy products. The Committee also has sponsored analysis by a group of university researchers, and conducted extensive study and analysis of its own. The BFP Committee evaluated alternatives to the BFP against the criteria of stability, predictability, simplicity, uniformity, transparency, sound economics and reduced regulation. Options identified by the Committee were grouped into the following categories:

Options Considered: Economic formulas
Product price and component formulas
Futures markets
California pricing
Cost of production
Informal rulemaking
Competitive pay price
Pooling differentials only

At this time, the Committee has identified four options for further discussion and debate:

- A four-class, multiple component pricing plan to price butterfat, protein and lactose used in cheese (Class III), and butterfat and nonfat solids used in butter/powder (Class IV).
- A three-class, multiple component pricing plan to price protein used in cheese, butterfat used in butter, and other nonfat solids used in powder (Class III—one manufacturing class).
- A product price formula computed from the butter, powder and cheese shares of U.S. production, using seasonal product yields and a California cost-based make allowance; and
- A competitive pay price series using a national weighted average price paid for Grade A milk used in manufactured products, updated by a product price formula. The price series would contain an adjuster to attempt to remove the effect of current regulation and to reduce it to a level more comparable to the current BFP.

As a basis for Class I prices, the BFP could be made more stable by using an economic formula or using a moving average of a manufacturing price. Class II prices could be based on components or continue to include a differential from the manufacturing price level.

The BFP Committee is continuing to study and analyze alternatives in response to public comments.

Appendix F: Summary of Revised Preliminary Suggested Order Consolidation Report

The ten marketing areas suggested in the initial preliminary consolidation report have increased to eleven and been modified to some extent in this revised preliminary report. Several of the initially suggested marketing areas were the subjects of numerous comments containing information that indicated that the boundaries of those areas should be re-evaluated. In addition, shifts in regulation and distributing plant distribution areas were known to have occurred. As a result, more detailed and updated (January 1997) data was obtained relating to the receipts of producer milk and distribution of fluid milk products by distributing plants in a number of the initially-suggested order marketing areas. As a result, changes were made in the suggested marketing areas of the Northeast, Appalachian, Southeast, Mideast, Upper Midwest, Central, Southwest, and Western regions, and a new Arizona-Las Vegas area was added.

An analysis of the distribution and procurement patterns of the fluid processing plants, along with other factors, was used to determine which order areas were most closely related. Proposals submitted by the public were also taken into account. The primary criteria used in determining which markets exhibit a sufficient degree of association in terms of sales, procurement, and structural relationships to warrant consolidation continued to be:

1. Overlapping route disposition.
2. Overlapping areas of milk supply.
3. Number of handlers within a market.
4. Natural boundaries.
5. Cooperative association service areas.
6. Features common to existing orders, such as similar multiple component pricing plans.
7. Milk utilization in common dairy products.

In the initial preliminary report, it was observed that the Farm Bill requirement to consolidate existing marketing areas does not specify expansion of regulation to previously non-Federally regulated areas where such expansion would have the effect of regulating handlers not currently regulated. This revised preliminary report suggests that some currently non-Federally regulated area be added on the basis of comments supported by data, views and arguments filed by interested persons. Specifically, unregulated areas contiguous to the initial suggested consolidated Northeast and Mideast marketing areas are suggested for inclusion in those suggested order areas. Some handlers currently not subject to full Federal order regulation would become pool plants if the suggested areas are added. Handlers who would be affected will be notified of the possible change in their status, and encouraged to comment.

As in the initial preliminary report, "pockets" of unregulated areas enclosed in the current marketing areas are included in the suggested consolidated marketing areas if their inclusion does not change the current regulatory status of a plant. However, in the process of consolidating marketing areas, some handlers who currently are partially regulated may become fully regulated because their sales in a combined marketing area will meet the pooling standards of a suggested consolidated order area. As a result, this report suggests that some unregulated areas contiguous to currently-regulated areas be added to Federal order areas where additional handlers would be affected.

The 11 modified suggested marketing areas (with those modified from the initial preliminary report, and the modifications, marked by *) and the major reasons for consolidation are:

*1. NORTHEAST—current marketing areas of the New England, New York-New Jersey, and Middle Atlantic Federal milk orders, **with the addition of*: contiguous unregulated areas of New Hampshire, Vermont and New York; the western non-Federally regulated portion of Massachusetts, the Western New York State order area, and Pennsylvania Milk Marketing Board Areas 2 and 3 in northeastern Pennsylvania.

Reasons for consolidation include the existence of overlapping sales and procurement areas between New England and New York-New Jersey and between New York-New Jersey and Middle Atlantic. In several cases, handlers who would become regulated because their total sales in the combined areas would meet pooling standards are located in areas where they compete with handlers who would not be similarly regulated. Handler equity suggests that these handlers, too, should become regulated. Another important measure of association is evidenced by industry efforts to study and pursue consolidation of the three Federal orders, as well as some of the nonfederally regulated territory, prior to the 1996 Farm Bill.

Sixteen additional distributing plants would be pooled as a result of the expansion of the consolidated area. Nine of these plants currently are partially regulated.

*2. APPALACHIAN—current marketing areas of the Carolina and Tennessee Valley Federal milk orders, **with the addition of*: all of the Louisville-Lexington-Evansville Federal order area (except one county—in the suggested Southeast area) and 26 currently-unregulated counties in Indiana and Kentucky.

More detailed and updated data showing overlapping sales and procurement areas between these marketing areas are major factors for supporting such a consolidation.

3. FLORIDA—current marketing areas of the Upper Florida, Tampa Bay, and Southeastern Florida Federal milk orders.

Natural boundary limitations and overlapping sales and procurement areas among the three orders are major reasons for consolidation, as well as a measure of association evidenced by cooperative association proposals to consolidate these three marketing areas. Further, the cooperative associations in this area have worked together for a number of years to accommodate needed movements of milk between the three Florida Federal orders.

*4. SOUTHEAST—current marketing area of the Southeast Federal milk order, plus 1 county from the Louisville-Lexington-Evansville Federal milk order marketing area, plus 15 currently-unregulated Kentucky counties, **minus* 2 currently-unregulated counties in northeast Texas (in the suggested Southwest area).

Major reasons for this consolidation include sales and procurement area overlaps between the Southeast order and this county. There is minimal sales area overlap with handlers regulated under other Federal orders. Collection of additional data showed greater disposition in the two Texas counties from Texas handlers than from Southeast handlers. There are no handlers in these two counties that would be affected.

*5. MIDEAST—current marketing areas of the Ohio Valley, Eastern Ohio-Western Pennsylvania, Southern Michigan, and Indiana Federal milk orders, plus Zone 2 of the Michigan Upper Peninsula Federal milk order, and currently-unregulated counties in Michigan, Indiana, and Ohio **with the addition of*: Pennsylvania Milk Marketing Board Area 6 (in western/central Pennsylvania) and 2 currently-unregulated counties in New York, and **minus* the Louisville-Lexington-Evansville order area, 12 counties in Illinois, and unregulated counties in Indiana and Kentucky that are being suggested for inclusion in the Appalachian area.

Major criteria suggesting this consolidation include the overlap of fluid sales in the Ohio Valley marketing area by handlers from the other areas suggested to be consolidated. With the consolidation, most route disposition by handlers located within the suggested Mideast order would be within the marketing area. Also, nearly all milk produced within the area would be pooled under the consolidated order. The portion of the Michigan Upper Peninsula marketing area suggested to be included in the Mideast consolidated area has sales and milk procurement areas in common with the Southern Michigan area and has minimal association with the western end of the current Michigan Upper Peninsula marketing area.

Collection of additional data and recent changes in marketing patterns indicate that the relationship between the Louisville-Lexington-Evansville (L–L–E) area and the order areas initially included in the suggested Appalachian area is closer than relationship between L–L–E and the Mideast area.

Seven distributing plants that would not have been pool plants as a result of the initially-suggested consolidation would become pool plants due to the suggested expansion of the consolidated area into Pennsylvania and New York. The number of pool plants also is affected by a shift of pool plants from one consolidated area to another because of the shift of territory from the initially-suggested Mideast area to the revised suggested Appalachian area.

*6. UPPER MIDWEST—current marketing areas of the Chicago Regional, Upper Midwest, Zones I and I(a) of the Michigan Upper Peninsula Federal milk orders, and unregulated portions of Wisconsin, **with the addition of:* the Iowa, Eastern South Dakota, and most of the Nebraska-Western Iowa Federal order areas, plus currently-unregulated counties in Iowa and Nebraska.

Major consolidation criteria include an overlapping procurement area between the Chicago Regional and Upper Midwest orders and overlapping procurement and route disposition area between the western end of the Michigan Upper Peninsula order and the Chicago Regional order. More-detailed and updated information revealed more significant overlapping procurement and route disposition areas between the Iowa, Eastern South Dakota and Nebraska-Western orders and Chicago Regional and Upper Midwest orders than had been observed in the initial study. In addition, a common pricing plan for producers, natural boundary limitations, and the prevalence of cheese as a major manufactured product for the substantial reserve milk supplies that exceed fluid milk needs exist in these orders. Some of the western Nebraska area is more closely associated with the Eastern Colorado area, however, and is suggested to remain with the Central consolidated area.

Eleven additional handlers that would have been pooled under the consolidated Central order in the initial Preliminary Report would be pooled under a consolidated Upper Midwest order under this revised report.

*7. CENTRAL—current marketing areas of the Southern Illinois-Eastern Missouri, Central Illinois, Greater Kansas City, Southwest Plains, and Eastern Colorado Federal milk orders, 10 counties currently in the Nebraska-Western Iowa Federal order area, plus 55 currently-unregulated counties in Kansas, Missouri, Illinois, Nebraska and Colorado, **plus* the 12 counties in the current Southern Illinois-Eastern Missouri area that initially were suggested as part of the consolidated Mideast area, **minus* the Eastern South Dakota, Iowa and most of the Nebraska-Western Iowa Federal order marketing areas.

Major criteria suggesting this consolidation include the overlapping procurement and route disposition between the current orders. The suggested consolidation would result in a concentration of both the sales and supplies of milk within the consolidated marketing area. The suggested consolidation would combine several relatively small orders and provide for the release of market data without revealing proprietary information. In addition, most of the producers in these areas share membership in several common cooperatives.

*8. SOUTHWEST—current marketing areas of Texas and New Mexico-West Texas Federal milk orders, **with the addition of:* two northeast Texas counties previously suggested to be added to the Southeast marketing area, and 47 currently-unregulated counties in southwest Texas, and **minus* the Central Arizona marketing area.

Major criteria suggesting consolidation include sales and procurement area overlaps and common cooperative association membership between the Texas and New Mexico-West Texas marketing areas, and similar marketing concerns with respect to trade with Mexico for both orders. Addition of the currently-unregulated Texas counties will result in the regulation of no additional handlers, and will reduce handlers' recordkeeping and reporting burden and the market administrator's administrative costs. In the initial consolidation report, the Central Arizona area was found to have a minimal association with the New Mexico-West Texas and Texas order areas. Further analysis showed that it has a much more significant degree of association with the Clark County, Nevada, portion of the current Great Basin order area.

The revised suggested consolidated Southwest area would include 4 fewer fully regulated pool plants as a result of the removal of the Central Arizona area.

*9. ARIZONA-LAS VEGAS—*an eleventh marketing area composed of the current marketing area of the Central Arizona order and the Clark County, Nevada, portion of the current Great Basin marketing area, plus eight currently-unregulated Arizona counties.

The major criterion suggesting consolidation is sales overlap between the sole Las Vegas, Nevada, handler and handlers regulated under the Central Arizona order in both Clark County, Nevada, and unregulated portions of northern Arizona. In addition,

both areas exchange significant volumes of bulk and packaged milk with Southern California.

The suggested Arizona-Las Vegas marketing area would include five fully regulated handlers, with no additional handlers regulated because of the addition of the currently-unregulated northern Arizona area.

*10. WESTERN—current marketing areas of the Western Colorado, Southwestern Idaho-Eastern Oregon, and Great Basin Federal milk orders, **minus* Clark County, Nevada. Major criteria suggesting consolidation include overlapping sales between Southwestern Idaho-Eastern Oregon and Great Basin, as well as a significant overlap in procurement for the two orders in five Idaho counties. The two orders also share a similar multiple component pricing plan. The Western Colorado order is included because it is a small market where data cannot be released without revealing confidential information unless combined with the adjacent Great Basin order.

Collection of more-detailed data indicates that the strength of earlier relationships between the former Great Basin and Lake Mead orders that justified their 1988 merger have dwindled significantly, with the Las Vegas area now more closely related to southern California and competing most heavily with Central Arizona handlers.

11. PACIFIC NORTHWEST—current marketing area of the Pacific Northwest Federal milk order plus 1 currently-unregulated county in Oregon. The degree of association with other marketing areas is insufficient to warrant consolidation.

Following is a table summarizing relevant data for the consolidated markets.

CONSOLIDATED MARKET SUMMARY

[Based on October 1995 Data]

Consolidated order	Number of fully regulated distributing plants		Total producer milk (1000 lbs.)		Combined class I use (percent)		Weighted average utilization value	
	Initial report	Revised report	Initial report	Revised report [1]	Initial report	Revised report	Initial report	Revised report
Northeast	85	92	1,934,833	2,102,620	46.7	49.0	$13.44	$13.49
Appalachian	25	29	320,198	[2] 412,813	82.5	81.5	14.11	13.94
Florida	18	16	[3] 200,397	204,541	88.3	88.3	15.05	15.05
Southeast	38	40	[4] 443,921	442,705	84.3	84.3	14.26	14.25
Mideast	68	68	[5] 1,140,952	1,103,366	57.8	57.2	12.96	12.94
Upper Midwest	27	39	[6] 1,046,539	1,354,209	[7] 34.2	[8] 37.6	12.59	12.62
Central	42	30	[9] 932,929	599,334	50.6	53.5	13.15	13.21
Southwest	31	26	861,307	680,232	48.3	48.1	13.36	13.39
Arizona-Las Vegas	N/A	7	N/A	[10] 181,075	N/A	48.9	N/A	13.26
Western	14	11	304,793	293,714	[11] 31.7	[12] 29.6	12.79	12.78
Pacific Northwest	23	21	501,257	493,207	36.3	35.6	12.45	12.44
Total	371	379	7,687,126	7,867,816	N/A	N/A	N/A	N/A

Consolidated Market Summary Table Footnotes

[1] Initial report producer deliveries, adjusted to include only those handlers who would be fully regulated (i.e. Status = 1) in the revised suggested marketing area, unless otherwise noted. When applicable, producer deliveries for currently non-Federally regulated plants which would be fully regulated in a revised suggested consolidated order are included in the appropriate suggested consolidated order.

[2] Includes producer milk for one currently fully regulated plant which would be exempt (i.e. Status = 3B) in the Appalachian market in the revised preliminary report.

[3] Excludes producer milk for one currently fully regulated F.O. 7 plant which would be regulated in the Florida market in the initial preliminary report.

[4] Includes producer milk for one currently fully regulated F.O. 7 plant which would be regulated in the Florida market in the initial preliminary report.

[5] Producer milk for F.O. 44 is included. Producer milk for a F.O. 32 handler who would be pooled under the initially-suggested Mideast market is included in the initially-suggested Central market.

[6] Producer milk for F.O. 30 and F.O. 68 only.

[7] A significant amount of producer milk was not pooled in October 1995. Estimated total producer milk would result in a 15.3% combined Class I utilization.

[8] A significant amount of producer milk was not pooled in October 1995. Estimated total producer milk would result in a 19.7% combined Class I utilization.

[9] Includes producer milk for a F.O. 32 handler that would be in the initially-suggested Mideast market.

[10] Excludes producer milk for one currently fully regulated F.O. 139 plant and one currently unregulated plant which would be regulated in the Arizona-Las Vegas market in the revised preliminary report.

[11] A significant amount of producer milk was not pooled in October 1995. Estimated total producer milk would result in a 21.8% combined Class I utilization.

[12] A significant amount of producer milk was not pooled in October 1995. Estimated total producer milk would result in a 21.6% combined Class I utilization.

[FR Doc. 99–6547 Filed 4–1–99; 8:45 am]

BILLING CODE 3410–02–P

federal register

Friday
April 2, 1999

Part III

Department of Transportation

Federal Aviation Administration

14 CFR Parts 119, 121, et al.
Aging Airplane Safety; Proposed Rule

Advisory Circulars (AC) 91–MA and (AC) 120–XX; Notice of Availability and Request for Comments; Notices

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 119, 121, 129, 135, and 183

[Docket No. FAA–1999–5401; Notice No. 99–02]

RIN 2120–AE42

Aging Airplane Safety

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM) and withdrawal of prior proposed rulemaking.

SUMMARY: The FAA proposes to require all airplanes operated under part 121 of Title 14, Code of Federal Regulations (14 CFR), all U.S.-registered multiengine airplanes operated under 14 CFR part 129, and all multiengine airplanes used in scheduled operations under 14 CFR part 135 to undergo records reviews and inspections by the Administrator after their 14th year in service to ensure that the maintenance of these airplanes' age-sensitive parts and components has been adequate and timely. The FAA also proposes to permit certain representatives of the Administrator to conduct these inspections. The proposed rule also would prohibit operation of these airplanes after specified deadlines unless damage-tolerance-based inspections and procedures are included in their maintenance or inspection program.

This proposal represents a critical step toward compliance with the Aging Aircraft Safety Act of 1991. It would help ensure the continuing airworthiness of aging airplanes operating in air transportation by applying modern damage-tolerance analysis and inspection techniques to older airplane structures that were certificated before such techniques were available, and through mandatory aging aircraft records reviews and inspections to be performed by the Administrator.

The Aging Airplane Safety NPRM published on October 5, 1993 (58 FR 51944) is withdrawn.

DATES: Comments must be received on or before August 2, 1999.

ADDRESSES: Comments on this proposed rulemaking should be mailed or delivered, in triplicate, to: U.S. Department of Transportation Dockets, Docket No. FAA–1999–5401, 400 Seventh St. SW., Room Plaza 401, Washington, DC 20590. Comments also may be submitted electronically to the following Internet address: 9–NPRM–CMTS@faa.gov. Comments may be filed and/or examined in Room Plaza 401, between 10:00 a.m. and 5:00 p.m. weekdays except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Frederick Sobeck, Aircraft Maintenance Division (AFS–300), Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591, telephone (202) 267–7355.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they desire. Comments relating to the environmental, energy, federalism, or economic impact that might result from adopting the proposals in this notice also are invited. Substantive comments should be accompanied by cost estimates. Comments must identify the regulatory docket or notice number and be submitted in triplicate to the Rules Docket address specified above.

All comments received, as well as a report summarizing each substantive public contact with FAA personnel on this rulemaking, will be filed in the docket. The docket is available for public inspection before and after the comment closing date.

All comments received on or before the closing date will be considered by the Administrator before taking action on this proposed rulemaking. Late-filed comments will be considered to the extent practicable. The proposals contained in this notice may be changed in light of the comments received.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must include a pre-addressed, stamped postcard with those comments on which the following statement is made: "Comments to Docket No. FAA–1999–5401." The postcard will be date stamped and mailed to the commenter.

Availability of NPRMs

Using a modem and suitable communications software, an electronic copy of this document may be downloaded from the FAA regulations section of the FedWorld electronic bulletin board service (telephone: (703) 321–3339), the **Federal Register**'s electronic bulletin board service (telephone: (202) 512–1661), or the FAA's Aviation Rulemaking Advisory Committee Bulletin Board service (telephone: (202) 267–5948).

Internet users may reach the FAA's web page at http://www.faa.gov/avr/arm/nprm/nprm.htm or the Government Printing Office's webpage at http://www.access.gpo.gov/nara for access to recently published rulemaking documents.

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–9680. Communications must identify the notice number or docket number of this NPRM.

Persons interested in being placed on the mailing list for future NPRMs should request from the above office a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

Background

Statutory Requirement

In October 1991, Congress enacted Title IV of Public Law 102–143, the "Aging Aircraft Safety Act of 1991" (AASA), to address aging aircraft concerns. The AASA was subsequently codified as section 447717 of Title 49, Unites States Code (49 U.S.C.).

Section 44717 of 49 U.S.C. instructs the Administrator to "prescribe regulations that ensure the continuing airworthiness of aging aircraft." That section also requires the Administrator to "make inspections, and review the maintenance and other records, of each aircraft an air carrier uses to provide air transportation." The records reviews and inspections would be those necessary to "enable the Administrator to decide whether the aircraft is in safe condition and maintained properly for operation in air transportation." Section 44717 of 49 U.S.C. specifies that these inspections and reviews must be carried out as part of each aircraft's heavy maintenance check conducted "after the 14th year in which the aircraft has been in service." It also states that the air carrier must "demonstrate to the Administrator, as part of the inspection, that maintenance of the aircraft's age-sensitive parts and components has been adequate and timely enough to ensure the highest degree of safety."

Section 44717 of 49 U.S.C. further states that the rule issued by the Administrator must require an air carrier to make its aircraft, as well as any records about the aircraft that the Administrator may require to carry out the review, available for inspection as necessary to comply with the rule. It also states that the Administrator must establish procedures to be followed for carrying out such an inspection.

Aging Airplane Safety Notice of Proposed Rulemaking, 1993

On October 5, 1993, the FAA published Notice No. 93–14, "Aging Airplane Safety" (58 FR 51944). The proposals contained in that notice would have required operator certification of aging airplane maintenance actions and would have established a framework for the Administrator to impose operational limits on certain airplanes. Once an airplane reached those limits, additional maintenance actions would be necessary, such as inspections or parts replacements, for the airplane to continue operating. Operational limits would have been established in a separate rulemaking.

Other specific proposals related to operator certification of aging airplane maintenance actions were included in the notice. Those proposals included: (1) A definition of the terms "heavy maintenance check" (HMC) and "years in service"; (2) a requirement for certificate holders to establish an HMC interval for each airplane they operate; (3) a requirement for certificate holders to make a maintenance record at the start of each airplane's 15th year in service and at all subsequent HMCs to certify that the airplane met all maintenance program requirements; and (4) a requirement for certificate holders to notify the FAA at least 30 days before the start of an airplane's HMC.

A number of commenters objected to certain provisions contained in the notice. Many commenters indicated that current rules already enable the Administrator to determine that an aircraft meets all maintenance program requirements; therefore, they asserted that additional rulemaking was unnecessary. Several commenters opposed the required 30-day notice proposal because the current regulations provide the FAA with sufficient means to determine the date of an aircraft's next required inspection. Several commenters also were concerned that the definition of "heavy maintenance check" was too broad.

A number of commenters opposed the concept of an operational limit unless the FAA specified the requirements used to establish and extend those limits. Finally, some commenters suggested that the FAA exclude airplanes already having damage-tolerance-based supplemental inspection programs (SIPs) from the operational limit requirement.

Withdrawal of Notice

After further review, and taking into consideration public comments, the Aging Airplane Safety NPRM, Notice No. 93–14 (58 FR 51944, October 5, 1993) is hereby withdrawn.

General Discussion

Historical Perspective

The continued airworthiness of aircraft structure is significantly affected by age-related fatigue damage. Evidence to date suggests that when all critical structure are included, damage-tolerance-based inspections and procedures provide the best approach to address aircraft fatigue.

An underlying principle of damage tolerance is that the initiation and growth of structural fatigue damage can be anticipated with sufficient precision to allow damage-tolerance-based inspections and procedures to detect damage before it reaches a size that affects an airplane's airworthiness. When damage is discovered, airworthiness is maintained by repairing the airplane before further flight.

Early fatigue requirements, such as "fail-safe" regulations, did not provide for timely inspection of an aircraft's critical structure to ensure that damaged or failed components could be dependably identified and then repaired or replaced before a hazardous condition developed. In 1978, the damage-tolerance concept was adopted for transport category airplanes as an amendment to 14 CFR 25.571 by Amendment No. 25–45 (43 FR 46238). That amended rule required damage-tolerance analysis as part of the type design of transport category airplanes for which application was received after October 5, 1978. On May 6, 1981, the FAA published Advisory Circular (AC) 91–56, "Supplemental Structural Inspection Program for Large Transport Category Airplanes," guidance material based on the amended rule for existing designs. Using the guidance provided in AC 91–56, many manufacturers of large transport category airplanes (airplanes of more than 75,000 pounds) developed SIPs for their existing models.

Beginning in 1984, the FAA issued a series of airworthiness directives (ADs) requiring the operators of those airplanes to incorporate the SIPs into their maintenance programs. SIPs provide inspections and procedures that are based on damage-tolerance principles.

On August 6, 1993, the FAA revised the airworthiness standards for small metallic airplanes to incorporate Amendment No. 23–45 (58 FR 42163) into 14 CFR part 23. Those revisions provided an option to use damage-tolerance-based inspections and procedures as a means for achieving continued airworthiness of newly certificated normal, utility, acrobatic, and commuter category airplanes. On February 9, 1996, the FAA revised part 23 by Amendment No. 23–48 (61 FR 5148) to require damage-tolerance-based inspections and procedures on all newly certificated commuter category airplanes.

Other airplanes were not affected by the described rule changes and thus do not have prescribed damage-tolerance-based inspections and procedures. These airplanes fall into four basic categories: (1) Airplanes with non-damage-tolerance-based SIPs, based solely on service history, as prescribed in AC No. 91–60, "The Continued Airworthiness of Older Airplanes"; (2) airplanes that were certificated with design-life limits on the entire airplane or on major components such as the wing, empennage, or fuselage; (3) airplanes that were designed to "fail-safe" criteria to comply with fatigue requirements; and (4) airplanes that were certificated with limited consideration being given to metal fatigue.

This Proposal

This proposed rule responds to the provisions of 49 U.S.C. 44717, which requires the Administrator to "prescribe regulations that ensure the continuing airworthiness of aging aircraft * * * [and] to make inspections and review the maintenance and other records of each aircraft an air carrier uses to provide air transportation that the Administrator decides may be necessary to enable the Administrator to decide whether the aircraft is in safe condition and maintained properly for operation in air transportation."

As a result of requirements stipulated in 49 U.S.C. 44717, the FAA proposes to prohibit the operation of certain airplanes in scheduled service unless the Administrator or the Administrator's designee has determined that maintenance of the aircraft's age-sensitive parts and components has been adequate and timely. All airplanes operating under part 121, all U.S.-registered multiengine airplanes operating under part 129, and all multiengine airplanes conducting scheduled operations under part 135 would be affected.

Air carriers would be required to make each airplane and certain records related to the maintenance of age-sensitive components of the airplane available to the Administrator. Also, each affected airplane would be prohibited from operating unless damage-tolerance-based inspections and procedures are included in the

maintenance or inspection program used on each airplane in accordance with a specified schedule. Damage-tolerance-based inspections and procedures would be required on all affected airplanes no later than December 20, 2010.

The airplanes affected by this proposed rule transport a significant proportion of those passengers carried in scheduled passenger service and are the most prevalent airplanes operated in such service.

This notice does not propose requirements for rotorcraft or single-engine airplanes, nor does it propose requirements for on-demand passenger- or cargo-carrying operations under 14 CFR part 135. The scope of this proposal includes the preponderance of aircraft the Congress intended to cover under the AASA. Furthermore, the FAA anticipates that the resource-intensive implementation of the proposed aircraft and records inspection provisions may be difficult to administer initially, but that FAA (and designee) resources, in the future, will have the capacity to oversee additional fleets of aircraft.

Thus, in a future notice, the FAA will propose aging aircraft requirements necessary to cover the operation of all the other aircraft used by air carriers to provide air transportation. For the purpose of developing those proposals, the FAA may consider the information (e.g., documents in public docket) it develops for the rule proposed in this notice. It is possible that those future proposals could be similar to the requirements proposed in this notice; however, because of the differences in the designs, operations, and maintenance of those aircraft, differences between this notice and the future proposals are likely.

Congress also instructed the Administrator to encourage governments of foreign countries and relevant international organizations to develop programs addressing aging aircraft concerns. Most foreign air carriers and foreign persons engaged in common-carriage operations have maintenance program requirements adopted by their governments. The FAA issues the airworthiness certificates for U.S.-registered airplanes. By including part 129 in this proposed rule, foreign air carriers and foreign persons operating U.S.-registered multiengine aircraft within or outside the United States would be required to include damage-tolerance-based inspections and procedures in their maintenance programs and be subject to aging aircraft records reviews and inspections. This action forms a portion of the FAA's response to the AASA by helping to ensure the continued airworthiness of aging U.S.-registered airplanes operated worldwide.

This proposal also would revise current 14 CFR 183.33(a) to expand the authority of the Designated Airworthiness Representative (DAR). The DAR would be authorized to conduct the proposed records reviews and inspections on behalf of the Administrator. When this proposal becomes a final rule, the FAA intends to recommend that the International Civil Aviation Organization (ICAO) and the Joint Aviation Authorities (JAA) consider making similar changes to their recommended practices and requirement.

Inspections

The FAA intends to verify that each operator has records to show that they have accomplished all required maintenance tasks, as well as the damage-tolerance-based inspections and procedures that would be required by this proposal. The FAA would validate that these records are correct for each affected airplane during the records review and inspection required by this proposed rule.

Section 44717 of 49 U.S.C. specifies that the records reviews and inspections be carried out as part of each aircraft's heavy maintenance check after the 14th year in service. For airplanes that have already completed 14 years in service, the proposal would require the first records review and inspection within 3 to 5 years of the effective date of the rule. This proposal would generally require the first records review and inspection to be accomplished no later than 5 years after the 14th year in service.

The FAA realizes that the first inspection required 5 years after the 14th year in service may not be consistent with current operator maintenance schedules. As a result, the records reviews and inspections carried out by the Administrator or the Administrator's designee may significantly affect these maintenance schedules, because the reviews and inspections may not coincide with current maintenance schedules.

In formulating this proposal, the FAA considered options for setting repeat intervals. Among those considered were the heavy maintenance check interval, heavy maintenance visit interval, or the "letter check" (e.g., "C", "D", or "E") interval or other equivalent check interval an operator may use. The FAA reviewed variabilities in the parameters used by operators to carry out scheduled maintenance requirements such as flight hours, calendar time, or a combination of both. The FAA also considered the phasing and segmenting of heavy maintenance checks and found that the intervals varied from 1 to 27 years.

In Air Transport Association of America (ATA) memorandum number 96–AE–014, dated March 11, 1996, the Airworthiness Concern Coordination Task Force recommended that "a 'C' check compliance period (18 months) or 'D' check period (5 years) be adopted for all rules unless it can be shown that a shorter time interval is required for safety reasons." A copy of this memorandum has been placed in the docket.

Individual operator maintenance or inspection check intervals have been adjusted over the years based on service experience and the operational environment of the aircraft. The adjustment, for the most part, has been toward increasing the time between subsequent check intervals. Consequently, maintenance check intervals vary among operators. To comply with the AASA, the 5-year repetitive interval after the initial inspection, not withstanding the escalations, best helps accomplish the safety goal of the AASA.

The FAA has determined that the best approach is to specify a fixed repeat interval when the Administrator will carry out records reviews and inspections of the affected airplanes. The FAA has chosen the 5-year repeat interval to meet its obligations, as established in 49 U.S.C. 44717.

To reduce the burden on the operator, the record reviews and inspections could take place at any time before the deadlines specified in the proposal. This allows the inspections to coincide with an airplane's normally scheduled maintenance visit when structural components are accessible for inspection. However, if an operator's maintenance interval exceeds 5 years, the operator will be obligated sooner than the end of the interval to make the airplane available to the Administrator or the Administrator's designee for the records review and inspection required by this proposal. For many smaller airplanes, the maintenance visit intervals are less than 5 years. In those cases, the repetitive intervals of the aging airplane records reviews and inspections would not exceed 5 years.

Conducting the inspections during normally scheduled maintenance visits will allow maximum use of the FAA's resources while minimizing the disruption to the operator. It also ensures that a significant portion of the airplane is accessible to the Administrator or the Administrator's designee and allows, to the extent

possible, a visible determination of compliance with aging aircraft requirements. Although it is the FAA's intent to carry out records reviews and inspections to the extent that the aircraft structure is accessible during the maintenance visit, the FAA may require additional access to determine that the maintenance of the airplane's age-sensitive parts and components has been adequate and timely.

The proposed rule specifies that airplanes already at their 25th year in service must be inspected within 3 years after the effective date of the rule. This earlier compliance time for the older airplanes will ensure that the oldest airplanes are inspected first and will distribute the workload for the initial inspections. The FAA estimates that 1,550 airplanes affected by this proposed rule would exceed 24 years in service by 1998. The estimated number of airplanes that will be 15 years old by 1998 is 2,850. Therefore, the proposed rule provides for approximately 1,500 airplanes to be inspected within the first 3 years following the effective date of the rule, followed by an approximately equal amount to be inspected in the subsequent 2 years.

The proposed rule also would require the operator to notify the FAA 60 days before the aircraft is available for the aging airplane records review and inspection. This would ensure that the Administrator or the Administrator's designee would be able to make the plans necessary to accomplish the aging airplane records review and inspection.

Records Review

For the Administrator to fulfill his or her obligation under 49 U.S.C. 44717, this proposal would require that certain records be made available by the operator. Operators are already required by existing regulations to maintain these records and reports. Although the proposal would require status lists and reports of specific maintenance actions, if needed, the FAA has the authority under exiting regulations to request all supporting documentation for the lists.

This proposal would establish a new requirement for "total years in service." The FAA has determined that this new requirement is essential for the Administrator and the operator to determine the compliance time for the initial and repetitive inspections. To meet this requirement, the operator would retain records validating when the initial certificate of airworthiness was issued for each airplane.

In addition, the FAA is aware that an airframe's flight cycles are not currently being collected by operators of small airplanes under part 135. This proposal would require that the operator make certain records and reports available to the FAA during the proposed aging airplane records review inspection.

Damage-Tolerance-Based Inspections and Procedures

A damage-tolerance-based inspection and procedure refers to "an inspection program that specifies procedures, thresholds, and repeat intervals that have been developed using damage-tolerance principles." Damage-tolerance-based inspections and procedures are developed by a manufacturer or operator based on an engineering evaluation of likely sites where damage could occur, considering expected stress levels, material characteristics, and projected crack growth rates. Damage-tolerance-based inspections and procedures identify inspection sites, specify inspection techniques; define thresholds for the initial inspection; and prescribe repeat inspection intervals. Test data and service experience are used to support the analysis.

The most important information used to develop a damage-tolerance-based inspection and procedure is derived analytically or by test, and the inspections are intended to anticipate locations where fatigue cracking might occur. Therefore, it is inappropriate to change damage-tolerance-based inspections and procedures solely on service experience without a significant engineering evaluation to confirm that there are no areas subject to fatigue cracking other than those revealed by the service experience. The engineering evaluation should include considering the detailed design data of the airplane, which is under the control of the manufacturer. For this reason, all damage-tolerance-based inspections and procedures should be developed under the technical direction of the type certificate holder for that airplane, with support from the operators when appropriate. However, the FAA would consider damage-tolerance-based inspections and procedures submitted by any applicant for approval if they are based on tests and service-supported damage-tolerance evaluations for that airplane model.

The damage-tolerance-based inspections and procedures specified in this proposal can be developed using one of the following methods:

(1) Damage-tolerance-based inspections and procedures that comply with § 25.571, Amendment 25–45 (43 FR 46238), or that comply with a subsequent amendment thereto;

(2) Damage-tolerance-based inspections and procedures that comply with the damage-tolerance provisions for metallic structure listed in 14 CFR 23.573, Amendment 23–45 (58 FR 42163), or that comply with a subsequent amendment thereto;

(3) AC 91–56 "Supplemental Structural Inspection Program for Large Transport Category Airplanes" dated May 6, 1981;

(4) Draft AC 91–MA "Continued Airworthiness of Older Small Transport and Commuter Airplanes; Establishment of Supplemental Inspection Programs." A notice of availability for this AC is published concurrently with this proposal; or

(5) Any other method that the Administrator finds complies with the principles of damage tolerance.

Although this proposed rule specifies dates by which damage-tolerance-based inspections and procedures would be required, the thresholds for these inspections may occur much later. While the damage-tolerance-based inspections and procedures would need to be developed within the regulatory timeframe proposed, the times when the inspections would be completed would depend on the damage-tolerance assessment.

For newly certificated airplanes, damage-tolerance-based inspections necessary to prevent catastrophic failure must be included in the Airworthiness Limitations Section of the Instructions for Continued Airworthiness required by 23.1529 or 25.1529.

Damage-tolerance-based inspections and procedures for airplanes certificated before the amendments that require damage tolerance as part of airplane type design may be approved through an amended or supplemental type certificate. Such a certificate would identify the damage-tolerance-based inspections and procedures as an airworthiness limitation on the airplane.

Damage-tolerance-based inspections and procedures for certain older airplanes also may be approved by a Letter of Approval issued by the FAA Aircraft Certification Office cognizant of the type certificate. The Letter of Approval would place an operational requirement for the operator's affected airplanes.

For some airplanes, the FAA has approved major structural modifications under a supplemental type certificate (STC). The original airplane manufacturer may not have sufficient technical data pertinent to these modifications to assist the airplane operators in conducting a damage-tolerance assessment of the modification. In these situations, the FAA expects the operator to work with the STC holder and the original airplane

manufacturer to develop damage-tolerance-based inspections and procedures for that modification. In some instances, the operator may not be able to work with the STC holder or manufacturer. These operators may elect to conduct their own damage-tolerance assessments. If an operator elects to develop damage-tolerance-based inspections and procedures in this fashion, competent engineering personnel, as well as inspection findings from the current maintenance or inspection program, should be used in conjunction with the airplane's design data base and model fleet experience. These data should be developed by the original manufacturer, and the STC holder should provide the basis for the damage-tolerance-based inspections and procedures; however, the operator also can develop its own data. FAA-approved major structural repairs should be analyzed in the same manner as modifications accomplished under an STC. Such procedures ensure that damage-tolerance-based inspections and procedures address each airplane affected by this proposal, including any modifications or repairs made to the basic airframe.

The FAA is aware that for some currently operating airplanes it may be difficult to develop damage-tolerance-based inspections and procedures. For example, the manufacturer may have gone out of business; technical data may not be adequate; the technical knowledge base may no longer be readily available; or the development of a damage-tolerance-based inspections and procedures may not be economically viable. If any of these conditions exist and appropriate damage-tolerance-based inspections and procedures cannot be developed those airplanes would not be eligible for operation under part 121, 129, or 135 after the dates specified in the proposal.

Non-damage-tolerance-based SIPs based on AC 91–60 have been mandated by ADs on the following airplanes: Douglas DC–3 and DC–6; Convair 240, 340, 440, 580, and 600 series; Lockheed Electra; and the Fokker F–27. Although inspections and procedures based on AC No. 91–60 address known service difficulties, they do not anticipate the possibility of future fatigue cracks that could be predicted through the use of damage-tolerance principles. Some inspection programs developed in accordance with AC No. 91–60 do not qualify as damage-tolerance-based inspections and procedures because they are either based solely on service experience or they may combine partial damage-tolerance assessments with service experience. For these reasons, the proposed rule would not allow continued use of inspection programs based on AC No. 91–60 alone. Instead, it proposes to require damage-tolerance-based inspections and procedures to supplement or replace existing inspection programs based on AC No. 91–60 no later than December 20, 2010.

Designated Airworthiness Representatives (DAR)

Section 44717 of 49 U.S.C. allows the Administrator to delegate the aging aircraft records reviews and inspections to properly qualified private persons as provided under 49 U.S.C. 44701(a)(2)(B) and (C). The FAA normally delegates similar authority to individuals under 49 U.S.C. 44702(d). Those delegations are contained in part 183. Because of the large number of airplanes (over 3,000) that would have to be inspected in a short period of time (5 years) and an anticipated growth of the aging fleet, the FAA proposes to permit such records reviews and inspections to be accomplished by a DAR authorized under part 183.

This proposal would revise current § 183.33 to permit DARs to conduct the reviews and inspections necessary to determine the continued effectiveness of airworthiness certificates, including the proposed reviews and inspections. The FAA would issue guidelines to its aviation safety inspectors and DARs on how to monitor and conduct records reviews and inspections in compliance with this proposed rule.

Proposed Appendixes

The proposed appendixes list the FAA-established design-life goals of several airplane types that are commonly used in scheduled service to assist in implementing this proposal.

For airplane models listed in the proposed appendix to part 121 and for airplane models initially certificated to carry 10 or more passengers located in the proposed appendix to part 129 and the proposed appendix to part 135, the proposal could effectively delay the implementation date of damage-tolerance-based inspections and procedures for these aircraft from 4 years after the effective date of the rule to the time the aircraft reaches its design-life goal.

However, for airplane models initially certificated to carry nine or fewer passengers listed in the proposed appendixes to part 129 and part 135, the proposal requires damage-tolerance-based inspections and procedures sooner than December 20, 2010.

The airplane models with 10 or more passenger seats listed in the proposed appendixes have been certificated with limits on either the structure or the maintenance program, or they have had subsequent structural analysis and testing. These limits are considered adequate to ensure the safety of these airplanes until they reach the listed design-life goal.

Early small airplane regulations did not consider fatigue until 1956, and then only on pressurized fuselages. With the exception of the Fairchild Model SA227–TT, the passenger airplanes with nine or fewer seats included in the proposed appendixes to part 129 and part 135 were initially certificated in the United States without any consideration being given to wing or empennage fatigue. However, the airworthiness authorities of the United Kingdom and Australia required fatigue evaluation on these airplanes before allowing operation in their countries. The airplane models listed in the proposed appendixes have been used consistently in scheduled commuter service in the United States for the past several years, and many of the highest-time airplanes have accumulated a number of flight hours approaching or exceeding the limits set by the airworthiness authorities of these other countries.

Most airplanes with a capacity for nine or fewer passengers were not listed in the appendixes because these airplanes are not commonly used in U.S. commuter operations and tend to have lower fleet times. Most were designed with sufficiently low stresses to allow them to operate safely without the need for damage-tolerance-based inspections and procedures before December 20, 2010.

However, if at a later date the FAA learns of specific airplanes with nine or fewer passenger seats commonly being used in commuter service with flight hours approaching or exceeding the limits set by the airworthiness authorities of other countries, the FAA will consider future rulemaking to add those models to the proposed appendixes.

A description of the airplanes in the proposed appendixes and their associated design-life goals are listed below. The FAA has reviewed the assessments that resulted in the life limit requirements described below, and has determined that those requirements appropriately, if not conservatively, reflect the times in the aircraft's service lives when significant maintenance must be performed on the critical structures to maintain the level of safety required for air transportation.

Beech 99 (All Models)

The Beech 99 is an unpressurized, 17-seat airplane configured for 15 passenger seats and 2 pilot seats. The Beech 99 initially was certificated in 1968 under part 23, Amendment No. 3, and is listed on type certificate data sheet (TCDS) A14CE. Special conditions were imposed on the Beech 99 to require fatigue validation testing of the wing and carry-through structure. In 1990, Beech Aircraft Company issued Mandatory Service Bulletin No. 2297 to require replacement of the entire outboard wing and the entire wing center section after 46,000 hours. This retirement time is based on full-scale fatigue testing.

Beech 1900 (All Models)

The Beech 1900, 1900C, and 1900D are pressurized, 21-seat airplanes configured for 19 passenger seats and 2 pilot seats. The 1900 and 1900C were initially certificated under Special Federal Aviation Regulation (SFAR) No. 41 in 1983, and the Beech 1900D was initially certificated in the commuter category in 1991. All models are listed on TCDS A24CE. All three models have certified life limits of 45,000 hours for the empennage listed in the Airworthiness Limitations sections of their maintenance manuals.

Beech 300, 300LW, B300, and B300C

The Beech 300, 300LW, B300, and B300C are 15-seat airplanes configured for 13 passenger seats and 2 pilot seats. The Beech 300 and 300LW were initially certificated under SFAR No. 41 in 1988, and the Beech B300 and B300C were initially certificated in the commuter category in 1989. All models are listed on TCDS A24CE. All four models have certified 30,000-hour life limits for the empennage listed in the Airworthiness Limitations sections of their maintenance manuals.

BAe Jetstream Models 3101 and 3201

The BAe Jetstream 3101 and 3201 are pressurized, 21-seat airplanes configured for 19 passenger seats and 2 pilot seats. The Jetstream 3101 was initially certificated under SFAR No. 41 in 1982 and is listed on TCDS A21EU. The Jetstream 3201 was initially certificated in the commuter category in 1988 and is listed on TCDS A56EU. Both airplanes have certified life limits of 30,000 landings for the wing and empennage listed in the Airworthiness Limitations sections of their maintenance manuals. For flights of 1 hour in length, this equates to a 30,000-hour limit.

Cessna 402

The Cessna 402 is a small, unpressurized, 10-seat airplane configured for 8 passenger seats and 2 pilot seats. The Cessna 402 was initially certificated in 1956, the Cessna 402A and 402B in 1969, and the Cessna 402C in 1978. They are listed on TCDS A7CE and were certificated in the United States without fatigue requirements. The 402, 402A, and 402B are subjected to AD No. 79–10–15, which mandates a 400-hour repetitive inspection for fatigue cracks on critical components of the wing structure. The proposed appendixes list a design-life goal of 12,000 hours for these aircraft, based on recent Cessna Aircraft Company calculations. The appendix lists a design-life goal of 7,700 hours for the Cessna 402C, based on fatigue limits set on the wing structure by the Airworthiness Authorities of Australia and the United Kingdom.

De Havilland DHC–6 (all models)

The de Havilland DHC–6 is an unpressurized, 24-seat airplane configured for 22 passenger seats and 2 pilot seats. The DHC–6 was initially certificated in 1966 under Civil Air Regulation (CAR) 3, Amendment No. 8, and in 1969 under SFAR No. 23, and is listed on TCDS A9EA. Transport Canada, designated as the airworthiness authority of the country of design by ICAO for the continued airworthiness of the DHC–6, issued an AD that is mandatory in Canada and imposes service life limits on the airplanes listed in the de Havilland Structural Components Service Life Limits Manual, PSM 1–6–11, Revision 4, dated May 31, 1996. This Canadian AD, issued in September 1996, mandates the retirement of the airplane at 66,000 hours.

Dornier DO–228 (all models)

The Dornier DO–228 is an unpressurized, 21-seat airplane configured for 19 passenger seats and 2 pilot seats. The DO–228–100 and DO–228–200 were initially certificated in 1984, the DO–228–101 and DO–228–201 in 1985, and the DO–228–202 in 1986 under part 23, Amendment No. 23, and SFAR No. 41C. The DO–228–212 was certificated in the commuter category in 1990. All are listed on TCDS A16EU. The Airplane Maintenance Manual for the DO–228–100/–101 and DO–228–200/–201/–202/–212 includes Airworthiness Limitation section 05–05–00, which specifies mandatory airplane replacement times. The DO–228–100 and DO–228–200 have a fatigue life of 42,800 hours; the DO–228–101 and DO–228–201 have a fatigue life of 32,800 hours; and the DO–228–202 has a fatigue life of 29,600 hours. The fatigue life for the DO–228–212 is 26,400 hours for all serial numbers except 155, and serial numbers 191 and higher; and 42,800 hours for serial number 155 and serial numbers 191 and higher.

Embraer EMB–110

The Embraer EMB–110 is a pressurized, 21-seat airplane configured for 19 passenger seats and 2 pilot seats. The EMB–110 was initially certificated under SFAR No. 41A in 1978 and is listed on TCDS A21SO. The EMB–110 was initially certificated with a 30,000-hour life limit on the wing and carry-through structure. This limit is listed in Note 3 of TCDS A21SO.

Fairchild Metro SA227

The Fairchild Metro SA227 series includes the SA227–AT, –TT, –AC, –BC, –PC, –CC, and –DD airplanes. The SA227–AT is a 16-seat airplane configured for 14 passenger seats and 2 pilot seats. It was initially certificated under SFAR No. 41C in 1981. The SA227–TT is an 11-seat airplane configured for 9 passenger seats and 2 pilot seats. It was initially certificated under SFAR No. 41B in 1981. Both models are listed on TCDS A5SW and have 35,000-hour certified life limits on their empennages.

The SA227–AC, –BC, and –PC are pressurized, 22-seat airplanes configured for 20 passenger seats and 2 pilot seats. They were initially certificated under SFAR No. 41C in 1981, 1989, and 1985, respectively. All three models are listed on TCDS A8SW and have a 35,000-hour certified empennage life.

The SA227–CC and –DC are pressurized, 21-seat airplanes configured for 19 passenger seats and 2 pilot seats. They were initially certificated in the commuter category of part 23 in 1990. Both models are listed on TCDS A18SW and have 35,000-hour certified empennage life limits.

Fairchild Metro SA226–TC

The SA226–TC is a pressurized, 22-seat airplane configured for 20 passenger seats and 2 pilot seats. It was initially certificated under part 23, Amendment No. 6, in 1970, and later certificated under SFAR No. 41C in 1982. It is listed on TCDS A8SW and has a 35,000-hour certified empennage life limit.

Pilatus Britten-Norman BN–2A MK III (all models)

The Pilatus Britten-Norman BN–2A MK III Trislander is an unpressurized, 18-seat airplane configured for 16 passenger seats and 2 pilot seats. The BN–2A MK III was initially certificated in 1971 under part 23, Amendment No. 8, and is listed on TCDS A29EU. The wing is limited to 23,900 hours at initial certification, assuming one landing per flight hour. For shorter flights, the wing is limited to 20,480 hours. This notice proposes the more conservative number.

Piper Navajo and PA–31 Series

The Piper Navajo and PA–31 series airplanes are 7- to 11-seat airplanes with seating configurations of 5 to 9 passenger seats and 2 pilot seats. Those airplanes listed in the appendixes are capable of carrying six or more passenger seats and have been used in commuter service in significant numbers for several years. There are pressurized and unpressurized versions and models powered by piston or by turbopropeller engines. The unpressurized versions are listed on TCDS A20SO, and the pressurized versions are listed on TCDS A8EA. The unpressurized versions were certificated in the United States under older regulations that did not require fatigue substantiation, and the pressurized versions have no fatigue certification of the wing structure and no fatigue limits on the pressurized cabin.

The Civil Airworthiness Authorities (CAA) of Australia and the United Kingdom required fatigue substantiation of these airplanes as a condition for their initial certification. The design-life goals listed in the appendixes represent limits certified by the Australian CAA. The limits for unpressurized models are based on the fatigue limits of the wing spar lower cap, and the limits for the pressurized models are based on the pressurized cabin.

Short Brothers SD3–30

The Short Brothers SD3–30 is a 32-seat airplane configured for 30 passenger seats and 2 pilot seats. The SD3–30 was certificated in the United States in 1976 under part 25, Amendment No. 30. The manufacturer has limited the maintenance program to 57,600-flight hours contingent on the successful completion of a mid-life inspection at 28,800 hours, as defined in the airplane maintenance manual.

Short Brothers SD3–60

The Short Brothers SD3–60 is a 41-seat airplane configured for 39 passenger seats and 2 pilot seats. The SD3–30 was certificated in the United States in 1982 under a United Kingdom certification basis that is equivalent to part 25, Amendment No. 34. The manufacturer has limited the maintenance program to 28,800 hours, as defined in the airplane maintenance manual.

Short Brothers SD3–Sherpa

The Short Brothers SD3–Sherpa is a 32-seat airplane configured for 30 passenger seats and 2 pilot seats. The SD3–30 was certificated in the United States in 1990 under a United Kingdom certification basis and to the additional validation requirements of part 25, Amendment No. 35. The manufacturer has limited the maintenance program to 40,000 hours, as defined in the airplane maintenance manual.

Related Activity

Concurrent with this proposal, the FAA is issuing two Notices of Availability of ACs. The first, AC No. 91–MA, "Continued Airworthiness of Older Small Transport and Commuter Airplanes; Establishment of Supplemental Inspection Programs," provides an acceptable means, but not the only means, to comply with the proposed damage-tolerance-based inspections and procedures. The second, AC No. 120–XX, "Aging Airplane Records Reviews and Inspections," provides guidance regarding how an operator complies with this proposal.

There are other initiatives being considered by the FAA to address Aging Aircraft issues. The FAA has received a recommendation from the Aviation Rulemaking Advisory Committee (ARAC) on rulemaking in the area of repair assessment of pressurized fuselages. The proposal would require a repair assessment for the pressurized fuselages of Airbus A300; Boeing 707/720, 727, 737, and 747; Douglas DC–8, DC–9/MD–80, and DC–10; British Aerospace BAC 1–11; Fokker F–28; and Lockheed L10–11 airplanes. The recommendation currently is being reviewed within the FAA, and publication of an NPRM is anticipated in the near future.

In addition, the FAA has found that some operators do not have a programmatic approach in place to appropriately address airplane corrosion. A rulemaking effort is being considered that would require development and implementation of a corrosion prevention and control program for all airplanes used in air transportation. The FAA anticipates publication of rulemaking on this subject in 1998.

On December 20, 1995, the FAA issued the final rule, "Commuter Operations and General Certification and Operations Requirements" (60 FR 65832), also known as the "Commuter Rule," to address commuter air operations in the United States. That rulemaking requires that all airplanes used in scheduled passenger service capable of carrying 10 or more passengers meet specific performance requirements by December 20, 2010. For some older airplanes, significant modifications would be necessary to meet those new requirements. That rulemaking provided an extended compliance date to give operators time to decide whether to retrofit those airplanes or phase them out of scheduled service. Because development of damage-tolerance-based inspections and procedures may be difficult for some airplanes currently operating in scheduled service, the FAA is proposing December 20, 2010, as a compliance date for this rulemaking.

Section-by-Section Analysis

Section 119.3

This section would be revised to include the definition of "years in service."

Section 121.368

Proposed paragraph (a) specifies that the Administrator will conduct the records reviews and inspections as necessary to decide whether an airplane is in safe condition and maintained properly for operation in air transportation.

Proposed paragraph (b) would prohibit a certificate holder from operating an airplane after a date specified in the section unless the Administrator has completed the aging aircraft records review and inspection.

Proposed paragraph (b) also would set forth the times by which a certificate holder must ensure its airplanes are inspected. Aging airplanes are divided into three categories for these inspections to ensure that the oldest aircraft are inspected first. For those airplanes that will have exceeded 24 years in service, the first records review and inspection would be required no later than 3 years after the effective date of the proposed rule. For those airplanes exceeding 14 but not 24 years in service at the time the proposed rule becomes effective, the first records review and inspection would be required no later than 5 years after the effective date of the proposed rule. Finally, airplanes that will exceed 14 years in service subsequent to the proposed rule's effective date would be required to

undergo the first records review and inspection no later than 5 years after their 14th year in service. All aging airplane records reviews and inspections specified in this section would need to be repeated at intervals not to exceed 5 years.

Proposed paragraph (c) would permit the Administrator to approve 90-day extensions on the thresholds and repeat intervals of aging aircraft records reviews and inspections to accommodate unforeseen scheduling conflicts.

Proposed paragraph (d) would require a certificate holder to make an affected airplane and certain associated records available for review and inspection.

Proposed paragraph (e) would require a certificate holder to notify the Administrator at least 60 days before the airplane and its associated records would be made available for review and inspection.

Section 121.370a

Proposed paragraph (a) would require certificate holders to ensure that, subject to certain limited exceptions, the maintenance programs for airplanes operating under part 121 include damage-tolerance-based inspections and procedures within 4 years after the effective date of the rule.

Proposed paragraph (b) would permit operators of airplanes listed in appendix M to part 121 to operate these airplanes without non-damage-tolerance-based inspections and procedures in their maintenance programs until reaching a design-life goal specified in the appendix, or 4 years after the effective date of the rule, whichever occurs later. However, no aircraft may operate without damage-tolerance-based inspections and procedures after December 20, 2010.

Proposed paragraph (c) would permit operators of airplanes that have non-damage-tolerance-based inspections and procedures already mandated by ADs to continue to operate those airplanes until December 20, 2010. After that date, the operator must have damage-tolerance-based inspections and procedures as part of their maintenance programs to be eligible to operate those airplanes under part 121.

Part 121, Appendix N

This appendix lists the airplanes and the design-life goals that are referenced in proposed § 121.370a.

Section 129.1

Paragraph (a) would update the reference to section 402 of the repealed and recodified FAA Act of 1958.

Paragraph (b) would clarify that proposed §§ 129.16 and 129.20 also apply to operations of U.S.-registered aircraft operated solely outside the United States.

Section 129.16

This proposed section is similar to proposed § 121.370a.

Proposed paragraph (a) would require foreign air carriers or foreign persons who operate U.S.-registered multiengine airplanes that were initially type certificated with 10 or more passenger seats to include damage-tolerance-based inspections and procedures in their maintenance programs within 4 years of the effective date of the proposed rule.

Proposed paragraph (b) would require foreign air carriers or foreign persons who operate U.S.-registered multiengine airplanes that were initially type certificated with nine or fewer passenger seats to include damage-tolerance-based inspections and procedures in their maintenance programs before December 20, 2010.

Proposed paragraph (c) would permit foreign air carriers or foreign persons to operate U.S.-registered airplanes of the type listed in appendix B to part 129 without damage-tolerance-based inspections and procedures in their maintenance programs until reaching a design-life goal specified in the appendix, or 4 years after the effective date of the proposed rule, whichever occurs later. However, no airplane may be operated without damage-tolerance-based inspections and procedures after December 20, 2010.

Proposed paragraph (d) would permit foreign air carriers or foreign persons to operate U.S.-registered airplanes that have non-damage-tolerance-based inspections and procedures already mandated by ADs to continue to operate those airplanes until December 20, 2010. After that date, the operator must have damage-tolerance-based inspections and procedures as part of their maintenance programs to be eligible to operate those airplanes under part 129.

Section 129.33

This proposed section is similar to proposed § 121.368.

Proposed paragraph (a) specifies that the Administrator will conduct the records reviews and inspections as necessary to decide whether an airplane is in safe condition and maintained properly for operation in air transportation.

Proposed paragraph (b) would prohibit a foreign air carrier or foreign person from operating a U.S.-registered airplane after a date specified in the section unless the Administrator has completed the aging aircraft records review and inspection.

Proposed paragraph (b) also would set forth the times by which a foreign air carrier or foreign person must ensure its U.S.-registered multiengine airplanes are inspected. Aging airplanes are divided into three categories for these inspections to ensure that the oldest airplanes are inspected first. For those airplanes that will have exceeded 24 years in service, the first records review and inspection would be required no later than 3 years after the effective date of the proposed rule. For those airplanes exceeding 14 but not 24 years in service at the time the proposed rule becomes effective, the first records review and inspection would be required no later than 5 years after the effective date of the proposed rule. Finally, airplanes that will exceed 14 years in service subsequent to the proposed rule's effective date would be required to undergo the first records review and inspection no later than 5 years after the 14th year in service. All aging airplanes records reviews and inspections specified in this section would need to be repeated at intervals not to exceed 5 years.

Proposed paragraph (c) would permit the Administrator to approve 90-day extensions on the thresholds and repeat intervals of aging airplane records review and inspection to accommodate unforeseen scheduling conflicts.

Proposed paragraph (d) would require a foreign air carrier or foreign person to make an affected airplane and certain associated records available for review and inspection.

Proposed paragraph (e) would require a foreign air carrier or foreign person to notify the Administrator at least 60 days before the airplane and its associated records would be made available for review and inspection.

Part 129, Appendix B

This appendix would list the airplanes and the design-life goals that are referenced in proposed § 129.16.

Section 135.168

This proposed section is similar to proposed §§ 121.370a and 129.16.

Proposed paragraph (a) would require operators of multiengine airplanes operating in scheduled service that were initially type certificated with 10 or more passenger seats to include damage-tolerance-based inspections and procedures in their inspection programs within 4 years of the effective date of the proposed rule.

Proposed paragraph (b) would require operators of multiengine airplanes in

scheduled service that were initially type certificated with nine or fewer passenger seats to include damage-tolerance-based inspections and procedures in their inspection programs before December 20, 2010.

Proposed paragraph (c) would permit operators of airplanes listed in appendix F to part 135 to operate these airplanes in scheduled service without damage-tolerance-based inspections and procedures in their inspection programs until reaching a design-life goal specified in the appendix, or 4 years after the effective date of the proposed rule, whichever occurs later. However, no airplane may be operated without damage-tolerance-based inspections and procedures after December 20, 2010.

Proposed paragraph (d) would permit operators of airplanes that have non-damage-tolerance-based inspections and procedures already mandated by ADs to continue to operate those airplanes until December 20, 2010. After that date, the operator must have damage-tolerance-based inspections and procedures as part of their inspection programs to be eligible to operate those airplanes under part 135.

Section 135.422

The proposed section is similar to proposed §§ 121.368 and 129.20.

Proposed paragraph (a) specifies that the Administrator will conduct the records reviews and inspections as necessary to decide whether an airplane is in safe condition and maintained properly for operation in air transportation.

Proposed paragraph (b) would prohibit a certificate holder from operating a multiengine airplane in scheduled operations after a date specified in the section unless the Administrator has completed the aging airplane records reviews and inspections.

Proposed paragraph (b) also would set forth the times by which a certificate holder must ensure its airplanes are inspected. Aging airplanes are divided into three categories for these inspections to ensure that the oldest aircraft are inspected first. For those airplanes that will have exceeded 24 years in service, the first records review and inspection would be required no later than 3 years after the effective date of the proposed rule. For those airplanes exceeding 14 but not 24 years in service at the time the proposed rule becomes effective, the first records review and inspection would be required no later than 5 years after the effective date of the proposed rule. Finally, airplanes that will exceed 14 years in service subsequent to the proposed rule's effective date would be required to undergo the first records review and inspection no later than 5 years after their 14th year in service. All aging airplane records reviews and inspections specified in this section would need to be repeated at intervals not to exceed 5 years.

Proposed paragraph (c) would permit the Administrator to approve 90-day extensions on the threshold and repeat intervals of the aging airplane records reviews and inspections to accommodate unforeseen scheduling conflicts.

Proposed paragraph (d) would require a certificate holder to make an affected airplane and certain associated records available for review and inspection.

Proposed paragraph (e) would require a certificate holder to notify the Administrator at least 60 days before the airplane and its associated records would be made available for review and inspection.

Part 135, Appendix G

This appendix lists the airplanes and the design-life goals that are referenced in proposed § 135.168.

Section 183.33

Paragraph (a) would expand the authority of DARs to permit them to make findings necessary to determine the continuing effectiveness of airworthiness certificates by conducting the record reviews and inspections required by proposed §§ 121.368, 129.20, and 135.422.

Paperwork Reduction Act

This proposal contains information collections that are subject to review by OMB under the Paperwork Reduction Act of 1995 (Pub. L. 104–13). This title, description, and respondent description of the annual burden are shown below.

Title: Aging Aircraft Safety.

Description: The FAA proposes to require all airplanes operated under part 121, all U.S.-registered multiengine airplanes operated under part 129, and all multiengine airplanes used in scheduled operations under part 135 to undergo records reviews and inspections by the Administrator after their 14th year in service to ensure that the maintenance of these airplanes' age-sensitive parts and components has been adequate and timely. The FAA also proposes to permit certain representatives of the Administrator to conduct these inspections. The proposed rule also would prohibit operation of these airplanes after specified deadlines unless damage-tolerance-based inspections and procedures are included in the maintenance or inspection program.

This proposal represents a critical step toward compliance with the AASA of 1991. It would ensure the continuing airworthiness of the preponderance of aging airplanes operating in air transportation by: (1) Mandating aging aircraft records reviews and inspections for all of the airplanes described above, and (2) applying modern damage-tolerance analyses and inspection techniques to older airplane structures that were certificated before such techniques were available.

Description of Respondents: Businesses or other for-profit organizations.

This proposal would constitute a recordkeeping burden for part 135 operators. Airframe flight cycles are not currently required to be collected by operators of small aircraft under part 135. This proposal would require the operator to record and maintain flight cycle information on their aircraft. This information is necessary to allow the FAA and the operator to accurately assess the fatigue condition of the airplane. Under part 135, a total of 209 airplanes would be affected. It is estimated that the reporting and recordkeeping requirements would take 30 minutes per airplane, per month, at an estimated cost of $20.00 per hour. The estimate of the total annual reporting and recordkeeping burden would be $25,080.00.

The agency solicits public comment on the information collection requirements to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Individuals and organizations may submit comments on the information collection requirement by August 2, 1999, and should direct them to the address listed in the **ADDRESSES** section of this document.

Persons are not required to respond to a collection of information unless it displays a currently valid OMB control number. The burden associated with

this proposal has been submitted to OMB for review. The FAA will publish a notice in the **Federal Register** notifying the public of the approval numbers and expiration date.

Regulatory Evaluation Summary

Changes to federal regulations must undergo several economic analyses. First, Executive Order 12866 directs Federal agencies to propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic impact of regulatory changes on small entities. Finally, the Office of Management and Budget directs agencies to assess the effects of regulatory changes on international trade. In conducting these assessments, the FAA has determined that this proposed rule: (1) Would generate benefits justifying its costs and is not "significant" as defined in Executive Order 12866; (2) would be "significant" as defined in DOT's Policies and Procedures; (3) would have a significant impact on a substantial number of small entities; and (4) would not restrain international trade. These analyses, available in the docket, are summarized below.

Description of Costs

The proposed rule would generate primary costs to those scheduled operators of multiengine airplanes not currently subject to mandatory damage-tolerance based inspections and procedures. Additional costs may be incurred by manufacturers who participate in the development of these procedures for the affected airplane models. In addition to the costs for development and implementation of new inspections and procedures, the rule would also impose costs related to the additional FAA physical inspections and records reviews mandated by the Congress to assure the continued airworthiness of aging airplanes. These costs would be incurred by both categories of operators of aging airplanes: (1) Those who currently have damage-tolerance based inspections and procedures, and (2) those who would be required to develop such procedures under the proposed rule. Finally, the FAA itself would incur costs in conducting these inspections and records reviews, and in reviewing and approving the operator's inspections and procedures.

It should be noted that the attributed costs of this proposal do not include the expense of making repairs that may be found necessary during either the operator's damage tolerance based inspections or the oversight inspections conducted by the FAA. While the agency recognizes that such repairs may constitute a significant expense, the costs of such repairs is not attributed to this proposed rule because existing FAA regulations require that repairs be made as necessary to assure the airworthiness of the airplane.

It is also noted that this evaluation focuses on existing airplanes and does not directly address the costs that the proposed rule would eventually (15 years after production) impose on new production airplanes, primarily because such costs (particularly their present value) would constitute an insignificant proportion of the costs represented in this study.

Development and Implementation Costs

The development and implementation costs of the inspections and procedures are calculated from a 1996 data collection of the fleet that would be affected. Approximately 1,190 airplanes were identified as being potentially subject to the requirements for development and implementation of the procedures and inspections under the proposed rule. The airplanes were then aggregated into 55 make-model groups consistent with the airplane groupings that would be covered under each individual inspection procedure document. Cost factors, ranging from .3 to 1.0, were then assigned to each airplane model group. These factors represent estimates of the proportion of full development costs that would be incurred for each airplane model group; recognizing that full program development costs for some models would be reduced either due to similarities between certain models or because some models already had a non-damage-tolerance based supplemental inspection program. Applying these cost factors produced the cost equivalence of 47 full SIP development efforts for the 55 models.

The methodology used to estimate the likely costs of the proposal first computed the costs that would be incurred: (1) If it were economically viable for every affected airplane in the database to meet the requirements of the proposed rule, and (2) if every existing, affected airplane continued to operate throughout the study period (year 2018). Following these calculations, the evaluation then estimates: (1) The number of airplanes and models where compliance would not, in fact, be economically viable, (2) the costs that would, instead, be incurred as a result of that inability, and (3) the costs that would not be incurred due to the retirement of airplanes from scheduled service during the study period for reasons unrelated to the proposed rule.

Data were collected and aggregated concerning the average airplane weight in each airplane-model group, the average and maximum ages of the airplanes, the average numbers of seats, the counts of airplanes, whether or not there was a design life goal based on an imposed life limit of a major structural component, and whether each model grouping was already in compliance with a non-damage-tolerance based program as defined in § 91.60. These data are used as controls or factors in the calculations that follow.

Under the proposal, the affected airplanes (15 years or older) would be generally subject to a mandated inspection program within 4 years after the effective date of the rule (the year 2002.) However, in an effort to reduce the economic impact, the proposal would delay the required compliance dates for those airplane models that meet any of several conditions. Compliance would be delayed for airplanes with 9 or fewer passenger seats until the year 2010. Airplanes that have an FAA defined design life goal would not be required to have a damage-tolerance based inspection and procedures program until they had reached their design life goal, or until the year 2010, whichever occurs first. Similarly, compliance could be delayed up until the year 2010 for those models required by airworthiness directive to be maintained under a non-damage-tolerance based program. Based on these criteria, along with airplane age, the expected date of compliance for each group model fleet was projected.

Based on engineering estimates, the cost methodology employs a functional estimate (dependent on the size of the airplane) of the time needed to develop the program for each model. This function produces a range between 10,311 and 25,776 hours necessary to develop the program for each model group. Approximately 841,000 engineering hours would be required to produce inspections and procedures for all affected models. Based on an assumed, fully burdened engineering rate of $95 per hour [1], the SIP development cost estimates for the various model groups range between $980,000 and $2.45 million per model group. The total development cost, assuming full development for every

[1] The rate for contract services was estimated by FAA field engineers, and it is believed to be higher than the cost that most parties will actually incur. The contract rate was used in order to be responsive to small entities that may have to rely on outside resources to develop their program.

model group sums to $79.9 million. These costs were then reduced by the factors described above to account for related model efficiencies and for models with partially compliant programs in place. The application of these factors reduced the range of costs to a level between $310,000 and $2.45 million per group, with a total potential development cost estimate of $67.8 million. Again, at this point in the methodology, the estimates assume that the inspections and procedures would actually be developed for all affected models.

For some airplane models, the FAA expects that the development work would uncover the need for model-specific structural modifications, either to make certain areas of the airplane inspectable or to replace structural elements that are determined to be uninspectable and subject to critical fatigue damage. Absent the engineering development work itself, estimates of the extent and magnitude of these modifications are inexact. As such, the FAA has employed a cost estimate that it considers to be on the high side of feasible costs.

Similar to the development costs, the evaluation assumes a functional estimate of the likely structural modification costs for each airplane based on the size of the airplane. Separate functions were employed for airplanes certificated under Part 25 and for those airplanes certificated under either Part 23 or CAR, based on the logic that the older and smaller airplanes were more likely to require modifications for inspectability. The cost estimates of the likely modifications range from $10,200 to $168,800 per affected airplane depending on airplane size and certification basis. (It should be noted that these costs are per airplane, whereas the inspection and procedure development costs are per model group.)

In the absence of more specific information, the evaluation assumes that one-half[2] of all affected models would require structural modifications as a result of the findings from the inspections and procedures development. The unit modification cost estimates from above were multiplied by the numbers of airplanes in each model group and then by one-half. These products were then summed across all models to yield a total potential modification cost of $65.0 million for the affected fleet.

The third major cost component of the development and implementation requirement involves conducting the actual inspections identified in the program for each model. For each model group, the evaluation assumes that the program directed inspections would begin when the fleet leader for that group reached 20 years of age or at the date the inspections and procedures were due, whichever occurred later. Under this logic, program directed inspections would begin anywhere between the years 2002 and 2014, depending on the characteristics of the individual airplane model group.

Again, based on engineering estimates, the cost methodology employs a functional model (dependent on the size of the airplane) of the expected number of critical locations that would need to be inspected on each airplane. It was assumed that each location would require four hours of inspection and that the burdened (including overhead) labor rate for that work would cost $55 per hour. These estimates produce a likely inspection cost ranging between $6,000 and $30,000 per airplane per inspection. Similar to the estimates of modification costs, these costs cannot be precisely estimated in the absence of the actual inspection and procedures development work for each model, and as such, the FAA has used what it considers to be high-end estimates.

In addition to the actual inspection work itself, the evaluation considers the incremental airplane downtime that would be necessitated by the additional work caused under this proposal. The evaluation assumes that each 40 hours of work caused by this proposal would require one additional day of airplane downtime.[3] The economic cost of downtime was computed under the assumption that the average productive return on capital is equal to 7 percent of the value of that capital per year. Downtime costs were calculated as the product of the number of additional downtime days, divided by 365 days per year, times the average estimated value of the airplane at the year the program would be required, times 7 percent. This produced a unit downtime cost per airplane, per inspection ranging between $63 and $7,181 depending on the age and size of the airplane involved.

The numbers of inspections that could be expected throughout the study period (year 2018) were computed based on the factors: (1) The number of years between the year the program would be due and the year 2018, (2) the annual number of hours that each airplane would fly (ranging between 858 and 1154 hours per year[4], depending on airplane size), and (3) an assumed inspection interval of every 4,000 hours. Finally the unit labor and downtime costs related to the operator inspections were multiplied by the numbers of airplanes in each model and by the expected numbers of inspections for that model during the study period. These products were then summed to represent the total potential operator inspection cost of the proposal: $33.5 million.

For the next step, the three major component costs of the development and implementation requirement were summed. The $67.8 million for developing the inspections and procedures, the $65.0 million for structural modifications, and the $33.5 million for operator inspections produced a total potential cost of $166.3 million. At this point, however, the evaluation methodology recognizes that the potential unit costs of the proposal would not be realized for all models. For some airplane models, the potential unit costs of the proposal could constitute significant proportions of, or actually exceed, the economic values of the airplanes involved.

For each airplane model group, the potential costs of compliance were compared to the estimated economic value of that group in the year the inspections and procedures would be due. In cases where the potential compliance cost would exceed 50 percent of the group value, the methodology assumes that the

[2] The estimate of "one-half of all affected models" is based upon expert judgment. The FAA requests public comment and supporting background regarding this estimate .

[3] The rate of incremental downtime per unit of required additional work varies widely depending on the resources that are available at different maintenance facilities, the different types and sizes of airplanes involved, and the concomitant maintenance that is being performed on the airplane during the same maintenance period. Essentially, the amount of downtime is a question of how much parallel work can be conducted on the airplane at one time. This calculation is an attempt to be responsive to industry by not assuming that incremental work could always be done during the time that other maintenance was being performed.

[4] The annual flight hours were based on a regression of aircraft by number of seats and flight hours from page IX–22 of the 1995 FAA Aviation Forecasts. To avoid the appearances of excess precision and to account for the operating differences between transport category and small commuter airplanes, the results were aggregated into two broad categories: airplanes with 9 seats or less, and airplanes with 10 seats or more. The assumed inspection interval of 4,000 hours was estimated by FAA field engineering staff, based on their projections of what would be found to be necessary when the supplemental inspection programs are developed. This number is an aggregated simplification since, especially for larger airplanes, it is expected that different areas of an airplane will have different inspection intervals.

inspections and procedures would not be developed and implemented, and the related compliance costs would not be incurred. Instead, the affected 34 models would be retired or transferred out of scheduled service, and the attributed costs of the proposal for these models would be a 50 percent reduction in their economic value. Failure to comply with the rule would not ground an airplane and eliminate its value, but instead, would preclude its being used in scheduled passenger service. The airplane could still be used for cargo or on-demand service under part 135. This methodology produces a potential cost of $109.1 million for those models where compliance would be economically feasible, and an attributed $33.6 million in reduced value for the models that could not reasonably comply. Total potential costs under this assumption equal $142.7 million.

As noted at the beginning of this section, the $142.7 million estimate was computed under the scenario whereby, external to the effects of the proposed rule, all of the affected 1,190 airplanes that exist today would continue to fly through the end of the study period, year 2018. In fact, some significant proportion of these costs would never be incurred due to normal rotation and retirement of the affected airplanes. The replacement cycle for the airplanes subject to this proposal varies widely within the industry. For some mainstream scheduled commuter carriers, it is common practice that airplanes are routinely replaced due to economic practicalities at a stage where few if any of the costs of this proposal would be incurred. Conversely, the economics of some smaller or niche carriers are such that airplanes may continue to fly for 40 years or more. In the absence of more specific projections, the evaluation incorporates the consensus of FAA field engineers associated with this proposal that at least one-third of the potential $142.7 million costs would not be incurred, leaving a projected cost of $95.1 million. The FAA solicits comments on this particular estimate.

Two relatively minor additions are necessary to compute the full expected cost of developing and implementing the inspections and procedures. First, the new inspections and procedures for each airplane model would have to be incorporated into the existing maintenance program of each affected operator. Based on the projected models where full compliance would be feasible, the FAA estimates that there would be 91 unique model/operator combinations whereby the additional inspections and procedures would have to be incorporated. The analysis assumes that this would require 80 hours of work per model/operator combination at a labor rate of $55 per hour, producing an incorporation cost of $440,400. Added to the $95.1 million cost above, this produces a total operator-manufacturer cost of $95.5 million.

As an additional perspective, the total present value cost of the $80,910,897 to all operators is equivalent to a twenty-year, annualized cost stream of $7,637,416, at 7 percent per year.

Similarly, the FAA would incur costs to review and approve: (1) The inspections and procedures for each model, and (2) their incorporation into the existing maintenance programs for each model/operator combination. The costs to review the inspections and procedures documents are estimated at $184,800, consisting of 160 hours of review at $55 per hour for each of the 21 programs to be developed. The costs for review of incorporating these procedures are projected at $200,200, consisting of 40 hours of review at $55 per hour for each of the 91 expected model/operator combinations. Adding these two figures produces a projected cost of $385,000 to the FAA for reviews related to the development and implementation of the inspections and procedures.

Costs of FAA and/or DAR Inspections

The proposed rule would also necessitate that the FAA inspect all airplanes that are, or due to this proposal would be, subject to a damage-tolerance based inspections and procedures requirement to determine their compliance with the subject programs. These inspections could begin at the start of an airplane's 15th year and would repeat at intervals not to exceed 5 years. Three categories of costs are associated with this provision: (1) The direct costs of the inspectors, (2) the personnel costs incurred by the operator to prepare for the inspections, and (3) the incremental airplane downtime caused by the inspections.

Using the dataset described in the previous section, the FAA estimates that there are 2,850 airplanes age 15 and older that are either currently subject to inspections and procedures requirement as a result of airworthiness directive or would be as a result of the proposed rule. For the purposes of calculation, the evaluation assumes that this number would remain essentially steady over the study period. Higher or lower forecasts of aging airplane fleet size would have a direct relationship to the cost estimates presented here.

The number of person hours required per inspection was estimated as a function of airplane size, ranging linearly from 24 person hours for an airplane of 50,000 pounds or less, up to a maximum of 120 person hours for airplanes of 200,000 pounds or more. In addition, it was assumed that for every individual hour of actual on-site inspection, an additional one-half hour of ancillary or overhead activity would be required. At a labor rate of $55 per hour, the direct inspector costs would range between $1,980 and $9,900 per airplane, per inspection, depending on airplane size. These unit costs were multiplied by the count of airplanes in each weight category and were summed to produce a total inspector cost of $18.7 million for the fleet of affected airplanes age 15 and over. Since each airplane must be inspected every five years, the average annual cost would be one-fifth of that total, or $3.7 million.

The proposed rule would specifically empower designated airworthiness representatives (DAR's) to conduct the records reviews and maintenance inspections required under this proposal. Operators who choose to engage a DAR for the necessary reviews and inspections would directly bear the costs of that work. Conversely, operators who choose to rely on FAA inspectors may lose a degree of control over scheduling and availability but would not bear the direct costs of the inspections. In the absence of more specific information, this analysis assumes that one-half of the work would be accomplished by DAR's, and as such, the burden of this expense would be evenly divided between the operators and the FAA.

The second component of these costs concerns the time spent by operator personnel in their preparations to make the aircraft and its associated records available for inspection and review. The evaluation assumes that operator personnel would expend one-fourth as much time preparing for the inspections as the inspectors would to conduct them (ranging from 6 to 30 hours per airplane inspection, depending on airplane size). Again assuming a burdened labor rate of $55 per hour, the projected cost of operator personnel would total $3.1 million for all affected airplanes over five years, or $624,000 per year.

The third cost component consists of the incremental airplane downtime necessitated by the additional inspections. Depending on airplane size, the estimated additional downtime is projected to range between approximately .7 and 1.6 days per airplane inspection. Parallel to the downtime cost estimations calculated

above for the operator inspections and procedures (7 percent annual value of capital), the analysis projects an economic valuation for these costs ranging from $118 to $2,671 per airplane, per inspection. Multiplying these unit costs by the numbers of airplanes in each size category produces a $3.7 million expense for the affected fleet every five years and an annual expense of $744,000.

The combined cost of the three components for FAA and DAR inspections would total $3,238,218 per year for the operators of affected airplanes, and $1,870,902 per year for the FAA (based on the above assumption that one-half of the inspections would be conducted by DAR's and borne by the operators). Over the 20 year study period, these costs would total $64.8 million ($32.1 million present value) for operators, and $37.4 million ($18.5 million present value) for the FAA.

Combined Costs

The table below summarizes both the standard and present value costs of the proposal. The table shows a combined proposal cost of $198 million with a present value of $99 million.

SUMMARY OF PROJECTED NPRM COSTS

Straight costs	For development and implement	For FAA/DAR inspection and review	Total
To operators of airplanes that need program	$95,524,573	$4,383,547	$99,908,120
Airplanes with program in place	0	60,380,819	60,380,819
Operator subtotal	95,524,573	64,764,366	160,288,939
To the FAA	385,000	37,418,040	37,803,040
Total	95,909,573	102,182,406	198,091,979

Present value costs	For SIP development and implement	For FAA/DAR inspection and review	Total
To operators of airplanes that need program	$48,849,466	$2,170,064	$51,019,530
Airplanes with program in place	0	29,891,367	29,891,367
Operator subtotal	48,849,466	32,061,431	80,910,897
To the FAA	188,856	18,523,703	18,712,559
Total	49,038,322	50,585,134	99,623,455

Description of Benefits

The structural properties of materials change as a result of the prolonged and/or repeated application of stress on that material. Fatigue is the term used to describe this inevitable weakening. After some duration of cyclic stress, the material will fail under the applied load because of fatigue. In critical structural elements, this can result in a catastrophic failure of the airplane.

One manifestation of fatigue in materials is cracking. It is not practical to detect fatigue cracks below a certain size. It is possible, however, to initiate inspections at a point in time, and to repeat those inspections at an interval, whereby a crack that can be detected will be detected and repaired before it can grow to a size where the residual strength of the structure is jeopardized.

FAA regulations addressing fatigue have evolved over time. Prior to 1956, airplanes were originally certificated without any specific consideration being given to metal fatigue. Later, airplanes were designed to meet fail-safe criteria with regard to fatigue requirements. "Fail-safe" means that the structure has been evaluated to assure that catastrophic failure of the airplane is not probable after fatigue failure or obvious partial failure of a single, principle structural element. Other airplanes were certificated with design-life limits on the entire airplane or some major structural component (e.g., wing, empennage, fuselage) under the "safe-life" concept whereby the structure has been evaluated to be able to withstand the repeated loads at the variable magnitudes expected during its service life without detectable cracks. Other airplanes have a form of supplemental inspection procedures specifically aimed at detecting metal fatigue or corrosion but which are derived from service history and the analysis of fleet leader experience rather than damage-tolerance based engineering analysis.

All of the airplanes that would be required to eventually implement damage-tolerance based inspections and procedures under this proposal fall into one of the categories described above. And even where some fatigue related evaluation and assurance was made at the time the airplane was designed and built, those assurances were never intended to be valid after the airplane exceeded the maximum number of flight hours assumed by the designer. Left unchecked, it is not a question of whether the repeated loadings on aircraft will produce a major structural failure, but rather, when. More than 29 percent of the airplanes under this proposal are already 20 years old or older; 14 percent are over 30 years old; and 7 percent of the airplanes are over 40 years old. Under existing procedures, the FAA cannot assure the continuing airworthiness of these airplanes, and that constitutes an unacceptable risk to air transportation.

The FAA has extensively deliberated on how to mitigate this risk and respond to the Congressional mandate. Technical experts and academic leaders were consulted, and the costs and benefits have been evaluated for numerous alternative approaches. The FAA believes that the damage-tolerance based inspections and procedures in this proposal are the best approach to assure the continued safety of the subject fleet while striking the most cost effective balance of fully responding to the law, minimizing overall costs, and minimizing the impact on small entities.

The purpose of this proposal is to assure the continued structural airworthiness of air carrier aircraft as they continue in service. In this context,

the rule does not increase intended safety; instead, it maintains the level of safety established at the time each model's type design was approved by the FAA. In the absence of this or a similar proposal, the FAA would be unable to determine critical aspects of air transportation safety as the affected airplanes age. Absent the ability to make this determination, the agency would be forced to require these aircraft to be retired at some arbitrary age.

There are, then, two principal benefits of the proposal. The first is that the FAA and the industry would be able to monitor the airworthiness of the affected aircraft as they age, and either take timely corrective action to maintain their continued airworthiness or retire them from service before they become unairworthy. The second benefit is that the aircraft would be able to stay in service longer because their continued airworthiness would be monitored, rather than the aircraft being retired at an arbitrary age.

There are clear safety benefits of this proposal, but it is not possible to reasonably estimate the numbers of accidents that the proposed rule would prevent, primarily because the FAA would take preventive action before an accident pattern due to age emerged.

It is possible, however, to provide a sense of scale by estimating the years of extended service the proposal would have to provide the affected fleet of aircraft to make benefits exceed the related costs. For example, the cost calculations project that it would be economically viable for 927 airplanes to comply with the damage-tolerance based inspection and procedures requirements of the proposal. At the respective times that these requirements would be due, the affected airplanes would have a cumulative estimated value of $649 million[5], with a present value of $321 million. By comparison, the present value cost of compliance for all of the airplanes subject to the proposed requirement is $51 million. If it is assumed that the average annual value of capital is 7 percent of its worth, then extending the useful life of the subject fleet by one year would be worth 7 percent of $321 million, or $22.5 million (again, present value). Accordingly, the projected costs of this provision would be recovered in 2.27 years of extended useful life ($51 million cost divided by $22.5 million annual benefit = 2.27 years). Note that the assumed timing of the "counter case" retirement of the affected models would, in turn, change the period necessary to recover the costs. If it is assumed that, in the absence of this proposed rule, no retirement action would have been taken until 5 years after the proposed rule would require SIP development, then the respective value of the subject fleet at that time would be lower ($188 million—present value), causing the annual value of extended useful life to be lower ($13.1 million), and finally requiring more time (3.9 years) to recover costs.

[5] The cumulative value of $649 million represents the resale value of the subject airplanes. This number was calculated using a regression model that projects the future value of an airplane as a function of its size and age at that time.

Comparison of Costs and Benefits

The FAA is unable to quantify the expected benefits of the proposal on the basis of historical accident rates that would be reduced. However, the proposed actions are necessary to ensure the continuing airworthiness of aging airplanes and the FAA finds that the benefits of the proposed rule would justify its costs.

Initial Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to ensure that small entities are not unnecessarily or disproportionately burdened by Government regulations. The RFA requires a Regulatory Flexibility Analysis if a rule will have a significant economic impact on a substantial number of small entities.

1. A Description of the Reasons Why Action by the Agency Is Being Considered

As more fully described in paragraph 2, below, this proposal is required by statute. The agency is considering actions specified in this proposed rule to prevent aviation accidents resulting from structural failure caused by deterioration associated with the aging process.

FAA regulations addressing structural design have evolved over time. Prior to 1956, airplanes were certificated considering the strength of the structure only. No specific consideration was given to metal fatigue. Since 1956, the FAA has incrementally changed its regulations to address fatigue; initially requiring fail-safe or safe-life designs, and currently requiring damage tolerance designs on new transport and commuter airplanes. Damage tolerance represents the most modern approach to continued structural integrity.

Fail-safe means that the structure has been evaluated to assure that catastrophic failure of the airplane is not probable after fatigue failure or obvious partial failure of a single principle structural element. Fail safe designs usually consist of redundant (multiple load path) structures that have no set design life limits.

Safe-life means that the structure has been evaluated to be able to withstand the repeated loads at the variable magnitudes expected during its service life without the development of critical cracks. Safe life designs usually consist of single load path structure that have an established retirement life on one or more major structural components (e.g., wing, empennage, fuselage).

Certain airplanes rely on supplemental inspection procedures specifically aimed at detecting metal fatigue or corrosion, but which are derived from service history and the analysis of fleet leader experience rather than damage-tolerance based engineering analysis.

All of the airplanes that would be required to eventually implement damage-tolerance based inspections and procedures under this proposal, fall into one of the categories described above. This includes aircraft where fatigue related evaluations and assurances were made at the time when the airplane was designed and built. Those assurances were never intended to be valid after the airplane exceeded the maximum number of flight hours assumed by the designer. More than 29 percent of the airplanes under this proposal are already 20 years old or older; 14 percent are over 30 years old; and 7 percent of the airplanes are over 40 years old. Under existing regulations, the continuing airworthiness of these airplanes cannot be assured, and that constitutes an unacceptable risk to air transportation.

2. A Succinct Statement of the Objectives of, and Legal Basis for, the Proposed Rule

The objective of the proposed rule is to ensure the continuing airworthiness of aging airplanes operating in air transportation: (1) By applying modern damage-tolerance analysis and inspection techniques to older airplane structures that were certificated before such techniques were available, and (2) through mandatory aging-aircraft records reviews and inspections to be performed by the FAA.

This proposal represents a critical step toward compliance with the Aging Aircraft Safety Act of 1991. In October of 1991, Congress enacted Title IV of Public Law 102–143, the "Aging Aircraft Safety Act of 1991," to address aging aircraft concerns. The act was subsequently recodified as 49 U.S.C. 44717.

Section 44717 of Title 49 instructs the Administrator to "prescribe regulations

that ensure the continuing airworthiness of aging aircraft." The law also requires the Administrator to "make inspections, and review the maintenance and other records, of each aircraft an air carrier uses to provide air transportation." The purpose of these inspections would be to "enable the Administrator to decide whether the aircraft is in safe condition and maintained properly for operation in air transportation." The law specifies that these inspections and reviews must be carried out as part of each aircraft's heavy maintenance check conducted "after the 14th year in which the aircraft has been in service." It also states that the air carrier must "demonstrate to the Administrator, as part of the inspection, that maintenance of the aircraft's age-sensitive parts and components has been adequate and timely enough to ensure the highest degree of safety."

Section 44717 further states that the rule issued by the Administrator must require an air carrier to make its aircraft, as well as any records about the aircraft that the Administrator may require to carry out the review, available for inspection as necessary to comply with the rule. It also states that the Administrator must establish procedures to be followed for carrying out such an inspection.

3. A Description of the Projected Reporting, Recordkeeping and Other Compliance Requirements of the Proposed Rule, Including an Estimate of the Classes or Types of Small Entities That Will Be Subject to the Requirement and the Type of Professional Skills Necessary for Preparation of the Report or Record

In order for the FAA to fulfill its obligation under 49 U.S.C. 44717, this proposal would require that certain records be made available by the operator. Most of the records that would be required under this proposal are currently required by other regulations. The proposed rule would constitute a minor additional recordkeeping burden for part 135 operators, many of which are small. Airframe flight cycles are not currently required to be collected by operators of small aircraft under part 135. This proposal would require operators to record and maintain flight cycle information on their aircraft. This information is necessary to allow the FAA and the operator to accurately assess the fatigue condition of the airplane.

Under part 135, a total of 209 airplanes would be affected. The FAA estimates that the reporting and recordkeeping requirements would take someone with basic clerk skills 30 minutes per airplane, per month, at a cost rate of $20.00 per hour. These factors translate into an annual recordkeeping cost of $120 per airplane. The projected total annual reporting and recordkeeping burden for all part 135 operators would be $25,080.

4. An Identification, to the Extent Practicable, of All Relevant Federal Rules That May Duplicate, Overlap, or Conflict with the Proposed Rule

The FAA is unaware of any federal rules that would duplicate, overlap, or conflict with the proposed rule.

5. A Description and an Estimate of the Number of Small Entities to Which the Proposed Rule Would Apply

The proposed rule would apply to the operators of all airplanes operated under 14 CFR part 121, all U.S.-registered multiengine airplanes operated under 14 CFR part 129, and all multiengine airplanes used in scheduled operations under 14 CFR part 135. Standard industrial classification coding does not precisely coincide with the subsets of operators who could be affected by the proposed rule. Nevertheless, the following distributions of employment size and estimated receipts for all scheduled air transportation firms (SIC Code 4512) are representative of the operators who would be affected by the proposed rule.

Employment category	Number of firms	Estimated receipts ($1,000's)
0–4	153	$193,166
5–9	57	145,131
10–19	56	198,105
20–99	107	1,347,711
100–499	74	3,137,624
500+	73	112,163,942
Totals	520	117,185,679

Based on existing operator/airplane distributions, the FAA estimates that the proposed rule could eventually affect 226 operators of the subject airplanes. The agency has also estimated the numbers of subject airplanes that each operator uses and has categorized the operators by fleet size.[6]

Subject airplanes operated	Count of operators
1 to 10	137
11 to 20	34
21 to 30	16
31 to 40	10
41 to 50	7
50 Plus	22
Total	226

[6] Note that the airplanes included here are only those subject to the proposed rule. It is possible that these operators may operate additional airplanes in services not included in the rule; e.g., on-demand, commuter cargo, or single engine.

6. Regulatory Flexibility Cost Analysis

The proposed rule contains two major cost provisions: (1) the development and implementation of new damage-tolerance based inspections and procedures, primarily for smaller airplanes, and (2) the additional FAA physical inspections and records reviews mandated by Congress to assure the continued airworthiness of all aging airplanes. The table below summarizes the derivation of the expected annualized costs per airplane for both provisions based on the categories of airplanes that would be affected.[7]

The table shows that the present value of the estimated cost of the proposal to develop and implement damage-tolerance based inspections and procedures is $48.8 million. Applying this value to the 1,190 affected airplanes produces an average present value cost

[7] This analysis, like the full regulatory evaluation, assigns all of the costs to develop the damage-tolerance-based inspections and procedures to the operators. It is likely that some of these costs may be borne by the manufacturers of current, major models.

per airplane of $41,050. As detailed above in the cost methodology section of the regulatory evaluation, the actual costs for any particular airplane may vary from this average cost.

In addition to the total cost per airplane, it is also useful to consider the annualized equivalent of this cost; that is to say, the annual future payments that would be necessary to equal the present value cost of $41,050. Such payments are a function of: (1) The assumed interest rate, and (2) the time period over which the costs would be borne. This analysis applies a 7 percent interest rate. As for the time period, the proposed rule would require that the supplemental inspection programs be developed between the years 2002 and 2010, depending on the characteristics of the individual airplane. For illustration purposes, this analysis assumes that, on average, the program development costs would be borne over a period of ten years. Based on these two assumptions, the ten-year annualized cost of program development and implementation is estimated at $5,845 per airplane.

In addition to the costs to develop the damage-tolerance based inspection procedures, those airplanes over 15 years old would also be subject to the costs associated with the proposed requirement for additional FAA inspections and record reviews. Parallel to the methodology described above, the operators of these airplanes would incur an additional present value cost of $3,827 per airplane, and an annualized cost of $361 per airplane (over the entire 20-year study period.)[3]

	Present value cost	Airplanes	Present value average cost	Years	Annualized cost per airplane
For Models That Need Inspec's and Procedures:					
Develop and implement costs	$48,849,466	1,190	$41,050	10	$5,844.60
FAA/DAR inspection costs	2,170,064	567	3,827	20	361.24
For Models That Have Inspec's and Procedures:					
FAA/DAR inspection costs	29,891,367	2,283	13,093	20	1,235.89

Finally, the costs of additional FAA inspections and records reviews would also be borne by the operators of those airplanes over 15 years old which already have damage-tolerance based inspections and procedures. The estimated present value of these costs is $29.9 million, distributed over 2,283 airplanes. These factors produce a present value estimated cost per airplane of $13,093, and a 20-year annualized cost of $1,236. The average inspection cost for these airplanes is significantly higher than for those airplanes that would need to have damage-tolerance based inspection programs developed because the airplanes with such programs in place are generally much larger.

Using the three separate cost-per-airplane factors described above, a crosstabulation was performed to determine the counts of airplanes that each existing operator employs by cost impact category; that is to say: (1) Whether the airplane currently has or would have to have an inspection program developed, and additionally (2) whether or not the airplane is over 15 years old. While the analysis cannot predict which operators will actually be flying which specific airplanes 10 or 15 years into the future, the methodology described here shows the distributional effects of these costs on the fleet as it is now composed. If the future fleet contains more airplanes over 15 years old, higher costs would be incurred.

The unit annualized costs per airplane for each provision were applied to the dataset of operators and counts of airplanes in each category. The costs were then accumulated to estimate the average annualized impact on each operator. The following table summarizes these computations. Costs are categorized by size of operator, as defined by the current number of subject airplanes operated.

Number of airplanes operated	Count of operators	Minimum annualized cost	Maximum annualized cost	Average annualized cost
1 to 10	137	$0	$61,697	$13,149
11 to 20	34	0	117,550	45,159
21 to 30	16	0	185,091	76,273
31 to 40	10	48,924	201,967	160,378
41 to 50	7	29,223	146.115	74,498
50 plus	22	0	412,030	149,953
Totals	226	0	412,030	44,166

For each category of operators, the table presents the projected minimum, maximum, and average annualized cost per operator. Minimum costs per operator range as low as zero in those cases: (1) where all of an operator's airplanes are models that already have a damage-tolerance based inspection program, and (2) where none of the operator's airplanes is over 14 years old.

As an additional perspective, the annualized equivalent of the $80,910,897 projected total present value cost to all operators is $7,637,416 (at 7% over 20 years.)

Again, it is noted that the cost figures above are based on averages. The actual cost impacts as well as the timing and duration of those costs could vary significantly across individual operators. As explained elsewhere in this notice, the FAA recognizes that the development of damage-tolerance based inspections and procedures may be technically or economically

[3] The costs to develop and implement a damage-tolerance-based program are largely front-loaded. By comparison, the costs of the additional FAA inspections and records reviews would continue relatively evenly over time.

impracticable for some airplane models.[9]

7. Description of Alternatives

The FAA has considered several alternative approaches to this proposed rulemaking and has attempted to minimize the potential economic impact of the proposal, especially the impact on the operation of aircraft most likely to be used by small entities, while meeting the agency's primary responsibility for aviation safety and its particular obligation under 49 U.S.C. 44717 to ensure the continuing airworthiness of aging aircraft. The primary alternatives of the proposal can be categorized along three broad questions:

- Which aircraft and which aircraft operations should be included in this proposal?
- What compliance timetable should be prescribed in meeting the proposed requirements?
- And, how rigorous should the requirements be?

A. Aircraft Included in the Proposal

As proposed, this rule would apply to all airplanes operated under part 121, all U.S.-registered multiengine airplanes operated under part 129, and all multiengine airplanes used in scheduled operations under part 135. This proposed rule would not cover helicopters, single engine airplanes operated under part 135 or part 129, airplanes used in cargo operations under part 135, or airplanes used in unscheduled (on-demand) operations under part 135. Section 44717 of Title 49 applies to "each aircraft an air carrier uses to provide air transportation." As such, the statute makes no exception for aircraft used by small entity air carriers to provide air transportation. Because this proposal does not include all aircraft described in the statute, the FAA is considering future rulemaking to address the remaining aircraft.

The aircraft and operations omitted from this proposal are not exclusively operated by small entities, but the FAA recognizes that they are more likely to be operated by small entities than, for example, large transport category airplanes in scheduled service. It should be recognized, however, that the problem addressed by Section 44717, the safety of aging aircraft, does not depend on whether the entity operating the aircraft is large or small.

[9] This cost discussion is meant to be responsive to the needs of small business and to the Small Business Administration. Currently the FAA is trying to establish standards for "significant cost".

B. Compliance Timetable

In general, the proposed rule would require that damage-tolerance based inspections and procedures be developed and implemented within four years of the effective date of the rule. The FAA recognizes that additional compliance time can reduce the burden on small and large entities, and the agency has made every effort to extend the compliance period in those cases where it would be reasonable to do so. Accordingly, compliance under this proposal could be delayed for airplane models with 9 or fewer passenger seats until the year 2010. Airplanes that have an FAA defined design life goal would not be required to have damage-tolerance based inspections and procedures until they had reached their design life goal, or until the year 2010, whichever occurs first. Similarly, compliance could be delayed up until the year 2010 for those models currently required by airworthiness directive to be maintained under a non damage-tolerance based inspection program.

C. Rigor of Requirements

As noted in Subsection 1, above, FAA regulations addressing structural design have evolved over time. Non damage-tolerance based supplemental inspection programs, based on Advisory Circular 91–60, have been mandated by airworthiness directives for several existing models. Those inspections and procedures address known service experience problems, but they do not anticipate the possibility of future fatigue cracks that could be predicted through the use of damage-tolerance based principles. Evidence to date suggests that when all critical structures are included, damage-tolerance based inspections and procedures provide the best approach to address aircraft fatigue. As such, this proposal would require that all of the airplanes subject to this rule, including those with existing service based procedures, meet this higher level of assessment and inspection by the year 2010. Obviously, the non damage-tolerance based program would induce lower costs but with a concomitant reduction in safety assurance.

In attempting to strike a permissible balance, it is important to note that this proposed rule would not mandate the most rigorous level of inspection procedures and analysis presently available. The FAA has published a proposed rule for future certifications of transport category airplanes (part 25) that would require the use of "initial flaw" consideration in the damage-tolerance and fatigue evaluation of structure for those airplanes. Under that proposal, the inspection thresholds for certain critical structure would have to be established based on crack growth analyses or tests assuming that the structure contains an initial flaw of the maximum probable size that could exist as a result of either manufacturing or service induced damage. The FAA holds that "initial flaw" consideration is an appropriate regulatory requirement for newly certificated transport category airplanes. By comparison, the existing aging airplanes under this proposed rule would be better served by addressing "initial flaw" procedures in advisory circular material, thereby maximizing the flexibility of operators to consider the best equivalent means of compliance for their particular airplane models.

8. Compliance Assistance

In its efforts to assist small entities and other affected parties in complying with the proposed rule, the FAA is publishing an advisory circular, "Continued Airworthiness of Older Small Transport and Commuter Airplanes; Establishment of Supplemental Inspection Programs." A notice of availability for this circular will be published concurrently with the proposed rule. This circular will detail acceptable means of compliance with the proposed rule.

In addition, the FAA has undertaken a research program to develop a simplified damage-tolerance based methodology, directly applicable to commuter sized airplanes. The results of this work will be available in the public domain and could be used by small manufacturers or designated engineering representatives (DERs) to aid their development of the inspections needed to comply with the proposed rule. Again, however, the benefits of a simplified damage-tolerance based methodology for smaller airplanes would be realized by both small and large air carriers.

The estimated cost to the government to develop the generic methodology is $4 million. To date, approximately $2.2 million has been spent and work is expected to be completed in fiscal year 2000. By funding the development of a generic damage tolerance methodology applicable to the entire commuter fleet, the FAA intends to reduce the costs to small entities and other operators subject to the proposed rule. It should be noted that the cost estimates in the economic analysis above reflect the full costs of implementing the proposed rule and do not account for the possible reductions in costs that could be afforded by this research.

Trade Impact Assessment

The proposed rule would not constitute a barrier to international trade, including the export of U.S. goods and services to foreign countries and the import of foreign goods and services into the United States.

International Trade Impact Analysis

The provisions of this proposed rule would not constitute a barrier to international trade, including the export of U.S. goods and services to foreign countries and the import of foreign goods and services into the United States.

International Compatibility

When this proposal becomes a final rule, the FAA intends to recommend that the ICAO and the JAA consider making similar changes to their recommended practices and requirements.

Unfunded Mandates Reform Act Assessment

Based on these estimates, the FAA does not consider the effects of this proposed rule sufficient to trigger the requirements of the Unfunded Mandates Reform Act or to be a "major" rulemaking for the purposes of the Congressional review requirements under the Small Business Regulatory Enforcement Fairness Act. The FAA requests comments on its cost estimates with respect to those statutes.

Regulations Affecting Intrastate Aviation in Alaska

Section 1205 of the FAA Reauthorization Act of 1996 (110 Stat. 3213) requires the Administrator, when modifying regulations in 14 CFR in a manner affecting intrastate aviation in Alaska, to consider the extent to which Alaska is not served by transportation modes other than aviation, and to establish such regulatory distinctions as he or she considers appropriate. Because this proposed rule would apply to all airplanes under part 121 and many airplanes under part 135, it could, if adopted, affect intrastate aviation in Alaska. The FAA, therefore, specifically requests comments on whether there is justification for applying the proposed rule differently to intrastate operations in Alaska.

Federalism Implications

The regulations proposed herein will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects

14 CFR Part 119

Air carriers, Air transportation, Aircraft, Aviation safety, Commuter operations, Reporting and recordkeeping requirements.

14 CFR Part 121

Air carriers, Aircraft, Aviation safety, Reporting and recordkeeping requirements, Safety, Transportation.

14 CFR Part 129

Air carriers, Aircraft, Aviation safety, Reporting and recordkeeping requirements.

14 CFR Part 135

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

14 CFR Part 183

Aircraft, Authority delegations (Government agencies), Reporting and recordkeeping requirements.

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend parts 119, 121, 129, 135, and 183 of Title 14, Code of Federal Regulations (14 CFR parts 119, 121, 129, 135, and 183) as follows:

PART 119—CERTIFICATION: AIR CARRIERS AND COMMERCIAL OPERATORS

1. The authority citation for part 119 continues to read as follows:

Authority: 49 U.S.C. 106(g), 1153, 40101, 40102, 40103, 40113, 44105, 44106, 44111, 44701–44717, 44722, 44901, 44903, 44904, 44906, 44912, 44914, 44936, 44938, 46103, 46105.

2. Section 119.3 is amended by adding the definition of "years in service" after the definition of "When common carriage is not involved or operations not involving common carriage" to read as follows:

§ 119.3 Definitions.

* * * * *

Years in service means the calendar time elapsed since an airplane was issued its first U.S. or first foreign airworthiness certificate.

PART 121—OPERATING REQUIREMENTS: DOMESTIC, FLAG, AND SUPPLEMENTAL OPERATIONS

3. The authority citation for part 121 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 40119, 44101, 44701–44702, 44705, 44709–44711, 44713, 44716–44717, 44722, 44901, 44903–44904, 44912, 46105.

4. Section 121.368 is added to read as follows:

§ 121.368 Aging airplane records reviews and inspections.

(a) *Applicability.* This section identifies the records and requirements necessary for the certificate holder to demonstrate to the Administrator that the maintenance of age-sensitive parts and components of the airplane has been adequate and timely enough to ensure the highest degree of safety. The Administrator reviews these records and conducts the inspections necessary to decide whether an airplane is in safe condition and maintained properly for operation in air transportation.

(b) No certificate holder may operate an airplane under this part after the dates specified herein unless the Administrator has notified the certificate holder that the Administrator has completed the aging airplane record reviews and inspections.

(1) For an airplane that has exceeded 24 years in service on [the effective date of the rule], no later than [3 years after the effective date of the rule] and thereafter at intervals not to exceed 5 years.

(2) For an airplane that has exceeded 14 years in service but not 24 years in service on [the effective date of the rule], no later than [5 years after the effective date of the rule] and thereafter at intervals not to exceed 5 years.

(3) For an airplane that has not exceeded 14 years in service on [the effective date of the rule], no later than 5 years after the start of the airplane's 15th year in service and thereafter at intervals not to exceed 5 years.

(c) In the event of an unforeseen scheduling conflict for a specific airplane, the Administrator may approve an extension of up to 90 days beyond a date specified in paragraph (b) of this section.

(d) The certificate holder must make available to the Administrator each airplane for which a records review and inspection is required under this section, in a condition for inspection specified by the Administrator, together with the following records:

(1) Total years in service;

(2) Total flight hours of the airframe;

(3) Total flight cycles of the airframe;

(4) Date of the last records review and inspection required by this section;

(5) Current status of life-limited parts of the airframe;

(6) Time since the last overhaul of all structural components that are required to be overhauled on a specific time basis;

(7) Current inspection status of the airplane, including the time since the last inspection required by the inspection program under which the airplane is maintained;

(8) Current status of the following, including the method of compliance:

(i) Airworthiness directives;

(ii) Corrosion Prevention and Control Programs; and

(iii) Inspections and procedures required by § 121.370a.

(9) A list of major structural alterations; and

(10) A report of major structural repairs and the current inspection status for those repairs.

(e) Each certificate holder must notify the Administrator at least 60 days before the date on which the airplane and airplane records will be available for review and inspection.

5. Section 121.370 is added to read as follows:

§ 121.370a Supplemental inspections.

(a) Except as otherwise provided in this section, no certificate holder may operate an airplane under this part after [4 years after the effective date of the rule] unless the maintenance program for that airplane includes damage-tolerance-based inspections and procedures.

(b) A certificate holder may operate an airplane listed in appendix M to this part as follows:

(1) If the time in service of the airplane reaches the design-life goal listed in appendix M to this part before [4 years after the effective date of the rule], the certificate holder may operate that airplane until [4 years after the effective date of the rule]; after that date, the airplane may not be operated unless the maintenance program for that airplane includes damage-tolerance-based inspections and procedures.

(2) If the time in service of the airplane reaches the design-life goal listed in appendix M to this part on or after [4 years after the effective date of the rule], the certificate holder may operate that airplane until the date the airplane's time in service reaches the design-life goal or until December 20, 2010, whichever occurs sooner. After that date, the airplane may not be operated unless the maintenance program for that airplane includes the damage-tolerance-based inspections and procedures.

(c) A certificate holder may operate an airplane for which an airworthiness directive requires the maintenance program to include non-damage-tolerance-based supplemental inspections and procedures until December 20, 2010; after that date, the certificate holder may not operate the airplane unless the maintenance program for that airplane includes damage-tolerance-based inspections and procedures.

6. Appendix N to part 121 is added to read as follows:

APPENDIX N TO PART 121—DESIGN-LIFE GOALS

Airplane type	Number of seats	Type certificate data sheet	Design-life goal (hrs)
Beech Aircraft Co.:			
—Beech 99 (all models)	15+2	A14CE	46,000
—Beech 1900 and 1900C	19+2	A24CE	45,000
—Beech 300 and 300LW	13+2	A24CE	30,000
—Beech B300 and B300C	15+2	A24CE	30,000
—Beech 1900D	19+2	A24CE	45,000
British Aerospace Ltd.:			
—BAe Jetstream 3101	19+2	A21EU	30,000
—BAe Jetstream 3201	19+2	A56EU	30,000
De Havilland Aircraft Co.:			
—DHC–6	22+2	A9EA	33,000
Dornier GmbH:			
—Dornier 228–100 and –200	19+2	A16EU	42,800
—Dornier 228–101 and –201	19+2	A16EU	32,800
—Dornier 228–202	19+2	A16EU	29,600
—Dornier 228–212 (Except SN 155 & 191 and up)	19+2	A16EU	26,400
—Dornier 228–212 (SN 155 and 191 and up)	19+2	A16EU	42,800
Empresa Brasileira de Aeronautica (Embraer):			
Embraer EMB–110	19+2	A21SO	30,000
Fairchild Aircraft Company:			
—SA226–TC	20+2	A8SW	35,000
—SA227–AT	14+2	A5SW	35,000
—SA227–TT	9+2	A5SW	35,000
—SA227–AC	20+2	A8SW	35,000
—SA227–PC	20+2	A8SW	35,000
—SA227–BC	20+2	A8SW	35,000
—SA227–CC	19+2	A18SW	35,000
—SA227–DC	19+2	A18SW	35,000
Pilatus Britten-Norman:			
PBN BN–2 Mk III (all models)	16+2	A29EU	20,480
Short Brothers Ltd.:			
—SD3–30	39+2	A41EU	57,600
—SD3–60	39+2	A41EU	28,800
—SD3-Sherpa	39+2	A41EU	40,000

PART 129—OPERATIONS: FOREIGN AIR CARRIERS AND FOREIGN OPERATORS OF U.S.-REGISTERED AIRCRAFT ENGAGED IN COMMON CARRIAGE

7. The authority citation for part 129 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40104–40105, 40113, 40119, 44701–44702, 44712, 44716–44717, 44722, 44901–44904, 44906.

8. Section 129.1 is revised to read as follows:

§ 129.1 Applicability.

(a) Except as provided in paragraph (b) of this section, this part prescribes rules governing the operation within the United States of each foreign air carrier holding a permit issued by the Civil Aeronautics Board or the Department of Transportation under 49 U.S.C. 41301 through 41306 (formerly section 402 of the Federal Aviation Act of 1958 (49 U.S.C. App. 1372), as amended), or other appropriate economic or exemption authority issued by the Civil Aeronautics Board or the Department of Transportation.

(b) Sections 129.14, 129.16, and 129.20 also apply to U.S.-registered aircraft operated solely outside the United States in common carriage by a foreign person or foreign air carrier. For the purpose of this part, a foreign person is any person, not a citizen of the United States, who operates a U.S.-registered aircraft in common carriage solely outside the United States.

9. Section 129.16 is added to read as follows:

§ 129.16 Supplemental inspections for U.S.-registered aircraft.

(a) Except as otherwise provided in this section, no foreign air carrier or foreign person may operate a U.S.-registered multiengine airplane initially type certificated with 10 or more passenger seats under this part after [4 years after the effective date of this rule] unless the maintenance program for that airplane includes damage-tolerance-based inspections and procedures.

(b) Except as otherwise provided in this section, no foreign air carrier or foreign person may operate a U.S.-registered multiengine airplane initially type certificated with nine or fewer passenger seats under this part after December 20, 2010, unless the maintenance program for that airplane includes damage-tolerance-based inspections and procedures.

(c) A foreign air carrier or foreign person may operate a U.S.-registered airplane listed in appendix B to this part as follows:

(1) If the time in service of the airplane reaches the design-life goal listed in appendix B to this part before [4 years after the effective date of the rule], the foreign air carrier or foreign person may operate that airplane until [4 years after the effective date of the rule]; after that date, the airplane may not be operated unless the maintenance program for that airplane includes damage-tolerance-based inspections and procedures.

(2) If the time in service of the airplane reaches the design-life goal listed in appendix B to this part on or after [4 years after the effective date of the rule], the foreign air carrier or foreign person may operate that airplane until the date the time-in-service of the airplane reaches the design-life goal or until December 20, 2010, whichever occurs sooner. After that date, the airplane may not be operated unless the maintenance program for that airplane includes damage-tolerance-based inspections and procedures.

(d) A foreign air carrier or foreign person may operate a U.S.-registered airplane for which an airworthiness directive requires the maintenance program to include non-damage-tolerance-based supplemental inspections and procedures until December 20, 2010. After that date, the foreign air carrier or foreign person may not operate the airplane unless the maintenance program for that airplane includes damage-tolerance-based inspections and procedures.

10. Section 129.33 is added to read as follows:

§ 129.33 Aging airplane records reviews and inspections for U.S.-registered aircraft.

(a) *Applicability.* This section identifies the records and requirements necessary for a foreign air carrier or foreign person to demonstrate to the Administrator that the maintenance of age-sensitive parts and components of the airplane has been adequate and timely enough to ensure the highest degree of safety. The Administrator reviews these records and conducts the inspections necessary to decide whether an airplane is in safe condition and maintained properly for operation in air transportation.

(b) After the dates specified herein, no foreign air carrier or foreign person may operate a U.S.-registered airplane under this part unless the Administrator has notified the foreign air carrier or foreign person that the Administrator has completed the aging airplane record reviews and inspections.

(1) For an airplane that has exceeded 24 years in service on [the effective date of the rule], no later than [3 years after the effective date of the rule], and thereafter at intervals not to exceed 5 years.

(2) For an airplane that has exceeded 14 years in service, but not 24 years in service, on [the effective date of the rule], no later than [5 years after the effective date of the rule], and thereafter at intervals not to exceed 5 years.

(3) For an airplane that has not exceeded 14 years in service on [the effective date of the rule], no later than 5 years after the start of the airplane's 15th year in service and thereafter at intervals not to exceed 5 years.

(c) In the event of an unforeseen scheduling conflict for a specific airplane, the Administrator may approve an extension of up to 90 days beyond a date specified in paragraph (b) of this section.

(d) The foreign air carrier or foreign person must make available to the Administrator each U.S.-registered airplane for which a records review and inspection is required under this section, in a condition for inspection specified by the Administrator, together with the following records:

(1) Total years in service;

(2) Total flight hours of the airframe;

(3) Total flight cycles of the airframe;

(4) Date of the last records review and inspection required by this section;

(5) Current status of life-limited parts of the airframe;

(6) Time since the last overhaul of all structural components that are required to be overhauled on a specific time basis;

(7) Current inspection status of the airplane, including the time since the last inspection required by the inspection program under which the airplane is maintained;

(8) Current status of the following, including the method of compliance:

(i) Airworthiness directives;

(ii) Corrosion Prevention and Control Programs; and

(iii) Inspections and procedures required by § 121.370 of this chapter.

(9) A list of major structural alterations; and

(10) A report of major structural repairs and the current inspection status for these repairs.

(e) Each foreign air carrier or foreign person must notify the Administrator at least 60 days before the date on which the airplane and airplane records will be available for inspection and review.

11. Appendix B to part 129 is added to read as follows:

APPENDIX B TO PART 129—DESIGN-LIFE GOALS

Airplane type	Number of seats	Type certificate data sheet	Design-life goal (hrs)
Beech Aircraft Co.:			
—Beech 99 (all models)	15+2	A14CE	46,000
—Beech 1900 and 1900C	19+2	A24CE	45,000
—Beech 300 and 300LW	13+2	A24CE	30,000
—Beech B300 and B300C	15+2	A24CE	30,000
—Beech 1900D	19+2	A24CE	45,000
British Aerospace Ltd.:			
—BAe Jetstream 3101	19+2	A21EU	30,000
—BAe Jetstream 3201	19+2	A56EU	30,000
Cessna Aircraft Co.:			
—Cessna 402 Series (all models except 402C)	8+2	A7CE	12,000
—Cessna 402C	8+2	A7CE	7,000
De Havilland Aircraft Co.:			
—DHC–6	22+2	A9EA	33,000
Dornier GmbH:			
—Dornier 228–100 and –200	19+2	A16EU	42,800
—Dornier 228–101 and –201	19+2	A16EU	32,800
—Dornier 228–202	19+2	A16EU	29,600
—Dornier 228–212 (Except SN 155 & 191 and up)	19+2	A16EU	26,400
—Dornier 228–212 (SN 155 and 191 and up)	19+2	A16EU	42,800
Empresa Brasileira de Aeronautica (Embraer):			
Embraer EMB–110	19+2	A21SO	30,000
Fairchild Aircraft Company:			
—SA226–TC	20+2	A8SW	35,000
—SA227–AT	14+2	A5SW	35,000
—SA227–TT	9+2	A5SW	35,000
—SA227–AC	20+2	A8SW	35,000
—SA227–PC	20+2	A8SW	35,000
—SA227–BC	20+2	A8SW	35,000
—SA227–CC	19+2	A18SW	35,000
—SA227–DC	19+2	A18SW	35,000
Pilatus Britten-Norman:			
PBN BN–2 Mk III (all models)	16+2	A29EU	20,480
Piper Aircraft Co.:			
—PA 31 Navajo	6+2	A20SO	11,000
—PA 31–300 Navajo	6+2	A20SO	15,500
—PA 31P Pressurized Navajo	6+2	A8EA	14,000
—PA 31T Cheyenne and Cheyenne II	7+2	A8EA	12,000
—PA 31–350 Chieftain and (T–1020)	9+2	A20SO	13,000
—PA 31–325 Navajo CR	9+2	A20SO	11,000
—PA 31T2 Cheyenne II XL	5+2	A8EA	11,400
—PA 31T3 (T–1040) without tip tanks	9+2	A8EA	17,400
—PA 31T3 (T–1040) with tip tanks	9+2	A8EA	13,800
Short Brothers Ltd.:			
—SD3–30	39+2	A41EU	57,600
—SD3–60	39+2	A41EU	28,800
—SD3-Sherpa	39+2	A41EU	40,000

PART 135—OPERATING REQUIREMENTS: COMMUTER AND ON-DEMAND OPERATIONS

12. The authority citation for part 135 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701–44702, 44705, 44709, 44711–44713, 44715–44717, 44722.

13. Section 135.168 is added to read as follows:

§ 135.168 Supplemental inspections.

(a) Except as otherwise provided in this section, no certificate holder may operate a multiengine airplane initially type certificated with 10 or more passenger seats in scheduled operations under this part after [4 years after the effective date of this rule], unless the inspection program for that airplane includes damage-tolerance-based inspections and procedures.

(b) Except as otherwise provided in this section, no certificate holder may operate a multiengine airplane initially type certificated with nine or fewer passenger seats in scheduled operation under this part after December 20, 2010, unless the inspection program for that airplane includes damage-tolerance-based inspections and procedures.

(c) A certificate holder may operate an airplane listed in appendix F to this part as follows:

(1) If the time in service of the airplane reaches the design-life goal listed in appendix F to this part before [4 years after the effective date of the rule], the certificate holder may operate that airplane until [4 years after the effective date of the rule]; after that date, the airplane may not be operated unless the inspection program for that airplane includes damage-tolerance-based inspections and procedures.

(2) If the time in service of the airplane reaches the design-life goal

listed in appendix F to this part on or after [4 years after the effective date of the rule], the certificate holder may operate that airplane until the date the time-in-service of the airplane reaches the design-life goal or until December 20, 2010, whichever occurs sooner. After that date, the airplane may not be operated unless the inspection program for that airplane includes damage-tolerance-based inspections and procedures.

(d) A certificate holder may operate an airplane for which an airworthiness directive requires the inspection program to include non-damage-tolerance-based supplemental inspections and procedures until December 20, 2010; after that date, the holder may not operate the airplane unless the inspection program for that airplane includes damage-tolerance-based inspections and procedures.

14. Section 135.422 is added to read as follows:

§ 135.422 Aging airplane records reviews and inspections.

(a) *Applicability.* This section identifies the records and requirements necessary for the certificate holder operating a multiengine airplane in scheduled operations to demonstrate to the Administrator that the maintenance of age-sensitive parts and components of the airplane has been adequate and timely enough to ensure the highest degree of safety. The Administrator reviews these records and conducts the inspections necessary to decide whether an airplane is in safe condition and maintained properly for operation in air transportation.

(b) After the dates specified herein, no certificate holder may operate a multiengine airplane under this part in scheduled operation unless the Administrator has notified the certificate holder that the Administrator has completed the aging airplane records reviews and inspections.

(1) For an airplane that has exceeded 24 years in service on [the effective date of the rule], no later than [3 years after the effective date of the rule], and thereafter at intervals not to exceed 5 years.

(2) For an airplane that has exceeded 14 years in service, but not 24 years in service, on [the effective date of the rule], no later than [5 years after the effective date of the rule], and thereafter at intervals not to exceed 5 years.

(3) For an airplane that has not exceeded 14 years in service on [the effective date of the rule], no later than 5 years after the start of the airplane's 15th year in service and thereafter at intervals not to exceed 5 years.

(c) In the event of an unforeseen scheduling conflict for a specific airplane, the Administrator may approve an extension of up to 90 days beyond a date specified in paragraph (b) of this section.

(d) The certificate holder must make available to the Administrator each airplane for which a records review and inspection is required under this section, in a condition for inspection specified by the Administrator, together with the following records:

(1) Total years in service;

(2) Total flight hours of the airframe;

(3) Total flight cycles of the airframe;

(4) Date of the last records review and inspection required by this section;

(5) Current status of life-limited parts of the airframe;

(6) Time since the last overhaul of all structural components that are required to be overhauled on a specific time basis;

(7) Current inspection status of the airplane, including the time since the last inspection required by the inspection program under which the airplane is maintained;

(8) Current status of the following, including the method of compliance:

(i) Airworthiness directives;

(ii) Corrosion Prevention and Control Programs; and

(iii) Inspections and procedures required by § 135.168.

(9) A list of major structural alterations; and

(10) A report of major structural repairs and the current inspection status for these repairs.

(e) Each certificate holder must notify the Administrator at least 60 days before the date on which the airplane and airplane records will be available for inspection and review.

15. Appendix G to part 135 is added to read as follows:

APPENDIX G TO PART 135—DESIGN-LIFE GOALS

Airplane type	Number of seats	Type certificate data sheet	Design-life goal (hrs)
Beech Aircraft Co.:			
—Beech 99 (all models)	15+2	A14CE	46,000
—Beech 1900 and 1900C	19+2	A24CE	45,000
—Beech 300 and 300LW	13+2	A24CE	30,000
—Beech B300 and B300C	15+2	A24CE	30,000
—Beech 1900D	19+2	A24CE	45,000
British Aerospace Ltd.:			
—BAe Jetstream 3101	19+2	A21EU	30,000
—BAe Jetstream 3201	19+2	A56EU	30,000
Cessna Aircraft Co.:			
—Cessna 402 Series (all models except 402C)	8+2	A7CE	12,000
—Cessna 402C	8+2	A7CE	7,700
De Havilland Aircraft Co.:			
—DHC–6	22+2	A9EA	33,000
Dornier GmbH:			
—Dornier 228–100 and –200	19+2	A16EU	42,800
—Dornier 228–101 and –201	19+2	A16EU	32,800
—Dornier 228–202	19+2	A16EU	29,600
—Dornier 228–212 (Except SN 155 & 191 and up)	19+2	A16EU	26,400
—Dornier 228–212 (SN 155 and 191 and up)	19+2	A16EU	42,800
Empresa Brasileira de Aeronautica (Embraer):			
Embraer EMB–110	19+2	A21SO	30,000
Fairchild Aircraft Company:			
—SA226–TC	20+2	A8SW	35,000

APPENDIX G TO PART 135—DESIGN-LIFE GOALS—Continued

Airplane type	Number of seats	Type certificate data sheet	Design-life goal (hrs)
—SA227–AT	14+2	A5SW	35,000
—SA227–TT	9+2	A5SW	35,000
—SA227–AC	20+2	A8SW	35,000
—SA227–PC	20+2	A8SW	35,000
—SA227–BC	20+2	A8SW	35,000
—SA227–CC	19+2	A18SW	35,000
—SA227–DC	19+2	A18SW	35,000
Pilatus Britten-Norman:			
PBN BN–2 Mk III (all models)	16+2	A29EU	20,480
Piper Aircraft Co.:			
—PA 31 Navajo	6+2	A20SO	11,000
—PA 31–300 Navajo	6+2	A20SO	15,500
—PA 31P Pressurized Navajo	6+2	A8EA	14,000
—PA 31T Cheyenne and Cheyenne II	7+2	A8EA	12,000
—PA 31–350 Chieftain and (T–1020)	9+2	A20SO	13,000
—PA 31–325 Navajo CR	9+2	A20SO	11,000
—PA 31T2 Cheyenne II XL	9+2	A20SO	11,400
—PA 31T3 (T–1040) without tip tanks	9+2	A8EA	17,400
—PA 31T3 (T–1040) with tip tanks	9+2	A8EA	13,800
Short Brothers Ltd.:			
—SD3–30	39+2	A41EU	57,600
—SD3–60	39+2	A41EU	28,800
—SD3–Sherpa	39+2	A41EU	40,000

PART 183—REPRESENTATIVES OF THE ADMINISTRATOR

16. The authority citation for part 183 continues to read as follows:

Authority: 31 U.S.C. 9701; 49 U.S.C. 106(g), 40113, 44702, 45303.

17. Section 183.33 is amended by revising paragraph (a) to read as follows:

§ 183.33 Designated Airworthiness Representative

* * * * *

(a) Perform examination, inspection, and testing services necessary to the issuance of, and to determine the continuing effectiveness of certificates, including issuing certificates, as authorized by the Director, Flight Standards Service, in the area of maintenance, or as authorized by the Director, Aircraft Certification Service, in the areas of manufacturing and engineering.

* * * * *

Issued in Washington, DC, on March 19, 1999.

L. Nicholas Lacey,

Director, Flight Standards Service.

[FR Doc. 99–7443 Filed 4–1–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Advisory Circular (AC) 91-MA, Continued Airworthiness of Older Small Transport and Commuter Airplanes; Establishment of Damage-Tolerance-Based Inspections and Procedures

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of availability and request for comments.

SUMMARY: This notice announces the availability of and request for comments on proposed AC 91-MA, which provides information and guidance to manufacturers and operators for use in developing contained structural integrity programs to ensure the safe operation of small transport and commuter airplanes throughout their operational usage. The material provides an acceptable means, but not the only means, of showing compliance with the operational requirements of the Federal Aviation Regulations applicable to the establishment of a damage-tolerance-based inspections and procedures.

DATES: Comments must be received on or before August 2, 1999.

ADDRESSES: Send all comments on the proposed AC to: Bobby Sexton, ACE-102, Aging Airplane Program Manager, Small Airplane Directorate, Central Region, Federal Aviation Administration, 601 East 12th Street, Kansas, Missouri, 64106; telephone number (816) 426-3241.

FOR FURTHER INFORMATION CONTACT: Bobby Sexton, ACE-102, Aging Airplane Program Manager, Small Airplane Directorate, Central Region, Federal Aviation Administration, 601 East 12th Street, Kansas, Missouri, 64106; telephone number: (816) 426-3241.

SUPPLEMENTARY INFORMATION:

Comments Invited

A copy of the draft AC may be obtained by accessing the FAA's webgage at http://www.faa.gov/avr/arm/nprm/nprm.htm. Interested parties are invited to submit comments on the proposed AC. Commenters must identify AC 91-MA, and submit comments to the address specified above. All communications received on or before the closing date for comments will be considered by the FAA before issuing the final AC.

Discussion

Service experience has revealed a need to assess the continuing airworthiness of small transport and commuter sized airplanes as they age. The structural integrity of these airplanes should be assessed on the basis of the most modern tools of analyses, testing, and nondestructive inspections in conjunction with the gathering of operational service experience. Fatigue cracking is usage dependent and, if left uncorrected, will degrade the integrity of the airframe to unsafe levels. Additional inspections, component modification, or structural component replacement may be essential to maintain the required level of safety.

Increased utilization, longer operation, and the high safety demands imposed on airplanes currently operating in air transportation service indicates that there is a need for a program to provide a high level of structural integrity for all airplanes in the commuter air transportation fleet. Accordingly, the program outlined in the draft AC is intended to describe a structural integrity assessment of each airplane type, to be accomplished by its manufacturer or other competent engineering organization have access to design data; and the adaptation of the results of that assessment into each operator's maintenance program.

Issued in Washington, DC on March 19, 1999.

L. Nicholas Lacey,

Director, Flight Standards Service.

[FR Doc. 99–7445 Filed 4–1–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Advisory Circular (AC) 120–XX, Aging Airplane Records Reviews and Inspections

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of availability and request for comments.

SUMMARY: This notice announces the availability of and request for comments on proposed AC 120–XX, which provides guidance pertaining to aging airplane records reviews and inspections that are accomplished to satisfy the requirements of the final rule entitled Aging Aircraft Safety which was enacted in response to a statutory requirement, the Aging Aircraft Safety Act of 1991.

DATES: Comments must be received on or before August 2, 1999.

ADDRESSES: Send all comments on the proposed AC to: Frederick Sobeck, AFS–300, Aging Airplane Program Manager, Flight Standards Service, Federal Aviation Administration, 800 Independence Ave., SW., Washington, DC 20591; telephone number: (202) 267–7355.

FOR FURTHER INFORMATION CONTACT: Frederick Sobeck, AFS–300, Aging Airplane Program Manager, Flight Standards Service, Federal Aviation Administration, 800 Independence Ave. SW., Washington, DC 20591; telephone number: (202) 267–7355.

SUPPLEMENTARY INFORMATION:

Comments Invited

A copy of the draft AC may be obtained by accessing the FAA's webpage at http://www.faa.gov/avr/arm/nprm/nprm.htm. Interested parties are invited to submit comments on the proposed AC. Commenters must identify AC 120–XX, and submit comments to the address specified above. All communications received on or before the closing date for comments will be considered by the FAA before issuing the final AC.

Discussion

To address aging aircraft concerns, in October 1991, Congress enacted Title IV of Public Law 102–143, known as the Aging Aircraft Safety Act of 1991, which was subsequently codified as 49 U.S.C. 44717. The law instructed the Administrator to prescribe regulations that would ensure the continued airworthiness of aging aircraft. The law also instructed the Administrator to conduct inspections and review the maintenance and other records of each aircraft an air carrier uses to provide air transportation. These inspections and records reviews were intended to enable the Administrator to decide whether aging aircraft are in a safe condition and maintained properly for operation in air transportation. The law also required the Administrator to establish procedures to be followed for performing such inspections.

In addition to imposing obligations on the Administrator, the law stated that air carriers must demonstrate that the maintenance of their aircraft's age-sensitive parts and components has been adequate and timely, and operators must make their aircraft and aircraft records available for inspection.

Issued in Washington, DC, on March 19, 1999.

L. Nicholas Lacey,

Director, Flight Standards Service.

[FR Doc. 99–7444 Filed 4–1–99; 8:45 am]

BILLING CODE 4910–13–M

VOL
64
ISS
63
AP
2
1999
UMI

federal register

Friday
April 2, 1999

Part IV

Department of Housing and Urban Development

24 CFR Part 100

Implementation of the Housing for Older Persons Act of 1995; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 100

[Docket No. FR–4094–F–02]

RIN 2529–AA80

Implementation of the Housing for Older Persons Act of 1995

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

ACTION: Final rule.

SUMMARY: This rule implements the Housing for Older Persons Act of 1995 (HOPA). HOPA amended the requirements for qualification for the housing for persons who are 55 years of age or older portion of the "housing for older persons" exemption established in the Fair Housing Act. In addition, HOPA established a good faith defense against civil money damages for persons who reasonably relied in good faith on the application of the "housing for older persons" exemption even when, in fact, the housing provider did not qualify for the exemption. This rule updates HUD's regulations to reflect the changes made by HOPA.

EFFECTIVE DATE: May 3, 1999.

FOR FURTHER INFORMATION CONTACT: Sara K. Pratt, Director, Office of Enforcement, Office of Fair Housing and Equal Opportunity, Room 5206, 451 Seventh Street, SW, Washington, DC 20410–0500, telephone (202) 708–0836. (This is not a toll-free number.) Hearing or speech-impaired individuals may reach this office by calling the toll-free Federal Information Relay Service (TTY) at 1–800–877–8399.

SUPPLEMENTARY INFORMATION:

Information Collection Requirements

The information collection requirements contained in §§ 100.306 and 100.307 of this rule have been submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) and have been assigned approval number 2529–0046. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.

I. Background

A. The Housing for Older Persons Act of 1995

The Fair Housing Act (Title VIII of the Civil Rights Act of 1968, as amended, 42 U.S.C. 3601–3619) (the Act) exempts "housing for older persons" from the Act's prohibitions against discrimination because of familial status. Section 807(b)(2)(C) of the Act exempts housing intended and operated for occupancy by persons 55 years of age or older which satisfies certain criteria. HUD has adopted implementing regulations further defining the "housing for older persons" exemption at 24 CFR part 100, subpart E.

The Housing for Older Persons Act of 1995 (Pub. L. 104–76, 109 Stat. 787, approved December 28, 1995) (HOPA) revised the definition of the original exemption contained in the Act for housing designed and operated for occupancy by persons who are 55 years of age of older. Section 2 of HOPA redefined this portion of the exemption to describe housing:

> (C) Intended and operated for occupancy by persons 55 years of age or older, and—
>
> (i) At least 80 percent of the occupied units are occupied by at least one person who is 55 years of age or older;
>
> (ii) The housing facility or community publishes and adheres to policies and procedures that demonstrate the intent required under this subparagraph; and
>
> (iii) The housing facility or community complies with rules issued by the Secretary [of HUD] for verification of occupancy, which shall—
>
> (I) Provide for verification by reliable surveys and affidavits; and
>
> (II) Include examples of the types of policies and procedures relevant to a determination of compliance with the requirement of clause (ii). Such surveys and affidavits shall be admissible in administrative and judicial proceedings for the purposes of such verification.

The new requirements under HOPA are equivalent to the original provisions of the Fair Housing Act. Like the original section 807(b)(C) of the Act, HOPA requires that a facility or community seeking to claim the 55 and older exemption show three factors: (1) That the housing be intended and operated for persons 55 years of age or older; (2) that at least 80 percent of the occupied units be occupied by at least one person who is 55 years of age or older; and (3) the housing facility or community publish and adhere to policies and procedures that demonstrate its intent to qualify for the exemption. The housing facility or community must also comply with rules issued by HUD for the verification of occupancy.

One substantive change made by HOPA was the elimination of "significant facilities and services" previously required by the Act to meet the 55-and-older exemption. Section 807(b)(2)(C) of the Act originally required that housing designed for persons who are 55 years of age or older provide "significant facilities and services specifically designed to meet the physical or social needs of older persons." HOPA also added the new requirement that a housing facility or community seeking the 55-and-older exemption comply with HUD regulations on verification of occupancy.

In addition, section 3 of HOPA added a new section 807(b)(5) to the Act. This new section established a good faith defense against civil money damages for a person who reasonably relies in good faith on the application of the housing for older persons exemption, even when, in fact, the housing facility or community does not qualify for the exemption. New section 807(b)(5) provides:

> (5)(A) A person shall not be held personally liable for monetary damages for a violation of this title if such person reasonably relied, in good faith, on the application of the exemption under this subsection relating to housing for older persons.
>
> (B) For purposes of this paragraph, a person may only show good faith reliance on the application of the exemption by showing that—
>
> (i) such person has no actual knowledge that the facility or community is not, or will not be, eligible for such exemption; and
>
> (ii) The facility or community has stated formally, in writing, that the facility or community complies with the requirements for such exemption.

B. This Rule

This rule revises § 100.304, which presents an overview of the exemption, to more closely track the HOPA requirements. The rule also creates a new § 100.305, which updates the 80 percent occupancy requirements. A new § 100.306 describes how a facility or community may establish its intent to operate as housing designed for persons at least 55 years of age or older. New § 100.307 sets forth the necessary procedures for verification of the 80 percent occupancy requirements. Finally, a new § 100.308 implements the good faith defense against civil money damages.

Section 2 of HOPA requires that any implementing HUD regulations "include examples of the types of policies and procedures relevant to a determination of compliance with" the statute's intent requirement. Accordingly, paragraph (a) of § 100.306 lists several factors which HUD considers relevant in determining whether the housing facility or community intends to operate as housing for older persons. Section 100.306(b) states, however, that such

phrases such as "adult living", "adult community", or similar statements are inconsistent with the intent to establish housing for older persons. Such phrases are not evidence that the facility or community intends to operate as housing for older persons and are inconsistent with that intent. HUD, in order to make an assessment of intent, will consider all of the measures taken by the facility or community to demonstrate the intent required by the Act. Moreover, the housing facility or community may not evict or terminate leases of families with children in order to achieve occupancy of at least 80 percent of the occupied units by at least one person 55 years of age or older.

HUD also provides guidance to assist housing facilities and communities in applying the requirements of this rule. These examples are contained in an appendix to this rule. The appendix will not be codified in title 24 of the CFR. HUD may update or revise the appendix as necessary.

C. Discussion of Public Comments on the January 19, 1997 Proposed Rule

The Housing for Older Persons Act (HOPA) was a remedial amendment to the Fair Housing Act overwhelmingly passed by Congress in an attempt to clarify the Act's senior housing exemption which Congress found was being effectively repealed by the judicial and administrative interpretation which the exemption had received.

Senator Brown described the purpose of HOPA as "making the law clearer and more workable for seniors * * * to protect seniors so that they can, if they wish to, move to housing where they are protected in their safety and their privacy." (Congressional Record, S. 18064). Senate Report #104–172 describes the purpose as a "return to the original intent of the Fair Housing Act exemption Congress created in 1988. HOPA is designed to make it easier for a housing community of older persons to determine whether they qualify for the Fair Housing Act exemption". While House Report 104–91 states "legislation is necessary to establish a workable and fair exemption to protect senior citizens who wish to live in retirement community". In short, HOPA was passed in order to protect senior housing.

HUD published a proposed rule for comment on January 14, 1997, at 62 FR 2000, and received approximately 130 comments on the proposed rule. The comments were evenly split between comments which expressed the belief that the regulation went too far in allowing the creation or continuation of senior housing and those which generally supported the rule but felt that it should have done more to stabilize the conditions at senior housing communities or which objected to isolated provisions. Several of the specific points raised will be addressed later in the preamble and have resulted in changes and refinements to the proposed regulation. As a general response, some of the comments from each side are based upon premises with which HUD does not agree. In addition, Congress did not state that HOPA should be retroactively applied. Therefore, a matter involving a claim of alleged discrimination occurring *before* December 28, 1995 will be covered by those laws and regulations in effect at the time of the claimed violation. Claims of alleged discrimination occurring after December 28, 1995, but before the effective date of this regulation will be analyzed using HOPA and its legislative history.

Those who maintain that HUD's interpretation of the exemption should be narrowed ignore the history of the senior housing exemption and HOPA. Congress made explicit findings that HOPA was necessary because of the narrow construction afforded the senior housing exemption in the past. It would be contrary to the intent of the HOPA to abolish the "significant facilities and services" requirement that hindered senior housing only to construct new impediments by strictly construing the remaining requirements. At the same time, Congress provided no indication that it intended to change the usual standards applicable in judicial constructions of exemptions, and, thus, HUD believes that, as with any exemption to the Fair Housing Act, the burden will be on the housing provider to prove that it meets the requirements set forth in this regulation in order to qualify for the exemption.

Others who believed that HUD should go further in specifying exactly what must be done by each facility and community fail to take into full account the limited nature of the exemption provided under the law. The Fair Housing Act and its senior exemptions, as amended by HOPA, do not provide standards for the proper operation of a senior community; they are designed only to advise communities and facilities what will not violate the familial status provisions of the Act. Most aspects of living in a senior community are governed by private contractual agreements between senior housing developers and individuals who purchased or rented the dwelling. Other aspects may be governed by state or local ordinances, particularly regarding mobile and manufactured homes. These private agreements and local laws, for the most part, are left undisturbed by HUD's interpretation of HOPA.

HUD has also taken into consideration the broader historical aspects of the senior housing issue. Until the advent of the familial status protection established in the Fair Housing Amendments Act of 1988, the senior housing industry was a well-established, accepted component of housing options for seniors. With no federal law directly applicable, the industry developed in a variety of configurations and circumstances. Age restrictions in individual communities started at various ages—age 40, age 45, age 50 and so forth. Many communities defined themselves as "adult" communities, but in operation served seniors. Many senior communities served mature residents who are active, participating members of their communities. State and local law, local custom, and various provisions of covenants and restrictions affected how rules for occupancy were established or changed, against whom those rules could be enforced, the senior community's interplay with state and local land use and anti-discrimination statutes, and other practical day-to-day issues of senior housing. Against the backdrop of the nearly infinite number of possible scenarios, HUD and courts attempted to enforce the 1988 provisions of the exemptions. Congress has determined that those efforts did not achieve the desired results, and amended the Act. The rules that are included here in final form have attempted to the address the issue in the broadest possible terms to account for the large variety of senior communities while being sufficiently detailed to provide clear guidance on the requirements of the senior housing exemption, without dictating results which may be inconsistent with local practice or deny flexibility in a variety of circumstances.

Opposition to the proposed rule came largely from Fair Housing advocacy groups and some housing industry groups. The comments of the Northern California Fair Housing Coalition (NCFHC), a coalition of 18 fair housing groups, is a representative example of the issues raised by these groups. NCFHC urges that the rule be withdrawn or significantly altered based on a strict interpretation of the exemption which HUD believes is contrary to the clear Congressional intent. Specifically, NCHFC considers § 100.305(e)(5), the so called "transition provision," to be without legal authority and bad public policy because, they assert, it would allow communities with

no senior residents to declare themselves housing for persons who are 55 years of age or older housing and discriminate against families with children until they reach the 80% senior occupancy minimum.

A transition provision was first adopted in the August 18, 1995 final rule which was implemented prior to the passage of HOPA, but the entire final rule was withdrawn in April 1996 after Congress passed HOPA. The intent of the original transition provision was to provide a mechanism to return to senior status for those former senior communities who had abandoned, or did not achieve, senior status for fear of law suits spawned by the pre-HOPA interpretations of the exemption, especially the requirement that significant facilities and services be provided, or for other reasons which Congress found were contrary to the original intent of the exemption. As it has done in the past, HUD is promulgating a transition provision under the authority of 42 U.S.C. 3607. As HUD noted in its comments to the previous final rule, published on August 18, 1995:

> The Act provides that a property "shall not fail to meet the requirements for housing for older persons by reason of * * * (B) unoccupied units * * *" 42 U.S.C. 3607. HUD believes it is justified in interpreting the Act to allow a community which, although it does not currently meet the 80 percent occupancy requirement, to reserve all unoccupied units for occupancy by a person 55 years of age or older. This may be the only way for a community which believed that it was ineligible for "housing for older persons" status, and which has therefore permitted occupancy by families, to qualify for the exemption.

HUD is concerned, however, that an overly broad transition provision may allow qualification for communities beyond those which temporarily were unable to qualify for the exemption because of the significant facilities and services provision or other interpretations of the exemption, and which would otherwise have been eligible for the exemption. For that reason, HUD has retained the transition provision, but only for a period of one year from the date on which this regulation becomes final, to allow communities which wish to qualify for the 55-and-older exemption to qualify. At the end of the one year period, the transition period will expire. HUD believes that this is a more balanced approach that achieves a common sense solution to a problem with equities on both sides. This represents the most significant change in the rule. The one year limitation period will require that those communities seeking to meet the 80% requirement have at least 80% of their occupied units occupied by at least one person who is 55 years of age or older by the expiration of the period in order to qualify for the exemption. Vacant units reserved for occupancy by persons who are 55 of age or older may not be counted in achieving this standard. The transition provision may not be facilitated by evicting or terminating the leases of resident households with minor children.

The transition provision will expire at the end of one year from the effective date of this regulation. A community or facility which attempts to meet the exemption during the transition period, unsuccessfully, must cease reserving vacant units for persons who are 55 years of age or older at the end of that period. Even if a facility or community fails to meet the exemption during this transition period, it will not be liable for discrimination on the basis of familial status resulting from actions taken during the one year period if it complies with all of the transition requirements during that time.

The NCFHC further objects to § 100.305(c)(2) which references "temporarily vacant" dwellings. This provision is in response to the situation where individuals move into "senior parks" as summer or winter homes while others in the community remain year round. NCFHC argues that only "primary residences" should be covered. There is no support in the Congressional history or in HOPA for this interpretation. HUD has held that a "dwelling" under the Act can cover summer homes or even timeshare units. There is no reason to make a distinction for senior housing. A unit which is occupied, even if temporarily vacant while its residents are absent seasonally, on vacation, or hospitalized, for example, is still occupied by that resident. If, on the other hand, a unit is leased by its owners during their absence, its current occupants, not its owners, are considered for purposes of the exemption.

The fair housing advocates and several attorneys further objected to § 100.306(c) which addresses the effect of language in housing documents on the intent requirement. HUD has consistently held that intent is established by the totality of the facts. HUD is also aware that prior to the adoption of protection for families with children in the Fair Housing Amendments Act, housing communities and facilities had established senior housing at an age other than 55 with a prohibition against amending the covenants for a period of 25 years or more. It would be unjust to deny such housing qualification for the exemption when it meets the intent requirement in all other ways as well as meeting the other requirements for the exemption and has done what it can to eliminate language inconsistent with the exemption for housing for persons 55 years of age or older. HUD notes, however, that in circumstances where the community holds itself out as "adult" and its legal documents describe occupancy in terms which are not consistent with the 55-and-older exemption and no action has been taken to attempt to change the applicable documents, the requisite intent requirement is not met.

Other commenters have interpreted this provision as sanctioning senior housing under federal law when state and local law prohibits or restricts the establishment of senior housing in the particular circumstances of that community. HUD has always allowed state or local laws which impose requirements in addition to, but not inconsistent with, those in the Act to apply. Moreover, to the extent that state or local law interpretations require additional or different standards, the Act's provisions must still be met to qualify for the exemption. HUD urges senior communities to consult state or local units of government to ensure that the housing community is also in compliance with all applicable state and local requirements governing senior housing.

Several commenters addressed specific actions of communities purporting to be senior housing. These include such matters as requirements that occupants join a homeowners association (HOA) or whether a community must allow an under-aged heir to reside in the community or the grandchild of a resident. None of these matters are directly affected by the rule. These types of issues are governed by private contractual agreements and local laws and practice. If there is no independent law, deed restriction or other legally enforceable requirement that an individual join a HOA, it is not required by HOPA. Additionally, although HOPA would allow under-aged heirs, or minors under the age of 18 years of age to reside in, or visit, housing for persons who are 55 years of age or older, it does not require it. HUD philosophically supports a compassionate community which has provisions allowing some flexibility where the exemption would not be destroyed by that flexibility, but there is no direct legal authority under the Act to require it.

There continues to be confusion concerning what is often referred to as the 80/20 split. HOPA states that the minimum standard to obtain housing for persons who are 55 years of age or older status is that "at least 80%" of the occupied units be occupied by persons 55 years or older. There is no requirement that the remaining 20% of the occupied units be occupied by persons under the age of 55, nor is there a requirement that those units be used only for persons where at least one member of the household is 55 years of age or older. Communities may decline to permit any persons under the age of 55, may require that 100% of the units have at least one occupant who is 55 years of age or older, may permit up to 20% of the occupied units to be occupied by persons who are younger than 55 years of age, or set whatever requirements they wish, as long as "at least 80%" of the occupied units are occupied by one person 55 years of age or older, and so long as such requirements are not inconsistent with the overall intent to be housing for older persons.

The final regulation retains the provision that a unit occupied by a person or persons as a reasonable accommodation to the disability of an occupant need not be counted in meeting the 80% requirements. This provision ensures that a community or facility seeking to authorize the reasonable accommodation for a resident who, because of a disability, requires an attendant, including family members under the age of 18, residing in a unit in order for that person to benefit from the housing will not have its exemption adversely affected by permitting the accommodation. The authority for this provision arises under the Act's requirement that reasonable accommodations be provided to persons with disabilities.

Although occupancy by a person under the age of 55 who inherits a unit or a surviving spouse who is younger than 55 years of age are the original examples cited by Congress in justifying the original 80/20 split, HUD does not consider these to be the only appropriate uses of the flexibility provided by the up to 20% allowed by the exemption, nor are protections for those groups required. HUD believes that the appropriate use of the 20%, if any, is at the discretion of the community or facility and does not intend to impose more specific requirements in this area. For example, a community could allow some percentage of its units, up to 20%, to be made available to persons over the age of *50*, and, as long as the overall intent to be senior housing remained clear, HUD would not have an objection. However, the remaining portion of units not counted for purposes of meeting the 80% requirement may not be segregated within a community or facility.

Some commenters offered opinions concerning the proper nomenclature for senior communities and the consequences of using the "wrong" term. HUD believes that the best practice is to refer to such housing as "Senior Housing" or "A 55 and older community" or "retirement community," and discourages the use of the terms "adult housing" or similar language. While use of adult housing or similar phrases, standing alone, do not destroy the intent requirement of HOPA, they send a clear message which is inconsistent with the intent to be housing for older persons. If a community or facility has clearly shown its intent in other ways, and meets the 80% requirement, then the intent requirement has been met even if the phrase "adult" or similar terminology is occasionally used. However, a community which describes itself as "adult" leaves itself vulnerable to complaints about its eligibility for the exemption, which could result in an investigation or litigation to determine whether the community in fact qualifies for the exemption.

Other questions on the intent requirement concerned whether HUD intended to require that all of the items in § 100.306 be provided and whether the examples of compliance with the intent requirement were mandatory. HUD does not intend to impose any rigid requirements on indicating intent. Section 100.306 only speaks to relevant factors to be considered and the examples simply illustrate what could satisfy the requirement. Intent is judged based on the common understanding of the word and whether the community or facility has established through various means whether they intend to operate housing for persons who are 55 years of age or older.

Other commenters objected to the inclusion of a "municipally zoned area" as a possible type of housing for persons who are 55 years of age or older, while others questioned the use of the terminology of "mobile home park" instead of "manufactured housing". When former Assistant Secretary Roberta Achtenberg conducted public hearings on the "55 and over" rule, HUD learned that there are a large variety of senior housing communities, organized and administered in various ways. HUD attempted to define the possibilities as broadly as possible to include any type of housing which could qualify for the exemption.

On the issue of age verification, commenters had several diverse suggestions. Several commenters urged that only the individual resident should be able to attest to his or her age and that anyone not cooperating with the survey should be considered to be not 55 years or older. It is HUD's position that the test is whether 80% of the occupied units are, in fact, occupied by persons 55 years or older. This need only be documented through reliable survey, census or affidavit, or other documentation, a copy of which should be retained for recordkeeping purposes, and which confirms that the 80% threshold is being met. A self certification of his or her age by an individual will be adequate to meet this standard. An affidavit from someone who knows the age of the occupant(s) and states his/her basis for the knowledge is sufficiently reliable to satisfy the statute. To hold otherwise would effectively allow 21% of a senior community to destroy the exemption by not cooperating with verification procedures.

Other comments concerning verification were that the use of immigration documents should be removed from the list of possible sources of age verification lest it encourage discrimination against legal immigrants. The option remains in the rule since it is only one way of verifying age. HUD does not intend to require any particular documentation be provided as a condition of occupancy, including immigration documentation. If any individual chooses to verify by providing a drivers license or affidavit instead of an immigration document, the verification requirement will be satisfied. A summary of the information gathered in support of the occupancy verification should be retained for confirmation purposes. Copies of supporting information gathered in support of the occupancy verification may be retained in a separate file with limited access, created for the sole purpose of complying with HOPA, and not in general or resident files that may be widely accessible to employees or other residents. The segregated documents may be considered confidential and not generally available for public inspection. HUD, state or local fair housing enforcement agencies, or the Department of Justice may review this documentation during the course of an investigation.

Other commenters questioned the reference to a "census" as a source of verification, noting that the census does not specify individual names but

instead deals with "census tracts" and is often outdated. This is a misunderstanding of HUD's view. HUD was not referring to the United States Decennial Census for verification of occupancy. The reference is to household censuses which are conducted by many cities and towns. The language has been clarified.

Some commenters objected to the "re-survey" of the park every two years as being unduly burdensome, especially if the list is actively updated on an on-going basis. While HUD is sympathetic to those well-managed communities which actively update lists of residents, it does not feel that such communities would be unduly burdened by the update since the information required will be readily available in the files. HUD's experience in this area gives it reason to believe that if surveys are not required to be updated periodically the quality of the recordkeeping will deteriorate and create the opportunity for the excessive litigation Congress sought to prevent. The re-survey does not require that all supporting documents be collected again—only that the community confirm that those persons counted as occupying dwellings for purposes of meeting the 80% requirement are, in fact, still in occupancy.

There were objections to making public information contained in an age survey for fear that confidential information may be obtained by someone attempting to prey on seniors. HUD believes that this is a misinterpretation of the requirement. Only the overall survey summary is required to be available for review, not the supporting documentation. The word "summary" has been added to this section.

Some commenters felt that any affidavit should be signed under the penalty of perjury to ensure the integrity of the process. Communities which are concerned about misrepresentation of the age of occupants are free to require that affidavits from occupants about the ages of persons in their households be signed under the penalty of perjury, just as they are free, consistent with state or local law, to require that applications, leases, and other admission documents be signed under oath, or under penalty of perjury. Statements from third party individuals who have personal knowledge of the age of the occupants and setting forth the basis for such knowledge may be used when occupants decline to provide information verifying age, but such statements must be made under penalty of perjury.

There were three comments concerning the "good faith reliance" exemption from monetary damages. The first questioned whether the exemption covered just housing for persons who are 55 years of age or older or all senior housing exemptions. A review of the language of HOPA indicates the language is applicable whenever the housing for older persons exemption may be claimed. The language has been adjusted accordingly. The second comment concerned whether the term "person" covered only "natural persons" or whether it included business and corporate entities. HUD believes Congress intended the "good faith reliance defense" to be applicable only to natural persons. The legislative history of the provision indicates that Congress intended to protect individual persons, such as individual members of boards of governing homeowners associations and real estate agents relying on information provided to them by operators of senior communities, in enacting this provision. House Report 104–91, at 10, describes this portion of the amendment as being designed to allow a person engaged in the business of residential real estate to show "good faith reliance" unless the person has actual knowledge that a facility or community is *not* eligible for the exemption and describes individual real estate agents as requiring protection in this area. This language indicates that it is natural persons which Congress wished to protect from damages awards in these circumstances.

To the extent that this interpretation may cause concern for corporate publishers which may accept a notice describing a facility or community as senior housing based on the representations of others and without personal knowledge of the actual qualifications for eligibility, HUD has already interpreted section 804(c) of the Act to exclude from liability those entities which publish advertisements regarding senior housing in good faith reliance on the assertions of others. To the extent that there is further publication based on a natural person's good faith reliance on a certification of eligibility for an exemption, HUD foresees no grounds for further liability. In other words, where the source of the information is a natural person who has the written certification described in the final regulation and further publication is based on that information, in the absence of actual knowledge that a particular community or facility is *not* eligible for the exemption, there is no liability for that publication.

The third issue identified by commenters deals with whether a claim of "good faith" requires actual knowledge that the community had certified in writing that it was housing for persons who are 55 years of age or older. A review of the language of the Committee report indicates that the eligibility for the claim of "good faith" relies on the fact that the facility or community "has certified to that person, in writing and on oath or affirmation, that it complies with the requirements" for the exemption. (House Report 104–91 at 10) Therefore, actual knowledge of the certification is required. *Other:* It has become clear that there is confusion about the extent to which the provisions of the Fair Housing Act relating to the housing for older persons exemptions affect statutory eligibility requirements for participation in federally funded housing programs. Neither HOPA nor the Act change the definition of "elderly family" which mandates that a family include the situation where the head, spouse or sole member is age 62 or older. Neither HOPA nor the Act permit a HUD-funded public housing provider to designate a project as being for the elderly without HUD review and approval, even if the project would meet the housing for older persons exemption under the Act. Similarly, HUD-funded housing which is designated for the elderly may not admit households which are not statutorily eligible for the housing (such as limiting admissions to those who are 55 years of age or older rather than the near elderly). Finally, no public housing development funded by HUD may exclude families with children, even if at least 80% of the units are occupied by at least one person who is 55 years of age or older.

II. Findings and Certifications

Executive Order 12866

This rule was reviewed by the Office of Management and Budget (OMB) under Executive Order 12866 on Regulatory Planning and Review, issued by the President on September 30, 1993. OMB determined that this final rule is a "significant regulatory action," as defined in section 3(f) of the Order (although not economically significant, as provided in section 3(f)(1) of the Order). Any changes made in the rule subsequent to its submission to OMB are identified in the docket file, which is available for public inspection as provided under the section of this preamble entitled **ADDRESS.**

Environmental Impact

In accordance with 24 CFR 50.19(c)(3) of the Department's regulations published in a final rule on September 27, 1996 (61 FR 50914), the policy set

forth in this final rule is categorically excluded from the requirements of the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4347) and the authorities cited in 24 CFR 50.4.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official, under section 6(a) of Executive Order 12612, *Federalism*, has determined that the policies contained in this final rule will not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. This rule implements the requirements of HOPA by revising the provisions for "55-or-older" housing found at 24 CFR part 100, subpart E. It effects no changes in the current relationships among the Federal government, the States and their political subdivisions in connection with HUD programs.

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed and approved this final rule, and in so doing certifies that this final rule will not have a significant economic impact on a substantial number of small entities. This rule updates HUD's regulations implementing the "housing for older persons" exemption to the Fair Housing Act. Specifically, the rule implements the statutory amendments made by HOPA. These revisions provide housing facilities and communities with a better understanding of what housing qualifies for the "55-or-older" exemption to the Fair Housing Act's prohibitions against discrimination on the basis of familial status. The final rule will not have any meaningful impact on small entities.

List of Subjects in 24 CFR part 100

Aged, Fair housing, Individuals with disabilities, Mortgages, Reporting and recordkeeping requirements.

Accordingly, 24 CFR part 100 is amended as follows:

PART 100—DISCRIMINATORY CONDUCT UNDER THE FAIR HOUSING ACT

1. The authority citation for 24 CFR part 100 continues to read as follows:

Authority: 42 U.S.C. 3535(d), 3600–3619.

2. Subpart E is amended by revising § 100.304 and by adding §§ 100.305, 100.306, 100.307, and 100.308, to read as follows:

Subpart E—Housing for Older Persons

* * * * *

§ 100.304 Housing for persons who are 55 years of age of older.

(a) The provisions regarding familial status in this part shall not apply to housing intended and operated for persons 55 years of age or older. Housing qualifies for this exemption if:

(1) The alleged violation occurred before December 28, 1995 and the housing community or facility complied with the HUD regulations in effect at the time of the alleged violation; or

(2) The alleged violation occurred on or after December 28, 1995 and the housing community or facility complies with:

(i) Section 807(b)(2)(C) (42 U.S.C. 3607(b)) of the Fair Housing Act as amended; and

(ii) 24 CFR 100.305, 100.306, and 100.307.

(b) For purposes of this subpart, *housing facility or community* means any dwelling or group of dwelling units governed by a common set of rules, regulations or restrictions. A portion or portions of a single building shall not constitute a housing facility or community. Examples of a housing facility or community include, but are not limited to:

(1) A condominium association;

(2) A cooperative;

(3) A property governed by a homeowners' or resident association;

(4) A municipally zoned area;

(5) A leased property under common private ownership;

(6) A mobile home park; and

(7) A manufactured housing community.

(c) For purposes of this subpart, *older person* means a person 55 years of age or older.

§ 100.305 80 percent occupancy.

(a) In order for a housing facility or community to qualify as housing for older persons under § 100.304, at least 80 percent of its occupied units must be occupied by at least one person 55 years of age or older.

(b) For purposes of this subpart, *occupied unit* means:

(1) A dwelling unit that is actually occupied by one or more persons on the date that the exemption is claimed; or

(2) A temporarily vacant unit, if the primary occupant has resided in the unit during the past year and intends to return on a periodic basis.

(c) For purposes of this subpart, *occupied by at least one person 55 years of age or older* means that on the date the exemption for housing designed for persons who are 55 years of age or older is claimed:

(1) At least one occupant of the dwelling unit is 55 years of age or older; or

(2) If the dwelling unit is temporarily vacant, at least one of the occupants immediately prior to the date on which the unit was temporarily vacated was 55 years of age or older.

(d) Newly constructed housing for first occupancy after March 12, 1989 need not comply with the requirements of this section until at least 25 percent of the units are occupied. For purposes of this section, newly constructed housing includes a facility or community that has been wholly unoccupied for at least 90 days prior to re-occupancy due to renovation or rehabilitation.

(e) Housing satisfies the requirements of this section even though:

(1) On September 13, 1988, under 80 percent of the occupied units in the housing facility or community were occupied by at least one person 55 years of age or older, provided that at least 80 percent of the units occupied by new occupants after September 13, 1988 are occupied by at least one person 55 years of age or older.

(2) There are unoccupied units, provided that at least 80 percent of the occupied units are occupied by at least one person 55 years of age or older.

(3) There are units occupied by employees of the housing facility or community (and family members residing in the same unit) who are under 55 years of age, provided the employees perform substantial duties related to the management or maintenance of the facility or community.

(4) There are units occupied by persons who are necessary to provide a reasonable accommodation to disabled residents as required by § 100.204 and who are under the age of 55.

(5) For a period expiring one year from the effective date of this final regulation, there are insufficient units occupied by at least one person 55 years of age or older, but the housing facility or community, at the time the exemption is asserted:

(i) Has reserved all unoccupied units for occupancy by at least one person 55 years of age or older until at least 80 percent of the units are occupied by at least one person who is 55 years of age or older; and

(ii) Meets the requirements of §§ 100.304, 100.306, and 100.307.

(f) For purposes of the transition provision described in § 100.305(e)(5), a housing facility or community may not evict, refuse to renew leases, or

otherwise penalize families with children who reside in the facility or community in order to achieve occupancy of at least 80 percent of the occupied units by at least one person 55 years of age or older.

(g) Where application of the 80 percent rule results in a fraction of a unit, that unit shall be considered to be included in the units that must be occupied by at least one person 55 years of age or older.

(h) Each housing facility or community may determine the age restriction, if any, for units that are not occupied by at least one person 55 years of age or older, so long as the housing facility or community complies with the provisions of § 100.306.

§ 100.306 Intent to operate as housing designed for persons who are 55 years of age or older.

(a) In order for a housing facility or community to qualify as housing designed for persons who are 55 years of age or older, it must publish and adhere to policies and procedures that demonstrate its intent to operate as housing for persons 55 years of age or older. The following factors, among others, are considered relevant in determining whether the housing facility or community has complied with this requirement:

(1) The manner in which the housing facility or community is described to prospective residents;

(2) Any advertising designed to attract prospective residents;

(3) Lease provisions;

(4) Written rules, regulations, covenants, deed or other restrictions;

(5) The maintenance and consistent application of relevant procedures;

(6) Actual practices of the housing facility or community; and

(7) Public posting in common areas of statements describing the facility or community as housing for persons 55 years of age or older.

(b) Phrases such as "adult living", "adult community", or similar statements in any written advertisement or prospectus are not consistent with the intent that the housing facility or community intends to operate as housing for persons 55 years of age or older.

(c) If there is language in deed or other community or facility documents which is inconsistent with the intent to provide housing for persons who are 55 years of age or older housing, HUD shall consider documented evidence of a good faith attempt to remove such language in determining whether the housing facility or community complies with the requirements of this section in conjunction with other evidence of intent.

(d) A housing facility or community may allow occupancy by families with children as long as it meets the requirements of §§ 100.305 and 100.306(a).

(Approved by the Office of Management and Budget under control number 2529–0046)

§ 100.307 Verification of occupancy.

(a) In order for a housing facility or community to qualify as housing for persons 55 years of age or older, it must be able to produce, in response to a complaint filed under this title, verification of compliance with § 100.305 through reliable surveys and affidavits.

(b) A facility or community shall, within 180 days of the effective date of this rule, develop procedures for routinely determining the occupancy of each unit, including the identification of whether at least one occupant of each unit is 55 years of age or older. Such procedures may be part of a normal leasing or purchasing arrangement.

(c) The procedures described in paragraph (b) of this section must provide for regular updates, through surveys or other means, of the initial information supplied by the occupants of the housing facility or community. Such updates must take place at least once every two years. A survey may include information regarding whether any units are occupied by persons described in paragraphs (e)(1), (e)(3), and (e)(4) of § 100.305.

(d) Any of the following documents are considered reliable documentation of the age of the occupants of the housing facility or community:

(1) Driver's license;

(2) Birth certificate;

(3) Passport;

(4) Immigration card;

(5) Military identification;

(6) Any other state, local, national, or international official documents containing a birth date of comparable reliability; or

(7) A certification in a lease, application, affidavit, or other document signed by any member of the household age 18 or older asserting that at least one person in the unit is 55 years of age or older.

(e) A facility or community shall consider any one of the forms of verification identified above as adequate for verification of age, provided that it contains specific information about current age or date of birth.

(f) The housing facility or community must establish and maintain appropriate policies to require that occupants comply with the age verification procedures required by this section.

(g) If the occupants of a particular dwelling unit refuse to comply with the age verification procedures, the housing facility or community may, if it has sufficient evidence, consider the unit to be occupied by at least one person 55 years of age or older. Such evidence may include:

(1) Government records or documents, such as a local household census;

(2) Prior forms or applications; or

(3) A statement from an individual who has personal knowledge of the age of the occupants. The individual's statement must set forth the basis for such knowledge and be signed under the penalty of perjury.

(h) Surveys and verification procedures which comply with the requirements of this section shall be admissible in administrative and judicial proceedings for the purpose of verifying occupancy.

(i) A summary of occupancy surveys shall be available for inspection upon reasonable notice and request by any person.

(Approved by the Office of Management and Budget under control number 2529–0046)

§ 100.308 Good faith defense against civil money damages.

(a) A person shall not be held personally liable for monetary damages for discriminating on the basis of familial status, if the person acted with the good faith belief that the housing facility or community qualified for a housing for older persons exemption under this subpart.

(b)(1) A person claiming the good faith belief defense must have actual knowledge that the housing facility or community has, through an authorized representative, asserted in writing that it qualifies for a housing for older persons exemption.

(2) Before the date on which the discrimination is claimed to have occurred, a community or facility, through its authorized representatives, must certify, in writing and under oath or affirmation, to the person subsequently claiming the defense that it complies with the requirements for such an exemption as housing for persons 55 years of age or older in order for such person to claim the defense.

(3) For purposes of this section, an authorized representative of a housing facility or community means the individual, committee, management company, owner, or other entity having the responsibility for adherence to the requirements established by this subpart.

(4) For purposes of this section, a person means a natural person.

(5) A person shall not be entitled to the good faith defense if the person has actual knowledge that the housing facility or community does not, or will not, qualify as housing for persons 55 years of age or older. Such a person will be ineligible for the good faith defense regardless of whether the person received the written assurance described in paragraph (b) of this section.

Dated: March 25, 1999.

Eva M. Plaza,

Assistant Secretary for Fair Housing and Equal Opportunity.

Note: This Appendix will not be Codified in Title 24 of the CFR.

Appendix

Examples of Applications of HUD'S Regulations Governing the Exemption for Housing for Persons 55 Years of Age or Older to the Fair Housing Act

Sections

1. Purpose.
2. 80 percent occupancy.
3. Intent to operate as housing for persons who are 55 years of age or older.
4. Verification of occupancy.
5. Future revisions to this appendix.

1. Purpose.

The Fair Housing Act (Title VIII of the Civil Rights Act of 1968, as amended, 42 U.S.C. 3601–3619) (the Act) exempts "housing for older persons" from the prohibitions against discrimination because of familial status. Section 807(b)(2)(C) of the Act exempts housing intended and operated for occupancy by persons 55 years of age or older that satisfies certain criteria. HUD has implemented the "housing for older persons" exemption at 24 CFR part 100, subpart E. Specifically, §§ 100.304, 100.305, 100.306, and 100.307 set forth the requirements for housing seeking to qualify for the exemption. The purpose of this appendix is to provide guidance to housing facilities or communities in applying these HUD requirements.

2. 80 Percent Occupancy.

Section 100.305 provides that in order for a housing facility or community to qualify for the exemption, at least 80 percent of its occupied units must be occupied by at least one person 55 years of age or older. This occupancy requirement must be met at the time of any alleged violation of the Act. Paragraph (f) of § 100.305 states that where application of the 80 percent rule results in a fraction of a unit, that unit shall be considered to be included in the units that must be occupied by at least one person 55 years of age or older.

Example: A community or facility contains 63 occupied units. Eighty percent of 63 units equals 50.4. Under § 100.305(d), 51 units would require occupancy by at least one person 55 years of age or older to qualify as 55 and older housing.

Section 100.305 also sets forth the other requirements a housing facility or community must follow in calculating occupancy. The following examples illustrate these requirements:

Example 1:

Buena Vista is a condominium association of 120 units. On September 13, 1988, twenty (20) of the occupied units are not occupied by at least one person 55 years of age or older.

On April 1, 1998, Buena Vista declares itself to be housing for persons 55 years of age or older. On that date:

(1) The twenty (20) persons described above are still residing at Buena Vista;

(2) Ten (10) units of the total 120 units are unoccupied;

(3) One (1) of the units is occupied by the association's maintenance supervisor; and

(4) Two (2) units are occupied only by live-in health aides who provide reasonable accommodations to residents with disabilities and who are under the age of 55.

How many of the occupied units must be occupied by at least one person 55 years of age or older in order for Buena Vista to qualify as 55-or-older housing?

Under § 100.305(e), Buena Vista would calculate its compliance with the 80 percent occupancy requirement by subtracting the following units from the total 120 units:

(1) The 20 units not occupied by at least one person 55 years of age or older on September 13, 1988 (See § 100.305(e)(1));

(2) The ten (10) unoccupied units (See § 100.305(e)(2));

(3) The one (1) unit occupied by the maintenance person (See § 100.305(e)(3)); and

(4) The two (2) units occupied by the health aides (See 42 U.S.C. 3607 (b)(3)(A) and 42 § 100.305(e)(4)).

Subtracting these 33 units from the total of 120 units leaves 87 units. At least 80 percent of these 87 units must be occupied by at least one person 55 years of age or older. Eighty percent of 87 equals 69.6. Due to § 100.305(d), 70 units must be occupied by at least one person 55 years of age or older. This example assumes that the community also meets the requirements of §§ 100.306 and 100.307.

Example 2:

Topaz House is a cooperative of 100 units. On January 20, 1998, Topaz House announces its intent to be 55-or-older housing and publishes policies and procedures sufficient to satisfy § 100.306. On that date, of the 100 total units:

(1) Sixty (60) of the occupied units are occupied by at least one person 55 years of age or older;

(2) Thirty (30) of the occupied units do not have occupants 55 years of age or older; and

(3) Ten (10) units are unoccupied.

Since 60 out of the 90 occupied units are occupied by at least one person 55 years of age or older, the Topaz House only has 67 percent of its occupied units occupied by at least one person 55 years of age or older.

Under § 100.305(e)(5), Topaz House may still qualify for the 55-or-older exemption if, during a period which is one year from the effective date of this regulation, it:

(1) Reserves all unoccupied units for occupancy by at least one person 55 years of age or older until at least 80 percent of the units are occupied by at least one person who is 55 years of age or older; and

(2) Meets the requirements of §§ 100.304, 100.305, 100.306, and 100.307 and

(3) Within the one year period achieves occupancy of at least 80% of its occupied units by at least one person who is 55 years of age or older.

There is no requirement that Topaz House take any action concerning the residents under 55 years of age who are occupying units on the date the building declares its intent to be 55-or-older housing. Topaz may not evict, or terminate the leases of households containing children under the age of 18, in order to qualify for the exemption.

Example 3:

Snowbird City is a mobile home community in Texas with 100 units. Snowbird City complies with all other requirements of 55-or-older housing, but is uncertain of its compliance with the 80 percent occupancy rule.

Fifty out of the 100 units are occupied year round. Of these fifty units, 12 units are not occupied by at least one person 55 years of age or older. Of the remaining 50 units, 5 are unoccupied and offered for sale, and the remaining 45 are occupied by at least one person 55 years of age or older each winter on a routine and reoccurring basis.

If a complaint of familial status discrimination is filed in December, the community meets the 80 percent occupancy requirement because 83 out of the 95 occupied units (87 percent), are occupied by at least one person 55 years of age or older. If the complaint is filed in July, Snowbird City still meets the requirement. Under § 100.305(b), a temporarily vacant unit is considered occupied by a person 55 years of age or older if:

(1) The primary occupant has resided in the unit during the past year; and

(2) The occupant intends to return on a periodic basis.

Example 4:

The King Philip Senior Community is a newly renovated building originally built in 1952. It has been vacant for over one year while extensive renovations were completed. The building contains 200 units. The King Philip Senior Community is intended to be operated as a 55-or-older community.

Under § 100.305(d), newly constructed housing need not comply with the 80 percent occupancy requirement until 25 percent of the total units are occupied. For purposes of § 100.305(d), newly constructed housing includes housing that has been unoccupied for at least 90 days due to renovation or rehabilitation. Accordingly, the King Philip Senior Community need not comply with the 80 percent occupancy requirement until 50 out of its 200 units (25 percent) are occupied. Subsequent to occupancy of the 50th unit, however, the building will have to satisfy the 80 percent occupancy rule in order to qualify as 55-or-older housing.

3. Intent to operate as housing for persons who are 55 years of age or older.

_ Section 100.306 provides that in order for a housing facility or community to qualify as housing for persons 55 years of age or older, it must publish and adhere to policies and procedures that demonstrate its intent to operate as housing for persons 55 years of age or older. Section 100.306 also details the factors HUD will utilize to determine whether a housing facility or community has met this intent requirement. The following are examples of housing facilities and communities which satisfy the intent requirement described in § 100.306:

Example 1:

A mobile home park which takes the following actions satisfies the intent requirement:

(1) Posts a sign indicating that the park is 55-or-older housing;

(2) Includes lease provisions stating that the park intends to operate as 55-or-older housing; and _

(3) Has provided local realtors with copies of the lease provisions.

Example 2:

An area zoned by a unit of local government as "senior housing" satisfies the intent requirement if:

(1) Zoning maps containing the "senior housing" designation are available to the public;

(2) Literature distributed by the area describes it as "senior housing";

(3) The "senior housing" designation is recorded in accordance with local property recording statutes; and

(4) Zoning requirements include the 55-or-older requirement or a similar provision.

Example 3:

A condominium association satisfies the intent requirement if it has:

(1) Adopted, through its rules and regulations, restrictions on the occupancy of units consistent with HUD's regulations governing 55-or-older housing at 24 CFR part 100, subpart E;

(2) Has distributed copies of the rules to all occupants; and

(3) Has notified local realtors of the restrictions.

The following is an example of a housing facility which has failed to satisfy the intent requirement described in § 100.306:

Example 4:

A homeowners association has failed to meet the intent requirement if it has Covenants, Conditions and Restrictions which refer to an "adult community," has posted a sign stating "A 40 and over community" and has restricted visiting children to a maximum of two weeks, but contains no similar restriction for visiting adults.

4. Verification of occupancy.

Section 100.307 provides that in order for a housing facility or community to qualify as 55-or-older housing, it must be able to produce, in response to a complaint alleging a violation of the Act, verification of compliance with § 100.305 through reliable surveys and affidavits. Paragraph (d)(7) of § 100.307 includes self-certifications in a list of documents considered reliable documentation of the age of occupants. The self-certification may be included in a lease or other document, and must be signed by an adult member of the household asserting that at least one person in the unit is 55 years of age or older. The following examples provide acceptable provisions to demonstrate a self-certification process:

Example 1:

All new leases, new purchase agreements, or new applications contain a provision directly above the signatory line for lessees, asserting that at least one occupant of the dwelling will be 55 years of age or older. In addition, the community surveys all current residents for their occupancy status in compliance with the 55-or-older requirements.

Example 2: Sample certification

I, (name), am 18 years of age or older and a member of the household that resides at (housing facility or community), (unit number or designation). I hereby certify that I have personal knowledge of the ages of the occupants of this household and that at least one occupant is 55 years of age or older.

Paragraph (e) of § 100.307 requires that the housing facility or community establish appropriate policies to require that all occupants comply with the age verification procedures. The following examples illustrate acceptable policies:

Example 1:

A condominium association establishes a rule that the board of directors must approve all new occupants. One criteria for approval is that new occupants of each unit inform the condominium association whether at least one person occupying the unit is 55 years of age or older.

Example 2:

A homeowners association amends its Covenants, Conditions and Restrictions, and records them at the appropriate government recording office. The amendments require applicants to state whether at least one occupant is 55 years of age or older.

Example 3:

The owner of a mobile home park where the residents own the coach but rent the land requires a statement of whether at least one occupant is 55 years of age or older before any sublease or new rental.

5. Future revisions to this appendix.

HUD may update or revise this appendix as necessary.

[FR Doc. 99–8167 Filed 4–1–99; 8:45 am]

BILLING CODE 4210–28–P

Reader Aids

Federal Register

Vol. 64, No. 63

Friday, April 2, 1999

CUSTOMER SERVICE AND INFORMATION

Federal Register/Code of Federal Regulations	
General Information, indexes and other finding aids	202–523–5227
Laws	523–5227
Presidential Documents	
Executive orders and proclamations	523–5227
The United States Government Manual	523–5227
Other Services	
Electronic and on-line services (voice)	523–4534
Privacy Act Compilation	523–3187
Public Laws Update Service (numbers, dates, etc.)	523–6641
TTY for the deaf-and-hard-of-hearing	523–5229

ELECTRONIC RESEARCH

World Wide Web

Full text of the daily Federal Register, CFR and other publications:

http://www.access.gpo.gov/nara

Federal Register information and research tools, including Public Inspection List, indexes, and links to GPO Access:

http://www.nara.gov/fedreg

E-mail

PENS (Public Law Electronic Notification Service) is an E-mail service that delivers information about recently enacted Public Laws. To subscribe, send E-mail to

listproc@lucky.fed.gov

with the text message:

subscribe publaws-l <firstname> <lastname>

Use listproc@lucky.fed.gov only to subscribe or unsubscribe to PENS. We cannot respond to specific inquiries at that address.

Reference questions. Send questions and comments about the Federal Register system to:

info@fedreg.nara.gov

The Federal Register staff cannot interpret specific documents or regulations.

FEDERAL REGISTER PAGES AND DATES, APRIL

15633–15914..... 1
15915–16332..... 2

CFR PARTS AFFECTED DURING APRIL

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

5 CFR

532.....15915
890.....15633
1200.....15916

7 CFR

301.....15916

Proposed Rules:

28.....15937
905.....15634
944.....15634
1000.....16026
1001.....16026
1002.....16026
1004.....16026
1005.....16026
1006.....16026
1007.....16026
1012.....16026
1013.....16026
1030.....16026
1032.....16026
1033.....16026
1036.....16026
1040.....16026
1044.....16026
1046.....16026
1049.....16026
1050.....16026
1064.....16026
1065.....16026
1068.....16026
1076.....16026
1079.....16026
1106.....16026
1124.....16026
1126.....16026
1131.....16026
1134.....16026
1135.....16026
1137.....16026
1138.....16026
1139.....16026

9 CFR

1.....15918
3.....15918

Proposed Rules:

201.....15938

10 CFR

2.....15636, 15920
10.....15636
11.....15636
25.....15636
95.....15636

Proposed Rules:

170.....15876
171.....15876

12 CFR

330.....15653

13 CFR

Proposed Rules:

120.....15942
121.....15708

14 CFR

39.....15657, 15659, 15661, 15669, 15920
71.....15673, 15674, 15675, 15676, 15678, 15679, 16024
91.....15912

Proposed Rules:

71.....15708, 16024
119.....16298
121.....16298
129.....16298
135.....16298
183.....16298

17 CFR

275.....15680
279.....15680

19 CFR

Proposed Rules:

146.....15873

21 CFR

510.....15683
520.....15683, 15684
522.....15683, 15685
558.....15683

Proposed Rules:

1.....15944
101.....15948

22 CFR

Ch. II.....15685
Ch. VI.....15686

24 CFR

100.....16324

26 CFR

1.....15686, 15687
7.....15687
31.....15687
602.....15687, 15688, 15873

30 CFR

Proposed Rules:

206.....15949

33 CFR

Proposed Rules:

175.....15709
177.....15709
179.....15709
181.....15709
183.....15709

40 CFR

52.....15688, 15922
300.....15926
Proposed Rules:
52.....15711, 15949

41 CFR

60-250.....15690
60-999.....15690

45 CFR

Proposed Rules:
10.....15709
15.....15709
24.....15709
25.....15709
26.....15709
28.....15709
70.....15709
169.....15709
175.....15709

47 CFR

Proposed Rules:
73.....15712, 15713, 15714, 15715

49 CFR

195.....15926

50 CFR

17.....15691
648.....15704

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT APRIL 2, 1999

AGRICULTURE DEPARTMENT
Animal and Plant Health Inspection Service
Animal welfare:
  Marine mammals—
    Swim-with-the-dolphin interactive programs; published 4-2-99
ENVIRONMENTAL PROTECTION AGENCY
Air programs:
  Stratospheric ozone protrection—
    Ozone-depleting substances; substitutes list; published 3-3-99
Superfund program:
  National oil and hazardous substances contingency plan—
    National priorities list update; published 4-2-99
MERIT SYSTEMS PROTECTION BOARD
Organization, functions, and authority delegations:
  Human resources management functions; published 4-2-99
PERSONNEL MANAGEMENT OFFICE
Prevailing rate systems; published 4-2-99
TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airworthiness directives:
  British Aerospace; published 2-22-99¶

RULES GOING INTO EFFECT APRIL 4, 1999

POSTAL SERVICE
International Mail Manual:
  International priority airmail service; postage rates and service conditions changes; published 3-3-99

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT
Animal and Plant Health Inspection Service
Plant-related quarantine, domestic:
  Karnal bunt disease—
    Regulated areas reclassification; comments due by 4-8-99; published 3-9-99
AGRICULTURE DEPARTMENT
Federal Crop Insurance Corporation
Crop insurance regulations:
  Onions; comments due by 4-5-99; published 2-18-99
AGRICULTURE DEPARTMENT
Food Safety and Inspection Service
Meat and poultry inspection:
  Inspection services; fee increase; comments due by 4-5-99; published 3-4-99
COMMERCE DEPARTMENT
Economic Development Administration
Economic Development Reform Act of 1998; implementation; comments due by 4-5-99; published 2-3-99
COMMERCE DEPARTMENT
Export Administration Bureau
Export licensing:
  Commerce control list—
    Missile technology controls changes; comments due by 4-9-99; published 2-8-99
COMMERCE DEPARTMENT
International Trade Administration
North American Free Trade Agreement (NAFTA); binational panel reviews:
  Circular welded non-alloy steel pipe and tube from—
    Mexico; comments due by 4-5-99; published 1-6-99
COMMERCE DEPARTMENT
National Oceanic and Atmospheric Administration
Fishery conservation and management:
  West Coast States and Western Pacific fisheries—
    West Coast salmon; comments due by 4-5-99; published 3-4-99
COMMODITY FUTURES TRADING COMMISSION
Reporting requirements:
  Large trader reports; reporting levels changes; comments due by 4-5-99; published 2-3-99
CORPORATION FOR NATIONAL AND COMMUNITY SERVICE
Privacy Act; implementation; comments due by 4-5-99; published 3-5-99
ENERGY DEPARTMENT
Federal Energy Regulatory Commission
Electric utilities (Federal Power Act):
  Open access same-time information systems (OASIS) and standards of conduct; implementation
  Uniform business practices; comments due by 4-5-99; published 2-3-99
ENVIRONMENTAL PROTECTION AGENCY
Air pollutants, hazardous; national emission standards:
  Polymer and resin production facilities (Groups I and IV) and volatile organic compound (VOC) emissions from polymer manufacturing industry; comments due by 4-8-99; published 3-9-99
  Polymer and resin production facilities (Groups I and IV) and volatile organic compound (VOC) emissions from polymer manufacturing industry; comments due by 4-8-99; published 3-9-99
Air pollution control; new motor vehicles and engines:
  New nonroad spark-ignition engines at or below 19 kilowatts; phase 2 emission standards; comments due by 4-5-99; published 2-3-99
Air quality implementation plans; approval and promulgation; various States:
  Connecticut; comments due by 4-9-99; published 3-10-99
Air quality implementation plans; √A√approval and promulgation; various States; air quality planning purposes; designation of areas:
  Colorado; comments due by 4-9-99; published 3-10-99
  Connecticut; comments due by 4-9-99; published 3-10-99
Hazardous waste:
  Identification and listing—
    Exclusions; comments due by 4-5-99; published 2-19-99
Superfund program:
  Toxic chemical release reporting; community-right-to-know—
    Persistent bioaccumulative toxic (PBT) chemicals; reporting thresholds lowered, etc.; comments due by 4-7-99; published 3-1-99
Water programs:
  Pollutants analysis test procedures; guidelines—
    Mercury; measurement method; comments due by 4-5-99; published 3-5-99
FARM CREDIT ADMINISTRATION
Freedom of Information Act; implementation; comments due by 4-7-99; published 3-8-99
FEDERAL COMMUNICATIONS COMMISSION
Common carrier services:
  Access charges—
    Primary lines; definition; comments due by 4-9-99; published 4-5-99
Radio services, special:
  Personal radio services—
    Medical implant communications service in 402-405 MHz band; establishment; comments due by 4-9-99; published 3-3-99
Radio stations; table of assignments:
  California; comments due by 4-5-99; published 2-23-99
  Colorado; comments due by 4-5-99; published 2-23-99
  Illinois; comments due by 4-5-99; published 2-23-99
  Iowa; comments due by 4-5-99; published 2-23-99
  Kansas; comments due by 4-5-99; published 2-23-99
  Kentucky; comments due by 4-5-99; published 2-23-99
  Montana; comments due by 4-5-99; published 2-23-99
  Pennsylvania; comments due by 4-5-99; published 2-23-99
  Texas; comments due by 4-5-99; published 2-23-99
  West Virginia; comments due by 4-5-99; published 2-23-99
  Wyoming; comments due by 4-5-99; published 2-23-99
FEDERAL ELECTION COMMISSION
Freedom of Information Act; implementation; comments due by 4-5-99; published 3-4-99
HEALTH AND HUMAN SERVICES DEPARTMENT
Children and Families Administration
Head Start Program:

Authorization of use of grant funds to finance construction and major renovation of facilities; comments due by 4-9-99; published 2-8-99

HEALTH AND HUMAN SERVICES DEPARTMENT
Food and Drug Administration
Food for human consumption:
Food labeling—
Dietary supplements; use of health claims based on authoritative statements; comments due by 4-6-99; published 1-21-99
Medical devices:
External penile rigidity devices; proposed classification; comments due by 4-5-99; published 1-4-99

INTERIOR DEPARTMENT
Land Management Bureau
Minerals management:
Oil and gas leasing—
Federal oil and gas resources; protection against drainage by operations on nearby lands resulting in lower royalties from Federal leases; correction; comments due by 4-5-99; published 1-13-99

INTERIOR DEPARTMENT
Surface Mining Reclamation and Enforcement Office
Permanent program and abandoned mine land reclamation plan submissions:
Indiana; comments due by 4-9-99; published 2-8-99

LEGAL SERVICES CORPORATION
Audit services:
Debarment, suspension, and removal of recipient auditors; comments due by 4-6-99; published 2-5-99

POSTAL SERVICE
Domestic Mail Manual:
Flat-size periodicals and standard mail; packaging material standards; comments due by 4-8-99; published 3-9-99

SECURITIES AND EXCHANGE COMMISSION
Securities:
Publication or submission of quotations without specified information; comments due by 4-7-99; published 3-8-99
Securities offerings, regulatory structure; modernization and clarification; comments due by 4-5-99; published 12-4-98
Takeovers and security holder communications; regulation modernization; comments due by 4-5-99; published 12-4-98

TRANSPORTATION DEPARTMENT
Disadvantaged business enterprise participation in DOT financial assistance programs; comments due by 4-5-99; published 2-2-99

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airworthiness directives:
Allison Engine Co., Inc.; comments due by 4-5-99; published 2-4-99
Boeing; comments due by 4-5-99; published 2-4-99
McDonnell Douglas; comments due by 4-8-99; published 2-22-99
Raytheon; comments due by 4-8-99; published 2-5-99
Textron Lycoming; comments due by 4-5-99; published 2-3-99
Class E airspace; comments due by 4-9-99; published 3-10-99

TRANSPORTATION DEPARTMENT
National Highway Traffic Safety Administration
American Automobile Labeling Act; implementation:
Motor vehicle content labeling; domestic and foreign parts content information; comments due by 4-9-99; published 2-8-99
Motor vehicle safety standards:
Air brake systems—
Air brake standard rulemaking petition; partial grant/partial denial; comments due by 4-5-99; published 2-3-99

TREASURY DEPARTMENT
Fiscal Service
Financial management services:
Federal payments by electronic funds transfer; access to accounts at financial institutions through payment service providers; comments due by 4-8-99; published 1-8-99

TREASURY DEPARTMENT
Internal Revenue Service
Income taxes:
Education tax credits; Hope scholarship credit and lifetime learning credit; guidance; comments due by 4-6-99; published 1-6-99
Fast-pay stock; recharacterizing financing arrangements; comments due by 4-6-99; published 1-6-99

TREASURY DEPARTMENT
Thrift Supervision Office
Regulated activities:
Exempt savings and loan holding companies and grandfathered activities; comments due by 4-9-99; published 2-8-99

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–523–6641. This list is also available online at http://www.nara.gov/fedreg.

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at http://www.access.gpo.gov/nara/index.html. Some laws may not yet be available.

S. 643/P.L. 106–6

Interim Federal Aviation Administration Authorization Act (Mar. 31, 1999; 113 Stat. 10)

Last List April 1, 1999.

Public Laws Electronic Notification Service (PENS)

PENS is a free electronic mail notification service of newly enacted public laws. To subscribe, send E-mail to **listproc@lucky.fed.gov** with the text message:

subscribe PUBLAWS-L Your Name.

Note: This service is strictly for E-mail notification of new public laws. The text of laws is not available through this service. **PENS** cannot respond to specific inquiries sent to this address.

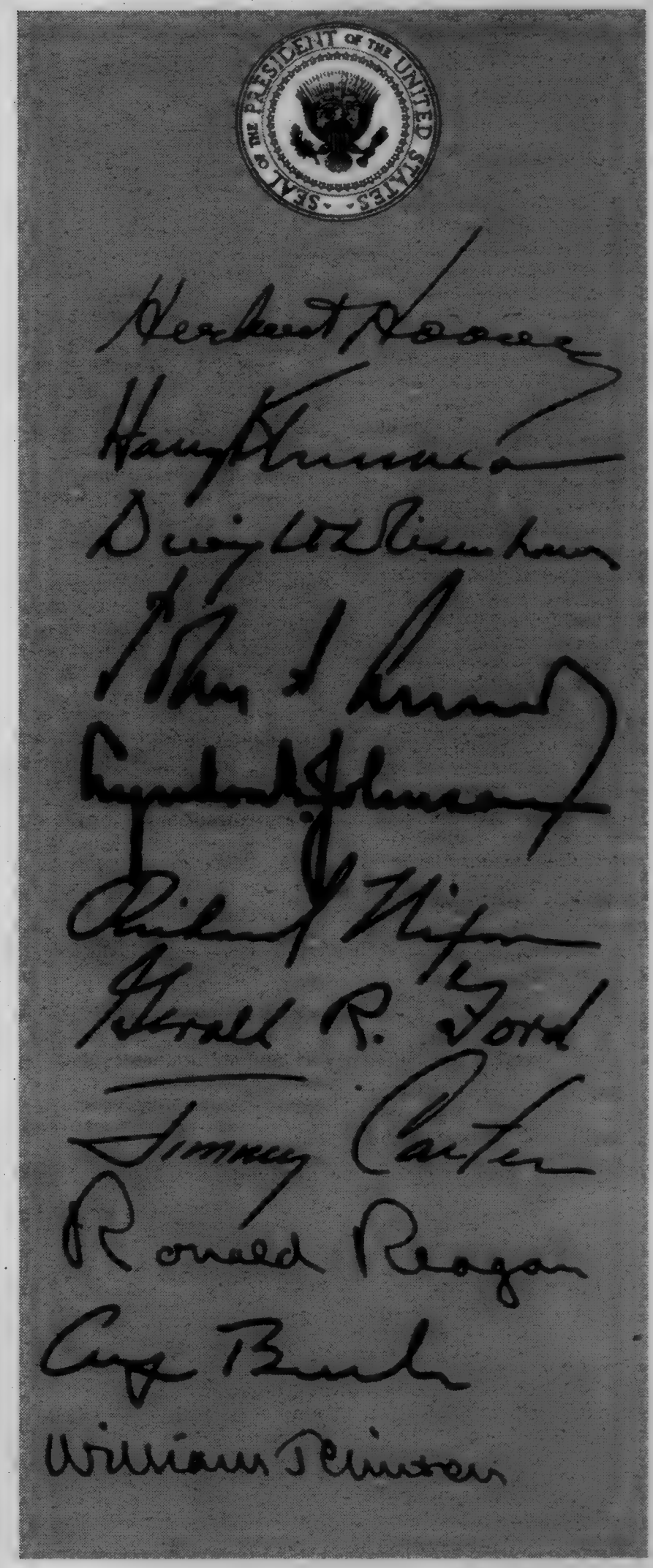

Public Papers of the Presidents of the United States

William J. Clinton

1993 (Book I)	**$51.00**
1993 (Book II)	**$51.00**
1994 (Book I)	**$56.00**
1994 (Book II)	**$52.00**
1995 (Book I)	**$60.00**
1995 (Book II)	**$65.00**
1996 (Book I)	**$66.00**
1996 (Book II)	**$72.00**
1997 (Book I)	**$69.00**

Published by the Office of the Federal Register,
National Archives and Records Administration

Mail order to:
Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250–7954

(Rev. 3/3/99)

VOL
64
ISS
63
AP
2
1999
UMI

The authentic text behind the news . . .

The Weekly Compilation of **Presidential Documents**

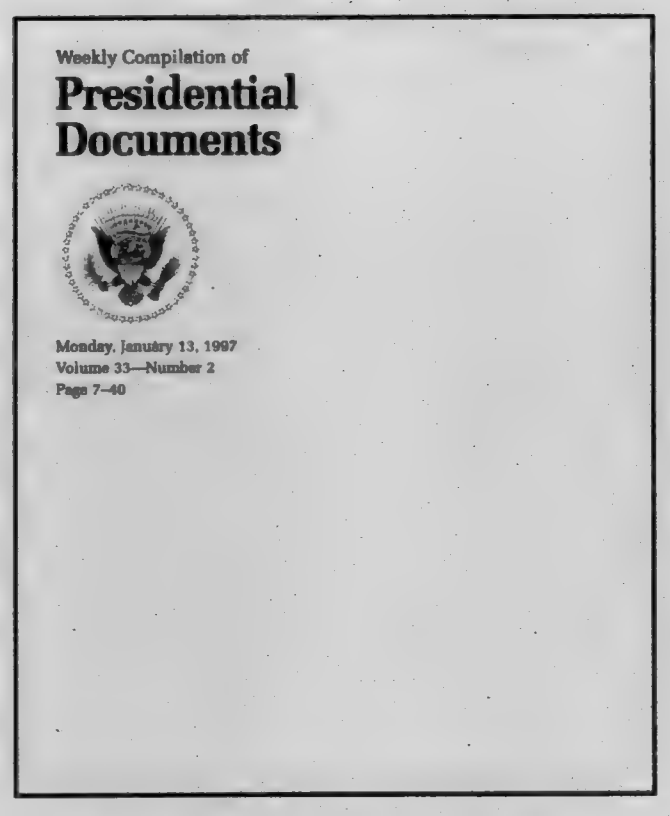

This unique service provides up-to-date information on Presidential policies and announcements. It contains the full text of the President's public speeches, statements, messages to Congress, news conferences, and other Presidential materials released by the White House.

The Weekly Compilation carries a Monday dateline and covers materials released during the preceding week. Each issue includes a Table of Contents, lists of acts approved by the President, nominations submitted to the Senate, a checklist of White House press releases, and a digest of other Presidential activities and White House announcements. Indexes are published quarterly.

Published by the Office of the Federal Register, National Archives and Records Administration.

Superintendent of Documents **Subscription** Order Form

Charge your order. It's Easy! MasterCard VISA

To fax your orders (202) 512–2250
Phone your orders (202) 512–1800

Order Processing Code:
*** 5420**

☐ **YES**, please enter _____ one year subscriptions for the **Weekly Compilation of Presidential Documents** (PD) so I can keep up to date on Presidential activities.

☐ $137.00 First Class Mail ☐ $80.00 Regular Mail

The total cost of my order is $ _____. **Price includes regular domestic postage and handling** and is subject to change. International customers please add 25%.

Company or personal name (Please type or print)

Additional address/attention line

Street address

City, State, ZIP code

Daytime phone including area code

Purchase order number (optional)

May we make your name/address available to other mailers? YES ☐ NO ☐

Please Choose Method of Payment:

☐ Check Payable to the Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐☐ – ☐
☐ VISA ☐ MasterCard Account
☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

☐☐☐☐ (Credit card expiration date)

Thank you for your order!

Authorizing signature 11/3

Mail To: Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250–7954

al
e
are

of the
al

VISA

512–2250
512–1800

) so I can

change.

uments
☐ – ☐

☐☐☐

k you for
ur order!

11/3

-7954

VOL
64
ISS
63
AP
2
1999
UMI

Printed on recycled paper

VOL
64
ISS
64
AP
5
1999
UMI

4-5-99
Vol. 64

United S
Governm
Printing
SUPERINTEN
OF DOCUME
Washington, D

OFFICIAL BU
Penalty for priv

UMI

THE PAPER AND INK USED IN THE ORIGINAL PUBLICATION MAY AFFECT THE QUALITY OF THE MICROFORM EDITION.

4–5–99
Vol. 64 No. 64

federal register

Monday
April 5, 1999

United States
Government
Printing Office
SUPERINTENDENT
OF DOCUMENTS
Washington, DC 20402

OFFICIAL BUSINESS
Penalty for private use, $300

PERIODICALS
Postage and Fees Paid
U.S. Government Printing Office
(ISSN 0097–6326)

**********3-DIGIT 481
A FR UMI 346U DEC 99 R
UMI
PERIODICALS CHECK IN
PO BOX 1346
ANN ARBOR MI 48106

VOL
64
ISS
64
AP
5
1999
UMI

4-5-99
Vol. 64
Pages 16

4–5–99
Vol. 64 No. 64
Pages 16333–16600

federal register

Monday
April 5, 1999

Briefings on how to use the Federal Register
For information on briefings in Washington, DC, see announcement on the inside cover of this issue.

The **FEDERAL REGISTER** is published daily, Monday through Friday, except official holidays, by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). The Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 is the exclusive distributor of the official edition.

The **Federal Register** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders, Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress, and other Federal agency documents of public interest.

Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless the issuing agency requests earlier filing. For a list of documents currently on file for public inspection, see http://www.nara.gov/fedreg.

The seal of the National Archives and Records Administration authenticates the Federal Register as the official serial publication established under the Federal Register Act. Under 44 U.S.C. 1507, the contents of the **Federal Register** shall be judicially noticed.

The **Federal Register** is published in paper and on 24x microfiche. It is also available online at no charge as one of the databases on GPO Access, a service of the U.S. Government Printing Office.

The online edition of the **Federal Register** is issued under the authority of the Administrative Committee of the Federal Register as the official legal equivalent of the paper and microfiche editions (44 U.S.C. 4101 and 1 CFR 5.10). It is updated by 6 a.m. each day the **Federal Register** is published and it includes both text and graphics from Volume 59, Number 1 (January 2, 1994) forward.

GPO Access users can choose to retrieve online **Federal Register** documents as TEXT (ASCII text, graphics omitted), PDF (Adobe Portable Document Format, including full text and all graphics), or SUMMARY (abbreviated text) files. Users should carefully check retrieved material to ensure that documents were properly downloaded.

On the World Wide Web, connect to the **Federal Register** at http://www.access.gpo.gov/nara. Those without World Wide Web access can also connect with a local WAIS client, by Telnet to swais.access.gpo.gov, or by dialing (202) 512-1661 with a computer and modem. When using Telnet or modem, type swais, then log in as guest with no password.

For more information about GPO Access, contact the GPO Access User Support Team by E-mail at gpoaccess@gpo.gov; by fax at (202) 512–1262; or call (202) 512–1530 or 1–888–293–6498 (toll free) between 7 a.m. and 5 p.m. Eastern time, Monday–Friday, except Federal holidays.

The annual subscription price for the **Federal Register** paper edition is $555, or $607 for a combined **Federal Register,** Federal Register Index and List of CFR Sections Affected (LSA) subscription; the microfiche edition of the **Federal Register** including the Federal Register Index and LSA is $220. Six month subscriptions are available for one-half the annual rate. The charge for individual copies in paper form is $8.00 for each issue, or $8.00 for each group of pages as actually bound; or $1.50 for each issue in microfiche form. All prices include regular domestic postage and handling. International customers please add 25% for foreign handling. Remit check or money order, made payable to the Superintendent of Documents, or charge to your GPO Deposit Account, VISA, MasterCard or Discover. Mail to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954.

There are no restrictions on the republication of material appearing in the **Federal Register.**

How To Cite This Publication: Use the volume number and the page number. Example: 64 FR 12345.

Printed on recycled paper.

SUBSCRIPTIONS AND COPIES

PUBLIC
Subscriptions:
Paper or fiche — **202–512–1800**
Assistance with public subscriptions — **512–1806**
General online information — **202–512–1530; 1–888–293–6498**
Single copies/back copies:
Paper or fiche — **512–1800**
Assistance with public single copies — **512–1803**
FEDERAL AGENCIES
Subscriptions:
Paper or fiche — **523–5243**
Assistance with Federal agency subscriptions — **523–5243**

FEDERAL REGISTER WORKSHOP

THE FEDERAL REGISTER: WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: Sponsored by the Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:
1. The regulatory process, with a focus on the Federal Register system and the public's role in the development regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WASHINGTON, DC

WHEN: April 20, 1999 at 9:00 am.
WHERE: Office of the Federal Register
Conference Room
800 North Capitol Street, NW.
Washington, DC
(3 blocks north of Union Station Metro)
RESERVATIONS: 202–523–4538

Contents

Federal Register

Vol. 64, No. 64

Monday, April 5, 1999

Agriculture Department
See Animal and Plant Health Inspection Service
See Cooperative State Research, Education, and Extension Service
See Forest Service

Animal and Plant Health Inspection Service
PROPOSED RULES
Genetically engineered organisms regulatory requirements; meeting, 16364

Army Department
NOTICES
Meetings:
Army Education Advisory Committee, 16429
United States Military Academy Board of Visitors, 16429
Patent licenses; non-exclusive, exclusive, or partially exclusive:
Microwave ferroelectric phase shifters and methods for fabricating same, et al., 16429

Centers for Disease Control and Prevention
NOTICES
Grants and cooperative agreements; availability, etc.:
Grants and cooperative agreements; availability, etc.:
Breast and cervical cancer; early detection program, 16459–16467
Occupational Safety and health—
Safety and health interventions in the construction industry, 16468–16470

Children and Families Administration
NOTICES
Meetings:
Head Start Research and Evaluation Advisory Committee, 16470
Medical Child Support Working Group, 16471–16472

Coast Guard
RULES
Drawbridge operations:
Florida, 16350–16351
Ports and waterways safety:
Hudson River, NY, et al.; safety and security zones, 16348–16350
NOTICES
Meetings:
Commercial Fishing Industry Vessel Advisory Committee, 16515

Commerce Department
See Foreign-Trade Zones Board
See National Oceanic and Atmospheric Administration

Comptroller of the Currency
NOTICES
Community Reinvestment Act regulations; Federal Financial Supervisory agencies policy statement; withdrawn, 16577–16578

Cooperative State Research, Education, and Extension Service
NOTICES
Grants and cooperative agreements; availability, etc.:
Special research programs—
Food safety research, 16579–16588

Corporation for National and Community Service
NOTICES
Agency information collection activities:
Proposed collection; comment request, 16423–16424

Customs Service
RULES
Customs bonds:
Warehouse withdrawals; aircraft turbine fuel; pipeline transportation, 16345–16347

Defense Department
See Army Department
See Defense Logistics Agency
See Uniformed Services University of the Health Sciences
NOTICES
Arms sales notification; transmittal letter, etc., 16424–16428

Defense Logistics Agency
NOTICES
Privacy Act:
Computer matching program, 16430–16431

Education Department
NOTICES
Agency information collection activities:
Proposed collection; comment request, 16431–16432
Grants and cooperative agreements; availability, etc.:
National Institute on Disability and Rehabilitation Research—
Rehabilitation research and training centers and rehabilitation engineering research centers program, 16527–16554
Reading excellence program, 16573–16576
Meetings:
Student Financial Assistance Advisory Committee, 16432

Employment and Training Administration
NOTICES
Adjustment assistance:
Donnkenny Apparel, Inc., 16482–16483
Gulf States Steel, Inc., 16483
Lone Star Steel Co., 16483–16484
Nabors Drilling USA, Inc., 16484
Phillips-Van Husen Corp., 16484
Pillsbury Co., et al., 16484–16485
Agency information collection activities:
Proposed collection; comment request, 16485–16486

Energy Department
See Federal Energy Regulatory Commission
NOTICES
Floodplain wetlands protection; environmental review determinations; availability, etc.:
Savannah River Site, SC, 16433–16434

Grants and cooperative agreements; availability, etc.:
Photovoltaics for utility scale applications, 16434
Meetings:
Environmental Management Site-Specific Advisory Board—
Kirtland Area Office (Sandia), 16435
Rocky Flats, 16434–16435
Applications, hearings, determinations, etc.:
Montaup Electric Co. & Somerset Power LLC, 16432–16433

Environmental Protection Agency
RULES
Air pollution control; new motor vehicles and engines:
New nonroad spark-ignition nonhandheld engines at or below 19 kilowatts; phase 2 emission standards; correction, 16526
Superfund program:
National oil and hazardous substances contingency plan—
National priorities list update, 16351–16352
PROPOSED RULES
Air programs:
Strategic ozone protection—
HCFC production, import and export; allowance system, 16373–16383
NOTICES
Agency information collection activities:
Proposed collection; comment request, 16444–16446
Submission for OMB review; comment request, 16446–16447
Air pollutants, hazardous; national emission standards:
Consumer and commercial products—
Automobile refinish coatings rule; consumer products rule; variance request, 16447–16449
Grants and cooperative agreements; availability, etc.:
Investigator-initiated grants program, 16449
Meetings:
Effluent Guidelines Task Force, 16449–16450
Project XL (excellence and leadership) innovative technologies project:
Public-health and environmental protection; tests for innovative ways of achieving better and more cost effective procedures, 16450–16452

Equal Employment Opportunity Commission
NOTICES
Meetings; Sunshine Act, 16452

Executive Office of the President
See Presidential Documents

Federal Aviation Administration
RULES
Airworthiness directives:
Allison Engine Co., Inc., 16339–16340
Class D and E airspace, 16340–16341
Class E airspace, 16341–16345
PROPOSED RULES
Airworthiness directives:
Bombardier, 16366–16368
General Electric Co., 16364–16366
Class E airspace, 16370–16372
NOTICES
Advisory circulars; availability, etc.:
Aircraft products and parts—
Aircraft engine instructions for continued airworthiness, 16515–16516
Environmental statements; availability, etc.:
John F. Kennedy International and LaGuardia Airports, NY; terminal Doppler weather radar; record of decision, 16516
Meetings:
Air Traffic Procedures Advisory Committee, 16516
Aviation Rulemaking Advisory Committee, 16516–16517

Federal Communications Commission
RULES
Common carrier services:
Access charges—
Primary lines; definition, 16353–16358
PROPOSED RULES
Common carrier services:
Access charges—
Primary lines; definition, 16389–16396
Radio broadcasting:
Broadcast and cable EEO rules and policies; extension, 16388–16389
Radio stations; table of assignments:
New Mexico, 16396
NOTICES
Agency information collection activities:
Proposed collection; comment request, 16452–16453
Submission for OMB review; comment request, 16453

Federal Deposit Insurance Corporation
NOTICES
Community Reinvestment Act regulations; Federal Financial Supervisory agencies policy statement; withdrawn, 16577–16578

Federal Energy Regulatory Commission
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 16435–16436
Electric rate and corporate regulation filings:
Power City Partners, L.P., et al., 16438–16440
Hydroelectric applications, 16437, 16440–16443
Meetings:
Northern Natural Gas Co.; settlement conference, 16443
Rhinelander Paper Co.; site visit and environmental comments requested, 16443–16444
Applications, hearings, determinations, etc.:
Columbia Gas Transmission, 16436
Consumers Energy Co., 16436
Iroquois Gas Transmission System, L.P., 16436–16437
Transcontinental Gas Pipe Line Corp., 16437–16438

Federal Financial Institutions Examination Council
NOTICES
Community Reinvestment Act:
Rating guidelines and lending analysis policy statement; interpretations withdrawn, 16453–16454

Federal Highway Administration
NOTICES
Motor vehicle safety standards:
Driver qualification—
Andersen, Gary R., et al.; vision requirement, 16517–16520

Federal Housing Finance Board
NOTICES
Federal home loan bank system:
Items processing and settlement and other services; prices, 16454–16457

Federal Maritime Commission
NOTICES
Agreements filed, etc., 16458

Federal Reserve System
NOTICES
Banks and bank holding companies:
Change in bank control, 16459
Permissible nonbanking activities, 16459
Community Reinvestment Act regulations; Federal Financial Supervisory agencies policy statement; withdrawn, 16577–16578
Applications, hearings, determinations, etc.:
Formations, acquisitions, and mergers, 16458–16459

Federal Transit Administration
NOTICES
Environmental statements; notice of intent:
Tampa Bay Regional Rail System, FL, 16520–16522

Fish and Wildlife Service
PROPOSED RULES
Endangered and threatened species:
Coastal cutthroat trout, 16397–16414
NOTICES
Endangered and threatened species:
Recovery plans—
Golden Paintbrush, 16478
MacFarlane's Four-O'Clock, 16478–16479
Endangered and threatened species permit applications, 16477–16478

Food and Drug Administration
RULES
Mutual recognition agreements:
U.S.-European Community—
Pharmaceutical good manufacturing practice inspection reports and medical device quality system audit and product evaluation reports; correction, 16347–16348
NOTICES
Agency information collection activities:
Reporting and recordkeeping requirements, 16472
Meetings:
Public input on public health; public forum, 16472–16473

Foreign-Trade Zones Board
NOTICES
Applications, hearings, determinations, etc.:
California
Tosco Refining Co.; oil refinery complex, 16421
Georgia, 16421
Texas
Diamond Shamrock Refining Co., L.P.; oil refinery complex, 16422

Forest Service
NOTICES
Environmental statements; notice of intent:
White River National Forest, CO, 16419–16421

General Services Administration
RULES
Federal travel:
Per diem localities; maximum lodging and meal allowances, 16352–16353

Health and Human Services Department
See Centers for Disease Control and Prevention
See Children and Families Administration
See Food and Drug Administration
See Health Resources and Services Administration
See National Institutes of Health

Health Resources and Services Administration
NOTICES
Grants and cooperative agreements; availability, etc.:
Organ and tissue donation; extramural support program, 16473–16475
Meetings:
Migrant Health National Advisory Council, 16475

Inter-American Foundation
NOTICES
Meetings; Sunshine Act, 16477

Interior Department
See Fish and Wildlife Service
See Land Management Bureau
NOTICES
Meetings:
National Recreation Lakes Presidential Study Commission, 16477

Internal Revenue Service
PROPOSED RULES
Income taxes:
Fast-pay stock; financing arangements recharacterization Hearing cancellation, 16372–16373

Justice Department
See Juvenile Justice and Delinquency Prevention Office
See National Institute of Justice

Juvenile Justice and Delinquency Prevention Office
NOTICES
Grants and cooperative agreements; availability, etc.:
Safe start demonstration project; safe start initiative, 16555–16571

Labor Department
See Employment and Training Administration
See Pension and Welfare Benefits Administration
See Veterans Employment and Training, Office of Assistant Secretary
NOTICES
Meetings:
President's Committee on the International Labor Organization, 16482

Land Management Bureau
NOTICES
Closure of public lands:
Oregon, 16479–16480
Meetings:
Resource advisory councils—
Northwest California, 16480
Sierra Front/Northwest Great Basin, 16480
Wild Horse and Burro Advisory Board, 16480–16481
Oil and gas leases:
Alaska, 16481–16482

Legal Services Corporation
PROPOSED RULES
Timekeeping requirements; republication, 16383–16387

National Aeronautics and Space Administration
NOTICES
Meetings:
Life and Microgravity Sciences and Applications Advisory Committee, 16501
Technology and Commercialization Advisory Committee, 16501

National Highway Traffic Safety Administration
RULES
Motor vehicle safety standards:
Bumper standard; technical amendments, 16359–16361
Lamps, reflective devices and associated equipment—
Location requirements for identification and clearance lamps mounted on rear of trucks and trailers, 16358–16359

National Institute of Justice
NOTICES
Grants and cooperative agreements; availability, etc.:
Sentencing and corrections research and evaluation, 16482

National Institutes of Health
NOTICES
Meetings:
National Cancer Institute, 16475–16476
National Institute of Child Health and Human Development, 16476
Scientific Review Center, 16476–16477

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
Alaska; fisheries of Exclusive Economic Zone—
Atka mackerel, 16362
Pacific cod, 16362–16363
Northeastern United States fisheries—
Scup, 16361–16362
Summer flounder, 16361
PROPOSED RULES
Endangered and threatened species:
Coho salmon—
Siskiyou County, CA, 16396–16397
Southwestern Washington/Columbia River and Umpqua River coastal cutthroat trout in Washington and Oregon, 16397–16414
Environmental statements; notice of intent:
Tilefish fishery, 16417–16418
Fishery conservation and management:
Magnuson-Stevens Act provisions—
Foreign fishing; issuance of transshipment permits, 16414–16417
NOTICES
Meetings:
Gulf of Mexico Fishery Management Council, 16422
Mid-Atlantic Fishery Management Council, 16422–16423

Nuclear Regulatory Commission
NOTICES
Meetings:
Reactor Safeguards Advisory Committee, 16503–16504
Petitions; Director's decisions:
Natural Resources Defense Council, 16504–16508
Applications, hearings, determinations, etc.:
Duquense Light Co. et al., 16501
Florida Power & Light Co., 16502–16503
Isakoff, Gary, 16503

Pension and Welfare Benefits Administration
NOTICES
Employee benefit plans; prohibited transaction exemptions:
Salomon Smith Barney, Inc., 16486–16493
Wells Fargo Bank, N.A., et al., 16493–16500

Presidential Documents
EXECUTIVE ORDERS
Export control regulations; amendment (EO 13117), 16589–16591
Trade; identification of expansion priorities and discriminatory procurement practices (EO 13116), 16333–16335
Government agencies and employees:
Foreign Affiars Reform and Resturcturing Act of 1998; implementation (EO 13118), 16593–16599
ADMINISTRATIVE ORDERS
Jordan; military drawdown (Presidential Determination No. 99-18 of March 25, 1999), 16337

Public Health Service
See Centers for Disease Control and Prevention
See Food and Drug Administration
See Health Resources and Services Administration
See National Institutes of Health

Securities and Exchange Commission
NOTICES
Self-regulatory organizations; proposed rule changes:
National Securities Clearing Corp., 16513–16514
Applications, hearings, determinations, etc.:
Public utility holding company filings, 16508–16513

State Department
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 16514–16515

Thrift Supervision Office
NOTICES
Agency information collection activities:
Proposed collection; comment request, 16522–16523
Community Reinvestment Act regulations; Federal Financial Supervisory agencies policy statement; withdrawn, 16577–16578

Transportation Department
See Coast Guard
See Federal Aviation Administration
See Federal Highway Administration
See Federal Transit Administration
See National Highway Traffic Safety Administration

Treasury Department
See Comptroller of the Currency
See Customs Service
See Internal Revenue Service
See Thrift Supervision Office

Uniformed Services University of the Health Sciences
NOTICES
Meetings; Sunshine Act, 16431

United States Information Agency
NOTICES
Agency information collection activities:
Proposed collection; comment request, 16523

Veterans Affairs Department
NOTICES
Agency information collection activities:
Proposed collection; comment request, 16523–16524
Submission for OMB review; comment request, 16525

Veterans Employment and Training, Office of Assistant Secretary
NOTICES
Grants and cooperative agreements; availability, etc.:
Federal contractor award information system, 16500–16501

Separate Parts In This Issue

Part II
Department of Education, 16527–16554

Part III
Department of Justice, Office of Juvenile Justice and Delinquency Prevention, 16555–16571

Part IV
Department of Education, 16573–16576

Part V
Department of the Treasury, Comptroller of the Currency; Federal Reserve System; Federal Deposit Insurance Corporation; Department of the Treasury, Office of Thrift Supervision, 16577–16578

Part VI
Department of Agriculture, Cooperative State Research, Education, and Extension Service, 16579–16588

Part VII
The President, 16589–16591

Part VIII
The President, 16593–16599

Reader Aids
Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

3 CFR
Executive Orders:
11223 (Amended by EO 13118).....16595
11269 (Amended by EO 13118).....16595
11958 (Amended by EO 13118).....16595
12163 (Amended by EO 13118).....16595
12188 (Amended by EO 13118).....16595
12260 (Amended by EO 13118).....16595
12293 (Amended by EO 13118).....16595
12301 (Amended by EO 13118).....16595
12599 (Amended by EO 13118).....16595
12703 (Amended by EO 13118).....16595
12884 (Amended by EO 13118).....16595
12981 (Amended by EO 13117).....16391
13116.....16333
13117.....16391
Memorandums:
March 23, 1999 (Amended by EO 13118).....16595
Administrative Orders:
Presidential Determination No. 99–18 of March 25, 1999.....16337

7 CFR
Proposed Rules:
340.....16364

14 CFR
39.....16339
71 (6 documents).....16340, 16341, 16342, 16343, 16344
Proposed Rules:
39 (2 documents).....16364, 16366
71 (4 documents).....16368, 16369, 16370, 16371

19 CFR
10.....16345
18.....16345
113.....16345
178.....16345

21 CFR
26.....16347

26 CFR
Proposed Rules:
1.....16372

33 CFR
100.....16348
117.....16450
165.....16348

40 CFR
90.....16526
300.....16351
Proposed Rules:
82.....16373

41 CFR
Ch. 301.....16352

45 CFR
Proposed Rules:
1635.....16383

47 CFR
69.....16353
Proposed Rules:
0.....16388
69.....16389
73 (2 documents).....16388, 16396
76.....16388

49 CFR
571.....16358
581.....16359

50 CFR
648 (2 documents).....16361, 16362
679 (2 documents).....16361, 16362
Proposed Rules:
17.....16397
223 (2 documents).....16396, 16397
224.....16397
226.....16397
600.....16414
648.....16417

Federal Register
Vol. 64, No. 64
Monday, April 5, 1999

Presidential Documents

Title 3—

The President

Executive Order 13116 of March 31, 1999

Identification of Trade Expansion Priorities and Discriminatory Procurement Practices

By the authority vested in me as President by the Constitution and the laws of the United States of America, including title III of the Act of March 3, 1993, as amended (41 U.S.C. 10d), sections 141 and 301–310 of the Trade Act of 1974, as amended (the Act) (19 U.S.C. 2171, 2411–2420), title III of the Trade Agreements Act of 1979, as amended (19 U.S.C. 2511–2518), and section 301 of title 3, United States Code, and to ensure that the trade policies of the United States advance, to the greatest extent possible, the export of the products and services of the United States and that trade policy resources are used efficiently, it is hereby ordered as follows:

PART I: IDENTIFICATION OF TRADE EXPANSION PRIORITIES

Section 1. *Identification and Annual Report.* (a) Within 30 days of the submission of the National Trade Estimate Report required by section 181(b) of the Act (19 U.S.C. 2241(b)) for 1999, 2000, and 2001, the United States Trade Representative (Trade Representative) shall review United States trade expansion priorities and identify priority foreign country practices, the elimination of which is likely to have the most significant potential to increase United States exports, either directly or through the establishment of a beneficial precedent. The Trade Representative shall submit to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives, and shall publish in the **Federal Register**, a report on the priority foreign country practices identified.

(b) In identifying priority foreign country practices under paragraph (a) of this section, the Trade Representative shall take into account all relevant factors, including:

(1) the major barriers and trade distorting practices described in the National Trade Estimate Report;
(2) the trade agreements to which a foreign country is a party and its compliance with those agreements;
(3) the medium-term and long-term implications of foreign government procurement plans; and
(4) the international competitive position and export potential of United States products and services.

(c) The Trade Representative may include in the report, if appropriate, a description of the foreign country practices that may in the future warrant identification as priority foreign country practices. The Trade Representative also may include a statement about other foreign country practices that were not identified because they are already being addressed by provisions of United States trade law, existing bilateral trade agreements, or in trade negotiations with other countries and progress is being made toward their elimination.

Sec. 2. *Resolution.* Upon submission of the report required by paragraph (a) of section 1 of this part, the Trade Representative shall, with respect to any priority foreign country practice identified therein, engage the country concerned for the purpose of seeking a satisfactory resolution, for example, by obtaining compliance with a trade agreement or the elimination of the practice as quickly as possible, or, if this is not feasible, by providing for compensatory trade benefits.

Sec. 3. *Initiation of Investigations.* Within 90 days of the submission of the report required by paragraph (a) of section 1 of this part, the Trade Representative shall initiate under section 302(b)(1) of the Act (19 U.S.C. 2412(b)(1)) investigations with respect to all of the priority foreign country practices identified, unless during the 90-day period the Trade Representative determines that a satisfactory resolution of the matter to be investigated has been achieved.

PART II: IDENTIFICATION OF DISCRIMINATORY GOVERNMENT PROCUREMENT PRACTICES

Section 1. *Identification and Annual Report.* (a) Within 30 days of the submission of the National Trade Estimate Report for 1999, 2000, and 2001, the Trade Representative shall submit to the Committees on Finance and on Governmental Affairs of the Senate and the Committees on Ways and Means and Government Reform and Oversight of the House of Representatives, and shall publish in the **Federal Register**, a report on the extent to which foreign countries discriminate against U.S. products or services in making government procurements.

(b) In the report, the Trade Representative shall identify countries that:

(1) are not in compliance with their obligations under the World Trade Organization Agreement on Government Procurement (the GPA), Chapter 10 of the North American Free Trade Agreement (NAFTA), or other agreements relating to government procurement (procurement agreements) to which that country and the United States are parties; or

(2) maintain, in government procurement, a significant and persistent pattern or practice of discrimination against U.S. products or services that results in identifiable harm to U.S. businesses and whose products or services are acquired in significant amounts by the United States Government.

Sec. 2. *Considerations in Making Identifications.* In making the identifications required by section 1 of this part, the Trade Representative shall: (a) consider the requirements of the GPA, NAFTA, or other procurement agreements, government procurement practices, and the effects of such practices on U.S. businesses as a basis for evaluating whether the procurement practices of foreign governments do not provide fair market opportunities for U.S. products or services;

(b) take into account, among other factors, whether and to what extent countries that are parties to the GPA, NAFTA, or other procurement agreements, and other countries described in section 1 of this part:

(1) use sole-sourcing or otherwise noncompetitive procedures for procurement that could have been conducted using competitive procedures;

(2) conduct what normally would have been one procurement as two or more procurements, to decrease the anticipated contract values below the value threshold of the GPA, NAFTA, or other procurement agreements, or to make the procurement less attractive to U.S. businesses;

(3) announce procurement opportunities with inadequate time intervals for U.S. businesses to submit bids; and

(4) use specifications in such a way as to limit the ability of U.S. suppliers to participate in procurements; and

(c) consider information included in the National Trade Estimate Report, and any other additional criteria deemed appropriate, including, to the extent such information is available, the failure to apply transparent and competitive procedures or maintain and enforce effective prohibitions on bribery and other corrupt practices in connection with government procurement.

Sec. 3. *Impact of Noncompliance and Denial of Comparable Treatment.* The Trade Representative shall take into account, in identifying countries in the annual report and in any action required by this part, the relative impact of any noncompliance with the GPA, NAFTA, or other procurement agreements, or of other discrimination on U.S. commerce, and the extent

to which such noncompliance or discrimination has impeded the ability of U.S. suppliers to participate in procurements on terms comparable to those available to suppliers of the country in question when seeking to sell goods or services to the United States Government.

Sec. 4. *Resolution.* Upon submission of the report required by section 1 of this part, the Trade Representative shall engage any country identified therein for the purpose of seeking a satisfactory resolution, for example, by obtaining compliance with the GPA, NAFTA, or other procurement agreements or the elimination of the discriminatory procurement practices as quickly as possible, or, if this is not feasible, by providing for compensatory trade benefits.

Sec. 5. *Initiation of Investigations.* (a) Within 90 days of the submission of the report required by section 1 of this part, the Trade Representative shall initiate under section 302(b)(1) of the Act (19 U.S.C. 2412(b)(1)) investigations with respect to any practice that:

(1) was the basis for the identification of a country under section 1; and
(2) is not at that time the subject of any other investigation or action under title III, chapter 1, of the Act,

unless during the 90-day period the Trade Representative determines that a satisfactory resolution of the matter to be investigated has been achieved.

(b) For investigations initiated under paragraph (a) of this section (other than an investigation involving the GPA or NAFTA), the Trade Representative shall apply the time limits and procedures in section 304(a)(3) of the Act (19 U.S.C. 2414(a)(3)). The time limits in subsection 304(a)(3)(B) of the Act (19 U.S.C. 2414(a)(3)(B)) shall apply if the Trade Representative determines that:

(1) complex or complicated issues are involved in the investigation that require additional time;
(2) the foreign country involved in the investigation is making substantial progress in drafting or implementing legislative or administrative measures that will end the discriminatory procurement practice; or
(3) such foreign country is undertaking enforcement measures to end the discriminatory procurement practice.

PART III: DIRECTION

Section 1. *Presidential Direction.* The authorities delegated pursuant to this order shall be exercised subject to any subsequent direction by the President in a particular matter.

Sec. 2. *Consultations and Advice.* In developing the annual reports required by part I and part II of this order, the Trade Representative shall consult with executive agencies and seek information and advice from U.S. businesses in the United States and in the countries involved in the practices under consideration.

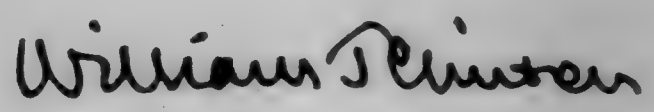

THE WHITE HOUSE,
March 31, 1999.

[FR Doc. 99–8433
Filed 4–2–99; 8:45 am]
Billing code 3195–01–P

VOL
64
ISS
64
AP
5
1999
UMI

[FR Doc. 9
Filed 4–2–
Billing cod

Presidential Documents

Presidential Determination No. 99–18 of March 25, 1999

Military Drawdown for Jordan

Memorandum for the Secretary of State [and] the Secretary of Defense

Pursuant to the authority vested in me by the Constitution and laws of the United States, including Title III of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1999, as enacted in Public Law 105–277 ("Title III"), I hereby direct the drawdown of defense articles from the stocks of the Department of Defense, defense services of the Department of Defense, and military education and training of an aggregate value of $25 million for Jordan consistent with the authority provided under the heading "Foreign Military Financing Program" in Title III for the purposes of part II of the Foreign Assistance Act of 1961, as amended.

The Secretary of State is authorized and directed to report this determination to the Congress and to publish it in the **Federal Register.**

William J. Clinton

THE WHITE HOUSE,
Washington, March 25, 1999.

[FR Doc. 99–8446
Filed 4–2–99; 8:45 am]
Billing code 4710–10–M

VOL
64
ISS
64
AP
5
1999
UMI

Rul

This sec
contains
applicabi
are keye
Federal
50 titles

The Cod
the Supe
new boo
REGIST

DEPAR

Federal

14 CFR

[Docket
11106; A

RIN 212

Airwort
Engine
AE 300

AGENCY
Admini

ACTION:
comme

SUMMAR
the Fed
adoptin
99–02–
known
Allison
3007A
engines
AD pro
engine
below 3
operatio
engine
or abov
prompt
shutdo
shutdo
of engi
The act
intende
shutdo
the star

DATES:
persons
it was
telegra
January
require

Comm
Docket
June 4,

ADDRES
triplica

Rules and Regulations

Federal Register
Vol. 64, No. 64
Monday, April 5, 1999

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NE–01–AD; Amendment 39–11108; AD 99–02–51]

RIN 2120–AA64

Airworthiness Directives; Allison Engine Company, Inc. AE 3007A and AE 3007C Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule, request for comments.

SUMMARY: This document publishes in the **Federal Register** an amendment adopting Airworthiness Directive (AD) 99–02–51 that was sent previously to all known U.S. owners and operators of Allison Engine Company, Inc. AE 3007A and AE 3007C series turbofan engines by individual telegrams. This AD prohibits, prior to further flight, all engine ground starts at oil temperatures below 32°F (0°C) unless preflight operational procedures ensure that engine oil temperature is maintained at or above 32°F (0°C). This amendment is prompted by reports of in-flight engine shutdowns. The in-flight engine shutdowns have been attributed to loss of engine oil from the starter shaft seal. The actions specified by this AD are intended to prevent an in-flight engine shutdown due to loss of engine oil from the starter shaft seal.

DATES: Effective April 20, 1999, to all persons except those persons to whom it was made immediately effective by telegraphic AD 99–02–51, issued on January 8, 1999, that contained the requirements of this amendment.

Comments for inclusion in the Rules Docket must be received on or before June 4, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 99–NE–01–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may also be sent via the Internet using the following address: "9-ad-engineprop@faa.gov." Comments sent via the Internet must contain the docket number in the subject line.

FOR FURTHER INFORMATION CONTACT: John Tallarovic, Aerospace Engineer, Chicago Aircraft Certification Office, FAA, Small Airplane Directorate, 2300 East Devon Ave., Des Plaines, IL 60018; telephone (847) 294–8180, fax (847) 294–7834.

SUPPLEMENTARY INFORMATION: On January 8, 1999, the Federal Aviation Administration (FAA) issued telegraphic airworthiness directive (TAD) 99–02–51, applicable to Allison Engine Company, Inc. AE 3007A and AE 3007C series turbofan engines that prohibits, prior to further flight, all engine ground starts at oil temperatures below 32°F (0°C), unless preflight operational procedures ensure that engine oil temperature is maintained at or above 32°F (0°C). That action was prompted by reports of three in-flight engine shutdowns since January 4, 1999. The FAA has determined that engine starting in cold temperatures can cause the starter shaft seal to become unseated, allowing oil to exit the accessory gearbox. This condition, if not corrected, could result in an in-flight engine shutdown due to loss of engine oil from the starter shaft seal.

Since the unsafe condition described is likely to exist or develop on other engines of the same type design, the FAA issued telegraphic AD 99–02–51 to prevent an in-flight engine shutdown due to loss of engine oil from the starter shaft seal. This AD prohibits all engine ground starts at oil temperatures below 32°F (0°C) unless preflight operational procedures ensure that engine oil temperature is maintained at or above 32°F (0°C). This AD is considered an interim action, and as the investigation continues, further rulemaking may be necessary. The actions are required to be accomplished in accordance with the compliance section of this AD.

Since it was found that immediate corrective action was required, notice and opportunity for prior public comment thereon were impracticable and contrary to the public interest, and good cause existed to make the AD effective immediately by individual telegrams issued on January 8, 1999, to all known U.S. owners and operators of Allison Engine Company, Inc. AE 3007A and AE 3007C series turbofan engines. These conditions still exist, and the AD is hereby published in the **Federal Register** as an amendment to Section 39.13 of part 39 of the Federal Aviation Regulations (14 CFR part 39) to make it effective to all persons.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 99–NE–01–AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and

responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

99–02–51 Allison Engine Company, Inc.: Amendment 39–11108: Docket 99–NE–01–AD.

Applicability: Allison Engine Company, Inc. AE 3007A and AE 3007C series turbofan engines, installed on but not limited to Embraer EMB–145 and Cessna 750 series airplanes.

Note 1: This airworthiness directive (AD) applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent an in-flight engine shutdown due to loss of engine oil from the starter shaft seal, accomplish the following:

(a) Prior to further flight, all ground engine starts at engine oil temperatures below 32°F (0°C) are prohibited except as provided in paragraphs (a)(1) and (a)(2) of this AD.

(1) For Allison Engine Company engine models AE 3007A, AE 3007A1, AE 3007A1/1, and AE 3007A1/2, if the engine oil temperature has dropped below 32°F (0°C) prior to flight, perform a highpower leak check on each engine (at least three minutes at takeoff power, reference Allison Engine Company AE 3007A series maintenance manual, section 72–00–00, page 505, subtask 72–00–00–790–002). No leaks above serviceable limits are permitted (0.21 quarts/hour, 200 cc/hour per Allison Engine Company AE 3007A, Fault Isolation Manual, section 79–37–00, page 212, allowable leakage).

(2) For Allison Engine Company engine model AE 3007C, if the engine oil temperature has dropped below 32°F (0°C) prior to flight, monitor the engine oil level using the following procedures:

(i) Operate engine at maximum continuous power for 10 minutes. Monitor the engine oil level.

(ii) If an oil level decrease of greater than 1.0 quarts occurs, maintenance is required before further flight.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Chicago Aircraft Certification Office. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Chicago Aircraft Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Chicago Aircraft Certification Office.

(c) This amendment becomes effective April 20, 1999, to all persons except those persons to whom it was made immediately effective by telegraphic AD 99–02–51, issued January 8, 1999, which contained the requirements of this amendment.

Issued in Burlington, Massachusetts, on March 29, 1999.

David A. Downey,

Assistant Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 99–8308 Filed 4–2–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–ASO–5]

Amendment of Class D and E Airspace; Orlando Executive Airport, Florida

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment modifies the Class D and Class E2 surface area airspace descriptions and establishes a Class E4 surface area airspace extension for the Orlando Executive Airport. This amendment is necessary as a result of the forthcoming amendment to the Orlando International Airport Class B airspace area. The establishment of the Class E4 airspace area is a technical change only, as this airspace extension is currently included in the Class D surface area airspace.

DATES: *Effective Date:* 0901 UTC, July 15, 1999.

Comments Date: Comments must be received on or before May 5, 1999.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Docket No. 99–ASO–5, Manager, Airspace Branch, ASO–520, P.O. Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of the Regional Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, telephone (404) 305–5627.

FOR FURTHER INFORMATION CONTACT: Nancy B. Shelton, Airspace Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5627.

SUPPLEMENTARY INFORMATION:

Request for Comments on the Rule

Although this action is a final rule, which involves a technical change to the Orlando Executive Airport surface area airspace, and was not preceded by notice and public procedure, comments are invited on the rule. This rule will become effective on the date specified in the **DATES** section. However, after the review of any comments and, if the FAA finds that further changes are appropriate, it will initiate rulemaking procedures to extend the effective date or to amend the regulation.

Comments that provide the factual basis supporting the views and

suggestions presented are particularly helpful in evaluating the effects of the rule, and in determining whether additional rulemaking is required. Comments are specifically invited on the overall regulatory, aeronautical, environmental, and energy-related aspects of the rule which might suggest the need to modify the rule.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations (14 CFR part 71) changes the description of the Class D airspace and Class E2 surface area airspace and establishes Class E4 airspace area designated as an extension to a Class D or Class E surface area for the Orlando Executive Airport.

Class D airspace designations are published in paragraph 5000, Class E2 airspace designations for surface areas are published in paragraph 6002 and Class E4 airspace areas designated as an extension to a Class D or Class E surface area are published in paragraph 6004 of FAA Order 7400.9F, dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class D and E airspace designations listed in this document will be published subsequently in the Order.

Since this action only makes a technical amendment to the Class D and Class E airspace descriptions and should have no impact on the users of the airspace in the vicinity of the Orlando Executive Airport, the notice and public procedure under 5 U.S.C. 553(b) are unnecessary.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by Reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR Part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; EO 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1—[Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

Paragraph 5000 Class D Airspace.

* * * * *

ASO FL D Orlando, FL [Revised]

Orlando Executive Airport, FL
(Lat 28°32'44" N., long. 81°19'58" W.)

That airspace extending upward from the surface, to but not including 1,600 feet MSL, within a 4.2-mile radius of Orlando Executive Airport, excluding that portion within the Orlando, FL, Class B airspace area. This Class D airspace area is effective during the specific days and times established in advance by a Notice to Airmen. The effective days and times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Paragraph 6002 Class E Airspace Designated as Surface Areas.

* * * * *

ASO FL E2 Orlando, FL [Revised]

Orlando Executive Airport, FL
(Lat. 28°32'44" N., long. 81°19'58" W.)

Within a 4.2-mile radius of Orlando Executive Airport excluding that portion within the Orlando, FL Class B airspace area. This Class E airspace area is effective during the specific days and times established in advance by a Notice to Airmen. The effective days and times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Paragraph 6004 Class E Airspace Areas Designated as an Extension to a Class D or Class E Surface Area.

* * * * *

ASO FL E4 Orlando, FL [New]

Orlando Executive Airport, FL
(Lat. 28°32'44" N., long. 81°19'58" W.)
Orlando VORTAC
(Lat. 28°32'34" N., long. 81°20'06" W.)

That airspace extending upward from the surface within 3.6 miles each side of the Orlando VORTAC 254 degree radial extending from the 4.2-mile radius to 8.1 miles west of the Orlando VORTAC; excluding that portion within the Orlando, FL, Class B airspace area. This Class E airspace area is effective during the specific days and times established in advance by a Notice to Airmen. The effective days and times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in College Park, Georgia, on March 24, 1999.

Nancy B. Shelton,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 99–8248 Filed 4–2–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–AGL–3]

Modification of Class E Airspace; Auburn, IN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This notice modifies Class E airspace at Auburn, IN. A Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to Runway (Rwy) 09, and a GPS SIAP to Rwy 27, have been developed for De Kalb County Airport. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approaches. This action increases the radius of the existing controlled airspace for this airport.

DATES: 0901 UTC, July 15, 1999.

FOR FURTHER INFORMATION CONTACT: Michelle M. Behm, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

History

On Monday, February 1, 1999, the FAA proposed to amend 14 CFR part 71 to modify Class E airspace at Auburn, IN (64 FR 4796). The proposal was to add controlled airspace extending upward from 700 to 1200 feet AGL to contain Instrument Flight Rules (IFR) operations in controlled airspace during portions of the terminal operation and while transiting between the enroute and terminal environments.

Interested parties were invited to participate in this rulemaking proceeding by submitting written

comments on the proposal to the FAA. No comments objecting to the proposal were received. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9F dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 modifies Class E airspace at Auburn, IN, to accommodate aircraft executing the proposed GPS Rwy 09 SIAP and GPS Rwy 27 SIAP at De Kalb County Airport by increasing the radius of the existing controlled airspace at the airport. The area will be depicted on appropriate aeronautical charts.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 95665, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9F, Airspace Designation and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

* * * * *

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL IN E5 Auburn, IN [Revised]

Auburn, De Kalb County Airport, IN
(Lat. 41°18'26" N., long. 85°03'52" W.)

That airspace extending upward from 700 feet above the surface within an 6.5-mile radius of the De Kalb County Airport, excluding the airspace within the Ft. Wayne, IN, Class E airspace area.

* * * * *

Issued in Des Plaines, Illinois on March 18, 1999.

John A. Clayborn,

Acting Manager, Air Traffic Division.

[FR Doc. 99–8251 Filed 4–2–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–AGL–2]

Modification of Class E Airspace; Watertown, WI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This notice modifies the Class E airspace at Watertown, WI. A Transponder Landing System (TLS) Standard Instrument Approach Procedure (SIAP) to Runway (Rwy) 05 has been developed for Watertown Municipal Airport. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approach. This action increases the radius of the existing controlled airspace for this airport.

EFFECTIVE DATE: 0901 UTC, July 15, 1999.

FOR FURTHER INFORMATION CONTACT: Michelle M. Behm, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

History

On Monday, February 1, 1999, the FAA proposed to amend 14 CFR part 71 to modify Class E airspace at Watertown, WI (64 FR 4797). The proposal was to add controlled airspace extending upward from 700 to 1200 feet AGL to contain Instrument Flight Rules (IFR) operations in controlled airspace during portions of the terminal operation and while transiting between the enroute and terminal environments. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. One comment strongly supporting the proposal was received from the Wisconsin Department of Transportation. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9F dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 modifies Class E airspace at Watertown, WI, to accommodate aircraft executing the proposed TLS Rwy 05 SIAP at Watertown Municipal Airport by increasing the radius of the existing controlled airspace at the airport. The area will be depicted on appropriate aeronautical charts.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 95665, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

* * * * *

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL WI E5 Watertown, WI [Revised]

Watertown Municipal Airport, WI
(Lat. 43°10'11" N., long. 88°43'24" W.)

That airspace extending upward from 700 feet above the surface within an 8.4-mile radius of the Watertown Municipal Airport.

* * * * *

Issued in Des Plaines, Illinois on March 18, 1999.

John A. Clayborn,

Acting Manager, Air Traffic Division.

[FR Doc. 99–8250 Filed 4–2–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–ASO–3]

Amendment of Class E Airspace; Toccoa, GA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This notice amends Class E airspace at Toccoa, GA. The VHF Omnidirectional Range (VOR) or Global Positioning System (GPS) Runway (RWY) 20 Standard Instrument Approach Procedure (SIAP) has been amended to the Toccoa RG Letourneau Field Airport. As a result, additional controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to accommodate the SIAP and for Instrument Flight Rules (IFR) operations at Toccoa RG Letourneau Field Airport. An extension via the 023 degree radial of the Foothills (ODF) VHF Omnidirectional Range/Tactical Air Navigation (VORTAC) for the VOR or GPS RWY 20 SIAP is necessary. The length of the Class E airspace extension northeast of the VORTAC is 7 miles, and the width of the airspace extension is 6.8 miles. This amendment also reflects the correct geographical position coordinates for the Toccoa RG Letourneau Field Airport and the Habersham County Airport; which are minor technical changes as the position of the airports is unchanged.

EFFECTIVE DATE: 0901 UTC, July 15, 1999.

FOR FURTHER INFORMATION CONTACT: Nancy B. Shelton, Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5627.

SUPPLEMENTARY INFORMATION:

History

On February 16, 1999, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) by amending Class E airspace at Toccoa, GA, (64 FR 7558). This action provides adequate Class E airspace for IFR operations at Toccoa RG Letourneau Field Airport. Designations for Class E airspace extending upward from 700 feet or more above the surface are published in FAA Order 7400.9F, dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR part 71.1. The class E designation listed in this document will be published subsequently in the Order.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) amends Class E airspace at Toccoa, GA, for the Toccoa RG Letourneau Field Airport. This amendment also corrects the geographical position coordinates for the Toccoa RG Letourneau Field Airport and the Habersham County Airport; which are minor technical changes as the position of the airports is unchanged.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation, as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; EO 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

Paragraph 6005 Class E Airspace Areas Extending Upward from 700 feet or More above the Surface of the Earth.

* * * * *

ASO GA E5 Toccoca, GA [Revised]

Toccoa RG Letourneau Field Airport
(Lat. 34°35'38" N., long. 83°17'45" W.)
Foothills VORTAC
(Lat. 34°41'45" N., long. 83°17'52" W.)
Habersham County Airport
(Lat. 34°30'03" N., long. 83°33'18" W.)

That airspace extending upward from 700 feet or more above the surface of the earth within a 10-mile radius of Toccoa RG Letourneau Field Airport and within 3.4 miles each side of the 023 degree radial from the Foothills VORTAC, extending 7 miles northeast of the VOR and within an 8.2-mile radius of Habersham County Airport.

* * * * *

Issued in College Park, Georgia, on March 24, 1994.

Nancy B. Shelton,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 99–8249 Filed 4–2–99; 8:45 am]

BILLING CODE 1910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–AGL–81]

Modification of Class E Airspace; Pontiac, IL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies Class airspace at Pontiac, IL. A Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to Runway (Rwy) 24 has been developed for Pontiac Municipal Airport. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approaches. This action increases the radius of the existing controlled airspace for this airport.

EFFECTIVE DATE: 0901 UTC, July 15, 1999.

FOR FURTHER INFORMATION CONTACT: Michelle M. Behm, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

History

On Monday, February 1, 1999, the FAA proposed to amend 14 CFR part 71 to modify E airspace at Pontiac, IL (64 FR 4795). The proposal was to add controlled airspace extending upward from 700 to 1200 feet AGL to contain Instrument Flight Rules (IFR) operations in controlled airspace during portions of the terminal operation and while transiting between the enroute and terminal environments.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9F dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 modifies Class E airspace at Pontiac, IL to accommodate aircraft executing the proposed GPS Rwy 24 SIAP at Pontiac Municipal Airport by increasing the radius of the existing controlled airspace at the airport. The area will be depicted on appropriate aeronautical charts.

The FAA has determined that this regulation only involes an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 95665, 3 CFR, 1959–1963 Comp., p. 389.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

* * * * *

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL IL E5 Pontiac, IL [Revised]

Pontiac Municipal Airport, IL
(Lat. 40°55′25″ N., long. 88°37′32″ W.)

That airspace extending upward from 700 feet above the surface within an 7.2-mile radius of the Pontiac Municipal Airport.

* * * * *

Issued in Des Plaines, Illinois on March 18, 1999.

John A. Clayborn,

Acting Manager, Air Traffic Division.

[FR Doc. 99–8245 Filed 4–2–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–AGL–1]

Modification of the legal description of the Class E Airspace; Sault Ste Marie, ON

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This notice modifies the legal description Class E airspace at Sault Ste Marie, ON. The airspace description for the Sault Ste Marie Airport, ON, Canada, incorrectly describes the northwest extension of the controlled airspace as the northeast extension. Controlled airspace extending upward from the surface is needed to contain aircraft executing instrument approach procedures. This action corrects the legal description of the existing controlled airspace for this airport in order to eliminate confusion regarding the actual configuration of the airspace.

EFFECTIVE DATE: 0901 UTC, July 15, 1999.

FOR FURTHER INFORMATION CONTACT: Michelle M. Behm, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

History

On Monday, February 1, 1999, the FAA proposed to amend 14 CFR part 71 to modify Class E airspace at Sault Ste Marie, ON (64 FR 4794). The proposal was to correct the legal description of the existing controlled airspace to reflect the actual configuration of that controlled airspace.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9F dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 modifies Class E airspace at Sault Ste Marie, ON, to correctly identify the northwest extension of the existing controlled airspace. The area will be depicted on appropriate aeronautical charts.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporations by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 95665, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

* * * * *

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL ON E4 Sault Ste Marie, ON [Revised]

Sault Ste Marie Airport, ON, Canada
(Lat. 46°29'06"N., long. 84°30'34"W.)

That airspace in the United States extending upward from the surface within 1.6 miles north of the 108° bearing from the airport extending from the 4.4-mile radius of Sault Ste Marie Airport to 4.8 miles southeast of the airport, and within 1.6 miles each side of the 118° bearing from the airport extending from the 4.4-mile radius to 9.6 miles southeast of the airport, and within 1.6 miles each side of the 293° bearing from the airport extending from the 4.4-mile radius to 4.8 miles northwest of the airport.

* * * * *

Issued in Des Plaines, Illinois on March 18, 1999.

John A. Clayborn,

Acting Manager, Air Traffic Division.

[FR Doc. 99–8244 Filed 4–2–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 10, 18, 113 and 178

[T.D. 99–33]

RIN 1515–AB67

Warehouse Withdrawals; Aircraft Fuel Supplies; Pipeline Transportation of Merchandise in Bond

AGENCY: Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document adopts as a final rule, with some changes, the interim rule amending the Customs Regulations that was published in the **Federal Register** on February 22, 1996, as T.D. 96–18. The interim rule implemented certain statutory changes to the Customs laws contained in the Customs modernization portion of the North American Free Trade Agreement Implementation Act regarding recordkeeping for merchandise transported by pipeline and duty-free withdrawals from Customs bonded warehouses of aircraft turbine fuel. The interim rule also clarified the procedures applicable to aircraft turbine fuel withdrawn from a bonded warehouse for certain duty-free use and then commingled with other lots of fuel before being so used.

EFFECTIVE DATE: April 5, 1999.

FOR FURTHER INFORMATION CONTACT: Jerry C. Laderberg, Office of Regulations and Rulings, 202–927–2320.

SUPPLEMENTARY INFORMATION:

Background

Title VI of the North American Free Trade Agreement Implementation Act, Pub. L. 103–182 (December 8, 1993), popularly known as the Customs Modernization Act (Mod Act), significantly amended certain Customs laws. This document concerns sections 664 and 665 of the Mod Act. Section 664 added a new section 553a to the Tariff Act of 1930 (19 U.S.C. 1553a), to account for bonded merchandise transported by pipeline. Section 665 amended section 557(a) of the Tariff Act of 1930 (19 U.S.C. 1557(a)), to provide for the duty-free withdrawal of turbine fuel from a Customs bonded warehouse under a 30-day accounting period.

Under section 553a, bonded merchandise transported by pipeline may be accounted for on a quantitative basis. For this purpose, the bill of lading or equivalent document of receipt, issued by the pipeline carrier to the shipper and accepted by the consignee, may be used to account for the quantity of merchandise so transported and to maintain the identity of that merchandise. This facilitates the commingling of bonded merchandise with non-bonded merchandise being transported by pipeline. Commingling previously was not permitted under Customs law, which required that the physical identity of the bonded merchandise be maintained. However, since most merchandise transported by pipeline is commingled and is susceptible to quantitative accounting, section 553a is intended both to enable the effective use of modern fuel transportation systems and to reduce the administrative costs and paperwork for the industry and the Government.

Under amended section 1557(a), aircraft turbine fuel may be withdrawn from a Customs bonded warehouse for use as provided under section 309 of the Tariff Act of 1930 (19 U.S.C. 1309) without the payment of duty if an amount equal to the quantity of fuel withdrawn is shown to be used as provided for in section 1309 within 30 days of its withdrawal. Duties must be deposited on turbine fuel that was withdrawn in excess of the quantity

shown to have been used under section 1309 during the 30-day period following withdrawal of the fuel. Previously, Customs required daily accounting for such fuel, which resulted in great administrative expense and excessive paperwork for industry. The amended procedure allows for the commingling of different lots of fuel, whether bonded, imported, or domestic, in a modern hydrant system, with accounting for the bonded fuel in a manner which is cost-effective and which substantially reduces paperwork.

Accordingly, by a document published in the **Federal Register** (61 FR 6772) on February 22, 1996, as T.D. 96–18, Customs issued interim regulations to implement the foregoing statutory enactments.

The interim regulations added a new § 18.31 to its regulations (19 CFR 18.31) to allow bonded merchandise being transported by pipeline to be accounted for on a quantitative basis, and a new § 10.62b to permit accounting on a monthly basis for the duty-free withdrawal of aircraft turbine fuel from a bonded warehouse for use as provided in 19 U.S.C. 1309. In connection with new §§ 10.62b and 18.31, the interim regulations also made conforming changes to existing §§ 10.60(d), 10.62(a), 18.1(a)(1), and 113.62(b) of the Customs Regulations (19 CFR 10.60(d), 10.62(a), 18.1(a)(1), and 113.62(b)).

Discussion of Comments

One commenter responded to the request for comments on the interim regulations contained in T.D. 96–18. This commenter agreed with the substance of the interim regulations, but made a number of suggestions in an effort to clarify the meaning of the regulations or to further simplify their administration. The suggestions made by the commenter, together with the responses by Customs, are set forth below.

Comment: The reference in § 10.62(a) to Customs Form (CF) 7506 should be changed to Customs Form 7501 because Customs has since adopted the use of CF 7501 in place of CF 7506.

Customs Response: Customs agrees. Section 10.62(a) is changed accordingly.

Comment: The last sentence in § 10.62b(b) should be changed to require that the withdrawal of turbine fuel be made using CF 7512 unless the blanket withdrawal procedure is used.

Customs Response: Customs disagrees. Under § 144.37, Customs Regulations (19 CFR 144.37), either a CF 7512 or a CF 7501 may be used to document the withdrawal.

Comment: The commenter stated that the use of the phrase, "the fuel withdrawn which is not entered and upon which duties have not been paid", in § 10.62b(c)(1) and its subordinate paragraphs, is superfluous and should be deleted from these provisions. The commenter asserts that, as used in paragraph (c)(1)(ii)(C) of § 10.62b, the phrase appears misplaced because this paragraph deals with fuel being loaded onto an aircraft, as opposed to being withdrawn without entry or payment of duty from a bonded warehouse.

Customs Response: Customs disagrees that the phrase should be entirely deleted from § 10.62b(c). It serves to remind Customs and the party withdrawing the fuel that the fuel must be entered if not timely laden under 19 U.S.C. 1309. Customs agrees, however, that the phrase is inappropriate as used in § 10.62b(c)(1)(ii)(C). Section 10.62b(c)(1)(ii)(C) is revised consistent with the request made by the commenter.

Comment: The commenter believes that it would be helpful to both Customs and importers to indicate in § 10.62b(c)(1) that the referenced documents should be submitted to Customs at the port where the bonded entry was filed.

Customs Response: Customs agrees and the provision is modified.

Comment: The commenter states, with reference to § 10.62b(g)(5), that blanket withdrawals of fuel from a bonded warehouse eliminate the need to file a CF 7512. The commenter advocates that the provision be revised to provide that a withdrawal document meeting the requirements of § 10.62b can be submitted instead of CF 7512. The commenter also suggests that the withdrawal document, which is issued by the warehouse proprietor under § 10.62b(g)(5), could also be issued by a pipeline operator, barge or vessel operator, or other party acceptable to Customs.

In addition, the commenter wants to delete the requirement in § 10.62b(g)(5)(ii) that the withdrawal document identify the specific tank from which the bonded fuel is withdrawn. The commenter is of the opinion that because fuel may be withdrawn from several tanks in frequent batches at multi-tank terminals, the precise tank or tanks from which a particular batch of fuel is withdrawn cannot readily be known. Moreover, the commenter declares that precise tank identification is not currently maintained for commercial or Customs purposes.

Customs Response: Customs disagrees with the suggested changes. As already mentioned, under § 144.37, Customs Regulations (19 CFR 144.37), a CF 7512, or a CF 7501, may be used to document withdrawals for export.

Because the warehouse proprietor is the party obligated under bond for the proper withdrawal of fuel supplies from the warehouse, the proprietor is the appropriate party to issue the withdrawal document. Customs believes that permitting another party, such as a pipeline, vessel, or barge operator, to issue a withdrawal document would impose an administrative burden on the agency as well as on the trade.

Furthermore, Customs believes that the withdrawal document must include the specific tank from which fuel is withdrawn in order to enable the agency to audit the withdrawal of the fuel accurately and effectively.

Conclusion

For these reasons, and after careful consideration of the comments and further review of the matter, Customs concludes that the interim rule published in the **Federal Register** (61 FR 6772) on February 22, 1996, as T.D. 96–18, should be adopted as a final rule with the changes explained above.

Regulatory Flexibility Act and Executive Order 12866

As discussed in the interim rule, since the amendments are not subject to the notice and public procedure requirements of the Administrative Procedure Act (5 U.S.C. 553), they are not subject to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Nor do the amendments constitute a "significant regulatory action" under E.O. 12866.

Paperwork Reduction Act

The collection of information contained in this final regulation has been reviewed and approved by the Office of Management and Budget (OMB) in accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) under control number 1515–0209. Part 178, Customs Regulations (19 CFR part 178) is amended to make provision for this information collection. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB.

The collection of information in this final rule is in § 10.62b. This information is required and will be used to verify that turbine fuel withdrawn from a Customs bonded warehouse is used on aircraft qualifying for duty-free withdrawal of fuel supplies, in accordance with statutory law. The likely respondents are businesses.

The estimated average annual burden associated with the collection of information in this final rule is 12 hours per respondent/recordkeeper.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the Office of Management and Budget, Attention: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503. A copy should also be sent to the Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service, 1300 Pennsylvania Avenue, NW., 3rd Floor, Washington, DC 20229.

List of Subjects

19 CFR Part 10

Customs duties and inspection, Exports, Imports, Reporting and recordkeeping requirements, Shipments.

19 CFR Part 18

Bonded transportation, Common carriers, Customs duties and inspection, Exports, Imports.

19 CFR Part 113

Common carriers, Customs duties and inspection, Exports, Freight, Laboratories, Reporting and recordkeeping requirements, Surety bonds.

19 CFR Part 178

Administrative practice and procedure, Exports, Imports, Reporting and recordkeeping requirements.

Amendments to the Regulations

Accordingly, the interim rule amending parts 10, 18 and 113, Customs Regulations (19 CFR parts 10, 18 and 113), which was published at 61 FR 6772 on February 22, 1996, is adopted as a final rule with the changes set forth below. In addition, part 178 is amended to add a new listing to Customs approved information collection requirements.

PART 10—ARTICLES CONDITIONALLY FREE, SUBJECT TO A REDUCED RATE, ETC.

1. The general authority citation for part 10, and the relevant specific authority citations, continue to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States (HTSUS)), 1321, 1481, 1484, 1498, 1508, 1623, 1624, 3314.

* * * * *

Sections 10.61, 10.62, 10.63, 10.64, 10.64a also issued under 19 U.S.C. 1309;

* * * * *

Section 10.62b also issued under 19 U.S.C. 1557;

* * * * *

§ 10.62 [Amended]

2. In § 10.62(a), the first sentence is amended by removing the reference to "Customs Form 7506" and by adding, in its place, "Customs Form 7501".

3. Section 10.62b is amended by revising paragraphs (c)(1) and (c)(1)(ii)(C) to read as follows:

§ 10.62b Aircraft turbine fuel.

* * * * *

(c) *Establishment of use of fuel by qualifying aircraft.* * * *

(1) The person withdrawing aircraft turbine fuel under paragraph (b) of this section must establish that an aircraft qualifying for the privileges provided for in section 309, Tariff Act of 1930, as amended, used fuel in an amount equal to or exceeding the quantity of the fuel withdrawn that is not entered and upon which duties are not paid by submitting to Customs, at the port where the bonded warehouse entry was filed, within the time provided in paragraph (d) of this section, either—

* * * * *

(ii) * * *

(C) All of the aircraft into which fuel is loaded hereunder were used in a trade provided for in section 309; and

* * * * *

PART 178—APPROVAL OF INFORMATION COLLECTION REQUIREMENTS

1. The authority citation for part 178 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 1624; 44 U.S.C. 3501 *et seq.*

2. Section 178.2 is amended by adding a new listing to the table in appropriate numerical order to read as follows:

§ 178.2 Listing of OMB control numbers.

19 CFR section	Description	OMB Control No.
*	*	*
§ 10.62b	Certificate of compliance for turbine fuel withdrawals	1515–0209
*	*	*

Approved: March 8, 1999.

Raymond W. Kelly,

Commissioner of Customs.

John P. Simpson,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 99–8333 Filed 4–2–99; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 26

[Docket No. 98N–0185]

RIN 0910–ZA11

Mutual Recognition of Pharmaceutical Good Manufacturing Practice Inspection Reports, Medical Device Quality System Audit Reports, and Certain Medical Device Product Evaluation Reports Between the United States and the European Community; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a final rule that appeared in the **Federal Register** of November 6, 1998 (63 FR 60122). The document amended FDA's regulations under an international agreement between the United States and the European Community. FDA took this action to enhance its ability to ensure the safety and effectiveness of pharmaceuticals and medical devices through more efficient utilization of its regulatory resources. The document was published with some inadvertent errors. This document corrects those errors.

EFFECTIVE DATE: March 31, 1999.

FOR FURTHER INFORMATION CONTACT: Merton V. Smith, Office of International

Affairs (HFG–1), Office of External Affairs, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–0910, or e-mail "MSmith@oc.fda.gov".

SUPPLEMENTARY INFORMATION: In FR Doc. 98–29609, appearing on page 60122, in the **Federal Register** of Friday, November 6, 1998, the following corrections are made:

1. In the preamble, on page 60137, in the third column, in the fifth paragraph, in the third line, after "to the following:", "that only" is removed.

§ 26.1 [Corrected]

2. On page 60142, in the first column, in § 26.1(c), in the fourth line, "that only" is removed.

§ 26.50 [Corrected]

3. On page 60153, in Appendix B of subpart B in § 26.50, in Table 2, in the first column, under the subheading "Clinical Thermometers:", the third entry beginning with "AN 868.5925 * * *" is removed; in that same table, under the subheading "Hypodermic Needles and Syringes (except anti-stick and self-destruct):", the third entry beginning with "OR 888.3020 * * * is removed; and in that same table, the subheading "External Fixators (except devices with no external components):" and the two entries that follow are removed.

Dated: March 30, 1999.

William K. Hubbard,

Acting Deputy Commissioner for Policy.

[FR Doc. 99–8199 Filed 3–31–99; 11:57 am]

BILLING CODE 4160–01–F

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Parts 100 and 165

[USCG–1999–5402]

Safety Zones, Security Zones, and Special Local Regulations

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary rules issued.

SUMMARY: This document provides required notice of substantive rules adopted by the Coast Guard and temporarily effective between October 1, 1998 and December 31, 1998, which were not published in the **Federal Register**. This quarterly notice lists temporary local regulations, security zones, and safety zones of limited duration and for which timely publication in the **Federal Register** may not have been possible.

DATES: This notice lists temporary Coast Guard regulations that became effective and were terminated between October 1, 1998 and December 31, 1998.

ADDRESSES: The Docket Management Facility maintains the public docket for this notice. Documents indicated in this notice will be available for inspection or copying at the Docket Management Facility, U.S. Department of Transportation, Room PL–401, 400 Seventh Street SW., Washington, DC 20593–0001 between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays. You may electronically access the public docket for this notice on the Internet at *http://dms.dot.gov,* Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: For questions on this notice, contact Lieutenant Junior Grade Mark Cunningham Office of Regulations and Administrative Law, telephone (202) 267–6233. For questions on viewing, or on submitting material to The docket, contact Dorothy Walker, Chief, Dockets, Department of Transportation (202) 866–9329.

SUPPLEMENTARY INFORMATION: District Commanders and Captains of the Port (COTP) must be immediately responsive to the safety needs of the waters within their jurisdiction; therefore, District Commanders and COTPs have been delegated the authority to issue certain local regulations. Safety zones may be established for safety or environmental purposes. A safety zone may be stationary and described by fixed limits or it may be described as a zone around a vessel in motion. Security zones limit access to vessels, ports, or waterfront facilities to prevent injury or damage. Special local regulations are issued to enhance the safety of participants and spectators at regattas and other marine events. Timely publication of these regulations in the **Federal Register** is often precluded when a regulation responds to an emergency, or when an event occurs without sufficient advance notice. However, the affected public is informed of these regulations through Local Notices to Mariners, press releases, and other means. Moreover, actual notification is provided by Coast Guard patrol vessels enforcing the restrictions imposed by the regulation.

Because mariners are notified by Coast Guard officials on-scene prior to enforcement action, **Federal Register** notice is not required to place the special local regulation, security zone, or safety zone in effect. However, the Coast Guard, by law, must published in the **Federal Register** notice of substantive rules adopted. To meet this obligation without imposing undue expense on the public, the Coast Guard periodically publishes a list of these temporary special local regulations, security zones, and safety zones. Permanent regulations are not included in this list because they are published in their entirety in the **Federal Register**. Temporary regulations may also be published in their entirety if sufficient time is available to do so before they are placed in effect or terminated. The safety zones, special local regulations and security zones listed in this notice have been exempted from review under Executive Order 12866 because of their emergency nature, or limited scope and temporary effectiveness.

The following regulations were placed in effect temporarily during the period October 1, 1998 and December 31, 1998, unless otherwise indicated.

Dated: March 30, 1999.

Pamela M. Pelcovits,

Chief, Office of Regulations and Administrative Law.

QUARTERLY REPORT

District docket	Location	Type	Effective date
01–98–134	Hudson River, Manhattan, NY	Safety Zone	10/13/98
01–98–152	Hudson River, Manhattan, NY	Safety Zone	10/8/98
01–98–159	Hudson River, Manhattan, NY	Safety Zone	10/16/98
01–98–160	Hudson River, Albany, NY	Safety Zone	10/22/98
01–98–164	Hudson River, Manhattan, NY	Safety Zone	11/21/98
01–98–166	Boston Harbor, Boston, MA	Safety Zone	11/7/98
01–98–167	Bath Iron Works, Bath, ME	Safety Zone	11/14/98
01–98–169	Hudson River, Manhattan, NY	Safety Zone	11/11/98
01–98–176	Newport, RI	Security Zone	12/3/98
01–98–177	Newport, RI	Security Zone	12/3/98

QUARTERLY REPORT—Continued

District docket	Location	Type	Effective date
01–98–180	Marblehead Harbor, Marblehead, MA	Safety Zone	12/31/98
01–98–181	Gloucester Harbor, Gloucester, MA	Safety Zone	12/31/98
01–98–182	Newport, RI	Safety Zone	12/31/98
05–98–080	James River, Williamsburg, VA	Safety Zone	10/6/98
05–98–085	Mattoponi River, West Point, VA	Safety Zone	10/3/98
05–98–088	Atlantic Ocean, Ocean City, MD	Special Local	10/10/98
05–98–089	Sunset Lake, Wildwood Crest, NJ	Special Local	10/10/98
05–98–091	Camp Lejeune, NC	Safety Zone	10/08/98
05–98–094	Spa Creek, Annapolis Harbor, Maryland	Special Local	11/14/98
05–98–099	Wrightsville Beach, North Carolina	Special Local	11/28/98
05–98–104	Cape Fear River, North Carolina	Safety Zone	11/25/98
05–98–105	Cape Fear River, North Carolina	Safety Zone	12/2/98
05–98–107	Cape Fear River, North Carolina	Safety Zone	12/5/98
05–98–108	Cape Fear River, North Carolina	Safety Zone	12/9/98
05–98–109	Cape Fear River, North Carolina	Safety Zone	12/15/98
05–98–109	Cape Fear River, North Carolina	Safety Zone	12/12/98
05–98–110	Cape Fear River, North Carolina	Safety Zone	12/18/98
05–98–112	Cape Fear River, North Carolina	Safety Zone	12/21/98
07–98–058	Islamorada, FL	Special Local	10/10/98
07–98–070	North of Old San Juan, Puerto Rico	Special Local	11/15/98
07–98–078	Bay View, Catano, PR	Special Local	11/29/98
07–98–081	East of Villa Marina, Fajardo, PR	Special Local	12/20/98
08–98–067	Tennessee River, M. 333.5 to 336.5	Special Local	10/17/98
08–98–074	Clear Lake, Clear Lake, TX	Special Local	12/12/98
13–98–036	Freedom Fireworks Display, Fort Vancouver	Safety Zone	10/30/98
13–98–037	Fireworks Display, St. Helens, OR	Safety	12/31/98

QUARTERLY REPORT

COTP docket	Location	Type	Effective date
Corpus Christi 98–005	Victoria Barge Canal	Safety Zone	10/21/98
Guam 98–003	Orote Point, Guam	Safety Zone	11/21/98
Guam 98–004	Agana Bay, Guam	Safety Zone	12/31/98
Houston-Galveston 98–011	Houston Ship Channel, Houston, TX	Safety Zone	12/16/98
LA/Long Beach 98–006	Long Beach Harbor, CA	Safety Zone	10/3/98
LA/Long Beach 98–007	Pierpont Bay, Ventura, CA	Safety Zone	10/4/98
LA/Long Beach 98–008	Long Beach Harbor, CA	Safety Zone	10/21/98
LA/Long Beach 98–009	Long Beach Harbor, CA	Safety Zone	10/22/98
LA/Long Beach 98–011	Santa Barbara, CA	Safety Zone	12/9/98
Louisville 98–003	Licking River, Compell County, KY	Safety Zone	11/2/98
Miami 98–064	West Palm Beach, FL	Safety Zone	10/2/98
Miami 98–066	West Palm Beach, FL	Safety Zone	10/15/98
Miami 98–067	Bal Harbor, Florida	Security Zone	10/13/98
Miami 98–069	Palm Beach County, FL	Safety Zone	10/30/98
Miami 98–071	Palm Beach County, FL	Safety Zone	11/4/98
Miami 98–074	Miami, FL	Safety Zone	11/13/98
New Orleans 98–021	Lwr Mississippi River, M. 94 to 95	Safety Zone	10/29/98
New Orleans 98–024	Lwr Mississippi River, M. 94 to 95	Safety Zone	12/5/98
New Orleans 98–025	Lwr Mississippi River, M. 229.5 to 230.5	Safety Zone	12/12/98
New Orleans 98–026	Lwr Mississippi River, M. 94 to 96	Safety Zone	12/16/98
New Orleans 98–027	Lwr Mississippi River, M. 94 to 96	Safety Zone	12/14/98
Paducah 98–006	Tennessee Tombigbee Waterway, M. 429 to 431.	Safety Zone	10/18/98
Paducah 98–007	Tennessee River, M. 304.5 to 306	Safety Zone	12/2/98
Paducah 98–001	Ohio River, M. 919 to 920	Safety Zone	12/29/98
San Francisco Bay 98–023	San Francisco Bay, San Francisco, CA	Safety Zone	10/8/98
San Francisco Bay 98–024	San Francisco Bay, San Francisco, CA	Safety Zone	10/10/98
San Francisco Bay 98–025	San Francisco Bay, San Francisco, CA	Safety Zone	10/10/98
San Juan 98–072	San Juan, PR	Safety Zone	12/1/98
San Juan 98–073	Port of San Juan, Puerto Rico	Safety Zone	11/13/98

[FR Doc. 99–8203 Filed 4–2–99; 8:45 am]
BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD07–98–083]

RIN 2115AE 47

Drawbridge Operation Regulations; Gulf Intracoastal Waterway, Florida

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule with request for comments.

SUMMARY: The Coast Guards is temporarily changing the regulations governing the operation of the Boca Grande Bridge, mile 34.3 at Placida. This change is being made because of concerns expressed by the bridgeowner about vehicle traffic congestion at the tollbooth near the bridge. The toll collection facilities are expected to be improved prior to the year 2000 winter season, therefore this rule will only be in effect for the remainder of the 1999 winter season. This proposal will accommodate the needs of vehicle traffic and still provide for the reasonable needs of navigation.

DATES: This temporary rule will be in effect from March 5, 1999, until May 31, 1999. Comments must be received on or before June 4, 1999.

ADDRESSES: Comments must be mailed to Commander (oan) Seventh Coast Guard District, 909 SE 1st Avenue, Miami, Florida 33131–3050, or may be delivered to room 406 at the above address between 7:30 a.m. and 4 p.m. Monday through Friday, except federal holidays. The comments received will be available for inspection and copying at room 406 at the same address and times.

FOR FURTHER INFORMATION CONTACT: Mr. Walt Paskowsky, Project Manager, Bridge Section, (305) 536–4103.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views or arguments. Persons submitting comments should include their names and addresses, identify the rulemaking [CGD07–98–083] and the specific section of this rule to which each comment applies, and give the reason for each comment.

The Coast Guard will consider all comments received during the comment period. It may change this rule in view of the comments received. The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the address under **ADDRESSES.** The request should include the reasons why a hearing would be beneficial. If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register.**

Background and Purpose

The existing regulation 33 CFR 117.287(a–1) requires the bridge to open on signal except that from January 1 to May 31, from 10 a.m. to 5 p.m., the draw need open only on the hour, quarter-hour, half-hour, and three quarter-hour. The Coast Guard is temporarily changing the time the bridge is on scheduled openings because of vehicle congestion at the bridge tollbooth during the winter season. Because the toll facilities are expected to be improved prior to the year 2000 winter season, the Coast Guard is temporarily adding three additional hours of scheduled opening times for the winter 1999 season. This temporary rule will allow the 15 minutes schedule start at 7 a.m. vice 10 a.m. until 5 p.m. This action should improve the flow of highway traffic through the tollbooth during the morning commuter periods without unreasonably impacting navigation.

In accordance with 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days after **Federal Register** publication. Publishing a NPRM and delaying its effective date would be contrary to public interests as the Coast Guard was just advised of the problems at the bridge by the bridgeowner, and immediate action is needed to alleviate the congestion at the bridge prior to the new tollbooths being constructed.

Regulatory Evaluation

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of the order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. The regulations will only increase waiting times for vessels by a maximum of 15 minutes.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this rule will have a significant economic impact on a substantial number of small entities. "Small entities" include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their field and governmental jurisdictions with populations of less than 50,000.

Therefore, the Coast Guard certifies under section 605(b) that this rule will not have a significant effect upon a substantial number of small entities as the vessels involved will only have to wait a maximum of an additional 15 minutes.

Federalism

The Coast Guard has analyzed the rule under the principles and criteria contained in Executive Order 12612, and has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Assessment

The Coast Guard considered the environmental impact of this rule and has concluded under Figure 2–1, paragraph 32 of Commandant Instruction M16475.1C, that the promulgation of operating requirements or procedures for drawbridges is categorically excluded from further environmental documentation. A "Categorical Exclusion Determination" is available in the docket for inspection and copying.

List of Subjects in 33 CFR Part 117

Bridges.

Temporary Regulations: In consideration of the foregoing, the Coast Guard amends 33 CFR part 117 as follows:

PART 117—[AMENDED]

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g), 33 CFR 117.43

2. From March 5, 1999, through May 31, 1999, in § 117.287, paragraph (a–1) is suspended and a new paragraph (a–3) is added to read as follows:

§ 117.287 Gulf Intracoastal Waterway.

* * * * *

(a–3) The Draw of the Gasparilla Island drawbridge, mile 34.3 at Placida,

shall open on signal, except that from March 5 to May 31, 1999, from 7 a.m. to 5 p.m. the draw need open only on the hour, quarter-hour, half-hour, and three quarter-hour.

* * * * *

Dated: March 5, 1999.

Norman T. Saunders,

Rear Admiral, U.S. Coast Guard Commander, Seventh Coast Guard District.

[FR Doc. 99–8202 Filed 4–2–99; 8:45 am]

BILLING CODE 4910–15–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–6317–5]

National Oil and Hazardous Substances Pollution Contingency Plan National Priorities List Update

AGENCY: Environmental Protection Agency.

ACTION: Notice of partial deletion of the Treasure Island Naval Station—Hunters Point Annex Site from the National Priorities List (NPL).

SUMMARY: The Environmental Protection Agency (EPA), Region 9, announces the deletion of operable unit (OU) No. 1, also known as Parcel A, of Treasure Island Naval Station—Hunters Point Annex, also known as Hunters Point Naval Shipyard (HPS), Superfund Site (EPA ID # CA1170090087) from the NPL. The NPL constitutes Appendix B of 40 CFR part 300 which is the National Oil and Hazardous Substance Pollution Contingency Plan (NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). EPA and the State of California have determined that all appropriate responses under CERCLA have been implemented on Parcel A of HPS, and that no further cleanup is appropriate for Parcel A of HPS. Moreover, EPA and the State of California have determined that the remedial actions conducted on Parcel A to date remain protective of public health, welfare, and the environment. This partial deletion is in accordance with 40 CFR 300.425(e) and the Notice of Policy Change: Partial Deletion of Sites Listed on the National Priorities List, 60 FR 55466 (November 1, 1995). The other parcels of HPS, Parcels B, C, D, E, and F, are still undergoing remedial actions, and are not to be removed from the NPL.

EFFECTIVE DATE: April 5, 1999.

ADDRESSES: *Information Repositories:* Information on this Site is available for viewing at the following locations:

U.S. EPA, Region 9, Superfund Records Center, 4th floor, 95 Hawthorne St., San Francisco, CA 94105, 415–536–2000. Anna E. Waden Branch Library, 5075 Third St., San Francisco, CA 94124, 415–715–4100.

San Francisco Main Public Library, Civic Center, San Francisco, CA 94102, 415–557–4400.

FOR FURTHER INFORMATION CONTACT: Claire Trombadore (SFD–8–2), RPM, U.S. EPA, Region 9, 75 Hawthorne St., San Francisco, CA 94105, 415–744–2409, Fax 415–744–1916, e-mail TROMBADORE.CLAIRE@EPAMAIL.EPA.GOV.

SUPPLEMENTARY INFORMATION: The site to be partially deleted from the NPL is: Parcel A, of Treasure Island Naval Station—Hunters Point Annex, San Francisco, California. After performing a Preliminary Assessment and Site Inspection (PA/SI) and a Remedial Investigation (RI) of Parcel A the Navy determined that Parcel A posed no significant threat to public health or the environment. Therefore, the Navy, which owns HPS, issued a "no action" Record of Decision (ROD) for Parcel A of HPS in November of 1995. The U.S. EPA concurred with this ROD.

The Navy has implemented all appropriate response actions required under CERCLA on Parcel A. Since the ROD for Parcel A specified "no action," a five year review is not necessary for this parcel. The other parcels of HPS, Parcels B, C, D, E, and F, are still undergoing remedial actions, and are not to be removed from the NPL.

A Notice of Intent for Partial Deletion for this Site was published on December 15, 1998 in the **Federal Register** (63 FR 69032–69034). The closing date for comments on the Notice of Intent for Partial Deletion was January 14, 1999. EPA received only one comment letter. This letter, from the San Francisco Redevelopment Agency, expressed support for the partial deletion of Parcel A. This letter is available for review in the HPS site file at the U.S. EPA, Region 9, Superfund Records Center, 4th floor, 95 Hawthorne St., San Francisco, CA 94105, 415–536–2000 and also in the repositories listed above.

EPA identifies sites which appear to present a significant risk to public health, welfare, or the environment, and it maintains the National Priorities List containing those sites. Remedial Actions at sites on the NPL may be funded by the Hazardous Substance Response Trust Fund (Fund). Any site or portion of a site deleted from the NPL remains eligible for remedial actions in the unlikely event that conditions at the site warrant such action. Section 300.425(e)(3) of the NCP states that Fund-financed actions may be taken at sites deleted from the NPL.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous substances, Hazardous wastes, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: March 16, 1999.

Felicia Marcus,

Regional Administrator, Region 9.

For the reason set out in the preamble, 40 CFR part 300 is amended as follows:

PART 300—[AMENDED]

1. The authority citation for part 300 continues to read as follows:

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351, E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p. 193.

2. Table 2 of Appendix B to part 300 is amended by revising the entry for "Treasure Island Naval Station—Hun Pt An," San Francisco, California, to read as follows:

Appendix B to Part 300—National Priorities List

TABLE 2.—FEDERAL FACILITIES SECTION

State	Site name	City/county	Notes[a]
*	*	*	*
CA	Treasure Island Naval Station-Hun Pt An	San Francisco	P

TABLE 2.—FEDERAL FACILITIES SECTION—Continued

State	Site name	City/county	Notes[a]
*	* * *	* * *	*

([a]) A=Based on issuance of health advisory by Agency for Toxic Substances and Disease Registry (if scored, HRS score need not be > 28.50).

* * * * * * *

P=Sites with partial deletion(s).

[FR Doc. 99–8086 Filed 4–2–99; 8:45 am]
BILLING CODE 6560–50–P

GENERAL SERVICES ADMINISTRATION

41 CFR Chapter 301

[FTR Amendment 79—1998 Edition]

RIN 3090–AG95

Federal Travel Regulation; Maximum Per Diem Rates in Michigan, New Jersey, New York, South Carolina, and West Virginia

AGENCY: Office of Governmentwide Policy, GSA.

ACTION: Final rule.

SUMMARY: This final rule amends the Federal Travel Regulation (FTR) Amendment 75, as corrected, published in the **Federal Register** on Wednesday, February 10, 1999 (64 FR 6550), to add per diem localities in the States of Michigan, New Jersey, New York, and West Virginia, respectively, and to increase the maximum lodging amount in Charleston, South Carolina.

DATES: This final rule is effective April 5, 1999, and applies for travel performed on or after April 5, 1999.

FOR FURTHER INFORMATION CONTACT: Jim Harte, Office of Governmentwide Policy, Travel and Transportation Management Policy Division, telephone 202–501–1538.

SUPPLEMENTARY INFORMATION:

A. Background

The General Services Administration (GSA), after an analysis of additional data, has determined that current lodging allowances for Frankenmuth, Michigan; Tom's River, New Jersey; Syracuse, New York; Charleston, South Carolina; and Shepherdstown, West Virginia, do not adequately reflect the cost of lodging in those areas. To provide adequate per diem reimbursement for Federal employee travel to Frankenmuth (Saginaw County), Michigan, the maximum lodging allowance is $64 and the meals and incidental expenses (M&IE) rate is $34, resulting in a maximum per diem rate of $98. For Federal employee travel to Tom's River (Ocean County), New Jersey, seasonal rates are: for the period June 1–September 30, the maximum lodging allowance is $69 and the M&IE rate is $38, resulting in a maximum per diem rate of $107, and for the period October 1–May 31, the maximum lodging allowance is $50 and the M&IE rate is $38, resulting in a maximum per diem rate of $88. The maximum lodging allowance for Syracuse (Onondaga County), New York, is $70 and the M&IE rate is $34, resulting in a maximum per diem rate of $104. The maximum lodging allowance for Charleston (Charleston County), South Carolina, is changed to $95 and the M&IE rate remains at $42, resulting in a maximum per diem rate of $137. The maximum lodging allowance for Shepherdstown (Jefferson County), West Virginia, is $65 and the M&IE rate is $38, resulting in a maximum per diem rate of $103.

B. Executive Order 12866

GSA has determined that this final rule is not a significant regulatory action for the purposes of Executive Order 12866 of September 30, 1993.

C. Regulatory Flexibility Act

This final rule is not required to be published in the **Federal Register** for notice and comment; therefore, the Regulatory Flexibility Act does not apply.

D. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the final rule does not impose recordkeeping or information collection requirements, or the collection of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 501 *et seq.*

E. Small Business Regulatory Enforcement Act

This final rule is also exempt from congressional review prescribed under 5 U.S.C. 801 since it relates solely to agency management and personnel.

List of Subjects in 41 CFR Chapter 301

Government employees, Travel and transportation expenses.

For the reasons set forth in the preamble, under 5 U.S.C. 5701–5709, 41 CFR chapter 301 is amended as follows:

CHAPTER 301—TEMPORARY DUTY (TDY) TRAVEL ALLOWANCES

Appendix A to chapter 301 is amended by adding, under the State of Michigan, an entry for Frankenmuth; under the State of New Jersey, an entry for Tom's River; under the State of New York, an entry for Syracuse, under the State of West Virginia, an entry for Shepherdstown; and by revising, under the State of South Carolina, the entry for Charleston as follows:

Appendix A to Chapter 301—Prescribed Maximum per Diem Rates for Conus

* * * * *

Per diem locality: key city 1[1]	County and/or other defined location[2,3]	Maximum lodging amount (room rate only—no taxes) (a)	+	M&IE rate (b)	=	Maximum per diem rate[4] (c)
* * *	* * *	*		*		*
MICHIGAN						
* * *	* * *	*		*		*
Frankenmuth	Saginaw	64		34		98

Per diem locality: key city 1 [1]	County and/or other defined location [2, 3]	Maximum lodging amount (room rate only—no taxes) (a)	+	M&IE rate (b)	=	Maximum per diem rate 4 (c)
* * *	*	*		*		*
NEW JERSEY						
* * *	*	*		*		*
Tom's River	Ocean					
(June 1-September 30)		69		38		107
(October 1-May 31)		50		38		88
* * *	*	*		*		*
NEW YORK						
* * *	*	*		*		*
Syracuse	Onondaga	70		34		104
* * *	*	*		*		*
SOUTH CAROLINA						
* * *	*	*		*		*
Charleston	Charleston	95		42		137
* * *	*	*		*		*
WEST VIRGINIA						
* * *	*	*		*		*
Shepherdstown	Jefferson	65		38		103
* * *	*	*		*		*

Dated: March 22, 1999.

David J. Barram,

Administrator of General Services.

[FR Doc. 99–8155 Filed 4–2–99; 8:45 am]

BILLING CODE 6820–34–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 69

[CC Docket No. 97–181; FCC 99–28]

Defining Primary Lines

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Federal Communications Commission adopts a location-based definition of "primary residential line." Under this definition, one residential line that a price cap local exchange carrier (LEC) provides to a particular location will be considered primary. Any other residential lines the price cap LEC provides to the same location shall be deemed non-primary residential lines. The Commission maintains the existing definition of "single line business line." These definitions will facilitate implementation of the Commission's access charge rules, which set higher caps for the subscriber line charges (SLCs) and presubscribed interexchange carrier charges (PICCs) that price cap LECs may assess on non-primary residential lines and multi-line business lines than on primary residential lines and single line business lines. Adopting requirements for differentiating and identifying such lines will promote uniformity in the way price cap LECs assess SLCs and PICCs.

EFFECTIVE DATE: July 1, 1999.

ADDRESSES: The entire file is available for inspection and copying weekdays from 9:00 a.m. to 4:30 p.m. in the Commission's Reference Center, 445 Twelfth Street SW, Washington, DC 20554. Copies may be purchased from the Commission's duplicating contractor, ITS Inc., 1231 Twentieth St., NW, Washington, DC 20036, (202) 857–3800.

FOR FURTHER INFORMATION CONTACT: Neil Fried, Common Carrier Bureau, (202) 418–1520; TTY: (202) 418–0484.

SUPPLEMENTARY INFORMATION:

A. Background

1. To provide interstate telecommunications services, interexchange carriers (IXCs) usually rely on some of the telephone infrastructure that incumbent LECs use to provide local telephone service. The incumbent LEC's local loop, for example, connects a customer to the LEC network so that the customer can make and receive intrastate calls. The incumbent LEC's local loop also connects the customer to the networks of IXCs so that the customer can make and receive interstate calls. Consequently, a portion of the costs an incumbent LEC incurs in providing this common infrastructure is allocated to intrastate service and recovered pursuant to state regulation, and a portion is allocated to interstate service and recovered pursuant to regulations of the Federal Communications Commission.

2. The Commission adopted uniform access charge rules in 1983 to govern the way incumbent LECs recover that portion of the costs of the common infrastructure allocated to interstate service. Under these rules, the Commission allows incumbent LECs to recover some of the interstate costs of providing the local loop through a flat, monthly end-user common line charge (EUCL)—sometimes called a SLC—that they assess on end users. The Commission limited the amount of the SLC, however, because of concerns that an excessively high SLC might cause end users to disconnect their telephone service. The Commission allowed the incumbent LECs to recover the

remainder of their interstate costs attributable to the local loop through a per-minute carrier common line charge (CCLC) that they assess on IXCs.

3. Under principles of cost-causation, it is most economically efficient for incumbent LECs to recover the costs of providing interstate access in the same way that they incur them. Under such principles, incumbent LECs should recover their traffic-sensitive costs of interstate access through per-minute charges, and should recover their non-traffic-sensitive costs through flat charges. The incumbent LECs' costs of providing the local loop do not change with the number, length, or type of telephone calls customers make, and so are non-traffic sensitive. Because of the cap on SLCs, however, incumbent LECs recover some of these non-traffic-sensitive loop costs through the traffic sensitive CCLC. In its May 1997 *Access Charge Reform Order*, the Commission decided to phase out the CCLC for price cap LECs on the grounds that recovering the non-traffic-sensitive loop costs through traffic-sensitive charges is economically inefficient.

4. To provide price cap LECs with a means to recover some of the loop costs they previously recovered in the CCLC, the Commission raised the price cap LECs' SLC caps for non-primary residential lines and multi-line business lines, but chose not to raise the price cap LECs' SLC caps for primary residential lines and single line business lines. For 1999, the SLC cap for price cap LECs is $3.50 per month for each primary residential and single line business line, $6.07 per month for each non-primary residential line, and $9.20 per month for each multi-line business line. To address concerns that charging a higher SLC for non-primary residential lines sold by price cap LECs might encourage subscribers to obtain their additional residential lines from resellers, the Commission decided in the *Access Charge Reform Order* to allow price cap LECs to charge the higher SLC to carriers that resell price-cap LECs' lines if the lines are non-primary.

5. Because the SLC caps on residential and single line business lines would prevent most price cap LECs from recovering through the SLC all the costs they formerly recovered through the CCLC, the Commission also created the PICC: a flat, per-line charge that price cap LECs may assess on an end user's presubscribed IXC. As with the SLC, the Commission set higher PICC caps for non-primary residential lines and multi-line business lines than for primary residential lines and single line business lines. Through June 30, 1999, the PICC cap is $0.53 per month for each primary residential and single line business line, $1.50 per month for each non-primary residential line, and $2.75 per month for each multi-line business line. As a result of the various caps, the lines of customers that subscribe to single residential or business lines are not assessed the entire cost of the loops. Until the access reform rate structure is fully phased in, these lines are subsidized by customers that subscribe to multiple business lines.

6. The Commission sought comment in a September 1997 notice of proposed rulemaking (Notice) on whether to modify its rules to provide for the definition, identification, and verification of primary residential lines and single line business lines. 62 FR 48042, September 12, 1997; 12 FCC Rcd 13647. Choosing appropriately balanced definitions is important because as primary residential and single line business line counts increase, so, too, does the subsidy that multi-line business line customers must bear during the phase-in of the access reform rate structure.

B. Definition of Primary Residential Line

1. Background

7. The Commission's rules currently do not define "primary residential line." The Commission sought comment in the Notice on whether to define the primary residential line as the primary line of a residence, of a household, of a subscriber, or on some other basis. Under a residence definition, only one line per service location—such as a house or an apartment—would receive primary line status. Under a household definition, each family unit would receive one primary line, so that if multiple families live in one house, each family would receive one line at rates with the lower caps. Under a subscriber definition, one line would be given primary-line status for each account opened with the carrier.

8. In the meantime, each price cap LEC devised its own definition for the purpose of its 1998 access tariff filings. The Commission concluded in its investigation of those tariff filings that, pending completion of this rulemaking proceeding, defining as a primary line either one line per residence or one line per billing-name account per residence was "not unreasonable" for purposes of the tariff filings. The Commission also found that reasonable definitions of primary and non-primary residential lines should, at a minimum, "categorize a second residential line as non-primary if the line is billed to the same name at the same location."

9. In the *Notice*, the Commission tentatively concluded that price cap LEC records might be inadequate to identify primary residential lines, particularly if the Commission adopted a household-based definition. Based on the presumption that identifying primary residential lines without information from the customer would be more administratively burdensome, the Commission tentatively concluded to permit price cap LECs to use end-user self-certification to identify primary lines.

2. Discussion

10. Some commenters have supported each of the definitions of primary residential line that the Commission identified in the *Notice:* household-based, account-based, and location-based. None of these definitions is flawless. An account-based definition, for example, would permit a subscriber to have multiple primary lines by ordering each line under a different account name. A location-based definition does not permit subscribers who share the same address, such as housemates, each to have his or her own primary line. A household-based definition would present carriers, consumers, and the Commission with the ambiguous and administratively burdensome task of determining which subscribers are part of which households. We have balanced the advantages and disadvantages of each option. We conclude that a location-based definition is the least intrusive and most administratively feasible definition that fulfills the *Access Charge Reform Order's* objectives for setting higher SLC and PICC caps for non-primary residential lines and multi-line business lines.

11. Thus, we will consider one residential line provided by a price cap LEC per service location to be a primary residential line. For example, only one line per house, per apartment, or per college dorm room will receive primary-line rates. We begin by noting along with a number of commenters that LECs can implement this definition based on their service records. As the Commission stated in the *Notice*, a location-based definition is "administratively simple and less invasive of subscribers' privacy because it does not require the gathering of information regarding subscriber living arrangements that would be needed to identify households." Consequently, this definition obviates the need for the self-certification procedure that the Commission outlined in the *Notice*, a

procedure that the Office of Management and Budget (OMB) argues would be ineffective and burdensome. A customer's service location is also straightforward to determine and not something the customer can easily alter or misreport to obtain the primary-line rate. This definition will require carriers to cross-check records within a service location to ensure that only one subscriber line per residence receives the primary-line rates, but sorting records by service location should be relatively easy. Furthermore, many price cap LECs are already moving toward a location-based definition in their tariffs.

12. The Commission's rules that establish PICCs and set different SLC caps for primary residential lines than for non-primary residential lines apply only to price cap LECs, not to rate-of-return LECs. Consequently, the definition of primary residential line shall apply only to price cap LECs. The Commission has sought comment on whether to apply to rate-of-return LECs the rules regarding PICCs and the higher caps for non-primary residential lines, but has not issued an order resolving that issue. Should the Commission decide at a later date to apply such rules to rate-of-return LECs, the Commission will address at that time how to define, identify, and verify primary residential lines and single line business lines for rate-of-return LECs. Thus the Commission does not address issues that the *Notice* raised regarding rate-of-return LECs.

13. A number of commenters oppose the location-based definition because it allows only one primary line per multi-subscriber residence. If, for example, two roommates each subscribe to a line, only one line will be billed at the primary-line rate. Generally, however, only a single residential connection is necessary to permit all residents at a particular service location complete access to telecommunications and information services, including access to emergency services.

14. If a subscriber has both a primary and secondary home, this definition would also treat one line in each home as primary. We note that this definition departs from current practice in the business context, under which a business with one line in each of multiple locations in the same telephone company area receives multi-line business rates on each line. We find it unnecessary to extend this policy to the residential context. As many comments point out, the burden of investigating whether a particular residential subscriber has lines in multiple residences outweighs any benefit from collecting the higher non-primary line rates, especially as the number of subscribers with multiple residences, and thus the number of lines that would be reclassified from primary to non-primary, is likely only a small percentage of all residential lines. Furthermore, in many instances different incumbent LECs will serve the primary and secondary residences. This further complicates the task of determining which subscribers have multiple residences, and raises the difficult question of which line would be deemed the primary line, assuming the subscriber could have only one primary line throughout all his or her residences. We also note that the number of residential subscribers is larger than the number of business subscribers.

15. We will look at all lines provided by a particular price cap LEC, whether sold by the price cap LEC or a reseller, when determining the status of the lines to a residence. We do so to address concerns that charging higher rates for non-primary residential lines sold by price cap LECs might encourage subscribers to obtain their additional lines from resellers for no reason other than to avoid the higher SLC. Consequently, we do not accept the invitation of some commenters to qualify our definition further by treating as primary one line per location per service provider. Doing so would create an artificial incentive for subscribers to spread their lines out among price cap LECs and multiple resellers merely to avoid the higher SLCs and PICCs associated with non-primary residential lines.

16. We do not seek to discourage subscribers from ordering services from multiple providers, but also do not want to create an artificial incentive for them to do so. Thus, when a price cap LEC has already sold a line to a residence, the price cap LEC may assess the higher rates on any additional resold lines. If, however, a resold price cap LEC line is the primary line, as is the case when all the lines to the residence are purchased from one or more resellers, the resold line will remain the primary line should a price cap LEC subsequently sell an additional line to that residence. If the price cap LEC line and resold line are sold simultaneously, the price cap LEC line shall be the primary line. When lines are sold to a location by both a price cap LEC and at least one reseller of price cap LEC lines, one of the lines must be identified as primary, but which one will have little impact on the end user: whichever line is deemed primary, the sum of the SLC and PICC charges to the consumer will be the same. Because the price cap LEC is physically providing both lines, we think it reasonable that it get the primary line designation in the rare circumstance that both lines are sold simultaneously.

17. Lines sold by wireless carriers and competitive LECs that do not resell price cap LEC lines shall not be considered in determining residential line status. Such carriers are not rate regulated by the Commission and are not subject to the Commission's rules regarding SLCs and PICCs. Nor do price cap LECs collect SLCs or PICCs on those carriers' lines. This approach is equitable as between price cap LECs, resellers, competitive LECs, and wireless carriers because it does not provide any artificial advantage in marketing second lines. Furthermore, a price cap LEC would have difficulty determining whether its customers are also receiving lines from non-reselling competitive LECs or wireless carriers.

18. We will not adopt a household-based definition of primary residential line. Although such a definition would allow multiple primary lines in multi-household residences (*e.g.*, one for each family in a multi-family dwelling), it would also require gathering invasive information concerning living arrangements through a self-certification mechanism that would be administratively burdensome given the large universe of customers. The ambiguity of a household-based definition may also result in inconsistent application across subscribers, or encourage subscribers simply to declare themselves part of different households to receive the lower primary-line rates.

19. Nor will we treat one line per subscriber account as primary. Such a definition would allow multiple subscribers at a single location to receive the lower primary-line rates on each line (*e.g.*, roommates with individual accounts). Some commenters view this as an advantage to the definition. Any such advantage, however, is offset by the ability of a subscriber to game such a definition by obtaining multiple lines under different account names. Some carriers even allow customers to obtain separate accounts under the same name. Furthermore, universal service objectives are met so long as residents at a single location have access to one line at that location at the subsidized primary-line rates; allowing more than one such line per location excessively shifts costs onto other subscribers. We agree with commenters that an account-based definition is unambiguous and compatible with most carriers' existing service records, but so too is a location-

based definition. An account-based definition would eliminate the need to check whether multiple subscribers are receiving lines at the same location, but the definition's other shortcomings outweigh this benefit. In any event, as noted above, sorting records by service location should not be difficult.

20. We also do not adopt the suggestion of some commenters that we eliminate the primary/non-primary line distinction, perhaps by applying an averaged rate to all lines or replacing the PICC with a cost-based SLC. The Commission has, in the past, specifically decided not to raise the SLC caps on primary residential lines, in accordance with the recommendations of the Federal-State Joint Board on Universal Service. A narrow proceeding such as this is not the appropriate forum for considering a SLC increase.

C. Definition of Single Line Business Line

1. Background

21. The Commission's rules for price cap LECs state that "[a] line shall be deemed to be a single line business subscriber line if the subscriber pays a rate that is not described as a residential rate in the local exchange service tariff and does not obtain more than one such line from a particular telephone company." 47 CFR 69.152(i). The Commission defines "telephone company" for the purposes of the Part 69 Rules as "an incumbent local exchange carrier." *See* 47 CFR 69.2(hh). The Commission sought comment in the *Notice* on whether to retain the definition of "single line business line," and whether to consider as a single line business a business with a single line in each of multiple locations.

2. Discussion

22. We shall retain the existing definition of single line business line. This definition allows incumbent LECs to assess the correct SLCs and PICCs on business lines without determining whether a customer receives service from other carriers.

23. This definition treats as a single line business any business that obtains one line from a price cap LEC and other lines from a wireless carrier or a competitive LEC that does not resell the price cap LEC's lines. As in the context of residential lines, we do not include lines provided by wireless carriers and competitive LECs that do not resell price cap LEC lines because such carriers are not subject to the Commission's SLC and PICC requirements, and because price-cap LECs do not collect SLCs or PICCs on those carriers' lines.

24. We clarify that if a business receives lines from a price cap LEC and a competitive LEC that is reselling the price cap LEC's lines, all those lines shall be considered multi-line business lines. Clarifying that all the lines provided by a price cap LEC become multi-line business lines once a customer purchases a second line provided by that price cap LEC (whether sold by the price cap LEC or a reseller of the price cap LEC's lines) prevents businesses from avoiding the higher multi-line business charges by spreading out their lines among one price cap LEC and multiple resellers of the price cap LEC's lines.

25. Under existing practice, a business with one line in each of multiple locations within a "telephone company area" is treated as a multi-line business. We will continue that practice. Thus when a business subscriber's account reflects a single line in each of two locations within a particular telephone company area, the subscriber will be treated as a multi-line business. Consequently, we shall maintain the existing definition of single line business line, thereby preserving the status quo both for price cap LECs and rate-of-return LECs.

D. Identification of Primary Residential and Single Line Business Lines

1. Background

26. As discussed, the Commission tentatively concluded in the *Notice* to permit price cap LECs to use end-user self-certification to identify primary lines. The Commission also sought comment on whether to require resellers to relay primary- and non-primary-line data to price cap LECs, or whether price cap LECs should identify the primary and non-primary lines of resellers' customers directly. Thus, if resellers collected self-certifications, the Commission asked whether resellers should be required to provide those certifications to price cap LECs so that the price cap LECs could assess on the resellers the appropriate SLCs. The Commission tentatively concluded that it would not use databases, county and municipal records, or social security numbers to identify primary lines because such proposals are administratively burdensome and raise privacy concerns.

2. Discussion

27. The definitions of primary residential line and single line business line will enable price cap LECs to use their service records to identify the status of their lines. This approach alleviates the concerns that carrier records would be insufficient to identify line-status, as those concerns were directed primarily at a household-based definition of primary residential line. Carriers will have the necessary information in their existing service records; thus, allowing carriers to use their records is the least burdensome option for carriers, consumers, and the Commission, and minimizes privacy concerns. Carrier records are also relatively easy to verify and reasonably immune from gaming or misreporting by customers, willful or otherwise.

28. Consequently, we need not address various administrative and privacy issues related to the self-certification method discussed in the *Notice*. Price cap carriers are, of course, still subject to tariffing requirements, and the Commission can always examine carriers' line counts in a tariff investigation. We note, also, that carriers are governed by statutory and regulatory restraints regarding the treatment of customer information to the extent that they apply to data regarding line status.

29. We will require each price cap LEC to identify the status of the lines it provides to resellers. We are not persuaded by commenters' arguments that requiring price cap LECs to determine the status of other carriers' lines will raise administrative and confidentiality concerns. Most of these comments focused on the difficulties of identifying lines provided by facilities-based competitive LECs, not resellers of price cap LECs' lines, or presumed a self-certification procedure. We believe that the price cap LECs are in a better position going forward than the resellers to know all their lines going to a particular residence, as their service records indicate both the lines the price cap LECs bill and the lines they provide on behalf of resellers. Thus, we will not require resellers to identify their primary and non-primary lines to price cap LECs. The issues the Commission raised in the *Notice* regarding the exchange of information between price cap LECs and resellers are largely mooted by our decision to adopt a location-based definition of primary line and to allow carriers to use service records rather than self-certification to identify line status. Because of that decision, as well as our clarification of the single line business line definition, price cap LECs will have the information necessary to administer the definitions, eliminating the need to share data with, or collect data from, other carriers.

E. Customer Notification

30. Because the distinction between primary and non-primary residential lines may cause customer confusion, the Commission sought comment in the Notice on whether to require carriers to provide consumers with a uniform disclosure statement describing the distinction. The Commission tentatively concluded that such a disclosure requirement would be consistent with applicable First Amendment standards, and sought comment on that conclusion. The Commission also sought comment on how, if it adopts a consumer disclosure statement that refers to the SLC cap on non-primary lines, such disclosure statement should indicate any future increases in the SLC cap. The Commission sought comment on whether such a statement would be compatible with marketing and consumer information campaigns that carriers have instituted or may be formulating. The Commission has issued a Notice of Proposed Rulemaking in CC Docket No. 98–170 focused on truth-in-billing. 63 FR 55077, October 14, 1998; *Truth-in-Billing,* CC Docket No. 98–170, Notice of Proposed Rulemaking, FCC 98–232 (rel. Sept. 17, 1998). We think it more appropriate to consider these issues in connection with that docket. Consequently, we refer these issues to that proceeding.

F. Detailed PICC Billing of IXCs

31. AT&T, MCI, and Sprint have asked the Commission to require price cap LECs to issue detailed bills that enable interexchange carriers to audit the PICC charges that price cap LECs assess on them. Creating additional requirements is not necessary at this time. We already require price cap LECs to provide interexchange carriers with customer-specific information about the PICCs they assess on them, and to include a "class of customer" indicator on Customer Account Record Exchange (CARE) transactions for new customer notifications. Furthermore, our decisions in the order concerning the definition and identification of primary residential lines and single line business lines should facilitate clearer and more uniform billing of SLCs and PICCs.

G. Procedural Matters

1. Final Regulatory Flexibility Analysis

32. The Commission incorporated an Initial Regulatory Flexibility Analysis (IRFA) in the *Notice* in this docket, as required by the Regulatory Flexibility Act (RFA). *See* 5 U.S.C. 603. The Commission sought written public comment on the proposals in the *Notice,* including comment on the *IRFA*. The RFA also requires the Commission to prepare a Final Regulatory Flexibility Analysis (FRFA) of the possible significant economic impact the order might have on small entities, unless the agency certifies that "the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities." 5 U.S.C. 605(b).

33. The RFA generally defines "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." 5 U.S.C. 601(6). In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act, unless the Commission has developed one or more definitions that are appropriate to its activities. 5 U.S.C. 601(3). A small business concern is one that: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA). Small Business Act, 15 U.S.C. 632. The SBA has further defined a small business for SIC categories 4812 (Radiotelephone Communications) and 4813 (Telephone Communications, Except Radiotelephone) as a business with no more than 1,500 employees. 13 CFR 121.201. A small organization is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field." 5 U.S.C. 601(4). "Small governmental jurisdiction" generally means "governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000." 5 U.S.C. 601(5).

34. Only price cap LECs currently assess SLCs and PICCs, and the order places the responsibility for differentiating and identifying primary residential lines and single line business lines only on price cap LECs, as discussed above. Consequently, the order will not significantly affect "small organizations" or "small governmental jurisdictions," and we only address the impact on small price cap LECs. Neither the Commission nor SBA has developed a definition of "small entity" specifically applicable to price-cap LECs. The closest definition under SBA rules is that for establishments providing "Telephone Communications, Except Radiotelephone."

35. According to our most recent data, 1,371 carriers reported that they were engaged in the provision of local exchange services. Fewer than 20 of these carriers are price-cap incumbent LECs. Consistent with our prior practice, we shall continue to exclude small incumbent LECs from the definition of "small entity." We consider these carriers dominant in their field of operations. Some also are not independently owned and operated, and most if not all likely have more than 1,500 employees. We therefore certify that our decisions in this proceeding will not have a significant economic impact on a substantial number of small entities. The Commission will send a copy of the order, including the certification, in a report to be sent to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996. *See* 5 U.S.C. 801(a)(1)(A). A summary of the order and the certification will also be sent to the Chief Counsel for Advocacy of the SBA.

2. Final Paperwork Reduction Act Analysis

36. The decision contained herein has been analyzed with respect to the Paperwork Reduction Act of 1995, Public Law No. 104–13, and does not contain new and/or modified information collections subject to OMB review.

H. Ordering Clauses

37. Accordingly, *it is ordered,* pursuant to sections 1, 4(i) and (j), 201–209, 218–222, 251, 254, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 201–209, 218–222, 251, 254, and 403, that the order is adopted.

38. *It is further ordered* that section 69.152 of the Commission's rules, 47 CFR 69.152, is amended as set forth in the rule changes.

39. *It is further ordered* that the policies, rules, and requirements adopted herein *shall be effective* July 1, 1999.

40. *It is further ordered* that the Commission's Office of Public Affairs, References Operations Division, *shall send* a copy of the Report and Order, including the Final Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 69

Access charges, Communications common carriers, End-user common line charge, Multi-line business line, Non-primary residential line, Price cap local exchange carriers, Primary interexchange carrier charge, Primary residential line, Reporting and recordkeeping requirements, Single line business line, Subscriber line charge, Telephone.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

Rule Changes

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 69 as follows;

PART 69—ACCESS CHARGES

1. The authority citation for part 69 continues to read as follows:

Authority: 47 U.S.C. 154, 201, 202, 203, 205, 218, 220, 254, 403.

2. Section 69.152 is amended by adding paragraph (h) to read as follows:

§ 69.152 End user common line for price cap local exchange carriers.

* * * * *

(h) Only one of the residential subscriber lines a price cap LEC provides to a location shall be deemed to be a primary residential line.

(1) For purposes of § 69.152(h), "residential subscriber line" includes residential lines that a price cap LEC provides to a competitive LEC that resells the line and on which the price cap LEC may assess access charges.

(2) If a customer subscribes to residential lines from a price cap LEC and at least one reseller of the price cap LEC's lines, the line sold by the price cap LEC shall be the primary line, except that if a resold price cap LEC line is already the primary line, the resold line will remain the primary line should a price cap LEC subsequently sell an additional line to that residence.

* * * * *.

[FR Doc. 99–7787 Filed 4–2–99; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

Federal Motor Vehicle Safety Standards; Lamps, Reflective Devices and Associated Equipment

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Interpretive rule.

SUMMARY: This document sets forth our interpretation of the location requirements for identification and clearance lamps mounted on the rear of trucks and trailers whose overall width is more than 2032 mm (80 in.). Federal Motor Vehicle Safety Standard No. 108 requires that identification lamps be mounted as close to the top of a vehicle as practicable. The identical requirement applies to clearance lamps, except when the rear identification lamps are mounted at the extreme height of the vehicle. In the past, we have stated that the manufacturer may make the initial determination as to whether it is practicable to mount these lamps near the top of a vehicle, and that it has been our enforcement policy to accept the manufacturer's determination of practicability unless that decision appears clearly erroneous. Under this approach, identification lamps on many vehicles, especially van-type trailers, have been mounted on the lower sill below the rear doors under various conditions, even on vehicles where the header was up to 3 inches wide. Our enforcement policy was based in part on the unavailability of narrow lamps. However, narrow lamps are now readily available. Effective on the publication of this interpretive rule, we interpret Standard No. 108 to require manufacturers to satisfy an objective standard of practicability; i.e., if, under all the circumstances, it would be practicable to locate lamps above the rear doors, the manufacturer must do so. We will no longer defer to a manufacturer's subjective determination of practicability.

DATES: Effective April 5, 1999.

FOR FURTHER INFORMATION CONTACT: Taylor Vinson, Office of Chief Counsel, NHTSA (Phone: 202–366–5263; FAX: 202–366–3820).

SUPPLEMENTARY INFORMATION:

Requirements of Federal Motor Vehicle Safety Standard No. 108 for the Location of Identification and Clearance Lamps on Large Trucks and Trailers

Table I of Federal Motor Vehicle Safety Standard No. 108, *Lamps, Reflective Devices and Associated Equipment,* requires trucks and trailers whose overall width is 2032 mm (80 inches) or more to be equipped with a rear lighting system that includes three red identification lamps and two red clearance lamps. Table II specifies that the identification lamps are to be mounted on the rear "as close as practicable to the top of the vehicle at the same height, as close as practicable to the vertical centerline." Table II also requires that the clearance lamps shall be mounted on the rear "to indicate the overall width of the vehicle, one on each side of the vertical centerline, at the same height, and as near the top thereof as practicable." However, clearance lamps need not be located near the top "when the rear identification lamps are mounted at the extreme height of a vehicle,* * *" S5.3.1.4).

In general, location requirements specified by Standard No. 108 for motor vehicle lamps and reflectors are expressed in terms of practicability. Under this approach, the required lighting equipment can be installed without unduly restricting the design of vehicles.

Past Policy Regarding the Meaning of "Practicability" With Respect to the Upper Mounting Location for Identification and Clearance Lamps

In 1968, when Standard No. 108 became effective for wide vehicles, lighting technology had not advanced to the level where it is today, and, in order to provide the required photometric performance, generally lamps were somewhat larger than lamps that are now commercially available. Manufacturers advised us that, in their opinion, it would not be practicable to mount the lamps on the rear header of some vehicles. Rather than make individual practicability assessments in an enforcement context, we advised the industry that we would not contest manufacturers' decisions to mount identification and clearance lamps below the cargo doors, on an approximate horizontal plane with other rear lamps, except where the manufacturer's decision was clearly erroneous.

This deferential approach originated as a matter of enforcement policy. Indeed, it was first articulated in a June 18, 1981 letter to the Division of State Patrol of the Wisconsin DOT from Francis Armstrong, who was the Director of NHTSA's Office of Vehicle Safety Compliance. Over the years this enforcement policy was restated in several letters signed by NHTSA's Chief Counsels.

However, over the years, narrow lamps have become available for use on trucks and trailers with relatively narrow headers. Since it appears that it is now "practicable" to locate clearance and identification lamps on or above such headers; we decided to review the issue and reconsider our earlier enforcement policy.

As part of our review, we conducted a field survey in which we took photographs and measured rear lighting configurations of several typical trailers. The photographs showed that some trailer manufacturers are locating identification and clearance lamps on the lower sill of many trailer models, even though there is sufficient space to

put those same lamps in the header area.

NHTSA's Preliminary Evaluations and Manufacturers' Responses

Based on the field survey information, we opened Preliminary Evaluations and sent information requests to eight van trailer manufacturers in November 1997. The manufacturers responded that each produces some models with identification and clearance lamps on the lower sill. Of a total production of these manufacturers totaling over 440,000 vehicles, the number with identification lamps located on the lower sill was approximately 225,000, or over half.

The manufacturers justified this location as one permitted by previous NHTSA letters and as representing "common industry practice." They also argued that conspicuity treatment provides a sufficient delineation of vehicle size. Addressing practicability, the manufacturers contended that smaller lamps such as those using light-emitting diodes (LEDs) could not be installed on narrow headers because of the lack of availability of LEDs, the difficulty of wiring them in a narrow area, and structural problems that could arise if the trailers were redesigned to accommodate lamps at the top. Some manufacturers argued that the lower sill location is needed to provide a surface that is large enough and rigid enough for the lamps. The respondents may not have been aware of very narrow lamps. Some incandescent lamps as narrow as 17.3 mm (0.68 in.) and some LED lamps as narrow as 22.4 mm (0.88 in.) are now available.

One manufacturer also commented that lamps placed on the lower sill are more conveniently replaced when replacement becomes necessary. However, replacement would be less frequent with the use of reliable, long-life LED lamps. Another mentioned that slim-line lamps do not dissipate heat as effectively as larger incandescent lamps. However, LED lamps emit only a low level of heat. Another mentioned that narrow lamps do not seal out moisture as effectively, without also noting that narrow lamps are available that are permanently sealed. None of the manufacturers indicated that they planned to change the existing location of their clearance or identification lamps.

Canada's Rear Identification and Clearance Lamp Location Requirements

On November 10, 1996, Canadian Motor Vehicle Safety Standard No. 108 was amended to require that identification and clearance lamps be mounted above or on the rear doors when the header extends at least 25 mm (1 in.) above the rear doors. When the header extends less than 25 mm, the lamps may be mounted above, on, or below the rear doors. Since then, Canada has enforced this standard on trucks engaged in commerce within its borders, including those manufactured in the United States that operate in Canada. Some of these U.S. manufacturers have complied with Canada's upper location requirements, but have nevertheless continued to locate lamps on the lower sill of their trailers manufactured for use in the United States which have a rear door and header assembly identical to their counterparts sold for use in Canada. The Canadian practice objectively supports the view that it would have been "practicable" to locate the lamps at the top of the U.S. vehicles.

Truck Trailer Manufacturer's Association's (TTMA) Recommended Practice for Rear Identification and Clearance Lamp Placement

TTMA restates NHTSA's past approach on practicability in its recommendations to its members on location of rear identification and clearance lamps. It goes on to recommend that the lamps be on the header when the header extends at least 50 mm (2 in.) above the rear doors when there is a flat space of at least 25 mm (1 in.).

NHTSA's New Interpretive Rule

After reviewing the matter, we have concluded that clearance and identification lamps that meet the photometric requirements of Standard No. 108, and are of a size permitting mounting on the header above the rear doors of most trailers and trucks, are available in the marketplace. The prior enforcement policy has, in practice, deferred to manufacturers who exercised their discretion to decide whether to mount these lamps above the rear doors. This approach has not assured that the safety purposes of the standard are achieved. The responses to NHTSA's information requests demonstrate that many U.S. manufacturers, including some of the largest trailer manufacturers, have placed, and are continuing to place, identification and clearance lamps below the rear doors, notwithstanding the fact that the ability of many of these same manufacturers to comply with the new Canadian requirements demonstrates that it is now practicable to mount identification and clearance lamps on the rear header in most instances.

As reflected by the responses to our information requests, many manufacturers have taken advantage of the deference conferred by our longstanding enforcement policy in deciding where to locate these lamps. In recognition of this practice, we have decided that it would be preferable to provide notice that the prior policy has been changed before bringing enforcement actions against such manufacturers without providing notice that the prior policy has been changed. Accordingly, we are publishing this interpretation of the requirement in Table II of Standard No. 108 that rear clearance lamps and identification lamps must be located "as near the top thereof as practicable" to make it clear that, henceforth, manufacturers will be required to satisfy an objective standard of practicability, i.e., if under all the circumstances it would be practicable to locate the identification and clearance lamps above the rear doors, the manufacturer must do so. Moreover, based on the experiences of manufacturers who have been able to comply with the Canadian requirements, NHTSA will presume that it is practicable to locate lamps on the header of a vehicle when the header extends at least 25 mm (1 in.) above the rear doors.

This interpretive rule is effective as of its publication in the **Federal Register**. However, as a matter of enforcement discretion, we do not intend to bring enforcement actions based on this interpretive rule immediately. This will be addressed separately.

Authority: 49 CFR 1.50 and 501.8(d)(5).

Issued on: March 30, 1999.

Frank Seales, Jr.,

Chief Counsel.

[FR Doc. 99–8186 Filed 4–2–99; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 581

[Docket No. NHTSA 99–5458]

RIN 2127–AH59

Bumper Standard

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule; technical amendment.

SUMMARY: This document amends 49 CFR Part 581 *Bumper Standard*, to update cross references in Sec.

581.5(c)(1) to Federal Motor Vehicle Safety Standard No. 108, 49 CFR 571.108, *Lamps, Reflective Devices and Associated Equipment.*

DATES: The amendment is effective April 5, 1999.

FOR FURTHER INFORMATION CONTACT: Taylor Vinson, Office of Chief Counsel, NHTSA (202–366–5263).

SUPPLEMENTARY INFORMATION: Part 581 of Title 49, Code of Federal Regulations, contains the Federal bumper standard issued under the authority of 49 U.S.C. Chapter 325. At present, 49 CFR Sec. 581.5(c)(1) reads:.

(c) Protective criteria. (1) Each lamp or reflective device except license plate lamps shall be free of cracks and shall comply with applicable visibility requirements of S4.3.1.1 of Standard No. 108 (sec. 571.108 of this part). The aim of each headlamp shall be adjustable to within the beam aim inspection limits specified in Table 2 of SAE Recommended Practice J599b, July 1970, measured with a mechanical aimer conforming to the requirements of SAE Standard J602a, July 1970.

We amended Standard No. 108 several years ago to renumber its paragraphs. At that time, S4.3.1.1 became S5.3.1.1. However, we did not make a corresponding change in Sec. 581.5(c)(1). This amendment makes the change. We are also amending the standard to substitute the August 1997 version of SAE Recommended Practice J599 for the July 1970 version. Further, mechanical aimers are no longer required to aim all headlamps under Standard No. 108 as they once were. The method of aiming now depends upon the type of headlamp that the manufacturer chooses for its vehicle. We are changing Sec. 581.5(c)1) to reflect these amendments as well.

Accordingly, we are updating Sec. 581.5(c)(1) by making these technical amendments. Because these amendments create no burdens on any person, we are not required to give notice and afford an opportunity to comment on this rulemaking action. The amendments are effective upon their publication in the **Federal Register**.

Rulemaking Analyses and Notices

Executive Order 12866 and DOT Regulatory Policies and Procedures. This rulemaking action was not reviewed under Executive Order 12866. Further, it has been determined that the rulemaking action is not significant under Department of Transportation regulatory policies and procedures. The purpose of the rulemaking action is to correct outdated references. Since the final rule will not impose or reduce costs, preparation of a full regulatory evaluation is not warranted. Vehicles subject to both Part 581 and Standard No. 108 are presumed to comply with both the new and old requirements.

National Environmental Policy Act

NHTSA has analyzed this rulemaking action for the purposes of the National Environmental Policy Act. This final rule will not have a significant effect upon the environment. The composition of passenger motor vehicle bumpers will not change from those presently in production.

Regulatory Flexibility Act

The agency has also considered the impacts of this rulemaking action in relation to the Regulatory Flexibility Act (5 U.S.C. Sec. 601 *et seq.*). For the reasons stated above in the paragraph on Executive Order 12866 and the DOT Regulatory Policies and Procedures, I certify that this rulemaking action will not have a significant economic impact upon a substantial number of small entities.

The following is NHTSA's statement providing the factual basis for the certification (5 U.S.C. Sec. 605(b)). The amendment primarily affects manufacturers of motor vehicles. Manufacturers of motor vehicles are generally not small businesses within the meaning of the Regulatory Flexibility Act.

The Small Business Administration's regulations define a small business in part as a business entity "which operates primarily within the United States." (13 CFR 121.105(a)) SBA's size standards are organized according to Standard Industrial Classification Codes (SIC), SIC Code 3711 "Motor Vehicles and Passenger Car Bodies" has a small business size standard of 1,000 employees or fewer.

For manufacturers of passenger cars and light trucks, NHTSA estimates there are at most five small manufacturers of passenger cars in the U.S. Since each manufacturer services a niche market, often specializing in replicas of "classic" cars, production for each manufacturer is fewer than 100 cars per year. Thus, there are at most 500 cars manufactured per year by U.S. small businesses.

In contrast, in 1998, there are approximately nine large manufacturers producing passenger cars, and light trucks in the U.S. Total U.S. manufacturing production per year is approximately 15 to 15 and a half million passenger cars and light trucks per year. NHTSA does not believe small businesses manufacture even 0.1 percent of total U.S. passenger car and light truck production per year.

Further, small organizations and governmental jurisdictions are not significantly affected as the price of motor vehicles ought not to change as the result of this final rule.

Executive Order 12612 (Federalism)

This rulemaking action has also been analyzed in accordance with the principles and criteria contained in Executive Order 12612. NHTSA has determined that this rulemaking action does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Civil Justice

This final rule does not have any retroactive effect. Under 49 U.S.C. 32511, whenever a Federal bumper standard is in effect, a state may not adopt or maintain a bumper standard which is not identical to the Federal standard. 49 U.S.C. 32503 sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal bumper standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the cost, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of more than $100 million annually. Because this final rule does not have a $100 million effect, no Unfunded Mandates assessment has been prepared.

List of Subjects in 49 CFR Part 581

Imports, Motor vehicles.

In consideration of the foregoing, 49 CFR Part 581 is amended as follows:

PART 581—BUMPER STANDARD

1. The authority citation for Part 581 is revised to read as follows:

Authority: 49 U.S.C. 32502; 322, 30111, 30115, 30117 and 30166; delegation of authority at 49 CFR 1.50.

2. Section 581.5(c)(1) is revised to read as follows:

§ 581.5 Requirements.

* * * * *

(c) Protective criteria. (1) Each lamp or reflective device except license plate lamps shall be free of cracks and shall comply with applicable visibility requirements of S5.3.1.1 of Standard No.

108 (§ 571.108 of this chapter). The aim of each headlamp installed on the vehicle shall be adjustable to within the beam aim inspection limits specified in Table 2 of SAE Recommended Practice J599 AUG97, measured with the aiming method appropriate for that headlamp.

* * * * *

Issued on March 30, 1999.

L. Robert Shelton,

Associate Administrator for Safety Performance Standards.

[FR Doc. 99–8185 Filed 4–2–99; 8:45 am]

BILLING CODE 4910–59–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 981014259–8312–02; I.D. 032699A]

Fisheries of the Northeastern United States; Summer Flounder Fishery; Commercial Quota Harvested for Maine

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Commercial quota harvest.

SUMMARY: NMFS announces that the summer flounder commercial quota available to the State of Maine has been harvested. Vessels issued a commercial Federal fisheries permit for the summer flounder fishery may not land summer flounder in Maine for the remainder of calendar year 1999, unless additional quota becomes available through a transfer. Regulations governing the summer flounder fishery require publication of this notice to advise the State of Maine that the quota has been harvested and to advise vessel permit holders and dealer permit holders that no commercial quota is available for landing summer flounder in Maine.

DATES: Effective 0001 hours, March 30, 1999, through December 31, 1999.

FOR FURTHER INFORMATION CONTACT: Paul H. Jones, Fishery Policy Analyst, (978) 281–9273.

SUPPLEMENTARY INFORMATION: Regulations governing the summer flounder fishery are found at 50 CFR part 648. The regulations require annual specification of a commercial quota that is apportioned among the coastal states from North Carolina through Maine. The process to set the annual commercial quota and the percent allocated to each state are described in § 648.100.

The initial total commercial quota for summer flounder for the 1999 calendar year was set equal to 11.11 million lb (5.039 kg) (63 FR 72203, December 31, 1998). The percent allocated to vessels landing summer flounder in Maine is 0.04756 percent, or 5,285 lb (2,397 kg).

Section 648.100(e)(4) stipulates that any overages of commercial quota landed in any state be deducted from that state's annual quota for the following year. In the calendar year 1998, a total of 5,168 lb (2,344 kg) were landed in Maine, creating a 377 lb (171 kg) overage that was deducted from the amount allocated for landings in the state during 1999 (64 FR 5196, February 3, 1999). The resulting quota for Maine was 4,908 lb (2,226 kg).

Section 648.101(b) requires the Administrator, Northeast Region, NMFS (Regional Administrator), to monitor state commercial quotas and to determine when a state's commercial quota is harvested. The Regional Administrator is further required to publish notification in the **Federal Register** advising a state and notifying Federal vessel and dealer permit holders that, effective upon a specific date, the state's commercial quota has been harvested and no commercial quota is available for landing summer flounder in that state. The Regional Administrator has determined, based upon dealer reports and other available information, that the State of Maine has attained its quota for 1999.

The regulations at § 648.4(b) provide that Federal permit holders agree, as a condition of the permit, not to land summer flounder in any state that the Regional Administrator has determined no longer has commercial quota available. Therefore, effective 0001 hours, March 30, 1999, further landings of summer flounder in Maine by vessels holding commercial Federal fisheries permits are prohibited for the remainder of the 1999 calendar year, unless additional quota becomes available through a transfer and is announced in the **Federal Register**. Effective March 30, 1999, federally permitted dealers are also advised that they may not purchase summer flounder from federally permitted vessels that land in Maine for the remainder of the calendar year, or until additional quota becomes available through a transfer.

Classification

This action is required by 50 CFR part 648 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: March 30, 1999.

George H. Darcy,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–8179 Filed 3–31–99; 1:02 pm]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 981014259–8312–02; I.D. 032699B]

Fisheries of the Northeastern United States; Scup Fishery; Commercial Quota Harvested for Winter I Period

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Commercial quota harvested for Winter I period.

SUMMARY: NMFS announces that the scup commercial quota available in the Winter I period to the coastal states from Maine to North Carolina has been harvested. Commercial vessels may not land scup in the northeast region for the remainder of the 1999 Winter I quota period (through April 30, 1999). Regulations governing the scup fishery require publication of this notice to advise the coastal states from Maine to North Carolina that the quota has been harvested and to advise vessel permit holders and dealer permit holders that no commercial quota is available for landing scup in these states.

DATES: Effective 0001 hours April 1, 1999, through April 30, 1999.

FOR FURTHER INFORMATION CONTACT: Paul H. Jones, Fishery Policy Analyst, (978) 281–9273.

SUPPLEMENTARY INFORMATION: Regulations governing the scup fishery are found at 50 CFR part 648. The regulations require annual specification of a commercial quota that is allocated into three quota periods, based upon percentages of the annual quota. The Winter I commercial quota (January through April) is distributed to the coastal states from Maine through North Carolina. The process to set the annual commercial quota and the percent allocated to each state are described in § 648.120.

The initial total commercial quota for scup for the 1999 calendar year was set equal to 2,534,000 lb (1,149,403 kg) (63 FR 72203, December 31, 1998). The Winter I period quota, which is equal to 45.11 percent of the annual commercial

quota (minus a discard estimate) was set at 1,143,087 lb (518,496 kg).

Section 648.121 requires the Administrator, Northeast Region, NMFS (Regional Administrator) to monitor the commercial scup quota for each quota period and, based upon dealer reports, state data, and other available information, to determine when the commercial quota has been harvested. The Regional Administrator is further required to publish notification in the **Federal Register** advising and notifying commercial vessels and dealer permit holders that, effective upon a specific date, the scup commercial quota has been harvested and no commercial quota is available for landing scup for the remainder of the Winter I period. The Regional Administrator has determined, based upon dealer reports and other available information, that the scup commercial quota for the 1999 Winter I period has been harvested.

The regulations at § 648.4(b) provide that Federal scup moratorium permit holders agree, as a condition of the permit, not to land scup in any state after NMFS has published a notification in the **Federal Register** stating that the commercial quota for the period has been harvested and that no commercial quota for the scup is available. Therefore, effective 0001 hours, April 1, 1999, further landings of scup in coastal states from Maine to North Carolina by vessels holding commercial Federal fisheries permits are prohibited through April 30, 1999. The Summer period for commercial scup harvest will open on May 1, 1999. Effective April 1, 1999, federally permitted dealers are also advised that they may not purchase scup from federally permitted vessels that land in coastal states from Maine through North Carolina for the remainder of the Winter I period (through April 30, 1999).

Classification

This action is required by 50 CFR part 648 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: March 29, 1999.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–8192 Filed 3–31–99; 1:02 pm]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 990304063–9063–01; I.D. 033199A]

Fisheries of the Exclusive Economic Zone Off Alaska; Trawling in Steller Sea Lion Critical Habitat in the Central Aleutian District of the Bering Sea and Aleutian Islands

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is prohibiting trawling within Steller sea lion critical habitat in the Central Aleutian District of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary because the 1999 critical habitat percentage of Atka mackerel established for the Central Aleutian District has been reached.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), March 31, 1999, until the end of the 1999 directed fishery for Atka mackerel within the Central Aleutian District.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586-7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI exclusive economic zone according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at Subpart H of 50 CFR part 600 and 50 CFR part 679.

The Final 1999 Harvest Specifications of Groundfish for the BSAI (64 FR 12103, March 11, 1999) established the 1999 TAC for Atka mackerel in the Central Aleutian District as 10,360 metric tons (mt), of which no more than 8,288 mt may be harvested from critical habitat. See § 679.20(c)(3)(iii) and 679.22(a)(8)(iii)(B).

In accordance with § 679.22(a)(8)(iii)(A), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the allowable harvest of Atka mackerel in Steller Sea lion critical habitat in the Central Aleutian District as specified under the Final 1999 Harvest Specification has been reached. Consequently, NMFS is prohibiting trawling in critical habitat, as defined at 50 CFR part 226, Table 1, Table 2, and Figure 4, in the Central Aleutian District of the BSAI.

Classification

This action responds to the best available information recently obtained from the fishery. It must be implemented immediately to avoid jeopardy to the continued existence of Steller sea lions. A delay in the effective date is impracticable and contrary to the public interest. NMFS finds for good cause that the implementation of this action should not be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

This action is required by § 679.20 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: March 31, 1999.

Bruce Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–8236 Filed 3–31–99; 2:49 pm]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 990304063–9062–01; I.D. 033099B]

Fisheries of the Exclusive Economic Zone Off Alaska, Pacific Cod in the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Apportionment of reserve.

SUMMARY: NMFS is apportioning the initial reserve of Pacific cod in the Gulf of Alaska (GOA). This action is necessary to allow incidental catch of Pacific cod to be retained in other directed fisheries and to account for previous harvest of the total allowable catch (TAC) in the GOA.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), April 5, 1999, until 2400, A.l.t., December 31, 1999. Comments must be received by April 20, 1999.

ADDRESSES: Comments may be sent to Sue Salveson, Assistant Administrator for Fisheries, Sustainable Fisheries Division, Alaska Region, NMFS, 709 West 9th Street, Room 453, Juneau, AK

99801 or P.O. Box 21668, Juneau, AK 99802–1668, Attn: Lori Gravel.

FOR FURTHER INFORMATION CONTACT: Thomas Pearson, 907–481–1780 or tom.pearson@noaa.gov.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The Final 1999 Harvest Specifications for Groundfish of the GOA (64 FR 12094, March 11, 1999) established the initial TAC of Pacific cod in the Western, Central, and Eastern Regulatory Areas of the GOA as 18,904 metric tons (mt), 34,348 mt, and 1,016 mt in the Western, Central, and Eastern Regulatory Areas respectively. Directed fishing for Pacific cod for processing by the inshore component in the Western Regulatory Area of the GOA was closed on March 8, 1999, and in the Central Regulatory Area on March 14, 1999, under § 679.20(d)(1)(iii), in order to prevent exceeding the allocation for processing by the inshore component in these areas (64 FR 12768, March 15, 1999 and 64 FR 13122, March 17, 1999).

The Final 1999 Harvest Specifications for Groundfish of the GOA (64 FR 12094, March 11, 1999) created reserves of Pacific cod in the GOA as a management buffer to prevent exceeding the TACs and to provide greater assurance that incidental catch of Pacific cod could be retained throughout the fishing year in other fisheries.

The Administrator, Alaska Region, NMFS, (Regional Administrator), has determined that the initial TAC for Pacific cod in the GOA needs to be supplemented from the Pacific cod reserve for the GOA in order to allow incidental catch of Pacific cod to be retained in other fisheries and to account for prior harvest. Therefore, in accordance with § 679.20(b)(3)(i)(A), NMFS is apportioning 13,567 mt of Pacific cod from the reserve to the TAC in the GOA: 4,726 mt in the Western, 8,587 mt in the Central, and 254 mt in the Eastern Regulatory Areas.

Pursuant to § 679.20(a)(6)(iii), the apportionment of the Pacific cod reserve in the GOA is allocated to vessels catching Pacific cod for processing by the inshore and offshore components as 90 percent and 10 percent of the TAC, respectively. This action increases the total allocation of the 1999 Pacific cod TACs for vessels catching Pacific cod for processing by the inshore component to 21,267 mt, 38,642 mt, and 1,143 mt in the Western, Central, and Eastern Regulatory Areas, respectively, and for the offshore component to 2,363 mt, 4,293 mt and 127 mt in the Western, Central, and Eastern Regulatory Areas, respectively. Maximum retainable bycatch amounts may be found in the regulations at § 679.20(e) and (f).

Classification

In accordance with § 679.20(b)(3)(iii)(A), NMFS finds that there is good cause for not providing the public with a prior opportunity to comment. As of March 18, 1999, NMFS estimates the initial TACs of 17,014 mt and 30,913 mt allocated to the inshore component in the Western and the Central Regulatory Areas of the GOA have been reached. This action is necessary to allow retention of amounts of Pacific cod that are caught incidentally while conducting directed fishing for other species in these areas.

This action responds to the initial TAC limitations for Pacific cod established in the Final 1999 Harvest Specifications for Groundfish in the GOA. This action will allow incidental catch of Pacific cod to be retained in other directed fisheries. The alternative is to prohibit retention of Pacific cod which is contrary to the FMP goals of providing the opportunity to more fully utilizing the available TACs and reducing discards. A delay in the effective date is impracticable and contrary to the public interest as it relieves a potential restriction. NMFS finds for good cause that the implementation of this action should not be delayed for 30 days. Accordingly, under U.S.C 553(d), a delay in the effective date is hereby waived.

This action is required by 50 CFR 679.20 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: March 30, 1999.

Bruce Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–8289 Filed 4–2–99; 8:45 am]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 64, No. 64
Monday, April 5, 1999

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 340

[Docket No. 99–025–1]

Regulatory Requirements for Genetically Engineered Organisms; Customer Service Meeting

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of public meeting.

SUMMARY: We are advising the public that the Animal and Plant Health Inspection Service will hold a meeting to discuss the current and future status of the regulatory requirements pertaining to the introduction of genetically engineered organisms and products. The meeting, which is open to the public, will be operated as a customer service workshop. We request that interested persons register and submit agenda items two weeks before the meeting date.

PLACE, DATES, AND TIME OF MEETING: The meeting will be held in the Conference Center at the USDA Center at Riverside, 4700 River Road, Riverdale, MD, on Tuesday, May 11, 1999, from 8:30 a.m. until 4:30 p.m., and Wednesday, May 12, 1999, from 8:30 a.m. until 1:00 p.m.

FOR FURTHER INFORMATION CONTACT: For information about the agenda, contact Dr. Sivramiah Shantharam, Biotechnology and Biological Analysis, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737–1236; (301) 734–4882; e-mail: shanthu.shantharam@usda.gov. To register for the meeting and to submit suggested agenda items, contact Ms. Kay Peterson at (301) 734–4885; fax: (301) 734–8910; e-mail: k.peterson@usda.gov. Information is also available on the Internet at the APHIS World Wide Web site: http://www.aphis.usda.gov/biotech.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340, "Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which Are Plant Pests or Which There Is Reason to Believe Are Plant Pests," regulate, among other things, the introduction (importation, interstate movement, or release into the environment) of organisms and products altered or produced through genetic engineering that are plant pests or that there is reason to believe are plant pests. Such genetically engineered organisms and products are considered "regulated articles." Before introducing a regulated article, a person is required under § 340.0 of the regulations to either notify the Animal and Plant Health Inspection Service (APHIS) in accordance with § 340.3 or obtain a permit in accordance with § 340.4. The regulations in § 340.6 provide that any person may submit a petition to APHIS seeking a determination that an article should not be regulated under 7 CFR part 340 and allow the extension of a previously issued determination of nonregulated status to certain additional regulated articles.

To provide an opportunity for a general discussion of the requirements for the preparation of notifications, permits, petitions, and requests for extensions of determinations of nonregulated status, APHIS has scheduled a workshop to be held in Riverdale, MD, on May 11 and 12, 1999. Additional items for consideration include the status of a pilot program designed to reduce the paperwork burden for the regulated public, proposals to simplify the existing regulations, and the movement of commodities containing genetically engineered organisms in international trade.

The tentative agenda for the meeting is as follows: Day 1, morning—notifications and permits; afternoon—petitions and extensions; Day 2, morning—international harmonization.

To register, submit your name, address, telephone number, and e-mail address to the person indicated under **FOR FURTHER INFORMATION CONTACT**. We request that you register and submit suggested agenda items by April 28, 1999.

Done in Washington, DC, this 29th day of March 1999.

Craig A. Reed,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 99–8276 Filed 4–2–99; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–ANE–62–AD]

RIN 2120–AA64

Airworthiness Directives; General Electric Aircraft Engines CF34 Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to General Electric Aircraft Engines CF34 series turbofan engines. This proposal would establish new life limits for certain high pressure compressor (HPC) spools, Part Number (P/N) 6078T56P01, stage 9 HPC disks, P/N 6087T01P03 or 6087T01P04, and rear HPC spools, P/N 5087T46P01 or 5087T46P02. This proposal is prompted by a cyclic life analysis using increased stress levels resulting from manufacturing discrepancies. The actions specified by the proposed AD are intended to prevent HPC spool and disk cracking, which could result in an uncontained engine failure and damage to the aircraft.

DATES: Comments must be received by June 4, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 98-ANE–62-AD, 12 New England Executive Park, Burlington, MA 01803-5299. Comments may also be sent via the Internet using the following address: "9-ad-engineprop@faa.gov". Comments sent via the Internet must contain the docket number in the subject line. Comments may be inspected at this location between 8:00 a.m. and 4:30 p.m.,

Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Eugene Triozzi, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7148, fax (781) 238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 98–ANE–62–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–ANE–62–AD, 12 New England Executive Park, Burlington, MA 01803–5299.

Discussion

General Electric Aircraft Engines (GEAE) has advised the Federal Aviation Administration (FAA) of the results of a cyclic life analysis using increased stress levels resulting from manufacturing discrepancies in certain forward high pressure compressor (HPC) spools, Part Number (P/N) 6078T56P01, stage 9 HPC disks, P/N 6087T01P03 or 6087T01P04, and rear HPC spools, P/N 5087T46P01 or 5087T46P02, installed on GEAE Models CF34–1A, –3A, –3A1, and –3A2 turbofan engines. No failures have occurred to date; the unsafe condition was identified by revised low cycle fatigue (LCF) analysis, after manufacturing discrepancies were discovered on parts. These discrepancies would result in component stress levels greater than those shown in original LCF life analyses, and consequently result in lower LCF lives. This condition, if not corrected, could result in HPC spool and disk cracking, which could result in an uncontained engine failure and damage to the aircraft.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require removal from service of affected forward HPC spools, rear HPC spools, and stage 9 HPC disks prior to accumulating cycles in service beyond new, reduced cyclic life limits. This proposal also would require for HPC spools, which have accumulated 6,000 or more CSN on the effective date of this AD, remove at the next shop visit after the effective date of this AD, but prior to accumulating 12,000 CSN.

There are approximately 600 engines of the affected design in the worldwide fleet. The FAA estimates that 28 engines installed on aircraft of U.S. registry would be affected by the requirement within this proposed AD to replace the forward spool. The FAA has calculated the prorated cost for forward spool replacements to be $36,500 per engine, based on the estimated new part cost divided by the original life limit, multiplied by the number of cycles that will be reduced by the proposed AD requirement. Therefore, the FAA estimates the total cost impact for replaced forward spools to be $1,022,000.

The FAA estimates that 200 engines installed on aircraft of U.S. registry would be affected by the requirement to replace the stage 9 disk. The FAA has calculated the prorated cost for stage 9 disk replacements to be $3,500 per engine, based on the estimated new part cost divided by the original life limit, multiplied by the number of cycles that will be reduced by the proposed AD requirement. The FAA estimates the total cost impact for replaced stage 9 disks to be $700,000.

The FAA estimates that 300 engines installed on aircraft of U.S. registry would be affected by the requirement to replace the rear spool. The FAA has calculated the prorated cost for rear spool replacements to be $8,900 per engine, based on the new part cost divided by the original life limit, multiplied by the number of cycles that will be reduced by the proposed AD requirement. Therefore, the FAA estimates the total cost impact for replaced rear spools to be $2,670,000.

The FAA has determined that it would take no additional work hours per engine to remove affected components, as removal would take place at available opportunities. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $4,392,000.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

General Electric Aircraft Engines: Docket No. 98–ANE–62–AD.

Applicability: General Electric Aircraft Engines (GEAE) Models CF34–1A, –3A, –3A1, and –3A2 turbofan engines, installed on but not limited to Canadair aircraft models CL–600–2A12, –2B16, and –2B19.

Note 1: This airworthiness directive (AD) applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent high pressure compressor (HPC) spool and disk cracking, which could result in an uncontained engine failure and damage to the aircraft, accomplish the following:

(a) Remove from service the following HPC spools and disks prior to accumulating cycles in service beyond new, reduced cyclic life limits, and replace with a serviceable part, as follows:

(1) For forward HPC spools, Part Number (P/N) 6078T56P01, which have accumulated fewer than 6,000 cycles since new (CSN) on the effective date of this AD, remove prior to accumulating 6,000 CSN.

(2) For forward HPC spools, P/N 6078T56P01, which have accumulated 6,000 or more CSN on the effective date of this AD, remove at the next shop visit after the effective date of this AD, but prior to accumulating 12,000 CSN.

(3) For the purpose of this AD, engine shop visit is defined as engine disassembly that includes separation of the compressor section from the fan section front frame and from the combustion section combustion chamber frame.

(4) For stage 9 HPC disks, P/N 6087T01P03 or 6087T01P04, remove prior to accumulating 20,000 CSN.

(5) For rear HPC spools, P/N 5087T46P01 or 5087T46P02, remove prior to accumulating 17,000 CSN.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office. Operators shall submit their request through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Engine Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Engine Certification Office.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the aircraft to a location where the requirements of this AD can be accomplished.

Issued in Burlington, Massachusetts, on March 30, 1999.

David A. Downey,

Assistant Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 99–8307 Filed 4–2–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–370–AD]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model CL–215–1A10 and CL–215–6B11 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing amendment, applicable to certain Bombardier Model CL–215–1A10 and CL–215–6B11 series airplanes, that currently requires repetitive inspections to detect cracking on certain wing to fuselage frame-angles, and repair, if necessary. This action would continue to require the same inspections. This proposal is prompted by an adverse comment received in response to the existing amendment. The actions specified by the proposed AD are intended to detect and correct cracking in the wing to fuselage frame-angles, which could result in reduced structural integrity of the airframe.

DATES: Comments must be received by May 5, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–370–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Bombardier, Inc., Canadair, Aerospace Group, P.O. Box 6087, Station Centreville, Montreal, Quebec H3C 3G9, Canada. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York.

FOR FURTHER INFORMATION CONTACT: Franco Pieri, Aerospace Engineer, Airframe and Propulsion Branch, ANE–171, FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York 11581; telephone (516) 256–7526; fax (516) 256–2716.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 98–NM–370–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–370–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On April 3, 1998, the FAA issued amendment 39–10458 (issued as a direct final rule), which was published in the **Federal Register** on April 10, 1998 (63 FR 17672). [A correction of the direct final rule was published in the **Federal Register** on May 4, 1998 (63 FR 24389).] That amendment is applicable to certain Bombardier Model CL–215–1A10 and CL–215–6B11 series airplanes. It requires repetitive inspections to detect cracking on certain wing to fuselage frame-angles, and repair, if necessary. That action was prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The requirements of that action are intended to detect and correct cracking in the wing to fuselage frame-angles, which could result in reduced structural integrity of the airframe.

Comments Received in Response to Direct Final Rule

In response to the direct final rule, the FAA has received adverse comments. As specified in the preamble of the direct final rule, the FAA uses the direct final rule procedure for non-controversial rules for which the FAA anticipates that it will receive no adverse public comments. The direct final rule advised the public that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, was received within the comment period, the regulation would become effective on July 9, 1998.

Disposition of Comments

The commenter states that a reference (found in the "Supplementary Information" section of the preamble of the direct final rule) to cracking on Model CL–215T airplanes is incorrect, and that the correct reference is Model CL–215–6B11 series airplanes. The FAA acknowledges that cracking was found on three Model CL–215–6B11 (CL–215T Variant) series airplanes. However, the "Supplementary Information" section of the direct final rule does not reappear in this proposed rule; therefore, no change to this proposed rule is necessary in this regard.

The commenter also points out that the parallel Canadian airworthiness directive (CF–97–07) does not permit further flight after cracking has been found. The "Differences Between This Rule and the Foreign AD" section of the direct final rule implies that the referenced Canadian airworthiness directive does allow further flight following a finding of cracking. The FAA concurs that this section need not have appeared in the direct final rule. Canadian airworthiness directive CF–97–07, dated May 28, 1997, indicates that if inspection results exceed the acceptance criteria in paragraph 2.D(7) of the referenced alert service bulletin, the manufacturer should be contacted for disposition before further flight.

Relevant Service Information

The manufacturer has issued Bombardier Alert Service Bulletin 215–A476, Revision 3, dated August 21, 1998, which describes procedures for an eddy current inspection to detect cracking of the fuselage frame angles at the wing front and rear spar attachment to the fuselage. Transport Canada Aviation (TCA), which is the airworthiness authority for Canada, classified this alert service bulletin as mandatory and issued Canadian airworthiness directive CF–97–07R1, dated September 30, 1998, in order to assure the continued airworthiness of these airplanes in Canada.

FAA's Conclusions

This airplane model is manufactured in Canada and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, TCA has kept the FAA informed of the situation described above. The FAA has examined the findings of the TCA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would supersede amendment 39–10458, described previously, to continue to require repetitive inspections to detect cracking on certain wing to fuselage frame-angles, and repair, if necessary. The inspections would be required to be accomplished in accordance with the alert service bulletin described previously. The repair would be required to be accomplished in accordance with a method approved by the Manager, New York Aircraft Certification Office, FAA, Engine and Propeller Directorate.

Cost Impact

The FAA estimates that 1 airplane of U.S. registry would be affected by this proposed AD. It would take approximately 2 work hours per airplane to accomplish the proposed actions, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of this proposed AD on U.S. operators is estimated to be $120 per airplane, per inspection cycle.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–10458 (63 FR 17672, April 10, 1998), and by adding a new airworthiness directive (AD), to read as follows:

Bombardier Inc. (Formerly Canadair): Docket 98–NM–370–AD.

Applicability: Model CL–215–1A10 and CL–215–6B11 series airplanes, serial numbers 1001 through 1125 inclusive, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct cracking in the wing to fuselage frame-angles, which could result in reduced structural integrity of the airframe, accomplish the following:

(a) Perform an eddy current inspection to detect cracking of the fuselage frame angles at the wing front and rear spar attachment to the fuselage at the later of the times specified in paragraphs (a)(1) and (a)(2) of this AD; in accordance with Bombardier Alert Service Bulletin 215-A476, Revision 3, dated August 21, 1998. Thereafter, repeat the inspection at intervals not to exceed 415 flight hours.

(1) Prior to the accumulation of 2,300 total flight hours.

(2) Within 150 flight hours or 4 months after the effective date of this AD, whichever occurs first.

Note 2: Accomplishment of the eddy current inspections of the lower surfaces of the frame angles conducted in accordance with Bombardier Alert Service Bulletin ASB 215–A476, Revision 1, dated January 14, 1997, or ASB 215–A476, Revision 2, dated June 15, 1998, prior to the effective date of this AD is considered to be acceptable for compliance with the requirements of paragraph (a) of this AD for that area only.

(b) If the results of any inspection required by paragraph (a) of this AD are outside the limits specified in paragraph 2.C.(7) of Bombardier Alert Service Bulletin ASB 215–A476, Revision 3, dated August 21, 1998: Prior to further flight, repair in accordance with a method approved by the Manager, New York Aircraft Certification Office (ACO), FAA, Engine and Propeller Directorate.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, New York ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, New York ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the New York ACO.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 4: The subject of this AD is addressed in Canadian airworthiness directive CF–97–07R1, dated September 30, 1998.

Issued in Renton, Washington, on March 30, 1999.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–8330 Filed 4–2–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–AGL–17]

Proposed Modification of Class E Airspace; Willmar, MN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to modify Class E airspace at Willmar, MN. A VHF Omnidirectional Range (VOR) or Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to Runway (Rwy) 28, Amendment (Amdt) 2, and a VOR SIAP Rwy 10, Amdt 2, have been developed for Willmar Municipal-John L. Rice Field Airport. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approaches. This action proposes to add a northwest extension and a southeast extension to the existing controlled airspace for this airport.

DATES: Comments must be received on or before May 20, 1999.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, AGL–7, Rules Docket No. 99–AGL–17, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, Airspace Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: Michelle M. Behm, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interesed parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 99–AGL–17." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Assistant Chief Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, SW, Washington, DC 20591, or

by calling (202) 267–3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to 14 CFR part 71 to modify Class E airspace at Willmar, MN, to accommodate aircraft executing the proposed VOR or GPS Rwy 28 SIAP, Amdt 2, and the VOR SIAP Rwy 10, Amdt 2, at Willmar Municipal-John L. Rice Field Airport by modifying the existing controlled airspace. Controlled airspace extending upward from 700 to 1200 feet AGL is needed to contain aircraft executing the approaches. The area would be depicted on appropriate aeronautical charts. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9F dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore this, proposed regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

* * * * *

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL MN E5 Willmar MN [Revised]

Willmar Municipal-John L. Rice Field Airport, MN
(Lat. 45°06′56″ N., long. 95°05′20″ W.)
Willmar VOR/DME
(Lat. 45°07′03″., long. 95°05′26″ W.)

That airspace extending upward from 700 feet above the surface within an 6.6-mile radius of the Willmar Municipal-John L. Rice field Airport and within 2.4 miles each side of the Willmar VOR/DME 115° radial extending from the 6.6-mile radius to 7.0 miles southeast of the airport, and within 2.4 miles each side of the Willmar VOR/DME 286° radial extending from the 6.6-mile radius to 7.0 miles northwest of the airport.

* * * * *

Issued in Des Plaines, Illinois on March 18, 1999.

John A. Clayborn,

Acting Manager, Air Traffic Division.

[FR Doc. 99–8252 Filed 4–2–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–AWP–3]

Proposed Modification of Class E Airspace; Santa Rosa, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to modify the Class E airspace area at Santa Rosa, CA. The establishment of a Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to Runway (RWY) 14 and GPS RWY 32 at Sonoma County Airport has made this proposal necessary. Additional controlled airspace extending upward from 700 feet or more above the surface of the earth is needed to contain aircraft executing the GPS RWY 14 and GPS RWY 32 SIAP to Sonoma County Airport. The intended effect of this proposal is to provide adequate controlled airspace for Instrument Flight Rules (IFR) operations at Sonoma County Airport, Santa Rosa, CA.

DATES: Comments must be received on or before May 10, 1999.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Attn: Manager, Airspace Branch, AWP–520, Docket No. 99–AWP–3, Air Traffic Division, 15000 Aviation Boulevard, Lawndale, California 90261.

The official docket may be examined in the Office of the Regional Counsel, Western-Pacific Region, Federal Aviation Administration, Room 6007, 15000 Aviation Boulevard, Lawndale, California 90261.

An informal docket may also be examined during normal business hours at the Office of the Manager, Airspace Branch, Air Traffic Division at the above address.

FOR FURTHER INFORMATION CONTACT: Larry Tonish, Air Traffic Airspace Specialist, Airspace Branch, AWP–520, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261, telephone (310) 725–6539.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with the comments a self-addressed, stamped postcard on which the following statement is made:

"Comments to Airspace Docket No. 99–AWP–3." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the prosposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Airspace Branch, Air Traffic Division, 15000 Aviation Boulevard, Lawndale, California 90261, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Airspace Branch, 15000 Aviation Boulevard, Lawndale, California 90261. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedures.

The Proposal

The FAA is considering an amendment to 14 CFR part 71 by modifying the Class E airspace area at Santa Rosa, CA. The establishment of a GPS RWY 14 and GPS RWY 32 SIAP at Sonoma County Airport has made this proposal necessary. Additional controlled airspace extending upward from 700 feet above the surface is needed to contain aircraft executing the GPS approach procedures at Sonoma County Airport. The intended effect of this proposal is to provide adequate controlled airspace for aircraft executing the GPS RWY 14 and GPS RWY 32 SIAP at Sonoma County Airport, Santa Rosa, CA. Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9F dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in this Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

Paragraph 600 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AWP CA E5 Santa Rosa, CA [Revised]

That airspace extending upward from 700 feet above the surface beginning at lat. 38°56'00" N., long, 123°02'04" W.; to lat. 39°15'00" N., long 123°02'04" W.; to lat. 39°15'00" N., long. 122°49'04" W.; to lat. 38°47'30" N., long, 122°49'04" W.; to lat. 38°23'00" N., long. 122°38'04" W.; to lat. 38°18'00" N., long. 122°48'04" W.; to lat. 38°56'00" N., long. 123°16'30" W., thence to the point of beginning.

* * * * *

Issued in Los Angeles, California on March 15, 1999.

Leonard A. Mobley,

Acting Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 99–8273 Filed 4–2–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–AGL–20]

Proposed Establishment of Class E Airspace; De Kalb, IL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish Class E airspace at De Kalb, IL. A Localizer/Distance Measuring Equipment (LOC/DME) Standard instrument Approach Procedure (SIAP) to Runway (Rwy) 2 has been developed for De Kalb Taylor Municipal Airport. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approach. This action proposes to create controlled airspace for this airport.

DATES: Comments must be received on or before May 20, 1999.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, AGL–7, Rules Docket No. 99–AGL–20, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, Airspace Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: Michelle M. Behm, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related

aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 99–AGL–20." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Assistant Chief Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to 14 CFR part 71 to establish Class E airspace at De Kalb, Il, to accommodate aircraft executing the proposed LOC/DME Rwy 2 SIAP at De Kalb Taylor Municipal Airport by creating controlled airspace. Controlled airspace extending upward from 700 to 1200 feet AGL is needed to contain aircraft executing the approach. The area would be depicted on appropriate aeronautical charts. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9F dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore this, proposed regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

* * * * *

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL IL E5 De Kalb IL [New]

De Kalb Taylor Municipal Airport, IL
(Lat. 41°42'30" W.)

That airspace extending upward from 700 feet above the surface within an 6.6-mile radius of the De Kalb Taylor Municipal Airport, excluding that airspace which overlies the Chicago, IL, Class E airspace area.

* * * * *

Issued in Des Plaines, Illinois on March 18, 1999.

John A. Clayborn,

Acting Manager, Air Traffic Division.

[FR Doc. 99–8246 Filed 4–2–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–AGL–21]

Proposed Modification of Class E Airspace; Kokomo, IN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to modify Class E airspace at Kokomo, IN. A Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to Runway (Rwy) 09, and a GPS SIAP to Rwy 27, have been developed for Logansport Municipal Airport. Controlled airspace extending upward from 700 to 1200 feet above feet above ground level (AGL) is needed to contain aircraft executing the approaches. This action proposes to increase the radius of the existing controlled airspace for this airport.

DATES: Comments must be received on or before May 20, 1999.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, AGL–7, Rules Docket No. 99–AGL–21, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, Airspace Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: Michelle M. Behm, Air Traffic Division, Airspace, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

Comment Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 99–AGL–21." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Assistant Chief Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, SW, Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to 14 CFR part 71 to modify Class E airspace at Kokomo, IN, to accommodate aircraft executing the proposed GPS Rwy 09 SIAP, and the GPS Rwy 27 SIAP, at Logansport Municipal Airport by modifying the existing controlled airspace. Controlled airspace extending upward from 700 to 1200 feet AGL is needed to contain aircraft executing the approaches. The area would be depicted on appropriate aeronautical charts. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9F dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore this, proposed regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

* * * * *

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL IN E5 Kokomo, IN [Revised]

Kokomo Municipal Airport, IN
(Lat. 40°31'41" N., long. 86°03'32" W.)
Grissom Air Reserve Base, IN
(Lat. 40°38'53" N., long. 86°09'08" W.)
Logansport Municipal airport, IN
(Lat. 40°42'41" N., long 86°22'28" W.)
Peru Municipal Airport, IN
(Lat. 40°47'11" N., long. 86°08'47" W.)

That airspace extending upward from 700 feet above the surface within a 7.0-mile radius of the Kokomo Municipal Airport and within 2.6 miles each side of the ILS localizer northeast course extending from the 7.0-mile radius to 10.8 miles northeast of the airport; and within a 7.0-mile radius of the Grissom ARB and within 3.8 miles each side of the ILS localizer northeast course extending from the 7.0-mile radius to 14.5 miles northeast of the base, and within 2.0 miles each side of the ILS localizer southwest course extending from the 7.0-mile radius to 14.5 miles southwest of the base;; and within a 7.7-mile radius of the Logansport Municipal Airport; and within a 6.3-mile radius of the Peru Municipal Airport.

* * * * *

Issued in Des Plaines, Illinois on March 18, 1999.

John A. Clayborn,

Acting Manager, Air Traffic Division.

[FR Doc. 99–8247 Filed 4–2–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–104072–97]

RIN 1545–AV07

Recharacterizing Financing Arrangements Involving Fast-Pay Stock; Hearing Cancellation

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Cancellation of notice of public hearing on proposed rulemaking.

SUMMARY: This document provides notice of cancellation of a public hearing on proposed regulations under section 7701 recharacterizing, for tax purposes, financing arrangements involving fast-pay stock.

DATES: The public hearing originally scheduled for Thursday, April 8, 1999, at 10 a.m., is cancelled.

FOR FURTHER INFORMATION CONTACT:

LaNita Van Dyke of the Regulations Unit, Assistant Chief Counsel (Corporate), (202) 622–7190 (not a toll-free number).

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking and/or notice of public hearing that appeared in the **Federal Register** on Wednesday, January 6, 1999 (64 FR 805), announced that a public hearing was scheduled for Thursday, April 8, 1999, at 10 a.m., in room 2615, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. The subject of the public hearing is proposed regulations under section 7701 of the Internal Revenue Code. The public comment period for these proposed regulations expires on Tuesday, April 6, 1999. The outlines of topics to be addressed at the hearing were due on Thursday, March 18, 1999.

The notice of proposed rulemaking and/or notice of public hearing, instructed those interested in testifying at the public hearing to submit a request to speak and an outline of the topics to be addressed. As of Tuesday, March 30, 1999, no one has requested to speak. Therefore, the public hearing scheduled for Thursday, April 8, 1999, is cancelled.

Cynthia Grigsby,

Chief, Regulations Unit Assistant Chief Counsel (Corporate).

[FR Doc. 99–8281 Filed 4–2–99; 8:45 am]

BILLING CODE 4830–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[FRL–6319–2]

RIN 2060–AH67

Protection of Stratospheric Ozone: Allowance System for Controlling HCFC Production, Import and Export

AGENCY: Environmental Protection Agency (EPA).

ACTION: Advance Notice of Proposed Rulemaking.

SUMMARY: EPA is seeking comments on a variety of options for establishing an allowance allocation system to control the U.S. consumption of class II controlled substances, the hydrochlorofluorocarbons (HCFCs), in accordance with U.S. obligations under the Montreal Protocol on Substances that Deplete the Ozone Layer (Protocol). Under the Protocol, the United States is obligated to limit HCFC consumption (defined by the Protocol and this notice as production plus imports, minus exports) under a specific cap, which will be reduced in a step-wise fashion over time. To ensure that the U.S. does not exceed this internationally mandated cap, EPA is presenting many options for establishing a future HCFC allowance allocation system. EPA is considering, among other things, an option where the allowance system would become effective only under certain conditions, i.e., once a specified percentage of the current U.S. HCFC cap has been reached or exceeded.

DATES: Comments on this advanced notice of proposed rulemaking must be received on or before June 4, 1999.

ADDRESSES: Comments on this advance notice of proposed rulemaking should be submitted in duplicate to: Air Docket No. A–98–33, U.S. Environmental Protection Agency, 401 M Street, SW., Room M–1500, Washington, DC 20460. The Docket is located in Room M–1500, First Floor, Waterside Mall at the address above. The materials may be inspected from 8 am until 4 p.m., Monday through Friday. A reasonable fee may be charged by EPA for copying docket materials.

FOR FURTHER INFORMATION CONTACT: Vera Au, EPA, Stratospheric Protection Division, Office of Atmospheric Programs, Office of Air and Radiation (6205–J), 401 M Street, SW., Washington, DC 20460, (202) 564–2216 or the Stratospheric Protection Hotline at (800) 296–1996.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Background
- A. Montreal Protocol on Substances that Deplete the Ozone Layer
- B. Title VI of the Clean Air Act Amendments of 1990

II. Options for Establishing an HCFC Allowance System
- A. Allowance Allocation System to Control U.S. HCFC Consumption
- 1. Type of Allowances
- 2. Unit of Measure of Allowances
- B. Method for Distributing Allowances
- C. Establishing an Equitable Baseline for Distributing Allowances
- D. Percentage of Allowances Distributed under U.S. HCFC Consumption Cap
- E. Transfers of Class II Allowances
- 1. Transfers Within Groups of Class II Substances
- 2. Inter-Pollutant Transfers
- 3. Inter-Company Transfers
- 4. Inter-pollutant Transfers Combined with Inter-Company Transfers
- 5. Transfers of Current-Year Allowances
- 6. Permanent Transfers of Baseline Allowances
- 7. International Trades of Current-Year Allowances
- 8. Offset for a Transfer of Allowances
- F. Conditions Under Which a Control System Would Become Effective

III. Other Regulatory Options for Controlling HCFCs
- A. Labeling
- B. SNAP Approval and Restrictions
- C. Non-Essential Product Ban under Section 610

IV. Administrative Requirements
- A. Executive Order 12866
- B. Regulatory Flexibility Act
- C. Executive Order 13045: Children's Health Protection
- D. National Technology Transfer and Advancement Act

Annex A: Ozone Depletion Potentials for Class II Substances as Currently Listed Under the Montreal Protocol

I. Background

A. Montreal Protocol on Substances that Deplete the Ozone Layer

Signatory countries that are Parties to the international agreement called the Montreal Protocol on Substances that Deplete the Ozone Layer (Protocol), during their second meeting in London in 1990, identified hydrochlorofluorocarbons (HCFCs) as transitional substitutes for chlorofluorocarbons (CFCs) and other more destructive ozone-depleting substances. At the Parties' fourth meeting in Copenhagen in 1992, a detailed phaseout schedule for HCFCs (listed in Annex C, Group I of the Protocol) was created. At this fourth meeting, the Parties to the Protocol established a freeze level (a cap) on the consumption of HCFCs for industrialized countries (Parties governed by Article 2 of the Protocol). Consumption is defined by the Protocol as production plus imports minus exports. The cap on HCFC consumption for industrialized countries went into effect on January 1, 1996, and was derived from the formula of 3.1 percent (reduced to 2.8 percent at the seventh meeting of the Parties) of a Party's CFC consumption in 1989, plus the Party's consumption of HCFCs in 1989. This formula puts the current U.S. cap for HCFC consumption at 15,240 ODP-weighted metric tons. The Parties to the Protocol then created a schedule for the gradual reduction and eventual phaseout of the consumption of HCFCs by 2030. The Copenhagen Amendments to the Protocol call for a 35 percent reduction of the cap in 2004, followed by a 65 percent reduction in 2010, a 90 percent reduction in 2015, a 99.5 percent reduction in 2020, and a total phaseout in 2030. The U.S. must, at a minimum, comply with this phaseout schedule under the Protocol.

EPA was petitioned to phase out the most ozone-depleting HCFCs first. Upon

analyzing this approach, EPA determined that the U.S. could in fact meet, if not exceed, the required Montreal Protocol reductions by the specified dates. Therefore, the U.S., as authorized under the Clean Air Act, is implementing a different phaseout schedule, carried out on a chemical-by-chemical basis for HCFCs (58 FR 65018), which will meet or exceed the Montreal Protocol reductions required. U.S. implementation of the HCFC phaseout is described below in parts I.B and I.C of this notice.

B. Title VI of the Clean Air Act Amendments of 1990

The Clean Air Act Amendments of 1990 (CAA or the Act), under Section 605(c), originally required the Administrator to promulgate, by December 31, 1999, regulations phasing out the production, and restricting the use of, class II substances (HCFCs), subject to any acceleration of the phaseout of production under Section 606. Section 605(c) further states that the Administrator shall promulgate regulations to ensure that the consumption of class II substances is phased out and terminated in accordance with the same schedule. The original phaseout schedule established in the Act has since been accelerated as authorized under Section 606 and is outlined below in part I.C of this notice.

Section 605 of the Act established the original U.S. phaseout schedule for class II substances. Section 605(a) states that, "Effective January 1, 2015, it shall be unlawful for any person to introduce into interstate commerce or use any class II substance unless such substance: (1) Has been used, recovered and recycled; (2) is used and entirely consumed (except for trace quantities) in the production of other chemicals; or (3) is used as a refrigerant in appliances manufactured prior to January 1, 2020." Section 605(b) states that, "Effective January 1, 2015, it shall be unlawful for any person to produce any class II substance in an annual quantity greater than the quantity of such substance produced by such person during the baseline year. Effective January 1, 2030, it shall be unlawful for any person to produce any class II substance." This phaseout schedule has since been accelerated under authority of Section 606.

Section 606(a) specifically requires the Administrator to promulgate regulations, accelerating the phaseout of production and consumption of ozone-depleting substances, "if (1) based on an assessment of credible current scientific information (including any assessment under the Montreal Protocol) regarding harmful effects on the stratospheric ozone layer associated with a class I or class II substance, the Administrator determines that such more stringent schedule may be necessary to protect human health and the environment against such effects, (2) based on the availability of substitutes for listed substances, the Administrator determines that such more stringent schedule is practicable . . ., or (3) the Montreal Protocol is modified to include a schedule to control or reduce production, consumption, or use of any substance more rapidly than the applicable schedule under this title."

Thus, Section 606 (a)(3) requires EPA to accelerate the phaseout to conform to any acceleration under the Protocol. In addition, Section 614(b) provides that in the case of a conflict between Title VI of the Act and the Protocol, the more stringent provision shall govern. The Parties to the Protocol, based on scientific evidence that losses of stratospheric ozone were occurring more rapidly than earlier believed, accelerated the phaseout of class I substances and established the phaseout schedule for class II substances at the Fourth Meeting of the Parties in Copenhagen in 1992. Pursuant to authorities provided by Title VI, EPA amended its regulations on December 10, 1993 (58 FR 65018) to provide for these accelerations. Targeting the phaseout set by the Protocol, EPA chose to phase out production and consumption of HCFCs on a chemical-by-chemical basis, beginning with those with the highest ozone depletion potential (ODP). EPA accelerated the phaseout of production and import of HCFC–22, HCFC–141b and HCFC–142b, the three HCFCs with the highest ODPs. Specifically, EPA's rule bans the production and import of HCFC–141b as of January 1, 2003. The production and import of HCFC–142b and HCFC–22 in excess of baseline allowances are prohibited effective January 1, 2010, except for the use in equipment manufactured prior to January 1, 2010. Beginning January 1, 2020, the production and import of HCFC–142b and HCFC–22 are banned. Production and import of the remaining HCFCs, in excess of their baseline production and consumption levels, will be prohibited beginning January 1, 2015, except as a refrigerant in equipment manufactured before January 1, 2020. All HCFCs will be completely phased out by January 1, 2030. EPA did not establish an allocation system for class II substances, as it did for class I substances.

Section 605(d) of the Act speaks to exceptions to the original phaseout schedule for HCFCs. Beginning in 2030, EPA can authorize up to 10 percent of the baseline per year for production of class II substances for medical devices considered essential by the U.S. Food and Drug Administration (FDA) and for which no safe and effective alternative has been developed and approved. EPA can authorize use of these quantities beginning in 2015 as an exception to the use restrictions contained in 605(a). EPA can authorize this limited amount of production and use, to the extent consistent with the Protocol, if FDA, in consultation with EPA, determines that it is necessary for use in these medical devices. In addition, beginning in 2015, and continuing up until 2030, EPA may authorize production of up to 110 percent of the baseline per year solely for export to and use in developing countries (Article 5 countries) that are Parties to the Protocol. This production is intended to be solely for the purpose of satisfying basic domestic needs of the importing developing country. Between 2030 and 2040, no more than 15 percent of the baseline can be produced annually for export to Article 5 countries. Section 605(d) does not permit any production for export to and use in Article 5 countries after January 1, 2040.

Per Section 602(b) of the Act, EPA published a list of class II substances in 40 CFR Part 82, Subpart A, Appendix B. All HCFCs fall into one grouping under class II ozone depleting substances, and, since publication of the initial list, no new class II substances have been added to the list.

Section 602(e) requires EPA to assign numerical values representing the ozone depletion potential (ODP) of all class II substances; and Section 602(e) further states that, "Where the ozone depletion potential of a substance is specified in the Montreal Protocol, the ozone depletion potential specified for that substance under this section shall be consistent with the Montreal Protocol." Annex A of this notice lists the ODPs for all class II substances as currently specified by the Protocol. Note that some of the ODPs listed under Annex A vary slightly from those listed under Appendix B to 40 CFR Part 82, Subpart A due to revisions of those ODPs under the Protocol since May 10, 1995. However, because this notice merely seeks comments and presents options, the future final rulemaking for the class II allowance allocation system will amend the list of ODPs currently presented in 40 CFR Part 82. Unless there are future revisions of the ODPs

for class II substances under the Protocol, entities involved in the HCFC market can expect to use the ODPs listed in Annex A of this notice for any ODP-weighted calculations that may be necessary as part of an HCFC allowance system.

Section 607(b) of the Act requires EPA to permit the transfer of any class I or class II allowances, within each group or class, on an ozone depletion weighted basis. In allowing transfers, under Section 607(a) of the Act, EPA must ensure that "the transactions under the authority of this section will result in greater total reductions in the production in each year of class I and class II substances than would occur in that year in the absence of such transactions." In other words, transfers cannot be made at a 1:1 ratio. In the class I regulations, an offset of one percent was required in any transfer to accomplish the environmental benefit required by Section 607. Those transfer requirements are set forth in 40 CFR Part 82, Subpart A, Section 82.12 (60 FR 24970, May 10, 1995). Transfer of class II allowances between entities and interpollutant transfers on an ODP-weighted basis, along with an appropriate offset, are addressed under II.E of today's notice.

Section 616 of the Act states that the U.S. may transfer allowances to another Party, under certain conditions. Few countries currently have a system in place for allocating, trading and expending HCFC allowances. As discussed in today's notice, differences exist between the manners in which the Protocol and the U.S. have structured their respective HCFC phaseout systems. Nevertheless, a trading regime similar to that implemented by EPA for class I international trades (40 CFR 82.9, 82.10) (60 FR 24970, May 10, 1995) could work effectively for class II trades. One possible such system is outlined in II.E.6 of this notice.

Reporting requirements mandated in Section 603 relative to HCFCs are currently in place in 40 CFR 82.13(n). Additional reporting requirements will likely accompany the implementation of a class II allowance allocation system.

II. Options for Establishing an HCFC Allowance System

Section 607 of the Act requires EPA to issue allowances for the production and consumption of class II substances. With this notice, EPA is putting forth options as to how such an allowance system could be established. The allowance system must ensure that U.S. consumption of class II substances does not exceed the cap agreed to under the Protocol (currently at 15,240 metric tons but will be reduced over time).

For the class I substances, EPA considered many methods for achieving the required reductions that were agreed to under the Protocol. The approaches distinguished between economic incentives and engineering controls or bans. EPA concluded that the most equitable, least costly and easiest system to administer for achieving the Protocol's required reductions for class I ozone-depleting substances was a marketable allowance system. EPA established such a system. The system proved highly successful and by January 1, 1996, the production and import of class I substances were completely phased out (but for narrow exemptions granted by the Parties to the Protocol) with minimal economic impact.

Unlike the class I allowance system, however, EPA is considering an approach whereby an allowance system for class II substances would only become effective if a certain threshold (i.e., a certain percentage of the total U.S. cap for class II substances) were reached or exceeded.

A. Allowance Allocation System to Control HCFC Consumption in the United States

1. Type of Allowances

a. Production Allowances and Consumption Allowances for Class I Controlled Substances. Under the control system for class I substances, EPA created a unit of measure called an allowance (see 40 CFR 82). An allowance, for a class I substance, represents the marketable rights and privileges granted to a company to produce or import a specific quantity of that class I substance. Under the class I allowance program, there were two types of allowances: production allowances and consumption allowances. One allowance in the regulatory program for class I substances was equal to one kilogram of either production or consumption of a substance, depending on the type of allowance.

Under the class I phaseout regulations, a company was required to expend both production and consumption allowances to be able to produce. To be able to import a class I controlled substance, a company was required to expend consumption allowances (See 40 CFR 82.4). After proper documentation was presented to EPA reflecting an export of a class I controlled substance, consumption allowances were refunded or returned to the exporting company (See 40 CFR 82.10).

b. Options for Allowances for Class II Controlled Substances. EPA is considering, and seeking comment on, the following options for class II allowances. One option for a class II allowance system would be to follow the structure established for the class I substances. To produce, a company would expend both production allowances and consumption allowances for a specific quantity of a class II controlled substance. To import, a company would expend consumption allowances for a specific quantity of a class II controlled substance. An exporter of class II substances would be able to obtain consumption allowances by providing documentation indicating the quantity of substance exported abroad.

A second option for a class II allowance system would be to operate the system using only one kind of allowance, which could be applied equally for production, imports and exports. This means that such an allowance (hereafter referred to as "class II allowance") could be applied to any element of the formula for consumption (consumption = production + imports-exports). Producers and importers alike would be allocated class II allowances according to baseline calculations. To produce, a company would expend class II allowances for a class II substance. To import, a company would expend class II allowances for a class II substance. Upon export, a company would receive class II allowances for the quantity of a class II substance exported. Essentially, allocation and expenditure of allowances under this system would differ from the class I system in that only one allowance would be allocated and expended for production. For example:

Activity	Class I allocated/expended	Class II allocated/expended
Production	production & consumption	class II allowance.
Import	consumption	class II allowance.
Export	consumption returned	class II allowance returned.

2. Unit of Measure for Allowances

Allowances can be accounted for in a variety of ways. They can equal any quantity one assigns to them, calculated by any workable measure. In the class I allowance system, EPA assigned each allowance a value of one kilogram of a class I substance. To produce or import, allowances were expended similarly, by kilograms. Since each chemical has its own ODP, any trades that took place between class I chemicals took into account the difference in ODPs, weighting the resulting allowances accordingly.

Due to the aforementioned differences in ODPs among chemicals, another possible measure for an allowance is an ODP-weighted unit (ODP x kilogram), tied to no specific chemical. EPA is considering, and seeking comment on, both an absolute allowance allocation by kilogram (which is chemical-specific) and an ODP-weighted allocation system (which is also allocated in kilograms but not chemical-specific). With this notice, EPA is exploring both options but attempts below to illustrate what the advantages and disadvantages of each system may entail.

a. Absolute Kilogram Allowances on a Chemical-by-Chemical Basis. One option for assigning a value to class II allowances would be to allocate them on an absolute quantity (kilogram) basis, as was done in the class I allocation system. In such a system, one kilogram of an HCFC would correspond to one allowance. In this absolute system, one would track the production, import or export of a specific chemical on a kilogram basis.

If trades were to occur between different class II substances in a system where one allowance equals one kilogram, any difference in ODP between the substances would have to be factored into the exchange, as was done with transfers and trades among class I substances (See Section 607(b)(1) of the Act). A brief example of such transfers is described below, but further options related to, and a more thorough explanation of, transfers are discussed in part II.E of today's notice.

To better illustrate how an absolute allowance system would function, take for example, Company A, which produced 1000 kilograms of HCFC–141b and 550 kilograms of HCFC–22 in its baseline year. Under an absolute allowance system, Company A would be allocated 1000 allowances for HCFC–141b and 550 allowances for HCFC–22. To produce 70 kilograms of HCFC–141b, 70 allowances would be subtracted from 1000, leaving Company A with 930 kilograms or allowances of HCFC–141b. If Company A wanted to produce more than 1000 kilograms of HCFC–141b, it could trade with another holder of HCFC–141b allowances or transfer its own HCFC–22 allowances to HCFC–141b allowances, taking into account the difference in ODP between the two substances. In this case, if Company A wanted to produce 200 additional kilograms of HCFC–141b, it could, through an intra-company transfer, shift the appropriate number of HCFC–22 allowances that, accounting for ODP differences, would represent the equivalent of 200 HCFC–141b allowances. Therefore, Company A would exchange 400 HCFC–22 allowances to add 200 HCFC–141b allowances, since the ODP of HCFC–22 is 0.055 and the ODP of HCFC–141b is 0.110. Similarly, Company A could have purchased 200 allowances of HCFC–141b or 400 allowances of HCFC–22 from some other allowance holder.

It is important to note what would occur under an absolute allowance system when various phaseout dates become effective. In 2003, for example, when the ban on production and importation of HCFC–141b takes effect (See 40 CFR section 82.4), entities with HCFC–141b baseline allowances, measured in kilograms, would no longer be authorized to produce or import HCFC–141b. Essentially, these entities would receive zero percent of their baseline allowances on January 1, 2003. The same would occur when other individual phaseout dates (e.g., for HCFC–22 and HCFC–142b in 2010) become effective.

In 2004, under the Protocol, the U.S. is required to reduce its current HCFC consumption cap (15,240 ODP-weighted metric tons) by 35 percent. At this time, every entity still holding HCFC baseline allowances may receive 65 percent (or 35 percent less) of their remaining HCFC baseline allowances.

Administratively, an absolute allocation system based on kilograms may be advantageous for its simplicity. Both for the regulated entities and EPA, an absolute system would afford greater ease, clarity, and predictability. Holders of absolute allowances would report their transactions in kilograms of each chemical. To determine future regulatory actions, EPA needs to keep a running tab on market supply and demand of the various chemicals. EPA is much better able to track which companies are expending which allowances for which chemicals if EPA carries out the calculations involving trades and expenditures, and then tracks the absolute quantities of each chemical. EPA is also obligated to report to the United Nations Environment Programme (UNEP) annually on U.S. production and importation on an absolute basis for each individual substance. Producers and importers have been operating and reporting under the class I absolute allocation system for many years, and are familiar with the necessary calculations, reporting forms, and tracking requirements. Therefore, any additional administrative burden of adopting a similar system for class II substances may be minimal for the regulated community. Consistency between the class I and potential class II systems would present a significant advantage. Under an absolute system, flexibility would not be compromised, due to the trading opportunities that can be established. EPA requests comment on the advantages or disadvantages of an absolute allocation system.

b. ODP-Weighted Allocation. Another means of allocating allowances is through an ODP-weighted system, whereby each allowance holder's allocation would be calculated according to the numerical value of the ODP associated with each chemical in the allowance holder's baseline year(s). In this case, the ODP weight of each HCFC becomes the meaningful variable and companies would be allocated an aggregate number of ODP-weighted (ODP x kilogram) units. For example, a company that produced 1000 kilograms of HCFC–142b in the baseline year(s) would be allocated 65 ODP-weighted allowances because HCFC–142b has an ODP of 0.065. Likewise, if this same company imported 1000 kilograms of HCFC–22 during the baseline year(s), they would also be allocated 55 ODP-weighted allowances (HCFC–22 has an ODP of 0.055). Thus, the company would have a total of 120 ODP-weighted allowances. The company would be able to expend the 120 ODP-weighted allowances by producing or importing any class II controlled substance or combination of class II controlled substances that it chooses, as long as the weighted total (kilogram x ODP) does not exceed the number of allowances. For example, the company could expend all of the 120 ODP-weighted allowances to produce 2,181 kilograms of HCFC–22. Alternatively, the company might expend the 120 ODP-weighted allowances to produce 6,000 kilograms of HCFC–123 (ODP = 0.02), or 1,091 kilograms of HCFC–141b (ODP=0.11). Under this system, intra-company transfers would not be necessary; inter-company trades would be in increments of ODP-weighted units.

The ODP-weighted allowance system may be viewed as more advantageous to regulated entities. Altering patterns of production and importation in response to market changes could be done more easily, and the offset required for intra-company transfers under an absolute kilogram allowance system would not apply, simply because there would be no actual transfer of allowances within a company where ODP units are concerned. The offset would still apply to inter-company trades because allowances would in fact be trading hands.

Under an ODP-weighted allowance system, however, complex calculations would be necessary by the reporting companies to arrive at the total quantity of class II substances produced or imported during the reporting period. For each chemical, the number of kilograms would have to be multiplied by its ODP and compared to the number of ODP-weighted allowances. Blends would present an additional complication by requiring a calculation of the percentage of each HCFC in a substance (e.g., R–401A), at each applicable ODP, and including that in the total reported ODP produced or imported for a quarter.

When the first phaseout date becomes effective in 2003 for HCFC–141b, under an ODP-weighted system, an entity participating in the HCFC–141b market would no longer receive the amount of ODP-weighted allowances associated with that entity's ODP units of HCFC–141b produced and/or imported in the baseline year(s). The same would be true for subsequent phaseouts. Complications come into play, however, when ODP-weighted allowances have been transferred on a permanent basis; that is, when a company actually trades baseline allowances. Where baseline trades (discussed more in part II.E.4 of this notice) have been made, adequately tracking ODP-weighted class II substances from one holder to another becomes very difficult. This is extremely important at each phaseout, to determine who holds the baseline allocation of the chemical being phased out.

EPA seeks comments on the viability of an ODP-weighted allowance system as presented above. Though presented as a possible option, EPA recognizes the many difficulties that could emerge with an ODP-weighted system (e.g., monitoring chemicals that have been produced or imported with traded allowances; reporting to UNEP the absolute quantities of all class II substances in kilograms). An ODP-weighted allowance system would also possibly be in conflict with Section 605(b)(1) of the Act, which states that, "Effective January 1, 2015, it shall be unlawful for any person to produce any class II substance in an annual quantity greater than the quantity of such substance produced by such person during the baseline year." This is because ODP-weighted allowances could be shifted within a company and thus allow that company to produce a greater quantity of a class II substance than in its baseline. (Such an intra-company transfer of allowances is discussed below in part E of this notice.)

B. Method for Distributing Allowances

EPA is required, under Section 607 of the Act, to issue allowances for the production and consumption of class II substances. There are a variety of methods for allocating allowances and EPA seeks comments on these options. First, EPA is considering allocating allowances for the full time period until the complete production and importation phaseout for all class II substances (currently 2030), taking into account both accelerated phaseouts for individual chemicals (e.g., those for HCFC–141b, HCFC–22 and HCFC–142b) and the step-wise reduction of the consumption cap as mandated under the Protocol. This allocation of allowances was the method followed in the regulatory program for class I substances. For class I substances, a quantity of allowances was allocated to listed companies as a baseline in the **Federal Register**. Allocating allowances for the full time period until a particular phaseout date provides certainty and stability for the market. Assuming the regulatory program includes smooth procedures for trading allowances, the full-term allocation of allowances establishes the basis for a "marketable permit" system.

The second option being considered is a system for re-calculating and re-allocating allowances on a "rolling basis." This would essentially move the baseline forward in time so that the baseline would always be the most accurate reflection of the current HCFC market. Under this option, EPA would review data on the production, import and export of HCFCs on some periodic basis, establish a new baseline for each entity, and re-allocate the allowances accordingly. A re-allocation of allowances may require an amendment to the original list in the regulation of entities with their respective baseline allowances. Alternatively, an administrative mechanism could be established to re-allocate allowances automatically at regular intervals.

However, if the regulatory system includes smooth procedures for trading allowances, shifts in demand and changes in market share could be addressed by individual companies, thus obviating the need to re-allocate allowances. Identifying the appropriate length of time for periodic review and re-allocation of allowances would be important, especially given both the existing phaseout schedule for specific HCFCs and the step-wise reduction of the HCFC consumption cap over time. Likewise, the length of time for periodic re-allocation of allowances may depend on the definition of a trigger mechanism for making the final rule effective, which is discussed in II.H of this notice. For example, instead of establishing specific years for the re-allocation of allowances (e.g., 2000 and 2002), the re-allocation could be linked with the trigger mechanism, so that re-allocation of allowances would occur, say, 2 years and 4 years after the allowance system becomes effective.

A final option would involve allocating allowances on a year-by-year basis. However, this would generate a large administrative burden for both EPA and those who produce, import and export HCFCs. The ability of those producers, importers and exporters to plan for the longer term would also be hampered.

EPA is seeking comments on all of the aforementioned options for distributing allowances.

C. Establishing an Equitable Baseline for Distributing Allowances

In developing the regulatory program for class I controlled substances, EPA collected information on the amounts of each class I substance produced, imported and exported during a given calendar year. EPA collected the data by publishing two notices in the **Federal Register** under authority of Section 114 of the Act (52 FR 47489 (December 14, 1987) and 55 FR 49116 (November 26, 1990)). The data requested from U.S. companies included reports on production runs, quantities of feedstock chemicals used in production, bills of lading, invoices, and other documents for a specific calendar year. The data submitted to EPA was used to assign company-specific production and import rights (allowances) to companies.

EPA is considering, and seeking comment on, many options for establishing a baseline for HCFC allowances. Consistent with the procedures associated with class I controlled substances, EPA will likely use historical information regarding a

company's activities to establish the baseline for class II allowances. EPA is considering following the same procedures used for establishing the baseline for class I controlled substances, including the publication of a Section 114 notice requesting specific information.

Options for establishing the actual baseline allowances for class II controlled substances are represented by a spectrum of choices, including using historical information from one year, from an average of multiple years, or using a formula for combining multiple years. At the extremes, EPA is considering historical information from 1989 or 1997, and many variations in between. EPA believes that the process of establishing the baseline should take into account, inter alia, the agreements by the Parties to the Protocol to control and phase out class II substances, the signing of the Clean Air Act Amendments of 1990 into law, the publication of regulations under Title VI of the Act governing the phaseout of class II substances, and the development of the current HCFC market in the U.S. EPA is seeking comments on the various options discussed below, as well as any other ideas for establishing an allocation baseline.

One option EPA is considering for establishing the baseline for class II controlled substances is historical information from one year. Collecting documents and information from companies for one year of activity would be less of an administrative burden for both EPA and the companies than if EPA were to collect information for more than one year. Another option EPA is considering is using data from multiple years to establish the baseline for class II substances. EPA is considering using historical information from consecutive years and averaging the data. EPA is also considering averaging historical data from non-consecutive years to establish the class II baseline. Calculating baseline allowances for class II substances by using a weighted average of multiple years is also being considered. For example, using a number of either consecutive or non-consecutive years within the time frame 1989–97, EPA would first calculate the production and importation for each. Then, after deciding upon the relative importance of each of those years regarding production and importation quantities, EPA would weight each year accordingly and make the baseline calculation to reflect the weighted average of those years. Once the option for determining the baseline is chosen, EPA believes that steps to ensure accuracy of historical data will be of utmost importance. Any baseline calculation involving multiple years will have to be reconciled with the definition of "baseline" in Section 601(2) of the Act, which states that the term "baseline year" means "a representative calendar year * * * in the case of any class II substance."

Another option EPA is considering for establishing a baseline is to use different years for establishing each HCFC's individual baseline. As an example, EPA might consider using one particular year (or years) to establish the baseline for HCFC–141b and a completely different year (or years) for establishing the baseline for HCFC–22 and HCFC–142b. In this example, EPA might consider using yet another year (or years) for establishing the baseline for all remaining HCFCs. Using this type of approach, and linking it with the options discussed above, EPA might choose the average of multiple years for one HCFC and a formula for establishing the baseline for another HCFC.

It is important to note that, under any scenario, when the phaseout date for HCFC–141b is reached in 2003, all HCFC–141b consumption (production + imports − exports) will cease. Those who did not participate in the HCFC–141b market will not be affected in 2003. However, those who did participate in the HCFC–141b market—through, for example, producing or importing HCFC–141b—would no longer receive any allowances associated with their historic HCFC–141b activity, and thus any authorization to produce or import HCFC–141b. Likewise, any company that, through a baseline trade, received allowances associated with historic HCFC–141b would no longer receive any allowances associated with the baseline trade in 2003.

In 2004, when the Protocol requires that the HCFC consumption cap be reduced from its current level by 35 percent, all remaining allowance holders may be affected. At that time, all allowance holders may receive up to 35 percent less of their remaining HCFC baseline allowances (all HCFC allowances minus HCFC–141b allowances).

D. Percentage of Allowances Distributed Under U.S. HCFC Consumption Cap

EPA is considering, and seeking comment on, whether to allocate the total number of allowances (the total quantity of ODP-weighted HCFC consumption) available to the U.S. under the cap as established by the Montreal Protocol. As discussed in part I.A of this notice, the current U.S. cap for HCFC consumption is 15,240 ODP-weighted metric tons, based on the formula of 2.8 percent of CFC consumption in 1989 plus the consumption of HCFCs in 1989. Today's notice considers an allocation of allowances equal to 100 percent of the 15,240 metric tons. This would, however, in the event of some violation of the allowance system, provide no cushion for error, thus risking violation of the U.S. cap. This risk could demand that EPA request information and monitor more often and in greater detail.

EPA is also considering, and seeking comment on, an allocation of some percentage less than the full quantity of the cap. In this scenario, consideration is given to potential violations of the allocation system by leaving enough unallocated class II allowances to cover any overage. In this case, the U.S. would not violate the cap as a consequence of a violation of its allocation system. EPA is seeking comment on the necessity of providing a safe buffer below the HCFC cap; the percentage to be allocated if less than 100 percent is warranted; and on the possible size of errors in the reporting of production and import data that could occur in a control period.

Related to the discussion above is the issue of how to allocate the remaining class II allowances falling between the U.S. cap (potentially allowing for some margin of error) and the selected baseline (discussed in II.C of this notice). For example, if the year 1996 were chosen as the baseline, this would represent about 82 percent of the U.S. cap, thus leaving open the question of how to allocate the remaining 18 percent, and if all of the remaining 18 percent should be allocated. This remaining percentage, or a lower percentage that would provide for a margin of error, could simply be added to the allocated baseline allowances, to be distributed on a pro rata basis. The entire amount, then, would be allocated in the form of allowances to those companies that participated in the HCFC market in the baseline year(s). Such a system would provide certainty in how the allowances would be allocated.

Depending on the baseline year(s), another possible option would be to allocate some portion of the remaining percentage (in our example some portion of the 18 percent) to those companies whose historic HCFC activity is not well represented by the baseline year(s), such as new companies that may have entered the HCFC market after the baseline year(s).

E. Transfers of Class II Allowances

In establishing the regulatory allowance program for class I controlled substances, EPA included provisions that permitted the transfer of allowances. The provisions for trades and transfers of class I allowances are in § 82.9, § 82.10, § 82.11 and § 82.12 of the final rule published in the **Federal Register** on May 10, 1995 (60 FR 24970). Today's notice describes the many different types of transfers permitted for class I allowances, as well as other variations. EPA is seeking comment on how these variations and options could apply to the transfer of class II allowances.

Under the current class I regulatory program, EPA is required to process the transfer of allowances within three working days from when EPA receives the request for an inter-pollutant or inter-company trade. Companies fax the request for a trade to EPA and within three working days EPA faxes a reply showing the new balance of unexpended allowances (See 40 CFR 82.12(a)(1), (b)(4)).

1. Transfers Within Groups of Class II Substances

To facilitate transfers among class II substances, EPA is permitted, under Section 607(b)(3) of the Act, to establish groups of class II substances. Under such a framework, inter-pollutant transfers of allowances would be limited to chemicals within an assigned group. Class I controlled substances are listed in the Act in groups, and inter-pollutant transfers of class I allowances are restricted to the specific groups. For example, CFC–11 and CFC–114 are listed in the Act as being in class I, Group I and all the halons are listed in class I, Group II. Inter-pollutant transfers of allowances can occur among CFCs in Group I and among halons in Group II, but transfers of allowances cannot occur between the two groups. One option for class II substances might be to establish class II groups based on each chemical's ODP. Another option might be to establish class II groups based on the U.S. phaseout dates for class II substances. EPA requests comment on the concept of grouping class II substances and the possible groupings themselves.

2. Inter-Pollutant Transfers

Section 607(b) of the Act states that inter-pollutant transfers shall be permitted. An inter-pollutant transfer is the transfer of an allowance of one substance to an allowance of another substance on an ODP-weighted basis. As an example, under the class I system, a company would transfer allowances for CFC–12 to allowances for CFC–115, taking into account ODP differences between the two chemicals. If a company wanted to transfer 1000 kilograms of their CFC–12 production allowances to CFC–115 production allowances, paperwork would be submitted with the following calculation: the 1000 kilograms of CFC–12 allowances are multiplied by the ODP of CFC–12 (1.0) and then divided by the ODP of CFC–115 (0.6), yielding 1667 kilograms of new CFC–115 production allowances. Inter-pollutant transfers are sometimes called intra-company trades because a company might shift allowances internally from one substance to another to react to shifts in demand. Inter-pollutant transfers of allowances were fairly common for class I controlled substances. There were more than 40 inter-pollutant transfers for class I substances each year from 1992 through 1995.

For class II substances, an example of an inter-pollutant transfer would be a transfer of 10,000 kilograms of HCFC–142b allowances to HCFC–141b allowances, which would result in 5,909 kilograms of HCFC–141b allowances because of the adjustment for the ODPs of the two chemicals (which does not take into account the required offset for transfers as discussed in II.E.7 of this notice). If the class II allowance system were to distribute allowances on an ODP-weighted basis, however, there would be no need to include provisions for inter-pollutant transfers.

3. Inter-Company Transfers

Another example of trades of class II allowances that EPA must permit under Section 607(c) of the Act are inter-company transfers. Inter-company transfers are trades of allowances, for the same substance, from one company to another company. Under such a system, Company A would simply transfer its allowances of a class II substance to Company B who wishes to have more allowances of that particular class II substance.

4. Inter-Pollutant Transfers Combined With Inter-Company Transfers

Both inter-company and inter-pollutant transfers could be combined in the same transaction for class I controlled substances, and EPA is considering allowing the same combined system for class II substances. As an example of how this worked under the class I system, Company A would trade 35,000 kilograms of CFC–11 allowances to Company B who needed allowances to produce CFC–115. In the information submitted to EPA, the two companies would agree that Company A would deduct 35,000 allowances for CFC–11 from its balance and Company B would receive 58,333 kilograms of CFC–115, due to the ODP difference between the two chemicals. (An additional one percent offset would also be required in this calculation as discussed in II.E.7).

Under this combined system for class II substances, a company that wishes, say, to increase its production of HCFC–141b before the 2003 phaseout could (1) re-distribute its own allowances that have been allocated for another class II substance to HCFC–141b (an intra-company/inter-pollutant transfer); (2) purchase more HCFC–141b allowances from another company (an inter-company transfer); or (3) purchase more allowances from another company of a substance other than HCFC–141b (an inter-company/inter-pollutant transfer). Any inter-pollutant transfer would account for differences in ODP.

5. Transfers of Current-Year Allowances

EPA is considering approaches for permitting transfers of current-year allowances for class II controlled substances. A transfer of current-year allowances means the allowances being traded can only be expended for production or import in that specific control period, or calendar year. Transfers of current-year allowances do not change the quantity of actual baseline allowances assigned to a company. A trade of current-year allowances is a one-time trade, only reflected in a company's balance of allowances for that control period in which the trade occurs. Trades of current-year allowances were permitted in the class I regulatory program. From 1992 to 1995, many companies took advantage of the opportunity to trade current-year allowances for class I controlled substances. As an example, a company might make an inter-pollutant trade from their unexpended CFC–11 allowances to their CFC–114 allowances in order to respond to greater market demand for CFC–114 in that particular year. Another example would be Company A purchasing allowances from Company B, because Company A wants to import CFC–113 sometime during that control period. EPA seeks comment on current-year allowance transfers.

6. Permanent Transfers of Baseline Allowances

EPA is considering the merits of permitting transfers of baseline allowances for class II substances. A

transfer of baseline allowances is a permanent shift of some quantity of a company's baseline allowances to another company. The permanent nature of the transfer of baseline allowances makes the trade different from the transfer of current-year allowances. For example, Company A could have produced 1,000 kilograms of HCFC–22 in the baseline year(s), and would therefore receive either 1,000 baseline allowances (for the kilogram-based system) or 55 ODP-weighted baseline allowances (for the ODP-weighted system). Company A could in turn permanently trade away these baseline allowances to Company B. In all subsequent years, Company A's quantity of baseline allowances would permanently be reduced, while Company B's quantity of baseline allowances would permanently be increased.

To implement the current U.S. phaseout schedule for class II controlled substances, it may not be possible to allow permanent transfers of baseline allowances if the type of allowance chosen is an ODP-weighted unit, as described in part II.A.2.b of this notice. Under the U.S. phaseout schedule for class II substances, the consumption of chemicals with the highest ODP is eliminated first. To efficiently eliminate the consumption of a specific chemical, such as HCFC–141b, under a possible program using ODP-weighted allowances, a company would no longer receive, in 2003, the portion of its allowances attributable to its historic consumption of HCFC–141b. Under this scenario, a company would not be able to make a permanent trade of a quantity of ODP-weighted allowances because the permanent transfer of ODP-weighted allowances would not be linked to a specific chemical, unless there were groupings of HCFCs according to their phaseout dates or unless historical consumption would determine deduction of allowances at a particular phaseout. Alternatively, regardless of whether or not baseline trades with ODP-weighted units are made, the historic baseline ODP-weighted amount for a given chemical could be deducted in the relevant phaseout year (e.g. 2003 for HCFC–141b). EPA seeks comment on the merits of baseline trades in general, and on the compatibility of baseline trades with kilogram-based allowances versus ODP-weighted allowances.

7. International Trades of Current-Year Allowances

Under the Protocol, international trades are recognized as a part of a process called "industrial rationalization." In Article 1 of the Protocol, industrial rationalization is defined as "the transfer of all or a portion of the calculated level of production of one Party to another, for the purpose of achieving economic efficiencies or responding to anticipated shortfalls in supply as a result of plant closures." International trades of production are permitted under the Protocol so companies can consolidate the manufacturing of a chemical in order to be able to achieve economies of scale as demand shrinks.

The Protocol includes the following language in Article 2, paragraph 5 bis: "Any Party not operating under paragraph 1 of Article 5 may, for one or more control periods, transfer to another such Party any portion of its calculated level of consumption set out in Article 2F [pertaining to HCFCs], provided that the calculated level of consumption of controlled substances in Group I of Annex A [CFCs] of the Party transferring the portion of its calculated level of consumption did not exceed 0.25 kilograms per capita in 1989 and that the total combined calculated levels of consumption of the Parties concerned do not exceed the consumption limits set out in Article 2F. Such transfer of consumption shall be notified to the Secretariat by each of the Parties concerned, stating the terms of such transfer and the period for which it is to apply."

International trades of production allowances are permitted under EPA's current regulations for class I controlled substances (40 CFR 82.9(c)). The procedures for international trades involve more review than the procedures for inter-pollutant and inter-company trades.

For class II substances, the implementation challenge of paragraph 5 bis of Article 2 in the Protocol is that "consumption" is a formula (production + imports − exports). Pursuant to a decision by the Parties, the Protocol language in paragraph 5 bis of Article 2 clearly restricts the U.S. from trading away HCFC consumption to another Party. The U.S. per capita consumption of CFCs in 1989 was 1.28 kilograms, well above the 0.25 kilogram per capita limit for transferring HCFC consumption. However, the Protocol language allows the U.S. to potentially receive a transfer of HCFC consumption from another Party. Only two non-Article 5 Parties, Norway and Poland, had a per capita consumption of CFCs in 1989 less than 0.25 kilograms. Thus, these are the only non-Article 5 Parties from whom the U.S. could potentially receive a transfer of HCFC consumption. We must therefore consider the likelihood of such international trades, and whether or not the establishment of provisions for class II international trades is warranted.

If EPA were to create provisions for class II international transfers, the options for such trades would be intimately linked to the type of allowance chosen for the final program, as discussed in part II.A.1 of this notice. If EPA were to choose a program with both production and consumption allowances (as in the class I system), it would be easier to limit international trades to just production by following the model already established for class I substances. If, on the other hand, EPA were to choose a program with class II allowances (which could apply to production, imports and exports), EPA would have to ensure that such allowances are used for production only and not for import.

Alternatively, EPA may choose to establish a special type of allowance to represent production rights received from an international trade. EPA seeks comment on allowing international trades of HCFC allowances and how they should be administered.

8. Offset for a Transfer of Allowances

The final aspect of trades of class II allowances considered in today's notice is the manner of achieving greater total reductions than would occur in the absence of a trade, as required in Section 607(a) of the Act. EPA believes that the offset required by Section 607 of the Act is only for inter-pollutant and inter-company transfers. In the allowance program for class I substances, an offset was not included in international trades.

Section 607(a) states that, "transactions under the authority of this section will result in greater total reductions in the production in each year of class I and class II substances than would occur in that year in the absence of such transactions." For the class I allowance program, EPA adopted a one percent offset, deducted from the transferor's allowance balance, for all inter-pollutant trades and all inter-company trades (40 CFR 82.12(a)(1)(i)(H), 82.12(b)(4)(i)(F)). However, for inter-pollutant trades combined with inter-company trades, only one offset is applied to the transfer of allowances. For class II controlled substances, EPA is considering re-examining the quantity of offset assessed in a transfer of allowances. Because the class II substances are less ozone-depleting than class I substances, EPA may consider a smaller offset for

trades of HCFC allowances. EPA requests comment on the degree of offset to apply to domestic trades of class II substances.

F. Conditions Under Which a Control System Would Become Effective

As mentioned in the background section of this notice (part I.B), EPA is mandated under the Act to promulgate regulations by December 31, 1999, to administer the phaseout of class II controlled substances. By this time, EPA intends to have in place an allowance system based on the options, or some slight variation thereof, discussed throughout this notice. However, EPA is considering an approach, whereby the allowance system would not go into effect unless a certain percentage of the U.S. cap for class II controlled substances were to be reached or exceeded.

It is possible that U.S. HCFC consumption levels will remain within a safe buffer of the current cap as agreed to under the Protocol, and thus never activate the allowance system. In 2003, under the U.S. accelerated phaseout for individual class II substances, HCFC–141b will be phased out. An allowance allocation system may not be necessary to phase out HCFC–141b. In 2004, however, at which time the U.S. is required under the Protocol to reduce its current HCFC consumption cap by 35 percent, an allowance system will likely be necessary to ensure U.S. compliance with the Protocol. Consequently, EPA should select a default date before 2004 when the allowance allocation system would become effective, in the event that the allowance system is not in place before that default date. EPA is seeking comments on the most appropriate timing of a default date for the system to become effective.

The rationale for an approach that would condition the onset of an allowance system upon reaching an established percentage of the U. S. cap set by the Montreal Protocol would be to avoid premature government intervention in the HCFC industry. Therefore, the threshold must be set at a level where the implementation of EPA's allowance system would be deemed necessary to ensure that the U.S. complies with its cap for class II substances. Furthermore, having the allowance system in place with a set threshold for implementation will provide the regulated community with a relatively predictable regulatory structure.

EPA is considering, and seeking comment on, the appropriateness of such an approach, the percentage of the U.S. cap for class II controlled substances that would trigger the onset of the allowance system, the time span and type of data used to calculate whether or not the percentage has been reached or exceeded, and the amount of time deemed appropriate for implementation of EPA's allowance system once the threshold has been reached or exceeded.

EPA is considering a range of percentage options that would trigger the onset of the allowance system. A low percentage would possibly mean that EPA's implementation of its allowance system occurs with a relatively long lag time (e.g., more than one year), whereas a higher percentage may require swift implementation (e.g., within one year or less). EPA is concerned that a percentage threshold set too high could threaten U.S. compliance with its cap for class II controlled substances, given the delays inherent in data collection and the need for some transition time between reaching the percentage and implementing the allowance system.

The trends that the data on class II consumption (discussed below) reveal, combined with the percentage threshold, may also influence the speed with which EPA implements its allowance system. For example, if class II reporting data reveal that the threshold has been, or will be, surpassed by an amount considered "too close" to the cap, then EPA may implement its allowance system within a shorter time frame; likewise, if the threshold were surpassed by an amount considered to be within a secure buffer of the cap, EPA could implement its allowance system with a longer delay.

EPA must decide on the time span and type of class II data used to determine U.S. class II consumption levels relative to the selected percentage. EPA currently receives quarterly data on production, importation and exportation of class II substances as required under Section 603 of the Act. In order to assess meaningful trends and levels of class II consumption relative to the selected percentage, EPA is considering, and seeking comment on, a variety of ways of using this quarterly data for that purpose.

Under the Protocol and the Act, compliance for class II substances (i.e., consumption relative to the cap) is measured against the calendar year. Therefore, aggregating four quarters of quarterly data (an annual sum) serves as a convenient method to determine class II consumption levels relative to the cap, and thus the selected criteria for initiating the allowance system. This would represent one possible option for calculating class II consumption levels relative to the selected criteria. Another option would be to use a rolling sum in determining compliance with an established threshold, based on submitted data for four or possibly more consecutive quarters, which could include quarters from two calender years. The rationale for using four or more consecutive quarters is to avoid seasonality effects, or trend biases, which individual quarterly data could bring. If a number other than four quarters were used, the appropriate weighting would have to be given to each quarter so that their sum would be the equivalent of a 12-month period. If five consecutive quarters were used, for example, each quarter would be scaled to represent one fifth of the 12-month period.

III. Other Regulatory Options for Controlling HCFCs

To ensure that the U.S. adheres to its phaseout schedule for class II controlled substances, EPA has options of pursuing, if necessary, other means to contribute to the control HCFC of consumption of class II substances. The discussion below pertains to current labeling program, SNAP program and the non-essential products ban, and potential amendments to those regulations. These options address the use of HCFCs rather than their production, import and export, which an allowance system would directly control. EPA is seeking comment on using any of these options discussed below in controlling HCFC consumption, either in combination with an allowance system, each other, or on its own.

A. Labeling

As an additional means of discouraging use of class II substances, so as to ensure that the U.S. does not exceed its cap for class II substances under the Protocol, EPA is considering and seeking comment on the required use of labels on products containing or manufactured with class II substances. According to Section 611 of the Act, such labels would read as follows: "Warning: Contains/manufactured with [insert name of substance], a substance which harms public health and environment by destroying ozone in the upper atmosphere."

According to Section 611(c) of the Act, "After 30 months after the enactment of the Clean Air Act Amendments of 1990, and before January 1, 2015, no product containing

a class II substance shall be introduced into interstate commerce unless it bears the label [referred to above] if the Administrator determines, after notice and opportunity for public comment, that there are substitute products or manufacturing processes (A) that do not rely on the use of such class II substance, (B) that reduce the overall risk to human health and the environment, and (C) that are currently or potentially available." Section 611(d) of the Act contains the same requirements for products manufactured with class II substances. Beginning January 1, 2015, all products containing or manufactured with a class II substance must bear the specified label regardless of whether the Administrator has made a determination regarding the availability of substitutes (§§ 611(c)(2) and 611(e)(5)). Therefore, the issue upon which EPA is requesting comment is whether EPA should, prior to January 1, 2015, require labels on certain products containing or manufactured with class II substances.

B. SNAP Approval and Restrictions

Section 612 of the Act requires EPA to promulgate rules making it unlawful to replace any class I or class II substance with any substitute substance that may present adverse effects to human health or the environment, where EPA has identified an alternative to such replacement that "(1) reduces the overall risk to human health and the environment; and (2) is currently or potentially available." In accordance with Section 612 of the Act, and under the Significant New Alternatives Policy (SNAP) program, EPA publishes lists of acceptable and unacceptable substitutes for class I and class II substances. In some SNAP sector end-uses, class II substances have been listed as acceptable substitutes. Class II substances are viewed by the Agency as transition chemicals that facilitate the transition out of more harmful class I chemicals. Since 1994, availability of zero-ODP alternatives has increased in a number of end-uses. It is therefore possible that existing SNAP determinations allowing HCFC end-uses could be revised to make them unacceptable for use. This could happen through three mechanisms.

First, EPA could receive a petition from a company to add a substance to or delete a substance from the SNAP list of acceptable and unacceptable alternatives (See Section 612(d)). Second, EPA could receive notification from a company before introduction of a substitute into interstate commerce for significant new use as an alternative to a class II substance (See Section 612(e)). Finally, EPA can initiate changes to the SNAP determinations independent of any petitions or notifications received. Such changes could be based on new data either on additional substitutes or on characteristics of substitutes previously reviewed.

EPA solicits comments on the possibility of controlling HCFCs through SNAP determinations.

C. Nonessential Product Ban under Section 610

Section 610(d) of the Act prohibits the sale, distribution, or offer for sale or distribution in interstate commerce, of certain nonessential products that contain or are made with class II substances. EPA is authorized to grant exceptions to the ban under certain conditions. Since the issuance of the final rule providing exemptions from the statutory Class II nonessential products ban, EPA has received information, including information on new substitutes for making certain products, indicating that it may be necessary to reconsider the continued appropriateness of those exemptions. The Agency also is aware that since the issuance of that initial final rulemaking, there has been further substitution away from ozone-depleting substances in aerosols and pressurized dispensers. EPA is currently reviewing information concerning the aerosol products and pressurized dispensers that were given exemptions in the December 1993 rulemaking. In particular, the Agency is evaluating whether there are technologically available substitutes for the HCFCs used in these products. When EPA completes its evaluation of the existing exemptions for HCFCs, if appropriate, the Agency will issue a notice of proposed rulemaking. Potentially removing some of these products from the current exemptions to the nonessential product ban could provide some further assurance that the U.S. would not exceed its cap for class II substances under the Protocol.

IV. Administrative Requirements

A. Executive Order 12866

Under Executive Order (E.O.) 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether this regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The E.O. defines "significant regulatory action" as any regulatory action (including an advanced notice of proposed rulemaking) that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or,

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined by OMB and EPA that this action is a "significant regulatory action" under the terms of Executive Order 12866 and is therefore subject to OMB review under the Executive Order. This notice was reviewed by OMB and changes recommended by OMB have been made and documented for the public record.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

EPA determined that the members of the regulated community that may be directly affected by this rulemaking are generally not small businesses. Small governments and small not-for-profit organizations would not be subject to the options in today's notice. The options discussed in today's notice are directed to large, multinational corporations that either produce, import, export, transform or destroy ozone-depleting chemicals covered by this notice. The options discussed in this notice, therefore, will not have a significant economic impact on a substantial number of small entities.

C. Applicability of Executive Order 13045: Children's Health Protection

Executive Order 13045: "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) applies to any rule that: (1) is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an

environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

EPA interprets E.O. 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This notice is not subject to E.O. 13045 because it presents options to implement a previously promulgated health or safety-based Federal standard, which in this case would be the accelerated phaseout schedule for HCFCs (58 FR 65018).

D. National Technology Transfer and Advancement Act

The National Technology Transfer and Advancement Act of 1995 (NTTAA), § 12(d), Pub. L. 104–113, requires federal agencies and departments to use technical standards that are developed or adopted by voluntary consensus standards bodies, using such technical standards as a means to carry out policy objectives or activities determined by the agencies and departments. If use of such technical standards is inconsistent with applicable law or otherwise impractical, a federal agency or department may elect to use technical standards that are not developed or adopted by voluntary consensus standards bodies if the head of the agency or department transmits to the Office of Management and Budget an explanation of the reasons for using such standards.

This advance notice does not mandate the use of any technical standards; accordingly, the NTTAA does not apply to this advance notice.

ANNEX A: OZONE DEPLETION POTENTIALS FOR CLASS II SUBSTANCES AS CURRENTLY LISTED UNDER THE MONTREAL PROTOCOL*

Dichlorofluoromethane (HCFC–21)	0.04
Monochlorodifluoromethane (HCFC–22)	0.055
Monochlorofluoromethane (HCFC–31)	0.02
Tetrachlorofluoroethane (HCFC–121)	0.01–0.04
Trichlorodifluoroethane (HCFC–122)	0.02–0.08
Dichlorotrifluoroethane (HCFC–123)	0.02
Monochlorotetrafluoroethane (HCFC–124)	0.022
Trichlorofluoroethane (HCFC–131)	0.007–0.05
Dichlorodifluoroethane (HCFC–132b)	[reserved]
Monochlorotrifluoroethane (HCFC–133a)	0.02–0.06
Dichlorofluoroethane (HCFC–141b)	0.11
Monochlorodifluoroethane (HCFC–142b)	0.065
Hexachlorofluoropropane (HCFC–221)	0.015–0.07
Pentachlorodifluoropropane (HCFC–222)	0.01–0.09
Tetrachlorotrifluoropropane (HCFC–223)	0.01–0.08
Trichlorotrifluoropropane (HCFC–224)	0.01–0.09
Dichloropentafluoropropane (HCFC–225ca)	0.025
Dichloropentafluoropropane (HCFC–225cb)	0.033
Monochlorohexafluoropropane (HCFC–226)	0.02–0.10
Pentachlorofluoropropane (HCFC–231)	0.05–0.09
Tetrachlorodifluoropropane (HCFC–232)	0.008–0.10
Trichlorotrifluoropropane (HCFC–233)	0.007–0.23
Dichlorotetrafluoropropane (HCFC–234)	0.01–0.28
Monochloropentafluoropropane (HCFC–235)	0.03–0.52
Tetrachlorofluoropropane (HCFC–241)	0.004–0.09
Trichlorodifluoropropane (HCFC–242)	0.005–0.13
Dichlorotrifluoropropane (HCFC–243)	0.007–0.12
Monochlorotetrafluoropropane (HCFC–244)	0.009–0.14
Trichlorofluoropropane (HCFC–251)	0.001–0.01
Dichlorodifluoropropane (HCFC–252)	0.005–0.04
Monochlorotrifluoropentane (HCFC–253)	0.003–0.03
Dichlorofluoropropane (HCFC–261)	0.002–0.02
Monochlorodifluoropropane (HCFC–262)	0.002–0.02
Monochlorofluoropropane (HCFC–271)	0.001–0.03

*According to Annex C of the Protocol, "Where a range of ODPs is indicated, the highest value in that range shall be used for the purposes of the Protocol. The ODPs listed as a single value have been determined from calculations based on laboratory measurements. Those listed as a range are based on estimates and are less certain. The range pertains to an isomeric group. The upper value is the estimate of the ODP of the isomer with the highest ODP, and the lower value is the estimate of the ODP of the isomer with the lowest ODP."

List of Subjects in 40 CFR Part 82

Environmental protection, Allowances, Administration practice and procedure, Air pollution control, Chemicals, Chlorofluorocarbons, Exports, Hydrochlorofluorocarbons, Imports, Montreal Protocol, Production, Reporting and recordkeeping requirements, Stratospheric ozone layer.

Dated: March 29, 1999.

Carol M. Browner,

Administrator.

[FR Doc. 99–8258 Filed 4–2–99; 8:45 am]

BILLING CODE 6560–60–P

LEGAL SERVICES CORPORATION

45 CFR Part 1635

Timekeeping Requirement

AGENCY: Legal Services Corporation.

ACTION: Proposed rule: Republication.

SUMMARY: This proposed rule would revise the Corporation's timekeeping rule to require recipient attorneys and paralegals to provide the date as well as

the time spent on each case, matter or supporting activity. In addition, the rule would require that recipient part-time attorneys and paralegals who work part-time for a recipient and part-time for an organization that engages in restricted activities certify that they did not engage in any restricted activities during any time period for which they were compensated by the recipient.

DATES: Comments should be received on or before June 4, 1999.

ADDRESSES: Comments should be submitted to the Office of the General Counsel, Legal Services Corporation, 750 First St. NE., 11th Floor, Washington, DC 20002–4250.

FOR FURTHER INFORMATION CONTACT: Suzanne B. Glasow, 202–336–8817.

SUPPLEMENTARY INFORMATION:

Background

The Operations and Regulations Committee (Committee) of the Legal Services Corporation's (LSC) Board of Directors (Board) met on September 11, 1998, in Chicago, Illinois, to consider proposed revisions to § 1635.3(b)(1) of the Corporation's timekeeping rule. The revisions were intended to require records that would more clearly demonstrate that part-time employees do not engage in restricted activities during the time for which they are compensated by the recipient. A proposed rule was published on October 22, 1998 (63 FR 56594), for public comment. The rule was a response to the Corporation's Office of Inspector General's (OIG) Summary Report on Audits of Selected Grantees for Compliance with Selected Regulations (February 1998) which found that timekeeping records could not demonstrate that part-time employees of recipients do not work on restricted activities during any time for which they are compensated by the recipient for their services. In order to address this finding, the OIG recommended revising the Corporation's timekeeping rule to require that part-time attorneys and paralegals account for all hours worked for the recipient by date and time of day in their timekeeping records. In subsequent discussions, the OIG stated that it would consider its recommendation implemented if LSC placed such a requirement only on part-time attorneys and paralegals who also work part-time for an organization that engages in restricted activities (hereinafter referred to as "part-time attorneys").

Accordingly, the proposed rule required part-time attorneys to provide the date and exact time of day for time spent on each case, matter or supporting activity. In addition, the rule required that the timekeeping records for such attorneys be consistent with their time and attendance records maintained by the recipient for payroll purposes (hereinafter referred to as "payroll records").

During the September meeting, the Committee questioned whether a certification requirement would constitute a better alternative to the timekeeping proposal and requested that the proposed rule include discussion of a certification alternative and requested comments on both proposals and any other alternatives that might better address the OIG's concerns.

The Corporation received 19 comments on the rule. Although a few comments expressed agreement with certain of the proposed timekeeping requirements, most comments opposed the proposal and stated a preference for the certification alternative. Opposing comments argued that the timekeeping proposal would impose a substantial administrative burden on recipients, without any meaningful remedy to the problem identified by the OIG. They also alleged that the proposal would place recipients in jeopardy of being in non-compliance with the Fair Labor Standards Act (FLSA).

The Committee met in Miami, Florida on February 21, 1999, to consider comments on the rule and, for the reasons set out below, determined that the certification alternative was the better remedy. The Committee also decided to retain the requirement that all attorneys and paralegals provide the date for each timekeeping entry and included a definition of *restricted activities*. Finally, the Committee decided to republish the rule for comment as revised at the Committee meeting because specific language on certification had not been included in the proposed rule.

Analysis of Comments

1. Exact Time of Day

The proposed rule required that timekeeping records for part-time attorneys provide the exact time of day spent on each case, matter or supporting activity. Several comments stated that the exact time of day requirement does not reflect the reality of time spent by an attorney in a law office. According to the comments, attorneys rarely spend significant blocks of time on a specific task. Work is often done on multiple cases at the same time and is often interrupted by phone calls, clients, and other staff needing advice or assistance in a matter. In order to keep time for each such occurrence, an attorney would be constantly taking time to keep time. As one comment pointed out, it would be impossible "for most attorneys to credibly recreate the exact time of day" in which each activity took place. One comment pointed out that its program is already diverting significant time, staff positions and funds to timekeeping. It now uses an equivalent to 6.78% of its LSC grant for timekeeping, even though its timekeeping system is fully computerized. Several recipients were concerned that they would need to buy new software and possibly hire new staff.

Comments also stated a concern that the additional timekeeping requirements would not provide sufficiently useful information to justify their imposition. This is due in part, according to several comments, because the requirement is an attempt to prove a negative.

In light of the comments and with the recommendation of the OIG, the Committee determined that the certification requirement, which is discussed below, would provide a better remedy than the timekeeping proposal.

2. Consistency Requirement

The proposed rule also required that timekeeping records be consistent with payroll records. Comments were especially concerned about the administrative burden of implementing the proposed rule's directive that timekeeping records be consistent with the recipient's payroll records (consistency requirement). On this point, one comment stated that it would force them "to combine two functions that are quite different."

Based on the comments received and the change in circumstances since the original recommendation was made, the Committee decided to take out the requirement that timekeeping records be consistent with time and attendance records used for payroll purposes. According to the OIG, the recommendation to include this provision was made as a result of the OIG audits which followed the 1996 appropriation act's implementation of additional restrictions and prohibitions on recipients. At that time, the prohibitions were new and required recipients to divest themselves from ongoing matters, and the OIG was receiving more complaints. Therefore, the risk of non-compliance was deemed to be relatively high. Subsequently, experience in OIG from audits and a significant reduction in complaints

suggests otherwise. The current view is that the risk of non-compliance is not high and, thus, the necessity for a regulatory requirement that timekeeping and payroll records be consistent is no longer deemed necessary.

The Committee's decision was also based on the concern raised in comments about the burden the consistency requirement would impose on recipients. Comments suggested that current systems may not provide the type of determinative information envisioned in the rule, although they would provide some information that, in particular cases, would be helpful. Recognizing this, the Committee decided to remove the requirement from the rule. Recipients should recognize, however, that auditors, in the normal course of auditing, will certainly note inconsistencies in records. Thus, while there would be no requirement that timekeeping and payroll records be consistent, if a clear inconsistency appears, auditors will raise questions and may ask to review other records or otherwise request an explanation of the inconsistency. Recipients should be prepared to explain such inconsistencies. For example, if (as described in some of the comments) a recipient allows an employee to work less than a full day (determined from the timekeeping records) although paid for a full day (determined from the payroll records) because the employee had worked long hours the previous day, the timekeeping records should confirm that the employee worked long hours the previous day.

3. Fair Labor Standards Act

Many comments were concerned that the requirement that timekeeping records be consistent with payroll records would place recipients in jeopardy of being in violation of the Fair Labor Standards Act (FLSA). Under the FLSA, exempt employees, in order to maintain their status, must be paid on a salary rather than on an hourly basis. Comments were concerned that a timekeeping proposal that focuses on time periods and requires consistency between time and payroll records would threaten the exempt status of recipient employees.

For the reasons set out below, the Committee determined that it is unlikely that recipients would be in violation of the FLSA as to their exempt employees simply because they require set working hours, require their employees to keep timekeeping records or require that such records be consistent with payroll records, unless they also dock their employees' pay based on the quality or quantity of their work. *See Hurley v. State of Oregon*, 27 F.3d 392, 395 (9th Cir. 1994)(It is either the actual docking of pay or an express policy that pay for a class of employees would be docked that violates the FLSA.). Nothing in the timekeeping proposal is intended to affect the pay of recipient employees. Rather, the purpose of the requirement is to ensure compliance with LSC restrictions. As long as recipients do not use the timekeeping information to inappropriately dock the pay of exempt employees, there should be no violation of the FLSA.

The FLSA, 29 U.S.C. 201, *et seq.*, sets out Federal minimum wage and overtime requirements for public and private sector employees. However, employees employed in a bona fide executive, administrative, or professional capacity are exempt from these requirements. 29 U.S.C. 213(a)(1). The United States Department of Labor ("DOL") is the Executive agency designated to implement the FLSA and it has issued regulations which define whether an employee is exempt under section 213(a)(1).

One criterion to determine whether an employee is exempt is whether the employee is compensated on a salary basis. 29 CFR 541.118. According to DOL regulations, an employee will not be considered to be on a salary basis if the employee is subject to a salary reduction because of variations in quantity or quality of work performed. 29 U.S.C. 541.118(a). Thus, an employee will not be found to be exempt if the employee's pay is docked for a pay period for absences from work for less than a day. § 541.118(a)(2). (Although this anti-docking requirement was recently revised for public employees, it remains a determinate factor for private sector employees. *See* 57 FR 37666 (August 19, 1992). Failure to pay non-exempt employees a fair hourly wage and overtime subjects an employer to financial sanctions.

Various practices of employers have been called into question by the courts as violative of the salary basis test and there has been disagreement over time and among courts regarding certain of these practices. However, certain common practices of employers are permissible because of Wage & Hour opinions issued by DOL may be relied upon by employers. 29 U.S.C. 258. Under the Portal-to-Portal Act, employers have an absolute defense against FLSA actions if the employer's actions are done in good faith and the employer relies on an administrative regulation, order, ruling, approval, or interpretation of the Wage & Hour Administrator, or any administrative practice of enforcement policy of the Administrator with respect to the class of employers to which the employer belongs. *Id.*

Existing Wage and Hour Opinion letters provide that the following practices are consistent with the "salary basis test."

An exempt employee can be required to work specific hours, fill out time cards or time sheets and to obtain permission before taking time off from work. W.H. OP. Ltr. (July 1, 1993).

An exempt employee can be paid overtime—on any basis the employer wishes. W.H. Op. Ltr. (April 13, 1967); W.H. Op. Ltr. (March 3, 1970; and W.H. Op. Ltr. (March 16, 1984).

An exempt employee can be docked leave by the hour, i.e., for absences of less than a day, as long as there are no cash deductions from the weekly salary for such absences. W.H. OP. Ltr. (April 9, 1993); W.H. Op. Ltr. (July 17, 1987); and W.H. Op. Ltr. (Marcy 30, 1994).

The Supreme Court in *Auer v. Robbins*, 117 S. Ct. 905, 911 (1997), has held that the DOL Secretary's interpretations of FLSA are controlling, unless clearly erroneous or inconsistent with the law. In *Graziano v. The Society of the New York Hospital*,[1] a Federal District Court vacated its earlier holding in the case based on W&H Opinion letters that were brought to the Court's attention in a motion to reconsider. The Court based its order to vacate on *Auer's* finding that DOL interpretations of FLSA are controlling. Because the opinion letters brought to the Court's attention were controlling decisions to which the Court was bound, the Court vacated its earlier decision which was inconsistent with the opinions.

A few comments cited case law that suggests that requiring employees to keep time is inconsistent with the exempt status of an employee. Although some courts have found that "rigid attendance and time keeping requirements are not consistent with salaried status," *Service Employees International Union, Local 102, v. County of San Diego*, 784 F. Supp. 1503, 1510 (S.D. Ca. 1992), the findings in these cases were not based on that factor alone, and, as noted above, Wage & Hour opinions approve of the practice. *See also Martin v. Malcolm*, 949 F.2d 611 (2d Cir. 1991).

[1] 1997 WL 639026 (S.D.N.Y. Oct. 15, 1997). This opinion was not reported in the Federal Supplement. It is also cited as a W&H Opinion at 4 Wage & Hour Cas.2d (BNA) 286. The underlying opinion that was vacated was also not reported, *see* 4 Wage & Hour Cas.2d (BNA) 12.

4. Certification requirement

The certification requirement in § 1635.3(e) of this proposed rule would require part-time attorneys or paralegals who also work for an organization that engages in restricted activities to certify on a quarterly basis that they were not compensated by the recipient for any restricted activities. The Committee favors this alternative to the timekeeping proposal because it does not create any undue administrative burden, is consistent with the Corporation's program integrity certification requirement, is more likely to achieve the intended goal, and would not implicate the FLSA.

Comments generally favored the certification alternative over the timekeeping proposal. One comment stated that certification would act as a true deterrent because violations would be subject to the sanctions under part 1640. Another recognized that "the consequences of a false certification will encourage honest and careful attention by staff."

Several suggestions and reservations were expressed about certification. A few comments expressed concern that the certification requirement creates a presumption that attorneys have violated the rules. This is not the intent of the requirement. The Corporation is aware that program attorneys generally provide high quality legal assistance and make every effort to comply with their LSC grant requirements. The certification requirement is no different than other LSC recordkeeping or certification requirements. The Corporation is required by statute to ensure that LSC funds are appropriately used. Tools such as records and certifications must be available to Corporation auditors to enable them to document that programs are in compliance.

Because of the seriousness of the sanctions for a false certification, one comment encouraged the Corporation to include an exception for *de minimis* involvement in restricted activities. The Committee agreed to add *de minimis* langauge to the certification requirement and requests comments on the exception. *De minimis* activity would include actions related to restricted activities that fall short of actually working on a restricted activity. Examples include such unavoidable actions as answering the phone and establishing another time to discuss a restricted case with the caller, or opening and screening mail.

Another comment questioned the necessity of the certification requirement when recipients are already subject to part 1640 and the certification requirement in part 1610 on program integrity. The certification in part 1610 is required of the program, not individuals. Certification by individual attorneys and paralegals would serve as a notice to such individuals of the seriousness with which the Corporation views the use of recipient funds and resources for involvement in restricted activities. It would also help provide documentation to auditors necessary to ensure compliance by part-time attorneys and would provide information to the recipient for use in its annual part 1610 program integrity certification. Part 1640 would not be implicated unless an attorney made a false certification about involvement in restricted activities or violated other laws listed in part 1640.

The proposed certification language requires quarterly certification on dates established by the Corporation. This language would allow the Corporation to establish the date for the initial certification at an appropriate time so that subsequent certification dates would coincide with the dates normally attributed to the end of each of a year's quarters. Certifications would be for a period of time that has already occurred. Thus, the first certification would most likely occur approximately three months after the effective date of the final rule.

A false certification, depending on the applicable law or circumstances, may constitute a violation of civil or criminal law. For LSC purposes, a false certification by a recipient employee would implicate certain Federal laws related to the use of Federal funds that are currently applicable to LSC recipients pursuant to 45 CFR part 1640. Violations of certain laws listed in part 1640 carry severe sanctions for false statements or claims to the Federal government regarding the use of Federal funds. *See for example*, 18 U.S.C. 287, 371, 1001 and 31 U.S.C. 3729; *United States v. Columbia/HCA Healthcare Corporation*, 125 F.3d 899 (5th Cir. 1997) ("false certifications of compliance create liability under the (False Claims Act) when certification is a prerequisite to obtaining a government benefit."); *United States v Burns*, 104 F.3d 529 (2nd Cir. 1997) (falsified time sheets submitted for pay under government-funded program found to be violation of 18 U.S.C. 1001).

Under part 1640, whether or not a recipient or an employee of a recipient has violated any of the applicable Federal laws is determined by the Federal court having jurisdiction of the matter. The Corporation does not prosecute or make judgments under the applicable Federal laws but it has authority to terminate funding under the conditions set out in § 1640.4. In addition, the Corporation's Inspector General has statutory authority to refer unlawful activity to the proper authorities. Several of the laws included in part 1640 prohibit making false claims to the government regarding the use of Federal funds. LSC funds are Federal funds for the purposes of the laws included in part 1640. Thus, a false certification regarding activities for which the applicable employee is compensated by the recipient, in certain circumstances, may put the employee at risk of prosecution for violation of such laws. Employees who sign such certifications should be fully informed of the implications and sign forms that, to the best of their knowledge, are true and accurate. Comments on the effects of requiring certification on program attorneys and paralegals are specifically requested by the Committee.

5. Date for Each Timekeeping Entry

The proposed rule also required both full-time and part-time attorneys and paralegals to provide the date as well as the amount of time spent on each case, matter or supporting activity. Comments generally opposed the requirement to include the date on the grounds that it is not required by the statutory timekeeping provision and because it does not address any specific concern. A few comments also alleged that it would impose an undue administrative burden on recipients to revise their current timekeeping systems.

The Committee did not agree that providing the date is unreasonable or would put an undue burden on recipients. Timekeeping records have little significance unless put into the context of a particular timeframe. 63 FR 56595 (Oct. 22, 1998). The current rule already implies a connection between timekeeping records and a particular date because it requires that timekeeping records be made contemporaneously. The preamble to the current rule explains that, in most cases, contemporaneous timekeeping means "records should be created no later than the end of the day." 61 FR 14262 (April 1, 1996). This makes sense because identifying a record with a particular time is the way to determine whether it is a contemporaneous record. It is also consistent with the Corporation's 1996 Timekeeping Guide for recipients which includes sample timekeeping forms, all of which require a date. In addition, according to the

OIG, most recipients already provide the date in their timekeeping records. Therefore, the Committee was not convinced that this requirement would impose additional burdens on most recipients. However, comments are requested in this proposed rule from those recipients who do not currently provide the date to explain how the requirement will affect their programs. Finally, the language setting out the date requirement has been moved and simplified from the proposed rule and is found in § 1635.3(b)(1).

6. Definition of Restricted Activities

A definition is added to this proposed rule in § 1635.2(c) in order to clarify the meaning of the term as used in the certification requirement. *Restricted activities* has been used as an umbrella term to refer to the restrictions listed in the definitions of purpose prohibited by the LSC Act and activity prohibited by or inconsistent with section 504 in 45 CFR 1610.2 (a) and (b). See preamble to 45 CFR part 1610, 62 FR 27695 (May 21, 1997). The restrictions therein apply variously to a recipient's LSC, private and public funds. A particular activity is restricted only to the extent it is limited pursuant to statutory or regulatory law. Thus, if the law permits an activity that is funded with non-LSC public funds, the activity is not restricted if it is funded with non-LSC public funds. Nothing in the proposed rule is intended to expand on the scope of any restriction or the type of recipient funds implicated by a particular restriction.

List of Subjects in 45 CFR Part 1635

Legal services, Reporting and recordkeeping requirements.

For reasons set out in the preamble, LSC proposes to revise 45 CFR part 1635 to read as follows:

PART 1635—TIMEKEEPING REQUIREMENT

Sec.
1635.1 Purpose.
1635.2 Definitions.
1635.3 Timekeeping requirement.
1635.4 Administrative provisions.

Authority: 42 U.S.C. 2996e(b)(1)(A), 2996g(a), 2996g(b), 2996g(e).

§ 1635.1 Purpose.

This part is intended to improve accountability for the use of all funds of a recipient by:

(a) Assuring that allocations of expenditures of Corporation funds pursuant to 45 CFR part 1630 are supported by accurate and contemporaneous records of the cases, matters, and supporting activities for which the funds have been expended;

(b) Enhancing the ability of the recipient to determine the cost of specific functions; and

(c) Increasing the information available to the Corporation for assuring recipient compliance with Federal law and corporation rules and regulations.

§ 1635.2 Definitions.

As used in this part—

(a) A *case* is a form of program service in which an attorney or paralegal of a recipient provides legal services to one or more specific clients, including, without limitation, providing representation in litigation, administrative proceedings, and negotiations, and such actions as advice, providing brief services and transactional assistance, and assistance with individual PAI cases.

(b) A *matter* is an action which contributes to the overall delivery of program services but does not involve direct legal advice to or legal representation of one or more specific clients. Examples of matters include both direct services, such as community education presentations, operating pro se clinics, providing information about the availability of legal assistance, and developing written materials explaining legal rights and responsibilities; and indirect services, such as training, continuing legal education, general supervision of program services, preparing and disseminating desk manuals, PAI recruitment, intake when no case is undertaken, and tracking substantive law developments.

(c) *Restricted activities* means the restrictions listed in the definitions of purpose prohibited by the LSC Act and activity prohibited by or inconsistent with section 504 in 45 CFR 1610.2(a) & (b).

(d) A *supporting activity* is any action that is not a case or matter, including management and general, and fundraising.

§ 1635.3 Timekeeping requirement.

(a) All expenditures of funds for recipient actions are, by definition, for cases, matters, or supporting activities. The allocation of all expenditures must be carried out in accordance with 45 CFR part 1630.

(b) Time spent by attorneys and paralegals must be documented by time records which record the amount of time spent on each case, matter, or supporting activity.

(1) Time records must be created contemporaneously and account for time by date and in increments not greater than one-quarter of an hour which comprise all of the efforts of the attorneys and paralegals for which compensation is paid by the recipient.

(2) Each record of time spent must contain: For a case, a unique client name or case number; for matters or supporting activities, an identification of the category of action on which the time was spent.

(c) The timekeeping system must be implemented within 30 days of the effective date of this regulation or within 30 days of the effective date of a grant or contract, whichever is later.

(d) The timekeeping system must be able to aggregate time record information from the time of implementation on both closed and pending cases by legal problem type.

(e) Recipients shall require any attorney or paralegal who works part-time for the recipient and part-time for an organization that engages in restricted activities to certify in writing that the attorney or paralegal has not engaged in restricted activity during any time period for which the attorney or paralegal was compensated by the recipient or has not used recipient resources for restricted activities. The certification requirement does not apply to a *de minimis* action related to a restricted activity that does not involve working on the restricted activity. Such *de minimis* actions would include activities such as answering the phone and establishing another non-program time with the caller to discuss the restricted activity, or opening and briefly screening mail. Certifications shall be made on a quarterly basis on dates established by the Corporation and shall be made on a form determined by the Corporation.

§ 1635.4 Administrative provisions.

Time records required by this section shall be available for examination by auditors and representatives of the Corporation, and by any other person or entity statutorily entitled to access to such records. The Corporation shall not disclose any time record except to a Federal, State or local law enforcement official or to an official of an appropriate bar association for the purpose of enabling such bar association official to conduct an investigation of an alleged violation of the rules of professional conduct.

March 30, 1999.

Suzanne B. Glasow,

Senior Assistant General Counsel.

[FR Doc. 99–8223 Filed 4–2–99; 8:45 am]
BILLING CODE 7050–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 0, 73, and 76

[MM Docket Nos. 98–204 and 96–16, DA 99–529]

Revision of Broadcast and Cable EEO Rules and Policies

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; extension of reply comment period.

SUMMARY: In *Review of the Commission's Broadcast and Cable Equal Employment Opportunity Rules and Policies*, the Commission partially grants a motion for extension of time and grants a request that comments be considered *nunc pro tunc*. The Minority Media and Telecommunications Council and 29 other organizations (MMTC *et al.*) request that comments that they filed March 5, 1999, and March 19, 1999, be considered *nunc pro tunc*. The NAB and broadcast associations representing the 50 states, Puerto Rico and the District of Columbia (NAB *et al.*) request an extension of time to file reply comments. The Commission believes that grant of MMTC *et al.*'s request is in the public interest and that partial grant of NAB *et al.*'s request will give commenters ample time to prepare and submit reply comments in this proceeding.

DATES: Reply comments due April 15, 1999.

ADDRESSES: Federal Communications Commission, Office of the Secretary, 445 12th Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Hope G. Cooper, Mass Media Bureau, Enforcement Division. (202) 418–1450.

SUPPLEMENTARY INFORMATION:

1. On November 20, 1998, the Commission released a *Notice of Proposed Rule Making*, MM Docket No. 98–204, 13 FCC Rcd 23004, 63 FR 66104, December 1, 1998, (*NPRM*), requesting comment on various proposals concerning the Commission's broadcast and cable EEO rules and policies. Comment and Reply Comment deadlines were established for January 19, 1999, and February 18, 1999, respectively.

2. On December 17, 1998, the National Association of Broadcasters (NAB) filed a "Motion for Extension of Time of Comment and Reply Comment Deadlines" (Motion). *See* National Association of Broadcasters' Motion for Extension of Time of Comment and Reply Comment Deadlines, MM Docket Nos. 98–204 and 96–16 at page 1. Therein, the NAB requested that we extend the due dates for the submission of comments and reply comments in response to the *NPRM* to February 18, 1999, and March 23, 1999, respectively. On January 4, 1999, the Minority Media and Telecommunications Council (MMTC) sent a letter to the Commission expressing support for the NAB's Motion.

3. Because we believed that the public interest would be served by an extension of the comment period in this proceeding, we granted the NAB's Motion and extended the date for filing comments to February 18, 1999, and extended the date for filing reply comments to March 23, 1999, in an *Order* released January 5, 1999, DA 99–105, 64 FR 2461, January 14, 1999.

4. On February 10, 1999, the MMTC filed a "Motion for Extension of Time." *See* Minority Media and Telecommunications Council's Motion for Extension of Time, MM Docket Nos. 98–204 and 96–16. Therein, the MMTC requested that we extend the due date for the submission of comments in response to the *NPRM* for three weeks, until March 11, 1999.

5. Because we believed that the public interest would be served by an extension of the comment period in this proceeding, we granted the MMTC's Motion in part and extended the date for filing comments to March 1, 1999, and, on our own motion, extended the date for filing reply comments to March 31, 1999, in an *Order* released February 12, 1999, DA 99–326, 64 FR 8779, February 23, 1999.

6. On March 1, 1999, MMTC and over 20 national civil rights organizations (MMTC *et al.*) filed a letter (MMTC letter) with the Commission in which they stated that they were unable to file their comments by the comment deadline due to "[t]he magnitude of the task and the illnesses of many of the fifteen people involved in this project" and in which they stated that they would move for consideration of their comments *nunc pro tunc*. *See* Letter from David Honig, Counsel for EEO Supporters (MMTC *et al.*), to Hon. Magalie Roman Salas, Secretary, Federal Communications Commission, MM Docket Nos. 98–204 and 96–16. In the letter, the MMTC *et al.* also stated that they planned to file four volumes of comments, with Volume I being 183 pages in length. On March 5, 1999, MMTC *et al.* filed Volume I of their comments, with a cover letter requesting consideration of these comments *nunc pro tunc*. *See* Comments filed by MMTC and 29 other organizations, MM Docket Nos. 98–204 and 96–16. MMTC *et al.* also stated that they would shortly file Volumes II (the Operation of an FCC Regulatory Program), Volume III (Statements of Witnesses), and Volume IV (Discussion of Witnesses' Statements) of their comments.

7. On March 10, 1999, the NAB and broadcast associations representing all 50 states, the District of Columbia and Puerto Rico (NAB *et al.*) filed a "Motion For Extension of Time of Reply Comment Deadline". Therein, NAB *et al.* requested that the Commission extend the due date for submission of reply comments. In support of their request, the NAB *et al.* stated that an important part of the comments for the record are not yet available. They cited to the MMTC letter and noted that, while MMTC *et al.* filed Volume I of their comments on March 5, 1999, they have yet to file the remaining volumes, whose length is unknown. The NAB *et al.* argued that, given the circumstances described above, if the Commission decides to consider MMTC *et al.*'s comments, it would be impossible for commenters to reply to all of the materials submitted in this proceeding by March 31, 1999. The NAB *et al.* further contended that, because the MMTC *et al.* has indicated that their future comments will include factual studies, sufficient time must be allowed for those studies to be evaluated and any additional research suggested by those studies to be conducted. Therefore, the NAB *et al.* contended that the Commission should extend the due date for filing comments to 60 days after the date that the MMTC's final volume, Volume IV, is filed with the Commission.

8. On March 19, 1999, MMTC *et al.* filed the remainder of their comments, Volumes II, III, and IV, with a cover letter requesting consideration of these comments *nunc pro tunc*. We believe that it is in the public interest to grant MMTC *et al.*'s request to consider their comments, even though their comments were filed after the due date for comments in this proceeding. MMTC *et al.* include a large number of organizations whose voices we feel should be heard in this proceeding and they provided sufficient explanation for the lateness of the filing. Therefore, we hereby grant MMTC's request to have their comments be considered *nunc pro tunc* in this proceeding.

9. We have considered the extension request filed by the NAB *et al.* and hereby extend the date for filing reply comments to April 15, 1999. This extension affords interested parties sufficient time from the date of MMTC

et al.'s last comment submission and a total of 45 days from the March 1 filing of all but one of the other comments. We believe that this is ample time to prepare and submit reply comments in this proceeding.

10. *Accordingly, it is ordered* that the MMTC *et al.*'s request for consideration of their comments *nunc pro tunc* is granted.

11. *It is further ordered* that the Motion for Extension of Time filed by the NAB *et al.* is granted in part and denied in part.

12. *It is therefore ordered* that the date for filing reply comments in this proceeding *is extended to* April 15, 1999.

13. This action is taken pursuant to authority found in sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 USC 154(i) and 303(r), and 0.204(b), 0.283 and 1.46 of the Commission's rules, 47 CFR 0.204(b), 0.283 and 1.46.

List of Subjects

47 CFR Part 0

Organization and functions (Government agencies).

47 CFR Part 73

Radio, Equal employment opportunity, Reporting and recordkeeping requirements, Television.

47 CFR Part 76

Cable television, Equal employment opportunity, Reporting and recordkeeping requirements.

Federal Communications Commission.

Roy J. Stewart,

Chief, Mass Media Bureau.

[FR Doc. 99–8421 Filed 4–2–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 69

[CC Docket No. 97–181; FCC 99–28]

Defining Primary Lines

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Federal Communications Commission has adopted a location-based definition of "primary residential line." Under this definition, one residential line that a price cap local exchange carrier (LEC) provides to a particular location will be considered primary. Any other residential lines the price cap LEC provides to the same location shall be deemed non-primary residential lines. This definition will facilitate implementation of the Commission's access charge rules, which set higher caps for the subscriber line charges (SLCs) and presubscribed interexchange carrier charges (PICCs) that price cap LECs may assess on non-primary residential lines and multi-line business lines than on primary residential lines and single line business lines. The Commission issues a Further Notice of Proposed Rulemaking in which we tentatively conclude that individuals with speech or hearing disabilities should have access at primary-line rates to one residential line per location for use with a TTY, regardless of whether another line at the location is also treated as primary for residents without such disabilities. We seek comment on this tentative conclusion, and several proposals for implementing it.

DATES: Comments are due on or before April 9, 1999, and reply comments are due on or before April 26, 1999.

ADDRESSES: The entire file is available for inspection and copying weekdays from 9:00 a.m. to 4:30 p.m. in the Commission's Reference Center, 445 Twelfth Street SW, Washington, DC 20554. Copies may be purchased from the Commission's duplicating contractor, ITS Inc., 1231 Twentieth St., NW, Washington, DC 20036, (202) 857–3800.

FOR FURTHER INFORMATION CONTACT: Neil Fried, Common Carrier Bureau, (202) 418–1520; TTY: (202) 418–0484.

SUPPLEMENTARY INFORMATION:

A. Background

1. To provide interstate telecommunications services, interexchange carriers (IXCs) usually rely on some of the telephone infrastructure that incumbent LECs use to provide local telephone service. The incumbent LEC's local loop, for example, connects a customer to the LEC network so that the customer can make and receive intrastate calls. The incumbent LEC's local loop also connects the customer to the networks of IXCs so that the customer can make and receive interstate calls. Consequently, a portion of the costs an incumbent LEC incurs in providing this common infrastructure is allocated to intrastate service and recovered pursuant to state regulation, and a portion is allocated to interstate service and recovered pursuant to regulations of the Federal Communications Commission.

2. The Commission adopted uniform access charge rules in 1983 to govern the way incumbent LECs recover that portion of the costs of the common infrastructure allocated to interstate service. Under these rules, the Commission allows incumbent LECs to recover some of the interstate costs of providing the local loop through a flat, monthly end-user common line charge (EUCL)—sometimes called a SLC—that they assess on end users. The Commission limited the amount of the SLC, however, because of concerns that an excessively high SLC might cause end users to disconnect their telephone service. The Commission allowed the incumbent LECs to recover the remainder of their interstate costs attributable to the local loop through a per-minute carrier common line charge (CCLC) that they assess on IXCs.

3. Under principles of cost-causation, it is most economically efficient for incumbent LECs to recover the costs of providing interstate access in the same way that they incur them. Under such principles, incumbent LECs should recover their traffic-sensitive costs of interstate access through per-minute charges, and should recover their non-traffic-sensitive costs through flat charges. The incumbent LECs' costs of providing the local loop do not change with the number, length, or type of telephone calls customers make, and so are non-traffic sensitive. Because of the cap on SLCs, however, incumbent LECs recover some of these non-traffic-sensitive loop costs through the traffic sensitive CCLC. In its May 1997 *Access Charge Reform Order*, the Commission decided to phase out the CCLC for price cap LECs on the grounds that recovering the non-traffic-sensitive loop costs through traffic-sensitive charges is economically inefficient.

4. To provide price cap LECs with a means to recover some of the loop costs they previously recovered in the CCLC, the Commission raised the price cap LECs' SLC caps for non-primary residential lines and multi-line business lines, but chose not to raise the price cap LECs' SLC caps for primary residential lines and single line business lines. For 1999, the SLC cap for price cap LECs is $3.50 per month for each primary residential and single line business line, $6.07 per month for each non-primary residential line, and $9.20 per month for each multi-line business line. To address concerns that charging a higher SLC for non-primary residential lines sold by price cap LECs might encourage subscribers to obtain their additional residential lines from resellers, the Commission decided in

the *Access Charge Reform Order* to allow price cap LECs to charge the higher SLC to carriers that resell price-cap LECs' lines if the lines are non-primary.

5. Because the SLC caps on residential and single line business lines would prevent most price cap LECs from recovering through the SLC all the costs they formerly recovered through the CCLC, the Commission also created the PICC: a flat, per-line charge that price cap LECs may assess on an end user's presubscribed IXC. As with the SLC, the Commission set higher PICC caps for non-primary residential lines and multi-line business lines than for primary residential lines and single line business lines. Through June 30, 1999, the PICC cap is $0.53 per month for each primary residential and single line business line, $1.50 per month for each non-primary residential line, and $2.75 per month for each multi-line business line. As a result of the various caps, the lines of customers that subscribe to single residential or business lines are not assessed the entire cost of the loops. Until the access reform rate structure is fully phased in, these lines are subsidized by customers that subscribe to multiple business lines. The Commission has adopted a location-based definition of "primary residential line." Under this definition, one residential line that a price cap local exchange carrier (LEC) provides to a particular location will be considered primary. Any other residential lines the price cap LEC provides to the same location shall be deemed non-primary residential lines.

B. Discussion

6. In establishing different SLCs and PICCs for primary and non-primary residential lines, we cited the important universal service goal of subsidizing rates for at least one line so that consumers have access to the telephone network. It has come to our attention that when one or more members of a residence have hearing or speech disabilities, the members of the residence often subscribe to one line dedicated for a traditional telephone and one line for a text telephone (TTY), which uses graphic communication in the transmission of coded signals through a wire or radio communication system. *See* 47 CFR 64.601(8). The residents can use the TTY to communicate directly with other TTYs, or can use the TTY in conjunction with Telecommunications Relay Services (TRS) and "two-line" voice or hearing carryover.

7. Telecommunications Relay Services (TRS) are telephone transmission services that enable an individual who has a hearing or speech disability to communicate by wire or radio with a hearing individual in a manner that is functionally equivalent to the way an individual who does not have a hearing or speech disability communicates using voice telephone services by wire or radio. *See* 47 CFR 64.601(7). Voice carryover (VCO) is a form of TRS that allows users with hearing disabilities to speak directly to a hearing person, while the TRS communication assistant (CA) types what is said to the TTY user. Hearing carryover (HCO) is a form of TRS that allows persons with speech disabilities to listen to the person they are calling, while typing their statements for the CA to read aloud to the voice telephone user. *See* 47 CFR 64.601(6), (9). "Two line" VCO and HCO are versions of these services that use two telephone lines and conference calling functions to increase the transparency of the CA and improve the functional equivalency of these services. Thus, in residences where one family member has a hearing or speech disability, two lines may be necessary for all the residents to have access to telephone service.

8. We believe that it is important to ensure that consumers with hearing or speech disabilities have access to the telephone network at primary-line rates, but we lack a detailed record in the present proceeding to determine how to address this issue. We tentatively conclude that individuals with speech or hearing disabilities served by price cap LEC lines should have access to the telecommunications network at primary line rates. Moreover, if we extend the non-primary line rate structure to rate-of-return LECs, we tentatively conclude that individuals with hearing or speech disabilities served by rate-of-return LEC lines should receive similar treatment. We seek comment on these tentative conclusions. In addition, we seek comment on other technologies or services that require an additional line to permit consumers with disabilities to access the telephone network and on whether those additional lines should also receive primary line rates. We believe that our tentative conclusions above are consistent with the Commission's mandate to ensure that all Americans have access to telecommunications services, and with the policy goals underlying the Commission's decision to cap primary residential SLCs and PICCs at lower levels than are applicable to other lines.

9. One way to ensure that consumers with hearing or speech disabilities have access to the telephone network at primary-line rates would be to treat as primary one residential line per location that is used by such individuals in conjunction with a TTY, regardless of whether another line at the location is also treated as primary for residents without such disabilities. We seek comment on such an approach, and how it might be implemented.

10. Another approach would be to subsidize more explicitly the difference in charges that would apply when the TTY-dedicated line is deemed non-primary as opposed to primary. We seek comment on such an approach, and how it might be implemented. In particular, we seek comment on whether the subsidies for such an approach should come from the TRS Fund or the more general Universal Service Fund. We also seek comment on the implications of section 225(d)(1)(D), which "require[s] that users of telecommunications relay services pay rates no greater than the rates paid for functionally equivalent voice communication services with respect to such factors as the duration of the call, the time of day, and the distance from point of origination to point of termination." 47 U.S.C. 225(d)(1)(D).

11. In many cases, the only change necessary to make a telephone line more easily accessible to an individual with a disability is to add a piece of consumer premises equipment (CPE), such as a TTY. Consequently, carriers may have no readily apparent means of determining which lines are being used by individuals with disabilities. We seek comment on whether carrier records indicate the presence at a location of certain CPE such as TTYs. We also seek comment on whether self-certification would be an appropriate means for carriers to identify the relatively small universe of customers to which either the definitional or funding approaches would apply, and if so, how such self-certification could be implemented. We note that many IXCs offer qualified TTY users the opportunity to self-certify to receive toll discounts, in recognition of the longer calling times associated with TTY use. For the sake of a clear record and so that all parties understand the issues involved, we also ask commenters to describe the developments in technology and services associated with TTYs, TRS, and "two-line" voice or hearing carryover. Parties should also address the extent to which any of these proposals would affect small business entities, including new entrants.

C. Procedural Matters

1. Ex Parte

12. This matter shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's revised *ex parte* rules. Parties making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required. *See* 47 CFR 1.1206(b)(2), as revised. Other rules pertaining to oral and written presentations are set forth in Section 1.1206(b), as well.

2. Initial Regulatory Flexibility Act Analysis

13. As required by the RFA, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in the *Further Notice of Proposed Rulemaking (Further Notice)*. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines for comments on the rest of the *Further Notice*, but they must have a seprrate and distinct heading, designating the comments as responses to the IRFA. The Commission will send a copy of the *Further Notice*, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration. In addition, the *Further Notice* and IRFA (or summaries thereof) will be published in the **Federal Register**.

14. *Need for and Objectives of the Proposed Rules*: In the *Access Reform Order*, the Commission set lower SLC and PICC caps for primary residential lines and single line business lines than for non-primary residential lines and multi-line business lines. The *Report and Order* in this proceeding promulgates definitions of "primary residential line" and "single line business line" to promote uniformity in the way price cap LECs assess SLCs and PICCs. The *Further Notice* seeks comment on how to apply the primary line distinction to TTY lines used by individuals with speech or hearing disabilities.

15. *Legal Basis:* The proposed action is authorized by sections 1, 2, 4(i), 4(j), 201–205, 218–220, 225, and 254 of the Communications Act as amended, 47 U.S.C. 151, 152, 154(i), 154(j), 201–205, 218–220, 225, and 254.

16. *Description and Estimate of the Number of Small Entities To Which the Proposed Rules Will Apply:* The RFA directs agencies to provide, where feasible, a description of the type and number of small entities that our proposed rules may affect. *See* 5 U.S.C. 603(b)(3). The proposals set forth in the proceeding may have a significant economic impact on a substantial number of small entities identified by the SBA. Because one of the proposals is to use a funding mechanism, such as the Universal Service Fund, we provide estimates of the number of small entities potentially affected across many sectors of the telecommunications industry. A definitional approach, on the other hand, would affect only price cap LECs. Consequently, the rules we eventually adopt may affect significantly fewer small entities than we describe here.

17. The most reliable source of information regarding the total numbers of certain common carrier and related providers nationwide, as well as the numbers of commercial wireless entities, appears to be data the Commission publishes annually in its *Telecommunications Industry Revenue* report, regarding the Telecommunications Relay Service (TRS). According to data in the most recent report, there are 3,459 interstate carriers. We further describe and estimate the number of small entities that may be affected by the proposed rules, if adopted. We ask parties to comment on the number of small carriers that they believe will be affected by rules regarding the primary-line treatment of TTY lines used by individuals with speech or hearing disabilities. Wherever possible, commenters should break their estimates into categories and subcategories similar to those we discuss here.

18. *Telephone Companies* (SIC 4813). We shall continue to exclude small incumbent LECs from the definitions of "small entity" and "small business concern," but nonetheless consider the impact on small incumbent LECs in our IRFA. Accordingly, our use of the terms "small entities" and "small businesses" does not encompass "small incumbent LECs." We use the term "small incumbent LECs" to refer to any incumbent LECs that arguably might be defined by SBA as "small business concerns."

19. *Total Number of Telephone Companies Affected.* The proposals herein may have a significant effect on a substantial number of the small entity telephone companies identified by SBA. The U.S. Bureau of the Census reports that, at the end of 1992, there were 3,497 firms engaged in providing telephone services for at least one year. This number contains a variety of different categories of carriers, including local exchange carriers, interexchange carriers, competitive access providers, cellular carriers, mobile service carriers, operator service providers, pay telephone operators, PCS providers, covered SMR providers, and resellers. Although it seems certain that some of the 3,497 telephone service firms are not "independently owned and operated," are dominant in their field, or have more than 1,500 employees, we will assume for present purposes that they qualify as small entities or small incumbent LECs. Thus, we estimate that the rules we eventually adopt following the *Further Notice* will affect no more than 3,497 small entity telephone companies and small incumbent LECs.

20. *Wireline Carriers and Service Providers.* SBA has developed a definition of small entities for telephone communications companies other than radiotelephone (wireless) companies. The Census Bureau reports that 2,321 such telephone companies were in operation for at least one year at the end of 1992. All but 26 of the 2,321 non-radiotelephone companies listed by the Census Bureau were reported to have fewer than 1,000 employees. Because we lack more specific data, we will assume for present purposes that the 26 companies have fewer than 1,500 employees. Although it seems certain that some of the 2,321 carriers are not independently owned and operated, or are dominant in their field, we are unable at this time to estimate with greater precision the number of wireline carriers and service providers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that the rules we eventually adopt will affect no more than 2,321 small entity wireline companies and small incumbent LECs.

21. *Local Exchange Carriers.* Neither the Commission nor the SBA has developed a definition of small LEC. The closest applicable definition under SBA rules is for telephone communications companies other than radiotelephone (wireless) companies. According to our most recent data, 1,371 carriers reported that they were engaged in the provision of local exchange services. Although it seems certain that some of these carriers are not independently owned and operated, are dominant in their field, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of LECs that

would qualify as small business concerns under SBA's definition. Consequently, we estimate that the rules we eventually adopt following the *Further Notice* will affect no more than 1,371 small entity LECs and small incumbent LECs.

22. *Interexchange Carriers.* Neither the Commission nor SBA has developed a definition of small IXCs. The closest applicable definition under SBA rules is for telephone communications companies other than radiotelephone (wireless) companies. According to the most recent *Telecommunications Industry Revenue* data, 143 carriers reported that they were engaged in the provision of interexchange services. Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of IXCs that would qualify as small business concerns under SBA's definition. Consequently, we estimate that the rules we eventually adopt following the *Further Notice* will affect no more than 143 small entity IXCs.

23. *Competitive Access Providers.* Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to providers of competitive access services (CAPs). The closest applicable definition under SBA rules is for telephone communications companies other than radiotelephone (wireless) companies. According to the most recent *Telecommunications Industry Revenue* data, 109 carriers reported that they were engaged in the provision of competitive access services. Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of CAPs that would qualify as small business concerns under SBA's definition. Consequently, we estimate that the rules we eventually adopt following the *Further Notice* will affect no more than 109 small entity CAPs.

24. *Operator Service Providers.* Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to providers of operator services. The closest applicable definition under SBA rules is for telephone communications companies other than radiotelephone (wireless) companies. According to the most recent *Telecommunications Industry Revenue* data, 27 carriers reported that they were engaged in the provision of operator services. Although some of these companies may not be independently owned and operated, or may have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of operator service providers that would qualify as small business concerns under SBA's definition. Consequently, we estimate that the rules we eventually adopt following the *Further Notice* will affect no more than 27 small entity operator service providers.

25. *Pay Telephone Operators.* Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to pay telephone operators. The closest applicable definition under SBA rules is for telephone communications companies other than radiotelephone (wireless) companies. According to the most recent *Telecommunications Industry Revenue* data, 441 carriers reported that they were engaged in the provision of pay telephone services. We do not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of pay telephone operators that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 441 small entity pay telephone operators that may be affected by the proposed rules, if adopted.

26. *Resellers (including debit card providers).* Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to resellers. The closest applicable SBA definition for a reseller is a telephone communications company other than radiotelephone (wireless) companies. According to the most recent *Telecommunications Industry Revenue* data, 339 reported that they were engaged in the resale of telephone service. We do not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of resellers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 339 small entity resellers that may be affected by the proposed rules, if adopted.

27. *Radiotelephone (Wireless) Carriers.* The Census Bureau reports that there were 1,178 companies in operation for at least one year at the end of 1992 that meet the SBA's definition of radiotelephone company. The Census Bureau also reported that all but 12 of those radiotelephone companies had fewer than 1,000 employees. Because we lack more specific data, we will assume for present purposes that the remaining 12 companies have fewer than 1,500 employees. Although it seems certain that some of the wireless carriers are not independently owned and operated, we are unable at this time to estimate with greater precision the number of radiotelephone carriers and service providers that would qualify as small business concerns under SBA's definition. Consequently, we estimate that the rules we eventually adopt following the *Further Notice* will affect no more than 1,178 small entity radiotelephone companies.

28. *Cellular Licensees.* Neither the Commission nor the SBA has developed a definition of small entities applicable to cellular licensees. Therefore, the applicable definition of small entity is the definition under the SBA rules applicable to radiotelephone (wireless) companies, as discussed. We note that there are 1,758 cellular licenses, although a cellular licensee may own several licenses. According to the most recent *Telecommunications Industry Revenue* data, 804 carriers reported that they were engaged in the provision of either cellular service or Personal Communications Service (PCS) services, which are placed together in the data. We do not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of cellular service carriers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 804 small cellular service carriers that may be affected by the proposed rules, if adopted.

29. *Mobile Service Carriers.* Neither the Commission nor the SBA has developed a definition of small entities applicable to mobile service carriers. Therefore, the applicable definition of small entity is the definition under the SBA rules applicable to radiotelephone (wireless) companies. The most recent *Telecommunications Industry Revenue* data shows that 172 carriers reported that they were engaged in the provision of either paging or "other mobile" services. Consequently, we estimate that there are fewer than 172 small mobile service carriers that may be affected by the proposed rules, if adopted.

30. *Paging Services.* The Commission has adopted a two-tier definition of small businesses in the context of auctioning licenses in the paging

service. A small business is defined as either (1) a entity that, together with its affiliates and controlling principals, has average gross revenues for the three preceding years of not more than $3 million; or (2) an entity that, together with affiliates and controlling principals, has average gross revenues for the three preceding calendar years of not more than $15 million. The SBA has approved this definition for paging companies. The Commission estimates that the total current number of paging carriers is approximately 600. In addition, the Commission anticipates that a total of 16,630 non-nationwide geographic area licenses will be granted or auctioned. The geographic area licenses will consist of 2,550 Major Trading Area (MTA) licenses and 14,080 Economic Area (EA) licenses. In addition to the 47 Rand McNally MTAs, the Commission is licensing Alaska as a separate MTA and adding three MTAs for the U.S. territories, for a total of 51 MTAs. No auctions of paging licenses have been held yet, and there is no basis to determine the number of licenses that will be awarded to small entities. Given the fact that no reliable estimate of the number of paging licensees can be made, we assume, for purposes of the IRFA, that all of the current licensees and the 16,630 geographic area paging licensees either are or will consist of small entities, as that term is defined by the SBA.

31. *Broadband PCS Licensees.* The broadband PCS spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission defined "small entity" for Blocks C and F as an entity that has average gross revenues of less than $40 million in the three previous calendar years. For Block F, the Commission added a classification for "very small business," which the Commission defined as an entity that, together with its affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years. The SBA has approved these regulations defining "small entity" in the context of broadband PCS auctions. We do not have sufficient data to determine how many small entities under the SBA-approved definition bid successfully for licenses in Blocks A and B. As of now there are 90 non-defaulting winning bidders that qualified as small entities in the Block C auctions. A total of 93 small and very small business bidders qualify as small entities for Blocks D, E, and F. Based on this information, we conclude that the rules we eventually adopt following the *Further Notice* will affect no more than 183 non-defaulting winning bidders that qualify as small entities in the C, D, E, and F Block broadband PCS auctions.

32. *Narrowband PCS.* The Commission has auctioned nationwide and regional licenses for narrowband PCS. There are 11 nationwide and 30 regional licensees for narrowband PCS. The Commission does not have sufficient information to determine whether any of these licensees are small businesses within the SBA-approved definition for radiotelephone companies. At present, there have been no auctions held for the major trading area (MTA) and basic trading area (BTA) narrowband PCS licenses. The Commission anticipates a total of 561 MTA licenses and 2,958 BTA licenses will be awarded by auction. Such auctions have not yet been scheduled, however. Given that nearly all radiotelephone companies have no more than 1,500 employees and that no reliable estimate of the number of prospective MTA and BTA narrowband licensees can be made, we assume, for purposes of the IRFA, that all of the licenses will be awarded to small entities, as that term is defined by the SBA.

33. *Rural Radiotelephone Service.* The Commission has not adopted a definition of small entity specific to the Rural Radiotelephone Service. A significant subset of the Rural Radiotelephone Service is the Basic Exchange Telephone Radio Systems (BETRS). We will use the SBA's definition applicable to radiotelephone companies. There are approximately 1,000 licensees in the Rural Radiotelephone Service, and we estimate that almost all of them qualify as small entities under the SBA's definition.

34. *Specialized Mobile Radio.* Pursuant to Section 90.814(b)(1) of the Commission's Rules, the Commission has defined "small entity" for geographic area 800 MHz and 900 MHz SMR licenses as firms that had average gross revenues of no more than $15 million in the three previous calendar years. This regulation defining "small entity" in the context of 800 MHz and 900 MHz SMR has been approved by the SBA. We do not know how many firms provide 800 MHz or 900 MHz geographic area SMR service, nor how many of these providers have annual revenues of no more than $15 million. The Commission recently held auctions for geographic area licenses in the 900 MHz SMR band. There were 60 winning bidders who qualified as small entities under the Commission's definition in the 900 MHz auction. Based on this information, we conclude that the rules we eventually adopt following the *Further Notice* will affect no more than 60 small entity geographic area SMR licensees. A total of 525 licenses were auctioned for the upper 200 channels in the 800 MHz geographic area SMR auction. There were 62 qualifying bidders, of which 52 were small businesses. The Commission has not yet determined how many licenses will be awarded for the lower 230 channels in the 800 MHz geographic area SMR auction. There is no basis to estimate, moreover, how many small entities within the SBA's definition will win these lower channel licenses. We assume that, for purposes of our evaluations in the IRFA, all of the current specialized mobile radio licensees are small entities, as the SBA defines that term.

35. *220 MHz Service.* The 220 MHz service has both Phase I and Phase II licenses. Phase I licensing was conducted by lotteries in 1992 and 1993. There are approximately 1,515 such non-nationwide licensees and four nationwide licensees currently authorized to operate in the 220 MHz band. The Commission has not developed a definition of small entities specifically applicable to such incumbent 220 MHz Phase I licensees. To estimate the number of such licensees that are small businesses, we apply the definition under the SBA rules applicable to Radiotelephone Communications companies. According to the Bureau of the Census, only 12 radiotelephone firms out of a total of 1,178 such firms that operated during 1992 had 1,000 or more employees. Therefore, if this general ratio continues to 1999 in the context of Phase I 220 MHz licensees, we estimate that nearly all such licensees are small businesses under the SBA's definition.

36. The Phase II 220 MHz service is a new service, and is subject to spectrum auctions. In the 220 MHz *Third Report and Order* we adopted criteria for defining small businesses and very small businesses for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. We have defined a small business as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding three years. Additionally, a very small business is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $3 million for the preceding

three years. The SBA has approved these definitions. An auction of Phase II licenses commenced on September 15, 1998, and closed on October 22, 1998. 908 licenses were auctioned in 3 different-sized geographic areas: three nationwide licenses, 30 Regional Economic Area Group Licenses, and 875 Economic Area (EA) Licenses. Of the 908 licenses auctioned, 693 were sold. Companies claiming small business status won: one of the Nationwide licenses, 67% of the Regional licenses, and 54% of the EA licenses. As of January 22, 1999, the Commission announced that it was prepared to grant 654 of the Phase II licenses won at auction. A re-auction of the remaining, unsold licenses is likely to take place during calendar year 1999.

37. *Mobile Satellite Services (MSS).* The Commission has not developed a definition of small entities applicable to licensees in the international services. Therefore, the applicable definition of small entity is the definition under the SBA rules applicable to Communications Services, Not Elsewhere Classified (NEC). This definition provides that a small entity is one with $11.0 million or less in annual receipts. According to the Census Bureau, there were a total of 848 communications services, NEC, in operation in 1992, and a total of 775 had annual receipts of less than $9.999 million. Mobile Satellite Services or Mobile Satellite Earth Stations are intended to be used while in motion or during halts at unspecified points. These stations operate as part of a network that includes a fixed hub or stations. The stations that are capable of transmitting while a platform is moving are included under section 20.7(c) of the Commission's rules as mobile services within the meaning of sections 3(27) and 332 of the Communications Act. Those MSS services are treated as CMRS if they connect to the Public Switched Network (PSN) and also satisfy other criteria of Section 332. Facilities provided through a transportable platform that cannot move when the communications service is offered are excluded from Section 20.7(c). The MSS networks may provide a variety of land, maritime and aeronautical voice and data services. There are eight mobile satellite licensees. At this time, we are unable to make a precise estimate of the number of small businesses that are mobile satellite earth station licensees.

38. *Air-Ground Radiotelephone Service.* The Commission has not adopted a definition of small business specific to the Air-Ground Radiotelephone Service, which is defined in section 22.99 of the Commission's rules. Accordingly, we will use the SBA's definition applicable to radiotelephone companies. There are approximately 100 licensees in the Air-Ground Radiotelephone Service, and we estimate that almost all of them qualify as small under the SBA definition.

39. *Fixed Microwave Services.* Microwave services include common carrier, private-operational fixed, and broadcast auxiliary radio services. At present, there are approximately 22,015 common carrier fixed licensees and 61,670 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services. The Commission has not yet defined a small business with respect to microwave services. For purposes of the IRFA, we will use the SBA's definition applicable to radiotelephone companies. We estimate, for this purpose, that all of the Fixed Microwave licensees (excluding broadcast auxiliary licensees) would qualify as small entities under the SBA definition for radiotelephone companies, and may be affected by the rules we eventually adopt to the extent that they contribute to the Universal Service or TRS funds.

40. *Wireless Communications Services.* This service can be used for fixed, mobile, radiolocation and digital audio broadcasting satellite uses. The Commission defined "small business" for the wireless communications services (WCS) auction as an entity with average gross revenues of $40 million for each of the three preceding years, and a "very small business" as an entity with average gross revenues of $15 million for each of the three preceding years. The Commission auctioned geographic area licenses in the WCS service. In the auction, there were seven winning bidders that qualified as very small business entities, and one that qualified as a small business entity. We conclude that the number of geographic area WCS licensees affected includes these eight entities.

41. *Cable System Operators* (SIC 4841). The SBA has developed a definition of small entities for cable and other pay television services that includes all such companies generating less than $11 million in revenue annually. This definition includes cable systems operators, closed circuit television services, direct broadcast satellite services, multipoint distribution systems, satellite master antenna systems, and subscription television services. According to the Census Bureau, there were 1,758 total cable and other pay television services and 1,423 had less than $11 million in revenue. We note that cable system operators are included in our analysis due to their ability to provide telephony.

42. The Commission has developed with the SBA's approval our own definition of a small cable system operator for the purposes of rate regulation. Under the Commission's rules, a "small cable company," is one serving fewer than 400,000 subscribers nationwide. Based on our most recent information, we estimate that there were 1,439 cable operators that qualified as small cable system operators at the end of 1995. Since then, some of those companies may have grown to serve over 400,000 subscribers, and others may have been involved in transactions that caused them to be combined with other cable operators. Consequently, we estimate that there are fewer than 1,439 small entity cable system operators that may be affected by the decisions and rules adopted in the Order. We conclude that only a small percentage of these entities currently provide qualifying "telecommunications services" required by the Act and, therefore, estimate that the number of such entities affected are significantly fewer than noted.

43. The Act also contains a definition of small cable system operator, which is "a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000." The Commission has determined that there are 61,700,000 subscribers in the United States. Therefore, we found that an operator serving fewer than 617,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all of its affiliates, do not exceed $250 million in the aggregate. Based on available data, we find that the number of cable operators serving 617,000 subscribers or fewer total 1,450. We do not request nor do we collect information concerning whether cable system operators are affiliated with entities whose gross annual revenues exceed $250,000,000, and thus are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Act.

44. *Direct Broadcast Satellites (DBS).* Because DBS provides subscription services, DBS falls within the SBA definition of Cable and Other Pay Television Services (SIC 4841). As of

December 1996, there were eight DBS licensees. The Commission, however, does not collect annual revenue data for DBS and, therefore, is unable to ascertain the number of small DBS licensees that could be impacted by these rules. Although DBS service requires a great investment of capital for operation, we acknowledge that there are several new entrants in this field that may not yet have generated $11 million in annual receipts, and therefore may be categorized as a small business, if independently owned and operated.

45. *International Services.* The Commission has not developed a definition of small entities applicable to licensees in the international services. Therefore, the applicable definition of small entity is the definition under the SBA rules applicable to Communications Services, Not Elsewhere Classified (NEC). This definition provides that a small entity is expressed as one with $11 million or less in annual receipts. According to the Census Bureau, there were a total of 848 communications services, NEC in operation in 1992, and a total of 775 had annual receipts of less than $9,999 million. We note that those entities providing only international service will not be affected by our rules. We do not, however, have sufficient data to estimate with greater detail those providing both international and interstate services. Consequently, we estimate that there are fewer than 775 small international service entities potentially impacted by our rules.

46. *International Broadcast Stations.* Commission records show that there are 20 international broadcast station licensees. We do not request or collect annual revenue information, and thus are unable to estimate the number of international broadcast licensees that would constitute a small business under the SBA definition. We note that those entities providing only international service will not be affected by our rules. We do not, however, have sufficient data to estimate with greater detail those providing both international and interstate services. Consequently, we estimate that there are fewer than 20 international broadcast stations potentially impacted by our rules.

47. *Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements:* Once we adopt rules regarding the primary-line treatment of TTY lines used by individuals with speech or hearing disabilities, carriers will need to identify such individuals. To do so, carriers may be able to rely on existing mechanisms, such as the toll discount program. If carriers are unable to use existing mechanisms, they may need to implement a self-certification mechanism. If the Commission adopts a funding approach, carriers may also need to report revenues for the administration of the funding mechanism. Carriers may, however, already be providing some of the necessary information in conjunction with existing funding mechanisms, such as the one currently in place for TRS. Under the funding approach, carriers may also need to provide data on the revenues attributable to TTY lines used by speech or hearing-impaired individuals as primary lines and as non-primary lines. We ask parties to comment on the reporting, recordkeeping, and other compliance requirements they believe will be necessary to implement rules regarding the primary-line treatment of TTY lines used by individuals with speech or hearing disabilities.

48. *Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered:* We have outlined and sought comment on what we believe are the significant possible alternatives for implementing a primary-line definition with respect to TTY lines used by speech-or hearing-disabled individuals. We note that small entities will be largely unaffected by the rules we promulgate following the *Further Notice* because the distinction between primary and non-primary lines applies only to price cap LECs. Depending on the funding mechanism—if any—chosen, however, some small entities may have contribution requirements. We seek comment on any significant alternative compliance or reporting requirements or timetables that take into account the resources available to small entities and accomplish our stated objectives.

49. *Federal Rules that May Overlap, Duplicate, or Conflict with the Proposed Rules.* Because this is the first occasion in which the Commission has attempted to define primary lines, we do not believe that the proposals in the *Further Notice* overlap with or duplicate any existing federal rules. We ask parties to comment on any federal rules that they believe may overlap with, duplicate, or conflict with the approaches we discuss in the *Further Notice.*

3. Initial Paperwork Reduction Act Analysis

50. Certain proposals contained in the *Further Notice* may require an information collection. As part of our continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act of 1995, Public Law No. 104–13, we invite the general public and the OMB to take this opportunity to comment on those information collections. Public and agency comments are due at the same time as other comments on the *Further Notice;* OMB comments are due 60 days from date of publication of the *Further Notice* in the **Federal Register.** Comments should address: (a) whether the proposed information collections are necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

4. Notice and Comment Procedures

51. Pursuant to sections 1.415 and 1.419 of the Commission's Rules, 47 CFR 1.415, 1.419, interested parties may file comments on or before April 9, 1999, and reply comments on or before April 26, 1999. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies.

52. Comments filed through the ECFS can be sent as an electronic file via the Internet to <http://www.fcc.gov/e-file/ecfs.html>. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail message to ecfs@fcc.gov, and should include the following words in the body of the message, "get form <your e-mail address>." A sample form and directions will be sent in reply.

53. Parties who choose to file by paper must file an original and four copies of each filing. All filings must be sent to the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, 445 Twelfth Street SW, Room TW–A325, Washington, DC 20554. In addition, one copy of each

pleading must be filed with the Commission's duplicating contractor, International Transcription Services (ITS), 1231 Twentieth Street, NW, Washington, DC 20036, and one copy with the Chief, Competitive Pricing Division, 445 Twelfth St. SW, Fifth Floor, Washington, DC 20554.

54. Parties are also asked to submit comments and reply comments on diskette. Such diskette submission would be in addition to and not a substitute for the formal filling requirements addressed above. Such a submission should be on a 3.5-inch diskette formatted in an IBM compatible form using MS Dos 5.0 and WordPerfect 5.1 software. The diskette should be submitted in "read only" mode. The diskette should be clearly labeled with the party's name, proceeding, type of pleading (comment or reply comments), and date of submission. The diskette should be accompanied by a cover letter.

55. Written comments by the public on the proposed information collections are due April 9, 1999, and replies are due on or before April 26, 1999. The Office of Management and Budget (OMB) must submit written comments on the proposed information collections on or before 60 days after date of publication in the **Federal Register**. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Judy Boley, Federal Communications Commission, 445 Twelfth St. SW, Washington, DC 20554, Room 1–C804, or via the Internet to dconway@fcc.gov, and to Timothy Fain, OMB Desk Officer, 10236 NEOB, 725 Seventeenth Street NW, Washington, DC 20503, or via the Internet to fain_t@al.eop.gov.

56. Alternative formats (computer diskette, large print, audio cassette and Braille) of the Report and Order and Further Notice of Proposed Rulemaking are available to persons with disabilities by contacting Martha Contee at (202) 418–0260 voice, (202) 418–2555 TTY, or mcontee@fcc.gov. The Notice can also be downloaded at: http://www.fcc.gov/dtf/.

57. Accordingly, *It is ordered*, pursuant to the authority contained in sections 1, 2, 4(i), 4(j), 201–205, 218–220, 225, and 254 of the Communications Act as amended, 47 U.S.C. 151, 152, 154(i), 154(j), 201–205, 218–220, 225, and 254, a Further Notice of Proposed Rulemaking *Is hereby adopted.*

58. *It is further ordered* that the Commission's Office of Public Affairs, References Operations Division, *Shall send* a copy of the Further Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–7788 Filed 4–2–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99–90, RM–9528]

Radio Broadcasting Services; Socorro, NM

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Mountain West Broadcasting seeking the allotment of Channel 271C2 to Socorro, NM, as the community's second local commercial FM service. Channel 271C2 can be allotted to Socorro in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction, at coordinates 34–03–42 NL; 106–53–48 WL. Mexican concurrence in the allotment is required since Socorro is located within 320 kilometers (199 miles) of the U.S.-Mexican border.

DATES: Comments must be filed on or before May 17, 1999, and reply comments on or before June 1, 1999.

ADDRESSES: Federal Communications Commission, 445 12th Street, S.W., Room TW–A325, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Victor A. Michael, Jr., President, Mountain West Broadcasting, 6807 Foxglove Drive, Cheyenne, WY 82009 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 99–90, adopted March 17, 1999, and released March 26, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–8240 Filed 4–2–99; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 223

[I.D. 030399A]

Endangered and Threatened Species; Petition to Delist Coho Salmon in Siskiyou County, California

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notification of petition finding.

SUMMARY: NMFS has received a petition to delist coho salmon (*Oncorhynchus kisutch*) in Siskiyou County, California, from the endangered species list. NMFS has determined that the petition does not contain any new, substantial scientific or commercial information indicating that the petitioned action may be warranted.

DATES: The finding announced in this document was made on March 29, 1999.

ADDRESSES: Requests for information concerning this petition should be sent to Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East West Highway, Silver Spring, MD 20910; telephone: (301)713–1401.

FOR FURTHER INFORMATION CONTACT: Lisa Lierheimer at (301)713–1401.

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(A) of the Endangered Species Act (ESA) of 1973, as amended (16 U.S.C *et seq.*), requires that NMFS make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information to demonstrate that the petitioned action may be warranted. NMFS' standard for substantial information is stated at 50 CFR 424.14(b) as "that amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted." This finding is to be based on all information available to NMFS at the time. To the maximum extent practicable, this finding is to be made within 90 days of the receipt of the petition, and the finding is to be published promptly in the **Federal Register**. If the finding is positive, NMFS is also required to promptly commence a review of the status of the involved species.

NMFS has made a 90-day finding on a petition to delist coho salmon (*Oncorhynchus kisutch*) in Siskiyou County, California. The petition, dated January 4, 1999, was submitted by Mr. Richard A. Gierak, Director of New Frontiers Institute, Inc., and was received by NMFS on January 20, 1999. The petitioner requested that NMFS delist coho salmon (*Oncorhynchus kisutch*) in Siskiyou County, California. This population is included in the Southern Oregon/Northern California coho salmon Evolutionarily Significant Unit (ESU); the ESU was listed as a threatened species on May 6, 1997 (62 FR 24588).

The petitioner submitted information from various documents from 1985 through 1998, including NMFS publications, reports, and **Federal Register** documents of salmon listings, and from personal communications on the primary causative factors in the decline of coho salmon in northern California rivers. The petitioner identifies two categories of major factors contributing to the decline of northern California coho: nature (i.e., floods, fire, drought, El Nino), and human activities (i.e., the Marine Mammal Protection Act and the overpopulation of salmonid predators, the removal of salmonid eggs for hatchery production, ocean fishing, and the destruction of estuarine habitats along the coast).

Under section 4(a)(1) of the ESA and the listing regulations at 50 CFR 424.11(c), when a species is considered for listing, NMFS must determine whether the species is endangered or threatened due to any one or a combination of the following factors: (1) The present or threatened destruction, modification, or curtailment of its habitat or range; (2) overutilization for commercial, recreational, scientific, or educational purposes; (3) disease or predation; (4) the inadequacy of existing regulatory mechanism; or (5) other natural or manmade factors affecting its continued existence.

Under 50 CFR 424.11(d), the factors considered in delisting a species are the same as those used to list a species. A species may be delisted only if the best scientific and commercial data indicates that the species is no longer threatened or endangered for the following reasons: (1) Extinction; (2) recovery (the point at which the purposes of the ESA are no longer required); or (3) subsequent investigation reveals that the original data or the interpretation of that data used to list the species was in error.

In its listing determination for coho salmon in the Southern Oregon/Northern California ESU (62 FR 24588, May 6, 1997), NMFS concluded that the current status of the population is the result of a wide range of long-standing, human-induced factors (i.e. habitat degradation, harvest, and artificial propagation) that serve to exacerbate the effects of environmental conditions that adversely impact coho salmon such as drought, poor ocean conditions, and flooding. The specific factors for decline of coho salmon that were identified in the petition (i.e. natural environmental change due to floods, fire, drought and El Nino, and human-induced activities associated with the management of marine mammal populations, fishing, and hatchery practices) were previously considered by NMFS in its listing determination and found to have contributed to the species decline. Information demonstrating that listed salmon have recovered or that the threats to salmon no longer exist were not presented in the petition.

NMFS has reviewed the petition, the literature cited in the petition, and other available literature and information. NMFS finds that the petitioned action does not present substantial scientific or commercial information indicating that delisting coho salmon in Siskiyou County, California, or the Southern Oregon/Northern California coho salmon ESU in which these populations are included, may be warranted.

Authority: 16 U.S.C. 1531 *et seq.*

Dated: March 29, 1999.

Andrew A. Rosenberg,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 99–8181 Filed 4–2–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 223, 224, and 226

[Docket No. 980723205–9057–02; I.D. 121198A]

RIN 1018–AF46

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Species; Threatened Status for Southwestern Washington/Columbia River Coastal Cutthroat Trout in Washington and Oregon, and Delisting of Umpqua River Cutthroat Trout in Oregon

AGENCIES: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce; Fish and Wildlife Service (FWS), Interior.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS completed a comprehensive status review of coastal cutthroat trout (*Oncorhynchus clarki clarki*) populations in Washington, Oregon, and California and has identified six Evolutionarily Significant Units (ESUs) within this range. Since that time, the question of whether NMFS or FWS (the Services, or we) has ESA jurisdiction over the species has arisen, and we have therefore agreed to resolve this matter before the final listing determination. In addition, the ESA requires FWS concurrence on NMFS ESA delisting determinations. Therefore, we are issuing this proposal jointly. We propose a rule to list one of the six cutthroat trout ESUs as threatened under the Endangered Species Act (ESA). The proposed ESU consists of coastal cutthroat trout populations in southwestern Washington and the Columbia River, excluding the Willamette River above Willamette Falls. We also propose to delist the Umpqua River cutthroat trout ESU currently listed as endangered. Information made available since that listing indicates Umpqua River cutthroat trout are part of a larger ESU

encompassing the coast of Oregon between the Columbia River and Cape Blanco, Oregon, and that this ESU does not warrant listing at this time. NMFS considers this ESU a candidate for listing.

In the proposed ESU, only naturally spawned cutthroat trout are proposed for listing. Prior to the final listing determination, we will examine the relationship between hatchery and naturally spawned populations of cutthroat trout, and populations of cutthroat trout above barriers to assess whether any of these populations warrant listing. This may result in the inclusion of specific hatchery populations or populations above barriers as part of the listed ESU in the final listing determination.

The Services request public comments on the biological issues pertaining to this proposed rule. We also request information on the biological, economic, and any other information relevant to designating critical habitat for the proposed cutthroat trout ESU. We further request suggestions and comments on integrated local/state/tribal/Federal conservation measures that will achieve the purposes of the ESA to recover the health of coastal cutthroat trout populations and the ecosystems upon which they depend. We believe these efforts, if successful, could serve as central components of a broadly based conservation program for recovery and rebuilding of salmonid populations, including coastal cutthroat trout.

DATES: Comments must be received by July 6, 1999. NMFS will announce the dates and locations of public hearings in Washington and Oregon in a separate **Federal Register** document. Requests for additional public hearings must be received by May 20, 1999.

ADDRESSES: Comments on this proposed rule and requests for public hearings or reference materials should be sent to Chief, Protected Resources Division, NMFS, Northwest Region, 525 NE Oregon Street, Suite 500, Portland, OR 97232–2737; fax (503) 230–5435.

FOR FURTHER INFORMATION CONTACT: Garth Griffin, 503–231–2005, Craig Wingert, 562–980–4021, or Christopher Mobley, 301–713–1401 of NMFS, or Catrina Martin, 503–231–6131 of FWS.

SUPPLEMENTARY INFORMATION:

Electronic Access

Reference materials regarding this listing determination can also be obtained from the internet at www.nwr.noaa.gov.

Background

In a document dated September 12, 1994, NMFS announced its intent to conduct comprehensive status reviews for five species of Pacific salmonids, including sea-run cutthroat trout (59 FR 46808). These were in addition to two ongoing status reviews for west coast coho salmon (*O. kisutch*) and steelhead (*O. mykiss*). NMFS completed coastwide status reviews for coho salmon and steelhead on July 25, 1995, and August 9, 1996, respectively (60 FR 38011; 61 FR 41541). On October 4, 1995, NMFS completed its status review for west coast pink salmon (*O. gorbuscha*) (60 FR 51928). In March of 1998, NMFS completed its status reviews for west coast sockeye (*O. nerka*), chum (*O. keta*), and chinook salmon (*O. tshawytscha*) (63 FR 11750; 63 FR 11774; 63 FR 11482). Thus, the current status review for coastal cutthroat trout completes NMFS' comprehensive assessment of seven Pacific salmonid stocks under its ESA jurisdiction (coho, pink, sockeye, chum, and chinook salmon; and steelhead and cutthroat trout).

On December 18, 1997, the Secretary of Commerce received a petition from Oregon Natural Resources Council to list and to designate critical habitat for sea-run cutthroat trout in the States of Washington, Oregon, and California. Copies of this petition are available upon request (see **ADDRESSES**). On March 23, 1998, NMFS accepted this petition as containing substantial scientific information indicating that a status review was warranted (63 FR 13832). Acceptance of this petition invoked the ESA's statutory requirement for NMFS to issue its findings on the coastal cutthroat trout status review by December 18, 1998.

In response to a petition to list Umpqua River cutthroat trout under the ESA, on July 8, 1994 (59 FR 35089), NMFS published a proposed rule to list this ESU, or distinct population (See "Consideration as a 'Species' Under the ESA"), as an endangered species. In this notice, NMFS proposed to include all cutthroat trout life-history types (i.e., non-migratory, freshwater migratory, and anadromous) in the listed ESU. On August 9, 1996 (61 FR 41514), NMFS published a final rule listing Umpqua River coastal cutthroat trout as an endangered species. However, in doing so, NMFS committed to re-evaluate the status of the species within 2 years or as new scientific information became available. The Services re-evaluate the status of Umpqua River cutthroat in this document.

On January 29, 1998, Douglas County, Oregon sued the Secretary of Commerce, alleging that NMFS' listing of Umpqua River cutthroat trout as an endangered species was not based on the "best scientific and commercial data available" in violation of the ESA. On December 14, 1998, the District Court of Oregon upheld NMFS' listing determination, noting that NMFS' ongoing status review of the species provides Douglas County and other parties with an opportunity to submit new information for NMFS' consideration. *Douglas County* v. *Daley*, No. 98–6024–HO, slip op. at n. 13 (D. OR. Dec. 14, 1998). NMFS considers new information submitted by Douglas County and other parties below.

During the status review process NMFS initiated a series of technical meetings with comanagers (state and tribal governments) and the public. Among these meetings was a series of Pacific Salmon Biological Technical Committee meetings held in Washington, Oregon, and California. Furthermore, on October 13, 1998, NMFS Biological Review Team (BRT) members met with comanagers and discussed their comments on a draft status review report. The BRT considered these comments in drafting their final status review report. Copies of the final status review document entitled "Scientific Conclusions of the Review of the Status of Coastal Cutthroat Trout (*Oncorhynchus clarki clarki*) from Washington, Oregon, and California" (NMFS, 1998a) are available upon request (see **ADDRESSES**).

Agency Jurisdiction for Cutthroat Trout

As described above, NMFS has a history of conducting status reviews on sea-run cutthroat trout. During the status review for Umpqua River sea-run cutthroat trout, NMFS and FWS agreed that NMFS would handle ESA responsibilities for all life forms of the species in the Umpqua River Basin (FWS, 1994). Since that time, the issue of agency jurisdiction has arisen for the various cutthroat life forms in other west coast basins, including the Southwestern Washington/Columbia River cutthroat trout ESU. For this reason, the current proposal to list the Southwestern Washington/Columbia River cutthroat trout ESU is being promulgated jointly. Prior to the final listing determination, one agency will assume lead ESA responsibility for the species.

Data Limitations and Scientific Uncertainty

There is a lack of quantitative information across the range of coastal cutthroat trout. This is not to say that information about coastal cutthroat trout does not exist; in fact, a considerable amount is known about the biology of this species. However, much of this information is qualitative or descriptive, rather than quantitative. Comprehensive, coastwide data sets on distribution, abundance, age structure, run timing, and other biological characteristics are largely absent for coastal cutthroat trout. The fact that coastal cutthroat trout do not constitute a commercially caught species, with fewer directed fisheries than for co-occurring Pacific salmonids, no doubt has much to do with the paucity of these data. Furthermore, spawning coastal cutthroat trout are more difficult to observe than spawning salmon, and there are almost no large runs that are clear targets for systematic monitoring.

Given the paucity of available data for coastal cutthroat trout, NMFS employed two methods to characterize uncertainty in its risk assessments. Both methods entailed characterizing BRT members' degree of certainty with particular risk conclusions. These methods generally led to consistent results, and the BRT used this information to draw its conclusions regarding the status of ESUs and then to characterize the degree of certainty associated with such scientific conclusions.

Life History of the Species

The life history of coastal cutthroat trout may be one of the most complex of any Pacific salmonid. Unlike other anadromous salmonids, sea-run forms of coastal cutthroat trout do not overwinter in the ocean and only rarely make extended migrations across large bodies of water. Their migrations in the marine environment are usually within 10 kilometers (6 miles) of land (Giger, 1972; Sumner, 1972; Jones, 1976; and Johnston, 1982), but have been detected up to 80 kilometers (50 miles) offshore (Pearcy, 1997). Although most anadromous cutthroat trout enter seawater as 2-or-3-year-old fish, some may remain in fresh water up to 5 years before entering the sea (Giger, 1972; and Sumner, 1972). Other cutthroat trout may not outmigrate to the ocean, but remain as nonmigrants in small headwater tributaries. Still other cutthroat trout may migrate entirely within freshwater environments (Nicholas, 1978; Tommasson, 1978; and Moring *et al.*, 1986), even when they have access to the ocean (Tomasson, 1978). In the Umpqua River, anadromous, non-migratory, and freshwater migratory (river-migrating) life-history forms have been reported (Loomis and Anglin, 1992; and Loomis *et al.*, 1993). Details of coastal cutthroat trout life history and ecology, including characteristics of particular life-history forms, can be found in published reviews by Hall (1997), Bisson (1997), and Gresswell and Harding (1997). Unfortunately, these reviews indicate that the genetic and environmental factors determining these life-history forms are poorly understood, a situation that has complicated the characterization of ESU boundaries and risk for coastal cutthroat trout.

Consideration as a "Species" Under the ESA

To qualify for listing as a threatened or endangered species, the identified populations of coastal cutthroat trout must constitute "species" under the ESA. The ESA defines a "species" to include "any subspecies of fish or wildlife or plants, and any distinct population segment of any species of vertebrate fish or wildlife which interbreeds when mature." [ESA Section 3(15)] NMFS published a policy describing the agency's application of the ESA definition of "species" to anadromous Pacific salmonid species (56 FR 58612, November 20, 1991). Subsequently, the Services jointly issued a policy addressing the recognition of distinct vertebrate population segments of all vertebrate species under the ESA on February 7, 1996 (61 FR 4722). NMFS' policy provides that a Pacific salmonid population will be considered distinct and, hence, a species under the ESA if it represents an ESU of the biological species. A population must satisfy two criteria to be considered an ESU: (1) It must be reproductively isolated from other conspecific population units (i.e., different populations of the same species), and (2) it must represent an important component in the evolutionary legacy of the biological species. The first criterion, reproductive isolation, need not be absolute, but must be strong enough to permit evolutionarily important differences to accrue in different population units. The second criterion is met if the population contributes substantially to the ecological/genetic diversity of the species as a whole. Guidance on the application of this policy is contained in a NOAA Technical Memorandum entitled "Definition of Species Under the Endangered Species Act: Application to Pacific Salmon," that is available upon request (see **ADDRESSES**).

Reproductive Isolation

Genetic data provide useful indirect evidence on reproductive isolation by integrating information about migration and gene flow over evolutionary time frames. However, only a limited number of studies of the genetic population structure of coastal cutthroat trout populations in the Pacific Northwest have been published, and these are very recent. Other studies are contained in unpublished graduate theses. All but one of these studies included samples from a limited geographic range.

In order to address this genetic data gap, NMFS, the Washington Department of Fish and Wildlife (WDFW), and the Oregon Department of Fish and Wildlife (ODFW) recently conducted a coastwide study of biochemical genetic variability in coastal cutthroat trout to help delineate groups of populations for management and conservation. The results of this study are summarized in this document under "Summary of Proposed ESU Determinations" and are discussed in further detail in the status review document (NMFS, 1998a).

Few detailed studies have explored the relationship between non-migratory, freshwater migratory, and anadromous *O. clarki clarki* in the same river basin, cohabitating in the same location. The few existing studies of cutthroat trout show that, although both allele frequencies and morphology may differ between populations above barriers and populations below barriers with access to the sea, these different life-history forms are generally more closely related within a drainage than are populations from different drainages. These results indicate that sea-run and non-migratory populations of cutthroat trout represent a single evolutionary lineage in which the various life-history characteristics have arisen repeatedly in different geographic regions.

With respect to barriers that permit some one-way migration (i.e., downstream migration of smolts but not upstream passage of adults), NMFS concludes that coastal cutthroat trout above these barriers should generally be included in ESUs that contain populations below these barriers. The basis for this conclusion is twofold: (1) Populations above barriers may contribute demographically and genetically to populations below them, even if the number of successful one-way migrants per generation is low, and (2) populations above barriers may represent genetic resources shared by populations below these barriers (and

therefore may constitute a significant component of diversity for an ESU). However, at this time NMFS has not attempted to identify any specific populations above barriers where one-way migration is occurring to a significant extent. Therefore, while such populations are considered part of the biological ESU to which they contribute, NMFS (or the FWS) will determine on a case-by-case basis whether such populations warrant protection under the ESA. Populations of coastal cutthroat trout existing above Willamette Falls in Oregon are an exception to this general rule; this situation and the rationale for this determination are discussed in the following section.

Summary of Proposed ESU Determinations

NMFS' ESU determinations for coastal cutthroat trout in Washington, Oregon, and California are summarized here. A more detailed discussion of ESU determinations is presented in the "Scientific Conclusions of the Review of the Status of Coastal cutthroat (*Oncorhynchus clarki clarki*) trout from Washington, Oregon, and California" (NMFS, 1998a). Copies of this document are available upon request (see **ADDRESSES**).

(1) Puget Sound ESU

This proposed ESU includes populations of coastal cutthroat trout from drainages of Puget Sound, Hood Canal, the eastern Olympic Peninsula (east of and including the Elwha River), and the Strait of Juan de Fuca. Life-history data indicate that coastal cutthroat trout from Puget Sound generally smolt at a smaller size and possibly at a younger age than those directly entering the open ocean or the outer coastal marine waters. Genetic data also indicate differences among populations in this ESU and those in southwestern Washington and farther south. Genetic data also indicate that, although populations in Puget Sound, Hood Canal, and on the Olympic Peninsula are highly heterogeneous genetically, evidence exists for separation of populations on the Olympic Peninsula from those in the eastern Strait of Juan de Fuca, northern Puget Sound, and Hood Canal. Populations in Hood Canal and along the Strait of Juan de Fuca are distinctive, but show no clear evidence of a transition zone between populations in Puget Sound and southwestern Washington. Populations from the upper Nisqually River (a heavily glacially influenced system in southern Puget Sound) are markedly distinct genetically from their nearest geographic neighbors. NMFS was unable to ascertain the source of this distinctiveness; possibilities include strong and long-standing reproductive isolation, sharp habitat differences, or a combination of these factors.

Based on distinctive life-history, genetic, and biogeographic patterns, NMFS concludes that the Puget Sound ESU includes all streams in Puget Sound and the Strait of Juan de Fuca west to, and including, the Elwha River. The northern boundary for this ESU is unclear, but genetic data lend support to the hypothesis that this ESU extends into southern British Columbia, including populations along the eastern Georgia Strait north of the city of Vancouver. These data also indicate that Vancouver Island populations are genetically distinct from those on the mainland, providing evidence for reproductive isolation of these groups. In general, this ESU's boundaries reflect an ecoregion in which river drainages have relatively high flows due largely to high precipitation, snow melt, and temperatures moderated by the marine environment. The southern and western boundaries are similar to those previously identified for chinook, coho, chum, and pink salmon, and steelhead; the northern boundary differs from that for chinook and coho salmon (which does not extend into Canada) and for pink, chum, and coho salmon (which does not include eastern Vancouver Island).

(2) Olympic Peninsula ESU

The proposed boundaries of this ESU are similar to those of steelhead and coho salmon, previously reviewed by NMFS (Busby *et al.*, 1996; and Weitkamp *et al.*, 1996) and include coastal cutthroat trout populations from the Strait of Juan de Fuca west of the Elwha River and coastal streams south to, but not including, streams that drain into Grays Harbor. Support for this ESU relies on the ecological distinctiveness of this area, which is characterized by high precipitation, cool water temperatures, and relatively short, high-gradient streams entering directly into the open ocean. Life-history data also suggest that these fish may have different migratory patterns than those in Puget Sound or the Columbia River. Coastal cutthroat trout from this area are relatively large as smolts, and a higher proportion of individuals appear to mature at first return from seawater than is the case in most Puget Sound populations.

Genetic data for this ESU are limited. Populations that have been sampled from the Olympic Peninsula are genetically distinctive but show a stronger genetic affinity to neighboring populations in Puget Sound and in Hood Canal than to those along the Strait of Juan de Fuca (east of the Elwha River). However, at least some of the Olympic Peninsula populations are not strongly differentiated from those in northern or southern Puget Sound, and they are well differentiated from populations to the south along the coast. Available information indicates that this ESU may represent a genetic transition zone between the Puget Sound and Southwestern Washington/Columbia River ESUs.

(3) Southwestern Washington/Columbia River ESU

The proposed boundaries of this ESU are similar to those of the lower Columbia River/southwest Washington Coast coho salmon ESU (Weitkamp *et al.*, 1996). The ESU comprises cutthroat trout in the Columbia River and its tributaries downstream from the Klickitat River in Washington and Fifteenmile Creek in Oregon (inclusive) and the Willamette River and its tributaries downstream from Willamette Falls. The ESU also includes cutthroat trout in Washington coastal drainages from the Columbia River to Grays Harbor (inclusive). Support for these ESU boundaries comes primarily from ecological and genetic information. Ecological characteristics of this region include the presence of extensive intertidal mud and sandflats, similarities in freshwater and estuarine fish faunas, and differences from estuaries to the north of Grays Harbor and to the south of the Columbia River. Genetic samples from coastal cutthroat in southwestern Washington also show a relatively close genetic affinity to the samples from the Columbia River.

Some data support a split of the Columbia River from southwestern Washington coastal cutthroat trout populations. Tagging and recovery data for chinook, coho, and chum salmon indicate different marine distributions for fish from the two areas. The limited dispersal ability of anadromous cutthroat trout may restrict genetic exchange among populations in the two areas, and the areas exhibit differences in their physical estuarine characteristics. An important salmonid parasite, *Ceratomyxa shasta*, occurs in the Columbia River but has not been observed in Willapa Bay or Grays Harbor. WDFW has conducted an unpublished analysis of a small number

of southwestern Washington populations in which it detected a greater differentiation of populations between this ESU and those in the Columbia River than did NMFS in its more comprehensive analysis. WDFW also argues that extensive hatchery influence in some populations may have obscured natural genetic differences between southwestern Washington and lower Columbia River coastal cutthroat trout. However, NMFS concludes that these analyses collectively do not provide compelling evidence for separate coastal cutthroat trout ESUs for the southwestern Washington coast and the Columbia River.

(4) Upper Willamette River ESU

This proposed ESU includes populations of cutthroat trout above Willamette Falls in Oregon. Coastal cutthroat trout, along with spring chinook salmon and winter steelhead, are the only three species of anadromous Pacific salmonids that historically occurred above Willamette Falls. In the Upper Willamette River, these other two species have been identified as separate ESUs in previous status reviews, based on ecological and genetic differences from other Columbia River populations, and on physical and hydrological conditions (Busby *et al.*, 1996; and Myers *et al.*, 1998). Based on information provided by ODFW (1998), Willamette Falls is a nearly complete barrier to anadromous fish, including summer steelhead and coastal cutthroat trout, during summer and early fall. NMFS concludes that the upper Willamette River has probably never supported a substantial anadromous population of cutthroat trout; the primary life-history types that exist above Willamette Falls appear to be the non-migratory and freshwater migratory forms, which appear to be relatively rare below the falls.

Upper Willamette River coastal cutthroat trout exhibit a genetic structure consistent with the hypothesis that Willamette Falls is a strong reproductive barrier between populations above and below the falls. *C. shasta* existing in the Willamette River below the Marys River and high temperatures in the lower Willamette River in summer and fall probably limit the survival of the very few migrants that are known to drop over the falls. The river above Willamette Falls encompasses a large area with considerable habitat complexity, and this area supports several different populations of coastal cutthroat trout. Although these populations are highly heterogeneous (dissimilar) genetically, they do form a moderately coherent cluster of apparently isolated and semi-isolated populations.

The physical and genetic evidence for: (1) a barrier at Willamette Falls; (2) habitat and ecological differences above and below the Falls; (3) the lack of anadromous populations and the prevalence of freshwater migratory forms above the Falls; and (4) evidence for very few smolt outmigrants produced above the Falls leads NMFS to conclude that coastal cutthroat trout above Willamette Falls should be considered a separate ESU. Since cutthroat trout in this region do not conduct extensive migrations and remain primarily in the freshwater environment, The Services conclude that cutthroat trout in this ESU fall under the jurisdiction of FWS. As previously noted, overall ESA jurisdiction of all coastal cutthroat trout ESUs remains to be determined.

(5) Oregon Coast ESU

The proposed boundaries of this ESU are similar to those identified for coho and chinook salmon and steelhead (Weitkamp *et al.*, 1996; Myers *et al.*, 1998; and Busby *et al.*, 1996) and include coastal cutthroat trout populations from the mouth of the Columbia River south to Cape Blanco, Oregon. Genetic data indicate marked differences between coastal cutthroat trout populations from coastal Oregon and those in the Columbia River and along the Washington coast. Samples of coastal cutthroat trout south of the Columbia River indicate a large, heterogeneous group of populations along the Oregon coast. Furthermore, several ecological differences exist between rivers along the Oregon coast and those farther north. The Oregon coast is characterized by a strong maritime influence, including relatively high precipitation, moderate temperatures, and short, low gradient streams with few migration barriers. Tagging studies in Alaska and elsewhere indicate that anadromous cutthroat trout follow shorelines when in seawater; thus, the known migratory patterns of this species are consistent with the hypothesis that the Columbia River, which is several miles wide and relatively deep at its mouth, is a migratory barrier between coastal populations in Oregon and those in Washington.

Although genetic data provide some evidence for a split between populations north or south of Cape Blanco, Oregon, biological and ecological data provide even greater support for such a split. The Cape Blanco area is a major biogeographic boundary for many marine and terrestrial species, and has been identified as an ESU boundary for chinook and coho salmon and steelhead on the basis of strong genetic, life-history, ecological, and habitat differences north and south of this landmark. Meristic data (measurements of physical characteristics) also point to a difference between coastal cutthroat trout populations north and south of Cape Blanco.

Previously, NMFS concluded that cutthroat trout in the Umpqua River Basin constituted an ESU (Johnson *et al.*, 1994; 61 FR 41514, August 9, 1996). However, new genetic information collected during the coastwide status review indicates that cutthroat trout populations in the Umpqua River Basin are part of a larger coastal ESU that includes populations in Oregon coastal drainages from the mouth of the Columbia River to Cape Blanco. As discussed later in this document, NMFS proposes to revise the Umpqua River cutthroat trout listing determination consistent with these findings (see "Proposed Determinations").

(6) Southern Oregon/California Coasts ESU

This proposed ESU includes populations of coastal cutthroat trout from Cape Blanco, Oregon, south to the southern extent of the subspecies' range, currently considered the Mattole River, south of Cape Mendocino, California. Although meristic information lends support for a separate ESU of coastal cutthroat trout populations south of Cape Blanco, genetic and ecological data do not strongly support such a conclusion. In addition, the limited dispersal capability of coastal cutthroat trout and anecdotal evidence for marked differences in population dynamics for populations north and south of Cape Blanco support a split at that landmark. Finally, the majority of river systems in this ESU are relatively small and steep, with limited estuaries, and are heavily influenced by a maritime climate. Many of these systems are characterized by seasonal physical and thermal barriers to movement by anadromous fish; notable exceptions without such barriers are the larger river basins such as the Eel, Klamath, and Rogue Rivers.

Summary of Factors Affecting the Species

Section 2(a)(1) of the ESA states that various species of fish, wildlife, and plants in the United States have been rendered extinct as a consequence of economic growth and development untempered by adequate concern and

conservation. Section 4(a)(1) of the ESA and the Services' regulations (50 CFR part 424) set forth procedures for listing species. The Secretaries of Commerce and the Interior (Secretaries) must determine, through the regulatory process, if a species is endangered or threatened based upon any one or a combination of the following factors: (1) The present or threatened destruction, modification, or curtailment of its habitat or range; (2) overutilization for commercial, recreational, scientific, or educational purposes; (3) disease or predation; (4) inadequacy of existing regulatory mechanisms; or (5) other natural or human-made factors affecting its continued existence.

Several recent documents describe in more detail the impacts of various factors contributing to the decline of cutthroat trout and other salmonids (Bryant and Lynch, 1996; NMFS, 1997; and NMFS, 1998b). These reports, available upon request (see **ADDRESSES**), conclude that all of the factors identified in section 4(a)(1) of the ESA have played a role in the decline of salmonids on the West Coast. Specifically, these reports identify destruction and modification of habitat, overutilization for recreational purposes, and natural and human-made factors as being the primary reasons for the decline of anadromous salmonids, including coastal cutthroat trout. The following discussion summarizes findings regarding the principle factors for decline across the range of coastal cutthroat trout.

A. The Present or Threatened Destruction, Modification, or Curtailment of its Habitat or Range

Habitat degradation and impacts associated with logging and related land management activities, in particular, have likely contributed to the decline of coastal cutthroat trout. Removal of forest canopy can cause an increase in both the maximum and the diurnal fluctuation of water temperatures, leading to disease outbreaks, altered timing of migration, and accelerated maturation. The removal of streamside vegetation can deplete the bank area of potential new woody debris, which provides cover for cutthroat trout. Lack of cover may increase predation rates on cutthroat trout. In addition, loss of riparian areas can result in decreased invertebrate production and detritus sources, both of which are key components of the species' food chain. Siltation, often caused by certain logging practices, may hinder fry emergence from the gravel and limit production of benthic invertebrates. Dissolved oxygen content of both surface and intragravel water can decrease as a result of logging operations, reducing egg and fry survival rates. Logging can also cause changes in stream flow regimes, resulting in potentially adverse water velocity and depth characteristics.

In addition to degradation of freshwater habitats, degradation of estuarine habitats has likely contributed to the decline of this species. Estuarine areas are highly productive habitats and play an important role in the life cycle of cutthroat trout (Hall, 1997). Dredging, filling, and diking of estuarine areas for agricultural, commercial, or municipal uses have resulted in the loss of many estuarine habitats.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Cutthroat trout are not harvested commercially, and scientific and educational programs have probably had little or no impact on these populations. However, cutthroat trout are a popular gamefish throughout the Pacific Northwest, and available information indicates that recreational fishing may have contributed to the general decline of cutthroat trout populations (Gresswell and Harding, 1997). In addition, coastal cutthroat trout are especially susceptible to hooking mortality and incidental catch in recreational and commercial fisheries targeting Pacific salmon and steelhead. Also, poaching may pose a significant threat to depressed populations of cutthroat trout in some areas.

C. Disease or Predation

Disease may be a factor contributing to the decline of cutthroat trout populations. For example, ODFW believes that *C. shasta* is a factor of decline for cutthroat trout populations in the Columbia and Willamette Rivers (ODFW, 1998). The extent to which this and other diseases affect cutthroat trout populations in other areas is unknown.

Several non-native fish species are known to prey on or compete with salmonids; however, no specific information exists regarding predation impacts by these or by native fishes on cutthroat trout. Pinnipeds, especially harbor seals and California sea lions, are increasing on the West Coast. However, the extent to which pinniped predation is a factor causing the decline of coastal cutthroat trout is unknown.

D. Inadequacy of Existing Regulatory Mechanisms

1. Federal Land Management Practices

The Northwest Forest Plan (NFP) is a Federal management policy with important benefits for salmonids, including cutthroat trout. While the NFP covers a very large area, the overall effectiveness of the NFP in conserving cutthroat trout is limited by the extent of Federal lands and by the fact that Federal land ownership is not uniformly distributed in watersheds within the affected ESUs. The extent and distribution of Federal lands limits the NFP's ability to achieve its aquatic habitat restoration objectives at watershed and river basin scales and highlights the importance of complementary salmon habitat conservation measures on non-Federal lands within the subject ESUs.

2. State Land Management Practices

The Washington Department of Natural Resources implements and enforces the State of Washington's forest practice rules (WFPRs) that are promulgated through the Forest Practices Board. These WFPRs contain provisions that can be protective of salmonids if fully implemented. WFPRs are based on adaptive management of forest lands through watershed analysis, development of site-specific land management prescriptions, and monitoring. Watershed Analysis prescriptions can exceed WFPR minima for stream and riparian protection.

However, NMFS believes the WFPRs, including watershed analysis, do not provide properly functioning riparian and instream habitats. Specifically, the base WFPRs do not adequately address large woody debris (LWD) recruitment, tree retention to maintain stream bank integrity and channel networks within floodplains, and chronic and episodic inputs of coarse and fine sediment-processes which are critical to maintaining properly functioning habitat for all life stages of cutthroat trout.

Similarly, the Oregon Forest Practices Act (OFPA), while modified in 1995 and improved over the previous OFPA, does not adequately protect salmonid habitat. In particular, the current OFPA does not provide adequate protection for the production and introduction of LWD to medium, small, and non-fish bearing streams. Small non-fish bearing streams are vitally important to the quality of downstream habitats. These streams carry water, sediment, nutrients, and LWD from upper portions of the watershed. The quality of downstream

habitats is determined, in part, by the timing and amount of organic and inorganic materials provided by these small streams (Chamberlin *et al.*, in Meehan, 1991). Given the existing depleted condition of most riparian forests on non-Federal lands, the time needed to attain mature forest conditions, the lack of adequate protection for non-riparian LWD sources in landslide-prone areas and small headwater streams (which account for about half the wood found naturally in stream channels) (Burnett and Reeves, 1997, citing Van Sickle and Gregory, 1990; McDade *et al.*, 1990; and McGreary, 1994), and current rotation schedules (approximately 50 years), there is a low probability that adequate LWD recruitment could be achieved under the current requirements of the OFPA. Also, the OFPA neither adequately manages timber harvest and road construction on sensitive, unstable slopes subject to mass wasting; nor does it address cumulative effects.

3. Dredge, Fill, and Inwater Construction Programs

The Army Corps of Engineers (COE) regulates removal/fill activities under section 404 of the Clean Water Act (CWA), which requires that the COE not permit a discharge that would "cause or contribute to significant degradation of the waters of the United States." One of the factors that must be considered in this determination is cumulative effects. However, the COE guidelines do not specify a methodology for assessing cumulative impacts or how much weight to assign them in decision-making. Furthermore, the COE does not have in place any process to address the additive effects of the continued development of waterfront, riverine, coastal, and wetland properties.

4. Water Quality Programs

The Federal CWA is intended to protect beneficial uses, including fishery resources. To date, implementation has not been effective in adequately protecting fishery resources, particularly with respect to non-point sources of pollution.

Sections 303(d)(1)(C) and (D) of the CWA requires states to prepare Total Maximum Daily Loads (TMDLs) for all water bodies that do not meet state water quality standards. TMDLs are a method for quantitatively assessing environmental problems in a watershed and identifying pollution reductions needed to protect drinking water, aquatic life, recreation, and other use of rivers, lakes, and streams. TMDLs may address all pollution sources, including such point sources as sewage or industrial plant discharges, and such non-point discharges as runoff from roads, farm fields, and forests.

The CWA gives state governments the primary responsibility for establishing TMDLs. However, the Environmental Protection Agency (EPA) is required to establish TMDLs if a state does not do so. State agencies in Oregon are committed to completing TMDLs for coastal drainages within 4 years, and all impaired waters within 10 years. Similarly ambitious schedules are in place, or are being developed for Washington and Idaho. The ability of these TMDLs to protect cutthroat trout and salmonids should be significant in the long term; however, it will be difficult to develop them quickly in the short term, and their efficacy in protecting salmonid habitat will be unknown for years to come.

5. Hatchery and Harvest Management

In an attempt to mitigate the loss of habitat, hatchery programs have been implemented throughout the range of coastal cutthroat trout. While some of these programs have succeeded in providing fishing opportunities, the impacts of these programs on native, naturally spawned stocks are not well understood. Competition, genetic introgression, and disease transmission resulting from hatchery introductions may significantly reduce the production and survival of native, naturally spawned cutthroat trout.

Historically, cutthroat trout were one of the most broadly distributed salmonids in western North America (Behnke, 1979 and 1992). They were often the only salmonid present (sometimes the only fish) in many lakes and streams throughout the interior American west, and they were far more broadly distributed than steelhead, rainbow trout, or other salmonids (Behnke, 1979 and 1992). In recent years, they have been replaced by rainbow trout or other introduced species in many parts of their range (Gresswell, 1988; and Young, 1995). Perhaps most destructive was the widespread release of hatchery rainbow trout (*O. mykiss*) throughout the native range of interior cutthroat trout (Gresswell 1988; Young 1995). The two species readily hybridize, often to the extreme detriment of *O. clarki*, and it has been estimated that "just within the last century perhaps 99 percent of the unique cutthroat strains of interior drainages have been lost forever" (Willers, 1991). Furthermore, in less than 100 years after the first settlements in the West, cutthroat trout vanished from most of its vast range (Behnke, 1988). Because of this hybridization with rainbow trout, and because of habitat degradation and other reasons, many of these inland subspecies have declined in numbers to an extent that they are now protected by state and Federal endangered species legislation (Johnson, 1987).

Other potentially important impacts of hatchery practices are the negative consequences of interactions between coho salmon fry released from hatcheries and coastal cutthroat trout. Coho salmon fry have often been released into streams in very high numbers, and they can compete with cutthroat trout for feeding and rearing habitat.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

Climatic conditions have exacerbated the problems associated with degraded and altered riverine and estuarine habitats. Persistent drought conditions have reduced the already limited spawning, rearing, and migration habitat. Climatic conditions appear to have resulted in decreased ocean productivity (Francis and Sibley 1991; Francis et al. 1992), which may compound the effects of degraded freshwater habitat conditions on salmonid productivity.

Hybridization between coastal cutthroat trout and *O. mykiss* may pose serious risks for this species. A recent NMFS/WDFW survey of genetic variation among populations indicated that hybridization was widespread in the Pacific Northwest. Hybridization appears to occur naturally in some areas where coastal cutthroat trout and *O. mykiss* overlap and may be accelerated by transplants of *O. mykiss* into areas where coastal cutthroat trout occur naturally. Hybridization can reduce the success of coastal cutthroat trout populations by lowering the genetic fitness of hybrid individuals. Hybrids appear to be intermediate in performance to either parental species, but some life-history traits in hybrids may be detrimental to their survival. The extent of the risk of hybridization due to human activities is unknown.

Efforts Being Made To Protect Coastal Cutthroat Trout

Section 4(b)(1)(A) of the ESA requires the Secretaries of Commerce and the Interior to make listing determinations solely on the basis of the best scientific and commercial data available and after taking into account efforts being made to protect the species. Therefore, in making listing determinations, we first

assess the status of the species and identify factors that have led to the decline of the species. We then assess existing conservation measures to determine if such measures sufficiently ameliorate risks to the species.

In judging the efficacy of existing conservation efforts, NMFS considers the following: (1) The substantive, protective, and conservation elements of such efforts; (2) the degree of certainty such that efforts will be reliably implemented; and (3) the presence of monitoring provisions that permit adaptive management (Bryant and Lynch, 1996). In some cases, conservation efforts may be relatively new and may not have had time to demonstrate their biological benefits. In such cases, provisions for adequate monitoring and funding of conservation efforts are essential to ensure that intended conservation benefits are realized.

During its coastal cutthroat trout status review, NMFS reviewed an array of protective efforts underway for cutthroat trout and other salmonids, ranging in scope from broad regional strategies to local watershed initiatives. NMFS has summarized some of the major efforts applicable to salmonids in a document entitled "Steelhead Conservation Efforts: A Supplement to the Notice of Determination for West Coast Steelhead under the Endangered Species Act" (NMFS, 1996). NMFS has identified additional conservation measures in the States of Washington, Oregon, and California that are not specifically addressed in this earlier report. We summarize these additional conservation measures here.

State of Washington Conservation Measures

The State of Washington is currently in the process of developing a statewide strategy to protect and restore naturally spawned steelhead and other salmon and trout species. In May of 1997, the Governor of Washington and other state officials signed a Memorandum of Agreement creating the Joint Natural Resources Cabinet (Joint Cabinet). This body is composed of state agency directors or their equivalents from a wide variety of agencies whose activities and constituents influence Washington's natural resources. The goal of the Joint Cabinet is to restore healthy salmon, steelhead, and trout populations by improving those habitats on which the fish rely. The Joint Cabinet's current activities include development of the Lower Columbia Steelhead Conservation Initiative (LCSCI), which is intended to comprehensively address protection and recovery of steelhead in the lower Columbia River area.

The scope of the LCSCI includes Washington's steelhead stocks in two ESUs that contain habitat in both Washington and Oregon. The initiative area includes the Lower Columbia River area (Cowlitz to Wind rivers) and portions of southwestern Washington. Although the initial focus of the LCSCI was on steelhead recovery, the state and local governments are exploring ways to expand the LCSCI into a multi-species recovery effort that would be consistent with Oregon's plan. When completed, conservation and restoration efforts in the LCSCI area will form a comprehensive, coordinated, and timely protection and rebuilding framework with benefits to steelhead and other salmonids (including coastal cutthroat trout) in the LCSCI area.

WDFW performed advance work on the initiative, emphasizing harvest and hatchery issues and related conservation measures. Consistent with creation of the Joint Cabinet, conservation planning has recently been expanded to include major involvement by other state agencies and stakeholders and to address habitat and tributary dam/hydropower components.

The LCSCI should provide a framework to describe concepts, strategies, opportunities, and commitments that will be critically needed to maintain the diversity and long term productivity of salmonids in the lower Columbia River for future generations. The initiative does not represent a formal watershed planning process; rather, it is intended to be complementary to such processes as they may occur in the future. The LCSCI details a range of concerns, including natural production and genetic conservation, recreational harvest, hatchery strategies, habitat protection and restoration goals, monitoring of stock status and habitat health, evaluation of the effectiveness of specific conservation actions, and an adaptive management structure to implement and modify the plan's trajectory as time progresses. It also addresses improved enforcement of habitat and fishery regulations and strategies for outreach and education.

The LCSCI is currently a "work-in-progress" and will evolve and change over time as new information becomes available. Input will be obtained through continuing outreach efforts by local governments and other stakeholders. Further refinements to strategies, actions, and commitments will occur using public and stakeholder review and input and continued interaction with the State of Oregon, tribes, and other government entities, including NMFS. The LCSCI will be subjected to independent technical review. In sum, these input and coordination processes will play a key role in determining the extent to which the eventual conservation package will benefit naturally spawned salmonids.

NMFS intends to continue working with the State of Washington and stakeholders involved in the formulation of the LCSCI. Ultimately, when more fully developed and implemented, this conservation effort may ameliorate risks facing many salmonids in this region.

State of Oregon Conservation Measures

In April 1996, the Governor of Oregon completed and submitted to NMFS a comprehensive conservation plan directed specifically at coho salmon stocks on the coast of Oregon. This plan, termed the Oregon Plan for Salmon and Watersheds (OPSW) (formerly known as the Oregon Coastal Salmon Restoration Initiative) was later expanded to include conservation measures for coastal steelhead stocks (Oregon, 1998). For a detailed description of the OPSW, refer to the May 6, 1997, listing determination for Southern Oregon/Northern California coho salmon (62 FR 24602). The essential tenets of the OPSW include the following:

1. The OPSW is comprehensive, addressing many factors for decline of coastal coho salmon and steelhead, most notably, those factors relating to harvest, habitat, and hatchery activities.

2. Under the OPSW, all state agencies whose activities affect salmon are held accountable for coordinating their programs in a manner that conserves and restores the species and their habitat. This is essential since salmon and steelhead have been affected by the actions of many different state agencies.

3. The OPSW includes a framework for prioritizing conservation and restoration efforts.

4. The OPSW includes a comprehensive monitoring plan that coordinates Federal, state, and local efforts to improve our understanding of freshwater and marine conditions, determine populations trends, evaluate the effects of artificial propagation, and rate the OPSW's success in restoring the salmon.

5. The OPSW recognizes that actions to conserve and restore salmon must be worked out by communities and landowners—those who possess local knowledge of problems and those who

have a genuine stake in the outcome. Watershed councils, soil and water conservation districts, and other grassroots efforts are the vehicles for getting this work done.

6. The OPSW is based upon the principles of adaptive management. Through this process, there is an explicit mechanism for learning from experience, evaluating alternative approaches, and making needed changes in the programs and measures.

7. The OPSW includes an Independent Multi-disciplinary Science Team (IMST). The IMST's purpose is to provide an independent audit of the OPSW's strengths and weaknesses. They will aid the adaptive management process by compiling new information into a yearly review of goals, objectives, and strategies, and by recommending changes to the OPSW.

8. The OPSW requires that a yearly report be made to the Governor, the legislature, and the public. This will help the agencies make the adjustments described for the adaptive management process.

As with the State of Washington's LCSCI process discussed earlier, NMFS intends to continue working with the State of Oregon and stakeholders involved in the formulation of the OPSW. Ultimately, when more fully developed and implemented, this conservation effort may ameliorate risks facing cutthroat trout and the other salmonid species in this region.

State of California Conservation Measures

The July, 1997, Executive Order W–159–97 of the Governor of California created the Governor's Watershed Restoration and Protection Council (WPRC). The WPRC, chaired by the Secretary of Resources, is an umbrella body consisting of all state agencies that have programs addressing anadromous salmonid protection and restoration. Under State law, the WPRC is charged with (1) providing oversight of all state activities aimed at watershed protection and enhancement, including the conservation and restoration of anadromous salmonids in California; and (2) directing the development of a Watershed Protection Program that provides for anadromous salmonid conservation in the State. The WPRC has established a 12-member, multi-disciplinary science review panel to advise it in the development of the watershed protection program.

The WPRC is currently reviewing and evaluating existing statewide regulatory and non-regulatory programs protecting anadromous salmonids and their habitat, as well as state and local restoration program efforts that are ongoing or proposed. A compilation of management, implementation, and monitoring improvements that are necessary to protect and conserve anadromous salmonids and their habitat will be an important outcome of this comprehensive review. NMFS reviewed and commented on early work products generated by this review process and will continue to participate in the review and the development of the watershed protection program.

NMFS is encouraged by California initiation of a comprehensive, watershed-based approach to salmon management and restoration. However, the WPRC process is still in progress, and a Watershed Protection Program has yet to be developed. The 1998 Memorandum of Agreement (MOA) signed by NMFS, California's Secretary of Resources, and the Director of the California Department of Fish and Game (CDFG) (NMFS/California MOA, 1998) ensures that NMFS will substantively participate in the development of this program, including participation on the scientific review panel that will advise the WPRC in the development of the Program. An important focus of this scientific review panel will be an assessment of the adequacy of California's forest practice regulations, including their implementation and enforcement.

In 1997, the California State legislature enacted SB 271, which provides CDFG with $43 million over 6 years for habitat restoration and watershed planning in coastal watersheds. This new funding allows CDFG to significantly expand its existing habitat restoration program in coastal watersheds, including areas in Northern California. SB 271 requires that 87.5 percent of the $43 million in funding be spent on project grants for habitat restoration, watershed planning, and related programs, and permits CDFG to use the remainder for contract administration activities and biological support staff necessary to achieve the restoration objectives of the legislation. SB 271 also specifies that funded projects: (1) emphasize the development of coordinated watershed improvement activities; (2) give highest priority to funding projects that restore habitat for salmon and/or steelhead that are eligible for protection as listed or candidate species under the State or Federal ESA, (3) treat causes of fish habitat degradation; and (4) are designed to restore the structure and function of fish habitat. As part of this program, CDFG is funding $7.0 million per year in new projects for 5 years beginning in FY 1998–99 (starting July 1998). In addition, CDFG will use SB 271 funding to support several new permanent positions that will assist in administering the program and will provide technical support in the development of watershed plans and habitat restoration projects.

NMFS has reviewed the SB 271 program and concludes that its implementation will benefit salmonids, including cutthroat trout, by promoting the development of watershed protection plans and the restoration of degraded habitat conditions (NMFS, 1998c). The NMFS/California MOA provides additional assurances that the SB 271 program will provide these benefits. First, the MOA allows NMFS to serve as an ex-officio member of the Advisory Committee that will oversee implementation of SB 271, including the allocation of funds. Second, the MOA commits CDFG to direct a major portion of the new personnel and fiscal resources provided by SB 271 to watershed restoration efforts (NMFS/California MOA, 1998). Finally, the MOA establishes a close working relationship between the State and NMFS that should enable continued improvements in a variety of sectors affecting at-risk salmonids.

Proposed Status of Coastal Cutthroat Trout ESUs

Section 3 of the ESA defines the term "endangered species" as "any species which is in danger of extinction throughout all or a significant portion of its range." The term "threatened species" is defined as "any species which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range." Thompson (1991) suggested that conventional rules of thumb, analytical approaches, and simulations may all be useful in making this determination. In previous status reviews, NMFS identified a number of factors that should be considered in evaluating the level of risk faced by an ESU, including (1) absolute numbers of fish and their spatial and temporal distribution; (2) current abundance in relation to historical abundance and current carrying capacity of the habitat; (3) trends in abundance; (4) natural and human-influenced factors that cause variability in survival and abundance; (5) possible threats to genetic integrity (e.g., from strays or outplants from hatchery programs); (6) diversity of life-history forms; and (7) recent events (e.g., a drought or changes in harvest

management) that have predictable short-term consequences for abundance of the ESU.

During the coastwide status review for coastal cutthroat trout, NMFS evaluated both quantitative and qualitative information to determine whether any cutthroat trout ESUs are threatened or endangered according to the ESA. The types of information used in these assessments are described in NMFS' status review document (NMFS, 1998a). The following is a summary of NMFS' conclusions regarding the status of identified cutthroat trout ESUs.

(1) Puget Sound ESU

Few data exist concerning historical and present abundance of coastal cutthroat trout in the Puget Sound ESU region, and almost no estimates of adult population sizes existed for this ESU. The exceptions are a WDFW estimate of the 1997 spawning escapement in the Skagit River Basin of 13,000 fish, and counts of cutthroat adults at an upstream migrant trap designed to target coho salmon on the Deschutes River in southern Puget Sound (5-year geometric mean = 74 coastal cutthroat trout). Anecdotal reports suggest low abundance of coastal cutthroat trout in southwestern Puget Sound streams. In general, NMFS remains concerned with the lack of information regarding the distribution and abundance of coastal cutthroat trout throughout the Puget Sound region. However, some data indicate that juvenile coastal cutthroat trout are relatively well distributed in the Skagit and Stillaguamish River Basins and along the Strait of Juan de Fuca.

Few trend data are available for this ESU; these include downstream migrant counts from streams in eastern Hood Canal, the Skagit River Basin, and in southern Puget Sound (up to 1987 only); adult counts on the Deschutes River; and catch-per-unit effort (CPUE) data for adults over the past 2 to 7 years in three northern Puget Sound River Basins.

Trends in smolt numbers were mixed in both Hood Canal and southern Puget Sound. Unfortunately, no information exists regarding smolt-to-adult survival in this ESU, so interpretation of the significance of smolt trends for overall risk to these populations is difficult. Increases in coastal cutthroat trout smolt numbers in some eastern Hood Canal streams coincided with declines in coho salmon abundance. A negative correlation between the abundances of coastal cutthroat trout and coho salmon suggests that interspecific interactions between these two species may be reducing the abundance of coastal cutthroat trout in some streams. In those streams with reduced coho salmon numbers, it is possible that a relaxation of competition has occurred, allowing for an increase in coastal cutthroat trout abundance.

The CPUE data for the Stillaguamish and Snohomish River populations showed increasing trends; the Skagit River CPUE has been declining. However, the short time frames (2 to 7 years) over which these data have been collected, and the possibility that significant declines in abundance occurred before data collection began, limits the usefulness of these trends in assessing population status. In addition, WDFW biologists feel that the variation in the adults caught may be due, in part, to annual variation in fish sampling conditions.

In addition to information about population sizes and trends in abundance for coastal cutthroat trout in this ESU, NMFS considered another important risk factor—the potential loss of life-history diversity. In particular, the anadromous life-history type appears to be declining in some streams containing coastal cutthroat trout. However, NMFS concludes that risks to the integrity and long-term sustainability of the Puget Sound ESU due to loss of life-history diversity are relatively low compared to other coastal cutthroat trout ESUs, in which there are more streams with documented declines in anadromous life-history types.

The influence of hatchery coastal cutthroat trout in the Puget Sound ESU is probably relatively low compared to the impacts of hatchery fish on the productivity of other Pacific salmonids. For example, the proportion of hatchery fish caught in the recreational fisheries for coastal cutthroat trout in Hood Canal is low indicating hatchery fish do not occur at significant levels in this area. On the other hand, there are some hatchery-related threats to naturally spawned coastal cutthroat trout populations in this ESU. WDFW considers some of the northern Puget Sound coastal cutthroat trout populations to be of mixed origin, indicating that fish of non-native origin may have contributed to the genetic composition of those populations (WDFW, 1998). Production in most streams within the ESU is considered to be "wild" (i.e., naturally spawned) by WDFW, indicating that WDFW does not believe that hatchery fish contribute significantly to natural spawning escapements (WDFW, 1998).

Listing Determination

While in general, little information exists to assess the status of this ESU, NMFS concludes available scientific information indicates the Puget Sound ESU does not warrant listing. Population levels in this ESU appear relatively stable over the past 10 to 15 years, although many of these populations are believed to be smaller relative to historic levels. Implementation of the NFP has likely reduced habitat risks on Federal lands within this ESU, which constitute about 30 percent of the total land area. However, NMFS remains concerned with habitat conditions on non-Federal lands throughout this ESU, including highly urbanized areas in the City of Seattle.

(2) Olympic Peninsula ESU

NMFS possesses little information to estimate population abundances for coastal cutthroat trout in the Olympic Peninsula ESU. However, limited trapping data support the opinions of state and tribal fisheries biologists that juveniles in this ESU are well distributed in streams along the western Strait of Juan de Fuca and northern Washington coast. Further, available data suggest that some highly productive cutthroat trout streams exist in this geographic region. For example, smolt abundances in Dickey Lake are high relative to numbers of smolts in Puget Sound and Hood Canal streams. On the other hand, ongoing habitat destruction, primarily due to logging and its associated activities (e.g., road building and stream blockages by culverts), continue to be a source of risk to coastal cutthroat trout in many Olympic Peninsula streams.

The quantitative data available for the Olympic Peninsula ESU are counts of downstream migrants on Clearwater River tributaries (from 1981 to present), Dickey River (1992–1994), Hoko River (1986–1989), and in Salt Creek along the Strait of Juan de Fuca (1998). The trends among Clearwater tributaries were mixed, suggesting that some tributary streams are good producers, while others are declining in migrant production. The absolute numbers of outmigrants in all streams trapped were encouraging; however, NMFS did not weigh trends from the Hoko River heavily in its risk determinations because these data are not current. In addition, the Dickey River trends were based on only 3 years of trapping designed to estimate coho salmon production. It is difficult to interpret the outmigrant data, partly because smolt-to-adult survival estimates are lacking

and because declines in production may have occurred before data collection began in 1981. Given the continued demonstrations of consistent smolt production from outmigrant trapping, the general consensus among scientists is that coastal cutthroat trout are well represented in streams throughout the Olympic Peninsula.

NMFS judges that the risks to the Olympic Peninsula ESU from losses of life-history diversity are lower than those for any other coastal cutthroat trout ESU. Risks associated with hatchery coastal cutthroat trout are probably low in this ESU. However, hatchery releases of coho salmon fry occur in some areas on the Olympic Peninsula, which may result in increased stress on coastal cutthroat trout due to elevated levels of interspecific competition relative to what occurs naturally.

Listing Determination

NMFS concludes the Olympic Peninsula ESU does not warrant listing at this time. However, BRT scientists were highly uncertain about their risk assessment due to the lack of quantitative data for this ESU. NMFS believes that there is adequate productive cutthroat trout habitat to support this ESU; however, data are not available to confirm such a conclusion. Consistent smolt production in the Dickey River and the general consensus among scientists that coastal cutthroat trout are well distributed in streams throughout the Olympic Peninsula support this conclusion. Implementation of the NFP has likely reduced risks associated with habitat quality and quantity on Federal lands, which constitute about 38 percent of the land area within this ESU.

(3) Southwestern Washington/Columbia River ESU

According to WDFW, the southwestern Washington-lower Columbia River region historically supported healthy, highly productive coastal cutthroat trout populations. Coastal cutthroat trout, especially the freshwater forms, may still be well distributed in most river basins in this geographic region, although probably in lower numbers relative to historical population sizes. However, severe habitat degradation throughout the lower Columbia River area has contributed to dramatic declines in anadromous coastal cutthroat trout populations and two near extinctions of anadromous runs in the Hood and Sandy Rivers. NMFS remains concerned about the extremely low population sizes of anadromous coastal cutthroat trout in lower Columbia River streams, indicated by low incidental catch of coastal cutthroat trout in salmon and steelhead recreational fisheries, and by low trap counts in a number of tributaries throughout the region. Although efficiencies for these traps in catching coastal cutthroat trout are not known, numbers of adults returning to traps have been consistently below 10 fish in most streams included in this ESU over each of the past 6 years. In contrast, NMFS believes that, even though information on the distribution of freshwater forms of coastal cutthroat trout in this region was mostly anecdotal, it probably was an accurate reflection of their widespread occurrence in streams throughout the region.

Trends in anadromous adults and outmigrating smolts in the southwestern Washington portion of this ESU are all declining. NMFS is aware that WDFW considers streams in this region to have a relatively good coastal cutthroat trout habitat; however, available data do not support the idea that the anadromous coastal cutthroat trout in this area are at low risk. Returns of both naturally and hatchery produced anadromous coastal cutthroat trout in almost all lower Columbia River streams have declined markedly over the last 10 to 15 years. Indeed, the only anadromous coastal cutthroat trout population in the lower Columbia River to show increases in abundance over the last 10 years is the North Fork Toutle River population, which is thought to be recovering from the effects of the Mt. Saint Helens eruption in 1980. Despite its increasing trend, WDFW states that its population numbers are still critically low (approximately 100 total adults in run).

A significant risk factor for coastal cutthroat trout in this ESU is the reduction in life-history diversity. Serious declines in the anadromous form have occurred throughout the lower Columbia River, and it has been nearly extirpated in at least two rivers on the Oregon side of the basin. Available information suggests that, in many streams, the freshwater forms of coastal cutthroat trout are well distributed and occur in relatively high abundance in comparison to the anadromous coastal cutthroat trout in the same stream. ODFW and WDFW presented evidence that freshwater coastal cutthroat trout can produce smolts that migrate to saltwater. Although this possibility could act to mitigate risks to anadromous forms of coastal cutthroat trout, the observation that sea-run cutthroat trout population sizes have remained consistently low in many areas is a cause for concern. Reduced abundance of anadromous fish will tend to restrict connectivity of populations in different watersheds, which can increase genetic and demographic risks.

In summary, even if freshwater forms of coastal cutthroat trout have been producing occasional smolts, this production has not resulted in demonstrably successful re-establishment of anadromous forms. Habitat degradation in stream reaches accessible to anadromous coastal cutthroat trout, and poor ocean and estuarine conditions, likely have combined to severely deplete this life-history form throughout the lower Columbia River Basin. Without the appropriate freshwater and estuarine habitat for the expression of anadromous life history, a greater risk of extinction may occur. The significance of this reduction in life-history diversity to the both the integrity and the likelihood of this ESU's long-term persistence is a major concern to NMFS.

Negative effects of hatchery coastal cutthroat trout may be contributing to the risks facing naturally spawned coastal cutthroat trout in this ESU. The lower Columbia River tributaries are the only streams in Washington still receiving hatchery-origin coastal cutthroat trout, although the total numbers of released hatchery fish have recently been substantially curtailed. In the early 1980s, an estimated 50 to 80 percent of the recreational catch for coastal cutthroat trout in the lower Columbia River was composed of hatchery fish. Biologists familiar with coastal cutthroat trout feel that recreational catch data reflect true trends in coastal cutthroat trout abundance (Hooton, 1997). Furthermore, the largest returns of coastal cutthroat trout in this region are to the Cowlitz River Basin, and existing information is consistent with the interpretation that a significant proportion of those fish are of hatchery origin (WDFW, 1998). The ultimate effects of hatchery fish depend on the relative sizes of hatchery and naturally spawned populations, the spatial and temporal overlap of hatchery and naturally spawned fish throughout their life cycles, and the actual extent to which hatchery fish spawn naturally and interbreed with naturally produced fish. In addition, the extent to which naturally spawned coastal cutthroat trout are incidentally harvested in fisheries targeting hatchery coastal cutthroat trout and other salmonids of hatchery origin also affects the

magnitude of the risks to coastal cutthroat trout from hatchery fish.

Listing Determination

NMFS concludes the Southwestern Washington/Columbia River ESU warrants listing as a threatened species. The degree of scientific certainty in this conclusion is somewhat higher than that for the other cutthroat trout ESUs. NMFS is particularly concerned about the widespread declines in abundance and the small population sizes of anadromous cutthroat trout throughout the lower Columbia River, as exemplified by near extinctions of anadromous cutthroat trout runs in the Hood and Sandy rivers. The severe reductions in abundance of this life-history form could have deleterious effects on the ability of this ESU to recover from widespread declines. Reductions in the quantity and quality of estuarine and riverine habitat have probably contributed to declines, but the relative importance of these risk factors is not well understood. However, NMFS is encouraged by recent steps taken by the States of Washington and Oregon to reduce mortality due to directed and incidental harvest of coastal cutthroat trout. Also, the apparent widespread distribution of non-migratory cutthroat trout in this ESU may help buffer extinction risks to some degree.

Recent conservation planning efforts by the States of Washington and Oregon may reduce risks faced by cutthroat trout in this ESU; however, these efforts are still in their formative stages. Specifically, the State of Washington's LCSCI is still in a developmental stage, and various technical and financial aspects of the plan need to be addressed. Furthermore, this effort is currently limited to lower Columbia River areas. The OPSW, while substantially implemented and funded on the Oregon Coast, has not yet reached a similar level of development in inland areas. Implementation of the NFP has likely reduced habitat risks on Federal lands, which constitute about 20 percent of the land area within this ESU.

(4) Upper Willamette River ESU

The conservation status of this ESU was not formally evaluated by NMFS. As stated earlier, the Services concluded that FWS retained ESA jurisdiction for cutthroat trout populations occurring above Willamette Falls. The conservation status of this ESU will be evaluated by FWS.

(5) Oregon Coast ESU

Coastal cutthroat trout in the Oregon coastal region occur mostly in small populations that are relatively well distributed. Most of the abundance information considered by NMFS for this ESU consists of juvenile and smolt abundance information, with the prominent exception of the adult counts at Winchester Dam on the North Umpqua River. In general, NMFS is encouraged by the number of juveniles in coastal streams with relatively large basins. Since the available data covers only the last 2 years, the accuracy in which these juvenile counts translate into adult abundances or longer-term population trends is uncertain. The estimated pre-1970s abundance of anadromous coastal cutthroat trout in the largest river basin contained within this ESU, the Umpqua River, is 30,000 adults. A recent estimate of total run size, based on expansions of observed numbers of adults from snorkel surveys, is similar. (However, NMFS remains concerned about the assumptions underlying expansion methods using snorkel survey data for the freshwater forms of coastal cutthroat trout in the Umpqua Basin.)

Conflicting information about the abundance and distribution of coastal cutthroat trout in the South Umpqua River Basin suggest that there is insufficient information to reliably determine the status of coastal cutthroat trout in that drainage. The number of adults returning to the North Umpqua River has been critically low in recent years (5-year geometric mean = 18 fish), although for the past 3 years, 79, 81, and 110 (through October, 1998) adult coastal cutthroat trout have been counted at Winchester Dam.

Smolt production in two small drainages (Cummins and Tenmile Creeks) in central Oregon shows an increasing trend over the past 7 years. However, the percentage of repeat spawners has declined in both drainages relative to estimates in the early 1970s. All other streams on the Oregon coast for which data are available are experiencing moderate declines in adults and juveniles. In some areas, declines may have occurred primarily in anadromous coastal cutthroat trout populations. For example, in the Alsea and Siuslaw River Basins, declines in anadromous runs have occurred as indicated by recreational catch data, but ODFW believes there is no evidence for similar declines in the freshwater forms of coastal cutthroat trout in those same basins.

NMFS remains concerned about reductions in anadromous life-history forms throughout this ESU. Available information indicates that sea-run cutthroat trout are suffering more serious declines than are freshwater forms along Oregon coastal streams. ODFW suggests that these freshwater forms may be producing smolts in several coastal streams. However, NMFS does not have the estimates of adult anadromous coastal cutthroat trout in those streams, so it is difficult to evaluate the possibility that freshwater forms could buffer anadromous forms from further declines.

Risks due to interactions with hatchery coastal cutthroat trout are probably moderately low in this ESU. Nevertheless, the widespread releases of Alsea River Hatchery broodstock in Oregon coastal streams have stopped only relatively recently. Genetic samples indicate that hatchery coastal cutthroat trout from the Alsea River broodstock have influenced the genetic composition of several coastal cutthroat trout populations in the Coquille River drainage. Hybrids between coastal cutthroat trout and steelhead/rainbow trout were detected in genetic samples from the Coquille River Basin and a few other streams in this ESU. As discussed earlier, some degree of hybridization between *O. mykiss* and coastal cutthroat trout may occur naturally without the direct influence of hatchery-origin fish.

Listing Determination

NMFS concludes that the Oregon Coast coastal cutthroat trout ESU does not warrant listing at this time but considers it a candidate for future listing. The BRT scientists were evenly split as to whether this ESU faced risk of endangerment. NMFS remains concerned with habitat degradation in this region, and the overall scarcity of abundance information for major drainages limited NMFS' efforts to conduct a risk evaluation.

Hatchery records indicate that the Alsea River coastal cutthroat trout stock was widely released in streams throughout the Oregon coastal region. Recent reductions in releases of hatchery-origin cutthroat trout and coho salmon fry, coupled with a statewide catch-and-release recreational fishery policy for naturally spawned coastal cutthroat trout, may reduce risks associated with these factors. NMFS notes that reduced nearshore ocean habitat quality is likely a significant threat to cutthroat trout in this region, but quantifying those effects on cutthroat trout abundance is difficult. Finally, NMFS remains concerned about

incidental mortality of coastal cutthroat trout in this ESU due to fishing pressure on Pacific salmonids. Recent changes in ODFW's harvest regulations may mitigate this concern to some degree.

Recently implemented state conservation efforts have likely reduced the degree of risk facing this species. Furthermore, implementation of the NFP has likely reduced habitat risks on Federal lands within this ESU, which constitute about 35 percent of the land area. However, NMFS remains concerned about the overall lack of abundance and trend information for this ESU, as evidenced by its scientists' level of uncertainty regarding the status of this ESU. An additional concern for this ESU is increased fragmentation of populations due to the loss of anadromous fish, which can increase genetic and demographic risks. NMFS believes additional monitoring of this ESU is necessary before it is eliminated from ESA consideration. Therefore, NMFS concludes that this ESU warrants classification as a candidate species. NMFS will revisit the status of this ESU within the next 4 years to determine whether ESA protection is warranted.

(6) Southern Oregon/California Coasts ESU

Coastal cutthroat trout in this ESU appear widely distributed in many small populations. Two possible exceptions are populations in the Rogue and Smith River Basins where the abundance of coastal cutthroat trout may be comparatively high. Smolt abundance in Lobster Creek, a Rogue River tributary, was estimated to be over 800 fish in 1998. In addition, fishery biologists familiar with the Rogue River Basin feel that it supports many well-distributed coastal cutthroat trout populations. Historical estimates indicated that the sea-run cutthroat trout population size in the Smith River Basin was 8,500 fish. Expansion estimates of fish greater than 25 cm in the three major forks of the Smith River indicate that each fork supports at least 300 coastal cutthroat trout. In addition, Mill Creek, one of the most productive coastal cutthroat trout tributaries in the Smith River Basin, has had between 1,000 and 4,000 outmigrating smolts over each of the past 4 years. Again, lack of information on smolt-to-adult survival and trap efficiencies makes interpreting smolt abundance estimates in the Rogue and Smith River Basins difficult. Population sizes are thought to be relatively small in other streams throughout this region, partly because it is the southern limit of this subspecies.

NMFS believes that severe habitat degradation has occurred in this region primarily due to activities associated with agriculture, flood control, logging, road construction, and some local development, which have contributed to a reduction in habitat capacity relative to historical levels. In addition, seasonal dewatering of stream mouths occurs naturally in northern California, resulting in sporadic blockages of access to the sea for anadromous fish in some streams. Also, large water withdrawals in several of the larger coastal river basins (e.g., Rogue, Klamath/Trinity, and Eel Rivers) and several of the smaller coastal rivers have reduced the quantity and quality of the remaining riverine and estuarine environments in this ESU.

Biologists familiar with this region believe, and anecdotal evidence suggests, that major declines in coastal cutthroat trout populations have occurred since historical times and that some populations appear to have been relatively stable or increasing in size since that time. The data available to NMFS indicate increasing short-term trends in smolt abundance in Mill Creek and increasing short-term trends in adult abundance in the lower Klamath River tributaries and its estuary and in the Smith River Basin. Exceptions include recent declines in the incidence of coastal cutthroat trout in Redwood Creek.

Risks due to interactions with hatchery coastal cutthroat trout are probably low in this ESU. Other risks NMFS notes for coastal cutthroat trout in this region are possible deleterious interactions with naturally occurring or hatchery-derived coho salmon and steelhead in Oregon and incidental catch of coastal cutthroat trout in sport fisheries targeting steelhead and coho salmon. NMFS is encouraged by recent changes in harvest regulations in both Oregon and California aimed at reducing risks to natural trout from direct and indirect harvest mortality.

Listing Determination

NMFS concludes the Southern Oregon/California Coasts ESU does not warrant listing at this time. Although the majority of the BRT scientists concluded this ESU does not warrant listing, these scientists were uncertain regarding this conclusion. As with many other ESUs for coastal cutthroat trout, NMFS is hindered in its assessment by the scarcity of abundance information for this ESU. However, continuing threats to the quality of freshwater and estuarine habitat for cutthroat trout in this region are sources of concern.

NMFS believes that existing conservation efforts implemented by the States of Oregon and California have likely reduced threats to this species. For example, recent harvest regulations aimed at reducing risks to natural trout from direct and indirect harvest mortality have likely reduced risks to coastal cutthroat trout. NMFS also believes that biological risks associated with habitat modification and degradation on Federal lands have declined in recent years with the implementation of the NFP, coupled with the consultation requirements associated with the listing of coho salmon as a threatened species in this region in 1997. Although NMFS remains concerned about habitat conditions on non-federal lands in this ESU, the majority of habitat in this area (about 53 percent) is under Federal management.

Proposed Determination

Based on NMFS' assessment of available scientific and commercial information obtained during the coast wide status review of coastal cutthroat trout, the Services are issuing a proposed determination that Southwestern Washington/Columbia River cutthroat trout (*O. clarki clarki*) constitute a "species" under the ESA and should be listed as threatened. The listed ESU for Southwestern Washington/Columbia River cutthroat trout is defined as all naturally spawned population(s) of coastal cutthroat trout in the Columbia River and its tributaries downstream from the Klickitat River in Washington and Fifteenmile Creek in Oregon (inclusive) as well as those in the Willamette River and its tributaries downstream from Willamette Falls. The ESU also includes cutthroat trout in Washington coastal drainages between the Columbia River and Grays Harbor (inclusive). The natural population consists of all fish that are progeny of naturally spawning fish residing below long-term, natural barriers (i.e., waterfalls in existence for hundreds or thousands of years). The offspring of all fish taken from the natural population after the date of listing are also part of the listed ESU.

NMFS concludes that the current Umpqua River cutthroat trout ESU, previously listed as an endangered species in 1996 (61 FR 41541, August 9, 1996; 61 FR 48412, September 13, 1996), is part of the larger Oregon Coast coastal cutthroat trout ESU that extends from the mouth of the Columbia River south to Cape Blanco, Oregon. NMFS concludes that the best available scientific information indicates the Oregon Coast ESU does not warrant

listing at this time. Therefore, through this notification, the Services propose to revise the Umpqua River cutthroat trout ESU and include it in the larger Oregon Coast ESU. This proposed revision results in a proposed delisting of the Umpqua River cutthroat trout ESU.

Prohibitions and Protective Measures

Section 9 of the ESA prohibits certain activities that directly or indirectly affect endangered species. These prohibitions apply to all individuals, organizations, and agencies subject to U.S. jurisdiction. Section 9 prohibitions apply automatically to endangered species as described in the following discussion; this is not the case for threatened species.

Section 4(d) of the ESA directs the Secretaries to implement regulations "to provide for the conservation of [threatened] species," that may include extending any or all of the prohibitions of section 9 to threatened species. Section 9(a)(1)(g) also prohibits violations of protective regulations for threatened species implemented under section 4(d). Therefore, in the case of threatened species, the Services have discretion under section 4(d) to adopt protective regulations based in part on the contents of available conservation measures. NMFS has already adopted 4(d) rules that except a limited range of activities from section 9 take prohibitions. For example, the interim 4(d) rule for Southern Oregon/Northern California coho salmon (62 FR 38479, July 18, 1997) excepts habitat restoration activities conducted in accordance with approved plans and fisheries conducted in accordance with approved state management plans. In appropriate cases, 4(d) rules could contain a broader range of exceptions for activities such as forestry, agriculture, and road construction when such activities are conducted in accordance with approved state or tribal plans.

These examples show that NMFS may apply section 9 prohibitions narrowly if there are strong protections provided in a state or tribal plan. There may be other circumstances as well in which NMFS would use the flexibility of section 4(d). For example, in some cases there may be a healthy population of salmon or coastal cutthroat trout within an overall ESU that is listed. In such a case, it may not be necessary to apply the full range of prohibitions available in section 9. The Services intend to use the flexibility of the ESA to respond appropriately to the biological condition of the proposed ESU and the populations within it and to the strength of state and tribal plans in place to protect them. Therefore, after further analysis, NMFS and/or the FWS will issue protective regulations pursuant to section 4(d) for the Southwestern Washington/Columbia River coastal cutthroat trout ESU.

Section 7(a)(4) of the ESA requires that Federal agencies confer with us on any actions likely to jeopardize the continued existence of a species proposed for listing and on actions likely to result in the destruction or adverse modification of proposed critical habitat. Federal agencies should confer with NMFS on the proposed Southwestern Washington/Columbia River coastal cutthroat trout ESU. For listed species, section 7(a)(2) requires Federal agencies to ensure that the activities they authorize, fund, or conduct are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into consultation with the appropriate Service.

Examples of Federal actions likely to affect coastal cutthroat trout in the proposed ESU include authorized land management activities of the U.S. Forest Service and U.S. Bureau of Land Management, as well as operation of hydroelectric and storage projects of the Bureau of Reclamation and the COE. Such activities include timber sales and harvest, hydroelectric power generation, and flood control. Federal actions, including the COE section 404 permitting activities under the CWA, COE permitting activities under the River and Harbors Act, National Pollutant Discharge Elimination System permits issued by the EPA, highway projects authorized by the Federal Highway Administration, Federal Energy Regulatory Commission licenses for non-federal development and operation of hydropower, and Federal salmon hatcheries, may also require consultation. These actions will likely be subject to ESA section 7 consultation requirements that may result in conditions designed to achieve the intended purpose of the project and avoid or reduce impacts to coastal cutthroat trout and its habitat within the range of the proposed ESU.

Sections 10(a)(1)(A) and 10(a)(1)(B) of the ESA provide us with the authority to grant exceptions to the ESA's "taking" prohibitions (see regulations to be codified at 50 CFR 222.301 through 222.308 for NMFS, 64 FR 14051 through 14066, and 50 CFR 17.22 and 17.32 for FWS). Section 10(a)(1)(A) scientific research and enhancement permits may be issued to entities (Federal and non-Federal) conducting research that involves a directed take of listed species.

NMFS has issued section 10(a)(1)(A) research or enhancement permits for other listed species (e.g., Snake River chinook salmon and Sacramento River winter-run chinook salmon) for a number of activities, including trapping and tagging, electroshocking to determine population presence and abundance, removing fish from irrigation ditches, and collecting adult fish for artificial propagation programs. These and other research efforts could provide critical information regarding cutthroat trout distribution and population abundance.

We can issue section 10(a)(1)(B) incidental take permits to non-federal entities performing activities that may incidentally take listed species. The types of activities potentially requiring a section 10(a)(1)(B) incidental take permit include the operation and release of artificially propagated fish by state or privately operated and funded hatcheries, state or university research on listed species not receiving Federal authorization or funding, the implementation of state fishing regulations, and timber harvest activities on non-Federal lands.

Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the ESA include recognition, recovery actions, Federal agency consultation requirements, and prohibitions on taking. Recognition through listing promotes public awareness and conservation actions by Federal, state, and local agencies, private organizations, and individuals.

Several conservation efforts are underway that may help reverse the decline of coastal cutthroat trout and other salmonids. These include the NFP (on Federal lands within the range of the northern spotted owl), Oregon's OPSW, Washington's LCSCI, and California's WPRC and SB 271 programs. We are encouraged by these efforts and believe they constitute significant strides in the region's endeavor to develop a scientifically well grounded conservation plan for these stocks. Other efforts, such as the Willamette River Conservation Planning process, are at various stages of development, but show promise to ameliorate risks facing coastal cutthroat trout. We intend to support and work closely with these efforts—staff and resources permitting—in the belief that

they can play an important role in the recovery planning process.

Based on information presented in this proposed rule, general conservation measures that could be implemented to help conserve coastal cutthroat trout are listed here. This list is not exhaustive and does not constitute NMFS' interpretation of a recovery plan under section 4(f) of the ESA.

1. Measures could be taken to promote land management practices that protect and restore cutthroat trout habitat. Land management practices affecting cutthroat trout habitat include timber harvest, road building, agriculture, livestock grazing, gravel mining, and urban development.

2. Evaluation of existing harvest regulations could identify any changes necessary to protect cutthroat trout populations.

3. Artificial propagation programs could be required to incorporate practices that minimize impacts upon natural populations of cutthroat trout.

4. Efforts could be made to ensure that existing and proposed dam facilities are designed and operated in a manner that lessens adverse effects on cutthroat trout populations.

5. Water diversions could have adequate headgate and staff gauge structures installed to control and monitor water usage accurately. Water rights could be enforced to prevent irrigators from exceeding the amount of water to which they are legally entitled. As necessary, instream flow studies could be conducted, and existing water rights re-adjudicated as necessary to ensure adequate instream flows to support cutthroat trout.

6. Irrigation diversions affecting downstream migrating cutthroat trout could be screened according to appropriate anadromous fish screen criteria. A thorough review of the impact of irrigation diversions on cutthroat trout could be conducted.

We recognize that, to be successful, protective regulations and recovery programs for cutthroat trout will need to be developed in the context of conserving aquatic ecosystem health. We intend that Federal lands and Federal activities play a primary role in preserving listed populations and the ecosystems upon which they depend. However, throughout the range of the ESU proposed for listing, cutthroat trout habitat occurs and can be affected by activities on state, tribal, or private land. Agricultural, timber, and urban land management activities on non-federal land could and should be conducted in a manner that minimizes adverse effects to cutthroat trout habitat.

We encourage non-Federal landowners to assess the impacts of their actions on potentially threatened or endangered salmonids. In particular, we encourage the establishment of watershed partnerships to promote conservation in accordance with ecosystem principles. These partnerships will be successful only if state, tribal, local governments, landowner representatives, and Federal and non-Federal biologists all participate and share the goal of restoring cutthroat trout to the watersheds.

Critical Habitat Determination

Critical habitat is defined in section 3 of the ESA as: (i) The specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the ESA, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection; and (ii) specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. "Conservation" means the use of all methods and procedures needed to bring the species to the point at which listing under the Act is no longer necessary.

Section 4(a)(3)(A) of the ESA requires that, to the maximum extent prudent and determinable, the Services designate critical habitat concurrently with a determination that a species is endangered or threatened. Our regulations (50 CFR 424.12(a)) state that critical habitat is not determinable if information sufficient to perform required analysis of the impacts of designation is lacking or if the biological needs of the species are not sufficiently well known to permit identification of an area as critical habitat. Section 4(b)(2) of the ESA requires us to consider economic and other relevant impacts of designating a particular area as critical habitat on the basis of the best scientific data available. The Secretaries may exclude any area from critical habitat if they determine that the economic benefits of such exclusion outweigh the conservation benefits, unless to do such would result in the extinction of the species. When a "not determinable" finding is made, we must, within 2 years of the publication date of the original proposed rule, designate critical habitat, unless designation is found to be not prudent.

Prior to proposing critical habitat for this species, the Services must identify geographic areas occupied by the species, as well as areas outside the current species range, which contain important physical or biological features essential for the conservation and recovery of the species, and must consider the economic and other impacts of designating critical habitat. Given this species' complex life history and the high degree of scientific uncertainty associated with it, NMFS has not yet had time to complete analyses necessary for designating critical habitat. Further, due to statutory time limitations, NMFS has not yet consulted with affected Indian tribes regarding the designation of critical habitat in areas that may impact tribal trust resources, tribally-owned fee lands, or the exercise of tribal rights. Such consultation is required by the recently implemented Secretarial Order entitled "American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act."

Given these remaining unresolved scientific and tribal issues, the Services find that critical habitat is not now determinable for the proposed ESU. During the comment period for this listing proposal, the Services also seek additional agency and public input on critical habitat, along with information on the proposed listing. We will use this and other information in formulating a determination on critical habitat for the Southwestern Washington/Columbia River ESU. The Services will also engage in government-to-government consultations with affected Indian tribes as required by the Secretarial Order.

NMFS Policies on Endangered and Threatened Fish and Wildlife

On July 1, 1994, the Services published a series of policies regarding listings under the ESA, including a policy for peer review of scientific data (59 FR 34270) and a policy to identify, to the maximum extent possible, those activities that would or would not constitute a violation of section 9 of the ESA (59 FR 34272).

Role of Peer Review

The intent of the peer review policy is to ensure that listings are based on the best scientific and commercial data available. Prior to a final listing, NMFS will solicit the expert opinions of three qualified specialists, concurrent with the public comment period. Independent peer reviewers will be selected from the academic and scientific community, tribal and other

Native American groups, Federal and state agencies, and the private sector.

Identification of Those Activities That Would Constitute a Violation of Section 9 of the ESA

The intent of this policy is to increase public awareness of the effect of this listing on proposed and ongoing activities within the range of coastal cutthroat trout. NMFS or the FWS will publish a proposed 4(d) rule in the future applying section 9 prohibitions and exceptions. However, to provide guidance prior to publication of this proposed rule, the following is a list of actions NMFS believes will not result in a violation of section 9:

(1) Possession of cutthroat trout acquired lawfully by permit issued by the appropriate Service pursuant to section 10 of the ESA, or by the terms of an incidental take statement pursuant to section 7 of the ESA.

(2) Federally approved projects that involve activities such as silviculture, grazing, mining, road construction, dam construction and operation, discharge of fill material, stream channelization or diversion for which consultation has been completed, and when such activity is conducted in accordance with any terms and conditions given by NMFS or the FWS in an incidental take statement accompanied by a biological opinion.

Activities that NMFS believes could potentially harm the cutthroat trout and result in "take", include, but are not limited to:

(1) Unauthorized collecting or handling of the species. Permits to conduct these activities are available for purposes of scientific research or to enhance the propagation or survival of the species.

(2) Unauthorized destruction/alteration of the species' habitat such as removal of large woody debris or riparian shade canopy, dredging, discharge of fill material, draining, ditching, diverting, blocking, or altering stream channels or surface or ground water flow.

(3) Discharges or dumping of toxic chemicals or other pollutants (i.e., sewage, oil, and gasoline) into waters or riparian areas supporting the species.

(4) Violation of discharge permits.

(5) Interstate and foreign commerce (commerce across state lines and international boundaries) and import/export without prior obtainment of an endangered species permit.

This list is not exhaustive; rather, it is provided to give you some examples of activities that may be considered by NMFS as constituting a "take" of coastal cutthroat trout under the ESA and associated regulations. Questions regarding whether specific activities constitute a violation of section 9 and general inquiries regarding prohibitions and permits, should be directed to NMFS (see **ADDRESSES**).

Public Comments Solicited

To ensure that the final action resulting from this proposal will be as accurate and effective as possible, we are soliciting comments and suggestions from the public, other governmental agencies, the scientific community, industry, and any other interested parties. We will hold public hearings in the areas affected by this proposal; details regarding locations, dates, and times will be published in a forthcoming **Federal Register** notification. We recognize that there are serious limits to the quality of information available, and, therefore, NMFS has executed its best professional judgement in developing this proposal. We request additional information regarding coastal cutthroat trout, in particular: (1) Biological or other relevant data concerning any threat to cutthroat trout; (2) the range, distribution, and population size of coastal cutthroat trout in the proposed and candidate ESUs; (3) current or planned activities in the subject areas and their possible impact on the proposed and candidate species; (4) cutthroat trout escapement, particularly escapement data partitioned into natural and hatchery components; (5) the proportion of naturally reproducing fish that were reared as juveniles in a hatchery; (6) homing and straying of natural and hatchery fish; (7) the reproductive success of naturally reproducing hatchery fish (i.e., hatchery-produced fish that spawn in natural habitat) and their relationship to the proposed and candidate ESUs; and (8) efforts being made to protect native, naturally reproducing populations of coastal cutthroat trout in Washington, Oregon, and California.

We also request quantitative evaluations describing the quality and extent of freshwater and marine habitats for juvenile and adult cutthroat trout as well as information on areas that may qualify as critical habitat in Washington and Oregon. Areas that include the physical and biological features essential to the recovery of the species should be identified. We recognize there are areas within the proposed boundaries of these ESUs that historically constituted cutthroat trout habitat, but that may not be currently occupied by cutthroat trout. We request information about cutthroat trout in these currently unoccupied areas and whether these habitats should be considered essential to the recovery of the species or excluded from designation. Essential features include, but are not limited to (1) habitat for individual and population growth, and for normal behavior; (2) food, water, air, light, minerals, or other nutritional or physiological requirements; (3) cover or shelter; (4) sites for reproduction and rearing of offspring; and (5) habitats that are protected from disturbance or are representative of the historical geographical and ecological distributions of the species.

For areas potentially qualifying as critical habitat, we request information describing (1) the activities that affect the area or could be affected by the designation, and (2) the economic costs and benefits of additional requirements of management measures likely to result from the designation.

We will consider all public comments and additional information regarding the status and critical habitat of the cutthroat trout ESUs prior to issuing a final determination. The availability of new information may cause us to reassess the status of cutthroat trout ESUs in the final determination.

Public Hearings

Joint Commerce-Interior ESA implementing regulations require us to promptly hold at least one public hearing if any person so requests within 45 days of publication of a proposed regulation to list a species or to designate critical habitat (see 50 CFR 424.16(c)(3)). In a forthcoming **Federal Register** notification, we will announce the dates and locations of public hearings on this proposed rule to provide the opportunity for the public to give comments and to permit an exchange of information and opinion among interested parties. We encourage the public's involvement in such ESA matters.

References

A complete list of all references cited herein is available upon request (see **ADDRESSES**).

Classification

The 1982 amendments to the ESA, in section 4(b)(1)(A), restrict the information that may be considered when assessing species for listing. Based on this limitation of criteria for a listing decision and the opinion in *Pacific Legal Foundation* v. *Andrus*, 675 F.2d 825 (6th Cir. 1981), NMFS categorically excludes all ESA listing actions from

environmental assessment requirements of the National Environmental Policy Act (NEPA) under NOAA Administrative Order 216–6. FWS also determined that an environmental assessment need not be prepared in connection with regulations adopted pursuant to section 4 of the ESA and published a notice in the **Federal Register** on October 25, 1983 (48 FR 49244), outlining its reasons.

As noted in the Conference Report on the 1982 amendments to the ESA, economic impacts cannot be considered in determinations regarding the status of species. Therefore, the economic analysis requirements of the Regulatory Flexibility Act (RFA) are not applicable to the listing process. In addition, this proposed rule is exempt from review under E.O. 12866.

At this time we are not proposing protective regulations pursuant to ESA section 4(d). In the future, prior to finalizing its 4(d) regulations for the threatened ESU, we will comply with all relevant NEPA and RFA requirements.

This proposed rule does not contain a collection-of-information requirement for purposes of the Paperwork Reduction Act.

List of Subjects

50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and record keeping requirements, Transportation.

50 CFR Part 223

Endangered and threatened species, Exports, Imports, Marine mammals, Transportation.

50 CFR Part 224

Administrative practice and procedure, Endangered and threatened species, Exports, Imports, Reporting and record keeping requirements, Transportation.

50 CFR Part 226

Endangered and threatened species.

For the reasons set out in the preamble, 50 CFR parts 17, 223, 224, and 226 are proposed to be amended as follows:

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

2. Amend § 17.11(h) by adding the following in alphabetical order under "Fishes", to the List of Endangered and Threatened Wildlife:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*	*	*	*	
FISHES							
*	*	*	*	*	*	*	
Trout, coastal cutthroat.	Oncorhynchus clarki clarki.	U.S.A. (AK, CA, OR, WA) Canada.	Southwestern WA/Columbia R.—(USA—OR, WA)—naturally spawning populations (and their progeny) below natural barriers in Columbia R. and its tributaries downstream from Klickitat R. (WA) and Fifteenmile Cr. (OR), inclusive, including Willamette R. downstream from Willamette Falls, and in coastal drainages between Columbia R. and Grays Harbor (WA), inclusive.	T	.....	NA	NA
*	*	*	*	*	*	*	

3. Amend § 17.11(h) by removing the entry for "Trout, Umpqua River cutthroat" under "Fishes" from the List of Endangered and Threatened Wildlife.

PART 223—THREATENED MARINE AND ANADROMOUS SPECIES

4. The authority citation for part 223 continues to read as follows:

Authority: 16 U.S.C. 1531 *et seq.*; 16 U.S.C. 742a *et seq.*; 31 U.S.C. 9701.

5. In § 223.102, paragraph (a)(20) is added to read as follows:

§ 223.102 Enumeration of threatened marine and anadromous species.

* * * * *

(a) * * *

(20) Southwestern Washington/Columbia River coastal cutthroat trout (*Oncorhynchus clarki clarki*). Includes all naturally spawned populations of coastal cutthroat trout (and their progeny) residing below long-standing, naturally impassable barriers in the Columbia River and its tributaries downstream from the Klickitat River in Washington and Fifteenmile Creek in Oregon (inclusive), including the Willamette River and its tributaries downstream from Willamette Falls, as well as those populations in Washington coastal drainages from the Columbia River to Grays Harbor (inclusive).

* * * * *

PART 224—ENDANGERED MARINE AND ANADROMOUS SPECIES

6. The authority citation for part 224 continues to read as follows:

Authority: 16 U.S.C. 1531–1543 and 16 U.S.C. 1361 *et seq.*

§ 224.101 [Amended]

7. In § 224.101, in paragraph (a), remove the words "Umpqua River cutthroat trout (*Oncorhynchus clarki clarki*)".

PART 226—DESIGNATED CRITICAL HABITAT

8. The authority citation for part 226 continues to read as follows:

Authority: 16 U.S.C. 1533.

§ 226.206 [Removed]

9. Section 226.206 is removed.

§§ 226.207 through 226.209 [Redesignated as §§ 226.206 through 226.208]

10. Sections 226.207 through 226.209 are redesignated as §§ 226.206 through 226.208, respectively.

Table 4 to part 226 [Removed]

11. Table 4 to part 226 is removed.

Dated: March 29, 1999.

Rolland A. Schmitten,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

Dated: March 22, 1999.

Jamie Rappaport Clark,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 99–8195 Filed 4–2–99; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 600

[Docket No. 981228324–8324–01; I.D. 121697A]

RIN 0648–AJ70

Magnuson-Stevens Fishery Conservation and Management Act; Amendment of Foreign Fishing Regulations

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes to amend the foreign fishing regulations to provide for the issuance of certain transshipment permits under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), as amended by the Sustainable Fisheries Act (SFA). NMFS also proposes to make additional minor changes in the foreign fishing regulations to update permit application and issuance procedures applicable to all types of foreign fishing permits issued under the Magnuson-Stevens Act. These proposed actions are necessary to maintain the foreign fishing regulations in a current and complete manner.

DATES: Comments must be received on or before May 5, 1999.

ADDRESSES: Send comments to Gary C. Matlock, Office of Sustainable Fisheries, NMFS, 1315 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Robert A. Dickinson, 301–713–2276.

SUPPLEMENTARY INFORMATION: Regulations at 50 CFR part 600, subpart F, govern foreign fishing under the Magnuson-Stevens Act (16 U.S.C. 1801 *et seq.*). Among other things, the regulations establish procedures for permit application and issuance under section 204(b) of the Magnuson-Stevens Act. Under these regulations, foreign fishing vessels may be permitted to fish in the U.S. Exclusive Economic Zone (EEZ). Until the SFA (Pub. L. 104–297) established section 204(d) of the Magnuson-Stevens Act, all foreign fishing applications were submitted under section 204(b) of the Magnuson-Stevens Act.

Section 204(d) of the Magnuson-Stevens Act authorizes the Assistant Administrator for Fisheries (AA) to issue transshipment permits authorizing foreign vessels to engage in fishing consisting solely of transporting fish or fish products at sea from a point within the EEZ or, with the concurrence of a state, within the boundaries of that state, to a point outside the United States. Issuance of a permit to a foreign vessel to receive fish or fish products at sea within the boundaries of a state is subject to certain conditions and restrictions and contingent upon the concurrence of the involved state. Until section 204(d) was added to the Magnuson-Stevens Act, transshipments of this nature at points at sea within the boundaries of a state were prohibited.

For consistency of process with permits issued under section 204(b) of the Magnuson-Stevens Act, NMFS proposes to make minor changes in the regulations at 50 CFR part 600, subpart F, to accommodate applications submitted under section 204(d) of the Magnuson-Stevens Act and to provide for the issuance of permits under section 204(d).

NMFS proposes to amend § 600.501(d) to provide that application forms for permits issued under section 204(d) be available from NMFS, and submitted to the AA. NMFS proposes that the application fee submitted for a permit under section 204(d) of the Magnuson-Stevens Act be the same as for applications submitted under section 204(b) of the Magnuson-Stevens Act. Currently this fee amount is $354.00 per vessel. This fee was determined in accordance with the procedures for determining administrative costs of each special product or service contained in the NOAA Finance Handbook. However, in accordance with section 204(d)(7) of the Magnuson-Stevens Act, this fee will be waived for applications under section 204(d) of the Magnuson-Stevens Act if the applicant provides satisfactory documentation to the AA indicating that the foreign nation under which the applicant vessel is registered does not collect a fee from vessels of the United States engaged in similar activities in the waters of such foreign nation. NMFS proposes that the documentation presented (e.g., copy of foreign fishing regulations applicable to vessels of the United States) must clearly exempt vessels of the United States from such a fee. NMFS proposes to publish, as appropriate, a notice of receipt in the **Federal Register** to notify interested parties of the opportunity to review and/or comment on applications. NMFS suggests that applicants allow 90 days for processing applications submitted under section 204(b) and (d) of the Magnuson-Stevens Act.

Following consideration of all recommendations, comments and any other factors pertinent to an application, the AA may issue an appropriate permit to a foreign vessel authorizing transshipments under provisions of section 204(d) if the AA determines that to do so would be in accordance with section 204(d)(3) of the Magnuson-Stevens Act. It is proposed that activity code 10 be established at § 600.501(c) to denote transshipment activities under section 204(d) of the Magnuson-Stevens Act. It is proposed that § 600.501(e)(2) be amended to provide for issuance of permits for activity code 10 directly to applicants and to provide that permits for activity codes 1 through 9 will be provided to the official representative of the applicant foreign nation by the Department of State (DOS). It is proposed that in § 600.508, a new paragraph (g) regarding transshipment operations be added.

NMFS also proposes that additional minor changes be made in the foreign fishing regulations at 50 CFR part 600, subpart F, to make vessels operating under permits issued in accordance with section 204(d) of the Magnuson-Stevens Act subject to the same requirements as vessels operating under permits issued in accordance with section 204(b) of the Magnuson-Stevens Act.

NMFS also proposes to amend § 600.501(e)(2) to reflect the fact that permit holders no longer have to enter any data in "blank permit forms." All necessary information will appear on the permit provided by the DOS (in the case of activity codes 1 through 9) or the NMFS (in the case of activity code 10). In order to delete references to outdated

permit processes, NMFS also proposes to delete § 600.501(k)(2) through (k)(5).

NMFS also proposes to update a reference to section 201 of the Magnuson-Stevens Act at § 600.506(a) and an address at § 600.506(b).

Lastly, NMFS proposes to delete several references to the Fishing Vessel and Gear Damage Compensation Fund program due to the discontinuance of the program. The cessation of this program was announced in a notice published in the **Federal Register** at 61 FR 34798, July 3, 1996.

Under NOAA Administrative Order 205–11, 7.01, dated December 17, 1990, the Under Secretary for Oceans and Atmosphere has delegated to the Assistant Administrator for Fisheries, NOAA, the authority to sign material for publication in the **Federal Register**.

Classification

This proposed rule has been determined to be not significant for purposes of E.O. 12866.

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The Regulatory Flexibility Act defines "small business" by reference to the Small Business Act (SBA). The SBA definition of the term small business is implemented through regulations at 13 CFR part 121. Those regulations define small business as meaning "a business entity organized for profit, with a place of business located in the United States, and which operates primarily within the United States or which makes a significant contribution to the U.S. economy, through payment of taxes or use of American products, materials or labor." None of the entities affected by this proposed rule meet that definition. Further, section 204(d)(3)(D) of the Magnuson-Stevens Act provides that an application may not be approved until the Secretary determines that "no owner or operator of a vessel of the United States which has the capacity to perform the transportation for which the application is submitted has indicated * * * an interest in performing the transportation at fair and reasonable rates." Therefore, no U.S. firms will be impacted. As a result, an initial regulatory flexibility analysis was not prepared.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information, subject to the requirements of the PRA, unless that collection of information displays a currently valid Office of Management and Budget (OMB) control number.

This rule contains two collection-of-information requirements subject to the Paperwork Reduction Act (PRA), both of which have been approved by the OMB. The collections of information are as follows:

(1) *Approved under OMB control number 0648–0089*—Application form for foreign fishing permits, including those to be issued under section 204(d) of the Magnuson-Stevens Act; estimated at 45 minutes per response.

(2) *Approved under OMB control number 0648–0075*—Reporting by vessels operating under foreign fishing permits, including those issued under section 204(d) of the Magnuson-Stevens Act; estimated at 6 minutes per response.

List of Subjects in 50 CFR Part 600

Fisheries, Fishing, Foreign relations, Intergovernmental relations.

Dated: March 29, 1999.

Andrew A. Rosenberg,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR Chapter VI is proposed to be amended as follows:

PART 600—MAGNUSON-STEVENS ACT PROVISIONS

1. The authority citation for part 600 continues to read as follows:

Authority: 5 U.S.C. 561 and 16 U.S.C. 1801 *et seq.*

2. In § 600.501, paragraph (c) introductory text, and paragraphs (d)(1), (d)(4), (e) and (k) are revised, and paragraph (c)(10) is added to read as follows:

§ 600.501 Vessel permits.

* * * * *

(c) *Activity codes.* Permits to fish under this subpart may be issued by the Assistant Administrator for the activities described in this paragraph, but the permits may be modified by regulations of this subpart and by the conditions and restrictions attached to the permit (see paragraphs (e)(1)(v) and (l) of this section). The Assistant Administrator may issue a permit, as appropriate, for one or more of the activity codes listed. Only vessels of nations having a GIFA with the United States may be issued permits for activity codes 1 through 9. A GIFA is not required for a vessel to be issued a permit for activity code 10. The activity codes are described as follows:

* * * * *

(10) *Activity Code 10.* Transshipping at sea for the purpose of transporting fish or fish products from a point within the EEZ or, with the concurrence of a state, within the boundaries of that state, to a point outside the United States.

(d) *Application.* (1) Applications for FFV permits authorizing activity codes 1 through 9 must be submitted by an official representative of a foreign nation to the DOS. Applications for permits authorizing activity codes 1 through 9 are available from, and should be submitted to, DOS, OES/OMC, Washington, DC 20520. Applications for FFV permits authorizing activity code 10 may be submitted by any person to the Assistant Administrator. Applications for permits authorizing activity code 10 are available from NMFS, Attn: International Fisheries Division, 1315 East West Highway, Silver Spring, Maryland 20910. All applicants should allow 90 days for review and comment by the public, involved governmental agencies, and appropriate Councils and for processing before the anticipated date to begin fishing. The permit application fee must be paid at the time of application according to § 600.518.

* * * * *

(4) Each applicant may request to substitute one FFV for another of the same flag by submitting a new application form and a short explanation of the reason for the substitution to the appropriate address listed at paragraph (d)(1) of this section. Each substitution is considered a new application, and a new application fee must be paid. NMFS will promptly process an application for a vessel replacing a permitted FFV that is disabled or decommissioned, once the appropriate Council(s) and governmental agencies have been notified of the substituted application.

(e) *Issuance.* (1) Permits may be issued to an FFV by the Assistant Administrator after—

(i) The Assistant Administrator determines that the fishing described in the application will meet the requirements of the Magnuson-Stevens Act and approves the permit application.

(ii) The applicant has paid the fees and provided any assurances required by the Secretary in accordance with the provisions of § 600.518.

(iii) The applicant has appointed an agent.

(iv) The applicant has identified a designated representative.

(v) The applicant has accepted the general "conditions and restrictions" of receiving permits, as required by section 204(b)(7) of the Magnuson-Stevens Act, and any "additional restrictions" attached to the permit for the conservation and management of fishery resources or for the prevention of significant impairment of the national defense or security interests.

(2) The DOS will provide permits for activity codes 1 through 9 to the official representative of the applicant foreign nation. The Assistant Administrator will provide permits for activity code 10 directly to the applicant.

(3) An approved permit will contain—

(i) The name and IRCS of the FFV and its permit number. (ii) The permitted fisheries and/or activity codes.

(iii) The date of issuance and expiration date, if other than December 31.

(iv) All conditions and restrictions, and any additional restrictions and technical modifications appended to the permit.

(4) Permits are not issued for boats that are launched from larger vessels. Any enforcement action that results from the activities of a launched boat will be taken against the permitted vessel.

* * * * *

(k) *Change in application information.* The applicant must report, in writing, any change in the information supplied under paragraph (d) of this section to the Assistant Administrator within 15 calendar days after the date of the change. Failure to report a change in the ownership from that described in the current application within the specified time frame voids the permit, and all penalties involved will accrue to the previous owner.

* * * * *

3. In § 600.502, paragraph (a) is revised, and a new paragraph (h) is added, to read as follows:

§ 600.502 Vessel reports.

(a) The operator of each FFV must report the FFV's activities to the USCG and NMFS as specified in this section.

* * * * *

(h) *Alternative reporting procedures.* As an alternative to the use of the specific procedures provided, an applicant may submit proposed reporting procedures for a general type of fishery operation (i.e., transshipments under Activity Code 10) to the appropriate Regional Administrator and the USCG commander (see tables 1 and 2 to § 602.502 of this chapter). With the agreement of the USCG commander, the Regional Administrator may authorize the use of alternative reporting procedures.

4. In § 600.505, paragraphs (a)(8), (a)(9), and (b)(1) are revised to read as follows:

§ 600.505 Prohibitions.

(a) * * *

(8) Engage in any fishing activity within the EEZ without a U.S. observer aboard the FFV, unless the requirement has been waived by the Assistant Administrator or appropriate Regional Administrator;

(9) Retain or attempt to retain, directly or indirectly, any U.S. harvested fish, unless the FFV has a permit for Activity Codes 4, 6, or 10;

* * * * *

(b) * * *

(1) Within the boundaries of any state, unless:

(i) The fishing is authorized by the Governor of that state as permitted by section 306(c) of the Magnuson-Stevens Act to engage in a joint venture for processing and support with U.S. fishing vessels in the internal waters of that state; or

(ii) The fishing is authorized by, and conducted in accordance with, a valid permit issued under § 600.501, and the Governor of that state has indicated concurrence to allow fishing consisting solely of transporting fish or fish products from a point within the boundaries of that state to a point outside the United States; or

* * * * *

5. In § 600.506, the last sentence in paragraph (a) and the first sentence in paragraph (b) are revised to read as follows:

§ 600.506 Observers.

(a) * * * Except as provided for in section 201(h)(2) of the Magnuson-Stevens Act, no FFV may conduct fishing operations within the EEZ unless a U.S. observer is aboard.

(b) *Effort plan.* To ensure the availability of an observer as required by this section, the owners and operators of FFV's wanting to fish within the EEZ will submit to the appropriate Regional Administrator or Science and Research Director and also to the Chief, Financial Services Division, NMFS, 1315 East West Highway, Silver Spring, MD 20910 a schedule of fishing effort 30 days prior to the beginning of each quarter.* * *

* * * * *

6. In § 600.508, paragraph (g) is added to read as follows:

§ 600.508 Fishing operations.

* * * * *

(g) *Transshipping.* Each FFV with Activity Code 1, 2, 3, 4, 5, 6, 7, 8, or 10 may transship in accordance with this subpart and the vessel's permit.

7. In § 600.518, paragraph (c) is removed, paragraphs (d) and (e) are redesignated as paragraphs (c) and (d) respectively, and paragraphs (a), (b)(1) introductory text, (b)(2) heading, and (b)(2)(i) introductory text are revised to read as follows:

§ 600.518 Fee schedule for foreign fishing.

(a) *Permit application fees.* Each vessel permit application submitted under § 600.501 must be accompanied by a fee. The amount of the fee will be determined in accordance with the procedures for determining administrative costs of each special product or service contained in the NOAA Finance Handbook. The fee is specified with the application form. At the time the application is submitted, a check for the fees, drawn on a U.S. bank, payable to the order of "Department of Commerce, NOAA," must be sent to the Assistant Administrator. The permit fee payment must be accompanied by a list of the vessels for which the payment is made. In the case of applications for permits authorizing activity code 10, the permit application fee will be waived if the applicant provides satisfactory documentary proof to the Assistant Administrator that the foreign nation under which the vessel is registered does not collect a fee from a vessel of the United States engaged in similar activities in the waters of such foreign nation. The documentation presented (e.g., copy of foreign fishing regulations applicable to vessels of the United States) must clearly exempt vessels of the United States from such a fee.

(b) *Poundage fees.* (1) *Rates.* If a Nation chooses to accept an allocation, poundage fees must be paid at the rate specified in the following table.

* * * * *

(2) *Method of payment of poundage fees and observer fees.*

(i) If a Nation chooses to accept an allocation, a revolving letter of credit (L/C) must be established and maintained to cover the poundage fees for at least 25 percent of the previous year's total allocation at the rate in paragraph (b)(1) of this section, or as determined by the Assistant Administrator, plus the

observer fees required by paragraph (c) of this section. The L/C must—

* * * * *

[FR Doc. 99–8180 Filed 4–2–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[I.D. 031999E]

Tilefish Fishery; Intent to Prepare an Environmental Impact Statement

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notification of intent to prepare an environmental impact statement (EIS); request for scoping comments.

SUMMARY: NMFS announces its intention to prepare, in cooperation with the Mid-Atlantic Fishery Management Council (Council), an EIS to assess potential effects on the human environment of changes to the management regime for tilefish (*Lopholatilus chamaeleonticeps*) pursuant to the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) as amended. Management would be accomplished by developing and implementing a Tilefish Fishery Management Plan (FMP) that would include appropriate management measures.

In addition, the Council announces a public process for determining the scope of issues to be addressed and for identifying the significant issues related to developing management measures for tilefish. The intended effect of this notice is to alert the interested public of the commencement of a scoping process and to provide for public participation. This action is necessary to comply with Federal environmental documentation requirements.

DATES: Written comments will be accepted until April 30, 1999. The scoping meeting will be held at 7 p.m. on Tuesday, April 27, 1999.

ADDRESSES: Send scoping comments to Mr. Daniel T. Furlong, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115 Federal Building, 300 South New Street, Dover, DE 19904–6790. The scoping meeting will be held at the Atlantic City Sheraton, 6821 Black Horse Pike, Atlantic City West, NJ.

FOR FURTHER INFORMATION CONTACT: Daniel T. Furlong, 302–674–2331 (FAX 302–674–5399).

SUPPLEMENTARY INFORMATION:

Problems Discussed for this FMP

1. Overfishing Must Be Ended and the Stock Biomass Must Be Rebuilt

Results from the recently completed (February 1999) NMFS Northeast Fishery Science Center (NEFSC) stock assessment indicate that the tilefish stock (north of North Carolina) is at a low biomass level and is likely overexploited. Total biomass in 1997 was estimated to be 7.3 million lb (3.311 million kg), which is about 36 percent of the biomass that would produce maximum sustainable yield (MSY) (B_{MSY}). Biomass-based fishing mortality was estimated to be 0.55, which is about 2.8 times higher than F_{MSY} of 0.20. Total landings in 1997 were slightly under 4.0 million lb and roughly the estimated MSY. One projection indicates that the stock can rebuild to B_{MSY} in 10 years if fished at a biomass-based fishing mortality of 0.16 for the next 10 years. This rate of fishing mortality equates to annual landings of about 1.7 million lb (0.77 million kg). Current fishing mortality rates are unsustainable. There has been a shift in the exploitation pattern towards smaller fish.

2. Overcapitalization Should Be Avoided

The tilefish fishery takes place year-round. However, it is most intense from October to June when market values and catch rates are the highest. Tilefish vessels are usually of steel construction and range in length from 50 to 100 ft (15.24 to 30.48 m). Although the number of vessels targeting tilefish has decreased since the peak in the early 1980s, the approximate dozen vessels currently in the fishery have more than adequate capacity to harvest the MSY level. Reductions in fishing effort for most of the New England and Mid-Atlantic fisheries (i.e. groundfish, scallops, and summer flounder) could result in additional fishing effort on the tilefish resource, as displaced vessels could enter this fishery.

3. Need for Better Data

National Standard 2 of the Magnuson-Stevens Act states that "measures shall be based upon the best scientific information available." The 14th NEFSC Stock Assessment Workshop noted that the weighout interview coverage of the fishery was low and that other data, which would allow for detection of changes in abundance would be useful to corroborate trends observed in the abundance indices. This workshop also called for the collection of size samples from landings. These data are important to assess the impacts and effectiveness of management measures, as well as, monitor fishing mortality and changes in stock size to determine if additional management measures for the FMP may be necessary.

4. Identification and Description of Essential Fish Habitat

Pursuant to the 1996 requirements of the Sustainable Fisheries Act, which amended the Magnuson-Stevens Act, the Council is required to identify and describe essential habitat for tilefish in the western Atlantic Ocean north of North Carolina. Therefore, the Council solicits comments from the public on the identification of and threats to essential habitat for tilefish during the scoping process.

5. Possible Management Objectives and Proposed Management Measures

The current proposed management unit is all tilefish under U.S. jurisdiction in the Atlantic Ocean north of North Carolina. Tilefish south of the Virginia/North Carolina border are currently managed as part of the Snapper-Grouper Fishery Management Plan by the South Atlantic Fishery Management Council and NMFS.

The intended purpose and possible objectives of the FMP are to: (1) End overfishing and rebuild the resource to the MSY level; (2) prevent overcapitalization; (3) limit new entrants; and (4) collect data to develop, monitor, and assess biological, economic, and social impacts of management measures designed to prevent overfishing.

Possible proposed management measures include: (1) Minimum fish size, (2) minimum hook size, (3) closed seasons, (4) closed areas, (5) quotas, (6) moratorium on vessels, (7) dealer and vessel permits, (8) dealer and vessel reports, (9) operator permits, (10) gear restrictions, (11) gear limits, (12) trip limits, and (13) other measures to reduce effort.

It is likely that any of the measures that are actually implemented would be frameworked. A Monitoring Committee, made up of representatives of the Councils and NMFS, would annually review the condition of the fishery and adjust the measures (e.g., trip limits, quotas, etc.) to achieve the desired goals.

6. Permitting and Reporting

It is anticipated that permits would be required for vessels landing tilefish for

sale, dealers purchasing tilefish from permitted vessels, and operators of permitted commercial vessels. Vessels landing tilefish for sale would need to submit logbook reports and dealers purchasing this species from permitted commercial vessels would need to submit reports.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act (PRA), unless that collection of information displays a currently valid Office of Management and Budget control number.

Under the Paperwork Reduction Act, burden hour estimates were calculated by NMFS for Amendment 2 to the Summer Flounder Fishery Management Plan. Burden hours for tilefish should be minimal as the fishery is somewhat seasonal (mostly October to June) and is currently prosecuted by only about 12 vessels. Using the same approach as was taken in summer flounder, it is anticipated that the 12 vessels would make three trips per month for 9 months—thus, a total of 324 reports from the fishermen (12 X 3 X 9). At 0.08 hours per report response, there would be a total of 27 burden hours per year. At a maximum, the same number of burden hours would be required for the tilefish processors.

7. Timetable for EIS Preparation and Decision Making

The Council has adopted a tentative preparation, review, and approval schedule for this FMP. Under this schedule, the draft EIS is planned for completion in May 1999 so that a special Council meeting dedicated exclusively to this FMP can be convened. If an acceptable draft is completed, the Council would decide at that meeting whether to submit the draft EIS for public review. Oral comments to the Council on their decision could be made at that meeting. If the Council's decision is affirmative, public review of the draft EIS would occur during 45 days in June and July 1999. At its August 1999 meeting, the Council would decide on revisions to the management of tilefish. Again, oral comments on this decision could be made to the Council at this meeting. If the Council's decision is affirmative, the EIS would be made final and submitted with the FMP recommendations and other rulemaking documents to the Secretary of Commerce (Secretary) for review and approval. The Council reserves the right to modify or abandon this schedule if deemed necessary.

Under the Magnuson-Stevens Act, Secretarial review and approval of an FMP includes concurrent public comment periods on the FMP and proposed regulations. If approved by the Secretary under this schedule, the tilefish management measures could be effective early in 2000.

Dated: March 26, 1999.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–8194 Filed 4–2–99; 8:45 am]

BILLING CODE 3510–22–F

Notices

Federal Register
Vol. 64, No. 64
Monday, April 5, 1999

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Upper Blue Stewardship Project; White River National Forest, Summit County, Colorado

AGENCY: Forest Service, USDA.

ACTION: Notice of Intent to Prepare an Environmental Impact Statement in conjunction with planning the Upper Blue Stewardship Project (hereafter referred to as the Stewardship Project).

SUMMARY: The USDA Forest Service, White River National Forest, gives notice of the agency's intent to prepare an environmental impact statement (EIS) to disclose the environmental effects of timber harvest, prescribed fire, watershed rehabilitation, road construction/re-construction/closure/ obliteration, trail reconstruction, non-system trail obliteration, historic site interpretation, a 4 cfs water diversion from the Miner's Creek drainage to the North Barton Gulch, and a hut site location in conjunction with designing the Stewardship Project for the Dillon Ranger District of the White River National Forest. These proposed actions are being considered together because they represent either connected or cumulative actions as defined by the Council on Environmental Quality (40 CFR 1508.25). This notice describes the proposed actions, environmental issues considered, estimated dates for filing the environmental impact statement, information concerning public participation, and the names and addresses of the agency officials who can provide additional information.

Poject Area: The Stewardship Project is using an interdisciplinary approach to manage 14,000 acres between the towns of Frisco, CO to the north and Breckenridge, CO to the south, Highway 9 to the east, and the top of the Tenmile Range to the west. The area is located in T5S, R77W, Sec. 31. T6S, R78W, Sec. 1, 2, 3, 4, 9, 10, 11, 12, 13, 14, 15, 16, 21, 22, 23, 24, 25, 26, 27, 28, 33, 34, 35, and 36 on the Dillon Ranger District of the White River National forest, Summit County, CO. The elevation in the area is between 9,000–12,933 feet.

Background: The project area was heavily logged during the mining era (1860–1940). Many trees were removed &/or burned, particularly Douglas-fir and ponderosa pine due to their superior lumber qualities. The result is a dense, even-aged forest between 80–140 years old that is dominated by lodgepole pine. The forest lacks diversity of tree species, age classes, structure (mixed-size forests, young stands, old growth), and understory species. The lack of diversity affects both forest health (it is more susceptible to insects, disease and fire), and habitat for wildlife species.

Preliminary issues: Issues identified to date include: proximity of the proposal to private property, commercial harvest of trees in a recreation setting, quantity of system and non-system roads and trails, water quality, RARE II roadless area, riparian condition, impacts to heritage resources, existing and potential impacts to visual quality, potential spread of noxious weeds, air quality impacts from burning, potential hut site locations, recreation user conflicts, water depletions, providing a ditch for the Town of Breckenridge water diversion, and affects on threatened, endangered, sensitive and management indicator species.

Purpose & Need: This Stewardship Project aims to improve forest health, visual quality, wildlife habitat, and fire resilience through greater species and structural diversity; to promote responsible recreation use; and to evaluate a ditch permit application from the Town of Breckenridge. The Project uses a variety of techniques to improve the health of the forest and species diversity, while protecting and enhancing the heritage, recreation, visual, watershed and wildlife resources. The Forest Service hopes to develop a strong partnership with local government, private land owners and forest users to help implement the necessary treatments on the ground.

The EIS will tier to the Land and Resource Management Plan for the White River National Forest 2nd Printing Updated through 08/01/90.

Proposed Action: Three-quarters-mile of new road construction may be needed. No road construction is planned within the Rare II roadless boundary. A total of 1.5 miles of system road and 5.5 miles of non-system roads will be closed or obliterated. Non-system trails will be obliterated or added to the system, depending upon public input.

The Summit Huts master plan of 1989 approved a conceptual location of an overnight hut in the Gold Hill area. This analysis will look at site specific impacts of the Gold Hill location, and 3–4 alternative sites. All five of the possible hut sites are within RARE II (roadless area review and evaluation) identified areas, though three of the sites are in former timber sale areas. All of the five possible hut sites are within 1B management prescription which emphasizes downhill or cross country skiing opportunities.

The Town of Breckenridge proposes to divert up to 4 cfs of water from the Miners Creek drainage to the North Barton drainage, in order to draw more water from the Blue River while maintaining minimum stream flow. This will involve using 2,400 feet of an existing ditch built in the early 1900's, constructing approximately 1500 feet of new ditch, and running the water down an existing tributary of the Blue River.

Interpretive sites are planned along major trails. Riparian areas may be expanded by 50 acres through removal of encroaching conifers.

All vegetation management units will follow visuals mitigation, where possible, by modifying existing and created openings to be irregular in shape, mimicking natural openings (including utilities corridors). Edges will be feathered at varying densities, to reduce sharp transition between openings and forest. Slash treatment will emphasize the tops of the trees where fine fuels exist. These activity fuels exist. These activity fuels will be treated by lopping and scattering, piling and burning or broadcast burning. Activity fuels will be treated to be less than 10 tons per acre near private property and less than 20 tons per acre in lodgepole units. Higher fuel levels will be allowed in areas that are surrounded by lower fuels areas.

Noxious weed management will include an integrated approach including preventative measures such as

re-seeding and cleaning equipment to prevent spread, as well as treatment of existing populations through mechanical, cultural, biological, and chemical methods based on the species to be treated, extent of infestation, and site specific conditions.

Aspen Units—Increase aspen by 300 acres over a 1,600 acre area by removing conifer overstory to promote aspen understory &/or aspen sprouting. Look for opportunities to increase aspen near private property boundaries, and existing clearcuts and utilities corridors. Openings created will be no larger than 10 acres. Removal of the conifers can be done by commercial, or noncommercial sale of the logs, force account felling or girdling of the trees, burning, &/or Christmas tree sales. There are two methods to do this, aspen release and aspen regeneration.

Aspen release will remove the conifer overstory to allow aspen understory to dominate the site. A young aspen forest will remain. Conifer islands (where 10–15 trees are grouped together) will be left to enhance landscape mosaic and increase structural diversity. Around the unit boundary, up to a 30 meter strip will be cleared, to allow for aspen colonization.

Aspen regeneration will occur in areas where few live, and some dead aspens remain. Group selection cuts will be made in areas where aspen root still exist, so the aspen can recolonize the site.

Spruce/Fir Units—Increase spruce/fir forests by 1,000 acres over a 1,880 acre area by removing lodgepole pine overstory to promote spruce/fir understory. A young spruce/fir forest will remain. A patchy, mosaic effect will be created. Trees will be harvested commercially, collected for firewood, felled or girdled and left on site for nutrient cycling. Tin, 1,000 acres of spruce/fir—lodgepole pine mix through a combination of prescribed fire, force account, and commercial harvest.

Ponderosa Pine Units—Increase ponderosa pine by 150 acres over a 190 acre area, at or below 9,200 ft. in elevation. Some existing clearcuts will be planted with ponderosa pine. Approximately 80 acres of new habitat for ponderosa pine will be created using clearcutting &/or burning, and planting ponderosa pine in several areas. Remove lodgepole commercially, for public firewood, or by felling and burning.

Douglas-Fir Units—Increase Douglas-fir to be present in 250 acres over a 270 acre area. Thin the lodgepole and underplant Douglas-fir in areas where remanent Douglas-fir trees have been found. Lodgerpole will be removed by force account or commercially. If areas are found where Douglas-fir is already present, clear an area of 1 tree height around it to allow for natural regeneration of Douglas-fir.

Lodgepole Pine Units—Create more early seral stage (young stands) and mixed age classes by treating 1,740 acres over a 2,680 acre area. Regenerate approximately 25% of each unit. Regenerate by removing overstory conifers in up to 2 acre patches. The remaining units will be thinned, with variable tree spacing of 8–16 feet between each remaining tree. Trees will be removed by commercial harvest, collected for firewood, burned, felled or girdled and left on site for nutrient cycling.

Involving the Public: Pursuant to Part 36b Code of Federal Regulations (CFR) 219.10(g), the Forest Supervisor for the agency's intent to prepare an environmental impact statement for the Stewardship Project described above. The Forest Service is seeking information, comments, and assistance from individuals, organizations and federal, state, and local agencies who may be interested in or affected by the proposed action (36 CFR 219.6).

Public participation will be solicited by notifying in person and/or by mail known interested and affected publics. News releases will be used to give the public general noticed, and public scoping meeting will occur. Public participation activities will include (but are not limited to) requests for written comments, open houses, and field trips. The public is invited to help identify issues and define the range of alternatives to be considered in the environmental impact statement.

A reasonable range of alternatives will be evaluated and reasons will be given for eliminating some alternatives from detailed study. A "no-action alternative" is required, meaning that management will not change the present condition. Alternatives will provide different ways to address and respond to public issues, management concerns, and resource opportunities identified during the scoping process. Scoping comments and existing condition reports will be used to develop preliminary alternatives; however, additional public involvement and collaboration will be done for final alternative development.

DATES: An **issue identification (scoping) meeting is scheduled for April 20, 1999** from 4:00–7:00 PM. An **alternative development meetings will be held May 20, 1999** from 5:00–8:00 PM. Both meetings will be in the Buffalo Mountain Room at the Summit County Commons Building off of Highway 9 (37 CR 1005) in Frisco, CO 80443. **Comments concerning the scope of the analysis should be received in writing by May 3, 1999.** In June and July a field trip(s) can be scheduled to look at particular concerns or alternatives in the field (such as non-system trail closures). Please respond if you are interested in attending field trip(s).

ADDRESSES: Send written comments to: Upper Blue Stewardship Project, Dillon Ranger District P.O. Box 620, Silverthorne, CO 80498.

FOR FURTHER INFORMATION CONTACT: Kathleen Phelps, Gwenan Stephens, or Alissa Roeder D'Onofrio, at (970) 468–5400. For road and trail questions and concerns, contact Angela Glenn (970) 262–3446.

Release and Review of the EIS

The DEIS is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public comment in December 1999. At that time, the EPA will publish a notice of availability for the DEIS in the **Federal Register**. The comment period on the DEIS will be 45 days from the date the EPA publishes the notice of availability in the **Federal Register**.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of the DEIS must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions; *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the DEIS stage but are not raised until after completion of the Final Environmental Impact Statement (FEIS) may be waived or dismissed by the courts; *City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.*, v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45 day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the FEIS.

To assist the Forest Service in identifying and considering issues and concerns on the proposed actions, comments on the DEIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement.

Comments may also address the adequacy of the DEIS or the merits of the alternatives formulated and discussed in the statements. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

After the comment period ends on the DEIS, comments will be analyzed, considered, and responded to by the Forest Service in preparing the Final EIS. The FEIS is scheduled to be completed in February 2000. The responsible official will consider the comments, responses, environmental consequences discussed in the FEIS, and applicable laws, regulations, and policies in making decisions regarding these revisions. The responsible official will document the decisions and reasons for the decisions in a Record of Decision for the revised Plan. The decision will be subject to appeal in accordance with 36 CFR 217.

Responsible Official

Martha J. Ketelle, Forest Supervisor, White River National Forest, PO Box 948, Glenwood Springs, CO. 81602–0948 "As the Responsible Official, I will decide which, if any, of the proposed projects will be implemented. I will document the decision and reasons for the decision in the Record of Decision. That decision will be subject to Forest Service appeal regulations."

Dated: March 22, 1999.

Daniel Hermaechea,

Acting Forest Supervisor, White River National Forest.

[FR Doc. 99–7977 Filed 4–2–99; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1032]

Grant of Authority for Subzone Status Tosco Refining Compnay (Oil Refinery) Los Angeles, California, Area

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Foreign-Trade Zones Act provides for " . . . the establishment . . . of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," and authorizes the Foreign-Trade Zones Board to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Board's regulations (15 CFR Part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved;

Whereas, the Los Angeles Board of Harbor Commissioners, grantee of Foreign-Trade Zone 202, has made application to the Board for authority to establish special-purpose subzone status at the oil refinery complex of Tosco Refining Company, located in the Los Angeles, California, area (FTZ Docket 37–98, filed 7/8/96);

Whereas, notice inviting public comment was given in the **Federal Register** (63 FR 38368, 7/16/98); and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations would be satisfied, and that approval of the application would be in the public interest if approval is subject to the conditions listed below;

Now, Therefore, the Board hereby authorizes the establishment of a subzone (Subzone 202C) at the oil refinery complex of Tosco Refining Company, located in the Los Angeles, California, area, at the locations described in the application, subject to the FTZ Act and the Board's regulations, including § 400.28, and subject to the following conditions:

1. Foreign status (19 CFR §§ 146.41, 146.42) products consumed as fuel for the refinery shall be subject to the applicable duty rate.

2. Privileged foreign status (19 CFR § 146.41) shall be elected on all foreign merchandise admitted to the subzone, except that non-privileged foreign (NPF) status (19 CFR § 146.42) may be elected on refinery inputs covered under HTSUS Subheadings #2709.00.1000—# 2710.00.1050, #2710.00.2500, and #2710.00.4510 which are used in the production of:

—petrochemical feedstocks and refinery by-products (examiners report, Appendix C);
—products for export; and,
—products eligible for entry under HTSUS #9808.00.30 and 9808.00.40 (U.S. Government purchases).

3. The authority with regard to the NPF option is initially granted until September 30, 2000, subject to extension.

Signed at Washington, DC, this 19th day of March 1999.

Robert S. LaRussa,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Attest:

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 99–8220 Filed 4–2–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1033]

Expansion of Foreign-Trade Zone 26 Atlanta, Georgia, Area

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Georgia Foreign-Trade Zone, Inc., grantee of Foreign-Trade Zone 26, submitted an application to the Board for authority to expand FTZ 26 to include the Peachtree City Industrial Park (Site 2) in Peachtree City, Georgia, within the Atlanta Customs port of entry (FTZ Docket 22–98; filed 4/16/98);

Whereas, notice inviting public comment was given in the **Federal Register** (63 FR 23720, 4/30/98) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that the proposal is in the public interest;

Now, therefore, the Board hereby orders:

The application to expand FTZ 26 is approved, subject to the Act and the Board's regulations, including Section 400.28, and subject to the Board's standard 2,000-acre activation limit.

Signed at Washington, DC, this 19th day of March 1999.

Robert S. LaRussa,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Attest:

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 99–8221 Filed 4–2–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1031]

Grant of Authority for Subzone Status Diamond Shamrock Refining Company, L.P. (Oil Refinery), Three Rivers, Texas

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Foreign-Trade Zones Act provides for " . . . the establishment . . . of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," and authorizes the Foreign-Trade Zones Board to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Board's regulations (15 CFR Part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved;

Whereas, the Port of Corpus Christi Authority, grantee of Foreign-Trade Zone 122, has made application to the Board for authority to establish special-purpose subzone status at the oil refinery complex of Diamond Shamrock Refining Company, L.P., located in Three Rivers, Texas (FTZ Docket 35–98, filed 6/30/98);

Whereas, notice inviting public comment was given in the **Federal Register** (63 FR 37515, 7/13/98); and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations would be satisfied and that approval of the application would be in the public interest if approval is subject to the conditions listed below;

Now, Therefore, the Board hereby authorizes the establishment of a subzone (Subzone 122M) at the oil refinery complex of Diamond Shamrock Refining Company, L.P., located in Three Rivers, Texas, at the locations described in the application, subject to the FTZ Act and the Board's regulations, including § 400.28, and subject to the following conditions:

1. Foreign status (19 CFR §§ 146.41, 146.42) products consumed as fuel for the refinery shall be subject to the applicable duty rate.

2. Privileged foreign status (19 CFR § 146.41) shall be elected on all foreign merchandise admitted to the subzone, except that non-privileged foreign (NPF) status (19 CFR § 146.42) may be elected on refinery inputs covered under HTSUS Subheadings #2709.00.1000—#2710.00.1050, #2710.00.2500, and #2710.00.4510 which are used in the production of:

—petrochemical feedstocks and refinery by-products (examiners report, Appendix C);
—products for export; and,
—products eligible for entry under HTSUS #9808.00.30 and 9808.00.40 (U.S. Government purchases).

3. The authority with regard to the NPF option is initially granted until September 30, 2000, subject to extension.

Signed at Washington, DC, this 19th day of March 1999.

Robert S. LaRussa,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Attest:

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 99–8219 Filed 4–2–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 032499C]

Gulf of Mexico Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council will convene a public meeting of the Socioeconomic Panel (SEP).

DATES: A meeting of the SEP will be held beginning at 8:30 a.m. on Thursday, April 15, and will conclude by 4:00 p.m. on Friday April 16, 1999.

ADDRESSES: The meeting will be held at the Tampa Airport Hilton Hotel, 2225 Lois Avenue, Tampa, FL 33607; telephone: 813–877–6688.

FOR FURTHER INFORMATION CONTACT: Antonio B. Lamberte, Economist, Gulf of Mexico Fishery Management Council, 3018 U.S. Highway 301 North, Suite 1000, Tampa, FL 33619; telephone: 813–228–2815.

SUPPLEMENTARY INFORMATION:

The SEP will meet to review available social and economic information on the Gulf migratory group of king and Spanish mackerels and to determine the social and economic implications of the levels of acceptable biological catches recommended by the Council's Mackerel Stock Assessment Panel (MSAP). The SEP may recommend to the Council total allowable catch (TAC) levels for the 1999–2000 fishing year and certain management measures associated with achieving the TACs.

Although other issues not contained in this agenda may come before the SEP for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in the agenda listed in this notice.

A copy of the agenda can be obtained by contacting the Gulf Council (see **ADDRESSES**).

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Anne Alford at the Council (see **ADDRESSES**) by April 8, 1999.

Dated: March 25, 1999.

Gary C. Matlock,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–8193 Filed 4–2–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 032499D]

Mid-Atlantic Fishery Management Council (MAFMC); Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Mid-Atlantic Fishery Management Council and the New England Fishery Management Council will hold a Joint Dogfish Committee meeting.

DATES: The meeting will be held on Wednesday, April 21, 1999, from 10:00 a.m. until 4:00 p.m.

ADDRESSES: This meeting will be held at the E. Boston Holiday Inn (at Logan Airport), 225 McClellan Highway, E. Boston, MA, telephone: 617–569–5250.

Council address: Mid-Atlantic Fishery Management Council, 300 S. New Street, Dover, DE 19904, and New England Fishery Management Council, 5 Broadway, Saugus, MA 01906.

FOR FURTHER INFORMATION CONTACT: Daniel T. Furlong, Executive Director, Mid-Atlantic Fishery Management Council; telephone: 302–674–2331, ext.

19, or Paul Howard, Executive Director, New England Fishery Management Council; telephone: 781–231–0422.

SUPPLEMENTARY INFORMATION: Agenda items for this meeting are: Interim management measures for seasonal quota period for fishing year 1999–2000; measures to allow increases in yield while achieving female spawning stock rebuilding targets; limited entry alternatives; develop tasks for Dogfish Technical Committee including evaluations of biological reference points and data needs and analytical requirements for setting management measures for fishing year 2000–01.

Although other issues not contained in this agenda may come before the Committees for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Joanna Davis at the Council (see **ADDRESSES**) at least 5 days prior to the meeting date.

Dated: March 25, 1999.

Gary C. Matlock,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–8224 Filed 4–2–99; 8:45 am]

BILLING CODE 3510–22–F

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE.

Proposed Information Collection; Comment Request

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (hereinafter the "Corporation"), as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirement on respondents can be properly assessed. Currently, the Corporation is soliciting comments concerning its request for approval of five new information collection from clients, family members/caregivers, comparison group members, and agencies that are affiliated with the Senior Companion Program (SCP) under the sponsorship of Corporation grants. This information will be used by the Corporation to evaluate the nature and effectiveness of the programs.

Copies of the proposed information collection request may be obtained by contacting the office listed below in the **ADDRESSES** section of this notice.

The Corporation is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Corporation, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Propose ways to enhance the quality, utility and clarity of the information to be collected; and
- Propose ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section by June 4, 1999.

ADDRESSES: Send comments to the Corporation for National and Community Service Attn: Charles Helfer, Office of Evaluation, 1201 New York Avenue, N.W., 9th floor, Washington, D.C. 20525.

FOR FURTHER INFORMATION CONTACT: Charles Helfer, (202) 606–5000, ext. 248.

SUPPLEMENTARY INFORMATION:

Background

One of the missions of the Corporation is to provide "opportunities for low-income persons aged 60 or over to serve as 'senior companions' to persons with exceptional needs" (42 U.S.C. 5013). The Senior Companion taps the skills and experience of America's growing senior population and provides more older Americans with the chance to serve their country and help meet pressing social needs. The Corporation currently supports senior companions in over 190 projects throughout the United States.

The Corporation is dedicating a significant portion of its resources to providing support to frail older adults living in the community who have difficulty with daily living tasks. It is an agency priority to evaluate these efforts. This data collection will assess the impact of the Corporation's Senior Companion Programs on clients, family members/caregivers, and agencies served.

Current Action

The Corporation seeks approval of five survey forms for the evaluation of the Corporation's Senior Companion Programs that it supports through grants. It will allow for the assessment of the impact of the SCP on clients, family members/caregivers and agencies served. It will also help the Corporation to determine effective practices in the use of Senior Companions by agencies that are affiliated with the program.

Part I. SCP Client and Comparison Group Baseline Survey

This survey is designed to assess baseline characteristics of SCP clients, and comparison group members in order to determine the health and functional status of older adults at entry into the program, their extent of social support, psychological well-being, need for medical and health care services, and their expectations for future care.

Type of Review: New approval.

Agency: Corporation for National and Community Service.

Title: SCP Client Baseline Survey.

OMB Number: None.

Agency Number: None.

Affected Public: SCP clients and comparison group members (at baseline).

Total Respondents: Approximately 1,800.

Frequency: One time.

Average Time Per Response: 30 minutes.

Estimated Total Burden Hours: 900 hours.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintenance): None.

Part II. SCP Client and Comparison Group Follow-up Survey

This survey is designed to assess changes in physical and functional status, extent of social support, psychological well-being, need for health and medical care services, and satisfaction with SCP and SCP-like

services among SCP clients and comparison group subjects at 3-month and 6-month follow-up.

Type of Review: New approval.

Agency: Corporation for National and Community Service.

Title: SCP Client Follow-up Survey.

OMB Number: None.

Agency Number: None.

Affected Public: SCP clients and comparison group members (at 3- and 6-month follow-up).

Total Respondents: Approximately 1,350 at 3-month follow-up and approximately 1,013 at 6-month follow-up.

Frequency: Two times.

Average Time Per Response: 30 minutes.

Estimated Total Burden Hours: 675 hours at 3-month follow-up, and 507 hours at 6-month follow-up.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintenance): None.

Part III. SCP Family Member/Caregiver and Comparison Group Baseline Survey

This survey is designed to assess the baseline characteristics of family members/caregivers associated with SCP clients, and comparison group members, and to determine their attitude toward caregiving, perceptions of the unmet needs of their older relatives/family members, and their expectations of future care for SCP clients/comparison group subjects. Family members/caregivers also will be asked to answer health and functional status questions on behalf of SCP clients and comparison group members when clients/comparison group subjects are unable to speak on their own behalf.

Type of Review: New approval.

Agency: Corporation for National and Community Service.

Title: SCP Family Member/Caregiver Baseline Survey.

OMB Number: None.

Agency Number: None.

Affected Public: Family members/caregivers and comparison group members affiliated with the SCP (at baseline).

Total Respondents: Approximately 800.

Frequency: One time.

Average Time Per Response: 30 minutes.

Estimated Total Burden Hours: 400 hours.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintenance): None.

Part IV. SCP Family Member/Caregiver and Comparison Group Follow-up Survey

This survey is designed to assess the changes in the characteristics of family member/caregivers associated with SCP clients, and comparison group members at 3-month and 6-month follow-up, and to document changes in attitudes toward caregiving, perceived unmet neets of relatives/family members, change in family member/caregiver well-being, and satisfaction with SCP and SCP-like services received. Changes in health and functional status of SCP clients and comparison group members also will be assessed from family members/caregivers on behalf of SCP clients and comparison group members who respond on behalf of SCP clients/comparison group subjects.

Type of Review: New approval.

Agency: Corporation for National and Community Service.

Title: SCP Family Member/Caregiver Follow-up Survey.

OMB Number: None.

Agency Number: None.

Affected Public: Family members/caregivers and comparison group members affiliated with the SCP (at 3- and 6-month follow-up).

Total Respondents: Approximately 544 at 3-month follow-up and approximately 462 at 6-month follow-up.

Frequency: Two times.

Average Time Per Response: 30 minutes.

Estimated Total Burden Hours: 272 hours at 3-month follow-up, and 231 hours at 6-month follow-up.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintenance): None.

Part V. Agency Cross-Sectional Survey

This survey is designed to document the types of agencies that are affiliated with the SCP, examine the types of roles and activities performed by senior companions and received by agency clients, assess the costs and benefits of having senior companions associated with participating agencies, and to determine agency satisfaction with SCP services. Agency representatives also will be asked to assess the impact of the SCP on the communities that they serve, and to suggest ways in which the SCP could be improved over time.

Type of Review: New approval.

Agency: Corporation for National and Community Service.

Title: SCP Agency Survey.

OMB Number: None.

Agency Number: None.

Affected Public: Agency supervisors who oversee Senior Companions at their agencies.

Total Respondents: Approximately 160.

Frequency: One time.

Average Time Per Response: 30 minutes.

Estimated Total Burden Hours: 80 hours.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operation/maintenance): None.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: March 29, 1999.

Thomas L. Bryant,

Acting General Counsel.

[FR Doc. 99–8173 Filed 4–2–99; 8:45 am]

BILLING CODE 6050–28–V

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 99–10]

36(b)(1) Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, Department of Defense.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of P.L. 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSCA/COMPT/RM, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 99–10, with attached transmittal, policy justification and Sensitivity of Technology.

Dated: March 29, 1999.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–10–M

DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

23 MAR 1999
In reply refer to:
I-99/02509

Honorable J. Dennis Hastert
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 99-10, concerning the Department of the Army's proposed Letter(s) of Offer and Acceptance (LOA) to the Netherlands for defense articles and services estimated to cost $360 million. Soon after this letter is delivered to your office, we plan to notify the news media.

Sincerely,

A.R. KELTZ
ACTING DIRECTOR

Attachments

Same ltr to: House Committee on International Relations
Senate Committee on Appropriations
Senate Committee on Foreign Relations
House Committee on National Security
Senate Committee on Armed Services
House Committee on Appropriations

Transmittal No. 99-10

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

(i) **Prospective Purchaser:** Netherlands

(ii) **Total Estimated Value:**

Major Defense Equipment*	$325 million
Other	$ 35 million
TOTAL	$360 million

(iii) **Description of Articles or Services Offered:** Two hundred forty-two JAVELIN anti-tank missile systems (consisting of 242 JAVELIN command launch units, 3,190 JAVELIN missile rounds, and 60 lot acceptance missiles), simulators, support equipment, spare and repair parts, publications and technical data, personnel training and equipment, U.S. Government and contractor engineering and logistics personnel services, a Quality Assurance Team, and other related elements of logistics support.

(iv) **Military Department:** Army (VZX)

(v) **Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:** None

(vi) **Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:** See Annex attached.

(vii) **Date Report Delivered to Congress:** 23 MAR 1999

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Netherlands - JAVELIN Anti-tank Missile Systems

The Government of the Netherlands has requested a possible sale of 242 JAVELIN anti-tank missile systems (consisting of 242 JAVELIN command launch units, 3,190 JAVELIN missile rounds, and 60 lot acceptance missiles), simulators, support equipment, spare and repair parts, publications and technical data, personnel training and equipment, U.S. Government and contractor engineering and logistics personnel services, a Quality Assurance Team, and other related elements of logistics support. The estimated cost is $360 million.

This proposed sale will contribute to the foreign policy and national security of the United States by improving the military capabilities of Netherlands and enhancing weapon system standardization and interoperability of this important NATO ally.

The Netherlands will use these JAVELIN anti-tank missile systems to enhance their anti-tank ground forces and to increase interoperability with U.S. forces. The Netherlands will have no difficulty absorbing these systems into its armed forces.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

The prime contractor will be JAVELIN Joint Venture (Raytheon and Lockheed Martin), Orlando, Florida One or more proposed offset agreements may be related to this proposed sale.

Implementation of this proposed sale will require the assignment of a U.S. Government Quality Assurance Team to the Netherlands for two weeks to assist in the delivery and deployment of the missiles. Two contractor representatives will be required in-country for two years to perform maintenance services.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 99-10

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

Annex
Item No. vi

(vi) Sensitivity of Technology:

1. The JAVELIN anti-tank missile system provides a man-portable, medium anti-tank capability to infantry, scouts, and combat engineers. JAVELIN is comprised of two major tactical components; a reusable Command Launch Unit (CLU) and a missile sealed in a disposable launch tube assembly. The CLU incorporates an integrated day/night sight and provides target engagement capability in adverse weather and countermeasure environments. The CLU may also be used in the stand-alone mode for battlefield surveillance and target detection. JAVELIN's key technical feature is the use of fire-and-forget technology which allows the gunner to fire and immediately take cover. Additional special features are the top attack and/or direct fire modes (for targets under cover), integrated day/night sight, advanced tandem warhead, imaging infrared seeker, target lock-on before launch, and soft launch from enclosures or covered fighting positions. The JAVELIN weapon system is intended to replace the DRAGON. At this time, there are no hardware differences in the missile rounds for the U.S. Army and export customers. The difference between U.S. Forces and export customers is in the missile software that is loaded into the Command Launch Unit and is downloaded to the missile prior to launch. If the software was compromised it could result in the sensitive technology being lost and reveal the performance capabilities of the JAVELIN Missile System. Reverse engineering of the software would require a substantial effort.

2. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures or equivalent systems which might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

3. A determination has been made that the Netherlands can provide substantially the same degree of protection for the sensitive technology being released as the U.S. Government. This sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

[FR Doc. 99–8228 Filed 4–2–99; 8:45 am]
BILLING CODE 5001–10–C

DEPARTMENT OF DEFENSE

Department of the Army

Advisory Committee Meeting Notice

AGENCY: U.S. Army Training and Doctrine Command (TRADOC).

ACTION: Notice of Meeting.

SUMMARY: In accordance with Section 10 (a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following meeting:

Name of Committee: Distance Learning/Training Technology Subcommittee of the Army Education Advisory Committee.

Date: 20 April 1999.

Place: Fort Monroe, Virginia.

Time: 0830–1630.

Proposed Agenda: Review status of Army Distance Learning and Classroom XXI and prepare briefing of Subcommittee recommendations.

Purpose of the Meeting: The members will advise the Assistant Deputy Chief of Staff (ADCST), HQ Training and Doctrine Command (TRADOC), on matters pertaining to education and training technologies to be used for Army Distance Learning and resident instruction. Recommendations prepared during this briefing will be presented to Army leadership at a date to be determined.

FOR FURTHER INFORMATION CONTACT: All communications regarding this subcommittee should be addressed to Mr. Richard Karpinski, at Commander, Headquarters TRADOC, ATTN: ATTG–CF (Mr. Karpinski), Fort Monroe, VA 23651–5000; telephone number (757) 728–5531.

SUPPLEMENTARY INFORMATION: Meeting of the advisory committee is open to the public. Because of restricted meeting space, attendance will be limited to those persons who have notified the Advisory Committee Management Office in writing at least five days prior to the meeting of their intention to attend. Contact Mr. Karpinski (757) 728–5531 for meeting agenda and specific locations.

Any member of the public may file a written statement with the committee before, during, or after the meeting. To the extent that time permits, the committee chairman may allow public presentations or oral statements at the meeting.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 99–8253 Filed 4–2–99; 8:45 am]

BILLING CODE 3710–08–P

DEPARTMENT OF DEFENSE

Department of the Army

Board of Visitors, United States Military Academy

AGENCY: United States Military Academy, West Point, New York, DoD.

ACTION: Notice of Open Meeting.

SUMMARY: In accordance with Section 10 (a)(2) of the Federal Advisory Committee Act (Pub.L. 92–463), announcement is made of the following meeting:

Name of Committee: Board of Visitors, United States Military Academy.

Date of Meeting: 3 May 1999.

Place of Meeting: Superintendent's Conference Room, Taylor Hall, United States Military Academy, West Point, New York.

Start Time of Meeting: Approximately 9:00 a.m.

Proposed Agenda: Review of the Academic, Military and Physical Programs at USMA. All proceedings are open.

FOR FURTHER INFORMATION CONTACT: For further information, contact Lieutenant Colonel Joseph A. Dubyel, United States Military Academy, West Point, NY 10996–5000, (914) 938–4200.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 99–8232 Filed 4–2–99; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Availability of U.S. Patents for Non-Exclusive, Exclusive, or Partially-Exclusive Licensing

AGENCY: U.S. Army Research Laboratory, Adelphi, Maryland.

ACTION: Notice.

SUMMARY: In accordance with 37 CFR 404.6, announcement is made of the availability of the following U.S. patents for non-exclusive, partially exclusive or exclusive licensing. All of the listed patents have been assigned to the United States of America as represented by the Secretary of the Army, Washington, D.C.

These inventions cover a group of ferroelectric devices, materials and processes and other technical arts.

Under the authority of Section 11(a)(2) of the Federal Technology Transfer Act of 1986 (Public Law 99–502) and Section 207 of Title 35, United States Code, the Department of the Army as represented by the U.S. Army Research Laboratory wish to license the inventions listed below in a non-exclusive, exclusive or partially exclusive manner to any party interested in manufacturing, using, and/or selling devices or processes covered by these inventions.

Title: Microwave Ferroelectric Phase Shifters and Methods for Fabricating the Same.

Inventors: Richard W. Babbitt, Thomas E. Koscica and William C. Drach.

Patent Number: 5,334,958.

Issued Date: August 2, 1994.

Title: Temperature Calibration System For A Ferroelectric Phase Shifting Array Antenna.

Inventors: Dale M. Didomenico, Thomas E. Koscica and William C. Drach.

Patent Number: 5,680,141.

Issued: October 21, 1997.

Title: Ceramic Ferroelectric Composite Material—BSTO–MGO.

Inventors: Louise Sengupta, Eric Ngo, Steven Stowell, Michelina O'Day and Robert Lancto.

Patent Number: 5,427,988.

Issued: June 17, 1995.

Title: Ferroelectric Thin Film Composites Made By Metallo-Organic Decomposition.

Inventors: Somnath Sengupta, Steven Stowell, Louise Sengupta, Pooran C. Joshi, Sasangan Ramanathan and Seshu B. Desu.

Patent Number: Patent Application ARL Docket No.: ARL 97–01.

Issued:

Title: Ceramic Ferrite Ferroelectric Composite Material.

Inventors: Louise Sengupta and Somnath Sengupta.

Patent Number: Patent Application ARL Docket No.: ARL 97–12.

Issued:

Title: Ceramic Ferroelectric Composite Material With Enhanced Electric Properties, BSTO/MG Based Compound—Rare Earth Oxide.

Inventors: Luna H. Chiu, Louise Sengupta, Steven Stowell, Somnath Sengupta and Jennifer Synowczynski.

Patent Number: Patent Application ARL Docket No.: ARL 98–47.

Issued:

FOR FURTHER INFORMATION CONTACT: Michael Rausa, Technology Transfer Office, AMSRL–CS–TT, U.S. Army Research Laboratory, Aberdeen Proving Ground, MD 21005–5055, tel: (410) 278–5028; fax: (410) 278–5820.

SUPPLEMENTARY INFORMATION: None.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 99–8231 Filed 4–2–99; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Defense Logistics Agency

Privacy Act of 1974: Computer Matching Program

AGENCY: Defense Manpower Data Center, Defense Logistics Agency, DoD.
ACTION: Notice of a computer matching program.

SUMMARY: Subsection (e)(12) of the Privacy Act of 1974, as amended (5 U.S.C. 552a), requires agencies to publish advance notice of any proposed or revised computer matching program by the matching agency for public comment. The Department of Defense (DoD), as the matching agency under the Privacy Act, is hereby giving notice to the record subjects of a computer matching program between the Department of Health and Human Services (HHS) and DoD that their records are being matched by computer.

DATES: This proposed action will become effective May 5, 1999, and the matching may commence unless changes to the program are required due to public comment or by Congressional or by the Office of Management and Budget objections. Any public comments must be received before the effective date.

ADDRESSES: Any interested party may submit written comments to the Director, Defense Privacy Office, 1941 Jefferson Davis Highway, Suite 920, Arlington, VA 22202–4502.

FOR FURTHER INFORMATION CONTACT: Mr. Vahan Moushegian, Jr. at (703) 607–2943.

SUPPLEMENTARY INFORMATION: Pursuant to subsection (o) of the Privacy Act of 1974, as amended, 5 U.S.C. 552a, the DoD and the HHS have concluded an agreement to conduct a computer matching. The purpose of this Matching Program is to fulfill one of the objectives of Executive Order 12953. In order to establish the Executive Branch of the Federal Government as a model employer in promoting and facilitating the establishment and enforcement of child support owed by its civilian and Uniformed Services' work force, periodic matches will be conducted to help in identifying current and retired (non-Postal) Federal civilian employees and active and retired Uniformed Services personnel (including reservist) who may owe delinquent child support.

A copy of the computer matching agreement between the HHS and the DoD is available upon request to the public. Requests should be submitted to the address above or to Ms. Ella Lawson, Parental Information Systems Specialist, Division of Program Operations, Office of Child Support Enforcement, 370 L'Enfant Promenade, SW, 4th Floor East, Washington, DC 20447.

Set forth below is a notice of the establishment of a computer matching program required by paragraph 6.c. of the Office of Management and Budget Guidelines on computer matching published on June 19, 1989, at 54 FR 25818.

The matching agreement, as required by 5 U.S.C. 552a(r) of the Privacy Act, and an advance copy of this notice was submitted on March 22, 1999, to the House Committee on Government Reform and Oversight, the Senate Committee on Governmental Affairs, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget, pursuant to paragraph 4d of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records about Individuals,' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: March 29, 1999.

Patricia L. Toppings,
Alternate OSD Federal Register Liaison Officer, Department of Defense.

COMPUTER MATCHING PROGRAM BETWEEN THE ADMINISTRATION FOR CHILDREN AND FAMILIES, DEPARTMENT OF HEALTH AND HUMAN SERVICES AND THE DEPARTMENT OF DEFENSE

A. *Participating Agencies:* Participants in this computer matching program are the Office of Child Support Enforcement (OCSE), Administration for Children and Families (ACF) of the Department of Health and Human Services (HHS) and the Defense Manpower Data Center (DMDC) of the Department of Defense (DoD). The HHS is the source agency, i.e., the agency disclosing the records for the purpose of the match. The DMDC is the specific recipient agency or matching agency, i.e., the agency that actually performs the computer matching.

B. *Purpose of the Match:* The purpose of this Matching Program is to fulfill one of the objectives of Executive Order 12953. In order to establish the Executive Branch of the Federal Government as a model employer in promoting and facilitating the establishment and enforcement of child support owed by its civilian and Uniformed Services' work force, periodic matches will be conducted to help in identifying current and retired (non-Postal) Federal civilian employees and active and retired Uniformed Services personnel (including reservists) who may owe delinquent child support. The list of hits will be forwarded to appropriate State Child Support Enforcement (CSE) agencies to determine, in each instance, whether wage withholding or other enforcement actions should be commenced. Neither DoD nor HHS intend to take any direct adverse financial, personnel, or disciplinary action as a result of such hits.

C. *Authority for Conducting the Match:* Legal authority for conducting matches for the general purpose of locating parents who are not paying child support, so that State CSE agencies can take action to secure such child support payments, is contained in section 453 of the Social Security Act, 42 U.S.C. 653. Specific authority directing Federal agencies to conduct this crossmatch is contained in section 304 of Executive Order 12953 February 27, 1995 (60 FR 11013, February 28, 1995).

D. *Records to be Matched:* The systems of records maintained by the respective agencies under the Privacy Act, from which records will be disclosed for the proposed computer match are as follows:

The Department of Health and Human Services will use records from a system identified as 09–09–0074, entitled 'The Federal Parent Locator and Federal Tax Refund Offset System (FPLS), DHHS/OCSE', last published on October 2, 1997, at 62 FR 51663.

DMDC will use records from a system identified as S322.10 DMDC, entitled 'Defense Manpower Data Center Data Base', last published on September 14, 1998 at 63 FR 49095.

E. *Description of Computer Matching Program:* On a periodic basis, but no more frequently than monthly, ACF will transmit to DoD the Master File of delinquent obligors submitted by State CSE agencies for Federal offset purposes. This file will be matched with DoD files, consisting of extracts of personnel records or current and retired (non-Postal) civilian employees and active and retired members of the Uniformed Services (including reservists).

Upon receipt of the OCSE information, ACF will submit to DMDC the following information: Noncustodial parent's (NCP's) Social Security Number (SSN), NCP's last name, other ACF or OCSE data as required for identification purposes. DMDC will match the data provided by ACF against its database and provide OCSE with the following information on individuals where hits (i.e., a match between the compared

data elements) occur: NCP name, NCP's SSN, NCP's date of birth, NCP's home address (if available), employer's name, employer's address (if available), type of employment (if available) and annual salary. If the disclosure of any DMDC information violates national policy or security interests of the United States or the confidentiality of Census data, such information shall not be transmitted and DMDC shall notify OCSE immediately.

F. *Inclusive Dates of the Matching Program:* This computer matching program is subject to review by the Office of Management and Budget and Congress. If the mandatory 30 day period for public comment has expired and if no objections are raised by either Congress or the Office of Management and Budget within 40 days of being notified of the proposed match, the computer matching program becomes effective and the respective agencies may begin the exchange of data at a mutually agreeable time on a monthly basis. By agreement between the Department of Health and Human Services and DoD, the matching program will be in effect and continue for 18 months with an option to extend for 12 additional months unless one of the parties to the agreement advises the other by written request to terminate or modify the agreement.

G. *Address for Receipt of Public Comments or Inquiries:* Director, Defense Privacy Office, 1941 Jefferson Davis Highway, Suite 920, Arlington, VA 22202–4502. Telephone (703) 607–2943.

[FR Doc. 99–8229 Filed 4–2–99; 8:45 am]

BILLING CODE 5000–04–F

DEPARTMENT OF DEFENSE

Uniformed Services University of the Health Sciences

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Uniformed Services University of the Health Sciences.

TIME AND DATE: 8:30 a.m. to 4:00 p.m., May 14, 1999.

STATUS: Open—under "Government in the Sunshine Act" (5 U.S.C. 552b(e)(3)).

MATTERS TO BE CONSIDERED:

May 14, 1999

PLACE: Uniformed Services University of the Health Sciences, Board of Regents Conference Room (D3001), 4301 Jones Bridge Road, Bethesda, MD 20814–4799.

8:30 a.m. Meeting—Board of Regents

(1) Approval of Minutes—February 9, 1999
(2) Faculty Matters
(3) Departmental Reports
(4) Financial Report
(5) Report—President, USUHS
(6) Report—Dean, School of Medicine
(7) Report—Dean, Graduate School of Nursing
(8) Comments—Chairman, Board of Regents
(9) New Business

CONTACT PERSON FOR MORE INFORMATION: Mr. Bobby D. Anderson, Executive Secretary of the Board of Regents, (301) 295–3116.

Dated: March 31, 1999.

Linda Bynum,

OSD Federal Register Liaison Officer, Department of Defense.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 99–8344 Filed 3–31–99; 4:44 pm]

BILLING CODE 5000–01–M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Acting Leader, Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before June 4, 1999.

ADDRESSES: Written comments and requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 400 Maryland Avenue, SW, Room 5624, Regional Office Building 3, Washington, DC 20202–4651, or should be electronically mailed to the internet address Pat__Sherrill@ed.gov, or should be faxed to 202–708–9346.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Leader, Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above. The Department of Education is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: March 30, 1999.

William E. Burrow,

Acting Leader, Information Management Group, Office of the Chief Information Officer.

Office of the Under Secretary

Type of Review: New.

Title: "What Works" Study for Adult ESL Literacy Students.

Frequency: On occasion.

Affected Public: Individuals or households.

Reporting and Recordkeeping Hour Burden:

Responses: 640.

Burden Hours: 1613.

Abstract: This study will examine the outcomes of instruction to adult ESL literacy students by comparing instructional activities that focus on literacy development with activities that focus on English acquisition. Instructional activities will be coded through a structured classroom observation guide and through information provided by teachers. Adult ESL literacy students will be assessed at

intake, after three months of instruction and nine months after enrollment using standardized tests of speaking, reading and writing and through a structured interview of literacy practices. Teachers, policymakers and teacher trainers will use the information from the study to develop more effective instruction.

[FR Doc. 99–8227 Filed 4–2–99; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Advisory Committee on Student Financial Assistance; Meeting

AGENCY: Advisory Committee on Student Financial Assistance, Education.

ACTION: Notice of upcoming meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of the forthcoming meeting of the Advisory Committee on Student Financial Assistance. This notice also describes the functions of the Committee. Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public.

DATES AND TIMES: Tuesday, April 27, 1999, beginning at 8:30 a.m. and ending at approximately 5 p.m.; and Wednesday, April 28, 1999, beginning at 8:30 a.m. and ending at approximately 2 p.m.

ADDRESSES: The University of Mississippi, Triplett Alumni Center, the Butler Auditorium, Alumni Drive, in Oxford, Mississippi 38677.

FOR FURTHER INFORMATION CONTACT: Dr. Brian K. Fitzgerald, Staff Director, Advisory Committee on Student Financial Assistance, Portals Building, 1280 Maryland Avenue, SW., Suite 601, Washington, DC 20202–7582 (202) 708–7439.

SUPPLEMENTARY INFORMATION: The Advisory Committee on Student Financial Assistance is established under Section 491 of the Higher Education Act of 1965 as amended by Public Law 100–50 (20 U.S.C. 1098). The Advisory Committee serves as an independent source of advice and counsel to the Congress and the Secretary of Education on student financial aid policy. Since its inception, the Committee has been charged with providing technical expertise with regard to systems of need analysis and application forms, making recommendations that result in the maintenance of access to postsecondary education for low- and middle-income students; conducting a study of institutional lending in the Stafford Student Loan Program; assisting with activities related to the 1992 reauthorization of the Higher Education Act of 1965; conducting a third-year evaluation of the Ford Federal Direct Loan Program (FDLP) and the Federal Family Education Loan Program (FFELP) under the Omnibus Budget Reconciliation Act (OBRA) of 1993; and assisting Congress with the 1998 reauthorization of the Higher Education Act.

The congressional mandate requires the Advisory Committee to conduct objective, nonpartisan, and independent analyses on important aspects of the student assistance programs under Title IV of the Higher Education Act. The Committee traditionally approaches its work from a set of fundamental goals: promoting program integrity, eliminating or avoiding program complexity, integrating delivery across the Title IV programs, and minimizing burden on students and institutions.

Reauthorizaton of the Higher Education Act has provided the Advisory Committee with a significantly expanded agenda in six major areas, such as, Performance-based Organization (PBO); Modernization; Technology; Simplification of Law and Regulation; Distance Education; and Early Information and Needs Assessment. In each of these areas, Congress has asked the Committee to: monitor progress toward implementing the Amendments of 1998; conduct independent, objective assessments; and make recommendations for improvement to the Congress and the Secretary. Each of these responsibilities flows logically from and effectively implements one or more of the Committee's original statutory functions and purposes.

The proposed agenda includes: (a) discussion sessions on implementing the provisions of the Higher Education Amendments of 1998 and their impact of all Title IV programs in the 21st century, in particular, college cost and student aid, need-based aid vs. merit-based aid; and (b) the impact of distance education on access and new initiatives in early intervention. In addition, the Committee will discuss its plans for the remainder of fiscal year 1999 and address other Committee business. Space is limited and you are encouraged to register early if you plan to attend. You may register through Internet at ADV__COMSFA@ED.gov or Tracy__Deanna__Jones@ED.gov. Please include your name, title, affiliation, complete address (including Internet and e-mail—if available), and telephone and fax numbers. If you are unable to register through Internet, you may mail or fax your registration information to the Advisory Committee staff office at (202) 401–3467. Also, you may contact the Advisory Committee staff at (202) 708–7439. The registration deadline is Friday, April 16, 1999.

The Advisory Committee will meet in Washington, DC on April 27, 1999, from 8:30 a.m. until approximately 5 p.m., and on April 28, from 8:30 a.m. until approximately 2 p.m.

Records are kept of all Committee proceedings, and are available for public inspection at the Office of the Advisory Committee on Student Financial Assistance, Portals Building, 1280 Maryland Avenue, SW., Suite 601, Washington, DC from the hours of 9 a.m. to 5:30 p.m., weekdays, except Federal holidays.

Dated: March 30, 1999.

Dr. Brian K. Fitzgerald,

Staff Director, Advisory Committee on Student Financial Assistance.

[FR Doc. 99–8214 Filed 4–2–99; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

[FE Docket Nos. 50849–1613–07–82 and 50849–1613–08–82]

Application for Rescission of a Prohibition Order Issued Pursuant to the Powerplant and Industrial Fuel Use Act of 1978 Montaup Electric Company and Somerset Power LLC

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of Application.

SUMMARY: Montaup Electric Company (Montaup) and Somerset Power LLC (Somerset) have requested that DOE rescind a prohibition order issued for Boiler Nos. 7 and 8 (Unit's 5 and 6, respectively) at Montaup's Somerset Generating Station pursuant to the Powerplant and Industrial Fuel Use Act of 1978 (FUA).

DATES: Comments, protests or requests to intervene must be submitted on or before April 20, 1999.

ADDRESSES: Comments, protests or requests to intervene should be addressed as follows: Office of Coal & Power Import and Export (FE–27), Office of Fossil Energy, U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585–0350.

FOR FURTHER INFORMATION CONTACT: Xavier Puslowski (Program Office) 202–586–4708 or Michael T. Skinker (Program Attorney) 202–586–6667.

SUPPLEMENTARY INFORMATION: On March 25, 1999, Montaup and Somerset filed a

joint application with the Office of Fossil Energy (FE) of the Department of Energy for rescission of a Prohibition Order issued in Docket Nos. 50849–1613–07–82 and 50849–1613–08–82 on January 27, 1986 (51 FR 4421, February 4, 1986), pursuant to section 301(c) of FUA and 10 CFR 504.8. The order took effect on April 7, 1986 and prohibited the use of petroleum or natural gas as a primary energy source in Boiler Nos. 7 and 8 (Unit Nos. 5 and 6, respectively) at Montaup's Somerset Generating Station located in Somerset, Massachusetts, in excess of the amounts equivalent to operation of each of the boilers using petroleum or natural gas for thirty (30) percent of their respective annual operating hours.

On October 15, 1998, Montaup and NRG Energy, Inc. (NRG) signed an Asset Purchase Agreement to sell the Somerset Generating Station to NRG. NRG has assigned its rights under that agreement to Somerset Power LLC, which will acquire the Somerset Generating Station and associated property. Transfer of ownership of the station is scheduled to occur by April 1, 1999. Therefore, Montaup and Somerset Power LLC have filed this application jointly.

Pursuant to 10 CFR 501.102(b), Montaup and Somerset filed this application based on a substantial change in the circumstances upon which the Prohibition Order was originally issued. The applicants note a provision of the existing order which states:

"* * * changes in the * * * relative economics of coal * * * as a fuel source * * * will be deemed to constitute "significantly changed circumstances" pursuant to 10 CFR 501.102(b) sufficient to provide a basis for rescission or modification of the specific prohibitions contained in this Order."

Montaup and Somerset claim that the price of oil is now significantly below the price of coal currently used in the Somerset Generating Station and that the continued use of coal would impair the facility's competitive position within the electric power market. The applicants also state that the deregulation of natural gas prices since the issuance of the original Prohibition Order and the prominence gained by natural gas as a viable alternative fuel source make the continued prohibition or limitation on the use of natural gas serve no just purpose. The applicants also note that the use of natural gas can offer significant environmental benefits over the burning of coal in the Somerset facility. For these reasons, Montaup and Somerset request that DOE rescind the Prohibition Order issued for the Somerset Generating Station.

Procedural Matters

Any party or person desiring to be heard or to protest this application for rescission should file five copies of any comments, protests or petitions to intervene at the address provided above. Filings should be clearly marked with the above docket numbers. Any request for a public hearing must be made within the public comment period. In making its decision regarding the requested rescission action, DOE will consider all relevant information submitted or otherwise available to it.

The public file containing a copy of this rescission application is available, upon request, at the address above.

DOE has granted the applicant's request for an expedited notice and comment period of fifteen (15) days due to the absence of any comments, protests or requests for a hearing having been filed in the original proceeding.

Issued in Washington, DC, on March 30, 1999.

Anthony J. Como,

Manager, Electric Power Regulation, Office of Coal & Power Im/Ex, Office of Fossil Energy.

[FR Doc. 99–8287 Filed 4–2–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Notice of Floodplain Involvement for the Constructed Wetlands Treatment of the A–01 Outfall Effluent at the Savannah River Site (SRS), Aiken, South Carolina

AGENCY: Savannah River Operations Office, Department of Energy (DOE).

ACTION: Notice of floodplain involvement.

SUMMARY: The process water effluent from the A–01 outfall located on SRS has consistently not met proposed South Carolina Department of Health and Environmental Control (SCDHEC) National Pollutant Discharge Elimination System (NPDES) permit limits which will become effective on October 1, 1999. DOE needs to reduce the copper and chronic toxicity levels in this effluent to ensure compliance when these proposed outfall limits go into effect. Based on extensive existing research in the use of wetlands to treat wastewater, DOE proposes to build and operate an artificial wetland facility to treat the effluent to meet the new discharge limits. This proposed treatment facility would be constructed within the 100-year floodplain of Tims Branch drainage corridor. In accordance with 10 CFR 1022, DOE will prepare a floodplain assessment and will perform this proposed action in a manner so as to avoid or minimize potential harm to or within the affected floodplain.

DATES: Comments on the proposed action are due on or before April 20, 1999.

ADDRESSES: For further information, including a site map and/or copy of the floodplain assessment, or to submit comments regarding this notice, contact Andrew R. Grainger, National Environmental Policy Act (NEPA) Compliance Officer, Savannah River Operations Office, Building 742–A, Room 183, Aiken, South Carolina 29808. The fax/phone number is (800) 881–7292. The e-mail address is nepa@srs.gov.

FOR FURTHER INFORMATION ON GENERAL FLOODPLAIN/WETLANDS ENVIRONMENTAL REVIEW REQUIREMENTS, CONTACT: Ms. Carol M. Borgstrom, Director, Office of NEPA Policy and Assistance (EH–42), U. S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585. Telephone (202) 586–4600 or (800) 472–2756.

SUPPLEMENTARY INFORMATION: In 1996, SCDHEC issued a new NPDES permit for SRS. This permit, which will go into effect no later than October 1, 1999, established new limits for copper, lead, mercury, and chronic toxicity. Subsequent to SCDHEC issuing the new permit, samples taken at the relocated A–01 outfall have shown that the effluent consistently does not meet the new outfall limits for both copper and chronic toxicity. DOE needs to implement actions to reduce these concentrations prior to that time when the new outfall limits are scheduled to go into effect. Extensive research has indicated that an artificial wetland can be used to treat these constituents and reduce the concentrations below the new permit limits before the effluent reaches the NPDES compliance sampling point. Based on this, DOE proposes to build and operate artificial wetlands to treat the effluent to meet the new discharge limits.

The proposed action entails the following: (1) Relocating the compliance point from the current location to a new site approximately 0.92 kilometers (0.57 miles) below the present outfall (already approved by SCDHEC), and (2) creating a flow management basin and an artificial wetland facility within the drainage channel of Tims Branch into which the A–01 outfall effluent is currently being discharged. These activities would necessitate temporary heavy equipment access and

construction of the new facility within this drainage corridor.

In accordance with DOE regulations for compliance with floodplain and wetland environmental review requirements (10 CFR part 1022), DOE will prepare a floodplain assessment for this proposed DOE action. The overall proposed action was previously evaluated under the NEPA process, with an environmental assessment (EA) (DOE/EA–1246) with a Floodplain Statement of Findings and a finding of no significant impact (FONSI) being issued in October of 1998. However, in an effort to reduce the total project cost, the proposed location for the flow management basin and artificial wetland facility was relocated from that site described in the EA to the new area within the A–01 outfall discharge channel. This facility relocation enabled the elimination of the entire piped collection system, thereby eliminating the cost and environmental impacts associated with that portion of the previous scope of the proposed action. A biological evaluation and wetlands determination of the new project location have not identified either any potential impacts to protected species or the presence of any jurisdictional wetlands. Based on the floodplain assessment to be conducted on the revised project scope, a floodplain statement of findings will be included in any revised FONSI that is issued pursuant to this proposed action or may be issued separately.

Issued in Aiken, SC, on March 17, 1999.

Lowell E. Tripp,

Director, Engineering and Analysis Division, Savannah River Operations Office.

[FR Doc. 99–8286 Filed 4–2–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Golden Field Office; Supplemental Announcement to the Broad Based Solicitation for Financial Assistance Applications Involving Research, Development and Demonstration for the Office of Energy, Efficiency and Renewable Energy; Photovoltaics for Utility Scale Applications (PVUSA)

AGENCY: U.S. Department of Energy.

ACTION: Supplemental Announcement 06 to the Broad Based Solicitation for Financial Assistance Applications DE–PS36–99GO10383.

SUMMARY: The U.S. Department of Energy (DOE), pursuant to the DOE Financial Assistance Rules, 10 CFR 600.8, is announcing its intention to solicit applications for Photovoltaics for Utility Scale Applications. The financial assistance award issued under this Supplemental Announcement will be a cooperative agreement.

DATES: The solicitation will be issued on or about March 31, 1999.

ADDRESSES: Copies of the Solicitation once issued, can be obtained from the Golden Field Office Home page at http://www.eren.doe.gov/golden/solicitations.html.

SUPPLEMENTARY INFORMATION: DOE is soliciting Applications to: maintain and operate the PVUSA California test site, located in Davis, California; provide performance assessments of the individual systems; and disseminate information to utilities and other users. PVUSA's primary objective is to evaluate a wide range of promising PV module and balance of system (BOS) technologies. PVUSA is a national public-private partnership composed of private industry, local governments, utilities, utility-related industries, and Federal entities. The partnership is conducting a project that assesses and demonstrates the viability of utility-scale photovoltaic (PV) electric generating systems and recent developments in module technology and encourages commercialization of promising PV technologies. DOE, as a participant of PVUSA, is supporting the operation and maintenance of the PVUSA California test site. At the PVUSA California test site, PV systems and components are evaluated and the information disseminated to utilities, manufacturers, National laboratories, and industry. The project offers manufacturers feedback on component reliability, availability, and standardization which may lead to cost reductions. The fielded systems represent mature module technologies that have the potential to produce low-cost energy and meet the Operation and Maintenance (O&M), power quality, reliability, and lifetime requirements necessary for a wide variety of applications, from remote power to utility applications. This project also exposes the PV industry to commercial procurement and construction practices. For more information about PVUSA, see the PVUSA web site at *http://www.pvusa.com*. The award under this Supplemental Announcement will be a Cooperative Agreement with a term of up to 36 months. Subject to the availability of funding, DOE anticipates selecting one application for award with funding not to exceed $600,000 per year. A minimum cost share of 50% of the total project cost is required. Solicitation Number DE–PS36–99GO10383, in conjunction with this Supplemental Announcement-06, will include complete information on the program including technical aspects, funding, application preparation instructions, application evaluation criteria, and other factors that will be considered when selecting projects for funding. Issuance of the Supplemental Announcement is planned for the week of March 29, 1999, with responses due on May 6, 1999. Questions should be submitted in writing to: John P. Motz, DOE Golden Field Office, 1617 Cole Boulevard, Golden, CO 80401–3393; transmitted via facsimile to John P. Motz at (303) 275–4788; or electronically to john__motz@nrel.gov.

FOR FURTHER INFORMATION CONTACT: John Motz, Contract Specialist, at 303–275–4737, e-mail john__motz@nrel.gov, or Robert Martin, Project Officer, at 303–275–4763, e-mail robert__martin@nrel.gov.

Issued in Golden, Colorado, on March 26, 1999.

Ruth E. Adams,

Acting Procurement Director, GO.

[FR Doc. 99–8284 Filed 4–2–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Rocky Flats

AGENCY: Department of Energy

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Rocky Flats. The Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Monday, April 19, 1999, 6:30 p.m.–9:30 p.m.

ADDRESSES: College Hill Library, (Front Range Community College), 3705 West 112th Avenue, Westminster, CO.

FOR FURTHER INFORMATION CONTACT: Ken Korkia, Board/Staff Coordinator, EM SSAB-Rocky Flats, 9035 North Wadsworth Parkway, Suite 2250, Westminster, CO 80021, phone: (303) 420–7855, fax: (303) 420–7579.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda:

1. Second part of discussion on low-level waste disposition issues; responses to questions, comments, and inquiry

requests from the Board; begin to formulate position statement.

2. Other Board business will be conducted as necessary.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Ken Korkia at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments at the beginning of the meeting.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9:00 a.m. and 4 p.m., Monday-Friday, except Federal holidays. Minutes will also be available at the Public Reading Room located at the Board's office at 9035 North Wadsworth Parkway, Suite 2250, Westminster, CO 80021; telephone (303) 420–7855. Hours of operation for the Public Reading Room are 9:00 am and 4:00 pm on Monday through Friday. Minutes will also be made available by writing or calling Deb Thompson at the Board's office address or telephone number listed above.

Issued at Washington, DC on March 29, 1999.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 99–8283 Filed 4–2–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Kirtland Area Office (Sandia)

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Kirtland Area Office (Sandia). The Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Wednesday, April 21, 1999: 6:00 p.m.–9:00 p.m. (MST).

ADDRESSES: Palo Duro Senior Center, 5221 Palo Duro NE, Albuquerque, New Mexico.

FOR FURTHER INFORMATION CONTACT: Mike Zamorski, Acting Manager, Department of Energy Kirtland Area Office, P.O. Box 5400, Albuquerque, NM 87185 (505) 845–4094.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda:

6:00 p.m. Call to Order/Roll Call—Hubert Joy, Chair

6:10 p.m. Presentations

- Sandia National Laboratory (SNL) Budget Status—John Arthur
- An Overview of Risk Issues and Concerns—SNL

7:40 p.m. Break

7:50 p.m. Administrative Issues

8:45 p.m. Public Comments

9:00 p.m. Adjourn

A final agenda will be available at the meeting Wednesday, April 21, 1999.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Mike Zamorski's office at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9:00 a.m. and 4 p.m., Monday-Friday, except Federal holidays. Minutes will also be available by writing to Mike Zamorski, Department of Energy Kirtland Area Office, P.O. Box 5400, Albuquerque, NM 87185, or by calling (505) 845–4094.

Issued at Washington, DC on March 29, 1999.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 99–8285 Filed 4–2–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[IC99–11–001; FERC Form No. 11]

Information Collection Submitted for Review and Request for Comments

March 30, 1999.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of submission for review by the Office of Management and Budget (OMB) and request for comments.

SUMMARY: The Federal Energy Regulatory Commission (Commission) has submitted the energy information collection listed in this notice to the Office of Management and Budget (OMB) for review under provisions of Section 3507 of the Paperwork Reduction Act of 1995 (Pub. L. 104–13). Any interested person may file comments on the collection of information directly with OMB and should address a copy of those comments to the Commission as explained below. The Commission received no comments in response to an earlier **Federal Register** notice of November 30, 1998 (63 FR 65768) and has made this notation in its submission to OMB.

DATES: Comments regarding this collection of information are best assured of having their full effect if received within 30 days of this notification.

ADDRESSES: Address comments to Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Federal Energy Regulatory Commission, Desk Officer, 726 Jackson Place, NW, Washington, DC 20503. A copy of the comments should also be sent to Federal Energy Regulatory Commission, Office of the Chief Information Officer, Attention: Mr. Michael Miller, 888 First Street, NE, Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT: Michael Miller may be reached by telephone at (202) 208–1415, by fax at (202) 208–2425, and by E-mail at mike.miller@ferc.fed.us.

SUPPLEMENTARY INFORMATION:

Description

The energy information collection submitted to OMB for review contains:

1. Collection of Information: FERC Form 11 "Natural Gas Pipeline Company Quarterly Statement of Monthly Data."

2. Sponsor: Federal Energy Regulatory Commission.

3. Control No.: OMB No. 1902–0032. The Commission is now requesting that OMB approve a three-year extension of the current expiration date, with no changes to the existing collection. There is an increase in the reporting burden due to an increase in the number of entities that submit this quarterly report. This is a mandatory information collection requirement.

4. Necessity of Collection of Information: Submission of the information is necessary to enable the Commission to carry out its responsibilities in implementing the provisions of the Natural Gas Act (NGA), 15 U.S.C. 717–717w and the Natural Gas Policy Act of 1978 (NGPA), 15 U.S.C. 3301–3432. Both the NGA and NGPA authorize the Commission to prescribe rules and regulations requiring natural gas pipeline companies whose gas was either transported or stored for a fee and exceeds 50 million Dekatherms in each of the three previous calendar years to submit FERC Form No. 11. The form provides monthly data on a quarterly basis on certain revenue and expenditure items of major pipelines, and also provides some volume data on their operations. Additionally, the monthly data collected on the FERC Form No. 11 allows for analysis of seasonal variation in throughput.

5. Respondent Description: The respondent universe currently comprises on average, 55 companies subject to the Commission's jurisdiction.

6. Estimated Burden: 660 total burden hours, 55 respondents, 4 responses annually, 3 hours per response (average).

7. Estimated Cost Burden to Respondents: 660 hours ÷ 2,080 hours per year × $109,889 per year = $34,869, average cost per respondent = $634.

Statutory Authority: Sections 10(a), 16, and 21(b) of the Natural Gas Act (NGA), 15 U.S.C. 717–717w, and the Natural Gas Policy Act of 1978 (NGPA), 15 U.S.C. 3301–3432.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–8263 Filed 4–2–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR99–4–001]

Consumers Energy Company; Notice of Amended Petition for Rate Approval

March 30, 1999.

Take notice that on March 26, 1999, Consumers Energy Company (CECo) filed pursuant to section 284.123(b)(2) of the Commission's regulations, an amended petition for rate approval requesting that the Commission approve as fair and equitable a maximum rate of $0.1061 per Dth, plus 2.26 percent for fuel used and lost and unaccounted for gas, for interruptible transportation service performed under section 311(a)(2) of the Natural Gas Policy Act of 1978 (NGPA). This amendment represents a prospective decrease from the rate of $0.1072 per Dth, plus fuel retainage of 2.4%, CECo requested in this docket on November 23, 1998.

CECo, formerly Consumers Power Company, is a Hinshaw pipeline organized under the laws of the State of Michigan and subject to the jurisdiction of the Michigan Public Service Commission.

Any person desiring to participate in this rate proceeding must file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. All such motions or protests must be filed with the Secretary of the Commission on or before April 5, 1999. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make Protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this application are on file with the Commission and are available for public inspection. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call (202) 208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–8265 Filed 4–2–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–223–001]

Columbia Gas Transmission; Notice of Compliance Filing

March 30, 1999.

Take notice that on March 25, 1999, Columbia Gas Transmission Corporation (Columbia) made its filing in compliance with the Commission's March 10, 1999 letter order. In that order, the Commission conditionally accepted two of Columbia's filed tariff sheets (Sheet Nos. 518 and 538), subject to Columbia explaining how its proposed rate discount provision added to its pro forma service agreements would apply to its SIT Rate Schedule and PAL Rate Schedule services.

Columbia states that copies of its compliance filing have been mailed to parties on the official service list to this proceeding.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.

Acting Secretary.

[FR Doc. 99–8268 Filed 4–2–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–126–011]

Iroquois Gas Transmission System, L.P.; Notice of Proposed Changes in FERC Gas Tariff

March 30, 1999.

Take notice that on March 26, 1999, Iroquois Gas Transmission System, L.P. (Iroquois) tendered for filing to become part of its FERC Gas Tariff, First Revised Volume No. 1, the following revised tariff sheets. The proposed effective dates of these revised tariff sheets are as noted.

Effective August 31, 1998;

Second Substitute Nineteenth Revised Sheet No. 4

Second Substitute Eighth Revised Sheet No. 5

Effective November 1, 1998:

Second Substitute Twentieth Revised Sheet No. 4
Substitute Twenty-first Revised Sheet No. 4
Substitute Twenty-second Revised Sheet No. 4

Effective January 1, 1999:

Substitute Twenty-third Revised Sheet No. 4

Iroquois asserts that the filing is in compliance with the Commission's order issued in the captioned proceeding on March 11, 1999. Iroquois states that the instant filing would permit it to (1) restate its rates and (2) surcharge customers, both to implement the Commission's grant of rehearing in the March 11 Order on the issue of the appropriate capital structure to use in establishing Iroquois' rates.

Iroquois states that copies of its filing were served on all jurisdictional customers and interested state commissions.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–8266 Filed 4–2–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene and Protests

March 30, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Major License.
b. *Project No.:* 2161–006.
c. *Date Filed:* June 26, 1998.
d. *Applicant:* Rhinelander Paper Company.
e. *Name of Project:* Rhinelander Hydroelectric Project.
f. *Location:* On the Wisconsin River in the townships of Tomahawk, Newbold, Pine Lake, and Pelican and in the county of Oneida, Wisconsin.
g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).
h. *Applicant Contact:* Mr. Bruce Olson, Utility Superintendent, Rhinelander Paper Company, 515 West Davenport Street, Rhinelander, WI 54501, (715) 369–4244.
i. *FERC Contact:* Any questions on this notice should be addressed to Michael Spencer, E-mail address michael.spencer@ferc.fed.us, or telephone 202–219–2846.
j. *Deadline for filing motions to intervene and protest:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, D.C. 20426.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of that document on that resource agency.

k. *Status of Environmental Analysis:* This application is not ready for environmental analysis at this time.

l. *Description of the project:* The project consists of the following existing facilities: (1) a main dam comprised of 370 feet of earth embankments, in two sections to the left and right of a spillway section containing two 10.7-foot-wide steel roller gates; (2) a 965-foot-long power canal, with a single 36-foot-wide Taintor gate spillway structure located downstream of a 14-gate canal inlet structure, located adjacent to the right embankment of the dam; (3) a 8.5-mile-long, 3,576-acre impoundment with a normal water surface elevation of 1,555.45 feet above mean sea level (msl), and a normal storage capacity of 21,500 acre-feet; (4) a powerhouse located at the downstream end of the power canal, containing three, horizontal Francis turbine units for a total installed capacity of 2,120 kilowatts (kW) and an average annual energy production of 10.692 gigawatt-hours (GWh); (5) switchgear connections with the adjacent paper mill; and (6) appurtenant facilities.

m. *Locations of the application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference and Files and Maintenance Branch, located at 888 First Street, N.E., Room 2A-1, Washington, DC 20426. this filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–8271 Filed 4–2–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–272–000]

Transcontinental Gas Pipe Line Corporation; Notice of Application to Abandon

March 30, 1999.

Take notice that on March 26, 1999, Transcontinental Gas Pipe Line Corporation (Transco), 2800 Post Oak Blvd., Houston, Texas 77056, filed under Section 7(b) of the Natural Gas Act, for authority to abandon, a firm sales service provided to Philadelphia Gas Works (PGW) under Transco's Rate Schedule FS. This information is more fully set forth in the application which is on file with the Commission and open to public inspection. The application may also be viewed on the web at www.ferc.fed.us. Call (202) 208–2222 for assistance.

Transco states that it entered into firm sales agreements with PGW on August 1, 1991, under which Transco sells gas to PGW under Rate Schedule FS, with a Daily Sales Entitlement of 14,493 Mcf per day. Under the agreement Transco delivers gas PGW at various upstream points of delivery. Transco seeks authorization to abandon the FS Agreement, effective March 31, 2000, pursuant to PGW's request to terminate the Agreement.

Any person desiring to be heard or make any protest with reference to said application should on or before April 20, 1999, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211)

and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required, or if the Commission on its own review of the matter finds that permission and approval of the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearings will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Transco to appear or be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc 99–8262 Filed 4–2–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC99–54–000, et al.]

Power City Partners, L.P., et al.; Electric Rate and Corporate Regulation Filings

March 29, 1999.

Take notice that the following filings have been made with the Commission:

1. Power City Partners, L.P.

[Docket No. EC99–54–000]

Take notice that on March 23, 1999, Power City Partners, L.P. (Power City) tendered for filing with the Federal Energy Regulatory Commission an application for authorization to transfer facilities under Section 203 of the Federal Power Act, in connection with a sale-leaseback of facilities associated with Power City's generating facility in Massena, New York.

Comment date: April 22, 1999, in accordance with Standard Paragraph E at the end of this notice.

2. Citizens Power LLC and CL Power Sales Ten, L.L.C.

[Docket No. EC99–56–000]

Take notice that on March 23, 1999, Citizens Power LLC and CL Power Sales Ten, L.L.C. filed an application for an order authorizing the proposed sale of Citizens Power LLC's 25% equity interest in CL Power Sales Ten, L.L.C. to W. John Fair.

Comment date: April 22, 1999, in accordance with Standard Paragraph E at the end of this notice.

3. Pacific Gas and Electric Company

[Docket No. EL98–46–002]

Take notice that on March 22, 1999, Pacific Gas and Electric Company (PG&E) tendered for filing a form of Interconnection Agreement Between Pacific Gas and Electric Company and Laguna Irrigation District (Agreement), replacing in its entirety the form submitted to the Commission on December 1, 1998. This amended form of the Agreement revises some minor typographical errors in the draft form previously submitted. PG&E's December 1, 1998 filing was made pursuant to a "Proposed Order Directing Interconnection and Establishing Further Procedures," issued in this case on September 16, 1998 (Proposed Order).

Copies of PG&E's filing have been served upon Laguna and all other parties to this proceeding.

Comment date: April 21, 1999, in accordance with Standard Paragraph E at the end of this notice.

4. Flathead Electric Cooperative, Inc.

[Docket No. EL99–48–000]

Take notice that on March 22, 1999, Flathead Electric Cooperative, Inc. tendered for filing a request for a disclaimer of jurisdiction that it is not a public utility under the Federal Power Act and a waiver of the reciprocity requirement, or in the alternative, a waiver of the requirements of Order Nos. 888 and 889 and certain regulations.

Comment date: April 21, 1999, in accordance with Standard Paragraph E at the end of this notice.

5. Advantage Energy, Inc.

[Docket No. ER97–2758–005]

Take notice that on March 24, 1999, the above-mentioned power marketer filed a quarterly report with the Commission in the above-mentioned proceeding for information only. This filing is available for public inspection and copying in the Public Reference Room or on the internet at www.ferc.fed.us/ online/rims.htm for viewing and downloading (call 202–208–2222 for assistance).

6. Avista Corporation

[Docket No. ER99–55–000]

Take notice that on March 24, 1999, Avista Corporation (Avista Corp.), refiled the Revised Ancillary Services Market Study, and explanatory letter, filed on March 15, 1999, in this docket, to reflect both public and confidential versions of the material.

Comment date: April 13, 1999, in accordance with Standard Paragraph E at the end of this notice.

7. Western Resources, Inc.

[Docket No. ER99–1399–000]

Take notice that on March 24, 1999, Western Resources, Inc., (Western Resources), tendered for filing an unbundling of the demand and energy charges under the electric interconnection agreement with the City of McPherson, Kansas, Board of Public Utilities.

Western Resources requests waiver of the Commission's notice requirements to the extent necessary to permit the effective date of February 6, 1997.

Copies of the filing were served upon McPherson and the Kansas Corporation Commission.

Comment date: April 13, 1999, in accordance with Standard Paragraph E at the end of this notice.

8. Tenaska Frontier Partners, Ltd.

[Docket No. ER99–2219–000]

Take notice that on March 22, 1999, the above-referenced public utility filed their quarterly transaction report for the quarter ending December 31, 1998.

Comment date: April 12, 1999, in accordance with Standard Paragraph E at the end of this notice.

9. Northeast Utilities Service

[Docket No. ER99–2236–000]

Take notice that on March 24, 1999, Northeast Utilities Service Company (NUSCO), tendered for filing a Service Agreement with Bangor Hydro-Electric Company (BHE) under the NU System Companies' System Power Sales/ Exchange Tariff No. 6.

NUSCO states that a copy of this filing has been mailed to BHE.

NUSCO requests that the Service Agreement become effective February 25, 1999.

Comment date: April 13, 1999, in accordance with Standard Paragraph E at the end of this notice.

10. New England Power Company

[Docket No. ER99–2237–000]

Take notice that on March 24, 1999, New England Power Company (NEP), tendered for filing Service Agreements with Sithe Power Marketing, Inc., for service under NEP's FERC Electric Tariffs, Original Volumes Nos. 6, 10, and 11.

Comment date: April 13, 1999, in accordance with Standard Paragraph E at the end of this notice.

11. Florida Power & Light Company

[Docket No. ER99–2238–000]

Take notice that on March 24, 1999, Florida Power & Light Company (FPL), tendered for filing proposed service agreements with Avista Energy, Inc., for Short-Term Firm and Non-Firm transmission service under FPL's Open Access Transmission Tariff.

FPL requests that the proposed service agreements be permitted to become effective on March 16, 1999.

FPL states that this filing is in accordance with Part 35 of the Commission's Regulations.

Comment date: April 13, 1999, in accordance with Standard Paragraph E at the end of this notice.

12. Cambridge Electric Light Company; Commonwealth Electric Company

[Docket No. ER99–2239–000]

Take notice that on March 24, 1999, Cambridge Electric Light Company and Commonwealth Electric Company provided notice to the Commission that their open access transmission tariffs shall be considered modified by adopting the North American Electric Reliability Council Transmission Loading Relief Alternative Transmission Tariff Amendment.

Comment date: April 13, 1999, in accordance with Standard Paragraph E at the end of this notice.

13. Florida Keys Electric Cooperative Association, Inc.

[Docket No. ER99–2240–000]

Take notice that on March 24, 1999, Florida Keys Electric Cooperative Association, Inc., tendered for filing a revised rate for non-firm transmission service provided to the City Electric System, Key West, Florida in accordance with the terms and conditions of the Long-Term Joint Investment Transmission Agreement between the Parties.

A copy of this filing has been served on CES and the Florida Public Service Commissioner.

FKEC respectfully requests an effective date for the revised non-firm transmission rate of April 1, 1999.

Comment date: April 13, 1999, in accordance with Standard Paragraph E at the end of this notice.

14. California Independent System Operator Corporation

[Docket No. ER99–2241–000]

Take notice that on March 24, 1999, the California Independent System Operator Corporation (ISO), tendered for filing a Scheduling Coordinator Agreement (SCA) between the ISO and the Department of Water and Power of the City of Los Angeles for acceptance by the Commission.

The ISO is requesting a waiver of the 60-day prior notice requirement to allow the SCA to be made effective as of March 22, 1999.

The ISO states that this filing has been served on the Department of Water and Power of the City of Los Angeles and the California Public Utilities Commission.

Comment date: April 13, 1999, in accordance with Standard Paragraph E at the end of this notice.

15. West Texas Utilities Company

[Docket No. ER99–2242–000]

Take notice that on March 24, 1999, West Texas Utilities Company (WTU), tendered for filing a Letter Agreement between WTU and the City of Coleman, Texas (Coleman). Under the agreement, WTU will make additional energy available to Coleman during the on-peak hours of the summer months of 1999, pursuant to a Supplemental Sales Agreement between WTU and Coleman, previously filed with the Commission.

WTU requests an effective date of June 1, 1999.

WTU states that copies of this filing have been served on Coleman and the Public Utility Commission of Texas.

Comment date: April 13, 1999, in accordance with Standard Paragraph E at the end of this notice.

16. Delmarva Power & Light Company

[Docket No. ER99–2243–000]

Take notice that on March 24, 1999, Delmarva Power & Light Company (Delmarva), tendered for filing an executed umbrella service agreement with PP&L EnergyPlus Co., under Delmarva's market rate sales tariff.

Comment date: April 13, 1999, in accordance with Standard Paragraph E at the end of this notice.

17. Niagara Mohawk Power Corporation

[Docket No. ER99–2244–000]

Take notice that on March 24, 1999, Niagara Mohawk Power Corporation (Niagara Mohawk), tendered for filing an amendment to Niagara Mohawk's open access transmission tariff. The amendment consists of a new Attachment J—Form of Service Agreement For Retail Transmission Service.

Niagara Mohawk requests an effective date of April 2, 1999, for the amendment.

Comment date: April 13, 1999, in accordance with Standard Paragraph E at the end of this notice.

18. Central Illinois Light Company

[Docket No. ER99–2245–000]

Take notice that on March 24, 1999, Central Illinois Light Company (CILCO), 300 Liberty Street, Peoria, Illinois 61202, tendered for filing with the Commission an Index of Customers under its Coordination Sales Tariff and one service agreement with one new customer, DukeSolutions, Inc. One customer has asked CILCO to terminate their service agreement, K N Energy, Inc.

CILCO requested an effective date of March 22, 1999.

Copies of the filing were served on the affected customers and the Illinois Commerce Commission.

Comment date: April 13, 1999, in accordance with Standard Paragraph E at the end of this notice.

19. Central Illinois Light Company

[Docket No. ER99–2246–000]

Take notice that on March 24, 1999, Central Illinois Light Company (CILCO), 300 Liberty Street, Peoria, Illinois 61202, tendered for filing with the Commission an Index of Customers under its Market Rate Power Sales Tariff and one service agreement with one new customer, DukeSolutions, Inc.

CILCO requested an effective date of March 22, 1999.

Copies of the filing were served on the affected customer and the Illinois Commerce Commission.

Comment date: April 13, 1999, in accordance with Standard Paragraph E at the end of this notice.

20. Avista Corporation

[Docket No. ER99–2247–000]

Take notice that on March 24, 1999, Avista Corporation, tendered for filing with the Federal Energy Regulatory Commission pursuant to 18 CFR Section 35.13, a Certificate of Concurrence in Puget Sound Energy, Inc.'s filing regarding the 1998–99 Operating Procedures under the Pacific Northwest Coordination Agreement Docket No. ER99–2026–000, previously noticed on March 5, 1999.

Comment date: April 13, 1999, in accordance with Standard Paragraph E at the end of this notice.

21. Northern States Power Company (Minnesota); Northern States Power Company (Wisconsin)

[Docket No. ER99–2248–000]

Take notice that on March 24, 1999, Northern States Power Company (Minnesota) and Northern States Power Company (Wisconsin) (jointly NSP), tendered for filing a Firm Point-to-Point Transmission Service Agreement between NSP and Madison Gas & Electric Company.

NSP requests that the Commission accept both the agreements effective July 1, 1999, and requests waiver of the Commission's notice requirements in order for the agreements to be accepted for filing on the date requested.

Comment date: April 13, 1999, in accordance with Standard Paragraph E at the end of this notice.

22. Central Power and Light Company; West Texas Utilities Company; Public Service Company of Oklahoma; Southwestern Electric Power Co.

[Docket No. ER99–2249–000]

Take notice that on March 24, 1999, Central Power and Light Company, West Texas Utilities Company, Public Service Company of Oklahoma and Southwestern Electric Power Company (collectively, the CSW Operating Companies) tendered for filing service agreements under which the CSW Operating Companies will provide transmission and ancillary services to Cargill-Alliant, LLC (Cargill) in accordance with the CSW Operating Companies' open access transmission service tariff.

The CSW Operating Companies state that a copy of the filing has been served on Cargill.

Comment date: April 13, 1999, in accordance with Standard Paragraph E at the end of this notice.

23. Alliant Energy Corporate Services, Inc.

[Docket No. ER99–2250–000]

Take notice that on March 24, 1999, Alliant Energy Corporate Services, Inc., tendered for filing an executed Form of Service Agreement for Long-Term Firm Point-to-Point Transmission Service. The transmission customer is Wisconsin Power and Light Company an Alliant Energy subsidiary.

Alliant Energy Corporate Services, Inc., requests an effective date of January 1, 1999, and accordingly, seeks waiver of the Commission's notice requirements.

A copy of this filing has been served upon the Illinois Commerce Commission, the Minnesota Public Utilities Commission, the Iowa Department of Commerce, and the Public Service Commission of Wisconsin.

Comment date: April 13, 1999, in accordance with Standard Paragraph E at the end of this notice.

24. Consolidated Edison Company of New York, Inc.; Orange and Rockland Utilities, Inc.; Consolidated Edison Company of New York, Inc. and Orange and Rockland Utilities, Inc.

[Docket No. ER99–2251–000, ER99–2252–000, EC98–62–000]

Take notice that on March 22, 1999, Consolidated Edison Company of New York, Inc. and Orange and Rockland Utilities, Inc. tendered for filing proposed amendments to their existing market-based rate tariffs to enable them to sell power at cost-based rates in the wholesale market and to comply with mitigation measures approved by the Commission in Docket No. EC98–62–000.

Comment date: April 12, 1999, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–8261 Filed 4–2–99; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Scoping Meetings and Site Visit and Soliciting Scoping Comments

March 30, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* New Major License.

b. *Project No.:* 2192–008.

c. *Date Filed:* June 26, 1998.

d. *Applicant:* Consolidated Water Power Company.

e. *Name of Project:* Biron Hydroelectric Project.

f. *Location:* On the Wisconsin River, at river mile 219, in the townships of Biron, Wisconsin Rapids, Stevens Point, Plover, and Whiting, in Wood and Portage Counties, Wisconsin. There is one parcel of federal lands, partially occupied by Biron Dam, located within the project boundary.

g. *Filed Pursuant to:* Federal Power Act, 16 USC 791(a)–825(r).

h. *Applicant Contact:* Mr. Mark Anderson, Consolidated Water Power Company, P.O. Box 8050, Wisconsin Rapids, WI 54495–8050, (715) 422–3927.

i. *FERC Contact:* Any questions on this notice should be addressed to Michael Spencer, E-mail address, michael.spencer@ferc.fed.us, or telephone (202) 219–2846.

j. *Deadline for filing scoping comments:* May 13, 1999.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Status of environmental analysis:* This application is not ready for environmental analysis at this time.

l. *Description of the Project:* The project consists of the following existing facilities: (1) a 34-foot-high dam consisting of 3,572.3 feet of concrete gravity wall in five sections, three

spillway sections containing 22 Taintor gates, and 15,900 feet of earthen dikes; (2) a 2,078-acre reservoir at water surface elevation of 1,035.3 feet msl, and a storage capacity of 19,500 acre-feet; (3) a powerhouse, integral with the dam, containing two 1,450-kW turbine generators, and an adjacent industrial (grinder) building containing seven turbine generators, with a total project installed capacity of 6,710 kW and an average annual generation of 38.6 GWh; (5) generator leads; and (6) appurtenant electrical facilities necessary to interconnect with the transmission system.

m. *Locatoins of the application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). A copy is also available for inspection and reproduction at the address shown in item h.

n. *Scoping Process:* The Commission intends to prepare a multiple project Environmental Assessment (EA) for the proposed relicensing of the Biron Project, Stevens Point Project (FERC No. 2110), and Rhinelander Project (FERC No. 2161), in accordance with the National Environmental Policy Act. The EA will consider both site-specific and cumulative environmental impacts and reasonable alternatives to the proposed actions.

Scoping Meetings

The Commission will hold joint scoping meetings for the Biron and Stevens Point Projects, one in the daytime and one in the evening, to help us identify the scope of issues to be addressed in the EA.

The daytime scoping meeting will focus on resource agency concerns, while the evening scoping meeting is primarily for public input. All interested individuals, organizations, and agencies are invited to attend one or both of the meetings, and to assist the staff in identifying the scope of the environmental issues that should be analyzed in the EA. The times and locations of these meetings are as follows:

Daytime Meeting

Wednesday, April 14, 1999, 1 p.m., Board Room, Plover Municipal Building, 2400 Post Road, Business Highway 51, Plover, Wisconsin.

Evening Meeting

Wednesday, April 14, 1999, 7 p.m., Stevens Point Holiday Inn, 1501 Northpoint Drive, Stevens Point, Wisconsin.

To help focus discussions, we will distribute a Scoping Document (SD1) outlining the subject areas to be addressed in the EA to parties on the Commission's mailing list. Copies of the SD1 also will be available at the scoping meetings.

Site Visit

The applicant and Commission staff will conduct a project site visit on Tuesday, April 13, 1999. We will meet at the Power Service Building of Consolidated Papers, 610 High Street, Wisconsin Rapids, Wisconsin, at 2 p.m. If you would like to attend, please call Mark Anderson, Consolidated Water Power Company, at (715) 422–3927, no later than April 9, 1999.

Objectives

At the scoping meetings, the staff will: (1) summarize the environmental issues tentatively identified for analysis in the EA; (2) solicit from the meeting participants all available information, especially quantifiable data, on the resources at issue; (3) encourage statements from experts and the public on issues that should be analyzed in the EA, including viewpoints in opposition to, or in support of, the staff's preliminary views; (4) determine the resource issues to be addressed in the EA; and (5) identify those issues that require a detailed analysis, as well as those issues that do not require a detailed analysis.

The meetings will be recorded by a stenographer and will become part of the formal record of the Commission's proceeding on the project. Individuals presenting statements at the meetings will be asked to sign in before the meeting starts and to identify themselves clearly for the record.

Individuals, organizations, and agencies with environmental expertise and concerns are encouraged to attend the meetings and to assist the staff in defining and clarifying the issues to be addressed in the EA.

Linwood A. Watson, Jr.

Acting Secretary.

[FR Doc. 99–8264 Filed 4–2–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted For Filing and Soliciting Motions To Intervene and Protests

March 31, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Major License.

b. *Project No.:* 2110–003.

c. *Date Filed:* June 26, 1998.

d. *Applicant:* Consolidated Water Power Company.

e. *Name of Project:* Stevens Point Hydroelectric Project.

f. *Location:* On the Wisconsin River in the town of Stevens Point, and in the county of Portage, Wisconsin.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r)

h. *Applicant Contact:* Mr. Kenneth K. Knapp, Vice President, Consolidated Water Power Company, P.O. Box 8050, Wisconsin Rapids, WI 54495–8050, 715–422–3073.

i. *FERC Contact:* Any questions on this notice should be addressed to Michael Spencer, E-mail address michael.spencer@ferc.fed.us, or telephone 202–219–2846.

j. *Deadline for filing motions to intervene and protest:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of that document on that resource agency.

k. *Status of Environmental Analysis:* This application is not ready for environmental analysis at this time.

l. *Description of the project:* The project consists of the following existing facilities: (1) a main dam comprised of 1,889 feet of concrete gravity walls in four sections, a spillway section containing 15 Taintor gates, and a total of 4,090 feet of earth dikes, on both the east and west banks of the river; (2) an auxiliary uncontrolled overflow

spillway (Rocky Run) and associated 5,000 feet of earth dikes, located about 1.25 miles upstream of the main dam; (3) a 12-mile-long, 3,915-acre impoundment with a normal water surface elevation of 1,087.0 feet above mean sea level (msl), and a maximum storage capacity of 27,000 acre-feet; (4) a powerhouse integral with the dam containing six vertical Francis turbine units for a total installed capacity of 3,840 kilowatts (kW) and an annual energy generation of 28.4 gigawatt-hours (GWh); (5) switchgear consisting of a single power transformer for the six units; and (6) appurtenant facilities.

m. *Locations of the application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference and Files and Maintenance Branch, located at 888 First Street, NE, Room 2A–1, Washington, DC 20426. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–8269 Filed 4–2–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Scoping Meetings and Site Visit and Soliciting Scoping Comments

March 31, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* New Major License.

b. *Project No.:* 2110–003.

c. *Date Filed:* June 26, 1998.

d. *Applicant:* Consolidated Water Power Company.

e. *Name of Project:* Stevens Point Hydroelectric Project.

f. *Location:* On the Wisconsin River, at river mile 236, in the town of Stevens Point, Portage County, Wisconsin. There are three parcels of federal lands, partially inundated islands totaling about 15.6 acres, within the project boundary.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:*
Mr. Mark Anderson, Consolidated Water Power Company, P.O. Box 8050, Wisconsin Rapids, WI 54495–8050, (715) 422–3927.

i. *FERC Contact:* Any questions on this notice should be addressed to Michael Spencer, E-mail address, michael.spencer@ferc.fed.us, or telephone (202) 219–2846.

j. *Deadline for filing scoping comments:* May 13, 1999.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Status of environmental analysis:* This application is not ready for environmental analysis at this time.

l. *Description of the Project:* The project consists of the following existing facilities: (1) a 28-foot-high main dam comprised of 1,889 feet of concrete gravity walls in four sections, a spillway section containing 15 Taintor gates, and a total of 4,090 feet of earth dikes, on both the east and west banks of the river; (2) an auxiliary 2,000-foot-long concrete uncontrolled overflow spillway (Rocky Run) and associated 5,000 feet of earth dikes, located about 1.25 miles upstream of the main dam; (3) a 12-mile-long, 3,915–acre impoundment at the normal maximum water surface elevation of 1,087.4 feet msl, and a maximum storage capacity of 27,000 acre-feet; (4) a powerhouse integral with the dam containing six vertical Francis turbine units for a total installed capacity of 3,840 kW and an annual energy generation of 28.4 GWh; (5) switchgear consisting of a single power transformer for the six units; and (6) appurtenant facilities.

m. *Locations of the application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 208–1371. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address shown in item h.

n. *Scoping Process:* The Commission intends to prepare a multiple project Environmental Assessment (EA) for the proposed relicensing of the Stevens Point Project, Biron Project (FERC No. 2192), and Rhinelander Project (FERC No. 2161), in accordance with the National Environmental Policy Act. The EA will consider both site-specific and cumulative environmental impacts and reasonable alternatives to the proposed actions.

Scoping Meetings

The Commission will hold joint scoping meetings for the Stevens Point and Biron Projects, one in the daytime and one in the evening, to help us identify the scope of issues to be addressed in the EA.

The daytime scoping meeting will focus on resource agency concerns, while the evening scoping meeting is primarily for public input. All interested individuals, organizations, and agencies are invited to attend one or both of the meetings, and to assist the staff in identifying the scope of the environmental issues that should be analyzed in the EA. The times and locations of these meetings are as follows:

Daytime Meeting

Wednesday, April 14, 1999, 1 p.m., Board Room, Plover Municipal Building, 2400 Post Road, Business Highway 51, Plover, Wisconsin.

Evening Meeting

Wednesday, April 14, 1999, 7 p.m., Stevens Point Holiday Inn, 1501 Northpoint Drive, Stevens Point, Wisconsin.

To help focus discussions, we will distribute a Scoping Document (SD1) outlining the subject areas to be addressed in the EA to parties on the Commission's mailing list. Copies of the SD1 also will be available at the scoping meetings.

Site Visit

The applicant and Commission staff will conduct a project site visit on Wednesday, April 14, 1999. We will meet at the parking lot near the boat launch in Bukolt Park, off Bukolt Avenue, Stevens Point, at 9 a.m. If you would like to attend, please call Mark Anderson, Consolidated Water Power Company, at (715) 422–3927, no later than April 9, 1999.

Objectives

At the scoping meetings, the staff will: (1) Summarize the environmental issues tentatively identified for analysis in the EA; (2) solicit from the meeting participants all available information, especially quantifiable data, on the

resources at issue; (3) encourage statements from experts and the public on issues that should be analyzed in the EA, including viewpoints in opposition to, or in support of, the staff's preliminary views; (4) determine the resource issues to be addressed in the EA; and (5) identify those issues that require a detailed analysis, as well as those issues that do not require a detailed analysis.

The meetings will be recorded by a stenographer and will become part of the formal record of the Commission's proceeding on the project. Individuals presenting statements at the meetings will be asked to sign in before the meeting starts and to identify themselves clearly for the record.

Individuals, organizations and agencies with environmental expertise and concerns are encouraged to attend the meetings and to assist the staff in defining and clarifying the issues to be addressed in the EA.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–8270 Filed 4–2–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–203–000]

Northern Natural Gas Company; Notice of Informal Settlement Conference

March 30, 1999.

Take notice that an informal settlement conference will be convened in this proceeding commencing at 10:00 a.m. on Tuesday, April 6, 1999, at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, for the purpose of drafting a settlement document in the above-referenced docket.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined by 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, please contact Sandra J. Delude at (202) 208–0583, Bob Keegan at (202) 208–0158, or Edith A. Gilmore at (202) 208–2158.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–8267 Filed 4–2–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Scoping Meeting and Site Visit, ND Soliciting Scoping Comments

March 30, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* New Major License

b. *Project No.:* 2161–006

c. *Date Filed:* June 26, 1998

d. *Applicant:* Rhinelander Paper Company

e. *Name of Project:* Rhinelander Hydroelectric Project

f. *Location:* On the Wisconsin River, at river mile 357, in the townships of Tomahawk, Newbold, Pine Lake, and Pelican, Oneida County, Wisconsin. There are no federal lands located within the project area.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contacts:*

Mr. Bruce Olson, Utility Superintendent, Rhinelander Paper Company, 515 West Davenport Street, Rhinelander, Wisconsin 54501, (715) 369–4244.

i. *FERC Contact:* Any questions on this notice should be addressed to Michael Spencer, E-mail address, michael.spencer@ferc.fed.us, or telephone (202) 219–2846.

j. *Deadline for filing scoping comments:* May 15, 1999.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on the resource agency.

k. *Status of environmental analysis:* This application is not ready for environmental analysis at this time.

l. *Description of the Project:* The project consists of the following existing facilities: (1) a main dam comprised of 370 feet of earth embankments, in two sections to the left and right of a spillway section containing two 10.7-foot-wide steel roller gates; (2) a 965-foot-long power canal, with a single 26-foot-wide Taintor gate spillway structure located downstream of a 14-gate canal inlet structure, located adjacent to the right embankment of the dam; (3) an 8.5-mile-long, 3,576-acre impoundment with a normal water surface elevation of 1,555.45 feet above mean sea level (msl), and a normal storage capacity of 21,500 acre-feet; (4) a brick powerhouse located at the downstream end of the power canal, containing three horizontal Francis turbine units for a total installed capacity of 2,120 kilowatts (kW) and an average annual energy production of 10.692 gigawatt-hours (GWh); (5) switchgear connections with the adjacent paper mill; and (6) appurtenant facilities.

m. *Locations of the application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). A copy is also available for inspection and reproduction at the address shown in item h.

n. *Scoping Process:* The Commission intends to prepare a multiple project Environmental Assessment (EA) for the proposed relicensing of the Rhinelander Project, Stevens Point Project (FERC No. 2110), and Biron Project (FERC No. 2192), in accordance with the National Environmental Policy Act. The EA will consider both site-specific and cumulative environmental impacts and reasonable alternatives to the proposed actions.

Scoping Meetings

The Commission will hold scoping meetings, one in the daytime and one in the evening, to help us identify the scope of issues to be addressed in the EA.

The daytime scoping meeting will focus on resource agency concerns, while the evening scoping meeting is primarily for public input. All interested individuals, organizations, and agencies are invited to attend one or both of the meetings, and to assist the staff in identifying the scope of the environmental issues that should be analyzed in the EA. The times and locations of these meetings are as follows:

Daytime Meeting

Friday, April 16, 1999, 9 a.m., Best Western Claridge Inn, 70 North Stevens

St., Highway 17 North, Rhinelander, Wisconsin.

Evening Meeting

Thursday, April 15, 1999, 7 p.m., Best Western Claridge Inn, 70 North Stevens St., Highway 17 North, Rhinelander, Wisconsin.

To help focus discussions, we will distribute a Scoping Document (SD1) outlining the subject areas to be addressed in the EA to parties on the Commission's mailing list. Copies of the SD1 also will be available at the scoping meetings.

Site Visit

The applicant and Commission staff will conduct a project site visit on Thursday, April 15, 1999. We will meet at the guard desk in the Rhinelander Paper Company lobby, 515 West Davenport Street, at 1 p.m. If you would like to attend, please call Bruce Olson, Rhinelander Paper Company, at 715–369–4244, no later than April 9, 1999.

Objectives

At the scoping meetings, the staff will: (1) summarize the environmental issues tentatively identified for analysis in the EA; (2) solicit from the meeting participants all available information, especially quantifiable data, on the resources at issue; (3) encourage statements from experts and the public on issues that should be analyzed in the EA, including viewpoints in opposition to, or in support of, the staff's preliminary views; (4) determine the resource issues to be addressed in the EA; and (5) identify those issues that require a detailed analysis, as well as those issues that do not require a detailed analysis.

The meetings will be recorded by a stenographer and will become part of the formal record of the Commission's proceeding on the project. Individuals presenting statements at the meetings will be asked to sign in before the meeting starts and to identify themselves clearly for the record.

Individuals, organizations, and agencies with environmental expertise and concerns are encouraged to attend the meetings and to assist the staff in defining and clarifying the issues to be addressed in the EA.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–8272 Filed 4–2–99; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6318–9]

Agency Information Collection Activities: Proposed Collection; Comment Request; Information Collection Request Number 801.12: Requirements for Generators, Transporters, and Waste Management Facilities Under the RCRA Hazardous Waste Manifest System

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit the following continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB): Requirements for Generators, Transporters, and Waste Management Facilities Under the RCRA Hazardous Waste Manifest system, ICR No. 801.12, OMB No. 2050–0039, expires 9/30/99.

Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before June 4, 1999.

ADDRESSES: Commenters must send an original and two copies of their comments referencing docket number F–1999–RWMP–FFFFF to: RCRA Docket Information Center, Office of Solid Waste (5305G), U.S. Environmental Protection Agency Headquarters (EPA HQ), 401 M Street, SW., Washington, D.C. 20460. Comments may also be submitted electronically through the Internet to: rcradocket@epamail.epa.gov. Comments in electronic format should also be identified by the RCRA docket number F–1999–RWMP–FFFFF. All electronic comments must be submitted as a ASCII file avoiding the use of special characters and any form of encryption.

Commenters should not submit electronically any confidential business information (CBI). An original and two copies of CBI must be submitted under a separate cover to: RCRA CBI Document Control Officer, Office of Solid Waste (5305W), U.S. EPA, 401 M Street, SW, Washington, DC 20460.

Public comments and supporting materials are available for viewing in the RCRA Information Center (RIC), located at Crystal Gateway 1, First Floor, 1235 Jefferson Davis Highway, Arlington, VA. The RIC is open from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding federal holidays. To review docket materials, it is recommended that the public make an appointment by calling 703–603–9230. The public may copy a maximum of 100 pages from any regulatory docket at no charge. Additional copies cost $.15/page. The index and some supporting materials are available electronically.

The ICR is available on the Internet. Follow these instructions to access the information electronically:

WWW: http://www.epa.gov/epaoswer/hazwaste/gener/manifest/
FTP: ftp.epa.gov
Login: anonymous
Password: your Internet address
Files are located in /pub/epaoswer

The official record for this action will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into paper form and place them in the official record, which will also include all comments submitted directly in writing. EPA responses to comments, whether the comments are written or electronic, will be in a notice in the "Federal Register." EPA will not immediately reply to commenters electronically other than to seek clarification of electronic comments that may be garbled in transmission or during conversion to paper form, as discussed above.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA Hotline 1–800–424–9346 or TDD 800–553–7672 (hearing impaired). In the Washington metropolitan area, call 703–412–9810 or TDD 703–412–3323. For more detailed information on specific aspects of this rulemaking, contact Bryan Groce, Office of Solid Waste (5305W), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460, 703 308–8750, groce.bryan@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

Affected entities: Entities potentially affected by this action are those who generate, transport, or manage hazardous waste including those who store, treat, recycle, or dispose of hazardous waste.

Title: Requirements for Generators, Transporters, and Waste Management Facilities Under the RCRA Hazardous Waste Manifest System, ICR No. 801, OMB No. 2050–0039, expiration date: 9/30/96.

Abstract: The Resource Conservation and Recovery Act (RCRA), as amended, establishes a national program to assure that hazardous waste management practices are conducted in a manner that is protective of human health and the environment. EPA's authority to

require compliance with the manifest system stems primarily from RCRA section 3002(a)(5). This section mandates a hazardous waste manifest "system" to assure that all hazardous waste generated is designated for and arrives at the appropriate treatment, storage, disposal facility. An essential part of this manifest system is the Uniform Hazardous Waste Manifest (Form 8700–22A). The manifest is a tracking document that accompanies the waste from its generation site to its final disposition. The manifest lists the wastes that are being shipped and the final destination of the waste.

The manifest system is a self-enforcing mechanism that requires generators, transporters, and owner/operators of treatment, storage, and disposal facilities to participate in hazardous waste tracking. In addition the manifest provides information to transporters and waste management facility workers on the hazardous nature of the waste, identifies wastes so that they can be managed appropriately in the event of an accident, spill, or leak, and ensures that shipments of hazardous waste are managed properly and delivered to their designated facilities.

This system does not ordinarily involve intervention on the part of EPA unless hazardous wastes do not reach their point of disposition within a specified time frame. In most cases, RCRA-authorized States operate the manifest system, and requirements may vary among authorized States.

EPA believes manifest requirements and the resulting information collection mitigate potential hazards to human health and the environment by ensuring that hazardous waste is sent to and received by appropriate treatment, storage, and disposal facilities, by initiating appropriate response actions if a shipment does not reach its intended destination, and by providing necessary emergency response information in the event of an accident, spill, or leak during transportation.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15.

The EPA is soliciting comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Burden Statement

The projected burden and cost for complying with manifest requirements are approximately 2,699,907 burden hours per year with an annual cost of $117,194,088.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Recordkeeping and Reporting Burden

Hazardous Waste Generators

The total estimated annual recordkeeping and reporting burden for hazardous waste generators is 922,411 hours. The Agency estimates that there are 18,514 large quantity generators (LQGs), 82,873 small quantity generators (SQGs), and 1,983 treatment storage and disposal facilities (TSDFs) acting as generators who are subject to the federal requirements for preparing a manifest. Hazardous waste generators prepare approximately 1,795,865 manifests annually for federally regulated hazardous waste.

The Agency believes that LQGs and SQGs take an average of 24 and 22.8 minutes respectively, to complete each manifest, and they are estimated to take 1.25 hours to read the manifest regulations once a year.

The estimated annual reporting burden related to manifesting for a SQG or LQG ranges from 3 to 90 minutes per generator. The variation in burden hours will depend on the nature of the shipment. For example, if a hazardous waste generator receives assistance in completing the manifest and experiences no problems with the shipment, the burden is likely to be as low as 3 minutes per manifest. If however, a generator does not receive a copy of the manifest returned by the TSDF the burden can be as high as 90 minutes to account for the time required to complete and submit an exception report.

EPA also estimates that there are 1,983 TSDFs who ship wastes offsite and that a TSDF who ships wastes offsite takes an average of 25.8 minutes to prepare a manifest. Of these TSDFs approximately 75 percent are captive TSDFs (i.e., TSDFs who receive waste from onsite sources only, or from onsite and offsite sources that are owned by the same company) and 25 percent are commercial TSDFs (i.e., facilities that manage waste from any generator or facility, or from a limited group of generators or facilities for commercial purposes). EPA estimates that the average commercial TSDF acting as a generator completes 292 manifests annually while the average captive TSDF acting as a generator completes 36 manifests annually. Approximately 144,832 manifests are completed annually by all commercial TSDFs acting as generators, and 53,532 manifests are completed annually by all captive TSDFs acting as generators. This results in a total of 198,364 manifests generated by TSDFs acting as generators each year.

In addition to reporting burden, hazardous waste generators are expected to incur a recordkeeping burden of between 10 and 20 minutes for time spent retaining the manifest, obtaining the signature of the first transporter, and dealing with any exception reports onsite.

Hazardous Waste Transporters

The estimated annual recordkeeping and reporting burden for hazardous waste transporters who handle the manifest is 633,119 hours. The Agency estimates that there are 500 hazardous waste transporter companies subject to the manifest system and that on average, each company will take 1.25 hours to read the manifest regulations once a year. Approximately 91 percent (1,623,317) of manifests will accompany highway shipments, 6 percent (107,032) will accompany rail shipments, and 3 percent (53,516) will accompany water shipments. EPA estimates that there are approximately 1,783,865 manifests

completed annually for domestic shipments and that there are an additional 12,000 manifests that accompany exports of hazardous wastes from the U.S.

The estimated annual reporting burden per manifest for hazardous waste transporters ranges from 10 to 90 minutes. The variation in burden hours for transporters will depend on the nature of the shipment and whether a discharge has occurred. If a discharge of hazardous waste occurs, the transporter is required to notify the authorities and will incur a higher burden.

In addition to reporting burden, hazardous waste transporters are expected to incur a recordkeeping burden of between 10 and 20 minutes per manifest to account for time spent retaining the manifest onsite, obtaining the signature of the next handler of the shipment, and relaying to that handler the remaining copies of the manifest.

Treatment Storage and Disposal Facilities

The estimated annual recordkeeping and reporting burden for designated TSDFs is 1,344,377 hours. Of the 2,584 TSDFs in the U.S., approximately 644 TSDFs receive hazardous waste shipments from offsite (e.g., they receive waste from any generator or facility, or from a limited group of generators or facilities for commercial purposes). The remaining TSDFs treat or store wastes from onsite sources only. EPA estimates that TSDFs who receive waste for treatment, storage, and disposal will take 1.25 hours to read the manifest regulations once a year.

These designated facilities are also expected to spend between 20 and 205 minutes fulfilling reporting requirements. For most TSDFs, reporting consists of completing and transmitting the manifest. Reporting of this type may require only 20 minutes per manifest. The Agency estimates that of the 1,795,685 manifests prepared by generators, 12,000 manifests are sent with shipments exported out of the U.S. and 178 manifests are lost in transport. These 12,178 manifests are not received or processed by designated TSDFs. The remaining 1,783,687 manifest are received by TSDFs. Of these, 7,135 (0.4%) manifests involve discrepancies. A TSDF who encounters a significant discrepancy may incur a burden as high as 205 minutes per manifest. This includes time for contacting the generator and completing the discrepancy reports.

In addition to reporting burden, designated TSDFs are expected to incur a recordkeeping burden of between five and 35 minutes per manifest to account for time spent retaining the manifest onsite and if needed, a discrepancy and unmanifested waste report, and relaying a signed copy confirming delivery of the shipment to the generator.

Costs

EPA estimates that generators, transporters, and TSDFs incur annual costs of $96,861,043. Of this total, $96,803,642 (99.9%) is attributable to labor costs and to operation and maintenance costs. Labor costs are estimated to be $96.16 per hour for legal staff, $71.50 per hour for managerial staff, $46.80 per hour for technical staff, and $24.48 per hour for clerical staff.

Additionally, capital costs for the hazardous waste manifest requirements are approximately $57,261. For this ICR, capital cost represents the cost of purchasing file cabinets to store paper copies of the manifest. The Agency anticipates that collectively the hazardous waste industry will need to keep copies of 7,872,069 manifests and reports annually and would need to purchase 492 standard size lateral file cabinets each year. In total, EPA estimates that the hazardous waste industry will need to pay an annual cost of $28,630 for the 492 file cabinets over each of the 15 years of the useful life of the file cabinet.

Because the exhibits in the ICR summarized in this notice present the average annual cost to respondents under the manifest system over the three-year life of the ICR, EPA has averaged the annual cost of purchasing file cabinets over three years. By averaging the annual payments for each of the three years, EPA has determined the total average annual cost to the industry to be approximately $57,261. Commenters should note that the above estimates reflect an overall increase in burden from the previous ICR. This increase is due primarily to adjustments to the number of manifests per shipment, to the amount of time required to read the regulations, and to the amount of time needed to prepare the manifest and process it during its transmission between various handlers.

The Agency is specifically interested in comments concerning the accuracy of the number of manifests estimated, the amount of time required to read the regulations and prepare the manifest, and elements of the manifest system that result in additional burden but are not included in the ICR.

Commenters should also be advised that EPA plans a more fundamental modification of the manifest system during the period of this ICR renewal. The Agency is interested in reducing the data elements and copy requirements of the current form, and moving perhaps to a more automated means of tracking and reporting hazardous waste movement data. Therefore, EPA also solicits comments suggesting those elements of the manifest system that are most amenable to change, and the burden reduction or other benefits that could result from the suggested changes. EPA also requests comments on the concept of automating the manifest system, and suggestions and concerns from the public on the automated approaches which EPA should consider in developing a new approach to tracking hazardous waste shipments. Send comments regarding the ICR and suggestions for reducing the burden to the address noted above in the section entitled **ADDRESSES**.

Dated: March 24, 1999.

Elizabeth Cotsworth,

Acting Director, Office of Solid Waste.

[FR Doc. 99–8254 Filed 4–2–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6319–6]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; Final Authorization for Hazardous Waste Management

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Action (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Final Authorization for Hazardous Waste Management, OMB Control No. 2050–0041, expiration date March 31, 1999. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before May 5, 1999.

FOR FURTHER INFORMATION CONTACT: For a copy of the ICR, call Sandy Farmer at EPA, (202) 260–2740, or download off the Internet at *http://www.epa.gov/icr/icr.htm*, and refer to EPA ICR No.969.05.

SUPPLEMENTARY INFORMATION:

Title: Final Authorization for Hazardous Waste Management Programs (OMB Control No. 2050–0041, EPA ICR No. 969.05) expiring 3/31/99. This is a

request for an extension of a currently approved collection.

Abstract: In order for a State to obtain final authorization for a State hazardous waste program or to revise its previously authorized program, it must submit an official application to the EPA Regional office for approval. The purpose of the application is to enable EPA to properly determine whether the State's program meets the requirements of section 3006 of RCRA.

Either EPA or the approved State may initiate a revision to The authorized program. State program revision may be necessary when the controlling Federal or State statutory or regulatory authority is modified or supplemented. The State shall inform EPA of any proposed modifications to its basic statutory or regulatory authority, its forms, procedures, or priorities, in accordance with section 271.21. If a State is proposing to transfer all or any part of any program from the approved State agency to any other agency, it must notify EPA in accordance with section 271.21 and submit revised organizational charts as required under section 271.6, in accordance with section 271.21. Further, whenever EPA has reason to believe that circumstances have changed with respect to a State program, EPA may request, and the State shall provide, a supplemental Attorney General's statement, program description, or such other documents or information as are necessary. These paperwork requirements are mandatory under section 3006(a). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. The **Federal Register** Notice required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on November 12, 1998 (63 FR 30275). Two comments were received.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 1187 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Affected Entities: Authorized states and territories.

Estimated Number of Respondents: 18.

Frequency of Response: Annually.

Estimated Total Annual Hour Burden: 21,357 hours.

Estimated Total Annualized Cost Burden: $0.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following address. Please refer to EPA ICR No.969.05 and OMB Control No. 2050–0041 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, OP Regulatory Information Division (2137), 401 M Street, SW, Washington,DC 20460 (or E-mail Farmer.Sandy@epamail.epa.gov); and Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW, Washington, DC 20503.

Dated: March 30, 1999.

Joseph Retzer,

Director, Regulatory Information Division.

[FR Doc. 99–8335 Filed 4–2–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6318–8]

National Volatile Organic Compound Emission Standards for Consumer and Commercial Products; Variance Requests for the Consumer Products Rule and the Automobile Refinish Coatings Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of opportunity for public hearing.

SUMMARY: This document provides a list of companies that have submitted requests for variances under the Consumer Products Rule and the Automobile Refinish Coatings Rule. The list includes variance requests received from December to early March, and includes the name of each requesting company, its location, and a brief summary of the request. The EPA will determine whether, and to what extent, and under what conditions to grant the requested variances from the requirements of the specific rules.

DATES: *Public Hearing.* A public hearing will be held, if requested, to provide interested persons an opportunity for oral presentation of data, views, or arguments concerning the variance requests. If anyone contacts the EPA requesting to speak at a public hearing by April 26, 1999, a public hearing will be held on May 25, 1999, beginning at 9:00 a.m. Persons interested in attending the hearing should notify Janet Eck, (919) 541–7946, to verify that a hearing will occur and for notification of the location of the meeting.

Request to Speak at Hearing. Persons wishing to speak at the public hearing must contact Janet Eck at the EPA by April 26, 1999. Ms. Eck may be contacted at telephone number (919) 541–7946, or FAX number (919) 541–5689.

FOR FURTHER INFORMATION CONTACT: For general information on the variance provisions of the rules or information on specific variance requests, contact Bruce Moore (telephone: 919–541–5460; email: moore.bruce@epa.gov) or Mark Morris (telephone: 919–541–5416; email: morris.mark@epa.gov), Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

SUPPLEMENTARY INFORMATION: On September 11, 1998, the EPA promulgated National Volatile Organic Compound (VOC) Emission Standards for Consumer Products (63 FR 48819) and National VOC Emission Standards for Automobile Refinish Coatings (63 FR 48806). These standards established VOC limits for the products affected by the rules. The rules contain provisions that allow a regulated entity to apply for a temporary variance if the entity cannot comply with the requirements of the rule because of circumstances beyond its reasonable control.

Requests for variances must include:

(1) The specific grounds upon which the variance is sought,

(2) The proposed date by which the regulated entity will achieve compliance with the rule (no later than 5 years after the issuance of the variance), and

(3) A compliance plan detailing the method(s) by which the regulated entity will achieve compliance with the rule. The rules state that the Administrator will issue a temporary variance if a regulated entity can demonstrate that

complying with the rule would be technologically or economically infeasible, and if the regulated entity proposes a plan by which compliance will be achieved as expeditiously as possible. A variance will cease to be effective upon the failure of an entity to comply with any term or condition of the variance. Upon the application of any party, the Administrator may review and, for good cause, modify or revoke a variance after holding a public hearing.

From December to early March, the EPA received twenty requests for variances from the two rules. Table 1 lists those companies requesting variances from the Consumer Products Rule. Table 2 lists those companies requesting variances from the Automobile Refinish Coatings Rule. These variance requests are currently undergoing review.

TABLE 1.—VARIANCE REQUESTS: CONSUMER PRODUCTS RULE

Company	Location	Summary of request
Waldwick Plastics Corporation	Waldwick, New Jersey	Waldwick requested a variance from the VOC limits for seven deodorizing products that would expire June 30, 1999.
Cul-Mac Industries, Inc	Wayne, Michigan	Cul-Mac requested a variance to modify dilution ratios for a windshield washer solvent. They requested a variance that would expire July 1999.
Taylor Labs, Inc	Chattanooga, Tennessee	Taylor Labs requested a 1 to 2 year variance from the date code requirements. They requested that dating the outer delivery packaging be acceptable rather than date coding individual packages within.
Selig Chemical Industries	Atlanta, Georgia	Selig requested a variance from the date coding requirements. They requested that, in lieu of data stamping their products, they be allowed to use hang tags until they obtain encoding equipment to date stamp their products. They have requested a variance that would expire November 1999.
Carroll Company	Garland, Texas	Carroll requested a variance that would expire January 2001 to allow sufficient time to purchase date coding equipment.
Ocean Coffee Company	Shreveport, LA	Ocean Coffee Company requested a five-year variance to acquire a supply of product in small quantities. They claim they are unable to find compliant products in quantities small enough to be economically feasible for them.
Chemtech	Monroe, Louisiana	Chemtech requested a variance that would expire September 1999 to allow them to manually calculate the VOC content of all of their product formulas.
ECP Incorporated	Oak Brook, Illinois	ECP requested a variance that would expire July 2000 to allow them to reformulate fabric protectors.
Pitt Penn Oil Company	Creighton, Pennsylvania	Pitt Penn requested a variance from the labeling requirements to allow them to deplete a large existing inventory of labels. Pitt Penn did not request a specific time by which compliance would be achieved.
Watkins, Inc	Winona, Minnesota	Watkins requested a five-year variance that would allow them to reformulate several products. Watkins has claimed the information in their request to be confidential.
Butcher	Alsip, Illinois	Butcher requested a variance that would expire December 1999 to allow them to reformulate several products. Butcher has claimed the information in their request to be confidential.
Amrep, Inc	Marietta, Georgia	Amrep requested a variance from the labeling requirements of the rule until April 1999.
North Carolina Department of Corrections.	Raleigh, North Carolina	The Department of Corrections requested a variance to reformulate a non-ammoniated glass cleaner and an ammoniated glass cleaner. They have requested a variance that would expire March 1999.
Central Products	Montgomery, Alabama	Central Products requested a 1-month variance from the labeling requirements.
MEDO Industries	Tarrytown, New York	MEDO requested a variance that would expire April 1999 to allow them to retrofit their date-coding equipment.
Wella	Richmond, Virginia	Wella requested a 1-month variance from the labeling requirements.
Atco International	Marietta, Georgia	Atco requested a variance from the VOC limits that would expire June 1999.

TABLE 2.—VARIANCE REQUESTS: AUTOMOBILE REFINISH COATINGS RULE

Company	Location	Summary of request
Finish Technologies	Walled Lake, Michigan	Finish Technologies has requested a 24-month variance from the rule because their coatings use a solvent which is expected to become an exempt compound.
Coventry Coatings, Inc	Garnerville, New York	Coventry Coatings has requested an 18-month variance to reformulate primer surfacers and clearcoats, and to deplete existing labels.
Grow Automotive	Troy, Michigan	Grow has requested a 6-month variance to develop product literature which will recommend the use of their products in a way that results in compliant coatings.

Authority: 42 U.S.C. 7511b(e).

March 29, 1999.

Robert Perciasepe,

Assistant Administrator, OAR.

[FR Doc. 99–8255 Filed 4–2–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6318–6]

Investigator-Initiated Grants: Request for Applications in the "Supersites" Program

AGENCY: Environmental Protection Agency.

ACTION: Notice of request for Applications.

SUMMARY: This notice provides information on the availability of a fiscal year 1999 investigator-initiated grants solicitation for a Particulate Matter (PM) "Supersites" monitoring program. The areas of research interest, eligibility and submission requirements, evaluation criteria, and implementation schedules are set forth in the announcement. Cooperative agreement grants will be competitively awarded following peer review. This competition is jointly announced by the Office of Air and Radiation and the Office of Research and Development. A discussion of the program will take place on June 7, 1999, in Durham, NC.

DATES: The receipt date for applications is Wednesday, August 4, 1999, by 4:00 p.m. EDT.

FOR FURTHER INFORMATION CONTACT: U.S. Environmental Protection Agency, National Center for Environmental Research and Quality Assurance (8703R), 401 M Street SW, Washington DC 20460, telephone (800) 490–9194. The complete announcement can be accessed on the Internet from the EPA home page: http://www.epa.gov/ncerqa under "announcements."

SUPPLEMENTARY INFORMATION: In this Request for Applications (RFA) the U.S. Environmental Protection Agency (EPA), Office of Air and Radiation and Office of Research and Development, invites research cooperative agreement applications to support development of a "Particulate Matter Supersites" monitoring program that will provide information of value to the atmospheric sciences, human health, and human exposure research communities. The PM Supersites Program will be implemented through individual projects in as many as five study areas of the United States. Each of these individual projects will be an ambient atmospheric measurement study which is designed to address and integrate objectives of the atmospheric sciences, health, and exposure research communities. Applications must be received by 4:00 p.m. EDT, Wednesday, August 4, 1999. The RFA provides relevant background information, summarizes EPA's interest in the topic areas, and describes the application and review process.

To foster interaction among potential applicants across a spectrum of scientific disciplines, EPA has organized a discussion session on the evening of June 7, 1999, at the Durham Marriott at the Civic Center, in Durham, NC. Further information about this meeting is posted on the EPA web site: *http://www.epa.gov/ttn/amtic/supsites.html*.

Contact person for technical questions related to the program is Richard D. Scheffe (*scheffe.richard@epa.gov*), telephone 919–541–4650, and administrative questions is Robert E. Menzer (*menzer.robert@epa.gov*), telephone 202–564–6849.

Dated: March 16, 1999.

Approved for publication:

Henry L. Longest II,

Acting Assistant Administrator for Research and Development.

[FR Doc. 99–8256 Filed 4–2–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6318–7]

Investigator-Initiated Grants: Request for Applications

AGENCY: Environmental Protection Agency.

ACTION: Notice of request for applications.

SUMMARY: This notice provides information on the availability of fiscal year 1999 investigator-initiated grants program announcements, in which the areas of research interest, eligibility and submission requirements, evaluation criteria, and implementation schedules are set forth. Grants will be competitively awarded following peer review.

DATES: Receipt dates vary depending on the specific research area within the solicitation and are listed below.

FOR FURTHER INFORMATION CONTACT: U.S. Environmental Protection Agency, National Center for Environmental Research and Quality Assurance (8703R), 401 M Street SW, Washington DC 20460, telephone (800) 490–9194. The complete announcement can be accessed on the Internet from the EPA home page: http://www.epa.gov/ncerqa under "announcements."

SUPPLEMENTARY INFORMATION: In its Requests for Applications (RFA) the U.S. Environmental Protection Agency (EPA) invites research grant applications in the following areas of special interest to its mission: (1) Airborne Particulate Matter Health Effects; (2) Drinking Water; (3) Combustion Emissions; (4) Computing Technology for Ecosystem Modeling; and (5) Exploratory Physical Science and Engineering Research. Applications must be received as follows: June 2, 1999, for topic (1); May 19, 1999, for topics (2) and (3); May 12, 1999, for topic (4); and June 9, 1999, for topic (5).

The RFAs provide relevant background information, summarize EPA's interest in the topic areas, and describe the application and review process.

Contact person for the Airborne Particulate Matter Health Effects RFA is Deran Pashayan (pashayan.deran@epamail.epa.gov), telephone 202–564–6913. Contact person for the Drinking Water RFA is William Stelz (stelz.william@epamail.epa.gov), telephone 202–564–6834. Contact person for the Combustion Emissions RFA is Thomas Veirs (veirs.thomas@epamail.epa.gov), telephone 202–564–6831. Contact person for the Computing Technology for Ecosystem Modeling RFA is Chris Saint (saint.chris@epamail.epa.gov), telephone 202–564–6909. Contact person for the Exploratory Physical Science and Engineering RFA is Bala Krishnan (krishnan.bala@epamail.epa.gov), telephone 202–564–6832.

Dated: March 16, 1999.

Approved for publication:

Henry L. Longest II,

Acting Assistant Administrator for Research and Development.

[FR Doc. 99–8257 Filed 4–2–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6319–9]

Effluent Guidelines Task Force Open Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: The Effluent Guidelines Task Force, an EPA advisory committee, will

hold a meeting to discuss the Agency's Effluent Guidelines Program. The meeting is open to the public.

DATES: The meeting will be held on Tuesday, May 4, 1999 from 9:00 a.m. to 5:00 p.m., and Wednesday, May 5, 1999 from 8:30 a.m. to 3:00 p.m.

ADDRESSES: The meeting will take place at the Radisson Barcelo Hotel, 2121 P Street, NW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Beverly Randolph, Office of Water (4303), 401 M Street, SW, Washington, D.C. 20460; telephone (202) 260–5373; fax (202) 260–7185.

SUPPLEMENTARY INFORMATION:

Pursuant to the Federal Advisory Committee Act (Pub. L. 92–463), the Environmental Protection Agency gives notice of a meeting of the Effluent Guidelines Task Force (EGTF). The EGTF is a subcommittee of the National Advisory Council for Environmental Policy and Technology (NACEPT), the external policy advisory board to the Administrator of EPA.

The EGTF was established in July of 1992 to advise EPA on the Effluent Guidelines Program, which develops regulations for dischargers of industrial wastewater pursuant to Title III of the Clean Water Act (33 U.S.C. 1251 *et seq.*). The Task Force consists of members appointed by EPA from industry, citizen groups, state and local government, the academic and scientific communities, and EPA regional offices. The Task Force was created to offer advice to the Administrator on the long-term strategy for the effluent guidelines program, and particularly to provide recommendations on a process for expediting the promulgation of effluent guidelines. The Task Force generally does not discuss specific effluent guideline regulations currently under development.

The meeting is open to the public, and limited seating for the public is available on a first-come, first-served basis. The public may submit written comments to the Task Force regarding improvements to the Effluent Guidelines program. Comments should be sent to Beverly Randolph at the above address. Comments submitted by April 23, 1999 will be considered by the Task Force at or subsequent to the meeting.

Dated: March 26, 1999.

Tudor T. Davies,

Director, Office of Science and Technology.

[FR Doc. 99–8336 Filed 4–2–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6320–2]

Notice of Process Improvements Under Project XL

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; clarification and streamlining of the process used for developing XL projects.

SUMMARY:

What is Project XL?

Project XL, which stands for eXcellence and Leadership, is a national initiative that tests innovative ways of achieving better and more cost-effective public health and environmental protection. XL pilot projects must meet certain criteria (see **SUPPLEMENTARY INFORMATION** section of this Notice), but are built around three key elements: (1) Stronger environmental performance; (2) meaningful stakeholder involvement; and (3) flexibility in EPA regulations, policies, or procedures. Project XL challenges the regulated community—facilities, business sectors, government agencies, and communities—to find cleaner, cheaper and smarter ways of protecting the environment. As of February 1999, ten projects are being implemented and over 20 more are in development. Project sponsors have already achieved a number of significant benefits by participating in Project XL, including increased environmental protection, substantial cost savings, improved operational flexibility, and better stakeholder relations.

What Is the Purpose of This Notice?

EPA is announcing new operating guidance for XL's project development process. Project XL is an evolving program where EPA applies "lessons learned" in a timely way. Comments are always welcome. This guidance will not be "finalized" through additional notices, but will be revised, when necessary, based on comments and input. This Notice provides a very brief description of the new guidance and announces the availability of three specific documents that describe the key changes in greater detail. These documents are available on Project XL's website: www.epa.gov/ProjectXL as well as from XL's information line at 202–260–5754.

Why Is This New XL Guidance Needed?

When Project XL was launched in 1995, there were no models to draw upon for such an innovative effort. Since that time, EPA has learned a great deal about how to carry out cross-media, cross-Agency experiments and can now be more specific on what a quality proposal should contain, how decisions should be made, and what a stakeholder process should entail. Building on that practical experience, EPA has worked hard with representatives from industry, environmental organizations, states, and other interested groups over the last several months to improve how XL pilot projects are developed and implemented. These improvements have already led to reductions in the "transaction costs" of all participants in projects where they have been utilized.

How Has the New Process Produced Better Results?

After a step-by-step evaluation of the old process, the "re-engineering" work group created a new process that is faster and clearer, and spells out the roles and responsibilities not only for EPA, but also project sponsors and stakeholders. Improvements have been seen in several XL projects currently under development where these changes have been utilized. For example, in one recent project several of the new techniques were applied resulting in a quality proposal that will have an agreement signed nine months after initial discussions began.

What Changes Have Been Made?

The old process needed—

—Greater clarity in determining what makes a good proposal and how to involve and assist stakeholders more effectively;

—Better management of proposal development activities and decision-making in EPA, the states, and other regulators outside of EPA; and

—More commitment to an expeditious process by all parties at all levels.

The new process is now—

—clearer, more predictable, and faster and is described in detail in the following documents:

(1) A Best Practices Guide for Proposal Development

This guide is designed to help project sponsors submit Project XL proposals that will go through the review process as quickly and smoothly as possible. The guide is intended to: (a) let project sponsors know in clear terms what information to put into a proposal; (b) help sponsors understand why EPA needs this information from project sponsors; and (c) give sponsors some initial sense of whether their idea is a likely candidate for Project XL.

(2) A Stakeholder Involvement Guide

Surveys of project sponsors have indicated that the stakeholder involvement process has been very beneficial to them, but that the process could benefit from clear guidance on how to do it and what's involved. This XL-specific guide to stakeholder involvement is designed to clarify the roles and responsibilities of sponsors and stakeholders, enumerate guiding principles, and provide ideas and tools to help develop, negotiate, and implement successful XL projects.

(3) Manual for EPA XL Project Teams

XL projects require expeditious coordination among several organizations within EPA. This manual guides the internal EPA process, and improves the Agency's ability to make decisions quickly and move XL projects effectively through the development process. It consists of two parts: (a) Ground Rules for EPA XL Teams, outlining ground rules found to be essential for EPA project teams to perform effectively; and (b) The XL Process Steps for EPA's XL Teams, which provides a step-by-step breakdown of the process and delineates internal responsibilities for each step.

EPA has developed additional tools and techniques to assist during proposal development:

—Project management schedules with milestones are now developed and tracked for every project;

—EPA senior management participate early during proposal development;

—The roles and responsibilities for all participants are now clearer;

—Training is available for new EPA XL project teams;

—Assistance is available through an EPA contractor to project sponsors who would like to use an impartial facilitator to help get the stakeholder involvement process off to an open, well-organized, and productive start.

—Task-specific technical assistance can also be provided for stakeholder groups under certain conditions through the Institute for Conservation Leadership (telephone number 301–270–2900).

How Fast is "Faster"?

The revised XL process is divided into shorter, more focused project phases, with estimated time frames of six months to a year, compared to 18 months or more for the old process.

THE NEW PHASES OF THE XL PROPOSAL PROCESS

Phase	Estimated number of days*	Description
Pre-Proposal	20–30	Informal discussions between EPA, State(s), and potential sponsors.
Proposal Development	50–75	EPA and the relevant State(s) help the sponsor develop proposal concepts into complete proposal package.
EPA & State Proposal Review	40–60	States and EPA decide whether the project is acceptable for developing a Final Project Agreement (FPA).
Final Project Agreement Development, and a **Federal Register** Notice to solicit comments, with the appropriate legal mechanism, where necessary (such as a permit or site specific rule)	90–180	EPA, the sponsor, the State(s), and the stakeholders work to develop the Final Project Agreement (FPA).
Total:	200–345*	

Provided the project sponsor and the State agree with the proposed schedules.

DATES: April 5, 1999.

FOR FURTHER INFORMATION CONTACT: (1) For XL projects: Contact Christopher Knopes, Office of Reinvention Programs, United States Environmental Protection Agency, Room 1029, 401 M Street SW, Mail Code 1802, Washington, DC 20460. The telephone number for the Office is (202) 260–5754; the facsimile number is (202) 401–6637.

(2) For general information, including documents referenced in this document, other EPA policy documents related to Project XL, EPA regional contacts, application information, and descriptions of existing XL projects and proposals, please turn to Project XL's website—http://www.epa.gov/ProjectXL for private and federal facilities, states, and business sectors; and for communities, turn to *http://www.epa.gov/ProjectXLC.*

SUPPLEMENTARY INFORMATION:

How are XL Projects Selected?

Much information on Project XL has been provided in previous **Federal Register** documents. In Project XL's first **Federal Register** Notice on May 23, 1995 (60 FR 27282), EPA described Project XL as a program that offers a balanced set of benefits to the environment, the regulated community and the public, and issued a general solicitation for proposals. In that Notice, EPA also defined the eight criteria by which proposals are selected for participation. In addition to these criteria, a project sponsor must have a solid record of compliance.

The criteria help evaluate whether the project can:

(1) Produce superior environmental results;

(2) Produce benefits such as cost savings, paperwork reduction, and operational flexibility;

(3) Garner stakeholder involvement and support;

(4) Achieve innovation and multi-media pollution prevention;

(5) Be transferable to other facilities, sectors, communities, etc.;

(6) Be feasible (technically and administratively);

(7) Identify monitoring, reporting, accountability, and evaluation methods; and

(8) Avoid shifting of risk burden.

In addition to these criteria, there are three criteria that are specific to community-sponsored XL projects:

(9) Build capacity for community participation;

(10) Create economic opportunity; and

(11) Promote community planning.

How Can You Get More Information?

For more detailed definitions of the XL criteria, please refer to the **Federal Register** documents of May 23, 1995 (60 FR 27282) and April 23, 1997 (62 FR19872), which provide further guidance and clarification. Additional information on XL (program policy, projects, project ideas, publications, and legal questions) can be obtained from the **Federal Register** document of June 23, 1998, from Project XL's websites http://*www.epa.gov/ProjectXL* and *http://www.epa.gov/ProjectXLC*, and by calling 202–260–5754.

Dated: March 23, 1999.

Jay Benforado,

Acting Associate Administrator, Office of Reinvention.

[FR Doc. 99–8338 Filed 4–2–99; 8:45 am]

BILLING CODE 6560–50–P

EQUAL EMPLOYMENT OPPORTUNITY

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Equal Employment Opportunity Commission.

DATE AND TIME: April 13, 1999 at 2:00 P.M.

PLACE: Federal Reserve Bank Auditorium, 10 Independence Mall, Philadelphia, PA, 19106.

STATUS: The meeting will be open to the public.

MATTERS TO BE CONSIDERED:

1. Announcement of Notation Votes, and
2. Panel Discussion of Equal Pay Act (EPA) Enforcement.

Note: Any matters not discussed or concluded may be carried over to a later meeting. (In addition to publishing notices on EEOC Commission meetings in the **Federal Register**, the Commission also provides a recorded announcement a full week in advance on future Commission meetings.) Please telephone (202) 663–7100 (voice) and (202) 663–4074 (TDD) at any time for information on these meetings.

CONTACT PERSON FOR MORE INFORMATION: Frances M. Hart, Executive Officer, on (202) 663–4070.

Dated: March 30, 1999.

Frances M. Hart,

Executive Officer Executive Secretariat.

[FR Doc. 99–8343 Filed 3–31–99; 4:40 pm]

BILLING CODE 6750–06–M

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collections Being Reviewed by the Federal Communications Commission

March 25, 1999.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before June 4, 1999. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commission, 445 12th Street, SW, Room 1–A804, Washington, DC 20554 or via the Internet to lesmith@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0095.

Title: Annual Employment Report—Cable Television.

Form Number: FCC 395–A.

Type of Review: Extension of currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 2,564.

Estimated Time per Response: 0.25 to 2.42 hours.

Frequency of Response: Annual reporting requirement.

Total Annual Burden: 4,683.

Total Annual Costs: None.

Needs and Uses: The Annual Employment Report (FCC 395–A) is a data collection device used to assess and enforce the Commission's EEO requirements. The report identifies employees by gender, race, color and/or national origin in nine major job categories. Every cable entity with six or more full-time employees and all Satellite Master Antenna Television Systems serving 50 or more subscribers and having six or more full-time employees must file annually a full FCC 395–A. However, cable entities with five or fewer full-time employees must only file Sections I, II, and IX of the FCC 395–A, and thereafter need not file again unless its employment increases. In addition, cable entities with six or more full-time employees will file a Supplemental Investigation Sheet once every five years. The data are used by FCC staff to monitor a cable unit's efforts to afford equal employment opportunity in employment. The data are also used to assess industry trends.

OMB Control Number: 3060–0574.

Title: MVPD Annual Employment Report.

Form Number: FCC 395–M.

Type of Review: Extension of currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 155.

Estimated Time Per Response: 0.25 to 2.42 hours.

Frequency of Response: Annual reporting requirement.

Total annual burden: 232 hours.

Total annual costs: None.

Needs and Uses: Section 22 (e) of the Cable Television Consumer Protection Act of 1992 (1992 Cable Act) amends the definition of "cable operator" for EEO purposes to include program packages of multiple video program distributors (MVPD) using owned or leased transport facilities in the multipoint distribution service (MDS), multichannel, multipoint distribution service (MMDS), direct broadcast satellite (DBS), television receive only (TVRO), and video dialtone facilities to provide multiple channels of video programming. The MVPD Annual Employment Report (FCC 395–M) is a data collection device used to assess and enforce the Commission's EEO requirements. The report identifies employees by gender, race, color, and/or national origin in nine major job categories. The FCC 395–M contains a grid which collects data on full and part-time employees, collects hiring and promotion data for senior upper-level job categories, and a list of job titles within each of the 15 job categories. MVPD units may submit computer-generated lists of job titles which are currently maintained for internal recordkeeping purposes. Every MVPD unit with six or more full-time employees must file annually a full FCC 395–M. However, MVPD units with five or fewer full-time employees must only file Sections I, II, and IX of the FCC 395–M, and thereafter, need not file again unless its employment increases. In addition, MVPD units with six or more full-time employees will file a Supplemental Investigation Sheet once every five years.

The data are used by FCC staff to monitor an MVPD unit's efforts to afford

equal employment opportunity in employment. The data are used to assess industry trends.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–8218 Filed 4–2–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Submitted to OMB for Review and Approval

March 19, 1999.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden · invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before May 5, 1999. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commissions, 445 12th Street, SW., Washington, DC 20554 or via the Internet to lesmith@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0134.

Title: Application for Renewal of Private Radio Station License.

Form Number(s): FCC 574 R.

Type of Review: Revision of a currently approved collection.

Respondents: Businesses or other for-profit entities; Not-for-profit institutions; Individuals or households; and State, Local, or Tribal Governments.

Number of Respondents: 84,000.

Estimated Time per Response: 0.3 hours.

Frequency of Response: Recordkeeping. On occasion reporting requirements.

Total Annual Burden: 27,720 hours.

Total Annual Costs: $5,697,000.

Needs and Uses: This form is filed by applicants in the Land Mobile and General Mobile Radio Services for renewal of an existing authorization. The data are used to determine eligibility for a renewal and issue a radio station license. Data are used to maintain the licensing database and provide proper use of the frequency spectrum.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–8217 Filed 4–2–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL FINANCIAL INSTITUTIONS EXAMINATIONS COUNCIL

Community Reinvestment Act

AGENCY: Federal Financial Institutions Examination Council.

ACTION: Withdrawal of prior interpretations.

SUMMARY: The Federal Financial Institutions Examination Council (FFIEC) is withdrawing certain interpretations and guidance provided to financial institutions subject to the Community Reinvestment Act (CRA) that have been rendered obsolete by the 1995 revisions to the regulations implementing the CRA promulgated by the Office of the Comptroller of the Currency (OCC), the Federal Reserve Board (Board), the Federal Deposit Insurance Corporation (FDIC) and the Office of Thrift Supervision (OTS) (collectively, the agencies).

EFFECTIVE DATE: April 5, 1999.

FOR FURTHER INFORMATION CONTACT:

OCC: Malloy Harris, National Bank Examiner, Community and Consumer Policy Division, (202) 874–4446; or Margaret Hesse, Senior Attorney, Community and Consumer Law Division, (202) 874–5750, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

Board: Catherine M.J. Gates, Senior Review Examiner, Division of Consumer and Community Affairs, (202) 452–3946; or James H. Mann, Attorney, Division of Consumer and Community Affairs, (202) 452–2412, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551.

FDIC: Louise N. Kotoshirodo, Review Examiner, Division of Compliance and Consumer Affairs, (202) 942–3599; or Robert W. Mooney, Senior Fair Lending Specialist, Division of Compliance and Consumer Affairs, (202) 942–3090, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

OTS: Richard R. Riese, Project Manager, Compliance Policy, (202) 906–6134; or Theresa A. Stark, Project Manager, Compliance Policy, (202) 906–7054, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

Background

Section 806 of the Community Reinvestment Act of 1977 (CRA), 12 U.S.C. 2905, requires the Federal financial supervisory agencies to publish regulations to carry out the purposes of the CRA. On October 12, 1978, the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, and the Office of Thrift Supervision (agencies) jointly published regulations to implement the CRA (43 FR 47151) (1978 regulations).

To assist financial institutions subject to the CRA in interpreting these regulations and to provide guidance on compliance with the CRA, the Federal Financial Institutions Examination Council (FFIEC) issued various interpretations and statements of policy, including the "Uniform Interagency Community Reinvestment Act Final Guidelines for Disclosure of Written Evaluations and Revised Assessment Rating System" (1990 Rating Guidelines) on May 1, 1990 (55 FR 18163) and the "Community Reinvestment Act Policy Statement on Analyses of Geographic Distribution of Lending" (1991 Lending Analyses Policy Statement) on December 6, 1991. The agencies also jointly issued a "Statement of the Federal Financial Supervisory Agencies Regarding the Community Reinvestment Act" (1989 Policy Statement), which was published in the **Federal Register** on April 5, 1989 (54 FR 13742).

On May 4, 1995, the agencies revised their CRA regulations by issuing a joint final rule (60 FR 22156). *See* 12 CFR Parts 25, 228, 345 and 563e, implementing 12 U.S.C. 2901 *et seq.* Subsequently, the agencies published related clarifying amendments on December 20, 1995 (60 FR 66048) and May 10, 1996 (61 FR 21362). The revised regulations were phased in over a two year period ending July 1, 1997, at which time, the 1978 regulations fully expired and all provisions of the revised regulations became applicable to all financial institutions covered by the CRA.

On October 21, 1996, the FFIEC published agency staff guidance under the new regulations in the form of "Interagency Questions and Answers Regarding Community Reinvestment" (Interagency Q&As) to consolidate staff guidance regarding the revised CRA regulations into a comprehensive document to serve as informal staff guidance for financial institutions, agency staff and the public (61 FR 54647). The FFIEC supplemented, amended, and republished the Interagency Q&As on October 7, 1997 (62 FR 52105). The Interagency Q&As to be their primary vehicle for disseminating guidance interpreting their CRA regulations.

CDRI Review

Section 303 of the Riegle Community Development and Regulatory Improvement Act of 1994 (CDRI Act) requires each federal banking agency to streamline and modify its regulations and written policies to improve efficiency, reduce unnecessary costs, and eliminate unwarranted restraints on credit availability; remove inconsistencies and outmoded and duplicative requirements; and work jointly with the other federal banking agencies to make uniform all regulations implementing common statutory or supervisory policies (12 U.S.C. 4803(a)). During the review of their CRA regulations, the agencies identified interpretations and policy statements issued under the 1978 regulations that have been superseded or made obsolete. In particular, the agencies have determined that the 1989 Policy Statement, the Rating Guidelines, and the Lending Analysis Policy Statement are obsolete as they provide guidance that is inconsistent with the revised regulations and should be withdrawn.

Withdrawal of Guidance on 1978 Regulations

Since the revised regulations have been fully implemented, the FFIEC finds that the guidelines and policy statements issued to interpret the 1978 regulations have become obsolete. Consequently, the FFIEC is withdrawing in its entirety the Rating Guidelines and the Lending Analysis Policy Statement. By a separate notice, the agencies are also withdrawing the 1989 Policy Statement. This notice appears elsewhere in today's **Federal Register**. To the extent that any agency individually adopted any of these guidelines and policy statements, it has taken action to rescind such guidelines or policy statements.

Dated: March 30, 1999.

Keith J. Todd,

Executive Secretary, Federal Financial Institutions Examination Council.

[FR Doc. 99–8142 Filed 4–2–99; 8:45 am]

BILLING CODE FRB: 6210–01–P 25%; OTS: 6720–01–P 25%; FDIC: 6714–01–P 25%; OCC: 4810–33–P 25%.

FEDERAL HOUSING FINANCE BOARD

[No. 99–N–3]

Prices for Federal Home Loan Bank Services

AGENCY: Federal Housing Finance Board.

ACTION: Notice of prices for Federal Home Loan Bank services.

SUMMARY: The Federal Housing Finance Board (Board) is publishing the prices charged by the Federal Home Loan Banks (Banks) for processing and settlement of items (negotiable order of withdrawal or NOW), and demand deposit accounting (DDA) and other services offered to members and other eligible institutions.

EFFECTIVE DATE: April 5, 1999.

FOR FURTHER INFORMATION CONTACT: Gwen R. Grogan, Associate Director, Office of Supervision (202) 408–2892; or Edwin J. Avila, Financial Analyst, (202) 408–2871; Federal Housing Finance Board, 1777 F Street, N.W., Washington, D.C. 20006.

SUPPLEMENTARY INFORMATION: Section 11(e) of the Federal Home Loan Bank Act (Bank Act) (12 U.S.C. § 1431(e)) authorizes the Banks (1) to accept demand deposits from member institutions, (2) to be drawees of payment instruments, (3) to engage in collection and settlement of payment instruments drawn on or issued by members and other eligible institutions, and (4) to engage in such incidental activities as are necessary to the exercise of such authority. Section 11(e)(2)(B) of the Bank Act (12 U.S.C. 1431(e)(2)(B)) requires the Banks to make charges for services authorized in that section, which charges are to be determined and regulated by the Board.

Section 943.6(c) of the Board's regulations (12 CFR 943.6(c)) provides for the annual publication in the **Federal Register** of all prices for Bank services. The following fee schedules are for the Banks which offer item processing services to their members and other qualified financial institutions. Most of the remaining Banks provide other Correspondence Services which may include securities safekeeping, disbursements, coin and currency, settlement, electronic funds transfer, etc. However, these Banks do not provide services related to processing of items drawn against or deposited into third party accounts held by their members or other qualified financial institutions.

District 1.—Federal Home Loan Bank of Boston (1999 NOW/DDA Services) (Services not provided)

District 2.—Federal Home Loan Bank of New York (1999 NOW/DDA Services) (Does not provide item processing services for third party accounts)

District 3.—Federal Home Loan Bank of Pittsburgh (1999 NOW/DDA Services)

Standard Fee Schedule

Effective Date 1/1/99

Deposit Processing Service (DPS)

DPS Deposit Tickets: $0.6000 per deposit
Printing of Deposit Tickets. Pass-through
Deposit Items Processed for volumes of:
(pricing varies—tiered by monthly volume)
1–25,000: $0.0395 per item (transit)
25,001–58,500: $0.0390 per item (transit)
58,501–91,500: $0.0385 per item (transit)
91,501–125,000: $0.0380 per item (transit)
125,001–158,500: $0.0365 per item (transit)
158,501–191,500: $0.0345 per item (transit)
191,501–over: $0.0315 per item (transit)
Deposit Items Encoded (West) for volumes of:
(pricing varies—tiered by monthly volume)
1–25,000 $0.0390 per item
25,001–58,500: $0.0386 per item
58,501–91,500: $0.0382 per item
91,501–125,000: $0.0378 per item
125,001–158,500: $0.0365 per item
158,501–191,500: $0.0360 per item
191,501–over: $0.0355 per item
Deposit Items Encoded (East) for volumes of:
(pricing varies—tiered by monthly volume)
1–25,000: $0.0345 per item
25,001–58,500: $0.0340 per item
58,501–91,500: $0.0335 per item
91,501–125,000: $0.0330 per item
125,001–158,500: $0.0315 per item
158,501–191,500: $0.0305 per item
191,501–over: $0.0299 per item
Deposit Items Returned: $2.5000 per item
Deposit Items Photocopied: $3.9500 per photocopy

DPS Photocopies–Subpoena: $19.0000 per hour of processing time,
Plus: $0.2500 per photocopy
Deposit Items Rejected (applicable to pre-encoded deposits $0.2300 per rejected item
Canadian Item Processing: $5.2500 per item
All Foreign Collection Charges: (Includes Foreign Collection Fees, Bought Foreign Collection Fees, Foreign Bank Processing Charges, and (Foreign Check Courier Charges)
Foreign Return Check Fee: $28.0000 per item
DPS Transportation (West): $9.2500 per pickup
DPS Transportation (East): $9.2500 per pickup
Return Check Courier Service: $135.0000 per month

Depository Account Services

"On-Us" Returns Deposited:
Qualified Returns: $0.7000 per item
Raw Returns: $2.5000 per item
Mail Deposits: $5.7500 per deposit
Bond Collection:
Bearer: $30.0000 per bond
Registered: $40.0000 per item
Bond Coupon Collection: $7.5000 per envelope
Bond Coupon Returns: $30.0000 per coupon
Deposit Transfer Vouchers: $5.7500 per item

Electronic Funds Transfers

Incoming Wire Transfers: $6.2500 per transfer
Outgoing Wire Transfers (LINK): $7.0000 per transfer
Outgoing Wire Transfers (Manual): $10.5500 per transfer
Fax of Wire Transfer Advice: $3.5000 per transfer
Internal Book Transfers (LINK): No Charge
Internal Book Transfers (Manual); $1.1000 per transfer
Foreign Wire Surcharge: $32.5000 per transfer *
Foreign Wire Tracers: Pass-through
Mortgage Participation Service Fee: $3.2000 per transfer
Expected Wires Not Received: Penalty Assessed **

Automated Clearing House

ACH Transaction Settlement (CR/DR): $0.2800 per transaction
ACH Origination Items (CR/DR): $0.2200 per item
ACH Origination Record Set-Up: $1.7500 per record
ACH Origination Items Returned: $6.0000 per returned item
ACH Returns/NOCs–Facsimile: $2.2500 per transaction
ACH Returns/NOCs–Telephone: $3.6500 per transaction
ACH/FRB Priced Service Charges: $0.2900 per transaction

* Note: This surcharge will be added to the amount of the outgoing funds transfer to produce a single total debit to be charged to the customer's account on the date of transfer.

** Note: Standard penalty is equivalent to the amount of the wire(s) times the daily IOD rate, divided by 360. If the wire not received causes the Bank to suffer any penalty, deficiency, or monetary loss, any and all related costs will also be assessed.

Federal Reserve Settlement

FRB Statement Transaction (CR/DR); $0.5900 per transaction
Reserve Requirement Pass-Thru $30.000 per month (active)
Correspondent Transaction (DR): $0.5900 per transaction
Direct Send Settlement: $150.0000 per month
FRB Inclearing Settlement: $150.0000 per month
FRB Coin & Currency Settlements: $40.0000 per month

Demand Deposit Services

Clearing Items Processed:$0.1600 per item
Clearing Items Fine Sorted (for return with Bank statements): $0.0800 per item
Reconcilement Copies–Manual: $0.1100 per copy
Reconcilement Copies–MagTape: $0.0540 per copy
Reconcilement MagTape Processing: Pass-through
Reconcilement Copies–Voided: $0.0450 per copy
Check Photocopies–Mail: $3.9500 per photocopy
Check Photocopies–Telephone/Fax: $4.7500 per photocopy
Check Photocopies–Subpoena: $0.7000 per photocopy
Stop Payment Orders: $17.7500 per item
Stop Payment Cancellations: $9.0000 per cancelled item
FRB Return Items Qualified: $0.2600 per item
FRB Return Items Processed: $0.4400 per item
FRB Return Items Over: $2,500: $6.0000 per item
Collections & Forgeries: $17.5000 per item
Check Imprinting: Pass-through
Request for Fax/Photocopy: $4.7500 per document/page

Check Processing (Inclearing)

Checks Processed for volume of: (pricing varies—tiered by monthly volume)
1–25,000: $0.0460 per item
25,001–58,500: $0.0435 per item
58,501–91,500 $0.0409 per item
91,501–125,000 $0.0383 per item
125,001–158,500: $0.0355 per item
158,501–191,500: $0.0329 per item
191,501–350,000: &0.0298 per item
350,001–500,000: $0.0272 per item
500,001–over: $0.0247 per item

Full Backroom Service (Item Processing Charges)

Non–Truncated Checks for volumes of: (pricing varies—tiered by monthly
1–25,000: $0.0598 per item
25,001–58,500: $0.0586 per item
58,501–91,500: $0.0572 per item
91,501–125,000: $0.0557 per item
125,001–158,500: $0.0542 per item
158,501–191,500: $0.0527 per item
191,501–350,000: $0.0512 per item
350,001–500,000: $0.0475 per item
500,001–over: $0.0445 per item
Truncated Checks for volumes of: (pricing varies—tiered by monthly volume)
1–25,000: $0.0498 per item
25,001–58,500: $0.0488 per item
58,501–91,500: $0.0472 per item
91,501–125,000: $0.0457 per item
125,001–158,500: $0.0443 per item
158,501–191,500: $0.0427 per item
191,501–350,000: $0.0412 per item
350,001–500,000: $0.0375 per item
500,001–over: $0.0345 per item

Modified Backroom Service (Item Processing Charges)

Non-Truncated Checks for volumes of: (pricing varies—tiered by monthly volume)
1–25,000: $0.0498 per item
25,001–58,500: $0.0488 per item
58,501–91,500: $0.0472 per item
91,501–125,000: $0.0457 per item
125,001–158,500: $0.0442 per item
158,501–191,500: $0.0427 per item
191,501–350,000: $0.0412 per item
350,001–500,000: $0.0375 per item
500,001–over: $0.0345 per item
Truncated Checks for volumes of: (pricing varies—tiered by monthly volume)
1–25,000: $0.0398 per item
25,001–58,500: $0.0388 per item
58,501–91,500: $0.0372 per item
91,501–125,000: $0.0357 per item
125,001–158,500: $0.0342 per item
158,501–191,500: $0.0327 per item
191,501–350,000: $0.0312 per item
350,001–500,000: $0.0275 per item
500,001–over: $0.0245 per item

Image Services

Proof Of Deposit (POD) Service

Pricing for each of these premium services is customer-specific, based upon individual service requirements; please call your Relationship Officer at (800) 288–3400 for further information.

Check Processing (Associated Services)

Unidentified Items Processed: $1.9500 per item
Over-The-Counter Items: $0.1900 per item
OTC Item Transportation: $10.0000 per month
Special Cycle Sorting: $0.0220 per item
Mid-Cycle Statement (Purged): $0.5500 per item (Min $2.75)
Mid-Cycle Stmt. (Non-Purged): $2.7500 per statement
Statement Printing: $0.0300 per page
Statement Processing:
Statements using Generic Envelopes: $0.0640 per envelope
Statements using Custom Envelopes: $0.1075 per envelope
Statements using Large Envelopes: $0.6500 per envelope
Envelope Destruction Fee: $0.0300 per envelope
Additional Stuffer Processing (one stuffer per statement free—applicable to all additional stuffer): $0.0275 per stuffer
Selective Stuffer Processing: $0.1000 per statement
Daily Report Postage: Pass-through
Statement Postage: Pass-through
Standard Return Calls: $1.4500 per item
Automated Return Calls: $0.2900 per item
Return Calls via Link: $0.7700 per item
Late Return Calls: $5.0000 per item
FRB Return Items Qualified: $0.2600 per item
FRB Return Items Processed: $0.4400 per item

FRB Return Items Over $2,500: $6.0000 per item
Suspect Item Processing: $5.0000 per suspect item
Check Photocopies—Mail: $3.9500 per photocopy
Check Photocopies—Telephone/Fax: $4.7500 per photocopy
Check Photocopies—Subpoena: $0.7000 per photocopy
Signature Verification Copies: $0.8000 per copy
Check Retrieval: $1.7500 per item
MICRSort Option (Fixed Fee): $27.8500 per month
MICRSort Option (per item): $0.0320 per item
Collections & Forgeries: $17.5000 per item
MCPJ Microfiche Service (Min. $20.00, Max. $100.00): $0.0022 per item
Transportation: Pass-through

Coin & Currency Service: Western Service Area

Cash Orders: $2.5000 per order, plus:
Currency Orders:$0.3400 per $1,000*
Coin Orders: $2.5500 per box
Currency Deposits: $1.3500 per $1,000*
Coin Deposits: $1.9500 per standard bag
Coin Deposits (Non-Standard): $3.0000 per non-standard bag
Coin Deposits (Unsorted): $9.0000 per mixed bag
Food Stamp Deposits: $2.0000 per $1,000*
Late Order Surcharge: $5.0000 per order
Coin Shipment Surcharge: $0.2700 per excess bag**
C&C Transportation (Zone W1): $17.5000 per stop
C&C Transportation (Zone W2): $29.5000 per stop
C&C Transportation (Zone W3): $40.0000 per stop
C&C Transportation (Zone W4): Negotiable ***

Coin & Currency Service: Eastern Service Area

Cash Orders: $2.5000 per order, plus:
Currency Orders: $0.3400 per $1,000*
Coin Orders: $3.0000 per box
Currency Deposits: $1.3500 per $1,000*
Coin Deposits: $1.9500 per standard bag
Coin Deposits (Non-Standard): $3.0000 per non-standard bag
Coin Deposits (Unsorted): $9.0000 per mixed bag
Food Stamp Deposits: $2.0000 per $1,000*
Late Order Surcharge: $5.0000 per order
Coin Shipment Surcharge: $0.2700 per excess bag**
C&C Transportation (Zone E1): $26.5000 per stop
C&C Transportation (Zone E2): $36.7500 per stop
C&C Transportation (Zone E3): $55.0000 per stop
C&C Transportation (Zone E4): Negotiable ***

* Note: Charges will be applied to each $1,000 ordered or deposited, and to any portion of a shipment not divisible by that standard unit.

* Note: A surcharge will apply to each container (box/bag) of coin in an order/delivery after the first 20 containers.

*** Note: Reserved for remote locations: delivery charges will be negotiated with the courier service on an individual basis.

Account Maintenance

Demand Deposit Accounts: $22.2500 per month, per account
Cut-Off Statements: $11.5000 per statement
Telephone Inquiry: $2.2500 per telephone call
Paper Advice of Transactions (DTS): $30.0000 per account, per month
Daily Transaction Data via LINK: No Charge

Monthly Minimum Charges

The Bank reserves the right to impose a monthly minimum charge for its services. The standard minimum for 1999 will be $2,000 per month, applied against Check Processing, Deposit Processing, and/or Proof of Deposit Services. Pass-through items, such as postage and transportation, do not apply.

Account Overdraft Penalty

Greater of $75.00 per day and the daily interest on the amount of the overdraft (Rate used for calculation equal to the highest posted advance rate plus 3.0%)

Requests for Programming Changes

Programming support for new services, enhancements to existing service levels, or servicer conversions requiring at least one hour of programmer time and/or equivalent FHLB expenses will be charged at a rate of $100.00 per hour, plus expenses.

Attention: Customers Receiving Transportation Charges Under Any Service

Rates and charges relative to transportation vary depending on the location of the office(s) serviced. Details regarding the pricing for the transportation to/from specific institutions or individual locations will be provided upon their subscription to that service.

Surcharges may be applicable and will be applied to the customer as effective and without prior notice.

Custom Pricing—Extension Agreements

Effective Date 1/1/99

Deposit Processing Service (DPS)

DPS Deposit Tickets: $0.6000 per deposit
Printing of Deposit Tickets: Pass-through
Deposit Items Processed for volumes of pricing varies—tiered by monthly volume:
1–25,000: $0.0385 per item (transit)
25,001–58,500: $0.0379 per item (transit)
58,501–91,500: $0.0374 per item (transit)
91,501–125,000: $0.0368 per item (transit)
125,001–158,500: $0.0363 per item (transit)
158,501–191,500: $0.0345 per item (transit)
191,501–over: $0.0315 per item (transit)
Deposit Items Encoded (West) (Pricing varies—tiered by monthly volume) for volumes of:
1–25,000: $0.0390 per item
25,001–58,500: $0.0386 per item
58,501–91,500: $0.0382 per item
91,501–125,000: $0.0378 per item
125,001–158,500: $0.0365 per item
158,501–191,500: $0.0360 per item
191,501–over: $0.0355 per item
Deposit Items Encoded (East) (Pricing varies—tiered by monthly volume) for volumes of:
1–25,000: $0.0345 per item
25,001–58,500: $0.0340 per item
58,501–91,500: $0.0335 per item
91,501–125,000: $0.0330 per item
125,001–158,500: $0.0315 per item
158,501–191,500: $0.0305 per item
191,501–over: $0.0299 per item
Deposit Items Returned: $1.9000 per item
Deposit Items Photocopied $3.7500 per photocopy
DPS Photocopies—Subpoena: $19.0000 per hour of processing time
Plus $0.2500 per photocopy
Deposit Items Rejected (applicable to pre-encoded deposits only): $0.2300 per rejected item
DPS Transportation (West): $8.9000 per pickup
DPS Transportation (East): $8.9000 per pickup
Return Check Courier Service: $130.0000 per month

Coin & Currency Service: Western Service Area

Cash Orders: $2.5000 per order, plus:
Currency Orders: $0.3300 per $1,000 *
Coin Orders: $2.5000 per box
Currency Deposits: $1.3200 per $1,000*
Coin Deposits: $1.9000 per standard bag
Coin Deposits (Non-Standard): $2.9500 per non-standard bag
Coin Deposits (Unsorted): $8.7500 per mixed bag
Food Stamp Deposits: $1.8500 per $1,000 *
Late Order Surcharge: $5.0000 per order
Coin Shipment Surcharge: 0.2700 per excess bag **
C&C Transportation (Zone W1): $17.1000 per stop
C&C Transportation (Zone W2): $28.9500 per stop
C&C Transportation (Zone W3): $38.5000 per stop
C&C Transportation (Zone W4): Negotiable ***

Coin & Currency Service: Eastern Service Area

Cash Orders: $2.5000 per order, plus:
Currency Orders: $0.3300 per $1,000*
Coin Orders: $2.9500 per box
Currency Deposits: $1.3200 per $1,000*
Coin Deposits $1.9000 per standard bag
Coin Deposits (Non-Standard): $2.9500 per non-standard bag
Coin Deposits (Unsorted): $8.750 per mixed bag
Food Stamp Deposits: $1.8500 per $1,000 *
Late Order Surcharge: $5.0000 per order
Coin Shipment Surcharge: $0.2700 per excess bag**
C&C Transportation (Zone E1): $25.8500 per stop
C&C Transportation (Zone E2): $35.9000 per stop
C&C Transportation (Zone E3): $55.0000 per stop
C&C Transportation (Zone E4): Negotiable ***

* Note: Charges will be applied to each $1,000 ordered or deposited, and to any portion of a shipment not divisible by that standard unit.

** Note: A surcharge will apply to each container (box/bag) of coin in an order/delivery after the first 20 containers.

*** Note: Reserved for remote locations: delivery charges will be negotiated with the courier service on an individual basis.

Check Processing (Inclearing)

Checks Processed for volumes of (pricing varies—tiered by monthly volume):
1–25,000: $0.0448 per item
25,001–58,500: $0.0426 per item
58,501–91,500: $0.0402 per item
91,501–125,000: $0.0376 per item
125,001–158,500: $0.0349 per item
158,501–191,500: $0.0324 per item
191,501–350,000: $0.0298 per item
350,001–500,000: $0.0272 per item
500,001–over: $0.0247 per item

Full Backroom Service (Item Processing Charges)

Non-Truncated Checks for volumes of (pricing varies—tiered by monthly volume):
1–25,000: $0.0589 per item
25,001–58,500: $0.0574 per item
58,501–91,500: $0.0559 per item
91,501–125,000: $0.0544 per item
125,001–158,500: $0.0529 per item
158,501–191,500: $0.0514 per item
191,501–350,000: $0.0499 per item
350,001–500,000: $0.0469 per item
500,001–over: $0.0439 per item

Trucated Checks for volumes of (pricing varies—tiered by monthly volume):
1–25,000: $0.0489 per item
25,001–58,500: $0.0474 per item
58,501–91,500: $0.0459 per item
91,501–125,000: $0.0444 per item
125,001–158,500: $0.0429 per item
158,501–191,500: $0.0414 per item
191,501–350,000: $0.0399 per item
350,001–500,000: $0.0369 per item
500,001–over: $0.0339 per item

Modified Backroom Service (Item Processing Charges)

Non-Truncated Checks for volumes of (Pricing varies—tiered by monthly volume):
1–25,000: $0.0489 per item
25,001–58,500: $0.0474 per item
58,501–91,500: $0.0459 per item
91,501–125,000: 0.0444 per item
125,001–158,500: $0.0429 per item
158,501–191,500: $0.0414 per item
191,501–350,000: $0.0399 per item
350,001–500,000: $0.0369 per item
500,001–over: $0.0339 per item

Truncated Checks for volumes of (Pricing varies—tiered by monthly volume):
1–25,000: $0.0389 per item
25,001–58,500: $0.0374 per item
58,501–91,500: $0.0359 per item
91,501–125,000: 0.0344 per item
125,001–158,500: $0.0329 per item
158,501–191,500: $0.0314 per item
191,501–350,000: $0.0299 per item
350,001–500,000: $0.0269 per item
500,001–over: $0.0239 per item

Check Processing (Associated Services)

Unidentified Items Processed: $1:9500 per item
Over-The-Counter Items: $0.1900 per item
OTC Item Transportation: $10.0000 per month
Special Cycle Sorting: $0.0220 per item
Mid-Cycle Statement (Purged): $0.5500 per item (Min $2.75)
Mid-Cycle Stmt. (Non-Purged): $2.7500 per statement
Check (NOW) Statement Processing:
Statements using Generic Envelopes: $0.0620 per envelope
Statements using Custom Envelopes: $0.1050 per envelope
Statements using Large Envelopes: $0.5900 per envelope
Envelope Destruction Fee: $0.0300 per envelope
Additional Stuffer Processing (one stuffer per statement free—applicable to all additional stuffers): $0.0250 per stuffer
Selective Stuffer Processing: $0.0700 per statement
Daily Report Postage: Pass-through
Statement Postage: Pass-through
Standard Return Calls: $1.3500 per item
Automated Return Calls: $0.2700 per item
Return Calls via Link: $0.2700 per item
Late Return Calls: $5.0000 per item
Suspect Item Processing: $5.0000 per item
FRB Return Items Qualified: $0.2200 per item
FRB Return Items Processed: $0.4300 per item
FRB Return Items Over $2,500: $8.0000 per item
Check Photocopies—Mail: $3.9500–per photocopy
Check Photocopies—Telephone/Fax: $4.7500 per photocopy
Check Photocopies—Subpoena: $0.7000 per photocopy
Signature Verification Copies: $0.8000 per copy
Check Retrieval: $1.6000 per item
MICRSort Option (Fixed Fee): $27.8500 per month
MICRSort Option (per item): $0.0320 per item
MCPJ Microfiche Service (Min. $20.00, Max. $100.00): $0.0022 per item
Collections and Forgeries: $17.5000 per item
Transportation: Pass-through

Attention: Customers Receiving Transportation Charges Under Any Service

Rates and charges relative to transportation vary depending on the locationof the office(s) serviced. Details regarding the pricing for the transportation to/from specific instructions or individual locations will be provided upon their subscription to that service.

Surcharges may be applicable and will be applied to the customer as effective and without prior notice.

Monthly Minimum Charges

The Bank reserves the right to impose a monthly minimum charge for its services. The standard minimum for 1999 will be $2,000 per month, applied against Check Processing, Deposit Processing, and/or Proof of Deposit Services. Pass-through items, such as postage and transportation, do not apply.

Requests for Programming Changes

Programming support for new services, enhancements to existing service levels, or servicer conversions requiring at least one hour of programmer time and/or equivalent FHLB expenses will be charged at a rate of $100.00 per hour, plus expenses.

District 4.—Federal Home Loan Bank of Atlanta (1999 NOW/DDA Services) (Does not provide item processing services for third party accounts)

District 5.—Federal Home Loan Bank of Cincinnati (1999 NOW/DDA Services) (Does not provide item processing services for third party accounts)

District 6.—Federal Home Loan Bank of Indianapolis (1999 NOW/DDA Services)

FEE SCHEDULES

a. Checking Account Processing

Effective January 1, 1997

I. Checking Account Service Transaction Charges

Monthly volume	Safekeeping (per item)	Turnaround (daily or cycled) (per item)	Complete (per item)	Full service image*		Limited service image*	
				Per item	Per statement	Per item	Per statement
0–5,000	$.053	$.0635	$0875	$.06	$.40	$.02	$.40
5–10,000	.045	.0585	.0855	.06	.40	.02	.40
10–15,000	.044	.0545	.0835	.06	.40	.02	.40
15–25,000	.039	.0475	.0825	.06	.40	.02	.40
25–50,000	.038	.0435	.0805	.06	.40	.02	.40
50–75,000	.034	.0405	.0765	.06	.40	.02	.40
75–100,000	.031	.0375	.0755	.06	.40	.02	.40
100–end up	.029	.0345	.0745	.06	.40	.02	.40

II. Ancillary Service Fees

Large Dollar Signature Verification: $0.50
Over-the-counters and Microfilm: $0.035
Return Items: $2.40
Photocopies** and Facsimiles: $2.50
Certified Checks: $1.00
Invalid Accounts: $0.50
Late Returns: $0.50
Invalid Returns: $0.50
No MICR/OTC: $0.50
Settlement Only: $100.00 per month
+Journal Entries: $3.00 each
Encoding Errors: $2.75
Fine Sort Numeric Sequence: $0.02
Access to Infoline: $50.00 per month
High Dollar Return Notification: N/C
Debit Entries: N/C
Debit Entries: N/C
Standard Stmt. Stuffers (up to 2)***: N/C

Minimum processing fee of $40.00 per month will apply for total NOW services. Also included in the above fees—at no additional cost are Federal Reserve fees, incoming courier fees, software changes, disaster recovery, envelope discount and inventory.

*Image Monthly Maintenance Fee of $500.00 for 0–32% of accounts; $300.00 for 33–49% of accounts; and $200.00 for 50%+ will be assessed for Image Statements.

**Photocopy request of 50 or more are charged at an hourly rate of $15.00.

***Each additional (over 2) will be charged at $.02 per statement.

b. Demand Deposits Accounts / ACH

Item Processing Service Fees

Cash Management Service

Demand deposit clearings will have the following service charges:

Stop payments: $6.00 per stop
Photocopies: $2.50 per copy
Collection/Return/Exception: $5.00
Daily Statement: $2.00
Maintenance: $30.00 per month
Debit Entries: N/C
Credit Entries: N/C

ACH Fees

Tape transmission: $8.50 per tape
or originations: $.045 per item
NACHA, MPX: Actual Federal Reserve charges
ACH entries clearing through our R&T number: $.25 per item
Settlement only: $65.00 per month
ACH returns/NOC: $2.50 per item

Collected balances will earn interest at CMS daily posted rate.

Prices effective April 1, 1993.

c. Deposit Services

Federal Home Loan Bank of Indianapolis

Pre-encoded Items:
City: $0.04 per item
RCPC: $.05 per item
Other Districts: $.085 per item
Unencoded: $.165 per item
Food Stamp: $.14 per item
Photocopies: $2.50 per copy
Adjustments on pre-encoded work: $2.75 per error
EZ Clear: $.14 per item
Coupons: $8.25 per envelope
Collections: $6.00 per item
Cash Letter: $2.00 per cash letter
Deposit Adjustments: $.30 per adjustment
Debit Entries: N/C
Credit Entries: N/C
Microfilming: N/C
Mortgage Remittance (Basic Service): $.35
Settlement only: $100.00 per month
+Journal Entries: $3.00 each
Courier* Indianapolis (city): $8.25 per location, per day, per pickup

*Outside Indianapolis: Prices vary per location.

N/C—No Charge.

Prices effective February 1, 1998.

District 7.—Federal Home Loan Bank of Chicago (1999 NOW/DDA Services) (Does not provide item processing services for third party accounts)

District 8.—Federal Home Loan Bank of Des Moines (1999 NOW/DDA Services) (Does not provide item processing services for third party accounts)

District 9.—Federal Home Loan Bank of Dallas (1999 NOW/DDA Services) (Does not provide item processing services for third party accounts)

District 10.—Federal Home Loan Bank of Topeka (1999 NOW/DDA Services) (Does not provide item processing services for third party accounts)

District 11.—Federal Home Loan Bank of San Francisco (1999 NOW/DDA Services) (Does not provide item processing services for third party accounts)

District 12.—Federal Home Loan Bank of Seattle (1999 NOW/DDA Services) (Does not provide item processing services for third party accounts)

By the Federal Housing Finance Board.

Dated: March 29, 1999.

William W. Ginsberg,

Managing Director.

[FR Doc. 99–8294 Filed 4–2–99; 8:45 am]

BILLING CODE 6725–01–M

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby given notice of the filing of the following agreement(s) under the Shipping Act of 1984. Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, NW, Room 962. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register.**

Agreement No.: 202–010776–112.

Title: Asia North America Eastbound Rate Agreement.

Parties: American President Lines, Ltd., APL Co. PTE Ltd., Hapag-Lloyd Container Linie GmbH, Kawasaki Kisen Kaisha, Ltd., A.P. Moller-Maersk Line, Mitsui O.S.K. Lines, Ltd., Nikppon Yusen Kaisha, Orient Overseas Container Line, Inc., P&O Nedlloyd B.V., P&O Nedlloyd Limited, Sea-Land Service, Inc.

Synopsis: Under the proposed agreement modification, the parties are suspending their agreement for six months and will not exercise any authority contained in the agreement except for certain "winding-down" activities. Further, the modification provides that one or more of the members may enter into individual or joint service contracts.

Agreement No.: 217–011659.

Title: CMA/Maersk/Sea-Land Space Charter Agreement.

Parties: A.P. Moller-Maersk Line, Sea-Land Service, Inc., Compagnie Maritime d'Affretement, S.A. ("CMA").

Synopsis: The proposed Agreement authorizes Maersk and Sea-Land to charter space to CMA in the trade between the Atlantic and Gulf Coasts of the United States and ports in the Bahamas, ports on the Mediterranean Sea, and ports on the Atlantic Coast of the Iberian-peninsula.

Agreement No.: 224–201009–002.

Title: Houston—Mediterranean Terminal Service Agreement.

Parties: Port of Houston Authority of Harris County, Texas Mediterranean Shipping, Co. S.A.

Synopsis: The proposed amendment extends the term of the agreement until May 31, 1999.

Dated: March 31, 1999.

By Order of the Federal Maritime Commission.

Bryant L. Van Brakle,

Secretary.

[FR Doc. 99–8178 Filed 4–2–99; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies

owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 29, 1999.

A. Federal Reserve Bank of Cleveland (Paul Kaboth, Banking Supervisor) 1455 East Sixth Street, Cleveland, Ohio 44101-2566:

1. Minster Financial Corp., Minster, Ohio; to become a bank holding company by acquiring 100 percent of the voting shares of Minster Bank, Minster, Ohio.

B. Federal Reserve Bank of Chicago (Philip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1413:

1. Van Orin Bancorp, Inc., Van Orin, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of First State Bank of Van Orin, Van Orin, Illinois.

Board of Governors of the Federal Reserve System, March 30, 1999.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 99–8210 Filed 4–2–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than April 19, 1999.

A. Federal Reserve Bank of Chicago (Philip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1413:

1. James V. Antonacci, Richard K. McCord, Charles E. Robbins, and Richard H. Levi, all of Springfield, Illinois to acquire, as a group acting in concert, the voting shares of Fairmount Bancorp, Inc., and The First National Bank of Fairmount, both of Fairmount, Illinois.

Board of Governors of the Federal Reserve System, March 30, 1999.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 99–8212 Filed 4–2–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 19, 1999.

A. Federal Reserve Bank of Chicago (Philip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1413:

1. Bank of Montreal, Toronto, Canada; and Bankmont Financial Corp., Chicago Illinois; to engage *de novo* through their subsidiary, Nesbitt Burns Securities, Inc., Chicago, Illinois in investing and trading activities pursuant to § 225.28(b)(8)(ii) of Regulation Y; and buying and selling bullion, and related activities pursuant to § 225.28(b)(8)(iii) of Regulation Y.

Board of Governors of the Federal Reserve System, March 30, 1999.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 99–8211 Filed 4–2–99; 8:45 am]

BILLING CODE 6210–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 99052]

Cooperative Agreement for 1999 National Breast and Cervical Cancer Early Detection Program; Notice of Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 1999 funds for a cooperative agreement program for the National Breast and Cervical Cancer Early Detection Program. This program addresses the "Healthy People 2000" priority area(s) related to cancer.

The purpose of this program is to establish a State/territorial/tribal comprehensive public health approach to reduce breast and cervical cancer morbidity and mortality through screening, tracking, follow-up and case management, public education, information, and outreach, professional education, quality assurance and improvement, surveillance, evaluation, partnership development and community involvement. The program is established to eliminate disparity and provide comprehensive breast and cervical cancer screening services for all women at or below 250 percent of the official poverty line as established by the Director of the Office of Management and Budget (OMB) and revised by the Secretary of DHHS in accordance with section 673(2) of the Omnibus Budget Reconciliation Act of 1991 (Section 1504(b)(3) of the PHS Act, as amended). Criteria for priority populations are uninsured or under-insured older women who are racial,

ethnic and cultural minorities, such as American Indians, Alaska Natives, African-Americans, Hispanics, Asian/Pacific Islanders; Lesbians; women with disabilities; and for women who live in hard-to-reach communities in urban and rural areas. Priority populations, as defined above, will be used throughout this document.

B. Eligible Applicants

Assistance will be provided only to the official health departments of States and Territories or their bona fide agents or instrumentalities and to Indian Tribal governments (including Indian Tribes, Tribal organizations, Alaska Natives and Urban Indian organizations, hereafter referred to as Tribes). This includes the Commonwealth of Puerto Rico, the Federated States of Micronesia, Guam, and the Republic of the Marshall Islands, and federally recognized tribes.

1. The following States and territories are excluded:

a. American Samoa, California, Colorado, Maryland, Michigan, Minnesota, Missouri, New Mexico, North Carolina, South Carolina, Texas, and West Virginia, which were funded in August 1997, under Program Announcement 718 entitled National Breast and Cervical Cancer Early Detection Program.

b. Alabama, Commonwealth of the Northern Mariana Islands, Delaware, Hawaii, Idaho, Indiana, Kentucky, Mississippi, Montana, Nevada, New Hampshire, North Dakota, Republic of Palau, South Dakota, Tennessee, Virgin Islands, Virginia, Washington, DC, and Wyoming, which were funded in September of 1996, under Program Announcement 623 entitled 1996 National Breast and Cervical Cancer Early Detection Program.

2. The following Tribes are excluded:

a. Consolidated Tribal Health Project, Inc., CA, and Southeast Regional Health Consortium, AK, which were funded August 1997, under Program Announcement 718 entitled National Breast and Cervical Cancer Early Detection Program.

b. Hopi tribe, AZ; Native American Rehabilitation Association of the NW, OR; Indian Community Health Service, AZ; and the Navajo Division of Health, AZ, which were funded in September of 1996, under Program Announcement 623 entitled 1996 National Breast and Cervical Cancer Early Detection Program.

States currently receiving CDC funds under Program Announcement 321 and 474, entitled Early Detection and Control of Breast and Cervical Cancer, are eligible to apply for funding under this announcement. Tribes currently receiving CDC funds under Program Announcement 442, entitled Early Detection Program American Indian Initiative, are eligible to apply for funding under this announcement.

Additionally, Puerto Rico, currently funded under Program Announcement 425, entitled Capacity Building for Core Components of Breast and Cervical Cancer Prevention and Control, is eligible to apply under this announcement.

C. Availability of Funds

1. Approximately $53,000,000 is available in FY 1999 to fund approximately 23 States. It is expected that the average award will be $2,100,000, ranging from $1,000,000 to $4,500,000.

2. Approximately $3,500,000 is available in FY 1999 to fund approximately 12 Tribes/Territories. It is expected that the average award will be $300,000, ranging from $200,000 to $500,000.

It is expected that the awards will begin on September 30, 1999, and will be made for a 12-month budget period within a project period of up to five years. Funding estimates may change.

Continuation awards of funded projects within an approved project period will be made on the basis of satisfactory progress and the availability of funds.

Direct Assistance

You may request Federal personnel, equipment, or supplies as direct assistance, in lieu of a portion of financial assistance.

Use of Funds

1. Not less than 60 percent of cooperative agreement funds will be expended for screening, tracking, follow-up, and the provision of appropriate support services such as case management. The remaining 40 percent will be expended to support public education, information, and outreach; professional education; quality assurance and improvement; surveillance; program evaluation; partnership development and community involvement. (Section 1503(a)(1) and (4) of the PHS Act, as amended.)

2. Cooperative agreement funds will not be expended to provide inpatient hospital or treatment services. (Section 1504(g) of the PHS Act, as amended.) Also, cooperative agreement funds will not be used for the specific diagnostic procedure of Loop Electro surgical Excisional Procedure (LEEP).

3. Not more than 10 percent of funds will be expended annually for administrative expenses. These administrative expenses are in lieu of and replace indirect costs. (Section 1504(f) of the PHS Act, as amended.)

Note: Treatment is defined as any medical or surgical intervention recommended by a clinician, and provided for the management of a diagnosed condition.

4. Matching funds are required from non-Federal sources in an amount not less than $1 for each $3 of Federal funds awarded under this program. (Section 1502 (a) and (b) of the PHS Act, as amended.)

5. Costs used to satisfy matching requirements are subject to the same prior approval requirements and rules of allowability as those which govern project costs supported by Federal funds. (OMB Circular A–87 "Cost Principles for State, Local and Indian Tribal Governments" and PHS Grants Policy Statement, Section 6).

6. All costs used to satisfy matching requirements must be documented by the applicant and will be subject to audit.

Recipient Financial Participation

Recipient financial participation is required for this program in accordance with the authorizing legislation. Section 1502(a) and (b)(1), (2), and (3) of the PHS Act, as amended, requires matching funds from non-Federal sources in an amount not less than $1 for each $3 of Federal funds awarded under this program. However, The Omnibus Territories Act requires DHHS to waive matching fund requirements for Guam, U.S. Virgin Islands, American Samoa and the Commonwealth of the Northern Mariana Islands.

The matching funds may be in cash or its equivalent in-kind or donated services, including equipment, fairly evaluated. The contributions may be made directly or through donations from public or private entities. Pub. L. 93–638 authorizes tribal organizations contracting under the authority of Title I and compacting under the authority of Title III to use funds received under the Indian Self-Determination Act as matching funds.

In States/territories/tribes, non-Federal funds from a variety of sources may presently be used to support one or more of the breast and cervical cancer early detection activities described in this program announcement. Maintenance of Effort (MOE)—The average amount of non-Federal dollars expended for breast and cervical cancer programs and activities made by a State/territory/tribe for the two year period preceding the first Federal fiscal year of the program funding for breast and

cervical cancer early detection activities. Supplantation of existing program efforts funded through other Federal or non-Federal sources is not allowable. Applicants may also include, as State/territory/tribe matching funds, any non-Federal amounts expended pursuant to Title XIX of the Social Security Act for the screening, tracking, follow-up and case management of women for breast and cervical cancer.

Matching funds may not include: (1) the payment for treatment services or the donation of treatment services; (2) services assisted or subsidized by the Federal government; or (3) the indirect or overhead costs of an organization.

D. Program Requirements

In accordance with Public Law 101–354:

1. States, territories and tribes are required to implement all the following program components:

a. States and tribes presently receiving comprehensive funding: All program components should be operational at this time.

b. Territory presently receiving capacity funding: Comprehensive breast and cervical cancer screening, follow-up, tracking services and other support services such as a case management should be initiated within the first twelve months of the first budget year. The capacity building program components (not the screening, tracking, follow-up and case management systems) should be fully operational at this time.

c. Territories/tribes not presently receiving capacity funds and applying for comprehensive funding: The application should outline plans for the operation of all program components. The screening, tracking, follow-up and case management systems should be initiated within twelve months of the award date. (Section 1503 (a)(1) and (3) of the PHS Act, as amended.)

2. If a new or improved, and superior, screening procedure becomes widely available and is recommended for use, this superior procedure will be utilized in the program. (Section 1503(b) of the PHS Act, as amended.)

3. An award may not be made unless the State/Territorial Medicaid Program provides coverage for:

a. In the case of breast cancer, a clinical breast examination and screening mammography.

b. In the case of cervical cancer, both a pelvic examination and Pap test screening. (Section 1502A of the PHS Act, as amended)

For those Territorial Departments of Health not receiving Medicaid, this program requirement would be non-applicable.

4. In 1993, Congressional amendments to the National Breast and Cervical Cancer Early Detection Program included the following changes:

a. The amount paid by a State/territory/tribe for a screening procedure may not exceed the amount that would be paid under part B of title XVIII of the Social Security Act (Medicare) (Section 1501(b)(3) of the PHS Act, as amended).

b. All facilities conducting mammography screening procedures funded by the Program must meet the regulations for mammography quality assurance developed by the Food and Drug Administration (FDA), most recently reauthorized and finalized October 31, 1998.

c. For cervical cancer activities, facilities will meet the standards and regulations developed by the Health Care Financing Administration (HCFA) implementing the Clinical Laboratory Improvement Amendments (CLIA) of 1988.

5. In 1998, Reauthorization language for the National Breast and Cervical Cancer Early Detection Program included the following change:

a. States/territories/tribes may enter into contracts with public and non-profit private entities and through contracts with public and private entities to provide screening, tracking, follow-up, and case management services, as well as for public education, information, and outreach activities, professional education activities, establish mechanisms to monitor quality of screening procedures, and to evaluate such activities. If a non-profit private entity and a private entity that is not a non-profit entity both submit applications to a State/tribe/territory, the State/tribe/territory may give priority, based on a competitive review process, to the application submitted by the non-profit private entity in any case in which the State/tribe/territory determines that the quality of such application is equivalent to the quality of the application submitted by the other private entity (Section 1501(b) of the PHS Act, as amended).

In accordance with section 1504(c)(2) of the PHS Act, as amended, CDC may waive the requirements for specific services/activities if it is determined that compliance by the State/territory/tribe would result in an inefficient allocation of resources with respect to carrying out a comprehensive breast and cervical cancer early detection program (as described in section 1501(a)). A request from the recipient outlining appropriate and detailed justification would be required before the waiver is approved.

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities under "Recipient Activities", and CDC will be responsible for conducting activities under "CDC Activities".

Recipient Activities

1. Establish a system for screening and rescreening women for breast and cervical cancer as a preventive health measure. (Section 1501(a)(1) of the PHS Act, as amended.)

This program is to increase the access to and use of screening services for breast and cervical cancer among all women with emphasis being given to identified priority populations as described under the "Purpose" section.

a. Ensure that screening and rescreening procedures are available for both breast and cervical cancer and provided to women participating in the program, including a clinical breast exam, mammography, pelvic exam, and Pap smear. (Section 1503(a)(2)(A) and (B).)

b. Screening services should be made available according to the following guidelines:

(1) Provide priority for screening, tracking, follow-up and other support services such as case management to women who are low-income and uninsured or under-insured. (Section 1504(a) of the PHS Act, as amended.)

An award may not be made under this announcement unless the State/territory/tribe involved agrees to give priority to the provision of screening, tracking, follow-up, and other support services such as case management to low-income women who are underserved or uninsured.

Note: Low income is defined as at or below 250 percent of the official poverty line. The official poverty line is established by the Director of the OMB and revised by the Secretary of the DHHS in accordance with section 673(2) of the Omnibus Budget Reconciliation Act of 1991 (Section 1504(b)(3) of the PHS Act, as amended.)

(2) Establish breast and cervical cancer screening services throughout the State/territory/tribe. (Section 1504(c)(1) of the PHS Act, as amended.) Funds may not be awarded under this announcement, unless the State/territory/tribe involved agrees that services and activities will be made available throughout the State, territory, or tribe, including availability to members of any Indian tribe or tribal organization (as such terms are defined in section 4 of the Indian Self-Determination and Education Assistance Act).

(3) Provide allowances for items and services reimbursed under other programs. (Section 1504(d) (1) and (2) of the PHS Act, as amended.)

Funds may not be awarded under this announcement, unless the State/territory/tribe involved agrees that funds will not be expended to make payment for any item or service that will be paid or can reasonably be expected to be paid by:

(a) Any State/territory/tribe compensation program, insurance policy, or Federal or State/territory/tribe health benefits program.

(b) An entity that provides health services on a prepaid basis.

(4) Establish a schedule of fees/charges for services. (Section 1504(b) (1), (2), and (3) of the PHS Act, as amended.)

Funds may not be awarded under this announcement unless the State/territory/tribe involved agrees that if charges are to be imposed for the provision of services or program activities, the fees/charges for allowable screening and diagnostic evaluation will be:

(a) Made according to a schedule of fees that is made available to the public. (Section 1504(b)(1) of the PHS Act, amended.)

(b) Adjusted to reflect the income of the woman screened. (Section 1504(b)(2) of the PHS Act, as amended.)

(c) Totally waived for any woman with an income of less than 100 percent of the official poverty line.

Additionally, the schedule of fees/charges should not exceed the maximum allowable charges established by the Medicare Program administered by the Health Care Financing Administration (HCFA). Fee/charge schedules should be developed in accordance with guidelines described in the interim final rule (42 CFR parts 405 and 534) which implements section 4163 of the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101–508) which provides limited coverage for screening mammography services.

Breast Health: The most important risk factors for breast cancer are being female and older age. Priority for mammograms should be given to eligible women 50 years and older not enrolled in Medicare Part B previously screened in the NBCCEDP. Specific policies that outline eligibility criteria and authorize screening and diagnostic services are provided in the NBCCEDP PPM.

Cervical Health: Women who are 18 years and older, with an intact cervix, are eligible for an annual Pap test and pelvic examination. While the incidence of precancerous lesions are higher among younger women, older women have higher rates of invasive cancer and cervical cancer mortality and are less likely to be screened regularly. Hence, programs should provide a balanced distribution in the ages of women receiving Pap tests. Women who have had a total hysterectomy that was performed for cervical neoplasia are eligible to receive Pap screening. Priority for Pap tests should be given to eligible women previously screened in the NBCCEDP. The following exception applies: After a woman has had three consecutive, normal, annual examinations, the Pap test may be performed less frequently at the discretion of her health care provider.

For diagnostic services following an abnormal screening result, cooperative agreement funds may be expended for colposcopy, colposcopy-directed biopsy, and endocervical curettage.

2. Provide appropriate referrals for medical treatment of women screened in the program and ensure, to the extent practicable, the provision of appropriate and timely diagnostic and treatment services (Section 1501(a)(2) of the PHS Act, as amended.)

A system for providing the appropriate and timely diagnostic and treatment services for women whose screening test results are abnormal or suspicious is an essential component of any comprehensive breast and cervical cancer early detection program. Priority for diagnostic services should be given to women provided a screening procedure by the program who have abnormal screening results. The implementation plan and budget for diagnostic services should reflect the projected number of women to be screened by the program annually and the estimated number of abnormal screening exams expected. Programs are encouraged to use the Screening and Diagnostic Worksheet included in the National Breast and Cervical Cancer Early Detection Program (NBCCEDP) Policies and Procedures Manual (PPM) to report their projections.

3. Develop, implement and maintain a proactive system for the timely and appropriate tracking, follow-up, and case management of women with abnormal or suspicious screening tests (Section 1501(a)(6) of the PHS Act, as amended).

Systems should include the regular updating of information on local resources available in the community to which health care providers can refer women for additional diagnostic procedures, as well as treatment services. Clients in need of treatment services should be assisted with obtaining eligibility for public-supported third party reimbursement programs or private donated services.

Tracking the women screened is essential to identify those women who have abnormal results and ensure they receive appropriate and timely follow-up for short-interval rescreening, diagnostic procedures, and treatment. Tracking also includes reminders and outreach to women with normal or benign results to return for timely rescreening. A proactive tracking system is one that can be effectively integrated into the State/territory/tribe health care delivery system. The tracking system should provide women with a unique identification number and to document the outcome of individual screening tests, regardless of the screening cycle or site. It should also provide information on needed diagnostic follow-up. Confidentiality of a woman's clinical procedure results must be assured.

To meet the intent of Pub. L. 101–354 in ensuring the appropriate follow-up of women with abnormal screening results, the State/territory/tribe tracking and follow-up system must include information on screening location (e.g., county, city), demographic characteristics (e.g., race, date of birth), and screening procedures and results (e.g., mammography, Pap tests) for all women in the program. For women identified with abnormal screening results, information on diagnostic procedures (e.g., colposcopy) and final diagnoses, treatment (e.g., date initiated), and stages of cancer must be included.

4. Develop and disseminate public information, education and outreach programs for the early detection and control of breast and cervical cancer. (Section 1501 (a)(3) of the PHS Act, as amended.) Public information, education, and outreach include the systematic design and sustained delivery of clear and consistent health messages to women using a variety of methods and strategies that contribute to the early detection of breast and cervical cancer. Successful public education and outreach programs are those that increase women's knowledge, and ultimately have an impact on attitudes and screening behavior.

Public information, education, and outreach activities should increase the number of women screened especially those who are identified as priority populations as defined in the "Purpose" section. State/territory/tribe and local programs should clearly demonstrate, through evaluation, the relationship of public information, education, and outreach strategies to the number of women screened through the program. The program should develop a plan that

defines the scope (content, priority populations, methods, strategies outcomes, resources) of the public information, education, and outreach efforts.

5. Improve the education, training, and skills of health professionals (including allied health professionals) in the detection and control of breast and cervical cancer. (Section 1501(a)(4) of the PHS Act, as amended.)

The purpose of professional education activities is to affect health care providers' knowledge, attitudes, and behaviors to ultimately result in more women, who are identified as priority populations as defined in the "Purpose" section, in the intended audience being screened appropriately.

Professional education refers to the education of physicians, nurses, case managers, cytotechnologists, radiologists, radiologic technologists, health educators, outreach workers, support staff members, and other health professionals. It includes preprofessional, postgraduate, and continuing education. Professional education includes developing knowledge, attitudes, and skills to enable professionals to perform their jobs more effectively. It involves the identification of resources and needs and planning, implementing, and evaluating training for the health care provider. Professional education includes promoting the development and implementation of systems of health care delivery that provide positive clinical outcomes for patients, as well as the development and dissemination of clear recommendations and guidelines.

A plan should be developed that defines the scope (i.e., content, provider populations, strategies, methods, outcomes, resources) of professional education, including a prioritized list of professional groups to be trained.

Training should be based on adult learning principles with a focus on skill-based training.

6. Establish mechanisms through which the State/territory/tribe can monitor the quality of screening procedures for breast and cervical cancer, including the interpretation of such procedures. (Section 1501(a)(5) of the PHS Act, as amended.)

Cooperative agreement funds may not be awarded (under Section 1501 of the PHS Act, as amended, Pub. L. 101–354) unless the State/territory/tribe involved agrees to assure that the State/territory/tribe will, in accordance with applicable law, assure the quality of screening procedures conducted pursuant to section 1503(c) of the PHS Act, as amended.

a. Develop and implement a quality assurance and improvement system for breast cancer screening. The mammography services provided to women screened in the program must be conducted in accordance with the following guidelines issued by the Secretary of the Department of Health and Human Services.

(1) All facilities conducting mammography screening procedures funded by the program must meet the requirements for mammography quality assurance developed by the Food and Drug Administration (FDA), most recently Reauthorized and finalized October 31, 1998.

(2) Radiologists participating in the program will record their findings using the second edition American College of Radiology (ACR) Breast Imaging Reporting and Data System (BI–RADS). The BI–RADS" reporting categories are as follows: (1) Negative; (2) Benign finding; (3) Probably benign finding—short interval follow-up suggested; (4) Suspicious finding; (5) Highly suggestive of malignancy; (6) Assessment incomplete—additional imaging evaluation needed.

(3) A report of the results of a mammogram performed through this program will be placed in a woman's permanent medical records that are maintained by her health care provider.

b. Develop and implement a quality assurance and improvement system for cervical cancer screening. The laboratory services provided to women for cytological screening must be conducted in accordance with the following guidelines issued by the Secretary of the Department of Health and Human Services.

(1) All facilities providing laboratory services will meet the standards and regulations promulgated by the Health Care Financing Administration (HCFA) under the Clinical Laboratory Improvement Act (CLIA) of 1988.

(2) All cervical cytology interpretation is required to be done on the premises of a qualified laboratory.

(3) A report of the results of a Pap test performed through this program will be placed in the woman's permanent medical records that are maintained by her health care provider.

(4) Pathologists participating in the program will record their Pap test findings using the Bethesda System which specifies specimen adequacy and incorporates these categories: (1) Within Normal Limits; (2) Infection/Inflammation/Reactive Changes; (3) Atypical squamous cells; (4) Low Grade Squamous Intra epithelial Neoplasia (SIL); (5) High Grade SIL; (6) Squamous Cell Carcinoma; (7) Atypical glandular cells; (8) Other.

In addition to using only MQSA and CLIA certified providers, quality assurance and improvement efforts should include use of:

(1) An active medical advisory group;

(2) Established clinical guidelines; and,

(3) A system that assures that abnormal screening results are followed-up and that rescreening occurs.

7. Establish mechanisms which enhance the State/territory/tribe cancer surveillance system (i.e., linkage to the Central Cancer Registry and other databases) and facilitate program planning and evaluation. (Section 1501(a)(5)) of the PHS Act, as amended.)

Monitoring the distribution and determinants of breast and cervical cancer incidence and mortality is necessary to effectively plan, implement, and evaluate a comprehensive early detection program. Linkages and coordination with State/territory/tribe vital statistics, the Central Cancer Registry, the Behavioral Risk Factor Surveillance System and other State/territory/tribe and local surveys are needed to evaluate the status of a program's goals and objectives.

a. To do this, surveillance systems should be established or enhanced which will:

(1) Collect Statewide/territory/tribal population-based information on the demographics, incidence, staging at diagnosis, and mortality from breast and cervical cancer.

(2) Identify segments of the population at higher risk for disease and for the failure to be screened.

(3) Identify factors contributing to the disease burden, such as behavioral risk factors and limited or inequitable access to early detection and treatment services.

(4) Monitor the number and characteristics of women screened in the program and the outcome of screening by analyzing data from the State/territory/tribe tracking and follow-up system.

(5) Monitor screening resources, including the number of available mammography facilities, cytology laboratories, and providers of cervical cancer screening.

(6) When appropriate, develop linkages between the above-mentioned data bases.

b. Measuring the effectiveness of program activities to modify the screening behavior of women and the effect on morbidity and mortality is important for the identification of successful intervention strategies for the early detection of breast and cervical

cancer. Equally important is the evaluation or the assessment of factors that contributed to the successful or unsuccessful establishment and implementation of program activities.

The design of each program component should ensure that there can be meaningful evaluation. The evaluation plan should assess the implementation and effectiveness of each program component. At a minimum, the evaluation plan should identify those program activities that will be evaluated, the objectives to be measured, how they will be measured, the proposed program time-lines, and resources needed. In addition to evaluating progress in meeting goals and objectives, the program should develop performance indicators to use as a measure of program improvement and resource management and allocation.

Note: Indicator is defined as a performance measure used to track critical processes over time to signify progress toward a particular goal or outcome of the program.

8. Ensure the coordination of services and program activities with other similar programs and establish a broad-based coalition to advise and support the program. (Section 1504(e) of the PHS Act, as amended.) Coordination with other similar programs maximizes the availability of services and program activities, promotes consistency in screening procedures and educational messages, and reduces duplication. An award may not be made under this program announcement unless the State/territory/tribe agrees that the services and activities provided in this program are coordinated with other Federal, State/territory/tribe, and local breast and cervical cancer early detection programs through the development of collaborative partnerships. (Section 1504(e) of the PHS Act, as amended.)

The success of a comprehensive breast and cervical cancer early detection program is improved by broad-based support in the community and active public and private sector involvement. Partnership development with a broad range of stakeholders, including consumers, brings valuable knowledge, skills, and financial resources to the program, and provides access to, and information about, populations of women who have been missed by traditional health service systems.

Linkages should be established with federally funded programs such as the Regional Offices of the National Cancer Institute/Cancer Information Service (NCI/CIS), the Health Resources and Services Administration (HRSA) community/migrant health centers, Title X Family Planning programs, State Offices for Aging and Minority Health, the Indian Health Service (IHS) and the Medicare Program of the Health Care Financing Administration (HCFA).

Linkages and active collaboration are strongly encouraged with private sector organizations such as the American Cancer Society (ACS), the Young Women's Christian Association (YWCA), the Susan G. Komen Breast Cancer Foundation, the National Breast Cancer Coalition (NBCC), the National Alliance of Breast Cancer Organizations (NABCO), the American Association of Retired Persons (AARP), local medical and nursing societies professional organizations, private physicians, survivors of breast and cervical cancer, local women's support groups, community leaders, managed care organizations, and other agencies and businesses in the community that provide health care and related support services to women.

9. Develop a work and management plan for the implementation of a comprehensive breast and cervical cancer screening.

The success of a comprehensive breast and cervical cancer early detection program is increased by the existence of a comprehensive, integrated, and realistic plan to address these diseases among all women, with emphasis given to women identified as priority populations under the "Purpose" section. All program components of the comprehensive program should be addressed.

A work plan should include goals, measurable objectives, strategies proposed to attain the goals and performance indicators (if applicable). The goals in the work plan should relate to the State, territory, or tribe Year 2000 Objectives and to the State, territory, and tribe Cancer Control Plan.

The management plan should reflect the development of qualified and diverse technical, program, and program/administrative staff, appropriate organizational relationships including lines of authority, adequate internal and external communication systems, and a system for sound fiscal management.

10. Representation or attendance at CDC sponsored training, meetings, site visits, and conferences.

CDC Activities

1. Convene a workshop of the funded Programs every one to two years for information-sharing and problem-solving and hold a Program Director's meeting at least once a year.

2. Provide consultation and technical assistance to plan, implement, and evaluate each component as described under Recipient Activities above, to include:

a. Practical application of Pub. L. 101–354, including amendments to the law;

b. Design and implementation of each program component (screening, tracking, follow-up and support services such as case management; public education and outreach; professional education; partnership development and community involvement; quality assurance and improvement; surveillance; and evaluation);

c. Interpretation of current scientific literature related to the early detection of breast and cervical cancer;

d. Nationally recognized clinical and quality assurance guidelines for the assessment and diagnosis of breast and cervical cancer;

e. Evaluation of each program component through the analysis and interpretation of program outcomes, screening data, and surveillance data;

f. Overall operational planning and program management.

3. Provide training opportunities on selected topics to State, territorial and tribal program staff through the National Center for Chronic Disease Prevention and Health Promotion, Division of Cancer Prevention and Control's National Training Center.

4. Conduct site visits to assess program progress and mutually resolve problems, as needed, and/or coordinate reverse site visits to CDC in Atlanta, Georgia.

C. Application Content

Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan. The application, including budget, justification and appendices, should be no more than 125 double-spaced unbound pages, printed on one-side of 8½ x 11" paper, suitable for photocopying, with one inch margins, and 12 point font.

1. Executive Summary

The applicant should provide a clear, concise one or two page written summary to include: (1) The need for the program; (2) The goals, objectives and activities of the proposed comprehensive breast and cervical cancer early detection program; (3) the requested amount of Federal funding;

and (4) capability to implement the program.

2. Background and Need

The applicant should describe:

a. The disease burden by age and race/ethnicity:

(1) The State/territory/tribe breast and cervical cancer age-adjusted mortality rates averaged over five years and their ranking nationally,

(2) The incidence rates for these diseases (where available) from central cancer registries;

b. Total number of women in the State/territory/tribe;

c. The number of low income women who are uninsured, by age (18–39; 40–49; 50–64; 65+) and racial/ethnic distribution;

d. Unmet screening and rescreening needs of uninsured and underinsured women (where available);

e. Barriers to early detection screening services.

3. Implementation Plan

The applicant should develop a Work plan that describes the:

a. Proposed goals, performance indicators related to goals, measurable, time-phased, and realistic objectives, and strategies to attain the goals for: (1) The overall program and (2) specific program components as described under the Recipient Activities. Project the number of women to be screened and rescreened annually by age, racial and ethnic groups, and areas or locality in the State/territory/tribe. (Section 1505(2) of the PHS Act, as amended.) Estimate the number of abnormal screening exams expected annually. Applicants are encouraged to include a completed Screening and Diagnostic Worksheet (sample included in the NBCCEDP PPM) in their application.

b. Describe the State/territory/tribe's: (1) Health care delivery system; (2) proposed Statewide/territorial/tribal screening system; (3) proposed proactive tracking and follow-up system for women requiring diagnostic procedures and medical treatment not provided by the program; and (4) proposed tracking and follow-up system for women screened and rescreened by the program; and (5) proposed support services such as case management (Section 1501 (a)(1) and (2) of the PHS Act, as amended.)

c. For those applicants previously receiving National Breast and Cervical Cancer Early Detection Program Cooperative Agreement funding, describe, in detail, the operational plan related to rescreening efforts (including staff responsible for oversight, the process to monitor rescreening rates and the system to assess the strategies used) and rescreening protocol (including a systematic and comprehensive reminder system). Include the calculation of mammography and cervical cancer rescreening rates for clinical services previously provided to eligible enrolled NBCCEDP women.

d. Document available resources in the State/territory/tribe for the payment or reimbursement of breast and cervical cancer screening, including the Medicaid Program. (Section 1504(d) of the PHS Act, as amended.)

e. Describe the ability to establish a screening program that meets FDA regulations for mammography screening; uses the American College of Radiology Breast Imaging Reporting and Data System (BI–RADS); meets the standards and regulations of the Clinical Laboratory Improvement Act (CLIA) for cervical cancer screening; and, uses the Bethesda System.

f. Provide a projected timetable for program implementation that displays dates for the accomplishment of specific proposed activities.

g. Describe the current or proposed plan for evaluating (1) the program's progress in meeting specific objectives outlined in the implementation plan by program component area, and (2) overall success based on performance indicators established by the applicant. Describe the types of indicators to be used to assess outcomes that will occur as a result of this funding. Baseline measures should be identified and assessed to allow for comparisons after implementation has begun. Specify the kind of data/performance indicator that will be used, how the data will be obtained, how information will be used to improve the overall efficiency and effectiveness of the program, as well as individual program components, who is responsible for each evaluation task, and a timeline for accomplishing each evaluation task.

h. Describe how the State/territory/tribe will assure that funds will be used in a cost-effective manner. (Section 1505 (4) of the PHS Act, as amended.)

4. Partnership Development and Community Involvement

The applicant should describe:

a. How the program will develop linkages and coordinate with other Federal, State and local programs, voluntary and professional organizations, private physicians, and mammography facilities and other groups, agencies, and businesses in the community that provide health care and related support services to women. (Section 1504(e) of the PHS Act, as amended.)

b. The current or proposed broad-based coalitions that will advise and support the breast and cervical cancer early detection program, including the identification of current members or proposed representatives, their charge, and their proposed roles and responsibilities. Specific subcommittees of the coalition should be described (e.g., Medical Advisory, public information education and outreach, and professional education).

c. Letters of support (dated within the last three months) from key partners, participants, and community leaders should be included in the application.

5. Management and Organizational Structure

The applicant should submit a Management plan. This plan should include a description of the structure to ensure the implementation of a comprehensive breast and cervical cancer program that includes development of qualified and diverse technical, program, and administrative staff, organizational relationships including lines of authority, internal and external communication systems, and a system for sound fiscal management. The information should also include the following:

a. A copy of the organizational chart indicating the placement of the proposed program in the department/organization.

b. Documentation of available resources in the State/territory/tribe for the payment or reimbursement of breast and cervical cancer screening, including the Medicaid and Medicare Programs. (Section 1504 (d) of the PHS Act, as amended.)

c. The proposed schedule of fees and charges for breast and cervical cancer screening and diagnostic services, consistent with maximum Medicare reimbursement rates, and include a description of its use in the program. In States/territories/tribes where there are multiple Medicare rates and a single reimbursement rate is being proposed, the applicant must provide justification for approval. (Section 1504 (b) of the PHS Act, as amended.)

6. Capability for Program Implementation

The applicant should describe proposed activities as measured by:

a. Accomplishments of an existing breast and cervical cancer early detection program funded by CDC or relevant past experiences funded by other sources:

(1) States Currently Receiving CDC Comprehensive Funds:

Accomplishments in establishing a comprehensive breast and cervical cancer early detection program, including the total number, age and racial/ethnic distribution of women screened; percent of abnormal findings by age and race/ethnicity; rate of cancer age adjusted or age-group specific; follow-up time between screening and diagnosis and between diagnosis and treatment initiation; and, percent of women who are routinely rescreened by the program.

Accomplishments in establishing an infrastructure to support a breast and cervical cancer screening program and in resolving program challenges, such as mammography screening for Medicare Part B unenrolled women 50 years and older, the timely follow-up of women with abnormal screening and diagnostic results, or the use of the American College of Radiology BI-RADS by radiologists to report mammogram results.

(2) Territory currently receiving CDC Capacity Building Funds: Accomplishments in establishing a comprehensive infrastructure to support a breast and cervical cancer screening program including screening, tracking, follow-up and case management information, public education and outreach, professional education, quality assurance and improvement, surveillance, and partnership development and community involvement.

(3) Territories/Tribes not currently Receiving CDC Breast and Cervical Cancer Funds: Relevant past experiences of the applicant in conducting screening, tracking, follow-up, case management; public information, education and outreach; professional education; quality assurance and improvement; surveillance; and, partnership development and community involvement for cancer control, chronic disease control or other relevant areas.

7. Source Data for Matching Requirement

Identify and describe:

a. Maintenance of Effort (MOE)—The average amount of non-Federal dollars expended for breast and cervical cancer programs and activities made by a State/territory/tribe for the two year period preceding the first Federal fiscal year of the program funding for breast and cervical cancer early detection activities. This amount will be used to establish the maintenance of effort baseline for current and future match requirements;

b. State/territory/tribe allowable sources of matching funds for the program and the estimated amounts from each;

c. Procedures for documenting the value of non-cash matching funds;

d. Procedures for documenting the actual amount of match received.

8. Budget With Justification

a. Provide a detailed budget request and complete line item justification (for both Federal and non-Federal funds) of all proposed operating expenses consistent with the program activities described in this announcement. Not less than 60 percent of Federal funds will be expended for screening, tracking, follow-up and other support services such as case management. Not more than 10 percent of Federal funds will be expended for administrative expenses. A detailed line-item breakdown of the 60/40 distribution should be incorporated into the budget.

b. The applicant should submit a Screening and Diagnostic Worksheet that details the projected number of women screened, the reimbursement rate provided for each service, and the overall projected clinical costs. A sample Screening and Diagnostic Worksheet is included in the NBCCEDP PPM.

c. To request new direct-assistance assignees, include:

(1) Number of assignees requested;

(2) Description of the position and proposed duties;

(3) Ability or inability to hire locally with financial assistance;

(4) Justification for request;

(5) Organizational chart and name of intended supervisor;

(6) Opportunities for training, education, and work experiences for assignees; and

(7) Description of assignee's access to computer equipment for communication with CDC (e.g., personal computer at home, personal computer at workstation, shared computer at workstation on site, shared computer at a central office).

F. Submission and Deadline

Submit the original and two copies of the completed application Form PHS–5161–1 (OMB Number 0937–0189). Forms are in the application kit. On or before May 26, 1999, submit the application to: Mildred S. Garner, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 2920 Brandywine Road, Room 3000, Atlanta, GA 30341.

1. Deadline: Applications will be considered as meeting the deadline if they are either:

a. Received on or before the stated deadline date; or

b. Sent on or before the deadline date and received in time for orderly processing. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks shall not be acceptable proof of timely mailing.)

2. Late Applications: Applications which do not meet the criteria in 1(a) or 1(b), above, are considered late applications, will be returned to the applicant.

G. Evaluation Criteria (100 Points)

Each application will be evaluated individually against the following criteria by an independent review group appointed by CDC.

1. Background and Need (10 points)

The extent of the disease burden and the need among the priority populations as measured by:

a. The State/territorial/tribal breast and cervical cancer age-adjusted mortality rates averaged more than five years and ranking nationally;

b. The disease burden, including the incidence rates of breast and cervical cancer by age, race and ethnicity (where available);

c. The number of uninsured women by race/ethnicity who are 18–39, 40–49, 50–64, 65+ years;

d. The unmet screening needs of uninsured and under-insured women;

e. Existing access and barriers to early detection services, (e.g., social, financial, geographic).

2. Implementation Plan (50 points)

The degree of comprehensiveness and quality of the Work Plan in relation to:

a. The applicant's proposed work plan that includes overall goals for the program and program components, describes performance indicators related to goals and details measurable, time phased and realistic objectives for each program component. (10 Points)

b. Proposed public education, information, and outreach strategies that are likely to increase the number of low income, uninsured women that are screened and rescreened. (10 points)

c. Proposed professional education strategies that are likely to effect the health care providers knowledge, attitudes, and behaviors in such a way that more women in the target audience are screened and rescreened appropriately. (10 points)

d. Proposed a service delivery program that provides quality screening, rescreening and diagnostic services,

according to established standards, and a proactive tracking, follow-up and case management system. (10 points)

e. Proposed surveillance and evaluation strategies that appear to use reliable data and program results to measure program effectiveness and to facilitate program planning, development, and implementation, and to enhance program goals and objectives. (10 points)

3. Partnership Development and Community Involvement (10 points)

The feasibility and extent of the applicant's proposal to develop and maintain collaborative partnerships with other Federal, State and local programs, territories, tribes and voluntary, professional, and private-sector agencies. The extent of involvement of a broad-based coalition that advises and supports the program. The extent to which letters of support reflects assistance from key partners, participants, and community leaders.

4. Management and Organizational Structure (15 points)

The feasibility and appropriateness of the applicant's management plan that describes the development of qualified and diverse technical, program, and administrative staff, organizational relationships including lines of authority, internal and external communication systems, and a system for sound fiscal management.

5. Capability for Program Implementation (15 points)

The extent to which the applicant appears likely to be successful in implementing the proposed activities as measured by:

a. Accomplishments by comprehensive-funded States and tribes in implementing a breast and cervical cancer early detection program as required through previous funding agreements. These accomplishments should be evaluated in terms of the number of women screened, the number of services provided, and the number of cancers detected.

b. Accomplishments by capacity-funded States in establishing a comprehensive public health infrastructure to support a breast and cervical cancer early detection program.

c. Relevant past experiences of unfunded applicants in conducting breast and cervical cancer early detection programs.

6. Budget and Justification (Not Weighted)

The extent to which the proposed budget is adequately justified, reasonable, and consistent with this program announcement.

7. Human Subject (Not Weighted)

Whether or not exempt from the DHHS regulations, does the application adequately address the requirement of 45 CFR part 46 for the protection of human subjects? Recommendations on the adequacy of protections include: (1) Protections appear adequate and there are no comments to make or concerns to raise, or (2) protections appear adequate, but there are comments regarding the protocol, or (3) protections appear inadequate and the Objective Review Group (ORG) has concerns related to human subjects, or (4) disapproval of the application is recommended because the research risks are sufficiently serious and protection against risks are inadequate as to make the entire application unacceptable.

H. Other Requirements

Technical Reporting Requirements

Provide CDC with the original plus two copies of:

1. Semiannual progress reports are required and must be submitted no later than 30 days after each semiannual reporting period. The semiannual progress reports must summarize the following: (1) Major accomplishments including information on women screened; (2) problems encountered in program implementation; and (3) efforts or proposed strategies to resolve problems. All manuscripts published as a result of the work supported in part or whole by the cooperative agreement will be submitted with the progress reports.

2. An annual financial status report (FSR) must be submitted no later than 90 days after the end of each budget period.

3. The final financial status report and progress report is required no later than 90 days after the end of the project period.

Send all reports to: Nealean K. Austin, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), Room 3000, 2920 Brandywine Road, Atlanta, GA 30341.

The following additional requirements are applicable to this program. For a complete description of each, see Attachment I in application package.

AR–1 Human Subjects Requirement
AR–2 Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research
AR–7 Executive Order 12372 Review
AR–9 Paperwork Reduction Act Requirements
AR–10 Smoke-Free Workplace Requirements
AR–11 Healthy People 2000
AR–12 Lobbying Restrictions

I. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under sections 1501, 1502, 1507 and 1509 (42 U.S.C. 300k, 42 U.S.C. 300l, and 42 U.S.C. 300n–3) of the Public Health Service Act, as amended. The Catalog of Federal Domestic Assistance number is 93.919.

J. Where To Obtain Additional Information

To receive additional written information and to request an application kit, call 1–888–GRANTS4 (1–888–472–6874). You will be asked to leave your name and address and will be instructed to identify the Announcement number of interest.

If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from: Nealean K. Austin, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office Announcement 99052, Centers for Disease Control and Prevention (CDC), Room 3000, 2920 Brandywine Road, Atlanta, GA 30341, telephone (770) 488–2754, E-mail address NEA1@CDC.GOV

For program technical assistance, contact: Amy Harris, Acting Manager, Policy Development and Administrative Coordination, Program Services Branch, Division of Cancer Prevention and Control, National Center for Chronic Disease Prevention and Health Promotion, Centers for Disease Control and Prevention (CDC), 4770 Buford Highway, NE., Mailstop K–57, Atlanta, GA 30341–3724, telephone (770) 488–4880, fax (770) 488–4727, or

See also the CDC home page on the Internet: http://www.cdc.gov or http://www.cdc.gov/cancer for a copy of the PPM.

Dated: March 30, 1999.

John L. Williams,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 99–8207 Filed 4–2–99; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 99062]

National Institute for Occupational Safety and Health; Safety and Health Interventions in the Construction Industry; Notice of Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 1999 funds for a cooperative agreement program for Safety and Health Interventions in the Construction Industry. This program addresses the "Healthy People 2000" priority area of Occupational Safety and Health. The purpose of this cooperative agreement is to develop, implement, and evaluate a national research program in prevention intervention effectiveness research and preventive service systems research in construction safety and health. Many of the National Occupational Research Agenda (NORA) priority areas are relevant to the construction industry and should be considered when responding to this Request for Assistance. These include, preventing hearing loss, back disorders, asthma, and dermatitis and reducing or eliminating traumatic injuries (caused by falls, electrocutions, struck-bys or contact with materials/objects). In addition, there are other high priority problems in construction that are not explicitly included in NORA, such as silicosis and lead poisoning, that should be addressed. The overall project will respond to problems that are specific to different regions, different trades and different industry sectors.

B. Eligible Applicants

Applications may be submitted by public and private nonprofit and for-profit organizations and by governments and their agencies; that is, universities, colleges, research institutions, hospitals, other public and private nonprofit and for-profit organizations, State and local governments or their bona fide agents, and federally recognized Indian tribal governments, Indian tribes, or Indian tribal organizations.

Note: Public Law 104–65 states that an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, cooperative agreement, contract, loan, or any other form.

C. Availability of Funds

Approximately $4.125 million is available in FY 99 to fund one award. It is expected that approximately $5.0 million will become available for years 2–5. It is expected that the award will begin on or about September 29, 1999, and will be made for a 4 year 9-month project period with year one being 9 months and years 2–4 being 12 months. Funding estimates may change. Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

D. Cooperative Activities

In conducting activities to achieve the purpose of this program, the recipient shall be responsible for the activities under Recipient Activities below, and CDC/NIOSH will be responsible for the activities under CDC/NIOSH Activities below:

Recipient Activities

1. Innovative Pilots or Feasibility Studies

a. Create implement innovative pilot/feasibility project to reduce injury/illness in construction.

b. Establish partnerships with small businesses and independent contractors, unionized contractors to develop, implement and evaluate pilot work looking at the health and safety needs of the entire spectrum of the construction workforce.

2. Intervention Evaluation Research

a. Implement and evaluate intervention initiatives to reduce construction-related injury/illness through partnerships. Incorporate economic analysis into the evaluation process for intervention study.

b. Identify and utilize data to target at-risk groups. Develop interventions aimed at improving best practices; develop detailed plans for modifying best practices based on data. Identify existing or develop new intervention initiatives designed to improve best practices for specific industry sectors and operations within individual sectors. Evaluate intervention initiatives for implementing and evaluating the effectiveness of the intervention throughout the targeted industry sector in future years.

c. Develop, implement, and evaluate employee/employer safety and health approaches.

d. Develop study designed to evaluate the effectiveness of worker training programs across multiple trades, on multiple issues of concern, and on using different training modalities. Evaluate the state of existing training programs and develop standardized safety and health training for the industry. Evaluate the effectiveness of training interventions using data collected.

3. Information and Technology Transfer

a. Develop, implement, and evaluate various aspects of the information transfer process within the construction industry.

b. Demonstrate the ability to create and maintain an infrastructure to be a central clearinghouse for collecting and disseminating health and safety related information to the construction industry.

c. Develop studies to identify the various means that construction firms use to obtain safety and health information.

4. Preventive Systems Research

Develop a research agenda which include (1) studies of policies and procedures that facilitate or hinder the adoption and implementation of effective best practices and interventions, and research on the technology of effective dissemination; (2) studies of the effects of age, gender, ethnicity, organizational, or sociocultural factors that affect access to, or use of, available best practice preventive interventions; and (3) studies of the costs associated with implementing best practice preventive interventions and methods of financing such interventions.

5. On-Going Surveillance

a. Identify pertinent databases and update and expand them where possible.

6. Review Priorities

a. Develop a system to continuously review surveillance and intervention outcome data to establish priorities for research under this cooperative agreement.

b. Convene a national conference for the purpose of sharing information, establishing priorities, and facilitating joint approaches for developing construction industry interventions and to identify and critique current "best practices" for specific construction trades and industry sectors.

CDC/NIOSH Activities

1. Provide technical assistance, through site visits and other communication, in all phases of the development, implementation and maintenance of the cooperative agreement.

2. Facilitate communication/coordination between recipients and

other groups, organizations and agencies involved in construction research and outreach.

E. Application Content

Use the information in the Cooperative Activities, Other Requirements, and Evaluation Criteria sections to develop the application content. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan. The narrative should be no more than 50 double-spaced pages. The original and each copy of the application must be submitted unstapled and unbound. All materials must be typewritten, double-spaced, with unreduced type (font size 12 point) on 8½" by 11" paper, with at least 1" margins, headers, and footers, and printed on one side only. Do not include any spiral or bound materials or pamphlets. Appendices should have indexes and include (1) support letters (2) information on key personnel (3) other supporting documentation.

F. Submission and Deadline

Letter of Intent (LOI)

Your letter of intent should include the following information. The letter of intent must be submitted on or before May 30, 1999, to: Sheryl L. Heard, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Announcement 99062, Centers for Disease Control and Prevention (CDC), 2920 Brandywine Road, Room 3000, Atlanta, Georgia 30341.

Application

Submit the original and two copies of PHS 5161–1 (OMB Number 0937–0189). Forms are in the application kit. On or before June 30, 1999, submit the application to: Sheryl Heard, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Announcement 99062, Centers for Disease Control and Prevention (CDC), 2920 Brandywine Road, Room 3000, Atlanta, Georgia 30341.

Deadline: Applications shall be considered as meeting the deadline if they are either:

(a) Received on or before the deadline date; or

(b) Sent on or before the deadline date and received in time for orderly processing. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

Late Applications: Applications which do not meet the criteria in (a) or (b) above are considered late applications, will not be considered, and will be returned to the applicant.

G. Evaluation Criteria

Application which are complete and responsive will be reviewed and evaluated by an Independent Special Emphasis Panel in accordance with the following criteria.

1. Background and Need (20 points total)

a. The extent to which the applicant understands the purpose and provides a comprehensive statement of the specific problems to be addressed. (2 points)

b. The extent to which the applicant presents data justifying the need for the overall program and it's components, and that interventions are theoretically justified and supported with epidemiologic, methodological, or behavioral research. (9 points)

c. The extent to which the interventions/pilot projects are feasible and can be expected to produce the anticipated results. The feasibility of adoption and sustainability of the intervention acknowledging potential strengths and barriers to adoption and sustainability in the industry, e.g. the impact of trends in construction, support by partners and stakeholders, costs of implementation, effects on production, and industry culture. Identification of participant relationships (potential or actual) that have and might have an interest in supporting and extending the intervention beyond the current agreement. (9 points)

2. Goals and Objectives (20 points total)

a. The extent to which specific research questions and/or hypotheses are described. The extent to which the applicant has included goals which are relevant to reducing injuries, illnesses, and/or hazard exposure among construction workers. (6 points)

b. The extent to which the applicant has included goals and objectives that are specific, measurable, time-phased, and feasible to accomplish, goals and objectives. (7 points)

c. The extent to which objectives include involving construction workers, employers, unions, and other stakeholders in the planning, implementation and evaluation of the projects proposed. (7 points)

3. Methods (25 points total)

a. The extent to which the applicant provides a detailed description of overall study design and research methods to be used for the proposed research project, including the designation of responsibility for activities undertaken. (10 points)

b. The extent to which the target population and setting in which the interventions/pilot projects are to be implemented are clearly described and shown to be adequate for achieving the desired objectives. (9 points)

c. The extent to which it is demonstrated that the participation of the target group will be sufficient to evaluate the interventions/pilot projects in an unbiased fashion. (3 points)

d. The extent to which the applicant has met the CDC policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed research. This includes: (1) The proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation; (2) The proposed justification when representation is limited or absent; (3) A statement as to whether the design of the study is adequate to measure differences when warranted; (4) A statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with community(ies) and recognition of mutual benefits will be documented. (3 points)

4. Staffing, Facilities and Resources (15 points total)

a. The extent to which organizational structure, job descriptions, proposed staffing, staff qualifications and experience, identified training needs or plan, and curricula vitea for both the proposed and current staff indicate the applicant's ability to carry out the objectives of the program. The extent to which the management staff and their working partners are clearly described, appropriately assigned and have pertinent skills and experiences, e.g. previous accomplishments in agricultural safety and health interventions. Time allocation of the professional staff to be assigned to this project. (8 points)

b. The extent to which concurrence with the applicant's plans by all other involved parties is specific and documented, e.g. support for proposed activities as well as commitment to participate from proposed partners (e.g. letters of support and/or memoranda of understanding). The extent to which the participants are clearly described and their qualifications for their component of the proposed work are explicitly stated. The extent to which the applicant provides proof of the involvement of partners/stakeholders

(e.g., academic researchers, non-profit organizations, unions and employers) in the development of this proposal. (7 points)

5. Evaluation (20 points)

The extent to which the proposed evaluation system is detailed and will document program process, effectiveness, impact, and outcome. The extent to which an evaluation plan has been developed to determine both the success of the pilot projects or interventions and to determine their utility as a public health prevention strategy with broader application. The extent to which the applicant demonstrates potential data sources for evaluation purposes, and documents staff availability, expertise, and capacity to perform the evaluation. The extent to which a feasible plan for reporting evaluation results and using evaluation information for programmatic decisions is included. The extent to which the applicant describes strategies for broad-based dissemination of information to the construction industry.

6. Budget and Justification (not scored)

The extent to which the applicant provides a detailed budget and narrative justification consistent with stated objectives and planned program activities.

7. Human Subjects Review (not scored)

If human subjects will be involved, the applicant must clearly state how they will be protected (i.e., describe the review process which will govern participation).

H. Other Requirements

Technical Reporting Requirements

Provide CDC with original plus two copies of

1. annual progress reports;
2. all final reports and project outputs, including published reports will be prepared in WordPerfect 6.1 or higher in a form that can be converted to HTML format for mounting on the Internet;
3. financial status report, no more than 90 days after the end of the budget period; and
4. final financial status and performance reports, no more than 90 days after the end of the project period.

Send all reports to: Sheryl Heard, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 2920 Brandywine Road, Room 3000, Atlanta, GA 30341.

The following additional requirements are applicable to this program. For a complete description of each, see Attachment I in the application package.

AR–1 Human Subjects Requirements

AR–2 Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research

AR–9 Paperwork Reduction Act Requirements

AR–10 Smoke-Free Workplace Requirements

AR–11 Healthy People 2000

AR–12 Lobbying Restrictions

AR–20 Conference Support

I. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under section 20(a) and 22(e)(7) of the Occupational Safety and Health Act of 1970, [29 U.S.C. 669(a) and 671(e)(7)]. The Catalog of Federal Domestic Assistance number is 93.283.

J. Where to Obtain Additional Information

Please refer to Program Announcement 99062 when you request information. To receive additional written information and to request an application kit, call 1–888–GRANTS4 (1–888 472–6874). You will be asked to leave your name and address and will be instructed to identify the Announcement number of interest.

See also the CDC home page on the Internet: http://www.cdc.gov

If you have questions after reviewing the contents of all the documents, please contact: Sheryl Heard, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Announcement 99062, Centers for Disease Control and Prevention (CDC), 2920 Brandywine Road, Room 3000, Atlanta, GA 30341, telephone (770) 488–2723, Email address SLH3@cdc.gov.

For program technical assistance, contact: Dr. Linda Goldenhar, National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention (CDC), Division of Surveillance, Hazard Evaluations and Field Studies, 4676 Columbia Parkway, R–21, Cincinnati, OH 45226, Telephone (513) 841–4493, Fax (513) 841–4486, e-mail: lyg9@cdc.gov.

Dated: March 30, 1999.

Diane D. Porter,

Acting Director, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention (CDC).

[FR Doc. 99–8331 Filed 4–2–99; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Head Start Bureau; Advisory Committee on Head Start Research and Evaluation; Notice of Meeting

AGENCY: Administration for Children, Youth and Families, ACF, DHHS.

ACTION: Notice of meeting; Advisory Committee on Head Start Research and Evaluation.

SUMMARY: The 1998 Head Start Reauthorization (42 U.S.C. 9844(g); Section 649(g)(1) of the Head Start Act, as amended) called on the Secretary of Health and Human Services to form an independent panel of experts (i.e., an Advisory Committee) to offer advice concerning research designs that would provide a national analysis of the impact of Head Start Programs. The April 26–27, 1999 meeting is expected to be the first of three meetings of the Advisory Committee that will culminate in a report to the Secretary due October 1, 1999.

DATE AND TIME: April 26, 1999, 9 a.m.–5:30 p.m. and April 27, 1999, 9 a.m.–12 p.m.

PLACE: Georgetown University Conference Center, 3800 Reservoir Road, NW., Washington, DC 20057.

SUPPLEMENTARY INFORMATION: This meeting is open to the public and is barrier free. Meeting records will also be open to the public and will be kept at the Switzer Building located at 330 "C" Street, SW., Washington, DC 20447. The Head Start Bureau also intends to make material related to this meeting available on the Head Start web site http:www/dhhs.gov/programs/hsb. An interpreter for the deaf and hearing impaired will be available upon advance request by calling Ellsworth Associates at (703) 821–3090 (ext. 282).

FOR FURTHER INFORMATION CONTACT: Deborah Roderick Stark at (301) 889–0430 for substantive information. ACF Office of Public Affairs at (202) 401–9215 for press inquiries. Ellsworth Associates at (703) 821–3090 (ext. 282) for logistical information.

Dated: March 31, 1999.

Patricia Montoya,

Commissioner, Administration on Children, Youth, and Families.

[FR Doc. 99–8316 Filed 4–2–99; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Medical Child Support Working Group

AGENCY: Administration for Children and Families, DHHS.

ACTION: Notice of Open Meeting.

SUMMARY: Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (FACA), notice is given of the second meeting of the Medical Child Support Working Group (MCSWG). The Medical Child Support Working Group was jointly established by the Secretaries of the Department of Labor (DOL) and the Department of Health and Human Services (DHHS) under section 401(a) of the Child Support Performance and Incentive Act of 1998. The purpose of the MCSWG is to identify the impediments to the effective enforcement of medical support by State child support enforcement agencies, and to submit to the Secretaries of DOL and DHHS a report containing recommendations for appropriate measures to address those impediments.

DATES: The meeting of the MCSWG will be held on Tuesday, April 13, 1999, from 11:00 a.m. to approximately 5:00 p.m.

ADDRESSES: The meeting will be held in Room N–3437, Conference Room A/B/C, at the offices of the U.S. Department of Labor, 200 Constitution Ave., N.W., Washington, D.C. All interested parties are invited to attend this public meeting. Seating may be limited and will be available on a first-come, first-serve basis. Persons needing special assistance, such a sign language interpretation or other special accommodation, should contact the Executive Director of the Medical Child Support Working Group, Office of Child Support Enforcement at the address listed below.

FOR FURTHER INFORMATION CONTACT: Ms. Samara Weinstein, Executive Director, Medical Child Support Working Group, Office of Child Support Enforcement, Fourth Floor East, 370 L'Enfant Promenade, SW, Washington, DC 20447 (telephone (202) 401–6953; fax (202) 401–5559; e-mail: sweinstein@acf.dhhs.gov). These are not toll-free numbers. The date, location and time for subsequent MCSWG meetings will be announced in advance in the **Federal Register**.

SUPPLEMENTARY INFORMATION: Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2) (FCCA), notice is given of a meeting of the Medical Child Support Working Group (MCSWG). The Medical Child Support Working Group was jointly established by the Secretaries of the Department of Labor (DOL) and the Department of Health and Human Services (DHHS) under section 401(a) of the Child Support Performance and Incentive Act of 1998 (P.L. 105–200).

The purpose of the MCSWG is to identify the impediments to the effective enforcement of medical support by State child support enforcement agencies, and to submit to the Secretaries of DOL and DHHS a report containing recommendations for appropriate measures to address those impediments. This report will include: (1) Recommendations based on assessments of the form and content of the National Medical Support Notice, as issued under interim regulations; (2) appropriate measures that establish the priority of withholding of child support obligations, medical support obligations, arrerages in such obligations, and in the case of a medical support obligation, the employee's portion of any health care coverage premium, by such State agencies in light of the restrictions on garnishment provided under title III of the Consumer Credit Protection Act (15 U.S.C. 1671–1677); (3) appropriate procedures for coordinating the provision, enforcement, and transition of health care coverage under the State programs for child support, Medicaid and the Child Health Insurance Program; (4) appropriate measures to improve the availability of alternate types of medical support that are aside from health care coverage offered through the noncustodial parent's health plan, and unrelated to the noncustodial parent's employer, including measures that establish a noncustodial parent's responsibility to share the cost of premiums, co-payments, deductibles, or payments for services not covered under a child's existing health coverage; (5) recommendations on whether reasonable cost should remain a consideration under section 452(f) of the Social Security Act; and (6) appropriate measures for eliminating any other impediments to the effective enforcement of medical support orders that the MCSWG deems necessary.

The membership of the MCSWG was jointly appointed by the Secretaries of DOL and DHHS, and includes representatives of: (1) DOL; (2) DHHS; (3) State Child Support Enforcement Directors; (4) State Medicaid Directors; (5) employers, including owners of small businesses and their trade and industry representatives and certified human resource and payroll professionals; (6) plan administrators and plan sponsors of group health plans (as defined in section 607(1) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1167(1)); (7) children potentially eligible for medical support, such as child advocacy organizations; (8) State medical child support organizations; and (9) organizations representing State child support programs.

Agenda: The agenda for this meeting includes a discussion of the form and content of the national Medical Support Notice (Notice) mandated by section 401(b) of the Child Support Performance and Incentive Act. The Notice is to be jointly developed and promulgated by the Secretaries of DHHS and DOL as a means of enforcing the health care coverage provisions in a child support order. As time permits, the MCSWG may discuss the other items to be included in its report to the Secretaries, as listed above.

Public Participation: Members of the public wishing to present oral statements to the MCSWG should forward their requests to Samara Weinstein, MCSWG Executive Director, as soon as possible and at least four days before the meeting. Such request should be made by telephone, fax machine, or mail, as shown above. Time permitting, the Chairs of the MCSWG will attempt to accommodate all such requests by reserving time for presentations. The order of persons making such presentations will be assigned in the order in which the requests are received. Members of the public are encouraged to limit oral statements to five minutes, but extended written statements may be submitted for the record. Members of the public also may submit written statements for distribution to the MCSWG membership and inclusion in the public record without presenting oral statements. Such written statements should be sent to the MCSWG Executive Director, as shown above, by mail or fax at least five business days before the meeting.

Minutes of all public meetings and other documents made available to the MCSWG will be available for public inspection and copying at both the DOL and DHHS. At DHHS, these documents will be available at the MCSWG Executive Director's Office, Office of Child Support Enforcement (OCSE), Administration for Children and Families, U.S. Department of Health and Human Services, Aerospace Building, Fourth Floor—East, 370 L'Enfant Promenade, SW, Washington, DC from 8:30 a.m. to 5:30 p.m. Questions regarding the availability of documents

from DHHS should be directed to Andrew J. Hagan, OCSE (telephone (202) 401–5375). This is not a toll-free number. Any written comments on the minutes should be directed to Ms. Samara Weinstein, Executive Director of the Working Group, as shown above.

Signed at Washington, DC, this 29th day of March, 1999.

David Gray Ross,

Commissioner, Office of Child Support Enforcement.

[FR Doc. 99–8317 Filed 4–2–99; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99N–0038]

Agency Information Collection Activities; Announcement of OMB Approval; Survey of Biomedical Equipment Manufacturers for Year 2000–Compliant Products

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled "Survey of Biomedical Equipment Manufacturers for Year 2000–Compliant Products" has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Peggy Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of January 22, 1999 (64 FR 3524), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0397. The approval expires on September 30, 1999. A copy of the supporting statement for this information collection is available on the Internet at "http://www.fda.gov/ohrms/dockets".

Dated: March 29, 1999.

William K. Hubbard,

Acting Deputy Commissioner for Policy.

[FR Doc. 99–8201 Filed 4–2–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Public Input on Public Health; Open Public Forum

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of meetings.

SUMMARY: The Food and Drug Administration (FDA), Office of Consumer Affairs and Office of Regulatory Affairs, Pacific Region, is announcing a series of open public forums entitled: "Public Input on Public Health, FDA Listens to You, A Town Hall Meeting." The purpose of the forums is to provide an opportunity for FDA's primary stakeholders, U.S. consumers, to have an open dialogue with FDA's senior policy makers about their consumer protection concerns. FDA plans to use the information in the development of the Pacific Region Strategic Plan and in the development of FDA's nation wide priorities. Under the FDA Modernization Act of 1997 (FDAMA), FDA was mandated by Congress to have ongoing consultations with its stakeholders on how FDA can best meet their regulatory requirements and to protect the public health. Two issues of particular concern, this year, are strengthening the science base of the agency and improving risk-based communication with the public.

DATES: Send registration and requests for oral presentations by May 5, 1999. See Table 1 in section II of this document for a complete schedule of all the meetings.

ADDRESSES: Send written comments to the specific contact person. See Table 1 in section II of this document for a complete listing of meeting locations and contact persons.

FOR FURTHER INFORMATION CONTACT: For general information: James Rowell or Patricia Alexander, Food and Drug Administration, 5600 Fishers Lane, rm. 16–75, Rockville, MD 20857, 301–827–4414 or 301–827–4391, FAX 301–443–9767.

For specific meeting information: See Table 1 in the **SUPPLEMENTARY INFORMATION** section of this document.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is a science based consumer protection agency responsible for ensuring that: (1) Foods are safe, wholesome and sanitary; (2) human and veterinary drugs, biological products, and medical devices are safe and effective; (3) cosmetics and electronic products that emit radiation are safe. FDA also ensures that these regulated products are honestly and accurately labeled and in compliance with applicable laws and regulations. FDA strives to maximize public health protection while reducing regulatory burdens.

Public participation in these forums will provide an essential ingredient to the achievement of the Pacific Region's intermediate and long range strategic planning goals. Additional benefits include: (1) Providing the opportunity to hear directly from consumers their concerns about health and policy issues, (2) reaching out to a broad representation of community based and consumer organizations to reach the full diversity of consumers, (3) using the information gained at these forums in FDA's decisionmaking process, (4) obtaining information necessary for the development of innovative programs to raise public awareness, (5) fostering communication among local agencies, both public and private, in order to more effectively respond to the public's need for information that empowers them in making health related decisions, and (6) encouraging individuals to take personal responsibility for protecting their own health.

II. Scheduled Meetings

The open public forums will be held in several locations throughout the country. The scheduled date and time, location, and specific contact person for each meeting is listed in Table 1 as follows:

TABLE 1.—MEETING SCHEDULES AND CONTACTS FOR REGISTRATION

Date	Time	Place	Address	Contact
Wednesday, May 12, 1999	10 a.m. to 1 p.m.	Elihu Harris State Office Bldg. Auditorium.	1515 Clay St., Oakland, CA.	Mary Ellen Taylor at 510–337–6888, FAX 510–337–6708

TABLE 1.—MEETING SCHEDULES AND CONTACTS FOR REGISTRATION—Continued

Date	Time	Place	Address	Contact
	4 p.m. to 7 p.m.	Elihu Harris State Office Bldg. Auditorium.	1515 Clay St., Oakland, CA.	Mary Ellen Taylor at 510–337–6888, FAX 510–337–6708
Friday, May 14, 1999	10 a.m. to 3 p.m.	California Science Center, Donald P. Loker Conference Center.	Figueroa and 39th Sts., Los Angeles, CA, (next to the Los Angeles Coliseum).	Rosario Vior at 949–798–7607, FAX 949–798–7715
Monday, May 17, 1999	1 p.m. to 4 p.m.	Portland State University, Smith Memorial Center.	724 SW. Harrison St., rm. 294, Portland, OR.	Alan Bennett at 503–671–9711, ext. 22 FAX 503–671–9711

III. Registration and Requests for Oral Presentations

Send registration information (including name, title, firm name, address, telephone, and fax number) and requests to make oral presentations to the registration contact person listed in Table 1 of section II of this document by Wednesday, May 5, 1999.

Written comments and questions concerning the meetings may also be submitted to the specific registration contact person listed for each meeting in Table 1. If you need special accommodations due to a disability, please contact the registration contact person at least 7 days in advance.

IV. Transcripts

Transcripts of the meeting may be requested in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, rm. 12A–16, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting at a cost of 10 cents per page.

Dated: March 29, 1999.

William K. Hubbard,

Acting Deputy Commissioner for Policy.

[FR Doc. 99–8200 Filed 4–2–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Extramural Support Program for Projects to Increase Organ and Tissue Donation

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice with comment period.

SUMMARY: The Health Resources and Services Administration (HRSA), Department of Health and Human Services (HHS), announces a proposed peer reviewed, competitively awarded extramural support program for fiscal year 1999 to fund projects to increase organ and tissue donation. This document sets forth the proposed parameters of the extramural support program and offers a 30-day period for public comment on: the project phases eligible for program support (pilot tests and replications), performance measures, funding priorities, and review criteria. Comments will be considered for the purpose of writing the detailed guidance to applicants for submission of applications. Applications will be solicited for this extramural support program by posting the announcement on the following three web sites: www.hrsa.gov, www.hrsa.gov/osp/dot/, and www.organdonor.gov, and by publishing it as a **Federal Register** notice.

In concert with HHS" National Organ and Tissue Donation Initiative, this extramural program intends, through cooperative agreements, to support projects of up to 3 years duration to implement, evaluate, and disseminate model interventions with the greatest potential for yielding a verifiable and demonstrable impact on donation and which are replicable, transferable, and feasible in practice. Applicants must be qualified organ procurement organizations (OPOs) or other nonprofit, private organizations, in collaboration with a consortium of other relevant entities. Strong evaluation project components and staffing expertise are required. Authority for this program is provided by Section 371(a)(3) of the Public Health Service (PHS) Act, 42 U.S.C. 273(a)(3), as amended.

DATES: To ensure consideration, comments must be received by May 5, 1999.

ADDRESSES: Written comments should be addressed to: D.W. Chen, M.D., M.P.H., Director, Division of Transplantation, Office of Special Programs, Health Resources and Services Administration, U.S. Department of Health and Human Services, Room 4–81, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. All comments received will be available for public inspection and copying at the Division of Transplantation, at the above address, weekdays (Federal holidays excepted) between the hours of 9:00 a.m. and 5:00 p.m.

FOR FURTHER INFORMATION CONTACT: D.W. Chen, M.D., M.P.H., Director, Division of Transplantation, Office of Special Programs, Health Resources and Services Administration, U.S. Department of Health and Human Services, Room 4–81, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857; 301 443–7577.

SUPPLEMENTARY INFORMATION:

Purposes

Organ donation has become an increasingly important public health issue. Only about 5,500 deaths in the United States each year result in organ donation, compared with an estimated potential of 8,000–15,000 donors. Moreover, almost 62,000 patients are currently awaiting transplants and about 4,000 patients die each year because of the critical shortage of transplantable organs.

A major barrier to donation today is low rates of family consent. The Health Care Financing Administration's revised Hospital Conditions of Participation for Organ, Tissue, and Eye Donation (June 22, 1998, 63 Fed. Reg. 33856) effective August 21, 1998, are designed to maximize opportunities to donate by requiring Medicaid-and Medicare-participating hospitals to notify OPOs of all deaths and imminent deaths so potential donors are identified and families are asked about donation; however, only about half of families who are asked give their consent. The latest national Gallup survey indicates that nearly all Americans would consent to donation if they knew that their loved one had requested it, but only about half of Americans who want to donate have told their families.

The goals of this program are to implement, evaluate, and disseminate

model interventions with the greatest potential for yielding a verifiable and demonstrable impact on donation and which are replicable, transferable, and feasible in practice. While the program focuses on organ donation, it is expected that projects to increase organ donation will have a similar impact on tissue donation. We propose that program funding be used to support the following project phases: (1) pilot testing and (2) replication. Phase 1 projects that test the efficacy of promising interventions to increase organ donation are anticipated to be smaller in scope and budget than Phase 2 projects, which will focus on implementing and testing in multiple sites interventions which already have proved effective in pilot studies. Phase 2 projects also can include dissemination efforts including such strategies as training workshops and remote and on-site technical assistance. Applicants must submit separate applications if they are interested in applying for both types of projects.

Projects are to be consistent with the goals of HHS" National Organ and Tissue Donation Initiative ("National Initiative") and have solid evaluation components as emphasized during the April 1–2, 1998, national conference titled "Increasing Donation and Transplantation: The Challenge of Evaluation" sponsored by HHS" Office of the Assistant Secretary for Planning and Evaluation with additional support provided by the Agency for Health Care Policy and Research and the National Institute of Allergy and Infectious Disease of the National Institutes of Health. (Copies of the National Initiative Partnership Kit, the final conference report, and a review of evaluation issues are available on www.organdonor.gov.) Projects can employ qualitative studies, quantitative research, or empiric work. As reflected in the third goal of the National Initiative, namely to learn more about what works to increase donation and transplantation, HHS places a high priority on research and evaluation.

HHS has served, and plans to continue to serve, as a catalyst for the field by emphasizing and encouraging carefully designed and rigorous evaluation components and research projects to ascertain effective interventions for increasing donation. HHS believes that the application of tested theoretical approaches and models to donation studies that are carefully designed and evaluated can yield instructive information for efforts to increase organ and tissue donation.

Eligibility

The proposed project must be carried out by a consortium of relevant entities or organizations, of which one organizational member ("the applicant") carries overall responsibility for project leadership and administration of the HRSA grant award. The applicant must be a qualified OPO or other nonprofit, private organization. Consortium members and roles must be identified in the application. The consortium must include at least one organization, group, or individual that has research design and evaluation expertise, and at least one other organization (e.g., OPO; public health or other Government agency; academic institution; hospital, community/migrant health center, or other health services delivery site; transplant/donation-related association or organization; community-based organization; faith-based organization). All members of the consortium must have substantive involvement in the project. For-profit organizations may participate as members of consortia, but not as the applicant.

Performance Measures

All projects *must* include rigorous outcome evaluation protocols. Outcomes and performance measures must be identified and defined to determine effectiveness of the project. Performance measures are expected to address one or more of the following outcomes:

1. Organ procurement rates;
2. Consent rates and donation;
3. Number and prevalence of family donation discussions

Funding and Administrative Mechanism

The administrative and funding mechanism to be used in this program will be the Cooperative Agreement (CA). This vehicle allows for greater Federal involvement in continuous refinement of the supported projects than provided through a grant program. All funded projects will be assigned to a Federal project officer for monitoring and guidance. In addition, in order to maximize their potential effectiveness, all funded projects will be reviewed at a pre-implementation meeting and regularly thereafter by a review group consisting of Federal representatives, methodology specialists, project directors of all CAs supported under this extramural program, and others as identified by the Federal Government. The overall purpose of the periodic review meetings is to discuss each project's progress toward its goals, problem areas if any, and strategies for increasing the efficacy of each project. The group will review and provide comment on issues such as the parameters of each project, appropriate outcome and performance measures (including base-line data), definitions of terms used to describe populations/groups of interest (e.g., potential donor family), terms used in the donation process (e.g., "intent," "consent", and "opportunity" to donate), and qualitative measurements (e.g., "significant" increase, "effective" intervention) to improve the usefulness of data collection for individual projects and across projects. Final decisions and project direction, however, are the responsibility of the Federal project officers. One of the funded applicants will receive additional funds to cover costs associated with the review group. Such costs may include, but are not limited to, expenses related to travel, supplies, and meeting management. Applicants interested in performing this function should so indicate in the application and state their capabilities.

Review Criteria

The review of applications will take into consideration the proposed criteria listed below. The system used by the peer review panel for scoring each application will range from 0–100 points, with 100 being best. Maximum points that can be awarded for each criterion are in parentheses. Separate ranking lists will be employed for projects in each of the two phases.

1. Potential of the project to yield a demonstrable and verifiable impact on organ donation and/or the other performance measures. (30 points)
2. Extent to which projects are replicable, transferable, and feasible in practice for entities with similar competencies (e.g., human resources, funding, technology) and for entities targeting populations with similar socio-demographic profiles. (15 points)
3. Degree of scientific rigor in the design, implementation, and evaluation of the project. (20 points)
4. Evidence of the availability of in-kind support, facilities, resources, and collaborative arrangements commensurate with the goals of the project and the extramural program. (10 points)
5. Adequacy and experience of project staff. (10 points)
6. Projects costs that are commensurate with proposed activities and anticipated outcomes, and adequacy of budget. (15 points)

Funding Factors

Two funding priorities are proposed for this program. Approved applications

that are eligible for the funding priorities are awarded additional points towards their final rank order score. The largest number of funding priority points is proposed for applications that are most likely to have a demonstrable impact on consent rates. Five (5) points will be awarded for this funding priority. Funding priority is also proposed for projects that address variations in consent by race and ethnicity, which may include an examination of differences in donation/transplantation knowledge, attitudes, and experiences among one or more minority groups. Two (2) points will be awarded for this funding priority. For applications that qualify, Government program staff will add the appropriate points to the score assigned by the peer review panel. (Maximum total points any application can achieve for all review criteria will be 107.)

HRSA reserves the option to fund a balance of projects in Phases 1 and 2.

Project Period

Projects will be awarded for up to 3 years.

Estimated Amount Available For This Competition

HRSA expects to award under this program up to $5 million in FY99 to support the first year of approximately 15–20 projects. Subsequent years' funding depends on the availability of appropriations, program priorities, and recipient performance.

Dated: March 30, 1999.

Claude Earl Fox,

Administrator.

[FR Doc. 99–8175 Filed 4–2–99; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

National Advisory Council on Migrant Health; Notice of Meeting

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice of Meeting.

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following National Advisory body scheduled to meet during the month of April 1999:

Name: National Advisory Council on Migrant Health.

Date & Time: Wednesday, April 21, 1999 at 9:00 A.M. to Thursday, April 22, 1999 at 5:00 P.M..

Place: Denver Marriott Center City, 1701 California Street, Denver, CO 80202, 303/297–1300 phone, 303/298–7474 fax. The meeting is open to the public.

Agenda: This will be a meeting of the Council. The agenda includes an overview of general Council business activities and priorities. Topics of discussion will include the State Children's Health Insurance Program, Migrant issues in Colorado, and updates from programs funded by the Migrant Health Program. The Council meeting is being held in conjunction with the National Association of Community Health Centers (NACHC), 1999 National Farmworker Health Conference, April 23–25, 1999. Anyone requiring information regarding the subject Council should contact Susan Hagler, Migrant Health Program, staff support to the National Advisory Council on Migrant Health, Bureau of Primary Health Care, Health Resources and Services Administration, 4350 East West-Highway, Bethesda, Maryland 20814, Telephone 301/594–4302.

Agenda Items are subject to change as priorities indicate.

Dated: March 30, 1999.

Jane M. Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 99–8198 Filed 4–2–99; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, Cancer Cell Biology, Tumor Biology and Genetic Conference Grants.

Date: April 8, 1999.

Time: 1:00 PM to 3:00 PM.

Agenda: To review and evaluate grant applications.

Place: 6130 Executive Boulevard, EPN, Room 635, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Olivia T. Preble, PHD, Scientific Review Administrator, Grants Review Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6130 Executive Boulevard—Rm. 643B, Rockville, MD 20892–7405, 301/496–7929.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction, 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower, 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: March 30, 1999.

Anna Snouffer,

Acting Committee Management Officer, NIH.

[FR Doc. 99–8320 Filed 4–2–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, Preclinical Evaluation of Intermediate Endpoints and their Modulation by Chemopreventive Agents.

Date: April 6, 1999.

Time: 1:00 PM to 3:00 PM.

Agenda: To review and evaluate contract proposals.

Place: 6130 Executive Blvd. 6th Floor, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Wilna A. Woods, PHD, Deputy Chief, Special Review, Referral and Research Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, Rockville, MD 20852, (301) 496–7903.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93,399, Cancer Control, National Institutes of Health, HHS)

Dated: March 30, 1999.

Anna Snouffer,

Acting Committee Management Officer, NIH.

[FR Doc. 99–8321 Filed 4–2–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Meeting of the National Reading Panel

Notice is hereby given of the sixth Washington area meeting of the National Reading Panel. The meeting will be held on Wednesday, April 7, 1999, from 9:00 to 5:00 PM at the Westin Fairfax, 2100 Massachusetts Avenue, Washington, DC 20008. The entire meeting will be open to the public.

The National Reading Panel was requested by Congress and created by the Director of the National Institute of Child Health and Human Development in consultation with the Secretary of Education. The Panel is studying the effectiveness of various approaches to teaching children how to read and will report on the best ways to apply these findings in classrooms and at home. Its members include prominent reading researchers, teachers, child development experts, leaders in elementary and higher education, and parents. The Chair of the Panel is Dr. Donald N. Langenberg, Chancellor of the University System of Maryland.

The Panel will build on the findings presented by the National Research Council's Committee on the Prevention of Reading Difficulties in Young Children. Based on its analysis of the scientific literature, the Panel will: Determine the readiness for application in the classroom of the results of the research studies; identify appropriate means to rapidly disseminate these results to facilitate effective reading instruction in the schools; and identify gaps in the knowledge base for reading instruction and the best ways to close these gaps.

The agenda for this meeting will focus on the presentation of progress reports from the panel subgroups. A period of time will be set aside at approximately 4:00 PM for members of the public to address the Panel and express their views regarding the Panel's mission. Individuals desiring an opportunity to speak before the Panel should address their requests to F. William Dommel, Jr., J.D., Executive Director, National Reading Panel, c/o Ms. Amy Andryszak, and either mail them to the Widmeyer-Baker Group, 1875 Connecticut Avenue, NW, Suite 800, Washington, DC 20009, or e-mail them to *amya@twbg.com*, or fax them to 202–667–0902. Requests for addressing the Panel should be received by April 5, 1999. Panel business permitting, each public speaker will be allowed five minutes to present his or her views. In the event of a large number of public speakers, the Panel Chair retains the option to further limit the presentation time allowed to each. Although the time permitted for oral presentations will be brief, the full text of all written comments submitted to the Panel will be made available to the Panel members for consideration.

For further information contact Ms. Amy Andryszak at 202–667–0901. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ms. Amy Andryszak by April 5, 1999.

Dated: March 30, 1999.

Duane Alexander,

Director, National Institute of Child Health and Human Development.

[FR Doc. 99–8322 Filed 4–2–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: April 2, 1999.

Time: 8:30 AM to 9:30 AM.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: J. Terrell Hoffeld, DDS, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4116, MSC 7816, Bethesda, MD 20892, (301) 435–1781.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: April 9, 1999.

Time: 11:00 AM to 12:00 PM.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Garrett V. Keefer, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4190, MSC 7808, Bethesda, MD 20892, (301) 435–1152.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: April 12, 1999.

Time: 1:00 PM to 4:00 PM.

Agenda: To review and evaluate grant applications.

Place: Washington National Airport Hilton, 2399 Jefferson Davis Highway, Arlington, VA 22202.

Contact Person: Everett E. Sinnett, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4120, MSC 7818, Bethesda, MD 20892, (301) 435–1016, ev__sinnett@nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: April 12, 1999.

Time: 3:00 PM to 5:00 PM.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Paul K. Strudler, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4100, MSC 7804, Bethesda, MD 20892, (301) 435–1716.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: April 13, 1999.

Time: 3:00 PM to 5:00 PM.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20692 (Telephone Conference Call).

Contact Person: Paul K. Strudler, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4100, MSC 7804, Bethesda, MD 20892, (301) 435–1716.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: April 14, 1999.

Time: 8:00 AM to 5:00 PM.

Agenda: To review and evaluate grant applications.

Place: River Inn, 924 25th Street, NW, Washington, DC 20037.

Contact Person: J. Terrell Hoffeld, DDS, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4116, MSC 7816, Bethesda, MD 20892, (301) 435–1781, th88q@nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, zrg1-tmp-3.

Date: April 14, 1999.

Time: 1:00 PM to 2:00 PM.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Jean Hickman, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4194, MSC 7808, Bethesda, MD 20892, (301) 435–1146.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: April 14, 1999.

Time: 6:00 PM to 7:30 PM.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Camilla E. Day, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6152, MSC 7840, Bethesda, MD 20892, (301) 435–1037.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: March 30, 1999.

Anna Snouffer,

Acting Committee Management Officer, NIH.

[FR Doc. 99–8319 Filed 4–2–99; 8:45 am]

BILLING CODE 4140–01–M

INTER-AMERICAN FOUNDATION BOARD

Inter-American Foundation Board Sunshine Act Meeting

TIME AND DATE: April 21, 1999, 11:30 a.m.–3:30 p.m.

PLACE: 901 N. Stuart Street, Tenth Floor, Arlington, Virginia 22203.

MATTERS TO BE CONSIDERED:

1. Approval of the Minutes of the December 2, 1998, Meeting of the Board of Directors
2. President's Report
3. Report on Hurricanes Georges and Mitch Reconstruction Effort
4. Report on Congressional Activities
5. Report on External Affairs Activities
6. Status Report on the Results Initiatives

CONTACT PERSON FOR MORE INFORMATION: Adolfo A. Franco, Secretary to the Board of Directors, (703) 306–4325.

Dated: April 1, 1999.

Adolfo A. Franco,

Sunshine Act Officer.

[FR Doc. 99–8498 Filed 4–1–99; 3:57 pm]

BILLING CODE 7025–01–M

DEPARTMENT OF THE INTERIOR

National Recreation Lakes Study Commission

AGENCY: National Recreation Lakes Study Commission.

ACTION: Notice of sixth meeting of the National Recreation Lakes Study Commission.

SUMMARY: The Omnibus Parks and Public Land Management Act of 1996 authorizes a presidential commission to review the demand for recreation at Federal lakes, and to develop alternatives for enhanced recreation uses, primarily through innovative public/private partnerships. This will be the sixth meeting of the Commission.

DATES: April 19–20, 1999, beginning at 9:00 a.m. on Monday, April 19 and ending at 5:00 p.m. The meeting will resume at 8:00 a.m. on Tuesday, April 20 and end at approximately 12:00 noon.

ADDRESSES: The meeting will be held at TVA Headquarters, Knoxville City Center, 400 West Summit Hill Drive, West Tower, Second Floor, Knoxville, Tennessee 37902. The Commission will hear an overview of the draft report and recommendations by the report editor and decisions will be made by the Commissioners; the communication strategy will be presented; and other topics may be discussed. The Commission will invite comments from the public beginning at 2:00 p.m. on April 19.

FOR FURTHER INFORMATION CONTACT: Jeanne Whittington at 202–219–7104.

Dated: March 29, 1999.

Jana Prewitt,

Executive Director, National Recreation Lakes Study Commission.

[FR Doc. 99–8209 Filed 4–2–99; 8:45 am]

BILLING CODE 4310–64–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Application for Endangered Species Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of Receipt of Application for Endangered Species Permit.

SUMMARY: The following applicants have applied for permits to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

DATES: Written data or comments on these applications must be received, at the address given below, by May 5, 1999.

ADDRESSES: Documents and other information submitted with these applications are available for review, *subject to the requirements of the Privacy Act and Freedom of Information Act*, by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, 1875 Century Boulevard, Suite 200, Atlanta, Georgia 30345 (Attn: David Dell, Permit Biologist). Telephone: 404/679–7313; Facsimile: 404/679–7081.

FOR FURTHER INFORMATION CONTACT: David Dell, Telephone: 404/679–7313; Facsimile: 404/679–7081.

SUPPLEMENTARY INFORMATION:

Applicant: Robert Brian Pate, Clemson, South Carolina, TE009025–0.

The applicant requests authorization to take (harass during nest monitoring and augmentation) the endangered red-cockaded woodpecker, *Picoides borealis*, throughout the species range in North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, Arkansas, Tennessee, and Kentucky for the purpose of enhancement of survival of the species.

Applicant: James D. Kiser, Appalachian Technical Services, Inc., Whitesburg, Kentucky, TE009638–0.

The applicant requests authorization to take (capture, tag, radio-track) the endangered gray bat, *Myotis grisescens*, Indiana bat, *Myotis sodalis*, and Virginia big-eared bat, *Corynorhinus townsendii ingens*, throughout the species' ranges in North Carolina, Georgia, Alabama, Mississippi, Tennessee, Kentucky, Indiana, Ohio, Pennsylvania, Virginia, and West Virginia for the purpose of enhancement of survival of the species.

Applicant: John J. Bernard, Natchitoches, Louisiana, TE009310–0.

The applicant requests authorization to take (harass during nest augmentation) the endangered red-cockaded woodpecker, *Picoides borealis*, throughout the species range in Louisiana for the purpose of enhancement of survival of the species.

Dated: March 29, 1999.

H. Dale Hall,

Deputy Regional Director.

[FR Doc. 99–8206 Filed 4–2–99; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of a Draft Recovery Plan for the Golden Paintbrush for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: The U.S. Fish and Wildlife Service announces the availability for public review of a Draft Recovery Plan for the Golden Paintbrush (*Castilleja levisecta*). This threatened herb, native to grasslands in the Puget Sound region of Washington and adjoining British Columbia, is known from only 11 small populations and requires site-specific habitat conservation measures and reintroduction to assure its recovery.

DATES: Comments on the draft recovery plan received by June 4, 1999 will be considered by the Service.

ADDRESSES: Copies of the draft recovery plan are available for inspection, by appointment, during normal business hours at the following location: Western Washington Office, North Pacific Coast Ecoregion, U.S. Fish and Wildlife Service, 510 Desmond Drive SE, Suite 102, Lacey, Washington 98501. Requests for copies of the draft recovery plan and written comments and materials regarding this plan should be addressed to Nancy Gloman, Acting Supervisor, at the above address.

FOR FURTHER INFORMATION CONTACT: Ted Thomas, Fish and Wildlife Biologist, at the above Lacey address (phone: 360/753–4327).

SUPPLEMENTARY INFORMATION:

Background

Restoring endangered or threatened animals and plants to the point where they are again secure, self-sustaining organisms within their ecosystem is a primary goal of the Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered necessary for the conservation of the species, establish criteria for the recovery levels for downlisting or delisting them, and estimate time and cost for implementing the recovery measures needed.

The Endangered Species Act, as amended (16 U.S.C. 1531 *et seq.*) (Act), requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act as amended in 1988 requires that public notice and an opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during the public comment period prior to approval of each new or revised recovery plan. Substantive technical comments will result in changes to the plans. Substantive comments regarding recovery plan implementation may not necessarily result in changes to the recovery plans, but will be forwarded to appropriate Federal or other entities so that they can take these comments into account during the course of implementing recovery actions. Individualized responses to comments will not be provided.

This perennial herb is listed as threatened. It is native to grasslands within the Puget Lowlands of western Washington, as well as the southern tip of Vancouver Island, British Columbia. Only 11 populations, all of them small, are known to exist. Five of the populations are on public lands and generally enjoy some degree of protection. The main threat to this plant is loss or degradation of its habitat. Most of the Puget Sound grasslands have been developed for commercial, residential, or agricultural purposes. Additional loss has been caused by encroachment of woody plants and weeds into the grasslands.

The objective of this plan is to conserve the plant so that protection by the Act is no longer necessary. Actions necessary to accomplish this objective include ensuring effective management for all state and Federally-managed sites, securing formal protection for privately-owned sites, where possible, monitoring protected sites, reintroducing the plant to suitable or restored habitat, including habitat within the species' historic range, and storing seed as a hedge against accidental loss of any of the populations.

Public Comments Solicited

The Service solicits written comments on this draft recovery plan. All comments received by the date specified above will be considered prior to final approval of this plan.

Authority

The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: March 30, 1999.

Anne Badgley,

Regional Director, Region 1, Portland, Oregon.

[FR Doc. 99–8177 Filed 4–2–99; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of Draft Revised Recovery Plan for MacFarlane's Four-O'Clock (Mirabilis macfarlanei) for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: The U.S. Fish and Wildlife Service announces the availability for public review of a draft revised recovery plan for MacFarlane's four-o'clock. (*Mirabilis macfarlanei*). This plant occurs in grassland habitats in Idaho County, Idaho, and Wallowa County, Oregon.

DATES: Comments received on the draft recovery plan by June 4, 1999 will be considered by the Service.

ADDRESSES: Copies of the draft revised recovery plan are available for inspection, by appointment, during normal business hours at the following locations: U.S. Fish and Wildlife Service, 1387 South Vinnell Way, Room 368, Boise, Idaho 83709 (phone: 208/378–5243). Requests for copies of the draft revised recovery plan and written comments and materials regarding this plan should be addressed to the Supervisor at the above address.

FOR FURTHER INFORMATION CONTACT: Edna Rey-Vizgirdas, botanist, at the above address.

SUPPLEMENTARY INFORMATION:

Background

Restoring endangered or threatened animals and plants to the point where they are again secure, self-sustaining members of their ecosystems is a primary goal of the Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered necessary for the conservation of the species, establish criteria for the recovery levels for downlisting or delisting them, and estimate time frames and costs for implementing the recovery measures needed.

The Endangered Species Act, as amended (16 U.S.C. 1531 *et seq.*) (Act), requires the development of a recovery plan for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act as amended in 1988 requires that public notice and an opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during the public comment period prior to approval of each new or revised recovery plan. Substantive technical comments will result in changes to the plans. Substantive comments regarding recovery plan implementation may not necessarily result in changes to the recovery plans, but will be forwarded to appropriate Federal or other entities so that they can take these comments into account during the course of implementing recovery actions. Individualized responses to comments will not be provided.

MacFarlane's four-o'clock (*Mirabilis macfarlanei*) is listed as threatened. A member of the four-o'clock family, this plant is found in low to mid-elevation canyon grassland habitats in west-central Idaho and northeastern Oregon. Plants are found on gravelly to loamy and sandy soils between approximately 300 and 900 meters (1,000 to 3,000 feet) elevation. Grazing by domestic livestock and the invasion of exotic (nonnative) plants are the greatest threats to this species. Other threats include human trampling, off-road vehicle use, construction and maintenance of roads and trails, and herbicide spraying.

The objective of this plan is to provide a framework for the recovery of MacFarlane's four-o'clock so that protection by the Act is no longer necessary. The recovery strategy for this species is focused on protecting habitat and maintaining self-sustaining populations of MacFarlane's four-o'clock throughout its range in Idaho and Oregon, and minimizing or eliminating threats to the populations.

This plan describes an 8-part strategy with specific tasks necessary to maintain suitable grassland ecosystems that provide habitat for MacFarlane's four-o'clock. The tasks, when implemented, will stabilize and maintain populations throughout the range of MacFarlane's four-o'clock by protecting sufficient occupied and adjacent suitable habitat, implementing actions that may be necessary to eliminate or control threats, managing habitat to maintain or enhance viable populations of MacFarlane's four-o'clock, monitoring the status of populations and habitat conditions to ensure that recovery actions are successful, conducting research to determine the population dynamics and ecology of the species to guide management efforts and ensure the conservation of the species, and establishing a long-term seed storage facility for MacFarlane's four-o'clock.

Public Comments Solicited

The Service solicits written comments on the recovery plan described. All comments received by the date specified above will be considered prior to approval of this plan.

Authority: The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: March 30, 1999.

David L. McMullen,

Acting Regional Director, Region 1, Portland, Oregon.

[FR Doc. 99–8204 Filed 4–2–99; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR 125–09–6334–05; GP9–0156]

Revised Closure Notice for Public Lands on North Spit

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Pursuant to 43 CFR 8364.1, the emergency closure of access to public lands and roads administered by the Bureau of Land Management on North Spit of Coos Bay, Oregon is being rescinded for the following area only: that portion within T. 25 S., R. 13 W., Will. Mer., Sec. 8, described as the North Spit Boat Ramp, T. 25 S., R. 13 W., Will. Mer., Sec. 19, T. 25 S., R. 14 W., Will. Mer., Sec. 24 and 25, described as the access road commonly known as the Bayside Road, and all public lands within 100 feet west of the Bayside Road. The closure of all other public lands within T. 25 S., R. 13 W., Will. Mer., Sec. 4, 5, 6, 7, 18, 19, and within T. 25 S., R 14 W., Will. Mer., remains in effect as described in FR Doc. 99–3723 "Emergency Closure Notice of Public Lands on North Spit", filed February 16, 1999. Any person who fails to comply with the provisions of this order may be subject to a fine not to exceed $1,000.00, and/or imprisonment not to exceed 12 months, in accordance with 43 CFR 8360.0–7.

SUPPLEMENTARY INFORMATION: The lands reopened by this notice are open to access by foot, horse and licensed street legal vehicles only (no All Terrain Vehicles). Access to the lands continuing in closure are restricted to authorized personnel only. Personnel authorized by the New Carissa Unified Command and Bureau of Land Management, Coos Bay District are exempt from the restrictions.

This restriction is needed for protection of western Snowy Plover nesting habitat, public safety, to alleviate poor access conditions and to keep the area clear for salvage operations to the New Carissa site.

This closure order is under the authority of the Federal Land Policy and Management Act of 1976 (Pub. L. 94–579, 90 Stat. 2743, 43 U.S.C. 1701) and in accordance with 43 CFR, Subpart 8364. Because of immediate potential dangers to the public and the western Snowy Plover habitat, a 30 day comment period is inappropriate and the closure is in effect as of the published date.

DATES: This closure remains in effect from March 26, 1999, until further notice.

FOR FURTHER INFORMATION CONTACT: Alan Hoffmeister, Public Affairs Officer, Coos Bay District Office, 1300 Airport Lane, North Bend, Oregon 97459. Telephone: (541) 756–0100.

Dated: March 25, 1999.

Gary L. Johnson,

Umpqua Field Manager.

[FR Doc. 99–8291 Filed 4–2–99; 8:45 am]

BILLING CODE 4310–33–U

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–360–1150–00]

Notice of Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Northwest California Resource Advisory Council, Redding, California, DOI.

ACTION: Notice of meeting change.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committees Act (Pub. L. 92–463) and the Federal Land Policy and Management Act (Pub. L. 94–579), the U.S. Bureau of Land Management's Northwest California Resource Advisory Council will meet Thursday and Friday, May 27 and 28, 1999, at the Redding Rancheria, 2000 Redding Rancheria Rd., Redding, CA. This meeting was originally scheduled for April 8 and 9, 1999, but a new date was scheduled because of BLM scheduling conflicts.

SUPPLEMENTARY INFORMATION: The meeting begins at 10 a.m. Thursday, May 27, in the multi-purpose room of the Redding Rancheria. Agenda items include recommended changes to the council charter, land exchanges, use of subgroups, an update on acquisition of the Headwaters Forest, and updates on the Knoxville Plan and Payne Ranch acquisition. Managers of the BLM Arcata, Redding and Ukiah field offices will also present reports. Time will be reserved at 1 p.m. for public comments. Depending on the number of persons wishing to speak, a time limit may be established.

On Friday, May 28, members will convene at 8 a.m. at the BLM Redding Field Office, 355 Hemsted Drive, and depart for a field tour of public lands managed by the BLM's Redding Field Office. Members of the public are welcome on the tour, but they must provide their own transportation. The field tour and meeting will adjourn by noon.

FOR FURTHER INFORMATION CONTACT: Contact Rich Burns, BLM Ukiah Field Manager, at (707) 468–4000.

Joseph J. Fontana,

Public Affairs Officer.

[FR Doc. 99–8205 Filed 4–2–99; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–030–09–1020–24–1 A]

Sierra Front/Northwest Great Basin Resource Advisory Council; Notice of Meeting Locations and Times

AGENCY: Bureau of Land Management, Interior.

ACTION: Resources Advisory Council Meeting Locations and Times.

SUMMARY: In accordance with the Federal Land Policy and Management Act and the Federal Advisory Committee Act of 1972 (FACA), the Department of the Interior, Bureau of Land Management (BLM) Council meetings will be held as indicated below. The agenda includes: Marietta-Mina Management Plan, Fallon Naval Air Station Environmental Impact Statement, proposed exchange involving land in Humboldt County, council charter renewal issues, council role relative to the U.S. Forest Service, Black Rock Management Plan update, and public comment periods. A field trip within the Fallon area may be held Friday afternoon. Members of the public will be welcome to join this tour.

All meetings are open to the public. The public may present written comments to the council. Each formal council meeting will have a time allocated for public comments. The public comment period fro the council meeting is listed below. Individuals who plan to attend and need further information about the meeting or need special assistance such as sign language interpretation or other reasonable accommodations, should contact Robert Stewart at the Carson City Field Office, 5665 Morgan Mill Road, Carson City, NV 89701, telephone (775) 885–6000.

DATES, TIME: The council will meet on Thursday, April 29, 1999 from 10:00 a.m. to 4:00 p.m. and Friday, April 30, 1999, from 8:00 a.m. to 1:00 p.m. at the Fallon Convention Center, 100 Campus Way, Fallon, NV, in the first floor conference room. If due to unforeseeable problems this site is not available, the alternate site of the meeting will be the Carson City Field Office, 5665 Morgan Mill Road, Carson City, NV 89701. The dates and times will remain the same. Public comment will be received at the close of each discussion unit, with a general public comment period on Friday, April 30, 1999 at 11:30 a.m.

FOR FURTHER INFORMATION CONTACT: Robert Stewart, Public Information Specialist, Carson City Field Office, telephone (702) 885–6000.

Dated: March 29, 1999.

John Singlaub,

Field Office Manager.

[FR Doc. 99–8290 Filed 4–2–99; 8:45 am]

BILLING CODE 4310–HC–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–220–09–1060–00–241A]

Wild Horse and Burro Advisory Board; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Announcement of meeting.

SUMMARY: The Bureau of Land Management (BLM) announces that the Wild Horse and Burro Advisory Board will conduct a meeting on matters pertaining to management and protection of wild, free-roaming horses and burros on the Nation's public lands.

DATES: The advisory board will meet Thursday, April 22, 1999, from 8 a.m. to 6 p.m. local time, and on Friday, April 23, 1999, from 8 a.m. to 12 noon local time.

The BLM is sponsoring a Population Viability Forum in conjunction with the advisory board meeting. The forum is scheduled for Wednesday, April 21, 1999, from 8 a.m. to 6 p.m. local time.

Submit written comments pertaining to the advisory board meeting no later than close of business April 30, 1999.

ADDRESSES: The advisory board will meet at the Fort Collins Marriott, 350 East Horsetooth Road, Fort Collins, Colorado 80525. The forum will take place at the same location.

Send written comments pertaining to the advisory board meeting to Bureau of Land Management, WO–610, Mail Stop 406 LS, 1849 C Street, NW, Washington, DC 20240. See **SUPPLEMENTARY INFORMATION** section for electronic access and filing address.

FOR FURTHER INFORMATION CONTACT: Mary Knapp, Wild Horse and Burro Public Affairs Specialist, (202) 452–5176. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service at 1–800–877–8339 between 8 a.m. and 4 p.m. Eastern

Daylight Time, Monday through Friday, excluding Federal holidays.

SUPPLEMENTARY INFORMATION:

I. Public Meeting

Under the authority of 43 CFR part 1784, the Wild Horse and Burro Advisory Board advises the Secretary of the Interior, the Director of the BLM, the Secretary of Agriculture, and the Chief, Forest Service, on matters pertaining to management and protection of wild, free-roaming horses and burros on the Nation's public lands. The tentative agenda for the meeting is:

Thursday, April 22, 1999

—Rangeland ecology and management review;
—Historical perspective of rangeland management;
—the BLM planning process and review of National Environmental Policy Act requirements;
—Management perspectives;
—Rangeland management issue identification;
—Public comment.

Friday, April 23, 1999

—Old Business: cost analysis for holding and training facilities; cost analysis for gelding policy; fee reduction/fee structure; immunocontraception guildelines; Strategic Plan; the Nevada Commission Plan;
—Advisory board recommendations;
The tentative agenda for the forum is:

Wednesday, April 21, 1999

—Session 1: Resource definition and management goals for conservation;
—Session 2: Effective genetic population size versus minimum viable population;
—Session 3: Data generation for population viability analysis of demographic, genetic and ecological modeling efforts;
—Session 4: Practical application of population viability analysis models.

The meeting and forum are open to the public. The advisory board will take detailed minutes of the meeting while the BLM will take detailed minutes of the forum. The BLM will make the minutes available to interested parties who contact the individual listed under **FOR FURTHER INFORMATION CONTACT.**

The meeting sites are accessible to individuals with disabilities. An individual with a disability who will need an auxiliary aid or service to participate in the hearing, such as interpreting service, assistive listening device, or materials in an alternate format, must notify the person listed under **FOR FURTHER INFORMATION CONTACT** two weeks before the scheduled meeting date. Although the BLM will attempt to meet a request received after that date, the requested auxiliary aid or service may not be available because of insufficient time to arrange it.

Under the Federal advisory committee management regulations (41 CFR 101–6.1015(b)), the BLM is required to publish in the **Federal Register** notice of a meeting 15 days prior to the meeting date.

II. Public Comment Procedures

Members of the public may make oral statements to the advisory board on April 22, 1999, at the appropriate point in the agenda, which is anticipated to occur at 4:30 p.m. local time. Persons wishing to make statements should register with the BLM by noon on April 22, 1999, at the meeting location. Depending on the number of speakers, the advisory board may limit the length of presentations. At previous meetings, presentations have been limited to three minutes in length. Speakers should address specific wild horse and burro-related topics listed on the agenda. Speakers must submit a written copy of their statement to the address listed in the **ADDRESSES** section or bring a written copy to the meeting.

Participation in the advisory board meeting is not a prerequisite for submittal of written comments. The BLM invites written comments from all interested parties. Your written comments should be specific and explain the reason for any recommendation. The BLM appreciates any and all comments, but those most useful and likely to influence decisions on management and protection of wild horses and burros are those that are either supported by quantitative information or studies or those that include citations to and analysis of applicable laws and regulations. Except for comments provided in electronic format, speakers should submit two copies of their written comments where feasible. The BLM will not necessarily consider comments received after the time indicated under the **DATES** section or at locations other than that listed in the **ADDRESSES** section.

In the event there is a request under the Freedom of Information Act (FOIA) for a copy of your comments, we intend to make them available in their entirety, including your name and address (or your e-mail address if you file electronically). However, if you do not want us to release your name and address (or e-mail address) in response to a FOIA request, you must state this prominently at the beginning of your comment. We will honor your wish to the extent allowed by law. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be released in their entirety, including names and addresses (or e-mail addresses).

Electronic Access and Filing Address

Speakers may transmit comments electronically via the Internet to: Mary_Knapp@blm.gov or mknapp@wo.blm.gov. Please include the identifier "WH&B" in the subject of your message and your name and address in the body of your message.

Dated: March 31, 1999.

Henri Bisson,

Assistant Director, Renewable Resources and Planning.

[FR Doc. 99–8280 Filed 4–2–99; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–931–1310–00–NPRA]

Notice of National Petroleum Reserve-Alaska (NPR–A) Oil and Gas Lease Sale 991 and Notice of Availability of the Detailed Statement of the Sale

AGENCY: Bureau of Land Management, DOI.

ACTION: Notice.

SUMMARY: This Notice provides official notification that the Bureau of Land Management, Alaska State Office will be holding an oil and gas lease sale bid opening for the Northeast Study Area of the NPR–A at 9:00 a.m., Alaska Daylight Time, May 5, 1999, at the Wilda Marston Theatre in the Z. J. Loussac Public Library, 3600 Denali Street, Anchorage, Alaska 99503.

The detailed statement for Sale 991 may be obtained by written request to the Public Information Center, Bureau of Land Management, Alaska State Office, 222 W. 7th Avenue, No.13, Anchorage, Alaska 99513–7599 or by telephone at 907–271–5960. It includes, among other things, a description of the areas to be offered for lease, the lease terms, conditions and special stipulations and information on how and where to submit bids. It will be available to the public immediately after publication of this Notice.

All bids must be submitted by competitive sealed bid in accordance with the provisions identified in the Detailed Statement of the Sale and must

be received at the Bureau of Land Management, Alaska State Office, 222 W. 7th Avenue, No. 13, Anchorage, Alaska 99513–7599 no later than 3:45 p.m., Alaska Daylight Time, May 4, 1999.

EFFECTIVE DATE: April 5, 1999.

FOR FURTHER INFORMATION CONTACT: Gene R. Terland or Robert Merrill, BLM Alaska State Office, 222 W. 7th Avenue, No. 13, Anchorage, Alaska 99513–7599, 907–271–3833

Dated: March 29, 1999.

Sally Wisely,

Acting State Director.

[FR Doc. 99–8138 Filed 4–2–99; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF JUSTICE

National Institute of Justice

[OJP (NIJ)–1219]

RIN 1121–ZB50

National Institute of Justice Solicitation for Research and Evaluation on Sentencing and Corrections

AGENCY: Office of Justice Programs, National Institute of Justice, Justice.

ACTION: Notice of solicitation.

SUMMARY: Announcement of the availability of the National Institute of Justice "Solicitation for Research and Evaluation on Sentencing and Corrections (1999)."

DATES: Due date for receipt of proposals is close of business June 30, 1999.

ADDRESSES: National Institute of Justice, 810 Seventh Street, NW, Washington, DC 20531.

FOR FURTHER INFORMATION CONTACT: For a copy of the solicitation, please call NCJRS 1–800–851–3420. For general information about application procedures for solicitations, please call the U.S. Department of Justice Response Center 1–800–421–6770.

SUPPLEMENTARY INFORMATION:

Authority

This action is authorized under the Omnibus Crime Control and Safe Streets Act of 1968, §§ 201–03, as amended, 42 U.S.C. 3721–23 (1994). Beginning in fiscal year 1999, up to 10 percent of the funds provided under Section 20104 of Subtitle C—Report on Streamlining Federal Prevention and Treatment Efforts may be allocated by States to offender drug testing-interdiction and treatment programs.

Background

This request for proposals announces a fourth year of support for research and evaluation that will further understanding about correctional policies and programs, sentencing, and impacts related to sentencing legislation. Support for this research and evaluation program is provided under the Violent Offender Incarceration and Truth-in-Sentencing Acts (Title II, Subtitle A) of the Violent Crime Control and Law Enforcement Act of 1994, as amended. The request responds to Congressional and public demand for a knowledge base that examines correctional policy, accountability in sentencing and recommendations for improvements. This fourth year of funding will support up to $1,500,000 in projects that will complement the previously funded national evaluation of the primary sentencing initiatives in the Act. Applications are sought for correctional managment studies, drug testing-interdiction and sanctioning research projects, and practitioner-initiated research partnerships that will contribute to the understanding of the impact and effectiveness of State and local correctional issues and sentencing initiatives that are generalizable to other jurisdictions.

Interested organizations should call the National Criminal Justice Reference Service (NCJRS) at 1–800–851–3420 to obtain a copy of "Solicitation for Research and Evaluation on Corrections and Sentencing (1999)" (refer to document no. SL000331). For World Wide Web access, connect either to NIJ at http://www.ojp.usdoj.gov/nij/funding.htm, or the NCJRS Justice Information Center at http://www.ncjrs.org/fedgrant.htm#nij.

Edwin Zedlewski,

Acting Director, National Institute of Justice.

[FR Doc. 99–8230 Filed 4–2–99; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Office of the Secretary

President's Committee on the International Labor Organization; Notice of Closed Meeting

In accordance with section 10(a) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is hereby given of a meeting of the President's Committee on the ILO:

Name: President's Committee on the International Labor Organization.

Date: Friday, April 30, 1999.

Time: 10 a.m.

Place: U.S. Department of Labor, Third & Constitution Ave., NW, Room S–2508, Washington, DC 20210.

Purpose: The meeting will include a review and discussion of current issues relating to United States' negotiating positions with member nations of the International Labor Organization. The meeting will concern matters the disclosure of which would seriously compromise the Government's negotiating objectives and bargaining positions. Accordingly, the meeting will be closed to the public, pursuant to section 9(B) of the Government in the Sunshine Act, 5 U.S.C. 552b(c)(9)(B).

FOR FURTHER INFORMATION CONTACT: Mr. Andrew J. Samet, President's Committee on the International Labor Organization, U.S. Department of Labor, 200 Constitution Avenue, NW, Room S–2235, Washington, DC 20210, Telephone (202) 219–6043.

Signed at Washington, DC, this 31st day of March 1999.

Alexis M. Herman,

Secretary of Labor.

[FR Doc. 99–8306 Filed 4–2–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–34,806 and TA–W–34,806C]

Donnkenny Apparel, Inc., Rural Retreat, Virginia, and Corporate Office, Wytheville, Virginia; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Notice of Certification Regarding Eligibility To Apply for Worker Adjustment Assistance on October 22, 1998, applicable to all workers of Donnkenny Apparel, Inc. located in Rural Retreat, Virginia. The notice was published in the **Federal Register** on November 10, 1998 (63 FR 63078).

At the request of the company, the Department reviewed the certification for workers of the subject firm. New information shows that worker separations occurred at the Corporate Office, Wytheville, Virginia location of Donnkenny Apparel, Inc. The Corporate Office provides administration and support function services for Donnkenny Apparel's manufacturing plants located throughout Virginia.

The intent of the Department's certification is to include all workers of Donnkenny Apparel, Inc. who were adversely affected by increased imports. Accordingly, the Department is amending the worker certification to cover the workers of Donnkenny Apparel, Inc., Corporate Office, Wytheville, Virginia.

The amended notice applicable to TA–W–34,806 is hereby issued as follows:

"All workers of Donnkenny Apparel, Inc., Rural Retreat, Virginia (TA–W–34,806), and Corporate Office, Wytheville, Virginia (TA–W–34,806C) who became totally or partially separated from employment on or after July 21, 1997 through October 22, 2000 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974."

Signed at Washington, DC, this 19th day of March, 1999.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 99–8302 Filed 4–2–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–35,106]

Gulf States Steel, Inc., Including Workers of Heckett Multiserv, a Division of Harsco Corp., Gadsden, Alabama; Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on November 23, 1998, applicable to all workers of Gulf States Steel, Inc. located in Gadsden, Alabama. The notice was published in the **Federal Register** on December 16, 1998 (63 FR 69313).

At the request of the petitioners, the Department reviewed the certification for workers of the subject firm. New information shows that employees of Heckett Multiserv, a division of Harsco Corporation, Gadsden, Alabama were employed by Gulf States Steel, Inc. to process slag products and provide scrap and metal reclamation from the blast furnaces used in the production of flat rolled carbon sheet, plate, and welded beams steel products for the appliances and construction industries at the Gadsden, Alabama facility. Worker separations occurred at Heckett Multiserv as a result of workers separations at Gulf States Steel, Inc.

Based on these findings, the Department is amending the certification to include workers of Heckett Multiserv, Gadsden, Alabama employed at Gulf States Steel, Inc., Gadsden, Alabama.

The intent of the Department's certification is to include all workers of Gulf States Steel, Inc. adversely affected by imports.

The amended notice applicable to TA–W–35,108 is hereby issued as follows:

"All workers of Gulf States Steel, Inc. and workers of Heckett Multiserv, A Division of Harsco Corporation, Gadsden, Alabama engaged in employment related to processing slag products and providing scrap and metal reclamation from the blast furnaces for the production of flat rolled carbon sheet, plate, and welded beams steel products for the appliances and construction industries at Gulf States Steel, Inc., Gadsden, Alabama who became totally or partially separated from employment on or after September 19, 1997 through November 23, 2000 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974."

Signed at Washington, DC, this 15th day of March, 1999.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 99–8299 Filed 4–2–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–34,869]

Lone Star Steel Co. Including Workers of Martin Marietta, Lone Star, TX; Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on September 2, 1998, applicable to all workers of Lone Star Steel Company, located in Lone Star, Texas. The notice was published in the **Federal Register** on September 28, 1998 (63 FR 51605).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of steel slabs. New information shows that some workers separated from employment at Lone Star Steel Company had their wages reported under a separate unemployment insurance (UI) tax account for Martin Marietta. Workers from Martin Marietta repair and maintain slab furnaces used in the production of steel slabs at the Lone Star, Texas location of Lone Star Steel Company. Worker separations occurred at Martin Marietta as a result of worker separations at Lone Star Steel Company.

Based on these findings,the Department is amending the certification to include workers of Martin Marietta, Lone Star, Texas who were engaged in employment related to the production of steel slabs at Lone Star Steel Company, Lone Star, Texas.

The intent of the Department's certification is to include all workers of Lone Star Steel Company adversely affected by increased imports.

The amended notice applicable to TA–W–34,869 is hereby issued as follows:

"All workers of Lone Star Steel Company, Lone Star, Texas engaged in employment related to the production of steel slabs and all workers of Martin Marietta, Lone Star, Texas engaged in employment related to repairing and maintaining slab furnaces for the production of steel slabs at Lone Star Steel Company, Lone Star, Texas who became totally or partially separated from employment on or after August 6, 1997 through September 2, 2000 are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974."

Signed at Washington, DC this 22nd day of March, 1999.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 99–8304 Filed 4–2–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–02563]

Lone Star Steel Co. Including Workers of Martin Marietta, Lone Star, Texas; Amended Certification Regarding Eligibility to Apply for NAFTA-Transitional Adjustment Assistance

In accordance with section 250(A), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974 (19 USC 2273), the Department of Labor issued a Certification for NAFTA Transitional Adjustment Assistance of September 2, 1998, applicable to all workers of Lone Star Steel Company located in Lone Star, Texas. The notice was published in the **Federal Register** on September 28, 1998 (63 FR 51606).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The

workers are engaged in the production of steel slabs. New information shows that some workers separated from employment at Lone Star Steel Company had their wages reported under a separate unemployment insurance (UI) tax account for Martin Marietta. Workers from Martin Marietta repair and maintain slab furnaces used in the production of steel slabs at the Lone Star, Texas location of Lone Star Steel Company. Worker separations occurred at Martin Marietta as a result of worker separations at Lone Star Steel Company.

Based on these findings, the Department is amending the certification to include workers of Martin Marietta, Lone Star, Texas who were engaged in employment related to the production of steel slabs at Lone Star Steel Company, Lone Star, Texas.

The intent of the Department's certification is to include all workers of Lone Star Steel Company who were adversely affected by the shift of production to Mexico.

The amended notice applicable to NAFTA—02563 is hereby issued as follows:

"All workers of Lone Star Steel Company, Lone Star, Texas engaged in employment related to the production of steel slabs and all workers of Martin Marietta, Lone Star, Texas engaged in employment related to repairing and maintaining slab furnaces for the production of steel slabs at Lone Star Steel Company, Lone Star, Texas who became totally or partially separated from employment on or after August 6, 1997 through September 2, 2000 are eligible to apply for NAFTA–TAA under section 250 of the Trade Act of 1974."

Signed at Washington, DC this 22nd day of March, 1999.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance, Office of Trade Adjustment Assistance.

[FR Doc. 99–8305 Filed 4–2–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment Training Administration

[TA–W–35,200]

Nabors Drilling USA, Inc., East Texas North Louisiana District Headquartered in Kilgore, Texas and California District, Operating at Various Locations in TA–W–35–200C California; Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on December 28, 1998 applicable to workers of Nabors USA, Inc., East Texas/North Louisiana District, headquarters in Kilgore, Texas operating at various locations in Texas and Louisiana. The notice was published in the **Federal Register** on January 25, 1999 (64 FR 3721).

At the request of the company, the Department reviewed the certification for workers of the subject firm. New findings show that worker separations have occurred at Nabors Drilling USA, Inc., California District operating at various locations in California. The workers provide drilling services related to the exploration and production of crude oil and natural gas.

The intent of the Department's certification is to include all workers of Nabor Drilling USA, Inc. adversely affected by increased imports. Accordingly, the Department is amending the certification to cover workers of Nabors Drilling USA, Inc., California District operating at various locations in California.

The amended notice applicable to TA–W–35,200 is hereby issued as follows:

"All workers of East Texas/North Louisiana District of Nabors Drilling USA, Inc., headquartered in Kilgore, Texas (TA–W–35,200), and the California District operating at various locations in California (TA–W–35,200C) who became totally or partially separated from employment on or after October 22, 1997 through December 28, 2000 are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974."

Signed at Washington, DC, this 23rd day of March, 1999.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 99–8303 Filed 4–2–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–34,582]

Phillips-Van Heusen Corp. Including Workers of Izod-Gant Corp. and BassNet, Geneva, Alabama and Ozark, Alabama; Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on July 14, 1998, applicable to all workers of Phillips-Van Heusen Corp., Geneva, and Ozark, Alabama. The notice was published in the **Federal Register** on August 7, 1998 (63 FR 42434).

At the request of the company, the Department reviewed the certification for workers of the subject firm. New information provided by the company shows that employees of Izod-Gant Corp. and BassNet, Geneva and Ozark, Alabama were employed by Phillips-Van Heusen Corp. to produce men's dress and casual shirts at the Geneva and Ozark, Alabama locations. Worker separations occurred at Izod-Gant Corp. and BassNet as a result of workers separations at Phillips-Van Heusen Corp.

Based on these findings, the Department is amending the certification to include workers of Izod-Gant Corp. and BassNet Geneva and Ozark, Alabama employed at Phillips-Van Heusen Corp., Geneva and Ozark, Alabama.

The intent of the Department's certification is to include all workers of Phillips-Van Heusen Corp. adversely affected by imports.

The amended notice applicable to TA–W–34,582 is hereby issued as follows:

"All workers of Phillips-Van Heusen Corp. and workers of Izod-Gant Corp. and BassNet, Geneva and Ozark, Alabama engaged in employment related to men's dress and casual shirts at Phillips-Van Heusen Corp., Geneva and Ozark, Alabama who became totally or partially separated from employment on or after May 14, 1997 through July 14, 2000 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974."

Signed at Washington, DC, this 9th day of March, 1999.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 99–8300 Filed 4–2–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training

[TA–W–35,451 and TA–W–35,451B]

The Pillsbury Co., Haagen-Dazs Plant, Woodbridge, NJ, and Haagen-Dazs Warehouse Operation, Dayton, NJ; Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Notice of Certification Regarding Eligibility to

Apply for Worker Adjustment Assistance on February 4, 1999, applicable to workers of The Pillsbury Company, Haagen-Dazs Plant located in Woodbridge, New Jersey. The notice will be published soon in the **Federal Register**.

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. New information shows that worker separations occurred at the Haagen-Dazs Warehouse Operation of The Pillsbury Company, Dayton, New Jersey when it closed in March, 1999. The Dayton, New Jersey location provided warehousing and distribution services for The Pillsbury Company, Haagen-Dazs's production facilities including Woodbridge, New Jersey. The workers are engaged in the production of ice cream products (gallons of ice cream, stick bars, pops and sorbet).

Accordingly, the Department is amending the certification to cover the workers of The Pillsbury Company, Haagen-Dazs Warehouse Operation, Dayton, New Jersey.

The intent of the Department's certification is to include all workers of The Pillsbury Company, Haagen-Dazs who were adversely affected by increased imports of ice cream products.

The amended notice applicable to TA–W–35,451 is hereby issued as follows:

"All workers of The Pillsbury Company, Haagen-Dazs Plant, Woodbridge, New Jersey (TA–W–35,451) and Haagen-Dazs Warehouse Operation, Dayton, New Jersey (TA–W–35,451A) who became totally or partially separated from employment on or after December 21, 1997 through February 11, 2001 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974."

Signed at Washington, DC, this 19th day of March, 1999.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 99–8301 Filed 4–2–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment and Training Administration (ETA) is soliciting comments concerning a proposed revision to Form ETA 581, Contribution Operations. A copy of the entire proposed information collection request (ICR) can be obtained by contacting the office listed below in the addressee section of this notice.

DATES: Written comments must be submitted to the office listed in the addressee section below on or before June 4, 1999.

The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

ADDRESSES: Constance I. Peterkin, Room S–4522, 200 Constitution Avenue, NW, Washington, DC 20210; telephone number: (202) 219–5615, extension 198 (this is not a toll-free number); internet address; cpeterkin@doleta.gov; facsimile number: (202) 219–8506.

SUPPLEMENTARY INFORMATION:

I. Background

The Unemployment Insurance Service (UIS) of the Employment and Training Administration (ETA) has three programs which evaluate the separate functions within the Unemployment Insurance (UI) program. The Benefit Accuracy Measurement (BAM) program assesses the accuracy of paying UI benefits. The Benefit Timeliness and Quality (BTQ) program assesses the quality and timeliness of UI benefit functions; while the Tax Performance System (TPS) evaluates the employer-related functions or tax operations of the UI program. The Contribution Operations report (Form ETA 581), is a comprehensive report of each state's UI tax operations and is essential in providing quarterly tax performance data to DOL/ETA/UIS, the source of grants funding authority. ETA 581 data is the basis for determining the adequacy of funding States' UI tax operations and measuring the performance and effectiveness of such operations. These are required Federal functions under the Federal-State UI program.

Using ETA 581 data, the TPS program measures performance, accuracy, and promptness in employer registration (status determination), report delinquency, collections (accounts receivable), and the audit function.

II. Current Actions

A new item, "Number of Employees Misclassified as Independent Contractors" (discovered through audits of employers), is being added. Misclassification of employees as independent contractors represent lost revenues to State unemployment funds from taxes based on the wages of such employees and lower UI benefit recipiency rates upon their unemployment. The collection of this new information will provide an indication of the extent of misclassification and eliminate the need for periodic surveys requesting such information. As a result of adding this new item, the average response time is estimated to increase by 0.5 hours.

The ETA 581 report is the only vehicle for collection of information on States' UI tax operations required under the TPS program. If ETA 581 data were not collected, there would be no basis for determining the adequacy of funding for States' UI tax operations, making projections and forecasts in conjunction with the budgetary process, nor measuring program performance and effectiveness. The ETA 581 accounts receivable data are necessary in the preparation of complete and accurate financial statements for the unemployment Trust Fund (UTF) and the maintenance of a modified accrual system for UTF accounting.

Type of Review: Revision.

Agency: Employment and Training Administration.

Title: Contribution Operations.

OMB Number: 1205–0178.

Agency Number: ETA 581.

Affected Public: State Government.
Cite/Reference/Form/etc: ETA 581.
Total Respondents: 53.
Frequency: Quarterly.
Total Responses: 212.
Average Time per Response: 8.5 hours.
Estimated Total Burden Hours: 1,802.
Total Burden Cost (operating/maintaining): $45,050.

Comments submitted in response to this comment request will be summarized and or included in the request for office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: March 29, 1999.

Grace A. Kilbane,

Director, Unemployment Insurance Service.

[FR Doc. 99–8295 Filed 4–2–99; 8:45 am]
BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Prohibited Transaction Exemption 99–15; Exemption Application No. D–10574]

Grant of Individual Exemption To Amend Prohibited Transaction Exemption (PTE) 94–50 Involving Salomon Smith Barney Inc. (Salomon Smith Barney) Located in New York, NY

AGENCY: Pension and Welfare Benefits Administration, U.S. Department of Labor.

ACTION: Grant of individual exemption to modify PTE 94–50.

SUMMARY: This document contains a final exemption before the Department of Labor (the Department) which would amend PTE 94–50 (59 FR 32024, June 21, 1994), an exemption granted to Smith Barney, Inc. (Smith Barney), the predecessor of Salomon Smith Barney. PTE 94–50 relates to the operation of the TRAK Personalized Investment Advisory Service product (the TRAK Program) and the Trust for TRAK Investments (subsequently renamed the Trust for Consulting Group Capital Markets Funds) (the Trust). These transactions are described in a notice of pendency that was published in the **Federal Register** on November 9, 1998 at 63 FR 60391.

EFFECTIVE DATE: This exemption is effective as of July 31, 1993 with respect to the transactions described in Section I.A. and B.(1). of this grant notice. It is also effective as of March 29, 1994 for transactions involving a daily-traded collective investment fund (the GIC Fund) that was added to the TRAK Program pursuant to PTE 94–50. With respect to Section I.B(2) and Section II(f)(1)-(4) of the General Conditions of this grant notice, which set forth the amendments to PTE 94–50, this exemption is effective as of November 9, 1998.

FOR FURTHER INFORMATION CONTACT: Ms. Jan D. Broady, Office of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor, telephone (202) 219–8881. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On November 9, 1998, the Department published, at 63 FR 60391, a notice of proposed exemption in the **Federal Register** that would amend PTE 94–50. PTE 94–50 provides an exemption from certain prohibited transaction restrictions of section 406 of the Employee Retirement Income Security Act of 1974 (the Act) and from the sanctions resulting from the application of section 4975 of the Internal Revenue Code of 1986 (the Code), as amended, by reason of section 4975(c)(1) of the Code. Specifically, PTE 94–50 provides exemptive relief from the restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, for the purchase or redemption of shares in the Trust by an employee benefit plan, an individual retirement account, or a retirement plan for a self-employed individual (collectively, the Plans). PTE 94–50 also provides exemptive relief from the restrictions of section 406(b) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(E) and (F) of the Code, with respect to the provision, by the Consulting Group of Smith Barney (the Consulting Group), of investment advisory services to independent fiduciaries of participating Plans (the Independent Plan Fiduciaries) that might result in such fiduciary's selection of an investment portfolio under the TRAK Program for the investment of Plan assets. [1]

Besides the transactions described above, PTE 94–50 permitted Smith Barney to add a daily-traded collective investment fund (i.e., the GIC Fund) to the existing Fund Portfolios and to describe the various entities operating the GIC Fund. Further, PTE 94–50 replaced references to Shearson Lehman with references to Smith Barney. PTE 94–50 is effective as of July 31, 1993 for the transactions described in PTE 92–77 and effective as of March 29, 1994 with respect to transactions involving the GIC Fund.

Salomon Smith Barney has informed the Department of certain changes to the facts underlying PTE 94–50. These modifications include (1) Corporate mergers that have changed the names of the parties described in PTE 94–50 and would permit broader distribution of TRAK-related products, (2) the implementation of a recordkeeping reimbursement offset system (the Recordkeeping Reimbursement Offset Procedure) under the TRAK Program, and (3) the institution of an automated reallocation option (the Automatic Reallocation Option) under the TRAK Program for which Salomon Smith Barney has requested administrative exemptive relief from the Department. The proposed exemption was requested in an application filed on behalf of Salomon Smith Barney pursuant to section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with the procedures (the Procedures) set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Accordingly, this exemption is being issued solely by the Department.

The proposed exemption gave interested persons an opportunity to comment on the notice of pendency and to request a public hearing. During the comment period, the Department received three written comments and no requests for a hearing in response to the notice. Two comments were submitted by Plan participants investing in the TRAK Program. The third comment, which is intended to clarify and modify

[1] On October 5, 1992, the Department granted PTE 92–77 at 55 FR 45833. PTE 92–77 permitted Shearson Lehman Brothers, Inc. (Shearson Lehman) to make the TRAK Program available to Plans that acquired shares in the Trust. In this regard, PTE 92–77 permitted Plans to purchase or redeem shares in the Trust and allowed the Consulting Group to provide investment advisory services to an Independent Fiduciary of a Plan which might result in such fiduciary's selection of a Portfolio in the TRAK Program for the investment of Plan assets.

Subsequent to the granting of PTE 92–77, on July 31, 1993, Smith Barney acquired certain assets of Shearson Lehman associated with its retail business, including the TRAK Program, and applied for and received a new exemption (PTE 94–50) for the ongoing operation of the TRAK Program. Essentially, PTE 94–50 amended and replaced PTE 92–77. However, because of certain material factual changes to the representations supporting PTE 92–77, the Department determined that the exemption was no longer effective for use by Smith Barney and its subsidiaries as of the date of the asset sale.

the proposed exemption, was submitted by Salomon Smith Barney.

Following is a discussion of the comments received, the responses provided by Salomon Smith Barney, and the Department's determinations regarding the comments.

Participant Comments

The first commenter objects to the proposed exemption because he is under the impression that the new services that will be offered to TRAK Program investors by Salomon Smith Barney will result in increased fees paid to consultants and investment advisers by the Funds. The commenter also does not believe that there will be a corresponding increase in the growth of the Funds.

Salomon Smith Barney represents that although it is not clear which provisions in the proposed exemption have elicted the comment, it points out that the comment relates more or less to the underlying Fund portfolios rather than to the TRAK Program.

As to the commenter's first area of concern, Salomon Smith Barney explains that the proposed Automatic Reallocation Option is a service that is to be provided at no additional cost to the investor and it does not affect the calculation of the investment advisory fee. In addition, Salomon Smith Barney represents that it does not have a basis to respond to the inclusion of "consultants" in this comment. With respect to the commenter's concern about growth prospects, Salomon Smith Barney states that no investment vehicle can assure investors future performance.

The second commenter states that while he has no objection to Salomon Smith Barney's implementation of the Automatic Reallocation Option, he would like to see the requirement for clear explanations of the choices and the implications of such choices. The commenter also suggests that Salomon Smith Barney provide a clear path for revocation of the Automatic Reallocation Option, whereby a Plan investor's choice would have to be reaffirmed periodically.

In response to this comment, Salomon Smith Barney states that the text of the announcement referred to in the preamble (the Preamble) at 60394 provides participants with the same information that the commenter requests. However, as an alternative to the commenter's suggestion of a reaffirmation mechanism, Salomon Smith Barney represents that it will include a footnote in the "Participant Quarterly Review" indicating that the participant is currently using the Automatic Reallocation Option and stating that such participant can cancel this service at any time. Salomon Smith Barney proposes to place the footnote after the legend quoted in Footnote 5 of the Preamble. The additional language would read as follows:

> You have elected to have your TRAK Portfolio automatically reallocated at such time as the Consulting Group recommends a change to the Allocation Model you are following. If, at any time, you choose to discontinue this service, please contact your Financial Consultant for instructions.

Salomon Smith Barney believes the participant will then be consistently reminded of his or her option to discontinue the Automatic Reallocation Option.

Salomon Smith Barney's Comments

1. Corporate Mergers

Salomon Smith Barney wishes to clarify that on page 60392 of the Preamble, in the first sentence of the paragraph captioned "Corporate Mergers," the phrase "Salomon Inc., the ultimate parent of" should be inserted after the phrase "acquired all the shares of." Also, in this section, Salomon Smith Barney wishes to modify the first sentence of the third paragraph to clarify that one of the purposes of the merger, rather than the "sole" purpose of the merger, was to create additional distribution channels for the TRAK Program.

In response to this comment, the Department concurs with the requested modifications and has made the suggested changes.

2. Recordkeeping Reimbursement Offset Procedure

Salomon Smith Barney has informed the Department that although it has not yet implemented the Recordkeeping Reimbursement Offset Procedure in a manner that will reduce the net outside fee (the Net Outside Fee), at the present time, it has in place a recordkeeping reimbursement program that reduces recordkeeping expenses only, at an annual rate of $8.50 per participant position. Salomon Smith Barney states that this annualized rate has been approved by the Funds' Board of Trustees and that, of the $8.50 amount, $0.50 per participant position represents a sub-transfer agency fee for the costs associated with the application of the reimbursement process (the Processing Fee). Currently, Salomon Smith Barney states that its affiliate, Smith Barney Corporate Trust Company, is retaining this Processing Fee.

Salomon Smith Barney has provided an example showing the manner in which the recordkeeping reimbursement amount is determined by the Funds at the $8.50 level using some of the numbers set forth in the example given in the Preamble on pages 60392 and 60393. The example assumes that all positions are eligible for reimbursement because positions in the Government Money Investments Portfolio and the Stable Value (GIC) Fund Portfolio are not eligible for recordkeeping reimbursement.

> Assume that Plan A has $1 million in assets invested in the TRAK Program and 100 participants. Assume further that Plan A pays its recordkeeper $20 per participant per year in Annual Fees totaling $2,000 per year or $500 per quarter and $12 per participant per year in Other Fees, totaling $1,200 per year or $300 per quarter. Assume also that the Plan pays the recordkeeper an annual Processing Fee of $150.
>
> At the end of each calendar quarter, Plan A's recordkeeper would determine the actual number of Fund positions held by the Plan A participants and calculate the resulting reimbursement amount that would be paid by the Funds. If Plan A had 300 participant positions at the end of the quarter, the Plan's total recordkeeping reimbursement amount to be paid by the Funds would be300 × $2 (the annual amount of $8 divided by 4) or $600.
>
> The Processing Fee paid by the Plan to the recordkeeper for the quarter would be 300 × $0.125 (the annual amount of $0.50 divided by 4) or $37.50. This Processing Fee would, in turn, also be credited back to the Plan by the Funds.

APPLICATION OF REIMBURESMENT TO RECORDKEEPING FEES

Quarterly Portion of Annual Fees	$500.00
Quarterly Portion of Other Fees[2]	300.00
Processing Fee	37.50
Total Quarterly Recordkeeping Fees	$837.50
Credit for Reimbursement	($600.00)
Credit for Processing Fee	($ 37.50)
Total Reimbursement	($637.50)
Net Amount of Recordkeeping Fees Payable by the Plan	$200.00
Net Amount of Recordkeeping Fees Payable by the Funds	637.50
Total Quarterly Record-keeping Fees	$837.50

[2] Assumes "Other Fees" are paid by the Plan during the quarter.

Since the recordkeeping reimbursement program currently in place applies only to the payment of expenses related to recordkeeping, there would never be an "excess reimbursement" according to Salomon Smith Barney. Therefore, the Total Reimbursement amount would reflect the lesser of the amount calculated as in the example above, or the actual costs billed. If

the Total Reimbursement calculation had exceeded the Total Quarterly Recordkeeping Fees, Salomon Smith Barney states that the maximum reimbursement amount would be limited to the Total Quarterly Recordkeeping Fees.

On page 60392 of the Preamble, the second paragraph of the section describing the Recordkeeping Reimbursement Offset Procedure states that in May 1998, the Board of Trustees of the Funds approved a recordkeeping reimbursement amount of $12.50 for each investment position held by a participant. Salomon Smith Barney notes that the recordkeeping reimbursement amount may be changed by the Board of Trustees of the Funds from time to time. Therefore, it requests that the description of the TRAK Program define the reimbursement amount as "such annual dollar amount per eligible position as shall be set by the Board of Trustees of the Funds from time to time." Salomon Smith Barney has also informed the Department that, of the $12.50 annual reimbursement amount approved by the Board of Trustees of the Funds, $0.50 is being retained by Smith Barney Corporate Trust Company as a Processing Fee.

The Department does not object to making the foregoing clarifications to the description of the Recordkeeping Reimbursement Offset Procedure in the Preamble. However, because Smith Barney Corporate Trust Company is retaining $0.50 per participant position as a Processing Fee, the Department requested that Salomon Smith Barney revise the calculations in the example appearing on pages 60392 and 60393 of the Preamble. In addition to these changes, Salomon Smith Barney suggested that the following disclaimer language preface the example in order to avoid investor confusion:

Salomon Smith Barney has provided the following numbers solely for ease of calculation and not as typical or representative of the operation of the TRAK product in any particular client circumstance.

Moreover, Salomon Smith Barney notes that because a Plan participating in the TRAK Program may be required to pay a recordkeeper "Other Fees" in addition to annual recordkeeping fees, both of which may be billed on a quarterly basis, it wishes to clarify that "Other Fees" may arise only at certain times of the year and that it does not wish to imply by the example that "Other Fees" are regularly billed quarterly in all instances.

In light of these changes, the revised example is set forth as follows:

Salomon Smith Barney has provided the following numbers solely for ease of calculation and not as typical or representative of the operation of the TRAK product in any particular client circumstance. Therefore, the Recordkeeping Reimbursement Offset Procedure would work as follows:

Assume that Plan A has $1 million in assets invested in the TRAK Program and 100 participants. Assume further that Plan A pays its recordkeeper $20 per participant per year in Annual Fees totaling $2,000 per year or $500 per quarter and $12 per participant per year in Other Fees, totaling $1,200 per year or $300 per quarter. Assume also that the Plan pays the recordkeeper an annual Processing Fee of $150.

At the end of each calendar quarter, Plan A's recordkeeper would determine the actual number of Fund positions held by the Plan A participants and calculate the resulting reimbursement amount. If Plan A had 300 participant positions at the end of the quarter, the Plan's total recordkeeping reimbursement amount would be 300 × $3 (the annual amount of $12 divided by 4) or $900. In addition, the Processing Fee paid to the recordkeeper for the quarter would be 300 × $0.125 (the annual amount of $0.50 divided by 4) or $37.50.

At the end of each calendar quarter, Plan A's recordkeeper would determine the actual number of Fund positions held by the Plan A participants and calculate the resulting reimbursement amounts to be paid by the Funds. If Plan A had 300 participant positions at the end of the quarter, the Plan's total recordkeeping reimbursement amount would be 300 × $3 (the annual amount of $12 divided by 4) or $900. To this amount would be added the $37.50 Processing Fee paid to the recordkeeper during the quarter. Such amounts would be credited as follows:

APPLICATION OF REIMBURSEMENT TO RECORDKEEPING FEES

Quarterly Portion of Annual Fees[3]	$500.00
Quarterly Portion of Other Fees	300.00
Processing Fee	37.50
Total Quarterly Recordkeeping Fees	$837.50
Credit for Reimbursement	($900.00)
Credit for Processing Fee	(37.50)
Total Reimbursement	($937.50)
Excess Reimbursement	($100.00)

[3] Assumes "Other Fees" are paid by the Plan during the quarter.

Because the Total Reimbursement amount exceeds the Total Quarterly Recordkeeping Fees, the Plan does not owe any recordkeeping fees for that period. Therefore, the recordkeeper would not bill the Plan. Instead, the Funds would pay the recordkeeper the $837.50 amount due.

APPLICATION OF EXCESS REIMBURSEMENT TO THE NET OUTSIDE FEE

Quarterly Net Outside Fee	$2,125.00

APPLICATION OF EXCESS REIMBURSEMENT TO THE NET OUTSIDE FEE—Continued

Excess Reimbursement	(100.00)
Net Outside Fee Paid by the Plan	$2,025.00
Net Outside Fee Paid by the Funds	100.00
Total Quarterly Net Outside Fee	$2,125.00

In the program as proposed, the Funds have agreed that any Excess Reimbursement amount remaining after the payment of the Total Quarterly Recordkeeping Fees would be paid by the Funds to reduce the Plan's investment advisory fee obligations. Therefore, the $100 Excess Reimbursement amount would be applied against the Plan's Quarterly Net Outside Fee. Under such circumstances, the recordkeeper would advise the Consulting Group that it is entitled to bill the Plan for the $2,025.00 balance of the Consulting Group's Net Outside Fee. In turn, the Funds would pay the $100 amount attributable to the Excess Reimbursement to the Consulting Group.[4]

Also, on page 60392 of the Preamble, in the second paragraph of the section describing the Recordkeeping Reimbursement Offset Procedure, it states that a participant holding positions in three different Funds would be eligible to receive a total annual reimbursement of $37.50. In light of the change to the allocation of the $12.50 reimbursement amount (i.e., $12.00 per participant position and $0.50 payable to Smith Barney Corporate Trust Company as a Processing Fee), Salomon Smith Barney wishes to clarify that the participant would receive a "total annual offset of $36.00" rather than a "total annual reimbursement of $37.50."

Finally, on page 60392 of the Preamble, in the last sentence of the second paragraph describing the Recordkeeping Reimbursement Offset Procedure, it states that an affected Plan will be required to pay only the balance of the [Net Outside] fee, which is generally charged on a quarterly basis, after the excess reimbursement amount has been deducted. Salomon Smith Barney wishes to point out that because some recordkeepers choose to bill the initial quarterly installment of the recordkeeping fee in full and then apply the recordkeeping reimbursement amount for each quarter to the next

[4] It should be noted that the existence or the amount of the excess will not alter the amount of the recordkeeping or advisory fees. Instead, the reimbursement calculations will determine the proportion of payment by the Funds of the Plan's fee obligations.

quarter's fees, it suggests that the Department delete the clause stating "and the timing of the offset of the excess reimbursement amount against the fees," appearing on page 60393 of the Preamble in the second sentence of the first full paragraph following the example.

The Department concurs with the modifications to the Preamble.

3. Footnote 3

On page 60392 of the Preamble, Footnote 3 states that Salomon Smith Barney is offsetting, quarterly, against the Outside Fee, such amount as is necessary to assure that the Consulting Group retains not more than 20 basis points (as an Inside Fee) from any Portfolio on investment assets attributable to any Plan. For purposes of clarification, Salomon Smith Barney requests that the Department add the following parenthetical exception at the end of the footnote after the word "Plan":

(except the Government Money Investments Portfolio and the Stable Value (GIC) Fund Portfolio, as to which no investment management fee is retained).

In response, the Department concurs with this clarification.

On page 60393 of the Preamble, the second sentence of the first paragraph following the example states that 23 recordkeepers currently provide services to TRAK Program investors. Salomon Smith Barney explains that since a Plan designates its own recordkeeper, the number "23" is subject to change. Therefore, Salomon Smith Barney suggests the deletion of this number and the Department concurs with this clarification.

4. Investor Contact/Superfluous Language

On page 60393 of the Preamble, Footnote 5 distinguishes the Automatic Reallocation Option from rebalancing of a participant's account and it instructs a TRAK Program participant to contact his or her Financial Consultant should a change in an investment allocation be warranted. Footnote 5 also states that a Financial Consultant is expected to initiate contact with Plan participants at least annually to encourage a comparison of the holdings in the Plan participant's portfolio against the Consulting Group's recommendation. Salomon Smith Barney wishes to inform the Department that in the case of retirement plans covering multiple participants, this contact typically may take the form of regular written communications between the Financial Consultant and the Plan investor.

Moreover, the Department has stricken the last two sentences of Footnote 5, which due to a printing error, contain superfluous language also appearing on page 60393 of the Preamble, in the second and third sentences of the first paragraph under the description of the Automatic Reallocation Option.

5. Footnote 6

On page 60394 of the Preamble, Footnote 6 states, in pertinent part, that there are 12 standard asset allocation models (the Allocation Models). Salomon Smith Barney explains that because it is constantly in the process of refining the basis for its asset allocation advice, the number of standard Allocation Models is expected to change as a result of such product modifications. To avoid an ongoing obligation to alter this number, Salomon Smith Barney suggests that the reference to the number "12" be deleted. Therefore, the Department has modified the Preamble, accordingly.

6. Condition (f)

On page 60395 of the Preamble and page 60396 of the operative language of the proposed exemption, Section II(f)(3) of the General Conditions contains a notice provision that requires an Independent Plan Fiduciary to give Salomon Smith Barney at least 30 calendar days prior written notice of its intention to "opt out" of a new asset allocation model. Salomon Smith Barney wishes to clarify that an Independent Plan Fiduciary has a period of at least 30 calendar days during which to provide Salomon Smith Barney with written notice. Therefore, Salomon Smith Barney proposes that the notice period be described as "at any time within the period of 30 calendar days" prior to the Effective Date.

In response to this comment, the Department has made the change suggested by Salomon Smith Barney.

7. Deletion of the Last Sentence of Paragraph (g)

On pages 60394 and 60395 of the Preamble, paragraph (g) states that if the Independent Plan Fiduciary "opts out," his or her Plan account will not be changed on the Effective Date. Paragraph (g) also states that, under such circumstances, the Allocation Model will remain at its current level or at such other level as the Independent Plan Fiduciary designates. However, the Automatic Reallocation Option will remain in effect for future changes in such participant's Allocation Model.

Salomon Smith Barney explains that once a participant has opted out of the Automatic Reallocation Option, the participant's account is left at its current "non-conforming" allocation levels and it no longer resembles a Consulting Group Allocation Model. Because the Automatic Reallocation Option, in effect, terminates upon a participant's "opting out," Salomon Smith Barney requests the deletion of the last sentence of paragraph (g).

In response to this comment, the Department has made the requested deletion to paragraph (g).

8. General Information

On page 60395 of the proposed exemption, in the section captioned "General Information," paragraph (2) states that the proposed exemption, if granted, will not extend to transactions prohibited under section 406(b)(3) of the Act and section 4975(c)(1)(F) of the Code. The Department wishes to point out that the exemption will extend to transactions that are prohibited under section 406(b) of the Act and section 4975(c)(1)(E) and (F) of the Code and it has modified the final exemption, accordingly.

9. Scope of the Term "Employee Benefit Plans"

Salomon Smith Barney requests that the exemption cover transactions in the TRAK Program that are entered into not only by qualified plans that meet the requirements of section 401(k) of the Code, but also by any individual account pension plan that may be subject to Title I of the Act and established under section 403(b) of the Code (the Section 403(b) Plan). To the extent that participants in Section 403(b) Plans invest their contributions in shares of the Funds, Salomon Smith Barney and its affiliates would like to make the TRAK Program available to them.

The Department concurs with this comment and, on page 60396 of the proposed exemption, it has revised Section I.A. of the operative language by deleting the word "or" preceding the phrase "a retirement plan for self-employed individuals (the Keogh Plan)" and adding the phrase "or an individual account pension plan that is subject to the provisions of Title I of the Act and established under section 403(b) of the Code (the Section 403(b) Plan)." In addition, the Department has revised Footnote 11 of the proposed exemption to include a reference to the term "Section 403(b) Plan" after the term "Keogh Plan." Further, on page 60398 of the proposed exemption, the

Department has revised Section III(c)(3) of the Definitions as follows:

(3) An individual covered under (i) a self-directed IRA or (ii) a Section 403(b) Plan, which invests in Trust shares.

For further information regarding the comments or other matters discussed herein, interested persons are encouraged to obtain copies of the exemption application file (Exemption Application No. D–10574) the Department is maintaining in this case. The complete application file, as well as all supplemental submissions received by the Department are made available for public inspection in the Public Documents Room of the Pension and Welfare Benefits Administration, Room N–5638, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Accordingly, after giving full consideration to the entire record, including the written comments received, the Department has decided to grant the exemption subject to the modifications and clarifications described above.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which require, among other things, a fiduciary to discharge his or her duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirements of section 401(a) of the Code that the plan operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) The exemption will extend to transactions prohibited under section 406(b)(3) of the Act and section 4975(c)(1)(F) of the Code;

(3) In accordance with section 408(a) of the Act and section 4975(c)(2) of the Code, and the Procedures cited above, and based upon the entire record, the Department finds that the exemption is administratively feasible, in the interest of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan;

(4) The exemption will be supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(5) This is subject to the express condition that the Summary of Facts and Representations set forth in the notice of proposed exemption relating to PTE 92–77, as amended by PTE 94–50 and this notice, accurately describe, where relevant, the material terms of the transactions to be consummated pursuant to this exemption.

Exemption

Under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the Procedures set forth above, the Department hereby amends PTE 94–50 as follows:

Section I. Covered Transactions

A. The restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (D) of the Code, shall not apply, to the purchase or redemption of shares by an employee benefit plan, an individual retirement account (the IRA), a retirement plan for self-employed individuals (the Keogh Plan), or an individual account pension plan that is subject to the provisions of Title I of the Act and established under section 403(b) of the Code (the Section 403(b) Plan) [5] in the Trust for Consulting Group Capital Market Funds (the Trust), established by Salomon Smith Barney, in connection with such Plans' participation in the TRAK Personalized Investment Advisory Service product (the TRAK Program).

B. The restrictions of section 406(b) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (E) and (F) of the Code, shall not apply, to the provision, by the Consulting Group, of (1) investment advisory services or (2) an automatic reallocation option (the Automatic Reallocation Option) to an independent fiduciary of a participating Plan (the Independent Plan Fiduciary), which may result in such fiduciary's selection of a portfolio (the Portfolio) in the TRAK Program for the investment of Plan assets.

This exemption is subject to the following conditions that are set forth below in Section II.

Section II. General Conditions

(a) The participation of Plans in the TRAK Program will be approved by an Independent Plan Fiduciary. For purposes of this requirement, an employee, officer or director of Salomon Smith Barney and/or its affiliates covered by an IRA not subject to Title I of the Act will be considered an Independent Plan Fiduciary with respect to such IRA.

(b) The total fees paid to the Consulting Group and its affiliates will constitute no more than reasonable compensation.

(c) No Plan will pay a fee or commission by reason of the acquisition or redemption of shares in the Trust.

(d) The terms of each purchase or redemption of Trust shares shall remain at least as favorable to an investing Plan as those obtainable in an arm's length transaction with an unrelated party.

(e) The Consulting Group will provide written documentation to an Independent Plan Fiduciary of its recommendations or evaluations based upon objective criteria.

(f) Any recommendation or evaluation made by the Consulting Group to an Independent Plan Fiduciary will be implemented only at the express direction of such Independent Plan Fiduciary, provided, however, that—

(1) If such Independent Plan Fiduciary shall have elected in writing (the Election), on a form designated by Salomon Smith Barney from time to time for such purpose, to participate in the Automatic Reallocation Option under the TRAK Program, the affected Plan or participant account will be automatically reallocated whenever the Consulting Group modifies the particular asset allocation recommendation which the Independent Plan Fiduciary has chosen. Such Election shall continue in effect until revoked or terminated by the Independent Plan Fiduciary in writing.

(2) Except as set forth below in paragraph II(f)(3), at the time of a change in the Consulting Group's asset allocation recommendation, each account based upon the asset allocation model (the Allocation Model) affected by such change would be adjusted on the business day of the release of the new Allocation Model by the Consulting Group, except to the extent that market conditions, and order purchase and redemption procedures may delay such processing through a series of purchase

[5] The employee benefit plan, the IRA, the Keogh Plan and the Section 403(b) Plan are collectively referred to herein as the Plans.

and redemption transactions to shift assets among the affected Portfolios.

(3) If the change in the Consulting Group's asset allocation recommendation exceeds an increase or decrease of more than 10 percent in the absolute percentage allocated to any one investment medium (e.g., a suggested increase in a 15 percent allocation to greater than 25 percent, or a decrease of such 15 percent allocation to less than 5 percent), Salomon Smith Barney will send out a written notice (the Notice) to all Independent Plan Fiduciaries whose current investment allocation would be affected, describing the proposed reallocation and the date on which such allocation is to be instituted (the Effective Date). If the Independent Plan Fiduciary notifies Salomon Smith Barney, in writing, at any time within the period of 30 calendar days prior to the proposed Effective Date that such fiduciary does not wish to follow such revised asset allocation recommendation, the Allocation Model will remain at the current level, or at such other level as the Independent Plan Fiduciary then expressly designates, in writing. If the Independent Plan Fiduciary does not affirmatively "opt out" of the new Consulting Group recommendation, in writing, prior to the proposed Effective Date, such new recommendation will be automatically effected by a dollar-for-dollar liquidation and purchase of the required amounts in the respective account.

(4) An Independent Plan Fiduciary will receive a trade confirmation of each reallocation transaction. In this regard, for all Plan investors other than Section 404(c) Plan accounts (i.e., 401(k) Plan accounts), Salomon Smith Barney will mail trade confirmations on the next business day after the reallocation trades are executed. In the case of Section 404(c) Plan participants, notification will depend upon the notification provisions agreed to by the Plan recordkeeper.

(g) The Consulting Group will generally give investment advice in writing to an Independent Plan Fiduciary with respect to all available Portfolios. However, in the case of a Plan providing for participant-directed investments (the Section 404(c) Plan), the Consulting Group will provide investment advice that is limited to the Portfolios made available under the Plan.

(h) Any sub-adviser (the Sub-Adviser) that acts for the Trust to exercise investment discretion over a Portfolio will be independent of Salomon Smith Barney and its affiliates.

(i) Immediately following the acquisition by a Portfolio of any securities that are issued by Salomon Smith Barney and/or its affiliates, the percentage of that Portfolio's net assets invested in such securities will not exceed one percent.

(j) The quarterly investment advisory fee that is paid by a Plan to the Consulting Group for investment advisory services rendered to such Plan will be offset by such amount as is necessary to assure that the Consulting Group retains no more than 20 basis points from any Portfolio (with the exception of the Government Money Investments Portfolio and the GIC Fund Portfolio for which the Consulting Group and the Trust will retain no investment management fee) which contains investments attributable to the Plan investor.

(k) With respect to its participation in the TRAK Program prior to purchasing Trust shares,

(1) Each Plan will receive the following written or oral disclosures from the Consulting Group:

(A) A copy of the Prospectus for the Trust discussing the investment objectives of the Portfolios comprising the Trust, the policies employed to achieve these objectives, the corporate affiliation existing between the Consulting Group, Salomon Smith Barney and its subsidiaries and the compensation paid to such entities.[6]

(B) Upon written or oral request to Salomon Smith Barney, a Statement of Additional Information supplementing the Prospectus which describes the types of securities and other instruments in which the Portfolios may invest, the investment policies and strategies that the Portfolios may utilize and certain risks attendant to those investments, policies and strategies.

(C) A copy of the investment advisory agreement between the Consulting Group and such Plan relating to participation in the TRAK Program and, if applicable, informing Plan investors of the Automatic Reallocation Option.

(D) Upon written request of Salomon Smith Barney, a copy of the respective investment advisory agreement between the Consulting Group and the Sub-Advisers.

(E) In the case of a Section 404(c) Plan, if required by the arrangement negotiated between the Consulting Group and the Plan, an explanation by a Salomon Smith Barney Financial Consultant (the Financial Consultant) to eligible participants in such Plan, of the services offered under the TRAK Program and the operation and objectives of the Portfolios.

(F) A copy of PTE 94–50 as well as the proposed exemption and the final exemption pertaining to the exemptive relief described herein.

(2) If accepted as an investor in the TRAK Program, an Independent Plan Fiduciary of an IRA or Keogh Plan, is required to acknowledge, in writing, prior to purchasing Trust shares that such fiduciary has received copies of the documents described above in subparagraph (k)(1) of this Section.

(3) With respect to a Section 404(c) Plan, written acknowledgement of the receipt of such documents will be provided by the Independent Plan Fiduciary (i.e., the Plan administrator, trustee or named fiduciary, as the recordholder of Trust shares). Such Independent Plan Fiduciary will be required to represent in writing to Salomon Smith Barney that such fiduciary is (a) independent of Salomon Smith Barney and its affiliates and (b) knowledgeable with respect to the Plan in administrative matters and funding matters related thereto, and able to make an informed decision concerning participation in the TRAK Program.

(4) With respect to a Plan that is covered under Title I of the Act, where investment decisions are made by a trustee, investment manager or a named fiduciary, such Independent Plan Fiduciary is required to acknowledge, in writing, receipt of such documents and represent to Salomon Smith Barney that such fiduciary is (a) independent of Salomon Smith Barney and its affiliates, (b) capable of making an independent decision regarding the investment of Plan assets and (c) knowledgeable with respect to the Plan in administrative matters and funding matters related thereto, and able to make an informed decision concerning participation in the TRAK Program.

(l) Subsequent to its participation in the TRAK Program, each Plan receives the following written or oral disclosures with respect to its ongoing participation in the TRAK Program:

(1) The Trust's semi-annual and annual report which will include financial statement for the Trust and investment management fees paid by each Portfolio.

(2) A written quarterly monitoring statement containing an analysis and an

[6] The fact that certain transactions and fee arrangements are the subject of an administrative exemption does not relieve the Independent Plan Fiduciary from the general fiduciary responsibility provisions of section 404 of the Act. In this regard, the Department expects the Independent Plan Fiduciary to consider carefully the totality of fees and expenses to be paid by the Plan, including the fees paid directly to Salomon Smith Barney or to other third parties and/or indirectly through the Trust to Smith Barney.

evaluation of a Plan investor's account to ascertain whether the Plan's investment objectives have been met and recommending, if required, changes in Portfolio allocations.

(3) If required by the arrangement negotiated between the Consulting Group and a Section 404(c) Plan, a quarterly, detailed investment performance monitoring report, in writing, provided to an Independent Plan Fiduciary of such Plan showing, Plan level asset allocations, Plan cash flow analysis and annualized risk adjusted rates of return for Plan investments. In addition, if required by such arrangement, Financial Consultants will meet periodically with Independent Plan Fiduciaries of Section 404(c) Plans to discuss the report as well as with eligible participants to review their accounts' performance.

(4) If required by the arrangement negotiated between the Consulting Group and a Section 404(c) Plan, a quarterly participant performance monitoring report provided to a Plan participant which accompanies the participant's benefit statement and describes the investment performance of the Portfolios, the investment performance of the participant's individual investment in the TRAK Program, and gives market commentary and toll-free numbers that will enable the participant to obtain more information about the TRAK Program or to amend his or her investment allocations.

(5) On a quarterly and annual basis, written disclosures to all Plans of the (a) percentage of each Portfolio's brokerage commissions that are paid to Salomon Smith Barney and its affiliates and (b) the average brokerage commission per share paid by each Portfolio to Salomon Smith Barney and its affiliates, as compared to the average brokerage commission per share paid by the Trust to brokers other than Salomon Smith Barney and its affiliates, both expressed as cents per share.

(m) Salomon Smith Barney shall maintain, for a period of six years, the records necessary to enable the persons described in paragraph (n) of this Section to determine whether the conditions of this exemption have been met, except that (1) a prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of Salomon Smith Barney and/or its affiliates, the records are lost or destroyed prior to the end of the six year period, and (2) no party in interest other than Salomon Smith Barney shall be subject to the civil penalty that may be assessed under section 502(i) of the Act, or to the taxes imposed by section 4975(a) and (b) of the Code, if the records are not maintained, or are not available for examination as required by paragraph (n) below.

(n)(1) Except as provided in section (2) of this paragraph and notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to in paragraph (m) of this Section II shall be unconditionally available at their customary location during normal business hours by:

(A) Any duly authorized employee or representative of the Department or the Service;

(B) Any fiduciary of a participating Plan or any duly authorized representative of such fiduciary;

(C) Any contributing employer to any participating Plan or any duly authorized employee representative of such employer; and

(D) Any participant or beneficiary of any participating Plan, or any duly authorized representative of such participant or beneficiary.

(2) None of the persons described above in subparagraphs (B)–(D) of this paragraph (n) shall be authorized to examine the trade secrets of Salomon Smith Barney or commercial or financial information which is privileged or confidential.

Section III. Definitions

For purposes of this exemption,

(a) The term "Salomon Smith Barney" means Salomon Smith Barney Inc. and any affiliate of Salomon Smith Barney, as defined in paragraph (b) of this Section III.

(b) An "affiliate" of Salomon Smith Barney includes—

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with Salomon Smith Barney. (For purposes of this subsection, the term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.)

(2) Any officer, director or partner in such person, and

(3) Any corporation or partnership of which such person is an officer, director or a 5 percent partner or owner.

(c) An "Independent Plan Fiduciary" is a Plan fiduciary which is independent of Salomon Smith Barney and its affiliates and is either—

(1) A Plan administrator, sponsor, trustee or named fiduciary, as the recordholder of Trust shares under a Section 404(c) Plan;

(2) A participant in a Keogh Plan;

(3) An individual covered under (A) a self-directed IRA, or (B) a Section 403(b) Plan which invests in Trust shares;

(4) A trustee, investment manager or named fiduciary responsible for investment decisions in the case of a Title I Plan that does not permit individual direction as contemplated by Section 404(c) of the Act; or

(5) A participant in a Plan, such as a Section 404(c) Plan, who is permitted under the terms of such Plan to direct, and who elects to direct the investment of assets of his or her account in such Plan.

Section IV. Effective Dates

This exemption is effective as of July 31, 1993 with respect to the transactions described in Section I.A. and B.(1). of this grant notice. It is also effective as of March 29, 1994 for transactions involving a daily-traded collective investment fund that was added to the TRAK Program pursuant to PTE 94–50. With respect to Section I.B(2) and Section II(f)(1)–(4) of the General Conditions of this grant notice, which set forth the amendments to PTE 94–50, this exemption is effective as of November 9, 1998.

The availability of this exemption is subject to the express condition that the material facts and representations contained in the application for exemption are true and complete and accurately describe all material terms of the transactions. In the case of continuing transactions, if any of the material facts or representations described in the application change, the exemption will cease to apply as of the date of such change. In the event of any such change, an application for a new exemption must be made to the Department.

For a more complete statement of the facts and representations supporting the Department's decision to grant the case of continuing transactions, if any of the material facts or representations described in the application change, the exemption will cease to apply as of the date of such change. In the event of any such change, an application for a new exemption must be made to the Department.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the proposed exemption and PTEs 92–77 and 94–50 which are cited above.

Signed at Washington, DC, this 30th day of March, 1999.

Ivan L. Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, Department of Labor.

[FR Doc. 99–8226 Filed 4–2–99; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Prohibited Transaction Exemption 99–13; Exemption Application No. D–10468, et al.]

Grant of Individual Exemptions; Wells Fargo Bank, N.A. (Wells Fargo), et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of Individual Exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, D.C. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of proposed exemption were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

Wells Fargo Bank, N.A. (Wells Fargo) Located in San Francisco, CA

[Prohibited Transaction Exemption (PTE) 99–13; Exemption Application No. D–10468]

Exemption

Section I. Exemption for the Conversion of Assets (the Conversion Transactions)

The restrictions of section 406(a) and section 406(b) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (F) of the Code, shall not apply, effective September 16, 1996, to the exchange of the assets of various employee benefit plans (the Plans) that are either held in certain collective investment funds (the CIF or CIFs) maintained by Wells Fargo, or otherwise held by Wells Fargo as trustee, investment manager or in any other capacity as fiduciary on behalf of the Plans, for shares of any open-end investment company (the Fund or Funds) registered under the Investment Company Act of 1940 (the 1940 Act) to which Wells Fargo or any of its affiliates (collectively, Wells Fargo) serves as investment adviser and may provide other services, provided the following conditions are met:

(a) The Plans are not sponsored by Wells Fargo.

(b) No sales commissions are paid by a Plan in connection with a Conversion Transaction.

(c) All or a *pro rata* portion of the assets of a CIF or all or a *pro rata* portion of the assets of the Plans or any separate portfolio thereof held by Wells Fargo in any capacity as fiduciary on behalf of such Plans are transferred in-kind to the Funds in exchange for shares of such Funds. Notwithstanding the foregoing, the allocation of fixed-income securities held by a CIF among Plans on the basis of each Plan's *pro rata* share of the aggregate value of such securities will not fail to meet the requirements of this subsection if—

(1) The aggregate value of such securities does not exceed one (1) percent of the total value of the assets held by the CIF immediately prior to the transfer; and

(2) Such securities have the same coupon rate and maturity, and at the time of the transfer, the same credit ratings from nationally recognized statistical rating agencies.

(d) The Plans or the CIFs receive shares of the Funds that have a total net asset value equal in value to the assets of the Plans or the CIFs exchanged for such shares on the date of transfer.

(e) The current market value of the assets of a Plan or the CIF is determined in a single valuation performed in the same manner as of the close of the same business day with respect to all such Plans participating in the transaction on such day, using independent sources in accordance with the procedures set forth in Rule 17a-7b (Rule 17a-7) under the Investment Company Act of 1940 (the 1940 Act), as amended, and the procedures established by the Funds pursuant to Rule 17a-7 for the valuation of such assets.

(f) A second fiduciary (the Second Fiduciary) who is acting on behalf of each affected Plan and who is independent of and unrelated to Wells Fargo, as defined in paragraph (g) of Section III below, receives advance written notice of the Conversion Transaction and the disclosures described in paragraph (f) of Section II below.

(g) On the basis of the information described in paragraph (f) of Section II below, the Second Fiduciary authorizes in writing the Conversion Transaction, the investment of such assets in corresponding Funds and the fees received by Wells Fargo in connection with its services to the Funds. Such authorization by the Second Fiduciary is consistent with the responsibilities, obligations, and duties imposed on fiduciaries by Part 4 of Title I of the Act. In addition, the Second Fiduciary must give prior approval, in writing, for the receipt of confirmation statements described below in paragraph (h)(2) and (i) by facsimile or electronic mail if the Second Fiduciary elects to receive such statements in that form.

(h)(1) For the Conversion Transaction which occurred on September 16, 1996, the written confirmation described below in paragraph (h)(2) was made by Wells Fargo to all Second Fiduciaries of the appropriate Plans within 38 business days of the transaction.

(2) Not later than 30 days after completion of each Conversion Transaction (except for the transaction described in paragraph (h)(1) above),

Wells Fargo sends by regular mail or personal delivery or, if applicable, by facsimile or electronic mail to the Second Fiduciary, a confirmation that contains the following information:

(A) The identity of each of the assets that was valued for purposes of the transaction in accordance with Rule 17a-7(b)(4) under the 1940 Act;

(B) The price of each of the assets involved in the transaction; and

(C) The identity of each pricing service or market maker consulted in determining the value of such assets.

(i) No later than 90 days after completion of each Conversion Transaction, Wells Fargo sends by regular mail or personal delivery or, if applicable, by facsimile or electronic mail to the Second Fiduciary, a confirmation that contains the following information:

(1) The number of CIF units held by such affected Plan immediately before the conversion (and the related per unit value and the aggregate dollar value of the units transferred); and

(2) The number of shares in the Funds that are held by such affected Plan following the conversion (and the related per share net asset value and the aggregate dollar value of the shares received).

(j) The conditions set forth in paragraphs (d), (e), (f), (n), (o), (p), and (q) of Section II below are satisfied.

Section II. Exemption for Receipt of Fees From Funds (transactions involving the receipt of Fees)

The restrictions of section 406(a) and section 406(b) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(D) through (F) of the Code, shall not apply to the receipt of fees by Wells Fargo from the Funds for acting as the investment adviser, as well as for acting as the custodian, sub-administrator, or for providing any "secondary service" (the Secondary Service) to the Funds [as defined in Section III(h)], in connection with the investment in the Funds by the Plans for which Wells Fargo acts as a fiduciary, provided that:

(a) No sales commissions are paid by the Plans in connection with purchase or sale of shares of the Funds through a Conversion Transaction, and no redemption fees are paid in connection with the sale of such shares by the Plans to the Funds.

(b) The price paid or received by the Plans for shares of the Funds, in connection with a Conversion Transaction is the net asset value per share, as defined in paragraph (e) of Section III, at the time of the transaction and is the same price which would have been paid or received for the shares by any other investor at that time.

(c) Neither Wells Fargo nor an affiliate, including any officer or director purchases from or sells to any of the Plans shares of any of the Funds.

(d) As to each individual Plan, the combined total of all Plan-level and Fund-level fees received by Wells Fargo for the provision of services to such Plan and to the Funds (with respect to the Plan's assets invested in the Funds), respectively, are not in excess of "reasonable compensation" within the meaning of section 408(b)(2) of the Act.

(e) Wells Fargo does not receive any fees payable pursuant to Rule 12b-1 under the 1940 Act (the 12b-1 Fees) in connection with the transactions.

(f) The Second Fiduciary receives, in advance of the investment by the Plan in a Fund, a full and detailed written disclosure of information concerning such Fund (including, but not limited to—

(1) A current prospectus for each Fund in which a Plan is considering investing;

(2) A statement describing the fees for investment advisory or similar services, any Secondary Services, and all other fees to be charged to or paid by the Plan and by the Funds, including the nature and extent of any differential between the rates of such fees;

(3) The reasons why Wells Fargo may consider such investment to be appropriate for the Plan;

(4) A statement describing whether there are any limitations applicable to Wells Fargo with respect to which assets of a Plan may be invested in the Funds, and if so, the nature of such limitations; and

(5) Upon request of the Second Fiduciary, a copy of the proposed exemption and/or a copy of the final exemption, once such documents are published in the **Federal Register**.

(g) On the basis of the prospectus and disclosure referred to in paragraph (f) of this Section II, the Second Fiduciary gives prior approval for such purchases, holdings and sales of Fund shares through Conversion Transactions that is consistent with the responsibilities obligations, and duties imposed on fiduciaries by Part 4 of Title I of the Act. Such approval must be in accordance with the provisions of PTE 77–4 (42 FR 18732, April 8, 1977) or its successor, as it may be amended from time to time.

(h) The authorization, described in paragraph (g) of this Section II, is terminable at will by the Second Fiduciary of a Plan, without penalty to such Plan. Such termination will be effected by Wells Fargo redeeming the shares of the Fund held by the affected Plan by the close of the business day following the date of receipt by Wells Fargo, either by mail, hand delivery, facsimile, or other available means of written communication at the option of the Second Fiduciary, of the termination form (the Termination Form), as defined in paragraph (i) of Section III below, or any other written notice of termination; provided that if, due to circumstances beyond the control of Wells Fargo, the sale cannot be executed within one business day, Wells Fargo shall have one additional business day to complete such redemption.

(i) Each Plan satisfies either (but not both) of the following:

(1) For a Plan for which Wells Fargo serves as a non-discretionary trustee, the Plan does not pay any Plan-level investment management fees, investment advisory fees, or similar fees to Wells Fargo with respect to Plan assets invested in the Funds. (This condition does not preclude the payment of investment advisory fees or similar fees by a Fund to Wells Fargo under the terms of its investment advisory agreement adopted in accordance with section 15 of the 1940 Act, nor does it preclude the payment of fees for Secondary Services to Wells Fargo pursuant to a duly adopted agreement between Wells Fargo and the Funds.)

(2) For a Plan for which Wells Fargo serves as a discretionary fiduciary (i.e., a trustee or investment manager), such Plan pays Wells Fargo an investment advisory fee based on total Plan assets from which a credit has been subtracted representing such Plan's pro rata share of investment advisory fees paid by the Funds. (This condition also does not preclude the payment of fees for Secondary Services to Wells Fargo pursuant to a duly adopted agreement between Wells Fargo and the Funds.)

(j) In the event of an increase in the rate of any fees paid by the Funds to Wells Fargo regarding any investment management services, investment advisory services, or fees for similar services that Wells Fargo provides to the Funds over an existing rate for such services that had been authorized by a Second Fiduciary, in accordance with paragraph (g) of this Section II, Wells Fargo will, at least 30 days in advance of the implementation of such increase, provide a written notice (which may take the form of a proxy statement, letter, or similar communication that is separate from the prospectus of the Fund and which explains the nature and amount of the increase in fees) to the Second Fiduciary of each of the Plans invested in a Fund which is

increasing such fees. Such notice shall be accompanied by the Termination Form, as defined in paragraph (i) of Section III below.

(k) In the event of an addition of a Secondary Service, as defined in paragraph (g) of Section III below, provided by Wells Fargo to the Fund for which a fee is charged or an increase in the rate of any fee paid by the Funds to Wells Fargo for any Secondary Service, as defined in paragraph (h) of Section III below, that results either from an increase in the rate of such fee or from the decrease in the number or kind of services performed by Wells Fargo for such fee over an existing rate for such Secondary Service which had been authorized by the Second Fiduciary of a Plan, in accordance with paragraph (g) of this Section II, Wells Fargo will, at least 30 days in advance of the implementation of such additional service for which a fee is charged or fee increase, provide a written notice (which may take the form of a proxy statement, letter, or similar communication that is separate from the prospectus of the Fund and which explains the nature and amount of the additional service for which a fee is charged or the nature and amount of the increase in fees) to the Second Fiduciary of each of the Plans invested in a Fund which is adding a service or increasing fees. Such notice shall be accompanied by the Termination Form, as defined in paragraph (i) of Section III below.

(l) The Second Fiduciary is supplied with a Termination Form at the times specified in paragraphs (j), (k) and (m) of this Section II with instructions regarding the use of such Termination Form including the following information—

(1) The authorization is terminable at will by any of the Plans, without penalty to such Plans. Such termination will be effected by Wells Fargo redeeming shares of the Fund held by the Plans requesting termination within one business day following the date of receipt by Wells Fargo, either by mail, hand delivery, facsimile, or other available means at the option of the Second Fiduciary, of the Termination Form or any other written notice of termination; provided that if, due to circumstances beyond the control of Wells Fargo, the redemption of shares of such Plans cannot be executed within one business day, Wells Fargo shall have one additional business day to complete such redemption; and

(2) Failure by the Second Fiduciary to return the Termination Form on behalf of a Plan will be deemed to be an approval of the additional Secondary Service for which a fee is charged or increase in the rate of any fees, if such Termination Form is supplied pursuant to paragraphs (j) and (k) of this Section II, and will result in the continuation of the authorization, as described in paragraph (h) of this Section II, of Wells Fargo to engage in the transactions on behalf of such Plan.

(m) The Second Fiduciary is supplied with a Termination Form, annually during the first quarter of each calendar year, beginning with the first quarter of the calendar year that begins after the date the notice granting this proposed exemption is published in the **Federal Register** and continuing for each calendar year thereafter; provided that the Termination Form need not be supplied to the Second Fiduciary, pursuant to paragraph (m) of this Section II, sooner than six months after such Termination Form is supplied pursuant to paragraphs (j) and (k) of this Section II, except to the extent required by said paragraphs (j) and (k) of this Section II to disclose an additional Secondary Service for which a fee is charged or an increase in fees.

(n)(1) With respect to each of the Funds in which a Plan invests, Wells Fargo will provide the Second Fiduciary of such Plan:

(A) At least annually with a copy of an updated prospectus of such Fund;

(B) Upon the request of such Second Fiduciary, with a report or statement (which may take the form of the most recent financial report, the current statement of additional information, or some other written statement) which contains a description of all fees paid by the Fund to Wells Fargo; and

(2) With respect to each of the Funds in which a Plan invests, in the event such Fund places brokerage transactions with Wells Fargo, Wells Fargo will provide the Second Fiduciary of such Plan at least annually with a statement specifying:

(A) The total, expressed in dollars, brokerage commissions of each Fund's investment portfolio that are paid to Wells Fargo by such Fund;

(B) The total, expressed in dollars, of brokerage commissions of each Fund's investment portfolio that are paid by such Fund to brokerage firms unrelated to Wells Fargo;

(C) The average brokerage commissions per share, expressed as cents per share, paid to Wells Fargo by each portfolio of a Fund; and

(D) The average brokerage commissions per share, expressed as cents per share, paid by each portfolio of a Fund to brokerage firms unrelated to Wells Fargo.

(o) All dealings between the Plans and any of the Funds are on a basis no less favorable to such Plans than dealings between the Funds and other shareholders holding the same class of shares as the Plans.

(p) Wells Fargo maintains, for a period of six years, in a manner that is convenient and accessible for audit and examination, the records necessary to enable the persons, described in paragraph (q) of Section II below, to determine whether the conditions of this proposed exemption have been met, except that—

(1) A prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of Wells Fargo, the records are lost or destroyed prior to the end of the 6 year period; and

(2) No party in interest, other than Wells Fargo, shall be subject to the civil penalty that may be assessed under section 502(i) of the Act, or to the taxes imposed by section 4975(a) and (b) of the Code, if the records are not maintained, or are not available for examination as required by paragraph (q) of Section II below;

(q)(1) Except as provided in paragraph (q)(2) of this Section II and notwithstanding any provisions of subsection (a)(2) and (b) of section 504 of the Act, the records referred to in paragraph (p) of Section II above are unconditionally available at their customary location for examination during normal business hours by —

(A) Any duly authorized employee or representative of the Department, the Internal Revenue Service or the Securities and Exchange Commission (the SEC);

(B) Any fiduciary of each of the Plans who has authority to acquire or dispose of shares of any of the Funds owned by such a Plan, or any duly authorized employee or representative of such fiduciary; and

(C) Any participant or beneficiary of the Plans or duly authorized employee or representative of such participant or beneficiary;

(2) None of the persons described in paragraph (q)(1)(B) and (q)(1)(C) of Section II shall be authorized to examine trade secrets of Wells Fargo, or commercial or financial information which is privileged or confidential.

Section III. Definitions

For purposes of this exemption, (a) The term "Wells Fargo" means Wells Fargo Bank, N.A. and any of its affiliates, as defined in paragraph (b) of this Section III.

(b) An "affiliate" of a person includes:

(1) Any person directly or indirectly through one or more intermediaries,

controlling, controlled by, or under common control with the person.

(2) Any officer, director, employee, relative, or partner in any such person; and

(3) Any corporation or partnership of which such person is an officer, director, partner, or employee.

(c) The term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(d) The term "Fund" or "Funds" means any diversified open-end investment company or companies registered under the 1940 Act for which Wells Fargo serves as investment adviser (including sub-adviser), and may also provide custodial or other services as approved by such Funds.

(e) The term "net asset value" means the amount for purposes of pricing all purchases and redemptions through the Conversion Transactions, calculated by dividing the value of all securities, determined by a method adopted by the Fund's board of directors in accordance with the 1940 Act, and other assets belonging to each of the portfolios in such Fund, less the liabilities charged to each portfolio, by the number of outstanding shares.

(f) The term "relative" means a "relative" as that term is defined in section 3(15) of the Act (or a "member of the family" as that term is defined in section 4975(e)(6) of the Code), or a brother, a sister, or a spouse of a brother or a sister.

(g) The term "Second Fiduciary" means a fiduciary of a plan who is independent of and unrelated to Wells Fargo. For purposes of this exemption, the Second Fiduciary will not be deemed to be independent of and unrelated to Wells Fargo if—

(1) Such Second Fiduciary directly or indirectly controls, is controlled by, or is under common control with Wells Fargo;

(2) Such Second Fiduciary, or any officer, director, partner, employee, or relative of such Second Fiduciary is an officer, director, partner, or employee of Wells Fargo (or is a relative of such persons);

(3) Such Second Fiduciary directly or indirectly receives any compensation or other consideration from Wells Fargo for his or her own personal account in connection with any transaction described in this exemption.

If an officer, director, partner, or employee of Wells Fargo (or a relative of such persons), is a director of such Second Fiduciary, and if he or she abstains from participation in (A) the choice of the Plan's investment manager/adviser, (B) the approval of any purchase or redemption by the Plan of shares of the Funds through a Conversion Transaction, and (C) the approval of any change of fees charged to or paid by the Plan, in connection with any of the transactions described in Sections I and II above, then paragraph (g)(2) of Section III above, shall not apply.

(h) The term "Secondary Service" means a service, other than an investment management, investment advisory, or similar service, which is provided by Wells Fargo to the Funds, including but not limited to custodial, accounting, brokerage, administrative, or any other service.

(i) The term "Termination Form" means the form supplied to the Second Fiduciary, at the times specified in paragraphs (j), (k) and (m) of Section II above, which expressly provides an election to the Second Fiduciary to terminate on behalf of the Plans the authorization, described in paragraph (g) of Section II. Such Termination Form may be used at will by the Second Fiduciary to terminate such authorization without penalty to the Plans and to notify Wells Fargo in writing to effect such termination by redeeming the shares of the Fund held by the Plans requesting termination by the close of the business day following the date of receipt by Wells Fargo, either by mail, hand delivery, facsimile or other available means at the option of the Second Fiduciary, of written notice of such request for termination; provided that if, due to circumstances beyond the control of Wells Fargo, the redemption cannot be executed within one business day, Wells Fargo shall have one additional business day to complete such redemption.

EFFECTIVE DATE: This exemption is effective as of September 16, 1996 with respect to the Conversion Transactions described in Section I and effective as of the date of the grant with respect to Transactions Involving the Receipt of Fees, as described in Section II.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption (the Notice) published on January 27, 1999 at 64 FR 4132.

Written Comments

The Department received one written comment with respect to the Notice and no requests for a public hearing. The comment was submitted by Wells Fargo and suggested several modifications to the conditional language of the Notice and the Summary of Facts and Representations (the Summary). Presented below are a discussion of Wells Fargo's comments and the Department's responses to such comments.

1. *Section I(c) of the Notice.* On page 4133 of the Notice, Section I(c) states that all or a *pro rata* portion of the assets of a CIF or all or a *pro rata* portion of the assets of the Plans that are held by Wells Fargo in any capacity as fiduciary on behalf of such Plans are transferred in-kind to the Funds in exchange for shares of such Funds. Wells Fargo requests that the Department amend Section I(c) of the Notice by inserting the phrase "or any separate portfolio thereof" after the phrase "all or a *pro rata* portion of the assets of the Plan." Wells Fargo states that it may serve as the directed trustee of a Plan which has a variety of investment portfolios that are managed by different investment managers. Under such circumstances, Wells Fargo notes that the Plan fiduciaries may exchange one or more, but less than all, of such portfolios. Wells Fargo believes the foregoing change to Section I(c) would clarify that the Plan can make the change without exchanging all shares that are held in a portfolio and managed by the other investment manager.

In addition, Wells Fargo notes that on page 42835 of PTE 97–41 (62 FR 42830, August 8, 1997), Section II(c) contains an exception to the requirement that assets transferred in a Conversion Transaction must constitute a *pro rata* portion of the CIF assets. Under this exception, which is applicable for Conversion Transactions occurring after August 8, 1997, if the CIF holds small positions that are not easily divisible, the securities will be allocated such that the transfer will include a *pro rata* share in the value of all such securities in the aggregate rather than in each security individually.

Specifically, Section II(c) of PTE 97–41 permits this type of allocation to be made for fixed-income securities if the following conditions are met:

- The aggregate value of such securities does not exceed one (1) percent of the total value of the CIF assets immediately prior to the transfer; and
- The securities have the same coupon rate and maturity and, at the time of the transfer, the same ratings from nationally recognized statistical ratings agencies.

Consistent with Section II(c) of PTE 97–41, Wells Fargo requests that the following sentence be added to Section I(c) of the Notice in order to allow a CIF (or, for that matter, a Plan) to avoid transaction costs associated with

liquidating small positions in fixed-income securities prior to maturity:

* * * Notwithstanding the foregoing, the allocation of fixed-income securities held by a CIF among Plans on the basis of each Plan's *pro rata* share of the aggregate value of such securities will not fail to meet the requirements of this subsection if—

(1) The aggregate value of such securities does not exceed one (1) percent of the total value of the assets held by the CIF immediately prior to the transfer; and

(2) Such securities have the same coupon rate and maturity, and at the time of the transfer, the same credit ratings from nationally recognized statistical rating agencies.

In response to these comments, the Department has made the changes suggested by Wells Fargo.

2. *Section I(e) of the Notice.* On page 4133 of the Notice, Section I(e) provides that assets that are transferred by a Plan or a CIF to a Fund are to be valued using sources independent of Wells Fargo in accordance with Rule 17a–7. In particular, the last sentence of Section I(e) describes the procedures currently required under Rule 17a–7 of the 1940 Act for the valuation of Plan or CIF assets that are transferred in-kind to a Fund.

Wells Fargo requests that the last sentence of Section I(e) be deleted in order to make the condition consistent with PTE 97–41.* Wells Fargo believes that the reference to Rule 17a–7 should provide flexibility to permit the use of new pricing systems which are approved by the SEC by amendment to Rule 17a–7 without having the parties request an amendment to the exemption.

In response to this comment, the Department concurs with this clarification and has made the requested change.

3. *Sections I(g), I(h)(2) and I(i) of the Notice.* On page 4133 of the Notice, Section I(g) describes the written authorization that is to be given by the Second Fiduciary with respect to a Conversion Transaction. Also on page 4133 of the Notice, Sections I(h)(2) and I(i) provide for the types of confirmation statements that Wells Fargo is to send the Second Fiduciary of a Plan by regular mail.

Wells Fargo requests that these conditions be amended to permit personal delivery of the foregoing information and the use of facsimile or electronic mail. With respect to Section I(g) of the Notice, Wells Fargo suggests that the following new sentence be added as a second sentence:

In addition, the Second Fiduciary must give prior approval, in writing, for the receipt of confirmation statements described below in paragraph (h)(2) and (i) by facsimile or electronic mail if the Second Fiduciary elects to receive such statements in that form.

Further, with respect to Sections I(h)(2) and I(i) of the Notice, Wells Fargo suggests that the phrase "or personal delivery or, if applicable, by facsimile or electronic mail" be added after the term "regular mail."

In response, the Department concurs with the requested clarifications and has made the changes suggested by Wells Fargo.

4. *Representation 1 of the Summary.* On page 4136 of the Summary, Representation 1 describes Wells Fargo, its parent, Wells Fargo & Company (WFC), and their various affiliates. Wells Fargo states that in a merger of equals effective November 2, 1998, WFC was merged with and into a wholly owned subsidiary of Norwest Corporation. In addition, Wells Fargo states that the name of the combined company is "Wells Fargo & Company."

To reflect these factual updates, the Department has revised Representation 1 by adding the following new, third paragraph:

Effective as of November 2, 1998, WFC was merged with and into a wholly owned subsidiary of Norwest Corporation. The name of the combined company is "Wells Fargo & Company."

For further information regarding the Wells Fargo's comment letter or other matters discussed herein, interested persons are encouraged to obtain copies of the exemption application file (Exemption Application No. D–10468) the Department is maintaining in this case. The complete application file, as well as all supplemental submissions received by the Department, are made available for public inspection in the Public Documents Room of the Pension and Welfare Benefits Administration, Room N–5638, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Accordingly, after giving full consideration to the entire record, including the written comments provided by Wells Fargo, the Department has made the aforementioned changes to the Notice and the Summary and has decided to grant the exemption subject to the modifications or clarifications described above.

FOR FURTHER INFORMATION CONTACT: Ms. Jan D. Broady of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

MONY Life Insurance Company (MONY)

Located in New York, NY

[Prohibited Transaction Exemption 99–14; Exemption Application No. D–10661]

Exemption

Section I. Covered Transactions

The restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply, effective November 16, 1998, to the (1) receipt of common stock of the MONY Group, Inc. (the Holding Company), the parent company of MONY, or (2) the receipt of cash or policy credits, by or on behalf of any eligible policyholder (the Eligible Policyholder) of MONY which is a plan (the Plan), subject to applicable provisions of the Act and/or the Code, other than an Eligible Policyholder which is a Plan maintained by MONY or an affiliate for its employees, in exchange for such Eligible Policyholder's membership interest in MONY, in accordance with the terms of a plan of reorganization (the Plan of Reorganization) adopted by MONY and implemented pursuant to section 7312 of the New York Insurance Law.

This exemption is subject to the conditions set forth below in Section II.

Section II. General Conditions

(a) The Plan of Reorganization is implemented in accordance with procedural and substantive safeguards that are imposed under New York Insurance Law and is subject to review and approval by the Superintendent of Insurance of the State of New York (the Superintendent).

(b) The Superintendent reviews the terms of the options that are provided to Eligible Policyholders of MONY as part of such Superintendent's review of the Plan of Reorganization, and the Superintendent only approves the Plan of Reorganization following a determination that such Plan of Reorganization is fair and equitable to all Eligible Policyholders and is not detrimental to the public.

(c) Each Eligible Policyholder has an opportunity to vote to approve the Plan of Reorganization after full written

---

* On page 58229 of the Preamble to the Notice underlying PTE 97–41 (61 FR 58224, November 13, 1996), the Department noted that the requirement that valuations of plan assets transferred from a CIF to a Fund be determined in accordance with Rule 17a–7 under the 1940 Act to provide flexibility for future transactions. Thus, if Rule 17a–7 was subsequently amended by the SEC to accommodate new pricing systems, the Department observed that Banks could take advantage of the amended Rule without having to request an amendment to the class exemption.

disclosure is given to the Eligible Policyholder by MONY.

(d) One or more independent fiduciaries of a Plan that is an Eligible Policyholder receives Holding Company stock, cash or policy credits pursuant to the terms of the Plan of Reorganization and neither MONY nor any of its affiliates exercises any discretion or provides investment advice with respect to such acquisition.

(e) After each Eligible Policyholder entitled to receive stock is allocated at least 7 shares of Holding Company stock, additional consideration is allocated to Eligible Policyholders who own participating policies based on actuarial formulas that take into account each participating policy's contribution to the surplus of MONY which formulas have been reviewed by the Superintendent.

(f) All Eligible Policyholders that are Plans participate in the transactions on the same basis within their class groupings as other Eligible Policyholders that are not Plans.

(g) No Eligible Policyholder pays any brokerage commissions or fees in connection with their receipt of Holding Company stock or in connection with the implementation of the commission-free sales and purchase programs.

(h) All of MONY's policyholder obligations remain in force and are not affected by the Plan of Reorganization.

Section III. Definitions

For purposes of this exemption:

(a) The term "MONY" means "MONY Life Insurance Company" and any affiliate of MONY as defined in paragraph (b) of this Section III.

(b) An "affiliate" of MONY includes—

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with MONY. (For purposes of this paragraph, the term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.)

(2) Any officer, director or partner in such person, and

(3) Any corporation or partnership of which such person is an officer, director or a 5 percent partner or owner.

(c) The term "Eligible Policyholder" means a policyholder who is eligible to vote and to receive consideration under MONY's Plan of Reorganization. Such Eligible Policyholder is a policyholder of the mutual insurer on the date the Plan of Reorganization is adopted by the Board of Trustees of MONY and on the effective date of the reorganization.

(d) The term "policy credit" means: (1) Dividend additions under an individual participating nonvariable annuity contract, (2) an increase in accumulation value of an individual nonparticipating nonvariable annuity contract, (3) an increase in the accumulation value in the separate investment account under an individual participating variable annuity contract, (4) an increase in the accumulation value in the general account investment option under an individual nonparticipating variable annuity contract or individual nonparticipating variable life insurance policy, (5) dividend deposits or dividend additions, as appropriate (depending on the selection of the underlying policy), (6) an increase in fund value on an individual nonparticipating nonvariable life insurance policy, (7) an extension of the expiry date on a policy which is in force as extended term life insurance pursuant to a non-forfeiture provision of a life insurance policy, or (8) an increase in the accumulation account value in the general account investment option under a group annuity contract or certificate issued thereunder.

EFFECTIVE DATE: This exemption is effective as of November 16, 1998, the date of MONY's Plan of Reorganization.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption (the Notice) that was published December 16, 1998 at 63 FR 69314.

Written Comments

The Department received three written comments with respect to the Notice. Two comments were submitted by Plan participants who are Eligible Policyholders of MONY. The third comment was submitted by MONY.

The first commenter expressed general approval of the Notice and the form of consideration that he would be receiving as a result of MONY's Plan of Reorganization. The commenter also endorsed the idea that his Plan policy would continue to contribute to the financial success of MONY.

The second commenter indicated that her only concern was that her investment account with MONY would remain unaffected by the Plan of Reorganization. However, after discussing this matter with a Department representative who explained that the exemption was predicated on the requirement that all of MONY's policyholder obligations would remain in force and would not be affected by the Plan of Reorganization, the commenter decided to withdraw her comment.

The third commenter, MONY, suggested certain technical and clarifying changes to the Notice and the Summary of Facts and Representations (the Summary). In addition, MONY was provided with comments from the New York State Insurance Department (the New York Department), whose comments were, in turn, incorporated into the comments submitted by MONY.

Following is a discussion of the comments received from MONY and the Department's responses with respect thereto.

1. *Section I.* On page 69314 of the Notice, Section I describes MONY Group, Inc. as a subsidiary of MONY. MONY notes that while MONY Group was a subsidiary of MONY at the time MONY filed its exemption application, on the effective date of the reorganization (November 16, 1998), the MONY Group became the parent company of MONY when MONY issued all of its common stock to the MONY Group. In this regard, MONY suggests that the phrase "a subsidiary" be deleted and replaced with "the parent company."

The Department concurs with the requested modification and has revised Section I, accordingly.

Also on page 69314 of the Notice, Section I uses the phrase "employee benefit plans" to describe the Plans that are covered by the exemption. MONY wishes to clarify that it may be a disqualified person with respect to arrangements involving individual retirement accounts which are described in section 4975(e)(1) of the Code but which may not constitute "employee benefit plans" as that term is defined under the Act and the Department's regulations. Therefore, MONY suggests that the exemption use the phrase "Plan subject to ERISA or section 4975(e) of the Code."

The Department has considered this comment and concurs basically with MONY's clarification. However, for the sake of consistency in the use of defined terms in the Notice as well as for parallelism, the Department has decided to revise the phrase to state "Plan subject to applicable provisions of the Act and/or the Code."

2. *Section II(a).* On page 69314 of the Notice, Section II(a) states, in pertinent part, that the Plan of Reorganization is subject to review and supervision by the Superintendent of Insurance of the State of New York (the Superintendent). MONY suggests that the word "supervision" be replaced with the word "approval" because the New York Department believes the word "approval" more accurately reflects the

role of the Superintendent with respect to MONY's Plan of Reorganization.

The Department concurs and has modified Section II(a), accordingly.

3. *Section II(d).* On page 69315 of the Notice, Section II(d) states that an Eligible Policyholder may elect to receive Holding Company stock, cash or policy credits pursuant to the Plan of Reorganization provided the decision is made by one or more independent fiduciaries of such Plan and that neither MONY nor any of its affiliates exercises any discretion or provides investment advice with respect to such election. MONY wishes to clarify that the only election provided under its Plan of Reorganization is a cash election that is provided to certain policyholders that would otherwise receive Holding Company stock. Specifically, MONY notes that under its Plan of Reorganization, Eligible Policyholders who are allocated 75 shares or less of Holding Company stock will be provided the option to elect cash instead of stock. However, because the principal thrust of the condition is to ensure that an Eligible Policyholder's decision to receive Holding Company stock, cash or policy credits is not influenced by MONY or any of its affiliates, MONY suggests that the Department revise General Condition II(d) of the Notice to read as follows:

(d) One or more independent fiduciaries of a Plan that is an Eligible Policyholder receives Holding Company stock, cash or policy credits pursuant to the terms of the Plan of Reorganization and neither MONY nor any of its affiliates exercises any discretion or provides investment advice with respect to such acquisition.

The Department concurs and has modified Section II(d), accordingly.

4. *Section II(e).* On page 69315 of the Notice, Section II(e) provides that the actuarial formulas developed by MONY to determine the allocation of stock among Eligible Policyholders have been approved by the Superintendent. MONY suggests that the word "approved" be replaced by the word "reviewed" because the New York Department believes the word "reviewed" more accurately reflects their role with respect to the allocation methodology, which the New York Department did not specifically approve.

The Department concurs and has modified Section II(e), accordingly.

5. *Section III(d).* On page 69315 of the Notice, Section III(d) defines the term "policy credit" to mean "an increase in the accumulation account value (to which no surrender or similar charges are applied) in the general account or an increase in an dividend accumulation on a policy." To make the definition more comprehensive, MONY suggests the following replacement definition of the term:

(d) "Policy credit" means (1) dividend additions under an individual participating nonvariable annuity contract, (2) an increase in accumulation value of an individual nonparticipating nonvariable annuity contract, (3) an increase in the accumulation value in the separate investment account under an individual participating variable annuity contract, (4) an increase in the accumulation value in the general account investment option under an individual nonparticipating variable annuity contract or individual nonparticipating variable life insurance policy, (5) dividend deposits or dividend additions, as appropriate (depending of the selection of the underlying policy), (6) an increase in fund value on an individual nonparticipating nonvariable life insurance policy, (7) an extension of the expiry date on a policy which is in force as extended term life insurance pursuant to a non-forfeiture provision of a life insurance policy, or (8) an increase in the accumulation account value in the general account investment option under a group annuity contract or certificate issued thereunder.*

In addition, MONY suggests that Footnote 2, which appears on page 69315 of the Notice, be placed at the end of the revised definition of the term "policy credit" where the asterisk is shown above.

The Department concurs with the revisions suggested by MONY and has made the requested changes.

6. *Representation 4.* On page 69316 of the Summary, the second sentence of the fourth paragraph of Representation 4 states that MONY hired the actuarial firm of Tillinghast Towers-Perrin (TT-P) to conduct the actuarial review of the Plan of Reorganization. MONY wishes to clarify that because the Superintendent actually selected the actuarial firm of TT-P to assist him in his actuarial review of the Plan of Reorganization, the word "MONY" should be deleted and replaced with the term "the Superintendent."

The Department concurs with this clarification.

7. *Representation 6.* On page 69316 of the Summary, the second sentence of the second paragraph of Representation 6 states that as a result of the reorganization, MONY's charter and by-laws were extinguished in accordance with New York Insurance Law. MONY wishes to clarify that it was required to amend and restate its charter and by-laws to reflect the new organizational structure of the company. Therefore, it suggests that the word "extinguished" be replaced with the words "amended and restated."

In response, the Department concurs with the requested modification.

8. *Footnote 9.* On page 69317 of the Summary, Footnote 9 of Representation 8 states that (as a result of MONY's demutualization) both the fixed and variable components of an insurance policy will be provided in exchange for the policyholder's membership interests. For purposes of clarification, MONY requests that the term "insurance policy" be deleted and replaced with the word "consideration."

In response to this change, the Department concurs that Footnote 9 should have read as follows:

*MONY notes that both the fixed and variable components of consideration will be provided in exchange for the policyholder's membership interests.

9. *Representation 9.* On page 69317 of the Summary, the first sentence of the first paragraph of Representation 9 states that amounts to be distributed to Eligible Policyholders that are Plans will be held in an escrow or similar arrangement in the event that the Department does not provide exemptive relief prior to the date of the reorganization. MONY wishes to point out that its Plan of Reorganization and exemption application provide that such amounts "may" be held in an escrow or similar arrangement pending the finalization of the exemption and that subsequent text in Representation 9 reflects the fact that the escrow arrangement may be determined to be unnecessary if the proposed exemption specifies the date of reorganization as the effective date of the exemption.

The Department concurs with this modification.

MONY also wishes to point out that after the Department issued the Notice specifying the date of reorganization as the effective date of the exemption, the New York Department did not require that amounts distributed to Eligible Policyholders be held in an escrow or similar arrangement. As such, MONY represents that the required distributions to the Plans have taken place.

10. *Representation 10.* On page 69317 of the Summary, the first sentence of the first paragraph of Representation 10 states that MONY's Plan of Reorganization provides for the establishment of a commission-free sales program (the Program) whereby Stock Eligible Policyholders who receive between 25 and 99 shares of Holding Company stock will be given the opportunity to sell their Holding Company stock on the open market within 60 days prior to the commencement date of the program. While this representation is generally accurate, MONY notes that it, subject to

the New York Department's review, has determined that policyholders who receive up to 99 shares may participate in the Program. In addition, MONY has determined that the Program will be offered for three months commencing August 17, 1999 and ending November 17, 1999, which date may be extended by MONY with the approval of the Superintendent.

For further information regarding the comments or other matters discussed herein, interested persons are encouraged to obtain copies of the exemption application file (Exemption Application No. D–10661) the Department is maintaining in this case. The complete application file, as well as all supplemental submissions received by the Department are made available for public inspection in the Public Documents Room of the Pension and Welfare Benefits Administration, Room N–5638, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Accordingly, after giving full consideration to the entire record, including the written comments received, the Department has decided to grant the exemption subject to the modifications and clarifications described above.

FOR FURTHER INFORMATION CONTACT: Ms. Jan D. Broady of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemptions does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application are true and complete and accurately describe all material terms of the transaction which is the subject of the exemption. In the case of continuing exemption transactions, if any of the material facts or representations described in the application change after the exemption is granted, the exemption will cease to apply as of the date of such change. In the event of any such change, application for a new exemption may be made to the Department.

Signed at Washington, D.C., this 30th day of March, 1999.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, Department of Labor.

[FR Doc. 99–8225 Filed 4–2–99; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Office of the Assistant Secretary for Veterans Employment and Training Service

Funding for Fiscal Year (FY) 1999; Federal Contractor Award Information System (FCAIS)

AGENCY: Office of the Assistant Secretary for Veterans' Employment and Training Service (OASVET), DOL.

ACTION: Notice.

SUMMARY: The Department of Labor invites proposal for one new award in FY 1999 as authorized under Title 38 United States Code, Section 4212. These awards will allow for the transition of the current FCAIS system to an efficient, interactive, and user-friendly data information system that will collect data from the Commerce Business Daily (CBD) and the Federal Procurement Data System (FPDS).

DATES: Applications will be accepted commencing with the issuance of this notice. The closing date for receipt of application is May 10, 1999, at 4:45 p.m. (Eastern Time) at the address below.

COPIES OF THE APPLICATION PACKAGE: Ms. Lisa Harvey, Procurement Services Center, 200 Constitution Ave., NW, Room N–5416, Washington, DC 20210. Requests by telephone and by fax will not be honored.

SUPPLEMENTARY INFORMATION: The Office of the Assistant Secretary for Veterans' Employment and Training announces the availability of $249,000 to allow for the transition of the current FCAIS system to an efficient, interactive, user-friendly data information system, and that will collect data from the Commerce Business Daily (CBD) and the Federal Procurement Data System (FPDS). The successful applicant will provide information received from the CBD and FPDS to State Employment Security Agencies (SESAs), and Workforce Development Boards (WDBs), on current and new Federal contracts for job development and job listing purposes. This information is used by SESA and WDB staff to advise covered Federal contractors of their obligations to consider hiring special disabled, Vietnam-era veterans, and veterans who served on active duty during a war or in a campaign or expedition for which a campaign badge has been authorized. The grant recipient will be required to:

a. Collect and maintain a data base of CBD and FPDS contract award information and disseminate that information to SESA and WDB staff on at least some monthly bases.

b. Maintain, store, and update a database of Federal contractors as new contracts are awarded, and distribute this data to state service delivery agencies in the media and format requested.

c. Answer question by telephone about the FCAIS, and make referrals to VETS Staff, and State local service delivery offices and personnel.

d. Identify Federal contractor award needs and develop a system that satisfies DVOPs and LVERs staff requirements on Federal contractors, subcontractors and other employers listing with the State employment service work or workforce development local office.

The grantee will need to develop a nationally accessible system that will enable State staff to verify contractor information, and advise VETS when changes are needed. It is expected that when this new system is developed and approved, the grantee will no longer be responsible for maintaining the current FCAIS.

Eligible applicants must be State or local governments, commercial, or nonprofit entities capable of interfacing with the USDOL, all SESAs and WDBs. Grantees with slow start up of the FY 1999 program will be funded at less than total grant award.

However, the Office of the Assistant Secretary reserves the right not to fund a grantee who is performing poorly and

shows little promise of completing the agreed work.

Signed at Washington, DC this 29th day of March, 1999.

Lawrence J. Kuss,

Grant Officer.

[FR Doc. 99–8298 Filed 4–2–99; 8:45 am]

BILLING CODE 4510–79–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (99–053)]

NASA Advisory Council, Life and Microgravity Sciences and Applications Advisory Committee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a meeting of the NASA Advisory Council, Life and Microgravity Sciences and Applications Advisory Committee.

DATES: Thursday, April 22, 1999, 10:00 a.m. to 6:00 p.m.; and Friday, April 23, 1999, 8:00 a.m. to 12:00 Noon.

ADDRESSES: NASA Headquarters, Room 9H40, 300 E Street, SW, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Dr. Bradley M. Carpenter, Code UG, National Aeronautics and Space Administration, Washington, DC 20546, 202/358–1490.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—Office of Life and Microgravity Sciences and Applications (OLMSA) Overview
—Subcommittee Summary Reports
—Biology Pillars
—International Space Station (ISS) Commercial Development Plan
—Price-Waterhouse-Coopers Grant Costing
—Review of ISS Research Directions Document
—Discussion of Committee Findings and Recommendations

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

Dated: March 27, 1999.

Matthew M. Crouch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 99–8215 Filed 4–2–99; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (99–054)]

NASA Advisory Council (NAC), Technology and Commercialization Advisory Committee (TCAC); Meeting

2AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a meeting of the NASA Advisory Council, Technology and Commercialization Advisory Committee.

DATES: Tuesday, April 27, 1999, 8:30 a.m. to 5 p.m. and Wednesday, April 28, 1999, 8 a.m. to 3 p.m.

ADDRESSES: Goddard Space Flight Center, Building 6, Room S119, Greenbelt Road, Greenbelt, MD 20771.

FOR FURTHER INFORMATION CONTACT: Mr. Gregory M. Reck, Code AF, National Aeronautics and Space Administration, Washington, DC 20546 (202/358–4700).

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—Status Report Update on NASA Technology
—Technology Panel Report Discussion
—Commercialization Panel Report Discussion

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

Dated: March 29, 1999.

Matthew M. Crouch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 99–8216 Filed 4–2–99; 8:45 am]

BILLING CODE 7510–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–334 AND 50–412]

Duquesne Light Company, Ohio Edison Company, Pennsylvania Power Company, The Cleveland Electric Company, The Toledo Edison Company; Notice of Partial Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of Duquesne Light Company (the licensee) to withdraw a portion of its October 15, 1998, application for proposed amendment to Facility Operating License Nos. DPR–66 and NPF–73 for the Beaver Valley Power Station, Unit Nos. 1 and 2, located in Shippingport, PA.

The withdrawn portion of the proposed amendment would have revised the Unit 1 and Unit 2 Technical Specifications (TSs) by deleting the description of the site exclusion boundary. This description will remain in the TSs.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on November 18, 1998 (63 FR 64111). However, by letters dated February 18, 1999 and February 23, 1999, the licensee withdrew this portion of the proposed change as discussed above.

For further details with respect to this action, see the application for amendment dated October 15, 1998, as supplemented by letter dated December 14, 1998, and the licensee's letters dated February 18, 1999, and February 23, 1999, which partially withdrew the application for license amendment. The above documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, PA 15001.

Dated at Rockville, Maryland, this 26th day of March 1999.

For the Nuclear Regulatory Commission.

Daniel S. Collins,

Project Manager, Project Directorate I–1, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 99–8313 Filed 4–2–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-389]

Florida Power & Light Company; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–16 issued to Florida Power & Light Company (the licensee) for operation of the St. Lucie Plant, Unit 2 located in St. Lucie County, Florida.

The proposed amendment would modify the St. Lucie, Unit 2, Technical Specifications to increase the capacity of the spent fuel storage pool, in part, by allowing a credit for a certain soluble boron concentration in the spent fuel pool.

The Commission had previously issued a Notice of Consideration of Issuance of an Amendment published in the **Federal Register** on February 25, 1998 (63 FR 9602), and December 16, 1998 (63 FR 69340). These notices contained the Commission's proposed determination that the requested amendment involved no significant hazards considerations, offered an opportunity for comments on the Commission's proposed determination, and offered an opportunity for the applicant to request a hearing on the amendment and for persons whose interest might be affected to petition for leave to intervene.

Due to an oversight, the Notice of Consideration of Amendment for each of the previously mentioned **Federal Register** notices did not provide notice that this application involves a proceeding on an application for a license amendment falling within the scope of section 134 of the Nuclear Waste Policy Act of 1982. Such notice is required by the Commission's regulations, 10 CFR 2.1107.

The Commission hereby provides such notice that this is a proceeding on an application for a license amendment falling within the scope of section 134 of the Nuclear Waste Policy Act of 1982 (NWPA), 42 U.S.C. 10154. Under section 134 of the NWPA, the Commission, at the request of any party to the proceeding, must use hybrid hearing procedures with respect to "any matter which the Commission determines to be in controversy among the parties."

The hybrid procedures in section 134 provide for oral argument on matters in controversy, preceded by discovery under the Commission's rules and the designation, following argument of only those factual issues that involve a genuine and substantial dispute, together with any remaining questions of law, to be resolved in an adjudicatory hearing. Actual adjudicatory hearings are to be held on only those issues found to meet the criteria of section 134 and set for hearing after oral argument.

The Commission's rules implementing section 134 of the NWPA are found in 10 CFR part 2, subpart K, "Hybrid Hearing Procedures for Expansion of Spent Fuel Storage Capacity at Civilian Nuclear Power Reactors" (published at 50 FR 41662 dated October 15, 1985). Under those rules, any party to the proceeding may invoke the hybrid hearing procedures by filing with the presiding officer a written request for oral argument under 10 CFR 2.1109. To be timely, the request must be filed within ten (10) days of an order granting a request for hearing or petition to intervene. The presiding officer must grant a timely request for oral argument. The presiding officer may grant an untimely request for oral argument only upon a showing of good cause by the requesting party for the failure to file on time and after providing the other parties an opportunity to respond to the untimely request. If the presiding officer grants a request for oral argument, any hearing held on the application must be conducted in accordance with the hybrid hearing procedures. In essence, those procedures limit the time available for discovery and require that an oral argument be held to determine whether any contentions must be resolved in an adjudicatory hearing. If no party to the proceeding timely requests oral argument, and if all untimely requests for oral argument are denied, then the usual procedures in 10 CFR Part 2, Subpart G apply.

By May 5, 1999, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding and to invoke the hybrid hearing procedures as set forth above must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Indian River Community College Library, 3209 Virginia Avenue, Fort Pierce, Florida 34981-5596. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order. Requests for hearing and petitions for leave to intervene that do not seek to invoke the hybrid procedures are not authorized by this notice and would be considered untimely.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also

provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determinations is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene that seeks to invoke the hybrid hearing procedures in accordance with this notice must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to M.S. Ross, Florida Power & Light Company, P.O. Box 14000, Juno Beach, FL 33408–0420, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated December 31, 1997, as supplemented May 15, 1998, September 15, 1998, November 25, 1998, and January 28, 1999, which are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Indian River Community College Library, 3209 Virginia Avenue, Fort Pierce, Florida 34981–5596.

Dated at Rockville, Maryland, this 30th day of March 1999.

For the Nuclear Regulatory Commission.

William C. Gleaves,

Project Manager, Project Directorate II, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 99–8314 Filed 4–2–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. IA–98–006; ASLBP No. 99–765–02–EA]

Gary Isakoff; establishment of Atomic Safety and Licensing Board

Pursuant to delegation by the Commission dated December 29, 1972, published in the **Federal Register**, 37 FR 28,710 (1972), and Sections 2.700, 2.702, 2.714, 2.714a, 2.717, 2.721 of the Commission's Regulations, all as amended, an Atomic Safety and Licensing Board is being established to preside over the following proceeding.

Gary Isakoff, Order Prohibiting Involvement in NRC–Licensed Activities, IA–98–006

In accordance with 10 CFR 2.202, this Board is established as a result of a request for hearing dated March 16, 1999, submitted by Attorney John F. O'Riordan on behalf of petitioner, Gary Isakoff. The request is pursuant to an NRC Order published in the **Federal Register** on March 10, 1999 (64 FR 11,954). The Order prohibits Mr. Isakoff from participating in NRC-licensed activities for a period of one year. The Order requires him to immediately cease his involvement in any NRC-licensed activities; inform the NRC of the name, address, and telephone number of the employer for which he was performing those activities; and provide a copy of the Order to that employer. In addition, the Order requires Mr. Isakoff to notify NRC of any employment involving NRC-licensed activities for one year following the prohibition period.

The Board is comprised of the following administrative judges:

Charles Bechhoefer, Chairman, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555–0001

Dr. Richard F. Cole, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555–0001

Dr. Charles N. Kelber, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555–0001

All correspondence, documents and other materials in this proceeding shall be filed with the Judges in accordance with 10 CFR 2.701.

Issued at Rockville, Maryland, this 30th day of March 1999.

G. Paul Bollwerk III,

Acting Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 99–8312 Filed 4–2–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards, Meeting of the Subcommittee on Plant License Renewal; Notice of Meeting

The ACRS Subcommittee on Plant License Renewal will hold a meeting on April 28 and 29, 1999, in Room T–2B3,

11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Wednesday, April 28, 1999—1:00 p.m. until the conclusion of business

Thursday, April 29, 1999—8:30 a.m. until the conclusion of business

The Subcommittee will review the NRC staff's Safety Evaluation Report concerning Calvert Cliffs Plant License Renewal Application, and related matters. The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the cognizant ACRS staff engineer named below five days prior to the meeting, if possible, so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC staff and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, and the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor, can be obtained by contacting the cognizant ACRS staff engineer, Mr. Noel F. Dudley (telephone 301/415–6888) between 7:30 a.m. and 4:15 p.m. (EST). Persons planning to attend this meeting are urged to contact the above named individual one or two working days prior to the meeting to be advised of any potential changes to the agenda, etc., that may have occurred.

Dated: March 30, 1999.

Richard P. Savio,

Associate Director for Technical Support, ACRS/ACNW.

[FR Doc. 99–8311 Filed 4–2–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Issuance of Directors Decision Under 10 CFR 2.206

Notice is hereby given that by petition dated October 15, 1998, the Natural Resources Defense Council (NRDC) has requested that the U.S. Nuclear Regulatory Commission (NRC) exert authority to ensure that the U.S. Army Corps of Engineers' (the Corps) handling of radioactive materials in connection with the Formerly Utilized Sites Remedial Action Program (FUSRAP) is effected in accord with properly issued license and all other applicable requirements. As NRDC notes in its petition, FUSRAP began in 1974 as a program of the U.S. Department of Energy (DOE), and that DOE had identified a total of 46 sites for cleanup under FUSRAP. By 1997, cleanup of 25 of these sites had been completed. There are currently 21 sites still in need of remediation. In October 1997, Congress transferred funding for FUSRAP from DOE to the Corps. NRDC believes that the Corps should obtain an NRC license to conduct activities under FUSRAP. At this time, the NRC has not required the Corps to obtain a license.

The request has been referred to the Director of the Office of Nuclear Material Safety and Safeguards. A copy of the petition was sent to DOE and the Corps, and DOE and the Corps were given the opportunity to comment.

By letter dated November 30, 1998, NRC acknowledged receipt of the October 15, 1998, Petition.

The Director, Office of Nuclear Materials Safety and Safeguards, has determined that the request should be denied for the reasons stated in the "Director's Decision Under 10 CFR 2.206" (DD–99–07), the complete text of which follows this notice and which is available for public inspection in the Commission's Public Document Room, the Gelman Building, located at 2120 L Street, N.W, Washington D.C. 20555, and is also available on the NRC Electronic Bulletin Board at (800) 952–9676.

A copy of this Decision has been filed with the Secretary of the Commission for the Commission's review in accordance with 10 CFR 2.206(c) of the Commission's regulations. As provided by this regulation, this Decision will constitute the final action of the Commission 25 days after the date of issuance unless the Commission, on its own motion, institutes review of the Decision within that time.

Dated at Rockville, Maryland, this 26 day of March 1999.

For the Nuclear Regulatory Commission.

Carl J. Paperiello,

Director, Office of Nuclear Material Safety and Safeguards.

Director's Decision Under 10 CFR § 2.206

I. Introduction

On October 15, 1998, Thomas B. Cochran, Ph.D., Director, Nuclear Program, Natural Resources Defense Council (NRDC) and James Sottile, IV, Caplin & Drysdale, Chartered, filed a petition on behalf of NRDC (the "petitioner") addressed to L. Joseph Callan, Executive Director for Operations, U.S. Nuclear Regulatory Commission (NRC). The petition requests that NRC exert authority to ensure that the Corps of Engineers' handling of radioactive materials in connection with the Formerly Utilized Sites Remedial Action Program (FUSRAP) is effected in accord with a properly issued license and all other applicable requirements.

II. Background

During the 1940s, 1950s, and 1960s, the Manhattan Engineer District and the Atomic Energy Commission performed work at a number of sites throughout the United States as part of the nation's early atomic energy program. Although many of the sites were cleaned up under guidelines in effect at the time, residual contamination remains at many of the sites today. The contaminants at these sites involved primarily low levels of uranium, thorium, and radium, with their associated decay products. The U.S. Department of Energy (DOE) began FUSRAP in 1974 to study these sites and take appropriate cleanup action. By 1997, DOE had identified 46 sites in the program and had completed remediation at 25 sites with some ongoing operation, maintenance, and monitoring being undertaken by DOE. Remedial action was planned, underway, or pending final closeout at the remaining 21 sites.

On October 13, 1997, Congress passed the 1998 Energy and Water Development Appropriations Act,[1] which transferred administration of FUSRAP to the U.S. Army Corps of

[1] Energy and Water Development Appropriations Act, 1998, Pub. L. No. 105–62, 111 Stat. 1326 (1997)

Engineers (the Corps or USACE) and appropriated $140,000,000 to the Corps for the completion of FUSRAP activities. The language in the law reads as follows:

> For the expenses necessary to administer and execute the Formerly Utilized Sites Remedial Action Program to clean up contaminated sites throughout the United States where work was performed as part of the nation's early atomic energy program, $140,000,000, to remain available until expended: Provided, that the unexpended balances of prior appropriations provided for these activities in this Act or any previous Energy and Water Development Appropriations Act may be transferred to and merged with this appropriation account, and thereafter, may be accounted for as one fund for the same time period as originally enacted.[2]

The legislative history behind this provision offers little guidance regarding the details of the Corps' new involvement. The Conference Committee report states that "(t)he conferees have agreed to transfer the Formerly Utilized Sites Remedial Action Program (FUSRAP) to the Corps of Engineers, and funding for this program is contained in Title I of the bill."[3] The House Appropriations Committee report indicates that this change stems from concerns over the cost of the FUSRAP program under DOE. The Committee report concludes that "(c)learly, the problem must be in the contract management and contract administration function performed by the Department of Energy and the management and operating contractors who actually subcontract for most of the cleanup work."[4] Finally, citing the Corps' efforts under the Formerly Used Defense Sites (FUDS) program, the report indicates that there are significant cost and schedule efficiencies to be gained by ". . . having the Corps of Engineers manage the Department of Energy's FUSRAP program as well."[5]

Given the lack of guidance in the legislative history, two members of Congress sought to clarify the law's intent through subsequent correspondence. In a November 6, 1997, letter to Energy Secretary Federico Pena and Defense Secretary William Cohen, Senator Pete Domenici and Representative Joseph McDade indicated, among other things, that:

> Transfer of the FUSRAP program to the U.S. Army Corps of Engineers makes management, oversight, programming and budgeting, technical investigations, designs, administration, and other such activities directly associated with the execution of remediation work at the currently eligible sites a responsibility of the Corps of Engineers. It should be emphasized that *basic underlying authorities for the program remain unaltered and the responsibility of DOE* [emphasis added].

The Energy and Water Development Appropriations Act for fiscal year 1999 (FY99), P.L. 105–245, continued the Corps' involvement as the implementing agency for the FUSRAP. In particular, the 1999 Act provided that response actions by the United States Army Corps of Engineers under FUSRAP shall be subject to the administrative, procedural, and regulatory provisions of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) (42 U.S.C. 9601 *et seq.*), and the National Oil and Hazardous Substances Pollution Contingency Plan, 40 CFR, Chapter 1, Part 300. In addition, the 1999 Act provided that, "* * * except as stated herein, these provisions do not alter, curtail or limit the authorities, functions or responsibilities of other agencies under the Atomic Energy Act (42 U.S.C. 2011 *et seq.*) * * *"[6]

To date, NRC has not regulated activities conducted under FUSRAP, including those activities conducted by the Corps since the transfer of the program. The petitioner, however, believes that NRC should regulate the Corps' FUSRAP activities, arguing that the Appropriations Act did not purport to transfer authority over FUSRAP to the Corps. As such, according to the petitioner, the Corps may not legally administer the program absent proper oversight because, unlike DOE and (in most cases) DOE contractors, the Corps is not exempt from the licensing requirements of the Atomic Energy Act (see 42 U.S.C. 2014(s)). The petitioner further indicates that DOE has publicly stated that it cannot extend its licensing exemption for private contractors to the Corps and that DOE has no regulatory authority over the Corps for the latter's FUSRAP activities. The petitioner concludes that "* * * the Corps does not have the legal authority to run FUSRAP without first obtaining a license from the NRC."

In support of its position, the petitioner notes that the institutional mission of the Corps is not focused on the safety and security of the nation's nuclear activities. In addition, NRC's failure to regulate the Corps' FUSRAP activities is claimed to be inconsistent with the intent of the laws governing the utilization and cleanup of nuclear materials. Finally, the petitioner adds that, with very few exceptions, Congress intended that no person should be permitted to handle nuclear materials except in accordance with a license issued by NRC.

In a November 30, 1998, letter NRC informed the petitioner that the petition had been received and was currently under review. On the same date, NRC forwarded the petition to the DOE and the Corps for their comment. In a January 12, 1999, letter, the Chief Counsel for the Corps, Robert M. Andersen, responded to NRC's request. DOE responded to NRC's request in a January 14, 1999, letter from William J. Dennison, Assistant General Counsel for Environment.

The Corps' Response

In its response, the Corps states that it is not required to obtain a license from NRC for its FUSRAP activities. The Corps' response emphasizes that Congress directed the Corps to conduct its FUSRAP activities pursuant to the CERCLA.[7] The Corps' principal argument is that no NRC license is required because of the federal permit waiver for on-site removal or remedial actions in § 121(e)(1) of CERCLA. The Corps also believes that the AEA exempts FUSRAP activity from NRC licensing. In its opinion, "Congress intended for USACE to fill the shoes of the AEC successor agency responsible for FUSRAP cleanup, that is DOE, an agency not considered a "person" subject to licensing under the AEA." The Corps further posits that, in transferring the FUSRAP program, Congress expressed no intent that the agency obtain an NRC license for that activity and, instead, sought a seamless transition "unimpeded by procedural requirements outside of CERCLA."

Nevertheless, the Corps commits to meeting the substantive requirements of both the Atomic Energy Act (AEA) and CERCLA. It acknowledges that NRC license requirements may apply to portions of FUSRAP response actions conducted off-site, beyond the scope of the permit waiver. The letter concludes by acknowledging that the substantive provisions of NRC regulations are applicable or relevant and appropriate requirements (ARARs) for many FUSRAP response actions under CERCLA and, as such, the Corps will look "... to NRC for guidance in interpreting and implementing these requirements on the sites."

DOE's Response

DOE's response differs in several respects from that of the Corps. On the

---

[2] *Id.*

[3] H.R. Conf. Rep. No. 271, 105th Cong., 1st Sess., 85 (1997).

[4] H.R. Rep. No. 190, 105th Sess., 99 (1997).

[5] *Id.*

[6] Pub. L. No. 105–245, Title I.

[7] 42 USC 9601 *et seq.*

matter of DOE's continued involvement with FUSRAP and oversight of the Corps, the Department "respectfully disagrees" with the Corps. According to its submittal, DOE is not authorized to regulate the Corps' FUSRAP activities and cannot transfer its AEA authorities to the Corps. In the Department's view, "(t)he transfer legislation did not make the Corps a DOE contractor, or otherwise subject the Corps' activities to the control or direction of DOE." The letter also indicates that DOE and the Corps are currently developing a memorandum of understanding (MOU) to clarify their respective roles and responsibilities as a result of the legislative transfer. Nevertheless, DOE believes that, with the exception of a few "administrative issues," there are no remaining issues between the two agencies that should affect NRC's disposition of the NRDC petition. The letter concludes that NRC should "evaluate the licensability of the Corps' activities in the same manner as it would evaluate the activities of any other 'person' within the meaning of the Atomic Energy Act." DOE defers to NRC on this question. The letter does not contain a DOE position concerning the viability of the Corps' CERCLA argument.

III. Discussion

The NRC staff has completed its evaluation of the petitioner's requests and the responses from the Corps of Engineers and the Department of Energy. For the reasons discussed below, the NRC denies the petitioner's request insofar as it calls on NRC to require the Corps to obtain a license for activities conducted at FUSRAP sites.

CERCLA Permit Waiver

Pursuant to § 121(e)(1) of CERCLA, "(n)o Federal, State, or local permit shall be required for the portion of any removal or remedial action conducted entirely onsite, where such remedial action is selected and carried out in compliance with this section."[8] This provision waives any NRC license requirements that would apply to the Corps' activities at FUSRAP sites conducted pursuant to CERCLA.

The Corps argues that, because Congress specifically subjected FUSRAP sites to the provisions of CERCLA in the 1999 Act, section 121(e)(1) applies to Corps' response actions at FUSRAP sites. In developing regulations for the implementation of CERCLA, the Environmental Protection Agency (EPA) addressed the § 121(e)(1) waiver provision for federal agency CERCLA response actions in § 300.400(e) of the National Contingency Plan (NCP). That provision states, in pertinent part:

"Permit requirements. (1) No federal, state, or local permits are required for on-site response actions conducted pursuant to CERCLA sections 104, 106, 120, 121, or 122. The term on-site means the areal extent of contamination and all suitable areas in very close proximity to the contamination necessary for implementation of response actions."[9]

In the preamble of the final rule which proposed this section, EPA provided:

Proposed § 300.400(e)(1) states that the permit waiver applies to all on-site actions conducted pursuant to CERCLA sections 104, 106, or 122; in effect, this covers all CERCLA removal and remedial actions (all "response" actions). However, a number of other federal agencies have inquired as to whether this language would reach response actions conducted pursuant to CERCLA sections 121 and 120. In response, EPA has made a non substantive clarification of the applicability of the permit waiver in CERCLA section 121(e)(1) to include on-site response actions conducted pursuant to CERCLA sections 120 and 121. . . . The addition of CERCLA section 120 simply recognizes that the permit waiver applies to federal facility cleanups conducted pursuant to CERCLA section 120(e), which are also selected and carried out in compliance with CERCLA section 121.[10]

Section 121(e)(1) applies to federal agencies such as the Corps in this case. The Corps may take the role of "lead agency" in a CERCLA cleanup action. The NCP defines "lead agency" as "the agency that provides the OSC/RPM to plan and implement response actions under the NCP. EPA, the USCG, another federal agency, or a state * * * may be the lead agency for a response action."[11] The NCP also states that "Federal agencies listed in § 300.175 have duties established by statute, executive order, or Presidential directive which may apply to federal response actions following, or in prevention of, the discharge of oil or release of a hazardous substance, pollutant, or contaminant."[12] The Corps, a branch of the U.S. Department of Defense, is among the agencies listed.[13] In the case of the FUSRAP program, Congress specifically designated the Corps as the "lead agency" in passing the 1999 Appropriations Act.[14]

As the Corps acknowledges in its letter, the permit waiver in § 121(e)(1) has been rarely addressed in the courts. In support of its position, the Corps does cite *McClellan Ecological Seepage Situation (MESS)* v. *Cheney*, a case which held that a Resource Conservation and Recovery Act (RCRA) permit was not required when activities which might otherwise require a RCRA permit took place at a site only as part of a CERCLA removal or remedial action.[15] In *McClellan*, MESS, a citizens' group, filed suit against the Secretary of Defense, with regard to cleanup actions being taken at McClellan Air Force Base, under RCRA and certain state laws. MESS claimed, *inter alia*, that McClellan was required to obtain a RCRA permit for the management of certain hazardous wastes on the base. The court held that an RCRA permit was not required, because the remedial activities were taken pursuant to CERCLA. The court relied on § 121(e)(1), stating, "Section 121(e) expressly provides that the activity does not have to be separately permitted."[16]

The Corps also cites *United States* v. *City of Denver* to uphold this interpretation of § 121(e)(1).[17] In that case, the court held that CERCLA preempted a zoning ordinance which was in actual conflict with EPA's remedial order. The court stated, "[T]o hold that Congress intended that non-uniform and potentially conflicting zoning laws could override CERCLA remedies would fly in the face of Congress's [sic] goal of effecting prompt cleanups of the literally thousands of hazardous waste sites across the country."[18]

---

[8] *See also*, 10 CFR 300.400(e).

[9] 40 CFR 300.400(e)(1).

[10] 55 FR 8666, 8689 (1990) ("National Oil and Hazardous Substances Pollution Contingency Plan; Final Rule) (emphasis added). This change echoed EPA's intentions stated in the proposed rule: "EPA proposes to state that on-site permits are not required for response actions taken by EPA, *other federal agencies*, States, or private parties pursuant to CERCLA sections 104, 106, or 122." 53 Fed. Reg. 51394, 51406 (1988) ("National Oil and Hazardous Substances Pollution Contingency Plan; Proposed Rule) (emphasis added).

[11] 40 CFR 300.5 (emphasis added). The definition goes on to state, "The federal agency maintains its lead agency responsibilities whether the remedy is selected by the federal agency for non-NPL sites or by EPA and the federal agency or by EPA alone under CERCLA section 120."

[12] 40 CFR 300.170.

[13] *See* 40 CFR 300.175(b)(4)(i).

[14] Pub. L. No. 105–245, Title I.

[15] 763 F. Supp. 431 (E.D. Cal. 1989). This holding was later vacated on the basis of subject matter jurisdiction. *See McClellan Ecological Seepage Situation (MESS)* v. *Perry*, 47 F.3d 325 (9th Cir. 1995).

[16] 763 F. Supp. 431, at 435. The court went on to note in dicta that where there has been treatment that requires a RCRA permit which is not associated with a remedial or removal action under CERCLA, such a permit would be required. *Id.*

[17] 100 F.3d 1509 (10th Cir. 1996).

[18] *Id.* at 1513. The Corps cited *Ohio* v. *USEPA*, 997 F.2d 1520 (D.C. Cir. 1993) in support of its § 121(e)(1) position. NRC would note that the case upholds a number of provisions in EPA's 1990 revision of the NCP, including § 121(e)(1). However, the court's discussion centers on EPA's definition of the term "onsite," and does not discuss the exemption provision, as a whole, in detail.

In passing the 1998 and 1999 Appropriations Acts, Congress gave no indication that it intended to suspend the waiver provision in § 121(e)(1) of CERCLA in the context of the Corps' FUSRAP activities. The 1999 Act does say: "Provided further, That, except as stated herein, these provisions do not alter, curtail or limit the authorities, functions or responsibilities of other agencies under the Atomic Energy Act (42 U.S.C. 2011 *et seq.*) * * *" In its letter, DOE points to this language to support its argument that the Appropriations Act does not create any authority for it to regulate the Corps. In doing so, DOE interprets the term "provisions" as referring to the provisions of the Appropriations Act and not the provisions of CERCLA. The NRC staff agrees with DOE on this point. While the language appears to indicate that the transfer of the program to the Corps does not alter the extent of DOE and perhaps NRC authority under the AEA, there is no specific indication that the language is intended to direct NRC to regulate the Corps' administration of the FUSRAP program. In particular, there is no evidence that in including this phrase, Congress intended to limit the application of the § 121(e)(1) permit waiver to the Corps' FUSRAP activities. In fact, nowhere in the reports for either the 1998 or 1999 Acts or in the text of the laws themselves did Congress give any hint that it intended NRC to regulate the Corps in its administration of the FUSRAP program. Instead, the inclusion of the specific reference to CERCLA suggests that Congress intended NRC to continue to refrain from regulating activities under the FUSRAP program even after DOE's role was reduced or discontinued.

As DOE states in its letter, the Corps has "consistently expressed the view that its authorities under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) * * *" are sufficient for the Corps' administration of the FUSRAP program. By the time the 1999 Appropriations Act was passed, the Corps' administration of the FUSRAP program under CERCLA was a matter of public record [19] and NRC had not taken any steps to require the Corps to obtain a license from NRC. If Congress had intended NRC to regulate the Corps' activities at FUSRAP sites, it is likely that it would have specifically directed NRC to do so in passing the 1999 Appropriations Act.

We note, however, that the waiver in § 121(e)(1) does not apply to off-site activities. To the extent that NRC and U.S. Department of Transportation (DOT) requirements apply to the transportation, transfer and disposal of Atomic Energy Act material taken off of FUSRAP sites, the Corps has committed to following applicable requirements, including those for transfer under the AEA, shipment under the Hazardous Materials Transportation Act, 49 U.S.C. 5101, and NRC manifest requirements (e.g., 10 CFR § 20.2006).[20]

NRC Authority Under UMTRCA

Many FUSRAP sites contain material over which NRC would have no regulatory jurisdiction regardless of whether the Corps is the lead agency in implementing the program and regardless of whether response actions by the Corps under the program are subject to CERCLA. In particular, of the 21 sites at which remediation has not yet been completed, 12 sites contain residual material resulting from activities that were not licensed by NRC at the time the Uranium Mill Tailings Act of 1978 (UMTRCA) became effective or at any time thereafter. As defined by the UMTRCA, NRC does not have authority to regulate cleanup of covered residual material resulting from an activity that was not so licensed.

The language of section 83 of the Atomic Energy Act (42 U.S.C. 2113(a)), was added to that Act by UMTRCA. Section 83 a. requires NRC to impose certain terms and conditions relating to cleanup with respect to any "license issued or renewed after the effective date" of section 83 for covered activities, and also imposes such terms or conditions on any such "license in effect on the date of enactment" of the section. No such responsibility was imposed upon NRC with respect to activities that were not under NRC license before the date of the enactment of section 83, if they were not licensed thereafter.

Prior to the enactment of UMTRCA, neither the AEC nor the NRC had statutory jurisdiction over residual material resulting from the processing of ore for source material. This position was taken by the AEC after careful legal analysis, and was subsequently adopted by the NRC when it succeeded to the AEC's regulatory functions. Though NRC exercised some control over such material in connection with licensed processing of ore for source material, it did not exercise jurisdiction at inactive sites where no license was in effect. UMTRCA was enacted because the Congress recognized that NRC did not have jurisdiction over radioactive residuals resulting from the extraction of uranium or thorium from ore processed for its source material content at inactive sites. This is evidenced by the floor remarks regarding the amended version of H.R. 13650, the bill that was enacted as UMTRCA. Senator Hart explained:

> Although the NRC licenses active uranium mining and milling activities, existing law does not permit the Commission to regulate the disposal of mill tailings once milling and mining operations cease and the operating license expires. It is that authority to regulate tailings after milling operations cease, that we propose be given to the NRC.[21]

Because the residual material at many FUSRAP sites was generated in activities that were not licensed when UMTRCA was enacted, or thereafter, NRC today has no basis to assert any regulatory authority over handling of the residuals at those sites.

The NRC staff notes that many of the remaining sites (i.e., sites containing materials other than mill tailings) also raise some significant jurisdictional questions in their own right. For instance, a few of the sites may still be in legal possession of DOE even though the Corps is conducting clean up at the site under FUSRAP. While the issue of possession appears to be a matter of continuing discussion between the Corps and DOE, it is highly unlikely that NRC would have authority to require a license for cleanup activities conducted at a site which continues to be a DOE-owned or controlled site. In addition, the concentration of radioactive material at some of the remaining sites may not be sufficient to trigger NRC license requirements. While NRC does not have information sufficient to reach a final conclusion for specific sites, it is the NRC staff's understanding that some of these sites may contain only "unimportant quantities" of source material as defined under 10 CFR § 40.13(a). If this is the case, the amount of material at these sites would not be sufficient to implicate NRC license requirements. Given the limitations of NRC jurisdiction under UMTRCA, the potential DOE ownership issues, and the possibility that several sites may

[19] See, e.g., Letter from Albert J. Genetti, Jr., U.S. Army Deputy Commander, U.S. Army Corps of Engineers, to Mr. Thomas B. Cochran and Ms. Barbara A. Finamore, Natural Resources Defense Council, May 20, 1998.

[20] While the Corps will be following NRC's requirements in this area, it is unlikely that any specific NRC license requirements would apply to shipments from FUSRAP sites. However, the staff will request that the Corps contact NRC if it plans to ship material that does not meet one of the exemptions for a specific license in NRC regulations. See, e.g., 10 C.F.R. § 71.10.

[21] 124 Cong. Rec. S18,748 (October 13, 1978).

contain "unimportant quantities" of source material, it is likely that the number of FUSRAP sites over which NRC may have jurisdiction would be very small even absent the CERCLA permit waiver.

The Corps' Authority Under the Appropriations Act

In its response, the Corps states that the AEA also exempts FUSRAP activity from NRC licensing because Congress intended the Corps to fill the shoes of DOE, an agency exempt from NRC regulatory requirements under most circumstances. DOE disagrees with this characterization, claiming that, for the most part, it has no role in the FUSRAP program at this time (regulatory, contractual, or otherwise). As such, in DOE's view, the Corps cannot rely on any exemption in the AEA to avoid regulation by NRC. Nevertheless, DOE acknowledges that the transfer to the Corps did not completely eliminate the Department's involvement with FUSRAP. While the issues have yet to be resolved, DOE may have responsibility for inventory reporting of government-owned FUSRAP sites to the General Services Administration and may be required to conduct post-cleanup monitoring at some sites after the Corps' clean up activities cease.

DOE and the Corps are working on an MOU to address their disagreements regarding the nature of the transfer of the FUSRAP program and their respective responsibilities under the program. Until the disagreement has been resolved, either by the agencies or by further direction from Congress, the NRC staff need not reach a conclusion on the matter. Nevertheless, in view of the clear applicability of CERCLA § 121(e)(1) to the Corps' activity at FUSRAP sites, the staff does not believe that it would be appropriate to require the Corps to obtain an NRC license for its activity at FUSRAP sites.

IV. Conclusion

In sum, Congress has given NRC no clear directive to oversee USACE's ongoing effort under CERCLA to complete the FUSRAP cleanup project. Indeed, Congress has provided NRC no money and no personnel to undertake an oversight role. In addition, Congress has made it clear that the Corps is to undertake FUSRAP cleanup pursuant to CERCLA which waives permit requirements for onsite activities. In these circumstances, we are disinclined to read our statutory authority expansively, and to commit scarce NRC resources, to establish and maintain a regulatory program in an area where, under Congressional direction, a sister federal agency already is at work and has committed itself to following appropriate safety and environmental standards.

Accordingly, I deny the petition insofar as it requests NRC to impose licensing and other regulatory requirements on the Corps for that agency's handling of radioactive material at FUSRAP sites. Both the permit waiver provision of CERCLA and the ambiguity regarding DOE's role in the program lead me to the conclusion that NRC should not inject itself into the FUSRAP program at this time. Absent specific direction from Congress to the contrary, NRC will continue to refrain from regulating the Corps in its clean up activities at FUSRAP sites.

As provided by 10 C.F.R. § 2.206, a copy of this Decision will be filed with the Secretary of the Commission for the Commission's review. The Decision will become the final action of the Commission 25 days after issuance, unless the Commission, on its own motion, institutes review of the Decision within that time.

Dated at Rockville, Maryland this 26th day of March 1999.

For the Nuclear Regulatory Commission.

Carl J. Paperiello,

Director, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 99–8315 Filed 4–2–99; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–26995]

Filings Under the Public Utility Holding Company Act of 1935, as Amended ("Act")

March 26, 1999.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by April 20, 1999, to the Secretary, Securities and Exchange Commission, Washington, DC 20549–0609, and serve a copy on the relevant applicant(s) and/or declarants(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After April 20, 1999, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Ameren Corporation, et al. (70–9427)

Ameren Corporation ("Ameren"), a registered holding company, Union Electric Company ("UE"), an electric and gas public utility subsidiary of Ameren, Union Electric Development Company ("UEDC"), an indirect nonutility subsidiary of Ameren, Ameren Development Company ("Ameren Development"), and "energy-related company" within the meaning of rule 58 and a subsidiary of Ameren, Ameren ERC, Inc., and "energy-related company" within the meaning of rule 58 and a wholly owned subsidiary of Ameren Development, all located at 1901 Chouteau Avenue, St. Louis, Missouri 63103, and Central Illinois Public Service Company ("CIPS"), an electric and gas public utility subsidiary of Ameren and CIPSCO Investment Company ("CIC"), a nonutility subsidiary of Ameren, both located at 607 East Adams, Springfield, Illinois 62739, (collectively, "Applicants") have filed an application-declaration under sections 6(a), 7, 9(a), 10, 12(c), 13(b) and rules 45, 46, 54, 87, 90 and 91 of the Act.

By order dated December 30, 1997 ("Merger Order"),[1] Ameren was authorized, among other things, to acquire all of the issued and outstanding common stock of UE and CIPS (collectively, the "Operating Companies") and Ameren Services, a subsidiary service company. By order dated March 13, 1998 ("Financing Order"),[2] Ameren was authorized, among other things to: issue and sell common stock and other securities; repay, redeem or retire securities of Ameren or its subsidiaries; and, provide working capital to its subsidiaries. Ameren was also authorized to issue guarantees and provide other forms of credit support in respect of the obligations of its existing and future nonutility subsidiaries in an aggregate principal amount not to exceed $300

[1] *See* Holding Co. Act Release No. 26809.

[2] *See* Holding Co. Act Release No. 26841.

million outstanding at any one time. Ameren's then existing nonutility subsidiaries were authorized to provide guarantees and other forms of credit support in respect of the obligations of other nonutility subsidiaries in an aggregate principal amount not to exceed $50 million outstanding at any one time.

Ameren now proposes, through December 31, 2003 ("Authorization Period"), to consolidate under Ameren Development, the direct and indirect ownership of various existing and future nonutility businesses and to engage in preliminary development activities ("Development Activities")[3] and administrative and management activities ("Administrative Activities")[4] associated with these investments.[5]

Ameren and Ameren Development request authority through the Authorization Period to organize and acquire, directly or indirectly, the equity securities of one or more nonutility subsidiaries ("Nonutility Subsidiaries").[6] Ameren and Ameren Development further propose to acquire the securities of one or more intermediate subsidiaries, which would be organized exclusively for the purpose of acquiring, holding and/or financing the acquisition of the securities of, or other interest in, one or more exempt wholesale generator ("EWG"), foreign utility company ("FUCO"), exempt telecommunications company ("ETC") (collectively, "Exempt Subsidiaries"), "energy-related company" within the meaning of rule 58 ("Rule 58 Subsidiary"), or other Nonutility Subsidiaries.

Intermediate subsidiaries may be organized exclusively for the purpose of acquiring and holding the securities of other direct or indirect nonutility subsidiaries of Ameren Development and may engage in Development Activities and Administrative Activities. An intermediate subsidiary may be organized, among other things, (1) to facilitate the making of bids or proposals to develop or acquire an interest in any Exempt Subsidiary, or other nonutility company which, upon acquisition, would qualify as a Rule 58 Subsidiary or other Non-Exempt Subsidiary; (2) to facilitate closing on the purchase or financing of an acquired company; (3) to effect an adjustment in the respective ownership interests in the business held by Ameren or Ameren Development and non-affiliated investors; (4) to facilitate the sale of ownership interests in one or more acquired nonutility company; (5) to comply with applicable laws of foreign jurisdictions; (6) to provide tax planning; (7) to insulate Ameren and its Operating Companies from operational or other business risks that may be associated with investments in nonutility companies; or, (8) for other lawful business purposes.

Financing subsidiaries may be formed for the purpose of issuing securities to investors other than Ameren in order to finance, in whole or in part, Ameren's direct or indirect acquisitions of Exempt Subsidiaries and Rule 58 Subsidiaries. Ameren and Ameren Development request authority to acquire, directly or indirectly, the equity securities of one or more corporations, trusts, partnerships or other entities created specifically for the purpose of facilitating the financing of Ameren's and its subsidiaries' authorized and exempt activities (including exempt and authorized acquisitions) through the issuance of long-term debt or equity securities to third parties and the transfer of the proceeds of these financings to Ameren or any of its subsidiaries.

Ameren may guarantee or enter into expense agreements in respect of the obligations of any of these financing subsidiaries.[7] If the direct parent company of a financing subsidiary is authorized in this proceeding or any subsequent proceeding to issue long-term debt or similar types of equity securities, then the amount of the securities issued by that financing subsidiary would count against the limitation applicable to its parent for those securities. In these cases, however, the guaranty by the parent of that security issued by its financing subsidiary would not be counted against the limitation on guarantees by Ameren authorized in the Financing Order or guarantees by Ameren Development or any of its subsidiaries, as requested in this application-declaration. In other cases, in which the parent company is not authorized in this or in a subsequent proceeding to issue similar types of securities, the amount of any guarantee not exempt under rules 45(b)(7) and 52 that is entered into by the parent company with respect to securities issued by its financing subsidiary would be counted against the limitation on Ameren guarantees under the Financing Order or guarantees by Ameren Development and its subsidiaries, as requested in this application-declaration.

Special-purpose subsidiaries seek authority to engage in any of the businesses or activities that UEDC or CIC are currently authorized to engage in under the terms of the Merger Order and which would not otherwise qualify as permitted or exempt businesses under rule 58 or section 34 of the Act;[8] customer financing; development and project activities; bill payment insurance; economic development services; customer goodwill programs; and outage insurance.

UEDC and CIC are currently engaged directly, or through subsidiaries, in certain nonutility businesses, including automated meter reading, the sale of appliance warranties, and demand side management programs. UEDC and CIC therefore request authority, to the extent needed,[9] to sell or otherwise transfer these businesses or the securities of current subsidiaries engaged in some or all of these businesses to Ameren Development or a subsidiary of Ameren Development. To the extent required, Ameren Development or any subsidiary of Ameren Development request authority to acquire the assets of these businesses or securities of subsidiaries of UEDC and CIC engaged in these businesses.[10] UEDC and CIC would sell the assets or securities for an amount equal to their cost or, alternatively, transfers of the securities or assets may be effected by distributions by UEDC, CIC and UE to Ameren, followed by Ameren's contribution of these

[3] Development Activities will be limited to: due diligence and design review; market studies; preliminary engineering; site inspection; preparation of bid proposals, including posting of bid bonds; application for required permits and/or regulatory approvals; acquisition of site options and options on other necessary rights; negotiation and execution of contractual commitments with owners of existing facilities, equipment vendors, construction firms, power purchasers, thermal hosts fuel suppliers and other project contractors; negotiation of financing commitments with lenders and other third-party investors; and other preliminary activities as may be required in connection with the purchase, acquisition and construction of facilities.

[4] Administrative Activities will include ongoing personnel, accounting, engineering, legal, financial, and other support activities necessary to manage Ameren Development's Development Activities and investments in subsidiaries.

[5] Ameren Development proposes to expend up to $250 million during the Authorization Period on Development Activities.

[6] Nonutility Subsidiaries may include intermediate subsidiaries, financing subsidiaries and special-purpose subsidiaries.

[7] The terms and conditions of these guarantees, including the duration and expiration thereof, would be the same as now authorized under the Financing Order.

[8] UEDC holds a small equity interest in a company that may be certified as an ETC under section 34.

[9] The sale of securities, assets or an interest in another business to an associate company may be exempt under rule 43(b).

[10] It is contemplated that UEDC will remain a wholly owned subsidiary of UE. Ameren may, however, contribute the stock of CIC to Ameren Development at some point in the future.

securities or assets to Ameren Development.[11]

Investments in special-purpose subsidiaries by Ameren Development may take the form of purchases of common stock or other equity securities, loans, capital contributions, cash advances or guarantees, or any combination of the foregoing.[12] Special-purpose subsidiaries request approval, to the extent required, to purchase the assets of or securities held by UEDC and/or CIC in those businesses identified in the Merger Order in which UEDC and/or CIC are already engaged, directly or indirectly, and which would not qualify as permitted or exempt activities under section 34 or rule 58.[13]

Ameren Development, Ameren Energy, CIC and any existing or future subsidiary of any of the foregoing, propose through the Authorization Period to provide guarantees or other forms of credit support in respect of securities issued by or other obligations of each other in an aggregate principal amount oat any time outstanding not to exceed $300 million, provided that any guaranty or other form of credit support outstanding on December 31, 2003, shall remain in effect until it expires in accordance with its terms.[14]

Credit support may take the form of direct guarantees of securities issued by any direct or indirect subsidiary, stand-by equity funding commitments, obligations under capital maintenance agreements or under reimbursement agreements in respect of bank letters of credit, payment obligations under contracts, or other similar financial instruments or contractual undertakings.

Ameren Development, Ameren Energy, CIC and any direct or indirect Rule 58 Subsidiaries of Nonutility Subsidiaries (including any intermediate subsidiary) of Ameren Development request an exemption under section 13(b) from the cost standard of rules 90 and 91 as applicable to these transactions, in any case in which any of the following circumstances apply:

(1) The client company is a FUCO or foreign EWG that derives no part of its income, directly or indirectly, from the generation, transmission, or distribution of electric energy for sale within the United States;

(2) The client company is an EWG that sells electricity at market-based rates which have been approved by the Federal Energy Regulatory Commission ("FERC");

(3) The client company is a "qualifying facility" ("QF") within the meaning of the Public Utility Regulatory Policies Act of 1978, as amended ("PURPA") that sells electricity exclusively (a) at rates negotiated at arms' length to one or more industrial or commercial customers purchasing electricity for their own use and not for resale and/or (b) to an electric utility company at the purchaser's "avoided cost" as determined in accordance with the regulations under PURPA; or (4) the client company is a domestic EWG or QF that sells electricity at rates based on its cost of service, as approved by FERC or any state public utility commission having jurisdiction, provided that the purchaser thereof is not an operating company within the Ameren System; or, (5) Ameren does not own 100% of the capital stock of the nonutility client company.

Applicants request an exemption from section 13(b) of the Act in connection with the performance of Administrative Activities or Development Activities for any client company that is an Exempt Subsidiary, Rule 58 Subsidiary or Non-Exempt Subsidiary if (a) the client company is a subsidiary of Ameren, the sole business of which is developing, owning, operating and/or providing services to other affiliated companies described in subparagraphs (1) through (5), above, or, (b) the client company is a subsidiary of Ameren, which does not derive, directly or indirectly, any material part of its income from sources within the United States and is not a public-utility company operating within the United States.

It is contemplated that Ameren Development will purchase management, marketing, development, accounting and administrative services from Ameren Services under a General Services Agreement.[15] In addition, utilizing a work order procedure, Ameren Development will request the Operating Companies to provide personnel and other resources as needed, from time to time, to consult and assist in engineering and other required functions in connection with the authorized business activities of Ameren Development and its subsidiaries. Ameren Development proposes to enter into a service agreement ("Nonutility Service Agreement") with each Operating Company that will be substantially similar to the General Services Agreement to obtain these services. An Operating Company may, in its absolute discretion, elect not to participate, either through personnel or other resources in any of Ameren Development's projects and businesses. If additional personnel and resources are not obtainable from within the Ameren System they will be obtained or hired from external sources.

Ameren Services will also continue to provide assistance in connection with financial, accounting, and internal auditing functions for Ameren Development utilizing those accounting systems which are economically justifiable under the circumstances. The accounts of Ameren Development will continue to be subject to audit by the independent accountants of Ameren.

Ameren Services and the Operating Companies will be reimbursed promptly for their costs incurred in connection with rendering any services to Ameren Development or its subsidiaries. The Operating Companies will utilize cost accounting procedures designed to identify promptly all direct and indirect costs, including overheads, which are applicable to the work being performed by or with Operating Company personnel, material or other assets. Ameren Services will account for, allocate and charge its costs to Ameren Development or its subsidiaries using procedures permitted under rules 90 and 91 and currently applicable methods of allocation as set forth in the General Services Agreement. All transactions between Ameren Development and Ameren Services and the Operating Companies will be at cost in compliance with section 13 and rules 90, 91 and 92.

Rule 58 Subsidiaries and special-purpose subsidiaries request authority to sell goods and services to customers both within and outside of the United States. The goods and services may include brokering and marketing electricity, natural gas and other energy commodities; energy management services; performance contracting services; technical support services; certain retail services; monitoring and response goods and services; energy-peaking services; and, project development and ownership activities. Ameren Development proposes to perform energy management services and technical support services and

[11] The transactions proposed in this paragraph will not involve the sale or other disposition of any utility assets of the Operating Companies.

[12] Ameren Development proposes to invest in these entities in an aggregate amount at any time outstanding not to exceed $250 million.

[13] UEDC holds a small equity interest in one company that may be certified as an ETC under section 34 of the Act.

[14] The authorization requested herein is intended to replace and supersede the $50 million limitation on guarantees and other forms of credit support contained in the Financing Order. The terms and conditions of these guarantees, including the duration or expiration thereof, would be the same as now authorized under the Financing Order.

[15] The Commission approved the General Services Agreement as a part of the Merger Order.

engage in related customer financing on a worldwide basis.

Ameren Energy proposes to act as agent for Ameren Services and/or the Operating Companies in connection with the brokering and marketing of electricity and other energy commodities by the Operating Companies. Ameren Energy and Ameren Services and each of the Operating Companies propose to enter into an Agency Agreement wherein Ameren Energy would provide agency and any other incidental services, at cost, determined in accordance with rules 90 and 91. Ameren Energy would not receive any profits from these transactions and would not receive any other fee or commission for its services.

Ameren Energy (or any other energy marketing and brokering subsidiary hereafter acquired or formed by Ameren Development) request authority to acquire or construct in one or more transactions, from time to time through the Authorization Period, nonutility energy assets in the United States, including natural gas production, gathering, processing, storage and transportation facilities and equipment, liquid oil reserves and storage facilities, and associated facilities (collectively, "Energy Assets"), that would be functionally related to and would assist Ameren Energy in connection with energy marketing, brokering and trading. Ameren Energy requests authorization to invest up to $400 million during the Authorization period in Energy Assets or in the equity securities of existing or new companies substantially all of whose physical properties consist or will consist of these Energy Assets. It is represented that either Ameren Energy nor any marketing subsidiary will require, directly or indirectly, any assets or properties the ownership or operation of which would cause a company to be considered an "electric utility company" or "gas utility company" as defined under the Act. In the event that Applicants acquire companies whose physical properties consist of Energy Assets which are engaged in energy (gas or electric or both) marketing activities, Applicants also request authorization to continue these activities.

Ameren Development seeks authorization, on behalf of itself and every direct or indirect Rule 58 Subsidiary and Non-Exempt Subsidiary, to pay dividends with respect to the securities of these companies, from time to time through the Authorization Period, out of capital and unearned surplus. Ameren Development, on behalf of itself and each of its current and future Rule 58 Subsidiaries and Nonutility Subsidiaries, represents that it will not declare or pay any dividend out of capital or unearned surplus in contravention of any law restricting the payment of dividends, Ameren Development also states that its subsidiaries will comply with the terms of any credit agreements and indentures that restrict the amount and timing of distributions to shareholders.

Ameren Development, on behalf of itself and its existing and future Rule 58 Subsidiaries and Nonutility Subsidiaries, also seeks authorization, to the extent needed, to enter into interest-rate hedging transactions with respect to anticipated-debt offerings ("Anticipatory Hedges"), subject to certain limitations and restrictions. Anticipatory Hedges would only be entered into with counterparties whose senior debt ratings, or the senior debt ratings of the parent companies of the counterparties, as published by Standard and Poor's Ratings Group, are equal to or greater than BBB+, or an equivalent rating from Moody's Investors Service, Fitch Investor Service or Duff and Phelps.

All open positions under an Anticipatory Hedge will be closed on or prior to the date of the new issuance and Ameren Development will not, at any time, take possession of the underlying U.S. Treasury securities. Anticipatory Hedge positions will not be outstanding for more than 180 days. The overall guidelines, parameters and controls applicable to an Anticipatory Hedge transaction by Ameren Development or any Rule 58 Subsidiary or Non-Exempt Subsidiary will be the same as those described in the Financing Order. All Anticipatory Hedges will qualify as bona fide hedges and will meet the criteria established by the Financial Accounting Standards Board in order to qualify the hedge accounting treatment, and Ameren Development will comply with the then existing financial disclosure requirements of the Financial Accounting Standards Board associated with hedging transactions.

Ameren Development may determine to transfer the securities or the assets of the subsidiaries to other direct or indirect subsidiaries of Ameren Development or to liquidate or merge subsidiaries. The internal transactions would be undertaken in order to eliminate corporate complexities, to combine related business segments for staffing and management purposes, to eliminate administrative costs, to achieve tax savings, or for other ordinary and necessary business purposes. These transactions would only involve Ameren Development and its direct and indirect subsidiaries and would have no impact on any other associate companies in the Ameren System. Ameren Development request authority to engage in these transactions, to the extent that they are not exempt under the Act and rules thereunder, through the Authorization Period.

Consolidated Edison, Inc. (70–9447)

Consolidated Edison, Inc. ("CEI"), 4 Irving Place, New York, New York 10003, a New York electric and gas public utility holding company exempt from registration under section 3(a)(1) of the Act by rule 2, has filed an application under sections 9(a)(2) and 10 of the Act.

CEI proposes to acquire all of the issued and outstanding securities of Orange and Rockland Utilities, Inc. ("Orange and Rockland"), a New York electric and gas public utility holding company exempt from registration by order under section 3(a)(2) of the Act.[16]

CEI owns all of the common stock of Consolidated Edison Company of New York, Inc. ("Con Edison"), a New York electric and gas utility company as defined under the Act. Orange and Rockland owns two public utility subsidiaries, Rockland Electric Company ("RECO"), a New Jersey electric utility company, and Pike County Light & Power Company ("Pike"), a Pennsylvania electric and gas utility company. Under the terms of the Agreement and Plan of Merger among Orange and Rockland, CEI and C Acquisiton Corp.[17], dated May 10, 1998 ("Merger Agreement"), C Acquisition Corp. will be merged with and into Orange and Rockland. Orange and Rockland will be the surviving corporation in the Merger and become a wholly owned subsidiary of CEI and Orange and Rockland's two utility subsidiaries, RECO and Pike, will remain direct subsidiaries of Orange and Rockland.

Con Edison supplies electric service in all of New York City (except part of the Borough of Queens) and most of Westchester County, New York, an approximate 660 square mile service territory with a population of more than eight million. Con Edison also supplies gas in the Boroughs of Manhattan and the Bronx and parts of the Borough of Queens and Westchester County, New York, and provides steam in part of

[16] *See* Rockland Light and Power Co., 1 SEC 354 (1936). Rockland Light and Power Company subsequently became Orange and Rockland Utilities, Inc.

[17] C Acquisition Corp. is a New York corporation and a wholly owned subsidiary of CEI which was created solely for merger purposes.

Manhattan. Con Edison is regulated by the New York State Public Service Commission ("NYPSC") as to retail rates, service, accounts, issuance of securities and in other respects. The Federal Energy Regulatory Commission ("FERC") has jurisdiction over Con Edison under the Federal Power Act ("FPA") in connection with electric transmission facilities and operations, wholesale sales of power and related transactions.

CEI's common stock is listed on the New York Stock Exchange. As of October 31, 1998, CEI had outstanding 233,186,794 common shares ($.10 par value). The issued and outstanding shares of Con Edison number 235,489,650 ($2.50 par value), all of which are held by CEI.

For the twelve months ended September 30, 1998, CEI's total operating revenues were $7.22 billion, of which approximately $5.74 billion were derived from electric operations, $1 billion were from gas operations, $355 million were from the steam business, and $113 million were from nonutility businesses. Consolidated assets of CEI at September 30, 1998, were approximately $14.5 billion.

In September 1997, the NYPSC approved a settlement agreement among Con Edison, the Staff of the NYPSC and other parties ("Con Edison Settlement Agreement") providing for: (1) a transition to a competitive electric market through the development of a "retail access" plan; (2) a rate plan providing for substantial retail rate reductions through March 31, 2002; (3) a reasonable opportunity to recover "strandable costs"; and (4) the divestiture by Con Edison to unaffiliated third parties of at least 50 percent of its New York City fossil-fueled electric generating capacity.

Under the Con Edison Settlement Agreement, Con Edison submitted a divestiture plan for its fossil-fueled electric generation in New York City ("Divestiture Plan"). The NYPSC approved Con Edison's electric generation Divestiture Plan in orders issued July 21, 1998 and August 5, 1998. Under the Divestiture Plan, Con Edison will auction off its New York City electric generation to unaffiliated third parties in three bundles. Closing on the sales of these three bundles is expected in the second half of 1999.

Under its Steam System Plan, announced on April 15, 1998, Con Edison will auction off the remainder of its electric generation in New York City in a fourth bundle, consisting of 463 MW of units that produce electricity and steam for Con Edison's steam delivery system. Con Edison plans to close on the sales of the fourth bundle by the end of 1999.

The NYPSC, in a July 21, 1998 order, gave Con Edison the option of having its unregulated affiliate participate in the auction to purchase one of the initial three bundles. On July 24, 1998, Con Edison advised the NYPSC that its affiliate would forego its right to participate in the auction.[18] Accordingly, Con Edison plans to divest all of its in-City generation to third parties.

In addition, Con Edison is in the process of divesting its 810 MW interest in the Bowline Point generating station ("Bowline Station") located in Orange and Rockland's territory as part of Orange and Rockland's auction of its generation, as described below. Similarly, Con Edison has agreed to divest its 400 MW interest in the Roseton station located in the service area of Central Hudson Gas and Electric Corporation, a nonaffiliate, in conjunction with Central Hudson's divestiture auction. As a result of the divestitures described above, Con Edison no longer will own dispatchable generation resources.[19] Con Edison will, however, retain an obligation to serve load in its service territory. In order to serve that load, Con Edison will purchase capacity and energy in the competitive market.

Orange and Rockland and its public utility subsidiaries supply electricity and gas to a service territory covering approximately 1,350 square miles. The eastern boundary of the service area extends along the west bank of the Hudson, directly across the river from the service territory of Con Edison. Orange and Rockland's New York electric and gas service territory includes all of Rockland County, most of Orange County and part of Sullivan County. In New Jersey, RECO supplies electricity to the northern parts of Bergen and Passaic Counties and small areas in the northeastern and northwestern parts of Sussex County. Pike supplies electricity and gas to the northeastern corner of Pike County, Pennsylvania. The application states that Orange and Rockland, RECO and Pike jointly operate a single fully integrated electric production and transmission system serving parts of New York, New Jersey and Pennsylvania.

Orange and Rockland and its public utility subsidiaries furnish electric service to approximately 269,000 customers in 96 communities with an estimated population of 681,000 and gas service to approximately 114,000 customers in 57 communities with an estimated population of 482,000. Approximately 77 percent of Orange and Rockland's consolidated energy sales are from its New York electric and gas service territory, which includes all of Rockland County, most of Orange County and part of Sullivan County, with 21 percent of consolidated energy sales generated from RECO in New Jersey and approximately one percent of consolidated energy sales from Pike in Pennsylvania.

Orange and Rockland is regulated by the NYPSC. RECO is regulated by the New Jersey Board of Public Utilities and Pike is regulated by the Pennsylvania Public Utility Commission as to retail rates, service and accounts, issuance of securities and in other respects as to service provided in those individual states. FERC has jurisdiction under the FPA over certain of the electric facilities and operations of Orange and Rockland and its subsidiaries.

For the twelve months ended September 30, 1998, Orange and Rockland's total operating revenues on a consolidated basis were approximately $643,261,000 and total utility operating revenues were $642,524,000, of which approximately $496 million was derived from electric sales and $146 million from gas sales.[20] As noted above, 21 percent of total utility revenues is generated from New Jersey, approximately one percent is from Pennsylvania, and the balance is from operations in New York. Consolidated assets of Orange and Rockland and its subsidiaries at September 30, 1998, were approximately $1.3 billion

Orange and Rockland filed a plan ("Final Divestiture Plan") to divest all of its electric generation facilities under the NYPSC divestiture orders. By orders issued April 16, 1998, and May 26, 1998, the NYPSC approved Orange and Rockland's Final Divestiture Plan. Orange and Rockland's Final Divestiture Plan provides for the divestiture of 100 percent of Orange and Rockland's generating assets by auction.

On November 24, 1998, Orange and Rockland agreed to sell all of its electric generating facilities, including its one-

[18] Con Edison's relinquishment of its affiliate's right to participate in the auction was based on certain understandings as to the treatment of any gain on the sales. On August 5, 1998, the NYPSC approved Con Edison's proposal in this regard, subject to one modification, which Con Edison accepted on August 10, 1998. Con Edison, accordingly, is proceeding with the divestiture.

[19] Con Edison will retain its interests in a nuclear power generating facility. It is expected that Con Edison's nuclear facility will operate whenever it is available and be bid into the generation market at an incremental price reflecting the "to go" costs.

[20] All intercompany balances and transactions have been eliminated.

third interest in the Bowline Station, to Southern Energy, Inc., a subsidiary of The Southern Company, a registered holding company. Also included in this sale is Con Edison's two-thirds interest in the Bowline Station. Orange and Rockland anticipates that this sale will be completed by April 30, 1999.

Con Edison and Orange and Rockland are members of the New York Power Pool ("NYPP"), a cooperative association consisting of the major electric utilities operating in the State of New York. NYPP is a "tight" power pool through which its members agree to coordinate their operations by operating their systems in parallel, by consulting on design, use and construction of capacity, by scheduling repair outages and by providing support to each other in meeting generating capacity and energy transmission needs. NYPP has a centralized computer system that monitors the available capacity on the system and the demand for energy of all of the NYPP members to determine which sources of capacity should be used to reliably provide economic energy to meet customer demand. Under the current NYPP structure, each member utility owns and controls its separate transmission system. Access to those systems is available through each utility's open access transmission tariff. Applicants state that NYPP has filed with the FERC a plan to reorganize and establish an Independent System Operator. Following the Merger, Con Edison and Orange and Rockland will continue to be members of NYPP and will continue to coordinate operations in accordance with applicable NYPP procedures. The Merger will be effected through the purchase of Orange and Rockland stock. Each share of Orange and Rockland common stock will be canceled and converted into the right to receive $58.50 in cash, without interest payable to the holder of such share upon surrender. Any Orange and Rockland common stock owned as treasury stock will be canceled and no payment will be due. All preferred stock and preference stock of Orange and Rockland will be redeemed, prior to the effective date of the Merger, at a redemption price equal to the respective amount set forth in Orange and Rockland's restated Certificate of Incorporation, together with all dividends accrued and unpaid to the date of redemption. The transactions relating to the Merger are expected to be taxable to the stockholders of Orange and Rockland for federal income tax purposes. The Merger Agreement is subject to customary closing conditions, including receipt of approval of the holders of Orange and Rockland's Common Stock and the approval of various state and federal regulatory agencies, including the Commission. Orange and Rockland held a meeting of its common stockholders on August 24, 1998, and the requisite two-third votes of its stockholders approved the Merger.

CEI states that following consummation of the Merger, CEI and Orange and Rockland will continue to be entitled to exemptions from all provisions of the Act, except sections 9(a)(2) and 10 of the Act. CEI requests an order granting it an exemption under section 3(a)(1) of the Act. CEI states that it will continue to satisfy the requirements for exemption because it and each of its public utilities are and will continue to be predominately intrastate in character and will continue to carry on their businesses substantially in New York.[21] Orange and Rockland will continue to rely on the Commission's order exempting Orange and Rockland from registration based on its status as a holding company which is predominantly a public utility company under section 3(a)(2) of the Act.

Allegheny Energy, Inc. (70–7888)

Allegheny Energy, Inc. ("Allegheny"), 10435 Downsville Pike, Hagerstown, MD 21740–1766, a registered holding company, has filed a post-effective amendment under sections 6(a) and 7 of the Act and rule 54 under the Act to application-declaration originally filed under sections 6(a), 7, 9(a), 10 and 12(b) of the Act and rules 45 and 54 under the Act.

By orders dated January 29, 1992 (HCAR No. 25462), February 28, 1992 (HCAR No. 25481), July 14, 1992 (HCAR No. 25581), November 5, 1993 (HCAR No. 25919), November 28, 1995 (HCAR No. 26418), April 18, 1996 (HCAR No. 26506), and December 23, 1997 (HCAR No. 26804) (collectively "Prior Orders"), Allegheny was authorized, among other things, to issue up to $400 million in short-term debt through December 31, 2001. Allegheny now proposes to: (1) Increase the limit on the issuance of short-term debt from $400 million up to $750 million under the terms and conditions stated in the Prior Orders; and (2) extend the period of authorization through December 31, 2007.

Allegheny states that the increase is necessary to enhance its ability to participate in evolving energy markets resulting form deregulation and, upon application and approval, to support acquisition and diversification plans.

For the Commission by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–8239 Filed 4–2–99; 8:45 am]

BILLING CODE 8010–01–M

[21] CEI states that after the Merger, 2% of its consolidated utility revenues will be derived from out of state operations. RECO, which operates only in New Jersey, will be 1.91% of the total. Pike, which operates only in Pennsylvania, is .09% of the total. CEI states that it does not have significant investments in nonutility businesses.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41218; File No. SR–NSCC–99–02]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change Regarding Exit Instructions for Exchange Orders

March 26, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on February 12, 1999, National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which items have been prepared primarily by NSCC. The Commission is publishing this notice to solicit comments from interested persons on the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change permits Mutual Fund Services ("Fund/SERV") members to submit exit instructions for exchange orders.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NSCC has prepared summaries, set forth in sections A, B,

[1] 15 U.S.C. 78s(b)(1).

and C below, of the most significant aspects of such statements.[2]

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Under the proposed rule change, NSCC will modify its rules relating to Fund/SERV.[3] Among other things, Fund/SERV enables eligible members to electronically process and settle mutual fund orders. These orders include purchases, redemptions, and exchanges.

The proposed rule change permits NSCC to implement a request by a users advisory group to modify NSCC's Rule 52 to provide members with the option of submitting exit instructions for exchange orders they determine not to settle within Fund/SERV.[4]

Fund/SERV was originally established to provide a once-a-day or single-cycle processing service that executed a member's instructions only at the end of each business day. Since exchange orders are immediately set for settlement the night they are received, exit instructions to delete outstanding exchange orders were not permitted under NSCC rules because Fund/SERV's single-cycle processing environment did not provide an opportunity for exit instructions to be executed.

However, Fund/SERV's intra day or multi-cycle processing now allows a member to submit instructions throughout the day. Under the proposed rule change an exchange order will continue to settle on the next business day unless a member submits an exit instruction on the same day it is received. NSCC plans to notify members by an "Important Notice" on March 29, 1999, that it intends to implement the rule change.

NSCC believes the proposed rule change is consistent with Section 17A of the Act[5] and the rules and regulations thereunder because it facilitates the prompt and accurate clearance and settlement of securities transactions.

B. Self-Regulatory Organization's Statement on Burden on Competition

NSCC does not believe that the proposed rule change will have an impact on or impose a burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments relating to the proposed rule change have been solicited or received other than from the chairperson of the Investment Company Institute's NSCC Fund/SERV Enhancement Committee. Her comments are attached to the proposal as Exhibit C. NSCC will notify the Commission of any other written comments received by NSCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Section 17A(b)(3)(F) of the Act requires that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions.[6] The Commission believes that the rule change is consistent with this obligation because the proposal provides Fund/SERV members with an automated method for deleting erroneous exchange orders. As a result, the proposed rule change reduces the likelihood that Fund/SERV members will need to go outside of Fund/SERV to correct an exchange order. Thus, the proposal promotes the prompt and accurate clearance and settlement of securities transactions.

NSCC has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after publication of the notice of filing. The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after publication of the notice of filing because accelerated approval will permit NSCC to implement this feature of Fund/SERV in a timely manner.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington D.C. 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filings will also be available for inspection and copying at the principal office of NSCC. All submissions should refer to the file number SR–NSCC–99–02 and should be submitted by April 26, 1999.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–NSCC–99–02) be, and hereby is, approved on an accelerated basis.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–8238 Filed 4–2–99; 8:45 am]

BILLING CODE 8010–01–M

[2] The Commission has modified the text of the summaries prepared by NSCC.

[3] Specifically, NSCC is amending Rule 52, A. Fund/SERV, SEC. 10.

[4] See letter from Colleen Daly, Chairperson of the Investment Company Institute's NSCC Fund/SERV Enhancement Committee (February 4, 1999). A copy of the letter is included with NSCC's filing.

[5] 15 U.S.C. 78q–1.

[6] 15 U.S.C. 78q–1(b)(3)(F).

[7] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

Office of Overseas Schools

[Public Notice 3020]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Department of State.

ACTION: 30-day notice of information collection; overseas schools—grant status reports.

SUMMARY: The Department of State has submitted the following information collection request to the Office of Management and Budget (OMB) for approval in accordance with the Paperwork Reduction Act of 1995. Comments should be submitted to OMB within 30 days of the publication of this notice.

The following summarizes the information collection proposal submitted to OMB:

Type of Request: Renewal.

Originating Office: A/OPR/OS.

Title of Information Collection: Overseas Schools—Grant Status Reports.

Frequency: Annual.

Form Number: OMB No. 1405–0033.

Respondents: Recipients of grants.

Estimated Number of Respondents: 190.

Average Hours Per Response: .25.

Total Estimated Burden: 47.5 hours.

Public comments are being solicited to permit the agency to:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.
- Evaluate the accuracy of the agency's estimate of the burden of the collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including through the use of automated collection techniques or other forms of technology.

FOR FURTHER INFORMATION CONTACT: Public comments or requests for additional information regarding the collection listed in this notice should be directed to Keith D. Miller of the Office of Overseas Schools (703) 875–7800, U.S. Department of State, Washington, DC 20520.

Dated: March 19, 1999.

Robert B. Dickson,

Executive Director, Bureau of Administration.

[FR Doc. 99–8191 Filed 4–2–99; 8:45 am]

BILLING CODE 4710–03–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG–1999–5462]

Commercial Fishing Industry Vessel Advisory Committee

AGENCY: Coast Guard, DOT.

ACTION: Notice of meetings.

SUMMARY: The Commercial Fishing Industry Vessel Advisory Committee (CFIVAC) will meet to discuss the Coast Guard's Fishing Vessel Casualty Task Force Report.

DATES: CFIVAC will meet on Wednesday, April 14, 1999, from 8:30 a.m. to 4:30 p.m. and Thursday, April 15, 1999, from 8:30 a. m. to 4:30 p.m.

ADDRESSES: CFIVAC will meet in the conference room of the Coast Guard National Pollution Funds Center, 4200 Wilson Boulevard, Suite 1000, Arlington, Virginia. This notice is available on the Internet at hhtp://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: For questions on this notice, contact Commander Mark A. Prescott, Executive Director of CFIVAC, or Lieutenant Commander Randy Clark, Assistant to the Executive Director, telephone 202–267–1181, fax 202–267–4570.

SUPPLEMENTARY INFORMATION: Notice of these meetings is given under the Federal Advisory Committee Act, 5 U.S.C. App. 2. Under the authority of the General Services Administration Federal Advisory Committee Regulations, 41 Code of Federal Regulations § 101–6.1015(b)(2), this notice is given with less than 15 days notice due to the exceptional circumstances. During the closing days of 1998 through the first three weeks of 1999 the commercial fishing industry lost four vessels and 11 lives off the Northeast and Mid-Atlantic coasts of the United States. This alarming death rate occurred in an industry that is considered one of America's most dangerous and if left unabated will be the deadliest year in over a decade. As a result, the Coast Guard chartered a Task Force to conduct a fast track study to: Determine the factual circumstances of these casualties; examine these incidents in the context of historical data for loss of life and property; provide quick feedback to industry; review the current fishing vessel safety program and past recommendations that have the potential for reducing loss of life and property; recommend the most significant measures that have great potential for reducing the loss of life and property; and develop a direction to be pursued by CFIVAC, the Coast Guard, and industry. The Coast Guard will complete the Task Force Report on, or about, April 5, 1999, and desires that CFIVAC review the report and make its recommendations as soon as possible. It is essential for CFIVAC to meet as quickly as possible due to the urgency of this matter. Therefore, it is not possible to provide 15 days prior notification of this meeting. Interested parties, including members of Congress, have been advised of this meeting.

Agenda of Meeting

Commercial Fishing Industry Vessel Advisory Committee (CFIVAC).

The agenda includes the following:

(1) Welcome, administrative issues.

(2) Review and comment on the Coast Guard's Fishing Vessel Casualty Task Force Report.

Procedural

The meeting is open to the public. This will be a working meeting of CFIVAC and there will be limited opportunity for public comment. Please note that the meeting may close early if all business is finished. Due to security procedures, members of the public must produce a photo ID to enter the building.

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the meetings, contact the Executive Director as soon as possible.

Dated: March 31, 1999.

Robert C. North,

Assistant Commandant for Marine Safety and Environmental Protection.

[FR Doc. 99–8334 Filed 4–2–99; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Proposed Advisory Circular; Aircraft Engines Instructions for Continued Airworthiness

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of availability of proposed advisory circular and request for comments.

SUMMARY: This notice announces the availability of draft Advisory Circular (AC), No. 33–XX, Aircraft Engine Instructions for Continued Airworthiness.

DATES: Comments must be received on or before May 5, 1999.

ADDRESSES: Send all comments on the proposed AC to the Federal Aviation Administration, Attn: Engine and Propeller Standards Staff, ANE–110, Engine and Propeller Directorate, Aircraft Certification Service, 12 New England Executive Park, Burlington, MA 01803–5299.

FOR FURTHER INFORMATION CONTACT: Chung Hsieh, Engine and Propeller Standards Staff, ANE–110, at the above address, telephone (781) 238–7115, fax (781) 238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

A copy of the draft AC may be obtained by contacting the person named under **FOR FURTHER INFORMATION CONTACT**. Interested persons are invited to comment on the proposed AC, and to submit such written data, views, or arguments as they desire. Commenters must identify the subject of the AC, and submit comments to the address specified above. All communications received on or before the closing date for comments will be considered by the Engine and Propeller Directorate, Aircraft Certification Service, before issuance of the final AC.

Background

This AC is on the subject of continued airworthiness of aircraft engines type certificated under Title 14 of the Code of Federal Regulations, part 33 (14 CFR part 33). The information and guidance presented in this AC would provide a method that can be used to demonstrate compliance with the requirements of § 33.4 and Appendix A to part 33—Instructions for Continued Airworthiness.

This advisory circular would be published under the authority granted to the Administrator by 49 U.S.C. 106(g), 40113, 44701–44702, 44704 and would provide guidance for the requirements in 14 CFR part 33.

Issued in Burlington, Massachusetts, on March 26, 1999.

David A. Downey,

Assistant Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 99–8242 Filed 4–2–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Availability of the Record of Decision for Terminal Doppler Weather Radar to Serve John F. Kennedy International and LaGuardia Airports, New York City, NY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Availability of Record of Decision (ROD).

SUMMARY: Pursuant to 49 U.S.C. 44501 and 44502 and in accordance with requirements of the National Environmental Policy Act of 1969, as amended, and FAA Order 1050.1D—Policies and Procedures for Considering Environmental Impacts, the FAA has issued a Record of Decision for Terminal Doppler Weather Radar to Serve John F. Kennedy International and LaGuardia Airports, New York, New York. After careful review of the administrative record, including the final environmental impact statement (EIS) released in January 1999, it is the final determination of the FAA that installation and operation of the terminal Doppler weather radar (TDWR) to serve John F. Kennedy International (JFK) and LaGuardia (LGA) Airports at the U.S. Coast Guard (USCG) Air Station Brooklyn site in Kings County, New York, is approved. The installation of a single TDWR to serve both JFK and LGA Airports is consistent with the responsibilities of the FAA Administrator under 49 U.S.C. 44501 and 44502 et seq. This action is also consistent with direction provided by Congress in the 1995 Department of Transportation and Related Agencies Appropriations Bill, Pub L. 103–331 (Sept. 30, 1994) Conference Report on H.R. 4556, 103rd Congress, 2nd Session, 140 Congressional Record 9–603 (Sept. 26, 1994). In reaching this decision, careful consideration has been given to aviation safety and operational needs as well as potential environmental effects. Therefore, by order of the Administrator a single TDWR will be installed at U.S. Coast Guard Air Station Brooklyn site.

This order is subject to review within 60 days in the U.S. Court of Appeals in accordance with the provisions of 49 U.S.C. 46110. This ROD will be sent to those parties who have indicated an interest in this TDWR project. The FAA will publish legal notices in newspapers of the affected area of New York City announcing this decision and the availability of this ROD.

FOR FURTHER INFORMATION OR TO OBTAIN A COPY OF THE RECORD OF DECISION OR FINAL EIS, CONTACT: Jerome D. Schwartz, Environmental Specialist, Federal Aviation Administration, Environmental Lead for TDWR, AND–402, 800 Independence Avenue, SW, Washington, DC 20591.

Issued in Washington DC on March 30, 1999.

James C. Link,

Leader, Integrated Product Team for Surveillance, AND–400.

[FR Doc. 99–8243 Filed 4–2–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Air Traffic Procedures Advisory Committee

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of meeting.

SUMMARY: The FAA is issuing this notice to advise the public that a meeting of the Federal Aviation Administration Air Traffic Procedures Advisory Committee (ATPAC) will be held to review present air traffic control procedures and practices for standardization, clarification, and upgrading of terminology and procedures.

DATES: The meeting will be held from April 19–22, 1999, from 9 a.m. to 5 p.m. each day.

ADDRESSES: The meeting will be held in the MacCracken room, Federal Aviation Administration, 800 Independence Avenue, SW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Eric Harrell, Executive Director, ATPAC, En Route/Terminal Operations and Procedures Division, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–3725.

SUPPLEMENTARY INFORMATION: Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. 2), notice is hereby given of a meeting of the ATPAC to be held April 19 through April 22, 1999, in the MacCracken Room, Federal Aviation Administration, 800 Independence Avenue, SW, Washington, DC.

The agenda for this meeting will cover: a continuation of the Committee's review of present air traffic control procedures and practices for standardization, clarification, and upgrading of terminology and procedures. It will also include:

1. Approval of Minutes.
2. Submission and Discussion of Areas of Concern.
3. Discussion of Potential Safety Items.
4. Report from Executive Director.
5. Items of Interest.
6. Discussion and agreement of location and dates for subsequent meetings.

Attendance is open to the interested public but limited to the space available. With the approval of the Chairperson, members of the public may present oral statements at the meeting. Persons desiring to attend and persons desiring to present oral statements should notify the person listed above not later than April 16, 1999. The next quarterly meeting of the FAA ATPAC is planned to be held from July 26–29, 1999, in Osh Kosh, Wisconsin.

Any member of the public may present a written statement to the Committee at any time at the address given above.

Issued in Washington, DC, on March 25, 1999.

Eric Harrell,

Executive Director, Air Traffic Procedures Advisory Committee.

[FR Doc. 99–8318 Filed 4–2–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Aviation Rulemaking Advisory Committee Meeting on Aircraft Certification Procedures Issues

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of the Federal Aviation Administration Aviation Rulemaking Advisory Committee to discuss aircraft certification procedures issues.

DATES: The meeting will be held on April 15, 1999, at 9:00 a.m. Arrange for oral presentations by April 9, 1999.

ADDRESSES: The meeting will be held at the General Aviation Manufacturers Association, 1400 K Street, N.W., Suite 801, Washington, DC 20005–2485.

FOR FURTHER INFORMATION CONTACT: Marisa Mullen, Transportation Industry Analyst, Office of Rulemaking (ARM–205), 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–7653, fax: (202) 267–5075.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463: 5 U.S.C. App. II), notice is hereby given of a meeting of the Aviation Rulemaking Advisory Committee to be held on April 15, 1999, at 9:00 a.m. at the General Aviation Manufacturers Association, 1400 K Street, NW., Suite 801, Washington, DC 20005–2485.

The agenda for this meeting will include:

(1) A status report on the FAA submitted rulemaking projects for "Type Certification Procedures for Changed Products", "Establishment of Organization Designation Authorization (ODA) Procedures", and "Production Certification and Parts Manufacturing";

(2) A status report on the Delegation Working Group tasking;

(3) A status report on the Parts and Production Certification Working Group tasking; and

(4) A discussion of future meeting dates, locations, activities; and plans.

Attendance is open to the interested public, but will be limited to the space available. The public must make arrangements by April 5, 1999, to present oral statements at the meeting. The public may present written statements to the committee at any time by providing 25 copies to the Executive Director, or by bringing the copies to the meeting. In addition, sign and oral interpretation can be made available at the meeting, as well as an assistive listening device, if requested 10 calendar days before the meeting. Arrangements may be made by contacting the person listed under the heading **FOR FURTHER INFORMATION CONTACT**.

Issued in Washington, DC, on March 26, 1999.

Brian Yanez,

Assistant Executive Director for Aircraft Certification Procedures Issues, Aviation Rulemaking Advisory Committee.

[FR Doc. 99–8241 Filed 4–2–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[FHWA Docket No. FHWA–98–4334]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of final disposition.

SUMMARY: The FHWA announces its decision to exempt 23 individuals from the vision requirement in 49 CFR 391.41(b)(10).

DATES: April 5, 1999.

FOR FURTHER INFORMATION CONTACT: For information about the vision exemptions in this notice, Ms. Sandra Zywokarte, Office of Motor Carrier Research and Standards, (202) 366–2987; for information about legal issues related to this notice, Ms. Judith Rutledge, Office of the Chief Counsel, (202) 366–0834, Federal Highway Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

An electronic copy of this document may be downloaded using a modem and suitable communications software from the **Federal Register** Electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the **Federal Register**'s home page at: http://www.nara.gov/fedreg and the Government Printing Office's database at: http://www.access.gpo.gov/nara.

Background

Twenty-four individuals petitioned the FHWA for a waiver of the vision requirement in 49 CFR 391.41(b)(10), which applies to drivers of commercial motor vehicles (CMVs) in interstate commerce. They are Gary R. Andersen, Joe F. Arnold, Jack E. Atkinson, Gary A. Barrett, Ivan L. Beal, Johnny A. Beutler, Richard D. Carlson, David John Collier, Tomie L. Estes, Jay E. Finney, Britt D. Hazelwood, Jon R. Houston, Chad M. Kallhoff, Loras G. Knebel, Rodney D. Lemburg, Dexter L. Myhre, James H. Oppliger, Stephanie D. Randels, Duane L. Riendeau, Darrell Rohlfs, Marvin L. Swillie, Larry Waldner, and Ronald Watt. The FHWA evaluated the petitions on their merits, as required by the decision in *Rauenhorst* v. *United States Department of Transportation, Federal Highway Administration*, 95 F.3d 715 (8th Cir. 1996), and made a preliminary determination that the waivers should be granted. On December 1, 1998, the agency published notice of its preliminary determination and requested comments from the public (63 FR 66226). The comment period closed on December 31, 1998. One comment was received, and its contents were carefully considered by the FHWA in reaching the final decision to grant the petitions.

The FHWA has not made a decision on one applicant, Mr. Jon R. Houston of Iowa. Subsequent to the publication of the preliminary determination, the agency received additional information from the Iowa Department of Transportation, and we are evaluating that information. A decision on Mr. Houston's petition will be made in the future.

When the remaining 23 individuals filed their vision waiver applications on various dates before June 9, 1998, the FHWA was authorized by 49 U.S.C. 31136(e) to waive the vision standard if the agency determined the waiver was consistent with the public interest and the safe operation of CMVs. As the statute did not limit the effective period of a waiver, the agency had discretion to issue waivers for any period warranted by the circumstances of a request.

On June 9, 1998, the FHWA's waiver authority changed with enactment of the Transportation Equity Act for the 21st Century (TEA–21), Pub. L. No. 105–178, 112 Stat. 107. Section 4007 of TEA–21 amended the waiver provisions of 49 U.S.C. 31315 and 31136(e) to change the standard for evaluating waiver requests, to distinguish between a waiver and an exemption, and to establish term limits for both. Under revised sections 31315 and 31136(e), the FHWA may grant a waiver for a period of up to 3 months or an exemption for a renewable 2-year period. The 23 applications in this proceeding fall within the scope of an exemption request under the revised statute.

The amendments to 49 U.S.C. 31315 and 31136(e) also changed the criteria for exempting a person from application of a regulation. Previously an exemption was appropriate if it was consistent with the public interest and the safe

operation of CMVs. Now the FHWA may grant an exemption if it finds "such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption." The new standard provides the FHWA greater flexibility and discretion to deal with exemptions than the previous standard. (See H.R. Conf. Rep. No. 105–550, at 489 (1998).)

Although the 23 petitions in this proceeding were filed before enactment of TEA-21, the FHWA is required to apply the law in effect at the time of its decision unless (1) its application will result in a manifest injustice or (2) the statute or legislative history directs otherwise. *Bradley* v. *School Board of the City of Richmond,* 416 U.S. 696 (1974). With respect to the new standard, nothing in the statute, its history, or the facts in this proceeding meets either of these two tests. In fact, the new standard is more equitable as it allows an exemption to be based on a reasonable expectation of equivalent safety, rather than requiring an absolute determination that safety will not be diminished. In addition, the "public interest" finding required under the previous standard is not necessary under the new exemption standard. These changes enhance the FHWA's discretion to consider exemptions, thus benefitting the 23 applicants rather than causing an injustice.

For that reason, we applied the new standard in our evaluation of these 23 petitions and determined that exempting these applicants from the vision requirement in 49 CFR 391.41(b)(10) is likely to achieve a level of safety equal to, or greater than, the level that would be achieved without the exemption.

Vision and Driving Experience of the Applicants

The vision requirement in 49 CFR 391.41(b)(10) provides:

> A person is physically qualified to drive a commercial motor vehicle if that person has distant visual acuity of at least 20/40 (Snellen) in each eye without corrective lenses or visual acuity separately corrected to 20/40 (Snellen) or better with corrective lenses, distant binocular acuity of at least 20/40 (Snellen) in both eyes with or without corrective lenses, field of vision of at least 70° in the horizontal meridian in each eye, and the ability to recognize the colors of traffic signals and devices showing standard red, green, and amber.

Since 1992, the FHWA has undertaken studies to determine if this vision standard should be amended. The latest report from our medical panel recommends changing the field of vision standard from 70° to 120°, while leaving the visual acuity standard unchanged. (See Frank C. Berson, M.D., Mark C. Kuperwaser, M.D., Lloyd Paul Aiello, M.D., and James W. Rosenberg, M.D., "Visual Requirements and Commercial Drivers," October 16, 1998, filed in the docket). The panel's conclusion supports the FHWA's view that the present standard is reasonable and necessary as a general standard to ensure highway safety. The FHWA also recognizes that some drivers do not meet the vision standard but have adapted their driving to accommodate their vision limitation and demonstrated their ability to drive safely.

The 23 applicants fall into this category. They are unable to meet the vision standard in one eye for various reasons, including amblyopia, retinal and corneal scars, and loss of an eye due to an accident. In most cases, their eye conditions were not recently developed. All but five applicants were either born with their vision impairments or have had them since childhood. They have lived with them for periods ranging from 16 to 46 years. The five individuals who sustained their vision conditions as adults have had them for periods ranging from 4 to 25 years.

Although each applicant has one eye which does not meet the vision standard in Section 391.41(b)(10), each has at least 20/40 corrected vision in the other eye and, in a doctor's opinion, can perform all the tasks necessary to operate a CMV. The doctors' opinions are supported by the applicants' possession of a valid commercial driver's license (CDL). Before issuing a CDL, States subject drivers to knowledge and performance tests designed to evaluate their qualifications to operate the CMV. All these applicants satisfied the testing standards for their State of residence. By meeting State licensing requirements, the applicants demonstrated their ability to operate a commercial vehicle, with their limited vision, to the satisfaction of the State.

While possessing a valid CDL, these 23 drivers have been authorized to drive a CMV in intrastate commerce even though their vision disqualifies them from driving in interstate commerce. They have driven CMVs with their limited vision for careers ranging from 4 to 36 years. In the past 3 years, the 23 drivers had a total of five moving violations among them. Two drivers were involved in minor accidents in their CMVs, but there were no injuries and neither person received a citation.

The qualifications, experience, and medical condition of each applicant were stated and discussed in detail in 63 FR 66226, December 1, 1998. Since the lone docket comment did not focus on the qualifications of a specific applicant, we have not repeated the individual profiles here. Our summary analysis of the applicants as a group, however, is supported by the information published in 63 FR 66226.

Basis for Exemption Determination

Under revised 49 U.S.C. 31315 and 31136(e), the FHWA may grant an exemption from the vision standard in 49 CFR 391.41(b)(10) if the exemption is likely to achieve an equivalent or greater level of safety than would be achieved without the exemption. Without the exemption, applicants will continue to be restricted to intrastate driving. With the exemption, applicants can drive in interstate commerce. Thus, our analysis focuses on whether applicants are likely to achieve an equal or greater level of safety driving in interstate commerce as they have achieved in intrastate commerce.

To evaluate the effect of these exemptions on safety, the FHWA considered not only the medical reports about the applicants' vision but also their driving records and experience with the vision deficiency. Recent driving performance is especially important in evaluating future safety, according to several research studies designed to correlate past and future driving performance. Results of these studies support the principle that the best predictor of future performance by a driver is his/her past record of accidents and traffic violations. Copies of the studies have been added to the docket.

We believe we can properly apply the principle to monocular drivers because data from the vision waiver program clearly demonstrate the driving performance of monocular drivers in the program is better than that of all CMV drivers collectively. (See 61 FR 13338, 13345, March 26, 1996). That monocular drivers in the waiver program demonstrated their ability to drive safely supports a conclusion that other monocular drivers, with qualifications similar to those required by the waiver program, can also adapt to their vision deficiency and operate safely.

The first major research correlating past and future performance was done in England by Greenwood and Yule in 1920. Subsequent studies, building on that model, concluded that accident rates for the same individual exposed to certain risks for two different time periods vary only slightly. (See Bates and Neyman, University of California Publications in Statistics, April 1952.) Other studies demonstrated theories of predicting accident proneness from

accident history coupled with other factors. These factors, such as age, sex, geographic location, mileage driven and conviction history, are used every day by insurance companies and motor vehicle bureaus to predict the probability of an individual experiencing future accidents. (See Weber, Donald C., "Accident Rate Potential: An Application of Multiple Regression Analysis of a Poisson Process," Journal of American Statistical Association, June 1971). A 1964 California Driver Record Study prepared by the California Department of Motor Vehicles concluded that the best overall accident predictor for both concurrent and nonconcurrent events is the number of single convictions. This study used 3 consecutive years of data, comparing the experiences of drivers in the first 2 years with their experiences in the final year.

Applying principles from these studies to the past 3-year record of the 23 applicants, we note that cumulatively the applicants have had only two minor accidents and five traffic violations in the last 3 years. None of the violations represented a serious traffic violation as defined in 49 CFR 383.5, and neither of the accidents involved bodily injury or resulted in a citation. The applicants achieved this record of safety while driving with their vision impairment, demonstrating they have adapted their driving skills to accommodate their condition. As the applicants' driving histories with their vision deficiencies are predictors of future performance, the FHWA concludes their ability to drive safely can be projected into the future.

In addition, we believe applicants' intrastate driving experience provides an adequate basis for evaluating their ability to drive safely in interstate commerce. Intrastate driving, like interstate operations, involves substantial driving on highways in the interstate system and on other roads built to interstate standards. Moreover, driving in congested urban areas exposes the driver to more pedestrians and vehicle traffic than exist on interstate highways. Faster reaction to traffic and traffic signals is generally required because distances are more compact than on highways. These conditions tax visual capacity and driver response just as intensely as interstate driving conditions. The veteran drivers in this proceeding have operated a CMV safely under those conditions for at least 4 years, most for much longer. Their experience and driving records lead us to believe the applicants are capable of operating in interstate commerce as safely as they have in intrastate commerce.

Consequently, the FHWA finds that exempting applicants from the vision standard in 49 CFR 391.41(b)(10) is likely to achieve a level of safety equal to that existing without the exemption. For this reason, the agency will grant the exemptions for the 2-year period allowed by 49 U.S.C. 31315 and 31136(e).

We recognize that the vision of an applicant may change and affect his/her ability to operate a commercial vehicle as safely as in the past. As a condition of the exemption, therefore, the FHWA will impose requirements on the 23 individuals consistent with the grandfathering provisions applied to drivers who participated in the agency's vision waiver program.

These requirements are found at 49 CFR 391.64(b) and include the following: (1) that each individual be physically examined every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the standard in 49 CFR 391.41(b)(10), and (b) by a medical examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provide a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that each individual provide a copy of the annual medical certification to the employer for retention in its driver qualification file, or keep a copy in his/her driver qualification file if he/she is self-employed. The driver must also have a copy of the certification when driving so it may be presented to a duly authorized Federal, State, or local enforcement official.

Discussion of Comment

The FHWA received one comment in this proceeding. In that comment, J.B. Hunt Transport, Inc. (Hunt) expresses general opposition to exemptions from the physical qualification standards and raises procedural objections to this proceeding.

On the procedural issue, Hunt maintains that the applicants should reapply under the standards which will be adopted in Docket No. FHWA–98–4145, *Federal Motor Carrier Safety Regulations; Waivers, Exemptions, and Pilot Programs; Rules and Procedures*, 63 FR 67600, December 8, 1998, to implement the TEA–21 changes to the agency's exemption authority. It asserts that the agency is disregarding the rulemaking process by considering vision waiver requests filed after the waiver program was closed and before rules are fully adopted to implement the new provisions of 49 U.S.C. 31315 and 31136(e).

Section 4007 of TEA–21 requires the Secretary of Transportation to promulgate regulations specifying the procedures by which a person may request an exemption. The statute lists four items of information an applicant must submit with an exemption petition and gives the Secretary 180 days (from June 9, 1998) to implement the new procedural regulations. On December 8, 1998, the agency published interim final rules in Docket No. FHWA–98–4145 to implement section 4007. The interim rules will govern exemption requests filed on or after June 9, 1998, until final rules are adopted in that proceeding.

Before publishing its notice of intent to grant these applications, the FHWA determined that applying the new procedural requirements of section 4007 of TEA–21 would adversely affect the applicants. As we explained in 63 FR 66226, December 1, 1998, it would have been manifestly unjust to hold applications filed before June 9, 1998, in abeyance until new procedural regulations were implemented in December, and then require the applicants to submit conforming, supplementary information to support their exemption request. Such delay not only would have been unjust but would have provided nothing to enhance safety. For these reasons, the FHWA decided not to apply the procedural requirements of section 4007 to exemption requests filed before its effective date, June 9, 1998. As these applications were filed before that date, we processed them under procedures in effect at the time they were filed, a decision supported by *Bradley* v. *School Board of the City of Richmond*, 416 U.S. 696 (1974).

The balance of Hunt's comments relate to its opposition to exemptions for drivers who cannot meet the existing medical standards. First, Hunt asserts that "minimum safety standards" should apply to every CMV driver in interstate commerce without the possibility of waiver or exemption. If the vision standard in 49 CFR 391.41(b)(10) is the appropriate minimum standard, Hunt urges, it should be applied without exception. If it is not, the standard should be reviewed in accordance with several guidelines suggested by Hunt in its comments.

The FHWA continues to review the vision standard in 49 CFR 391.41(b)(10), as evidenced by the medical panel's report dated October 16, 1998, filed in this docket, and we welcome Hunt's suggested guidelines to factor into our review process. Notwithstanding the

ongoing review of the vision standard, however, the FHWA must comply with *Rauenhorst* v. *United States Department of Transportation, Federal Highway Administration*, 95 F.3d 715 (8th Cir. 1996), and grant individual exemptions under standards that are consistent with public safety. Meeting those standards, the 23 veteran drivers in this case have demonstrated to our satisfaction that they can operate a CMV with their current vision as safely in interstate commerce as they have in intrastate commerce. Accordingly, they qualify for an exemption under 49 U.S.C. 31315 and 31136(e).

Hunt also asserts that motor carriers should be given regulatory relief which would allow them to maintain the more stringent vision standard found in 49 CFR 391.41(b)(10) and the right to legally decline the use of a driver with an exemption. Absent that relief, Hunt urges that motor carriers "forced to use a waived or exempted driver" should receive a hold harmless agreement from the FHWA relieving them of liability in case a medically exempted driver has a traffic accident.

The FHWA's physical qualification standards are minimum requirements; thus, carriers already have the right to maintain standards that meet or exceed those established by the agency (49 CFR 390.3(d)). When motor carriers apply higher physical standards than required by the FHWA, however, they must be prepared to justify their requirements if challenged under the Americans with Disabilities Act, Pub.L. 101–336, 104 Stat. 327, or any other law. In short, a motor carrier has a legal obligation not to discriminate on the basis of a disability, and the FHWA cannot relieve a carrier of that obligation.

Conclusion

After considering the comment to the docket and based upon its evaluation of the 23 waiver applications in accordance with *Rauenhorst* v. *United States Department of Transportation, Federal Highway Administration, supra*, the FHWA exempts Gary R. Andersen, Joe F. Arnold, Jack E. Atkinson, Gary A. Barrett, Ivan L. Beal, Johnny A. Beutler, Richard D. Carlson, David John Collier, Tomie L. Estes, Jay E. Finney, Britt D. Hazelwood, Jerome R. Jessen, Chad M. Kallhoff, Loras G. Knebel, Rodney D. Lemburg, Dexter L. Myhre, James H. Oppliger, Stephanie D. Randels, Duane L. Riendeau, Darrell Rohlfs, Marvin L. Swillie, Larry Waldner, and Ronald Watt from the vision requirement in 49 CFR 391.41(b)(10), subject to the following conditions: (1) That each individual be physically examined every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the standard in 49 CFR 391.41(b)(10), and (b) by a medical examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provide a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that each individual provide a copy of the annual medical certification to the employer for retention in its driver qualification file, or keep a copy in his/her driver qualification file if he/she is self-employed. The driver must also have a copy of the certification when driving so it may be presented to a duly authorized Federal, State, or local enforcement official.

In accordance with revised 49 U.S.C. 31315 and 31136(e), each exemption will be valid for 2 years unless revoked earlier by the FHWA. The exemption will be revoked if (1) the person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31315 and 31136. If the exemption is still effective at the end of the 2-year period, the person may apply to the FHWA for a renewal under procedures in effect at that time.

Authority: 49 U.S.C. 31315 and 31136; 23 U.S.C. 315; 49 CFR 1.48.

Issued on: March 29, 1999.

Kenneth R. Wykle,

Federal Highway Administrator.

[FR Doc. 99–8196 Filed 4–2–99; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Environmental Impact Statement on the Tampa Bay Regional Rail System in Tampa, Florida

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Federal Transit Administration (FTA) and the Hillsborough Area Regional Transit Authority intend to prepare an Environmental Impact Statement (EIS) for the Tampa Bay Regional Rail project in the City of Tampa and Hillsborough County, Florida. The EIS is being prepared in conformance with the National Environmental Policy Act (NEPA), and will also address the requirements of other federal and state environmental laws. The FTA will be the lead federal agency. The EIS will address the social, economic, and environmental effects of selected transportation improvements identified in the "Early Action Plan" identified as a result of the Alternatives for Mobility Enhancement Major Investment Study (MIS) which was completed in April of 1998. HART will perform this effort in coordination with the following consulting agencies: the Florida Department of Transportation (FDOT), the Hillsborough County Metropolitan Planning Organization (MPO), Hillsborough County, and the City of Tampa.

The EIS will evaluate selected transportation improvements in the corridors between the central business district in Tampa and three destinations: the University of South Florida to the north, Westshore/Hillsborough Community College to the west, and Port Tampa to the south. The EIS will evaluate the following transportation alternatives: a No Build Alternative, a Transportation System Management (TSM) Alternative, and Rail Transit Alternatives using Diesel Multiple Units. The No Build Alternative will consist of improvements that are existing or committed (i.e., funded). The TSM Alternative will consist of bus improvements and other transportation system management approaches. The Rail Transit Alternative Diesel Multiple Units are self-propelled rail transit cars that do not require electrification of the right-of-way, but can operate on tracks in streets or adjacent to freight rail tracks. In addition, reasonable alternatives suggested during the scoping process will be considered.

Scoping will be accomplished through correspondence with interested persons, organizations, and federal, state and local agencies, as well as through public meetings. See **SUPPLEMENTARY INFORMATION** below for details.

DATES: *Comment Due Date:* Written comments on the scope of alternatives and impacts to be considered should be sent to HART by May 21, 1999. See **ADDRESSES** below. Three Public Scoping Meetings and one Agency Scoping Meeting will be held on the following dates and times: Agency Scoping—April 13, 1999 at 9:00 to 11:00 a.m.; Public Scoping Meetings—April 13, 19, and 20, 1999 at 4:00 to 7:00 p.m. See **ADDRESSES** below.

ADDRESSES: Written comments should be sent to Mr. Steve Carroll, Project Manager, Hillsborough Area Regional

Transit Authority, 201 East Kennedy Boulevard, Suite 1600, Tampa, Florida, 33602. Phone: (813) 223–6831. The scoping meetings will be held at the following locations:

1. April 13, 1999—9:00 a.m. to 11:00 a.m. County Center, 601 E. Kennedy Boulevard 26th Floor, Room A, Downtown Tampa, Florida (located between Kennedy Blvd. and Jackson St., and Morgan St. and Pierce St.)

2. April 13, 1999—4:00 p.m. to 7:00 p.m. Marshall Center at the University of South Florida, 4202 E. Fowler Avenue, USF Campus, Tampa, Florida (located on Fowler Ave. between 30th St. and 56th St.)

3. April 19, 1999—4:00 p.m. to 7:00 p.m. TECO Hall in TECO Plaza, 702 N. Franklin Street, Downtown Tampa, Florida (located between Polk St. and Zack St., and Franklin St. and Tampa St.)

4. April 20, 1999—4:00 p.m. to 7:00 p.m. Port Tampa Library, 4902 Commerce Street, Port Tampa City, Florida (located just south of the apex at Interbay and Westshore Blvd. on Commerce St.)

Directions to meeting sites and information about special accommodation (Spanish translation, signing for hearing impaired, wheelchair access, etc.) is available from Vasti Amaro at HART at 201 East Kennedy Boulevard, Suite 1600, Tampa, Florida 33602, or (813) 254–4278.

FOR FURTHER INFORMATION CONTACT: Ms. Elizabeth Martin, Community Planner, Federal Transit Administration Region 4. Phone (404) 562–3500.

SUPPLEMENTARY INFORMATION:

I. Scoping

FTA and HART invite interested individuals, organizations, and businesses and federal, state and local agencies to participate in defining the alternatives to be evaluated and identifying any significant social, economic, or environmental issues related to the alternatives. Comments on the appropriateness of the alternatives and impact issues are encouraged. Specific suggestions on additional alternatives to be examined and issues to be addressed are welcomed and will be considered in the development of the final study scope. Comments may be made orally at the meetings or in writing prior to May 21, 1999.

HART staff will be present at the scoping meetings to describe the corridor alternatives, answer any questions, and receive comments. Additional opportunities for public participation will be provided throughout the EIS preparation to review findings and results and to solicit comments. Interested persons will be notified of project progress through ongoing community information distributed to the project mailing list that will include all scoping participants.

Additional background information on the need for the project, the EIS process, alternatives, and impact issues to be addressed by the EIS is contained in a document entitled "Project Scoping." Copies of the document have been distributed to affected federal, state and local agencies, and interested parties currently on the project mailing list. Others may request the document from HART. See **ADDRESSES** above.

II. Description of Study Area and Project Need

The study area is located in the City of Tampa and Hillsborough County. It extends approximately 28.5 miles between Downtown Tampa and the University of South Florida (USF) to the north, Hillsborough Area Community College to the west (Westshore), and Port Tampa to the south. Between USF and Port Tampa, approximately 18.5 miles of Diesel Multiple Unit rail transit facilities would generally follow the existing CSX Railroad tracks, which currently have active freight service. Between Downtown and Westshore/Hillsborough Community College, approximately 10 miles of Diesel Multiple Unit rail transit facilities would generally follow the I–275 corridor. The area is currently served by HART bus service, and there is no existing rail rapid transit or commuter service in the study area.

The study area includes and connects the three largest employment/activity centers in the Tampa Bay area: USF, Westshore, and Downtown. Residential areas in between and adjacent to these destinations would also be served. Availability of right-of-way in the study area is constrained, and substantial increases in travel demand will exceed existing and planned capacity of the roadway system. The adopted cost affordable Long Range Transportation Plan for the region calls for a combination of modal improvements, including widening of existing roadways, improvements to the bus system, pedestrian and bicycle facilities enhancement, application of technology to manage demand and improve system efficiencies, and introduction of Diesel Multiple Unit rail transit service.

In response to the study area needs, HART and the Hillsborough County MPO conducted a Major Investment Study in the study area. The results of the Major Investment Study, which was completed in April 1998, concluded with the selection of a Locally Preferred Strategy including Diesel Multiple Unit rapid rail service between Downtown, USF, Hillsborough Community College/Westshore and Port Tampa, and substantial improvements to bus service. The transit improvements are intended to increase the capacity of the transportation network, improve accessibility and mobility, diversify transportation choices, and help achieve regional air quality goals by providing alternatives to the single-occupant vehicle and the opportunity to reduce vehicle miles traveled.

Alternatives

The transportation alternatives proposed for consideration in this project area include:

(1) No-Build Alternative, which involves no change to transportation services or facilities in the Corridor beyond already committed projects;

(2) A Transportation System Management Alternative which focuses on operational and low to medium cost capital improvements to bus transit routes and services in the project area; and

(3) Diesel Multiple Unit rail rapid transit alternatives ranging from approximately 18.5 to approximately 28.5 miles of rail generally located parallel to existing CSX railroad corridors from USF through Downtown Tampa to Port Tampa, and the I–275 Corridor through Westshore. Stations would be located to serve potential significant trip generators and in areas where economic development efforts are planned or underway. The locations of stations and resulting impacts will be an important area of consideration during the study.

Potential Impacts for Analysis

The FTA and HART intend to evaluate significant social, environmental, and economic impacts of the alternatives analyzed in the EIS. Primary factors to be addressed include: land use, economic development, traffic and parking, coordination with ongoing transportation projects, grade crossing safety, noise and vibration, community impacts, environmental justice, historic/archaeological sites, water quality, air quality, contaminated materials and capital and operating costs. Impacts on other factors including aesthetics, parklands, ecosystems, threatened and endangered species, and energy will also be assessed. Other potential impact issues may be added as a result of scoping and agency coordination efforts. Mitigation measures will be identified for significant environmental impacts.

The subjects and level of detail addressed in the EIS will be consistent with the requirements of the joint FTA/FHWA environmental regulations (23 CFR 771 and 40 CFR 1500–1508) and other related regulations. The proposed impact assessment and evaluation will take into account both positive and negative effects, direct and indirect impacts, short-term (construction) and long-term impacts, and cumulative effects.

FTA Procedures

In accordance with federal transportation planning regulations and environmental procedures (40 CFR Part 1500–1508 and 23 CFR Part 771), the EIS will be prepared to consider reasonable alternatives, assess the potential impacts associated with reasonable alternatives, and provide the public with the opportunity to comment. The EIS will be prepared to address the components of the Locally Preferred Strategy identified in the 1998 Major Investment Study in the corridor between downtown Tampa and the University of South Florida, Hillsborough Community College, and Port Tampa. The Draft EIS will be circulated to solicit public and agency comments on the proposed action. Based on the comments received on the Draft EIS, HART will prepare the Final EIS. Opportunity for public comment will be provided throughout project development process.

Issued On: March 30, 1999.

Susan E. Schruth,

Regional Administrator.

[FR Doc. 99–8197 Filed 4–2–99; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Proposed Agency Information Collection Activities; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on proposed and continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Today, the Office of Thrift Supervision within the Department of the Treasury solicits comments on the S&L Holding Company Registration Statement.

DATES: Submit written comments on or before June 4, 1999.

ADDRESSES: Send comments to Manager, Dissemination Branch, Information Management and Services, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, Attention 1550–0020. Hand deliver comments to the Public Reference Room, 1700 G Street, NW., lower level, from 9:00 a.m. to 4:00 p.m. on business days; they may be sent by facsimile transmission to FAX Number (202) 906–7755; or they may be sent by e-mail to public.info@ots.treas.gov. Those commenting by e-mail should include their name and telephone number. Comments over 25 pages in length should be sent to FAX number (202) 906–6956. Comments are available for inspection at 1700 G St. N.W., from 9:00 a.m. until 4:00 p.m. on business days.

Interested persons may also inspect copies of the Form with instructions at 1700 G Street, NW., from 9:00 a.m. until 4:00 p.m. on business days or from PubliFax, OTS' Fax-on-Demand system, at (202) 906–5660.

FOR FURTHER INFORMATION CONTACT: Nadine Washington, Supervision, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, (202) 906–6706.

SUPPLEMENTARY INFORMATION:

Title: S&L Holding Company Registration Statement.

OMB Number: 1550–0020.

Form Number: H–(e)____.

Abstract: This information is necessary to determine whether a company meets the statutory standards to become a savings and loan holding company.

Current Actions: OTS proposes to renew this information collection without revision.

Type of Review: Extension.

Affected Public: Business or For Profit.

Estimated Number of Respondents: 135.

Estimated Time Per Respondent: 8 hours.

Estimated Total Annual Burden Hours: 1,080 hours.

Request for Comments: The OTS will summarize comments submitted in response to this notice or will include these comments in its request for OMB approval. All comments will become a matter of public record. The OTS invites comment on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality; and (d) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Dated: March 29, 1999.

Celia Winter,

Director, Information Management and Services.

[FR Doc. 99–8323 Filed 4–2–99; 8:45 am]

BILLING CODE 6720–01–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Proposed Agency Information Collection Activities; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on proposed and continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Today, the Office of Thrift Supervision within the Department of the Treasury solicits comments on the S&L Holding Company Applications.

DATES: Submit written comments on or before June 4, 1999.

ADDRESSES: Send comments to Manager, Dissemination Branch, Information Management and Services, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, Attention 1550–0015. Hand deliver comments to the Public Reference Room, 1700 G Street, NW., lower level, from 9:00 a.m. to 4:00 p.m. on business days. Send facsimile transmissions to FAX Number (202) 906–7755; or they may be sent by e-mail to public.info@ots.treas.gov. Those commenting by e-mail should include their name and telephone number. Comments over 25 pages in length should be sent to FAX number (202) 906–6956. Comments are available for inspection at 1700 G Street, N.W., from 9:00 a.m. until 4:00 p.m. on business days.

Interested persons may also inspect copies of the Form with instructions at 1700 G Street, NW., from 9:00 A.M. until 4:00 P.M. on business days or from PubliFax, OTS' Fax-on-Demand system, at (202) 906–5660.

FOR FURTHER INFORMATION CONTACT: Nadine Washington, Supervision, Office of Thrift Supervision, 1700 G Street,

NW., Washington, DC 20552, (202) 906–6706.

SUPPLEMENTARY INFORMATION:

Title: S&L Holding Company Applications

OMB Number: 1550–0015

Form Number: H–(b)10

Abstract: This information is collected to determine if a savings and loan holding company has adhered to the statutes, regulations, and condition of approval to acquire an insured institution and whether any of the holding company's activities would be injurious to the operation of the subsidiary savings institution.

Current Actions: OTS proposes to renew this information collection without revision.

Type of Review: Extension.

Affected Public: Business or For Profit.

Estimated Number of Respondents: 154.

Estimated Time Per Respondent: 500 hours.

Estimated Total Annual Burden Hours: 77,000 hours.

Request for Comments: The OTS will summarize comments submitted in response to this notice or will include these comments in its request for OMB approval. All comments will become a matter of public record. The OTS invites comment on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality; and (d) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Dated: March 29, 1999.

Celia Winter,

Director, Information Management and Services.

[FR Doc. 99–8324 Filed 4–2–99; 8:45 am]

BILLING CODE 6720–01–P

UNITED STATES INFORMATION AGENCY

Proposed Collection; Comment Request

AGENCY: United States Information Agency.

ACTION: Proposed Collection; Comment Request.

SUMMARY: The United States Information Agency, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on an information collection requirement concerning the public use form entitled "Application for Certificate of International Educational Character." This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3506(c)(2)(A).

Comments are requested on the proposed information collection concerning: (a) Whether the proposed collection of information is necessary for the proper performance of the agency, including whether the information has practical utility; (b) the accuracy of the Agency's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected and (d) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Send comments regarding this burden estimates or any other aspect of this collection of information to the United States Information Agency, M/AOL, 301 Fourth Street, SW, Washington, DC 20547; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Docket Library, Room 10202, NEOB, Washington, DC 20503.

DATES: Comments are due on or before June 4, 1999.

COPIES: Copies of the Request for Clearance (OMB 83–I), supporting statement, and other documents that will be submitted to OMB for approval may be obtained from the USIA Clearance Officer. Comments should be submitted to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for USIA, and also to the USIA Clearance Officer.

FOR FURTHER INFORMATION CONTACT: Agency Clearance Officer, Ms. Jeannette Giovetti, United States Information Agency, M/AOL, 301 Fourth Street, SW, Washington, DC 20547; telephone (202) 619–4408, internet address: JGiovett@USIA. GOV; and OMB review: Mr. Jeff Hill, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Docket Library, Room 10202, NEOB, Washington, DC 20503, Telephone (202) 395–3176.

SUPPLEMENTARY INFORMATION: The information collection activity involved with this program is conducted pursuant to the mandate give to the United States Information Agency under the terms and conditions of the multilateral "Agreement for Facilitating the International Circulation of Visual and Auditory Materials of an Educational, Scientific and Cultural Character," Public Law 89–634, and the "World-Wide Free Flow Export-Import Of Audio-Visual Materials," 22 CFR—Part 502.

Public reporting burden for this collection of information (Paper Work Reduction Project: OMB No. 3116–0007) is estimated to average 25 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the date needed, and completing reviewing the collection of information. Responses are required to retain benefits and respondents are required to respond on an as needed basis

Current Actions USIA is requesting OMB renewal of this currently approved information collection for a period of three years.

Title Application for Certificate of International Educational Character.

Form Number IAP—17.

Abstract This information collection is used to certify the international character of visual and auditory materials (motion pictures, videotapes, recordings, sound recordings, filmstrips, slides, maps, charts posters, models, etc.) for producers and distributors who have an interest in exporting their materials abroad in accordance with the provisions of Pub. L. 89–634 and 22 CFR part 502.

Proposed Frequency of Responses
No. of Respondents—400.
Recordkeeping Hours—.45
Total Annual Burden—)259.

Dated: March 29, 1999.

Rose Royal,

Federal Register Liaison.

[FR Doc. 99–8277 Filed 4–2–99; 8:45 am]

BILLING CODE 8230–01–M

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0009]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the

proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed revision of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments for information needed for vocational rehabilitation training, vocational education, and vocational planning.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before June 4, 1999.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420. Please refer to "OMB Control No. 2900–0009" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Public Law 104–13; 44 U.S.C., 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Disabled Veterans Application for Vocational Rehabilitation, VA Form 28–1900.

OMB Control Number: 2900–0009.

Type of Review: Revision of a currently approved collection.

Abstract: Veterans with compensable service-connected disabilities use this form to apply for vocational rehabilitation under 38 U.S.C. chapter 31. The application obtains information used to determine basic entitlement, schedule an evaluation, determine final eligibility for the benefit.

Affected Public: Individuals or households.

Estimated Annual Burden: 13,625 hours.

Estimated Average Burden Per Respondent: 15 minutes.

Frequency of Response: Generally one time.

Estimated Number of Respondents: 54,500.

Dated: March 3, 1999.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 99–8187 Filed 4–2–99; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0253]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments for information that VA considers crucial to the evaluation of an underwriter's experience.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before June 4, 1999.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420. Please refer to "OMB Control No. 2900–0253" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Public Law 104–13; 44 U.S.C., 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Nonsupervised Lender's Nomination and Recommendation of Credit Underwriter, VA Form 26–8736a.

OMB Control Number: 2900–0253.

Type of Review: Extension of a currently approved collection.

Abstract: The standards established by VA require that a lender have a qualified underwriter review all loans to be closed on an automatic basis to determine that the loan meets VA's credit underwriting standards. To determine if the lender's nominee is qualified to make such a determination, VA has developed VA Form 26–8736a that contains information that VA considers crucial to the evaluation of an underwriter's experience. The form is completed by the lender and the lender's nominee for underwriting and then submitted to VA for approval.

Affected Public: Business or other for-profit.

Estimated Annual Burden: 1,000 hours.

Estimated Average Burden Per Respondent: 20 minutes.

Frequency of Response: Generally one time.

Estimated Number of Respondents: 3,000.

Dated: February 18, 1999.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 99–8188 Filed 4–2–99; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0270]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATE: Comments must be submitted on or before May 5, 1999.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Ron Taylor, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–8015 or FAX (202) 273–5981. Please refer to "OMB Control No. 2900–0270."

SUPPLEMENTARY INFORMATION:

Title: Financial Counseling Statement, VA Form 26–8844.

OMB Control Number: 2900–0270.

Type of Review: Extension of a currently approved collection.

Abstract: The form is part of VA's supplemental servicing program for helping veteran-borrowers who are seriously delinquent on guaranteed or insured VA home loans. In VA's supplemental servicing effort, financial counseling is performed in appropriate cases to afford veteran-borrowers the maximum assistance possible to retain their homes during periods of temporary financial difficulty. The information collected is used by VA to make recommendations to the borrower in an effort to help the borrower cure the default status of the loan.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on September 24, 1998 at page 51120.

Affected Public: Individuals or households.

Estimated Annual Burden: 3,750 hours.

Estimated Average Burden Per Respondent: 45 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 5,000.

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, Allison Eydt, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–4650. Please refer to "OMB Control No. 2900–0029" in any correspondence.

Dated: March 2, 1999.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 99–8189 Filed 4–2–99; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0463]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATE: Comments must be submitted on or before May 5, 1999.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Ron Taylor, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–8015 or FAX (202) 273–5981. Please refer to "OMB Control No. 2900–0463."

SUPPLEMENTARY INFORMATION:

Title: Notice of Waiver of VA Compensation or Pension to Receive Military Pay and Allowances, VA Form 21–8951.

OMB Control Number: 2900–0463.

Type of Review: Reinstatement, with change, of a previously approved collection for which approval has expired.

Abstract: This form is used by Reserve and National Guard personnel to waive either VA benefits or military pay and allowances. The law prohibits simultaneous payment of VA compensation or pension and military pay and allowances.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on December 23, 1998 at page 71194.

Affected Public: Individuals or Households.

Estimated Annual Burden: 4833 hours.

Estimated Average Burden Per Respondent: 10 minutes.

Frequency of Response: Generally one time.

Estimated Number of Respondents: 29,000.

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, Allison Eydt, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–4650. Please refer to "OMB Control No. 2900–0463" in any correspondence.

Dated: March 2, 1999.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 99–8190 Filed 4–2–99; 8:45 am]

BILLING CODE 8320–01–P

Corrections

Federal Register
Vol. 64, No. 64
Monday, April 5, 1999

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 90

[FRL–6308–6]

RIN 2060–AE29

Phase 2 Emission Standards for New Nonroad Spark-Ignition Nonhandheld Engines at or Below 19 Kilowatts

Correction

In rule document 99–6175 beginning on page 15208 in the issue of Tuesday, March 30, 1999, make the following correction:

§90.207 Credit calculation and manufacturer compliance with emission standards.

On page 15241, in the third column,in §90.207 (a) under "Load Factor", the formula should read:

$$\sum_{i=1}^{n}(\%\text{MTT mode}_i)\times(\%\text{MTS mode}_i)\times(\text{WF mode}_i)$$

[FR Doc. 99–6175 Filed 4–2–99; 8:45 am]
BILLING CODE 1505–01–D

federal register

Monday
April 5, 1999

Part II

Department of Education

National Institute on Disability and Rehabilitation Research; Final Funding Priorities for Fiscal Years 1999–2000 for Certain Centers; Inviting Applications for a New Rehabilitation Research and Training Center and New Rehabilitation Engineering Research Centers for Fiscal Year 1999; Notices

DEPARTMENT OF EDUCATION

National Institute on Disability and Rehabilitation Research; Notice of Final Funding Priorities for Fiscal Years 1999–2000 for Certain Centers

SUMMARY: The Secretary announces funding priorities for one Rehabilitation Research and Training Center (RRTC) and two Rehabilitation Engineering Research Centers (RERCs) under the National Institute on Disability and Rehabilitation Research (NIDRR) for fiscal years 1999–2000. The Secretary takes this action to focus research attention on areas of national need. These priorities are intended to improve rehabilitation services and outcomes for individuals with disabilities.

EFFECTIVE DATE: These priorities take effect on May 5, 1999.

FOR FURTHER INFORMATION CONTACT: Donna Nangle. Telephone: (202) 205–5880. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–9136. Internet: Donna__Nangle@ed.gov

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

SUPPLEMENTARY INFORMATION: This notice contains final priorities under the Disability and Rehabilitation Research Projects and Centers Program for one RRTC related to rehabilitation of persons with traumatic brain injury (TBI) and two RERCs related to universal design and the built environment, and telecommunications access. The final priorities refer to NIDRR's proposed Long-Range Plan (LRP). The LRP can be accessed on the World Wide Web at: http://www.ed.gov/legislation/FedRegister/announcements/1998–4/102698a.html

These final priorities support the National Education Goal that calls for every adult American to possess the skills necessary to compete in a global economy.

The authority for the Secretary to establish research priorities by reserving funds to support particular research activities is contained in sections 202(g) and 204 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 762(g) and 764).

Note: This notice of final priorities does not solicit applications. A notice inviting applications is published elsewhere in this issue of the **Federal Register**.

Analysis of Comments and Changes

On January 15, 1999 the Secretary published a notice of proposed priorities in the **Federal Register** (64 FR 2730). The Department of Education received 13 letters commenting on the notice of proposed priority by the deadline date. Technical and other minor changes—and suggested changes the Secretary is not legally authorized to make under statutory authority—are not addressed.

Rehabilitation Research and Training Centers

Priority 1: Rehabilitation of Persons with Traumatic Brain Injury.

Comment: Two commenters suggested that the RRTC should focus exclusively on persons with mild TBI. Three additional commenters suggested that the RRTC emphasize issues related to persons with mild TBI.

Discussion: NIDRR agrees that the RRTC should be required to carry out additional research on the rehabilitation of persons with mild TBI. However, NIDRR declines to require the RRTC to focus exclusively on persons with mild TBI because it is important for the RRTC to have the additional discretion to pursue promising research related to persons with moderate and severe TBI.

Changes: The second required activity has been revised to include an emphasis on persons with mild TBI, and the fourth required activity has been revised to include persons with mild TBI.

Comment: The RRTC should address postacute rehabilitation and support trials of specific interventions at the inpatient stage of rehabilitation.

Discussion: The priority is silent on the issue of the rehabilitation setting. Applicants have the discretion to propose to address the rehabilitation setting or settings. The peer review process will evaluate the merits of the proposals.

Changes: None.

Comment: Because universal design can have a significant impact on the functioning of persons with TBI, the "Introduction" should include the discussion in NIDRR's proposed LRP Plan on the interaction between individuals and the environment.

Discussion: There are numerous references to NIDRR's proposed LRP in NIDRR's FY 1999 priorities. For the sake of consistency and brevity, and in light of the fact that the LRP is easily accessible through the Internet, NIDRR prefers to include only references to the LRP in the priorities.

Changes: None.

Comment: The third required activity to develop and evaluate innovative interventions to assist families should be revised to include the requirement to utilize the physical and informational environments as a resource to enhance functional and social abilities.

Discussion: An applicant could propose to fulfill the requirements of the third activity by utilizing the physical and informational environments as a resource to enhance functional and social abilities. The peer review process will evaluate the merits of the proposal. NIDRR has no basis to determine that all applicants should be required to utilize the physical and informational environments as a resource to enhance functional and social abilities.

Changes: None.

Comment: The RRTC should be required to coordinate with the proposed RERCs on Universal Design and the Built Environment and Telecommunications Access.

Discussion: The RRTC is required to coordinate with entities carrying out related research or training activities including NIDRR's grantees on TBI. An applicant could propose to coordinate with the RERCs on Universal Design and the Built Environment and Telecommunications Access. NIDRR has no basis to determine that all applicants should be required to coordinate with the RERCs on Universal Design and the Built Environment and Telecommunications Access.

Changes: None.

Comment: The "Introduction" and the second required activity indicate that the RRTC will address all age groups. One commenter indicated that the target population of the RRTC is overly broad, and the four required research activities of the RRTC should focus exclusively on children and adolescents. A second commenter suggested that the priority should support separate geriatric and pediatric studies.

Discussion: NIDRR agrees that requiring the RRTC to address all age groups is too broad a task. However, NIDRR believes that requiring the RRTC to focus exclusively on children and adolescents may result in the RRTC neglecting equally important adult issues that are not being addressed by other research initiatives. NIDRR prefers to provide applicants with the discretion to propose the age groups that the RRTC will address. If an applicant proposes to emphasize issues related to children and adolescents, the peer review process will evaluate the merits of this proposal.

In regard to the comment on geriatric and pediatric studies, NIDRR prefers to provide applicants with the discretion to propose whether studies involving different age groups are conducted separately or jointly. The peer review process will evaluate the merits of the proposal. NIDRR has no basis to

determine that all applicants should propose to carry out the studies separately.

Changes: The "Introduction" and the second required activity have been revised to eliminate the requirement that the RRTC address all age groups. Applicants have the discretion to propose the age groups that the RRTC will address.

Comment: Several projects of the Centers for Disease Control (CDC) address the epidemiology and needs of persons with mild TBI. The priority should be revised to eliminate the epidemiological studies in order to avoid duplication.

Discussion: After consulting with officials from the CDC, NIDRR agrees that the requirement to carry out epidemiological studies would duplicate CDC research.

Changes: The requirement to carry out epidemiological studies has been eliminated.

Rehabilitation Engineering Research Centers

Priority 2: Universal Design and the Built Environment

Comment: Is the objective of the second required activity to develop an anthropometric database to be used to develop new universal designs for toilet and bathing facilities, or to develop an anthropometric database and conduct research related to accessing toilet and bathing facilities?

Discussion: The purpose of the second required activity is to develop an anthropometric database on the specific issue of access and use of toileting and bathing facilities, and in the process to develop a prototype anthropometric database that can be used as a model for future databases.

Changes: None.

Comment: Two commenters suggested that the target population for the fourth required activity should be broadened to include persons with disabilities.

Discussion: NIDRR agrees the RERC should serve as a national information resource for persons with disabilities.

Changes: Persons with disabilities has been added to the target population of the fourth required activity.

Comment: Two commenters expressed concern that the priority is too narrowly focused on physical access and does not address the needs of individuals with sensory disabilities. One of the commenters indicated that the RERC should expressly integrate acoustic and visually-based accommodations into its universal design efforts.

Discussion: NIDRR expects the RERC to address the principles of universal design as they apply to all persons with disabilities, including those with sensory disabilities. The priority does not indicate that the RERC is focused exclusively on physical access. NIDRR prefers to provide applicants with the discretion to propose the extent to which the RERC will address the needs of persons with sensory disabilities. The peer review process will evaluate the merits of the proposal.

Changes: None.

Comment: Does the RERC have to develop all the technological solutions it evaluates under the first required activity, or can the RERC evaluate solutions that industry has already developed?

Discussion: As long as the RERC engages in certain activities that include both development and evaluation, applicants have the discretion to propose to carry out additional evaluation activities.

Changes: None.

Comment: Please clarify whether the prototype anthropometric database should include persons with cognitive disabilities.

Discussion: The only requirement that is placed on the target population for the prototype anthropometric database is that it must include persons who use manual or powered wheelchairs. In addition to manual or powered wheelchair users, an applicant could propose to include persons with cognitive disabilities in the database. The peer review process will evaluate the merits of the proposal.

Changes: None.

Comment: The RERC should be required to coordinate on activities of mutual interest with the RRTCs on TBI and other RRTCs dealing with cognitive disabilities to ensure more utilization of universal design in the built environment for these individuals.

Discussion: There is a general requirement for the RERC to coordinate with other entities carrying out related research or training activities. An applicant could propose to coordinate with the RRTCs on Traumatic Brain Injury and other Centers dealing with cognitive disabilities. The peer review process will evaluate the merits of the proposal. NIDRR has no basis to determine that all applicants must coordinate with the RRTCs on Traumatic Brain Injury and other Centers dealing with cognitive disabilities.

Changes: None.

Priority 3: Telecommunications Access

Comment: The RERC should be required to address visual display access.

Discussion: NIDRR's RERC on Hearing Enhancement is currently conducting research and development in this area. However, an applicant could propose to address visual display access. The peer review process will evaluate the merits of the proposal. NIDRR has no basis to determine that all applicants should be required to propose research on visual display access.

Changes: None.

Rehabilitation Research and Training Centers

Authority for the RRTC program of NIDRR is contained in section 204(b)(2) of the Rehabilitation Act of 1973, as amended (29 U.S.C. 764(b)(2)). Under this program the Secretary makes awards to public and private organizations, including institutions of higher education and Indian tribes or tribal organizations for coordinated research and training activities. These entities must be of sufficient size, scope, and quality to effectively carry out the activities of the Center in an efficient manner consistent with appropriate State and Federal laws. They must demonstrate the ability to carry out the training activities either directly or through another entity that can provide that training.

The Secretary may make awards for up to 60 months through grants or cooperative agreements. The purpose of the awards is for planning and conducting research, training, demonstrations, and related activities leading to the development of methods, procedures, and devices that will benefit individuals with disabilities, especially those with the most severe disabilities.

Description of Rehabilitation Research and Training Centers

RRTCs are operated in collaboration with institutions of higher education or providers of rehabilitation services or other appropriate services. RRTCs serve as centers of national excellence and national or regional resources for providers and individuals with disabilities and the parents, family members, guardians, advocates or authorized representatives of the individuals.

RRTCs conduct coordinated, integrated, and advanced programs of research in rehabilitation targeted toward the production of new knowledge to improve rehabilitation methodology and service delivery systems, to alleviate or stabilize disabling conditions, and to promote maximum social and economic independence of individuals with disabilities.

RRTCs provide training, including graduate, pre-service, and in-service training, to assist individuals to more effectively provide rehabilitation services. They also provide training including graduate, pre-service, and in-service training, for rehabilitation research personnel and other rehabilitation personnel.

RRTCs serve as informational and technical assistance resources to providers, individuals with disabilities, and the parents, family members, guardians, advocates, or authorized representatives of these individuals through conferences, workshops, public education programs, in-service training programs and similar activities.

RRTCs disseminate materials in alternate formats to ensure that they are accessible to individuals with a range of disabling conditions.

NIDRR encourages all Centers to involve individuals with disabilities and individuals from minority backgrounds as recipients of research training, as well as clinical training.

The Department is particularly interested in ensuring that the expenditure of public funds is justified by the execution of intended activities and the advancement of knowledge and, thus, has built this accountability into the selection criteria. Not later than three years after the establishment of any RRTC, NIDRR will conduct one or more reviews of the activities and achievements of the Center. In accordance with the provisions of 34 CFR 75.253(a), continued funding depends at all times on satisfactory performance and accomplishment.

Priorities

Under 34 CFR 75.105(c)(3) the Secretary gives an absolute preference to applications that meet the following priority. The Secretary will fund under this competition only applications that meet this absolute priority.

Priority 1: Rehabilitation of Persons With Traumatic Brain Injury (TBI)

Introduction

Chapter Four of NIDRR's proposed Long-Range Plan (63 FR 57204) addresses research on trauma rehabilitation, including brain injury. A 1998 draft National Institute of Health's Consensus Development Conference Statement on Rehabilitation of Persons with TBI identifies emotional, cognitive, behavioral, and physical symptoms of TBI that affect the individuals with TBI, family, friends, community, and society. The report raises important research issues related to children, the elderly, and persons who experience mild TBI symptoms.

This RRTC will emphasize, but not be limited to, the rehabilitation needs of persons with mild TBI. For the purpose of this priority, mild TBI is defined using the definition developed in 1991 by the Mild TBI Committee of the Head Injury Interdisciplinary Special Interest Group of the American Congress of Rehabilitation Medicine definition (see Esselman, P. and Uomoto, J., "Classification of the Spectrum of Mild Traumatic Brain Injury," *Brain Injury*, Vol. 9, No. 4, pgs. 417–424, 1995).

NIDRR has a long history of support for research on TBI that has focused primarily on adults with moderate and severe injuries. This RRTC may address the needs of all, or selected, age groups including children and the elderly.

Priority

The Secretary will establish an RRTC for the purpose of developing interventions to improve the functional abilities and promote the independence of persons with TBI. The RRTC must:

(1) Develop and evaluate methodologies to assess the long term consequences of mild TBI and identify interventions for rehabilitation;

(2) Develop and evaluate innovative methods of diagnosis and treatment of the medical, psychological, and neurobehavioral sequelae of TBI with an emphasis on persons with mild TBI;

(3) Develop and evaluate innovative interventions to assist families;

(4) Develop and test prognostic indicators of rehabilitation outcomes including early predictors of functional outcomes for persons with TBI including those with mild TBI;

(5) Provide training on research methodology and applied research experience, and training on knowledge gained from the Center's research activities to persons with disabilities and their families, service providers, and other appropriate parties;

(6) Develop and disseminate informational materials based on knowledge gained from the Center's research activities, and disseminate the materials to persons with disabilities, their representatives, service providers, and other interested parties;

(7) Involve individuals with disabilities and, if appropriate, their representatives, in planning and implementing its research, training, and dissemination activities, and in evaluating the Center;

(8) Conduct a state-of-the-science conference and publish a comprehensive report on the final outcomes of the conference. The report must be published in the fourth year of the grant; and

(9) Coordinate with other entities carrying out related research or training activities including NIDRR's grantees on TBI.

Description of Rehabilitation Engineering Research Centers

RERCs carry out research or demonstration activities by:

(a) Developing and disseminating innovative methods of applying advanced technology, scientific achievement, and psychological and social knowledge to (1) solve rehabilitation problems and remove environmental barriers, and (2) study new or emerging technologies, products, or environments;

(b) Demonstrating and disseminating (1) innovative models for the delivery of cost-effective rehabilitation technology services to rural and urban areas, and (2) other scientific research to assist in meeting the employment and independent living needs of individuals with severe disabilities; or

(c) Facilitating service delivery systems change through (1) the development, evaluation, and dissemination of consumer-responsive and individual and family-centered innovative models for the delivery to both rural and urban areas of innovative cost-effective rehabilitation technology services, and (2) other scientific research to assist in meeting the employment and independent needs of individuals with severe disabilities.

Each RERC must provide training opportunities to individuals, including individuals with disabilities, to become researchers of rehabilitation technology and practitioners of rehabilitation technology in conjunction with institutions of higher education and nonprofit organizations.

The Department is particularly interested in ensuring that the expenditure of public funds is justified by the execution of intended activities and the advancement of knowledge and, thus, has built this accountability into the selection criteria. Not later than three years after the establishment of any RERC, NIDRR will conduct one or more reviews of the activities and achievements of the Center. In accordance with the provisions of 34 CFR 75.253(a), continued funding depends at all times on satisfactory performance and accomplishment.

General RERC Requirements

The following requirements apply to these RERCs pursuant to these absolute priorities unless noted otherwise. An applicant's proposal to fulfill these requirements will be assessed using

applicable selection criteria in the peer review process.

The RERC must have the capability to design, build, and test prototype devices and assist in the transfer of successful solutions to relevant production and service delivery settings. The RERC must evaluate the efficacy and safety of its new products, instrumentation, or assistive devices.

The RERC must disseminate research results and other knowledge gained from the Center's research and development activities to persons with disabilities, their representatives, disability organizations, businesses, manufacturers, professional journals, service providers, and other interested parties.

The RERC must develop and carry out utilization activities to successfully transfer all new and improved technologies developed by the RERC to the marketplace.

The RERC must involve individuals with disabilities and, if appropriate, their representatives, in planning and implementing its research, development, training, and dissemination activities, and in evaluating the Center.

The RERC must conduct a state-of-the-science conference and publish a comprehensive report on the final outcomes of the conference. The report must be published in the fourth year of the grant.

The RERC must coordinate with other entities carrying out related research or training activities.

Priorities

Under 34 CFR 75.105(c)(3) the Secretary gives an absolute preference to applications that meet the following priorities. The Secretary will fund under this competition only applications that meet one of these absolute priorities.

Priority 2: Universal Design and the Built Environment Introduction

Chapter 5 of NIDRR's proposed Long-Range Plan (63 FR 57207) discusses the importance of improving access to the built environment through universal design. Universal design is a process whereby environments and products are designed with built-in flexibility so they are usable by all people, regardless of age and ability, at no additional cost to the user. For the purpose of this priority, the built environment includes public and private buildings, houses, landscapes, and tools and objects of daily use (e.g., door openers, environmental control systems, and appliances).

In order to create environments that are universal in nature, it is necessary to have a database of physical measurements of the human body (i.e., anthropometric data) that includes persons with disabilities. There is a need for more anthropometric data on persons with disabilities. A 1996 report from the U.S. Architectural and Transportation Barriers Compliance Board (Access Board) concluded that research was needed regarding how people with disabilities access toilet and bathing facilities. NIDRR expects this RERC to develop a prototype anthropometric database that can be used to create universally designed toileting facilities and adapted for the development of other anthropometric databases for persons with disabilities.

Priority

The Secretary will establish an RERC on universal design and the built environment to advance the field of universal design and improve the accessibility of the built environment. The RERC must:

(1) Develop and evaluate universally designed plans and products for the built environment;

(2) Develop a prototype anthropometric database, both static and dynamic, of persons with disabilities, including those who use manual or powered wheelchairs, to access and use toilet and bathing facilities;

(3) Identify, develop and evaluate strategies for promoting adoption of universal design in the building and product manufacturing industries, and design and architecture curricula; and

(4) Serve as a national information resource on universal design standards, plans, building products, funding sources, and performance evaluations for persons with disabilities, designers, builders and manufacturers.

In carrying out these purposes, the RERC must coordinate on activities of mutual interest with the RERCs on Telecommunications Access and Information Technologies Access, and the Access Board.

Priority 3: Telecommunications Access

Introduction

Chapter 5 of NIDRR's proposed Long-Range Plan (63 FR 57207) discusses the importance of telecommunications accessibility and the need for continued research and development. For the purpose of this priority, telecommunications systems and products include, but are not limited to, wireless communication technologies, networks, multimedia conferencing systems, and software supporting these technologies, products, and systems.

The RERC on Telecommunications Access faces the challenge of promoting access to a highly dynamic field. In order to keep pace with developments in the field, NIDRR expects this RERC to undertake its research and development activities in close collaboration with private industry as well as with public entities that regulate the telecommunications industry. NIDRR expects this RERC to contribute to improving the employment status of persons with disabilities by providing employers with technical assistance and by providing persons with disabilities with information to make them better consumers.

Priority

The Secretary will establish an RERC on telecommunications access for the purpose of developing technological solutions and promoting access for persons with disabilities to current and emerging telecommunications systems and products. The RERC must:

(1) Develop and evaluate in collaboration with industry technological solutions to promote accessibility and universal design at the outset of the development of telecommunications systems and products;

(2) Develop and disseminate strategies for integrating current accessibility features into newer generations of telecommunications systems and products;

(3) Provide technical assistance to public and private organizations responsible for developing policies, guidelines, and standards that affect the accessibility of telecommunications technology products and systems, including the Access Board and the Federal Communications Commission; and

(4) Provide technical assistance and guidance to individuals with disabilities and employers on accessibility issues affecting current telecommunications systems and products.

In carrying out these purposes, the RERC must coordinate on activities of mutual interest with the RERCs on Information Technology Access, Telerehabilitation, Hearing Enhancement, Blindness and Low Vision, and Universal Design and the Built Environment.

Electronic Access to This Document

Anyone may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or portable document format (pdf) on the World Wide Web at either of the following sites: http://ocfo.ed.gov/fedreg.htm http://www.ed.gov/news.html

To use the pdf you must have the Adobe Acrobat Reader Program with Search, which is available free at either of the preceding sites. If you have questions about using the pdf, call the U.S. Government Printing Office toll free at (202) 512–1530 or, toll free at 1–888–293–6498.

Anyone may also view these documents in text copy only on an electronic bulletin board of the Department. Telephone: (202) 219–1511 or, toll free, 1–800–222–4922. The documents are located under Option G—Files/Announcements, Bulletins and Press Releases.

Note: The official version of this document is the document published in the **Federal Register**.

Applicable Program Regulations: 34 CFR Part 350.

(Catalog of Federal Domestic Assistance Number 84.133B, Rehabilitation Research and Training Centers and 84.133E, Rehabilitation Engineering Research Centers)

Program Authority: 29 U.S.C. 760–762.

Dated: March 29, 1999.

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 99–8165 Filed 4–2–99; 8:45 am]

BILLING CODE 4000–01–U

DEPARTMENT OF EDUCATION

[CFDA Nos.: 84.133B and 84.133E]

National Institute on Disability and Rehabilitation Research, Notice Inviting Applications for a New Rehabilitation Research and Training Center and New Rehabilitation Engineering Research Centers for Fiscal Year 1999

Note to Applicants: This notice is a complete application package. Together with the statute authorizing the programs and applicable regulations governing the programs, including the Education Department General Administrative Regulations (EDGAR), this notice contains information, application forms, and instructions needed to apply for a grant under these competitions.

These programs support the National Education Goal that calls for all Americans to possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship.

The estimated funding levels in this notice do not bind the Department of Education to make awards in any of these categories, or to any specific number of awards or funding levels, unless otherwise specified in statute.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR), 34 CFR Parts 74, 75, 77, 80, 81, 82, 85, and 86; and Disability and Rehabilitation Research Projects and Centers—34 CFR Part 350, particularly *Rehabilitation Research and Training Centers* in Subpart C and *Rehabilitation Engineering Research Centers* in Subpart D.

Program Title: Rehabilitation Research and Training Centers (RRTCs).

CFDA Number: 84.133B.

Purpose of Program: RRTCs conduct coordinated and advanced programs or research on disability and rehabilitation that will produce new knowledge that will improve rehabilitation methods and service delivery systems, alleviate or stabilize disabling conditions, and promote maximum social and economic independence for individuals with disabilities. RRTCs provide training to service providers at the pre-service, in-service training, undergraduate, and graduate levels, to improve the quality and effectiveness of rehabilitation services. They also provide advanced research training to individuals with disabilities and those from minority backgrounds engaged in research on disability and rehabilitation. RRTCs serve as national and regional technical assistance resources and provide training for service providers, individuals with disabilities and families and representatives, and rehabilitation researchers.

Eligible Applicants: Parties eligible to apply for grants under this program are States, public or private agencies, including for-profit agencies, public or private organizations, including for-profit organizations, institutions of higher education, and Indian tribes and tribal organizations.

APPLICATION NOTICE FOR FISCAL YEAR 1999 REHABILITATION RESEARCH AND TRAINING CENTERS CFDA NO.84–133B–10

Funding priority	Deadline for transmittal of applications	Estimated number of awards	Maximum award amount (per year)*	Project period (months)
Rehabilitation for Persons with Traumatic Brain Injury	6/03/99	1	$650,000	60

*Note: The Secretary will reject without consideration or evaluation any application that proposes a project funding level that exceeds the stated maximum award amount per year (See 34 CFR 75.104(b)).

RRTC Selection Criteria: The Secretary uses the following selection criteria to evaluate applications for an RRTC on Rehabilitation for Persons with Traumatic Brain Injury under the RRTC program. (See section 350.54)

(a) *Importance of the problem* (9 points total).

(1) The Secretary considers the importance of the problem.

(2) In determining the importance of the problem, the Secretary considers the following factors:

(i) The extent to which the applicant clearly describes the need and target population (3 points).

(ii) The extent to which the proposed activities address a significant need of those who provide services to individuals with disabilities (3 points).

(iii) The extent to which the proposed project will have beneficial impact on the target population (3 points).

(b) *Responsiveness to an absolute or competitive priority* (4 points total).

(1) The Secretary considers the responsiveness of the application to the absolute or competitive priority published in the **Federal Register**.

(2) In determining the responsiveness of the application to the absolute or competitive priority, the Secretary considers the following factors:

(i) The extent to which the applicant addresses all requirements of the absolute or competitive priority (2 points).

(ii) The extent to which the applicant's proposed activities are likely to achieve the purposes of the absolute or competitive priority (2 points).

(c) *Design of research activities* (35 points total).

(1) The Secretary considers the extent to which the design of research activities is likely to be effective in

accomplishing the objectives of the project.

(2) In determining the extent to which the design is likely to be effective in accomplishing the objectives of the project, the Secretary considers the following factors:

(i) The extent to which the research activities constitute a coherent, sustained approach to research in the field, including a substantial addition to the state-of-the-art (5 points).

(ii) The extent to which the methodology of each proposed research activity is meritorious, including consideration of the extent to which—

(A) The proposed design includes a comprehensive and informed review of the current literature, demonstrating knowledge of the state-of-the-art (5 points);

(B) Each research hypothesis is theoretically sound and based on current knowledge (5 points);

(C) Each sample population is appropriate and of sufficient size (5 points);

(D) The data collection and measurement techniques are appropriate and likely to be effective (5 points); and

(E) The data analysis methods are appropriate (5 points).

(iii) The extent to which anticipated research results are likely to satisfy the original hypotheses and could be used for planning additional research, including generation of new hypotheses where applicable (5 points).

(d) *Design of training activities* (11 points total).

(1) The Secretary considers the extent to which the design of training activities is likely to be effective in accomplishing the objectives of the project.

(2) In determining the extent to which the design is likely to be effective in accomplishing the objectives of the project, the Secretary considers the following factors:

(i) The extent to which the proposed training materials are likely to be effective, including consideration of their quality, clarity, and variety (2 points).

(ii) The extent to which the proposed training methods are of sufficient quality, intensity, and duration (2 points).

(iii) The extent to which the proposed training content—

(A) Covers all of the relevant aspects of the subject matter (1 point); and

(B) If relevant, is based on new knowledge derived from research activities of the proposed project (1 point).

(iv) The extent to which the proposed training materials, methods, and content are appropriate to the trainees, including consideration of the skill level of the trainees and the subject matter of the materials (2 points).

(v) The extent to which the proposed training materials and methods are accessible to individuals with disabilities (1 point).

(vi) The extent to which the applicant is able to carry out the training activities, either directly or through another entity (2 points).

(e) *Design of dissemination activities* (8 points total).

(1) The Secretary considers the extent to which the design of dissemination activities is likely to be effective in accomplishing the objectives of the project.

(2) In determining the extent to which the design is likely to be effective in accomplishing the objectives of the project, the Secretary considers the following factors:

(i) The extent to which the content of the information to be disseminated—

(A) Covers all of the relevant aspects of the subject matter (1 point); and

(B) If appropriate, is based on new knowledge derived from research activities of the project (1 point).

(ii) The extent to which the materials to be disseminated are likely to be effective and usable, including consideration of their quality, clarity, variety, and format (2 points).

(iii) The extent to which the methods for dissemination are of sufficient quality, intensity, and duration (2 points).

(iv) The extent to which the materials and information to be disseminated and the methods for dissemination are appropriate to the target population, including consideration of the familiarity of the target population with the subject matter, format of the information, and subject matter (1 point).

(v) The extent to which the information to be disseminated will be accessible to individuals with disabilities (1 point).

(f) *Design of technical assistance activities* (4 points total).

(1) The Secretary considers the extent to which the design of technical assistance activities is likely to be effective in accomplishing the objectives of the project.

(2) In determining the extent to which the design is likely to be effective in accomplishing the objectives of the project, the Secretary considers the following factors:

(i) The extent to which the methods for providing technical assistance are of sufficient quality, intensity, and duration (1 point).

(ii) The extent to which the information to be provided through technical assistance covers all of the relevant aspects of the subject matter (1 point).

(iii) The extent to which the technical assistance is appropriate to the target population, including consideration of the knowledge level of the target population, needs of the target population, and format for providing information (1 point).

(iv) The extent to which the technical assistance is accessible to individuals with disabilities (1 point).

(g) *Plan of operation* (4 points total).

(1) The Secretary considers the quality of the plan of operation.

(2) In determining the quality of the plan of operation, the Secretary considers the following factors:

(i) The adequacy of the plan of operation to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, and timelines for accomplishing project tasks (2 points).

(ii) The adequacy of the plan of operation to provide for using resources, equipment, and personnel to achieve each objective (2 points).

(h) *Collaboration* (2 points total).

(1) The Secretary considers the quality of collaboration.

(2) In determining the quality of collaboration, the Secretary considers the following factors:

(i) The extent to which the applicant's proposed collaboration with one or more agencies, organizations, or institutions is likely to be effective in achieving the relevant proposed activities of the project (1 point).

(ii) The extent to which agencies, organizations, or institutions demonstrate a commitment to collaborate with the applicant (1 point).

(i) *Adequacy and reasonableness of the budget* (3 points total).

(1) The Secretary considers the adequacy and the reasonableness of the proposed budget.

(2) In determining the adequacy and the reasonableness of the proposed budget, the Secretary considers the following factors:

(i) The extent to which the costs are reasonable in relation to the proposed project activities (1 point).

(ii) The extent to which the budget for the project, including any subcontracts, is adequately justified to support the proposed project activities (2 points).

(j) *Plan of evaluation* (7 points total).

(1) The Secretary considers the quality of the plan of evaluation.

(2) In determining the quality of the plan of evaluation, the Secretary considers the following factors:

(i) The extent to which the plan of evaluation provides for periodic assessment of progress toward—

(A) Implementing the plan of operation (1 point); and

(B) Achieving the project's intended outcomes and expected impacts (1 point).

(ii) The extent to which the plan of evaluation will be used to improve the performance of the project through the feedback generated by its periodic assessments (1 point).

(iii) The extent to which the plan of evaluation provides for periodic assessment of a project's progress that is based on identified performance measures that—

(A) Are clearly related to the intended outcomes of the project and expected impacts on the target population (2 points); and

(B) Are objective, and quantifiable or qualitative, as appropriate (2 points).

(k) *Project staff* (9 points total).

(1) The Secretary considers the quality of the project staff.

(2) In determining the quality of the project staff, the Secretary considers the extent to which the applicant encourages applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability (1 point).

(3) In addition, the Secretary considers the following factors:

(i) The extent to which the key personnel and other key staff have appropriate training and experience in disciplines required to conduct all proposed activities (2 points).

(ii) The extent to which the commitment of staff time is adequate to accomplish all the proposed activities of the project (2 points).

(iii) The extent to which the key personnel are knowledgeable about the methodology and literature of pertinent subject areas (2 points).

(iv) The extent to which the project staff includes outstanding scientists in the field (2 points).

(l) *Adequacy and accessibility of resources* (4 points).

(1) The Secretary considers the adequacy and accessibility of the applicant's resources to implement the proposed project.

(2) In determining the adequacy and accessibility of resources, the Secretary considers the following factors:

(i) The extent to which the applicant is committed to provide adequate facilities, equipment, other resources, including administrative support, and laboratories, if appropriate (1 point).

(ii) The extent to which the applicant has appropriate access to clinical populations and organizations representing individuals with disabilities to support advanced clinical rehabilitation research (2 points).

(iii) The extent to which the facilities, equipment, and other resources are appropriately accessible to individuals with disabilities who may use the facilities, equipment, and other resources of the project (1 point).

Program Title: Rehabilitation Engineering Research Centers (RERCs).

CFDA Number: 84.133E.

Purpose of Program: RERCs conduct research, demonstration, and training activities regarding rehabilitation technology—including rehabilitation engineering, assistive technology devices, and assistive technology services, in order to enhance the opportunities to better meet the needs of, and address the barriers confronted by, individuals with disabilities in all aspects of their lives.

Eligible Applicants: Parties eligible to apply for grants under this program are States, public or private agencies, including for-profit agencies, public or private organizations, including for-profit organizations, institutions of higher education, and Indian tribes and tribal organizations.

APPLICATION NOTICE FOR FISCAL YEAR 1999, REHABILITATION ENGINEERING RESEARCH CENTERS, CFDA NO. 84–133E

Funding priority	Deadline for transmittal of applications	Estimated number of awards	Maximum award amount (per year)*	Project period (months)
84.133E–1 Universal Design and the Built Environment	6/03/99	1	$675,000	60
84.133E–7 Telecommunications Access	6/03/99	1	675,000	60

*Note: The Secretary will reject without consideration or evaluation any application that proposes a project funding level that exceeds the stated maximum award amount per year (See 34 CFR 75.104(b)).

RERC Selection Criteria: The Secretary uses the following selection criteria to evaluate applications for RERCs on Universal Design and the Built Environment, and Telecommunications Access under the RERC program. (See section 350.54)

(a) *Importance of the problem* (8 points total).

(1) The Secretary considers the importance of the problem.

(2) In determining the importance of the problem, the Secretary considers the following factors:

(i) The extent to which the applicant clearly describes the need and target population (3 points).

(ii) The extent to which the proposed activities address a significant need of rehabilitation service providers (2 points).

(iii) The extent to which the proposed project will have beneficial impact on the target population (3 points).

(b) *Responsiveness to an absolute or competitive priority* (4 points total).

(1) The Secretary considers the responsiveness of an application to the absolute or competitive priority published in the **Federal Register**.

(2) In determining the application's responsiveness to the absolute or competitive priority, the Secretary considers the following factors:

(i) The extent to which the applicant addresses all requirements of the absolute or competitive priority (2 points).

(ii) The extent to which the applicant's proposed activities are likely to achieve the purposes of the absolute or competitive priority (2 points).

(c) *Design of research activities* (20 points total).

(1) The Secretary considers the extent to which the design of research activities is likely to be effective in accomplishing the objectives of the project.

(2) In determining the extent to which the design is likely to be effective in accomplishing the objectives of the project, the Secretary considers the following factors:

(i) The extent to which the research activities constitute a coherent, sustained approach to research in the field, including a substantial addition to the state-of-the-art (3 points).

(ii) The extent to which the methodology of each proposed research activity is meritorious, including consideration of the extent to which—

(A) The proposed design includes a comprehensive and informed review of the current literature, demonstrating knowledge of the state-of-the-art (3 points);

(B) Each research hypothesis is theoretically sound and based on current knowledge (3 points);

(C) Each sample population is appropriate and of sufficient size (3 points);

(D) The data collection and measurement techniques are appropriate and likely to be effective (3 points); and

(E) The data analysis methods are appropriate (3 points).

(iii) The extent to which anticipated research results are likely to satisfy the original hypotheses and could be used for planning additional research, including generation of new hypotheses where applicable (2 points).

(d) *Design of development activities* (20 points total).

(1) The Secretary considers the extent to which the design of development activities is likely to be effective in accomplishing the objectives of the project.

(2)(i) In determining the extent to which the design is likely to be effective in accomplishing the objectives of the project, the Secretary considers the following factors:

(ii) The extent to which the plan for development, clinical testing, and evaluation of new devices and technology is likely to yield significant products or techniques, including consideration of the extent to which—

(A) The proposed project will use the most effective and appropriate technology available in developing the new device or technique (3 points);

(B) The proposed development is based on a sound conceptual model that demonstrates an awareness of the state-of-the-art in technology (4 points);

(C) The new device or technique will be developed and tested in an appropriate environment (3 points);

(D) The new device or technique is likely to be cost-effective and useful (3 points);

(E) The new device or technique has the potential for commercial or private manufacture, marketing, and distribution of the product (4 points); and

(F) The proposed development efforts include adequate quality controls and, as appropriate, repeated testing of products (3 points).

(e) *Design of training activities* (4 points total).

(1) The Secretary considers the extent to which the design of training activities is likely to be effective in accomplishing the objectives of the project.

(2) In determining the extent to which the design is likely to be effective in accomplishing the objectives of the project, the Secretary considers the following factor: The extent to which the type, extent, and quality of the proposed clinical and laboratory research experience, including the opportunity to participate in advanced-level research, are likely to develop highly qualified researchers (4 points).

(f) *Design of dissemination activities* (7 points total).

(1) The Secretary considers the extent to which the design of dissemination activities is likely to be effective in accomplishing the objectives of the project.

(2) In determining the extent to which the design is likely to be effective in accomplishing the objectives of the project, the Secretary considers the following factors:

(i) The extent to which the content of the information to be disseminated—

(A) Covers all of the relevant aspects of the subject matter (2 points); and

(B) If appropriate, is based on new knowledge derived from research activities of the project (2 points).

(ii) The extent to which the materials to be disseminated are likely to be effective and usable, including consideration of their quality, clarity, variety, and format (2 points).

(iii) The extent to which the information to be disseminated will be accessible to individuals with disabilities (1 point).

(g) *Design of utilization activities* (2 points total).

(1) The Secretary considers the extent to which the design of utilization activities is likely to be effective in accomplishing the objectives of the project.

(2) In determining the extent to which the design is likely to be effective in accomplishing the objectives of the project, the Secretary considers the following factor: The extent to which the potential new users of the information or technology have a practical use for the information and are likely to adopt the practices or use the information or technology, including new devices (2 points).

(h) *Design of technical assistance activities* (2 points total).

(1) The Secretary considers the extent to which the design of technical assistance activities is likely to be effective in accomplishing the objectives of the project.

(2) In determining the extent to which the design is likely to be effective in accomplishing the objectives of the project, the Secretary considers the following factor: The extent to which the methods for providing technical assistance are of sufficient quality, intensity, and duration (2 points).

(i) *Plan of operation* (4 points total).

(1) The Secretary considers the quality of the plan of operation.

(2) In determining the quality of the plan of operation, the Secretary considers the following factors:

(i) The adequacy of the plan of operation to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, and timelines for accomplishing project tasks (2 points).

(ii) The adequacy of the plan of operation to provide for using resources, equipment, and personnel to achieve each objective (2 points).

(j) *Collaboration* (4 points total).

(1) The Secretary considers the quality of collaboration.

(2) In determining the quality of collaboration, the Secretary considers the following factors:

(i) The extent to which agencies, organizations, or institutions demonstrate a commitment to collaborate with the applicant (2 points).

(ii) The extent to which agencies, organizations, or institutions that commit to collaborate with the applicant have the capacity to carry out collaborative activities (2 points).

(k) *Adequacy and reasonableness of the budget* (3 points total).

(1) The Secretary considers the adequacy and the reasonableness of the proposed budget.

(2) In determining the adequacy and the reasonableness of the proposed budget, the Secretary considers the following factors:

(i) The extent to which the costs are reasonable in relation to the proposed project activities (1 point).

(ii) The extent to which the budget for the project, including any subcontracts, is adequately justified to support the proposed project activities (2 points).

(l) *Plan of evaluation* (9 points total).

(1) The Secretary considers the quality of the plan of evaluation.

(2) In determining the quality of the plan of evaluation, the Secretary considers the following factors: The extent to which the plan of evaluation provides for periodic assessment of a project's progress that is based on identified performance measures that—

(i) Are clearly related to the intended outcomes of the project and expected impacts on the target population (5 points); and

(ii) Are objective, and quantifiable or qualitative, as appropriate (4 points).

(m) *Project staff* (9 points total).

(1) The Secretary considers the quality of the project staff.

(2) In determining the quality of the project staff, the Secretary considers the extent to which the applicant encourages applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability (1 point).

(3) In addition, the Secretary considers the following factors:

(i) The extent to which the key personnel and other key staff have appropriate training and experience in disciplines required to conduct all proposed activities (2 points).

(ii) The extent to which the commitment of staff time is adequate to accomplish all the proposed activities of the project (2 points).

(iii) The extent to which the key personnel are knowledgeable about the methodology and literature of pertinent subject areas (2 points).

(iv) The extent to which the project staff includes outstanding scientists in the field (2 points).

(n) *Adequacy and accessibility of resources* (4 points total).

(1) The Secretary considers the adequacy and accessibility of the applicant's resources to implement the proposed project.

(2) In determining the adequacy and accessibility of resources, the Secretary considers the following factors:

(i) The extent to which the applicant is committed to provide adequate facilities, equipment, other resources, including administrative support, and laboratories, if appropriate (2 points).

(ii) The extent to which the applicant has appropriate access to clinical populations and organizations representing individuals with disabilities to support advanced clinical rehabilitation research (1 point).

(iii) The extent to which the facilities, equipment, and other resources are appropriately accessible to individuals with disabilities who may use the facilities, equipment, and other resources of the project (1 point).

Instructions for Application Narrative

The Secretary will reject without consideration or evaluation any application that proposes a project funding level that exceeds the stated maximum award amount per year (See 34 CFR 75.104(b)).

The Secretary strongly recommends the following:

(a) A one-page abstract;

(b) An Application Narrative (i.e., Part III that addresses the selection criteria that will be used by reviewers in evaluating individual proposals) of no more than 125 pages double-spaced (no more than 3 lines per vertical inch) 8½ × 11" pages (on one side only) with one inch margins (top, bottom, and sides). The application narrative page limit recommendation does not apply to: Part I—the electronically scannable form; Part II—the budget section (including the narrative budget justification); and Part IV—the assurances and certifications; and

(c) A font no smaller than a 12-point font and an average character density no greater than 14 characters per inch.

Instructions for Transmittal of Applications

(a) If an applicant wants to apply for a grant, the applicant must—

(1) Mail the original and two copies of the application on or before the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA # [Applicant must insert number and letter]), Washington, DC 20202–4725, or

(2) Hand deliver the original and two copies of the application by 4:30 p.m. [Washington, DC time] on or before the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA # [Applicant must insert number and letter]), Room #3633, Regional Office Building #3, 7th and D Streets, SW., Washington, DC.

(b) An applicant must show one of the following as proof of mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary.

(c) If an application is mailed through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

Notes: (1) The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

(2) An applicant wishing to know that its application has been received by the Department must include with the application a stamped self-addressed postcard containing the CFDA number and title of this program.

(3) The applicant *must* indicate on the envelope and—if not provided by the Department—in Item 10 of the Application for Federal Assistance (Standard Form 424) the CFDA number—and letter, if any—of the competition under which the application is being submitted.

Application Forms and Instructions

The appendix to this application is divided into four parts. These parts are organized in the same manner that the submitted application should be organized. These parts are as follows:

PART I: Application for Federal Assistance (Standard Form 424 (Rev. 4–88)) and instructions.

PART II: Budget Form—Non-Construction Programs (Standard Form 524A) and instructions.

PART III: Application Narrative.

Additional Materials

Estimated Public Reporting Burden.

Assurances—Non-Construction Programs (Standard Form 424B).

Certification Regarding Lobbying, Debarment, Suspension, and Other Responsibility Matters: and Drug-Free Work-Place Requirements (ED Form 80–0013).

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion: Lower Tier Covered Transactions (ED Form 80–0014) and instructions. (NOTE: ED Form GCS–014 is intended for the use of primary participants and should not be transmitted to the Department.)

Certification of Eligibility for Federal Assistance in Certain Programs (ED Form 80–0016).

Disclosure of Lobbying Activities (Standard Form LLL (if applicable) and instructions; and Disclosure Lobbying Activities Continuation Sheet (Standard Form LLL–A).

An applicant may submit information on a photostatic copy of the application and budget forms, the assurances, and the certifications. However, the application form, the assurances, and the certifications must each have an *original signature*. No grant may be awarded unless a completed application form has been received.

For Applications Contact: The Grants and Contracts Service Team, Department of Education, 400 Independence Avenue S.W., Switzer Building, 3317, Washington, D.C. 20202, or call (202) 205–8207. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–9860. The preferred method for requesting information is to FAX your request to (202) 205–8717.

Individuals with disabilities may obtain a copy of the application package in an alternate format by contacting the GCST. However, the Department is not able to reproduce in an alternate format the standard forms included in the application package.

For Further Information Contact: Donna Nangle, U.S. Department of

Education, 400 Maryland Avenue, S.W., room 3418, Switzer Building, Washington, D.C. 20202–2645. Telephone: (202) 205–5880. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–9136. Internet: Donna__Nangle@ed.gov

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

Electronic Access to This Document

Anyone may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or portable document format (pdf) on the World Wide Web at either of the following sites:

http://ocfo.ed.gov/fedreg.htm
http://www.ed.gov/news.html

To use the pdf you must have the Adobe Acrobat Reader Program with Search, which is available free at either of the preceding sites. If you have questions about using the pdf, call the U.S. Government Printing Office toll free at 1–888–293–6498.

Anyone may also view these documents in text copy only on an electronic bulletin board of the Department. Telephone: (202) 219–1511 or, toll free, 1–800–222–4922. The documents are located under Option G—Files/Announcements, Bulletins and Press Releases.

Note: The official version of this document is the document published in the **Federal Register**.

Program Authority: 29 U.S.C. 760–762.

Dated: March 30, 1999.

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

Appendix—Application Forms and Instructions

Applicants are advised to reproduce and complete the application forms in this Section. Applicants are required to submit an original and two copies of each application as provided in this Section. However, applicants are encouraged to submit an original and seven copies of each application in order to facilitate the peer review process and minimize copying errors.

Frequent Questions

1. Can I Get an Extension of the Due Date?

No! On rare occasions the Department of Education may extend a closing date for all applicants. If that occurs, a notice of the revised due date is published in the **Federal Register**. However, there are no extensions or exceptions to the due date made for individual applicants.

2. What Should be Included in the Application?

The application should include a project narrative, vitae of key personnel, and a budget, as well as the Assurances forms included in this package. Vitae of staff or consultants should include the individual's title and role in the proposed project, and other information that is specifically pertinent to this proposed project. The budgets for both the first year and all subsequent project years should be included.

If collaboration with another organization is involved in the proposed activity, the application should include assurances of participation by the other parties, including written agreements or assurances of cooperation. It is *not* useful to include general letters of support or endorsement in the application.

If the applicant proposes to use unique tests or other measurement instruments that are not widely known in the field, it would be helpful to include the instrument in the application.

Many applications contain voluminous appendices that are not helpful and in many cases cannot even be mailed to the reviewers. It is generally not helpful to include such things as brochures, general capability statements of collaborating organizations, maps, copies of publications, or descriptions of other projects completed by the applicant.

3. What Format Should be Used for the Application?

NIDRR generally advises applicants that they may organize the application to follow the selection criteria that will be used. The specific review criteria vary according to the specific program, and are contained in this Consolidated Application Package.

4. May I Submit Applications to More Than One NIDRR Program Competition or More Than One Application to a Program?

Yes, you may submit applications to any program for which they are responsive to the program requirements. You may submit the same application to as many competitions as you believe appropriate. You may also submit more than one application in any given competition.

5. What is the Allowable Indirect Cost Rate?

The limits on indirect costs vary according to the program and the type of application.

An applicant for an RRTC is limited to an indirect rate of 15%.

An applicant for an RERC is limited to the organization's approved indirect cost rate. If the organization does not have an approved indirect cost rate, the application should include an estimated actual rate.

6. Can Profitmaking Businesses Apply for Grants?

Yes. However, for-profit organizations will not be able to collect a fee or profit on the grant, and in some programs will be required to share in the costs of the project.

7. Can Individuals Apply for Grants?

No. Only organizations are eligible to apply for *grants* under NIDRR programs. However, individuals are the only entities eligible to apply for fellowships.

8. Can NIDRR Staff Advise Me Whether My Project Is of Interest to NIDRR or Likely To Be Funded?

No. NIDRR staff can advise you of the requirements of the program in which you propose to submit your application. However, staff cannot advise you of whether your subject area or proposed approach is likely to receive approval.

9. How Do I Assure That My Application Will Be Referred to the Most Appropriate Panel for Review?

Applicants should be sure that their applications are referred to the correct competition by clearly including the competition title and CFDA number, including alphabetical code, on the Standard Form 424, and including a project title that describes the project.

10. How Soon After Submitting My Application Can I Find Out If It Will Be Funded?

The time from closing date to grant award date varies from program to program. Generally speaking, NIDRR endeavors to have awards made within five to six months of the closing date. Unsuccessful applicants generally will be notified within that time frame as well. For the purpose of estimating a project start date, the applicant should estimate approximately six months from the closing date, but no later than the following September 30.

11. Can I Call NIDRR to Find Out If My Application Is Being Funded?

No. When NIDRR is able to release information on the status of grant applications, it will notify applicants by letter. The results of the peer review cannot be released except through this formal notification.

12. If My Application Is Successful, Can I Assume I Will Get the Requested Budget Amount in Subsequent Years?

No. Funding in subsequent years is subject to availability of funds and project performance.

13. Will All Approved Applications Be Funded?

No. It often happens that the peer review panels approve for funding more applications than NIDRR can fund within available resources. Applicants who are approved but not funded are encouraged to consider submitting similar applications in future competitions.

BILLING CODE 4000–01–U

Application for Federal Education Assistance

Note: If available, please provide application package on diskette and specify the file format.

U.S. Department of Education

Form Approved OMB No. 1875-0106 Exp. 06/30/2001

Applicant Information

1. Name and Address

Legal Name: _____

Address: _____

Organizational Unit: _____

City _____ State _____ County _____ ZIP Code + 4 _____

2. Applicant's D-U-N-S Number [ ][ ][ ][ ][ ][ ][ ][ ][ ]

3. Catalog of Federal Domestic Assistance #: 8 4 [ ][ ][ ][ ] → Title: _____

4. Project Director: _____

Address: _____

City _____ State _____ ZIP Code + 4 _____

Tel. #: ( ) _____ - _____ Fax #: ( ) _____ - _____

E-Mail Address: _____

5. Is the applicant delinquent on any Federal debt? ☐ Yes ☐ No

(If "Yes," attach an explanation.)

6. Type of Applicant *(Enter appropriate letter in the box.)* ☐

A State	H Independent School District
B County	I Public College or University
C Municipal	J Private, Non-Profit College or University
D Township	K Indian Tribe
E Interstate	L Individual
F Intermunicipal	M Private, Profit-Making Organization
G Special District	N Other *(Specify)*: _____

7. Novice Applicant ☐ Yes ☐ No

Application Information

8. Type of Submission:

—PreApplication	*—Application*
☐ Construction	☐ Construction
☐ Non-Construction	☐ Non-Construction

9. Is application subject to review by Executive Order 12372 process?

☐ Yes *(Date made available to the Executive Order 12372 process for review):* ___/___/_____

☐ No *(If "No," check appropriate box below.)*

☐ Program is not covered by E.O. 12372.

☐ Program has not been selected by State for review.

10. Proposed Project Dates: Start Date: ___/___/_____ End Date: ___/___/_____

11. Are any research activities involving human subjects planned at any time during the proposed project period? ☐ Yes ☐ No

a. If "Yes," Exemption(s) #: _____ *OR* b. Assurance of Compliance #: _____

c. IRB approval date: _____ ☐ Full IRB ☐ Expedited Review

12. Descriptive Title of Applicant's Project:

Estimated Funding

13a. Federal	$	.00
b. Applicant	$	.00
c. State	$	.00
d. Local	$	.00
e. Other	$	.00
f. Program Income	$	.00
g. TOTAL	$	.00

Authorized Representative Information

14. To the best of my knowledge and belief, all data in this preapplication/application are true and correct. The document has been duly authorized by the governing body of the applicant and the applicant will comply with the attached assurances if the assistance is awarded.

a. Typed Name of Authorized Representative

b. Title

c. Tel. #: ( ) _____ - _____ Fax #: ( ) _____ - _____

d. E-Mail Address:

e. Signature of Authorized Representative Date: ___/___/_____

REV. 1/1999

ED 424

Instructions for ED 424

1. **Legal Name and Address.** Enter the legal name of applicant and the name of the primary organizational unit which will undertake the assistance activity.

2. **D-U-N-S Number.** Enter the applicant's D-U-N-S Number. If your organization does not have a D-U-N-S Number, you can obtain the number by calling 1-800-333-0505 or by completing a D-U-N-S Number Request Form. The form can be obtained via the Internet at the following URL: **http://www.dnb.com/dbis/aboutdb/intldunn.htm.**

3. **Catalog of Federal Domestic Assistance (CFDA) Number.** Enter the CFDA number and title of the program under which assistance is requested.

4. **Project Director.** Name, address, telephone and fax numbers, and e-mail address of the person to be contacted on matters involving this application.

5. **Federal Debt Delinquency.** Check **"Yes"** if the applicant's organization is delinquent on any Federal debt. (This question refers to the applicant's organization and not to the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.) Otherwise, check **"No."**

6. **Type of Applicant.** Enter the appropriate letter in the box provided.

7. **Novice Applicant.** Check **"Yes"** only if assistance is being requested under a program that gives special consideration to novice applicants and you meet the program requirements for novice applicants. By checking "Yes" the applicant certifies that it meets the novice applicant requirements specified by ED. Otherwise, check **"No."**

8. **Type of Submission.** Self-explanatory.

9. **Executive Order 12372.** Check **"Yes"** if the application is subject to review by Executive Order 12372. Also, please enter the month, date, and four (4) digit year (e.g., 12/12/2000). Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process. Otherwise, check **"No."**

10. **Proposed Project Dates.** Please enter the month, date, and four (4) digit year (e.g., 12/12/2000).

11. **Human Subjects.** Check **"Yes"** or **"No"**. If research activities involving human subjects are **not** planned **at any time** during the proposed project period, check **"No." The remaining parts of item 11 are then not applicable.**

    If research activities involving human subjects, whether or not exempt from Federal regulations for the protection of human subjects, **are** planned **at any time** during the proposed project period, either at the applicant organization or at any other performance site or collaborating institution, check **"Yes."** If **all** the research activities are designated to be exempt under the regulations, enter, in item 11a, the exemption number(s) corresponding to one or more of the six exemption categories listed in **"Protection of Human Subjects in Research"** attached to this form. Provide sufficient information in the application to allow a determination that the designated exemptions in item 11a, are appropriate. **Provide this narrative information in an "Item 11/Protection of Human Subjects Attachment" and insert this attachment immediately following the ED 424 face page. Skip the remaining parts of item 11.**

    If **some or all** of the planned research activities involving human subjects are covered (nonexempt), skip item 11a and continue with the remaining parts of item 11, as noted below. In addition, follow the instructions in **"Protection of Human Subjects in Research"** attached to this form to prepare the six-point narrative about the nonexempt activities. **Provide this six-point narrative in an "Item 11/Protection of Human Subjects Attachment" and insert this attachment immediately following the ED 424 face page.**

    If the applicant organization has an approved Multiple Project Assurance of Compliance on file with the Grants Policy and Oversight Staff (GPOS), U.S. Department of Education, or with the Office for Protection from Research Risks (OPRR), National Institutes of Health, U.S. Department of Health and Human Services, that covers the specific activity, enter the Assurance number in item 11b and the date of approval by the Institutional Review Board (IRB) of the proposed activities in item 11c. This date must be no earlier than one year before the receipt date for which the application is submitted and must include the four (4) digit year (e.g., 2000). Check the type of IRB review in the appropriate box. An IRB may use the expedited review procedure if it complies with the requirements of 34 CFR 97.110. If the IRB review is delayed beyond the submission of the application, enter **"Pending"** in item 11c. If your application is recommended/selected for funding, a follow-up certification of IRB approval from an official signing for the applicant organization must be sent to and received by the designated ED official within 30 days after a specific formal request from the designated ED official. **If the applicant organization does not have** on file with GPOS or OPRR **an approved Assurance of Compliance** that covers the proposed research activity, enter **"None"** in item 11b and skip 11c. In this case, the applicant organization, by the signature on the application, is declaring that it will comply with 34 CFR 97 within 30 days after a specific formal request from the designated ED official for the Assurance(s) and IRB certifications.

12. **Project Title.** Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

13. **Estimated Funding.** Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate **only** the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 13.

14. **Certification.** To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office.

    Be sure to enter the telephone and fax number and e-mail address of the authorized representative. Also, in item 14e, please enter the month, date, and four (4) digit year (e.g., 12/12/2000) in the date signed field.

Paperwork Burden Statement

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless such collection displays a valid OMB control number. The valid OMB control number for this information collection is **1875-0106**. The time required to complete this information collection is estimated to average between 15 and 45 minutes per response, including the time to review instructions, search existing data resources, gather the data needed, and complete and review the information collection. **If you have any comments concerning the accuracy of the estimate(s) or suggestions for improving this form, please write to:** U.S. Department of Education, Washington, D.C. 20202-4651. **If you have comments or concerns regarding the status of your individual submission of this form write directly to:** Joyce I. Mays, Application Control Center, U.S. Department of Education, 7th and D Streets, S.W. ROB-3, Room 3633, Washington, D.C. 20202-4725.

PROTECTION OF HUMAN SUBJECTS IN RESEARCH
(Attachment to ED 424)

I. Instructions to Applicants about the Narrative Information that Must be Provided if Research Activities Involving Human Subjects are Planned

If you marked item 11 on the application "Yes" and designated exemptions in 11a, **(all research activities are exempt),** provide sufficient information in the application to allow a determination that the designated exemptions are appropriate. Research involving human subjects that is exempt from the regulations is discussed under **II.B. "Exemptions,"** below. The Narrative must be succinct. **Provide this information in an "Item 11/Protection of Human Subjects Attachment" and insert this attachment immediately following the ED 424 face page.**

If you marked "Yes" to item 11 on the face page, and designated no exemptions from the regulations **(some or all of the research activities are nonexempt),** address the following six points for each nonexempt activity. In addition, if research involving human subjects will take place at collaborating site(s) or other performance site(s), provide this information before discussing the six points. Although no specific page limitation applies to this section of the application, be succinct. Provide the six-point narrative and discussion of other performance sites in an **"Item 11/Protection of Human Subjects Attachment" and insert this attachment immediately following the ED 424 face page.**

(1) Provide a detailed description of the proposed involvement of human subjects. Describe the characteristics of the subject population, including their anticipated number, age range, and health status. Identify the criteria for inclusion or exclusion of any subpopulation. Explain the rationale for the involvement of special classes of subjects, such as children, children with disabilities, adults with disabilities, persons with mental disabilities, pregnant women, prisoners, institutionalized individuals, or others who are likely to be vulnerable.

(2) Identify the sources of research material obtained from individually identifiable living human subjects in the form of specimens, records, or data. Indicate whether the material or data will be obtained specifically for research purposes or whether use will be made of existing specimens, records, or data.

(3) Describe plans for the recruitment of subjects and the consent procedures to be followed. Include the circumstances under which consent will be sought and obtained, who will seek it, the nature of the information to be provided to prospective subjects, and the method of documenting consent. State if the Institutional Review Board (IRB) has authorized a modification or waiver of the elements of consent or the requirement for documentation of consent.

(4) Describe potential risks (physical, psychological, social, legal, or other) and assess their likelihood and seriousness. Where appropriate, describe alternative treatments and procedures that might be advantageous to the subjects.

(5) Describe the procedures for protecting against or minimizing potential risks, including risks to confidentiality, and assess their likely effectiveness. Where appropriate, discuss provisions for ensuring necessary medical or professional intervention in the event of adverse effects to the subjects. Also, where appropriate, describe the provisions for monitoring the data collected to ensure the safety of the subjects.

(6) Discuss why the risks to subjects are reasonable in relation to the anticipated benefits to subjects and in relation to the importance of the knowledge that may reasonably be expected to result.

II. Information on Research Activities Involving Human Subjects

A. Definitions.

A research activity involves human subjects if the activity is research, as defined in the Department's regulations, and the research activity will involve use of human subjects, as defined in the regulations.

—Is it a research activity?

The ED Regulations for the Protection of Human Subjects, Title 34, Code of Federal Regulations, Part 97, define research as "a systematic investigation, including research development, testing and evaluation, designed to develop or contribute to generalizable knowledge." *If an activity follows a deliberate plan whose purpose is to develop or contribute to generalizable knowledge, such as an exploratory study or the collection of data to test a hypothesis, it is research.* Activities which meet this definition constitute research whether or not they are conducted or supported under a program which is considered research for other purposes. For example, some demonstration and service programs may include research activities.

—Is it a human subject?

The regulations define human subject as "a living individual about whom an investigator (whether professional or student) conducting research obtains (1) data through intervention or interaction with the individual, or (2) identifiable private information." *(1) If an activity involves obtaining information about a living person by manipulating that person or that person's environment, as might occur when a new instructional technique is tested, or by communicating or interacting with the individual, as occurs with surveys and interviews, the definition of human subject is met. (2) If an activity involves obtaining private information about a living person in such a way that the information can be linked to that individual (the identity of the subject is or may be readily determined by the investigator or associated with the information), the definition of human subject is met.* [Private information includes information about behavior that occurs in a context in which an individual can reasonably expect that no observation or recording is taking place, and information which has been provided for specific purposes by an individual and which the individual can reasonably expect will not be made public (for example, a school health record).]

B. Exemptions.

Research activities in which the only involvement of human subjects will be in one or more of the following six categories of *exemptions* are not covered by the regulations:

(1) Research conducted in established or commonly accepted educational settings, involving normal educational practices, such as (a) research on regular and special education instructional strategies, or (b) research on the effectiveness of or the comparison among instructional techniques, curricula, or classroom management methods.

(2) Research involving the use of educational tests (cognitive, diagnostic, aptitude, achievement), survey procedures, interview procedures or observation of public behavior, unless: (a) information obtained is recorded in such a manner that human subjects can be identified, directly or through identifiers linked to the subjects; and (b) any disclosure of the human subjects' responses outside the research could reasonably place the subjects at risk of criminal or civil liability or be damaging to the subjects' financial standing, employability, or reputation. *If the subjects are children, this exemption applies only to research involving educational tests or observations of public behavior when the investigator(s) do not participate in the activities being observed.* [Children are defined as persons who have not attained the legal age for consent to treatments or procedures involved in the research, under the applicable law or jurisdiction in which the research will be conducted.]

(3) Research involving the use of educational tests (cognitive, diagnostic, aptitude, achievement), survey procedures, interview procedures or observation of public behavior that is not exempt under section (2) above, if the human subjects are elected or appointed public officials or candidates for public office; or federal statute(s) require(s) without exception that the confidentiality of the personally identifiable information will be maintained throughout the research and thereafter.

(4) Research involving the collection or study of existing data, documents, records, pathological specimens, or diagnostic specimens, if these sources are publicly available or if the information is recorded by the investigator in a manner that subjects cannot be identified, directly or through identifiers linked to the subjects.

(5) Research and demonstration projects which are conducted by or subject to the approval of department or agency heads, and which are designed to study, evaluate, or otherwise examine: (a) public benefit or service programs; (b) procedures for obtaining benefits or services under those programs; (c) possible changes in or alternatives to those programs or procedures; or (d) possible changes in methods or levels of payment for benefits or services under those programs.

(6) Taste and food quality evaluation and consumer acceptance studies, (a) if wholesome foods without additives are consumed or (b) if a food is consumed that contains a food ingredient at or below the level and for a use found to be safe, or agricultural chemical or environmental contaminant at or below the level found to be safe, by the Food and Drug Administration or approved by the Environmental Protection Agency or the Food Safety and Inspection Service of the U.S Department of Agriculture.

Copies of the Department of Education's Regulations for the Protection of Human Subjects, 34 CFR Part 97 and other pertinent materials on the protection of human subjects in research are available from the Grants Policy and Oversight Staff (GPOS) Office of the Chief Financial and Chief Information Officer, U.S. Department of Education, Washington, D.C., telephone: (202) 708-8263, and on the U.S. Department of Education's Protection of Human Subjects in Research Web Site at http://ocfo.ed.gov/humansub.htm.

OMB Approval No. 0348-0040

ASSURANCES - NON-CONSTRUCTION PROGRAMS

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0040), Washington, DC 20503

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project cost) to ensure proper planning, management, and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§4728-4763) relating to prescribed standards for merit systems for programs funded under one of the 19 statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. §794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§ 290 dd-3 and 290 ee 3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply, as applicable, with the provisions of the Hatch Act (5 U.S.C. §§1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§276a to 276a-7), the Copeland Act (40 U.S.C. §276c and 18 U.S.C. §§874) and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally assisted construction subagreements.

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. §§7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).

12 Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§1721 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. §470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. §§469a-1 et seq.).

14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. §§2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§4801 et seq.) which prohibits the use of lead-based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act Amendments of 1996 and OMB Circular No. A-133, "Audits of States, Local Governments, and Non-Profit Organizations."

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE
APPLICANT ORGANIZATION	DATE SUBMITTED

Standard Form 424B (Rev. 7-97) Back

UMI
1999
AP
5
64
ISS
64
VOL

U.S. DEPARTMENT OF EDUCATION

BUDGET INFORMATION

NON-CONSTRUCTION PROGRAMS

OMB Control No. 1880–0538

Expiration Date: 10/31/99

Name of Institution/Organization

Applicants requesting funding for only one year should complete the column under "Project Year 1." Applicants requesting funding for multi-year grants should complete all applicable columns. Please read all instructions before completing form.

SECTION A - BUDGET SUMMARY
U.S. DEPARTMENT OF EDUCATION FUNDS

Budget Categories	Project Year 1 (a)	Project Year 2 (b)	Project Year 3 (c)	Project Year 4 (d)	Project Year 5 (e)	Total (f)
1. Personnel						
2. Fringe Benefits						
3. Travel						
4. Equipment						
5. Supplies						
6. Contractual						
7. Construction						
8. Other						
9. Total Direct Costs (lines 1-8)						
10. Indirect Costs						
11. Training Stipends						
12. Total Costs (lines 9-11)						

ED FORM NO. 524

Name of Institution/Organization	Applicants requesting funding for only one year should complete the column under "Project Year 1." Applicants requesting funding for multi-year grants should complete all applicable columns. Please read all instructions before completing form.

SECTION B - BUDGET SUMMARY
NON-FEDERAL FUNDS

Budget Categories	Project Year 1 (a)	Project Year 2 (b)	Project Year 3 (c)	Project Year 4 (d)	Project Year 5 (e)	Total (f)
1. Personnel						
2. Fringe Benefits						
3. Travel						
4. Equipment						
5. Supplies						
6. Contractual						
7. Construction						
8. Other						
9. Total Direct Costs (lines 1-8)						
10. Indirect Costs						
11. Training Stipends						
12. Total Costs (lines 9-11)						

SECTION C - OTHER BUDGET INFORMATION (see instructions)

ED FORM NO. 524

Public reporting burden for this collection of information is estimated to vary from 13 to 22 hours per response, with an average of 17.5 hours per response, including the time reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the U.S. Department of Education, Information Management and Compliance Division, Washington, D.C. 20202-4651; and the Office of Management and Budget, Paperwork Reduction Project 1875-0102, Washington DC 20503.

INSTRUCTIONS FOR ED FORM 524

General Instructions

This form is used to apply to individual U.S. Department of Education discretionary grant programs. Unless directed otherwise, provide the same budget information for each year of the multi-year funding request. Pay attention to applicable program specific instructions, if attached.

Section A - Budget Summary
U.S. Department of Education Funds

All applicants must complete Section A and provide a breakdown by the applicable budget categories shown in lines 1-11.

Lines 1-11, columns (a)-(e): For each project year for which funding is requested, show the total amount requested for each applicable budget category.

Lines 1-11, column (f): Show the multi-year total for each budget category. If funding is requested for only one project year, leave this column blank.

Line 12, columns (a)-(e): Show the total budget request for each project year for which funding is requested.

Line 12, column (f): Show the total amount requested for all project years. If funding is requested for only one year, leave this space blank.

Section B - Budget Summary
Non-Federal Funds

If you are required to provide or volunteer to provide matching funds or other non-Federal resources to the project, these should be shown for each applicable budget category on lines 1-11 of Section B.

Lines 1-11, columns (a)-(e): For each project year for which matching funds or other contributions are provided, show the total contribution for each applicable budget category.

Lines 1-11, column (f): Show the multi-year total for each budget category. If non-Federal contributions are provided for only one year, leave this column blank.

Line 12, columns (a)-(e): Show the total matching or other contribution for each project year.

Line 12, column (f): Show the total amount to be contributed for all years of the multi-year project. If non-Federal contributions are provided for only one year, leave this space blank.

Section C - Other Budget Information
Pay attention to applicable program specific instructions, if attached.

1. Provide an itemized budget breakdown, by project year, for each budget category listed in Sections A and B.

2. If applicable to this program, enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period. In addition, enter the estimated amount of the base to which the rate is applied, and the total indirect expense.

3. If applicable to this program, provide the rate and base on which fringe benefits are calculated.

4. Provide other explanations or comments you deem necessary.

BILLING CODE 4000-01-C

Public reporting burden for these collections of information is estimated to average 30 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding this burden estimate or any other aspect of these collections of information, including suggestions for reducing this burden, to: the U.S. Department of Education, Information Management and Compliance Division, Washington, D.C. 20202–4651; and to the Office of Management and Budget, Paperwork Reduction Project 1820–0027, Washington, D.C. 20503.

Rehabilitation Research and Training Centers (CFDA No. 84.133B) 34 CFR Part 350.

Rehabilitation Engineering Research Center (CFDA No. 84.133E) 34 CFR Part 350.

BILLING CODE 4000–01–U

CERTIFICATIONS REGARDING LOBBYING; DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS; AND DRUG-FREE WORKPLACE REQUIREMENTS

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of this form provides for compliance with certification requirements under 34 CFR Part 82, "New Restrictions on Lobbying," and 34 CFR Part 85, "Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)." The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Education determines to award the covered transaction, grant, or cooperative agreement.

1. **LOBBYING**

As required by Section 1352, Title 31 of the U.S. Code, and implemented at 34 CFR Part 82, for persons entering into a grant or cooperative agreement over $100,000, as defined at 34 CFR Part 82, Sections 82.105 and 82.110, the applicant certifies that:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement;

(b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;

(c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, contracts under grants and cooperative agreements, and subcontracts) and that all subrecipients shall certify and disclose accordingly.

2. **DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS**

As required by Executive Order 12549, Debarment and Suspension, and implemented at 34 CFR Part 85, for prospective participants in primary covered transactions, as defined at 34 CFR Part 85, Sections 85.105 and 85.110--

A. The applicant certifies that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this application been convicted of or had a civil judgement rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application had one or more public transaction (Federal, State, or local) terminated for cause or default; and

B. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

3. **DRUG-FREE WORKPLACE (GRANTEES OTHER THAN INDIVIDUALS)**

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 -

A. The applicant certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an on-going drug-free awareness program to inform employees about-

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will-

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency, in writing, within 10 calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such

conviction. Employers of convicted employees must provide notice, including position title, to: Director, Grants Policy and Oversight Staff, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3652, GSA Regional Office Building No. 3), Washington, DC 20202-4248. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted-

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

B. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address. city, county, state, zip code)

_____

_____

_____

Check [ ] if there are workplaces on file that are not identified here.

DRUG-FREE WORKPLACE
(GRANTEES WHO ARE INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610-

A. As a condition of the grant, I certify that I will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant; and

B. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, I will report the conviction, in writing, within 10 calendar days of the conviction, to: Director, Grants Policy and Oversight Staff, Department of Education, 400 Maryland Avenue, S.W. (Room 3652, GSA Regional Office Building No. 3), Washington, DC 20202-4248. Notice shall include the identification number(s) of each affected grant.

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above certifications.

NAME OF APPLICANT	PR/AWARD NUMBER AND / OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0013

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered Transactions

This certification is required by the Department of Education regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, for all lower tier transactions meeting the threshold and tier requirements stated at Section 85.110.

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," " person," "primary covered transaction," " principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion-Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may but is not required to, check the Nonprocurement List.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0014, 9/90 (Replaces GCS-009 (REV.12/88), which is obsolete)

Certification of Eligibility for Federal Assistance in Certain Programs

I understand that 34 CFR 75.60, 75.61, and 75.62 require that I make specific certifications of eligibility to the U.S. Department of Education as a condition of applying for Federal funds in certain programs and that these requirements are in addition to any other eligibility requirements that the U.S. Department of Education imposes under program regulations. Under 34 CFR 75.60 – 75.62:

I. I certify that

A. I do not owe a debt, or I am current in repaying a debt, or I am not in default (as that term is used at 34 CFR Part 668) on a debt:

1. To the Federal Government under a nonprocurement transaction (e.g., a previous loan, scholarship, grant, or cooperative agreement); or

2. For a fellowship, scholarship, stipend, discretionary grant, or loan in any program of the U.S. Department of Education that is subject to 34 CFR 75.60, 75.61, and 75.62, including:

- Federal Pell Grant Program (20 U.S.C. 1070a, et seq.);
- Federal Supplemental Educational Opportunity Grant (SEOG) Program (20 U.S.C. 1070(b), et seq.):
- State Student Incentive Grant Program (SSIG) 20 U.S.C. 1070c, et seq.);
- Federal Perkins Loan Program (20 U.S.C. 1087aa, et seq.);
- Income Contingent Direct Loan Demonstration Project (20 U.S.C. 1087a, note);
- Federal Stafford Loan Program, Federal Supplemental Loans for Students [SLS], Federal PLUS, or Federal Consolidation Loan Program (20 U.S.C. 1071, et seq.);
- Cuban Student Loan Program (20 U.S.C. 2601, et seq.);
- Robert C. Byrd Honors Scholarship Program (20 U.S.C. 1070d-31, et seq.);
- Jacob K. Javits Fellows Program (20 U.S.C. 1134h-1134l);
- Patricia Roberts Harris Fellowship Program (20 U.S.C. 1134d-1134g);
- Christa McAuliffe Fellowship Program (20 U.S.C. 1105-1105i);
- Bilingual Education Fellowship Program (20 U.S.C. 3221-3262);
- Rehabilitation Long-Term Training Program (29 U.S.C. 774(b));
- Paul Douglas Teacher Scholarship Program (20 U.S.C. 1104, et seq.);
- Law Enforcement Education Program (42 U.S.C. 3775);
- Indian Fellowship Program (29 U.S.C. 774(b));

OR

B. I have made arrangements satisfactory to the U.S. Department of Education to repay a debt as described in A.1. or A.2. (above) on which I had not been current in repaying or on which I was in default (as that term is used in 34 CFR Part 668).

II. I certify also that I have not been declared by a judge, as a condition of sentencing under section 5301 of the Anti-Drug Abuse Act of 1988 (21 U.S.C. 862), ineligible to receive Federal assistance for the period of this requested funding.

I understand that providing a false certification to any of the statements above makes me liable for repayment to the U.S. Department of Education for funds received on the basis of this certification, for civil penalties, and for criminal prosecution under 18 U.S.C. 1001.

_____ _____
(Signature) (Date)

_____
(Typed or Printed Name)

Name or number of the USDE program under which this certification is being made: _____

ED 80-0016 (9/92)

OMB Control No. 1801-0004 (Exp. 8/31/2001)

NOTICE TO ALL APPLICANTS

The purpose of this enclosure is to inform you about a new provision in the Department of Education's General Education Provisions Act (GEPA) that applies to applicants for new grant awards under Department programs. This provision is Section 427 of GEPA, enacted as part of the Improving America's Schools Act of 1994 (Pub. L. 103-382).

To Whom Does This Provision Apply?

Section 427 of GEPA affects applicants for new grant awards under this program. **ALL APPLICANTS FOR NEW AWARDS MUST INCLUDE INFORMATION IN THEIR APPLICATIONS TO ADDRESS THIS NEW PROVISION IN ORDER TO RECEIVE FUNDING UNDER THIS PROGRAM.**

(If this program is a State-formula grant program, a State needs to provide this description only for projects or activities that it carries out with funds reserved for State-level uses. In addition, local school districts or other eligible applicants that apply to the State for funding need to provide this description in their applications to the State for funding. The State would be responsible for ensuring that the school district or other local entity has submitted a sufficient section 427 statement as described below.)

What Does This Provision Require?

Section 427 requires each applicant for funds (other than an individual person) to include in its application a description of the steps the applicant proposes to take to ensure equitable access to, and participation in, its Federally-assisted program for students, teachers, and other program beneficiaries with special needs. This provision allows applicants discretion in developing the required description. The statute highlights six types of barriers that can impede equitable access or participation: gender, race, national origin, color, disability, or age. Based on local circumstances, you should determine whether these or other barriers may prevent your students, teachers, etc. from such access or participation in, the Federally-funded project or activity. The description in your application of steps to be taken to overcome these barriers need not be lengthy; you may provide a clear and succinct description of how you plan to address those barriers that are applicable to your circumstances. In addition, the information may be provided in a single narrative, or, if appropriate, may be discussed in connection with related topics in the application.

Section 427 is not intended to duplicate the requirements of civil rights statutes, but rather to ensure that, in designing their projects, applicants for Federal funds address equity concerns that may affect the ability of certain potential beneficiaries to fully participate in the project and to achieve to high standards. Consistent with program requirements and its approved application, an applicant may use the Federal funds awarded to it to eliminate barriers it identifies.

What are Examples of How an Applicant Might Satisfy the Requirement of This Provision?

The following examples may help illustrate how an applicant may comply with Section 427.

(1) An applicant that proposes to carry out an adult literacy project serving, among others, adults with limited English proficiency, might describe in its application how it intends to distribute a brochure about the proposed project to such potential participants in their native language.

(2) An applicant that proposes to develop instructional materials for classroom use might describe how it will make the materials available on audio tape or in braille for students who are blind.

(3) An applicant that proposes to carry out a model science program for secondary students and is concerned that girls may be less likely than boys to enroll in the course, might indicate how it intends to conduct "outreach" efforts to girls, to encourage their enrollment.

We recognize that many applicants may already be implementing effective steps to ensure equity of access and participation in their grant programs, and we appreciate your cooperation in responding to the requirements of this provision.

Estimated Burden Statement for GEPA Requirements

The time required to complete this information collection is estimated to vary from 1 to 3 hours per response, with an average of 1.5 hours, including the time to review instructions, search existing data resources, gather and maintain the data needed, and complete and review the information collection. **If you have any comments concerning the accuracy of the time estimate(s) or suggestions for improving this form, please write to:** U.S. Department of Education, Washington, DC 20202-4651.

Approved by OMB
0348-0046

Disclosure of Lobbying Activities

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure)

1. Type of Federal Action: a. contract ____ b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	**2. Status of Federal Action:** a. bid/offer/application ____ b. initial award c. post-award	**3. Report Type:** a. initial filing ____ b. material change **For material change only:** Year _____ quarter _____ Date of last report_____
4. Name and Address of Reporting Entity: ____ Prime ____ Subawardee Tier_____, if Known: **Congressional District, if known:**	**5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:** **Congressional District, if known:**	
6. Federal Department/Agency:	**7. Federal Program Name/Description:** **CFDA Number, *if applicable*:** _____	
8. Federal Action Number, *if known:*	**9. Award Amount, *if known:*** **$**	
10. a. Name and Address of Lobbying Registrant ***(if individual, last name, first name, MI):***	**b. Individuals Performing Services *(including address if different from No. 10a)*** ***(last name, first name, MI):***	
11. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.	**Signature:** _____ **Print Name:**_____ **Title:**_____ **Telephone No.:** _____ **Date:** _____	
Federal Use Only	**Authorized for Local Reproduction** **Standard Form - LLL (Rev. 7-97)**	

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.

2. Identify the status of the covered Federal action.

3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.

4. Enter the full name, address, city, State and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.

5. If the organization filing the report in item 4 checks "Subawardee," then enter the full name, address, city, State and zip code of the prime Federal recipient. Include Congressional District, if known.

6. Enter the name of the federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.

7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.

8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitations for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Included prefixes, e.g., "RFP-DE-90-001."

9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.

10. (a) Enter the full name, address, city, State and zip code of the lobbying registrant under the Lobbying Disclosure Act of 1995 engaged by the reporting entity identified in item 4 to influence the covered Federal action.

    (b) Enter the full names of the individual(s) performing services, and include full address if different from 10(a). Enter Last Name, First Name, and Middle Initial (MI).

11. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

According to the Paperwork Reduction Act, as amended, no persons are required to respond to a collection of information unless it displays a valid OMB control Number. The valid OMB control number for this information collection is OMB No. 0348-0046. Public reporting burden for this collection of information is estimated to average 10 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, DC 20503

[FR Doc. 99-8166 Filed 4-2-99; 8:45 am]
BILLING CODE 4000-01-C

federal register

Monday
April 5, 1999

Part III

Department of Justice

Office of Juvenile Justice and Delinquency Prevention

Safe Start Demonstration Project and Evaluation of the Safe Start Initiative; Notice

DEPARTMENT OF JUSTICE

Office of Juvenile Justice and Delinquency Prevention

[OJP (OJJDP)–1217]

RIN 1121–ZB51

Safe Start Demonstration Project and Evaluation of the Safe Start Initiative

AGENCY: Office of Juvenile Justice and Delinquency Prevention, Office of Justice Programs, Justice.

ACTION: Notice of funding availability.

SUMMARY: Notice is hereby given that the Office of Juvenile Justice and Delinquency Prevention (OJJDP), pursuant to Pub. L. 105–277, October 19, 1998, Making Appropriations for the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies for the Fiscal Year Ending September 30, 1999, and for Other Purposes, is issuing a program announcement and solicitation for applications from all communities to create a comprehensive system that will improve the access, delivery, and quality of services for young children at high risk of exposure, or who have been exposed to violence. OJJDP is also issuing an evaluation announcement and solicitation for applications to conduct an evaluation of this initiative.

The FY 1999 appropriation will provide up to 12 sites with funding of up to $250,000. These awards will be made through a competitive grant process, to be administered by OJJDP. The FY 1999 appropriation also will provide funding up to $1 million for a national evaluator to conduct an evaluation of the sites.

DATES: Applications under this program must be received no later than 5 p.m. ET June 14, 1999.

ADDRESSES: Applications should be submitted to the Office of Juvenile Justice and Delinquency Prevention, c/o Juvenile Justice Resource Center, 2277 Research Boulevard, Mail Stop 2K, Rockville, MD 20850. Interested applicants need to obtain the Safe Start Initiative Application Package, which includes the two program announcements, application instructions, and forms. The package is available online at OJJDP's Web site: www.ojjdp.ncjrs.org (click on the Grants and Funding prompt). The package is also available by mail (call OJJDP's Clearinghouse at 800–638–8736 and request SL 334) or via e-mail (at puborder@ncjrs.org). For packages being mailed, please allow 3–5 days for delivery.

FOR FURTHER INFORMATION REGARDING THE SAFE START INITIATIVE, CONTACT: Michelle Avery, Program Manager, Office of Juvenile Justice and Delinquency Prevention, 810 Seventh Street, NW, Washington, DC 20531, 202–514–5084; e-mail: Averym@ojp.usdoj.gov. For further information regarding the Evaluation of the Safe Start Initiative, contact Dean Hoffman, Program Manager, Office of Juvenile Justice and Delinquency Prevention, 810 Seventh Street, NW, Washington, DC 20531, 202–353–9256; e-mail: Hoffmand@ojp.usdoj.gov. [These telephone numbers are not toll-free numbers.]

SUPPLEMENTARY INFORMATION:

Purpose

The purpose of the Safe Start demonstration project is to develop a demonstration initiative to prevent and reduce the impact of family and community violence on young children (primarily from birth to 6 years of age). The project seeks to create a comprehensive service delivery system by helping communities to expand existing partnerships among service providers in the fields of early childhood education/development, health, mental health, family support and strengthening, domestic violence, substance abuse prevention and treatment, crisis intervention, child welfare, law enforcement, courts, and legal services. This comprehensive service delivery system should improve access to, delivery of, and quality of services for young children at high risk of exposure to violence or who have been exposed to violence,[1] along with their families, and their caregivers, at any point of entry into the system.

Background

Throughout America, millions of children are exposed to violence at home, in their neighborhoods, and in their schools.

In 1996 nearly 3 million children were the subjects in 2 million reports of child abuse and neglect (Poe-Yamagata, 1997). A 1994 study found that 1 out of every 10 children treated in the Boston City Hospital primary care clinic had witnessed a shooting or stabbing before the age of 6. Almost all (94 percent) of the children had been exposed to multiple forms of violence, and half had been exposed to violence within the past month. Half of the children witnessed such violence in the home, and half witnessed it in the streets. The average age of these children was 2.7 years (Taylor et al., 1994).

It has been estimated that each year in the United States between 3.3 million (Carlson, 1984) and 10 million (Straus, 1991) children witness violence in the home, including a range of behaviors from intense verbal arguments to fatal assaults with guns and knives.

Family violence also encompasses violence between siblings. According to one study, 77 percent of children under the age of 9 had recently been violent toward a sibling (Steinmetz, 1977). Another study found that 80 percent of children committed violent acts toward their siblings every year (Straus, Gelles, and Steinmetz, 1980).

Young children are particularly at risk of and affected by violence and exposure to violence.

In a comparison study of census data from five cities, domestic violence was shown to have occurred disproportionately in homes with children under the age of 5. Children in this age group also were more likely than older children to witness multiple acts of domestic violence and substance abuse (Fantuzzo et al., 1997). Research indicates that because of their age and limited ability to understand violent episodes, younger children are more vulnerable to the impact of victimization. Children's exposure to violence and maltreatment is significantly associated with increased depression, anxiety, posttraumatic stress, anger, greater alcohol and drug abuse, and lower academic achievement (Zero to Three, 1994). Exposure to violence shapes how they remember, learn, and feel. Numerous studies cite the connection between abuse or neglect of a child and later development of violent and delinquent behavior (Thornberry, 1994; Wright and Wright, 1994; Widom, 1992). Children who experience violence either as victims or as witnesses are at increased risk of becoming violent themselves. This danger is greatest for the youngest children, who depend almost completely on their parents and other caregivers to protect them from trauma.

Children exposed to violence do not receive adequate intervention or treatment to address harmful aftereffects.

According to the U.S. Advisory Board on Child Abuse and Neglect (U.S. Department of Health and Human Services, 1995), more than 90 percent of children who were abused or neglected did not get the services they needed. Rarely are such children provided treatment or help in dealing with the traumatic effects of maltreatment. Also, too often, referrals to victim services

[1] "Exposure to violence" means being a victim of abuse, neglect, or maltreatment or a witness to domestic violence, or other violent crime.

made during investigations of domestic violence and other violent crime are limited to the adult victim rather than focusing on both adult and child victims and witnesses, leaving these children without services.

There is broad consensus that current juvenile justice practice is often inadequate in preventing or intervening in exposure of children to violence. Services are crisis oriented and divide children and families into distinct, often arbitrary categories. Communication among service providers is often poor, resulting in an inability to treat families holistically, meet their needs, and develop comprehensive solutions (Melaville and Blank, 1993).

There is a movement toward a coordinated system response.

As the juvenile justice field continues to recognize prevention as central to its mission and to focus its prevention efforts on those factors that place children at risk for both victimization and delinquent activity, practitioners are increasingly recognizing that the segmentation and fragmentation of community service delivery systems are serious obstacles to effective services for at-risk and victimized children (Gerry and Morrill, 1990). In addition, practitioners and policymakers are beginning to recognize the effectiveness of engaging communities in addressing problems related to delinquency and violence.

The Federal Government has a critical role, not only in reorganizing and restructuring its own activities to promote and facilitate such reorganization on the community level, but also in stimulating community-based systems improvement by providing financial and technical assistance to communities engaged in collaborative processes (Conly and McGillis, 1996). In recent years, Federal agencies have funded a variety of programs to promote collaboration among service providers for children and families. For example:

- In 1994, the Office of Juvenile Justice and Delinquency Prevention (OJJDP) within the U.S. Department of Justice (DOJ) provided initial support to document the Child Development-Community Policing (CDCP) Program model, which was developed by the Yale University Child Study Center and the New Haven Department of Police Services in 1991. Since then, with continuing support from OJJDP and support from DOJ's Office for Victims of Crime and Violence Against Women Grants Office, CDCP has expanded its scope of work and replicated its model in other cities. The program provides assistance to children and adolescents who have been exposed to or victimized by family or community violence and consequently placed at significant psychological and developmental risk. Through this partnership, police and mental health professionals participate in activities such as cross-disciplinary training, seminars on child and adolescent development, policing strategies, case conferences, and 24-hour consultation services.
- In 1997, the Substance Abuse and Mental Health Services Administration (SAMHSA) of the U.S. Department of Health and Human Services (HHS), in conjunction with the Casey Family Program, established the Starting Early/Starting Smart initiative. This public/private collaboration integrates mental health and substance abuse prevention and treatment services with primary health care or early childhood care settings for children from birth to 7 years.
- In 1995, OJJDP began SafeFutures, a 5-year demonstration program in six communities. Under this program, communities are implementing comprehensive community programs designed to reduce youth violence, delinquency, and victimization through a continuum of care system for youth ages 0–18 and their families. This continuum assists communities in responding to the needs of youth at critical stages of their development through a range of prevention, intervention, treatment, and sanctions programs.
- In 1996, several components of the Office of Justice Programs within the Department of Justice joined to initiate the Safe Kids/Safe Streets program. This 5½-year demonstration program, designed to foster coordinated community responses to child abuse and neglect and break the cycle of early childhood victimization and later criminality, is currently being implemented in five sites in the United States.
- HHS's Comprehensive Community Mental Health Services for Children and their Families Program includes intensive community-based services for children with serious emotional disturbances and their families based on a multiagency, multidisciplinary approach involving both the public and private sectors. The key goal of the program is to develop comprehensive interagency systems of care, including collaboration between a variety of providers, *e.g.*, juvenile justice, child welfare, schools, health, and mental health providers.

Through these programs, and others, communities have established formal collaboration between two or more service providers in order to improve service delivery to children, their families, and caregivers. To help communities expand partnerships to include additional providers, in fiscal year 1999 Congress appropriated $10 million to establish the Safe Start initiative. These funds will assist communities that are doing the type of work identified in the five examples above. (Eligibility is not limited to the communities mentioned above-see the "Eligibility Requirements" section below.) Safe Start will provide up to 12 communities with funds to develop and coordinate services to prevent and reduce the impact of family and community violence on young children. The program seeks to accomplish this goal by enhancing and expanding existing community partnerships focused on this problem through integrating public and private support.

Goal

The goal of this project is to create a holistic approach to prevent and reduce the harmful effects of exposure to violence on young children by improving access to, delivery of, and quality of services to children and responding to the needs of children and their families at any point of entry into relevant (*e.g.*, legal, social services, medical) systems.

Objectives

In order to achieve its goal, the Safe Start demonstration project seeks to develop a comprehensive and coordinated community system for preventing and responding to the harmful effects of exposure to violence on young children by:

- Assessing the extent and nature of children's exposure or risk of exposure to violence and the circumstances within the community under which this exposure occurs.
- Increasing awareness within communities and among professionals of the impact of exposure to violence on children and ways to prevent children's exposure to violence.
- Increasing children's access to quality prevention programs.
- Improving identification, referral, and interventions for children, along with their families.
- Facilitating collaboration and coordination of services to improve cross-agency prevention and response, increasing professional cross-training, and reducing barriers to accessing services.
- Providing specific training and support to direct service providers in preventing and dealing with the

psychological and developmental effects of children's experience with violence.

• Addressing the multiethnic, racial, and gender needs of young children who are at high risk of or who have been exposed to violence.

• Fostering and facilitating organizational change that promotes improvements in a variety of prevention, protection/intervention, and treatment services provided by relevant agencies and service providers.

• Developing and implementing specific protocols, procedures, and research-based programs for responding to the needs of children at high risk of, or exposed to, violence and strengthening violence prevention programs designed to reduce such exposure.

The approach through which grantees under the Safe Start initiative are to achieve these objectives will involve:

• Expanding a comprehensive planning and implementation effort that must substantially include representatives from relevant public and private agencies and programs who have a thorough understanding of child development, violence, and its impact on children.

• Assessing and addressing the current levels and seriousness of critical health, mental health, and educational consequences and needs of children at high risk of, or exposed to, violence in their communities.

• Assessing and addressing the policies, procedures, and services directed at the needs of children who are at high risk of, or exposed to, violence in the community.

• Identifying and reducing gaps, deficiencies, and barriers in prevention and intervention policies, procedures, and services.

• Identifying and accessing training and technical assistance that supports the coordinated prevention and intervention services, policies, and procedures.

Program Strategy

OJJDP will competitively select up to 12 communities to receive cooperative agreements for up to 5½ years under the Safe Start initiative.

Project Phases

The strategy for establishing this comprehensive service delivery system involves a multiyear development process (see chart below). The initiative will be conducted in three phases.

During Phase I, which will correspond to the first 12 months of the initiative, selected sites are to conduct assessment, planning, and initial development activities, which are discussed in detail below. Applicants are required to include a strategy for the Phase I assessment and planning as part of the initial application for selection as a Safe Start site. Selected sites will need to successfully complete their Safe Start 5-year strategic plan and an 18-month program implementation plan by month 9 of Phase I to be eligible for funding in Phase II. The 5-year strategic plan and 18-month program implementation plan will serve as major components of the application for continuation funding for Phase II.

Applicants will begin Phase II in month 12 upon OJJDP approval of the 5-year strategic plan and 18-month implementation plan. In Phase II, sites will begin implementation of their Safe Start activities and services. Specifically, Phase II consists of 18 months of initial implementation, training, capacity building, and evaluation of those activities and services planned during Phase I.

Phase III includes the remaining three annual budget periods of the 5½-year initiative. In budget periods 3 and 4, sites will focus on full implementation and maintenance of the program based on the plan developed during Phase I and initial implementation of Phase II. By budget period 4, sites will also actively identify and implement ways to sustain improvements achieved under Safe Start by conducting long-range planning beyond the conclusion of the initiative and developing alternative funding. Finally, in budget period 5, sites will continue full implementation of services and activities, finalize long-range planning, and ensure sustainability.

Project Funding

• Selected applicants will be awarded up to $670,000 for the first budget period of 18 months. (Note that the budget periods and phases of this project overlap). Selected applicants will be able to use up to $250,000 for Phase I assessment, planning, and initial development activities.[2]

• For applicants that successfully complete Phase I, the remaining funding available from the first budget period of up to $420,000 will be available along with $670,000 of funding from the second budget period of 12 months to support activities during Phase II (months 13–30) for a total of up to $1,090,000 of funding support per site. Grantees will receive the highest level of funding for the demonstration program in Phase II. Funding will vary based on a variety of factors including size of the target area and population, site-specific needs identified and supported in the Phase I plan and to be implemented during Phase II, and successful completion of the products and activities identified for Phase I. These funds will cover any infrastructure building, startup costs, and training, evaluation, and program services needed to enhance existing resources.

• Funding in Phase III (budget periods 3, 4, and 5) will be up to $670,000 per site in year 3 and will decrease each subsequent budget period. Selected sites will be expected to ensure that local resources are leveraged to sustain the project during years 4 and 5 of Phase III and beyond the 5½-year project period.

Phase	Years	Activities	Funding
Phase I (12 mos.)	Year 1:		
	months 0–9	Assessment & planning	$250,000
	months 10–12	xIInitial development.	
	month 12	xIOJJDP review of site plans completed.	
Phase II (18 mos.)	Year 2: months 13–30	Initial implementation	420,000
			+670,000
			1,090,000
Phase III (36 mos.)	Year 3: months 31–42	Full Implementation	670,000
	Year 4: months 43–54	Sustainability	>670,000

[2] Applicants are requested to submit award requests for the amount of $670,000; however, selected grantees will only have access to $250,000 for planning through month 12. The remaining $420,000, plus additional funds under a supplemental award for initial implementation in Phase II will be made available in month 12 upon successful completion of Phase I and OJJDP approval of plans. See "Award Amount" and "Award Period" sections below.

Phase	Years	Activities	Funding
	Year.5 months 55–66		>670,000

Funding in this demonstration initiative is intended to supplement existing services provided through Federal, State, local, and tribal sources and to be used for the purpose of coordinating and supplementing an existing system of care. In each community's system of care, the primary objective is to capitalize on and reshape existing staff time and services while also filling service gaps.

Target Population and Area

This demonstration initiative has been developed to target young children (primarily from birth to 6 years of age) who are at high risk of exposure or who have been exposed to violence, along with their families and other caregivers. The target age range is somewhat flexible based on the justified needs of a community. Applicants need to specify what particular age range is targeted, how and why this range was identified and is appropriate to the geographic area to be served, and how "high risk of exposure to violence" and "exposed to violence" are defined in the community.

Sites funded under this initiative must address the multiethnic, racial, and gender-specific needs of young children who are at high risk of or who have been exposed to violence. Sites may direct their efforts to the entire jurisdiction or to specific geographical areas of special need. However, the identified need must be clearly justified as described below. For instance, applicants may choose to direct program efforts toward children in one or more communities within a larger urban, rural, or tribal area.

Applicants must justify the target area and population in terms of both need and appropriateness to the accomplishment of program objectives. Applicants must show that targeted geographic areas represent identifiable communities or neighborhoods where the investment of Safe Start resources will result in appreciable improvements for children who live there. Appropriateness of the target area also must be justified in part by demonstrating particular community strengths or existing resources from which to build Safe Start.

Collaboration/Coordination

Collaboration and coordination are central components of the Safe Start program. At the national level, OJJDP has developed this initiative in coordination with other Federal agencies and offices, including the Department of Health and Human Services and DOJ's Violence Against Women Grants Office and Office for Victims of Crime. At the local level, Safe Start sites are expected to demonstrate and continue coordination and collaboration with other Federal, State, and local agencies; national and community foundations; and private sector programs, including community-based organizations and faith communities. To ensure that a comprehensive service delivery system is provided, key partnerships must be established and expanded. A list of relevant partners and service providers follows to highlight the full range of disciplines and sectors to be involved. Primary partners represent key points of entry for prevention and intervention; secondary partners can provide support resources as needed.

Primary partners include the following:

- Battered women's shelters and domestic violence advocacy agencies.
- Child advocacy centers.
- Courts: Judges, attorneys, guardians *ad litem*, court appointed special advocates, administrative staff in the dependency/juvenile courts, family courts, domestic violence courts, and drug courts.
- Domestic violence, family violence prevention, and hotline services.
- Early childhood development and child care.
- Faith leaders and communities.
- Head Start and Early Head Start.
- Law enforcement.
- Mental health services.
- Primary health care providers, hospitals, and emergency medical services.
- Schools.
- Social services and child protective services.
- Substance abuse prevention and treatment services.

Secondary partners include the following:

- Business and private sector.
- Housing.
- Income maintenance personnel (Temporary Assistance for Needy Families; General Assistance; Supplemental Security Income; Women, Infants, and Children Program, *etc.*).
- Labor.
- Media.
- Transportation.

Under Safe Start, communities will be expected to develop a coordinated prevention and response system composed of core services identified below under the "Activities/Services" section. Additional primary and secondary partners will vary based on the particular needs and existing service delivery systems of individual communities. Grantees will be selected based in large part on their demonstration of active partnerships and their ability to expand and sustain the partnerships to broadly encompass partners needed in the community. Collaboratives should display the following elements:

- A shared, focused objective that is narrow enough to have an impact yet broad enough to engage the interests of multiple agencies (since children at high risk of, or exposed to, violence have critical health, mental health, education, safety, housing, and transportation needs).
- Leadership and ongoing support from the highest agency levels.
- Dedicated administrative budget and staff to support the initiative's goals and objectives.
- Systemwide implementation that is sufficiently broad in scope to gain sustained policy-level attention and impact key agency practices.
- Demonstrated ability to leverage public and private funding to ensure commitment during the project and sustainability of improved services and coordination after Safe Start funding has ended.
- A focus on outcomes, with measurable, tracked, and evaluated progress toward planned goals and objectives.
- Ongoing support and technical assistance to promote community coordination.
- Experience in problem solving to enhance individuals' and agencies' abilities to prevent violence and trauma before they occur.

Activities/Services

To accomplish the goal of Safe Start, communities will have to improve their service delivery systems (*e.g.*, by improving identification, assessment, and referral mechanisms; addressing confidentiality issues; implementing organizational change; enhancing information sharing and management information systems; creating protocols and multidisciplinary teams, *etc.*), and they will have to implement programs

that research has proven effective (*e.g.*, Functional Family Therapy, Nurse Home Visitation).

Through the Safe Start planning (Phase I) and implementation (Phases II and III) process, communities should build on existing services to develop a coordinated prevention and response system that contains the following minimum core components: a protocol between police, mental health, medical, and child protective services; child advocacy centers; early childhood development and education; family strengthening services; a home visitation program; domestic violence services for battered mothers whose children are at high risk of exposure, or exposed to, intimate partner violence; substance abuse prevention and treatment services; and model dependency courts. The process of planning and implementation that selected sites will be required to perform is described below.

Phase I—Planning and Initial Development

During Phase I, selected sites will be required to prepare a 5-year strategic plan that outlines how the local community will create an integrated prevention and response system of care for preventing and reducing the impact of exposure to violence on children along with their families or caregivers. This plan should provide a framework for activities, policy changes, and resource adjustments for the remaining years of the award and beyond to continue the community assessment and planning as part of ongoing maintenance of the effort. The 5-year strategic plan should provide the overarching structure/framework for all efforts to improve the prevention of and a community response to children's exposure to violence. It is both a state-of-the-community report on children at high risk of, or exposed to, violence and a step-by-step guide for action.

Phase I planning also should include identifying and assessing existing community services, including gaps in services; identifying and assessing all resources currently used and available for use (human, technological, and fiscal); assessing financial strategies; and assessing existing policies and procedures within and across agencies and providers responding to children who are at high risk of, or exposed to, violence along with their families.

To accomplish these purposes, the strategic plan must provide a data-driven risk and resource assessment about the current community in quantifiable terms-numbers, percentages-that can inform decisionmakers and serve as baseline measures against which to judge progress. It must also delineate a list action steps—a blueprint—that, among other items, includes responsibilities (by individual and organization), and timelines for achieving an integrated service delivery system.

The strategic plan must substantially involve key leaders (*e.g.*, policy, administrative, and community) necessary for a comprehensive prevention system and response to exposure to violence in terms of assessment information, outcomes, policies, financing and programming strategies, staffing, training, coordination, and services. Services that are administered at a city, county, tribal, or State level must be identified and involved. The strategic plan should include the basic elements of any planning document such as the vision, mission, goals, objectives, assessment findings (including a description of the current continuum), and a list of prioritized actions for the next 5 years. These prioritized actions should include the target date by which they will be implemented and the agency/persons that have lead responsibility for them. It is expected that prioritized actions will include a range of strategies such as policy and systems changes, service delivery changes (*e.g.*, expanded service hours), service integration, program enhancements, and new programming (including but not limited to those strategies supported under the Safe Start grant funds). These strategies should occur at all of the following levels: Policy, legislative, management, and frontline service delivery.

In addition to the 5-year strategic plan, sites will also be required to submit an 18-month detailed initial implementation plan (application) for funding for Phase II.

Phase I—Deliverables Required of Selected Grantees To Proceed to Phase II

Assessment and planning activities conducted by sites during Phase I should position selected sites to begin implementation of improved service delivery to children and their families in Phases II and III. By month 9 of Phase I, participants are expected to have developed and submitted a comprehensive 5-year strategic plan that builds on previous activities in the community that includes, at a minimum, the following:

- Vision Statement (5 years).
- Description of Planning Process (participants and planning methods).
- Defined Target Area and Population.
- Community Assessment (based on data, where appropriate).
  - —Map of current services in the delivery system for both prevention and reduction.
  - —Identification of resources currently invested in the issue of exposure.
  - —Identification of priority risk and protective factors.
  - —Identification of gaps in the current service delivery system.
  - —Analysis of community strengths, resources, and opportunities available to support the system.
  - —Identification of service barriers among key service providers, including availability, accessibility, and appropriateness.
  - —Identification of program and policy priorities for putting an integrated system in place.
  - —Description of plan for maintaining and updating initial assessment findings.
- Goals and Objectives for Prevention and Reduction of the Impact of Exposure.
- Action Plan.
  - —Policy and system changes to address priorities for prevention and reduction. Services and programming (including Safe Start-funded activities and other services).
  - —Task and timeline plan.
- Plan for Measuring Progress.
  - —Plan for ongoing assessment.
  - —Benchmarks for measuring progress.
  - —Description of who will participate in measuring progress and how decisions about necessary changes and refinements will be made.
- Training and Technical Assistance Plan (see below).
- Local Evaluation Plan (see below).
- Statement of Collaborative Phase I Plan Development.
  - —Because the strategic plan is to be the product of a collaborative, communitywide planning process including all policymakers involved in the prevention and reduction of exposure to violence, selected sites will need to include a signed statement in which each supporting party attests to his or her substantial involvement in the development of the strategic plan. The statement must contain each person's original signature, typed/printed name, address, telephone number, and affiliation (agency head, parent, youth). In addition, signed statements of the staffing group members who participated and a description of the roles of the key leaders, in the preparation of the strategic plan are required.

In addition, by month 9 of Phase I, sites will be required to submit a

detailed implementation plan (*i.e.*, full application) for Phase II of the Safe Start initiative. The implementation plan/application must detail the activities and strategies to be implemented, and provide a timeline and a budget for the 18 months of initial program startup and implementation. The Phase II application must include a training and technical assistance plan and a local evaluation plan. All applicants will be eligible for continuation in Phase II if performance in Phase I, the strategic plan, and the implementation plan/application merit support for implementation funding.

Applicants will also be required to provide memorandums of understanding (MOU's), cosigned by all participating agencies, that describe in detail agency commitments and activities each agency will perform to improve service coordination and delivery.

These deliverables will be due to OJJDP by month 9 of the program to ensure adequate time for review and approval by OJJDP for continuation of and funding for Phase II. The remaining 3 months of the first year should be used in preparation for Phase II in such activities as training, policy development, and other developmental activities.

Selected sites also will be required to provide interim planning reports and draft products throughout Phase I to allow for a formative feedback process intended to facilitate successful completion of Phase I.

Phase II—Initial Implementation (Months 13–30)

Once each selected site has successfully completed Phase I, OJJDP will provide additional funds for Phase II. During this phase, OJJDP expects communities to build upon existing services to begin developing a coordinated prevention and response system including the core components listed above under "Collaboration/Coordination" and "Activities/Services." If an applicant demonstrates that a particular component is not needed or has been adequately developed in its community, funding is flexible enough to allow for greater emphasis in another service or systems change area. Although the Safe Start initiative does not require selected sites to implement prescribed models for particular program components, sites must use programs and services that have been demonstrated through research to prevent and minimize the impact of exposure to violence. Applicants will be expected to justify and demonstrate the effectiveness of programs or practices proposed for implementation or expansion. (Numerous information resources on research-based practices and programs are available from OJJDP through the Juvenile Justice Clearinghouse. The National Clearinghouse for Child Abuse and Neglect also can provide information. Contact information is listed on page 52.)

Deliverables for Phase II will be developed during Phase I in consultation with OJJDP, and written guidance from OJJDP will be provided annually throughout Phase II.

Activities will include the following:

- Implementation of professional training, cross-training, and development at the individual and staff/organizational level regarding prevention, identification, and intervention techniques to address the needs of children at risk of/exposed to violence.
- Implementation of strategies for improving identification, referral, and intervention.
- Development and implementation of cross-system coordination and protocols.
- Implementation of any new research-based service models to fill identified gaps.
- Increasing the quality of, and access to, services.
- Developing management information systems and improving case management.

Training and Technical Assistance

A comprehensive national training and technical assistance (national TTA) component will be identified by OJJDP and will support the communities selected to participate in Safe Start. These communities will receive a range of OJJDP-funded support including assessment, coordination, brokering, and provision of TTA in both content and systems improvement areas.

In addition, of the up to $250,000 in funding that can be awarded for planning, sites are expected to set aside $50,000 for local TTA to support community-specific needs and build on existing local TTA resources. Sites are encouraged in Phase I to use the TTA set-aside to access support for ongoing facilitation of and consultation on the strategic planning process.

In Phase II, local intensive training across disciplines for community teams on children's exposure to violence, treatment options, and interventions in various settings should be provided by a team of experts identified by the agencies, including professionals experienced in working with parents, childcare workers, child protective service providers, battered women's advocates/workers, community policing officers, probation officers, parole officers, prosecutors, judges, pediatricians, emergency room doctors, nurses, school personnel, educators, clergy, public housing officials, and university professors. Again, this training should build on what is available under existing contracts. This training plan should be developed with the assistance of the National TTA Coordinator during planning under Phase I.

Evaluation

Safe Start evaluations will track each selected site's process and the impact of developing a coordinated service delivery system through (1) a cross-site process evaluation; (2) a cross-site impact evaluation; and (3) rigorous local impact evaluations. These evaluations will be conducted at both the national and the local level. The objectives of both the national and local evaluation will adjust to the shifting demands of each Safe Start phase and are intended to document Safe Start activities across the life of the initiative.

During Phase I, the evaluation will focus on process by documenting the process and results of planning meetings, progress of the risk and resource analysis, identification of gaps, problems encountered, *etc.* As the initiative moves into Phase II and III implementation, the evaluation also will be concerned with outcomes related to the impact of new and/or enhanced services and changes in policy and procedures on the lives of children and families exposed to violence. This process will be guided by the development of a Safe Start logic model for each community (described in more detail below).

The National Evaluator

The Safe Start national evaluator will be selected by OJJDP through a separate, competitive process. Program applicants must agree to comply with the national evaluation requirements. Because it is important that the experiences of all Safe Start communities be measured in a common fashion, allowing for generation of knowledge across all communities, the national evaluator is responsible for designing two cross-site evaluation efforts. The first, the cross-site process evaluation, is intended to document and analyze the process of effective implementation of the Safe Start initiative to provide information to strengthen and refine the initiative within and across sites. It is important to identify factors that contribute to or impede the successful implementation

of the initiative in each community. The second, the cross-site impact evaluation, is intended to assess the extent to which the initiative is meeting its goals and measure the amount of change that is taking place. Finally, the national evaluator is responsible for providing technical assistance to local evaluators in designing local evaluation plans. These plans must focus on conducting more rigorous evaluations that use experimental or quasi-experimental designs. These plans will be reviewed by the national evaluator and OJJDP. OJJDP will approve local evaluation plans.

Local Evaluation Requirements

Each Safe Start grantee must select and set aside ample funds (no less than 10 percent) of the project budget to fund a local evaluator to provide evaluation support throughout the life of the initiative. In subsequent years of the initiative, the percentage of the project budget allocated to the local evaluator may increase. Safe Start applicants must make a strong and demonstrated commitment to incorporating evaluation activities into their planning and implementation activities. The overall evaluation effort is intended to document and assess the initiative as it develops in each community and becomes an integral component of the initiative by measuring progress, suggesting adjustments, and keeping the initiative outcome focused.

The process of selecting a local evaluator will vary across jurisdictions according to each jurisdiction's policies. That is, some jurisdictions may be required to competitively select a local evaluator while others may have different mechanisms. Applicants should describe the requisite process in their jurisdictions and incorporate this selection process into their Phase I (planning and initial development) timeline. Applicants are encouraged to reach out to universities and other local organizations to fill this responsibility. The national evaluator will develop a common set of criteria to use in selecting a local evaluator. This guidance is intended to convey the same set of expectations to all potential local evaluators.

Local evaluators have six areas of responsibility: (1) Developing a Safe Start logic model for their community; (2) participating in cross-site process evaluation activities; (3) participating in cross-site impact evaluation activities; (4) designing and conducting local Safe Start impact evaluations; (5) providing technical assistance to the local Safe Start initiative; and (6) contributing to report writing. These are described in more detail below.

Develop a Logic Model for the Local Safe Start Initiative. During the planning phase, Safe Start projects and their respective local evaluators will be required to work collaboratively with the national evaluator to develop a local Safe Start logic model. A logic model is a description of how project inputs, activities, and outputs are expected to accomplish the goals and objectives of a project. In other words, a logic model maps out the activities that will occur over the life of the initiative and ties these to the outcomes desired by the project staff.

Participate in Cross-Site Process Evaluation Activities. Local evaluators will work closely with the national evaluator to complete cross-site process evaluation activities. As discussed above, the national evaluator is responsible for designing this cross-site effort. Local evaluators will have input into this design but will ultimately be required to participate in accordance with the agreed-upon structure and methods. For example, the local evaluator must participate by using any instruments designed by the national evaluator for use by all Safe Start sites, following agreed-upon information-sharing procedures, and maintaining contact with the national evaluator and OJJDP.

Participate in Cross-Site Impact Evaluation Activities. The national evaluator is responsible for guiding the design of the cross-site impact evaluation, which is designed to assess the extent to which the initiative is meeting its goals and the amount of change that is taking place. The national and local evaluator are expected to develop a strong working relationship and a mutual commitment to measure Safe Start outcomes. The local evaluator will work with the national evaluator to identify impacts that can be measured as the initiative develops. For example, if the Safe Start community adopts new policies in police referrals to family counseling services, the national evaluator may require that the local evaluator and other local Safe Start project staff monitor the number of referrals made after the policy takes effect. In this same vein, the national evaluator may require that archival data be collected to provide a baseline. It should be noted that all of these requirements will be central to implementing a rigorous evaluation of Safe Start and will embed the process and impact evaluations in the program's development, implementation, and refinement. Local evaluators must participate in the design and implementation of the cross-site impact evaluation in accordance with procedures developed by the national evaluator.

Design and Conduct Local Impact Evaluations. As Safe Start communities begin to implement specific programs (*e.g.*, Nurse Home Visitation) and the need arises to assess the impact of Safe Start services on individuals (*i.e.*, children and their families), the national evaluator will be able to provide technical assistance to local evaluators in designing evaluation plans that can accomplish this task.

The local evaluator and local Safe Start project staff will be expected to make a strong and demonstrated commitment to designing evaluations that can accomplish this level of assessment. Furthermore, these local plans must focus on conducting more rigorous evaluations that use experimental or quasi-experimental designs. The national evaluator will provide guidance in developing these plans and report on the progress of each community to OJJDP. The local evaluator will submit an evaluation plan to the national evaluator, who will then submit the plan to OJJDP. OJJDP will give final approval for all local impact evaluation plans.

To assist in accomplishing this task, the national evaluator will be required to develop a Safe Start Self-Evaluation Tool Kit, modeled after OJJDP's *Title V: Delinquency Prevention Program: Community Self-Evaluation Workbook*, for use by each site.

Provide Technical Assistance to Local Safe Start Initiative. The local evaluator must be able to assist the local Safe Start project staff to develop an implementation plan that is outcome based and data driven. The goal of this relationship is to develop a strong partnership in which program designers and evaluators work together to clarify goals and objectives and make a strong commitment to measuring progress in systematic, scientific ways. To foster this relationship, the local evaluator is expected to actively participate in all stages of the local Safe Start initiative.

Contribute to Report Writing. Local evaluators will be called upon by the national evaluator to help report on activities in their communities. The reports may be used, for example, to produce cross-site Safe Start newsletters that focus on the larger effort or specific areas of interest such as developing strategies to include schools in the effort, sharing information across agencies, and recruiting interest from private organizations in the community.

Eligibility Requirements

OJJDP invites applications from all communities.[3] Public agencies, including State agencies, local units of government, and tribal governments, are invited to apply as lead applicants for a collaborative, community-based initiative. Private agencies and organizations may apply as coapplicants and collaborative partners but not as lead applicants and must agree to waive any profit or fee. Joint applications from two or more eligible applicants are welcomed; however, one applicant must be clearly indicated as lead and the others indicated as coapplicants. Applicants must be applying on behalf of a collaborative group of agencies working to prevent and address the impact of exposure to violence or interested in expanding the collaboration to the issue of exposure. Communities that are attempting to integrate more than one collaborative initiative are strongly encouraged to apply.

Up to 12 applicants will be selected from urban, rural, and tribal categories. Applicants will compete for award in each of these three distinct categories (e.g., all tribal applicants will compete only against applications eligible under the tribal category). Applicants must comply with one of the following definitions based on the most recent Census data,[4] and must identify the application as urban, rural, or tribal:

- *Urban*: Any area that lies inside a metropolitan area (MA), as designated by the Office of Management and Budget using the Census of Population and Housing data, and that has a population of not less than 100,000.
- *Rural*: Any area that lies outside the boundaries of an MA, as designated by the Office of Management and Budget using the Census of Population and Housing data, and that has a population of not less than 10,000 and not more than 100,000.
- *Tribal government*: Federally recognized tribes or Confederated Tribes on a reservation. Confederated Tribes are two or more tribes grouped under a single government by treaty or Executive Order. Eligible tribes must have a tribal government serving a reservation population of not less than 5,000, and a tribal court.

Applicants must demonstrate an established collaborative group—or the ability and commitment to expand coordination between two or more entities to other parties—and an infrastructure for overseeing the initiative. The selected communities should build upon any existing projects relevant to this initiative, such as the following:

- Office of National Drug Control Policy and OJJDP's Community Anti-Drug Coalitions.
- Department of Justice's Title V Community Prevention Grants, Safe Kids/Safe Streets, Comprehensive Communities, Weed and Seed, Child Development/Community Policing, or Violence Against Women Grants Office sites.
- Empowerment Zones/Enterprise Communities.
- Department of Health and Human Services' Comprehensive Community Mental Health Services for Children and their Families; Starting Early/Starting Smart, Head Start, and Early Head Start; and Maternal Child Health Bureau's Leadership Education Projects.
- Department of Education's Safe and Drug-Free Schools.
- Department of Agriculture's Children, Youth and Families At Risk training.
- Department of Housing and Urban Development's Hope VI.

Selection Criteria

Applicants must submit a project narrative describing the overall approach to the Safe Start program, including a description of the conceptual and organizational framework for the collaborative approach and a detailed strategy for planning in Phase I.

All applicants will be evaluated and rated by a peer review panel according to the selection criteria outlined below. Applicants must use the selection criteria headings that appear below as the headings for their program narrative and present information in that order. The selection criteria will be used to determine the extent of each applicant's responsiveness to program application requirements, compliance with eligibility requirements, indicators of need (including high rates of children exposed to violence), organizational capability, and thoroughness and innovation in responding to strategic issues related to project implementation. Staff and peer reviewer recommendations are advisory only, and the final award decision will be made by the OJJDP Administrator, taking into consideration geographic diversity and other considerations. As part of this final selection, a select group of finalists may be visited by a team of Federal officials to make final determinations about the awards.

Problem(s) To Be Addressed (10 points)

Applicants must provide a discussion of children's exposure to violence in the target community. This discussion must address the nature and extent of exposure to violence, including the factors in the community that put children at high risk of exposure to violence. Applicants should provide indicators or measures of the extent of the problem based on current local data such as crime, justice, health, and economic statistics. This information, in addition to data obtained during the assessment of Phase I, will be used as a baseline against which the progress and effectiveness of the applicant's efforts to prevent and reduce the effects of children's exposure to violence will be measured. As part of this section, applicants also should identify current community efforts and resources to reduce the effects of exposure to violence on children, including gaps in community response/service delivery. Applicants should indicate their knowledge of how and why coordination among their specific community entities can be effective in addressing children at high risk of exposure to violence and the effects on children of exposure to violence.

Applicants should organize and provide this information in the following manner:

Section One—Description of the Community and Target Population

a. Describe the geographic area, size of population, age range to be served, general population characteristics, and ethnic composition of the community participating in the Safe Start program. Explain how and why the targeted community was identified and defined.

b. Describe the governmental structure and major agencies servicing young children, including but not limited to law enforcement, the courts (e.g., domestic relations and dependency courts), social services, and health and mental health services. Provide a brief overview of responsibilities and relationships that currently exist, including availability of services and case management processes.

---

[3] A community is any set of contiguous neighborhoods within an urban area or one or more adjacent counties, towns, townships, parishes, or villages; tribal lands or reservations; or other general purpose subdivisions of a State that shares a preponderance of interests, needs, services, and governance structures as related to the prevention and reduction of the negative impacts of children's exposure to violence. See also definitions for urban, rural, and tribal categories.

[4] To determine if a jurisdiction is within a metropolitan area, visit the Census Bureau's Web site at www.census.gov/population/www/estimates/aboutmetro.html.

Section Two—Assessment of Community Strengths and Weaknesses

a. Provide data on specific risk factors for children's exposure to violence, such as high rates of crime, drug abuse, poverty, child abuse and neglect, prevalence of intimate partner violence/domestic violence, and other factors identified in the community. Describe all local baseline data being collected and analyzed. Indicate any information gaps regarding risk factors or difficulties in assessing them.

b. Describe the areas of greatest need. What are the gaps in existing services?

c. Describe what resources are available to the community to address the identified risk factors.

d. Discuss/describe current operations and response to children at high risk of, or exposed to, violence.

e. Discuss community strengths and weaknesses.

Goals and Objectives (10 points)

Outline the collaborative's vision for preventing and ameliorating the impact of exposure to violence, describing how the involved systems and agencies will operate upon conclusion of the planning and implementation phases. Applicants will be judged on a clear, far-reaching, yet realistic, vision statement.

Applicants must provide a clear discussion of the proposed project goals and objectives as they logically relate to the needs, resources, and capabilities of their communities (which applicants should list in response to the section above, "Problems To Be Addressed") in relation to the long-range 5-year vision. In addition, applicants should outline specific goals and objectives for Phase I planning that result in the attainment of the Phase I deliverables set forth in the "Project Strategy" section of the solicitation. Objectives must be quantified, measurable, and attainable within the timeframes of the initiative phases. Applicants are reminded that Phase I is 12 months, but deliverables are due to OJJDP at month 9.

Project Design (20 points)

Applicants must describe their strategy for planning. The planning process and the major activities to be undertaken in the development of the implementation plan should be described stating the specific steps to be used during the first 12 months of the project. The steps should illustrate how the process will incorporate activities underway; coordinate and leverage services; identify and review services, existing gaps, policies and procedures, and barriers to services; identify human, fiscal, and technological resources; assess system function through case-level analysis; identify existing data sources and conduct a thorough data-driven assessment; and use this information to develop a strategy that minimizes duplication and inefficiencies and maximizes cooperation, coordination, and collaboration. The plan also should address local evaluation activities such as data collection, assessment, and planning for Phase I; development of a logic model; and local evaluation design. The plan must include a timeline or milestone chart that details not only the major activities and events but also the action steps and tasks associated with implementing the strategy to plan. The timeline should identify specific staff responsible or job functions required for completing each task.

Specifically, for Phase I, applicants should:

- List the collaborative partners including service providers who will participate in the planning and implementation process. Applicants will be judged on clear evidence of broad, high-level community involvement in the planning and implementation process.
- Identify the lead agency.
- Describe the process by which agencies plan to work together to design a coordinated service delivery system. Applicants will be judged on (1) the extent to which they have initiated planning and implementation of a comprehensive service system for children exposed to violence and/or are in a position to build on current efforts including expansion of collaborative partnerships in other related areas, and (2) the ability and willingness on the part of key leaders to leverage existing resources, create new sources of support, make policy and procedural changes, and sustain activities. Please describe in detail the vision for ensuring linkages and integration at the direct service level by all involved agencies to provide a coordinated system of care for children exposed to violence. Include a description of the coordination mechanisms, both human and technological, such as interagency staffing groups, integrated case management systems, management information systems, joint intake and assessment procedures, referrals, *etc.*
- Describe how information is to be collected, used, coordinated, maintained, and managed. Also, please explain how children first will be identified as in need of services and through which contacts children will first receive services.
- Describe existing services and programs currently operating in the target community.
- Describe the plan for training and technical assistance in Phase I.
- Describe the local evaluation plan and incorporate it into the Phase I timeline/workplan (this should include a description of the process for selecting and contracting a local evaluator; data collection, assessment, and planning for Phase I; development of a logic model; and local evaluation design).
- Describe the developmental activities to be conducted in months 9–12.

Management and Organizational Capability (40 points)

Applicants should use this section to describe a sound governance and operating structure capable of carrying out the proposed initiative and to demonstrate the following: community readiness, an effective team management structure for the initiative involving the lead agency and the collaborative partners, and a strong organizational capability by the lead agency commensurate with the scope of work outlined in this solicitation. These elements and their share of the 40 points available under this criterion are discussed below.

Section One—Community Readiness (10 points)

Describe how the proposed vision and project design will build on and/or fit within current and past communitywide planning processes to achieve the initiative's objectives. Discuss the community's history of collaboration and planning as it addressed or addresses children's exposure to violence (or related issues, such as child abuse and neglect and domestic violence). Include a description of the participants, major milestones, and the nature and process of the collaboration. Clarify what has been done, what is in process, and what remains to be done. Describe the infrastructure upon which Safe Start will be developed. Applicants should demonstrate the existence, viability, and accomplishments to date of multidisciplinary arrangements whereby various agencies in a jurisdiction are working cooperatively or collaboratively to improve the community's response to children and families, especially if in the area of exposure to violence. Applicants must also document that the collaborative or cooperative groups represent all the relevant stakeholders needed to reduce the impact of exposure in the target community. This involvement should include atypical resources and

stakeholders such as grassroots organizations, parents, and community leaders. Applicants will be judged on the presence of structures and agreements (such as a range of local human resources and financial commitments) to ensure collaboration and coordination in planning, implementing, and evaluating an integrated system of care and the participation of all sectors of the community in the initiative.

Applicants also should demonstrate evidence of favorable policies and/or legislation that characterizes the political and administrative environments and gives evidence of political or administrative support for the proposed collaborative effort. Give examples of actual favorable policies or legislation in appendix D (discussed below).

Applicants must include documentation and letters of agreement, such as copies of MOU's and/or letters of collaboration/coordination, from key agencies that specifically describe the commitments made by each participating agency in appendix F (discussed below).

Section Two—Management (15 points)

Outline the proposed project staffing structure and management plan for the collaborative effort including at least one full-time, high-level, experienced lead coordinator for the initiative and support staff for the Phase I planning and initial development process. Applicants are to identify roles and responsibilities of each involved agency, committee, board, or other entity and explain its relationship to the overall effort. In addition, applicants must name and describe the core management team and the capabilities and experience of all staff and consultants who will participate in the management team or play lead roles in the planning effort. Include résumés of key personnel in appendix E (discussed below). Indicate the percentage of time for each named staff or consultant and the supervision or management plan. Describe the management practices that will be used to evaluate staff and program progress and to ensure corrective action.

Section Three—Organizational Capability (15 points)

Applicants should provide a brief overview of the lead agency's knowledge and experience in children, youth, and family issues, particularly as they relate to the prevention and reduction of the impact of exposure to violence. In addition, the applicant should demonstrate specific and detailed experience in leading collaborative, communitywide planning efforts involving systems change. The applicant must demonstrate a history that is consistent with the size and scope of this initiative. The applicant should also provide evidence of experience in strategic planning and management of staff in a collaborative environment. Experience leveraging State, local, tribal, or other resources is required. Applicants should demonstrate the ability and willingness to participate and cooperate in a comprehensive evaluation of this demonstration initiative at both the national and local level for purposes of formative learning and advancement of strategies to assist children and families.

Budget (10 points)

Applicants must provide a proposed budget that is complete, detailed, reasonable, allowable, and cost effective in relation to the activities to be performed and that indicates the extent to which resources have been committed for the first 12 months of the initiative. Although Safe Start is intended to improve service delivery through enhanced coordination of available services, the program allows applicants to determine the ratio of funds for coordination and for services, based on local needs. However, applicants must provide at least one full-time experienced, high-level project coordinator to oversee the planning effort and additional staff resources and support as needed. In addition, of the up to $250,000 to be awarded for planning, applicants must set aside $50,000 for local training and technical assistance to support community-specific needs and build on existing local TTA resources (to be defined in the budget). Sites are encouraged in Phase I to use the TTA set-aside to provide support for ongoing outside facilitation and consultation of the strategic planning process. Applicants should also use these funds to budget for travel to two cross-site grantee meetings. Additionally, ample funds should be budgeted for the local evaluation according to the specifications of this solicitation.

Appendixes (10 points)

To help reviewers gauge the likelihood of grantee success, applicants must submit the following appendixes as evidence of their readiness and potential:

- Appendix A: Resources list. This is a listing of the existing local services to children and families in the areas of prevention and reduction of the impact of exposure to violence. At a minimum, the list should include provider names, addresses, phone numbers, and a brief description of the services offered.
- Appendix B: Cross-system protocols. These are interagency agreements and protocols outlining a multidisciplinary approach to responding to children exposed to violence and preventing exposure, case management and tracking, and provision of services and treatment to these children and their families. Such agreements should, at a minimum, be among the police department, the child welfare system, the courts, the appropriate health and mental health agencies, and domestic violence service providers or advocates. Where agreements are not developed, please provide policies and protocols that exist between these agencies for services to children and families in general that may be expanded in Phase I. Agreements and protocols that include the school system and victims' services and advocates will further enhance the application. (To meet page limitations, applicants may provide a bibliography of protocols and interagency agreements that includes date(s) of agreement/effective date(s) and selected, relevant pages as evidence of applicability of the documents to this effort.)
- Appendix C: Statement of collaborative application. It is imperative that the plan be a mutual submission by all stakeholders. As evidence, applicants must submit a statement asserting that each party signing was substantially involved in the development of the plan. The statement must contain each person's original signature, typed/printed name, address, telephone number, and affiliation (title and agency or role-*e.g.*, parent, block leader).
- Appendix D: Evidence of favorable policies and/or legislation. Applicants are to document the existence of a favorable climate by listing current agency policies or local, State, or tribal legislation that aids interagency, communitywide collaboration in regard to children exposed to violence or other family support issues. As with appendix B, applicants may choose to do this by providing a bibliography of policies and legislation that includes effective date(s) along with selected, relevant pages.
- Appendix E: Key staff and consultant résumés. Include résumés or brief descriptions of the relevant experience of key staff named in the "Management and Organizational Capability" section.
- Appendix F: Letters of agreement and MOU's. Include documentation of letters of agreement and MOU's that specifically describe commitments made by each partner agency.

Format

The narrative portion of this application must not exceed 25 pages (excluding forms, assurances, and appendixes) and must be submitted on 8½- by 11-inch paper, double spaced on one side of the paper in a standard 12-point font. The appendixes cannot exceed 20 pages. This is necessary to maintain fair and uniform standards among all applicants. If the narrative and appendixes do not conform to these standards, OJJDP will deem the application ineligible for consideration.

Award Period

The Safe Start demonstration project will be funded in the form of a cooperative agreement for a 5½ year project period.

Applicants are requested to apply for up to $670,000; however, only $250,000 will be available for Phase I (the first 12 months of the project). Applicants should provide a detailed budget and supporting narrative *only* for Phase I (12 months).

The remainder of the award funds ($420,000) should be designated for development and implementation activities. Applicants should provide only a summary budget for the $420,000 for Phase II initial implementation. A summary budget to be used by all applicants has been provided as attachment A, since in the first 9 months of the planning phase selected jurisdictions will be expected to develop a detailed 18-month implementation budget (based on the 5-year strategic plan). The $420,000 will be special conditioned under the grant and will not be available for use by the grantee until the detailed 5-year strategic plan and 18-month implementation plan are reviewed and approved by OJJDP.

In the 18-month implementation plan, grantees will be required to provide a detailed budget and supporting narrative for the remaining $420,000 of funds plus up to $670,000 made available through a supplemental award in Phase II.

Award Amount

Selected applicants will receive up to $250,000 for Phase I planning and development. Once the planning phase has been completed and the 5-year strategic plan and 18-month implementation plan are approved, up to $1,090,000 will be made available, including the balance of the $420,000 from the initial budget period. In that way, the funding level for the project will increase in Phase II for startup and initial implementation activities.

Funding will then decrease in Phase III, as sites seek and obtain alternative forms of funding to continue this project. Funding in Phase II and the subsequent years of Phase III will depend on grantee performance, availability of funds, and other criteria established at the time of the award.

Catalog of Federal Domestic Assistance (CFDA) Number

For this program, the CFDA number, which is required on Standard Form 424, Application for Federal Assistance, is 16.730. This form is included in the *FY 1999 Application Package*, which can be obtained by calling the Juvenile Justice Clearinghouse at 800–638–8736 or sending an e-mail request to puborder@ncjrs.org. The *Application Package* is also available online at www.ojjdp.ncjrs.org.

Coordination of Federal Efforts

To encourage better coordination among Federal agencies in addressing State and local needs, DOJ is requesting applicants to provide information on the following: (1) Active Federal grant award(s) supporting this or related efforts, including awards from DOJ; (2) any pending application(s) for Federal funds for this or related efforts; and (3) plans for coordinating any funds described in items (1) or (2) with the funding sought by this application. For each Federal award, applicants must include the program or project title, the Federal grantor agency, the amount of the award, and a brief description of its purpose.

"Related efforts" is defined for these purposes as one of the following:

- Efforts for the same purpose (*i.e.*, the proposed award would supplement, expand, complement, or continue activities funded with other Federal grants).
- Another phase or component of the same program or project (*e.g.*, to implement a planning effort funded by other Federal funds or to provide a substance abuse treatment or education component within a criminal justice project).
- Services of some kind (*e.g.*, technical assistance, research, or evaluation) to the program or project described in the application.

Delivery Instructions

All applications should be mailed or delivered to the Office of Juvenile Justice and Delinquency Prevention, c/o Juvenile Justice Resource Center, 2277 Research Boulevard, Mail Stop 2K, Rockville, MD 20850; 301–519–5535.

Note: In the lower left-hand corner of the envelope, you must clearly write "Safe Start Demonstration Project" and indicate the type of jurisdiction for which you are applying (urban, rural, or tribal).

Due Date

Applicants are responsible for ensuring that the original and five copies of the application package are received by 5 p.m. EDT on June 14, 1999.

Contacts

For further information, call Michelle Avery, Program Manager, Special Emphasis Division, at 202–307–5914, or send an e-mail inquiry to averym@ojp.usdoj.gov.

Juvenile Justice Clearinghouse: 800–638–8736 (phone) or www.ojjdp.ncjrs.org (Web site)

National Clearinghouse on Child Abuse and Neglect: 800–394-3366 (phone) or www.calib.com/nccanch (Web site)

References

Carlson, B.E. 1984. Children's observations of interparental violence. In *Battered Women and Their Families*, edited by A.R. Roberts. New York: Springer, pp. 147–167.

Conly, C., and McGillis, D. 1996. The Federal role in revitalizing communities and preventing and controlling crime and violence. *National Institute of Justice Journal* 231:24–30.

Fantuzzo, J.W., Boruch, R., Beriama, A., Atkins, M., and Marcus, S. 1997. Domestic violence and children: Prevalence and risk in five major cities. *Journal of the American Academy of Child and Adolescent Psychiatry* 36:1, 116–122.

Gerry, M., and Morrill, W. 1990. Integrating the delivery of services to school-aged children at risk: Toward a description of American experience and experimentation. *Octopus Times* 1:61–66.

Melaville, A., and Blank, M. 1993. *Together We Can: A Guide for Crafting a Profamily System of Education and Human Services*. Washington, DC: U.S. Department of Education and U.S. Department of Health and Human Services.

Poe-Yamagata, E. 1997. "Number of Children Reported to Protected Service Agencies, 1980–1996." Adapted from Sickmund, M., Snyder, H., and Poe-Yamagata, E. *Juvenile Offenders and Victims: 1997 Update on Violence*, Washington, D.C.: U.S. Department of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention.

Steinmetz, S.K. 1977. *The Cycle of Violence: Assertive, Aggressive, and Abusive Family Interaction*. New York: Praeger.

Straus, M.A. 1991 (September). Children as witnesses to marital violence: A risk factor for life-long problems among nationally representative sample of American men and women. Paper presented at the Ross Roundtable on Children and Violence, Washington, DC.

Straus, M., Gelles, R., and Steinmetz, S. 1980. *Behind Closed Doors: Violence in the American Family.* Garden City, NY: Anchor.

Taylor, L., Zuckerman, B., Harik, V., and Groves, B.M. 1994. Witnessing violence by young children and their mothers. *Journal of Developmental and Behavioral Pediatrics* 15(2):120–123.

Thornberry, T.P. 1994. *Violent Families and Youth Violence.* Washington, DC: U.S. Department of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention.

U.S. Department of Health and Human Services. (1995) *A Nation's Shame: Fatal Child Abuse and Neglect in the United States,* A Report of the U.S. Advisory Board on Child Abuse and Neglect.

Widom, C.S. 1992. *Cycle of Violence.* Washington, DC: U.S. Department of Justice, Office of Justice Programs, National Institute of Justice.

Wright, K.N., and Wright, K.E. 1994. *Family Life, Delinquency, and Crime: A Policymaker's Guide.* Washington, DC: U.S. Department of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention.

Zero to Three/National Center for Clinical Infant Programs. 1994. *Caring for Infants and Toddlers in Violent Environments: Hurt, Healing, and Hope.* Washington, DC: Zero to Three.

ATTACHMENT A—SUMMARY BUDGET FOR $420,000

Personnel and fringe benefits	$150,000
Program services	200,000
Training and technical assistance	25,000
Local evaluation	25,000
Equipment	10,000
Travel	5,000
Supplies	5,000
Total	420,000

Evaluation of the Safe Start Initiative

Purpose

The purpose of this evaluation is to document and evaluate communities' efforts to prevent and reduce the impact of family and community violence on young children (primarily from birth to 6 years of age). Toward that end, the Safe Start initiative seeks to create a comprehensive service delivery system by helping communities to expand existing partnerships among service providers in the fields of early childhood education/development, health, mental health, family support and strengthening, domestic violence, substance abuse prevention and treatment, crisis intervention, child welfare, law enforcement, courts, and legal services.

Background

The goal of the Safe Start initiative is to create a holistic approach to reduce and prevent the harmful effects of exposure to violence on young children by improving access to, delivery of, and quality of services to children and responding to the needs of children and their families at any point of entry into relevant systems (*e.g.,* legal, social services, medical). Safe Start communities will undertake the following activities to achieve this goal:

- Expand a comprehensive planning effort that includes representatives from a variety of public and private agencies and programs with expertise in child development, violence, and the impact of violence on children.
- Assess the extent and nature of children's exposure or risk of exposure to violence and the circumstances within the community under which this exposure occurs.
- Assess and address the current levels and seriousness of critical health, mental health, and educational consequences and needs of children exposed to violence.
- Increase awareness within communities and among professionals of the impact of exposure to violence on children.
- Identify and reduce gaps, deficiencies, and barriers in community policies, procedures, and services designed to prevent exposure to violence or lessen its impact on children who have been exposed.
- Improve identification, referral, and interventions for children who are at risk of being exposed to violence or have been exposed to violence.
- Identify and access training and technical assistance that supports coordinated services, policies, and procedures designed to prevent exposure to violence or lessen its impact on children who have been exposed.
- Facilitate collaboration and coordination of services to improve cross-agency response, increase professional cross-training, and reduce barriers to accessing services.
- Foster and facilitate organizational and systems change that promotes improvements in the availability, delivery, and quality of prevention, protection/intervention, and treatment services provided by law enforcement, mental health, health, domestic violence advocacy, courts and legal services, and educational services.
- Develop and implement specific protocols, procedures, and research-based programs for responding to the needs of children exposed to violence and strengthening violence prevention programs designed to reduce such exposure.
- Provide specific training and support to service providers in dealing with the psychological and developmental effects of children's experience with violence.
- Address the multiethnic, racial, and gender needs of young children who are at high risk of or who have been exposed to violence.
- This community-based initiative will progress in a series of stages across 5½ years of Federal funding. Applicants should become familiar with the program announcement for OJJDP's Safe Start demonstration project and research literature on the prevention and effects of exposure to violence. Applicants should pay special attention to the core elements of the Safe Start initiative as identified in the program solicitation. These highlight the programmatic areas, such as courts, police, child protective services, and mental health services, that must be addressed by each community. Also, in the program solicitation, the "Program Strategy" section delineates the activities and goals of the initiative's phases.

Evaluation Strategy

OJJDP will competitively award one cooperative agreement under this solicitation. Given the purpose of the evaluation, the overall evaluation design is intended to carefully document the formative aspects of the initiative and measure its effects in terms of level of implementation of the strategic planning process, extent of systems reform and service integration and improvement, and impact of the initiative on the lives of children and families.

Indicators of the level of implementation of the strategic planning process include, but are not limited to, determining:

- The comprehensiveness and rigor in assessing the incidence and prevalence of children's exposure to violence and the nature and severity of harm caused to children in the community who have been exposed to violence; The closeness of the connection between the implementation plan and the risks, needs, and resources of the community.
- The extent to which proposed solutions reflect both theoretical and strategic relevance to the problems identified in the assessment.

Systems reform and service integration and improvement might include measures of the following:

- Greater use of existing data sources or the creation of new data systems to

identify trends in the incidence of child victimization and exposure to violence.

- Number of referrals made to mental health services by law enforcement, social services, early childhood workers, domestic violence shelters, and other relevant agencies.
- Number of court cases that result in referrals of children for screening, assessment, or intervention and treatment because of a recognition of exposure to violence issues.
- Changes in resource allocation (*e.g.*, funding streams).
- Improved or new methods for sharing information across agencies.

Impacts on the lives of children and families can include a variety of outcomes that will vary according to the strategies implemented by each community. Some examples include:

- As a result of providing more timely and appropriate mental health services to children exposed to violence via police referral mechanisms and partnerships, these children may exhibit lower levels of Post Traumatic Stress Disorder (PTSD) and/or depression.
- A Prenatal Nurse Home Visitation Program may result in healthier mothers and babies, increased attachment and bonding, and reduced incidence of child abuse and neglect.

The evaluation of Safe Start will be conducted using a national evaluator and local evaluators funded by and located in each Safe Start community. The relationship between the national evaluator and the local evaluators should be collaborative and supportive with guidance and leadership coming from the national evaluator. In key areas of the evaluation effort, the national evaluator and OJJDP have authority over local evaluators. Specifically, local evaluators must participate in the cross-site process and impact evaluations in accordance with the procedures established by the national evaluator (*e.g.*, the collection and transmittal of data) and design a local evaluation plan that is approved by the national evaluator and OJJDP. Applicants should pay special attention to the portion of the program solicitation that outlines the community's responsibility for selecting and funding a local evaluator and the role of local evaluators in the overall evaluation effort.

The national evaluator will be expected to (1) carefully document all stages of the planning and implementation processes and collect relevant process data; (2) design a cross-site impact evaluation and collect and analyze relevant data; (3) assist local evaluators to develop local logic models and impact evaluation plans; (4) compile and provide timely comparative cross-site results, as appropriate, back to the local sites and their evaluators from the impact evaluation; (5) assist local evaluators in determining which programmatic components are amenable to producing reliable measures of program impact on children; and (6) prepare reports suitable for publication by OJJDP. The evaluation effort will be guided by a logic model of the Safe Start initiative that can be tailored to the activities of each individual site and follow the theory of change proposed by each community. The evaluation must be planned to include up to 12 Safe Start communities.

Cross-Site Process Evaluation

The national evaluator is responsible for designing a cross-site process evaluation, which will be adopted by all Safe Start local evaluators. Local evaluators will have input into this design but ultimately will be required to participate in the cross-site process evaluation in accordance with the agreed-upon structure and methods. Local evaluators will be required to submit process data to the national evaluator on an agreed-upon schedule to be developed by the national evaluator.

The process evaluation should be designed to document and analyze the process of effective implementation of the Safe Start initiative to provide information to strengthen and refine the initiative within and across sites throughout the 5½ years of planning and implementation. It is important to identify factors that contribute to or impede the successful implementation of the initiative in each community. It is essential to know not only whether the initiative is successful or unsuccessful and the degree to which it succeeds or fails, but also why or how it was successful or unsuccessful. The process evaluation also should document the breadth of the community assessment process, analyze the connectedness between the results of the community assessment and implementation plan, and analyze the extent to which each community's implementation plan draws from programs and practices that are theory driven and research based.

Cross-Site Impact Evaluation

The national evaluator is responsible for designing the cross-site impact evaluation. Local evaluators must participate in the design and implementation of the cross-site impact evaluation in accordance with procedures developed by the national evaluator. This component of the evaluation will assess the extent to which the initiative is meeting its quantitative goals and the amount of change that is taking place on the community and individual level. For example, if the Safe Start community adopts new policies for police referrals to family counseling services, the national evaluator may require that the local evaluator and other local Safe Start project staff monitor the number of referrals made after the policy takes effect. In this same vein, the national evaluator may require that archival data be collected to provide a baseline. Also, the national evaluator will report on the effects specific programs and strategies are having on children and families. This level of data collection and analysis will be possible primarily through the design and implementation of the local impact evaluation, described in more detail below.

The national and local evaluator must develop a strong working relationship and a mutual commitment to measure Safe Start outcomes. The local evaluator will work with the national evaluator to identify outcomes that can be measured as the initiative develops. It should be noted that all of these requirements will be central to implementing a rigorous evaluation of Safe Start and embed the process and impact evaluation process in the program development, implementation, and refinement process.

Local Impact Evaluations

As Safe Start communities begin to implement specific programs (*e.g.*, Nurse Home Visitation) and the need arises to assess the impact of Safe Start services on individuals (*i.e.*, children and their families/caregivers), the national evaluator will provide technical assistance to local evaluators in designing evaluation plans that can accomplish this task. The local evaluator and local Safe Start project staff will be expected to make a strong and demonstrated commitment to designing evaluations that can accomplish this level of assessment. Furthermore, these local plans must focus on conducting rigorous evaluations that use experimental or quasi-experimental designs. The national evaluator will provide guidance in developing these plans and report on the progress of each community to OJJDP. The local evaluator will submit an evaluation plan to the national evaluator, who will then submit the plan to OJJDP, which will give final approval for all local impact evaluation plans.

Local impact evaluation plans will be developed in a cooperative effort between the Safe Start project staff, its

local evaluator, and the national evaluator. This collaboration is important to the evaluation effort for a number of reasons. For example, when local impact evaluations are designed, the Safe Start project staff must have input into how to identify or create comparison groups, how to design referral procedures for a specific program, and how to develop agreements regarding random assignment to experimental and control groups. In sum, the local Safe Start project staff are crucial to the implementation of any rigorous evaluation design. The national evaluator is responsible for guiding the development of these plans through training and technical assistance on evaluation methods. (The level of expertise and technical assistance needed at the local level is expected to vary across communities.) Finally, the national evaluator will be required to develop a Safe Start Self-Evaluation Tool Kit for use by each site. The Tool Kit should be modeled after OJJDP's *Title V: Community Prevention Grants Program: Community Self-Evaluation Workbook* (available from the Juvenile Justice Clearinghouse, 800–638–8736).

The national evaluation of Safe Start will be conducted in two phases over 6 years. Phase I (12 months) will entail designing and implementing a cross-site process evaluation; building capacity at the local level to conduct more intensive impact evaluations of specific programs and strategies (*e.g.*, developing tools for communities to use in selecting a local evaluator and providing technical assistance around evaluation issues); assisting in the development of Safe Start logic models and local evaluation plans; developing the Safe Start Evaluation Tool Kit; developing a preliminary workplan for measuring the impact of Safe Start across sites; and producing reports and publications.

During Phase II (60 months), the national evaluator will continue and complete the cross-site process evaluation, conduct the cross-site impact evaluation, produce and provide ongoing assistance to local evaluators in designing and conducting more rigorous impact evaluations of specific programs and strategies, and produce reports and publications.

Goals and Objectives

Phase I

Goal: Document and analyze the process of effective implementation of the Safe Start initiative to provide information to strengthen and refine the initiative within and across sites. The analysis will identify factors that contribute to or impede the successful implementation of the initiative in each community.

Objectives:

- Develop a conceptual framework for conducting the cross-site process evaluation to include all Safe Start sites. This framework should be formed around a general logic model of the Safe Start initiative that can be tailored to the activities of each site. The national evaluator must develop materials communicating the evaluation strategy, including instruments, mechanisms, and procedures to collect process data, to the local evaluators and Safe Start project staff.
- Compile and analyze results and provide routine feedback to the sites on the planning, program development, and implementation process.
- Produce reports and publications that document the progress of the initiative in each community and across sites.

Goal: Develop the capacity of local evaluators to evaluate the impact of specific programs and strategies implemented in their communities.

Objectives:

- Formulate a set of critical elements related to the tasks and requirements of the local evaluator to be used by Safe Start communities in selecting/recruiting a local evaluator 3 months after the grant award. This product should explain the role and responsibilities of the national evaluator as they relate to (1) the goals of the national evaluation effort (*e.g.*, data collection requirements) and (2) the goals of the local evaluation effort (*e.g.*, experimental or quasi-experimental evaluations of specific programs). Also at this time, the grantee will submit a preliminary plan for assisting Safe Start communities in the selection process.
- Provide training and technical assistance (the degree of which should be flexible to address the needs of different communities) to local evaluators in refining logic models; identifying long-, intermediate-, and short-range outcomes; identifying necessary data sources and variables; and designing local impact evaluation plans for evaluating the impact of specific programs and strategies implemented by the community. The national evaluator will produce a Safe Start Self-Evaluation Tool Kit modeled after OJJDP's *Title V: Community Prevention Grants Program: Community Self-Evaluation Workbook*.

Goal: Design an impact evaluation that can measure the effect of the initiative within and across sites. It is expected that communities will differ significantly in their approaches to the initiative as they will be guided by their specific risk and resource assessments. However, the national evaluator should draw from its experience with evaluating similar efforts and associated literature on evaluating community initiatives to propose an approach to designing a cross-site impact evaluation.

Phase II

Goal: Continue the cross-site process evaluation and finalize and implement the cross-site impact evaluation design. During Phase II, particular attention will be paid to identifying, collecting, and reporting on community-, system-, and individual-level outcomes.

Objectives:

- Compile and analyze results and provide routine feedback to the sites on the planning, program development, and implementation process.
- Produce annual, interim reports that document the progress of the initiative in each community and across sites.

Goal: Further assist local evaluators in designing and implementing local evaluation plans and monitor the progress and results of these evaluations.

Objectives:

- Provide technical assistance to local evaluators as necessary.
- Collect and analyze Safe Start local impact evaluation plans and results and produce a report for OJJDP.

Products

For Delivery During Phase I

The grantee will submit a draft cross-site process evaluation design including a common set of data collection instruments, mechanisms, and procedures to be pilot tested at Safe Start sites. This product will be submitted 3 months after the grant award.

The grantee will submit the set of critical elements related to the tasks and requirements of the local evaluator to be used by Safe Start communities in selecting/recruiting a local evaluator 3 months after the grant award. Also at this time, the grantee will submit a preliminary plan for assisting Safe Start communities in the selection process.

Six months after the grant award, the grantee will deliver a draft Safe Start Self-Evaluation Tool Kit modeled after OJJDP's *Title V: Community Prevention Grants Program: Community Self-Evaluation Workbook*. Also at this time, the grantee will deliver a technical assistance workplan for assisting Safe

Start communities in the development of local evaluation plans.

An interim report describing the results of the process evaluation through the end of Phase I will be submitted 30 days prior to the end of Phase I. This report should include analysis and results of the planning process, a summary of logic model development in each Safe Start community, and a summary of each local evaluator's progress toward designing a local evaluation plan. This report should lend itself to publication as one or more OJJDP Bulletins.

A preliminary workplan for developing and conducting the cross-site impact evaluation will be submitted 30 days prior to the end of Phase I (a separate document from the cross-site interim report). This should include potential data sources and data collection strategies and an estimated timetable.

For Delivery During Phase II

A finalized cross-site impact evaluation design and strategy will be submitted 3 months after Phase II begins. The grantee must address issues relating to pilot testing instruments and Office of Management and Budget approval.

During Phase II, interim reports that describe the ongoing efforts of the Safe Start communities (*e.g.*, local development and evaluation of the initiative) and present findings from the cross-site process and impact evaluations will be submitted every 6 months (the first being due 6 months after Phase II begins). These reports should lend themselves to being published as one or more OJJDP publications.

A draft final report will be due 30 days prior to the end of Year 6. This report should incorporate results of both the process and cross-site impact evaluations and update and summarize local evaluators' progress toward completing local impact evaluations. The final report will be due at the end of Year 6 and should lend itself to being published as one or more OJJDP publications.

Eligibility Requirements

OJJDP invites applications from public and private agencies, organizations, institutions, or individuals. Applicants must demonstrate that they have experience in evaluating broad-based community initiatives. Private, for-profit organizations must agree to waive any profit or fee. Joint applications from two or more eligible applicants are welcome, as long as one is designated the primary applicant and any others coapplicants.

Selection Criteria

Applicants will be evaluated and rated by a peer review panel according to the selection criteria outlined below.

Problem(s) To Be Addressed (20 points)

The applicant must include a clear and concise discussion of its understanding of the effects, treatment, and prevention of young children's exposure to violence. Applicants should discuss how to apply state-of-the-art evaluation methods, including qualitative methods, to achieve evaluation objectives. Also, applicants should discuss any anticipated methodological issues and problems associated with this type of evaluation and describe proposed solutions for these potential problems. A thorough understanding of theory-driven evaluation, interagency collaboration to effectuate systems change and service delivery improvement, community-based prevention and intervention programs, and multisite research on a national level is vital.

Goals and Objectives (10 points)

Applicants must define specific and measurable goals and objectives for coordinating and implementing this project. These should be guided the requirements in this solicitation, but the applicant should expand and augment them to fit with its approach to the project while describing how the approach will accomplish the larger goals and objectives.

Project Design (35 points)

In response to this solicitation, applicants must present a detailed and clear design for accomplishing the goals and objectives of Phase I. Applicants must discuss how their proposed approach to Phase I would lay the foundation for meeting the goals and objectives of Phase II. The applicant must include a timetable for accomplishing Phase I goals and objectives and delivering the required products. It is important to discuss how the cross-site process evaluation will be carried out and how the applicant will lay the foundation for the cross-site impact evaluation to include, but not be limited to, instrument development, methods, information dissemination, and cross-site communication and monitoring. Applicants must ensure the confidentiality of all subjects. It is important to discuss how the applicant will effectively deliver technical assistance at the local level aimed at evaluation capacity building. Furthermore, the applicant must propose a design that will foster a collaborative and supportive relationship between local evaluators and the national evaluator.

Management and Organizational Capability (25 points)

The application must include a discussion of how the applicant will coordinate and manage this evaluation to achieve evaluation goals and objectives. The applicant's management structure and staffing must be adequate and appropriate for the successful implementation of the project. The applicant must identify responsible individuals and key consultants, their time commitment, and major tasks. Key staff and consultants should have significant experience with evaluation research on multisite, community initiatives. They must demonstrate the ability to work effectively with a range of agencies and service providers including, but not limited to, courts, police departments, child protective services, and mental health service providers to collect data and manage other requirements of the project. Staff and key consultant résumés must be attached as part of the appendixes.

Budget (10 points)

The applicant must provide a proposed budget that is complete, detailed, reasonable, allowable, and cost effective in relation to the activities to be undertaken during Phase I. (Annual Phase II budgets will vary depending on certain factors; see below.) Applicants must budget for travel to two cross-site grantee meetings in Phase I in addition to any other travel.

Format

The narrative portion of this application must be submitted on 8½-by 11-inch paper, double spaced on one side of the paper in a standard 12-point font. This is necessary to maintain fair and uniform standards among all applicants. If the narrative does not conform to these standards, OJJDP will deem the application ineligible for consideration. The narrative must not exceed 35 pages exclusive of appendixes, forms, assurances, and budget.

Award Period

This evaluation will be funded in the form of a cooperative agreement for an initial 12-month budget period for Phase I of a 6½-year project period. Funding in the second and subsequent budget periods will depend upon grantee performance, availability of funds, and

other criteria established at the time of award.

Award Amount

Up to $1 million is available for the initial 12-month budget period. Funding in subsequent years will be available at levels that are at least comparable.

Catalog of Federal Domestic Assistance (CFDA) Number

For this program, the CFDA number, which is required on Standard Form 424, Application for Federal Assistance, is 16.730. This form is included in the *FY 1999 Application Package*, which can be obtained by calling the Juvenile Justice Clearinghouse at 800–638–8736 or sending an e-mail request to puborder@ncjrs.org. The *Application Package* is also available online at www.ojjdp.ncjrs.org.

Coordination of Federal Efforts

To encourage better coordination among Federal agencies in addressing State and local needs, the U.S. Department of Justice (DOJ) is requesting applicants to provide information on the following: (1) Active Federal grant award(s) supporting this or related efforts, including awards from DOJ; (2) any pending application(s) for Federal funds for this or related efforts; and (3) plans for coordinating any funds described in items (1) or (2) with the funding sought by this application. For each Federal award, applicants must include the program or project title, the Federal grantor agency, the amount of the award, and a brief description of its purpose.

"Related efforts" is defined for these purposes as one of the following:

- Efforts for the same purpose (*i.e.*, the proposed award would supplement, expand, complement, or continue activities funded with other Federal grants).
- Another phase or component of the same program or project (*e.g.*, to implement a planning effort funded by other Federal funds or to provide a substance abuse treatment or education component within a criminal justice project).
- Services of some kind (*e.g.*, technical assistance, research, or evaluation) to the program or project described in the application.

Delivery Instructions

All application packages should be mailed or delivered to the Office of Juvenile Justice and Delinquency Prevention, c/o Juvenile Justice Resource Center, 2277 Research Boulevard, Mail Stop 2K, Rockville, MD 20850; 301–519–5535.

Note: In the lower left-hand corner of the envelope, you must clearly write "Evaluation of the Safe Start Initiative."

Due Date

Applicants are responsible for ensuring that the original and five copies of the application package are received by 5 p.m. EDT on June 14, 1999.

Contact

For further information, call Dean Hoffman, Program Manager, Research and Program Development Division, 202–353–9256, or send an e-mail inquiry to hoffmand@ojp.usdoj.gov.

Suggested References

The Annie E. Casey Foundation. 1997. *Evaluating Comprehensive Community Change.* Report of The Annie E. Casey Foundation's March 1997 Research and Evaluation Conference.

Connell, J.P., Kubisch, A.C., Schorr, L.B., and Weiss, C.H., eds. 1995. *New Approaches to Evaluating Community Initiatives: Concepts, Methods, and Contexts.* Washington, DC: The Aspen Institute.

Fulbright-Anderson, K., Kubisch, A.C., and Connell, J.P., eds. 1998. *New Approaches to Evaluating Community Initiatives (Volume 2): Theory, Measurement, and Analysis.* Washington, DC: The Aspen Institute.

Harrell, Adele. 1996. *Evaluation Strategies for Human Services Programs: A Guide for Policymakers and Providers.* Washington, DC: The Urban Institute Press.

Office of Juvenile Justice and Delinquency Prevention. 1995. *Title V Delinquency Prevention Program: Community Self-Evaluation Workbook.* Washington, DC: U.S. Department of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention.

Dated: March 26, 1999.

Shay Bilchik,

Administrator, Office of Juvenile Justice and Delinquency Prevention.

[FR Doc. 99–8158 Filed 4–2–99; 8:45 am]

BILLING CODE 4410–18–P

UMI

VOL
64

ISS
64

AP
5

1999

UMI

federal register

Monday
April 5, 1999

Part IV

Department of Education

Notice Inviting Applications and Establishing Requirements for New Awards for Fiscal Year (FY) 1999; Notice

DEPARTMENT OF EDUCATION

[CFDA No. 84.338]

Notice Inviting Applications and Establishing Requirements for New Awards for Fiscal Year (FY) 1999

AGENCY: Department of Education.

ACTION: Notice Inviting Applications and Establishing Requirements for New Awards for Fiscal Year (FY) 1999.

Reading Excellence Program

Purpose of Program: The Reading Excellence Program provides competitive reading and literacy grants to eligible State educational agencies (SEAs). SEAs, in turn, will award competitive subgrants to local educational agencies (LEAs) to fund local reading improvement programs and tutorial assistance programs.

Background: The Reading Excellence Act (REA), Part C, Title II of the Elementary and Secondary Education Act of 1965 (ESEA), was enacted as Title VIII of the Labor-HHS-ED Appropriations Act of 1999 by Section 101(f) of Pub. L. 105–277, the Omnibus Appropriations Act of FY 1999. Section 2253 of the REA authorizes a Reading and Literacy Grant Program to SEAs. Grants are to be awarded on a competitive basis to eligible SEAs, which in turn will make competitive subgrants to LEAs for two types of programs: Local Reading Improvement subgrants and Tutorial Assistance subgrants.

The purposes of the program are: (1) To provide children with the readiness skills they need to learn to read once they enter school; (2) to teach every child to read in the child's early childhood years—(a) as soon as the child is ready to read; or (b) as soon as possible once the child enters school, but not later than the third grade; (3) to improve the reading skills of students, and the instructional practices for current teachers (and, as appropriate, other instructional staff) who teach reading, through the use of findings from scientifically based reading research, including findings relating to phonemic awareness, systematic phonics, fluency, and reading comprehension; (4) to expand the number of high-quality family literacy programs; and (5) to provide early literacy intervention to children who are experiencing reading difficulties in order to reduce the number of children who are incorrectly identified as a child with a disability and inappropriately referred to special education.

Each SEA that receives funds must award subgrants on a competitive basis to eligible LEAs under two programs: Local Reading Improvement and Tutorial Assistance.

To be eligible for a Local Reading Improvement subgrant, an LEA must: (a) have at least one school that is identified for school improvement under section 1116(c) of ESEA in the geographic area served by the agency; (b) have the largest or second largest number of children who are counted under section 1124(c) of ESEA, in comparison to all other LEAs in the State; or (c) have the highest or second highest school-age child poverty rate, in comparison to all other LEAs in the State.

To be eligible for a Tutorial Assistance subgrant, an LEA must meet one of the three conditions listed for Local Reading Improvement subgrants or have at least one school in the geographic area served by the agency that (i) is located in an area designated as an empowerment zone under part I of sub-chapter U of chapter 1 of the Internal Revenue Code of 1986; or (ii) is located in an area designated as an enterprise community under the same part.

Eligible Applicants: SEAs of each of the 50 states, the District of Columbia, Puerto Rico, and the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands are eligible to apply for a grant.

Applications Available: April 5, 1999.

Deadline for Transmittal of Applications: May 7, 1999.

Deadline for Intergovernmental Review: July 6, 1999.

Note: Applications must be submitted on or before May 7, 1999, to be considered for funding. An application for an award may be submitted by electronic mail (email), regular mail, or hand delivery. Applications may not be faxed. The following are accepted for proof of submittal: (1) A legibly dated U.S. Postal Service postmark; (2) a legible mail receipt with the date of mailing stamped by the U.S. Postal Service; (3) a dated shipping label, invoice, or receipt from a commercial carrier; (4) an electronic return receipt (for emailed applications); or (5) any other proof of mailing acceptable to the Secretary.

Special instructions for applications submitted by email: Applications submitted by email should include an electronic return receipt and should be mailed to grantspolicy@ed.gov. Applications submitted by email may be submitted in one of the following formats: (1) Microsoft Word (Version Word 95 or Word 97) or (2) portable document format (PDF). The preferred version is Word 97; however, all versions must have text search capability. The electronic version will be the official file copy. To ensure the integrity of the program, the Department will return a printed version to the applicant. The returned receipt and copy will be considered proof of receipt. All forms requiring original signatures (ED–424, Application for Federal Education Assistance; SF 424B, Assurances: Non-Construction Programs; ED 80–0013, Certifications Regarding Lobbying, Debarment, Suspension and other Responsibility Matters; and Drug-Free Workplace Requirements; ED 80–0014, Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions; and Form LLL, Disclosure of Lobbying Activities) must be mailed to the Department by the deadline date, as set out above under Deadline for Transmittal.

Available Funds: $241,100,000.

Estimated Range of Awards: $200,000—$30,000,000 per award.

Minimum Grant Award for SEAs Receiving a Grant: $500,000 for SEAs; $100,000 minimum for territories.

Estimated Average Size of Awards: $11,500,000.

Estimated Number of Awards: 22.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 75, 77, 79, 80, 81, 82, 85, and 86; and (b) 34 CFR Part 299, General Provisions governing Titles I through XIII of ESEA.

Waiver of Proposed Rulemaking: In accordance with the Administrative Procedure Act (5 U.S.C. 553), it is the practice of the Secretary to offer interested parties the opportunity to comment on proposed regulations. Section 437(d)(1) of the General Education Provisions Act (GEPA), however, exempts from this requirement rules that apply to the first competition under a new or substantially revised program. The Secretary, in accordance with section 437(d)(1) of GEPA, has decided to forgo public comment on an absolute priority and a requirement in order to ensure the timely award of funds. The Secretary issues an absolute priority elsewhere in this notice and establishes the following requirement: the SEA must submit with its application the proposed LEA subgrant application(s) and a description of the procedures, including review criteria, the SEA will use to award subgrants; the LEA application(s) and description will be reviewed as part of the State application by the peer review panel.

This requirement will apply only to the competition for FY 1999 funds.

Absolute Priority: Under 34 CFR 75.105(c)(3) of EDGAR, the Secretary has the authority to establish an absolute priority for applications under programs administered by the Department. For all funds to be awarded under this competition, the Secretary establishes an absolute priority to applicants that propose projects that exclusively fund, at the subgrant level, activities to improve elementary school reading instruction and related early childhood, professional development, family literacy, and tutorial assistance activities. To qualify for this priority, States could not fund, at the subgrant level, any activities for middle schools or high schools. Under this competition, the Secretary will consider for funding only those applications that meet this absolute priority.

Competitive Priority: Section 2253(c)(2)(C) of the Reading Excellence Act requires that priority shall be given to applications from SEAs whose States have modified, are modifying, or provide an assurance that they will modify within 18 months after receiving an REA grant the SEA's elementary school teacher certification requirements. The modification must increase the training and the methods of teaching reading required for certification as an elementary school teacher to reflect scientifically based reading research. However, nothing in the REA shall be construed to establish a national system of teacher certification.

Under 34 CFR 75.105(b)(2)(iv) and (c)(2), respectively, the Secretary is not required to seek public comment on a specific priority set out in the statute and can implement that priority as a competitive preference. The Secretary will award 10 additional points to applicants that meet the REA–competitive priority.

Selection Criteria: Under 34 CFR 75.210, the Secretary has chosen the following selection criteria. The maximum possible score for each criterion is indicated in parentheses with the criterion. The Secretary awards up to 100 points for all criteria. In addition, an applicant may be awarded 10 additional points under the Competitive Priority announced in this notice.

(a) *Significance (10 points).* (1) The Secretary considers the significance of the proposed project. In determining the significance of the proposed project, the Secretary considers the following factor:

(i) The extent to which the proposed project is likely to build local capacity to provide, improve, or expand services that address the needs of the target population.

(b) *Quality of project design (30 points).* (1) The Secretary considers the quality of the design of the proposed project. (2) In determining the quality of the proposed project design, the Secretary considers the following factors:

(i) The extent to which the proposed project will be coordinated with similar or related efforts, and with other appropriate community, State, and Federal resources.

(ii) The extent to which the proposed project design reflects up-to-date knowledge from research and effective practice.

(iii) The extent to which the proposed project is based upon a specific research design, and the quality and appropriateness of that design, including the scientific rigor of the studies involved.

(iv) The extent to which the proposed project is part of a comprehensive effort to improve teaching and learning and support rigorous academic standards for students.

(v) The extent to which the proposed project encourages parental involvement.

(c) *Quality of project services (35 points).* (1) The Secretary considers the quality of the services to be provided by the proposed project. (2) In determining the quality of the services to be provided by the proposed project, the Secretary considers the quality and sufficiency of strategies for ensuring equal access and treatment for eligible project participants who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability. (3) In addition, the Secretary considers the following:

(i) The extent to which the training or professional development services to be provided by the proposed project are of sufficient quality, intensity, and duration to lead to improvements in practice among the recipients of those services.

(ii) The extent to which the technical assistance services to be provided by the proposed project involve the use of efficient strategies, including the use of technology, as appropriate, and the leveraging of non-project resources.

(iii) The extent to which the services to be provided by the proposed project reflect up-to-date knowledge from research and effective practice.

(iv) The extent to which the services to be provided by the proposed project are appropriate to the needs of the intended recipients or beneficiaries of those services.

(v) The extent to which the services to be provided by the proposed project involve the collaboration of appropriate partners for maximizing the effectiveness of project services.

(d) *Adequacy of resources (10 points).* (1) The Secretary considers the adequacy of resources for the proposed project. (2) In determining the adequacy of resources for the proposed project, the Secretary considers the following factor:

(i) The extent to which the costs are reasonable in relation to the number of persons to be served and to the anticipated results and benefits.

(e) *Quality of the management plan (5 points).* (1) The Secretary considers the quality of the management plan for the proposed project. (2) In determining the quality of the management plan for the proposed project, the Secretary considers the following factor:

(i) How the applicant will ensure that a diversity of perspectives are brought to bear in the operation of the proposed project, including those of parents, teachers, the business community, a variety of disciplinary and professional fields, recipients or beneficiaries of services, or others, as appropriate.

(f) *Quality of the project evaluation (10 points).* (1) The Secretary considers the quality of the evaluation to be conducted of the proposed project. (2) In determining the quality of the evaluation, the Secretary considers the following factors:

(i) The extent to which the methods of evaluation include the use of objective performance measures that are clearly related to the intended outcomes of the project and will produce quantitative and qualitative data to the extent possible.

(ii) The extent to which the methods of evaluation will provide performance feedback and permit periodic assessment of progress toward achieving intended outcomes.

Intergovernmental Review

The Reading and Excellence Act in this notice is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

For Applications or Information Contact: To request an application or to

obtain further information about the competition, contact Dr. Joseph Conaty, U.S. Department of Education, 400 Maryland Avenue, SW, Room 5C141, Washington, DC 20202–6200; call (202) 260–8228; or email reading__excellence@ed.gov.

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) by contacting Katie Mincey, Director, Alternate Format Center, 330 C St. SW, Room 1000, Washington, DC 20202–4560; by calling (202) 260–9895 or 205–8113; or by emailing katie__mincey@ed.gov. Individuals with disabilities also may obtain a copy of the application package in an alternate format by contacting Ms. Mincey. However, the Department is not able to reproduce in an alternate format the standard forms included in the application package.

Electronic Access to This Document

Anyone may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or portable document format (PDF) on the World Wide Web at the following site: http://ocfo.ed.gov/fedreg.htm

To use the PDF version you must have the Adobe Acrobat Reader program, which is available free by going through the previous site. If you have questions about using PDF, call the U.S. Government Printing office at (202) 512–1530 or toll free at 1–888–293–6498.

Anyone may view these documents in text copy only on an electronic bulletin board of the Department. Telephone: (202) 219–1511 or, toll free, 1–800–222–4922. The documents are located under Option G—Files/Announcements, Bulletins and Press Releases.

Note: The official version of this document is the document published in the **Federal Register**.

Electronic Submission of Applications: Applications for this grant may be submitted by email, regular mail, or hand delivery. Electronic submission is the preferred method of submission. To ensure application integrity, a printed version of all electronic submissions will be returned to applicants.

Program Authority: Reading Excellence Act, Part C, Title II of ESEA, was enacted as Title VIII of the Labor–HHS–ED Appropriations Act of 1999 by Section 101(f) of Pub. L. 105–277, the Omnibus Appropriations Act of FY 1999.

Dated: March 30, 1999.

Judith Johnson,

Acting Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 99–8278 Filed 3–31–99; 3:27 pm]

BILLING CODE 4000–01–P

Federal Register

Monday
April 5, 1999

Part V

Department of the Treasury

Office of the Comptroller of the Currency

Federal Reserve System

Federal Deposit Insurance Corporation

Department of the Treasury

Office of Thrift Supervision

Statement of the Federal Financial Supervisory Agencies Regarding the Community Reinvestment Act; Notice

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

[Docket No. 99–03]

FEDERAL RESERVE SYSTEM

[Regulation BB; Docket No. R–0822]

FEDERAL DEPOSIT INSURANCE CORPORATION

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

[Docket No. 99–14]

Statement of the Federal Financial Supervisory Agencies Regarding the Community Reinvestment Act

AGENCIES: Office of the Comptroller of the Currency (OCC), Department of the Treasury; Board of Governors of the Federal Reserve System (Board); Federal Deposit Insurance Corporation (FDIC); Office of Thrift Supervision (OTS), Department of the Treasury (collectively, the agencies).

ACTION: Withdrawal of statement of policy.

SUMMARY: The agencies are withdrawing their joint statement of policy entitled "Statement of the Federal Financial Supervisory Agencies Regarding the Community Reinvestment Act" (the Statement) because the Statement has become obsolete and provides guidance that is currently inconsistent with the Community Reinvestment Act (CRA) regulations as revised in 1995, which became fully effective on July 1, 1997.

EFFECTIVE DATE: The removal of the Statement of Policy is effective April 5, 1999.

FOR FURTHER INFORMATION CONTACT:

OCC: Malloy Harris, National Bank Examiner, Community and Consumer Policy Division, (202) 874–4446; or Margaret Hesse, Senior Attorney, Community and Consumer Law Division, (202) 874–5750, Office of the Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219.

Board: Catherine M.J. Gates, Senior Review Examiner, Division of Consumer and Community Affairs, (202) 452–3946; or James H. Mann, Attorney, Division of Consumer and Community Affairs, (202) 452–2412, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW, Washington, DC 20551.

FDIC: Louise N. Kotoshirodo, Review Examiner, Division of Compliance and Consumer Affairs, (202) 942–3599; or Robert W. Mooney, Senior Fair Lending Specialist, Division of Compliance and Consumer Affairs, (202) 942–3090, Federal Deposit Insurance Corporation, 550 17th Street, NW, Washington, DC 20429.

OTS: Richard R. Riese, Project Manager, Compliance Policy, (202) 906–6134; or Theresa A. Stark, Project Manager, Compliance Policy, (202) 906–7054, Office of Thrift Supervision, 1700 G Street, NW, Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

Background

On April 5, 1989, the OCC, Board, FDIC, and the Federal Home Loan Bank Board (the predecessor to the OTS) issued a Joint Policy Statement designed to provide the public and the federally insured financial institutions with guidance on the requirements of the CRA and the policies and procedures the agencies were to apply to the application process. 54 FR 13742. On May 4, 1995, the agencies revised their CRA regulations by issuing a joint final rule. 60 FR 22156. *See* 12 CFR parts 25, 228, 345 and 563e, implementing 12 U.S.C. 2901 *et seq*. Subsequently, the agencies published related clarifying amendments on December 20, 1995 (60 FR 66048) and May 10, 1996. 61 FR 21362.

The Statement provided guidance regarding the types of policies and procedures that financial institutions should have in place to fulfill their responsibilities under the CRA. The Statement reflects the preceding CRA regulation and is, therefore, obsolete.

Section 303 of the Riegle Community Development and Regulatory Improvement Act of 1994 (the CDRI Act) requires each federal banking agency to streamline and modify its regulations and written policies to improve efficiency, reduce unnecessary costs, eliminate unwarranted restraints on credit availability, remove outmoded and duplicative requirements, and to work jointly with the other federal banking agencies to make uniform all regulations implementing common statutory policies. 12 U.S.C. 4803.

As part of its effort to fulfill the duties imposed by section 303 of the CDRI Act, the agencies have reviewed the statement of policy concerning the CRA and have concluded that it has been made superfluous by the revisions to the regulations that implement the CRA. The agencies have therefore decided to withdraw this statement of policy, thereby furthering the section 303 goal of removing outmoded and duplicative requirements.

The Agencies' Action

The agencies hereby withdraw the Statement.

Dated: February 22, 1999.

John D. Hawke, Jr.,

Comptroller of the Currency.

By order of the Secretary of the Board, acting pursuant to delegated authority for the Board of Governors of the Federal Reserve System, March 30, 1999.

Jennifer J. Johnson,

Secretary of the Board.

By order of the Board of Directors, dated at Washington, D.C. this 10th day of February, 1998.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

Editorial Note: This document was received at the Office of the Federal Register on March 31, 1999.

Dated: March 11, 1999.

By the Office of Thrift Supervision.

Ellen S. Seidman,

Director.

[FR Doc. 99–8213 Filed 4–2–99; 8:45 am]

BILLING CODE OCC 4810–33–P (25%);
BILLING CODE BOARD 6210–01–P (25%);
BILLING CODE FDIC 6714–01–P (25%);
BILLING CODE OTS 6720–01–P (25%)

Federal Register

Monday
April 5, 1999

Part VI

Department of Agriculture

Cooperative State Research, Education, and Extension Service

Special Research Grants Program, Food Safety Research, Fiscal Year 1999: Request for Proposals and Request for Input; Notice

DEPARTMENT OF AGRICULTURE

Cooperative State Research, Education, and Extension Service

Special Research Grants Program, Food Safety Research, Fiscal Year 1999: Request for Proposals and Request for Input

AGENCY: Cooperative State Research, Education, and Extension Service.

ACTION: Notice of Request for Proposals and Request for Input.

SUMMARY: The Cooperative State Research, Education, and Extension Service (CSREES) announces the availability of grant funds and requests proposals for the Special Research Grants Program, Food Safety Research for fiscal year (FY) 1999. The amount available for support of this program in FY 1999 is approximately $4,677,998.

This Request for Proposals (RFP) sets out the objectives for these projects, the eligibility criteria for projects and applicants, the application procedures, and the set of instructions needed to apply for a Food Safety Research Project grant.

By this notice, CSREES additionally solicits stakeholder input from any interested party regarding the FY 1999 Special Research Grants Program, Food Safety Research for use in the development of the next request for proposals for this program.

DATES: Proposals must be received on or before June 4, 1999. Proposals received after June 4, 1999, will not be considered for funding. Comments regarding this request for proposals are requested within six months from the issuance of this notice. Comments received after that date will be considered to the extent practicable.

ADDRESSES: To obtain a copy of this RFP and application materials, please contact the Proposal Services Unit; Office of Extramural Programs; Cooperative State Research, Education, and Extension Service; U.S. Department of Agriculture; STOP 2245; 1400 Independence Avenue, S.W.; Washington, D. C. 20250–2245; Telephone: (202) 401–5048. When contacting the Proposal Services Unit, please indicate that you are requesting application materials for the Special Research Grants Program, Food Safety Research. Application materials may also be requested via Internet by sending a message with your name, mailing address (not e-mail) and telephone number to psb@reeusda.gov that states that you wish to receive a copy of the application materials for the Special Research Grants Program, Food Safety Research. The materials will then be mailed to you (not e-mailed) as quickly as possible.

Written stakeholder comments should be submitted by first-class mail to: Office of Extramural Programs; Competitive Research Grants and Awards Management; USDA–CSREES; STOP 2299; 1400 Independence Avenue, S.W., Washington, D.C. 20250–2299, or via e-mail to: RFP-OEP@reeusda.gov. In your comments, please indicate that you are responding to the FY 1999 Food Safety Research Program.

FOR FURTHER INFORMATION CONTACT: Dr. Anne Bertinuson; Cooperative State Research, Education, and Extension Service; U.S. Department of Agriculture; STOP 2220; 1400 Independence Avenue, S.W.; Washington, D.C. 20250–2220; telephone: (202) 401–6825; Internet: abertinuson@reeusda.gov.

SUPPLEMENTARY INFORMATION:

Table of Contents

Stakeholder Input
Part I—General Information
  A. Legislative Authority
  B. Definitions
  C. Eligibility
  D. Complementary Programs
Part II—Program Description
  A. Purpose and Scope of the Program
  B. Available Funds and Award Limitations
Part III—Preparation of a Proposal
  A. Program Application Materials
  B. Content of a Proposal
Part IV—Submission of a Proposal
  A. What to Submit
  B. Where and When to Submit
  C. Acknowledgment of Proposals
Part V—Selection Process and Evaluation Criteria
  A. Selection Process
  B. Evaluation Criteria
Part VI—Additional Information
  A. Access to Peer Review Information
  B. Grant Awards
  C. Use of Funds; Changes
  D. Other Federal Statutes and Regulations that Apply
  E. Confidential Aspects of Proposals and Awards
  F. Regulatory Information

Stakeholder Input

CSREES is soliciting comments regarding this solicitation of applications from any interested party. These comments will be considered in the development of the next request for proposals for the Program. Such comments will be forwarded to the Secretary or his designee for use in meeting the requirements of section 103(c)(2) of the Agricultural Research, Extension, and Education Reform Act of 1998, 7 U.S.C. 7613(c)(2). This section requires the Secretary to solicit and consider input on a current request for proposals from persons who conduct or use agricultural research, education, or extension for use in formulating the next request for proposals for an agricultural research program funded on a competitive basis.

In your comments, please include the name of the program and the fiscal year solicitation of applications to which you are responding. Comments are requested within six months from the issuance of the solicitation of applications. Comments received after that date will be considered to the extent practicable.

Part I—General Information

A. Legislative Authority

The authority for this program is contained in section (c)(1)(A) of the Competitive, Special, and Facilities Research Grant Act, Section 2 of Pub. L. No. 89–106, as amended (7 U.S.C. 450i(c)(1)(A)). This Program is subject to the administrative provisions found in 7 CFR Part 3400 for the Special Research Grants Program which set forth procedures to be followed when submitting grant proposals, rules governing the evaluation of proposals, the awarding of grants, and post-award administration of such grants. However, where there are differences between this RFP and the administrative provisions, the RFP shall take precedence to the extent that the administrative provisions authorize such deviations. In accordance with the statutory authority, grants awarded under the Special Research Grants Program are for the purpose of conducting research to facilitate or expand promising breakthroughs in areas of the food and agricultural sciences of importance to the United States.

B. Definitions

For the purpose of awarding grants under this program, the following definitions are applicable in addition to the definitions identified in 7 CFR Part 3400.

(1) Authorized departmental officer means the Secretary or any employee of the Department who has the authority to issue or modify grant instruments on behalf of the Secretary.

(2) Authorized organizational representative means the president, director, or the chief executive officer of the applicant organization or the official, designated by the president, director, or chief executive officer of the applicant organization, who has the authority to commit the resources of the organization.

(3) Grant means the award by the Secretary of funds to a grantee to assist in meeting the costs of conducting, for

the benefit of the public, an identified project which is intended and designed to establish, discover, elucidate, or confirm information or the underlying mechanisms relating to a research program area identified in this program solicitation.

(4) Principal Investigator/Project Director means the single individual designated by the grantee in the grant application and approved by the Secretary who is responsible for the scientific and technical direction of the project.

(5) Prior approval means written approval evidencing prior consent by an authorized departmental officer as defined in (1) above.

(6) Secretary means the Secretary of Agriculture and any other officer or employee of the Department to whom the authority involved may be delegated.

C. Eligibility

Proposals may be submitted by State agricultural experiment stations, all colleges and universities, other research institutions and organizations, Federal agencies, private organizations or corporations, and individuals. Proposals must be directly related to conducting quantitative and/or qualitative science-based risk assessments of microbial hazards in ready-to-eat foods; the scientific basis for critical control points, critical limits, and process capability; or ensuring the safety of imported and domestic fruits and vegetables. Although an applicant may be eligible based on its status as one of these entities, there are factors which may exclude an applicant from receiving Federal financial and nonfinancial assistance and benefits under this program (e.g., debarment or suspension of an individual involved or a determination that an applicant is not responsible based on submitted organizational management information).

D. Complementary Programs

Research focusing exclusively on epidemiological approaches for food safety will not be funded under this program. Research on epidemiological approaches for food safety should be directed to the National Research Initiative Competitive Grants Program (NRICGP). To obtain a copy of the RFP for the NRICGP and application materials, please contact the Proposal Services Unit, Office of Extramural Programs, USDA/CSREES at (202) 401–5048. These materials may also be requested via Internet by sending a message with your name, mailing address (not e-mail) and telephone number to psb@reeusda.gov that states that you wish to receive a copy of the RFP and application materials for the Epidemiological Approaches to Food Safety FY 1999 Program. The materials will then be mailed to you (not e-mailed) as quickly as possible. The NRICGP deadline for these types of research proposals is April 5, 1999.

Part II—Program Description

A. Purpose and Scope of the Program

Proposals are invited for competitive grant awards under the Special Research Grants Program, Food Safety Research for FY 1999. The purpose of this grant program is to support problem-solving food safety research that addresses current and emerging National issues in food safety. The program for FY 1999 will focus on conducting qualitative and quantitative risk assessments of ready-to-eat foods; the scientific basis for critical control points, critical limits, and process capability in assuring food safety; and ensuring the safety of imported and domestic fruits and vegetables. Proposals that address the following issues are requested:

(1) proposals that conduct comprehensive, qualitative and/or quantitative science-based risk assessments related to microbial foodborne pathogens (e.g., *Listeria monocytogenes, Campylobacter jejuni, Cyclospora, Salmonella*, etc.) and/or their toxins associated with ready-to-eat foods, including those foods that are fresh, minimally processed or processed;

(2) proposals that address the scientific basis and models for establishing and validating critical control points, critical limits, and process capability related to control measures for significant foodborne microbial pathogens and/or their toxins in production, processing and distribution of foods; or

(3) proposals that address the safety of fresh and minimally processed imported and domestic fruits and vegetables that include: the development of safe and efficacious techniques to enhance or ensure microbiological safety; approaches that relate production, harvesting, handling, transportation, and distribution control measures to the prevention of microbial pathogen infection or cross-contamination; or development of procedures for sampling to accurately detect the presence of microbial pathogens and/or their toxins.

Research issue No. (1) relates to ready-to-eat foods, No. (2) relates to any food, and No. (3) is limited to fresh fruits and vegetables. Projects submitted for research issue No. (1) should be primarily focused on conducting risk assessments; however, researchers may propose to generate supporting data for use in the proposed risk assessments, as appropriate. Risk assessment proposals should be multi-institutional and multi-disciplinary. Proposals that focus primarily on generating data in support of risk assessment should be submitted to the NRICGP on epidemiological approaches for food safety that is referenced above or submitted under one of the other two areas of this RFP.

All proposals are to describe how the research will be transferred for implementation. Thus, preference will be given to proposals that have partnerships with potential users of the information derived from the research.

B. Available Funds and Award Limitations

Funds will be awarded on a competitive basis to support research projects that address food safety research that focuses on conducting risk assessments on ready-to-eat foods; the scientific basis for critical control points, critical limits, and process capability; or ensuring the safety of imported and domestic fruits and vegetables. Matching funds are encouraged but not required. Under this program the Secretary may make grant awards for the support of research projects for up to three years. The total amount of funds available in FY 1999 for support of this program is approximately $4,677,998. It is estimated that up to $2 million will be available for grants relating to risk assessments of ready-to-eat foods and it is anticipated that up to $600,000 will be granted for each award. Each proposal submitted in FY 1999 shall request funding for a period not to exceed two years. Funding for additional years will depend upon the availability of funds, progress toward objectives, and program priorities. FY 1999 awardees would need to recompete in future years for additional funding.

Part III—Preparation of a Proposal

A. Program Application Materials

Program application materials will be made available to interested entities upon request. These materials include information about the purpose of the program, how the program will be conducted, and the required contents of a proposal, as well as the forms needed to prepare and submit grant applications under the program. To obtain program application materials, please contact the Proposal Services Unit; Office of Extramural Programs; Cooperative State

Research, Education, and Extension Service; U.S. Department of Agriculture; STOP 2245; 1400 Independence Avenue, S.W.; Washington, D. C. 20250–2245; Telephone: (202) 401–5048. When contacting the Proposal Services Unit, please indicate that you are requesting application materials for the Special Research Grants Program, Food Safety Research. Application materials may also be requested via Internet by sending a message with your name, mailing address (not e-mail) and telephone number to psb@reeusda.gov that states that you wish to receive a copy of the application materials for the Special Research Grants Program, Food Safety Research. The materials will then be mailed to you (not e-mailed) as quickly as possible.

B. Content of a Proposal

(1) General

The proposal should follow these guidelines, enabling reviewers to more easily evaluate the merits of each proposal in a systematic, consistent fashion:

(a) The proposal should be prepared on only one side of the page using standard size (8½" × 11") white paper, one inch margins, typed or word processed using no type smaller than 12 point font, and single spaced. Use an easily readable font face (e.g., Geneva, Helvetica, CG Times).

(b) Each page of the proposal, including the Project Summary, budget pages, required forms, and any appendices, should be numbered sequentially in the upper right-hand corner.

(c) The proposal should be stapled in the upper left-hand corner. Do not bind. An original and 9 copies (10 total) must be submitted in one package, along with 20 copies of the "Project Summary" as a separate attachment.

(2) Cover Page

Each copy of each grant proposal must contain an "Application for Funding", Form CSREES–661. One copy of the application, preferably the original, must contain the pen-and-ink signature(s) of the proposing principal investigator(s)/project director(s)(PI/PD) and the authorized organizational representative who possesses the necessary authority to commit the organization's time and other relevant resources to the project. Any proposed PI/PD or co-PI/PD whose signature does not appear on Form CSREES–661 will not be listed on any resulting grant award. Complete both signature blocks located at the bottom of the "Application for Funding" form.

Form CSREES–661 serves as a source document for the CSREES grant database; it is therefore important that it be completed accurately. The following items are highlighted as having a high potential for errors or misinterpretations:

(a) Title of Project (Block 6). The title of the project must be brief (80-character maximum), yet represent the major thrust of the effort being proposed. Project titles are read by a variety of nonscientific people; therefore, highly technical words or phraseology should be avoided where possible. In addition, introductory phrases such as "investigation of" or "research on" should not be used.

(b) Program to Which You Are Applying (Block 7). "Special Research Grants Program, Food Safety Research" should be inserted in this block. You may ignore the reference to a **Federal Register** announcement.

(c) Program Area and Number (Block 8). The name of the program area, "Food Safety Research," should be inserted in this block. You should ignore references to the program number and the **Federal Register** announcement.

(d) Types of Award Request (Block 13). There are three types of proposals that may be submitted to this program: new proposals, renewal proposals, and resubmitted proposals. If the submitted proposal describes a project that has not been previously submitted to the Special Food Safety Research Grant Program, please check "New." If the proposal being submitted requests additional funding for a project beyond the period that was approved in an original or amended award, check "Renewal." Please indicate the prior USDA award number in the appropriate location in this block. Proposals for renewed funding will compete on the same basis with all other proposals submitted to the Program at the same time. These proposals must contain the same information as required for new applications, and additionally must contain a Progress Report. As discussed below the Progress Report must be included within the 15 pages of the Project Description. If the proposal was previously submitted to the Special Food Safety Research Grant Program but not funded, check "Resubmission." The resubmitted proposal should clearly indicate the changes that have been made in the proposed project. Proposals which appear to be resubmissions (regardless of the designation) are regarded as such by the Program and the panel, and compete on the same basis with all other proposals submitted to the Program at the same time. However, a clear statement acknowledging comment of the previous review, indicating revisions, rebuttals, etc., can positively influence the review of the proposal. Therefore, for resubmitted proposals, as discussed below the investigator(s) must respond to the previous submission's panel summary on no more than one page, titled "RESPONSE TO PREVIOUS REVIEW" which is to be placed directly after the Project Summary. Failure to include a "RESPONSE TO PREVIOUS REVIEW" may negatively influence the review of a proposal.

(e) Principal Investigator(s)/Project Director(s) (Block 15). The designation of excessive numbers of co-PI/PD's creates problems during final review and award processes. Listing multiple co-PI/PD's, beyond those required for genuine collaboration, is therefore discouraged. Note that providing a Social Security Number is voluntary, but is an integral part of the CSREES information system and will assist in the processing of the proposal.

(f) Type of Performing Organization (Block 18). A check should be placed in the box beside the type of organization which actually will carry out the effort. For example, if the proposal is being submitted by an 1862 Land-Grant institution but the work will be performed in a department, laboratory, or other organizational unit of an agricultural experiment station, box "03" should be checked. If portions of the effort are to be performed in several departments, check the box that applies to the individual listed as PI/PD #1 in Block 15.a.

(g) Other Possible Sponsors (Block 22). List the names or acronyms of all other public or private sponsors including other agencies within USDA and other programs funded by CSREES to whom your application has been or might be sent. In the event you decide to send your application to another organization or agency at a later date, you must inform the identified CSREES program manager as soon as practicable. Submitting your proposal to other potential sponsors will not prejudice its review by CSREES; however, duplicate support for the same project will not be provided.

(3) Table of Contents

For consistency and ease in locating information, each proposal must contain a detailed Table of Contents just after the Cover Page. The Table of Contents should include page numbers for each component of the proposal. Page numbers, shown in the upper right-hand corner, should begin with the first page of the Project Summary.

(4) Project Summary

The proposal must contain a Project Summary of 250 words or less on a separate page. The summary must be self-contained and describe the overall goals and relevance of the project. The summary should also contain a listing of the major organizations participating in the project. The Project Summary should immediately follow the Table of Contents. In addition to the summary, this page must include the title of the project, the name of the applicant organization, the authorized organizational representative, and the principal investigator(s)/project director(s), followed by the summary.

(5) Response to Previous Review (if resubmission)

For the content of this section, see the information on resubmitted proposals in Part III, B.(2)(d), Types of Proposals, of this RFP.

(6) Project Description

PLEASE NOTE: The Project Description shall not exceed 15 pages of written text and may not exceed a total of 20 pages including figures and tables. This maximum has been established to ensure fair and equitable competition.

(a) Objectives—Clear, concise, complete, and logically arranged statement(s) of specific aims of the proposed effort must be included in all proposals.

(b) Justification—This section should include in-depth information on the following, when applicable:

(i) estimates of the magnitude of the food safety problem and its relevance to ongoing National food and agricultural research programs;

(ii) importance of starting the work during the current fiscal year, and

(iii) reasons for having the work performed by the proposing institution.

(c) Literature Review—A summary of pertinent publications with emphasis of their relationship to the effort being proposed should be provided and should include all important and recent publications from other institutions, as well as those from the applicant institution. The citations themselves should be accurate, complete, and written in an acceptable journal format.

(d) Progress Report—If the proposal is for a renewal grant for an existing project supported under this program, include a clearly marked progress report describing results to date from the previous award. In addition, the progress report must be limited to three pages (within the project description 15 page limit) and should include: a comparison of actual accomplishments with the goals established for the previous award; the reasons established goals were not met, if applicable; and a listing of publications resulting from the award. Copies of no more than two preprints or reprints may be appended to the proposal.

(e) Current Work—Current unpublished institutional activities "to date" in the program area under which the proposal is being submitted should be described.

(f) Research Methods—The procedures or methodology to be applied to the proposed effort should be explicitly stated. This section should include but not necessarily be limited to:

(i) a description of the proposed investigations and/or experiments in the sequence in which it is planned to carry them out;

(ii) techniques to be employed, including their feasibility;

(iii) kinds of results expected;

(iv) means by which data will be analyzed or interpreted;

(v) pitfalls which might be encountered; and

(vi) limitations to proposed procedures.

(g) Cooperation and Institutional Units Involved—Cooperative, multi-institutional and multi-disciplinary applications are encouraged. Identify each institutional unit contributing to the project and designate the lead institution or institutional unit. When appropriate, the project should be coordinated with the efforts of other State and/or national programs. Clearly define the roles and responsibilities of each institutional unit of the project team, if applicable.

(h) Equipment and Facilities—All facilities which are available for use or assignment to the project during the requested period of support should be reported and described briefly. Any potentially hazardous materials, procedures, situations, or activities, whether or not directly related to a particular phase of the effort, must be explained fully, along with an outline of the precautions to be exercised. Examples include work with toxic chemicals and experiments that may put human subjects or animals at risk.

All items of major instrumentation available for use or assignment to the proposed project should be itemized. In addition, items of nonexpendable equipment needed to conduct and bring the project to a successful conclusion should be listed, including dollar amounts and, if funds are requested for their acquisition, justified.

(i) Project Timetable—The proposal should outline all important phases as a function of time, year by year, for the entire project, including periods beyond the grant funding period.

(7) Key Personnel

All senior personnel who are expected to be involved in the effort must be clearly identified. For each person, the following should be included:

(a) an estimate of the time commitment involved; and

(b) vitae of the principal investigator(s)/project director(s), senior associate(s), and other professional personnel. This section should include vitae of all key persons who are expected to work on the project, whether or not CSREES funds are sought for their support. The vitae should be limited to two (2) pages each in length, excluding publications listings. A chronological list of all publications in refereed journals during the past five (5) years, including those in press, must be provided for each professional project member for whom a curriculum vitae is provided. Also list only those non-refereed technical publications that have relevance to the proposed project. All authors should be listed in the same order as they appear on each paper cited, along with the title and complete reference as these usually appear in journals.

(8) Conflict-of-Interest List (Form CSREES–1233)

A separate Conflict-of-Interest List form (Form CSREES–1233) must be submitted for each investigator for whom a curriculum vitae is required (see above). This form is necessary to assist program staff in excluding from proposal review those individuals who have conflicts-of-interest with the project personnel in the grant proposal. The Program Manager must be informed of additional conflicts-of-interest that arise after the proposal has been submitted.

(9) Collaborative and/or Subcontractual Arrangements

If it will be necessary to enter into formal consulting or collaborative arrangements with other individuals or organizations, such arrangements should be fully explained and justified. In addition, evidence should be provided that the collaborators involved have agreed to render these services. A letter of intent from the individual or organization will satisfy this requirement.

All anticipated subcontractual arrangements should be explained and justified in this section. A proposed statement of work and a budget for each

arrangement involving the transfer of substantive programmatic work or the providing of financial assistance to a third party must be provided. Agreements between departments or other units of your own institution and minor arrangements with entities outside of your institution (e.g., requests for outside laboratory analyses) are excluded from this requirement.

If you expect to enter into subcontractual arrangements, please note that the provisions contained in 7 CFR Part 3019, USDA Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations, and the general provisions contained in 7 CFR 3015.205, USDA Uniform Federal Assistance Regulations, flow down to subrecipients. In addition, required clauses from 7 CFR 3019.40 through 3019.48 ("Procurement Standards") and Appendix A ("Contract Provisions") should be included in final contractual documents, and it is necessary for the subawardee to make a certification relating to debarment/suspension.

(10) Certifications

Note that by signing the Form CSREES–661 the applicant is providing the required certifications set forth in 7 CFR Part 3017, as amended, regarding Debarment and Suspension and Drug-Free Workplace, and 7 CFR Part 3018, regarding Lobbying. The certification forms are included in the application package for informational purposes only. These forms should not be submitted with your proposal since by signing the Form CSREES–661 your organization is providing the required certifications. If the project will involve a subcontractor or consultant, the subcontractor/consultant should submit a Form AD–1048 to the grantee organization for retention in their records. This form should not be submitted to USDA.

(11) Appendices to the Project Description

Appendices to the Project Description are allowed if they are directly germane to the proposed research and are limited to a total of two of the following: reprints (papers that have been published in peer-reviewed journals) and preprints (manuscripts in press for a peer-reviewed journal). Preprints must be accompanied by the letter of acceptance from the publishing journal.

(12) Budget

Prepare the budget form (Form CSREES–55) in accordance with instructions provided. A budget form is required for each year of requested support. In addition, a cumulative budget is required detailing the requested total support for the overall project period. (For example, for a two-year project, the proposal would include three budget forms; one for each of the two years of the project and one cumulative budget for the full two years.) The budget form may be reproduced as needed by applicants. Funds may be requested under any of the categories listed on the form, provided that the item or service for which support is requested is allowable under the authorizing legislation, the applicable Federal cost principles and these program guidelines, and can be justified as necessary for the successful conduct of the proposed project. Applicants must also include a budget narrative to explain and justify their budgets. The following guidelines should be used in developing your proposal budget(s):

(a) Salaries and Wages. Salaries and wages are allowable charges and may be requested for personnel who will be working on the project in proportion to the time such personnel will devote to the project. If salary funds are requested, the number of Senior and Other Personnel and the number of CSREES Funded Work Months must be shown in the spaces provided. Grant funds may not be used to augment the total salary or rate of salary of project personnel or to reimburse them for time in addition to a regular full-time salary covering the same general period of employment.

Salary funds requested must be consistent with the normal policies of the institution.

(b) Fringe Benefits. Funds may be requested for fringe benefit costs if the usual accounting practices of your institution provide that institutional contributions to employee benefits (social security, retirement, etc.) be treated as direct costs. Fringe benefit costs may be included only for those personnel whose salaries are charged as a direct cost to the project.

(c) Nonexpendable Equipment. Nonexpendable equipment means tangible nonexpendable personal property including exempt property charged directly to the award having a useful life of more than one year and an acquisition cost of $5,000 or more per unit. (However, institutions may establish lower limits.) As such, items of necessary instrumentation or other nonexpendable equipment should be listed individually by description and estimated cost in the budget narrative. This applies to revised budgets as well, as the equipment item(s) and amount(s) may change.

Note: For projects awarded under the authority of subsection (c)(1)(A) of the Competitive, Special, and Facilities Research Grant Act, no funds will be awarded for the renovation or refurbishment of research spaces; the purchase or installation of fixed equipment in such spaces; or for the planning, repair, rehabilitation, acquisition, or construction of a building or facility.

(d) Materials and Supplies. The types of expendable materials and supplies which are required to carry out the project should be indicated in general terms with estimated costs in the budget narrative.

(e) Travel. The type and extent of travel and its relationship to project objectives should be described briefly and justified. For both domestic and foreign travel, provide the purpose, the destination, method of travel, number of persons traveling, number of days, and estimated cost for each trip in the budget narrative. Airfare allowances normally will not exceed round-trip jet economy air accommodations. U.S. flag carriers must be used when available. See 7 CFR Part 3015.205(b)(4) for further guidance.

(f) Publication Costs/Page Charges. Anticipated costs of preparing and publishing results of the research being proposed (including page charges, necessary illustrations, and the cost of a reasonable number of coverless reprints) may be estimated and charged against the grant.

(g) Computer (ADPE) Costs. Reimbursement for the costs of using specialized facilities (such as a university- or department-controlled computer mainframe or data processing center) may be requested if such services are required for completion of the work.

(h) All Other Direct Costs. Anticipated direct project charges not included in other budget categories must be itemized with estimated costs and justified in the budget narrative. This applies to revised budgets as well, as the item(s) and dollar amount(s) may change. Examples may include space rental at remote locations, subcontractual costs, charges for consulting services, telephone, facsimile, shipping costs, and fees for necessary laboratory analyses. You are encouraged to consult the "Instructions for Completing Form CSREES–55, Budget," of the Application Kit for detailed guidance relating to this budget category. Form AD–1048 must be completed by any subcontractors or consultants and retained by the grantee.

(i) Indirect Costs. Section 711 of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act for FY

1999, Sec. 101(a) of Pub. L. No. 105–277, limits indirect costs for this program to 14 percent of total Federal funds provided under each award. Therefore, the recovery of indirect costs under this program may not exceed the lesser of the grantee institution's official negotiated indirect cost rate or the equivalent of 14 percent of total Federal funds awarded (TFFA). If no rate has been negotiated, a reasonable dollar amount (equivalent to or less than 14 percent of total Federal funds requested) in lieu of indirect costs may be requested, subject to approval by USDA.

(j) Cost-sharing. Cost-sharing is encouraged; however, cost-sharing is not required nor will it be a direct factor in the awarding of any grant.

(13) Current and Pending Support

All proposals must list any other current public or private support (including in-house support) to which key personnel identified in the proposal have committed portions of their time, whether or not salary support for person(s) involved is included in the budget. Analogous information must be provided for any pending proposals that are being considered by, or that will be submitted in the near future to, other possible sponsors, including other USDA programs or agencies.

Concurrent submission of identical or similar proposals to the possible sponsors will not prejudice proposal review or evaluation by the Administrator for this purpose. However, a proposal that duplicates or overlaps substantially with a proposal already reviewed and funded (or that will be funded) by another organization or agency will not be funded under this program. The application material includes Form CSREES–663, "Current and Pending Support," which should be used for listing current and pending support. Note that the project being proposed should be included in the pending section of the form.

(14) Compliance With the National Environmental Policy Act (NEPA).

As outlined in 7 CFR Part 3407 (the Cooperative State Research, Education, and Extension Service regulations implementing NEPA), the environmental data for any proposed project is to be provided to CSREES so that CSREES may determine whether any further action is needed. In some cases the preparation of environmental data may not be required. Certain categories of actions are excluded from the requirements of NEPA.

In order for CSREES to determine whether any further action is needed with respect to NEPA, pertinent information regarding the possible environmental impacts of a particular project is necessary; therefore, Form CSREES–1234, "NEPA Exclusions Form," must be included in the proposal indicating whether the applicant is of the opinion that the project falls within a categorical exclusion and the reasons therefore. If it is the applicant's opinion that the proposed project falls within the categorical exclusions, the specific exclusion must be identified. Form CSREES–1234 and supporting documentation should be placed after Form CSREES–661, "Application for Funding," in the proposal.

Even though a project may fall within the categorical exclusions, CSREES may determine that an Environmental Assessment or an Environmental Impact Statement is necessary for an activity. This will be the case if substantial controversy on environmental grounds exists or if other extraordinary conditions or circumstances are present which may cause such activity to have a significant environmental effect.

(15) Assurance Statement(s) (Form CSREES–662)

A number of situations encountered in the conduct of projects require special assurance, supporting documentation, etc., before funding can be approved for the project. In addition to any other situation that may exist with regard to a particular project, it is expected that some applications submitted in response to these guidelines will include the following:

(a) Recombinant DNA or RNA Research. As stated in 7 CFR 3015.205(b)(3), all key personnel identified in the proposal and all endorsing officials of the proposing organization are required to comply with the guidelines established by the National Institutes of Health entitled, "Guidelines for Research Involving Recombinant DNA Molecules," as revised. If your project proposes to use recombinant DNA or RNA techniques, the application must so indicate by checking the "yes" box in Block 19 of Form CSREES–661 and by completing Section A of Form CSREES–662. For applicable proposals recommended for funding, Institutional Biosafety Committee approval is required before CSREES funds will be released.

(b) Animal Care. Responsibility for the humane care and treatment of live vertebrate animals used in any grant project supported with funds provided by CSREES rests with the performing organization. Where a project involves the use of living vertebrate animals for experimental purposes, all key project personnel and all endorsing officials of the proposing organization are required to comply with the applicable provisions of the Animal Welfare Act of 1996, as amended (7 U.S.C. 2131 *et seq.*) and the regulations promulgated thereunder by the Secretary in 9 CFR Parts 1, 2, 3, and 4 pertaining to the care, handling, and treatment of these animals. If your project will involve these animals or activities, you must check the "yes" box in Block 20 of Form CSREES–661 and complete Section B of Form CSREES–662. In the event a project involving the use of live vertebrate animals results in a grant award, funds will be released only after the Institutional Animal Care and Use Committee has approved the project.

(c) Protection of Human Subjects. Responsibility for safeguarding the rights and welfare of human subjects used in any grant project supported with funds provided by CSREES rests with the performing organization. Guidance on this issue is contained in the National Research Act, Pub. L. 93–348, as amended, and implementing regulations established by the Department under 7 CFR Part 1c. If you propose to use human subjects for experimental purposes in your project, you should check the "yes" box in Block 21 of Form CSREES–661 and complete Section C of Form CSREES–662. In the event a project involving human subjects results in a grant award, funds will be released only after the appropriate Institutional Review Board has approved the project.

(16) Applicant Peer Review Requirements

Subsection (c)(5) of the Competitive, Special, and Facilities Research Grant Act (7 U.S.C. § 450i(c)), as amended by section 212 of the Agricultural Research, Extension, and Education Reform Act of 1998 ("1998 Act"), Pub. L. 105–185, requires applicants to conduct a scientific peer review of a proposed research project in accordance with regulations promulgated by the Secretary prior to the Secretary making a grant award under this authority. Regulations implementing this requirement currently are the subject of a proposed rule making (64 FR 14347, March 24, 1999). The statute requires promulgation of a final rule prior to award of a grant under this program. The proposed rule would impose the following requirements for scientific peer review by applicants of proposed research projects:

1. Credible and independent. Review arranged by the grantee must provide for a credible and independent assessment of the proposed project. A credible

review is one that provides an appraisal of technical quality and relevance sufficient for an organizational representative to make an informed judgment as to whether the proposal is appropriate for submission for Federal support. To provide for an independent review, such review may include USDA employees, but should not be conducted solely by USDA employees.

2. Notice of completion and retention of records. A notice of completion of the review shall be conveyed in writing to CSREES either as part of the submitted proposal or prior to the issuance of an award, at the option of CSREES. The written notice constitutes certification by the applicant that a review in compliance with these regulations has occurred. Applicants are not required to submit results of the review to CSREES; however, proper documentation of the review process and results should be retained by the applicant.

3. Renewal and supplemental grants. Review by the grantee is not automatically required for renewal or supplemental grants as defined in 7 CFR 3400.6. A subsequent grant award will require a new review if, according to CSREES, either the funded project has changed significantly, other scientific discoveries have affected the project, or the need for the project has changed. Note that a new review is necessary when applying for another standard or continuation grant after expiration of the grant term.

4. Scientific Peer Review. Scientific peer review is an evaluation of a proposed project for technical quality and relevance to regional or national goals performed by experts with the scientific knowledge and technical skills to conduct the proposed research work. Peer reviewers may be selected from an applicant organization or from outside the organization, but shall not include principal or co-principal investigators, collaborators or others involved in the preparation of the application under review.

Because of the nature of the rule making process, these requirements are subject to change based upon the comments received. Applicants whose proposals are recommended for funding must comply with the review requirements as promulgated in the final rule as a condition precedent to receiving an award under this RFP.

Part IV—Submission of a Proposal

A. What To Submit

An original and nine copies of the complete proposal must be submitted. Each copy of the proposal must be stapled in the upper left-hand corner. DO NOT BIND. In addition, submit 20 copies of the proposal's Project Summary. All copies of the proposal and Project Summary must be submitted in one package.

B. Where and When To Submit

Proposals must be received on or before June 4, 1999. Proposals may be sent by First Class mail, but applicants are strongly encouraged to send their proposal by certified mail and obtain a receipt to document the mailing. Proposals sent via the U.S. Postal Service must be sent to the following address: Special Grants Program—Food Safety Research; c/o Proposal Services Unit; Office of Extramural Programs; USDA/CSREES; STOP 2245; 1400 Independence Avenue, SW; Washington, DC 20250–2245; Telephone: (202) 401–5048.

Note: Applicants are strongly encouraged to submit their completed proposals via overnight mail or delivery services to ensure timely receipt by the USDA and to obtain a receipt to document dispatch of the proposal. Facsimile (FAX) copies will not be accepted.

Hand-delivered proposals or those delivered by an overnight express or courier service should be brought to the following address: Special Grants Program—Food Safety Research; c/o Proposal Services Unit; Office of Extramural Programs; USDA/CSREES; Room 303; Aerospace Center; 901 D Street, SW; Washington, DC 20024; Telephone: (202) 401–5048.

C. Acknowledgment of Proposals

The receipt of all proposals will be acknowledged in writing and via the Internet (e-mail). Therefore, it is important to include your e-mail address on Form CSREES–712 when applicable. This acknowledgment will contain a proposal identification number. Once your proposal has been assigned a proposal number, please cite that number in future correspondence.

Part V—Selection Process and Evaluation Criteria

A. Selection Process

Applicants should submit fully developed proposals that meet all the requirements set forth in this request for proposals.

Each proposal will be evaluated in a two-part process. First, each proposal will be screened to ensure that it meets the requirements as set forth in this request for proposals. Second, proposals that meet these requirements will be technically evaluated by a peer review panel.

The individual peer panel members will be selected from those persons recognized as specialists who are uniquely qualified by training and experience in their respective fields to render expert advice on the merit of the proposals being reviewed. The individual views of the panel members will be used by CSREES staff to determine which proposals should be recommended to the Administrator (or his designee) for final funding decisions.

There is no commitment by USDA to fund any particular proposal or to make a specific number of awards. Care will be taken to avoid actual and potential conflicts of interest among reviewers. Evaluations will be confidential to USDA staff members, peer panel reviewers, and the proposed principal investigator(s)/project director(s), to the extent permitted by law.

B. Evaluation Criteria

In accordance with the provisions of 7 CFR 3400.5, the evaluation factors below will be used in lieu of those contained in 7 CFR 3400.15 in reviewing applications submitted in response to this request for proposals:

(1) Scientific merit of the proposal (represents 50% of the evaluation).

- Conceptual adequacy of the hypothesis or approach as related to the program objectives;
- Clarity and delineation of proposed project objectives as related to National issues and objectives;
- Adequacy of the description of the proposed work;
- Suitability and feasibility of the methodology for conducting the work;
- Probability of success of the project; and
- Novelty, uniqueness, and originality.

(2) Qualifications of the proposed project personnel, partnerships and adequacy of the facilities (represents 25% of the evaluation).

- Training and demonstrated awareness of previous alternative approaches to relevant objective(s) listed in the Request for Proposals and performance record and/or potential for future accomplishments;
- Partnerships with other disciplines and institutions;
- Time allocated for systematic attainment of objectives;
- Institutional experience and competence in the identified area of work; and
- Adequacy of available or obtainable support personnel, facilities, and instrumentation.

(3) Adoption or transfer of technology strategies (represents 25% of the evaluation).

- Established or documented linkage with industry partner(s); and

• Clear and effective plan for educational outreach and technology transfer to end users.

Part VI—Additional Information:

A. Access to Peer Review Information

Copies of summary reviews, not including the identity of the reviewers, will be sent to all applicant PI/PD's automatically, after the review process has been completed.

B. Grant Awards

(1) General

Within the limit of funds available for such purpose, the Administrator shall make grants to those responsible, eligible applicants whose proposals are judged most meritorious under the procedures set forth in this request for proposals. The date specified by the Administrator as the effective date of the grant shall be no later than September 30 of the Federal fiscal year in which the project is approved for support and funds are appropriated for such purpose, unless otherwise permitted by law. It should be noted that the project need not be initiated on the grant effective date, but as soon thereafter as practical so that project goals may be attained within the funded project period. All funds granted by CSREES under this request for proposals shall be expended solely for the purpose for which the funds are granted in accordance with the approved application and budget, the regulations, the terms and conditions of the award, the applicable Federal cost principles, and the Department's assistance regulations (Parts 3015, 3016, and 3019 of 7 CFR).

(2) Organizational Management Information

Specific management information relating to an applicant shall be submitted on a one-time basis as part of the responsibility determination prior to the award of a grant identified under this part if such information has not been provided previously under this or another program for which the sponsoring agency is responsible. Copies of forms recommended fer use in fulfilling the requirements contained in this section will be provided by the sponsoring agency as part of the preaward process.

(3) Grant Award Document and Notice of Grant Award

The grant award document shall include at a minimum the following:

(a) Legal name and address of performing organization or institution to whom the Administrator has awarded a grant under the terms of this request for proposals;

(b) Title of project;

(c) Name(s) and address(es) of PI/PD's chosen to direct and control approved activities;

(d) Identifying grant number assigned by the Department;

(e) Project period, specifying the amount of time the Department intends to support the project without requiring recompetition for funds;

(f) Total amount of Departmental financial assistance approved by the Administrator during the project period;

(g) Legal authority(ies) under which the grant is awarded;

(h) Approved budget plan for categorizing allocable project funds to accomplish the stated purpose of the grant award; and

(i) Other information or provisions deemed necessary by CSREES to carry out its respective granting activities or to accomplish the purpose of a particular grant.

The notice of grant award, in the form of a letter, will be prepared and will provide pertinent instructions or information to the grantee that is not included in the grant award document.

CSREES will award standard grants to carry out this program. A standard grant is a funding mechanism whereby CSREES agrees to support a specified level of effort for a predetermined time period without additional support at a future date.

C. Use of Funds; Changes

(1) Delegation of Fiscal Responsibility

The grantee may not in whole or in part delegate or transfer to another person, institution, or organization the responsibility for use or expenditure of grant funds.

(2) Reporting Requirements

The grantee must prepare an annual report that details all significant activities towards achieving the goals and objectives of the project. The narrative should be succinct and be no longer than five pages, using 12-point font, single-spaced type. A budget summary should be attached to this report, which will provide an overview of all monies spent during the reporting period.

(3) Changes in Project Plans

(a) The permissible changes by the grantee, PI/PD, or other key project personnel in the approved project grant shall be limited to changes in methodology, techniques, or other aspects of the project to expedite achievement of the project's approved goals. If the grantee and/or the PI/PD's are uncertain as to whether a change complies with this provision, the question must be referred to the Authorized Departmental Officer (ADO) for a final determination.

(b) Changes in approved goals or objectives shall be requested by the grantee and approved in writing by the ADO prior to effecting such changes. In no event shall requests for such changes be approved which are outside the scope of the original approved project.

(c) Changes in approved project leadership or the replacement or reassignment of other key project personnel shall be requested by the grantee and approved in writing by the awarding official of CSREES prior to effecting such changes.

(d) Transfers of actual performance of the substantive programmatic work in whole or in part and provisions for payment of funds, whether or not Federal funds are involved, shall be requested by the grantee and approved in writing by the ADO prior to effecting such transfers, unless prescribed otherwise in the terms and conditions of the grant.

(e) Changes in Project Period: The project period may be extended by CSREES without additional financial support, for such additional period(s), within the statutory limitation, as the ADO determines may be necessary to complete or fulfill the purposes of an approved project. Any extension of time shall be conditioned upon prior request by the grantee and approval in writing by the ADO, unless prescribed otherwise in the terms and conditions of a grant.

(f) Changes in Approved Budget: Changes in an approved budget must be requested by the grantee and approved in writing by the ADO prior to instituting such changes if the revision will involve transfers or expenditures of amounts requiring prior approval as set forth in the applicable Federal cost principles, Departmental regulations, or in the grant award.

D. Other Federal Statutes and Regulations That Apply

Several other Federal statutes and regulations apply to grant proposals considered for review and to project grants awarded under this program. These include but are not limited to:

7 CFR Part 1—USDA implementation of the Freedom of Information Act.

7 CFR Part 3, as amended—USDA implementation of OMB Circular No. A–129 regarding debt collection.

7 CFR Part 15, subpart A—USDA implementation of Title VI of the Civil Rights Act of 1964, as amended.

7 CFR Part 3015—USDA Uniform Federal Assistance Regulations, implementing OMB directives (i.e.,

Circular Nos. A–21 and A–122) and incorporating provisions of 31 U.S.C. 6301–6308 (formerly the Federal Grant and Cooperative Agreement Act of 1977, Pub. L. No. 95–224), as well as general policy requirements applicable to recipients of Departmental financial assistance.

7 CFR Part 3016, as amended—Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.

7 CFR Part 3017—USDA implementation of Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants).

7 CFR Part 3018—USDA implementation of Restrictions on Lobbying. Imposes prohibitions and requirements for disclosure and certification related to lobbying on recipients of Federal contracts, grants, cooperative agreements, and loans.

7 CFR Part 3019—USDA implementation of OMB Circular A-110, Uniform Administrative Requirements for Grants and Agreements With Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations.

7 CFR Part 3052—USDA implementation of OMB Circular No. A–133, Audits of States, Local Governments, and Non-profit Institutions.

7 CFR Part 3407—CSREES procedures to implement the National Environmental Policy Act of 1969, as amended.

29 U.S.C. 794 (section 504, Rehabilitation Act of 1973) and 7 CFR Part 15B (USDA implementation of statute)— prohibiting discrimination based upon physical or mental handicap in Federally assisted programs.

35 U.S.C. 200 et seq.—Bayh-Dole Act, controlling allocation of rights to inventions made by employees of small business firms and domestic nonprofit organizations, including universities, in Federally assisted programs (implementing regulations are contained in 37 CFR Part 401).

E. Confidential Aspects of Proposals and Awards

When a proposal results in a grant, it becomes a part of the record of the Agency's transactions, available to the public upon specific request. Information that the Secretary determines to be of a privileged nature will be held in confidence to the extent permitted by law. Therefore, any information that the applicant wishes to have considered as privileged should be clearly marked as such and sent in a separate statement, two copies of which should accompany the proposal.

The original copy of a proposal that does not result in a grant will be retained by the Agency for a period of one year. Other copies will be destroyed. Such a proposal will be released only with the consent of the applicant or to the extent required by law. A proposal may be withdrawn at any time prior to the final action thereon.

F. Regulatory Information

For the reasons set forth in the final Rule-related Notice to 7 CFR Part 3015, subpart V, this program is excluded from the scope of the Executive Order 12372 which requires intergovernmental consultation with State and local officials. Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the collection of information requirements contained in this Notice have been approved under OMB Document No. 0524–0022.

Done at Washington, D.C., on this 30th day of March, 1999.

K. Jane Coulter,

Acting Administrator, Cooperative State Research, Education, and Extension Service.

[FR Doc. 99–8288 Filed 4–2–99; 8:45 am]

BILLING CODE 3410–22–P

federal register

Monday
April 5, 1999

Part VII

The President

Executive Order 13117—Further Amendment to Executive Order 12981, as Amended

VOL
64
ISS
64
AP
5
1999
UMI

Federal
Vol. 64,
Monday,

Title 3

The P

[FR Doc.
Filed 4–2
Billing co

Federal Register
Vol. 64, No. 64
Monday, April 5, 1999

Presidential Documents

Title 3—

The President

Executive Order 13117 of March 31, 1999

Further Amendment to Executive Order 12981, as Amended

By the authority vested in me as President by the Constitution and the laws of the United States of America and in order to further the implementation of the reorganization of the Arms Control and Disarmament Agency (ACDA) into the Department of State, in this instance by eliminating ACDA's vote on dual-use export license decisions in the administration of export controls, it is hereby ordered that Executive Order 12981, as amended ("Executive Order 12981"), is further amended as follows:

Section 1. The second sentence of section 1 of Executive Order 12981 is amended by deleting ", and the Arms Control and Disarmament Agency".

Sec. 2. The second sentence of section 5(a)(1)(A) of Executive Order 12981 is amended by adding "and" after "the Secretary of Defense" and before "the Secretary of Energy," and deleting ", and the Director of the Arms Control and Disarmament Agency."

Sec. 3. The first sentence of section 5(a)(2) of Executive Order 12981 is amended by deleting ", and the Arms Control and Disarmament Agency."

Sec. 4. The second sentence of section 5(a)(3)(A) of Executive Order 12981 is amended by deleting ", and the Arms Control and Disarmament Agency."

Sec. 5. The first sentence of section 6 of Executive Order 12981 is amended by deleting "and the Arms Control and Disarmament Agency".

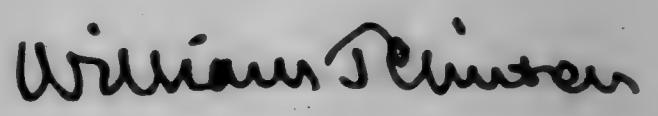

THE WHITE HOUSE,
March 31, 1999.

[FR Doc. 99–8509
Filed 4–2–99; 8:45 am]
Billing code 3195–01–P

VOL
64
ISS
64
AP
5
1999
UMI

federal register

Monday
April 5, 1999

Part VIII

The President

Executive Order 13118—Implementation of the Foreign Affairs Reform and Restructuring Act of 1998

UMI

VOL
64
ISS
64
AP
5
1999
UMI

Federal
Vol. 64,
Monday,

Title 3

The P

Federal Register
Vol. 64, No. 64
Monday, April 5, 1999

Presidential Documents

Title 3—

The President

Executive Order 13118 of March 31, 1999

Implementation of the Foreign Affairs Reform and Restructuring Act of 1998

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 621 of the Foreign Assistance Act of 1961, as amended (22 U.S.C. 2381), and section 301 of title 3, United States Code, it is hereby ordered as follows:

Section 1. Part 1–1 of Executive Order 12163, as amended, is amended to read as follows:

"1–1. DEPARTMENT OF STATE

"1–100. Delegation of Functions. (a) Exclusive of the functions otherwise delegated, or reserved to the President, by this order, Executive Order 12884, Executive Order 11579, and Executive Order 12757, and subject to the provisions of such orders, there are hereby delegated to the Secretary of State (referred to in this Part as the "Secretary") all functions conferred upon the President by:

"(1) the Foreign Assistance Act of 1961 (22 U.S.C. 2151 *et seq.*) ("Act");

(i) except that with respect to section 505(a) of the Act, such functions only insofar as those functions relate to other provisions which may be required by the President or only insofar as they relate to consent;
(ii) except that with respect to section 505(b) of the Act, such functions only insofar as those functions pertain to countries that agree to the conditions set forth therein;

"(2) section 1205(b) of the International Security and Development Cooperation Act of 1985 ("ISDCA of 1985");

"(3) section 8(d) of the Act of January 12, 1971 (22 U.S.C. 2321b(d));

"(4) section 607 of the International Security Assistance and Arms Export Control Act of 1976 (22 U.S.C. 2394a);

"(5) section 402(b)(2) of title 10, United States Code, which shall be exercised in consultation with the Secretary of Defense;

"(6) the third proviso under the heading "Development Assistance" contained in title II of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1999 (as contained in Public Law 105–277);

"(7) section 572 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1989 (Public Law 100–461);

"(8) sections 508, 517, 518, 528(a), 535, 539, 544, 561, 563, 572, 574, 575, 585, 594 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1999 (as contained in Public Law 105–277);

"(9) section 523 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1999 (as contained in Public Law 105–277), which shall be exercised in consultation with the Secretary of the Treasury;

"(10) section 551 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1999 (as contained in Public Law 105–277);

"(11) section 591 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1998 (Public Law 105–118), and the provisions of law referenced therein;

"(12) section 821(b) of the Western Hemisphere Drug Elimination Act (as contained in Public Law 105–277).

"(b) The functions under section 653 of the Act delegated to the Secretary shall be exercised in consultation with the Secretary of Defense, insofar as they relate to functions under the Act administered by the Department of Defense, and the Director of the Office of Management and Budget.

"(c) The functions under sections 239(f), 620(e), 620(g), 620(j), 620(q), and 620(s) of the Act delegated to the Secretary shall be exercised in consultation with the Administrator of the United States Agency for International Development.

"(d) The Secretary shall perform all public information functions abroad with respect to the foreign assistance, aid, and development programs of the United States Government, to the extent such functions are not specifically assigned by statute to be performed by a different officer.

"(e) The Secretary may redelegate to any other officer or agency of the Executive branch functions delegated to the Secretary by this order to the extent such delegation is not otherwise prohibited by law.".

Sec. 2. Part 1–2 of Executive Order 12163, as amended, is amended to read as follows:

"1–2. UNITED STATES AGENCY FOR INTERNATIONAL DEVELOPMENT

"1–200. United States Agency for International Development.

"(a) The United States Agency for International Development is an independent establishment within the Executive branch. Any reference in the Act to the agency primarily responsible for administering part I of the Act, or to the Administrator of such agency, shall be deemed to be a reference to the United States Agency for International Development or to the Administrator of that agency, as appropriate.

"(b) The United States Agency for International Development shall be headed by an Administrator appointed pursuant to section 624(a) of the Act.

"(c) The officers provided for in section 624(a) of the Act shall serve in the United States Agency for International Development.

"(d) The Office of Small Business provided for in section 602(b) of the Act shall be in the United States Agency for International Development.

"(e) To the extent practicable, the Administrator of the United States Agency for International Development will exercise functions relating to Foreign Service personnel in a manner that will assure maximum compatibility among agencies authorized by law to utilize the Foreign Service personnel system. To this end, the Administrator shall consult regularly with the Secretary of State.".

Sec. 3. Part 1–3 of Executive Order 12163, as amended, is amended in section 301(c) by striking "part II of the Act (except chapters 4, 6, and 8 thereof)" and inserting in lieu thereof "chapters 2 and 5 of part II of the Act".

Sec. 4. Part 1–4 of Executive Order 12163, as amended, is revoked.

Sec. 5. Part 1–5 of Executive Order 12163, as amended, is amended as follows:

(1) in section 1–501(c), by striking "Director, as provided in Executive Order 11269 of February 14, 1966, as amended" and inserting in lieu thereof "Secretary of State";

(2) section 1–504 is revoked;

(3) section 1–505 is amended to read as follows:

"1–505. Trade and Development Agency. There is delegated to the Director of the Trade and Development Agency the functions conferred upon the President by section 661(d) of the Act.";

(4) section 1–506 is revoked.

Sec. 6. Part 1–6 of Executive Order 12163, as amended, is amended as follows:

(1) in section 1–602, by striking "Director of IDCA, the Director" and inserting in lieu thereof "Secretary of State, the Secretary"; and

(2) in section 1–604, by striking ", title IV of the IDC Act of 1979 or section 402 of the Mutual Security Act of 1954".

Sec. 7. Part 1–7 of Executive Order 12163, as amended, is amended as follows:

(1) in section 1–701(a)—

(A) by striking "662(a),"; and

(B) by inserting "493," after "298(a),";

(2) by striking section 1–701(b), and redesignating subsections "(c)" and "(d)" as subsections "(b)" and "(c)", respectively;

(3) in section 1–701(c) (as redesignated by this section)—

(A) by inserting "209(d)," before "303";

(B) by striking "481" and inserting in lieu thereof "490"; and

(C) by striking ", 669(b)(1), 670(a), 670(b)(2), and 670(b)(3)";

(4) in section 1–701(g), by striking "131,";

(5) in section 1–702—

(A) by striking "Director" and inserting in lieu thereof "Secretary"; and

(B) by striking "IDCA" and inserting in lieu thereof "the Department of State";

(6) by adding a new section 1–703 to read as follows:

"1–703. Office of Management and Budget. In this order the Director of the Office of Management and Budget shall retain all authorities related to the implementation of his budgetary and policy coordination functions, including the authority to:

(a) request and receive information from any agency that is subject to this delegation;
(b) carry out all responsibilities associated with implementing the Government Performance and Results Act, the Government Management Reform Act, and other comparable government-wide statutes dealing with management; and
(c) carry out all statutory budget and policy coordination responsibilities assigned to the Director of the Office of Management and Budget by statute or Executive order.

Sec. 8. Part 1–8 of Executive Order 12163, as amended, is amended to read as follows:

"1–8 FUNDS

"1–800. Allocation of Funds. Funds described below that are appropriated or otherwise made available to the President shall be deemed to be allocated without any further action of the President, as follows:

"(a) Except as provided in subsections (b) and (c), there are allocated to the Secretary all funds made available for carrying out the Act, including any funds appropriated under the heading "Nonproliferation, Anti-Terrorism, Demining and Related Programs".

"(b) There are allocated to the Secretary of Defense all funds made available for carrying out chapters 2 and 5 of Part II of the Act.

"(c) There are allocated to the Secretary of the Treasury all funds made available for carrying out section 129 of the Act.

"(d) The Secretary of State, the Secretary of Defense, and the Secretary of the Treasury may allocate or transfer as appropriate any funds received under subsections (a), (b), and (c) of this section, respectively, to any agency or part thereof for obligation or expenditure thereby consistent with applicable law.

Sec. 9. Part 1–9 of Executive Order 12163, as amended, is amended as follows: (1) in section 1–902(c), by striking "hereafter-enacted"; and (2) by revoking sections 1–903(c) and 1–903(d).

Sec. 10. The following Executive orders are revoked or amended:

(1) Executive Order 12884 of December 1, 1993, is amended—

(a) in section 3, by striking the section heading and all that follows through "by:", and inserting in lieu thereof "Secretary of State-Additional Functions. There are delegated to the Secretary of State the functions conferred upon the President by:"; and

(b) in section 6(a), by striking "3, 4, and 5" and inserting in lieu thereof "4 and 5".

(2) Executive Order 12703 of February 20, 1990, is amended by amending section 2 to read as follows:

"Sec. 2. Department of State. The functions conferred upon the President by section 201 of the Act relating to Enterprise Funds for Poland and Hungary are hereby delegated to the Secretary of State.".

(3) Executive Order 12599 of June 23, 1987, is revoked.

(4) Executive Order 12293 of February 23, 1981, is amended—

(A) in section 2, by striking "Director of the United States International Development Cooperation Agency" and inserting in lieu thereof "Administrator of the United States Agency for International Development"; and

(B) in section 9, by striking "United States International Development Cooperation Agency" and inserting in lieu thereof "United States Agency for International Development" in both places this phrase appears.

(5) Executive Order 12301 of March 26, 1981, is amended in subsection (b)(23) by striking "Director of the United States 8International Development Cooperation Agency" and inserting in lieu thereof "Administrator of the United States Agency for International Development".

(6) Executive Order 12188 of January 2, 1980, is amended by striking "Director of the United States International Development Cooperation Agency" and inserting in lieu thereof "Administrator of the United States Agency for International Development".

(7) Executive Order 12260 of December 31, 1980, is amended in the annex thereto, by striking "United States International Development Cooperation Agency" and inserting in lieu thereof "United States Agency for International Development".

(8) Executive Order 11958 of January 18, 1977, is amended in section 2 by striking "the Director of the United States International Development Cooperation Agency, the Director of the Arms Control and Disarmament Agency,".

(9) Executive Order 11269 of February 14, 1966, is amended—

(A) in section 1(b), by striking "Director of the International Development Cooperation Agency" and inserting in lieu thereof "Administrator of the United States Agency for International Development";

(B) in section 4(a), by striking "Director of the International Development Cooperation Agency" and inserting in lieu thereof "Secretary of State", in both places that it appears; and

[FR Doc.
Filed 4–2
Billing co

(C) in section 7, by striking "Functions of the Director of the International Development Cooperation Agency. As the principal international development advisor to the President, the Director of the International Development Cooperation Agency" and inserting in lieu thereof "Functions of the Secretary of State. The Secretary of State".

(10) Executive Order 11223 of May 12, 1965, is amended by striking "Director of the United States International Development Cooperation Agency (with respect to functions vested in or delegated to the Director)" and inserting in lieu thereof "Administrator of the United States Agency for International Development (with respect to functions vested in or delegated to the Administrator)".

(11) The Memorandum for the Secretary of State of March 23, 1999, entitled "Delegation of Authority Under Section 577 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1999 (as contained in Public Law 105–277)", is amended by deleting the second sentence therein.

Sec. 11. The provisions of this order shall become effective as of April 1, 1999, except that the authority contained in section 1–100(d), and the amendment made by section 5(2) of this order, shall become effective as of October 1, 1999.

William J. Clinton

THE WHITE HOUSE,
March 31, 1999.

[FR Doc. 99–8547
Filed 4–2–99; 10:35 am]
Billing code 3195–01–P

VOL
64
ISS
64
AP
5
1999
UMI

Rea

CUSTO
Federal
General
aids
Laws
Presiden
Executiv
The Unit
Other Se
Electroni
Privacy
Public L
TTY for

ELECTR
World W
Full text
publicat
Federal
Inspecti
E-mail
PENS (P
service t
Laws. To
with the
Use listp
PENS. W
Referenc
Federal
The Fed
regulatio

FEDER
15633–1
15915–1
16333–1

Reader Aids

Federal Register

Vol. 64, No. 64

Monday, April 5, 1999

CUSTOMER SERVICE AND INFORMATION

Federal Register/Code of Federal Regulations	
General Information, indexes and other finding aids	202–523–5227
Laws	523–5227
Presidential Documents	
Executive orders and proclamations	523–5227
The United States Government Manual	523–5227
Other Services	
Electronic and on-line services (voice)	523–4534
Privacy Act Compilation	523–3187
Public Laws Update Service (numbers, dates, etc.)	523–6641
TTY for the deaf-and-hard-of-hearing	523–5229

ELECTRONIC RESEARCH

World Wide Web

Full text of the daily Federal Register, CFR and other publications:

http://www.access.gpo.gov/nara

Federal Register information and research tools, including Public Inspection List, indexes, and links to GPO Access:

http://www.nara.gov/fedreg

E-mail

PENS (Public Law Electronic Notification Service) is an E-mail service that delivers information about recently enacted Public Laws. To subscribe, send E-mail to

listproc@lucky.fed.gov

with the text message:

subscribe publaws-l <firstname> <lastname>

Use listproc@lucky.fed.gov only to subscribe or unsubscribe to PENS. We cannot respond to specific inquiries at that address.

Reference questions. Send questions and comments about the Federal Register system to:

info@fedreg.nara.gov

The Federal Register staff cannot interpret specific documents or regulations.

FEDERAL REGISTER PAGES AND DATES, APRIL

15633–15914..... 1
15915–16332..... 2
16333–16600..... 5

CFR PARTS AFFECTED DURING APRIL

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Executive Orders:
11223 (Amended by EO 13118).....16595
11269 (Amended by EO 13118).....16595
11958 (Amended by EO 13118).....16595
12163 (Amended by EO 13118).....16595
12188 (Amended by EO 13118).....16595
12260 (Amended by EO 13118).....16595
12293 (Amended by EO 13118).....16595
12301 (Amended by EO 13118).....16595
12599 (Amended by EO 13118).....16595
12703 (Amended by EO 13118).....16595
12884 (Amended by EO 13118).....16595
12981 (Amended by EO 13117).....16391
13116.....16333
13117.....16391

Memorandums:
March 23, 1999 (Amended by EO 13118).....16595

Administrative Orders:
Presidential Determination No. 99-18 of March 25, 1999.....16337

5 CFR

532.....15915
890.....15633
1200.....15916

7 CFR

301.....15916

Proposed Rules:
28.....15937
340.....16364
905.....15634
944.....15634
1000.....16026
1001.....16026
1002.....16026
1004.....16026
1005.....16026
1006.....16026
1007.....16026
1012.....16026
1013.....16026
1030.....16026
1032.....16026
1033.....16026
1036.....16026
1040.....16026
1044.....16026
1046.....16026
1049.....16026
1050.....16026
1064.....16026
1065.....16026
1068.....16026
1076.....16026
1079.....16026
1106.....16026
1124.....16026
1126.....16026
1131.....16026
1134.....16026
1135.....16026
1137.....16026
1138.....16026
1139.....16026

9 CFR

1.....15918
3.....15918

Proposed Rules:
201.....15938

10 CFR

2.....15636, 15920
10.....15636
11.....15636
25.....15636
95.....15636

Proposed Rules:
170.....15876
171.....15876

12 CFR

330.....15653

13 CFR

Proposed Rules:
120.....15942
121.....15708

14 CFR

39.....15657, 15659, 15661, 15669, 15920, 16339
71.....15673, 15674, 15675, 15676, 15678, 15679, 16024, 16340, 16341, 16342, 16343, 16344
91.....15912

Proposed Rules:
39.....16364, 16366
71.....15708, 16024, 16368, 16369, 16370, 16371
119.....16298
121.....16298
129.....16298
135.....16298
183.....16298

17 CFR

275.....15680
279.....15680

19 CFR

10.....16345
18.....16345
113.....16345
178.....16345

Proposed Rules:

146.....15873

21 CFR

26.....16347
510.....15683
520.....15683, 15684
522.....15683, 15685
558.....15683

Proposed Rules:

1.....15944
101.....15948

22 CFR

Ch. II.....15685
Ch. VI.....15686

24 CFR

100.....16324

26 CFR

1.....15686, 15687
7.....15687
31.....15687
602.....15687, 15688, 15873

Proposed Rules:

1.....16372

30 CFR

Proposed Rules:

206.....15949

33 CFR

100.....16348
117.....16350
165.....16348

Proposed Rules:

175.....15709
177.....15709
179.....15709
181.....15709
183.....15709

40 CFR

52.....15688, 15922
90.....16526
300.....15926, 16351

Proposed Rules:

52.....15711, 15949
82.....16373

41 CFR

Ch. 301.....16352
60-250.....15690
60-999.....15690

45 CFR

Proposed Rules:

1635.....16383

46 CFR

Proposed Rules:

10.....15709
15.....15709
24.....15709
25.....15709
26.....15709
28.....15709
70.....15709
169.....15709
175.....15709

47 CFR

69.....16353

Proposed Rules:

0.....16388
69.....16389
73.....15712, 15713, 15714, 15715, 16388, 16396
76.....16388

49 CFR

195.....15926
571.....16358
581.....16359

50 CFR

17.....15691
648.....15704, 16361, 16362
679.....16361, 16362

Proposed Rules:

17.....16397
223.....16396, 16397
224.....16397
226.....16397
600.....16414
648.....16417

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT APRIL 5, 1999

COMMERCE DEPARTMENT
Economic Analysis Bureau
International services surveys:
Foreign direct investments in U.S.—
BE-15; annual survey; exemption level; published 3-4-99

COMMERCE DEPARTMENT
National Oceanic and Atmospheric Administration
Fishery conservation and management:
Alaska; fisheries of Exclusive Economic Zone—
Pacific cod; published 4-5-99

ENVIRONMENTAL PROTECTION AGENCY
Air pollutants, hazardous; national emission standards:
Radon emissions from phosphogypsum stacks; published 2-3-99
Air quality implementation plans; approval and promulgation; various States:
Florida; published 2-3-99
Superfund program:
National oil and hazardous substances contingency plan—
National priorities list update; published 4-5-99

FEDERAL COMMUNICATIONS COMMISSION
Radio services, special:
Private land mobile services—
800 and 900 MHz bands; operation and licensing; published 3-4-99

GENERAL SERVICES ADMINISTRATION
Federal travel:
Per diem localities; maximum lodging and meal allowances; published 4-5-99

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airworthiness directives:
Agusta S.p.A.; published 3-19-99
Boeing; published 3-1-99
Boeing; correction; published 3-15-99

TRANSPORTATION DEPARTMENT
National Highway Traffic Safety Administration
Motor vehicle safety standards:
Bumper standard; technical amendments; published 4-5-99
Lamps, reflective devices and associated equipment—
Location requirements for identification and clearance lamps mounted on rear of trucks and trailers; published 4-5-99

TREASURY DEPARTMENT
Customs Service
Customs bonds:
Warehouse withdrawals; aircraft turbine fuel; pipeline transportation; published 4-5-99

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT
Agricultural Marketing Service
Avocados grown in—
South Florida; comments due by 4-16-99; published 3-17-99
Prunes (dried) produced in California; comments due by 4-15-99; published 1-25-99

AGRICULTURE DEPARTMENT
Farm Service Agency
Program regulations:
Preferred lender program implementation and guaranteed loan regulations streamlining; comments due by 4-13-99; published 2-12-99

AGRICULTURE DEPARTMENT
Rural Business-Cooperative Service
Program regulations:
Preferred lender program implementation and guaranteed loan regulations streamlining; comments due by 4-13-99; published 2-12-99

AGRICULTURE DEPARTMENT
Rural Housing Service
Program regulations:
Preferred lender program implementation and guaranteed loan regulations streamlining; comments due by 4-13-99; published 2-12-99

AGRICULTURE DEPARTMENT
Rural Utilities Service
Program regulations:
Preferred lender program implementation and guaranteed loan regulations streamlining; comments due by 4-13-99; published 2-12-99

COMMERCE DEPARTMENT
Census Bureau
Foreign trade statistics:
Automated Export System; shipper's export data; electronic filing; comments due by 4-13-99; published 2-12-99

COMMERCE DEPARTMENT
National Oceanic and Atmospheric Administration
Fisheries assistance programs; fishing capacity reduction program; comments due by 4-12-99; published 2-11-99
Fishery conservation and management:
Northeastern United States fisheries—
Northeast multispecies; comments due by 4-13-99; published 3-29-99

DEFENSE DEPARTMENT
Federal Acquisition Regulation (FAR):
Progress payments and related financing policies; comments due by 4-12-99; published 2-10-99

EDUCATION DEPARTMENT
Special education and rehabilitative services:
Infants and toddlers with disabilities early intervention program; advice and recommendations request; comments due by 4-12-99; published 3-12-99

ENVIRONMENTAL PROTECTION AGENCY
Air pollutants, hazardous; national emission standards:
Secondary aluminum production; comments due by 4-12-99; published 2-11-99
Air pollution control; new motor vehicles and engines:
New nonroad spark-ignition engines rated above 19 kilowatts and new land-based recreational spark-ignition engines; comments due by 4-12-99; published 2-8-99
Air quality implementation plans; approval and promulgation; various States:
Delaware; comments due by 4-12-99; published 3-11-99
Iowa; comments due by 4-12-99; published 3-11-99
Kentucky; comments due by 4-14-99; published 3-15-99
Air quality implementation plans; approval and promulgation; various States; air quality planning purposes; designation of areas:
Ohio; comments due by 4-16-99; published 3-17-99
Air quality implementation plans; approval and promulgation; various States:
Oregon; comments due by 4-14-99; published 3-15-99
Texas; comments due by 4-14-99; published 3-15-99
Hazardous waste:
Mixed low-level radioactive waste; storage, treatment, and disposition; comments due by 4-15-99; published 3-1-99

FEDERAL COMMUNICATIONS COMMISSION
Common carrier services:
Inter-carrier compensation for Internet service provider (ISP)-bound traffic; comments due by 4-12-99; published 3-24-99
Radio broadcasting:
Broadcast and cable EEO rules and policies; extension; comments due by 4-15-99; published 4-5-99
Low power FM radio service; creation and operation; comments due by 4-12-99; published 2-16-99

FEDERAL HOUSING FINANCE BOARD
Federal home loan bank system:
Consolidated obligations; joint and several liability allocation; comments due by 4-12-99; published 2-11-99

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD
Thrift savings plan:

- Death benefits; transfer into G Fund after participant's death; comments due by 4-12-99; published 2-11-99

GENERAL SERVICES ADMINISTRATION

Federal Acquisition Regulation (FAR):
- Progress payments and related financing policies; comments due by 4-12-99; published 2-10-99

Federal property management:
- Purchase or lease determinations guidelines and use of private inspection, testing, and grading services; comments due by 4-12-99; published 2-10-99

Federal travel:
- Travel and relocation expenses test programs; comments due by 4-12-99; published 2-10-99

HEALTH AND HUMAN SERVICES DEPARTMENT

Children and Families Administration

Personal Responsibility and Work Opportunity Reconciliation Act of 1996; implementation:
- Child support enforcement program; revision or elimination of obsolete or inconsistent provisions; comments due by 4-12-99; published 2-9-99

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration

Food for human consumption:
- Food labeling—
  - Nutrient content claims; "healthy" definition; partial stay extension; comments due by 4-15-99; published 3-16-99

Human drugs and biological products:
- In vivo radiopharmaceuticals used for diagnosis and monitoring—
  - Evaluation and approval; developing medical imaging drugs and biologics; guidance availability; comments due by 4-14-99; published 2-16-99

HEALTH AND HUMAN SERVICES DEPARTMENT

Health Care Financing Administration

Medicare:
- Outpatient diabetes self-management training services; expanded coverage; comments due by 4-12-99; published 2-11-99

HOUSING AND URBAN DEVELOPMENT DEPARTMENT

Fair housing:
- Fair Housing Act violations; civil penalties; comments due by 4-12-99; published 2-10-99

INTERIOR DEPARTMENT

Minerals Management Service

Royalty management:
- Audit functions; delegation to States; comments due by 4-12-99; published 2-10-99
- Federal and Indian leases; oil valuation; comments due by 4-12-99; published 3-12-99

INTERIOR DEPARTMENT

Reclamation Bureau

Farm operation in excess 960 acres, information requirements; and formerly excess land eligibility to receive non-full cost irrigation water; comments due by 4-12-99; published 3-11-99

INTERIOR DEPARTMENT

Surface Mining Reclamation and Enforcement Office

Permanent program and abandoned mine land reclamation plan submissions:
- Pennsylvania; comments due by 4-12-99; published 3-12-99

Surface coal mining and reclamation operations:
- Ownership and control mining operations; definitions, permit requirements, enforcement actions, etc.; comments due by 4-15-99; published 3-31-99

JUSTICE DEPARTMENT

Drug Enforcement Administration

Records, reports, and exports of listed chemicals:
- Chemical mixtures that contain regulated chemicals; comments due by 4-16-99; published 2-12-99

JUSTICE DEPARTMENT

Immigration and Naturalization Service

Immigration:
- Aliens—
  - Employment eligibility verification; acceptable receipts; comments due by 4-12-99; published 2-9-99

JUSTICE DEPARTMENT

Illegal Immigration Reform and Immigrant Responsibility Act and Debt Collection Improvement Act; implementation:
- Employer sanctions, unfair immigration-related employment practice cases, and immigration-related document fraud; comments due by 4-13-99; published 2-12-99

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Federal Acquisition Regulation (FAR):
- Progress payments and related financing policies; comments due by 4-12-99; published 2-10-99

SECURITIES AND EXCHANGE COMMISSION

Securities and investment companies:
- Electronic Data Gathering, Analysis, and Retrieval (EDGAR) system modernization; comments due by 4-15-99; published 3-16-99

Securities:
- International disclosure standards; foreign private issuers conformance; comments due by 4-12-99; published 2-9-99
- Registered broker dealers and transfer agents and Year 2000 compliance; operational capability requirements; comments due by 4-12-99; published 3-11-99

TRANSPORTATION DEPARTMENT

Coast Guard

Drawbridge operations:
- Florida; comments due by 4-12-99; published 2-9-99
- Massachusetts; comments due by 4-14-99; published 3-15-99

Ports and waterways safety:
- Hudson River, NY; safety zone; comments due by 4-13-99; published 2-12-99

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:
- Fairchild; comments due by 4-12-99; published 2-18-99
- Fokker; comments due by 4-14-99; published 3-15-99
- McDonnell Douglas; comments due by 4-16-99; published 3-2-99
- Rolls-Royce Ltd.; comments due by 4-12-99; published 2-10-99
- Texton Lycoming; comments due by 4-12-99; published 2-10-99

Class E airspace; comments due by 4-15-99; published 3-8-99

Restricted areas; comments due by 4-12-99; published 2-26-99

TRANSPORTATION DEPARTMENT

National Highway Traffic Safety Administration

Fuel economy standards:
- Passenger automobiles; low volume manufacturer exemptions; comments due by 4-12-99; published 3-11-99

TREASURY DEPARTMENT

Alcohol, Tobacco and Firearms Bureau

Alcoholic beverages:
- Distilled spirits, wine, and malt beverages; labeling and advertising—
  - Fill standards; comments due by 4-12-99; published 2-9-99

TREASURY DEPARTMENT

Customs Service

Automated Export System:
- Shipper's export declarations and outbound vessel manifest information; electronic transmission; cross reference to Census Bureau regulations; comments due by 4-13-99; published 2-12-99

TREASURY DEPARTMENT

Internal Revenue Service

Income taxes:
- Group-term life insurance coverage costs; uniform premium table; comments due by 4-13-99; published 1-13-99

Procedure and administration:
- Timely mailing treated as timely filing/electronic postmark; comments due by 4-15-99; published 1-15-99

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–523–

6641. This list is also available online at http://www.nara.gov/fedreg.

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at http://www.access.gpo.gov/nara/index.html. Some laws may not yet be available.

H.R. 1212/P.L. 106–7

To protect producers of agricultural commodities who applied for a Crop Revenue Coverage PLUS supplemental endorsement for the 1999 crop year. (Apr. 1, 1999; 113 Stat. 12)

Last List April 2, 1999.

Public Laws Electronic Notification Service (PENS)

PENS is a free electronic mail notification service of newly enacted public laws. To subscribe, send E-mail to **listproc@lucky.fed.gov** with the text message:

subscribe PUBLAWS-L Your Name.

Note: This service is strictly for E-mail notification of new public laws. The text of laws is not available through this service. **PENS** cannot respond to specific inquiries sent to this address.

CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, stock numbers, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

A checklist of current CFR volumes comprising a complete CFR set, also appears in the latest issue of the LSA (List of CFR Sections Affected), which is revised monthly.

The CFR is available free on-line through the Government Printing Office's GPO Access Service at http://www.access.gpo.gov/nara/cfr/index.html. For information about GPO Access call the GPO User Support Team at 1-888-293-6498 (toll free) or 202-512-1530.

The annual rate for subscription to all revised paper volumes is $951.00 domestic, $237.75 additional for foreign mailing.

Mail orders to the Superintendent of Documents, Attn: New Orders, P.O. Box 371954, Pittsburgh, PA 15250–7954. All orders must be accompanied by remittance (check, money order, GPO Deposit Account, VISA, Master Card, or Discover). Charge orders may be telephoned to the GPO Order Desk, Monday through Friday, at (202) 512–1800 from 8:00 a.m. to 4:00 p.m. eastern time, or FAX your charge orders to (202) 512-2250.

Title	Stock Number	Price	Revision Date
1, 2 (2 Reserved)	(869–034–00001–1)	5.00	[5] Jan. 1, 1998
3 (1997 Compilation and Parts 100 and 101)	(869–034–00002–9)	19.00	[1] Jan. 1, 1998
4	(869–034–00003–7)	7.00	[5] Jan. 1, 1998
5 Parts:			
1–699	(869–038–00004–1)	37.00	Jan. 1, 1999
700–1199	(869–034–00005–3)	26.00	Jan. 1, 1998
1200–End, 6 (6 Reserved)	(869–034–00006–1)	39.00	Jan. 1, 1998
7 Parts:			
1–26	(869–038–00007–5)	25.00	Jan. 1, 1999
27–52	(869–038–00008–3)	32.00	Jan. 1, 1999
53–209	(869–038–00009–1)	20.00	Jan. 1, 1999
210–299	(869–034–00010–0)	44.00	Jan. 1, 1998
300–399	(869–038–00011–3)	25.00	Jan. 1, 1999
400–699	(869–038–00012–1)	37.00	Jan. 1, 1999
700–899	(869–034–00013–4)	30.00	Jan. 1, 1998
900–999	(869–034–00014–2)	39.00	Jan. 1, 1998
1000–1199	(869–034–00015–1)	44.00	Jan. 1, 1998
1200–1599	(869–034–00016–9)	34.00	Jan. 1, 1998
1600–1899	(869–034–00017–7)	58.00	Jan. 1, 1998
1900–1939	(869–034–00018–5)	18.00	Jan. 1, 1998
1940–1949	(869–034–00019–3)	33.00	Jan. 1, 1998
1950–1999	(869–034–00020–7)	40.00	Jan. 1, 1998
2000–End	(869–034–00021–5)	24.00	Jan. 1, 1998
8	(869–034–00022–3)	33.00	Jan. 1, 1998
9 Parts:			
1–199	(869–034–00023–1)	40.00	Jan. 1, 1998
200–End	(869–034–00024–0)	33.00	Jan. 1, 1998
10 Parts:			
0–50	(869–034–00025–8)	39.00	Jan. 1, 1998
51–199	(869–034–00026–6)	32.00	Jan. 1, 1998
200–499	(869–034–00027–4)	31.00	Jan. 1, 1998
500–End	(869–034–00028–2)	43.00	Jan. 1, 1998
*11	(869–038–0002–6)	20.00	Jan. 1, 1999
12 Parts:			
1–199	(869–038–00030–0)	17.00	Jan. 1, 1999
200–219	(869–038–00031–8)	20.00	Jan. 1, 1999
220–299	(869–038–00032–6)	40.00	Jan. 1, 1999
300–499	(869–034–00033–9)	23.00	Jan. 1, 1998
500–599	(869–038–00034–2)	24.00	Jan. 1, 1999
600–End	(869–034–00035–5)	44.00	Jan. 1, 1998
*13	(869–038–00036–9)	25.00	Jan. 1, 1999
14 Parts:			
1–59	(869–034–00037–1)	47.00	Jan. 1, 1998
60–139	(869–034–00038–0)	40.00	Jan. 1, 1998
140–199	(869–034–00039–8)	16.00	Jan. 1, 1998
200–1199	(869–034–00040–1)	29.00	Jan. 1, 1998
1200–End	(869–038–00041–5)	24.00	Jan. 1, 1999
15 Parts:			
0–299	(869–034–00042–8)	22.00	Jan. 1, 1998
300–799	(869–034–00043–6)	33.00	Jan. 1, 1998
800–End	(869–034–00044–4)	23.00	Jan. 1, 1998
16 Parts:			
0–999	(869–038–00045–8)	32.00	Jan. 1, 1999
1000–End	(869–034–00046–1)	33.00	Jan. 1, 1998
17 Parts:			
1–199	(869–034–00048–7)	27.00	Apr. 1, 1998
200–239	(869–034–00049–5)	32.00	Apr. 1, 1998
240–End	(869–034–00050–9)	40.00	Apr. 1, 1998
18 Parts:			
1–399	(869–034–00051–7)	45.00	Apr. 1, 1998
400–End	(869–034–00052–5)	13.00	Apr. 1, 1998
19 Parts:			
1–140	(869–034–00053–3)	34.00	Apr. 1, 1998
141–199	(869–034–00054–1)	33.00	Apr. 1, 1998
200–End	(869–034–00055–0)	15.00	Apr. 1, 1998
20 Parts:			
1–399	(869–034–00056–8)	29.00	Apr. 1, 1998
400–499	(869–034–00057–6)	28.00	Apr. 1, 1998
500–End	(869–034–00058–4)	44.00	Apr. 1, 1998
21 Parts:			
1–99	(869–034–00059–2)	21.00	Apr. 1, 1998
100–169	(869–034–00060–6)	27.00	Apr. 1, 1998
170–199	(869–034–00061–4)	28.00	Apr. 1, 1998
200–299	(869–034–00062–2)	9.00	Apr. 1, 1998
300–499	(869–034–00063–1)	50.00	Apr. 1, 1998
500–599	(869–034–00064–9)	28.00	Apr. 1, 1998
600–799	(869–034–00065–7)	9.00	Apr. 1, 1998
800–1299	(869–034–00066–5)	32.00	Apr. 1, 1998
1300–End	(869–034–00067–3)	12.00	Apr. 1, 1998
22 Parts:			
1–299	(869–034–00068–1)	41.00	Apr. 1, 1998
300–End	(869–034–00069–0)	31.00	Apr. 1, 1998
23	(869–034–00070–3)	25.00	Apr. 1, 1998
24 Parts:			
0–199	(869–034–00071–1)	32.00	Apr. 1, 1998
200–499	(869–034–00072–0)	28.00	Apr. 1, 1998
500–699	(869–034–00073–8)	17.00	Apr. 1, 1998
700–1699	(869–034–00074–6)	45.00	Apr. 1, 1998
1700–End	(869–034–00075–4)	17.00	Apr. 1, 1998
25	(869–034–00076–2)	42.00	Apr. 1, 1998
26 Parts:			
§§ 1.0-1–1.60	(869–034–00077–1)	26.00	Apr. 1, 1998
§§ 1.61–1.169	(869–034–00078–9)	48.00	Apr. 1, 1998
§§ 1.170–1.300	(869–034–00079–7)	31.00	Apr. 1, 1998
§§ 1.301–1.400	(869–034–00080–1)	23.00	Apr. 1, 1998
§§ 1.401–1.440	(869–034–00081–9)	39.00	Apr. 1, 1998
§§ 1.441–1.500	(869–034–00082–7)	29.00	Apr. 1, 1998
§§ 1.501–1.640	(869–034–00083–5)	27.00	Apr. 1, 1998
§§ 1.641–1.850	(869–034–00084–3)	32.00	Apr. 1, 1998
§§ 1.851–1.907	(869–034–00085–1)	36.00	Apr. 1, 1998
§§ 1.908–1.1000	(869–034–00086–0)	35.00	Apr. 1, 1998
§§ 1.1001–1.1400	(869–034–00087–8)	38.00	Apr. 1, 1998
§§ 1.1401–End	(869–034–00088–6)	51.00	Apr. 1, 1998
2–29	(869–034–00089–4)	36.00	Apr. 1, 1998
30–39	(869–034–00090–8)	25.00	Apr. 1, 1998
40–49	(869–034–00091–6)	16.00	Apr. 1, 1998
50–299	(869–034–00092–4)	19.00	Apr. 1, 1998
300–499	(869–034–00093–2)	34.00	Apr. 1, 1998
500–599	(869–034–00094–1)	10.00	Apr. 1, 1998
600–End	(869–034–00095–9)	9.00	Apr. 1, 1998
27 Parts:			
1–199	(869–034–00096–7)	49.00	Apr. 1, 1998

Title	Stock Number	Price	Revision Date
200-End	(869-034-00097-5)	17.00	[4] Apr. 1, 1998
28 Parts:			
0-42	(869-034-00098-3)	36.00	July 1, 1998
43-end	(869-034-00099-1)	30.00	July 1, 1998
29 Parts:			
0-99	(869-034-00100-9)	26.00	July 1, 1998
100-499	(869-034-00101-7)	12.00	July 1, 1998
500-899	(869-034-00102-5)	40.00	July 1, 1998
900-1899	(869-034-00103-3)	20.00	July 1, 1998
1900-1910 (§§ 1900 to 1910.999)	(869-034-00104-1)	44.00	July 1, 1998
1910 (§§ 1910.1000 to end)	(869-034-00105-0)	27.00	July 1, 1998
1911-1925	(869-034-00106-8)	17.00	July 1, 1998
1926	(869-034-00107-6)	30.00	July 1, 1998
1927-End	(869-034-00108-4)	41.00	July 1, 1998
30 Parts:			
1-199	(869-034-00109-2)	33.00	July 1, 1998
200-699	(869-034-00110-6)	29.00	July 1, 1998
700-End	(869-034-00111-4)	33.00	July 1, 1998
31 Parts:			
0-199	(869-034-00112-2)	20.00	July 1, 1998
200-End	(869-034-00113-1)	46.00	July 1, 1998
32 Parts:			
1-39, Vol. I		15.00	[2] July 1, 1984
1-39, Vol. II		19.00	[2] July 1, 1984
1-39, Vol. III		18.00	[2] July 1, 1984
1-190	(869-034-00114-9)	47.00	July 1, 1998
191-399	(869-034-00115-7)	51.00	July 1, 1998
400-629	(869-034-00116-5)	33.00	July 1, 1998
630-699	(869-034-00117-3)	22.00	[4] July 1, 1998
700-799	(869-034-00118-1)	26.00	July 1, 1998
800-End	(869-034-00119-0)	27.00	July 1, 1998
33 Parts:			
1-124	(869-034-00120-3)	29.00	July 1, 1998
125-199	(869-034-00121-1)	38.00	July 1, 1998
200-End	(869-034-00122-0)	30.00	July 1, 1998
34 Parts:			
1-299	(869-034-00123-8)	27.00	July 1, 1998
300-399	(869-034-00124-6)	25.00	July 1, 1998
400-End	(869-034-00125-4)	44.00	July 1, 1998
35	(869-034-00126-2)	14.00	July 1, 1998
36 Parts			
1-199	(869-034-00127-1)	20.00	July 1, 1998
200-299	(869-034-00128-9)	21.00	July 1, 1998
300-End	(869-034-00129-7)	35.00	July 1, 1998
37	(869-034-00130-1)	27.00	July 1, 1998
38 Parts:			
0-17	(869-034-00131-9)	34.00	July 1, 1998
18-End	(869-034-00132-7)	39.00	July 1, 1998
39	(869-034-00133-5)	23.00	July 1, 1998
40 Parts:			
1-49	(869-034-00134-3)	31.00	July 1, 1998
50-51	(869-034-00135-1)	24.00	July 1, 1998
52 (52.01-52.1018)	(869-034-00136-0)	28.00	July 1, 1998
52 (52.1019-End)	(869-034-00137-8)	33.00	July 1, 1998
53-59	(869-034-00138-6)	17.00	July 1, 1998
60	(869-034-00139-4)	53.00	July 1, 1998
61-62	(869-034-00140-8)	18.00	July 1, 1998
63	(869-034-00141-6)	57.00	July 1, 1998
64-71	(869-034-00142-4)	11.00	July 1, 1998
72-80	(869-034-00143-2)	36.00	July 1, 1998
81-85	(869-034-00144-1)	31.00	July 1, 1998
86	(869-034-00144-9)	53.00	July 1, 1998
87-135	(869-034-00146-7)	47.00	July 1, 1998
136-149	(869-034-00147-5)	37.00	July 1, 1998
150-189	(869-034-00148-3)	34.00	July 1, 1998
190-259	(869-034-00149-1)	23.00	July 1, 1998
260-265	(869-034-00150-9)	29.00	July 1, 1998
266-299	(869-034-00151-3)	33.00	July 1, 1998
300-399	(869-034-00152-1)	26.00	July 1, 1998
400-424	(869-034-00153-0)	33.00	July 1, 1998
425-699	(869-034-00154-8)	42.00	July 1, 1998
700-789	(869-034-00155-6)	41.00	July 1, 1998
790-End	(869-034-00156-4)	22.00	July 1, 1998
41 Chapters:			
1, 1-1 to 1-10		13.00	[3] July 1, 1984
1, 1-11 to Appendix, 2 (2 Reserved)		13.00	[3] July 1, 1984
3-6		14.00	[3] July 1, 1984
7		6.00	[3] July 1, 1984
8		4.50	[3] July 1, 1984
9		13.00	[3] July 1, 1984
10-17		9.50	[3] July 1, 1984
18, Vol. I, Parts 1-5		13.00	[3] July 1, 1984
18, Vol. II, Parts 6-19		13.00	[3] July 1, 1984
18, Vol. III, Parts 20-52		13.00	[3] July 1, 1984
19-100		13.00	[3] July 1, 1984
1-100	(869-034-00157-2)	13.00	July 1, 1998
101	(869-034-00158-1)	37.00	July 1, 1998
102-200	(869-034-00158-9)	15.00	July 1, 1998
201-End	(869-034-00160-2)	13.00	July 1, 1998
42 Parts:			
1-399	(869-034-00161-1)	34.00	Oct. 1, 1998
400-429	(869-034-00162-9)	41.00	Oct. 1, 1998
430-End	(869-034-00163-7)	51.00	Oct. 1, 1998
43 Parts:			
1-999	(869-034-00164-5)	30.00	Oct. 1, 1998
1000-end	(869-034-00165-3)	48.00	Oct. 1, 1998
44	(869-034-00166-1)	48.00	Oct. 1, 1998
45 Parts:			
1-199	(869-034-00167-0)	30.00	Oct. 1, 1998
200-499	(869-034-00168-8)	18.00	Oct. 1, 1998
500-1199	(869-034-00169-6)	29.00	Oct. 1, 1998
1200-End	(869-034-00170-0)	39.00	Oct. 1, 1998
46 Parts:			
1-40	(869-034-00171-8)	26.00	Oct. 1, 1998
41-69	(869-034-00172-6)	21.00	Oct. 1, 1998
70-89	(869-034-00173-4)	8.00	Oct. 1, 1998
90-139	(869-034-00174-2)	26.00	Oct. 1, 1998
140-155	(869-034-00175-1)	14.00	Oct. 1, 1998
156-165	(869-034-00176-9)	19.00	Oct. 1, 1998
166-199	(869-034-00177-7)	25.00	Oct. 1, 1998
200-499	(869-034-00178-5)	22.00	Oct. 1, 1998
500-End	(869-034-00179-3)	16.00	Oct. 1, 1998
47 Parts:			
0-19	(869-034-00180-7)	36.00	Oct. 1, 1998
20-39	(869-034-00181-5)	27.00	Oct. 1, 1998
40-69	(869-034-00182-3)	24.00	Oct. 1, 1998
70-79	(869-034-00183-1)	37.00	Oct. 1, 1998
80-End	(869-034-00184-0)	40.00	Oct. 1, 1998
48 Chapters:			
1 (Parts 1-51)	(869-034-00185-8)	51.00	Oct. 1, 1998
1 (Parts 52-99)	(869-034-00186-6)	29.00	Oct. 1, 1998
2 (Parts 201-299)	(869-034-00187-4)	34.00	Oct. 1, 1998
3-6	(869-034-00188-2)	29.00	Oct. 1, 1998
7-14	(869-034-00189-1)	32.00	Oct. 1, 1998
15-28	(869-034-00190-4)	33.00	Oct. 1, 1998
29-End	(869-034-00191-2)	24.00	Oct. 1, 1998
49 Parts:			
1-99	(869-034-00192-1)	31.00	Oct. 1, 1998
100-185	(869-034-00193-9)	50.00	Oct. 1, 1998
186-199	(869-034-00194-7)	11.00	Oct. 1, 1998
200-399	(869-034-00195-5)	46.00	Oct. 1, 1998
400-999	(869-034-00196-3)	54.00	Oct. 1, 1998
1000-1199	(869-034-00197-1)	17.00	Oct. 1, 1998
1200-End	(869-034-00198-0)	13.00	Oct. 1, 1998
50 Parts:			
1-199	(869-034-00199-8)	42.00	Oct. 1, 1998
200-599	(869-034-00200-5)	22.00	Oct. 1, 1998
600-End	(869-034-00201-3)	33.00	Oct. 1, 1998

Title	Stock Number	Price	Revision Date
CFR Index and Findings Aids	(869-034-00049-6)	46.00	Jan. 1, 1998
Complete 1998 CFR set		951.00	1998
Microfiche CFR Edition:			
Subscription (mailed as issued)		247.00	1998
Individual copies		1.00	1998
Complete set (one-time mailing)		247.00	1997
Complete set (one-time mailing)		264.00	1996

[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period July 1, 1997 to June 30, 1998. The volume issued July 1, 1997, should be retained.

[5] No amendments to this volume were promulgated during the period January 1, 1997 through December 31, 1997. The CFR volume issued as of January 1, 1997 should be retained.

[6] No amendments to this volume were promulgated during the period April 1, 1997, through April 1, 1998. The CFR volume issued as of April 1, 1997, should be retained.

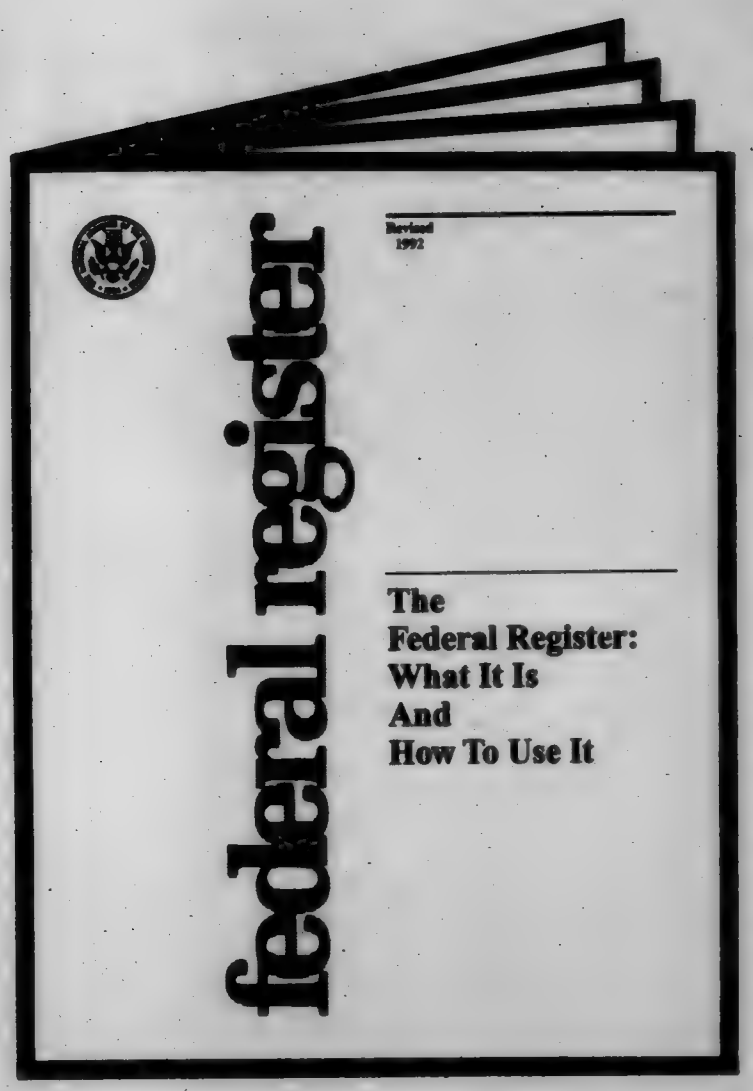

Announcing the Latest Edition

The Federal Register: What It Is and How to Use It

A Guide for the User of the Federal Register—Code of Federal Regulations System

This handbook is used for the educational workshops conducted by the Office of the Federal Register. For those persons unable to attend a workshop, this handbook will provide guidelines for using the *Federal Register* and related publications, as well as an explanation of how to solve a simple research problem.

Price $7.00

Superintendent of Documents **Publications** Order Form

Order Processing Code:
*** 6173**

☐ **YES**, enter my subscription(s) as follows:

Charge your order. It's Easy!

To fax your orders (202) 512–2250
Phone your orders (202) 512–1800

___/___ copies of **The Federal Register – What it is and Hot To Use It,** at $7.00 per copy. Stock No. 069–000–00044–4.

The total cost of my order is $ _____. **Price includes regular domestic postage and handling** and is subject to change.
International customers please add 25%

Company or personal name (Please type or print)

Additional address/attention line

Street address

City, State, ZIP code

Daytime phone including area code

Purchase order number (optional)

May we make your name/address available to other mailers? YES ☐ NO ☐

Please Choose Method of Payment:

☐ Check Payable to the Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐☐☐ – ☐
☐ VISA ☐ MasterCard Account
☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐
☐☐☐☐ (Credit card expiration date)

Thank you for your order!

Authorizing signature (Rev.11/3)

Mail To: Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250–7954

Would you like to know...

if any changes have been made to the Code of Federal Regulations or what documents have been published in the Federal Register without reading the Federal Register every day? If so, you may wish to subscribe to the *LSA (List of CFR Sections Affected)*, the *Federal Register Index*, or both.

LSA • List of CFR Sections Affected

The LSA (List of CFR Sections Affected) is designed to lead users of the Code of Federal Regulations to amendatory actions published in the Federal Register. The LSA is issued monthly in cumulative form. Entries indicate the nature of the changes—such as revised, removed, or corrected. $27 per year.

Federal Register Index

The index, covering the contents of the daily Federal Register, is issued monthly in cumulative form. Entries are carried primarily under the names of the issuing agencies. Significant subjects are carried as cross-references. $25 per year.

A finding aid is included in each publication which lists Federal Register page numbers with the date of publication in the Federal Register.

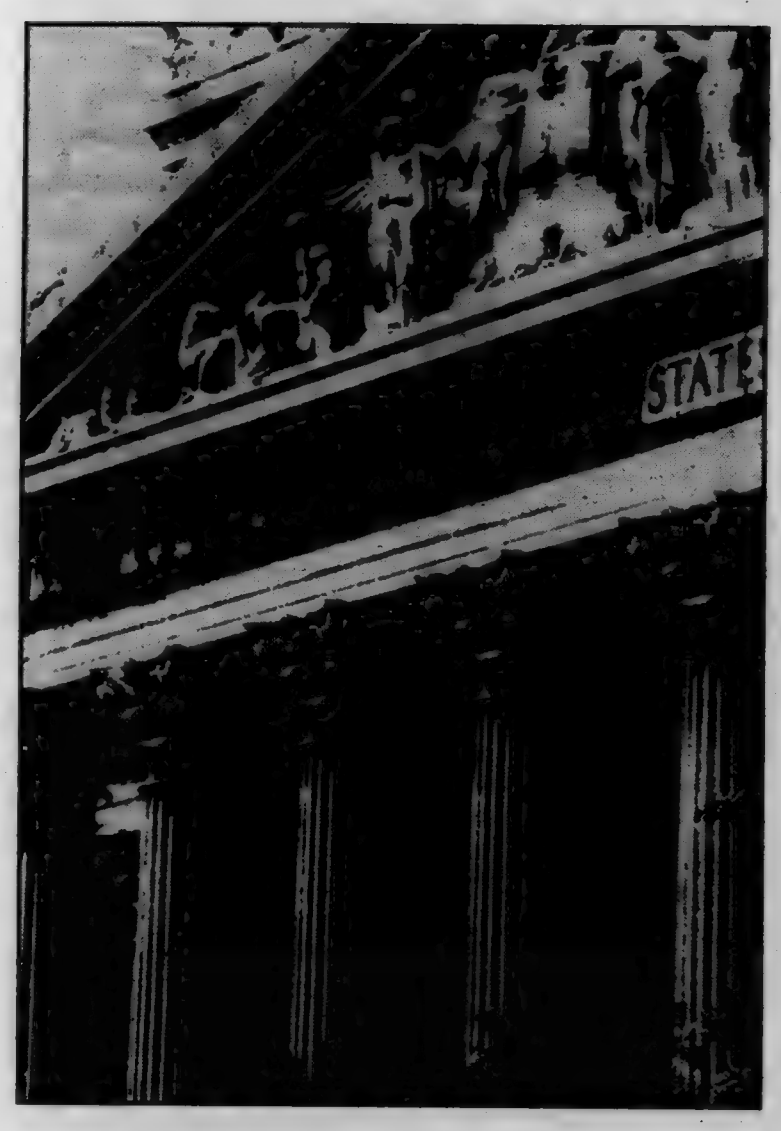

Superintendent of Documents **Subscription** Order Form

Order Processing Code:
*** 5421**

Charge your order. It's Easy! MasterCard VISA

To fax your orders (202) 512–2250
Phone your orders (202) 512–1800

☐ **YES**, enter the following indicated subscriptions for one year:

_____ **LSA (List of CFR Sections Affected)**, (LCS) for $27 per year.
_____ **Federal Register Index** (FRUS) $25 per year.

The total cost of my order is $ _____. **Price includes regular domestic postage and handling** and is subject to change. International customers please add 25%.

Company or personal name (Please type or print)

Additional address/attention line

Street address

City, State, ZIP code

Daytime phone including area code

Purchase order number (optional)

May we make your name/address available to other mailers? YES ☐ NO ☐

Please Choose Method of Payment:

☐ Check Payable to the Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐☐ – ☐☐☐☐
☐ VISA ☐ MasterCard Account
☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

☐☐☐☐ (Credit card expiration date)

Thank you for your order!

Authorizing Signature 1/97

Mail To: Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250–7954

Microfiche Editions Available...

Federal Register

The Federal Register is published daily in 24x microfiche format and mailed to subscribers the following day via first class mail. As part of a microfiche Federal Register subscription, the LSA (List of CFR Sections Affected) and the Cumulative Federal Register Index are mailed monthly.

Code of Federal Regulations

The Code of Federal Regulations, comprising approximately 200 volumes and revised at least once a year on a quarterly basis, is published in 24x microfiche format and the current year's volumes are mailed to subscribers as issued.

Microfiche Subscription Prices:

Federal Register:

One year: $220.00
Six months: $110.00

Code of Federal Regulations:

Current year (as issued): $247.00

Superintendent of Documents **Subscription** Order Form

Order Processing Code:
*** 5419**

Charge your order. It's Easy!

To fax your orders (202) 512–2250
Phone your orders (202) 512–1800

☐ **YES**, enter the following indicated subscription in 24x microfiche format:

_____ **Federal Register** (MFFR) ☐ One year at $220 each ☐ Six months at $110

_____ **Code of Federal Regulations** (CFRM7) ☐ One year at $247 each

The total cost of my order is $_____. **Price includes regular domestic postage and handling** and is subject to change. International customers please add 25%.

Company or personal name (Please type or print)

Additional address/attention line

Street address

City, State, ZIP code

Daytime phone including area code

Purchase order number (optional)

May we make your name/address available to other mailers? YES ☐ NO ☐

Please Choose Method of Payment:

☐ Check Payable to the Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐☐☐–☐
☐ VISA ☐ MasterCard Account
☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

☐☐☐☐ (Credit card expiration date)

Thank you for your order!

Authorizing signature 11/3

Mail To: Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250–7954

INFORMATION ABOUT THE SUPERINTENDENT OF DOCUMENTS' SUBSCRIPTION SERVICE

Know when to expect your renewal notice and keep a good thing coming. To keep our subscription prices down, the Government Printing Office mails each subscriber *only one renewal notice*. You can learn when you will get your renewal notice by checking the number that follows month/year code on the top line of your label *as shown in this example:*

A renewal notice will be sent approximately 90 days **before the shown date.**

```
AFR SMITH212J                    DEC97 R 1
JOHN SMITH
212 MAIN STREET
FORESTVILLE MD 20704
```

A renewal notice will be sent approximately 90 days **before the shown date.**

```
AFRDO SMITH212J                  DEC97 R 1
JOHN SMITH
212 MAIN STREET
FORESTVILLE MD 20704
```

To be sure that your service continues without interruption, please return your renewal notice promptly. If your subscription service is discontinued, simply send your mailing label from any issue to the Superintendent of Documents, Washington, DC 20402–9372 with the proper remittance. Your service will be reinstated.

To change your address: Please SEND YOUR MAILING LABEL, along with your new address to the Superintendent of Documents, Attn: Chief, Mail List Branch, Mail Stop: SSOM, Washington, DC 20402–9373.

To inquire about your subscription service: Please SEND YOUR MAILING LABEL, along with your correspondence, to the Superintendent of Documents, Attn: Chief, Mail List Branch, Mail Stop: SSOM, Washington, DC 20402–9373.

To order a new subscription: Please use the order form provided below.

Superintendent of Documents **Subscription** Order Form

Order Processing Code:
*** 5468**

Charge your order. It's Easy! MasterCard VISA

To fax your orders (202) 512–2250
Phone your orders (202) 512–1800

☐ **YES**, enter my subscription(s) as follows:

_____ subscriptions to **Federal Register (FR);** *including* the daily Federal Register, monthly Index and List of CFR Sections Affected (LSA), at $607 each per year.

_____ subscriptions to **Federal Register**, *daily only* (FRDO), at $555 each per year.

The total cost of my order is $_____. **Price includes regular domestic postage and handling**, and is subject to change. International customers please add 25%.

Company or personal name (Please type or print)

Additional address/attention line

Street address

City, State, ZIP code

Daytime phone including area code

Purchase order number (optional)

May we make your name/address available to other mailers? YES ☐ NO ☐

Please Choose Method of Payment:

☐ Check Payable to the Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐☐☐ – ☐
☐ VISA ☐ MasterCard Account
☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

☐☐☐☐ (Credit card expiration date)

Thank you for your order!

Authorizing signature 11/3

Mail To: Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250–7954

RVICE

VISA

512–2250
512–1800

change.

uments

– □

k you for
ur order!

11/3

–7954

VOL
64
ISS
64
AP
5
1999
UMI

Printed on recycled paper

VOL
64
ISS
65
AP
6
1999
UMI

4-6-99
Vol. 64

UMI

THE PAPER AND INK USED IN THE ORIGINAL PUBLICATION MAY AFFECT THE QUALITY OF THE MICROFORM EDITION.

United S
Governm
Printing
SUPERINTE
OF DOCUM
Washington,

OFFICIAL B
Penalty for p

4-6-99
Vol. 64 No. 65

federal register

Tuesday
April 6, 1999

United States
Government
Printing Office
SUPERINTENDENT
OF DOCUMENTS
Washington, DC 20402

OFFICIAL BUSINESS
Penalty for private use, $300

PERIODICALS
Postage and Fees Paid
U.S. Government Printing Office
(ISSN 0097-6326)

**********3-DIGIT 481
A FR UMI 346U DEC 99 R
UMI
PERIODICALS CHECK IN
PO BOX 1346
ANN ARBOR MI 48106
101

VOL
64
ISS
65
AP
6
1999
UMI

4-6-99
Vol. 64
Pages 1

ANN ARBOR MI 48106
101

4-6-99
Vol. 64 No. 65
Pages 16601–16796

federal register

Tuesday
April 6, 1999

Briefings on how to use the Federal Register
For information on briefings in Washington, DC, see announcement on the inside cover of this issue.

The **FEDERAL REGISTER** is published daily, Monday through Friday, except official holidays, by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). The Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 is the exclusive distributor of the official edition.

The **Federal Register** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders, Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress, and other Federal agency documents of public interest.

Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless the issuing agency requests earlier filing. For a list of documents currently on file for public inspection, see http://www.nara.gov/fedreg.

The seal of the National Archives and Records Administration authenticates the Federal Register as the official serial publication established under the Federal Register Act. Under 44 U.S.C. 1507, the contents of the **Federal Register** shall be judicially noticed.

The **Federal Register** is published in paper and on 24x microfiche. It is also available online at no charge as one of the databases on GPO Access, a service of the U.S. Government Printing Office.

The online edition of the **Federal Register** is issued under the authority of the Administrative Committee of the Federal Register as the official legal equivalent of the paper and microfiche editions (44 U.S.C. 4101 and 1 CFR 5.10). It is updated by 6 a.m. each day the **Federal Register** is published and it includes both text and graphics from Volume 59, Number 1 (January 2, 1994) forward.

GPO Access users can choose to retrieve online **Federal Register** documents as TEXT (ASCII text, graphics omitted), PDF (Adobe Portable Document Format, including full text and all graphics), or SUMMARY (abbreviated text) files. Users should carefully check retrieved material to ensure that documents were properly downloaded.

On the World Wide Web, connect to the **Federal Register** at http://www.access.gpo.gov/nara. Those without World Wide Web access can also connect with a local WAIS client, by Telnet to swais.access.gpo.gov, or by dialing (202) 512-1661 with a computer and modem. When using Telnet or modem, type swais, then log in as guest with no password.

For more information about GPO Access, contact the GPO Access User Support Team by E-mail at gpoaccess@gpo.gov; by fax at (202) 512–1262; or call (202) 512–1530 or 1–888–293–6498 (toll free) between 7 a.m. and 5 p.m. Eastern time, Monday–Friday, except Federal holidays.

The annual subscription price for the **Federal Register** paper edition is $555, or $607 for a combined **Federal Register,** Federal Register Index and List of CFR Sections Affected (LSA) subscription; the microfiche edition of the **Federal Register** including the Federal Register Index and LSA is $220. Six month subscriptions are available for one-half the annual rate. The charge for individual copies in paper form is $8.00 for each issue, or $8.00 for each group of pages as actually bound; or $1.50 for each issue in microfiche form. All prices include regular domestic postage and handling. International customers please add 25% for foreign handling. Remit check or money order, made payable to the Superintendent of Documents, or charge to your GPO Deposit Account, VISA, MasterCard or Discover. Mail to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954.

There are no restrictions on the republication of material appearing in the **Federal Register.**

How To Cite This Publication: Use the volume number and the page number. Example: 64 FR 12345.

Printed on recycled paper.

SUBSCRIPTIONS AND COPIES

PUBLIC
Subscriptions:
Paper or fiche — **202–512–1800**
Assistance with public subscriptions — **512–1806**
General online information — **202–512–1530; 1–888–293–6498**
Single copies/back copies:
Paper or fiche — **512–1800**
Assistance with public single copies — **512–1803**
FEDERAL AGENCIES
Subscriptions:
Paper or fiche — **523–5243**
Assistance with Federal agency subscriptions — **523–5243**

FEDERAL REGISTER WORKSHOP

THE FEDERAL REGISTER: WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: Sponsored by the Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:
1. The regulatory process, with a focus on the Federal Register system and the public's role in the development regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WASHINGTON, DC

WHEN: April 20, 1999 at 9:00 am.
WHERE: Office of the Federal Register
Conference Room
800 North Capitol Street, NW.
Washington, DC
(3 blocks north of Union Station Metro)
RESERVATIONS: 202–523–4538

Contents

Federal Register
Vol. 64, No. 65
Tuesday, April 6, 1999

Agency for International Development
RULES
Acquisition regulations:
Miscellaneous amendments, 16647–16649

Agriculture Department
See Animal and Plant Health Inspection Service
See Forest Service
See National Agricultural Statistics Service
See Rural Utilities Service

Air Force Department
NOTICES
Meetings:
Scientific Advisory Board, 16715

Animal and Plant Health Inspection Service
PROPOSED RULES
Exportation and importation of animals and animal products:
Horses from Morocco; change in disease status, 16655–16656

Census Bureau
NOTICES
Agency information collection activities:
Proposed collection; comment request, 16695

Centers for Disease Control and Prevention
NOTICES
Grants and cooperative agreements; availability, etc.:
Oral disease prevention and oral health promotion; infrastructure development initiatives, 16738–16740
Meetings:
Energy-Related Epidemiologic Research Advisory Committee, 16740–16741
Lung cancer among workers exposed to external ionizing radiation, 16741
Vaccine information materials:
Hepatitis B, Haemophilus influenzae type b (Hib), varicella (Chickenpox), and measles, mumps, rubella (MMR) vaccines
Correction, 16741–16742

Civil Rights Commission
NOTICES
Meetings; Sunshine Act, 16694

Coast Guard
RULES
Drawbridge operations:
Dulac Bayou, LA, 16641
Ports and waterways safety:
Bergen County United Way Fireworks, NY; safety zone, 16642–16643
Ward Cove, Tongass Narrows, AK; safety zone, 16641–16642

Commerce Department
See Census Bureau
See Export Administration Bureau
See Foreign-Trade Zones Board
See International Trade Administration
See National Oceanic and Atmospheric Administration
See Patent and Trademark Office
RULES
Acquisition regulations:
Agency protest procedures, 16651–16654
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 16694–16695

Consumer Product Safety Commission
NOTICES
Agency information collection activities:
Proposed collection; comment request, 16710–16711
Flamable Fabrics Act:
Polyurethane foam in upholstered furniture; labeling rule petition, 16711

Customs Service
RULES
Export control:
Used motor vehicles; exportation requirements, 16635–16640
NOTICES
Uruguay Round Agreements Act (URAA):
Foreign entities violating textile transshipment rules; list, 16781–16783

Defense Department
See Air Force Department
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 16711–16712
Travel per diem rates, civilian personnel; changes, 16712–16715

Education Department
NOTICES
Grants and cooperative agreements; availability, etc.:
Elementary and secondary education—
Native Hawaiian curriculum development, teacher training and recruitment program, 16715–16716
Native Hawaiian curriculum development; training and recruitment program, 16716–16718
Native Hawaiian family-based eduation centers program, 16718–16720

Employment and Training Administration
NOTICES
Adjustment assistance:
American Smelting and Refinery Co., 16755
Amoco Exploration and Production and Amoco Shared Services, 16755
Boeing Co., 16755–16756
Capco, Inc., et al., 16756–16757
Equity Oil Co., 16757
Hudson ICS, 16757
Motorola Ceramic Products, 16757
National Oilwell, 16757
Texaco Exploration and Producing, Inc., 16757

Adjustment assistance and NAFTA transitional adjustment assistance:
Tube City, Inc., et al., 16752–16755
NAFTA transitional adjustment assistance:
V.F. Jeanwear et al., 16757–16759

Energy Department
See Energy Information Administration
See Federal Energy Regulatory Commission
RULES
Acquisition regulations:
Performance guarantees, 16649–16651
NOTICES
Atomic energy agreements; subsequent arrangements, 16720
Environmental statements; availability, etc.:
Mixed oxide fuel; surplus plutonium disposition supplement, 16720–16721
Meetings:
Biological and Environmental Research Advisory Committee, 16721–16722
Environment Management Site-Specific Advisory Board—Idaho National Engineering and Environmental Laboratory, ID, 16722–16723

Energy Information Administration
NOTICES
Agency information collection activities:
Proposed collection; comment request, 16723–16725
Meetings:
American Statistical Association Committee on Energy Statistics, 16726

Environmental Protection Agency
RULES
Hazardous waste:
Identification and listing—
Exclusions, 16643–16647
PROPOSED RULES
Air quality implementation plans; approval and promulgation; various States:
Missouri, 16659–16661
NOTICES
Superfund; response and remedial actions, proposed settlements, etc.:
Conus Chemical So., 16732
Superfund program:
Prospective purchaser agreements—
Container Recycling Site, KS, 16732

Executive Office of the President
See Trade Representative, Office of United States

Export Administration Bureau
NOTICES
Agency information collection activities:
Proposed collection; comment request, 16695–16696
Meetings:
Materials Technical Advisory Committee, 16696–16697

Farm Credit Administration
RULES
Farm credit system:
Organization and disclosure to shareholders—
Bank director compensation limits, 16617–16618
NOTICES
Meetings; Sunshine Act, 16732–16733

Federal Aviation Administration
RULES
Airworthiness directives:
AlliedSignal Inc., 16621–16624
Avions Pierre Robin, 16624–16625
Boeing, 16625–16635
PROPOSED RULES
Airworthiness directives:
McDonnell Douglas, 16656–16658
NOTICES
Exemption petitions; summary and disposition, 16774–16775
Meetings:
Commercial Space Transportation Advisory Committee, 16775
Research, Engineering and Development Advisory Committee, 16775–16776
Passenger facility charges; applications, etc.:
Chicago O'Hare International Airport, IL, 16776
Cleveland Hopkins International Airport and Burke Lakefront Airport, OH, 16776–16777
University of Illinois-Willard Airport, IL, 16777–16778

Federal Communications Commission
PROPOSED RULES
Common carrier services:
Satellite communications—
Mobile and portable earth stations in 1610-1660.5 MHz band; emissions limits, 16687–16689
Practice and procedure:
Regulatory fees (1999 FY); assessment and collection, 16661–16687
NOTICES
Meetings:
North American Numbering Council, 16733

Federal Emergency Management Agency
NOTICES
Agency information collection activities:
Proposed collection; comment request, 16733–16735
Submission for OMB review; comment request, 16735–16737
Meetings:
Technical Mapping Advisory Council, 16737

Federal Energy Regulatory Commission
NOTICES
Hydroelectric applications, 16729–16730
Meetings:
Capacity benefit margin in computing; available transmission capacity; technical conference, 16730–16732
Applications, hearings, determinations, etc.:
Bangor Hydro Electric Co., 16726
Boundary Gas, Inc., 16726–16727
Great Lakes Gas Transmission L.P., 16727
Kansas Pipeline Co., 16727–16728
Mid Louisiana Gas Co., 16728
Northern Border Pipeline Co., 16728–16729

Federal Housing Finance Board
RULES
Federal home loan bank system:
Eligible collateral for FHL bank advances, clarification and verification, 16618–16621
Mandatory excess capital stock redemption; prohibition of fee payment in lieu of stock redemption, 16787–16791

PROPOSED RULES
Federal home loan bank system:
Mandatory excess capital stock redemption; prohibited stock dividends, 16792–16795

Federal Maritime Commission
NOTICES
Freight forwarder licenses:
Palmetto Freight Forwarding Corp., 16737

Federal Railroad Administration
NOTICES
Meetings:
Railroad Safety Advisory Committee, 16778

Federal Reserve System
RULES
Consumer leasing (Regulation M):
Lease advertisements, multiple-item leases; renegotiations and extensions and estimates of official fees and taxes; disclosure guidance, 16612–16614
Truth in lending (Regulation Z):
Calculation of payment schedules involving private mortgage insurance, etc., 16614–16617
NOTICES
Banks and bank holding companies:
Formations, acquisitions, and mergers, 16737
Permissible nonbanking activities, 16738

Federal Transit Administration
NOTICES
Environmental statements; notice of intent:
Cincinnati/Northern Kentucky Region; light rail transit project, 16778–16780

Financial Management Service
See Fiscal Service

Fiscal Service
NOTICES
Surety companies acceptable on Federal bonds:
Allied Mutual Surety Company, 16783
Columbia Mutual Insurance Company, 16783–16784
Michigan Mutual Insurance Company, 16784
Nova Casualty Co., 16784

Fish and Wildlife Service
NOTICES
Endangered and threatened species:
Incidental take permits—
Florida scrubjay and eastern indigo snake, 16745–16747

Food and Drug Administration
NOTICES
Food additive petitions:
Arakawa Chemical Industries, Ltd., 16742
Proctor & Gamble Co., 16742–16743
Food for human consumption:
Indentity standards deviation; market testing permits—
Kraft Foods, Inc.; grated parmesan cheese, 16743
GRAS or prior sanctioned ingredients:
Flax Council of Canada, 16743
Reports and guidance documents; availability, etc.:
Public health issues posed by use of nonhuman primate xenografts in humans; industry guidance, 16743–16744

Foreign-Trade Zones Board
NOTICES
Applications, hearings, determinations, etc.:
Pennsylvania
Sandvik Saws & Tools, Inc.; wharehousing and distribution facility, 16697

Forest Service
NOTICES
Meetings:
Southwest Oregon Province Interagency Executive Advisory Committee, 16693

Health and Human Services Department
See Centers for Disease Control and Prevention
See Food and Drug Administration

Housing and Urban Development Department
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 16744–16745

Immigration and Naturalization Service
NOTICES
Citizen attestation employment eligibility pilot program; guidance, 16751–16752

Interior Department
See Fish and Wildlife Service
See Land Management Bureau

Internal Revenue Service
RULES
Procedure and administration:
Unified partnership audit procedures; modifications and additions, 16640
NOTICES
Agency information collection activities:
Proposed collection; comment request, 16784–16786
Inflation adjustment factor and reference prices:
Nonconventional source fuel credit, 16786

International Trade Administration
NOTICES
Antidumping:
Brass sheet and strip from—
Germany, 16697–16699
Hot-rolled lead and bismuth carbon steel products from—
Germany, 16703–16707
United Kingdom, 16699–16703
Industrial nitrocellulose from—
United Kingdom, 16707

Judicial Conference of the United States
NOTICES
Meetings:
Judicial Conference Advisory Committee on—
Appellate Procedure Rules, 16748
Bankruptcy Procedure Rules, 16749
Civil Procedure Rules, 16748
Criminal Procedure Rules, 16748–16749
Evidence Rules, 16748
Practice and Procedure Rules, 16748–16749

Justice Department
See Immigration and Naturalization Service

NOTICES
Pollution control; consent judgments:
A.G. Miller Co., Inc., et al., 16749
American Board Companies, Inc., C.I. Liquidators of New York, Inc., and Great American Industries, Inc., 16749–16750
American Home Products Corp. et al., 16750
Ben Shemper & Sons, Inc., et al., 16750
Berks Associates, Inc., et al., 16751
Commercial Auto Body, et al., 16751

Labor Department
See Employment and Training Administration
See Mine Safety and Health Administration
See Occupational Safety and Health Administration

Land Management Bureau
NOTICES
Meetings:
California Desert District Advisory Council, 16747
Resource advisory councils—
Northeast California, 16747
National Petroleum Reserve:
Alaska; additions, 16747–16748

Mine Safety and Health Administration
NOTICES
Safety standard petitions:
International Uranium Corp., et al., 16759–16761

National Agricultural Statistics Service
NOTICES
Committees; establishment, renewal, termination, etc.:
Agricultural Statistics Advisory Committee, 16693–16694

National Highway Traffic Safety Administration
PROPOSED RULES
Civil monetary penalties; inflation adjustment, 16690–16692

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
Alaska; fisheries of Exclusive Economic Zone—
Gulf of Alaska shallow-water species; direct fishing prohibition by vessels using trawl gear, 16654
NOTICES
Meetings:
North Pacific Fishery Management Council, 16707–16708
Western Pacific Fishery Management Council, 16708–16709

Nuclear Regulatory Commission
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 16763–16764
Environmental statements; availability, etc.:
Public Service Electric & Gas Co., 16764–16765
Meetings:
Reactor Safeguards Advisory Committee, 16765
Applications, hearings, determinations, etc.:
Molycorp, Inc., 16764

Occupational Safety and Health Administration
NOTICES
Grants and cooperative agreements; availability, etc.:
Susan Harwood training program, 16761–16763

Office of United States Trade Representative
See Trade Representative, Office of United States

Patent and Trademark Office
NOTICES
Agency information collection activities:
Proposed collection; comment request, 16709–16710

Personnel Management Office
RULES
Group life insurance, Federal employees:
Court orders, 16601–16602

Postal Service
NOTICES
Privacy Act:
Systems of records, 16765–16766

Public Debt Bureau
See Fiscal Service

Public Health Service
See Centers for Disease Control and Prevention
See Food and Drug Administration

Rural Utilities Service
RULES
Telecommunications system construction policies and procedures:
Telecommunications borrowers preloan and postloan requirements; reduction of RUS oversight with respect to preparation of plans and specifications, etc., 16602–16612

Securities and Exchange Commission
NOTICES
Agency information collection activities:
Proposed collection; comment request, 16766–16767
Self-regulatory organizations; proposed rule changes:
Chicago Board Options Exchange, Inc., 16771
National Securities Clearing Corp., 16772
Options Clearing Corp., 16772–16773
Applications, hearings, determinations, etc.:
Aquinas Funds, Inc., et al., 16767–16769
Brantley Capital Corp., 16769–16771

Statistical Reporting Service
See National Agricultural Statistics Service

Surface Transportation Board
NOTICES
Railroad operation, acquisition, construction, etc.:
Union Pacific Railroad Co., 16780

Trade Representative, Office of United States
NOTICES
Meetings:
Trade Policy and Negotiations Advisory Committee, 16773

Transportation Department
See Coast Guard
See Federal Aviation Administration
See Federal Railroad Administration
See Federal Transit Administration
See National Highway Traffic Safety Administration
See Surface Transportation Board
NOTICES
Aviation proceedings:
Agreements filed; weekly receipts, 16774

Treasury Department
See Customs Service
See Fiscal Service
See Internal Revenue Service
NOTICES
Reports and guidance documents; availability, etc.:
Capital Budgeting Study Commission, 16780–16781

Separate Parts In This Issue

Part II
Federal Housing Finance Board, 16787–16795

Reader Aids
Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

5 CFR
870.....16601

7 CFR
1753.....16602

9 CFR
Proposed Rules:
93.....16655

12 CFR
213.....16612
226.....16614
611.....16617
620.....16617
935 (2 documents) 16618, 16788

Proposed Rules:
933.....16792
934.....16792
935.....16792

14 CFR
39 (3 documents) 16621, 16624, 16625

Proposed Rules:
39.....16656

19 CFR
178.....16635
192.....16635

26 CFR
301.....16640

33 CFR
117.....16641
165 (2 documents) 16641, 16642

40 CFR
261.....16643

Proposed Rules:
52.....16659
70.....16659

47 CFR
Proposed Rules:
1.....16661
2.....16687
25.....16687

48 CFR
701.....16647
703.....16647
715.....16647
731.....16647
752.....16647
909.....16649
970.....16649
1333.....16651

49 CFR
Proposed Rules:
578.....16690

50 CFR
679.....16654

Rules and Regulations

Federal Register
Vol. 64, No. 65
Tuesday, April 6, 1999

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 870

RIN 3206–AI49

Federal Employees' Group Life Insurance Program: Court Orders

AGENCY: Office of Personnel Management.

ACTION: Interim rule with request for comments.

SUMMARY: The Office of Personnel Management (OPM) is issuing interim regulations to implement a new law, which was enacted July 22, 1998. This law requires that provisions of a court decree of divorce, annulment, or legal separation, or the terms of a court order or court-approved property settlement agreement relating to such a court decree be followed instead of the otherwise existing statutory order of precedence for payment of benefits under the Federal Employees' Group Life Insurance Program.

DATES: Interim rules are effective May 6, 1999. Comments must be received on or before June 7, 1999.

ADDRESSES: Send written comments to Abby L. Block, Chief, Insurance Policy and Information Division, Office of Insurance Programs, Retirement and Insurance Service, Office of Personnel Management, PO Box 57, Washington, DC 20044; or deliver to OPM, Room 3425, 1900 E Street, NW, Washington, DC; or FAX to (202) 606–0633.

FOR FURTHER INFORMATION CONTACT: Karen Leibach, (202) 606–0004.

SUPPLEMENTARY INFORMATION: The Federal Employees' Group Life Insurance (FEGLI) law sets an order of precedence for payment of benefits following the death of an insured employee, annuitant, or compensationer (5 U.S.C. 8705). First in the order of precedence is a designated beneficiary. There has been no statutory limitation on changing designations.

When a divorce decree requires an individual insured under FEGLI to name his/her children or former spouse as the beneficiary, it is possible the individual may not comply or may comply and then change the designation at a later date. This action, while potentially in violation of the court order, did not violate the FEGLI law.

Pub. L. 105–205, 112 Stat. 683, enacted July 22, 1998, requires benefits to be paid in accordance with the terms of a court decree of divorce, annulment, or legal separation, or the terms of any court order or court-approved property settlement agreement relating to a court decree of divorce, annulment, or legal separation, regardless of whether or not the insured individual actually completes a designation complying with the court order, if the court order is received in the appropriate office before the death of the insured individual. To the extent provided in the court order, the court order supersedes any prior designation by the insured individual. Pub. L. 105–205 also prohibits an insured individual from changing his/her designation, unless the person(s) named in the court order agrees or unless the court order is subsequently modified by the court that originally issued it.

These regulations define the types of court orders that the law applies to and state that the statutory order of precedence will not be applicable if such a court order has been received in the appropriate office on or after the date of enactment of the legislation and prior to the death of the insured. The appropriate office for active employees is their employing agency; the appropriate office for separated employees (annuitants) is OPM. For a compensationer, during the first 12 months of nonpay status the appropriate office is their employing agency; after separation or the completion of 12 months in nonpay status, the appropriate office is OPM. To avoid the possibility of a fraudulent submission, we are requiring that certified copies of the court orders be submitted.

In the event of conflicting court orders, the Office of Federal Employees' Group Life Insurance (OFEGLI) will pay benefits based on whichever court order has the earliest date of execution and meets the requirement of having been received by the appropriate office on or after the date of enactment and before the death of the insured. (A domestic relations court order from one court does not automatically have the effect of modifying an existing domestic relations court order from another court.)

Pub. L. 105–205 also allows a court order to direct the insured to make an irrevocable assignment to the person(s) named in the court order. However, until the insured individual properly completes an assignment form, the assignment does not occur.

These regulations also correct an error to § 870.506(e)(2) to state that eligible employees who return to Federal service after a break in service of 180 days or more receive whatever Optional insurance coverage they had before separation, if they do not submit a Life Insurance Election specifically electing or waiving Optional insurance.

Waiver of General Notice of Proposed Rulemaking

Under section 553 (b)(3)(B) and (d)(3) of title 5, United States Code, I find that good cause exists for waiving the general notice of proposed rulemaking. These regulations implement Pub. L. 105–205, which became effective July 22, 1998.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because the regulation will only affect life insurance benefits of Federal employees and retirees.

Executive Order 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with Executive Order 12866.

List of Subjects in 5 CFR Part 870

Administrative practice and procedure, Government employees, Hostages, Iraq, Kuwait, Lebanon, Life insurance, Retirement.

U.S. Office of Personnel Management.

Janice R. Lachance,

Director.

Accordingly, OPM is amending 5 CFR part 870 as follows:

PART 870—FEDERAL EMPLOYEES' GROUP LIFE INSURANCE PROGRAM

1. The authority citation for part 870 is revised to read as follows:

Authority: 5 U.S.C. 8716; subpart J also issued under sec. 599C of Pub. L. 101–513, 104 Stat. 2064, as amended; § 870.302 also issued under sections 11202(f), 11232(e), and 11246(b) and (c) of Pub. L. 105–33, 111 Stat. 251; §§ 870.101, 870.801, 870.802, and 870.901 also issued under Pub. L. 105–205, 112 Stat. 683.

2. In § 870.101, the definition *Court order* is added in alphabetical *order* to read as follows:

§ 870.101 Definitions.

* * * * *

Court order means any court decree of divorce, annulment, or legal separation, or the terms of any court order or court-approved property settlement agreement relating to any court decree of divorce, annulment, or legal separation, the terms of which require FEGLI benefits to be paid to a specific person or persons.

* * * * *

3. In § 870.506, the third sentence of paragraph (e)(2) is revised to read as follows:

§ 870.506 Optional insurance: cancelling a waiver.

* * * * *

(e) * * *

(2) * * * If the employee doesn't file a Life Insurance Election, in a manner designated by OPM, within the 31-day period, the employee gets whatever Optional insurance coverage he/she had immediately before separating from Federal service and is considered to have waived any other Optional insurance. * * *

* * * * *

4. In § 870.801, paragraph (a), introductory text, is revised, paragraphs (d) and (e) are redesignated as paragraphs (e) and (f), and a new paragraph (d) is added to read as follows:

§ 870.801 Order of precedence and payment of benefits.

(a) Except as provided in paragraph (d) of this section, benefits are paid according to the order of precedence stated in 5 U.S.C. 8705(a), as follows:

* * * * *

(d)(1) If there is a court order in effect naming a specific person or persons to receive life insurance benefits upon the death of an insured individual, Basic insurance and Option A and Option B insurance will be paid to the person or persons named in the court order, instead of according to the order of precedence.

(2) To qualify a person for such payment, a certified copy of the court order must be received by the appropriate office on or after July 22, 1998, and before the death of the insured.

(3)(i) For employees, the appropriate office is their employing agency.

(ii) For annuitants, the appropriate office is OPM.

(iii) For compensationers during the first 12 months of nonpay status, the appropriate office is their employing agency.

(iv) For compensationers after separation or the completion of 12 months in nonpay status, the appropriate office is OPM.

(4) If, within the applicable time frames, the appropriate office receives conflicting court orders entitling different persons to the same insurance, benefits will be paid based on whichever court order was issued first.

* * * * *

5. In § 870.802, the first sentence of paragraph (a) is revised, and a new paragraph (i) is added to read as follows:

§ 870.802 Designation of beneficiary.

(a) Except as provided in paragraph (i) of this section, if an insured individual wants benefits paid differently from the order of precedence, he/she must file a designation of beneficiary. * * *

* * * * *

(i) (1) Except as provided in paragraph (i)(2) of this section, if a court order has been received in accordance with § 870.801(d), an insured individual cannot designate a different beneficiary, unless

(i) The person(s) named in the court order gives written consent for the change, or

(ii) The court order is modified.

(2) If a court order has been received in accordance with § 870.801(d), and the court order applies to only part of the insurance benefits, an insured individual can designate a different beneficiary to receive the insurance benefits that are not included under the court order. If the insured individual does not make a designation for these benefits and there is no previous valid designation on file, benefits will be paid according to the order of precedence shown in § 870.801(a).

(3) If a court order received in accordance with § 870.801(d) is subsequently modified without naming a new person to receive the benefits, and a certified copy of the modified court order is received by the appropriate office before the death of the insured, the insured individual can designate a beneficiary. Benefits will be paid according to the order of precedence shown in § 870.801(d) if the insured individual does not complete a new designation of beneficiary.

6. In § 870.901, paragraph (i) is added to read as follows:

§ 870.901 Assignments permitted

* * * * *

(i) A court order can direct that an insured individual make an irrevocable assignment to the person(s) named in the court order. For an assignment to be effective, the insured individual must follow the procedures in § 870.902.

[FR Doc. 99–8279 Filed 4–5–99; 8:45 am]

BILLING CODE 6325–01–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

7 CFR Part 1753

RIN 0572–AB34

Telecommunications System Construction Policies and Procedures

AGENCY: Rural Utilities Service, USDA.

ACTION: Final rule.

SUMMARY: The Rural Utilities Service (RUS) hereby amends its regulations on telecommunications system construction policies and procedures. This revision includes empowering the telecommunications borrowers by reducing oversight by RUS with respect to preparation of plans and specifications, bid approvals, and final document approvals. In addition to reducing the requirements for facilities construction, RUS will also make technical corrections and clarifications, and minor technical changes.

EFFECTIVE DATE: This regulation is effective on May 6, 1999.

FOR FURTHER INFORMATION CONTACT: Orren E. Cameron III, Director, Telecommunications Standards Division, Rural Utilities Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW, STOP 1598, Washington, DC 20250–1598. Telephone: (202) 720–8660; e-mail: ecameron@rus.usda.gov.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This final rule has been determined to be not significant for purposes of Executive Order 12866 and therefore has not been reviewed by the Office of Management and Budget.

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil

Justice Reform. RUS has determined that this final rule meets the applicable standards provided in Section 3. of the Executive Order. In addition, all State and local laws and regulations that are in conflict with this rule will be preempted, no retroactive effect will be given to this rule, and, in accordance with § 212(e) of the Department of Agriculture Reorganization Act of 1994 (7 U.S.C. 6912(e)), administrative appeal procedures, if any, must be exhausted before an action against the Department or its agencies may be initiated.

Regulatory Flexibility Act Certification

The Administrator of RUS has determined that this final rule will not have a significant economic impact on a substantial number of small entities, as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The RUS telecommunications program provides loans to borrowers at interest rates and terms that are more favorable than those generally available from the private sector. RUS borrowers, as a result of obtaining federal financing, receive economic benefits which exceed any direct economic costs associated with complying with RUS regulations and requirements. Moreover, this action liberalizes certain contract requirements by changing contract limits thereby reducing RUS oversight requirements and further offsetting economic costs. Therefore an analysis under the Regulatory Flexibility act is not required.

Information Collection and Recordkeeping Requirements

The Office of Management and Budget (OMB) approval of the information collection requirements of this rule under the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended), OMB control number 0572–0059, has expired. In the preamble of its Notice of Proposed Rulemaking on Telecommunications System Construction Policies and Procedures, published July 17, 1998, (63 FR 38503), RUS included a statement regarding the collection of information in this rule and provided an opportunity for public comment. RUS will publish a Notice in the **Federal Register** upon receipt of OMB approval of the collection of information. No person is required to respond to the collection of information required by this rule until such Notice is published.

National Environmental Policy Act Certification

The Administrator of RUS has determined that this final rule will not significantly affect the quality of the human environment as defined by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). Therefore, this action does not require an environmental impact statement of assessment.

Catalog of Federal Domestic Assistance

The program described by this final rule is listed in the Catalog of Federal Domestic Assistance Programs under No. 10.851, Rural Telephone Loans and Loan Guarantees, and No. 10.852, Rural Telephone Bank Loans. This catalog is available on a subscription basis from the Superintendent of Documents, United States Government Printing Office, Washington, DC 20402–9325.

Executive Order 12372

This final rule is excluded from the scope of Executive Order 12372, Intergovernmental Consultation, which may require consultation with State and local officials. See notice related to a final rule entitled "Department Programs and Activities Excluded from Executive Order 12372," (50 FR 47034) which published re-determined that RUS loans, loan guarantees, and RTB bank loans were exempted from coverage under this order.

Unfunded Mandates

This rule contains no Federal Mandates (under the regulatory provision of Title II of the Unfunded Mandates Reform Act of 1995) for State, local, and tribal governments or the private sector. Thus, this rule is not subject to the requirements of section 202 and 205 of the Unfunded Mandates Reform Act.

Background

RUS has undertaken a strategic review of all policies and procedures covering its preloan and postloan requirements of borrowers. This review was part of RUS efforts in governmental streamlining and empowering the recipients of the loans provided under the Rural Electrification Act (RE Act) of 1936, (7 U.S.C. 901 *et seq.*). As a result of this review, several procedures and policies were deemed no longer necessary. Other policies and procedures have been streamlined and RUS will place more responsibility with the borrowers to insure a more cost effective review process while maintaining the required loan security. In view of this increased reliance upon borrowers and their consultants, certain provisions have been added to reduce the government's vulnerability to conflicts of interest. Provisions have also been added for construction of headquarters facilities pursuant to the Rural Electrification Loan Restructuring Act of 1993 (107 Stat. 1356).

RUS is also making technical corrections to final regulations which were reorganized and redesignated on September 27, 1990, at 55 FR 39393. In particular, certain regulations contained cross references which inadvertently had not been updated. This action is simply a correction to these regulations with no change to substance. Changes to regulatory text are merely to update cross references. As currently published, the final regulations may prove to be misleading.

Comments

Public comments were received from Hicks and Ragland Engineering Company, Harry Hutson, and Century Telephone Enterprises. The comments, recommendations, and responses are summarized as follows:

Comment: In regard to § 1753.7(e) one commenter questioned whether new bids had to be taken on a project or changes with the awarded bidder could be negotiated when a substantial change in the plans and specifications (P&S) is required after executed contacts have been obtained.

Response: Changes in the plans and specifications do not require new bids but can be handled by contract amendments as described in § 1753.11.

Comment: One commenter stated that § 1753.2 defines major construction as projects estimated to cost more than $250,000, and minor construction as projects estimated to cost $250,000 or less. Section 1753.46(2) states that contracts under $250,000, may, at the borrower's option, be negotiated. Section 1753.5(2) states that RUS approval is required for negotiated major construction contracts. By definition there is no major construction below $250,000. Therefore, we cannot have a negotiated major construction contract.

Response: Certain RUS contracts such as RUS Forms 525 and 545 for central office equipment may be used for negotiated major construction with RUS approval.

Comment: One commenter stated that § 1753.46 discusses minor construction. Since the limit for minor construction is now $250,000, this information should be in the minor construction section not the major construction section.

Response: RUS believes that a discussion of the use of the RUS Forms 515 and 773 is appropriate in this section. RUS added a sentence to § 1753.77 in this final rule indicating that the rules for using these forms are contained in subpart F.

Comment: One commenter stated that minor construction can be accomplished via work order, RUS Forms 773 or 515. A Form 515 contract under $250,000 can be negotiated except if equal to $250,000, which is almost impossible. To make this more sensible, the borrower should be able to negotiate, at their option, Form 515 contracts costing $250,000 or less.

Response: RUS agrees with this comment and made the change in the appropriate paragraphs.

Comment: One commenter stated that § 1753.7(e) contains the statement "estimated to cost over $500,000 or 25% of the total loan, whichever is less." This statement appears in numerous paragraphs throughout this part 1753 but in these statements "whichever is less" does not appear. For clarity, it should be stated each time the statement appears whether you mean it to be less than or more than.

Response: RUS agrees with this comment. The phrase "whichever is less" is added in the appropriate paragraphs.

Comment: One commenter stated § 1753.48(b) should be eliminated since you can not negotiate above $250,000.

Response: RUS agrees in part with this comment. The first sentence in § 1753.48(b) raises the negotiation limit to $250,000 and is useful. The second sentence is deleted in this final rule.

Comment: One commenter said there should be no reference in the major construction section to negotiated RUS Form 515 or 773 contracts.

Response: Negotiated RUS Form 515 contracts operate under the same rules as any other Form 515 contract so it is covered in subpart F. RUS Form 773 is only mentioned in subpart F for the reader's convenience. For rules regarding the use of RUS Form 773, the reader is referred by subpart F to subpart I.

Comment: One commenter stated that § 1653.47(c) requires checklist Form 553 be completed and signed by the borrower's engineer and submitted to RUS for review with the plans and specifications. RUS Form 553 is so out of date that the Washington, D.C., staff does not use it or require it. Rus Form 553 should be updated or eliminated.

Response: RUS agrees with this comment and references to Form 553 are deleted in this final rule.

Comment: One commenter stated that there is confusing language in § 1753.48(b) regarding negotiated procurement for RUS Form 515 contract. The first part of the paragraph says bids are not required for outside plant construction which is estimated to cost less than $250,000, but the last part says plans and specifications for proposed contracts exceeding $500,000 must be approved by RUS before negotiations with a contractor may begin.

Response: RUS agrees with this comment. The second sentence in § 1753.48(b) is deleted in this final rule.

List of Subjects in 7 CFR Part 1753

Communications equipment, Loan programs—communications, Reporting and recordkeeping requirements, Rural areas, Telecommunication, Telephone.

For reasons set forth in the preamble, 7 CFR chapter XVII is amended as follows:

PART 1753—TELECOMMUNICATION SYSTEM CONSTRUCTION POLICIES AND PROCEDURES

1. The authority citation for part 1753 is revised to read as follows:

Authority: 5 U.S.C. 501, 7 U.S.C. 901 *et seq.*

2. Revised § 1753.1, paragraph (a) to read as follows:

§ 1753.1 General.

(a) The standard RUS Telecommunications Loan Documents contain provisions regarding procurement of materials and equipment and construction of telecommunications facilities by telecommunications borrowers. This part implements certain of the provisions by setting forth requirements and procedures. Borrowers shall follow these requirements and procedures whenever using loan funds to purchase materials and equipment or perform construction, unless they have received the Administrator's written approval to do otherwise.

* * * * *

3. Amend § 1753.2 to add a new definitions for "loan purposes," "RUS," and "RTB," and revise the definitions of "major construction", "minor construction" and "modernization plan" to read as follows:

§ 1753.2 Definitions.

* * * * *

Loan purposes—The high level objectives of the loan are to fund the construction. These purposes are first stated in the characteristics letter described in 7 CFR 1737.80, which is sent to the applicant to offer a loan after RUS has completed its preloan studies.

Major construction—A telecommunications plant project estimated to cost more than $250,000, including all labor and materials.

Minor construction—A telecommunications plant project estimated to cost $250,000 or less, including all labor and materials.

* * * * *

Modernization plan—A State plan, which has been approved by RUS, for improving the telecommunications network of those Telecommunications Providers covered by the plan. A Modernization Plan must conform to the provisions of 7 CFR part 1751, subpart B.

* * * * *

RTB—the Rural Telephone Bank, established as a body corporate and an instrumentality of the United States, to obtain supplemental funds from non-Federal sources and utilize them in making loans, for the purposes of financing, or refinancing, the construction, improvement, expansion, acquisition, and operation of telephone lines, facilities, or systems, for RUS borrowers financed under sections 201 and 408 of the Act.

RUS—the Rural Utilities Service, an agency of the United States Department of Agriculture established pursuant to Section 232 of the Federal Crop Insurance and Reform and Department of Agriculture Reorganization Act of 1994 (Pub. L. 103–354, 108 Stat. 3178), successor to Rural Electrification Administration with respect to administering certain electric and telecommunications program. See 7 CFR 1700.1.

* * * * *

4. Revise the first word of § 1753.3(a) from "Prior" to "Advance."

5. Amend § 1753.5, to revise paragraph (b)(1), redesignate paragraph (b)(2) to (b)(3), and add a new paragraph (b)(2) to read as follows:

§ 1753.5 Methods of major construction.

* * * * *

(b) *Contract construction.* (1) RUS approval of the borrower's award of the contract is not required if the contractor is selected through sealed competitive bidding, the bid amount is $500,000 or less and the contractor is not a company or organization affiliated with the borrower. This does not relieve the borrower of the requirements of bidding or bid evaluation set contained in this part.

(2) RUS approval of the borrower's award of the contract is required for all other competitively-bid and for negotiated major construction contracts.

* * * * *

6. Amend § 1753.6, to revise paragraph (a) and add paragraph (e) to read as follows:

§ 1753.6 Standards, specifications, and general requirements.

(a) Materials, equipment, and construction financed with loan funds must meet the standards and specifications established by RUS. 7 CFR part 1755 lists the RUS Bulletins containing the standards and specifications for telephone facilities. Materials and equipment meeting these standards are included on the List of Material Acceptable for Use on Telecommunications Systems of RUS Borrowers, I.P. 300–4. This bulletin may be obtained by subscription from the Superintendent of Documents, Government Printing Office, Washington, DC 20402.

* * * * *

(e) All software, software systems, and firmware financed with loan funds must be year 2000 compliant, as defined in 7 CFR 1732.22(e).

7. Amend § 1753.7, to revise paragraphs (c) and (e) to read as follows:

§ 1753.7 Plans and specifications (P&S).

* * * * *

(c) The appropriate standards and specifications listed in 7 CFR part 1755 shall be included in the P&S. When RUS has not prepared standards and specifications, the borrower shall use general engineering requirements and specifications prepared by the borrower's engineer. The specifications prepared by the borrower's engineer and based on general engineering requirements shall be subject to review and approval by RUS for all major construction, including major projects which would be exempted from RUS approval under paragraph (e) of this section.

* * * * *

(e) RUS approval of P&S is required for construction that is estimated to cost over $500,000 or 25% of the total loan, whichever is less, and for all building construction. P&S for all other construction are exempt from RUS review and approval except that, at the time of contract approval, RUS will examine the plans and specifications for conformity with the loan purposes and to determine that they comply with other requirements of this part.

* * * * *

8. Amend § 1753.8, to revise paragraphs (a)(1), (a)(11)(i), (a)(11)(ii) introductory text, (a)(11)(iii) introductory text, and (a)(12)(i), and add a new paragraph (a)(11)(iv) is added to read as follows:

§ 1753.8 Contract construction procedures.

(a) Sealed, competitive bidding—(1) *Bid opening date:* The borrower is responsible for scheduling the bid opening date. If RUS review of P&S is required by § 1753.7, the borrower shall wait until approval has been received before setting the date. In setting the date, sufficient time should be allowed for the bidders to examine the project site and prepare their bids. The borrower shall notify GFR of the bid date and invite GFR to attend.

* * * * *

(11) *Award of contract:* (i) The borrower shall obtain from the engineer the determination of the lowest responsive bid, a tabulation of all bids and the engineer's recommendation for award of the contract. Contract award is subject to RUS approval if either the cost of the project is over $500,000 or the contract is with an organization affiliated with the borrower. Contract award of all other projects is not subject to RUS approval.

(ii) If an award is made, the borrower shall award the contract to the lowest responsive bidder. The borrower may award the contract immediately upon determination of the lowest responsive bidder if the following conditions are met:

* * * * *

(iii) If RUS approval of the award of contract is required under this paragraph (a)(11), the borrower shall send to RUS for consideration of approval of the award:

* * * * *

(iv) If RUS approval of the award of contract is not required under this paragraph (a)(11), the borrower shall keep a file available for inspection by RUS. The file shall be kept for at least two years and shall include:

(A) One copy of all received bids.

(B) The engineer's recommendation and tabulation of all bids including "Buy American" evaluations, if any, and all other evaluations required by law.

(C) Evidence of acceptance of the low bid by the borrower, such as a copy of the board resolution certified by the Secretary of the board.

(12) *Execution of contract:* (i) The borrower shall submit to RUS three original counterparts of the contract executed by the contractor and borrower.

* * * * *

9. Revise § 1753.11, paragraphs (a)(3), (b) and (d) to read as follows:

§ 1753.11 Contract amendments.

(a) * * *

(3) The amendment causes an unbonded contract to require a contractor's performance bond. This would occur when a contract that is executed in an amount below that requiring a performance bond by 7 CFR part 1788, subpart C, is amended to an amount above that amount.

(b) Advance RUS approval to execute other contract amendments is not required. These amendments may be submitted to RUS at any time prior to closeout. If a borrower wishes to receive an advance of funds based on an amended contract amount (i.e., amendments that increase a contract by less than 20%), the borrower may initiate an increase in the amount approved for advance by submitting three copies of the amendment to RUS for approval.

* * * * *

(d) Upon execution of any amendment that causes the amended contract amount to exceed the original contract amount by 20% or more, three copies of the amendment shall be submitted to RUS for approval.

10. Amend § 1753.15, to redesignate paragraphs (a)(2) through (a)(5) as (a)(3) through (a)(6), add a new paragraph (a)(2), and revise paragraphs (a)(1) and newly designated paragraphs (a)(5)(i) and (ii) to read as follows:

§ 1753.15 General.

(a)(1) The standard RUS loan documents contain provisions regarding engineering and architectural services performed by or for RUS telecommunications borrowers. This part implements certain of the provisions by setting forth the requirements and procedures to be followed by borrowers in selecting architects and engineers and obtaining architectural and engineering services by contract or by force account.

(2) Borrowers shall obtain architectural and engineering services only from persons or firms which are not affiliated with, and have not represented, a contractor, vendor or manufacturer who may provide labor, materials, or equipment to the borrower under any current loan.

* * * * *

(5)(i) For major construction, services provided by architects and engineers not on the borrower's staff must be provided under Form 220, Architectural Service Contract, or Form 217, Postloan Engineering Service Contract—Telecommunications. These contracts require RUS approval.

(ii) For minor construction, borrowers may use the contracts in paragraph (a)(5)(i) of this section for postloan architectural or engineering services or any other form of contract, such as Form 245, Engineering Service Contract, Special Services—Telephone. RUS

approval of contracts for postloan architectural or engineering services associated with minor construction, except for buildings covered in paragraph (a)(6) of this section, is not required.

* * * * *

11. Amend § 1753.16, to revise paragraphs (b)(1) through (b)(4) to read as follows:

§ 1753.16 Architectural services.

* * * * *

(b)(1) The borrower shall use Form 220 when contracting for architectural services for major construction, except that the borrower may use either Form 220 or Form 217 if the building is an unattended central office building.

(2) The borrower and the architect negotiate the fees for services under Form 220.

(3) Reasonable modifications or additions to the terms and provisions in Form 220 may be made, subject to RUS approval, to obtain the specific services needed for a building.

(4)(i) Three copies of Form 220, executed by the borrower and the architect, shall be sent to GFR to be forwarded to RUS for approval. RUS will review the contract terms and conditions. RUS will not approve the contract if, in RUS's judgment:

(A) Unacceptable modifications have been made to the contract form.

(B) The contract will not accomplish loan purposes.

(C) The architectural service fees are unreasonable.

(D) The contract presents unacceptable loan security risk to RUS.

(ii) If RUS approves the contract, RUS will send one copy to the architect and one copy to the borrower.

* * * * *

12. Amend § 1753.17(b)(1)(ii)(D) to remove "(See 7 CFR part 1758)", add paragraph (b)(1)(ii)(E), and revise paragraphs (c)(1)(i)(C) and (c)(2)(i)(A) to read as follows:

§ 1753.17 Engineering services.

* * * * *

(b) * * *

(1) * * *

(ii) * * *

(E) The consulting engineering firm is affiliated with or has represented a contractor, vendor, or manufacturer who may provide labor, materials, or equipment to the borrower under any current loan.

* * * * *

(c) * * *

(1) * * *

(i) * * *

(C) The names, qualifications, and responsibilities of other principal employees who will be associated with providing the engineering services.

* * * * *

(2) * * *

(i) * * *

(A) A copy of the employee's qualifications and experience record, unless previously submitted. RUS requires a minimum of four years of construction and inspection experience. The employee cannot be engaged in the actual construction.

* * * * *

13. Add § 1753.18 to read as follows:

§ 1753.18 Engineer and architect contract closeout certifications.

A certification of completion and inspection of construction signed by the borrower and countersigned in accordance with accepted professional engineering and architectural practice, by the engineer or architect, shall be prepared as evidence of completion of a major construction project. This certification shall make reference to the contract number and contract amount, and shall include the following:

(a) A statement that the construction is complete and was done in accordance with the RUS approved system design or layout or subsequent RUS approved changes.

(b) A statement that the construction was for loan purposes.

(c) A statement that construction used RUS-accepted materials and was in accordance with specifications published by RUS covering the construction which were in effect when the contract was executed, or in the absence of such specifications, that it meets other applicable specifications and standards (specify), and that it meets all applicable national and local code requirements as to strength and safety.

(d) A statement that the construction complies with the "Buy American" provision (7 U.S.C. 903 note) of the Rural Electrification Act of 1936 (7 U.S.C. 901 *et seq.*).

(e) A statement that all necessary approvals have been obtained from regulatory bodies and other entities with jurisdiction over the project.

(f) A statement that all closeout documents required by this part have been examined and found complete such that the Contractor has fulfilled all obligations under the contract except for warranty coverage.

(g) A statement that the engineer or architect is not affiliated with and does not represent the contractor, vendor, or manufacturer who is a participant in the contract.

14. Revise § 1753.25, paragraphs (a), (c), and (d) as follows:

§ 1753.25 General.

(a) This subpart implements and explains the provisions of the Loan Documents setting forth the requirements and the procedures to be followed by borrowers in constructing headquarters, commercial office, central office, warehouse, and garage buildings with loan funds.

* * * * *

(c) All plans and specifications for buildings to be constructed with loan funds are subject to the approval of RUS. In addition, preliminary plans and specifications for headquarters and commercial office buildings to be constructed with loan funds are subject to RUS approval.

(d) RUS Form 257, Contract to Construct Buildings, shall be used for the construction of all headquarters, commercial office, central office, warehouse, and garage buildings with loan funds. Refer to § 1753.26 for further instructions.

* * * * *

15. Amend § 1753.26, to redesignate paragraphs (a) through (d) and (b) through (e) respectively, revise redesignated paragraph (b)(1) and add a new paragraph (a) to read as follows:

§ 1753.26 Plans and specifications (P&S).

(a) For headquarters and commercial office buildings only, the borrower shall prepare preliminary P&S showing the floor plan and general architectural details of the building to be constructed using loan funds. In particular, the preliminary P&S shall address the requirements of § 1753.25(f) and the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601 *et seq.*). The P&S shall be submitted to the GFR and are subject to RUS approval.

(b) * * *

(1) RUS Contract Form 257, Contract to Construct Buildings, completed to the extent explained in (c) of this section.

* * * * *

16. Revise § 1753.30, paragraphs (b), (c)(2), and (c)(3) to read as follows:

§ 1753.30 Closeout procedures.

* * * * *

(b) *RUS Form 257 Contract.* (1) Whenever changes were made in the plans and specifications which did not require immediate submission to RUS of an amendment under § 1753.11, a final contract amendment showing the changes shall be prepared.

(2) Upon completion of the project, the borrower shall obtain certifications from the architect or engineer that the project and all required documentation are satisfactory and complete. The

requirements for this certification are contained in § 1753.18.

(3) The engineer's or architect's contract closeout certification and the final amendment shall be submitted to RUS as a basis for the final advance of funds for the contract.

(4) After all required RUS approvals are obtained, final payment is made in accordance with article III of RUS Form 257 once the borrower has received the architect's or engineer's certifications regarding satisfactory completion of the project.

(c) * * *

(2) Complete, with the assistance of its architect or engineer, the documents listed in the following table that are required for the closeout of force account construction.

DOCUMENTS REQUIRED TO CLOSEOUT CONSTRUCTION OF BUILDINGS

RUS Form No.	Description	Use with		No. of copies prepared by		Distribution	
		Contract	Force account	Contractor	Architect/engineer	Borrower	Contractor
238	Construction or Equipment Contract Amendment (if not previously submitted, send to RUS for approval).	X			(3)	(to RUS)	(to RUS)
181	Certificate of Completion (contract construction) [1].	X			2	1	1
231	Certificate of Contractor	X		1		1	
224	Waiver and Release of Lien From Each Supplier.	X		1		1	
213	Certificate (buy American)	X		1		1	
None [2]	"As Built" Plans and Specifications.	X	X		1	1	
None	Guarantees, Warranties, Bonds, Operating or Maintenance Instructions, etc.	X		1		1	
None	Architect/Engineer seismic safety certification.	X	X		2	1	1

[1] Cost of materials and services furnished by borrower are not to be included in Total Cost on RUS Form 181.
[2] When only minor changes were made during construction, two copies of a statement to that effect from the Architect will be accepted instead of the "as built" Plans and Specifications.

(3) Make distribution of the completed documents as indicated in the table in this section.

* * * * *

17. Revise § 1753.36, paragraph (g) to read as follows:

§ 1753.36 General.

* * * * *

(g) Materials and equipment must meet the standards and general specifications approved by RUS. Materials and equipment included in I.P. 300–4, "List of Materials Acceptable for Use on Telecommunications Systems of RUS Borrowers", have been accepted as meeting these requirements. If the equipment is not included in the "List of Materials" but has been approved for field trial installation, the borrower must in each instance obtain field trial approval from RUS prior to entering into any agreement with a supplier.

* * * * *

18. Revise § 1753.37, paragraph (c) to read as follows:

§ 1753.37 Plans and specifications (P&S).

* * * * *

(C) RUS review of P&S is required for construction estimated to cost over $500,000 total or estimated to cost more than 25% of the total loan, whichever is less.

(1) If RUS review is required, the borrower shall submit one copy of the P&S to the GFR for RUS review.

(2) RUS will review the P&S and notify the borrower in writing of approval or disapproval.

19. Revise § 1753.38, paragraphs (a)(1)(i), (a)(1)(v), (a)(2)(i), (a)(2)(v), (b)(1), (b)(3), (b)(5), (e)(2), and (e)(3) to read as follows:

§ 1753.38 Procurement procedures.

(a) * * *

(1) *Solicitation of bids.* (i) After RUS approval of the specifications and equipment requirements (required only for projects expected to exceed $500,000 or 25% of the loan, whichever is less), the borrower shall send "Notice and Instructions to Bidders" to suppliers with central office equipment included in the current Informational Publication (I.P.) 300–4, "List of Materials Acceptable for Use on Telecommunications Systems of RUS Borrowers." I.P. 300–4 is a subscription item available from the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 371954, Pittsburgh, PA 15250–7954. This "Notice" may also be sent to suppliers of non-domestic equipment currently accepted by RUS as meeting RUS technical standards. The "Notice" may also be sent to suppliers of central office equipment accepted for field trial.

* * * * *

(v) At the request of an invited supplier, the borrower shall provide two copies of the P&S.

(2) *Technical sessions.* (i) The borrower shall schedule individual technical sessions by the suppliers, notify each supplier of its scheduled date and time, notify the GFR of all scheduled dates and times, and request the following be available at the technical session:

* * * * *

(v) After evaluation of the technical proposals and RUS approval of the changes to P&S (required only for projects that are expected to exceed $500,000 or 25% of the loan, whichever is less), sealed bids shall be solicited from only those bidders whose technical proposals meet P&S requirements. When fewer than three bidders are adjudged qualified by the borrower to bid, RUS approval must be obtained to proceed. Generally, RUS will grant such approval only if the borrower can demonstrate to the satisfaction of RUS that a good faith effort was made to obtain at least three competitive bids. This would be demonstrated if all suppliers currently listed in I.P. 300–4

were invited to submit technical proposals.

* * * * *

(b) * * *

(1) After RUS approval of the P&S and equipment requirements (required only for contracts expected to exceed $500,000 or 25% of the loan, whichever is less), the borrower shall send two complete copies of the approved P&S to the supplier an request that a proposal be submitted.

* * * * *

(3) If the contract is expected to exceed $500,000 or 25% of the loan, whichever is less, changes in the P&S resulting from the technical session shall be subject to RUS review and approval.

* * * * *

(5) The borrower shall obtain an award recommendation from its engineer.

* * * * *

(e) * * *

(1) * * *

(ii) * * *

(A) Prepare and assemble the documents listed in the table in this section, Documents Required to Close Out Central Office Equipment Contracts.

* * * * *

(iii) Make the documents listed in the table available for GFR review on the date of final inspection.

(iv) Distribute the documents as indicated in the table. The documents listed for RUS shall be retained by the borrower for inspection by RUS for at least two years from the date of the engineer's contract closeout certificate.

* * * * *

(g) Once RUS approval has been obtained for any required amendments, the borrower shall obtain certifications from the engineer that the project and all required documentation are satisfactory and complete. The requirements for the final contract certification are contained in § 1753.18.

(h) Once these certifications have been received, final payment shall be made according to the payment terms of the contract. Copies of the certifications shall be submitted with the FRS, requesting the remaining funds on the contract.

(2) The borrower shall prepare a plan containing an outline of the proposed use of the equipment, the proposal from the supplier and an estimate of the installation cost. If the total cost exceeds $500,000, RUS approval of the award of contract is required. The borrower shall in this case submit its plan and the supplier's proposal to GFR. If the cost does not exceed $500,000, the borrower's award of contract is not subject to RUS approval.

(3) If RUS approval was required by paragraph (e)(2) of this section, upon RUS approval the purchase may be made using RUS Contract Form 525, or 545, or when applicable, the procedures contained in subpart I of this part.

* * * * *

(20) Amend § 1753.39 to revise paragraphs (a), (e)(1), (3)(2), (f) introductory text, (f)(1)(ii)(A), (f)(1)(iii), (f)(1)(iv) and (g), delete paragraph (e)(3), and add paragraph (h) to read as follows:

§ 1753.39 Closeout documents.

* * * * *

(a) *Contract amendments.* Amendments that must be submitted to RUS for approval, as required by § 1753.11, shall be submitted promptly. All other amendments may be submitted to RUS with the engineer's contract closeout certification.

* * * * *

(e) * * *

(1) Obtain from the engineer a certification of partial closeout.

(2) Submit one copy of the summary to RUS with an FRS.

(f) Final contract closeout procedure. The documents required for the final closeout of the central office equipment contract, RUS Contract Forms 525 and 545, are listed in the following table, which also indicates the number of copies and their distribution. The procedure to be followed is as follows:

DOCUMENTS REQUIRED TO CLOSEOUT CENTRAL OFFICE EQUIPMENT CONTRACT

RUS Form No.	Description	Use with		Prepared by		Distribution	
		RUS Form 525	RUS Form 545	Contractor	Engineer	Borrower	Contractor
238	Construction or Equipment Contract Amendment (if not previously submitted, send to RUS for approval).	X	X	.....	(3)	(to RUS)	(to RUS)
754	Certificate of Completion and Certificate of Contractor and Indemnity Agreement (if submitted, Form 744 is not required).	X	.....	3	3	2	1
517	Results of Acceptance Tests (prepare and distribute copies immediately upon completion of the acceptance tests of each central office).	X	.....	.....	2	1	1
752a	Certificate of Completion—Not Including Installation.	.....	X	.....	2	1	1
224	Waiver and Release of Lien (from each supplier).	X	.....	1	.....	1	.....
231	Certificate of Contractor	X	.....	1	.....	1	.....
213	Certificate (Buy American)	X	X	1	.....	1	.....
None	Switching Diagram, as installed	X	X	2	.....	2	.....
None	Set of Drawings (each set to include all the drawings required under the Specification, RUS Form 522).	X	X	2	.....	2	.....

21. Revise § 1753.46, pararaphs (c)(2) and (c)(3) to read as follows:

§ 1753.46 General.

* * * * *

(c) * * *

(2) Contract Form 515, which is for $250,000 or less, may, at the borrower's option, be negotiated. See § 1753.48(b).

(3) RUS Form 773 may be used for minor outside plant projects which are not competitively bid because they cannot be designed and staked at the

time of contract execution. Projects of this nature include routine line extensions and placement of subscriber drops. See subpart I of this part.

22. Revise § 1753.47, paragraph (c) to read as follows:

§ 1753.47 Plans and specifications (P&S).

* * * * *

(c) *Submission of plans and specifications to RUS.* (1) If the project does not exceed $500,000 or 25% of the loan, whichever is less, the borrower shall furnish GFR one set of P&S. The borrower may then proceed with procurement in accordance with § 1753.48.

(2) If the project exceeds $500,000 or 25% of the loan, whichever is less, RUS approval of P&S is required. Two sets of P&S shall be furnished to GFR. RUS will return one set to the borrower upon notice of approval. The borrower may then proceed with procurement in accordance with § 1753.48.

23. Revise § 1753.48, paragraphs (a)(4) and (b)(1) to read as follows:

§ 1753.48 Procurement procedures.

(a) * * *

(4) *Bid openings.* (i) Bid openings and award of the contract shall be conducted in accordance with §§ 1753.5(b)(1) and 1753.8(a).

(ii) If § 1753.8 requires RUS approval of award of the bid, the borrower shall submit to RUS two copies of the assembly unit sections of the apparent lowest responsive bid accepted by the borrower.

(b) *Negotiated procurement.* (1) Competitive bids are not required for outside plant construction that is estimated to cost $250,000, or less, inclusive of labor and materials.

* * * * *

24. Revise § 1753.49, paragraphs (b), (c)(2) and (c)(3) to read as follows:

§ 1753.49 Closeout documents.

* * * * *

(b) *Documents required.* The following table lists the documents required to closeout the RUS contract Form 515.

DOCUMENTS REQUIRED TO CLOSEOUT CONSTRUCTION CONTRACT

[RUS Form 515]

RUS Form No.	Description	No. of copies prepared by		Distribution	
		Contractor	Engineer	Borrower	Contractor
724	Final Inventory—Certificate of Completion	.....	2	1	1
724a	Final Inventory—Assembly Units	.....	2	1	1
None	Contractor's Bond Extension (send to RUS when required)	(3)	.....	(to RUS)	(to RUS)
281	Tabulation of Materials Furnished by Borrower	2	.....	1	1
213	Certificate—"Buy American"	1	.....	1	.....
None	Listing of Construction Change Orders	.....	1	1	.....
224	Waiver and Release of Lien (from each supplier)	1	.....	1	.....
231	Certificate of Contractor	1	.....	1	.....
527	Final Statement of Construction	.....	2	1	1
None	Reports on Results of Acceptance Tests	.....	1	1	1
None	Set of Final Staking Sheets	.....	1	1	.....
None	Tabulation of Staking Sheets	.....	1	1	.....
None	Correction Summary (legible copy)	.....	1	1	.....
None	Treated Forest Products Inspection Reports or Certificates of Compliance (prepared by inspection company or supplier).	.....	.....	1	.....
None	Final Key Map (when applicable)	.....	1	1	.....
None	Final Central Office Area and Town Maps	.....	1	1	.....

(c) * * *

(2) *Final inventory documents.* (i) The borrower shall obtain certifications from the engineer that the project and all required documentation are satisfactory and complete. Requirements for these contract closeout certifications are contained in § 1753.18.

(ii) The borrower shall prepare and distribute the final inventory documents in accordance with the tables contained in this section. The documents listed for RUS shall be retained by the borrower for inspection by RUS for at least two years from the date of the engineer's contract closeout certification.

STEP-BY-STEP PROCEDURE FOR CLOSEOUT OF CONSTRUCTION CONTRACT

[RUS Form 515]

Sequence		By	Procedure
Step No.	When		
1	Upon Completion of Construction	Borrower's Engineer.	Prepares the following: a set of Detail Maps and a set (when applicable) of Key Maps which show in red the work done under the 515 contract; a Tabulation of Staking Sheet; and a tentative Final Inventory, RUS Forms 724 and 724a.
2	After acceptance tests made	Borrower's Engineer.	Forwards letter to the borrower with copies to the GFR stating that the project is ready for final inspection. Schedules inspection date.
3	Upon receipt of letter from Borrower's Engineer.	GFR	Advises borrower whether attending the final inspection will be possible.

STEP-BY-STEP PROCEDURE FOR CLOSEOUT OF CONSTRUCTION CONTRACT—Continued
[RUS Form 515]

Sequence		By	Procedure
Step No.	When		
4	By inspection date	Borrower's Engineer.	Obtains and makes available the following documents: a set of "as constructed" detail maps and (when applicable) "as built" key maps; a list of construction change orders; the final staking sheets; the tabulation staking sheets; the treated forest products inspection reports or certificates of compliance; the tentative final inventory, RUS Forms 724 and 724a; the tentative tabulation, RUS Form 231 (if borrower furnished part of material); and, a report of results of acceptance tests.
5	During inspection	Borrower's Engineer.	Issues instructions to contractor covering corrections to be made in construction as a result of inspection.
6	During inspection	Contractor	Corrects construction on basis of instructions from the borrower's engineer. The corrections should proceed closely behind the inspection in order that the borrower's engineer can check the corrections before leaving the system.
7	During inspection	Borrower's Engineer.	Inspects and approves corrected construction. Marks inspected areas on the key map, if available, otherwise on the detail maps.
8	Upon completion of inspection	Borrower's Engineer.	Prepares or obtains all the closeout documents listed in Table 3.
9	After signing final inventory	Borrower	Prepares and submits to RUS the engineer's certifications of completion and a Financial Requirement Statement, RUS Form 481, requesting amount necessary to make final payment due under contract.
10	On receipt of final advance	Borrower	Promptly forwards check for final payment to contractor.
11	During subsequent loan fund audit review following final payment.	RUS Field Accountant.	Examines borrower's construction records for compliance with the construction contract and Subpart F, and examines RUS Form 281 (Tabulation of Materials Furnished by Borrower) if any, for appropriate costs.

(iii) When the total inventory price exceeds the maximum contract by more than 20 percent, an extension to the contractor's bond is required.

(iv) The borrower shall submit the engineer's contract closeout certification with FRS for the final advance of funds.

(3) Final payment shall be made according to the payment provisions of article III of RUS Form 515, except that certificates and other documents required to be submitted to or approved by the Administrator shall be submitted to and approved by the Owner.

§ 1753.50 [Removed and Reserved]

25. Section 1753.50 is removed and reserved.

26. Revise § 1753.58, paragraphs (b), (c)(2) and (c)(5) to read as follows:

§ 1753.58 Closeout documents.

* * * * *

(b) *Documents.* The documents required to close the FAP are listed in the following table. The following is a brief description of the closeout documents:

DOCUMENTS REQUIRED TO CLOSE OUT FORCE ACCOUNT OUTSIDE PLANT CONSTRUCTION

RUS Form No.	Description
817, 817a, 817b	Final Inventory Force Account Construction and Certificate of Engineer. Submit one copy to RUS, if required [1]
213	Certificate—"Buy American" (as applicable from each supplier).
None	Detail Maps.
None	Key map, if applicable.
None	Staking Sheets.
None	Tabulation of staking sheets.
None	Treated Forest Products Inspection Reports or Certificates of Compliance (prepared by inspection company or supplier).

[1] RUS Forms 817, 817a, and 817b are to be submitted to GFR only if required in paragraph (c)(5) of this section. Otherwise, the final inventory documents are to be assembed and retained by the borrower for at least two years.

(c) * * *

(2) The GFR shall be invited to make the final inspection accompanied by the engineer and the borrower.

* * * * *

(5) After inspection, the final inventory documents shall be assembled as indicated in the table in this section. RUS Forms 817, 817a, and 817b are to be submitted to GFR only if the amount of the closeout exceeds the original force account proposal by 20% or more. Otherwise, the final inventory documents are to be assembed and retained by the borrower for at least two years.

* * * * *

27. Revise § 1753.68, paragraphs (b)(2)(i), (b)(2)(ii), (b)(2)(iii), (b)(2)(iv), (b)(2)(v), (b)(4)(i), (b)(4)(ii), (c)(2), and (d)(3) to read as follows:

§ 1753.68 Purchasing special equipment.

* * * * *

(b) * * *

(2) *Initial equipment purchase.* (i) The borrower prepares P&S and, for projects estimated to exceed $500,000 or 25% of the loan, whichever is less, sends two copies to GFR for approval.

(ii) For projects estimated to exceed $500,000 or 25% of the loan, whichever is less, RUS will either approve P&S in writing or notify the borrower of the reasons for withholding approval.

(iii) For projects estimated to cost less than $500,000 or 25% of the loan, whichever is less, the borrower may proceed with procurement upon completion of the P&S.

(iv) If the borrower has employed full competitive bidding in the selection, a contract may be executed with the successful bidder and the borrower may proceed to paragraph (b)(2)(vi) of this section.

(v) If the borrower did not follow a fully competitive bidding process as described in § 1753.8, the selection, along with a summary of all proposals and an engineer's recommendation, shall be sent to RUS. RUS shall approve the proposal selection in writing or notify the borrower of any reason for withholding approval.

* * * * *

(4) *New system additions.* (i) The borrower prepares the P&S and, if the project is estimated to exceed $500,000 or 25% of the loan, whichever is less, sends two copies to the GFR for approval. The borrower may request RUS approval to negotiate for the purpose of standardization on a system basis prior to preparing the P&S.

(ii) RUS notifies the borrower in writing as to whether the borrower may negotiate for specific equipment. If P&S were required to be submitted to RUS under paragraph (b)(4)(i) of this section, RUS notifies the borrower in writing of P&S approval (or notifies the borrower of the reasons for withholding approval).

* * * * *

(c) * * *

(2) The borrower shall prepare any required amendments to the special equipment contract, arrange for the execution by all parties, and submit these amendments to RUS in accordance with § 1753.11(d). RUS Form 238, Construction or Equipment Contract Amendment, shall be used for this purpose.

* * * * *

(d) * * *

(3) *Closeout documents.* When the acceptance tests have been completed and all deficiencies have been corrected, the borrower:

(i) Assembles and distributes the documents listed in the following table that are required for the closeout of the special equipment contract. The documents listed for RUS shall be retained by the borrower for inspection by RUS for at least two years from the date of the engineer's contract closeout certification.

DOCUMENTS REQUIRED TO CLOSE OUT SPECIAL EQUIPMENT CONTRACTS

[RUS Forms 397 and 398]

RUS Form No.	Description	No. of copies prepared by			Engineer	Distribution	
		Form 397	Form 398	Contractor		Borrower	Contractor
238	Construction or Equipment Contract Amendment (if not previously submitted, send to RUS for approval).	.....	(3)	.....	(3)	(to RUS)	(to RUS)
396	Certificate of Completion—Special Equipment Contract (Including Installation).	.....	2	.....	.....	1	1
396a	Certificate of Completion—Special Equipment Contract (Not Including Installation).	.....	.....	.....	2	1	1
744	Certificate of Contractor and Indemnity Agreement.	1	.....	.....	.....	1	.....
213	Certificate (Buy American)	1	.....	1	.....	1	.....
None	Report in writing, including all measurements and other information required under Part II of the applicable specifications.	1	.....	.....	1	1	.....
None	Set of maintenance recommendations for all equipment furnished under the contract.	1	.....	1	.....	1	.....

(ii) Obtains certifications from the engineer that the project and all required documentation are satisfactory and complete. Requirements for this contract closeout certification are contained in § 1753.18.

(iii) Submits copies of the engineer's certifications to RUS with the FRS requesting the remaining funds on the contract.

(iv) Makes final payment in accordance with the payment terms of the contract.

28. Revise § 1753.76, paragraph (a) is revised to read as follows:

§ 1753.76 General.

(a) This subpart implements and explains the provisions of the Loan Documents containing the requirements and procedures to be followed by borrowers for minor construction of telecommunications facilities using RUS

loan funds. Terms used in this subpart are defined in § 1753.2.

* * * * *

29. Revise § 1753.77 to read as follows:

§ 1753.77 Methods of minor construction.

Minor construction may be performed by contract using RUS Contract Form 773, "Miscellaneous Construction Work and Maintenance Services", by RUS Contract Form 515, or by work order construction. The rules for using Form 515 for minor construction are contained in subpart F of this part.

30. Revise § 1753.80, paragraph (b) to read as follows:

§ 1753.80 Minor construction procedure.

* * * * *

(b) RUS financing under Form 773 contracts dated in the same calendar year is limited to the following amounts for the following discrete categories of minor construction. The date of the Form 773 contract is the date the Form 773 contract is executed.

(1) For outside plant construction, the limit is $500,000 or ten per cent (10%) of the borrower's previous calendar year's outside plant total construction, whichever is greater.

(2) For central office equipment, the limit is $500,000.

(3) For special equipment and buildings, the limit is $250,000 in each category.

* * * * *

Appendices A–F Removed

31. Remove Appendices A through F to part 1753.

Dated: March 31, 1999.

Inga Smulkstys,

Deputy Under Secretary, Rural Development.

[FR Doc. 99–8380 Filed 4–5–99; 8:45 am]

BILLING CODE 3410–15–M

FEDERAL RESERVE SYSTEM

12 CFR Part 213

[Regulation M; Docket No. R–1028]

Consumer Leasing

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule; official staff interpretation.

SUMMARY: The Board is publishing revisions to the official staff commentary to Regulation M, which implements the Consumer Leasing Act. The commentary applies and interprets the requirements of the regulation. The update provides guidance on disclosures for lease renegotiations and extensions, official fees and taxes, multiple-item leases, and advertisements.

DATES: This rule is effective March 31, 1999. Compliance is optional until March 31, 2000.

FOR FURTHER INFORMATION CONTACT: Kyung Cho-Miller or Obrea Poindexter, Staff Attorneys, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, at (202) 452–3667. For users of Telecommunications Device for the Deaf (TDD) *only*, Diane Jenkins at (202) 452–3544.

SUPPLEMENTARY INFORMATION:

I. Background

The Consumer Leasing Act (CLA), 15 U.S.C. 1667–1667e, was enacted in 1976 as an amendment to the Truth in Lending Act (TILA), 15 U.S.C. 1601 *et seq.* The Board's Regulation M (12 CFR part 213) implements the act. The CLA requires lessors to provide consumers with uniform cost and other disclosures about consumer lease transactions. The act generally applies to consumer leases of personal property in which the contractual obligation does not exceed $25,000 and has a term of more than four months. An automobile lease is the most common type of consumer lease covered by the act.

The commentary (12 CFR Part 213 (Supp. I)) is a substitute for individual written staff interpretations; it is updated as necessary, but generally not more frequently than annually, to address significant questions that arise. This is the first update since the January 1, 1998, effective date for complying with the revised regulation. Except as discussed below, the interpretations are adopted as proposed, with some technical edits to address concerns raised by commenters. In response to concerns about the uncertainty of computer readiness for the Year 2000 date change, the effective date for mandatory compliance with the commentary update is March 31, 2000.

In December, the Board published proposed amendments to the commentary to Regulation M (63 FR 67434, December 7, 1998). The Board received comments from leasing industry representatives. Overall, commenters generally supported the proposed amendments, except for the guidance on estimating official fees and taxes.

II. Commentary Revisions

Section 213.3—General Disclosures Requirements

3(d) Use of Estimates

As proposed, the example about estimating official fees and taxes in comment 3(d)(1)–1(i) is removed. A cross reference to the commentary to section 213.4(n), which provides guidance on estimating official fees and taxes, is added to comment 3(d)(1)–2..

Section 213.4—Content of Disclosures

4(c) Payment Schedule and Total Amount of Periodic Payments

Comment 4(c)–1 is revised to clarify that scheduled payments can occur at both regular and irregular intervals. A similar revision is also made in comment 1 to appendix A.

4(f) Payment Calculation

Motor vehicle lease disclosures must include a mathematical progression of how periodic payments are derived. Comment 4(f)–2 is added to address lease transactions that involve multiple items of leased property if one of the items is not a motor vehicle under state law.

4(n) Fees and Taxes

Lessors must disclose the total amount payable by the lessee during the lease term for official and license fees, certificate of title fees, registration, and taxes. Commenters supported the need for guidance about this disclosure but thought proposed comment 4(n)–2 did not provide sufficient flexibility given the difficulty in projecting future fees and taxes on some lease transactions. Fees and taxes may differ widely, state by state and jurisdiction by jurisdiction. In addition, some of the taxes and fees being projected may involve amounts that are billed directly to consumers and not through the lessor. Comment 4(n)–2 is revised to provide guidance and flexibility in determining rates and fees.

Section 213.5—Renegotiations, Extensions, and Assumptions

5(a) Renegotiations

A renegotiation occurs where a lease is satisfied and replaced by a new lease. Under Regulation M, a renegotiation generally triggers new disclosures. Several commenters requested further guidance on how to properly complete model forms where, by renegotiation, the initial lease term is extended and the consummation date remains unchanged from the initial lease. Comment 5(a)–1 is added to clarify that disclosures should conform to the

lessee's legal obligation and to include guidance for using the model forms.

5(b) Extensions

Comment 5(b)–3 is added to provide guidance on lease extensions, which sometimes are consummated before the end of the initial lease term. The comment clarifies that disclosures should be based on the lessee's obligation for the period of the extension, whether the extension agreement is consummated during the initial lease term or afterwards. Any fees required in connection with the extension also must be reflected in the new disclosures, regardless of when the fees are paid.

Section 213.7—Advertising

7(d)(2) Additional Terms

Comment 7(d)(2)–1 is revised to provide guidance for advertising periodic lease payments affected by third-party fees that vary by state or locality, such as taxes or licenses.

Appendix A—Model Forms

Comment 1 to appendix A is revised to provide additional examples of permissible changes to the model forms.

List of Subjects in 12 CFR Part 213

Advertising, Federal Reserve System, Reporting and recordkeeping requirements, Truth in lending.

For the reasons set forth in the preamble, the Board amends 12 CFR Part 213 as follows:

PART 213—CONSUMER LEASING (REGULATION M)

1. The authority citation for part 213 continues to read as follows:

Authority: 15 U.S.C. 1604; 1667f.

2. In Supplement I to Part 213, under *Section 213.3—General Disclosure Requirements*, under *Paragraph 3(d)(1) Standard*, paragraph 1. is amended by removing "For example:" from the last line, paragraph 1.i. is removed, and paragraph 2. is amended by adding a new sentence to the end of the paragraph.

The addition reads as follows:

Supplement I To Part 213—Official Staff Commentary To Regulation M

* * * * *

Section 213.3—General Disclosure Requirements

* * * * *

3(d)(1) Standard

* * * * *

2. *Basis of Estimates.* * * * See commentary to § 213.4(n) for estimating official fees and taxes.

* * * * *

3. In Supplement I to Part 213, under *Section 213.4—Content of Disclosures*, the following amendments are made:

a. Under *4(c) Payment Schedule and Total Amount of Periodic Payments*, paragraph 1. is revised;

b. Under *4(f) Payment Calculation*, a new paragraph 2. is added; and

c. Under *4(n) Fees and Taxes*, a new paragraph 2. is added.

The additions and revisions read as follows:

* * * * *

Section 213.4—Content of Disclosures

* * * * *

4(c) Payment Schedule and Total Amount of Periodic Payments

1. *Periodic payments.* The phrase "number, amount, and due dates or periods of payments" requires the disclosure of all payments that are made at regular or irregular intervals and generally derived from rent, capitalized or amortized amounts such as depreciation, and other amounts that are collected by the lessor at the same interval(s), including, for example, taxes, maintenance, and insurance charges. Other periodic payments may, but need not, be disclosed under § 213.4(c).

* * * * *

4(f) Payment Calculation

* * * * *

2. *Multiple-items.* If a lease transaction involves multiple items of leased property, one of which is not a motor vehicle under state law, at their option, lessors may include all items in the disclosures required under § 213.4(f). See comment 3(a)–4 regarding disclosure of multiple transactions.

* * * * *

4(n) Fees and Taxes

* * * * *

2. *Estimates.* In disclosing the total amount of fees and taxes under § 213.4(n), lessors may need to base the disclosure on estimated tax rates or amounts and are afforded great flexibility in doing so. Where a rate is applied to the future value of leased property, lessors have flexibility in estimating that value, including, but not limited to, using the mathematical average of the agreed upon value and the residual value or published valuation guides; or a lessor could prepare estimates using the agreed upon value and disclose a reasonable estimate of the total fees and taxes. Lessors may include a statement that the actual total of fees and taxes may be higher or lower depending on the tax rates in effect or the value of the leased property at the time a fee or tax is assessed.

* * * * *

4. In Supplement I to Part 213, under *Section 213.5—Renegotiations, Extensions, and Assumptions*, the following amendments are made:

a. A new undesignated heading, *5(a) Renegotiations*, and paragraph 1. is added; and

b. Under *Paragraph 5(b) Extensions.*, a new paragraph 3. is added.

The additions read as follows:

* * * * *

Section 213.5—Renegotiations, Extensions, and Assumptions

* * * * *

5(a) Renegotiations

1. *Basis of disclosures.* Lessors have flexibility in making disclosures so long as they reflect the legal obligation under the renegotiated lease. For example, assume that a 24-month lease is replaced by a 36-month lease. The initial lease began on January 1, 1998, and was renegotiated and replaced on July 1, 1998, so that the new lease term ends on January 1, 2001.

i. If the renegotiated lease covers the 36-month period beginning January 1, 1998, the new disclosures would reflect all payments made by the lessee on the initial lease and all payments on the renegotiated lease. In this example, since the renegotiated lease covers a 36-month period beginning January 1, 1998, the disclosures must reflect payments made since that date. On the model form, the "total of base periodic payments" disclosed under § 213.4(f)(7) should reflect periodic payments to be made over the entire 36-month term. Payments received since January 1, 1998, are added as a new line item disclosed as "total of payments received" and are subtracted from the "total of base periodic payments" in calculating a new item disclosed as the "total of base periodic payments remaining." For example, if 6 monthly payments of $300 were received since January 1, 1998, the disclosure form should include a "total of base periodic payments" line from which $1,800 is subtracted to arrive at the "total of base periodic payments remaining." The remainder of the disclosures would not change.

ii. If the renegotiated lease covers only the remaining 30 months, from July 1, 1998, to January 1, 2001, the disclosures would reflect only the charges incurred in connection with the renegotiation and the payments for the remaining period.

* * * * *

5(b) Extensions

* * * * *

3. *Basis of disclosures.* The disclosures should be based on the extension period, including any upfront costs paid in connection with the extension. For example, assume that initially a lease ends on March 1, 1999. In January 1999, agreement is reached to extend the lease until October 1, 1999. The disclosure would include any extension fee paid in January and the periodic payments for the seven-month extension period beginning in March.

* * * * *

5. In Supplement I to Part 213, under *Section 213.7—Advertising,* under *Paragraph 7(d)(2) Additional Terms.,* paragraph 1. is revised as follows:

* * * * *

Section 213.7—Advertising

* * * * *

7(d)(2) Additional Terms

1. *Third-party fees that vary by state or locality.* The disclosure of a periodic payment or total amount due at lease signing or delivery may:

i. Exclude third-party fees, such as taxes, licenses, and registration fees and disclose that fact; or

ii. Provide a periodic payment or total that includes third-party fees based on a particular state or locality as long as that fact and the fact that fees may vary by state or locality are disclosed.

* * * * *

6. In Supplement I to Part 213, under *Appendix A—Model Forms,* paragraph 1. is revised as follows:

* * * * *

Appendix A—Model Forms

* * * * *

1. *Permissible changes.* Although use of the model forms is not required, lessors using them properly will be deemed to be in compliance with the regulation. Generally, lessors may make certain changes in the format or content of the forms and may delete any disclosures that are inapplicable to a transaction without losing the act's protection from liability. For example, the model form based on monthly periodic payments may be modified for single-payment lease transactions or for quarterly or other regular or irregular periodic payments. The model form may also be modified to reflect that a transaction is an extension. The content, format, and headings for the segregated disclosures must be substantially similar to those contained in the model forms; therefore, any changes should be minimal. The changes to the model forms should not be so extensive as to affect the substance and the clarity of the disclosures.

* * * * *

By order of the Board of Governors of the Federal Reserve System, acting through the Secretary of the Board under delegated authority, March 31, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–8412 Filed 4–5–99; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

12 CFR Part 226

[Regulation Z; Docket No. R–1029]

Truth in Lending

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule; official staff interpretation.

SUMMARY: The Board is publishing revisions to the official staff commentary to Regulation Z (Truth in Lending). The commentary applies and interprets the requirements of the regulation. The update addresses the prohibition against the issuance of unsolicited credit cards. It provides guidance on calculating payment schedules involving private mortgage insurance. In addition, the update discusses credit sale transactions where downpayments include cash and property used as a trade-in, and adopts several technical amendments.

DATES: This rule is effective March 31, 1999. Compliance is optional until March 31, 2000.

FOR FURTHER INFORMATION CONTACT: James H. Mann or Obrea O. Poindexter (open-end credit), or Michael E. Hentrel or Kathleen C. Ryan (closed-end credit), Staff Attorneys; Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, at (202) 452–3667 or 452–2412; for users of Telecommunications Device for the Deaf (TDD) *only,* Diane Jenkins at (202) 452–3544.

SUPPLEMENTARY INFORMATION:

I. Background

The purpose of the Truth in Lending Act (TILA; 15 U.S.C. 1601 *et seq.*) is to promote the informed use of consumer credit by providing for disclosures about its terms and cost. The act requires creditors to disclose the cost of credit as a dollar amount (the finance charge) and as an annual percentage rate (APR). Uniformity in creditors' disclosures is intended to assist consumers in comparison shopping. TILA requires additional disclosures for loans secured by a consumer's home and permits consumers to rescind certain transactions that involve their principal dwelling. In addition, the act regulates certain practices of creditors. The act is implemented by the Board's Regulation Z (12 CFR Part 226). The Board's official staff commentary (12 CFR Part 226 (Supp. I)) interprets the regulation, and provides guidance to creditors in applying the regulation to specific transactions. The commentary is a substitute for individual staff interpretations; it is updated periodically to address significant questions that arise.

In December, the Board published proposed amendments to the commentary to Regulation Z (63 FR 67436, December 7, 1998). The Board received about 50 comments. Most of the comments were from financial institutions and other creditors; state attorneys general and consumer representatives also submitted comments. Overall, commenters generally supported the proposed amendments. Views were mixed on comments concerning multifunction cards that are or may be used as credit cards and credit sale transactions where downpayments involve cash payments and property used as a trade-in.

Except as discussed below, the commentary is being adopted as proposed; some technical suggestions or concerns raised by commenters are addressed. In response to concerns about the uncertainty of computer readiness for the Year 2000 date change, the effective date for mandatory compliance with the commentary update is March 31, 2000.

II. Commentary Revisions

Subpart A—General

Section 226.2—Definitions and Rules of Construction

2(a) Definitions

2(a)(15) Credit Card

Section 226.2(a)(15) defines a credit card to include any card or credit device that may be used from time to time to obtain credit. Comment 2(a)(15)–2 provides examples of cards and devices that are and are not credit cards. The comment is revised to include a new example of cards or devices that are credit cards, addressing recent programs where cards are marketed from the outset with both credit and non-credit features. (Two additional examples were proposed. Some commenters suggested technical changes to ensure consistency in the new examples; the changes were made by merging them.)

2(a)(18) Downpayment

Comment 2(a)(18)–3 provides guidance on how a creditor discloses the downpayment if a trade-in is

involved in a credit sale transaction and if the amount of an existing lien exceeds the value of the trade-in. Under Regulation Z, the term "downpayment" refers to an amount, including the value of any property used as a trade-in, paid to a seller to reduce the "cash price." If the amount of an existing lien exceeds the value of the property being used as a trade-in and no cash payment is involved, creditors must disclose zero as the downpayment and not a negative number. The proposed comment also added an example where the consumer makes a cash payment. In that example, creditors would apply the cash payment to the excess lien amount rather than reduce the price of the purchased item. In response to commenters' concerns, the comment has been revised to provide flexibility. At their option, creditors may first apply the cash payment to reduce the price of the purchased item.

Many commenters opposed the proposal. Some believed that applying the cash payment to the excess lien amount would be confusing to consumers because the creditor's treatment of the cash payments might not be readily apparent. They argued that the comment should comport with consumers' general expectations—that cash payments would be disclosed as downpayments that reduce the cash price.

Moreover, commenters stated that, where cash payments are made in credit sales involving a trade-in and a lien on the property that exceeds the value of the trade-in, many creditors currently apply the cash payment to any excess lien amount. These creditors disclose the cash payment as a downpayment. Many of these creditors, along with consumer advocates and state Attorneys General commenting on the issue, believe disclosing a downpayment equal to the cash payment is more helpful to consumers. They express concern about the potential for confusion under the proposal when, for example, a cash payment of $500 is applied to an excess lien amount of $2,000 and the downpayment is disclosed as $0, even if the cash payment is disclosed elsewhere in the itemization of the amount financed. (See § 226.18(c).) Some commenters also believed the proposal potentially conflicts with some state laws regarding the disclosure of downpayments.

In response to comments received and upon further analysis, the proposed example has been revised. In disclosing a downpayment where cash payments are made in credit sales involving a trade-in and a lien on the property that exceeds the value of the trade-in, creditors may, but need not, apply the cash payment first to any excess lien amount.

Subpart B—Open-end Credit

Section 226.12—Special Credit Card Provisions

12(a) Issuance of Credit Cards

12(a)(1)

Section 226.12(a) prohibits creditors from issuing credit cards except in response to a consumer's request or application for the card or as a renewal of, or substitute for, a previously accepted credit card. The prohibition, which parallels the statute, addresses various concerns including the potential for theft and fraud and the consumer inconvenience of refuting claims of liability. The law does not prohibit creditors from issuing unsolicited cards that have a non-credit purpose—such as check-guarantee or purchase-price discount cards—so long as they cannot also be used to obtain credit. Consumers may later be able to convert these cards to credit cards if the issuer makes a credit feature available and the consumer requests the credit.

Comment 12(a)(1)–7 provides guidance regarding a card that is issued to and accepted by the consumer as a non-credit device and that subsequently is converted for use as a credit device at the consumer's request. The revisions clarify the comment's applicability to recent programs where unsolicited cards are marketed from the outset as both stored-value cards and credit cards. The Board proposed revisions to the comment to reflect more clearly its intended purpose.

Views were mixed on the proposal. Commenters that opposed the revisions cited a variety of reasons for their position. Some believed the concerns associated with the prohibition—theft, fraud, and the inconvenience of refuting claims of liability—were outdated, due to advances in technology and industry practice regarding fraud prevention, and TILA's $50 maximum potential loss for consumers. Others believed the proposal would inappropriately deter the development of multifunction cards. They discussed the convenience of such cards and urged that any rule be crafted narrowly so as to not affect the continuing development of multifunction cards. The prohibition is, however statutory.

Comment 12(a)(1)–7 is revised in accord with the proposal, with some changes to address commenters' concerns. The fundamental import of the comment remains unchanged: Multifunction cards connected with credit plans when they are issued are credit cards, and they may not be sent without the consumer's prior request or application. New examples have been added to provide further guidance. The comment makes clear that card issuers do not violate the prohibition merely by sending a card imprinted with information that identifies the consumer, so long as the issuer does not propose to connect the card to a credit plan at the time the card is issued.

To the extent that the interpretation of the TILA rule previously may have been unclear, the Board believes that liability should not attach to a card issuer's prior reliance on comment 12(a)(1)–7 in issuing multifunction cards that included a credit feature.

Section 226.14—Determination of Annual Percentage Rate

14(c) Annual Percentage Rate for Periodic Statements

Comment 14(c)–10 addresses finance charges that are imposed during the current billing cycle but that relate to account activity that occurred during a prior billing cycle. The comment is revised to refer expressly to current-cycle or prior-cycle debits and current-cycle or prior-cycle credits.

Subpart C—Closed-end Credit

Section 226.18—Content of Disclosures

18(g) Payment Schedule

The Homeowners Protection Act of 1998 limits the amount of private mortgage insurance (PMI) consumers can be required to purchase. Borrowers may request cancellation of PMI under some circumstances and lenders must terminate PMI automatically when certain conditions are met.

Comment 18(g)–5 is added in response to creditors' requests for guidance on how the new statutory requirements affect TILA disclosures. PMI premiums are finance charges and are figured into disclosures such as the APR and payment schedule. TILA disclosures are based on the legal obligation between the parties, and the comment provides that the payment schedule disclosure should reflect all components of the finance charge, including PMI for the time period there is a legal obligation to maintain the insurance.

Commenters generally supported the proposed guidance, although a few believed the guidance was unnecessary and others believed the guidance was not detailed enough. In response to comments received, the comment is revised to clarify that creditors may rely on assumptions used for variable-rate transactions and discounted and

premium variable-rate transactions in calculating payment schedules that involve PMI.

18(j) Total Sale Price

Comment 18(j)–2 provides the formula for calculating the total sale price in a credit sale transaction; it is the sum of the cash price, certain other amounts financed, and the finance charge. In response to requests for guidance, the commentary is revised to address how the total sale price may be affected by downpayments involving both cash and property used as a trade-in with a lien exceeding the value of the trade-in. This guidance is provided in a new comment 18(j)–3.

Under the proposal, creditors were to calculate the downpayment by applying cash payments first to reduce excess lien amounts. In response to commenters' concerns about the Board's proposed approach to disclosing the downpayment, the guidance has been revised. See comment 2(a)(18)–3.

The flexibility provided to creditors in disclosing a downpayment may result in disclosures of a total sale price that may differ among creditors. However, key disclosures such as the amount financed, finance charge, and APR remain uniform and will not be affected by the creditor's approach in disclosing the downpayment and total sale price.

Subpart E—Special Rules for Certain Home Mortgage Transactions

Section 226.32—Requirements for Certain Closed-end Home Mortgages

32(a) Coverage

32(a)(1)(ii)

Creditors must follow the rules in § 226.32 if the total points and fees payable by the consumer at or before loan closing exceed the greater of $400 or 8 percent of the total loan amount. The Board is required to adjust the $400 amount each year. The adjusted amount for 1999 ($441), published on December 8, 1998 (63 FR 67575) is added to comment 32(a)(1)(ii)–2.

List of Subjects in 12 CFR Part 226

Advertising, Banks, banking, Consumer protection, Credit, Federal Reserve System, Mortgages, Reporting and recordkeeping requirements, Truth in lending.

For the reasons set forth in the preamble, the Board amends 12 CFR part 226 as follows:

PART 226—TRUTH IN LENDING (REGULATION Z)

1. The authority citation for part 226 continues to read as follows:

Authority: 12 U.S.C. 3806; 15 U.S.C. 1604 and 1637(c)(5).

2. In Supplement I to Part 226, under *Section 226.2—Definitions and Rules of Construction*, the following amendments are made:

a. Under *Paragraph 2(a)(15) Credit card.*, paragraph 2. is revised; and

b. Under *Paragraph 2(a)(18) Downpayment.*, paragraph 3. is revised.

The revisions read as follows:

Supplement I to Part 226—Official Staff Interpretations

* * * * *

Subpart A—General

* * * * *

Section 226.2—Definitions and Rules of Construction

2(a) Definitions.

* * * * *

2(a)(15) Credit card.

* * * * *

2. *Examples.* i. Examples of credit cards include:

A. A card that guarantees checks or similar instruments, if the asset account is also tied to an overdraft line or if the instrument directly accesses a line of credit.

B. A card that accesses both a credit and an asset account (that is, a debit-credit card).

C. An identification card that permits the consumer to defer payment on a purchase.

D. An identification card indicating loan approval that is presented to a merchant or to a lender, whether or not the consumer signs a separate promissory note for each credit extension.

E. A card or device that can be activated upon receipt to access credit, even if the card has a substantive use other than credit, such as a purchase-price discount card. Such a card or device is a credit card notwithstanding the fact that the recipient must first contact the card issuer to access or activate the credit feature.

ii. In contrast, a credit card does not include, for example:

A. A check-guarantee or debit card with no credit feature or agreement, even if the creditor occasionally honors an inadvertent overdraft.

B. Any card, key, plate, or other device that is used in order to obtain petroleum products for business purposes from a wholesale distribution facility or to gain access to that facility, and that is required to be used without regard to payment terms.

* * * * *

2(a)(18) Downpayment.

* * * * *

3. *Effect of existing liens.* i. *No cash payment.* In a credit sale, the "downpayment" may only be used to reduce the cash price. For example, when a trade-in is used as the downpayment and the existing lien on an automobile to be traded in exceeds the value of the automobile, creditors must disclose a zero on the downpayment line rather than a negative number. To illustrate, assume a consumer owes $10,000 on an existing automobile loan and that the trade-in value of the automobile is only $8,000, leaving a $2,000 deficit. The creditor should disclose a downpayment of $0, not −$2,000.

ii. *Cash payment.* If the consumer makes a cash payment, creditors may, at their option, disclose the entire cash payment as the downpayment, or apply the cash payment first to any excess lien amount and disclose any remaining cash as the downpayment. In the above example:

A. If the downpayment disclosed is equal to the cash payment, the $2,000 deficit must be reflected as an additional amount financed under § 226.18(b)(2).

B. If the consumer provides $1,500 in cash (which does not extinguish the $2,000 deficit), the creditor may disclose a downpayment of $1,500 or of $0.

C. If the consumer provides $3,000 in cash, the creditor may disclose a downpayment of $3,000 or of $1,000.

* * * * *

3. In Supplement I to Part 226, under *Section 226.12—Special Credit Card Provisions*, under *Paragraph 12(a)(1)*, paragraph 7. is revised to read as follows:

* * * * *

Subpart B—Open-end Credit

* * * * *

Section 226.12—Special Credit Card Provisions

* * * * *

12(a) Issuance of credit cards.

Paragraph 12(a)(1)

* * * * *

7. *Issuance of non-credit cards.* i. *General.* Under § 226.12(a)(1), a credit card cannot be issued except in response to a request or an application. (See comment 2(a)(15)–2 for examples of cards or devices that are and are not credit cards.) A non-credit card may be sent on an unsolicited basis by an issuer that does not propose to connect the card to any credit plan; a credit feature

may be added to a previously issued non-credit card only upon the consumer's specific request.

ii. *Examples.* A purchase-price discount card may be sent on an unsolicited basis by an issuer that does not propose to connect the card to any credit plan. An issuer demonstrates that it proposes to connect the card to a credit plan by, for example, including promotional materials about credit features or account agreements and disclosures required by § 226.6. The issuer will violate the rule against unsolicited issuance if, for example, at the time the card is sent a credit plan can be accessed by the card or the recipient of the unsolicited card has been preapproved for credit that the recipient can access by contacting the issuer and activating the card.

* * * * *

4. In Supplement I to Part 226, *Section 226.14—Determination of Annual Percentage Rate,* under *Paragraph 14(c) Annual percentage rate for periodic statements.,* paragraph 10.ii. is republished and paragraph 10.ii.B. is revised to read as follows:

* * * * *

Section 226.14—Determination of Annual Percentage Rate

* * * * *

14(c) Annual percentage rate for periodic statements.

* * * * *

10. *Prior-cycle adjustments.*

* * * * *

ii. Finance charges relating to activity in prior cycles should be reflected on the periodic statement as follows:

* * * * *

B. If a finance charge that is posted to the account relates to activity for which a finance charge was debited or credited to the account in a previous billing cycle (for example, if the finance charge relates to an adjustment such as the resolution of a billing error dispute, or an unintentional posting error, or a payment by check that was later returned unpaid for insufficient funds or other reasons), the creditor shall at its option:

1. Calculate the annual percentage rate in accord with ii.A. of this paragraph, or

2. Disclose the finance charge adjustment on the periodic statement and calculate the annual percentage rate for the current billing cycle without including the finance charge adjustment in the numerator and balances associated with the finance charge adjustment in the denominator.

* * * * *

5. In Supplement I to Part 226, under *Section 226.18—Content of Disclosures,* the following amendments are made:

a. Under *18(g) Payment schedule.,* a new paragraph 5. is added; and

b. Under *18(j) Total sale price.,* a new paragraph 3. is added.

The additions read as follows:

* * * * *

Subpart C—Closed-end Credit

* * * * *

Section 226.18—Content of Disclosures

* * * * *

18(g) Payment schedule.

* * * * *

5. *Mortgage insurance.* The payment schedule should reflect the consumer's mortgage insurance payments until the date on which the creditor must automatically terminate coverage under applicable law, even though the consumer may have a right to request that the insurance be cancelled earlier. (For assumptions in calculating a payment schedule that includes mortgage insurance that must be automatically terminated, see comments 17(c)(1)–8 and 17(c)(1)–10.)

* * * * *

18(j) Total sale price.

* * * * *

3. *Effect of existing liens.* When a credit sale transaction involves property that is being used as a trade-in (an automobile, for example) and that has a lien exceeding the value of the trade-in, the total sale price is affected by the amount of any cash provided. (See comment 2(a)(18)–3.) To illustrate, assume a consumer finances the purchase of an automobile with a cash price of $20,000. Another vehicle used as a trade-in has a value of $8,000 but has an existing lien of $10,000, leaving a $2,000 deficit that the consumer must finance.

i. If the consumer pays $1,500 in cash, the creditor may apply the cash first to the lien, leaving a $500 deficit, and reflect a downpayment of $0. The total sale price would include the $20,000 cash price, an additional $500 financed under § 226.18(b)(2), and the amount of the finance charge. Alternatively, the creditor may reflect a downpayment of $1,500 and finance the $2,000 deficit. In that case, the total sale price would include the sum of the $20,000 cash price, the $2,000 lien payoff amount as an additional amount financed, and the amount of the finance charge.

ii. If the consumer pays $3,000 in cash, the creditor may apply the cash first to extinguish the lien and reflect the remainder as a downpayment of $1,000. The total sale price would reflect the $20,000 cash price and the amount of the finance charge. (The cash payment extinguishes the trade-in deficit and no charges are added under § 226.18(b)(2).) Alternatively, the creditor may elect to reflect a downpayment of $3,000 and finance the $2,000 deficit. In that case, the total sale price would include the sum of the $20,000 cash price, the $2,000 lien payoff amount as an additional amount financed, and the amount of the finance charge.

* * * * *

6. In Supplement I to Part 226, *Section 226.32—Requirements for Certain Closed-end Home Mortgages,* under *Paragraph 32(a)(1)(ii),* paragraph 2.iv. is added to read as follows:

* * * * *

Subpart E—Special Rules For Certain Home Mortgage Transactions

* * * * *

Section 226.32—Requirements for Certain Closed-end Home Mortgages

* * * * *

32(a) Coverage.

* * * * *

Paragraph 32(a)(1)(ii).

* * * * *

2. *Annual adjustment of $400 amount.*

* * * * *

iv. For 1999, $441, reflecting a 1.4 percent increase in the CPI–U from June 1997 to June 1998, rounded to the nearest whole dollar.

* * * * *

By order of the Board of Governors of the Federal Reserve System, acting through the Secretary of the Board under delegated authority, March 31, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–8413 Filed 4–5–99; 8:45 am]

BILLING CODE 6210–01–P

FARM CREDIT ADMINISTRATION

12 CFR Parts 611 and 620

RIN 3052–AB79

Organization; Disclosure to Shareholders; FCS Board Compensation Limits

AGENCY: Farm Credit Administration.

ACTION: Final rule.

SUMMARY: This final rule amends Farm Credit Administration (FCA) regulations on Farm Credit System (System or FCS) bank director compensation. The amendment removes the requirement for FCS banks to obtain our prior

approval before paying their directors more than the generally applicable limit.

EFFECTIVE DATE: This regulation will become effective 30 days after publication in the **Federal Register** during which either or both houses of Congress are in session. We will publish a notice of the effective date in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Alan Markowitz, Senior Policy Analyst, Office of Policy and Analysis, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4479; or Rebecca S. Orlich, Senior Attorney, Office of General Counsel, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4020, TDD (703) 883–4444.

SUPPLEMENTARY INFORMATION: We adopt these amendments without change from the proposed rule (63 FR 49305, September 15, 1998), as part of our continuing efforts to reduce the burden of regulatory compliance. We amend § 611.400 to remove the requirement for System banks to obtain our prior approval before paying director compensation in excess of the generally applicable limit. Section 4.21(a) of the Farm Credit Act of 1971, as amended (Act), provides for the maximum amount of annual compensation that System banks may ordinarily pay to directors. Section 4.21(b) authorizes us to waive this limitation under exceptional circumstances. The amended rule provides that:

- Banks may pay a director more than the maximum amount when a director has spent extraordinary time and effort on bank business in exceptional circumstances.
- The additional compensation may not exceed 30 percent of the annual limit.
- Each bank must have a written policy describing any exceptional circumstances under which the board will pay additional compensation.
- Banks must document the exceptional circumstances for each case in which additional amounts are paid.

We also make a conforming amendment to § 620.5(i)(1), regarding disclosure of additional compensation in the annual report to shareholders.

We received comments on the proposed rule from the Farm Credit Council on behalf of its member banks; Western Farm Credit Bank; AgAmerica, FCB; and CoBank, ACB (CoBank). All commenters agreed with us that elimination of our prior approval reduces regulatory burden while preserving the requirement that banks pay additional compensation only in exceptional circumstances. The following excerpt from CoBank's comment was typical of the comments we received. "Since FCA can and will effectively monitor the payment of director compensation through the examination process, CoBank believes it is both fair and achievable to allow the Banks to make additional compensation determinations based on exceptional circumstances and the documentation to support such compensation."

List of Subjects

12 CFR Part 611

Agriculture, Banks, banking, Rural areas.

12 CFR Part 620

Accounting, Agriculture, Banks, banking, Reporting and recordkeeping requirements, Rural areas.

For the reasons stated above, parts 611 and 620 of chapter VI, title 12 of the Code of Federal Regulations are amended to read as follows:

PART 611—ORGANIZATION

1. The authority citation for part 611 continues to read as follows:

Authority: Secs. 1.3, 1.13, 2.0, 2.10, 3.0, 3.21, 4.12, 4.15, 4.20, 4.21, 5.9, 5.10, 5.17, 7.0—7.13, 8.5(e) of the Farm Credit Act (12 U.S.C. 2011, 2021, 2071, 2091, 2121, 2142, 2183, 2203, 2208, 2209, 2243, 2244, 2252, 2279a—2279f–1, 2279aa–5(e)); secs. 411 and 412 of Pub. L. 100–233, 101 Stat. 1568, 1638; secs. 409 and 414 of Pub. L. 100–399, 102 Stat. 989, 1003, and 1004.

Subpart D—Rules for Compensation of Board Members

2. Section 611.400 is amended by revising paragraphs (c) and (d)(3) to read as follows:

§ 611.400 Compensation of bank board members.

* * * * *

(c)(1) A Farm Credit bank is authorized to pay a director up to 30 percent more than the statutory compensation limit in exceptional circumstances where the director contributes extraordinary time and effort in the service of the bank and its shareholders.

(2) Banks must document the exceptional circumstances justifying additional director compensation. The documentation must describe:

(i) The exceptional circumstances justifying the additional director compensation, including the extraordinary time and effort the director devoted to bank business; and

(ii) The amount and the terms and conditions of the additional director compensation.

(d) * * *

(3) The exceptional circumstances under which the board would pay additional compensation for any of its directors as authorized by paragraph (c) of this section.

* * * * *

PART 620—DISCLOSURE TO SHAREHOLDERS

3. The authority citation for part 620 continues to read as follows:

Authority: Secs. 5.17, 5.19, 8.11 of the Farm Credit Act (12 U.S.C. 2252, 2254, 2279aa-11); sec. 424 of Pub. L. 100–233, 101 Stat. 1568, 1656.

Subpart B—Annual Report to Shareholders

§ 620.5 [Amended]

4. Section 620.5(i)(1) is amended by removing the words "under which a waiver of section 4.21 of the Act was granted by the FCA" and adding in their place the words "justifying the additional director compensation as authorized by § 611.400(c)(1) of this chapter" in the second sentence.

Dated: March 30, 1999.

Vivian L. Portis,

Secretary, Farm Credit Administration Board.

[FR Doc. 99–8310 Filed 4–5–99; 8:45 am]

BILLING CODE 6705–01–P

FEDERAL HOUSING FINANCE BOARD

12 CFR Part 935

[No. 99–20]

RIN 3069–AA77

Collateral Eligible To Secure Federal Home Loan Bank Advances

AGENCY: Federal Housing Finance Board.

ACTION: Final rule.

SUMMARY: The Federal Housing Finance Board (Finance Board) is amending its regulation governing eligible collateral for Federal Home Loan Bank (FHLBank) advances to clarify that certain assets, including the insured or guaranteed portions of federally-insured or guaranteed loans and securities representing an equity interest in eligible collateral, qualify as eligible collateral to secure FHLBank advances. The final rule also amends the Finance Board's regulation on collateral verification to eliminate certain ambiguities therein.

DATES: This final rule is effective on April 15, 1999.

FOR FURTHER INFORMATION CONTACT: Eric M. Raudenbush, Attorney-Advisor,

Office of General Counsel, (202) 408–2932, Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006, or by electronic mail at raudenbushe@fhfb.gov.

SUPPLEMENTARY INFORMATION:

I. The Proposed Rule

On December 8, 1998, the Finance Board published for comment a proposed rule to amend its Advances Regulation, 12 CFR part 935, primarily in order to codify in the Regulation provisions governing various collateral arrangements that have been the subject of regulatory interpretations and requests for such interpretations from the FHLBanks and their members. *See* 63 FR 67625 (Dec. 8, 1998). The sixty day public comment period closed on February 8, 1999. The Finance Board received a total of forty comments: eleven from FHLBanks, seventeen from FHLBank members, five from trade associations, two from members of Congress, and one each from an investment broker/dealer serving FHLBank members, an accounting firm, a state governor and a non-member corporate credit union. Only the non-member corporate credit union opposed the rule generally.

Section 10(a) of the Federal Home Loan Bank Act (Bank Act) enumerates four categories of collateral that are eligible to secure FHLBank advances: (1) Current whole first mortgage loans on improved residential property and securities representing a whole interest in such mortgages; (2) securities that are issued, guaranteed, or insured by the United States Government, or any agency thereof; (3) deposits of a FHLBank; and (4) other real-estate related collateral in a total amount not to exceed 30 percent of the borrowing member's capital. *See* 12 U.S.C. 1430(a). The Advances Regulation implements and clarifies the statutory requirements of section 10 of the Bank Act that relate to the security interests that a FHLBank must obtain and maintain when making advances to member institutions. Among the issues that the Regulation addresses are: the types and amounts of collateral that a FHLBank may or must accept when making advances; the priority of FHLBank claims to such collateral in relation to other creditors; and requirements regarding the valuation and verification of the existence of pledged collateral. *See* 12 CFR 935.9–12.

In response to numerous requests from both FHLBanks and their members to clarify or interpret these collateral provisions in the context of specific transactions, the Finance Board proposed to amend § 935.9 to make explicit in the Regulation that the FHLBanks may accept as collateral to secure advances to members: (1) the insured or guaranteed portions of federally-insured or guaranteed loans, regardless of delinquency status; (2) securities representing an equity interest in eligible collateral; and (3) eligible mortgage or government securities collateral held by members' wholly-owned investment subsidiaries, under the conditions set forth in the proposed rule. In addition, the Finance Board proposed to amend § 935.11(b) of the Advances Regulation, governing collateral verification, to eliminate an ambiguous reference therein to standards established by the Auditing Standards Board of the American Institute of Certified Public Accountants (AICPA).

II. Comments on the Proposed Rule and Analysis of Changes Made in the Final Rule

A. Eligible Collateral Pledged by a Qualifying Investment Subsidiary

The proposed rule would have amended § 935.1 of the Advances Regulation to include a definition of the term "Qualifying Investment Subsidiary" (QIS), which was to include business entities that: (1) Are wholly owned by a member; (2) are operated solely as passive investment vehicles on behalf of that member; and (3) hold only cash equivalents and assets that are eligible collateral under §§ 935.9(a)(1) and (2) of the Advances Regulation. In turn, the proposed rule would have created a new § 935.9(b) under which the FHLBanks would have been expressly permitted to accept pledges of eligible collateral from a member's QIS to secure advances to that member where the FHLBank was able to obtain and maintain a security interest in the collateral pursuant to which its rights and privileges were functionally equivalent to those that the FHLBank would possess if the member were to pledge the collateral directly.

These proposed provisions were intended primarily to address requests from FHLBanks to accept as security for advances to members eligible collateral held by Real Estate Investment Trust and state security corporation subsidiaries. However, a large number of commenters questioned the Finance Board's proposal to address only pledges of collateral from a narrow class of wholly-owned subsidiaries, while ignoring collateral arrangements with other types of affiliates that may be permissible under the Bank Act. In light of these comments, the Finance Board has decided to remove these QIS provisions from the text of the final rule pending further analysis of the issue. It is anticipated that, in the near future, the Finance Board will either finalize the QIS provisions separately in a modified form, or will issue a new proposed rule that addresses in a more comprehensive fashion pledges of collateral from members' affiliates.

B. Equity Interests in Eligible Collateral

Section 935.9(a)(1)(iii) of the proposed rule expressly authorized FHLBanks to accept as collateral for advances to members any security the ownership of which represents an undivided equity interest in whole mortgages or mortgage-backed securities (MBS), all of which qualify as eligible collateral under § 935.9(a)(1). Similarly, § 935.9(a)(2)(ii) of the proposed rule expressly authorized FHLBanks to accept as collateral any security the ownership of which represents an undivided equity interest in underlying assets, all of which qualify as eligible government securities collateral under § 935.9(a)(2). These provisions were intended to permit FHLBanks to accept as collateral shares of mutual funds and similar equity investments where the underlying assets of the fund comprise only eligible collateral.

Seven commenters (two FHLBanks, two members, two trade associations and the investment broker/dealer) expressly supported, and no commenters expressly opposed, these provisions. However, the two FHLBanks opposed the proposed rule's requirement that the underlying assets of the fund consist only of eligible collateral. Noting that it is likely that, for liquidity purposes, such funds may hold a small percentage of assets that do not qualify as eligible collateral, one FHLBank suggested that the FHLBanks be authorized to accept shares of funds where at least 90 percent of the underlying assets are eligible collateral. The other FHLBank suggested that FHLBanks be permitted to lend against the pro-rata share of the underlying assets that do qualify as eligible collateral. In the final rule, the Finance Board has combined the material contained in proposed §§ 935.9(a)(1)(iii) and (a)(2)(ii) into a new § 935.9(a)(5), under which the FHLBanks are permitted to accept shares of mutual funds and similar investments that represent an undivided equity interest in underlying assets that qualify as eligible collateral under either § 935.9(a)(1) or (a)(2). This change makes clear that FHLBanks may accept shares of funds that hold a combination of eligible mortgage assets and eligible government securities, in addition to

those that hold either one or the other type of eligible collateral. In addition, new § 935.9(a)(5) makes clear that such funds may also hold cash or cash equivalents without losing their eligibility as collateral for advances. Because of the complexities of monitoring the fluctuating asset pools of mutual funds and similar investments, the Finance Board has determined that it will not, at this time, permit FHLBanks to accept under new § 935.9(a)(5) shares of funds that hold any assets that are neither eligible collateral under §§ 935.9(a)(1) or (a)(2), nor cash or cash equivalents. Depending on the mix of the underlying assets, however, shares of such funds may constitute eligible collateral under § 935.9(a)(4).

C. Government Securities

In the proposed rule, the Finance Board proposed to redesignate the existing text of § 935.9(a)(2) of the Advances Regulation as § 935.9(a)(2)(i)(A) and to add: a new paragraph (i)(B) to make clear that FHLBanks may accept, as eligible government securities collateral, mortgages or other loans, regardless of delinquency status, to the extent that the repayment of the principal and/or interest on such mortgages or loans is backed by the United States Government or any of its agencies; and a new paragraph (i)(C) to make clear that FHLBanks may also accept as eligible collateral securities that are backed by, or represent equity interests in, pools of loans or mortgages that are insured or guaranteed by the United States Government or its agencies (to the extent of such insurance or guarantee), even if the investment instrument itself is not so insured or guaranteed. Proposed §§ 935.9(a)(2)(i)(B) and (C) have been redesignated in the final rule as §§ 935.9(a)(2)(ii) and (iii), respectively.

Nineteen commenters (nine members, four trade associations, three FHLBanks, two members of Congress and one state governor) expressly supported these changes and one commenter (the non-member corporate credit union) expressly opposed them. Several commenters noted specifically that, in the risk-based capital provisions of their respective regulations, the federal financial institution regulatory agencies recognize that individual loans that are insured or guaranteed by the United States Government possess risk equal to that of government-insured or guaranteed securities representing interests in pools of loans.

A significant number of commenters requested that the Finance Board make clear in the preamble to the final rule that Sallie Mae student loans reinsured by the U.S. Department of Education (DOE) and certificates backed by pools of such loans will be considered to be eligible collateral pursuant to the new provisions. The Finance Board understands that, with respect to at least some Sallie Mae loans made under the Federal Family Education Loan Program (FFELP), the holder of the loan benefits directly only from the guarantee of a Guarantee Agency that is not part of the federal government. While a Guarantee Agency may have a legal right to be reimbursed by the DOE for a portion of guarantee payments made to holders of defaulted student loans, the holders of these loans do not, in most circumstances, have any right to reimbursement from the federal government. Without concluding that Sallie Mae loans may never be considered to be "government securities," the Finance Board has determined that, where a member holding a loan is not the direct beneficiary of insurance or a guarantee payable by the United States or its agencies, such loans will not be considered to be eligible government securities collateral under section 10(a)(2) of the Bank Act. Accordingly, the text of final § 935.9(a)(2)(ii) has been revised to reflect this requirement.

Many commenters responded favorably to the statement in the preamble to the proposed rule that, pursuant to the new provisions, the guaranteed portions of small business loans guaranteed by the Small Business Administration (SBA) could be accepted as government securities collateral under § 935.9(a)(2). Since the publication of the proposed rule, the Finance Board has learned that, under SBA regulations, holders of SBA guaranteed loans made under the SBA's 7(a) Program may not use the guaranteed portions of these loans as collateral for any borrowing without the prior written consent of the SBA, which will be granted only if certain conditions are met. *See* 13 CFR 120.420. While the Finance Board continues to consider the guaranteed portions of SBA loans to be eligible collateral under § 935.9(a)(2)(ii) of the final rule, it is the responsibility of the FHLBank and its borrowing member to ensure that these and any other statutory and regulatory requirements pertaining to the pledging of government-insured or guaranteed loans are met at the time such assets are taken as collateral. The Finance Board has no authority to interpret, waive, or enforce the regulations of other federal agencies and has not undertaken a comprehensive survey of statutory and regulatory requirements that may apply to government-insured or guaranteed loans that may be accepted as collateral under new §§ 935.9(a)(2)(ii) and (iii).

The one commenter that opposed the adoption of the new government securities provisions argued that, by permitting FHLBanks to accept, in addition to mortgages, "other loans" insured or guaranteed by the United States or its agencies, the Finance Board is permitting the FHLBanks to stray from their housing finance mission. In fact, section 10(a)(2) of the Bank Act—which is the source of statutory authority for § 935.9(a)(2) of the regulations—does not require that government securities be mortgage-related to be eligible as collateral for FHLBank advances. *See* 12 U.S.C. 1430(a)(2).

D. Collateral Verification

Finally, in the proposed rule, the Finance Board proposed to amend § 935.11(b) of the Advances Regulation, governing the verification of the existence of collateral, to remove therefrom a requirement that each FHLBank establish written collateral verification procedures containing standards similar to those established by the AICPA. Three commenters (two FHLBanks and one member) expressly supported the amendment. Two commenters (one member and the AICPA), while not objecting generally to revising § 935.11(b), stated that any amendment should more clearly set forth objectively measurable expectations regarding collateral verification.

The intent behind the proposed amendment is to direct the FHLBanks to maintain appropriate collateral verification standards and processes and to give the Finance Board examination staff the flexibility to assess the adequacy of specific standards and procedures adopted by each FHLBank. Although, in the course of such a review, examiners would normally look for consistency with generally accepted standards, such as those established by the AICPA, to mandate particular standards in the rule would eliminate the flexibility that the Finance Board has determined is necessary in carrying out these examinations. Accordingly, this amendment remains unchanged in the final rule.

III. Regulatory Flexibility Act

The final rule applies only to the FHLBanks, which do not come within the meaning of "small business," as defined in the Regulatory Flexibility Act (RFA). *See* 5 U.S.C. 601(6). Therefore, in

accordance with section 605(b) of the RFA, 5 U.S.C. 605(b), the Finance Board hereby certifies that this proposed rule, if promulgated as a final rule, will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 12 CFR Part 935

Credit, Federal home loan banks, Reporting and recordkeeping requirements.

Accordingly, the Finance Board amends 12 CFR part 935 as follows:

PART 935—ADVANCES

1. The authority citation for part 935 is revised to read as follows:

Authority: 12 U.S.C. 1422a(a)(3), 1422b(a)(1), 1426, 1429, 1430, 1430b and 1431.

Subpart A—Advances to Members

2. Amend § 935.1 by revising the definition of "Mortgage-backed security" to read as follows:

§ 935.1 Definitions.

* * * * *

Mortgage-backed security means:

(1) An equity security representing an ownership interest in:

(i) Fully disbursed, whole first mortgage loans on improved residential real property; or

(ii) Mortgage pass-through or participation securities which are themselves backed entirely by fully disbursed, whole first mortgage loans on improved residential real property; or

(2) An obligation, bond, or other debt security backed entirely by the assets described in paragraph (1)(i) or (ii) of this definition.

* * * * *

3. Amend § 935.9 as follows:

a. Add to the headings of paragraphs (b), (c) and (e) the word "advances" preceding the word "collateral";

b. Revise paragraph (a) as follows:

§ 935.9 Collateral.

(a) *Eligible security for advances.* At the time of origination or renewal of an advance, each Bank shall obtain, and thereafter maintain, a security interest in collateral that meets the requirements of one or more of the following categories:

(1) *Mortgage loans and privately issued securities.* (i) Fully disbursed, whole first mortgage loans on improved residential real property not more than 90 days delinquent; or

(ii) Privately issued mortgage-backed securities, excluding the following:

(A) Securities that represent a share of only the interest payments or only the principal payments from the underlying mortgage loans;

(B) Securities that represent a subordinate interest in the cash flows from the underlying mortgage loans;

(C) Securities that represent an interest in any residual payments from the underlying pool of mortgage loans; or

(D) Such other high-risk securities as the Board in its discretion may determine.

(2) *Agency securities.* Securities issued, insured or guaranteed by the United States Government, or any agency thereof, including without limitation:

(i) Mortgage-backed securities, as defined in § 935.1 of this part, issued or guaranteed by the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, the Government National Mortgage Association, or any other agency of the United States Government;

(ii) Mortgages or other loans, regardless of delinquency status, to the extent that the mortgage or loan is insured or guaranteed by the United States or any agency thereof, or otherwise is backed by the full faith and credit of the United States, and such insurance, guarantee or other backing is for the direct benefit of the holder of the mortgage or loan; and

(iii) Securities backed by, or representing an equity interest in, mortgages or other loans referred to in paragraph (a)(2)(ii) of this section.

(3) *Deposits.* Deposits in a Bank.

(4) *Other collateral.* (i) Except as provided in paragraph (a)(4)(iii) of this section, other real estate-related collateral acceptable to the Bank if:

(A) Such collateral has a readily ascertainable value; and

(B) The Bank can perfect a security interest in such collateral.

(ii) Eligible other real estate-related collateral may include, but is not limited to:

(A) Privately issued mortgage-backed securities not otherwise eligible under paragraph (a)(1)(ii) of this section;

(B) Second mortgage loans, including home equity loans;

(C) Commercial real estate loans; and

(D) Mortgage loan participations.

(iii) A Bank shall not permit the aggregate amount of outstanding advances to any one member, secured by such other real estate-related collateral, to exceed 30 percent of such member's capital, as calculated according to GAAP, at the time the advance is issued or renewed.

(5) *Securities representing equity interests in eligible advances collateral.* Any security the ownership of which represents an undivided equity interest in underlying assets, all of which qualify either as:

(i) Eligible collateral under paragraphs (a)(1) or (2) of this section; or

(ii) Cash or cash equivalents.

* * * * *

4. Amend § 935.11 by revising paragraph (b) to read as follows:

§ 935.11 Pledged collateral; verification.

* * * * *

(b) *Collateral verification.* Each Bank shall establish written procedures and standards for verifying the existence of collateral securing the Bank's advances, and shall regularly verify the existence of the collateral securing its advances in accordance with such procedures and standards.

Dated: March 19, 1999.

By the Board of Directors of the Federal Housing Finance Board.

Bruce A. Morrison,

Chairman.

[FR Doc. 99–8356 Filed 4–5–99; 8:45 am]

BILLING CODE 6725–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–ANE–08–AD; Amendment 39–11103; AD 99–07–19]

RIN 2120–AA64

Airworthiness Directives; AlliedSignal Inc. TFE731–40R–200G Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to AlliedSignal Inc. TFE731–40R–200G turbofan engines. This action requires inspection of the fuel flow meter tube assembly part number (P/N) 3061157–2, which connects the fuel control to the fuel flow meter, and eventual replacement of the tube and fuel flow meter mounting bracket. This amendment is prompted by two in-flight shutdowns on two recently certified TFE731–40R turbofan engines within the last six months that resulted from fuel flow meter tube assembly failures. The actions specified in this AD are intended to prevent fuel from spraying on and around electrical components due to a cracked fuel line, which can result in an in-flight engine shutdown, and could possibly result in an engine fire.

DATES: Effective April 21, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 21, 1999.

Comments for inclusion in the Rules Docket must be received on or before June 7, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 99–ANE–08–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may also be sent via the Internet using the following address: "9-ad-engineprop@faa.gov." Comments sent via the Internet must contain the docket number in the subject line.

AlliedSignal Inc. service information referenced in this AD may be obtained from AlliedSignal Aerospace Services Attn: Data Distribution, M/S 64–3/2101–201, P.O. Box 29003, Phoenix, AZ 85038–9003; telephone (602) 365–2493, fax (602) 365–5577. Astra service information referenced in this AD may be obtained from Galaxy Aerospace Company, Attn: Publications, One Galaxy Way, Alliance Airport, Fort Worth, TX, 76177; telephone (817) 837–3740, fax (817) 837–3739. This information may be examined at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Joseph Costa, Aerospace Engineer, Los Angeles Aircraft Certification Office, FAA, Transport Airplane Directorate, 3960 Paramount Blvd., Lakewood, CA 90712–4137; telephone (562) 627–5246, fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: The Federal Aviation Administration (FAA) has received reports of failures of the fuel flow meter tube assembly between the fuel control and the fuel flow meter. These failures caused uncommanded in-flight shutdowns of the AlliedSignal Inc., TFE731–40R–200G turbofan engines. In one incident, an Israel Aircraft Industries, LTD. (IAI) Astra SPX airplane operator experienced an uncommanded engine rollback to shutdown. The post-flight investigation revealed a fracture of the fuel flow meter tube assembly, part number (P/N) 3061157–2, located between the fuel control unit and the fuel flow meter. Before this incident, the operator had experienced fuel flow fluctuations and had performed maintenance in the area of the fuel flow meter tube assembly in accordance with standard troubleshooting procedures. In another incident, an SPX operator experienced a fracture in a fuel flow meter tube assembly of the same P/N. This incident occurred shortly after replacement of the fuel control/main fuel pump. The FAA has concluded that the current rigid tube assembly design is not tolerant of normal maintenance actions and, therefore, this action is necessary to introduce a flexible hose design.

Since the initial incident, the FAA has verified that the fuel flow meter tube assembly, P/N 3061157–2, meets design intent, but could benefit from a more robust design from a maintenance standpoint. This condition, if not corrected, could result in fuel spraying on and around electrical components due to a cracked fuel line, which can result in an in-flight engine shutdown, and could possibly result in an engine fire.

The FAA has reviewed and approved the technical contents of AlliedSignal Inc. Operator Information Wire (OIW) TFE731–40G–99–01, dated January 7, 1999, that describes procedures for visual inspection of the fuel flow meter tube assembly, P/N 3061157–2, for cracks or leakage, and inspection of the clamping of the fuel flow meter and attached tube assemblies for proper installation. Also, the FAA has approved the technical content of AlliedSignal Inc. Alert Service Bulletin (ASB) TFE731–A73–5119 dated March 4, 1999, and has approved the technical content of Astra Alert Service Bulletin 1125–73A–189 dated March 4, 1999, that describes procedures for installing the new flexible fuel line and fuel flow meter mounting bracket.

Since an unsafe condition has been identified that is likely to exist or develop on other AlliedSignal Inc. TFE731–40R–200G turbofan engines of the same type design, this AD is being issued to prevent fuel from spraying on and around electrical components due to a cracked fuel line, which can result in an in-flight engine shutdown, and could possibly result in an engine fire. This AD requires the inspection of the fuel flow meter tube assembly, P/N 3061157–2, for cracks or leakage and for proper clamping within 5 hours time-in-service (TIS) after the effective date of this AD if any maintenance has been performed that required disconnecting the fuel flow meter tube assembly or the support clamping of the fuel meter or attached tube assemblies, or if it is unknown if any maintenance has been performed. This AD also requires inspection of the fuel flow meter tube assembly, P/N 3061157–2, for cracks or leakage and for proper clamping within 25 hours TIS after the effective date of this AD if no maintenance has been performed that required disconnecting the fuel flow meter tube assembly or the support clamping of the fuel meter or attached tube assemblies. This AD also requires replacement of fuel flow meter tube assembly, P/N 3061157–2, with a new flexible fuel line assembly and replacement of the fuel flow meter mounting bracketing within 30 days after the effective date of this AD. The inspections and replacements are required to be done in accordance with the service information described previously.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments, as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 99–ANE–08–AD." The

postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

99–07–19 AlliedSignal Inc.: Amendment 39–11103. Docket 99–ANE–08–AD.

Applicability: AlliedSignal Inc. TFE731–40R–200G turbofan engines installed on, but not limited to, Israel Aircraft Industries LTD (IAI), Model Astra SPX airplanes.

Note 1: This airworthiness directive (AD) applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless done previously.

To prevent fuel from spraying on and around electrical components due to a cracked fuel line, which can result in an in-flight engine shutdown, and could possibly result in an engine fire do the following:

(a) Inspect the fuel flow tube assembly, P/N 3061157–2, within 5 hours time-in-service (TIS) after the effective date of this AD, in accordance with Operator Information Wire (OIW) TFE731–40G–99–01, dated January 7, 1999, Compliance/Accomplishment Instructions step (2)(a) through step (2)(f) if any of the following actions have been done:

(1) If the fuel control or fuel flow meter have been removed or replaced;

(2) If maintenance has been performed which required removal of the clamping which supports the fuel flow meter or the attached tube assemblies; or

(3) If it is unknown if any maintenance has been done.

If the fuel flow tube assembly is cracked or shows evidence of leakage, or if the fuel flow meter clamping is suspected of applying stress to the tube assembly, replace the fuel flow tube assembly with serviceable parts in accordance with the Accomplishment Instructions of AlliedSignal Alert Service Bulletin (ASB) TFE731–A73–5119, dated March 4, 1999, and in accordance with the Accomplishment Instructions of Astra Alert Service Bulletin 1125–73A–189, dated March 4, 1999, prior to further flight.

(b) Inspect the fuel flow tube assembly, P/N 3061157–2, within 25 hours TIS after the effective date of this AD, in accordance with OIW TFE731–40G–99–01, dated January 7, 1999, Compliance/Accomplishment Instructions, step (1)(a) through step (1)(b), if the fuel control or fuel flow meter has not been removed or replaced since new and maintenance has not been done which required the removal of the clamping that supports the fuel flow meter or the attached tube assemblies. If the fuel flow tube assembly is cracked or shows evidence of leakage, or if the fuel flow meter clamping is suspected of applying stress to the tube assembly, replace the fuel flow tube assembly and fuel flow meter mounting bracket with serviceable parts in accordance with the Accomplishment Instructions of AlliedSignal Alert Service Bulletin (ASB) TFE731–A73–5119, dated March 4, 1999, and in accordance with the Accomplishment Instructions of Astra Alert Service Bulletin 1125–73A–189, dated March 4, 1999, prior to further flight.

(c) Within 30 days after the effective date of this AD, replace fuel flow tube assembly, P/N 3061157–2 and existing fuel flow meter mounting bracket with serviceable parts in accordance with the Accomplishment Instructions of AlliedSignal Alert Service Bulletin (ASB) TFE731–A73–5119, dated March 4,1999, and in accordance with the Accomplishment Instructions of Astra Alert Service Bulletin 1125–73A–189, dated March 4, 1999.

(d) If the flexible fuel line assembly, P/N 3061288–1, and fuel flow meter mounting bracket, P/N 3061293–1, are installed, or if rigid fuel flow tube assembly P/N 3060999–2 is installed, no further action is required and the requirements of this AD have been completed.

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles Aircraft Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Los Angeles Aircraft Certification Office.

(f) Special flight permits may be issued in accordance with § § 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the aircraft to a location where the requirements of this AD can be accomplished.

(g) The inspection and part replacement shall be done in accordance with the following service information:

Document No.	Pages	Revision	Date
TFE731–40G–99–01, AlliedSignal Inc. Operator Information Wire	3	Original	January 7, 1999.
TFE731–A73–5119, AlliedSignal Inc. Alert Service Bulletin	10	Original	March 4, 1999.
1125–73A–189, Astra Alert Service Bulletin	8	Original	March 4, 1999.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of the AlliedSignal Service Bulletin and Operator Information Wire may be obtained from AlliedSignal Aerospace Services Attn: Data Distribution, M/S 64–3/2101–201, P.O. Box 29003, Phoenix, AZ 85038–9003; telephone (602) 365–2493. Copies of the Astra Service Bulletin may be obtained from Galaxy Aerospace Company, Attn: Publications, One Galaxy Way, Alliance Airport, Fort Worth TX, 76177; telephone (817) 837–3740, FAX (817) 837–3739. Copies may be inspected at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

(h) This amendment becomes effective on April 21, 1999.

Issued in Burlington, Massachusetts, on March 25, 1999.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 99–8093 Filed 4–5–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–CE–82–AD; Amendment 39–11104; AD 99–07–20]

RIN 2120–AA64

Airworthiness Directives; Avions Pierre Robin Model R2160 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to all Avions Pierre Robin Model R2160 airplanes. This AD requires repetitively inspecting the vertical stabilizer spar in the area of the lower fitting of the rudder for cracks, loose rivets, or spar web distortion; and modifying the vertical stabilizer spar either immediately or at a certain time period depending on whether discrepancies are found during the inspections. This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for France. The actions specified by this AD are intended to detect defects (cracks, loose rivets, or spar web distortion) in the vertical stabilizer spar, which could result in structural failure of the vertical stabilizer with possible reduced or loss of control of the airplane.

DATES: Effective May 17, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 17, 1999.

ADDRESSES: Service information that applies to this AD may be obtained from Avions Pierre Robin, 1, route de Troyes, 21121 Darois-France; telephone: 80 44 20 50; facsimile: 80 35 60 80. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 98-CE–82-AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Karl M. Schletzbaum, Aerospace Engineer, FAA, Small Airplane Directorate, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone: (816) 426–6932; facsimile: (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Events Leading to the Issuance of This AD

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to all Avions Pierre Robin Model R2160 airplanes was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on January 19, 1999 (64 FR 2863). The NPRM proposed to require repetitively inspecting the vertical stabilizer spar in the area of the lower fitting of the rudder for cracks, loose rivets, or spar web distortion; and modifying the vertical stabilizer spar either immediately or at a certain time period depending on whether discrepancies are found during the inspections.

Accomplishment of the proposed inspections as specified in the NPRM would be required in accordance with Avions Pierre Robin Service Bulletin No. 120, dated September 27, 1990. Accomplishment of the proposed modification as specified in the NPRM would be required in accordance with the instructions included with Avions Pierre Robin Kit No. 97.40.03, as specified in Avions Pierre Robin Service Bulletin No. 120, dated September 27, 1990.

The NPRM was the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for France.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposed rule or the FAA's determination of the cost to the public.

The FAA's Determination

After careful review of all available information related to the subject presented above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. The FAA has determined that these minor corrections will not change the meaning of the AD and will not add any additional burden upon the public than was already proposed.

Cost Impact

The FAA estimates that 10 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 20 workhours per airplane to accomplish this action, and that the average labor rate is approximately $60 an hour. Parts cost approximately $100 per airplane. Based on these figures, the total cost impact of this AD on U.S. operators is estimated to be $13,000, or $1,300 per airplane.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the

Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

98–07–20 Avions Pierre Robin: Amendment 39–11104; Docket No. 98–CE–82–AD.

Applicability: Model R2160 airplanes, all serial numbers, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (f) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated in the body of this AD, unless already accomplished.

To detect defects (cracks, loose rivets, or spar web distortion) in the vertical stabilizer spar, which could result in structural failure of the vertical stabilizer with possible reduced or loss of control of the airplane, accomplish the following:

(a) Within the next 50 hours time-in-service (TIS) after the effective date of this AD, and thereafter at intervals not to exceed 100 hours TIS until the modification required by paragraph (b) of this AD is incorporated, inspect the vertical stabilizer spar in the area of the lower fitting of the rudder for cracks, loose rivets, or spar web distortion. Accomplish this inspection in accordance with the instructions in Avions Pierre Robin Service Bulletin No. 120, dated September 27, 1990.

(b) At whichever of the compliance times in paragraphs (b)(1) and (b)(2) of this AD that occurs first, modify the vertical stabilizer spar by incorporating Avions Pierre Robin Kit No. 97.40.03 in accordance with the instructions to this kit, as specified in Avions Pierre Robin Service Bulletin No. 120, dated September 27, 1990.

(1) Prior to further flight if cracks, loose rivets, or spar web distortion are/is found during any inspection required by paragraph (a) of this AD; or

(2) Within the next 12 calendar months after the effective date of this AD.

(c) Modifying the vertical stabilizer spar as specified in paragraph (b) of this AD is considered terminating action for the repetitive inspection requirement of this AD.

(d) As of the effective date of this AD, no person may install, on any affected airplane, a vertical stabilizer spar that has not been modified as specified in paragraph (b) of this AD.

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(f) An alternative method of compliance or adjustment of the compliance times that provides an equivalent level of safety may be used if approved by the Manager, Small Airplane Directorate, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64106. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Small Airplane Directorate.

(g) Questions or technical information related to the service information referenced in this AD should be directed to Avions Pierre Robin, 1 route de Troyes 21121 Darois, France; telephone: 03.80.44.20.50; facsimile: 03.80.35.60.80. This service information may be examined at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

(h) The inspection required by this AD shall be done in accordance with Avions Pierre Robin Service Bulletin No. 120, dated September 27, 1990. The modification required by this AD shall be done in accordance with the instructions to Avions Pierre Robin Kit No. 97.40.03 as referenced in Avions Pierre Robin Service Bulletin No. 120, dated September 27, 1990. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Avions Pierre Robin, 1 route de Troyes 21121 Darois, France. Copies may be inspected at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in French AD 90–224(A), dated December 12, 1990.

(i) This amendment becomes effective on May 17, 1999.

Issued in Kansas City, Missouri, on March 25, 1999.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–8092 Filed 4–5–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–163–AD; Amendment 39–11106; AD 99–08–02]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 747 series airplanes. The amendment requires a one-time inspection to detect discrepancies of the center fuel tank wiring and components, and corrective action, if necessary; and a one-time electrical bonding test of the center fuel tank components, and rework, if necessary. For certain airplanes, the amendment requires a one-time insulation resistance test and a one-time inspection to detect discrepancies of the wiring and components of the fuel quantity indication system (FQIS), and corrective actions, if necessary; replacement of certain FQIS probes with certain newer probes; a system adjustment and system operational test; and modification (installation of a flame arrestor) of the inlet line of the scavenge pump of the center fuel tank. This amendment is prompted by design review and testing results obtained in support of an accident investigation. The actions specified by this AD are intended to prevent ignition sources and consequent fire/explosion in the center fuel tank.

DATES: Effective May 11, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 11, 1999.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Dionne Stanley, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Transport Airplane Directorate, Seattle

Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2250; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all Boeing Model 747 series airplanes was published in the **Federal Register** on July 24, 1998 (63 FR 39765). That action proposed to require a one-time inspection to detect discrepancies of the center fuel tank, and corrective actions, if necessary; replacement of all components of the fuel quantity indicating system (FQIS) of the center tanks with new FQIS components; and replacement of the FQIS wiring with new wiring. For certain airplanes, that action proposed to require a one-time inspection to detect discrepancies of the FQIS, and corrective actions, if necessary; and installation of a flame arrestor in the scavenge pumps of the center fuel tank. That action was prompted by design review and testing results obtained in support of an investigation into a 1996 accident involving a Boeing Model 747 series airplane that occurred shortly after takeoff from John F. Kennedy International Airport in Jamaica, New York (hereinafter referred to as "the accident").

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

1. Support for Various Actions in the Proposal

Five commenters support various actions proposed by the AD.

Two commenters strongly support the philosophy in the notice of proposed rulemaking (NPRM) that tank entry would be minimized because multiple issues pertaining to the center wing tank may be accomplished during a single tank entry.

One commenter states that it currently plans to accomplish the actions described in Boeing Service Bulletin 747–28–2205 during scheduled checks to inspect center wing tank components. Another commenter states that it considers a one-time inspection of all Model 747 series airplanes necessary to ensure that no manufacturing or operator rework anomalies exist in today's fleet prior to the introduction of any new maintenance procedures. The FAA infers that those two commenters concur with the proposal to require the actions specified by Boeing Service Bulletin 747–28–2205, dated June 27, 1997, and Revision 1, dated April 16, 1998, as applicable.

Four commenters concur with the proposal to require the actions contained in Boeing Alert Service Bulletin 747–28A2208, dated May 14, 1998.

Four commenters concur with the proposal to require the actions contained in Boeing Alert Service Bulletin 747–28A2210, dated May 14, 1998.

2. Request To Withdraw the Proposal: No Justification

One commenter states that, without any proof that the FQIS or any of the other center wing tank components may have been the cause of the accident, and, without any service experience that supports such a conclusion, there is no technical or operational justification to mandate the proposed rule. The FAA infers that the commenter requests withdrawal of the proposed AD.

The commenter states that on-airplane tests performed by Boeing have not shown any in-service condition that could create any hazard. The commenter also concludes that there is no service experience that shows any evidence of ignition sources (evidence that would have been visible on any of the 248 airplanes that have been inspected).

The FAA does not concur that the proposed AD should be withdrawn based on the lack of conclusive evidence that the accident was caused by failure of the FQIS components or any of the other center fuel tank components. The FAA agrees that no conclusive evidence exists to indicate the accident was caused by failure of the FQIS or center fuel tank components. However, during such accidents, evidence that could lead to a conclusive identification of the cause of the accident often is destroyed. Regardless of the degree of destruction caused by such an accident, there often is no specific physical evidence of low energy electrical arcing. In consideration of the extensive wiring installed on a Boeing Model 747 series airplane, and the extensive damage to the wiring that occurred during the airplane fire, breakup, and subsequent recovery, conclusive identification of a specific wire that was damaged before the fire and breakup is extremely unlikely.

Following the determinations that an explosion in the center fuel tank was the initial event in the breakup of the airplane in the accident, and that the fire was not caused by an external source such as a bomb or missile, the National Transportation Safety Board (NTSB) has necessarily used systems analysis methods to determine what systems on the airplane are most likely to have been the source of ignition energy. That analysis included examinations of system failure modes and effects, service history, and similar airplanes. It was that analysis that led the FAA to propose the requirements specified in the NPRM.

The same commenter stated that on-airplane tests performed by Boeing have not shown any in-service condition that could create any hazard, and that any evidence of ignition sources would have been visible on any of the 248 airplanes that have been inspected. The FAA surmises that the commenter is referring to the bonding and grounding checks recommended in Boeing Service Bulletin 747–28–2205. The FAA agrees that to date none of the bonding and grounding checks have revealed severe bonding or grounding degradation that would pose a safety threat to the airplane. The bonding and grounding provisions within the fuel tank are designed to protect the fuel system components from becoming in-tank ignition sources in the event of a lightning strike or static electricity. However, the investigation of the accident identified certain fuel tank explosion scenarios involving latent failures or aging conditions within the fuel tank that are not related to the bonding or grounding aspects of the fuel system. Those scenarios involve a failure or condition inside the tank (such as conductive debris, copper/sulfur or silver/sulfur contaminants, and damaged in-tank wiring) in combination with a failure outside the tank (such as a hot short or electrical interference condition on the FQIS wiring). Examples of these in-tank and out-of-tank conditions, which can contribute to a multiple-failure ignition scenario, were found in airplane service records and on airplanes that were inspected by the FAA and NTSB.

The FAA does not agree with the commenter's conclusion that evidence of ignition sources would have been visible on any of the 248 airplanes that have been inspected. The FAA surmises that the commenter is referring to the results of the inspections described in Boeing Service Bulletin 747–28–2205. The infrequency of fuel tank explosions on Model 747 series airplanes indicates that the conditions creating the scenario for an airplane fuel tank explosion are uncommon. To date no evidence of ignition sources or conditions that may lead to an ignition source have been identified through inspections described in Service Bulletin 747–28–2205; therefore, the FAA would expect this evidence or condition to be unusual. A

sample inspection of 200 or 300 airplanes may identify degradation or system aging issues, but the FAA has determined that only a thorough inspection of all affected Model 747 series airplanes in the fleet can determine if a rare condition setting the stage for an airplane fuel tank explosion exists in a given airplane. No change to the final rule in this regard is necessary.

3. Request To Withdraw the Proposal: Unnecessary

One commenter states that the proposed AD is unnecessary due to the related rulemaking proposed in NPRM docket 97–NM–272–AD. The FAA infers that the commenter requests that this proposed AD be withdrawn.

The commenter observes that the related proposed AD (97–NM–272–AD) would prevent possible voltage spikes caused by lightning, electromagnetic interference, or electrical failures from entering the fuel tanks. The commenter concluded that ignition sources would be eliminated by either the related NPRM or this proposed AD, and that mandating both proposals is unnecessary.

NPRM docket 97–NM–272–AD has been issued as final rule AD 98–20–40 (63 FR 52147, September 30, 1998), effective November 4, 1998. AD 98–20–40, applicable to all Boeing Model 747–100, -200, -300, SP, and SR series airplanes, requires the installation of shielding and separation of the FQIS electrical wiring.

The FAA does not concur with the commenter's rationale as a basis to withdraw the proposed AD. Although the FAA agrees that both this final rule and AD 98–20–40 address the potential for ignition sources within airplane fuel tanks, each activity addresses different aspects of the multiple-failure ignition scenarios identified by the NTSB and FAA in the course of the accident investigation. These different aspects of the multiple-failure ignition scenarios were identified through the FQIS safety analysis and examinations of Model 747 series airplanes performed by the NTSB and FAA and involve latent failures or aging conditions within the fuel tank combined with a subsequent single failure or electrical interference condition outside the tank.

In attempting to preclude future fuel tank explosions, the FAA finds it necessary to address all aspects of viable ignition scenarios to ensure that potential failures of the fuel system cannot contribute to ignition of the flammable fuel vapors in airplane fuel tanks. By requiring "best practices" to be used both inside the tank (to eliminate the possibility for the creation of latent "spark-gap" locations in the event of high voltage on the FQIS wires) and outside the tank (to avoid introduction of ignition energy onto the FQIS wires), the FAA has determined that the modifications of the FQIS design of the Model 747 series airplane required by AD 98–20–40 and this final rule will adequately address the identified unsafe condition and meet the appropriate fail-safe standards to provide the level of safety (i.e., tank ignition events should never occur) intended by the regulations in place at the time of the original certification of the design.

No change to the final rule in this regard is necessary.

4. Request To Remove Requirement To Inspect Wiring

Five commenters request that the proposed AD remove the requirement to inspect the center fuel tank wiring and components, as specified by Boeing Service Bulletin 747–28–2205. One commenter, the manufacturer, states that Service Bulletin 747–28–2205 was initiated as a voluntary inspection activity. The service bulletin specifies that the purpose of inspecting the center fuel tank is to gather data on the in-service condition of fuel tanks, identify follow-up activities to ensure continued airworthiness, and develop updated maintenance programs and/or corrective action service bulletins where necessary. The manufacturer stated that, because the purpose of the inspections identified in the service bulletin was to collect data necessary to assess the in-service condition of the fleet, only a sampling of airplanes would be required. The manufacturer adds that, since no unsafe conditions have been identified in the approximately 283 airplanes inspected in accordance with this bulletin, there is no justification for mandating this bulletin. The manufacturer's philosophy has been to address any corrective actions for known issues in separate service bulletins to keep this bulletin from being mandated by regulatory action.

Four commenters agree that the intent of Service Bulletin 747–28–2205 was to conduct a sample program to gather data on in-service airplanes and not to address any unsafe condition.

Two commenters also note that, on all airplanes inspected to date, there have been no immediate safety concerns identified. One commenter states that, based on the inspections performed to date, Boeing is still convinced that the present design is safe.

The FAA does not concur with the commenters' request to withdraw the subject requirement. While the commenters state that Service Bulletin 747–28–2205 was initiated as a voluntary data-gathering inspection activity and that the manufacturer's philosophy has been to address any corrective actions for known issues in separate service bulletins, the FAA has repeatedly stated (e.g., at the NTSB Public Hearing and at ATA meetings) that it would consider mandating accomplishment of Service Bulletin 747–28–2205.

The FAA agrees that to date none of the inspections have revealed severe bonding or grounding degradation or a specific condition that would pose a safety threat to affected airplanes. The infrequency of fuel tank explosions on Model 747 series airplanes indicates that the conditions creating the scenario for such an explosion are uncommon. To date no evidence of ignition sources or conditions that may lead to an ignition source has been identified through inspections performed in accordance with Service Bulletin 747–28–2205; therefore, the FAA expects this evidence or condition to be unusual. While the FAA agrees that a sample inspection of 200 to 300 airplanes may identify degradation or system aging issues, only a thorough inspection of all affected Model 747 series airplanes in the fleet can determine if a rare condition setting the stage for an airplane fuel tank explosion exists in a given airplane. Therefore, the FAA does not concur with the commenters' request to withdraw the requirement to inspect the center fuel tank wiring in accordance with Service Bulletin 747–28–2205.

No change to the final rule in this regard is necessary.

5. Request To Add an Inspection

One commenter requests that the proposed actions specified in Boeing Service Bulletin 747–28–2205 be expanded to include an inspection to ensure that only fuel tube clamps of proper design are used in the center fuel tank and that the electrical resistances of all fuel tube clamps and couplings are within specified limits.

The commenter states that the NTSB, FAA, and National Aeronautics and Space Administration have each documented cases of fuel tube clamps and flexible fuel tube (Wiggins) couplings that were not properly bonded. In addition, the commenter found four different types of fuel tube clamps present in Model 747 series airplanes, some of which were not bonded. Also, the commenter has found fuel tube clamps in the center fuel tank of a Model 747 series airplane with silicon cushions that had degraded in

the presence of fuel. The commenter further notes that military specifications prohibit the use of this type of clamp in fuel tanks.

The FAA does not concur with the commenter's request to add an inspection. At the NTSB's request, an operator measured resistances and capacitances from three airplanes, each a different model, utilizing flexible fuel tube (Wiggins) couplings. The data from those measurements can be found in the NTSB accident investigation docket associated with the subject accident. After a review of the data from each of the three airplanes, the FAA determined that the range of resistances and capacitances measured would not result in an ignition with respect to static charge. The fuel tube clamps would be even less of a concern than the Wiggins fittings (for which the data were taken) because the fuel tube clamps would have lower associated capacitances.

While previous examination of the Wiggins coupling design has identified the potential for generating electrical sparks during a lightning event, standard installations in large aluminum fuel tanks (as in the Model 747) with fay surface bonding where fuel tubes attach to wing structure and the use of bonding jumpers have been shown to provide adequate lighting protection. In that type of installation, the design relies on the bonding jumper and fay surfaces to create a path for conducting the lightning current. The requirement to examine the bonding jumpers and measure the electrical bonding resistance as specified in Boeing Service Bulletin 747–28–2205, Revision 1, verifies the integrity of the provisions for lightning protection. Therefore, no additional measurements or inspections concerning the Wiggins couplings themselves are required.

Previous studies performed regarding the threat of lightning to an aircraft fuel system have not identified tube clamps as ignition sources.

No change to the final rule in this regard is necessary.

6. Request To Revise Reporting Requirements

Several commenters request revision or withdrawal of the proposed requirements to report results of the inspection of the center fuel tank and FQIS wiring. The specific requests are as follows:

- One commenter requests that the proposed requirement to report results of the inspection specified by Boeing Service Bulletin 747–28–2205 be withdrawn. The commenter states that the reporting requirement is necessary only for providing sample results to aid in defining future maintenance requirements. The commenter also is concerned that legible and consistent reporting results are not always obtained during inspections. The commenter states that it would be of considerable concern if corrupt or lost data meant that an operator was noncompliant.
- Three commenters request that the proposed inspection reporting requirements be modified to allow 30 days instead of the proposed 10 days. One commenter, the manufacturer, requests that the proposed AD extend the reporting time from 10 to 30 days because the volume and detail of the records taken during the inspection require a significant effort to collect and document. In addition, some airlines perform a series of inspections on a number of airplanes within a short time frame. One commenter, an operator, states that 10 days is not adequate to provide the reports, based on numerous center fuel tank inspections it has performed (in accordance with Service Bulletin 747–28–2205). That commenter adds that the data for the inspection are quite extensive, and that collating and processing the data take considerable time; in some cases, three weeks were required to input the data into a database and complete a qualitative report.
- One commenter opposes any proposed requirement to reinspect airplanes inspected previously with the original issue of Boeing Service Bulletin 747–28–2205, due to the change in reporting requirements in Revision 1 of that service bulletin. One commenter, an operator, states that the reporting mechanism in the original release of Service Bulletin 747–28–2205 was improved in Revision 1 (the main purpose of the revision). The commenter observed that operators did provide the relevant data to Boeing, but not necessarily in a manner consistent with the mechanism employed in Revision 1 of the service bulletin.
- Two commenters request that, for those airplanes on which the center fuel tank inspections have already been accomplished in accordance with the original version of Boeing Service Bulletin 747–28–2205, the proposed reporting requirements be revised to allow any incorrect or missing data to be obtained and submitted after a scheduled tank entry or "C" check, prior to the compliance date of the proposed AD. One commenter, an operator, explained that when the original data from the center fuel tank inspections (in accordance with the original release of Service Bulletin 747–28–2205) were collected, the inspection was not a mandatory project. Although most of the data were collected, about 1% to 4% of the data were missing or incorrect on 13 of 44 airplanes inspected. That commenter interprets the proposed requirement to submit all findings on the previously inspected airplanes to mean that operators would be required to plan another unscheduled tank entry to re-obtain the missing measurements. That commenter plans to obtain the missing measurements during the accomplishment of the installation of the scavenge pump flame arrestor and considers an additional tank entry prior to that installation to be of no value.

The FAA concurs with the request to remove the reporting requirements from the proposal. Because the proposed AD specified that the reporting results of the inspections described in both Service Bulletin 747–28–2205 and Alert Service Bulletin 747–28A2208 be sent directly to the manufacturer, the FAA would not be reviewing those results. Boeing Service Bulletin 747–28–2205 states that the data from the inspection program "* * * will be used to confirm the intended condition of the tanks and, where necessary, to identify follow-up activities to assure the continued airworthiness of these tanks. These additional activities may include updated maintenance programs and/or corrective action service bulletins." Service Bulletin 747–28A2208 states that "* * * data will be collected and used to confirm the intended conditions of the FQIS * * *"

Ordinarily, the FAA mandates that inspection results be submitted directly to the agency when the FAA intends to use the data to determine if the AD needs to be revised. For example, data reporting may be mandated if that information could be used to identify trends indicating that the AD would need a more restrictive action, such as including additional airplanes or reducing the compliance time. Inspection data from 283 Model 747 series airplanes have been submitted by operators having already completed the actions specified by the original issue of Service Bulletin 747–28–2205. These data have not identified any information that the FAA would consider relevant to the requirements of the proposed AD. The FAA does not expect that any data from Alert Service Bulletin 747–28A2208 will identify information relevant to the requirements of the proposed AD. Because additional data from the accomplishment of either Boeing Service Bulletin 747–28–2205 or Alert Service Bulletin 747–28A2208 would not serve a direct purpose for the FAA, the reporting requirements have

been removed from the final rule. Operators may voluntarily submit their inspection and test data to the manufacturer, as requested in the applicable service bulletins.

The final rule has been revised to delete paragraph (c), which referred to the reporting requirements for the inspections and tests contained in Boeing Service Bulletin 747–28–2205 and Alert Service Bulletin 747–28A2208.

7. Support for Reporting Requirement

One commenter fully supports a requirement for operators to report findings to the FAA. [However, it should be noted that the reporting requirement proposed in the NPRM would have required operators to "* * * submit a report of the results of the inspections * * * to the Manager, Airline Support, Boeing Commercial Airplane Group."]

It was not the FAA's intent to require that the inspection reports be submitted to the FAA. As stated earlier, ordinarily, the FAA mandates that reporting requirements be submitted directly to the agency when the FAA intends to use the data to determine if the AD needs to be revised. For example, data reporting may be mandated if that information could be used to identify trends indicating that the AD would need a more restrictive action, such as encompassing more airplanes or a shorter compliance time. Inspection data from 283 Boeing Model 747 series airplanes have been submitted by operators having already completed the original version of Boeing Service Bulletin 747–28–2205. These data have not identified any information that the FAA would consider relevant to the requirements of the proposed AD. The FAA does not expect that any data from Alert Service Bulletin 747–28A2208 will identify information relevant to the requirements of the proposed AD. Because additional data from the accomplishment of either service bulletin would not serve a direct purpose to the FAA, the reporting requirements for Boeing Service Bulletin 747–28–2205 and Alert Service Bulletin 747–28A2208 will be removed from the final rule. The operators may voluntarily submit their inspection and test data to the manufacturer.

The reporting requirements [paragraph (c) of the proposed AD] have been removed from the final rule.

8. Request To Allow Optional Modification

One commenter explained that, during inspections performed on airplanes in accordance with the original version of Boeing Service Bulletin 747–28–2205, some operators, with the airplane manufacturer's approval, modified in-tank bonding by adding additional bonding jumpers. The operator states that the modifications have been necessary for various reasons, but always with the intent to ensure conformity with design requirements, and that, at the next "D" check, the airplane may or may not be reworked back to original configuration, depending upon the circumstances of the modification.

The commenter requests that the final rule consider the aforementioned situation so that operators do not have to re-enter the fuel tanks.

The FAA infers that additional bonding jumpers were installed to achieve the resistance values specified by the airplane type design. The FAA additionally infers that the operators are concerned that, because the addition of bonding jumpers is not specified as acceptable rework in the service bulletin, re-entry into the fuel tank would be required to achieve the resistance values by a method specified in the service bulletin. The FAA considers that the bonding jumpers added with the approval of the manufacturer may be an acceptable change to the type design. However, requests for alternative methods of compliance must be submitted in accordance with paragraph (d) of this AD. (Operators of foreign-registered airplanes would need to obtain approval for the change from their respective regulatory authorities as an alternative method of compliance to the AD.) Another option would be for the manufacturer to revise Service Bulletin 747–28–2205 to add this modification, and apply for an alternative method of compliance to the AD. No change to the final rule is necessary.

9. Request To Remove Certain Airplanes From the Requirement To Accomplish Paragraph (a)

One commenter requests that, for new airplanes, the FAA mitigate the intent of paragraph (a) of the proposed AD, "unless it is clearly the intent of the FAA to document compliance with SB 747–28–2205 during production."

The commenter interprets paragraph (a) of the NPRM to mean that new production airplanes also would be required to accomplish the proposed inspections and tests during production, or that the operators would be required to perform the inspections and tests after delivery, but no later than 24 months after the effective date of the proposed AD. Therefore, at the time of delivery, airplane records would be required to demonstrate compliance with Boeing Service Bulletin 747–28–2205 or an FAA-approved equivalent method of compliance. Otherwise, the AD compliance letter, provided at the time of new airplane delivery, would be required to report the AD as further action required by the customer after delivery.

The FAA concurs with the commenter's interpretation of the effect paragraph (a) of the proposal would have on production airplanes. However, the intent of the proposal was not to require the incorporation of Service Bulletin 747–28–2205 for the production airplanes. Paragraph (a) of the final rule has been revised to require accomplishment of Service Bulletin 747–28–2205, Revision 1, by airplanes listed in that service bulletin.

10. Request To Revise Work Hour Estimates

One commenter stated that the airplane downtime provided in the referenced service bulletins is not a true reflection of the time necessary to accomplish the actions, as it does not include tank preparation, scheduling manpower, and any necessary rework.

The commenter suggests that the rework associated with the actions described in the original version of Boeing Service Bulletin 747–28–2205 takes as least as long as the inspection itself. Although no specific change was requested by the commenter, the FAA infers that the commenter requests that the work hour estimates for the wiring inspection be revised.

The FAA does not concur with the request to revise the work hour estimates. While the FAA agrees that the service bulletins do not include tank preparation time, the cost estimate for the AD does factor in the preparation time and associated cost for one center fuel tank entry (assuming that all of the required actions will be accomplished concurrently). Normally the cost analysis in AD rulemaking actions does not include "incidental costs," such as planning time or time necessitated by other administrative actions. Because incidental costs may vary significantly from operator to operator, such costs are almost impossible to calculate.

Furthermore, the economic analysis of the AD is limited only to the cost of actions actually required by the rule. It does not consider the costs of "on condition" actions, such as repairing damaged components detected during a required inspection ("repair, if necessary"). Such "on condition" repair actions would be required to be accomplished—regardless of AD action—in order to correct an unsafe

condition identified in an airplane and to ensure operation of that airplane in an airworthy condition, as required by the Federal Aviation Regulations.

No change to the final rule in this regard is necessary.

11. Request To Revise Cost Estimate

One commenter provided cost estimates different from those proposed in the NPRM, including $12,500 for the work hours, $61,000 for the material, and $69,000 for the downtime required to accomplish the proposed actions, for a total of $142,500 per airplane. Although there was no specific change requested by the commenter, the FAA infers that the commenter requests that the proposed cost estimates be revised.

The FAA does not concur with the request to revise the cost estimates. The commenter did not provide any justification for the different cost estimate.

Moreover, the FAA considers it inappropriate to attribute the costs associated with aircraft "downtime" to the cost of the AD, because, normally, compliance with the AD will not necessitate any additional downtime beyond that of a regularly scheduled maintenance hold. However, in cases such as this AD, where additional downtime may be necessary for some airplanes, the FAA does not possess sufficient information to evaluate the number of airplanes that may be so affected or the amount of additional downtime that may be required. Therefore, attempting to estimate such costs would be futile.

No change to the final rule in this regard is necessary.

12. Request To Mandate Accomplishment of Unreleased Service Bulletin

One commenter requests that the proposed rule be modified to mandate the actions contained in a revision to Boeing Alert Service Bulletin 747–28A2208.

The commenter advised that a revision to the alert service bulletin was being prepared. The commenter listed the changes to be included in the revision:

- A clarification of the part numbers for sleeving material and wire;
- A clarification in references to the supplier service bulletin on the compensators, and additional information provided to operators on the installation of a seal boot during the assembly of a splice; and
- A clarification of a reference with respect to the installation of terminals lugs.

The FAA does not concur with the commenter's request to mandate the actions contained in a revision to Alert Service Bulletin 747–28A2208 because the revision will not be released in time to support the procedural schedule for the release of this AD. Use of the phrase "or later FAA-approved revisions" violates Office of the Federal Register regulations regarding approval of materials that are incorporated by reference. However, affected operators may apply for an alternative method of compliance, in accordance with paragraph (d) of this AD.

13. Request To Expand Inspection Requirements

One commenter requests that the proposed FQIS inspection (actions as described in Boeing Alert Service Bulletin 747–28A2208) be expanded to include the following actions that were identified during the accident investigation:

- Electrical tests for disconnected/floating wire shielding that has been found inside and outside Boeing Model 747 fuel tanks;
- A test for proper operation of the FQIS indicator light circuit (a failure path was found from the light circuit to the tank wires);
- Isolation of FQIS and Airborne Integrated Data System wiring;

Inspections for loose metal debris on and in the volumetric shutoff (ground refueling) unit that can bridge across FQIS compensator circuits; and

- Inspections of the wiring connections at all terminal blocks and terminal strips in the center fuel tank.

The FAA does not concur with the commenter's request to expand the FQIS inspection in this AD. The FAA points out that the proposed AD is intended to address only *in-tank* actions. However, some of the commenter's proposed actions concerning systems or components outside of the fuel tanks are addressed in AD 98–20–40 [airplane models not addressed by that AD will be addressed by a proposed Special Federal Aviation Regulation (SFAR)]. AD 98–20–40 requires the installation of shielding and separation of the electrical wiring of the FQIS and the first four bulleted items in the preceding list.

The commenter also proposes that the FAA require electrical tests for disconnected or floating wire shielding *inside* the fuel tanks. The action specified in the NPRM for accomplishing Boeing Alert Service Bulletin 747–28A2208 requires a visual inspection of the FQIS wire shield termination at the terminal blocks, which, according to the commenter, should detect any loose or disconnected wire shields. However, the commenter adds that, with the new requirement to replace all FQIS wiring outside of the fuel tanks and the surge tank (the tank located on the outboard tip of each wing, which collects any overfill from any of the fuel tanks) with shielded wire, the concern regarding a floating or disconnected wire shield within the fuel tank (in the FQIS) is mitigated.

The FAA does not concur with the request to include electrical tests for disconnected or floating wire shields inside the center fuel tank. With the mandated design change requiring shielding on all outside-the-tank FQIS wiring, a hot short to the FQIS wire bundle outside of the tank would be intercepted and grounded by the FQIS wire bundle shield. Therefore, the only threat posed by a floating or disconnected wire shield inside the fuel tank, such as the HI Z shield, would be system malfunctioning due to potential electromagnetic effects. While system malfunctioning is undesirable, it does not pose a safety threat to the airplane with respect to fuel tank ignition.

The commenter also proposes inspections of the wiring connections at all terminal blocks and terminal strips in the center fuel tank. The FAA points out that paragraph (b) of the AD requires "a one-time visual inspection of the FQIS wiring and components, in accordance with Boeing Alert Service Bulletin 747–28A2208." Included in that alert service bulletin are specific procedures for the inspection of all terminal blocks and terminal strips in the center fuel tank; this inspection is required for compliance with the requirements of this AD. The FAA agrees that an action to visually inspect the terminal strip located in the center wing tank for proper wiring connections is appropriate. The final rule does not require revision in this regard.

14. Request To Remove In-Production Airplanes From Inspection Requirement

One commenter requests that, for new airplanes, the FAA mitigate the intent of paragraph (b) of the proposed AD, "unless it is clearly the intent of the FAA to document compliance with SB 747–28A2208 during production."

The FAA does not concur with the commenter's request. The AD, as written, does not require documentation of compliance with Boeing Alert Service Bulletin 747–28A2208 for production airplanes. Paragraphs (b)(1) and (b)(2) of the AD specify those groups listed in the airplane effectivity section of the service bulletin, which includes only 747–100, –200, –300, SR, and SP airplane line

numbers. Therefore, none of the 747–400 production airplanes would be required to comply with paragraph (b) of this AD. No change to the final rule is necessary in this regard.

15. Request To Limit FQIS Inspection Requirement to Younger Airplanes

One commenter requests the FAA to revise the requirement to inspect the FQIS wiring by limiting it to airplanes younger than 20 years. The commenter observes that mandating the combination of the inspection of the FQIS wiring and components and the replacement of the FQIS wiring and components is overdone for airplanes older than 20 years. If rulemaking requires removal of FQIS wiring and components, an extra inspection on the newly installed components cannot be technically justified.

The FAA concurs with the commenter's statement that requiring both the FQIS wiring inspection and probe replacement in accordance with Boeing Alert Service Bulletin 747–28A2208 and the replacement of FQIS wiring and components for airplanes older than 20 years is not technically justified. If both requirements were to be mandated, airplanes that are required to replace FQIS wiring and components would not be subject to the inspection described in Alert Service Bulletin 747–28A2208. However, as discussed in issue 18., the requirement to replace FQIS wiring and components has been removed.

16. Request To Eliminate Duplicate Inspection

Three commenters state that the proposal would require a duplication of the wiring inspection of the FQIS. (The same inspection is described in Boeing Service Bulletin 747–28–2205 and Alert Service Bulletin 747–28A2208.) The commenters request that the AD clarify this requirement so that operators may avoid the duplication of work.

The FAA concurs with the commenters' request. Service Bulletin 747–28–2205 and Alert Service Bulletin 747–28A2208 do indeed contain some duplicate actions. Therefore, the final rule has been revised to continue to require accomplishment of Boeing Alert Service Bulletin 747–28A2208 for the FQIS inspection for Model 747–100, –200, –300, SP, and SR series airplanes. Airplanes already inspected in accordance with Steps 1 through 9 in Figure 11 of the original issue of Service Bulletin 747–28–2205, will receive credit for the accomplishment of Steps 1 through 6 in Figure 16 of Alert Service Bulletin 747–28A2208. Model 747–100, –200, –300, SP, and SR series airplanes will be required to accomplish only step 3 in Figure 11 of Service Bulletin 747–28–2205, Revision 1. However, because Alert Service Bulletin 747–28A2208 does not address Model 747–400 airplanes, those airplanes would be required to perform the tasks outlined in Steps 1 through 9 in Figure 11 of Service Bulletin 747–28–2205, Revision 1.

17. Request To Remove Requirement To Install Flame Arrestor

Three commenters do not support the requirement to accomplish Boeing Alert Service Bulletin 747–28A2210, which describes installation of a flame arrestor in the inlet line of the scavenge pump. Two commenters request the FAA to provide valid technical data and further technical discussion in support of that requirement.

One commenter stated that neither service experience over the past 25 years of operation of the Model 747 nor findings of the 248 airplanes inspected to date indicate that the scavenge pump design could possibly create an unsafe condition. The commenter states that, other than providing an additional layer of safety, there is no technical justification to mandate the actions specified in Alert Service Bulletin 747–28A2210.

The other commenters note that, while the FAA identified the scavenge pump's vulnerability to center fuel tank ignition as a result of a potential mechanical failure of the pump, Alert Service Bulletin 747–28A2210 specifies that "laboratory testing of the pump has not revealed any condition under which the pump would generate an ignition source." The commenters question the necessity for the proposed modification due to the disparity between the FAA and Boeing positions. The commenters suggest that the FAA pursue further examination of this issue and provide valid technical data supporting the need for this modification.

The FAA infers that the commenters are requesting removal of the requirement to install a flame arrestor in the scavenge pump inlet line of the center fuel tank. The FAA does not concur. It was noted during the accident investigation that, although the structure that had contained the scavenge pump was recovered, the scavenge pump itself was missing from the wreckage. The scavenge pump is operated differently than the other pumps within the fuel system. The purpose of the scavenge pump is to reduce the amount of unusable fuel in the center fuel tank by scavenging the fuel left in the tank after the override boost pumps have been turned off (due to low pressure output). This scavenged fuel is relocated to a wing tank for later use. Because of its unique operation, the scavenge pump is run dry, which means that it continues to operate while exposed only to the fuel vapor within the center fuel tank.

Because the scavenge pump was missing and unavailable for further analysis, the NTSB reviewed possible failure scenarios associated with the vane-type scavenge pump. The scavenge pump rotating element is made of steel, as are the pump vanes and sleeving against which the vanes rotate. While the laboratory testing performed on Boeing Model 747 scavenge pumps has not produced an ignition during explosion-proof testing and dry-running the pump, not all of the potential failures are represented by those types of qualification tests. One scenario not represented by qualification tests involves metallic debris within the tank being drawn into the pump and becoming lodged between the steel pump sleeve and the steel rotating components, or causing another type of pump failure. This scenario could cause sparking or excessive heat and potentially act as an ignition source if the pump were exposed to fuel vapors from within the center fuel tank (dry-running). The vulnerability of the scavenge pump to creating a scenario that would allow ignition of the flammable fuel vapors drawn into the pump and have the resultant flame front propagate back through the inlet line to the center fuel tank causing a fuel tank explosion was identified during the design reviews of this component. That revelation led to the manufacturer's willingness to provide a flame arrestor design for the inlet line of the scavenge pump. Therefore, the FAA considers this information as technical justification for requiring the installation of a flame arrestor in the inlet line of the scavenge pump.

No change in the final rule is required.

18. Request To Remove Requirement To Replace FQIS: No Demonstrated Need

Five commenters oppose the FAA's proposal to require replacement of the center tank FQIS components and wiring on Model 747 series airplanes having 20 or more years of service. The FAA infers that these commenters request removal of these replacement actions from the proposed AD.

Four commenters state that there is no evidence to date indicating that sulfide contamination is degrading these specific parts to a point where they would be considered a safety hazard to

the airplane, either by themselves or in combination with system failures.

One commenter notes that it has conducted analyses and tests on these particular FQIS components that were removed from aged Boeing Model 747 series airplanes and reports it has not found an instance in which the level of sulfide contamination presents a hazard. The commenter also states that it provided an extensive response to this issue of sulfides in its response to NPRM (docket) 97–NM–272–AD. The commenter notes that the FAA and NTSB are actively pursuing studies of sulfides and the effect these compounds may have in the fuel tank. The commenter proposes that, prior to rulemaking activities on this issue, further research into the subject of sulfides in fuel tanks be accomplished and suggests that these investigations pursue the mechanisms for the formation of sulfides in commercial fuel tank environments. The commenter further states that any testing should involve, where practical and possible, actual airplane components and wiring, and study of the ignition capability of sulfide-contaminated equipment in a fuel vapor environment.

One commenter states that there are no data that indicate that a replacement of the FQIS installed on Model 747–400 series airplanes is necessary. The commenter points out that there are significant differences in the design and construction of the FQIS components and wiring for Model 747–400 and 747 Classic series airplanes.

The FAA concurs with the request to remove the requirement to replace the FQIS. The FAA agrees with the commenters that the effects of copper/sulfur contaminates are not fully understood at this time. The FAA had anticipated gathering meaningful data from the commenters as to a reasonable replacement time for the FQIS components and wiring, but no additional data were provided through this comment process. Therefore, the FAA may consider further rulemaking on the issue of copper/sulfur or silver/sulfur contamination.

The FAA and NTSB currently plan to research the effects of copper/sulfur deposits on fuel tank system components. The research will include identifying copper/sulfur film properties, identifying the mechanisms related to film growth, and identifying aircraft maintenance methods that will detect and remove deposits before they reach hazardous levels.

The final rule has been revised to remove the requirement to replace all the center tank FQIS components with new FQIS components [paragraph (d) of the NPRM]. The final rule has been further revised to remove the requirement to replace the silver-plated copper FQIS wiring with nickel-plated copper wiring [paragraph (e) of the NPRM].

19. Request To Remove Requirement To Replace FQIS Wiring: Various Reasons

Several commenters propose the removal of the requirement to replace the FQIS wiring and components, for various reasons. As stated previously, the final rule has been revised to remove the requirement to replace all the center tank FQIS components with new FQIS components. The action requiring replacement of the silver-plated copper FQIS wiring with nickel-plated copper wiring also has been removed from the final rule. Therefore, these requests are moot.

20. Request To Reduce Compliance Time

One commenter does not support the proposed compliance time to replace the FQIS components, and to replace silver-plated copper FQIS wiring with new nickel-plated wiring, on airplanes having 20 or more years of service. The commenter encourages the FAA to require a much earlier replacement interval.

The commenter states that the proposed actions are based on finding the presence of corrosion, in the form of copper/sulfur residue, on center fuel tank FQIS components of Model 747 series airplanes. The commenter further states that testing has demonstrated the potential for arcing of sulfur residues, which could create a possible ignition source. However, the commenter has found sulfidation on FQIS components in a 17-year-old Boeing Model 757 series airplane that had accumulated only 24,000 hours of service. The commenter is also aware of Boeing laboratory test results (which were shared with the FAA) that indicate that sulfidation may be present on FQIS components with less than 1,000 hours of service.

As discussed previously, the FAA acknowledges that the effects of copper/sulfur contaminates are not fully understood at this time. The FAA had anticipated gathering meaningful data from the commenters to help determine a reasonable replacement time for the FQIS components and wiring, but no additional data were provided through this comment process. Therefore, the FAA may consider further rulemaking on the issue of copper/sulfur or silver/sulfur contamination.

The FAA and NTSB currently plan to research the effects of copper/sulfur deposits on fuel tank system components. The research will include identifying copper/sulfur film properties, identifying the mechanisms related to film growth, and identifying airplane maintenance methods to detect and remove deposits before they reach hazardous levels. After this research is accomplished, appropriate actions and intervals for those actions may be proposed to address any concerns identified by the research.

As previously stated, the final rule has been revised to remove the requirements to replace all center tank FQIS components with new FQIS components, and to replace silver-plated copper FQIS wiring with nickel-plated copper wiring.

21. Request To Require Replacement of All Silver-Plated Wiring

One commenter strongly supports the action for replacing silver-plated copper FQIS wiring in the center wing tank with new nickel-plated wiring. The commenter encourages the FAA to expand this action to address replacement, with new nickel-plated copper wiring, of all silver-plated copper wiring (not just that on the FQIS) that is exposed to fuel or fuel vapors.

The FAA does not concur with the commenter's proposal. The FAA acknowledges that the effects of copper/sulfur contaminates are not fully understood at this time. The FAA had anticipated gathering meaningful data from the commenters to determine a reasonable replacement time for the FQIS components and wiring, but no additional data were provided through this comment process. Therefore, the FAA may consider further rulemaking on the issue of copper/sulfur or silver/sulfur contamination.

The FAA and NTSB currently plan to research the effects of copper/sulfur deposits on fuel tank system components. The research will include identifying copper/sulfur film properties, identifying the mechanisms related to film growth, and identifying airplane maintenance methods to detect and remove deposits before they reach hazardous levels. After this research is accomplished, appropriate actions and intervals for those actions may be proposed to address any concerns identified by the research.

As previously stated, the final rule has been revised to remove the requirement to replace all center tank FQIS components with new FQIS components. In addition, the final rule has been revised to remove the requirement to replace silver-plated copper FQIS wiring with nickel-plated copper wiring.

22. Request To Approve BF Goodrich FQIS for Compliance

One commenter, an operator, requests that the AD specify the BF Goodrich Digital FQIS system as an acceptable means of compliance with the AD. The operator reports that it expects to have the FQIS system installed on all of its airplanes by January 2000.

The FAA is reviewing the BF Goodrich Digital FQIS system to determine if it is an acceptable means of compliance with AD 98–20–40, which requires the installation of shielding and separation of the electrical wiring of the FQIS. The FAA does not have the information necessary to approve the BF Goodrich Digital FQIS system as an alternative method of compliance to the requirements of the proposed AD.

Furthermore, as stated previously, the final rule has been revised to remove the requirement to replace the FQIS components and wiring due to concerns regarding copper/sulfur or silver/sulfur contamination.

23. Request To Revise Number of Affected Airplanes

One commenter, the manufacturer, provided an estimate of affected airplanes for United States and foreign operators. The FAA infers that the commenter requests the revision of the affected number of airplanes to reflect 248 airplanes operated domestically and a total of 1,077 airplanes operated worldwide.

The FAA concurs. The original estimates in the proposed AD were provided by the manufacturer. Because the manufacturer provided a revised estimate via the NPRM comment process, the final rule has been revised to reflect these numbers.

24. Request To Extend Compliance Time

Five commenters request an extension of the compliance time for the actions specified by the proposed AD.

Two commenters suggest 36 months as a realistic compliance time, considering the time required to schedule these modifications into operators' normal maintenance schedules.

One commenter proposes that, although parts will be available to support the modification described in Boeing Alert Service Bulletin 74–28A2210, the compliance time should be the same for all actions. The commenter is concerned that requiring a different compliance time for this service bulletin could mean that the 40-hour effort of tank preparation would be required for only a two-hour modification procedure. Therefore, this commenter requests the compliance time for all actions to be 36 months.

One commenter requests an increase in the compliance time to allow operators to complete these actions at scheduled "D" checks, which would reduce the additional "down time" of the airplanes. The commenter encourages the FAA to consider the additional cost associated with taking an airplane out of service.

Another commenter, an operator, stated that a proposed compliance time of 24 months would require most of its airplanes to be inspected/modified in "C" checks. The associated cost of accomplishing these actions in "C" checks rather than "D" checks is $69,000 per airplane.

Some commenters request that the compliance time associated with replacement of the FQIS components be based on a time frame of "x" months after parts availability.

Another commenter suggests that, with respect to the proposed requirement to replace all of the FQIS components, a period not to exceed 25 years after manufacture of the airplane would be better matched to the airplane operational life and maintenance schedule.

The FAA does not concur with the commenters' request for an extension of the compliance time. In developing an appropriate compliance time, the FAA considered the safety implications, parts availability, and normal maintenance schedules for timely accomplishment of the required actions. The FAA also has removed from the final rule several proposed actions: replacement of all center tank FQIS components with new FQIS components, replacement of silver-plated copper FQIS wiring with nickel-plated copper wiring, and the reporting requirements. These revisions to the AD will substantially reduce the amount of time operators will need to accomplish the required actions. Also, because replacement of the FQIS components and wiring will no longer be required, the parts availability concern associated with the fact that those system components are no longer in production or do not currently exist is not a factor in considering compliance time.

Because the proposed AD addresses actions to reduce the potential for an ignition source within the center fuel tank, and because some of the original requirements in the proposed NPRM have been removed, the FAA does not find it is in the best interest of the public or industry to extend the compliance time. Associated rulemaking regarding ignition sources, such as a proposed SFAR (which is currently being developed) and AD 98–20–40 (which has a 36-month compliance time), will not be fully implemented for several years. Therefore, it is important that the actions required by this AD be implemented as quickly as possible.

No change to the compliance times in the final rule is necessary.

Additional Changes to Final Rule

Certain requirements in the proposed AD would have been applicable to all Boeing Model 747 series airplanes; those actions have been removed from the final rule. As a result, the applicability of the final rule has been revised to include only those airplanes affected by the remaining requirements.

In the proposed AD, paragraphs (a)(2), (b)(1), and (b)(2) referred to certain Figures in the applicable service bulletins. The FAA finds that clarification of the requirements of paragraphs (a)(2), (b)(1), and (b)(2) is necessary. Although the Figures called out in those paragraphs contain the primary instructions for those actions, additional information may be found in other Figures of the service bulletins for accomplishment of the actions required by those paragraphs. The final rule has been revised to remove specific Figure references from paragraphs (a)(2), (b)(1), and (b)(2).

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes described previously. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

There are approximately 1,077 Boeing Model 747 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 248 airplanes of U.S. registry will be affected by this AD.

The FAA estimates that it will take approximately 40 work hours per airplane to purge, access, and close the center fuel tank, at an average labor rate of $60 per work hour. The cost impact on U.S. operators to purge, access, and close the fuel tank is estimated to be $2,400 per airplane.

The FAA estimates that the inspection of the center fuel tank will be required to be accomplished on 248 airplanes. It will take approximately 56 work hours per airplane to accomplish the inspection, at an average labor rate of

$60 per work hour. Based on these figures, the cost impact of this inspection on U.S. operators is estimated to be $833,280, or $3,360 per airplane.

The FAA estimates that the FQIS inspection and system operational test, probe replacement, and insulation resistance test will be required to be accomplished on 191 airplanes. It will take approximately 60 work hours (maximum) per airplane to accomplish these actions, at an average labor rate of $60 per work hour. Required parts will cost approximately $30,000 per airplane (maximum). Based on these figures, the cost impact of these actions on U.S. operators is estimated to be a maximum of $6,417,600, or $33,600 per airplane.

The FAA estimates that the installation of a flame arrestor will be required to be accomplished on 214 airplanes. It will take approximately 2 work hours per airplane to accomplish the installation, at an average labor rate of $60 per work hour. Required parts will cost approximately $1,107 per airplane. Based on these figures, the cost impact of this installation on U.S. operators is estimated to be $262,578, or $1,227 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

99–08–02 Boeing: Amendment 39–11106. Docket 98–NM–163–AD.

Applicability: Model 747 airplanes having line numbers 1 through 1124 inclusive, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent ignition sources and consequent fire/explosion in the center fuel tank, accomplish the following:

(a) For those airplanes listed in Boeing Service Bulletin 747–28–2205, Revision 1, dated April 16, 1998: Within 24 months after the effective date of this AD, accomplish paragraphs (a)(1) and (a)(2) of this AD, in accordance with the service bulletin.

(1) Perform a one-time visual inspection of the center fuel tank wiring and components to detect discrepancies (damage, disbonding, and incorrect installation). If any discrepancy is detected, prior to further flight, repair the discrepant component, or replace it with a new or serviceable component. And

(2) Perform a one-time electrical bonding test of the center fuel tank components. If any measured resistance exceeds the limits specified by the service bulletin, prior to further flight, rework the discrepant component.

Note 2: Revision 1 of Boeing Service Bulletin 747–28–2205 provides two additional actions (inspection of the body fuel tank components and measurement of the ground resistance of the pressure switch case on the auxiliary power unit pump) that were not provided in the original version of this service bulletin. Inspections and testing accomplished prior to the effective date of this AD in accordance with Boeing Service Bulletin 747–28–2205, dated June 27, 1997, are considered acceptable for compliance with the applicable actions specified in this AD.

Note 3: Airplanes required to accomplish paragraph (b) of this AD are exempt from accomplishing steps 1, 2, and 4 through 9 in Figure 11 of Boeing Service Bulletin 747–28–2205, Revision 1, dated April 16, 1998.

(b) For those airplanes listed in Boeing Alert Service Bulletin 747–28A2208, dated May 14, 1998: Within 24 months after the effective date of this AD, perform a one-time insulation resistance test of the fuel quantity indication system (FQIS), a one-time visual inspection of the FQIS wiring and components to detect discrepancies (chafing damage to the wiring and incorrect configuration of the terminal blocks), replacement of "series 3" (or earlier series) FQIS probes with new "series 4" (or subsequent series) FQIS probes, and system adjustment and system operational test; in accordance with the alert service bulletin. If any discrepancy is detected, prior to further flight, perform corrective actions in accordance with the alert service bulletin.

Note 4: For airplanes on which steps 1 through 9 in Figure 11 of Boeing Service Bulletin 747–28–2205, dated June 27, 1997, or Revision 1, dated April 16, 1998, were accomplished prior to the effective date of this AD, steps 1 through 6 in Figure 16 of Boeing Alert Service Bulletin 747–28A2208, dated May 14, 1998, are not required.

(c) For airplanes having line positions 1 through 971 inclusive: Within 24 months after the effective date of this AD, install a flame arrestor in the inlet line of the electrical motor-operated scavenge pump of the center fuel tank, in accordance with Boeing Alert Service Bulletin 747–28A2210, dated May 14, 1998.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 5: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(f) The actions shall be done in accordance with Boeing Service Bulletin 747–28–2205, Revision 1, dated April 16, 1998; Boeing Alert Service Bulletin 747–28A2208, dated

May 14, 1998; and Boeing Alert Service Bulletin 747–28A2210, dated May 14, 1998; as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on May 11, 1999.

Issued in Renton, Washington, on March 29, 1999.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–8134 Filed 4–5–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 178 and 192

[T.D. 99–34]

RIN 1515–AC19

Exportation of Used Motor Vehicles

AGENCY: Customs Service, Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations to implement title IV of the Anti Car Theft Act of 1992, which concerns the exportation of used self-propelled vehicles. The amendments concern the nature of the documentation that establishes ownership of a vehicle bound for export and the presentment of that documentation to Customs. The document also clarifies procedures to enable Customs to more efficiently and effectively deter the export of stolen vehicles.

EFFECTIVE DATE: May 6, 1999.

FOR FURTHER INFORMATION CONTACT: Hugh Austin, Outbound Programs, Office of Field Operations, (202) 927–3735.

SUPPLEMENTARY INFORMATION:

Background

Regulations implementing current export control requirements applicable to used self-propelled vehicles, vessels, and aircraft are found at part 192 of the Customs Regulations (19 CFR part 192). Since 1989, these regulations have, in general, required persons or entities seeking to export used self-propelled vehicles to present both the vehicle and documentation, which includes the Vehicle Identification Number (VIN) or other product identification number, to Customs at least three days prior to shipment; Customs then checks the VIN against the databases of the National Crime Information Center (NCIC) to see if the vehicle has been reported stolen.

To strike back against auto thieves and carjackers, on October 25, 1992, the President signed the Anti Car Theft Act of 1992 (the Act)(Pub. L. 102–519, 106 Stat. 3384) in the hope that the legislation would reduce the level of auto thefts and carjackings—a major crime problem costing American car owners billions of dollars each year. *See*, H.R. 4542, 102th Cong., 2d Sess. (1992), *reprinted* in (1992) 5 U.S.C.C.&A.N. 2829. Title IV of the Act contains provisions pertaining to the export of stolen automobiles. Section 401 of title IV contains two provisions intended to tighten Customs enforcement against stolen car exporters. Section 401 amends Part VI of Title IV of the Tariff Act of 1930 by adding: new section 646A (19 U.S.C. 1646b), which directs Customs to conduct random checks of automobiles and containers to ensure that reported VIN information matches the VINs on vehicles being exported; and new section 646B (19 U.S.C. 1646c), which codifies Customs export reporting requirements, and directs Customs to check selected VINs against the information contained at the NCIC.

To implement section 401 of the Act and address certain other procedural problems present in the exportation of used motor vehicles pertaining to the authenticity of documentation presented to Customs to establish ownership of the vehicle to be exported, on October 28, 1997, Customs published a Notice of Proposed Rulemaking in the **Federal Register** (62 FR 55764) to amend the Customs Regulations at § 192.2, Customs Regulations (19 CFR 192.2), which pertains to the requirements for exporting such vehicles. The amendment proposed to revise the documentation requirements contained in paragraph (b) to better ensure that the documentation reflects ownership of the vehicle; the documentation presentment requirement contained in paragraph (c) to clarify the three-day rule; and the authentication requirement of paragraph (d) to make it conform with the above changes. The proposed amendment also added a new paragraph (e) to give port directors the authority to establish when and where the original documentation for the vehicle for export may be presented and where and when the vehicle may be inspected at their ports. The authority citation for part 192 would also be revised to add the statutory citation for the Act discussed (19 U.S.C. 1646c).

The comment period closed on December 29, 1997. Forty-four comments were received. The comments and Customs responses to them follow.

Discussion of Comments

Of the comments received, nine (9) supported the proposed changes and thirty-five (35) either opposed or suggested revisions to the proposed changes. Collectively, these comments concern four major areas.

1. *The requirement to present the original Certificate of Title or a certified copy of the original title issued by a government authority for export of the vehicle presented.*

Comment: The majority of comments received argued that Customs should continue to accept notarized copies of title documents as sufficient proof of ownership of used vehicles intended to be exported, rather than adopt a requirement that only an original or a certified copy of the vehicle title issued by a government authority establishes ownership. These commenters stated that this new documentary requirement will slow the business of exporting used vehicles because of the added costs and time required to obtain these documents from sole-source state-issuing authorities. Accordingly, these commenters propose that Customs not institute the more stringent documentary requirement.

Customs Response: Customs disagrees with the contention that notarized copies of an original title are sufficient to prove ownership of vehicles intended to be exported. Customs needs to be sure that the export of the vehicle presented is authorized by the true owner(s) of the vehicle. In light of the mandate contained in the Anti Car Theft Act of 1992 that Customs tighten enforcement against stolen car exporters, it is Customs position that the only documents which establish verifiable ownership are the original Certificate of Title or a certified copy issued by a government authority.

Original Certificates of Title contain security features designed to defeat fraud, counterfeiting, modifications, etc. Copies of original titles certified by the government-issuing authority also protect against fraud. The fact that these documents are issued by a single government agency in each jurisdiction registering motor vehicles adds to the trustworthiness of these documents.

Concerning notaries certifying "copies" of original documents as

representing the "original" document, Customs understands the function of the majority of such acts as merely bearing witness/attesting to the placement of an original signature on a document, rather than certifying as to the authenticity of copies of original documents as "original" documents. (Indeed, some states expressly provide in their notary public application procedures that notaries do not have the power to certify the authenticity of any document, official or unofficial!) Accordingly, Customs can no longer accept such documents as meeting the requirement of establishing verifiable ownership with an intent to export the vehicle presented. Customs does not know of any document other than an original title for a vehicle or certified copy of the title issued by a government authority that possesses the same level of trustworthiness to aid Customs in the prevention of exporting stolen vehicles.

Accordingly, the more stringent documentary requirement proposed will not be modified. However, because the comments received regarding the documentary requirements admit to some confusion concerning the words "certified copy" and "copy" of documents, definitions for these terms are added to § 192.1 to clarify their meaning in the regulations. A "certified" copy of an original title document is defined to mean "a document issued by a government authority that serves in place of the original Certificate of Title." It is felt that this definition provides the same trustworthiness factors discussed above for the original title. Where the word "copy" is used, Customs means a duplicate or photocopy of the original document. However, such a copy must be a true and complete copy, which means that a photocopy of the backside of the original document must also be presented where there is any writing on the backside of the original document (see discussion below regarding assignment). To reflect the requirement that both sides of the document must be copied where the original document contains any writing on its backside, Customs uses the phrase "complete copies'.

Comment: Where there has been an assignment of an original title, some commenters questioned whether this circumstance will require that a new Certificate of Title be issued before the vehicle can be exported.

Customs Response: Where there has been an assignment of vehicle ownership with the back of the original title showing a proper transfer (with all required information regarding the assignment of ownership completed and legible) of the vehicle from one party to another, Customs believes that a new Certificate of Title need not be issued. The original title will be accepted by Customs, provided complete copies of the original title are submitted for authentication. Customs agrees that requiring an exporter of an assigned vehicle to re-title the used vehicle in his name prior to export would create an undue time and cost burden. However, if requested, the exporter should present the bill of sale with the assigned title.

Comment: Concerning vehicles that are leased or have liens recorded on the original title, one commenter (representing a state licensing authority) requests that Customs make it clear in the regulations that the required letter from the owner of the vehicle is in addition to providing a certified copy of the original title.

Customs Response: For vehicles that are leased or for which a recorded lien exists in the U.S., Customs will require additional documentation that proves consent by such third-parties-in-interest that the vehicles presented may be exported. This third-party proof of consent must be in writing, give express permission for the vehicle to be exported, and bear the original signature of the third-party. The writing must be on the third-party's letterhead and include the date, a description of the vehicle which includes the VIN, the name of the owner of the leased vehicle or the lienholder, and a telephone number at which the owner or lienholder may be contacted. The exporter must provide this separate document with the original title or certified copy of the title to Customs at the time of presentation. If the original title or certified copy of the title shows that the lien has been properly released, then no written authorization from the lienholder will be required to be presented.

Comment: Another commenter (representing an agency of the federal government) requests that U.S. government personnel on official travel be exempt from the proposed documentary presentment rules because the processing of large numbers of relocations by the agency's internal travel office would be severely hampered by complying with Customs proposed reporting procedure. Further, the commenter states that there is no risk that these vehicles are stolen.

Customs Response: Because vehicles belonging to U.S. Government personnel temporarily reassigned abroad pursuant to official travel orders are processed and exported pursuant to official government travel department procedures and because the federal government employee on official travel is normally required to present documentary proof of vehicle ownership to the sponsoring agency's internal office prior to shipping, Customs agrees with the commenter that the threat of such vehicles being stolen is extremely low. Customs also agrees that to require U.S. Government employees to reestablish ownership of the vehicle at the time of export merely duplicates a procedure without benefit to the employee or Customs law enforcement responsibilities.

Accordingly, Customs is amending the general documentation requirement procedures at § 192.2(b)(1) to provide a general exception for U.S. Government military or civilian employees who are shipping their vehicles abroad in conjunction with official reassignment orders. Such personnel are presumed to have complied with the general documentation requirements of § 192.2(b), so long as the employee's official travel orders indicate that there has been compliance with the sponsoring agency's internal travel department procedures for vehicle export.

2. *Acceptable ownership documents for new or Original Equipment Manufacture (OEM) vehicles not titled but issued a Manufacturer's Statement of Origin (MSO); vehicles contained in in-bond movements; or vehicles in a salvage, junk, or scrap condition.*

Comment: Many comments were received discussing the need for Customs to generally clarify the provisions of Part 192 concerning such issues as definitions and other self-propelled "used" vehicle identification numbers, and whether an exporter of parts or components of used self-propelled vehicles is obligated to meet the Customs reporting requirements. One commenter recommended that Customs undertake a review of the regulations—presumably § 192.2—to address basic requirements for vehicles identified with Product Identification Numbers (PINs) and Hull Identification Numbers (HINs). Another commenter requested that the modifier "used" be inserted immediately before the term "vehicles" and before the specific listing of "automobiles, trucks, vans, minivans, motorcycles and buses" contained in 19 CFR part 192 subpart A. This same commenter pointed out that the terms, "used vehicles", "vehicles" and "vehicle" are ambiguous and are used interchangeably.

Concerning newly manufactured vehicles, one commenter noted that some states (California and Michigan) do not issue MSOs for newly purchased vehicles, and requests that Customs

accept substitute documents, such as a dealer's invoice.

Concerning vehicles exported in a salvage, junk, or scrap condition, one commenter recommended that Customs remove the word "satisfactory" as regards the burden of proof exporters must bear to prove ownership of the vehicle, stating that Customs is not fully aware of all state laws regarding the titling, or lack thereof, of such vehicles and that giving such discretion to Customs agents promotes a lack of uniformity at the ports of exit.

Customs Response: Customs agrees that the modifier "used" should be inserted immediately before the term "vehicles" contained in § 192.2(b). As concerns the listing of specific types of vehicles ("automobiles, trucks, vans, minivans, motorcycles and buses"), see the discussion below concerning the revised organization of the regulations.

Vehicles which do not meet Customs definition of "used" are considered new or OEM vehicles and do not have to be reported to Customs before the vehicle is exported. The question presented by these types of vehicles is whether title has been transferred by a manufacturer, distributor, or dealer to an ultimate purchaser, either legally or equitably, prior to the vehicle's exportation.

If the legal or equitable title of the vehicle has been transferred prior to the vehicle's export, then the new or OEM vehicle must be reported to Customs before the vehicle can be exported; the vehicle having become "used" and subject to these export reporting regulations. In these cases, Customs will require the following documentation before export can occur: the Manufacturer's Statement of Origin (MSO) or, in cases where the vehicle is manufactured in a state by a company that does not issue MSOs for newly purchased vehicles, a document such as a dealer's invoice that proves ownership. In this latter instance, the burden of proof will be on the exporter to establish that the jurisdiction from where the vehicle comes does not have any ownership documentation requirements regarding such vehicles, and the exporter will be required to provide an original document showing his basis for ownership of the vehicle.

Regarding the comment as to whether an exporter of parts or components of used, self-propelled vehicles is obligated to meet the Customs reporting requirements of Part 192, these amendments are only concerned with the exportation of entire vehicles, not component parts. Accordingly, the comment is outside the scope of this final rule and no change to the regulations will be made. However, it is noted that the importation and exportation of stolen parts and components of vehicles renders the importer or exporter subject to the penalty and seizure and forfeiture provisions of 19 U.S.C. 1627a(a), as implemented by 19 CFR 192.3(c) and (d).

Vehicles that are exported from the U.S. as part of an in-bond movement are not subject to these export reporting requirements. In-bond movements, however, are subject to inspection at the discretion of Customs.

Regarding vehicles exported in a salvage, junk, or scrap condition, Customs is not concerned with the condition of the vehicle exported, but rather the type and status of the documentation for the vehicle. Since there is no national requirement concerning the titling of such vehicles and frequently government-issuing authorities have inconsistent or varying certification requirements for such vehicles, Customs must require of these vehicles the most authentic documents available to establish ownership of the vehicle to be exported. Accordingly, in those cases where the vehicle was issued an original Certificate of Title or a Salvage Title which remains in force, Customs will require presentation of that original title document pursuant to the provisions of § 192.2(b)(1). Also, in those cases where the vehicle was issued a junk or scrap certificate by a government authority that remains in force, Customs will require presentation of that original document pursuant to the provisions of § 192.2(b)(3)(iii). But, in those cases where the vehicle was not issued a Certificate of Title, a Salvage Title, or a junk or scrap certificate, or the title or certificate is no longer in force, Customs will accept such documents as a Bill of Sale as establishing ownership pursuant to the provisions of § 192.2(b)(3)(iv), provided: (1) The owner certifies to Customs in writing that the government-issuing authority for the jurisdiction has no registration/certification requirements for such vehicles, and (2) the owner attests in writing to the *bona fides* of the sale and that the vehicle presented for export is not stolen. Because a government-issuing authority will not necessarily be involved in the issuance of Bills of Sale, the burden of proof Customs places on exporters in this regard is not deemed unreasonable.

Regarding the commenter's observation that the word "satisfactory" (from proposed § 192.2(b)(3)) gives too much discretion to Customs agents and promotes a lack of uniformity at the ports of exit, Customs disagrees. Since the exporter is in a better position to report on the titling practices/requirements of the particular jurisdiction from where the vehicle comes, Customs believes that use of the word "satisfactory" does not place an undue burden on the exporter. Proof of a jurisdiction's titling practices/requirements requires merely a letter from the government agency responsible for titling vehicles that applicable regulations either exist or do not exist.

As discussed below, Customs is revising the heading and text of proposed § 192.2(b)(4) to more directly address the documentary requirements for exporting vehicles not titled, including "junk" and "scrap" vehicles.

3. *The security of original documents presented to Customs.*

Comment: Some commenters were concerned about the security, *i.e.*, safe return, of original title documents left with Customs over the course of the 72-hour reporting requirement. While the risk of loss was cited as the overriding concern, liability issues, the burden of replacing the original, and additional costs in the form of additional exporter processing costs and the potential for lost business were also raised.

Customs Response: If the timely return and risk of loss of original title documents are primary concerns with the process of presenting such documents to Customs, it is recommended that the exporter timely present the required documentation and wait while Customs verifies the authenticity of the documents. Then Customs can directly return the documents to the exporter. Exporters must understand Customs believes that the original title document is the single most important document needed to prevent the illegal export of stolen vehicles and that these regulatory changes are designed to tighten Customs enforcement against the exportation of stolen cars.

Regarding the commenters' issues of liability, the burden of replacing the original, and additional exporter processing costs, in those cases where the original title document was presented to and retained by Customs and cannot be found prior to the vehicle's export, the exporter's authenticated copy of the original documentation serves as evidence of compliance with the reporting requirements. However, where the original title document was returned to the exporter, then the exporter is liable for replacing the documents and bearing any processing costs associated with such replacement. While Customs is willing to work with individual exporters to address problems they may be experiencing at certain ports of entry,

no systemic change to the documentation procedures provided herein will be made.

4. *The time requirement for submitting documents, and presenting the vehicle for inspection at a place other than at the port of export.*

Comment: Several comments were received inquiring as to the time for document presentation and the beginning point of the required 72-hour time period. One exporter stated that the requirement for exporters at seaports to submit all original documentation to Customs 72 hours prior to export, while the requirement for exporters at land borders to submit copies of documentation to Customs 72 hours prior to export, subject to presentation of originals at the time of export, did not seem very equitable. Another commenter suggested the following procedure at land borders regarding cars purchased at auction:

1. At the time of purchase, the auction will complete the Shipper's Export Declaration (SED) with attached certified copies of invoices and/or bills of sale (separate bills of sale are required by California law, but not other states);

2. The auction will give a copy of the SED to the purchasing motor vehicle dealer;

3. The auction will forward the original SED to a designated land border crossing (a specialized facility equipped to follow the procedures to expedite the legitimate export of used motor vehicles into Mexico); and

4. Customs will allow export 72 hours following receipt of the original SED, upon presentation of the motor vehicle with the copy of the SED by the purchasing Dealer.

Additional comments were received inquiring whether a vehicle could be inspected and certified at its point of origin, and whether a vehicle's documents could be verified at the point of export.

Customs Response: Regarding the suggested auction procedure, Customs does not consider the SED document to be as trustworthy a document as the original Certificate of Title issued by a government agency, for the reasons discussed above under Customs first response. Further, the SED is a document protected by the Commerce laws with the result that Customs is generally precluded from sharing the information with other law enforcement agencies. The exporter who is required to complete the SED may or may not be the auto auction. Therefore, as an enforcement tool, the value of the SED is significantly lowered in Customs stated objective to more efficiently and effectively deter the export of stolen vehicles. Lastly, copies of invoices and/or bills of sale that are certified by an auto auction business do not meet the documentation requirements of these regulations for purposes of exporting a vehicle.

Accordingly, no change to the regulations will be made to accommodate this suggested documentation procedure.

Regarding the beginning of the required 72-hour time period, Customs notes that the proposed regulation provides that the original document and the vehicle be presented to Customs *at least* (emphasis supplied) 72 hours, to include not less than two full business days, prior to lading or in the case of the land border ports, prior to the intended date of export. This 72-hour time period is a statutory minimum time period. Customs has reconsidered its proposal to further delineate when this 72-hour time period begins or whether a time period, *i.e.*, the concept of "business days," falls within this time period minimum because, in fact, port directors can require greater time periods within which exporters must submit required documentation. The purpose of requiring the documentation *at least* 72-hours before export of the vehicle is so that Customs can cross-check the VIN with information entered into the NCIC on stolen vehicles. Accordingly, the provisions of proposed § 192.2(c) will be revised to remove the "2 full business days" concept so that the provisions of redenominated paragraph (d), which allow port directors to establish the locations and hours of operation for exporters to present required documentation, will not be compromised.

Regarding the different document and vehicle presentation requirements at seaports and land border ports, the operational differences at land border and seaports concerning vehicle presentation were explained in Treasury Decision 90–71, when the provisions of § 192.2(c) were first amended concerning this issue. However, the one commenter's observation that the proposed requirement for exporters at seaports to submit all original documentation to Customs 72 hours prior to export, while the proposed requirement for exporters at land borders to submit copies of documentation to Customs 72 hours prior to export, subject to presentation of originals at the time of export, did not seem very equitable, is valid and Customs agrees that implementation of the Act requires a uniform approach regarding presentment of documentation. Accordingly, the provisions of § 192.2(c) concerning the presentment of documentation are amended to require that exporters at land borders submit original documentation at least 72 hours before export of the vehicle, to parallel the requirement for exporters at seaports.

Concerning the presentation of a vehicle for inspection at a place other than at the port of export, Customs has recently amended its regulations at Part 118, which concerns Centralized Examination Stations, to authorize their use in the export of merchandise (*see*, 63 FR 16683, dated April 6, 1998; T.D. 98–29). Accordingly, Customs can direct that vehicles be inspected at locations other than at the port of export.

Other Changes

After review of the comments and further consideration of the proposal, Customs has decided to restructure § 192.2(b) to present a clearer understanding of the specific documentation required for certain used vehicles to be exported. Accordingly, instead of heading paragraphs (b)(1) through (b)(5) as they were proposed to be headed, the headings are changed to clearly direct readers to the requirements for (1) U.S.-titled vehicles; (2) foreign-titled vehicles; and (3) untitled vehicles. Under the heading for untitled vehicles, there are subparagraphs for the following categories: (1) Newly-manufactured vehicles issued an MSO; (2) newly-manufactured vehicles not issued an MSO; (3) vehicles issued a junk or scrap certificate; and (4) vehicles issued a title or certificate that is not in force or are otherwise not registered. These changes are non-substantive.

With the restructuring of paragraph (b), Customs is not enumerating vehicle types such as automobiles, trucks, buses, etc., in the substantive documentation requirements portion of this final rule document. Customs believes that the definition of "Self-propelled vehicle" at § 192.1 is broad enough to cover any vehicle used or designated for running on land and that paragraphs (b)(1) through (b)(3) are applicable as drafted to all self-propelled vehicles that fall within the definition. Accordingly, the one comment suggesting that Customs incorporate by reference the generic vehicle's terminology used by National Highway Traffic Safety Administration and/or the Environmental Protection Agency to indicate which vehicles are subject to the regulations rather than list specific types of vehicles is not adopted.

It is also noted that Customs has decided to reverse the order of proposed paragraphs (d) and (e) of § 192.2 for

organizational clarity. Thus, amended paragraph (d) will address where documents are to be presented and amended paragraph (e) will provide for the authentication of documents procedure.

Also, the general authority citation for Part 192 is revised to add the applicable Anti Car Theft Act provisions, and minor word changes to § 192.1 are made for clarity.

To reflect the paperwork requirements contained at § 192.2(b), part 178 of the Customs Regulations is also amended.

The Regulatory Flexibility Act and Executive Order 12866

In so far as the amendments are intended to assist Customs exercise its law enforcement responsibilities in prohibiting the export of stolen vehicles and to place a minimum burden on legitimate exporters of used vehicles, pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), it is certified that the amendments will not have a significant economic impact on a substantial number of small entities. Accordingly, the amendment is not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604. The amendment does not meet the criteria for a "significant regulatory action" as specified in E.O. 12866.

Paperwork Reduction Act

The collection of information contained in this final rule has been reviewed and approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507) under control number 1515–0157. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB.

The clarification of the collection of information in this final rule is in § 192.2. This information is necessary so that Customs can exercise its law enforcement responsibilities in prohibiting the export of stolen vehicles. Respondents or recordkeepers are already required by statute or regulation to maintain the vast majority of the information covered in this regulation. The likely respondents or recordkeepers are business organizations including importers, exporters and manufacturers.

The estimated average annual burden associated with the collection of information in this final rule is 10 minutes per respondent or recordkeeper. Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the U.S. Customs Service, Information Services Group, Office of Finance, 1300 Pennsylvania Ave., NW, Washington, DC 20229; and to OMB, Attention: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, D.C. 20503.

Drafting Information

The principal author of this document was Gregory R. Vilders, Attorney, Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects

19 CFR Part 178

Administrative practice and procedure, Collections of information, Exports, Imports, Paperwork requirements, Reporting and recordkeeping requirements.

19 CFR Part 192

Administrative practice and procedure, Customs duties and Inspection, Exports, Government employees, Motor Vehicles, Penalties.

Amendments to the Regulations

For the reasons stated above, parts 178 and 192 of the Customs Regulations (19 CFR parts 178 and 192) is amended as set forth below:

PART 178—APPROVAL OF INFORMATION COLLECTION REQUIREMENTS

1. The authority citation for part 178 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 1624; 44 U.S.C. 3501 *et seq.*

2. Section 178.2 is amended by revising the text of the listing for "Part 192" to read as follows:

§ 178.2 Listing of OMB control numbers.

19 CFR section	Description	OMB control No.
*	* * *	*
§ 192.2 ...	Documentation requirements for exporting used, self-propelled vehicles, vessels, and aircraft.	1515–0157

PART 192—EXPORT CONTROL

1. The authority citation for part 192, Customs Regulations (19 CFR part 192), is revised to read as follows:

Authority: 19 U.S.C. 66, 1624, 1627a, 1646a, 1646b, 1646c.

2. Section 192.1 is amended by adding two new definitions, in appropriate alphabetical order, to read as follows:

§ 192.1 Definitions.

* * * * *

Certified. "Certified" when used with reference to a copy means a document issued by a government authority that includes on it a signed statement by the authority that the copy is an authentic copy of the original.

Copy. "Copy" refers to a duplicate or photocopy of an original document. Where there is any writing on the backside of an original document, a "complete copy" means that both sides of the document are copied.

* * * * *

3. Section 192.2 is amended as follows:

a. In the first sentence of paragraph (a), remove the words "a document" and add in their place the words "the required documentation'; and

b. Paragraphs (b), (c) and (d) are revised to read as follows:

§ 192.2 Requirements for exportation.

* * * * *

(b) *Documentation required.*—(1) For U.S.-titled vehicles.—(i) *Vehicles issued an original certificate of title.* For used, self-propelled vehicles issued, by any jurisdiction in the United States, a Certificate of Title or a Salvage Title that remains in force, the owner must provide to Customs, at the time and place specified in this section, the original Certificate of Title or a certified copy of the Certificate of Title and two complete copies of the original Certificate of Title or certified copy of the original.

(ii) *Where title evidences third-party ownership/claims.* If the used, self-propelled vehicle is leased or a recorded lien exists in the U.S., in addition to complying with paragraph (b)(1)(i) of this section, the provisional owner must provide to Customs a separate writing from the third-party-in-interest which expressly provides that the subject vehicle may be exported. This writing must be on the third-party's letterhead paper, and contain a complete description of the vehicle including the Vehicle Identification Number (VIN), the name of the owner or lienholder of the leased vehicle, and the telephone numbers at which that owner or lienholder may be contacted. The writing must bear an original signature of the third-party and state the date it was signed.

(iii) *Where U.S. Government employees are involved.* If the used, self-propelled vehicle is owned by a U.S.

government employee and is being exported in conjunction with that employee's reassignment abroad pursuant to official travel orders, then, in lieu of complying with paragraph (b)(1)(i) of this section, the employee may be required to establish that he has complied with the sponsoring agency's internal travel department procedures for vehicle export.

(2) *For foreign-titled vehicles.* For used, self-propelled vehicles that are registered or titled abroad, the owner must provide to Customs, at the time and place specified in this section, the original document that provides satisfactory proof of ownership (with an English translation of the text if the original language is not in English), and two complete copies of that document (and translation, if necessary).

(3) *For untitled vehicles.*—(i) Newly-manufactured vehicles issued an MSO. For newly-manufactured, self-propelled vehicles that are purchased from a U.S. manufacturer, distributor, or dealer that become used, as defined in this subpart, and are issued a Manufacturer's Statement of Origin (MSO), but not issued a Certificate of Title by any jurisdiction of the United States, the owner must provide to Customs, at the time and place specified in this section, the original MSO and two complete copies of the original MSO.

(ii) *Newly-manufactured vehicles not issued an MSO.* For newly-manufactured, self-propelled vehicles purchased from a U.S. manufacturer, distributor, or dealer that become used, as defined in this subpart, and not issued an MSO or a Certificate of Title by any jurisdiction of the United States, the owner must establish that the jurisdiction from where the vehicle comes does not have any ownership documentation requirements regarding such vehicles and provide to Customs, at the time and place specified in this section, an original document that proves ownership, such as a dealer's invoice, and two complete copies of such original documentation.

(iii) *Vehicles issued a junk or scrap certificate.* For used, self-propelled vehicles for which a junk or scrap certificate issued, by any jurisdiction of the United States, remains in force, the owner must provide to Customs, at the time and place specified in this section, the original certificate or a certified copy of the original document and two complete copies of the original document or certified copy of the original.

(iv) *Vehicles issued a title or certificate that is not in force or are otherwise not registered.* For used, self-propelled vehicles that were issued, by any jurisdiction of the United States, a title or certificate that is no longer in force, or that are not required to be titled or registered, and for which an MSO was not issued, the owner must establish that the jurisdiction from where the vehicle comes does not have any ownership documentation requirements regarding such vehicles and provide to Customs, at the time and place specified in this section, the original document that shows his basis for ownership or right of possession, such as a bill of sale, and two complete copies of that original document. Further, the owner must certify in writing to Customs that the procurement of the vehicle was a bona fide transaction, and that the vehicle presented for export is not stolen.

(c) *When presented.*—(1) *Exportation by vessel or aircraft.* For those vehicles exported by vessel or aircraft, the required documentation and the vehicle must be presented to Customs at least 72 hours prior to export.

(2) *Exportation at land border crossing points.* For those vehicles exported by rail, highway, or under their own power:

(i) The required documentation must be submitted to Customs at least 72 hours prior to export; and

(ii) The vehicle must be presented to Customs at the time of exportation.

(d) *Where presented.* Port directors will establish locations at which exporters must present the required documentation and the vehicles for inspection. Port directors will publicize these locations, including their hours of operation.

(e) *Authentication of documentation.* Customs will determine the authenticity of the documents submitted. Once the authenticity of the documents is established, Customs will mark the documents. In most cases the original document(s) will be returned to the exporter. In those cases where the original title document was presented to and retained by Customs and cannot be found prior to the vehicle's export, the exporter's authenticated copy of the original documentation serves as evidence of compliance with the reporting requirements.

Approved: March 16, 1999.

Raymond W. Kelly,

Commissioner of Customs.

John P. Simpson,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 99–8332 Filed 4–5–99; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[REG–106564–98]

RIN 1545–AW86

Modifications and Additions to the Unified Partnership Audit Procedures; Hearing Cancellation

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Cancellation of notice of public hearing on proposed rulemaking.

SUMMARY: This document provides notice of cancellation of a public hearing on proposed regulations relating to the unified partnership audit procedures.

DATES: The public hearing originally scheduled for Wednesday, April 14, 1999, at 10 a.m., is cancelled.

FOR FURTHER INFORMATION CONTACT: Michael L. Slaughter of the Regulations Unit, Assistant Chief Counsel (Corporate), (202) 622–7180 (not a toll-free number).

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking, notice of proposed rulemaking by cross-reference to temporary regulations, and notice of public hearing that appeared in the **Federal Register** on Tuesday, January 26, 1999 (64 FR 3886), announced that a public hearing was scheduled for Wednesday, April 14, 1999, at 10 a.m., in room 2615, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. The subject of the public hearing is proposed regulations under sections 6221 through 6233 of the Internal Revenue Code. The public comment period for these proposed regulations expires on Monday, April 26, 1999. The outlines of topics to be addressed at the hearing were due on Wednesday, March 24, 1999.

The notice of proposed rulemaking and notice of public hearing, instructed those interested in testifying at the public hearing to submit a request to speak and an outline of the topics to be addressed. As of March 31, 1999, no one has requested to speak. Therefore, the public hearing scheduled for Wednesday, April 14, 1999, is cancelled.

Cynthia E. Grigsby,

Chief, Regulations Unit, Assistant Chief Counsel (Corporate).

[FR Doc. 99–8372 Filed 4–5–99; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD 08–99–012]

Drawbridge Operating Regulation; Dulac Bayou, LA

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Eighth Coast Guard District, has issued a temporary deviation from the regulation governing the operation of the SR 47 swing span drawbridge across Dulac Bayou, mile 0.6, at Dulac, Terrebonne Parish, Louisiana. This deviation allows the Louisiana Department of Transportation and Development to close the bridge continuously from 8 a.m. on April 26, 1999 through 3 p.m. on April 30, 1999. This temporary deviation is issued to allow for the replacement of the link pins of the hydraulic pistons, as extensive but necessary maintenance operation. Presently, the draw opens on signal at all times.

DATES: This deviation is effective from 8 a.m. on April 26, 1999 through 3 p.m. on April 30, 1999.

ADDRESSES: Unless otherwise indicated, documents referred to in this notice are available for inspection or copying at the office of the Eighth Coast Guard District, Bridge Administration Branch, Commander (ob), Eighth Coast Guard District, 501 Magazine Street, New Orleans, Louisiana, 70130–3396. The Bridge Administration Branch of the Eighth Coast Guard District maintains the public docket for this temporary deviation.

FOR FURTHER INFORMATION CONTACT: Phil Johnson, Bridge Administration Branch, telephone (504) 589–2965.

SUPPLEMENTARY INFORMATION: The SR 57 swing span drawbridge across Dulac Bayou, mile 0.6, in Dulac, Terrebonne Parish, Louisiana, has a vertical clearance of 7 feet above high water in the closed-to-navigation position and unlimited clearance in the open-to-navigation position. Navigation on the waterway consists of tugs with tows, fishing vessels, sailing vessels, and other recreational craft. The Louisiana Department of Transportation and Development requested a temporary deviation from the normal operation of the drawbridge in order to accommodate the maintenance work, involving removal and replacement of the link pins of the hydraulic pistons. This work is essential for the continued operation of the draw span.

The District Commander has, therefore, issued a deviation from the regulations in 33 CFR 117.5 authorizing the draw of the SR 57 swing span bridge across Dulac Bayou, mile 0.6, at Dulac, Louisiana to remain in the closed to navigation position from 8 a.m. on April 26, 1999 through 3 p.m. on April 30, 1999.

Dated: March 29, 1999.

Paul J. Pluta,

Rear Admiral, U.S. Coast Guard Commander, Eighth Coast Guard District.

[FR Doc. 99–8474 Filed 4–5–99; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP Southeast Alaska 99–001]

RIN 2115–AA97

Safety Zone; Ward Cove, Tongass Narrows, Ketchikan, AK

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule; request for comments.

SUMMARY: The Coast Guard is establishing a temporary safety zone encompassing the navigable waters of Ward Cove, on Tongass Narrows, Ketchikan, Alaska. The safety zone is needed to protect maritime vessels transiting the area from a potential navigation impediment created by the implosion of the Ketchikan Pulp Company's Bleach Plant, Digester and Accumulator buildings. This safety zone is established to encompass the navigable waters bounded by 55°23′58″ N, 131°43′37″ W, northwest across the mouth of Ward Cove to 55°24′N, 131°44′13″ W and all waters inside Ward Cove east of this line. Entry into, transit through or anchoring within this Safety Zone is prohibited unless authorized by the Captain of the Port Southeast Alaska or the Coast Guard vessel on scene. The Coast Guard vessel on scene may be contacted on VHF Channel 16.

DATES: This temporary final rule becomes effective at 9 a.m. AST, on April 1, 1999, and terminates at 12:01 a.m. ADT on April 15, 1999.

ADDRESSES: Documents as indicated in this preamble are available for inspection or copying at Supervisor, U.S. Coast Guard, Marine Safety Detachment, 2030 Sealevel Drive, Suite 203, Ketchikan, Alaska between 8 a.m. and 2 p.m., Monday through Friday, except Federal holidays. The telephone number is (907) 225–4496.

FOR FURTHER INFORMATION CONTACT: Lieutenant Patrick W. Clark, Supervisor, U.S. Coast Guard, Marine Safety Detachment Ketchikan, (907) 225–4496.

SUPPLEMENTARY INFORMATION:

Regulatory History

A notice of proposed rulemaking (NPRM) was not published for this regulation. In keeping with requirements of 5 U.S.C. 553(B), the coast Guard finds that good cause exists for not publishing a NPRM. In keeping with requirements of 5 U.S.C. 553(d)(3), the Coast Guard also finds that good cause exists for making this regulation effective less than 30 days after publication in the **Federal Register.** Publication of a NPRM and delay of effective date would be contrary to the public interest because immediate action is necessary to protect the safety of the maritime vessel traffic.

Although this rule is being published as a temporary final rule without prior notice, an opportunity for public comment is nevertheless desirable to ensure the rule was both reasonable and workable. Accordingly, persons wishing to comment may do so by submitting comments to the office listed in **ADDRESSES** in this preamble. Persons submitting comments should include their names and addresses, identify this rulemaking (COTP Southeast Alaska 99–001) and the specific sections of this document to which each comment applies, and give the reason for each comment. The Coast Guard will consider all comments received and may modify future temporary final rules in view of the comments.

Background and Purpose

On April 1, 1999 at approximately 12:30 p.m. AST, Ketchikan Pulp Company will implode three of the facility's building. A 2000-foot radius safety zone is required around the demolition site to protect the maritime public from the hazards created by the activities being conducted in the area.

Regulatory Evaluation

This temporary final rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The

Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard considered whether this rule will have a significant impact on a substantial number of small businesses and not-for-profit organizations that are not dominant in their respective fields, and governmental jurisdictions with populations less than 50,000. For the same reasons set forth in the above Regulatory Evaluation, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this temporary final rule will not have a significant economic impact on a substantial number of small entities.

Assistance for Small Entities

In accordance with sec. 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), the Coast Guard wants to assist small entities in understanding this rule so that they can better evaluate its effectiveness in them and participate in the rulemaking process. If your small business or organization is affected by this rule and you have questions concerning its provisions or options for compliance, please contact the office listed in **ADDRESSES** in this preamble.

Collection of Information

This temporary final rule contains no information collection requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this temporary final rule under the principals and criteria contained in Executive Order 12612 and has determined that this temporary final rules does not have sufficient implications for federalism to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this temporary final rule and concluded that, under figure 2–1, paragraph (34)(g), of Commandant Instruction M16475.1C, this temporary final rule is categorically excluded from further environmental documentation. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons set out in the preamble, the Coast Guard amends 33 CFR Part 165 as follows:

PART 165—[AMENDED]

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

2. A new temporary section § 165.T17–SEAK–001 is added to read as follows:

§ 165.T17–SEAK–001 Safety Zone: Ward Cove, Tongass Narrows, Ketchikan Alaska.

(a) Location. The following area is a Safety Zone: The navigable waters of Ward Cove bounded by a line starting at the Southeast shoreline of Ward Cove at 55°23′58″ N, 131°43′37″ W, proceeding northwest to 55°24′ N, 131°44′13″ W, and all navigable waters inside Ward Cove to the east of the line.

(b) Effective dates. This regulation becomes effective at 9 a.m. AST, on April 1, 1999, and terminates at 12:01 a.m. ADT on April 15, 1999.

(c) Regulations. In accordance with the general regulations in § 165.23 of this part, entry into this safety zone is prohibited except as authorized by the captain of the Port.

Dated: March 16, 1999.

W. David Eley,

Commander, U.S. Coast Guard, Captain of the Port, Southeast Alaska.

[FR Doc. 99–8476 Filed 4–5–99; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD01–99–018]

RIN 2115–AA97

Safety Zone: Bergen County United Way Fireworks, Hudson River, Manhattan, NY

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for the Bergen County United Way Fireworks program located on the Hudson River, Manhattan, New York. This action is necessary to provide for the safety of life on navigable waters during the event. This action is intended to restrict vessel traffic on a portion of the Hudson River.

DATES: This rule is effective from 9:30 p.m. until 11:00 p.m., on Sunday, April 11, 1999. For rain date, refer to the regulatory text set out in this rule.

ADDRESSES: Documents as indicated in this preamble are available for inspection or copying at Coast Guard Activities New York, 212 Coast Guard Drive, room 205, Staten Island, New York 10305, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (718) 354–4193.

FOR FURTHER INFORMATION CONTACT: Lieutenant J. Lopez, Waterways Oversight Branch, Coast Guard Activities New York (718) 354–4193.

SUPPLEMENTARY INFORMATION:

Regulatory History

Pursuant to 5 U.S.C. 553, a notice of proposed rulemaking (NPRM) was not published for this regulation. Good cause exists for not publishing an NPRM and for making this regulation effective less than 30 days after **Federal Register** publication. Due to the date the Application for Approval of Marine Event was received, there was insufficient time to draft and publish an NPRM and publish the final rule 30 days before its effective date. Any delay encountered in this regulation's effective date would be contrary to public interest since immediate action is needed to close a portion of the waterway and protect the maritime public from the hazards associated with this fireworks display.

Background and Purpose

On February 24, 1999, Bay Fireworks submitted an application to hold a fireworks program on the waters of the Hudson River. The fireworks program is being sponsored by Bergen County United Way. This regulation establishes a safety zone in all waters of the Hudson River within a 360 yard radius of the fireworks barge located in approximate position 40°44′49″ N 074°01′02″ W (NAD 1983), approximately 500 yards west of Pier 60, Manhattan, New York. The safety zone is in effect from 9:30 p.m. until 11 p.m. on Saturday, April 10, 1999, with a rain date on Sunday, April 11, 1999, at the same time and place. The safety zone prevents vessels from transiting a portion of the Hudson River and is needed to protect boaters from the hazards associated with

fireworks launched from a barge in the area. Marine traffic will still be able to transit through the eastern 150 yards of the 850-yard wide Hudson River during the event. The Captain of the Port does not anticipate any negative impact on commercial traffic due to this event. Additionally, vessels are not precluded from mooring at or getting underway from Piers 59–62 or from the Piers at Castle Point, New Jersey. Public notifications will be made prior to the event via local notice to mariners, and marine information broadcasts.

Regulatory Evaluation

This final rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. It has not been reviewed by the Office of Management and Budget under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this final rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. This finding is based on the minimal time that vessels will be restricted from the area, that vessels are not precluded from getting underway, or mooring at, Piers 59–62 and the Piers at Castle Point, New Jersey, that vessels may safely transit to the east of the zone, and extensive advance notifications which will be made.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard considered whether this rule will have a significant economic impact on a substantial number of small entities. "Small entities" include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

For reasons discussed in the Regulatory Evaluation above, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this final rule will not have a significance economic impact on a substantial number of small entities.

Collection of Information

This final rule does not provide for a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this final rule under the principles and criteria contained in Executive Order 12612 and has determined that this final rule does not have sufficient implications for federalism to warrant the preparation of a Federalism Assessment.

Unfunded Mandates

Under the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), the Coast Guard must consider whether this rule will result in an annual expenditure by state, local, and tribal governments, in the aggregate of $100 million (adjusted annually for inflation). If so, the Act requires that a reasonable number of regulatory alternatives be considered, and that from those alternatives, the least costly, most cost-effective, or least burdensome alternative that achieves the objective of the rule be selected. No state, local, or tribal government entities will be effected by this rule, so this rule will not result in annual or aggregate costs of $100 million or more. Therefore, the Coast Guard is exempt from any further regulatory requirements under the Unfunded Mandates Act.

Environment

The Coast Guard has considered the environmental impact of this final rule and concluded that under Figure 2–1, paragraph 34(g), of Commandant Instruction M16475.1C, this final rule is categorically excluded from further environmental documentation. A written Categorical Exclusion Determination is available in the docket for inspection in copying where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

Regulation

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR Part 165 as follows:

PART 165—[AMENDED]

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

2. Add temporary § 165.T01–018 to read as follows:

§ 165.T01–018 Safety Zone: Bergen County United Way Fireworks, Hudson River, Manhattan, New York.

(a) *Location.* The following area is a safety zone: all waters of the Hudson River within a 360 yard radius of the fireworks barge in approximate position 40°44′49″ N, 074°01′02″ W (NAD 1983), approximately 500 yards west of Pier 60, Manhattan, New York.

(b) *Effective period.* This section is effective from 9:30 p.m. until 11:00 p.m. on Saturday, April 10, 1999, with a rain date of Sunday, April 11, 1999, at the same time and place.

(c) *Regulations.*

(1) The general regulations contained in 33 CFR 165.23 apply.

(2) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on scene patrol personnel. U.S. Coast Guard patrol personnel include commissioned, warrant, and petty officers of the Coast Guard. Upon being hailed by a U.S. Coast Guard vessel via siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

Dated: March 22, 1999.

R.E. Bennis,

Captain, U.S. Coast Guard, Captain of the Port, New York.

[FR Doc. 99–8475 Filed 4–5–99; 8:45 am]

BILLING CODE 4910–15–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[SW–FRL–6320–4]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Final Exclusion

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) today is granting a petition submitted by Aluminum Company of America (Alcoa), Pittsburgh, Pennsylvania, to exclude (or "delist") certain solid wastes generated by its wastewater treatment plant from the lists of hazardous wastes contained in subpart D of 40 CFR part 261. EPA has concluded that the petitioned waste is not a hazardous waste when disposed of in a subtitle D landfill. This exclusion applies only to the 16,772 cubic yards of wastewater treatment plant (WWTP) sludge present in the Stolle landfill. Today's action conditionally excludes the petitioned waste from the

requirements of the hazardous waste regulations under the Resource Conservation and Recovery Act (RCRA) only if the waste remains in place or, if excavated, it is disposed of in a subtitle D landfill which is permitted, licensed, or registered by a State to manage industrial solid waste.

EFFECTIVE DATE: April 6, 1999.

ADDRESSES: The RCRA regulatory docket for this proposed rule is located at the U.S. EPA Region 5, 77 W. Jackson Blvd., Chicago, IL 60604, and is available for viewing from 8:00 a.m. to 4:00 p.m., Monday through Friday, excluding Federal holidays. Call Peter Ramanauskas at (312) 886–7890 for appointments. The public may copy material from the regulatory docket at $0.15 per page.

FOR FURTHER INFORMATION CONTACT: For technical information concerning this document, contact Peter Ramanauskas at the address above or at (312) 886–7890.

SUPPLEMENTARY INFORMATION:

I. Background

A. Authority

Under §§ 260.20 and 260.22, facilities may petition the EPA to remove their wastes from hazardous waste control by excluding them from the lists of hazardous wastes contained in subpart D of part 261. Specifically, § 260.20 allows any person to petition the Administrator to modify or revoke any provision of parts 260 through 266, 268 and 273, and under § 260.22, which specifically provides generators the opportunity to petition the Administrator to exclude a waste on a "generator-specific" basis from the hazardous waste lists. Petitioners must provide sufficient information to allow EPA to determine that the waste to be excluded does not meet any of the criteria under which the waste was listed as a hazardous waste. In addition, where there is reasonable basis to believe that factors (including additional constituents) other than those for which the waste was listed could cause the waste to be a hazardous waste, the Administrator must determine that such factors do not warrant retaining the waste as a hazardous waste.

B. History of This Rulemaking

Alcoa petitioned EPA to exclude its WWTP sludge from hazardous waste control. After evaluating the petition, on December 21, 1998, EPA proposed to exclude Alcoa's waste from the lists of hazardous wastes in subpart D of part 261 (see 63 FR 70360). This rulemaking addresses the public comments received on the proposal and finalizes the proposed decision to grant Alcoa's petition.

II. Disposition of Delisting Petition

Aluminum Company of America, Alcoa Corporate Center, 201 Isabella Street, Pittsburgh, Pennsylvania 15212–5858

A. Proposed Exclusion

Alcoa petitioned EPA to exclude the estimated total volume of 16,772 cubic yards of WWTP filter press sludge previously disposed of in the Stolle landfill from the list of hazardous wastes contained in § 261.31 because it believed that the petitioned waste did not meet any of the criteria under which the waste was listed and that there were no additional constituents or factors that could cause the waste to be hazardous. Subsequently, Alcoa provided additional information to complete its petition. The WWTP filter cake sludge is listed as EPA Hazardous Waste Numbers F006 and F019. The listed constituents of concern for EPA Hazardous Waste Number F006 are cadmium, hexavalent chromium, nickel and cyanide (complexed) and for EPA Hazardous Waste Number F019 are hexavalent chromium and cyanide (complexed) (see appendix VII of part 261).

In support of its petition, Alcoa submitted detailed descriptions of its manufacturing and wastewater treatment processes, a schematic diagram of the wastewater treatment process, and analytical testing results for representative samples of the petitioned waste, including (1) the hazardous characteristics of ignitability, corrosivity, and reactivity; (2) total oil and grease; (3) Toxicity Characteristic Leaching Procedure (TCLP, SW–846 Method 1311) analyses for volatile and semi-volatile organic compounds, herbicides, pesticides, polychlorinated biphenyls (PCBs), metals, fluoride, and cyanide (using deionized water instead of acid); (4) total sulfide, total cyanide and total fluoride; and (5) total constituent analysis for 40 CFR part 264, appendix IX metals (plus hexavalent chromium for which F006 and F019 wastes are listed), VOCs, SVOCs, pesticides and herbicides, and PCBs.

EPA evaluated the information and analytical data provided by Alcoa and tentatively determined that Alcoa had successfully demonstrated that the petitioned waste is not hazardous. See the proposed exclusion (63 FR 70360; December 21, 1998) for a detailed explanation of EPA's evaluation.

B. Response to Comments

EPA received a public comment on the December 21, 1998 proposal from Chemical Products Corporation.

Comment: Commenter noted the absence of any published revision of the Toxicity Characteristic regulatory limit for barium, as the level for barium in the proposed exclusion exceeds the regulatory limit for barium in the Toxicity Characteristic (TC) Rule.

Response: The regulatory limit for barium under the TC rule has not been changed. The level of regulatory concern in the proposed rule was calculated using the EPA Composite Model for Landfills (EPACML). This level for barium, although protective of human health and the environment, has been lowered in today's final rule to comply with the levels set by the toxicity characteristic in § 261.24.

C. Changes to Proposed Conditions

In the proposed rulemaking, EPA included delisting levels for 12 constituents which would be protective of human health and the environment and which could not be exceeded in a TCLP extract of the petitioned waste. The proposed levels of 200 mg/l for barium and 10 mg/l for chromium have been lowered to the hazardous waste TC levels of 100 mg/l for barium and 5 mg/l for chromium to ensure that the petitioned waste, even though protective of human health and the environment, remains below the TC levels.

Levels in the proposed rule were based on "Docket Report on Health-Based Levels and Solubilities Used in the Evaluation of Delisting Petitions," December 1994. This document was revised in May, 1996, and the health based levels for copper and vanadium were changed from 1.4 mg/l to 1.3 mg/l for copper and from 0.2 mg/l to 0.3 mg/l for vanadium. These new values were multiplied by the dilution/attenuation factor (DAF) generated using the EPACML to calculate the allowable constituent concentration levels.

In today's final rule, the allowable constituent concentrations measured in the TCLP extract may not exceed the following levels (mg/l): Arsenic—5; Barium—100; Chromium—5; Cobalt—210; Copper—130; Nickel—70; Vanadium—30; Zinc—1000; Fluoride—400; Acetone—400; Methylene Chloride—0.5; Bis(2-ethylhexyl)phthalate—0.6.

D. Final Agency Decision

For the reasons stated in both the proposal and this document, EPA has concluded that Alcoa's petitioned waste

may be excluded from hazardous waste control. EPA, therefore, is granting a final exclusion for the WWTP sludge. This exclusion applies to the waste described in the petition only if the requirements described in Table 1 of part 261, appendix IX are satisfied.

Although management of the waste covered by this exclusion is removed from subtitle C jurisdiction, this exclusion applies only if the waste remains in place or, if excavated, is disposed of in a subtitle D landfill which is permitted, licensed, or registered by a state to manage industrial solid waste.

III. Limited Effect of Federal Exclusion

The final exclusion being granted today is issued under the Federal (RCRA) delisting program. States, however, are allowed to impose (non-RCRA) regulatory requirements that are more stringent than EPA's, pursuant to section 3009 of RCRA. These more stringent requirements may include a provision which prohibits a Federally-issued exclusion from taking effect in the State. Because a petitioner's waste may be regulated under a dual system (i.e., both Federal (RCRA) and State (non-RCRA) programs), petitioners are urged to contact the State regulatory authority to determine the current status of their waste under State law.

Furthermore, some States are authorized to administer a delisting program in lieu of the Federal program (i.e., to make their own delisting decisions). Therefore, this exclusion does not apply in those authorized States. If the petitioned waste will be transported to any State with delisting authorization, Alcoa must obtain delisting authorization from that State before the waste may be managed as nonhazardous in the State.

IV. Effective Date

This rule is effective April 6, 1999. The Hazardous and Solid Waste Amendments of 1984 amended section 3010 of RCRA to allow rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance. That is the case here, because this rule reduces the existing requirements for persons generating hazardous wastes. These reasons also provide a basis for making this rule effective immediately, upon publication, under the Administrative Procedure Act, 5 U.S.C. 553(d).

V. Regulatory Impact

Under Executive Order 12866, (58 FR 51735 (October 4, 1993)) the Agency must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect, in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof, or; (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that this rule is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review.

VI. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601–612, whenever an agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the impact of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). No regulatory flexibility analysis is required, however, if the Administrator or delegated representative certifies that the rule will not have any impact on any small entities.

This rule will not have an adverse economic impact on any small entities since its effect would be to reduce the overall costs of EPA's hazardous waste regulations. Accordingly, I hereby certify that this regulation will not have a significant economic impact on a substantial number of small entities. This regulation, therefore, does not require a regulatory flexibility analysis.

VII. Paperwork Reduction Act

Information collection and recordkeeping requirements associated with this final rule have been approved by OMB under the provisions of the Paperwork Reduction Act of 1980 (Public Law 96–511, 44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2050–0053.

VIII. Unfunded Mandates Reform Act

Under section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, which was signed into law on March 22, 1995, EPA generally must prepare a written statement for rules with Federal mandates that may result in estimated costs to State, local, and tribal governments in the aggregate, or to the private sector, of $100 million or more in any one year. When such a statement is required for EPA rules, under section 205 of the UMRA, EPA must identify and consider alternatives, including the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. EPA must select that alternative, unless the Administrator explains in the final rule why it was not selected or it is inconsistent with law. Before EPA establishes regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must develop under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, giving them meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising them on compliance with the regulatory requirements. The UMRA generally defines a Federal mandate for regulatory purposes as one that imposes an enforceable duty upon State, local or tribal governments or the private sector. EPA finds that today's delisting decision is deregulatory in nature and does not impose any enforceable duty upon State, local or tribal governments or the private sector. In addition, today's delisting decision does not establish any regulatory requirements for small governments and so does not require a small government agency plan under UMRA section 203.

IX. Submission to Congress and General Accounting Office

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of Congress and to the Comptroller General of the United States. EPA is not required to submit a rule report regarding today's action under section 801 because this is a rule of particular applicability. Section 804 exempts from section 801 the

following types of rules: rules of particular applicability; rules relating to agency management or personnel; and rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties. 5 U.S.C. 804(3).

X. Executive Order 13045—Protection of Children From Environmental Health Risks and Safety Risks

The E.O. 13045 is entitled "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997). This order applies to any rule that EPA determines: (1) is economically significant as defined under Executive Order 12866, and (2) the environmental health or safety risk addressed by the rule has a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This final rule is not subject to E.O. 13045 because this is not an economically significant regulatory action as defined by E.O. 12866.

XI. Executive Order 12875

Under E.O. 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected state, local, and tribal governments, the nature of their concerns, copies of written communications from the governments, and a statement supporting the need to issue the regulation. In addition, E.O. 12875 requires EPA to develop an effective process permitting elected officials and other representatives of state, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates." Today's rule does not create a mandate on state, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

XII. Executive Order 13084

Under E.O. 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, E.O. 13084 requires EPA to develop an effective process permitting representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities." Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

XIII. The National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This rulemaking does not establish any new technical standards and thus, the Agency has no need to consider the use of voluntary consensus standards in developing this final rule.

List of Subjects in 40 CFR Part 261

Environmental protection, Hazardous waste, Recycling, and Reporting and recordkeeping requirements.

Authority: Sec. 3001(f) RCRA, 42 U.S.C. 6921(f).

Dated: March 16, 1999.

Robert Springer,

Director, Waste, Pesticides and Toxics Division.

For the reasons set out in the preamble, 40 CFR part 261 is amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for Part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, and 6938.

2. In Table 1 of Appendix IX of Part 261 add the following waste stream in alphabetical order by facility to read as follows:

Appendix IX to Part 261—Wastes Excluded Under §§ 260.20 and 260.22

TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES

Facility	Address	Waste description
Aluminum Company of America	750 Norcold Ave., Sidney, Ohio 45365.	Wastewater treatment plant (WWTP) sludges generated from the chemical conversion coating of aluminum (EPA Hazardous Waste No. F019) and WWTP sludges generated from electroplating operations (EPA Hazardous Waste No. F006) and stored in an on-site landfill. This is an exclusion for approximately 16,772 cubic yards of landfilled WWTP filter cake. This exclusion applies only if the waste filter cake remains in place or, if excavated, is disposed of in a Subtitle D landfill which is permitted, licensed, or registered by a state to manage industrial solid waste. This exclusion was published on April 6, 1999. 1. The constituent concentrations measured in the TCLP extract may not exceed the following levels (mg/L): Arsenic—5; Barium—100; Chromium—5; Cobalt—210; Copper—130; Nickel—70; Vanadium—30; Zinc—1000; Fluoride—400; Acetone—400; Methylene Chloride—0.5; Bis(2-ethylhexyl)phthalate—0.6. 2. (a) If, anytime after disposal of the delisted waste, Alcoa possesses or is otherwise made aware of any environmental data (including but not limited to leachate data or groundwater monitoring data) or any other data relevant to the delisted waste indicating that any constituent identified in Condition (1) is at a level in the leachate higher than the delisting level established in Condition (1), or is at a level in the ground water or soil higher than the health based level, then Alcoa must report such data, in writing, to the Regional Administrator within 10 days of first possessing or being made aware of that data. (b) Based on the information described in paragraph (a) and any other information received from any source, the Regional Administrator will make a preliminary determination as to whether the reported information requires Agency action to protect human health or the environment. Further action may include suspending or revoking this exclusion, or other appropriate response necessary to protect human health and the environment. (c) If the Regional Administrator determines that the reported information does require Agency action, the Regional Administrator will notify the facility in writing of the actions the Regional Administrator believes are necessary to protect human health and the environment. The notice shall include a statement of the proposed action and a statement providing the facility with an opportunity to present information as to why the proposed Agency action is not necessary or to suggest an alternative action. The facility shall have 10 days from the date of the Regional Administrator's notice to present such information. (d) Following the receipt of information from the facility described in paragraph (c) or (if no information is presented under paragraph (c) the initial receipt of information described in paragraph (a), the Regional Administrator will issue a final written determination describing the Agency actions that are necessary to protect human health or the environment. Any required action described in the Regional Administrator's determination shall become effective immediately, unless the Regional Administrator provides otherwise.

[FR Doc. 99–8480 Filed 4–5–99; 8:45 am]
BILLING CODE 6560–50–P

AGENCY FOR INTERNATIONAL DEVELOPMENT

48 CFR Parts 701, 703, 715, 731, and 752

[AIDAR Notice 98–1]

Miscellaneous Amendments to Acquisition Regulations

AGENCY: Internatinal Development Cooperation Agency, United States Agency for International Development.

ACTION: Final rule.

SUMMARY: The U.S. Agency for International Development (USAID) is amending the USAID Acquisition Regulation (AIDAR) to make various administrative modifications in accordance with the changes to Part 15 of the Federal Acquisition Regulation published in Federal Acquisition Circular 97–02, to designate an additional level for concurrence before the Contracting Officer confers with the Head of Contracting Activity on matters concerning procurement integrity violations or other possible violations, and to add coverage on payment of

salary supplements for Host Government employees.

EFFECTIVE DATE: May 6, 1999.

FOR FURTHER INFORMATION CONTACT: M/OP/P, Ms. Kathleen O'Hara, Room 7.08–92, 1300 Pennsylvania Ave., N.W., U.S. Agency for International Development, Washington, D.C. 20523–7801. Telephone: (202) 712–4759.

SUPPLEMENTARY INFORMATION: The AIDAR is being amended to make various administrative changes to conform with revised Part 15 of the Federal Acquisition Regulation published in Federal Acquisition Circular 97–02. This Notice updates the expiration dates of the Office of Management and Budget (OMB) approval under the Paperwork Reduction Act. This Notice also adds an additional level for concurrence before the Contracting Officer confers with the Head of Contracting Activity on matters concerning procurement integrity violations or other possible violations. Allowing for concurrence by the person who is one above the Contacting Officer simplifies the procedure to release information. Finally, this Notice adds coverage in Part 731 and a clause which, in accordance with USAID policy, provides that salary supplements for host government employees are not allowable costs without approval. This implements long standing Agency policy.

The changes made by this Notice are mostly administrative and not considered major rules as defined in E.O. 12866. This Notice will neither impact a substantial number of small entities, nor will it establish information collection as contemplated by the Regulatory Flexibility Act and the Paperwork Reduction Act. Because of the nature of this Notice, use of the proposed rule/public comment approach was not considered necessary. USAID decided to issue this Notice as a final rule; however, the Agency welcomes public comment on the material covered by this Notice or any part of the AIDAR at any time. Comments or questions may be addressed as specified in the **FOR FURTHER INFORMATION CONTACT** section of the preamble.

List of Subjects in 48 CFR Parts 701, 703, 715, 731, and 752

Government procurement.

Accordingly for the reasons set out in the Preamble, 48 CFR Chapter 7 is amended as follows:

1. The authority citations in Parts 701, 703, 715, 731, and 752 continue to read as follows:

Authority: Sec. 621, Pub. L. 87–195, Stat. 445 (22 U.S.C. 2381), as amended; E.O. 12163, Sept. 29, 1979, 44 FR 56673, CFR 1979 Comp., p. 435.

PART 701—FEDERAL ACQUISITION REGULATION SYSTEM

Subpart 701.1—Purposes, Authority, Issuance

701.105 [Amended]

2. Section 701.105 is amended by removing "06/30/97" everywhere it appears in paragraph (a) and adding "08/31/2000" in its place and by revising paragraph (c) to read as follows:

701.105 OMB approval under the Paperwork Reduction Act.

* * * * *

(c) Public reporting burden for these collections of information is estimated as shown in paragraph (a) of this section. The estimated burden includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimates or any other aspects of these collections of information, including suggestions for reducing the burden, to: U.S. Agency for International (USAID), Office of Procurement, Policy Division (M/OP/P), Room 7.08–082U, 1300 Pennsylvania Avenue, N.W. Washington, D.C. 20523–7801; and Office of Management and Budget (OMB), Paperwork Reduction Project (0412–0520), Washington, D.C. 20503.

PART 703—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

Subpart 703.1—Safeguards

703.104 [Amended]

3. Section 703.104–5 is revised to read as follows:

703.104 Disclosure, protection, and marking of proprietary and source information.

A Contracting Office may authorize release of proprietary and/or source selection information outside the Government for evaluation purposes pursuant to FAR 15.305(c) and (AIDAR) 48 CFR 715.305(c).

4. Section 703.104–10 is added to read as follows:

703.104–10.1 Violations or possible violations.

Requests for concurrence under paragraph (a)(1) of FAR 3.104–10 shall be forwarded to one level above the Contracting Officer.

PART 715—CONTRACTING BY NEGOTIATION

5. Part 715 is amended by removing Subpart 715.4, Solicitation and Receipt of Proposals and Quotations; by redesignating Subpart 715.6, Source Selections, as Subpart 715.3; and redesignating Subpart 715.5, Unsolicited Proposals, as Subpart 715.6; by redesignating 715.502 as 715.602, 715.504 as 715.604, 715.604–70 as 715.303–70, 716.613–70 as 715.370–, and 715.613–71 as 715.370–2; and by removing 715.506, 715.506–1, and 715.605.

6. In newly designated 715.303–70, paragraph (b)(3) is revised to read as follows:

715.303–70 Responsibilities of USAID evaluation committees.

* * * * *

(b) * * *

(3) The chair shall prepare and provide to the Contracting Officer written documentation summarizing the results of the evaluation of each proposal, including an assessment of past performance information in accordance with FAR 15.305(a)(2). The documentation shall include narrative justification of the evaluation results.

* * * * *

715.305 [Added]

7. Section 715.305 is added to read as follows:

715.305 Proposal evaluation.

(a) [Reserved]

(b) A justification is to be written by the Contracting Officer and placed in the official file to support the decision to reject all proposals and to cancel the procurement.

(c) The Contracting Office may authorized release of proposals outside the Government for evaluation—

(1) When an Evaluation Assistance Contract (EAC) is required to provide technical advisory or other services relating to the evaluation of proposals; or

(2) When an individual other than a government employee, known as a Non-Government Evaluator (NGE), is selected to serve as a member of a USAID technical evaluation committee, the Contracting Officer shall obtain a signed and dated certification and agreement from each NGE and EAC that they will safeguard the proposals and information therein and that they perceive no actual or potential conflict of interests. (An acceptable certification appears under ADS Chapter 302).

715.370 [Added]

8. Section 715.370 is added to read as follows:

715.370 Alternative source selection procedures.

The following selection procedures may be used, when appropriate, for activities covered under Title XII of the Foreign Assistance Act of 1961, as amended.

9. Newly redesignated 715.602 is amended by revising paragraphs (b) and (c) to read as follows:

715.602 Policy.

* * * * *

(B) USAID's basic policies and procedures regarding unsolicited proposals are those established in FAR subpart 15.6 and this subpart.

(c) For detailed information on unsolicited proposals, see 715.604; for initial contact point within USAID, see 715.604(c).

10. Newly redesignated 715.604 is amended by revising the section heading and paragraph (a) and adding paragraph (c) to read as follows:

715.604 Agency points of contact.

(a) Information concerning USAID's policies for unsolicited proposals is available from the U.S. Agency for International Development, Evaluation Division, Room 7.08–005, 1300 Pennsylvania Avenue, NW, Washington, D.C. 20523–7803.

* * * * *

(c) Initial inquiries and subsequent unsolicited proposals should be submitted to the address specified in paragraph (a) of this section.

PART 731—CONTRACT COST PRINCIPLES AND PROCEDURES

Subpart 731.2—Contracts With Commercial Organizations

731.205–71 [Added]

11. Section 731.205–71 is added as follows:

731.205–71 Salary supplements for Host Government employees.

(a) *Definitions.* (1) A Host Government (HG) employee is a person paid by the HG, occupying an established position, either temporary or permanent, part-time or full-time, within a HG institution.

(2) An HG institution is an organization in which the government owns at least a fifty percent share or receives at least fifty percent of its financial support from the government.

(b) *General.* Salary supplement occurs when payments are made that augment an HG employee's base salary or premiums, overtime, extra payments, incentive payment and allowances for which the HG employee would qualify under HG rules or practices for the performance of his/hers regular duties or work performed during his/hers regular office hours. Per diem, invitational travel, honoraria and payment for work carried out outside of normal working hours are not considered to be salary supplements subject to the provisions in USAID policy referenced in paragraph (c) of this section.

(c) Salary supplements are eligible for USAID financing only when authorized in accordance with USAID policy established in the cable State 119780 dated April 15, 1988 (on ADS–CD under USAID Handbooks, Handbook 1). If salary supplements have been authorized in a particular case, the Contracting Officer shall provide written approval to the contractor in order for such costs to be eligible. Any specific requirements or limitations shall be specified in the approval.

(d) Contracting Officers shall insert the Clause at 752.231–71 in all contracts in which there is a possibility of the need of HG employees. It should also be inserted in all subsequent subcontracts.

PART 752—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

Subpart 752.2—Texts of Provisions and Clauses

12. Section 752.231–71 is added to read as follows:

752.231–71 Salary supplements for HG employees.

As prescribed in 731.205–71, for use in all contracts with a possible need or services of a HG employee. The clause should also be inserted in all subsequent sub-contracts.

SALARY SUPPLEMENTS FOR HG EMPLOYEES (OCT 1998)

(a) Salary supplements are payments made that augment an employee's base salary or premiums, overtime, extra payments, incentive payment and allowances for which the HG employee would qualify under HG rules or practice for the performance of his/hers regular duties or work performed during his/hers regular office hours. Per diem, invitational travel, honoraria and payment for work carried out outside of normal working hours are not considered to be salary supplements.

(b) Salary supplements to HG Employees are not allowable without the written approval of the Contracting Officer.

Dated: March 8, 1999.

Marcus L. Stevenson,

Procurement Executive.

[FR Doc. 99–6609 Filed 4–5–99; 8:45 am]

BILLING CODE 6116–01–M

DEPARTMENT OF ENERGY

48 CFR Parts 909 and 970

RIN 1991–AB44

Acquisition Regulations; Performance Guarantees

AGENCY: Department of Energy.

ACTION: Final rule.

SUMMARY: The Department of Energy (DOE) is amending its acquisition regulations to formally require a performance guarantee under circumstances where a prospective awardee has been created solely for the performance of the instant contract and lacks sufficient financial or other resources to fulfill its obligations under the prospective contract. In circumstances where the newly created entity likely will be dependent upon the resources of the parent organization, this rule allows Contracting Officers to consider the resources of the parent in a determination of the newly created entity's responsibility only when the parent provides a performance guarantee or other undertaking satisfactory to the Contracting Officer. While this situation occurs most often in the award of contracts for the management and operation of DOE facilities, this rule makes a form of performance guarantee necessary whenever these circumstances are encountered. .

EFFECTIVE DATE: This rule will take effect May 6, 1999.

FOR FURTHER INFORMATION CONTACT: Robert M. Webb, U.S. Department of Energy, Office of Procurement and Assistance Management, 1000 Independence Avenue, SW, Washington, DC 20585, (202) 586–8264.

SUPPLEMENTARY INFORMATION:

I. Background.
II. Resolution of Comment.
III. Procedural Requirements.
A. Review Under Executive Order 12866.
B. Review Under Executive Order 12988.
C. Review Under the Regulatory Flexibility Act.
D. Review Under the Paperwork Reduction Act.
E. Review Under the National Environmental Policy Act.
F. Review Under Executive Order 12612.
G. Review Under Small Business Regulatory Enforcement Fairness Act of 1996.

H. Review Under the Unfunded Mandates Reform Act of 1995.

I. Background

The Department of Energy in certain cases requires that the contractor be a corporate entity organized specifically for the performance of the contract at a specific DOE site. This requirement occurs regularly in the award of management and operating contracts and is intended (1) to assure the dedication of the contractor to the performance of the contract; (2) to limit involvement of the Department with the corporate parent; (3) to isolate the contractor from the parent for purposes of security and classification matters; (4) to limit the flow of information between the contractor and its parent, limiting a potential source of organizational conflict of interest; (5) to isolate the accounting system of the contractor, since often the budget and accounting systems of such contractors are integrated into DOE's budget and accounting systems; and (6) to limit the necessity of corporate support thereby reducing or negating a basis for charging general and administrative expense to the contract.

Such dedicated contractors, however, generally have limited assets. In most cases, without consideration of the corporate assets of the parent entity(ies), the DOE Contracting Officer would not be able to make a determination that the contractor was financially responsible and had sufficient resources available to assure successful performance of the contract.

It has been a common practice of the Department in such instances for the parent entity(ies) to provide some form of guarantee of performance. While there are other means for the parent to guarantee the subsidiary's fulfillment of all its contractual obligations, such as an unconditional letter of credit, the most appropriate means under these circumstances is a contractually binding performance guarantee. This rulemaking incorporates the requirement for a performance guarantee (or, where appropriate, equivalent enforceable commitment) into the Department of Energy Acquisition Regulation.

The proposed rule was published in the **Federal Register** on November 9, 1998 (63 FR 60268).

II. Resolution of Comment

One comment was received in response to the proposed rule. It suggests that the solicitation provision be modified to state affirmatively that the performance guarantee is not intended to create third party beneficiary status in any third party. The comment further states that DOE recognizes this issue in the model performance guarantee provided in other DOE guidance. The commenter seems to believe that the solicitation provision is intended to be included in the contract. That is not the case. DOE has chosen not to make the suggested change since statements made in solicitation are generally not binding after contract award, and the solicitation provision is intended only to put prospective offerors on notice of the requirement for a performance guarantee acceptable as a condition of award and will not, itself, become part of the contract.

The solicitation notice as published in the proposed rule contained a second paragraph putting prospective offerors on notice that if a proposal is submitted by multiple entities, a performance guarantee must be executed by each, making each jointly and severally liable. We have deleted this paragraph from the notice. It is unnecessary because the same requirement is discussed at both 909.104–3(e) and 970.0902(b) of this rule, and the notice states that the performance guarantee(s) must be to DOE's satisfaction.

III. Procedural Requirements

A. Review Under Executive Order 12866

Today's regulatory action has been determined not to be a "significant regulatory action" under Executive Order 12866, "Regulatory Planning and Review," (58 FR 51735, October 4, 1993). Accordingly, this final rule was not subject to review under that Executive Order by the Office of Information and Regulatory Affairs of the Office of Management and Budget (OMB).

B. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, "Civil Justice Reform," 61 FR 4729 (February 7, 1996), imposes on Executive agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. With regard to the review required by section 3(a), section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, these regulations meet the relevant standards of Executive Order 12988.

C. Review Under the Regulatory Flexibility Act

This final rule has been reviewed under the Regulatory Flexibility Act 5 U.S.C. 601, *et seq.*, which requires preparation of an initial regulatory flexibility analysis for any rule that must be proposed for public comment and that is likely to have significant economic impact on a substantial number of small entities. The contracts to which this rulemaking apply involve award to newly formed subsidiaries organized by a parent corporations to perform specific DOE contracts. In such instances, the parent will be required to guarantee the performance of the subsidiary. There would not be an adverse economic impact on contractors or subcontractors. In addition, DOE management and operating contractors historically have not been small entities. Accordingly, DOE certifies that this final rule would not have a significant economic impact on a substantial number of small entities, and, therefore, no regulatory flexibility analysis has been prepared.

D. Review Under the Paperwork Reduction Act

No additional information or record keeping requirements are imposed by this rulemaking. Accordingly, no OMB clearance is required under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

E. Review Under the National Environmental Policy Act

DOE has concluded that promulgation of this final rule falls into a class of actions which would not individually or cumulatively have significant impact on the human environment, as determined by DOE's regulations (10 CFR part 1021, subpart D) implementing the National

Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.*). Specifically, this final rule is categorically excluded from NEPA review because the amendments to the DEAR would be strictly procedural (categorical exclusion A6). Therefore, this final rule does not require an environmental impact statement or environmental assessment pursuant to NEPA.

F. Review Under Executive Order 12612

Executive Order 12612, (52 FR 41685, October 30, 1987), requires that regulations, rules, legislation, and any other policy actions be reviewed for any substantial direct effects on States, on the relationship between the Federal Government and the States, or in the distribution of power and responsibilities among the various levels of Government. If there are sufficient substantial direct effects, then the Executive Order requires the preparation of a federalism assessment to be used in all decisions involved in promulgating and implementing a policy action. This final rule merely reflects current practice relating to determinations of responsibility. States which contract with DOE will be subject to this rule. However, DOE has determined that this rule would not have a substantial direct effect on the institutional interests or traditional functions of the States.

G. Review Under Small Business Regulatory Enforcement Fairness Act of 1996

As required by 5 U.S.C. 801, DOE will report to Congress promulgation of the rule prior to its effective date. The report will state that it has been determined that this final rule is not a "major rule" as defined by 5 U.S.C. 804(3).

H. Review Under the Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) generally requires a Federal agency to perform a detailed assessment of costs and benefits of any rule imposing a Federal Mandate with costs to State, local or tribal governments, or to the private sector, of $100 million or more. This final rulemaking would only affect private sector entities, and the impact is less than $100 million.

List of Subjects in 48 CFR Parts 909 and 970

Government procurement.

Issued in Washington, D.C. on March 30, 1999.

Richard H. Hopf,

Director, Office of Procurement and Assistance Management.

For the reasons set out in the preamble, Chapter 9 of Title 48 of the Code of Federal Regulations is amended as set forth below.

PART 909—CONTRACTOR QUALIFICATIONS

1. The authority citation for Part 909 continues to read as follows:

Authority: 42 U.S.C. 7254; 40 U.S.C. 486(c).

2. Subsection 909.104–3 is added as follows:

909.104–3 Application of standards. (DOE coverage-paragraph (e))

(e) DOE may select an entity which was newly created to perform the prospective contract, including, but not limited to, a joint venture or other similarly binding corporate partnership. In such instances when making the determination of responsibility pursuant to 48 CFR 9.103, the contracting officer may evaluate the financial resources of other entities only to the extent that those entities are legally bound, jointly and severally if more than one, by means of a performance guarantee or other equivalent enforceable commitment to supply the necessary resources to the prospective contractor and to assume all contractual obligations of the prospective contractor. The guaranteeing corporate entity(ies) must be found to have sufficient resources in order to satisfy its guarantee.

PART 970—DOE MANAGEMENT AND OPERATING CONTRACTS

3. The authority citation for Part 970 continues to read:

Authority: Sec. 161 of the Atomic Energy Act of 1954 (42 U.S.C. 2201), sec. 644 of the Department of Energy Organization Act, Pub.L. 95–91 (42 U.S.C. 7254).

4. Section 970.0902 is added as follows:

970.0902 Determination of responsibility.

(a) In the award of a management and operating contract, the contracting officer shall determine that the prospective contractor is a responsible contractor and is capable of providing all necessary financial, personnel, and other resources in performance of the contract.

(b) DOE contracts with entities that have been created solely for the purpose of performing a specific management and operating contract. Such a newly created entity generally will have very limited financial and other resources. In such instances, when making the determination of responsibility required under this section, the contracting officer may evaluate the financial resources of other entities only to the extent that those entities are legally bound, jointly and severally if more than one, by means of a performance guarantee or other equivalent enforceable commitment to supply the necessary resources to the prospective contractor and to assume all contractual obligations of the prospective contractor. A performance guarantee should be the means used unless an equivalent degree of commitment can be obtained by an alternative means.

(c) The guaranteeing corporate entity(ies) must be found to have sufficient resources in order to satisfy its guarantee.

(d) Contracting officers shall insert the provision at 970.5204–89 in solicitations where the awardee is required to be organized solely for performance of the requirement.

5. Section 970.5204–89 is added as follows:

970.5204–89 Requirement for guarantee of performance.

In accordance with 970.0902(d), insert the following provision in appropriate solicitations.

Requirement for Guarantee of Performance (APR 1999)

The successful proposer is required by other provisions of this solicitation to organize a dedicated corporate entity to carry out the work under the contract to be awarded as a result of this solicitation. The successful proposer will be required, as part of the determination of responsibility of the newly organized, dedicated corporate entity and as a condition of the award of the contract to that entity, to furnish a guarantee of that entity's performance. That guarantee of performance must be satisfactory in all respects to the Department of Energy.

[FR Doc. 99–8454 Filed 4–5–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF COMMERCE

48 CFR Part 1333

[Docket No. 990127035–9035–01]

RIN 0605–AA15

Commerce Acquisition Regulation; Agency Protest Procedures

AGENCY: Department of Commerce.

ACTION: Final rule.

SUMMARY: The Department of Commerce amends the Commerce Acquisition

Regulation (CAR) to implement the requirements of Executive Order 12979 and the Federal Acquisition Regulation (FAR) Part 33, Section 103, to include "Agency Protest Procedures-Level Above the Contracting Officer." The Department of Commerce has an urgent need to publish its final rule stating the policy governing protests at the level above the Contracting Officer. These rules are currently being used by all Department of Commerce contracting activities. Accordingly, they provide uniform policy and procedures governing the filing and disposition of all pre award and post award agency protests of contracting actions at the level above the Contracting Officer. It should be emphasized, however, that the current rules and procedures pertaining to ordinary agency protests filed directly with the Contracting Officer remain in effect. These provisions include establishment of the protest decision authority for all Agency protests filed at the level above the Contracting Officer, the election of forum, the procedures for filing such protests, the minimal filing contents for a valid protest of this type, procedures for the protest disposition, the effects of protest filing on contract awards, and potential remedies available for resolution of these protests. These rules have been designed to create an additional avenue for resolving third party grievances in connection with the acquisition process and to avoid resolving these types of disputes through formal judicial processes.

EFFECTIVE DATE: This final rule is effective May 6, 1999.

FOR FURTHER INFORMATION CONTACT: Ms. Lisa Jandovitz, Director, Policy, Office of Acquisition Management, 202–482–0202.

SUPPLEMENTARY INFORMATION: This rule implements the requirements of Executive Order No. 12979 and Federal Acquisition Regulation (FAR 33.103). On October 25, 1995, President Clinton signed Executive Order No. 12979 which directs heads of executive agencies to develop administrative procedures for resolving protests to awards of procurement contracts within their agencies at a level above the Contracting Officer. Authority to administer procurement-related directives has been delegated within the Department of Commerce through the Chief Financial Officer and Assistant Secretary for Administration to the Director for Acquisition Management (Procurement Executive). The Department's goal is to encourage protesters to resolve their protests at the agency level, help build confidence in the Government's acquisition system, and reduce the number or frequency of protests to the General Accounting Office and other external fora. Prior to submission of an agency protest, all parties shall use their best efforts to resolve concerns raised by an interested party at the Contracting Officer level through open and frank discussions. If concerns cannot be resolved, protesters may use these procedures when a resolution is requested from the agency at a level above the Contracting Officer. An agency protest is one that may be filed with either the Contracting Officer or the Protest Decision Authority but not both. When a protester decides to file a protest at the agency level with "the Protest Decision Authority", as that term is defined in these regulations, the guidelines set forth in these established agency level protest procedures above the Contracting Officer apply. These procedures are in addition to the existing protest procedures contained in FAR Part 33.102.

Under these regulations, "day" is considered to be a calendar day. In computing a period of time for the purpose of these procedures, the day from which the period begins to run is not counted. When the last day of the period is a Saturday, Sunday, or Federal holiday, the period extends to the next day that is not a Saturday, Sunday, or Federal holiday. Similarly, when the Washington, DC offices of the Department of Commerce are closed for all or part of the last day, the period extends to the next day on which the Department is open for business.

Protesters using these procedures may protest to the "Protest Decision Authority" who will make the final decision for the Department. Protests shall be addressed to: (Name, title of the individual, and address of the individual listed in the solicitation).

Regulatory Flexibility Act

A Regulatory Flexibility Analysis is not required for this rule because it is being issued without prior notice and opportunity for comment. This rule pertains to a matter relating to public property, loans, grants, benefits, or contracts, 5 U.S.C. 553(a)(2), and does not constitute a significant revision to the CAR (48 CFR 1.501–3(a)).

Paperwork Reduction Act

This final rule contains information collection requirements which have been cleared by the Office of Management and Budget pursuant to the Paperwork Reduction Act (OMB Control No. 9000–0035). Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB control number.

Executive Order 12866

It has been determined that this rule is not significant for purposes of Executive Order 12866.

List of Subjects in 48 CFR Part 1333

Government procurement.

For the purposes set out in the preamble, 48 CFR Part 1333 is amended as follows:

1. The authority for Part 1333 continues to read as follows:

Authority: Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 486(c)), as delegated by the Secretary of Commerce in Department Organization Order 10–5 and Department Administrative Order 108–2.

2. Amend Subpart 1333.1 by adding 1333.101 to read as follows:

1333.101 Definitions.

Agency protest, as used in this subpart, is one that may be filed with either the Contracting Officer or the Protest Decision Authority but not both.

Assistant General Counsel (AGC), as used in this subpart, means the Assistant General Counsel of the Department of Commerce for Finance and Litigation.

Protest Decision Authority, as used in this subpart, is the agency official above the level of the Contracting Officer who has been designated by the Procurement Executive to handle and issue the formal agency decision resolving the protest.

3. Add 1333.102 to read as follows:

1333.102 General.

(a) Protests must be received within ten work days after the basis for protest is known or should have been known unless good cause is shown to extend the time limit. However, protests based upon alleged improprieties in any type of solicitation which are apparent prior to bid opening or the closing time for receipt of initial proposals shall be filed prior to bid opening or the closing time for receipt of initial proposals. Unless the time limit for receiving the protest is extended for good cause, a protest to the contracting activity which is received after the time limit will not be considered. When a timely protest is filed only with the contracting activity, the contracting officer shall take prompt action toward resolution after consulting with the AGC, and notify the protestor in writing of the action taken.

(b) When a protest is filed only with the contracting activity before award, an award shall not be made until the matter is resolved, unless the head of the contracting office makes the determination prescribed in FAR 33.103(f).

(c) When a protest is filed only with the contracting activity after award, the Contracting Officer need not notify the contractor, if the protest can be promptly resolved. If it appears likely that a protest will be filed with the General Accounting Office (GAO), or other administrative forum, the Contracting Officer should promptly notify the contractor in writing and consider suspending contract performance.

4. Revise 1333.103 to read as follows:

1333.103 Protests to the agency.

(a) When a protester decides to file a protest at the agency level with the Protest Decision Authority, the guidelines set forth in these established agency level protest procedures above the Contracting Officer apply. These procedures are in addition to the existing protest procedures contained in the FAR Part 33.102 and 1333.102 of this subpart.

(1) For purposes of this subpart, a day is a calendar day. In computing a period of time for the purpose of these procedures, the day from which the period begins to run is not counted. When the last day of the period is a Saturday, Sunday, or Federal holiday, the period extends to the next day that is not a Saturday, Sunday, or Federal holiday. Similarly, when the Washington, DC offices of the Department of Commerce are closed for all or part of the last day, the period extends to the next day on which the Department is open.

(2) Protesters using these procedures may protest to the Protest Decision Authority who will make the final decision for the Department. Protests shall be addressed to: (Name, title of the person and address to be inserted by the Contracting Officer in the solicitation). The outside of the envelope or beginning of the FAX transmission must be marked "Agency-level Protest". The protester shall also provide a copy of the protest within 1 day to the responsible Contracting Officer and a copy to: Contract Law Division, Office of the Assistant General Counsel for Finance and Litigation, Department of Commerce, Room H5882, 14th Street and Constitution Avenue, NW, Washington, DC 20230, (FAX Number 202–482–5858).

(3) While a protest is pending at the agency level with the Protest Decision Authority, the protester agrees not to protest to the GAO or any other external fora. If the protester has already filed with the GAO or other external fora, the procedures described here may not be used.

(i) Protests based upon alleged improprieties in a solicitation which are apparent prior to bid opening or time set for receipt of proposals shall be filed prior to bid opening or the time set for receipt of proposals. If the contract has been awarded, protests must be filed within 10 days after contract award or 5 days after the date the protester was given the opportunity to be debriefed, whichever date is later. In cases other than those covered in the preceding two sentences, protests shall be filed not later than 14 days after the basis of the protest is known or should have been known, whichever is earlier.

(ii) To be filed on a given day, protests must be received by 4:30 PM current local time. Any protests received after that time will be considered to be filed on the next day. Incomplete submissions will not be considered filed until all information is provided.

(iii) To be complete, protests must contain the following information:

(A) The protester's name, address, telephone number, and fax number.

(B) The solicitation or contract number, name of contracting office and the Contracting Officer.

(C) A detailed statement of all factual and legal grounds for protests, and an explanation of how the protester was prejudiced.

(D) Copies of relevant documents supporting protester's statement.

(E) A request for ruling by the agency.

(F) Statement as to form of relief requested.

(G) All information establishing that the protester is an interested party for the purpose of filing a protest.

(H) All information establishing the timeliness of the protest.

(iv) All protests must be signed by an authorized representative of the protestor.

(b) Within 14 days after the protest is filed, the Contracting Officer will prepare an administrative report that responds to the issues raised by the protester and addresses any other issues, which, even if not raised by the protester, that may have been identified by agency officials as being relevant to the fairness of the procurement process. The Contracting Officer shall forward this administrative report to the Contract Law Division, Office of the Assistant General Counsel for Finance and Litigation.

(1) For good cause shown, the Protest Decision Authority may grant an extension of time for filing the administrative report and for issuing the written decision. When an extension is granted, the Protest Decision Authority will notify the protester and all interested parties within 1 day of the decision to grant the extension.

(2) Unless an extension is granted, the Protest Decision Authority will issue a decision within 35 days of the protest. The protest decision authority's final decision will be binding on the Department of Commerce and not subject to further appeals.

(3) The Protest Decision Authority shall send a written ruling and a summary of the reasons supporting the ruling to the protester, by "Certified Mail, Return Receipt Requested," and shall forward information copies to the applicable contracting office and the Procurement Executive, Office of Acquisition Management.

(c) Effect of protest on award and performance.

(1) When a protest is filed prior to award, a contract may not be awarded unless authorized by the Head of the Contracting Activity (HCA) based on a written finding that:

(i) The supplies or services are urgently required.

(ii) Delivery or performance would be unduly delayed by failure to make the award promptly.

(iii) A prompt award will be in the best interest of the Government.

(2) When a protest is filed within 10 days after contract award, or 5 days after a debriefing date was offered to the protester under a timely debriefing request in accordance with FAR 15.1004, whichever is later, the Contracting Officer shall immediately suspend performance pending the resolution of the protest within the agency, including any review by an independent higher official, unless continued performance is justified. The HCA may authorize continued contract performance, notwithstanding the protest, based on a written finding that:

(i) Contract performance would be in the best interest of the United States; or

(ii) Urgent and compelling circumstances that significantly affect the interests of the United States will not permit waiting for a decision.

(d) The Protest Decision Authority may grant one or more of the following remedies:

(1) Terminate the contract.

(2) Re-compete the requirement.

(3) Issue a new solicitation.

(4) Refrain from exercising options under the contract.

(5) Award a contract consistent with statutes and regulations.

(6) Amend the solicitation provisions which gave rise to the protest and continue with the procurement.

(7) Such other remedies as the decision-maker may determine are necessary to correct a defect.

Robert A. Welch,

Procurement Executive.

[FR Doc. 99–8282 Filed 4–5–99; 8:45 am]

BILLING CODE 3510–EC–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 990304062–9062–01; I.D. 033199F]

Fisheries of the Economic Exclusive Zone Off Alaska; Shallow-water Species Fishery by Vessels Using Trawl Gear in the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for species that comprise the shallow-water species fishery by vessels using trawl gear in the Gulf of Alaska (GOA), except for vessels fishing for pollock using pelagic trawl gear in those portions of the GOA open to directed fishing for pollock. This action is necessary because the second seasonal apportionment of the 1999 halibut bycatch allowance specified for the trawl shallow-water species fishery in the GOA has been caught.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), April 1, 1999, until 1200 hrs, A.l.t., July 4, 1999.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The Final 1999 Harvest Specifications of Groundfish for the GOA (64 FR 12094, March 11, 1999) established the Pacific halibut bycatch allowance for the GOA trawl shallow-water species fishery, which is defined at § 679.21(d)(3)(iii)(A), for the second season, the period April 1, 1999, through July 3, 1999, as 100 metric tons.

In accordance with § 679.21(d)(7)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the second seasonal apportionment of the 1999 Pacific halibut bycatch allowance specified for the trawl shallow-water species fishery in the GOA has been caught. Consequently, NMFS is prohibiting directed fishing for the shallow-water species fishery by vessels using trawl gear in the GOA, except for vessels fishing for pollock using pelagic trawl gear in those portions of the GOA open to directed fishing for pollock. The species and species groups that comprise the shallow-water species fishery are: Pollock, Pacific cod, shallow-water flatfish, flathead sole, Atka mackerel, and "other species."

Maximum retainable bycatch amounts may be found in the regulations at § 679.20(e) and (f).

Classification

This action responds to the best available information recently obtained from the fishery. It must be implemented immediately in order to prevent overharvesting the second seasonal apportionment of the 1999 Pacific halibut bycatch allowance specified for the trawl shallow-water species fishery in the GOA. A delay in the effective date is impracticable and contrary to the public interest. The fleet has already taken the second seasonal bycatch allowance of Pacific halibut. Further delay would only result in the 1999 Pacific halibut bycatch allowance specified for the trawl shallow-water species fishery in the GOA being exceeded. NMFS finds for good cause that the implementation of this action can not be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

This action is required by § 679.21 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: March 31, 1999.

Bruce Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–8430 Filed 4–1–99; 3:49 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 64, No. 65
Tuesday, April 6, 1999

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 93

[Docket No. 98–055–1]

Horses From Morocco; Change in Disease Status

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the regulations concerning the importation of horses to remove Morocco from the list of regions the Animal and Plant Health Inspection Service considers affected with African horse sickness. This proposed action is based on information received from Morocco and is in accordance with standards set by the Office International des Epizooties for recognizing a country as free of African horse sickness. This proposed action would relieve restrictions on the importation of horses into the United States from Morocco.

DATES: Consideration will be given only to comments received on or before June 7, 1999.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 98–055–1, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. 98–055–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Dr. John Cougill, Senior Staff Veterinarian, Products Program, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 40, Riverdale, MD 20737–1231, (301) 734–3399; or e-mail: john.w.cougill@usda.gov.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 93 (referred to below as the regulations) prescribe the conditions for the importation into the United States of specified animals to prevent the introduction of various animal diseases, including African horse sickness (AHS). AHS is a fatal viral equine disease that is not known to exist in the United States.

Section 93.308(a)(2) of the regulations lists regions that the Animal and Plant Health Inspection Service (APHIS) considers affected with AHS and sets forth specific quarantine requirements for horses that are imported from those regions. APHIS requires horses intended for importation from any of the regions listed, including horses that have stopped in or transited those regions, to enter the United States only at the port of New York and be quarantined at the New York Animal Import Center in Newburgh, NY, for at least 60 days. This precaution is necessary to help ensure that the horses are not affected with AHS.

We are proposing to recognize Morocco as free of AHS. We are proposing this action based on information given to APHIS by Morocco and standards set by the Office International des Epizooties (OIE).

In order for a country to be recognized as free of AHS, the OIE requires the disease to be mandatorily reportable. In addition, the country must not have vaccinated domestic horses or other equines against the disease during the past 12 months. The OIE also requires that the country have no clinical, serological (in nonvaccinated animals), or epidemiological evidence of AHS for the past 2 years. Morocco has not had a recorded case of AHS in over 6 years, and vaccination against AHS has not been permitted for over 3 years.

With its request to be considered free of AHS, Morocco provided APHIS with information about its veterinary infrastructure, animal health monitoring system, trading practices with other regions, and other pertinent information that we require in order to determine whether Morocco should be recognized as free of AHS.

APHIS has reviewed the information provided by Morocco in support of declaring it free of AHS. Based on that information, and in accordance with OIE standards for recognizing a country as free of AHS, we are proposing to consider Morocco as free of AHS. Therefore, we are proposing to amend § 93.308(a)(2) by removing Morocco from the list of regions declared affected with AHS. This proposed action would allow horses from Morocco to be shipped to and quarantined at ports designated in § 93.303, and would reduce the quarantine period to an average of 3 days to meet the quarantine and testing requirements specified in § 93.308.

On October 28, 1997, we published a final rule and policy statement in the **Federal Register** that established procedures for recognizing regions, rather than only countries, for the purpose of importing animals and animal products into the United States, and that established procedures by which regions may request permission to export animals and animal products to the United States under specified conditions, based on the regions' disease status (see 62 FR 56000–56033, Dockets Nos. 94–106–8 and 94–106–9). The final rule was effective on November 28, 1997. The request from Morocco addressed by this proposed rule is not a request to be recognized as a region, rather than a country, nor a request to establish new import conditions based on the disease status of regions. Therefore, we have handled and evaluated this request in the traditional framework of recognizing a country as affected or not affected with a specified disease. If this proposed rule is adopted, the current regulations regarding importation of horses from regions free of AHS will apply.

We are also proposing to revise 93.308(a)(2) to make it easier to read.

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

This proposed rule would recognize Morocco as free of AHS. This action would allow horses from Morocco to be shipped to and quarantined at ports

designated in 93.303 and would reduce the quarantine and testing period to an average of 3 days to meet quarantine requirements specified in 93.308.

U.S. importers of competition and breeding horses from Morocco would be affected by this rule if it is adopted. These importers would no longer be required to quarantine horses from Morocco for 60 days at the New York Animal Import Center in Newburgh, NY, at a cost of approximately $5,296 per horse.

In 1996, the United States imported 31,633 horses, valued at $7,523,000; none of these horses were imported into the United States from Morocco. Removing the requirement for a 60-day quarantine for horses from Morocco would make the importation of horses less expensive and logistically easier. As a result, we anticipate that U.S. importers of competition and breeding horses might begin importing horses from Morocco. Since the value of Morocco's exports of purebred horses in 1996 was approximately $39,000, we do not expect that the number of horses exported to the United States would be significant. Furthermore, most horses imported from Morocco would probably be in the United States on a temporary basis for particular events, such as for races, or for breeding, and then transported back to Morocco. For these reasons, we anticipate the overall economic impact on U.S. entities would be minimal.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This proposed rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 9 CFR Part 93

Animal diseases, Imports, Livestock, Poultry and poultry products, Quarantine, Reporting and recordkeeping requirements.

Accordingly, we propose to amend 9 CFR part 93 as follows:

PART 93—IMPORTATION OF CERTAIN ANIMALS, BIRDS, AND POULTRY, AND CERTAIN ANIMAL, BIRD, AND POULTRY PRODUCTS; REQUIREMENTS FOR MEANS OF CONVEYANCE AND SHIPPING CONTAINERS

1. The authority citation for part 93 would continue to read as follows:

Authority: 7 U.S.C. 1622; 19 U.S.C. 1306; 21 U.S.C. 102–105, 111, 114a, 134a, 134b, 134c, 134d, 134f, 136, and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.2(d).

2. In 93.308, paragraph (a)(2) would be revised to read as follows:

§ 93.308 Quarantine requirements.

(a) * * *

(2) Horses intended for importation from regions APHIS considers to be affected with African horse sickness may enter the United States only at the port of New York, and must be quarantined at the New York Animal Import Center in Newburgh, New York, for at least 60 days. This restriction also applies to horses that have stopped in or transited a region considered affected with African horse sickness. APHIS considers the following regions to be affected with African horse sickness: All the regions on the continent of Africa, except Morocco; Oman, Qatar, Saudi Arabia, and the Yemen Arab Republic.

* * * * *

Done in Washington, DC, this 31st day of March 1999.

Joan M. Arnoldi,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 99–8456 Filed 4–5–99; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–SW–11–AD; Amendment 39–11113; AD 99–08–07]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Helicopter Systems (MDHS) Model 369E, 369FF, 500N, and 600N Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment supersedes an existing priority letter airworthiness directive (AD) 98–17–14, applicable to MDHS Model 369E, 369FF, 500N, and 600N helicopters, that currently requires, within the next 14 calendar days, inspecting each relay receptacle contact socket for correct size of the contact socket holes and replacing incorrectly-sized contact sockets with airworthy contact sockets. This amendment requires the same inspections and replacements as the existing priority letter AD, but changes the serial numbers affected for the MDHS Model 500N and 600N helicopters and changes a part number that was incorrectly referenced in the existing AD. This amendment is prompted by three incidences in which a MDHS Model 600 helicopter's Engine Control Unit (ECU) Fail light illuminated, even though the ECU continued to automatically control the engine. The cause of the ECU malfunction indication was determined to be contact sockets that did not properly fit the corresponding pins of the affected relay. Improperly sized contact sockets could create multiple unsafe conditions. These conditions, if not corrected, could result in the loss of various engine control or warning systems including the undetected loss of the auto-reignition function after an engine flameout, failure of an engine to reignite, and a subsequent forced landing and the inability to immediately detect an engine-out condition or to properly govern main rotor speed following loss of the Full Authority Digital Engine Control (FADEC), and subsequent loss of control of the helicopter.

DATES: Effective April 21, 1999.

Comments for inclusion in the Rules Docket must be received on or before June 7, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 99–SW–11–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

FOR FURTHER INFORMATION CONTACT: Bruce Conze, Aerospace Engineer, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Blvd., Lakewood, California 90712, telephone (562) 627–5261, fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: On August 14, 1998, the FAA issued Priority Letter AD 98–17–14, applicable to MDHS Model 369E, 369FF, 500N and 600N helicopters, that requires, within the next 14 calendar days, inspecting each relay receptacle, part number (P/N) HS4256–1, contact sockets for correct size of the contact socket holes, and

replacing incorrectly-sized contact sockets with airworthy contact sockets, P/N 019–0075–002. That action was prompted by an incident in which a MDHS Model 600 helicopter's ECU Fail light illuminated, even though the ECU continued to automatically control the engine. The helicopter manufacturer reported two additional similar incidents on other MDHS Model 600N helicopters. The cause of the ECU malfunction indication was determined to be contact sockets that did not properly fit the corresponding pins of the affected relay. That condition, if not corrected, could result in the loss of the Battery Hi Temp. relay and the Auto-Re-Ignition Igniter relay on MDHS Model 369E, 369FF, and 500N helicopters. The loss of these engine control or warning systems could result in multiple unsafe conditions, including the undetected loss of the auto-reignition function after an engine flameout, failure of an engine to reignite, and a subsequent forced landing. Also, that condition, if not corrected, could result in the undetected loss of the Battery Hi Temp. relay and the FADEC-related relays (which includes the ECU Fail relay, the Engine-Out relay, the Manual Mode relay, the FADEC Start relay, and the Voice Warning Unit) on MDHS Model 600N helicopters. The undetected loss of these engine control or warning systems could result in multiple unsafe conditions, including the inability to immediately detect an engine-out condition or to properly govern main rotor speed following loss of the FADEC, and subsequent loss of control of the helicopter.

Since the issuance of that AD, the FAA has determined that not all of the previously affected MDHS Model 600N helicopters have the unsafe condition; the prefix "RN" for the serial number for the MDHS Model 500N helicopters is incorrect; and the part number for the relay receptacle was incorrectly stated in Figure 1.

Since an unsafe condition has been identified that is likely to exist or develop on other MDHS Model 369E, 369FF, 500N and 600N helicopters of the same type design, this AD supersedes Priority Letter AD 98–17–14 to require, within the next 14 calendar days, inspecting each affected relay receptacle contact socket for correct size of the contact socket holes, and replacing incorrectly-sized sockets with airworthy contact sockets. The short compliance time involved is required because the previously described critical unsafe condition can adversely affect the controllability of the helicopter. Therefore, inspecting each suspect relay receptacle contact socket for correct size of the contact socket holes and replacing incorrectly-sized sockets with airworthy contact sockets is required within the next 14 calendar days, and this AD must be issued immediately.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

The FAA estimates that 156 helicopters of U.S. registry will be affected by this AD, that it will take approximately 4 work hours per helicopter to inspect and replace all contact sockets, and that the average labor rate is $60 per work hour. Required parts will cost approximately $864 per helicopter. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $172,224 assuming one inspection per helicopter and replacement of all contact sockets on all the helicopters in the U.S. fleet.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 99–SW–11–AD. The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

AD 99–06–07 McDonnell Douglas Helicopter Systems: Amendment 39–11113. Docket No. 99–SW–11–AD. Supersedes Priority Letter AD 98–17–14, Docket No. 98–SW–32–AD.

Applicability: Model 369E (serial numbers (S/N) 384E through 0539E); Model 369FF (S/

N 076FF through 0128FF); Model 500N (serial numbers up to and including LN085); and Model 600N (serial numbers RN002 through RN039) helicopters, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required within the next 14 calendar days, unless accomplished previously.

To prevent undetected loss of engine control or warning systems, accomplish the following:

(a) Access relays K1, K2, K3, K5, K104, and K200 (relays, part number (P/N) HS4240).

(b) Remove each relay specified in paragraph (a) from its relay receptacle (receptacle), P/N HS4256–1.

(c) Using a No. 60 drill bit or a 0.040-in. diameter wire as a gauge, attempt to insert the gauge into every contact socket (socket) of each relay. Ensure the gauge is inserted perpendicular to the face of the receptacle, to prevent damage to the receptacle and the socket (Figure 1). If the gauge can be inserted into a socket, it is unairworthy and must be replaced with an airworthy socket, P/N 019–0075–002.

BILLING CODE 4910–13–U

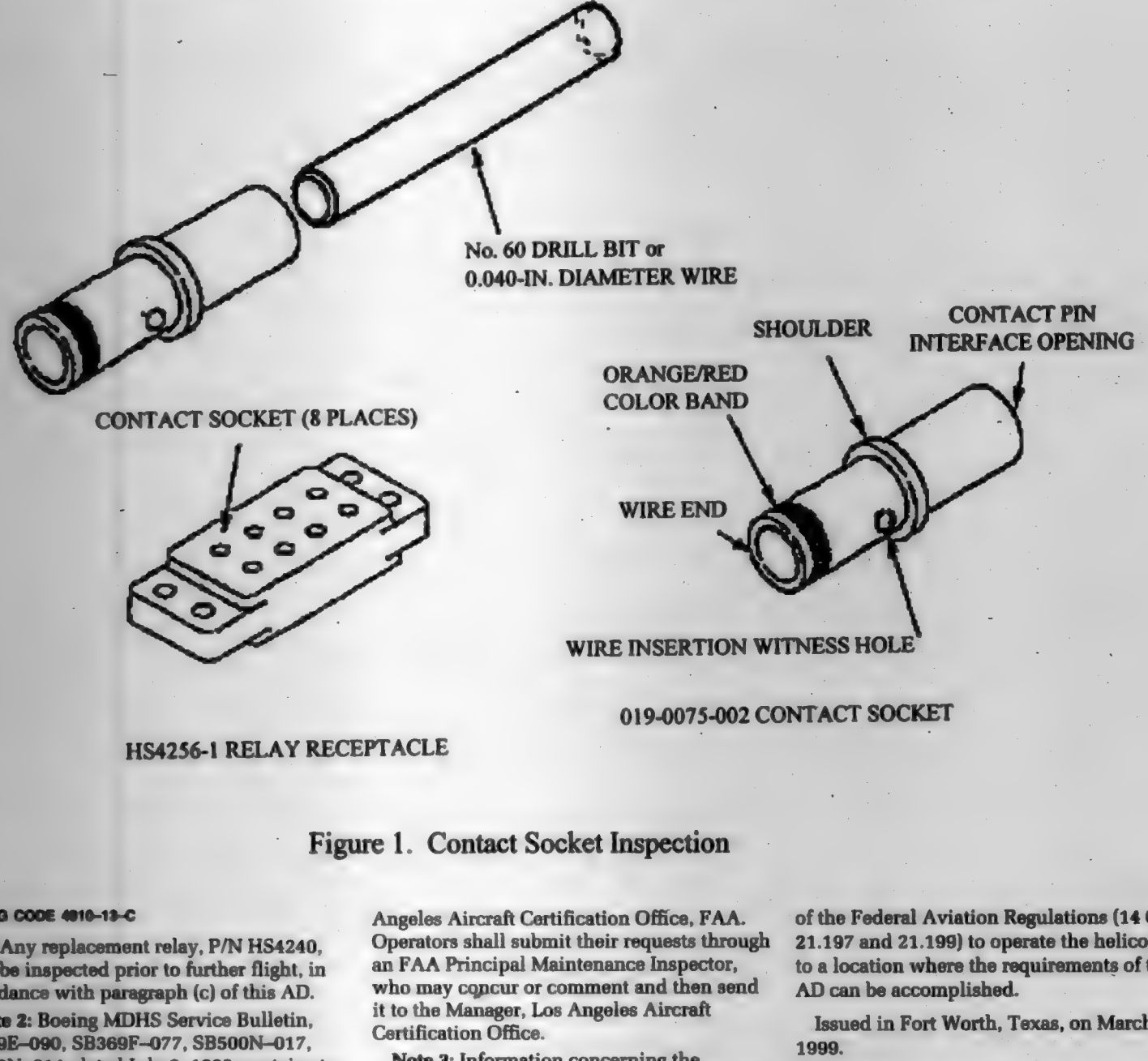

Figure 1. Contact Socket Inspection

BILLING CODE 4910–13–C

(d) Any replacement relay, P/N HS4240, must be inspected prior to further flight, in accordance with paragraph (c) of this AD.

Note 2: Boeing MDHS Service Bulletin, SB369E–090, SB369F–077, SB500N–017, SB600N–014, dated July 6, 1998, pertains to the subject of this AD.

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Los Angeles Aircraft Certification Office.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles Aircraft Certification Office.

(f) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the helicopter to a location where the requirements of this AD can be accomplished.

Issued in Fort Worth, Texas, on March 30, 1999.

Eric Bries,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 99–8408 Filed 4–5–99; 8:45 am]

BILLING CODE 4910–13–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 70

[MO 063–1063; FRL–6320–5]

Approval and Promulgation of Implementation Plans and State Operating Permits Programs; State of Missouri

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is announcing the proposed approval of the Missouri "Definitions and Common Reference Tables" rule and certain portions of the Missouri "Operating Permits" rule as amendments to the Missouri State Implementation Plan (SIP) and as revisions to the Part 70 (operating permits) program. These revisions clarify the Missouri rules, update the rules for consistency with Federal regulations and other state rules, and are consistent with EPA guidance.

DATES: Comments must be received on or before May 6, 1999.

ADDRESSES: All comments should be addressed to: Kim Johnson, Environmental Protection Agency, Air Planning and Development Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101.

Copies of the state submittals are available at the following addresses for inspection during normal business hours: Environmental Protection Agency, Air Planning and Development Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101; and the Environmental Protection Agency, Air and Radiation Docket and Information Center, Air Docket (6102), 401 M Street, SW, Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Kim Johnson, Environmental Protection Agency, Air Planning and Development Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101. (913) 551–7975.

SUPPLEMENTARY INFORMATION:

Background

What Is a SIP?

Section 110 of the Clean Air Act (CAA) requires states to develop air pollution regulations and control strategies to ensure that state air quality meets the national ambient air quality standards established by EPA. These ambient standards are established under section 109 of the CAA, and they currently address six criteria pollutants. These pollutants are: carbon monoxide, nitrogen dioxide, ozone, lead, particulate matter (PM), and sulfur dioxide.

Each state must submit these regulations and control strategies to EPA for approval and incorporation into the Federally enforceable SIP.

The CAA requires each state to have a Federally approved SIP which protects air quality primarily by addressing air pollution at its point of origin. These SIPs can be extensive, containing state regulations or other enforceable documents and supporting information such as emission inventories, monitoring networks, and modeling demonstrations.

What Is the Federal Approval Process for a SIP?

In order for state regulations to be incorporated into the Federally enforceable SIP, states must formally adopt the regulations and control strategies consistent with state and Federal requirements. This process generally includes a public notice, public hearing, public comment period, and a formal adoption by a state-authorized rulemaking body.

Once a state rule, regulation, or control strategy is adopted, the state submits it to EPA for inclusion into the SIP. EPA must provide public notice and seek additional public comment regarding the proposed Federal action on the state submission. If adverse comments are received, they must be addressed prior to any final Federal action by EPA.

All state regulations and supporting information approved by EPA under section 110 of the CAA are incorporated into the Federally approved SIP. Records of such SIP actions are maintained in the Code of Federal Regulations (CFR) at Title 40, Part 52 entitled "Approval and Promulgation of Implementation Plans." The actual state regulations which are approved are not reproduced in their entirety in the CFR but are "incorporated by reference," which means that EPA has approved a given state regulation with a specific effective date.

What Does Federal Approval of a State Regulation Mean To Me?

Enforcement of the state regulation before and after it is incorporated into the Federally approved SIP is primarily a state responsibility. However, after the regulation is Federally approved, EPA is authorized to take enforcement action against violators. Citizens are also offered legal recourse to address violators as described in the CAA.

What Is the Part 70 (Operating Permits) Program?

The CAA amendments of 1990 require all states to develop operating permits programs that meet certain Federal criteria. In implementing this program, the states are to require certain sources of air pollution to obtain permits that contain all applicable requirements under the CAA. One purpose of the Part 70 (operating permits) program is to improve enforcement by issuing each source a single permit that consolidates all of the applicable CAA requirements into a Federally enforceable document. By consolidating all of the applicable requirements for a facility into one document, the source, the public, and the permitting authorities can more easily determine what CAA requirements apply and how compliance with those requirements is determined.

Sources required to obtain an operating permit under this program include: "major" sources of air pollution and certain other sources specified in the CAA or in EPA's implementing regulations. For example, all sources regulated under the acid rain program, regardless of size, must obtain permits. Examples of major sources include those that emit 100 tons per year or more of volatile organic compounds, carbon monoxide, lead, sulfur dioxide, nitrogen dioxide, or PM_{10}; those that emit 10 tons per year of any single hazardous air pollutant (HAP) (specifically listed under the CAA); or those that emit 25 tons per year or more of a combination of HAPs.

Revisions to the state operating permits program are also subject to public notice, comment, and EPA approval.

What Are the Changes That EPA Is Proposing to Approve?

The revisions include changes to the definitions rule 10 CSR 10–6.020 which (1) add a de minimis emission level for municipal solid waste landfills (any source which has emissions below this de minimis level is not required to obtain a new source permit), (2) remove caprolactam from the list of HAPs, and (3) revise the PM definition and the definition for particulate matter less than 10-microns in diameter (PM_{10}). These changes are all consistent with Federal regulations and EPA guidance.

The changes to the operating permits rule 10 CSR 10–6.065 include revising the exemption for grain-handling facilities by including an exemption from Part 70 permitting requirements for country grain elevators. Also included are operating permit rule updates to

make the exemptions consistent with the Missouri construction permits rule requirements, 10 CSR 10–6.060. For example, the sand and gravel operations exemption is revised to include operations with a production rate of less than 17.5 tons per hour instead of 150,000 tons per year. These changes are consistent with EPA guidance and add consistency between the applicable rules which reduces confusion. For more information regarding these changes, the reader is referred to the technical support document for this notice.

What Action Is EPA Taking?

EPA is proposing to approve, as an amendment to the SIP and the Part 70 program, the revisions to Missouri rules 10 CSR 10–6.020, "Definitions and Common Reference Tables," and 10 CSR 10–6.065, "Operating Permits." These revisions clarify the Missouri rules, update the rules for consistency with Federal regulations and other state rules, and are consistent with EPA guidance.

Therefore, EPA is seeking public comment regarding the proposed approval of this state submittal as an amendment to the SIP and the Part 70 (operating permits) program.

EPA is also taking comments on minor changes made to rule 6.020 (submitted to EPA on July 10, 1996) that were approved in a **Federal Register** notice dated May 14, 1997. The primary purpose of the May 14, 1997, notice was to give final approval to revisions which were submitted for approval on August 3, 1996. As a result, the May 14, 1997, notice did not fully discuss the minor changes submitted on July 10, 1996. These changes include revising the volatile organic compounds definition to exempt acetone for consistency with Federal regulations and revising the installation definition for clarity.

Therefore, EPA is taking comments on this revision at this time. If EPA receives adverse comments specifically relating to the two definition changes identified, EPA would withdraw its approval of one or both definition changes and take a new final action on the changes.

EPA also notes that sections (4)(A), (4)(B), and (4)(H) of Missouri rule 6.065 are not part of the SIP or Part 70 program and will not be acted on in this rulemaking.

Conclusion

Proposed Action

EPA is proposing to approve, as an amendment to the Federally approved SIP and the Part 70 program, the revisions to Missouri rules 10 CSR 10–6.020, "Definitions and Common Reference Tables," and 10 CSR 10–6.065, "Operating Permits," effective on April 30, 1998.

Administration Requirements

A. Executive Order (E.O.) 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 entitled "Regulatory Planning and Review."

B. E.O. 12875

Under E.O. 12875, Enhancing the Intergovernmental Partnership, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, E.O. 12875 requires EPA to provide to the OMB a description of the extent of EPA's prior consultation with representatives of affected state, local, and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, E.O. 12875 requires EPA to develop an effective process permitting elected officials and other representatives of state, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's rule does not create a mandate on State, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

C. E.O. 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997) applies to any rule that: (1) is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to E.O. 13045 because it is not an economically significant regulatory action as defined by E.O. 12866, and it does not address an environmental health or safety risk that would have a disproportionate effect on children.

D. E.O. 13084

Under E.O. 13084, Consultation and Coordination with Indian Tribal Governments, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, E.O. 13084 requires EPA to provide to the OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, E.O. 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and Subchapter I, Part D of the CAA do not create any new requirements, but simply approve requirements that the state is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant

economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-state relationship under the CAA, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co., v. U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to state, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either state, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under state or local law, and imposes no new requirements. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, result from this action.

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

40 CFR Part 70

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Operating permits, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401 *et seq.*

March 26, 1999. .

Dennis Grams, P.E.,

Regional Administrator, Region VII.

[FR Doc. 99–8482 Filed 4–5–99; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[MD Docket No. 98–200; FCC 99–44]

Assessment and Collection of Regulatory Fees for Fiscal Year 1999

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commission is proposing to revise its Schedule of Regulatory Fees in order to recover the amount of regulatory fees that Congress has required it to collect for fiscal year 1999. Section 9 of the Communications Act of 1934, as amended, provides for the annual assessment and collection of regulatory fees. For fiscal year 1999 sections 9(b)(2) and (3) provide for annual "Mandatory Adjustments" and "Permitted Amendments" to the Schedule of Regulatory Fees. These revisions will further the National Performance Review goals of reinventing Government by requiring beneficiaries of Commission services to pay for such services.

DATES: Comments are due on or before April 19, 1999, and reply comments are due on or before April 29, 1999.

FOR FURTHER INFORMATION CONTACT: Terry Johnson, Office of Managing Director at (202) 418–0445.

SUPPLEMENTARY INFORMATION:

Table of Contents

Topic

I. Introduction
II. Background
III. Discussion
A. Summary of FY 1999 Fee Methodology
B. Development of FY 1999 Fees
i. Adjustment of Payment Units
ii. Calculation of Revenue Requirements
iii. Recalculation of Fees
iv. Proposed Changes to Fee Schedule
a. FY 1999 Fee Schedule To Be Based on Mandatory Adjustments
b. Reduction of the FM Construction Permit Fee
v. Effect of Revenue Redistributions on Major Constituencies
C. Notice of Inquiry Issues
D. Procedures for Payment of Regulatory Fees
i. Annual Payments of Standard Fees
ii. Installment Payments for Large Fees
iii. Advance Payments of Small Fees
iv. Minimum Fee Payment Liability
v. Standard Fee Calculations and Payments
E. Schedule of FY 1999 Regulatory Fees
IV. Procedural Matters
A. Comment Period and Procedures
B. *Ex Parte* Rules
C. Initial Regulatory Flexibility Analysis
D. Authority and Further Information
Attachment A—Initial Regulatory Flexibility Analysis
Attachment B—Sources of Payment Unit Estimates For FY 1999
Attachment C—Calculation of Revenue Requirements and Pro-Rata Fees
Attachment D—FY 1999 Schedule of Regulatory Fees
Attachment E—Comparison Between FY 1998 and FY 1999 Proposed Regulatory Fees
Attachment F—Detailed Guidance on Who Must Pay Regulatory Fees
Attachment G—Description of FCC Activities
Attachment H—Factors, measurements and calculations that go into determining station signal contours and associated population coverages

I. Introduction

1. By this *Notice of Proposed Rulemaking*, the Commission commences a proceeding to revise its Schedule of Regulatory Fees in order to collect the amount of regulatory fees that Congress, pursuant to section 9(a) of the Communications Act, as amended, has required it to collect for Fiscal Year (FY) 1999.[1]

2. Congress has required that we collect $172,523,000 through regulatory fees in order to recover the costs of our enforcement, policy and rulemaking, international and user information activities for FY 1999.[2] This amount is $10,000,000 or approximately 6% more than the amount that Congress designated for recovery through regulatory fees for FY 1998.[3] Thus, we are proposing to revise our fees in order to collect the increased amount that Congress has required that we collect. Additionally, we propose to amend the Schedule in order to simplify and streamline it.[4]

3. In proposing to revise our fees, we adjusted the payment units and revenue requirement for each service subject to a fee, consistent with sections 159(b)(2) and (3). In addition, we are proposing changes to the fees pursuant to public interest considerations. The current Schedule of Regulatory Fees is set forth in sections 1.1152 through 1.1156 of the Commission's rules.[5]

[1] 47 U.S.C. 159 (a).

[2] Public Law 105–277 and 47 U.S.C. 159(a)(2).

[3] *Assessment and Collection of Regulatory Fees for Fiscal Year 1998*, FCC 98–115, released June 16, 1998, 63 FR 35847 (Jul. 1, 1998).

[4] 47 U.S.C. 159(b)(3).

[5] 47 CFR 1.1152 through 1.1156.

II. Background

4. Section 9(a) of the Communications Act of 1934, as amended, authorizes the Commission to assess and collect annual regulatory fees to recover the costs, as determined annually by Congress, that it incurs in carrying out enforcement, policy and rulemaking, international, and user information activities.[6] See Attachment G for a description of these activities. In our *FY 1994 Fee Order*,[7] we adopted the Schedule of Regulatory Fees that Congress established, and we prescribed rules to govern payment of the fees, as required by Congress.[8] Subsequently, we modified the fee Schedule to increase the fees in accordance with the amounts Congress required us to collect in each succeeding fiscal year. We also amended the rules governing our regulatory fee program based upon our experience administering the program in prior years.[9]

5. As noted, for FY 1994 we adopted the Schedule of Regulatory Fees established in section 9(g) of the Act. For fiscal years after FY 1994, however, sections 9(b)(2) and (3), respectively, provide for "Mandatory Adjustments" and "Permitted Amendments" to the Schedule of Regulatory Fees.[10] Section 9(b)(2), entitled "Mandatory Adjustments," requires that we revise the Schedule of Regulatory Fees whenever Congress changes the amount that we are to recover through regulatory fees.[11]

6. Section 9(b)(3), entitled "Permitted Amendments," requires that we determine annually whether additional adjustments to the fees are warranted, taking into account factors that are reasonably related to the payer of the fee and factors that are in the public interest. In making these amendments, we are to "add, delete, or reclassify services in the Schedule to reflect additions, deletions or changes in the nature of its services." [12]

7. Section 9(i) requires that we develop accounting systems necessary to adjust our fees pursuant to changes in the costs of regulation of various services that are subject to a fee, and for other purposes.[13] For FY 1997, we relied for the first time on cost accounting data to identify our regulatory costs and to develop our FY 1997 fees based upon these costs. Also, for FY 1997, we limited the increase in the amount of the fee for any service in order to phase in our reliance on cost-based fees for those services whose revenue requirement would be more than 25 percent above the revenue requirement which would have resulted from the "mandatory adjustments" to the FY 1997 fees without incorporation of costs. This methodology, which we continued to utilize for FY 1998, enabled us to develop regulatory fees which we believed to be more reflective of our costs of regulation, and allowed us to make revisions to our fees based on the fullest extent possible, and consistent with the public interest, on the actual costs of regulating those services subject to a fee. Finally, section 9(b)(4)(B) requires that we notify Congress of any permitted amendments 90 days before those amendments go into effect.[14]

III. Discussion

A. Summary of FY 1999 Fee Methodology

8. As noted, Congress has required that the Commission recover $172,523,000 for FY 1999 through the collection of regulatory fees, representing the costs applicable to our enforcement, policy and rulemaking, international, and user information activities.[15]

9. In developing our proposed FY 1999 fee schedule, we first determined that we would continue to use the same general methodology for "Mandatory Adjustments" to the Fee Schedule as we used in developing fees for FY 1998. We estimated the number of payment units [16] for FY 1999 in order to determine the aggregate amount of revenue we would collect without any revision to our FY 1998 fees. Next, we compared this revenue amount to the $172,523,000 that Congress has required us to collect in FY 1999 and pro-rated the difference among all the existing fee categories.

10. Once we established our tentative FY 1999 fees, we evaluated proposals made by Commission staff concerning "Permitted Amendments" to the Fee Schedule and to our collection procedures. These proposals are discussed in paragraphs 15–19 and are factored into our proposed FY 1999 Schedule of Regulatory Fees, set forth in Attachment D.

11. Finally, we have incorporated, as Attachment F, proposed Guidance containing detailed descriptions of each fee category, information on the individual or entity responsible for paying a particular fee and other critical information designed to assist potential fee payers in determining the extent of their fee liability, if any, for FY 1999.[17] In the following paragraphs, we describe in greater detail our proposed methodology for establishing our FY 1999 regulatory fees.

B. Development of FY 1999 Fees

i. Adjustment of Payment Units

12. In calculating individual service regulatory fees for FY 1999, we adjusted the estimated payment units for each service because payment units for many services have changed substantially since we adopted our FY 1998 fees. We obtained our estimated payment units through a variety of means, including our licensee data bases, actual prior year payment records, and industry and trade group projections. Whenever possible, we verified these estimates from multiple sources to ensure the accuracy of these estimates. Attachment B provides a summary of how revised payment units were determined for each fee category.[18]

ii. Calculation of Revenue requirements

13. We next multiplied the revised payment units for each service by the FY 1998 fees in each category to determine how much revenue we would collect without any change to the FY 1998 Schedule of Regulatory Fees. The amount of revenue which we would collect without changes to the Fee Schedule is approximately $157.6 million. This amount is approximately $14.9 million less than the amount the Commission is required to collect in FY 1999. We then adjusted the revenue requirements for each category on a proportional basis, consistent with Section 9(b)(2) of the Act, to obtain an estimate of the revenue requirements for each fee category so that the Commission could collect $172,523,000 as required by Congress. Attachment C

---

[6] 47 U.S.C. 159(a).
[7] 59 FR 30984 (Jun. 16, 1994).
[8] 47 U.S.C. 159(b), (f)(1).
[9] 47 CFR 1.1151 *et seq.*
[10] 47 U.S.C. 159(b)(2), (b)(3).
[11] 47 U.S.C. 159(b)(2).
[12] 47 U.S.C. 159(b)(3).
[13] 47 U.S.C. 159(i).
[14] 47 U.S.C. 159(b)(4)(B).
[15] 47 U.S.C. 159(a).
[16] Payment units are the number of subscribers, mobile units, pagers, cellular telephones, licenses, call signs, adjusted gross revenue dollars, etc. which represent the base volumes against which fee amounts are calculated.
[17] We also will incorporate a similar Attachment in the *Report and Order* concluding this rulemaking. That Attachment will contain updated information concerning any changes made to the proposed fees adopted by the *Report and Order*.
[18] It is important to also note that Congress' required revenue increase in regulatory fee payments of approximately six percent in FY 1999 will not fall equally on all payers because payment units have changed in several services. When the number of payment units in a service increase from one year to another, fees do not have to rise as much as they would if payment units had decreased or remained stable. Declining payment units have the opposite effect on fees.

provides detailed calculations showing how we determined the revised revenue amounts to be raised for each service.

iii. Recalculation of Fees

14. Once we determined the amount of fee revenue that it is necessary to collect from each class of licensee, we divided the revenue requirement by the number of payment units (and by the license term, if applicable, for "small" fees) to obtain actual fee amounts for each fee category. These calculated fee amounts were then rounded in accordance with section 9(b)(3) of the Act. *See* Attachment C.

iv. Proposed Changes to Fee Schedule

15. We examined the results of our calculations to determine if further adjustments of the fees and/or changes to payment procedures were warranted based upon the public interest and other criteria established in 47 U.S.C. 159(b)(3).[19] As a result of this review, we are proposing the following "Permitted Amendments" to our Fee Schedule:

a. FY 1999 Fee Schedule To Be Based on Mandatory Adjustments

16. We are proposing that the FY 1999 fee schedule be based on the mandatory adjustments as computed in Attachment C and in accordance with section 9(b)(2) of the Act.

b. Reduction of the FM Construction Permit Fee

17. In the original Congressional fee schedule, the FM Construction Permit fee was set at $500 (Five times the AM Construction Permit Fee of $100). In succeeding year's schedules, nearly the same relationship has prevailed as evidenced by the calculated FM Construction Permit fee for FY 1999 of $1,250 (compared to the calculated AM Construction Permit fee for FY 1999 of $255).

18. Several parties have informally expressed concern that the FM Construction Permit fee is out of proportion in relation to the fees imposed on licensed FM stations particularly in less populated areas. At the same time, it should be noted that the regulatory costs borne by the Commission applicable to FM Construction Permits is significantly higher than its costs for AM Construction Permits.

19. We seek comment on a staff proposal to make a permitted amendment to the schedule of regulatory fees for FY 1999 reducing the FM Construction Permit fee to $765 (three times the AM Construction Permit fee). This reduction would result in a loss of $145,500 in estimated regulatory fee collections.

v. Effect of Revenue Redistributions on Major Constituencies

20. The following chart illustrates the relative percentage of the overall revenue requirements borne by the major constituencies since the inception of regulatory fees in FY 1994.

PERCENTAGE OF REVENUE COLLECTED BY CONSTITUENCY

	FY 1994 (actual)	FY 1995 (actual)	FY 1996 (actual)	FY 1997 (actual)	FY 1998 (actual)	FY 1999 (proposed)
Cable TV Operators (Inc. CARS Licenses)	41.4	24.0	33.4	21.8	17.9	17.9
Broadcast Licensees	23.8	13.8	14.6	14.1	15.6	15.4
Satellite Operators (Inc. Earth Stations)	3.3	3.6	4.0	5.0	5.3	5.6
Common Carriers	25.0	44.5	40.9	49.8	47.5	47.1
Wireless Licensees	6.5	14.1	7.1	9.3	13.7	14.0
Total	100.0	100.0	100.0	100.0	100.0	100.0

C. Notice of Inquiry Issues

21. On November 10, 1998, the Commission adopted a *Notice of Inquiry* in this proceeding seeking comments on five specific issues.[20] Briefly, the issues for which comments were sought included: (1) Clarification of the Commercial Mobile Radio Services ("CMRS") fee categories and demarcation of which types of services or usage to include in each category;[21] (2) determination of the appropriate basis for assessing regulatory fees on geostationary orbit space stations ("GSOs"); (3) determination of the appropriate method of assessing our regulatory costs associated with non-geostationary orbit space station systems ("NGSOs") to licensees which have launched satellites or to all NGSO licensees; (4) whether we should base revenues for interstate telephone service providers on the Universal Services Fund's end user methodology rather than the Telecommunication Relay Services Fund adjusted gross revenue methodology; and (5) whether we should create a "new services" category in our cost accounting system in which costs associated with development of new services, regardless of the service, would be proportionately assessed to all feeable categories rather than assessed to existing licensees in the same service category.

22. In the interest of expediting this *NPRM*, we are deferring analysis of the comments and replies received pursuant to the *NOI* for inclusion in the final Report and Order in this proceeding. Commenters do not need to resubmit these same arguments in response to this *NPRM*. Further, the basis for assessing revenues for interstate telephone service providers is best delayed until the conclusion of CC Docket No. 98–171, *In the Matter of 1998 biennial Regulatory Review—Streamlined Contributor Reporting Requirements Associated with Administration of Telecommunications Relay Services, North American Numbering Plan, Local Number Portability, and Universal Service support Mechanisms.*[22]

D. Procedures for Payment of Regulatory Fees

23. Generally, we propose to retain the procedures that we have established for the payment of regulatory fees. Section 9(f) requires that we permit "payment by installments in the case of fees in large amounts, and in the case of small amounts, shall require the payment of the fee in advance for a

[19] In FY 1997 and FY 1998 we limited increases to 25%. For FY 1999, none of the proposed fee increases exceed 25%.

[20] 63 FR 70090 (Dec. 18, 1998).

[21] In this regard we specifically request additional comments on a proposal raised by BellSouth Wireless in its Petitions for Reconsideration of the FY 1997 and FY 1998 Rulemakings, that the Commission reclassify 900 MHz SMR Service into the CMRS Messaging Service.

[22] FCC 98–233, released September 25, 1998, 63 FR 54090 (Oct. 8, 1998).

number of years not to exceed the term of the license held by the payer." *See* 47 U.S.C. 159(f)(1). Consistent with section 9(f), we are again proposing to establish three categories of fee payments, based upon the category of service for which the fee payment is due and the amount of the fee to be paid. The fee categories are (1) "standard" fees, (2) "large" fees, and (3) "small" fees.

i. Annual Payments of Standard Fees

24. As we have in the past, we are proposing to treat regulatory fee payments by certain licensees as "standard fees" which are those regulatory fees that are payable in full on an annual basis. Payers of standard fees are not required to make advance payments for their full license term and are not eligible for installment payments. All standard fees are payable in full on the date we establish for payment of fees in their regulatory fee category. The payment dates for each regulatory fee category will be announced either in the Report and Order terminating this proceeding or by public notice in the **Federal Register** pursuant to authority delegated to the Managing Director.

ii. Installment Payments for Large Fees

25. While we are mindful that time constraints may preclude an opportunity for installment payments, we propose that regulatees in any category of service with a liability of $12,000 or more be eligible to make installment payments and that eligibility for installment payments be based upon the amount of either a single regulatory fee payment or combination of fee payments by the same licensee or regulatee. We propose that regulatees eligible to make installment payments may submit their required fees in two equal payments (on dates to be announced) or, in the alternative, in a single payment on the date that their final installment payment is due. Due to statutory constraints concerning notification to Congress prior to actual collection of the fees, however, it is unlikely that there will be sufficient time for installment payments, and that regulatees eligible to make installment payments will be required to pay these fees on the last date that fee payments may be submitted. The dates for installment payments, or a single payment, will be announced either in the *Report and Order* terminating this proceeding or by public notice published in the **Federal Register** pursuant to authority delegated to the Managing Director.

iii. Advance Payments of Small Fees

26. As we have in the past, we are proposing to treat regulatory fee payments by certain licensees as "small" fees subject to advance payment consistent with the requirements of section 9(f)(2). We propose that advance payments will be required from licensees of those services that we decided would be subject to advance payments in our FY 1994 *Report and Order*, and to those additional payers set forth herein.[23] We are also proposing that payers of advance fees will submit the entire fee due for the full term of their licenses when filing their initial, renewal, or reinstatement application. Regulatees subject to a payment of small fees shall pay the amount due for the current fiscal year multiplied by the number of years in the term of their requested license. In the event that the required fee is adjusted following their payment of the fee, the payer would not be subject to the payment of a new fee until filing an application for renewal or reinstatement of the license. Thus, payment for the full license term would be made based upon the regulatory fee applicable at the time the application is filed. The effective date for payment of small fees established in this proceeding will be announced in our *Report and Order* terminating this proceeding or by public notice published in the **Federal Register** pursuant to authority delegated to the Managing Director.

iv. Minimum Fee Payment Liability

27. As we have in the past, we are proposing that regulatees whose total regulatory fee liability, including all categories of fees for which payment is due by an entity, amounts to less than $10 will be exempted from fee payment in FY 1999.

v. Standard Fee Calculations and Payment Dates

28. As noted, the time for payment of standard fees and any installment payments will be announced in our *Report and Order* terminating this proceeding or will be published in the **Federal Register** pursuant to authority delegated to the Managing Director. For licensees, permittees and holders of other authorizations in the Common Carrier, Mass Media, and Cable Services whose fees are not based on a subscriber, unit, or circuit count, we are proposing that fees be paid for any authorization issued on or before *October 1, 1998.*[24]

29. In the case of regulatees whose fees are based upon a subscriber, unit or circuit count, the number of a regulatees' subscribers, units or circuits on *December 31, 1998*, will be used to calculate the fee payment.[25]

E. Schedule of Regulatory Fees

30. The Commission's proposed Schedule of Regulatory Fees for FY 1999 is contained in Attachment D of this *NPRM*.

IV. Procedural Matters

A. Comment Period and Procedures

31. Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments on or before April 19, 1999, and reply comments on or before April 29, 1999. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies.[26]

32. Comments filed through the ECFS can be sent as an electronic file via the Internet to <http://www.fcc.gov/e-file/ecfs.html>. Generally, only one copy of an electronic submission must be filed. However, if multiple docket or rulemaking numbers appear in the caption of this proceeding, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by e-mail via Internet. To get filing instructions for e-mail comments, commenters should send an e-mail to ecfs@fcc.gov, and should include the following words in the body of the message, "get form <your e-mail address." A sample form and directions will be sent in reply.

33. Parties who choose to file by paper must file an original and four

[23] Applicants for new, renewal and reinstatement licenses in the following services will be required to pay their regulatory fees in advance: Land Mobile Services, Microwave Services, Marine (Ship) Service, Marine (Coast) Service, Private Land Mobile (Other) Services, Aviation (Aircraft) Service, Aviation (Ground) Service, General Mobile Radio Service (GMRS).

[24] Where a license or authorization is transferred or assigned after October 1, 1998, the fee shall be paid by the licensee or holder of the authorization on the date that the payment is due.

[25] Cable system operators are to compute their subscribers as follows: Number of single family dwellings + number of individual households in multiple dwelling unit (apartments, condominiums, mobile home parks, etc.) paying at the basic subscriber rate + bulk rate customers + courtesy and free service. Note: Bulk-Rate Customers = Total annual bulk-rate charge divided by basic annual subscription rate for individual households. Cable system operators may base their count on "a typical day in the last full week" of December 1998, rather than on a count as of December 31, 1998.

[26] *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

copies of each filing. If more than one docket or rulemaking number appear in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. All filings must be sent to the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., TW–A325, Washington, D.C. 20554.

34. Parties who choose to file by paper should also submit their comments on diskette. These diskettes should be submitted to: Terry Johnson, Office of Managing Director, Federal Communications Commission, 445 12th Street, S.W., 1–C807, Washington, D.C. 20554. Such a submission should be on a 3.5 inch diskette formatted in an IBM compatible format using WordPerfect 5.1 for Windows or compatible software. The diskette should be accompanied by a cover letter and should be submitted in "read only" mode. The diskette should be clearly labelled with the commenter's name, proceeding (including the lead docket number in this case MD Docket No. 98–200, type of pleading (comment or reply comment), date of submission, and the name of the electronic file on the diskette. The label should also include the following phrase "Disk Copy—Not an Original." Each diskette should contain only one party's pleadings, preferably in a single electronic file. In addition, commenters must send diskette copies to the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, N.W., Washington, D.C. 20037.

35. Documents filed in this proceeding will be available for public inspection during regular business hours in the FCC Reference Center, of the Federal Communications Commission, Room CY–A257, 445 12th Street, S.W., Washington, D.C. 20554, and will be placed on the Commission's "Internet site."

B. Ex Parte Rules

36. This is a non-restricted notice and comment rulemaking proceeding. *Ex parte* presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed pursuant to the Commission's rules.[27]

C. Initial Regulatory Flexibility Analysis

37. As required by the Regulatory Flexibility Act,[28] the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the possible impact on small entities of the proposals suggested in this document. The IRFA is set forth as Attachment A. Written public comments are requested with respect to the IRFA. These comments must be filed in accordance with the same filing deadlines for comments on the rest of the *NPRM*, but they must have a separate and distinct heading, designating the comments as responses to the IRFA. The Office of Public Affairs, Reference Operations Division, shall send a copy of this *NPRM*, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration, in accordance with the Regulatory Flexibility Act.

D. Authority and Further Information

38. Authority for this proceeding is contained in sections 4(i) and (j), 9, and 303(r) of the Communications Act of 1934, as amended.[29] It is ordered that this *NPRM* is adopted. It is further ordered that the Commission's Office of Public Affairs, Reference Operations Division, shall send a copy of this *NPRM*, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

39. Further information about this proceeding may be obtained by contacting the Fees Hotline at (202) 418–0192.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

Attachment A—Initial Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act (RFA),[30] the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in the present *Notice of Proposed Rulemaking, In the Matter of Assessment and Collection of Regulatory Fees for Fiscal Year 1999.* Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the IRFA provided above in paragraph 31. The Commission will send a copy of the *NPRM*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.[31] In addition, the *NPRM* and IRFA (or summaries thereof) will be published in the **Federal Register**.[32]

I. Need for, and Objectives of, the Proposed Rules

2. This rulemaking proceeding is initiated to obtain comments concerning the Commission's proposed amendment of its Schedule of Regulatory Fees. For Fiscal Year 1999, we intend to collect regulatory fees in the amount of $172,523,000, the amount that Congress has required the Commission to recover. The Commission seeks to collect the necessary amount through its proposed revised fees, as contained in the attached Schedule of Regulatory Fees, in the most efficient manner possible and without undue burden to the public.

II. Legal Basis

3. This action, including publication of proposed rules, is authorized under Sections (4)(i) and (j), 9, and 303(r) of the Communications Act of 1934, as amended.[33]

III. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

4. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted.[34] The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."[35] In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.[36] A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).[37] A small organization is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field."[38] Nationwide, as of 1992, there were approximately

[27] 47 CFR 1.1202, 1.1203 and 1026(a).

[28] 5 U.S.C. 603.

[29] 47 U.S.C. 154(i)–(j), 159, & 303(r).

[30] 5 U.S.C. 603. The RFA, 5 U.S.C. 601 *et seq.*, has been amended by the Contract With America Advancement Act of 1996, Public Law No. 104–121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

[31] 5 U.S.C. 603(a).

[32] *Id.*

[33] 47 U.S.C. 154(i) and (j), 159, and 303(r).

[34] 5 U.S.C. 603(b)(3).

[35] *Id.* 601(6).

[36] 5 U.S.C. 601(3) (incorporating by reference the definition of "small business concern" in 15 U.S.C. 632). Pursuant to the RFA, the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**." 5 U.S.C. 601(3).

[37] Small Business Act, 15 U.S.C. 632 (1996).

[38] 5 U.S.C. 601(4).

275,801 small organizations.[39] "Small governmental jurisdiction" generally means "governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000."[40] As of 1992, there were approximately 85,006 such jurisdictions in the United States.[41] This number includes 38,978 counties, cities, and towns; of these, 37,566, or 96 percent, have populations of fewer than 50,000.[42] The Census Bureau estimates that this ratio is approximately accurate for all governmental entities. Thus, of the 85,006 governmental entities, we estimate that 81,600 (91 percent) are small entities. We further describe and estimate the number of small entity licensees and regulatees that may be affected by the proposed rules, if adopted.

Cable Services or Systems

5. The SBA has developed a definition of small entities for cable and other pay television services, which includes all such companies generating $11 million or less in revenue annually.[43] This definition includes cable systems operators, closed circuit television services, direct broadcast satellite services, multipoint distribution systems, satellite master antenna systems and subscription television services. According to the Census Bureau data from 1992, there were 1,788 total cable and other pay television services and 1,423 had less than $11 million in revenue.[44]

6. The Commission has developed its own definition of a small cable system operator for the purposes of rate regulation. Under the Commission's rules, a "small cable company" is one serving fewer than 400,000 subscribers nationwide.[45] Based on our most recent information, we estimate that there were 1,439 cable operators that qualified as small cable system operators at the end of 1995.[46] Since then, some of those companies may have grown to serve over 400,000 subscribers, and others may have been involved in transactions that caused them to be combined with other cable operators. Consequently, we estimate that there are fewer than 1,439 small entity cable system operators.

7. The Communications Act also contains a definition of a small cable system operator, which is "a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000."[47] The Commission has determined that there are 66,000,000 subscribers in the United States. Therefore, we found that an operator serving fewer than 660,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all of its affiliates, do not exceed $250 million in the aggregate.[48] Based on available data, we find that the number of cable operators serving 660,000 subscribers or less totals 1,450.[49] We do not request nor do we collect information concerning whether cable system operators are affiliated with entities whose gross annual revenues exceed $250,000,000,[50] and thus are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act. It should be further noted that recent industry estimates project that there will be a total 64,000,000 subscribers, and we have based our fee revenue estimates on that figure.

8. Other Pay Services. Other pay television services are also classified under Standard Industrial Classification (SIC) 4841, which includes cable systems operators, closed circuit television services, direct broadcast satellite services (DBS),[51] multipoint distribution systems (MDS),[52] satellite master antenna systems (SMATV), and subscription television services.

Common Carrier Services and Related Entities

9. The most reliable source of information regarding the total numbers of certain common carrier and related providers nationwide, as well as the numbers of commercial wireless entities, appears to be data the Commission publishes annually in its *Telecommunications Industry Revenue* report, regarding the Telecommunications Relay Service (TRS).[53] According to data in the most recent report, there are 3,459 interstate carriers.[54] These carriers include, *inter alia*, local exchange carriers, wireline carriers and service providers, interexchange carriers, competitive access providers, operator service providers, pay telephone operators, providers of telephone toll service, providers of telephone exchange service, and resellers.

10. The SBA has defined establishments engaged in providing "Radiotelephone Communications" and "Telephone Communications, Except Radiotelephone" to be small businesses when they have no more than 1,500 employees.[55] We discuss the total estimated number of telephone companies falling within the two categories and the number of small businesses in each, and we then attempt to refine further those estimates to correspond with the categories of telephone companies that are commonly used under our rules.

11. Although some affected incumbent local exchange carriers (ILECs) may have 1,500 or fewer employees, we do not believe that such entities should be considered small entities within the meaning of the RFA because they are either dominant in their field of operations or are not independently owned and operated, and therefore by definition not "small entities" or "small business concerns" under the RFA. Accordingly, our use of the terms "small entities" and "small businesses" does not encompass small ILECs. Out of an abundance of caution, however, for regulatory flexibility analysis purposes, we will separately consider small ILECs within this

[39] 1992 Economic Census, U.S. Bureau of the Census, Table 6 (special tabulation of data under contract to Office of Advocacy of the U.S. Small Business Administration).

[40] 5 U.S.C. 601(5).

[41] U.S. Dept. of Commerce, Bureau of the Census, "1992 Census of Governments."

[42] *Id.*

[43] 13 CFR 121.201, SIC code 4841.

[44] *1992 Economic Census Industry and Enterprise Receipts Size Report*, Table 2D, SIC code 4841 (U.S. Bureau of the Census data under contract to the Office of Advocacy of the U.S. Small Business Administration).

[45] 47 CFR 76.901(e). The Commission developed this definition based on its determination that a small cable system operator is one with annual revenues of $100 million or less. *Implementation of Sections of the 1992 Cable Act: Rate Regulation, Sixth Report and Order and Eleventh Order on Reconsideration*, 10 FCC Rcd 7393 (1995), 60 FR 10534 (Feb. 27, 1995).

[46] Paul Kagan Associates, Inc., *Cable TV Investor*, Feb. 29, 1996 (based on figures for Dec. 30, 1995).

[47] 47 U.S.C. 543(m)(2).

[48] *Id.* 76.1403(b).

[49] Paul Kagan Associates, Inc., *Cable TV Investor*, Feb. 29, 1996 (based on figures for Dec. 30, 1995).

[50] We do receive such information on a case-by-case basis only if a cable operator appeals a local franchise authority's finding that the operator does not qualify as a small cable operator pursuant to section 76.1403(b) of the Commission's rules. *See* 47 CFR 76.1403(d).

[51] Direct Broadcast Services (DBS) are discussed with the international services, *infra*.

[52] Multipoint Distribution Services (MDS) are discussed with the mass media services, *infra*.

[53] FCC, Telecommunications Industry Revenue: TRS Fund Worksheet Data, Figure 2 (Number of Carriers Paying Into the TRS Fund by Type of Carrier) (Nov. 1997) (*Telecommunications Industry Revenue*).

[54] *Id.*

[55] 13 CFR 121.201, Standard Industrial Classification (SIC) codes 4812 and 4813. *See also* Executive Office of the President, Office of Management and Budget, *Standard Industrial Classification Manual* (1987).

analysis and use the term "small ILECs" to refer to any ILECs that arguably might be defined by the SBA as "small business concerns."[56]

12. Total Number of Telephone Companies Affected. The U.S. Bureau of the Census ("Census Bureau") reports that, at the end of 1992, there were 3,497 firms engaged in providing telephone services, as defined therein, for at least one year.[57] This number contains a variety of different categories of carriers, including local exchange carriers, interexchange carriers, competitive access providers, cellular carriers, mobile service carriers, operator service providers, pay telephone operators, personal communications services providers, covered specialized mobile radio providers, and resellers. It seems certain that some of those 3,497 telephone service firms may not qualify as small entities or small ILECs because they are not "independently owned and operated."[58] For example, a PCS provider that is affiliated with an interexchange carrier having more than 1,500 employees would not meet the definition of a small business. It is reasonable to conclude that fewer than 3,497 telephone service firms are small entity telephone service firms or small ILECs that may be affected by the proposed rules, if adopted.

13. Wireline Carriers and Service Providers. The SBA has developed a definition of small entities for telephone communications companies except radiotelephone (wireless) companies. The Census Bureau reports that there were 2,321 such telephone companies in operation for at least one year at the end of 1992.[59] According to the SBA's definition, a small business telephone company other than a radiotelephone company is one employing no more than 1,500 persons.[60] All but 26 of the 2,321 non-radiotelephone companies listed by the Census Bureau were reported to have fewer than 1,000 employees. Thus, even if all 26 of those companies had more than 1,500 employees, there would still be 2,295 non-radiotelephone companies that might qualify as small entities or small ILECs. We do not have data specifying the number of these carriers that are not independently owned and operated, and thus are unable at this time to estimate with greater precision the number of wireline carriers and service providers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that fewer than 2,295 small telephone communications companies other than radiotelephone companies are small entities or small ILECs that may be affected by the proposed rules, if adopted.

14. Local Exchange Carriers. Neither the Commission nor the SBA has developed a definition for small providers of local exchange services (LECs). The closest applicable definition under the SBA rules is for telephone communications companies other than radiotelephone (wireless) companies.[61] According to the most recent *Telecommunications Industry Revenue* data, 1,371 carriers reported that they were engaged in the provision of local exchange services.[62] We do not have data specifying the number of these carriers that are either dominant in their field of operations, are not independently owned and operated, or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of LECs that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that fewer than 1,371 providers of local exchange service are small entities or small ILECs that may be affected by the proposed rules, if adopted.

15. Interexchange Carriers. Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to providers of interexchange services (IXCs). The closest applicable definition under the SBA rules is for telephone communications companies other than radiotelephone (wireless) companies.[63] According to the most recent *Telecommunications Industry Revenue* data, 143 carriers reported that they were engaged in the provision of interexchange services.[64] We do not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of IXCs that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 143 small entity IXCs that may be affected by the proposed rules, if adopted.

16. Competitive Access Providers. Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to competitive access services providers (CAPs). The closest applicable definition under the SBA rules is for telephone communications companies other than except radiotelephone (wireless) companies.[65] According to the most recent *Telecommunications Industry Revenue* data, 109 carriers reported that they were engaged in the provision of competitive access services.[66] We do not have data specifying the number of these carriers that are not independently owned and operated, or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of CAPs that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 109 small entity CAPs that may be affected by the proposed rules, if adopted.

17. Operator Service Providers. Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to providers of operator services. The closest applicable definition under the SBA rules is for telephone communications companies other than radiotelephone (wireless) companies.[67] According to the most recent *Telecommunications Industry Revenue* data, 27 carriers reported that they were engaged in the provision of operator services.[68] We do not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of operator service providers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 27 small entity operator service providers that may be affected by the proposed rules, if adopted.

18. Pay Telephone Operators. Neither the Commission nor the SBA has

---

[56] 13 CFR 121.201, SIC code 4813. Since the time of the Commission's 1996 decision, *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, First Report and Order*, 11 FCC Rcd 15499, 16144–45 (1996), 61 FR 45476 (Aug. 29, 1996), the Commission has consistently addressed in its regulatory flexibility analyses the impact of its rules on such ILECs.

[57] U.S. Department of Commerce, Bureau of the Census, *1992 Census of Transportation, Communications, and Utilities: Establishment and Firm Size*, at Firm Size 1–123 (1995) (*1992 Census*).

[58] *See generally* 15 U.S.C. 632(a)(1).

[59] *1992 Census, supra*, at Firm Size 1–123.

[60] 13 CFR 121.201, SIC code 4813.

[61] *Id.*

[62] *Telecommunications Industry Revenue*, Figure 2.

[63] 13 CFR 121.201, SIC code 4813.

[64] *Telecommunications Industry Revenue*, Figure 2.

[65] 13 CFR 121.201, SIC code 4813.

[66] *Telecommunications Industry Revenue*, Figure 2.

[67] 13 CFR 121.201, SIC code 4813.

[68] *Telecommunications Industry Revenue*, Figure 2.

developed a definition of small entities specifically applicable to pay telephone operators. The closest applicable definition under SBA rules is for telephone communications companies other than radiotelephone (wireless) companies.[69] According to the most recent *Telecommunications Industry Revenue* data, 441 carriers reported that they were engaged in the provision of pay telephone services.[70] We do not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of pay telephone operators that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 441 small entity pay telephone operators that may be affected by the proposed rules, if adopted.

19. Resellers (including debit card providers). Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to resellers. The closest applicable SBA definition for a reseller is a telephone communications company other than radiotelephone (wireless) companies.[71] According to the most recent *Telecommunications Industry Revenue* data, 339 reported that they were engaged in the resale of telephone service.[72] We do not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of resellers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 339 small entity resellers that may be affected by the proposed rules, if adopted.

20. 800 Service Subscribers.[73] Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to 800 service ("toll free") subscribers. The most reliable source of information regarding the number of 800 service subscribers appears to be data the Commission collects on the 800 numbers in use.[74] According to our most recent data, at the end of 1995, the number of 800 numbers in use was 6,987,063. Similarly, the most reliable source of information regarding the number of 888 service subscribers appears to be data the Commission collects on the 888 numbers in use.[75] According to our most recent data, at the end of August 1996, the number of 888 numbers that had been assigned was 2,014,059. We do not have data specifying the number of these subscribers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of toll free subscribers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 6,987,063 small entity 800 subscribers and fewer than 2,014,059 small entity 888 subscribers that may be affected by the proposed rules, if adopted.

International Services

21. The Commission has not developed a definition of small entities applicable to licensees in the international services. Therefore, the applicable definition of small entity is generally the definition under the SBA rules applicable to Communications Services, Not Elsewhere Classified (NEC).[76] This definition provides that a small entity is expressed as one with $11.0 million or less in annual receipts.[77] According to the Census Bureau, there were a total of 848 communications services providers, NEC, in operation in 1992, and a total of 775 had annual receipts of less than $9.999 million.[78] The Census report does not provide more precise data.

22. International Broadcast Stations. Commission records show that there are 20 international broadcast station licensees. We do not request nor collect annual revenue information, and thus are unable to estimate the number of international broadcast licensees that would constitute a small business under the SBA definition. However, the Commission estimates that only six international broadcast stations are subject to regulatory fee payments.

23. International Public Fixed Radio (Public and Control Stations). There are 3 licensees in this service subject to payment of regulatory fees. We do not request nor collect annual revenue information, and thus are unable to estimate the number of international broadcast licensees that would constitute a small business under the SBA definition.

24. Fixed Satellite Transmit/Receive Earth Stations. There are approximately 3100 earth station authorizations, a portion of which are Fixed Satellite Transmit/Receive Earth Stations. We do not request nor collect annual revenue information, and thus are unable to estimate the number of the earth stations that would constitute a small business under the SBA definition.

25. Fixed Satellite Small Transmit/Receive Earth Stations. There are 3100 earth station authorizations, a portion of which are Fixed Satellite Small Transmit/Receive Earth Stations. We do not request nor collect annual revenue information, and thus are unable to estimate the number of fixed satellite transmit/receive earth stations that may constitute a small business under the SBA definition.

26. Fixed Satellite Very Small Aperture Terminal (VSAT) Systems. These stations operate on a primary basis, and frequency coordination with terrestrial microwave systems is not required. Thus, a single "blanket" application may be filed for a specified number of small antennas and one or more hub stations. The Commission has processed 377 applications. We do not request nor collect annual revenue information, and thus are unable to estimate the number of VSAT systems that would constitute a small business under the SBA definition.

27. Mobile Satellite Earth Stations. There are 11 licensees. We do not request nor collect annual revenue information, and thus are unable to estimate of the number of mobile satellite earth stations that would constitute a small business under the SBA definition.

28. Radio Determination Satellite Earth Stations. There are four licensees. We do not request nor collect annual revenue information, and thus are unable to estimate the number of radio determination satellite earth stations that would constitute a small business under the SBA definition.

29. Space Stations (Geostationary). Commission records reveal that there are 43 Geostationary Space Station licensees. We do not request nor collect annual revenue information, and thus are unable to estimate the number of geostationary space stations that would constitute a small business under the SBA definition.

[69] 13 CFR 121.201, SIC code 4813.

[70] *Telecommunications Industry Revenue*, Figure 2.

[71] 13 CFR 121.201, SIC code 4813.

[72] *Telecommunications Industry Revenue*, Figure 2.

[73] We include all toll-free number subscribers in this category, including 888 numbers.

[74] FCC, CCB Industry Analysis Division, *FCC Releases, Study on Telephone Trends*, Tbl. 20 (May 16, 1996).

[75] FCC, CCB Industry Analysis Division, *Long Distance Carrier Code Assignments*, p. 80, Tbl. 10B (Oct. 18, 1996).

[76] An exception is the Direct Broadcast Satellite (DBS) Service, *infra*.

[77] 13 CFR 120.121, SIC code 4899.

[78] 1992 *Economic Census Industry and Enterprise Receipts Size Report*, Table 2D, SIC code 4899 (U.S. Bureau of the Census data under contract to the Office of Advocacy of the U.S. Small Business Administration).

30. Space Stations (Non-Geostationary). There are 12 Non-Geostationary Space Station licensees, of which only two systems are operational. We do not request nor collect annual revenue information, and thus are unable to estimate of the number of non-geostationary space stations that would constitute a small business under the SBA definition.

31. Direct Broadcast Satellites. Because DBS provides subscription services, DBS falls within the SBA-recognized definition of "Cable and Other Pay Television Services."[79] This definition provides that a small entity is one with $11.0 million or less in annual receipts.[80] As of December 1996, there were eight DBS licensees. However, the Commission does not collect annual revenue data for DBS and, therefore, is unable to ascertain the number of small DBS licensees that could be impacted by these proposed rules. Although DBS service requires a great investment of capital for operation, there are several new entrants in this field that may not yet have generated $11 million in annual receipts, and therefore may be categorized as small businesses, if independently owned and operated.

Mass Media Services

32. Commercial Radio and Television Services. The proposed rules and policies will apply to television broadcasting licensees and radio broadcasting licensees.[81] The SBA defines a television broadcasting station that has $10.5 million or less in annual receipts as a small business.[82] Television broadcasting stations consist of establishments primarily engaged in broadcasting visual programs by television to the public, except cable and other pay television services.[83] Included in this industry are commercial, religious, educational, and other television stations.[84] Also included are establishments primarily engaged in television broadcasting and which produce taped television program materials.[85] Separate establishments primarily engaged in producing taped television program materials are classified under another SIC number.[86] There were 1,509 television stations operating in the nation in 1992.[87] That number has remained fairly constant as indicated by the approximately 1,564 operating television broadcasting stations in the nation as of December 31, 1997.[88] For 1992,[89] the number of television stations that produced less than $10.0 million in revenue was 1,155 establishments.[90] Only commercial stations are subject to regulatory fees.

33. Additionally, the Small Business Administration defines a radio broadcasting station that has $5 million or less in annual receipts as a small business.[91] A radio broadcasting station is an establishment primarily engaged in broadcasting aural programs by radio to the public.[92] Included in this industry are commercial, religious, educational, and other radio stations.[93] Radio broadcasting stations which primarily are engaged in radio broadcasting and which produce radio program materials are similarly included.[94] However, radio stations which are separate establishments and are primarily engaged in producing radio program material are classified under another SIC number.[95] The 1992 Census indicates that 96 percent (5,861 of 6,127) radio station establishments produced less than $5 million in revenue in 1992.[96] Official Commission records indicate that 11,334 individual radio stations were operating in 1992.[97] As of December 31, 1997, Commission records indicate that 12,270 radio stations were operating, of which 7,465 were FM stations.[98] Only commercial stations are subject to regulatory fees.

34. Thus, the proposed rules, if adopted, will affect approximately 1,558 full power television stations, approximately 1,200 of which are considered small businesses.[99] Additionally, the proposed rules will affect some 12,156 full power radio stations, approximately 11,670 of which are small businesses.[100] These estimates may overstate the number of small entities because the revenue figures on which they are based do not include or aggregate revenues from non-television or non-radio affiliated companies. There are also 1,952 low power television stations (LPTV).[101] Given the nature of this service, we will presume that all LPTV licensees qualify as small entities under the SBA definition.

Alternative Classification of Small Stations

35. An alternative way to classify small radio and television stations is by number of employees. The Commission currently applies a standard based on the number of employees in administering its Equal Employment Opportunity Rule (EEO) for broadcasting.[102] Thus, radio or

[79] 13 CFR 120.121, SIC code 4841.

[80] 13 CFR 121.201, SIC code 4841.

[81] While we tentatively believe that the SBA's definition of "small business" greatly overstates the number of radio and television broadcast stations that are small businesses and is not suitable for purposes of determining the impact of the proposals on small television and radio stations, for purposes of this *Notice* we utilize the SBA's definition in determining the number of small businesses to which the proposed rules would apply. We reserve the right to adopt, in the future, a more suitable definition of "small business" as applied to radio and television broadcast stations or other entities subject to the proposed rules in this *Notice*, and to consider further the issue of the number of small entities that are radio and television broadcasters or other small media entities. *See Report and Order in MM Docket No. 93–48 (Children's Television Programming)*, 11 FCC Rcd 10660, 10737–38 (1996), 61 FR 43981 (Aug. 27, 1996), *citing* 5 U.S.C. 601(3).

[82] 13 CFR 121.201, SIC code 4833.

[83] Economics and Statistics Administration, Bureau of Census, U.S. Department of Commerce, *1992 Census of Transportation, Communications and Utilities, Establishment and Firm Size, Series UC92–S–1*, Appendix A–9 (1995) (*1992 Census, Series UC92–S–1*).

[84] *Id.; see* Executive Office of the President, Office of Management and Budget, *Standard Industrial Classification Manual* (1987), at 283, which describes "Television Broadcasting Stations" (SIC code 4833) as: "Establishments primarily engaged in broadcasting visual programs by television to the public, except cable and other pay television services. Included in this industry are commercial, religious, educational and other television stations. Also included here are establishments primarily engaged in television broadcasting and which produce taped television program materials."

[85] *1992 Census, Series UC92–S–1*, at Appendix A–9.

[86] *Id.*, SIC code 7812 (Motion Picture and Video Tape Production); SIC code 7922 (Theatrical Producers and Miscellaneous Theatrical Services) (producers of live radio and television programs).

[87] FCC News Release No. 31327 (Jan. 13, 1993); *1992 Census, Series UC92–S–1*, at Appendix A–9.

[88] FCC News Release, "Broadcast Station Totals as of Dec. 31, 1997."

[89] A census to determine the estimated number of Communications establishments is performed every five years, in years ending with a "2" or "7." *See 1992 Census, Series UC92–S–1*, at III.

[90] The amount of $10 million was used to estimate the number of small business establishments because the relevant Census categories stopped at $9,999,999 and began at $10,000,000. No category for $10.5 million existed. Thus, the number is as accurate as it is possible to calculate with the available information.

[91] 13 CFR 121.201, SIC code 4832.

[92] *1992 Census, Series UC92–S–1*, at Appendix A–9.

[93] *Id.*

[94] *Id.*

[95] *Id.*

[96] The Census Bureau counts radio stations located at the same facility as one establishment. Therefore, each co-located AM/FM combination counts as one establishment.

[97] FCC News Release, No. 31327 (Jan. 13, 1993).

[98] FCC News Release, "Broadcast Station Totals as of December 31, 1997."

[99] We use the 77 percent figure of TV stations operating at less than $10 million for 1992 and apply it to the 1997 total of 1558 TV stations to arrive at 1,200 stations categorized as small businesses.

[100] We use the 96% figure of radio station establishments with less than $5 million revenue from the Census data and apply it to the 12,088 individual station count to arrive at 11,605 individual stations as small businesses.

[101] FCC News Release, No. 7033 (Mar. 6, 1997).

[102] The Commission's definition of a small broadcast station for purposes of applying its EEO rules was adopted prior to the requirement of approval by the SBA pursuant to section 3(a) of the

Continued

television stations with fewer than five full-time employees are exempted from certain EEO reporting and record keeping requirements.[103] We estimate that the total number of broadcast stations with 4 or fewer employees is approximately 4,239.[104]

Auxiliary, Special Broadcast and Other Program Distribution Services

36. This service involves a variety of transmitters, generally used to relay broadcast programming to the public (through translator and booster stations) or within the program distribution chain (from a remote news gathering unit back to the station). The Commission has not developed a definition of small entities applicable to broadcast auxiliary licensees. Therefore, the applicable definitions of small entities are those, noted previously, under the SBA rules applicable to radio broadcasting stations and television broadcasting stations.[105]

37. There are currently 2,720 FM translators and boosters, 4,952 TV translators.[106] The FCC does not collect financial information on any broadcast facility and the Department of Commerce does not collect financial information on these auxiliary broadcast facilities. We believe, however, that most, if not all, of these auxiliary facilities could be classified as small businesses by themselves. We also recognize that most translators and boosters are owned by a parent station which, in some cases, would be covered by the revenue definition of small business entity discussed above. These stations would likely have annual revenues that exceed the SBA maximum to be designated as a small business (either $5 million for a radio station or $10.5 million for a TV station). Furthermore, they do not meet the Small Business Act's definition of a "small business concern" because they are not independently owned and operated.[107]

38. Multipoint Distribution Service (MDS). This service involves a variety of transmitters, which are used to relay programming to the home or office, similar to that provided by cable television systems.[108] In connection with the 1996 MDS auction the Commission defined small businesses as entities that had annual average gross revenues for the three preceding years not in excess of $40 million.[109] This definition of a small entity in the context of MDS auctions has been approved by the SBA.[110] These stations were licensed prior to implementation of Section 309(j) of the Communications Act of 1934, as amended.[111] Licenses for new MDS facilities are now awarded to auction winners in Basic Trading Areas (BTAs) and BTA-like areas.[112] The MDS auctions resulted in 67 successful bidders obtaining licensing opportunities for 493 BTAs. Of the 67 auction winners, 61 meet the definition of a small business. There are 1,573 previously authorized and proposed MDS stations currently licensed. Thus, we conclude that there are 1,634 MDS providers that are small businesses as deemed by the SBA and the Commission's auction rules. It is estimated, however, that only 1,650 MDS licensees are subject to regulatory fees and the number which are small businesses is unknown.

Wireless and Commercial Mobile Services

39. Cellular Licensees. Neither the Commission nor the SBA has developed a definition of small entities applicable to cellular licensees. Therefore, the applicable definition of small entity is the definition under the SBA rules applicable to radiotelephone (wireless) companies. This provides that a small entity is a radiotelephone company employing no more than 1,500 persons.[113] According to the Bureau of the Census, only twelve radiotelephone firms out of a total of 1,178 such firms which operated during 1992 had 1,000 or more employees.[114] Therefore, even if all twelve of these firms were cellular telephone companies, nearly all cellular carriers were small businesses under the SBA's definition. In addition, we note that there are 1,758 cellular licenses; however, a cellular licensee may own several licenses. In addition, according to the most recent Telecommunications Industry Revenue data, 804 carriers reported that they were engaged in the provision of either cellular service or Personal Communications Service (PCS) services, which are placed together in the data.[115] We do not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of cellular service carriers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 804 small cellular service carriers that may be affected by the proposed rules, if adopted.

40. 220 MHz Radio Service—Phase I Licensees. The 220 MHz service has both Phase I and Phase II licenses. Phase I licensing was conducted by lotteries in 1992 and 1993. There are approximately 1,515 such non-nationwide licensees and four nationwide licensees currently authorized to operate in the 220 MHz band. The Commission has not developed a definition of small entities specifically applicable to such incumbent 220 MHz Phase I licensees. To estimate the number of such licensees that are small businesses, we apply the definition under the SBA rules applicable to Radiotelephone Communications companies. This definition provides that a small entity is a radiotelephone company employing

---

Small Business Act, 15 U.S.C. 632(a), as amended by section 222 of the Small Business Credit and Business Opportunity Enhancement Act of 1992, Public Law 102–366, 222(b)(1), 106 Stat. 999 (1992), as further amended by the Small Business Administration Reauthorization and Amendments Act of 1994, Public Law 103–403, 301, 108 Stat. 4187 (1994). However, this definition was adopted after public notice and the opportunity for comment. *See Report and Order* in Docket No. 18244, 23 FCC 2d 430 (1970), 35 FR 8925 (Jun. 6, 1970).

[103] *See, e.g.*, 47 CFR 73.3612 (Requirement to file annual employment reports on Form 395 applies to licensees with five or more full-time employees); *First Report and Order* in Docket No. 21474 *(Amendment of Broadcast Equal Employment Opportunity Rules and FCC Form 395)*, 70 FCC 2d 1466 (1979), 50 FR 50329 (Dec. 10, 1985). The Commission is currently considering how to decrease the administrative burdens imposed by the EEO rule on small stations while maintaining the effectiveness of our broadcast EEO enforcement. *Order and Notice of Proposed Rule Making in MM Docket No. 96–16 (Streamlining Broadcast EEO Rule and Policies, Vacating the EEO Forfeiture Policy Statement and Amending Section 1.80 of the Commission's Rules to Include EEO Forfeiture Guidelines)*, 11 FCC Rcd 5154 (1996), 61 FR 9964 (Mar. 12, 1996). One option under consideration is whether to define a small station for purposes of affording such relief as one with ten or fewer full-time employees.

[104] Compilation of 1994 Broadcast Station Annual Employment Reports (FCC Form B), Equal Opportunity Employment Branch, Mass Media Bureau, FCC.

[105] 13 CFR 121.201, SIC code 4832.

[106] FCC News Release, *Broadcast Station Totals as of December 31, 1996*, No. 71831 (Jan. 21, 1997).

[107] 15 U.S.C. 632.

[108] For purposes of this item, MDS includes both the single channel Multipoint Distribution Service (MDS) and the Multichannel Multipoint Distribution Service (MMDS).

[109] 47 CFR 1.2110(a)(1).

[110] *Amendment of Parts 21 and 74 of the Commission's Rules with Regard to Filing Procedures in the Multipoint Distribution Service and in the Instructional Television Fixed Service and Implementation of Section 309(j) of the Communications Act—Competitive Bidding*, 10 FCC Rcd 9589 (1995), 60 FR 36524 (Jul. 17, 1995).

[111] 47 U.S.C. 309(j).

[112] *Id.* A Basic Trading Area (BTA) is the geographic area by which the Multipoint Distribution Service is licensed. *See* Rand McNally *1992 Commercial Atlas and Marketing Guide*, 123rd Edition, pp. 36–39.

[113] 13 CFR 121.201, SIC code 4812.

[114] *1992 Census, Series UC92–S–1*, at Table 5, SIC code 4812.

[115] *Telecommunications Industry Revenue*, Figure 2.

no more than 1,500 persons.[116] According to the Bureau of the Census, only 12 radiotelephone firms out of a total of 1,178 such firms which operated during 1992 had 1,000 or more employees.[117] Therefore, if this general ratio continues to 1999 in the context of Phase I 220 MHz licensees, we estimate that nearly all such licensees are small businesses under the SBA's definition.

41. 220 MHz Radio Service—Phase II Licensees. The Phase II 220 MHz service is a new service, and is subject to spectrum auctions. In the 220 MHz *Third Report and Order* we adopted criteria for defining small businesses and very small businesses for purposes of determining their eligibility for special provisions such as bidding credits and installment payments.[118] We have defined a small business as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding three years. Additionally, a very small business is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $3 million for the preceding three years.[119] The SBA has approved these definitions.[120] An auction of Phase II licenses commenced on September 15, 1998, and closed on October 22, 1998.[121] 908 licenses were auctioned in 3 different-sized geographic areas: three nationwide licenses, 30 Regional Economic Area Group Licenses, and 875 Economic Area (EA) Licenses. Of the 908 licenses auctioned, 693 were sold. Companies claiming small business status won: one of the Nationwide licenses, 67% of the Regional licenses, and 54% of the EA licenses. As of January 22, 1999, the Commission announced that it was prepared to grant 654 of the Phase II licenses won at auction.[122] A re-auction of the remaining, unsold licenses is likely to take place during calendar year 1999.

42. Private and Common Carrier Paging. The Commission has proposed a two-tier definition of small businesses in the context of auctioning licenses in the Common Carrier Paging and exclusive Private Carrier Paging services. Under the proposal, a small business will be defined as either (1) an entity that, together with its affiliates and controlling principals, has average gross revenues for the three preceding years of not more than $3 million, or (2) an entity that, together with affiliates and controlling principals, has average gross revenues for the three preceding calendar years of not more than $15 million. Because the SBA has not yet approved this definition for paging services, we will utilize the SBA's definition applicable to radiotelephone companies, *i.e.*, an entity employing no more than 1,500 persons.[123] At present, there are approximately 24,000 Private Paging licenses and 74,000 Common Carrier Paging licenses. According to the most recent *Telecommunications Industry Revenue* data, 172 carriers reported that they were engaged in the provision of either paging or "other mobile" services, which are placed together in the data.[124] We do not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of paging carriers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 172 small paging carriers that may be affected by the proposed rules, if adopted. We estimate that the majority of private and common carrier paging providers would qualify as small entities under the SBA definition.

43. Mobile Service Carriers. Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to mobile service carriers, such as paging companies. As noted above in the section concerning paging service carriers, the closest applicable definition under the SBA rules is that for radiotelephone (wireless) companies,[125] and the most recent *Telecommunications Industry Revenue* data shows that 172 carriers reported that they were engaged in the provision of either paging or "other mobile" services.[126] Consequently, we estimate that there are fewer than 172 small mobile service carriers that may be affected by the proposed rules, if adopted.

44. Broadband Personal Communications Service (PCS). The broadband PCS spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission defined "small entity" for Blocks C and F as an entity that has average gross revenues of less than $40 million in the three previous calendar years.[127] For Block F, an additional classification for "very small business" was added and is defined as an entity that, together with their affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years.[128] These regulations defining "small entity" in the context of broadband PCS auctions have been approved by the SBA.[129] No small businesses within the SBA-approved definition bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the Block C auctions. A total of 93 small and very small business bidders won approximately 40% of the 1,479 licenses for Blocks D, E, and F.[130] Based on this information, we conclude that the number of small broadband PCS licensees will include the 90 winning C Block bidders and the 93 qualifying bidders in the D, E, and F blocks, for a total of 183 small entity PCS providers as defined by the SBA and the Commission's auction rules.

45. Narrowband PCS. The Commission has auctioned nationwide and regional licenses for narrowband PCS. There are 11 nationwide and 30 regional licensees for narrowband PCS. The Commission does not have sufficient information to determine whether any of these licensees are small businesses within the SBA-approved

---

[116] 13 CFR 121.201, Standard Industrial Classification (SIC) code 4812.

[117] U.S. Bureau of the Census, U.S. Department of Commerce, 1992 Census of Transportation, Communications, and Utilities, UC92-S-1, Subject Series, Establishment and Firm Size, Table 5, Employment Size of Firms; 1992, SIC code 4812 (issued May 1995).

[118] 220 MHz Third Report and Order, 12 FCC Rcd 10943, 11068–70, at paras. 291–295 (1997).

[119] 220 MHz Third Report and Order, 12 FCC Rcd at 11068–69, para. 291.

[120] *See* Letter from A. Alvarez, Administrator, SBA, to D. Phythyon, Chief, Wireless Telecommunications Bureau, FCC (Jan. 6, 1998).

[121] *See generally* Public Notice, "220 MHz Service Auction Closes," Report No. WT 98–36 (Wireless Telecom. Bur. Oct. 23, 1998).

[122] Public Notice, "FCC Announces It is Prepared to Grant 654 Phase II 220 MHz Licenses After Final Payment is Made," Report No. AUC–18–H, DA No. 99–229 (Wireless Telecom. Bur. Jan. 22, 1999).

[123] 13 CFR 121.201, SIC code 4812.

[124] *Telecommunications Industry Revenue*, Figure 2.

[125] 13 CFR 121.201, SIC code 4812.

[126] *Telecommunications Industry Revenue*, Figure 2.

[127] *See Amendment of Parts 20 and 24 of the Commission's Rules—Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap, Report and Order*, FCC 96–278, WT Docket No. 96–59, paras. 57–60 (released Jun. 24, 1996), 61 FR 33859 (Jul. 1, 1996); *see also* 47 CFR 24.720(b).

[128] *See Amendment of Parts 20 and 24 of the Commission's Rules—Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap, Report and Order*, FCC 96–278, WT Docket No. 96–59, para. 60 (1996), 61 FR 33859 (Jul. 1, 1996).

[129] *See, e.g.*, Implementation of Section 309(j) of the Communications Act—Competitive Bidding, PP Docket No. 93–253, *Fifth Report and Order*, 9 FCC Rcd 5532, 5581–84 (1994).

[130] FCC News, *Broadband PCS, D, E and F Block Auction Closes*, No. 71744 (released Jan. 14, 1997).

definition for radiotelephone companies. At present, there have been no auctions held for the major trading area (MTA) and basic trading area (BTA) narrowband PCS licenses. The Commission anticipates a total of 561 MTA licenses and 2,958 BTA licenses will be awarded by auction. Such auctions have not yet been scheduled, however. Given that nearly all radiotelephone companies have no more than 1,500 employees and that no reliable estimate of the number of prospective MTA and BTA narrowband licensees can be made, we assume, for purposes of this IRFA, that all of the licenses will be awarded to small entities, as that term is defined by the SBA.

46. Rural Radiotelephone Service. The Commission has not adopted a definition of small entity specific to the Rural Radiotelephone Service.[131] A significant subset of the Rural Radiotelephone Service is the Basic Exchange Telephone Radio Systems (BETRS).[132] We will use the SBA's definition applicable to radiotelephone companies, *i.e.*, an entity employing no more than 1,500 persons.[133] There are approximately 1,000 licensees in the Rural Radiotelephone Service, and we estimate that almost all of them qualify as small entities under the SBA's definition.

47. Air-Ground Radiotelephone Service. The Commission has not adopted a definition of small entity specific to the Air-Ground Radiotelephone Service.[134] Accordingly, we will use the SBA's definition applicable to radiotelephone companies, *i.e.*, an entity employing no more than 1,500 persons.[135] There are approximately 100 licensees in the Air-Ground Radiotelephone Service, and we estimate that almost all of them qualify as small under the SBA definition.

48. Specialized Mobile Radio (SMR). The Commission awards bidding credits in auctions for geographic area 800 MHz and 900 MHz SMR licenses to firms that had revenues of no more than $15 million in each of the three previous calendar years.[136] In the context of 900 MHz SMR, this regulation defining "small entity" has been approved by the SBA; approval concerning 800 MHz SMR is being sought.

49. The proposed fees in the NPRM apply to SMR providers in the 800 MHz and 900 MHz bands that either hold geographic area licenses or have obtained extended implementation authorizations. We do not know how many firms provide 800 MHz or 900 MHz geographic area SMR service pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of no more than $15 million. One firm has over $15 million in revenues. We assume, for purposes of this IRFA, that all of the remaining existing extended implementation authorizations are held by small entities, as that term is defined by the SBA.

50. For geographic area licenses in the 900 MHz SMR band, there are 60 who qualified as small entities. For the 800 MHz SMR's, 38 are small or very small entities.

51. Private Land Mobile Radio (PLMR). PLMR systems serve an essential role in a range of industrial, business, land transportation, and public safety activities. These radios are used by companies of all sizes operating in all U.S. business categories. The Commission has not developed a definition of small entity specifically applicable to PLMR licensees due to the vast array of PLMR users. For the purpose of determining whether a licensee is a small business as defined by the SBA, each licensee would need to be evaluated within its own business area.

52. The Commission is unable at this time to estimate the number of small businesses which could be impacted by the rules. However, the Commission's 1994 Annual Report on PLMRs [137] indicates that at the end of fiscal year 1994 there were 1,087,267 licensees operating 12,481,989 transmitters in the PLMR bands below 512 MHz. Because any entity engaged in a commercial activity is eligible to hold a PLMR license, the proposed rules in this context could potentially impact every small business in the United States.

53. Amateur Radio Service. We estimate that 6,800 applicants will apply for vanity call signs in FY 1999. All are presumed to be individuals. All other amateur licensees are exempt from payment of regulatory fees.

54. Aviation and Marine Radio Service. Small businesses in the aviation and marine radio services use a marine very high frequency (VHF) radio, any type of emergency position indicating radio beacon (EPIRB) and/or radar, a VHF aircraft radio, and/or any type of emergency locator transmitter (ELT). The Commission has not developed a definition of small entities specifically applicable to these small businesses. Therefore, the applicable definition of small entity is the definition under the SBA rules for radiotelephone communications.[138]

55. Most applicants for recreational licenses are individuals. Approximately 581,000 ship station licensees and 131,000 aircraft station licensees operate domestically and are not subject to the radio carriage requirements of any statute or treaty. Therefore, for purposes of our evaluations and conclusions in this IRFA, we estimate that there may be at least 712,000 potential licensees which are individuals or are small entities, as that term is defined by the SBA. We estimate, however, that only 16,800 will be subject to FY 1999 regulatory fees.

56. Fixed Microwave Services. Microwave services include common carrier,[139] private-operational fixed,[140] and broadcast auxiliary radio services.[141] At present, there are approximately 22,015 common carrier fixed licensees and 61,670 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services. The Commission has not yet defined a small business with respect to microwave services. For purposes of this IRFA, we will utilize the SBA's definition applicable to radiotelephone companies—*i.e.*, an entity with no more than 1,500 persons.[142] We estimate, for this purpose, that all of the Fixed Microwave licensees (excluding broadcast auxiliary licensees) would qualify as small entities under the SBA

[131] The service is defined in section 22.99 of the Commission's rules, 47 CFR 22.99.

[132] BETRS is defined in sections 22.757 and 22.759 of the Commission's rules, 47 CFR 22.757 and 22.759.

[133] 13 CFR 121.201, SIC code 4812.

[134] The service is defined in section 22.99 of the Commission's rules, 47 CFR 22.99.

[135] 13 CFR 121.201, SIC code 4812.

[136] 47 CFR 90.814(b)(1).

[137] Federal Communications Commission, *60th Annual Report, Fiscal Year 1994*, at 116.

[138] 13 CFR 121.201, SIC code 4812.

[139] 47 CFR 101 *et seq.* (formerly, part 21 of the Commission's Rules).

[140] Persons eligible under parts 80 and 90 of the Commission's rules can use Private Operational-Fixed Microwave services. *See* 47 CFR parts 80 and 90. Stations in this service are called operational-fixed to distinguish them from common carrier and public fixed stations. Only the licensee may use the operational-fixed station, and only for communications related to the licensee's commercial, industrial, or safety operations.

[141] Auxiliary Microwave Service is governed by part 74 of Title 47 of the Commission's rules. *See* 47 CFR 74 *et seq.* Available to licensees of broadcast stations and to broadcast and cable network entities, broadcast auxiliary microwave stations are used for relaying broadcast television signals from the studio to the transmitter, or between two points such as a main studio and an auxiliary studio. The service also includes mobile TV pickups, which relay signals from a remote location back to the studio.

[142] 13 CFR 121.201, SIC 4812.

definition for radiotelephone companies.

57. Public Safety Radio Services. Public Safety radio services include police, fire, local government, forestry conservation, highway maintenance, and emergency medical services.[143] There are a total of approximately 127,540 licensees within these services. Governmental entities as well as private businesses comprise the licensees for these services. As indicated *supra* in paragraph four of this IRFA, all governmental entities with populations of less than 50,000 fall within the definition of a small entity.[144] All licensees in this category are exempt from the payment of regulatory fees.

58. Personal Radio Services. Personal radio services provide short-range, low power radio for personal communications, radio signalling, and business communications not provided for in other services. The services include the citizen's band (CB) radio service, general mobile radio service (GMRS), radio control radio service, and family radio service (FRS).[145] Inasmuch as the CB, GMRS, and FRS licensees are individuals, no small business definition applies for these services. We are unable at this time to estimate the number of other licensees that would qualify as small under the SBA's definition; however, only GMRS licensees are subject to regulatory fees.

59. Offshore Radiotelephone Service. This service operates on several UHF TV broadcast channels that are not used for TV broadcasting in the coastal area of the states bordering the Gulf of Mexico.[146] At present, there are approximately 55 licensees in this service. We are unable at this time to estimate the number of licensees that would qualify as small under the SBA's definition for radiotelephone communications.

60. Wireless Communications Services. This service can be used for fixed, mobile, radiolocation and digital audio broadcasting satellite uses. The Commission defined "small business" for the wireless communications services (WCS) auction as an entity with average gross revenues of $40 million for each of the three preceding years, and a "very small business" as an entity with average gross revenues of $15 million for each of the three preceding years. The Commission auctioned geographic area licenses in the WCS service. In the auction, there were seven winning bidders that qualified as very small business entities, and one that qualified as a small business entity. We conclude that the number of geographic area WCS licensees affected includes these eight entities.

IV. Description of Projected Reporting, Recordkeeping and Other Compliance Requirements

61. With certain exceptions, the Commission's Schedule of Regulatory Fees applies to all Commission licensees and regulatees. Most licensees will be required to count the number of licenses or call signs authorized, complete and submit an FCC Form 159 ("FCC Remittance Advice"), and pay a regulatory fee based on the number of licenses or call signs.[147] Interstate telephone service providers must compute their annual regulatory fee based on their adjusted gross interstate revenue using information they already supply to the Commission in compliance with the Telecommunications Relay Service (TRS) Fund, and they must complete and submit the FCC Form 159. Compliance with the fee schedule will require some licensees to tabulate the number of units (*e.g.*, cellular telephones, pagers, cable TV subscribers) they have in service, and complete and submit an FCC Form 159. Licensees ordinarily will keep a list of the number of units they have in service as part of their normal business practices. No additional outside professional skills are required to complete the FCC Form 159, and it can be completed by the employees responsible for an entity's business records.

62. Each licensee must submit the FCC Form 159 to the Commission's lockbox bank after computing the number of units subject to the fee. As an option, licensees are permitted to file electronically or on computer diskette to minimize the burden of submitting multiple copies of the FCC Form 159. This latter, optional procedure may require additional technical skills. Licensees who pay small fees in advance supply fee information as part of their application and do not need to use the FCC Form 159.

63. Licensees and regulatees are advised that failure to submit the required regulatory fee in a timely manner will subject the licensee or regulatee to a late payment fee of 25 percent in addition to the required fee.[148] Until payment is received, no new or pending applications will be processed, and existing authorizations may be subject to rescission.[149] Further, in accordance with the Debt Collection Improvement Act of 1996, federal agencies may bar a person or entity from obtaining a federal loan or loan

---

[143] With the exception of the special emergency service, these services are governed by Subpart B of part 90 of the Commission's rules, 47 CFR 90.15–90.27. The police service includes 26,608 licensees that serve state, county, and municipal enforcement through telephony (voice), telegraphy (code) and teletype and facsimile (printed material). The fire radio service includes 22,677 licensees comprised of private volunteer or professional fire companies as well as units under governmental control. The local government service that is presently comprised of 40,512 licensees that are state, county, or municipal entities that use the radio for official purposes not covered by other public safety services. There are 7,325 licensees within the forestry service which is comprised of licensees from state departments of conservation and private forest organizations who set up communications networks among fire lookout towers and ground crews. The 9,480 state and local governments are licensed to highway maintenance service provide emergency and routine communications to aid other public safety services to keep main roads safe for vehicular traffic. The 1,460 licensees in the Emergency Medical Radio Service (EMRS) use the 39 channels allocated to this service for emergency medical service communications related to the delivery of emergency medical treatment. 47 CFR 90.15–90.27. The 19,478 licensees in the special emergency service include medical services, rescue organizations, veterinarians, handicapped persons, disaster relief organizations, school buses, beach patrols, establishments in isolated areas, communications standby facilities, and emergency repair of public communications facilities. 47 CFR 90.33–90.55.

[144] 5 U.S.C. 601(5).

[145] Licensees in the Citizens Band (CB) Radio Service, General Mobile Radio Service (GMRS), Radio Control (R/C) Radio Service and Family Radio Service (FRS) are governed by Subpart D, Subpart A, Subpart C, and Subpart B, respectively, of part 95 of the Commission's rules. 47 CFR 95.401–95.428; 95.1–95.181; 95.201–95.225; 47 CFR 95.191–95.194.

[146] This service is governed by subpart I of part 22 of the Commission's rules. *See* 47 CFR 22.1001–22.1037.

[147] The following categories are exempt from the Commission's Schedule of Regulatory Fees: Amateur radio licensees (except applicants for vanity call signs) and operators in other non-licensed services (e.g., Personal Radio, part 15, ship and aircraft). Governments and non-profit (exempt under section 501(c) of the Internal Revenue Code) entities are exempt from payment of regulatory fees and need not submit payment. Non-commercial educational broadcast licensees are exempt from regulatory fees as are licensees of auxiliary broadcast services such as low power auxiliary stations, television auxiliary service stations, remote pickup stations and aural broadcast auxiliary stations where such licenses are used in conjunction with commonly owned non-commercial educational stations. Emergency Alert System licenses for auxiliary service facilities are also exempt as are instructional television fixed service licensees. Regulatory fees are automatically waived for the licensee of any translator station that: (1) is not licensed to, in whole or in part, and does not have common ownership with, the licensee of a commercial broadcast station; (2) does not derive income from advertising; and (3) is dependent on subscriptions or contributions from members of the community served for support. Receive only earth station permittees are exempt from payment of regulatory fees. A regulatee will be relieved of its fee payment requirement if its total fee due, including all categories of fees for which payment is due by the entity, amounts to less than $10.

[148] 47 U.S.C. 1.1164(a).

[149] 47 U.S.C. 1.1164(c).

insurance guarantee if that person or entity fails to pay a delinquent debt owed to any federal agency.[150] Thus, debts owed to the Commission may result in a person or entity being denied a federal loan or loan guarantee pending before another federal agency until such obligations are paid.[151]

64. The Commission's rules currently provide for relief in exceptional circumstances. Persons or entities that believe they have been placed in the wrong regulatory fee category or are experiencing extraordinary and compelling financial hardship, upon a showing that such circumstances override the public interest in reimbursing the Commission for its regulatory costs, may request a waiver, reduction or deferment of payment of the regulatory fee.[152] However, timely submission of the required regulatory fee must accompany requests for waivers or reductions. This will avoid any late payment penalty if the request is denied. The fee will be refunded if the request is granted. In exceptional and compelling instances (where payment of the regulatory fee along with the waiver or reduction request could result in reduction of service to a community or other financial hardship to the licensee), the Commission will accept a petition to defer payment along with a waiver or reduction request.

V. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

65. *The Omnibus Consolidated and Emergency Supplemental Appropriations Act for FY 1999*, Public Law 105–277 requires the Commission to revise its Schedule of Regulatory Fees in order to recover the amount of regulatory fees that Congress, pursuant to Section 9(a) of the Communications Act, as amended, has required the Commission to collect for Fiscal Year (FY) 1999.[153] We seek comment on the proposed methodology for implementing these statutory requirements and any other potential impact of these proposals on small entities.

66. With the use of actual cost accounting data for computation of regulatory fees, we found that some fees which were very small in previous years would have increased dramatically. The methodology proposed in this *NPRM* minimizes this impact by limiting the amount of increase and shifting costs to other services which, for the most part, are larger entities.

67. Several categories of licensees and regulatees are exempt from payment of regulatory fees. *See, e.g.*, footnote 108, *supra*, and Attachment H of the *NPRM, infra*.

VI. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

68. None.

BILLING CODE 6712–01–P

[150] Public Law 104–134, 110 Stat. 1321 (1996).

[151] 31 U.S.C. 7701(c)(2)(B).

Attachment B

SOURCES OF PAYMENT UNIT ESTIMATES FOR FY 1999

In order to calculate individual service fees for FY 1999, we adjusted FY 1998 payment units for each service to more accurately reflect expected FY 1999 payment liabilities. We obtained our updated estimates through a variety of means. For example, we used Commission licensee data bases, actual prior year payment records and industry and trade association projections when available. We tried to obtain verification for these estimates from multiple sources and, in all cases, we compared FY 1999 estimates with actual FY 1998 payment units to ensure that our revised estimates were reasonable. Where it made sense, we adjusted and/or rounded our final estimates to take into consideration the fact that certain variables that impact on the number of payment units cannot yet be estimated exactly. These include an unknown number of waivers and/or exemptions that may occur in FY 1999 and the fact that, in many services, the number of actual licensees or station operators fluctuates from time to time due to economic, technical or other reasons. Therefore, when we note, for example, that our estimated FY 1999 payment units are based on FY 1998 actual payment units, it does not necessarily mean that our FY 1999 projection is exactly the same number as FY 1998. It means that we have either rounded the FY 1999 number or adjusted it slightly to account for these variables.

EE CATEGORY	SOURCES OF PAYMENT UNIT ESTIMATES
Land Mobile (All), Microwave, IVDS[154], Marine (Ship & Coast), Aviation (Aircraft & Ground), GMRS, Amateur Vanity Call Signs, Domestic Public Fixed	Based on Wireless Telecommunications Bureau (WTB) projections of new applications and renewals taking into consideration existing Commission licensee data bases. Aviation (Aircraft) and Marine (Ship) estimates have been adjusted to take into consideration the licensing of portions of these services on a voluntary basis.
CMRS Mobile Services	Based on actual FY 1998 payment units adjusted to take into consideration industry estimates of growth between FY 1998 and FY 1999 and Wireless Telecommunications Bureau projections of new applications and average number of mobile units associated with each application.
CMRS Messaging Services	Based on industry estimates of the number of units in operation.
AM/FM Radio Stations	Based on actual FY 1998 payment units.
UHF/VHF Television Stations	Based on actual FY 1998 payment units.
AM/FM/TV Construction Permits	Based on actual FY 1998 payment units.
LPTV, Translators and Boosters	Based on actual FY 1998 payment units.
Auxiliaries	Based on actual FY 1998 payment units.
MDS/MMDS	Based on actual FY 1998 payment units.
Cable Antenna Relay Service (CARS)	Based on actual FY 1998 payment units.
Cable Television System Subscribers	Based on Cable Services Bureau and industry estimates of subscribership.
Interstate Telephone Service Providers	Based on actual FY 1998 interstate revenues associated with contributions to the Telecommunications Relay System (TRS) Fund, adjusted to take into consideration FY 1999 revenue growth in this industry as estimated by the Common Carrier Bureau.
Earth Stations	Based on actual FY 1998 payment units.
Space Stations (GSOs & NGSOs)	Based on International Bureau licensee data bases.
International Bearer Circuits	Based on International Bureau estimate.
International HF Broadcast Stations, International Public Fixed Radio Service	Based on actual FY 1998 payment units.

[154] The Wireless Telecommunications Bureau's staff advises that they do not anticipate receiving any applications for IVDS in FY 1999. Therefore, since there is no volume, there will be no regulatory fee in the IVDS category for FY 1999.

Attachment C

CALCULATION OF REVENUE REQUIREMENTS AND PRO-RATA FEES

Fee Category	FY 1999 Payment Units	(times) FY 1998 Fee	(times) Payment Years	(equals) Computed FY 1999 Revenue Requirement	Pro-Rated Revenue Requirement* *	Rounded New FY 1999 Regulatory Fee	Expected FY 1999 Revenue
LM (220 MHz, >470 MHZ-Base, SMRS)	5,800	12	5	348,000	380,800	13	377,000
Private Microwave	5,375	12	10	645,000	705,793	13	698,750
Domestic Public Fixed/Comc'l Microwave	1,000	10	10	120,000	131,310	13	130,000
IVDS	0	0	5	0	0	0	0
Marine (Ship)	16,800	6	10	1,008,000	1,103,006	7	1,176,000
GMRS/Other LM	68,700	6	5	2,061,000	2,255,254	7	2,404,500
Aviation (Aircraft)	4,800	6	10	288,000	315,145	7	336,000
Marine (Coast)	1,400	6	5	42,000	45,959	7	49,000
Aviation (Ground)	1,600	6	5	48,000	52,524	7	56,000
Amateur Vanity Call Signs	6,800	6	10	88,400	96,732	1.42	96,732
AM/FM Radio	8,905	1,370	1	12,195,735	13,345,211	1,500	13,381,900
AM Construction Permits	75	235	1	17,625	19,286	255	19,125
FM Construction Permits	300	1,150	1	345,000	377,517	1,250	375,000
Satellite TV	109	1,175	1	128,075	140,146	1,275	138,975
Satellite TV Construction Permit	6	420	1	2,520	2,758	460	2,760
VHF Markets 1-10	42	37,575	1	1,578,150	1,726,894	41,125	1,727,250
VHF Markets 11-25	60	31,275	1	1,876,500	2,053,364	34,225	2,053,500
VHF Markets 26-50	70	21,400	1	1,498,000	1,639,190	23,425	1,639,750
VHF Markets 51-100	119	11,975	1	1,425,025	1,559,337	13,100	1,558,900
VHF Remaining Markets	205	3,100	1	635,500	695,397	3,400	697,000
VHF Construction Permits	15	2,525	1	37,875	41,445	2,775	41,625
UHF Markets 1-10	68	14,175	1	963,900	1,054,750	15,500	1,054,000
UHF Markets 11-25	67	10,725	1	718,575	786,302	11,725	785,575
UHF Markets 26-50	100	6,650	1	665,000	727,678	7,275	727,500
UHF Markets 51-100	150	3,975	1	596,250	652,448	4,350	652,500
UHF Remaining Markets	180	1,075	1	193,500	211,738	1,175	211,500
UHF Construction Permits	60	2,650	1	159,000	173,986	2,900	174,000
Auxiliaries	22,000	11	1	242,000	264,809	12	264,000
International HF Broadcast	5	475	1	2,375	2,599	520	2,600
LPTV/Translators/Boosters	2,020	265	1	535,300	585,753	290	585,800
CARS	1,687	50	1	84,350	92,300	55	92,785
Cable Systems	64,000,000	0.44	1	28,160,000	30,814,144	0.48	30,814,144
Interstate Telephone Service Providers	67,732,300,000	0.0011	1	74,505,530	81,527,847	0.0012	81,527,847
CMRS Mobile Srvcs. (Cell./Publ./Mobile)	55,540,000	0.29	1	15,950,600	17,453,324	0.32	17,453,324
CMRS Messaging Services	34,500,000	0.04	1	1,380,000	1,510,068	0.04	1,510,068
MDS/MMDS	1,650	260	1	429,000	469,434	285	470,250
International Circuits	465,000	6	1	2,790,000	3,052,964	7	3,255,000
International Public Fixed	3	375	1	1,125	1,231	410	1,230
Earth Stations	3,100	165	1	511,500	559,710	180	558,000
Space Stations (Geostationary)	42.5	119,000	1	5,057,500	5,534,181	130,225	5,534,563
Space Stations (Non-geostationary)	2	164,800	1	329,600	360,666	180,325	360,650
****** Total Estimated Revenue Collected				157,662,910	172,523,000		172,995,103
****** Total Revenue Requirement				172,523,000	172,523,000		172,523,000
Difference				(14,860,090)	0		472,103

1.094252288 factor applied

Attachment D

FY 1999 SCHEDULE OF REGULATORY FEES

(PROPOSED)

Fee Category	Annual Regulatory Fee (U.S. $'s)
PMRS (per license) (Formerly Land Mobile - Exclusive Use at 220-222 MHz, above 470 MHz, Base Station and SMRS) (47 CFR part 90)	13
Microwave (per license) (47 CFR part 101)	13
Interactive Video Data Service (per license) (47 CFR part 95)	No Fee
Marine (Ship) (per station) (47 CFR part 80)	7
Marine (Coast) (per license) (47 CFR part 80)	7
General Mobile Radio Service (per license) (47 CFR part 95)	7
Land Mobile (per license) (all stations not covered by PMRS and CMRS)	7
Aviation (Aircraft) (per station) (47 CFR part 87)	7
Aviation (Ground) (per license) (47 CFR part 87)	7
Amateur Vanity Call Signs (per call sign) (47 CFR part 97)	1.42
CMRS Mobile Services (per unit) (47 CFR parts 20, 22, 24, 80 and 90)	.32
CMRS Messaging Services (per unit) (47 CFR parts 20, 22 and 90)	.04
Multipoint Distribution Services (per call sign) (47 CFR part 21)	285
AM Radio Construction Permits	255
FM Radio Construction Permits	1,250
TV (47 CFR part 73) VHF Commercial	
Markets 1-10	41,125
Markets 11-25	34,225
Markets 26-50	23,425
Markets 51-100	13,100
Remaining Markets	3,400
Construction Permits	2,775
TV (47 CFR part 73) UHF Commercial	
Markets 1-10	15,500
Markets 11-25	11,725
Markets 26-50	7,275

Fee Category	Annual Regulatory Fee (U.S. $'s)
Markets 51-100	4,350
Remaining Markets	1,175
Construction Permits	2,900
Satellite Television Stations (All Markets)	1,275
Construction Permits - Satellite Television Stations	460
Low Power TV, TV/FM Translators & Boosters (47 CFR part 74)	290
Broadcast Auxiliary (47 CFR part 74)	12
Cable Antenna Relay Service (47 CFR part 78)	55
Cable Television Systems (per subscriber) (47 CFR part 76)	.48
Interstate Telephone Service Providers (per revenue dollar)	.0012
Earth Stations (47 CFR part 25)	180
Space Stations (per operational station in geostationary orbit) (47 CFR part 25) also includes Direct Broadcast Satellite Service (per operational station) (47 CFR part 100)	130,225
Space Stations (per operational system in non-geostationary orbit) (47 CFR part 25)	180,325
International Bearer Circuits (per active 64KB circuit)	7
International Public Fixed (per call sign) (47 CFR part 23)	410
International (HF) Broadcast (47 CFR part 73)	520

RADIO STATION REGULATORY FEES						
Population Served	AM Class A	AM Class B	AM Class C	AM Class D	FM Classes A, B1 & C3	FM Classes B, C, C1 & C2
<=20,000	430	325	225	275	325	430
20,001 - 50,000	825	650	325	450	650	825
50.001 - 125,000	1,350	875	450	675	875	1,350
125,001 - 400,000	2,000	1,400	675	825	1,400	2,000
400,001 - 1,000,000	2,750	2,250	1,250	1,500	2,250	2,750
>1,000,000	4,400	3,600	1,750	2,250	3,600	4,400

Attachment E

COMPARISON BETWEEN FY 1998 & FY 1999 PROPOSED REGULATORY FEES

Fee Category	Annual Regulatory Fee FY 1998	NPRM Proposed Fee FY 1999	Annual Regulatory Fee FY 1999
PMRS (per license) (Formerly Land Mobile-Exclusive Use at 220-222 Mhz, above 470 Mhz, Base Station and SMRS) (47 CFR part 90)	12	13	
Microwave (per license) (47 CFR part 101)	12	13	
Interactive Video Data Service (per license) (47 CFR part 95)	No Fee	No Fee	
Marine (Ship) (per station) (47 CFR part 80)	6	7	
Marine (Coast) (per license) (47 CFR part 80)	6	7	
General Mobile Radio Service (per license) (47 CFR part 95)	6	7	
Land Mobile (per license) (all stations not covered by PMRS and CMRS)	6	7	
Aviation (Aircraft) (per station) (47 CFR part 87)	6	7	
Aviation (Ground) (per license) (47 CFR part 87)	6	7	
Amateur Vanity Call Signs (per call sign) (47 CFR part 97)	1.30	1.42	
CMRS Mobile Services (per unit) (47 CFR parts 20, 22, 24, 80 and 90)	.29	.32	
CMRS Messaging Services [formerly One Way Paging] (per unit) (47 CFR parts 20, 22, and 90)	.04	.04	
Multipoint Distribution Services (per call sign) (47 CFR part 21)	260	285	
AM Construction Permits	235	255	
FM Construction Permits	1,150	1,250	
TV (47 CFR part 73) VHF Commercial			
Markets 1-10	37,575	41,125	
Markets 11-25	31,275	34,225	
Markets 26-50	21,400	23,425	
Markets 51-100	11,975	13,100	
Remaining Markets	3,100	3,400	
Construction Permits	2,525	2,775	
TV (47 CFR part 73) UHF Commercial			
Markets 1-10	14,175	15,500	
Markets 11-25	10,725	11,725	

Fee Category	Annual Regulatory Fee FY 1998	NPRM Proposed Fee FY 1999	Annual Regulatory Fee FY 1999
Markets 26-50	6,650	7,275	
Markets 51-100	3,975	4,350	
Remaining Markets	1,075	1,175	
Construction Permits	2,650	2,900	
Satellite Television Stations (All Markets)	1,175	1,275	
Construction Permits - Satellite Television Stations	420	460	
Low Power TV, TV/FM Translators & Boosters (47 CFR part 74)	265	290	
Broadcast Auxiliary (47 CFR part 74)	11	12	
Cable Antenna Relay Service (47 CFR part 78)	50	55	
Earth Stations (47 CFR part 25)	165	180	
Cable Television Systems (per subscriber) (47 CFR part 76)	.44	.48	
Interstate Telephone Service Providers (per revenue dollar)	.0011	.0012	
Space Stations (per operational station in geostationary orbit) (47 CFR part 25) also includes Direct Broadcast Satellite Service (per operational station) (47 CFR part 100)	119,000	130,225	
Space Stations (per operational system in non-geostationary orbit) (47 CFR part 25)	164,800	180,325	
International Bearer Circuits (per active 64KB circuit)	6	7	
International Public Fixed (per call sign) (47 CFR part 23)	375	410	
International (HF) Broadcast (47 CFR part 73)	475	520	

FY 1998 RADIO STATION REGULATORY FEES						
Population Served	AM Class A	AM Class B	AM Class C	AM Class D	FM Classes A, B1 & C3	FM Classes B, C, C1 & C2
<=20,000	400	300	200	250	300	400
20,001 - 50,000	750	600	300	400	600	750
50,001 - 125,000	1,250	800	400	600	800	1,250
125,001 - 400,000	1,750	1,250	600	750	1,250	1,750
400,001 - 1,000,000	2,500	2,000	1,000	1,250	2,000	2,500
>1,000,000	4,000	3,250	1,500	2,000	3,250	4,000

FY 1999 RADIO STATION REGULATORY FEES						
Population Served	AM Class A	AM Class B	AM Class C	AM Class D	FM Classes A, B1 & C3	FM Classes B, C, C1 & C2
<=20,000	430	325	225	275	325	430
20,001 - 50,000	825	650	325	450	650	825
50,001 - 125,000	1,350	875	450	675	875	1,350
125,001 - 400,000	2,000	1,400	675	825	1,400	2,000
400,001 - 1,000,000	2,750	2,250	1,250	1,500	2,250	2,750
>1,000,000	4,400	3,600	1,750	2,200	3,600	4,400

BILLING CODE 6712-01-C

Attachment F—Detailed Guidance on Who Must Pay Regulatory Fees

1. The guidelines below provide an explanation of regulatory fee categories established by the Schedule of Regulatory Fees in section 9 (g) of the Communications Act,[155] as modified in the instant *NPRM*. Where regulatory fee categories need interpretation or clarification, we have relied on the legislative history of section 9, our own experience in establishing and regulating the Schedule of Regulatory Fees for Fiscal Years (FY) 1994, 1995, 1996, 1997, and 1998 and the services subject to the fee schedule. The categories and amounts set out in the schedule have been modified to reflect changes in the number of payment units, additions and changes in the services subject to the fee requirement and the benefits derived from the Commission's regulatory activities, and to simplify the structure of the schedule. The schedule may be similarly modified or adjusted in future years to reflect changes in the Commission's budget and in the services regulated by the Commission.[156]

2. *Exemptions.* Governments and nonprofit entities are exempt from paying regulatory fees and should not submit payment. A nonprofit entity may be asked to submit a current IRS Determination Letter documenting that it is exempt from taxes under section 501 of the Internal Revenue Code or the certification of a governmental authority attesting to its nonprofit status. The governmental exemption applies even where the government-owned or community-owned facility is in competition with a commercial operation. Other specific exemptions are discussed below in the descriptions of other particular service categories.

1. Private Wireless Radio Services

3. Two levels of statutory fees were established for the Private Wireless Radio Services—exclusive use services and shared use services. Thus, licensees who generally receive a higher quality communication channel due to exclusive or lightly shared frequency assignments will pay a higher fee than those who share marginal quality assignments. This dichotomy is consistent with the directive of section 9, that the regulatory fees reflect the benefits provided to the licensees.[157] In addition, because of the generally small amount of the fees assessed against Private Wireless Radio Service licensees, applicants for new licenses and reinstatements and for renewal of existing licenses are required to pay a regulatory fee covering the entire license term, with only a percentage of all licensees paying a regulatory fee in any one year. Applications for modification or assignment of existing authorizations do not require the payment of regulatory fees. The expiration date of those authorizations will reflect only the unexpired term of the underlying license rather than a new license term.

a. Exclusive Use Services

4. *Private Mobile Radio Services (PMRS):* Regulatees in this category include those authorized under part 90 of the Commission's rules to provide limited access Wireless Radio service that allows high quality voice or digital communications between vehicles or to fixed stations to further the business activities of the licensee. These services, using the 220–222 MHz band and frequencies at 470 MHz and above, may be offered on a private carrier basis in the Specialized Mobile Radio Services (SMRS).[158] For FY 1999, PMRS licensees will pay a $13 annual regulatory fee per license, payable for an entire five or ten year license term at the time of application for a new, renewal, or reinstatement license.[159] The total regulatory fee due is either $65 for a license with a five year term or $130 for a license with a 10 year term.

5. *Microwave Services:* These services include private and commercial microwave systems and private and commercial carrier systems authorized under part 101 of the Commission's rules to provide telecommunications services between fixed points on a high quality channel of communications. Microwave systems are often used to relay data and to control railroad, pipeline, and utility equipment. Commercial systems typically are used for video or data transmission or distribution. For FY 1999, Microwave licensees will pay a $13 annual regulatory fee per license, payable for an entire ten year license term at the time of application for a new, renewal, or reinstatement license. The total regulatory fee due is $130 for the ten year license term.

6. *Interactive Video Data Service (IVDS):* The IVDS is a two-way, point-to-multi-point radio service allocated high quality channels of communications and authorized under part 95 of the Commission's rules. The IVDS provides information, products, and services, and also the capability to obtain responses from subscribers in a specific service area. The IVDS is offered on a private carrier basis. The Commission does not anticipate receiving any applications in the IVDS during FY 1999. Therefore, for FY 1999, there is no regulatory fee for IVDS licensees.

b. Shared Use Services

7. *Marine (Ship) Service:* This service is a shipboard radio service authorized under part 80 of the Commission's rules to provide telecommunications between watercraft or between watercraft and shore-based stations. Radio installations are required by domestic and international law for large passenger or cargo vessels. Radio equipment may be voluntarily installed on smaller vessels, such as recreational boats. The Telecommunications Act of 1996 gave the Commission the authority to license certain ship stations by rule rather than by individual license. The Commission exercises that authority. Thus, private boat operators sailing entirely within domestic U.S. waters and who are not otherwise required by treaty or agreement to carry a radio, are no longer required to hold a marine license, and they will not be required to pay a regulatory fee. For FY 1999, parties required to be licensed and those choosing to be licensed for Marine (Ship) Stations will pay a $7 annual regulatory fee per station, payable for an entire ten-year license term at the time of application for a new, renewal, or reinstatement license. The total regulatory fee due is $70 for the ten year license term.

8. *Marine (Coast) Service:* This service includes land-based stations in the maritime services, authorized under part 80 of the Commission's rules, to provide communications services to ships and other watercraft in coastal and inland waterways. For FY 1999, licensees of Marine (Coast) Stations will pay a $7 annual regulatory fee per call sign, payable for the entire five year license term at the time of application for a new, renewal, or reinstatement license. The total regulatory fee due is $35 per call sign for the five-year license term.

9. *Private Land Mobile (Other) Services:* These services include Land Mobile Radio Services operating under parts 90 and 95 of the Commission's

---

[155] 47 U.S.C. 159(g)

[156] 47 U.S.C. 159(b)(2), (3).

[157] 47 U.S.C. 159(b)(1)(A).

[158] This category only applies to licensees of shared-use private 220–222 MHz and 470 MHz and above in the Specialized Mobile Radio (SMR) service who have elected not to change to the Commercial Mobile Radio Service (CMRS). Those who have elected to change to the CMRS are referred to paragraph 14 of this Attachment.

[159] Although this fee category includes licenses with ten-year terms, the estimated volume of ten-year license applications in FY 1999 is less than one-tenth of one percent and, therefore, is statistically insignificant.

rules. Services in this category provide one- or two-way communications between vehicles, persons or fixed stations on a shared basis and include radiolocation services, industrial radio services, and land transportation radio services. For FY 1999, licensees of services in this category will pay a $7 annual regulatory fee per call sign, payable for an entire five-year license term at the time of application for a new, renewal, or reinstatement license. The total regulatory fee due is $35 for the five-year license term.

10. *Aviation (Aircraft) Service:* These services include stations authorized to provide communications between aircraft and between aircraft and ground stations and include frequencies used to communicate with air traffic control facilities pursuant to part 87 of the Commission's rules. The Telecommunications Act of 1996 gave the Commission the authority to license certain aircraft radio stations by rule rather than by individual license. The commission exercises that authority. Thus, private aircraft operators flying entirely within domestic U.S. airspace and who are not otherwise required by treaty or agreement to carry a radio are no longer required to hold an aircraft license, and they will not be required to pay a regulatory fee. For FY 1999, parties required to be licensed and those choosing to be licensed for Aviation (Aircraft) Stations will pay a $7 annual regulatory fee per station, payable for the entire ten-year license term at the time of application for a new, renewal, or reinstatement license. The total regulatory fee due is $70 per station for the ten-year license term.

11. *Aviation (Ground) Service:* This service includes stations authorized to provide ground-based communications to aircraft for weather or landing information, or for logistical support pursuant to part 87 of the Commission's rules. Certain ground-based stations which only serve itinerant traffic, i.e., possess no actual units on which to assess a fee, are exempt from payment of regulatory fees. For FY 1999, licensees of Aviation (Ground) Stations will pay a $7 annual regulatory fee per license, payable for the entire five-year license term at the time of application for a new, renewal, or reinstatement license. The total regulatory fee is $35 per call sign for the five-year license term.

12. *General Mobile Radio Service (GMRS):* These services include Land Mobile Radio licensees providing personal and limited business communications between vehicles or to fixed stations for short-range, two-way communications pursuant to part 95 of the Commission's rules. For FY 1999, GMRS licensees will pay a $7 annual regulatory fee per license, payable for an entire five-year license term at the time of application for a new, renewal or reinstatement license. The total regulatory fee due is $35 per license for the five-year license term.

c. Amateur Radio Vanity Call Signs

13. *Amateur Vanity Call Signs:* This category covers voluntary requests for specific call signs in the Amateur Radio Service authorized under part 97 of the Commission's rules. Applicants for Amateur Vanity Call-Signs will continue to pay a $1.30 annual regulatory fee per call sign, as prescribed in the FY 1998 fee schedule, payable for an entire ten-year license term at the time of application for a vanity call sign until the FY 1999 fee schedule becomes effective. The total regulatory fee due would be $13 per license for the ten-year license term.[160] For FY 1999, Amateur Vanity Call Sign applicants will pay a $1.42 annual regulatory fee per call sign, payable for an entire ten-year term at the time of application for a new, renewal or reinstatement license. The total regulatory fee due is $14.20 per call sign for the ten-year license term. We propose that there will be no refunds to applicants who submit applications before implementation of the FY 1999 fee.

d. Commercial Wireless Radio Services

14. *Commercial Mobile Radio Services (CMRS) Mobile Services:* The Commercial Mobile Radio Service (CMRS) is an "umbrella" descriptive term attributed to various existing broadband services authorized to provide interconnected mobile radio services for profit to the public, or to such classes of eligible users as to be effectively available to a substantial portion of the public. CMRS Mobile Services include certain licensees which formerly were licensed as part of the Private Radio Services (*e.g.*, Specialized Mobile Radio Services) and others formerly licensed as part of the Common Carrier Radio Services (*e.g.*, Public Mobile Services and Cellular Radio Service). While specific rules pertaining to each covered service remain in separate parts 22, 24, 27, 80 and 90, general rules for CMRS are contained in part 20. CMRS Mobile Services will include: Specialized Mobile Radio Services (part 90);[161] Broadband Personal Communications Services (part 24), Public Coast Stations (part 80); Public Mobile Radio (Cellular, 800 MHz Air-Ground Radiotelephone, and Offshore Radio Services) (part 22); and Wireless Communications Service (part 27). Each licensee in this group will pay an annual regulatory fee for each mobile or cellular unit (mobile or telephone number), assigned to its customers, including resellers of its services. For FY 1999, the regulatory fee is $.32 per unit.

15. *Commercial Mobile Radio Services (CMRS) Messaging Services:* The Commercial Mobile Radio Service (CMRS) is an "umbrella" descriptive term attributed to various existing narrowband services authorized to provide interconnected mobile radio services for profit to the public, or to such classes of eligible users as to be effectively available to a substantial portion of the public. CMRS Messaging Services include certain licensees which formerly were licensed as part of the Private Radio Services (*e.g.*, Private Paging and Radiotelephone Service), licensees formerly licensed as part of the Common Carrier Radio Services (*e.g.*, Public Mobile One-Way Paging), licensees of Narrowband Personal Communications Service (PCS) (*e.g.*, one-way and two-way paging), and 220–222 MHz Band and Interconnected Business Radio Service. While specific rules pertaining to each covered service remain in separate parts 22, 24 and 90, general rules for CMRS are contained in part 20. Each licensee in the CMRS Messaging Services will pay an annual regulatory fee for each unit (pager, telephone number, or mobile) assigned to its customers, including resellers of its services. For FY 1999, the regulatory fee is $.04 per unit.

16. Finally, we are reiterating our definition of CMRS payment units to make it clear that fees are assessable on each PCS or cellular telephone and each one-way or two-way pager capable of receiving or transmitting information, whether or not the unit is "active" on the "as-of" date for payment of these fees. The unit becomes "feeable" if the end user or assignee of the unit has possession of the unit and the unit is capable of transmitting or receiving voice or non-voice messages or data and the unit is either owned and operated by the licensee of the CMRS system or a

[160] Section 9(h) exempts "amateur radio operator licenses under part 97 of the Commission's rules (47 CFR part 97)" from the requirement. However, section 9(g)'s fee schedule explicitly includes "Amateur vanity call signs" as a category subject to the payment of a regulatory fee.

[161] This category does not include licensees of private shared-use 220 MHz and 470 MHz and above in the Specialized Mobile Radio (SMR) service who have elected to remain non-commercial. Those who have elected not to change to the Commercial Mobile Radio Service (CMRS) are referred to paragraph 4 of this Attachment.

reseller, or the end user of a unit has a contractual agreement for the provision of a CMRS service from a licensee of a CMRS system or a reseller of a CMRS service. The responsible payer of the regulatory fee is the CMRS licensee. For example, John Doe purchases a pager and contractually obtains paging services from Paging Licensee X. Paging Licensee X is responsible for paying the applicable regulatory fee for this unit. Likewise, Cellular Licensee Y donates cellular phones to a high school and the high school either pays for or obtains free cellular service from Cellular Licensee Y. In this situation, Cellular Licensee Y is responsible for paying the applicable regulatory fees for these units.

2. Mass Media Services

17. The regulatory fees for the Mass Media fee category apply to broadcast licensees and permittees. Noncommercial Educational Broadcasters are exempt from regulatory fees.

a. Commercial Radio

18. These categories include licensed Commercial AM (Classes A, B, C, and D) and FM (Classes A, B, B1, C, C1, C2, and C3) Radio Stations operating under part 73 of the Commission's rules.[162] We have combined class of station and city grade contour population data to formulate a schedule of radio fees which differentiate between stations based on class of station and population served. In general, higher class stations and stations in metropolitan areas will pay higher fees than lower class stations and stations located in rural areas. The specific fee that a station must pay is determined by where it ranks after weighting its fee requirement (determined by class of station) with its population. The regulatory fee classifications for Radio Stations for FY 1999 are as follows:

FY 1999 RADIO STATION REGULATORY FEES

Population served	AM Class A	AM Class B	AM Class C	AM Class D	FM Classes A, B1 & C3	FM Classes B, C, C1 & C2
<20,000	430	325	225	275	325	430
20,001–50,000	825	650	325	450	650	825
50,001–125,000	1,350	875	450	675	875	1,350
125,001–400,000	2,000	1,400	675	825	1,400	2,000
400,001–1,000,000	2,750	2,250	1,250	1,500	2,250	2,750
>1,000,000	4,400	3,600	1,750	2,250	3,600	4,400

19. Licensees may determine the appropriate fee payment by referring to a list which will be provided as an attachment to the final *Report and Order* in this proceeding. This same information will be available on the FCC's internet world wide web site (http://www.fcc.gov) by calling the FCC's National Call Center (1–888–225–5322), and may be included in the Public Notices mailed to each licensee for which we have a current address on file (Note: Non-receipt of a Public Notice does not relieve a licensee of its obligation to submit its regulatory fee payment).

b. Construction Permits—Commercial AM Radio

20. This category includes holders of permits to construct new Commercial AM Stations. For FY 1999, permittees will pay a fee of $255 for each permit held. Upon issuance of an operating license, this fee would no longer be applicable and licensees would be required to pay the applicable fee for the designated group within which the station appears.

c. Construction Permits—Commercial FM Radio

21. This category includes holders of permits to construct new Commercial FM Stations. For FY 1999, permittees will pay a fee of $1,250 for each permit held. Upon issuance of an operating license, this fee would no longer be applicable. Instead, licensees would pay a regulatory fee based upon the designated group within which the station appears.

d. Commercial Television Stations

22. This category includes licensed Commercial VHF and UHF Television Stations covered under part 73 of the Commission's rules, except commonly owned Television Satellite Stations, addressed separately below. Markets are Nielsen Designated Market Areas (DMA) as listed in the *Television & Cable Factbook*, Stations Volume No. 67, 1999 Edition, Warren Publishing, Inc. The fees for each category of station are as follows:

VHF Markets 1–10—$41,125
VHF Markets 11–25—$34,225
VHF Markets 26–50—$23,425
VHF Markets 51–100—$13,100
VHF Remaining Markets—$3,400
UHF Markets 1–10—$15,500
UHF Markets 11–25—$11,725
UHF Markets 26–50—$7,275
UHF Markets 51–100—$4,350
UHF Remaining Markets—$1,175

e. Commercial Television Satellite Stations

23. Commonly owned Television Satellite Stations in any market (authorized pursuant to Note 5 of § 73.3555 of the Commission's rules) that retransmit programming of the primary station are assessed a fee of $1,275 annually. Those stations designated as Television Satellite Stations in the 1999 Edition of the *Television and Cable Factbook* are subject to the fee applicable to Television Satellite Stations. All other television licensees are subject to the regulatory fee payment required for their class of station and market.

f. Construction Permits—Commercial VHF Television Stations

24. This category includes holders of permits to construct new Commercial VHF Television Stations. For FY 1999, VHF permittees will pay an annual regulatory fee of $2,775. Upon issuance of an operating license, this fee would no longer be applicable. Instead, licensees would pay a fee based upon the designated market of the station.

g. Construction Permits—Commercial UHF Television Stations

25. This category includes holders of permits to construct new UHF Television Stations. For FY 1999, UHF Television permittees will pay an annual regulatory fee of $2,900. Upon issuance of an operating license, this fee would no longer be applicable. Instead,

[162] The Commission acknowledges that certain stations operating in Puerto Rico and Guam have been assigned a higher level station class than would be expected if the station were located on the mainland. Although this results in a higher regulatory fee, we believe that the increased interference protection associated with the higher station class is necessary and justifies the fee.

licensees would pay a fee based upon the designated market of the station.

h. Construction Permits—Satellite Television Stations

26. The fee for UHF and VHF Television Satellite Station construction permits for FY 1999 is $460. An individual regulatory fee payment is to be made for each Television Satellite Station construction permit held.

i. Low Power Television, FM Translator and Booster Stations, TV Translator and Booster Stations

27. This category includes Low Power UHF/VHF Television stations operating under part 74 of the Commission's rules with a transmitter power output limited to 1 kW for a UHF facility and, generally, 0.01 kW for a VHF facility. Low Power Television (LPTV) stations may retransmit the programs and signals of a TV Broadcast Station, originate programming, and/or operate as a subscription service. This category also includes translators and boosters operating under part 74 which rebroadcast the signals of full service stations on a frequency different from the parent station (translators) or on the same frequency (boosters). The stations in this category are secondary to full service stations in terms of frequency priority. We have also received requests for waivers of the regulatory fees from operators of community based Translators. These Translators are generally not affiliated with commercial broadcasters, are nonprofit, nonprofitable, or only marginally profitable, serve small rural communities, and are supported financially by the residents of the communities served. We are aware of the difficulties these Translators have in paying even minimal regulatory fees, and we have addressed those concerns in the ruling on reconsideration of the FY 1994 *Report and Order*. Community based Translators are exempt from regulatory fees. For FY 1999, licensees in low power television, FM translator and booster, and TV translator and booster category will pay a regulatory fee of $290 for each license held.

j. Broadcast Auxiliary Stations

28. This category includes licensees of remote pickup stations (either base or mobile) and associated accessory equipment authorized pursuant to a single license, Aural Broadcast Auxiliary Stations (Studio Transmitter Link and Inter-City Relay) and Television Broadcast Auxiliary Stations (TV Pickup, TV Studio Transmitter Link, TV Relay) authorized under part 74 of the Commission's Rules. Auxiliary Stations are generally associated with a particular television or radio broadcast station or cable television system. This category does not include translators and boosters (see paragraph 26 *infra*). For FY 1999, licensees of Commercial Auxiliary Stations will pay a $12 annual regulatory fee on a per call sign basis.

k. Multipoint Distribution Service

29. This category includes Multipoint Distribution Service (MDS); Local Multipoint Distribution (LMDS), and Multichannel Multipoint Distribution Service (MMDS), authorized under part 21 of the Commission's Rules to use microwave frequencies for video and data distribution within the United States. For FY 1999, MDS, LMDS, and MMDS stations will pay an annual regulatory fee of $285 per call sign.

3. Cable Services

a. Cable Television Systems

30. This category includes operators of Cable Television Systems, providing or distributing programming or other services to subscribers under part 76 of the Commission's Rules. For FY 1999, Cable Systems will pay a regulatory fee of $.48 per subscriber.[163] Payments for Cable Systems are to be made on a per subscriber basis as of December 31, 1998. Cable Systems should determine their subscriber numbers by calculating the number of single family dwellings, the number of individual households in multiple dwelling units, *e.g.*, apartments, condominiums, mobile home parks, etc., paying at the basic subscriber rate, the number of bulk rate customers and the number of courtesy or fee customers. In order to determine the number of bulk rate subscribers, a system should divide its bulk rate charge by the annual subscription rate for individual households. See FY 1994 *Report and Order*, 59 FR 30984 (January 16, 1994).

b. Cable Antenna Relay Service

31. This category includes Cable Antenna Relay Service (CARS) stations used to transmit television and related audio signals, signals of AM and FM Broadcast Stations, and cablecasting from the point of reception to a terminal point from where the signals are distributed to the public by a Cable Television System. For FY 1999, licensees will pay an annual regulatory fee of $55 per CARS license.

4. Common Carrier Services

a. Commercial Microwave (Domestic Public Fixed Radio Service)

32. This category includes licensees in the Point-to-Point Microwave Radio Service, Local Television Transmission Radio Service, and Digital Electronic Message Service, authorized under part 101 of the Commission's rules to use microwave frequencies for video and data distribution within the United States. These services are now included in the Microwave category (see paragraph 5 *infra*).

b. Interstate Telephone Service Providers

33. This category includes Inter-Exchange Carriers (IXCs), Local Exchange Carriers (LECs), Competitive Access Providers (CAPs), domestic and international carriers that provide operator services, Wide Area Telephone Service (WATS), 800, 900, telex, telegraph, video, other switched, interstate access, special access, and alternative access services either by using their own facilities or by reselling facilities and services of other carriers or telephone carrier holding companies, and companies other than traditional local telephone companies that provide interstate access services to long distance carriers and other customers. This category also includes pre-paid calling card providers. These common carriers, including resellers, must submit fee payments based upon their proportionate share of gross interstate revenues using the methodology that we have adopted for calculating contributions to the TRS fund.[164] In order to avoid imposing any double payment burden on resellers, we will permit carriers to subtract from their gross interstate revenues, as reported to NECA in connection with their TRS contribution, any payments made to underlying common carriers for telecommunications facilities and services, including payments for interstate access service, that are sold in the form of interstate service. For this purpose, resold telecommunications facilities and services are only intended to include payments that correspond to revenues that will be included by another carrier reporting interstate revenue. For FY 1999, carriers must multiply their adjusted gross revenue figure (gross revenue reduced by the total amount of their payments to underlying common carriers for telecommunications facilities or services) by the factor 0.0012 to

[163] Cable systems are to pay their regulatory fees on a per subscriber basis rather than per 1,000 subscribers as set forth in the statutory fee schedule. See FY 1994 *Report and Order* at paragraph 100.

[164] *See Telecommunications Relay Services*, 8 FCC Rcd 5300 (1993), 58 FR 39671 (Jul. 26, 1993).

determine the appropriate fee for this category of service. Regulatees may want to use the following worksheet to determine their fee payment:

	Total	Interstate
(1) Revenue reported in TRS Fund worksheets		
(2) Less: Access charges paid		
(3) Less: Other telecommunications facilities and services taken for resale		
(4) Adjusted revenues (1)minus(2)minus(3)		
(5) Fee factor		0.0012
(6) Fee due (4)times(5)		

5. International Services

a. Earth Stations

34. Very Small Aperture Terminal (VSAT) Earth Stations, equivalent C-Band Earth Stations and antennas, and earth station systems comprised of very small aperture terminals operate in the 12 and 14 GHz bands and provide a variety of communications services to other stations in the network. *VSAT* systems consist of a network of technically-identical small Fixed-Satellite Earth Stations which often include a larger hub station. VSAT Earth Stations and C-Band Equivalent Earth Stations are authorized pursuant to part 25 of the Commission's rules. *Mobile Satellite Earth Stations,* operating pursuant to part 25 of the Commission's rules under blanket licenses for mobile antennas (transceivers), are smaller than one meter and provide voice or data communications, including position location information for mobile platforms such as cars, buses, or trucks.[165] *Fixed-Satellite Transmit/Receive and Transmit-Only Earth Station antennas,* authorized or registered under part 25 of the Commission's rules, are operated by private and public carriers to provide telephone, television, data, and other forms of communications. Included in this category are telemetry, tracking and control (TT&C) earth stations, and earth station uplinks. For FY 1999, licensees of VSATs, Mobile Satellite Earth Stations, and Fixed-Satellite Transmit/Receive and Transmit-Only Earth Stations will pay a fee of $180 per authorization or registration *as well as a separate fee of $180 for each associated Hub Station.*

35. *Receive-only earth stations.* For FY 1999, there is no regulatory fee for receive-only earth stations.

[165] Mobile earth stations are hand-held or vehicle-based units capable of operation while the operator or vehicle is in motion. In contrast, transportable units are moved to a fixed location and operate in a stationary (fixed) mode. Both are assessed the same regulatory fee for FY 1999.

b. Space Stations (Geostationary Orbit)

36. Geostationary Orbit (also referred to as Geosynchronous) Space Stations are domestic and international satellites positioned in orbit to remain approximately fixed relative to the earth. Most are authorized under part 25 of the Commission's rules to provide communications between satellites and earth stations on a common carrier and/or private carrier basis. In addition, this category includes Direct Broadcast Satellite (DBS) Service which includes space stations authorized under part 100 of the Commission's rules to transmit or re-transmit signals for direct reception by the general public encompassing both individual and community reception. For FY 1999, entities authorized to operate geostationary space stations (including DBS satellites) will be assessed an annual regulatory fee of $130,225 per operational station in orbit. Payment is required for any geostationary satellite that has been launched and tested and is authorized to provide service.

c. Space Stations (Non-Geostationary Orbit)

37. Non-Geostationary Orbit Systems (such as Low Earth Orbit (LEO) Systems) are space stations that orbit the earth in non-geosynchronous orbit. They are authorized under part 25 of the Commission's rules to provide communications between satellites and earth stations on a common carrier and/or private carrier basis. For FY 1999, entities authorized to operate Non-Geostationary Orbit Systems (NGSOs) will be assessed an annual regulatory fee of $180,325 per operational system in orbit. Payment is required for any NGSO System that has one or more operational satellites operational. In our FY 1997 *Report and Order* at paragraph 75 we retained our requirement that licensees of LEOs pay the LEO regulatory fee upon their certification of operation of a single satellite pursuant to section 25.120(d). We require payment of this fee following commencement of operations of a system's first satellite to insure that we recover our regulatory costs related to LEO systems from licensees of these systems as early as possible so that other regulatees are not burdened with these costs any longer than necessary. Because section 25.120(d) has significant implications beyond regulatory fees (such as whether the entire planned cluster is operational in accordance with the terms and conditions of the license) we are clarifying our current definition of an operational LEO satellite to prevent misinterpretation of our intent as follows:

> Licensees of Non-Geostationary Satellite Systems (such as LEOs) are assessed a regulatory fee upon the commencement of operation of a system's first satellite as reported annually pursuant to sections 25.142(c), 25.143(e), 25.145(g), or upon certification of operation of a single satellite pursuant to section 25.120(d).

d. International Bearer Circuits

38. Regulatory fees for International Bearer Circuits are to be paid by facilities-based common carriers (either domestic or international) activating the circuit in any transmission facility for the provision of service to an end user or resale carrier. Payment of the fee for bearer circuits by non-common carrier submarine cable operators is required for circuits sold on an indefeasible right of use (IRU) basis or leased to any customer, including themselves or their affiliates, other than an international common carrier authorized by the Commission to provide U.S. international common carrier services. *Compare* FY 1994 *Report and Order* at 5367. Payment of the international bearer circuit fee is also required by non-common carrier satellite operators for circuits sold or leased to any customer, including themselves or their affiliates, other than an international common carrier authorized by the Commission to provide U.S. international common carrier services. The fee is based upon active 64 kbps circuits, or equivalent circuits. Under this formulation, 64 kbps circuits or their equivalent will be assessed a fee. Equivalent circuits include the 64 kbps circuit equivalent of larger bit stream

circuits. For example, the 64 kbps circuit equivalent of a 2.048 Mbps circuit is 30 64 kbps circuits. Analog circuits such as 3 and 4 kHz circuits used for international service are also included as 64 kbps circuits. However, circuits derived from 64 kbps circuits by the use of digital circuit multiplication systems are not equivalent 64 kbps circuits. Such circuits are not subject to fees. Only the 64 kbps circuit from which they have been derived will be subject to payment of a fee. For FY 1999, the regulatory fee is $7.00 for each active 64 kbps circuit or equivalent. For analog television channels we will assess fees as follows:

Analog television channel Size in MHz	No. of equivalent 64 kbps circuits
36	630
24	288
18	240

e. International Public Fixed

39. This fee category includes common carriers authorized under part 23 of the Commission's rules to provide radio communications between the United States and a foreign point via microwave or HF troposcatter systems, other than satellites and satellite earth stations, but not including service between the United States and Mexico and the United States and Canada using frequencies above 72 MHz. For FY 1999, International Public Fixed Radio Service licensees will pay a $410 annual regulatory fee per call sign.

f. International (HF) Broadcast

40. This category covers International Broadcast Stations licensed under part 73 of the Commission's rules to operate on frequencies in the 5,950 kHz to 26,100 kHz range to provide service to the general public in foreign countries. For FY 1999, International HF Broadcast Stations will pay an annual regulatory fee of $520 per station license.

Authorization of Service: The authorization or licensing of radio stations, telecommunications equipment, and radio operators, as well as the authorization of common carrier and other services and facilities. Includes policy direction, program development, legal services, and executive direction, as well as support services associated with authorization activities.[166]

[166] Although Authorization of Service is described in this exhibit, it is not one of the activities included as a feeable activity for regulatory fee purposes pursuant to section 9(a)(1) of the Act. 47 U.S.C. 159(a)(1).

Policy and Rulemaking: Formal inquiries, rulemaking proceedings to establish or amend the Commission's rules and regulations, action on petitions for rulemaking, and requests for rule interpretations or waivers; economic studies and analyses; spectrum planning, modeling, propagation-interference analyses, and allocation; and development of equipment standards. Includes policy direction, program development, legal services, and executive direction, as well as support services associated with policy and rulemaking activities.

Enforcement: Enforcement of the Commission's rules, regulations and authorizations, including investigations, inspections, compliance monitoring, and sanctions of all types. Also includes the receipt and disposition of formal and informal complaints regarding common carrier rates and services, the review and acceptance/rejection of carrier tariffs, and the review, prescription and audit of carrier accounting practices. Includes policy direction, program development, legal services, and executive direction, as well as support services associated with enforcement activities.

Public Information Services: The publication and dissemination of Commission decisions and actions, and related activities; public reference and library services; the duplication and dissemination of Commission records and databases; the receipt and disposition of public inquiries; consumer, small business, and public assistance; and public affairs and media relations. Includes policy direction, program development, legal services, and executive direction, as well as support services associated with public information activities.

Attachment H—Factors, measurements and calculations that go into determining station signal contours and associated population coverages

AM Stations: Specific information on each day tower, including field ratio, phasing, spacing and orientation was retrieved, as well as the theoretical pattern RMS figure (mV/m @ 1 km) for the antenna system. The standard, or modified standard if pertinent, horizontal plane radiation pattern was calculated using techniques and methods specified in sections 73.150 and 73.152 of the Commission's rules.[167] Radiation values were calculated for each of 72 radials around the transmitter site (every 5 degrees of azimuth). Next, estimated soil conductivity data was retrieved from a database representing the information in FCC Figure M3. Using the calculated horizontal radiation values, and the retrieved soil conductivity data, the distance to the city grade (5 mV/m) contour was predicted for each of the 72 radials. The resulting distance to city grade contours were used to form a geographical polygon. Population counting was accomplished by determining which 1990 block centroids were contained in the polygon. The sum of the population figures for all enclosed blocks represents the total population for the predicted city grade coverage area.

FM Stations: The maximum of the horizontal and vertical HAAT (m) and ERP (kW) was used. Where the antenna HAMSL was available, it was used in lieu of the overall HAAT figure to calculate specific HAAT figures for each of 72 radials under study. Any available directional pattern information was applied as well, to produce a radial-specific ERP figure. The HAAT and ERP figures were used in conjunction with the propagation curves specified in section 73.313 of the Commission's rules to predict the distance to the city grade (70 dBuV/m or 3.17 mV/m) contour for each of the 72 radials.[168] The resulting distance to city grade contours were used to form a geographical polygon. Population counting was accomplished by determining which 1990 block centroids were contained in the polygon. The sum of the population figures for all enclosed blocks represents the total population for the predicted city grade coverage area.

[167] 47 U.S.C. 73.150 and 73.152.

[168] 47 U.S.C. 73.313.

[FR Doc. 99–8342 Filed 4–5–99; 8:45 am]
BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2, 25

[IB Docket No. 99–67; FCC 99–37]

Implementation of the GMPCS MoU and Petition of the NTIA To Establish Emissions Limits for Mobile and Portable Earth Stations in the 1610–1660.5 MHz Band

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission has proposed rules and policies implementing the international Global Mobile Personal Communications by Satellite (GMPCS) Memorandum of Understanding and Arrangements adopted last spring by the International

Telecommunications Union. Among other things, the Notice proposes to apply our current part 2 equipment certification procedures to terminals used in conjunction with authorized GMPCS systems that are for sale or lease and use in the United States. It also contemplates a customs procedure for allowing terminals to be carried into the United States.

DATES: Comments must be submitted on or before May 3, 1999; reply comments must be submitted on or before May 18, 1999.

ADDRESSES: Federal Communications Commission, 445 Twelfth Street S.W., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Tracey Weisler (202) 418–0744 or Bill Bell (202) 418–0741.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rulemaking in IB Docket No. 99–67; FCC 99–37, adopted February 25, 1999 and released March 5, 1999. The complete text of this Notice of Proposed Rulemaking is available for inspection and copying during normal business hours in the FCC Reference Information Center, 445 Twelfth Street, Room CYA257, S.W., Washington, DC 20554. and also may be purchased from the Commissions's copy contractor, International Transcription Service, 1231 20th Street, N.W., Washington, DC 20036, phone: 202–857–3800; facsimile: 202–857–3805.

To file formally in this proceeding, comments can be filed using the Commission's Electronic Comment Filing System ("ECFS") or by paper copies. *See* Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121 (May 1, 1998). Comments filed through the ECFS can be sent as an electronic file via the Internet to <http://www.fcc.gov/e-file/ecfs.html>. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to ecfs@fcc.gov, and should include the following words in the body of the message, "get form <your e-mail address>." A sample form and directions will be sent in reply.

Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appear in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. All filings must be sent to the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, The Portals, 445 Twelfth Street, S.W., Room TW–A325, Washington, DC 20554.

Parties who choose to file by paper should also submit their comments on diskette. These diskettes should be submitted to: Paul Gordon, Office of the Secretary, Federal Communications Commission, The Portals, 445 Twelfth Street, S.W., Room 2C223, Washington, DC 20554. Such a submission should be on a 3.5 inch diskette formatted in an IBM compatible format using WordPerfect 5.1 for Windows or compatible software. The diskette should be accompanied by a cover letter and should be submitted in "read only" mode. The diskette should be clearly labelled with the commenter's name, proceeding (including the lead docket number in this case [IB Docket No. 99–67]), type of pleading (comment or reply comment), date of submission, and the name of the electronic file on the diskette. The label should also include the following phrase "Disk Copy—Not an Original." Each diskette should contain only one party's pleading, preferably in a single electronic file. In addition, commenters must send diskette copies to the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, N.W., Washington, DC 20037. Comments and reply comments should be captioned using the docket number in this proceeding only.

As required by Section 603 of the Regulatory Flexibility Act, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the expected impact on small entities of the proposals suggested in this document.

Summary of Notice of Proposed Rulemaking

The Commission's proposed rulemaking (1) outlines the provisions of the GMPCS MoU and recognizes the need to facilitate transport terminals delivering new international voice, data and broadband services across national borders; (2) seeks comment on the categories of GMPCS terminals that should fall under the ITU definition for purposes of equipment certification; (3) seeks comment on the requirement to certify terminals for sale or lease and use in the United States and how to treat terminals brought into the United States as personal effects for temporary use or transit; (4) seeks comment on the current technical requirements and procedures for earth station licensing under Part 25 and whether to expand those requirements for certification; (5) proposes to adopt NTIA's out-of-band emission proposal for terminals operating in the 1610–1660.5 MHz range; and (6) seeks comment on how best to implement and enforce our new procedures in conjunction with the Commission's Compliance and Information Bureau and the U.S. Customs Service.

Administrative Matters

This is a non-restricted notice and comment rulemaking proceeding. *Ex parte* presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in the Commission's rules. *See generally* 47 CFR 1.1202, 1.1203, and 1.1206(a). The Sunshine Agenda period is the period of time that commences with the release of public notice that a matter has been placed on the Sunshine Agenda and terminates when the Commission (1) releases the text of a decision or order in the matter; (2) issues a public notice stating that the matter has been deleted from the Sunshine Agenda; or (3) issues a public notice stating that the matter has been returned to the staff for further consideration, whichever occurs first. 47 CFR 1.1202(f). During the Sunshine Agenda period, no presentations, ex parte or otherwise, are permitted unless specifically exempted. 47 CFR 1.1203. Pursuant to applicable procedures set forth in Sections 1.415 and 1.419 of the Commission's Rules, 47 CFR 1.415 and 1.419, interested parties may file comments on or before May 3, 1999 and reply comments on or before May 18, 1999.

To file formally in this proceeding, you must file an original and five copies of all comments, reply comments, and supporting comments. If you want each Commissioner to receive a personal copy of your comments send additional copies to Office of the Secretary, Federal Communications Commission, Washington, DC 20554. Comments and reply comments will be available for public inspection during regular business hours in the Federal Communications Commission, Reference Information Center, Room CYA257, Twelfth Street, S.W., Washington, DC 20554.

Initial Regulatory Flexibility Act Statement

As required by the Regulatory Flexibility Act,[1] the Commission has prepared this present Initial Regulatory Flexibility Analysis of the possible significant economic impact on small entities by the policies and rules proposed in this *Notice of Proposed Rule Making* ("*Notice*"). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the *Notice* provided above. The Commission will send a copy of this *Notice*, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration. In addition, the *Notice* and IRFA will be published in the **Federal Register**.

Need for and Objectives of the Proposed Rules

This Notice proposes to extend the FCC's current equipment certification procedure to GMPCS terminals that are to be sold for use in the United States, while allowing terminals manufactured and sold elsewhere to enter the United States for transit or temporary use if they have complied with the GMPCS–MoU notification process and bear the "GMPCS–MoU ITU Registry" mark.

Legal Basis

This action is taken pursuant to Sections 4(i), 7(e), 303(c), 303(f), 303(g), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 157(a), 303(c), 303(f), 303(g), and 303(r), 307, 309, and 310.

Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA generally defines the term "small entity " as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).

The Commission has not developed a definition of small entities applicable to geostationary or non-geostationary orbit fixed-satellite, mobile satellite operators or terminal manufacturers. Therefore, the applicable definition of small entity in the satellite services industry is the definition under the Small Business Administration (SBA) rules applicable to Communications Services "Not Elsewhere Classified."[2] This definition provides that a small entity is expressed as one with $11.0 million or less in annual receipts. According to Census Bureau data, there are 848 firms that fall under the category of Communications Services, Not Elsewhere Classified. Of those, approximately 775 reported annual receipts of $11 million or less and qualify as small entities.[3] The Census Bureau category is very broad and commercial satellite services constitute only a subset of its total. Although it is difficult to estimate the number of entities that will be required to or choose to comply with the procedures proposed in this *Notice*, we note that the Commission has licensed 12 entities to provide GMPCS in the United States. Of these licensees, only VITA and LEO One qualify as small businesses.[4] The other entities are not small businesses because they each have revenues in excess of $11 million annually or have parent companies or investors that have revenues in excess of $11 million annually. We request comment on the description and number of small entities that are significantly impacted by this proposal.

Description of Projected Reporting, Recordkeeping and Other Compliance Requirements

In this proceeding, we are proposing to use current forms and procedures to implement new proposed requirements. Therefore, this proposed action may create minimal additional mandatory reporting requirements for license applications and/or new equipment certification requirements for certain sectors of the satellite operator, service provider and equipment manufacturing industry.

Steps Taken to Minimize Significant Economic Impact on Small Entities and Significant Alternatives Considered

It should be noted that the Commission received a petition from the National Telecommunications and Information Agency regarding establishment of an out-of-band emission limit for certain GMPCS terminals in 1998 and comments were later filed by several entities. However, no Petitions for Rulemaking were filed to initiate the MoU portion of this proceeding, and there have been no comments in this proceeding that suggest alternatives to the proposed procedure. Therefore, we request comment on alternative licensing and equipment certification procedures that might minimize the amount of economic impact on small entities.

Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rules

None.

Ordering Clauses

Accordingly, It is Ordered that, pursuant to Sections 4(i), 7(a), 303(c), 303(f), 303(g), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 157(a), 303(c), 303(f), 303(g), and 303(r), 307, 309(a), 310, NOTICE IS HEREBY GIVEN of our intent to adopt these proposed rule revisions. It is Further Ordered that the Commission's Office of Public Affairs, Reference Operations Division, shall send a copy of this Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration, in accordance with Section 603(a) of the Regulatory Flexibility Act, 5 U.S.C. 601 *et. seq.* (1981).

List of Subjects

47 CFR Part 2

Communications equipment.

47 CFR Part 25

Communications equipment, Satellites.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–8499 Filed 4–5–99; 8:45 am]

BILLING CODE 6712–01–P

[1] 5 U.S.C. 603.

[2] *See* 13 CFR 121.201, Standard Industrial Classification (SIC) Code 4899.

[3] U.S. Bureau of the Census, U.S. Department of Commerce, 1992 Census of Transportation, Communications, and Utilities, UC92–S–1, Subject Series, Establishment and Firm Size, Table 2D, Employment Size of Firms: 1992, SIC Code 4899 (issued May 1995).

[4] *See Notice of Proposed Rulemaking*, IB Docket No. 96–426, 11 FCC Rcd 19841 (1996) at 44.

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 578

[Docket No. NHTSA 99–5448]

RIN 2127–AH48

Civil Penalties

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to adjust certain civil penalties authorized for violations of statutes that we enforce. The Federal Civil Monetary Penalty Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996, requires us to take this action periodically. The largest adjustments would occur in penalties for related series of violations of 49 U.S.C. Chapter 301—Motor Vehicle Safety, and 49 U.S.C. Chapter 325—Bumper Standards. The maximum penalties for violations of Chapters 301 and 325 would be increased from $880,000 to $925,000 according to the formulae set forth in the statute. Adjustments in two other penalties would be made as well. These adjusted penalties would apply to violations occurring on or after the effective date of the final rule.

DATES: Date that comments are due: May 21, 1999. Proposed effective date: 45 days after publication of final rule in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Taylor Vinson, Office of Chief Counsel, NHTSA, telephone (202) 366–5263, facsimile (202) 366–3820, electronic mail "TVinson@nhtsa.dot.gov", 400 Seventh Street, SW, Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

Background

In order to preserve the remedial impact of civil penalties and to foster compliance with the law, the Federal Civil Monetary Penalty Inflation Adjustment Act of 1990 (("Adjustment Act"), 28 U.S.C. 2461 note, Pub. L. 101–410), as amended by the Debt Collection Improvement Act of 1996 ("Collection Act," Pub. L. 104–134), requires us and other Federal agencies to regularly adjust certain civil penalties for inflation. Under these laws, each agency must make an initial inflationary adjustment for all applicable civil penalties, and must make further adjustments of these penalty amounts at least once every four years. The Collection Act limited the initial increase to 10 percent of the penalty being adjusted.

Our initial adjustment of civil penalties under these legislative authorities was published on February 4, 1997 (62 FR 5167). We established 49 CFR Part 578, *Civil Penalties*, which applies to violations that occur on and after March 6, 1997. These adjustments resulted in the maximum permissible increases of 10 percent. For example, the maximum penalty of $1,000 for each violation of 49 U.S.C. 30112(a), up to $800,000 for a related series of violations, was adjusted to $1,100 and $880,000.

In accordance with the mandate to make further adjustments of civil penalty amounts at least once every four years, we propose to adjust some of our penalties now in order to enhance their deterrent effect.

Method of Calculation

Under the Adjustment Act as amended by the Collection Act, we determine the inflation adjustment for each applicable civil penalty by increasing the maximum civil penalty amount per violation by the cost-of-living adjustment, and then applying a rounding factor. Section 5(b) of the Adjustment Act defines the "cost-of-living" adjustment as:

> the percentage (if any) for each civil monetary penalty by which—
>
> (1) the Consumer Price Index for the month of June of the calendar year preceding the adjustment exceeds
>
> (2) the Consumer Price Index for the month of June of the calendar year in which the amount of such civil monetary penalty was last set or adjusted pursuant to law.

Since we plan to make the current adjustment effective before July 1, 1999, the "Consumer Price Index (CPI) for the month of June of the calendar year preceding the adjustment" would be the CPI for June 1998. This figure is 488.2. NHTSA's penalties were initially adjusted based on the CPI figure for June 1996. Since the intent of the legislation is for agencies to adjust their civil penalties to account for increases in inflation in order to preserve their remedial impact, we believe that this is realized by adjusting civil penalties according to the CPI base upon "which the amount of such civil monetary penalty was last set or adjusted pursuant to law." This base was the CPI for June 1996. This was 469.5. The factor that we should use in calculating the increase, then, is 488.2 divided by 469.5, or 1.0398296. Any calculated increase under this adjustment is then subject to a specific rounding formula set forth in sec. 5(a) of the Adjustment Act. Under the formula:

> Any increase shall be rounded to the nearest—
>
> (1) Multiple of $10 in the case of penalties less than or equal to $100;
>
> (2) Multiple of $100 in the case of penalties greater than $100 but less than or equal to $1,000;
>
> (3) Multiple of $1,000 in the case of penalties greater than $1,000 but less than or equal to $10,000;
>
> (4) Multiple of $5,000 in the case of penalties greater than $10,000 but less than or equal to $100,000;
>
> (5) Multiple of $10,000 in the case of penalties greater than $100,000 but less than or equal to $200,000; and
>
> (6) Multiple of $25,000 in the case of penalties greater than $200,000.

Penalties That We Are Increasing

Upon review, we have concluded that application of the formulae permit some of our penalties to be increased at this time. We are proposing this action before the passage of four years in order to enhance the deterrent effect of these penalties because of their importance to our enforcement programs. Even with these increases, these penalties appear less than adequate as a full deterrent to violations of the statutes that we enforce. For example, the maximum penalty for a related series of violations under the National Traffic and Motor Vehicle Safety Act of 1966 as amended in 1974 was $800,000. It would have increased more than threefold, to $2.45 million, in June 1996 if adjusted for inflation. However, the adjustment was capped at $880,000. Further, under this aggregate penalty ceiling, on a per vehicle basis the maximum penalty amounts to less than one dollar per vehicle where a substantial fleet was in violation of the Safety Act.

Odometer tampering and disclosure. As shown above, sec. 5(a)(3) of the amended Adjustment Act permits an increase rounded "to the nearest multiple of $1,000" for penalties between $1,000 and $10,000. Under 49 CFR 578.6(f)(2), a penalty of $1,650 may be imposed (the original penalty was $1,500). A figure of $1,716 results when the inflation factor is applied. The nearest multiple of $1,000 is $2,000. Therefore, we propose to amend 49 CFR 578.6(f)(2) so that a person who violates a requirement on odometer tampering and disclosure, with intent to defraud, will now be liable for three times the actual damages or $2,000, whichever is greater.

Consumer information. The rounding provisions of section 5(a)(6) of the Adjustment Act permit raises to the nearest multiple of $25,000 where the penalty exceeds $200,000. Section

578.6(d) establishes a maximum penalty of $440,000 (originally $400,000) for a related series of violations of consumer information regarding crashworthiness and damage susceptibility. The inflation factor applied to $440,000 gives $457,525. As the nearest $25,000 multiple is $450,000, we propose adjusting the penalty to this amount.

Violations of safety and bumper requirements. Both 49 CFR 578.6(a) and 49 CFR 578.6(c)(2) establish a maximum penalty of $880,000 (originally $800,000) for related series of violations of Chapter 301—Motor Vehicle Safety, and Chapter 325—Bumper Standards. Multiplying this figure by the inflation factor gives $915,050. Section 5(a)(6) permits a rounding to the nearest multiple of $25,000, which is $925,000, and we are proposing adjusting the penalties to this amount.

Effective Date

These amendments would be effective 45 days after publication in the **Federal Register** and would apply to violations of pertinent statutes and regulations occurring on and after that date.

Request for Comments

Interested persons are invited to submit comments on the proposal and other approaches to adjustment of penalties for inflation. It is requested that two copies be submitted.

All comments must not exceed 15 pages in length. (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. 49 CFR part 512.

All comments received before the close of business on the comment closing date indicated above for the proposal will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Comments received too late for consideration in regard to the final rule will be considered as suggestions for further rulemaking action. Comments on the proposal will be available for inspection in the docket. The NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

Rulemaking Analyses and Notices

Executive Order 12866 and DOT Regulatory Policies and Procedures

We have considered the impact of this rulemaking action under E.O. 12866 and the Department of Transportation's regulatory policies and procedures. This rulemaking document was not reviewed under E.O. 12866, "Regulatory Planning and Review." This action is limited to the adoption of adjustments of civil penalties under statutes that the agency enforces, and has been determined to be not "significant" under the Department of Transportation's regulatory policies and procedures.

Regulatory Flexibility Act

We have also considered the impacts of this notice under the Regulatory Flexibility Act. I certify that this proposed rule would have no significant economic impact on a substantial number of small entities. The following is my statement providing the factual basis for the certification (5 U.S.C. 605(b)). The proposed amendments primarily affect manufacturers of motor vehicles. Manufacturers of motor vehicles are generally not small businesses within the meaning of the Regulatory Flexibility Act.

The Small Business Administration's regulations define a small business in part as a business entity "which operates primarily within the United States." (13 CFR 121.105(a)) SBA's size standards are organized according to Standard Industrial Classification Codes (SIC), SIC Code 3711 "Motor Vehicles and Passenger Car Bodies" has a small business size standard of 1,000 employees or fewer.

For manufacturers of passenger cars and light trucks, NHTSA estimates there are at most five small manufacturers of passenger cars in the U.S. Since each manufacturer serves a niche market, often specializing in replicas of "classic" cars, production for each manufacturer is fewer than 100 cars per year. Thus, there are at most 500 cars manufactured per year by U.S. small businesses.

In contrast, in 1999, there are approximately nine large manufacturers producing passenger cars, and light trucks in the U.S. Total U.S. manufacturing production per year is approximately 15 to 15 and a half million passenger cars and light trucks per year. We do not believe small businesses manufacture even 0.1 percent of total U.S. passenger car and light truck production per year.

Further, small organizations and governmental jurisdictions would not be significantly affected as the price of motor vehicles ought not to change as the result of this proposed rule. As explained above, this action is limited to the proposed adoption of a statutory directive, and has been determined to be not "significant" under the Department of Transportation's regulatory policies and procedures.

Finally, this action would not affect our civil penalty policy under the Small Business Regulatory Enforcement Fairness Act (62 FR 37115, July 10, 1997). We shall continue to consider the appropriateness of the penalty to the size of the business charged.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (Pub. L. 96–511), we state that there are no requirements for information collection associated with this rulemaking action.

National Environmental Policy Act

We have also analyzed this rulemaking action under the National Environmental Policy Act and determined that it has no significant impact on the human environment.

Executive Order 12612 (Federalism)

We have analyzed this proposed rule in accordance with the principles and criteria contained in E.O. 12612, and have determined that it has no significant federalism implications to warrant the preparation of a Federalism Assessment.

Civil Justice Reform

This proposed rule does not have a retroactive or preemptive effect. Judicial review of a rule based on this proposal may be obtained pursuant to 5 U.S.C. 702. That section does not require that a petition for reconsideration be filed prior to seeking judicial review.

Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the cost, benefits and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of more than $100 million annually. Because this rule would not have a $100 million effect, no Unfunded Mandates assessment will be prepared.

List of Subjects in 49 CFR Part 578

Imports, Motor vehicle safety, Motor vehicles, Rubber and Rubber Products, Tires, Penalties.

PART 578—CIVIL PENALTIES

1. The authority citation for 49 CFR Part 578 would continue to read as follows:

Authority: Pub. L. 101–410, Pub. L. 104–134, 49 U.S.C. 30165, 30505, 32308, 32309, 32507, 32709, 32710, 32912, and 33115; delegation of authority at 49 CFR 1.50.

2. Section 578.6 would be amended by revising the last sentence in paragraphs (a) and (d), revising paragraphs (c)(2) and (f)(2), and republishing the headings of paragraphs (a), (c), (d), and (f) to read as follows:

§ 578.6 Civil penalties for violations of specified provisions of Title 49 of the United States Code.

(a) *Motor Vehicle Safety.* * * * The maximum civil penalty under this paragraph for a related series of violations is $925,000.

* * * * *

(c) *Bumper standards.* (1) * * *

(2) The maximum civil penalty under this paragraph for a related series of violations is $925,000.

(d) *Consumer information regarding crashworthiness and damage susceptibility.* * * * The maximum penalty under this paragraph for a related series of violations is $450,000.

* * * * *

(f) *Odometer tampering and disclosure.* * * *

(2) A person that violates 49 U.S.C. Chapter 327 or a regulation prescribed or order issued thereunder, with intent to defraud, is liable for three times the actual damages or $2,000, whichever is greater.

Issued on: March 29, 1999.

Kenneth N. Weinstein,

Associate Administrator for Safety Assurance.

[FR Doc. 99–8140 Filed 4–5–99; 8:45 am]

BILLING CODE 4910–59–P

Notic

This section contains do proposed r public. Noti committee rulings, del petitions an statements examples o section.

DEPARTM

Forest Se

Southwes Interagen (PIEC) Ac

AGENCY: F

ACTION: N

SUMMARY: Advisory 21, 1999 Coos Bay Office at meeting w continue to be cov Act requi February River Bas strategy; Current i Committe

FOR FURT Direct qu to Chuck Committe Service, 333 W. 8 97501, ph

Dated: M

Charles J.

Acting De

[FR Doc. 9

BILLING CO

DEPART

National

Notice o the Advi Statistic

AGENCY: Service,

ACTION: Advisory Statistics

Notices

Federal Register
Vol. 64, No. 65
Tuesday, April 6, 1999

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Southwest Oregon Province Interagency Executive Committee (PIEC) Advisory Committee

AGENCY: Forest Service, USDA.
ACTION: Notice of meeting.

SUMMARY: The Southwest Oregon PIEC Advisory Committee will meet on April 21, 1999 in North Bend, Oregon at the Coos Bay Bureau of Land Management Office at 1300 Airport Lane. The meeting will begin at 9:00 a.m. and continue until 4:30 p.m. Agenda items to be covered include: (1) Clear Water Act requirements; (2) Critique of February 23 PAC meeting; (3) Update on River Basin watershed restoration strategy; (4) Public comment; and (5) Current issues as perceived by Advisory Committee members.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to Chuck Anderson, Province Advisory Committee Coordinator, USDA, Forest Service, Rogue River National Forest, 333 W. 8th Street, Medford, Oregon 97501, phone (541 (858–2322).

Dated: March 29, 1999.

Charles J. Anderson,

Acting Designated Federal Official.

[FR Doc. 99–8463 Filed 4–5–99; 8:45 am]
BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

National Agricultural Statistics Service

Notice of Invitation for Nominations to the Advisory Committee on Agriculture Statistics

AGENCY: National Agricultural Statistics Service, USDA.
ACTION: Solicitation of nomination for Advisory Committee on Agriculture Statistics Membership.

SUMMARY: In accordance with the Federal Advisory Committee Act, 5 U.S.C. App. 2, this notice announces an invitation from the Office of the Secretary of Agriculture for nominations to the Advisory Committee on Agriculture Statistics.

Effective October 1, 1996, responsibility for the census of agriculture program was transferred to USDA. Responsibility for the Advisory Committee on Agriculture Statistics was transferred from the Department of Commerce to USDA when the National Agricultural Statistics Service (NASS) received funding and responsibility for the census of agriculture beginning in fiscal year 1997. The reestablishment of this Committee is in the public interest in accordance with the duties the law imposes on USDA.

The purpose of the Committee is to advise the Secretary of Agriculture on the scope, timing, content, etc. of the periodic censuses and surveys of agriculture, other related surveys, and the types of information to obtain from respondents concerning agriculture. The Committee also prepares recommendations regarding the content of agriculture reports and presents the views and needs for data for major suppliers and users of agriculture statistics.

The Committee draws on the experience and expertise of its members to form a collective judgment concerning agriculture data collected and the statistics issued by NASS. This input is vital to keep current with shifting data needs in the rapidly changing agricultural environment and keep NASS informed of emerging developments and issues in the agriculture community that can affect agricultural statistics activities.

The Committee, appointed by the Secretary of Agriculture, shall consist of 25 members representing a broad range of disciplines and interests, including, but not limited to, representatives of national farm organizations, agricultural economists, rural sociologists, farm policy analysts, educators, State agriculture representatives, and agriculture-related business and marketing experts.

Terms of membership on the Committee will be staggered every 2 years. Initially, approximately one-half of the members selected by the Secretary in this, the first Advisory Committed on Agriculture selection process, will service a 1-year term and the other half a 2-year term. Members selected after this year will serve a full 2-year term. The Chairperson of the Committed shall be selected by members to serve a 1-year term.

Equal opportunity practices, in line with USDA policies, will be followed in all membership appointments to the Committee. To ensure that the recommendations of the Committee have taken into account the needs of the diverse groups served by USDA, membership shall include, to the extent practicable, individuals with demonstrated ability to represent minorities, women, and persons with disabilities.

Persons nominated for the Advisory Committee on Agriculture Statistics will be required to complete and submit an Advisory Committee Membership Background Information questionnaire.

The duties of the Committee are solely advisory. The Committee will make recommendations to the Secretary of Agriculture with regards to the agricultural statistics program of NASS, and such other matters as it may deem advisable, or which the Secretary of Agriculture, Under Secretary for Research, Education, and Economics, or the Administrator of NASS may request. The Committee will meet at least annually. All meetings are open to the public. Committee members will be reimbursed for official travel expenses only.

DATES: Nominations must be received by May 6, 1999 to be assured of consideration.

Nominations, Additional Information, or Comments

Nominations should include the following information: name, title, address, telephone number, and organization, and should be e-mailed to hq__aa@nass.usda.gov, faxed to (202) 720-9013, OR telephoned to Rich Allen, Associate Administrator, NASS, at (202) 720–4333. Each person nominated is required to complete an Advisory Committee Membership Information questionnaire. This form may be requested by telephone, fax, or e-mail using the information above. Forms are also available on the Internet through the "Agency Information," "Advisory Committee on Agriculture Statistics" options of the NASS Home Page at

http://www.usda.gov/nass. Completed questionnaires may be faxed to the number above, mailed, or completed and e-mailed directly from the Internet side.

All mailed correspondence should be sent to Rich Allen, Associate Administrator, National Agricultural Statistics Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW, Room 4117 South Building, Washington, DC 20250–2000.

Send questions, comments, and requests for additional information to the e-mail address, fax number, or address listed above.

Signed at Washington, DC, March 31, 1999.

Donald M. Bay,

Administrator, National Agricultural Statistics Service.

[FR Doc. 99–8381 Filed 4–5–99; 8:45 am]

BILLING CODE 3410–20–M

COMMISSION ON CIVIL RIGHTS

Sunshine Act Meeting

AGENCY: U.S. Commission on Civil Rights.

DATE AND TIME: Friday, April 16, 1999, 8:30 a.m.

PLACE: U.S. Commission on Civil Rights, 624 Ninth Street, N.W., Room 540, Washington, DC 20425.

STATUS: .

Agenda

I. Approval of Agenda
II. Approval of Minutes of March 5, 1999 Meeting
III. Announcements
IV. Staff Director's Report
V. "Equal Educational Opportunity and Nondiscrimination for Minority Students: Federal Enforcement of Title VI in Ability Grouping Practices" Report
VI. State Advisory Reports
- "Civil Rights Issues Facing the Blind and Visually Impaired in Illinois" Report
- "Police Protection of the African American Community in Chicago: An Update" (Illinois)

VII. Future Agenda Items

CONTACT PERSON FOR FURTHER INFORMATION: David Aronson, Press and Communications (202) 376–8312.

Stephanie Y. Moore,

General Counsel.

[FR Doc. 99–8610 Filed 4–2–99; 2:01 pm]

BILLING CODE 6335–01–M

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce (DOC) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of Export Administration (BXA).

Title: Survey of U.S. Chemical Industry to Assist in Compliance Activities Regarding Certain Provisions of the Chemical Weapons Convention.

Agency Form Number: None.

OMB Approval Number: 0694–New.

Type of Request: New collection.

Burden: 50 hours.

Average Time Per Response: 30 minutes per response.

Number of Respondents: 100 respondents.

Needs and Uses: The Chemical Weapons Convention is a multilateral arms control treaty that seeks to achieve an international ban on chemical weapons. This collection of information is necessary in order to assist efforts by U.S. government officials to ensure that the U.S. is and will be in compliance with certain provisions of the Chemical Weapons Convention (CWC) Treaty.

Affected Public: Federal government, businesses or other for-profit institutions.

Respondent's Obligation: Voluntary.

OMB Desk Officer: David Rostker (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, Office of the Chief Information Officer, (202) 482–3272, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington, D.C. 20230.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, 725 17th Street, N.W., Washington, D.C. 20230.

Dated: March 31, 1999.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 99–8428 Filed 4–5–99; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

Submission For OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.

Title: Census 2000 Maritime Enumeration.

Form Number(s): D–34, D–47.

Agency Approval Number: Not available.

Type of Request: New collection.

Burden: 66 hours.

Number of Respondents: 810.

Avg Hours Per Response: D–34—2 minutes, D–47—5 minutes.

Needs and Uses: Planning is currently underway for the Census 2000, which the Census Bureau will conduct on April 1, 2000. The Census Bureau must provide everyone in the United States and Outlying Areas the opportunity to be counted in the Census 2000, including persons on U.S. flag oceangoing vessels.

Based on addresses provided by the Maritime Administration (MARAD) and other contacts, the Census Bureau will mail enumeration packages, which include multiple copies of Form D–23, "Shipboard Census Report" (SCR) to U.S. flag maritime ship current operators, who will forward the census materials to the ship's captains/masters, who will in turn distribute the SCRs to the ship's officers, crew, and passengers for completion. (The SCR is cleared separately under OMB approval number 0607–0856.) This request is for clearance of Forms D–34, "Census 2000 Information for American Flag Vessels" and D–47, "Census 2000 Location Report for American Flag Vessels." These forms will be used in the administration of the enumeration of the U.S. shipboard population. Each current operator is asked to complete Form D–34 if he/she needs additional enumeration materials for other vessels. Each ship's captain/master will complete Form D-47 to note the ship's location.

The Census Bureau uses the information on Form D–34 to supplement our mailing list for maritime vessels. We use the information on Form D–47 to correctly assign individuals aboard ship who report the vessel as their usual residence to the appropriate geographic area associated with the ship.

Affected Public: American flag vessel owners/operators and ship's captains/masters.

Frequency: One time.

Respondent's Obligation: Mandatory.

Legal Authority: Title 13, United States Code, Sections 141, 193, 221, and 222.

OMB Desk Officer: Nancy Kirkendall, (202) 395–7313.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, room 5033, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Nancy Kirkendall, OMB Desk Officer, room 10201, New Executive Office Building, Washington, DC 20503.

Dated: March 31, 1999.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 99–8445 Filed 4–5–99; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Bureau of the Census

Annual Survey of State and Local Government Finance

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before June 7, 1999.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5033, 14th and Constitution Avenue, NW, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to David Kellerman, Chief, Finance Branch, Governments Division, U.S. Bureau of the Census, Washington, DC 20233–6800 [(301) 457–1502].

SUPPLEMENTARY INFORMATION:

I. Abstract

The Annual Survey of State and Local Government Finance collects data on state government finances and estimates of local government revenue, expenditures, debt, and assets, nationally and within state areas. Data are collected for all agencies, departments, and institutions of the fifty state governments and for a sample of all local governments (counties, municipalities, townships, and special districts). The forms and procedures are similar to those used in previous annual surveys. Data for school districts are collected under a separate survey.

Results of this survey are used by the Bureau of Economic Analysis to develop the public sector components of the National Income and Product Accounts. Other Federal agencies that make frequent use of these data include the U.S. Federal Reserve Board, the Congressional Research Service, the General Accounting Office, and the Department of Justice. Other users include state and local government executives and legislators, policy makers, economists, researchers, and the general public.

II. Method of Collection

Canvass methodology consists of a mail out/mail back questionnaire. Responses will be screened manually, then put into an electronic format. Telephone follow-up is used to contact non-respondents and, as necessary, to correct apparent errors and incorrect responses. Other methods used to collect data and maximize response include central data collection and electronic reporting.

III. Data

OMB Number: 0607–0585.

Form Number: F–5, F–5A, F–11, F–12, F–13, F–21, F–22, F–25, F–28, F–29, F–32, F–42.

Type of Review: Regular.

Affected Public: State and local governments.

Estimated Number of Respondents: 7,459.

Estimated Time Per Response: 3.5 hours.

Estimated Total Annual Burden Hours: 22,798.

Estimated Total Annual Cost: Cost to respondents is estimated to be $353,369.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13, sections 161 and 182.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: March 31, 1999.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 99–8447 Filed 4–5–99; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Firearms Convention

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before June 7, 1999.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Clearance Officer, Department of Commerce, Office of the Chief Information Officer, Room 5327, 14th and Constitution Avenue, NW, Washington, DC 20230. Her e mail address is LEngelme@doc.gov.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Dawnielle Battle, BXA Information Collection Liaison, Department of Commerce, Room 6881, 14th & Constitution Avenue, NW, Washington, DC 20230.

SUPPLEMENTAL INFORMATION:

I. Abstract

Regulations for the Control of the International Movement of Firearms, Their Parts and Components and Ammunition (OAS Model Regulations), are designed to promote harmonized procedures for import and export controls over the legal international movement of firearms. The Model Regulations and the Firearms Convention require the government of importing States to issue an Import Certificate to the importer of firearms and the government of exporting States to issue licenses for the firearms.

II Method of Collection

Written notification and recordkeeping.

III. Data

OMB Number: 0694–0114.

Form Number: N/A.

Type of Review: Regular submission.

Affected Public: Individuals, businesses or other for-profit and not-for-profit institutions.

Estimated Number of Respondents: 833.

Estimated Time Per Response: 5 to 45 minutes per response.

Estimated Total Annual Burden Hours: 179.

Estimated Total Annual Cost: $0—no capital expenditures are required.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they will also become a matter of public record.

Dated: March 31, 1999.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 99–8426 Filed 4–5–99; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Commercial Encryption Items Under the Jurisdiction of the Department of Commerce

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before June 7, 1999.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Clearance Officer, Office of the Chief Information Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington, DC 20230. Her "e" mail address is LEngelme@doc.gov.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Dawnielle Battle, BXA ICB Liaison, Department of Commerce, Room 6881, 14th and Constitution Avenue, NW, Washington, DC, 20230.

SUPPLEMENTAL INFORMATION:

I. Abstract

The Export Export Administration Regulations (EAR) set forth the licensing policy for exports and reexports of encryption commodities and software to U.S. subsidiaries, insurance companies, health and medical end-users, on-line merchants and foreign commercial firms. The information required is used in making licensing decisions. A recent rulemaking reduced paperwork by eliminating the following: (1) key recovery agent requirements; (2) business and marketing plan requirement for non-recovery items; and (3) six month progress reviews.

II. Method of Collection

Typed or by Fax.

III. Data

OMB Number: 0694–0104.

Form Number: BXA–748P.

Type of Review: Regular submission for extension of a currently approved collection.

Affected Public: Individuals, businesses or other for-profit and not-for-profit institutions.

Estimated Number of Respondents: 260.

Estimated Time Per Response: 15 minutes to 5½ hours per response.

Estimated Total Annual Burden Hours: 703.

Estimated Total Annual Cost: $0—no capital expenditures are required.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they will also become a matter of public record.

Dated: March 31, 1999.

Linda Engelmeier,

Departmental Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 99–8427 Filed 4–5–99; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Materials Technical Advisory Committee; Notice of Open Meeting

The Materials Technical Advisory Committee (MTAC) will meet on April 22, 1999, 10:30 a.m., in the Herbert C. Hoover Building, Room 3884, 14th Street between Constitution & Pennsylvania Avenues, N.W., Washington, D.C. The Committee advises the Office of the Assistant Secretary for Export Administration with respect to technical questions that affect the level of export controls applicable to advanced materials and related technology.

Agenda

1. Opening remarks.
2. Discussion of the effect on industry of adding controls for salts, esters, and

hydrates of the 54 chemical precursors already controlled by ECCN 1C350.

3. Report on the status of the Chemical Weapons Convention implementing legislation.

4. Report on the results of the most recent Biological Weapons Convention (BWC) Western Group meeting.

5. Discussion of the BWC implementation protocol, including "triggers".

6. Update on deemed export controls.

7. Presentations of papers and comments by the public.

The meeting will be open to the public and a limited number of seats will be available. Reservations are not required. To the extent that time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting. However, to facilitate distribution of public presentation materials to Committee members, the Committee suggests that presenters forward the public presentation materials to the following address: Ms. Lee Ann Carpenter, Advisory Committees MS: 3876, 14th St. & Pennsylvania Ave., N.W., U.S. Department of Commerce, Washington, D.C. 20230.

For more information contact Lee Ann Carpenter on (202) 482–2583.

Dated: March 31, 1999.

Lee Ann Carpenter,

Committee Liaison Officer.

[FR Doc. 99–8361 Filed 4–5–99; 8:45 am]

BILLING CODE 3510–33–M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 13–99]

Foreign-Trade Zone 24—Pittston, Pennsylvania; Application for Subzone Sandvik Saws and Tools, Inc., Throop, Pennsylvania

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Eastern Distribution Center, Inc., grantee of FTZ 24, requesting special-purpose subzone status for the warehousing and distribution facility of Sandvik Saws and Tools, Inc. (Sandvik), located in Throop, Pennsylvania. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR part 400). It was formally filed on March 25, 1999.

The Sandvik facility (40,500 sq. ft.) is located at 15 Burt Collins Drive in Throop (Lackawanna County), Pennsylvania. The facility (85 employees) is used for the storage and distribution of imported saws and tools (primarily HTS 8201, 8202, 8203, 8204 and 8211, duty rate ranges from duty-free to 9%). The products are distributed throughout the U.S. and Central America.

Zone procedures would exempt Sandvik from Customs duty payments on products that are reexported. On its domestic sales, the company would be able to defer duty payments until merchandise is shipped from the plant. The application indicates that the savings from zone procedures would help improve the plant's competitiveness.

In accordance with the Board's regulations, a member of the FTZ staff has been appointed examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is June 7, 1999. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to June 21, 1999).

A copy of the application and the accompanying exhibits will be available for public inspection at each of the following locations:

U.S. Department of Commerce Export Assistance Center, One Montage Mountain Rd., Suite B, Scranton, Pennsylvania 18507.

Office of the Executive Secretary, Foreign-Trade Zones Board, Room 3716, U.S. Department of Commerce, 14th and Pennsylvania Avenue, N.W., Washington, D.C. 20230

Dated: March 26, 1999.

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 99–8483 Filed 4–5–99; 8:45 am]

BILLING CODE 3510–25–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–428–602]

Preliminary Results of Antidumping Duty Administrative Review: Brass Sheet and Strip From Germany

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: In response to a request by the petitioners and the respondent, Wieland-Werke AG, the Department of Commerce is conducting an administrative review of the antidumping duty order on brass sheet and strip from Germany. This review covers one manufacturer and exporter of the subject merchandise, Wieland-Werke AG. The period of review is March 1, 1997, through February 28, 1998.

For the reasons provided in the *Facts Available* section of this notice, we have preliminarily determined Wieland-Werke AG's antidumping rate based on adverse facts available, assigning to this company the highest margin applied to a respondent during any segment of this proceeding. If these preliminary results are adopted in our final results of administrative review, we will instruct the Customs Service to assess antidumping duties based on that margin.

Interested parties are invited to comment on these preliminary results. Parties who submit argument in this proceeding are requested to submit with the argument: (1) a statement of the issue; and (2) a brief summary of the argument.

EFFECTIVE DATE: April 6, 1999.

FOR FURTHER INFORMATION CONTACT: Magd Zalok or Kris Campbell, AD/CVD Enforcement Group I, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–4162 or (202) 482–3813, respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department's) regulations are to the regulations provided in 19 CFR Part 351 (1998).

Background

The Department published the antidumping duty order on brass sheet and strip from Germany on March 6, 1987. *See Notice of Antidumping Duty Order; Brass Sheet and Strip From the Federal Republic of Germany*, 52 FR 6997 (March 6, 1987). On March 11, 1998, the Department published a notice of opportunity to request an

administrative review of the antidumping duty order for the 1997/98 review period. *See Notice of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 62 FR 11868 (March 11, 1998). On March 31, 1998, the petitioners [1] and Wieland-Werke AG (Wieland) requested that the Department conduct an administrative review of the antidumping duty order on brass sheet and strip from Germany for Wieland. We published a notice of initiation of this review on April 24, 1998. *See Notice of Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 63 FR 20378 (April 24, 1998). On May 5, 1998, we issued an antidumping questionnaire to Wieland. Wieland withdrew from participation in this review on May 11, 1998. On December 7,1998, we extended the time limit for issuance of the preliminary results by 120 days because it was not practicable to issue these results within the specified time period. *See Postponement of Preliminary Results of Antidumping Duty Administrative Review*, 63 FR 67453 (December 7, 1998).

Scope of the Review

This review covers shipments of brass sheet and strip, other than leaded and tinned, from Germany. The chemical composition of the covered products is currently defined in the Copper Development Association (C.D.A.) 200 Series or the Unified Numbering System (U.N.S.) C2000; this review does not cover products the chemical compositions of which are defined by other C.D.A. or U.N.S. series. In physical dimensions, the products covered by this review have a solid rectangular cross section over 0.006 inches (0.15 millimeters) through 0.188 inches (4.8 millimeters) in finished thickness or gauge, regardless of width. Coiled, wound-on-reels (traverse wound), and cut-to-length products are included. The merchandise is currently classified under *Harmonized Tariff Schedule of the United States* (*HTSUS*) item numbers 7409.21.00 and 7409.29.00. Although the *HTSUS* item numbers are provided for convenience and customs purposes, the Department's written description of the scope of this order remains dispositive.

Facts Available

Section 776(a)(2) of the Act provides that if an interested party withholds information that has been requested by the Department, fails to provide such information in a timely manner or in the form requested, significantly impedes a proceeding under the antidumping statute, or provides information that cannot be verified, the Department shall use facts available in reaching the applicable determination.

In selecting from among the facts otherwise available, section 776(b) of the Act authorizes the Department to use an adverse inference if the Department finds that a party has failed to cooperate by not acting to the best of its ability to comply with requests for information. *See* the Statement of Administrative Action to the URAA at 870 (SAA).

In this case, Wieland informed the Department that it was withdrawing from participation in the review on May 11, 1998. By withdrawing its participation, Wieland impeded the instant review. Therefore, we preliminarily determine that the use of total facts available is appropriate, in accordance with section 776(a)(2) of the Act.

As noted above, in selecting facts otherwise available, pursuant to section 776(b) of the Act, the Department may use an adverse inference if the Department finds that an interested party, such as Wieland in this case, failed to cooperate by not acting to the best of its ability to comply with requests for information. Consistent with Department practice in cases where a respondent fails to cooperate to the best of its ability, and in keeping with section 776(b)(3) of the Act, as adverse facts available we have applied a margin based on the highest margin found either in prior reviews or in the LTFV investigation. *See, e.g., Viscose Rayon Staple Fiber From Finland*, 63 FR 32820, 32822 (June 16, 1998) (final administrative review). In this case, the highest margin from either prior reviews or the less-than-fair-value (LTFV) investigation is 16.18 percent *ad valorem*. This rate was calculated for a respondent in the LTFV investigation.

Section 776(c) of the Act requires the Department to corroborate, to the extent practicable, secondary information used as facts available. Secondary information is described in the SAA (at 870) as "[i]nformation derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise."

The SAA further provides that "corroborate" means simply that the Department will satisfy itself that the secondary information to be used has probative value. Thus, to corroborate secondary information, to the extent practicable, the Department will examine the reliability and relevance of the information used. However, unlike other types of information, such as input costs or selling expenses, there are no independent sources for calculated dumping margins. The only source for margins is an administrative determination. Thus, in an administrative review, if the Department chooses as total adverse facts available a calculated dumping margin from a prior segment of the proceeding, it is not necessary to question the reliability of the margin from that time period (*i.e.*, the Department can normally be satisfied that the information has probative value and that it has complied with the corroboration requirements of section 776(c) of the Act). *See, e.g., Elemental Sulphur from Canada*, 62 FR 971 (January 7, 1997) (preliminary administrative review) and *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from France, et al.*, 62 FR 2081, 2088 (January 15, 1997) (final administrative review). With respect to the relevance aspect of corroboration, however, the Department will consider information reasonably at its disposal as to whether there are circumstances that would render a margin inappropriate. Where circumstances indicate that the selected margin is not appropriate as adverse facts available, the Department will disregard the margin and determine an appropriate margin. *See, e.g., Fresh Cut Flowers from Mexico; Final Results of Antidumping Duty Administrative Review*, 61 FR 6812, 6814 (February 22, 1996) (where the Department disregarded the highest margin as adverse facts available because the margin was based on another company's uncharacteristic business expense resulting in an unusually high margin). In this review, we are not aware of any circumstances that would render the use of the margin selected for Wieland as inappropriate.

Preliminary Results of the Review

As a result of this review, we preliminarily determine that the following margin exists for the period March 1, 1997, through February 28, 1998:

[1] Hussey Copper Ltd., The Miller Company, Outokumpu American Brass, Revere Copper Products, Inc., International Association of Machinists and Aerospace Workers, International Union, Allied Industrial Workers of America (AFL-CIO), Mechanics Educational Society of America (Local 56) and the United Steel Workers of America (AFL–CIO/CLC).

Producer/Manufacturer/Exporter	Percentage Margin
Wieland	16.18

Any interested party may request a hearing within thirty days of publication. *See* 19 CFR 351.310(c). If requested, a hearing will be held 44 days after the publication of this notice, or the first workday thereafter. Interested parties may submit case briefs within 30 days of the date of publication of this notice. Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than 37 days after the date of publication. The Department will publish a notice of the final results of this administrative review, which will include the results of its analysis of issues raised in any such written comments, not later than 120 days after the date of publication of this notice.

Assessment Rate

In the event these preliminary results are made final, we intend to assess antidumping duties on Wieland's entries at the same rate as the dumping margin (*i.e.*, 16.18 percent) since the margin is not a current calculated rate for the respondent, but a rate based upon total facts available pursuant to section 776(b) of the Act.

Cash Deposit

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(1) of the Act: (1) the cash deposit rate for Wieland will be the rate established in the final results of this administrative review (no deposit will be required for a zero or *de minimis* margin, *i.e.*, a margin lower than 0.5 percent); (2) for merchandise exported by manufacturers or exporters not covered in these reviews but covered in a previous segment of this proceeding, the cash deposit rate will be the company-specific rate published for the most recent segment; (3) if the exporter is not a firm covered in this review, a prior review, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in these or any prior review, the cash deposit rate will be 7.30 percent, the all others rate established in the LTFV investigation. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This determination is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: March 31, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99–8485 Filed 4–5–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–412–810]

Certain Hot-Rolled Lead and Bismuth Carbon Steel Products from the United Kingdom: Preliminary Results of Antidumping Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review.

SUMMARY: The Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on certain hot-rolled lead and bismuth carbon steel products from the United Kingdom in response to requests by respondent, British Steel Engineering Steels Limited (BSES), and petitioners, Ispat Inland Inc. and USS/KOBE Steel Co. This review covers the period March 1, 1997, through February 28, 1998.

We have preliminarily determined that sales have been made below normal value (NV). Interested parties are invited to comment on these preliminary results. If these preliminary results are adopted in our final results of administrative review, we will instruct the Customs Service to assess antidumping duties on all appropriate entries.

EFFECTIVE DATE: April 6, 1999.

FOR FURTHER INFORMATION CONTACT: Rebecca Trainor or Katherine Johnson, Office 5, AD/CVD Enforcement Group II, Import Administration, Room B099, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington D.C. 20230; telephone (202) 482–4007, or 482–4929, respectively.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations at 19 CFR Part 351 (1998).

SUPPLEMENTARY INFORMATION:

Background

On March 22, 1993, the Department published in the **Federal Register** the antidumping duty order on certain hot-rolled lead and bismuth carbon steel products from the United Kingdom (58 FR 15324).

On March 11, 1998, we published in the **Federal Register** (62 FR 11868) a notice of opportunity to request an administrative review of the antidumping duty order on certain hot-rolled lead and bismuth carbon steel products from the United Kingdom covering the period March 1, 1997, through February 28, 1998.

In accordance with 19 CFR 351.213(b)(1), both BSES and petitioners requested that we conduct this administrative review. We published a notice of initiation of this antidumping duty administrative review on April 24, 1998 (63 FR 20378).

On April 28, 1998, petitioners requested that the Department determine whether antidumping duties have been absorbed by BSES. On January 29, 1999, the Department requested proof that unaffiliated purchasers will ultimately pay the antidumping duties to be assessed on entries during the review period.

The Department is conducting this administrative review in accordance with section 751 of the Act.

Scope of the Review

The products covered by this review are hot-rolled bars and rods of nonalloy or other alloy steel, whether or not descaled, containing by weight 0.03 percent or more of lead or 0.05 percent or more of bismuth, in coils or cut lengths, and in numerous shapes and sizes. Excluded from the scope of this

review are other alloy steels (as defined by the *Harmonized Tariff Schedule of the United States* (HTSUS) Chapter 72, note 1 (f)), except steels classified as other alloy steels by reason of containing by weight 0.4 percent or more of lead, or 0.1 percent or more of bismuth, tellurium, or selenium. Also excluded are semi-finished steels and flat-rolled products. Most of the products covered in this review are provided for under subheadings 7213.20.00.00 and 7214.30.00.00 of the HTSUS. Small quantities of these products may also enter the United States under the following HTSUS subheadings: 7213.31.30.00; 7213.31.60.00; 7213.39.00.30; 7213.39.00.60; 7213.39.00.90; 7213.91.30.00; 7213.91.45.00; 7213.91.60.00; 7213.99.00; 7214.40.00.10, 7214.40.00.30, 7214.40.00.50; 7214.50.00.10; 7214.50.00.30, 7214.50.00.50; 7214.60.00.10; 7214.60.00.30; 7214.60.00.50; 7214.91.00; 7214.99.00; 7228.30.80.00; and 7228.30.80.50. HTSUS subheadings are provided for convenience and Customs purposes. The written description of the scope of this proceeding is dispositive.

Duty Absorption

On April 28, 1998, the petitioners requested that the Department determine whether antidumping duties had been absorbed during the POR. Section 751(a)(4) of the Act provides for the Department, if requested, to determine during an administrative review initiated two or four years after the publication of the order, whether antidumping duties have been absorbed by a foreign producer or exporter, if the subject merchandise is sold in the United States through an affiliated importer. In this case, BSES sold to the United States through an importer that is affiliated within the meaning of section 751(a)(4) of the Act.

Section 351.213(j)(2) of the Department's regulations provides that for transition orders (*i.e.*, orders in effect on January 1, 1995), the Department will conduct duty absorption reviews, if requested, for administrative reviews initiated in 1996 or 1998. Because the order underlying this review was issued prior to January 1, 1995, and this review was initiated in 1998, we will make a duty absorption determination in this segment of the proceeding.

On January 29, 1998, the Department requested proof that unaffiliated purchasers will ultimately pay the antidumping duties to be assessed on entries during the review period. BSES did not respond to the Department's request for information. Based on the record, we cannot conclude that the unaffiliated purchasers in the United States will pay the ultimately assessed duty. Furthermore, we have preliminarily determined that there is a dumping margin on 66 percent of BSES' U.S. sales during the POR. Therefore, we find that antidumping duties have been absorbed by BSES on 66 percent of its U.S. sales.

Fair Value Comparisons

To determine whether sales of the subject merchandise by BSES to the United States were made at less than NV, we compared export price (EP) to the NV, as described in the "Export Price" and "Normal Value" sections of this notice.

Pursuant to section 777(A)(d)(2), we compared the EPs of individual U.S. transactions to the monthly weighted-average NV of the foreign like product where there were sales made at prices above the cost of production (COP), as discussed in the "Cost of Production Analysis" section, below, and were otherwise in the ordinary course of trade.

Product Comparisons

In accordance with section 771(16) of the Act, we considered all products produced by BSES covered by the description in the "Scope of the Review" section, above, to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. We compared U.S. sales to sales made in the home market within the contemporaneous window period, which extends from three months prior to the U.S. sale until two months after the sale. Where there were no sales of identical merchandise in the home market made in the ordinary course of trade to compare to U.S. sales, we compared U.S. sales to the most similar foreign like product made in the ordinary course of trade. In making the product comparisons, we matched foreign like products based on the physical characteristics reported by the respondents in the following order: chemical composition, shape, cut (*i.e.*, coil or cut-to-length), size, and grade.

Consistent with our practice (*see, e.g., Final Results of Antidumping Duty Administrative Review: Cold-Rolled Carbon Steel Flat Products from the Netherlands*, 61 FR 48465, September 13,1996), we compared prime quality models sold in the United States to identical prime quality models sold in the home market. Where no home market sales of identical prime quality models made in the ordinary course of trade existed, we compared the U.S. sales of prime quality models to the most similar prime quality foreign like product made in the ordinary course of trade, based on the characteristics listed above. There were no U.S. sales of second quality models during the POR.

Export Price

We based United States price on EP, as defined in section 772(a) of the Act, because the merchandise was sold directly by the exporter to unaffiliated U.S. purchasers prior to the date of importation and constructed export price was not otherwise indicated by the facts of record. When sales are made prior to importation through an affiliated or unaffiliated U.S. sales agent to an unaffiliated customer in the United States, our practice is to examine several criteria in order to determine whether the sales are EP sales. Those criteria are: (1) whether the merchandise was shipped directly from the manufacturer to the unaffiliated U.S. customer; (2) whether this was the customary commercial channel between the parties involved; and (3) whether the function of the U.S. selling agent was limited to that of a "processor of sales-related documentation" and a "communications link" with the unaffiliated U.S. buyer. Where all three criteria are met, indicating that the activities of the U.S. selling agent are ancillary to the sale, the Department has determined the sales to be EP sales. *See, e.g., Notice of Final Results of Sales at Less Than Fair Value: Stainless Steel Wire Rod From Italy*, 63 FR 40422, 40424–25, July 29, 1998. In the instant review, the role of BSES' U.S. subsidiary was limited to providing marketing support and referring customer inquiries to the parent company. Thus, the above-referenced criteria have been met, and we have treated all U.S. sales as EP sales.

We calculated EP based on packed, delivered prices to customers in the United States. We made deductions, where applicable, for foreign inland freight, FOB charges in the United Kingdom, ocean freight, marine insurance, U.S. Customs duties, brokerage and handling charges, merchandise processing fees, and U.S. inland freight charges, in accordance with 19 CFR 351.402(a). We also made adjustments for invoice corrections.

Normal Value

In order to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating NV, the Department compared BSES's volume of home market sales of the foreign like product to its volume of U.S. sales of the subject merchandise, in accordance with

sections 773(a)(1) (B) and (C) of the Act. Because BSES' aggregate volume of home market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales of the subject merchandise, we determined that the home market provides a viable basis for calculating NV, in accordance with 19 CFR 351.404(b).

Many of BSES' home market sales were made to affiliated original equipment manufacturers (OEMs). It is the Department's practice, in situations where home market sales are made to affiliated parties, to determine whether it is appropriate to use such sales as the basis of NV by comparing the prices of those sales to the prices of sales to unaffiliated parties, on a model-by-model basis. *See Final Results of Antidumping Duty Administrative Reviews, Partial Termination of Administrative Reviews, and Revocation in Part of Antidumping Duty Orders; Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from France, et al.*, 60 FR 10899, 10900, February 28, 1995; and 19 CFR 351.403(c). Because BSES made home market sales to affiliated OEMs during the period of review (POR), we tested these sales to ensure that, on average, the affiliated-party sales were made at arm's length. To conduct this test, we compared the weighted-average gross unit prices of sales to affiliated and unaffiliated customers net of all movement charges, direct selling expenses, invoice corrections, rebates, and packing. As a result of our arm's-length test, we disregarded sales to the affiliated OEM customers in the home market where the prices charged to an affiliated customer were on average less than 99.5 percent of the prices charged to unaffiliated customers. *See Final Results of Antidumping Duty Administrative Review; Certain Welded Carbon Steel Pipes and Tubes From Thailand* 62 FR 53809, 53817, October 16, 1997. We did not require BSES to provide downstream sales by the affiliated OEM customers because these customers further manufactured the subject merchandise into merchandise not covered by the order. BSES also sold through affiliated resellers to unaffiliated customers during the POR. BSES reported these unaffiliated-customer transactions, and we used them in our determination of NV. *See* 19 CFR 351.403(d).

In accordance with section 773(a)(1)(B)(i) of the Act, to the extent practicable, we based NV on sales at the same level of trade (LOT) as the EP sale. If NV was calculated at a different LOT, we made an adjustment, if appropriate and if possible, in accordance with section 773(a)(7) of the Act. (*See* "Level of Trade" section below.)

Level of Trade

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same LOT as the EP transaction. The NV LOT is that of the starting-price sales in the comparison market or, when NV is based on CV, that of the sales from which we derive selling, general and administrative (SG&A) expenses and profit. For EP, the LOT is also the level of the starting-price sale, which is usually from the exporter to an unaffiliated U.S. customer. To determine whether NV sales are at a different LOT than EP sales, we examined stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison-market sales are at a different LOT and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison-market sales at the LOT of the export transaction, we make an LOT adjustment under section 773(a)(7)(A) of the Act.

While BSES did not claim a LOT adjustment, we have, nonetheless, undertaken an evaluation to determine whether such an adjustment was necessary. In so doing, we examined respondent's distribution systems, including selling functions, classes of customers, and selling expenses. BSES reported two channels of distribution in the home market: (1) sales produced to order and shipped from the mill directly to unaffiliated OEMs (Channel 1 sales); and (2) sales by affiliated resellers to unaffiliated OEMs (Channel 2 sales). In analyzing the information submitted, we found that the two home market channels differ with respect to selling activities. Channel 2 sales involved additional selling activities including: ordering by the reseller for its own account in anticipation of future customer orders; maintenance of inventory; small lot sales; cutting into short lengths; and rebundling into smaller weight bundles. None of these activities are typical of mill direct sales to Channel 1 customers. Further, we found that these channels constitute different stages in the marketing process. Based on this analysis, we find that the two home market channels of distribution comprise two LOTs.

BSES reported EP sales in the U.S. market, which were made to order by BSES, and shipped directly to OEMs in the United States. We found that EP sales involved the same selling functions and therefore were sold at the same marketing stage as BSES' home market Channel 1 sales, described above. Therefore, we have determined that the LOT for all EP sales is the same as Channel 1 in the home market. Accordingly, we have compared the U.S. sales to sales at the same LOT in the home market when possible. If we found no contemporaneous home market Channel 1 sales of the identical or most similar product, we matched the EP sale to home market Channel 2 sales of that product. Because we compared sales at different LOTs in some instances, we examined whether a LOT adjustment was appropriate. Based on our analysis, we determined that there was a pattern of consistent price differences between the Channel 1 and Channel 2 LOTs in the home market. Therefore, when we compared sales at different LOTs, we made an adjustment in accordance with section 773(a)(7)(A) of the Act. (*See* Memorandum to the File from The Team dated March 31, 1999, for further explanation.)

Cost of Production Analysis

Pursuant to section 773(b) of the Act, for this POR, we initiated an investigation of sales at less than the COP. We performed this analysis because, in the final results of the most recent administrative review of BSES, we disregarded BSES' home market sales that were below the COP. *See Final Results of Antidumping Duty Administrative Review; Certain Hot-Rolled Lead and Bismuth Carbon Steel Products From the United Kingdom*, 62 FR 18744, April 17, 1997. Therefore, in accordance with section 773(b)(2)(A)(ii) of the Act, we had reasonable grounds to believe or suspect that BSES made sales at less than the COP during this review period. Before making any NV comparisons, we conducted the COP analysis described below.

A. Calculation of COP

We calculated the COP based on the sum of BSES' cost of materials and fabrication employed in producing the foreign like product, plus amounts for home market general and administrative expenses. We relied on the home market sales and COP information provided by BSES in its questionnaire responses.

B. Test of Home Market Prices

After calculating COP, we tested whether home market sales of hot-rolled lead and bismuth carbon steel were made at prices below the COP within an extended period of time in substantial quantities, and whether such prices permitted recovery of all costs within a

reasonable period of time. We compared the model-specific COP to the reported home market prices less any applicable invoice corrections, movement charges, rebates, direct and indirect selling expenses, and packing costs.

C. Results of COP Test

Pursuant to section 773(b)(2)(C) of the Act, where less than 20 percent of the respondent's sales of a specific model were at prices less than the COP, we did not disregard any below-cost sales of that product because we determined that the below-cost sales were not made in "substantial quantities." Where 20 percent or more of the respondent's sales of a specific model during the POR were at prices less than the COP, we disregarded the below-cost sales because we determined that the below-cost sales were made within an extended period of time in "substantial quantities" in accordance with sections 773(b)(2)(B) and (C) of the Act, and because, based on our comparisons of prices to weighted-average COPs for the POR, we determined that the below-cost sales of the product were at prices which would not permit recovery of all costs within a reasonable period of time, as defined in section 773(b)(2)(D) of the Act. Based on this test, we disregarded certain below-cost home market sales made by BSES.

Price-to-Price Comparisons

Pursuant to section 777A(d)(2) of the Act, we compared the EPs of individual transactions to the monthly weighted-average price of sales of the foreign like product where there were sales at prices above COP, as discussed above. We based NV on packed, delivered prices to unaffiliated purchasers in the home market, and to affiliated purchasers in the home market to the extent that prices were at arm's length. We made adjustments to home market price, where applicable, in accordance with section 773(a)(6) of the Act, for invoice corrections, rebates, and inland freight. We also made a circumstance-of-sale adjustment for differences in credit, credit insurance and warranty expenses pursuant to section 773(a)(6)(C)(iii) of the Act. In order to adjust for differences in packing between the two markets, we increased home market price by the amount of U.S. packing costs and reduced it by the amount of home market packing costs. We made adjustments, where appropriate, for physical differences in merchandise, in accordance with section 773(a)(6)(C)(ii) of the Act, and for differences in LOT, in accordance with section 773(a)(7)(A) of the Act.

Preliminary Results of the Review

As a result of our comparison of EP and NV, we preliminarily determine that the following weighted-average dumping margin exists:

Manufacturer/exporter	Period	Margin (percent)
British Steel Engineering Steels Limited (BSES) (formerly United Engineering Steels Limited)	3/1/97–2/28/98	12.55

Parties to the proceeding may request disclosure within five days of the date of publication of this notice. Any interested party may request a hearing within 30 days of publication. Any hearing, if requested, will be held 80 days after the date of publication or the first business day thereafter.

Issues raised in the hearing will be limited to those raised in the respective case briefs and rebuttal briefs. Case briefs from interested parties and rebuttal briefs, limited to the issues raised in the respective case briefs, may be submitted not later than 70 days and 77 days, respectively, from the date of publication of these preliminary results. *See* 19 CFR 351.309(c) and (d). Parties who submit case briefs or rebuttal briefs in this proceeding are requested to submit with each argument (1) a statement of the issue and (2) a brief summary of the argument. Parties are also encouraged to provide a summary of the arguments not to exceed five pages and a table of statutes, regulations and cases cited.

The Department will subsequently issue the final results of this administrative review, including the results of its analysis of issues raised in any such written briefs or at the hearing, if held, not later than 120 days after the date of publication of this notice.

Interested parties who wish to request a hearing or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, Room B–099, within 30 days of the date of publication of this notice. Requests should contain: (1) the party's name, address and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. *See* 19 CFR 351.310(c).

Assessment Rates

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. The Department will issue appropriate appraisement instructions directly to the Customs Service upon completion of this review. The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by this review and for future deposits of estimated duties. We will instruct the Customs Service to assess antidumping duties on all appropriate entries covered by this review if any importer-specific assessment rate calculated in the final results of this review is above *de minimis*. For assessment purposes, we intend to calculate importer-specific assessment rates for the subject merchandise by aggregating the dumping margins calculated for all U.S. sales examined and dividing this amount by the total quantity sold.

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Cash Deposit Requirements

The following cash deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for the reviewed company will be that established in the final results of this review, except if the rate is less than 0.50 percent, and therefore, *de minimis* within the meaning of 351.106(d)(1), in which case the cash deposit rate will be zero; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less than fair value (LTFV) investigation, but the manufacturer is, the cash deposit rate

will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 25.82 percent, the "All Others" rate made effective by the LTFV investigation. These requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This administrative review and notice are published in accordance with section 751(a)(1) of the Act and 19 CFR 351.221.

Dated: March 31, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99–8486 Filed 4–5–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–428–811]

Certain Hot-Rolled Lead and Bismuth Carbon Steel Products from Germany: Preliminary Results of Antidumping Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce

ACTION: Notice of preliminary results of antidumping duty administrative review.

SUMMARY: The Department of Commerce ("the Department") is conducting an administrative review of the antidumping duty order on certain hot-rolled lead and bismuth carbon steel products from Germany in response to a request by the respondent, Saarstahl AG ("Saarstahl"). This review covers the period March 1, 1997, through February 28, 1998.

We have preliminarily determined that sales have not been made below normal value ("NV"). Interested parties are invited to comment on these preliminary results. If these preliminary results are adopted in our final results of administrative review, we will instruct the Customs Service not to assess antidumping duties on entries subject to this review.

EFFECTIVE DATE: April 6, 1999.

FOR FURTHER INFORMATION CONTACT: David J. Goldberger or Rebecca Trainor, Office 5, AD/CVD Enforcement Group II, Import Administration, Room B099, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington D.C. 20230; telephone (202) 482–4136, or 482–4007, respectively.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations at 19 CFR Part 351 (1998).

SUPPLEMENTAL INFORMATION:

Background

On March 22, 1993, the Department published in the **Federal Register** the antidumping duty order on certain hot-rolled lead and bismuth carbon steel products from Germany (58 FR 15324).

On March 11, 1998, we published in the **Federal Register** (62 FR 11868) a notice of opportunity to request an administrative review of the antidumping duty order on certain hot-rolled lead and bismuth carbon steel products from Germany covering the period March 1, 1997, through February 28, 1998.

In accordance with 19 CFR 351.213(b)(1), Saarstahl requested that we conduct an administrative review of its sales. We published a notice of initiation of this antidumping duty administrative review on April 24, 1998 (63 FR 20378).

On April 28, 1998, petitioners requested that the Department determine whether antidumping duties have been absorbed by Saarstahl. On January 29, 1999, the Department requested proof that unaffiliated purchasers will ultimately pay the antidumping duties to be assessed on entries during the review period.

The Department is conducting this administrative review in accordance with section 751 of the Act.

Scope of the Review

The products covered by this review are hot-rolled bars and rods of nonalloy or other alloy steel, whether or not descaled, containing by weight 0.03 percent or more of lead or 0.05 percent or more of bismuth, in coils or cut lengths, and in numerous shapes and sizes. Excluded from the scope of this review are other alloy steels (as defined by the *Harmonized Tariff Schedule of the United States* (HTSUS) Chapter 72, note 1 (f)), except steels classified as other alloy steels by reason of containing by weight 0.4 percent or more of lead, or 0.1 percent or more of bismuth, tellurium, or selenium. Also excluded are semi-finished steels and flat-rolled products. Most of the products covered in this review are provided for under subheadings 7213.20.00.00 and 7214.30.00.00 of the HTSUS. Small quantities of these products may also enter the United States under the following HTSUS subheadings: 7213.31.30.00; 7213.31.60.00; 7213.39.00.30; 7213.39.00.60; 7213.39.00.90; 7213.91.30.00; 7213.91.45.00; 7213.91.60.00; 7213.99.00; 7214.40.00.10, 7214.40.00.30, 7214.40.00.50; 7214.50.00.10; 7214.50.00.30, 7214.50.00.50; 7214.60.00.10; 7214.60.00.30; 7214.60.00.50; 7214.91.00; 7214.99.00; 7228.30.80.00; and 7228.30.80.50. HTSUS subheadings are provided for convenience and Customs purposes. The written description of the scope of this proceeding is dispositive.

Duty Absorption

On April 28, 1998, the petitioners requested that the Department determine whether antidumping duties had been absorbed during the POR. Section 751(a)(4) of the Act provides for the Department, if requested, to determine during an administrative review initiated two or four years after the publication of the order, whether antidumping duties have been absorbed by a foreign producer or exporter, if the subject merchandise is sold in the United States through an affiliated importer. In this case, Saarstahl sold to the United States through an importer that is affiliated within the meaning of section 751(a)(4) of the Act.

Section 351.213(j)(2) of the Department's regulations provides that for transition orders (*i.e.*, orders in effect on January 1, 1995), the Department will conduct duty absorption reviews, if requested, for administrative reviews initiated in 1996 or 1998. Because the order underlying this review was issued prior to January 1, 1995, and this review was initiated in 1998, we will make a duty absorption determination in this segment of the proceeding. As we have preliminarily found that there is no dumping margin for Saarstahl with respect to its U.S. sales, we have also preliminarily found that there is no duty absorption.

Fair Value Comparisons

To determine whether sales of the subject merchandise by Saarstahl to the United States were made at less than NV, we compared export price ("EP") to the NV, as described in the "Export Price" and "Normal Value" sections of this notice.

Pursuant to section 777A(d)(2) of the Act, we compared the EPs of individual U.S. transactions to the monthly weighted-average NV of the foreign like product where there were sales made at prices above the cost of production (COP), as discussed in the "Cost of Production Analysis" section, below and were otherwise in the ordinary course of trade.

Product Comparisons

In accordance with section 771(16) of the Act, we considered all products produced by Saarstahl covered by the description in the "Scope of the Review" section, above, to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. We compared U.S. sales to sales made in the home market within the contemporaneous window period, which extends from three months prior to the U.S. sale until two months after the sale. Where there were no sales of identical merchandise in the home market made in the ordinary course of trade to compare to U.S. sales, we compared U.S. sales to the most similar foreign like product made in the ordinary course of trade. In making the product comparisons, we matched foreign like products based on the physical characteristics reported by the respondents in the following order: chemical composition, shape, cut (*i.e.*, coil or cut-to-length), size, and grade (*see* Model Match Methodology Memorandum from the Team to Irene Darzenta Tzafolias, dated March 22, 1999 ("Model Match Methodology Memorandum")).

Consistent with our practice (*see, e.g., Final Results of Antidumping Duty Administrative Review: Cold-Rolled Carbon Steel Flat Products from the Netherlands*, 61 FR 48465, (September 13, 1996)), we compared prime quality models sold in the United States to identical prime quality models sold in the home market. Where no home market sales of identical prime quality models made in the ordinary course of trade existed, we compared the U.S. sales of prime quality models to the most similar prime quality foreign like product made in the ordinary course of trade, based on the product characteristics listed above. There were no U.S. sales of second quality models during the POR.

The petitioners contend that the Department should also include casting type (*i.e.*, bloom or billet casting) as a product matching characteristic. When selecting model match criteria, we normally choose physical characteristics of the merchandise that are identifiable and/or quantifiable (*see, e.g., Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Melamine Institutional Dinnerware Products From Indonesia*, 61 FR 43333, 43334, August 22, 1996). As discussed in the Model Match Methodology Memorandum, we did not use this production method characteristic in the model match hierarchy because, other than the petitioners' general contention that bloom-cast products are of better quality than billet-cast products, there is no information on the record indicating that merchandise produced by different casting methods results in any discrete, quantifiable differences in the physical characteristics of the merchandise. In addition, while the petitioners have demonstrated a difference in costs between the two production methods, no party has demonstrated that there are differences in cost attributable to differences in physical characteristics of the merchandise.

Because Saarstahl reported product costs and control numbers to distinguish between casting type, we have revised the weight-averaged costs of the products reported based solely on the matching criteria identified above.

Export Price

We based United States price on EP, as defined in section 772(a) of the Act, because the merchandise was sold directly by the exporter to unaffiliated U.S. purchasers prior to the date of importation and constructed export price was not otherwise indicated by the facts of record. When sales are made prior to importation through an affiliated or unaffiliated U.S. sales agent to an unaffiliated customer in the United States, our practice is to examine several criteria in order to determine whether the sales are EP sales. Those criteria are: (1) Whether the merchandise was shipped directly from the manufacturer to the unaffiliated U.S. customer; (2) whether this was the customary commercial channel between the parties involved; and (3) whether the function of the U.S. selling agent was limited to that of a "processor of sales-related documentation" and a "communications link" with the unaffiliated U.S. buyer. Where all three criteria are met, indicating that the activities of the U.S. selling agent are ancillary to the sale, the Department has determined the sales to be EP sales (*see, e.g., Notice of Final Results of Sales at Less Than Fair Value: Stainless Steel Wire Rod from Italy*, 63 FR 40422, 40424–25, July 29,1998). In the instant review, the above-referenced criteria have been met. As discussed in Saarstahl's questionnaire responses, Saarsteel, Inc., Saarstahl's affiliate in the United States, acts only as a communications link and a processor of sales-related documentation. It has no role in selling the merchandise and it does not inventory the subject merchandise. Accordingly, we have treated all U.S. sales as EP sales.

We calculated EP based on packed, delivered prices to customers in the United States. We made deductions, where applicable, for foreign inland freight and brokerage and handling expenses in Germany, ocean freight, marine insurance, U.S. Customs duties, brokerage and handling charges, merchandise processing fees, and U.S. inland freight charges, in accordance with section 772(c) of the Act.

Normal Value

In order to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating NV, the Department compared Saarstahl's volume of home market sales of the foreign like product to its volume of U.S. sales of the subject merchandise, in accordance with sections 773(a)(1)(C) of the Act. Because Saarstahl's aggregate volume of home market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales of the subject merchandise, we determined that the home market provides a viable basis for calculating NV, in accordance with Section 773(a)(1)(C) of the Act and 19 CFR 351.404(b).

Saarstahl's home market sales listing included merchandise of steel grades that Saarstahl stated are outside the scope of this review. Based on Saarstahl's representations of the merchandise in its December 28, 1998, and January 29, 1999, submissions, we excluded these sales from our analysis.

Many of Saarstahl's home market sales were made to affiliated parties. It is the Department's practice, in situations where home market sales are made to affiliated parties, to determine whether sales to affiliated parties might be appropriate to use as the basis of NV by comparing prices of those sales to prices of sales to unaffiliated parties, on a model-by-model basis. *See Final Results of Antidumping Duty Administrative Reviews, Partial Termination of Administrative Reviews, and Revocation in Part of Antidumping Duty Orders; Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, et al.*, 60 FR 10899, 10900, February 28, 1995; and 19 CFR 351.403(c). Because Saarstahl made home market sales to affiliated end-users during the POR, we tested these sales to ensure that, on

average, the affiliated-party sales were made at arm's length. To conduct this test, we compared the weighted-average unit prices of sales to affiliated and unaffiliated customers net of all movement charges, direct selling expenses, billing adjustments, and packing. As a result of our arm's-length test, we disregarded sales to the affiliated customers in the home market where the prices charged to an affiliated customer were on average less than 99.5 percent of the prices charged to unaffiliated customers. *See Final Results of Antidumping Duty Administrative Review; Certain Welded Carbon Steel Pipes and Tubes from Thailand*, 62 FR 53808, 53817, October 16, 1997.

In accordance with section 773(a)(1)(B)(i) of the Act, to the extent practicable, we based NV on sales at the same level of trade ("LOT") as the EP sale.

Level of Trade

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same LOT as the EP transaction. The NV LOT is that of the starting-price sales in the comparison market or, when NV is based on CV, that of the sales from which we derive selling, general and administrative ("SG&A") expenses and profit. For EP, the LOT is also the level of the starting-price sale, which is usually from exporter to importer. To determine whether NV sales are at a different level of trade than EP, we examined stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison-market sales are at a different LOT and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison-market sales at the LOT of the export transaction, we make an LOT adjustment under section 773(a)(7)(A) of the Act.

In this proceeding, Saarstahl reported three channels of distribution in the home market: (1) sales produced to order and shipped directly to the customer, (2) sales manufactured to order and maintained in a warehouse for "just in time" delivery, and (3) sales of secondary merchandise sold to resellers. In analyzing the data submitted, we found that the three home market channels differ significantly with respect to selling activities. Inventory maintenance is only offered to customers in the second channel. Freight and delivery services and technical advice are only offered to customers in the first and second channels. Further, we found that these channels constitute different stages in the marketing process. Based on this analysis, we find that the three home market channels of distribution comprise three LOTs.

In the United States, Saarstahl reported one channel of distribution, which involves sales produced to order and shipped directly to customers. The selling activities and functions associated with these sales are equivalent to those offered in the first home market channel discussed above. Accordingly, we have compared the U.S. sales to sales made at the same LOT in the home market.

Cost of Production Analysis

Pursuant to section 773(b) of the Act, for this POR, we initiated an investigation of sales at less than the cost of production ("COP"). As discussed in the Memorandum to Joe Spetrini, Deputy Assistant Secretary for AD/CVD Enforcement III from Edward Yang, Office Director, dated July 8, 1998, we initiated the COP investigation because, in the preliminary determination of the less-than-fair-value ("LTFV") investigation, we disregarded some of Saarstahl's home market sales found to be below the COP (*see Preliminary Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Lead and Bismuth Carbon Steel Products From Germany*, 57 FR 44551, September 28, 1992). Saarstahl subsequently failed both the sales and COP verifications and the Department relied on the best information available as the basis for the final determination (*see Final Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Lead and Bismuth Carbon Steel Products From Germany*, 58 FR 6205, January 27, 1993). Therefore, in accordance with section 773(b)(2)(A)(ii) of the Act, we had reasonable grounds to believe or suspect that sales made at less than the COP may have occurred during this review period. Before making any NV comparisons, we conducted the COP analysis described below.

A. Calculation of COP

We calculated the COP based on the sum of Saarstahl's cost of materials and fabrication employed in producing the foreign like product, plus amounts for home market general and administrative (G&A) expenses and interest expenses. We made no adjustments to the data provided by Saarstahl in its questionnaire responses.

B. Test of Home Market Prices

After calculating COP, we tested whether home market sales of hot-rolled lead and bismuth carbon steel were made at prices below the COP within an extended period of time in substantial quantities, and whether such prices permitted recovery of all costs within a reasonable period of time. We compared the model-specific COP to the reported home market prices less any applicable movement charges, billing adjustments, direct and indirect selling expenses, and packing.

For indirect selling expenses incurred in Germany, Saarstahl reported the actual expenses incurred during the POR by its affiliate Vertriebsgesellschaft Saarstahl m.b.H. ("VGS"), which handles all of Saarstahl's sales and distribution activities. Since the COP response is based on Saarstahl's expenses during its fiscal year, corresponding to the calendar year, we recalculated the indirect selling expenses to reflect the fiscal year, based on the ratio of VGS' expenses to sales revenue reported in its 1997 financial statement, which covers the 1997 calendar year. These expenses included commission payments to unaffiliated parties. To avoid double-counting, we did not deduct these commissions from the net home market price we compared to COP.

C. Results of COP Test

Pursuant to section 773(b)(2)(C) of the Act, where less than 20 percent of the respondent's sales of a specific model were at prices less than the COP, we did not disregard any below-cost sales of that product because we determined that the below-cost sales were not made in "substantial quantities." Where 20 percent or more of the respondent's sales of a specific model during the POR were at prices less than the COP, we disregarded the below-cost sales because we determined that the below-cost sales were made within an extended period of time in "substantial quantities" in accordance with sections 773(b)(2)(B) and (C) of the Act, and because, based on our comparisons of prices to weighted-average COPs for the POR, we determined that the below-cost sales of the product were at prices which would not permit recovery of all costs within a reasonable period of time, as defined in section 773(b)(2)(D) of the Act. Based on this test, we disregarded certain below-cost home market sales made by Saarstahl.

Price-to-Price Comparisons

Pursuant to section 777A(d)(2) of the Act, we compared the EPs of individual

transactions to the monthly weighted-average price of sales of the foreign like product where there were sales at prices above COP, as discussed above. We based NV on packed, delivered prices to unaffiliated purchasers in the home market, and to affiliated purchasers in the home market to the extent that prices were at arm's-length. We made adjustments to home market price, where applicable, in accordance with section 773(a)(6) of the Act, for billing adjustments, inland freight, and warehousing expenses. We also made circumstance-of-sale adjustments for differences in credit expenses, interest revenue, bank fees (based on information in Saarstahl's February 26, 1999, response), warranties, and commissions paid to unaffiliated parties pursuant to section 773(a)(6)(C)(iii) of the Act.

Saarstahl paid commissions to unaffiliated parties on certain sales in the home market, but did not pay any commissions to unaffiliated parties on U.S. sales. Under 19 CFR 351.410 (e), where there is a commission paid in one market and none in the other market, we offset the commission with indirect selling expenses incurred in the other market to the extent of the lesser of the commission or the indirect selling expenses. Accordingly, where appropriate, we offset the weighted-average home market commission by deducting it from the weighted-average home market price and then adding the sale-specific U.S. indirect selling expenses. For U.S. indirect selling expenses, we used the recalculated indirect selling expenses incurred in Germany, as described in the "Cost of Production Analysis" section above. In addition, we calculated the selling expenses incurred by Saarstahl's U.S. affiliate, Saarsteel, Inc., based on the ratio of Saarsteel's selling expenses to sales revenue reported in its 1997 financial statement. We also included the reported inventory carrying expense amount on U.S. sales in the total amount of U.S. indirect selling expenses available to offset the weighted-average home market commissions.

In order to adjust for differences in packing between the two markets, we increased home market price by the amount of U.S. packing costs and reduced it by the amount of home market packing costs. We made adjustments, where appropriate, for physical differences in merchandise, in accordance with section 773(a)(6)(C)(ii) of the Act.

For home market sales where the payment date was not reported as of the date of submission of the latest home market sales listing, we recalculated imputed credit expenses using the date of the latest sales listing submission as the payment date.

Preliminary Results of the Review

As a result of our comparison of EP and NV, we preliminarily determine that the following weighted-average dumping margin exists:

Manufacturer/Exporter	Period	Margin (percent)
Saarstahl AG (Saarstahl)	3/1/97–2/28/98	0.00

Parties to the proceeding may request disclosure within five days of the date of publication of this notice. Any interested party may request a hearing within 30 days of publication. Any hearing, if requested, will be held 80 days after the date of publication or the first business day thereafter.

Issues raised in the hearing will be limited to those raised in the respective case briefs and rebuttal briefs. Case briefs from interested parties and rebuttal briefs, limited to the issues raised in the respective case briefs, may be submitted not later than 70 days and 77 days, respectively, from the date of publication of these preliminary results. *See* 19 CFR 351.309(c) and (d). Parties who submit case briefs or rebuttal briefs in this proceeding are requested to submit with each argument (1) a statement of the issue and (2) a brief summary of the argument. Parties are also encouraged to provide a summary of the arguments not to exceed five pages and a table of statutes, regulations, and cases cited.

The Department will subsequently issue the final results of this administrative review, including the results of its analysis of issues raised in any such written briefs or at the hearing, if held, not later than 120 days after the date of publication of this notice.

Interested parties who wish to request a hearing or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, Room B–099, within 30 days of the date of publication of this notice. Requests should contain: (1) the party's name, address and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. See 19 CFR 351.310(c).

Assessment Rates

The Department shall determine and the Customs Service shall assess antidumping duties on all appropriate entries. The Department will issue appropriate appraisement instructions directly to the Customs Service upon completion of this review. The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by this review and for future deposits of estimated duties. We will instruct the Customs Service to assess antidumping duties on all appropriate entries covered by this review if any importer-specific assessment rate calculated in the final results of this review is above *de minimis*. For assessment purposes, we intend to calculate importer-specific assessment rates for the subject merchandise by aggregating the dumping margins calculated for all U.S. sales examined and dividing this amount by the total entered value of the sales examined.

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Cash Deposit Requirements

The following cash deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for the reviewed company will be that established in the final results of this review, except if the rate is less than 0.50 percent, and therefore, *de minimis* within the meaning of 19 CFR 351.106(d)(1), in which case the cash deposit rate will be zero; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this

review, a prior review, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufactures or exporters will continue to be 85.05 percent, the "All Others" rate made effective by the LTFV investigation. These requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This administrative review and notice are published in accordance with section 751(a)(1) of the Act and 19 CFR 351.221.

Dated: March 31, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99–8487 Filed 4–5–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–412–803]

Industrial Nitrocellulose From the United Kingdom: Notice of Extension of Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Extension of time limits for preliminary results of antidumping duty administrative review of industrial nitrocellulose from the United Kingdom.

SUMMARY: The Department of Commerce ("the Department") is extending the time limits for the preliminary results of the antidumping duty administrative review of the antidumping order on industrial nitrocellulose from the United Kingdom. This review covers one producer/exporter of industrial nitrocellulose for the period July 1, 1997, through June 30, 1998.

EFFECTIVE DATE: April 6, 1999.

FOR FURTHER INFORMATION CONTACT: Todd Peterson or Thomas Futtner, AD/CVD Enforcement Group II, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington D.C. 20230, telephone (202) 482–4195 or 482–3814, respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended ("the Act") are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are references to the provisions codified at 19 CFR part 351 (1998).

Extension of Time Limits for Preliminary Results

The Department initiated this administrative review on August 27, 1998 (63 FR 45796). Under section 751(a)(3)(A) of the Act, the Department may extend the deadline for completion of an administrative review if it determines that it is not practicable to complete the review within the statutory time limit. Due to the complexity of a certain issue in this case, the Department determines that it is not practicable to complete the preliminary results of this review within the statutory time limit. *See* memorandum from Holly A. Kuga to Robert S. LaRussa, which is on file in Room B–099 at the Department's headquarters. Therefore, the Department is extending the time limit for the preliminary results of the aforementioned review to July 31, 1999. The final determination will occur within 120 days of the publication of the preliminary results.

This extension of time limits is in accordance with section 751(a)(3)(A) of the Act.

Dated: March 30, 1999.

Louis Apple,

Acting Deputy Assistant Secretary, AD/CVD Enforcement Group II.

[FR Doc. 99–8484 Filed 4–5–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 032999B]

North Pacific Fishery Management Council; Notice of Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: The North Pacific Fishery Management Council and its advisory committees will hold public meetings.

SUMMARY: The North Pacific Fishery Management Council (Council) and its advisory committees will meet in Anchorage, AK.

DATES: See **SUPPLEMENTARY INFORMATION** for specific dates and times for the meetings.

ADDRESSES: The meetings will be held at the Anchorage Hilton Hotel, 500 W. Third Avenue, Anchorage, AK.

Council address: North Pacific Fishery Management Council, 605 W. 4th Ave., Suite 306, Anchorage, AK 99501–2252.

FOR FURTHER INFORMATION CONTACT: Council staff, telephone: 907–271–2809.

SUPPLEMENTARY INFORMATION:

Dates and Times for the Meetings

1. The Scientific and Statistical Committee (SSC) will begin at 9:30 a.m. on Monday, April 19, continuing through Wednesday, April 21, 1999.

2. The Advisory Panel (AP) will begin at 8:00 a.m. on Monday, April 19, and continue through Thursday, April 22, 1999.

3. The Council's Enforcement Committee and Individual Fishery Quota (IFQ) Implementation Team will meet at 6:00 p.m. on Tuesday, April 20, to discuss a proposed weighmaster program for the halibut and sablefish IFQ fisheries.

4. The Council's Enforcement Committee will meet at 6:00 p.m. on Wednesday, April 21, to discuss enforcement issues related to the Federal and State definitions of 'pelagic trawl.'

5. The Council will begin at 8:00 a.m. on Wednesday, April 21, continuing through a portion of Monday, April 26, 1999.

Other workgroup or committee meetings may be held during the week. Notices of these meetings will be posted at the hotel. All meetings are open to the public with the exception of Council executive sessions, which may be held during the noon hour during the meeting week, if necessary, to discuss personnel, international issues, or litigation.

Agendas

Scientific and Statistical Committee (SSC)

The SSC will address the following issues:

1. Reports on Federal and State research activities involving Steller sea lions, and review of an initial analysis of management measures for Steller sea lion protection for the years 2000 and beyond.

2. Initial review of amendments to Council fishery management plans designed to mitigate effects of recent

American Fisheries Act (AFA) measures on non-pollock fisheries, and initial review of amendments to fishery management plans to conform with the AFA.

3. Final review of management measures for seabird protection, and review an experimental fishery permits, if available, for bird avoidance measures.

4. Review of logbook data collection for the halibut charter fisheries off Alaska.

5. Initial review of fishery management plan amendments:

a. A non-pelagic trawl ban in Cook Inlet.

b. Initial review of alternatives for shark management.

6. Initial review of a proposed rebuilding plan for *C. bairdi* crab in the Bering Sea.

Advisory Panel

The agenda for the Advisory Panel will include the same subjects as listed below for the Council's plenary session, with the exception of Halibut Charter Guideline Harvest Level (Item 2), and Crab LLP Eligibility (Item 6), which they considered at their February 1999 meeting, and Magnuson-Stevens Act Reauthorization (Item 10), the NMFS Budget (Item 12), and the status reports listed in Item 1.

Council

The agenda for the Council's plenary session will include the following issues. The Council may take appropriate action on any of the issues identified.

1. The Council will receive the following reports, taking action if required:

a. Reports from the National Marine Fisheries Service (NMFS) and the Alaska Department of Fish and Game (ADF&G) on the current status of the groundfish fisheries off Alaska.

b. Reports from the U.S. Coast Guard and NMFS Enforcement on recent enforcement activities.

c. Report from the National Research Council on a recent ecosystems management study.

2. The Council will review a discussion paper of proposed management measures for the Alaska halibut charterboat fleet and provide direction to staff.

3. Receive reports on Federal and State research activities relating to Steller sea lions.

4. Initial review of alternatives and options for implementation of additional or alternative Steller sea lion protection measures for 2000 and beyond.

5. Initial review of fishery management plan amendments to conform with requirements of the American Fisheries Act (AFA), and initial review of an amendment package for fishery management measures to mitigate impacts of the AFA on non-pollock fisheries.

6. Consider revision of previous action on eligibility for the license limitation program for the crab fisheries off Alaska.

7. The Council will discuss sustainable fisheries management, and receive a progress report on development of criteria for defining habitat areas of particular concern.

8. The Council is scheduled to take final action on management measures for seabird protection, discuss the problem of net debris, and review experimental fishery permits, if available, for bird avoidance measures.

9. The Council will receive a status report on the national vessel monitoring system.

10. The Council will receive a status report on a proposed weighmaster program for the halibut and sablefish IFQ fisheries and take any necessary action.

11. The Council will hold an initial discussion of potential amendments to the Magnuson-Stevens Fishery Conservation and Management Act.

12. The Council will discuss and comment, if necessary, on a proposed rule to reduce observer coverage on longline catcher vessels 60 ft and under in the Community Development Quota (CDQ) program.

13. The Council will receive a status report on communities eligible under the CDQ program, and review an analysis to reduce CDQ observer coverage at shore plants.

14. The Council will discuss NMFS budget priorities and regional funding allocations within NMFS.

15. Under Groundfish Management, the Council will consider the following subjects:

a. Final action on reduction of the maximum retainable bycatch of shortraker/rougheye and thornyhead rockfish.

b. Initial review of an amendment to ban non-pelagic trawl gear in Cook Inlet.

c. Review of any proposals received for individual vessel bycatch accountability and halibut mortality avoidance programs.

d. Direction to staff on allocation of Bering Sea/Aleutian Islands Pacific cod between freezer longliners and other fixed gear.

e. Initial review of management alternatives for sharks in the waters off Alaska.

f. Discussion and direction to staff on analysis of species endorsements under the groundfish license limitation program.

g. Review experimental fisheries permit to assess sampling for species composition.

16. Initial review of a rebuilding plan for *bairdi* crab in the Bering Sea/Aleutian Islands.

17. Review Board of Fisheries activities concerning crab fishing seasons and new stand-down requirements.

The Council will review and discuss potential impacts of these actions on other Council-managed fisheries and take action as necessary.

Although other issues not contained in this agenda may come before this Council for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal Council action during the meeting. Council action will be restricted to those issues specifically identified in the agenda listed in this notice.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Helen Allen, 907–271–2809, at least 7 working days prior to the meeting date.

Dated: March 31, 1999.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–8471 Filed 4–5–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 032999C]

Western Pacific Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings.

SUMMARY: The Western Pacific Fishery Council (Council) will hold public meetings of its Bottomfish Advisory Panel (BAP) and Bottomfish Plan Team (BPT) in Honolulu, HI.

DATES: The BAP meeting will be held on April 21–22, 1999, from 8:30 a.m. to

5:00 p.m. each day. The BPT meeting will be held on April 28–29, 1999, from 8:30 a.m. to 5:00 p.m. each day.

ADDRESSES: Both meetings will be held at the Council office conference room, 1164 Bishop St., Suite 1400, Honolulu, HI; telephone: (808–522–8220).

Council address: Western Pacific Fishery Management Council, 1164 Bishop St., Suite 1400, Honolulu, HI 96813.

FOR FURTHER INFORMATION CONTACT: Kitty M. Simonds, Executive Director; telephone: 808–522–8220.

SUPPLEMENTARY INFORMATION: The BAP will discuss and may make recommendations to the Council on the agenda items below. The order in which agenda items will be addressed can change.

8:30 am Wednesday, April 21, 1999

1. Status of Northwestern Hawaiian Island (NWHI) and Main Hawaiian Islands (MHI) bottomfish management systems

A. Genetic research on onaga, ehu & hapuupuu stocks

B. Status of State's MHI management program (including enforcement and adequacy of closed areas)

2. Other concerns from the Region

A. Possible limited entry/closed areas in Northern Mariana Islands

B. Night scuba spear fishing in Guam

C. Other areas

3. Status of annual report recommendations (American Samoa, Guam, Hawaii, Northern Mariana Islands, Region-wide)

8:30 a.m. Thursday, April 22, 1999

4. Status of amendment addressing Sustainable Fishery Act (SFA) provisions

5. Council's Program Planning document

6. Comprehensive Data Amendment

7. Other business

8. Summary of Panel's recommendations

The BPT will discuss and may make recommendations to the Council on the agenda items below. The order in which agenda items will be addressed can change.

8:30 a.m. Wednesday, April 28, 1999

1. Improvements to annual report modules

A. Progress with previous recommendations

B. Suggestions for further improvements

2. 1998 annual report modules (status of fishery and area recommendations; American Samoa, Guam, Hawaii, Northern Mariana Islands)

3. 1998 annual report region-wide recommendations

A. Progress/status of previous year's recommendations

B. Development of new or repeat recommendations

8:30 a.m. Thursday, April 29, 1999

4. Status of amendment addressing SFA provisions

A. Bycatch

B. Overfishing

5. Addition of Bottomfish Management Unit Species (BMUS)

6. Status of NWHI bottomfish management system

A. Mau Zone limited entry amendment

7. MHI bottomfish management

A. Genetic stock structure of onaga & ehu

B. Genetic research needs for hapuupuu

C. Status of State's MHI management program (including enforcement and adequacy of closed areas)

8. Council's Program Planning document

9. Comprehensive Data Amendment

10. Recommendations of the Bottomfish Advisory Panel

11. Other business, and

12. Summary of Plan Team recommendations.

Although other issues not contained in this agenda may come before the Council for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kitty M. Simonds, 808–522–8220 (voice) or 808–522–8226 (fax), at least 5 days prior to meeting date.

Dated: March 30, 1999.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–8469 Filed 4–5–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

Patent and Trademark Office

Admittance To Practice and Roster of Registered Patent Attorneys and Agents Admitted To Practice Before the Patent and Trademark Office

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce (DOC), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on the continuing and proposed information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or June 7, 1999.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5033, 14th and Constitution Avenue, NW, Washington, DC 20230 (e mail address is LEngelme@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to the attention of Karen Bovard, Director, Office of Enrollment and Discipline, 2221 South Clark Street, Arlington, VA 22202, by telephone at (703) 306–4097, or by facsimile transmission to (703) 306–4134.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Office of Enrollment and Discipline (OED) collects information to determine the qualifications of individuals entitled to represent applicants before the Patent and Trademark Office (PTO) in the preparation and prosecution of applications for a patent. The OED also collects information to administer and maintain the roster of attorneys and agents registered to practice before the PTO.

There are forms associated with this information collection, which OED uses to collect information from the public. These forms are Form PTO–158 (Application for Registration to Practice Before the United States Patent and Trademark Office), Form PTO–158A (Application for Registration to Practice Before the United States Patent and Trademark Office Under 37 CFR 10.6(c) By a Foreign Resident), Form PTO–275 (Undertaking Under 37 CFR 10.10(b)), and Form PTO–107A (Data Sheet—Register of Patent Attorneys and

Agents). The applicant uses Forms PTO–158, 158A, and 275 to register for the examination. Form PTO–107A is used by the applicant to supply information for the register.

II. Method of collection

By mail, facsimile, and hand carry when the individual desires to participate in the information collection.

III. Data

OMB Number: 0651–0012.

Form Number: Form PTO–158, Form PTO–158A, Form PTO–275, and Form PTO–107A.

Type of Review: Revision of a currently approved collection.

Affected Public: Individuals or households, businesses or other for-profit, not-for-profit institutions, farms, state, local or tribal governments, and the Federal Government.

Estimated Number of Respondents: 8,100 responses per year.

Estimated Time Per Response: It is estimated to take approximately 30 minutes to complete either an application for registration to practice before the PTO or an application for a foreign resident to practice before the PTO. It is estimated to take 20 minutes to complete undertakings under 37 CFR 10.10(b) and data sheets for the register of patent attorneys and agents.

Estimated Total Annual Respondent Burden Hours: 3,557 hours per year.

Estimated Total Annual Respondent Cost Burden: $0 (no capital start-up or maintenance expenditures are required). $622,475 per year is estimated for salary costs associated with respondents.

Title of form	PTO Form Number	Estimated time for response (minutes)	Estimated annual burden hours	Estimated annual responses
Application for Registration to Practice Before the United States Patent and Trademark Office.	Form PTO–158	30	2,500	5,000
Application for Registration to Practice Before the United States Patent and Trademark Office Under 37 CFR 10.6(c) by a Foreign Resident.	Form PTO–158A	30	100	200
Undertaking under 37 CFR 10.10(b)	Form PTO–275	20	132	400
Data Sheet—Register of Patent Attorneys and Agents	Form PTO–107A	20	825	2,500
Totals		.....	3,557	8,100

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, e.g., the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized or included in the request for OMB approval of this information collection; they will also become a matter of public record.

Dated: March 31, 1999.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 99–8431, Filed 4–5–99; 8:45 am]

BILLING CODE 3510–16–P

CONSUMER PRODUCT SAFETY COMMISSION

Proposed Collection; Comment Request—Information Collection Requirements for Sound Levels of Toy Caps

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: As required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Consumer Product Safety Commission requests comments on a proposed extension of approval, for a period of three years from the date of approval by the Office of Management and Budget, of information collection requirements in a toy cap rule.

A regulation codified at 16 CFR 1500.18(a)(5) bans toy caps producing peak sound levels at or above 138 decibels (dB). Another regulation codified at 16 CFR 1500.86(a)(6) exempts toy caps producing sound levels between 138 and 158 dB from the banning rule if they bear a specified warning label and if firms intending to distribute such caps: (1) notify the Commission of their intent to distribute such caps; (2) participate in a program to develop toy caps producing sound levels below 138 dB; and (3) report quarterly to the Commission concerning the status of their programs to develop caps with reduced sound levels. The Commission wishes to obtain current and periodically updated information from all manufacturers concerning the status of programs to reduce sound levels of toy caps. The Commission will use this information to monitor industry efforts to reduce the sound levels of toy caps, and to ascertain which firms are currently manufacturing or importing toy caps with peak sound levels between 138 and 158 db.

The Commission will consider all comments received in response to this notice before requesting approval of this collection of information from the Office of Management and Budget.

DATES: Written comments must be received by the Office of the Secretary not later than June 7, 1999.

ADDRESSES: Written comments should be captioned "Information Collection Requirements for Sound Levels of Toy Caps" and mailed to the Office of the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207, or delivered to that office, room 502, 4330 East-West Highway, Bethesda, Maryland 20814. Written comments may also be sent to the Office of the Secretary by facsimile at (301) 504–0127 or by e-mail at cpsc-os@cpsc.gov.

FOR FURTHER INFORMATION CONTACT: For information about the proposed collection of information call or write Robert E. Frye, Director, Office of

Planning and Evaluation, Consumer Product Safety Commission, Washington, D.C. 20207; (301) 504–0416, Ext. 2264.

SUPPLEMENTARY INFORMATION:

A. Estimated Burden

The Commission staff estimates that there are ten firms required to annually submit the required information. The staff further estimates that the average number of hours per respondent is four per year, for a total of 40 hours of annual burden.

B. Request for Comments

The Commission solicits written comments from all interested persons about the proposed collection of information. The Commission specifically solicits information relevant to the following topics:

—Whether the collection of information described above is necessary for the proper performance of the Commission's functions, including whether the information would have practical utility;
—Whether the estimated burden of the proposed collection of information is accurate;
—Whether the quality, utility, and clarity of the information to be collected could be enhanced; and
—Whether the burden imposed by the collection of information could be minimized by use of automated, electronic or other technological collection techniques, or other forms of information technology.

Dated: April 1, 1999.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 99–8497 Filed 4–5–99; 8:45 am]

BILLING CODE 6355–01–P

CONSUMER PRODUCT SAFETY COMMISSION

Petition Requesting Labeling Rule for Polyurethane Foam in Upholstered Furniture

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: The Commission has received a petition from the National Association of State Fire Marshals requesting that the Commission require labels warning that polyurethane foam in upholstered furniture poses a fire hazard under the Flammable Fabrics Act. The Commission solicits written comments concerning the petition.

DATES: Comments on the petition should be received in the Office of the Secretary by June 7, 1999.

ADDRESSES: Comments, preferably in five copies, on the petition should be mailed to the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207, telephone (301) 504–0800, or delivered to the Office of the Secretary, Room 501, 4330 East-West Highway, Bethesda, Maryland 20814. Comments may also be filed by telefacsimile to (301) 504–0127 or by email to cpsc-os@cpsc.gov. Comments should be captioned "Petition FP 99–1, Petition for Labeling of Polyurethane Foam." A copy of the petition is available for inspection at the Commission's Public Reading Room, Room 419, 4330 East-West Highway, Bethesda, Maryland.

FOR FURTHER INFORMATION CONTACT: Rockelle Hammond, Office of the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207; telephone (301) 504–0800, ext. 1232.

SUPPLEMENTARY INFORMATION: The Commission has received correspondence from the National Association of State Fire Marshals ("NASFM") that requests the Commission to issue a rule under the Flammable Fabrics Act ("FFA").[1] NASFM asserts that polyurethane foam in upholstered furniture poses an unreasonable risk of fire because once ignited it burns rapidly and emits toxic gases. NASFM asks the Commission to require that upholstered furniture manufacturers and retailers provide flammability warnings to the public. The Commission is docketing the correspondence as a petition under provisions of the FFA, 15 U.S.C. 1191–1204.

Interested parties may obtain a copy of the petition by writing or calling the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504–0800. A copy of the petition is also available for inspection from 8:30 a.m. to 5 p.m., Monday through Friday, in the Commission's Public Reading Room, Room 419, 4330 East West Highway, Bethesda, Maryland.

[1] The Commission voted 2–1 to publish this notice requesting comments on the petition. Chairman Ann Brown and Commissioner Thomas Moore voted in favor of publication while Commissioner Mary Sheila Gall voted against it for the reason provided in a separate statement. A copy of Commissioner Gall's statement is available from the Office of the Secretary.

Dated: April 1, 1999.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 99–8496 Filed 4–5–99; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission of OMB review; comment request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

TITLE, ASSOCIATED FORM, AND OMB NUMBER: Nutritional Assessment and Dietary Intake; AF Form 2572; OMB Number 0701–0130.

TYPE OF REQUEST: Reinstatement.

NUMBER OF RESPONDENTS: 12,000.

RESPONSES PER RESPONDENT: 1.

ANNUAL RESPONSES: 12,000.

AVERAGE BURDEN PER RESPONSE: 15 minutes.

ANNUAL BURDEN HOURS: 3,000.

NEEDS AND USES: Respondents are medical beneficiaries referred for nutrition counseling. The information is used within individual military hospital settings only. Information is requested from individuals to determine their usual daily food intake and exercise patterns. The diet counselor assesses this information and determines adequacy of the diet, as well as conformance of the usual diet with prescribed dietary guidelines. This assessment is required by the Joint Commission on Accreditation of Healthcare Organizations.

AFFECTED PUBLIC: Individuals or households.

FREQUENCY: On occasion.

RESPONDENT'S OBLIGATION: Voluntary.

OMB DESK OFFICER: Mr. Edward C. Springer. Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DOD CLEARANCE OFFICER: Mr. Robert Cushing. Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: March 30, 1999.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 99–8360 Filed 4–5–99; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Revised Non-Foreign Overseas Per Diem Rates

AGENCY: DoD, Per Diem, Travel and Transportation Allowance Committee.

ACTION: Notice of revised non-foreign overseas per diem rates.

SUMMARY: The Per Diem, Travel and Transportation Allowance Committee is publishing Civilian Personnel Per Diem Bulletin Number 206. This bulletin lists revisions in the per diem rates prescribed for U.S. Government employees for official travel in Alaska, Hawaii, Puerto Rico, the Northern Mariana Islands and Possessions of the United States. AEA changes announced in Bulletin Number 194 remain in effect. Bulletin Number 206 is being published in the **Federal Register** to assure that travelers are paid per diem at the most current rates.

EFFECTIVE DATE: April 1, 1999.

SUPPLEMENTARY INFORMATION: This document gives notice of revisions in per diem rates prescribed by the Per Diem and Transportation Allowance Committee for non-foreign areas outside the continental United States. It supersedes Civilian Personnel Per Diem Bulletin Number 205. Distribution of Civilian Personnel Per Diem Bulletins by mail was discontinued. Per Diem Bulletins published periodically in the **Federal Register** now constitute the only notification of revisions in per diem rates to agencies and establishments outside the Department of Defense. For more information or questions about per diem rates, please contact your local travel office. The text of the Bulletin follows:

MAXIMUM PER DIEM RATES FOR OFFICIAL TRAVEL IN ALASKA, HAWAII, THE COMMONWEALTHS OF PUERTO RICO AND THE NORTHERN MARIANA ISLANDS AND POSSESSIONS OF THE UNITED STATES BY FEDERAL GOVERNMENT CIVILIAN EMPLOYEES

Locality	Maximum lodging amount (A)	+	M&IE rate (B)	=	Maximum per diem rate (C)	Effective date
ALASKA:						
ANCHORAGE [INCL NAV RES]:						
05/01–09/30	161		63		224	03/01/99
10/01–04/30	89		56		145	03/01/99
BARROW	115		73		188	03/01/99
BETHEL	105		60		165	03/01/99
COLD BAY	110		68		178	03/01/99
CORDOVA	85		62		147	03/01/98
CRAIG:						
05/01–08/31	115		52		161	05/01/97
09/01–04/30	79		64		143	05/01/97
DEADHORSE	80		67		147	03/01/99
DENALI NATIONAL PARK:						
06/01–08/31	115		52		167	03/01/98
09/01–05/31	90		50		140	03/01/98
DILLINGHAM	95		59		154	08/01/98
DUTCH HARBOR-UNALASKA	110		71		181	03/01/99
EARECKSON AIR STATION	80		57		137	03/01/99
EIELSON AFB:						
05/15–09/15	118		58		176	03/01/99
09/16–05/14	81		54		135	03/01/99
ELMENDORF AFB:						
05/01–09/30	161		63		224	03/01/99
10/01–04/30	89		56		145	03/01/99
FAIRBANKS:						
05/15–09/15	118		58		176	03/01/99
09/16–05/14	81		54		135	03/01/99
FT. RICHARDSON:						
05/01–09/30	161		63		224	03/01/99
10/01–04/30	89		56		145	03/01/99
FT. WAINWRIGHT:						
05/15–09/15	118		58		176	03/01/99
09/16–05/14	81		54		135	03/01/99
GLENNALLEN	90		52		142	10/01/98
HEALY:						
06/01–08/31	115		52		167	03/01/98
09/01–05/31	90		50		140	03/01/98
HOMER:						
05/15–09/15	115		58		173	03/01/99
09/16–05/14	98		57		155	03/01/99
JUNEAU	105		68		173	03/01/99
KAKTOVIK	175		74		249	03/01/99
KAVIK CAMP	125		69		194	03/01/99

MAXIMUM PER DIEM RATES FOR OFFICIAL TRAVEL IN ALASKA, HAWAII, THE COMMONWEALTHS OF PUERTO RICO AND THE NORTHERN MARIANA ISLANDS AND POSSESSIONS OF THE UNITED STATES BY FEDERAL GOVERNMENT CIVILIAN EMPLOYEES—Continued

Locality	Maximum lodging amount (A)	+	M&IE rate (B)	=	Maximum per diem rate (C)	Effective date
KENAI–SOLDOTNA:						
05/01–09/30	114		63		177	03/01/99
10/01–04/30	76		59		135	03/01/99
KENNICOTT	149		68		217	10/01/98
KETCHIKAN:						
05/01–09/30	110		74		184	03/01/99
10/01–04/30	88		73		161	03/01/99
KING SALMON	101		70		171	03/01/99
KLAWOCK:						
05/01–08/31	95		66		161	05/01/97
09/01–04/30	79		64		143	05/01/97
KODIAK	99		67		166	03/01/99
KOTZEBUE:						
05/01–08/31	137		75		212	03/01/99
09/01–04/30	73		61		134	03/01/99
KULIS AGS:						
05/01–09/30	161		63		224	03/01/99
10/01–04/30	89		56		145	03/01/99
MCCARTHY	149		68		217	10/01/98
METLAKATLA:						
05/30–10/01	85		52		137	03/01/99
10/02–05/29	78		51		129	03/01/99
MURPHY DOME:						
05/15–09/15	118		58		176	03/01/99
09/16–05/14	81		54		135	03/01/99
NOME:						
03/01–03/31	117		58		175	03/01/99
04/01–02/29	92		56		148	03/01/99
NUIQSUT	120		69		189	03/01/99
PETERSBURG	87		57		144	03/01/99
POINT HOPE	130		70		200	03/01/99
POINT LAY	105		67		172	03/01/99
PRUDHOE BAY	80		67		147	03/01/99
SEWARD:						
05/01–09/30	122		65		187	03/01/99
10/01–04/30	86		61		147	03/01/99
SITKA–MT. EDGECOMBE:						
04/01–09/04	101		60		161	03/01/98
09/05–03/31	83		59		142	03/01/98
SKAGWAY:						
05/01–09/30	110		74		184	03/01/99
10/01–04/30	88		73		161	03/01/99
SPRUCE CAPE	99		67		166	03/01/99
TANANA:						
03/01–03/31	117		58		175	03/01/99
04/01–02/29	92		56		148	03/01/99
UMIAT	107		33		140	03/01/99
VALDEZ:						
05/15–10/01	110		63		173	03/01/99
10–02–05/14	84		60		144	03/01/99
WAINWRIGHT	127		82		209	03/01/99
WRANGELL:						
05/01–09/30	110		74		184	03/01/99
10/01–04/30	88		73		161	03/01/99
YAKUTAT	110		68		178	03/01/99
[OTHER]	80		57		137	03/01/99
AMERICAN SAMOA:						
AMERICAN SAMOA	73		53		126	03/01/97
GUAM:						
GUAM (INCL ALL MIL INSTAL)	150		79		229	05/01/98
HAWAII:						
CAMP H M SMITH	110		61		171	07/01/97
EASTPAC NAVAL COMP TELE AREA	110		61		171	07/01/97
FT. DERUSSEY	110		61		171	07/01/97
FT. SHAFTER	110		61		171	07/01/97

MAXIMUM PER DIEM RATES FOR OFFICIAL TRAVEL IN ALASKA, HAWAII, THE COMMONWEALTHS OF PUERTO RICO AND THE NORTHERN MARIANA ISLANDS AND POSSESSIONS OF THE UNITED STATES BY FEDERAL GOVERNMENT CIVILIAN EMPLOYEES—Continued

Locality	Maximum lodging amount (A)	+	M&IE rate (B)	=	Maximum per diem rate (C)	Effective date
HICKAM AFB	110		61		171	07/01/97
HONOLULU NAVAL & MC RES CTR	110		61		171	07/01/97
ISLE OF HAWAII: HILO	80		52		132	06/01/98
ISLE OF HAWAII: OTHER	100		54		154	06/01/98
ISLE OF KAUAI:						
05/01–11/30	115		62		177	06/01/98
12/01–04/30	136		64		200	06/01/98
ISLE OF KURE	60		41		101	07/01/97
ISLE OF MAUI	112		64		176	06/01/98
ISLE OF OAHU	110		61		171	07/01/97
KANEOHE BAY MC BASE	110		61		171	07/01/97
KEKAHA PACIFIC MISSILE RANGE FAC:						
05/01–11/30	115		62		177	06/01/98
12/01–04/30	136		64		200	06/01/98
KILAUEA MILITARY CAMP	80		52		132	06/01/98
LULUALEI NAVAL MAGAZINE	110		61		171	07/01/97
NAS BARBERS POINT	110		61		171	07/01/97
PEARL HARBOR [INCL ALL MILITARY]	110		61		171	07/01/97
SCHOFIELD BARRACKS	110		61		171	07/01/97
WHEELER ARMY AIRFIELD	110		61		171	07/01/97
[other]	79		62		141	06/01/93
JOHNSTON ATOLL:						
JOHNSTON ATOLL	13		9		22	07/01/97
MIDWAY ISLANDS:						
MIDWAY ISLANDS [INCL ALL MIL]	60		41		101	07/01/97
NORTHERN MARIANA ISLANDS:						
ROTA	105		71		176	05/01/97
SAIPAN	170		78		248	05/01/97
[OTHER]	61		53		114	05/01/97
PUERTO RICO:						
BAYAMON:						
04/16–11/14	117		67		184	09/01/98
11/15–04/15	148		70		218	09/01/98
CAROLINA:						
04/16–11/14	117		67		184	09/01/98
11/15–04/15	148		70		218	09/01/98
FAJARDO [INCL CEIBA, LUQUILLO & HUMACAO]	82		60		142	03/01/98
FT. BUCHANAN [INCL GSA SVC CTR, GUAYNABO]:						
04/16–11/14	117		67		184	09/01/98
11/15–04/15	148		70		218	09/01/98
LUIS MUNOZ MARIN IAP AGS:						
04/16–11/14	117		67		184	09/01/98
11/15–04/15	148		70		218	09/01/98
MAYAGUEZ	94		60		154	06/01/98
PONCE	101		67		168	09/01/98
ROOSEVELT ROADS & NAV STA	82		60		142	03/01/98
SABANA SECA [INCL ALL MILITARY]:						
04/16–11/14	117		67		184	09/01/98
11/15–04/15	148		70		218	09/01/98
SAN JUAN & NAV RES STA:						
04/16–11/14	150		70		220	04/01/99
11/15–04/15	167		72		239	04/01/99
[OTHER]	66		57		123	09/01/98
VIRGIN ISLANDS (U.S.):						
ST. CROIX:						
04/15–12/14	107		75		182	08/01/98
12/15–04/14	131		78		209	08/01/98
ST. JOHN:						
04/15–12/14	286		89		375	08/01/98
12/15–04/14	413		102		515	08/01/98
ST.THOMAS:						
04/15–12/14	171		75		246	08/01/98
12/15–04/14	285		87		372	08/01/98

MAXIMUM PER DIEM RATES FOR OFFICIAL TRAVEL IN ALASKA, HAWAII, THE COMMONWEALTHS OF PUERTO RICO AND THE NORTHERN MARIANA ISLANDS AND POSSESSIONS OF THE UNITED STATES BY FEDERAL GOVERNMENT CIVILIAN EMPLOYEES—Continued

Locality	Maximum lodging amount (A)	+	M&IE rate (B)	=	Maximum per diem rate (C)	Effective date
WAKE ISLAND:						
WAKE ISLAND	60		32		92	09/01/98

Dated: March 31, 1999.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 99–8359 Filed 4–5–99; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Department of the Air Force

HQ USAF Scientific Advisory Board Meeting

The S&T Strategic Plan Thrust Review Meeting in support of the HQ USAF Scientific Advisory Board will meet at Woodshole, MA on September 14–16, 1999 from 8:00 a.m. to 5:00 p.m.

The purpose of the meeting is to gather information and receive briefings for the S&T Strategic Plan Thrust Review.

The meeting will be closed to the public in accordance with Section 552b (c) of Title 5, United States Code, specifically subparagraphs (1) and (4) thereof.

For further information, contact the HQ USAF Scientific Advisory Board Secretariat at (703) 697–8404.

Carolyn A. Lunsford,

Air Force Federal Register Liaison Officer.

[FR Doc. 99–8370 Filed 4–5–99; 8:45 am]

BILLING CODE 5001–05–P

DEPARTMENT OF EDUCATION

Office of Elementary and Secondary Education; Notice of Final Funding Priorities for Fiscal Year (FY) 1999 Under the Native Hawaiian Curriculum Development, Teacher Training, and Recruitment Program

SUMMARY: The Secretary announces final funding priorities for fiscal year (FY) 1999 under the Native Hawaiian Curriculum Development, Teacher Training, and Recruitment Program. Under the priorities, funds under the Native Hawaiian Curriculum Development, Teacher Training and Recruitment Program will be used to support activities in the areas of (1) computer literacy and technology education, (2) agriculture education partnerships, (3) astronomy, (4) indigenous health, (5) waste management, and (6) prisoner education.

EFFECTIVE DATE: May 6, 1999.

SUPPLEMENTARY INFORMATION: On December 29, 1998, the Secretary published in the **Federal Register** a notice of proposed funding priorities announcing that the Secretary intended to use $1,500,000 of FY 1999 funds available under the Curriculum Development, Teacher Training and Recruitment Program to fund one or two projects in each of six identified priority categories: (1) computer literacy and technology education, (2) agriculture education partnerships, (3) astronomy, (4) indigenous health, (5) waste management, and (6) prisoner education. This notice announces the final funding priorities for the program.

Note: This notice of final funding priorities does not solicit applications. A notice inviting applications under this competition is published in a separate notice in this issue of the **Federal Register**.

Analysis of Comments and Changes

Four parties submitted various comments in response to the Secretary's notice of proposed funding priorities for the program.

Comment: One commenter recommended that the Department run a broader competition without any absolute priorities.

Discussion: The Secretary believes that the absolute priorities are necessary to help focus limited resources on addressing some of the specific needs of the Native Hawaiian community.

Changes: None.

Comment: One commenter suggested that the Department support a new Native Hawaiian student-centered academy, governed by a local school board, and independent of the Hawaii Department of Education.

Discussion: The Secretary believes that the priorities that have been adopted better further the statutory purposes of the program.

Changes: None.

Comments: The other two commenters were generally supportive of the priorities, and offered various suggestions for strengthening or clarifying some of the priorities. These commenters also recommended that the Department continue to support activities in the field of aquaculture. In addition, one of the two commenters recommended that the astronomy priority be expanded to include support of educational and training opportunities for all grade levels, including community college, baccalaureate, graduate, and postgraduate levels.

Discussion: The Department has just completed the support of aquaculture projects under this program, and has determined that it would be more appropriate at this time to use the resources available to fund new projects in the identified priority categories. Furthermore, the Secretary believes that the astronomy priority as originally proposed better meets the statutory purposes of the program.

The Secretary believes that many of the other suggestions from these commenters, which form the basis for the additional program design information provided in the notice inviting applications for new awards published elsewhere in this issue of the **Federal Register**, can be incorporated into applications as part of the proposed projects.

Changes: None.

ABSOLUTE PRIORITIES: Under 34 CFR 75.105(c)(3), the Secretary gives an absolute preference to applications that focus entirely on activities in one of the following six areas:

(1) Computer literacy and technology education—to support curriculum development, teacher training and model programs designed to increase computer literacy and access for Native

Hawaiian elementary and secondary school students;

(2) Agriculture education partnerships—to support the integration of agricultural and business practices into high school curriculum through the expansion of partnerships between community-based agricultural businesses and high schools with high concentrations of Native Hawaiian students;

(3) Astronomy—to support the development of educational programs in astronomy for Native Hawaiian elementary and secondary school students to assist them in reaching challenging science and mathematics standards and to encourage them to enter the field of astronomy;

(4) Indigenous health—to support curriculum development, teacher training, and instruction activities that will foster a better understanding and knowledge of Native Hawaiian traditional medicine, particularly among Native Hawaiian elementary and secondary students;

(5) Waste management innovation—to study and document traditional Hawaiian practices of sustainable waste management and to prepare teaching materials for educational purposes and for demonstration of the use of native Hawaiian plants and animals for waste treatment and environmental remediation; and

(6) Prisoner education—to support programs that target juvenile offenders and/or youth at risk of becoming juvenile offenders. Comprehensive and culturally sensitive strategies for reaching the target population will include family counseling, basic education/job skills training, and the involvement of community elders as mentors.

The Secretary funds under the FY 1999 competition under this program only applicants that meet one of these absolute priorities.

FOR FURTHER INFORMATION CONTACT: Beth Baggett, U.S. Department of Education, 400 Maryland Avenue, S.W., Washington, D.C. 20202–6140. Telephone (202) 260–2502. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

Individuals with disabilities may obtain a copy of the application package in an alternate format, also, by contacting that person. However, the Department is not able to reproduce in an alternate format the standard forms included in the application package.

Electronic Access to This Document: Anyone may view this document, as well as all other Department of Education Documents published in the **Federal Register**, in text or portable document format (pdf) on the World Wide Web at either of the following sites: *http://ocfo.ed.gov/fedreg.htm* or *http://www.ed.gov/news.html*.

To use the pdf you must have the Adobe Acrobat Reader Program with Search, which is available free at either of the previous sites. If you have questions about using the pdf, call the U.S. Government Printing Office toll free at 1–888–293–6498.

Program Authority: 20 U.S.C. 7905.

Dated: March 30, 1999.

Judith Johnson,

Acting Assistant Secretary, Elementary and Secondary Education.

[FR Doc. 99–8395 Filed 4–5–99; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[CFDA No.: 84.297A]

The Native Hawaiian Curriculum Development, Teacher Training and Recruitment Program

AGENCY: Department of Education.

ACTION: Notice inviting applications for new awards for fiscal year (FY) 1999.

PURPOSES OF PROGRAM: The Native Hawaiian Curriculum Development, Teacher Training and Recruitment Program supports—

(1) *Curricula*—the development of curricula to address the needs of Native Hawaiian students, particularly elementary and secondary students, which may include programs of instruction conducted in the Native Hawaiian language and mathematics and science curricula incorporating the relevant application of Native Hawaiian culture and traditions;

(2) *Preteacher training*—the development and implementation of preservice teacher training to ensure that student teachers within the State, particularly those who are likely to be employed in schools with a high concentration of Native Hawaiian students, are prepared to better address the unique needs of Native Hawaiian students within the context of Native Hawaiian culture, language, and traditions;

(3) *Inservice teacher training*—the development and implementation of inservice teacher training to ensure that teachers, particularly those employed in schools with a high concentration of Native Hawaiian students, are prepared to better address the unique needs of Native Hawaiian students within the context of Native Hawaiian culture, language, and traditions; and

(4) *Teacher recruitment*—the development and implementation of teacher recruitment programs to enhance teacher recruitment within communities with a high concentration of Native Hawaiian students and to increase the numbers of teachers who are of Native Hawaiian ancestry.

Consistent with these statutory purposes, the Secretary has established absolute priorities that will govern the distribution of funds under the program.

ELIGIBLE APPLICANTS: Native Hawaiian educational organizations or educational entities with experience in developing or operating Native Hawaiian programs or programs of instruction conducted in the Native Hawaiian language.

APPLICATIONS AVAILABLE: April 6, 1999.

DEADLINE FOR TRANSMITTAL OF APPLICATIONS: May 21, 1999.

DEADLINE FOR INTERGOVERNMENTAL REVIEW: July 20, 1999.

AVAILABLE FUNDS: $1,500,000.

ESTIMATED NUMBER OF AWARDS: 1–2 awards in each of the six absolute priority categories.

ESTIMATED SIZE OF AWARDS: $125,000.

ESTIMATED RANGE OF AWARDS: $125,000—$250,000.

Note: These estimates are projections for the guidance of potential applicants. The Department is not bound by any estimates in this notice.

PROJECT PERIOD: Up to 36 months.

APPLICABLE REGULATIONS: The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75, 77, 79, 81, 82, and 85.

ABSOLUTE PRIORITIES: The Secretary has published elsewhere in this issue of the **Federal Register** a notice of final priorities, which establishes absolute priorities in the following areas under the Curriculum Development, Teacher Training and Recruitment Program: (1) computer literacy and technology education; (2) agriculture education partnerships; (3) astronomy; (4) indigenous health; (5) waste management; and (6) prisoner education programs.

Under 34 CFR 75.105(c)(3), the Secretary will fund under this competition only applicants that meet one of the absolute priorities.

STATUTORY PRIORITIES: In accordance with section 9209(b) of the Elementary and Secondary Education Act, the Secretary gives priority to awarding grants for activities that —

(1) focus on the needs of at-risk youth; or

(2) employ a program of instruction conducted in the Native Hawaiian language.

These statutory priorities are embedded in the selection criteria for this competition.

SUPPLEMENTARY INFORMATION: Applications will be reviewed on the basis of the selection criteria included in this notice. All funded projects must meet one of the absolute priorities. While applicants have discretion in determining how best to address the absolute priorities, the Secretary is particularly interested in receiving quality proposals that include the components described below. Funded proposals may lack some of these specific components, but address the absolute priorities in other effective ways.

(1) *Computer literacy and technology education.* While computer skills have become increasingly necessary for both academic and employment success in today's society, many Native Hawaiian students lack meaningful access to computers and computer training. The Secretary believes that high quality computer literacy and technology education programs should be conducted for Native Hawaiian elementary and secondary school students. These model programs should consist of curricula development, teacher training, and programs of instruction designed to increase both academic and career opportunities for elementary and secondary students. In providing these services, eligible entities are encouraged to partner with other organizations or institutions with expertise in utilizing state-of-the-art centralized computer systems and teleconferencing capabilities.

(2) *Agriculture education partnerships.* In order to improve the economic and social conditions in many rural areas of Hawaii, the Secretary supports the expansion of partnerships between community-based agricultural businesses and high schools with high concentrations of Native Hawaiian students. These agriculture education partnerships will integrate agricultural and business practices into high school curricula through model programs involving curricula development, teacher training, and instructional programs.

(3) *Astronomy.* The Secretary believes that the development of instructional programs for elementary and secondary school students in astronomy would assist Native Hawaiians in reaching challenging science and mathematics standards. Model programs would include the development of culturally appropriate advanced mathematics and science curricula based upon recent scientific findings in the field of astronomy. Exposure to the use of observatory and other astronomical equipment as well as other experiential and hands-on activities would be fostered through such programs.

(4) *Indigenous health programs.* Because of a lack of available instruction in Native Hawaiian traditional medicine, knowledge of traditional healing practices is being lost for younger generations of Native Hawaiians. Younger Native Hawaiians are not being trained adequately, for example, on where traditional medicines can be found, how they are harvested in a manner that will conserve the resource, and how such medicines are to be applied. The Secretary believes that this problem can be addressed through the support of teacher training, curriculum development, and instructional activities in traditional medicine.

(5) *Prisoner education.* In Hawaii, the number of incarcerated Native Hawaiians, including Native Hawaiian juveniles, far exceeds their relative percentage in the State's population. The Secretary believes that a successful prisoner education program would target convicted, at-risk Native Hawaiian youths as an alternative to incarceration. A comprehensive program should consist of prevention, intervention and treatment services as well as education, job training, judicial and case management services. A funded applicant should have experience in working with and in encouraging the re-integration of youth offenders into schools or career paths or both within the community in a culturally sensitive manner. To help ensure success of the program, funded applicants should work in partnership with the Hawaii State Department of Labor and Industrial Relations, the Office of Youth Services, and other appropriate agencies.

(6) *Waste management treatment programs.* Funds under this priority support curriculum development, teaching training, and instructional programs related to the study and documentation of traditional Hawaiian practices of sustainable waste management, including activities to prepare Native Hawaiians to participate actively in the risk assessment and remediation of environmental health hazards that impact upon Native Hawaiians. A successful applicant should have specific knowledge of the capacities of Native Hawaiian plants and animals to contribute to the management of modern waste materials. The applicant should have experience in educational programming, especially for elementary and secondary school grades, so that knowledge about traditional Hawaiian methods of sustainable waste management can be developed and used. The project may include an emphasis on environmental technologies applicable to the remediation of environmental health risks to Hawaiian homelands and surplus Federal lands subject to reuse.

SELECTION CRITERIA: The Secretary will use the following selection criteria in 34 CFR 75.210 to evaluate applications under this competition. Under the criterion "Quality of the project design", the factors are weighed in accordance with the points indicated. With respect to the other criteria, the factors under each criterion are weighed equally. The maximum score for all of the selection criteria is 100 points. The maximum score for each criterion, and the factors within each criterion, are as follows:

(a) *Significance (15 points).* (1) The Secretary considers the significance of the proposed project.

(2) In determining the significance of the proposed project, the Secretary considers the following factors:

(i) The significance of the problem or issue to be addressed by the proposed project.

(ii) The importance or magnitude of the results or outcomes likely to be attained by the proposed project, especially improvements in teaching and student achievement.

(b) *Quality of the project design (35 points).* (1) The Secretary considers the quality of the design of the proposed project.

(2) In determining the quality of the design of the proposed project, the Secretary considers the following factors:

(i) The extent to which the proposed project represents an exceptional approach for meeting statutory purposes and requirements. (10 points)

(ii) The extent to which the proposed project represents an exceptional approach to the priorities established for the competition. (10 points)

(iii) The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified and measurable. (10 points)

(iv) The extent to which the design of the proposed project is appropriate to, and will successfully address, the needs

of the target population or other identified needs. (5 points)

(c) *Quality of project personnel (10 points).* (1) The Secretary considers the quality of the personnel who will carry out the proposed project.

(2) In determining the quality of project personnel, the Secretary considers the extent to which the applicant encourages applications for employment from persons who are members of groups that have traditionally been under represented based on race, color, national origin, gender, age, or disability.

(3) In addition, the Secretary considers the following factors:

(i) The qualifications, including relevant training and experience, of the project director.

(ii) The qualifications, including relevant training and experience, of key project personnel.

(iii) The qualifications, including relevant training and experience, of project consultants or subcontractors.

(d) *Adequacy of resources (5 points).* (1) The Secretary considers the adequacy of resources for the proposed project.

(2) In determining the adequacy of resources for the proposed project, the Secretary considers the following factors:

(i) The adequacy of support, including facilities, equipment, supplies, and other resources, from the applicant organization or the lead applicant organization.

(ii) The extent to which the budget is adequate to support the proposed project.

(e) *Quality of the management plan (15 points).* (1) The Secretary considers the quality of the management plan for the proposed project.

(2) In determining the quality of the management plan for the proposed project, the Secretary considers the following factors:

(i) The adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, time lines, and milestones for accomplishing project tasks.

(ii) The adequacy of procedures for ensuring feedback and continuous improvement in the operation of the proposed project.

(iii) The extent to which the time commitments of the project director and other key project personnel are appropriate and adequate to meet the objectives of the proposed project.

(f) *Quality of the project evaluation (20 points).* (1) The Secretary considers the quality of the evaluation to be conducted of the proposed project.

(2) In determining the quality of the evaluation, the Secretary considers the following factors:

(i) The extent to which the methods of evaluation provide for examining the effectiveness of project implementation strategies.

(ii) The extent to which the methods of evaluation include the use of objective performance measures that are clearly related to the intended outcomes of the project and will produce quantitative and qualitative data to the extent possible.

FOR APPLICATIONS OR INFORMATION CONTACT: Madeline E. Baggett, U.S. Department of Education, 400 Maryland Avenue, S.W., Washington, D.C. 20202–6140. Telephone (202) 260–2502. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

Individuals with disabilities may obtain a copy of the application package in an alternate format, also, by contacting that person. However, the Department is not able to reproduce in an alternate format the standard forms included in the application package.

Electronic Access to this Document: Anyone may view this document, as well as all other Department of Education Documents published in the **Federal Register**, in text or portable document format (pdf) on the World Wide Web at either of the following sites:

http://ocfo.ed.gov/fedreg.htm or

http://www.ed.gov/news.html

To use the pdf you must have the Adobe Acrobat Reader Program with Search, which is available free at either of the previous sites. If you have questions about using the pdf, call the U.S. Government Printing Office toll free at 1–888–293–6498.

Note: The official application notice for a discretionary grant competition is the notice published in the **Federal Register**.

Program Authority: 20 U.S.C. 7909.

Dated: March 30, 1999.

Judith Johnson,

Acting Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 99–8393 Filed 4–5–99; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[CFDA No.: 84.209A]

The Native Hawaiian Family-Based Education Centers Program

AGENCY: Department of Education.

ACTION: Notice inviting applications for new awards for fiscal year (FY) 1999.

Purpose of Program: To expand the operation, throughout the Hawaiian Islands, of Family-Based Education Centers that include: (1) parent-infant programs for prenatal through three-year-olds; (2) preschool programs for four-and five-year-olds; (3) continued research and development; and (4) a long-term follow-up and assessment program, which may include educational support services for Native Hawaiian language immersion programs or transition to English speaking programs.

Eligible Applicants: Native Hawaiian educational organizations or educational entities with experience in developing or operating Native Hawaiian programs or programs of instruction conducted in the Native Hawaiian language.

Applications Available: April 6, 1999.

Deadline for Transmittal of Applications: May 21, 1999.

Deadline for Intergovernmental Review: July 20, 1999.

Available Funds: $2 million.

Estimated Number of Awards: 1 to 2.

Estimated Size of Awards: $1,000,000.

Estimated Range of Awards: $1,000,000–$2,000,000.

Note: These estimates are projections for the guidance of potential applicants. The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75, 77, 79, 81, 82, and 85.

Invitational Priority: Under the Family-Based Education Centers Program, the Secretary is particularly interested in receiving applications from eligible entities whose projects would include the development and implementation of an appropriate, culturally-relevant Native Hawaiian early education and care information system. The system would provide information relative to the specific needs and strengths in Native Hawaiian early childhood services, including: (1) a determination of the existence, use, and effectiveness of programs and services available to Native Hawaiians; (2) within existing data collection efforts

statewide, an identification of critical areas of need for services for Native Hawaiians; (3) a determination of the numbers and demographics of Native Hawaiians in each age group, prenatal through age five, that have need for strengthened services; (4) an assessment of the quality of existing services; (5) an identification of the gaps in services to that age group; and (6) a determination of where additional data needs to be gathered and a means of defining culturally-compatible measures for the collection of such data. The Secretary is especially interested in receiving proposals from entities that would address the early education and care needs of the targeted population through comprehensive, collaborative efforts with other appropriate organizations and agencies.

An application that meets this invitational priority receives no competitive or absolute preference over applications that do not meet the priority. However, all proposals under the Family-Based Education Centers competition must address the four components in section 9205 of the Elementary and Secondary Education Act, as outlined in the "Purposes of Programs" section of this Notice.

Selection Criteria: The Secretary will use the following selection criteria in 34 CFR 75.210 to evaluate applications under this competition. The maximum score for all of the selection criteria is 100 points. The maximum score for each criterion is indicated in parenthesis with the criterion. The criteria are as follows:

(a) *Significance (15 points).* (1) The Secretary considers the significance of the proposed project.

(2) In determining the significance of the proposed project, the Secretary considers the following factors:

(i) The significance of the problem or issue to be addressed by the proposed project.

(ii) The importance or magnitude of the results or outcomes likely to be attained by the proposed project, especially improvements in teaching and student achievement.

(b) *Quality of the project design (35 points).* (1) The Secretary considers the quality of the design of the proposed project.

(2) In determining the quality of the design of the proposed project, the Secretary considers the following factors:

(i) The extent to which the proposed project represents an exceptional approach for meeting statutory purposes and requirements.

(ii) The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified and measurable.

(iii) The extent to which the design of the proposed project is appropriate to, and will successfully address, the needs of the target population or other identified needs.

(c) *Quality of project personnel (10 points).* (1) The Secretary considers the quality of the personnel who will carry out the proposed project.

(2) In determining the quality of project personnel, the Secretary considers the extent to which the applicant encourages applications for employment from persons who are members of groups that have traditionally been under represented based on race, color, national origin, gender, age, or disability.

(3) In addition, the Secretary considers the following factors:

(i) The qualifications, including relevant training and experience, of the project director.

(ii) The qualifications, including relevant training and experience, of key project personnel.

(iii) The qualifications, including relevant training and experience, of project consultants or subcontractors.

(d) *Adequacy of resources (5 points).* (1) The Secretary considers the adequacy of resources for the proposed project.

(2) In determining the adequacy of resources for the proposed project, the Secretary considers the following factors:

(i) The adequacy of support, including facilities, equipment, supplies, and other resources, from the applicant organization or the lead applicant organization.

(ii) The extent to which the budget is adequate to support the proposed project.

(e) *Quality of the management plan (15 points).* (1) The Secretary considers the quality of the management plan for the proposed project.

(2) In determining the quality of the management plan for the proposed project, the Secretary considers the following factors:

(i) The adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, time lines, and milestones for accomplishing project tasks.

(ii) The adequacy of procedures for ensuring feedback and continuous improvement in the operation of the proposed project.

(iii) The extent to which the time commitments of the project director and other key project personnel are appropriate and adequate to meet the objectives of the proposed project.

(f) *Quality of the project evaluation (20 points).* (1) The Secretary considers the quality of the evaluation to be conducted of the proposed project.

(2) In determining the quality of the evaluation, the Secretary considers the following factors:

(i) The extent to which the methods of evaluation provide for examining the effectiveness of project implementation strategies.

(ii) The extent to which the methods of evaluation include the use of objective performance measures that are clearly related to the intended outcomes of the project and will produce quantitative and qualitative data to the extent possible.

For Applications or Information Contact: Madeline E. Baggett, U.S. Department of Education, 400 Maryland Avenue, S.W., Washington, D.C. 20202–6140. Telephone (202) 260–2502. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

Individuals with disabilities may obtain a copy of the application package in an alternate format, also, by contacting that person. However, the Department is not able to reproduce in an alternate format the standard forms included in the application package.

Electronic Access to this Document: Anyone may view this document, as well as all other Department of Education Documents published in the **Federal Register**, in text or portable document format (pdf) on the World Wide Web at either of the following sites: http://ocfo.ed.gov/fedreg.htm or http://www.ed.gov/news.html. To use the pdf you must have the Adobe Acrobat Reader Program with Search, which is available free at either of the previous sites. If you have questions about using the pdf, call the U.S. Government Printing Office toll free at 1–888–293–6498.

Note: The official application notice for a discretionary grant competition is the notice published in the **Federal Register**.

Program Authority: 20 U.S.C. 7905.

Dated: March 30, 1999.

Judith Johnson,

Acting Assistant Secretary, Elementary and Secondary Education.

[FR Doc. 99–8394 Filed 4–5–99; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Office of Arms Control and Nonproliferation Policy; Proposed Subsequent Arrangement

AGENCY: Department of Energy.

ACTION: Subsequent arrangement.

SUMMARY: This notice is being issued under the authority of Section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160). The Department is providing notice of a "subsequent arrangement" under the Agreement for Cooperation in the Peaceful Uses of Nuclear Energy Between the United States of America and the European Atomic Energy Community (EURATOM) and the Agreement for Cooperation Between the Government of the United States of America and the Government of Canada Concerning the Civil Uses of Atomic Energy.

This subsequent arrangement concerns the transfer of 90,552,300 grams of natural uranium in the form of hexafluoride from Cameco Corporation in Canada to Urenco Limited in the United Kingdom for toll enrichment. The enrichment will not exceed 20%. The material will then be transferred to Northern States Power in Minneapolis, MN for use in their commercial power reactor.

In accordance with Section 131 of the Atomic Energy Act of 1954, as amended, we have determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

Dated: March 30, 1999.

For the Department of Energy.

Edward T. Fei,

Deputy Director, International Policy and Analysis Division, Office of Arms Control and Nonproliferation.

[FR Doc. 99–8451 Filed 4–5–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Arms Control and Nonproliferation Policy; Proposed Subsequent Arrangement

AGENCY: Department of Energy.

ACTION: Subsequent Arrangement.

SUMMARY: This notice is being issued under the authority of Section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160). The Department is providing notice of a "subsequent arrangement" under the Agreement for Cooperation in the Peaceful Uses of Nuclear Energy Between the United States of America and the European Atomic Energy Community (EURATOM) and the Agreement for Cooperation Between the Government of the United States of America and the Government of Canada Concerning the Civil Uses of Atomic Energy.

This subsequent arrangement concerns the transfer of 3,078,600 grams of natural uranium in the form of hexafluoride from Cameco Corporation in Canada to Urenco Limited in the United Kingdom for toll enrichment. The enrichment will not exceed 20%. The material will then be transferred to Wolf Creek Nulcear Operation Corporation in Burlington, KS for use in their commercial power reactor.

In accordance with Section 131 of the Atomic Energy Act of 1954, as amended, we have determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

Dated: March 30, 1999.

For the Department of Energy.

Edward T. Fei,

Deputy Director, International Policy and Analysis Division Office of Arms Control and Nonproliferation.

[FR Doc. 99–8452 Filed 4–5–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Supplement to the Draft Surplus Plutonium Disposition Environmental Impact Statement

AGENCY: Department of Energy.

ACTION: Notice of Intent.

SUMMARY: The Department of Energy (DOE) announces its intent to prepare a supplement to the Surplus Plutonium Disposition Draft Environmental Impact Statement (SPD EIS) pursuant to the National Environmental Policy Act (NEPA). The SPD Draft EIS (DOE/EIS–0283D) was issued for public comment in July 1998. The Supplement will update the SPD Draft EIS by examining the potential environmental impacts of using mixed oxide (MOX) fuel in six specific commercial nuclear reactors at three sites for the disposition of surplus weapons-grade plutonium. DOE identified these reactors through a competitive procurement process. The Department is planning to issue the Supplement to the SPD Draft EIS in April 1999. DOE will publish a separate Notice of Availability in the **Federal Register** at that time. This Notice of Intent describes the content of the Supplement to the SPD Draft EIS, solicits public comment on the Supplement, and announces DOE's intention to conduct a public hearing. Consistent with 40 CFR 1502.9(c)(4) and 10 CFR 1021.314(d), DOE has determined not to conduct scoping for the Supplement.

ADDRESSES: Requests for information concerning the plutonium disposition program can be submitted by calling (answering machine) or faxing them to the toll free number 1–800–820–5156, or by mailing them to: Bert Stevenson, NEPA Compliance Officer, Office of Fissile Materials Disposition, U.S. Department of Energy, Post Office Box 23786, Washington, DC 20026–3786.

FOR FURTHER INFORMATION CONTACT: For general information on the DOE NEPA process, please contact: Carol Borgstrom, Director, Office of NEPA Policy and Assistance, U.S. Department of Energy, 1000 Independence Avenue, S.W., Washington, DC 20585, 202–586–4600 or leave a message at 1–800–472–2756.

Additional information regarding the DOE NEPA process and activities is available on the Internet through the NEPA Home Page at http://www.eh.doe.gov/nepa.

SUPPLEMENTARY INFORMATION:

Background

In October 1994, the Secretary of Energy and the Congress created the Office of Fissile Materials Disposition (MD) within the Department of Energy (DOE) to focus on the elimination of surplus highly enriched uranium (HEU) and plutonium surplus to national defense needs. As one of its major responsibilities, MD is tasked with determining how to disposition surplus weapons—usable plutonium. In January 1997, DOE issued a Record of Decision (ROD) for the Storage and Disposition of Weapons—Usable Fissile Materials Final Programmatic Environmental Impact Statement (S&D PEIS) (DOE/EIS–

0229; December 1996). In that ROD, DOE decided to pursue a strategy that would allow for the possibility of both the immobilization of surplus plutonium and the use of surplus plutonium as mixed oxide (MOX) fuel in existing domestic, commercial reactors. DOE is in the process of completing the Surplus Plutonium Disposition Environmental Impact Statement (SPD Draft EIS) (DOE/EIS–0283D; July 1998) to choose a site(s) for plutonium disposition activities and to determine the technology(ies) that will be used to support this effort.

Related Procurement Action

To support the timely undertaking of the surplus plutonium disposition program, DOE initiated a procurement action to contract for MOX fuel fabrication and reactor irradiation services. The services requested in this procurement process include design, licensing, construction, operation, and eventual deactivation of a MOX facility, as well as irradiation of the MOX fuel in three to eight existing domestic, commercial reactors, should the decision be made by DOE to go forward with the MOX program.

On May 19, 1998, DOE issued a Request for Proposal (RFP) (Solicitation Number DE–RP02–98CH10888) that defined limited activities that may be performed prior to issuance of the SPD EIS ROD. These activities include non-site-specific work primarily associated with the development of the initial conceptual design for the fuel fabrication facility, and plans (paper studies) for outreach, long lead-time procurements, regulatory management, facility quality assurance, safeguards, security, fuel qualifications, and deactivation. No construction would be started on a MOX fuel fabrication facility until the SPD EIS ROD is issued. The MOX facility, if built, would be DOE-owned, licensed by the Nuclear Regulatory Commission, and located at one of four candidate DOE sites. DOE has designated the Savannah River Site as the preferred alternative for the MOX fuel fabrication facility.

Based on a review of proposals received in response to the RFP, DOE determined in January 1999 that one proposal was in the competitive range. Under this proposal, MOX fuel would be fabricated at a DOE site and then irradiated in one of six domestic commercial nuclear reactors.

Environmental Review During Procurement Action

An environmental critique was prepared in accordance with DOE's National Environmental Policy Act (NEPA) regulations at 10 CFR 1021.216. Because an EIS is in progress on this action, DOE required offerors to submit reasonably available environmental data and analyses as a part of their proposals. DOE independently evaluated and verified the accuracy of the data provided by the offeror in the competitive range, and prepared an environmental critique for consideration before the selection was made. The Environmental Critique was used by DOE to determine:

(1) if there are any important environmental issues in the offeror's proposal that may affect the selection process; and

(2) if the potential environmental impacts of the offeror's proposal were bounded by impacts presented in the S&D PEIS and SPD Draft EIS or whether additional analysis was required in the SPD Final EIS.

As required by Section 216, the Environmental Critique included a discussion of the purpose of the procurement; the salient characteristics of the offeror's proposal; any licenses, permits or approvals needed to support the program; and an evaluation of the potential environmental impacts of the offer. The Environmental Critique is a procurement-sensitive document and subject to all associated restrictions. DOE then prepared a synopsis, which summarizes the Environmental Critique and reduces business-sensitive information to a level that will not compromise the procurement process. The Synopsis will be filed with the Environmental Protection Agency and made available to the public.

Contract Award

As a result of the procurement process described above, in March 1999, the Department of Energy contracted with Duke Engineering & Services, COGEMA, Inc., and Stone & Webster to provide mixed oxide fuel fabrication and reactor irradiation services. The team, known as DUKE COGEMA STONE & WEBSTER or DCS, has its corporate headquarters in Charlotte, NC. Subcontractors to DCS include Duke Power Company, Charlotte, NC and Virginia Power Company, Richmond, VA, who will provide the reactor facilities in which mixed oxide fuel will be used upon receipt of Nuclear Regulatory Commission license amendments. Other major subcontractors include Nuclear Fuel Services, Inc., Erwin, TN; Belgonucleaire, Brussels, Belgium; and Framatome Cogema Fuels of Lynchburg, VA. Under the contract, the team will also modify six existing U.S. commercial light water reactors at three sites to irradiate mixed oxide fuel assemblies. These reactors sites are Catawba in York, SC; McGuire in Huntersville, NC; and North Anna in Mineral, VA. The team will be responsible for obtaining a license to operate the fuel fabrication facility and the license modifications for the reactors from the Nuclear Regulatory Commission. Full execution of this contract is contingent on DOE's completion of the SPD EIS, as provided by 40 CFR 1021.216(i).

Supplement to the Surplus Plutonium Disposition Draft Environmental Impact Statement

The purpose of the Supplement to the SPD Draft EIS is to update the Draft by including specific information available as a result of the award of the DCS contract. The Supplement to the SPD Draft EIS will contain background information on the SPD Draft EIS; changes made to the SPD Draft EIS (Section 1.7.2); a description of the reactor sites (Section 3.7); impacts of irradiating mixed oxide fuel in existing light water reactors (Section 4.28); Facility Accidents (Appendix K); Analysis of Environmental Justice (Appendix M); and the Environmental Synopsis (Appendix O).

DOE anticipates that the Supplement to the SPD Draft EIS will be available in April. DOE intends to hold an interactive hearing in Washington, DC in May 1999 to discuss issues and receive oral and written comments on the Supplement to the Draft SPD EIS. The Notice of Availability will provide specific information concerning the date, time and location for the public hearing.

Issued in Washington, DC this 31st day of March 1999, for the United States Department of Energy.

David Michaels,

Assistant Secretary, Environment, Safety and Health.

[FR Doc. 99–8455 Filed 4–5–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Science; Biological and Environmental Research Advisory Committee

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Biological and Environmental Research Advisory Committee. Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770) requires that public notice of

these meetings be announced in the **Federal Register**.

DATES: Thursday, April 22, 1999, 8:30 a.m. to 5:30 p.m.; and Friday, April 23, 1999, 8:30 a.m. to 12:00 p.m.

ADDRESSES: American Geophysical Union, 2000 Florida Avenue, N.W., Washington, D.C. 20009.

FOR FURTHER INFORMATION CONTACT: Dr. David Thomassen (301–903–9817; david.thomassen@science.doe.gov), or Ms. Shirley Derflinger (301–903–0044; shirley.derflinger@science.doe.gov), Designated Federal Officers, Biological and Environmental Research Advisory Committee, U.S. Department of Energy, Office of Science, Office of Biological and Environmental Research, SC–70, 19901 Germantown Road, Germantown, Maryland 20874–1290.

SUPPLEMENTARY INFORMATION: Purpose of the Meeting: To provide advice on a continuing basis to the Director, Office of Science of the Department of Energy, on the many complex scientific and technical issues that rise in the development and implementation of the biological and environmental research program.

Tentative Agenda

Thursday, April 22, 1999

8:30 a.m.—Welcoming Remarks
8:40 a.m.—Remarks from Director, Office of Science
9:40 a.m.—Low Dose Radiation Research Program
10:30 a.m.—New Directions in Bioengineering
11:30 a.m.—Science Talk, Medical Imaging
2:00 p.m.—Talk, National Science Foundation in the New Millennium
3:00 p.m.—Carbon Management & Climate Change Technology Initiative
3:15 p.m.—Scientific Simulation Initiative
5:00 p.m.—Public Comments and Adjourn

Friday, April 23, 1999

8:30 a.m.—State of Biological and Environmental Research (BER)/ FY2000 Outlook
9:30 a.m.—Human Genome Program Update
10:45 a.m.—BER Structural Biology Program
11:45 a.m.—Public Comments and Adjourn

Public Participation: The day and a half meeting is open to the public. If you would like to file a written statement with the Committee, you may do so either before or after the meeting. If you would like to make oral statements regarding any of the items on the agenda, you should contact David Thomassen or Shirley Derflinger at the address or telephone numbers listed above. You must make your request for an oral statement at least five business days before the meeting. Reasonable provision will be made to include the scheduled oral statements on the agenda. The Chairperson of the Committee will conduct the meeting to facilitate the orderly conduct of business. Public comment will follow the 10-minute rule.

Minutes: The minutes of this meeting will be available for public review and copying within 30 days at the Freedom of Information Public Reading Room, IE–190, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C., between 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, D.C. on March 31, 1999.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 99–8453 Filed 4–5–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Idaho National Engineering and Environmental Laboratory

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting via telephone conference call of the Environmental Management Site-Specific Advisory Board (EM SSAB), Idaho National Engineering and Environmental Laboratory (INEEL). The Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Wednesday, April 21, 1999, 1:30 p.m. (MST).

There will be a full Board telephone conference call beginning at 1:30 p.m. (MST).

FOR FURTHER INFORMATION CONTACT: Ms. Wendy Green Lowe, INEEL Board Facilitator, Jason Associates Corp. (208–522–1662) or visit the Board's Internet homepage at http://www.ida.net/users/cab. You may also contact Mr. Charles Rice, INEEL Board Chair, c/o Jason Associates Corporation.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

To participate in the conference call, the Board members, the public, and other interested parties may call Ms. Lowe at the phone number above to get the conference call telephone number and pass code. Following opening comments by the Board chair, Chuck Rice, the Board's facilitator will describe the process and agenda that will be followed during the call. Parties interested in participating in the conference call are encouraged to call in at the beginning of the call.

Tentative Agenda: Discuss, develop consensus on, and finalize a recommendation currently being drafted by the board's Spent Nuclear Fuel Committee (chaired by Board member Jim Bondurant). If achieved through consensus, the recommendation—prepared in response to the Department of Energy's recent Notice of Intent to Prepare an Environmental Impact Statement (EIS) for Electrometallurgical Treatment of Sodium-Bonded Spent Nuclear Fuel in the Conditioning Facility at Argonne National Laboratory-West, INEEL—will transmit the Board's comments on the scope of the EIS.

Public Participation: In compliance with the Federal Advisory Committee Act, the public is invited to join the conference call, listen to the Board's deliberations, and provide comment during a specific time segment that will be set aside for public participation. Written statements may be filed with the Committee before the call. Gerald Bowman, the Designated Federal Officer and Assistant Manager for Laboratory Development, is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments.

Minutes: The minutes of this conference call will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9:00 a.m. and 4 p.m., Monday-Friday, except Federal holidays. Minutes will also be available by writing to Charles M. Rice, INEEL Citizens' Advisory Board Chair, 477 Shoup Ave., Suite 205, Idaho Falls, Idaho 83402 or by calling Wendy Green Lowe, the Board Facilitator, at (208) 522–1662.

Issued at Washington, DC on April 1, 1999.

Rachel Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 99–8448 Filed 4–5–99; 8:45 am]

BILLING CODE 6450–01–M

DEPARTMENT OF ENERGY

Energy Information Administration

Agency Activities: Comment Request on Collection and Dissemination of Natural Gas Information.

SUMMARY: The Energy Information Administration (EIA) has undertaken a process to analyze its natural gas information collection and dissemination program to ensure its continuing accuracy, validity, adequacy, and reliability. As part of this process, EIA is soliciting comments from users of natural gas information as well as respondents to EIA's surveys.

DATES: Written comments must be submitted on or before June 7, 1999. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, please advise the contact listed below of your intention to do so as soon as possible.

ADDRESSES: Send comments to Ann Ducca, Energy Information Administration, EI–44, Forrestal Building, U.S. Department of Energy, Washington, DC 20585. Alternately, Ms. Ducca may be contacted at (202) 586–6137, by e-mail at Ann.Ducca@eia.doe.gov, or by FAX at (202) 586–4420.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Ms. Ducca at the address listed above.

SUPPLEMENTARY INFORMATION:

I. Background
II. Current Actions
III. Request for Comments
IV. Future Actions

I. Background

In order to fulfill its responsibilities under the Federal Energy Administration Act of 1974 (Pub. L. 93–275) and the Department of Energy Organization Act (Pub. L. 95–91), the Energy Information Administration (EIA) is obliged to carry out a central, comprehensive, and unified energy data and information program. As part of this program, EIA collects, evaluates, assembles, analyzes, and disseminates data and information related to energy resource reserves, production, demand, and technology, and related economic and statistical information relevant to the adequacy of energy resources to meet demands in the near and longer term future for the Nation's economic and social needs.

With respect to natural gas, EIA collects information on reserves, production, processing, transmission, storage, distribution, and consumption. This information is used in EIA data products, analytical reports, and forecasts covering the entire natural gas industry. Appendix A contains information on EIA surveys collecting natural gas information as well as selected products.

The EIA, as part of its continuing effort to reduce paperwork and respondent burden and to ensure the practical utility of information collected (required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13)), conducts a consultation program to provide the general public and other Federal agencies with an opportunity to comment on proposed and/or continuing reporting forms. This program helps to ensure that requested data can be provided in the desired format, reporting burden is minimized, reporting forms are clearly understood, and the impact of collection requirements on respondents can be properly assessed. In addition, comments received from this consultation program are an integral component of EIA's program to ensure the accuracy, validity, adequacy, and reliability of information collected.

II. Current Actions

Given changes in Federal laws and regulations (e.g., the Natural Gas Wellhead Decontrol Act of 1989 (Pub. L. 101–60) and Federal Energy Regulatory Commission Order 636) as well as changes in the U.S. economy, the natural gas industry has undergone a significant transformation in the past ten years. One example of the effect of this transformation is shown in the chart in Appendix B. The chart illustrates the fact that EIA's published natural gas prices reflect coverage of a decreasing percentage of all natural gas purchases. This has occurred because many natural gas consumers now purchase gas from companies not presently included in EIA's surveys.

Recognizing the changes in the industry, EIA has undertaken a project titled "Next Generation * Natural Gas," also known as $(NG)^2$. The project will design and implement a new, comprehensive information program for natural gas to meet customer requirements in the post-2000 time frame. EIA wants to involve both data providers (i.e., respondents to its survey forms) and data users as part of the $(NG)^2$ project. Working together with its stakeholders, EIA can redesign its natural gas information system to be more effective and efficient.

To begin this new project, EIA held ten focus groups and plans to conduct executive interviews to solicit comments from some data users and data providers. That information will be one input for developing a draft outline of natural gas data requirements. EIA is now requesting comments from all interested persons.

III. Request for Comments

Prospective survey respondents, data users, and other interested parties should comment on issues that EIA should address as part its natural gas information system redesign project. Issues may include, but are not limited to: (1) what natural gas information should EIA collect (including the time periods, geographic breakdowns, economic sector breakdowns, and confidentiality treatments); (2) what data are needed to describe and assess wholesale and retail natural gas markets; (3) what natural gas reports, analyses, and forecasts are important to you and why; and (4) any other important topics EIA should consider during this project. Also, persons willing to actively participate with EIA during this process are desired and are encouraged to contact the person listed above.

Comments received in response to this notice may be summarized and/or included in the later requests for Office of Management and Budget approval of EIA's natural gas surveys. They also will become a matter of public record.

IV. Future Actions

EIA will use the comments in response to this notice along with comments received by other methods to help in the development of its natural gas data requirements. Then, draft survey instruments (e.g., forms and instructions) will be designed to collect the data. The survey instruments will be tested using a variety of methods including cognitive testing and small-scale pretests. This process should result in a redesigned natural gas information collection system that will be fully operational around 2002–2003.

To keep interested persons informed of the changing natural gas market and EIA's efforts to redesign its natural gas information system, EIA is developing a page for its Internet site (http://www.eia.doe.gov) and an automatic e-mail notification system (http://tonto.eia.doe.gov/email/index.htm). Both items should be operational by late June.

Statutory Authority: Section 3506 (c)(2)(A) of the Paperwork Reduction Act of 1995 (Pub. L. 104–13).

Issued in Washington, DC, March 30, 1999.

Jay H. Casselberry,

Agency Clearance Officer, Statistics and Methods Group, Energy Information Administration.

Appendix A. Energy Information Administration Natural Gas Surveys and Information Products

Major EIA surveys currently collecting natural gas information are:

EIA–23, "Annual Survey of Domestic Oil and Gas Reserves,"
EIA–23P, "Oil and Gas Well Operator Update Report,"
EIA–28, "Financial Reporting System,"
EIA–64A, "Annual Report of the Origin of Natural Gas Liquids Report,"
EIA–176, "Annual Report of Natural and Supplemental Gas Supply and Disposition,"
EIA–191, "Monthly Underground Gas Storage Report,"
EIA–412, "Annual Report of Public Electric Utilities,"
EIA–457, "Residential Energy Consumption Survey,"
EIA–627, "Annual Quantity and Value of Natural Gas Report,"
EIA–759, "Monthly Power Plant Report,"
EIA–767, "Steam Electric Plant Operation and Design Report,"
EIA–782A, "Refiners/Gas Plant Operators' Monthly Petroleum Product Sales Report,"
EIA–816, "Monthly Natural Gas Liquids Report,"
EIA–846, "Manufacturing Energy Consumption Survey,"
EIA–857, "Monthly Report of Natural Gas Purchases and Deliveries to Consumers,"
EIA–860A, "Annual Electric Generator Report—Utility,"
EIA–860B, "Annual Electric Generator Report—Nonutility,"
EIA–871, "Commercial Buildings Energy Consumption Report,"
EIA–886, "Alternative Transportation Fuels and Alternative Fueled Vehicles,"
EIA–895, "Monthly Quantity and Value of Natural Gas Report," and
EIA–900, "Monthly Nonutility Power Report."

Additional information about these surveys is provided at EIA's Internet site (http://www.eia.doe.gov/oss/forms.html)

EIA produces many reports utilizing natural gas data, analyses, and forecasts. Such reports include: the *Monthly Energy Review*; *Natural Gas Monthly*; *Natural Gas Annual*; *Annual Energy Outlook*; *International Energy Annual*; *Natural Gas Issues and Trends*; and *U.S. Crude Oil, Natural Gas, and Natural Gas Liquids Reserves Annual Report*. These reports as well as other energy information products may be obtained by accessing EIA's Home Page (http://www.eia.doe.gov).

BILLING CODE 6450–01–P

Appendix B. Coverage of Natural Gas Prices Paid by Consumers

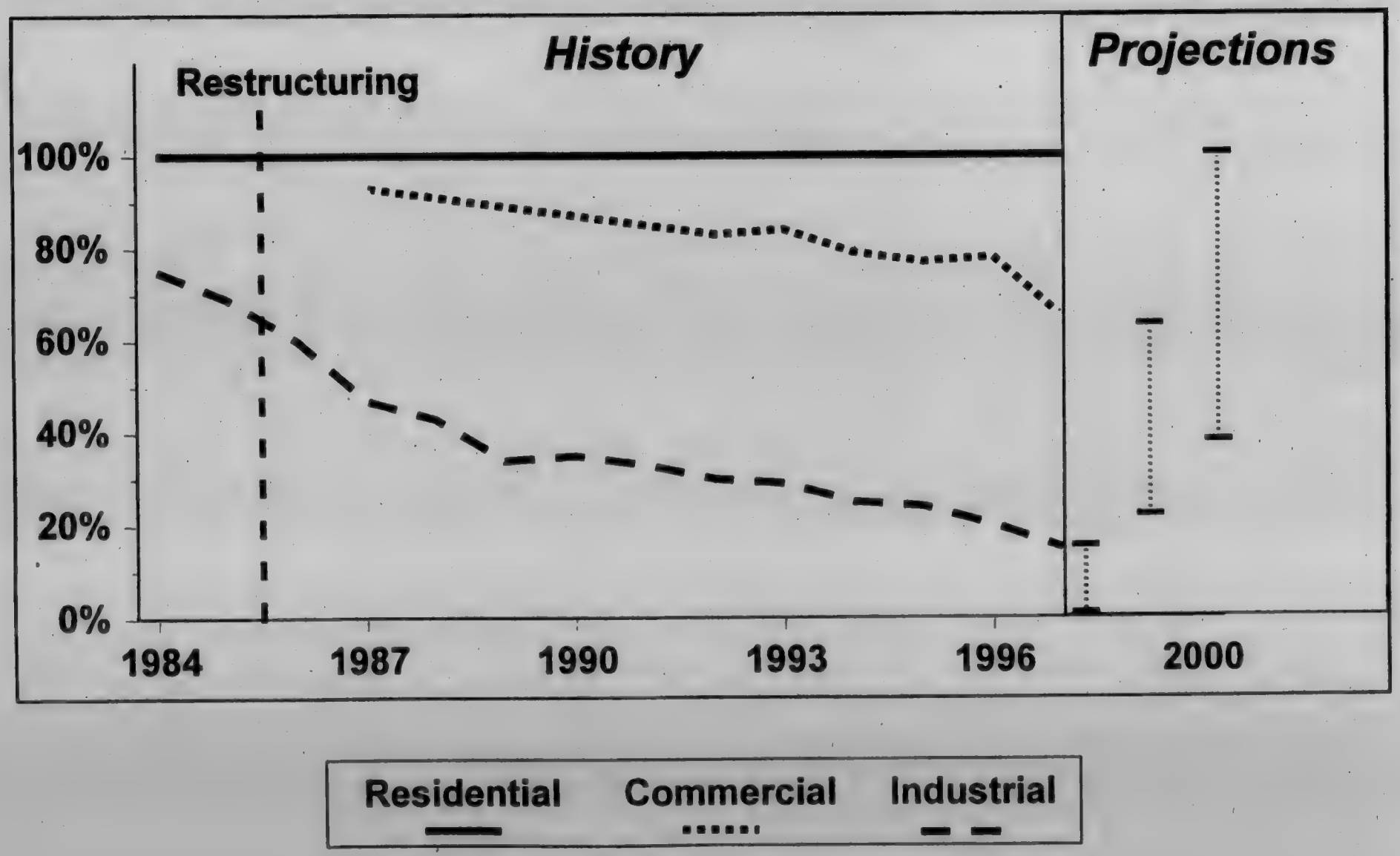

[FR Doc. 99–8450 Filed 4–5–99; 8:45 am]
BILLING CODE 6450–01–C

DEPARTMENT OF ENERGY

Energy Information Administration

American Statistical Association Committee on Energy Statistics; Notice of Open Meeting

This notice announces a meeting of the American Statistical Association's Committee on Energy Statistics, a utilized Federal Advisory Committee. Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

Date and Time: Thursday, April 29, 1999 8:30 am—4:45 pm; Friday, April 30, 1999 8:30 am—12:00 noon.

Place: U. S. Department of Energy, Forrestal Building 1000 Independence Ave., S.W., Washington, DC 20585.

For Further Information Contact: Mr. William I. Weinig, EI–70, Committee Liaison, Energy Information Administration, U.S. Department of Energy, Washington, DC 20585, Telephone: (202) 426–1101. Alternately, Mr. Weinig may be contacted by email at william.weinig@eia.doe.gov or by FAX at (202) 426–1083.

Purpose of Committee: To advise the Department of Energy, Energy Information Administration (EIA), on EIA technical statistical issues and to enable the EIA to benefit from the Committee's expertise concerning other energy-related statistical matters.

Tentative Agenda

Thursday, November 19, 1998

A. Opening Remarks by the Chairman
B. Major Topics
1. International Modeling
2. Cognitive and Field Testing for Establishment Surveys
3. Common Data Definitions
4. Common Collection and Processing System (CCAPS)and Anticipated Challenges for Discussion at the Fall Meeting
5. Increasing the Effectiveness of Ratio Edits by Using Joint Transformed Variables
6. Graphics Techniques

Friday, November 20, 1998

C. Major Topics
1. EIA's Next Environmental Study
2. Cognitive Interviews on EIA's Web Site
3. A Discussion of the Committee's Reactions to Cognitive Interview Protocol and EIA's Web Site
D. Closing Remarks by the Chairman

Public Participation: The meeting is open to the public. The Chairperson of the committee is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Written statements may be filed with the committee either before or after the meeting. If there are any questions, please contact Mr. William I. Weinig, EIA Committee Liaison, at the address or telephone number listed above.

Minutes: Available for public review and copying at the Public Reading Room, (Room 1E–190), 1000 Independence Avenue, SW, Washington, DC 20585, (202) 586–3142, between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday.

Issued at Washington, DC on April 1, 1999.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 99–8449 Filed 4–5–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2666]

Bangor Hydro Electric Company; Notice of Authorization for Continued Project Operation

March 31, 1999.

On March 28, 1997, Bangor Hydro Electric Company, licensee for the Medway Project No. 2666, filed an application for a new or subsequent license pursuant to the Federal Power Act (FPA) and the Commission's regulations thereunder. Project No. 2666 is located on the West Branch of the Penobscot River in Penobscot County, Maine.

The license for Project No. 2666 was issued for a period ending March 31, 1999. Section 15(a)(1) of the FPA, 16 U.S.C. 808(a)(1), requires the Commission, at the expiration of a license term, to issue from year to year an annual license to the then licensee under the terms and conditions of the prior license until a new license is issued, or the project is otherwise disposed of as provided in Section 15 or any other applicable section of the FPA. If the project's prior license waived the applicability of Section 15 of the FPA, then, based on Section 9(b) of the Administrative Procedure Act, 5 U.S.C. 558(c), and as set forth at 18 CFR 16.21(a), if the licensee of such project has filed an application for a subsequent license, the licensee may continue to operate the project in accordance with the terms and conditions of the license after the minor or minor part license expires, until the Commission acts on its application. If the licensee of such a project has not filed an application for a subsequent license, then it may be required, pursuant to 18 CFR 16.21(b), to continue project operations until the Commission issues someone else a license for the project or otherwise orders disposition of the project.

If the project is subject to Section 15 of the FPA, notice is hereby given that an annual license for Project No. 2666 is issued to Bangor Hydro Electric Company for a period effective April 1, 1999, through March 31, 2000, or until the issuance of a new license for the project or other disposition under the FPA, whichever comes first. If issuance of a new license (or other disposition) does not take place on or before March 31, 2000, notice is hereby given that, pursuant to 18 CFR 16.18(c), an annual license under Section 15(a)(1) of the FPA is renewed automatically without further order or notice by the Commission, unless the Commission orders otherwise.

If the project is not subject to Section 15 of the FPA, notice is hereby given that Bangor Hydro Electric Company is authorized to continue operation of the Medway Project No. 2666 until such time as the Commission acts on its application for subsequent license.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–8379 Filed 4–5–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–265–000]

Boundary Gas, Inc., Notice of Proposed Changes in FERC Gas Tariff

March 31, 1999.

Take notice that on March 26, 1999, Boundary Gas, Inc. (Boundary) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets:

To become effective January 1, 1998:

First Revised Sheet No. 1
First Revised Sheet No. 32
First Revised Sheet No. 33

To become effective May 28, 1998:

First Revised Sheet No. 3
First Revised Sheet No. 4
Second Revised Sheet No. 5
First Revised Sheet No. 9
First Revised Sheet No. 26
First Revised Sheet No. 28
Frist Revised Sheet No. 30

To become effective July 2, 1998:

Second Revised Sheet No. 4
Third Revised Sheet No. 5
Second Revised Sheet No. 9
First Revised Sheet No. 10
Second Revised Sheet No. 26
Second Revised Sheet No. 28
Second Revised Sheet No. 30

To become effective August 1, 1998:

Second Revised Sheet No. 32

To become effective November 6, 1998:

Third Revised Sheet No. 4

Fourth Revised Sheet No. 5
Third Revised Sheet No. 9
Third Revised Sheet No. 26
Third Revised Sheet No. 28
Third Revised Sheet No. 30

To become effective January 1, 1999:

First Revised Sheet No. 15
First Revised Sheet No. 16
Third Revised Sheet No. 32

To become effective January 28, 1999

Second Revised Sheet No. 6

Boundary states that the primary purpose of this filing is to revise Boundary's tariff to reflect recent changes to the Boundary Phase 2 Gas Sales Agreement (Sales Agreement), which is incorporated into Boundary's tariff. Specifically, this filing is designed to reflect recent changes among Boundary's stockholders, who are also Boundary's only customers, and the elimination of the requirement that Boundary's customers submit their gas payments to an escrow agent. Boundary also states that the tariff filing reflects certain administrative changes.

Pursuant to 18 CFR 154.207, Boundary requests a waiver of the notice requirements for tariff filings in order to make these tariff sheets effective on the dates proposed in the tariff filing.

Boundary states that copies of this filing were served upon each of Boundary's customers and the state commissions in Connecticut, Massachusetts, New Hampshire, New Jersey, New York and Rhode Island.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulation. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–8377 Filed 4–5–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–275–000]

Great Lakes Gas Transmission Limited Partnership; Notice of Request Under Blanket Authorization

March 31, 1999.

Take notice that on March 29, 1999, Great Lakes Gas Transmission Limited Partnership (Great Lakes), One Woodward Avenue, Suite 1600, Detroit, Michigan 48226, filed a request, pursuant to Sections 157.205 and 157.212 of the Regulations, 18 CFR 157.205 and 157.212, of the Commission's regulations for authorization under Great Lakes' blanket certificate issued in Docket No. CP90–2053–000 to construct and operate a new meter station, to be located in Marenisco Township, Gogebic County, Michigan, all as more fully set forth in the application which is on file with the Commission and open to public inspection.[1] This filing may be viewed on the web at: http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

The proposed facilities, it is said, would be located entirely within Great Lakes' existing right-of-way and would be used to deliver up to 1,560 dekatherms per day of natural gas to Northern States Power Company—Wisconsin (NSP–WI). Great Lakes states that NSP–WI would utilize these volumes to provide new natural gas service in the Township of Marenisco, which Township has not heretofore received natural gas service. Great Lakes further states that the estimated cost of constructing the new facilities is $291,000; the actual cost of construction would be borne by NSP–WI through payment of a contribution in aid of construction. Great Lakes further states that natural gas would be transported to the proposed meter station pursuant to an existing firm transportation agreement between itself and NSP–WI.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file a motion to intervene or notice of intervention, pursuant to Rule 214 of the Commission's Procedural Rules, 18 CFR 385.214, and pursuant to Section 157.205 of the Commission's Regulations, 18 CFR 157.205, a protest to the Request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–8375 Filed 4–5–99; 8:45 am]

BILLING CODE 6717–01–M

[1] Great Lakes states that a copy of its Request is available for inspection electronically on its website at *http://www.greatlakesgas.com/transport/ferc/marenisco.htm.*

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM99–2–166–000]

Kansas Pipeline Company; Notice of Revised Tariff Filing

March 31, 1999.

Take notice that on March 26, 1999, Kansas Pipeline Company (Kansas Pipeline) tendered for filing Revised Tariff Sheets, as part of its FERC Gas Tariff, Original Volume No. 1, to be effective April 1, 1999:

Second Revised Sheet No. 15
Second Revised Sheet No. 17
Second Revised Sheet No. 21
Second Revised Sheet No. 23
Second Revised Sheet No. 26
Second Revised Sheet No. 28
Second Revised Sheet No. 30
Second Revised Sheet No. 32

Kansas Pipeline states that this filing is made in accordance with Section 23 (Fuel Reimbursement Adjustment) of the General Terms and Conditions of Kansas Pipeline's FERC Gas Tariff. The substitute revised tariff sheets reflect corrections to the revised tariff sheets filed on October 1 and reflect the following corrected changes to the Fuel Reimbursement Percentages: (1) a 12.4% decrease in the Zone 1 Reimbursement Percentage for volumes delivered between April and October; (2) a 12.7% decrease in the Zone 1 Fuel Reimbursement Percentage for volumes delivered between November and March; (3) the Zone 2 Fuel Reimbursement Percentage remains at 0.00%; and (4) the Zone 3 Fuel Reimbursement Percentage remains at 0.00%.

Kansas Pipeline states that copies of this filing are being served on all affected customers and applicable state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission,

888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 of 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission"s Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings.

Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–8378 Filed 4–5–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Mid Louisiana Gas Company; Notice of Request Under Blanket Authorization

[Docket No. CP99–274–000]

March 31, 1999.

Take notice that on March 29, 1999, Mid Louisiana Gas Company (Mid Louisiana), 1100 Louisiana Street, Suite 2950, Houston, Texas 77002, filed in Docket No. CP99–274–000 a request pursuant to Sections 157.205 and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.216) for authorization to abandon by sale to Mississippi Valley Gas Company (Mississippi Valley) certain pipeline facilities known as the T–26 Lateral and appurtenant facilities located in Adams County, Mississippi, under Mid Louisiana's blanket certificate issued in Docket No. CP82–539–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection. This filling may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Mid Louisiana proposes to abandon by sale to Mississippi Valley its T–26 Lateral consisting of approximately 0.37 miles of 4½-inch pipe and 0.08 mile of 4-inch pipe and appurtenances located in Adams County, Mississippi. Mid Louisiana states that the facilities were initially constructed to provide delivery of gas for Mid Louisiana's merchant or sale obligation, and that today these facilities are utilized solely for the delivery of gas transported pursuant to Mid Louisiana's Firm Transportation Agreement No. MLG–Q–70165 with Mississippi River Corporation (MRC), dated September 1, 1993. Mid Louisiana states that it will continue to deliver volumes as contracted, however the point of delivery will be moved from the terminus of the T–26 Lateral to the point where the T–26 Lateral interconnects Mid Louisiana's mainline.

Mid Louisiana states that it and Mississippi Valley have agreed to the sale and purchase of the facilities, in the amount of $10, pursuant to a letter agreement dated August 28, 1998, and that MRC has consented to the abandonment and sale by document dated Federal 11, 1999.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–8374 Filed 4–5–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–21–001]

Northern Border Pipeline Company; Notice of Amendment

March 31, 1999.

Take notice that on March 25, 1999, Northern Border Pipeline Company (Northern Border), 1111 South 103rd Street, Omaha, Nebraska 68124–1000, filed in Docket No. CP99–21–001, an amendment to its pending application in Docket No. CP99–21–000, for a certificate of public convenience and necessity, pursuant to Section 7(c) of the Natural Gas Act and Part 157 of the Commission's regulations, to construct and operate pipeline and compression facilities, all as more fully set forth in the amendment which is on file with the Commission and open to public inspection. This filing may be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Specifically, Northern Border seeks to: (1) replace the compressor wheel and uprate the 6,500 HP electric drive compressor at Compressor Station No. 14 to a 13,000 HP electric drive compressor; (2) replace the compressor wheel and internals and uprate the 12,000 HP electric drive compressor at Compressor Station No. 17 to a 15,000 HP electric drive compressor; (3) install and operate a 13,000 HP electric drive compressor at Compressor Station Site No. 18; (4) construct and operate approximately 34.4 miles of 36-inch pipeline from Manhattan, Illinois to North Hayden, Indiana; (5) construct and operate a new meter station; and (6) other appurtenant facilities. Northern Border also withdraws its request to install compression at Compressor Station Nos. 2, 4, and 16 and will not make the previously proposed cooling modifications. Further, Northern Border withdraws its request for permission and approval to abandon and remove certain compression facilities. The change in facility configuration was prompted when two of the original project shippers, El Paso Energy Marketing Company and Minnesota Corn Processors, obtained firm capacity via capacity release subsequent to the filing of Docket No. CP99–21–000. Northern Border states that the estimated cost of the proposed facilities is $125.7 million. The proposed in-service date of the facilities is November 1, 2000.

Northern Border proposes to maintain its cost of service ratemaking methodology and roll-in to Rate Schedule T–1 (Northern Border's Part 284 firm transportation rate schedule) the cost of the new facilities with its existing system costs. Northern Border maintains that the aggregation of the proposed costs with existing facility costs will result in an increase in the unit cost under Rate Schedule T–1 that is less than the 5 percent presumption in the Commission's *Pricing Policy for New and Existing Facilities Constructed by Interstate Natural Gas Pipelines* (68 FERC ¶ 61,140 (1994)). Northern Border also asserts that its proposal will offer system-wide benefits to existing and prospective shippers.

Northern Border also requests a one-time waiver of Subsection 4.83 of Rate Schedule T–1 in Northern Border's FERC Gas Tariff, First Revised Volume No. 1, which details the calculation of

an average monthly rate base. Instead of calculating the average monthly rate base using the beginning and end-of-month balances as is currently in the tariff, Northern Border seeks to use a daily weighted average balance for the in-service month of a the proposed facilities.

Any person desiring to be heard or to make any protest with reference to said application should on or before April 21, 1999, file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. The Commission's rules require that protestors provide copies of their protests to the party or parties directly involved. Any person wishing to become a party in any proceeding herein must file a motion to intervene in accordance with the Commission's rules.

A person obtaining intervenor status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by every one of the intervenors. An intervenor can file for rehearing of any Commission order and can petition for court review of any such order. However, an intervenor must submit copies of comments or any other filing it makes with the Commission to every other intervenor in the proceeding, as well as 14 copies with the Commission.

A person does not have to intervene, however, in order to have comments considered. A person, instead, may submit two copies of comments to the Secretary of the Commission. Commenters will be placed on the Commission's environmental mailing list, will receive copies of environmental documents and will be able to participate in meetings associated with the Commission's environmental review process. Commenters will not be required to serve copies of filed documents on all other parties. However, commenters will not receive copies of all documents filed by other parties or issued by the Commission and will not have the right to seek rehearing or appeal the Commission's final order to a federal court.

The Commission will consider all comments and concerns equally, whether filed by commenters or those requesting intervenor status.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonments and a grant of the certificate are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Northern Border to appear or to be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–8373 Filed 4–5–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Non-Project Use of Project Lands and Waters and Soliciting Comments, Motions To Intervene, and Protests

March 31, 1999.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type*: Non-Project Use of Project Lands and Waters.

b. *Project No*: 2232–386.

c. *Date Filed*: March 15, 1999.

d. *Applicant*: Duke Energy Corporation.

e. *Name of Project*: Catawba-Wateree Hydroelectric Project.

f. *Location*: On Lake Hickory near the Lovelady Township, in Caldwell County, North Carolina. The project does not utilize federal or tribal lands.

g. *Filed Pursuant to*: Federal Power Act, 16 U.S.C. § 791(a)–825(r).

h. *Applicant Contact*: Mr. E.M. Oakley, Duke Energy Corporation P.O. Box 1006 (EC12Y), Charlotte, NC 28201–1006 (704) 382–5778.

i. *FERC Contact*: Any questions on this notice should be addressed to Brian Romanek at (202) 219–3076, or e-mail address: brian.romanek@ferc.fed.us.

j. *Deadline for filing comments and or motions*: May 7, 1999.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, Mail Code: DLC, HL–11.1, 888 First Street, N.E., Washington DC 20426.

Please include the project number (2232–386) on any comments or motions filed.

k. *Description of Proposal*: Duke Energy Corporation proposes to lease to Gunpowder, LLC (Riverbend) four parcels containing a total of 2.07 acres of project land for the construction of 67 boat slips, a loading dock, concrete boat ramp and the placement of rip rap to stabilize 500 feet of shoreline. The boat slips would provide access to the reservoir for residents of Riverbend Subdivision. No dredging is proposed.

l. *Locations of the Application*: A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 first Street, NE, Room 2A, Washington, D.C. 20426, or by calling (202) 208–1371. This filing may be viewed on http://www.ferc.fed.us/online/rims.htm (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. This notice also consists of the following standard paragraphs: B, C1 and D2.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests or motions to intervene must be received on or before the specified comment date for the particular application.

C1. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the

filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–8376 Filed 4–5–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL99–46–000]

Capacity Benefit Margin in Computing Available Transmission Capacity; Notice of Technical Conference and Potential Broadcast of Technical Conference and Request for Comments

March 31, 1999.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of Technical Conference and Potential Broadcast of Technical Conference and Request for Comments.

SUMMARY: The Federal Energy Regulatory Commission (Commission) notifies interested persons that the Commission Staff will convene a technical conference at the Commission regarding Capacity Benefit Margin on May 20 and 21, 1999, commencing at 10:00 A.M. each day. The Commission Staff invites any interested person wishing to speak at the technical conference to submit a request to make a statement. The Commission Staff also invites interested persons to submit written comments. At a later date, the Secretary will issue a further notice listing the speakers, panels and subjects for the technical conference.

DATES: Requests to speak at the technical conference must be filed with the Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426 on or before Monday, April 19, 1999.

Written comments must be received by 5:00 P.M., Friday, April 23, 1999.

Persons interested in receiving the Capitol Connection's live internet, telephone or satellite coverage of the technical conference for a fee must notify Shirley Al-Jarani or Julia Morelli at the Capitol Connection (703–993–3100) or contact them at Capitol Connection's website (www.capitolconnection.gmu.edu) by May 7, 1999. Persons interested in National Narrowcast Network's Hearing-On-The-Line service coverage of the technical conference live by telephone should call 202–966–2211 for further details.

The technical conference will be held on May 20 and 21, 1999, commencing at 10:00 A.M. each day.

ADDRESSES: The technical conference will be held at the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT:

Charles Faust (Technical Issues), Office of Electric Power Regulation, 888 First Street, NE, Washington, DC 20426, 202–208–0564.

Andre Goodson (Legal Issues), Office of the General Counsel, 888 First Street, NE, Washington, DC 20426, 202–208–2167.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in the Public Reference Room at 888 First Street, N.E., Room 2A, Washington, DC 20426.

The Commission Issuance Posting System (CIPS) provides access to the texts of formal documents issued by the Commission. CIPS can be accessed via Internet through FERC's Home Page (http://www.ferc.fed.us) using the CIPS link or the Energy Information Online icon. The full text of this document will be available on CIPS in ASCII and WordPerfect 6.1 format. CIPS is also available through the Commission's electronic bulletin board service at no charge to the user and may be access using a personal computer with a modem by dialing 202–208–1397, if dialing locally, or 1–800–856–3920, if dialing long distance. To access CIPS, set your communications software to 19200, 14400, 12000, 9600, 7200, 4800, 2400, or 1200 bps, full duplex, no parity, 8 data bits and 1 stop bit. User assistance is available at 202–208–2474 or by E-mail to CipsMaster@FERC.fed.us.

This document is also available through the Commission's Records and Information Management System (RIMS), an electronic storage and retrieval system of documents submitted to and issued by the Commission after November 16, 1981. Documents from November 1995 to the present can be viewed and printed. RIMS is available in the Public Reference Room or remotely via Internet through FERC's Homepage using the RIMS link or the Energy Information Online icon. User assistance is available at 202–208–2222, or by E-mail to RimsMaster@FERC.fed.us.

Finally, the complete text on diskette in WordPerfect format may be purchased from the Commission's copy contractor, RVJ International, Inc. RVJ International, Inc., is located in the Public Reference Room at 888 First Street, NE, Washington, DC 20426.

The Commission has directed the Commission Staff to convene a technical conference to be held on Thursday, May 20, 1999, and Friday, May 21, 1999, at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. The technical conference will commence at 10:00 a.m. each day and will be open to all interested persons. The technical conference will address Capacity Benefit Margin. The Commission Staff has attached to this notice a list of suggested subjects for discussion at the technical conference.

Persons wishing to speak at the technical conference must submit a request to make a statement in Docket No. EL99–46–000. This request should clearly specify that it concerns the Capacity Benefit Margin technical conference and must specify the name of the person desiring to speak and the party or parties the speaker represents. Persons with common interests or views are requested to file a joint request for participation, so that the Commission can accommodate the maximum number of participants. Requests must also include a brief synopsis of the issue or issues the speaker wishes to address as well as the speaker's position on the issue or issues. All requests must be filed with the Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426 on or before Monday, April 19, 1999.

The number of persons desiring to speak at the conference may exceed the time allotted. Therefore, based on the

requests to participate, the Commission Staff will put together panels of speakers representing a broad spectrum of interests and views for each panel. At a later date, the Secretary will issue a further notice listing the speakers, panels and subjects for the technical conference.

In addition, interested persons are invited to submit written comments addressing topics to be discussed at the technical conference.

To facilitate review of the comments, commenters should provide a one page executive summary of their comments. The comments should be no longer than 25 pages in length, double spaced, on 8½" x 11" paper, with standard margins.

The original and 14 copies of such comments must be received before 5:00 p.m., Friday, April 23, 1999. Comments should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426 and should refer to Docket No. EL99–46–000.

In addition to filing paper copies, the Commission encourages the filing of comments either on computer diskette or via Internet E-Mail. Comments may be filed in the following formats: WordPerfect 6.1 or lower version, MS Word Office 97 or lower version, or ASCII format.

For diskette filing, include the following information on the diskette label: Docket No. EL99–46–000; the name of the filing entity; the software and version used to create the file; and the name and telephone number of a contact person.

For Internet E-Mail submittal, comments should be submitted to "comment.rm@ferc.fed.us" in the following format. On the subject line, specify Docket No. EL99–46–000. In the body of the E-Mail message, include the name of the filing entity; the software and version used to create the file, and the name and telephone number of the contact person. Attach the comment to the E-Mail in one of the formats specified above. The Commission will send an automatic acknowledgement to the sender's E-Mail address upon receipt. Questions on electronic filing should be directed to Brooks Carter at 202–501–8145, E-Mail address brooks.carter@ferc.fed.us.

Commenters should take note that, until the Commission amends its rules and regulations, the paper copy of the filing remains the official copy of the document submitted. Therefore, any discrepancies between the paper filing and the electronic filing or the diskette will be resolved by reference to the paper filing.

All comments will be placed in the Commission's public files and will be available for inspection in the Commission's Public Reference Room at 888 First Street, NE, Washington, DC 20426, during normal business hours. Additionally, comments can be viewed and printed remotely via the Internet through FERC's Homepage using the RIMS link or the Energy Information Online icon. User assistance is available at 202–208–2222, or by E-mail to RimsMaster@FERC.fed.us.

If there is sufficient interest, the Capitol Connection may offer the conference live for a fee over the Internet as well as via telephone and satellite. Persons interested in receiving the Capitol Connection's live internet, phone bridge or satellite coverage for a fee, please call Shirley Al-Jarani or Julia Morelli at the Capitol Connection (703–993–3100) or contact them at Capitol Connection's website (www.capitolconnection.gmu.edu) by May 7, 1999. In addition, National Narrowcast Network's Hearing-On-The-Line service covers all FERC meetings live by telephone so that interested persons can listen at their desks, from their homes, or from any phone, without special equipment. Billing is based on time on-line. Call 202–966–2211 for further details.

By direction of the Commission. Commissioner Bailey did not participate in this decision.

David P. Boergers,

Secretary.

What is CBM?

NERC's June 1996 publication, *Available Transfer Capability Definitions and Determination* (page 14), states:

> Capacity Benefit Margin (CBM) is that amount of transmission transfer capability reserved by load serving entities to ensure access to generation from interconnected systems to meet generation reliability requirements. Reservation of CBM by a load serving entity allows that entity to reduce its installed generating capacity below that which may otherwise have been necessary without interconnections to meet its generation reliability requirements.

It adds that if "a load-serving entity maintains policies and procedures to reserve transfer capability for generation reliability purposes," CBM should be subtracted from Total Transmission Capacity (TTC) in computing Available Transmission Capacity (ATC).[1] It neither prescribes a specific methodology for computing CBM, nor dictates that a CBM adjustment of any amount be computed. Rather, the computations of ATC set forth in the publication create a placeholder for those utilities that elect to make a CBM adjustment. It appears that utilities have different views on what CBM is and how it is computed. Also, the decision as to whether and how to make a CBM adjustment appears to reside in the transmission provider's' merchant function, and it is not clear how decisions about CBM are made within the confines of the Commission's unbundling requirements.

Who is Allowed to use Transmission Capacity set Aside as CBM?

It appears that for many transmission providers transmission capacity set aside as CBM is not made available for firm transmission uses. However, some transmission providers do use CBM for their own firm uses, and some appear to make CBM available for the firm imports of any load-serving entity in the control area. There also appears to be some variation as to how CBM is made available for nonfirm open access offerings. Some utilities appear to make it available only during system emergencies, others appear to use CBM to meet the nonfirm uses of the transmission provider, while others appear to treat it as nonfirm ATC under their open access tariffs.

Is CBM an Economic Issue and, if so, is the Right Person Making the Economic Decision?

While CBM is often labeled a reliability issue, it is generally supported on the ground that it reduces the cost of maintaining generation reliability when compared to other alternatives that could be used to maintain generation reliability. In circumstances when there are multiple ways to maintain generation reliability that impact transmission access differently (*e.g.*, install generation

[1] The publication defines TTC as the amount of electric power that can be transferred over the interconnected transmission network in a reliable manner so as to ensure (1) that existing facilities will be operated within normal ratings and limits; (2) the electric systems are capable of absorbing dynamic power swings and remaining stable following a disturbance that results in the loss of a single system element; and (3) after contingencies and before operator-intervention, facility loadings do not exceed emergency limits and ratings. (pages 6–9) It notes that TTC may also be reduced to reflect a Transmission Reliability Margin which is defined as the transmission capability necessary to ensure that the interconnected transmission network is secure under a reasonable range of uncertainties in system conditions, including (1) the fact that the assumptions used to model TTC may need to be more conservative in the long term because less is known about the system parameters (*e.g.*, transactions, loads, generators) over extended periods and (2) the fact that actual operating conditions (*e.g.*, generator dispatch, parallel flows, and maintenance outages) may differ from those reflected in the model. (pages 13–14)

locally, purchase transmission to reach remote generating resources, or reduce firm ATC on the assumption that neighbors will help out during generation contingencies), the person making the choice may not be the same person, or the only person, that is affected by the economics of the decision.

Are There Considerations Other Than Reliability and Economics that Impact CBM Issues?

In *Pennsylvania-New Jersey-Maryland Interconnection*, 81 FERC ¶ 61,257 at 62,276–77 (1998), the Commission expressed the possibility that changes in CBM practices might raise transition issues. For example, in the short run, reliability could be affected if CBM practices are changed without providing time for those relying on it to make other arrangements. Equities may also be a consideration when the past economic decisions of transmission providers to use CBM were reasonable in the historical context.

The cost of transmission capacity which may be set aside for CBM is rolled into the basic transmission charge and apportioned pro rata among all transmission users. The differing CBM practices of utilities may support differing rate treatments.

[FR Doc. 99–8422 Filed 4–5–99; 8:45 am]
BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY (EPA)

[FRL–6319–4]

Proposed Prospective Purchaser Agreement Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as Amended by the Superfund Amendments and Reauthorization Act, Container Recycling Superfund Site, Kansas City, KS

AGENCY: Environmental Protection Agency.

ACTION: Notice; request for public comment.

SUMMARY: Notice is hereby given that a proposed prospective purchaser agreement associated with the Container Recycling Superfund Site, located in Kansas City, Wyandotte County, Kansas, was executed by the agency on March 10, 1999 . The Site is an inactive drum reconditioning facility. The agreement is subject to final approval after the comment period. The Prospective Purchaser Agreement would resolve certain potential EPA claims under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 ("CERCLA"), against Alliance Industrial Service, LLC, the prospective purchaser ("the purchaser").

The settlement would require the purchaser to remove and properly dispose of certain containerized wastes and several thousand spent drums located at the property. The purchaser would also be required to provide EPA access to the property.

For thirty (30) days following the date of publication of this document, the Agency will receive written comments relating to the proposed settlement.

DATES: Comments must be submitted on or before May 6, 1999.

ADDRESSES: Comments should reference the "Container Recycling Superfund Site Prospective Purchaser Agreement" and should be forwarded to Jim MacDonald, On-Scene Coordinator, U.S. Environmental Protection Agency, Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101.

The proposed settlement is available for public inspection at the U.S. Environmental Protection Agency, Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101. A copy of the proposed agreement may be obtained from Eileen Gendreau (913) 551–7736, at this address.

FOR FURTHER INFORMATION CONTACT: Mike Gieryic, Assistant Regional Counsel, U.S. Environmental Protection Agency, Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101, (913) 551–7822.

Dated: March 15, 1999.

Dennis Grams,

Regional Administrator, Region VII.

[FR Doc. 99–8468 Filed 4–5–99; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6311–7]

Proposed Settlement Under Section 122(h)(1) of the Comprehensive Environmental Response, Compensation and Liability Act

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed administrative settlement and opportunity for public comment—Conus Chemical Company Superfund Site.

SUMMARY: The United States Environmental Protection Agency (EPA) is proposing to enter into an administrative settlement to resolve certain claims under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (CERCLA). Notice is being published to inform the public of the proposed settlement and of the opportunity to comment. This settlement concerns the Conus Chemical Company Superfund Site in Newark, New Jersey and is intended to resolve the site owner's liability for response costs incurred by EPA.

DATES: Comments must be provided by May 6, 1999.

ADDRESSES: Comments should be addressed to the United States Environmental Protection Agency, Office of Regional Counsel, 290 Broadway—17th Floor, New York, NY 10007, and should refer to: In the Matter of the Conus Chemical Company Superfund Site, Agreement for Recovery of Past Response Costs, U.S. EPA Index No. II–CERCLA–98–0116.

FOR FURTHER INFORMATION CONTACT: U.S. Environmental Protection Agency, Office of Regional Counsel, 290 Broadway—17th Floor, New York, NY 10007; Attention: Marc Seidenberg, Esq. (212) 637–3150.

SUPPLEMENTARY INFORMATION: In accordance with section 122(i)(1) of CERCLA, notice is hereby given of a proposed administrative settlement concerning the Conus Chemical Company Superfund Site located in Newark, New Jersey. Section 122(h)(1) of CERCLA provides EPA with authority to settle certain claims for response costs incurred by the United States when the settlement has received the approval of the Attorney General of the United States of America. The one settling party will pay $350,000 to reimburse EPA for response costs incurred at the Conus Chemical Company Superfund Site.

Dated: March 26, 1999.

William J. Muszynski,

Acting Regional Administrator, Region 2.

[FR Doc. 99–8481 Filed 4–5–99; 8:45 am]
BILLING CODE 6560–50–P

FARM CREDIT ADMINISTRATION

Sunshine Act Meeting

AGENCY: Farm Credit Administration.

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), that the April 8, 1999 regular meeting of the

Farm Credit Administration Board (Board) will not be held.

FOR FURTHER INFORMATION CONTACT: Vivian L. Portis, Secretary to the Farm Credit Administration Board, (703) 883–4025, TDD (703) 883–4444.

ADDRESSES: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

Dated: April 2, 1999.

Vivian L. Portis,

Secretary, Farm Credit Administration Board.

[FR Doc. 99–8581 Filed 4–2–99; 12:56 pm]

BILLING CODE 6705–01–P

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 92–237; DA 99–647]

Next Meeting of the North American Numbering Council

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: On April 2, 1999, the Commission released a public notice announcing the April 21 and April 22, 1999, meeting and agenda of the North American Numbering Council (NANC). The intended effect of this action is to make the public aware of the NANC's next meeting and its agenda.

FOR FURTHER INFORMATION CONTACT: Linda Simms, (202) 418–2330 or via the Internet at lsimms@fcc.gov or Jeannie Grimes at (202) 418–2313 or jgrimes@fcc.gov. The address is: Network Services Division, Common Carrier Bureau, Federal Communications Commission, 2000 M Street, NW, Suite 235, Washington, DC 20554. The fax number is: (202) 418–7314. The TTY number is: (202) 418–0484. After April 8, 1999, the address will be as follows: Common Carrier Bureau, Federal Communications Commission, Network Services Division, Portals II, 445 Twelfth Street, S.W., Room TW-C305, Washington, DC 20554.

SUPPLEMENTARY INFORMATION: Released: April 2, 1999.

The next meeting of the North American Numbering Council (NANC) will be held on Wednesday, April 21, 1999, from 8:30 a.m., until 5:00 p.m., and on Thursday, April 22, 1999, from 8:30 a.m., until 12 noon. at the Federal Communications Commission, Portals II, 445 Twelfth Street, S.W., Room TW-C305, Washington, DC 20554

FOR FURTHER INFORMATION CONTACT: Linda Simms at (202) 418–2330 or via the Internet at lsimms@fcc.gov or Jeannie Grimes at (202) 418–2313 or jgrimes@fcc.gov. The address is: Network Services Division, Common Carrier Bureau, Federal Communications Commission, 2000 M Street, NW, Suite 235, Washington, DC 20554. The fax number is: (202) 418–7314. The TTY number is: (202) 418–0484. Effective April 8, 1999, the address will be: Network Services Division, Common Carrier Bureau, Federal Communications Commission, Portals II, 445 Twelfth Street, S.W., Suite 6A–320, Washington, DC 20554

SUPPLEMENTARY INFORMATION: This meeting is open to the members of the general public. The FCC will attempt to accommodate as many participants as possible. The public may submit written statements to the NANC, which must be received two business days before the meeting. In addition, oral statements at the meeting by parties or entities not represented on the NANC will be permitted to the extent time permits. Such statements will be limited to five minutes in length by any one party or entity, and requests to make an oral statement must be received two business days before the meeting. Requests to make an oral statement or provide written comments to the NANC should be sent to Linda Simms at the address under **FOR FURTHER INFORMATION CONTACT**, stated above.

Proposed Agenda—Wednesday, April 21, 1999

1. Approval of March 16–17 and March 30, 1999, meeting minutes.
2. Local Number Portability Administration (LNPA) Working Group Report.
3. Issue Management Group—Local Number Portability Implementation. Report on best way to address concerns (*e.g.*, throughput and porting volumes) within the industry; what role the LNPA WG should play, and what are the options within the industry to address such issues.
4. Industry Numbering Committee (INC) Report. INC 500/900 Portability Report.
5. Numbering Resource Optimization (NRO) Working Group Report.
6. Cost Recovery Working Group Report. Discussion of NANC response recommendation to Illinois Number Pooling Subcommittee March 2, 1999, letter regarding treatment and funding of common pooling costs. NBANC Board Report, NANPA Billing and Collection Agent activities.
7. North American Numbering Plan Administration (NANPA) Oversight Working Group Report. Presentation of NANPA Performance Evaluation Report.

Thursday, April 22, 1999

8. Lockheed Martin NANP Exhaust Review Team. Lockheed Martin report on review of exhaust model.
9. Other Business.

Federal Communications Commission.

Blaise A. Scinto,

Deputy Chief, Network Services Division, Common Carrier Bureau.

[FR Doc. 99–8611 Filed 4–5–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on the proposed collection of information. In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)), this notice seeks comments on Federal assistance to States for the suppression of any fire that constitutes as a major disaster.

SUPPLEMENTARY INFORMATION. Section 420 of the Robert R. Stafford Disaster Relief and Emergency Assistance Act, Public Law 93–288, as amended, authorizes the President to provide assistance, including grants, equipment, supplies, and personnel, to any State for the suppression of any fire on publicly or privately-owned forest or grassland, which threatens such destruction as would constitute a major disaster. Under E.O. 12148, the President has delegated this authority to the Director of FEMA, who in turn has re-delegated the authority to the Response and Recovery Executive Associate Director. FEMA has issued regulations pertaining to fire suppression assistance (FSA) contained in 44 CFR, Part 206, Subpart L.

Collection of Information.

Title: Request for Fire Suppression Assistance.

Type of Information Collection: Reinstatement with change.

OMB Number: 3067–0066.

Form Numbers: FEMA Forms 90–58, 90–91; Standard Forms 424, 270.

Abstract: FEMA provides assistance for fire suppression of forest or

grassland fires, which threatens destruction to life/and or improved property as would constitute a major disaster under Fire Suppression Assistance (FSA). In order for FEMA to provide the necessary assistance to States for the fire suppression program activities, the following forms are used to collect information: FEMA Form 90–58, Request for Fire Suppression Assistance, used by the state to provide information to support the need for Federal assistance.

FEMA Form 90–91, Damage Survey Report, prepared by the Principal Advisor, State Forester, and a FEMA representative upon termination of eligible fire suppression assistance. Standard Form 424, Federal Assistance (referred to in FEMA as their Fire Project Application) submitted by a State immediately after FEMA's Regional Director terminates fire suppression assistance. Standard Form 270, Request for Advance or Reimbursement used by the State as an option to receive funds. In addition, under Section 420 of the Stafford Act there must be a FEMA-State Agreement. Also, a State Administrative Plan must be developed by the State for the Administration of a Fire Suppression Assistance Grant. The plan must designate the State agency that will be responsible for the administration of the program and ensure compliance with the law and regulation applicable to (FSA) grants and ensure the administrative plan is incorporated into the State Emergency Plan.

Affected Public: State, local or tribal government.

Frequency of Response: On occasion.

Estimated Total Annual Burden Hours: 110 hours.

Information collection	Respondents per year	Hour burden per response	Burden hours per year
FEMA-Statement Agreement	27	5 minutes	2.25
Standard Form 90–58	27	1 hour	27
Standard Form 424	27	1 hour	27
FEMA Form 90–91	27	30 minutes ..	13.5
Standard Form 270 or Letter of Credit	27	30 minutes ..	13.5
State Administrative Plan	27	1 hour	27
Estimated Total	27	4.0833 hours	110.25

Estimated Cost. $1,654-cost is estimated at $15.00 per respondent × 27 respondents × 4.0833 hour burden per response.

COMMENTS: Written comments are solicited to: (a) Evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses. Comments should be received within 60 days of the date of this notice.

ADDRESSES: Interested persons should submit written comments to Muriel B. Anderson, FEMA Information Collections Officer, Federal Emergency Management Agency, 500 C Street, SW, Room 316, Washington, DC 20472. Telephone number (202) 646–2625. FAX number (202) 646–3524. Email address muriel.anderson@fema.gov.

FOR FURTHER INFORMATION CONTACT: Contact Sherry Savoy at (202) 646–2667 for additional information. Contact Ms. Anderson at (202) 646–2625 for copies of the proposed collection of information.

Dated: March 26, 1999.

Reginald Trujillo,

Director, Program Services Division, Operations Support Directorate.

[FR Doc. 99–8465 Filed 4–5–99; 8:45 am]

BILLING CODE 6718–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed revised information collections. In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)), this notice seeks comments concerning the Elevation Certificate and the Floodproofing Certificate. The certificates are required by the NFIP to certify the elevations of buildings, so that the policy can be properly rated. It also provides documentation to verify the community's enforcement of building ordinances, which is important to the NFIP mitigation and floodplain management activities.

SUPPLEMENTARY INFORMATION. The NFIP is authorized by Public Law 90–448 (1968) and expanded by Public Law 93–234 (1973). The National Flood Insurance Act of 1968 requires that the Federal Emergency Management Agency (FEMA) provide flood insurance at full actuarial rates reflecting the complete flood risk to structures built or substantially improved on or after the effective date, for the initial Flood Insurance Rate Map (FIRM) for the community, or after December 31, 1974, whichever is later, so that the risks associated with buildings in flood-prone areas are borne by those located in such areas and not by the taxpayers at large. In accordance with Public Law 93–234, the purchase of flood insurance is mandatory when Federal or federally related financial assistance is being provided for acquisition or construction of buildings located, or to be located, within FEMA-identified special flood hazard areas of communities that are participating in the NFIP.

The NFIP regulations require the elevation or floodproofing of newly constructed structures in designated special flood hazard areas. As part of the agreement for making flood insurance available in a community, the NFIP requires the community to adopt a floodplain management ordinance containing certain minimum requirements intended to reduce future flood losses. One such requirement is that the community obtain the elevation of the lowest floor (including basement) of all new and substantially improved

structures, and maintain a record of all such information. The data may be generated and retained as part of the community's permit issuance and building inspection processes. The Elevation Certificate is one convenient way for a community to comply with this requirement. The Floodproofing Certificate may similarly be used to establish the required record in those instances when floodproofing for non-residential structures is a permitted practice.

In the past several years, FEMA has collected feedback from users of the Elevation Certificate form requesting minor changes and clarifications. These changes include better description of structure being certified; expanding "Section B—Flood Insurance Rate Map Information" to include critical map information; improving Instructions Section and simplifying the existing Building Diagrams; and clarifying the certification section to reduce the liability risk on the surveyors and professional engineers.

Collection of Information

Title: Post Construction Elevation Certificate/Floodproofing Certificate.

Type of Information Collection: Revision of a currently approved collection.

OMB Number: 3067–0077.

Form Numbers: FEMA Form 81–31, Elevation Certificate; FEMA Form 81–65, Floodproofing Certificate for Non-Residential Structures.

Abstract: The Elevation Certificate and Floodproofing Certificate are adjuncts to the application for flood insurance. The certificates are required for proper rating of post-Flood Insurance Rate Map (FIRM) structures, which are buildings constructed after publication of the FIRM, for flood insurance in Special Flood Hazard Areas. In addition, the Elevation Certificate is needed for pre-FIRM structures being rated under post-FIRM flood insurance rules. The certificates provide community officials and others, with standardized documents that are readily needed.

The certificates are supplied to insurance agents, community officials, surveyors, engineers, architects, and NFIP policyholders/applicants. The community officials or other professionals provide the elevation data required to document conformance with floodplain management regulations and for the applicants so that actuarial insurance rates can be charged. The elevation data is transmitted to the NFIP by the insurance applicant or agent with the appropriate NFIP policy forms.

The data is also used to assist FEMA in measuring the effectiveness of the NFIP regulations in eliminating or decreasing damage caused by flooding and the appropriateness of the NFIP premium charges for insuring property against the flood hazard.

Affected Public: Individuals and households, Businesses or other for-profit, Not-for-profit institutions, Farms, and State, local or tribal governments.

Estimated Total Annual Burden Hours: 166,362.

FEMA forms	Number of respondents (A)	Hours per response (B)	Annual burden hours (A×B)
81–31	73,000	2.25	164,250
81–65	650	3.25	2,112
Total	73,650		166,362

Estimated Cost: The average cost is estimated to be a fee of $125–$200 charged to the applicant by the private sector professional completing the Elevation or Floodproofing Certificates. Total annual costs could range from $9,206,250 to $14,730,000 (i.e., 73,650 respondents × $125 per respondent = $9,206,250 to 73,650 respondents × $200 per respondent = $14,730,000.) Although the average is estimated to range from $125 to $200 per certificate, the actual cost for a given certificate may vary by region and location. In many cases, the Certificates will be available at no cost as a normal product of the community's construction and local permitting processes.

The cost to the Federal government for developing/revising the Elevation Certificate and Floodproofing Certificate is estimated to total $50,000. There is no independent dollar cost to the Federal government to develop, process, analyze and maintain this information since it is submitted by the applicant for flood insurance, along with the applicant's application.

COMMENTS: Written comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology; e.g., permitting electronic submission of responses. Comments should be received within 60 days of the date of this notice.

ADDRESSES: Interested persons should submit written comments to Muriel B. Anderson, FEMA Information Collections Officer, Federal Emergency Management Agency, 500 C Street, SW, Room 316, Washington, DC 20472. Telephone number (202) 646–2625. FAX number (202) 646–3524 or email muriel.anderson@fema.gov.

FOR FURTHER INFORMATION CONTACT: Contact Jhun de la Cruz, Insurance Examiner, Federal Insurance Administration, (202) 646–2650 for additional information. Contact Ms. Anderson at (202) 646–2625 or email muriel.anderson@fema.gov for copies of the proposed collection of information.

Dated: March 26, 1999.

Reginald Trujillo,

Director, Program Services Division, Operations Support Directorate.

[FR Doc. 99–8466 Filed 4–5–99; 8:45 am]

BILLING CODE 6718–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Activities: Submission for OMB Review; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency is submitting a request for review and approval of an expired information collection. The request is submitted under the emergency processing procedures in Office of Management and Budget OMB)

regulation 5 CFR 1320.13. FEMA is requesting that this information collection be approved by April 12, 1999, for use through October 1999.

FEMA plans to follow this emergency request with a request for a 3-year approval. The request will be processed under OMB's normal clearance procedures in accordance with the provisions of OMB regulation 5 CFR 1320.10. To help us with the timely processing of the emergency and normal clearance submissions to OMB, FEMA invites the general public to comment on the proposed collection of information. This notice and request for comments is in accordance with the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)). It also seeks comments concerning the information collections outlined in 44 CFR Part 61, as it pertains to application for National Flood Insurance Program (NFIP) insurance.

SUPPLEMENTARY INFORMATION. The National Flood Insurance Program (NFIP) is authorized by Public Law 90–448 (1968) and expanded by Public Law 93–234 (1973). The National Flood Insurance Act of 1968 requires that the Federal Emergency Management Agency (FEMA) provided flood insurance at full actuarial rates reflecting the complete flood risk to structures built or substantially improved on or after the effective date for the initial Flood Insurance Rate Map (FIRM) for the community, or after December 31, 1974, whichever is later, so that the risks associated with buildings in flood-prone areas are borne by those located in such areas and not by the taxpayers at large. In accordance with Public Law 93–234, the purchase of flood insurance is mandatory when Federal or federally related financial assistance is being provided for acquisition or construction of buildings located, or to be located, within FEMA-identified special flood hazard areas of communities that are participating in the NFIP.

Collection of Information.

Title: National Flood Insurance Program Policy Forms.

Type of Information Collection: Reinstatement, with change, of a previously approved collection for which approval has expired.

OMB Number: 3067–0022.

Forms: FEMA Form 81–16, Flood Insurance Application—used to obtain building and/or content coverage for dwellings and general property. Also used to apply for a Condo Master Policy, which provides flood insurance coverage on a single policy for all residential condo units in condominium building.

FEMA Form 81–17, Cancellation/Nullification Request—used for cancellation or nullification of a NFIP policy.

FEMA Form 81–18, General Change Endorsement—used to amend existing policy data shown on the policy Declaration Page.

Request for Policy Processing and Renewal Information Letter (RPPRI Letter)—requests additional or corrected information from the producer when an Application, Endorsement, or Renewal cannot be processed because of missing or incorrect? Upon receipt by the NFIP of the additional or corrected information, the Application, Endorsement, or Renewal is processed.

FEMA Form 81–25, V-Zone Risk Factor Rating—provides certified information concerning the building site, the building support system and other construction details, related to the building's resistance to wind and wave action. The information is used to determine the risk's eligibility for lower flood insurance rates.

FEMA Form 81–67, Preferred Risk Application—a simplified application used to obtain flood insurance coverage for risk's located in B, C and X zones (zones designated as being moderately to minimally at risk from flooding) at lower premiums.

Renewal Premium Notice—advises that the policy is about to expire and informs the payor of the premium required, for the coverage option selected, that must be submitted to renew the policy.

Abstract: In order to provide for the availability of policies for flood insurance, policies are marketed through the facilities of licensed insurance agents or brokers in the various States. Applications from agents or brokers are forwarded to a servicing company designated as fiscal agent by FIA. Upon receipt and examination of the application and required premium, the servicing company issues the appropriate Federal flood insurance policy.

Affected Public: Individuals or households; Business or other for-profit; Not-for-profit institutions; Farms; Federal Government; State, Local or Tribal Government.

Estimated Total Annual Burden Hours: 31,718 hours.

FEMA NFIP policy form	Number of responses	Per form burden hours (in mins.)	Total burden hours
81–16 Application and 81–67 Preferred Risk Application*	36,100	12	7,220
81–17 Cancellation	10,800	7.5	1,350
81–18 Endorsement	96,100	9	14,415
RPPRI Letters (to obtain missing information required for applications, endorsements, and renewals)	*Because this format is used to obtain information requested but missing on, and required to process, applications, endorsements and renewals, its burden hours are not counted separately, but are included in the burden hour totals for those forms.*		
81–25 V-Zone Risk Factor Rating Form	10	15	3
Renewal Premium Notice	174,600	3	8,730
Total	317,610		31,718

*The Preferred Risk Applications and the regular Flood Insurance Applications are now processed and recorded together. There is now break down available to separate the burden for each application.

Estimated Total Costs: A $50 expense constant and a $30 policy fee are charged to the policyholder for the issuance of a new policy or the renewal of an existing policy in order to meet the operating expenses of the NFIP. (The amount of the expense constant and/or the policy fee are subject to adjustment as needed to meet the actual cost of the program.) The annual estimated cost to respondents is $25,408,800.

The projected Operating Expenses (not including claims and claim adjustment expenses) of the NFIP are estimated at approximately $6,000,000 annually.

COMMENTS: Written comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) evaluate the accuracy of the estimated costs to respondents to provide the information to the agency; (d) enhance the quality, utility, and clarity of the information to be collected; and (e) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses. Comments should be received within 30 days of the date of this notice.

ADDRESSES: Interested persons should submit written comments to the Office of Management and Budget, Office of Information and Regulatory Affairs, ATTN: Desk Officer for FEMA, 725 17th Street, NW, Room 10102, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Contact Donald R. Beaton, Jr., Chief Underwriter, Federal Insurance Administration at (202) 646–3442 for additional information. Contact Muriel B. Anderson, FEMA Information Collections Officer at (202) 646–2625 or email muriel.anderson@fema.gov for copies of the proposed collection of information.

Dated: March 29, 1999.

Reginald Trujillo,

Director, Program Services Division, Operations Support Directorate.

[FR Doc. 99–8467 Filed 4–5–99; 8:45 am]

BILLING CODE 6718–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

Open Meeting, Technical Mapping Advisory Council

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice of teleconference meeting.

SUMMARY: In accordance with § 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. 1, the Federal Emergency Management Agency gives notice that the following meeting will be held:

NAME: Technical Mapping Advisory Council.

DATE OF MEETING: April 8, 1999.

PLACE: The FEMA Conference Operator in Washington, DC will initiate the teleconference. Individuals interested in participating should call 1–800–320–4330 at the time of the teleconference. Callers will be prompted for the conference code, #15, and then connected through to the teleconference.

TIME: 2:00 p.m. to 4:00 p.m., EST.

Proposed Agenda

1. Call to order.
2. Announcements.
3. Action on minutes from March 1999 meeting.
4. Discuss agenda for May 1999 meeting.
5. Adjournment.

STATUS: This meeting is open to the public.

FOR FURTHER INFORMATION CONTACT: Michael K. Buckley, P.E., Federal Emergency Management Agency, 500 C Street SW., room 421, Washington, DC 20472, telephone (202) 646–2756 or by facsimile at (202) 646–4596.

SUPPLEMENTARY INFORMATION: Minutes of the meeting will be prepared and will be available upon request 30 days after they have been approved by the next Technical Mapping Advisory Council meeting in May 1999.

Dated: March 31, 1999.

Michael J. Armstrong,

Associate Director for Mitigation.

[FR Doc. 99–8464 Filed 4–5–99; 8:45 am]

BILLING CODE 6718–04–P

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, DC 20573.

Palmetto Freight Forwarding Corp., 9695 NW 79 Avenue, Bay #6, Hialeah Gardens, FL 33016,

Officers: Eduardo Pichardo, President, Marben Pichardo, Vice President

Dated: March 31, 1999.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 99–8362 Filed 4–5–99; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 30, 1999.

A. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

1. *Manufacturers Bankshares, Inc.*, Tampa, Florida; to become a bank holding company by acquiring 100 percent of the voting shares of Manufacturers Bank of Florida, Tampa, Florida.

Board of Governors of the Federal Reserve System, March 31, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–8396 Filed 4–5–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 20, 1999.

A. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

1. *Trustmark Corporation*, Jackson, Mississippi; to engage *de novo* through its subsidiary, Trustmark Bankcard, National Association, Columbus, Georgia (in organization), in making, acquiring, brokering, or servicing loans or other extensions of credit, pursuant to § 225.28(b)(1) of Regulation Y.

Board of Governors of the Federal Reserve System, March 31, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–8397 Filed 4–5–99; 8:45 am]

BILLING CODE 6210–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 99043]

Notice of Availability of Funds; Infrastructure Development Initiatives Related to Oral Disease Prevention and Oral Health Promotion

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 1999 funds for a cooperative agreement program for Infrastructure Development Initiatives Related to Oral Disease Prevention and Oral Health Promotion. This program addresses the Healthy People 2000 priority areas Oral Health, Tobacco, Educational and Community-Based Programs, and Diabetes and Chronic Disabling Conditions.

The purpose of the program is to develop initiatives related to oral disease prevention and related chronic disease and health promotion capacity; and, to coordinate the dissemination of comprehensive oral disease information and health promotion programmatic expertise among state and local agencies, public and private sector organizations, and health care professionals in the United States.

The purpose of this program includes conducting projects that:

1. Promote the development of leadership and infrastructure to establish sustainable oral health programs at the state and local levels.
2. Advance tobacco control programs, especially smokeless tobacco.
3. Advance school oral health education and targeted oral disease and oral injury prevention efforts (e.g. athletic mouth guards).
4. Develop and carry out oral health education and disease prevention programs for high-risk adults.

B. Eligible Applicants

Assistance will be provided only to a dental health organization that is a 501(c)(3) private, nonprofit organization. Eligible applicants must have established working relationships with public advocacy coalitions and national, state and local organizations.

Limited competition is justified under this program announcement because of the need for a directed and concentrated focus in the effective dissemination of programs and information related to oral health. The coordination and implementation of a national oral health education program strategy requires organizations that have the capacity and experience to influence the professional actions of their constituencies; have the capacity to identify, assess, and advocate for implementing effective oral health programs; and can build the capacity of coalitions and state and local health and education agencies.

The applicant organization must include evidence of its nonprofit status with the application. Any of the following is acceptable evidence.

1. A reference to the organization's listing in the Internal Revenue Service's (IRS) most recent list of tax-exempt organizations described in section 501(c)(3) of the IRS Code.
2. A copy of a currently valid Internal Revenue Service Tax exemption certificate.
3. A statement from a state taxing body, State Attorney General, or other appropriate state official certifying that the applicant organization has a nonprofit status and that none of the net earnings accrue to any private shareholders or individuals.
4. A certified copy of the organization's certificate of incorporation or similar document if it clearly establishes the nonprofit status of the organization.

Note: Effective January 1, 1996, Public Law 104–65 states that an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 that engages in lobbying activities is not eligible to receive federal funds constituting an award, grant, cooperative agreement, contract, loan, or any other form.

C. Availability of Funds

Approximately $70,000 is available in FY 1999 to fund one award. It is expected that the award will begin on or about August 15, 1999, and will be made for a 12-month budget period within a project period of up to 5 years. Funding estimates may change.

Continuation awards within the project period will be made on the basis of satisfactory progress and the availability of funds.

Use of Funds

Funded programs may include activities related to risk factors for oral diseases or chronic health conditions that are effected by oral diseases or that may influence oral diseases. Examples of related factors or conditions include: tobacco use prevention, proper nutrition, diabetes control and the prevention of oral complications of diabetes, and cardiovascular disease.

D. Program Requirements

In conducting activities to achieve the purpose of this program, the grantee

will be responsible for the activities under 1. below, and CDC will be responsible for the activities under 2. below:

1. Recipient Activities

a. Collaborate with state and local coalitions to develop and expand activities to improve and strengthen oral health infrastructure.

b. Identify geographic areas for the implementation and evaluation of oral health education, that includes tobacco.

c. Initiate and conduct the development and project planning, implementation, monitoring, and evaluation of oral health education and health promotion projects and service programs.

d. Provide expert guidance and consultation to State and local coalitions and organizations during program development and operation and development of evaluation methodologies.

e. Monitor and evaluate program performance.

f. Analyze program-related data and, on a periodic basis, share data and program performance information through appropriate channels (conferences, reports, publications, etc.).

g. Coordinate activities with other relevant agencies, organizations, and individuals to facilitate the development, implementation, and evaluation of oral disease prevention and health promotion programs, either as stand-alone programs or integrated within broader chronic disease prevention and health promotion programs. For example, program activities may be implemented in the following areas:

(1) Working with the National Spit Tobacco Education Program, to expand tobacco prevention and control activities beyond baseball to include blue collar workers, military, and other professional sports that include professional wrestling. Special attention may also be given to minority populations within the aforementioned subgroups. The recipient should develop and carry out activities that deglamorize tobacco use and expand partnerships with agencies and organizations that could support the implementation of tobacco control and prevention.

(2) Develop and expand oral health education and prevention activities that could be implemented in schools and expand partnerships with agencies and organizations that can support the implementation of school oral health programs for children and adolescents.

(3) Develop a mechanism for targeting oral health promotion messages to adults, especially high-risk adults, such as those with diabetes. Public education about oral cancer, its causes, prevention, detection, and treatment may be undertaken. Other examples may include assessment of the oral health of special populations, such as Special Olympic adult athletes or the homeless, and establishing and expanding referral programs.

2. CDC Activities

a. Participate in planning, implementing, and evaluating strategies and programs.

b. Assist in the analysis and interpretation of the evaluation phase of projects or programs.

c. Provide programmatic consultation and guidance in support of the program.

d. Provide continuing updates on scientific and operational developments in the areas of oral disease prevention and control, related risk factors, and impacts on other chronic health conditions.

e. Assist in the planning and implementation of linkages with local or State agencies.

f. Assist in the technological and methodological dissemination of successful prevention and intervention models among targeted groups such as State and local health departments, community-based organizations, and other health professionals.

E. Application Content

Applicants should use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. The application will be evaluated on the criteria listed, so it is important to follow them in laying out the program plan. The narrative should be no more than 25 double-spaced pages, excluding appendixes printed on one side, with one inch margins, and unreduced font. The application should contain:

1. Statement of Need

Identify and describe the nature and extent of each problem for which assistance is requested and provide a brief description of each programmatic plan and activity for addressing these problems.

2. Capability and Experience

a. Describe experience in developing and implementing nationally recognized community-based oral disease prevention and health promotion initiatives.

b. Describe experience in carrying out community-based oral disease prevention and capacity development activities in State and local sites.

c. Describe the ability to leverage significant electronic and print media coverage around critical oral health education and promotion activities.

d. Demonstrate the ability to conduct oral health capacity and infrastructure development activities that have specific relevance to proposed project objectives.

e. Describe current and past collaboration and operational strategies with other organizations to accomplish program goals and disseminate information related to oral disease and control through a broad-based public advocacy coalition.

f. Describe current or past unique opportunities or innovations employed to further oral health programs through the use of unusual talent, resources, populations, or programmatic situations that are not readily accessed by other organizations and provides augmentation of existing CDC resources. For example, relationships may be with organizations such as Major League Baseball, the Major League Baseball Association, and Special Olympics.

g. Describe ability to begin implementing the projects outlined in this application request within a short time period (3–6 months).

3. Objectives

Establish and submit long- (5 year) and short-term (1 year) objectives for each programmatic activity proposed. Objectives must be specific, measurable, time phased, and realistic.

4. Operational Plan

Submit an operational plan that addresses achieving each of the objectives established. Provide a concise description of each component or major activity and how it will be carried out. The plan must identify and establish a timeline for the completion of each component or major activity.

5. Evaluation Plan

Submit a quantitative plan for monitoring progress toward achieving each of the stated objectives.

6. Program Management

Describe the need, functions, and qualifications for each program personnel requested.

a. Describe the proposed staffing for the project and provide job descriptions for existing and proposed positions.

b. Submit curriculum vitae (limited to 2 pages per person) for each professional staff member named in the proposal.

c. Provide documentation demonstrating presence of affiliate organizations or programs in at least 7

of the 10 Health and Human Services Regional Offices regions in the United States.

d. Describe the volunteer network distributed around the country and their expertise and experience related directly to proposed activities.

7. Budget

Submit a detailed budget and line-item justification that is consistent with the purpose of the program and the proposed project activities.

An original and two copies of the application are required. Pages should be numbered and a complete index to the application and its appendixes included. Begin each separate section on a new page. The original and each copy of the application must be submitted unstapled, unbound, and typed on 8½″ by 11″ paper, with at least 1″ margins, headings and footers, and printed on one side only.

F. Submission and Deadline

Application

Submit the original and two copies of PHS–5161–1 (OMB Number 0937–0189). Forms are in the application kit. On or before June 15, 1999, submit the application to:

Locke Thompson, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Announcement 99043, Centers for Disease Control and Prevention, Room 3000, 2920 Brandywine Road, Mail Stop E–18, Atlanta, GA 30341–4146.

Deadline: Applications shall be considered as meeting the deadline if they are either:

(a) Received on or before the deadline date; or

(b) Sent on or before the deadline date and received in time for orderly processing. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

Late Applications: Applications which do not meet the criteria in (a) or (b) above are considered late applications, will not be considered, and will be returned to the applicant.

G. Evaluation Criteria

Each application will be evaluated individually against the following criteria by an independent review group appointed by CDC.

1. Needs Statement (15 Points) The extent to which the applicant identifies specific needs related to the purposes of the program.

2. Capability and Experience (15 Points) The extent to which the organization has the capability and experience to develop national community-based oral disease prevention and health promotion programs and to develop State and local infrastructure necessary for their success. The extent to which the proposed network of affiliate organizations, programs, coalitions, and volunteer groups possess capacity to perform projects of a national scope.

3. Objectives (10 Points)

The degree to which short-and long-term objectives are specific, time-phased, measurable, and realistic.

4. Operational Plan (25 Points)

The adequacy of the applicant's plan to carry out the proposed activities.

5. Evaluation Plan (15 Points)

The extent to which the evaluation plan provides methods of monitoring progress toward meeting project objectives.

6. Program Management (20 Points)

The extent to which proposed staff meet requirements and possess the experience and capacity to perform the project.

The applicant must provide evidence of the number and type of field staff that are currently active in at least seven of the 10 PHS regions within the United States.

7. Budget (Not Scored)

The extent to which the budget is reasonable and consistent with the purpose and objectives of the program.

H. Other Requirements

Technical Reporting Requirements

Provide CDC with an original plus two copies of

1. semiannual progress reports;

2. financial status report, no more than 90 days after the end of the budget period;

3. final financial and performance reports, no more than 90 days after the end of the project period.

Send all reports to: Locke Thompson, Grants Management Specialist, Grants, Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention, Room 3000, 2920 Brandywine Road, Mail Stop E–18, Atlanta, GA 30341–4146

The following additional requirements are applicable to this program and are incorporated herein by reference. For a complete description of each, see Attachment 1 in the application kit.

AR–9 Paperwork Reduction Act Requirements
AR–10 Smoke-Free Workplace Requirements
AR–11 Healthy People 2000
AR–12 Lobbying Restrictions
AR–15 Proof of Nonprofit Status

I. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under the Public Health Service Act, Sections 317(k)(2)[42 U.S.C. 247b (k)(2)], as amended. The Catalog of Federal Domestic Assistance number is 93.283.

J. Where to Obtain Additional Information

To receive additional written information and to request an application kit, call 1–888-GRANTS4 (1–888 472–6874). You will be asked to leave your name and address and will be instructed to identify the Announcement number of interest.

If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from: Locke Thompson, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Announcement 99043, Centers for Disease Control and Prevention, Room 3000, 2920 Brandywine Road, Mail Stop E–18, Atlanta, GA 30341–4146, Telephone (770) 488–2749, E-mail: lxt1@cdc.gov.

For program technical assistance, contact: Scott M. Presson, Program Director, Division of Oral Health, National Center for Chronic Disease Prevention, and Health Promotion, Centers for Disease Control and Prevention 4770 Buford Hwy, NE., Mail Stop F–10, Atlanta, GA 30341–3724, Telephone, (770)488–6056, E-mail: skp4@cdc.gov.

See also the CDC home page on the Internet: http://www.cdc.gov.

Dated: March 30, 1999.

Jane M. Sparks,

Acting Director, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 99–8174 Filed 4–5–99; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Committee for Energy-Related Epidemiologic Research and Subcommittee for Community Affairs: Meetings

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease

Control and Prevention (CDC) announces the following committee meetings.

Name: Advisory Committee for Energy-Related Epidemiologic Research (ACERER).

Times and Dates: 8:30 a.m.–5 p.m., April 20, 1999; 8:30 a.m.–5 p.m., April 21, 1999.

Place: Hyatt Regency Knoxville, 500 Hill Avenue SE, Knoxville, Tennessee 37915, telephone 423/637–1234, fax 423/522–5911.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 100 people.

Purpose: This committee is charged with providing advice and recommendations to the Secretary, HHS; the Assistant Secretary for Health; the Director, CDC; and the Administrator, Agency for Toxic Substances and Disease Registry (ATSDR), on establishment of a research agenda and the conduct of a research program pertaining to energy-related analytic epidemiologic studies.

Matters to be Discussed: Agenda items will include update presentations from the National Center for Environmental Health (NCEH), the National Institute for Occupational Safety and Health (NIOSH), and ATSDR on the progress of current studies and proposed research agendas; a presentation of the historical overview of ACERER; a review of current NCEH and NIOSH research agendas; a discussion of prospective studies of clean-up workers—Government and community; an explanation of how the Subcommittee for Community Affairs (SCA) relates to the full ACERER; a discussion of the continuing issues related to the National Cancer Institute (NCI) report; a discussion of research agenda formulation; and a report on community health centers.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Michael J. Sage, Executive Secretary, ACERER, and Acting Deputy Director, Division of Environmental Hazards and Health Effects (DEHHE), NCEH, CDC 4770 Buford Highway, NE, (F28), Atlanta, Georgia 30341–3724, telephone 770/488–7044.

Name: Subcommittee for Community Affairs (SCA), ACERER

Time and Date: 8:30 p.m.–5 p.m., April 22, 1999.

Place: Oak Ridge Mall, 333 Main Street, Oak Ridge, Tennessee 37830, telephone 423/482–2008, fax 423/481–3429.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 100 people.

Purpose: This subcommittee advises ACERER on matters related to community needs.

Matters to be Discussed: Agenda items will include update presentations from NCEH, NIOSH, and ATSDR on the progress of current studies; a discussion of subcommittee recommendations and public involvement activities. There will also be an update on the SCA work group progress.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Steven A. Adams, Executive Secretary, SCA, ACERER, Radiation Studies Branch, DEHHE, NCEH, CDC, 4770 Buford Highway, NE, (F–28), Atlanta, Georgia 30341–3724, telephone 770/488–7040, fax 770/488–7044.

The Director, Management Analysis and Services Office has been delegated the authority to sign Federal Register notices pertaining to announcements of meetings and other committee management activities for both the CDC and ATSDR.

Dated: March 25, 1999.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 99–8411 Filed 4–5–99; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

The National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control and Prevention (CDC) Announces the Following Meeting

Name: Study Protocol Peer Review Meeting: Lung Cancer Among Workers Exposed to External Ionizing Radiation.

Time and Date: 9 a.m.–3:30 p.m., May 24, 1999.

Place: NIOSH, Hamilton Laboratories, Hamilton Auditorium, 5555 Ridge Avenue, Cincinnati, Ohio 45213.

Status: Open to the public, limited by the space available. The meeting room accommodates approximately 50 people.

Purpose: The purpose of this meeting is to obtain expert advice regarding technical and scientific aspects of the study "Multi-Site Case-Control Study of Lung Cancer and External Ionizing Radiation" being conducted at NIOSH. Participants on the Peer Review Panel will review the study protocol and advise on the conduct of the study. Viewpoints and suggestions from industry, labor, academia, other government agencies and the public are invited.

Contact Person for More Information: Larry J. Elliott, MSPH, C.I.H., Health-Related Energy Research Branch, Division of Surveillance, Hazard Evaluations, and Field Studies, NIOSH, CDC, 4676 Columbia Parkway, M/S R–44, Cincinnati, Ohio 45226, telephone 513/841–4400.

The Director, Management Analysis and Services office has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: March 25, 1999.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 99–8404 Filed 4–5–99; 8:45 am]

BILLING CODE 4160–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Interim Polio Vaccine Information Materials; New Vaccine Information Materials for Hepatitis B, Haemophilus Influenzae Type b (Hib), and Varicella (Chickenpox) Vaccines, and Revised Vaccine Information Materials for Measles, Mumps, Rubella (MMR) Vaccines; Notices

Correction

Notices published in the **Federal Register** on February 23, 1999 [64 FR 9040] beginning on page 9041 make the following corrections:

Polio

On page 9041, 2nd column, under #2: The sentence "Both vaccines work well." should be moved to appear after "Oral Polio Vaccine Drops by Mouth" It should read:

IPV
Inactivated Polio Vaccine
A shot
OPV
Oral Polio Vaccine
Drops by mouth
Both vaccines work well.

Page 9041, 3rd column, under #4, last paragraph, 3rd line from end: replace "helps to protect" with "protects".

Page 9041, 3rd column, heading for #5: should read "Some Children Should Get Only Shots and Some Should Get Only Drops" (no period in the middle).

Page 9044, List of Telephone Numbers

Massachusetts: should be (617) 983–6800
Nevada: should be (775) 684–5900
New Hampshire: should be (603) 271–4482
New Jersey: should be (609) 588–7512
Washington state: should be (360) 664–8688

Hepatitis B

Page 9045, 1st column, under #5 near bottom: "Mild P.problems" should be "Mild Problems"

Haemophilus Influenzae Type B

Page 9045, 3rd column, under #1, under bullet Death: "and nearly 1,000

died." should read "and nearly 1,000 people died."

On page 9046, 1st column, heading for #5: Should read "What if there is a moderate or severe reaction?" (not problem)

All other information and requirements of the notice remain the same.

Dated: March 31, 1999.

Joseph R. Carter,

Acting Associate Director for Management and Operations, Centers for Disease Control and Prevention (CDC).

[FR Doc. 99–8410 Filed 4–5–99; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99F–0720]

Arakawa Chemical Industries, Ltd.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Arakawa Chemical Industries, Ltd. has filed a petition proposing that the food additive regulations be amended to expand the safe use of hydrogenated aromatic petroleum hydrocarbon resins for use in blends with polymers intended for contact with food.

DATES: Written comments on the petitioner's environmental assessment by May 6, 1999.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Ellen M. Waldron, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3089.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a food additive petition (FAP 9B4653) has been filed by Arakawa Chemical Industries, Ltd., c/o Keller and Heckman, LLP, 1001 G St. NW., suite 500 West, Washington, DC 20001. The petition proposes to amend the food additive regulations in 21 CFR part 178—Indirect Food Additives: Adjuvants, Production Aids, and Sanitizers and in § 177.1520 *Olefin polymers* (21 CFR 177.1520) to expand the safe use of hydrogenated aromatic petroleum hydrocarbon resins, for use in blends with polymers intended for contact with food.

The potential environmental impact of this action is being reviewed. To encourage public participation consistent with regulations issued under the National Environmental Policy Act (40 CFR 1501.4(b)), the agency is placing the environmental assessment submitted with the petition that is the subject of this notice on public display at the Dockets Management Branch (address above) for public review and comment. Interested persons may, on or before May 6, 1999, submit to the Dockets Management Branch (address above) written comments. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. FDA will also place on public display any amendments to, or comments on, the petitioner's environmental assessment without further announcement in the **Federal Register**. If, based on its review, the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: March 22, 1999.

Laura M. Tarantino,

Acting Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 99–8441 Filed 4–5–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99F–0719]

The Procter & Gamble Co.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that The Procter & Gamble Co. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of olestra in place of fats and oils in prepackaged, unpopped popcorn kernels that are ready-to-heat.

DATES: Written comments on the petitioner's environmental assessment by May 6, 1999.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Mary D. Ditto, Center for Food Safety and Applied Nutrition (HFS–206), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3090.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a food additive petition (FAP 9A4652) has been filed by The Procter & Gamble Co., Winton Hill Technical Center, 6071 Center Hill Ave., Cincinnati, OH 45224. The petition proposes to amend the food additive regulations in § 172.867 *Olestra* (21 CFR 172.867) to provide for the safe use of olestra in place of fats and oils in prepackaged, unpopped popcorn kernels that are ready-to-heat.

The potential environmental impact of this action is being reviewed. To encourage public participation consistent with regulations issued under the National Environmental Policy Act (40 CFR 1501.4(b)), the agency is placing the environmental assessment submitted with the petition that is the subject of this notice on public display at the Dockets Management Branch (address above) for public review and comment. Interested persons may, on or before May 6, 1999, submit to the Dockets Management Branch (address above) written comments. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. FDA will also place on public display any amendments to, or comments on, the petitioner's environmental assessment without further announcement in the **Federal Register**. If, based on its review, the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: March 22, 1999.

Laura M. Tarantino,

Acting Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 99–8442 Filed 4–5–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98P–1121]

Grated Parmesan Cheese Deviating From Identity Standard; Temporary Permit for Market Testing

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a temporary permit has been issued to Kraft Foods, Inc., to market test a product designated as "100% Grated Parmesan Cheese" that deviates from the U.S. standards of identity for parmesan cheese and grated cheeses. The purpose of the temporary permit is to allow the applicant to measure consumer acceptance of the product, identify mass production problems, and assess commercial feasibility, in support of a petition to amend the standard of identity for parmesan cheese.

DATES: This permit is effective for 15 months, beginning on the date the food is introduced or caused to be introduced into interstate commerce, but not later than July 6, 1999.

FOR FURTHER INFORMATION CONTACT: Loretta A. Carey, Center for Food Safety and Applied Nutrition (HFS–158), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–5099.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 130.17 concerning temporary permits to facilitate market testing of foods deviating from the requirements of the standards of identity promulgated under section 401 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 341), FDA is giving notice that a temporary permit has been issued to Kraft Foods, Inc., Three Lakes Dr., Northfield, IL 60093.

The permit covers 86 million pounds of interstate marketing tests products identified as "grated parmesan cheese" that deviate from the U.S. standard of identity for parmesan cheese (21 CFR 133.165) and grated cheeses (21 CFR 133.146) in that the product is formulated by using a different enzyme technology that fully cures the cheese in 6 months rather than 10 months. The test product meets all the requirements of the standards with the exception of this deviation. Because test preferences vary by area, along with social and environmental differences, the purpose of this permit is to test the product throughout the United States.

Under this temporary permit, the parmesan cheese will be test marketed as grated parmesan cheese. The test product will bear the name "100% Grated Parmesan Cheese."

This permit provides for the temporary marketing of 86 million pounds of grated parmesan cheese in retail containers of various sizes. The test product will be manufactured at Kraft Foods, Inc., 10800 Avenue 184, Tulare, CA 93274. The product will then be shipped to Kraft Foods Inc., 1007 Town Line Rd., Wausau, WI 54401, where it is aged, grated, and packaged for distribution. The product will be distributed throughout the United States.

The information panel of the labels will bear nutrition labeling in accordance with 21 CFR 101.9. Each of the ingredients used in the food must be declared on the labels as required by the applicable sections of 21 CFR part 101.

This permit is effective for 15 months, beginning on the date the food is introduced or caused to be introduced into interstate commerce, but not later than July 6, 1999.

Dated: March 29, 1999.

Kenneth J. Falci,

Acting Director, Office of Food Labeling, Center for Food Safety and Applied Nutrition.

[FR Doc. 99–8440 Filed 4–5–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 96G–0096]

The Flax Council of Canada; Withdrawal of GRAS Affirmation Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the withdrawal, without prejudice to a future filing, of a petition (GRASP 5G0416) proposing to affirm that the use of low linolenic acid flaxseed oil is generally recognized as safe (GRAS) as a food oil.

FOR FURTHER INFORMATION CONTACT: Lawrence J. Lin, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 C St. SW., Washington, DG 20204, 202–418–3103.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of March 27, 1996 (61 FR 13505), FDA announced that a petition (GRASP 5G0416) had been filed by the Flax Council of Canada, 465–167 Lombard Ave., Winnipeg, MB R3B 0T6, Canada. This petition proposed that the use of low linolenic acid flaxseed oil as a food oil be affirmed as GRAS.

The Flax Council of Canada has now withdrawn the petition without prejudice to a future filing (21 CFR 171.7).

Dated: March 17, 1999.

Eugene C. Coleman,

Acting Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 99–8443 Filed 4–5–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99D–0557]

"Guidance for Industry: Public Health Issues Posed by the Use of Nonhuman Primate Xenografts in Humans;" Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a guidance document entitled "Guidance for Industry: Public Health Issues Posed by the Use of Nonhuman Primate Xenografts in Humans." The guidance document is being issued in response to public comments and recent interest among clinical investigators in using nonhuman primate xenografts in the near future. The document is intended to provide guidance on nonhuman primate xenotransplantation in humans.

DATES: Written comments may be submitted at any time, however, comments should be submitted by July 6, 1999, to ensure adequate consideration in preparation of a revised document, if warranted. The agency is soliciting public comment but is implementing this guidance document immediately because of the public health concerns related to the use of live cells, tissues, and organs from nonhuman primate xenografts in humans.

ADDRESSES: Submit written requests for single copies of the guidance document entitled "Guidance for Industry: Public Health Issues Posed by the Use of Nonhuman Primate Xenografts in Humans" to the Office of Communication, Training, and Manufacturers Assistance (HFM–40), Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448. Send one self-addressed adhesive label to assist that office in processing your requests. The guidance document may also be obtained by mail by calling the CBER Voice Information System at 1–800–835–4709 or 301–827–1800, or by fax by calling the FAX Information System at 1–888–CBER–FAX or 301–827–3844. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

Submit written comments on the guidance document to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Valerie A. Butler, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–6210.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a guidance document entitled "Guidance for Industry: Public Health Issues Posed by the Use of Nonhuman Primate Xenografts in Humans." The document provides guidance to industry concerning: (1) The potential public health risks posed by nonhuman primate xenografts; (2) the need for further scientific research and evaluation of these risks, particularly infectious agents; and (3) the need for public discussion concerning these issues.

Concerns have arisen in the last few years about the potential infectious disease and public health risks associated with xenotransplantation, particularly nonhuman primate xenotransplantation. For the purpose of this guidance document, xenotransplantation is defined as any procedure that involves the use of live cells, tissues, or organs from a nonhuman animal source transplanted or implanted into a human, or used for ex vivo contact with human body fluids, cells, tissues, or organs that are subsequently given to a human recipient. In addition, defined for the purpose of this document, xenografts include live cells, tissues, or organs from a nonhuman animal source used for xenotransplantation.

In developing the guidance, FDA considered numerous sources of information, including concerns raised in public comments to the "Draft Public Health Service (PHS) Guideline on Infectious Disease Issues in Xenotransplantation" (61 FR 49920, September 23, 1996) and concerns voiced by the scientific and lay community at the public workshops on xenotransplantation entitled "Cross–Species Infectivity and Pathogenesis" held on July 21 and 22, 1997, and "Developing U.S. Public Health Service Policy in Xenotransplantation" held on January 21 and 22, 1998, sponsored by PHS.

The approach outlined in the guidance document has been accepted by the other PHS agencies including the National Institutes of Health, the Centers for Disease Control and Prevention, and the Health Resources and Services Administration, as well as the Department of Health and Human Services Working Group on Xenotransplantation. The agency is aware that other species of animals have been used and are proposed as future sources of xenografts and may pose infectious disease risks. The public health issues raised by xenotransplantation, regardless of source animal species, will continue to receive scientific evaluation and discussion by appropriate Federal agencies and advisory committees.

The guidance document represents the agency's current thinking on the potential public health risks posed by the use of nonhuman primate xenografts in humans, and the consequent need for further scientific evaluation and public discussion of this issue. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirement of the applicable statute, regulations, or both. As with other guidance documents, FDA does not intend this document to be all-inclusive and cautions that not all information may be applicable to all situations. The document is intended to provide information and does not set forth requirements.

II. Comments

The agency notes that measures taken during the production of some nonhuman primate xenografts products, such as extensive preclinical xenotransplant product testing for infectious agents, genetic engineering, enclosure of the product in a semipermeable barrier, and/or the use of well-characterized cell lines which have been handled in a manner to avoid the introduction of new pathogens, could potentially provide greater control of infectious disease risks. The agency specifically solicits comments on the potential for such measures, alone or in combination, to substantially reduce the risks posed by nonhuman primate xenotransplantation. The agency is soliciting public comment but is implementing this guidance document immediately because of the public health concerns related to the use of live cells, tissues and organs from nonhuman primate xenografts in humans.

Interested persons may submit to the Dockets Management Branch (address above) written comments regarding this guidance document. Written comments may be submitted at any time, however, comments should be submitted by July 6, 1999, to ensure adequate consideration in preparation of a revised document, if warranted. Two copies of any comments are to be submitted, except individuals may submit one copy. Comments should be identified with the docket number found in the brackets in the heading of this document. A copy of the guidance document and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Persons with access to the Internet may obtain the document using the World Wide Web (WWW). For WWW access, connect to CBER at "http://www.fda.gov/cber/guidelines.htm".

Dated: March 30, 1999.

William K. Hubbard,

Acting Deputy Commissioner for Policy.

[FR Doc. 99–8439 Filed 4–5–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4442–N–09]

Notice Of Proposed Information Collection for Public Comment

AGENCY: Office of the Assistant Secretary for Policy Development and Research, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for

review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments are due June 7, 1999.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Reports Liaison Officer, Office of Policy Development & Research, Department of Housing and Urban Development, 451–7th Street, SW, Room 8226, Washington, DC 20410–6000.

FOR FURTHER INFORMATION CONTACT: Laurent V. Hodes or Robert W. Gray, Office of Policy Development and Research, Department of Housing and Urban Development, 451 7th St., SW, Room 8154, Washington, DC 20410–6000, telephone 202–708–5537 extension 5736 or 5732. (This is not a toll-free number.) A copy of the proposed forms and other available documents to be submitted to OMB may be obtained from Mr. Hodes or Mr. Gray.

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond, including through use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Reinstatement, "Customer-Survey of Households Living in Federally Assisted Units," OMB Control Number: 2528–0170, Expired 04/30/98.

Description of the Need for the Information and Proposed Use:

HUD recently developed and tested a cost-effective mail survey instrument for assessing resident satisfaction with, and rating of, housing units assisted through HUD programs. This survey, which elicits renters' ratings of their housing, provided high response rates and high levels of agreement with independent condition ratings by professional inspectors. HUD plans to implement this survey as an ongoing tool to assess customer ratings of housing assisted through the Section 8 Certificate and Voucher programs. For limited evaluative or comparative purposes, HUD may also use this survey to assess resident ratings of other Federal housing assistance programs.

This survey will provide feedback to help local housing agencies improve their Section 8 programs, and will help HUD to focus its monitoring and technical assistance resources where program performance most needs improvement. It will also provide HUD's policy, budget, and program managers with improved measures for tracking national housing conditions over time.

Members of the affected public: Households receiving assistance from the Section 8 Certificate or Voucher Programs.

Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: Information will be collected by an annual mail survey of 267,000 of the 1.4 million households who are assisted through the Section 8 Certificate and Voucher programs. The survey will take approximately 15 minutes to complete for an annual total of 66,750 hours of respondent burden. Because the survey will be administered to a sample of households, and because of turnover in the Section 8 programs, most households will not be asked to complete the survey two years in a row.

Status of the proposed information collection: The original information collection was suspended at the termination of HUD's pilot testing. This proposed reinstatement is pending submission to the Office of Management and Budget (OMB) for review and clearance.

Authority: Sec. 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: March 29, 1999.

Lawrence L. Thompson,

General Deputy Assistant Secretary for Policy Development and Research.

[FR Doc. 99–8399 Filed 4–5–99; 8:45 am]

BILLING CODE 4210–62–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of an Application for an Incidental Take Permit for Construction on a Single-Family Lot, in Volusia County, FL

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: Linda B. Walters (Applicant), is seeking an incidental take permit (ITP) from the Fish and Wildlife Service (Service), pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973 (Act), as amended. The ITP would authorize incidental take of the Florida scrub-jay (*Aphelocoma coerulescens*) and the eastern indigo snake (*Drymarchon corais couperi*), both threatened species, on a single family lot for a period of twenty (20) years. The proposed taking is incidental to land clearing and other activities associated with the construction of a single family home on a .685-acre lot in Volusia County, Florida (Project). Surveys on the Project site indicate that one family of Florida scrub-jays occupies the Project site. No eastern indigo snakes have been reported on the property; however, the Applicant has requested that the eastern indigo snake be included in the ITP based on the chance that this species could occur on the project site. A description of the mitigation and minimization measures outlined the Applicant's Habitat Conservation Plan (HCP) to address the effects of the Project to the protected species is as described further in the **SUPPLEMENTARY INFORMATION** section below.

Further, the Service has determined that the Applicant's HCP qualifies as a "low-effect" HCP as defined by the Service's Habitat Conservation Planning Handbook (November 1996). The Service has further determined that approval of the HCP qualifies as a categorical exclusion under the National Environmental Policy Act (NEPA), as provided by the Department of Interior Manual (516 DM 2, Appendix 1 and 516 DM 6, Appendix 1).

Copies of the Applicant's HCP may be obtained by making a request to the Regional Office (see **ADDRESSES**). Requests must be in writing to be processed. This notice is provided pursuant to Section 10 of the Act and NEPA regulations (40 CFR 1506.6).

The Service specifically requests information, views, opinions from the public via this Notice, including information regarding the adequacy of

the HCP as measured against the Service's ITP issuance criteria found in 50 CFR Parts 13 and 17.

DATES: Written comments on the application and HCP should be sent to the Service's Regional Office (see **ADDRESSES**) and should be received on or before May 6, 1999.

ADDRESSES: Persons wishing to review the HCP may obtain a copy by writing the Service's Southeast Regional Office, Atlanta, Georgia. Documents will also be available for public inspection by appointment during normal business hours at the Regional Office, 1875 Century Boulevard, Suite 200, Atlanta, Georgia 30345 (Attn: Endangered Species Permits), or Field Supervisor, U.S. Fish and Wildlife Service, 6620 South Point Drive, South, Suite 310, Jacksonville, Florida 32216–0912. Written data or comments should be submitted to the Regional Office. Requests for the documentation must be in writing to be processed. Comments must be submitted in writing to be processed. Please reference permit number TE008789–0 in such comments, or in requests of the documents discussed herein.

FOR FURTHER INFORMATION CONTACT: Mr. Rick G. Gooch, Regional Permit Coordinator, (see **ADDRESSES** above), telephone: 404/679–7110, facsimile: 404/679–7081.

SUPPLEMENTARY INFORMATION: Aphelocoma coerulescens is geographically isolated from other subspecies of scrub-jays found in Mexico and the Western United States. The Florida scrub-jay is found almost exclusively in peninsular Florida and is restricted to scrub habitat. The total estimated population is between 7,000 and 11,000 individuals. Due to habitat loss and degradation throughout the State of Florida, it has been estimated that the Florida scrub-jay population has been reduced by at least half in the last 100 years. Surveys have indicated that one family of Florida scrub-jays inhabit the Project site. Construction of the Project's infrastructure, commercial construction and construction of the individual home sites will likely result in death of, or injury to, Aphelocoma coerulescens incidental to the carrying out of these otherwise lawful activities. Habitat alteration associated with property development will reduce the availability of feeding, shelter, and nesting habitat.

Section 9 of the Act, and implementing regulations, prohibits taking the Florida scrub-jay and eastern indigo snake. Taking, in part, is defined as an activity that kills, injures, harms, or harasses a listed endangered or threatened species. Section 10(a)(1)(B) of the Act provides an exemption, under certain circumstances, to the Section 9 prohibition if the taking is incidental to, and not the purpose of otherwise lawful activities.

Observations by Service biologists documented the presence of one family of Florida scrub-jays and use of suitable habitat on the applicant's property. The .685 acres of occupied habitat on the site is very overgrown due to fire suppression and a lack of any kind of management. The surrounding area is intensely developed with only scattered fragments of scrub habitat remaining. No evidence of eastern indigo snakes were found on the property; however, the applicant is requesting to be protected under an incidental take provision since this wide ranging species potentially may use the site. Initial construction of a single family home would sufficiently modify and cause impacts to occupied Florida scrub-jay habitat on the project site, as to meet the definition of "take" in the Act.

The HCP describes measures the Applicant will take to avoid and mitigate such taking resulting from the Project. To minimize impacts, the Applicant will ensure clearing of vegetation within 150 feet of active nests will not take place during the nesting season for Florida scrub-jays (March 1 through July 1). Appendix C of the habitat conservation plan (HCP) details the avoidance measures that the Applicant has agreed to implement to reduce potential impacts to any eastern indigo snakes which may be found on the project site. To mitigate for the up to .685 acres of occupied habitat that would be eliminated on-site, the applicant will contribute $8631.00 to the National Fish and Wildlife Foundation Fund for the conservation and management of the Florida scrub-jay. This money will be used, along with other funds received from Section (a)(1)(B) permits, to purchase scrub-jay habitat in Volusia County, Florida. This amount is based on replacement at a rate of 2:1 (replaced: lost), provides a $1,000 per acre management endowment for perpetual management, and includes a five percent fee for the administration of the National Fish and Wildlife Foundation account. Once purchased, the land will be transferred to a third party land management organization along with the $1,000 per acre management endowment for management into perpetuity. This will be accomplished through the use of a conservation easement, specifying that the land be left undeveloped and managed into perpetuity. It is believed that ensuring the protection and viability of quality, occupied habitat in a large contiguous preserve is more beneficial to the scrub-jay and indigo snake than any on-site mitigation plan could offer. No mitigation other than the standard protection measures are offered for the eastern indigo snake, although that species would also generally benefit from conservation and management of a large tract of land.

As earlier stated, the Service has determined that the Plan qualifies as a "low-effect" HCP as defined by the Service's Habitat Conservation Planning Handbook (November 1996). Low-effect HCPs are those involving: (1) Minor or negligible effects on federally listed and candidate species and their habitats, and (2) minor or negligible effects on other environmental values or resources. The Applicant's HCP qualifies for the following reasons:

1. Approval of the HCP would result in minor or negligible effects on the Florida scrub-jay, eastern indigo snake, and their habitats. The Service does not anticipate significant direct or cumulative effects to the Florida scrub-jay or eastern indigo snake resulting from construction of the Project.

2. Approval of the HCP would not have adverse effects on known unique geographic, historic or cultural sites, or involve unique or unknown environmental risks.

3. Approval of the HCP would not result in any significant adverse effects on public health or safety.

4. The project does not require compliance with Executive Order 11988 (Floodplain Management), Executive Order 11990 (Protection of Wetlands), or the Fish and Wildlife Coordination Act, nor does it threaten to violate a Federal, State, local or tribal law or requirement imposed for the protection of the environment.

5. Approval of the Plan would not establish a precedent for future action or represent a decision in principle about future actions with potentially significant environmental effects.

The Service has therefore determined that approval of the Plan qualifies as a categorical exclusion under the NEPA, as provided by the Department of the Interior Manual (516 DM 2, Appendix 1 and 516 DM 6, Appendix 1). No further NEPA documentation will therefore be prepared.

The Service will evaluate the HCP and comments submitted thereon to determine whether the eastern indigo

snake. The Service will also evaluate whether the issuance of a Section 10(a)(1)(B) ITP complies with Section 7 of the Act by conducting an intra-Service Section 7 consultation. The results of the consultation, in combination with the above findings, will be used in the final analysis to determine whether or not to issue the ITP; the final decision will be made no sooner than 30 days from the date of this notice.

Dated: March 29, 1999.

H. Dale Hall,

Deputy Regional Director.

[FR Doc. 99–8403 Filed 4–5–99; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–610–09–0777–42]

Meeting of the California Desert District Advisory Council

SUMMARY: Notice is hereby given, in accordance with Pub. Ls. 92–463 and 94–579, that the California Desert District Advisory Council to the Bureau of Land Management, U.S. Department of the Interior, will participate in a field tour of the BLM-administered public lands within the West Mojave Management Planning area on Thursday, May 6, 1999 from 8 a.m. to 4 p.m., and meet in formal session on Friday, May 7 from 8 a.m. until noon and 1 p.m. to 5 p.m. and on Saturday, May 8 from 8 a.m. to 12 noon. The Friday and Saturday meetings will be held in the conference room at the Barstow Holiday Inn, located at 1511 East Main Street, Barstow, California.

All Desert District Advisory Council meetings are open to the public. Time for public comment may be made available by the Council Chairman during the presentation of various agenda items, and is scheduled at the beginning of the meeting for topics not on the agenda.

Written comments may be filed in advance of the meeting for the California Desert District Advisory Council, c/o Bureau of Land Management, Public Affairs Office, 6221 Box Springs Boulevard, Riverside, California 92507–0714. Written comments also are accepted at the time of the meeting and, if copies are provided to the recorder, will be incorporated into the minutes.

FOR FURTHER INFORMATION CONTACT: Carole Levitzky at (909) 697–5217 or Doran Sanchez at (909) 697–5220, BLM California Desert District Public Affairs.

Dated: March 31, 1999.

Tim Salt,

District Manager.

[FR Doc. 99–8405 Filed 4–5–99; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–350–1020–00]

Notice of Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Northeast California Resource Advisory Council, Susanville, California.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committees Act (Pub. L. 92–463) and the Federal Land Policy and Management Act (Pub. L. 94–579), the U.S. Bureau of Land Management's Northeast California Resource Advisory Council will meet Thursday and Friday, May 6 and 7, 1999, at the Bureau of Land Management's Eagle Lake Field Office, 2950 Riverside Drive, Susanville, CA.

SUPPLEMENTARY INFORMATION: On Thursday, May 6, the council will convene at 9 a.m. at the Bureau of Land Management's Eagle Lake Field Office, 2950 Riverside Drive, Susanville, CA. At 9:30 a.m., the council will depart for a field tour of the Fort Sage Off Highway Vehicle Area near Doyle, CA. Members of the public are welcome on the tour, but they must provide their own transportation in a high clearance, four-wheel-drive vehicle. The tour will return to Susanville at approximately 5 p.m. On Friday, the council will convene at 8 a.m. at the Eagle Lake Field office for a business meeting.

Agenda items include an update from the BLM California State Office, discussion about the RAC meeting budget for the remainder of the fiscal year, and reports from managers of the BLM Alturas, Eagle Lake and Surprise field offices. The council will discuss off-highway vehicle management issues in each field office, and discuss development of management guidelines for off-highway vehicles. Public comments will be taken at 1 p.m. Depending on the number of persons wishing to speak, a time limit could be established.

FOR FURTHER INFORMATION CONTACT: Jeff Fontana, public affairs officer, at (530) 257–5381.

Linda D. Hansen,

Eagle Lake Field Manager.

[FR Doc. 99–8406 Filed 4–5–99; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–030–1410–00–NPRA; F–85600]

Designation of Additions to Special Areas in National Petroleum Reserve-Alaska; Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This notice provides official publication of additions to the Teshekpuk Lake Special Area and the Colville River Special Area located within the National Petroleum Reserve-Alaska (NPR–A). The designation of these additions is pursuant to the Naval Petroleum Reserves Act of 1976, and in accordance with the Record of Decision for the Northeast National Petroleum Reserve-Alaska Final Integrated Activity Plan/Environmental Impact Statement (IAP/EIS).

DATES: April 6, 1999.

FOR FURTHER INFORMATION CONTACT: Gene Terland, BLM Alaska State Office, 907–271–3344 or Michael Kunz, BLM Northern Field Office, 907–474–2302. Mail may be sent to the Bureau of Land Management (930), Alaska State Office, 222 West 7th Avenue, #13, Anchorage, Alaska 99513–7599.

SUPPLEMENTARY INFORMATION: In 1977, to assure protection of significant subsistence, recreational, fish and wildlife, historical and scenic values, the Secretary of the Interior designated the Teshekpuk Lake Special Area and Colville River Special Area, located within the NPR–A.

In 1998, the BLM prepared the IAP/EIS for a 4.6-million-acre area within the NPR–A to determine the appropriate multiple-use management consistent with existing statutory direction which encourages oil and gas leasing while protecting important surface resources and uses. In order to meet these management responsibilities, the BLM recommended the Pik Dunes Land Use Emphasis Area (LUEA) be added to the Teshekpuk Lake Special Area and areas encompassing the Kikiakrorak and Kogosukruk Rivers be added to the Colville River Special Area. On October 7, 1998, the Secretary of the Interior

signed the Record of Decision adopting the management plan and directed the BLM to add the lands to the Teshekpuk Lake and Colville River Special Areas. Therefore, pursuant to section 104(b) of the Naval Petroleum Reserves Productions Act of 1976, 42 U.S.C. 6501 (1994), the following described lands are added to the designated Special Areas:

Umiat Meridian

Teshekpuk Lake Special Area (Pik Dunes LUEA)

T. 10 N., R. 5 W.,
Secs. 2 through 11, inclusive;
Secs. 14 through 23, inclusive;
Secs. 28, 29, and 30.
T. 11 N., R. 5 W.,
Secs. 33, 34, and 35.

Colville River Special Area (Kikiakrorak and Kogosukruk Rivers)

Those areas which are approximately 2 miles on either side of the Kikiakrorak River downstream from T. 2 N., R. 4 W., and 2 miles on either side of the Kogosukruk River and tributaries downstream from T. 2 N., R. 3 W., located within:

Tps. 1 through 7 N., R. 1 E.
Tps. 2 through 8 N., R. 2 E.
Tps. 1 through 5 N., Rs. 1 and 2 W.
Tps. 2, 3, and 4 N., R. 3 W.
Tps. 2, and 3 N., R. 4 W.

Dated: March 30, 1999.

Sally Wisely,

Acting State Director.

[FR Doc. 99–8402 Filed 4–5–99; 8:45 am]

BILLING CODE 4310–JA–P

JUDICIAL CONFERENCE OF THE UNITED STATES

Meeting of the Judicial Conference Advisory Committee on Rules of Evidence

AGENCY: Judicial Conference of the United States Advisory Committee on Rules of Evidence.

ACTION: Notice of open meeting.

SUMMARY: The Advisory Committee on Rules of Evidence will hold a two-day meeting. The meeting will be open to public observation but not participation.

DATES: April 12–13, 1999.

TIME: 8:30 a.m. to 5:00 p.m.

ADDRESSES: Fordham University School of Law, 140 West 62nd Street, Room 430, New York, New York.

FOR FURTHER INFORMATION CONTACT: John K. Rabiej, Chief, Rules Committee Support Office, Administrative Office of the United States Courts, Washington, D.C. 20544, telephone (202) 502–1820.

Dated: April 1, 1999.

John K. Rabiej,

Chief, Rules Committee Support Office.

[FR Doc. 99–8488 Filed 4–5–99; 8:45 am]

BILLING CODE 2210–55–M

JUDICIAL CONFERENCE OF THE UNITED STATES

Meeting of the Judicial Conference Advisory Committee on Rules of Appellate Procedure

AGENCY: Judicial Conference of the United States Advisory Committee on Rules of Appellate Procedure.

ACTION: Notice of open meeting.

SUMMARY: The Advisory Committee on Rules of Appellate Procedure will hold a two-day meeting. The meeting will be open to public observation but not participation.

DATES: April 15–16, 1999.

TIME: 8:30 a.m. to 5:00 p.m.

ADDRESSES: Thurgood Marshall Federal Judiciary Building, Judicial Conference Center, One Columbus Circle, NE, Washington, DC.

FOR FURTHER INFORMATION CONTACT: John K. Rabiej, Chief, Rules Committee Support Office, Administrative Office of the United States Courts, Washington, DC 20544, telephone (202) 502–1820.

Dated: April 1, 1999.

John K. Rabiej,

Chief, Rules Committee Support Office.

[FR Doc. 99–8489 Filed 4–5–99; 8:45 am]

BILLING CODE 2210–55–M

JUDICIAL CONFERENCE OF THE UNITED STATES

Meeting of the Judicial Conference Advisory Committee on Rules of Civil Procedure

AGENCY: Judicial Conference of the United States Advisory Committee on Rules of Civil Procedure.

ACTION: Notice of open meeting.

SUMMARY: The Advisory Committee on Rules of Civil Procedure will hold a two-day meeting. The meeting will be open to public observation but not participation.

DATES: April 19–20, 1999.

TIME: 8:30 a.m. to 5:00 p.m.

ADDRESSES: Salishan Lodge, 7760 Highway 101 North, Gleneden Beach, Oregon.

FOR FURTHER INFORMATION CONTACT: John K. Rabiej, Chief, Rules Committee Support Office, Administrative Office of the United States Courts, Washington, D.C. 20544, telephone (202) 502–1820.

Dated: April 1, 1999.

John K. Rabiej,

Chief, Rules Committee Support Office.

[FR Doc. 99–8490 Filed 4–5–99; 8:45 am]

BILLING CODE 2210–55–M

JUDICIAL CONFERENCE OF THE UNITED STATES

Meeting of the Judicial Conference Advisory Committee on Rules of Criminal Procedure

AGENCY: Judicial Conference of the United States, Advisory Committee on Rules of Criminal Procedure.

ACTION: Notice of open meeting.

SUMMARY: The Advisory Committee on Rules of Criminal Procedure will hold a two-day meeting. The meeting will be open to public observation but not participation.

DATES: April 22–23, 1999.

TIME: 8:30 a.m. to 5:00 p.m.

ADDRESSES: Thurgood Marshall Federal Judiciary Building, Judicial Conference Center, One Columbus Circle, NE, Washington, DC.

FOR FURTHER INFORMATION CONTACT: John K. Rabiej, Chief, Rules Committee Support Office, Administrative Office of the United States Courts, Washington, DC 20544, telephone (202) 502–1820.

Dated: April 1, 1999

John K. Rabiej,

Chief, Rules Committee Support Office

[FR Doc. 99–8491 Filed 4–5–99; 8:45 am]

BILLING CODE 2210–55–M

JUDICIAL CONFERENCE OF THE UNITED STATES

Meeting of the Judicial Conference Committee on Rules of Practice and Procedure

AGENCY: Judicial Conference of the United States, Committee on Rules of Practice and Procedure.

ACTION: Notice of open meeting.

SUMMARY: The Committee on Rules of Practice and Procedure will hold a two-day meeting. The meeting will be open to public observation but not participation.

DATES: June 14–15, 1999.

TIME: 8:30 a.m. to 5:00 p.m.

ADDRESSES: Boston College Law School, 885 Centre Street, Newton Centre, Massachusetts.

FOR FURTHER INFORMATION CONTACT: John K. Rabiej, Chief, Rules Committee

Support Office, Administrative Office of the United States Courts, Washington, DC 20544, telephone (202) 502–1820.

Dated: April 1, 1999.

John K. Rabiej,

Chief, Rules Committee Support Office.

[FR Doc. 99–8492 Filed 4–5–99; 8:45 am]

BILLING CODE 2210–55–M

JUDICIAL CONFERENCE OF THE UNITED STATES

Meeting of the Judicial Conference Advisory Committee on Rules of Criminal Procedure

AGENCY: Judicial Conference of the United States, Advisory Committee on Rules of Criminal Procedure.

ACTION: Notice of open meeting.

SUMMARY: The Advisory Committee on Rules of Criminal Procedure will hold a two-day meeting. The meeting will be open to public observation but not participation.

DATES: June 21–22, 1999.

TIME: 8:30 a.m. to 5:00 p.m.

ADDRESSES: RiverPlace Hotel, 1510 Southwest Harbor Way, Portland, Oregon.

FOR FURTHER INFORMATION CONTACT: John K. Rabiej, Chief, Rules Committee Support Office, Administrative Office of the United States Courts, Washington, D.C. 20544, telephone (202) 502–1820.

Dated: April 1, 1999.

John K. Rabiej,

Chief, Rules Committee Support Office.

[FR Doc. 99–8493 Filed 4–5–99; 8:45 am]

BILLING CODE 2210–55–M

JUDICIAL CONFERENCE OF THE UNITED STATES

Meeting of the Judicial Conference Advisory Committee on Rules of Bankruptcy Procedure

AGENCY: Judicial Conference of the United States, Advisory Committee on Rules of Bankruptcy Procedure.

ACTION: Notice of open meeting.

SUMMARY: The Advisory Committee on Rules of Bankruptcy Procedure will hold a two-day meeting. The meeting will be open to public observation but not participation.

DATES: September 27–28, 1999.

TIME: 8:30 a.m. to 5:00 p.m.

ADDRESS: Jackson Lake Lodge, Highway 89 North, Moran, Wyoming.

FOR FURTHER INFORMATION CONTACT: John K. Rabiej, Chief, Rules Committee Support Office, Administrative Office of the United States Courts, Washington, D.C. 20544, telephone (202) 502–1820.

Dated: April 1, 1999.

John K. Rabiej,

Chief, Rules Committee Support Office.

[FR Doc. 99–8494 Filed 4–5–99; 8:45 am]

BILLING CODE 2210–55–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed Consent Decree in *United States and State of Connecticut* v. *A.G. Miller Company, Inc., et al.*, Civ. No. 399–CV–0471 & 0473 (JCH), was lodged on March 16, 1999 with the United States District Court for the District of Connecticut. The United States' complaint seeks to recover, pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. 9601, *et al.*, future response costs to be incurred by EPA at the Old Southington Landfill Superfund Site located in the town of Southington, Connecticut ("Site").

The proposed Consent Decree embodies an agreement with 119 *de minimis* PRPs at the Site, pursuant to Section 122(g) of CERCLA, 42 U.S.C. 9622(g), to pay $828,831, in aggregate, in settlement of claims for future response costs at the Site and claims for natural resource damages at the Site. Of this total, $814,573 will be paid to the United States and $14,258 will be paid to the Department of the Interior ("DOI"). The monies paid to the United States will be set aside for the purpose of funding future response actions at the Site, including a possible future groundwater remedy. The monies paid to DOI will be set aside to fund a future natural resource damages restoration project in connection with the Site.

The proposed Consent Decree provides the 119 *de minimis* settling defendants with a release for civil liability for EPA's and the State's future CERCLA response costs and natural resource damages at the Site for resources under the trusteeship of the Secretary of the Interior and the Secretary of Commerce, through the National Oceanic and Atmospheric Administration, and under the trusteeship of the State.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed Consent Decree.

Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, D.C. 20044, and should refer to *United States and State of Connecticut* v. *A.G. Miller Company, Inc., et al.*, DOJ Ref. No. 90–11–2–420/1.

The proposed consent decree may be examined at the Office of the United States Attorney, U.S. Courthouse, 915 Lafayette Blvd., Rm. 309, Bridgeport, CT 06604; the Region I Office of the Environmental Protection Agency, Region I Records Center, 90 Canal Street, Fourth Floor, Boston, MA 02203; and at the Consent Decree Library, 1120 G Street, N.W., Third Floor, Washington, D.C. 20005, (202) 624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, Third Floor, N.W., Washington, D.C. 20005. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $35.50 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Joel Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 99–8458 Filed 4–5–99; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Consent Judgments Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act

In accordance with Departmental Policy, 28 CFR 50.7, 38 FR 19029, and 42 U.S.C. 9622(d), notice is hereby given that a proposed Consent Decree in *United States* v. *American Board Companies, Inc., C.I. Liquidators of New York, Inc., and Great American Industries, Inc.*, DOJ # 90–11–2–489, Civ No. 99–CV–435 (TJM) was lodged in the United States District Court for the Northern District of New York on March 24, 1999. The Consent Decree resolves the liability of the Settling Defendants under Sections 106 and 107 of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. 9606 and 9607, relating to the Vestal Water Supply Well 1–1 Superfund Site, located in the town of Vestal, Broom County, New York (the "Site").

Under the proposed Consent Decree, C.I. Liquidators of New York, Inc. and Great American Industries, Inc. will pay, jointly and severally, a total of $775,000 in four installment payments to reimburse a portion of EPA's future response costs for response actions at the Site. American Board Companies, Inc. will provide access to its portion of the Site and will comply with certain restrictions on the use of its property. In return for the payments and other consideration, the Settling Defendants will receive covenants not to sue under Sections 106 and 107 of CERCLA for the Site as well as contribution protection.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, written comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *American Board Companies, Inc., C.I. Liquidators of New York, Inc., and Great American Industries, Inc., DOJ* # 90–11–2–489. The proposed Consent Decree may be examined at the Office of the United States Attorney, Northern District of New York, James Foley U.S. Courthouse, 445 Broadway, Room 231, Albany, New York 12207; at the Region II Office of the U.S. Environmental Protection Agency, 290 Broadway, New York, New York 10278; and at the Consent Decree Library, 1120 G Street, NW, 3rd Floor, Washington, DC 20005, (202) 624–0892. Copies of the Consent Decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW, 3rd Floor, Washington, DC 20005. In requesting a copy, please enclose a check in the amount of $7.00 (25 cents per page reproduction costs) payable to the Consent Decree Library.

Joel M. Gross,

Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 99–8460 Filed 4–5–99; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act

In accordance with Departmental policy, 28 CFR 50.7, and Section 122 of CERCLA, 42 U.S.C. 9622, notice is hereby given that on March 24, 1999, a proposed Consent Decree in *United States* v. *Armco, Inc.* v. *American Home Products Corp. et al.*, Civil Action No: C–2–95–698, was lodged with the United States District Court for the Southern District of Ohio. This consent decree resolves potential claims by the United States against eleven third-party defendants under the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9601 *et seq.*, for recovery response costs incurred or to be incurred by the United States in connection with the Fultz Landfill Superfund Site located near Byesville, Guernsey County, Ohio. Under the proposed consent decree, the third-party defendants will pay the United States a total of $27,979 in reimbursement of past response costs.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *Armco, Inc.*, v. *American Home Products Corp., et al.*, D.J. Ref. 90–11–3–856A.

The proposed Consent Decree may be examined at the Office of the United States Attorney, Southern District of Ohio, 20080 High Street, 4th Floor, Columbus, OH 43215, at the Region 5 Office of the Environmental Protection Agency, 77 West Jackson Street, Chicago, Illinois 60604–3590, and at the Consent Decree Library, 1120 G Street, N.W., 3rd Floor, Washington, D.C. 20005, (202) 624–0892. A copy of the proposed Consent Decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 3rd Floor, Washington, D.C. 20005. In requesting a copy, please enclose a check in the amount of $7.25 (25 cents per page reproduction cost) payable to the Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 99–8461 Filed 4–5–99; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States* v. *Ben Shemper & Sons, Inc, et al.*, Civil Action No. 94–50385/LAC was lodged on March 12, 1999, with the United States District Court for the Northern District of Florida. In December 1994 pursuant to Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. 9607, the United States filed this action to recover response actions at the Sapp Battery Site near Cottondale, Florida. In addition, the complaint contained a claim against defendant, Ben Shemper & Sons, Inc. (Shemper) under Section 106(a) of CERCLA, 42 U.S.C. 9606(a), for failure to comply with EPA's Unilateral Administrative Order directing Shemper to participate in implementing the remedy for soil contamination at the site. The site was contaminated with lead and other heavy metals as the result of battery cracking operations conducted at the site from approximately 1970 to 1980. The consent decree requires Shemper to pay $1,330,000 plus interest over a period of approximately three years.

The Department of Justice will receive, for a period of 30 days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to: *United States* v. *Ben Shemper & Sons, Inc., et al.*, DOJ Ref. # 90–11–2–699E.

The proposed consent decree may be examined at the Office of the United States Attorney, Northern District of Florida, 114 E. Gregory Street, Pensacola, Florida 32501; Office of the U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, S.W., Atlanta, Georgia 30303; and at the Consent Decree Library, 1120 G Street, N.W., 3rd Floor, Washington D.C. 20005 (202) 624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G. Street, N.W., 3rd Floor, Washington, D.C. 20005. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $4.50 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Walker Smith,

Deputy Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 99–8457 Filed 4–5–99; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

Notice is hereby given that a consent decree in *United States* v. *Berks Associates, Inc. et al.*, Civil Action No. 91–4868 (E.D. Pa.) was lodged with the court on March 16, 1999.

The proposed decree resolves claims of the United States against 44 de-minimis parties under Sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended ("CERCLA"), 42 U.S.C. 9606 and 9607, for response costs and actions at the Douglassville Disposal Superfund Site in Berks County, PA. Each of the participating Settling Defendants sent one percent or less of the hazardous wastes found at the Site. The decree obligates the Settling Defendants, collectively, to reimburse to the United States a total of $8.9 million in past costs and anticipated future response costs. Of this amount, $3.2 million represents recovery of past costs and $5.7 million represents recovery of future costs.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Berks Associates, Inc. et al.*, Civil Action No. 91–4868. (E.D. Pa.), DOJ Ref. # 90–11–2–303.

The proposed consent decree may be examined at the United States Department of Justice, Environment and Natural Resources Division, Consent Decree Library, 1120 G Street, NW, 4th Floor, Washington, DC 20005, (202) 624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW, 4th Floor, Washington, DC 20005. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $8.00 (25 cents per page reproduction costs, excluding attachments), payable to the Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 99–8462 Filed 4–5–99; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

In accordance with Department policy, 28 CFR 50.7, notice is hereby given that a proposed Consent Decree in *United States and State of Connecticut* v. *Commercial Auto Body, et al.*, Civ. No. 399–CV–0470 & 0472 (JCH), was lodged on March 16, 1999 with the United States District Court for the District of Connecticut. The United States' complaint seeks to recover, pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. 9601, et al., past response costs incurred by EPA at the Old Southington Landfill Superfund Site located in the Town of Southington, Connecticut ("Site").

The proposed Consent Decree embodies an agreement with six potentially responsible parties ("PRPs") at the Site to pay $45,537, in aggregate, in settlement of claims for past response costs at the Site. Of this total, $30,000 will be paid to the United States and $15,537 will be paid to two parties who are performing a remedial action at the Site. The monies paid to the two performing parties will be used to partially fund the remedial action being performed by the two performing parties. The proposed Consent Decree provides the six settling defendants with a release for civil liability for EPA's and the State of Connecticut's ("State's") past CERCLA response costs at the Site.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed Consent Decree.

Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, DC 20044, and should refer to *United States and State of Connecticut* v. *Commercial Auto Body, et al.*, DOJ Ref. No. 90–11–2–420/2.

The proposed consent decree may be examined at the Office of the United States Attorney, U.S. Courthouse, 915 Lafayette Blvd., Rm. 309, Bridgeport, CT 06604; the Region I Office of the Environmental Protection Agency, Region 1 Records Center, 90 Canal Street, Fourth Floor, Boston, MA 02203; and at the Consent Decree Library, 1120 G Street, NW, Third Floor, Washington, DC 20005, (202) 614–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, Third Floor, NW, Washington, DC 20005. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $7.00 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Joel Gross,

Chief, Environmental Enforcement Section, Environmental and Natural Resources Division.

[FR Doc. 99–8459 Filed 4–5–99; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

[INS No. 1927–98]

Eligibility Pilot Program Citizen Attestation Employment

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Notice.

SUMMARY: In April 1999, the Immigration and Naturalization Service (Service) will begin testing the Citizen Attestation Employment Eligibility Pilot Program. On September 15, 1997, the Service published a notice in the **Federal Register** providing the requirements and guidance to employers that might be interested in participating in a pilot program(s) for employment eligibility confirmation. The notice also instructed employers to contact the Service if they elected to participate in the program(s). The pilot programs discussed in that notice were the Basic Pilot, the Citizen Attestation Pilot, and the Machine-Readable Document Pilot. These pilot programs are required by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA). Employers in all 50 states were originally invited to submit election forms expressing interest in the Citizen Attestation Pilot Program, but the Service reserved the right to limit the pilot to certain states based on the level of employer interest and on further determinations as to states driver licensing procedures. This notice is to advise employees that the Citizen Attestation Pilot will be offered to all employers in the states of Arizona, Maryland, Massachusetts, Michigan, and Virginia.

DATES: There is no deadline for volunteering to participate in the Citizen Attestation Pilot Program, but interested employers should contact the Service as soon as possible to maximize their opportunity to participate.

Employers in the states listed above who have already submitted a Form I–876, Election Form, to the Service do not have to reapply.

FOR FURTHER INFORMATION CONTACT: John E. Nahan, Immigration and Naturalization Service, SAVE Program, 425 I Street, NW., ULLICO Building, 4th Floor, Washington, DC 20536, telephone (888) 464–4218.

SUPPLEMENTARY INFORMATION:

What Is the Citizen Attestation Pilot Program?

The Citizen Attestation Pilot Program is a free employment confirmation system being conducted by the Service to test a method of providing an effective, nondiscriminatory employment eligibility process, focusing on electronic confirmation. The pilot program involves a verification check of the Service's database to verify the alien number and other information provided by a newly-hired alien employee. Equipment needed for participation in this pilot is a personal computer with a modem. The pilot program can be tested for up to 4 years.

Who May Participate in the Citizen Attestation Pilot Program?

The pilot program is being offered to all employers in the states of Arizona, Maryland, Massachusetts, Michigan, and Virginia. Participation in the pilot will be voluntary on the part of employers, except with regard to the Executive and Legislative Branches of the Federal Government and certain employers found to be in violation of the Immigration and Nationality Act in states where the pilot is being conducted.

How Does an Employer Sign Up for Participation in the Citizen Attestation Pilot Program?

All employers must enter into a Memorandum of Understanding (MOU) with the Service. To obtain the MOU or to request additional information about the Citizen Attestation Pilot Program, you may submit your requests to the Immigration and Naturalization Service by writing to, 425 I Street, NW., ULLICO Building, 4th Floor, Washington, DC 20536, Attention: SAVE Program Branch, or you may fax your request to the SAVE Program at (202) 514–9981, or you may call the SAVE Program toll free at 1–888–464–4218.

Paperwork Reduction Act

The information collection requirement contained in the Memorandum of Understanding has been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act. The clearance number for this collection is OMB 1115–0228.

Dated: March 30, 1999.

Doris Meissner,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 99–8354 Filed 4–5–99; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance and NAFTA Transitional Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended, the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) issued during the period of February and March, 1999.

In order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance to be issued, each of the group eligibility requirements of Section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations for Worker Adjustment Assistance

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA–W–34,326; Tube City, Inc., West Mifflin, PA

TA–W–35,380; Sharon Tube Co., Niles, OH

TA–W–35,624; Bar-Sew, Inc., Lehighton, PA

TA–W–35,548; Mill-Rite Farms, Inc., Albany, OR

TA–W–35,467; Pittsburgh Corning Corp., Port Allegany, PA

TA–W–35,191; A & B; Allied Signal Laminate Systems, Pendleton, SC, Franklin, IN and LaCrosse, WI

TA–W–35,592; North American Refractories Co., Womelsdorf, PA

TA–W–35,402; U.S. Steel Group, A Div. Of USX Corp., Fairless Works, Hairless Hills, PA

TA–W–35,450; Braeburn Alloy Steel, Inc., Lower Burrell, PA

TA–W–35,473; Blount, Inc., Forestry & Industrial Equipment Div., Prentice, WI

TA–W–35,483; Computalog USA, Inc., Fort Worth, TX

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

TA–W–35,287; Hanover Accoesories, Powtucket, RI

TA–W–35,594; Intertek Testing Services, Int'l, Inc., Pasadena, TX

TA–W–35,497; Washington Public Power Supply System, Satsop Site, Elma, WA

TA–W–35,350; General Electric Co., Hickory, NC

TA–W–35,567; Boise Cascade Corp, Research & Development Dept, Portland, OR

TA–W–35,486; Buckeye, Inc., Midland, TX

TA–W–35,598; NANA Management Service & NANNA/Colt Engineering, Anchorage, AK

The workers firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–35,438; Motorola Ceramic Products, Albuquerque, NM

TA–W–35,258; Habersham Metal Products, Cornelia, GA

TA–W–35,560; Dyna Craft Industries, Inc., Murrysville, PA

TA–W–35,249; Frenesius Medical Care, N.A., Renal Produc Technologies, McAllen, TX

TA–W–35,220; Ametek, US Gauge Div., Sellersville, PA

TA–W–35,271; Essex Group, Inc., Pana, IL

TA–W–35,234; P.D.U. Apparel, Inc., Garfield, NJ

TA–W–275; Motorola, Tempe, AZ

TA–W–35,322; International Paper Corp., Containerboard Div., Gardiner, OR

TA–W–35,133; Johnson Matthey, APG Thermal management Group, Cheney, WA (Including Temporary Workers from Humanix, Volt and CDI, Spokane, WA)

TA–W–35,290; AG-Chem Equipment Co., Inc., Jackson, MN

TA–W–35,499; Kulicke and Soffa Industries, Inc., Willow Grove, PA
TA–W–35,360; Koch Label Co L.L.C., Evansville, IN
Increased imports did not contribute importantly to worker separations at the firm.
TA–W–35,230; Avery Dennison Fasson Roll, North America Div., Quakertown, PA
The investigation revealed that criteria (2) and criteria (3) have not been met. Sales or production did not decline during the relevant period as required for certification. Increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have not contributed importantly to the separations or threat thereof, and the absolute decline in sales or production.
TA–W–35,229; Getinge/Castle, Rochester, NY
The investigation revealed that criteria (2) has not been met. Sales or production did not decline during the relevant period as required for certification.
TA–W–35,522; Great Northern Paper, Inc., Paper Mills Div., Pinkham Div, Woodlands Div., Millinocket, ME
The investigation revealed that criteria (1) has not been met. A significant number or proportion of the workers did not become totally or partially separated from employment as required for certification.

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued; the date following the company name and location of each determination references the impact date for all workers of such determination.

TA–W–35,647; Parker Drilling Co., Anchorag, AK: January 13, 19998.
TA–W–35,654 A, B, C, D; Hasbro Corp Office, Pawtucket, RI, Rhode Island Manufacturing (RIM), Central Falls, RI, Hasbro Toy Group, Cincinnati, OH, Hasbro Games Group, Milton Bradley Co., East Longmeadow, MA, Hasbro Games Group, Parker Brothers, Beverly, MA: March 12, 1999.
TA–W–35,255; United States Steel, International Inc., Dravasburg, PA: November 10, 1997.
TA–W–35,202; United States Steel, International, Inc., Braddock, PA: November 2, 1997.
TA–W–35,189; Rexnord Corp., Roller Chain Div., Indianapolis, IN: October 26, 1997.
TA–W–35,277; Eaton Corp., Vehicle Switch/Electronics Div., Winamac, IN: November 13, 1997.
TA–W–35,344; General Electric, Memphis Lamp Plant, Memphis, TN: November 23, 1997.
TA–W–35,493; Linville Hosiery Co., Inc., Marion, NC: January 5, 1998.
TA–W–35,526; Williston Basin Inspection Service, Williston, ND: December 30, 1997.
TA–W–35,489; D'Arbo Limited, Inc., Monterey, TN: January 4, 1998.
TA–W–35,424; Cross Creek Apparel, Inc., Hillsville Embroidery Plant, Hillsville, VA: December 11, 1997.
TA–W–35,533; Manufacturing and Technical Enterprises, Inc., East Wilton, ME: January 8, 1998
TA–W–35,472; Tony Lama Boot Co., El Paso, TX: December 21, 1997.
TA–W–35,653; Kentucky Apparel, L.L.P., Bowling Green, KY: January 29, 1998.
TA–W–35,422; Chestnut Hill Marketing, Fall River, MA: December 12, 1997.
TA–W–35,720, A & B; Indera Mills Yadkinville, NC, Winston Salem, NC and North Wilkesboro, NC: February 11, 1998.
TA–W–35,644; Eagle Electric Mfg Co., Inc., Sanford, NC: January 16, 1998.
TA–W–35,587; Hopewell Sewing, Inc., Brodax, VA: January 18, 1998.
TA–W–35,429; Rayovac Corp., Appleton, WI: November 28, 1997.
TA–W–35,367; Auburn Sportswear, Tallassee, AL: December 2, 1997.
TA–W–35,513 & A; Hunt Oil Co., Dallas, TX and Gulf Coast Div., Houston, TX: January 5, 1998.
TA–W–35,370; Mademoiselle Knitwear, Brooklyn, NY: December 8, 1997.
TA–W–35,559; Ariana, Inc., Hoboken, NJ: January 15, 1998.
TA–W–35,518; Power Offshore Services, Inc., Belle Chasse, LA: January 11, 1998.
TA–W–35,374; Jinkerson Services, Inc., El Paso, TX: December 2, 1997.
TA–W–35,351; Komatsu America International Co., Galion, OH: February 12, 1999.
TA–W–35,434A, B, C, D, E; Baker Atlas Operating in Field Locations in TX, LA, CA, PA, MA, CO: November 30, 1997.
I further determine that all workers at Baker Atlas Headquarters and oilfield equipment manufacturing plant in Houston, TX are denied.
TA–W–35,676; Texas Boot, Inc., Smithville, TN; February 5, 1998.
TA–W–35,226; United Defense L.P., Steel Products Div/Foundry, Anniston, AL: November 3, 1997.
TA–W–35,622; The Apparel Group, Louisville, KY: February 14, 1998.
TA–W–35,304; Allen-Bradley Co., Inc., Dept #240, #250, #255, #260, #262, Milwaukee, WI: November 30, 1997.
TA–W–35,167; Tyolit North American, Inc., Westborough, MA: October 16, 1997.
TA–W–35,452 & A, B, C, D, E, F, G, H; Pendleton Woolen Mills, Fremont NE, Pendleton Corporate Office, Portland, OR, Columbia Wool Scouring, Portland, OR, Pendleton Oregon Mill, Pendleton, OR, Foundation Mill, Portland, OR, Washougal Mill, Washougal, WA, Bellevue Facility, Bellevue, NE, Door Woolen Mills, Guild NH, Pendleton Sales Representative, Cincinnati, OH: December 21, 1997.
TA–W–35,745; Berk Knit Shirt Co., Colon, MI: February 11, 1998.
TA–W–35,740; Borg-Warner Automotive, Sterling Heights Operation, Sterling Heights, MI: February 25, 1998.
TA–W–35,549 & A; Lion Apparel, Williamsburg, KY and Goldburg, KY: January 8, 1998.
TA–W–35,375; Slater Steel Corp., Specialty Alloys Div., Fort Wayne, IN: December 2, 1997.
TA–W–35,313; AM Communication, Quakertown, PA: November 17, 1997.
TA–W–35,436; Computed Anatomy, Inc., New York, NY: December 17, 1997.
TA–W–35,508; Compaq Computer Corp., Colorado Spring, CO: January 4, 1998.
TA–W–35,625; Independent Products (USA), Inc., Champlain, NY: January 15, 1998.
TA–W–35,397; Bonny Products, Inc., Washington, NC: December 12, 1997.
TA–W–35,393; Corning Consumer Products Co., Charleroi, PA: December 7, 1997.
TA–W–35,488; Doehler Jarvis/Harvard Industries (Currently d/b/a/ Pottstown Precision Casting), Stowe, PA: January 5, 1998.
TA–W–35,297; General Electro Mechanical Corp., (GEMCOR), West Seneca, NY: November 13, 1997.
TA–W–35,719; CNB International, Inc., New Products Div., Buffalo, NY: February 9, 1998.
TA–W–35,243; The Carthage Co., Carthage, MS: November 3, 1997.
TA–W–35,744; Petroglyph Operating Co., Hutchinson, KS & Operating in the following States: A; UT, B; CO: February 9, 1998.
TA–W–35,546; Cross Creek Apparel, North Wilkesboro, NC: January 12, 1998.
TA–W–35,698; Marquip, Inc., Phillips, WI: February 2, 1998.

TA–W–35,702; Hapco Screen Printing, Inc., Emmaus, PA: February 2, 1998.
TA–W–35,612 & A; Salant Corp., Obion-Denton Facilities, Obion, TN and Union City, TN: January 25, 1998.
TA–W–35,629; GN Netcom, Inc., Scotts Valley, CA: January 26, 1998.
TA–W–35,551; Coates ASI, Inc., Phoenix, AZ: January 18, 1998.
TA–W–35,492; Curtis Sportswear, Inc., Etowah, TN: January 12, 1998.
TA–W–35,636 & A; Wright's Knitwear Corp., Auburn, PA and West Hazleton, PA: January 22, 1998.
TA–W–35,621; Tyler Ten Quality, Jacksonville, TX: January 25, 1998.

Also, pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance hereinafter called (NAFTA–TAA) and in accordance with section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act as amended, the Department of Labor presents summaries of determinations regarding eligibility to apply for NAFTA–TAA issued during the month of February and March, 1999.

In order for an affirmative determination to be made and a certification of eligibility to apply for NAFTA–TAA the following group eligibility requirements of section 250 of the Trade Act must be met:

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, (including workers in any agricultural firm or appropriate subdivision thereof) have become totally or partially separated from employment and either—
(2) That sales or production, or both, of such firm or subdivision have decreased absolutely,
(3) That imports from Mexico or Canada of articles like or directly competitive with articles produced by such firm or subdivision have increased, and that the increases in imports contributed importantly to such workers' separations or threat of separation and to the decline in sales or production of such firm or subdivision; or
(4) That there has been a shift in production by such workers' firm or subdivision to Mexico or Canada of articles like or directly competitive with articles which are produced by the firm or subdivision.

Negative Determinations NAFTA–TAA

In each of the following cases the investigation revealed that criteria (3) and (4) were not met. Imports from Canada or Mexico did not contribute importantly to workers' separations. There was no shift in production from the subject firm to Canada or Mexico during the relevant period.

NAFTA–TAA–02840; Graham-Field Health Products, Inc., Hauppauge, NY
NAFTA–TAA–02776; Co-Steel Raritan, Perth Amboy, NY
NAFTA–TAA–02717; Delta Apparel Co., Decatur, TN
NAFTA–TAA–02754; AG-Chem Equipment Co., Inc., Jackson, MN
NAFTA–TAA–02748; Thermo Power, Crusader Engine Div., Sterling Heights, MI
NAFTA–TAA–02831; Sanyo Audio Manufacturing (USA) Corp., Milroy, PA
NAFTA–TAA–02741; Compaq Computer Corp., Houston, TX
NAFTA–TAA–02726; Avery Dennison, Fasson Roll North America Div., Quakertown, PA
NAFTA–TAA–02896; Northwest Stampong & Precision, Eugene, OR
NAFTA–TAA–02796; US Can Co., Green Bay, WI
NAFTA–TAA–02907; Federal-Mogul Corp., Friction Products, New Castle, IN
NAFTA–TAA–02866; Crown Cork and Seal Col., Omaha, NE
NAFTA–TAA–02958; Schlumberger Oilfield Services, Roswell District, Roswell, NM and Operating at All Other Locations in the State of NM
NAFTA–TAA–02884 & A; Wright's Knitwear Corp., Auburn, PA and West Hazleton, PA
NAFTA–TAA–02811; Marquip, Inc., Phillips, WI
NAFTA–TAA–02941; Vanport Manufacturing, Inc., Boring, OR
NAFTA–TAA–02901; Baker Hughes Centrilift, Cody, WY
NAFTA–TAA–02879; Scripto-Tokai Corp., Fontana, CA

The investigation revealed that the criteria for eligibility have not been met for the reasons specified.

NAFTA–TAA–02873; McKinley Fiber Co., Albuquerque, NM
NAFTA–TAA–02876; Seagae Technology, Costa Mesa, CA
NAFTA–TAA–02826; Washington Public Power Supply System, Satsop Site, Elma, WA
NAFTA–TAA–02878; Bill Kaiser Co., Kansas City, MO
NAFTA–TAA–02924; RR Donnelley & Sons Co., Fulfillment and Distribution Div., Dunmore, PA
NAFTA–TAA–02782; General Electric Co., Hickory, NC

The investigation revealed that the workers of the subject firm did not produce an article within the meaning of section 250(a) of the Trade Act, as amended.

NAFTA–TAA–02848; Great Northern Paper, Inc., Paper Mills Div., Pinkham Div., Woodlands, Div. and Millinocket, ME

The investigation revealed that criteria (1) has not been met. A significant number or proportion of the workers in such workers' firm or an appropriate subdivision (including workers in any agricultural firm or appropriate subdivision thereof) did not become totally or partially separated from employment as required for certification.

Affirmative Determinations NAFTA–TAA

NAFTA–TAA–02899; Peregrine, Inc., Peregrine USA, Flint Operating, Flint, MI: January 11, 1998.
NAFTA–TAA–02859 & A; Lanier Clothes, Press and Finishing Dept., Greenville, GA and Fayette, AL: January 7, 1998. (All workers at Lanier Clothes, Fayette, engaged in employment related to the production of men's tailored coats.)

I further determine that all workers Press and Finishing Dept., Greenville, GA producing men's suits are denied.

NAFTA–TAA–02825; General Electric Co., Industrial Systems Div., Mebane, NC: December 17, 1997.
NAFTA–TAA–02713; Clarion Manufacturing Corp. of America, Walton, KY: October 28, 1997.
NAFTA–TAA–02815; Ausco Products, Inc., Benton Harbor, MI: November 25, 1997.
NAFTA–TAA–02745; Mead Paper Corp., Rumford, ME: November 12, 1999.
NAFTA–TAA–02835; Clevenger Industries, Inc., Marion, NC: January 5, 1998.
NAFTA–TAA–02833; Martin-Decker/ Totco Casper, WY & Operating in the State of ND; January 8, 1998.
NAFTA–TAA–02858: The Pillsbury Co., Haagen-Dazs Plant, Woodbridge, NJ: December 21, 1997.
NAFTA–TAA–02849; Stitches, Inc., El Paso, TX: February 24, 1998
NAFTA–TAA–02854; Porcelanite, Inc., Lexington, NC: January 13, 1998.
NAFTA–TAA–02839; Fair-Rite Products Corp., Springfield, VT: January 11, 1998.
NAFTA–TAA–02810; Cyclone Drilling, Headquartered in Gillete, WY & Operation in the following States: A; CO, B; MT, C; NM, D; ND, E; UT: December 18, 1997.
NAFTA–TAA–02797; Graphic Packaging Corp., Div. of Flexible

Packaging, Franklin, OH: November 23, 1997.
NAFTA–TAA–02882; Jamesbury, Inc., El Paso Distribution Center, El Paso, TX: January 19, 1998.
NAFTA–TAA–02895: Amphenol Corp., Amphenol Aerospace Operations, Sidney, NY: February 8, 1999.
NAFTA–TAA–02966; Galey & Lord Industries, Inc., a/k/a Galey & Lord Services Co., Eagle Pass, TX: February 22, 1998.
NAFTA–TAA–02856; Fourmost Garment, Inc., Bristol, VA: January 8, 1998.
NAFTA–TAA–02904: Imperial Home Decor Group, Plattsburg Plant, Plattsburg, NY; March 1, 1999.
NAFTA–TAA–02845; Tecos Fashions, El Paso, TX: January 12, 1998.
NAFTA–TAA–02869; Stanley Tools, Goldblatt Plant, Kansas City, KS: January 25, 1998.
NAFTA–TAA–02918; Indiana Knitwear Corp., Berk-Knit Shirt Co., Colon, MI: February 9, 1998.
NAFTA–TAA–02829; Curtis Sportswear, Inc., Etowah, TN: December 29, 1997.
NAFTA–TAA–02953; Brand-S Corp., Superior Hardwoods Div., Corvallis, OR: March 4, 1998.
NAFTA–TAA–02949; Seco Products Corp., Therma-Systems Div., South Plainfield, NJ: February 26, 1998.

I hereby certify that the aforementioned determinations were issued during the months of February and March, 1999. Copies of these determinations are available for inspection in Room C–4318, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: March 31, 1999.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 99–8383 Filed 4–5–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–35,576]

American Smelting and Refinery Company (ASARCO) El Paso, TX; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on February 1, 1999 in response to a worker petition which was filed on behalf of workers at American Smelting and Refinery Company (ASARCO).

The petitioning group of workers is subject to an ongoing investigation for which a determination has not yet been issued (TA–W–35,516). Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, D.C. this 23rd day of March, 1999.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 99–8389 Filed: 4–5–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–35, 309]

BP/AMOCO (Formerly Amoco Corporation) AMOCO Exploration and Production Amoco Shared Services; Amended Certification Regarding Eligility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Certification of Elibility to Apply for Worker Adjustment Assistance on February 19, 1999, applicable to workers to Amoco Exploration and Production and Amoco Shared Services, Headquartered in Houston, Texas and operating at other locations in the above mention states. The notice will be published soon in the **Federal Register**.

At the request of the company and the State agency, the Department reviewed the certification for workers of the subject firm. The workers were engaged in activities related to exploration and production of crude oil and natural gas. New findings show that in January, 1999 Amoco Corporation became known as BP/Amoco (formerly Amoco Corporation). Findings also show that some workers separated from employment at BP/Amoco, Amoco Exploration and Production and Amoco Shared Services had their wages reported under a separate unemployment insurance (UI) tax account for Amoco Production Company, Inc., headquartered in Houston, Texas and operating at other locations in the above cited states.

Accordingly, the Department is amending the certification to reflect this matter.

The amended notice applicable to TA–W–35, 309 is hereby issued as follows:

"All workers of BP/Amoco (Formerly Amoco Corporation), Amoco Exploration and Production, Amoco Shared Services, a/k/a Amoco Production Company, Inc., headquarters in Houston, Texas and operating at other locations cited below who became totally or partially separated from employment on or after October 1, 1998 through February 19, 2001 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974:

TA–W–35, 309A ALABAMA
TA–W–35, 309B ARKANSAS
TA–W–35, 309C CALIFORNIA
TA–W–35, 309D COLORADA
TA–W–35, 309E FLORIDA
TA–W–35, 309F ILLINOIS
TA–W–35, 309G KANSAS
TA–W–35, 309H LOUISIANA
TA–W–35, 309I MASSACHUSETTS
TA–W–35, 309J MICHIGAN
TA–W–35, 309K MISSISSIPPI
TA–W–35, 309L MISSOURI
TA–W–35, 309M NEW MEXICO
TA–W–35, 309N OKLAHOMA
TA–W–35, 309O TEXAS
TA–W–35, 309P WYOMING."

Signed at Washington, DC this 24th day of March, 1999.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 99–8390 Filed 4–5–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

The Boeing Company, Wichita, KS; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on December 21, 1998 in response to a worker petition which was filed on December 21, 1998 on behalf of workers at The Boeing Company, Wichita, Kansas.

The petitioning group of workers is the subject of an ongoing investigation whose scope includes the worker group at Wichita, Kansas. That ongoing investigation (TA–W–35,399) was also instituted on December 21, 1998. The determination resulting from TA–W–35,399 will include a ruling on eligibility for workers at Wichita, Kansas. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, D.C. this 23rd day of March, 1999.

Grant D. Beale,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 99–8387 Filed 4–5–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility to Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Acting Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Acting Director, Office of Trade Adjustment Assistance, at the address shown below, not later than April 16, 1999.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Acting Director, Office of Trade Adjustment Assistance, at the address shown below, not later than April 16, 1999.

The petitions filed in this case are available for inspection at the Office of the Acting Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210.

Signed at Washington, DC this 8th day of March, 1999.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

APPENDIX

[Petitions Instituted on 03/08/1999]

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
35,759	Capco, Inc (Comp)	Coquille, OR	02/02/1999	Golf Shafts—Ski Poles.
35,760	STU Blattner, Inc (Wrks)	Golden, CO	02/03/1999	Maintance Functions.
35,761	Texaco Explor. & Prod. (Wrks)	Midland, TX	02/12/1999	Crude Oil and Natural Gas.
35,762	LSI Logic Inc. (Wrks)	Ft. Collins, CO	02/10/1999	Semi Conductors.
35,763	Heckett MultiServ (Wrks)	Vineyard, UT	02/09/1999	Process Slag.
35,764	Mike Byrd Casing Crews (Wrks)	Odessa, TX	02/17/1999	Oil Drilling Services.
35,765	Hennepin Paper Co (USWA)	Little Falls, MN	02/17/1999	Construction Paper.
35,766	R and B Falcon Drilling (Wrks)	Houma, LA	02/19/1999	Oil Drilling.
35,767	U.S. Energy (Wrks)	Riverton, WY	02/18/1999	Uranium.
35,768	VECO Corp (Comp)	Anchorage, AK	02/19/1999	Oilfield Services.
35,769	Arrow Automotive Ind. (Comp)	Morrilton, AR	02/16/1999	Remanufactured Starters, Alternators.
35,770	International Steel Wool (Comp)	Springfield, OH	02/24/1999	Chopped Steel Wool Fibers.
35,771	U.S. Can—Ballonoff (Wrks)	Columbiana, OH	02/17/1999	Decorated Metal Tins.
35,772	Battle Mountain Welding (Comp)	Battle Mountain, NV	02/12/1999	Welding Repair.
35,773	Hudson I.C.S. (Wrks)	San Leandro, CA	02/10/1999	Pencils.
35,774	Carbide, Inc (USWA)	Irwin, PA	02/02/1999	Tungsten Carbide Preforms.
35,775	Goodyear Tire and Rubber (USWA)	East Gadsden, AL	02/11/1999	Radial Passenger Tires.
35,776	Illinois Glove Co (Comp)	Beardstown, IL	02/17/1999	Gloves—Commercial and Military.
35,777	John Deere Consumer Prod. (Comp)	Greer, SC	02/22/1999	Engines of Handheld Lawn & Garden Equip.
35,778	MacWhyte Wire Rope Co (UAW)	Kenosha, WI	02/18/1999	Wire Rope.
35,779	SGL Carbon Copr (IUE)	St. Marys,, PA	02/22/1999	Graphite Parts for Industral Application.
35,780	Premiumwear, Inc (Wrks)	Fairmont, NC	02/18/1999	Sport Shirts.
35,781	Friday child Mfg. (Wrks)	New York, NY	02/03/1999	Junior Sportswear.
35,782	JPS Converter & Indust. (Comp)	Rocky Mt, VA	02/22/1999	Woven, Unfinished Fabrics.
35,783	South Bay Circuits (Comp)	San Jose, CA	02/23/1999	Printed Circuit Boards.
35,784	Hycroft Resources & Dev. (Wrks)	Winnemucca, NV	02/12/1999	Gold.
35,785	Fleenor Dirt Construction (Wrks)	Hays, KS	02/10/1999	Oilfield Construction.
35,786	Al Tech Specialty Steel (USWA)	Dunkirk, NY	02/27/1999	Stainless Steel Wire, Bars, etc.
35,787	R.R. Donnelley and Sons (GCIU)	Dunmore, PA	02/08/1999	Books, CDs.
35,788	McGregor Loudspeaker Mfg. (Wrks)	Prairie Du Chen, WI	02/17/1999	Automotive Speakers.
35,789	U.S. Colors (Wrks)	Scottsville, KY	02/01/1999	Tee Shirts.
35,790	KCS Mountain Resources (Wrks)	Worland, WY	02/12/1999	Oil and Gas.
35,791	Keystone Stihl, Inc (Comp)	Mifflintown, PA	02/18/1999	Power Tools.
35,792	Texaco Explore & Prod Tech (Comp)	Houston, TX	02/01/1999	Oil and Gas.
35,793	AR Accessories Group (Wrks)	Milwaukee, WI	02/08/1999	Men's and Ladies' Wallets.
35,794	Cone Mills Corp (Comp)	Greensboro, NC	02/23/1999	Denim Fabrics.
35,795	Robinson Manufacturing (Wrks)	Lineville, AL	02/03/1999	Men's & Boys' Underwear, Outerwear.
35,796	Tom Brown, Inc (Wrks)	Midland, TX	02/16/1999	Oil and Gas.
35,797	Columbia Controls (Wrks)	Portland, OR	02/19/1999	Assembly & Wiring of Chain Making Equip.
35,798	Ryerson-Thypin Steel Co (Wrks)	Easten, PA	02/08/1999	Stainless Steel Plat and Tube.

[FR Doc. 99–8384 Filed 4–5–99; 8:45 am]
BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–35,876]

Equity Oil Company Salt Lake City, UT; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on March 22, 1999, in response to a petition filed on the same date on behalf of workers at Equity Oil Company, Salt Lake City, Utah.

The company official submitting the petition has requested that the petition be withdrawn at this time. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 23rd day of March, 1999.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 99–8386 Filed 4–5–99; 8:45 am]
BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–35,773]

Hudson ICS San Leandro, CA; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on March 8, 1999 in response to a worker petition which was filed on February 11, 1999 on behalf of workers at Hudson ICS, San Leandro, California.

A negative determination applicable to the petitioning group of workers was issued on October 1, 1998 (TA–W–34,997). No new information is evident which would result in a reversal of the Department's previous determination. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 26th day of March, 1999.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 99–8385 Filed 4–5–99; 8:45 am]
BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–35,438]

Motorola Ceramic Products, Albuquerque, NM; Notice of Affirmative Determination Regarding Application for Reconsideration

By letter of February 28, 1999 the petitioner requested administrative reconsideration of the Department of Labor's Notice of Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance, applicable to petition number TA–W–35,438. The denial notice was signed on February 18, 1999 and will soon be published in the **Federal Register**.

The petitioner requested administrative reconsideration and provided new information which would support a reopening of the case.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted. Signed at Washington, DC this 9th day of March, 1999.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 99–8391 Filed 4–5–99; 8:45 am]
BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–35,172]

National Oilwell, McAlester, OK; Notice of Affirmative Determination Regarding Application for Reconsideration

By letter of March 3, 1999 the petitioner requested administrative reconsideration of the Department of Labor's Notice of Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance, applicable to petition number TA–W–35,172. The denial notice was signed on February 3, 1999 and published in the **Federal Register** on February 25, 1999 (64 FR 9353).

The petitioner alleges that the Department did not thoroughly review the issue of imports of like or directly competitive products and provided additional information which warrants reconsideration of the case.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, D.C. this 18th day of March, 1999.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 99–8392 Filed 4–5–99; 8:45 am]
BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–35,761]

Texaco Exploration and Producing, Inc., Houston, Texas; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on March 8, 1999, in response to a worker petition which was filed on behalf of workers at Texaco Exploration and Producing, Inc., Midland, Texas.

All workers of the subject firm are included in a petition investigation in process for TA–W–35,792. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC this 5th day of March, 1999.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 99–8388 Filed 4–5–99; 8:45 am]
BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for NAFTA Transitional Adjustment Assistance

Petitions for transitional adjustment assistance under the North American Free Trade Agreement-Transitional Adjustment Assistance Implementation Act (Pub. L. 103–182), hereinafter called (NAFTA–TAA), have been filed with State Governors under Section 250(b)(1) of Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended, are identified in the Appendix to this

Notice. Upon notice from a Governor that a NAFTA–TAA petition has been received, the Acting Director of the Office of Trade Adjustment Assistance (OTAA), Employment and Training Administration (ETA), Department of Labor (DOL), announces the filing of the petition and takes action pursuant to paragraphs (c) and (e) of Section 250 of the Trade Act.

The purpose of the Governor's actions and the Labor Department's investigations are to determine whether the workers separated from employment on or after December 8, 1993 (date of enactment of Pub. L. 103–182) are eligible to apply for NAFTA–TAA under Subchapter D of the Trade Act because of increased imports from or the shift in production to Mexico or Canada.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing with the Acting Director of OTAA at the U.S. Department of Labor (DOL) in Washington, DC provided such request if filed in writing with the Acting Director of OTAA not later than April 16, 1999.

Also, interested persons are invited to submit written comments regarding the subject matter of the petitions to the Acting Director of OTAA at the address shown below not later than April 16, 1999.

Petitions filed with the Governors are available for inspection at the Office of the Acting Director, OTAA, ETA, DOL, Room C–4318, 200 Constitution Avenue, NW, Washington, DC 20210.

Signed at Washington, DC this 31st day of March, 1999.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

APPENDIX

Subject firm	Location	Date received at governor's office	Petition No.	Articles produced
V.F. Jeanswear (UFCW)	Houston, MO	02/26/1999	NAFTA–2,936	Jeans.
Rockwell Automation—Reliance Electric (IAMAW).	Madison, IN	02/26/1999	NAFTA–2,937	AC fractional motors, refrigeration.
Garden State Tanning (Co.)	Fleetwood, PA	02/26/1999	NAFTA–2,938	Leather cut sets for automotive industry.
KLH Industries (Co.)	Durant, MS	02/25/1999	NAFTA–2,939	Electrical wiring harness.
Emerson Electric—Thermodisc (Wkrs)	El Paso, TX	02/25/1999	NAFTA–2,940	Electrical switches.
Vanport (Wkrs)	Boring, OR	02/25/1999	NAFTA–2,941	Lumber.
Bailey Apparel (Co.)	Bailey, NC	02/24/1999	NAFTA–2,942	Infants, toddlers and girls dresses.
Castalia Apparel (Co.)	Castalia, NC	02/23/1999	NAFTA–2,943	Infants, toddlers and girls dresses.
Shasta (IAMAW)	Monaca, PA	02/24/1999	NAFTA–2,944	Alloy & stainless semi-finished products.
Newark Paperboard (GCU)	Woodburn, OR	02/23/1999	NAFTA–2,945	Paper tubes & paper cones.
Gambro Healthcare (Co.)	Newport News, VA	02/24/1999	NAFTA–2,946	Blood tubing sets.
Harman International (Wkrs)	Prairie du Chie, WI	03/01/1999	NAFTA–2,947	Automotive speakers.
Ansell Protective Products (UNITE)	Haynesville, LA	03/01/1999	NAFTA–2,948	Vinyl gloves.
Seco Products (Co.)	South Plainfield, NJ	03/02/1999	NAFTA–2,949	Plastic lids and inserts.
Ryerson Thypin Steel (Wkrs)	Easton, PA	03/02/1999	NAFTA–2,950	Steel tube and plate.
Equistar Chemical (Wkrs)	Port Arthur, TX	03/05/1999	NAFTA–2,951	Plastic.
Carhartt (Co.)	McKenzie, TN	03/04/1999	NAFTA–2,952	Bib overalls.
Brand S (Co.)	Corvallis, OR	03/04/1999	NAFTA–2,953	Hardwood plywood, hardwood veneer.
Lucia (Co.)	Elkin, NC	03/04/1999	NAFTA–2,954	Ladies apparel.
Wady—Employment of Solution of CA (Wkrs).	Marina Del Rey, CA	03/02/1999	NAFTA–2,955	Pijamas.
Hudson (Wkrs)	San Leandro, CA	02/18/1999	NAFTA–2,956	Pencil slats.
Barker Atlas (Co.)	Houston, TX	03/04/1999	NAFTA–2,957	Drilling.
Schlumberger (Wkrs)	Roswell, NM	02/22/1999	NAFTA–2,958	Oil.
Haggar Clothing—Weslaco (Co.)	Weslaco, TX	03/02/1999	NAFTA–2,959	Men's pants and coats.
Keystone Powdered Metal (IUE)	St. Marys, PA	03/03/1999	NAFTA–2,960	Automotive and powdered metal parts.
John Deere Consumer (Co.)	Greer, SC	03/01/1999	NAFTA–2,961	Engines for lawn and garden equipment.
Eaton Corporation (Co.)	Hamilton, IN	03/04/1999	NAFTA–2,962	Valves, sensors, actuation devices, lock.
Dean Pickle and Specialty Products (Wkrs).	Croswell, MI	03/01/1999	NAFTA–2,963	Fresh cucumbers.
West Bend Company (The) (PACE)	West Bend, WI	03/03/1999	NAFTA–2,964	Thermo plugs.
Bard Access Systems—CR Bard (Co.)	Salt Lake City, UT	02/04/1999	NAFTA–2,965	Medical device (catheters).
Galey and Lord Industries (Wkrs)	Eagle Pass, TX	03/02/1999	NAFTA–2,966	Cutting jeans.
Carolina Maid Products (Co.)	Granite Quarry, NC	03/05/1999	NAFTA–2,967	Ladies dresses.
Russell Core—Habersham Mills (Wkrs)	Habersham, GA	03/08/1999	NAFTA–2,968	Yarn.
General Electric (Co.)	Morrison, IL	03/05/1999	NAFTA–2,969	Wall thermostats.
Ametek (IAM)	Cambridge, OH	03/02/1999	NAFTA–2,970	Small electric motor.
North America Knitting (Co.)	Mansfield, OH	03/08/1999	NAFTA–2,9971	Knitted sweaters, suits, dresses, skirts.
Foremost Drill Systems (Wkrs)	Reno, NV	03/04/1999	NAFTA–2,972	Mining tools.
JWA Diving—Soni Form (Co.)	El Cajon, CA	03/08/1999	NAFTA–2,973	Buoyancy compensators.
Tultex Corporation (Co.)	Mayodan, NC	03/08/1999	NAFTA–2,974	Crewneck fleece sweatshirts.
Illinois Glove (UNITE)	Beardstown, IL	03/05/1999	NAFTA–2,975	Gloves.
Artcraft Industries—Simula (Wkrs)	Milwaukee, WI	03/10/1999	NAFTA–2,976	Aluminum frame.
Ansell Edmont (UNITE)	Haynesville, LA	03/01/1999	NAFTA–2,977	Vinyl gloves.
Puget Plastics (Co.)	Tualatin, OR	03/10/1999	NAFTA–2,978	Plastic injection parts.
Marui International Products (Wkrs)	El Paso, TX	03/10/1999	NAFTA–2,979	Automotive plastic covers.
Greenwood Mills—Lindale Manufacturing (UNITE).	Lindale, GA	03/12/1999	NAFTA–2,980	Denim cloth.
Advance Consultants (Wkrs)	Midland, TX	03/11/1999	NAFTA–2,981	Oil well geological service.
Timken Latrobe Steel (USWA)	Latrobe, PA	03/10/1999	NAFTA–2,982	Steel.

APPENDIX—Continued

Subject firm	Location	Date received at governor's office	Petition No.	Articles produced
Brow Jordan (USWA)	Newport, AR	02/26/1999	NAFTA–2,983	Casual & outdoor patio furniture.
North Power (Wkrs)	Arcade, NY	03/09/1999	NAFTA–2,984	Alternators.
Continental Sprayers International (Wkrs)	El Paso, TX	03/09/1999	NAFTA–2,985	Plastic sprayers.
Startex Mill—Spartan Mill (Wkrs)	Spartanburg, SC	03/09/1999	NAFTA–2,986	Cloth.
Fashion Enterprises (Wkrs)	El Paso, TX	03/11/1999	NAFTA–2,987	Women's jackets, suits, skirts & slacks.
Columbia Controls and Panels (Wkrs)	Portland, OR	03/12/1999	NAFTA–2,988	Assembly of electrical control cabinets.
Torrington Company (The) (Co.)	Watertown, CT	03/12/1999	NAFTA–2,989	Camshafts & tilt steering column shafts.

[FR Doc. 99–8382 Filed 4–5–99; 8:45 am]
BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petitions for Modification

The following parties have filed petitions to modify the application of mandatory safety standards under section 101(c) of the Federal Mine Safety and Health Act of 1977.

1. International Uranium (USA) Corporation

[Docket No. M–98–08–M]

International Uranium (USA) Corporation, HC 64, Box 153, 2555 No. Hwy 89A, Fredonia, Arizona 86022 has filed a petition to modify the application of 30 CFR 57.14130(a)(4)(roll-over protective structures (ROPS) and seat belts for surface equipment) to its Sunday Mine Complex (I.D. No. 05–01197) located in Dolores County, Colorado. The petitioner proposes to implement traffic controls instead of providing Elmac trucks with seatbelts and rollover protection for use during limited time on the surface. The petitioner proposes to: (i) restrict the speed of the Elmac trucks while traveling the short distance on the surface to five miles per hour; (ii) mark the surface area where the trucks travel as a "No Travel Zone" for unauthorized surface mining equipment; and (iii) require truck operators, upon exiting the portal, to conduct a "rolling stop" and prior to proceeding visibly survey the travel route. The petitioner asserts that by implementing these steps, all potential for a collision or rollover type accident would be eliminated while the Elmac truck is on the surface and, because seatbelts and rollover protection are only designed to mitigate injuries in the event of a rollover or collision accident, the traffic controls would provide a greater measure of protection by eliminating the possibility of a rollover or collision accident.

2. International Uranium (USA) Corporation

[Docket No. M–98–09–M]

International Uranium (USA) Corporation, HC 64, Box 153, 2555 No. Hwy 89A, Fredonia, Arizona 86022 has filed a petition to modify the application of 30 CFR 57.14130(a)(6) (roll-over protective structures (ROPS) and seat belts for surface equipment) to its Sunday Mine Complex (I.D. No. 05–01197) located in Dolores County, Colorado. The petitioner proposes to implement traffic controls instead of providing its Massey-Ferguson tractor with seatbelts and rollover protection for use during limited travel on the surface. The petitioner proposes to: (i) restrict the surface speed of its Massey-Ferguson tractor to five miles per hour; and (ii) restrict the travel of its tractor to designated routes, over maintained roadways, to the maintenance shop and parking area. The petitioner asserts that by implementing these steps, all potential for a collision or rollover-type accident would be eliminated while the Massey-Ferguson tractor is on the surface. In addition, the petitioner asserts that because rollover protection is only designed to mitigate injuries in the event of a rollover accident, the traffic controls would provide a greater measure of protection by eliminating the possibility of a collision or rollover accident.

3. International Uranium (USA) Corporation

[Docket No. M–98–10–M]

International Uranium (USA) Corporation, HC 64, Box 153, 2555 No. Hwy 89A, Fredonia, Arizona 86022 has filed a petition to modify the application of 30 CFR 57.14132(b) (horns and backup alarms for surface equipment) to its Sunday Mine Complex (I.D. No. 05–01197) located in Dolores County, Colorado. The petitioner proposes to implement area restrictions instead of providing Elmac underground-type haulage trucks with back-up alarms. The petitioner proposes to: (i) implement personnel and equipment restrictions in the ramping areas during the one occasion where the trucks move in a limited backward direction on the surface; (ii) prohibit unauthorized personnel and equipment from the stockpile ramping areas; and (iii) implement restrictions through training, including applicable revisions to the training plan and through signs clearly indicating that the ramping areas are "No Entry" zones. The petitioner asserts that by implementing these steps, all potential for a collision-type accident would be eliminated while the Elmac truck is backing-up the stockpile ramps. In addition, the petitioner asserts that because back-up alarms would be used to warn persons to evacuate the area where the equipment is backing up, the area restrictions, which would keep people out of the area would provide a greater measure of protection.

4. Moberly Stone Company

[Docket No. M–1999–001–M]

Moberly Stone Company, P.O. Box 582, Moberly, Missouri 65270–0582 has filed a petition to modify the application of 30 CFR 57.14100(b) (safety defects; examination, correction and records) to its Moberly Stone Company Underground Mine (I.D. No. 23–02105), and Open Pit Mine (I.D. No. 23–01785) both located in Randolph County, Missouri. The petitioner requests a modification of the mandatory safety standard to permit operation of its pit trucks without a tachometer or a speedometer. The petitioner asserts that using a tachometer or a speedometer would not contribute to any safety factor for the pit trucks since the nature of the rock deposit would only allow the pit trucks to travel at a top average speed of 10 miles an hour.

5. Canyon Fuel Company, LLC

[Docket No. M–1999–006–C]

Canyon Fuel Company, LLC, HC 35 Box 380, Helper, Utah 84526 has filed a petition to modify the application of 30 CFR 75.1909(a)(1) (nonpermissible diesel-powered equipment; design and performance requirements) to its Skyline Mine No. 3 (I.D. No. 42–01566) located in Carbon County, Utah. The petitioner requests a modification of the mandatory safety standard to permit the use of non-permissible, light duty equipment that is equipped with an over the road type diesel engine which has been or is currently being offered in commercially available highway type vehicles instead of using equipment that is equipped with an MSHA approved engine. The petitioner asserts that application of the mandatory safety standard would result in a diminution of safety to the miners. In addition, the petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

6. Energy Fuels Coal, Inc.

[Docket No. M–1999–007–C]

Energy Fuels Coal, Inc., P.O. Box 459, Florence, Colorado 81226 has filed a petition to modify the application of 30 CFR 75.701 (grounding metallic frames, casings, and other enclosures of electric equipment) to its South Field Mine (I.D. No. 05–03455) located in Fremont County, Colorado. The petitioner proposes to use a 135 kw/169 kva, 480 volt diesel powered generator set to move equipment in and out of the mine and to operate a roof bolter for roof rehabilitation in remote areas of the mine. The genset is 480 vac three phase and is mounted and grounded to a metal sled with an area of 60 square feet that is in contact with the damp mine floor at all times: Energy Fuels feels that this application is a good ground in that the genset sled has a low resistance to earth. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

7. CONSOL of Kentucky, Inc.

[Docket No. M–1999–008–C]

CONSOL of Kentucky, Inc., Consol Plaza, 1800 Washington Road, Pittsburgh, Pennsylvania 15241–1421 has filed a petition to modify the application of 30 CFR 75.1101–8 (water sprinkler systems; arrangement of sprinklers) to its Big Springs E1 Mine (I.D. No. 15–18115) located in Knott County, Kentucky. The petitioner requests a modification of the mandatory safety standard to permit the use of a single line of automatic secondary belt conveyors. The petitioner proposes to: (i) use a single overhead pipe system with 1/2-inch orifice automatic sprinklers located on 10-foot centers rather than every 8 feet, to cover 50 feet of fire-resistant belt or 150 feet of non-fire resistant belt with actuation temperatures between 200 and 230 degrees Fahrenheit and with water pressure equal to or greater than 10 psi; (ii) have the automatic sprinklers located not more than 10 feet apart so that the discharge of water will extend over the belt drive, belt take-up, electrical control, and gear reducing unit; and (iii) conduct a test to insure proper operation during the installation of each new system and during any subsequent repair or replacement of any critical part. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

8. KenAmerican Resources, Inc.

Docket No. M–1999–009–C]

KenAmerican Resources, Inc., 7590 Highway 181, Central City, Kentucky 42330 has filed a petition to modify the application of 30 CFR 75.503 (permissible electric face equipment; maintenance) to its Paradise #9 Mine (I.D. No. 15–17741) located in Muhlenberg County, Kentucky. The petitioner proposes to use a spring-loaded device with specific fastening characteristics instead of padlocks to secure plugs and electrical type connectors to batteries and to the permissible mobile powered equipment the batteries serve. The petitioner asserts that the spring-loaded device would prevent accidental separation of the battery plugs from their receptacles during normal operation of the battery equipment. In addition, the petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard, and would not result in a diminution of safety to the miners.

9. D & D Coal Company

[Docket No. M–1999–010–C]

D & D Coal Company, 139 E. Independence Street, Shamokin, Pennsylvania 17872 has filed a petition to modify the application of 30 CFR 75.1200(d) & (i) (mine map) to its 7' Drift (I.D. No. 36–08092) located in Schuylkill County, Pennsylvania. The petitioner proposes to use cross-sections instead of contour lines through the intake slope, at locations of rock tunnel connections between veins, and at 1,000 foot intervals of advance from the intake slope, and to limit the required mapping of the mine workings above and below to those present within 100 feet of the veins being mined except when veins are interconnected to other veins beyond the 100-foot limit through rock tunnels. The petitioner asserts that due to the steep pitch encountered in mining anthracite coal veins, contours provide no useful information and their presence would make portions of the mine illegible. The petitioner further asserts that use of cross-sections in lieu of contour lines has been practiced since the late 1800's thereby providing critical information relative to the spacing between veins and proximity to other mine workings which fluctuate considerably. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

10. D & D Coal Company

Docket No. M–1999–011–C]

D & D Coal Company, 139 E. Independence Street, Shamokin, Pennsylvania 17872 has filed a petition to modify the application of 30 CFR 75.1202 and 75.1202–1(a) (temporary notations, revisions, and supplements) to its 7' Drift (I.D. No. 36–08092) located in Schuylkill County, Pennsylvania. The petitioner proposes to revise and supplement mine maps annually instead of every 6 months, as required, and to update maps daily by hand notations. The petitioner asserts that the low production and slow rate of advance in anthracite mining make surveying on 6 month intervals impractical. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

11. Canyon Fuel Company, LLC

[Docket No. M–1999–012–C]

Canyon Fuel Company, LLC, 397 South 800 West, Salina, Utah 84654 has filed a petition to modify the application of 30 CFR 75.1002 (location of trolley wires, trolley feeder wires, high-voltage cables and transformers) to its SUFCO Mine (I.D. No. 42–00089) located in Sevier County, Utah. The petitioner proposes to use high-voltage (2,400 volts) cables on continuous miner sections. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

12. Consolidation Coal Company

[Docket No. M–1999–013–C]

Consolidation Coal Company, Consol Plaza, 1800 Washington Road, Pittsburgh, Pennsylvania 15241–1421 has filed a petition to modify the application of 30 CFR 75.1002 (location of trolley wires, trolley feeder wires, high-voltage cables and transformers) to its Rend Lake Mine (I.D. No. 11–00601) located in Jefferson County, Illinois. The petitioner proposes to use high-voltage (4,160 volt) cables to supply power to its longwall mining system in by the last open crosscut. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

13. The Ohio Valley Coal Company

[Docket No. M–1999–014–C]

The Ohio Valley Coal Company, 56854 Pleasant Ridge Road, Alledonia, Ohio 43902 has filed a petition to modify the application of 30 CFR 75.804(a) (underground high-voltage cables) to its Powhatan No. 6 Mine (I.D. No. 33–01159) located in Belmont County, Ohio. The petitioner proposes to use a high-voltage cable with an internal ground check conductor smaller than No. 10 (A.W.G.) as part of its longwall mining system. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

14. Perry County Coal Corporation

[Docket No. M–1999–015–C]

Perry County Coal Corporation, P.O. Box 5001, Hazard, Kentucky 41702 has filed a petition to modify the application of 30 CFR 75.388(a)(3) (boreholes in advance of mining) to its EAS #1 Mine (I.D. No. 15–02085) located in Perry County, Kentucky. The petitioner proposes to establish a 100 foot barrier line instead of a 200 foot barrier around two adjacent mines located in the same seam as the EAS #1 Mine. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

Request for Comments

Persons interested in these petitions are encouraged to submit comments via e-mail to "comments@msha.gov", or on a computer disk along with an original hard copy to the Office of Standards, Regulations, and Variances, Mine Safety and Health Administration, 4015 Wilson Boulevard, Room 627, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before May 6, 1999. Copies of these petitions are available for inspection at that address.

Dated: March 26, 1999.

Carol J. Jones,

Acting Director, Office of Standards, Regulations, and Variances.

[FR Doc. 99–8369 Filed 4–5–99; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

Susan Harwood Training Grant Program

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice of availability of funds and request for grant applications.

SUMMARY: The Occupational Safety and Health Administration (OSHA) awards funds to nonprofit organizations to conduct safety and health training and education in the workplace. This notice announces grant availability for training in safety and health programs in construction; in health services; and for preventing amputations in manufacturing. The notice describes the scope of the grant program and provides information about how to get detailed grant application instructions. Applications should not be submitted without the applicant first obtaining the detailed grant application instructions mentioned later in the notice.

Section 21(c) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 670) authorizes this program.

DATES: Applications must be received by May 28, 1999.

ADDRESSES: Submit grant applications to the OSHA Office of Training and Education, Division of Training and Educational Programs, 1555 Times Drive, Des Plaines, Illinois 60018.

FOR FURTHER INFORMATION CONTACT: Ronald Mouw, Chief, Division of Training and Educational Programs, or Cynthia Bencheck, Program Analyst, OSHA Office of Training and Education, 1555 Times Drive, Des Plaines, Illinois 60018, telephone (847) 297–4810, e-mail cindy.bencheck@oti.osha.gov.

SUPPLEMENTARY INFORMATION:

What is the purpose of the program?

OSHA's strategic plan contains strategic goals to improve workplace safety and health for all workers, change the workplace culture to increase employer and worker awareness of, commitment to, and involvement in safety and health, and to secure public confidence through excellence in the development and delivery of OSHA's programs and services. OSHA's intent is to reduce the number of worker injuries, illnesses and fatalities by focusing nationwide attention and Agency resources on the most prevalent types of workplace injuries and illnesses, the most hazardous industries and the most hazardous workplaces. The Susan Harwood Training Grants Program is one of the mechanisms OSHA is using to achieve its strategic goals.

Susan Harwood Training Grants provide funds to train workers and employers to recognize, avoid, and prevent safety and health hazards in their workplaces. The program emphasizes three areas.

- Educating workers and employers in small businesses. A small business has 250 or fewer workers.
- Training workers and employers about new OSHA standards.
- Training workers and employers about high risk activities or hazards identified by OSHA through its strategic plan, or as part of an OSHA special emphasis program.

Grantees are expected to develop training and/or educational programs that address topics named by OSHA, recruit workers and employers for the training, and conduct the training. Grantees will also be expected to follow-up with people who have been trained by their program to find out what, if any, changes were made to reduce hazards in their workplaces as a result of the training.

What are the training topics this year?

The purpose of this notice is to announce that funds are available for grants. The three training topics were chosen based on injuries and illnesses in selected industries identified in OSHA's strategic plan. Each grant application must address one of the following areas.

1. Preventing Amputations in Manufacturing. Programs that train workers, operators and maintenance personnel in the recognition and avoidance of amputation hazards with industrial machinery in manufacturing industries: shears, slitters, saws, slicers, and/or power presses. (Standard Industrial Classifications (SIC) beginning with the number 2 or 3).

2. Health Services. Programs that train workers in the recognition and prevention of safety and health hazards in health services facilities, including medical and dental offices, hospitals, nursing homes, medical laboratories, and home health care services. (Standard Industrial Classification (SIC) 80).

While OSHA is interested in providing health services workers with training encompassing all safety and health hazards, we are primarily concerned with ergonomic hazards and biohazards. Your proposal may cover other safety and health topics, but your program should emphasize the topics of primary concern.

3. Construction. Programs that train workers on non-residential construction sites in the recognition and avoidance of hazards relating to falls.

Who is eligible to apply for a grant?

Any nonprofit organization that is not an agency of a State or local government is eligible to apply. However, State or local government supported institutions of higher education are eligible to apply in accordance with 29 CFR 97.4(a)(1).

Applicants other than State or local government supported institutions of higher education will be required to submit evidence of nonprofit status, preferably from the IRS.

What can grant funds be spent on?

Grant funds can be spent on the following.

- Conducting training.
- Conducting other activities that reach and inform workers and employers about occupational safety and health hazards and hazard abatement.
- Developing educational materials for use in the training.

Are there restrictions on how grant funds can be spent?

OSHA will not provide funding for the following activities.

1. Any activity that is inconsistent with the goals and objectives of the Occupational Safety and Health Act of 1970.

2. Training involving workplaces that are not covered by the Occupational Safety and Health Act. Examples include state and local government workers in non-State Plan States and workers covered by section 4(b)(1) of the Act.

3. Production, publication, reproduction or use of training and educational materials, including newsletters and instructional programs, that have not been reviewed by OSHA for technical accuracy.

4. Activities that address issues other than recognition, avoidance, and prevention of unsafe or unhealthy working conditions. Examples include workers' compensation, first aid, and publication of materials prejudicial to labor or management.

5. Activities that provide assistance to workers in arbitration cases or other actions against employers, or that provide assistance to employers and/or workers in the prosecution of claims against Federal, State or local governments.

6. Activities that directly duplicate services offered by OSHA, a State under an OSHA-approved State Plan, or consultation programs provided by State designated agencies under section 7(c)(1) of the Occupational Safety and Health Act.

7. Activities intended to generate membership in the grantee's organization. This includes activities to acquaint nonmembers with the benefits of membership, inclusion of membership appeals in materials produced with grant funds, and membership drives.

What other grant requirements are there?

1. OSHA review of educational materials. OSHA will review all educational materials produced by the grantee for technical accuracy during development and before final publication. OSHA will also review training curriculums and purchased training materials for accuracy before they are used.

When grant recipients produce training materials, they will provide copies of completed materials to OSHA before the end of the grant period. OSHA has a lending program that circulates grant-produced audiovisual materials. Audiovisual materials produced by the grantee as a part of their grant program will be included in this lending program. In addition, all materials produced by grantees may be placed on the Internet by OSHA.

2. OMB and regulatory requirements. Grantees will be required to comply with the following documents.

- 29 CFR part 95, which covers grant requirements for nonprofit organizations, including universities and hospitals. These are the Department of Labor regulations implementing OMB Circular A–110.
- OMB Circular A–21, which describes allowable and unallowable costs for educational institutions.
- OMB Circular A–122, which describes allowable and unallowable costs for other nonprofit organizations.
- OMB Circular A–133, which provides information about audit requirements.

3. Certifications. All applicants will be required to certify to a drug-free workplace in accordance with 29 CFR part 98, to comply with the New Restrictions on Lobbying published at 29 CFR part 93, to make a certification regarding the debarment rules at 29 CFR part 98, and to complete a special lobbying certification.

4. Matching share. The program requires the grantee to provide a matching share of funds. Grant recipients are to provide a minimum of 20% of the total grant budget. This matching share may be in-kind, rather than a cash contribution, or a combination of cash and in-kind. For example, if the Federal share of the grant is $80,000 (80% of the grant), then the matching share will be $20,000 (20% of the grant), for a total grant of $100,000. The matching share may exceed 20%.

How are applications reviewed and rated?

OSHA staff will review grant applications and present the results to the Assistant Secretary who will make the selection of organizations to be awarded grants.

OSHA will give preference to applications which:

- Address multiple safety and health subjects. For example, an application for the target preventing amputations in manufacturing which addresses machine guarding, ergonomic, and lockout/tagout hazards would be preferred over one that only addresses machine guarding.
- Plan to conduct train-the-trainer programs and gather data concerning the courses and the number of students trained by the new trainers as a part of their grant.
- Train managers and/or supervisors in addition to workers.
- Serve multiple employers. OSHA is interested in reaching more than one employer with each grant awarded.

The following factors will be considered in evaluating grant applications.

1. Program Design

a. The proposed training and education program addresses one of the following topics.

i. Preventing amputations in manufacturing.

ii. Safety and health hazards at health services facilities.

iii. Fall protection in non-residential construction.

b. The proposal plans to train workers and/or employers and clearly estimates the numbers to be trained.

c. The proposal contains a train-the-trainer program, and the number of students to be trained by these new trainers are clearly estimated.

d. The planned activities are appropriate for the workers and/or employers to be trained.

e. There is a plan to recruit trainees for the program.

f. If the proposal includes developing educational materials, there is a plan for OSHA to review the materials during development.

g. There is a plan to evaluate the program's effectiveness and this includes plans to follow-up with trainees to see if the training resulted in workplace change.

h. The planned work can be accomplished in one year.

i. There is a description of the target population, the hazards that will be addressed, the barriers which have prevented adequate training for the target population, why the program cannot be completed without Federal funds, and why funding sources currently available cannot be used for this purpose.

2. Program Experience

a. The organization applying for the grant demonstrates experience with occupational safety and health.

b. The organization applying for the grant demonstrates experience training adults in work-related subjects.

c. The staff to be assigned to the project have experience in (1) occupational safety and health, (2) the specific topic chosen, and (3) training adults.

d. The organization applying for the grant demonstrates experience in recruiting and training the population it proposes to serve under the grant.

3. Administrative Capability

a. The applicant organization demonstrates experience managing a variety of programs.

b. The applicant organization has administered, or will work with an organization that has administered, a number of different Federal and/or State grants over the past five years.

c. The application is complete, including forms, budget detail, narrative and workplan, and required attachments.

4. Budget

a. The budgeted costs are reasonable.

b. The proposed non-Federal matching share is at least 20% of the total budget.

c. The budget complies with Federal cost principles (which can be found in applicable OMB Circulars) and with OSHA budget requirements contained in the grant application instructions.

d. The cost per trainee is less than $500 and the cost per training hour is reasonable.

In addition to the factors listed above, the Assistant Secretary will take other items into consideration, such as the geographical distribution of the grant programs and the coverage of populations at risk.

How much money is available for grants?

There is approximately $1.8 million available for this program. The average Federal award will be $125,000.

How long are grants awarded for?

Grants are awarded for a twelve-month period. If first year performance is satisfactory and funds are available, grants will be renewed for an additional twelve-month period.

How do I get a grant application package?

Grant application instructions may be obtained from the OSHA Office of Training and Education, Division of Training and Educational Programs, 1555 Times Drive, Des Plaines, Illinois 60018. The application instructions are also available at http://www.osha-slc.gov/Training/sharwood/sharwood.html.

When and where are applications to be sent?

The application deadline is 4:30 p.m. Central Time, Friday, May 28, 1999.

Applications are to be mailed to the Division of Training and Educational Programs, OSHA Office of Training and Education, 1555 Times Drive, Des Plaines, IL 60018. Applications may be sent by fax to (847) 297–4874.

How will I be told if my application was selected?

Organizations selected as grant recipients will be notified by a representative of the Assistant Secretary, usually from an OSHA Regional Office. An applicant whose proposal is not selected will be notified in writing.

Notice that an organization has been selected as a grant recipient does not constitute approval of the grant application as submitted. Before the actual grant award, OSHA will enter into negotiations concerning such items as program components, funding levels, and administrative systems. If the negotiations do not result in an acceptable submittal, the Assistant Secretary reserves the right to terminate the negotiation and decline to fund the proposal.

Signed at Washington, DC, this 26 day of March 1999.

Charles N. Jeffress,

Assistant Secretary of Labor.

[FR Doc. 99–8112 Filed 4–5–99; 8:45 am]

BILLING CODE 4510–26–P

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

1. Type of submission, new, revision, or extension: Extension.

2. The title of the information collection: 10 CFR part 75—Safeguards on Nuclear Material—Implementation of US/IAEA Agreement

3. The form number, if applicable: Not applicable.

4. How often the collection is required: Installation information is submitted upon written notification from the Commission. Changes are submitted as they occur. Nuclear Material accounting and control information is submitted in accordance with specified instructions.

5. Who will be required or asked to report: Selected persons licensed or certified by the Commission or Agreement States to possess source or special nuclear material at an installation specified on the U. S. eligible list as determined by the Secretary of State or his designee and filed with the Commission, as well as holders of construction permits and applicants who apply for licenses to possess one effective kilogram or more of special nuclear or source material.

6. An estimate of the number of responses: 13

7. The estimated number of annual respondents: 6

8. An estimate of the total number of hours needed annually to complete the requirement or request: 4,848 (48 hours for reporting and 800 hours each for 6 recordkeepers).

9. An indication of whether section 3507(d), Pub. L. 104–13 applies: Not applicable.

10. Abstract: 10 CFR part 75 establishes a system of nuclear material accounting and control to implement the agreement between the United States and the International Atomic Energy Agency (IAEA). Under that agreement, NRC is required to collect the information and make it available to the IAEA. Currently, the IAEA has selected and is inspecting one out of six NRC-licensed facilities pursuant to 10 CFR 75.41.

A copy of the final supporting statement may be viewed free of charge at the NRC Public Document Room, 2120 L Street, NW (lower level), Washington, DC. OMB clearance requests are available at the NRC worldwide web site (http://www.nrc.gov/NRC/PUBLIC/OMB/index.html). The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions should be directed to the OMB reviewer by May 6, 1999. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date. Erik Godwin, Office of Information and Regulatory Affairs (3150–0055), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be submitted by telephone at (202) 395–3084.

The NRC Clearance Officer is Brenda Jo. Shelton, 301–415–7233.

Dated at Rockville, Maryland, this 31st day of March 1999.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 99–8434 Filed 4–5–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 040–8778]

License Amendment by Molycorp, Inc; Meeting

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of Public Meeting.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) will hold this public meeting to: (1) discuss with the public its review of a license amendment request by Molycorp, Inc., to construct and operate an interim (5–10 year) storage facility at its ferro-alloy production plant in Washington, PA; and (2) discuss the status of decommissioning of the Washington, PA, site.

In August of 1992, Molycorp informed NRC of its intent to terminate the Source Material license for its York, PA, facility. The amendment request to construct the storage facility was submitted to NRC in a letter from the licensee dated February 8, 1996. A subsequent request for storage of Molycorp York soils at the Molycorp, Washington, site was proposed as part of a decommissioning plan for the York site. The radioactive soils were generated in operations conducted at the York rare earth metal recovery facility from 1965 to 1992. These soils have a volume of approximately 3,000 cubic yards and before approval of the amendment request can be granted, the licensee must demonstrate that containment will be provided for the radioactive soils (contaminated with thorium-228 and uranium-238) proposed to be transported from York to Washington, PA. The NRC review is assessing the environmental and safety impacts of this request.

DATES: April 15, 1999, at 6 pm.

ADDRESSES: North Trinity Elementary School, 225 Midland Drive, Washington, Pennsylvania.

STATUS: Pubic and Open.

The NRC staff has arranged this public meeting to discuss the NRC's review conducted to assess the potential significance of environmental impacts associated with the amendment request. The results of the review will be considered along with other factors in determining whether construction of the interim storage facility will be granted. In addition, the status of decommissioning of the Washington, PA, site will be discussed.

AGENDA FOR MOLYCORP MEETING: This public meeting will begin at 6:00 p.m. and adjourn at 9:00 p.m.

Topic Lead

1. Introduction and discussion of meeting participation procedures—John Olshock, Solicitor, Canton Township Supervisors
2. Introduction of NRC staff and discussion of NRC decision making process—Robert Nelson, Chief, NRC Special Projects Section
3. Presentation of NRC review—Roy Person, Sr. Materials Engineer, NRC
4. Questions/answers and comments—Meeting participants
5. Summary of action items—Robert Nelson
6. Adjourn meeting—Canton Township Supervisors

For further information regarding this meeting, contact Roy Person of the NRC, at (301) 415–6701. For further details with respect to this action, the draft environmental assessment for this licensing action and the Decommissioning Plan for the York site are available for inspection at the NRC's Public Document Room, 2120 L Street N.W., Washington, DC 20555.

Dated at Rockville, Maryland, this 30th day of March 1999.

For the Nuclear Regulatory Commission.

John W.N. Hickey,

Chief, Low-Level Waste and Decommissioning Projects Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 99–8435 Filed 4–5–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–272 and 50–311]

Public Service Electric and Gas Co.; Salem Nuclear Generating Station, Unit Nos. 1 and 2 Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from certain requirements of its regulations to Facility Operating License Nos. DPR–70 and DPR–75 for the Salem Nuclear Generating Station, Unit Nos. 1 and 2, respectively, issued to the Public Service Electric and Gas Company (the licensee), for operation of the Salem Nuclear Generating Station, located in Salem County, New Jersey.

Environmental Assessment

Identification of Proposed Action

The proposed action would exempt the licensee from the requirements of 10 CFR 50.71(e)(4) regarding submission of revisions to the updated final safety analysis report (UFSAR). Under the proposed exemption, the licensee would schedule updates to UFSAR, common for both units, based on the refueling cycle of Salem Unit 1 and at intervals not to exceed 24 months.

The Need for the Proposed Action

The *Code of Federal Regulations*, 10 CFR 50.71(e)(4), requires licensees to submit updates to their FSAR annually or within 6 months after each refueling outage provided that the interval between successive updates does not exceed 24 months. Since Units 1 and 2 share a common FSAR, the licensee must update the same document annually or within 6 months after a refueling outage for either unit. The underlying purpose of the rule was to relieve licensees of the burden of filing annual FSAR revisions while assuring that such revisions are made at least every 24 months. The Commission reduced the burden, in part, by permitting a licensee to submit its FSAR revisions 6 months after refueling outages for its facility, but did not provide for multiple unit facilities

sharing a common FSAR in the rule. Rather, the Commission stated: "With respect to the concern about multiple facilities sharing a common FSAR, licensees will have maximum flexibility for scheduling updates on a case-by-case basis" (57 FR 39355) (1992). Allowing the exemption would maintain the updated FSAR current within 24 months of the last revision.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed action and concludes that it involves administrative activities unrelated to plant operation.

The proposed action will not increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released off site, and there is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential non-radiological impacts, the proposed action does not involve any historic sites. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, there are no significant non-radiological environmental impacts associated with the proposed action.

Accordingly, the Commission concludes that there are no significant environmental impacts associated with this action.

Alternative to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action (i.e., the "no-action" alternative). Denial of the exemption would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for the Salem Nuclear Generating Station.

Agencies and Persons Contacted

In accordance with its stated policy, on March 31, 1999, the staff consulted with the New Jersey State official, Mr. Dennis Zannoni, Chief, Bureau of Nuclear Engineering, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

On the basis of the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed exemption.

For further details with respect to this action, see the licensee's letter dated December 2, 1998, which is available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington DC, and at the local public document room located at the Salem Free Public Library, 112 West Broadway, Salem, NJ 08079.

Dated at Rockville, Maryland, this 31st day of March 1999.

For the Nuclear Regulatory Commission.

Elinor G. Adensam,

Director, Project Directorate I–2, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 99–8436 Filed 4–5–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards, Joint Meeting of the ACRS Subcommittees on Reliability and Probabilistic Risk Assessment and on Regulatory Policies and Practices; Notice of Meeting

The ACRS Subcommittees on Reliability and Probabilistic Risk Assessment and on Regulatory Policies and Practices will hold a joint meeting on April 21, 1999, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Wednesday, April 21, 1999—8:30 a.m. until the conclusion of business

The Subcommittees will review the staff reconciliation of public comments on performance-based initiatives (SECY–98–132); plan for pursuing performance-based initiatives, candidate activities, and related matters; and NUREG/CR–5392, "Elements of an Approach to Performance-Based Regulatory Oversight." The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittees, their consultants, and staff. Persons desiring to make oral statements should notify the cognizant ACRS staff engineer named below five days prior to the meeting, if possible, so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittees, along with any of their consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittees will then hear presentations by and hold discussions with representatives of the NRC staff, their consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, and the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by contacting the cognizant ACRS staff engineer, Mr. Michael T. Markley (telephone 301/415–6885) between 7:30 a.m. and 4:15 p.m. (EST). Persons planning to attend this meeting are urged to contact the above named individual one or two working days prior to the meeting to be advised of any potential changes to the agenda, etc., that may have occurred.

Dated: March 30, 1999.

Richard P. Savio,

Associate Director for Technical Support, ACRS/ACNW.

[FR Doc. 99–8432 Filed 4–5–99; 8:45 am]

BILLING CODE 7590–01–P

POSTAL SERVICE

Privacy Act of 1974, System of Records

AGENCY: Postal Service.

ACTION: Notice of modification to an existing system of records.

SUMMARY: This document publishes notice of modification to Privacy Act System of Records USPS 120.151, Personnel Records—Recruiting, Examining, and Appointment Records. The proposed modification expands the system location to include contractor sites.

DATES: Any interested party may submit written comments on the proposed

modification. This proposal will become effective without further notice on May 17, 1999, unless comments received on or before that date result in a contrary determination.

ADDRESSES: Written comments on this proposal should be mailed or delivered to Administration and Records, United States Postal Service, 475 L'Enfant Plaza, SW, Room 8141, Washington, DC 20260–5243. Copies of all written comments will be available at the above address for public inspection and photocopying between 8 a.m. and 4:45 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Susan M. Aldorfer (202) 268–2938.

SUPPLEMENTARY INFORMATION: Privacy Act System of Records USPS 120.151, Personnel Records—Recruiting, Examining, and Appointment Records, collects information for recruiting and recommending appointment of qualified individuals. Such information consists of personal and professional resumes, personal applications, test scores, medical assessments, academic transcripts, letters of recommendation, employment certifications, medical records, and registers of eligibles. System locations include U.S. Postal Service personnel offices, the National Test Administration Center (NTAC), the Minneapolis Integrated Business Systems Solutions Center (MIBSSC), and/or other offices within Postal Service facilities authorized to engage in recruiting or examining activities or to make appointments to positions. This notice expands the system location to include contractor sites.

Selection assessment tests have been developed for use as a management tool to be used in conjunction with other information from the selection process to choose qualified individuals for postal positions. In some instances, the Postal Service will use contractors to perform services relative to assessment, such as scoring tests. For that reason, the system location is expanded to include contractor sites. Any contractor who maintains information collected by this system is made subject to the Privacy Act in accordance with subsection (m) and is required to apply appropriate protections subject to the audit and inspection of the Postal Inspection Service.

Pursuant to 5 U.S.C. 552a(e)(11), interested persons are invited to submit written data, views, or arguments on the proposed part of this notice. A report of the proposed system change has been sent to Congress and to the Office of Management and Budget for their evaluation.

USPS Privacy Act system 120.151 was last published in its entirety in the **Federal Register** on October 26, 1989 (54 FR 43693) and was amended on October 11, 1990 (55 FR 41398–41400). The Postal Service proposes amending the system as shown below:

USPS 120.151

SYSTEM NAME:

Personnel Records—Recruiting, Examining, and Appointment Records, 120.151.

SYSTEM LOCATION:

[CHANGE TO READ:]

U.S. Postal Service personnel offices; the National Test Administration Center (NTAC); the Minneapolis Integrated Business Systems Solutions Center (MIBSSC); other offices within Postal Service facilities authorized to engage in recruiting or examining activities or to make appointments to positions; and contractor sites.

* * * * *

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 99–8401 Filed 4–5–99; 8:45 am]

BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549

Extension:

Rule 236, SEC File No. 270–118, OMB Control No. 3235–0095

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Rule 236 under the Securities Act of 1933 ("Securities Act") requires issuers wishing to rely upon an exemption from the Securities Act registration for the issuance of fractional shares, script certificates or order forms, in connection with a stock dividend, stock split, reverse stock split, conversion, merger or similar transaction to furnish specified information to the Commission in writing at least ten days prior to the offering. The information is needed to provide notice that an issuer is relying on the exemption. Public companies are the likely respondents. An estimated ten submissions are made pursuant to Rule 236 annually, resulting in an estimated annual total burden of 15 hours.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, N.W. Washington, DC 20549.

Dated: March 29, 1999.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–8437 Filed 4–5–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Existing Collection Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, D.C. 20549–0007

Extension:

Rule 17f–4 [17 CFR 270.17f–4] SEC File No. 270–232 OMB Control No. 3235–0225.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), the Securities and Exchange Commission (the "Commission") is soliciting comments on the collections of information summarized below. The Commission plans to submit these existing collections of information to the Office of Management and Budget ("OMB") for extension and approval.

Section 17(f) [1] of the Investment Company Act of 1940 [2] (the "Act")

[1] 15 U.S.C. 80a–17(f).

[2] 15 U.S.C. 80a.

permits registered management investment companies ("funds") and their custodians to maintain fund assets in system for the central handling of securities, subject to Commission rules. Rule 17f–4 [3] under the Act defines this type of system as a "securities depository." The rule sets conditions for the use of certain depositories, including a U.S. registered clearing agency that acts as a depository, and the federal book-entry system for government securities.[4]

Certain information collection requirements apply to the fund's custodian when, as in the usual case, a fund uses a depository through its custodian. Rule 17f–4 requires the custodian to send the fund a written confirmation of each transfer or securities to or from the fund's account with the custodian. When securities are transferred to the fund's account, the custodian also must identify as belonging to the fund (or "earmark") an appropriate quantity of securities that the custodian holds in a fungible bulk with the depository (or with any agent through which the custodian uses the depository). In addition, the custodian or its agent must send the fund reports it receives concerning the depository's internal accounting controls, and reports on the custodian's or agent's own controls as the fund may reasonably request.

Other information collection requirements apply to the fund. The fund's board of directors must approve by resolution the custodian's arrangement with each depository, and material changes in any arrangement. In the unusual cast when a fund deals directly with a depository, the fund board must approve the arrangement with the depository, and the fund must establish a system that is reasonably designed to prevent unauthorized officer's instructions.[5]

Rule 17f–4 facilitates the safe use of depositories, which can simplify the clearance and settlement of securities transactions and reduce risks of loss, theft, and destruction of securities. The rule's requirements that the custodian confirm transactions and earmark a portion of its holdings for the fund help to document the fund's transactions, and provide evidence of the funds's interest in "omnibus" depository accounts that may contain the pooled assets of multiple owners. The requirement that the custodian and its agent send the fund reports on internal controls helps the fund and its auditors to evaluate the reliability of the custodian, its agent, and the depository. The requirement that the fund board approve depository arrangements and material changes encourages directors to review periodically the safety of these arrangements. The requirement that the fund have a system to prevent unauthorized officer's instructions helps to protect fund assets from misappropriation.

The Commission staff estimates that 3,400 respondents (including 3,300 funds, 50 bank custodians, and 50 agents of the custodians) make approximately 25,750 responses under the rule each year. The staff estimates that on average, 50 custodians spend 500 hours each year in transmitting daily confirmations to funds and 250 hours in earmarking holdings for funds, and 100 custodians and agents spend 16 hours annually in transmitting reports to funds. The staff estimates that on average, 500 funds spend 6 hours each year in approving new depository arrangements or changes in existing arrangements, and 50 funds spend 10 hours each year in implementing systems to prevent unauthorized officer's instructions. The total annual burden of the rule's requirements for all respondents therefore is estimated to be 42,600 hours ((50 custodians × 750 hours) + (100 custodians and agents × 16 hours) + (500 funds × 6 hours) + (50 funds × 10 hours)).[6]

The estimated annual burden of 42,600 burden hours represents an increase of 17,344 hours over the prior estimate of 25,256 hours. The increase in annual burden hours is attributable to the staff's recognition that the rule imposes information collection requirements on funds as well as custodians, and to increases in the estimated time spent by custodians and agents in collection information relating to an increasing number of funds transactions.

The estimate of average burden hours is made solely for the purposes of the Paperwork Reduction Act. The estimate is not derived from a comprehensive or even a representative survey or study of the costs of Commission rules. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Written comments are invited on: (a) Whether the collections of information are necessary for the proper performance of the functions of the Commission, including whether the information has practical utility; (b) the accuracy of the Commission's estimate of the burdens of the collections of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burdens of the collections of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, N.W. Washington, D.C. 20549–0004.

Dated: March 23, 1999.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–8438 Filed 4–5–99; 8:45 am]

BILLING CODE 8010–01–M

[3] 17 CFR 270.17f–4.

[4] Rule 17f–4 does not regulate the use of foreign securities depositories. Funds that maintain securities in foreign depositories must comply with rule 17f–5 under the Act [17 CFR 270.17f–5].

[5] Officer's instructions are directions to the depository by authorized personnel of the fund.

[6] The estimated average burden hours do not reflect the costs of operating computer systems used by custodians to provide confirmations and earmark assets, and used by funds to help prevent unauthorized officer's instructions.

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–23767; 812–9204]

The Aquinas Funds, Inc., et al.; Notice of Application

March 30, 1999.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for an order under section 6(c) of the Investment Company Act of 1940 (the "Act") for an exemption from section 15(a) of the Act and rule 18f–2 under the Act.

SUMMARY OF APPLICATION: The requested order would permit applicants, The Aquinas Funds, Inc. ("Company") and Aquinas Investment Advisers, Inc. ("Adviser"), to enter into and materially amend subadvisory agreements without obtaining shareholder approval.

FILING DATES: The application was filed on September 2, 1994, and was amended on September 20, 1995, and January 13, 1999. Applicants have agreed to file an amendment during the notice period, the substance of which is reflected in this notice.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's

Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on April 26, 1999, and should be accompanied by proof of service on applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549–0609; Applicants, 5310 Harvest Hill Road, Suite 248, Dallas, TX 75230.

FOR FURTHER INFORMATION CONTACT: Deepak T. Pai, Senior Counsel, at (202) 942–0574 or Nadya Roybiat, Assistant Director, at (202) 942–0564, (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch, 450 Fifth Street, N.W., Washington, D.C. 20549–0102 (telephone (202) 942–8090).

Applicants' Representations

1. The Company is registered under the Act as an open-end management investment company offering shares in four separate portfolios: Aquinas Fixed Income Fund, Aquinas Equity Income Fund, Aquinas Equity Growth Fund, and Aquinas Balanced Fund ("Funds"), each with its own distinct investment objectives, policies, and restrictions.[1] The Company is organized as a Maryland corporation.

2. The Adviser, registered under the Investment Advisers Act of 1940 ("Advisers Act"), serves as investment adviser to the Company pursuant to an investment advisory agreement ("Management Agreement"). Specific portfolio management for each Fund is provided by at least two portfolio managers ("Portfolio Managers"), each of which is registered under the Advisers Act.

3. Under the Management Agreement, the Adviser, subject to approval by the Company's board of directors ("Board"), provides each Fund with general management and administration services, develops the investment programs, selects, hires, and monitors Portfolio Managers, and allocates assets among the Portfolio Managers. Portfolio Managers are selected for the Funds based primarily upon the research and recommendations of the Adviser, which evaluates quantitatively and qualitatively the Portfolio Manager's skills and results in managing assets for specific asset classes, investment styles and strategies. For these services, the Adviser receives an annual management fee from each Fund based on the Fund's average net assets.

4. Under sub-advisory agreements between the Company and the Adviser and the Portfolio Managers ("Portfolio Management Agreements"), each Portfolio Manager purchases and sells portfolio securities for its segment of a Fund in accordance with the Fund's investment objectives, restrictions, and policies. The Adviser pays the Portfolio Managers' fees out of the fees the Adviser receives from the Fund.

5. Applicants request an order to permit the Adviser to enter into and materially amend Portfolio Management Agreements without obtaining shareholder approval.[2] The requested relief will not extend to a Portfolio Manager that is an "affiliated person" (as defined in section 2(a)(3) of the Act) of the Company, the Adviser, or the Funds, other than by reason of serving as a Portfolio Manager to one or more of the Funds (an "Affiliated Portfolio Manager"). None of the current Portfolio Managers is an Affiliated Portfolio Manager.

Applicants' Legal Analysis

1. Section 15(a) of the Act provides, in relevant part, that it is unlawful for any person to act as an investment adviser to a registered investment company except under a written contract approved by a majority of the investment company's outstanding voting shares. Rule 18f–2 under the Act provides that each series or class of stock in a series company affected by a matter must approve the matter if the Act requires shareholder approval.

2. Section 6(c) of the Act authorizes the SEC to exempt persons or transactions from the provisions of the Act to the extent that the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the Act. Applicants believe that their requested relief meets this standard for the reasons discussed below.

3. Applicants assert that a Fund's shareholders rely on the Adviser's ability to select, monitor and replace the Portfolio Managers. Applicants represent that the Adviser has substantial experience in performing these functions for the Company and has managed the Funds, since September 1994, with multiple Portfolio Managers. Applicants submit that, from the perspective of an investor, the role of the Portfolio Managers is comparable to that of individual portfolio managers employed by other investment advisory firms. Applicants content that granting the requested relief would enable the Fund's Adviser/Portfolio Manager strategy to operate more efficiently and without unnecessary delays. Applicants note that the Management Agreement will continue to be fully subject to sections 15(a) and 15(c) of the Act and rule 18f–2 under the Act.

Applicants' Conditions

Applicants agree that the requested order will be subject to the following conditions:

1. The Company will disclose in its prospectus the existence, substance and effect of any order granted pursuant to this application. In addition, each Fund and any Future Fund will hold itself out to the public as employing the management structure described in this application. The prospectus with respect to the Funds and any Future Fund will prominently disclose that the Adviser has the ultimate responsibility for the investment performance of the Funds due to the Adviser's responsibility to oversee the Portfolio Managers and recommend their hiring, termination and replacement.

2. Within 90 days of the hiring of any new Portfolio Manager, shareholders will be furnished relevant information about the new Portfolio Manager that would be contained in a proxy statement, including any change in such disclosure caused by the addition of the new Portfolio Manager. Each Fund will meet this condition by providing shareholders with an information statement meeting the requirements of Regulation 14C, Schedule 14C, and Item 22 of Schedule 14A under the Securities Exchange Act of 1934 within 90 days of the hiring of a Portfolio Manager.

3. No director or officer of the Company or director or officer of the

[1] Applicants request that the relief apply to any registered open-end investment company that in the future is advised by the Adviser or any person controlling, controlled by, or under common control (within the meaning of section 2(a)(9) of the 1940 Act) with the Adviser (a "Future Fund"), provided that such Future Fund operates in substantially the same manner as the Company with respect to the Adviser's responsibility to select, evaluate, and supervise portfolio managers and complies with the terms and conditions of the application. All existing investment companies (and series thereof) that currently intend to rely on the order have been named as applicants.

[2] Applicants state that the manner of operation of the Funds' multi-manager system and the substance and effect of the requested order has been disclosed in the Funds' prospectus since the effective date of the Funds' Registration Statement on Form N–1A.

Adviser will own directly or indirectly (other than through a pooled investment vehicle that is not controlled by any such officer or director) any interest in a Portfolio Manager, except for (i) ownership of interests in the Adviser or any entity that controls, is controlled by or is under common control with the Adviser, or (ii) ownership of less than 1% of the outstanding securities of any class of equity or debt of a publicly-traded company that is either a Portfolio Manager or an entity that controls, is controlled by or is under common control with a Portfolio Manager.

4. The Adviser will provide general investment management and administrative services to the Funds and, subject to review and approval by the Board will (i) set the Funds' overall investment strategies; (ii) recommend Portfolio Managers; (iii) allocate and, when appropriate, reallocate the Funds' assets among Portfolio Managers; (iv) monitor and evaluate the investment performance of the Portfolio Managers; and (v) ensure that the Portfolio Managers comply with the investment objectives, policies and restrictions of the respective Funds.

5. At all times, a majority of the Board will be persons each of whom is not an "interested person" of the Company (as defined in Section 2(a)(19) of the Act) (the "Independent Directors"), and the nomination of new or additional Independent Directors will be placed within the discretion of the then existing Independent Directors.

6. Neither the Company nor the Adviser will enter into a Portfolio Management Agreement for a Fund with any Affiliated Portfolio Manager without such agreement, including the compensation to be paid thereunder, being approved by the shareholders of the applicable Fund.

7. When a change of Portfolio Manager is proposed for a Fund with an Affiliated Portfolio Manager, the Board including a majority of the Independent Directors, will make a separate finding, reflected in the minutes of the meeting of the Board, that such change is in the best interests of the Fund and its shareholders and does not involve a conflict of interest from which the Adviser or the Affiliated Portfolio Manager derives an inappropriate advantage.

8. Before a Future Fund may rely on the requested order, the operation of the Fund as described in the application will be approved by the vote of a majority of the Fund's outstanding voting securities, as defined in the Act, or, in the case of a Future Fund whose public shareholders purchased shares on the basis of a prospectus containing the disclosure contemplated by condition 1, by the initial shareholders before offering shares of that Fund to the public.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–8364 Filed 4–5–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. IC–23766, 812–11278]

Brantley Capital Corporation; Notice of Application

March 30, 1999.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for an order under section 61(a)(3)(B) of the Investment Company Act of 1940 (the "Act").

SUMMARY OF APPLICATION: Applicant, Brantley Capital Corporation, seeks an order approving its Disinterested Director Option Plan (the "Plan").

FILING DATES: The application was filed on August 26, 1998 and amended on February 19, 1999. Applicant has agreed to file an amendment, the substance of which is reflected in the notice.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on April 26, 1999, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

FOR FURTHER INFORMATION CONTACT: John K. Forst, Attorney Advisor, at (202) 942–0569 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch, 450 5th Street, N.W., Washington, D.C. 20549–0102 (tel. (202) 942–8090).

Applicant's Representations

1. Applicant is a business development company ("BDC") within the meaning of section 2(a)(48) of the Act.[1] Brantley Capital Management L.L.C., ("Brantley") an investment adviser registered under the Investment Advisers Act of 1940 ("Advisers Act"), serves as Applicant's investment adviser. Brantley is compensated based upon a percentage of Applicant's assets, and receives no performance-based compensation. Applicant's officers receive compensation directly or indirectly from the fees paid to Brantley under the investment advisory agreement but do not receive any other cash compensation from Applicant. Applicant does not have a profit-sharing plan described in section 57(n) of the Act.

2. Applicant is managed by a board of directors ("Board") currently consisting of nine members, six of whom are persons who are not officers or employees or otherwise considered "interested persons" of Applicant within the meaning of section 2(a)(19) of the Act. Every investment transaction by Applicant requires prior express approval by the Board. Applicant also relies on its directors to review and consider the best use of its resources. The directors review and evaluate reports of outstanding commitments, required reserves for follow-on financing, and funds available for future investment for the purpose of evaluating and making these resource allocations. At least once each calendar quarter, Applicant's directors review portfolio investments, including those that are non-performing or performing inadequately and evaluate Brantley's recommended course of action for Applicant under the circumstances. In addition, on a calendar quarter basis, Applicant's directors undertake a good faith valuation of Applicant's investments for which no independent market valuations are available.

3. Applicant requests an order under section 61(a)(3)(B) of the Act approving the Plan for current or future directors who at the time of issuance of the options are neither officers nor employees of Applicant ("Non-officer Directors". Each of Applicant's No-officer Directors currently receives a monthly fee of $500 for serving on the Board and an additional $1,000 for each meeting of the Board or a committee

[1] Section 2(a)(48) defines a BDC to be any closed-end investment company that operates for the purpose of making investments in securities described in sections 55(a)(1) through 55(a)(3) of the Act and makes available significant managerial assistance with respect to the issuers of such securities.

attended. The Plan was adopted by the Board on October 21, 1996 and approved by Applicant's initial shareholders prior to the public offering on October 29, 1996. Applicant states that the Plan was disclosed in the prospectus and subsequent periodic shareholder reports. The Plan will become effective on the date it is approved by the SEC.

4. The Plan provides that (i) each of the Non-officer Directors will automatically be granted an option to purchase 2,000 shares of Applicant's common stock (the "Shares"), upon approval of the Plan by the SEC, and (ii) immediately following Applicant's annual meeting of stockholders in 1997 and each annual meeting of stockholders of Applicant thereafter, each Non-officer Director then serving on the Board will be granted options to purchase 2,000 Shares, subject to adjustments for stock splits or combinations of Shares. A maximum of 75,000 Shares, or 2% of Applicant's outstanding shares, have been authorized for issuance under the Plan.

5. The exercise price of the options will be the greater of (a) the current market value[2] of the Shares on the date the option is granted (the "Grant Date"), or (b) the current net asset value of the Shares. Each option will be exercisable during the period beginning twelve months after the Grant Date and ending not later than ten years after the Grant Date.

6. In the event that a Non-officer Director's services are terminated because of disability or death, the then outstanding options of the Non-officer Director will become exercisable upon the later of (a) six months after the Grant Date, and (b) the date of the termination by reason of disability or death, and thereafter may be exercised for a period of one year from the date of the termination, but in no event after the expiration date of the option. In the event that a Non-officer Director's services terminate for any reason other than disability or death, the Plan provides that the then-outstanding options of that Non-officer Director may be exercised for a period of 90 days from the date of such termination, but in no event after the stated expiration date of each option.

7. Applicant's officers and employees, including employee directors, are eligible to receive options under Applicant's stock option plan for its officers and employees ("Officer Option Plan"). Non-officer Directors are not entitled to receive stock option awards under the Officer Option Plan. The total number of shares authorized for issuance under the Officer Option Plan is 1,175,000 which represents 24% of Applicant's outstanding Shares. Applicant states that, under the Officer Option Plan, options for 325,000 Shares are currently outstanding, of which 216,667 have vested. Applicant represents and the Plan provides that the aggregate number of Shares it will issue under the Plan and the Officer Option Plan will not exceed the limits in section 61(a)(3)(C)(ii) of the Act. Applicant has no warrants, options or rights to purchase its outstanding voting securities other than those granted to its directors, officers and employees pursuant to these two Plans.

[2] "Current market value" is defined in the Plan as the average of the closing sale prices, as reported in The Wall Street Journal, at which Shares were traded on the last five days on which trading in the Shares was reported to have taken place on the Nasdaq National Market prior to the option grant.

Applicant's Legal Analysis

1. Section 63(3) of the Act permits a BDC to sell its common stock at a price below current net asset value upon the exercise of any option issued in accordance with section 61(a)(3) of the Act.

2. Section 61(a)(3)(B) of the Act provides, in pertinent part, that a BDC may issue to its Non-officer Directors options to purchase its voting securities pursuant to an executive compensation plan, provided that: (a) The options expire by their terms within ten years; (b) the exercise price of the options is not less than the current market value of the underlying securities at the date of the issuance of the options, or if no market value exists, the current net asset value of the voting securities; (c) the proposal to issue the options is authorized by the BDC's shareholders, and is approved by order of the SEC upon application; (d) the options are not transferable except for disposition by gift, will or intestacy; (e) no investment adviser for the BDC receives any compensation described in paragraph (1) of section 205 of the Advisers Act, except to the extent permitted by clause (A) or (B) of that section; and (f) the BDC does not have a profit-sharing plan as described in section 57(n) of the Act.

3. In addition, section 61(a)(3)(B) of the Act provides that the amount of the BDC's voting securities that would result from the exercise of all outstanding warrants, options, and rights at the time of issuance may not exceed 25% of the BDC's outstanding voting securities, except that if the amount of voting securities that would result from the exercise of all outstanding warrants, options, and rights issued to the BDC's directors, officers, and employees pursuant to an executive compensation plan would exceed 15% of the BDC's outstanding voting securities, then the total amount of voting securities that would result from the exercise of all outstanding warrants, options, and rights at the time of issuance will not exceed 20% of the outstanding voting securities of the BDC.

4. Applicant represents that the Plan would comply with the requirements of section 61(a)(3)(B) of the Act. Applicant submits that the terms of the Plan are fair and reasonable and do not involve overreaching of Applicant or its shareholders. Applicant states that because the options may not be exercised until twelve months after the Grant Date, the Plan provides Non-officer Directors with an incentive to remain with the Applicant. In addition, Applicant states that under the Plan, the amount of stock options that would be granted, assuming the six current Non-officer Directors, would be up to 24,000 Shares in 1998 and 12,000 Shares each year commencing in 1999, or less than 1% of the Shares outstanding. Applicant asserts that the exercise of stock options pursuant to the Plan will not have a substantial dilutive effect on the net asset value of the Shares. In addition, Applicant states that the Shares underlying options outstanding under the Officer Option Plan, together with Shares underlying options that would be granted to Non-officer Directors under the Plan and Shares that would result from the exercise of any other warrants, rights or options issued by Applicant, if any, will not exceed the limits in section 61(a)(3)(C)(ii) of the Act. Applicant states that, other than stock options provided for under the Plan and the Officer Option Plan, it does not currently have outstanding warrants, options or rights to purchase its voting securities.

5. Applicant states that its directors make a significant contribution to the management of its business and to the review and supervision of its portfolio investments. Applicant states that Non-officer Directors provide it with skills and experience which are critical to its success, including the approval of each proposed investment, restructuring, follow-on financing, or disposition of an existing investment. Applicant believes that its ability to make grants of options under the Plan to Non-officer Directors provides a means of retaining the services of its current Non-officer Directors and of attracting qualified persons to serve as Non-officer Directors in the future.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–8365 Filed 4–5–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41215; File No. SR–CBOE–99–04]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to New Series of Options Based on the Standard and Poor's 100 Index

March 26, 1999.

I. Introduction

On January 21, 1999, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") submitted to the Securities and Exchange Commission ("Commission" or "SEC"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to change the permissible range of new series of Standard and Poor's 100 Index options ("OEX") under unusual market conditions. Notice of the proposed rule change appeared in the **Federal Register** on February 23, 1999.[3] The Commission received no comments on the proposal. This order approves the proposed rule change.

II. Description of the Proposal

The Exchange proposes to amend CBOE Rule 24.9, Interpretation and Policy .01(d), to increase the permissible range of additional series that may be listed for OEX options during unusual market conditions. Interpretation and Policy .01(d) currently requires that when the Exchange introduces trading in a new expiration month, or when additional series of options in an existing expiration month are opened, the Exchange shall only list series of options with exercise prices that are "reasonably related to the current value of the underlying index." In the case of OEX options, "reasonably related to the current value of the underlying index" is defined to be within eight percent of the current index value under normal market conditions. Under unusual market conditions, "reasonably related to the current value of the underlying index" is defined to be within ten percent of the index value. The Exchange now proposes that, for options on OEX, exercise prices within twenty percent of the current index value, instead of within ten percent, be deemed "reasonably related to the value of the underlying index" under unusual market conditions.

III. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[4] In particular, the Commission believes the proposal is consistent with Section 6(b)(5), in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.[5]

The Commission believes that the proposal should enable the CBOE to respond to changing market conditions by listing OEX options series that provide market participants with an effective means to manage risk and implement their trading strategies. The Commission further believes that the discretion to list additional series of OEX options should help to ensure the consistent availability of index options series tailored to meet the needs of investors during periods of market volatility. Additionally, the CBOE's proposal strikes an appropriate balance between accommodating the needs of market participants and avoiding the excessive proliferation of options series.

The proposal affects only OEX options and the unusual market conditions that would trigger the availability of additional OEX series under the proposal occur infrequently. The CBOE represents that unusual market conditions occur no more than once a month on average.[6] To help determine whether unusual market conditions exist, the Exchange can look to a variety of factors and objective tools, including VIX, a volatility indicator.[7] Moreover, even when the CBOE determines that unusual market conditions exist, the Exchange explains that customer demand and market maker interest ultimately will determine how many additional series will be listed.[8] This should help to ensure adequate liquidity in new series.

In addition to representing that the number of additional series resulting from the proposal will not be significant, the CBOE does not believe that any additional series will pose a capacity problem. In this regard, the Commission notes that the Exchange retains the ability to limit new series and remove existing series. In addition, the Options Price Reporting Authority ("OPRA") has represented that OPRA's capacity is sufficient to meet the expected demands of the additional strike prices.[9]

Accordingly, the Commission believes that the proposal should provide the Exchange with flexibility to open additional index options series and, at the same time, minimize capacity and continue to appropriately limit the number of index options series that may be outstanding at any one time. Indeed, the Exchange is not obligated to open new series every time the index value changes, and the CBOE should only open new series in a manner that is consistent with the maintenance of a fair and orderly market.

IV. Conclusion

For the foregoing reasons, the Commission believes that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with Section 6(b)(5).[10]

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[11] that the proposed rule change (SR–CBOE–99–04) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–8368 Filed 4–5–99; 8:45 am]

BILLING CODE 8010–01–M

---

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] See Securities Exchange Act Release No. 41052 (February 12, 1999), 64 FR 8893.

[4] In approving this rule, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[5] 15 U.S.C. 78f(b)(5).

[6] See Letter from Stephanie C. Mullins, Attorney, CBOE, to Nancy Sanow, Senior Special Counsel, Division of Market Regulation, SEC, dated March 3, 1999 ("CBOE Letter").

[7] According to the Exchange, VIX currently is at approximately 28 to 30, and unusual market conditions may occur if VIX reaches approximately 40 or above.

[8] See CBOE Letter, *supra* note 6.

[9] See CBOE Letter, *supra* note 6 and Letter from Joe P. Corrigan, Executive Director, Options Price Reporting Authority, to Stephanie C. Mullins, Attorney, Chicago Board Options Exchange, dated February 9, 1999.

[10] 15 U.S.C. 78f(b)(5).

[11] 15 U.S.C. 78s(b)(2).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41223; File No. SR–NSCC–99–03]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Fees and Charges

March 29, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on February 24, 1999, the National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by NSCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change revises NSCC's fee schedule for trade comparison, trade recording, flip trades, and Fund/SERV transactions.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change.

NSCC's trade comparison fee for each side of each stock, warrant, or right trade submitted is $.018 per 100 shares with a minimum fee of $.072 and a maximum fee of $1.08. The proposed rule change reduces the fee for each side submitted to $.010 with the minimum fee reduced to $.040 and the maximum fee reduced $.60.

NSCC's trade recording fee for each side of each stock, warrant, or right item that is entered for settlement but not compared by NSCC is $.008 per 100 shares with a minimum fee of $.032 and a maximum fee of $.48. The proposed rule change reduces the fee for such items to $.006 per 100 shares with the minimum fee reduced to $.024 and the maximum fee reduced to $.36.

NSCC's per side fee for flip trades is $.050. The proposed rule change reduces the fee to $.025 per side.

The proposed rule change reduces NSCC's Fund/SERV transaction fee from $.30 to $.25 per side per order or transfer request.

NSCC intends to give its members the benefit of these fee changes effective as of January 1, 1999. The necessary adjustments to accommodate these reductions will be reflect in billing statements transmitted in February 1999.

NSCC believes that the proposed rule change is consistent with Section 17A(b)(3)(D) of the Act[3] and the rules and regulations thereunder because it provides for the equitable allocation of reasonable dues, fees, and other charges among NSCC's participants.

(B) Self-Regulatory Organization's Statement on Burden on Competition

NSCC does not believe that the proposed rule change will impact or impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments have been solicited or received. NSCC will notify the Commission of any written comments received by NSCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act[4] and pursuant to Rule 19b–4(f)(2)[5] promulgated thereunder because the proposal changes a due, fee, or other charge imposed by NSCC. At any time within sixty days of the filing of such rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of NSCC.

All submissions should refer to File No. SR–NSCC–99–03 and should be submitted by April 27, 1999.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–8366 Filed 4–5–99; 8:45 am]

BILLING CODE 8010–01–M

---

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified the text of the summaries prepared by NSCC.

[3] 15 U.S.C. 78q–1(b)(3)(D).

[4] 15 U.S.C. 78s(b)(3)(A)(ii).

[5] 17 CFR 240.19b–4(f)(2).

[6] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41222; File No. SR–OCC–99–03]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing and Immediate Effectiveness of a Proposed Rule Amending Rules and By-Laws

March 29, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on March 3, 1999, The Options Clearing Corporation ("OCC") files with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by OCC. The

[1] 15 U.S.C. 78s(b)(1).

Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change deletes the references to options on Government National Mortgage Association ("GNMA") securities, options on certificates of deposit, Index Participants ("IPs"), and market baskets in OCC's rules and by-laws.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The proposed rule change deletes the references to options on GNMA securities, options on certificates of deposits, IPs, and market baskets in OCC's rules and by-laws. According to OCC, these products are no longer cleared, and it is unlikely that these products will be listed or cleared in the future.

OCC believes the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act[3] and the rules and regulations thereunder because the proposal conforms OCC's rules and by-laws to the products that OCC currently clears.

(B) Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the proposed rule change would have any material adverse impact on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were not and are not intended to be solicited with respect to the proposed rule change and none have been received.

[2] The Commission has modified the text of the summaries prepared by OCC.

[3] 15 U.S.C. 78q–1(b)(3)(F).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(iii) of Act[4] and pursuant to Rule 19b–4(f)(4)[5] promulgated thereunder because the proposal is effecting a change in an existing OCC service that does not adversely affect the safeguarding of securities or funds in OCC's custody or control or for which OCC is responsible and does not significantly affect the respective rights or obligations of OCC or persons using OCC's services. At any time within sixty days of the filing of such rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of OCC. All submissions should refer to File No. SR–OCC–99–03 and should be submitted by April 27, 1999.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–8367 Filed 4–5–99; 8:45 am]

BILLING CODE 8010–01–M

[4] 15 U.S.C. 78s(b)(3)(A)(iii).

[5] 17 CFR 240.19b–4(f)(4).

[6] 17 CFR 200.30–3(a)(12).

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Notice of Meeting of the Advisory Committee on Trade Policy and Negotiations (ACTPN)

AGENCY: Office of the United States Trade Representative.

ACTION: Notice that the April 21, 1999, meeting of the Advisory Committee for Trade Policy and Negotiations will be held from 8:00 a.m. to 1:00 p.m. The meeting will be closed to the public from 8:00 a.m. to 12:30 p.m. and open to the public from 12:30 p.m. to 1:00 p.m.

SUMMARY: The Advisory Committee for Trade Policy and Negotiations will hold a meeting on April 21, 1999 from 8:00 a.m. to 1:00 p.m. The meeting will be closed to the public from 8:00 a.m. to 12:30 p.m. The meeting will include a review and discussion of current issues which influence U.S. trade policy. Pursuant to Section 2155(f)(2) of Title 19 of the United States Code, I have determined that this meeting will be concerned with matters the disclosure of which would seriously compromise the development by the United States Government of trade policy, priorities, negotiating objectives or bargaining positions with respect to the operation of any trade agreement and other matters arising in connection with the development, implementation and administration of the trade policy of the United States. The meeting will be open to the public and press from 12:30 p.m. to 1:00 p.m. when trade policy issues will be discussed. Attendance during this part of the meeting is for observation only. Individuals who are not members of the committee will not be invited to comment.

DATES: The meeting is scheduled for April 21, 1999, unless otherwise notified.

ADDRESSES: The meeting will be held at the USTR ANNEX Building in Conference Rooms 1 and 2, located at 1724 F Street, NW, Washington, D.C., unless otherwise notified.

FOR FURTHER INFORMATION CONTACT: Ladan Manteghi, Office of the United States Trade Representative, (202) 395–6120.

Charlene Barshefsky,

United States Trade Representative.

[FR Doc 99–8349 Filed 4–5–99; 8:45 am]

BILLING CODE 3190–01–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed During the Week Ending March 26, 1999

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. Sections 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: OST–99–5414.
Date Filed: March 22, 1999.
Parties: Members of the International Air Transport Association.
Subject:
PTC2 ME–AFR 0027 dated 19 March 1999
Mail Vote 989
TC2 Middle East-Africa Resolutions r1–r–18
Minutes
PTC2 ME–AFR 0025 dated 5 March 1999
Tables
PTC2 ME–AFR Fares 0026 dated 23 March 1999
Intended effective date: 1 October 1999.

Docket Number: OST–99–5437.
Date Filed: March 25, 1999.
Parties: Members of the International Air Transport Association.
Subject:
PTC2 AFR 0049 dated 19 March 1999.
Mail Vote 991.
TC2 Within Africa Resolution r1–r30
Minutes
PTC2 AFR 0047 dated 2 March 1999
Tables
PTC2 AFR Fares 0023 dated 23 March 1999
Intended effective date: 1 May 1999.

Docket Number: OST–99–5439.
Date Filed: March 25, 1999
Parties: Members of the International Air Transport Association.
Subject:
PTC3 0315 dated 23 March 1999
Mail Vote 994
TC3 Resolution 085t
Introduce fares from Viet Nam to Japan
Intended effective date: 1 April 1999.

Docket Number: OST–99–5440.
Date Filed: March 25, 1999.
Parties: Members of the International Air Transport Association.
Subject:
PTC12 MEX–EUR 0024 dated 19 March 1999
Mail Vote 987
Mexico-Europe Resolutions r1–r–23
Minutes
PTC12 MEX–EUR 0023 dated 2 March 1999
Tables
PTC12 MEX–EUR FARES 0008 dated 23 March 1999
Intended effective date: 1 May 1999.

Dorothy W. Walker,
Federal Register Liaison.

[FR Doc. 99–8345 Filed 4–5–99; 8:45 am]
BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–99–08]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before April 27, 1999.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–200), Petition Docket No. ____, 800 Independence Avenue, SW., Washington, D.C. 20591.

Comments may also be sent electronically to the following internet address: 9–NPRM–cmts@faa.gov.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–200), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, D.C. 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Cherie Jack (202) 267–7271 or Terry Stubblefield (202) 267–7624 Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, D.C., on March 31, 1999.

Donald P. Byrne,
Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: 29484
Petitioner: National Air Transportation
Section of the FAR Affected: 14 CFR 135.213 (a) and (b)
Description of Relief Sought: To permit National Air Transportation Association air charter company members who operate turbine aircraft to use current weather reports supplied by automated means (in particular, the Automated Weather Automation System (AWOS–2)) at the airport of intended landing or to use current weather reports issued by another airport within 25 nautical miles, if additional restrictions are followed.

Dispositions of Petitions

Docket No.: CE152
Petitioner: Raytheon Aircraft Company
Sections of the FAR Affected: 14 CFR 23.775(e)
Description of Relief Sought/ Disposition: To permit Raytheon Aircraft Company type certification for operation above 25,000 feet, and up to 31,000 feet of the Raytheon Model 3000 airplane with a windshield and canopy that are not fail-safe designs in the part 23 acrobatic category.
Grant, 3/09/99, Exemption No. 6869

Docket No.: 27122
Petitioner: Air Tractor, Inc.
Sections of the FAR Affected: 14 CFR 61.31(a)(1)
Description of Relief Sought/ Disposition: To permit Air Tractor and pilots of Air Tractor AT–802 and AT–802A airplanes to operate those airplanes without holding a type rating although the maximum gross weight of the airplane exceeds 12,500 pounds.
Grant, 3/23/99, Exemption No. 5651E

Docket No.: 28660
Petitioner: The Collings Foundation
Sections of the FAR Affected: 14 CFR 91.319(a), 119.5(g), and 119.21(a)
Description of Relief Sought/ Disposition: To permit the Collings Foundation to change their jurisdictional Flight Standards District Office (FSDO) from "NE

FSDO No. 5" to "NE FSDO No. 1" because The Collings Foundation's principal base of operations is located in the jurisdictional area of the Bedford, Massachusetts, FSDO (NE FSDO No. 1) not the Portland, Maine, FSDO (NE FSDO No. 5).

Grant, 3/23/99, Exemption No. 6540B

Docket No.: 28813
Petitioner: Reeve Aleutian Airways, Inc.
Sections of the FAR Affected: 14 CFR 199.67(a)(1)
Description of Relief Sought/ Disposition: To permit Mr. Keith Campbell to serve as Director of Operations at Reeve Aleutian Airways, Inc. without holding an airline transport pilot certificate.

Grant, 2/26/99, Exemption No. 6585A

Docket No.: 28816
Petitioner: Eagle Jet Charter, Inc.
Sections of the FAR Affected: 14 CFR 119.67(a)(1) and 119.71(a)
Description of Relief Sought/ Disposition: To permit Mr. Brian N. Duehring to serve as Director of Operations at EJC without holding an airline transport pilot certificate.

Grant, 3/15/99, Exemption No. 6587A

Docket No.: 28858
Petitioner: Evergreen International Aviation, Inc.
Sections of the FAR Affected: 14 CFR 91.315, 119.5(g), and 119.21(a)
Description of Relief Sought/ Disposition: To permit EAVM to operate its former military Boeing B–17G aircraft, which has a limited category airworthiness certificate, for the purpose of carrying passengers on local flights in return for donations.

Grant, 3/12/99, Exemption No. 6632A

Docket No.: 28891
Petitioner: Kachina Aviation
Sections of the FAR Affected: 14 CFR 133.19(a)(3) and 133.51
Description of Relief Sought/ Disposition: To permit Kachina Aviation to conduct external-load operations in the United States using its Canadian-registered rotocraft.

Grant, 3/05/99, Exemption No. 6638A

Docket No.: 29360
Petitioner: Skydive City, Inc.
Sections of the FAR Affected: 14 CFR 105.43(a)
Description of Relief Sought/ Disposition: To permit SCI to allow nonstudent foreign nationals to participate in SCI-sponsored parachute jumping events held at SCI's facilities without complying with the parachute equipment and packing requirements of 105.43(a).

Grant, 2/12/99, Exemption No. 6870

Docket No.: 29375
Petitioner: CareFlight
Sections of the FAR Affected: 14 CFR 135.143(c)(2)
Description of Relief Sought/ Disposition: To permit CareFlight to operate its Bell helicopters (Registration Nos. N141CF, N142CF, N143CF, N144CF, B145CF, N147CF, N148CF, N149CF, and N1083G) without TSO–C112 (Mode S) transponders installed in each aircraft.

Grant, 3/23/99, Exemption No. 6877

Docket No.: 29400
Petitioner: Flight Line Aviation, Inc.
Section of the FAR Affected: 14 CFR 135.143(c)(2)
Description of Relief Sought/ Disposition: To permit Flight Line Aviation, Inc. to operate its Pipe PA28–151 aircraft (Registration No. N4406X, Serial No. 28–7615012). under part 135 without TSO–C112 (Mode S) transponders installed in the aircraft.

Grant, 3/23/99, Exemption No. 6874

Docket No.: 29415
Petitioner: Aberdeen Flying Service
Section of the FAR Affected: 14 CFR 135.143(c)(2)
Description of Relief Sought/ Disposition: To permit Aberdeen Flying Service to operate certain under the provisions of part 135 without TSO–C112 (Mode S) transponders installed.

Grant, 3/23/99, Exemption No. 6875

Docket No.: 29450
Petitioner: Business Airfreight
Section of the FAR Affected: 14 CFR 135.143(c)(2)
Description of Relief Sought/ Disposition: To permit Business Airfreight to operate certain under part 135 without TSO–C112 (Mode S) transponders installed in each aircraft.

Grant, 3/23/99, Exemption No. 6876

[FR Doc. 99–8418 Filed 4–5–99; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Commercial Space Transportation Advisory Committee—Open Meeting

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Commercial Space Transportation Advisory Committee open meeting.

SUMMARY: Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C. App. 2), notice is hereby given of a meeting of the Commercial Space Transportation Advisory Committee (COMSTAC). The meeting will take place on Thursday, May 6, 1999, from 8:00 a.m. to 1:00 p.m. in Room 2230, Department of Transportation Headquarters, 400 7th Street SW, in Washington, DC. This will be the twenty-ninth meeting of the COMSTAC.

The agenda for the meeting will include reports from the COMSTAC Working Groups; a legislative update on Congressional activities involving commercial space transportation; an activities report from FAA's Associate Administrator for Commercial Space Transportation (formerly the Office of Commercial Space Transportation [60 FR 62762, December 7, 1995]); a report from the Office of Science and Technology Policy regarding a newly-initiated interagency working group for commercial space issues; and a briefing on an upcoming review of commercial space transportation policy issues by COMSTAC member, Dr. John Logsdon from George Washington University. The meeting is open to the public; however, space is limited.

Meetings of the Technology and Innovation, Reusable Launch Vehicle, and Risk Management Working Groups will be held on Wednesday, May 5, 1999. For specific information concerning the times and locations of these meetings, contact the Contact Person listed below.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should inform the Contact Person listed below in advance of the meeting.

FOR FURTHER INFORMATION CONTACT: Brenda Parker (AST–200), Office of the Associate Administrator for Commercial Space Transportation (AST), 800 Independence Avenue SW, Room 331, Washington, DC 20591, telephone (202) 267–8308.

Dated: March 29, 1999.

Patricia G. Smith,

Associate Administrator for Commercial Space Transportation.

[FR Doc. 99–8415 Filed 4–5–99; 8:45 am]
BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Research, Engineering and Development (R,E&D) Advisory Committee

Pursuant to section 10(A)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. 2), notice is hereby given of a meeting of the FAA

Research, Engineering and Development (R,E&D) Advisory Committee on Wednesday, April 21. The meeting will be held at the Holiday Inn Rosslyn Westpark Hotel, 1900 North Fort Myer Drive, Arlington, Virginia.

On Wednesday, April 21 the meeting will begin at 8:00 a.m. and end at 3:30 p.m.

The Federal Aviation Administration will present its Fiscal Year 2001–2005 research and development portfolio. The Committee will provide recommendations on the portfolio in the areas of air traffic services, airports, aircraft safety, security, human factors and environment and energy.

Attendance is open to the interested public but limited to space available. Persons wishing to attend the meeting or obtain information should contact Lee Olson at the Federal Aviation Administration, AAR–200, 800 Independence Avenue, SW, Washington, DC 20591, (202) 267–7358.

Members of the public may present a written statement to the Committee at any time.

Issued in Washington, DC on March 30, 1999.

Jan Brecht-Clark,

Deputy Director, Office of Aviation Research.

[FR Doc. 99–8419 Filed 4–5–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Intent To Rule on Application To Use the Revenue From a Passenger Facility Charge (PFC) at Chicago O'Hare International Airport, Chicago, Illinois

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to use the revenue from a PFC at Chicago O'Hare International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before May 6, 1999.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Chicago Airports District Office, 2300 East Devon Avenue, Room 201, Des Plaines, Illinois 60018.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Ms. Mary Rose Loney, Commissioner, of the City of Chicago Department of Aviation at the following address: Chicago O'Hare International Airport, P.O. Box 66142, Chicago, Illinois 60666.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the City of Chicago Department of Aviation under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Mark A. McClardy, Acting Manager, Chicago Airports District Office, 2300 East Devon Avenue, Room 201, Des Plaines, Illinois 60018, (847) 294–7335. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to use the revenue from a PFC at Chicago O'Hare International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On March 4, 1999, the FAA determined that the application to use the revenue from a PFC submitted by the City of Chicago Department of Aviation was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than June 4, 1999.

The following is a brief overview of the application.

PFC application number: 99–10–U–00–ORD
Level of the proposed PFC: $3.00
Original charge effective date: September 1, 1993
Estimated charge expiration date: October 1, 2018
Total estimated PFC revenue: $84,370,000.00
Brief description of proposed project:
a. Explosive Blast Mitigation—Phase II
b. Acquire 12 Airport Transit System Vehicles
c. Bessie Coleman Bridge Rehabilitation
d. Lake O'Hare Capacity Enhancement
e. Runway 9L/27R Rehabilitation
f. Perimeter Intrusion Detection System
g. Taxiway B Rehabilitation at C3/C4

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Air Taxi Operators.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the City of Chicago Department of Aviation.

Issued in Washington, DC on March 31, 1999.

Eric Gabler,

Manager, Passenger Facility Charge Branch.

[FR Doc. 99–8416 Filed 4–5–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent to Rule on Application to Impose a Passenger Facility Charge (PFC) at Cleveland Hopkins International Airport, and to Use the Revenue at Cleveland Hopkins International Airport and Burke Lakefront Airport, Cleveland, Ohio

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Intent to Rule on Application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose a PFC at Cleveland Hopkins International Airport and to use the revenue at Cleveland Hopkins International Airport and Burke Lakefront Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before May 6, 1999.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Detroit Airports District Office, Willow Run Airport, East, 8820 Beck Road, Belleville, Michigan 48111.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Solomon F. Balraj, Director of the Department of Port Control at the following address: Department of Port Control, Cleveland Hopkins International Airport, 5300 Riverside Drive, Cleveland, Ohio 44135–3193.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Department of Port Control under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Robert L. Conrad, Program Manager, Federal Aviation Administration, Detroit Airports District Office, Willow Run Airport, East, 8820 Beck Road, Belleville, Michigan 48111 (734–487–7295). The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose a PFC at Cleveland Hopkins International Airport and to use the revenue at Cleveland Hopkins International Airport and Burke Lakefront Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On March 1, 1999, the FAA determined that the application to impose and use the revenue from a PFC submitted by City of Cleveland was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than May 29, 1999.

The following is a brief overview of the application.

PFC Application No.: 99–06–C–00–CLE
Level of the proposed PFC: $3.00
Proposed charge effective date: June 1, 1999
Proposed charge expiration date: April 1, 2008
Total estimated PFC revenue: $185,919,856.00
Brief description of proposed projects:

Proposed Impose and Use Projects

Cleveland Hopkins

Brook Park Land Transfer; Residential Sound Insulation; Expand Baggage Claim; Reconstruct Tug Road; Extend Runway 5R/Preliminary Engineering; New Federal Inspection Services Facility/Design; Commuter Ramp; Concourse D Ramp.

Burke Lakefront Airport

Overlay Runway 6L/24R; Install ILS.

Impose Only Projects

Cleveland Hopkins

Extend Runway 5R/Design and Construct; Federal Inspection Services Facility/Construct; Analex Office Building/Demolish.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Air Taxi/Commercial Operators.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application, notice, and other documents germane to the application in person at the Department of Port Control, Cleveland Hopkins International Airport.

Issued in Washington, D.C. on March 31, 1999.

Eric Gabler,

Manager, Passenger Facility Charge Branch.

[FR Doc. 99–8420 Filed 4–5–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at the University of Illinois-Willard Airport, Savoy, IL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at University of Illinois-Willard Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before May 6, 1999.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Chicago Airports District Office, 2300 East Devon Avenue, Room 201, Des Plaines, Illinois 60018.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Joe Attwood, Airport Manager, University of Illinois-Willard Airport at the following address: University of Illinois-Willard Airport #77 Airport Road, Savoy, Illinois 61874.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the University of Illinois-Willard Airport under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Gary K. Regan, Program Manager, Chicago Airports District Office, 2300 East Devon Avenue, Room 201, Des Plaines, Illinois 60018, (847) 294–7525. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at University of Illinois-Willard Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On March 1, 1999, the FAA determined that the application to impose and use the revenue from a PFC submitted by the University of Illinois-Willard Airport was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than June 14, 1999.

The following is a brief overview of the application.

PFC application number: 99–02–C–00–CMI
Level of the proposed PFC: $3.00
Proposed charge effective date: November 1, 1999
Proposed charge expiration date: April 1, 2003
Total estimated PFC revenue: $1,418,400.00
Brief description of proposed projects:

a. North Quadrant Site Development, Phase I
b. PFC Application Reimbursement
c. Phase 5, Rehabilitation of RW 14R/32L
d. Airport Layout Plan Update (with Noise Analysis)
5e. Airfield Lighting Improvements, Phase 1
f. Acquire Snow Removal Equipment, Rotary Broom
g. North Quadrant Site Development, Phase 2
h. Acquire ARFF Vehicle
i. Acquire Snow Removal Equipment, Truck and Plow
j. Acquire ADA Passenger Lift Device
k. Airfield Lighting Improvements, Phase 2
l. Security Fencing, Phase 1
m. Construct Exit Taxiway, RW 14R/32L
n. Security Fencing, Phase 2
o. Security Fencing, Phase 3
p. Terminal Security System Revisions

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Air Taxi/Commercial Operators.

Any person may inspect the application in person at the FAA office

listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the University of Illinois-Willard Airport.

Issued in Washington, DC on March 31, 1999.

Eric Gabler,

Manager, Passenger Facility Charge Branch.

[FR Doc. 99–8417 Filed 4–5–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. RSAC–91–1, Notice No. 16]

Railroad Safety Advisory Committee; Notice of Meeting

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of Railroad Safety Advisory Committee ("RSAC") meeting.

SUMMARY: FRA announces the next meeting of the RSAC, a Federal Advisory Committee that develops railroad safety regulations through a consensus process. The meeting will address a wide range of topics, including possible adoption of specific recommendations for regulatory action.

DATES: The meeting of the RSAC is scheduled to commence at 9:30 a.m. and conclude at 4:00 p.m. on Thursday, April 15, 1999.

ADDRESSES: The meeting of the RSAC will be held at The Wyndham Hotel, 1400 M Street NW, Washington, DC. The meeting is open to the public on a first-come, first-served basis and is accessible to individuals with disabilities. Sign language interpreters will be available for individuals with hearing impediments.

FOR FURTHER INFORMATION CONTACT: Vicky McCully, RSAC Coordinator, FRA, 400 7th Street, SW, Stop 25, Washington, D.C. 20590, (202) 493–6305 or Grady Cothen, Deputy Associate Administrator for Safety Standards and Program Development, FRA, 400 7th Street, SW, Stop 25, Washington, D.C. 20590, (202) 493–6302.

SUPPLEMENTARY INFORMATION:

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), FRA is giving notice of a meeting of the Railroad Safety Advisory Committee ("RSAC"). The meeting is scheduled to begin at 9:30 a.m. and conclude at 4:00 p.m. on Thursday, April 15, 1999. The meeting will be held at The Wyndham Hotel, 1400 M Street, NW, Washington, DC. All times noted are Eastern Standard Time.

RSAC was established to provide advice and recommendations to the FRA on railroad safety matters. The Committee consists of 48 individual representatives, drawn from among 27 organizations representing various rail industry perspectives, and 2 associate non-voting representatives from the agencies with railroad safety regulatory responsibility in Canada and Mexico. Staff of the National Transportation Safety Board and Federal Transit Administration also participate in an advisory capacity.

During this meeting, the Cab Working Conditions Working Group will brief the RSAC on the primary elements of its recommendations for a proposed standard for locomotive sanitary conditions. The Working Group will also provide a status report on recommendations for hearing conservation program requirements for locomotive cab employees.

The Track Safety Working Group will present an overview of its proposed recommendations for amendments to the Track Safety Standards to provide for the use of Gage Restraint Measurement System (GRMS) technology and its proposed standards relating to the safety of persons operating maintenance-of-way equipment.

The Locomotive Crashworthiness Working Group intends to present to the RSAC for consideration, recommended standards for freight, passenger and switching locomotives.

The RSAC will receive a status report from the Accident/Incident Working Group, tasked with evaluating the concept of a reportable train accident, specifically the means by which the railroad property damage threshold is calculated.

A report providing status information will be presented by the Positive Train Control (PTC) Working Group, tasked with: (1) facilitating understanding of current PTC technologies, definitions, and capabilities; (2) addressing issues regarding the feasibility of implementing fully integrated PTC systems; and (3) facilitating implementation of software based signal and operating systems through consideration of revisions to the Rules, Standards and Instructions to address processor-based technology and communication-based architectures.

Please refer to the notice published in the **Federal Register** on March 11, 1996 (61 FR 9740) for more information about the RSAC.

Issued in Washington, D.C. on March 30, 1999.

George A. Gavalla,

Acting Associate Administrator for Safety.

[FR Doc. 99–8424 Filed 4–5–99; 8:45 am]

BILLING CODE 4910–06–M

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Environmental Impact Statement on the I–71 Light Rail Transit Project in the Cincinnati/Northern Kentucky Region

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of Intent to prepare an Environmental Impact Statement (EIS).

SUMMARY: The Federal Transit Administration (FTA) (the Federal lead agency) and the Ohio-Kentucky-Indiana Regional Council of Governments (OKI), the Metropolitan Planning Organization (MPO) for the Cincinnati region (the local lead agency), intend to prepare an Environmental Impact Statement (EIS) for the I–71 Light Rail Transit Project. In March of 1998, OKI completed a Major Investment Study (MIS) which studied four alternatives for the I–71 Corridor: Light Rail Transit, No-Build, Transportation Systems Management (TSM), Busway and High Occupancy Vehicle Lanes. The OKI selected the Light Rail Transit as the Locally Preferred Strategy.

The EIS is being prepared in conformance with the National Environmental Policy Act (NEPA) and will also satisfy the requirements of the 1990 Clean Air Act Amendments (CAAA). The EIS will evaluate the following transportation alternatives: a No-Build Alternative, a Transportation Systems Management (TSM) Alternative, and the Light Rail Transit (LRT) Alternative. Key stakeholders include the Ohio Department of Transportation (ODOT), the Kentucky Transportation Cabinet (KYTC), Southwest Ohio Regional Transit Authority (SORTA), Transit Authority of Northern Kentucky (TANK), Hamilton County, Kenton County, and the cities of Cincinnati, Covington, Blue Ash, and Montgomery.

DATES: *Comment Due Date:* Written comments on the scope of alternatives and impacts to be considered must be postmarked by June 15, 1999. *Scoping Meetings:* Public Scoping Meetings will be held on: May 10th—Monday 5 p.m. to 8 p.m. at the Evanston Recreation Center, 3204 Wooburn Avenue, Cincinnati, OH; May 11th—Tuesday 11

a.m. to 1:30 p.m. at the Christ Church Undercroft, 318 East Fourth Street, Cincinnati, OH; May 12th—Wednesday 5 p.m. to 8 p.m. at Blue Ash City Council Chambers, 4343 Cooper Road, Blue Ash, OH; and on May 18th—Tuesday 5 p.m. to 8 p.m. at the City of Covington, City Commission Chambers, 638 Madison Avenue, Covington, KY.

ADDRESSES: Written comments should be sent to Mr. Warner Moore, Project Manager, Ohio-Kentucky-Indiana Regional Council of Governments, 801–B West Eighth Street, Suite 400, Cincinnati, OH 45203–1607.

SCOPING PROCESS: The purposes of the Public Scoping Meetings are to: Provide interested individuals with an introduction to and an overview of the EIS process, and provide the opportunity for comments on the alternatives being considered and significant issues or impacts to be addressed in the EIS. Four Public Scoping Meetings will be held in the study area. Comments may be submitted orally at any of the Scoping Meetings or in writing during the Scoping comment period for the preparation of the Draft Environmental Impact Statement (DEIS) which ends on June 15, 1999. The Scoping Meetings will begin at 11 a.m. for the lunch-time meeting in the downtown Cincinnati and at 5 p.m. for evening meetings. Each meeting will include an open house where attendees will be able to view graphics and discuss the project with project representatives. A presentation on the project will be given at 12 p.m. for lunch-time meeting and at 6 p.m. for the evening meetings, followed by an additional opportunity for questions and answers during both the lunch-time and evening meetings. Scoping material will be available at the meeting or in advance of the meeting by contacting Mr. Jeff Walker, Planner II, at (513) 621–6300 or the TDD number at (513) 621–7063. A sign language interpreter will be available for the hearing impaired. The buildings are accessible to people with disabilities and are open to all members of the community.

FOR FURTHER INFORMATION CONTACT: Mr. Paul Fish, Federal Transit Administration, Region V, (312) 353–2865.

SUPPLEMENTARY INFORMATION:

I. Scoping

The FTA and OKI invite interested individuals, organizations, and federal, state and local agencies to participate in defining the alternatives to be evaluated in the EIS; identifying any significant social, economic, or environmental impacts to be evaluated; and suggesting alternatives that are less costly or have less environmental impacts while achieving similar transportation objectives. An information packet, referred to as the Scoping Booklet, will be circulated to all federal, state or local agencies having jurisdiction in the project, and all interested parties currently on the OKI mailing list. Others may request this Scoping Booklet by contacting Mr. Jeff Walker, Planner II, Ohio-Kentucky-Indiana Regional Council of Governments, 801–B West Eighth Street, Suite 400, Cincinnati, OH 45203–1607, or by phone at (513) 621–6300 or TDD at (513) 621–7063.

During Scoping, comments should focus on identifying the range of alternatives that should be considered and not stating a preference for a particular alternative. Scoping comments may be made at the Public Scoping Meeting or in writing within 45 days after publication of this notice. See the DATES section above for the locations and times of the Scoping Meetings and the ADDRESSES section above for the contact person for sending in written comments.

II. Description of the Study Area and Project

The study area is a north-south corridor which is approximately 18 miles long and generally parallels Interstate-71 (I–71). The LRT Alternative would extend from the south side of downtown Covington, Kentucky, through the downtown area of Covington, across the Ohio River into downtown Cincinnati, through a tunnel under Mount Auburn, through the Medical Center and the University of Cincinnati area, north to the City of Norwood where it will meet the SORTA right-of-way (on which the Indiana-Ohio Railroad previously owned and currently operates), and north to serve Silverton, Kenwood, Deer Park, Montgomery and Blue Ash. A yard and shop facility will be located somewhere along the length of the alignment.

Double-track light rail transit construction is being studied with in-street running in downtown areas and ballast tracks within the exclusive railroad right-of-way north of Cincinnati. The Clay Wade Bailey Bridge corridor will be examined during the Scoping Process to determine its potential for the Ohio River crossing. The study includes a proposal for approximately 20 stations to be designed for pedestrians as well as both bus and park-and-ride access. The LRT project is intended to provide fixed rail service between key activity centers in Cincinnati and Covington, including both cities' downtown districts, the Northern Kentucky Convention Center, the Aranoff Theatre District, the Medical Center, University of Cincinnati, Xavier University, the Cincinnati Bengal's Paul Brown Stadium, the new Cincinnati Reds Baseball Stadium, the Underground Railroad Freedom Center and the Cincinnati Convention Center. Key employers along the proposed alignment include the IRS Regional Center, Procter & Gamble World Headquarters, Proctor & Gamble Sharon Woods Technical Center, Chiquita Brands International, Cinergy Corporation/Cincinnati Gas & Electric Company, the Kroger Company, the American Financial Group, Inc., Cincinnati Bell, Ethicon Endo-Surgery, Hamilton County, Kenton County, and the Cities of Covington and Cincinnati Administrative Offices and City/County Court systems.

The I–71 Corridor has been and continues to be an area of significant growth for the region. Traffic congestion on many of the corridor's roadways is currently at unacceptable levels and is expected to worsen with the projected employment and population growth. Low-income, transit-dependent populations are increasing in the region, along with the need for improved access to jobs. Both riverfront areas of Covington and Cincinnati are experiencing tremendous public and private sector investment in the economic development and revitalization of the central cities. These redevelopment efforts, which will focus employment, entertainment, recreation and tourism on the riverfront area, will place a greater demand on existing roadways and transit service.

In response to this need, OKI conducted an MIS for the I–71 corridor. The results of the MIS study included the selection of a locally preferred strategy of a light rail transit system with downtown and suburban stops along the alignment, including stations, park-and-ride lots and transit centers. Transit improvements are intended to alleviate traffic congestion in the I–71 corridor by offering an alternative to single-occupancy vehicle travel, and assisting in the achievement of regional air quality goals.

III. Alternatives

The transportation alternatives proposed for consideration in this I–71 Light Rail Transit Project Draft EIS include:

(1) No-Build Alternative which involves no change to transportation services or facilities in the corridor beyond already committed projects;

(2) Transportation System Management (TSM) Alternative which

consists of low to medium cost improvements to the facilities and operation of the METRO and TANK bus systems in addition to the currently planned transit improvements in the corridor; and

(3) Light Rail Alternative, including stations and support facilities, generally located parallel to the I–71 corridor and on surface streets in downtown Covington and Cincinnati combined with a modified bus service component. Stations would be located to serve potentially significant trip generators and in areas where economic development efforts are planned or underway in order to maximize potential joint development opportunities.

IV. Probable Effects

The FTA and OKI will evaluate significant environmental, social, and economic impacts of the alternatives analyzed in the EIS. Primary environmental issues include: land-use, historic and archeological resources, traffic and parking, noise and vibration, neighborhoods and environmental justice, floodplain encroachment, coordination with ongoing related transportation and economic development projects, and construction impacts. Other issues the EIS will address include natural areas, rare and endangered species, air and water quality, groundwater, energy, potentially contaminated sites, displacements and relocations, ecosystems, water resources, hazardous waste, parklands, and energy impacts. The impacts will be evaluated both for the construction period and for the long-term period of operation of each alternative. In addition, the cumulative effects of the proposed project and any irreversible or irretrievable commitment of resources will be identified. Measures to avoid or mitigate any significant adverse impacts will be developed.

V. FTA Procedures

In accordance with the federal transportation planning regulations (23 CFR part 450) and the federal environmental impact regulations and related procedures (23 CFR part 771), the DEIS will be prepared to include an evaluation of the social, economic, and environmental impacts of the alternatives. The LRT Alternative was chosen as the Locally Preferred Strategy of the Major Investment Study completed in March of 1998. The project is included in the OKI Metropolitan Area Transportation Plan and conforming Transportation Improvement Program. The EIS and the Preliminary Engineering (PE) for the I–71 LRT PE/EIS will be prepared simultaneously and documented in the DEIS. The Final EIS will consider the public and agency comments received during the public and agency circulation of the Draft Environmental Impact Statement, and OKI will select the Preferred Alternative. Then OKI, with FTA as lead agency, will continue with the preparation of the Final EIS. Opportunity for additional public comment will be provided throughout all phases of project development.

Issued on: April 1, 1999.

Joel P. Ettinger,

Regional Administrator, Federal Transit Administration.

[FR Doc. 99–8478 Filed 4–5–99; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33720]

Union Pacific Railroad Company—Trackage Rights Exemption—Blue Rapids Railway Company

Blue Rapids Railway Company (BRRC) has agreed to grant local trackage rights to Union Pacific Railroad Company (UP) over its line of railroad, known as the Bestwall Branch, extending from a UP junction at milepost 0.12 at Marysville to milepost 10.12 at Bestwall, a distance of 10 miles in Marshall County, KS.

The purpose of the trackage rights is to allow continued service on the line when the incumbent tenant withdraws.[1] The transaction is scheduled to be consummated upon receipt of authority in the related proceeding, STB Finance Docket No. 33652.

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry.*, Inc.—Lease and Operate, 360 I.C.C. 653 (1980).

This notice is filed under 49 CFR 1180.2(d)(7). If it contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33720, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW, Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Joseph D. Anthofer, Esq., 1416 Dodge Street, #830, Omaha, NE 68179.

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

Decided: March 30, 1999.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 99–8325 Filed 4–5–99; 8:45 am]

BILLING CODE 4915–00–P

[1] There is one shipper on the line located at Bestwall. The line is currently operated by Northeast Kansas & Missouri Division of Mid-Michigan Railroad, Inc. (NEKM), under a local trackage rights agreement, which is to be assigned to UP pursuant to this exemption. In a related proceeding, *Union Pacific Railroad Company—Acquisition and Operation Exemption—Mid Michigan Railroad, Inc.*, STB Finance Docket No. 33652. UP seeks to acquire and operate the main line extending from St. Joseph, MO, to Upland KS, near Maryville. That petition will be addressed by the Board in a separate decision.

DEPARTMENT OF THE TREASURY

Commission to Study Capital Budgeting (Advisory Commission to the President of the United States)

ACTION: Release of Final Report to the Public.

SUMMARY: The President's Commission to Study Capital Budgeting has released its final report to the public following the report's presentation to the National Economic Council on Tuesday, March 23, 1999. The report may be viewed at: http://www.whitehouse.gov/pcscb, the Commission website. Hard copies of the report may be obtained from the Superintendent of Documents, PO Box 371954, Pittsburgh, PA 15250–7954, at a cost of US$6 (US$7.50 to foreign addresses) per copy. Please provide the order number S/N 048–000–00524–1, full name, address, and daytime phone number with area code. Payment may be by check, GPO deposit account, VISA, Master Card, or Discover/NOVUS. Please provide card number, expiration date, and authorizing signature. Orders also may be filled by phone at (202) 512–1800, FAX to (202) 512–2250, or at any of the Government Printing Office (GPO) outlets.

The Commission contact is: Dick Emery, Executive Director, President's Commission to Study Capital Budgeting, Old Executive Office Building (Room 258), Washington, DC 20503, Voice: (202) 395–4630, Fax: (202) 395–6170, E-Mail: capital__budget@omb.eop.gov Website: http://www.whitehouse.gov/pcscb.

FOR FURTHER INFORMATION CONTACT: E. William Dinkelacker, Ph.D., Designated Federal Official, Room 4456 Main Treasury, Washington, DC 20220, Voice: (202) 622–1285, Fax: (202) 622–1294, E-Mail: william.dinkelacker@do.treas.gov.

Angel E. Ray,

Committee Management Officer.

[FR Doc. 99–8495 Filed 4–5–99; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

Customs Service

List of Foreign Entities Violating Textile Transshipment and Country of Origin Rules

AGENCY: Customs Service, Department of the Treasury.

ACTION: General notice.

SUMMARY: This document notifies the public of foreign entities which have been issued a penalty claim under section 592 of the Tariff Act, for certain violations of the customs laws. This list is authorized to be published by section 333 of the Uruguay Round Agreements Act.

FOR FURTHER INFORMATION CONTACT: For information regarding any of the operational aspects, contact Scott Greenberg, National Seizures and Penalties Officer, Seizures and Penalties Division, Office of Field Operations, (415) 782–9442. For information regarding any of the legal aspects, contact Ellen McClain, Office of Chief Counsel, at 202–927–6900.

SUPPLEMENTARY INFORMATION:

Background

Section 333 of the Uruguay Round Agreements Act (URAA) (Public Law 103–465, 108 Stat. 4809) (signed December 8, 1994), entitled Textile Transshipments, amended Part V of title IV of the Tariff Act of 1930 by creating a section 592A (19 U.S.C. 1592A), which authorizes the Secretary of the Treasury to publish in the **Federal Register**, on a biannual basis, a list of the names of any producers, manufacturers, suppliers, sellers, exporters, or other persons located outside the Customs territory of the United States, when these entities and/or persons have been issued a penalty claim under section 592 of the Tariff Act, for certain violations of the customs laws, provided that certain conditions are satisfied:

The violations of the customs laws referred to above are the following: (1) Using documentation, or providing documentation subsequently used by the importer of record, which indicates a false or fraudulent country of origin or source of textile or apparel products; (2) Using counterfeit visas, licenses, permits, bills of lading, or similar documentation, or providing counterfeit visas, licenses, permits, bills of lading, or similar documentation that is subsequently used by the importer of record, with respect to the entry into the Customs territory of the United States of textile or apparel products; (3) Manufacturing, producing, supplying, or selling textile or apparel products which are falsely or fraudulently labeled as to country of origin or source; and (4) Engaging in practices which aid or abet the transshipment, through a country other than the country of origin, of textile or apparel products in a manner which conceals the true origin of the textile or apparel products or permits the evasion of quotas on, or voluntary restraint agreements with respect to, imports of textile or apparel products.

If a penalty claim has been issued with respect to any of the above violations, and no petition in response to the claim has been filed, the name of the party to whom the penalty claim was issued will appear on the list. If a petition, supplemental petition or second supplemental petition for relief from the penalty claim is submitted under 19 U.S.C. 1618, in accord with the time periods established by §§ 171.32 and 171.33, Customs Regulations (19 CFR 171.32, 171.33) and the petition is subsequently denied or the penalty is mitigated, and no further petition, if allowed, is received within 30 days of the denial or allowance of mitigation, then the administrative action shall be deemed to be final and administrative remedies will be deemed to be exhausted. Consequently, the name of the party to whom the penalty claim was issued will appear on the list. However, provision is made for an appeal to the Secretary of the Treasury by the person named on the list, for the removal of its name from the list. If the Secretary finds that such person or entity has not committed any of the enumerated violations for a period of not less than 3 years after the date on which the person or entity's name was published, the name will be removed from the list as of the next publication of the list.

Reasonable Care Required

Section 592A also requires any importer of record entering, introducing, or attempting to introduce into the commerce of the United States textile or apparel products that were either directly or indirectly produced, manufactured, supplied, sold, exported, or transported by such named person to show, to the satisfaction of the Secretary, that such importer has exercised reasonable care to ensure that the textile or apparel products are accompanied by documentation, packaging, and labeling that are accurate as to its origin. Reliance solely upon information regarding the imported product from a person named on the list is clearly not the exercise of reasonable care. Thus, the textile and apparel importers who have some commercial relationship with one or more of the listed parties must exercise a degree of reasonable care in ensuring that the documentation covering the imported merchandise, as well as its packaging and labeling, is accurate as to the country of origin of the merchandise. This degree of reasonable care must rely on more than information supplied by the named party.

In meeting the reasonable care standard when importing textile or apparel products and when dealing with a party named on the list published pursuant to section 592A of the Tariff Act of 1930, an importer should consider the following questions in attempting to ensure that the documentation, packaging, and labeling is accurate as to the country of origin of the imported merchandise. The list of questions is not exhaustive but is illustrative.

(1) Has the importer had a prior relationship with the named party?

(2) Has the importer had any detentions and/or seizures of textile or apparel products that were directly or indirectly produced, supplied, or transported by the named party?

(3) Has the importer visited the company's premises and ascertained that the company has the capacity to produce the merchandise?

(4) Where a claim of an origin conferring process is made in accordance with 19 CFR 102.21, has the importer ascertained that the named party actually performed the required process?

(5) Is the named party operating from the same country as is represented by that party on the documentation, packaging or labeling?

(6) Have quotas for the imported merchandise closed or are they nearing closing from the main producer countries for this commodity?

(7) What is the history of this country regarding this commodity?

(8) Have you asked questions of your supplier regarding the origin of the product?

(9) Where the importation is accompanied by a visa, permit, or license, has the importer verified with

the supplier or manufacturer that the visa, permit, and/or license is both valid and accurate as to its origin? Has the importer scrutinized the visa, permit or license as to any irregularities that would call its authenticity into question?

The law authorizes a biannual publication of the names of the foreign entities and/or persons. On October 5, 1998, Customs published a Notice in the **Federal Register** (63 FR 53493) which identified 26 (twenty-six) entities which fell within the purview of section 592A of the Tariff Act of 1930.

592A List

For the period ending March 31, 1999, Customs has identified 24 (twenty-four) foreign entities that fall within the purview of section 592A of the Tariff Act of 1930. This list reflects the addition of 3 new entities and 5 removals to the 26 entities named on the list published on October 5, 1998. The parties on the current list were assessed a penalty claim under 19 U.S.C. 1592, for one or more of the four above-described violations. The administrative penalty action was concluded against the parties by one of the actions noted above as having terminated the administrative process.

The names and addresses of the 24 foreign parties which have been assessed penalties by Customs for violations of section 592 are listed below pursuant to section 592A. This list supersedes any previously published list. The names and addresses of the 24 foreign parties are as follows (the parenthesis following the listing sets forth the month and year in which the name of the company was first published in the **Federal Register**):

Azmat Bangladesh, Plot Number 22–23, Sector 2 EPZ, Chittagong 4233, Bangladesh. (9/96)
Cupid Fashion Manufacturing Ltd., 17/F Block B, Wongs Factory Building, 368–370 Sha Tsui Road, Tsuen Wan, Hong Kong. (9/97)
Excelsior Industrial Company, 311–313 Nathan Road, Room 1, 15th Floor, Kowloon, Hong Kong. (9/98)
Eun Sung Guatemala, S.A., 13 Calle 3–62 Zona Colonia Landivar, Guatemala City, Guatemala. (3/98)
Everlast Glove Factory, Goldfield Industrial Centre, 1 Sui Wo Road, Room 15, 15th Floor, Fo Tan, Shatin, New Territories, Hong Kong. (3/99)
Glory Growth Trading Company, No.6 Ping Street, Flat 7–10, Block A, 21st Floor, New Trade Plaza, Shatin, New Territories, Hong Kong. (9/98)
Great Southern International Limited, Flat A, 13th floor, Foo Cheong Building, 82–86 Wing Lok Street, Central, Hong Kong. (9/98)
G.T. Plus Ltd., Kowloon Centre, 29–43 Ashley Road, 4/Fl, Tsimshatsui, Kowloon, Hong Kong. (3/99)
Hyattex Industrial Company, 3F, No. 207–4 Hsin Shu Road, Hsin Chuang City, Taipei Hsien, Taiwan. (9/96)
Jentex Industrial, 7–1 Fl., No. 246, Chang An E. Rd., Sec.2, Taipei, Taiwan. (3/97)
Jiangxi Garments Import and Export Corp., Foreign Trade Building, 60 Zhangqian Road, Nanchang, China. (3/98)
Liable Trading Company, 1103 Kai Tak Commercial Building, 62–72 Stanley Street, Kowloon, Hong Kong. (9/98)
Li Xing Garment Company Limited, 2/F Long Guang Building, Number 2 Manufacturing District, Sanxiang Town, Zhongshan, Guandgong, China. (9/96)
Mabco Limited, 6/F VIP Commercial Centre, 116–120 Canton Road, Kowloon, Hong Kong. (3/99)
McKowan Lowe & Company Limited, 1001–1012 Hope Sea Industrial Centre, 26 Lam Hing Street, Kowloon Bay, Kowloon, Hong Kong. (9/98)
Meigao Jamaica Company Limited, 134 - Pineapple Ave., Kingston, Jamaica. (9/96)
Meiya Garment Manufacturers Limited, No. 2 Building, 3/F, Shantou Special Economic Zone, Shantou, China. (9/96)
Rex Industries Limited, VIP Commercial Center, 116–120 Canton Road, 11th Floor, Tsimshatsui, Kowloon, Hong Kong. (9/98)
Sannies Garment Factory, 35–41 Tai Lin Pai Road, Gold King Industrial Building, Flat A & B, 2nd Floor, Kwai Chung, New Territories, Hong Kong. (9/98)
Shing Fat Gloves & Rainwear, 2 Tai Lee Street, 1–2 Floor, Yuen Long, New Territories, Hong Kong. (9/98)
Sun Kong Glove Factory, 188 San Wan Road, Units 32–35, 3rd Floor, Block B, Sheung Shui, New Territories, Hong Kong. (9/98)
Sun Weaving Mill Ltd., Lee Sum Factory Building, Block 1 & 2, 23 Sze Mei Street, Sanpokong, Bk 1/2, Kowloon, Hong Kong. (9/97)
Takhi Corporation, Huvsgalchdyn Avenue, Ulaanbaatar 11, Mongolia. (3/98)
Topstyle Limited, 6/F, South Block, Kwai Shun Industrial Center, 51–63 Container Port Road, Kwai Chung, New Territories, Hong Kong. (9/96)

Any of the above parties may petition to have its name removed from the list. Such petitions, to include any documentation that the petitioner deems pertinent to the petition, should be forwarded to the Assistant Commissioner, Office of Field Operations, United States Customs Service, 1300 Pennsylvania Avenue, NW, Washington, DC 20229.

Additional Foreign Entities

In the October 5, 1998, **Federal Register** notice, Customs also solicited information regarding the whereabouts of 29 foreign entities, which were identified by name and known address, concerning alleged violations of section 592. Persons with knowledge of the whereabouts of those 29 entities were requested to contact the Assistant Commissioner, Office of Field Operations, United States Customs Service, 1300 Pennsylvania Avenue, NW, Washington, DC 20229.

In this document, a new list is being published which contains the names and last known addresses of 31 entities. This reflects the addition of two new entities to the list.

Customs is soliciting information regarding the whereabouts of the following 31 foreign entities concerning alleged violations of section 592. Their names and last known addresses are listed below (the parenthesis following the listing sets forth the month and year in which the name of the company was first published in the **Federal Register**):

Balmar Export Pte. Ltd., No. 7 Kampong Kayu Road, Singapore, 1543. (3/98)
Envestisman Sanayi A.S., Buyukdere Cad 47, Tek Is Merkezi, Istanbul, Turkey. (9/97)
Essence Garment Making Factory, Splendid Centre, 100 Larch Street, Flat D, 5th Floor, Taikoktsui, Kowloon, Hong Kong. (3/98)
Fabrica de Artigos de Vest. Dynasty, Lda., Avenida do Almirante Magalhaes Correia, Edificio Industrial Keck Seng, Block III, 4th Floor "UV", Macau. (3/98)
Fabrica de Artigos de Vestuario Lei Kou, No. 45 Estrada Marginal de Areia Preta, Edif.Ind.Centro Polytex, 6th Floor, D, Macau. (9/98)
Fabrica de Vestuario Wing Tai, 45 Estrada Marginal Da Areia Preta, Edif. Centro Poltex, 3/E, Macau. (3/98)
Galaxy Gloves Factory, Annking Industrial Building, Wang Yip East Street Room A, 2/F, Lot 357, Yuen Long Industrial Estate, Yuen Long, New Territories, Hong Kong. (3/98)
Golden Perfect Garment Factory, Wong's Industrial Building, 33 Hung To Road, 3rd Floor, Kwun Tong, Kowloon, Hong Kong. (9/98)
Grey Rose Maldives, Phoenix Villa, Majeedee Magu, Male, Republic of Maldives. (3/98)
K & J Enterprises, Witty Commercial Building, 1A–1L Tung Choi Street, Room 1912F, Mong Kok, Kowloon, Hong Kong. (9/98)
Konivon Development Corp., Shun Tak Center, 200 Connaught Road, No. 3204, Hong Kong. (3/98)
Kwuk Yuk Garment Factory, Kwong Industrial Building, 39–41 Beech St., Flat A, 11th Floor, Tai Kok Tsui, Kowloon, Hong Kong. (3/98)
Land Global Ltd., Block c, 14/F, Y.P. Fat Building, Phase 1, 77 Hoi Yuen Road, Kowloon, Hong Kong. (9/97)
Leader Glove Factory, Tai Ping Industrial Centre, 57, Ting Kok Road, 25/F, Block 1, Flat A, Tai Po, New Territories, Hong Kong. (3/98)
Lins Fashions S.A., Lot 111, San Pedro de Macoris, Dominican Republic. (9/96)
Maxwell Garment Factory, Unit C, 21/F, 78–84, Wang Lung Street, Tseun Wan, New Territories, Hong Kong. (3/99)

New Leo Garment Factory Ltd, Galaxy Factory Building, 25–27 Luk Hop Street, Unit B, 18th Floor, San Po Kong, Kowloon, Hong Kong. (9/98)

Patenter Trading Company, Block C. 14/F, Yip Fat Industrial Building, Phase 1, 77 Hoi Yuen Road, Kowloon, Hong Kong. (9/97)

Penta-5 Holding (HK) Ltd., Metro Center II, 21 Lam Hing Street, Room 1907, Kowloon Bay, Kowloon, Hong Kong. (9/98)

Round Ford Investments, 37–39 Ma Tau Wai Road, 13/f Tower B, Kowloon, Hong Kong. (9/97)

Shanghai Yang Yuan Garment Factory, 2 Zhaogao Road, Chuanshin, Shanghai, China. (9/97)

Silver Pacific Enterprises Ltd., Shun Tak Center, 200 Connaught Road, No. 3204, Hong Kong. (3/98)

Tak Hing Textile Company Limited, Wo Fung Industrial Building, 3/F, block D, Lot No. 5180, IN D.D 51, On Lok Village, Fanling, New Territories, Hong Kong. (3/99)

Tat Hing Garment Factory, Tat Cheong Industrial Building, 3 Wing Ming Street, Block C, 13/F, Lai Chi Kok, Kowloon, Hong Kong. (3/98)

Tientak Glove Factory Limited, 1 Ting Kok Road, Block A, 26/F, Tai Po, New Territories, Hong Kong. (3/98)

United Textile and Weaving, P.O. Box 40355, Sharjah, United Arab Emirates. (3/97)

Wealthy Dart, Wing Ka Industrial Building, 87 Larch Street, 7th Floor, Kowloon, Hong Kong. (3/98)

Wilson Industrial Company, Yip Fat Factory Building, 77 Hoi Yuen Road, Room B, 3/F, Kwun Yong, Kowloon, Hong Kong. (3/98)

Wing Lung Manufactory, Hing Wah Industrial Building, Units 2, 5–8, 4th Floor YLTL 373, Yuen Long, New Territories, Hong Kong. (9/98)

Yogay Fashion Garment Factory Ltd, Lee Wan Industrial Building, 5 Luk Hop Street, San Po Kong, Kowloon, Hong Kong. (3/98)

Zuun Mod Garment Factory Ltd., Tuv Aimag, Mongolia. (9/97)

If you have any information as to a correct mailing address for any of the above 31 firms, please send that information to the Assistant Commissioner, Office of Field Operations, U.S. Customs Service, 1300 Pennsylvania Avenue, NW, Washington, DC 20229.

Dated: April 1, 1999.

Garnet J. Fee,

Acting Assistant Commissioner, Office of Field Operations.

[FR Doc. 99–8423 Filed 4–5–99; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Fiscal Service

Surety Companies Acceptable on Federal Bonds: Termination; Allied Mutual Insurance Company

AGENCY: Financial Management Service, Fiscal Service, Department of the Treasury.

ACTION: Notice.

SUMMARY: This is Supplement No. 10 to the Treasury Department Circular 570; 1998 Revision, published July 1, 1998, at 63 FR 36080.

FOR FURTHER INFORMATION CONTACT: Surety Bond Branch at (202) 874–6507.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the Certificate of Authority issued by the Treasury to Allied Mutual Insurance Company, under the United States Code, Title 31, sections 9304–9408, to qualify as an acceptable surety on Federal bonds is terminated effective immediately.

The Company was last listed as an acceptable surety on Federal bonds at 63 FR 36082, July 1, 1998.

With respect to any bonds currently in force with Allied Mutual Insurance Company, bond-approving officers may let such bonds run to expiration and need not secure new bonds. However, no new bonds should be accepted from the Company. In addition, bonds that are continuous in nature should not be renewed.

The Circular may be viewed and downloaded through the Internet at http://www.fms.treas.gov/c570/index.html. A hard copy may be purchased from the Government Printing Office (GPO), Subscription Service, Washington, DC, telephone (202) 512–1800. When ordering the Circular from GPO, use the following stock number: 048000–00516–1.

Questions concerning this notice may be directed to the U.S. Department of the Treasury, Financial Management Service, Financial Accounting and Services Division, Surety Bond Branch, 3700 East-West Highway, Room 6A04, Hyattsvlle, MD 20782.

Dated: March 26, 1999.

Wanda J. Rogers,

Acting Director, Financial Accounting and Services Division, Financial Management Service.

[FR Doc. 99–8351 Filed 4–5–99; 8:45 am]

BILLING CODE 4810–35–M

DEPARTMENT OF THE TREASURY

Fiscal Service

Surety Companies Acceptable on Federal Bonds: Columbia Mutual Insurance Company

AGENCY: Financial Management Service, Fiscal Service, Department of the Treasury.

ACTION: Notice.

SUMMARY: This Is Supplement No. 11 to the Treasury Department Circular 570; 1998 Revision, published July 1, 1998, at 63 FR 36080.

FOR FURTHER INFORMATION CONTACT: Surety Bond Branch at (202) 874–6905.

SUPPLEMENTARY INFORMATION: A Certificate of Authority as an acceptable surety on Federal bonds is hereby issued to the following Company under 31 U.S.C. 9304 to 9308. Federal bond-approving officers should annotate their reference copies of the Treasury Circular 570, 1998 Revision, on page 36088 to reflect this addition:

Columbia Mutual Insurance Company. BUSINESS ADDRESS: P.O. Box 618, Columbia, Missouri 65202. PHONE: (573) 474–6193. UNDERWRITING LIMITATION b/: $5,211,000. SURETY LICENSES c/: AL, AZ. AR, CO, GA, ID, IL, IN, IA, KS, KY, LA, MN, MS, MO, MT, NE, NM, ND, OK, ND, SD, TN, TX, VA, WA, WV and WY. INCORPORATED IN: Missouri.

Certificates of Authority expire on June 30 each year, unless revoked prior to that date. The Certificates are subject to subsequent annual renewal as long as the companies remain qualified (31 CFR part 223). A list of qualified companies is published annually as of July 1 in Treasury Department Circular 570, with details as to underwriting limitations, areas in which licensed to transact surety business and other information.

The Circular may be viewed and downloaded through the Internet at http://www.fms.treas.gov/c570/index.htlm. A hard copy may be purchased from the Government Printing Office (GPO) Subscription Service, Washington, DC, Telephone (202) 512–1800. When ordering the Circular from GPO, use the following stock number: 048–000–00516–1.

Questions concerning this Notice may be directed to the U.S. Department of the Treasury, Financial Management Service, Financial Accounting and Services Division, Surety Bond Branch, 3700 East-West Highway, Room 6A04, Hyattsville, MD 20782.

Dated: March 26, 1999.

Wanda J. Rogers,

Acting Director, Financial Accounting and Services Division, Financial Management Service.

[FR Doc. 99–8352 Filed 4–5–99; 8:45 am]

BILLING CODE 4810–15–M

DEPARTMENT OF THE TREASURY

Fiscal Service

Surety Companies Acceptable on Federal Bonds: Michigan Mutual Insurance Company

AGENCY: Financial Management Service, Fiscal Service, Department of the Treasury.

ACTION: Notice.

SUMMARY: This is Supplement No. 8 to the Treasury Department Circular 570; 1988 Revision, published July 1, 1998, at 63 FR 36080.

FOR FURTHER INFORMATION CONTACT: Surety Bond Branch at (202) 874–7102.

SUPPLEMENTARY INFORMATION: A Certificate of Authority as an acceptable surety on Federal bonds is hereby issued to the following Company under 31 U.S.C. 9304 to 9308. Federal bond-approving officers should annotate their reference copies of the Treasury Circular 570, 1998 Revision, on page 36099 to reflect this addition:

Michigan Mutual Insurance Company. BUSINESS ADDRESS: P.O. Box 2060, Farmington Hills, MI 48333–2060. PHONE: (248) 615–9000. UNDERWRITING LIMITATION b/: $13,106,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, FL, GA, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, and WY. INCORPORATED IN: Michigan.

Certificates of Authority expire on June 30 each year, unless revoked prior to that date. The Certificates are subject to subsequent annual renewal as long as the companies remain qualified (31 CFR part 223). A list of qualified companies is published annually as of July 1 in Treasury Department Circular 570, with details as to underwriting limitations, areas in which licensed to transact surety business and other information.

The Circular may be viewed and downloaded through the Internet at http://www.fms.treas.gov/c570/index.html. A hard copy may be purchased from the Government Printing Office (GPO) Subscription Service, Washington, DC, Telephone (202) 512–1800. When ordering the Circular from GPO, use the following stock number: 048–000–00516–1.

Questions concerning this Notice may be directed to the U.S. Department of the Treasury, Financial Management Service, Financial Accounting and Services Division, Surety Bond Branch, 3700 East-West Highway, Room 6A04, Hyattsville, MD 20782.

Dated: February 23, 1999.

Wanda J. Rogers,

Acting Director, Financial Accounting and Services Division, Financial Management Service.

[FR Doc. 99–8350 Filed 4–5–99; 8:45 am]

BILLING CODE 4810–35–M

DEPARTMENT OF THE TREASURY

Fiscal Service

Surety Companies Acceptable on Federal Bonds: NOVA Casualty Company

AGENCY: Financial Management Service, Fiscal Service, Department of the Treasury.

ACTION: Notice.

SUMMARY: This is Supplement No. 12 to the Treasury Department Circular 570; 1998 Revision, published July 1, 1998, at 63 FR 36080.

FOR FURTHER INFORMATION CONTACT: Surety Bond Branch at (202) 874–6765.

SUPPLEMENTARY INFORMATION: A Certificate of Authority as an acceptable surety on Federal bonds is hereby issued to the following Company under 31 U.S.C. 9304 to 9308. Federal bond-approving officers should annotate their reference copies of the Treasury Circular 570, 1998 Revision, on page 36102 to reflect this addition:

NOVA Casualty Company. BUSINESS ADDRESS: 180 Oak Street, Buffalo, New York, 14203–1610. PHONE: (716) 856–3722. UNDERWRITING LIMITATION b/: $520,000. SURETY LICENSES c/: IN, IA, MS, NY, ND. INCORPORATED IN: New York.

Certificates of Authority expire on June 30 each year, unless revoked prior to that date. The Certificates are subject to subsequent annual renewal as long as the companies remain qualified (31 CFR Part 223). A list of qualified companies is published annually as of July 1 in Treasury Department Circular 570, with details as to underwriting limitations, areas in which licensed to transact surety business and other information.

The Circular may be viewed and downloaded through the Internet at http://www.fms.treas.gov/c570/index.html. A hard copy may be purchased from the Government Printing Office (GPO) Subscription Service, Washington, DC, Telephone (202) 512–1800. When ordering the Circular from GPO, use the following stock number: 048–000–00516–1.

Questions concerning this Notice may be directed to the U.S. Department of the Treasury, Financial Management Service, Financial Accounting and Services Division, Surety Bond Branch, 3700 East-West Highway, Room 6A04, Hyattsville, MD 20782.

Dated: March 26, 1999.

Wanda J. Rogers,

Acting Director, Financial Accounting and Services Division, Financial Management Service.

[FR Doc. 99–8353 Filed 4–5–99; 8:45 am]

BILLING CODE 4810–35–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 3975

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 3975, Tax Professionals Annual Mailing List Application and Order Blank.

DATES: Written comments should be received on or before June 7, 1999 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5569, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Tax Professionals Annual Mailing List Application and Order Blank.

OMB Number: 1545–0351.

Form Number: Form 3975.

Abstract: Form 3975 allows a tax professional a systematic way to remain

on the Tax Professional Mailing File and to order copies of tax materials.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 320,000.

Estimated Time Per Respondent: 3 minutes.

Estimated Total Annual Burden Hours: 16,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

REQUEST FOR COMMENTS: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 30, 1999.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 99–8346 Filed 4–5–99; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 10318

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 10318, Deduction For Depletion On Ground Water Used For Irrigation.

DATES: Written comments should be received on or before June 7, 1999 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5569, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Deduction For Depletion On Ground Water Used For Irrigation.

OMB Number: 1545–0520.

Form Number: Form 10318.

Abstract: This form provides a standard method of computing and reporting water depletion deductions by taxpayers who extract ground water from Ogallala geological formation. The IRS uses the information to determine if the depletion deduction has been computed correctly.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, individuals, and farms.

Estimated Number of Respondents: 2,000.

Estimated Time Per Respondent: 2 hours.

Estimated Total Annual Burden Hours: 4,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

REQUEST FOR COMMENTS: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 29, 1999.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 99–8347 Filed 4–5–99; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[REG–209798–95]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, REG–209798–95 (TD 8746), Amortizable Bond Premium, (Reg. sections 1.163–13, 1.171–4, and 1.171–5).

DATES: Written comments should be received on or before June 7, 1999 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this regulation should be directed to Faye Bruce, (202) 622–6665, Internal Revenue Service, room 5577, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Amortizable Bond Premium.

OMB Number: 1545–1491.

Regulation Project Number: REG–209798–95.

Abstract: This regulation addresses the tax treatment of bond premium. The regulation provides that a holder may make an election to amortize bond premium by offsetting interest income with bond premium, and the holder must attach a statement to their tax return providing certain information. The regulation also provides that a taxpayer may receive automatic consent to change its method of accounting for premium provided the taxpayer attaches a statement to its tax return. The information requested is necessary for the IRS to determine whether a holder of a bond has elected to amortize bond premium and to determine whether an issuer or a holder has changed its method of accounting for premium.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations and individuals.

Estimated Number of Respondents: 100,000.

Estimated Time Per Respondent: 30 min.

Estimated Total Annual Burden Hours: 50,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

REQUEST FOR COMMENTS: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 25, 1999.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 99–8348 Filed 4–5–99; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Publication of Inflation Adjustment Factor, Nonconventional Source Fuel Credit, and Reference Price for Calendar Year 1998

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Publication of inflation adjustment factor, nonconventional source fuel credit, and reference price for calendar year 1998 as required by section 29 of the Internal Revenue Code (26 U.S.C. section 29).

SUMMARY: The inflation adjustment factor, nonconventional source fuel credit, and reference price are used in determining the tax credit allowable on the production of fuel from nonconventional sources under section 29.

DATES: The 1998 inflation adjustment factor, nonconventional source fuel credit, and reference price apply to qualified fuels sold during calendar year 1998.

INFLATION FACTOR: The inflation factor for calendar year 1998 is 2.0384.

CREDIT: The nonconventional source fuel credit for calendar year 1998 is $6.12 per barrel-of-oil equivalent of qualified fuels.

PRICE: The reference price for calendar year 1998 is $10.88. Because this reference price does not exceed $23.50 multiplied by the inflation adjustment factor, the phaseout of credit provided for in section 29(b)(1) does not occur for any qualified fuel sold in calendar year 1998.

FOR FURTHER INFORMATION CONTACT:

For the inflation factor and credit—Thomas Thompson, OP:RS:R:E, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224, Telephone Number (202) 874–0585 (not a toll-free number)

For the reference price—Alan Cooper or David McMunn, CC:DOM:P&SI:6, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224, Telephone Number (202) 622–3110 (not a toll-free number)

Judith C. Dunn,

Associate Chief Counsel (Domestic).

[FR Doc. 99–8371 Filed 4–5–99; 8:45 am]

BILLING CODE 4830–01–U

federal register

Tuesday
April 6, 1999

Part II

Federal Housing Finance Board

12 CFR Parts 935, et al.
Prohibition on Payment Fee in Lieu of Mandatory Excess Capital Stock Redemption; Final Rule
Mandatory Excess Capital Stock Redemption; Prohibited Stock Dividends; Proposed Rule

FEDERAL HOUSING FINANCE BOARD

12 CFR Part 935

[No. 99–21]

RIN 3069–AA83

Prohibition on Payment of Fee In Lieu of Mandatory Excess Capital Stock Redemption

AGENCY: Federal Housing Finance Board.

ACTION: Interim final rule.

SUMMARY: The Federal Housing Finance Board (Finance Board) is amending its regulation governing Federal Home Loan Bank (Bank) advances to prohibit the Banks from imposing or accepting a fee in lieu of redeeming a member's excess capital stock held in the Bank. The Finance Board has determined that allowing the payment of such fees would detract from the agency's ongoing efforts and initiatives to ensure that the Banks carry out their housing finance and community investment mission.

EFFECTIVE DATE: This interim final rule shall be effective on April 6, 1999. The Finance Board will accept written comments on this interim final rule on or before May 6, 1999.

FOR FURTHER INFORMATION CONTACT: Joseph A. McKenzie, Deputy Chief Economist, (202) 408–2845, Office of Policy, Research and Analysis; or Sharon B. Like, Senior Attorney-Advisor, (202) 408–2930, or Jane S. Converse, Senior Attorney-Advisor, (202) 408–2976, Office of General Counsel, Federal Housing Finance Board, 1777 F Street, N.W., Washington, D.C. 20006.

SUPPLEMENTARY INFORMATION:

I. Statutory and Regulatory Background

A. The Banks' Housing Finance and Community Investment Mission

The Federal Home Loan Bank System (Bank System) is comprised of 12 District Banks that are federally chartered and managed by boards of directors that set policies pursuant to regulations established by the Finance Board. As government-sponsored enterprises (GSEs), the Banks act as intermediaries in the capital markets, raising funds on favorable terms and passing the proceeds on to member institutions in the form of advances (loans).

Under section 10(a) of the Federal Home Loan Bank Act (Bank Act) and part 935 of the Finance Board's regulations, the Banks have broad authority to make advances in support of housing finance, which includes community investment finance. *See* 12 U.S.C. 1430(a), (i), (j); 12 CFR part 935. The Banks also are required to offer two programs, the Affordable Housing Program (AHP) and the Community Investment Program (CIP), to provide subsidized or at-cost advances, respectively, in support of unmet housing finance or economic development credit needs. *See* 12 U.S.C. 1430(i), (j); 12 CFR parts 960, 970. In addition, section 10(j)(10) of the Bank Act, as implemented by a recently issued Finance Board regulation, authorizes the Banks to establish Community Investment Cash Advance (CICA) Programs for community lending, defined as providing financing for economic development projects for targeted beneficiaries. *See* 12 U.S.C. 1430(j)(10); 63 FR 65536 (Nov. 27, 1998).

The Bank Act provides that the Finance Board's primary duty is to ensure that the Banks operate in a financially safe and sound manner. *See id.* section 1422a(a)(3)(A). The Bank Act further provides that, to the extent consistent with this primary duty, the Finance Board also is responsible for supervising the Banks, ensuring that the Banks carry out their housing finance mission, and ensuring that the Banks remain adequately capitalized and able to raise funds in the capital markets. *See id.* section 1422a(a)(3)(B).

B. Statutory and Regulatory Minimum Capital Stock, Dividend and Redemption Provisions

Under the Bank Act and implementing Finance Board regulations, a member's required minimum capital stock investment in its Bank is the greater of: (1) 1 percent of the member's aggregate unpaid loan principal (defined as the member's home mortgage loans, home purchase contracts, and similar obligations) but not less than $500; (2) 0.3 percent of the member's total assets; or (3) 5 percent of total advances outstanding to the member. In the case of members that are not "qualified thrift lenders" (QTLs), the third option is computed as 5 percent of total advances outstanding to the member divided by the member's "actual thrift investment percentage" (as defined in 12 U.S.C. 1467a(m)). *See* 12 U.S.C. 1426(b)(1), (2), (4); 1430(c), (e)(1), (3); 12 CFR 933.20(a).

Section 6(b)(1) further provides that the Bank shall annually adjust, at such time and in such manner as the Finance Board may by regulations or otherwise prescribe, the amount of capital stock held by each member so that such member shall have invested its minimum capital stock requirement. *See id.* section 1426(b)(1); 12 CFR 933.22(b)(1). Section 6(b)(1) also provides that if the Bank finds that the investment of any member in capital stock is greater than that required under section 6(b), the Bank may, unless prohibited by the Finance Board, in its discretion and upon application of the member, retire the capital stock of such member in excess of the amount so required. *See id.* section 1426(b)(1); 12 CFR 933.22(b)(2).

Section 16(a) of the Bank Act provides, among other things, that dividends may be paid by the Banks with the approval of the Finance Board. *See* 12 U.S.C. 1436(a). Section 6(g) of the Bank Act provides that all stock of any Bank shall share in dividend distributions without preference. *See id.* section 1426(g). Section 934.17 of the Finance Board's regulations on the operations of the Banks implements these provisions by providing, among other things, that dividends may be paid by the Banks in cash or in the form of stock. *See* 12 CFR 932.3; 63 FR 65683, 65687 (Nov. 30, 1998) (redesignating § 932.3 as § 934.17).

Section 935.15(b) of the Finance Board's Advances Regulation provides that "[a] Bank, after providing 15 calendar days advance written notice to a member, may unilaterally redeem that amount of the member's Bank stock that exceeds" the member's minimum statutory and regulatory capital stock requirements. *See* 12 CFR 935.15(b). Section 935.15(b) further provides that the Bank shall have discretion to determine the timing of such unilateral redemption, provided that the Bank's redemption policy is consistent with the requirement in section 7(j) of the Bank Act that the affairs of the Bank shall be administered fairly and impartially and without discrimination in favor of or against member borrowers, *see* 12 U.S.C. section 1427(j).

The Bank Act and § 935.15(b) of the Advances regulation are silent on whether a Bank, in administering its mandatory redemption policy, may impose on or accept from a member a fee in lieu of redeeming the member's excess Bank capital stock.

II. Analysis of the Interim Final Rule

A. Proposed Fee In Lieu of Mandatory Excess Capital Stock Redemption

A Bank has adopted a policy, effective March 31, 1999, pursuant to which the Bank generally will redeem that amount of each member's capital stock exceeding 115 percent of the member's minimum statutory capital stock requirement, with an option, if lawful and appropriate, for the member to pay

a fee to the Bank in lieu of such redemption. The Bank has requested confirmation from the Finance Board that the proposed fee would be authorized under the Bank Act and Finance Board regulations.

As noted above, the Bank Act and § 935.15(b) of the Finance Board's Advances regulation are silent on whether a Bank may impose on or accept from a member a fee in lieu of redeeming the member's excess Bank capital stock. Even though the Bank Act is susceptible to an interpretation that the payment of such fees would be authorized under law, the Finance Board has determined that allowing the payment of such fees would detract from the agency's ongoing efforts and initiatives to ensure that the Banks carry out their housing finance and community investment mission, as discussed below. Therefore, the Finance Board is adopting this interim final rule prohibiting the payment of such fees. Although this interim final rule will become effective on the date of publication in the **Federal Register**, the Finance Board requests comment on all aspects of the rule during a 30-day comment period.

According to the Bank, the purpose of the Bank's proposed redemption policy is to enhance the Bank's competitiveness vis a vis other Banks by increasing its earnings per share and therefore its dividend rate. The Bank forecasts that mandatory redemption of surplus capital stock or payment of the fee in lieu of redemption would add approximately 12 basis points to the Bank's quarterly dividend. The Bank has a number of large members owned by holding companies that also have subsidiaries located in other Bank districts. The Bank is concerned that these members may discontinue borrowing from the Bank and that their affiliates will become members and borrow from these other Banks because those Banks pay higher dividend rates than the Bank.

Under the Bank's proposed policy, the Bank would unilaterally redeem "surplus" capital stock (defined by the Bank as capital stock in excess of 115 percent of minimum capital stock requirements but not less than $100,000) held by all members, unless the member pays a fee to the Bank, on a monthly basis, to continue holding its surplus capital stock. The 115 percent threshold was adopted to allow membership flexibility for future borrowings from the Bank and absorb the stock dividends. The $100,000 minimum was adopted in order to reduce the operational impact of the redemption policy on smaller members. The Bank states that the fee, which is 1.65 percent of the value of a member's surplus capital stock, was designed to make the Bank financially indifferent to a member's decision to continue to hold surplus capital stock. The fee income paid to the Bank would act as an offset to the dividend dilution caused by those members holding surplus capital stock.

As of August 31, 1998, the Bank had excess capital stock of $554 million, or 14 percent of its total capital of $3.9 billion. The Bank's total "surplus" capital stock, as of August 31, 1998, was $312 million. One mandatory thrift member held 70 percent of the Bank's total surplus capital stock as of that date. The Bank has excess capital stock, in part, because it pays members quarterly stock dividends rather than cash dividends. The Bank has indicated that paying a stock dividend rather than a cash dividend provides tax benefits for its members, and the Bank intends to continue paying stock dividends for this reason.

B. The Banks Are Significantly Overcapitalized

By many standards, the 12 Banks are significantly overcapitalized. As of December 31, 1998, the 12 Banks had total capital stock of $22.8 billion, with $2.8 billion, or 12.6 percent, of this amount constituting capital stock in excess of the Banks' statutory minimum capital stock requirements. On a risk-adjusted basis (using the current risk-based standards applicable to federally regulated depositories), the total capital is estimated at 22 percent of the Banks' total assets, a level far above that of large commercial banks and other housing GSEs.[1] The highest percentage of excess capital stock to total capital stock at a Bank was 30.1 percent, and the lowest was 1.2 percent.

Even without excess capital stock in the Bank System, *i.e.*, capital stock at only the statutorily required minimum stock levels, the Banks would be significantly overcapitalized. A redemption of all excess capital stock in the Bank System would reduce the Banks' risk-based capital ratio to approximately 19.2 percent.

Members have excess capital stock holdings, in part, because they receive stock dividends from the Banks. Currently, five Banks pay stock dividends, and seven Banks pay cash dividends. The Internal Revenue Service has ruled that the issuance of stock dividends by the Banks is not taxable income for members. *See* IRS Rev. Rul. 90–98, November 26, 1990, 1990–48–I.R.B.4, 26 CFR 1.305–2. However, cash dividends and redemptions of stock received as dividends generally are taxable income to members. *See* 26 U.S.C. 301(c), 302(a). Because of the deferred tax liability associated with stock dividends, many members may have allowed their stock dividends to accumulate rather than request redemption of their capital stock, as is their option under the Bank Act. *See* 12 U.S.C. 1426(b)(1).

The members' holdings of excess capital stock are concentrated, with the largest holder of excess capital stock having 9 percent of the Bank System's total excess capital stock. The top five holders of excess capital stock represent 19 percent of the Bank System's total excess capital stock.

Excess capital stock holdings also arise where members' total assets, home mortgage loans or outstanding advances have decreased since their last capital stock purchases, or where members have changed to QTL status, thereby reducing their advances-based capital stock requirement. Members may continue to hold some excess capital stock in order to minimize the transaction costs associated with capital stock purchases that would be required if the member's levels of total assets, home mortgage loans or outstanding advances fluctuate.

C. The Banks' Arbitrage Activities With Non-Core Mission Assets Detract From the Mission of the Banks To Promote Housing Finance and Community Investment

The Banks pay dividends on all capital stock, including excess capital stock. Since the average Bank System dividend rate of 6.64 percent exceeds the rate of return a Bank can earn by investing members' capital in core mission assets, a Bank must leverage its excess capital stock to pay dividends. The leveraging cannot involve advances, since they are already capitalized by required capital stock. Thus, the Banks must leverage excess capital stock by investing in non-core mission assets in order to generate sufficient earnings to pay a uniform dividend on all capital stock, including the excess capital stock.

There is a strong correlation between the amount of excess capital stock at a Bank and the level of that Bank's non-

[1] A depository institution generally is deemed to be "well-capitalized" if it has a total risk-based capital ratio of 10 percent or greater, a Tier 1 risk-based capital ratio of 6 percent or greater, and a leverage ratio of 5 percent or greater. *See* 12 CFR 6.4(b)(1), 208.33(b)(1), 325.103(b)(1), 565.4(b)(1). The minimum capital requirement for the other housing GSEs—the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation—generally is 2.5 percent of on-balance sheet assets plus .45 percent of off-balance sheet obligations. *See* 12 U.S.C. 4612(a).

core mission assets. In demonstrating the correlation between excess capital stock and non-mission-related assets, the Finance Board looked at the concept of "core mission assets," defined as Bank advances, which include AHP advances and subsidies, CIP advances, community lending advances, Mortgage Partnership Finance assets, and other assets generated for the Banks by members and nonmember borrowers. Core mission assets do not include mortgage-backed securities (MBS) and money market instruments, which are not generated for the Banks by members or nonmember borrowers and their purchase by the Banks does not materially facilitate housing and community lending by members or nonmember borrowers. As demonstrated in the following table, the Banks with the highest levels of excess capital stock also have the lowest ratios of core mission assets to consolidated obligations:

EXCESS CAPITAL STOCK AND CORE MISSION ASSETS

Bank	Core mission assets to consolidated obligations (%)	Descending rank	Excess capital stock to total capital stock (%)	Rank
A	86.5	1	10.4	7
B	85.1	2	1.0	1
C	81.8	3	10.2	6
D	81.3	4	4.2	2
E	80.7	5	3.0	3
F	79.7	6	7.8	4
G	70.5	7	9.3	5
H	69.4	8	17.1	10
I	65.4	9	26.8	11
J	63.8	10	15.2	8
K	59.9	11	30.1	12
L	58.6	12	16.2	9
Bank System	75.8	.....	12.6	.....

Approximately 75.8 percent of total Bank System consolidated obligations are invested in core mission assets.

The four Banks with the highest ratios of core mission assets to consolidated obligations had ratios of excess capital stock to total capital stock of 10.4 percent, 1.2 percent, 10.4 percent, and 4.2 percent. The five Banks with the lowest ratios of core mission assets to consolidated obligations had the highest ratios of excess capital stock to total capital stock. Of these five, three pay stock dividends, and one pays the highest dividend in the Bank System. At present, core mission assets are no more than 86.5 percent of consolidated obligations at any Bank.

The Finance Board believes that the Banks' arbitrage activities for the purpose of generating sufficient earnings to pay adequate dividends on excess capital stock detract from the mission of the Banks to promote housing finance and community investment, by encouraging activities not related to the Banks' mission and thereby detracting from the financial incentive to engage in mission-related activity. While the Banks' interest in paying a reasonable dividend to members is a legitimate business consideration, and it is appropriate to redeem excess capital stock to assist in this purpose, allowing members to pay a fee in lieu of such mandatory redemption would perpetuate excess capital stock at the Banks and the Banks' continued need to invest in non-core mission assets to pay dividends on such excess stock.

D. Amendment of Advances Regulation To Prohibit Payment of Fee In Lieu of Mandatory Excess Capital Stock Redemption—§ 935.15(b)

For the reasons discussed above, this interim final rule amends § 935.15(b) of the Finance Board's Advances regulation to prohibit the Banks from imposing on or accepting from a member a fee in lieu of mandatory redemption of the member's excess capital stock. Specifically, the interim final rule adds a new paragraph (b)(2) which provides that: "A Bank may not impose on or accept from a member a fee in lieu of redeeming the member's excess Bank capital stock."

In addition, the second sentence of current § 935.15(b), which is redesignated as paragraph (b)(1), is revised to clarify that the Bank's implementation of its redemption policy, and not just the timing of redemptions, shall be consistent with the requirement of section 7(j) of the Bank Act (12 U.S.C. 1427(j)) that the affairs of the Bank shall be administered fairly and impartially and without discrimination in favor of or against any member borrower.

This action is taken as an interim final rule, effective on the date of publication in the **Federal Register**, because the Bank's proposed fee policy is intended to be effective on March 31, 1999.

III. Issues For Consideration

Reducing Levels of Excess Capital Stock by Prohibiting Payment of Stock Dividends and Requiring Unilateral Redemption of Excess Capital Stock

The Finance Board believes that the Banks' levels of excess capital stock should be significantly reduced. As discussed above, the Banks are substantially overcapitalized and, thus, reduction in the amount of their excess capital would not adversely affect the safety and soundness of the Banks. The statutory minimum capital stock requirements guarantee that a Bank's capital stock will grow as the scope of its operations increases.

As discussed above, excess capital stock requires the Banks to generate earnings, through investments in non-core mission assets, in order to pay dividends on such stock, which is not needed to capitalize advances and other core mission assets. The Banks' arbitrage activities for this purpose detract from the mission of the Banks to promote housing finance and community investment, by encouraging activities not related to the Banks' mission and thereby detracting from the financial incentive to engage in mission-related activity. A reduction in the amount of excess capital stock would reduce the amount of capital stock on which dividends must be paid, thereby

reducing the level of arbitrage activities conducted in order to generate earnings to pay dividends on such capital stock.

One cause of the Banks' excess capital stock levels is the payment by some Banks of stock dividends rather than cash dividends to members. Prohibiting the Banks from paying stock dividends would help reduce excess capital stock levels in the Bank System and the consequent arbitrage activities.

Another way to reduce excess capital stock in the Bank System and thereby reduce arbitrage activities in non-core mission assets by the Banks, would be to require the Banks to unilaterally redeem members' excess capital stock. In the past year, five Banks unilaterally redeemed their excess capital stock expressly for the purpose of reducing the amount of their money market investments.

The Finance Board recognizes that payment of stock dividends has Federal tax advantages to members over payment of cash dividends, and that excess capital stock redemptions incur Federal tax liabilities for members. However, the private financial advantage to members from minimizing their taxes through the payment of stock dividends, while having no safety and soundness implications for the Banks, ultimately detracts from the Banks' housing finance and community investment mission and serves no other legitimate business purpose for the Banks.

Accordingly, simultaneously with this rulemaking, the Finance Board in a separate Advance Notice of Proposed Rulemaking (ANPRM) published elsewhere in this issue of the **Federal Register**, is requesting comment on how, by what means, and to what extent prohibiting or limiting the Banks' ability to pay stock dividends to members would assist the Finance Board in achieving the goal of reducing excess capital stock in the Bank System. Similarly, the Finance Board is requesting comment on whether the Banks should be required to unilaterally redeem members' excess Bank capital stock to help achieve the goal of reducing excess capital stock in the Bank System. Regarding required unilateral redemption of excess capital stock, the Finance Board specifically requests comment on whether a member should be allowed to maintain some amount of excess capital stock, *e.g.*, 10 percent of its total minimum capital stock requirement, in anticipation of fluctuations in its assets or outstanding advances that may affect its minimum capital stock requirement. The Finance Board also requests comment on what the timing of unilateral redemptions should be, *e.g.*, no less frequently than quarterly, semi-annually, or annually at the time of the Banks' adjustments of the members' minimum capital stock requirements? The Finance Board also requests comment on whether the currently required 15 days' notice to members before redemption should be retained or modified. In addition, the Finance Board requests comment on whether § 933.23 of the Finance Board's membership regulation, which permits a member to purchase excess capital stock if approved by the Bank, should be removed or modified. *See* 12 CFR 933.23.

In the alternative, the Finance Board requests comment on whether the Banks should be permitted to hold excess capital stock, but be prohibited from paying dividends on such stock, as a way to reduce the Banks' arbitrage activities with non-core mission assets. The Finance Board also requests comment on whether and to what extent excess capital stock holdings could be allowed so long as they are not being leveraged in the consolidated obligations market. In addition, the Finance Board requests comment on whether excess capital stock holdings should be permitted for a limited period of time, such as up to six months, where the member indicates that it intends to increase its advance borrowings during that time period.

Comments received in response to the ANPRM will be reviewed and considered by the Finance Board in preparation for further action in connection with the issues discussed in the ANPRM.

IV. Regulatory Flexibility Act

Because no notice of proposed rulemaking is required for this interim final rule, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply.

V. Paperwork Reduction Act

This interim final rule does not contain any collections of information pursuant to the Paperwork Reduction Act of 1995. *See* 44 U.S.C. 3501 *et seq.* Therefore, the Finance Board has not submitted any information to the Office of Management and Budget for review.

VI. Notice and Public Participation

The Finance Board for good cause finds that the notice and public comment procedure required by the Administrative Procedure Act is impracticable, unnecessary or contrary to the public interest in this instance, because the change made by this interim final rule prohibits an immediately pending Bank action that would detract from the Banks' mission to promote housing finance and community investment. *See* 5 U.S.C. 553(b)(3)(B).

List of Subjects in 12 CFR Part 935

Credit, Federal home loan banks, Reporting and recordkeeping requirements.

Accordingly, the Finance Board hereby amends title 12, chapter IX, part 935 of the *Code of Federal Regulations* as follows:

PART 935—ADVANCES

1. The authority citation for part 935 continues to read as follows:

Authority: 12 U.S.C. 1422a(a)(3), 1422b(a)(1), 1426, 1429, 1430, 1430b, 1431.

2. Section 935.15 is amended by revising paragraph (b) to read as follows:

§ 935.15 Capital stock requirements; unilateral redemption of excess stock.

* * * * *

(b) *Unilateral redemption of excess capital stock; fee in lieu prohibited.* (1) A Bank, after providing 15 calendar days advance written notice to a member, may require the redemption of that amount of the member's Bank capital stock that exceeds the capital stock requirements set forth in paragraph (a) of this section or, in the case of a non-QTL member, the capital stock requirements set forth in § 935.13(a)(1)(ii) of this part, provided the minimum amount required in sections 6(b)(1) and 10(e)(3) of the Act is maintained. The Bank shall have the discretion to determine the timing of such unilateral redemption. The Bank's implementation of its redemption policy shall be consistent with the requirement of section 7(j) of the Act (12 U.S.C. 1427(j)) that the affairs of the Bank shall be administered fairly and impartially and without discrimination in favor of or against any member borrower.

(2) A Bank may not impose on or accept from a member a fee in lieu of redeeming the member's excess Bank capital stock.

Dated: March 19, 1999.

By the Board of Directors of the Federal Housing Finance Board.

Bruce A. Morrison,

Chairman.

[FR Doc. 99–8357 Filed 4–5–99; 8:45 am]

BILLING CODE 6725–01–P

FEDERAL HOUSING FINANCE BOARD

12 CFR Parts 933, 934, 935

[No. 99–22]

RIN 3069–AA85

Mandatory Excess Capital Stock Redemption; Prohibited Stock Dividends

AGENCY: Federal Housing Finance Board.

ACTION: Advance notice of proposed rulemaking (ANPRM).

SUMMARY: The Federal Housing Finance Board (Finance Board) is requesting public comment on how, by what means, and to what extent prohibiting or limiting the ability of the Federal Home Loan Banks (Banks) to pay stock dividends to members would assist the Finance Board in achieving the goal of reducing excess capital stock in the Bank System. Similarly, the Finance Board is requesting comment on whether the Banks should be required to unilaterally redeem members' excess Bank capital stock to help achieve the goal of reducing excess capital stock in the Bank System.

DATES: Comments must be received in writing on or before May 6, 1999.

ADDRESSES: Comments should be mailed to: Elaine L. Baker, Secretary to the Board, Federal Housing Finance Board, 1777 F Street, NW, Washington, DC 20006. Comments will be available for public inspection at this address.

FOR FURTHER INFORMATION CONTACT: Joseph A. McKenzie, Deputy Chief Economist, (202) 408–2845, Office of Policy, Research and Analysis; or Sharon B. Like, Senior Attorney-Advisor, (202) 408–2930, or Jane S. Converse, Senior Attorney-Advisor, (202) 408–2976, Office of General Counsel, Federal Housing Finance Board, 1777 F Street, NW, Washington, DC 20006.

SUPPLEMENTARY INFORMATION:

I. Statutory and Regulatory Background

A. The Banks' Housing Finance and Community Investment Mission

The Federal Home Loan Bank System (Bank System) is comprised of 12 District Banks that are federally chartered and managed by boards of directors that set policies pursuant to regulations established by the Finance Board. As government-sponsored enterprises (GSEs), the Banks act as intermediaries in the capital markets, raising funds on favorable terms and passing the proceeds on to member institutions in the form of advances (loans).

Under section 10(a) of the Federal Home Loan Bank Act (Bank Act) and part 935 of the Finance Board's regulations, the Banks have broad authority to make advances in support of housing finance, which includes community investment finance. *See* 12 U.S.C. 1430 (a), (i), (j); 12 CFR part 935. The Banks also are required to offer two programs, the Affordable Housing Program (AHP) and the Community Investment Program (CIP), to provide subsidized or at-cost advances, respectively, in support of unmet housing finance or economic development credit needs. *See* 12 U.S.C. 1430 (i), (j); 12 CFR parts 960, 970. In addition, section 10(j)(10) of the Bank Act, as implemented by a recently issued Finance Board regulation, authorizes the Banks to establish Community Investment Cash Advance (CICA) Programs for community lending, defined as providing financing for economic development projects for targeted beneficiaries. *See* 12 U.S.C. 1430(j)(10); 63 FR 65536 (Nov. 27, 1998).

The Bank Act provides that the Finance Board's primary duty is to ensure that the Banks operate in a financially safe and sound manner. *See id.* section 1422a(a)(3)(A). The Bank Act further provides that, to the extent consistent with this primary duty, the Finance Board also is responsible for supervising the Banks, ensuring that the Banks carry out their housing finance mission, and ensuring that the Banks remain adequately capitalized and able to raise funds in the capital markets. *See id.* section 1422a(a)(3)(B).

B. Statutory and Regulatory Minimum Capital Stock, Redemption and Dividend Provisions

Under the Bank Act and implementing Finance Board regulations, a member's required minimum capital stock investment in its Bank is the greater of: (1) 1 percent of the member's aggregate unpaid loan principal (defined as the member's home mortgage loans, home purchase contracts, and similar obligations) but not less than $500; (2) 0.3 percent of the member's total assets; or (3) 5 percent of total advances outstanding to the member. In the case of members that are not "qualified thrift lenders" (QTLs), the third option is computed as 5 percent of total advances outstanding to the member divided by the member's "actual thrift investment percentage" (as defined in 12 U.S.C. 1467a(m)). *See* 12 U.S.C. 1426(b)(1), (2), (4); 1430(c), (e)(1), (3); 12 CFR 933.20(a).

Section 6(b)(1) further provides that the Bank shall annually adjust, at such time and in such manner as the Finance Board may by regulations or otherwise prescribe, the amount of capital stock held by each member so that such member shall have invested its minimum capital stock requirement. *See id.* section 1426(b)(1); 12 CFR 933.22(b)(1). Section 6(b)(1) also provides that if the Bank finds that the investment of any member in capital stock is greater than that required under section 6(b), the Bank may, unless prohibited by the Finance Board, in its discretion and upon application of the member, retire the capital stock of such member in excess of the amount so required. *See id.* section 1426(b)(1); 12 CFR 933.22(b)(2).

Section 16(a) of the Bank Act provides, among other things, that dividends may be paid by the Banks with the approval of the Finance Board. *See* 12 U.S.C. 1436(a). Section 6(g) of the Bank Act provides that all stock of any Bank shall share in dividend distributions without preference. *See id.* section 1426(g). Section 934.17 of the Finance Board's regulations on the operations of the Banks implements these provisions by providing, among other things, that dividends may be paid by the Banks in cash or in the form of stock. *See* 12 CFR 932.3; 63 FR 65683, 65687 (Nov. 30, 1998) (redesignating § 932.3 as § 934.17).

Section 935.15(b) of the Finance Board's Advances Regulation provides that "[a] Bank, after providing 15 calendar days advance written notice to a member, may unilaterally redeem that amount of the member's Bank stock that exceeds" the member's minimum statutory and regulatory capital stock requirements. *See* 12 CFR 935.15(b). Section 935.15(b) further provides that the Bank shall have discretion to determine the timing of such unilateral redemption, provided that the Bank's redemption policy is consistent with the requirement in section 7(j) of the Bank Act that the affairs of the Bank shall be administered fairly and impartially and without discrimination in favor of or against member borrowers, *see* 12 U.S.C. section 1427(j).

The Bank Act and § 935.15(b) of the Advances regulation are silent on whether a Bank, in administering its mandatory redemption policy, may impose on or accept from a member a fee in lieu of redeeming the member's excess Bank capital stock.

II. Interim Final Rule Prohibiting Fee In Lieu of Mandatory Excess Capital Stock Redemption—§ 935.15(b)

A. Proposed Fee In Lieu of Mandatory Excess Capital Stock Redemption

A Bank has adopted a policy, effective March 31, 1999, pursuant to which the Bank generally will redeem that amount of each member's capital stock exceeding 115 percent of the member's minimum statutory capital stock requirement, with an option, if lawful and appropriate, for the member to pay a fee to the Bank in lieu of such redemption. The Bank has requested confirmation from the Finance Board that the proposed fee would be authorized under the Bank Act and Finance Board regulations.

As noted above, the Bank Act and § 935.15(b) of the Finance Board's Advances regulation are silent on whether a Bank may impose on or accept from a member a fee in lieu of redeeming the member's excess Bank capital stock. Even though the Bank Act is susceptible to an interpretation that the payment of such fees would be authorized under law, the Finance Board has determined that allowing the payment of such fees would detract from the agency's ongoing efforts and initiatives to ensure that the Banks carry out their housing finance and community investment mission, as discussed below. Therefore, simultaneously with this ANPRM, the Finance Board has adopted a separate interim final rule, published elsewhere in this issue of the **Federal Register**, that prohibits the payment of such fees. Although the interim final rule is effective on the date of publication in the **Federal Register**, the Finance Board is requesting comment on all aspects of that rule during a 30-day comment period.

According to the Bank, the purpose of the Bank's proposed redemption policy is to enhance the Bank's competitiveness vis a vis other Banks by increasing its earnings per share and therefore its dividend rate. The Bank forecasts that mandatory redemption of surplus capital stock or payment of the fee in lieu of redemption would add approximately 12 basis points to the Bank's quarterly dividend. The Bank has a number of large members owned by holding companies that also have subsidiaries located in other Bank districts. The Bank is concerned that these members may discontinue borrowing from the Bank and that their affiliates will become members and borrow from these other Banks because those Banks pay higher dividend rates than the Bank.

Under the Bank's proposed policy, the Bank would unilaterally redeem "surplus" capital stock (defined by the Bank as capital stock in excess of 115 percent of minimum capital stock requirements but not less than $100,000) held by all members, unless the member pays a fee to the Bank, on a monthly basis, to continue holding its surplus capital stock. The 115 percent threshold was adopted to allow membership flexibility for future borrowings from the Bank and absorb the stock dividends. The $100,000 minimum was adopted in order to reduce the operational impact of the redemption policy on smaller members. The Bank states that the fee, which is 1.65 percent of the value of a member's surplus capital stock, was designed to make the Bank financially indifferent to a member's decision to continue to hold surplus capital stock. The fee income paid to the Bank would act as an offset to the dividend dilution caused by those members holding surplus capital stock.

As of August 31, 1998, the Bank had excess capital stock of $554 million, or 14 percent of its total capital of $3.9 billion. The Bank's total "surplus" capital stock, as of August 31, 1998, was $312 million. One mandatory thrift member held 70 percent of the Bank's total surplus capital stock as of that date. The Bank has excess capital stock, in part, because it pays members quarterly stock dividends rather than cash dividends. The Bank has indicated that paying a stock dividend rather than a cash dividend provides tax benefits for its members, and the Bank intends to continue paying stock dividends for this reason.

B. The Banks Are Significantly Overcapitalized

By many standards, the 12 Banks are significantly overcapitalized. As of December 31, 1998, the 12 Banks had total capital stock of $22.8 billion, with $2.8 billion, or 12.6 percent, of this amount constituting capital stock in excess of the Banks' statutory minimum capital stock requirements. On a risk-adjusted basis (using the current risk-based standards applicable to federally regulated depositories), the total capital is estimated at 22 percent of the Banks' total assets, a level far above that of large commercial banks and other housing GSEs.[1] The highest percentage of excess capital stock to total capital stock at a Bank was 30.1 percent, and the lowest was 1.2 percent.

Even without excess capital stock in the Bank System, *i.e.*, capital stock at only the statutorily required minimum stock levels, the Banks would be significantly overcapitalized. A redemption of all excess capital stock in the Bank System would reduce the Banks' risk-based capital ratio to approximately 19.2 percent.

Members have excess capital stock holdings, in part, because they receive stock dividends from the Banks. Currently, five Banks pay stock dividends, and seven Banks pay cash dividends. The Internal Revenue Service has ruled that the issuance of stock dividends by the Banks is not taxable income for members. *See* IRS Rev. Rul. 90–98, November 26, 1990, 1990–48–I.R.B.4, 26 CFR 1.305–2. However, cash dividends and redemptions of stock received as dividends generally are taxable income to members. *See* 26 U.S.C. 301(c), 302(a). Because of the deferred tax liability associated with stock dividends, many members may have allowed their stock dividends to accumulate rather than request redemption of their stock, as is their option under the Bank Act. *See* 12 U.S.C. 1426(b)(1). The members' holdings of excess capital stock are concentrated, with the largest holder of excess capital stock having 9 percent of the Bank System's total excess capital stock. The top five holders of excess capital stock represent 19 percent of the Bank System's total excess capital stock.

Excess capital stock holdings also arise where members' total assets, home mortgage loans or outstanding advances have decreased since their last capital stock purchases, or where members have changed to QTL status, thereby reducing their advances-based capital stock requirement. Members may continue to hold some excess stock in order to minimize the transaction costs associated with capital stock purchases that would be required if the member's levels of total assets, home mortgage loans or outstanding advances fluctuate.

C. The Banks' Arbitrage Activities With Non-Core Mission Assets Detract From the Mission of the Banks To Promote Housing Finance and Community Investment

The Banks pay dividends on all capital stock, including excess capital

[1] A depository institution generally is deemed to be "well-capitalized" if it has a total risk-based capital rtio of 10 percent or greater, a Tier 1 risk-based capital ratio of 6 percent or greater, and a leverage ratio of 5 percent or greater. *See* 12 CFR 6.4(b)(1), 208.33(b)(1), 325.103(b)(1), 565.4(b)(1). The minimum capital requirement for the other housing GSEs—the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation—generally is 2.5 percent of on-balance sheet assets plus .45 percent of off-balance sheet obligations. *See* 12 U.S.C. 4612(a).

stock. Since the average Bank System dividend rate of 6.64 percent exceeds the rate of return a Bank can earn by investing members' capital in core mission assets, a Bank must leverage its excess capital stock to pay dividends. The leveraging cannot involve advances, since they are already capitalized by required capital stock. Thus, the Banks must leverage excess capital stock by investing in non-core mission assets in order to generate sufficient earnings to pay a uniform dividend on all capital stock, including the excess capital stock.

There is a strong correlation between the amount of excess capital stock at a Bank and the level of that Bank's non-core mission assets. In demonstrating the correlation between excess capital stock and non-mission-related assets, the Finance Board looked at the concept of "core mission assets," defined as Bank advances, which include AHP advances and subsidies, CIP advances, community lending advances, Mortgage Partnership Finance assets, and other assets generated for the Banks by members and nonmember borrowers. Core mission assets do not include mortgage-backed securities (MBS) and money market instruments, which are not generated for the Banks by members or nonmember borrowers and their purchase by the Banks does not materially facilitate housing and community lending by members or nonmember borrowers. As demonstrated in the following table, the Banks with the highest levels of excess capital stock also have the lowest ratios of core mission assets to consolidated obligations:

EXCESS CAPITAL STOCK AND CORE MISSION ASSETS

Bank	Core mission assets to consolidated obligations (%)	Descending rank	Excess capital stock to total capital stock (%)	Rank
A	86.5	1	10.4	7
B	85.1	2	1.0	1
C	81.8	3	10.2	6
D	81.3	4	4.2	2
E	80.7	5	3.0	3
F	79.7	6	7.8	4
G	70.5	7	9.3	5
H	69.4	8	17.1	10
I	65.4	9	26.8	11
J	63.8	10	15.2	8
K	59.9	11	30.1	12
L	58.6	12	16.2	9
Bank System	75.8	.....	12.6	.....

Approximately 75.8 percent of total Bank System consolidated obligations are invested in core mission assets.

The four Banks with the highest ratios of core mission assets to consolidated obligations had ratios of excess capital stock to total capital stock of 10.4 percent, 1.2 percent, 10.4 percent, and 4.2 percent. The five Banks with the lowest ratios of core mission assets to consolidated obligations had the highest ratios of excess capital stock to total capital stock. Of these five, three pay stock dividends, and one pays the highest dividend in the Bank System. At present, core mission assets are no more than 86.5 percent of consolidated obligations at any Bank.

The Finance Board believes that the Banks' arbitrage activities for the purpose of generating sufficient earnings to pay adequate dividends on excess capital stock detract from the mission of the Banks to promote housing finance and community investment, by encouraging activities not related to the Banks' mission and thereby detracting from the financial incentive to engage in mission-related activity. While the Banks' interest in paying a reasonable dividend to members is a legitimate business consideration, and it is appropriate to redeem excess capital stock to assist in this purpose, allowing members to pay a fee in lieu of such mandatory redemption would perpetuate excess capital stock at the Banks and the Banks' continued need to invest in non-core mission assets to pay dividends on such excess stock.

D. Amendment of Advances Regulation To Prohibit Payment of Fee In Lieu of Mandatory Excess Capital Stock Redemption—§ 935.15(b)

For the reasons discussed above, the interim final rule adopted by the Finance Board and published elsewhere in this issue of the **Federal Register** amends § 935.15(b) of the Finance Board's Advances regulation to prohibit the Banks from imposing on or accepting from a member a fee in lieu of mandatory redemption of the member's excess capital stock.

III. Issues for Consideration

Reducing Levels of Excess Capital Stock By Prohibiting Payment of Stock Dividends and Requiring Unilateral Redemption of Excess Capital Stock—§§ 934.17, 935.15(b)

The Finance Board believes that the Banks' levels of excess capital stock should be significantly reduced. As discussed above, the Banks are substantially overcapitalized and, thus, reduction in the amount of their excess capital would not adversely affect the safety and soundness of the Banks. The statutory minimum capital stock requirements guarantee that a Bank's capital stock will grow as the scope of its operations increases.

As discussed above, excess capital stock requires the Banks to generate earnings, through investments in non-core mission assets, in order to pay dividends on such stock, which is not needed to capitalize advances and other core mission assets. The Banks' arbitrage activities for this purpose detract from the mission of the Banks to promote housing finance and community investment, by encouraging activities not related to the Banks' mission and thereby detracting from the financial incentive to engage in mission-related activity. A reduction in the amount of excess capital stock would reduce the amount of capital stock on which dividends must be paid, thereby reducing the level of arbitrage activities conducted in order to generate earnings to pay dividends on such capital stock.

One cause of the Banks' excess capital stock levels is the payment by some Banks of stock dividends rather than

cash dividends to members. Prohibiting the Banks from paying stock dividends would help reduce excess capital stock levels in the Bank System and the consequent arbitrage activities.

Another way to reduce excess capital stock in the Bank System and thereby reduce arbitrage activities in non-core mission assets by the Banks, would be to require the Banks to unilaterally redeem members' excess capital stock. In the past year, five Banks unilaterally redeemed their excess capital stock expressly for the purpose of reducing the amount of their money market investments.

The Finance Board recognizes that payment of stock dividends has Federal tax advantages to members over payment of cash dividends, and that excess capital stock redemptions incur Federal tax liabilities for members. However, the private financial advantage to members from minimizing their taxes through the payment of stock dividends, while having no safety and soundness implications for the Banks, ultimately detracts from the Banks' housing finance and community investment mission and serves no other legitimate business purpose for the Banks.

Accordingly, the Finance Board is requesting comment on how, by what means, and to what extent prohibiting or limiting the Banks' ability to pay stock dividends to members would assist the Finance Board in achieving the goal of reducing excess capital stock in the Bank System. *See* 12 CFR 934.17. Similarly, the Finance Board is requesting comment on whether the Banks should be required to unilaterally redeem members' excess Bank capital stock to help achieve the goal of reducing excess capital stock in the Bank System. *See id.* § 935.15(b). The Finance Board specifically requests comment on whether a member should be allowed to maintain some amount of excess capital stock, *e.g.*, 10 percent of its total minimum capital stock requirement, in anticipation of fluctuations in its assets or outstanding advances that may affect its minimum capital stock requirement. The Finance Board also requests comment on what the timing of unilateral redemptions should be, *e.g.*, no less frequently than quarterly, semi-annually, or annually at the time of the Banks' adjustments of the members' minimum capital stock requirements? The Finance Board also requests comment on whether the currently required 15 days' notice to members before redemption should be retained or modified. In addition, the Finance Board requests comment on whether § 933.23 of the Finance Board's membership regulation, which permits members to purchase excess capital stock if approved by the Bank, should be removed or modified. *See id.* § 933.23.

In the alternative, the Finance Board requests comment on whether the Banks should be permitted to hold excess capital stock, but be prohibited from paying dividends on such stock, as a way to reduce the Banks' arbitrage activities with non-core mission assets. The Finance Board also requests comment on whether and to what extent excess capital stock holdings could be allowed so long as they are not being leveraged in the consolidated obligations market. In addition, the Finance Board requests comment on whether excess capital stock holdings should be permitted for a limited period of time, such as up to six months, where the member indicates that it intends to increase its advance borrowings during that time period.

Comments received in response to this ANPRM will be reviewed and considered by the Finance Board in preparation for further action in connection with the issues discussed in this ANPRM.

Dated: March 19, 1999.

By the Board of Directors of the Federal Housing Finance Board.

Bruce A. Morrison,

Chairman.

[FR Doc. 99–8358 Filed 4–5–99; 8:45 am]

BILLING CODE 6725–01–P

VOL
64
ISS
65
AP
6
1999
UMI

Rea

CUSTO

Federal
General
aids

Laws

Presiden
Executive
The Unit

Other Se
Electroni
Privacy A
Public La
TTY for t

ELECTR

World W

Full text
publicati

Federal
Inspectio

E-mail

PENS (Pu
service th
Laws. To

with the

Use listp
PENS. W

Referenc
Federal

The Fede
regulatio

FEDERA

15633–15
15915–16
16333–16

Reader Aids

Federal Register

Vol. 64, No. 65

Tuesday, April 6, 1999

CUSTOMER SERVICE AND INFORMATION

Federal Register/Code of Federal Regulations	
General Information, indexes and other finding aids	202–523–5227
Laws	523–5227
Presidential Documents	
Executive orders and proclamations	523–5227
The United States Government Manual	523–5227
Other Services	
Electronic and on-line services (voice)	523–4534
Privacy Act Compilation	523–3187
Public Laws Update Service (numbers, dates, etc.)	523–6641
TTY for the deaf-and-hard-of-hearing	523–5229

ELECTRONIC RESEARCH

World Wide Web

Full text of the daily Federal Register, CFR and other publications:

http://www.access.gpo.gov/nara

Federal Register information and research tools, including Public Inspection List, indexes, and links to GPO Access:

http://www.nara.gov/fedreg

E-mail

PENS (Public Law Electronic Notification Service) is an E-mail service that delivers information about recently enacted Public Laws. To subscribe, send E-mail to

listproc@lucky.fed.gov

with the text message:

subscribe publaws-l <firstname> <lastname>

Use listproc@lucky.fed.gov only to subscribe or unsubscribe to PENS. We cannot respond to specific inquiries at that address.

Reference questions. Send questions and comments about the Federal Register system to:

info@fedreg.nara.gov

The Federal Register staff cannot interpret specific documents or regulations.

FEDERAL REGISTER PAGES AND DATES, APRIL

15633–15914..... 1
15915–16332..... 2
16333–16600..... 5

CFR PARTS AFFECTED DURING APRIL

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Executive Orders:
11223 (Amended by EO 13118).....16595
11269 (Amended by EO 13118).....16595
11958 (Amended by EO 13118).....16595
12163 (Amended by EO 13118).....16595
12188 (Amended by EO 13118).....16595
12260 (Amended by EO 13118).....16595
12293 (Amended by EO 13118).....16595
12301 (Amended by EO 13118).....16595
12599 (Amended by EO 13118).....16595
12703 (Amended by EO 13118).....16595
12884 (Amended by EO 13118).....16595
12981 (Amended by EO 13117).....16391
13116.....16333
13117.....16391
Memorandums:
March 23, 1999 (Amended by EO 13118).....16595
Administrative Orders:
Presidential Determination No. 99-18 of March 25, 1999.....16337

5 CFR

532.....15915
870.....00000
890.....15633
1200.....15916

7 CFR

301.....15916
1753.....00000
Proposed Rules:
28.....15937
340.....16364
905.....15634
944.....15634
1000.....16026
1001.....16026
1002.....16026
1004.....16026
1005.....16026
1006.....16026
1007.....16026
1012.....16026
1013.....16026
1030.....16026
1032.....16026
1033.....16026
1036.....16026
1040.....16026
1044.....16026
1046.....16026
1049.....16026
1050.....16026
1064.....16026
1065.....16026
1068.....16026
1076.....16026
1079.....16026
1106.....16026
1124.....16026
1126.....16026
1131.....16026
1134.....16026
1135.....16026
1137.....16026
1138.....16026
1139.....16026

9 CFR

1.....15918
3.....15918
Proposed Rules:
93.....00000
201.....15938

10 CFR

2.....15636, 15920
10.....15636
11.....15636
25.....15636
95.....15636
Proposed Rules:
170.....15876
171.....15876

12 CFR

213.....00000
226.....00000
330.....15653
611.....00000
620.....00000
935.....00000
Proposed Rules:
933.....00000
934.....00000
935.....00000

13 CFR

Proposed Rules:
120.....15942
121.....15708

14 CFR

39.....15657, 15659, 15661, 15669, 15920, 16339, 00000
71.....15673, 15674, 15675, 15676, 15678, 15679, 16024,

16340, 16341, 16342, 16343, 16344
91 15912

Proposed Rules:
39 ..... 16364, 16366, 00000
71 ..... 15708, 16024, 16368, 16369, 16370, 16371
119 16298
121 16298
129 16298
135 16298
183 16298

17 CFR
275 15680
279 15680

19 CFR
178 00000
192 00000
10 16345
18 16345
113 16345
178 16345

Proposed Rules:
146 15873

21 CFR
26 16347
510 15683
520 ..... 15683, 15684
522 ..... 15683, 15685
558 15683

Proposed Rules:
1 15944
101 15948

22 CFR
Ch. II 15685
Ch. VI 15686

24 CFR
100 16324

26 CFR
1 ..... 15686, 15687
7 15687
31 15687
301 00000
602 ..... 15687, 15688, 15873

Proposed Rules:
1 16372

30 CFR

Proposed Rules:
206 15949

33 CFR
100 16348
117 ..... 16350, 00000
165 ..... 16348, 00000

Proposed Rules:
175 15709
177 15709
179 15709
181 15709
183 15709

40 CFR
52 ..... 15688, 15922
90 16526
261 00000
300 ..... 15926, 16351

Proposed Rules:
52 ..... 15711, 15949, 00000
70 00000
82 16373

41 CFR
Ch. 301 16352
60-250 15690
60-999 15690

45 CFR
260 00000
261 00000
262 00000
263 00000
264 00000
265 00000

Proposed Rules:
1635 16383

46 CFR

Proposed Rules:
10 15709
15 15709
24 15709
25 15709
26 15709
28 15709
70 15709
169 15709
175 15709

47 CFR
69 16353

Proposed Rules:
0 16388
1 00000
2 00000
25 00000
69 16389
73 ..... 15712, 15713, 15714, 15715, 16388, 16396
76 16388

48 CFR
701 00000
703 00000
715 00000
731 00000
752 00000
909 00000
970 00000
1333 00000

49 CFR
195 15926
571 16358
581 16359

Proposed Rules:
578 00000

50 CFR
17 15691
648 ..... 15704, 16361, 16362
679 ..... 16361, 16362, 00000

Proposed Rules:
17 16397
223 ..... 16396, 16397
224 16397
226 16397
600 16414
648 16417

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT APRIL 6, 1999

ENVIRONMENTAL PROTECTION AGENCY

Hazardous waste:
- Identification and listing—
  - Exclusions; published 4-6-99

FEDERAL HOUSING FINANCE BOARD

Federal home loan bank system:
- Mandatory excess capital stock redemption; prohibition of fee payment in lieu of stock redemption; published 4-6-99

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT

Agricultural Marketing Service

Avocados grown in—
- South Florida; comments due by 4-16-99; published 3-17-99

Prunes (dried) produced in California; comments due by 4-15-99; published 1-25-99

AGRICULTURE DEPARTMENT

Farm Service Agency

Program regulations:
- Preferred lender program implementation and guaranteed loan regulations streamlining; comments due by 4-13-99; published 2-12-99

AGRICULTURE DEPARTMENT

Rural Business-Cooperative Service

Program regulations:
- Preferred lender program implementation and guaranteed loan regulations streamlining; comments due by 4-13-99; published 2-12-99

AGRICULTURE DEPARTMENT

Rural Housing Service

Program regulations:
- Preferred lender program implementation and guaranteed loan regulations streamlining; comments due by 4-13-99; published 2-12-99

AGRICULTURE DEPARTMENT

Rural Utilities Service

Program regulations:
- Preferred lender program implementation and guaranteed loan regulations streamlining; comments due by 4-13-99; published 2-12-99

COMMERCE DEPARTMENT

Census Bureau

Foreign trade statistics:
- Automated Export System; shipper's export data; electronic filing; comments due by 4-13-99; published 2-12-99

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Fisheries assistance programs; fishing capacity reduction program; comments due by 4-12-99; published 2-11-99

Fishery conservation and management:
- Northeastern United States fisheries—
  - Northeast multispecies; comments due by 4-13-99; published 3-29-99

DEFENSE DEPARTMENT

Federal Acquisition Regulation (FAR):
- Progress payments and related financing policies; comments due by 4-12-99; published 2-10-99

EDUCATION DEPARTMENT

Special education and rehabilitative services:
- Infants and toddlers with disabilities early intervention program; advice and recommendations request; comments due by 4-12-99; published 3-12-99

ENVIRONMENTAL PROTECTION AGENCY

Air pollutants, hazardous; national emission standards:
- Secondary aluminum production; comments due by 4-12-99; published 2-11-99

Air pollution control; new motor vehicles and engines:
- New nonroad spark-ignition engines rated above 19 kilowatts and new land-based recreational spark-ignition engines; comments due by 4-12-99; published 2-8-99

Air quality implementation plans; approval and promulgation; various States:
- Delaware; comments due by 4-12-99; published 3-11-99
- Iowa; comments due by 4-12-99; published 3-11-99
- Kentucky; comments due by 4-14-99; published 3-15-99

Air quality implementation plans; approval and promulgation; various States; air quality planning purposes; designation of areas:
- Ohio; comments due by 4-16-99; published 3-17-99

Air quality implementation plans; approval and promulgation; various States:
- Oregon; comments due by 4-14-99; published 3-15-99
- Texas; comments due by 4-14-99; published 3-15-99

Hazardous waste:
- Mixed low-level radioactive waste; storage, treatment, and disposition; comments due by 4-15-99; published 3-1-99

FEDERAL COMMUNICATIONS COMMISSION

Common carrier services:
- Inter-carrier compensation for Internet service provider (ISP)-bound traffic; comments due by 4-12-99; published 3-24-99

Radio broadcasting:
- Broadcast and cable EEO rules and policies; extension; comments due by 4-15-99; published 4-5-99
- Low power FM radio service; creation and operation; comments due by 4-12-99; published 2-16-99

FEDERAL HOUSING FINANCE BOARD

Federal home loan bank system:
- Consolidated obligations; joint and several liability allocation; comments due by 4-12-99; published 2-11-99

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

Thrift savings plan:
- Death benefits; transfer into G Fund after participant's death; comments due by 4-12-99; published 2-11-99

GENERAL SERVICES ADMINISTRATION

Federal Acquisition Regulation (FAR):
- Progress payments and related financing policies; comments due by 4-12-99; published 2-10-99

Federal property management:
- Purchase or lease determinations guidelines and use of private inspection, testing, and grading services; comments due by 4-12-99; published 2-10-99

Federal travel:
- Travel and relocation expenses test programs; comments due by 4-12-99; published 2-10-99

HEALTH AND HUMAN SERVICES DEPARTMENT

Children and Families Administration

Personal Responsibility and Work Opportunity Reconciliation Act of 1996; implementation:
- Child support enforcement program; revision or elimination of obsolete or inconsistent provisions; comments due by 4-12-99; published 2-9-99

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration

Food for human consumption:
- Food labeling—
  - Nutrient content claims; "healthy" definition; partial stay extension; comments due by 4-15-99; published 3-16-99

Human drugs and biological products:
- In vivo radiopharmaceuticals used for diagnosis and monitoring—
  - Evaluation and approval; developing medical imaging drugs and biologics; guidance availability; comments due by 4-14-99; published 2-16-99

HEALTH AND HUMAN SERVICES DEPARTMENT

Health Care Financing Administration

Medicare:
- Outpatient diabetes self-management training services; expanded coverage; comments due by 4-12-99; published 2-11-99

HOUSING AND URBAN DEVELOPMENT DEPARTMENT
Fair housing:
Fair Housing Act violations; civil penalties; comments due by 4-12-99; published 2-10-99

INTERIOR DEPARTMENT
Minerals Management Service
Royalty management:
Audit functions; delegation to States; comments due by 4-12-99; published 2-10-99
Federal and Indian leases; oil valuation; comments due by 4-12-99; published 3-12-99

INTERIOR DEPARTMENT
Reclamation Bureau
Farm operation in excess 960 acres, information requirements; and formerly excess land eligibility to receive non-full cost irrigation water; comments due by 4-12-99; published 3-11-99

INTERIOR DEPARTMENT
Surface Mining Reclamation and Enforcement Office
Permanent program and abandoned mine land reclamation plan submissions:
Pennsylvania; comments due by 4-12-99; published 3-12-99
Surface coal mining and reclamation operations:
Ownership and control mining operations; definitions, permit requirements, enforcement actions, etc.; comments due by 4-15-99; published 3-31-99

JUSTICE DEPARTMENT
Drug Enforcement Administration
Records, reports, and exports of listed chemicals:
Chemical mixtures that contain regulated chemicals; comments due by 4-16-99; published 2-12-99

JUSTICE DEPARTMENT
Immigration and Naturalization Service
Immigration:
Aliens—
Employment eligibility verification; acceptable receipts; comments due by 4-12-99; published 2-9-99

JUSTICE DEPARTMENT
Illegal Immigration Reform and Immigrant Responsibility Act and Debt Collection Improvement Act; implementation:
Employer sanctions, unfair immigration-related employment practice cases, and immigration-related document fraud; comments due by 4-13-99; published 2-12-99

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION
Federal Acquisition Regulation (FAR):
Progress payments and related financing policies; comments due by 4-12-99; published 2-10-99

SECURITIES AND EXCHANGE COMMISSION
Securities and investment companies:
Electronic Data Gathering, Analysis, and Retrieval (EDGAR) system modernization; comments due by 4-15-99; published 3-16-99
Securities:
International disclosure standards; foreign private issuers conformance; comments due by 4-12-99; published 2-9-99
Registered broker dealers and transfer agents and Year 2000 compliance; operational capability requirements; comments due by 4-12-99; published 3-11-99

TRANSPORTATION DEPARTMENT
Coast Guard
Drawbridge operations:
Florida; comments due by 4-12-99; published 2-9-99
Massachusetts; comments due by 4-14-99; published 3-15-99
Ports and waterways safety:
Hudson River, NY; safety zone; comments due by 4-13-99; published 2-12-99

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airworthiness directives:
Fairchild; comments due by 4-12-99; published 2-18-99
Fokker; comments due by 4-14-99; published 3-15-99
McDonnell Douglas; comments due by 4-16-99; published 3-2-99
Rolls-Royce Ltd.; comments due by 4-12-99; published 2-10-99
Texton Lycoming; comments due by 4-12-99; published 2-10-99
Class E airspace; comments due by 4-15-99; published 3-8-99
Restricted areas; comments due by 4-12-99; published 2-26-99

TRANSPORTATION DEPARTMENT
National Highway Traffic Safety Administration
Fuel economy standards:
Passenger automobiles; low volume manufacturer exemptions; comments due by 4-12-99; published 3-11-99

TREASURY DEPARTMENT
Alcohol, Tobacco and Firearms Bureau
Alcoholic beverages:
Distilled spirits, wine, and malt beverages; labeling and advertising—
Fill standards; comments due by 4-12-99; published 2-9-99

TREASURY DEPARTMENT
Customs Service
Automated Export System:
Shipper's export declarations and outbound vessel manifest information; electronic transmission; cross reference to Census Bureau regulations; comments due by 4-13-99; published 2-12-99

TREASURY DEPARTMENT
Internal Revenue Service
Income taxes:
Group-term life insurance coverage costs; uniform premium table; comments due by 4-13-99; published 1-13-99
Procedure and administration:
Timely mailing treated as timely filing/electronic postmark; comments due by 4-15-99; published 1-15-99

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–523–6641. This list is also available online at http://www.nara.gov/fedreg.

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at http://www.access.gpo.gov/nara/index.html. Some laws may not yet be available.

H.R. 1212/P.L. 106–7

To protect producers of agricultural commodities who applied for a Crop Revenue Coverage PLUS supplemental endorsement for the 1999 crop year. (Apr. 1, 1999; 113 Stat. 12)

Last List April 2, 1999.

Public Laws Electronic Notification Service (PENS)

PENS is a free electronic mail notification service of newly enacted public laws. To subscribe, send E-mail to **listproc@lucky.fed.gov** with the text message:

subscribe PUBLAWS-L Your Name.

Note: This service is strictly for E-mail notification of new public laws. The text of laws is not available through this service. **PENS** cannot respond to specific inquiries sent to this address.

hed 1-

AWS

t of
rrent
hich
laws. It
nction
Laws
2–523–

://

ral
ordered
l
he
uments,
ing
C 20402
). The

et from

ara/
may

of
s who
venue
emental
999
99; 113

ge.

ronic
e

onic mail
newly
To
l to
w with

-L Your

strictly
of new
of laws
h this
respond
nt to

VOL
64
ISS
65
AP
6
1999
UMI

Printed on recycled paper

VOL
64
ISS
66
AP
7
1999
UMI

4–7–99
Vol. 64

UMI

THE PAPER AND INK USED IN THE ORIGINAL PUBLICATION MAY AFFECT THE QUALITY OF THE MICROFORM EDITION.

United S
Governm
Printing
SUPERINTEN
OF DOCUME
Washington, D
OFFICIAL BU
Penalty for pri

4–7–99
Vol. 64 No. 66

federal register

Wednesday
April 7, 1999

United States
Government
Printing Office
SUPERINTENDENT
OF DOCUMENTS
Washington, DC 20402

OFFICIAL BUSINESS
Penalty for private use, $300

PERIODICALS
Postage and Fees Paid
U.S. Government Printing Office
(ISSN 0097–6326)

**********3-DIGIT 481
A FR UMI 346U DEC 99 R
UMI
PERIODICALS CHECK IN
PO BOX 1346
ANN ARBOR MI 48106
101

VOL
64
ISS
66
AP
7
1999
UMI

4–7–99
Vol. 64
Pages

4–7–99
Vol. 64 No. 66
Pages 16797–17078

Federal Register

Wednesday
April 7, 1999

Briefings on how to use the Federal Register
For information on briefings in Washington, DC, see announcement on the inside cover of this issue.

The **FEDERAL REGISTER** is published daily, Monday through Friday, except official holidays, by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). The Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 is the exclusive distributor of the official edition.

The **Federal Register** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders, Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress, and other Federal agency documents of public interest.

Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless the issuing agency requests earlier filing. For a list of documents currently on file for public inspection, see http://www.nara.gov/fedreg.

The seal of the National Archives and Records Administration authenticates the Federal Register as the official serial publication established under the Federal Register Act. Under 44 U.S.C. 1507, the contents of the **Federal Register** shall be judicially noticed.

The **Federal Register** is published in paper and on 24x microfiche. It is also available online at no charge as one of the databases on GPO Access, a service of the U.S. Government Printing Office.

The online edition of the **Federal Register** is issued under the authority of the Administrative Committee of the Federal Register as the official legal equivalent of the paper and microfiche editions (44 U.S.C. 4101 and 1 CFR 5.10). It is updated by 6 a.m. each day the **Federal Register** is published and it includes both text and graphics from Volume 59, Number 1 (January 2, 1994) forward.

GPO Access users can choose to retrieve online **Federal Register** documents as TEXT (ASCII text, graphics omitted), PDF (Adobe Portable Document Format, including full text and all graphics), or SUMMARY (abbreviated text) files. Users should carefully check retrieved material to ensure that documents were properly downloaded.

On the World Wide Web, connect to the **Federal Register** at http://www.access.gpo.gov/nara. Those without World Wide Web access can also connect with a local WAIS client, by Telnet to swais.access.gpo.gov, or by dialing (202) 512-1661 with a computer and modem. When using Telnet or modem, type swais, then log in as guest with no password.

For more information about GPO Access, contact the GPO Access User Support Team by E-mail at gpoaccess@gpo.gov; by fax at (202) 512–1262; or call (202) 512–1530 or 1–888–293–6498 (toll free) between 7 a.m. and 5 p.m. Eastern time, Monday–Friday, except Federal holidays.

The annual subscription price for the **Federal Register** paper edition is $555, or $607 for a combined **Federal Register**, Federal Register Index and List of CFR Sections Affected (LSA) subscription; the microfiche edition of the **Federal Register** including the Federal Register Index and LSA is $220. Six month subscriptions are available for one-half the annual rate. The charge for individual copies in paper form is $8.00 for each issue, or $8.00 for each group of pages as actually bound; or $1.50 for each issue in microfiche form. All prices include regular domestic postage and handling. International customers please add 25% for foreign handling. Remit check or money order, made payable to the Superintendent of Documents, or charge to your GPO Deposit Account, VISA, MasterCard or Discover. Mail to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954.

There are no restrictions on the republication of material appearing in the **Federal Register.**

How To Cite This Publication: Use the volume number and the page number. Example: 64 FR 12345.

Printed on recycled paper.

SUBSCRIPTIONS AND COPIES

PUBLIC

Subscriptions:

Paper or fiche	202–512–1800
Assistance with public subscriptions	512–1806
General online information	202–512–1530; 1–888–293–6498

Single copies/back copies:

Paper or fiche	512–1800
Assistance with public single copies	512–1803

FEDERAL AGENCIES

Subscriptions:

Paper or fiche	523–5243
Assistance with Federal agency subscriptions	523–5243

FEDERAL REGISTER WORKSHOP

THE FEDERAL REGISTER: WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: Sponsored by the Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WASHINGTON, DC

WHEN: April 20, 1999 at 9:00 am.

WHERE: Office of the Federal Register
Conference Room
800 North Capitol Street, NW.
Washington, DC
(3 blocks north of Union Station Metro)

RESERVATIONS: 202–523–4538

Contents

Federal Register
Vol. 64, No. 66
Wednesday, April 7, 1999

Agriculture Department
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 16897–16898

Air Force Department
NOTICES
Meetings:
Scientific Advisory Board, 16946
Patent licenses; non-exclusive, exclusive, or partially exclusive:
Air Force Research Laboratory, Kirkland AFB, NM, 16946–16947

Antitrust Division
NOTICES
Meetings:
International Competition Policy Advisory Committee, 16999

Army Department
NOTICES
Privacy Act:
System of records, 16947–16948

Centers for Disease Control and Prevention
NOTICES
Committees; establishment, renewal, termination, etc.:
Interagency Committee on Smoking and Health, 16974
Grants and cooperative agreements; availability, etc.:
Pathogenesis of measles infections; development of vaccines, 16974–16976

Coast Guard
RULES
Regattas and marine parades:
Christiansted Harbor, St. Croix, swimming event, 16812–16813
City of Fort Lauderdale Annual Air and Sea Show, 16813–16814
NOTICES
Water pollution control:
Clean Water Act; class II administrative penalty assessments—
Ashland, Inc., 17053–17054
Water polution control:
Clean Water Act; class II administrative penalty assessments—
TransAmerican Refining Corp., 17054–17055

Commerce Department
See Export Administration Bureau
See International Trade Administration
See National Oceanic and Atmospheric Administration
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 16898
Voting age population; 1998 census count, 16898–16899

Customs Service
PROPOSED RULES
Customs bonded wharehouses:
Inventory reports filing, 16868–16870

Defense Department
See Air Force Department
See Army Department
NOTICES
Arms sales notification; transmittal letter, etc., 16938–16945
Grants and cooperative agreements; availability, etc.:
Ecology and oceanography of harmful algal blooms project, 16930–16937

Employment and Training Administration
NOTICES
Adjustment assistance:
Great Northern Paper, 17015–17016
Louisiana Pacific, et al., 17016–17017
Ralston Purina, 17017
Timken Co., et al., 17017–17019
Twinstar Semiconductor, 17019

Energy Department
See Federal Energy Regulatory Commission
NOTICES
Environmental statements; availability, etc.:
Idaho National Engineering and Environmental Laboratory, ID; record of decision, 16948–16952

Environmental Protection Agency
RULES
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
Avermectin, 16843–16850
Propamocarb hydrochloride, 16840–16843
Tebufenozide, 16850–16856
Trichloderma hazianum KRL-AG2(ATCC No. 20847) etc., 16856–16860
PROPOSED RULES
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
Dalapon, etc., 16874–16880
NOTICES
Agency information collection activities:
Proposed collection; comment request, 16960–16961
Submission for OMB review; comment request, 16961–16962
Grants and cooperative agreements; availability, etc.:
Ecology and oceanography of harmful algal blooms project, 16930–16937
Pesticide programs:
Food Quality Protection Act—
Choosing a Percentile of Acute Dietary Exposure as a Threshold of Regulatory Concern; policy issues; comment request, 16962–16965
Pesticide registration, cancellation, etc.:
AgrEvo USA Co., 16965–16967
Pesticides; experimental use permits, etc.:
Fleming Laboratories, Inc., 16967

Reports and guidance documents; availability, etc.:
Data for refining anticipated residue estimates used in dietary risk assessment for organophosphate pesticides, 16967–16970

Executive Office of the President
See National Drug Control Policy Office
See Presidential Documents
See Trade Representative, Office of United States

Export Administration Bureau
NOTICES
Export privileges, actions affecting:
Yasutomi, Kiyoyuki, 16899

Federal Aviation Administration
RULES
Airworthiness directives:
Bell, 16801–16803
Boeing, 16810–16812
Bombardier, 16803–16805
Eurocopter France, 16808–16810
McDonald Douglas, 16805–16808
NOTICES
Agency information collection activities:
Proposed collection; comment request, 17055–17056
Passenger facility charges; applications, etc.:
MBS International Airport, MI, 17056

Federal Communications Commission
PROPOSED RULES
Common carrier services:
Satellite communications—
2 GHz band; policies and services rules establishment, 16880–16882
NOTICES
Committees; establishment, renewal, termination, etc.:
Technological Advisory Council, 16970
Meetings:
Technological Advisory Council, 16970–16971

Federal Energy Regulatory Commission
NOTICES
Electric rate and corporate regulation filings:
Pacific Gas & Electric Co., et al., 16955–16957
Environmental statements; availability, etc.:
ANR Pipeline Co., 16957–16958
Bonners Ferry, ID, 16958
Hydroelectric applications, 16959
Meetings:
Puget Sound Energy, Inc.; hydroelectric settlement, 16960
Applications, hearings, determinations, etc.:
AES Eastern Energy, L.P., et al., 16952–16953
American Electric Power Co. et al., 16953
Columbia Gas Transmission Corp., 16953
Koch Gateway Pipeline Co., 16953
Mississippi River Transmission Corp., 16953–16954
Montana Power Co., 16954
Northern Natural Gas Co., 16954
Northwest Pipeline Corp., 16954–16955

Federal Highway Administration
PROPOSED RULES
Right-of-way and environment:
Mitigation of impacts to wetlands, 16870–16874

Federal Reserve System
NOTICES
Banks and bank holding companies:
Change in bank control, 16971
Formations, acquisitions, and mergers, 16971
Meetings; Sunshine Act, 16971

Federal Transit Administration
PROPOSED RULES
Major capital investment projects, 17061–17071

Fish and Wildlife Service
PROPOSED RULES
Endangered and threatened species:
Rhadine exilis, etc. (nine invertebrate species from Bexar County, TX), 16890–16891
Rio Grande Silvery Minnow, 16890
NOTICES
Environmental statements; availability, etc.:
Incidental take permits—
Florida scrub jay, et al., 16993–16994

Food and Drug Administration
NOTICES
Meetings:
Cardiovascular and Renal Drugs Advisory Committee, 16976
Drug Abuse Advisory Committee, 16976–16977
Peeripheral and Central Nervous System Drugs Advisory Committee, 16977

General Services Administration
NOTICES
Environmental statements; availability, etc.:
GSA Federal laboratories, Prince George's County, MD, 16972
Grants and cooperative agreements; availability, etc.:
Small business competitivenesss demonstration program, 16972–16973

Health and Human Services Department
See Centers for Disease Control and Prevention
See Food and Drug Administration
See Health Resources and Services Administration
NOTICES
Meetings:
President's Council on Physical Fitness and Sports, 16973–16974

Health Resources and Services Administration
NOTICES
Organization, functions, and authority delegations:
Maternal and Child Health Bureau, 16977–16980

Interior Department
See Fish and Wildlife Service
See Land Management Bureau
See National Park Service
See Surface Mining Reclamation and Enforcement Office
NOTICES
Privacy Act:
Systems of records, 16981–16992

Internal Revenue Service
NOTICES
Agency information collection activities:
Proposed collection; comment request, 17057–17060

International Trade Administration
NOTICES
Antidumping:
Barbed wire and barbless wire from—
Argentina, 16899–16901
Frozen concentrated orange juice from—
Brazil, 16901–16904
Potassium permanganate from—
China, 16907–16910
Spain, 16904–16906
Sebacic acid from—
China, 16910–16913
Committees; establishment, renewal, termination, etc.:
Asian Pacific Economic Cooperation Electronic Steering Group, 16913–16914
Countervailing duties:
Hot-rolled lead and bismuth carbon steel products from—
Germany, 16915–16920
United Kingdom, 16920–16924
Welded carbon steel pipes and tubes and welded carbon steel line pipe from—
Turkey, 16924–16929
Export trade certificates of review, 16929–16930
Applications, hearings, determinations, etc.:
University of—
Louisiana State University, 16913
Michigan, 16913

International Trade Commission
NOTICES
Import investigations:
Chloropicrin from—
China, 16998
Creatine monohydrate from—
China, 16998–16999
Extruded rubber thread from—
Indonesia, 16999

Justice Department
See Antitrust Division
See Justice Programs Office
See National Institute of Corrections
See Prisons Bureau

Justice Programs Office
NOTICES
Reports and guidance documents; availability, etc.:
Prison Industry enhancement certifications program; guideline, 17000–17014

Labor Department
See Employment and Training Administration
NOTICES
Women's Bureau:
National women veterans art design search, 17015

Land Management Bureau
NOTICES
Agency information collection activities:
Proposed collection; comment request, 16994–16995
Meetings:
Resource advisory councils—
Northeastern Great Basin, 16995–16996
Realty actions; sales, leases, etc.:
New Mexico, 16996
New Mexico; correction, 16996

National Aeronautics and Space Administration
NOTICES
Grants and cooperative agreements; availability, etc.:
Ecology and Oceanography of harmful algal blooms project, 16930–16937

National Drug Control Policy Office
NOTICES
Meetings:
Drug-Free Communities Advisory Commission, 16970

National Gambling Impact Study Commission
NOTICES
Meetings, 17019

National Highway Traffic Safety Administration
RULES
Light truck fuel economy standards, 16860–16862

National Institute of Corrections
NOTICES
Grants and cooperative agreements; availability, etc.:
Gender-Specific Responses: Research, Practice and Guiding Principles, 17014

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
West Coast States and Western Pacific fisheries—
Pacific Coast groundfish, 16862–16867
PROPOSED RULES
Fishery conservation and management:
Northeastern United States fisheries—
Summer flounder, scup, and black sea bass, 16891–16896
NOTICES
Grants and cooperative agreements; availability, etc.:
Ecology and oceanography of harmful algal blooms project, 16930–16937
Meetings:
North Pacific Fishery Management Council, 16937
Permits:
Endangered and threatened species, 16937–16938

National Park Service
NOTICES
Meetings:
Jimmy Carter National Historic Site Advisory Commission, 16996–16997

National Science Foundation
NOTICES
Grants and cooperative agreements; availability, etc.:
Ecology and oceanography of harmful algal blooms project, 16930–16937
Meetings:
Advancement of Women and Minorities in Science, Engineering and Technology Development, 17019

Nuclear Regulatory Commission
NOTICES
Environmental statements; availability, etc.:
Carolina Power & Light Co., 17019–17021
Meetings; Sunshine Act, 17021
Operating licenses, amendments; no significant hazards considerations; biweekly notices, 17021–17040
Regulatory agreements:
Ohio; correction, 17040

Office of United States Trade Representative
See Trade Representative, Office of United States

Pension Benefit Guaranty Corporation
NOTICES
Agency information collection activities:
Proposed collection; comment request, 17040–17041

Personnel Management Office
RULES
Employment:
Reduction in force—
Service credit; retention record, 16797–16801

Postal Service
RULES
Domestic mail manual:
Package reallocation for periodicals and standard mail (A) flats placed on pallets and new labeling list L001; implementation, 16814–16840

Presidential Documents
PROCLAMATIONS
Special observances:
Cancer Control Month (Proc. 7177), 17073–17076
Child Abuse Prevention Month, National (Proc. 7178), 17077–17078

Prisons Bureau
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 17014–17015

Public Health Service
See Centers for Disease Control and Prevention
See Food and Drug Administration
See Health Resources and Services Administration

Railroad Retirement Board
NOTICES
Privacy Act:
Systems of records, 17041–17042

Research and Special Programs Administration
PROPOSED RULES
Pipeline safety:
Hazardous liquid transportation—
Gas and hazardous liquid pipelines; corrosion control, 16885–16889
Liquefied compressed gases, 16882
Hazardous liquified natural gas facilities; safety standards—
Gas and hazardous liquid pipeline repair, 16882–16885

Securities and Exchange Commission
NOTICES
Meetings:
Securities laws uniformity annual conference; proposed agenda; comment request, 17042–17050
Applications, hearings, determinations, etc.:
K2 Design,Inc., 17042

Small Business Administration
NOTICES
Grants and cooperative agreements; availability, etc.:
Drug-free workplace demonstration program, 17050
License surrenders:
Cactus Capital Co., 17050
Meetings; district and regional advisory councils:
Nebraska, 17050–17051
New York, 17051
Meetings; district and regional advisory councils:
Nebraska, 17051
Reporting and Recordkeeping Requirements, 17051

Social Security Administration
NOTICES
Agency information collection activities:
Proposed collection; comment request, 17051–17052

State Department
NOTICES
Pipeline facilities on U.S. borders; permit applications:
Portland Pipe Line Corp., 17052

Surface Mining Reclamation and Enforcement Office
NOTICES
Privacy Act:
Systems of records, 16997–16998

Surface Transportation Board
NOTICES
Railroad services abandonment:
Union Pacific Railroad Co., 17056–17057

Trade Representative, Office of United States
NOTICES
Unfair trade practices, petitions, etc.:
Foreign countries engaging in discriminatory government procurement practices; comment request, 17053

Transportation Department
See Coast Guard
See Federal Aviation Administration
See Federal Highway Administration
See Federal Transit Administration
See National Highway Traffic Safety Administration
See Research and Special Programs Administration
See Surface Transportation Board

Treasury Department
See Customs Service
See Internal Revenue Service

United States Information Agency
NOTICES
Art objects; importation for exhibition:
Dresden in the Ages of Splendor and Enlightenment: 18th Century Paintings form the Old Masters Picture Gallery, 17060

Separate Parts In This Issue

Part II
Department of Transportation, Federal Transit Administration, 17061–17071

Part III
The President, 17073–17078

Reader Aids
Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

3 CFR
Proclamation:
7177.....17075
7178.....17077

5 CFR
351.....16797

14 CFR
39 (5 documents) 16801, 16803, 16805, 16808, 16810

19 CFR
Proposed Rules:
19.....16868

23 CFR
Proposed Rules:
777.....16870

33 CFR
100 (2 documents) 16812, 16813

39 CFR
111.....16814

40 CFR
180 (4 documents) 16840, 16843, 16850, 16856
Proposed Rules:
180.....16874
185.....16874
186.....16874

47 CFR
Proposed Rules:
25.....16880

49 CFR
533.....16860
Proposed Rules:
171.....16882
177.....16882
178.....16882
180.....16882
192 (2 documents) 16882, 16885
195 (2 documents) 16882, 16885
611.....17062

50 CFR
600.....16862
660.....16862
Proposed Rules:
17 (2 documents) 16890
648.....16891

VOL
64
ISS
66
AP
7
1999
UMI

Ru

This se
contain
applica
are key
Federal
50 titles

The Co
the Sup
new bo
REGIST

**OFFIC
MANA**

5 CFR

RIN 320

**Reduc
Retent**

AGENCY
Manag

ACTION:

SUMMA
Manage
regulat
reducti
regulat
reducti
and the

DATES:
May 7,

FOR FUR
Thomas
Yeatma
606–23

SUPPLE

Backgr

On A
propose
covered
uniform
reductio
part 351
regulati
to reduc
when th
records

Comme

OPM
propose
Federal
organiza
associat
union, a
employe

Rules and Regulations

Federal Register
Vol. 64, No. 66
Wednesday, April 7, 1999

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 351

RIN 3206–AI09

Reduction in Force Service Credit; Retention Records

AGENCY: Office of Personnel Management.

ACTION: Final rulemaking.

SUMMARY: The Office of Personnel Management (OPM) is issuing final regulations that cover service credit for reduction in force purposes. These final regulations also cover access to reduction in force records by employees and their representatives.

DATES: These regulations are effective May 7, 1999.

FOR FURTHER INFORMATION CONTACT: Thomas A. Glennon or Jacqui R. Yeatman at (202) 606–0960, FAX (202) 606–2329.

SUPPLEMENTARY INFORMATION:

Background

On August 14, 1998, OPM published proposed regulations (63 FR 43640) that covered the crediting of civilian and uniformed service for purposes of reduction in force competition under part 351 of this title. These proposed regulations also covered who has access to reduction in force retention records, when that access is available, and what records are available for review.

Comments (Overview)

OPM received six comments on the proposed regulations: one from a Federal agency, two from veterans' organizations, one from an employee association, one from an employees' union, and one from an individual employee.

Comments on Reduction in Force Service Credit Regulations

OPM's reduction in force regulations found in part 351 are published under authority of 5 U.S.C. 3502(a), which originated in Public Law 78–359 (the Veterans' Preference Act of 1944). The statute provides that OPM's reduction in force regulations must give effect to four factors in releasing employees: (1) Tenure of employment (i.e., type of appointment) (5 U.S.C. 3502(a)(1)); (2) veterans' preference (5 U.S.C. 3502(a)(2)); (3) length of service (5 U.S.C. 3502(a)(3)); and (4) performance ratings (5 U.S.C. 3502(a)(4)).

The proposed regulations clarify longstanding OPM policy on the crediting of civilian and uniformed service for purposes of reduction in force competition under part 351 of this title.

These final regulations cover what types of service are creditable when an agency establishes the order of retention for competing employees in a reduction in force.

The agency concurred with the proposed regulations as written, including the provisions covering both reduction in force service credit and access to retention records by employees and their representatives.

The employee association objected to proposed § 351.503(b)(3), which provides that an employee may not receive dual reduction in force service credit for service performed on active duty in the Armed Forces that is concurrent with civilian employment as a Federal employee.

Proposed § 351.503(b)(3) is adopted without revision. This prohibition against double reduction in force service credit is consistent with the provisions of the statute (i.e., 5 U.S.C. 3502(a)(3)), and longstanding appellate interpretation applicable to OPM's governmentwide programs authorized by 5 U.S.C. (see *Seltzer* v. *Office of Personnel Management,* 833 F.2d 975 (Fed. Cir., 1987)).

The two veterans' organizations objected to proposed § 351.503(b)(2)(i), which provides that a retired member of a uniformed service who is receiving retired pay based upon 20 or more years of active service in the Armed Forces is generally entitled to credit under this part only for the length of time in active service in the Armed Forces during a war, or active duty served in a campaign or expedition for which a campaign badge or expeditionary medal has been authorized.

Proposed § 351.503(b)(2)(ii) provides that a retired member of a uniformed service with 20 or more years of creditable active service in the Armed Forces is entitled to reduction in force service credit for all of that time only if the employee is considered a preference eligible under 5 U.S.C. 3501(a)(3), as implemented in § 351.501(d)(1).

As covered in the summary below of the final reduction in force service credit regulations, proposed § 351.503(b)(2)(i) is adopted without revision. The final regulation incorporates the statutory requirements of 5 U.S.C. 3502(a)(A) and (B), which originated in Public Law 88–448 (the Dual Compensation Act of 1964).

Referencing 5 U.S.C. 3501(a)(3)(A), 5 U.S.C. 3502(a)(B)(ii) (from Pub. L. 88–448) provides that a retired member of a uniformed service with 20 or more years of creditable Armed Forces service is entitled to reduction in force retention service credit only if the individual is receiving a disability retirement from the Armed Forces resulting from injury or disease received in the line of duty as a direct result of armed conflict, or caused by an instrumentality of war that incurred in the line of duty during a period of war as defined by 38 U.S.C. 101 and 301. (OPM implements 5 U.S.C. 3501(a)(3)(A) in § 351.501(d)(1) of the reduction in force regulations.)

Summary of Final Reduction in Force Service Credit Regulations

Final § 351.503(a) provides that all civilian service as a Federal employee, as defined in 5 U.S.C. 2105(a), is creditable for purposes of determining the reduction in force rights of a competing employee. Civilian service that does not meet the definition set forth in 5 U.S.C. 2105(a) is creditable for retention purposes only if specifically authorized by statute.

Final § 351.503(b)(2)(i) provides that, except as provided in § 351.503(b)(2)(ii), a retired member of a uniformed service who is receiving retired pay based upon 20 or more years of active service in the Armed Forces is entitled to credit under this part only for the length of time in active service in the Armed Forces during a war, or active duty served in a campaign or expedition for which a campaign badge or expeditionary medal

has been authorized. (For additional information on § 351.503(b)(2)(i), refer to the Supplementary Information section above with "Comments on the Reduction in Force Service Credit Regulations.")

Final § 351.503(b)(2)(ii) provides that a retired member of a uniformed service with 20 or more years of creditable active service in the Armed Forces is entitled to reduction in force service credit for all of the individual's active service in the Armed Forces only if the employee is considered a preference eligible under 5 U.S.C. 3501(a)(3), as implemented in § 351.501(d)(1).

Final § 351.503(b)(3) provides that an employee may not receive dual retention service credit for service performed on active duty in the Armed Forces that was performed during concurrent civilian employment as a Federal employee.

Final § 351.503(c)(1) provides that the agency is responsible for establishing both the service computation date, and the adjusted service computation date, applicable to each employee competing for retention. Also, the agency is responsible for adjusting the service computation dates to withhold retention service credit for noncreditable service.

Final § 351.503(c)(2) provides that the service computation date includes all actual creditable service under §§ 351.503(a) and (b).

Final § 351.503(c)(3) provides that the adjusted service computation date includes all actual creditable service under §§ 351.503(a) and (b), and additional retention service credit for performance authorized by § 351.504(d).

Final § 351.503(d) covers the calculation of the service computation date for retention purposes.

Final § 351.503(e) covers the calculation of the adjusted service computation date that includes additional service credit for retention purposes that is authorized by § 351.504(d).

OPM further implements § 351.503 through instructions found in the OPM Operating Manual, "The Guide to Processing Personnel Actions," Chapter 6, "Determining Creditable Service and Determining Service Computation Dates (SCD's)."

Comments on the Reduction in Force Regulations Covering Retention Records

As previously noted in the "Comments (Overview)" section of Supplementary Information, the agency that commented on the proposals concurred with the regulations as written, including the provisions on both reduction in force service credit and access to retention records by employees and their representatives.

The employee who commented on the proposed regulations only addressed the provisions covering access to reduction in force records. The employee supported the proposed regulations as written. The employee added that, under the Privacy Act (see the following paragraphs below for additional information on application of the Privacy Act), her former agency denied her access to retention records even after she received a specific notice of separation by reduction in force. The employee concluded that proposed § 351.505 would prevent the recurrence of a similar situation for other employees reached for reduction in force actions.

The employees' union objected to proposed § 351.505(b)(1) on the basis that the regulation violates 5 U.S.C. 552a(d)(1), which is part of the Privacy Act. Specifically, the union argues that proposed § 351.505(b)(1) improperly limited employees' access to retention records and related records only to an employee (including an employee's representative) who actually receives a specific notice of reduction in force. The employees' union also objected to proposed § 351.505(b)(1) on the basis that it violates § 351.201(c), which provides that each agency is responsible for applying OPM's reduction in force regulations uniformly and consistently.

As covered in the summary below of the final reduction in force service credit regulations, proposed § 351.505(b)(1) is adopted without revision.

The union is incorrect in its assertion that 5 U.S.C. 552a(d)(1) of the Privacy Act is applicable to § 351.505 and the retention records that an agency develops under authority of part 351 of this chapter.

As noted by the union, 5 U.S.C. 552a(a)(5) states that "the term 'system of records" means a group of any records under the control of any agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual." However, the retention records covered by § 351.505 are in fact *"retention register(s)"* developed and maintained under authority of § 351.404 rather than a system of records covered by 5 U.S.C. 552a(d)(1) of the Privacy Act.

Information from retention registers is not first retrieved on the basis of an employee's name or other personal identifying information, but instead on the basis of groups of interchangeable positions, and next on the basis of the four retention factors that define reduction in force competition under part 351 of this chapter. § 351.404(a) provides in pertinent part that "When a competing employee is to be released from a competitive level under this part (i.e., part 351 of this chapter), the agency shall establish a separate retention register for that "*competitive level.* The retention register is prepared from the current retention records of employees." (Emphasis added for reference.)

Section 351.403 similarly provides that each competitive level (which serves as the basis for a retention register) is developed first from the agency's identification and retrieval of groups of positions rather than the names or other identifying information of individual employees. Specifically, § 351.403(a)(1) and (2) provide that "(1) Each agency shall establish competitive levels consisting of all positions in a competitive area which are in the same grade (or occupational level) and classification series, and which are similar enough in duties, qualification requirements, pay schedules, and working conditions so that the agency may reassign the incumbent of one position to any of the other positions in the level without undue interruption.

"(2) Competititive level determinations are based on each employee's official position, not the employee's personal qualifications."

Accepting the union's argument that 5 U.S.C. 552a(d)(1) of the Privacy Act is applicable to § 351.505, and a retention register developed and maintained under authority of § 351.404, would mean that a released employee (and the employee's representative) does not have access to any retention records that contained the name, or other identifying retention (such as service dates), of employees competing for positions in the reduction in force. This would result in the same situation described by the employee who commented above on the proposed regulations that, because of its interpretation of the Privacy Act, her agency denied her access to any retention records containing specific information relating to other employees in her competitive area.

The union is also incorrect in its conclusion that proposed § 351.505(b) violates § 351.201(c), which provides that "Each agency is responsible for assuring that the provisions in this part (i.e., part 351 of this chapter) are uniformly and consistently applied in any one reduction in force."

Proposed § 351.505(b) for the first time requires agencies to provide retention records to the representative of an employee who has received a

specific notice of reduction in force. Previously, there was no authority in OPM's regulations for agencies to provide union representatives (or any individual other than the employee) with this essential information unless the employee subsequently filed a reduction in force appeal or grievance.

Similarly, proposed § 351.505(c) for the first time specifies the type of retention-related information that an agency would be required to make available to an employee (and/or the employee's representative) who is reached for a reduction in force action. For example, the agency would now be required to provide employees (and their representatives) with access to retention records evidencing how the employee was reached for release from the competitive level, as well as any records related to an employee's potential bump and retreat rights. No longer could an agency claim that it met its obligation to provide retention information to a released employee by simply giving the employee a "sanitized" retention register with all of the pertinent information blocked out.

The union is correct in stating that proposed § 351.505(b) would not extend access to agencies' retention records to the public realm. However, the union is incorrect in its argument that proposed § 351.505(b)(1) violates present § 351.201(c), which provides that an agency must apply OPM's reduction in force regulations uniformly and consistently.

OPM clearly recognizes that reduction in force actions impact upon people, sometimes even resulting in actions such as involuntary separations and downgradings. Proposed § 351.505(b) respects the privacy of all individual employees who have received notices of reduction in force actions while still providing them (and their representatives) with a right to relevant information concerning their agency's application of reduction in force procedures to them.

Similarly, § 351.201(c) requires that the agency must apply the same retention procedures to all employees who received specific reduction in force notices (e.g., the agency may not establish different competitive areas based upon grades or classification series). There is no basis for the union to expand the scope of § 351.201(c) and conclude that any employee (or the employee's representative) has the right to view all retention registers. Again, we believe that the policy in proposed § 351.505(b) provides each employee who is reached for a reduction in force action with full information concerning how the agency determined the employee's retention rights, while still recognizing the personal sensitivity of the situation.

Also, the union is incorrect in stating that proposed § 351.505(b) violates 5 U.S.C. 7114(b)(4), which requires an agency to furnish information to a union that is acting as a collective bargaining agent. The union argues that because proposed § 351.505(b) would limit unions' access to employees' retention records, the regulation would constitute an unfair labor practice under 5 U.S.C. 7114(b)(4).

In fact, 5 U.S.C. 7114(b)(4) specifically states that an agency must furnish a union certain information "to the extent not prohibited by law." To the extent that proposed § 351.505(b) prohibits release of information to unions concerning reduction in force retention records, the release of that information is "prohibited by law" for purposes of 5 U.S.C. 7114(b)(4). OPM's interpretation is that proposed § 351.505(b) is a regulation that has the force and effect of law. Therefore, proposed § 351.505(b) could not, and does not, violate 5 U.S.C. 7114(b)(4), which is the applicable controlling statute.

Finally, the union objected to proposed § 351.505(f), which provides that an agency must preserve all registers and records relating to a reduction in force for at least 1 year after the date the agency issues specific notices of reduction in force. As an alternative, the union asked that OPM require agencies to retain all records related to a reduction in force for at least 5 years.

As covered in the summary below of the final reduction in force service credit regulations, proposed § 351.505(f) is adopted without revision.

The union maintained that proposed § 351.505(f) would limit the ability of employees to file appeals or grievances that would potentially establish a link between agency actions in a current reduction in force with one or more previous reduction in force actions conducted by the agency more than 1 year ago. The union used examples such as an employee competing in successive reduction in force actions on a one person competitive level.

The union is incorrect in its assumptions.

Reduction in force actions under authority of part 351 of this chapter are based upon organizational changes, as defined in § 351.201(a)(2), in which employees compete for retention based upon the four factors set forth in 5 U.S.C. 3502(a) (1)–(4).

Section 351.506(a) provides that an employee's rights and benefits in a single reduction in force are based upon the effective date of that reduction in force action. An employee who is separated or downgraded by reduction in force under authority of part 351 and believes that the agency improperly applied OPM's reduction in force regulations in determining the employee's retention rights in that reduction in force has a basic right, as applicable, to file a timely appeal to the Merit Systems Protection Board, or to file a grievance under the provisions of a controlling collective bargaining agreement.

(For reference, § 351.901 provides that a separated or downgraded employee has a basic right to file an appeal to the Merit Systems Protection Board; § 1201.22(b) of the Board's regulations provides that the employee must file the appeal within 30 days of the effective date of the reduction in force action. Section 1201.3(c)(1) of the Board's regulations provides that an employee who is covered by a collective bargaining agreement under 5 U.S.C. 7121 has a basic right to follow the negotiated grievance procedures contained in the agreement for resolving any action that could otherwise be appealed to the Board, except as otherwise provided in § 1201.3(c).)

Turning to the union's example, the fact that an employee was placed in a one person competitive level for two reduction in force actions likely means that the employee simply continues to hold the same unique position. As previously noted, § 351.201(c) provides that the agency is responsible "* * * for assuring that the provisions in this part are uniformly and consistently applied in *any one reduction in force*." (Emphasis added for reference.) Similarly, since § 351.506(a) provides that an employee's retention rights and benefits in a single reduction in force are based upon the effective date of that reduction in force action, each reduction in force is a distinct event for which the agency is responsible under authority of § 351.204. There is no relation between retention records used in a prior reduction in force and records in a later reduction in force.

OPM believes that, again consistent with agency responsibility under authority of § 351.204, the agency may determine whether or not to retain retention records for more than 1 year, as well as the length of the extended retention. For example, an agency may decide to retain the retention records resulting from actions affecting 100 employees longer than retention records resulting from the closure of a duty station staffed with three employees.

Summary of Final Reduction in Force Regulations on Retention Records

Final § 351.505(a) provides that the agency is responsible for maintaining the correct personnel records that are used to determine employees' retention standing.

Final § 351.505(b) provides that the agency must allow its retention registers and related records to be inspected by an employee of the agency who has received a specific reduction in force notice, and/or the employee's representative if the representative is acting on behalf of that individual employee. Previously, there was no authority permitting an employee's representative to have access to pertinent retention records. The representative now has access to pertinent retention records when acting on behalf of an individual employee who has received a specific notice of reduction in force under part 351 of this chapter.

Final § 351.505(b) also provides that an authorized representative of OPM has the right to review an agency's retention records.

Final § 351.505(c) provides that an employee who has received a specific notice of reduction in force has the right to review any completed records used by the agency in a reduction in force action that was taken, or will be taken, against the employee.

Final § 351.505(d) provides that an employee who has not received a specific reduction in force notice has no right to review the agency's retention registers and related records.

Final § 351.505(e) provides that the agency is responsible for ensuring that each employee's access to retention records is consistent with both the Freedom of Information Act and the Privacy Act.

Final § 351.505(f) provides that the agency must preserve all registers and records relating to a reduction in force for at least 1 year after the date the agency issues specific reduction in force notices.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it only affects Federal employees.

List of Subjects in Part 351

Administrative practice and procedure, Government employees, U.S. Office of Personnel Management.

Janice R. Lachance,

Director.

Accordingly, OPM is amending part 351 of title 5, Code of Federal Regulations, as follows:

PART 351—REDUCTION IN FORCE

1. The authority citation for part 351 continues to read as follows:

Authority: 5 U.S.C. 1302, 3502, 3503; sec. 351.801 also issued under E.O. 12828, 58 FR 2965.

2. Section 351.503 is revised to read as follows:

§ 351.503 Length of service.

(a) All civilian service as a Federal employee, as defined in 5 U.S.C. 2105(a), is creditable for purposes of this part. Civilian service performed in employment that does not meet the definition of *Federal employee* set forth in 5 U.S.C. 2105(a) is creditable for purposes of this part only if specifically authorized by statute as creditable for retention purposes.

(b)(1) As authorized by 5 U.S.C. 3502(a)(A), all active duty in a uniformed service, as defined in 5 U.S.C. 2101(3), is creditable for purposes of this part, except as provided in paragraphs (b)(2) and (b)(3) of this section.

(2) As authorized by 5 U.S.C. 3502(a)(B), a retired member of a uniformed service who is covered by § 351.501(d) is entitled to credit under this part only for:

(i) The length of time in active service in the Armed Forces during a war, or in a campaign or expedition for which a campaign or expedition badge has been authorized; or

(ii) The total length of time in active service in the Armed Forces if the employee is considered a preference eligible under 5 U.S.C. 2108 and 5 U.S.C. 3501(a), as implemented in § 351.501(d).

(3) An employee may not receive dual service credit for purposes of this part for service performed on active duty in the Armed Forces that was performed during concurrent civilian employment as a Federal employee, as defined in 5 U.S.C. 2105(a).

(c)(1) The agency is responsible for establishing both the service computation date, and the adjusted service computation date, applicable to each employee competing for retention under this part. If applicable, the agency is also responsible for adjusting the service computation date and the adjusted service computation date to withhold retention service credit for noncreditable service.

(2) The service computation date includes all actual creditable service under paragraph (a) and paragraph (b) of this section.

(3) The adjusted service computation date includes all actual creditable service under paragraph (a) and paragraph (b) of this section, and additional retention service credit for performance authorized by § 351.504(d).

(d) The service computation date is computed on the following basis:

(1) The effective date of appointment as a Federal employee under 5 U.S.C. 2105(a) when the employee has no previous creditable service under paragraph (a) or (b) of this section; or if applicable,

(2) The date calculated by subtracting the employee's total previous creditable service under paragraph (a) or (b) of this section from the most recent effective date of appointment as a Federal employee under 5 U.S.C. 2105(a).

(e) The adjusted service computation date is calculated by subtracting from the date in paragraph (d)(1) or (d)(2) of this section the additional service credit for retention authorized by § 351.504(d).

3. Section 351.505 is revised to read as follows:

§ 351.505 Records.

(a) The agency is responsible for maintaining correct personnel records that are used to determine the retention standing of its employees competing for retention under this part.

(b) The agency must allow its retention registers and related records to be inspected by:

(1) An employee of the agency who has received a specific reduction in force notice, and/or the employee's representative if the representative is acting on behalf of the individual employee; and

(2) An authorized representative of OPM.

(c) An employee who has received a specific notice of reduction in force under authority of subpart H of this part hes the right to review any completed records used by the agency in a reduction in force action that was taken, or will be taken, against the employee, including:

(1) The complete retention register with the released employee's name and other relevant retention information (including the names of all other employees listed on that register, their individual service computation dates calculated under § 351.503(d), and their adjusted service computation dates

calculated under § 351.503(e)) so that the employee may consider how the agency constructed the competitive level, and how the agency determined the relative retention standing of the competing employees; and

(2) The complete retention registers for other positions that could affect the composition of the employee's competitive level, and/or the determination of the employee's assignment rights (e.g., registers to which the released employee may have potential assignment rights under § 351.701(b) and (c)).

(d) An employee who has not received a specific reduction in force notice has no right to review the agency's retention registers and related records.

(e) The agency is responsible for ensuring that each employee's access to retention records is consistent with both the Freedom of Information Act (5 U.S.C. 552), and the Privacy Act (5 U.S.C. 552a).

(f) The agency must preserve all registers and records relating to a reduction in force for at least 1 year after the date it issues a specific reduction in force notice.

[FR Doc. 99–8587 Filed 4–6–99; 8:45 am]
BILLING CODE 6325–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–SW–16–AD; Amendment 39–11111; AD 99–06–15]

RIN 2120–AA64

Airworthiness Directives; Bell Helicopter Textron Canada Model 407 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This document publishes in the **Federal Register** an amendment adopting Airworthiness Directive (AD) 99–06–15 which was sent previously to all known U.S. owners and operators of Bell Helicopter Textron Canada (BHTC) Model 407 helicopters by individual letters. This AD requires installing a tail rotor pitch-limiting left-pedal stop, installing an airspeed limitation placard, marking a never-exceed velocity (Vne) placard on all airspeed indicators, and revising the Limitations section of the Rotorcraft Flight Manual (RFM). This amendment is prompted by three accidents involving inflight tail rotor blade strikes against the tailboom. The actions specified by this AD are intended to prevent the tail rotor blades from striking the tailboom, which could result in separation of the aft section of the tailboom with the tail rotor gearbox and vertical fin, and subsequent loss of control of the helicopter.

DATES: Effective April 22, 1999, to all persons except those persons to whom it was made immediately effective by Priority Letter AD 99–06–15, issued on March 9, 1999, which contained the requirements of this amendment.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 22, 1999.

Comments for inclusion in the Rules Docket must be received on or before June 7, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 99–SW–16–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

The applicable service information may be obtained from Bell Helicopter Textron Canada, 12,800 Rue de l'Avenir, Mirabel, Quebec JON1LO, telephone (800) 463–3036, fax (514) 433–0272. This information may be examined at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Jurgen Priester, Aerospace Engineer, FAA, Rotocraft Directorate, Rotorcraft Certification Office, ASW–170, 2601 Meacham Blvd., Fort Worth, Texas, 76137, telephone (817) 222–5159, fax (817) 222–5783.

SUPPLEMENTARY INFORMATION: On September 25, 1998, the FAA issued Priority Letter AD 98–20–41, applicable to BHTC Model 407 helicopters, which restricted the airspeed to 25 knots indicated airspeed less than the Vne airspeeds indicated on the airspeed limitation placard. The priority letter also required installing an airspeed limitation placard, marking a redline at a Vne of 115 knots and applying a red arc from 115 to 140 knots on all airspeed indicators, and revising the Limitations section of the RFM that requires pilots to maintain yaw trim within one ball width of the centered position of the turn and bank (slip) indicator. That action was prompted by two accidents involving in-flight tail rotor blade strikes against the tailboom on Model 407 helicopters. Persons aboard both helicopters reported hearing a loud "bang" immediately prior to experiencing a loss of directional control of the helicopter. Subsequent inspection of the helicopters revealed that the aft section of the tailboom, including the tail rotor, the tail rotor gearbox, and the vertical fin, had separated from the helicopters in-flight. In both cases, inspection of the retrieved tailbooms confirmed that the tailbooms had been struck at least three times by the rotating tail rotor blades. The specific cause of these two in-flight tail rotor blade strikes against the tailboom has not been determined; however, flight test data indicated that tail rotor blade strikes were more likely to occur at higher airspeeds and altitudes. The data indicated that the cause of the tail rotor strikes is excessive tail rotor blade flapping. The reason for the excessive tail rotor blade flapping is unknown, but it may be aggravated by left pedal input. Excessive tail rotor flapping, if not corrected, could result in the tail rotor blades striking the tailboom, separation of the aft section of the tailboom with the tail rotor gearbox and vertical fin, and subsequent loss of control of the helicopter. Transport Canada, which is the airworthiness authority for Canada, issued AD CF–98–36, dated September 25, 1998, to require that the airspeed be reduced to minimize the risk of a tailboom strike during flight. After the issuance of Priority Letter AD 98–20–41, BHTC issued Technical Bulletin No. 407–98–13, dated December 12, 1998 (TB), which recommended a reduction in Vne of only 15 KIAS with the installation of a left pedal stop to limit maximum tail rotor blade pitch

Transport Canada then further notified the FAA that an unsafe condition may continue to exist on BHTC Model 407 helicopters. Transport Canada advised that installing the tail rotor pitch-limiting left-pedal stop in accordance with the TB and further reducing the Vne is required to minimize the risk of a tailboom strike during flight. Transport Canada classified the TB as mandatory, and issued AD CF–98–36R3, dated March 5, 1999, in order to assure the continued airworthiness of these helicopters in Canada. That action was prompted by a third accident involving an in-flight tail rotor blade strike against the tailboom on BHTC Model 407 helicopters. The pilot in this latest accident reported that the helicopter was in straight and level cruise flight at 110 KIAS in non-turbulent conditions when the

helicopter experienced an uncommanded left pedal hardover. The pilot reported that this uncommanded full left pedal movement was followed by a loud "bang" and then a loss of directional control of the helicopter. Subsequent inspection of the helicopter revealed that the aft section of the tailboom, including the tail rotor, the tail rotor gearbox, and the vertical fin, had separated from the helicopter in-flight. This helicopter did not have the tail rotor pitch-limiting left-pedal stop installed.

Since the unsafe condition described is likely to exist or develop on other BHTC Model 407 helicopters of the same type design, the FAA issued Priority Letter AD 99–06–15 to supersede Priority Letter AD 98–20–41. Priority Letter AD 99–06–15 requires, before further flight, installing a tail rotor pitch-limiting left-pedal stop and adjusting the rigging of the directional controls, installing a new airspeed limitation placard, marking a new Vne limit of 100 knots indicated airspeed on all airspeed indicators, and revising the RFM to reduce the airspeed limitation further and to maintain the previously revised yaw-operational limitations. The priority letter AD is intended to prevent the tail rotor blades from striking the tailboom, which could result in separation of the aft section of the tailboom with the tail rotor gearbox and vertical fin, and subsequent loss of control of the helicopter. The actions specified by the superseding priority letter AD are required to be accomplished in accordance with the TB described previously. The short compliance time involved is required because the previously described critical unsafe condition can adversely affect the structural integrity of the helicopter. Therefore, installing a tail rotor pitch-limiting left-pedal stop, installing a new airspeed limitation placard, marking a new Vne limit on all airspeed indicators, and revising the RFM are required prior to further flight, and this AD must be issued immediately.

Since it was found that immediate corrective action was required, notice and opportunity for prior public comment thereon were impracticable and contrary to the public interest, and good cause existed to make the AD effective immediately by individual letters issued on March 9, 1999 to all known U.S. owners and operators of BHTC Model 407 helicopters. These conditions still exist, and the AD is hereby published in the **Federal Register** as an amendment to section 39.13 of the Federal Aviation Regulations (14 CFR 39.13) to make it effective to all persons.

The FAA estimates that 200 helicopters of U.S. registry will be effected by this AD, that it will take approximately 2 work hours per helicopter to accomplish the required actions, and the average labor rate is $60 per work hour. Required parts will cost approximately $245 per helicopter. Based on these figures the total cost impact of the AD on U.S. operators is estimated to be $73,000.

Comments Invited

Although this action is in form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment comments are invited on this rule. Interested persons are invited to comment on this rule submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Comments wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 99–SW–16–AD." The postcard will be stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1997). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

AD 99–06–15 Bell Helicopter Textron Canada: Amendment 39–11111. Docket No. 99–SW–16–AD.

Applicability: Model 407 helicopters, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (i) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required before further flight, unless accomplished previously.

To prevent the tail rotor blades from striking the tailboom, which could result in separation of the aft section of the tailboom with the tail rotor gearbox and vertical fin, and subsequent loss of control of the helicopter, accomplish the following:

(a) Install a stop that limits the maximum distance that the left pedal can travel in accordance with Part I of the Accomplishment Instructions in Bell Helicopter Textron Canada Technical Bulletin 407–98–13, dated December 12, 1998 (TB).

(b) Adjust the rigging of the directional controls in accordance with Part II of the Accomplishment Instructions in the TB.

(c) Install the airspeed limitation placard shown in Figure 1 of this AD so that it completely covers and obscures the airspeed limitation placard, P/N 407–070–201–103. Ensure that the replacement placard is at least 2 1/16-inches tall and 3 9/16-inches long.

FIGURE.—407 AIRSPEED LIMITATIONS-KNOTS-IAS

[AD 99–06–15]

Maximum Autorotation VNE 100 KIAS											
OAT	Pressure Altitude FT X 1000										
C°	0	2	4	6	8	10	12	14	16	18	20
52	98	93	88	.....	.....	.....	.....	.....	.....	.....	.....
40	100	95	91	86	81	76	.....	.....	.....	.....	.....
20	100	100	95	90	85	80	76	71	66	61	.....
0	100	100	100	95	90	85	80	75	70	65	60
−20	100	100	100	100	95	90	85	80	75	70	65
−40	97	93	88	83	79	74	70	65	61	.....	.....

(d) Install a redline at a Vne of 100 KIAS on all airspeed indicators. Remove or obscure any previously installed lines or acrcs above 100 KIAS. If the redline is installed on the instrument glass, also install a slippage mark on the glass and on the isntrument case.

(e) Add the following statement to the Limitations section of the Rotorcraft Flight Manual (RFM): When operating at an airspeed of 60 to 100 KIAS, maintain yaw trim within one ball diameter of the centered position of the turn and bank (slip) indicator, and avoid sudden or large directional control inputs in flight.

(f) Mark the airspeed limitations placard in Figure 1–3 in the RFM to indicate that it has been superseded by this AD, and insert a copy of this AD into the RFM. Also, mark the airspeed indicator in Figure 1–5 of the RFM to indicate a Vne of 100 KIAS.

(g) This AD revises the limitations section of BHTC Model 407 RFM by replacing sheet 1 of Figure 1–3 in the RFM with Figure 1 of this AD, revising sheet 3 of Figure 1–5 of the RFM, and adding an operational limitation for allowable yaw trim and directional control input.

(h) Report any uncommanded right yaw, uncommanded movement of the pedals during flight, or tail rotor blade contact with the tailboom within 24 hours of the occurence to the Manager, Rotorcraft Certification Office, telephone (817) 222–5170. Reporting requirements have been approved by the Office of Management and Budget and assigned OMB control number 2120–0056.

(i) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Rotorcraft Certification Office, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Rotorcraft Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Rotorcraft Certification Office.

(j) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the helicopter to a location where the requirements of this AD can be accomplished, provided they are for a one-time ferry flight without passengers, and that airspeed during the flight does not exceed 60 KIAS. For helicopters with a left-pedal stop installed in accordance with the TB, the airspeed must not exceed 100 KIAS for a one-time ferry flight without passengers.

(k) The modifications shall be done in accordance with Parts I and II of the Accomplishment Instructions in Bell Helicopter Textron Canada Technical Bulletin 407–98–13, dated December 12, 1998. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Bell Helicopter Textron Canada, 12,800 Rue de l'Avenir, Mirabel, Quebec JON1LO, telephone (800) 463–3036, fax (514) 433–0272. Copies may be inspected at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(l) This amendment becomes effective on April 22, 1999, to all persons except those persons to whom it was made immediately effective by Priority Letter AD 99–06–15, issued March 9, 1999, which contained the requirements of this amendment.

Note 3: The subject of this AD is addressed in Transport Canada (Canada) AD CF–98–36R3, dated March 5, 1999.

Issued in Fort Worth, Texas, on March 30, 1999.

Eric Bries,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 99–8407 Filed 4–6–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–04–AD; Amendment 39–11109; AD 99–06–04]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model DHC–8–100, –200, and –300 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Bombardier Model DHC–8–100, –200, and –300 series airplanes, that requires modification of the flight compartment door; repetitive inspections for wear of the flight compartment door hinges following modification; and repair or replacement of the hinges with new hinges, if necessary. This amendment is prompted by a report that the door lock mechanism of the flight compartment door jammed and could not be opened using the alternate release mechanism. The actions specified by this AD are intended to prevent failure of the alternate release mechanism of the flight

compartment door, which could delay or impede the evacuation of the flightcrew during an emergency. Such failure also could result in the flightcrew not being able to assist passengers in the event of an emergency.

DATES: Effective May 12, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 12, 1999.

ADDRESSES: The service information referenced in this AD may be obtained from Bombardier, Inc., Bombardier Regional Aircraft Division, Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ezra Sasson, Aerospace Engineer, Systems and Equipment Branch, ANE–172, FAA, New York Aircraft Certification Office, Engine and Propeller Directorate, 10 Fifth Street, Third Floor, Valley Stream, New York 11581; telephone (516) 256–7520; fax (516) 568–2716.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Bombardier Model DHC–8–100, –200, and –300 series airplanes was published as a supplemental notice of proposed rulemaking (NPRM) in the **Federal Register** on August 5, 1998 (63 FR 41741). That action proposed to require modification of the flight compartment door; repetitive inspections for wear of the flight compartment door hinges following modification; and repair or replacement of the hinges with new hinges, if necessary.

Comments Received

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Support for Proposed Rule

One commenter supports the proposed rule.

Request to Revise Applicability Statement

One commenter requests that the applicability statement of the proposed AD be revised to reflect the effectivity listing specified in Bombardier Service Bulletin S.B. 8–52–39, Revision 'D,' dated February 27, 1998 (i.e., Model DHC–8 series airplanes having serial numbers 003 through 433 inclusive, except serial numbers 269, 408, and 413). The commenter points out that paragraph (a) of the proposed AD requires accomplishment of the modification specified in the subject service bulletin.

The FAA does not concur with the commenter's request. The applicability statement of the original NPRM [which was published in the **Federal Register** on July 11, 1997 (62 FR 37170)] read, "Model DHC–8–100, –200, and –300 series airplanes having serial numbers 3 through 433 inclusive, excluding serial numbers 269, 408, and 418; certificated in any category." The FAA revised the applicability of the supplemental NPRM in consonance with the Canadian airworthiness directive CF–96–20R2, dated July 16, 1997. This revision was made because the supplemental NPRM was revised to add repetitive inspections for wear of the flight compartment door hinges following accomplishment of the required modification. These new repetitive inspections must be accomplished on all affected airplanes having serial numbers 3 and subsequent, regardless of whether the airplane has been modified.

Explanation of Changes Made to Supplemental NPRM

The FAA has revised the final rule to reflect the corporate name change of de Havilland, Inc. to Bombardier, Inc.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes described previously. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Interim Action

This is considered to be interim action. The manufacturer has advised the FAA that it currently is developing a modification that will eliminate the need for the repetitive inspections for wear of the flight compartment door hinges. Once this modification is developed, approved, and available, the FAA may consider additional rulemaking.

Cost Impact

The FAA estimates that 133 Bombardier Model DHC–8–100, –200, and –300 series airplanes of U.S. registry will be affected by this AD.

It will take approximately 4 work hours per airplane to accomplish the required modification, at an average labor rate of $60 per work hour. Required parts will be provided by the manufacturer at no cost to operators. Based on these figures, the cost impact of the modification required by this AD on U.S. operators is estimated to be $31,920, or $240 per airplane.

It will take approximately 2 work hours per airplane to accomplish the required inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the inspection required by this AD on U.S. operators is estimated to be $15,960, or $120 per airplane, per inspection cycle.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

99–08–04 Bombardier, Inc. (Formerly de Havilland, Inc.): Amendment 39–11109. Docket 97–NM–04–AD.

Applicability: Model DHC–8–100, –200, and –300 series airplanes having serial numbers 3 and subsequent; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the alternate release mechanism of the flight compartment door, which could delay or impede the evacuation of the flightcrew and passengers during an emergency, accomplish the following:

(a) Within 90 days after the effective date of this AD, modify the lower hinge assembly and main door latch (Modification 8/2337) of the flight compartment door, in accordance with Bombardier Service Bulletin S.B. 8–52–39, Revision 'D,' dated February 27, 1998.

Note 2: Modification of the flight compartment door accomplished prior to the effective date of this AD in accordance with Bombardier Service Bulletin S.B. 8–52–39, dated August 30, 1996; Revision 'A,' dated October 31, 1996; Revision 'B,' dated July 4, 1997; or Revision 'C,' dated September 1, 1997; is considered acceptable for compliance with the modification required by paragraph (a) of this AD.

(b) Within 800 flight hours after accomplishment of the modification required by paragraph (a) of this AD, inspect the hinge areas around the hinge pin holes of the flight compartment door for wear, in accordance with Bombardier Service Bulletin S.B. 8–52–39, Revision 'C,' dated September 1, 1997, or Revision 'D,' dated February 27, 1998.

(1) If no wear is detected, or if the wear is less than or equal to 0.020 inch in depth, repeat the inspection thereafter at intervals not to exceed 800 flight hours.

(2) If any wear is detected and its dimension around the hinge pin holes is less than 0.050 inch and greater than 0.020 inch in depth, prior to further flight, perform the applicable corrective actions specified in the service bulletin. Repeat the inspection thereafter at intervals not to exceed 800 flight hours.

(3) If any wear is detected and its dimension around the hinge pin holes is greater than or equal to 0.050 inch in depth, prior to further flight, replace the worn hinges with new hinges in accordance with the service bulletin. Repeat the inspection thereafter at intervals not to exceed 800 flight hours.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, New York Aircraft Certification Office (ACO), FAA, Engine and Propeller Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, New York ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the New York ACO.

Special Flight Permits

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(e) The actions shall be done in accordance with Bombardier Service Bulletin S.B. 8–52–39, Revision 'C,' dated September 1, 1997, and Bombardier Service Bulletin S.B. 8–52–39, Revision 'D,' dated February 27, 1998; as applicable. This incorporation by reference was approved by the Director of the **Federal Register** in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Bombardier, Inc., Bombardier Regional Aircraft Division, Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 4: The subject of this AD is addressed in Canadian airworthiness directive CF–96–20R2, dated July 16, 1997.

(f) This amendment becomes effective on May 12, 1999.

Issued in Renton, Washington, on March 30, 1999.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–8328 Filed 4–6–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–110–AD; Amendment 39–11110; AD 99–08–05]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–9 and C–9 (Military) Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain McDonnell Douglas Model DC–9 and C–9 (military) series airplanes. This amendment requires repetitive inspections to detect fatigue cracking of the fuselage frames and longerons 16R and 17R above the forward lower cargo door; repair, if necessary; and modification of the fuselage frames and longerons, if necessary, and follow-on repetitive inspections to detect fatigue cracking of the skin adjacent to the modification. This amendment is prompted by numerous instances of fatigue cracking of the fuselage frames and longerons. The actions specified by this AD are intended to prevent fatigue cracking of the fuselage frames and longerons 16R and 17R, which could result in reduced structural integrity of the airplane.

DATES: Effective May 12, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 12, 1999.

ADDRESSES: The service information referenced in this AD may be obtained from The Boeing Commercial Aircraft Group, Douglas Products Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1–L51 (2–60). This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los

Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Wahib Mina, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5324; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model DC–9 and C–9 (military) series airplanes was published in the **Federal Register** on April 27, 1998 (63 FR 20548). That action proposed to require repetitive inspections to detect fatigue cracking of the fuselage frames and longerons 16R and 17R above the forward lower cargo door; repair, if necessary; and modification of the fuselage frames and longerons, if necessary, and follow-on repetitive inspections to detect fatigue cracking of the skin adjacent to the modification.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

One commenter indicates that it is not affected by the proposed rule.

Request To Extend Compliance Time

One commenter requests that the FAA extend the proposed compliance time for the initial inspection from 30,000 total landings, or within 3,000 landings after the effective date of this AD (whichever occurs later), to 30,000 total landings, or within 3,500 landings after the effective date of this AD (whichever occurs later). The commenter indicates that the 3,000-landing time limit will cause scheduling problems and will adversely affect operators. The commenter also states that an additional 500 landings would assure a smooth transition into the operators' maintenance program and would not cause additional safety concerns.

The FAA does not concur with the commenter's request. In developing an appropriate compliance time for the initial inspection, the FAA considered not only the degree of urgency associated with addressing the fatigue cracking of the fuselage frames and longerons, but other factors as well. Those factors include the recommendations of the manufacturer, and the practical aspect of accomplishing the initial inspection within an interval of time coinciding with normal scheduled maintenance for the majority of the affected operators. In that regard, the commenter did not provide any data to substantiate that an extension of the compliance time would not compromise safety. In view of those factors, and the amount of time that has already elapsed since issuance of the notice of proposed rulemaking, the FAA has determined that further delay of this inspection is, in general, not appropriate. The FAA may, however, approve a request for an adjustment of the compliance time under the provisions of paragraph (e) of this final rule if data are submitted to substantiate that such an adjustment would provide an equivalent level of safety.

Request To Extend/Eliminate Repetitive Inspection Interval for Modified Airplanes

One commenter requests that the proposed repetitive inspection interval for modified airplanes be extended or eliminated. The commenter states that incorporation of the modification of the fuselage frames and longerons 16R and 17R above the forward cargo door, in accordance with McDonnell Douglas Service Bulletin DC9–53–267, dated October 20, 1997, will improve the fatigue design of the longeron-to-frame attach points, thereby decreasing the probability of frame and longeron cracking that could result in secondary damage to the fuselage skin. The commenter also states that accomplishing the preventative modification should allow the repetitive inspection interval to be increased or should eliminate the need for repetitive inspections.

The FAA does not concur with the commenter's request. The FAA has coordinated this issue with the manufacturer and has determined that the repetitive inspections for modified airplanes are necessary to ensure an adequate level of safety for the transport airplane fleet. The cracking of the fuselage skin adjacent to the modification above the forward lower cargo door is fatigue-related, and the 19,000-landing repetitive inspection intervals were calculated based on fatigue and damage tolerance analysis. Therefore, no change to the final rule is necessary in this regard.

Request Credit for Previously Accomplished Work

Two commenters request credit for prior accomplishment of the proposed initial inspection. The commenters state that documented inspections were accomplished previously in accordance with AD 94–03–01, amendment 39–8807 (59 FR 6538, February 11, 1994), or AD 96–13–03, amendment 39–9671 (61 FR 31009, June 19, 1996), per supplemental inspection document (SID) Report No. L26–008, Section 02, Volume II, Chapter 53–10–01, dated November 1987, using the same inspection method cited in the proposed AD, and in accordance with McDonnell Douglas Service Bulletin DC9–53–267, which was cited as the appropriate source of service information for accomplishment of the initial inspection.

The FAA concurs with the commenters' requests that an initial inspection accomplished prior to the effective date of this AD in accordance with AD 94–03–01 or AD 96–13–03 is acceptable for compliance with the initial inspection requirement in the final rule. However, the FAA notes that operators are always given credit for work accomplished previously if the work is performed in accordance with the existing AD by means of the phrase in the compliance section of the AD that states, "Required as indicated, unless accomplished previously." Therefore, no change to the final rule is necessary in this regard.

Request To Revise Paragraph (b)(1) of the Proposed Rule

One commenter requests that paragraph (b)(1) of the proposed rule be revised to read, "Option 1. Repeat the visual inspections in accordance with McDonnell Douglas Service Bulletin DC9–53–267, dated October 20, 1997, Paragraph 3.B. (SID Report No. L26–008, Volume II, Chapter 53–10–08, dated July 1997)." The commenter states that paragraph (b)(1) of the proposal is unclear because the service bulletin does not specify the inspection procedure for the repetitive inspections.

The FAA concurs that clarification should be provided. The intent of paragraph (b)(1) is that operators repeat the visual inspection required by paragraph (a) of the AD. That paragraph requires accomplishment of the visual inspection specified in paragraph 3.B.1. of the Accomplishment Instructions of the service bulletin referenced by the commenter. Additionally, paragraph 3.B.1. of the service bulletin points to the SID report identified by the commenter. For clarification purposes, the FAA has revised paragraph (a) of the final rule to reference paragraph 3.B.1. of the service bulletin. In addition, the FAA has revised paragraph (b)(1) of the final rule to specify that the visual

inspection to be repeated is that required by paragraph (a) of this AD.

Request To Revise Paragraphs (b)(2) and (c) of the Proposed Rule

This same commenter requests that paragraphs (b)(2) and (c) of the proposed rule be revised to define the inspection area and give operators the option to inspect the fuselage skin either internally or externally. The commenter interprets the repetitive inspection requirements of these paragraphs as being limited to the fuselage skin only, as shown in the shaded area in SID Report No. L26–008, Volume II, Chapter 53–10–08, dated July 1997, which does not include the longerons or frames.

The FAA concurs that clarification should be provided. The visual inspection specified in paragraphs (b)(2) and (c) of this AD is required to be accomplished in accordance with the inspection procedure specified in McDonnell Douglas Service Bulletin DC9–53–267, dated October 20, 1997. The intent of that inspection is to detect fatigue cracking of the fuselage skin adjacent to the modification. The only method for such inspection is an internal visual inspection of the inboard side of the fuselage, as specified in SID Report No. L26–008, Volume II, Chapter 53–10–08, dated July 1997 (which is referenced in the service bulletin as the appropriate inspection procedure for accomplishment of the visual inspection). Any crack will initiate at the frames and longerons, and the repair area cannot be seen from the outside. Therefore, the inspection must be accomplished internally to detect cracking of the skin adjacent to the repair.

For clarification purposes, the FAA has revised paragraph (b)(2) of the final rule to reference paragraph 3.B.1.D. of the Accomplishment Instructions of the service bulletin. Paragraph (c) of the final rule also has been revised to reference paragraph 3.B.1.D.(5) of the Accomplishment Instructions of the service bulletin. [Paragraphs 3.B.1.D. and 3.B.1.D.(5) reference the SID specified above for accomplishment of the visual inspection.]

Request To Allow Operator Approval of Certain Repairs

The same commenter requests that the FAA revise paragraphs (b)(2)(ii) and (c)(2) of the proposed AD to permit repairs of any cracked structure found on subsequent inspections to be accomplished by the operators in accordance with FAA-approved data, rather than in accordance data approved by the Manager of the Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. The commenter states that the findings and repair methods could be submitted to the Los Angeles ACO for subsequent review.

The FAA does not concur with the commenter's request. Access to the type design data is needed for repair data approval, and operators do not have such access. Therefore, the FAA has determined that to maintain an acceptable level of safety for the affected fleet, repair or modification of any cracked structure referenced in paragraphs (b)(2)(ii) and (c)(2) of this AD must be approved by the Manager, Los Angeles ACO. No change to the final rule is necessary in this regard.

Explanation of Changes to Final Rule

Paragraph (d) of the final rule has been revised to provide clarification. The revised paragraph states that accomplishment of the inspection requirements of this AD constitutes terminating action for inspections of Principal Structural Element 53.09.055A (defined in McDonnell Douglas Report No. L26–008, DC–9 Supplemental Inspection Document, Report No. L26–008, Section 2 of Volume III–95, dated September 1995). As a result of this revision, the FAA also has removed NOTE 2 of the proposal; this note is no longer necessary.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes described previously. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

There are approximately 887 airplanes of the affected design in the worldwide fleet. The FAA estimates that 582 airplanes of U.S. registry will be affected by this AD. It will take approximately 1 work hour per airplane to accomplish the required inspection, at an average labor rate of $60 per work hour. Based on this figure, the cost impact of the inspection required by this AD on U.S. operators is estimated to be $34,920, or $60 per airplane, per inspection cycle.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Should an operator be required to accomplish the modification, it would take approximately 4 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts would cost approximately $860 or $713 per airplane, depending on the service kit purchased. Based on these figures, the cost impact of the modification is estimated to be as high as $1,100 and as low as $953 per airplane.

Should an operator be required to accomplish the follow-on inspection of the fuselage skin, it would take approximately 1 work hour per airplane to accomplish the inspection, at an average labor rate of $60 per work hour. Based on this figure, the cost impact of the follow-on inspection on U.S. operators is estimated to be $60 per airplane, per inspection cycle.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

99–08–05 McDonnell Douglas: Amendment 39–11110. Docket 98–NM–110–AD.

Applicability: Model DC–9 and C–9 (military) series airplanes, as listed in McDonnell Douglas Service Bulletin DC9–53–267, dated October 20, 1997; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent fatigue cracking of the fuselage frames and longerons 16R and 17R, which could result in reduced structural integrity of the airplane, accomplish the following:

(a) Prior to the accumulation of 30,000 total landings, or within 3,000 landings after the effective date of this AD, whichever occurs later, perform a visual inspection to detect fatigue cracking of the fuselage frames and longerons 16R and 17R above the forward lower cargo door, in accordance with paragraph 3.B.1. of the Accomplishment Instructions of McDonnell Douglas Service Bulletin DC9–53–267, dated October 20, 1997.

(b) *Condition 1.* If no cracking is detected during the inspection required by paragraph (a) of this AD, accomplish the requirements of either paragraph (b)(1) or (b)(2) of this AD, in accordance with McDonnell Douglas Service Bulletin DC9–53–267, dated October 20, 1997.

(1) *Option 1.* Repeat the visual inspection required by paragraph (a) of this AD thereafter at intervals not to exceed 19,000 landings. Or

(2) *Option 2.* Prior to further flight, modify the fuselage frames and longerons 16R and 17R. Prior to the accumulation of 19,000 landings after accomplishment of the modification, perform the visual inspection specified in paragraph 3.B.1.D. of the Accomplishment Instructions of the service bulletin to detect fatigue cracking of the skin adjacent to the modification.

(i) If no cracking is detected, repeat the visual inspection thereafter at intervals not to exceed 19,000 landings.

(ii) If any cracking is detected, prior to further flight, repair in accordance with a method approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

(c) *Condition 2.* If any cracking is detected during the inspection required by paragraph (a) of this AD, prior to further flight, repair the cracked area and modify the fuselage frames and longerons 16R and 17R; in accordance with McDonnell Douglas Service Bulletin DC9–53–267, dated October 20, 1997. Prior to the accumulation of 19,000 landings after accomplishment of the modification, perform the visual inspection specified in paragraph 3.B.1.D.(5) of the Accomplishment Instructions of the service bulletin to detect fatigue cracking of the skin adjacent to the modification, in accordance with the service bulletin.

(1) If no cracking is detected, repeat the visual inspection thereafter at intervals not to exceed 19,000 landings.

(2) If any cracking is detected, prior to further flight, repair in accordance with a method approved by the Manager, Los Angeles ACO.

(d) Accomplishment of the inspections required by this AD constitutes terminating action for the inspections of Principal Structural Element 53.09.055A (reference McDonnell Douglas Model DC–9 Supplemental Inspection Document, Report No. L26–008, Section 2 of Volume III–95, dated September 1995), as required by AD 96–13–03, amendment 39–9671.

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

(f) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(g) Except as provided by paragraphs (b)(2)(ii) and (c)(2) of this AD, the actions shall be done in accordance with McDonnell Douglas Service Bulletin DC9–53–267, dated October 20, 1997. This incorporation by reference was approved by the Director of the **Federal Register** in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Aircraft Group, Douglas Products Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1–L51 (2–60). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the **Federal Register**, 800 North Capitol Street, NW., suite 700, Washington, DC.

(h) This amendment becomes effective on May 12, 1999.

Issued in Renton, Washington, on March 30, 1999.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–8329 Filed 4–6–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–SW–58–AD; Amendment 39–11112; AD 99–08–06]

RIN 2120–AA64

Airworthiness Directives; Eurocopter France Model SA. 3160, SA. 316B, SA. 316C, and SA. 319B Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to Eurocopter France Model SA. 3160, SA. 316B, SA. 316C, and SA. 319B helicopters. This action requires inspecting the spar skin and main rotor blade (blade) root reinforcement strip area for a bonding separation, corrosion, or a crack, and replacing the blade, if necessary. This amendment is prompted by the in-flight failure of a blade. The actions specified in this AD are intended to detect a bonding separation, corrosion, or a crack in the area of the blade root reinforcement strip, which could result in failure of the blade and subsequent loss of control of the helicopter.

DATES: Effective April 22, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 22, 1999.

Comments for inclusion in the Rules Docket must be received on or before May 7, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 98–SW–58–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

The service information referenced in this AD may be obtained from American Eurocopter Corporation, 2701 Forum Drive, Grand Prairie, Texas 75053–4005, telephone (972) 641–3460, fax (972)

641–3527. This information may be examined at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Richard Monschke, Aerospace Engineer, FAA, Rotorcraft Directorate, Rotorcraft Standards Staff, 2601 Meacham Blvd., Fort Worth, Texas 76137, telephone (817) 222–5116, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION:

Basis for Issuing This AD

The Direction Generale De L'Aviation Civile (DGAC), which is the airworthiness authority for France, recently notified the FAA that an unsafe condition may exist on Model SE. 3160, SA. 316B, SA. 316C, and SA. 319B helicopters. The DGAC advises that, due to the failure of a blade, the spar skin and blade root reinforcement strip area should be checked for separations, cracks, and corrosion.

Eurocopter France has issued Eurocopter SA 316/319 Service Bulletin No. 05.92 Revision No. 1, dated September 28, 1998 (SB). That SB specifies an inspection for bonding separation in the area along the reinforcement strip using a tapping method, and a visual inspection for cracks or corrosion in the blade root area skin using a 3-to 7-power magnifying glass. The DGAC classified this service bulletin as mandatory and issued DGAC AD 98–285–057(A), dated July 15, 1998, and DGAC AD 98–285–057(A) R1, dated December 16, 1998, in order to assure the continued airworthiness of these helicopters in France. The DGAC AD's require the initial inspection within 25 flying hours or 6 months, the Eurocopter SB recommends the initial inspection within 25 hours. The FAA has determined that the initial inspection must be accomplished before further flight to ensure public safety.

These helicopter models are manufactured in France and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of these type designs that are certificated for operation in the United States. Since an unsafe condition has been identified that is likely to exist or develop on other Eurocopter France Model SE. 3160, SA. 316B, SA. 316C, and SA. 319B helicopters of the same type designs registered in the United States, this AD is being issued to detect a bonding separation, corrosion, or a crack in the area of the blade root reinforcement strip, which could result in failure of a blade and subsequent loss of control of the helicopter. This AD requires inspecting each spar skin and blade root reinforcement strip area for a bonding separation, corrosion, or a crack, and replacing the blade if any bonding separation, corrosion, or a crack is found. The actions are required to be accomplished in accordance with the service bulletin described previously. The short compliance time involved is required because the previously described critical unsafe condition can adversely affect the structural integrity of the helicopters. Therefore, the initial inspections are required before further flight, and the repetitive inspections are required at intervals not to exceed 100 hours time-in-service (TIS) or 6 calendar months, whichever occurs first, and this AD must be issued immediately.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment on this AD are not practical, and that good cause exists for making this amendment effective in less than 30 days.

Cost Impact

The FAA estimates that 24 helicopters will be affected by this AD, that it will take approximately 1.5 work hours to do the visual inspection, and 16.0 hours to replace a blade, if necessary, and that the average labor rate is $60 per work hour. Required parts will cost approximately $40,000 per helicopter. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $2,160 to conduct one inspection of the fleet, and $40,960 per helicopter to replace one blade (if necessary).

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 98–SW–58–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA's Determination

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the

Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety. Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

AD 99–08–06 Eurocopter France: Amendment 39–11112. Docket No. 98–SW–58–AD.

Applicability: Model SE. 3160, SA. 316B, SA. 316C, and SA. 319B helicopters, with main rotor blade, part numbers (P/N) 3160S11–10000-all part numbers, 3160S11–30000-all part numbers, 3160S11–35000-all part numbers, 3160S11–40000-all part numbers, 3160S11–45000-all part numbers, 3160S11–50000-all part numbers, and 3160S11–55000-all part numbers, installed, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect bonding separation, corrosion, or cracks in the area of a main rotor blade (blade) root reinforcement strip, which could result in failure of the blade and subsequent loss of control of the helicopter, accomplish the following:

(a) Before further flight, and afterwards at intervals not to exceed 100 hours time-in-service or 6 calendar months, whichever occurs first, inspect the spar skin and blade root reinforcement strip area for a bonding separation, corrosion, or a crack in accordance with paragraphs 2.A and 2.B of the Accomplishment Instructions in Eurocopter SA 316/319 Service Bulletin No. 05.92. Revision No. 1, dated September 28, 1998 (SB), except operators are not required to contact Eurocopter if an anamoly is found.

(b) For the hatched areas (1.5 x 50mm and 10 x 100mm) on the upper and lower surfaces of each blade, if bonding separation is found, replace the blade with an airworthy blade prior to further flight (refer to Figure 1 of the SB).

(c) Bonding separation in the non-hatched area (10 x 100mm) of the upper and lower surfaces of each blade is permissible and must be inspected using the tapping method at intervals not to exceed 25 hours time-in-service to monitor possible propagation. When the bonding separation reaches the hatched area, the blade must be replaced with an airworthy blade (refer to Figure 1 of the SB).

(d) Visually inspect for a crack or corrosion on the upper and lower skin in the 100 x 100mm blade root area. If a crack or corrosion is detected, replace the blade with an airworthy blade prior to further flight (refer to Figure 1 of the SB).

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standards Staff, Rotorcraft Directorate, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Standards Staff.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standards Staff.

(f) Special flight permits will not be issued.

(g) Accomplish the inspections in accordance with Eurocopter SA 316/319 Service Bulletin No. 05.92 Revision No. 1, dated September 28, 1998. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Eurocopter Corporation, 2701 Forum Drive, Grand Prairie, Texas 75053–4005, telephone (972) 641–3460, fax (972) 641–3527. Copies may be inspected at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(h) This amendment becomes effective on April 22, 1999.

Note 3: The subject of this AD is addressed in Direction Generale De L'Aviation Civile (France) AD 98–285–057(A), dated July 15, 1998, and AD 98–285–057(A)R1, dated December 16, 1998.

Issued in Fort Worth, Texas, on March 30, 1999.

Eric Bries,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 99–8409 Filed 4–6–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–326–AD; Amendment 39–11105; AD 99–08–01]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 747 series airplanes, that requires repetitive detailed visual inspections for corrosion, and repetitive high frequency eddy current (HFEC) inspections for cracks, of the upper link assembly on the number 2 and number 3 engine struts, and corrective actions, if necessary. This amendment is prompted by reports of corrosion and cracks located at the four fasteners that attach to the aft end to the upper link assembly on the number 2 and number 3 engine struts. The actions specified by this AD are intended to prevent failure of the upper link due to cracking or corrosion, subsequent damage to other strut support structure, and in-flight separation of an engine from the airplane.

DATES: Effective May 12, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 12, 1999.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Tamara L. Anderson, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2771; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD)

that is applicable to certain Boeing Model 747 series airplanes was published in the **Federal Register** on April 9, 1998 (63 FR 17344). That action proposed to require repetitive detailed visual inspections for corrosion, and repetitive high frequency eddy current (HFEC) inspections for cracks, of the upper link assembly on the number 2 and number 3 engine struts, and corrective actions, if necessary.

Comments Received

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Support for Proposed Rule

Two commenters support the proposed rule.

Request to Revise Compliance Time for the Initial Inspections of Certain Airplanes

One commenter, Boeing, notes that Chapter 54–00–01 of the Overhaul Manual (OHM) does not provide repair instructions other than instructions for replacement of the upper link aft fitting or the upper link tube. For airplanes with upper link assemblies that were overhauled in accordance with Chapter 54–00–01 of the OHM, and on which the four aft end attach bolts were installed with sealant, FLAG NOTE 1 of Figure 1 of Boeing Alert Service Bulletin 747–54A2187, dated May 22, 1997 (which is referenced in the proposed AD as the appropriate source of service information for accomplishment of the required inspections) recommends that the initial inspection be accomplished within 6,000 flight cycles or 8 years after the upper link assembly was overhauled.

From this comment, the FAA infers that the commenter is pointing out an error in the referenced alert service bulletin and is requesting that all affected airplanes be inspected at the later of the times specified in paragraphs (a)(2)(i) and (a)(2)(ii) of the proposed AD. The FAA concurs. Because the instructions for the subject overhaul are not available, the FAA has extended the compliance time for those affected airplanes to coincide with the compliance time for all other affected airplanes. The FAA has revised the final rule accordingly.

Request to Delete Note 2

One commenter requests that FAA delete **Note 2** of the notice of proposed rulemaking (NPRM). The commenter points out that **Note 2** removes the operator's "equivalent procedure" allowance specified in Boeing Alert Service Bulletin 747–54A2187. The commenter states that most airlines have FAA-approved procedures that are part of the maintenance program. These procedures are developed because each manufacturer has a slightly different procedure for commonly used processes. If operators are forced to use each manufacturer's specific procedure (i.e., Boeing 747 Airplane Maintenance Manual), as specified in **Note 2**, an undue burden would be placed on the operators. In addition, the FAA's Seattle Aircraft Certification Office (ACO) would receive numerous requests for approval of an alternative method of compliance (AMOC), which could delay implementation of the AD and significantly affect operators' ability to respond to AD's that have short compliance times.

The FAA concurs with the commenter's request to delete **Note 2** of the NPRM. The FAA has reconsidered its position, as was stated under the heading "Differences Between Proposed Rule and Alert Service Bulletin." The FAA has determined that procedures "equivalent" to those procedures specified in the referenced alert service bulletin for removing or replacing the upper link that are employed by an operator will adequately address the identified unsafe condition and provide an acceptable level of safety. The FAA finds that, if an operator is required to remove or replace the upper link, those corrective actions may be accomplished in accordance with either the applicable chapter of the Boeing 747 Airplane Maintenance Manual (AMM) or an operator's "equivalent procedure," when specified in the referenced alert service bulletin. Therefore, the FAA has removed **Note 2** of the NPRM from the final rule.

Request to Clarify the Term "Certain Corrective Actions"

One commenter requests that the FAA clarify whether the term "certain corrective actions," as described under the heading "Differences Between Proposed Rule and Alert Service Bulletin" in the proposed AD, applies to repairs as well as removal and installation. The commenter states that the referenced alert service bulletin specifies that an operator's "equivalent procedure" may be used for removal or installation of the upper links and does not specify that an operator's "equivalent procedure" may be used for repairs of the upper links. In addition, the commenter points out that **Note 2** of the NPRM states "* * * and Boeing Alert Service Bulletin 747–54A2187, dated May 22, 1997, specifies that corrective actions may be accomplished in accordance with an operator's 'equivalent procedure.'"

The FAA finds that clarification is necessary. The term "certain" in that paragraph refers to some of the required corrective actions. The operator's "equivalent procedure" does not apply to the inspection specified in Figure 2 or the repair specified in Figure 3 of the alert service bulletin. The alert service bulletin specifies that "certain" corrective actions (i.e., removing, installing, and replacing the upper link) may be accomplished in accordance with an operator's "equivalent procedure." Therefore, the FAA finds that the term "certain" is correct in that paragraph. The FAA acknowledges that **Note 2** of NPRM incorrectly reads "corrective actions," rather than "certain corrective actions." However, as discussed previously, **Note 2** is not restated in the final rule, thus, no change to the final rule is necessary.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

There are approximately 567 Boeing Model 747 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 173 airplanes of U.S. registry will be affected by this AD, that it will take approximately 12 work hours per airplane to accomplish the required inspections, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $124,560, or $720 per airplane, per inspection cycle.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612,

it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

99–08–01 Boeing: Amendment 39–11105. Docket 97–NM–326–AD.

Applicability: Model 747 series airplanes, line positions 1 through 886 inclusive; equipped with Pratt & Whitney JT9D–3 or –7, or General Electric CF6–45 or –50 engine struts; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the upper link due to cracking or corrosion, subsequent damage to other strut support structure, and in-flight separation of an engine from the airplane, accomplish the following:

(a) Perform a detailed visual inspection for corrosion, and a high frequency eddy current (HFEC) inspection for cracks, of the upper link assembly on the number 2 and number 3 engine struts, in accordance with Boeing Alert Service Bulletin 747–54A2187, dated May 22, 1997, at the later of the times specified in paragraphs (a)(1) and (a)(2) of this AD.

(1) Within 6,000 total flight cycles, or 8 years after the date of manufacture of the airplane, whichever occurs first.

(2) Within 600 flight cycles, or 6 months after the effective date of this AD, whichever occurs first.

(b) If no crack or corrosion is detected during any inspection required by paragraph (a) of this AD, repeat the inspections specified in paragraph (a) of this AD, thereafter, at intervals not to exceed 18 months.

(c) If any crack or corrosion is detected during any inspection required by this AD, prior to further flight, accomplish either paragraph (c)(1) or (c)(2) of this AD, in accordance with Boeing Alert Service Bulletin 747–54A2187, dated May 22, 1997. Thereafter, repeat the inspections required by paragraph (a) of this AD, at intervals not to exceed 6,000 flight cycles or 8 years, whichever occurs first.

(1) Repair the upper link within the limits specified in the alert service bulletin, in accordance with Part 2 of the Accomplishment Instructions of the alert service bulletin. (Complete corrosion and crack removal must be achieved within the limits specified in the alert service bulletin.) Or

(2) Replace the upper link with a new upper link assembly, in accordance with Part 3 of the Accomplishment Instructions of the alert service bulletin.

(d) Accomplishment of the modifications required in AD 95–13–07, amendment 39–9287 (for General Electric CF6–45 or –50 engine struts); or AD 95–10–16, amendment 39–9233 (for Pratt & Whitney JT9D–3 or –7 engine struts); constitutes terminating action for the requirements of this AD.

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(f) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(g) Except as provided by paragraph (d) of this AD, the actions shall be done in accordance with Boeing Alert Service Bulletin 747–54A2187, dated May 22, 1997. This incorporation by reference was approved by the Director of the **Federal Register** in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the **Federal Register**, 800 North Capitol Street, NW., suite 700, Washington, DC.

(h) This amendment becomes effective on May 12, 1999.

Issued in Renton, Washington, on March 29, 1999.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–8309 Filed 4–6–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD07–99–016]

RIN 2115–AE46

Special Local Regulations: St. Croix International Triathlon, St. Croix, USVI

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: Temporary special local regulations are being adopted for the Saint Croix International Triathlon. The event will be held from 5 a.m. to 9 a.m. Atlantic Standard Time (AST) on May 2, 1999, in Saint Croix, Christiansted Harbor, USVI. These regulations are needed to provide for the safety of life on navigable waters during the event.

DATES: These regulations become effective at 4:30 a.m. and terminate at 9 a.m. AST on May 2, 1999.

FOR FURTHER INFORMATION CONTACT: Mr. John Reyes at (787) 289–7900, extension 228.

SUPPLEMENTARY INFORMATION:

Background and Purpose

There will be approximately 300 participants swimming a course in Christiansted Harbor, St. Croix on May 2, 1999. The swimmers will be competing with numerous spectator craft in the area, creating an extra or unusual hazard in the navigable waterway. These regulations are required to provide for the safety of life on the navigable waters during the running of the St. Croix International Triathlon.

In accordance with 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days after **Federal Register** publication since immediate action is needed to minimize potential danger to the public. The permit was received approximately one month prior to the event taking place.

Regulatory Evaluation

This regulation is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(f) of that order. The Office of Management and Budget has excepted it from review under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full regulatory evaluation under paragraph 10e of the regulated policies and procedures of DOT is unnecessary. The regulated area encompasses Christiansted Harbor, Saint Croix, USVI, entry into which is prohibited for only 4.5 hours early in the morning on the day of the event.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) the Coast Guard must consider whether this rulemaking will have a significant economic impact on a substantial number of small entities. Small entities include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities, as the regulations will only be in effect for approximately 4 hours early in the day in an area with limited commercial traffic.

Collection of Information

This rule contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Assessment

The Coast Guard considered the environmental impact of this action consistent with Figure 2–1, paragraph 34(g) Commandant Instruction M16475.1C, and has determined that this action is categorically excluded from any future environmental documentation.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

Temporary Regulations

In consideration of the foregoing, the Coast Guard amends part 100 of Title 33, Code of Federal Regulations as follows:

PART 52—[AMENDED]

1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233, 49 CFR 1.46, and 33 CFR 100.35.

2. A temporary § 100.35T–07–016 is added as follows:

§ 100.35T–07–016 St. Croix International Triathlon; Christiansted, St. Croix, USVI.

(a) *Definitions:*

(1) *Regulated Area:* A regulated area is established for the waters North of Saint Croix, USVI in Christiansted Harbor, Kings Wharf beginning at 17–44′51″N, 064–42′20″W, then North East to 17–45′08″N 064–42′02″W, then South West to 17–44′52″N 064–42′02″W and back to origin. All coordinates referenced use Datum: NAD 1983.

(2) *Coast Guard Patrol Commander:* The Coast Guard Patrol Commander is a commissioned, warrant, or petty officer of the Coast Guard who has been designated by Commanding Officer, Greater Antilles Section, San Juan, Puerto Rico.

(b) *Special Local Regulations:*

(1) Entry into the regulated area by other than event participants is prohibited, unless otherwise authorized by the Patrol Commander. Spectator craft are required to remain in a spectator area to be established by the event sponsor Project Saint Croix Association. After termination of the race all vessels may resume normal operation. At the discretion of the Patrol Commander, between scheduled racing events, traffic may be permitted to resume normal operations.

(2) Temporary buoys will be used to delineate the course.

(c) *Dates:* These regulations become effective at 4:30 a.m. and terminated at 9 a.m. AST on May 2, 1999.

Dated: March 29, 1999.

N.T. Saunders,

Rear Admiral, U.S. Coast Guard, Commander, Seventh Coast Guard District.

[FR Doc. 99–8572 Filed 4–6–99; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD07–99–017]

RIN 2115–AE46

Special Local Regulations; Air & Sea Show, Fort Lauderdale, FL

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing temporary special local regulations for the City of Fort Lauderdale Air & Sea Show. This event will be held from April 30th, through May 2nd, 1999, and will involve approximately 150 participating aircraft and vessels, and 3,000 spectator craft. The resulting congestion will create an extra or unusual hazard in the navigable waters. These regulations are necessary to provide for the safety of life on navigable waters during the event.

DATES: These regulations are effective from 9 a.m. to 3 p.m. EDT on Friday, April 30, 1999, and from 9 a.m. to 5 p.m. EDT on Saturday and Sunday May 1st and 2nd 1999.

FOR FURTHER INFORMATION CONTACT: LTJG J. Delgado Coast Guard Group Miami, Florida at (305) 535–4409.

SUPPLEMENTARY INFORMATION:

Background and Purpose

The City of Fort Lauderdale Annual Air & Sea Show is a three day event with approximately 130 aircraft and 18 ski boats, jet skis and offshore racing power boats. In addition, various military aircraft, including high performance aircraft, will be operating at high speeds and low altitudes in the area directly above the regulated area. The event will take place in the Atlantic Ocean from Fort Lauderdale beach to one nautical mile offshore, between Oakland Park Boulevard and the 17th Street Causeway. These regulations will prohibit non-participating vessels from entering the regulated area, and directs participants to obey instructions from the patrol commander.

Although a permanent regulation has been published for this event (33 CFR 100.731), a change in the dates of 1999 caused the time period to be outside the dates inclusive in the permanent regulation. Therefore, in accordance with 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days after publication in the **Federal Register.** Publishing a NPRM and delaying its effective date would be contrary to national safety interests since prompt action is needed to minimize potential danger to the public. The permit with the changed date was received less than six weeks prior to the event taking place, and the public may be confused as to whether the permanent regulation covers this time period.

Regulatory Evaluation

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary. Entry into the regulated area offshore is prohibited for only 6 hours on Friday, and 8 hours on Saturday and Sunday.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this rule will have a significant economic impact on a substantial number of small entities. "Small entities" include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this rule would not have a significant economic impact on a substantial number of small entities as the regulations would only be in effect for approximately eight hours each day for three days in an area with limited commercial traffic.

Collection of Information

These regulations contain no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Assessment

The Coast Guard has considered the environmental impact of this action and has determined pursuant to Figure 2–1, paragraph 34(g) of Commandant Instruction M16475.1C, that this action is categorically excluded from further environmental documentation.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

Temporary Regulations

In consideration of the foregoing, the Coast Guard amends Part 100 of Title 33, Code of Federal Regulations, as follows:

PART 100—[AMENDED]

1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233, 49 CFR 1.46 and 33 CFR 100.35.

2. A new section 100.35T–07–017 is added to read as follows:

§ 100.35T–07–017 Special Local Regulations; Air & Sea Show, Ft. Lauderdale, FL.

(a) *Definitions:*

(1) *Regulated area.* The following is a regulated area: All waters of the Atlantic Ocean west of a line drawn from 26–10.32N, 080–05.9W to 26–06.36N, 080–05.58W. All coordinates referenced use Datum: NAD 83.

(2) *Patrol Commander.* The Coast Guard Patrol Commander is a commissioned, warrant, or petty officer of the Coast Guard who has been designated by Commander, Coast Guard Group Miami, Florida.

(b) *Special Local Regulations.*

(1) All vessels, with the exception of event participants, are prohibited from entering the regulated area without the specific permission of the patrol commander.

(2) All vessels shall immediately follow any specific instructions given by event patrol craft and exercise extreme caution while operating in or near the regulated area. A succession of not fewer than five short whistle or horn blasts from a patrol vessel will be the signal for any non-participating vessel to stop immediately. The display of an orange distress smoke signal from a patrol vessel will be the signal for any and all vessels to stop immediately.

(3) After the termination of the Air and Sea Show event for each respective day, all vessels may resume normal operations.

(c) *Dates.* These regulations are effective from 9 a.m. to 3 p.m. EDT on Friday, April 30, 1999, and from 9 a.m. to 5 p.m. EDT on Saturday and Sunday May 1st and 2nd 1999.

Dated: March 29, 1999.

N.T. Saunders,

Rear Admiral, U.S. Coast Guard, Commander, Seventh Coast Guard District.

[FR Doc. 99–8573 Filed 4–6–99; 8:45 am]

BILLING CODE 4910–15–M

POSTAL SERVICE

39 CFR Part 111

Domestic Mail Manual Changes To Implement New Labeling List L001 and To Implement Package Reallocation for Periodicals and Standard Mail (A) Flats Placed on Pallets

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: This final rule amends the Domestic Mail Manual (DMM) to implement new labeling list L001, 5-Digit Scheme—Periodical Flats and Irregular Parcels and Standard (A) Flats, and to offer mailers an option to use package reallocation to protect the sectional center facility (SCF) pallet level for Periodicals flats and irregular parcels and Standard Mail (A) flats.

EFFECTIVE DATE: July 29, 1999.

FOR FURTHER INFORMATION CONTACT: Cheryl Beller, (202) 268–5166 or Barry Elliott, (202) 268–2731.

SUPPLEMENTARY INFORMATION: On October 29, 1998, the Postal Service published for public comment in the **Federal Register** a proposed rule (63 FR 57970–57996) regarding the implementation of labeling list L001 and package reallocation. The Postal Service also invited comments on the proposed rule from interested parties and accepted comments through December 28, 1998. This final rule contains the DMM standards adopted by the Postal Service after review of the comments that were submitted.

Evaluation of Comments Received

The Postal Service received 11 pieces of correspondence offering comments

on the October 29 proposed rule. Respondents included major mailer associations, individual publishers, printers, service bureaus, and mailers. Nearly all of the commenters were supportive of either one or all of the components of the proposed rule. However, many of the same commenters who voiced support for the proposed rule also conveyed various levels of uncertainty as to how their specific mailings would be impacted by L001 and/or package reallocation. Many of these commenters, therefore, suggested that the Postal Service should implement both L001 and package reallocation optionally as opposed to requiring either or both components. It was felt that implementing both components optionally would allow more time for additional modeling and also provide mailers with the flexibility to determine the most appropriate combination of these options for their specific mailing(s). Based on these comments, as well as other concerns that are mentioned below, the Postal Service has elected to implement both L001 and package reallocation as optional preparation methods with an effective date of July 29, 1999.

Optional Implementation

By implementing both L001 and package reallocation as optional preparation methods, mailers will have the ability to mitigate any of the concerns that were cited during the comment period. Mailers will be able to selectively utilize none, one, or both options as they deem appropriate for their specific mailing. By appropriately tailoring the utilization of these options to their specific mailing, mailers should be able to avoid the undesired results noted in some of the comments. Potential undesirable results that were cited as possibilities depending on the size and/or density of a mailing were: (1) An increase in the number of sacks, (2) an increase in the amount of mail on ADC or BMC pallets (if package reallocation is not used), and (3) an inordinate amount of mail being moved from 5-digit pallets to SCF pallets. Several different alternatives were suggested to alleviate these undesirable results. The alternatives varied from lowering the minimum weight for pallets to creating a transfer hub pallet for Periodicals. These alternatives are no longer entirely relevant given that the Postal Service will allow the mailer to choose the option(s) that are most appropriate for their mailings. Prior to preparing a specific mailing, mailers should remain cognizant of the potential undesirable results and therefore choose to experiment with different combinations of the two options to determine the most appropriate setup.

Other comments also factored into the decision to make both L001 and package reallocation optional. Two commenters expressed concerns about L001 being a required pallet level because some palletized mailings do not use palletization software. In these instances, it was stated that the creation of an L001 pallet, if prepared manually without software, would slow down and/or complicate production. Accordingly, the commenters requested palletized mailings that are not prepared with palletization software be exempt from using L001. Although the Postal Service has decided to implement L001 as an optional preparation method, and thus alleviate this concern temporarily for mailers not using palletization software, it remains likely the Postal Service will require the use of L001 for all palletized Standard (A) and Periodicals flat mailings at some point in the future. For ZIP Codes that are included on L001, it is more appropriate for service and cost reasons for the Postal Service to receive one L001 pallet instead of multiple 5-digit pallets because all of the mail for the zones listed in a given combination are processed at the same facility. The use of L001 facilitates greater presort density, which can yield more "cross-dock" pallets for plants and provide more timely service to mailers. Hence, there are operational and service efficiencies to be gained from making L001 a required level of preparation. Mailers that are not currently using palletization software to prepare pallets should therefore begin evaluating how palletization software can be integrated into their production processes in the future, in order to be prepared for a change that would require the usage of L001. Likewise, mailers that are already using palletization software to prepare pallets are strongly encouraged to utilize L001 because this list reflects the way the mail is processed by postal operations.

One commenter expressed concern regarding the requirement that reallocation could be performed only with Presort Accuracy Validation and Evaluation (PAVE)-certified software. The concern pertains to the portion of the mailing community that uses in-house-developed software applications. The commenter remarked that there are marketplace factors which compel commercial software vendors to attempt PAVE certification and that those same factors do not apply to in-house developed software applications. Therefore, the commenter requested that the requirement be amended to "PAVE certified software or approved documentation." The same commenter, as well as two other commenters, also expressed concern about requiring the implementation of labeling list L001 by May 1999. They noted many companies are having to devote computer programmers to the Y2K bug and resources are therefore limited for new development. One of these three commenters also requested that a longer lead time (12 weeks) be provided between the date that software is PAVE-certified and the implementation date. Since both L001 and package reallocation will now be optional, developers of in-house software applications will be able to work on this initiative in a less frenetic manner. As noted earlier, the implementation date for L001 and package reallocation will be July 29, 1999. In the interest of providing the requested lead time between certification and implementation, PAVE testing of L001 and package reallocation will be made available to interested parties beginning in April.

Additional Comments

Communication regarding rate impact—One commenter noted that the Postal Service should emphasize the proposed changes will not have any impact on rates. The comment is noted and the Postal Service reminds mailers that rates for packages of flats on pallets are based on the presort level of the package, not the presort level of the pallet.

Availability of Labeling List L001 in an Electronic Format

—One commenter requested that labeling list L001 should be made available in an electronic format in order to eliminate the need for developers to manually build a table of the information. Moreover, the commenter requested that the list should be made available through a mechanism that would facilitate quicker, if not, real-time updates. Another commenter questioned if the publication of the L001 list in the DMM would eventually result in the 5-digit scheme list, which is used for automation letters, being published in the DMM instead of the current mechanism (AMS City/State file). The same commenter also expressed concern about potential confusion among mailers regarding the L001 list and the 5-digit scheme list for letter-size mail.

The Postal Service recognizes the need for labeling lists, such as L001, to be provided to software developers and mailers in an electronic format. Realistically, making labeling lists

available in an electronic format is the first step in facilitating quicker updates to mailers. An effort has been underway for some time to provide this format, and is currently nearing completion. The USPS/Mailers Technical Advisory Committee (MTAC) Presort Optimization Work Group will be involved in the final stages of this effort to assure that appropriate file formats are provided. The Postal Service does not anticipate mailers having difficulty in discerning the difference between the 5-digit scheme list and L001. The 5-digit scheme list applies only to barcoded letters and L001 applies only to pallets and 5-digit Carrier Routes sacks of Periodicals flats and irregular parcels and Standard (A) flats.

Impact of L001 pallets on delivery units—One commenter expressed concerns regarding non-carrier route pieces being shipped to delivery units only to be returned to a plant because the sortation to carrier route is performed at the plant. The commenter suggested the Postal Service should require mailers to place a CRRT designation on the address label of every piece of mail in order to facilitate manual distribution of this mail by nonscheme-trained clerks at the delivery unit. This would help to alleviate the need to send the mail back to the plant for distribution to carrier route.

The scenario outlined by the commenter is not necessarily an outgrowth from the implementation of L001. There are already instances where a delivery unit receives non-carrier route mail on a 5-digit pallet and the unit must decide how to best handle that mail. In many cases, the amount of non-carrier route pieces is the determining factor in whether the mail is worked at the delivery unit or returned to the plant. Field sites have received guidance on how L001 should be used and how it can benefit them. Based on that information, field sites have listed only the zone combinations they deem appropriate for their specific service area. Operations at Postal Service Headquarters is currently discussing other possible changes to pallet standards in the future that could better remedy this situation and will soon begin discussions with field sites for their input. It should be noted that the destination delivery unit (DDU) rate will be available for mail on a 5-digit scheme pallet prepared using L001 for all carrier route rate Periodicals or Enhanced Carrier Route rate Standard Mail (A) on the pallet when the pallet is deposited at the facility designated by the Postal Service as the location where the carrier cases the mail based on the "Label To" Zip Code on the pallet label.

List of Subjects in 39 CFR part 111

Postal Service.

Accordingly, the Postal Service adopts the following amendments to the Domestic Mail Manual, which is incorporated by reference in the Code of Federal Regulations (see 39 CFR part 111).

PART 111—AMENDED]

The authority citation for 39 CFR part 111 continues to read as follows:

Authority: 5 U.S.C. 552 (a); 39 U.S.C 101, 401, 403, 404, 407, 3001–3011, 3201–3219, 3403–3406, 3621, 5001.

Revise the following sections of the Domestic Mail Manual as follows:

E Eligibility

E200 Periodicals

* * * * *

E230 Nonautomation Rates

* * * * *

2.0 CARRIER ROUTE RATES

* * * * *

2.2 Eligibility

* * * * *

[Amend 2.2 by revising 2.2a to add the word "scheme" before "carrier routes sacks" and add new sentence as follows:]

a. The basic carrier route rate applies to copies in carrier route packages of six or more letter-size pieces each that are sorted to carrier route, 5-digit carrier routes, or 3-digit carrier routes trays; and six or more flat-size pieces or irregular parcel-size pieces each that are sorted to carrier route, 5-digit, or 5-digit scheme carrier routes sacks. (Preparation of 5-digit scheme carrier routes sacks is optional, but, if performed, must be done for all 5-digit scheme destinations.)

* * * * *

E250 Destination Entry

* * * * *

2.0 DDU RATE

2.1 Eligibility

[Amend the second sentence of E250.2.1 by adding the word "scheme" before "carrier routes sacks" as follows:]

* * * Copies claimed at DDU rates must be part of a carrier route package placed in a carrier route tray or sack, a 5-digit carrier routes tray or sack, or, for flats and irregular parcels, a 5-digit scheme carrier routes sack, under M200, or be palletized under M045, and otherwise eligible for and claimed at a carrier route rate. * * *

* * * * *

E600 Standard Mail

* * * * *

E620 Nonautomation Standard Mail (A) Rates

* * * * *

2.0 ENHANCED CARRIER ROUTE RATES

* * * * *

2.8 Basic Rates

[Amend E630.2.8 by revising 2.8b to add the word "scheme" before "carrier routes sacks" and add new sentence as follows:]

Basic (nonautomation) carrier route rates apply to each piece that is sorted under M620 into the corresponding qualifying groups:

* * * * *

b. Flat-size pieces in a carrier route package of 10 or more pieces palletized under M045, or placed in a carrier route sack containing at least 125 pieces or 15 pounds of pieces or in a 5-digit or 5-digit scheme carrier routes sack. (Preparation of 5-digit scheme carrier routes sacks is optional, but, if performed, must be done for all 5-digit scheme destinations.)

* * * * *

E650 Destination Entry

E651 Regular, Nonprofit, and Enhanced Carrier Route Standard Mail

* * * * *

7.0 DDU DISCOUNTS

* * * * *

7.2 Eligibility

[Amend E651.7.2 by revising the first sentence to provide DDU rate eligibility for carrier route flats placed in 5-digit scheme carrier routes sacks, as follows:]

Pieces in a mailing that meet the standards in 1.0 through 4.0 and 7.0 are eligible for the DDU rate when deposited at a DDU, addressed for delivery within that facility's service area (carrier routes), and placed in properly prepared and labeled carrier route packages sorted to carrier route trays (letters) or sacks (flats and irregular parcels), 5-digit carrier routes trays (letters) or sacks (flats and irregular parcels), or 5-digit scheme carrier routes sacks (flats) under M600, or palletized under M045, and otherwise eligible for and claimed at a carrier route rate. * * *

* * * * *

L Labeling Lists

L000 General Use

[Add labeling list L001 as follows:]

L001 5-Digit Scheme—Periodicals Flats and Irregular Parcels and Standard (A) Flats

When 5-digit scheme sort is used for Periodicals flats and irregular parcels packages and Standard Mail (A) flats packages, mail for the 5-digit ZIP Codes shown in Column A must be combined on pallets or in carrier routes sacks labeled to the corresponding destination shown in Column B.

BILLING CODE 7710-12-P

Column A Destination ZIP Codes	Column B Label Container To
00901, 02	SAN JUAN PR 00901
00907, 08	SAN JUAN PR 00907
00909, 10	SAN JUAN PR 00909
00911-14	SAN JUAN PR 00911
00915, 16	SAN JUAN PR 00915
00917-19	SAN JUAN PR 00917
00920-22, 68	SAN JUAN PR 00920
00923, 24, 29	SAN JUAN PR 00923
00925, 27, 28	SAN JUAN PR 00925
00958, 60	BAYAMON PR 00960
00956, 57, 59, 61	BAYAMON PR 00961
00962, 63, 65	CATANO PR 00962
00966, 67, 69, 70	GUAYNABO PR 00970
00979, 82-88	CAROLINA PR 00982
01013, 14, 20-22	CHICOPEE MA 01013
01432, 33	AYER MA 01432
01701-05	FRAMINGHAM MA 01701
01830-35	HAVERHILL MA 01830
01840-45	LAWRENCE MA 01840
01850-54	LOWELL MA 01850
01950-52	NEWBURYPORT MA 01950
02108, 33	BOSTON MA 02108
02109, 13	BOSTON MA 02109
02110-12	BOSTON MA 02110
02118-20	ROXBURY MA 02118
02121, 25	DORCHESTER MA 02121
02140-42, 63	CAMBRIDGE MA 02140
02143-45	SOMERVILLE MA 02143
02153, 55, 56	MEDFORD MA 02155
02420, 21	LEXINGTON MA 02420
02445-47	BROOKLINE MA 02446
02451-54	WALTHAM MA 02451
02471, 72, 77	WATERTOWN MA 02472
02474-76	ARLINGTON MA 02474
02478, 79	BELMONT MA 02478
02457, 81, 82	WELLESLEY HILLS MA 02481
02540, 41	FALMOUTH MA 02540
02664, 73	SOUTH YARMOUTH MA 02664
02721, 22	FALL RIVER MA 02721
02725, 26	SOMERSET MA 02726
02741, 42	NEW BEDFORD MA 02741
02779, 80	TAUNTON MA 02780
02860, 62	PAWTUCKET RI 02860
02879, 80, 83	WAKEFIELD RI 02880
02895, 96	WOONSOCKET RI 02895
03051, 52	HUDSON NH 03051
03060, 61	NASHUA NH 03060
03062, 63	NASHUA NH 03062
03108, 11	MANCHESTER NH 03108
03246, 47	LACONIA NH 03246
03301-06	CONCORD NH 03301
03431, 35	KEENE NH 03431
03801-04	PORTSMOUTH NH 03801
03820, 22	DOVER NH 03820
03842, 43	HAMPTON NH 03842
03839, 66-68	ROCHESTER NH 03867
04101, 08	PORTLAND ME 04101
05301-04	BRATTLEBORO VT 05301
05401-07	BURLINGTON VT 05401
05601-04, 09, 20, 33	MONTPELIER VT 05601

Column A Destination ZIP Codes	Column B Label Container To
05701, 02	RUTLAND VT 05701
06050-53	NEW BRITAIN CT 06050
06701-06, 08, 10, 12, 16, 20-26, 49	WATERBURY CT 06701
06777, 93, 94	WASHINGTON DEPOT CT 06777
06810-13, 16, 17	DANBURY CT 06810
06830, 31, 36	GREENWICH CT 06830
06850-60	NORWALK CT 06850
06880, 81	WESTPORT CT 06880
07004, 06, 07	CALDWELL NJ 07006
07011-15	CLIFTON NJ 07015
07017-19	EAST ORANGE NJ 07019
07024, 25	FORT LEE NJ 07024
07031, 32	KEARNY NJ 07032
07042-44	MONTCLAIR NJ 07042
07050-52	ORANGE NJ 07050
07055-57	PASSAIC NJ 07055
07059-63	PLAINFIELD NJ 07061
07065-67	RAHWAY NJ 07065
07070-75	RUTHERFORD NJ 07070
07090-92	WESTFIELD NJ 07091
07094, 96	SECAUCUS NJ 07094
07401, 17, 23, 46, 58, 63, 81, 95, 98	ALLENDALE NJ 07401
07450-52	RIDGEWOOD NJ 07450
07470, 74, 77	WAYNE NJ 07470
07601-08	HACKENSACK NJ 07606
07631, 32	ENGLEWOOD NJ 07631
07701, 02, 04	REDBANK NJ 07701
07801-03, 06, 69	DOVER NJ 07801
07901, 02	SUMMIT NJ 07901
07960-63	MORRISTOWN NJ 07960
08002, 03, 34	CHERRY HILL NJ 08034
08540-44	PRINCETON NJ 08540
08723, 24	BRICK NJ 08723
08753-57	TOMS RIVER NJ 08753
08817-20, 37	EDISON NJ 08817
08854, 55	PISCATAWAY NJ 08854
08861-63	PERTH AMBOY NJ 08861
08871, 72	SAYREVILLE NJ 08872
08873, 75	SOMERSET NJ 08873
08878, 79	SOUTH AMBOY 08879
10017, 44	GRAND CENTRAL NY 10017
10022, 55	FDR NY 10022
10520, 21	CROTON ON HUDSON NY 10520
10550-53, 57-59	MOUNT VERNON NY 10550
10570-72	PLEASANTVILLE NY 10570
10580, 81	RYE NY 10580
10940, 41, 43	MIDDLETOWN NY 10940
10951, 52	MONSEY NY 10952
10994, 95	WEST NYACK NY 10994
10996, 97	WEST POINT NY 10996
11001, 02, 04, 05	FLORAL PARK NY 11001
11020-27	GREAT NECK NY 11022
11040-44	NEW HYDE PARK NY 11040
11050-56	PORT WASHINGTON NY 11050
11553, 55, 56	UNIONDALE NY 11553
11580-83	VALLEY STREAM NY 11580
11568, 90	WESTBURY NY 11590
11702, 03, 07	BABYLON NY 11702

Column A Destination ZIP Codes	Column B Label Container To
11776, 77	PORT JEFFERSON NY 11776
12180, 83	TROY NY 12180
12550-53	NEWBURGH NY 12550
12601, 02	POUGHKEEPSIE NY 12601
12603, 04	ARLINGTON NY 12603
12801, 03, 04	GLENS FALLS NY 12801
12901, 03	PLATTSBURGH NY 12901
13021, 22	AUBURN NY 13021
13088-90	LIVERPOOL NY 13088
13440, 41	ROME NY 13440
14020, 21	BATAVIA NY 14020
14094, 95	LOCKPORT NY 14094
14120, 21	NIORTH TONAWANDA NY 14120
14150, 51	TONAWANDA NY 14150
14201, 02	BUFFALO NY 14202
14203-05	BUFFALO NY 14203
14208, 09	BUFFALO NY 14209
14301-05	NIAGARA FALLS NY 14302
14850-53, 82	ITHACA NY 14850
14901-05	ELMIRA NY 14901
17001, 11	CAMP HILL PA 17011
17042, 46	LEBANON PA 17042
17701, 03	WILLIAMSPORT PA 17701
18015-18	BETHLEHEM PA 18015
18040, 42-45	EASTON PA 18042
18504, 08, 12, 17-19	SCRANTON PA 18504
18501, 03, 05, 07, 09, 10, 15	SCRANTON PA 18505
18640-44	PITTSTON PA 18640
18701, 02	WILKES BARRE PA 18701
18704, 08, 09	WILKES BARRE PA 18704
18705-07	WILKES BARRE PA 18705
18954, 66	SOUTHHAMPTON PA 18966
19013-16, 22	CHESTER PA 19013
19020, 21	BENSALEM PA 19020
19025, 34	FORT WASHINGTON PA 19025
19043, 98	HOLMES PA 19043
19047-49, 53	LANGHORNE PA 19047
19054-59	LEVITTOWN PA 19054
19037, 63-65, 86, 91	MEDIA PA 19063
19080, 87-89	WAYNE PA 19080
19082-84	UPPER DARBY PA 19082
19301, 12, 33	PAOLI PA 19301
19380-83	WEST CHESTER PA 19380
19401, 04	NORRISTOWN PA 19401
19403, 07-09	EAGLEVILLE PA 19403
19405, 06	KING OF PRUSSIA PA 19406
19464, 65	POTTSTOWN PA 19464
19702, 11-18, 25, 26	NEWARK DE 19711
20110-12	MANASSAS VA 20110
20120, 21	CENTERVILLE VA 20120
20186, 87	WARRENTON VA 20186
20703-06, 37, 38, 40, 41, 81-85, 87-89	CALVERT DDC MD 20782
22191-94	WOODBRIDGE VA 22191
22401-08, 12	FREDERICKSBURG VA 22401
22554, 55	STAFFORD VA 22554
22801, 07	HARRISONBURG VA 22801
22901-11	CHARLOTTESVILLE VA 22901
23058-60	GLEN ALLEN VA 23060

Column A Destination ZIP Codes	Column B Label Container To
23111, 16	MECHANICSVILLE VA 23111
23112, 13	MIDLOTHIAN VA 23112
23185-87	WILLIAMSBURG VA 23185
23229, 55, 94	RICHMOND VA 23229
23233, 38, 42	RICHMOND VA 23233
23234, 37	RICHMOND VA 23234
23235, 36	RICHMOND VA 23235
23430, 31	SMITHFIELD VA 23430
23432-39	SUFFOLK VA 23434
23690-93	GRAFTON VA 23692
23801, 03-06	PETERSBURG VA 23801
23832, 38	CHESTERFIELD VA 23832
23901, 09, 43	FARMVILLE VA 23901
24001-10	ROANOKE VA 24001
24011, 13, 16	ROANOKE VA 24011
24022-38, 40, 42-45, 48	ROANOKE VA 24022
24060-63	BLACKSBURG VA 24060
24068, 73	CHRISTIANSBURG VA 24068
24112-15	MARTINSVILLE VA 24112
24141-43	RADFORD VA 24141
24401, 02	STAUNTON VA 24401
24505-22, 24-39, 44-50, 52-71, 73-91, 93-99	LYNCHBURG VA 24505
24540-43	DANVILLE VA 24541
25301, 11	CHARLESTON WV 25301
25302, 12	CHARLESTON WV 25302
25303, 09	CHARLESTON WV 25303
25304, 15	CHARLESTON WV 25304
25701, 03-05, 71-79	HUNTINGTON WV 25701
25706-29	HUNTINGTON WV 25706
26101-06	PARKERSBURG WV 26101
26301, 02	CLARKSBURG WV 26301
26501-08	MORGANTOWN WV 26505
26554, 55	FAIRMONT WV 26554
27101, 15	WINSTON SALEM NC 27101
27103, 04, 14	WINSTON SALEM NC 27103
27105, 06, 16	WINSTON SALEM NC 27106
27107, 17, 27	WINSTON SALEM NC 27107
27203, 04	ASHEBORO NC 27203
27215-17, 20	BURLINGTON NC 27215
27260-65	HIGH POINT NC 27260
27284, 85	KERNERSVILLE NC 27284
27288, 89	EDEN NC 27288
27292-95	LEXINGTON NC 27292
27320-23	REIDSVILLE NC 27320
27330, 31	SANFORD NC 27330
27360, 61	THOMASVILLE NC 27360
27401-03, 11, 20, 35, 55	GREENSBORO NC 27401
27405, 15	GREENSBORO NC 27405
27406, 16	GREENSBORO NC 27406
27408, 09, 10	GREENSBORO NC 27408
27511-13, 19	CARY NC 27511
27514, 15, 99	CHAPEL HILL NC 27514
27530-34	GOLDSBORO NC 27530
27587, 88	WAKE FOREST NC 27587
27604, 16	RALEIGH NC 27604
27608, 09	RALEIGH NC 27609
27603, 10	RALEIGH NC 27610
27612, 13	RALEIGH NC 27612
27614, 15	RALEIGH NC 27615

Column A Destination ZIP Codes	Column B Label Container To
27701, 03	DURHAM NC 27701
27705, 15	DURHAM NC 27705
27707, 13, 17	DURHAM NC 27707
27709, 11	DURHAM NC 27709
27712, 22	DURHAM NC 27712
27801-04	ROCKY MOUNT NC 27801
27833-36, 58	GREENVILLE NC 27833
27893-96	WILSON NC 27893
27906-09	ELIZABETH CITY NC 27909
28001, 02	ALBEMARLE NC 28001
28025, 26	CONCORD NC 28025
28052, 53	GASTONIA NC 28052
28054-56	GASTONIA NC 28054
28070, 78	HUNTERSVILLE NC 28078
28081-83	KANNAPOLIS NC 28081
28092, 93	LINCOLNTON NC 28092
28104-06	MATTHEWS NC 28105
28110-12	MONROE NC 28110
28144-47	SALISBURY NC 28144
28150-52	SHELBY NC 28150
28301-09, 11, 14	FAYETTEVILLE NC 28301
28328, 29	CLINTON NC 28328
28334, 35	DUNN NC 28334
28352, 53	LAURINBURG NC 28352
28358-60	LUMBERTON NC 28358
28370-74	PINEHURST NC 28370
28387, 88	SOUTHERN PINES NC 28387
28401-12	WILMINGTON NC 28401
28459, 67-70	SHALLOTTE NC 28459
28461, 65	SOUTHPORT NC 28461
28501-04	KINSTON NC 28501
28540, 45	JACKSONVILLE NC 28540
28543, 44, 46	JACKSONVILLE NC 28546
28560-64	NEW BERN NC 28560
28601-03	HICKORY NC 28601
28607, 08	BOONE NC 28607
28633, 45	LENOIR NC 28645
28655, 80	MORGANTON NC 28655
28625, 77, 87	STATESVILLE NC 28677
28734, 44	FRANKLIN NC 28734
28739, 91-93	HENDERSONVILLE NC 28739
28738, 85, 86	WAYNESVILLE NC 28786
28804, 14	ASHEVILLE NC 28804
28806, 16	ASHEVILLE NC 28806
29071-73	LEXINGTON SC 29072
29115-18	ORANGEBURG SC 29115
29150-54	SUMTER SC 29150
29169-72	WEST COLUMBIA SC 29169
29301-03, 06, 07	SPARTANBURG SC 29301
29304, 05, 16, 18, 19	SPARTANBURG SC 29304
29340-42	GAFFNEY SC 29340
29401, 03, 13	CHARLESTON SC 29401
29405, 15	CHARLESTON SC 29405
29406, 19	CHARLESTON SC 29406
29407, 17	CHARLESTON SC 29407
29412, 22	CHARLESTON SC 29412
29414, 16	CHARLESTON SC 29414
29418, 20, 23	CHARLESTON SC 29418
29455, 57	JOHNS ISLAND SC 29455
29434, 61	MONCKS CORNER SC 29461

Column A Destination ZIP Codes	Column B Label Container To
29464-66	MOUNT PLEASANT SC 29464
29483, 84	SUMMERVILLE SC 29483
29485, 56	SUMMERVILLE SC 29485
29526-28	CONWAY SC 29526
29532, 40	DARLINGTON SC 29532
29550, 51	HARTSVILLE SC 29550
29572, 75, 77, 78, 87	MYRTLE BEACH SC 29577
29582, 97, 98	N MYRTLE BEACH SC 29582
29601, 05, 09	GREENVILLE SC 29601
29602, 13, 14, 18, 19	GREENVILLE SC 29602
29603, 04, 08, 12	GREENVILLE SC 29603
29606, 07	GREENVILLE SC 29606
29610, 11, 17	GREENVILLE SC 29610
29615, 16	GREENVILLE SC 29615
29621-26	ANDERSON SC 29621
29631-34	CLEMSON SC 29631
29640-42	EASLEY SC 29640
29646-49	GREENWOOD SC 29646
29650-52	GREER SC 29650
29672, 78, 79	SENECA SC 29672
29680, 81	SIMPSONVILLE SC 29680
29715, 16	FORT MILL SC 29715
29720, 21	LANCASTER SC 29720
29730, 31, 33, 34	ROCK HILL SC 29730
29901-04, 06	BEAUFORT SC 29901
30004, 09	ALPHARETTA GA 30004
30005, 22	ALPHARETTA GA 30005
30012, 13, 94	CONYERS GA 30012
30030, 31, 33, 89	DECATUR GA 30030
30034-37	DECATUR GA 30034
30038, 58	LITHONIA GA 30038
30028, 40, 41	CUMMING GA 30040
30043, 46	LAWRENCEVILLE GA 30043
30042, 44, 45	LAWRENCEVILLE GA 30044
30047, 48	LILBURN GA 30047
30008, 60	MARIETTA GA 30060
30071, 93	NORCROSS GA 30071
30075, 77	ROSWELL GA 30075
30080-82	SMYRNA GA 30080
30083, 86, 88	STONE MOUNTAIN GA 30083
30084, 85	TUCKER GA 30084
30010, 92	NORCROSS GA 30092
30101, 02	ACWORTH GA 30101
30120, 21	CARTERSVILLE GA 30120
30188, 89	WOODSTOCK GA 30188
30701, 03	CALHOUN GA 30701
30719-22	DALTON GA 30720
31201, 11, 17	MACON GA 31201
31206, 16	MACON GA 31206
31210, 20	MACON GA 31210
31310, 13-15	HINESVILLE GA 31310
31401, 15	SAVANNAH GA 31401
31403, 05	SAVANNAH GA 31403
31404, 14	SAVANNAH GA 31404
31406, 11, 16	SAVANNAH GA 31406
31407, 08, 18	SAVANNAH GA 31407
31419, 20	SAVANNAH GA 31419
31701, 05	ALBANY GA 31701
31702, 03, 06, 08	ALBANY GA 31702
31709, 68, 92, 94	AMERICUS GA 31709

Column A Destination ZIP Codes	Column B Label Container To
31901, 02	COLUMBUS GA 31901
31903, 05	COLUMBUS GA 31903
32034, 35	FERNANDINA BEACH FL 32034
32024, 25, 55, 56	LAKE CITY FL 32055
32060, 64	LIVE OAK FL 32060
32050, 68	MIDDLEBURG FL 32068
32065, 67, 73	ORANGE PARK FL 32073
32084-86, 92, 95	SAINT AUGUSTINE FL 32084
32041, 97	YULEE FL 32097
32205, 20, 21, 36, 54	JACKSONVILLE FL 32205
32207, 47	JACKSONVILLE FL 32207
32208, 19	JACKSONVILLE FL 32208
32210, 38	JACKSONVILLE FL 32210
32211, 39, 77	JACKSONVILLE FL 32211
32216, 45, 46	JACKSONVILLE FL 32216
32217, 23, 37, 41, 57, 59	JACKSONVILLE FL 32217
32218, 26	JACKSONVILLE FL 32218
32225, 35	JACKSONVILLE FL 32225
32224, 40, 50	JACKSONVILLE FL 32250
32256, 58	JACKSONVILLE FL 32256
32301, 11	TALLAHASSEE FL 32301
32303, 15	TALLAHASSEE FL 32303
32304, 10, 16	TALLAHASSEE FL 32304
32308, 17	TALLAHASSEE FL 32308
32401, 02	PANAMA CITY FL 32401
32403, 04	PANAMA CITY FL 32404
32405, 06, 09	PANAMA CITY FL 32405
32407, 08, 13, 17	PANAMA CITY FL 32407
32502, 73-76, 89-98	PENSACOLA FL 32502
32501, 03, 13	PENSACOLA FL 32503
32504, 14, 24, 34	PENSACOLA FL 32504
32506, 16, 26	PENSACOLA FL 32506
32507, 08	PENSACOLA FL 32507
32522, 23	PENSACOLA FL 32522
32536, 38, 39	CRESTVIEW FL 32536
32540, 41	DESTIN FL 32540
32547-49	FT WALTON BEACH FL 32547
32561, 62, 66	GULF BREEZE FL 32561
32544, 69	MARY ESTHER FL 32569
32570-72, 83	MILTON FL 32570
32578, 88	NICEVILLE FL 32578
32615, 16	ALACHUA FL 32615
32626, 44	CHIEFLAND FL 32626
32643, 55	HIGH SPRINGS FL 32643
32701, 15	ALTAMONTE SPRINGS FL 32701
32707, 18, 30	CASSLEBERRY FL 32707
32708, 19	WINTER SPRINGS FL 32708
32703, 04, 12	APOPKA FL 32712
32714, 16	ALTAMONTE SPRINGS FL 32714
32720-24	DELAND FL 32720
32725, 28	DELTONA FL 32725
32726, 27, 36	EUSTIS FL 32726
32738, 39	DELTONA FL 32738
32746, 95	LAKE MARY FL 32746
32750, 52	LONGWOOD FL 32750
32751, 94	MAITLAND FL 32751
32756, 57	MT DORA FL 32757
32763, 74	ORANGE CITY FL 32763
32762, 65, 66	OVIEDO FL 32765
32771-73	SANFORD FL 32771

Column A Destination ZIP Codes	Column B Label Container To
32779, 91	LONGWOOD FL 32779
32780-83, 96	TITUSVILLE FL 32780
32789, 90	WINTER PARK FL 32789
32801, 02	ORLANDO FL 32801
32804, 54	ORLANDO FL 32804
32805, 55	ORLANDO FL 32805
32806, 56	ORLANDO FL 32806
32807, 57	ORLANDO FL 32807
32808, 18, 68	ORLANDO FL 32808
32809, 39, 59	ORLANDO FL 32809
32810, 60	ORLANDO FL 32810
32811, 35, 61	ORLANDO FL 32811
32812, 27, 32	ORLANDO FL 32812
32817, 67	ORLANDO FL 32817
32819, 21, 36, 69	ORLANDO FL 32819
32820, 26, 28, 29, 31, 33, 34, 78	ORLANDO FL 32820
32824, 37, 77	ORLANDO FL 32824
32901, 02, 19	MELBOURNE FL 32901
32904, 12	WEST MELBOURNE FL 32904
32905, 06	PALM BAY FL 32905
32907-09, 11	PALM BAY WEST FL 32907
32922-24, 26, 27	COCOA FL 32922
32925, 37	PATRICK AFB FL 32925
32931, 32	COCOA BEACH FL 32931
32934, 40, 41	EAU GALLIE FL 32934
32952-54	MERRITT ISLAND FL 32952
32955, 56	ROCKLEDGE FL 32955
32958, 76, 78	SEBASTIAN FL 32958
32960, 63	VERO BEACH FL 32960
32962, 65, 68	VERO BEACH FL 32962
32966, 67, 69	VERO BEACH FL 32966
33008, 09	HALLANDALE FL 33009
33010, 11	HIALEAH FL 33010
33015, 17	SOUTH FLORIDA FL 33015
33002, 18	SOUTH FLORIDA FL 33018
33019, 20, 22	SOUTH FLORIDA FL 33020
33021, 81	SOUTH FLORIDA FL 33021
33023, 83	SOUTH FLORIDA FL 33023
33024, 84	SOUTH FLORIDA FL 33024
33030, 33, 90	HOMESTEAD FL 33030
33031, 32, 39, 92	SOUTH FLORIDA 33032
33034, 35	HOMESTEAD FL 33034
33040, 41, 45	KEY WEST FL 33040
33055, 56	SOUTH FLORIDA FL 33055
33060, 69	SOUTH FLORIDA FL 33060
33061, 62, 72	SOUTH FLORIDA FL 33061
33063, 93	SOUTH FLORIDA FL 33063
33065, 75	SOUTH FLORIDA FL 33065
33067, 73, 76, 97	SOUTH FLORIDA FL 33067
33071, 77	SOUTH FLORIDA FL 33071
33128, 32, 36	MIAMI FL 33128
33129, 30	MIAMI FL 33129
33127, 37	MIAMI FL 33137
33109, 39	MIAMI FL 33139
33167, 68	MIAMI FL 33167
33174, 84	MIAMI FL 33174
33175, 85	MIAMI FL 33175
33186, 96	MIAMI FL 33186
33301, 94	FT LAUDERDALE FL 33301

Column A Destination ZIP Codes	Column B Label Container To
33324, 88	FT LAUDERDALE FL 33324
33404, 19	WEST PALM BEACH FL 33404
33407, 12	WEST PALM BEACH FL 33407
33411, 21	WEST PALM BEACH FL 33411
33413, 15	WEST PALM BEACH FL 33413
33417, 22	WEST PALM BEACH FL 33417
33424, 25, 74	BOYNTON BEACH FL 33424
33427, 29, 81	BOCA RATON FL 33427
33428, 97	BOCA RATON FL 33428
33441, 43	DEERFIELD BEACH FL 33441
33444, 47	DELRAY BEACH FL 33444
33445, 82	DELRAY BEACH FL 33445
33446, 48, 84	DELRAY BEACH FL 33446
33455, 75	HOBE SOUND FL 33455
33461, 66	LAKE WORTH FL 33461
33462, 65	LAKE WORTH FL 33462
33454, 63	LAKE WORTH FL 33463
33468, 77, 78	JUPITER FL 33468
33509, 11	BRANDON FL 33511
33523, 25, 26	DADE CITY FL 33525
33539-41, 43, 44	ZEPHYRHILLS FL 33540
33548, 49	LUTZ FL 33549
33564-67	PLANT CITY FL 33566
33568, 69	RIVERVIEW FL 33569
33570, 72, 73	RUSKIN FL 33570
33583, 84	SEFFNER FL 33584
33594, 95	VALRICO FL 33594
33602, 72	TAMPA FL 33602
33603, 73	TAMPA FL 33603
33604, 74	TAMPA FL 33604
33605, 75	TAMPA FL 33605
33610, 80	TAMPA FL 33610
33611, 81	TAMPA FL 33611
33612, 82	TAMPA FL 33612
33614, 84	TAMPA FL 33614
33615, 85	TAMPA FL 33615
33616, 86	TAMPA FL 33616
33618, 25, 88	TAMPA FL 33618
33624, 26	TAMPA FL 33624
33637, 87	TAMPA FL 33637
33701, 31	ST PETERSBURG FL 33701
33702, 16, 42	ST PETERSBURG FL 33702
33703, 32	ST PETERSBURG FL 33703
33704, 34	ST PETERSBURG FL 33704
33705, 12, 15, 39	ST PETERSBURG FL 33705
33706, 36, 40, 41	ST PETERSBURG FL 33706
33707, 11, 37, 47	ST PETERSBURG FL 33707
33708, 38	ST PETERSBURG FL 33708
33709, 10, 43	ST.PETERSBURG FL 33709
33713, 14, 84	ST PETERSBURG FL 33713
33730, 33	ST PETERSBURG FL 33730
33755, 57, 69	CLEARWATER FL 33755
33759, 60, 62, 64	CLEARWATER FL 33762
33761, 63, 65	CLEARWATER FL 33765
33770, 71, 74, 79	LARGO FL 33770
33772, 73, 75-78	SEMINOLE FL 33772
33780-82	PINELLAS PARK FL 33781
33785, 86	INDIAN ROCKS BEACH FL 33785
33801-03, 15	LAKELAND FL 33801
33805, 09, 10	LAKELAND FL 33805

Column A Destination ZIP Codes	Column B Label Container To
33807, 11, 13	LAKELAND FL 33813
33830, 31	BARTOW FL 33830
33844, 45	HAINES CITY FL 33844
33853-56, 59, 67	LAKE WALES FL 33853
33870-72	SEBRING FL 33870
33880, 82, 83	WINTER HAVEN FL 33880
33881, 84, 85	LAKELAND FL 33881
33901, 16	FT MYERS FL 33901
33903, 17	FT MYERS FL 33903
33905, 94	FT MYERS FL 33905
33909, 93	CAPE CORAL FL 33909
33912, 13	FT MYERS FL 33912
33914, 91	CAPE CORAL FL 33914
33931, 32	FT MYERS BEACH FL 33931
33935, 75	LABELLE FL 33935
33936, 70-72	LEHIGH ACRES FL 33936
33948, 53, 81	PT CHARLOTTE FL 33948
33950, 55, 82	PUNTA GORDA FL 33950
33952, 54	PT CHARLOTTE FL 33952
33980, 83	PUNTA GORDA FL 33980
34104, 09	NAPLES FL 34104
34105, 10	NAPLES FL 34105
34112, 13	NAPLES FL 34112
34116, 17, 19, 20	NAPLES FL 34116
34134, 35	BONITA SPRINGS FL 34134
34142, 43	IMMOKALEE FL 34142
34201-04	BRADENTON FL 34203
34205, 06, 08	BRADENTON FL 34206
34207, 10, 81, 82	BRADENTON FL 34207
34209, 80	BRADENTON FL 34209
34217, 18	BRADENTON BEACH FL 34217
34220, 21	PALMETTO FL 34220
34223, 24, 95	ENGLEWOOD FL 34223
34230, 34-37, 43	SARASOTA FL 34230
34231, 38, 41, 42, 76	SARASOTA FL 34231
34232, 33, 40	SARASOTA FL 34232
34239, 77	SARASOTA FL 34239
34265, 66	ARCADIA FL 34265
34274, 75	NOKOMIS FL 34274
34284, 85, 92	VENICE FL 34285
34286, 87	NORTH PORT FL 34287
34420, 21	BELLVIEW FL 34420
34423, 28, 29	CRYSTAL RIVER FL 34428
34430-34	DUNNELLON FL 34430
34446-48	HOMOSASSA SPRINGS FL 34446
34450-53	INVERNESS FL 34450
34460, 61	LECANTO FL 34460
34464, 65	BEVERLY HILLS FL 34464
34470, 75, 78, 79	OCALA FL 34470
34471, 72, 80, 83	OCALA FL 34471
34473, 74, 76, 77, 81, 82	OCALA FL 34473
34488, 89	SILVER SPRINGS FL 34488
34491, 92	SUMMERFIELD FL 34491
34601-05, 13, 14	BROOKSVILLE FL 34601
34606-09, 11	SPRING HILL FL 34606
34652-56	NEW PORT RICHEY FL 34652
34667, 69, 74	HUDSON FL 34667
34668, 73	PORT RICHEY FL 34668
34682-85	PALM HARBOR FL 34683
34688, 89	TARPON SPRINGS FL 34689

Column A Destination ZIP Codes	Column B Label Container To
34697, 98	DUNEDIN FL 34698
34711, 12	CLERMONT FL 34711
34741, 42, 46, 47	KISSIMMEE FL 34741
34743-45, 58, 59	KISSIMMEE FL 34743
34748, 49, 88, 89	LEESBURG FL 34748
34769-73	ST CLOUD FL 34769
34777, 78, 87	WINTER GARDEN FL 34777
34945, 81, 82, 86-88	FT PIERCE FL 34945
34946, 47, 49, 51	FT PIERCE FL 34946
34948, 54, 79, 85	FT PIERCE FL 34948
34957, 58	JENSEN BEACH FL 34957
34972-74	OKEECHOBEE FL 34972
34990, 91	PALM CITY FL 34990
35010, 11	ALEXANDER CITY AL 35010
35045, 46	CLANTON AL 35045
35150, 51	SYLACAUGA AL 35150
35160, 61	TALLADEGA AL 35160
35475, 76	NORTHPORT AL 35476
35501-04	JASPER AL 35501
35956, 57	BOAZ AL 35957
36027, 72	EUFAULA AL 36027
36066-68	PRATTVILLE AL 36067
36079, 81, 82	TROY AL 36081
36092, 93	WETUMPKA AL 36092
36330, 31	ENTERPRISE AL 36330
36360, 61	OZARK AL 36360
36426, 27	BREWTON AL 36426
36460, 61	MONROEVILLE AL 36460
36701-03	SELMA AL 36701
36801-04	OPELIKA AL 36801
36830-32, 49	AUBURN AL 36830
36867-70	PHENIX CITY AL 36867
37011, 13	ANTIOCH TN 37011
37024, 27	BRENTWOOD TN 37024
37040, 41	CLARKSVILLE TN 37040
37055, 56	DICKSON TN 37055
37064, 65, 67-69	FRANKLIN TN 37064
37070, 72	GOODLETTSVILLE TN 37070
37075, 77	HENDERSONVILLE TN 37075
37087, 88, 90	LEBANON TN 37087
37110, 11	MCMINNVILLE TN 37110
37115, 16	MADISON TN 37115
37121, 22	MT JULIET TN 37121
37127, 30, 33	MURFREESBORO TN 37127
37128, 29	MURFREESBORO TN 37128
37160-62	SHELBYVILLE TN 37160
37201, 19	NASHVILLE TN 37201
37204, 20	NASHVILLE TN 37204
37206, 13	NASHVILLE TN 37206
37208, 18, 28	NASHVILLE TN 37208
37210, 24	NASHVILLE TN 37210
37211, 22	NASHVILLE TN 37211
37229, 30	NASHVILLE TN 37229
37303, 71	ATHENS TN 37303
37311, 12, 20, 64	CLEVELAND TN 37311
37317, 46	COPPERHILL TN 37317
37349, 55	MANCHESTER TN 37355
37304, 73	SALE CREEK TN 37373
37319, 79, 84	SODDY DAISY TN 37379
37337, 81, 95	SPRING CITY TN 37381
37358, 85	TELLICO PLAINS TN 37385
37402, 03, 08, 50, 99	CHATTANOOGA TN 37402
37409, 10, 19	CHATTANOOGA TN 37409
37411, 14	CHATTANOOGA TN 37411
37601, 05	JOHNSON CITY TN 37601
37602, 04	JOHNSON CITY TN 37604
37616, 41	CHUCKEY TN 37641
37642, 45	CHURCH HILL TN 37642
37643, 44	ELIZABETHTON TN 37643
37660, 62, 65	KINGSPORT TN 37660
37716, 17	CLINTON TN 37716
37743-45	GREENEVILLE TN 37743
37771, 72	LENOIR CITY TN 37771
37801-04	MARYVILLE TN 37801
37813-16	MORRISTOWN TN 37814
37821, 22	NEWPORT TN 37821
37824, 25, 79	NEW TAZWELL TN 37825
37830, 31	OAK RIDGE TN 37830
37862-64, 68, 76	SEVIERVILLE TN 37862
37902, 16, 29, 99	KNOXVILLE TN 37902
37914, 24	KNOXVILLE TN 37914
37917, 27	KNOXVILLE TN 37917
37918, 28, 38	KNOXVILLE TN 37918
37919, 39	KNOXVILLE TN 37919
37920, 40, 98	KNOXVILLE TN 37920
37923, 32	KNOXVILLE TN 37923
37950, 90, 95, 97	KNOXVILLE TN 37950
38017, 27	COLLIERVILLE TN 38017
38018, 88	CORDOVA TN 38018
38024, 25	DYERSBURG TN 38024
38053-55	MILLINGTON TN 38053
38101, 40, 42, 43, 45, 47, 48, 50, 51, 59, 61, 66, 69, 94, 97	MEMPHIS TN 38101
38103, 05, 46, 63, 65, 73	MEMPHIS TN 38103
38104, 74	MEMPHIS TN 38104
38106, 26, 36	MEMPHIS TN 38106
38108, 12	MEMPHIS TN 38108
38109, 90	MEMPHIS TN 38109
38111, 52	MEMPHIS TN 38111
38115, 75, 88, 93	MEMPHIS TN 38115
38116, 31, 32, 86	MEMPHIS TN 38116
38117, 37, 57, 77	MEMPHIS TN 38117
38118, 81	MEMPHIS TN 38118
38119, 20, 87	MEMPHIS TN 38119
38125, 41	MEMPHIS TN 38125
38127, 67	MEMPHIS TN 38127
38128, 68	MEMPHIS TN 38128
38133, 35	MEMPHIS TN 38133
38134, 84	MEMPHIS TN 38134
38138, 39, 83	MEMPHIS TN 38138
38301, 02, 08	JACKSON TN 38301
38303, 05, 14	JACKSON TN 38305
38501-03, 05, 06	COOKEVILLE TN 38501
38555, 57, 58	CROSSVILLE TN 38555
38634, 35	HOLLY SPRINGS MS 38634
38701-05	GREENVILLE MS 38701
38801-03	TUPELO MS 38801
38901, 02	GRENADA MS 38901
38930, 35	GREENWOOD MS 38930

Column A Destination ZIP Codes	Column B Label Container To
39042, 43	BRANDON MS 39042
39056, 58, 60	CLINTON MS 39056
39110, 30	MADISON MS 39110
39120-22	NATCHEZ MS 39120
39157, 58	RIDGELAND MS 39157
39180-83	VICKSBURG MS 39180
39201, 02	JACKSON MS 39201
39204, 84	JACKSON MS 39204
39206, 86	JACKSON MS 39206
39208, 18, 88	JACKSON MS 39208
39209, 89	JACKSON MS 39209
39212, 72, 82	JACKSON MS 39212
39213, 83	JACKSON MS 39213
39401-07	HATTIESBURG MS 39401
39440-43	LAUREL MS 39440
39520-22, 29	BAY ST LOUIS MS 39520
39564-66	OCEAN SPRINGS MS 39564
39601-03	BROOKHAVEN MS 39601
39648, 49	MC COMB MS 39648
39701-05, 10	COLUMBUS MS 39701
39759, 60	STARKVILLE MS 39759
40201-04, 08, 10, 70	LOUISVILLE KY 40202
40206, 07, 57, 80	LOUISVILLE KY 40207
40211, 12, 51	LOUISVILLE KY 40211
40205, 13, 18	LOUISVILLE KY 40213
40209, 14	LOUISVILLE KY 40214
40216, 56	LOUISVILLE KY 40216
40219, 29, 59	LOUISVILLE KY 40219
40220, 50	LOUISVILLE KY 40220
40222, 41, 42, 52	LOUISVILLE KY 40222
40231-33, 90, 92, 94, 96-98	LOUISVILLE KY 40232
40223, 43, 53	LOUISVILLE KY 40243
40258, 66, 68, 81, 83, 84	LOUISVILLE KY 40258
40269, 99	LOUISVILLE KY 40299
40502, 17	LEXINGTON KY 40502
40503, 14	LEXINGTON KY 40503
40504, 10, 13	LEXINGTON KY 40504
40505, 09, 16	LEXINGTON KY 40505
40506, 26, 36, 46	LEXINGTON KY 40506
40507, 08	LEXINGTON KY 40507
40511, 15	LEXINGTON KY 40511
40601-04	FRANKFORT KY 40601
40701, 02	CORBIN KY 40701
40741-45	LONDON KY 40741
41011, 12, 14-19	COVINGTON KY 41011
41071-74	NEWPORT KY 41071
41075, 76	NEWPORT KY 41075
41101, 02, 05, 14	ASHLAND KY 41101
41301, 42	CAMPTON KY 41301
41501, 02	PIKEVILLE KY 41501
41701, 02	HAZARD KY 41701
42001, 03	PADUCAH KY 42001
42101, 04, 22	BOWLING GREEN KY 42101
42134, 35	FRANKLIN KY 42134
42141, 42	GLASGOW KY 42141
42153, 64	SCOTTSVILLE KY 42164
42240, 41	HOPKINSVILLE KY 42240
42419, 20	HENDERSON KY 42420
42501-03	SOMERSET KY 42501

Column A Destination ZIP Codes	Column B Label Container To
42701, 02	ELIZABETHTOWN KY 42701
43016, 17	DUBLIN OH 43016
43040, 41	MARYSVILLE OH 43040
43055, 56, 58, 93	NEWARK OH 43055
43007, 67	RAYMOND OH 43067
43081, 82, 86	WESTERVILLE OH 43081
43135, 52, 56	LAURELVILLE OH 43135
43150, 63	RUSHVILLE OH 43150
43206, 17	COLUMBUS OH 43206
43222, 23	COLUMBUS OH 43222
43234, 35, 40	COLUMBUS OH 43234
43301, 02	MARION OH 43301
43314, 35	CALEDONIA OH 43314
43330, 59	WHARTON OH 43359
43701, 02, 21	ZANESVILLE OH 43702
43725, 50	CAMBRIDGE OH 43725
43754, 86	LEWISVILLE OH 43754
43736, 73	QUAKER CITY OH 43773
43803, 40	STONE CREEK OH 43840
44221, 22	CUYAHOGA FALLS OH 44221
44240, 41	KENT OH 44240
44256-58	MEDINA OH 44256
44281, 82	WADSWORTH OH 44281
44646, 47	MASSILLON OH 44646
45011, 12, 20-26	HAMILTON OH 45011
45014, 18	FAIRFIELD OH 45014
45042-44	MIDDLETOWN OH 45042
45202, 10	CINCINNATI OH 45202
45203, 04, 14	CINCINNATI OH 45203
45206, 26	CINCINNATI OH 45206
45207, 12	CINCINNATI OH 45212
45216, 17, 32	CINCINNATI OH 45217
45219, 20	CINCINNATI OH 45219
45223, 25	CINCINNATI OH 45223
45209, 27	CINCINNATI OH 45227
45228, 30	CINCINNATI OH 45230
45213, 36	CINCINNATI OH 45236
45233, 38	CINCINNATI OH 45238
45218, 40, 46	CINCINNATI OH 45240
45244, 45	CINCINNATI OH 45245
45239, 47, 51-53	CINCINNATI OH 45251
45502-04	SPRINGFIELD OH 45502
45505, 06	SPRINGFIELD OH 45505
45613, 83	BEAVER OH 45613
45622, 54	NEW PLYMOUTH OH 45654
45662, 63	PORTSMOUTH OH 45662
45710, 76	ALBANY OH 45710
45711, 77	AMESVILLE OH 45711
45712, 29	BARLOW OH 45712
45715, 21	BEVERLY OH 45715
45717, 64	NELSONVILLE OH 45764
45734, 67, 89	NEW MATAMORAS OH 45767
45786, 87	WARTERFORD OH 45786
46011, 14-16, 18	ANDERSON IN 46011
46012, 13, 17	ANDERSON IN 46012
46032, 33	CARMEL IN 46032
46142, 43	GREENWOOD IN 46142
46202, 23, 25	INDIANAPOLIS IN 46202
46204, 82, 44	INDIANAPOLIS IN 46204
46205, 20, 30	INDIANAPOLIS IN 46205

Column A Destination ZIP Codes	Column B Label Container To
46206, 07, 83, 85, 98	INDIANAPOLIS IN 46206
46214, 53, 54	INDIANAPOLIS IN 46214
46217, 27, 37, 47	INDIANAPOLIS IN 46217
46221, 31	INDIANAPOLIS IN 46221
46235, 36	INDIANAPOLIS IN 46236
46239, 59	INDIANAPLOIS IN 46239
46240, 60, 80, 90	INDIANAPOLIS IN 46240
46241, 42, 51	INDIANAPOLIS IN 46241
46250, 56	INDIANAPOLIS IN 46250
46268, 78	INDIANAPOLIS IN 46268
46307, 08	CROWN POINT IN 46307
46320, 25, 27	HAMMOND IN 46320
46350, 52	LA PORTE IN 46350
46360, 61	MICHIGAN CITY IN 46360
46408, 09	GARY IN 46408
46410, 11	MERRILLVILLE IN 46410
46516, 17	ELKHART IN 46516
46526-28	GOSHEN IN 46526
46544-46	MISHAWAKA IN 46544
46580, 81	WARSAW IN 46580
46601, 17	SOUTH BEND IN 46601
46613, 14, 80	SOUTH BEND IN 46613
46616, 19	SOUTH BEND IN 46616
46635, 37, 60	SOUTH BEND IN 46635
46901-04	KOKOMO IN 46901
46952, 53	MARION IN 46952
47129-32	JEFFERSONVILLE IN 47130
47150, 51	NEW ALBANY IN 47150
47629, 30	NEWBURGH IN 47630
47670, 71	PRINCETON IN 47670
47701-06, 21, 22, 27, 30-37, 39-41, 44, 47, 50	EVANSVILLE IN 47701
47708, 13	EVANSVILLE IN 47708
47711, 24	EVANSVILLE IN 47711
47712, 19, 20	EVANSVILLE IN 47712
47714, 28	EVANSVILLE IN 47714
47715, 16	EVANSVILLE IN 47715
47801-08	TERRE HAUTE IN 47801
47901-07, 96	LAFAYETTE IN 47901
48001, 28	ALGONAC MI 48001
48009, 12	BIRMINGHAM MI 48009
48025, 34, 37, 75, 76, 86	SOUTHFIELD MI 48025
48026, 66	FRASER MI 48026
48035, 36, 43, 45, 46	CLINTON TOWNSHIP MI 48035
48038, 42, 44	CLINTON TOWNSHIP MI 48038
48040, 49, 59-61, 74	MARYSVILLE MI 48040
48047, 51	NEW BALTIMORE MI 48047
48048, 50	NEW HAVEN MI 48048
48062-64	RICHMOND MI 48062
48065, 96	ROMEO MI 48065
48067-70, 72, 73	ROYAL OAK MI 48067
48080-82	SAINT CLAIR SHORES MI 48080
48007, 83, 84, 98, 99	TROY MI 48083
48015, 89-93	WARREN MI 48089
48094, 95	WASHINGTON MI 48094
48103, 06, 08, 09	ANN ARBOR MI 48103
48105, 13	GREEN ROAD STATION MI 48105
48104, 07	LIBERTY STATION MI 48107
48111, 12	BELLEVILLE MI 48111
48114, 16	BRIGHTON MI 48116

Column A Destination ZIP Codes	Column B Label Container To
48120-22, 26	DEARBORN MI 48120
48123-25	DEARBORN ANNEX MI 48124
48135, 36	GARDEN CITY MI 48135
48150, 51, 54	LIVONIA MI 48150
48152, 53	GREENMEAD STA MI 48152
48161, 62	MONROE MI 48161
48167, 75	NORTHVILLE MI 48167
48174, 80	TAYLOR MI 48180
48185, 86	WESTLAND MI 48185
48187, 88	CANTON MI 48188
48192, 95	WYANDOTTE MI 48192
48197, 98	YPSILANTI MI 48197
48201, 02, 06, 11	NORTHEND STATION MI 48202
48214, 15	JEFFERSON STATION MI 48214
48208, 16, 26, 43	GRAND SHELBY STA MI 48216
48217, 18, 29	RIVER ROUGE MI 48218
48220, 21	COLLEGE PARK STA MI 48221
48225, 30	FOX CREEK STATION MI 48225
48239, 40	REDFORD MI 48239
48302, 04	BLOOMFIELD HILLS MI 48302
48306-09	ROCHESTER HILLS MI 48306
48310-14	STERLING HTS MI 48310
48315-18	SHELBY TWP MI 48315
48320, 28, 40-43	KEEGO HARBOR MI 48320
48321, 26	AUBURN HILLS MI 48321
48322-25	WEST BLOOMFIELD MI 48322
48327, 29, 83, 86	WATERFORD ANNEX MI 48327
48331, 33, 34	FARMINGTON HILLS MI 48331
48332, 35, 36	FARMINGTON MI 48332
48346-48	CLARKSTON MI 48346
48356, 57	HIGHLAND MI 48356
48359-63	LAKE ORION MI 48359
48370, 71	OXFORD MI 48370
48374, 77	NOVI CR ANNEX MI 48374
48375, 76	NOVI MI 48375
48380-82	MILFORD MI 48380
48390, 91	WALLED LAKE MI 48390
48504, 31-33	NORTHWEST ANNEX MI 48504
48506, 09	NORTHEAST ANNEX MI 48509
48519, 29	SOUTHEAST ANNEX MI 48519
48801, 02	ALMA MI 48801
48804, 58, 59	MOUNT PLEASANT MI 48804
48805, 64	OKEMOS MI 48805
48823-26	EAST LANSING MI 48823
48843, 44	HOWELL MI 48843
48906, 17	DELTA BRANCH MI 48906
48910-12	SOUTHWEST ANNEX MI 48910
49002, 24	PORTAGE MI 49002
49006, 07	KALAMAZOO MI 49006
49014, 17	BATTLE CREEK MI 49014
49015, 16	BATTLE CREEK MI 49015
49022, 23	BENTON HARBOR MI 49022
49068, 69	MARSHALL MI 49068
49103, 04	BERRIEN SPRINGS MI 49103
49120, 21	NILES MI 49120
49504, 14, 44	GRAND RAPIDS MI 49504
49505, 15, 25	GRAND RAPIDS MI 49505
49506, 16	GRAND RAPIDS MI 49506
49507, 10	GRAND RAPIDS MI 49507
49508, 18, 48	GRAND RAPIDS MI 49508

Column A Destination ZIP Codes	Column B Label Container To
49801, 02	IRON MOUNTAIN MI 49801
50310, 94	DES MOINES IA 50310
50320, 21	DES MOINES IA 50320
50322, 23	DES MOINES IA 50322
50701-04, 06, 07	WATERLOO IA 50701
51101, 02, 05, 10, 11	SIOUX CITY IA 51101
51103, 09	SIOUX CITY IA 51103
51104, 08	SIOUX CITY IA 51104
51106, 07	SIOUX CITY IA 51106
51501-03	COUNCIL BLUFFS IA 51501
52401, 03	CEDAR RAPIDS IA 52401
52402, 10, 11	CEDAR RAPIDS IA 52402
52404, 05, 08, 09	CEDAR RAPIDS IA 52408
52801-03, 05, 08	DAVENPORT IA 52801
52804, 06, 07, 09	NORTHWEST STATION IA 52802
53005, 08, 45	BROOKFIELD WI 53005
53022, 77	GERMANTOWN WI 53022
53051, 52	MENOMONEE FALLS WI 53051
53081-83	SHEBOYGAN WI 53081
53090, 95	WEST BEND WI 53090
53092, 97	MEQUON WI 53092
53094, 98	WATERTOWN WI 53094
53140-44, 58	KENOSHA WI 53140
53146, 51	NEW BERLIN WI 53146
53186-89	WAUKESHA WI 53186
53202, 03	MILWAUKEE WI 53202
53205, 33	MILWAUKEE WI 53205
53207, 35	MILWAUKEE WI 53207
53213, 26	MILWAUKEE WI 53213
53215, 19, 34	MILWAUKEE WI 53215
53220, 28	MILWAUKEE WI 53220
53222, 25	MILWAUKEE WI 53222
53223, 24	MILWAUKEE WI 53223
53401, 03, 07	RACINE WI 53401
53402, 04	RACINE WI 53404
53405, 06, 08	RACINE WI 53406
53545-47	JANESVILLE WI 53545
53704, 14, 16	MADISON WI 53704
53711, 17, 19, 44	MADISON WI 53711
53713, 15	MADISON WI 53713
54220, 21	MANITOWOC WI 54220
54301, 02, 11	GREEN BAY WI 54301
54303, 04, 13	GREEN BAY WI 54303
54401-03	WAUSAU WI 54401
54494, 95	WISCONSIN RAPIDS WI 54494
54901-04	OSHKOSH WI 54901
54911-15	APPLETON WI 54911
54935-37	FOND DU LAC WI 54935
54956, 57	NEENAH WI 54956
55104, 14	ST PAUL MN 55104
55110, 15	ST PAUL MN 55110
55103, 17	ST PAUL MN 55117
55120, 21	ST PAUL MN 55120
55305, 45, 91	MINNETONKA MN 55305
55311, 69	MAPLE GROVE MN 55311
55317, 18, 31, 86	CHANHASSEN MN 55317
55306, 37	BURNSVILLE MN 55337
55344, 46, 47	EDEN PRAIRIE MN 55344
55403, 05	MINNEAPOLIS MN 55403
55404, 54	MINNEAPOLIS MN 55404
55411, 12	MINNEAPOLIS MN 55411
55413, 18	MINNEAPOLIS MN 55413
55414, 55	MINNEAPOLIS MN 55414
55417, 50	MINNEAPOLIS MN 55417
55420, 25, 31	MINNEAPOLIS MN 55420
55424, 36, 39	MINNEAPOLIS MN 55424
55428-30	MINNEAPOLIS MN 55428
55433, 48	MINNEAPOLIS MN 55433
55434, 49	MINNEAPOLIS MN 55434
55437, 38	MINNEAPOLIS MN 55437
55441, 42	MINNEAPOLIS MN 55441
55443-45	MINNEAPOLIS MN 55443
55446, 47	MINNEAPOLIS MN 55446
55803, 04	DULUTH MN 55803
55901-03, 05	ROCHESTER MN 55901
55904, 06	ROCHESTER MN 55904
56001-03	MANKATO MN 56001
56301, 03, 04	ST CLOUD MN 56301
56501, 02	DETROIT LAKES MN 56501
56560-63	MOORHEAD MN 56560
57103, 04, 10	SIOUX FALLS SD 57103
57105-09	SIOUX FALLS SD 57105
57401, 02	ABERDEEN SD 57401
57701, 02, 09	RAPID CITY SD 57701
58103, 04, 06	FARGO ND 58103
58105, 07-09	FARGO ND 58105
58201-08	GRAND FORKS ND 58201
58401, 02, 05	JAMESTOWN ND 58401
58501, 02, 05	BISMARCK ND 58501
58601, 02	DICKINSON ND 58601
58701-05, 07	MINOT ND 58701
58801, 02	WILLISTON ND 58801
59101, 05	BILLINGS MT 59101
59102, 06	BILLINGS MT 59102
59103, 04, 07, 08	BILLINGS MT 59103
59401, 02, 05	GREAT FALLS MT 59401
59403, 04, 06, 14	GREAT FALLS MT 59404
59701-03, 50	BUTTE MT 59701
59801, 03	MISSOULA MT 59801
59802, 04, 08	MISSOULA MT 59802
60411, 12	CHICAGO HEIGHTS IL 60411
60431, 34, 35	JOLIET IL 60431
60432, 33, 36	JOLIET IL 60432
60440, 90	BOLINGBROOK IL 60440
60441, 46	LOCKPORT IL 60441
60453, 59	OAK LAWN IL 60453
60415, 54-58	OAK LAWN IL 60454
60462, 67	ORLAND PARK IL 60462
60463-65, 82	PALOS HEIGHTS IL 60463
60477, 78	TINLEY PARK IL 60477
60504, 05	AURORA IL 60504
60506, 07	AURORA IL 60506
60521-23	HINSDALE IL 60521
60525, 26	LA GRANGE IL 60525
60564, 65	NAPERVILLE IL 60564
60566, 67	NAPERVILLE IL 60566
61801-03	CHAMPAIGN IL 61801
61820-22	CHAMPAIGN IL 61821
61832-34	CHAMPAIGN IL 61832
62025, 26	EDWARDSVILLE IL 62025

Column A Destination ZIP Codes	Column B Label Container To
62201-08	EAST ST LOUIS IL 62201
62220-22, 25	BELLEVILLE IL 62220
62223, 26	DUTCH HOLLOW STA IL 62223
62224, 58	MASCOUTAH IL 62258
62301-06	QUINCY IL 62301
62901-03	CARBONDALE IL 62901
63005, 06	CHESTERFIELD MO 63005
63011, 22	BALLWIN MO 63011
63021, 24	BALLWIN MO 63021
63026, 99	FENTON MO 63026
63019, 28	FESTUS MO 63028
63032-34	FLORISSANT MO 63032
63044, 45	BRIDGETON MO 63044
63101, 02, 64, 69, 88, 99	ST LOUIS MO 63101
63104, 58	ST LOUIS MO 63104
63105, 24	ST LOUIS MO 63105
63107, 13, 15, 20	ST LOUIS MO 63107
63108, 56	ST LOUIS MO 63108
63109, 39	ST LOUIS MO 63109
63111, 18	ST LOUIS MO 63111
63112, 33	ST LOUIS MO 63112
63126-28	ST LOUIS MO 63126
63129, 51	ST LOUIS MO 63129
63134, 40	ST LOUIS MO 63134
63137, 38	ST LOUIS MO 63137
63301-04	ST CHARLES MO 63301
63366, 67	O'FALLON MO 63366
63601, 53	PARK HILLS MO 63601
63701-03	CAPE GIRARDEAU MO 63701
63901, 02	POPLAR BLUFF MO 63901
64013, 15	BLUE SPRINGS MO 64015
64050, 51, 56, 58	INDEPENDENCE MO 64050
64053, 54	INDEPENDENCE MO 64053
64055, 57	INDEPENDENCE MO 64055
64064, 86	LEES SUMMIT MO 64064
64068, 69	LIBERTY MO 64068
64081, 82	LEES SUMMIT MO 64081
64101, 02, 05, 96	KANSAS CITY MO 64105
64109, 28	KANSAS CITY MO 64109
64111, 71	KANSAS CITY MO 64111
64116, 17, 60, 61	KANSAS CITY MO 64116
64118, 88	KANSAS CITY MO 64118
64119, 57, 58, 67	KANSAS CITY MO 64119
64120, 25, 26	KANSAS CITY MO 64120
64123, 24	KANSAS CITY MO 64123
64129, 30	KANSAS CITY MO 64130
64133, 36	KANSAS CITY MO 64133
64134, 37, 92	KANSAS CITY MO 64134
64138, 39	KANSAS CITY MO 64138
64114, 45-49	KANSAS CITY MO 64145
64151, 53, 54, 63, 64, 90	KANSAS CITY MO 64153
64155, 56, 65, 66	KANSAS CITY MO 64155
64501, 05	ST JOSEPH MO 64501
64801, 02	JOPLIN MO 64801
64803, 04	JOPLIN MO 64803
65101, 09, 10	JEFFERSON CITY MO 65101
65102-08	JEFFERSON CITY MO 65102
65201, 02, 11-16	COLUMBIA MO 65201
65203, 17, 18	COLUMBIA MAIN MO 65203
65401, 02, 09	ROLLA MO 65401

Column A Destination ZIP Codes	Column B Label Container To
65616, 72	BRANSON MO 65616
65804, 08, 09	SPRINGFIELD MO 65804
65807, 10	SPRINGFIELD MO 65807
66027, 43, 48	FT LEAVENWORTH KS 66027
66044, 49	LAWRENCE KS 66044
66046, 47	LAWRENCE KS 66046
66051, 61	OLATHE KS 66061
66062, 63	OLATHE KS 66062
66101, 15, 17, 18	KANSAS CITY KS 66101
66102, 10	KANSAS CITY KS 66102
66103, 05	KANSAS CITY KS 66103
66109, 11-13	KANSAS CITY KS 66112
66202, 05, 22	SHAWNEE MISSION KS 66202
66203, 16	SHAWNEE MISSION KS 66203
66210, 25	SHAWNEE MISSION KS 66210
66212, 82	SHAWNEE MISSION KS 66212
66209, 13	SHAWNEE MISSION KS 66213
66214, 15, 85	SHAWNEE MISSION KS 66215
66221, 23, 24	SHAWNEE MISSION KS 66223
66217-20, 26, 27, 86	SHAWNEE MISSION KS 66226
66502, 03, 05, 06	MANHATTAN KS 66502
66603, 06, 07, 12, 16, 83	TOPEKA KS 66603
66604, 47, 67	TOPEKA KS 66604
66605, 09, 11	TOPEKA KS 66605
66608, 17, 18	TOPEKA KS 66608
66610, 14, 15	TOPEKA KS 66610
66762, 63	PITTSBURG KS 66762
67204, 19	WICHITA, KS 67204
67205, 12, 23	WICHITA KS 67205
67206, 26, 28, 30, 32	WICHITA KS 67206
67208, 20	WICHITA KS 67208
67209, 15, 27, 35	WICHITA KS 67209
67210, 16	WICHITA KS 67210
67401, 02	SALINA KS 67401
67501, 02, 04, 05	HUTCHINSON KS 67501
67901, 05	LIBERAL KS 67901
68025, 26	FREMONT NE 68025
68105, 06, 55	OMAHA NE 68105
68108, 09	OMAHA NE 68108
68110, 11, 19, 20	OMAHA NE 68110
68112, 52	OMAHA NE 68112
68114, 24	OMAHA NE 68114
68116, 18, 30, 54	OMAHA NE 68116
68117, 27	OMAHA NE 68117
68122, 34, 42, 64	OMAHA NE 68122
68123, 47	BELLEVUE NE 68123
68128, 33, 57	PAPILLION NE 68128
68131, 32	OMAHA NE 68131
68135-39	OMAHA NE 68135
68144, 45	OMAHA NE 68144
68502, 42	LINCOLN NE 68502
68504, 07, 14, 17, 27	LINCOLN NE 68504
68506, 20	LINCOLN NE 68506
68512, 22, 23, 32	LINCOLN NE 68512
68516, 26	LINCOLN NE 68516
68521, 24, 28, 31	LINCOLN NE 68521
68601, 02	COLUMBUS NE 68601
68701, 02	NORFOLK NE 68701
68801-03	GRAND ISLAND NE 68801
68847-49	KEARNEY NE 68847

Column A Destination ZIP Codes	Column B Label Container To
68901, 02	HASTINGS NE 68901
70501, 02, 07	LAFAYETTE LA 70501
70503, 06, 96	LAFAYETTE LA 70506
70508, 98	LAFAYETTE LA 70508
70704, 14	BAKER LA 70704
70706, 26, 27	DENHAM SPRINGS 70706
70707, 37	GONZALES LA 70707
70764, 65	PLAQUEMINE LA 70764
70801, 02, 21-23, 25, 83	BATON ROUGE LA 70801
70803, 93, 94	BATON ROUGE LA 70803
70805, 12, 92	BATON ROUGE LA 70805
70806, 96	BATON ROUGE LA 70806
70807, 11, 18, 74	BATON ROUGE LA 70807
70808, 20, 98	BATON ROUGE LA 70808
70809, 10, 36, 84	BATON ROUGE LA 70809
70814, 95	BATON ROUGE LA 70814
70815, 19, 31	BATON ROUGE LA 70815
70816, 17, 27, 79	BATON ROUGE LA 70816
71102, 20, 61-66	SHREVEPORT LA 71102
71103, 33	SHREVEPORT LA 71103
71104, 34	SHREVEPORT LA 71104
71105, 15, 35	SHREVEPORT LA 71105
71106, 36	SHREVEPORT LA 71106
71107, 37	SHREVEPORT LA 71107
71108,18, 38, 48	SHREVEPORT LA 71108
71109, 19, 29, 49	SHREVEPORT LA 71109
71111, 71, 72	BOSSIER CITY LA 71111
71112, 13	BOSSIER CITY LA 71112
71130, 53	SHREVEPORT LA 71130
71601-13	PINE BLUFF AR 71601
71901, 09, 13, 23, 53	HOT SPRINGS NTL PK AR 71901
72113-20, 24, 90	NORTH LITTLE ROCK AR 72113
72201-12, 14-17, 19, 21-23, 25, 27	LITTLE ROCK AR 72201
72301-03	WEST MEMPHIS AR 72301
72315-19	BLYTHEVILLE AR 72315
72335, 36	FORREST CITY AR 72335
72396, 97	WYNNE AR 72396
72401-04	JONESBORO AR 72401
72450, 51	PARAGOULD AR 72450
72501-03	BATESVILLE AR 72501
72701-04	FAYETTEVILLE AR 72701
72712-16	BENTONVILLE AR 72712
72901-06, 08, 13, 14, 16, 23	FORT SMITH AR 72901
73034, 83	EDMOND OK 73034
73069-72	NORMAN OK 73069
73501, 02, 05-07	LAWTON OK 73501
73701-06	ENID OK 73701
74003-06	BARTLESVILLE OK 74003
74011-14	BROKEN ARROW OK 74011
74017, 18	CLAREMORE OK 74017
74066, 67	SAPULPA OK 74066
74074-78	STILLWATER OK 74074
74354, 55	MIAMI OK 74354
74361, 62	PRYOR OK 74361
74401-03	MUSKOGEE OK 74401
74464, 65	TAHLEQUAH OK 74464
74467-77	WAGONER OK 74467
74501, 02	MCALESTER OK 74501

Column A Destination ZIP Codes	Column B Label Container To
74601-04	PONCA CITY OK 74601
74701, 02	DURANT OK 74701
75018, 19	COPPELL TX 75019
75020, 21	DENISON TX 75020
75030, 88, 89	ROWLETT TX 75030
75032, 87	ROCKWALL TX 75032
75034, 35	FRISCO TX 75034
75090-92	SHERMAN TX 75090
75116, 37	DUNCANVILLE TX 75116
75134, 46	LANCASTER TX 75134
75160, 61	TERRELL TX 75160
75165, 67	WAXAHACHIE TX 75165
75401-04	GREENVILLE TX 75401
75428, 29	COMMERCE TX 75428
75455, 56	MOUNT PLEASANT TX 75455
75460-62	PARIS TX 75460
75482, 83	SULPHUR SPRINGS TX 75482
75652-54	HENDERSON TX 75652
75662, 63	KILGORE TX 75662
75670-72	MARSHALL TX 75670
76007, 10	ARLINGTON TX 76010
76005, 06, 11	ARLINGTON TX 76011
76012, 94	ARLINGTON TX 76012
76004, 13	ARLINGTON TX 76013
76003, 14, 18, 96	ARLINGTON TX 76014
76001, 15-17	ARLINGTON TX 76015
76301, 03-06, 09	WICHITA FALLS TX 76301
76302, 08, 10	WICHITA FALLS TX 76302
76384, 85	VERNON TX 76384
76501-05, 08	TEMPLE TX 76501
76540, 41, 43	KILLEEN TX 76540
76542, 47, 48	KILLEEN TX 76542
76544-46	KILLEEN TX 76544
76701, 03, 06, 11	WACO TX 76701
76704, 05, 15	WACO TX 76704
76707, 08	WACO TX 76707
76710, 14	WACO TX 76710
76702, 12	WACO TX 76712
77301-06, 84, 85	CONROE TX 77301
77325, 39, 45	HUMBLE TX 77325
77327, 28	CLEVELAND TX 77327
77338, 46, 47, 96	HUMBLE TX 77338
77340-44, 48, 49	HUNTSVILLE TX 77340
77373, 83, 88	SPRING TX 77373
77375, 77	TOMBALL TX 77375
77379, 89, 91	SPRING TX 77379
77380, 86, 87	SPRING TX 77380
77381, 82, 93	SPRING TX 77381
77401, 02	BELLAIRE TX 77401
77404, 14	BAY CITY TX 77404
77406, 69	RICHMOND TX 77406
77410, 29, 33	CYPRESS TX 77410
77449, 50, 91-94	KATY TX 77449
77459, 89	MISSOURI CITY TX 77459
77477, 97	STAFFORD TX 77477
77478, 87	SUGAR LAND TX 77478
77479, 96	SUGAR LAND TX 77479
77501, 02, 06	PASADENA TX 77501
77503-05, 07, 08	PASADENA TX 77503
77510, 17	SANTA FE TX 77510

Column A Destination ZIP Codes	Column B Label Container To
77511, 12	ALVIN TX 77511
77515, 16	ANGLETON TX 77515
77520-22	BAYTOWN TX 77520
77541, 42	FREEPORT TX 77541
77546, 49	FRIENDSWOOD TX 77546
77550, 53, 55	GALVESTON TX 77550
77551, 52, 54	GALVESTON TX 77551
77571, 72	LA PORTE TX 77571
77573, 74	LEAGUE CITY TX 77573
77581, 84, 88	PEARLAND TX 77581
77590, 92	TEXAS CITY TX 77590
77630, 32	ORANGE TX 77630
77640, 43	PORT ARTHUR TX 77640
77662, 70	VIDOR TX 77662
77801-08	BRYAN TX 77801
77833, 34	BRENHAM TX 77833
77840-45	COLLEGE STATION TX 77840
77868, 69	NAVASOTA TX 77868
78028, 29	KERRVILLE TX 78028
78040-46	LAREDO TX 78040
78102-04	BEEVILLE TX 78102
78130-33	NEW BRAUNFELS TX 78130
78148-50	UNIVERSAL CITY TX 78148
78155, 56	SEGUIN TX 78155
78202, 04, 07, 83	SAN ANTONIO TX 78202
78203, 10	SAN ANTONIO TX 78203
78205, 06, 91-99	SAN ANTONIO TX 78205
78208, 09	SAN ANTONIO TX 78208
78211, 14, 21, 24-26, 64	SAN ANTONIO TX 78211
78212, 15	SAN ANTONIO TX 78212
78216, 79	SAN ANTONIO TX 78216
78219, 20, 22, 44, 62, 63	SAN ANTONIO TX 78219
78227, 42	SAN ANTONIO TX 78227
78230, 31, 48, 78	SAN ANTONIO TX 78230
78232, 47, 58-61, 70	SAN ANTONIO TX 78232
78233, 39, 66	SAN ANTONIO TX 78233
78238, 68	SAN ANTONIO TX 78238
78240, 49, 55-57, 69	SAN ANTONIO TX 78240
78245, 50-54, 76	SAN ANTONIO TX 78245
78332, 33	ALICE TX 78332
78363, 64	KINGSVILLE TX 78363
78381, 82	ROCKPORT TX 78382
78401-03, 07, 08, 70, 71, 73, 75-78	CORPUS CHRISTI TX 78401
78404, 63	CORPUS CHRISTI TX 78404
78405, 65	CORPUS CHRISTI TX 78405
78406, 09, 10, 26, 60	CORPUS CHRISTI TX 78406
78411, 66	CORPUS CHRISTI TX 78411
78412, 14, 68	CORPUS CHRISTI TX 78412
78413, 27, 72	CORPUS CHRISTI TX 78413
78415-17, 67	CORPUS CHRISTI TX 78415
78418, 19, 80	CORPUS CHRISTI TX 78418
78502, 05	MCALLEN TX 78502
78503, 04	MCALLEN TX 78503
78522, 23, 26	BROWNSVILLE TX 78522
78539, 40	EDINBURG TX 78539
78550-53	HARLINGEN TX 78550
78572, 73	MISSION TX 78572
78613, 30	CEDAR PARK TX 78613
78626-28	GEORGETOWN TX 78626

Column A Destination ZIP Codes	Column B Label Container To
78335, 36	ARANSAS PASS TX 78336
78641, 45, 46	LEANDER TX 78641
78664, 82, 83	ROUND ROCK TX 78664
78666, 67	SAN MARCOS TX 78666
78680, 81	ROUND ROCK TX 78680
78702, 21, 22	AUSTIN TX 78702
78705, 51	AUSTIN TX 78705
78712, 13	AUSTIN TX 78712
78717, 26, 29, 50	AUSTIN TX 78717
78719, 41, 42, 44	AUSTIN TX 78719
78723-25	AUSTIN TX 78723
78727, 58	AUSTIN TX 78727
78728, 53	AUSTIN TX 78728
78730, 59	AUSTIN TX 78730
78732, 34	AUSTIN TX 78732
78733, 46	AUSTIN TX 78733
78735-37, 39, 49	AUSTIN TX 78735
78747, 48	AUSTIN TX 78747
78752, 54	AUSTIN TX 78752
78756, 57	AUSTIN TX 78756
78801, 02	UVALDE TX 78801
78840-43, 47	DEL RIO TX 78840
78852, 53	EAGLE PASS TX 78852
79101-04	AMARILLO TX 79101
79106, 19, 21, 24, 60	AMARILLO TX 79106
79107, 08, 11	AMARILLO TX 79107
79110, 18	AMARILLO TX 79110
79401, 03, 05, 08, 11, 15, 17	LUBBOCK TX 79401
79404, 12, 23, 52	LUBBOCK TX 79404
79406, 09, 30	LUBBOCK TX 79406
79407, 14	LUBBOCK TX 79407
79410, 13, 93	LUBBOCK TX 79410
79416, 90	LUBBOCK TX 79416
79424, 64	LUBBOCK TX 79424
79701, 02	MIDLAND TX 79701
79703, 05, 07	MIDLAND TX 79703
79761, 63, 66	ODESSA TX 79761
79762, 64, 65	ODESSA TX 79762
79906, 08	EL PASO TX 79906
79907, 17	EL PASO TX 79907
79922, 32	EL PASO TX 79922
79924, 34	EL PASO TX 79924
79940-55	EL PASO TX 79940
80001, 02, 04	ARVADA CO 80001
80003, 05-07	ARVADA CO 80003
80010, 40, 45	AURORA CO 80010
80011, 18, 19, 42	AURORA CO 80011
80012, 41	AURORA CO 80012
80014, 44	AURORA CO 80014
80015, 16, 46	AURORA CO 80015
80017, 47	AURORA CO 80017
80020, 21, 38	BROOMFIELD CO 80020
80033, 34	WHEAT RIDGE CO 80033
80110-12, 55	ENGLEWOOD CO 80110
80120, 25, 60	LITTLETON CO 80120
80121, 22, 61	LITTLETON CO 80121
80124, 26, 63	LITTLETON CO 80124
80127, 62	LITTLETON CO 80127
80202, 65, 90, 93, 94	DENVER CO 80202

Column A Destination ZIP Codes	Column B Label Container To
80203, 64, 95	DENVER CO 80203
80210, 50	DENVER CO 80210
80227, 35, 36	DENVER CO 80227
80233, 41	DENVER CO 80233
80239, 49	DENVER CO 80239
80301, 08	BOULDER CO 80301
80302, 06	BOULDER CO 80302
80303, 07	BOULDER CO 80303
80437, 39	EVERGREEN CO 80437
80477, 87	STEAMBOAT SPRINGS CO 80477
80501, 04	LONGMONT CO 80501
80521, 22, 24	FT COLLINS CO 80521
80525-28	FT COLLINS CO 80525
80537, 39	LOVELAND CO 80537
80840, 41	USAF ACADEMY CO 80840
80901, 03, 05	COLORADO SPGS CO 80901
80904, 34	COLORADO SPGS CO 80904
80906, 37, 60	COLORADO SPGS CO 80906
80907, 33	COLORADO SPGS CO 80907
80908, 21	COLORADO SPGS CO 80908
80909, 32	COLORADO SPGS CO 80909
80910, 35	COLORADO SPGS CO 80910
80911, 25, 31	COLORADO SPGS CO 80911
80913, 26	COLORADO SPGS CO 80913
80915, 22, 28-30, 70	COLORADO SPGS CO 80915
80918, 36	COLORADO SPGS CO 80918
80919, 49	COLORADO SPGS CO 80919
80920, 62	COLORADO SPGS CO 80920
81002, 07	PUEBLO CO 81002
81003, 08	PUEBLO CO 81003
81004-06	PUEBLO CO 81004
81101, 02	ALAMOSA CO 81101
81147, 57	PAGOSA SPRINGS CO 81147
81212, 15	CANON CITY CO 81212
81301, 02	DURANGO CO 81301
82001, 07, 09	CHEYENNE WY 82001
82051, 57, 63, 70-73	LARAMIE WY 82070
82602, 05	CASPER WY 82602
82601, 04, 09	CASPER WY 82609
82716-18	GILLETTE WY 82716
82901, 02	ROCK SPRINGS WY 82901
82930, 31	EVANSTON WY 82930
83001, 02	JACKSON WY 83001
83605, 06	CALDWELL ID 83605
83642, 80	MERIDIAN ID 83642
83647, 48	MOUNTAIN HOME ID 83647
83651-53, 86, 87	NAMPA ID 83651
83702, 03, 06, 12	BOISE ID 83702
83704, 11, 13	BOISE ID 83704
83707, 08	BOISE ID 83707
83709, 19	BOISE ID 83709
83716, 17	BOISE ID 83716
83814-16	COEUR D ALENE ID 83814
84003, 04	AMERICAN FORK UT 84003
84010, 11	BOUNTIFUL UT 84010
84015, 75, 89	CLEARFIELD UT 84015
84036, 61	KAMAS UT 84036
84040, 41	LAYTON UT 84040
84042, 62	PLEASANT GROVE UT 84042
84057, 59	OREM UT 84057
84058, 97	OREM UT 84058
84060, 68, 98	PARK CITY UT 84060
84065, 95	RIVERTON UT 84065
84070, 91, 94	SANDY UT 84070
84078, 79	VERNAL UT 84078
84084, 88	WEST JORDAN UT 84084
84090, 92, 93	SANDY UT 84090
84101, 44, 80	SALT LAKE CTY UT 84101
84106, 52	SALT LAKE CTY UT 84106
84107, 57	SALT LAKE CTY UT 84107
84108, 58	SALT LAKE CTY UT 84108
84110, 45, 51	SALT LAKE CTY UT 84110
84111, 33, 38	SALT LAKE CTY UT 84111
84115, 65	SALT LAKE CTY UT 84115
84120, 28, 70	SALT LAKE CTY UT 84120
84121, 71	SALT LAKE CTY UT 84121
84125-27	SALT LAKE CTY UT 84125
84302, 24	BRIGHAM CITY UT 84302
84321, 23	LOGAN UT 84321
84401, 09	OGDEN UT 84401
84402, 03, 05, 15	OGDEN UT 84403
84404, 12, 14	OGDEN UT 84404
84511, 33	BLANDING UT 84511
84601, 03, 05, 06	PROVO UT 84601
84663, 64	SPRINGVILLE UT 84663
84701, 32	RICHFIELD UT 84701
84720, 22, 81	CEDAR CITY UT 84720
84770, 71, 82	ST GEORGE UT 84770
85001, 02	PHOENIX AZ 85001
85003, 04, 25, 30, 73	PHOENIX AZ 85004
85008, 10	PHOENIX AZ 85008
85005, 07, 09, 98	PHOENIX AZ 85009
85013, 67	PHOENIX AZ 85013
85011, 14	PHOENIX AZ 85014
85016, 64	PHOENIX AZ 85016
85017, 61, 79	PHOENIX AZ 85017
85018, 60	PHOENIX AZ 85018
85021, 69	PHOENIX AZ 85021
85022, 68	PHOENIX AZ 85022
85023, 80	PHOENIX AZ 85023
85024, 50, 54	PHOENIX AZ 85024
85029, 53, 71	PHOENIX AZ 85029
85019, 31, 43, 63	PHOENIX AZ 85031
85032, 46, 78	PHOENIX AZ 85032
85034, 36, 74	PHOENIX AZ 85034
85038, 62, 72, 82, 99	PHOENIX AZ 85038
85040, 66	PHOENIX AZ 85040
85044, 76	PHOENIX AZ 85044
85045, 48, 70	PHOENIX AZ 85048
85201, 11	MESA AZ 85201
85202, 74	MESA AZ 85202
85203, 13, 75	MESA AZ 85203
85204, 14	MESA AZ 85204
85205, 07, 15, 77	MESA AZ 85205
85206, 12, 16	MESA AZ 85206
85217, 19, 20, 78	APACHE JUNCTION AZ 85219
85222, 30	CASA GRANDE AZ 85222
85224, 46	CHANDLER AZ 85224
85225, 44	CHANDLER AZ 85225
85232, 79	FLORENCE AZ 85232

Column A Destination ZIP Codes	Column B Label Container To
85233, 34, 96, 99	GILBERT AZ 85233
85248, 49	CHANDLER AZ 85248
85250, 53	SCOTTSDALE AZ 85250
85251, 52	SCOTTSDALE AZ 85251
85255, 62	SCOTTSDALE AZ 85255
85260, 67	SCOTTSDALE AZ 85260
85256, 57, 71	SCOTTSDALE AZ 85256
85258, 61	SCOTTSDALE AZ 85258
85259, 63, 64, 68, 69	SCOTTSDALE AZ 85259
85281, 86	TEMPE AZ 85281
85283, 84	TEMPE AZ 85283
85285, 87-89	TEMPE AZ 85285
85301, 03, 05, 07, 09, 11	GLENDALE AZ 85301
85302, 04, 06, 12	GLENDALE AZ 85302
85308, 10, 18	GLENDALE AZ 85308
85323, 38	AVONDALE AZ 85323
85345, 80	PEORIA AZ 85345
85351, 72	SUN CITY AZ 85351
85358, 90	WICKENBURG AZ 85358
85363, 73	YOUNGTOWN AZ 85363
85364-67, 69	YUMA AZ 85364
85374-76, 78, 79, 87	SUN CITY AZ 85374
85381, 82	PEORIA AZ 85381
85501, 02	GLOBE AZ 85501
85541, 47	PAYSON AZ 85541
85546, 48	SAFFORD AZ 85546
85607, 08	DOUGLAS AZ 85607
85614, 22	GREEN VALLEY AZ 85614
85621, 28, 62	NOGALES AZ 85621
85613, 35, 36, 50	SIERRA VISTA AZ 85635
85643, 44	WILLCOX AZ 85643
85701, 02	TUCSON AZ 85701
85706, 77	TUCSON AZ 85706
85712, 49	TUCSON AZ 85712
85713, 14	TUCSON AZ 85713
85715, 50	TUCSON AZ 85715
85720, 21	TUCSON AZ 85720
85726, 44	TUCSON AZ 85726
85730, 47, 48	TUCSON AZ 85730
85737, 39	TUCSON AZ 85737
85741, 42	TUCSON AZ 85741
85735, 36, 46	TUCSON AZ 85746
86001, 02	FLAGSTAFF AZ 86001
86003, 04	FLAGSTAFF AZ 86003
86301-04, 05	PRESCOTT AZ 86301
86312-14	PRESCOTT VALLEY AZ 86314
86322, 24, 31	CAMP VERDE AZ 86322
86336, 39-41, 51	SEDONA AZ 86336
86401, 02, 13	KINGMAN AZ 86401
86403-06	LAKE HAVASU CITY AZ 86403
86426, 29, 30, 39, 42	BULLHEAD CITY AZ 86442
87102, 04, 94	ALBUQUERQUE NM 87102
87105, 21, 95	ALBUQUERQUE NM 87105
87106, 96	ALBUQUERQUE NM 87106
87107, 97	ALBUQUERQUE NM 87107
87108, 98	ALBUQUERQUE NM 87108
87109, 22, 99	ALBUQUERQUE NM 87109
87110, 76, 90	ALBUQUERQUE NM 87110
87111, 54, 91	ALBUQUERQUE NM 87111
87112, 53, 92	ALBUQUERQUE NM 87112

Column A Destination ZIP Codes	Column B Label Container To
87114, 84, 87, 93	ALBUQUERQUE NM 87114
87123, 81	ALBUQUERQUE NM 87123
87124, 74	ALBUQUERQUE NM 87124
87301, 05	GALLUP NM 87301
87401, 02, 99	FARMINGTON NM 87401
87502, 04	SANTA FE NM 87502
87532, 33	ESPANOLA NM 87532
88001, 11	LAS CRUCES NM 88001
88004, 06	LAS CRUCES NM 88004
88005, 12	LAS CRUCES NM 88005
88030, 31	DEMING NM 88030
88061, 62	SILVER CITY NM 88061
88101, 02	CLOVIS NM 88101
88210, 11	ARTESIA NM 88210
88220, 21	CARLSBAD NM 88220
88240-42	HOBBS NM 88240
88310, 11	ALAMOGORDO NM 88310
89005, 06	BOULDER CITY NV 89005
89012, 14	HENDERSON NV 89014
89011, 15	HENDERSON NV 89015
89018, 70	INDIAN SPRINGS NV 89018
89019, 26	JEAN NV 89019
89028, 29	LAUGHLIN NV 89028
89031, 33	NORTH LAS VEGAS NV 89031
89041, 48	PAHRUMP NV 89041
89049, 50	TONOPAH NV 89049
89102, 46	LAS VEGAS NV 89102
89103, 13, 35	LAS VEGAS NV 89103
89117, 47	LAS VEGAS NV 89117
89120, 23, 39	LAS VEGAS NV 89120
89128, 34, 38	LAS VEGAS NV 89128
89129-31	LAS VEGAS NV 89129
89431, 32	SPARKS NV 89431
89434-36	SPARKS NV 89434
89450-52	INCLINE VILLAGE NV 89450
89501, 12	RENO NV 89501
89503, 13	RENO NV 89503
89504, 05	RENO NV 89504
89510, 15	RENO NV 89510
89523, 33	RENO NV 89623
89701-06, 21	CARSON CITY NV 89701
90201, 02, 70	BELL CA 90201
90209-13	BEVERLY HILLS CA 90210
90220-24	COMPTON CA 90220
90230-33	CULVER CITY CA 90230
90239-42	DOWNEY CA 90240
90245, 66, 67	EL SEGUNDO CA 90245
90247-49	GARDENA CA 90247
90250, 51	HAWTHORNE CA 90250
90260, 61	LAWNDALE CA 90260
90263-65	MALIBU CA 90265
90274, 75	PALOS VERDES CA 90274
90254, 77, 78	REDONDO BEACH CA 90277
90291-96	VENICE CA 90291
90401, 06, 07	SANTA MONICA CA 90401
90402-05, 08-11	SANTA MONICA CA 90403
90601, 08	WHITTIER CA 90601
90602, 07	WHITTIER CA 90602
90603, 04, 09	WHITTIER CA 90603
90605, 06, 10	WHITTIER CA 90605

Column A Destination ZIP Codes	Column B Label Container To
90620-24	BUENA PARK CA 90620
90631-33	LA HABRA CA 90631
90637-39	LA MIRADA CA 90637
90650-52	NORWALK CA 90650
90660-65	PICO RIVERA CA 90660
90701-03	ARTESIA CA 90701
90706, 07	BELLFLOWER CA 90706
90711-14	LAKEWOOD CA 90712
90715, 16	LAKEWOOD CA 90715
90720, 21	LOS ALAMITOS CA 90720
90731-34	SAN PEDRO CA 90731
90744, 48	WILMINGTON CA 90744
90745, 47, 49	CARSON CA 90745
90803, 53	LONG BEACH CA 90803
91301, 76	AGOURA HILLS CA 91301
91303-05, 09	CANOGA PARK CA 91304
91306, 96	WINNETKA CA 91306
91307, 08	WEST HILLS CA 91307
91311-13	CHATSWORTH CA 91311
91319, 20	NEWBURY PARK CA 91319
91321, 22, 81	NEWHALL CA 91321
91324, 25, 28-30	NORTHRIDGE CA 91324
91326, 27	NORTHRIDGE CA 91326
91331, 33, 34	PACOIMA CA 91331
91335, 37	RESEDA CA 91335
91340-42, 92	SYLMAR CA 91342
91343, 93	NORTH HILLS CA 91343
91344-46, 94, 95	MISSION HILLS CA 91345
91310, 50, 80, 84	SANTA CLARITA CA 91350
91351, 86	CANYON COUNTRY CA 91351
91352, 53	SUN VALLEY CA 91352
91354, 55, 85	VALENCIA CA 91355
91356, 57	TARZANA CA 91356
91358-63	THOUSAND OAKS CA 91360
91302, 64, 65, 67, 71, 72, 99	WOODLAND HILLS CA 91364
91403, 13, 23	SHERMAN OAKS CA 91403
91601-03	NORTH HOLLYWOOD CA 91601
91604, 14	STUDIO CITY CA 91604
91605, 06, 08-12, 15, 16, 18	NORTH HOLLYWOOD CA 91605
91607, 17	VALLEY VILLAGE CA 91607
91701, 37	ALTA LOMA CA 91701
91718-20	CORONA CA 91718
91722, 24	COVINA CA 91722
91729, 30, 39	RANCHO CUCAMONGA CA 91730
91731, 32, 34	EL MONTE CA 91731
91740, 41	GLENDORA CA 91740
91744-47, 49	LA PUENTE CA 91744
91754, 55	MONTEREY PARK CA 91754
91761, 62, 64	ONTARIO CA 91761
91766-69	POMONA CA 91767
91775, 76, 78	SAN GABRIEL CA 91775
91784-86	UPLAND CA 91786
91788, 89	WALNUT CA 91789
91790-93	WEST COVINA CA 91790
91801-03	ALHAMBRA CA 91801
91901, 03	ALPINE CA 91901
91902, 08	BONITA CA 91902
91909, 11	CHULA VISTA CA 91909
91910, 12	CHULA VISTA CA 91910
91913-15, 21	CHULA VISTA CA 91913
91932, 33	IMPERIAL BEACH CA 91932
91941-44	LA MESA CA 91941
91945, 46	LEMON GROVE CA 91945
91947, 50, 51	NATIONAL CITY CA 91950
91976-79	SPRING VALLEY CA 91977
92008, 18	CARLSBAD CA 92008
92019, 20, 22	EL CAJON CA 92020
92023, 24	ENCINITAS CA 92024
92025, 29, 33, 46	ESCONDIDO CA 92025
92026, 27, 30	ESCONDIDO CA 92026
92028, 88	FALLBROOK CA 92028
92037-39	LA JOLLA CA 92037
92049, 51, 52, 54, 55, 57	OCEANSIDE CA 92054
92056, 58	OCEANSIDE CA 92056
92064, 74	POWAY CA 92064
92067, 91	RANCHO SANTA FE CA 92067
92069, 79, 96	SAN MARCOS CA 92069
92071, 72	SANTEE CA 92071
92084, 85	VISTA CA 92084
92092, 93	LA JOLLA CA 92093
92201-03	INDIO CA 92201
92225, 26, 42, 80	BLYTHE CA 92225
92231, 32	CALEXICO CA 92231
92234, 35	CATHEDRAL CITY CA 92234
92243, 44	EL CENTRO CA 92243
92210, 11, 55, 60, 61	PALM DESERT CA 92260
92262-64	PALM SPRINGS CA 92262
92277, 78	TWENTYNINE PALMS CA 92277
92284-86	YUCCA VALLEY CA 92284
92307, 08	APPLE VALLEY CA 92307
92310-12	BARSTOW CA 92311
92314, 86	BIG BEAR CITY CA 92314
92313, 24	COLTON CA 92324
92334-37	FONTANA CA 92335
92340, 45	HESPERIA CA 92345
92329, 71	PHELAN CA 92371
92373-75	REDLANDS CA 92373
92376, 77	RIALTO CA 92376
92392-94	VICTORVILLE CA 92392
92401, 02, 08, 10	SN BERNARDINO CA 92401
92404, 13	SN BERNARDINO CA 92404
92405, 06	SN BERNARDINO CA 92405
92407, 27	SN BERNARDINO CA 92407
92501, 02	RIVERSIDE CA 92501
92503, 13	RIVERSIDE CA 92503
92504, 14	RIVERSIDE CA 92504
92505, 15	RIVERSIDE CA 92505
92506, 16	RIVERSIDE CA 92506
92507, 17	RIVERSIDE CA 92507
92508, 18	RIVERSIDE CA 92508
92509, 19	RIVERSIDE CA 92509
92530-32	LAKE ELSINORE CA 92531
92543-46	HEMET CA 92543
92551-55	MORENO VALLEY CA 92553
92556, 57	MORENO VALLEY CA 92557
92562-64	MURRIETA CA 92562
92570-72, 99	PERRIS CA 92570
92581-83	SAN JACINTO CA 92583

Column A Destination ZIP Codes	Column B Label Container To
92584-87	SUN CITY CA 92586
92589-93	TEMECULA CA 92591
92607, 77	LAGUNA NIGUEL CA 92607
92615, 46	HUNTINGTON BEACH CA 92615
92602-04, 18-20, 50	IRVINE CA 92619
92606, 14, 23	IRVINE CA 92623
92626-28	COSTA MESA CA 92628
92624, 29	DANA POINT CA 92629
92605, 47, 49	HUNTINGTON BEACH CA 92647
92651, 52	LAGUNA CA 92651
92653, 54	LAGUNA HILLS CA 92653
92657, 58, 60, 62, 65	NEWPORT BEACH CA 92658
92659, 61, 63	NEWPORT BEACH CA 92659
92672-74	SAN CLEMENTE CA 92672
92683-85	WESTMINSTER CA 92683
92610, 78, 79, 88	RCHO STA MARG CA 92688
92675, 90-93	MISSION VIEJO CA 92690
92780-82	TUSTIN CA 92781
92701-12, 28, 35, 99	SANTA ANA CA 92799
92821-23	BREA CA 92822
92831, 34	FULLERTON CA 92834
92832, 36	FULLERTON CA 92836
92833, 37	FULLERTON CA 92837
92835, 38	FULLERTON CA 92838
92840-44	GARDEN GROVE CA 92842
92845, 46	GARDEN GROVE CA 92846
92856, 57, 59, 61-69	ORANGE CA 92863
92870, 71	PLACENTIA CA 92871
92885-87	YORBA LINDA CA 92885
92801-08, 12, 14-17, 25, 50, 99	ANAHEIM CA 92899
93001, 02, 05, 07	VENTURA CA 93001
93003, 04, 06, 09	VENTURA CA 93003
93010-12	CAMARILLO CA 93010
93013, 14	CARPINTERIA CA 93013
93015, 16	FILLMORE CA 93015
93020, 21	MOORPARK CA 93020
93023, 24	OJAI CA 93023
93030-32, 35	OXNARD CA 93030
93033, 34	OXNARD CA 93033
93041-44	PORT HUENEME CA 93041
93060, 61	SANTA PAULA CA 93060
93062-65, 93, 97, 99	SIMI VALLEY CA 93065
93215, 16	DELANO CA 93215
93222, 25	FRAZIER PARK CA 93225
93230-32	HANFORD CA 93230
93245, 46	LEMOORE CA 93245
93257, 58	PORTERVILLE CA 93257
93274, 75	TULARE CA 93274
93277, 78	VISALIA CA 93277
93279, 91	VISALIA CA 93279
93401-10, 12	SAN LUIS OBISPO CA 93401
93436-38	LOMPOC CA 93436
93454-58	SANTA MARIA CA 93454
93501, 02	MOJAVE CA 93501
93504, 05	CALIFORNIA CITY CA 93505
93514, 15	BISHOP CA 93514
93516, 96	BORON CA 93516
93523, 24	EDWARDS CA 93523
93534-36, 39, 84, 86	LANCASTER CA 93534

Column A Destination ZIP Codes	Column B Label Container To
93550-52, 90, 91	PALMDALE CA 93550
93555, 56	RIDGECREST CA 93555
93561, 62, 81, 82	TEHACHAPI CA 93561
93611-13	CLOVIS CA 93612
93637-39	MADERA CA 93638
93901-17, 62	SALINAS CA 93907
93921-23	CARMEL CA 93923
93940-44	MONTEREY CA 93940
93950, 51	PACIFIC GROVE CA 93950
94010, 11	BURLINGAME CA 94010
94014-17	DALY CITY CA 94014
94023, 24	LOS ALTOS CA 94023
94025, 26, 28	MENLO PARK CA 94025
94035, 41-43	MOUNTAIN VIEW CA 94041
94061-65	REDWOOD CITY CA 94061
94080, 83	S SAN FRANCISCO CA 94080
94086-88	SUNNYVALE CA 94086
94301, 02, 06	PALO ALTO CA 94301
94303, 04	PALO ALTO CA 94303
94305, 09	STANFORD CA 94305
94401, 02	SAN MATEO CA 94401
94403, 04	SAN MATEO CA 94403
94501, 02	ALAMEDA CA 94501
94506, 26	DANVILLE CA 94506
94509, 31	ANTIOCH CA 94509
94519, 21	CONCORD CA 94519
94518, 20	CONCORD CA 94520
94533, 35	FAIRFIELD CA 94533
94536, 55	FREMONT CA 94536
94541-43	HAYWARD CA 94541
94540, 45	HAYWARD CA 94545
94546, 52	CASTRO VALLEY CA 94546
94550, 51	LIVERMORE CA 94550
94556, 75	MORAGA CA 94556
94558, 59, 81	NAPA CA 94558
94547, 72	RODEO CA 94572
94590, 92	VALLEJO CA 94590
94596, 97	WALNUT CREEK CA 94596
94702, 10	BERKELEY CA 94702
94801, 02	RICHMOND CA 94801
94925, 39, 76, 77	CORTE MADERA CA 94925
94927, 28, 31	ROHNERT PARK CA 94931
94941, 42	MILL VALLEY CA 94941
94945, 47-49	NOVATO CA 94947
94952, 54	PETALUMA CA 94952
94930, 60, 78, 79	SAN ANSELMO CA 94960
94965, 66	SAUSALITO CA 94965
95001, 03	APTOS CA 95003
95020, 21	GILROY CA 95020
95023, 24	HOLLISTER CA 95023
95030-32	LOS GATOS CA 95030
95037, 38	MORGAN HILL CA 95037
95050-56	SANTA CLARA CA 95050
95060-67	SANTA CRUZ CA 95060
95070, 71	SARATOGA CA 95070
95076, 77	WATSONVILLE CA 95076
95340, 41, 44, 48	MERCED CA 95340
95380-82	TURLOCK CA 95380
95472, 73	SEBASTOPOL CA 95472
95602-04	AUBURN CA 95603

Column A Destination ZIP Codes	Column B Label Container To
95608, 09	CARMICHAEL CA 95608
95610, 11, 21	CITRUS HEIGHTS CA 95610
95616-18	DAVIS CA 95616
95661, 78	ROSEVILLE CA 95678
95687, 88, 96	VACAVILLE CA 95687
95605, 91	WEST SACRAMENTO CA 95691
95926-29, 73, 76	CHICO CA 95926
95945, 49	GRASS VALLEY CA 95945
95965, 66	OROVILLE CA 95965
95967, 69	PARADISE CA 95969
95991, 92	YUBA CITY CA 95991
96150-58	SOUTH LAKE TAHOE CA 96150
96160, 61	TRUCKEE CA 96160
96720, 21	HILO HI 96721
96732, 33	KAHULUI HI 96732
96739, 40, 45	KAILUA KONA HI 96740
96738, 43	KAMUELA HI 96743
96761, 67	LAHAINA HI 96761
96701, 82	PEARL CITY HI 96782
96754, 57, 86	WAHIAWA HI 96786
96707, 09, 97	WAIPAHU HI 96797
97005, 08	BEAVERTON, OR 97005
97201, 58	PORTLAND OR 97201
97202, 82	PORTLAND OR 97202
97203, 31, 83	PORTLAND OR 97203
97204, 05, 40	PORTLAND OR 97204
97206, 86	PORTLAND OR 97206
97208, 28	PORTLAND OR 97208
97209, 10, 96	PORTLAND OR 97209
97212, 27	PORTLAND OR 97212
97213, 18, 38	PORTLAND OR 97213
97214, 32, 93	PORTLAND OR 97214
97215, 16, 33, 92	PORTLAND OR 97215
97219, 80	PORTLAND OR 97219
97220, 30, 94	PORTLAND OR 97220
97221, 25, 98	PORTLAND OR 97221
97222, 67-69	PORTLAND OR 97222
97223, 24, 81	PORTLAND OR 97223
97229, 91	PORTLAND OR 97229
97236, 66, 90	PORTLAND OR 97236
97301, 03, 05	SALEM OR 97301
97302, 06	SALEM OR 97302
97330, 31, 33, 35	CORVALIS OR 97333
97401, 40	EUGENE OR 97401
97404, 08	EUGENE OR 97404
97403, 05, 55	EUGENE OR 97405
97477, 78	SPRINGFIELD OR 97477
97501, 04	MEDFORD OR 97501
97526, 27	GRANTS PASS OR 97526
97601-03	KLAMATH FALLS OR 97601
97701, 02, 07-09	BEND OR 97701
98001, 02, 47, 71, 92	AUBURN WA 98002
98003, 23, 63, 93	FEDERAL WAY WA 98003
98004, 39	BELLEVUE WA 98004
98005, 15	BELLEVUE WA 98005
98007, 08	BELLEVUE WA 98007
98011, 41	BOTHELL WA 98011
98012, 21, 82	BOTHELL WA 98012
98020, 26	EDMONDS WA 98020
98022, 38	ENUMCLAW WA 98022

Column A Destination ZIP Codes	Column B Label Container To
98027, 29	ISSAQUAH WA 98027
98031, 42, 64	KENT WA 98031
98032, 35	KENT WA 98032
98033, 83	KIRKLAND WA 98033
98036, 37, 46	LYNNWOOD WA 98036
98048, 51	RAVENSDALE WA 98051
98053, 73	REDMOND WA 98053
98055, 58	RENTON WA 98055
98056, 57, 59	RENTON WA 98056
98101, 20, 29, 61, 71, 91	SEATTLE WA 98101
98102, 12	SEATTLE WA 98102
98104, 34, 54, 64, 74, 84	SEATTLE WA 98104
98105, 45, 85, 95	SEATTLE WA 98105
98106, 26	SEATTLE WA 98106
98107, 17	SEATTLE WA 98107
98111, 81	SEATTLE WA 98111
98114, 44	SEATTLE WA 98144
98138, 48, 58, 88	SEATTLE WA 98148
98168, 78	SEATTLE WA 98168
98160, 77	SEATTLE WA 98177
98221, 22	EVERETT WA 98221
98230, 31	EVERETT WA 98230
98270, 71	EVERETT WA 98270
98273, 74	EVERETT WA 98273
98290, 91, 96	EVERETT WA 98290
98329, 32, 35	GIG HARBOR WA 98332
98362, 63	PORT ANGELES WA 98362
98366, 67	PORT ORCHARD WA 98366
98371, 72	PUYALLUP WA 98371
98373-75	PUYALLUP WA 98375
98352, 90	SUMNER WA 98390
98401, 77	TACOMA WA 98401
98402, 21	TACOMA WA 98402
98403, 22-24	TACOMA WA 98403
98404, 42, 43	TACOMA WA 98404
98405, 15	TACOMA WA 98405
98406, 16	TACOMA WA 98406
98408, 12, 18	TACOMA WA 98408
98444, 47	TACOMA WA 98444
98445, 46	TACOMA WA 98445
98465-67	TACOMA WA 98465
98439, 99	TACOMA WA 98499
98501, 07	OLYMPIA WA 98501
98502, 08, 12	OLYMPIA WA 98502
98503, 09, 13	OLYMPIA WA 98503
98506, 16	OLYMPIA WA 98506
98660, 63, 66	VANCOUVER WA 98660
98661, 65, 68, 85, 86	VANCOUVER WA 98661
98662, 64, 82-84	VANCOUVER WA 98662
99163, 65	PULLMAN WA 99163
99202, 12	SPOKANE WA 99202
99203, 23	SPOKANE WA 99203
99204, 19, 24	SPOKANE WA 99204
99205, 09	SPOKANE WA 99205
99206, 14, 16	SPOKANE WA 99206
99207, 17	SPOKANE WA 99207
99208, 18, 28	SPOKANE WA 99208
99336-38	KENNEWICK WA 99336
99502, 07, 18	ANCHORAGE AK 99502
99515, 16	ANCHORAGE AK 99515

Column A Destination ZIP Codes	Column B Label Container To
99701, 03, 09, 12	FAIRBANKS AK 99701
99702, 05	FAIRBANKS AK 99702
99706-08	FAIRBANKS AK 99706

Column A Destination ZIP Codes	Column B Label Container To

BILLING CODE 7710-12-C

M MAIL PREPARATION AND SORTATION

M000 General Preparation Standards

M010 Mailpieces

M011 Basic Standards

1.0 TERMS AND CONDITIONS

1.1 Presort Process

[Amend M011.1.1 to incorporate a reference to package reallocation to read as follows:]

Presort is the process by which a mailer prepares mail so that it is sorted to at least the finest extent required by the standards for the rate claimed. Generally, presort is performed sequentially, from the lowest (finest) level to the highest level, to those destinations specified by standard and is completed at each level before the next level is prepared. Under standards for package reallocation for Periodicals flats and irregular parcels and Standard Mail (A) flats on pallets (see M041 and M045), mail will not necessarily be placed on the lowest (finest) level pallets (package reallocation is optional, but, if performed, must be done for the complete mailing job). Not all presort levels are applicable in all situations.

1.2 Presort Levels

[Amend M011.1.2 by revising 1.2d and adding new 1.2e and 1.2f to differentiate between 5-digit schemes for automation letters and 5-digit schemes for pallets and for carrier routes sacks of Periodicals flats and irregular parcels and Standard Mail (A) flats; redesignate current M011.1.2e through M011.1.2m as M011.1.2g through M011.1.2o, respectively, as follows:]

Terms used for presort levels are defined as follows:

* * * * *

d. 5-digit scheme (trays) for automation letters: the ZIP Code in the delivery address on all pieces is one of the 5-digit ZIP Code areas processed by the USPS as a single scheme, as shown in the USPS City State File.

e. 5-digit scheme carrier routes (sacks) for Periodicals flats and irregular parcels and Standard Mail (A) flats: the ZIP Code in the delivery address on all pieces in carrier route packages begins with one of the 5-digit ZIP Code zones processed by the USPS as a single scheme, as shown in L001.

f. 5-digit scheme (pallets) for Periodicals flats and irregular parcels and Standard Mail (A) flats: The ZIP Code in the delivery address on all pieces begins with one of the 5-digit ZIP Code zones processed by the USPS as a single scheme, as shown in L001.

* * * * *

1.3 Preparation Instructions

* * * * *

[Amend 1.3 by revising the first sentence of 1.3g to insert the phrase "for automation letters"; inserting new 1.3h and i to define 5-digit/scheme sort for carrier routes sacks of Periodicals flats and irregular parcels and Standard Mail (A) flats and 5-digit/scheme sort for Periodicals flats and irregular parcels packages and Standard Mail (A) flats packages on pallets; redesignate 1.3h through s as 1.3j through u, respectively, to read as follows:]

g. A 5-digit scheme sort for automation letters yields * * *

h. A 5-digit/scheme carrier routes sort for sacked carrier route rate Periodicals flats and irregular parcels and Enhanced Carrier Route rate Standard Mail (A) flats yields 5-digit scheme carrier routes sacks for those 5-digit ZIP Codes listed in L001 and 5-digit carrier routes sacks for other areas. The 5-digit ZIP Codes in each scheme are treated as a single presort destination subject to a single minimum sack volume, with no further separation by 5-digit ZIP Code required. Sacks prepared for a 5-digit scheme destination that contain carrier route packages for only one of the schemed 5-digit areas are still considered 5-digit carrier route scheme sorted and are labeled accordingly. The 5-digit/scheme sort is optional for carrier route rate flat-size and irregular parcel Periodicals and flat-size Enhanced Carrier Route rate Standard Mail (A) in sacks. If preparation of 5-digit scheme carrier routes sacks is performed, it must be done for all 5-digit scheme destinations. A 5-digit/scheme carrier route sort may not be used for mail at other rates in sacks.

i. A 5-digit/scheme sort for Periodicals flats and irregular parcels and Standard Mail (A) flats prepared as packages on pallets yields 5-digit scheme pallets for those 5-digit ZIP Codes listed in L001 and 5-digit pallets for other areas. The 5-digit ZIP Codes in each scheme are treated as a single presort destination subject to a single minimum pallet volume, with no further separation by 5-digit ZIP Code required. Pallets prepared for a 5-digit scheme destination that contain packages for only one of the schemed 5-digit areas are still considered 5-digit scheme sorted and are labeled accordingly. The 5-digit/scheme sort is optional for flat-size and irregular parcel-size Periodicals and flat-size Enhanced Carrier Route rate Standard Mail (A) prepared as packages on pallets and may not be used for other mail prepared on pallets, except for packages of Standard Mail (A) irregular parcels that are part of a mailing job that is prepared in part as palletized flats at automation rates. If preparation of 5-digit scheme pallets is performed, it must be done for all 5-digit scheme destinations.

* * * * *

M030 Containers

M031 Labels

* * * * *

4.0 PALLET LABELS

* * * * *

4.8 Delivery Unit, SCF, DDU, and DSCF Rates

[Amend M031.4.8 to refer to 5-digit scheme pallets, as follows:]

If a 5-digit, 5-digit scheme, 3-digit, or SCF pallet contains copies claimed at Periodicals delivery unit and SCF zone rates, or Standard Mail DDU and DSCF rates, as applicable, the content line of the pallet label must show the designation "DDU/SCF," after the content description.

* * * * *

5.0 SECOND LINE CODES

[Amend 5.0 to include code for 5-digit scheme carrier routes sacks, as follows:]

The codes shown below must be used as appropriate on Line 2 of sack, tray, and pallet labels.

* * * * *

Content	Code
Scheme	SCH. (Periodicals and Standard Mail (A) 5-digit scheme carrier routes sacks and 5-digit scheme pallets only).

* * * * *

M032 Barcoded Labels

1.0 BASIC STANDARDS—TRAY AND SACK LABELS

* * * * *

Exhibit 1.3a 3-Digit Content Identifier Numbers

[Amend Exhibit 1.3a, Periodicals (PER) and Standard (A) by inserting new 5-digit scheme carrier routes sacs and 5-digit scheme Enhanced Carrier Routes sacks categories, respectively, to read as follows:]

* * * * *

Class and mailing	CIN	Human-readable content line
Periodicals (Per)		
PER Flats—Carrier Route:		
5-digit carrier routes sacks	386	PER FLTS CR–RTS
5-digit scheme car. rts. sacks	371	PER FLTS CR–RTS SCH
PER Parcels—Carrier Route:		
5-digit carrier routes sacks	396	PER IRREG CR–RTS
5-digit scheme car. rts. sacks	399	PER IRREG CR–RTS SCH
Periodicals (News)		
NEWS Flats—Carrier Route:		
5-digit carrier routes sacks	486	NEWS FLTS CR–RTS
5-digit scheme car. rts. sacks	471	NEWS FLTS CR–RTS SCH
NEWS Parcels—Carrier Route:		
5-digit carrier routes sacks	496	NEWS IRREG CR–RTS
5-digit scheme car. rts. sacks	499	NEWS IRREG CR–RTS SCH
Standard Mail (A)		
Enhanced Carrier Route Flats—Nonautomation:		
5-digit carrier routes sacks	586	STD FLTS CR–RTS
5-digit scheme car. rts. sacks	529	STD FLTS CR–RTS SCH

M033 Sacks And Trays

1.0 BASIC STANDARDS

* * * * *

1.7 Origin/Entry 3-Digit/Scheme Trays and Sacks

[Amend the first sentence in M033.1.7 to refer to preparation of 5-digit carrier routes trays and sacks, optional 5-digit scheme carrier routes sacks for Periodicals and Standard Mail (A), and 3-digit carrier routes trays, as follows:]

Except for flat-size and irregular parcel-size Periodicals under 1.8, after all carrier route, 5-digit carrier routes (and where permitted, 5-digit scheme carrier routes and 3-digit carrier routes), 5-digit (and, where permitted, 5-digit scheme), 3-digit (and, where permitted, 3-digit scheme) sacks/trays are prepared * * *

1.8 Periodicals Flats and Irregular Parcels Origin/Entry SCF Sacks

[Amend the first sentence in M033.1.8 to refer to preparation of 5-digit carrier routes sacks and optional 5-digit scheme carrier routes sacks for Periodicals, as follows:]

For flat-size and irregular parcel-size Periodicals, after all carrier route, 5-digit carrier routes (and where permitted, 5-digit scheme carrier routes), 5-digit, 3-digit, and required SCF sacks are prepared * * *

* * * * *

M040 Pallets

M041 General Standards

* * * * *

5.0 PREPARATION

[Amend M041.5.1 to indicate that pallet sortation using package reallocation may not always require sorting a mailing to the finest level as follows:]

5.1 Presort

Pallet preparation and pallet sortation are subject to the specific standards in

M045. Pallet sortation is generally intended to presort the palletized portion of a mailing to at least the finest extent required for the corresponding class of mail and method of preparation. Pallet sortation is sequential from the lowest (finest) level to the highest and must be completed at each required level before the next optional or required level is prepared. Standard preparation terms and presort levels for pallets are defined in M011 and M045. For sacks, trays, or machinable parcels on pallets, the mailer must prepare all required pallet levels before any mixed ADC or mixed BMC pallets are prepared for a mailing or job. Packages and bundles prepared under M045 must not be placed on mixed ADC or mixed BMC pallets. Packages and bundles that cannot be placed on pallets must be prepared in sacks under the standards for the rate claimed. The standards for package reallocation (M045.5.0), an optional method of pallet preparation, are designed to retain as much mail as possible at the SCF level and may result in some packages of Periodicals flats and irregular parcels and Standard Mail (A) flats, and irregular parcels that are part of a mailing job that is prepared in part as palletized flats at automation rates, not being placed on the finest level of pallet possible. Mailers must use PAVE-certified presort software to prepare mailings using package reallocation (package reallocation is optional, but, if performed, must be done for the complete mailing job).

5.2 Required Preparation

[Amend M041.5.2 by revising 5.2a to refer to Periodicals and Standard Mail (A) 5-digit pallets prepared under the standards for package reallocation as follows:]

These standards apply to:

a. Periodicals, Standard Mail (A), and Parcel Post (other than BMC Presort, OBMC Presort, DSCF, and DDU rate mail). A pallet must be prepared to a required sortation level when there are 500 pounds of Periodicals or Standard Mail packages, sacks, or parcels or six layers of Periodicals or Standard Mail (A) letter trays. For packages of Periodicals flats and irregular parcels and packages of Standard Mail (A) flats on pallets prepared under the standards for package reallocation (M045.5.0), not all mail for a required 5-digit destination is required to be on a 5-digit pallet or optional 5-digit scheme pallet. Mixed pallets of sacks, trays, or machinable parcels must be labeled to the BMC or ADC (as appropriate) serving the post office where mailings are entered into the mailstream. The processing and distribution manager of that facility may issue a written authorization to the mailer to label mixed BMC or mixed ADC pallets to the post office or processing and distribution center serving the post office where mailings are entered. These pallets contain all mail remaining after required and optional pallets are prepared to finer sortation levels under M045, as appropriate.

* * * * *

6.0 COPALLETIZED, COMBINED, OR MIXED-RATE LEVEL MAILINGS OF FLAT-SIZE PIECES

* * * * *

[Amend M041.6.3 and M041.6.4 to indicate that pallet sortation using package reallocation may not always require sorting a mailing to the finest level, as follows:]

6.3 Periodicals Publications

To combine more than one Periodicals publication on pallets, the mailer must merge and presort copies of all the publications into common packages to achieve the finest presort level for the combined mailing. To copalletize different Periodicals flat-size publications, the mailer must consolidate on pallets all independently sorted packages for each publication to achieve the finest presort level for the mailing. A combined or copalletized mailing prepared under M045.5.0, using package reallocation, may not always result in all packages being placed on the finest pallet level possible. Both combined and copalletized publications must be supported by the documentation required in M045. Preferred Periodicals may be combined with Regular Periodicals only as permitted by standard.

6.4 Standard Mail (A)

To copalletize different Standard Mail (A) flat-size mailings, the mailer must consolidate on pallets all independently sorted packages from each mailing to achieve the finest presort level for the mailing, except that a copalletized mailing prepared under M045.5.0, using package reallocation, may not always result in all packages being placed on the finest pallet level possible. At the time of mailing, the mailer must present computer-generated listings required in M045 that include a summary list consolidating the copalletized multiple mailings and a list of the contents of each pallet by ZIP Code and presort level.

* * * * *

M045 Palletized Mailings

* * * * *

4.0 PALLET PRESORT AND LABELING

[Amend the title of M045.4.1 to indicate that it also refers to trays on pallets, as follows:]

4.1 Packages, Bundles, Sacks, or Trays

[Amend M045.4.1 by revising 4.1a and adding new 4.1b to provide an optional 5-digit/scheme sort for packages of Periodicals and Standard Mail (A) flats; redesignate M045.4.1b through M0454.1e as M045.4.1c through M045.4.1f, as follows:]

Preparation sequence and Line 1 labeling:

a. 5-digit: required for sacks; required for packages and bundles except for packages and bundles prepared under b; optional for trays; for Line 1, use 5-digit ZIP Code destination of contents.

b. 5-digit/scheme: optional for Periodicals and Standard Mail (A) packages and bundles; for Line 1 for 5-digit pallets, use 5-digit ZIP Code destination of contents; for Line 1 for 5-digit scheme pallets, use L001, column B.

* * * * *

4.4 Line 2

[Amend M045.4.4 to require "SCHEME" or "SCH" to appear on 5-digit scheme pallets of Periodicals or Standard Mail (A), as follows:]

Line 2, class of mail (shown below, as appropriate), processing category and mail type (e.g., "MACH," "LTRS BC"), "SCHEME" or "SCH" for 5-digit scheme pallets of Periodicals or Standard Mail (A), and any processing code required by the applicable labeling list under 4.1, 4.2, and 4.3:

* * * * *

[Add new section M045.5.0 to specify preparation requirements for package reallocation; and redesignate sections M045.5.0 through M045.13.0, as M045.6.0 through M045.14.0, respectively, as follows:]

5.0 PACKAGE REALLOCATION FOR PERIODICALS FLATS AND IRREGULAR PARCELS AND STANDARD MAIL (A) FLATS ON PALLETS

5.1 Basic Standards

Package reallocation is an optional preparation method (if performed, package reallocation must be done for the complete mailing job); only PAVE-certified presort software may be used to create pallets under the standards in 5.2 through 5.4. The software will determine if mail for an SCF service area would fall beyond the SCF level if all required 5-digit or optional 5-digit/

scheme pallets and optional 3-digit pallets are prepared. Reallocation is performed only when there is mail for the SCF service area that would fall beyond the SCF pallet level (e.g., to an ADC or BMC pallet). The amount of mail required to bring the mail that would fall beyond the SCF level back to an SCF level pallet level is the minimum volume that will be reallocated, where possible.

5.2 General Reallocation Rules

Reallocation rules:

a. Package preparation is not affected by the reallocation process. Reallocate only complete packages and only the minimum number of packages necessary to create an SCF pallet meeting the minimum pallet weight. Based on the weight of individual pieces within a package and packaging parameters, the weight of mail that is reallocated may be slightly more than the minimum volume required to create an SCF pallet.

b. Reallocate packages from the highest available pallet level possible. If it is not possible to reallocate some mail from a 3-digit pallet first, then attempt to eliminate a 3-digit pallet and reallocate all mail from that pallet to create an SCF pallet; if mail cannot be reallocated from a 3-digit pallet, then attempt to reallocate some mail from a 5-digit or 5-digit scheme pallet.

c. The reallocation process may result in the elimination of a 3-digit pallet to create an SCF pallet, but a 5-digit or 5-digit scheme pallet (when 5-digit scheme pallets are prepared) may not be eliminated in order to create an SCF pallet.

d. When reallocating mail to create an SCF pallet, reallocate mail from only one more finely sorted pallet. This may be accomplished by reallocating a portion of a 3-digit pallet, reallocating all mail from a 3-digit pallet, or reallocating a portion of a 5-digit or 5-digit scheme pallet following the sequence in 5.2b.

e. Mailers may use any minimum pallet weight(s) permitted by DMM standards and may use different minimum weights for different pallet levels in conjunction with package reallocation.

5.3 Reallocation of Packages if Optional 3-Digit Pallets Are Prepared

Reallocation rules:

a. Attempt to identify a 3-digit pallet of adequate weight that can support reallocation of one or more packages to bring the mail that has fallen through the SCF level back to the SCF level without eliminating the pallet. A sufficient volume of mail must remain on the 3-digit pallet after reallocation to meet the 3-digit pallet weight minimum established by the mailer in compliance with applicable DMM standards. If a 3-digit pallet of adequate weight is available, create an SCF pallet by combining the reallocated mail from the 3-digit pallet with the mail that would fall beyond the SCF pallet level.

b. If no single 3-digit pallet within the SCF service area contains an adequate volume of mail to allow reallocation of a portion of the mail on a pallet as described in the previous step, then eliminate one 3-digit pallet and reallocate all of the mail to create an SCF pallet by combining it with the mail that would fall beyond the SCF pallet level. The result will be that the software will not prepare one 3-digit pallet for the SCF service area if it is detrimental to the SCF pallet.

c. If there are no 3-digit pallets, attempt to identify a 5-digit or 5-digit scheme pallet of adequate weight to support reallocation of one or more packages to bring the mail that would fall beyond the SCF pallet level back to the SCF level. A sufficient volume of mail must remain on the 5-digit or 5-digit scheme pallet after reallocation to meet the pallet weight minimum established by the mailer in compliance with applicable DMM standards. If a 5-digit or 5-digit scheme pallet of adequate weight is available, create an SCF pallet by combining the reallocated packages with the mail that would fall beyond the SCF pallet level.

d. If no single 5-digit or 5-digit scheme pallet within the SCF service area contains an adequate volume of mail to allow reallocation of a portion of the mail on a pallet as described in c, then no packages will be reallocated and an SCF pallet will not be prepared; the mail that falls beyond the SCF pallet level must be placed on the appropriate level pallet (ADC or BMC) or in the appropriate level sack.

5.4 Reallocation of Packages if Optional 3-Digit Pallets Are Not Prepared

Reallocation rules:

a. Attempt to identify a 5-digit or 5-digit scheme pallet of adequate weight to support reallocation of one or more packages to bring the mail that would fall beyond the SCF pallet level back to the SCF level. A sufficient volume of mail must remain on the 5-digit or 5-digit scheme pallet after reallocation to meet the pallet weight minimum established by the mailer in compliance with applicable DMM standards. If a 5-digit or 5-digit scheme pallet of adequate weight is available, create an SCF pallet by combining the reallocated packages with the mail that would fall beyond the SCF pallet level.

b. If no single 5-digit or 5-digit scheme pallet within the SCF service area contains an adequate volume of mail to allow reallocation of a portion of the mail on a pallet as described in a, then no packages will be reallocated and an SCF pallet will not be prepared; the mail that falls beyond the SCF pallet level must be placed on the appropriate level pallet (ADC or BMC) or in the appropriate level sack.

5.5 Documentation

Mailings must be supported by documentation produced by PAVE-certified software meeting the standards in P012.

6.0 PALLETS OF PACKAGES, BUNDLES, AND TRAYS OF LETTER-SIZE MAIL

[Amend redesignated 6.1 and 6.2 by revising the second section of each section to indicate that automation rate and nonautomation rate mail must be placed on separate 5-digit scheme pallets, as follows:]

6.1 * * * Automation rate and nonautomation rate pieces must be placed on separate 5-digit and 5-digit scheme pallets. * * *

6.2 * * * Automation rate and nonautomation rate pieces must be placed on separate 5-digit and 5-digit scheme pallets, except that upgradable pieces prepared under M610 may be placed on 5-digit pallets with automation rate pieces. * * *

* * * * *

M200 Periodicals (Nonautomation)

1.0 BASIC STANDARDS

* * * * *

1.5 Low Volume Packages and Sacks

[Amend M200.1.5 by revising reference to "3.1a through 3.1e" to read "3.1a through 3.1f", as follows:]

As a general exception to 2.4b through 2.4d and 3.1a through 3.1f, * * *

* * * * *

3.0 SACK PREPARATION (FLAT-SIZE PIECES AND IRREGULAR PARCELS)

3.1 Sack Preparation

[Amend M200.3.1 by revising 3.1b and adding new 3.1c to provide an optional 5-digit/scheme carrier routes sort for flats and irregular parcels; redesignate M200.3.1c through M200.3.1g as M200.3.1d through M200.3.1h, as follows:]

Sack size, preparation sequence, and Line 1 labeling:

* * * * *

b. 5-digit carrier routes (carrier routes packages only): required for rate eligibility (no minimum) unless sacks are prepared under c; for Line 1, use 5-digit ZIP Code destination of packages, preceded for military mail by the prefixes under M031.

c. 5-digit/scheme carrier routes (carrier route packages only): required at 24 pieces, optional with one six-piece package minimum except under 1.5; for Line 1 for 5-digit carrier routes sacks, use 5-digit ZIP Code destination of packages, preceded for military mail by the prefixes under M031; for Line 1 for 5-digit scheme carrier routes sacks, use L001, column B.

* * * * *

3.2 Sack Line 2

[Amend M200.3.2 by adding new 3.2e for 5-digit scheme carrier routes sacks; and redesignate M200.3.2e through M200.3.2h as M200.3.2f through M200.3.2i, respectively, as follows:]

* * * * *

e. 5-digit scheme car. rts.: "CR-RTS SCH"

* * * * *

M600 Standard Mail (Nonautomation)

* * * * *

M620 Enhanced Carrier Route Standard Mail

* * * * *

4.0 SACK PREPARATION—FLAT-SIZE PIECES AND IRREGULAR PARCELS

* * * * *

4.2 Sack Preparation

[Amend M620.4.2 by revising 4.2b and adding new 4.2c, as follows:]

Sack size, preparation sequence, and Line 1 labeling:

* * * * *

b. 5-digit carrier routes: required (no minimum); for irregular parcels; for Line 1, use 5-digit ZIP Code destination of packages, preceded for military mail by the prefixes under M031.

c. 5-digit/scheme carrier routes: required (no minimum) for flats; for Line 1, for 5-digit sacks, use 5-digit ZIP Code destination of packages, preceded for military mail by the prefixes under M031; for Line 1 for 5-digit scheme sacks, use L001, column B.

4.3 Sack Line 2

[Amend M620.4.3 by adding new 4.3e for 5-digit scheme carrier routes sacks, as follows:]

* * * * *

e. 5-digit scheme car. rts.: "CR-RTS SCH"

* * * * *

P Postage And Payment Methods

P000 Basic Information

* * * * *

P012 Documentation

* * * * *

2.0 STANDARDIZED DOCUMENTATION—FIRST-CLASS MAIL, PERIODICALS, AND STANDARD MAIL (A)

* * * * *

2.2 Format and Content

[Amend P012.2.2d by revising 2.2d(4) to add standards for identifying SCF pallets created as a result of package reallocation by adding the following to the end of the section:]

* * * * *

d. For packages on pallets, the body of the listing reporting these required elements:

* * * * *

(4) * * * Document SCF pallets created as a result of package reallocation under M045.5.0 on the USPS Qualification Report by designating the protected SCF pallet with an identifier of "PSCF." This identifier is only required to appear on the USPS Qualification Report; it is not required to appear on pallet labels or on any other mailing documentation.

* * * * *

2.4 Sortation Level

[Amend 2.4 by adding new indicators "CR5S" to identify 5-digit carrier routes scheme sacks, "5DGS" to identify 5-digit scheme pallets, and "PSCF" to identify SCF pallets created as a result of package reallocation under M045.5.0, as follows:]

The actual sortation level (or corresponding abbreviation) is used for the package, tray, sack, or pallet levels required by 2.2 and shown below:

Sortation level	Abbreviation
* * * * *	
5-Digit Carrier Routes	CR5
5-Digit Scheme Carrier Routes (Periodicals flats, Standard Mail (A) flats).	CR5S
5-Digit Scheme (pallets, Periodicals flats and irregular parcels, Standard Mail (A) flats).	5DGS
* * * * *	
SCF (pallets)	N/A
SCF (pallets created from package reallocation).	PSCF
* * * * *	

Stanley F. Mires,
Chief Counsel, Legislative.

[FR Doc. 99–8400 Filed 4–6–99; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300826; FRL–6070–1]

RIN 2070–AB78

Propamocarb Hydrochloride; Extension of Tolerance for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation extends time-limited tolerances for residues of the fungicide propamocarb hydrochloride in or on tomatoes, tomato puree, and tomato paste at 0.5, 1.0, and 3.0 part per million (ppm), respectively, for an additional 1–year period. These tolerances will expire and are revoked on November 15, 2001. This action is in response to EPA's granting of emergency exemptions under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) authorizing use of the pesticide on tomatoes. Section 408(l)(6) of the Federal Food, Drug, and Cosmetic Act requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under FIFRA section 18.

DATES: This regulation becomes effective April 7, 1999. Objections and requests for hearings must be received by EPA, on or before June 7, 1999.

ADDRESSES: Written objections and hearing requests. identified by the docket control number [OPP–300826], must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk identified by the docket control number, [OPP–300826], must also be submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of

Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 119, Crystal Mall 2 (CM #2), 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epa.gov. Copies of electronic objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect 5.1/6.1 or ASCII file format. All copies of electronic objections and hearing requests must be identified by the docket control number [OPP–300826]. No Confidential Business Information (CBI) should be submitted through e-mail. Copies of electronic objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: By mail: Libby Pemberton, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 280, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA, 703 308–9364, pemberton.libby@epa.gov.

SUPPLEMENTARY INFORMATION: EPA issued a final rule, published in the **Federal Register** of May 16, 1997 (62 FR 26960) (FRL–5717–5), which announced that on its own initiative under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a and (l)(6), as amended by the Food Quality Protection Act of 1996 (FQPA) (Pub. L. 104–170) it established time-limited tolerances for the residues of propamocarb hydrochloride in or on tomatoes at 0.5 ppm, tomato paste at 3 ppm, and tomato puree at 1 ppm with an expiration date of May 15, 1999. EPA extended the expiration date of these tolerances to November 15, 2000 in the **Federal Register** of June 12, 1998 (63 FR 32134) (FRL–5795–3). EPA established the tolerances because section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under FIFRA section 18. Such tolerances can be established without providing notice or period for public comment.

EPA received a request to extend the use of propamocarb hydrochloride on tomatoes for this year growing season due to continued failure to control immigrant strains of late blight in greenhouse grown tomatoes with registered fungicides. After having reviewed the submission, EPA concurs that emergency conditions exist. EPA has authorized under FIFRA section 18 the use of propamocarb hydrochloride on greenhouse grown tomatoes for control of late blight in Arizona and California.

EPA assessed the potential risks presented by residues of propamocarb hydrochloride in or on tomatoes. In doing so, EPA considered the safety standard in FFDCA section 408(b)(2), and decided that the necessary tolerance under FFDCA section 408(l)(6) would be consistent with the safety standard and with FIFRA section 18. The data and other relevant material have been evaluated and discussed in the final rule of May 16, 1997. Based on that data and information considered, the Agency reaffirms that extension of the time-limited tolerance will continue to meet the requirements of section 408(l)(6). Therefore, the time-limited tolerances are extended for an additional 1-year period. EPA will publish a document in the **Federal Register** to remove the revoked tolerance from the Code of Federal Regulations (CFR). Although this tolerance will expire and is revoked on November 15, 2001, under FFDCA section 408(l)(5), residues of the pesticide not in excess of the amounts specified in the tolerances remaining in or on tomatoes, tomato paste and tomato puree after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA and the application occurred prior to the revocation of the tolerances. EPA will take action to revoke these tolerances earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

I. Objections and Hearing Requests

The new FFDCA section 408(g) provides essentially the same process for persons to "object" to a tolerance regulation as was provided in the old section 408 and in section 409. However, the period for filing objections is 60 days, rather than 30 days. EPA currently has procedural regulations which govern the submission of objections and hearing requests. These regulations will require some modification to reflect the new law. However, until those modifications can be made, EPA will continue to use those procedural regulations with appropriate adjustments to reflect the new law.

Any person may, by June 7, 1999, file written objections to any aspect of this regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given under the "ADDRESSES" section (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). EPA is authorized to waive any fee requirement "when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection." For additional information regarding tolerance objection fee waivers, contact James Tompkins, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 239, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 305-5697, tompkins.jim@epa.gov. Requests for waiver of tolerance objection fees should be sent to James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

If a hearing is requested, the objections must include a statement of the factual issues on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the requestor (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

II. Public Record and Electronic Submissions

EPA has established a record for this regulation under docket control number [OPP–300826] (including any comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Rm. 119 of the Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

Objections and hearing requests may be sent by e-mail directly to EPA at:

opp-docket@epa.gov.

E-mailed objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this regulation, as well as the public version, as described in this unit will be kept in paper form. Accordingly, EPA will transfer any copies of objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the Virginia address in "ADDRESSES" at the beginning of this document.

III. Regulatory Assessment Requirements

A. Certain Acts and Executive Orders

This final rule establishes tolerances under section 408 of the FFDCA. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). Nor does it require any special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994), or require OMB review in accordance with Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997).

In addition, since tolerances and exemptions that are established under section 408(l)(6) of FFDCA, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. Nevertheless, the Agency previously assessed whether establishing tolerances, exemptions from tolerances, raising tolerance levels or expanding exemptions might adversely impact small entities and concluded, as a generic matter, that there is no adverse economic impact. The factual basis for the Agency's generic certification for tolerance actions published on May 4, 1981 (46 FR 24950), and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

B. Executive Order 12875

Under Executive Order 12875, entitled *Enhancing the Intergovernmental Partnership* (58 FR 58093, October 28, 1993), EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to OMB a description of the extent of EPA's prior consultation with representatives of affected State, local, and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's rule does not create an unfunded Federal mandate on State, local, or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

C. Executive Order 13084

Under Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998), EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

IV. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the Agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides

and pests, Reporting and recordkeeping requirements.

Dated: March 25, 1999.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346(a), and 371.

§ 180.499 [Amended]

2. In § 180.499, by amending paragraph (b) by revising the date "11/15/00" to read "11/15/01".

[FR Doc. 99–8339 Filed 4–6–99; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300825; FRL–6070–6]

RIN 2070–AB78

Avermectin; Pesticide Tolerances for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a time-limited tolerance for combined residues of avermectin in or on avocado. This action is in response to EPA's granting of an emergency exemption under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act authorizing use of the pesticide on avocado. This regulation establishes a maximum permissible level for residues of avermectin B_1 and its delta-8,9-isomer in this food commodity pursuant to section 408(l)(6) of the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996. The tolerance will expire and is revoked on September 30, 2000.

DATES: This regulation is effective April 7, 1999. Objections and requests for hearings must be received by EPA on or before June 7, 1999.

ADDRESSES: Written objections and hearing requests, identified by the docket control number [OPP–300825], must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk identified by the docket control number, [OPP–300825], must also be submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epa.gov. Copies of electronic objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect 5.1/6.1 or ASCII file format. All copies of electronic objections and hearing requests must be identified by the docket control number [OPP–300825]. No Confidential Business Information (CBI) should be submitted through e-mail. Copies of electronic objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: By mail: Jacqueline E. Gwaltney, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 278 Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, 703/305–6792, gwaltney.jackie@epa.gov.

SUPPLEMENTARY INFORMATION: EPA, on its own initiative, pursuant to sections 408 and (l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a and (l)(6), is establishing a tolerance for combined residues of the fungicide, in or on avocado at 0.02 ppm part per million (ppm). This tolerance will expire and is revoked on September 30, 2000. EPA will publish a document in the **Federal Register** to remove the revoked tolerance from the Code of Federal Regulations.

I. Background and Statutory Findings

The Food Quality Protection Act of 1996 (FQPA) (Pub. L. 104–170) was signed into law August 3, 1996. FQPA amends both the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 301 *et seq.*, and the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136 *et seq.* The FQPA amendments went into effect immediately. Among other things, FQPA amends FFDCA to bring all EPA pesticide tolerance-setting activities under a new section 408 with a new safety standard and new procedures. These activities are described in this preamble and discussed in greater detail in the final rule establishing the time-limited tolerance associated with the emergency exemption for use of propiconazole on sorghum (61 FR 58135, November 13, 1996) (FRL–5572–9).

New section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . ."

Section 18 of FIFRA authorizes EPA to exempt any Federal or State agency from any provision of FIFRA, if EPA determines that "emergency conditions exist which require such exemption." This provision was not amended by FQPA. EPA has established regulations governing such emergency exemptions in 40 CFR part 166.

Section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA. Such tolerances can be established without providing notice or period for public comment.

Because decisions on section 18-related tolerances must proceed before EPA reaches closure on several policy issues relating to interpretation and

implementation of the FQPA, EPA does not intend for its actions on such tolerances to set binding precedents for the application of section 408 and the new safety standard to other tolerances and exemptions.

II. Emergency Exemption for Avermectin on Avocado and FFDCA Tolerances

California submitted information to EPA that indicates that the avocado thrip (*Scirthothrips perseae*) poses a significant threat to the profitable production of avocado. Avocado affected by avocado thrip can be rendered unmarketable because it causes severe scarring and damage to small avocado fruit, fruit stems and tender leaf flushes. California determined that the conditions for a avocado thrip outbreak were favorable and invoked its authorities under 40 CFR 166.40 to declare a crisis situation. After considering the implications connected with the use of this pesticide under a crisis situation, EPA is establishing this tolerance for the use of avermectin on avocado for the control of avocado thrips in California.

EPA has authorized under FIFRA section 18 the use of avermectin on avocado for control of avocado thrips in California. After having reviewed the submission, EPA concurs that emergency conditions exist for this state.

As part of its assessment of this emergency exemption, EPA assessed the potential risks presented by residues of avermectin in or on avocado . In doing so, EPA considered the safety standard in FFDCA section 408(b)(2), and EPA decided that the necessary tolerance under FFDCA section 408(l)(6) would be consistent with the safety standard and with FIFRA section 18. Consistent with the need to move quickly on the emergency exemption in order to address an urgent non-routine situation and to ensure that the resulting food is safe and lawful, EPA is issuing this tolerance without notice and opportunity for public comment under section 408(e), as provided in section 408(l)(6). Although this tolerance will expire and is revoked on September 30, 2000, under FFDCA section 408(l)(5), residues of the pesticide not in excess of the amounts specified in the tolerance remaining in or on avocado after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA, and the residues do not exceed a level that was authorized by this tolerance at the time of that application. EPA will take action to revoke this tolerance earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

Because this tolerance is being approved under emergency conditions EPA has not made any decisions about whether avermectin meets EPA's registration requirements for use on avocado or whether a permanent tolerance for this use would be appropriate. Under these circumstances, EPA does not believe that this tolerance serves as a basis for registration of avermectin by a State for special local needs under FIFRA section 24(c). Nor does this tolerance serve as the basis for any State other than California to use this pesticide on this crop under section 18 of FIFRA without following all provisions of EPA's regulations implementing section 18 as identified in 40 CFR part 166. For additional information regarding the emergency exemption for avermectin, contact the Agency's Registration Division at the address provided under the "ADDRESSES" section.

III. Aggregate Risk Assessment and Determination of Safety

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 and a complete description of the risk assessment process, see the final rule on Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997) (FRL–5754–7) .

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of avermectin and to make a determination on aggregate exposure, consistent with section 408(b)(2), for a time-limited tolerance for combined residues of avermectin on avocado at 0.02ppm. EPA's assessment of the dietary exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by avermectin are discussed in this unit.

B. Toxicological Endpoint

1. *Acute toxicity.* The acute dietary Reference Dose (RfD) is 0.0025 mg/kg from a 1–year dog study. The no observed adverse effect level (NOAEL) is 0.25 mg/kg/day, and the lowest observed adverse effect level (LOAEL) is 0.50 mg/kg/day based on mydriasis (pupil dilation) which was observed after one week of dosing. An uncertainty factor of 100 to account for interspecies extrapolation (10x) and intraspecies variability (10x) was recommended (Hazard Identification Assessment Review Committee (HIARC), 7/28/98).

2. *Short- and intermediate-term toxicity.* Short- and intermediate-term dermal NOAELs of 0.25 mg/kg/day based on mydriasis after one week of dosing in a 1–year dog study. Dermal absorption is considered to be 1%. Short- and intermediate-term inhalation NOAEL is a route-to-route extrapolation from the oral NOAEL of 0.25 mg/kg/day based on mydriasis after one week of dosing in a 1–year dog study. Oral and inhalation absorption are both assumed to be 100% (HIARC, 7/28/98).

3. *Chronic toxicity.* EPA has established the RfD for avermectin at 0.0012 milligrams/kilogram/day (mg/kg/day) from a 2–generation reproduction study in rats. The developmental NOAEL is 0.12 mg/kg/day, and the developmental LOAEL is 0.40 mg/kg/day based on decreased pup body weight and viability during lactation, and increased incidence of retinal rosettes in F2b weanlings. An uncertainty factor of 100 to account for interspecies extrapolation (10x) and intraspecies variability(10x) was recommended.

4. *Long-term.* Long-term dermal NOAEL of 0.12 mg/kg/day based on decreased pup body weight and viability during lactation, and increased incidence of retinal rosettes in F2b weanlings in a 2–generation reproduction study in rats. Dermal absorption is considered to be 1% (HIARC, 7/28/98).

Long-term inhalation NOAEL is a route-to-route extrapolation from the oral NOAEL of 0.12 mg/kg/day based on decreased pup body weight and viability during lactation, and increased incidence of retinal rosettes in F2b weanlings in a 2–generation reproduction study in rats. Oral and inhalation absorption are both assumed to be 100% (HIARC, 7/28/98).

5. *Carcinogenicity.* At its July 27, 1996 meeting, the EPA RfD/Peer Review Committee classified avermectin as a Cancer Group E chemical based on the absence of significant tumor increases in two adequate rodent carcinogenicity

studies. On July 28, 1998 the HIARC retained this classification. This assessment is not required.

C. Exposures and Risks

1. *From food and feed uses.* Tolerances have been established (40 CFR 180.449) for the combined residues of avermectin, in or on a variety of raw agricultural commodities. Risk assessments were conducted by EPA to assess dietary exposures and risks from avermectin as follows:

i. *Acute exposure and risk.* Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1–day or single exposure. The avermectin acute (food only) exposure analysis was recently completed in conjunction with the section 3 human health risk assessment on grapes and peppers. The analysis included avocados at the recommended time-limited tolerance of 0.02 ppm. The risk estimate should be viewed as highly refined. Additional refinement would be unlikely to reduce risk estimates significantly. In making a safety determination for this tolerance, EPA is taking into account this refined exposure assessment. The resulting calculations are presented below at the 99.9th percentile as either a percent of the acute population adjusted dose (%PAD) or percent RfD (%RfD) depending on the population. EPA is generally concerned with acute exposures that exceed 100% of the acute RfD(aRfD)/PAD.

Subgroup	ARC (mg/kg)	Percent Population adjusted dose	Percent Reference dose
U.S. population	0.000086	35%PAD	
Children (1–6 years)	0.000176	70	
Females (13+/nursing)	0.000095	38	
Males (13–19 years)	0.000048		2

ii. *Chronic exposure and risk.* The avermectin chronic (food only) exposure analysis was recently completed in conjunction with the section 3 human health risk assessment on grapes and peppers. The analysis included avocados at the recommended time-limited tolerance of 0.02 ppm. In conducting this chronic dietary risk assessment, EPA has made somewhat conservative assumptions -- anticipated residues and percent crop-treated data were used for selected crops -- which result in an overestimate of human dietary exposure. This chronic dietary (food only) exposure should be viewed as a partially refined risk estimate; further refinement using additional percent crop-treated values would result in a lower dietary exposure estimate. Thus, in making a safety determination for this tolerance, EPA is taking into account this partially refined exposure assessment. EPA is generally concerned with chronic exposures that exceed 100% of the chronic RfD/PAD. The existing avermectin tolerances (published, pending and new) result in an ARC that is equivalent to the following percentages of the RfD or PAD:

Subgroup	ARC_{FOOD}	Percent Population adjusted dose	Percent Reference dose
U.S. Population	0.000008	7	
Non-nursing infants (< 1 year)	0.000023	19	
Females (13+/nursing)	0.000008	6	
Males (20+ years)	0.000008		< 1

2. *From drinking water.* Modeling data (Generic expected environmental concentration/Screening concentration In Ground Water (GENEEC/SCIGROW)) indicate worst case estimated environmental concentrations (EEC) of 0.485 µg/L avermectin for acute and 0.239 µg/L for chronic exposure, both in surface water from the same use of avermectin on strawberries (the maximum use rate on the label). Refined modeling data Pesticide Root Zone Model-Exposure Analysis Modeling System (PRZM—EXAM) indicate a worst case EEC of 0.88 µg/L for acute and 0.57 µg/L for chronic, both calculated for an avermectin use on strawberries grown on black plastic mulch. EPA notes that the certainty of the concentrations estimated for strawberries is low, due to uncertainty on the amount of runoff from plant beds covered in plastic mulch and uncertainty on the amount of degradation of avermectin on black plastic compared to soil.

EPA believes the estimates of avermectin exposure in water derived from the PRZM-EXAMS model are significantly overstated for several reasons. The PRZM-EXAMS model was designed to estimate exposure from ecological risk assessments and thus uses a scenario of a body of water approximating the size of a 1 hectare (2.5 acres) pond. This tends to overstate drinking water exposure levels for the following reasons. First, surface water source drinking water generally comes from bodies of water that are substantially larger than a 1 hectare (2.5 acres) pond. Second, the modeled scenario also assumes that essentially the whole basin receives an application of the pesticide. Yet in virtually all cases, basins large enough to support a drinking water facility will contain a substantial fraction of the area which does not receive pesticide. Third, there is often at least some flow (in a river) or turnover (in a reservoir or lake) of the water so the persistence of the pesticide near the drinking water facility is usually overestimated. Fourth, even assuming a reservoir is directly adjacent to an agricultural field, the agricultural field may not be used to grow a crop on

which the pesticide in question is registered for use. Fifth, the PRZM-EXAMS modeled scenario does not take into account reductions in residue-loading due to applications of less than the maximum application rate or no treatment of the crop at all (percent crop treated data). Although there is a high degree of uncertainty to this analysis, these are the best available estimates of concentrations of avermectin in drinking water.

3. *From non-dietary exposure.* The avermectin non-dietary exposure analysis was recently completed in conjunction with the section 3 human health risk assessment on grapes and peppers. Avermectin's registered residential uses include indoor crack/crevice and outdoor application to lawns. For lawn uses, a risk assessment was conducted for adult applicators and postapplication exposure to avermectin using the EPA's Draft SOPs for Residential Exposure Assessments (12/18/97). For children's postapplication exposure to avermectin from indoor crack/crevice products, exposure studies were used to estimate risk. Short- and intermediate-term risk for the registered uses do not exceed EPA's level of concern. Chronic exposures for the residential uses are not expected.

i. *Chronic exposure and risk.* Chronic exposures for the residential uses are not expected.

ii. *Short- and intermediate-term exposure and risk.* Risk for the registered uses do not exceed EPA's level of concern.

4. *Cumulative exposure to substances with common mechanism of toxicity.* Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity."

EPA does not have, at this time, available data to determine whether avermectin has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, avermectin does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that avermectin has a common mechanism of toxicity with other substances. For more information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the final rule for Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997).

D. Aggregate Risks and Determination of Safety for U.S. Population

In examining aggregate exposures, FQPA directs EPA to consider available information concerning exposures from the residue in food and all other non-occupational exposures. The primary non-food sources of exposure the Agency looks at include drinking water (whether from ground or surface water), and exposure through pesticide use in gardens, lawns or buildings (residential and other indoor and/or outdoor uses). In evaluating food exposures, EPA takes into account varying consumption patterns of major identifiable subgroups of consumers, including infants and children.

1. *Acute risk.* Acute aggregate exposure takes into account acute dietary food and water exposure. The registrant previously submitted an acute dietary exposure analysis using probabilistic "Monte Carlo" modeling. EPA examined the assumptions made in conducting the analysis and some of the residue files for accuracy and found the analysis acceptable after correcting for the current acute RfD, updating %CT data, and correcting concentration factors. EPA recalculated the assessment using the submitted acute file and the correct acute RfD, updated %CT data, correcting the residue files above to use one-half limit of detection (LOD) and one-half limit of quantitation (LOQ) where appropriate, and using the average field trial residue level and previously established processing factors for blended commodities. In addition, EPA's analysis included residues in pear juice for which no data has been previously required. Since all other juices show reductions in avermectin residues from the raw agricultural commodity, EPA used the reduction factor for apples in the analysis. The dietary (food only) acute %PAD ranges from 18% for nursing infants < 1 year old to 70% for children 1–6 yrs. This risk estimate should be viewed as highly refined since it used anticipated residue values and percent crop-treated data in conjunction with Monte Carlo analysis. The acute dietary exposure does not exceed EPA's level of concern. The registrant is reminded that future probabilistic modeling submissions should follow EPA's suggested guidelines (http://www.epa.gov/fedrgstr/EPA-PEST/1998/November/Day-05/o-p29665.htm).

Avermectin is a moderately persistent, but non-mobile compound in soil and water environments. The GENEEC and SCI-GROW modeling data for avermectin in drinking water indicate levels less than OPP's DWLOC for acute exposure. Using the refined PRZM-EXAMS modeling data in drinking water also indicates levels less than OPP's DWLOC for acute exposure, with the exception of children 1–6 years old. EPA notes that the certainty of the concentrations estimated for strawberries in the refined estimates is low, due to uncertainty on the amount of runoff from plant beds covered in plastic mulch and uncertainty on the amount of degradation of avermectin on black plastic compared to soil. Although the peak EEC of 0.88 µg/L slightly exceeds the acute DWLOC (0.74 µg/L, considering the uncertain nature of the modeling estimate, EPA does not expect aggregate acute exposure to avermectin will pose an unacceptable risk to human health.

2. *Chronic risk.* Using the probabilistic "MonteCarlo" exposure assumptions described in this unit, EPA has concluded that aggregate exposure to avermectin from food will utilize 7% of the PAD for the U.S. population. The major identifiable subgroup with the highest aggregate exposure is non-nursing infants with 19% of the chronic PAD. No chronic residential exposures are expected from use of avermectin. Avermectin is a moderately persistent, but non-mobile compound in soil and water environments. EPA does not expect aggregate chronic exposure to avermectin will pose an unacceptable risk to human health.

3. *Short- and intermediate-term risk.* Short- and intermediate-term aggregate exposure takes into account chronic dietary food and water (considered to be a background exposure level) plus indoor and outdoor residential exposure.

i. Short-term aggregate exposure takes into account chronic dietary food and water (considered to be a background exposure level) plus short-term residential uses which include dermal, inhalation, and oral exposures. For children's postapplication exposure from crack and crevice uses, the worst case exposure scenario, risks do not exceed EPA's level of concern. The residential uses that were aggregated with chronic dietary food and water are from lawn and crack and crevice uses and include:

• ADULT dermal exposure from the highest adult residential applicator scenario (3.4E–7 mg/kg/day from belly grinder granular open pour) and crack and crevice applicator scenario (2.1E–8 mg/kg/day) with exposure from postapplication activities (3.0E–6 mg/

kg/day), and inhalation from turf and crack and crevice (3.9E–7 mg/kg/day).

• CHILDREN's oral exposure from turf and crack and crevice hand-to-mouth, with turf incidental ingestion (3.8E–5 mg/kg/day), dermal exposure from turf and crack and crevice (6.1E–6 mg/kg/day), and inhalation exposure from crack and crevice (1.1E–4 mg/kg/day). Using the exposures above, EPA calculated the short-term drinking water level of concerns (DWLOCs). The DWLOC of 8.2 µg/L for the U.S. population is greater than the water EEC's. The DWLOC for infants/children (0.75 µg/L) is slightly exceeded by the PRZM-EXAMS peak value of 0.88 µg/L. However, as noted above for the acute DWLOC, EPA is not concerned given the uncertainty of the estimated water concentrations. EPA does not expect aggregate short-term exposure to avermectin will pose an unacceptable risk to human health.

ii. The worst case intermediate-term exposures to avermectin for adults are the same as those described above for short-term exposures. Using the exposures above, EPA calculated the adult intermediate-term DWLOC of 8.2 µg/L, which is greater than the water EEC's. EPA does not expect aggregate intermediate-term exposure to avermectin will pose an unacceptable risk to adult human health.

iii. The worst case intermediate-term exposures to avermectin for infants and children are the same as those described above. Since the short- and intermediate-term NOAELs are the same, the DWLOC is also equal to the 0.75 µg/L short-term value. Again, given the uncertainty in the 0.88 µg/L PRZM-EXAMS value, EPA is not concerned with the residues in drinking water at this time. EPA does not expect aggregate intermediate-term exposure to avermectin will pose an unacceptable risk to human health.

4. *Aggregate cancer risk for U.S. population.* At its July 27, 1996 meeting, the EPA RfD/Peer Review Committee classified avermectin as a Cancer Group E chemical based on the absence of significant tumor increases in two adequate rodent carcinogenicity studies. This risk assessment was not required.

5. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result from aggregate exposure to avermectin residues.

E. Aggregate Risks and Determination of Safety for Infants and Children

1. *Safety factor for infants and children*— i. *In general.* In assessing the potential for additional sensitivity of infants and children to residues of avermectin, EPA considered data from developmental toxicity studies in the rat and rabbit and a 2–generation reproduction study in the rat. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from maternal pesticide exposure during gestation. Reproduction studies provide information relating to effects from exposure to the pesticide on the reproductive capability of mating animals and data on systemic toxicity.

FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for pre- and post-natal toxicity and the completeness of the database unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a margin of exposure (MOE) analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans. EPA believes that reliable data support using the standard MOE and uncertainty factor (usually 100 for combined inter- and intra-species variability) and not the additional tenfold MOE/uncertainty factor when EPA has a complete data base under existing guidelines and when the severity of the effect in infants or children or the potency or unusual toxic properties of a compound do not raise concerns regarding the adequacy of the standard MOE/safety factor.

ii. *Conclusion.* There is a complete toxicity database for avermectin and exposure data is complete or is estimated based on data that reasonably accounts for potential exposures.

2. *Acute risk.* Acute aggregate exposure takes into account acute dietary food and water exposure. The registrant previously submitted an acute dietary exposure analysis using probabilistic "Monte Carlo" modeling. EPA examined the assumptions made in conducting the analysis and some of the residue files for accuracy and found the analysis acceptable after correcting for the current acute RfD, updating %CT data, and correcting concentration factors. EPA recalculated the assessment using the submitted acute file and the correct acute RfD, updated %CT data, correcting the residue files above to use one-half limit of detection (LOD) and one-half limit of quantitation (LOQ) where appropriate, and using the average field trial residue level and previously established processing factors for blended commodities. In addition, EPA's analysis included residues in pear juice for which no data has been previously required. Since all other juices show reductions in avermectin residues from the raw agricultural commodity, EPA used the reduction factor for apples in the analysis. The dietary (food only) acute %PAD range from 18% for nursing infants < 1 year old to 70% for children 1–6 yrs. This risk estimate should be viewed as highly refined since it used anticipated residue values and percent crop-treated data in conjunction with Monte Carlo analysis. The acute dietary exposure does not exceed EPA's level of concern. The registrant is reminded that future probabilistic modeling submissions should follow EPA's suggested guidelines (http://www.epa.gov/fedrgstr/EPA-PEST/1998/November/Day-05/o-p29665.htm).

Avermectin is a moderately persistent, but non-mobile compound in soil and water environments. The GENEEC and SCI-GROW modeling data for avermectin in drinking water indicate levels less than OPP's DWLOC for acute exposure. Using the refined PRZM-EXAMS modeling data in drinking water also indicates levels less than OPP's DWLOC for acute exposure, with the exception of children 1–6 years old. EPA notes that the certainty of the concentrations estimated for strawberries in the refined estimates is low, due to uncertainty on the amount of runoff from plant beds covered in plastic mulch and uncertainty on the amount of degradation of avermectin on black plastic compared to soil. Although the peak EEC of 0.88 µg/L slightly exceeds the acute DWLOC (0.74 µg/L, considering the uncertain nature of the modeling estimate, EPA does not expect aggregate acute exposure to avermectin will pose an unacceptable risk to human health.

3. *Chronic risk.* Using the exposure assumptions described in this unit, EPA has concluded that aggregate exposure to avermectin from food will utilize 7% of the PAD for infants and children. The major identifiable subgroup with the highest aggregate exposure is non-nursing infants with 19% of the chronic PAD. No chronic residential exposures are expected from use of avermectin. Avermectin is a moderately persistent, but non-mobile compound in soil and water environments. EPA does not expect aggregate chronic exposure to avermectin will pose an unacceptable risk to human health.

4. Short- or intermediate-term risk. Short- and intermediate-term aggregate exposure takes into account chronic dietary food and water (considered to be a background exposure level) plus indoor and outdoor residential exposure.

i. Short-term aggregate exposure takes into account chronic dietary food and water (considered to be a background exposure level) plus short-term residential uses which include dermal, inhalation, and oral exposures. For children's postapplication exposure from crack and crevice uses, the worst case exposure scenario, risks do not exceed EPA's level of concern. The residential uses that were aggregated with chronic dietary food and water are from lawn and crack and crevice uses and include:

• ADULT dermal exposure from the highest adult residential applicator scenario (3.4E–7 mg/kg/day from belly grinder granular open pour) and crack and crevice applicator scenario (2.1E–8 mg/kg/day) with exposure from postapplication activities (3.0E–6 mg/kg/day), and inhalation from turf and crack and crevice (3.9E–7 mg/kg/day).

• CHILDREN's oral exposure from turf and crack and crevice hand-to-mouth, with turf incidental ingestion (3.8E–5 mg/kg/day), dermal exposure from turf and crack and crevice (6.1E–6 mg/kg/day), and inhalation exposure from crack and crevice (1.1E–4 mg/kg/day). Using the exposures above, EPA calculated the short-term drinking water level of concerns (DWLOCs). The DWLOC of 8.2 µg/L for the U.S. population is greater than the water EEC's. The DWLOC for infants/children (0.75 µg/L) is slightly exceeded by the PRZM-EXAMS peak value of 0.88 µg/L. However, as noted above for the acute DWLOC, EPA is not concerned given the uncertainty of the estimated water concentrations. EPA does not expect aggregate short-term exposure to avermectin will pose an unacceptable risk to human health.

ii. The worst case intermediate-term exposures to avermectin for adults are the same as those described above for short-term exposures. Using the exposures above, EPA calculated the adult intermediate-term DWLOC of 8.2 µg/L, which is greater than the water EEC's provided by EFED. EPA does not expect aggregate intermediate-term exposure to avermectin will pose an unacceptable risk to adult human health.

iii. The worst case intermediate-term exposures to avermectin for infants and children are the same as those described above. Since the short- and intermediate-term NOAELs are the same, the DWLOC is also equal to the 0.75 µg/L short-term value. Again, given the uncertainty in the 0.88 µg/L PRZM-EXAMS value, EPA is not concerned with the residues in drinking water at this time. EPA does not expect aggregate intermediate-term exposure to avermectin will pose an unacceptable risk to human health.

5. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to avermectin residues.

IV. Other Considerations

Analytical Enforcement Methodology

Adequate enforcement methodology (example - gas chromotography) is available to enforce the tolerance expression. The method may be requested from: Calvin Furlow, PRRIB, IRSD (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm 101FF, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 305–5229.

V. Conclusion

Therefore, the tolerance is established for combined residues of avermectin in or on avocado at 0.02 ppm.

VI. Objections and Hearing Requests

The new FFDCA section 408(g) provides essentially the same process for persons to "object" to a tolerance regulation as was provided in the old section 408 and in section 409. However, the period for filing objections is 60 days, rather than 30 days. EPA currently has procedural regulations which govern the submission of objections and hearing requests. These regulations will require some modification to reflect the new law. However, until those modifications can be made, EPA will continue to use those procedural regulations with appropriate adjustments to reflect the new law.

Any person may, by June 7, 1999, file written objections to any aspect of this regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given under the "ADDRESSES" section (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). EPA is authorized to waive any fee requirement "when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection." For additional information regarding tolerance objection fee waivers, contact James Tompkins, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 239, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 305–5697, tompkins.jim@epa.gov. Requests for waiver of tolerance objection fees should be sent to James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

If a hearing is requested, the objections must include a statement of the factual issues on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the requestor (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

VII. Public Record and Electronic Submissions

EPA has established a record for this regulation under docket control number [OPP–300825] (including any comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 119 of the Public Information and Records Integrity Branch, Information Resources and Services Division

(7502C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA.

Objections and hearing requests may be sent by e-mail directly to EPA at: opp-docket@epa.gov.

E-mailed objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this regulation, as well as the public version, as described in this unit will be kept in paper form. Accordingly, EPA will transfer any copies of objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the Virginia address in "ADDRESSES" at the beginning of this document.

VIII. Regulatory Assessment Requirements

A. Certain Acts and Executive Orders

This final rule establishes a tolerance under section 408 of the FFDCA. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). Nor does it require any prior consultation as specficed by Executive Order 12875, entitled *Enhancing the Intergovernmental Partnership* (58 FR 58093, October 28, 1993), or special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994), or require OMB review in accordance with Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997).

In addition, since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(l)(6), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. Nevertheless, the Agency previously assessed whether establishing tolerances, exemptions from tolerances, raising tolerance levels or expanding exemptions might adversely impact small entities and concluded, as a generic matter, that there is no adverse economic impact. The factual basis for the Agency's generic certification for tolerance actions published on May 4, 1981 (46 FR 24950), and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

B. Executive Order 12875

Under Executive Order 12875, entitled *Enhancing the Intergovernmental Partnership* (58 FR 58093, October 28, 1993), EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to OMB a description of the extent of EPA's prior consultation with representatives of affected State, local, and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's rule does not create an unfunded Federal mandate on State, local, or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

C. Executive Order 13084

Under Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998), EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

IX. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the Agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: March 24, 1999.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

2. In § 180.449, the table to paragraph (b) is amended by adding an entry for avocado to read as follows:

§ 180.449 Avermectin B_1 and its delta-8,9-isomer; tolerances for residues.

* * * * *

(b) * * *

Commodity	Parts per million	Expiration/revocation date
Avocado	0.02	9/20/00

* * * * *

[FR Doc. 99–8340 Filed 4–6–99; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300828; FRL–6072–6]

RIN 2070–AB78

Tebufenozide; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of Tebufenozide, benzoic acid, 3,5-dimethyl-, 1-(1,1-dimethylethyl)-2-(4-ethylbenzoyl) hydrazide in or on berry (crop group 13), cranberry, and mint. The Interregional Research Project Number 4 (IR–4) requested these tolerances under the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996.

DATES: This regulation is effective April 7, 1999. Objections and requests for hearings must be received by EPA on or before June 7, 1999.

ADDRESSES: Written objections and hearing requests, identified by the docket control number, [OPP–300828], must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk identified by the docket control number, [OPP–300828], must also be submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect 5.1/6.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket control number [OPP–300828]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: By mail: Sidney Jackson, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 272, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 305–7610, e-mail: jackson.sidney@epa.gov.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of February 9, 1999 (64 FR 6351) (FRL–6058–3), EPA issued a notice pursuant to section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a as amended by the Food Quality Protection Act of 1996 (FQPA) (Pub. L. 104–170) announcing the filing of pesticide petitions (PP) 8E5021, 8E4983, and 8E5019 for tolerance by IR–4 . This notice included a summary of the petition prepared by the Rohm and Haas Company, the registrant. There were no comments received in response to the notice of filing.

The petition requested that 40 CFR 180.482 be amended by establishing tolerances for residues of the insecticide tebufenozide, benzoic acid, 3,5-dimethyl-, 1-(1,1-dimethylethyl)-2-(4-ethylbenzoyl) hydrazide, in or on the berry crop group at 3.0 parts per million (ppm), cranberry at 1.0 ppm, and mint at 10.0 ppm.

I. Background and Statutory Findings

Section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue...."

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 and a complete description of the risk assessment process, see the final rule on Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997) (FRL–5754–7).

II. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of tebufenozide and to make a determination on aggregate exposure, consistent with section 408(b)(2), for tolerances for residues of tebufenozide on the berry crop group at 3.0 ppm, cranberry at 1.0 ppm, and mint at 10.0 ppm. EPA's assessment of the dietary exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by tebufenozide are discussed in this unit.

1. *Acute toxicity.* Results of a battery of toxicological studies using technical grade product show tebufenozide has low acute toxicity. Tebufenozide was practically non-toxic by ingestion of a single oral dose in rats and mice (LD_{50} > 5,000 milligram/kilogram (mg/kg)) and was practically non-toxic by dermal application lethal dose(LD) LD_{50} > 5,000

mg/kg. Tebufenozide was not significantly toxic to rats after a 4–hr inhalation exposure with a lethal concentration(LC) LC_{50} value of 4.5 mg/L (highest attainable concentration), is not considered to be a primary eye irritant or a skin irritant and is not a dermal sensitizer. An acute neurotoxicity study in rats did not produce any neurotoxic or neuropathologic effects.

2. *Genotoxicty.* Tebufenozide technical was negative (non-mutagenic) in an Ames assay with and without hepatic enzyme activation and in a reverse mutation assay with *E. coli.* Tebufenozide technical was negative in a hypoxanthine guanine phophoribosyl transferase (HGPRT) gene mutation assay using Chinese hamster ovary (CHO) cells in culture when tested with and without hepatic enzyme activation. In isolated rat hepatocytes, tebufenozide technical did not induce unscheduled DNA synthesis (UDS) or repair when tested up to the maximum soluble concentration in culture medium. Tebufenozide did not produce chromosome effects *in vivo* using rat bone marrow cells or *in vitro* using Chinese hamster ovary cells (CHO). On the basis of the results from this battery of tests, it is concluded that tebufenozide is not mutagenic or genotoxic.

3. *Reproductive and developmental toxicity*— i. *Reproductive toxicity.* In a 1993 2–generation reproduction study in Sprague-Dawley rats, the parental (systemic) no observable adverse effect levels (NOAEL) was 0.8 and 0.9 mg/kg/day for males and females, respectively. The parental (systemic) lowest observable adverse effect level(LOAEL) was 11.5 and 12.8 mg/kg/day for males and females, respectively, based on decreased body weight, body weight gain, and food consumption in males. An increased incidence and/or severity of splenic pigmentation was also observed. The reproductive NOAEL was 11.5 and 12.8 mg/kg/day for males and females, respectively. The reproductive LOAEL was 154.8 and 171.1 mg/kg/day for males and females, respectively, based on an increase in the number of pregnant females with increased gestation duration and dystocia. Effects in the offspring consisted of decreased number of pups per litter on postnatal days 0 and/or 4.

In a 1995 2–generation reproduction study designed to evaluate parental (systemic) toxicity in rats, the NOAEL was 1.6 and 1.8 mg/kg/day in males and females, respectively. The LOAEL was 12.6 and 14.6 mg/kg/day in males and females, respectively, based on histopathological findings of congestion and extramedullary hematopoiesis in the spleen. The offspring NOAEL was 12.6 and 14.6 mg/kg/day in males and females, respectively. The offspring LOAEL was 126.0 and 143.2 mg/kg/day in males and females, respectively, based on decreased body weight on postnatal days 14 and 21.

ii. *Developmental toxicity.* In a prenatal developmental toxicity study in Sprague-Dawley rats, there was no evidence of maternal or developmental toxicity at the highest dose level of 1,000 mg/kg/day. The maternal and developmental toxicity NOAEL was 1,000 mg/kg/day .

In a prenatal developmental toxicity study conducted in New Zealand white rabbits, tebufenozide was administered in doses of 50, 250, or 1,000 mg/kg/day on gestation days 7–19. No evidence of maternal or developmental toxicity was observed. The maternal and developmental toxicity NOAEL was 1,000 mg/kg/day.

4. *Subchronic toxicity.* i. The NOAEL in a 90–day rat feeding study was 200 ppm (13 mg/kg/day for males, 16 mg/kg/day for females). The LOAEL was 2,000 ppm (133 mg/kg/day for males, 155 mg/kg/day for females). Decreased body weights in males and females was observed at the LOAEL of 2,000 ppm. As part of this study, the potential for tebufenozide to produce subchronic neurotoxicity was investigated. Tebufenozide did not produce neurotoxic or neuropathologic effects when administered in the diets of rats for 3 months at concentrations up to and including the limit dose of 20,000 ppm (NOAEL = 1,330 mg/kg/day for males, 1,650 mg/kg/day for females).

ii. In a 90–day feeding study with mice, the NOAEL was 20 ppm (3.4 and 4.0 mg/kg/day for males and females, respectively). The LOAEL was 200 ppm (35.3 and 44.7 mg/kg/day for males and females, respectively). Decreases in body weight gain were noted in male mice at the LOAEL of 200 ppm.

iii. A 90–day dog feeding study gave a NOAEL of 50 ppm (2.1 mg/kg/day for males and females). The LOAEL was 500 ppm (20.1 and 21.4 mg/kg/day for males and females, respectively). At the LOAEL, females exhibited a decrease in rate of weight gain and males presented an increased reticulocyte.

iv. A 10–week study was conducted in the dog to examine the reversibility of the effects on hematological parameters that were observed in other dietary studies with the dog. Tebufenozide was administered for 6 weeks in the diet to 4 male dogs at concentrations of either 0 or 1,500 ppm. After the sixth week, the dogs receiving treated feed were switched to the control diet for 4 weeks. Hematological parameters were measured in both groups prior to treatment, at the end of the 6–week treatment, after 2 weeks of recovery on the control diet and after 4 weeks of recovery on the control diet. All hematological parameters in the treated/recovery group were returned to control levels indicating that the effects of tebufenozide on the hemopoietic system are reversible in the dog.

v. In a 21–day dermal toxicity study of tebufenozide, rats (6/sex/dose) received repeated dermal administration of either the technical 96.1% product RH–75,992 at 1,000 mg/kg/day (Limit-Dose) or the formulation (23.1% a.i.) product RH–755,992 2F at 0, 62.5, 250, or 1,000 mg/kg/day, 6 hours/day, 5 days/week for 21 days. The high dose was administered as the "neat" compound, while the low and mid-dose were prepared as dilutions with distilled water. While the untreated group received no treatment, the solvent control group received a "2F Formulation Blank" at a solvent volume equal to that received by the formulation high-dose group.

Under conditions of this study, RH–75,992 Technical or RH–75,992 2F demonstrated no systemic toxicity or dermal irritation at the highest dose tested 1,000 mg/kg/ during the 21 day study.

Based on these results, the NOAEL for systemic toxicity and dermal irritation in both sexes is 1,000 mg/kg/day, the highest dose tested. A LOAEL for systemic toxicity and dermal irritation was not established.

5. *Chronic toxicity/Carcinogenicity.* i. A 1–year feeding study in dogs resulted in decreased red blood cells, hematocrit, and hemoglobin and increased Heinz bodies, reticulocytes, and platelets at the LOAEL of 8.7 mg/kg/day. The NOAEL for systemic toxicity was 1.8 mg/kg/day.

ii. An 18–month mouse carcinogenicity study showed no signs of carcinogenicity at dosage levels up to and including 1,000 ppm, the highest dose tested.

iii. In a combined rat chronic/carcinogenicity study, the NOAEL for chronic toxicity was 100 ppm (4.8 and 6.1 mg/kg/day for males and females, respectively) and the LOAEL was 1,000 ppm (48 and 61 mg/kg/day for males and females, respectively). No carcinogenicity was observed at the dosage levels up to 2,000 ppm (97 mg/kg/day and 125 mg/kg/day for males and females, respectively).

B. Toxicological Endpoints

1. *Acute toxicity.* Toxicity observed in oral toxicity studies were not

attributable to a single dose (exposure). No neurological or systemic toxicity was observed in rats given a single oral administration of tebufenozide at 0, 500, 1,000 or 2,000 mg/kg. No maternal or developmental toxicity was observed following oral administration of tebufenozide at 1,000 mg/kg/day (Limit-Dose) during gestation to pregnant rats or rabbits. The Agency concludes that this risk is negligible. Therefore, no toxicological endpoint is required for acute toxicity.

2. *Short- and intermediate-term toxicity.* Since there are no registered residential uses, there were no dermal and inhalation endpoints established for tebufenozide. No dermal or systemic toxicity was seen in rats receiving 15 repeated dermal applications of the technical (97.2%) product at 1,000 mg/kg/day (Limit-Dose) as well as a formulated (23% a.i.) product at 0, 62.5, 250, or 1,000 mg/kg/day over a 21–day period. The Agency noted that in spite of the hematological effects seen in the dogs study, similar effects were not seen in rats receiving the compound via the dermal route indicating poor dermal absorption. Also, no developmental endpoints of concern were evident due to the lack of developmental toxicity in either rat or rabbit studies. The Agency concludes that this risk is negligible and no toxicological endpoint is required for short- and intermediate-term toxicity.

3. *Chronic toxicity.* EPA has established the Reference dose (RfD) for tebufenozide at 0.018. This RfD is based on a chronic toxicity study in dogs which found growth retardation, alterations in hematology parameters, changes in organ weights, and histopathological lesions in the bone, spleen and liver at 8.7 mg/kg/day.

4. *Carcinogenicity.* Tebufenozide has been classified as a Group E, "no evidence of carcinogenicity for humans," chemical by the Agency's RfD Committee.

5. *Animal metabolism.* The absorption, distribution, excretion and metabolism of tebufenozide in rats was investigated. Tebufenozide is partially absorbed, is rapidly excreted and does not accumulate in tissues. Although tebufenozide is mainly excreted unchanged, a number of polar metabolites were identified. These metabolites are products of oxidation of the benzylic ethyl or methyl side chains of the molecule. These metabolites were detected in plant and other animal (rat, goat, hen) metabolism studies.

6. *Metabolite toxicology.* Common metabolic pathways for tebufenozide have been identified in both plants (grape, apple, rice and sugar beet) and animals (rat, goat, hen). The metabolic pathway common to both plants and animals involves oxidation of the alkyl substituents (ethyl and methyl groups) of the aromatic rings primarily at the benzylic positions. Extensive degradation and elimination of polar metabolites occurs in animals such that residues are unlikely to accumulate in humans or animals exposed to these residues through the diet.

7. *Endocrine disruption.* The toxicology profile of tebufenozide shows no evidence of physiological effects characteristic of the disruption of the hormone estrogen. Based on structure-activity information, tebufenozide is unlikely to exhibit estrogenic activity. Tebufenozide was not active in a direct *in vitro* estrogen binding assay. No indicators of estrogenic or other endocrine effects were observed in mammalian chronic studies or in mammalian and avian reproduction studies. Ecdysone has no known effects in vertebrates. Overall, the weight of evidence provides no indication that tebufenozide has endocrine activity in vertebrates.

C. Exposures and Risks

1. *From food and feed uses.* Tolerances have been established (40 CFR 180.482) for the residues of tebufenozide, in or on a variety of raw agricultural commodities. Currently established tolerances for residues of tebufenozide are listed under 40 CFR 180.482 and include permanent tolerances for residues in/on pecans (0.01 ppm) and walnuts (0.1 ppm), import tolerances for residues in/on apples (1.0 ppm) and wine grapes (0.5 ppm), and time-limited tolerances on various plant and animal commodities.

The metabolic fate of tebufenozide in animals is currently under review by the Agency, therefore, in this risk assessment, only existing and proposed uses of tebufenozide on raw agricultural commodities are considered as no livestock feed items are derived from berry (crop group 13), cranberry and mint. Risk assessments were conducted by EPA to assess dietary exposures from tebufenozide as follows:

Section 408(b)(2)(F) states that the Agency may use data on the actual percent of food treated (PCT) for assessing chronic dietary risk only if the Agency can make the following findings: That the data used are reliable and provide a valid basis to show what percentage of the food derived from such crop is likely to contain such pesticide residue; that the exposure estimate does not underestimate exposure for any significant subpopulation group; and if data are available on pesticide use and food consumption in a particular area, the exposure estimate does not understate exposure for the population in such area. In addition, the Agency must provide for periodic evaluation of any estimates used. To provide for the periodic evaluation of the estimate of percent of crop treated as required by the section 408(b)(2)(F), EPA may require registrants to submit data on PCT.

The Agency used PCT information as follows:

To refine chronic dietary exposure and risk estimates obtained by the use of the Dietary Exposure Evaluation Model (DEEM), which incorporates data from the Continuing Survey of Food Intakes by Individuals (CSFII) for a specified period.

The Agency believes that the three conditions, discussed in section 408 (b)(2)(F) in this unit concerning the Agency's responsibilities in assessing chronic dietary risk findings, have been met. The PCT estimates are derived from Federal and private market survey data, which are reliable and have a valid basis. Typically, a range of estimates are supplied and the upper end of this range is assumed for the exposure assessment. By using this upper end estimate of the PCT, the Agency is reasonably certain that the percentage of the food treated is not likely to be underestimated. The regional consumption information and consumption information for significant subpopulations is taken into account through EPA's computer-based model for evaluating the exposure of significant subpopulations including several regional groups. Use of this consumption information in EPA's risk assessment process ensures that EPA's exposure estimate does not understate exposure for any significant subpopulation group and allows the Agency to be reasonably certain that no regional population is exposed to residue levels higher than those estimated by the Agency. Other than the data available through national food consumption surveys, EPA does not have available information on the regional consumption of food to which tebufenozide may be applied in a particular area.

i. *Acute exposure and risk.* No endpoints were selected for acute dietary exposure. Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1–day or single exposure. Toxicity observed in oral toxicity studies were not attributable to a single dose (exposure). No neurological or systemic toxicity was

observed in rats given a single oral administration of tebufenozide at 0, 500, 1,000 or 2,000 mg/kg. No maternal or developmental toxicity was observed following oral administration of tebufenozide at 1,000 mg/kg/day (Limit-Dose) during gestation to pregnant rats or rabbits. This risk assessment is not required. The Agency considers acute exposure/risk to be negligible.

ii. *Chronic exposure and risk.* The residue of concern for tebufenozide in plant and animal commodities is the parent compound per se. The RFD used for the chronic dietary analysis is 0.018 mg/kg/day. In performing chronic dietary exposure and risk analysis, the Agency used the Dietary Exposure Evaluation Model (DEEM), which incorporates data from the CSFII for the period, 1989 to 1992. Some refinement to the dietary exposure estimates was made through the use of percent-of-crop-treated data. The resulting Anticipated Residue Contributions (ARC) for the U.S. population and various DEEM population subgroups can be determined. Of these subgroups, the highest exposure is projected for children ages 1–6 years, whose chronic intake is estimated as 73% of the RfD. Percent RFD values for other subgroups include: U.S. population for the 48 states (36), all infants less than 1 year old (52) and children 7 to 12 years old (46). Generally, in the absence of additional safety factors, the Agency is not concerned with exposures less than 100% of the RfD. Thus, for all populations, the chronic human health risk from exposure to tebufenozide in foods is below the Agency's level of concern.

2. *From drinking water.* Available data suggest that tebufenozide ranges from moderately persistent to persistent and is mobile; thus, tebufenozide could potentially leach to ground water and runoff to surface water under certain environmental conditions. There is no Maximum contaminant Level (MCL) for residues of tebufenozide in drinking water. No drinking water Health Advisories have been issued for tebufenozide. There is no entry for tebufenozide in the "Pesticides in Groundwater Database (EPA 734–12–92–001, September 1992). The Agency concludes that there is reasonable certainty that no harmful exposure exist from drinking water.

Chronic exposure and risk. Monitoring data are not available to assess the human exposure to tebufenozide via drinking water. In lieu of these data, the Agency has calculated the Tier I estimated concentrations in drinking water (DWECs) for tebufenozide using Generic expected environmental concentration (GENEEC) (surface water) and Screening concentration In Ground Water (SCI-GROW) (ground water) for use in the human health risk assessment. According to Agency records, the maximum application rate for tebufenozide is 0.25 lb a.i. x 5 applications per year on pecans. This application scenario was used to calculate the DWECs for the human health risk assessment due to the wide range of aerobic soil half-life of 6 (California Loam) and 729 (worst case soil with low microbial activity) days. For surface water, the chronic (56–day) values are 13.3 parts per billion (ppb) and 16.5 ppb for the half-lives of 66 and 729 days, respectively. The ground water screening concentrations are 0.16 ppb and 1.04 ppb for the half-lives of 66 and 729 days, respectively. These values represent upper-bound estimates of the concentrations that might be found in surface and ground water due to the use of tebufenozide on pecans.

In performing this risk assessment, the Agency has calculated drinking water levels of concern (DWLOCs) for each of the DEEM population subgroups. Within each subgroup, the population with the highest estimated exposure was used to determine the maximum concentration of tebufenozide that can occur in drinking water without causing an unacceptable human health risk. As a comparison value, the Agency has used the 16.5 ppb value in this risk assessment, as this represents a worst-case scenario. The DWLOCs for tebufenozide are above the DWEC of 16.5 ppb for all population subgroups. Therefore, the Agency believes that the human health risk from exposure to tebufenozide through drinking water is not likely to exceed the Agency's level of concern.

Because the Agency lacks sufficient water-related exposure data to complete a comprehensive drinking water risk assessment for many pesticides, EPA has commenced and nearly completed a process to identify a reasonable yet conservative bounding figure for the potential contribution of water-related exposure to the aggregate risk posed by a pesticide. In developing the bounding figure, EPA estimated residue levels in water for a number of specific pesticides using various data sources. The Agency then applied the estimated residue levels, in conjunction with appropriate toxicological endpoints (RfD's or acute dietary no observed adverse effect levels (NOAEL's)) and assumptions about body weight and consumption, to calculate, for each pesticide, the increment of aggregate risk contributed by consumption of contaminated water. While EPA has not yet pinpointed the appropriate bounding figure for exposure from contaminated water, the ranges the Agency is continuing to examine are all below the level that would cause tebufenozide to exceed the RfD if the tolerance being considered in this document were granted. The Agency has therefore concluded that the potential exposures associated with tebufenozide in water, even at the higher levels the Agency is considering as a conservative upper bound, would not prevent the Agency from determining that there is a reasonable certainty of no harm if the tolerance is granted.

3. *From non-dietary exposure.* Tebufenozide is not currently registered for use on residential non-food sites. The Agency concludes that there are no chronic, short- or intermediate-term non-dietary exposure.

4. *Cumulative exposure to substances with common mechanism of toxicity.* Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity."

EPA does not have, at this time, available data to determine whether tebufenozide has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, tebufenozide does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that tebufenozide has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the final rule for Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997).

D. Aggregate Risks and Determination of Safety for U.S. Population

1. *Acute risk.* Since no acute toxicity endpoints were identified for tebufenozide, the Agency concludes that acute aggregate risk from the use of the pesticide will not pose an unacceptable risk to human health.

2. *Chronic risk.* In aggregating risks, the Agency has considered only dietary exposure. Due to lack of endpoints and/or relevant use registrations, assessment

of exposure via non-dietary routes (e.g., dermal, inhalation, non-dietary oral) are not required. Using the Anticipated Residue Contribution exposure assumptions described in this unit, EPA has concluded that aggregate exposure to tebufenozide from food will utilize 36% of the RFD for the U.S. population. The major identifiable subgroup with the highest aggregate exposure is children (1-6 years old) at 73% of the RFD and is discussed below. EPA generally has no concern for exposures below 100% of the RFD because the RFD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health.

Since the dietary risk for tebufenozide is below the Agency's level of concern and the estimated concentrations of tebufenozide in drinking water are below EPA's drinking water level of concern, the Agency believes that establishment of the requested tolerances for tebufenozide will not pose an unacceptable aggregate health risk to infants, children, or adults.

3. *Short- and intermediate-term risk.* In aggregating risks, the Agency has considered only dietary exposure. Due to lack of endpoints and/or residential use registrations, the agency concludes that short- and intermediate-term risk via non-dietary routes (e.g., dermal, inhalation, non-dietary oral) will not pose an unacceptable risk to human health.

4. *Aggregate cancer risk for U.S. population.* Tebufenozide is classified as a Group E chemical (no evidence of carcinogenicity in humans). The Agency concludes that the aggregate cancer risk for the U. S. population is not impacted by the establishment of these proposed tolerances.

5. *Determination of safety.* EPA concludes that there is a reasonable certainty that no harm will result from aggregate exposure to tebufenozide residues.

E. Aggregate Risks and Determination of Safety for Infants and Children

1. *Safety factor for infants and children*— i. *In general.* In assessing the potential for additional sensitivity of infants and children to residues of tebufenozide EPA considered data from developmental toxicity studies in the rat and rabbit and a 2-generation reproduction study in the rat. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from maternal pesticide exposure gestation. Reproduction studies provide information relating to effects from exposure to the pesticide on the reproductive capability of mating animals and data on systemic toxicity.

FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for pre-and post-natal toxicity and the completeness of the database unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a margin of exposure (MOE) analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans. EPA believes that reliable data support using the standard uncertainty factor (usually 100 for combined inter- and intra-species variability) and not the additional tenfold MOE/uncertainty factor when EPA has a complete data base under existing guidelines and when the severity of the effect in infants or children or the potency or unusual toxic properties of a compound do not raise concerns regarding the adequacy of the standard MOE/safety factor.

ii. *Developmental toxicity studies.* Developmental toxicity studies showed no increased sensitivity in fetuses as compared to maternal animals following *in utero* exposures in rats and rabbits. See discussion under Unit II.A. of this preamble.

iii. *Reproductive toxicity study.* Multi-generation reproduction toxicity studies in rats showed no increased sensitivity in pups as compared to adults and offsprings. See discussion under Unit II.A. of this premble.

iv. *Pre- and post-natal sensitivity.* The Agency determined that available data provide no indication of increased sensitivity of rats or rabbits to *in utero* and/or postnatal exposure to tebufenozide.

v. *Conclusion.* The Agency believes that reliable data support using the standard hundredfold safety factor for assessing sensitivity to residues of tebufenozide and that an additional tenfold margin of safety for infants and children is not warranted. There is a complete toxicity database for tebufenozide and exposure data are complete or estimated based on data that reasonably account for potential exposures.

2. *Acute risk.* No acute toxicity endpoints for tebufenozide have been identified and this risk assessment is not required.

3. *Chronic risk.* Using the exposure assumptions described in this unit, EPA has concluded that aggregate exposure to tebufenozide from food only will utilize 52% and 73% of the RfD for all infants (<1 yr old) and children (1–6 yr old), respectively. EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. EPA does not expect the aggregate exposure from tebufenozide in food, drinking water and from non-dietary exposure to exceed the Agency level of concern.

4. *Short- or intermediate-term risk.* Since no short- or intermediate-term toxicological endpoints were identified by the Agency for tebufenozide and there are no registered uses that would result in residential exposure, the Agency concludes that this risk criterion is negligible and the subject tolerances adequately protect the safety of infants and children.

5. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to tebufenozide residues.

III. Other Considerations

A. Metabolism In Plants and Animals

The metabolism of tebufenozide in plants (grapes, apples, rice and sugar beets) is adequately understood for the purpose of these tolerances. The metabolism of tebufenozide in all crops was similar and involves oxidation of the alkyl substituents of the aromatic rings primarily at the benzylic positions. The extent of metabolism and degree of oxidation are a function of time from application to harvest. In all crops, parent compound comprised the majority of the total dosage. None of the metabolites were in excess of 10% of the total dosage.

Since there are no animal feed items associated with the berry crop group, cranberry and mint tops (leaves and stems), a discussion of the qualitative nature of the residue in animals is not germane to this action.

B. Analytical Enforcement Methodology

High performance liquid chromatographic (HPLC) analytical methods using ultraviolet (UV) detection have been validated for blueberries, raspberries, cranberries, and mint foliage. The methods involve extraction by blending with solvents, purification of the extracts by liquid-liquid partitions and final purification of the residues using solid phase extraction column chromatography. The limits of quantitation is 0.005 ppm for blueberries, 0.01 ppm for mint foliage,

and raspberries, 0.02 ppm for mint oil, and 0.05 ppm for cranberries.

C. Magnitude of Residues

Field residue trials were conducted with a 70WP formulation in geographically representative regions of the United States. A total of eight field residue trials were conducted in blueberries. The average blueberry residue value from all trials was 0.81 ppm.

A total of six field residue trials were conducted in cranberries. The average cranberry residue value from all trials was 0.30 ppm.

A total of five field residue trials were conducted in mint. The average mint foliage residue value from all trials was 7.11 ppm. Mint oil was prepared from foliage from two residue trials. The average oil residue was 0.23 ppm. Since residues do not concentrate in oil, a tolerance is not needed.

A total of five field residue trials were conducted in raspberries. The average raspberry residue value from all trials was 0.62 ppm.

D. International Residue Limits

There are currently no CODEX, Canadian or Mexican maximum residue levels (MRLs) established for tebufenozide in blueberries, cranberries or mint, therefore no harmonization issues are required for this action.

IV. Conclusion

Therefore, the tolerance is established for residues of tebufenozide in the berry crop group at 3.0 ppm, cranberry at 1.0 ppm, and mint at 10.0 ppm.

V. Objections and Hearing Requests

The new FFDCA section 408(g) provides essentially the same process for persons to "object" to a tolerance regulation as was provided in the old section 408 and in section 409. However, the period for filing objections is 60 days, rather than 30 days. EPA currently has procedural regulations which govern the submission of objections and hearing requests. These regulations will require some modification to reflect the new law. However, until those modifications can be made, EPA will continue to use those procedural regulations with appropriate adjustments to reflect the new law.

Any person may, by June 7, 1999, file written objections to any aspect of this regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given under the "ADDRESSES" section (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this regulation. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). EPA is authorized to waive any fee requirement "when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection." For additional information regarding tolerance objection fee waivers, contact James Tompkins, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 239, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 305–5697, tompkins.jim@epa.gov. Requests for waiver of tolerance objection fees should be sent to James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

If a hearing is requested, the objections must include a statement of the factual issues on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the requestor (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

VI. Public Record and Electronic Submissions

EPA has established a record for this regulation under docket control number [OPP–300828] (including any comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 119 of the Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA.

Objections and hearing requests may be sent by e-mail directly to EPA at:
opp-docket@epa.gov.

E-mailed objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. The official record for this regulation, as well as the public version, as described in this unit will be kept in paper form. Accordingly, EPA will transfer any copies of objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the Virginia address in "ADDRESSES" at the beginning of this document.

VII. Regulatory Assessment Requirements

A. Certain Acts and Executive Orders

This final rule establishes a tolerance under section 408(d) of the FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). Nor does it require any prior consultation as specified by Executive Order 12875, entitled *Enhancing the Intergovernmental Partnership* (58 FR 58093, October 28, 1993), or special considerations as required by Executive

Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994), or require OMB review in accordance with Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997).

In addition, since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. Nevertheless, the Agency previously assessed whether establishing tolerances, exemptions from tolerances, raising tolerance levels or expanding exemptions might adversely impact small entities and concluded, as a generic matter, that there is no adverse economic impact. The factual basis for the Agency's generic certification for tolerance actions published on May 4, 1981 (46 FR 24950), and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

B. Executive Order 12875

Under Executive Order 12875, entitled *Enhancing the Intergovernmental Partnership* (58 FR 58093, October 28, 1993), EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to OMB a description of the extent of EPA's prior consultation with representatives of affected State, local, and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's rule does not create an unfunded Federal mandate on State, local, or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

C. Executive Order 13084

Under Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998), EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

VIII. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the Agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: March 24, 1999.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. In § 180.482, by revising the introductory text to paragraph (a) and by adding alphabetically the following entries to the table in paragraph (a).

§ 180.482 Tebufenozide; tolerances for residues.

(a) *General.* Tolerances are established for residues of the insecticide tebufenozide, benzoic acid, 3,5-dimethyl-1-(1,1-dimethylethyl)-2-(4-ethylbenzoyl)hydrazide, in or on the following raw agricultural commodities:

Commodity	Parts per million
* * * * *	*
Berry (crop group 13)	3.0
Cranberry	1.0
* * * * *	*
Peppermint, tops	10.0
Spearmint, tops	10.0

* * * * *

[FR Doc. 99–8341 Filed 4–6–99; 8:45 am]
BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300823; FRL–6070–3]

RIN 2070–AB78

Trichoderma harzianum KRL-AG2 (ATCC #20847) or Strain T–22; Revision of Exemption from the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes an exemption from the requirement of a tolerance for residues of the microbial pesticide active ingredient *Trichoderma harzianum* KRL-AG2 (ATCC #20847) also known as strain T–22 when applied/used as seed treatments, on cuttings and transplants, or as soil

treatments and certain foliar applications. Bioworks Inc., 122 North Genesee Street, Geneva, New York 14456 submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996 requesting an exemption from the requirement of a tolerance. This rule allows a revision of the existing exemption from tolerances for seed treatments (40 CFR 180. 1102) for residues of *Trichoderma harzianum* KRL-AG2 (ATCC #20847, also known as strain T–22) to include additional food commodities. This regulation eliminates the need to establish a maximum permissible level for residues of *Trichoderma harzianum* KRL-AG2.

DATES: This regulation is effective April 7, 1999. Objections and requests for hearings must be received by EPA on or before June 7, 1999.

ADDRESSES: Written objections and hearing requests, identified by the docket control number [OPP–300823], must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees) and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk identified by the docket control number, [OPP–300823], must also be submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epa.gov. Copies of electronic objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 5.1/6.1 file format or ASCII file format. All copies of electronic objections and hearing requests must be identified by the docket number [OPP–300823]. No Confidential Business Information (CBI) should be submitted through e-mail. Copies of electronic objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: By mail: Shanaz Bacchus, c/o Product Manager (PM) 90, Biopesticides and Pollution Prevention Division (7511C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: 9th fl., Crystal Mall #2 1921 Jefferson Davis Hwy., Arlington, VA, 703–308–8097, bacchus.shanaz@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of August 22, 1997 (62 FR 34390) (FRL–5737–2), EPA issued a notice pursuant to section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(e), as amended by the Food Quality Protection Act of 1996 (FQPA) (Pub. L. 104–170) announcing the filing of a pesticide tolerance petition by Bioworks Inc., 122 North Genesee Street, Geneva, New York 14456. This notice included a summary of the petition prepared by the petitioner Bioworks, Inc. The petition requested that 40 CFR part 180 be amended by establishing an exemption from the requirement of a tolerance for residues of *Trichoderma harzianum* KRL-AG2 (ATCC #20847) in/on all food commodities. There were no comments received in response to the notice of filing.

I. Risk Assessment and Statutory Findings

New section 408(c)(2)(A)(i) of the FFDCA allows EPA to establish an exemption from the requirement for a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(c)(2)(A)(ii) defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue..." Additionally, section 408(b)(2)(D) requires that the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity."

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. First, EPA determines the toxicity of pesticides. Second, EPA examines exposure to the pesticide through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings.

II. Toxicological Profile

Consistent with section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action and considered its validity, completeness and reliability and the relationship of this information to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children.

This pesticide is currently registered for seed treatments for which an exemption from tolerance exists for certain raw agricultural commodities (40 CFR 180.1102). In PR Notice 95–3, June 7, 1995, the Agency included this active ingredient in a list of low risk pesticides qualifying for reduced restricted entry intervals (REI) depending on the exposure and risk posed to workers. The data submitted to support the initial registration of this product includes three acute rat studies, an acute oral toxicity/pathogenicity study, an acute pulmonary toxicity/pathogenicity study and an acute intravenous toxicity study. The active ingredient is classified as Toxicity Category IV on the basis of those studies. A waiver was granted for the acute dermal toxicity studies.

T. harzianum KRL-AG2 (ATCC #20847) is not known to produce any compounds or metabolites of health concern. This organism controls plant disease by competing with plant pathogens for root and foliar surfaces for the establishment of fungal colonies and by mycoparasitism. There are no known genotoxic or reproductive effects.

III. Aggregate Exposures

In examining aggregate exposure, FFDCA section 408 directs EPA to consider available information concerning exposures from the pesticide residue in food and all other non-occupational exposures, including drinking water from groundwater or surface water and exposure through

pesticide use in gardens, lawns, or buildings (residential and other indoor uses).

Trichoderma harzianum is a naturally occurring fungus. This strain is a typical member of that species. There is no evidence that it presents any risk to animals or humans. This species is present in many different types of environments worldwide. Because of its ubiquitous nature all humans and animals have some natural exposure to the organism. Proposed application methods, uses, and application rates is not likely to result in a sustained increase in the population levels of this organism beyond the naturally occurring background levels of *Trichoderma harzianum*.

A. Dietary Exposure

Dietary exposure is not expected from the use of this microbial pesticide as labeled. The microbial pesticide can be removed by peeling, washing, cooking and processing. Therefore, risk and exposure to humans, infants and children is likely to be minimal.

1. *Food.* Dietary exposure to the microbial pesticide is likely to occur. The lack of acute oral toxicity/pathogenicity, and the ubiquitous nature of the microbial, support the exemption from the requirement of a tolerance for this active ingredient.

2. *Drinking water exposure.* The microorganism *Trichoderma harzianum* KRL-AG2 (ATCC #20847) is common in the soil and may be found in aquatic habitats. Drinking water is not being screened for *Trichoderma harzianum* KRL-AG2 (ATCC #20847) as a potential indicator of microbial contamination. Both percolation through soil and municipal treatment of drinking water would reduce the possibility of exposure to *Trichoderma harzianum* KRL-AG2 (ATCC #20847) through drinking water. Therefore, the potential of significant transfer to drinking water is minimal to nonexistent. However, even if negligible oral exposure should occur through drinking water, the Agency concludes that such exposure would present no risk due to the lack of toxicity and the ubiquitous nature of the microbe.

B. Other Non-Occupational Exposure

Dermal and inhalation exposure and risk to adults, infants and children via treated lawns or recreational areas are likely if the pesticide is used as labeled. However, the pesticide is a naturally occurring microbe and is ubiquitous in the environment. Based on the low toxicity potential as evidenced by the data submitted, the microbial pesticide active ingredient is likely to pose a minimal to nonexistent dermal or inhalation hazard if used as labeled.

IV. Cumulative Effects

Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity." There are several strains of *Trichoderma spp.* registered at this time. While these strains may produce similar metabolites, the likelihood of adverse cumulative effects via a common mechanism of toxicity is likely to be minimal based on the lack of toxicity/pathogenicity potential of the active ingredients.

V. Determination of Safety for U.S. Population, Infants and Children

FFDCA section 408 provides that EPA shall apply an additional tenfold margin of exposure (safety) for infants and children in the case of threshold effects to account for pre- and post-natal toxicity and the completeness of the database unless EPA determines that a different margin of exposure (safety) will be safe for infants and children. In this instance, EPA believes there are reliable data to support the conclusion that there are no threshold effects of concern to infants, children and adults when *Trichoderma harzianum* KRL-AG2 (ATCC #20847) is used as labeled. As a result, the provision requiring an additional margin of exposure does not apply.

VI. Other Considerations

A. Endocrine Disruptors

EPA does not have any information regarding endocrine effects of this microbial pesticide at this time. The Agency is not requiring information on the endocrine effects of this pesticide at this time; and Congress allowed 3 years after August 3, 1996, for the Agency to implement a screening and testing program with respect to endocrine effects.

B. Analytical Method(s)

The registrant has submitted data and analytical methods to identify potential contaminants and to assure that they are within regulatory levels. All batches containing potential human pathogens are to be destroyed.

C. Codex Maximum Residue Level

There are no Codex maximum residue levels for this active ingredient.

D. Conclusions

The Agency has concluded that the use of this pesticide will not pose any adverse health effects to the U.S. population, infants and children, because of the low toxicological profile. As a result, EPA establishes an exemption from tolerance requirements pursuant to FFDCA section 408(j)(3) for *Trichoderma harzianum* KRL-AG2 (ATCC #20847) in/on all food commodities.

VII. Objections and Hearing Requests

The new FFDCA section 408(g) provides essentially the same process for persons to "object" to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d)and as was provided in the old section 408 and in section 409. However, the period for filing objections is 60 days, rather than 30 days. EPA currently has procedural regulations which governs the submission of objections and hearing requests. These regulations will require some modification to reflect the new law. However, until those modifications can be made, EPA will continue to use those procedural regulations with appropriate adjustments to reflect the new law.

Any person may, by June 7, 1999, file written objections to any aspect of this regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given under the "ADDRESSES" section (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the hearing clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). EPA is authorized to waive any fee requirement "when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection." For additional information regarding tolerance objection fee waivers, contact James Tompkins, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 239, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 305–5697, tompkins.jim@epa.gov. Requests for waiver of tolerance objection fees should be sent to James Hollins, Information Resources and Services

Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

VIII. Public Record and Electronic Submissions

EPA has established a record for this regulation under docket control number [OPP–300823] (including any comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 119 of the Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA.

Objections and hearing requests may be sent by e-mail directly to EPA at:

opp-docket@epa.gov.

E-mailed objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this regulation, as well as the public version, as described in this unit will be kept in paper form. Accordingly, EPA will transfer any copies of objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the Virginia address in "ADDRESSES" at the beginning of this document.

IX. Regulatory Assessment Requirements

A. Certain Acts and Executive Orders

This final rule establishes an exemption from the tolerance requirement under section 408(d) of the FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501*et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). Nor does it require any prior consultation as specified by Executive Order 12875, entitled *Enhancing the Intergovernmental Partnership* (58 FR 58093, October 28, 1993), or special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations*(59 FR 7629, February 16, 1994), or require OMB review in accordance with Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997).

In addition, since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the exemption in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. Nevertheless, the Agency previously assessed whether establishing tolerances, exemptions from tolerances, raising tolerance levels or expanding exemptions might adversely impact small entities and concluded, as a generic matter, that there is no adverse economic impact. The factual basis for the Agency's generic certification for tolerance actions published on May 4, 1981 (46 FR 24950), and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

B. Executive Order 12875

Under Executive Order 12875, entitled *Enhancing the Intergovernmental Partnership* (58 FR 58093, October 28, 1993), EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to OMB a description of the extent of EPA's prior consultation with representatives of affected State, local, and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's rule does not create an unfunded Federal mandate on State, local, or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

C. Executive Order 13084

Under Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998), EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of

Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

X. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the Agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: March 24, 1999.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division. Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346(a), and 371.

2. Section 180.1102 is revised to read as follows:

§ 180.1102 Trichoderma harzianum KRL-AG2 (ATCC #20847) strain T–22; exemption from requirement of a tolerance.

An exemption from the requirement of a tolerance is established for residues of the biofungicide *Trichoderma harzianum* KRL-AG2 (ATCC #20847); also known as strain T–22 when applied in/or on all food commodities.

[FR Doc. 99–8637 Filed 4–6–99; 8:45 am]
BILLING CODE 6560–50–F

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 533

[Docket No. NHTSA–99–5464]

RIN 2127–AH52

Light Truck Average Fuel Economy Standard, Model Year 2001

AGENCY: National Highway Traffic Safety Administration (NHTSA).

ACTION: Final rule.

SUMMARY: This final rule establishes the average fuel economy standard for light trucks manufactured in model year (MY) 2001. The issuance of the standard is required by statute. As required by section 322 of the fiscal year (FY) 1999 DOT Appropriations Act, the light truck standard for MY 2001 is identical to the standard for MY 2000, 20.7 mpg.

DATES: This final rule becomes effective on June 7, 1999.

ADDRESSES: Petitions for reconsideration should be submitted to: Administrator, National Highway Traffic Safety Administration, 400 Seventh Street, S.W., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: For non-legal issues, call Henrietta Spinner, Office of Consumer Programs, at (202) 366–0846, facsimile (202) 366–2738, electronic mail "hspinner@nhtsa.dot.gov". For legal issues, call Otto Matheke, Office of the Chief Counsel, at 202–366–5263.

SUPPLEMENTARY INFORMATION:

I. Background

In December 1975, during the aftermath of the energy crisis created by the oil embargo of 1973–74, Congress enacted the Energy Policy and Conservation Act. The Act established an automotive fuel economy regulatory program by adding Title V, "Improving Automotive Efficiency," to the Motor Vehicle Information and Cost Saving Act. Title V has been amended and recodified without substantive change as Chapter 329 of Title 49 of the United States Code. Chapter 329 provides for the issuance of average fuel economy standards for passenger automobiles and automobiles that are not passenger automobiles (light trucks).

Section 32902(a) of Chapter 329 states that the Secretary of Transportation shall prescribe by regulation corporate average fuel economy (CAFE) standards for light trucks for each model year. That section also states that "[e]ach standard shall be the maximum feasible average fuel economy level that the Secretary decides the manufacturers can achieve in that model year." (The Secretary has delegated the authority to implement the automotive fuel economy program to the Administrator of NHTSA. 49 CFR 1.50(f).) Section 32902(f) provides that in determining the maximum feasible average fuel economy level, we shall consider four criteria: technological feasibility, economic practicability, the effect of other motor vehicle standards of the Government on fuel economy, and the need of the United States to conserve energy. Using this authority, we have set light truck CAFE standards through MY 2000. See 49 CFR 533.5(a). The standard for MY 2000 is 20.7 mpg.

We began the process of establishing light truck CAFE standards for model years after MY 1997 by publishing an Advance Notice of Proposed Rulemaking (ANPRM) in the **Federal Register**. 59 FR 16324 (April 6, 1994). The ANPRM outlined the agency's intention to set standards for some or all of model years 1998 to 2006.

On November 15, 1995, the Department of Transportation and Related Agencies Appropriations Act for Fiscal Year 1996 was enacted. Pub. L. 104–50. Section 330 of that Act provides:

> None of the funds in this Act shall be available to prepare, propose, or promulgate any regulations . . . prescribing corporate average fuel economy standards for automobiles . . . in any model year that differs from standards promulgated for such automobiles prior to enactment of this section.

We then issued a notice of proposed rulemaking (NPRM) limited to MY 1998, which proposed to set the light truck CAFE standard for that year at 20.7 mpg, the same standard as had been set for MY 1997. 61 FR 145 (January 3, 1996). This 20.7 mpg standard was adopted by a final rule issued on March 29, 1996. 61 FR 14680 (April 3, 1996).

On September 30, 1996, the Department of Transportation and Related Agencies Appropriations Act for Fiscal Year 1997 was enacted. Pub. L. 104–205. Section 323 of that Act provides:

> None of the funds in this Act shall be available to prepare, propose, or promulgate any regulations . . . prescribing corporate average fuel economy standards for automobiles . . . in any model year that differs from standards promulgated for such

automobiles prior to enactment of this section.

On March 31, 1997, we issued a final rule (62 FR 15859) establishing light truck fuel economy standards for the 1999 model year. This final rule was not preceded by an NPRM. The agency concluded that the restriction contained in Section 323 of the FY 1997 Appropriations Act prevented us from issuing any standards other than the standard set for the 1998 model year. Because we had no other course of action, we determined that issuing an NPRM was unnecessary and contrary to the public interest.

On October 27, 1997, the Department of Transportation and Related Agencies Appropriations Act for Fiscal Year 1998 was enacted. Pub. L. 105–66. Section 322 of that Act provided, as did the corresponding sections of the FY 1996 and FY 1997 appropriations acts, that none of the funds appropriated could be used to promulgate any regulations (including fuel economy standards) that differ from those of a prior year. On March 30, 1998, we issued a final rule (63 FR 16699) establishing light truck fuel economy standards for the 2000 model year. This final rule was also not preceded by an NPRM. The agency concluded that the restriction contained in Section 322 of the FY 1998 Appropriations Act prevented us from issuing any standards other than the standard set for the 1999 model year. As was the case in prior years, we determined that issuing an NPRM was unnecessary and contrary to the public interest because we had no other course of action.

On October 21, 1998, the Omnibus Consolidated and Emergency Supplemental Appropriations Act for Fiscal Year 1999 was enacted. Pub. L. 105–277. This law contained the appropriations provisions for the Department of Transportation for the 1999 fiscal year. Section 322 of that Act provides:

> None of the funds in this Act shall be available to prepare, propose, or promulgate any regulations pursuant to title V of the Motor Vehicle Information and Cost Savings Act prescribing corporate average fuel economy standards for automobiles, as defined in such title, in any model year that differs from standards promulgated for such automobiles prior to enactment of this section.

Because light truck CAFE standards must be set no later than eighteen months before the beginning of the model year in question, the deadline for us to set the MY 2001 standard is approximately April 1, 1999. As the agency cannot spend any funds in violation of the terms of Section 322, it cannot undertake any work in preparation of a standard for MY 2001 unless it is identical to the MY 2000 standard. Preparation of any fuel economy standard requires the agency to spend money to determine what the appropriate fuel economy level would be, to analyze the costs and benefits of that standard and to prepare documents and studies regarding the standard. Incurring these costs when the legislation dictates the fuel economy level would not be a productive use of resources. Accordingly, the agency is foregoing any analysis of what the appropriate fuel economy level for MY 2001 might be.

We note that the language contained in Section 322 of the FY 1999 Act is identical to that found in Section 330 of the FY 1996 Appropriations Act and Section 323 of the FY 1997 Appropriations Act. The adoption of identical language in the FY 1998 Act leads us to conclude that Congress considered our prior view of this language to be correct: the limitation precludes NHTSA from setting a light truck standard that differs from one adopted in the previous year.

As explained above, Section 322 precludes NHTSA from preparing, proposing, or issuing any CAFE standard that is not identical to those previously established for MYs 1998, 1999 and 2000. We are therefore establishing the MY 2001 light truck standard through the issuance of this final rule. In our view, the express directive in the FY 1999 Omnibus Appropriations Act stops us from considering a new CAFE standard for the 2001 model year. As we cannot expend any funds to set the 2001 standard at any level other than the MY 2000 standard, issuing a notice of proposed rulemaking and providing an opportunity for notice and comment would be unnecessary and contrary to the public interest. Accordingly, this final rule sets the MY 2001 light truck CAFE standard at the MY 2000 level of 20.7 mpg.

II. Correcting Amendment

In a notice published in the **Federal Register** on April 6, 1994, (59 FR 16313) we established fuel economy standards for light trucks for the 1996 and 1997 model years. The final rule contained in that notice also modified the existing fuel economy standards for light trucks by eliminating the separate category for captive imports and combining all light trucks into a single category. Because of this, § 533.5(a) of Part 533 was modified to replace an existing table, table III—which had a column for captive imports and a column for all other light trucks. However, the regulatory text was not changed to reflect the change to a single category for all light trucks. To correct this oversight, we are amending § 533.5 by adding a new paragraph—533.5(f)—indicating that for the 1996 model year and all subsequent model years, that captive imports and other trucks will be combined into a single category, as shown in table III.

III. Final rule

These regulations are being published as a final rule. Accordingly, the fuel economy standards in Part 533 are fully in effect 30 days after the date of the document's publication. No further regulatory action by the agency is necessary to make these regulations effective.

These regulations have been published as a final rule without prior issuance of a notice of proposed rulemaking because Section 322 of the FY 1999 DOT appropriations act prevents us from issuing any fuel economy standard for the 2001 model year that differs from those in effect for the 2000 model year. Because of this, providing for prior notice and opportunity for comment would have been superfluous.

In the agency's view, vehicle manufacturers and other parties will not be harmed by the agency's decision not to issue an NPRM before issuing a final rule to establish the MY 2001 light truck fuel economy standard. The applicable fuel economy standards established in this final rule do not differ from those established for the prior model year. As these standards cannot be modified by the agency, use of a final rule without a prior NPRM has no impact on the positions of any interested party.

IV. Impact Analyses

A. Economic Impacts

We have not prepared a final economic assessment because of the restrictions imposed by Section 322 of the FY 1999 DOT Appropriations Act. All past fuel economy rules, however, have had economic impacts in excess of $100 million per year. The rule was reviewed by the Office of Management and Budget under Executive Order 12866 and is considered significant under the Department's regulatory procedures. Although we have no discretion under the statute (as well as with respect to the costs it imposes), we are treating this rule as "economically significant" under Executive Order 12866 and "major" under 5 U.S.C. 801.

B. Environmental Impacts

We have not conducted an evaluation of the impacts of this action under the

National Environmental Policy Act. There is no requirement for such an evaluation where Congress has eliminated the agency's discretion by precluding any action other than the one announced in this document.

C. Impacts on Small Entities

We have not conducted an evaluation of this action pursuant to the Regulatory Flexibility Act. The agency notes that this final rule, which was not preceded by a Notice of Proposed Rulemaking, is not a "rule" as defined by the Regulatory Flexibility Act and is, therefore, not subject to its provisions. As Congress has eliminated the agency's discretion by precluding any action other than the one taken in this document, we would not be able to take any action in the event such an analysis supported setting the light truck fuel economy at a different level. Past evaluations indicate, however, that few, if any, light truck manufacturers would have been classified as a "small business" under the Regulatory Flexibility Act.

The Regulatory Flexibility Act of 1980 (Public Law 96–354) requires each agency to evaluate the potential effects of a final rule on small businesses. Establishment of a fuel economy standard for light trucks affects motor vehicle manufacturers, few of which are small entities. The Small Business Administration (SBA) has set size standards for determining if a business within a specific industrial classification is a small business. The Standard Industrial Classification code used by the SBA for Motor Vehicles and Passenger Car Bodies (3711) defines a small manufacturer as one having 1,000 employees or fewer.

Very few single stage manufacturers of motor vehicles within the United States have 1,000 or fewer employees. Those that do are not likely to have sufficient resources to design, develop, produce and market a light truck. For this reason, we certify that this final rule would not have a significant economic impact on a substantial number of small entities.

D. Executive Order 12612 (Federalism)

We have analyzed this final rule in accordance with the principles and criteria contained in E.O. 12612, and have determined that this final rule does not have significant Federalism implications to warrant the preparation of a Federalism Assessment. As a historical matter, prior light truck standards have not had sufficient Federalism implications to warrant the preparation of a Federalism Assessment.

E. The Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the costs, benefits and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local or tribal governments, in the aggregate, or by the private sector, of more than $100 million annually.

The agency notes that Section 322 of the FY 1999 DOT Appropriations Act precludes the agency from the expenditure of any funds to prepare, propose or promulgate any fuel economy standard that differs from those currently in effect. This directive forbids NHTSA from studying any alternative fuel economy standards other than those presently in force. The agency cannot consider any other alternative standards that may result in lower costs, lesser burdens, or more cost-effectiveness for state, local or tribal governments or the private sector. Furthermore, as we are precluded from expending any funds to prepare an alternative fuel economy standard, it cannot embark on any studies of such alternatives. We have therefore not prepared a written assessment of this final rule for the purposes of the Unfunded Mandates Act.

F. Paperwork Reduction Act

There are no information collection requirements in this final rule.

G. Department of Energy Review

In accordance with 49 U.S.C. 32902(j), We submitted this final rule to the Department of Energy for review. That Department did not make any comments that we have not responded to.

V. Conclusion

Based on the foregoing, we are establishing a combined average fuel economy standard for non-passenger automobiles (light trucks) for MY 2001 at 20.7 mpg.

List of Subjects in 49 CFR Part 533

Energy conservation, Fuel economy, Motor vehicles.

PART 533—[AMENDED]

In consideration of the foregoing, 49 CFR Part 533 is amended as follows:

1. The authority citation for part 533 continues to read as follows:

Authority: 49 U.S.C. 32902; delegation of authority at 49 CFR 1.50.

2. § 533.5 is amended by revising Table IV in paragraph (a) and by adding paragraph (f) to read as follows:

§ 533.5 Requirements.

(a) * * *

TABLE IV

Model year	Standard
1996	20.7
1997	20.7
1998	20.7
1999	20.7
2000	20.7
2001	20.7

* * * * *

(f) For model year 1996 and thereafter, each manufacturer shall combine its captive imports with its other light trucks and comply with the average fuel economy standard in paragraph (a) of this section.

Issued on: April 1, 1999.

Ricardo Martinez,

Administrator.

[FR Doc. 99–8580 Filed 4–2–99; 3:19 pm]

BILLING CODE 4910–59–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 600 and 660

[Docket No. 981231333–8333–01; I.D. 032599A]

Fisheries off West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery; Trip Limit Adjustments

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Fishing restrictions; request for comments.

SUMMARY: NMFS announces changes to the restrictions to the Pacific Coast groundfish limited entry and open access fisheries to clarify landings restrictions north and south of Cape Mendocino, California; in the limited entry fisheries to clarify the canary rockfish cumulative landings limit south of Cape Mendocino; in the open access fisheries, to revise trip limits for *Sebastes* complex species, including yellowtail rockfish, canary rockfish, black rockfish, blue rockfish; revises the trip limits in the pink shrimp exempted trawl open access fishery for overall groundfish, Dover sole, whiting, and sablefish landings; and provides three technical corrections to the annual specifications and management measures. These restrictions are

intended to clarify some of the restrictions within the 1999 annual management measures and to extend the fisheries as long as possible during the year while keeping landings within the 1999 optimum yields (OYs) and allocations for these species.

DATES: Effective 0001 hours local time (l.t.) April 1, 1999. For vessels operating in the B platoon, effective from 0001 hours (l.t.) April 16, 1999. These changes are in effect, unless modified, superseded or rescinded, until the effective date of the 2000 annual specifications and management measures for the Pacific Coast groundfish fishery, which will be published in the **Federal Register**. Comments will be accepted through April 22, 1999.

ADDRESSES: Submit comments to William Stelle, Jr., Administrator, Northwest Region (Regional Administrator), NMFS, 7600 Sand Point Way N.E., BIN C15700, Bldg. 1, Seattle, WA 98115–0070; or William Hogarth, Administrator, Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213.

FOR FURTHER INFORMATION CONTACT: Katherine King or Yvonne deReynier, Northwest Region, NMFS, 206–526–6140.

SUPPLEMENTARY INFORMATION: The following changes to current management measures (published January 8, 1999 at 64 FR 1316) were recommended by the Pacific Fishery Management Council (Council), in consultation with the States of Washington, Oregon, and California, at its March 9 through 12, 1999, meeting in Portland, OR.

Clarification to the Limited Entry Limit for Canary Rockfish Landed South of Cape Mendocino

For the 1999 annual specifications and management measures, the Council recommended and NMFS adopted limited entry 2-month cumulative limits for the periods beginning April 1, 1999, of 9,000 lb (4,082 kg) for canary rockfish coastwide, and 6,500 lb (2,948 kg) for *Sebastes* species south of Cape Mendocino. Canary rockfish is managed within the *Sebastes* complex and limited by the *Sebastes* complex trip limit, but neither the Council nor NMFS noticed that the coastwide canary rockfish limit for the 2-month periods beginning April 1 exceeded the overall *Sebastes* complex limit for those same 2-month periods in the southern area. The Council recommended at its March 1999 meeting that NMFS correct this discrepancy in time for the beginning of the April 1 through May 31 2-month cumulative limit period. The Council recommended that the cumulative limit for canary rockfish south of Cape Mendocino within a 2-month cumulative limit period not exceed the *Sebastes* complex south of Cape Mendocino cumulative limit for that same period. Consequently, the 2-month cumulative trip limit for canary rockfish south of Cape Mendocino is reduced to 6,500 lb (2,948 kg).

Cape Mendocino Management Line for Sebastes Complex Species

Chilipepper rockfish and splitnose rockfish are separate from the *Sebastes* complex south of Cape Mendocino, and are managed by cumulative limits that do not count toward the *Sebastes* complex limits south of Cape Mendocino. North of Cape Mendocino, chilipepper rockfish and splitnose rockfish are part of the *Sebastes* complex. For the first cumulative limit period of 1999, January 1 through March 31, the overall *Sebastes* complex limit north of Cape Mendocino was 24,000 lb (10,866 kg), the overall *Sebastes* complex limit south of Cape Mendocino was 13,000 lb (5,897 kg), the chilipepper rockfish limit south of Cape Mendocino was 45,000 lb (20,412 kg), and the splitnose rockfish limit south of Cape Mendocino was 32,000 lb (14,515 kg).

Vessels targeting Pacific Coast groundfish generally are not restricted to fishing in particular areas. There are, however, restrictions for vessels that operate in two different management areas, with different cumulative trip limits, but within a single cumulative limit period. The 1999 annual specifications and management measures (64 FR 1316, January 8, 1999) deal with this issue at paragraph IV.A.(12), "Operating in areas with different trip limits" with "cross-over" provisions at sub-paragraphs (a) and (b):

(a) *Going from a more restrictive to a more liberal area.* If a vessel takes and retains any species of groundfish in an area where a more restrictive trip limit applies, before fishing in an area where a more liberal trip limit (or no trip limit) applies, then that vessel is subject to the more restrictive trip limit for the entire period to which that trip limit applies, no matter where the fish are taken and retained, possessed, or landed.

(b) *Going from a more liberal to a more restrictive area.* If a vessel takes and retains a species (or species complex) in an area where a higher trip limit (or no trip limit) applies, and takes and retains, possesses or lands the same species (or species complex) in an area where a more restrictive trip limit applies, then that vessel is subject to the more restrictive trip limit for that trip limit period.

After the 1999 specifications and management measures went into effect, NMFS began to receive telephone calls from fishing vessel owners and operators who were fishing near the Cape Mendocino management line, wondering how to apply the "cross-over" provisions to fishing for *Sebastes* complex species. With the higher overall *Sebastes* complex limit north of Cape Mendocino and the large chilipepper and splitnose rockfish limits south of Cape Mendocino, fishers wanted to know how they could maximize their catch without exceeding landings limits. It became apparent that vessels could take the larger *Sebastes* complex limit north of Cape Mendocino, then move south of Cape Mendocino and catch chilipepper rockfish and/or splitnose rockfish if the bycatch of *Sebastes* were discarded.

After much consideration, NMFS determined that the "cross-over" provisions in the 1999 annual specifications and management measures were not specific enough to deal with this particular problem, and asked the Council for clarification at its March 1999 meeting.

At the March 1999 meeting, the Council considered a variety of possible interpretations of how to apply the "cross-over" provisions to the different *Sebastes* complex, chilipepper rockfish, and splitnose rockfish limits. The Council primarily wanted to clarify these provisions in a way that would not encourage discards. The Council did not want vessels to first target the higher *Sebastes* complex limit north of Cape Mendocino and then to move south to take chilipepper rockfish and splitnose rockfish and discard *Sebastes* complex species south of Cape Mendocino. Chilipepper rockfish and splitnose rockfish are often caught in association with other *Sebastes* complex species, and if vessels are targeting chilipepper and splitnose without also being allowed to retain *Sebastes* complex species, those *Sebastes* complex species would have to be discarded.

To resolve this issue, the Council recommended revising the 1999 "cross-over" provisions to deal specifically with *Sebastes* complex species so that if a vessel takes and retains either chilipepper rockfish and/or splitnose rockfish south of Cape Mendocino, that vessel would be subject to the south of Cape Mendocino *Sebastes* complex limit for the remainder of the cumulative limit period, no matter where it takes and retains, possesses or lands *Sebastes* complex species.

Increases to Open Access Monthly Limits for Sebastes Complex Species

Beginning in 1999, *Sebastes* complex limits for the open access fishery were

unlinked from the limited entry fishery so that open access groundfish landings might be better spread throughout the year. At its November 1998 meeting, the Council had recommended an open access cumulative monthly limit for *Sebastes* complex species north of Cape Mendocino of 3,600 lb (1,633 kg), of which no more than 400 lb (181 kg) per month could be species other than yellowtail or canary rockfish. The Council also recommended that within the *Sebastes* complex limit for north of Cape Mendocino, the monthly cumulative limit for yellowtail rockfish would be 2,600 lb (1,179 kg), and the monthly cumulative limit for canary rockfish would be 1,000 lb (454 kg). After the November Council meeting, an error was discovered in the Pacific Fisheries Information Network (PacFIN) data system, which had wrongly attributed some past rockfish landings to the open access fishery north of Cape Mendocino. As a result of this error, the Council had made its recommendation for the 1999 trip limit based on data that had overestimated landings projections for the open access fishery. The 400 lb (181 kg) limit for species other than yellowtail and canary rockfish within the *Sebastes* complex limit appeared unnecessarily restrictive and burdensome in light of the post-meeting information. For these reasons, NMFS disapproved the 400 lb (181 kg) trip limit and asked the Council to address open access limits north of Cape Mendocino at its March 1999 meeting. NMFS did approve and implement the Council's recommendation for an overall *Sebastes* cumulative trip limit of 3,600 lb (1,633 kg) per month, with the sublimits of 2,600 lb (1,179 kg) of yellowtail rockfish and 1,000 lb (454 kg) of canary rockfish.

At its March 1999 meeting, following corrections of open access landings information, the Council reconsidered open access *Sebastes* complex limits. The Council's Groundfish Management Team (GMT) compared past harvest rates with 1999 allocations for a variety of species and advised the Council that the open access trip limits for *Sebastes* complex species and yellowtail rockfish north of Cape Mendocino and for canary rockfish coastwide would not allow attainment of the open access allocations for these species. For this reason, the Council recommended at its March 1999 meeting to revise the open access cumulative landings limits for *Sebastes* complex species north of Cape Mendocino and for canary rockfish coastwide to an overall *Sebastes* complex limit of 12,000 lb (5,443 kg) per month north of Cape Mendocino and an overall *Sebastes* complex limit of 2,000 lb (907 kg) south of Cape Mendocino, within which: No more than 6,500 lb (2,948 kg) per month may be yellowtail rockfish north of Cape Mendocino; no more than 2,000 lb (907 kg) per month may be canary rockfish coastwide; no more than 3,500 lb (1,588 kg) per month may be black rockfish and blue rockfish north of Cape Mendocino, and no more than 2,000 lb (907 kg) per month may be species other than yellowtail rockfish, canary rockfish, black rockfish and blue rockfish north of Cape Mendocino. Current open access limits for bocaccio south of Cape Mendocino would remain in effect and would continue to count toward the overall *Sebastes* complex limit of 2,000 lb (907 kg) for that area.

Although the sum of the cumulative monthly limits for canary rockfish, yellowtail rockfish, black rockfish and blue rockfish, and other *Sebastes* rockfish is greater than the overall monthly cumulative limit for the *Sebastes* complex north of Cape Mendocino, the overall *Sebastes* complex limit may not be exceeded. Consequently, the monthly cumulative limits for canary rockfish, yellowtail rockfish, black rockfish and blue rockfish, and other *Sebastes* complex species north of Cape Mendocino cannot all be achieved. Similarly, the canary rockfish coastwide limit is equal to the *Sebastes* complex limit south of Cape Mendocino. Any canary rockfish taken south of Cape Mendocino counts against the overall *Sebastes* complex limit, which may not be exceeded.

The adjusted trip limits are calculated to provide a year long fishing opportunity. Pacific Coast groundfish landings are monitored throughout the year, and further adjustments to cumulative trip limits will be made as necessary.

Pink Shrimp Fishery

Groundfish regulations allow shrimp trawlers to retain and land groundfish caught incidentally on fishing trips targeting pink shrimp. Pink shrimp trawls are one of the open access "exempted" trawl gears. Under the 1999 management measures, exempted trawl gears are managed under a 300 lb (136 kg) groundfish "per trip" limit, including the same daily trip limits for sablefish (300 lb (136 kg) north of 36° N. lat. and 350 lb (159 kg) south of 36° N. lat.) and thornyheads (50 lb) (22.7 kg) per day south of Point Conception) as all other open access gears. This limit was a change from previous years' management measures for pink shrimp trawlers, which had been permitted to multiply the daily trip limit for groundfish by the number of days in the fishing trip.

The pink shrimp fishery has historically been managed to allow landings of incidentally caught groundfish, so that fishers would not be required by regulations to discard those groundfish. At the March 1999 Council meeting, the GMT advised the Council that restricting the pink shrimp fishery to 300 lb (136 kg) of groundfish per trip might force regulatory discards of incidentally caught groundfish, without reducing the discard mortality in the pink shrimp fishery. If management measures for pink shrimp trawlers accommodate landings of incidentally caught groundfish, those landings (by vessels without limited entry permits) are counted against the open access groundfish allocations. Incidentally caught groundfish that are discarded are not measured and are not counted against allocations. However, assumptions are made about overall discards and discards are taken into account when calculating overall harvest. Furthermore, some shrimp fishers testified that groundfish are a historical, desirable component of their shrimp/groundfish fishery and should not be treated as incidental catch. For these reasons, the Council recommended setting a new trip limit for vessels engaged in fishing for pink shrimp with exempted trawl gear at 500 lb (227 kg) of groundfish per day, multiplied by the number of days of the fishing trip, but not to exceed 2,000 lb (907 kg) per trip. The 500 lb (227 kg) per day portion of this limit had been in effect until January 1, 1999. All groundfish landings in the pink shrimp fishery, except for Dover sole and Pacific whiting landings, would continue also to be managed under species-specific daily, monthly, and 2-month cumulative trip limits (including the 1,800 lb (817 kg) 2-month cumulative limit for sablefish), except that the daily trip limit for sablefish north of 36° N. lat. would no longer apply to this fishery. Dover sole and Pacific whiting landings would be constrained by the per trip groundfish limit. The Council further recommended that, in any landing by vessels engaged in fishing for pink shrimp, the amount of groundfish landed not exceed the amount of pink shrimp landed.

Groundfish Taken by Exempted Trawl Gears Outside of the Pink Shrimp Fishery

In addition to the pink shrimp fishery, groundfish may be landed by vessels using exempted trawl gear in fisheries targeting spot and ridgeback prawns,

California halibut, and sea cucumber. The Council considered restricting landings of groundfish taken in all exempted trawl fisheries so that in any landing, the amount of groundfish landed would not exceed the amount of the target species landed. This issue was tabled until the April 1999 Council meeting, so that the Council could have the benefit of advice from its Groundfish Advisory Panel.

Inseason Trip Limit Adjustments Between Council Meetings

The 1999 cumulative trip limit periods for the limited entry fishery include 2-month cumulative limit periods for April-May, June-July, and August-September. During those periods, Council meetings are scheduled for April, June, and September, which means that the Council could only make inseason adjustments at its April meeting for June 1 and at its June meeting for August 1. At its March 1999 meeting, the Council's GMT recommended that the Council plan to make no trip limit adjustments at the April meeting, because landings data from the January 1 through March 31 cumulative limit period would not be available until after that meeting. To allow itself more flexibility for inseason adjustments, the Council decided that if it wants the opportunity to adjust trip limits before June 1, a conference call could be conducted with individuals identified by the Council to recommend adjustments based on recommendations from the May 1999 GMT meeting. A similar conference call could be scheduled in July if GMT recommendations from the July 1999 GMT meeting suggest that inseason adjustments are necessary.

Corrections to the 1999 Specifications and Management Measures

This document also contains three technical corrections to the 1999 annual specifications and management measures (64 FR 1316, January 8, 1999). The definition of a daily trip limit at Section IV, under A.(1)(b) states that under a daily trip limit, only two landings of groundfish may be made in a 24-hour period. This was a mistake. For years, under a daily trip limit, only one landing could be made in a 24-hour period, and that restriction was not changed for 1999. Therefore, a correction is being made in this document to the definition of "daily trip limit" to restrict the number of landings under a daily trip limit to one in a 24-hour period.

The second mistake is in Section IV, under A.(1)(c)(i)(C), which states that in 1999, limited entry permit transfers take effect on the first day of a major cumulative limit period, and that those days in 1999 are January 1, April 1, June 1, August 1, October 1, November 1, and December 1. According to the groundfish regulations at 50 CFR 660.333 (c)(1), "* * * Transfers of permits designated as participating in the "B" platoon will become effective on the first day of the next "B" platoon major limited entry cumulative limit period following the date of the transfer * * *" Therefore, a correction has been made to this section of the annual specifications to include the effective dates of transfer for those vessels participating in the "B" platoon.

The third mistake is in Section IV, under B.(2)(b), which reads, "Harvest of all *Sebastes* complex species (except bocaccio), including those species with their own cumulative limits (yellowtail rockfish, canary rockfish, bocaccio), count toward the overall applicable *Sebastes* cumulative limits for the areas north and south of Cape Mendocino." This sentence is internally inconsistent, and is also inconsistent with the next paragraph, which makes clear that bocaccio do count toward the overall *Sebastes* limit. Therefore, this section is being modified to clarify that bocaccio count toward the overall *Sebastes* complex limits.

NMFS Action

For the reasons stated above, NMFS concurs with the Council's recommendations and announces the following changes to the 1999 annual management measures (64 FR 1316, January 8, 1999, as amended). The annual management measures are modified as follows:

1. In section IV, under A. *General Definitions and Provisions*, paragraphs (1)(b) and (1)(c)(i)(C) are revised, paragraph (12) introductory text is revised, and paragraph (12)(c) is added to read as follows:

A. General Definitions and Provisions

* * * * *

(1) * * *

(b) *A daily trip limit* is the maximum amount that may be taken and retained, possessed, or landed per vessel in 24 consecutive hours, starting at 0001 local time. Only one landing of groundfish may be made in that 24-hour period. Daily trip limits may not be accumulated during multiple day trips.

(c) * * *

(i) * * *

(C) *Permit transfers.* For the purposes of the restriction that limited entry permit transfers are to take effect only on the first day of a major cumulative limit period (50 CFR 660.333 (c)(1)), those days in 1999 are January 1, April 1, June 1, August 1, October 1, November 1, and December 1. For vessels with permits authorized to participate in the "B" platoon, those days in 1999 are January 16, April 16, June 16, August 16, October 16, November 16, and December 16.

* * * * *

(12) *Operating in areas with different trip limits.* Trip limits for a species or species complex may differ in different geographic areas along the coast. The following "crossover" provisions apply to vessels operating in different geographical areas that have different cumulative or "per trip" trip limits for the same species or species complex, unless otherwise specified as in paragraph (c) for chilipepper and splitnose rockfishes and the *Sebastes* complex. * * *

* * * * *

(c) *Chilipepper Rockfish, Splitnose Rockfish and the Sebastes Complex.* If a vessel takes and retains, possesses, or lands any splitnose or chilipepper rockfish south of Cape Mendocino, then the more restrictive *Sebastes* complex cumulative trip limit applies during the same cumulative limit period, no matter where the *Sebastes* complex is taken and retained, possessed, or landed.

* * * * *

2. In section IV, under B. *Limited Entry Fishery*, paragraph B.(2)(b) and table 3 under B.(2)(b)(i) are revised to read as follows:

B. Limited Entry Fishery

* * * * *

(2) * * *

(b) *Trip limits for the Sebastes complex.* Harvest of all *Sebastes* complex species, including those species with their own cumulative limits (yellowtail rockfish, canary rockfish, bocaccio), count toward the overall applicable *Sebastes* cumulative limits for the areas north and south of Cape Mendocino. Crossover provisions for operating on both sides of Cape Mendocino during a cumulative trip limit period are found in Section IV, paragraph (A)(12), with special provisions for chilipepper rockfish, splitnose rockfish, and the *Sebastes* complex.

(i) *Trip limits for the Sebastes complex except bocaccio.* The cumulative trip limits for the *Sebastes* complex and its component species are as follows, unless otherwise announced in the **Federal Register**:

TABLE 3.—SEBASTES COMPLEX AND ITS COMPONENT SPECIES

[except bocaccio]

Phase	Cumulative trip limit periods	Cumulative Trip Limits (in pounds)					Length of Cumulative trip limit period
		Sebastes complex (north and south of Cape Mendocino)		Yellowtail rockfish [1] (north of Cape Mendocino)	Canary rockfish [1] (coastwide)		
		North	South		North	South	
I	Jan 1–Mar 31	24,000 (10,886 kg)	13,000 (5,897 kg)	15,000 (6,804 kg)	9,000 (4,082 kg)	9,000 (4,082 kg)	3 months.
II	Apr 1–May 31	25,000	6,500	13,000	9,000	6,500	2 months.
	June 1–July 31	25,000	6,500	13,000	9,000	6,500	2 months.
	Aug 1–Sept 30	25,000 (11,340 kg)	6,500 (2,948 kg)	13,000 (5, 897 kg)	9,000 (4,082 kg)	6,500 (2,948 kg)	2 months.
III	Oct 1–31	10,000	5,000	5,000	3,000	3,000	1 month.
	Nov 1–30	10,000	5,000	5,000	3,000	3,000	1 month.
	Dec 1–31	10,000 (4,536 kg)	5,000 (2,268 kg)	5,000 (2,268 kg)	3,000 (1,361 kg)	3,000 (1,361 kg)	1 month.

[1] Also counts toward the overall *Sebastes* complex limit, which may not be exceeded.

* * * * *

3. In section IV, under C. *Trip limits in the Open Access Fishery*, paragraphs C.(1)(d)(i), C.(1)(g), C.(2), C.(4), C.(5), and the heading of paragraph C.(6) are revised, and paragraph C.(7) is added to read as follows:

C. Trip Limits in the Open Access Fishery

* * * * *

(1) * * *

(d) *Sebastes complex*—(i) *Cumulative monthly limits.* The cumulative monthly limif for the *Sebastes* complex is 12,000 lb (5,443 kg) per vessel north of Cape Mendocino, and 2,000 lb (907 kg) per vessel south of Cape Mendocino. Within the cumulative trip limit for the *Sebastes* complex, no more than 2,000 lb (907 kg) per month may be canary rockfish coastwide, no more than 6,500 lb (2,948 kg) per month may be yellowtail rockfish north of Cape Mendocino, no more than 3,500 lb (1,588 kg) per month may be black rockfish and blue rockfish combined north of Cape Mendocino, no more than 2,000 lb (907 kg) per month may be *Sebastes* complex species other than yellowtail rockfish, canary rockfish, black rockfish and blue rockfish north of Cape Mendocino, and no more than 500 lb (227 kg) per month may be bocaccio south of Cape Mendocino (except for setnet or trammel net gear—see IV.C.(1)(d)(ii) below). [Note: The sum of the cumulative monthly limits for canary rockfish, yellowtail rockfish, black rockfish and blue rockfish, and other *Sebastes* rockfish is greater than the overall monthly cumulative limit for the *Sebastes* complex north of Cape Mendocino, which may not be exceeded. Consequently, the monthly cumulative limits for canary rockfish, yellowtail rockfish, black rockfish and blue rockfish, and other Sebastes complex species north of Cape Mendocino cannot all be achieved. Similarly, the canary rockfish coastwide limit is equal to the *Sebastes* complex limit south of Cape Mendocino. Any canary rockfish taken south of Cape Mendocino counts against the overall *Sebastes* complex limit, which may not be exceeded.]

* * * * *

(g) *Black rockfish.* The trip limit at 50 CFR 660.323(a)(i) for black rockfish caught with hook-and-line gear also applies and is counted toward the cumulative *Sebastes* limits, as stated in paragraph IV.C.(1)(d). (The black rockfish limit is also stated in paragraph IV.B.(9))

(2) *Sablefish.* The 2-month cumulative limit periods for sablefish taken in the open access fishery are the same as those stated above for the limited entry nontrawl fishery at paragraph IV.B.(6)(d)(ii).

(a) *Hook-and-line, pot, setnet, trammel net, exempted trawl gears used by vessels engaged in fishing for spot and ridgeback prawns, California halibut, or sea cucumber.* The following trip limits apply to all open access gear, except for exempted trawl gear used by vessels engaged in fishing for pink shrimp.

(i) *North of 36°00′ N. lat.* North of 36°00′ N. lat., the daily trip limit for sablefish is 300 lb (136 kg), which counts toward a cumulative trip limit of 1,800 lb (816 kg) per 2-month period.

(ii) *South of 36°00′ N. lat.* The daily trip limit for sablefish taken and retained south of 36°00′ N. lat. is 350 lb (159 kg). [Note: All sablefish taken by vessels engaged in fishing for spot and ridgeback prawns, California halibut, or sea cucumber with exempted trawl gear may not exceed and counts against the 300 lb (136 kg) per trip limit for groundfish specified below at paragraph IV.C.(6).]

(b) *Sablefish taken by vessels engaged in fishing for pink shrimp with exempted trawl gear.* North of 36° N. lat., the cumulative trip limit for sablefish is 1,800 lb (816 kg) per 2-month period. South of 36° N. lat., the daily trip limit for sablefish is 350 lb (159 kg) per day, which may not be multiplied by the number of days in the trip.

* * * * *

(4) *Dover sole.* The monthly cumulative limit for Dover sole is 100 lb (45 kg) and applies to all open access gear, except for vessels engaged in fishing for pink shrimp with exempted trawl gear, which are constrained by the overall groundfish limits in paragraph IV.C.(7).

(5) *Pacific whiting.* The monthly cumulative limit for Pacific whiting is 100 lb (45 kg), and applies to all open access gear, except for vessels engaged in fishing for pink shrimp with exempted trawl gear, which are constrained by the overall groundfish limits in paragraph IV.C.(7).

(6) *Groundfish taken with exempted trawl gear by vessels engaged in fishing for spot and ridgeback prawns, California halibut, and sea cucumbers*

* * *

* * * * *

(7) *Groundfish taken with exempted trawl gear by vessels engaged in fishing for pink shrimp.* The trip limit for a vessel engaged in fishing for pink shrimp is 500 lb (227 kg) of groundfish per day, multiplied by the number of days of the fishing trip, but not to exceed 2,000 lb (907 kg) per trip. In addition, no other open access limits may be exceeded by a vessel engaged in fishing for pink shrimp, except for the

limits for Dover sole and Pacific whiting, landings of which are constrained by the per trip groundfish limits. In any landing by vessels engaged in fishing for pink shrimp, the amount of groundfish landed may not exceed the amount of pink shrimp landed. [Note: Although vessels engaged in fishing for pink shrimp were permitted to retain thornyheads in the latter half of 1998, retention of thornyheads north of Pt. Conception is prohibited for this and all other open access fisheries in 1999.]

* * * * *

Classification

These actions are authorized by the regulations implementing the Pacific Coast Groundfish Fishery Management Plan. The determination to take these actions is based on the most recent data available. The aggregate data upon which the determinations are based are available for public inspection at the office of the Administrator, Northwest Region, NMFS (see **ADDRESSES**) during business hours. Because of the need for immediate action to implement these changes at the beginning of the April through May 2-month cumulative limit period, and because the public had an opportunity to comment on the action at the March 1999 Council meeting, NMFS has determined that good cause exists for this document to be published without affording a prior opportunity for public comment or a 30-day delayed effectiveness period. These actions are taken under the authority of 50 CFR 660.323 (b)(1), and are exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: March 31, 1999.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–8429 Filed 4–1–99; 4:20 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 64, No. 66
Wednesday, April 7, 1999

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR PART 19

RIN 1515–AC41

Customs Bonded Warehouses

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the Customs Regulations regarding the filing of certain inventory reports by bonded warehouse proprietors. Instead of requiring that these reports be filed with Customs, the document proposes that bonded warehouse proprietors maintain these inventory reports after their preparation. In some instances when the inventory report is prepared a letter must be submitted to Customs certifying that the report has been prepared. As proposed to be amended, the port director would be the Customs officer to whom certification letters must be submitted and to whom the annual report covering smelting or refining operations should be submitted. These proposed changes and other changes proposed in this document are intended to simplify inventory recordkeeping procedures for warehouse proprietors and are consistent with Customs movement toward a post-audit environment and the spirit of "shared responsibility" embodied in the Customs Modernization provisions of the North American Free Trade Agreement Implementation Act.

DATES: Comments must be received on or before June 7, 1999.

ADDRESSES: Written comments may be addressed to and inspected at the Regulations Branch, U.S. Customs Service, 1300 Pennsylvania Avenue, NW., 3rd Floor, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Edward Bowles, Senior Auditor, Regulatory Audit Division, (202–927–0071).

SUPPLEMENTARY INFORMATION:

Background

This document proposes several amendments to part 19, Customs Regulations (19 CFR part 19), concerning the submission to Customs of certain inventory reports covering merchandise in a bonded warehouse. Instead of requiring that certain reports be filed with Customs, the document proposes to amend the Customs Regulations to require that bonded warehouse proprietors maintain these inventory reports after their preparation. In certain instances, when the inventory report is prepared, a letter must be submitted to Customs certifying that the report has been prepared. As proposed to be amended, the port director would be the Customs officer to whom certification letters must be submitted and to whom the annual report covering smelting or refining operations should be submitted. These proposed changes and other changes proposed in this document are intended to simplify inventory recordkeeping procedures for warehouse proprietors and are consistent with Customs movement toward a post-audit environment and the spirit of "shared responsibility" embodied in the Customs Modernization provisions of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182).

Warehouse Proprietor's Submission

The principal change proposed in this document concerns the Warehouse Proprietor's Submission on Customs Form (CF) 300. Currently, § 19.12(g) of the Customs Regulations requires certain bonded warehouse proprietors to file annually the CF 300 with the field director of regulatory audit within 45 days from the end of the proprietor's business year. The CF 300 describes all merchandise in the beginning and ending inventory and all merchandise covered by entries opened and closed during the year which do not appear in the beginning or ending inventory.

Section 19.12(g) also provides that these proprietors may submit an alternative format concerning the inventory information required on the CF 300 if the field director of regulatory audit first gives written approval to use an alternative format.

Section 19.12(d)(3) requires, with certain exceptions, that duties and taxes applicable to any non-extraordinary shortage of, or damage to, merchandise in a warehouse be paid when the CF 300 is due, or at any time prior to the annual filing of the CF 300 or certified annual reconciliation.

This document proposes to amend § 19.12(g) to no longer require the submission of the CF 300 by these warehouse proprietors. The proposed amendment would still require these warehouse proprietors to prepare the CF 300 within 45 calendar days from the end of these proprietors' business years; but instead of requiring these proprietors to submit it to Customs within that time frame, the proposed amendment would require these proprietors to retain the document and submit to the port director within 10 days of the preparation of the CF 300 a letter certifying that the CF 300 has been prepared, is available for Customs review, and is accurate.

The document also proposes to amend § 19.12(g) to provide that these warehouse proprietors would no longer need Customs permission in order to use an alternative format to the CF 300. Of course, under the proposed amendment, if an alternative format is used, a similar letter would need to be submitted to Customs within 10 days of the preparation of the alternate format certifying that the alternate to the CF 300 has been prepared, is available for Customs review and is accurate.

Section 19.12(d)(3) is proposed to be amended to provide that duties and taxes applicable to any non-extraordinary shortage of, or damage to, merchandise in a warehouse be reported to Customs no later than the date the letter is due to Customs certifying that the CF 300 or alternate has been prepared.

Annual Reconciliation Report

Section 19.12(h)(1) concerns the requirement of certain other warehouse proprietors to prepare an annual reconciliation report, rather than the CF 300, and establishes the date by which the report must be prepared. Section 19.12(h)(1) currently allows for these warehouse proprietors to apply to the field director of regulatory audit for an extension of time within which to prepare the report and § 19.12(h)(3) requires these proprietors to submit a letter to the field director of regulatory

audit certifying that the annual reconciliation report has been prepared.

This document proposes to amend § 19.12(h)(1) to make port directors, rather than field directors of regulatory audit, responsible for approving extensions of time within which reconciliation reports must be prepared. The document proposes to amend § 19.12(h)(3) to require that the certification letter be submitted to the port director.

Smelting and Refining Warehouses

This document also proposes two changes regarding the submission of inventory reports by bonded smelting and refining warehouses. One proposed change concerns the filing of a monthly report and the other concerns the filing of an annual report.

Section 19.17(g) currently provides that where two or more smelting and refining warehouses are included under one blanket smelting and refining bond, an overall monthly statement of inventory and bond charges must be filed by the principal named in the bond with each involved Field Director, Regulatory Audit, showing the inventory at each plant covered by the bond. Furthermore, § 19.17(g) provides that each port director at whose port a plant or plants are located is responsible for determining the correctness of the inventory report covering merchandise at those plants under his jurisdiction.

As proposed to be amended by this document, § 19.17(g) would no longer require the proprietor named as principal in the bond to file the monthly statement with any Field Director, Regulatory Audit, but would instead require the proprietor to maintain the monthly statement after its preparation. In addition, § 19.17(g) would be changed to make clear, as is currently the case, that if the warehouses covered by an overall statement are located in more than one port, each port director may choose to verify the accuracy of the inventory report only with respect to that portion of the report that relates to amounts held at a plant that is located within that port director's jurisdiction.

Section 19.19(b) currently requires that an annual report covering the smelting or refining operations conducted by each manufacturer be submitted to the Field Director, Regulatory Audit. As proposed to be amended by this document, the regulations would no longer require the annual report to be submitted to the Field Director, Regulatory Audit. Instead, the annual report would be filed with the port director.

Other Amendments

Section 19.12(d)(3) currently refers to the filing of the annual reconciliation when the filing of the annual reconciliation is not required. Accordingly, this document proposes to remove the reference to the filing of the annual reconciliation from that paragraph.

Also, § 19.12(d)(3) currently includes a cross-reference to paragraph (f) of that section in relation to the annual reconciliation report. However, the annual reconciliation report is dealt with in paragraph (h) of that section, not paragraph (f). Accordingly, this document proposes to replace the cross-reference to paragraph (f) in § 19.12(d)(3) with a cross-reference to paragraph (h).

Comments

Before adopting the proposal, consideration will be given to any written comments that are timely submitted to Customs. Customs specifically requests comments on the clarity of this proposed rule and how it may be made easier to understand. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9:00 a.m. and 4:30 p.m. at the Regulations Branch, U.S. Customs Service, 1300 Pennsylvania Avenue, NW., 3rd Floor, Washington, D.C.

The Regulatory Flexibility Act and Executive Order 12866

The proposed amendments are intended to simplify inventory recordkeeping procedures for warehouse proprietors and be consistent with Customs movement toward a post-audit environment and the spirit of "shared responsibility" embodied in the Customs Modernization provisions of the North American Free Trade Agreement Implementation Act. As such, pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), it is hereby certified that the proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities. Accordingly, it is not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604. Nor does the proposed rule result in a "significant regulatory action" under E.O. 12866.

Paperwork Reduction Act

The collections of information contained in this notice of proposed rulemaking have been previously reviewed and approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1995 and assigned the following OMB control numbers: 1515–0093 for bonded warehouse proprietor's submission; 1515–0121 for information to be supplied by owner or lessee in support of application to establish a bonded warehouse facility; 1515–0127 for application by manufacturer to bond (or discontinue a previously bonded) establishment engaged in the smelting or refining of metal-bearing materials; and 1515–0135 for record of smelting or refining operation showing receipt and disposition of each shipment of material. This document restates the collections of information without substantive change.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB.

Although this document restates the collections of information without substantive change, comments are specifically requested concerning: (a) Whether the collections of information are necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) how to enhance the quality, utility, and clarity of the information to be collected; (c) how to minimize the burden of complying with the collections of information, including through the application of automated collection techniques or other forms of information technology; and (d) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Comments concerning suggestions for reducing the burden of the collections of information should be sent to the Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service, 1300 Pennsylvania Avenue, NW., 3rd Floor, Washington, D.C. 20229. A copy should also be sent to U.S. Customs Service, Information Services Group, Attention: J. Edgar Nichols, Room 3.2–C, 1300 Pennsylvania Avenue, NW., Washington, D.C. 20229. Comments should be submitted within the same time frame that comments are due regarding the substance of the proposal.

List of Subjects in 19 CFR Part 19

Customs duties and inspection, Exports, Freight, Imports, Reporting and recordkeeping requirements, Warehouses.

Proposed Amendments to the Regulations

It is proposed to amend part 19, Customs Regulations (19 CFR part 19), as set forth below.

PART 19—CUSTOMS WAREHOUSES, CONTAINER STATIONS, AND CONTROL OF MERCHANDISE THEREIN

1. The general authority citation for part 19, and the relevant sectional authority citation, would continue to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States), 1624.

* * * * *

Sections 19.17–19.25 also issued under 19 U.S.C. 1312;

* * * * *

2. It is proposed to amend § 19.12 by revising the seventh and eighth sentences of paragraph (d)(3), by revising the first sentence of paragraph (g), adding a sentence thereafter, and revising the last sentence of paragraph (g), and by revising the first sentence, respectively, of paragraphs (h)(1) and (h)(3), to read as follows:

§ 19.12 Inventory control and recordkeeping system.

* * * * *

(d) *Accountability for merchandise in a warehouse.* * * *

(3) *Theft, shortage, overage or damage.* * * * The proprietor must also record all shortages and overages as required in the Customs Form 300 or annual reconciliation report under paragraph (g) or (h) of this section, as appropriate. Duties and taxes applicable to any non-extraordinary shortage or damage and not required to be paid earlier must be reported and submitted to the port director no later than the date the certification of preparation of Customs Form 300 is due or at the time the certification of preparation of the annual reconciliation report is due, as prescribed in paragraph (g) or (h) of this section. * * *

* * * * *

(g) *Warehouse proprietor submission.* Except as otherwise provided in paragraph (h) of this section or § 19.19(b) of this part, the warehouse proprietor must prepare a Warehouse Proprietor's Submission on Customs Form (CF) 300 within 45 calendar days from the end of the business year and maintain the Submission on file for 5 years from the end of the business year covered by the Submission. The proprietor must submit to the port director, within 10 business days after preparation of the CF 300, a letter signed by the proprietor certifying that the CF 300 has been prepared, is available for Customs review, and is accurate. * * * An alternative format may be used for providing the information required on the CF 300.

(h) *Annual reconciliation.* * * *

(1) *Report.* Instead of preparing Customs Form 300 as required under paragraph (g) of this section, the proprietor of a class 2, importers' private bonded warehouse, and proprietors of classes 4, 5, 6, 7, 8, and 9 warehouses if the warehouse proprietor and the importer are the same party, must prepare a reconciliation report within 90 days after the end of the fiscal year unless the port director authorizes an extension for reasonable cause. * * *

* * * * *

(3) *Certification.* The proprietor must submit to the port director within 10 business days after preparation of the annual reconciliation report, a letter signed by the proprietor certifying that the annual reconciliation has been prepared, is available for Customs review, and is accurate. * * *

* * * * *

3. It is proposed to amend § 19.17 by revising the first and second sentences of paragraph (g) to read as follows:

§ 19.17 Application to establish warehouse; bond.

* * * * *

(g) *Statement of inventory and bond charges.* Where two or more smelting or refining warehouses are included under one blanket smelting and refining bond, an overall statement must be prepared and maintained by the principal named in the bond by the 28th of each month, showing the inventory as of the close of the preceding month, of all metals on hand at each plant covered by the blanket bond and the total of bonded charges for all plants. If the warehouses covered by an overall statement are located in more than one port, each port director may choose to verify the accuracy of the inventory report only with respect to that portion of the report that relates to amounts held at a plant that is located within that port director's jurisdiction. * * *

4. It is proposed to amend § 19.19 by revising the first sentence of paragraph (b) to read as follows:

§ 19.19 Manufacturers' records; annual statement.

* * * * *

(b) Every manufacturer engaged in smelting or refining, or both, must prepare and submit to the port director at the port nearest which the plant is located an annual statement for the fiscal year for the plant involved not later than 60 days after the termination of that fiscal year. * * *

Raymond W. Kelly,

Commissioner of Customs.

Approved: March 12, 1999.

John P. Simpson,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 99–8517 Filed 4–6–99; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 777

[FHWA Docket No. FHWA–97–2514; 96–8]

RIN 2125–AD78

Mitigation of Impacts to Wetlands and Natural Habitat

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Supplemental notice of proposed rulemaking (SNPRM); request for comments.

SUMMARY: The FHWA is further supplementing its June 17, 1996, notice of proposed rulemaking (NPRM), Mitigation of Impacts to Wetlands, and June 18, 1997, supplemental notice of proposed rulemaking (SNPRM) on the same subject, as described in the **SUPPLEMENTARY INFORMATION.** This SNPRM also updates the FHWA's wetlands regulation to conform with wetland and natural habitat mitigation provisions contained in the recently enacted Transportation Equity Act for the 21st Century (TEA–21).

DATES: Comments must be received on or before June 7, 1999.

ADDRESSES: All signed, written comments must refer to the docket number appearing at the top of this document. Submit all comments to the Docket clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. All comments received will be available for examination at the above address between 10 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped envelope or postcard.

FOR FURTHER INFORMATION CONTACT: Mr. Paul Garrett, Office of Natural Environment, HENE, (303) 969–5772, extension 332, or Mr. Brett Gainer, Office of the Chief Counsel, HCC–31, (202) 366–1372, Federal Highway Administration, 400 Seventh Street, SW., Washington, D.C. 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

Internet users can access all comments received by the U.S. DOT Dockets, Room PL–401, by using the universal source locator (URL): http://dms.dot.gov. It is available 24 hours each day, 365 days a year. Please follow the instructions online for more information and help.

An electronic copy of this document may be downloaded using a modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202)–512–1661. Internet users may reach the **Federal Register**'s home page at: http://www.nara.gov/fedreg and the Government Printing Office's database at http://www.access.gpo.gov/nara.

I. The Rulemaking Process

This rulemaking would amend the FHWA's regulation on wetlands mitigation to conform with the provisions of the Intermodal Surface Transportation Efficiency Act (ISTEA) (Pub. L. 102–240, 105 Stat.1914), TEA–21, and state-of-the-art practices in wetland science, technology, and management.

II. Public Participation

An NPRM on this subject was published in the **Federal Register** on June 17, 1996 (61 FR 30553). The comment period was from June 17 through August 16, 1996. Subsequently, an SNPRM was published in the **Federal Register** on June 18, 1997 (62 FR 33047). The comment period for this SNPRM was from June 18 through August 18, 1997.

In its June 17, 1996, NPRM and June 18, 1997, SNPRM, the FHWA proposed to amend 23 CFR part 777, Mitigation of Impacts to Privately owned Wetlands, in order to update the current, out-dated regulations in light of changes brought about by the ISTEA. Specifically, the June 17, 1996, NPRM proposed revision to the previous regulation (23 CFR part 777) to conform to ISTEA, thereby providing more flexibility to State Departments of Transportation (DOT) in determining eligibility of mitigation alternatives for Federal participation. The NPRM proposed broadening the scope of the regulation to encompass all wetland mitigation projects eligible for Federal participation, not just those involving privately owned wetlands. The June 18, 1997 SNPRM proposed to clarify the scope of the FHWA's wetlands regulations by specifying that they apply to all projects funded pursuant to the provisions of title 23, United States Code (Title 23). The rulemaking proposed also to make a technical amendment to the text of the June 17, 1996 NPRM.

Recently, TEA–21 (Pub. L. 105–178, 112 Stat. 107) added funding eligibility under the NHS and STP programs for mitigation of impacts on natural habitats due to highway projects funded under title 23, U.S.C. This rulemaking would also include a provision requiring that existing wetland and habitat mitigation banks be given preference for use in establishing compensatory mitigation if the highway project impacts occur within the bank's service area (Sections 1106(b) and 1108(a) of TEA–21; 23 U.S.C. 103(b)(6)(M) and 133(b)(11). In this SNPRM, the FHWA would revise the current proposed regulation to conform to the authority of TEA–21.

In addition to making changes to conform with TEA–21, this proposal would broaden the scope of the current regulation to encompass all mitigation projects for impacts to wetlands and natural habitats eligible for Federal participation, not just those involving privately owned wetlands. This SNPRM also applies to projects under the Federal Lands Highway Program, as described in § 777.1, Purpose.

With all this in mind, the FHWA has decided to issue this SNPRM, which would further amend part 777. At each place where the term "wetlands" occurs in the regulatory text, this SNPRM proposes to add either the words "natural habitat" or "habitat." In addition, § 777.2, Definitions, would be amended to add a definition of the term "natural habitat." Where negative impacts are unavoidable, the Department of Transportation's Fiscal Year 1999 and 2000 Performance Plans establish an objective to minimize the adverse impacts of projects on wetlands and to achieve a net gain of wetlands in the Federal-aid and Federal Lands Highway Programs. Thus, a new definition for "net gain of wetlands" would be added to § 777.2.

Section 777.9, Mitigation of Impacts, would be amended by adding a preference for existing wetlands banks or natural habitat banks to the provision authorizing the expenditure of Federal-aid highway funds for wetlands and natural habitat mitigation banking and related measures.

Finally, the title of part 777 would be changed to read, "Mitigation of Impacts to Wetlands and Natural Habitat." The FHWA invites comments on this new proposal.

Rulemaking Analyses and Notices

All comments received before the close of business on the comment closing date indicated above will be considered and will be available for examination in the docket at the above address. Comments received after the comment closing date will be filed in the docket and will be considered to the extent practicable, but the FHWA may issue a final rule at any time after the close of the comment period. In addition to late comments, the FHWA will also continue to file in the docket relevant information that becomes available after the comment closing date, and interested persons should continue to examine the docket for new material.

Executive Order 12866 (Regulatory Planning and Review and DOT Regulatory Policies and Procedures)

The FHWA has considered the impact of this document and has determined that it is neither a significant rulemaking action within the meaning of Executive Order 12866 nor a significant rulemaking under the regulatory policies and procedures of the Department of Transportation. This rulemaking would supplement the FHWA's NPRM proposing to amend its regulations regarding mitigation of impacts to privately owned wetlands, which have become outdated because of provisions in Sections 1006 and 1007 of the ISTEA authorizing greater flexibility for Federal participation in mitigating impacts to wetlands. These amendments have been codified at 23 U.S.C. 103 and 133. The recently enacted TEA–21 added the term "natural habitat" to the eligibility provisions of 23 U.S.C. 103 and 133, and added a preference for the use of established mitigation banks for wetland mitigation activities. This SNPRM would amend the NPRM to address these new provisions.

This SNPRM would not cause any significant changes to the amount of funding available to the States under the STP or NHS programs or add to the process by which States receive funding. The provisions of this proposed rulemaking would not require the additional expenditure of Federal-aid or State highway funds. Instead, this SNPRM would merely clarify the scope of the FHWA's wetlands regulations by specifying that they apply to all projects

funded pursuant to title 23, U.S.C. Thus, it is anticipated that the economic impact of this rulemaking would be minimal. In addition, it would not create a serious inconsistency with any other agency's action or materially alter the budgetary impact of any entitlements, grants, user fees, or loan programs; nor will amendment of this regulation raise any novel legal or policy issues. Therefore, a full regulatory evaluation is not required.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601–612), the FHWA has evaluated the effects of this SNPRM on small entities and has determined it would not have a significant economic impact on a substantial number of small entities. Supplementing the FHWA's June 17, 1996, NPRM and June 18, 1997, SNPRM in this manner would not affect the amount of funding available to the States through the STP or NHS programs, or the procedures used to select the States eligible to receive these funds. Furthermore, States are not included in the definition of "small entity" set forth in 5 U.S.C. 601. For these reasons, and for those set forth in the analysis of E.O. 12866, the FHWA hereby certifies that this action will not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

This proposed rule would not impose a Federal mandate resulting in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year (2 U.S.C. 1532).

Executive Order 12612 (Federalism Assessment)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this action does not raise sufficient federalism implications to warrant the preparation of a federalism assessment. This SNPRM would not preempt any State law or State regulation. No additional costs or burdens would be imposed on the States as a result of this action, and the States' ability to discharge traditional State governmental functions would not be affected by this rulemaking.

Executive Order 12372

Catalog of Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

Paperwork Reduction Act

This action does not create a collection of information requirement for the purposes of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3520.

National Environmental Policy Act

The FHWA has analyzed this rulemaking for the purposes of the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4347). This SNPRM would not, in and of itself, constitute a major Federal action significantly affecting the quality of the human environment. Instead, it would clarify the scope of the June 17, 1996, NPRM, which was intended to increase the flexibility available to States when deciding how to mitigate impacts to wetlands resulting from projects funded pursuant to the provisions of title 23, U.S.C. The passage of TEA–21, with its addition of the term "natural habitat" to the wetlands mitigation banking provisions of title 23, U.S.C., made this SNPRM necessary. Such impacts to wetlands and natural habitat and appropriate mitigation measures would be evaluated pursuant to NEPA on a project-by-project basis by the States and the FHWA. Accordingly, promulgation of this SNPRM would not require the preparation of an environmental impact statement.

Regulatory Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 23 CFR Part 777

Flood plains, Grant programs—transportation, Highways and roads, Natural habitat, Wetlands.

Issued on: March 31, 1999.

Kenneth R. Wykle,

Federal Highway Administrator.

In consideration of the foregoing, the FHWA proposes to revise 23 CFR part 777, as set forth below:

1. Part 777 is revised to read as follows:

PART 777—MITIGATION OF IMPACTS TO WETLANDS AND NATURAL HABITAT

Sec.

777.1 Purpose.
777.2 Definitions.
777.3 Background.
777.5 Federal participation.
777.7 Evaluation of impacts.
777.9 Mitigation of impacts.
777.11 Other considerations.

Authority: 42 U.S.C. 4321 *et seq.*; 49 U.S.C. 303; 23 U.S.C. 101(a), 103, 109(h), 133(b)(1), 133(b)(11), 133(d)(2), 138, 315; E.O. 11990; DOT Order 5660.1A; 49 CFR 1.48(b).

§ 777.1 Purpose.

To provide policy and procedures for the evaluation and mitigation of adverse environmental impacts to wetlands and natural habitat resulting from Federal-aid projects funded pursuant to provisions of title 23, U.S.C. These policies and procedures shall be applied by the Federal Highway Administration (FHWA) to projects under the Federal Lands Highway Program to the extent such application is deemed appropriate by the FHWA.

§ 777.2 Definitions.

In addition to those contained in 23 U.S.C. 101(a), the following definitions shall apply as used in this regulation:

Biogeochemical transformations. Those changes in chemical compounds and substances which naturally occur in ecosystems. Examples are the carbon, nitrogen, and phosphorus cycles in nature, in which these elements are incorporated from inorganic substances into organic matter and recycled on a continuing basis.

Compensatory mitigation. Activities such as restoration, enhancement, creation, and under exceptional circumstances, preservation, of wetlands, wetland buffer areas, and natural habitats, carried out to replace or compensate for the loss of wetlands or natural habitat area or functional capacity resulting from Federal-aid projects funded pursuant to provisions of title 23, U.S.C. Compensatory mitigation usually occurs in advance of or concurrent with the impacts to be mitigated, but may occur after such impacts in special circumstances.

Ecologically desirable. A state or condition desired or wanted as the result of a mitigation agreement that provides additional wetland or natural habitat area or functional capacity.

Natural habitat. A complex of natural, primarily native or indigenous vegetation, not subject to cultivation or current artificial landscaping, a primary purpose of which is to provide habitat for wildlife, either terrestrial or aquatic.

For purposes of this regulation, *habitat* has the same meaning as *natural habitat*.

Net gain of wetlands. When project impacts are unavoidable, a wetland resource conservation and management principle under which, over the long term, losses of wetlands area of functional capacity due to highway projects are offset by gains at a ratio greater than 1:1, through restoration, enhancement, preservation, or creation of wetlands or associated areas critical to the protection or conservation of wetlands functions. This definition specifically excludes natural habitat, as defined in this section, other than wetlands.

On-site, in-kind mitigation. Compensatory mitigation which replaces wetlands or natural habitat area or functions lost as a result of a highway project with the same or like wetland or habitat type and functions adjacent or contiguous to the site of the impacts.

Service area of a mitigation bank. The service area of a wetland or natural habitat mitigation bank shall be consistent with that in the Federal Guidance for the Establishment, Use and Operation of Mitigation Banks,[1] i.e., the designated area (e.g., watershed, county) wherein a bank can be expected to provide appropriate compensation for impacts to wetlands and/or other aquatic or natural habitat resources.

Wetland or habitat enhancement. Increasing the capacity of an altered or degraded site to perform specific functions by modifying the site conditions in or around the wetland or natural habitat. Examples include, but are not limited to, alteration of hydrologic regime, vegetation management, erosion control, fencing, pest control, and fertilization.

Wetland or habitat establishment period. An agreed-upon period of time required to establish wetland functional capacity in a compensatory mitigation project sufficient to compensate wetlands or habitat losses due to impacts of Federal-aid highway projects. The establishment period may vary depending on the specific wetland or habitat type being developed.

Wetland or habitat functional capacity. The ability of a wetland or natural habitat to perform natural functions, such as provide wildlife habitat, support biodiversity, store surface water, or perform biogeochemical transformations, as determined by scientific functional assessment. Natural functions of wetlands include, but are not limited to, those listed by the U.S. Army Corps of Engineers at 33 CFR 320.4(b)(2)(I) through (viii).

Wetland or habitat restoration. Reestablishment of wetlands or natural habitats on a site where they formerly existed but essentially have been eliminated.

Wetland or wetlands. The terms wetland and wetlands have the same meaning as the definition issued by the U.S. Army Corps of Engineers (33 CFR 328.3(b)) and the U.S. Environmental Protection Agency (40 CFR 230.3).

Wetlands and habitat banking and related measures. Efforts, or contributions to efforts, to restore, create, enhance, or, in exceptional circumstances, preserve wetlands, natural habitats, or functional capacity of these areas , usually undertaken in advance and outside the area of direct impacts of proposed Federal-aid highway projects and intended expressly to compensate for unavoidable wetlands or habitat losses caused by such projects, when compensation could not be achieved or would not be as environmentally beneficial if located at individual project impact sites.

Wetlands or habitat mitigation credit. A unit of wetlands or habitat mitigation, defined either by:

(1) Area or

(2) A measure of functional capacity through application of scientific functional assessment.

§ 777.3 Background.

(a) Executive Order 11990, Protection of Wetlands, and DOT Order 5660.1A, Preservation of the Nation's Wetlands, emphasize the important functions and values inherent in the Nation's wetlands.

(b) Federal agencies are directed to avoid new construction in wetlands unless the head of the agency determines that:

(1) There is no practicable alternative to such construction, and

(2) The proposed action includes all practicable measures to minimize harm to wetlands which may result from such use.

(c) Sections 103 and 133 of title 23, U.S.C., identify additional approaches for mitigation and management of impacts to wetlands and natural habitats which result from projects funded pursuant to title 23, U.S.C., as eligible for participation with Federal-aid highway funds.

§ 777.5 Federal participation.

(a) Those measures which the FHWA and a State DOT find appropriate and necessary to mitigate adverse environmental impacts to wetlands and natural habitats are eligible for Federal participation where the impacts are the result of projects funded pursuant to title 23, U.S.C. The justification for the cost of proposed mitigation measures should be considered in the same context as any other public expenditure; that is, the proposed mitigation represents a reasonable public expenditure when weighed against other social, economic, and environmental values, and the benefit realized is commensurate with the proposed expenditure. Mitigation measures shall give like consideration to traffic needs, safety, durability, and economy of maintenance of the highway.

(b) It is FHWA policy to permit, consistent with the limits set forth in this part, the expenditure of title 23, U.S.C., funds for activities required for the planning, design, construction, and establishment of wetlands and natural habitat mitigation projects, and acquisition of land or interests therein.

§ 777.7 Evaluation of impacts.

(a) The reasonableness of the public expenditure should be directly related to:

(1) The importance of the impacted wetlands and natural habitats, and

(2) The extent of highway impacts on the wetlands and natural habitats, as determined through an appropriate, interdisciplinary, impact assessment.

(b) Evaluation of the importance of the impacted wetlands and natural habitats should consider:

(1) The wetlands' and natural habitat functional capacity;

(2) Input from the appropriate resource management agencies through interagency coordination;

(3) The relative importance of these functions to the total wetland or natural habitat resource of the area; and

(4) Other factors such as uniqueness, esthetics, or cultural values.

(c) A determination of the highway impact should focus on both the short- and long-term effects of the project on wetland or natural habitat functional capacity, consistent with 40 CFR 1502.16.

§ 777.9 Mitigation of impacts.

(a) *Actions eligible for Federal funding*. There are a number of actions that can be taken to minimize the impact of highway projects on wetlands or natural habitats. The following actions qualify for Federal-aid highway funding:

(1) Where practicable, avoidance or minimization of impacts to wetlands or

[1] This document is available from FHWA Headquarters, Resource Centers, and individual State Division Offices for inspection and copying as prescribed at 49 CFR Part 7.

natural habitats through realignment and special design or construction features. In accordance with the Environmental Protection Agency's Clean Water Act Section 404(b)(1) guidelines (40 CFR part 230 *et seq.*), avoidance and then minimization must be given first consideration in mitigating wetlands impacts. These guidelines apply only to impacts to wetlands regulated under Section 404 of the Clean Water Act.

(2) After practicable avoidance and minimization measures have been exhausted, other ecologically desirable compensatory mitigation alternatives, either inside or outside of the right-of-way. These may include such measures as on-site mitigation, when that alternative is determined to be ecologically desirable and practicable; improvement of existing degraded or historic wetlands or natural habitats through restoration or enhancement on or off site; creation of new wetlands from non-wetland areas off-site; and under exceptional circumstances, preservation of existing wetlands or natural habitats on or off site. Restoration of wetlands is generally preferable to enhancement or creation of new wetlands from non-wetland areas.

(3) Improvements to existing wetlands or natural habitats. Such activities may include, but are not limited to, construction or modification of water level control structures or ditches, establishment of natural vegetation, recontouring of the site, installation or removal of irrigation or water distribution systems, pest control, installation of fencing, site monitoring, and other measures to protect, enhance, or restore the wetland or natural habitat character of the site.

(4) Wetlands mitigation banking and related measures. With respect to participation in a natural habitat or wetland mitigation effort related to a project funded under this title that has an impact that occurs within the service area of a mitigation bank, preference shall be given, to the maximum extent practicable, to the use of the mitigation bank if the bank contains sufficient available credits to offset the impact and the bank is approved in accordance with the Federal Guidance for the Establishment, Use and Operation of Mitigation Banks [2] or other applicable Federal law (including regulations).

(b) *Participation in wetlands or natural habitat mitigation banks.* If the development or acquisition of mitigation credits in wetland or natural habitat mitigation banks, either on or off-site, is determined to be the most ecologically desirable and practicable alternative for compensatory mitigation, banking alternatives eligible for participation with Federal-aid funds include such measures as the following:

(1) Multi-user wetlands or natural habitat banks established on publicly owned or controlled lands;

(2) Single purpose publicly owned banks, established by and for the use of a State DOT with Federal-aid participation; or multipurpose publicly owned banks, established with public, non-Federal-aid funds, in which credits may be purchased by highway agencies using Federal-aid funds on a per-credit basis; or

(3) Other forms of mitigation banks in which mitigation credits are purchased by State DOTs to mitigate wetlands or habitat impacts due to projects funded under title 23, U.S.C., including privately owned banks or those established with private funds to mitigate wetland or natural habitat losses which have been approved and/or permitted by the appropriate regulatory agency.

(c) *Contributions to statewide and regional efforts to conserve, restore, enhance and create wetlands or natural habitats.* Federal-aid funds may participate in the development of statewide and regional wetlands conservation plans, including any efforts and plans authorized pursuant to the Water Resources Development Act of 1990 (Pub. L. 101–640). Contributions to these efforts may occur in advance of project construction only if such efforts are consistent with all applicable requirements of Federal law and regulations and State transportation planning processes.

§ 777.11 Other considerations.

(a) The development of measures proposed to mitigate impacts to wetlands or natural habitats should include consultation with appropriate State and Federal agencies.

(b) Federal-aid funds may not participate in the replacement of wetlands or natural habitats absent sufficient assurances that the area will be maintained in the intended state as a wetland or natural habitat.

(c) The acquisition of proprietary interests in replacement wetlands or natural habitats as a mitigation measure may be in fee simple or by easement, as appropriate. The acquisition of "mitigation credits" in wetland or natural habitat mitigation banks should be accomplished through a legally recognized instrument, such as permanent easement or deed restriction, which provides for protection and permanent continuation of the wetland or natural habitat nature of the mitigation.

(d) A State DOT may acquire privately owned lands in cooperation with another public agency or third party. Such an arrangement may accomplish greater benefits than would otherwise be accomplished by the individual agency acting alone.

(e) A State DOT may transfer the title to, or enter into an agreement with, an appropriate public natural resource management agency to manage lands acquired outside the right of way without requiring a credit to Federal funds. Any such transfer of title or agreement shall require the continued use of the lands for the purpose for which they were acquired. In the event the purpose is no longer served, the lands and interests therein shall immediately revert to the State DOT for proper disposition.

(f) The reasonable costs of acquiring lands or interests therein to provide replacement lands with equivalent wetlands or natural habitat area or functional capacity associated with these areas are eligible for Federal participation.

(g) The objective in mitigating impacts to wetlands in the Federal-aid highway program is to implement the policy of a net gain of wetlands on a program wide basis, when project impacts are unavoidable.

(h) Certain activities to ensure the viability of compensatory mitigation wetlands or natural habitats during the period of establishment are eligible for Federal-aid participation. These include, but are not limited to, such activities as repair or adjustment of water control structures, pest control, irrigation, fencing modifications, replacement of plantings, and mitigation site monitoring. The establishment period should be specifically determined by the mitigation agreement among the mitigation planners prior to beginning any compensatory mitigation activities.

[FR Doc. 99–8444 Filed 4–6–99; 8:45 am]
BILLING CODE 4910–22–P

[2] See footnote 1.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 180, 185 and 186

[OPP–300841; FRL–6075–1]

RIN 2070–AB78

Tolerance Revocations for Certain Pesticides

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document announces the proposed revocation of tolerances listed in the regulatory text for the herbicides dalapon, fluchloralin, metobromuron, paraquat, and sesone; the fungicides zinc sulfate, glyodin, and manganous dimethyldithiocarbamate (manam); the insecticides coumaphos, hydrogen cyanide and *O*-Ethyl *S*-phenyl ethylphosphonodithioate (fonofos); the plant growth regulator *N,N*-dimethylpiperidinium chloride (mepiquat chloride); and the food additive ethyl formate. Also, this notice proposes to revoke the tolerance for residues of the nematocide and insecticide ethoprop in or on mushrooms and soybeans; soybeans, forage; and soybeans, hay; and the food additive tolerance for residues of the fungicide paraformaldehyde in maple syrup. EPA expects to determine whether any individuals or groups want to support these tolerances. The regulatory actions in this notice are part of the Agency's reregistration program under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), and the tolerance reassessment requirements of the Federal Food, Drug, and Cosmetic Act (FFDCA). By law, EPA is required to reassess 33% of the tolerances that were in existence on August 2, 1996, by August 1999, or about 3,200 tolerances. The regulatory actions proposed in this document pertain to the proposed revocation of 206 tolerances and/or exemptions, which would be counted among reassessments made toward the August 1999 review deadline of FFDCA section 408(q), as amended by the Food Quality Protection Act (FQPA) of 1996.

DATES: Comments must be received on or before June 7, 1999.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit IV of the SUPPLEMENTARY INFORMATION section of this notice. Be sure to identify the appropriate docket number [OPP–300841].

FOR FURTHER INFORMATION CONTACT: Amy Caicedo, Special Review Branch (7508C), Special Review and Reregistration Division, Office of Pesticide Programs, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number and e-mail address: Special Review Branch, Crystal Mall 2, 6th floor, 1921 Jefferson Davis Highway, Arlington, Virginia, Telephone: (703) 308–9399; e-mail: caicedo.amy@epa.gov.

SUPPLEMENTARY INFORMATION:

I. What is the Contribution to Tolerance Reassessment?

By law, EPA is required to reassess 33% of the tolerances that were in existence on August 2, 1996, by August 1999, or about 3,200 tolerances. As of March 1999, EPA has reassessed over 2,400 tolerances. The regulatory actions proposed in this document pertain to the proposed revocation of 206 tolerances and/or exemptions, which would be counted among reassessments made toward the August 1999 review deadline of FFDCA section 408(q), as amended by the Food Quality Protection Act (FQPA) of 1996.

II. Does this Proposed Rule Apply to Me?

You may be affected by this proposed rule if you sell, distribute, manufacture, or use pesticides for agricultural applications, process food, distribute or sell food, or implement governmental pesticide regulations. Pesticide reregistration and other actions [see FIFRA section 4(g)(2)] include tolerance and exemption reassessment under FFDCA section 408. Potentially affected categories and entities may include, but are not limited to:

Category	Examples of Potentially Affected Entities
Agricultural Stakeholders.	Growers/Agricultural Workers Contractors [Certified/Commercial Applicators, Handlers, Advisors, etc.] Commercial Processors Pesticide Manufacturers User Groups Food Consumers
Food Distributors	Wholesale Contractors Retail Vendors Commercial Traders/Importers
Intergovernmental Stakeholders.	State, Local, and/or Tribal Government Agencies
Foreign Entities	Governments, Growers, Trade Groups

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this table could also be affected. If you have any questions regarding the applicability of this action to a particular entity, you can consult with the technical person listed in the "FOR FURTHER INFORMATION CONTACT" section.

III. How can I get additional information or copies of this or other support documents?

A. Electronically

You may obtain electronic copies of this document and various support documents from the EPA Internet Home Page at http://www.epa.gov/. On the Home Page select "Laws and Regulations" and then look up the entry for this document under "**Federal Register**- Environmental Documents." You can also go directly to the "**Federal Register**" listings at http://www.epa.gov/homepage/fedrgstr/.

B. In Person or by Phone

If you have any questions or need additional information about this action, please contact the technical person identified in the "FOR FURTHER INFORMATION CONTACT" section. In addition, the official record for this notice, including the public version, has been established under docket control number [OPP–300841], including comments and data submitted electronically as described below. A public version of this record (including printed paper versions of any electronic comments) which does not include any information claimed as Confidential Business Information (CBI), is available for inspection in room 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington Virginia, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Public Information and Records Integrity Branch telephone number is 703–305–5805.

IV. How Can I Respond to this Notice?

A. How and to Whom Do I Submit Comments To?

You may submit comments through the mail, in person, or electronically. Be sure to identify the appropriate docket number (i.e., [OPP–300841]) in your correspondence.

1. *By mail.* Submit written comments, identified by the docket control number [OPP–300841], to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

2. *In person or by courier.* Deliver written comments, identified by the docket control number [OPP–300841], to: Public Information and Records Integrity Branch, Office of Pesticide Programs, U.S. Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA.

3. *Electronically*. Submit your comments and/or data electronically by email to: oppt.ncic@epa.gov. Do not submit any information electronically that you consider to be CBI. Submit electronic comments in ASCII file format avoiding the use of special characters and any form of encryption. Comment and data will also be accepted on standard computer disks in WordPerfect 5.1/6.1 or ASCII file format. All comments and data in electronic form must be identified by the appropriate docket control number [OPP–300841]. You may also file electronic comments and data online at many Federal Depository Libraries.

B. How Should I Handle CBI Information in My Comments?

You may claim information that you submit in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential will be included in the public docket by EPA without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult with the technical person identified in the "FOR FURTHER INFORMATION CONTACT" section.

V. What Is a "Tolerance"?

A "tolerance" represents the legally allowed maximum level for residues of pesticide chemicals in or on raw agricultural commodities and processed foods. Section 408 of FFDCA, 21 U.S.C. 301 et seq., as amended by the FQPA of 1996, Pub. L. 104–170, authorizes the establishment of tolerances (maximum residue levels), exemptions from the requirement of a tolerance, modifications in tolerances, and revocation of tolerances for residues of pesticide chemicals in or on raw agricultural commodities and processed foods (21 U.S.C. 346(a)). Without a tolerance or exemption, food containing pesticide residues is considered to be unsafe and therefore "adulterated" under section 402(a) of the FFDCA. If food containing pesticide residues is considered to be "adulterated," you can not distribute the product in interstate commerce (21 U.S.C. 331(a) and 342(a)). For a food-use pesticide to be sold and distributed, the pesticide must not only have appropriate tolerances under the FFDCA, but also must be registered under section 3 of FIFRA (7 U.S.C. et seq.). To retain these tolerances and exemptions, EPA must make a finding that the tolerances and exemptions are safe. To make this safety finding, EPA needs data and information indicating that there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide residues covered by the tolerances and exemptions.

Monitoring and enforcement of pesticide tolerances and exemptions are carried out by the U.S. Food and Drug Administration (FDA) and the U.S. Department of Agriculture (USDA). This includes monitoring for pesticide residues in or on commodities imported into the United States.

VI. Why Is EPA Proposing the Tolerance Actions Discussed below?

EPA is proposing a number of these tolerance actions to implement the tolerance recommendations made during the Reregistration Eligibility Decision (RED) process, and as follow-up on canceled pesticides and uses of pesticides. As part of the RED process, EPA is required to determine whether each of the amended tolerances meets the safety standards under the Food Quality Protection Act (FQPA). The safety finding determination is found in detail in each RED for the active ingredient. REDs propose certain tolerance actions to be implemented to meet safety findings and change commodity names and groupings in accordance with new EPA policy. Printed copies of the REDs may be obtained from EPA's National Center for Environmental Publications and Information (EPA/NCEPI), P.O. Box 42419, Cincinnati, OH 45242–2419, telephone 1–800–490–9198; fax 513–489–8695 and from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161, telephone 703–487–4650. Electronic copies of the RED are available on the internet at http://www.epa.gov/REDs.

Of the chemicals in this **Federal Register** Notice, REDs have been issued for Paraquat, Coumaphos, and Mepiquat chloride. The REDs for Paraquat and Mepiquat chloride were issued after passage of FQPA so they contain the Agency's evaluation of the database for these pesticides, including requirements for additional data on the active ingredients to confirm the potential human health and environmental risk assessments associated with current product uses as well as the Agency's decisions and conditions under which these uses and products will be eligible for registration. A determination of safety by EPA includes consideration of (a) potential cumulative effects with pesticides that have a common mode of toxicity, (b) aggregate risks resulting from exposure to residues in food and drinking water and exposure occurring due to pesticide application in residential settings, and (c) special sensitivity to children. FFDCA section 408(b)(2)(C) requires that when determining appropriate tolerances, EPA apply an additional ten-fold safety factor for infants and children to take into account potential pre- and post-natal toxicity and the completeness of data on toxicity and exposure unless a different margin of safety, on the basis of reliable data, will be safe for infants and children. Retention, reduction, or removal of the ten-fold safety factor is based on a weight of evidence evaluation of all applicable data. This **Federal Register** proposal for Paraquat and Mepiquat chloride only includes the tolerances proposed for revocation. At a later date, EPA will issue a **Federal Register** proposal for the other tolerance reassessments in the Paraquat and Mepiquat chloride REDs. An FQPA assessment still remains to be done for Coumaphos since this RED was completed before passage of FQPA.

In addition to implementing the tolerance recommendations found in RED documents, this **Federal Register** notice proposes revocation for canceled uses of certain pesticides. Registrations for Dalapon, Ethyl Formate, Fluchloralin, Fonofos, Glyodin, Hydrogen Cyanide, Manam, Metobromuron, Sesone, and Basic Zinc Sulfate were voluntarily canceled by their respective registrants. It is EPA's general practice to propose revocation of tolerances for residues of pesticide active ingredients for which FIFRA registrations no longer exist. EPA has historically expressed a concern that retention of tolerances that are not necessary to cover residues in or on legally treated foods has the potential to encourage misuse of pesticides within the United States. However, in accordance with FFDCA section 408, EPA will not revoke any tolerance or exemption proposed for revocation if any person demonstrates a need for the retention of the tolerance, and if retention of the tolerance will meet the tolerance standard established under FQPA. Generally, interested parties support the retention of such tolerances in order to permit treated commodities to be legally imported into the United States, since raw agricultural commodities or processed food or feed commodities containing pesticide residues not covered by a tolerance or exemption are considered to be adulterated.

For tolerances without U.S. registrations, EPA requires the same

toxicology and residue chemistry data requirements as are needed to support U.S. food-use registrations. For import tolerances, EPA applies these data requirements on a case-by-case basis to account for specific growing conditions in foreign countries. (See 40 CFR part 158 for EPA's data requirements to support domestic use of a pesticide and the establishment and maintenance of a tolerance. EPA is developing a guidance document concerning data requirements for import tolerance support. This guidance will be made available to interested persons). In most cases, EPA requires residue chemistry data (crop field trials) that are representative of growing conditions in exporting countries in the same manner that EPA requires representative residue chemistry data from different U.S. regions to support domestic use of a pesticide and any resulting tolerance(s) or exemption(s). Good Laboratory Practice (GLP) requirements for studies submitted in support of tolerances and exemptions for import purposes only are the same as for domestic purposes; i.e., the studies are required to either fully meet GLP standards, or have sufficient justification presented to show that deviations from GLP requirements do not significantly affect the results of the studies.

VII. Which Pesticides Are Covered by this Action?

The following pesticides are covered by this proposed rule:

1. Basic zinc sulfate is a fungicide used to control blight, brown rot, leaf spot, and scab. It was manufactured by FMC Corp. Agricultural Products Group, Griffin Corp., Marzone Inc., Puregro Co., Solaris Group of The Monsanto Co., Sureco Inc., Tifchem Products Inc., and W.R. Grace and Company.

2. Coumaphos [*O,O*-Diethyl *O*-(3-chloro-4-methyl-2-oxo-2*H*-1-benzopyran-7-yl) phosphorothioate], trade names CO-Ral, Baymix, Bay 21/199, Muscatox, Asuntol, Ent–17957, Resitox, is an organophosphate insecticide used for control of a wide variety of livestock insects, including cattle grubs, screw worms, lice, scabies, flies, and ticks. It is used against ectoparasites, which are insects that live on the outside of host animals such as sheep, goats, horses, pigs, and poultry. It is added to cattle and poultry feed to control the development of fly larvae that breed in manure. It is manufactured by Bayer Corporation.

3. Dalapon (2,2-dichloropropionic acid, trade names Dalapon 85 and GX Dalapon) is an herbicide used to control Bermuda grass, oxtails, Johnson grass, quackgrass, and other perennial and annual grasses, as well as cattails and rushes. It was manufactured by Aceto Agriculture Chemicals Corp. and by Garden Exchange Ltd.

4. Ethoprop (*O*-ethyl *S,S*-dipropyl phosphorodithioate, trade name Mocap) is a nematocide and insecticide used to control aphids, beetles, billbugs, grubs, nematodes, rootworms, weevils, and wireworms. It is manufactured by Rhone-Poulenc AG Company.

5. Ethyl formate is a food additive used to control the flour beetle, Indian meal moth, and raisin moth. It was manufactured by Coast Laboratories and by International Minerals and Chemical Corporation.

6. Fluchloralin (*N*-(2-chloroethyl)-1-*a,a,a*-trifluoro-2,6-dinitro-*N*-propyl-*p*-toluidine, trade name Basalin) is a selective herbicide used to control broadleaf weeds, crabgrass, oxtails, goosegrass, Johnson grass, and pigweed. It was manufactured by BASF Corporation.

7. *O*-Ethyl *S*-phenyl ethylphosphonodithioate (Fonofos, trade names Dyfonate, N–2790, Ent–25,796, Stauffer N–2790) is a soil applied organophosphate insecticide. It was manufactured by Zeneca Ag Products.

8. Glyodin (2-heptadecyl-2-imidazoline acetate or 2-heptadecyl-2-imidazoline (base)) is a fungicide used to control black rot, black spot, brown rot, leaf spot, powdery mildew, scab, and sooty blotch. It was manufactured by Agway Inc., Grower Service Corp., and Union Carbide Corporation.

9. Hydrogen cyanide is an insecticide and rodenticide fumigant used to control beetles, cockroaches, mealworms, mice, moths, rats, and weevils. It was manufactured by Degesch America, Inc. and by Fumico Incorporated.

10. Manganous dimethyldithiocarbamate (manam, trade names Fundex, Tricarbamix, and Niagara niacide) is a fungicide used to control leaf spot, rust and scab. It was manufactured by Aceto Agriculture Chemicals Corp., ELF Atochem North America Inc., and FMC Corp. Agricultural Products Group.

11. Metobromuron (*N'*-(4-bromophenyl)-*N*-methoxy-*N*-methylurea) is a selective herbicide used to control barnyard grass, carpetweed, chickweed, crabgrass, goose grass, pigweed, and ragweed. It was manufactured by Aceto Agriculture Chemicals Corporation.

12. *N,N*-dimethylpiperidinium chloride (mepiquat chloride, trade name Pix) is a plant growth regulator. It is manufactured by BASF Corporation.

13. Paraformaldehyde (trade names Flomor, Ma-pel, Sapflo) is a fungicide and bacteriocide used to control pathogenic fungi, pathogenic bacteria, and mold/mildew. It is manufactured by Lamb Natural Flow, Inc., Sugar Bush Supply Co., and Reynolds Sugar Bush Incorporated.

14. Paraquat (trade names Cyclone, Gramoxone, and Surefire) is a herbicide used to control a broad spectrum of emerged weeds. It is manufactured by Zeneca Ag Products.

15. Sesone (sodium 2,4-dichlorophenoxyethyl sulfate) is a herbicide used to control barnyard grass, carpetweed, chickweed, crabgrass, foxtail, and pigweed. It was manufactured by Landia Chemical Co. and by Tifchem Products Incorporated.

VIII. What Action Is Being Taken?

This notice proposes revocation of all FFDCA tolerances for residues of the herbicides dalapon, 40 CFR 180.150, 185.1500, and 186.1500; fluchloralin, § 180.363; metobromuron § 180.250; and sesone, § 180.102; the fungicides basic zinc sulfate, § 180.244; glyodin, § 180.124; and manganous dimethyldithiocarbamate, § 180.161; the insecticides fonofos, § 180.221; and hydrogen cyanide, § 180.130; and the food additive ethyl formate, § 180.520; because no registered uses exist. The registrations for these pesticide chemicals were canceled because the registrant failed to pay the required maintenance fee and/or the registrant voluntarily canceled all registered uses of the pesticide.

For the following pesticides, certain tolerances for specific commodities are proposed to be removed.

1. *Ethoprop.* The following tolerances for residues in 40 CFR 180.262(a) on mushrooms; soybeans; soybeans, forage; and soybeans, hay are being proposed for revocation for Ethoprop because uses no longer exist for mushrooms, and the registrant voluntarily canceled the soybean uses.

2. *Paraformaldehyde.* The paraformaldehyde tolerance in 40 CFR 185.4650 for residues in maple syrup is being proposed for revocation because the use was voluntarily canceled by the registrant.

3. *Coumaphos.* The tolerances in 40 CFR 180.189 for residues of coumaphos for residues on eggs; poultry, fat; poultry, meat byproducts(mbyp); and poultry, meat are being proposed for revocation because these uses were voluntarily canceled by the registrant.

4. *N,N-dimethylpiperidinium chloride.* This notice also proposes revocation of FFDCA tolerances in 40 CFR 180.384 for residues of the plant

growth regulator *N,N*-dimethylpiperidinium chloride (mepiquat chloride) in or on cotton, forage because it is no longer considered a significant livestock feed item. Tolerances on eggs; milk; poultry, fat; poultry, mbyp; poultry, meat are being proposed for revocation because there is no reasonable expectation of finite residues and therefore a tolerance is unnecessary (40 CFR 180.6(b)). The tolerance for cottonseed meal is being revoked because it will be covered within the reassessed raw agricultural commodities tolerance.

5. *Paraquat*. EPA proposes to revoke the tolerances for rye grain and oat grain in 40 CFR 180.205(a) because no registered uses exist. The Agency proposes to revoke the tolerances for poultry, fat; meat; and poultry, mbyp in 40 CFR 180.205(a) because data indicate that no residues are expected. The statement of policy is given in 40 CFR 180.6(a)(3). In such cases, the Agency proposes to revoke the existing tolerances because they are unnecessary. Also, the Agency proposes to revoke the tolerances for bean straw; hops, fresh; hop vines; lentil, hay; peanut, vines; and sunflower, seed hulls in 40 CFR 180.205(a) because they are no longer considered raw agricultural commodities.

It is EPA's general practice to propose revocation of those tolerances for residues of pesticide chemicals for which there are no active registrations. These revocations will become final unless any person in commenting on the proposal demonstrates a need for the tolerance to cover residues in or on imported commodities or domestic commodities legally treated.

IX. When Do These Actions Become Effective?

EPA proposes that these actions become effective 90 days following publication of a final rule in the **Federal Register**. EPA is proposing this effective date because EPA believes that by this date all existing stocks of pesticide products labeled for the uses associated with the tolerances proposed for revocation will have been exhausted for more than 1 year; giving ample time for any treated fresh produce to clear trade channels. Therefore, EPA believes revocation after a 90–day period should be reasonable. However, if EPA is presented with information that there are existing stocks still available for use and that information is verified, EPA will consider extending the expiration date of the tolerance. If you have comments regarding existing stocks and whether the effective date accounts for these stocks, please submit comments as described in Unit IV of the SUPPLEMENTARY INFORMATION section of this notice.

Any commodities listed in the regulatory text of this notice that are treated with the pesticides subject to this notice, and that are in the channels of trade following the tolerance revocations, shall be subject to FFDCA section 408(1)(5), as established by FQPA. Under this section, any residue of these pesticides in or on such food shall not render the food adulterated so long as it is shown to the satisfaction of FDA that, (1) the residue is present as the result of an application or use of the pesticide at a time and in a manner that was lawful under FIFRA, and (2) the residue does not exceed the level that was authorized at the time of the application or use to be present on the food under a tolerance or exemption from tolerance. Evidence to show that food was lawfully treated may include records that verify the dates that the pesticide was applied to such food.

X. What Can I Do If I Wish the Agency to Maintain a Tolerance That the Agency Proposes to Revoke?

In addition to submitting comments in response to this proposed rule, you may also submit an objection. EPA subsequently issues a final rule after considering the comments that are submitted in response to this notice. If you fail to file an objection to the final rule within the time period specified, you will have waived the right to raise any issues resolved in the final rule. After the specified time, the issues resolved in the final rule cannot be raised again in any subsequent proceedings.

This proposal provides 60 days for any interested person to demonstrate a need for retaining a tolerance, if retention of the tolerance will meet the tolerance standard established under FQPA. If EPA receives a comment to that effect, EPA will not proceed to revoke the tolerance immediately. However, EPA will take steps to ensure the submission of any needed supporting data and will issue an order in the **Federal Register** under FFDCA section 408(f) if needed. The order would specify the data needed, the time frames for its submission, and would require that within 90 days some person or persons notify EPA that they will submit the data. If the data are not submitted as required in the order, EPA will take appropriate action under FIFRA or FFDCA.

XI. How Do the Regulatory Assessment Requirements Apply to this Action?

A. Is this a "Significant Regulatory Action"?

No. Under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action." The Office of Management and Budget (OMB) has determined that tolerance actions, in general, are not "significant" unless the action involves the revocation of a tolerance that may result in a substantial adverse and material affect on the economy. In addition, this action is not subject to Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997), because this action is not an economically significant regulatory action as defined by Executive Order 12866. Nonetheless, environmental health and safety risks to children are considered by the Agency when determining appropriate tolerances. Under FQPA, EPA is required to apply an additional 10-fold safety factor to risk assessments in order to ensure the protection of infants and children unless reliable data supports a different safety factor.

B. Does this Action Contain Any Reporting or Recordkeeping Requirements?

No. This action does not impose any information collection requirements subject to OMB review or approval pursuant to the Paperwork Reduction Act (44 U.S.C. 3501 et seq.).

C. Does this Action Involve Any "Unfunded Mandates"?

No. This action does not impose any enforceable duty, or contain any "unfunded mandates" as described in Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

D. Do Executive Orders 12875 and 13084 Require EPA to Consult with States and Indian Tribal Governments Prior to Taking the Action in this Notice?

No. Under Executive Order 12875, entitled *Enhancing Intergovernmental Partnerships* (58 FR 58093, October 28, 1993), EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to the Office of Management

and Budget (OMB) a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's proposed rule does not create an unfunded Federal mandate on State, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this proposed rule.

Under Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998), EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's proposed rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this proposed rule.

E. Does this Action Involve Any Environmental Justice Issues?

No. This proposed rule does not involve special considerations of environmental-justice related issues pursuant to Executive Order 12898, entitled "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations" (59 FR 7629, February 16, 1994).

F. Does this Action Have a Potentially Significant Impact on a Substantial Number of Small Entities?

No. The Agency has certified that tolerance actions, including the tolerance actions in this document, are not likely to result in a significant adverse economic impact on a substantial number of small entities. The factual basis for the Agency's determination, along with its generic certification under section 605(b) of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), appears at 63 FR 55565, October 16, 1998 (FRL–6035–7). This generic certification has been provided to the Chief Counsel for Advocacy of the Small Business Administration.

G. Does this Action Involve Technical Standards?

No. This tolerance action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Pub. L. 104–113, Section 12(d) (15 U.S.C. 272 note). Section 12(d) directs EPA to use voluntary consensus standards in its regulatory activities unless doing so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, business practices, etc.) that are developed or adopted by voluntary consensus standards bodies. The NTTAA requires EPA to provide Congress, through OMB, explanation when the Agency decides not to use available and applicable voluntary consensus standards. EPA invites public comment on this conclusion.

H. Are There Any International Trade Issues Raised by this Action?

These revocations will not become final if comments are received which demonstrate the need to maintain the tolerance to cover residues in or on imported commodities. However, data must be submitted that support the continued tolerance. The U.S. EPA is developing guidance concerning data requirements for import tolerance support. This guidance will be made available to interested persons.

I. Is this Action Subject to Review under the Congressional Review Act?

No. This action is not a final rule. Under 5 U.S.C. 801(a)(1)(A) of the Administrative Procedure Act (APA) as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (Title II of Pub. L. 104–121, 110 Stat. 847), only final rules must be submitted to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication in the **Federal Register**.

List of Subjects

40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

40 CFR Part 185

Environmental Protection, Food additives, Pesticide and pest.

40 CFR Part 186

Environmental Protection, Animal feeds, Pesticide and pest.

Dated: March 31, 1999.

Lois Rossi,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR parts 180, 185 and 186 be amended as follows:

PART 180—[AMENDED]

1. In part 180:

a. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

§§ 180.102, 180.124, 180.130, 180.150, and 180.161 [Removed]

b. By removing §§ 180.102, 180.124, 180.130, 180.150 and 180.161.

c. Section 180.189 is revised to read as follows:

§ 180.189 Coumaphos; tolerances for residues.

Tolerances for residues of the insecticide coumaphos (*O,O*-diethyl 0-3-chloro-4-methyl-2-oxo- 2*H*-1-benzopyran-7-yl phosphorothioate and its oxygen analog (*O,O*-diethyl 0-3-chloro-4-methyl-2-oxo- 2H-1-benzopyran-7-yl phosphate) in or on raw food commodities as follows:

Commodity	Parts per million
Cattle, fat	1.0
Cattle, meat	1.0

Commodity	Parts per million
Cattle, mbyp	1.0
Goat, fat	1.0
Goat, meat	1.0
Goat, mbyp	1.0
Hog, fat	1.0
Hog, meat	1.0
Hog, mbyp	1.0
Horse, fat	1.0
Horse, meat	1.0
Horse, mbyp	1.0
Milk, fat (=n in whole milk)	0.5
Sheep, fat.	1.0
Sheep, meat	1.0
Sheep, mbyp	1.0

§ 180.205 [Amended]

d. By removing from § 180.205(a), *Paraquat*, the entries for bean straw; hops, fresh; hop vines; lentil, hay; oat grain; peanut, vines; poultry, fat; poultry, meat; poultry, mbyp; rye grain, and sunflower, seed hulls.

§§ 180.221, 180.244, and 180.250 [Removed]

e. By removing §§ 180.221, 180.244, and 180.250.

§ 180.262 [Amended]

f. By removing, from § 180.262(a), *Ethoprop; tolerances for residues*, the entry for mushrooms.

§ 180.363 [Removed]

g. By removing § 180.363.

§ 180.384 [Amended]

h. By removing from § 180.384(a), *N,N-dimethylpiperidinium chloride; tolerances for residues*, the entries for cotton forage; cottonseed; cottonseed meal; eggs; milk; poultry, fat; poultry, mbyp; and poultry, meat.

§ 180.520 [Removed]

i. By removing § 180.520.

PART 185—[AMENDED]

1. In part 185:

a. The authority citation for part 185 continues to read as follows:

Authority: 21 U.S.C. 346a, 348.

§§ 185.1500 and 185.4650 [Removed]

b. By removing §§ 185.1500 and 185.4650.

PART 186—[AMENDED]

1. In part 186:

a. The authority citation for part 186 continues to read as follows:

Authority: 21 U.S.C. 342, 348, and 371.

§§ 186.1500 [Removed]

b. By removing § 186.1500.

[FR Doc. 99–8635 Filed 4–6–99; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 25

[IB Docket No. 99–81; RM–9328; FCC 99–50]

The Establishment of Policies and Service Rules for the Mobile Satellite Service in the 2 GHz Band

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Federal Communications Commission (FCC) proposes to amend the regulations covering the 1.6/2.4 GHz Mobile Satellite Service (MSS) to incorporate the rules for the 2 GHz MSS in a Notice of proposed rulemaking (Notice). The Notice also seeks comment on non-service link issues, service rules, and frequency coordination. The actions are necessary to establish service rules for the 2 GHz MSS and to obtain public comment on policies for the 2 GHz MSS. The effect of amending the existing 1.6/2.4 GHz MSS rules to incorporate the 2 GHz MSS is to simplify and harmonize the rules for these types of satellite services in the Commission's rules.

DATES: Submit comments on or before June 24, 1999 and submit reply comments on or before July 26, 1999.

ADDRESSES: Office of the Secretary, Federal Communications Commission, 445 Twelfth Street, S.W., Washington, D.C. 20554. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (May 1, 1998). Comments filed through the ECFS can be sent as an electronic file via the Internet to <http://www.fcc.gov/e-file/ecfs.html>. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to ecfs@fcc.gov, and should include the following words in the body of the message, "get form <your e-mail address>." A sample form and directions will be sent in reply.

FOR FURTHER INFORMATION CONTACT: *Technical Information:* Alex Roytblat, 202–418–7501; *Legal Information:* Chris Murphy, 202–418–2373 or Howard Griboff, 202–418–0657.

SUPPLEMENTARY INFORMATION:

1. The Commission is authorized to conduct this rulemaking pursuant to its statutory authority contained in the Communications Act of 1934, as amended. 47 U.S.C. 154(i), 303(v). The Notice proposes to grant in part the Petition for Expedited Rulemaking (RM–9328) filed by ICO Services Limited, which requests that the Commission establish service rules for the 2 GHz mobile satellite service by amending the existing Big LEO mobile satellite service rules rather than by developing an entirely new set of rules. The Notice also proposes not to adopt financial qualification entry criteria because all of the proposed systems can be accommodated in the available spectrum. The Notice proposes four main spectrum assignment options. The first is a "flexible band arrangement" that would grant each system 2.5 MHz in uplink and downlink spectrum, group systems in segments based on the particular technology used, and provide expansion spectrum between the assigned segments for additional system requirements. The second proposes a "negotiated entry" approach that would license all the applicants across the entire band and leave it to them to coordinate their operations with the Commission being available to resolve disputes. The third and fourth options, respectively, are a "traditional band arrangement" in which the spectrum would be divided equally among the applicants, and a proposal to auction licenses in the event that none of the preceding three options is viable. The Notice also asks commenters to propose different spectrum assignment alternatives or whether there are other viable approaches or combinations to sharing this spectrum.

2. The Notice reviews each proposed service rule and seeks comment on specific proposals for applying the rules to the 2 GHz MSS. For instance, the Notice seeks comment on the appropriate license term for 2 GHz MSS systems and whether they should be required to build their systems with public safety capabilities such as

position determination and automatic number identification. The Notice also requests commenters to address the need for service to rural and unserved areas, including Indian reservations, in their comments, and the role that these new systems can play in meeting this need. Specifically, the Notice asks commenters to address whether one criterion for resolution of expansion band coordination disputes should be whether a licensee is providing service to unserved areas, or whether licensees should be granted extensions of system implementation milestones if they will provide service to unserved communities.

3. In addition, the Notice seeks comment whether and how orbital debris mitigation practices should be applied to 2 GHz mobile satellite systems. The Notice also seeks comment on out-of-band emission requirements and incorporating the Global Mobile Personal Communications Service and handset roaming authorization procedures addressed in a rulemaking recently adopted by the Commission (IB Docket No. 99–67, FCC 99–37 (released March 5, 1999). Moreover, the Notice acknowledges relocation issues associated with the authorization of the 2 GHz MSS and offers commenters an opportunity to address any in-band sharing issues, particularly as they may affect the Commission's choice of assignment methods in this proceeding. Finally, the Notice seeks input on international coordination of the U.S. 2 GHz MSS band arrangement. In this regard, the Notice seeks input on ways the U.S. band arrangement could achieve compatibility with the existing European 2 GHz MSS band arrangement.

Initial Regulatory Flexibility Analysis

Pursuant to the Regulatory Flexibility Act of 1990, 5 U.S.C. 601–612, (RFA) as amended by the Contract with America Advancement Act of 1996, Public Law No. 104–121, 110 Stat. 847, the Commission's Initial Regulatory Flexibility Analysis with respect to this Notice of Proposed Rulemaking is as follows:

Reason for and Objectives of the Proposed Rule: This Notice of Proposed Rulemaking (Notice) seeks comment on various proposals for creating a spectrum assignment approach that would accommodate all proposed 2 GHz MSS systems and provide service to consumers as quickly as possible. This Notice also seeks comment on proposals for service rules to apply to 2 GHz MSS systems. These actions are necessary for the Commission to evaluate these proposals and seek comment from the public on any other alternatives. The objective of this proceeding is to assign the 2 GHz MSS spectrum in an efficient manner and create rules to ensure systems implement their proposals in a manner that serves the public interest. We believe that adoption of the proposed rules will reduce regulatory burdens and, with minimal disruption to existing permittees and licensees, result in the continued development of 2 GHz MSS and other satellite services to the public.

Legal Basis: This Notice is adopted pursuant to Sections 1, 4(i), 303(r), 303(v), 307, 309(a), 309(j), 310, 319(d), 321(b), 332, 359 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 303(r), 303(v), 307, 309(a), 309(j), 310, 319(d), 321(b), 332, 359 and 5 U.S.C. 553 of the Administrative Procedures Act.

Description and Estimate of Small Entities Subject to the Rules: The Commission has not developed a definition of small entities applicable to geostationary or non-geostationary orbit fixed-satellite or mobile satellite service operators. Therefore, the applicable definition of small entity is the definition under the Small Business Administration (SBA) rules applicable to Communications Services, Not Elsewhere Classified. This definition provides that a small entity is one with $11.0 million or less in annual receipts. According to Census Bureau data, there are 848 firms that fall under the category of Communications Services, Not Elsewhere Classified which could potentially fall into the 2 GHz MSS category. Of those, approximately 775 reported annual receipts of $11 million or less and qualify as small entities. The rules proposed in this Notice apply only to entities providing 2 GHz mobile satellite service. Small businesses may not have the financial ability to become 2 GHz MSS system operators because of the high implementation costs associated with satellite systems and services. At least one of the 2 GHz MSS applicants may be considered a small business at this time. We expect, however, that by the time of implementation it will no longer be considered a small business due to the capital requirements for launching and operating its proposed system. Since there is limited spectrum and orbital resources available for assignment, we estimate that no more than 9 entities will be approved by the Commission as operators providing these services. Therefore, because of the high implementation costs and the limited spectrum resources, we do not believe that small entities will be impacted by this rulemaking to a great extent.

Reporting, Recordkeeping, and Other Compliance Requirements: The proposed action in this Notice would affect those entities applying for 2 GHz MSS space station and earth station authorizations and those applying to participate in assignment of 2 GHz MSS spectrum. In the case where there is not any mutual exclusivity, applicants will be required to follow the streamlined application procedures of part 25 for space and earth station licenses by submitting the information required by Form 312, where applicable. In the case where there is mutual exclusivity between applicants for authorizations and spectrum reservations in the case of letter of intent filers, the competitive bidding rules of part 1 will be used to determine the licensee and/or spectrum designee. If auctions are required, applicants and letter of intent filers will have to comply with the requirement to file a short-form (FCC Form 175). Completion of short-form FCC Form 175 to participate in an auction is not estimated to be a significant economic burden for these entities. The action proposed will also affect auction winners in that it will require them to submit a long Form 312 application for authorization. Submission of Form 312 will be required by all 2 GHz MSS applicants and letter of intent filers whether selected through the competitive bidding process or not.

Federal Rules that Overlap, Duplicate or Conflict with These Proposed Requirements: None. One of the main objectives of the Notice is to eliminate any existing overlap or duplication of rules between the 2 GHz MSS and other satellite services.

Steps Taken to Minimize Significant Economic Impact on Small Entities and Significant Alternatives Considered: In developing the proposals contained in this Notice, we have attempted to minimize the burdens on all entities in order to allow maximum participation in the 2 GHz MSS market while achieving our other objectives. We seek comment on the impact of our proposals on small entities and on any possible alternatives that could minimize the impact of our rules on small entities. In particular, we seek comment on alternatives to the reporting, recordkeeping, and other compliance requirements discussed above. Written comments are requested on this Initial Regulatory Flexibility Analysis. These comments must be filed in accordance with the same filing deadlines set for comments on the other issues in this Notice of Proposed Rulemaking, but they must have a separate and distinct heading designating them as responses to the Regulatory Flexibility Analysis.

The Public Affairs, Reference Operations Division, shall send a copy of this Notice to the Chief Counsel for Advocacy of the Small Business Administration in accordance with Section 603(a) of the Regulatory Flexibility Act.

Comments are solicited: Written comments are requested on this Initial Regulatory Flexibility Analysis. These comments must be filed in accordance with the same filing deadlines set for comments on the other issues in this Notice of Proposed Rulemaking, but they must have a separate and distinct heading designating them as responses to the Regulatory Flexibility Analysis.

List of Subjects in 47 CFR Part 25

Satellites.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–8510 Filed 4–6–99; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 171, 177, 178, 180

[Docket No. RSPA–97–2718 (HM–225A)]

RIN 2137–AD07

Hazardous Materials: Revision to Regulations Governing Transportation and Unloading of Liquefied Compressed Gases

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice of Negotiated Rulemaking Committee Meeting.

SUMMARY: RSPA gives notice of a negotiated rulemaking advisory committee (the Committee) meeting for May 4–5, 1999. This notice is issued in accordance with the provisions of the Federal Advisory Committee Act. The purpose of this meeting is for the Committee to negotiate the content of a final rule to be issued by RSPA. The final rule will address requirements for alternative safety standards for preventing and mitigating unintentional releases of hazardous materials during the unloading of cargo tank motor vehicles in liquefied compressed gas service. The public is invited to attend; an opportunity for members of the public to make oral presentations will be provided if time permits.

DATES: The May 4–5, 1999 meeting is scheduled from 8:30 a.m. to 4 p.m.

ADDRESSES: The meeting will take place at the Department of Transportation, Room 6244–6248, 400 Seventh Street, SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Jennifer Karim or Susan Gorsky, (202) 366–8553, Office of Hazardous Materials Standards, Research and Special Programs Administration, Department of Transportation. Facilitator: Philip J. Harter, The Mediation Consortium, (202) 887–1033.

SUPPLEMENTARY INFORMATION: On March 22, 1999, RSPA published in the **Federal Register** a notice of proposed rulemaking (64 FR 13856) recommending alternative safety standards for preventing and mitigating unintentional releases of hazardous materials during the unloading of cargo tank motor vehicles in liquefied compressed gas service. This proposed rule was developed through consensus by the Committee. The Committee was established to develop recommendations for alternative safety standards for preventing and mitigating unintentional releases of hazardous materials during the unloading of cargo tank motor vehicles in liquefied compressed gas service. Meeting summaries and other relevant materials are placed in the public docket and can be accessed through (http://dms.dot.gov).

Issued in Washington, DC, on April 2, 1999, under authority delegated in 49 CFR Part 1.

Thomas G. Allan,

Acting Director, Office of Hazardous Materials Standards, Research and Special Programs Administration.

[FR Doc. 99–8629 Filed 4–6–99; 8:45 am]

BILLING CODE 4910–60–M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 192 and 195

[Docket No. RSPA–98–4733; Notice 1]

RIN 2137–AD25

Pipeline Safety: Gas and Hazardous Liquid Pipeline Repair

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: We are proposing to adopt a safety performance standard for the repair of corroded or damaged steel pipe in gas or hazardous liquid pipelines. Because present safety standards specify particular methods of repair, operators must get approval from government regulators to use innovative repair technologies. The proposed standard would encourage technological innovations and reduce repair costs without reducing safety.

DATES: Submit written comments by June 7, 1999.

ADDRESSES: All comments should identify the docket number and title of this action, which are stated above in the heading. Comments may be mailed or delivered to the Docket Facility, U.S. Department of Transportation, Room #PL–401, 400 Seventh Street, SW, Washington, DC 20590–0001. The original and two copies should be submitted. Persons who want confirmation of mailed comments must include a self-addressed stamped postcard. Comments may also be e-mailed to ops.comments@rspa.dot.gov in ASCII or text format. The Dockets Facility is open from 10:00 a.m. to 5:00 p.m., Monday through Friday, except on Federal holidays when the facility is closed.

FOR FURTHER INFORMATION CONTACT: L. M. Furrow at (202)366–4559 or furrowl@rspa.dot.gov. Comments may be read on the internet at http://dms.dot.gov. General information about RSPA's pipeline safety program can be obtained at http://ops.dot.gov.

SUPPLEMENTARY INFORMATION:

Current Pipeline Repair Safety Standards

If a pipeline operator discovers an unsafe pipe dent during the construction of a steel gas transmission line or main to be operated at 20 percent or more of specified minimum yield strength (SMYS), DOT safety standards require that the operator remove the dent by cutting out the damaged piece of pipe as a cylinder (49 CFR 192.309(b)). This repair requirement does not allow operators to use new or more innovative technologies to repair the dent.

One of the DOT maintenance standards for steel gas transmission lines operating at 40 percent or more of SMYS similarly disallows the use of new technologies (49 CFR 192.713). Under this standard, if an operator discovers an imperfection or damage to pipe that impairs the serviceability of the line, the operator must either replace the pipe or repair it by installing a full encirclement split sleeve of appropriate design. Although this standard permits operators to use two widely-accepted methods of pipe repair, because it prescribes methods of repair rather than what the repair should accomplish, the standard lacks

flexibility. It denies operators the opportunity to take advantage of innovative repair methods. It also discourages operators from developing new repair methods that may be more economical.

Some DOT safety standards governing the repair of corroded pipe also lack flexibility: If a gas transmission line has a large area of general corrosion that has reduced the pipe wall below the thickness required for the maximum allowable operating pressure (MAOP), the corroded pipe must be replaced, unless its operating pressure is reduced (49 CFR 192.485(a)). In gas distribution pipelines, such corroded pipe must be replaced (49 CFR 192.487(a)). In hazardous liquid or carbon dioxide pipelines, such pipe must be replaced unless the operating pressure is reduced (49 CFR 195.416(f)).

All these repair standards were based on recommended industry practices in vogue over 30 years ago. The 1968 edition of the American Society of Mechanical Engineers (ASME) B31.8 Code was the basis for §§ 192.309(b) and 192.713, while §§ 192.485(a) and 192.487(a) were based on the 1969 edition of the National Association of Corrosion Engineers Standard RP–01–69. Section 195.416(f) was based on a comparable provision of the 1966 edition of the ASME B31.4 Code. Since then, the DOT standards based on these practices have not kept pace with changes in technology.

Performance Oriented Standards and Recent Waivers

For steel pipe not subject to repair restrictions under §§ 192.309(b), 192.485(a), 192.487(a), 192.713, or 195.416(f), operators may and do use methods besides pipe replacement and split sleeves to repair corroded or damaged steel pipe. These methods include composite pipe wraps, grinding, hot tapping, and weld deposition. For example, a gouge that impairs the serviceability of a steel gas transmission line operating at less than 40 percent of SMYS is not covered by § 192.713. This defect would be subject to the less restrictive repair requirement of § 192.703(b), which allows repair by any method that returns the pipe to a safe condition.

In recent years, various pipeline operators have sought relief from the requirement to repair high-stress steel gas transmission lines by the traditional methods of pipe replacement or installation of full-encirclement split sleeves. These operators wanted to use a new repair system called Clock Spring® to simplify and reduce the average cost of repairs. This system, which consists of a fiberglass/polyester composite material coiled with adhesive in layers over a filler, reinforces steel pipe that has certain non-leaking defects. According to tests and analyses done by the Gas Research Institute (GRI), when properly installed, the system permanently restores the pressure containing capability of the pipe.[1]

Based on GRI's field and laboratory performance data, we concluded that this new technology provides at least the same level of safety on high-stress transmission lines as pipe replacement or a full-encirclement split sleeve. Therefore, we granted the operators' requests by waiving the applicable requirements.[2] No problems involving installations under the waivers have been reported. Moreover, GRI's inspection of a statistical sample of installations under the waivers did not show any evidence of creep, degradation, or loss of reinforcement.[3]

The Proposal

To add flexibility to §§ 192.309(b), 192.485(a), 192.487(a), 192.713, and 195.416(f), we are proposing to allow operators to use repair methods that meet a performance standard. The proposed standard is that the method must be able to "permanently restore the serviceability of the pipe." We chose this wording because it describes the result expected from replacing damaged pipe or installing a full-encirclement split sleeve over the damage to pipe. We expect at least the same result from a qualified alternative repair method.

As to the permanency of repair, we are not suggesting that the repair should last indefinitely. It need last only as long as the pipe is expected to last under normal operating and maintenance conditions.

Whether a particular repair method will restore the serviceability of the pipe depends on the loading the repaired pipe must support. Sometimes pipe and particularly pipe joints are subjected to significant longitudinal forces imposed by external loads. Where longitudinal forces are a design consideration, a repair method that structurally serves only to contain internal pressure might not suffice to restore the serviceability of the pipe. On the other hand, if longitudinal forces are not a design consideration, a repair method that restores the pressure containing capability of the pipe would restore its serviceability.

We are also proposing that a qualified repair method must have undergone "reliable engineering tests and analyses" to confirm that the method meets the performance standard. We do not believe it necessary to propose guidelines for these tests and analyses because of the widespread use of alternative repair methods without reports of failures. So the tests and analyses need only be what a reasonable and prudent professional engineer would consider adequate to demonstrate compliance with the performance standard.

The proposed change to § 192.309(b) merely adds the performance standard to the end of the introductory clause. Operators would then have the option of either removing or repairing the described dents.

In §§ 192.485(a), 192.487(a), and 195.416(f), the proposed performance standard would take the place of present wording that allows the repair of small areas of general corrosion. Consequently, any corroded area, large or small, could be repaired as long as the repair method meets the performance standard. The primary purpose of this change would be to allow the repair of large corroded areas. But we are proposing to apply the proposed performance standard to small corroded areas as well because of the difficulty of distinguishing between small and large areas. Also, current methods being used to repair small corroded areas readily qualify under the proposed performance standard.

As for § 192.713, besides including the proposed performance standard, we are proposing to remove the sentences specifically allowing repair by full-encirclement split sleeves (paragraphs (a)(2) and (b)). This well-established repair method readily qualifies under the proposed performance standard.

In addition, we are proposing to drop the priority that § 192.713 now gives to

---

[1] D. R. Stephens, Summary of Validation of Clock Spring® for Permanent Repair of Pipeline Corrosion Defects, GRI–98/0227, Gas Research Institute, Chicago, Illinois, October 1998.

[2] First we granted the Panhandle Eastern Corporation a waiver of § 192.713(a) to install Clock Spring® over six corrosion anomalies on Line #2 in Ohio, subject to certain monitoring and reporting conditions (58 FR 13823; March 15, 1993). Then we granted 28 interstate operators and their subsidiaries a waiver of §§ 192.485(a) and 192.713(a) to install Clock Spring® on transmission line pipe operating at 40 percent or more of SMYS, provided the operators follow the manufacturer's installation procedures, use GRIWrap® (a computer program that determines if a defect is suitable for Clock Spring® repair), participate in GRI's evaluation plan, notify us and state interstate agents of planned installations, and use trained installers (60 FR 10630; February 27, 1995). Next we extended the February 27th waiver to include six more interstate operators (60 FR 47800; September 14, 1995). Subsequently, we authorized a few additional interstate operators to apply the February 27th waiver, and we approved similar waivers granted intrastate operators by state pipeline safety agencies in Illinois, Wyoming, and Minnesota.

[3] D. R. Stephens, op. cit., p. 53.

repair by replacement whenever it is feasible to take a damaged pipeline out of service. We know of no compelling safety reason to justify this priority, and it does not permit the use of other qualified, more economical repair methods while a pipeline is shut down. For regulatory consistency, we would also remove a similar replacement priority from § 192.717, which governs the repair of leaks.

Finally, we are proposing to terminate the requirement under §§ 192.713(a)(1) and 192.717(a)(1) that replacement pipe have "similar or greater design strength" than the pipe being replaced. This qualification, which does not apply to the replacement of corroded pipe under §§ 192.485, 192.487, or 195.416, may result in an overly conservative design that is unnecessary for current operations. The safety of all replacement pipe in gas transmission lines is otherwise governed by the material, design, construction, and testing requirements of Part 192.

Regulatory Analyses and Notices

A. Executive Order 12866 and DOT Policies and Procedures

The Office of Management and Budget (OMB) does not consider this proposed rulemaking to be a significant regulatory action under Section 3(f) of Executive Order 12866 (58 FR 51735; October 4, 1993). Therefore, OMB has not reviewed this rulemaking document. DOT does not consider this proposed rulemaking significant under its regulatory policies and procedures (44 FR 11034; February 26, 1979).

The proposed rule changes would provide operators flexibility to choose the most cost-effective method of repairing pipe, while maintaining public safety. Thus, the changes would not add costs to industry, government, or the public. In fact, the proposed changes should reduce operators' costs of transporting oil and gas, and perhaps the price consumers pay for these products. In comments on a proposed waiver to the Panhandle Eastern Corporation, the American Gas Association estimated that industry could save $6.5 million a year by using composite wrap to repair corroded or damaged pipe. Although part of the gas pipeline industry is already realizing these savings because of the Panhandle and other waivers,[4] the proposed changes would create a similar opportunity for savings by the entire oil and gas pipeline industry. And still more savings could possibly result from the use of innovative technologies not covered by the waivers. This proposed rulemaking fosters the use and development of new repair technologies without additional cost to the regulated industry. A regulatory evaluation document is available for review in the docket.

B. Regulatory Flexibility Act

The proposed rule changes would not impose additional requirements on pipeline operators, including small entities that operate regulated pipelines. Rather, the proposed changes would offer operators the opportunity to use more economical methods of repairing corroded or damaged pipe. Thus, this proposal may reduce costs to operators, including small entities. Based on the facts available about the anticipated impact of this proposed rulemaking, I certify, pursuant to Section 605 of the Regulatory Flexibility Act (5 U.S.C. 605), that this proposed rulemaking would not have a significant economic impact on a substantial number of small entities.

C. Executive Order 13084

The proposed rules have been analyzed in accordance with the principles and criteria contained in Executive Order 13084, "Consultation and Coordination with Indian Tribal Governments." Because the proposed rules would not significantly or uniquely affect the Indian tribal governments, the funding and consultation requirements of Executive Order 13084 do not apply.

D. Paperwork Reduction Act

This proposed rulemaking contains no information collection that is subject to review by OMB under the Paperwork Reduction Act of 1995.

E. Unfunded Mandates Reform Act of 1995

This proposed rulemaking would not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It would not result in costs of $100 million or more to either State, local, or tribal governments, in the aggregate, or to the private sector, and would be the least burdensome alternative that achieves the objective of the rule.

F. National Environmental Policy Act

We have analyzed the proposed rule changes for purposes of the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*). Because the changes would require that alternative repair methods be as safe as the methods now allowed, we have preliminarily determined that the proposed changes would not significantly affect the quality of the human environment. An environmental assessment document is available for review in the docket.

G. Impact on Business Processes and Computer Systems

Many computers that use two digits to keep track of dates will, on January 1, 2000, recognize "double zero" not as 2000 but as 1900. This glitch, the Year 2000 problem, could cause computers to stop running or to start generating erroneous data. The Year 2000 problem poses a threat to the global economy in which Americans live and work. With the help of the President's Council on Year 2000 Conversion, Federal agencies are reaching out to increase awareness of the problem and to offer support. We do not want to impose new requirements that would mandate business process changes when the resources necessary to implement those requirements would otherwise be applied to the Year 2000 Problem.

This notice of proposed rulemaking does not propose business process changes or require modifications to computer systems. Because this notice apparently does not affect the ability of organizations to respond to the Year 2000 problem, we do not intend to delay the effectiveness of the rule changes proposed in this notice.

H. Executive Order 12612

This action would not have substantial direct effects on states, on the relationship between the Federal Government and the states, or on the distribution of power and responsibilities among the various levels of government.

Therefore, in accordance with Executive Order 12612 (52 FR 41685; October 30, 1987), RSPA has determined that the proposed rules do not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

List of Subjects

49 CFR Part 192

Natural gas, Pipeline safety, Reporting and recordkeeping requirements.

49 CFR Part 195

Ammonia, Carbon dioxide, Petroleum, Pipeline safety, Reporting and recordkeeping requirements.

In consideration of the foregoing, we propose to amend 49 CFR parts 192 and 195 as follows:

PART 192—[AMENDED]

1. The authority citation for part 192 continues to read as follows:

[4] See note 2.

Authority: 49 U.S.C. 5103, 60102, 60104, 60108, 60109, 60110, 60113, and 60118; and 49 CFR 1.53.

2. In § 192.309, paragraph (b) introductory text would be revised to read as follows:

§ 192.309 Repair of steel pipe.

* * * * *

(b) Each of the following dents must be removed from steel pipe to be operated at a pressure that produces a hoop stress of 20 percent, or more, of SMYS, unless the dent is repaired by a method that can permanently restore the serviceability of the pipe, as shown by reliable engineering tests and analyses:

* * * * *

3. Section 192.485(a) would be revised to read as follows:

§ 192.485 Remedial measures: Transmission lines.

(a) *General corrosion.* Each segment of transmission line with general corrosion and with a remaining wall thickness less than that required for the MAOP of the pipeline must be replaced or the operating pressure reduced commensurate with the strength of the pipe based on actual remaining wall thickness. However, corroded pipe may be repaired by a method that can permanently restore the serviceability of the pipe, as shown by reliable engineering tests and analyses. Corrosion pitting so closely grouped as to affect the overall strength of the pipe is considered general corrosion for the purpose of this paragraph.

* * * * *

4. Section 192.487(a) would be revised to read as follows:

§ 192.487 Remedial measures: Distribution lines other than cast iron or ductile iron lines.

(a) *General corrosion.* Except for cast iron or ductile iron pipe, each segment of generally corroded distribution line pipe with a remaining wall thickness less than that required for the MAOP of the pipeline, or a remaining wall thickness less than 30 percent of the nominal wall thickness, must be replaced.

However, corroded pipe may be repaired by a method that can permanently restore the serviceability of the pipe, as shown by reliable engineering tests and analyses. Corrosion pitting so closely grouped as to affect the overall strength of the pipe is considered general corrosion for the purpose of this paragraph.

* * * * *

5. Section 192.713 would be revised to read as follows:

§ 192.713 Transmission lines: Permanent field repair of imperfections and damages.

(a) Each imperfection or damage that impairs the serviceability of pipe in a steel transmission line operating at or above 40 percent of SMYS must be—

(1) Removed by cutting out and replacing a cylindrical piece of pipe; or

(2) Repaired by a method that can permanently restore the serviceability of the pipe, as shown by reliable engineering tests and analyses.

(b) Operating pressure must be reduced to a safe level during repair operations.

6. In 192.717, paragraph (a)(1) and paragraph (a)(2) introductory text would be revised to read as follows:

§ 192.717 Transmission lines: Permanent field repair of leaks.

(a) * * *

(1) Remove the leak by cutting out and replacing a cylindrical piece of pipe.

(2) Install a full encirclement welded split sleeve of appropriate design, unless the transmission line:

* * * * *

PART 195—[AMENDED]

7. The authority citation for Part 195 continues to read as follows:

Authority: 49 U.S.C. 5103, 60102, 60104, 60108, 60109, 60118, and 49 CFR 1.53.

8. Section 195.416(f) would be revised to read as follows:

§ 195.416 External corrosion control.

* * * * *

(f) Any pipe that is found to be generally corroded so that the remaining wall thickness is less than the minimum thickness required by the pipe specification tolerances must be replaced with coated pipe that meets the requirements of this part. However, generally corroded pipe need not be replaced if—

(1) The operating pressure is reduced to be commensurate with the limits on operating pressure specified in this subpart, based on the actual remaining wall thickness; or

(2) The pipe is repaired by a method that can permanently restore the serviceability of the pipe, as shown by reliable engineering tests and analyses.

* * * * *

Issued in Washington, D.C. on April 1, 1999.

Richard B. Felder,

Associate Administrator for Pipeline Safety.

[FR Doc. 99–8574 Filed 4–6–99; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 192 and 195

[Docket No. RSPA–97–2762; Notice 2]

RIN 2137–AD24

Pipeline Safety: Corrosion Control on Gas and Hazardous Liquid Pipelines

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice of public meeting and request for comments.

SUMMARY: We are considering the need to modify our corrosion control standards for gas and hazardous liquid pipelines. To start, we are reviewing the gas standards to see if any need to be clarified, made more effective, or upgraded to be consistent with modern safety practices. The review will help us carry out the President's Regulatory Reinvention Initiative and determine if rule changes are needed to reduce the potential for corrosion-caused incidents. So far, we have held a public meeting and met with knowledgeable persons from industry and state regulatory agencies on the adequacy of the standards. Now, to get feedback on the results of these efforts, interested persons are invited to participate in a second public meeting and to submit written comments on the matters discussed in this notice. The public meeting will be in conjunction with the National Association of Corrosion Engineers (NACE) 54th Annual Conference and Exhibition, CORROSION/99, in San Antonio, Texas.

DATES: The public meeting will be on April 28, 1999, from 8:00 am to 12:00 noon at the Marriott Riverwalk Hotel in San Antonio, Texas. If you want to make an oral presentation at the meeting, please notify Jenny Donohue no later than April 23, 1999, by phone (202–366–4046) or by Internet e-mail (donohuej@rspa.dot.gov), and indicate the approximate length of your presentation. In addition, no later than June 30, 1999, you may submit written comments by mailing or delivering an original and two copies to the Dockets Facility, U.S. Department of Transportation, Room PL–401, 400 Seventh Street, SW, Washington, DC 20590–0001. Or you may submit written comments to the docket electronically. To do so, log on to the following Internet Web address: http://dms.dot.gov. Click on "Help & Information" for instructions on how to file a document electronically. All

written comments should identify the docket and notice numbers stated in the heading of this notice. Anyone who wants confirmation of mailed comments must include a self-addressed stamped postcard. Late filed comments will be considered so far as practicable.

ADDRESSES: The Marriott Riverwalk Hotel is located at 101 Bowie Street, San Antonio, TX 78205, phone: (210) 223–1000. The Dockets Facility is located on the plaza level of the Nassiff Building, Room PL–401, 400 Seventh Street, SW, Washington, DC. It is open from 10:00 a.m. to 5:00 p.m., Monday through Friday, except federal holidays when it is closed.

FOR FURTHER INFORMATION CONTACT: Richard Lopez by phone at 713–718–3956 or by Internet e-mail at richard.lopez@rspa.dot.gov. You can read comments and other material in the docket (RSPA–97–2762) at this Internet Web address: http://dms.dot.gov. General information about our pipeline safety program is available at this Internet Web address: http://ops.dot.gov. Graphs showing the rate of pipeline incidents due to corrosion will also be posted at that Web address.

SUPPLEMENTARY INFORMATION:

Background

Outside-force damage and corrosion are, respectively, the number one and number two causes of reported incidents on gas and hazardous liquid pipelines. Persons who participated in our Risk Assessment Prioritization (RAP) program, which we use to allocate our resources, rated the risk of outside-force damage as "very high" and the risk of corrosion as "high." In an effort to reduce outside-force damage, we have established standards for operator programs designed to prevent excavation damage and for state programs that oversee one-call notification systems. Recently we began working with other concerned organizations to inform the public on ways to reduce damage to all underground utilities and to study and promote the use of the best practices in damage prevention. For the corrosion risk, RAP participants identified several risk mitigating activities, the more significant of which, such as creating risk-based inspection programs, establishing cathodic protection criteria for hazardous liquid pipelines, and defining electrical survey alternatives, are among the concerns mentioned below.

Our statistical analyses of the data that operators report under 49 CFR Parts 191 and 195 show that while corrosion remains the second leading cause of reported pipeline incidents, the rate of reportable incidents due to corrosion has declined in recent years. Also, as shown by the table below for the period 1986 through 1998, the likelihood of corrosion-caused incidents harming people or the environment continues to be relatively low. Still, we think the record warrants our attention and indicates there may be reasons to improve our corrosion control standards to reduce the potential for future incidents. We are especially interested in evaluating the best long-term corrosion control measures to determine if cost-effective means of further reducing corrosion can be implemented.

Pipeline	Percent of all incidents	Percent of all deaths	Percent of all injuries	Percent of all property damages
Gas transmission and gathering	22.7	0	3.7	13
Gas distribution (non-plastic)	4.9	5.6	7.0	3.9
Hazardous liquid	25.7	3.2	0.9	20

To evaluate alternative regulatory strategies and in further response to the President's Regulatory Reinvention Initiative [1], on September 8, 1997, we held a public meeting on how the corrosion control standards in 49 CFR Parts 192 and 195 might be improved (62 FR 44436; Aug. 21, 1997). The meeting was held in Oakbrook Illinois in conjunction with NACE's Fall Committee Meetings to attract participation by experts in corrosion control. NACE is an international organization that provides training and certification programs, conferences, standards, and reports on the prevention and control of materials corrosion.

The Oakbrook meeting focused primarily on whether our corrosion control standards should incorporate by reference NACE Standard RP0169–96, "*Control of External Corrosion on Underground or Submerged Metallic Piping Systems,*" as a substitute for all or some of the requirements, and whether the requirements should be the same for gas and hazardous liquid pipelines. Many participants and subsequent commenters opposed incorporating the NACE document by reference because it is not entirely written in regulatory, or mandatory, style. There was also general agreement that although some changes may be needed, our corrosion control standards for gas and hazardous liquid pipelines should be generally the same.

After the Oakbrook meeting, we began a detailed review of the corrosion control standards in 49 CFR Part 192, Subpart I. We began reviewing the gas pipeline standards rather than the standards for hazardous liquid pipelines in Part 195 because the gas standards provide more detailed criteria. To help in this effort, we have met from time to time with representatives from NACE, the pipeline industry, and state governments. The meetings have helped us assess whether the Subpart I standards are adequate for safety, need clarification, or allow the use of new technologies.

In order to have the same standards for gas and hazardous liquid pipelines, we are now considering whether the gas pipeline standards, possibly with some changes, would be suitable for hazardous liquid pipelines. The advantage of applying the gas standards to hazardous liquid pipelines is that the gas standards are less ambiguous than the hazardous liquid standards. However, changes besides those that may be needed for gas pipelines may be needed to accommodate the different operating characteristics of hazardous liquid pipelines, such as temperature and commodity corrosiveness.

To optimize our review process, we have assigned the following priorities to different segments of the nation's pipeline infrastructure: We are considering hazardous liquid pipelines first, because the current Part 195 corrosion control standards are ambiguous in many respects and because corrosion-caused failures on these lines pose risks to the

[1] On March 4, 1995, President Clinton issued a memorandum to heads of departments and agencies calling for a review of all agency regulations and elimination or revision of those that are outdated or in need of reform.

environment as well as public safety. Next in importance are gas transmission and non-rural gathering lines because of the continuing high percentage of corrosion-caused incidents. Finally comes gas distribution lines, because assessing the need to modify standards to account for operational differences between gas transmission and distribution lines and among gas distribution systems is more difficult, requiring more information about systems and possible alternatives to present standards. These three stages of review may result in publication of one or more notices of proposed rulemaking later this year after considering all the comments we receive as a result of this notice.

Guiding Principles

At our latest meetings with industry and state representatives, in Houston, Texas on February 16–19, 1999, at the Marriott Westside Hotel, and in Washington, DC on March 11, 1999, at our headquarters, the following principles were developed to guide our assessment of the need to improve or clarify the corrosion control standards:

- Evaluate existing data and use the evaluation to assess the need to change standards.
- Continue to improve public safety and environmental protection.
- Assess the need for corrosion control standards throughout the national pipeline system based on the risk associated with different parts of the system.
- Upgrade regulations to allow for future changes in pipeline industry technology and operating practices as appropriate.
- Strive for uniform interpretation/enforcement.
- To the extent practicable, involve all interested parties in assessing the need to change standards.
- Use the new cost/benefit policy framework being developed for RSPA's pipeline safety advisory committees in determining the costs and benefits of potential changes to standards.
- Achieve balance between performance and prescriptive language.
- Develop performance measures to assess the effectiveness of corrosion control programs.
- Focus on managing corrosion to maintain pipeline integrity.
- Provide adequate regulatory flexibility to allow operators to implement alternative measures that meet the performance requirements of the corrosion regulations.

RSPA Concerns

Besides the guiding principles, the meetings with industry and state representatives have helped us evaluate the following concerns we have about the adequacy of the gas pipeline corrosion control standards. These concerns relate generally to the clarity of the standards, whether the standards are effective, whether they are consistent with modern practices, and whether they are in the interest of safety. The list does not include § 192.459, for which we have already proposed changes to deal with the problem of the extent of corrosion on exposed pipelines (Docket PS–107; 54 FR 27041; June 27, 1989). If we were to propose changes to Part 195 based on the corrosion control standards in Subpart I of Part 192, we would include in the proposal any changes that may be necessary to make Part 195 consistent with any changes made to § 192.459 in Docket PS–107.

The concerns stated below relate to the Subpart I standards in 49 CFR Part 192, which apply to metallic gas gathering, transmission, and distribution lines. As mentioned above, we are considering both the need to change those standards in response to the concerns and whether to apply the standards, with or without changes, to hazardous liquid pipelines subject to 49 CFR Part 195.

Personnel Qualification (§ 192.453)

- In view of the proposed rules on qualification of pipeline personnel (63 FR 57269; Oct. 27, 1998), are more specific qualification standards needed for individuals who direct or carry out corrosion control procedures? (The proposed rules apply to personnel doing regulated operation and maintenance tasks, including corrosion control, on regulated pipeline facilities. However, the proposed rules do not apply to management personnel who may oversee but not perform corrosion-related tasks on a pipeline.)

External Corrosion: New Pipelines (§ 192.455)

- Should a cathodic protection system be installed on offshore pipelines in less than 1 year after the pipeline is constructed, for example, 60 days, because of the strong corrosiveness of salt water?
- Is it in the interest of safety to exempt pipelines in particular environments and temporary pipelines from the coating and cathodic protection requirements?

External Corrosion: Existing Pipelines (§ 192.457)

- Should existing compressor, regulator, and measuring station piping continue to be excluded from the requirement to cathodically protect effectively coated transmission line pipe?
- Is the present requirement to cathodically protect certain older existing pipelines only in areas of "active corrosion" adequate for public safety? If not, what would be a cost effective alternative standard?
- Is the meaning of "active corrosion" clear and technically sound? If not, how should it be changed?

External Corrosion: Coating (§ 192.461)

- Should the implicit requirement to coat field joints and repairs be expressly stated? Does coating need to be compatible with the anticipated service conditions, including the effects of temperature?
- For offshore pipelines, during installation, are special measures necessary to protect against damage to coating, including field joint coating; and, to avoid mechanical damage, are special coatings needed on J-tubes, I-tubes and pipelines installed by the bottom tow method?

External Corrosion: Cathodic Protection Criteria (§ 192.463)

- Are the cathodic protection system criteria in Appendix D of Part 192, 300 mV shift and E-log-I, obsolete, since they are not in NACE Standard RP0169–96? If so, should operators be allowed to continue to use them on existing pipe, but not new pipe?

External Corrosion: Monitoring (§ 192.465)

- Does the sampling basis prescribed for inspecting short sections of main or transmission lines not in excess of 100 feet and separately protected service lines provide effective corrosion control, particularly as it applies to service lines that supply gas to public buildings?

External Corrosion: Electrical Isolation (§ 192.467)

- What remedial action is needed when an electrical short in a casing results in inadequate cathodic protection of the pipeline outside the casing?
- Should newly constructed offshore pipelines be electrically isolated from bare steel platforms unless both are protected as a single unit?
- Is electrical isolation needed where contact with aboveground structures would adversely affect cathodic protection?

External Corrosion: Test Leads (§ 192.471)

- Are accessible test leads needed on offshore risers that are electrically isolated and not accessible for testing?

• For aluminum pipelines, should all test leads be insulated aluminum conductors and installed to avoid harm to the pipe?

External Corrosion: Interference Currents (§ 192.473)

• Where light rail systems exist, should operators specifically be required to identify and test for stray currents and keep records of the test results?

Internal Corrosion (§ 192.475)

• Are special requirements needed to deal with the problem of internal corrosion in storage field piping, as evidenced by piping leaks in West Virginia and several Midwestern states?

Atmospheric Corrosion: General (§ 192.479)

• Should new and existing pipelines be subject to the same protection requirements?

• Is protection needed where corrosion is a light surface oxide or where corrosion will not likely affect the safe operation of the pipeline before the next scheduled inspection?

• Is special protection needed in the splash zone of offshore pipelines and at soil to air interfaces of onshore pipelines?

Atmospheric Corrosion: Monitoring (§ 192.481)

• Should the inspection interval for onshore pipelines be extended beyond 3 years in view of the generally low incidence of serious problems on protected pipelines?

• For onshore pipelines, are more frequent inspections needed at soil to air interfaces, under thermal insulation, at disbonded coatings, and at pipe supports?

• For offshore pipelines, are more frequent inspections needed under poorly bonded coatings and at splash zones, support clamps, and deck penetrations?

Records (§ 192.491)

• Should operators keep records of findings of non-corrosive conditions if § 192.455 is changed to remove the benefit of such findings?

• Is the period for keeping corrosion control monitoring records, "as long as the pipeline remains in service," necessary for safety or accident investigation? If not, what is an appropriate period?

Concerns of Others

National Association of Pipeline Safety Representatives (NAPSR).

Long before the Oakbrook meeting, NAPSR reported on an extensive review of Part 192 that included recommendations to change several of the standards for corrosion control. We published the report and requested public comment on its various recommended rule changes (Docket PS–124, Notice 2; 58 FR 59431, Nov. 9, 1993). We adopted one of NAPSR's corrosion standard recommendations (regarding § 192.475) in the final rule we published in Docket PS–124 (61 FR 28770; June 6, 1996). The others are discussed below:

• With regard to §§ 192.457 and 192.465, NAPSR recommended changes to clarify the meaning of "electrical survey" and where alternatives to electrical surveys may be used. But most commenters either opposed or wanted to modify the recommendation, feeling it would unreasonably limit an operator's ability to determine areas of active corrosion by alternative methods.

• With regard to § 192.459, NAPSR recommended we require operators to record the condition of protective coatings whenever they inspect exposed portions of buried pipelines, arguing the records would provide a useful history of the condition of the pipelines as well as evidence that exposed pipe had been inspected as required. Opponents argued the recommendation was unnecessary because § 192.491 already requires operators to keep records of required inspections.

• With regard to § 192.467(c), NAPSR recommended changes to require that operators annually test pipeline casings for electrical isolation, and to clarify what "other measures" must be taken to minimize pipeline corrosion if isolation is not achieved. There was strong opposition to this recommendation because studies have not correlated shorted casings and corrosion on the carrier pipe, or because a longer interval of inspection would be more appropriate.

• With regard to § 192.479(b), NAPSR recommended that regardless of the date of installation, all aboveground pipelines or portions of a pipeline that are exposed to the atmosphere be cleaned and either coated or jacketed with a material suitable for the prevention of atmospheric corrosion, unless the pipeline is in a non-corrosive atmosphere. Commenters who objected to this recommendation said the difficulty of proving a non-corrosive atmosphere could cause operators to coat older pipelines that have no harmful atmospheric corrosion.

• With regard to the provision in § 192.487(a) that permits the repair rather than replacement of pipe with a small area of general corrosion, NAPSR recommended that the provision refer to generally accepted guidelines for determining what corroded areas may be repaired. Although most commenters opposed the idea of requiring operators to apply the guidelines in every case, there was no objection to making the guidelines permissive as § 192.485 does.

• Finally, with regard to § 192.489(b), NAPSR recommended that we clarify that internal sealing is not an appropriate method of strengthening graphitized pipe. There was no opposition to this recommendation.

Gas Piping Technology Committee (GPTC)

In an April, 1995 rulemaking petition, GPTC requested the following:

• Remove from § 192.467 the requirement that pipe be electrically isolated from metallic casings. GPTC argued there are no safety benefits from clearing shorted casings.

• Amend §§ 192.465 and 192.481 to allow operators to take up to 39 months to carry out inspections of unprotected pipelines that must be done at 3-year intervals. GPTC said the extra time would add flexibility to the standards with no reduction in safety.

National Transportation Safety Board (NTSB)

As a result of a recent accident investigation, NTSB recommended two changes to the Part 195 corrosion standards:

• Revise Part 195 to require pipeline operators to determine the condition of pipeline coating whenever pipe is exposed and, if degradation is found, to evaluate the coating condition of the pipeline. (P–98–35)

• Revise Part 195 to include performance measures for the adequate cathodic protection of liquid pipelines. (P–98–36)

We will be considering all these recommendations in the present proceeding as we decide what changes, if any, to propose for the corrosion control standards.

Alternatives

Changing the current standards to satisfy the concerns discussed above may not be the only way to improve protection against corrosion. Some industry representatives have expressed a desire to employ new technologies or risk management concepts as more advanced solutions to corrosion

problems. So we are considering the following as alternatives to some or all of the standards:

• Corrosion Management Plans. Our experience shows that many operators get superior results by applying their own pipeline-specific plans for controlling corrosion. These plans often contain methods and corrosion management techniques not required by the standards. To encourage the development and use of these plans, we are considering whether to allow operators to comply with corrosion management plans as an alternative to the corrosion control standards. While we think such plans would have to meet the objectives of the standards if not the specifics, this regulatory approach would give operators more flexibility to tailor their corrosion control practices to meet varying conditions. Such plans would be subject to review by agency inspection personnel and possible change if deemed inadequate (49 CFR 190.237).

• NACE Standard RP0169–96. Another alternative to compliance with the standards that some persons may favor is incorporation by reference of all or part of NACE Standard RP0169–96. Although its advisory style affects the suitability of this NACE standard for regulatory use, it is, nonetheless, widely accepted as the most authoritative source of up-to-date pipeline corrosion control practices. In an analogous situation, we have recently proposed to incorporate by reference other industry documents that are drafted in an advisory style. In the proceeding on the safety of breakout of tanks, we proposed to reference four documents published by the American Petroleum Institute that are recommended practices: API Recommended Practice 651 "Cathodic Protection of Aboveground Petroleum Storage Tanks," API Recommended Practice 652 "Lining of Aboveground Petroleum Storage Tanks Bottoms," API Recommended Practice 2003 "Protection Against Ignitions Arising out of Static, Lightning, and Stray Currents," and API Recommended Practice 2350 "Overfill Protection for Storage Tanks In Petroleum Facilities" (Docket RSPA–97–2095; 63 FR 27903; May 21, 1998). Recognizing that API intended these documents to be advisory and not imperative, we proposed that operators follow the recommended practices unless they note in their procedural manuals why compliance with all or certain provisions is not necessary for the safety of a particular breakout tank or tanks. Any decisions not to follow certain provisions would be subject to review by agency inspection personnel and possible change if deemed inadequate (49 CFR 190.237). We could take a similar approach with respect to advisory provisions of NACE Standard RP0169–96 that operators may decide are unnecessary for the safety of particular pipelines.

Compliance Manual

We are also considering developing a Compliance Manual that would contain guidelines for federal and state inspectors in evaluating operator compliance with the corrosion standards. The manual would be available to the public, so operators could learn what inspectors look for in checking for compliance. We expect the manual to include explanations and illustrations that apply the standards to hypothetical pipelines, accounting for variations in operating conditions. For example, we plan to include details on how to perform field pipe-to-soil measurements, including connection of leads to the pipeline, voltmeter, and half cell. We also want to show how to apply the different cathodic protection criteria, and how to do a close-interval survey. We think such a manual would advance an effective and uniform understanding, interpretation, and application of the standards. It could also provide a basis for training government and operator personnel.

Public Participation

As stated in more detail above, interested persons are invited to attend the San Antonio public meeting and present oral or written statements about any of the principles, concerns, or alternatives discussed in this notice. Written statements not presented at the meeting may be submitted to the docket. If necessary, we may limit the time for oral presentations so that everyone who requests an opportunity to speak may do so. Those who do not request time for presentations may have an opportunity to speak as time allows.

We are particularly interested in receiving comments on the following:

1. Whether any existing standards deter or disallow the use of new technologies, and, if so, how.

2. The costs and benefits of any suggested changes to standards and alternatives to standards.

3. The amount of time operators may need to prepare for compliance with any suggested standards or alternatives.

4. With regard to the Corrosion Management Plan and NACE Standard alternatives—

a. The bases for evaluating the adequacy of corrosion management plans.

b. The best way to facilitate agency review of operator decisions under the alternatives (e.g., prior notification, reporting, recordkeeping).

c. Whether NACE Standard RP0169–96 is adequate for pipeline corrosion control and, if so, should we incorporate it by reference in our corrosion control standards?

5. For hazardous liquid pipelines—

a. Whether additional standards are needed to further reduce the possibility of damage to environmentally sensitive areas.

b. If Subpart I standards were applied to hazardous liquid pipelines, the changes, if any, that would be needed to account for differences between gas and liquid pipelines.

6. For gas distribution systems—

a. Root causes of corrosion leaks on coated, uncoated, protected, and unprotected metallic lines.

b. Descriptions of operating/maintenance practices to minimize corrosion leaks on cathodically unprotected lines.

c. Descriptions of risk-based corrosion management programs.

d. The best approach to monitoring corrosion control in urban wall-to-wall paved areas.

7. The amount of buried piping at compressor, regulator, and measuring stations that is not cathodically protected.

8. Explicit examples of adequate compliance with particular standards that have had varied interpretations.

9. To provide an acceptable level of safety on existing pipelines, must cathodic protection preserve the pipeline indefinitely or merely slow the rate of corrosion until the pipeline has to be rehabilitated or replaced?

Authority: 49 U.S.C. Chapter 601 and 49 CFR 1.53.

Richard B. Felder,

Associate Administrator for Pipeline Safety.

[FR Doc. 99–8628 Filed 4–6–99; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AB88

Endangered and Threatened Wildlife and Plants; Reopening of Public Comment Period, Notice of Public Hearing, and Notice of Availability of Documents Associated With Proposed Designation of Critical Habitat for the Rio Grande Silvery Minnow

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; reopening of comment period, notice of public hearing, and notice of availability of draft documents.

SUMMARY: The Fish and Wildlife Service provides notice that the public comment period on the proposal to designate critical habitat for the Rio Grande silvery minnow (*Hybognathus amarus*), an endangered species, is reopened. We anticipate that public interest in the proposal to designate critical habitat will be high. Thus, we have scheduled a public hearing to be held in Albuquerque, New Mexico (see **DATES** and **ADDRESSES**). The reopening of the comment period will allow all interested parties to submit comments on the proposal, the draft Economic Analysis, and the draft Environmental Assessment prepared for the designation, which are now available (see **ADDRESSES**). We are seeking comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested parties concerning the proposed designation and the draft documents.

DATES: The comment period for this proposal is now reopened and will close on May 7, 1999. All comments on the proposal, the draft Economic Analysis, and draft Environmental Assessment will be accepted through May 7, 1999. A public hearing on the proposal and the draft documents is scheduled for April 29, 1999 from 6:30 p.m. to 9:00 p.m.

ADDRESSES: Written comments and materials should be sent to the Field Supervisor, New Mexico Ecological Services Field Office, 2105 Osuna NE, Albuquerque, New Mexico 87113. Copies of the draft documents are also available from the Field Office. Comments and materials received will be available for public inspection during normal business hours, by appointment, at the above address. The public hearing will be held at the Indian Pueblo Cultural Center, 2401 12th Street NW, Albuquerque, New Mexico.

FOR FURTHER INFORMATION CONTACT: Jennifer Fowler-Propst, Field Supervisor, New Mexico Ecological Services Field Office, at the above address 505–346–2525.

SUPPLEMENTARY INFORMATION:

Background

The Fish and Wildlife Service proposed to list the Rio Grande silvery minnow as an endangered species with critical habitat on March 1, 1993 (58 FR 11821). The public comment period, originally scheduled to close on April 30, 1993, was extended until August 25, 1993, (58 FR 19220; April 13, 1993) to conduct public hearings and allow submission of additional comments. Public hearings were held in Albuquerque and Socorro, New Mexico, on the evenings of April 27 and 28, 1993, respectively.

We published the final rule to list the Rio Grande silvery minnow on July 20, 1994 (59 FR 36988). At that time, we found that critical habitat was not determinable because there was insufficient information to perform required analyses of the impacts of the designation. We contracted an economic analysis of the designation in September 1994; the draft analysis was provided to us in February, 1996 and we transmitted it to all interested individuals on April 26, 1996. We notified the public that, because of the moratorium on final listing actions and determinations of critical habitat imposed by Public Law 104–6, no work would be conducted on the analysis or on the final decision concerning critical habitat. However, we solicited comments from the public and agencies for use when such work resumed.

On February 22, 1999, the United States District Court for the District of New Mexico, in *Forest Guardians and Defenders of Wildlife* v. *Bruce Babbitt*, CIV 97–0453 JC/DIS, ordered us to publish a final determination with regard to critical habitat for the Rio Grande silvery minnow within 30 days of that order. Subsequently, on March 22, 1999, the Court ordered that we would be allowed an additional 90 days for the final designation. The current deadline is for publication of the final determination by June 23, 1999.

The Fish and Wildlife Service is using the extension granted by the Court to seek public input to the process of designating critical habitat. Comments on the draft Economic Analysis and draft Environmental Assessment will be considered in our final determination of critical habitat. Written comments we have already received on the draft Economic Analysis in 1996 have been retained and will be considered during this open comment period.

Author: The primary author of this document is Jennifer Fowler-Propst, New Mexico Ecological Services Field Office (see *ADDRESSES* section).

Authority

The authority for this action is the Endangered Species Act (16 U.S.C. 1532 *et seq.*).

Dated: March 30, 1999.

David Yazzie,

Acting Regional Director, Fish and Wildlife Service.

[FR Doc. 99–8208 Filed 4–6–99; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AF33

Endangered and Threatened Wildlife and Plants; Notice of Public Hearing and Extension of Comment Period on the Proposed Rule for Listing Nine Bexar County, Texas Invertebrates as Endangered.

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; notice of extension of comment period and announcement of public hearing.

SUMMARY: The U.S. Fish and Wildlife Service gives notice that the public comment period is extended and a public hearing will be held on the proposed determination of endangered status for nine Bexar County invertebrates. The species proposed for listing (63 FR 71855; December 30, 1998) are *Rhadine exilis* (no common name) and *Rhadine infernalis* (no common name), small, essentially eyeless ground beetles; *Batrisodes venyivi* (Helotes mold beetle), a small, eyeless mold beetle; *Texella cokendolpheri* (Robber Baron Cave harvestman), a small, eyeless harvestman (daddy-longlegs); *Cicurina baronia* (Robber Baron cave spider), *Cicurina madla* (Madla's cave spider), *Cicurina venii* (no common name), *Cicurina vespera* (vesper cave spider), and *Neoleptoneta microps* (Government Canyon cave spider), all small eyeless, or essentially eyeless, spiders. All interested parties are invited to submit comments on this proposal.

DATES: A public hearing will be held from 7:30 p.m. to 9:00 p.m. on April 20, 1999 in San Antonio, Texas. Information displays and an opportunity to ask questions will be available from 5:30 to 7:00 p.m. on April 20, 1999. The extended comment period closes May 31, 1999.

ADDRESSES: The public hearing and information displays will be held at the Lee High School cafeteria located at 1400 Jackson Keller Road in San Antonio, Texas. Written comments and materials concerning the proposal should be sent to the Field Supervisor, U.S. Fish and Wildlife Service, Ecological Services, 10711 Burnet Road, Suite 200, Austin, Texas 78758–4460. Comments and materials received will be available for public inspection by appointment during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Alisa Shull, U.S. Fish and Wildlife Service (see **ADDRESSES** section) (telephone 512–490–0057: facsimile 512–490–0974).

SUPPLEMENTARY INFORMATION:

Background

These nine invertebrates are obligate cave-dwelling species (troglobites) of local distribution in caves in northern Bexar County, Texas. The life habits of the species are not well known. They are probably predaceous on the eggs, larvae, or adults of other cave invertebrates.

Threats to these species and their habitats include destruction and/or deterioration of habitat by commercial, residential, and road construction; filling of caves, and loss of permeable cover; potential contamination from such things as septic effluent, sewer leaks, run-off, and pesticides; predation by and competition with non-native fire ants; and vandalism.

In 1994 we began discussions with a coalition of landowners, developers, and other interested parties about creating a conservation agreement that might preclude the need for listing these species. We have been working since then with interested parties to develop a conservation strategy and agreement. However, all the details necessary to accomplish this goal have not yet been agreed to. These issues relate primarily to determining what is needed for species conservation, responsibility and commitment for implementation and funding, and the amount of time required to implement the conservation measures. If these issues are resolved before a final listing decision is made, the final listing decision may differ from that proposed for some or all of these species.

Public hearings are designed to gather relevant information the public may have that we should consider in determining the status of and threats to these species. During the hearing the Service will present information about the proposed action of listing the nine Bexar County invertebrates as endangered. We invite the public to submit information and comments either at the hearing on April 20, 1999, or in writing. We request that comments be as specific as possible.

This hearing will be held from 7:30 to 9:00 pm. In the event there are a large number of people who wish to comment, the time allotted for oral statements may have to be limited. Persons wishing to comment at the hearing are encouraged to provide a written copy of their statement at the start of the hearing. There is no limit on the length of written comments. Written comments may also be submitted at any time during the open comment period and are given equal consideration to oral comments. Written comments should be sent to: Supervisor, USFWS, 10711 Burnet Road, Suite 200, Austin, Texas 78758, and must be received by May 31, 1999.

From 5:30 to 7:00 p.m., prior to the public hearing, several information booths will be set up at the hearing site (see **ADDRESSES**) to allow the public to gather information and ask questions. The best time to ask questions or discuss issues will be from 5:30 to 7:00 p.m. at the information displays. Although the Service will present information at the beginning of the hearing about the proposed action of listing the nine Bexar County invertebrates as endangered, the format of the hearing will not allow for questions and answers or two-way dialogue during the hearing.

Additional information that would be particularly useful to the Service in making a final listing determination includes any additional biological data; the location of any additional caves containing these species or caves where searches have been conducted and the species not found; areas planned for development or other activities that might affect any of the nine invertebrates; and existing local, state, or Federal regulations that provide protection for these species and their habitat.

Author: The primary author of this notice is Christina Longacre (see **ADDRESSES** section) (telephone 512/490–0057: facsimile 512/490–0974).

Authority

The authority for this action is the Endangered Species Act of 1973 as amended (16 U.S.C. 1531 *et seq.*).

Dated: March 29, 1999.

Nancy M. Kaufman,

Regional Director, Fish and Wildlife Service.

[FR Doc. 99–8678 Filed 4–5–99; 11:55 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 990301058–9058–01; I.D. 011499B]

RIN 0648–AL56

Fisheries of the Northeastern United States; Amendment 12 to the Fishery Management Plan for the Summer Flounder, Scup, and Black Sea Bass Fisheries; Amendment 8 to the Fishery Management Plan for the Atlantic Mackerel, Squid, and Butterfish Fisheries; and Amendment 12 to the Fishery Management Plan for the Atlantic Surf Clam and Ocean Quahog Fisheries

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes regulations to implement Amendment 12 to the Fishery Management Plan (FMP) for the Summer Flounder, Scup, and Black Sea Bass Fisheries; Amendment 8 to the FMP for the Atlantic Mackerel, Squid, and Butterfish Fisheries; and Amendment 12 to the FMP for the Atlantic Surf Clam and Ocean Quahog Fisheries. This proposed rule would implement framework provisions for amending management measures for these fisheries, restrict the size of domestic harvesting vessels permitted in the Atlantic mackerel fishery without restricting the size of processing vessels, and implement an operator permit requirement for the surf clam and ocean quahog fisheries. These amendments are intended to meet the requirements of the Sustainable Fisheries Act of October 1996 (SFA).

DATES: Comments must be received on or before May 24, 1999.

ADDRESSES: Comments on this proposed rule should be sent to Jon C. Rittgers, Acting Regional Administrator,

Northeast Regional Office, NMFS, One Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope "Comments on the Mid-Atlantic SFA Amendments."

Comments regarding burden-hour estimates for collection-of-information requirements contained in this proposed rule should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503 (Attention: NOAA Desk Officer).

Copies of the proposed amendments, the environmental assessments (EA), the regulatory impact reviews, and other supporting documents are available from Daniel Furlong, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115 Federal Building, 300 S. New Street, Dover, DE 19904-6790.

FOR FURTHER INFORMATION CONTACT: Regina L. Spallone, Fishery Policy Analyst, 978–281–9221.

SUPPLEMENTARY INFORMATION: The Mid-Atlantic Fishery Management Council (Council) and the Atlantic States Marine Fisheries Commission, in consultation with the New England and South Atlantic Fishery Management Councils, prepared proposed Amendment 12 to the Summer Flounder, Scup, and Black Sea Bass FMP. The Council, in consultation with the New England and South Atlantic Fishery Management Councils, prepared proposed Amendment 8 to the Atlantic Mackerel, Squid, and Butterfish FMP. The Council, in consultation with the New England Fishery Management Council, prepared proposed Amendment 12 to the Atlantic Surf Clam and Ocean Quahog FMP.

NMFS published a notice of availability for these amendments in the **Federal Register** on January 27, 1999 (64 FR 4065), soliciting public comments on the three amendments through March 29, 1999. All comments received by the end of that comment period on the proposed amendments, whether specifically directed to any of the amendments or to this proposed rule, will be considered in the approval/disapproval decision on the amendments. Public comments must be received (not postmarked or otherwise transmitted, including faxes) by the close of business on March 29, 1999, to be considered in the approval/disapproval decision. Comments received after that date, but before the end of the comment period for this proposed rule May 24, 1999, will not be considered in the approval/disapproval decision of the amendments, but will be considered in the decision on issuance of the final rule.

Overfishing Definition

All three of the FMP amendments would revise the overfishing definitions to bring them into accord with the new national standards of the Magnuson-Stevens Fishery Conservation and Management Act of 1976 (Magnuson-Stevens Act), as amended by the SFA. Under the revised standards, overfishing definitions must be composed of two reference points, one for fishing mortality and one for stock biomass. "Overfishing" occurs whenever a stock or stock complex is subjected to a rate or level of F that jeopardizes the capacity of a stock or stock complex to produce maximum sustainable yield (MSY) on a continuing basis. "Overfished" describes a stock or stock complex with a sufficiently low biomass to require a change in management practices to achieve the appropriate level or rate of stock rebuilding (to B_{target}).

Only one change to the regulatory text is necessary because of the new overfishing definitions. Amendment 8 to the Atlantic Mackerel, Squid, and Butterfish FMP (Amendment 8) proposes to revise the maximum fishing mortality rate for *Illex* squid to F_{msy} to better reflect the goal of achieving MSY on a continuing basis. The other proposed FMP amendments do not require changes to the regulatory text. Comments on these FMP amendments were solicited in the Notice of Availability (64 FR 4065).

Framework Adjustment Process

The proposed amendments would add a framework adjustment process for each of the fisheries, in addition to the annual specification setting process. This provision would allow the Council to modify or add management measures through a streamlined public review process. As such, management measures that have been identified in the plan could be implemented or adjusted at any time during the year. The following management measures could be implemented or modified through framework adjustment procedures for Amendments 12 and 8 (summer flounder, scup, black sea bass, Atlantic mackerel, *Loligo* and *Illex* squids, and butterfish fisheries) unless otherwise noted: Minimum and maximum fish sizes; gear restrictions; permitting restrictions; recreational possession and harvest limits and seasons; closed areas; commercial seasons and trip limits; commercial quota system, including commercial quota allocation procedure and possible quota set asides to mitigate bycatch; restrictions on vessel size in length overall and gross registered tons (LOA and GRT) or shaft horsepower; operator permits (summer flounder, scup, and black sea bass only); regional management and inseason adjustments to specifications (Atlantic mackerel, squid, and butterfish only) and any other management measures currently included in the FMP.

In addition, the following provisions could be implemented for the fisheries managed under all three FMPs, unless otherwise noted: Set aside quotas for scientific research; description and identification of essential fish habitat (EFH) and habitat areas of particular concern; management measures for fishing gear that impact EFH; overfishing definition thresholds and targets; vessel tracking system; and optimum yield range (surf clam and ocean quahogs only).

Other Proposed Measures

This proposed rule would restrict the size of domestic harvesting vessels, but not processing vessels, permitted in the Atlantic mackerel fishery. Any vessel that exceeds any one of the following: 165 ft (50.3 m) in LOA, or 750 GRT, or a shaft horsepower (shp) of 3,000, would be ineligible for a permit to harvest Atlantic mackerel. NMFS believes this proposed language describes clearly the intended effect of the measure, which is to exclude all vessels meeting any one of the three criteria.

NMFS is concerned that the wording of the regulation, as submitted by the Council, would not achieve the Council's intentions by allowing vessels to become eligible for a harvesting permit under various combinations of length, tonnage and horsepower. Based on the record of discussions at public Council meetings, this proposed rule would interpret the Council's action to mean adoption of the most restrictive interpretation of the criteria. NMFS is seeking comment on this interpretation which would prohibit harvesting of Atlantic mackerel by all vessels meeting any one of the preceding criteria. NMFS is also seeking comment on the overall merits of such a prohibition on harvesting vessels.

The Council is concerned about rapid over-capitalization of the mackerel fleet by the entry of large vessels with significant harvesting potential. The Council's analysis indicates that the current fleet of vessels in the Northeast has more than enough fishing harvesting capacity to take the sustainable harvest of Atlantic mackerel. This analysis can be reviewed in its entirety by obtaining a copy of Amendment 8 to the Atlantic

Mackerel, Squid, and Butterfish FMP (see **ADDRESSES**).

Because Amendment 8 proposes to prohibit only vessels that exceed the above specified limits from harvesting Atlantic mackerel and not from processing it, NMFS, to be consistent with the intent of the Council, proposes to modify the vessel and dealer permitting provisions to provide for processing by such vessels. Specifically, the vessel permit requirement would be revised to make vessels exceeding the size limits specified ineligible for a permit to harvest Atlantic mackerel. A new dealer permit category would be established to allow a vessel of any size to receive, possess and process Atlantic mackerel at sea, as well as to off-load the product. Such a vessel would be required to obtain an at-sea processing permit and comply with the dealer reporting requirements.

This proposed rule would implement, through Amendment 12 to the FMP for the Atlantic Surf Clam and Ocean Quahog Fisheries, the operator permit requirement for individuals fishing for surf clams or ocean quahogs. An operator is the master, captain, or other individual aboard a fishing vessel who is in charge of that vessel's operations. Under the proposed rule, any vessel fishing commercially for surf clams or ocean quahogs in the EEZ would have to have on board at least one operator who holds an operator permit issued pursuant to this FMP or any other FMP prepared by the Mid-Atlantic or the New England Fishery Management Councils. The operator may be held accountable for violations of the fishing regulations and may be subject to an operator permit sanction for violations. During the permit sanction period, the individual operator could not be aboard any federally permitted fishing vessel or any vessel subject to Federal fishing regulations while the vessel is at sea or engaged in off-loading.

Technical Changes

Effective February 1, 1991, NMFS closed the fishing grounds located east of 69° W. longitude, and south of 42°20' N. latitude to surf clam and ocean quahog harvesting (56 FR 3980, February 1, 1991). That area was closed to fishing for surf clams and ocean quahogs due to high concentrations of the organism that causes paralytic shellfish poisoning (PSP) currently found in these species at that location. The original notification specified that the area would remain closed until the Secretary of Commerce determines that the adverse environmental conditions caused by the PSP toxin are no longer present. Since that closure is still in effect, NMFS proposes to codify the closure so that new entrants into the fishery, and those who may not have been actively participating in the fishery since 1991, can be notified more easily of the closure and subsequent re-opening, should it occur.

Additionally, NMFS proposes to suspend the sea turtle conservation regulations codified at § 648.106. The measures implemented in Amendment 2 to the Summer Flounder, Scup, and Black Sea Bass FMP (57 FR 57358, December 4, 1992) were intended to serve a temporary function, pending implementation of permanent measures under the authority of the Endangered Species Act (ESA). Those regulations are now in place under 50 CFR parts 217 and 227. Regulations issued under the ESA supersede the regulations issued under part 648, which are proposed to be replaced with a cross reference to parts 217 and 227.

Classification

At this time, NMFS has not determined that the amendments that this proposed rule would implement are consistent with the national standards of the Magnuson-Stevens Act and other applicable law. NMFS, in making that determination, will take into account the data, views, and comments received during the comment period.

The Council prepared EAs for each of the amendments that discuss the impacts on the environment. Copies of the environmental assessments are available from the Council (see **ADDRESSES**).

This proposed rule has been determined to be significant for purposes of E.O. 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities as follows:

Some of the provisions implemented by this rule, i.e., the revised overfishing definitions and the framework process, are not expected to impact participants in any of these fisheries. Consequently, these provisions would not change historical production or normal business practices associated with the fishery. For the operator permit provision, approximately 21 of the 84 vessels that landed surf clams or ocean quahogs in 1997 (25 percent) are operated by individuals who would be required to obtain that permit. These individuals would not already have a permit issued, as required by another fishery. Compliance costs associated with this requirement are estimated at $22 ($15 form preparation, plus $7 for passport photographs), to be incurred every 3 years only, since the permit is valid for that time. Therefore, it is realistic to assume that this cost would equate to but a small percentage of the annualized costs of the surf clam and quahog industry. The vessel size restriction is estimated to impact 1 of approximately 1,000 vessels that represent potential new entry into the directed mackerel fishery. As a result, a regulatory flexibility analysis was not prepared. Any changes in management provisions that arise as a result of the measures enacted by these amendments would be reviewed for economic impacts when submitted.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number.

This proposed rule contains collection-of-information requirements subject to the Paperwork Reduction Act. These collection-of-information requirements have been submitted to OMB for approval. The requirements and their estimated response times are: Operator permits at 1 hour per response, at-sea processor permits at 5 minutes per response, and weekly reporting for at-sea processors at 2 minutes to complete the dealer purchase report (Form 88–30), and 4 minutes to summarize and call-in the weekly IVR report. The response times shown include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Public comment is sought regarding whether these proposed collections-of-information are necessary for the proper performance of the functions of the agency, including whether the information has practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection-of-information, including through the use of automated collection techniques or other forms of information technology. Send comments regarding these burden estimates or any other aspect of the data requirements, including suggestions for reducing the burden, to NMFS (see **ADDRESSES**) and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 (ATTN: NOAA Desk Officer).

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: March 31, 1999.

Rolland A. Schmitten,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 648 is proposed to be amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 648.4, paragraph (a)(5)(iii) is revised to read as follows:

§ 648.4 Vessel and individual commercial permits.

(a) * * *

(5) * * *

(iii) *Atlantic mackerel permit.* Any vessel of the United States may obtain a permit to fish for or retain Atlantic mackerel in or from the EEZ, except for vessels that exceed 165 feet in length overall (LOA), or 750 gross registered tons, or have shaft horsepower exceeding 3000 shp. Vessels that exceed the size restriction may obtain an at-sea processing permit specified under § 648.6(a)(2).

* * * * *

3. In § 648.5, paragraph (a) is revised to read as follows:

§ 648.5 Operator permits.

(a) *General.* Any operator of a vessel fishing for or possessing sea scallops in excess of 40 lb (18.1 kg), NE Multispecies, and, mackerel, squid, or butterfish, or scup, and, black sea bass, or, as of [insert effective date of the final rule], Atlantic surf clams and ocean quahog harvested in or from the EEZ, or issued a permit for these species under this part, must have been issued under this section and carry on board, a valid operator's permit.

* * * * *

4. In § 648.6, paragraph (a) is redesignated paragraph (a)(1) and a heading is added to newly redesignated paragraph (a)(1); a new paragraph (a)(2) is added; and a paragraph (c) is revised to read as follows:

§ 648.6 Dealer/processor permits.

(a) *General.* (1) *Dealer permits.* * * *

(2) *At-sea processors.* Notwithstanding the provisions of § 648.4(a)(5), any vessel of the United States must have been issued and carry on board a valid at-sea processor permit issued under this section to receive over the side, possess and process Atlantic mackerel harvested in or from the EEZ by a lawfully permitted vessel of the United States.

* * * * *

(c) *Information requirements.* Applications must contain at least the following information and any other information required by the Regional Administrator: Company name, place(s) of business (principal place of business if applying for a surf clam and ocean quahog permit), mailing address(es) and telephone number(s), owner's name, dealer permit number (if a renewal), name and signature of the person responsible for the truth and accuracy of the application, a copy of the certificate of incorporation if the business is a corporation, and a copy of the partnership agreement and the names and addresses of all partners, if the business is a partnership, name of at-sea processor vessel, and current vessel documentation papers, if an at-sea processor permit.

* * * * *

5. In § 648.7, the last two sentences of paragraph (c) are removed and paragraph (f)(3) is revised to read as follows:

§ 648.7 Recordkeeping and reporting requirements.

* * * * *

(f) * * *

(3) *At-sea purchasers, receivers, or processors.* All persons purchasing, receiving, or processing any summer flounder, or mackerel, or squid, or butterfish, or scup, or black sea bass at sea for landing at any port of the United States must submit information identical to that required by paragraph (a)(1), (a)(2), or (a)(3) of this section, as applicable, and provide those reports to the Regional Administrator or designee on the same frequency basis.

* * * * *

6. In § 648.14, paragraph (p)(10) is added to read as follows:

§ 648.14 Prohibitions.

* * * * *

(p) * * *

(10) Fish for, retain, or possess Atlantic mackerel in or from the EEZ with a vessel that exceeds 165 ft (50.3 m) in length overall, or 750 GRT, or 3000 shp, except for processing Atlantic mackerel by a vessel holding a valid at-sea processor permit pursuant to § 648.6(a)(2).

* * * * *

7. In § 648.20, paragraph (c) is revised to read as follows:

§ 648.20 Maximum optimum yield (OYs).

* * * * *

(c) *Illex*–catch associated with a fishing mortality rate of F_{msy}.

* * * * *

8. In § 648.21, paragraph (b)(2)(i) is revised to read as follows:

§ 648.21 Procedures for determining initial annual amounts.

* * * * *

(b) * * *.

(2) *Mackerel.* (i) Mackerel ABC must be calculated from the formula ABC = T - C, where C is the estimated catch of mackerel in Canadian waters for the upcoming fishing year and T is the catch associated with a fishing mortality rate that is equal to F_{target} (F= 0.25) at 890,000 mt spawning stock biomass (or greater) and decreases linearly to zero at 450,000 mt spawning stock biomass (½ B_{msy}).

* * * * *

9. Section 648.24 is added under subpart B to read as follows:

§ 648.24 Framework adjustments to management measures.

(a) *Within season management action.* The MAFMC, at any time, may initiate action to add or adjust management measures within the Atlantic Mackerel, Squid, and Butterfish FMP if it finds that action is necessary to meet or be consistent with the goals and objectives of the plan.

(1) *Adjustment process.* The MAFMC shall develop and analyze appropriate management actions over the span of at least two MAFMC meetings. The MAFMC must provide the public with advance notice of the availability of the recommendation(s), appropriate justification(s) and economic and biological analyses, and the opportunity to comment on the proposed adjustment(s) at the first meeting and prior to and at the second MAFMC meeting. The MAFMC's recommendations on adjustments or additions to management measures must come from one or more of the following categories: minimum fish size, maximum fish size, gear restrictions, gear requirements or prohibitions, permitting restrictions, recreational possession limit, recreational seasons, closed areas, commercial seasons, commercial trip limits, commercial quota system including commercial quota allocation procedure and possible quota set asides to mitigate bycatch, recreational harvest limit, annual specification quota setting process, FMP Monitoring Committee composition and process, description and identification of essential fish habitat (and fishing gear management measures that impact EFH), description and identification of habitat areas of particular concern,

overfishing definition and related thresholds and targets, regional gear restrictions, regional season restrictions (including option to split seasons), restrictions on vessel size (LOA and GRT) or shaft horsepower, any other management measures currently included in the FMP, set aside quota for scientific research, regional management, and process for inseason adjustment to the annual specification.

(2) *MAFMC recommendation.* After developing management actions and receiving public testimony, the MAFMC shall make a recommendation to the Regional Administrator. The MAFMC's recommendation must include supporting rationale, if management measures are recommended, an analysis of impacts, and a recommendation to the Regional Administrator on whether to issue the management measures as a final rule. If MAFMC recommends that the management measures should be issued as a final rule, MAFMC must consider at least the following factors, and provide support and analysis for each factor considered:

(i) Whether the availability of data on which the recommended management measures are based allows for adequate time to publish a proposed rule, and whether the regulations would have to be in place for an entire harvest/fishing season.

(ii) Whether there has been adequate notice and opportunity for participation by the public and members of the affected industry in the development of the recommended management measures.

(iii) Whether there is an immediate need to protect the resource.

(iv) Whether there will be a continuing evaluation of management measures following their implementation as a final rule.

(3) *Regional Administrator action.* If the MAFMC's recommendation includes adjustments or additions to management measures and, after reviewing the MAFMC's recommendation and supporting information:

(i) If the Regional Administrator concurs with MAFMC's recommended management measures and determines that the recommended management measures should be issued as a final rule based on the factors specified in paragraph (a)(2) of this section, the measures will be issued as a final rule in the **Federal Register**.

(ii) If the Regional Administrator concurs with MAFMC's recommended management measures and determines that the recommended management measures should be published first as a proposed rule, the measures will published as a proposed rule in the **Federal Register**. After additional public comment, if the Regional Administrator concurs with the MAFMC recommendation, the measures will be issued as a final rule in the **Federal Register**.

(iii) If the Regional Administrator does not concur, MAFMC will be notified in writing of the reasons for the non-concurrence.

(4) *Emergency actions.* Nothing in this section is meant to derogate from the authority of the Secretary to take emergency action under section 305(e) of the Magnuson-Stevens Act.

(b) [Reserved]

10. In § 648.73, paragraph (a)(4) is added to read as follows:

§ 648.73 Closed areas.

(a) * * *

(4) *Georges Bank.* The paralytic shellfish poisoning (PSP) contaminated area known as Georges Bank and located east of 69° W. longitude, and south of 42°20' N. latitude.

* * * * *

11. Section 648.77 under Subpart E is added to read as follows:

§ 648.77 Framework adjustments to management measures.

(a) *Within season management action.* At any time, MAFMC may initiate action to add or adjust management measures within the Atlantic Surf Clam and Ocean Quahog FMP if it finds that action is necessary to meet or be consistent with the goals and objectives of the plan.

(1) *Adjustment process.* MAFMC shall develop and analyze appropriate management actions over the span of at least two MAFMC meetings. MAFMC must provide the public with advance notice of the availability of the recommendation(s), appropriate justification(s) and economic and biological analyses, and the opportunity to comment on the proposed adjustment(s) at the first meeting, and prior to and at the second MAFMC meeting. The MAFMC's recommendations on adjustments or additions to management measures must come from one or more of the following categories: The overfishing definition (both the threshold and target levels) description and identification of EFH (and fishing gear management measures that impact EFH), habitat areas of particular concern, set aside quota for scientific research, vessel tracking system, optimum yield range.

(2) *MAFMC recommendation.* After developing management actions and receiving public testimony, MAFMC shall make a recommendation to the Regional Administrator. MAFMC's recommendation must include supporting rationale, if management measures are recommended, an analysis of impacts, and a recommendation to the Regional Administrator on whether to issue the management measures as a final rule. If MAFMC recommends that the management measures should be issued as a final rule, it must consider at least the following factors, and provide support and analysis for each factor considered:

(i) Whether the availability of data on which the recommended management measures are based allows for adequate time to publish a proposed rule, and whether the regulations would have to be in place for an entire harvest/fishing season.

(ii) Whether there has been adequate notice and opportunity for participation by the public and members of the affected industry in the development of recommended management measures.

(iii) Whether there is an immediate need to protect the resource.

(iv) Whether there will be a continuing evaluation of management measures adopted following their implementation as a final rule.

(3) *Regional Administrator action.* If MAFMC's recommendation includes adjustments or additions to management measures and, after reviewing MAFMC's recommendation and supporting information:

(i) If the Regional Administrator concurs with the MAFMC's recommended management measures and determines that the recommended management measures should be issued as a final rule based on the factors specified in paragraph (a)(2) of this section, the measures will be issued as a final rule in the **Federal Register**.

(ii) If the Regional Administrator concurs with the MAFMC's recommended management measures and determines that the recommended management measures should be published first as a proposed rule, the measures will be published as a proposed rule in the **Federal Register**. After additional public comment, if the Regional Administrator concurs with the MAFMC recommendation, the measures will be issued as a final rule and published in the **Federal Register**.

(iii) If the Regional Administrator does not concur, MAFMC will be notified in writing of the reasons for the non-concurrence.

(4) *Emergency actions.* Nothing in this section is meant to derogate from the authority of the Secretary to take emergency action under section 305(e) of the Magnuson-Stevens Act.

(b) [Reserved]

12. Section 648.107 is added under Subpart G to read as follows:

§ 648.107 Framework adjustments to management measures.

(a) *Within season management action.* MAFMC, at any time, may initiate action to add or adjust management measures within the Summer Flounder, Scup, and Black Sea Bass FMP if it finds that action is necessary to meet or be consistent with the goals and objectives of the plan.

(1) *Adjustment process.* MAFMC shall develop and analyze appropriate management actions over the span of at least two MAFMC meetings. MAFMC must provide the public with advance notice of the availability of the recommendation(s), appropriate justification(s) and economic and biological analyses, and the opportunity to comment on the proposed adjustment(s) at the first meeting and prior to and at the second MAFMC meeting. MAFMC's recommendations on adjustments or additions to management measures must come from one or more of the following categories: Minimum fish size, maximum fish size, gear restrictions, gear requirements or prohibitions, permitting restrictions, recreational possession limit, recreational seasons, closed areas, commercial seasons, commercial trip limits, commercial quota system including commercial quota allocation procedure and possible quota set asides to mitigate bycatch, recreational harvest limit, annual specification quota setting process, FMP Monitoring Committee composition and process, description and identification of essential fish habitat (and fishing gear management measures that impact EFH), description and identification of habitat areas of particular concern, overfishing definition and related thresholds and targets, regional gear restrictions, regional season restrictions (including option to split seasons), restrictions on vessel size (LOA and GRT) or shaft horsepower, operator permits, any other commercial or recreational management measures, any other management measures currently included in the FMP, and set aside quota for scientific research.

(2) *MAFMC recommendation.* After developing management actions and receiving public testimony, MAFMC shall make a recommendation to the Regional Administrator. MAFMC's recommendation must include supporting rationale, if management measures are recommended, an analysis of impacts, and a recommendation to the Regional Administrator on whether to issue the management measures as a final rule. If MAFMC recommends that the management measures should be issued as a final rule, it must consider at least the following factors and provide support and analysis for each factor considered:

(i) Whether the availability of data on which the recommended management measures are based allows for adequate time to publish a proposed rule, and whether the regulations would have to be in place for an entire harvest/fishing season.

(ii) Whether there has been adequate notice and opportunity for participation by the public and members of the affected industry in the development of recommended management measures.

(iii) Whether there is an immediate need to protect the resource.

(iv) Whether there will be a continuing evaluation of management measures adopted following their implementation as a final rule.

(3) *Regional Administrator action.* If MAFMC's recommendation includes adjustments or additions to management measures and, if after reviewing the MAFMC's recommendation and supporting information:

(i) The Regional Administrator concurs with the MAFMC's recommended management measures and determines that the recommended management measures should be issued as a final rule based on the factors specified in paragraph (a)(2) of this section, the measures will be issued as a final rule in the **Federal Register**.

(ii) If the Regional Administrator concurs with the MAFMC's recommended management measures and determines that the recommended management measures should be published first as a proposed rule, the measures will be published as a proposed rule in the **Federal Register**. After additional public comment, if the Regional Administrator concurs with the MAFMC recommendation, the measures will be issued as a final rule and published in the **Federal Register**.

(iii) If the Regional Administrator does not concur, the MAFMC will be notified in writing of the reasons for the non-concurrence.

(4) *Emergency actions.* Nothing in this section is meant to derogate from the authority of the Secretary to take emergency action under section 305(e) of the Magnuson-Stevens Act.

(b) [Reserved]

13. Section 648.127 is added under Subpart H to read as follows:

§ 648.127 Framework adjustments to management measures.

(a) *Within season management action.* See § 648.107(a).

(1) *Adjustment process.* See § 648.107(a)(1).

(2) *MAFMC recommendation.* See § 648.107(a)(2)(i) to (iv).

(3) *Regional Administrator action.* See § 648.107(a)(i) through (iii).

(4) *Emergency actions.* See § 648.107(a)(4).

(b) [Reserved]

14. Section 648.147 is added under Subpart I to read as follows:

§ 648.147 Framework adjustments to management measures.

(a) *Within season management action.* See § 648.107(a).

(1) *Adjustment process.* See § 648.107(a)(1).

(2) *MAFMC recommendation.* See § 648.107(a)(2)(i) through (iv).

(3) *Regional Administrator action.* See § 648.107(a)(i) through (iii).

(4) *Emergency actions.* See § 648.107(a)(4).

(b) [Reserved]

[FR Doc. 99–8470 Filed 4–6–99; 8:45 am]
BILLING CODE 3510–22–F

Notices

Federal Register
Vol. 64, No. 66
Wednesday, April 7, 1999

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

April 2, 1999.

The Department of Agriculture has submitted the following information collection requirement(s) the OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, D.C. 20503 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, D.C. 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–6746.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Farm Service Agency

Title: Loan Deficiency Payments.
OMB Control Number: 0560–0129.
Summary of Collection: Loan deficiency payments are authorized by the Federal Agriculture Improvement and Reform Act of 1966 (1996 Act), Section 135. The Farm Service Agency (FSA), on behalf of the Commodity Credit Corporation (CCC), administers the marketing assistance loan and loan deficiency programs. The loan deficiency payment option allows producers of eligible upland cotton, rice, wheat, feed grains, and oilseeds (marketing assistance loan commodities) to obtain loan deficiency payments on their eligible production instead of placing the commodity under a CCC marketing assistance loan. Loan deficiency payments are made available when the loan rate for the commodity is greater than the announced repayment rate or world market price, as applicable. An eligible producer on a farm must have: (1) complied with the highly erodible land requirements; (2) completed payment limitation eligibility requirements; (3) reported planted acres for commodities applicable to loan and loan deficiency payment requests; (4) met the applicable crop insurance requirements; (5) a share in the risk of producing the commodity; and (6) beneficial interests in the commodity, which includes control of the commodity, risk of loss, and title to the commodity, at the time of the loan deficiency payment request. The FSA will collect information using forms CCC–633 LDP, CCC–Cotton AA, and CCC–709.
Need and Use of the Information: FSA will collect information to determine the eligibility, applicable payments rates, quantities, and payment amount of participants to receive loan deficiency payments. They will also use the information to determine cases of noncompliance with the regulations governing the loan deficiency payment program. Furnishing the data is voluntary. However, without it, assistance under the CCC loan deficiency payment program cannot be provided.
Description of Respondents: Farm; individuals or households; Business or other for-profit.
Number of Respondents: 600,000.
Frequency of Responses: Reporting: Annually.
Total Burden Hours: 1,117,500.

Farm Service Agency

Title: Application for Payment of Amounts Due Persons who have Died, Disappeared or have been Declared Incompetent.
OMB Control Number: 0560–0026.
Summary of Collection: Representatives or survivors of producers who die, disappear, or are declared incompetent must be afforded a method of obtaining any payment intended for the producer as stipulated in 7 CFR 707. It is necessary to collect information recorded on FSA–325 in order to determine whether representatives or survivors of a producer are entitled to receive payments earned by a producer who dies, disappears, or is declared incompetent before receiving the payments. The Farm Service Agency (FSA) will collect information using form FSA–315.
Need and Use of the Information: FSA will collect information to determine eligibility for representatives or survivors to receive payment of amounts due persons who have died, disappeared, or have been declared incompetent.
Description of Respondents: Individuals or households; business or other for-profit; not-for-profit institutions; State, Local or Tribal Government.
Number of Respondents: 3,000.
Frequency of Responses: Reporting: other (when necessary).
Total Burden Hours: 1,500.

Forest Service

Title: Smith River National Recreation Area.
OMB Control Number: 0596–0138.
Summary of Collection: The Smith River National Recreation Area (NRA) was established by the Smith River National Recreation Area Act of 1990. Section 8(d) of the Act directed the Secretary of Agriculture to promulgate supplementary mineral regulations to ensure "* * * the preservation, protection, enhancement, and interpretation for present and future generations of the Smith River . Watershed's outstanding wild and scenic rivers, ecological diversity, and recreation opportunities while providing for the wise use and sustained

productivity of its natural resources. Some of the lands within the NRA fall under the purview of the United States mining laws of 1872, as amended, which governs the prospecting for and appropriation of metallic and most nonmetallic minerals. This law provides individuals the right to search for and extract valuable locatable minerals and secure title to the lands involved. A prospector, upon discovering a valuable mineral deposit, may locate a mining claim. Recording that claim in the local courthouse, and with the appropriate BLM State Office, affords the mining claimant protection from subsequent locators. A mining claimant is then entitled to reasonable access to the claim for further prospecting, mining or necessary related activities, subject to other laws and applicable regulations. The Forest Service (FS) will collect information using the Plan of Operations Form FS–2800–5 or whatever format or medium that the operator chooses to process request to mine on federally-owned and/or managed lands.

Need and Use of the Information: FS will collect information on the name and legal mailing address of the operator, owner, and any lessees, assigns, and designees; copy of the deed/legal instrument that conveyed the outstanding mineral rights; sketches/maps of the outstanding mineral rights location, the proposed area of operations, existing/proposed roads or access routes, any new proposed road construction, and the approximate location and size of the areas to be disturbed including existing or proposed structures, facilities, and other improvements; description of the type of operation which includes a list of the type, size, location, and number of structures, facilities, and other improvements. etc. The collection of this information is necessary to ensure the continued stability of the area surrounding the mining site and to monitor the mining operation.

Description of Respondents: Business or other for-profit.

Number of Respondents: 2.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 40.

Nancy B. Sternberg,

Departmental Clearance Officer.

[FR Doc. 99–8607 Filed 4–6–99; 8:45 am]

BILLING CODE 3410–01–M

DEPARTMENT OF COMMERCE

Submission For OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.

Title: Survey of Income and Program Participation 1996 Panel Wave 11.

Form Number(s): SIPP/CAPI Automated Instrument, SIPP–161105(L).

Agency Approval Number: 0607–0813.

Type of Request: Revision of a currently approved collection.

Burden: 117,800 hours..

Number of Respondents: 77,700.

Avg Hours Per Response: 30 minutes.

Needs and Uses: The Bureau of the Census conducts the Survey of Income and Program Participation (SIPP) to collect information from a sample of households concerning the distribution of income received directly as money or indirectly as in-kind benefits. SIPP data are use by economic policymakers, the Congress, state and local governments, and Federal agencies that administer social welfare and transfer payment programs such as the Department of Health and Human Services, the Department of Housing and Urban Development, and the Department of Agriculture.

The SIPP is a longitudinal survey, in that households in the panel are interviewed 12 times at 4-month intervals or waves over the life of the panel, making the duration of the panel about 4 years. The next panel of households will be introduced in the year 2000.

The survey is molded around a central core of labor force and income questions, health insurance questions, and questions concerning government program participation that remain fixed throughout the life of the panel. The core questions are asked at Wave 1 and are updated during subsequent interviews. The core is supplemented with additional questions or topical modules designed to answer specific needs.

This request is for clearance of the topical modules to be asked during Wave 11 of the 1996 Panel. The core questions and topical modules for Waves 1–10 have already been cleared. The topical modules for Wave 11 are: (1) Child Support Agreements, (2) Support for Non-household members, (3) Adult Disability, (4) Child Disability, and (5) Computer and Internet Usage. Wave 11 interviews will be conducted from August through November 1999.

The Census Bureau is conducting incentive experiments over the course of the 1996 Panel. Monetary incentives to encourage response have been incorporated into most Waves of the 1996 Panel. Wave 11 also includes an incentive experiment.

Affected Public: Individuals or households.

Frequency: Every 4 months.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13 U.S.C., Section 182.

OMB Desk Officer: Nancy Kirkendall, (202) 395–7313.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, room 5033, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Nancy Kirkendall, OMB Desk Officer, room 10201, New Executive Office Building, Washington, DC 20503.

Dated: April 1, 1999.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 99–8588 Filed 4–6–99; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Office of the Secretary

Estimates of the Voting Age Population for 1998

AGENCY: Office of the Secretary, Commerce.

ACTION: General Notice Announcing Population Estimates.

SUMMARY: This notice announces the voting age population estimates, as of July 1, 1998, for each state and the District of Columbia. We are giving this notice in accordance with the 1976 amendment to the Federal Election Campaign Act, Title 2, United States Code, Section 441a(e).

FOR FURTHER INFORMATION CONTACT: John F. Long, Chief, Population Division, Bureau of the Census, Department of Commerce, Room 2011, Federal Building 3, Washington, DC 20233, telephone 301–457–2071.

SUPPLEMENTARY INFORMATION: Under the requirements of the 1976 amendment to the Federal Election Campaign Act, Title 2, United States Code, Section

441a(e), I hereby give notice that the estimates of the voting age population for July 1, 1998, for each state and the District of Columbia are as shown in the following table.

ESTIMATE OF THE POPULATION OF VOTING AGE FOR EACH STATE AND DISTRICT OF COLUMBIA: JULY 1, 1998

[In thousands]

Area	Population 18 and over
United States	200,426
Alabama	3,268
Alaska	422
Arizona	3,405
Arkansas	1,885
California	23,755
Colorado	2,930
Connecticut	2,483
Delaware	565
District of Columbia	420
Florida	11,376
Georgia	5,620
Hawaii	895
Idaho	878
Illinois	8,858
Indiana	4,382
Iowa	2,140
Kansas	1,932
Kentucky	2,948
Louisiana	3,178
Maine	953
Maryland	3,848
Massachusetts	4,689
Michigan	7,266
Minnesota	3,466
Mississippi	1,995
Missouri	4,032
Montana	656
Nebraska	1,217
Nevada	1,280
New Hampshire	886
New Jersey	6,125
New Mexico	1,233
New York	13,673
North Carolina	5,627
North Dakota	476
Ohio	8,365
Oklahoma	2,467
Oregon	2,457
Pennsylvania	9,142
Rhode Island	751
South Carolina	2,877
South Dakota	537
Tennessee	4,099
Texas	14,130
Utah	1,398
Vermont	450
Virginia	5,147
Washington	4,217
West Virginia	1,407
Wisconsin	3,872
Wyoming	352

I have certified these counts to the Federal Election Commission.

Dated: March 31, 1999.

William M. Daley,

Secretary, Department of Commerce.

[FR Doc. 99–8723 Filed 4–6–99; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Action Affecting Export Privileges; Kiyoyuki Yasutomi

On Tuesday, December 8, 1998, **Federal Register** published an Order issued by the Bureau of Export Administration (BXA) on December 1, 1998 (63 FR 67644). The Order identifies Kiyoyuki Yasutomi, with an address at M.E.I. Japan, 6F Sanyo Bldg, 1 Maitocho, Shinjuku ku, Tokyo 160 Japan, as a person denied all U.S. export privileges. The reference to "M.E.I. Japan" has caused some confusion in the export community as to the identity of the company listed in Yasutomi's address. To eliminate that confusion, BXA is amending the Order to identify the abbreviation "M.E.I. Japan" listed in the address in both the caption and the text of that Order. Under the Order, Kiyoyuki Yasutomi is the person denied export privileges. The acronyn "M.E.I." stands for "Micro Electronics International."

Amendment

In the address in the caption and in paragraph I of the text of the Order of December 1, 1998, "M.E.I. Japan" should read "M.E.I. Japan, also known as Micro Electronics International Japan".

Dated: March 26, 1999.

Eileen M. Albanese,

Director, Office of Exporter Services.

[FR Doc. 99–8540 Filed 4–6–99; 8:45 am]

BILLING CODE 3510–DT–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–357–405]

Final Results of Expedited Sunset Review: Barbed Wire and Barbless Fencing Wire from Argentina

AGENCY: Import Administration, International Trade Administration, Department of Commerce

ACTION: Notice of Final Results of Expedited Sunset Review: Barbed Wire and Barbless Fencing Wire from Argentina

SUMMARY: On December 2, 1998, the Department of Commerce ("the Department") initiated a sunset review of the antidumping order on barbed wire and barbless fencing wire from Argentina (63 FR 66527) pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act"). On the basis of a notice of intent to participate and substantive comments filed on behalf of the domestic industry and inadequate response (in this case, no response) from respondent interested parties, the Department determined to conduct an expedited review. As a result of this review, the Department finds that revocation of the antidumping order would be likely to lead to continuation or recurrence of dumping at the levels indicated in the Final Results of Review section of this notice.

FOR FURTHER INFORMATION CONTACT: Scott E. Smith or Melissa G. Skinner, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, D.C. 20230; telephone: (202) 482–6397 or (202) 482–1560, respectively.

EFFECTIVE DATE: April 7, 1999.

Statute and Regulations

This review was conducted pursuant to sections 751(c) and 752 of the Act. The Department's procedures for the conduct of sunset reviews are set forth in *Procedures for Conducting Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders*, 63 FR 13516 (March 20, 1998) ("*Sunset Regulations*"). Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department's Policy Bulletin 98:3" *Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin*, 63 FR 18871 (April 16, 1998) ("*Sunset Policy Bulletin*").

Scope

The merchandise subject to this antidumping order is barbed wire and barbless fencing wire from Argentina, which is currently classifiable under Harmonized Tariff Schedule (HTS) item number 7313.00.00. The HTS item number is provided for convenience and U.S. Customs purposes. The written product description remains dispositive.

This review covers imports from all manufacturers and exporters of barbed wire and barbless fencing wire from Argentina.

Background

On December 2, 1998, the Department initiated a sunset review of the antidumping order on barbed wire and barbless fencing wire from Argentina (63 FR 66527), pursuant to section 751(c) of the Act. The Department received a Notice of Intent to Participate on behalf of Davis Wire Corporation, Keystone Steel & Wire Company and Oklahoma Steel & Wire Company, Inc. ("domestic interested parties") on December 16, 1998, within the deadline specified in section 351.218(d)(1)(i) of the Sunset Regulations. Each company claimed interested party status under section 771(9)(C) of the Act as a domestic producer of barbed wire. In addition, Keystone Steel & Wire Company indicated that it is the successor-in-interest to the original petitioner, Forbes Steel & Wire Corporation, and Davis Wire Corporation indicated that it is the successor-in-interest to one of the companies that supported the original petition in this case, CF&I Steel Corporation. Further, Oklahoma Steel & Wire Company, Inc. indicated that it supported the original petition filed by Forbes Steel & Wire Corporation in 1984. We received a complete substantive response from the domestic interested parties on January 4, 1999, within the 30-day deadline specified in the Sunset Regulations under section 351.218(d)(3)(i). We did not receive a substantive response from any respondent interested party to this proceeding. As a result, pursuant to 19 CFR 351.218(e)(1)(ii)(C), the Department determined to conduct an expedited, 120-day, review of this order.

Determination

In accordance with section 751(c)(1) of the Act, the Department conducted this review to determine whether revocation of the antidumping order would be likely to lead to continuation or recurrence of dumping. Section 752(c) of the Act provides that, in making this determination, the Department shall consider the weighted-average dumping margins determined in the investigation and subsequent reviews and the volume of imports of the subject merchandise for the period before and the period after the issuance of the antidumping order, and shall provide to the International Trade Commission ("the Commission") the magnitude of the margin of dumping likely to prevail if the order is revoked.

The Department's determinations concerning continuation or recurrence of dumping and the magnitude of the margin are discussed below. In addition, parties' comments with respect to continuation or recurrence of dumping and the magnitude of the margin are addressed within the respective sections below.

Continuation or Recurrence of Dumping

Drawing on the guidance provided in the legislative history accompanying the Uruguay Round Agreements Act ("URAA"), specifically the Statement of Administrative Action ("the SAA"), H.R. Doc. No. 103–316, vol. 1 (1994), the House Report, H.R. Rep. No. 103–826, pt.1 (1994), and the Senate Report, S. Rep. No. 103–412 (1994), the Department issued its *Sunset Policy Bulletin* providing guidance on methodological and analytical issues, including the bases for likelihood determinations. In its *Sunset Policy Bulletin*, the Department indicated that determinations of likelihood will be made on an order-wide basis (*see* section II.A.3). In addition, the Department indicated that normally it will determine that revocation of an antidumping order is likely to lead to continuation or recurrence of dumping where (a) dumping continued at any level above *de minimis* after the issuance of the order, (b) imports of the subject merchandise ceased after the issuance of the order, or (c) dumping was eliminated after the issuance of the order and import volumes for the subject merchandise declined significantly (*see* section II.A.3).

In addition to guidance on likelihood provided in the *Sunset Policy Bulletin* and legislative history, section 751(c)(4)(B) of the Act provides that the Department shall determine that revocation of an order is likely to lead to continuation or recurrence of dumping where a respondent interested party waives its participation in the sunset review. In the instant review, the Department did not receive a response from any respondent interested party. Pursuant to section 351.218(d)(2)(iii) of the *Sunset Regulations*, this constitutes a waiver of participation.

The antidumping duty order on barbed wire and barbless fencing wire from Argentina was published in the **Federal Register** on November 13, 1985 (50 FR 46808). No administrative reviews of this case have been conducted by the Department.[1] The order remains in effect for all manufacturers and exporters of the subject merchandise.

In its substantive response, the domestic interested parties argue that the likely effect of revocation of the order against barbed wire from Argentina is that dumping would recur (*see* January 4, 1999 Substantive Response of the Domestic Interested Parties at 2). With respect to whether imports of the subject merchandise ceased after the issuance of the order, the domestic interested parties, citing American Iron and Steel Institute data, state that imports of barbed wire from Argentina disappeared from the U.S. market during the course of the original antidumping investigation, and that there have been no imports at all since 1986 (*see* January 4, 1999 Substantive Response of the Domestic Interested Parties at 2). Further, with respect to whether dumping continued at any level above *de minimis* after the issuance of the order, the domestic interested parties state that the dumping margin has remained at 69.02 percent *ad valorem* during the life of the order (*see* January 4, 1999 Substantive Response of the Domestic Interested Parties at 2).

In conclusion, the domestic interested parties argued that the Department should determine that there is a likelihood that dumping would resume if the order were to be revoked because (1) shipments of subject merchandise ceased following the imposition of the order and have not resumed, (2) dumping margins have existed for all known exporters of the subject merchandise during the entire life of the order, and (3) there are no significant barriers for new or former suppliers to enter the market.

Consistent with section 752(c) of the Act, the Department considered the volume of imports of the subject merchandise before and after issuance of the order. The statistics on imports of the subject merchandise between 1980 and 1997, provided by the domestic interested parties and confirmed by U.S. Census Bureau IM146 reports, indicate that imports of the subject merchandise ceased after 1986 and have not resumed.

As discussed in section II.A.3 of the *Sunset Policy Bulletin*, the SAA at 890, and the House Report at 63–64, "[i]f imports cease after the order is issued, it is reasonable to assume that exporters could not sell in the United States without dumping and that, to reenter the U.S. market, they would have to resume dumping." Imports of barbed wire and barbless fencing wire from Argentina ceased soon after the issuance of the order. The Department finds that the cessation of imports after the

[1] The Department did publish the following notice prior to the establishment of the antidumping duty order. *See Barbed Wire and Barbless Fencing Wire from Argentina: Final Determination of Sales at Less Than Fair Value*; 50 FR 38563, September 23, 1985.)

issuance of the order is highly probative of the likelihood of continuation or recurrence of dumping. Furthermore, deposit rates above *de minimis* levels continue in effect for all shipments of the subject merchandise from Argentina.[2] Therefore, absent argument and evidence to the contrary, given that shipments of the subject merchandise ceased soon after the issuance of the order, that dumping margins continue to exist, and that respondent interested parties have waived their right to participate in this review before the Department, we determine that, consistent with Section II.A.3 of the *Sunset Policy Bulletin*, dumping is likely to continue or recur if the order were revoked.

Magnitude of the Margin

In the *Sunset Policy Bulletin*, the Department stated that it will normally provide to the Commission the margin that was determined in the final determination in the original investigation. Further, for companies not specifically investigated or for companies that did not begin shipping until after the order was issued, the Department normally will provide a margin based on the "all others" rate from the investigation. (*See* section II.B.1 of the *Sunset Policy Bulletin*.) Exceptions to this policy include the use of a more recently calculated margin, where appropriate, and consideration of duty absorption determinations. (*See* sections II.B.2 and 3 of the *Sunset Policy Bulletin*.)

The Department, in its final determination of sales at less than fair value, published a weighted-average dumping margin for one Argentine manufacturer/exporter, Acindar Industria Argentina de Aceros S.A. ("Acindar") (50 FR 38563, September 23, 1985). The Department also published an "all others" rate in this same **Federal Register** notice. With respect to duty absorption findings, because there have been no completed administrative reviews of the order, the Department has not had the opportunity to address the issue of duty absorption.

In its substantive response, the domestic interested parties state that the weighted-average dumping margin calculated by the Department for Acindar in the original investigation is the dumping margin likely to prevail if the order were revoked (*see* January 4, 1999 Substantive Response of the Domestic Interested Parties at 4). The domestic interested parties make this statement because this order has never undergone an administrative review and the dumping margin from the original investigation provides the best evidence of the likely dumping margin in the absence of the order.

The Department agrees with the domestic interested parties' argument concerning the choice of the margin rate to report to the Commission. An examination of the margin history of the order as well as an examination of import statistics of the subject merchandise, as provided in U.S. Department of Commerce Trade Statistics data, confirms that dumping margins have existed throughout the life of the order and that imports of the subject merchandise ceased soon after its imposition.

The Department finds the margin from the original investigation is the only calculated rate that reflects the behavior of exporters without the discipline of the order. Therefore, consistent with the *Sunset Policy Bulletin*, we determine that the margin calculated in the Department's original investigation is probative of the behavior of Argentine producers and exporters of barbed wire and barbless fencing wire if the order were revoked. We will report to the Commission the company-specific and "all others" rate from the original investigation contained in the *Final Results of Review* section of this notice.

Final Results of Review

As a result of this review, the Department finds that revocation of the antidumping order would likely to lead to continuation or recurrence of dumping at the margins listed below:

Manufacturer/exporter	Margin (percent)
Acindar	69.02
All Others	69.02

This notice serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305 of the Department's regulations. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This five-year ("sunset") review and notice are in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: April 1, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99–8625 Filed 4–6–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–351–605]

Final Results of Expedited Sunset Review: Frozen Concentrated Orange Juice from Brazil

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Final Results of Expedited Sunset Review: Frozen Concentrated Orange Juice (FCOJ) from Brazil.

SUMMARY: On December 2, 1998, the Department of Commerce ("the Department") initiated a sunset review of the antidumping order on frozen concentrated orange juice from Brazil (63 FR 66527) pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act"). On the basis of a notice of intent to participate and substantive comments filed on behalf of the domestic interested parties and inadequate response (in this case, no response) from respondent interested parties, the Department determined to conduct an expedited review. As a result of this review, the Department finds that revocation of the antidumping order would be likely to lead to continuation or recurrence of dumping at the levels indicated in the Final Results of the Review section of this notice.

FOR FURTHER INFORMATION CONTACT: Darla D. Brown or Melissa G. Skinner, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, D.C. 20230; telephone: (202) 482–3207 or (202) 482–1560, respectively.

EFFECTIVE DATE: April 7, 1999.

Statute and Regulations

This review was conducted pursuant to sections 751(c) and 752 of the Act. The Department's procedures for the conduct of sunset reviews are set forth in *Procedures for Conducting Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders*, 63 FR 13516 (March 20, 1998) ("*Sunset Regulations*"). Guidance on methodological or analytical issues

---

[2] *See Barbed wire and Barbless Fencing Wire from Argentina: Final Determination of Sales at Less Than Fair Value*, 50 FR 38563 (September 23, 1985) and *Antidumping Duty Order: Barbed Wire and Barbless Fencing Wire from Argentina*, 50 FR 46808 (November 13, 1985).

relevant to the Department's conduct of sunset reviews is set forth in the Department's Policy Bulletin 98:3—*Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin*, 63 FR 18871 (April 16, 1998) ("Sunset Policy Bulletin").

Scope

The merchandise subject to this antidumping order is frozen concentrated orange juice from Brazil.[1] Such merchandise is currently classifiable under Harmonized Tariff Schedule (HTS) item number 2009.11.00. The HTS item number is provided for convenience and Customs purposes only. The written description remains dispositive.

This review covers imports from all manufacturers and exporters of frozen concentrated orange juice from Brazil, other than imports produced by Sucocitrico Cutrale, S.A., which was excluded from the order (52 FR 16426, May 5, 1987), as well as Cargill Citrus Ltda, Citrosuco Paulista S.A., Coopercitrus Industrial Frutesp S.A., and Montectirus Trading S.A., for which the order was revoked (56 FR 52510, October 21, 1991) and Frutropic, for which the order was also revoked (59 FR 53137, October 21, 1994).

Background

On December 2, 1998, the Department initiated a sunset review of the antidumping order on frozen concentrated orange juice from Brazil (63 FR 66527), pursuant to section 751(c) of the Act. The Department received a Notice of Intent to Participate on behalf of Florida Citrus Mutual, Caulkins Indiantown Citrus Co., Citrus Belle, Citrus World, Inc., Orange Co. of Florida, Inc., Peace River Citrus Products, Inc., and Southern Gardens Citrus Processors Corp. (collectively "the domestic interested parties") on December 17, 1998, within the deadline specified in section 351.218(d)(1)(i) of the *Sunset Regulations*. Pursuant to 19 USC § 1677(9)(G)(iii), the domestic interested parties claimed interested party status as a coalition representative of growers and processors of oranges and orange juice. In addition, Florida Citrus Mutual, a trade association representing growers of oranges used in the production of FCOJ, was the original petitioner in the antidumping duty investigation of FCOJ from Brazil. We received a complete substantive response from the domestic interested parties on January 4, 1999, within the 30-day deadline specified in the *Sunset Regulations* under section 351.218(d)(3)(i). We did not receive a substantive response from any respondent interested party to this proceeding. As a result, pursuant to 19 CFR 351.218(e)(1)(ii)(C), the Department determined to conduct an expedited, 120-day, review of this order. On February 8, 1999, the domestic interested parties submitted a copy of the preliminary results of the latest administrative review of FCOJ from Brazil, covering the period between May 1, 1997 and April 30, 1998.[2]

Determination

In accordance with section 751(c)(1) of the Act, the Department conducted this review to determine whether revocation of the antidumping order would be likely to lead to continuation or recurrence of dumping. Section 752(c) of the Act provides that, in making this determination, the Department shall consider the weighted-average dumping margins determined in the investigation and subsequent reviews and the volume of imports of the subject merchandise for the period before and the period after the issuance of the antidumping order, and shall provide to the International Trade Commission ("the Commission") the magnitude of the margin of dumping likely to prevail if the order is revoked.

The Department's determinations concerning continuation or recurrence of dumping and the magnitude of the margin are discussed below. In addition, parties' comments with respect to continuation or recurrence of dumping and the magnitude of the margin are addressed within the respective sections below.

Continuation or Recurrence of Dumping

Drawing on the guidance provided in the legislative history accompanying the Uruguay Round Agreements Act ("URAA"), specifically the Statement of Administrative Action ("the SAA"), H.R. Doc. No. 103–316, vol. 1 (1994), the House Report, H.R. Rep. No. 103–826, pt. 1 (1994), and the Senate Report, S. Rep. No. 103–412 (1994), the Department issued its *Sunset Policy Bulletin* providing guidance on methodological and analytical issues, including the bases for likelihood determinations. In its *Sunset Policy Bulletin*, the Department indicated that determinations of likelihood will be made on an order-wide basis (*see* section II.A.3). In addition, the Department indicated that normally it will determine that revocation of an antidumping order is likely to lead to continuation or recurrence of dumping where (a) dumping continued at any level above de minimis after the issuance of the order, (b) imports of the subject merchandise ceased after the issuance of the order, or (c) dumping was eliminated after the issuance of the order and import volumes for the subject merchandise declined significantly (*see* section II.A.3).

In addition to guidance on likelihood provided in the *Sunset Policy Bulletin* and legislative history, section 751(c)(4)(B) of the Act provides that the Department shall determine that revocation of the order would be likely to lead to continuation or recurrence of dumping where a respondent interested party waives its participation in the sunset review. In the instant review, the Department did not receive a substantive response from any respondent interested party. Pursuant to section 351.218(d)(2)(iii) of the *Sunset Regulations*, this constitutes a waiver of participation.

The antidumping order on FCOJ from Brazil was published in the **Federal Register** on May 5, 1987 (52 FR 16426). Since that time, the Department has conducted several administrative reviews.[3] On October 21, 1991, the Department revoked the order with respect to imports produced by Cargill Citrus Ltda, Citrosuco Paulista S.A., Coopercitrus Industrial Frutesp S.A., and Montectirus Trading S.A. (56 FR 52510, October 21, 1991). On October 21, 1994, the Department also revoked

[1] Pulpwash, a by-product of FCOJ which is composed of water-extracted soluble orange solids, was found to be outside of the scope of the order (55 FR 26721, June 29, 1990).

[2] *See Frozen Concentrated Orange Juice from Brazil; Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review*, 64 FR 5767 (February 5, 1999).

[3] *See Frozen Concentrated Orange Juice from Brazil; Final Results of Antidumping Duty Administrative Review*, 55 FR 26721 (June 29, 1990); *Frozen Concentrated Orange Juice from Brazil; Final Results and Termination in Part of Antidumping Duty Administrative Review*, 55 FR 47502 (November 14, 1990); *Frozen Concentrated Orange Juice from Brazil; Final Results and Termination in Part of Antidumping Duty Administrative Review; Revocation in Part of the Antidumping Duty Order*, 56 FR 52510 (October 21, 1991); *Frozen Concentrated Orange Juice from Brazil; Final Results and Termination in Part of Antidumping Duty Administrative Review*, 57 FR 12910 (April 14, 1992); *Frozen Concentrated Orange Juice from Brazil; Final Results of Antidumping Duty Administrative Review and Revocation of Order in Part*, 59 FR 53137 (October 21, 1994); *Notice of Final Results of Antidumping Duty Administrative Review: Frozen Concentrated Orange Juice from Brazil*, 62 FR 5798 (February 7, 1997); *Frozen Concentrated Orange Juice from Brazil; Final Results of Antidumping Duty Administrative Review*, 62 FR 29328 (May 30, 1997); *Frozen Concentrated Orange Juice from Brazil; Final Results of Antidumping Duty Administrative Review*, 63 FR 26145 (May 12, 1998).

the order for Frutropic (59 FR 53137, October 21, 1994). The order remains in effect for all other manufacturers and exporters of the subject merchandise.

In its substantive response, the domestic interested parties argued that the actions taken by producers and exporters of FCOJ during the life of the order indicate that the likely effect of revocation of the order in this case would be that dumping of FCOJ would continue or resume, and that margins would increase (*see* Substantive Response of the Domestic Interested Parties, January 4, 1999, at 3). With respect to whether dumping continued at any level above de minimis after the issuance of the order, the domestic interested parties stated that while there have been determinations of de minimis or zero margins for certain producers in the past, in the current administrative review (covering entries during the period June 1997–May 1998), the Department has found enough evidence of sales in home or third country markets below cost of production of FCOJ to initiate a cost investigation (*see* Substantive Response of the Domestic Interested Parties, January 4, 1999, at 4–5).

With respect to whether imports of the subject merchandise ceased after the issuance of the order, the domestic interested parties maintained that since FCOJ is a commodity product, the fact that import volumes have risen or declined in absolute terms since the imposition of the order is of lesser probative value (*see id.*). They went on to argue that agricultural commodities, such as FCOJ, require additional analysis, due to the perishable nature of the article and its production cycles (*see id.*).

In conclusion, the domestic interested parties argued that the Department should determine that there is a likelihood that dumping would continue were the order revoked because dumping margins have existed throughout the life of the order for some Brazilian exporters/producers of FCOJ.

As discussed in Section II.A.3 of the *Sunset Policy Bulletin*, the SAA at 890, and the House Report at 63–64, if companies continue dumping with the discipline of an order in place, the Department may reasonably infer that dumping would continue if the discipline were removed. A dumping margin above de minimis continues to exist for shipments of the subject merchandise from Branco Peres Citrus S.A. [4]

Consistent with section 752(c) of the Act, the Department also considers the volume of imports before and after issuance of the order. The Department's statistics on imports of FCOJ from Brazil between 1985 and 1998, demonstrate that in 1987, the year the order was imposed, imports of FCOJ fell sharply (from approximately 2.2 billion liters in 1986 to approximately 2 million liters in 1987).[5] Since the imposition of the order, imports of FCOJ have not reached the pre-order level; however, imports of subject merchandise have not consistently decreased either.

As noted above, in conducting its sunset reviews, the Department considers the weighted-average dumping margins and volume of imports when determining whether revocation of an antidumping duty order would lead to the continuation or recurrence of dumping. Based on this analysis, the Department finds that the existence of dumping margins above de minimis levels after the issuance of the order is highly probative of the likelihood of continuation or recurrence of dumping. Therefore, the Department finds no reason to consider the domestic interested parties' argument that additional analysis is required for antidumping orders on agricultural products. A deposit rate above a de minimis level continues in effect for exports of the subject merchandise by at least one known Brazilian manufacturer/exporter. Therefore, given that dumping has continued over the life of the order, respondent interested parties waived participation in this sunset review, and absent argument and evidence to the contrary, the Department determines that dumping is likely to continue if the order were revoked.

Magnitude of the Margin

In the Sunset Policy Bulletin, the Department stated that it normally will provide to the Commission the margin that was determined in the final determination in the original investigation. Further, for companies not specifically investigated or for companies that did not begin shipping until after the order was issued, the Department normally will provide a margin based on the "all others" rate from the investigation. (*See* section II.B.1 of the *Sunset Policy Bulletin*.) Exceptions to this policy include the use of a more recently calculated margin, where appropriate, and consideration of duty absorption determinations. (*See* sections II.B.2 and 3 of the *Sunset Policy Bulletin*.)

The Department, in its final determination of sales at less than fair value ("LTFV"), published a weighted-average dumping margin for one Brazilian producer/exporter, Citrosuco Paulista, of frozen concentrated orange juice (52 FR 8324, March 17, 1987). As discussed above, the order with respect to Citrosuco Paulista has been revoked. The final LTFV determination also contained an "all others" rate. We note that, to date, the Department has not issued any duty absorption findings in this case.

In its substantive response, the domestic interested parties recommended that the Department deviate from its stated policy of selecting rates from the original investigation. Specifically, the domestic interested parties suggested that, because it is a commodity product, FCOJ should not be treated as other industrial products, where pricing may vary considerably from one producer to another. Rather, they suggested that current market conditions will dictate the level of dumping if there were no order. Therefore, the domestic interested parties requested that the Department apply the new, higher, dumping margin of 65.2 percent found in the preliminary results and partial rescission of the most recent antidumping duty administrative review (64 FR 5767, February 5, 1999).

Because the results of the ongoing administrative review have not yet been finalized, the Department believes it is not appropriate to rely on those results for the purpose of this determination. Further, we note that, although FCOJ is a commodity product, the magnitude of any margin of dumping is determined based on factors other than market price alone, for example, cost of production. Therefore, absent persuasive evidence to the contrary, the Department continues to believe that as noted in the *Sunset Policy Bulletin*, the margins from the original investigation are the only calculated rates that reflect the behavior of exporters without the discipline of the order in place.

The Department finds no reason to deviate from its stated policy of reporting the margins from the original investigation. The Department finds the margins calculated in the original investigation are probative of the behavior of Brazilian producers/exporters if the order were revoked as they are the only margins which reflect their actions absent the discipline of the order. Therefore, the Department will report to the Commission all others rate from the original investigation as

[4] *See Frozen Concentrated Orange Juice From Brazil: Final Results of Antidumping Administrative Review*, 63 FR 26145 (May 12, 1998).

[5] *See* U.S. Census Bureau Report IM146.

contained in the *Final Results of Review* section of this notice. The Department has not reported the calculated margin for Citrosuco Paulista, S.A., the only company with a calculated margin in the investigation, because the order with respect to Citrosuco Paulista has been revoked.

Final Results of Review

As a result of this review, the Department finds that revocation of the antidumping order would likely lead to continuation or recurrence of dumping at the margins listed below:

Manufacturer/exporter	Margin (percent)
All Others	1.96

This notice serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305 of the Department's regulations. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This five-year ("sunset") review and notice are in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: April 1, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99–8618 Filed 4–6–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–469–007]

Final Results of Expedited Sunset Review: Potassium Permanganate from Spain

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Final Results of Expedited Sunset Review: Potassium Permanganate from Spain.

SUMMARY: On November 2, 1998, the Department of Commerce ("the Department") initiated a sunset review of the antidumping order on potassium permanganate from Spain (63 FR 58709) pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act"). On the basis of a notice of intent to participate and substantive comments filed on behalf of the domestic industry and inadequate response (in this case, no response) from respondent interested parties, the Department determined to conduct an expedited review. As a result of this review, the Department finds that revocation of the antidumping order would be likely to lead to continuation or recurrence of dumping at the levels indicated in the Final Results of Review section of this notice.

FOR FURTHER INFORMATION CONTACT: Scott E. Smith or Melissa G. Skinner, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, D.C. 20230; telephone: (202) 482–6397 or (202) 482–1560, respectively.

EFFECTIVE DATE: April 7, 1999.

Statute and Regulations

This review was conducted pursuant to sections 751(c) and 752 of the Act. The Department's procedures for the conduct of sunset reviews are set forth in *Procedures for Conducting Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders*, 63 FR 13516 (March 20, 1998) ("*Sunset Regulations*"). Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department's Policy Bulletin 98:3—*Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin*, 63 FR 18871 (April 16, 1998) ("*Sunset Policy Bulletin*").

Scope

The merchandise subject to this antidumping order is potassium permanganate from Spain, an inorganic chemical produced in free-flowing, technical, and pharmaceutical grades. Potassium permanganate is classifiable under item 2841.61.0000 of the Harmonized Tariff Schedule of the United States (HTSUS). The HTSUS item number is provided for convenience and U.S. Customs purposes. The written description remains dispositive.

This review covers imports from all manufacturers and exporters of Spanish potassium permanganate.

Background

On November 2, 1998, the Department initiated a sunset review of the antidumping order on potassium permanganate from Spain (63 FR 58709), pursuant to section 751(c) of the Act. The Department received a Notice of Intent to Participate on behalf of Carus Chemical Company ("Carus") on November 16, 1998, within the deadline specified in section 351.218(d)(1)(i) of the *Sunset Regulations*. Carus claimed interested party status under 19 U.S.C. 1677(9)(C) as a U.S. producer of potassium permanganate. In addition, Carus indicated that it was the original petitioner in this proceeding and that it has regularly participated in all administrative reviews. We received a complete substantive response from Carus on December 2, 1998, within the 30-day deadline specified in the *Sunset Regulations* under section 351.218(d)(3)(i). We did not receive a substantive response from any respondent interested party to this proceeding. As a result, pursuant to 19 CFR 351.218(e)(1)(ii)(C), the Department determined to conduct an expedited, 120-day review of this order.

The Department determined that the sunset review of the antidumping duty order on potassium permanganate from Spain is extraordinarily complicated. In accordance with section 751(c)(5)(C)(v) of the Act, the Department may treat a review as extraordinarily complicated if it is a review of a transition order (*i.e.*, an order in effect on January 1, 1995). (*See* section 751(c)(6)(C) of the Act.) Therefore, on March 2, 1999, the Department extended the time limit for completion of the final results of this review until not later than June 1, 1999, in accordance with section 751(c)(5)(B) of the Act.[1]

Determination

In accordance with section 751(c)(1) of the Act, the Department conducted this review to determine whether revocation of the antidumping order would be likely to lead to continuation or recurrence of dumping. Section 752(c) of the Act provides that, in making this determination, the Department shall consider the weighted-average dumping margins determined in the investigation and subsequent reviews and the volume of imports of the subject merchandise for the period before and the period after the issuance of the antidumping order, and shall provide to the International Trade Commission ("the Commission") the magnitude of the margin of dumping likely to prevail if the order is revoked.

The Department's determinations concerning continuation or recurrence of dumping and the magnitude of the

[1] *See Potassium Permanganate from Spain and the People's Republic of China: Extension of Time Limit for Final Results of Five-Year Review*, 64 FR 10991 (March 8, 1999).

margin are discussed below. In addition, Carus' comments with respect to continuation or recurrence of dumping and the magnitude of the margin are addressed within the respective sections below.

Continuation or Recurrence of Dumping

Drawing on the guidance provided in the legislative history accompanying the Uruguay Round Agreements Act ("URAA"), specifically the Statement of Administrative Action ("the SAA"), H.R. Doc. No. 103–316, vol. 1 (1994), the House Report, H.R. Rep. No. 103–826, pt.1 (1994), and the Senate Report, S. Rep. No. 103–412 (1994), the Department issued its *Sunset Policy Bulletin* providing guidance on methodological and analytical issues, including the bases for likelihood determinations. In its *Sunset Policy Bulletin*, the Department indicated that determinations of likelihood will be made on an order-wide basis (*see* section II.A.3). In addition, the Department indicated that normally it will determine that revocation of an antidumping order is likely to lead to continuation or recurrence of dumping where (a) dumping continued at any level above *de minimis* after the issuance of the order, (b) imports of the subject merchandise ceased after the issuance of the order, or (c) dumping was eliminated after the issuance of the order and import volumes for the subject merchandise declined significantly (*see* section II.A.3).

In addition to guidance on likelihood provided in the *Sunset Policy Bulletin* and legislative history, section 751(c)(4)(B) of the Act provides that the Department shall determine that revocation of an order is likely to lead to continuation or recurrence of dumping where a respondent interested party waives its participation in the sunset review. In the instant review, the Department did not receive a response from any respondent interested party. Pursuant to section 351.218(d)(2)(iii) of the *Sunset Regulations*, this constitutes a waiver of participation.

The antidumping duty order on potassium permanganate from Spain was published in the **Federal Register** on January 19, 1984 (49 FR 2277). Since that time, the Department has conducted three administrative reviews.[2] The order remains in effect for all manufacturers and exporters of the subject merchandise.

In its substantive response, Carus argued that "it is highly likely that dumping would continue if the antidumping order in this case (the "Order") were to be revoked". With respect to whether dumping continued at any level above *de minimis* after the issuance of the order, Carus stated that the uninterrupted existence of dumping margins for the past decade—and continued failure of IQN [Industrial Quimica del Nalon] to challenge this margin through annual review—provides compelling evidence that Spanish potassium permanganate would be dumped in the U.S. market in the absence of the order (*see* December 2, 1998, Substantive Response of Carus at page 6).

With respect to whether imports of the subject merchandise ceased after the issuance of the order, Carus, citing its own shipment data and official U.S. Census Bureau import statistics, argued that imports of Spanish-origin potassium permanganate increased by almost 250% between 1983 and 1986 and reached an all-time high of over 2.5 million lbs. in 1986, accounting for over 14% of the U.S. market. Moreover, Carus asserts that, during the 1983–86 period, increasing levels of imports were accompanied by increasing levels of dumping, not declining or no dumping (*see* December 2, 1998, Substantive Response of Carus at 7). Carus further argues that the ability of Spanish producers of potassium permanganate to export large quantities of subject merchandise to the U.S. with dumping margins in place suggests that revocation of the order could prompt a massive influx of potassium permanganate into the U.S. at below fair market value. Carus notes that total imports of the subject merchandise continued in substantial volumes during all years when the order was in effect.

In addition, Carus states that there are other factors which support the likelihood of dumping if the order were revoked. Carus argues that the attractiveness of the U.S. market would promote increased imports of Spanish potassium permanganate because U.S. prices of this product are at a premium while prices elsewhere in the world are well below U.S. levels. Furthermore, Carus asserts that Spanish producers have an overcapacity of the subject merchandise and see the U.S., with its premium prices for potassium permanganate, as a vibrant market where they can sell their product.

In conclusion, Carus argued that the Department should determine that there is a likelihood that dumping would continue were the order revoked because (1) dumping margins have existed and continue to exist, (2) shipments of subject merchandise have continued throughout the life of the life of the order, (3) premium prices for potassium permanganate in the U.S. will promote continued, if not increased, dumping by Spanish producers and (4) Spanish producers have an overcapacity of the subject merchandise and need markets, especially ones with high prices, in which to sell.

As discussed in Section II.A.3 of the *Sunset Policy Bulletin*, the SAA at 890, and the House Report at 63–64, if companies continue dumping with the discipline of an order in place, the Department may reasonably infer that dumping would continue if the discipline were removed. A dumping margin above *de minimis* has existed throughout most of the life of the order, and continues to exist, for shipments of the subject merchandise from all Spanish producers/exporters.[3]

Consistent with section 752(c) of the Act, the Department also considered the volume of imports before and after issuance of the order. The import statistics provided by Carus on imports of the subject merchandise between 1981 and 1998, and those examined by the Department (U.S. Census Bureau IM146 reports), demonstrate that imports of the subject merchandise continued throughout the life of the order.

Based on this analysis, the Department finds that the existence of dumping margins after the issuance of the order is highly probative of the likelihood of continuation or recurrence of dumping. Deposit rates above a *de minimis* level continue in effect for exports of the subject merchandise by all known Spanish manufacturers/exporters. Therefore, given that dumping has continued over the life of the order and respondent interested parties have waived their right to participate in this review before the Department, and absent argument and evidence to the contrary, the Department determines that dumping is

[2] *See Potassium Permanganate from Spain; Early Determination of Antidumping Duty*, 49 FR 18341 (April 30, 1984); *Final Results of Antidumping Duty Administrative Review; Potassium Permanganate From Spain*, 53 FR 21504 (June 8, 1988); and *Final Results of Antidumping Duty Administrative Review; Potassium Permanganate From Spain*, 56 FR 58361 (November 19, 1991). Prior to the imposition of the order, the Department published *Potassium Permanganate from Spain; Final Determination of Sales at Less Than Fair Value*, 48 FR 53589 (November 28, 1983).

[3] *See Potassium Permanganate from Spain; Early Determination of Antidumping Duty*, 49 FR 18341 (April 30, 1984); *Final Results of Antidumping Duty Administrative Review; Potassium Permanganate From Spain*, 53 FR 21504 (June 8, 1988); and *Final Results of Antidumping Duty Administrative Review; Potassium Permanganate From Spain*, 56 FR 58361 (November 19, 1991).

likely to continue if the order were revoked.

Because the Department based this determination on the continued existence of margins above *de minimis* and respondent interested parties' waiver of participation, it is not necessary to address Carus' arguments concerning the attractiveness of the U.S. market and Spanish overcapacity and export orientation.

Magnitude of the Margin

In the *Sunset Policy Bulletin*, the Department stated that it will normally provide to the Commission the margin that was determined in the final determination in the original investigation. Further, for companies not specifically investigated or for companies that did not begin shipping until after the order was issued, the Department normally will provide a margin based on the "all others" rate from the investigation. (*See* section II.B.1 of the *Sunset Policy Bulletin*.) Exceptions to this policy include the use of a more recently calculated margin, where appropriate, and consideration of duty absorption determinations. (*See* sections II.B.2 and 3 of the *Sunset Policy Bulletin*.)

The Department, in its final determination of sales at less than fair value, published a weighted-average dumping margin for Asturquimica,[4] a Spanish producer/exporter of potassium permanganate, of 5.49 percent (48 FR 53589, November 28, 1983). The Department also published an "all others" rate of 5.49 percent in this same **Federal Register** notice. We note that, to date, the Department has not issued any duty absorption findings in this case.

In its substantive response, Carus argues that the Department, as stipulated in the *Sunset Policy Bulletin*, should provide the Commission a more recently calculated margin. Citing the *Sunset Policy Bulletin*, Carus states that "[a] company may choose to increase dumping in order to maintain or increase market share. As a result, increasing margins may be more representative of a company's behavior in the absence of an order." According to Carus, in the administrative review covering August 9, 1983 through January 10, 1984 (49 FR 18341, April 30, 1984), the Department determined that no dumping of Spanish potassium permanganate had occurred during this period justifying a cash deposit rate of zero. After this review, Carus argues that imports of Spanish potassium permanganate soared, reaching a zenith of 2.5 million lbs. in 1986. Carus adds that when it subsequently requested an administrative review (53 FR 21504, June 8, 1988), a dumping margin of 16.16 percent was established for all imports of the subject merchandise. We note that this margin was decreased to 5.53 percent following litigation before the U.S. Court of International Trade.[5]

Carus submits that the determination of no dumping in the 1984 administrative review precipitated an enormous influx of subject merchandise, being sold at less than fair value, because it was no longer subject to the restraint imposed by a positive margin rate. Carus argues that the increase in imports of Spanish potassium permanganate to 2.5 million lbs. from 1983 to 1986 represents an increase of more than 210 percent over this three year period and 250 percent from pre-order levels just five years earlier. In addition, according to Carus, this increase in Spanish imports allowed Spanish producers/exporters to increase their percentage of the market share from just under 6 percent in 1982 (during the period of investigation) to 14.1 percent by 1986. Carus submits that the margin calculated in the administrative review for the period January 1, 1986 to December 31, 1986 (53 FR 21504, June 8, 1988) is more appropriate to report to the Commission.

Further, Carus reasserts its argument concerning the high price of potassium permanganate in the U.S. with respect to its price on the world market. Carus argues that export prices in non-U.S. markets for potassium permanganate fell by over $0.13/lb during 1997 and 1998. Importers in the U.S. market, however, paid a price premium of $0.25/lb in 1997 and $0.23/lb. in 1998.

The Department agrees with Carus' argument concerning the choice of the margin rate to report to the Commission. An examination of the margin history of the order as well as an examination of import statistics of the subject merchandise, as provided in U.S. Census Bureau IM146 reports, confirms the scenario outlined by Carus. From 1983 to 1986, import volumes of the subject merchandise more than doubled. During this period, there was a cash deposit rate of zero in effect. Following the request for an administrative review by Carus, the Department established a dumping margin above *de minimis* levels (53 FR 21504, June 8, 1988). The increase in import volumes during this period of unrestricted market access resulted in an increase in the market share held by Spanish imports. According to the *Sunset Policy Bulletin*, "a company may choose to increase dumping in order to maintain or increase market share. As a result, increasing margins may be more representative of a company's behavior in the absence of an order." Therefore, given the increase in imports through 1986, accompanied by the increase in the dumping margin in 1986, the Department finds this more recent rate is the most probative of the behavior of the known Spanish producer/exporter of potassium permanganate if the order were revoked. As such, the Department will report to the Commission the company-specific and "all others" rates from the administrative review for the period January 1, 1986 through December 31, 1986 as contained in the *Final Results of Review* section of this notice.

Final Results of Review

As a result of this review, the Department finds that revocation of the antidumping duty order would likely lead to continuation or recurrence of dumping at the margins listed below:

Manufacturer/exporter	Margin (percent)
IQN	5.53
All Others	5.53

This notice serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305 of the Department's regulations. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This five-year ("sunset") review and notice are in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: April 1, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99–8623 Filed 4–6–99; 8:45 am]

BILLING CODE 3510–DS–P

[4] Asturquimica has since merged with IQN (*see* Final Results of Redetermination Pursuant to Court Remand, *Industrial Quimica del Nalon* v. *United States*, Slip Op. 89–174 (December 21, 1989)). Since 1989, the Department has considered IQN the successor to Asturquimica.

[5] Pursuant to an initial court remand, this margin was changed to 12.87 percent (*see* Final Results of Redetermination Pursuant to Court Remand, *Industrial Quimica del Nalon* v. *United States*, Slip Op. 89–174 (December 21, 1989)). Pursuant to a second court remand, the 12.87 percent margin was changed to 5.53 percent (*see* Final Results of Redetermination Pursuant to Court Remand, *Industrial Quimica del Nalon* v. *United States*, Slip Op. 91–43 (May 24, 1991)).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–001]

Final Results of Expedited Sunset Review: Potassium Permanganate from the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Final Results of Expedited Sunset Review: Potassium Permanganate from the People's Republic of China.

SUMMARY: On November 2, 1998, the Department of Commerce ("the Department") initiated a sunset review of the antidumping order on potassium permanganate from the People's Republic of China (63 FR 58709) pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act"). On the basis of a notice of intent to participate and substantive comments filed on behalf of the domestic industry and inadequate response (in this case, no response) from respondent interested parties, the Department determined to conduct an expedited review. As a result of this review, the Department finds that revocation of the antidumping order would be likely to lead to continuation or recurrence of dumping at the levels indicated in the Final Results of Review section of this notice.

FOR FURTHER INFORMATION CONTACT: Scott E. Smith or Melissa G. Skinner, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, D.C. 20230; telephone: (202) 482–6397 or (202) 482–1560, respectively.

EFFECTIVE DATE: April 7, 1999.

Statute and Regulations

This review was conducted pursuant to sections 751(c) and 752 of the Act. The Department's procedures for the conduct of sunset reviews are set forth in *Procedures for Conducting Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders*, 63 FR 13516 (March 20, 1998) ("*Sunset Regulations*"). Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department's Policy Bulletin 98:3—*Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin*, 63 FR 18871 (April 16, 1998) ("*Sunset Policy Bulletin*").

Scope

The merchandise subject to this antidumping order is potassium permanganate from the People's Republic of China ("PRC"), an inorganic chemical produced in free-flowing, technical, and pharmaceutical grades.[1] Potassium permanganate is classifiable under item 2841.61.0000 of the Harmonized Tariff Schedule of the United States (HTSUS). The HTSUS item number is provided for convenience and U.S. Customs purposes. The written description remains dispositive.

This review covers imports from all manufacturers and exporters of potassium permanganate from the PRC.

Background

On November 2, 1998, the Department initiated a sunset review of the antidumping order on potassium permanganate from the People's Republic of China (63 FR 58709), pursuant to section 751(c) of the Act. The Department received a Notice of Intent to Participate on behalf of Carus Chemical Company ("Carus") on November 16, 1998, within the deadline specified in section 351.218(d)(1)(i) of the *Sunset Regulations*. Carus claimed interested party status under 19 U.S.C. 1677(9)(C) as a U.S. producer of potassium permanganate. In addition, Carus indicated that it was the original petitioner in this proceeding and that it has regularly participated in all administrative reviews. We received a complete substantive response from Carus on December 3, 1998, within the 30-day deadline specified in the *Sunset Regulations* under section 351.218(d)(3)(i). We did not receive a substantive response from any respondent interested party to this proceeding. As a result, pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C), the Department determined to conduct an expedited, 120-day review of this order.

The Department determined that the sunset review of the antidumping duty order on potassium permanganate from the People's Republic of China is extraordinarily complicated. In accordance with section 751(c)(5)(C)(v) of the Act, the Department may treat a review as extraordinarily complicated if it is a review of a transition order (*i.e.*, an order in effect on January 1, 1995). (*See* section 751(c)(6)(C) of the Act.) Therefore, on March 2, 1999, the Department extended the time limit for completion of the final results of this review until not later than June 1, 1999, in accordance with section 751(c)(5)(B) of the Act.[2]

Determination

In accordance with section 751(c)(1) of the Act, the Department conducted this review to determine whether revocation of the antidumping order would be likely to lead to continuation or recurrence of dumping. Section 752(c) of the Act provides that, in making this determination, the Department shall consider the weighted-average dumping margins determined in the investigation and subsequent reviews and the volume of imports of the subject merchandise for the period before and the period after the issuance of the antidumping order, and shall provide to the International Trade Commission ("the Commission") the magnitude of the margin of dumping likely to prevail if the order is revoked.

The Department's determinations concerning continuation or recurrence of dumping and the magnitude of the margin are discussed below. In addition, Carus' comments with respect to continuation or recurrence of dumping and the magnitude of the margin are addressed within the respective sections below.

Continuation or Recurrence of Dumping

Drawing on the guidance provided in the legislative history accompanying the Uruguay Round Agreements Act ("URAA"), specifically the Statement of Administrative Action ("the SAA"), H.R. Doc. No. 103–316, vol. 1 (1994), the House Report, H.R. Rep. No. 103–826, pt.1 (1994), and the Senate Report, S. Rep. No. 103–412 (1994), the Department issued its *Sunset Policy Bulletin* providing guidance on methodological and analytical issues, including the bases for likelihood determinations. In its *Sunset Policy Bulletin*, the Department indicated that determinations of likelihood will be made on an order-wide basis (*see* section II.A.3). In addition, the Department indicated that normally it will determine that revocation of an antidumping order is likely to lead to continuation or recurrence of dumping where (a) dumping continued at any level above *de minimis* after the issuance of the order, (b) imports of the subject merchandise ceased after the issuance of the order, or (c) dumping was eliminated after the issuance of the

[1] On May 19, 1995, the Department determined that plastic ignitor spheres containing potassium permanganate are not within the scope of the order (60 FR 26871).

[2] *See Potassium Permanganate from Spain and the People's Republic of China: Extension of Time Limit for Final Results of Five-Year Review*, 64 FR 10991 (March 8, 1999).

order and import volumes for the subject merchandise declined significantly (see section II.A.3).

In addition to guidance on likelihood provided in the *Sunset Policy Bulletin* and legislative history, section 751(c)(4)(B) of the Act provides that the Department shall determine that revocation of an order is likely to lead to continuation or recurrence of dumping where a respondent interested party waives its participation in the sunset review. In the instant review, the Department did not receive a substantive response from any respondent interested party. Pursuant to section 351.218(d)(2)(iii) of the *Sunset Regulations*, this constitutes a waiver of participation.

The antidumping duty order on potassium permanganate from the PRC was published in the **Federal Register** on January 31, 1984 (49 FR 3897). Since that time, the Department has conducted two administrative reviews.[3] The order remains in effect for all manufacturers and exporters of the subject merchandise.

In its substantive response, Carus argues that it is highly likely that dumping would continue if the antidumping order in this case were to be revoked. (*See* December 3, 1998, Substantive Response of Carus at 2.) With respect to whether dumping continued at any level above *de minimis* after the issuance of the order, Carus argued that high dumping margins have been continuously in place for the almost 15 years since the date of the order. Carus further argues that the uninterrupted existence of high margins over the life of the order, and the continued failure of any PRC producer or exporter to successfully complete an annual review, provides compelling evidence that PRC exporters would engage in dumping at very high rates in the absence of the order. According to Carus, even with the severe discipline of the order in place, PRC exporters have continued to dump. (*See* December 3, 1998, Substantive Response of Carus at 7.)

With respect to whether imports of the subject merchandise ceased after the issuance of the order, Carus, citing its own shipment data and official U.S. Census Bureau import statistics, argued that reported imports of potassium permanganate from the PRC effectively ceased after May 1994, when the Department issued the final results of the 1990 administrative review. (*See* December 3, 1998, Substantive Response of Carus at 7.) Carus argues that PRC producers/exporters were attempting to circumvent the order by shipping subject merchandise through a number of Hong Kong resellers who had not been subject to increased margin rates assigned to PRC producers and certain Hong Kong resellers in the final results of the 1989 administrative review (56 FR 19640).[4] Carus further argues that while imports of Chinese potassium permanganate were subject to the 39.64 percent deposit rate (1984–1990), annual imports surged by almost 580%—from 432,000 lbs. in 1984 to over 2.1 million lbs. in 1989 to over 2.5 million lbs. in 1990. (*See* December 3, 1998, Substantive Response of Carus at 22.) According to Carus, imports of the subject merchandise ceased after the deposit rate increased to reflect the actual level of dumping and purported absorption and, thus, the "loophole" associated with sales through Hong Kong resellers was eliminated.

In addition, Carus states that there are other factors which support the likelihood of dumping if the order were revoked. Carus argues that the attractiveness of the U.S. market would promote increased imports of Chinese potassium permanganate because U.S. prices of this product are at a premium while prices elsewhere in the world are well below U.S. levels. Carus also argues that Chinese producers have an oversupply of subject merchandise. In this respect, Carus makes four arguments. First, Carus states that the high antidumping duties established by the European Union and India on potassium permanganate from China have effectively shut Chinese exporters of this product out of those markets, increasing their inventories and forcing them to look elsewhere for export markets. Second, Carus argues that advances in Chinese potassium permanganate production technology have resulted in increased efficiency and enable producers to offer lower prices. These technological advances have resulted in increased production capacities and inventories and, coupled with a lower price, will spur increased exportation. Third, because potassium permanganate has applications in the production of cocaine and China has recently demonstrated greater vigilance in controlling exports of potassium permanganate in situations where it may be used in the production of narcotics, Carus argues that this increased control may result in an additional surplus of Chinese potassium permanganate. According to Carus, this will promote the search for additional export markets which, in turn, may prompt future dumping. Fourth, Carus asserts that the Asian financial crisis has reduced the need for Chinese potassium permanganate in Asia. Carus argues that cash-strapped Asian governments are not likely to begin using large volumes of potassium permanganate in the type of applications for which it is used in the United States—for the treatment of municipal waste and drinking water. According to Carus, these factors may force Chinese producers to look elsewhere to sell their product.

In conclusion, Carus argued that the Department should determine that there is a likelihood that dumping would continue were the order revoked because (1) dumping margins have existed throughout the life of the order, (2) shipments of subject merchandise continued throughout the life of the order and have ceased only recently as the effective margin rate has increased to reflect the actual level of dumping, (3) premium prices for potassium permanganate in the U.S. will promote continued, if not increased, dumping by Chinese producers, (4) Chinese producers have an oversupply of the subject merchandise, for a variety of reasons, and need markets in which to sell and (5) the Asian economic crisis is limiting the number of markets in which Chinese producers of potassium permanganate can sell.

As discussed in Section II.A.3 of the *Sunset Policy Bulletin*, the SAA at 890, and the House Report at 63–64, if companies continue dumping with the discipline of an order in place, the Department may reasonably infer that dumping would continue if the discipline were removed. A dumping margin above *de minimis* continues to exist for shipments of the subject

[3] *See Final Results of Antidumping Duty Administrative Review: Potassium Permanganate from The People's Republic of China*, 56 FR 19640, April 29, 1991 (1989 POR) and *Potassium Permanganate from The People's Republic of China; Final Results of Antidumping Duty Administrative Review*, 59 FR 26625, May 23, 1994 (1990 POR). Prior to the imposition of the order, the Department published *Final Determination of Sales at Less Than Fair Value: Potassium Permanganate from The People's Republic of China*, 48 FR 57347, December 29, 1983.

[4] On April 29, 1991, the Department published *Final Results of Antidumping Duty Administrative Review: Potassium Permanganate from The People's Republic of China* (56 FR 19640) in which all subject merchandise produced and exported directly to the U.S. by Chinese manufacturers became subject to a deposit rate of 128.94 percent. In addition to all PRC producers, a rate of 128.94 percent was established for four of the seven known Hong Kong resellers of the subject merchandise in the 1991 Final Results. In those Final Results, other resellers retained the original 39.63 percent rate established for "all other" producers/exporters in the antidumping duty order (*see Antidumping Duty Order; Potassium Permanganate from The People's Republic of China*, 49 FR 3897, January 31, 1984).

merchandise from all Chinese producers/exporters.[5]

Consistent with section 752(c) of the Act, the Department also considered the volume of imports before and after issuance of the order. The import statistics provided by Carus on imports of the subject merchandise between 1980 and 1998, and those examined by the Department (U.S. Census Bureau IM146 reports), demonstrate that imports of the subject merchandise have continued throughout the life of the order.

Based on this analysis, the Department finds that the existence of dumping margins after the issuance of the order is highly probative of the likelihood of continuation or recurrence of dumping. Deposit rates above a *de minimis* level continue in effect for exports of the subject merchandise by all known Chinese manufacturers/exporters. Therefore, given that dumping has continued over the life of the order and respondent interested parties have waived their right to participate in this review before the Department, and absent argument and evidence to the contrary, the Department determines that dumping is likely to continue if the order were revoked.

Because the Department based this determination on the continued existence of margins above *de minimis* and respondent interested parties' waiver of participation, it is not necessary to address Carus' arguments concerning the attractiveness of the U.S. market, U.S. price premiums for potassium permanganate, Chinese overcapacity and export orientation, or the effects of the Asian economic crisis.

Magnitude of the Margin

In the *Sunset Policy Bulletin*, the Department stated that it will normally provide to the Commission the margin that was determined in the final determination in the original investigation. Further, for companies not specifically investigated or for companies that did not begin shipping until after the order was issued, the Department normally will provide a margin based on the "all others" rate from the investigation. (*See* section II.B.1 of the *Sunset Policy Bulletin*.) Exceptions to this policy include the use of a more recently calculated margin, where appropriate, and consideration of duty absorption determinations. (*See* sections II.B.2 and 3 of the *Sunset Policy Bulletin*.)

The Department, in its final determination of sales at less than fair value, published a weighted-average dumping margin for the China National Chemicals Import and Export Corporation (SINOCHEM), the sole Chinese producer/exporter in the original investigation, of 39.63 percent (48 FR 57347, December 29, 1983). The Department also published an "all others" rate of 39.63 percent in this same **Federal Register** notice. With respect to duty absorption findings, Carus argues that duty absorption is likely in this case but, because there have been no completed administrative reviews of the order since the 1990 administrative review, the Department has not had the opportunity to address the issue of duty absorption.

In its substantive response, Carus argues that the Department should provide the Commission a more recently calculated margin. Citing the *Sunset Policy Bulletin*, Carus states that "[a] company may choose to increase dumping in order to maintain or increase market share. As a result, increasing margins may be more representative of a company's behavior in the absence of an order." In the original investigation, the Department established a deposit rate of 39.63 percent for SINOCHEM as well as for "all other" producers/exporters of Chinese potassium permanganate (48 FR 57347, December 29, 1983). Carus asserts that the 39.63 percent margin established in the investigation was far too low to prevent rapid import growth and continued dumping of PRC-origin product, as well as dramatic increases in the Chinese share of the U.S. market. According to Carus, Chinese imports of the subject merchandise surged by almost 580%—from 432,000 lbs. in 1984 to over 2.1 million lbs. in 1989 to over 2.5 million lbs. in 1990.

In January of 1990, Carus requested an administrative review of Chinese exports of potassium permanganate to the United States. In response to this request, the Department conducted a review and established, on April 29, 1991, a new deposit rate for all PRC producers of 128.94 percent. In addition, the Department established a new deposit rate for four of the seven known Hong Kong resellers of this product. According to Carus' information, imports of the subject merchandise then decreased by almost 70 percent, from 2,560,700 lbs. in 1990 to 861,051 lbs. in 1991.

Nevertheless, by 1993, imports of Chinese potassium permanganate had increased to 2,441,453 lbs. and had recaptured over 9 percent of the U.S. market, almost as much of the U.S. market as Chinese producers/exporters had held just prior to the imposition of the order. Carus claims this resurgence in Chinese imports was attributed to a "loophole" evident in the 1991 Final Results. Specifically, the "all others" rate of 39.63 percent was still being applied as a deposit rate to previously unnamed Hong Kong resellers, not all of whom could be identified for review. Carus argues that the retention of the 39.63 percent rate for Hong Kong resellers subject to the "all others" rate, coupled with the willingness and ability of Chinese producers/exporters to dump, allowed substantial amounts of PRC-origin potassium permanganate to be transshipped through Hong Kong resellers and sold in the U.S. at below fair market value. In the 1991 Final Results, the Department clarified that, in cases involving non-market economies, an "all others" cash deposit rate is not appropriate because any non-market economy country firm must show that it is entitled to a separate rate before a rate other than the non-market economy country-wide rate can be assigned to it, and any intermediate country reseller is properly assigned the rate for its producer unless the reseller affirmatively shows that the merchandise has not simply been transshipped. 59 FR 26630.[6] Because no third country reseller established, during the 1990 administrative review or since, that its merchandise was not being transshiped, such that the first exporter "to the United States" was properly deemed to be the PRC exporter, the "all others" loophole was eliminated in the May 23, 1994 final results of the 1990 administrative review, which established a 128.94 percent deposit rate for all shipments of Chinese potassium permanganate. 59 FR 26625.

Carus submits that the history of this case shows that the margin established in the original investigation was insufficient to prevent an influx of Chinese potassium permanganate and insufficient to prevent Chinese producers/exporters' attempts at increasing market share in the United States through dumping. Carus argues that, between 1984 and 1990, Chinese producers/exporters of potassium permanganate increased their share of the U.S. market by 340 percent, from 2.5 percent to 8.5 percent. December 3, 1998 Substantive Response of Carus. Furthermore, Carus argues that the "loophole" created by the exclusion of certain Hong Kong resellers from the

[5] *See Potassium Permanganate from The People's Republic of China; Final Results of Antidumping Duty Administrative Review*, 59 FR 26625 (May 23, 1994).

[6] *See also Yue Pak* v. *United States*, Slip Op. 96–65 (CIT April 18, 1996), *aff'd* 111 F. 3rd 142 (Fed. Cir. 1997).

128.94 percent margin assigned to Chinese exporters in the 1989 administrative review again permitted dramatic increases in Chinese imports of the subject merchandise and the virtual recapture of the Chinese percentage of the U.S. potassium permanganate market.

Therefore, Carus argues, the margin determined in the original investigation does not reflect current Chinese pricing behavior or present levels of globally-traded input prices. In addition, Carus argues the changes in the methodology used by the Department in the calculation of margins renders the margin from the original investigation suspect.

The Department agrees with Carus' argument concerning the choice of the margin rate to report to the Commission. An examination of the margin history of the order as well as an examination of import statistics of the subject merchandise, as provided in U.S. Census Bureau IM146 reports, confirms the scenario outlined by Carus. From 1984, the date the first margins were established for this proceeding (49 FR 3897, January 31, 1984), to 1990, import volumes of the subject merchandise swelled, increasing by almost 600 percent. During this period, a cash deposit rate of 39.64 percent was in effect. In 1991, in an administrative review requested by Carus, the Department established a new deposit rate of 128.94 percent for producers of the subject merchandise from the PRC and for certain named third country resellers (56 FR 19640, April 29, 1991). Import volumes fell substantially in 1991, by almost 70 percent, but then rebounded by 1993, the year immediately preceding the final results of the 1990 administrative review (59 FR 26625, May 23, 1994). In May of 1994, in the Final Results of the 1990 administrative review, the Department established a rate of 128.94 percent for all potassium permanganate of Chinese origin, whether shipped directly from the PRC or transshipped through a third country reseller. Following the establishment of this more inclusive margin rate, shipments of potassium permanganate fell dramatically, and have not exceeded 50,000 lbs. in any year since 1996.

The Department believes that the increase in import volumes and market share between the imposition of the order and the Final Results in the 1989 administrative review (56 FR 19640, April 29, 1991) reflect the willingness and ability of Chinese producers/exporters to dump this product despite the margin rate established by the Department in the original investigation. Furthermore, the continuation of dumping and the virtual recapture of market share between the final results in the 1989 review and those in the 1990 review reflects attempts by Chinese producers/exporters to circumvent the order by transshipping the subject merchandise through third country resellers with lower deposit rates. This is evidenced by the dramatic reduction in import volumes following the 1990 administrative review (59 FR 26625, May 23, 1994) in which a single rate was established for all potassium permanganate of Chinese origin, regardless of the interim shipping location, absent a showing that either the Chinese exporter was entitled to a separate rate or the third country reseller was not merely engaged in transshipment. This more inclusive margin determination has apparently reduced the ability of Chinese producers/exporters to circumvent the order.

According to the *Sunset Policy Bulletin*, "a company may choose to increase dumping in order to maintain or increase market share. As a result, increasing margins may be more representative of a company's behavior in the absence of an order." Therefore, the Department finds that this most recent rate is the most probative of the behavior of Chinese producers/exporters of potassium permanganate if the order were revoked. As a result, the Department is not addressing current Chinese pricing behavior or changes in methodologies used by the Department in its margin calculations. The Department will report to the Commission the country-wide rate from the administrative review for the period January 1, 1990 through December 31, 1990 (59 FR 26625, May 23, 1994) as contained in the Final Results of Review section of this notice.

Final Results of Review

As a result of this review, the Department finds that revocation of the antidumping order would likely lead to continuation or recurrence of dumping at the margins listed below:

Manufacturer/exporter	Margin (percent)
Country-wide rate for the People's Republic of China	128.94

This notice serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305 of the Department's regulations. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This five-year ("sunset") review and notice are in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: April 1, 1999.

Robert S. LaRussa

Assistant Secretary for Import Administration.

[FR Doc. 99–8624 Filed 4–6–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–825]

Final Results of Expedited Sunset Review: Sebacic Acid from the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Final Results of Expedited Sunset Review: Sebacic Acid from the People's Republic of China.

SUMMARY: On December 2, 1998, the Department of Commerce ("the Department") initiated a sunset review of the antidumping order on sebacic acid from the People's Republic of China (63 FR 66527) pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act"). On the basis of a notice of intent to participate and substantive comments filed on behalf of the domestic industry and inadequate response (in this case, no response) from respondent interested parties, the Department determined to conduct an expedited review. As a result of this review, the Department finds that revocation of the antidumping order would be likely to lead to continuation or recurrence of dumping at the levels indicated in the Final Results of Review section of this notice.

FOR FURTHER INFORMATION CONTACT: Scott E. Smith or Melissa G. Skinner, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, D.C. 20230; telephone: (202) 482–6397 or (202) 482–1560, respectively.

EFFECTIVE DATE: April 7, 1999.

Statute and Regulations

This review was conducted pursuant to sections 751(c) and 752 of the Act.

The Department's procedures for the conduct of sunset reviews are set forth in *Procedures for Conducting Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders*, 63 FR 13516 (March 20, 1998) ("*Sunset Regulations*"). Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department's Policy Bulletin 98:3—*Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin*, 63 FR 18871 (April 16, 1998) ("*Sunset Policy Bulletin*").

Scope

The merchandise subject to this antidumping order is sebacic acid (all grades), a dicarboxylic acid with the formula $(CH_2)_8(COOH)_2$, which include but are not limited to CP Grade (500ppm maximum ash, 25 maximum APHA color), Purified Grade (1000ppm maximum ash, 50 maximum APHA color), and Nylon Grade (500ppm maximum ash, 70 maximum ICV color). The principal difference between the grades is the quantity of ash and color. Sebacic acid contains a minimum of 85 percent dibasic acids of which the predominant species is the C_{10} dibasic acid. Sebacic acid is sold generally as a free-flowing powder/flake.

Sebacic acid has numerous industrial uses, including the production of nylon 6/10 (a polymer used for paintbrush and toothbrush bristles and paper machine felts), plasticizers, esters, automotive coolants, polyamides, polyester castings and films, inks and adhesives, lubricants, and polyurethane castings and coatings.

Sebacic acid is currently classifiable under subheading 2917.13.00.30 of the Harmonized Tariff Schedule of the United States (HTSUS). The HTSUS item number is provided for convenience and U.S. Customs purposes. The written product description of the scope of this order remains dispositive.

This review covers imports from all manufacturers and exporters of Chinese sebacic acid.

Background

On December 2, 1998, the Department initiated a sunset review of the antidumping order on sebacic acid from the People's Republic of China (63 FR 66527), pursuant to section 751(c) of the Act. The Department received a Notice of Intent to Participate on behalf of Union Camp Corporation ("Union Camp") on December 8, 1998, within the deadline specified in section 351.218(d)(1)(i) of the *Sunset Regulations*. Union Camp claimed interested party status under 19 U.S.C. 1677(9)(C) as a domestic producer of sebacic acid. In addition, Union Camp indicated that it is the sole domestic producer of sebacic acid and was the original petitioner in the underlying investigation. We received a complete substantive response from Union Camp on January 4, 1999, within the 30-day deadline specified in the *Sunset Regulations* under section 351.218(d)(3)(i). We did not receive a substantive response from any respondent interested party to this proceeding. As a result, pursuant to 19 CFR 351.218(e)(1)(ii)(C), the Department determined to conduct an expedited, 120-day, review of this order.

Determination

In accordance with section 751(c)(1) of the Act, the Department conducted this review to determine whether revocation of the antidumping order would be likely to lead to continuation or recurrence of dumping. Section 752(c) of the Act provides that, in making this determination, the Department shall consider the weighted-average dumping margins determined in the investigation and subsequent reviews and the volume of imports of the subject merchandise for the period before and the period after the issuance of the antidumping order, and shall provide to the International Trade Commission ("the Commission") the magnitude of the margin of dumping likely to prevail if the order is revoked.

The Department's determinations concerning continuation or recurrence of dumping and the magnitude of the margin are discussed below. In addition, parties' comments with respect to continuation or recurrence of dumping and the magnitude of the margin are addressed within the respective sections below.

Continuation or Recurrence of Dumping

Drawing on the guidance provided in the legislative history accompanying the Uruguay Round Agreements Act ("URAA"), specifically the Statement of Administrative Action ("the SAA"), H.R. Doc. No. 103–316, vol. 1 (1994), the House Report, H.R. Rep. No. 103–826, pt.1 (1994), and the Senate Report, S. Rep. No. 103–412 (1994), the Department issued its *Sunset Policy Bulletin* providing guidance on methodological and analytical issues, including the bases for likelihood determinations. In its *Sunset Policy Bulletin*, the Department indicated that determinations of likelihood will be made on an order-wide basis (*see* section II.A.3). In addition, the Department indicated that normally it will determine that revocation of an antidumping order is likely to lead to continuation or recurrence of dumping where (a) dumping continued at any level above *de minimis* after the issuance of the order, (b) imports of the subject merchandise ceased after the issuance of the order, or (c) dumping was eliminated after the issuance of the order and import volumes for the subject merchandise declined significantly (*see* section II.A.3).

In addition to guidance on likelihood provided in the *Sunset Policy Bulletin* and legislative history, section 751(c)(4)(B) of the Act provides that the Department shall determine that revocation of an order is likely to lead to continuation or recurrence of dumping where a respondent interested party waives its participation in the sunset review. In the instant review, the Department did not receive a response from any respondent interested party. Pursuant to section 351.218(d)(2)(iii) of the *Sunset Regulations*, this constitutes a waiver of participation.

The antidumping duty order on sebacic acid from the People's Republic of China was published in the **Federal Register** on July 14, 1994 (59 FR 35909). Since this time, the Department has conducted three administrative reviews.[1] The order remains in effect for all manufacturers and exporters of the subject merchandise.

In its substantive response, Union Camp argues that revocation of the order will likely lead to increased imports of sebacic acid from the PRC at dumped prices (*see* January 4, 1999 Substantive Response of Union Camp at 3). With respect to whether dumping continued at any level above *de minimis* after the issuance of the order, Union Camp states that for each of the participating companies, dumping has continued after the issuance of the order (*see* January 4, 1999 Substantive Response of Union Camp at 4). Union Camp notes that during the first and second administrative reviews, Tianjin Chemicals Import & Export Corp.'s dumping margin was zero and, during the third administrative review, SINOCHEM International Chemical Co.'s dumping margin was *de minimis*.

[1] *See Sebacic Acid from The People's Republic of China; Final Results of Antidumping Duty Administrative Review*, 62 FR 10530 (March 7, 1997); *Sebacic Acid from The People's Republic of China; Final Results of Antidumping Duty Administrative Review*, 62 FR 65674 (December 15, 1997); and *Sebacic Acid from The People's Republic of China; Final Results of Antidumping Duty Administrative Review*, 63 FR 43373 (August 13, 1998).

Union Camp argues, however, as stated in the *Sunset Policy Bulletin*, that a zero or *de minimis* margin, in itself, will not require the Department to determine that continuation or recurrence is not likely.

In addition, Union Camp asserts that Chinese sebacic acid is being dumped in the European market. By comparing Union Camp's current selling price in the European Union to the Chinese selling price (based on information received from Union Camp's European customers and publicly quoted unit prices), Union Camp believes that sebacic acid of Chinese origin is being dumped in Europe. Furthermore, Union Camp asserts that this fact suggests that if the U.S. dumping order on Chinese sebacic acid were revoked, Chinese exporters of sebacic acid would likely reduce their sales prices and increase their dumping in the U.S.

With respect to whether imports of the subject merchandise ceased after the issuance of the order, Union Camp, citing Commerce IM145 reports, argues that imports of Chinese sebacic acid dropped significantly with the imposition of dumping duties under the order in 1994 and continued to decline in 1995. Union Camp notes that, during 1996 and 1997, imports of the subject merchandise increased slightly, however, it asserts this increase can most likely be attributed to an increase in the domestic consumption of sebacic acid beginning in 1995.

In conclusion, Union Camp argued that the Department should determine that there is a likelihood that dumping would continue were the order revoked because (1) dumping margins have existed for most known exporters of the subject merchandise during the entire life of the order, (2) it believes that Chinese sebacic acid is being dumped in Europe and (3) shipments of subject merchandise have also continued throughout the life of the order and this suggests that, if the U.S. order were revoked, dumping of subject merchandise would increase in the U.S.

As discussed in Section II.A.3 of the *Sunset Policy Bulletin*, the SAA at 890, and the House Report at 63–64, if companies continue dumping with the discipline of an order in place, the Department may reasonably infer that dumping would continue if the discipline were removed. Although two of the four known Chinese producers have, at various times over the life of the order, received zero or *de minimis* margins, none has consistently eliminated dumping while increasing or maintaining market share. Dumping margins above *de minimis* levels continue to exist for shipments of the subject merchandise from three of the four known Chinese producers.[2]

Consistent with section 752(c) of the Act, the Department also considered the volume of imports before and after issuance of the order. The import statistics provided by Union Camp, and confirmed by the Department, on imports of the subject merchandise between 1992 and 1997, demonstrate that, while imports of the subject merchandise fell sharply after the imposition of the order, they continue.

Based on this analysis, the Department finds that the existence of dumping margins after the issuance of the order is highly probative of the likelihood of continuation or recurrence of dumping. Deposit rates above a *de minimis* level continue in effect for exports of the subject merchandise by three of the four known Chinese manufacturers/exporters. Therefore, given that dumping has continued over the life of the order, respondent interested parties have waived their right to participate in this review before the Department and, absent argument and evidence to the contrary, the Department determines that dumping is likely to continue if the order were revoked.

Because the Department based this determination on the continued existence of margins above *de minimis*, the continuation of dumped imports and respondent interested parties' waiver of participation, it is not necessary to address Union Camp's arguments concerning possible dumping of Chinese sebacic acid in Europe.

Magnitude of the Margin

In the *Sunset Policy Bulletin*, the Department stated that it will normally provide to the Commission the margin that was determined in the final determination in the original investigation. Further, for companies not specifically investigated or for companies that did not begin shipping until after the order was issued, the Department normally will provide a margin based on the "all others" rate from the investigation. (*See* section II.B.1 of the *Sunset Policy Bulletin*.) Exceptions to this policy include the use of a more recently calculated margin, where appropriate, and consideration of duty absorption determinations. (*See* sections II.B.2 and 3 of the *Sunset Policy Bulletin*.)

The Department, in its final determination of sales at less than fair value, published weighted-average dumping margins for four Chinese producers/exporters of the subject merchandise ranging from 82.66 percent to 243.40 percent (59 FR 28053, May 31, 1994).[3] The Department also published an "all others" rate in this final determination.[4] We note that, to date, the Department has not issued any duty absorption findings in this case.

In its substantive response, citing the *Sunset Policy Bulletin*, Union Camp states that the Department normally will provide the Commission with the dumping margins "from the investigation, because that is the only calculated rate that reflects the behavior of exporters . . . without the discipline of the order . . . in place." Union Camp argues that the Department, consistent with the *Sunset Policy Bulletin*, should provide the Commission with the final margins from the original investigation as the magnitude of dumping margin likely to prevail if the order were revoked (*see* January 4, 1999 Substantive Response of Union Camp at 7).

The Department agrees with Union Camp's argument concerning the choice of the margin rate to report to the Commission. An examination of the margin history of the order as well as an examination of import statistics of the subject merchandise, as provided in U.S. Department of Commerce Trade Statistics data, confirms that imports of the subject merchandise continue to exist.

Our review of the margin history over the life of the order demonstrates that there have been fluctuations in the margins for some producers/exporters of the subject merchandise. The Department, however, does not view these fluctuations as demonstrating a consistent pattern of behavior. Therefore, in accordance with the *Sunset Policy Bulletin* and absent an argument that a more recently

---

[2] *See Sebacic Acid from The People's Republic of China; Final Results of Antidumping Duty Administrative Review*, August 13, 1998 (63 FR 43373).

[3] Pursuant to court remand, several of the company-specific margins were changed (*see Final Results of Redetermination Pursuant to Court Remand, Union Camp Corporation* v. *United States, Consol. Court No. 94–08–00480, Slip Op. 96–123 (August 5, 1996)*).

[4] The Department actually published a "PRC country-wide rate" and defined this as the rate that applies to all PRC companies not specifically listed in the **Federal Register** notice (*see Notice of Final Determination of Sales at Less Than Fair Value: Sebacic Acid from The People's Republic of The People's Republic of China*, 59 FR 28053 (May 31, 1994)). This definition indicates that the "PRC country-wide rate", in this case, is the same as the "all others" rate normally identified by the Department. In addition, pursuant to court remand, this "all others" rate was changed (*see Final Results of Redetermination Pursuant to Court Remand, Union Camp Corporation* v. *United States, Consol. Court No. 94–08–00480, Slip Op. 96–123 (August 5, 1996)*).

calculated margin is more indicative of the margin likely to prevail if the order were revoked, we determine that the original margins calculated in the Department's original investigation are probative of the behavior of Chinese producers and exporters of sebacic acid if the order were revoked. We will report to the Commission the company-specific and all others rates contained in the Final Results of Review section of this notice.

Final Results of Review

As a result of this review, the Department finds that revocation of the antidumping order would likely lead to continuation or recurrence of dumping at the margins listed below: [5]

Manufacturer/exporter	Margin (percent)
SINOCHEM Jiangsu Import & Export Corp	141.97
Tianjin Chemical Import & Export Corp	118.00
SINOCHEM International Chemical Co	82.66
Guangdong Chemical Import & Export Corp	102.99
All Others	243.40

This notice serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305 of the Department's regulations. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This five-year ("sunset") review and notice are in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: April 1, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99–8622 Filed 4–6–99; 8:45 am]

BILLING CODE 3510–DS–P

[5] The margins in this section of the notice reflect the changes to the original margins pursuant to court remand (*see Final Results of Redetermination Pursuant to Court Remand, Union Camp Corporation* v. *United States, Consol. Court No. 94–08–00480, Slip Op. 96–123 (August 5, 1996)*).

DEPARTMENT OF COMMERCE

International Trade Administration

University of Michigan; Notice of Decision on Application for Duty-Free Entry of Scientific Instrument

This is a decision pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C.

Docket Number: 99–001. *Applicant:* The Regents of the University of Michigan, Ann Arbor, MI 48109–0602. *Instrument:* Electron Microscope, Model H–7500. *Manufacturer:* Hitachi Scientific Instruments, Japan. *Intended Use:* See notice at 64 FR 9981, March 1, 1999. Order Date: April 23, 1998.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as the instrument is intended to be used, was being manufactured in the United States at the time the instrument was ordered. *Reasons:* The foreign instrument is a conventional transmission electron microscope (CTEM) and is intended for research or scientific educational uses requiring a CTEM. We know of no CTEM, or any other instrument suited to these purposes, which was being manufactured in the United States at the time of order of the instrument.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 99–8619 Filed 4–6–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Application for Duty-Free Entry of Scientific Instrument

Pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether an instrument of equivalent scientific value, for the purposes for which the instrument shown below is intended to be used, is being manufactured in the United States.

Comments must comply with 15 CFR 301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, D.C. 20230. Application may be examined between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C.

Docket Number: 99–003. *Applicant:* Louisiana State University, Mechanical Engineering Department, Nicholson Ext., Baton Rouge, LA 70803. *Instrument:* Electron Microscope, Model JEM–2010. *Manufacturer:* JEOL Ltd., Japan. *Intended Use:* The instrument will be used extensively in the study of microstructures, surfaces, and the structural and compositional characteristics of materials. The research areas of interest include but are not limited to the following: (1) fundamental issues of stress corrosion cracking phenomena and specifically directed toward understanding the nature of the embrittlement mechanism, (2) surface modification processes and more specifically with the processing-microstructure-property relationship of modified surfaces and thin films, (3) exploring the possibility to grow thick amorphous alloy layers by solid-state interdiffusion reactions in diffusion couples assisted by bombardment of energetic particles (plasma or ion beam), (4) understanding how and why solid-state alloying and amorphization can be achieved in some binary systems with relatively large positive heat of mixing (i.e., systems immiscible in equilibrium) and (5) studying the consolidation and properties of nanocrystalline metals, oxides and noncomposites. Application accepted by Commissioner of Customs: March 19, 1999.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 99–8620 Filed 4–6–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Request for Comments on the Asian Pacific Economic Cooperation (APEC) Electronic Commerce Steering Group Work Plan

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of request for public comment.

SUMMARY: The Department of Commerce/International Trade Administration (DOC/ITA) seeks comment on the APEC Electronic Commerce Steering Group work program.

DATES: Comments are due no later than April 21, 1999.

ADDRESSES: Comments may be submitted by e-mail to the following e-mail address <sabrina__montes@ita.doc.gov>. All e-mail submissions should include the following text in the subject line of the message: "APEC Electronic Commerce Steering Group work plan—Comment." The body of the message should indicate the name and affiliation of the correspondent and the name and version of the word processing program used to create the document. Files compatible with the Windows versions of MS Word or WordPerfect word processing programs are preferred. Otherwise, please submit comments in ASCII text format. To enable prompt review and accessibility to the public, DOC/ITA prefers submission of comments in electronic form by e-mail.

DOC/ITA will accept comments submitted on 3½ inch floppy disc. The disc label should include the name and affiliation of the correspondent and the name and version of the word processing program used to create the document. DOC/ITA will also accept comments submitted in hard copy. Individuals or organizations that submit comments in hard copy must provide twenty (20) copies. Discs and hard copy comments must be submitted to Sabrina Montes, Office of Trade and Economic Analysis, International Trade Administration, U.S. Department of Commerce, HCHB Stop 2815, 14th Street & Constitution Avenue, NW, Washington, DC 20230. Tel.: 202–482–5242. Fax: 202–482–4614.

If the submission contains business confidential information, a justification as to why the information contained in the submission should be treated confidentially must be included in the submission. Submissions containing business confidential information must be clearly marked "Confidential" at the top and bottom of the cover page (or letter) and each page of the submission. A version that does not contain confidential information should also be submitted and clearly marked "public version" at the top and bottom of each page.

Comments should clearly state the position taken and should describe the specific information supporting that position. Comments must be made in English. All submissions should include the name and affiliation of the correspondent.

Written comments submitted in connection with this request, except for information that is business confidential, will be available for public inspection on the Internet at <http://infoserv2.ita.doc.gov/otea/apec/fedreg.nsf> or in hard copy at the U.S. Department of Commerce, 14th Street & Constitution Avenue, NW, Washington, DC 20230. An appointment to review the file may be made by calling Sabrina Montes, Office of Trade and Economic Analysis, International Trade Administration, Tel.: 202–482–5242.

Respondents that provide an e-mail address with their submission will be added to an e-mail list for future information.

FOR FURTHER INFORMATION CONTACT: Jonathan Menes, Director Office of Trade and Economic Analysis/Co-Chair APEC Electronic Commerce Steering Group (202–482–5145).

SUPPLEMENTARY INFORMATION: In Vancouver, November 1997, Leaders of APEC member economies brought the importance of electronic commerce to the fore by directing Ministers to

> undertake a work program on electronic commerce in the region, taking into account relevant activities of other international fora, and to report to us in Kuala Lumpur. This initiative should recognize the leading role of the business sector and promote a predictable and consistent legal and regulatory environment that enables all APEC economies to reap the benefits of electronic commerce.

In November 1998, the APEC Ministers approved a Blueprint for Action on electronic commerce that sets out a framework for electronic commerce in APEC, outlines a work plan, and establishes a steering group to coordinate electronic commerce activities within APEC fora and to implement the Blueprint work program. The Steering Group membership consists of representatives from all APEC economies. The Steering Group will involve relevant APEC working groups and sub-fora, as well as business sector experts in accordance with APEC guidelines on business participation.

DOC/ITA seeks comment on the APEC Electronic Commerce Steering Group work program, which is outlined in the Blueprint for Action on electronic commerce <http://www.dfat.gov.au/apec/ecom/>.

The Blueprint for Action on electronic commerce advocates that APEC economies "endeavor to work together to build trust and confidence; enhance government use [of electronic commerce]; intensify community outreach; promote technical cooperation and experience exchange; where appropriate, work toward eliminating impediments to its uptake; and develop seamless legal, technical, operating and trading environments to facilitate the growth and development of electronic commerce."

Specific initiatives identified in the work program include:

- Developing measures and indicators of the uptake, use, and flows of e-commerce;
- Assessing impediments to economic commerce in APEC and reviewing the economic costs that inhibit electronic commerce, including those imposed by regulatory or market conditions;
- Working on the financial aspects of electronic commerce;
- Expanding a case history database to facilitate and support electronic commerce activities by small and medium enterprises (SMEs), government, and business/public sector partnerships;
- Exploring economic and technical cooperation to facilitate the uptake, use, and maximization of the benefits of electronic commerce in APEC member economies;
- Tasking authentication experts, including business sector experts, to study the range of business models for electronic authentication. This work should include examining the potential role of mechanisms, such as cross-certification and the use of a root certification authority, to promote inter-operability and trust and to facilitate cross-border electronic commerce;
- Working with UNCITRAL and other international fora to advance, where appropriate, the work on the legal foundations for a seamless system of cross-border electronic commerce;
- Establishing APEC electronic virtual commerce/multimedia resource network; and
- Developing paperless trading by 2005, if possible.

Work in many of these areas is already underway in various APEC fora, including the Telecommunications Working Group, the Transportation Working Group, the Industrial Science and Technology Working Group, and the Committee on Trade and Investment and its subcommittee on Customs Procedures.

Dated: March 29, 1999.

Jonathan C. Menes,

Director, Office of Trade and Economic Analysis, Co-Chair APEC Electronic Commerce Steering Group, International Trade Administration, U.S. Department of Commerce.

[FR Doc. 99–8425 Filed 4–6–99; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–428–812]

Certain Hot-Rolled Lead and Bismuth Carbon Steel Products From Germany: Preliminary Results of Countervailing Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce

ACTION: Notice of Preliminary Results of Countervailing Duty Administrative Review

SUMMARY: The Department of Commerce (the Department) is conducting an administrative review of the countervailing duty order on certain hot-rolled lead and bismuth carbon steel products from Germany for the period January 1, 1997 through December 31, 1997. For information on the net subsidy for the reviewed company as well as for non-reviewed companies, please see the *Preliminary Results of Review* section of this notice. If the final results remain the same as these preliminary results of administrative review, we will instruct the U.S. Customs Service to assess countervailing duties as detailed in the *Preliminary Results of Review* section of this notice. Interested parties are invited to comment on these preliminary results. (See the Public Comment section of this notice.)

EFFECTIVE DATE: April 7, 1999.

FOR FURTHER INFORMATION CONTACT: Eric B. Greynolds or Robert Copyak, Group II, Office of AD/CVD Enforcement VI, Import Administration, U.S. Department of Commerce, Room 4012, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–2786.

SUPPLEMENTARY INFORMATION:

Background

On March 22, 1993, the Department published in the **Federal Register** (58 FR 15325) the countervailing duty order on certain hot-rolled lead and bismuth carbon steel products from Germany. On March 11, 1998, the Department published a notice of "Opportunity to Request an Administrative Review" (63 FR 11868) of this countervailing duty order. We received a timely request for review from Saarstahl AG (Saarstahl), the respondent company to this proceeding. On April 24, 1998, we initiated the review, covering the period January 1, 1997 through December 31, 1997, (63 FR 20378). On April 28, 1999, Inland Steel Bar Company and USS/KOBE Steel Co. (petitioners) requested that the Department conduct verification of information submitted on the record in all questionnaire responses.

In accordance with 19 CFR 351.213(b), this review covers only those producers or exporters for which a review was specifically requested. Accordingly, this review covers Saarstahl AG (Saarstahl). This review also covers five programs. On November 19, 1998, we extended the period for completion of the preliminary results pursuant to section 751(a)(3) of the Tariff Act of 1930, as amended. *See Hot-Rolled Lead and Bismuth Carbon Steel Products from Germany: Extension of the Time Limit for Preliminary Results of Countervailing Duty Administrative Review* (63 FR 64235). The deadline for the final results of this review is no later than 120 days from the date on which these preliminary results are published in the **Federal Register**.

Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act (URAA) effective January 1, 1995 (the Act). The Department is conducting this administrative review in accordance with section 751(a) of the Act. All citations to the Department's regulations reference 19 CFR Part 351(April 1998), unless otherwise indicated.

Scope of the Review

The products covered by this investigation are hot-rolled bars and rods of nonalloy or other alloy steel, whether or not descaled, containing by weight 0.03 percent or more of lead or 0.05 percent or more of bismuth, in coils or cut lengths, and in numerous shapes and sizes. Excluded from the scope of this investigation are other alloy steels (as defined by the Harmonized Tariff Schedule of the United States (HTSUS) Chapter 72, note 1 (f)), except steels classified as other alloy steels by reasons of containing by weight 0.4 percent or more of lead, or 0.1 percent or more of bismuth, tellurium, or selenium. Also excluded are semi-finished steels and flat-rolled products. Most of the products covered in this review are provided for under subheadings 7213.20.00.00 and 7214.30.00.00 of the HTSUS. Small quantities of these products may also enter the United States under the following HTSUS subheadings: 7213.31.30.00; 7213.31.60.00; 7213.39.00.30; 7213.39.00.60; 7213.39.00.90; 7213.91.30.00; 7213.91.45.00; 7213.91.60.00; 7213.99.00; 7214.40.00.10, 7214.40.00.30, 7214.40.00.50; 7214.50.00.10; 7214.50.00.30, 7214.50.00.50; 7214.60.00.10; 7214.60.00.30; 7214.60.00.50; 7214.91.00; 7214.99.00; 7228.30.80.00; and 7228.30.80.50. HTSUS subheadings are provided for convenience and Customs purposes. The written description of the scope of this proceeding is dispositive.

Duty Absorption

On April 28, 1998, the Department received a request from petitioners to conduct a duty absorption review to determine whether Saarstahl absorbed countervailing duties. The issue of whether it is appropriate to examine duty absorption in the context of a countervailing duty review was considered in the 1997 administrative review of the countervailing duty order on lead and bismuth carbon steel products from the United Kingdom. The Department concluded that, because there is no relationship between the amount of duties absorbed and the extent of government subsidization that will take place in the future, it is not appropriate to examine duty absorption in a countervailing duty reviews. Therefore, we are not conducting a duty absorption review in this administrative review. A copy of the decision memorandum which elaborates the Department's rationale with regard to this issue (*see* memorandum through Holly A. Kuga, Acting Deputy Assistant Secretary for Group II, to Robert S. LaRussa, Assistant Secretary for Import Administration, dated March 18, 1999, a public document on file in the Central Records Unit, Room B–099 of the Main Commerce Building) has been placed on the record of this administrative review as a public document from the team to the file, dated March 25, 1999.

Subsidies Valuation Information

Allocation Period

In *British Steel plc.* v. *United States*, 879 F.Supp. 1254 (February 9, 1995) (*British Steel I*), the U.S. Court of International Trade (the Court) ruled against the allocation period methodology for non-recurring subsidies that the Department had employed for the past decade, a methodology that was articulated in the *General Issues Appendix* appended to *Final Affirmative Countervailing Duty Determination: Certain Steel Products from Austria*; 58 FR 37217 (July 9, 1993) (*GIA*). In accordance with the Court's decision on remand, the Department determined that the most reasonable

method of deriving the allocation period for nonrecurring subsidies is a company-specific AUL of non-renewable physical assets. This remand determination was affirmed by the Court on June 4, 1996. *British Steel plc.* v. *United States*, 929 F.Supp 426, 439 (CIT 1996) (*British Steel II*).

However, in administrative reviews where the Department examines non-recurring subsidies received prior to the POR which have been countervailed based on an allocation period established in an earlier segment of the proceeding, it is not practicable to reallocate those subsidies over a different period of time. Since the countervailing duty rate in earlier segments of the proceeding was calculated based on a certain allocation period and resulted in a certain benefit stream, redefining the allocation period in later segments of the proceeding would entail taking the original grant amount and creating an entirely new benefit stream for that grant. Such a practice may lead to an increase or decrease in the total amount countervailed and, thus, would result in the possibility of over-or under-countervailing the actual benefit. In this administrative review, the Department is considering non-recurring subsidies previously allocated in the initial investigation. Therefore, for purposes of these final results, the Department is using the original allocation period assigned to each non-recurring subsidy received prior to the POR. *See, e.g., Final Results of Countervailing Duty Administrative Review: Industrial Phosphoric Acid from Israel*, 64 FR 2879 (January 19, 1999) and *Final Results of Countervailing Duty Administrative Review: Certain Carbon Steel Products from Sweden*, 62 FR 16549 (April 7, 1997).

Discount Rates

Pursuant to the *Final Results of Redetermination Pursuant to Court Remand Regarding The Privatization in Germany: Saarstahl Ag* v. *United States*, Consol. Ct. No. 93–04–00219 (June 30, 1997) (*Remand Determination*), we find that Saarstahl was uncreditworthy in 1989 and, therefore, have applied the uncreditworthy discount rate from the *Remand Determination* for Saarstahl's calculations.

Change in Ownership

(I) Background

In the investigation of this proceeding, we examined Saarstahl's changes in ownership prior to 1991. Specifically, in 1986, Arbed, a company owned by the Government of Luxemburg, transferred 76 percent of Saarstahl's shares to the Government of Saarland (GOS), making Saarstahl a majority state-owned company. The GOS then began a search for a new investor for Saarstahl. Usinor-Sacilor, a company owned by the Government of France, expressed interest in Saarstahl. In 1989, the GOS and Usinor-Sacilor reached an agreement in which: (1) the two steel companies in Saarland, Saarstahl Volingen Gmbh. (Saarstahl) and Dillinger Hüttenwerke (Dillinger) would merge to form DHS Dillinger Hütte Saarstahl AG (DHS); (2) Usinor-Sacilor would buy the newly created DHS; and (3) in return for Usinor-Sacilor's purchase of DHS, the GOS and the Government of Germany (GOG) would forgive Saarstahl's debt obligations, also known as Rückzahlungsverpflichtungen (RZVs), to the regional and federal governments and release the company from any obligation to repay Saarstahl's guaranteed loans. The last step of the change in ownership took place in 1989 with the transfer of the long products business from DHS to a newly-formed company, Saarstahl AG.

In the investigation of this case, the Department found that the cancellation of Saarstahl's debts constituted countervailable subsidies. *See Final Affirmative Countervailing Duty Determination: Certain Hot Rolled Lead and Bismuth Carbon Steel Products from Germany*, 58 FR 6233, 6233 (January 27, 1993) (*Lead and Bismuth*). Further, the Department determined that the change in ownership transaction did not alter the effect of these previously bestowed subsidies. In the 1993 certain steel products investigations, the Department modified its position in *Lead and Bismuth* concerning changes in ownership. Specifically, the Department stated that it could no longer be assumed that the entire amount of subsidies passes through to the new owners after a change in ownership. Rather, when a company is sold, even partially, a portion of the sales price represents repayment of prior subsidies. *See GIA*, 58 FR at 37263. As a result of this change, the Department, pursuant to the *Remand Determination: Certain Hot Rolled Lead and Bismuth Carbon Steel Products from Germany*, (October 12, 1993), altered its original determination regarding the effects of privatization on subsidies previously received by Saarstahl so that it conformed with the methodology described in the *GIA*. This change in ownership methodology was upheld in *Saarstahl AG* v. *United States*, 78 F. 3d 1539 (Fed. Cir. 1996) and *British Steel plc* v. *Untied States*, 127 F.3d 1471 (Fed. Cir. 1997).

In the recent investigation of steel wire rod from Germany, we included in our change of ownership calculations the 1994 transaction under which Usinor-Sacilor, via DHS, spun-off 100 percent of Saarstahl AG to the GOS for DM 1. *See Final Affirmative Countervailing Duty Determination: Steel Wire Rod from Germany (German Wire Rod)*, 62 FR 54990, (October 22, 1997) (*German Wire Rod*). Respondents have reported in this administrative review that, in 1997, the GOS transferred the majority of its shareholdings in Saarstahl to three parties: (1) Saarstahl Treuhand, (2) AG der Dillinger Huttenwerke (Dillinger), and (3) Kreditanstalt fur Wiederaufbau (Kreditanstalt). Prior to this transfer, the GOS held approximately 99.9 percent of Saarstahl's shares. After the share transfer, the GOS held approximately 32 percent of the company's shares. The remaining 68 percent was divided as follows: Saarstahl Treuhand—28.1 percent, Dillinger—19.9 percent, and Kreditanstalt—20 percent.

Regarding the 1997 privatization, petitioners argue in their March 11, 1999, submission that the new shareholders in Saarstahl should not be considered private entities. They argue that Saarstahl Treuhand is a trust that was set up and is controlled by the GOG because no private investor could be found for these shares. They argue that the GOS (through its ownership of Saarstahl) is an owner of the parent company of Dillinger and, therefore, Dillinger is government-controlled. They also argue that, because the Kreditanstalt is a development bank of the GOG, shares assigned to it represent no ultimate change in the ownership of Saarstahl. On this basis, petitioners argue that none of the three parties' purchase price can constitute repayment of Saarstahl's previously bestowed subsidies. In addition, petitioners argue that the Department should treat all of the purchase price as a grant to Saarstahl because none of the parties to the privatization made its purchase on terms consistent with those of a private investor.

In its March 22, 1999, submission, respondent rebuts petitioners' contention that the buyers of Saarstahl in 1997 were not private actors. Respondent argues that Saarstahl Treuhand is a private trust established under German law for the benefit of bankruptcy creditors and that it is not, in any way, controlled by the government. Regarding Dillinger, respondent states that approximately 5 percent is held by individual investors

and the remaining 95 percent is held by DHS. They then explain that the majority of DHS is owned by the private companies Usinor-Sacilor S.A. and ARBED S.A. Regarding Kreditanstalt, respondent argues that the administrative record of this proceeding clearly indicates that the development bank's decision to invest in Saarstahl was made on terms consistent with commercial considerations and, on this basis, its payment should be included as part of the purchase price. Thus, respondent argues that since all three parties made their decision to invest in Saarstahl independent of the GOG and the GOS, the Department should determine that 100 percent of the purchase price constitutes repayment of Saarstahl's previously bestowed subsidies.

In this administrative review, we are analyzing the privatization of Saarstahl in 1989, its subsequent spin-off in 1994, and the company's partial privatization in 1997. For purposes of this preliminary determination, we have applied the Department's change in ownership methodology for the 1989 privatization and the 1994 spin-off. However, we have not applied the change in ownership methodology for the 1997 reorganization. In light of petitioner's arguments that the new shareholders should not be considered private entities and that the purchase price constituted a countervailable grant, we are considering whether to treat contributions by the new shareholder as grants or as repayment of prior subsidies. We will gather further information regarding the 1997 change in ownership, and we will consider the comments submitted on the record by interested parties. We note that all information submitted on the record pertaining to this issue will be subject to verification and further analysis.

(II) Change in Ownership Calculation Methodology

Under the *Change in Ownership* methodology described in the GIA concerning the treatment of subsidies received prior to the sale of a company or the spinning-off of a productive unit, we estimate the portion of the purchase price attributable to prior subsidies. We compute this by first dividing the privatized company's subsidies by the company's net worth for each year during the period beginning with the earliest point at which nonrecurring subsidies would be attributable to the POR (in this case 1983) and ending one year prior to the change in ownership.

As in *German Wire Rod*, we have modified this methodology with respect to Saarstahl. *See* 62 FR 54991. Specifically, we calculated the ratios in question by including in the calculation the assistance that Saarstahl received prior to privatization in the year the assistance was received. We did so even though we do not consider this prior assistance, at the it was received, to be nonrecurring in nature, and, thus, allocable over time.

We then take the simple average of the ratios of subsidies to net worth. This simple average of the ratios serves as a reasonable surrogate for the portion subsidies constitute of the overall value of the company. Next, we multiply the average ratio by the purchase price to derive the portion of the purchase price attributable to repayment of prior subsidies. Finally, we reduce the benefit streams of the prior subsidies by the ratio of the repayment amount to the net present value of all remaining benefits at the time of privatization.

With respect to spin-offs, consistent with the Department's position regarding privatization, we analyze the spin-off of productive units to assess what portion of the sale price of the productive unit can be attributable to the repayment of prior subsidies. To perform this calculation, we first determine the amount of the seller's subsidies that the spun-off productive unit could potentially take with it. To calculate this amount, we divide the value of the assets of the spun-off unit by the value of the assets of the company selling the unit. We then apply this ratio to the net present value of the seller's remaining subsidies. We next estimate the portion of the purchase price going towards repayment of prior subsidies in accordance with the privatization methodology outlined above.

Analysis of Programs

I. Programs Conferring Subsidies

A. Government Forgiveness of Saarstahl Debt in 1989

During the period 1978 to 1989, Saarstahl and its predecessor companies received large amounts of assistance from the GOS and the GOG in the form of RZVs. Repayment of these RZVs became contingent upon Saarstahl returning to profitability and earning a profit above and beyond the losses accumulated after 1978.

In 1989, the GOS reached an agreement with Usinor-Sacilor to combine Saarstahl with Dillinger under a holding company, DHS. Pursuant to the combination agreement and as a condition for sale, in 1989 the GOG and GOS entered into a debt forgiveness contract (Entschuldungsvertrag, or EV) which effectively forgave all the outstanding repayment obligations owed by Saarstahl to the two Governments (*i.e.*, a total of DM 3.945 billion in debt was forgiven). The EV specified, however, that if Saarstahl went bankrupt, the GOG and GOS claims could be revived, but their claims would be subordinated to those of all other creditors.

After several years of unprofitable operation, Saarstahl filed for bankruptcy in 1993 under the German Bankruptcy Regulations (Konkursordnung). In 1994, the GOS bought Saarstahl back from Usinor-Sacilor for DM 1. At the time of its bankruptcy, Saarstahl's liabilities exceeded its assets by a factor of four, not including its liabilities to the GOG and GOS. Both Governments filed claims against the Saarstahl bankruptcy estate based on the RZV debt that was conditionally forgiven in 1989. These EV-related claims were rejected by the bankruptcy trustee as invalid in 1995 on the grounds that the degree of their subordination resulted in the fact that the GOG and GOS would never be repaid. The GOG and GOS chose not to appeal the rejection of their bankruptcy claims, on the grounds that the subordination of their claims made the likelihood of recovery very small, and not worth the high cost of litigating the matter.

In *Lead and Bismuth*, 58 FR at 6234, we found that Saarstahl's RZVs and similar related debt were forgiven by the 1989 EV, thus conferring a countervailable benefit on Saarstahl as of 1989. This was also the Department's finding in *Certain Steel* and *German Wire Rod*. No new information or evidence of changed circumstances was presented in this review to warrant any reconsideration of these findings.

To calculate the countervailable benefit in the POR, we used our standard declining balance grant methodology. We then divided the benefit attributable to the POR, adjusted to reflect the changes in ownership described above, by the total sales of Saarstahl during the same period. On this basis, we preliminarily determine the net subsidy for this program to be 11.61 percent *ad valorem* for Saarstahl.

B. *Debt Forgiveness by Private Banks in 1989*

Toward the end of 1985, the GOS presented a long-term restructuring plan for Saarstahl to Saarstahl's creditors and requested that they forgive loans in the amount of DM 350 million. In 1986, the private banks agreed to forgive DM 217.33 million of debt owed to them by Saarstahl (DM 216.82 of which was forgiven in 1989), if the GOG and GOS fulfilled certain prerequisites. Two of

the prerequisites were that the Governments forgive all debt owed to them by Saarstahl and that the GOS secure the future liquidity of Saarstahl. In 1986, the GOS agreed to forgive all debts owed to it by Saarstahl and to secure the liquidity of Saarstahl as it had in the past.

In the investigation of this case, we determined that the 1989 forgiveness of principal by private banks in the amount of DM 216.82 constituted a countervailable subsidy. *See Lead and Bismuth*, 58 FR 6233–34; *See also, German Wire Rod*, 62 FR at 54991. No new information or evidence of changed circumstances was presented in this review to warrant any reconsideration of that finding.

To calculate the countervailable subsidy, we followed the methodology described in the "Government Forgiveness of Saarstahl's Debt in 1989" section of the notice, above. We then divided the benefit attributable to the POR, adjusted to reflect the changes in ownership described above, by the total sales of Saarstahl during the same period. On this basis, we preliminarily determine the net subsidy for this program to be 0.64 percent *ad valorem* for Saarstahl.

C. *Worker Assistance Program (ECSC Redeployment Aid Under Article 56(2)(b)*

Under Article 56(2)(b) of the European Coal and Steel Community (ECSC) Treaty, persons employed in the iron, steel, and coal industries who lose their jobs may receive assistance for social adjustment. This assistance is provided to workers affected by restructuring measures, particularly workers withdrawing from the labor market into early retirement and workers forced into unemployment. The ECSC disburses assistance under this program on the condition that the affected country makes an equivalent contribution. During the POR, payments were made to Saarstahl, on behalf of its workers, under Article 56(2)(b).

In *Lead and Bismuth*, 58 FR at 6235, the Department determined that the portion of ECSC payments (*i.e.* 50 percent) made under this program during the POI, 1991, was not countervailable because the funds for this program came from the ECSC's operational budget, which is funded by levies on the companies. In *Lead and Bismuth*, the Department also previously found that the portion funded by the GOG was countervailable to the extent that the GOG's payments relieved Saarstahl of an obligation to its laid-off workers that the company would otherwise have incurred. *See Lead and Bismuth*, 58 FR at 6235.

In *German Wire Rod*, the Department determined this program to be countervailable but distinguished between GOG worker assistance payments relating to the social plan established in conjunction with Saarstahl's bankruptcy in 1993, and GOG worker assistance payments made pursuant to the company's pre-bankruptcy social plans. *See* 62 FR at 54993. In that investigation, the Department reasoned that Saarstahl's bankruptcy social plan provides the maximum allowable benefits to workers under German bankruptcy law and that, therefore, the knowledge of ECSC 56(2)(b) benefits did not affect the company's social plan obligations. Thus, the Department determined that GOG payments relating to Saarstahl's bankruptcy social plan are not countervailable. *Id.*

In this administrative review, we have followed the approach taken in *German Wire Rod* and, therefore, preliminarily determine that only the worker assistance payments received pursuant to Saarstahl's pre-bankruptcy social plans are countervailable. Because a company can expect to receive the benefits on an ongoing basis, we have limited our analysis to funds received during the POR, 1997. In situations where the company and its workers are aware at the time of their negotiations that the government will be making contributions to the workers' benefits, the Department's practice is to treat half of the amount paid by the government as benefitting the company. *See, GIA*, 58 FR at 37225. In the *GIA*, the Department stated that when the government's willingness to provide assistance is known at the time the contract is being negotiated, this assistance is likely to have an effect on the outcome of the negotiations. In these situations, the Department will assume that the differences between what the workers would have demanded and what the company would have preferred to have paid would have been split between the parties, with the result that one-half of the government payment goes to relieving the company of an obligation that would otherwise exist. *See, GIA*, 58 FR at 37256. This methodology was upheld in *LTV Steel Co.* v. *United States*, 985 F. Supp. 95, 116 (CIT 1997).

Consistent with Department's practice described above, the benefit to Saarstahl is one-half the amount paid to the workers by the GOG under the pre-bankruptcy social plan. To calculate the benefit under this program, we divided this amount by Saarstahl's total sales during the POR. On this basis, we preliminarily determine the net subsidy to Saarstahl under this program to be 0.06 percent *ad valorem*.

II. Program Preliminarily Determined to be Not Countervailable

A. *ECSC Research and Development Assistance Under Article 55*

Under Article 55 of the ECSC Treaty, assistance is available to promote technical and economic research relating to the production and increased use of coal and steel, and to occupational safety in the coal and steel industries. Since the end of 1986, this program has been funded solely through levies on steel producing companies.

During the POR, Saarstahl received research and development assistance related to calcium treated and aluminum deoxidized steels with high sulfur content under the ECSC Article 55 program.

In *Final Affirmative Countervailing Duty Determination: Certain Steel Products from Belgium*, 58 FR 37273, 37285, (July 9, 1993), the Department found this program to be not countervailable because funding under this program was provided by levies on participating steel companies and because the program stipulates that the results of research conducted under Article 55 must be made publicly available.

No new information or evidence of changed circumstances has been submitted in this proceeding to warrant reconsideration of this determination. Therefore, for purposes of this preliminary determination, we find this program not countervailable.

III. Other Program Examined

BRITE/EuRAM Research and Development Project (BRITE/EuRAM Project)

Under the BRITE/EuRAM Project, participants receive research and development assistance in the form of grants from the European Community (EC). In order to receive the assistance, participants must make a formal proposal to the EC for the funding of a specific research and development project. Applicants whose proposals have been accepted then enter into a contract with the EC in which such items as the scope of the project, project goals, applicant reporting requirements and EC payments are established.

During the POR, Saarstahl received grants from the EC under the BRITE/EuRAM Project for the development of a project entitled, "World Class Performance for Wire Drawing through Improved Quality of the Manufacturing Process (WIREMAN)." According to the

EC and Saarstahl, the objective of the WIREMAN project was to minimize waste and resource usage in the drawing process with the main focus of the project on the processing of steelcord for use in the manufacture of tires.

Because the research and development assistance related to this program is tied to merchandise other than subject merchandise, we preliminarily determine that this assistance did not benefit Saarstahl's production of subject merchandise during the POR. (For further discussion, *see* the Memorandum to the File, "BRITE/EuRAM Project," dated March 31, 1999, on file in the Central Records Unit (CRU)). We note that we intend to verify the EC's and Saarstahl's statements as they relate to the tying of benefits under this program to merchandise other than subject merchandise.

IV. Programs About Which More Information Is Needed

Subsidies Leading Up to the 1997 Reorganization

In this administrative review, petitioners argue that information contained in Saarstahl's financial statements indicates that Saarstahl claimed large write-offs of loans and other liabilities both in 1996 and in 1997. They argue that the Department should analyze these write-offs within an overall context of Saarstahl's operation as a government-owned but bankrupt company and its reorganization out of bankruptcy in 1997.

In its original July 20, 1998, questionnaire response, Saarstahl explained that it was unable to submit the 1997 financial data requested by the Department because it had not yet completed its financial statements for 1997. Saarstahl submitted its financial statements for 1997 on the record on January 15, 1999. In a submission dated February 9, 1999, petitioners raised the issue of potentially large amounts of debt forgiveness and grants leading up to the 1997 reorganization. On February 26, 1999, Saarstahl submitted a questionnaire response containing further information regarding its large amounts of extraordinary income and writeoffs. On March 11, 1999, upon reviewing this new information, petitioners suggested that the Department should consider whether, as in the years leading up to the 1989 reorganization, massive debt forgiveness and additional government contributions allowed Saarstahl to remain an ongoing concern and emerge from its bankruptcy. Additionally, petitioners suggest that Saarstahl may have been forgiven value-added taxes that it owed. Saarstahl addressed petitioners claims in a submission dated March 22, 1999. In general, Saarstahl argues that its bankruptcy proceeding was handled in full accordance with German law and that the forgiveness of debts as a result of bankruptcy is not countervailable, in accordance with the Department's practice.

The issues raised by petitioners regarding Saarstahl's operation as a government-owned bankrupt company and the nature of its extraordinary income and write-offs leading up to its reorganization in 1997 merit further examination in this administrative review. Due to the delayed submission of Saarstahl's financial data for 1997, these issues were raised with very little time for the Department to collect all of the information needed to examine them fully. While the Department preliminarily concludes that the information on the record is insufficient to demonstrate the existence of a countervailable program, the Department will consider the issues further and gather additional information, which will be subject to verification. Among other things, we will examine: (1) the terms of Saarstahl's bankruptcy, (2) its operation as a going concern during bankruptcy, (3) the relationship between Saarstahl and its creditors, (4) the nature of its liabilities, (5) the terms of the 1997 reorganization, (6) the establishment of the purchase price, (7) the nature of Saarstahl debt writeoffs, and (8) the relationship between the new shareholders and the governments of Saarstahl and Germany. We will consider whether Saarstahl's writeoffs of liabilities leading up to the 1997 reorganization constitute countervailable subsidies, whether it received countervailable subsidies in the form of tax forgiveness, and whether the sale of Saarstahl provided the company with countervailable grants. After we collect additional information and conduct verification, we will prepare an analysis memorandum addressing all of the pertinent issues surrounding Saarstahl's reorganization in 1997. Prior to issuing our final determination, we intend to provide all parties the opportunity to comment on our analysis.

Verification

As provided in section 782(i) of the Act, we intend to verify the information submitted by the Governments of Germany and Saarland and Saarstahl. In addition, we will schedule our verification so that all parties to the proceeding will have ample time to comment on our findings prior to the publication of our final results of this administrative review.

Preliminary Results of Review

In accordance with 19 CFR 355.221(b)(4)(i), we have calculated an individual subsidy rate for Saarstahl, the producer/exporter subject to this administrative review. For the period January 1, 1997 through December 31, 1997, we preliminarily determine the net subsidy for Saarstahl to be 12.31 percent *ad valorem*. If the final results of this review remain the same as these preliminary results, the Department intends to instruct the U.S. Customs Service to assess countervailing duties for Saarstahl at 12.31 percent *ad valorem*. The Department also intends to instruct the U.S. Customs Service (Customs) to collect a cash deposit of 12.31 percent of the f.o.b. invoice price on all shipments of the subject merchandise from Saarstahl, entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this review.

Because the URAA replaced the general rule in favor of a country-wide rate with a general rule in favor of individual rates for investigated and reviewed companies, the procedures for establishing countervailing duty rates, including those for non-reviewed companies, are now essentially the same as those in antidumping cases, except as provided for in section 777A(e)(2)(B) of the Act. The requested review will normally cover only those companies specifically named. *See* 19 CFR 355.22(b). Pursuant to 19 CFR 355.22(c), for all companies for which a review was not requested, duties must be assessed at the cash deposit rate, and cash deposits must continue to be collected, at the rate previously ordered. As such, the countervailing duty cash deposit rate applicable to a company can no longer change, except pursuant to a request for a review of that company. *See Federal-Mogul Corporation and The Torrington Company* v. *United States*, 822 F. Supp. 782 (CIT 1993) and *Floral Trade Council* v. *United States*, 822 F. Supp. 766 (CIT 1993) (interpreting 19 CFR 353.22(e), the antidumping regulation on automatic assessment, which is identical to 19 CFR 355.22(g)). Therefore, the cash deposit rates for all companies except those covered by this review will be unchanged by the results of this review.

We will instruct Customs to continue to collect cash deposits for non-reviewed companies at the most recent

company-specific or country-wide rate applicable to the company. Accordingly, the cash deposit rates that will be applied to non-reviewed companies covered by this order are those established in the most recently completed administrative proceeding conducted under the URAA. If such a review has not been conducted, the rate established in the most recently completed administrative proceeding pursuant to the statutory provisions that were in effect prior to the URAA amendments is applicable. *See Lead Bar*. These rates shall apply to all non-reviewed companies until a review of a company assigned these rates is requested. In addition, for the period January 1, 1997 through December 31, 1997, the assessment rates applicable to all non-reviewed companies covered by this order are the cash deposit rates in effect at the time of entry.

Public Comment

Pursuant to 19 CFR 351.224(b), the Department will disclose to parties to the proceeding any calculations performed in connection with these preliminary results within five days after the date of publication of this notice. Pursuant to 19 CFR 351.309, interested parties may submit written comments in response to these preliminary results. Case briefs must be submitted within 30 days after the date of publication of this notice, and rebuttal briefs, limited to arguments raised in case briefs, must be submitted no later than five days after the time limit for filing case briefs. Parties who submit argument in this proceeding are requested to submit with the argument: (1) A statement of the issue, and (2) a brief summary of the argument. Case and rebuttal briefs must be served on interested parties in accordance with 19 CFR 351.303(f). Also, pursuant to 19 CFR 351.310, within 30 days of the date of publication of this notice, interested parties may request a public hearing on arguments to be raised in the case and rebuttal briefs. Unless the Secretary specifies otherwise, the hearing, if requested, will be held two days after the date for submission of rebuttal briefs, that is, thirty-seven days after the date of publication of these preliminary results.

The Department will publish the final results of this administrative review, including the results of its analysis of issues raised in any case or rebuttal brief or at a hearing.

This administrative review is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act (19 U.S.C. 1675(a)(1) and 19 U.S.C. 1677f(i)(1)).

Dated: March 31, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99–8621 Filed 4–6–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–412–811]

Certain Hot-Rolled Lead and Bismuth Carbon Steel Products from the United Kingdom; Preliminary Results of Countervailing Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Preliminary Results of Countervailing Duty Administrative Review.

SUMMARY: The Department of Commerce ("the Department") is conducting an administrative review of the countervailing duty order on certain hot-rolled lead and bismuth carbon steel products ("lead bar") from the United Kingdom for the period January 1, 1997 through December 31, 1997. For information on the net subsidy for each reviewed company, as well as for all non-reviewed companies, please see the *Preliminary Results of Review* section of this notice. If the final results remain the same as these preliminary results of administrative review, we will instruct the U.S. Customs Service to assess countervailing duties as detailed in the *Preliminary Results of Review* section of this notice. Interested parties are invited to comment on these preliminary results. (*See Public Comment* section of this notice.)

EFFECTIVE DATE: April 7, 1999.

FOR FURTHER INFORMATION CONTACT: Gayle Longest or Christopher Cassel, Group II, Office CVD/AD Enforcement VI, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–2786.

SUPPLEMENTARY INFORMATION:

Background

On March 22, 1993, the Department published in the **Federal Register** (58 FR 15327) the countervailing duty order on certain hot-rolled lead and bismuth carbon steel products from the United Kingdom. On March 11, 1998, the Department published a notice of "Opportunity to Request Administrative Review" (63 FR 11868) of this countervailing duty order. We received a timely request for review, and we initiated the review, covering the period January 1, 1997 through December 31, 1997, on April 24, 1998, (63 FR 20378).

In accordance with 19 CFR 351.213(b) this review covers only those producers or exporters of the subject merchandise for which a review was specifically requested. Accordingly, this review covers British Steel plc./British Steel Engineering Steels Ltd. (formerly United Engineering Steels Limited). This review also covers nine programs.

On December 7, 1998, we extended the period for completion of the preliminary results pursuant to section 751(a)(3) of the Tariff Act of 1930, as amended. *See Certain Hot-Rolled Lead and Bismuth Carbon Steel Products From the United Kingdom: Postponement of Preliminary Results of Countervailing Duty Administrative Review* (63 FR 67459). The deadline for the final results of this review is no later than 120 days from the date on which these preliminary results are published in the **Federal Register**.

Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act ("URAA") effective January 1, 1995 ("the Act"). The Department is conducting this administrative review in accordance with section 751(a) of the Act. All citations to the Department's regulations reference 19 C.F.R. Part 351, (1998) unless otherwise indicated.

Scope of the Review

Imports covered by this review are hot-rolled bars and rods of non-alloy or other alloy steel, whether or not descaled, containing by weight 0.03 percent or more of lead or 0.05 percent or more of bismuth, in coils or cut lengths, and in numerous shapes and sizes. Excluded from the scope of this review are other alloy steels (as defined by the *Harmonized Tariff Schedule of the United States* (HTSUS) Chapter 72, note 1 (f)), except steels classified as other alloy steels by reason of containing by weight 0.4 percent or more of lead or 0.1 percent or more of bismuth, tellarium, or selenium. Also excluded are semi-finished steels and flat-rolled products. Most of the products covered in this review are provided for under subheadings 7213.20.00.00 and 7214.30.00.00 of the HTSUS. Small quantities of these products may also enter the United

States under the following HTSUS subheadings: 7213.31.30.00, 60.00; 7213.39.00.30, 00.60, 00.90; 7213.91.30.00, 45.00,60.00; 7213.99.00; 7214.40.00.10, 00.30, 00.50; 7214.50.00.10, 00.30, 00.50; 7214.60.00.10, 00.30, 00.50; 7214.91.00; 7214.99.00 and 7228.30.80.00, 80.50. The HTSUS subheadings are provided for convenience and for Customs purposes. The written description of the scope of this proceeding is dispositive.

Duty Absorption

On April 8, 1998, the Department received a request from petitioners to conduct a duty absorption review to determine whether British Steel Engineering Steels Ltd. absorbed countervailing duties. The Department considered petitioners request and determined that it is not appropriate to conduct a duty absorption inquiry in this countervailing duty review because the rationale for conducting duty absorption inquiries in antidumping duty proceedings are not relevant in countervailing duty cases. For further discussion, see Memorandum to Robert S. LaRussa from Holly Kuga, dated March 18, 1999, a public document on file in the Central Records Unit, Room B–099 of the Main Commerce Building.

Subsidies Value Information

Change in Ownership

(I) Background

On March 21, 1995, British Steel plc ("BS plc") acquired all of Guest, Keen & Nettlefolds' (GKN) shares in United Engineering Steels ("UES"), the company which produced and exported the subject merchandise to the United States during the original investigation. Thus, UES became a wholly-owned subsidiary of BS plc and was renamed British Steel Engineering Steels ("BSES").

Prior to this change in ownership, UES was a joint venture company formed in 1986 by British Steel Corporation ("BSC"), a government-owned company, and GKN. In return for shares in UES, BSC contributed a major portion of its Special Steels Business, the productive unit which produced the subject merchandise. GKN contributed its Brymbo Steel Works and its forging business to the joint venture. BSC was privatized in 1988 and now bears the name BS plc.

In the investigation of this case, the Department found that BSC had received a number of nonrecurring subsidies prior to the 1986 transfer of its Special Steels Business to UES. *See Final Affirmative Countervailing Duty Determination: Certain Hot-Rolled Lead and Bismuth Carbon Steel Products From the United Kingdom*, 58 FR 6237, 6243 (January 27, 1993) (*Lead Bar*). Further, the Department determined that the sale to UES did not alter these previously bestowed subsidies, and thus the portion of BSC's pre-1986 subsidies attributable to its Special Steels Business transferred to UES. *Lead Bar*, 58 FR at 6240.

In the 1993 certain steel products investigations, the Department modified the allocation methodology developed for *Lead Bar*. Specifically, the Department stated that it would no longer assume that all subsidies allocated to a productive unit follow it when it is sold. Rather, when a productive unit is spun-off or acquired, a portion of the sales price of the productive unit represents the reallocation of prior subsidies. *See* the General Issues Appendix (*GIA*), appended to the *Final Countervailing Duty Determination; Certain Steel Products From Austria*, 58 FR 37217, 37269 (July 9, 1993) (*Certain Steel*). In a subsequent Remand Determination, the Department aligned *Lead Bar* with the methodology set forth in the "Privatization" and "Restructuring" sections of the *GIA*. *Certain Hot-Rolled Lead and Bismuth Carbon Steel Products from the United Kingdom: Remand Determination* (October 12, 1993) (*Remand*).

On March 21, 1995, BS plc acquired 100 percent of UES. In determining how this change in ownership affects our attribution of subsidies to the subject merchandise, we relied on section 771(5)(F) of the Act, which states that a change in ownership does not require a determination that past subsidies received by an enterprise are no longer countervailable, even if the transaction is accomplished at arm's length. The Statement of Administrative Action, H.R. Doc. No. 316, Vol. 1, 103d Cong., 2d Sess. (1994) (SAA), explains that the aim of this provision is to prevent the extreme interpretation that the arm's length sale of a firm automatically, and in all cases, extinguishes any prior subsidies conferred. While the SAA indicates that the Department retains the discretion to determine whether and to what extent a change in ownership eliminates past subsidies, it also indicates that this discretion must be exercised carefully by considering the facts of each case. SAA at 928.

In accordance with the Act and the SAA, we examined the facts of BS plc's acquisition of GKN's 50 percent ownership stake in UES, and we determined that the change in ownership does not render previously bestowed subsidies attributable to UES no longer countervailable. However, we also determined that a portion of the purchase price paid for UES is attributable to its prior subsidies. Therefore, we reduced the amount of the subsidies that "traveled" with UES to BS plc, taking into account the allocation of subsidies to GKN, the former joint-owner of UES. *See Certain Hot-Rolled Lead and Bismuth Carbon Steel Products From the United Kingdom; Final Results of Countervailing Duty Administrative Review*, 62 FR 53306 (October 14, 1997) (*Lead Bar 95 Final Results*) and *Certain Hot-Rolled Lead and Bismuth Carbon Steel Products From the United Kingdom; Preliminary Results of Countervailing Duty Administrative Review*, 62 FR 16555 (April 7, 1997) (*Lead Bar 95 Preliminary Results*). To calculate the amount of UES's subsidies that passed through to BS plc as a result of the acquisition, we applied the methodology described in the "Restructuring" section of the *GIA*. *See GIA*, 58 FR at 37268–37269. This determination is in accordance with our changes in ownership finding in *Final Affirmative Countervailing Duty Determination; Pasta From Italy*, 61 FR 30288, 30289–30290 (June 14, 1996), and our finding in the 1994 administrative review of this case, in which we determined that "[t]he URAA is not inconsistent with and does not overturn the Department's *General Issues Appendix* methodology or its findings in the *Lead Bar Remand Determination.*" *Certain Hot-Rolled Lead and Bismuth Carbon Steel Products From the United Kingdom; Final Results of Countervailing Duty Administrative Review*, 61 FR 58377, 58379 (November 14, 1996).

With the acquisition of UES, we also determined that BS plc's remaining subsidies are attributable to the subject merchandise, now produced by BS plc's wholly-owned subsidiary, BSES. Where the Department finds that a company has received untied countervailable subsidies, to determine the countervailing duty rate, the Department attributes those subsidies to that company's total sales of domestically produced merchandise, including the sales of 100-percent-owned domestic subsidiaries. If the subject merchandise is produced by a subsidiary company, and the only subsidies in question are the untied subsidies received by the parent company, the countervailing duty rate calculation for the subject merchandise is the same as described above. Similarly, if such a company purchases another company, as was the case with

BS plc's purchase of UES, then the current benefit from the parent company's allocable untied subsidies is attributed to total sales, including the sales of the newly acquired company. *See, e.g., GIA*, 58 FR at 3762 ("the Department often treats the parent entity and its subsidiaries as one when determining who ultimately benefits from a subsidy"). Accordingly, in the *Lead Bar 95 Final Results*, we determined that it is appropriate to collapse BSES with BS plc for purposes of calculating the countervailing duty for the subject merchandise. BSES, as a wholly-owned subsidiary of BS plc, continues to benefit from the remaining benefit stream of BS plc's untied subsidies.

In collapsing UES with BS plc, we also determined that UES's untied subsidies "rejoined" BS plc's pool of subsidies with the company's 1995 acquisition. All of these subsidies were untied subsidies originally bestowed upon BSC (BS plc). After the formation of UES in 1986, the subsidies that "traveled" with the Special Steels Business were also untied, and were found to benefit UES as a whole. *See Lead Bar 95 Final Results; Lead Bar 95 Preliminary Results.*

(II) *Calculation of Benefit*

To calculate the countervailing duty rate for the subject merchandise in 1997, we first determined BS plc's benefits in 1997, taking into account all spin-offs of productive units (including the Special Steel Business) and BSC's full privatization in 1988. *See Final Affirmative Countervailing Duty Determination; Certain Steel Products from the United Kingdom*, 58 FR 37393 (July 9, 1993) (*UK Certain Steel*). We then calculated the amount of UES's subsidies that "rejoined" BS plc after the 1995 acquisition, taking into account the reallocation of subsidies to GKN. *See Lead Bar 95 Final Results; Lead Bar 95 Preliminary Results.* As indicated above, in determining both these amounts, we followed the methodology outlined in the *GIA*. After adding BS plc's and UES's benefits for each program, we then divided that amount by BS plc's total sales of merchandise produced in the United Kingdom in 1997.

Allocation Methodology

In *British Steel plc* v. *United States*, 879 F. Supp. 1254 (CIT 1995) (*British Steel*), the U.S. Court of International Trade ("the Court") ruled against the allocation period methodology for non-recurring subsidies that the Department has employed for the past decade, a methodology that was articulated in the *General Issues Appendix* (58 FR 37226). In accordance with the Court's decision on remand, the Department determined that the most reasonable method of deriving the allocation period for nonrecurring subsidies is a company-specific average useful life (AUL) of non-renewable physical assets. For British Steel, we determined this allocation period to be 18 years. This remand determination was affirmed by the Court on June 4, 1996. *British Steel*, 929 F.Supp 426, 439 (CIT 1996).

The Department's acquiescence to the CIT's decision in the *Certain Steel* cases resulted in different allocation periods between the *UK Certain Steel* and *Lead Bar* proceedings (18 years vs. 15 years). Different allocation periods for the same subsidies in two proceedings involving the same company generate significant inconsistencies. Moreover, UES became a wholly-owned subsidiary of BS plc in 1995. In the 1995 review of *Lead Bar*, in order to maintain a consistent allocation period across the *UK Certain Steel* and *Lead Bar* proceedings, as well as in the different segments of Lead Bar, we altered the allocation methodology previously used to determine the allocation period for non-recurring subsidies previously bestowed on BSC and attributed to UES. In the 1995 review, we applied the company-specific 18-year allocation period to all non-recurring subsidies. *See Lead Bar 95 Final Results.* Based on our decision in the 1995 administrative review of this order, we preliminarily determine that it is appropriate in this review to continue to allocate all of BSC's non-recurring subsidies over BS plc's company-specific average useful life of renewable physical assets (*i.e.*, 18 years).

Analysis of Programs

I. Programs Conferring Subsidies

A. Equity Infusions

In each year from 1978/79 through 1985/86, BSC/BS plc received equity capital from the Secretary of State for Trade and Industry pursuant to section 18(1) of the Iron and Steel Acts 1975, 1981, and 1982. According to section 18(1), the Secretary of State for the Department of Trade and Industry may "pay to the Corporation (BSC) such funds as he sees fit." The Government of the United Kingdom's equity investments in BSC/BS plc were made pursuant to an agreed external financing limit which was based upon medium-term financial projections. BSC's performance was monitored by the Government of the United Kingdom on an ongoing basis and requests for capital were examined on a case-by-case basis. The UK government did not receive any additional ownership, such as stock or additional rights, in return for the capital provided to BSC/BS plc under section 18(1) since it already owned 100 percent of the company.

In *Lead Bar* (58 FR at 6241), the Department found BSC/BS plc to be unequityworthy from 78/79 through 1985/86, and thus determined that the Government of the United Kingdom's equity infusions were inconsistent with commercial considerations. Although, prior to the formation of UES, BSC's section 18(1) equity capital was written off in two stages (£3,000 million in 1981 and £1,000 million in 1982) as part of a capital reconstruction of BSC, the Department determined that BSC/BS plc benefitted from these equity infusions, notwithstanding the subsequent write-off of equity capital. Therefore, the Department countervailed the equity investments as grants given in the years the equity capital was received. No new information or evidence of changed circumstances was presented in this review to warrant a reconsideration of that finding.

Because the Department determined in *Lead Bar* that the infusions are non-recurring, we have allocated the benefits over BS plc's company-specific average useful life of renewable physical assets (18 years).

Although uncreditworthiness was not specifically alleged or investigated during the investigation on lead bar, in *UK Certain Steel* the Department found that BSC/BS plc was uncreditworthy from 1977/78 through 1985/86. 58 FR at 37395. No new information or evidence of changed circumstances was presented in this review to warrant a reconsideration of that finding. Therefore, we have used a discount rate which includes a risk premium to calculate the benefit from the grants. *See, e.g., Final Affirmative Countervailing Duty Determinations: Certain Steel Products From Mexico*, 58 FR 37352, 37354 (July 9, 1993) (Mexican Steel).

To calculate the benefit to the subject merchandise from this program, we first summed the benefit to BS plc from all infusions allocated to 1997. Then, we determined the portion of that benefit still remaining with BS plc after accounting for privatization and spin-offs. To that we added the portion of UES's subsidies under this program that "rejoined" BS plc with the acquisition. *See* the "Change in Ownership" section of the notice. We then divided the result by BS plc's total sales of merchandise produced in the United Kingdom in 1997. On this basis, we preliminarily determine the net subsidy for this

program to be 4.07 percent *ad valorem* in 1997.

B. Regional Development Grant Program

Regional development grants were paid to BSC/BS plc under the Industry Act of 1972 and the Industrial Development Act of 1982. In order to qualify for assistance under these two Acts, an applicant had to be engaged in manufacturing and located in an assisted area. Assisted areas are older, industrial regions identified as having deep-seated, long-term problems such as high levels of unemployment, migration, slow economic growth, derelict land, and obsolete factory buildings. Regional development grants were given for the purchase of specific assets. According to the Government of the United Kingdom, the program involved one-time grants, sometimes disbursed over several years.

BSC/BS plc received regional development grants during the period between fiscal years 1978/79 and 1985/86. The Department found this program countervailable in *Lead Bar* (58 FR at 6242), because it is limited to specific regions. No new information or evidence of changed circumstances was presented in this review to warrant a reconsideration of that finding.

In *Lead Bar*, we determined that, because each grant required a separate application, these grants are non-recurring. Accordingly, we have calculated the benefits from this program by allocating the benefits over BS plc's company-specific average useful life of renewable physical assets (18 years). Since BSC/BS plc was uncreditworthy from 1978/79 through 1985/86 (as discussed under the "Equity Infusions" section, above), we have used a discount rate which includes a risk premium (*see Mexican Steel*, 58 FR at 37354) to calculate the benefits from these grants.

To calculate the benefit from this program, we followed the methodology described above in the section on "Equity Infusions". On this basis, we preliminarily determine the net subsidy for this program to be 0.14 percent *ad valorem* in 1997.

C. National Loan Funds Loan Cancellation

In conjunction with the 1981/1982 capital reconstruction of BSC, section 3(1) of the Iron and Steel Act of 1981 extinguished certain National Loans Fund ("NLF") loans, as well as the interest accrued thereon, at the end of BSC's 1980/81 fiscal year. Because this loan cancellation was provided specifically to BSC, the Department determined in *Lead Bar* (58 FR at 6242) that it provided a countervailable benefit. No new information or evidence of changed circumstances was presented in this review to warrant a reconsideration of that finding.

We calculated the benefit for this review using our standard methodology for non-recurring grants. We allocated the benefits from this loan cancellation over BS plc's company-specific average useful life of renewable physical assets (18 years). Because BSC/BS plc was found to be uncreditworthy in 1981/82 (as discussed under "Equity Infusions" section, above), we have used a discount rate which includes a risk premium. *See Mexican Steel*, 58 FR at 37354.

To calculate the benefit from this program, we followed the methodology described above in the section on "Equity Infusions". On this basis, we preliminarily determine the net subsidy for this program to be 0.43 percent *ad valorem* in 1997.

II. Programs Preliminarily Determined To Be Not Used

We examined the following programs and preliminarily determine that the producers and/or exporters of the subject merchandise did not apply for or receive benefits under these programs during the period of review:

A. New Community Instrument Loans
B. NLF Loans.
C. Regional Selective Loans.
D. ECSC Article 56(b)(2) Redeployment Aid.
E. Inner Urban Areas Act of 1978.
F. LINK Initiative

III. Other Programs Examined

BRITE/EuRAM and Standards Measurement and Testing Program

BS plc received assistance under these two European Union programs to fund research and development. The European Union claimed that assistance provided under both of these programs is non-countervailable in accordance with Article 8.2(a) of the WTO Agreement on Subsidies and Countervailing Measures and section 771(5B)(B) of the Act (which provide that certain research and development subsidies are not countervailable). We preliminarily determine that it is not necessary to determine whether BRITE/EuRAM and the Standards Measurement and Testing Program qualify for non-countervailable treatment because combined, the assistance provided under both of these programs would result in a rate of less than 0.005 percent *ad valorem*, and thus would have no impact on the overall countervailing duty rate calculated for this POR. For this same reason we have not conducted a specificity analysis of these programs. *See, e.g., Final Affirmative Countervailing Duty Determination: Steel Wire Rod from Germany*, 62 FR 54990, 54995–54996 (October 22, 1997); *Certain Carbon Steel Products from Sweden; Final Results of Countervailing Duty Administrative Review*, 62 FR 16549, 16553 (April 7, 1997) and *Certain Carbon Steel Products from Sweden; Preliminary Results of Countervailing Duty Administrative Review*, 61 FR 64062, 64065 (December 3, 1996); *Final Negative Countervailing Duty Determination: Certain Laminated Hardwood Trailer Flooring ("LHF") From Canada*, 62 FR 5201 (February 4, 1997); *Industrial Phosphoric Acid From Israel; Final Results of Countervailing Duty Administrative Review*, 61 FR 53351, 53352 (October 11, 1996) and *Industrial Phosphoric Acid From Israel; Preliminary Results of Countervailing Duty Administrative Review*, 61 FR 28845 (June 6, 1996).

Preliminary Results of Review

In accordance with 19 CFR 351.221(b)(4)(i), we have calculated an individual subsidy rate for each producer/exporter subject to this administrative review. As discussed in the "Change in Ownership" section of the notice, above, we are treating British Steel plc and British Steel Engineering Steels as one company for purposes of this proceeding. For the period January 1, 1997 through December 31, 1997, we preliminarily determine the net subsidy for British Steel plc/British Steel Engineering Steels (BS plc/BSES) to be 4.64 percent *ad valorem*. If the final results of this review remain the same as these preliminary results, the Department intends to instruct the U.S. Customs Service ("Customs") to assess countervailing duties for BS plc/BSES at 4.64 percent *ad valorem*. The Department also intends to instruct the Customs to collect a cash deposit of estimated countervailing duties of 4.64 percent of the f.o.b. invoice price on all shipments of the subject merchandise from BS plc/BSES, entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this review.

Because the URAA replaced the general rule in favor of a country-wide rate with a general rule in favor of individual rates for investigated and reviewed companies, the procedures for establishing countervailing duty rates, including those for non-reviewed companies, are now essentially the same as those in antidumping cases, except as provided for in section 777A(e)(2)(B) of the Act. The requested review will

normally cover only those companies specifically named. *See* 19 CFR 351.213(b). Pursuant to 19 CFR 351.212(c), for all companies for which a review was *not* requested, duties must be assessed at the cash deposit rate, and cash deposits must continue to be collected, at the rate previously ordered. As such, the countervailing duty cash deposit rate applicable to a company can no longer change, except pursuant to a request for a review of that company. *See Federal-Mogul Corporation and The Torrington Company* v. *United States*, 822 F. Supp. 782 (CIT 1993) and *Floral Trade Council* v. *United States*, 822 F. Supp. 766 (CIT 1993) (interpreting 19 CFR 353.22(e), the antidumping regulation on automatic assessment, which is identical to 19 CFR 355.22(g)). Therefore, the cash deposit rates for all companies except those covered by this review will be unchanged by the results of this review.

We will instruct Customs to continue to collect cash deposits for non-reviewed companies at the most recent company-specific or country-wide rate applicable to the company. Accordingly, the cash deposit rates that will be applied to non-reviewed companies covered by this order are those established in the most recently completed administrative proceeding conducted under the URAA. If such a review has not been conducted, the rate established in the most recently completed administrative proceeding pursuant to the statutory provisions that were in effect prior to the URAA amendments is applicable. *See Certain Hot-Rolled Lead and Bismuth Carbon Steel Products from the United Kingdom; Final Results of Countervailing Duty Administrative Review*, 60 FR 54841 (October 26, 1995). These rates shall apply to all non-reviewed companies until a review of a company assigned these rates is requested. In addition, for the period January 1, 1997 through December 31, 1997, the assessment rates applicable to all non-reviewed companies covered by this order are the cash deposit rates in effect at the time of entry.

Public Comment

Pursuant to 19 CFR 351.224(b), the Department will disclose to parties to the proceeding any calculations performed in connection with these preliminary results within five days after the date of publication of this notice. Pursuant to 19 CFR 351.309, interested parties may submit written comments in response to these preliminary results. Case briefs must be submitted within 30 days after the date of publication of this notice, and rebuttal briefs, limited to arguments raised in case briefs, must be submitted no later than five days after the time limit for filing case briefs. Parties who submit argument in this proceeding are requested to submit with the argument: (1) a statement of the issue, and (2) a brief summary of the argument. Case and rebuttal briefs must be served on interested parties in accordance with 19 CFR 351.303(f). Also, pursuant to 19 CFR 351.310, within 30 days of the date of publication of this notice, interested parties may request a public hearing on arguments to be raised in the case and rebuttal briefs. Unless the Secretary specifies otherwise, the hearing, if requested, will be held two days after the date for submission of rebuttal briefs. The Department will publish the final results of this administrative review, including the results of its analysis of issues raised in any case or rebuttal brief or at a hearing.

This administrative review is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act (19 U.S.C. 1675(a)(1) and 19 U.S.C. 1677f(i)(1)).

Dated: March 31, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99–8626 Filed 4–6–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–489–502]

Certain Welded Carbon Steel Pipes and Tubes and Welded Carbon Steel Line Pipe from Turkey; Preliminary Results of Countervailing Duty Administrative Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Preliminary Results of Countervailing Duty Administrative Reviews.

SUMMARY: The Department of Commerce (the Department) is conducting administrative reviews of the countervailing duty orders on certain welded carbon steel pipes and tubes and certain welded carbon steel line pipe from Turkey for the period January 1, 1997 through December 31, 1997. For information on the net subsidy for each reviewed company for each class or kind of merchandise, as well as for all non-reviewed companies, *see* the *Preliminary Results of Reviews* section of this notice. If the final results remain the same as these preliminary results of administrative reviews, we will instruct the U.S. Customs Service to assess countervailing duties as detailed in the *Preliminary Results of Reviews* section of this notice. Interested parties are invited to comment on these preliminary results. (*See Public Comment* section of this notice.)

EFFECTIVE DATE: April 7, 1999.

FOR FURTHER INFORMATION CONTACT: Stephanie Moore or Eric Greynolds, Group II, Office of CVD/AD Enforcement VI, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–3692 or (202) 482–6071, respectively.

SUPPLEMENTARY INFORMATION:

Background

On March 7, 1986, the Department published in the **Federal Register** (51 FR 7984) the countervailing duty orders on certain welded carbon steel pipes and tubes (pipe and tube) and certain welded carbon steel line pipe (line pipe) from Turkey. On March 11, 1998, the Department published a notice of "Opportunity to Request Administrative Review" (63 FR 11868) of these countervailing duty orders. We received a timely request to conduct a review of pipe and tube from Yucel Boru ve Profil Endustrisi A.S., and its affiliated companies, Cayirova Boru Sanayi ve Ticaret A.S., and Yucelboru Ihracat Ithalat ve Pazarlama A.S. (Yucel Boru Group). We also received a timely request to conduct a review of line pipe from Mannesmann—Sumerbank Boru Endustrisi T.A.S. (Mannesmann). We initiated the reviews covering the period January 1, 1997 through December 31, 1997 on April 24, 1998 (62 FR 20378).

In accordance with 19 CFR 351.213(b), these reviews cover only those producers or exporters of the subject merchandise for which a review was specifically requested. Accordingly, the review on pipe and tube covers the Yucel Boru Group and the review on line pipe covers Mannesmann. These reviews also cover 21 programs.

On December 7, 1998, we extended the period for completion of the preliminary results pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended. *See Certain Welded Carbon Steel Pipes and Tubes and Welded Carbon Steel Line Pipe from Turkey: Extension of the Time Limit for Preliminary Results of Countervailing Duty Administrative Reviews* (63 FR 67460). The deadline for the final

results of this review is no later than 120 days from the date on which these preliminary results are published in the **Federal Register**.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act (URAA) effective January 1, 1995 (the Act). The Department is conducting this administrative review in accordance with section 751(a) of the Act. All citations to the Department's regulations reference 19 CFR Part 351 (1998), unless otherwise indicated.

Scope of Reviews

Imports covered by these reviews are shipments from Turkey of two classes or kinds of merchandise: (1) certain welded carbon steel pipe and tube, having an outside diameter of 0.375 inch or more, but not more than 16 inches, of any wall thickness. These products, commonly referred to in the industry as standard pipe and tube or structural tubing, are produced to various American Society for Testing and Materials (ASTM) specifications, most notably A–53, A–120, A–135, A–500, or A–501; and (2) certain welded carbon steel line pipe with an outside diameter of 0.375 inch or more, but not more than 16 inches, and with a wall thickness of not less than .065 inch. These products are produced to various American Petroleum Institute (API) specifications for line pipe, most notably API–L or API–LX. These products are classifiable under the Harmonized Tariff Schedule of the United States (HTSUS) as item numbers 7306.30.10 and 7306.30.50. The HTSUS item numbers are provided for convenience and Customs purposes. The written descriptions remain dispositive.

Calculation of Benefits

Foreign Exchange Difference ("Kur Farki" Accounts)

(I) Background

In prior reviews, the respondent companies argued that, in order to correctly calculate the *ad valorem* subsidy rates, the Department should include foreign exchange gains and losses (kur farki) resulting from their foreign sales in the denominator because such exchange differences are actual sales revenue. In support, respondents cited the Turkish generally accepted accounting principles (Turkish GAAP) requirement to include foreign exchange differences in their gross sales in the income statement. Respondents also submitted a Government of the Republic of Turkey (GRT) Standard Accounting Plan, explaining that the Turkish GAAP indicates gross sales include commodities sold or services rendered as a result of a company's main operations, as well as exchange rate differences related to export sales within the relevant period. (See, GRT, June 22, 1998 questionnaire response, Exhibit 23). However, in past reviews, the Department determined that, although the foreign exchange differences were included in the companies' income statement as part of the total revenue figure for tax purposes, foreign exchange differences are not sales revenue. *See e.g., Certain Welded Carbon Steel Pipe and Tube and Welded Carbon Steel Line Pipe from Turkey; Preliminary Results and Partial Recission of Countervailing Duty Administrative Reviews*, 62 FR 64808 (December 9, 1997) (*1996 Preliminary Results*), and *Certain Welded Carbon Steel Pipe and Tube and Welded Carbon Steel Line Pipe from Turkey; Final Results and Partial Recission of Countervailing Duty Administrative Reviews*, 63 FR 18885, 18890 (April 16, 1998) (*1996 Final Results*). *See also Certain Welded Carbon Steel Pipes and Tubes and Welded Carbon Steel Line Pipe from Turkey; Preliminary Results of Countervailing Duty Administrative Reviews*, 62 FR 16782 (April 8, 1997) (*1995 Preliminary Results*), and *Certain Welded Carbon Steel Pipes and Tubes and Welded Carbon Steel Line Pipe from Turkey; Final Results of Countervailing Duty Administrative Reviews*, 62 FR 43984 (August 18, 1997) (*1995 Final Results*).

In reviewing U.S. and international accounting standards, we find that foreign exchange differences are not viewed as sales income generated by a company's main operations. Rather, foreign exchange differences are viewed as "other income," which results from foreign exchange rate changes that take place between the date a company records a sale denominated in a foreign currency at the exchange rate in effect on that day, and the exchange rate in effect on the day that the company records receipt of payment that is denominated in that foreign currency. The Financial Accounting Standards (FAS) No. 52—Foreign Currency Transactions of the Financial Accounting Standards Board (FASB) indicates that a change in exchange rates between the functional currency (Turkish Lira) and the currency in which an export transaction is denominated (*e.g.*, U.S. dollars) increases or decreases the amount of functional currency expected upon settlement of the export transaction. That increase or decrease in expected functional currency is a foreign currency transaction gain or loss that is generally included in determining net income. (Items such as currency hedging, and transactions of a long-term investment nature are excluded in determining net operating income.) (*See FASB*, Volume I, June 1, 1997). Foreign exchange gains or losses are reported in the company's income statement as a non-operating item or "other income," *i.e.*, income derived from other sources, such as a sale of a fixed asset, which, in turn, is reported in net income. *Wiley, Interpretation and Application of Generally Accepted Accounting Principles*, at 767 (1998); *see also International Accounting Standard Financial Reporting in Hyper-inflationary Economies* (IAS 5) (foreign exchange gains or losses should be included in net income, which encompasses "other income"). Therefore, inclusion of foreign currency exchange gains and losses in gross sales is inconsistent with international accounting standards. *See also Price Waterhouse, Doing Business in Turkey*, Chapter 11 (1992, as amended July 31, 1995) (lack of clearly defined commercial accounting principles and the predominance of tax law mean that Turkish law should be treated with extreme caution, and international accounting standards are preferred). Additionally, we note that *World Accounting*, Matthew Bender, Volume 3, p. TRK–11 (1998) states that receivables denominated in foreign currency should be recorded at the original national currency value and should be valued again at the end of the accounting period using the exchange rate of that date established by the Ministry of Finance. The difference in national currency value should be recorded under foreign exchange gains and losses account. More importantly, foreign exchange gains and losses have to do with financing activities and not sales activities. Therefore, consistent with U.S. international and Turkish accounting standards, we continue to determine that kur farki amounts are foreign exchange differences and not sales revenue. However, we have preliminarily determined to index both the subsidy benefits (numerator) and sales revenue (denominator) to account for the impact of high inflation in Turkey (*see* below).

(II) Modification of the Calculation Methodology

In prior reviews, to determine the benefit for each program, we deducted the foreign exchange differences, which resulted from the changes in the U.S. dollar/Turkish lira exchange rates, from the sales figure. Normally, where a country is experiencing high rates of inflation, we may make adjustments when companies index for inflation. In this case, however, despite a persistently high rate of inflation in Turkey, Turkish companies do not index any of the figures (other than fixed assets) in their financial statements to account for inflation. In the past, we have not indexed the numerator and denominator.

Upon further review, the persistently high rate of inflation in Turkey leads us to conclude that we should index the benefit (numerator) in the month of receipt and index the monthly sales (denominator) for each program. During the period of review (POR), the inflation rate in Turkey was 81 percent, as published in the 1997 Quarterly Bulletin by the Central Bank of Turkey. Indexing the benefit and the sales figures will neutralize any potential distortion in our subsidy calculations caused by high inflation and the timing of the receipt of the subsidy. We indexed the sales values and the benefit using the Wholesale Price Index (WPI) for 1997, as reported by the Central Bank of Turkey.

Analysis of Programs

I. Programs Conferring Subsidies

A. Pre-Shipment Export Credit

The Export Credit Bank of Turkey provides short-term pre-shipment export loans to exporters through intermediary commercial banks. The program is designed to support export-related industries. Loans are made to exporters who commit to export within a specified period of time. Generally, loans are extended for 120 days for industrial goods and cover 50 to 75 percent of the FOB export value. These loans are denominated in Turkish Lira (TL) and repaid in TL. The interest rate charged on these pre-shipment loans is established by Turk Eximbank and is tied to the Central Bank's rediscount rate. In *1996 Preliminary and Final Results*, *1995 Preliminary and Final Results*, and *Final Affirmative Countervailing Duty Determination: Certain Pasta from Turkey* 61 FR 30366 (June 14, 1996) (*Pasta*), the Department found this program countervailable because receipt of the loans is contingent upon export performance and the interest rate paid on these loans is less than the amount the recipient would pay on a comparable commercial loan.

In *1996 Final Results* and *1995 Final Results* reviews, we found these loans to be untied and available for exported merchandise because the exporter has to only show that an export has taken place and provide the foreign currency exchange receipts from the commercial bank to close out the loan with Turk Eximbank. Because the loans are not specifically tied to a particular destination at the time of approval, we determined that the pre-shipment loan program is an untied export loan program. *See 1996 Final Results* 63 FR at 18886 and *1995 Final Results*, 62 FR at 43986. In these reviews, no new information or evidence of changed circumstances has been submitted to warrant reconsideration of that finding.

Pursuant to section 771(5)(E)(ii) of the Act, a benefit shall be treated as conferred "in the case of a loan, if there is a difference between the amount the recipient of the loan pays on the loan and the amount the recipient would pay on a comparable commercial loan that the recipient could actually obtain on the market." In this case, to calculate the rate the recipient would pay on a comparable commercial loan that could actually be obtained by it, *i.e.*, the benchmark interest rate, we are using company-specific interest rates on comparable commercial loans for all pre-shipment loans that were taken out by Mannesmann in both 1996 and 1997, and repaid in 1997. The rates on commercial loans, used as benchmarks, provided to Mannesmann include the customary Bank Insurance and Services Tax (BIST), which is equal to 5 percent of the interest amount paid, the Resource Utilization Support Fund (RUSF) fee equal to 6 percent of the interest amount paid, and a stamp tax equal to 0.6 percent of the principal. The Yucel Boru Group did not obtain any commercial short-term loans during the POR.

In addition, because the Department continues to consider Turkey to have high inflation based on a WPI rate of 81 percent, we also preliminarily determine that it is appropriate to use monthly average short-term interest rates (*see 1996 Preliminary Results*, 62 FR at 64809; *1995 Preliminary Results*, 62 FR at 16783, and *Pasta*, 61 FR at 30367). Therefore, where monthly company-specific interest rates for Mannesmann were not available for benchmark interest rates, we used the short-term interest rates published in *The Economist*. For all months for the Yucel Boru Group we used the short-term interest rates published in *The Economist*. The source cited in *The Economist* for its weekly short-term interest rates for Turkey is Akbank, which is a large privately-owned commercial bank in Turkey. We based the monthly interest rates used in our calculations on a simple average of the weekly figures corresponding for that month as reported in *The Economist*. While we considered other sources for short-term interest rates, including the International Monetary Fund (IMF) and the Organization for Economic Cooperation and Development (OECD), *The Economist* was the only source we found that published short-term lending rates for Turkey. Using these benchmark rates, we continue to find these pre-shipment export loans countervailable because the interest rate charged is less than the rate for comparable commercial loans that the company could actually obtain in the market. Therefore, this program provides both a financial contribution under section 771(5)(D)(i), and confers a benefit under section 771(5)(E)(ii) of the Act to the respondents.

Resolution Number: 94/5782, Article 4, effective June 13, 1994, allows for the exemption of certain fees that are normally charged on loans, provided that the loans are used in financing exportation and other foreign exchange earning activities. As discussed below, we have previously determined these exempted fees to be countervailable. For pre-shipment loans, which are denominated in TL, the fees that are exempted are the customary BIST, RUSF, and the stamp tax as described above. The Department's current practice is normally to compare effective interest rates rather than nominal rates. "Effective" interest rates are intended to take account of the actual cost of the loan, including the amount of any fees, commissions, compensating balances, government charges or penalties paid in addition to the "nominal" interest rate. Therefore, we have added the exempted customary banking fees to the benchmark interest rates obtained from *The Economist*. *See e.g., Certain Iron-Metal Castings from India: Final Results of Countervailing Duty Administrative Review*, 60 FR 44843 (August 29, 1995) (*Indian Castings*). *See also 1995 Preliminary Results*, 62 FR at 16784.

To determine the benefit in these reviews, we calculated the countervailable subsidy as the difference between actual interest paid on pre-shipment loans during the POR and the interest that would have been paid using the benchmark interest rates. This difference on the loans for each

month was indexed for inflation (as described above), and the result divided by the company's total export sales, which we also indexed for inflation. On this basis, we preliminarily determine the countervailable subsidy to be 0.84 percent *ad valorem* for the Yucel Boru Group for pipe and tube, and 0.19 percent *ad valorem* for Mannesmann for line pipe.

B. Foreign Exchange Loan Assistance

As discussed above, GRT Resolution Number: 94/5782 allows commercial banks to exempt certain fees on loans used in export related activities. We previously determined that use of this program is contingent upon export performance and, therefore, countervailable within the meaning of section 771(5A)(B). *See 1996 Preliminary Results*, 62 FR at 64810, and *1995 Preliminary Results*, 62 FR at 16784.

During the POR, Mannesmann received and paid interest on foreign currency loans from a commercial bank in connection with merchandise exported to the United States and was exempted from paying the customary BIST equal to 5 percent of the amount of interest paid, the RUSF fee equal to 6 percent of the principal, and the stamp tax equal to 0.6 percent of the principal. Unlike pre-shipment loans that are denominated in TL where the RUSF fee is 6 percent of the amount of interest paid, the RUSF fee for foreign currency loans is calculated as 6 percent of the principal.

We have previously determined that the BIST and RUSF fee exemptions are financial contributions within the meaning of section 771(5)(D)(ii) of the Act in the form of revenue foregone that is otherwise due, which provides a benefit in the amount of the exemption. *See, 1996 Preliminary Results*, 62 FR at 64810, and *1995 Preliminary Results*, 62 FR at 16785. We have also determined in the 1996 and 1995 reviews that the benefits are recurring because, once the company obtains a foreign currency loan, it is automatically exempted from paying the fees.

During the POR, Mannesmann obtained foreign currency loans that were tied to destinations other than the United States, and loans that were received for both U.S. and German shipments. The Yucel Boru Group did receive foreign currency loans in connection with merchandise exported to the United States during the POR.

To calculate the benefit for this program, we computed the exempted fees based on the amount of interest or principal paid during the POR for the foreign currency loans that Mannesmann received in connection with merchandise exported to the United States and Germany. We then indexed this benefit and divided the resultant amount by the company's (indexed) monthly total exports of the subject merchandise to the United States, and the company's total export sales of the subject merchandise to Germany. On this basis, we preliminarily determine the net subsidy to be 0.66 percent *ad valorem* for Mannesmann for line pipe, and zero for the Yucel Boru Group for pipe and tube. We have requested that Mannesmann provide its monthly total export sales to Germany in order to index these sales for inflation and more accurately calculate the *ad valorem* benefit for this program in the final determination.

C. Freight Program

Decree number 93/43, effective October 13, 1993, provided freight rebate payments to exporters expressed as $50 per ton for merchandise exported on Turkish vessels, and $30 per ton for merchandise exported on non-Turkish vessels, capped at 15 percent of the FOB value of the goods. Benefits under this program were provided in the form of 30 percent TL cash and 70 percent Turkish treasury bonds with one and two-year maturity dates. Companies were eligible to receive interest on bonds on the one-year anniversary date of the issuance of the bonds and on the date of the maturity of the bonds. The program was terminated on December 31, 1994, and there were no payments on shipments made after January 1, 1995.

In the 1996 and 1995 reviews, we determined that these cash grants and bonds are countervailable export subsidies within the meaning of section 771(5A)(B) of the Act because the benefit is contingent upon export performance. The grants and bonds are a direct transfer of funds from the GRT providing a benefit in the amount of the cash grants and bonds. We also determined that the benefits under the Freight Program are "recurring" because, once a company exported and submitted documentation to the Central Bank, it became eligible to regularly receive cash grants or bonds. The receipt of benefits is automatic and continued throughout the life of the program. (*1996 Preliminary Results*, 62 FR at 64811 and *1995 Preliminary Results*, 62 FR at 16785). *See also Allocation Section of the General Issues Appendix in Final Affirmative Countervailing Duty Determination: Certain Steel Products from Austria*, 58 FR 37217, 37268–69 (July 9, 1993) (*General Issues Appendix*).

During the POR, Mannesmann received cash and bonds under the freight rebate program based on exports made in 1994. The one-year bond matured in 1997, and the two-year bond matured in 1998. During the POR, the Yucel Boru Group did not receive any benefits under this program in connection with exports to the United States. Normally, the Department countervails the benefit on the date of receipt because that is when the benefit affects cash flow and business decisions. *See e.g., Ferrochrome from South Africa; Final Results of Countervailing Duty Administrative Review*, 56 FR 33254, 33255 (July 19, 1991). However, the Department makes an exception in the case of an export benefit that is calculated as a percentage of the FOB value on a shipment-by-shipment basis, and the amount of the benefit to be received is known at the time of export. *See e.g., Indian Castings*, at 60 FR 44843. Although the benefit under the freight program is calculated based on tonnage and not as a percentage of export value, we have said that a benefit determined by the amount of the tonnage may also be known at the time of export.

However, as previously determined in the 1996 review, the facts in this case establish that the exporter did not know the amount of benefit ultimately to be received at the time of export. Although the freight payments were stated in U.S. dollars per ton, the benefit was not tied to the U.S. dollar. Thus, because of high inflation in Turkey, the GRT's initial decision not to commit to the exchange rate existing either on the date of export, or on the date payment was received by the exporters, demonstrates that exporters could not know with certainty the value of the benefit at the time of export. In fact, it was not until February 1995, two months after the termination of the freight program, that the GRT announced that the benefit from this program would be based on the exchange rate that was in effect on December 31, 1994, regardless of when the shipments occurred.

Therefore, because the GRT only committed to an exchange rate after the date of export, given the high rate of inflation in Turkey, there was no way Mannesmann could have predicted at the time of export the amount of TL benefit that would be received. As a result, because Mannesmann could not know the exact amount of the TL benefit, or the U.S. dollar value of that TL benefit on the date of export, Mannesmann could not make business and pricing decisions until the actual receipt of the TL benefit. The TL amount ultimately received by

Mannesmann in 1997 did not correspond to the U.S. dollar value of the benefit granted by the GRT at the time of export. Therefore, we preliminarily determine that the benefits under this program are bestowed when the cash is received with respect to the cash payments, and not on the date of exportation. This position is consistent with the Department's analysis of a similar program in *Pasta*, where we determined that the benefit should be treated as having been bestowed when the cash was received rather than earned. (*See* discussion of *Payments for Exports on Turkish Ships* program in *Pasta*, 61 FR at 30369).

With regard to the bonds portion of the rebate, we previously determined that the benefits from the bonds are bestowed on the date of maturity. *See 1995 Preliminary Results*, 62 FR at 16785. Although there were no restrictions on the sale or transfer of the bonds, there has been no secondary market to allow exporters to convert their bonds to cash because of the rate of inflation. Therefore, the exporters have no choice but to hold the bonds until maturity. *See* also *Pasta*, 61 FR at 30368.

The benefits under the freight program are made on a shipment-by-shipment basis. Therefore, where a benefit is tied or can be tied to exports to the United States, we calculate the *ad valorem* subsidy rate by dividing the benefit by the firm's total exports to the United States. *See e.g., Notice of Final Results of Countervailing Duty Administrative Review: Roses and Other Cut Flowers from Colombia*, 52 FR 48847, 48848 (December 28, 1987). We have calculated the benefit for Mannesmann from this program by dividing the total amount of cash payments, which includes interest on the bonds and matured bonds (indexed for inflation) by total exports to the United States during the POR (indexed for inflation). On this basis, we preliminarily determine the net subsidy to be 3.43 percent *ad valorem* for Mannesmann for line pipe, and zero for the Yucel Boru Group for pipe and tube.

II. Program Preliminarily Determined To Be Not Countervailable

Special Importance Sector Under Investment Allowances

During the POR, the Yucel Boru Group was entitled to receive a 100 percent investment allowance because it made an investment in a "special importance sector." The special importance sector is a provision under the Investment Allowance program that allows companies a 100 percent corporate tax deduction of their fixed investment, regardless of the region in which the investment is made.

In order to determine whether the "special importance sector" benefits are specific, in law or in fact, to an enterprise or industry, section 771(5A)(D) directs the Department to consider the following factors:

1. whether the enabling legislation expressly limits access to the subsidy to an enterprise or industry;
2. whether the actual recipients of the subsidy, whether considered on an enterprise or industry basis, are limited in number;
3. whether an enterprise or industry is a predominant user of the subsidy;
4. whether an enterprise or industry receives a disproportionately large amount of the subsidy; and
5. the manner in which the authority providing the subsidy has exercised discretion in the decision to grant the subsidy indicates that an enterprise or industry is favored over others.

An analysis of the first factor shows that the enabling legislation does not expressly limit access to an enterprise or industry; therefore, the subsidy is not specific as a matter of law.

With respect to whether the benefits are specific, the GRT provided information regarding the total number of certificates issued to the various industries within each sector, the total investment, and the total fixed investment for each industry and sector. This data shows that more than 4,500 certificates were issued to different companies in numerous and varied industries and regions throughout Turkey. The data also shows that the iron and steel industry was not a predominant user, nor did it receive a disproportionate share of the benefits during the POR. Therefore, we preliminarily determine this program not to be countervailable.

III. Programs Preliminarily Determined To Be Not Used

We examined the following programs and preliminarily determined that the producers and/or exporters of the subject merchandise did not apply for or receive benefits under these programs during the POR:

A. Resource Utilization Support Fund
B. State Aid for Exports Program
C. Advance Refunds of Tax Savings
D. Export Credit Through the Foreign Trade Corporate Companies Rediscount Credit Facility (Eximbank)
E. Past Performance Related Foreign Currency Export Loans (Eximbank)
F. Export Credit Insurance (Eximbank)
G. Subsidized Turkish Lira Credit Facilities
H. Subsidized Credit for Proportion of Fixed Expenditures
I. Fund Based Credit
J. Investment Allowances (in excess of 30% minimum)
K. Resource Utilization Support Premium (RUSP)
L. Incentive Premium on Domestically Obtained Goods
M. Deduction from Taxable Income for Export Revenues
N. Regional Subsidies
   1. Additional Refunds of VAT (VAT + 10%)
   2. Postponement of VAT on Imported Goods
   3. Land Allocation (GIP)
   4. Taxes, Fees (Duties), Charge Exemption (GIP)

IV. Program Preliminarily Determined To Be Terminated

Export Incentive Certificate Customs Duty & Other Tax Exemptions

Communique No. 96/1 dated January 5, 1996, rescinded Communique No. 95/7, which provided export incentive certificates for the exclusion of taxes and duties, effective January 1, 1996. There are no residual benefits accruing from this program. Therefore, we preliminarily determine that the program has been terminated.

Preliminary Results of Review

In accordance with 19 CFR 351.221(b)(4)(i), we calculated an individual subsidy rate for each producer/exporter subject to these administrative reviews. For the period January 1, 1997 through December 31, 1997, we preliminarily determine the net subsidy for Mannesmann to be 4.28 percent *ad valorem* for line pipe, and 0.84 percent *ad valorem* for Yucel Boru for pipes and tubes. If the final results of this review remain the same as these preliminary results, the Department intends to instruct the U.S. Customs Service (Customs) to assess countervailing duties as indicated above. The Department would also instruct Customs to collect cash deposits of estimated countervailing duties as indicated above based on the f.o.b. invoice price on all shipments of the subject merchandise from reviewed companies, entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this review.

Because the URAA replaced the general rule in favor of a country-wide rate with a general rule in favor of individual rates for investigated and reviewed companies, the procedures for establishing countervailing duty rates, including those for non-reviewed companies, are now essentially the same as those in antidumping cases, except as

provided for in section 777A(e)(2)(B) of the Act. The requested review will normally cover only those companies specifically named. *See* 19 CFR 351.213(b). Pursuant to 19 CFR 351.212(c), for all companies for which a review was *not* requested, duties must be assessed at the cash deposit rate, and cash deposits must continue to be collected, at the rate previously ordered. As such, the countervailing duty cash deposit rate applicable to a company can no longer change, except pursuant to a request for a review of that company. *See Federal-Mogul Corporation and The Torrington Company* v. *United States*, 822 F. Supp. 782 (CIT 1993) and *Floral Trade Council* v. *United States*, 822 F. Supp. 766 (CIT 1993). Therefore, the cash deposit rates for all companies except those covered by this review will be unchanged by the results of this review.

We will instruct Customs to continue to collect cash deposits for non-reviewed companies at the most recent company-specific or country-wide rate applicable to the company. Accordingly, the cash deposit rates that will be applied to non-reviewed companies covered by this order will be the rate for that company established in the most recently completed administrative proceeding under the Act, as amended by the URAA. If such a review has not been conducted, the rate established in the most recently completed administrative proceeding conducted pursuant to the statutory provisions that were in effect prior to the URAA amendments is applicable. *See, Certain Welded Carbon Steel Pipe and Tube Products from Turkey; Final Results of Countervailing Duty Review*, 53 FR 9791 (March 25, 1988). These rates shall apply to all non-reviewed companies until a review of a company assigned these rates is requested. In addition, for the period January 1, 1997 through December 31, 1997, the assessment rates applicable to all non-reviewed companies covered by this order are the cash deposit rates in effect at the time of entry.

Public Comment

Pursuant to 19 CFR 351.224(b), the Department will disclose to parties to the proceeding any calculations performed in connection with these preliminary results within five days after the date of publication of this notice. Pursuant to 19 CFR 351.309, interested parties may submit written comments in response to these preliminary results. Case briefs must be submitted within 30 days after the date of publication of this notice, and rebuttal briefs, limited to arguments raised in case briefs, must be submitted no later than five days after the time limit for filing case briefs. Parties who submit argument in this proceeding are requested to submit with the argument: (1) a statement of the issues, and (2) a brief summary of the argument. Case and rebuttal briefs must be served on interested parties in accordance with 19 CFR 351.303(f). Also, pursuant to 19 CFR 351.310, within 30 days of the date of publication of this notice, interested parties may request a public hearing on arguments to be raised in the case and rebuttal briefs. Unless the Secretary specifies otherwise, the hearing, if requested, will be held two days after the date for submission of rebuttal briefs. The Department will publish the final results of these administrative reviews, including the results of its analysis of issues raised in any case or rebuttal brief or at a hearing.

These administrative reviews are issued and published in accordance with section 751(a)(1) and 777(i)(1) of the Act (19 U.S.C. 1675(a)(1) and 19 U.S.C. 1677f(i)(1)).

Dated: March 31, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99–8627 Filed 4–6–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Export Trade Certificate of Review

ACTION: Notice of Application.

SUMMARY: The Office of Export Trading Company Affairs ("OETCA"), International Trade Administration, Department of Commerce, has received an application for an Export Trade Certificate of Review. This notice summarizes the conduct for which certification is sought and requests comments relevant to whether the Certificate should be issued.

FOR FURTHER INFORMATION CONTACT: Morton Schnabel, Director, Office of Export Trading Company Affairs, International Trade Administration, (202) 482–5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. A Certificate of Review protects the holder and the members identified in the Certificate from state and federal government antitrust actions and from private, treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. Section 302(b)(1) of the Act and 15 CFR 325.6(a) require the Secretary to publish a notice in the **Federal Register** identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination whether a Certificate should be issued. If the comments include any privileged or confidential business information, it must be clearly marked and a nonconfidential version of the comments (identified as such) should be included. Any comments not marked privileged or confidential business information will be deemed to be nonconfidential. An original and five copies, plus two copies of the nonconfidential version, should be submitted no later than 20 days after the date of this notice to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, Room 1104H, Washington, D.C. 20230. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). However, nonconfidential versions of the comments will be made available to the applicant if necessary for determining whether or not to issue the certificate. Comments should refer to this application as "Export Trade Certificate of Review, application number 99–00002." A summary of the application follows.

Summary of the Application:

Applicant: DecoArt, Inc., Highway 150 and 27, Stanford, Kentucky 40484.

Contact: Martin R. Snyder, Attorney.

Telephone: (502) 562–7505,

Application No.: 99–00002,

Date Deemed Submitted: March 29, 1999,

Members (in addition to applicant): None.

DecoArt, Inc. seeks a Certificate to cover the following specific Export Trade, Export Markets, and Export Trade Activities and Methods of Operations.

Export Trade

1. *Products*

Artists acrylic paints and decorative finishes.

2. *Services*

All services related to the export of Products.

3. *Technology Rights*

All intellectual property rights associated with Products or Services,

including, but not limited to: patents, trademarks, service marks, trade names, copyrights, neighboring (related) rights, trade secrets, know-how, and sui generis forms of protection for databases and computer programs.

4. *Export Trade Facilitation Services (as they Relate to the Export of Products, Services and Technology Rights)*

Export Trade Facilitation Services, including, but not limited to: professional services in the area of government relations and assistance with state and federal export programs; foreign trade and business protocol; consulting; market research and analysis; collection of information on trade opportunities; marketing; negotiations; joint ventures; shipping and export management; export licensing; advertising; documentation and services related to compliance with custom requirements; insurance and financing; bonding; warehousing; export trade promotion; legal assistance; trade show exhibitions; organizational development; management and labor strategies; transfer of technology; transportation; and facilitating the formation of shippers' associations.

Export Markets

The Export Markets include all parts of the world except the United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands).

Export Trade Activities and Methods of Operation

DecoArt, Inc. may:

1. Provide and/or arrange for the provision of Export Trade Facilitation Services;

2. Engage in promotion and marketing activities and collect and distribute information on trade opportunities in the Export Markets;

3. Enter into, terminate, amend or enforce exclusive and/or non-exclusive agreements with distributors, foreign buyers, and/or sales representatives in Export Markets, and oblige such distributors, foreign buyers, and/or sales representatives not to deal in goods competing with those supplied by DecoArt, Inc.;

4. Enter into, terminate, amend or enforce exclusive or non-exclusive licensing agreements regarding Products, Services, or Technology Rights with Suppliers, Export Intermediaries, or other persons in Export Markets;

5. Enter into, terminate, amend or enforce exclusive or non-exclusive sales agreements with Suppliers, Export Intermediaries, or other persons for the transfer of title to Products, Services, and/or Technology Rights in Export Markets;

6. Enter into, terminate, amend or enforce exclusive or non-exclusive pricing and/or consignment agreements for the sale and shipment of Products and Services to Export Markets;

7. Allocate export sales, export orders and/or divide Export Markets, among Suppliers, Export Intermediaries, or other persons for the sale, licensing and/or transfer of title to Products, Services, and/or Technology Rights;

8. Enter into, terminate, amend or enforce territorial and customer restraints on Suppliers, Export Intermediaries, or other persons regarding the sale, licensing and/or transfer of title to Products, Services, and/or Technology Rights;

9. Enter into, terminate, amend or enforce exclusive or non-exclusive price and/or territorial agreements with U.S. Suppliers;

10. Enter into, terminate, amend or enforce exclusive or non-exclusive agreements for the tying of Products and Services, the setting of prices, and/or the distribution, shipping or handling of Products or Services in the Export Markets;

11. Terminate, amend or enforce contractual or other relationships with Suppliers, Export Intermediaries or other persons who refuse to agree or adhere to restraints on their activities related to export of Products;

12. Enter into, terminate, amend or enforce agreements to invest in overseas warehouses for the purpose of storing exported Products until transferred to the foreign purchaser, or to invest in overseas facilities for the purpose of making minor Product or packaging modifications necessary to insure compatibility of the Product with the requirements of the foreign market;

13. Represent U.S. Suppliers at trade shows and solicit agents and distributors for their Products in the Export Markets;

14. Refuse to quote prices for, or to market or sell, Products or Services to an Export Market or Markets, or to distributors, buyers and/or sales representatives who directly or indirectly market or sell to an Export Market or Markets;

15. Sell, or offer to sell Products at different prices for direct or indirect sale to an Export Market or Markets as compared to prices for direct or indirect sale to domestic markets; and

16. Affix labels or other forms of identification to Products which identify the Products and indicate whether such Products are for direct or indirect sale only in an Export Market or Markets.

Definitions

1. "Export Intermediary" means a person who acts as a distributor, sales representative, sales or marketing agent, or broker, or who performs similar functions including providing or arranging for the provision of Export Trade Facilitation Services.

2. "Supplier" means a person who produces, provides, or sells any Product and/or a Service.

Dated: April 2, 1999.

Morton Schnabel,

Director, Office of Export Trading Company Affairs.

[FR Doc. 99–8589 Filed 4–6–99; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

ENVIRONMENTAL PROTECTION AGENCY

NATIONAL SCIENCE FOUNDATION

DEPARTMENT OF DEFENSE

Office of Naval Research

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Docket No. 990203 041–9041–01; I.D. No. 020299B]

RIN 0648–ZA60

Request for Proposals for the Ecology and Oceanography of Harmful Algal Blooms Project

AGENCIES: The Coastal Ocean Program and the National Sea Grant College Program/National Oceanic and Atmospheric Administration (NOAA)/Commerce; the National Center for Environmental Research and Quality Assurance/Environmental Protection Agency(EPA); the Directorate for Geosciences, Division of Ocean Sciences/National Science Foundation(NSF); the Office of Naval Research(ONR) /Department of Defense; and the Office of Earth Science/National Aeronautics Space Administration(NASA).

ACTION: Supplemental notification for financial assistance for project grants.

SUMMARY: The purpose of this notice is to advise the public that the NOAA Coastal Ocean Program(COP), the NOAA National Sea Grant College Program, the EPA National Center for Environmental Research and Quality Assurance, the NSF Directorate for

Geosciences, Division of Ocean Sciences, the Department of Defense/ Office of Naval Research, and the Office of Earth Science, National Aeronautics and Space Administration are soliciting research proposals of 1 to 5 years in duration for the Ecology and Oceanography of Harmful Algal Blooms (ECOHAB) program. This program provides support for research on all aspects of harmful algal bloom(HAB) ecology and oceanography in U.S. coastal waters. This document details the requirements for applications for research support to address general HAB ecology and oceanography that will be considered by the Federal research partnership consisted of NOAA, NSF, EPA, ONR, and NASA.

DATES: The deadline for proposals is June 7, 1999, by 3:00 PM, EST.

ADDRESSES: Submit the original and two copies of your proposal to Coastal Ocean Program Office (ECOHAB 99), SSMC#3, 9th Floor, Room 9752, 1315 East-West Highway, Silver Spring, MD 20910. NOAA Standard Form Applications with instructions are accessible on the following COP Internet Site in a read-only format. Blank Forms may be printed out, but information cannot be saved to the web site, nor transmitted electronically to NOAA.

http://www.cop.noaa.gov

FOR FURTHER INFORMATION CONTACT:

Technical Information: Dr. Kevin Sellner, ECOHAB Coordinator, COP Office, 301–713–3338/ext 127, Internet: ksellner@cop.noaa.gov.

Business Management: Leslie McDonald, COP Grants Office, (301) 713–3338/ext 137, Internet: Leslie.McDonald@noaa.gov.

If you have Brown Tide Research Initiative (BTRI) related questions, contact Sue Banahan, COP Office, 301–713–3338/ext 115, Internet: sbanahan@cop.noaa.gov. More information on the BTRI research program is available through the World Wide Web on New York Sea Grant's website (http://www.seagrant.sunysb.edu/pages/btri.htm), or by contacting Cornelia Schlenk of New York Sea Grant (NYSG) at 516–632–6906, Internet: cschlenk@ccmail.sunysb.edu.

SUPPLEMENTARY INFORMATION:

Background

Program Description: For complete Program Description and Other Requirements criteria for the Coastal Ocean Program, see COP's General Grant Administration Terms and Conditions initial notice in the **Federal Register** (63 FR 44237, August 18, 1998) and at internet site: http://www.cop.noaa.gov.

Harmful Algal Blooms(HABs) include toxic and noxious phytoplankton (including Pfiesteria-like organisms) and benthic algae. Evidence suggests that, over the last few decades, the frequency and duration of HABs have been increasing nationally and worldwide. Formerly, only a few regions of the U.S. were affected by HABs, but now virtually every coastal state has reported major blooms. In many cases, blooms extend over large geographic areas and are composed of more than one harmful or toxic species. Furthermore, HABs are not unique to the United States and have attracted interest from many countries that have commercial and recreational activities in the coastal ocean. Most recently, a Intergovernmental Oceanographic Commission-Scientific Committee on Oceanic Research workshop (GEOHAB, Global Ecology and Oceanography of HABs) in Denmark convened to consider the establishment of an international research program on the increasing problem of HABs in our world's coastal oceans.

In spite of a growing list of affected resources, our understanding of the biological, physical, and chemical processes that regulate HABs is limited. Toxic blooms can potentially impact virtually all compartments of the marine foodweb due to adverse effects on viability, growth, fecundity, and recruitment of marine organisms. Because toxins can move through ecosystems, the impacts can be far reaching. Likewise, dramatic shifts in structure of an ecosystem can accompany plankton blooms and macroalgal overgrowth in benthic systems. In the context of ecological effects, our present knowledge is inadequate to define the scale and complexity of many HAB phenomena.

Impacts of HABs are extensive. Periodic blooms in some coastal areas have caused collapse of ecosystems, with accompanying serious economic impacts. Economic losses in the U.S. from HABs are likely to exceed one billion dollars over several decades. The costs of HABs are included in toxin monitoring programs, closures of shellfish beds, collapse of some fisheries and shellfisheries, mortality of fish and shellfish, disruptions in tourism, threats to public and coastal resource health, publication of watershed, health and seafood advisories, and medical treatments.

HABs are not only economically costly, but they also cause severe human health effects. Human illnesses due to natural algal toxins include ciguatera fish poisoning, paralytic shellfish poisoning (PSP), amnesic shellfish poisoning (ASP), neurotoxic shellfish poisoning, diarrhetic shellfish poisoning, and short-term neurocognitive dysfunction from exposure to *Pfiesteria piscicida*. Severe cases of PSP and ASP can result in death within 24 hours of consuming the toxic shellfish from respiratory arrest and brain dysfunction. Additionally, ASP can have the devastating side effect of permanent memory loss.

The interagency ECOHAB program addresses the need for long-term, large-scale, multidisciplinary research, and is outlined in the report," ECOHAB, the Ecology and Oceanography of Harmful Algal Blooms" (Anderson, D.M. 1995. WHOI, Woods Hole, MA, 66 pp.; http://habserv1.whoi.edu/hab/nationplan/ECOHAB/PDF/ECOHABPDF.html). The primary objective of this notice is to solicit proposals for research on the environmental processes that facilitate and regulate HABs in the coastal ocean. Developing an understanding of how physical and biological processes interact to promote bloom development, maintenance, and decline will contribute to the ultimate goal of preventing, managing, controlling, and mitigating the impacts of HABs, outlined in the nation's comprehensive Federal approaches, "Marine Biotoxins and Harmful Algae: A National Plan" (Anderson, D.M., S.B. Galloway, and J.D. Joseph. 1993. WHOI Technical Report 93–02, Woods Hole Oceanographic Institution, Woods Hole, MA 44 pp.; http://www.redtide.whoi.edu/hab/nationplan/s-kplan/s-kcontents.html) and "Harmful Algal Blooms in Coastal Waters: Options for Prevention, Control, and Mitigation" (Boesch, D.F. *et al* 1997. NOAA COP Decision Analysis Series No.10, NOAA Coastal Ocean Office, Silver Spring, MD 46 pp.).

To address the increased need for research on HABs, NOAA, NSF, EPA, ONR, and NASA combine each agency's unique interests and missions into this coordinated research program. The interests and objectives of each agency are defined in the following paragraphs:

NOAA—HABs and related biotoxin risk must be managed if we are to build viable and valuable sustainable fisheries, protect threatened and endangered species, and effectively manage coastal activities and resources. NOAA's interest is in developing effective techniques for prevention, control, and mitigation to assist in reducing the impacts of HABs on public health, living marine resources, and coastal habitats. Developing predictive

and early warning capabilities for HABs is a specific area of emphasis.

NSF—Many aspects of species-specific dynamics of plankton, macroalgal populations, and species succession that contribute to bloom formation are poorly understood. NSF's interest is in increasing our understanding of the direct and indirect causes of HABs in our coastal regions and their ecological consequences through research on the physiological and ecological basis for bloom formation, the physical and chemical attributes of coastal oceans that facilitate them, the population attributes of bloom species, and the long-term consequences of ecosystem changes.

EPA—Research programs support an integrated approach to protect the integrity of ecosystems that are affected by blooms through the development of bioindicators for toxic forms of HABs and through the restoration of degraded ecosystems using a watershed approach. Specific areas of emphasis for ecosystem protection related to Pfiesteria and other HABs include the impact of nutrients from agricultural activities and other non-point sources of pollution with investigations conducted at the regional or watershed scale.

ONR—Plankton blooms resulting from complex coupled physical/biological processes strongly affect the physical, optical, and acoustic properties of the coastal ocean. ONR's interest is in characterizing and forecasting the physical, bioacoustical, and optical properties of blooms to improve the capability of the fleet to operate effectively within coastal environments worldwide.

NASA—Algal pigments affect optical properties of the water in well-characterized ways. In the open ocean, it is possible to quantify pigment concentration using remote sensing techniques because phytoplankton are solely responsible for variation in water color. In nearshore, estuarine, and inland waters, suspended sediments and dissolved organic compounds make the optical properties much more complex. The goal of detecting algal blooms in the presence of other colored materials is the subject of ongoing research. NASA is interested in developing remote sensing techniques that could be applied to the detection or tracking of harmful algal blooms in nearshore coastal environments.

Research Goals and Topical Areas:

A. The specific goals of the research solicited by this notice are to:

(1) Understand the causes of blooms;

(2) Determine the sources, fates, and consequences of HABs in foodwebs and fisheries;

(3) Develop an enhanced predictive and early warning capability for the occurrence and impact of HABs; and

(4) Explore means for prevention, mitigation, and control of HABs.

B. To address these needs, ECOHAB will support research on general themes of:

(1) Characterization and detection of HAB cells, life stages, and toxins;

(2) Mechanisms underlying the initiation, distribution, and accumulation of individual bloom-forming species;

(3) Physiological and biochemical bases of the ecological role of toxins in bloom-forming species;

(4) Physical and biological processes that influence the transport, fate, and effects of marine biotoxins and other HAB impacts;

(5) The influence of human and natural factors on the biophysical mechanisms that facilitate and regulate HABs, including detection and tracking of conditions suspected of being conducive to bloom formation and potential methods of control;

(6) Longer term consequences of ecosystem changes brought about by the increasing frequency and persistence of planktonic blooms and community alterations that can accompany macroalgal overgrowth in benthic systems; and

(7) Development of models of the physical, biogeochemical, and ecological processes that can ultimately lead to HAB prediction.

A significant challenge to the implementation of this program is that HAB phenomena are diverse with respect to the causative organisms involved, the hydrographic or environmental regimes in which they occur, the factors regulating bloom dynamics, and the nature and extent of their impacts. Whereas laboratory research helps define factors that could be significant in causing blooms, field research and model development are essential to determine and predict the conditions under which blooms form. Comprehensive multidisciplinary studies are needed to fully understand the complex mechanisms underlying the growth and accumulation of harmful species, the formation, transfer, and fate of toxins, the impacts of HABs and toxins on ecosystems, and the influence of human activities on these processes.

This announcement provides an opportunity for investigators to propose research to address the national problem of HABs. Proposals are sought for individual studies or small interdisciplinary efforts that address gaps in knowledge related to the nature of HAB phenomena. These studies should address fundamental ecological and oceanographic questions related to HABs. For example, individual studies by one or more investigators or by small teams could address such research issues as physical transport and techniques for identifying, detecting, and monitoring biotoxins and HAB species.

Studies of nutrient kinetics, physiological bases of growth and toxin production for harmful species, toxin transfer through the foodweb, and mechanisms for controlling blooms would be of interest. The purpose of the individual studies is to encourage research into key questions on the underlying mechanisms involved with HABs and their control, without necessarily being limited to particular study regions.

Proposals are sought for the following four topical areas:

(1) Ecology and oceanography of HABs, including Pfiesteria,

(2) Long Island brown tides,

(3) Prevention, control, and mitigation of HABs impacting fisheries, aquaculture, and human health, and

(4) Economic assessments of HABs.

The following describe in detail the type of proposals sought for each topical area:

(1) Proposals on the ecology and oceanography of HAB species, including Pfiesteria, are encouraged, with support provided by NOAA, NSF, and EPA. This is a broad category that encourages proposals on all aspects of HABs and Pfiesteria along U.S. coasts. Proposals addressing prevention, control, and mitigation of Pfiesteria will be considered as part of this topical area; proposals addressing mitigation, management, and control of other HAB species are to be submitted to the National Sea Grant College Program topical area three.

(2) Proposals of 1 to 3 years in duration are sought to address the gaps in knowledge of factors leading to the initiation, persistence, and subsidence of brown tide (*Aureococcus anophagefferens*) in New York's embayments. The NOAA Coastal Ocean Program (COP), in cooperation with New York Sea Grant, established the Brown Tide Research Initiative (BTRI). The goal of this program is to understand and predict the onset of brown tide blooms and to advance strategies for mitigating its environmental impacts.

Proposals applying for BTRI funds should address one or more of ECOHAB goals under Section A.,(1)(3) and/or (4) and research themes under Section B., (2)(5) and/or (7) in the context of the

specific scientific objectives of the BTRI. Those objectives are:

(a) Identification of the physical, chemical, and biological factors that initiate and sustain brown tide blooms. Investigations into a range of factors will be considered. Of special interest are laboratory, mesocosm, and field studies in the areas of growth physiology of Aureococcus; nutrient (and other growth factors) budgets in affected areas, including the role of groundwater and its constituents; water column conditioning; benthic-pelagic coupling; dynamics of brown tide blooms and other resident planktonic communities; and the role of allelopathy in brown tide blooms. Retrospective analysis and synthesis of existing data and information that can explain and predict brown tide events will also be considered (e.g., examinations of water quality monitoring data sets and previous studies).

(b) Techniques to isolate and maintain axenic cultures of Aureococcus.

(c) Identification of the factors leading to the cessation of brown tide blooms. This may include investigations on activities of viruses and other pathogens, autolysis, and ecology of the resident grazing community.

Research should be hypothesis-based and focused on understanding the causes of brown tide blooms, with the goal to advance information for developing approaches to avoid or minimize these blooms. Geographically, this effort is focused on New York's affected bays (e.g., the Peconic Bays and the South Shore Estuary). It is expected that information gained in this study will provide insight useful in understanding and managing brown tide occurrences in Rhode Island and New Jersey and will shed light on other harmful algal bloom phenomena. Investigators will be expected to justify proposed research within the context of proposed or on-going work and build upon rather than repeat previous experimental efforts.

(3) NOAA's National Sea Grant College Program solicits proposals that focus on two topical areas. The first of these two are the development of mitigation, management, and potential control strategies to enhance our ability to protect commercially important fisheries, aquaculture, and human health from the impacts of HAB species other than Pfiesteria.

(4) The National Sea Grant College Program is also interested in requests specific to the assessment of the economic impacts of HABs (including Pfiesteria) in order to evaluate the cost-effectiveness of potential management actions.

Part I: Schedule and Proposal Submission

The guidelines for proposal preparation provided here are mandatory. Proposals received after the published deadline or proposals that deviate from the prescribed format will be returned to the sender without further consideration. This announcement and additional background information will be made available on the COP home page on the World Wide Web at http://www.cop.noaa.gov.

ECOHAB will support projects ranging from laboratory studies by individual investigators or by small research teams through coordinated, well-integrated, multidisciplinary field programs. Studies will also be supported to develop predictive models and address gaps in knowledge related to mechanisms that regulate harmful algal species, including Pfiesteria and related taxa. While the agencies will maintain separate funding mechanisms, a common review process will be used to evaluate and select proposals.

Upon conclusion of external peer and panel merit review, meritorious proposals may be recommended for funding by any of the agencies. Subsequent grant administration procedures will be in accordance with the individual policies of the awarding agency. In addition to the extramural funding, NOAA and other permitted Federal partnering agencies may fund investigators from other Federal laboratories that successfully compete through the ECOHAB Program announcement. To address the increased need for research on HABs, NOAA, NSF, EPA, ONR, and NASA combine each agency's unique interests and missions into this coordinated research program.

Full Proposals

Letters of Intent and/or partial proposals are not requested under this notice. Applications must include the original and two unbound copies of the full proposal. Investigators are not required to submit more than three copies of the proposal; however, the normal review process requires twenty copies. Investigators are encouraged to submit sufficient proposal copies for the full review process if they wish all reviewers to receive color or otherwise unusual materials submitted as part of the proposal. Facsimile transmissions and electronic mail submission of full proposals will not be accepted.

Required Elements

All applicants must closely follow the instructions and guidelines in the Standard NOAA Application Forms and Kit (see Part II) for preparation of the proposal.

Each proposal must include the following eight elements:

(1) Signed summary title page. The title page should be signed by the principal investigator (PI) and the institutional representative. The summary title page identifies the project's title starting with the acronym ECOHAB, a short title (less than 50 characters), and the lead PI's name and affiliation, complete address, phone, FAX and e-mail information.

(2) One-page abstract/project summary. An abstract must be included and should contain an introduction of the problem, rationale, scientific objectives and/or hypotheses to be tested, and a brief summary of work to be completed. The abstract should appear on a separate page, headed with the proposal title, institution(s), investigator's name(s), total proposed cost, and budget period.

(3) Statement of work/project description. The first section of the project description must be a summary of previous relevant research. This section should also include the following: (a) the objective for the period of proposed work and its expected significance; (b) the relation to the present state of knowledge in the field and relation to previous work and work in progress by the proposing principal investigator(s); (c) a discussion of how the proposed project lends value to the program goals; and (d) specific plans for making research products generated in the project, such as environmental data, cultures, genetic sequences, etc., available to the scientific community. NOAA and NSF have specific requirements that environmental data be submitted to the National Oceanographic Data Center; participating agencies may have additional requirements or guidelines for sharing of research materials and data.

Project management should be clearly identified with a description of the management function within a team. It is important to provide a full scientific justification for the research; do not simply reiterate justifications presented in this notice.

The project description section should not exceed 15 pages. Page limits are inclusive of figures and other visual materials, but exclusive of references and milestone chart. The type size must be clear and readily legible, in 12 point size. There must be no more than 6 lines in a vertical space of 2.5 cm, and margins at the top, bottom, and each

side of pages should be a minimum of 2.5 cm.

(4) Milestone chart. Time lines of major tasks covering the duration of the proposed project - up to 60 months.

(5) Budget. Applicants must submit the Facesheet, Standard Form 424 (Rev July 1997), "Application for Federal Assistance", to indicate the total amount of funding proposed for the whole project period. Proposals must also include annual budgets that correspond with the descriptions provided in the statement of work. Therefore, applicants are also required to submit the Standard Form 424A (Rev 7–97), "Budget Information - Non-Construction Programs" in order to provide a detailed budget for fiscal year increments.

Include a budget narrative/justification to support all proposed budget object class categories. Note that, for multiyear project periods, the out-year budget estimates are to be included in Section E on Standard Form 424A. These forms are included on the COP website listed under Part II, Application Forms and Kit. The program office shall review the proposed budgets to determine the necessity and adequacy of proposed costs for accomplishing the objectives of the proposed grant.

NSF requests information on ship requirements in order to schedule time on University-National Oceanographic Laboratory System (UNOLS) vessels as NSF might fund any of the proposals submitted. Ship requirements and costs do not need to be included on the budget forms SF–424 or SF–424A, but must be separately identified by submitting a NSF-UNOLS Ship Time Request Form (OMB #3145–0058, expiration date September 1999) identifying ship, sea days, ship requirements (berths, labs, wire capabilities, special equipment, etc). Support of ships required for field studies are a significant cost that will be evaluated in any proposals for funding, so the need should be adequately justified within the project description. The funding mechanism for ship time is agency specific.

The NSF form is included as Appendix A, "Instructions for Preparation of Proposals Requesting Support for Oceanographic Facilities", NSF 94–124. The form is also available via the UNOLS web site at ttp://www.gso.uri.edu/unols/ship/shiptime.html. Paper copies may be requested from UNOLS, but the electronic version is strongly preferred for ease of information exchange and processing. The investigator is responsible for sending copies to the UNOLS office and ship operators. If no ship time is required, submit the UNOLS form and indicate that no shiptime is required.

(6) Biographical sketch. All senior personnel must provide two-page summaries that include the following:

(a) A listing of professional and academic essentials and mailing address;

(b) A list of up to five publications most closely related to the proposed project and five other significant publications, within the last five years. Additional lists of publications, lectures, etc., should not be included;

(c) A list of all persons and their organizational affiliation in alphabetical order who have collaborated on a project or publication within the last 48 months, including collaborators on the proposal and persons listed in the publications. If there are no collaborators, this should be so indicated;

(d) A list of persons (including their organizational affiliation), with whom the individual has had an association as thesis advisor or postdoctoral scholar sponsor;

(e) A list of the names and institutions of the individual's own graduate and postgraduate advisors.

The material presented in (c)(d) and (e) is used to assist in identifying potential conflicts or bias in the selection of reviewers.

(7) Current and pending support. NSF requires information on current and pending support of all proposers. Describe all current and pending support for all PIs, including subsequent funding in the case of continuing grants. A model format is available on NSF Form 1239, available at http://www.nsf.gov/cgi-bin/getpub?99form1239. This form is part of the NSF Grant Proposal Guide and Proposal Forms Kit. Use of this form is optional; however, the categories of information included on the NSF Form 1239 must be provided.

All current support from whatever source (e.g., Federal, state or local government agencies, private foundations, industrial or other commercial organizations) must be listed. The proposed project and all other projects or activities requiring a portion of time of the PI and other senior personnel should be included, even if they receive no salary support from the project(s). The total award amount for the entire award period covered (including indirect costs) should be shown, as well as the number of person-months per year to be devoted to the project, regardless of source of support.

(8) Appendices. The only material permitted in the Appendix is an EPA quality assurance (QA) statement (QANS, OMB #2080–0033, approved 8/14/97) for proposals for topical area (1), general HAB research (including Pfiesteria) that involve data collection or processing, surveys, environmental measurements, and/or modeling. The statement simply indicates how quality processes or products will be assured. This statement should not exceed two consecutively numbered, 8.5 x 11–inch pages of single-spaced standard 12–point type with 1–inch margins.

For topical area (1) projects that involve environmentally related measurements or data generation, a quality system that complies with the requirements of ANSI/ASQC E4, "Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs", must be in place as follows:

(a) The activities to be performed or hypothesis to be tested (reference may be made to the specific page and paragraph number in the application where this information may be found); criteria for determining the acceptability of data quality in terms of precision, accuracy, representativeness, completeness, and comparability.

(b) The study design including sample type and location requirements and any statistical analyses that were used to estimate the types and numbers of samples required for physical samples or similar information for studies using survey and interview techniques

(c) The procedures for the handling and custody of samples, including sample identification, preservation, transportation, and storage.

(d) The methods that will be used to analyze samples or data collected, including a description of the sampling and/or analytical instruments required.

(e) The procedures that will be used in the calibration and performance evaluation of the sampling and analytical methods used during the project.

(f) The procedures for data reduction and reporting, including a description of statistical analyses to be used and any computer models to be designed or utilized associated with verification and validation techniques.

(g) The intended use of the data as they relate to the study objectives or hypotheses.

(h) The quantitative and or qualitative procedures that will be used to evaluate the success of the project.

(i) Any plans for peer or other reviews of the study design or analytical methods prior to data collection.

ANSI/ASQC E4, "Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs" is available for purchase from the American Society for Quality Control, phone 1–800–248–1946, item T55. Only in exceptional circumstances should it be necessary to consult this document.

Proposal Format and Assembly

Clamp the proposal in the upper left-hand corner, but otherwise leave it unbound. Use 1 inch (2.5 cm) margins at the top, bottom, left, and right of each page. Use clear and easily legible type face in standard size of 12 points. Print on one side of the page only. These guidelines for proposal preparation are mandatory. Proposals that deviate from the prescribed format will be returned to the sender without further consideration.

Part II: Further Supplementary Information

(l) Program Authorities for COP and Sea Grant/NOAA–33,U.S.C. 1121 *et. seq.* as amended; for EPA–33, U.S.C 1251 *et. seq.* and 40 CFR parts 30 and 40; for NSF–42, U.S.C. 1861 *et. seq.*; for ONR–10, U.S.C 2358 as amended and 31 U.S.C 6304; and for NASA–14 CFR part 1260.

(2) Catalog of Federal Domestic Assistance Numbers. 11.478 for the Coastal Ocean Program; 11.417 for NOAA/Sea Grant; 66.500 for the Environmental Protection Agency; 47.050 for the National Science Foundation, and 12.300 for the Office of Naval Research.

(3) Program Description. See initial COP General Notice (63 FR 44237, August 18, 1998).

(4) Funding Availability. Publication of this notice does not obligate any agency to any specific award or to any part of the entire amount of funds available. Recipients and subrecipients are subject to all Federal laws and agency policies, regulations, and procedures applicable to Federal financial assistance awards.

A total of $2,150,000 is available for general research on HABs, including Pfiesteria, topical area (1). Small individual studies may typically request $80,000–$100,000 per investigator annually; EPA funding will be limited to $150,000 per year for a maximum of 3 years. Requests to support small group or team projects, including those with field components, are expected to be proportionately higher. In any proposal, support should be strongly justified. All projects should budget funds for investigator participation in an ECOHAB meeting in FY 2000.

Funds available for research under the BTRI, topical area (2), are approximately $400,000 in FY 1999, $400,000 in FY 2000, and $300,000 in FY 2001, pending appropriations. Proposed projects may be 1 to 3 years in length. The annual funding level of a typical grant (one to two investigators) may be up to $100,000, although more comprehensive, multidisciplinary proposals may require higher levels of funding. All proposed BTRI projects should budget funds (as necessary) for investigators to participate in the BTRI Symposium held annually on Long Island, NY.

A total of $550,000 is available for the National Sea Grant College Program research topics, prevention, control, and mitigation for fisheries and aquaculture and economic assessment, topical areas (3) and (4). The annual funding level of a typical grant (one to two investigators) is anticipated to be up to $100,000, although more comprehensive, multidisciplinary proposals may require higher levels of funding. Proposed activities may extend for up to 2 years, but funding to cover both project years will be awarded in FY99; an annual report showing satisfactory progress must be submitted at the end of the first year.

Project activities should include identified milestones for each project year. Support in years after FY99 are contingent upon the availability of funds and the requirements of an individual agency supporting the project.

(5) Matching Requirements. For proposals submitted to the National Sea Grant College Program topical areas on (a) prevention, control, and mitigation of HABs for fisheries and aquaculture and (b) economic assessment (see paragraph (4), matching funds equivalent to 50 percent of Federal funds requested must be provided; for the other two topical research areas (general HABs and Pfiesteria, and BTR research), no matching funds are required.

Proposals must include matching funds equivalent to at least 50 percent of Federal funds requested, or at least 33 percent of the total project cost; for example, a request of $100,000 in Federal funds must be accompanied by at least $50,000 in matching funds.

(6) Type of Funding Instrument. Project grants.

(7) Eligibility Criteria. This opportunity is open to all interested, qualified, non-federal, and Federal researchers. Non-federal researchers should comply with their institutional requirements for proposal submission. Non-NOAA Federal applicants will be required to submit certifications or documentation which clearly show that they can receive funds from the Department of Commerce (DOC) for this research. Foreign researchers must subcontract with U.S. proposers. Non-federal researchers affiliated with NOAA-University Joint Institutes should comply with joint institutional requirements. Non-federal awardees will be funded either through grants to their institutions or through their joint institutes. Proposals deemed acceptable from Federal researchers will be funded through NOAA via a mechanism other than a grant or cooperative agreement. DOC requirements will prevail if there is a conflict between DOC requirements and institutional requirements.

(8) Award Period. Full Proposals can cover a project period from 1 to 5 years as listed here: Funds are available for general HABs and Pfiesteria from FY1999 through FY2004; BTRI from FY1999 through FY2001; and for the National Sea Grant College topics from FY1999 through FY2000 - all dependent on continuing appropriations. Multiyear awards may be funded in total or incrementally on an annual basis; the funding period by participating agencies is at the discretion of the individual agency.

(9) Indirect Costs. If indirect costs are proposed, the following statement applies: The total dollar amount of the indirect costs proposed in an application must not exceed the indirect cost rate negotiated and approved by a cognizant Federal agency prior to the proposed effective date of the award.

(l0) Application Forms and Kit. When applying for financial assistance under this announcement, applicants will be able to obtain a copy of the Federal Register announcement and a standard NOAA Application Kit from the COP home page at the following World Wide Web address: http://www.cop.noaa.gov. If you are unable to access this information, you may also call COP at (301) 713–3338, extension 116, to leave a mailing request.

The Standard Forms 424 (Rev July 1997) Application for Federal Assistance; 424A (Rev July 1997); Budget Information - Non-Construction Programs; and 424B (Rev July 1997) Assurances - Non Construction Programs shall be used in applying for financial assistance. In addition, other forms required include the CD–511, Certifications Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying (submitted with the application package); the CD–512, Certification Regarding Debarment, Suspension, Ineligibility and Voluntary

Exclusion-Lower Tier Covered Transactions and Lobbying (this certification is to remain with the recipient and not to be forwarded to the Grants Officer); and SF-LLL, Disclosure of Lobbying Activities (if applicable).

(11) Project Funding Priorities. Priority consideration will be given to those highly ranked proposals that promote balanced coverage of ECOHAB science goals (pp. 7–8, Research Goals and Topical Areas), provide a programmatically balanced approach to missions of each agency, and avoid duplication of completed or on-going work.

(12) Evaluation Criteria. Consideration for financial assistance will be given for proposals that address the following elements:

(a) Scientific Merit (20 percent): Intrinsic scientific value of the proposed work and the likelihood that it will lead to fundamental advancements and new discoveries, or that it will have substantial impact on progress in that field;

(b) Research Performance Competence (20 percent): The capability of the investigator and collaborators to complete the proposed work as evidenced by past research accomplishments, previous cooperative work, timely communication, and sharing of findings, data, and other research products;

(c) Relevance (20 percent): Likelihood that the research will contribute to the goals of ECOHAB and lead to improved management of coastal resources;

(d) Technical Approach (20 percent): Availability of focused science objectives and a complete but efficient strategy for making measurements and observations in support of the objectives. The scientific approach is sound and logically planned throughout the cycle of the proposed work;

(e) Linkages (10 percent): Connections to existing or planned studies, or demonstrated cooperative arrangements to provide or use data or other research results to achieve the goals of ECOHAB and this specific notice;

(f) Costs (10 percent): Adequacy of the proposed resources to accomplish the proposed work, and the appropriateness of the requested proportion of the total available funds.

(13) Selection Procedures. All proposals will be evaluated and ranked individually in accordance with the assigned weights of the above evaluation criteria by (a) independent peer mail review and by (b) independent peer panel review. Both Federal and non-federal experts in the field may be used in this process. The peer mail reviewers will be several individuals with expertise in the subjects addressed by particular proposals. Each mail reviewer will see only certain individual proposals within his or her area of expertise, and rank them individually on a scale of —1" to —5", where scores represent respectively: excellent, very good, good, fair, poor.

The peer panel will consist of 8 to 10 individuals, with each individual having expertise in a separate area, so that the panel as a whole covers a broad range of scientific expertise. The panel will have access to the mail reviews of all proposals, and will use the mail reviews in discussion and evaluation of the entire slate of proposals. Each panel member will rank proposals on the scale of "1" to "5", as stated in the preceding paragraph.

The program officer(s) will not vote as part of the independent peer panel. Those proposals receiving an average panel rank of Fair or Poor will not be given further consideration and will be notified of non-selection. For the proposals rated by the panel as either Excellent, Very Good, or Good, the program managers will first apply the project funding priorities listed earlier in this document under Part 11, Paragraph (11). (However, EPA will consider only Excellent and Very Good proposals for funding). Second, the program managers will select the proposals to be recommended for funding; third, determine the total duration of funding for each proposal; and fourth, determine the amount of funds available for each proposal. Awards may not necessarily be made to the proposals scored the highest by individual panel and/or mail reviews.

When a decision is made (whether an award or declination), verbatim copies of reviews, excluding the names of the reviewers, and summaries of review panel deliberations, if any, become available to the proposer. No information directly identifying reviewers or other pending or declined proposals will be released.

Dependent on the agency recommending support, investigators may be asked to modify objectives, work plans, or budgets and provide supplemental information required by the agency prior to the award. Subsequent grant administration procedures will be in accordance with the individual policies of the awarding agency. A summary statement of the scientific review by the peer panel will be provided to each applicant.

(14) Other Requirements. See initial COP Notice (63 FR 44237, August 18, 1998), at the COP Internet Site: http://www.cop.noaa.gov.

This notification involves collections of information subject to the requirements of the Paperwork Reduction Act. The standard NOAA forms have been approved by the Office of Management and Budget (OMB) under control numbers 0348–0043, 0348–0044, 0348–0040 and 0348–0046. The EPA-required QA statement was approved in OMB document #2080–0033 (August 14, 1997). The NSF-UNOLS Ship Time Request Form and the NSF Form for Current and Pending Support have been approved by OMB as follows:

The UNOLS form, also titled NSF Form 831 (Rev July 1992) has OMB clearance through September 1999 under control number OMB #3145–0058. The form is available via the UNOLS web site at the following web site: http://www.gso.uri.edu/unols/ship/shiptime.html. Paper copies may also be requested from UNOLS, but the electronic version is strongly preferred for ease of information exchange and processing. The NSF guidelines and ship-time form were included in the then-existing e-mail based Internet electronic dissemination system operated by NSF - Science and Technology Information System). The NSF Form 1239 (Oct 1998) for Current and Pending Support is cleared as part of the NSF Grant Proposal Guide and Proposal Forms Kit under OMB# 3145–0058 with an expiration date of September 1999.

Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act, unless that collection displays a current valid OMB control number.

Dated: March 23, 1999.

Ted I. Lillestolen,

Deputy Assistant Administrator, Ocean Service and Coastal Zone Management.

Dated: March 17, 1999.

Norine E. Noonan,

Assistant Administrator, Office of Research and Development,Environmental Protection Agency.

Dated: March 16, 1999.

G. Michael Purdy,

Director, Division of Ocean Sciences, National Science Foundation.

Dated: March 29, 1999.

Steven E. Ramberg,

Department Head, Ocean, Space and Atmosphere Science and Technology Department, Office of Naval Research.

Dated: March 26, 1999.

Jack A Kaye,

Director, Research Division, Office of Earth Science,NASA Headquarters.

[FR Doc. 99–8616 Filed 4–6–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 033199E]

North Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: A scientific review panel of six scientists will meet in Seattle, WA.

DATES: The meeting will be held on April 26–28, 1999.

ADDRESSES: The meeting will be held at the Alaska Fisheries Science Center, 7600 Sand Point Way NE, Building 9, Auditorium, Seattle, WA 98115.

Council address: North Pacific Fishery Management Council, 605 W. 4th Ave., Suite 306, Anchorage, AK 99501–2252.

FOR FURTHER INFORMATION CONTACT: Clarence Pautzke, telephone: 907–271–2809.

SUPPLEMENTARY INFORMATION: In December 1998, the North Pacific Fishery Management Council (Council) approved emergency measures aimed at further protection for the endangered Steller sea lion. These measures were based on a biological opinion provided by NMFS which concluded that, left unchanged, the pollock fisheries in the Gulf of Alaska and Bering Sea are likely to jeopardize the continued existence of Steller sea lions, and are likely to destroy or adversely modify designated Steller sea lion critical habitat. These emergency measures will need to be replaced with more permanent regulations for the years 2000 and beyond. The Council requested in December that NMFS, in consultation with the Council, the Marine Mammal Commission, and the Alaska Department of Fish and Game, coordinate an independent review of the Biological Opinion and related data.

The panel is being asked to look at the scientific basis for the conclusions of the Biological Opinion and determine whether the principles for establishing reasonable and prudent alternatives are consistent with and supported by the available science.

Although the review session will be open to public attendees, no public comment period is scheduled. A more detailed agenda with estimated times should be available on the on the NPFMC web page (http://www.fakr.noaa.gov/npfmc) by April 9, 1999.

Although other issues not contained in this agenda may come before this panel for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this agenda.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Helen Allen, 907–271–2809, at least 5 working days prior to the meeting date.

Dated: April 1, 1999.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–8612 Filed 4–6–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 040199A]

Endangered Species; Permits

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of application for a research permit (1214), and issuance of modification 1 to research permit 1174.

SUMMARY: Notice is hereby given of the following actions regarding permits for takes of endangered and threatened species for the purposes of scientific research and/or enhancement:

NMFS has received a permit application from: Ms. Jane Anne Provancha, of Dynamac Corporation (1214), and NMFS has issued modification 1 to scientific research Permit 1174 to Mr. Harold Brundage III, of Environmental Research and Consulting, Inc, to take listed species.

DATES: Written comments or requests for a public hearing on this request (1214) must be received on or before May 7, 1999.

ADDRESSES: The documents pertaining to this application and permit are available for review by appointment by contacting:

Chief, Endangered Species Division; Office of Protected Resources, F/PR3, NMFS, 1315 East-West Hwy., Silver Spring, MD 20910–3226 (301–713–1401).

FOR FURTHER INFORMATION CONTACT:

For Application 1214, Barb Schroeder, Endangered Species Division, Office of Protected Resources, (301–713–1401).

For Permit 1174, Terri Jordan, Endangered Species Division, Office of Protected Resources, (301–713–1401).

SUPPLEMENTARY INFORMATION:

Authority

Issuance of permits and permit modifications, as required by the ESA, is based on a finding that such permits/modifications: (1) Are applied for in good faith; (2) would not operate to the disadvantage of the listed species which are the subject of the permits; and (3) are consistent with the purposes and policies set forth in section 2 of the ESA. Authority to take listed species is subject to conditions set forth in the permits. Permits and modifications are issued in accordance with and are subject to the Endangered Species Act of 1973 (ESA) (16 U.S.C. 1531–1543) and NMFS regulations governing listed fish and wildlife permits (50 CFR parts 217–227).

Those individuals requesting a hearing on an application listed in this notice should set out the specific reasons why a hearing on that application would be appropriate (see **ADDRESSES**). The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries, NOAA. All statements and opinions

contained in the permit action summaries are those of the applicant and do not necessarily reflect the views of NMFS.

Species Covered in This Notice

The following species and covered in this notice: Green turtle (*Chelonia mydas*), Loggerhead turtle (*Caretta caretta*), Shortnose sturgeon (*Acipenser brevirostrum*).

New Application Received

Jane Provancha (1214) requests authorization to take listed green and loggerhead sea turtles for scientific research in Mosquito Lagoon, FL. The purpose of the research is to continue work that began under NMFS Permit 942, granted in 1995; specifically, to: (1) Continue the comparison of current marine turtle population structure and distribution in Mosquito Lagoon to baseline data collected in 1976–1979, (2) evaluate current seasonal distribution and occurrence of sea turtles, (3) evaluate distribution patterns relative to submarine resource distribution, (4) determine regional "importance value" of this lagoon relative to other studied juvenile habitats on the east coast of Florida, and (5) determine the sex ratio of the subadult marine turtles inhabiting Mosquito Lagoon.

Modification Issued

Notice is hereby given that on February 26, 1999, NMFS issued modification 1 to scientific research Permit 1174 to Mr. Harold Brundage III, of Environmental Research and Consulting, Inc. The applicant possesses a 5-year permit to sample for and collect shortnose sturgeon in the Delaware River and Estuary system and in the lower Susquehanna River/Chesapeake Bay Complex. This sampling program is under contract to the NMFS Northeast Region, Protected Resources Division. The objectives of the study are to collect data on current distribution, abundance, length structure and movements of shortnose sturgeon in the Delaware River Estuary and in the lower Susquehanna River and Chesapeake Bay. Modification 1 increases the authorized annual take of shortnose sturgeon in the Delaware River to generate a statistically valid population estimate, due to evidence that the population of shortnose sturgeon in the Delaware River may be substantially higher than previously thought.

Dated: April 1, 1999.

Kevin Collins,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 99–8614 Filed 4–6–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 99–11]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Pub. L. 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSCA/COMPT/RM, (793) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 99–11, with attached transmittal and policy justification.

Dated: April 1, 1999.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–10–M

DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

26 MAR 1999
In reply refer to:
I-99/03075

Honorable J. Dennis Hastert
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 99-11, concerning the Department of the Air Force's proposed Letter(s) of Offer and Acceptance (LOA) to Korea for defense articles and services estimated to cost $350 million. Soon after this letter is delivered to your office, we plan to notify the news media.

Sincerely,

A.R. KELTZ
ACTING DIRECTOR

Attachments

Same ltr to: House Committee on International Relations
Senate Committee on Appropriations
Senate Committee on Foreign Relations
House Committee on National Security
Senate Committee on Armed Services
House Committee on Appropriations

Transmittal No. 99-11

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

(i) **Prospective Purchaser: Korea**

(ii) **Total Estimated Value:**

Major Defense Equipment*	$ 0 million
Other	$ 350 million
TOTAL	$ 350 million

(iii) **Description of Articles or Services Offered: A Cooperative Logistics Supply Support Agreement (CLSSA) requisition case (FMSO II) for the support of F-4D/E, RF-4C, F-5A/B/E/F, RF-5A, A/T-37, T-38, F-16C/D, and C-130H aircraft; AN/FPS-117 and AN/FRN-45 radar systems; and AIM-7, AIM-9 and AIM-120 missile components. These items are of U.S. origin and are being operated by the Republic of Korea.**

(iv) **Military Department: Air Force (KCI and KCJ)**

(v) **Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: None**

(vi) **Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: None**

(vii) **Date Report Delivered to Congress: 26 MAR 1999**

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Republic of Korea - Cooperative Logistics Supply Support Arrangement

The Republic of Korea has requested a possible sale of spare parts under a Cooperative Logistics Supply Support Agreement (CLSSA) requisition case (FMSO II) for the support of F-4D/E, RF-4C, F-5A/B/E/F, RF-5A, A/T-37, T-38, F-16C/D, and C-130H aircraft; AN/FPS-117 and AN/FRN-45 radar systems; and AIM-7, AIM-9 and AIM-120 missile components. These items are of U.S. origin and are being operated by the Republic of Korea. The estimated cost is $350 million.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country which has been and continues to be an important force for political stability and economic progress in Northeast Asia.

The Republic of Korea needs these additional spare parts to maintain the aircraft, radar, and missile systems previously procured from the United States in a mission capable status.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

Procurement of these items of support will be from the many contractors providing similar items to the U.S. armed forces. There are no offset agreements proposed to be entered into in connection with this potential sale.

Implementation of this proposed sale will not require the assignment of any additional U.S. Government personnel or contractor representatives to the Republic of Korea.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

[FR Doc. 99–8505 Filed 4–6–99; 8:45 am]
BILLING CODE 5001–10–C

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 99–12]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Pub. L. 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSCA/COMPT/RM, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 99–12, with attached transmittal and policy justification.

Dated: April 1, 1999.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–10–M

DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

26 MAR 1999
In reply refer to:
I-99/03077

Honorable J. Dennis Hastert
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 99-12 and under separate cover the classified annex thereto. This Transmittal concerns the Department of the Air Force's proposed Letter(s) of Offer and Acceptance (LOA) to Israel for defense articles and services estimated to cost $2.0 billion. Soon after this letter is delivered to your office, we plan to notify the news media of the unclassified portion of this Transmittal.

Sincerely,

A.R. KELTZ
ACTING DIRECTOR

Attachments

Separate Cover:
Classified Annex

Same ltr to: House Committee on International Relations
Senate Committee on Appropriations
Senate Committee on Foreign Relations
House Committee on National Security
Senate Committee on Armed Services
House Committee on Appropriations

Transmittal No. 99-12

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

(i) **Prospective Purchaser:** Israel

(ii) **Total Estimated Value:**

Major Defense Equipment*	$ 1.5 billion
Other	$ .5 billion
TOTAL	$ 2.0 billion

(iii) **Description of Articles or Services Offered:** Fifty F-16C/D Block 50/52 aircraft; 50 AN/APG-68(V)X radar; and 30 each LANTIRN navigation and targeting pods. All aircraft will be configured with either the F100-PW-229 or F110-GE-129 engines by direct commercial sale; Night Vision Goggle compatible cockpits; conformal fuel tanks; and the capability to employ the AIM-120, AIM-9, and a wide variety of air-to-surface munitions. Associated support equipment, software development/integration, spares and repair parts, flight test instrumentation, publications and technical documentation, personnel training and training equipment, U.S. Government and contractor technical and logistics personnel services, and other related requirements to ensure full program supportability will also be provided.

(iv) **Military Department:** Air Force (SPF, Amendment 1)

(v) **Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:** None

(vi) **Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:** See Annex under separate cover

(vii) **Date Report Delivered to Congress:** 26 MAR 1999

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Israel - F-16C/D Aircraft

The Government of Israel has requested a possible sale of 50 F-16C/D Block 50/52 aircraft; 50 AN/APG-68(V)X radar; and 30 each LANTIRN navigation and targeting pods. All aircraft will be configured with either the F100-PW-229 or F110-GE-129 engines by direct commercial sale; Night Vision Goggle compatible cockpits; conformal fuel tanks; and the capability to employ the AIM-120, AIM-9, and a wide variety of air-to-surface munitions. Associated support equipment, software development/integration, spares and repair parts, flight test instrumentation, publications and technical documentation, personnel training and training equipment, U.S. Government and contractor technical and logistics personnel services, and other related requirements to ensure full program supportability will also be provided. The estimated cost is $2.0 billion.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country which has been and continues to be an important force for political stability and economic progress in the Middle East.

Israel needs these aircraft to augment its present operational inventory and to enhance its air-to-air and air-to-ground self defense capability. The F-16 enhances Israel's ability to defend itself and supports U.S. regional objectives for Israel's national security and maintenance of Israel's qualitative edge. Israel, which already has F-16 aircraft in its inventory, will have no difficulty absorbing these additional aircraft.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

The prime contractor will be Lockheed Martin Corporation, Orlando, Florida. Under this sale, the contractor will incur offset obligations under an existing industrial cooperation agreement.

Implementation of this proposed sale will not require the assignment of any additional U.S. Government personnel to Israel. A number of U.S. contractor representatives, to be determined during program implementation, will be required in Israel to conduct Contractor Engineering Technical Services (CETS) for a three-year period after aircraft delivery.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

[FR Doc. 99–8506 Filed 4–6–99; 8:45 am]
BILLING CODE 5001–10–C

DEPARTMENT OF DEFENSE

Department of the Air Force

HQ USAF Scientific Advisory Board Meeting

The Spectrum Management Study will meet at Hughes Space & Comm Company, Raytheon Systems Company, and Los Angeles Air Force Base, CA on April 28–29, 1999 from 8:00 a.m. to 5:00 p.m.

The purpose of the meeting is to gather information and receive briefings for the 1999 Quick Look Study.

The meeting will be closed to the public in accordance with Section 552b(c) of Title 5, United States Code, specifically subparagraphs (1) and (4) thereof.

For further information, contact the HQ USAF Scientific Advisory Board Secretariat at (703) 697–8404.

Carolyn A. Lunsford,

Air Force Federal Register Liaison Officer.

[FR Doc. 99–8542 Filed 4–6–99; 8:45 am]

BILLING CODE 5001–05–P

DEPARTMENT OF DEFENSE

Department of the Air Force

HQ USAF Scientific Advisory Board Meeting

The Spectrum Management Study in support of the HQ USAF Scientific Advisory Board will meet in Rosslyn, VA on May 26–28, 1999 from 8:00 a.m. to 5:00 p.m.

The purpose of the meeting is to gather information and receive briefings for the Study.

The meeting will be closed to the public in accordance with Section 552b (c) of Title 5, United States Code, specifically subparagraphs (1) and (4) thereof.

For further information, contact the HQ USAF Scientific Advisory Board Secretariat at (703) 697–8404.

Carolyn A. Lunsford,

Air Force Federal Register Liaison Officer.

[FR Doc. 99–8543 Filed 4–6–99; 8:45 am]

BILLING CODE 5001–05–P

DEPARTMENT OF DEFENSE

Department of the Air Force

Notice of Availability of Federally Owned Inventions

Pursuant to the provisions of Part 404 of Title 37, Code of Federal Regulations, which implements Pub. L. 96–517, the Department of the Air Force announces the availability of certain Air Force owned inventions. The following list of patent applications and patents are available for Nonexclusive or Exclusive Licensing from the Air Force Research Laboratory (AFRL/DE or /VS) at Kirtland AFB. Additional information concerning the inventions is available upon request.

All communications concerning this Notice should be sent to Mr. Kenneth Callahan, Patent Attorney, 377 ABW/JAN, 2251 Maxwell SE, Kirtland AFB, NM 87117, telephone no. (505) 846–1542, e-mail: callahke@plk.af.mil, or fax to (505) 846–0279.

AIR FORCE RESEARCH LABORATORY PATENTS AVAILABLE FOR LICENSING AT KIRTLAND AFB, NM

Patent Appl./No.	Title of invention
08/903,194	Bandwidth Enhancement and Broadband Noise Reduction in Injection-Locked Semiconductor Lasers.
08/910,058	Magnetic Voltage-Pulser.
08/910,538	Compact Intense Radiation System.
08/978,658	High-Efficiency Multiple-Junction Solar Cells.
08/984,309	Cryogenic Pupil Stop for Dual-Band Infrared Focal Plane Arrays.
09/078,893	Multiple Wavelength Heterodyne Array Interferometric Surface Profilometer.
09/092,608	Liquid Crystal Active Optics Correction for Large Space-Based Optical Systems.
09/098,773	Columnar Focal Lens.
09/110,520	Regulated Capacitor Charging Circuit Using a High Reactance Transformer.
09/150,636	HAN TEAN Mixing Gas Generator Propellant Tank Pressurizer for Launch Vehicles and Spacecraft.
09/169,494	Post Process Deposition Shielding for Microelectromechanical Systems.
09/169,495	Post Process Metallization Interconnects for Microelectromechanical Systems (MEMS).
09/178,876	Advanced Instrument Controller.
09/231,149	Active Edge Controlled Optical Quality Membrane Mirror.
09/237,140	Flexureless Multi-Stable Micromirrors for Optical Switching.
09/252,379	Coupled Helmholtz Resonators for Broadband Acoustic Attenuation.
5,835,545	Compact Intense Radiation System.
5,808,226	Grenade Shell Laser System.
5,774,490	Diode-Pumped Tm: YAG/HBr Four Micron Laser System.
5,773,787	Plasma Gun Voltage Generator.
5,760,496	Inverse-Pinch Voltage Pulse Generator.
5,748,657	High Efficiency Constant Current Laser Drivers.
5,742,045	Apparatus Using Diode Laser Logic to Form a Configurable Optical Gate System.
5,734,303	Microwave Waveguide Mode Converter Having a Bevel Output End.
5,727,016	Spatially Coherent Diode Laser With Lenslike Media and Feedback From Straight-Toothed Gratings.

AIR FORCE RESEARCH LABORATORY PATENTS AVAILABLE FOR LICENSING AT KIRTLAND AFB, NM—Continued

Patent Appl./No.	Title of invention
5,705,959	High Efficiency Low Distortion Amplification.
5,696,786	Solid-State Laser System.
5,694,602	Weighted System and Method for Spatial Allocation of a Parallel Load.
5,689,958	High Efficiency Thermal Electric Cooler Driver.
5,675,604	Portable Pumped Laser System.
5,658,488	Regeneration of BHP in a Plant Process.
5,656,873	Transmission Line Charging.
5,646,764	Optical Beam Scanner With Rotating Transmissive Optics.
5,629,802	Spatially Multiplexed Optical Signal Processor.
5,604,642	Laser Welding of Light-Weight Honeycomb Mirrors.
5,604,431	Integrated Grid Particle Impact Detector.
5,602,387	Method of Protecting an RF Receiver in a Hostile Electromagnetic Environment.
5,567,995	Multi-Winding Spiral Generator.
5,557,699	NLO Waveguide and Switch and Method.
5,553,629	Portable Medical Laser Pack System.
5,535,029	Spatial Light Modulator Having Amplitude Coupled With Binary Phase Mode.
5,504,578	Temporal Fringe Pattern Analysis System of a Laser Gain Media.
5,500,865	Phased Cascading of Multiple Nonlinear Optical Elements for Frequency Conversion.
5,458,043	Battery Charging Capacitors Electromagnetic Launcher.
5,457,685	Multi-Speaker Conferencing Over Narrowband Channels.
5,444,308	Nanosecond Transmission Line Charging Apparatus.
5,425,044	Compact, Burst Mode, Pulsed, High Energy, Blowdown Flow Photolytic Atomic Iodine Laser.
5,422,047	Carbonaceous Fuel Particles.
5,410,558	Variable Short Period Electron Beam Wiggler for Free Electron Lasers.
5,406,072	Method for Microbeam Ion Radiation Testing of Photonic Devices.

Carolyn A. Lunsford,
Air Force Federal Register Liaison Officer.
[FR Doc. 99–8541 Filed 4–6–99; 8:45 am]
BILLING CODE 5001–05–P

DEPARTMENT OF DEFENSE

Department of the Army

Privacy Act of 1974; System of Records

AGENCY: Department of the Army, DoD.
ACTION: Notice to amend system of records.

SUMMARY: The Department of the Army is amending a system of records notice in its existing inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on May 7, 1999, unless comments are received which result in a contrary determination.

ADDRESSES: Privacy Act Officer, Records Management Program Division, Army Records Management and Declassification Agency, ATTN: TAPC-PDD-RP, Stop C55, Ft. Belvoir, VA 22060–5576.

FOR FURTHER INFORMATION CONTACT: Ms. Janice Thornton at (703) 806–4390 or DSN 656–4390.

SUPPLEMENTARY INFORMATION: The Department of the Army systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the record system being amended are set forth below followed by the notice, as amended, published in its entirety. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: March 31, 1999.

L.M. Bynum,
Alternate OSD Federal Register Liaison Officer, Department of Defense.

A0608 TAPC

SYSTEM NAME:

Personal Affairs Files *(February 22, 1993, 58 FR 10002).*

CHANGES:

* * * * *

STORAGE:

Delete the last word 'cards' from entry.

* * * * *

SAFEGUARDS:

Add to the end of the entry 'Records are kept in secure office areas.'

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with 'Commander, U.S. Total Army Personnel Command, ATTN: TAPC-PDO-IP, 200 Stovall Street, Alexandria, VA 22332–0474.'

* * * * *

A0608 TAPC

SYSTEM NAME:

Personal Affairs Files.

SYSTEM LOCATION:

Decentralized to major commands, installations, and activities. Official mailing addresses are published as an appendix to the Army's compilation of record systems notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Army officers, warrant officers, and enlisted personnel on active duty.

CATEGORIES OF RECORDS IN THE SYSTEM:

Third party inquiries pertaining to such matters as dependent assistance, indebtedness, non-support, paternity claims, and marriage in overseas areas.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3013, Secretary of the Army and 5 U.S.C. 301, Departmental Regulations.

PURPOSE(S):

To review and answer inquiries concerning personal affairs of service members; e.g., dependent assistance, indebtedness, non-support, paternity claims, marriage in overseas areas, and similar matters that originate from third parties.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders.

RETRIEVABITY:

By service member's surname.

SAFEGUARDS:

Records are available only to designated persons having official need therefor in the performance of their duties. Records are kept in secure office areas.

RETENTION AND DISPOSAL:

Retained for 2 years.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, U.S. Total Army Personnel Command, ATTN: TAPC-PDO-IP, 200 Stovall Street, Alexandria, VA 22332–0474.

NOTIFICATION PROCEDURE:

Individuals seeking to determine if information about themselves is contained in this record system should address written inquiries to the command/installation/activity where they believe inquiry was sent.

Individual should provide the full name, current address and telephone number, and sufficient details to permit locating the record.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this record system should address written inquiries to the command/installation/activity where they believe inquiry was sent.

Individual should provide the full name, current address and telephone number, and sufficient details to permit locating the record.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From third parties, official Army records.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 99–8507 Filed 4–6–99; 8:45 am]

BILLING CODE 5001–10–F

DEPARTMENT OF ENERGY

Record of Decision For the Advanced Mixed Waste Treatment Project at the Idaho National Engineering and Environmental Laboratory

AGENCY: U. S. Department of Energy (DOE)

ACTION: Record of decision.

SUMMARY: The Department has decided to implement the Preferred Alternative identified in the Advanced Mixed Waste Treatment Project Final Environmental Impact Statement (AMWTP FEIS) (DOE/EIS–0290), dated January 1999. The decision to proceed with the construction and operation of the Advanced Mixed Waste Treatment Project (AMWTP) facility allows the U.S. Department of Energy (DOE) to treat and prepare for shipment and disposal of 65,000 cubic meters of DOE transuranic (TRU) waste, alpha-contaminated low-level mixed waste (alpha LLMW), and low-level mixed wastes (LLMW) currently stored at Idaho National Engineering and Environmental Laboratory (INEEL). Further, DOE could treat at the AMWTP up to 120,000 cubic meters of additional waste from the INEEL or other DOE sites, for a total of 185,000 cubic meters. The AMWTP facility will treat waste to meet the Waste Isolation Pilot Plant (WIPP) Waste Acceptance Criteria (WAC) and applicable requirements of the Toxic Substances Control Act (TSCA) and the Resource Conservation and Recovery Act (RCRA) Land Disposal Restrictions (LDR).

In making its decision, DOE considered several factors including the environmental analyses reported in the AMWTP FEIS, estimated costs of the alternatives reported in Advanced Mixed Waste Treatment Project Environmental Impact Statement Alternatives Cost Study, regulatory implications of the alternatives, mission, national policy, and public comments on the AMWTP Draft EIS. This Record of Decision documents the Department's decision to implement the Preferred Alternative, which provides for the greatest long-term protection of the environment with small short-term environmental impacts and health risks.

FOR FURTHER INFORMATION CONTACT: For further information on the AMWTP, the contract with BNFL Inc., or the EIS, please write or call: John Medema, AMWTP EIS Document Manager, U.S. Department of Energy, Idaho Operations Office, 850 Energy Drive, MS–1117, Idaho Falls, ID 83401, Telephone: (208) 526–1407.

For general information on DOE's National Environmental Policy Act (NEPA) process, please contact: Carol M. Borgstrom, Director, Office of NEPA Policy and Assistance (EH–42), U.S. Department of Energy, 1000 Independence Avenue, S.W., Washington, D.C. 20585, Telephone: (202) 586–4600 or leave a message at (800) 472–2756.

SUPPLEMENTARY INFORMATION:

Background

Since the mid-1940s, DOE and its predecessor agencies have generated TRU waste during the course of nuclear weapons production, nuclear material processing, and research and development activities. DOE currently defines TRU waste as waste containing alpha-emitting radionuclides with an atomic number greater than 92 and half-

lives greater than 20 years, at concentrations greater than 100 nanocuries per gram of waste. Prior to 1982, DOE considered waste containing alpha-emitting radionuclides at concentrations greater than 10 nanocuries per gram of waste to be TRU waste. Waste at INEEL that has concentrations greater than 10 nanocuries per gram but less than 100 nanocuries per gram is considered to be alpha-contaminated low-level waste, which is being managed as TRU waste. DOE has stored TRU waste and alpha-contaminated low-level waste at the INEEL since the early 1970s. Most of this waste was generated at DOE's Rocky Flats Plant near Denver, Colorado. The waste was shipped to the INEEL in drums and boxes that were retrievably stored on an asphalt pad at INEEL's Radioactive Waste Management Complex (RWMC) and covered with tarps, plywood, and soil to form an earthen-covered berm.

Approximately 95 percent of this radioactive waste is classified as mixed waste because it contains chemically hazardous waste and, therefore, is regulated under RCRA. Some of the wastes also contain polychlorinated biphenyls (PCBs), which are regulated under TSCA. These wastes (radioactive, RCRA, and TSCA wastes) are mixed together within their storage containers. DOE needs to place these wastes in a configuration that will allow for their disposal at the WIPP near Carlsbad, New Mexico, or another appropriate facility, in a manner consistent with state and federal law and in compliance with the schedule contained in the Settlement Agreement/Consent Order.

On October 17, 1995, the State of Idaho, the Department of the Navy, and DOE settled the case of the *Public Service Co. of Colorado* v. *Batt*, CV 91–0035–S–EJL (D. Idaho) (Lead Case). Certain conditions of the Settlement Agreement/Consent Order obligated DOE to:

—Commence procurement of a treatment facility at the INEEL for the treatment of TRU waste, alpha LLMW, and LLMW, and

—Execute a procurement contract for a treatment facility by June 1, 1997, complete construction of the facility by December 31, 2002, and commence operation by March 31, 2003.

A procurement contract for treatment services was awarded to BNFL Inc. on December 20, 1996. Construction and operation of the treatment facility is contingent upon DOE's completion of an EIS and issuance of a record of decision. If DOE decides not to move forward with construction and operation of the facility, the contract will be terminated.

Also, DOE negotiated the INEEL Site Treatment Plan (STP) with the State of Idaho to meet the requirements of the Federal Facility Compliance Act (FFCA). The STP includes a schedule for constructing a treatment facility(ies) for TRU waste and alpha LLMW that is consistent with the milestones in the Settlement Agreement/Consent Order.

Alternatives Considered

DOE analyzed four alternatives in the EIS, including the No Action Alternative, the Preferred Alternative, the Non-Thermal Treatment Alternative, and the Treatment and Storage Alternative. Under all four alternatives, the Department would continue with preparations at existing INEEL facilities to ship 3,100 cubic meters of TRU waste out of Idaho under the Settlement Agreement/Consent Order. The alternatives are summarized below.

Preferred Alternative

The Preferred Alternative provides for construction and operation of the AMWTP facility in accordance with DOE's contract with BNFL Inc. The AMWTP facility will treat waste to WIPP WAC, TSCA, and RCRA LDR requirements and standards, as applicable. The waste treatment processes analyzed in the Preferred Alternative are supercompaction, macroencapsulation, incineration, and microencapsulation (see Figure 1). The facility will have sufficient operating capacity to treat approximately 6,500 cubic meters of waste per year. This would accommodate the treatment of 65,000 cubic meters of INEEL waste by 2015 as required by the Settlement Agreement/Consent Order, and up to 120,000 cubic meters of additional waste from the INEEL or other DOE sites by 2033. Treatment of 65,000 cubic meters of INEEL waste would result in approximately 30,000 cubic meters (containerized volume) of waste for offsite disposal. This alternative will allow DOE to satisfy negotiated agreements and commitments and meet regulatory requirements under RCRA and TSCA.

The Preferred Alternative is consistent with DOE's planning objectives and decisions as documented in the 1995 Record of Decision for the Department of Energy Programmatic Spent Nuclear Fuel Management and Idaho National Engineering Laboratory Environmental Restoration and Waste Management Programs (60 **Federal Register** 28680, June 1, 1995). Implementation of the Preferred Alternative is also consistent with the Record of Decision for the Treatment and Storage of Transuranic Waste Pursuant to the Waste Management Programmatic Environmental Impact Statement (63 **Federal Register** 3629, January 23, 1998). In that Record of Decision, the Department decided to "develop and operate mobile and fixed facilities to characterize and prepare TRU waste for disposal at WIPP" and that "each of the DOE's sites that has, or will generate, TRU waste will, as needed, prepare and store its TRU waste on site . . . prior to disposal."

BILLING CODE 6450–01–P

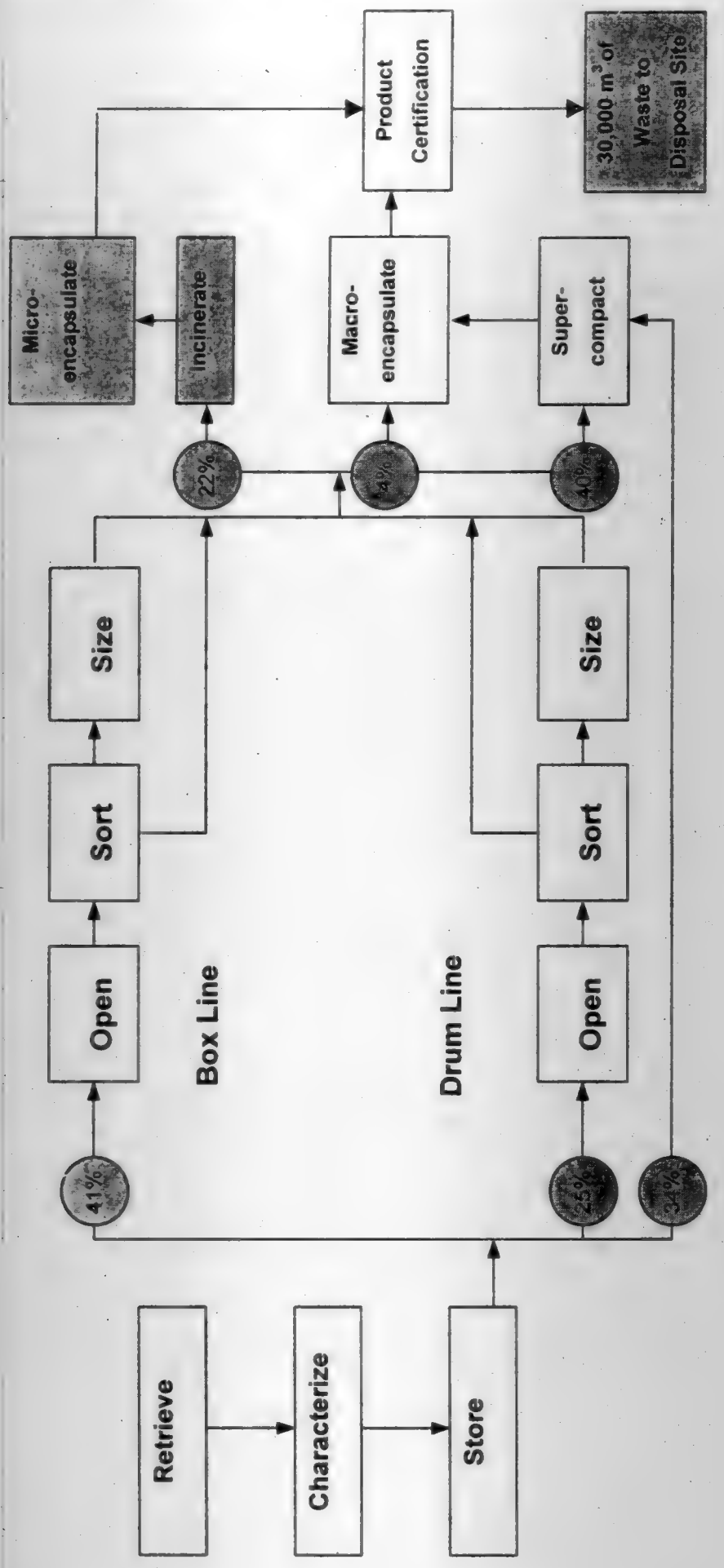

FIGURE 1. Preferred Alternative process flow-65,000[1] cubic meters of input volume.

[1]Process flow would be the same for treatment of up to 120,000 cubic meters of additional waste, if needed.

BILLING CODE 6450-01-C

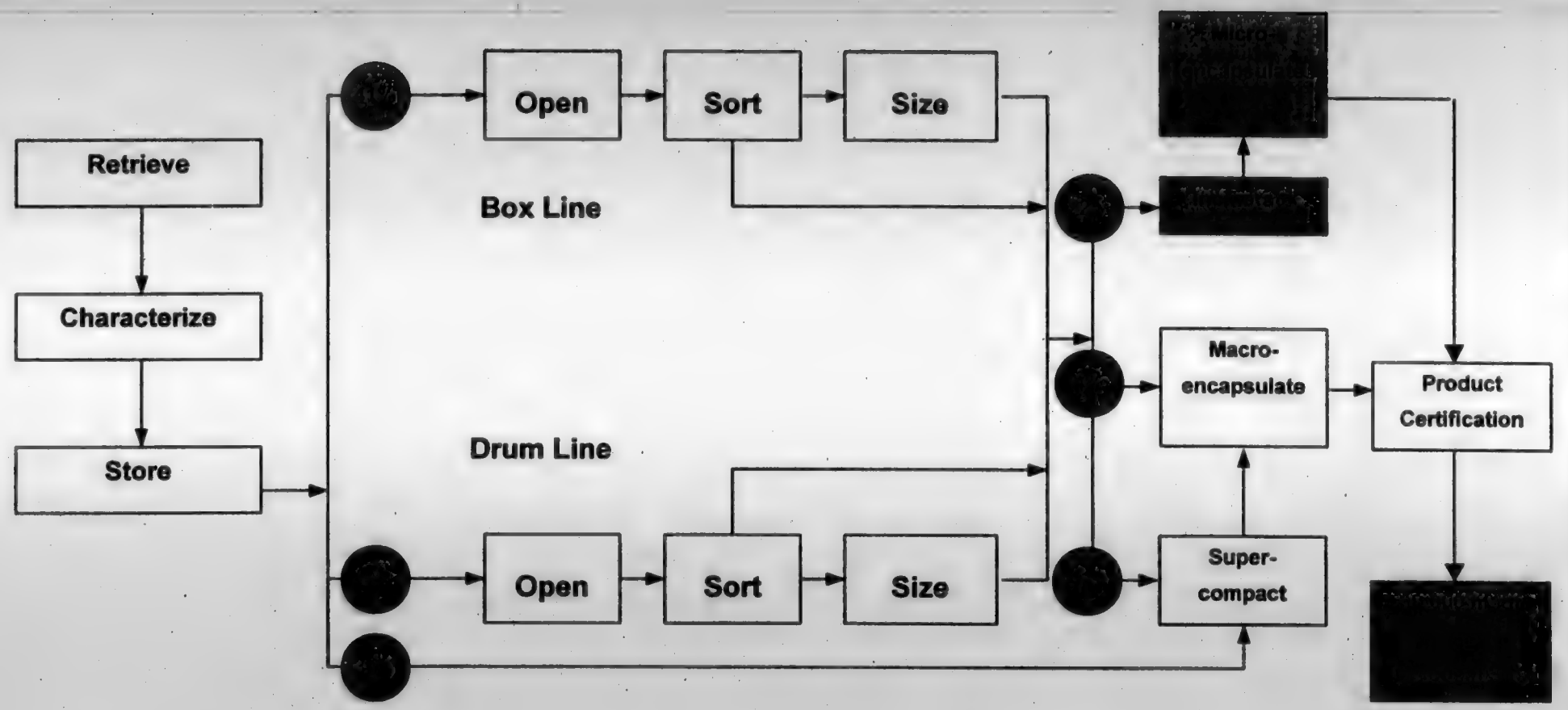

BILLING CODE 6450–01–C

FIGURE 1. Preferred Alternative process flow-65,000[1] cubic meters of input volume.

[1]Process flow would be the same for treatment of up to 120,000 cubic meters of additional waste, if needed.

No Action Alternative

Under the No Action Alternative, waste, as described in the Waste Management EIS, would be managed in accordance with the Record of Decision for the Waste Management EIS (61 FR 9133, March 7, 1996). Under the No Action Alternative, the INEEL would continue to receive and store TRU waste generated at the INEEL and at other DOE sites. These activities would be conducted in accordance with the Environmental Restoration and Waste Management Programmatic EIS (DOE/EIS–0200–F, May 1997). Under the No Action Alternative, the WIPP would not receive TRU waste, but only existing TRU waste would be stored at the INEEL. The existing facilities could not be upgraded to meet current RCRA requirements for receiving and storing TRU waste. These facilities would not meet the RWMC Settlement Agreement.

The Preferred Alternative selected by DOE is an appropriate balance between protection of the human environment, the waste management isolation requirements, and is consistent with the Specific Decision Criteria made in the ROD. The Programmatic Waste Management EIS, Engineered Alternatives Restoration Program, Advanced Mixed Waste Treatment Project, Idaho High-Level Waste and Facility Disposition, and Waste Isolation Pilot Plant Disposal Phase EISs are incorporated by reference in this EA. The Preferred Alternative is consistent with the 1995 Programmatic EIS ROD, Department of Energy decisions regarding treatment of Alpha Mixed Waste, Waste Isolation Pilot Plant Disposal Phase ROD, pending Congressional funding, and is consistent with the Settlement Agreement. Under the Preferred Alternative, the INEEL would receive TRU waste from the Programmatic Waste Management EIS, Engineered Alternatives Restoration Program, Advanced Mixed Waste Treatment Project, Idaho High-Level Waste and Facility Disposition, and Waste Isolation Pilot Plant Disposal Phase EISs are incorporated by reference in this EA. The Preferred Alternative is consistent with the 1995 Programmatic EIS ROD, Department of Energy decisions regarding treatment of Alpha Mixed Waste, Waste Isolation Pilot Plant Disposal Phase ROD, pending Congressional funding, and is consistent with the Settlement Agreement. Under the Preferred Alternative, the INEEL would receive TRU waste from the

No Action Alternative

Under this alternative, ongoing TRU waste, alpha LLMW, and LLMW management operations and projects would continue and existing facilities at the INEEL RWMC would remain in use. Waste would be retrieved from the earthen-covered berm, and placed in RCRA compliant storage facilities. These actions have been analyzed and would proceed as described in the Environmental Assessment for the Retrieval and Re-storage of Transuranic Storage Area Waste at the Idaho National Engineering Laboratory (DOE/EA–0692). Waste would be shipped to WIPP or another appropriate facility, but only as could be supported by existing INEEL facilities. Waste that could not meet the appropriate receiving facility WAC would remain in storage in the RCRA storage modules at the RWMC indefinitely.

The No Action Alternative was not selected because it would not provide appropriate long-term environmental protection (i.e., it would not destroy any of the hazardous organic components of the waste and would not permanently isolate all the wastes from the environment). The No Action Alternative would not comply with the Settlement Agreement/Consent Order, RCRA, TSCA, or with the INEEL STP, and is not consistent with long-range DOE planning and decisions DOE has made in previous Records of Decision. Specifically, in the 1995 Record of Decision Department of Energy Programmatic Spent Nuclear Fuel Management and Idaho National Engineering Laboratory Environmental Restoration and Waste Management Programs DOE decided: "The INEL will construct treatment facilities necessary to comply with the Federal Facility Compliance Act. Treatment of transuranic waste at a minimum will be for the purpose of meeting waste acceptance criteria for disposal at Waste Isolation Pilot Plant and will occur on a schedule to be negotiated with the State of Idaho." Additionally, in the 1995 Record of Decision, the Department decided to make future decisions regarding planned waste treatment projects (i.e., Private Sector Alpha-Contaminated Mixed Low-Level Waste Treatment and Idaho Waste Processing Facility) at the INEEL pending further project definition, funding priorities, or appropriate review under NEPA. The AMWTP EIS tiers from the Department of Energy Programmatic Spent Nuclear Fuel Management and Idaho National Engineering Laboratory Environmental Restoration and Waste Management Programs Final Environmental Impact Statement (DOE/EIS–0203–F) and provides both site-specific environmental impact analysis and the required NEPA review.

Non-Thermal Treatment Alternative

Under this alternative, the AMWTP facility would be constructed without the capability to incinerate waste or microencapsulate incinerator ash. Only supercompaction and macroencapsulation would be used to treat wastes. Wastes requiring thermal treatment to meet disposal criteria (e.g., PCBs) would be repackaged and stored until a treatment option is developed or identified and evaluated under NEPA. The AMWTP facility construction schedule would be the same as for the Preferred Alternative. All waste that could be treated to meet WIPP WAC without incineration would be prepared for shipment to WIPP. Operation of the facility would continue until 2015, when DOE expects the need for it to end. Under this alternative, the 65,000 cubic meters of INEEL waste would be non-thermally treated. Approximately 23,000 to 29,000 cubic meters of waste would be shipped from the INEEL for disposal and approximately 8,000 to 14,000 cubic meters of containerized waste would remain in storage indefinitely at the RWMC.

DOE considers this alternative to be less desirable than the Preferred Alternative because it would not result in destruction of any of the hazardous organic components of the waste or the PCBs, and some waste would be stored indefinitely at INEEL. The Non-Thermal Treatment Alternative would not allow full compliance with the Settlement Agreement/Consent Order, RCRA, or with the INEEL STP. This alternative would not be consistent with DOE long-range plans or with decisions made in the 1995 Record of Decision regarding the construction at INEEL of treatment facilities necessary to comply with the FFCA STP.

Treatment and Storage Alternative

Under this alternative, the AMWTP construction and operation, including the treatment processes implemented, would be the same as for the Preferred Alternative. The difference is that the treated waste (approximately 30,000 cubic meters) would be stored at the RWMC rather than shipped offsite for disposal. This alternative was evaluated as a contingency to analyze the long-term environmental impacts of storing the treated waste at the RWMC in the event that WIPP or another appropriate offsite facility is unable to receive or dispose of INEEL treated waste. Waste from other DOE sites could still come to the AMWTP for treatment. In accordance with the INEEL STP, such offsite wastes would be accepted at the AMWTP facility for treatment and treated waste would be returned to the generator.

The Treatment and Storage Alternative is less desirable than the Preferred Alternative because (1) it would not comply with the Settlement Agreement/Consent Order (i.e., waste would not be shipped out of Idaho) and (2) it is not consistent with DOE's long-range plans to dispose of this waste.

Environmentally Preferable Alternative

In identifying the Environmentally Preferable Alternative, DOE considered both near-term and long-term human health and environmental impacts. Certain alternatives would result in smaller near-term potential impacts but continued potential for long-term impacts, while other alternatives would result in larger near-term potential impacts but smaller long-term potential impacts.

The AMWTP EIS analyzed a number of potential environmental impacts, including those to human health, air and water, ecological resources, environmental justice, land use, and site infrastructure under each of the alternatives. The analysis showed little difference in potential impacts among the alternatives analyzed. Nonetheless, all potential impacts identified were considered in DOE's decision, and in the identification of the Environmentally Preferable Alternative.

For the projected 30-year period of AMWTP facility operations analyzed in the EIS, the short-term potential environmental impacts of the action alternatives would be slightly greater than the No Action Alternative. In the long-term, the potential impacts to health and the environment would be the greatest under the No Action Alternative. Over the long-term wastes could be released to the environment if the storage containers degrade. Additionally, it is reasonable to expect that some treatment or preparation for disposal will still be needed at some time in the future, and the risks associated with long-term storage and the loss of institutional control remain.

The Preferred Alternative and the Treatment and Storage Alternative would result in the largest (although small) potential near-term impacts to air quality, public health and worker risk. Both the Preferred Alternative and the Treatment and Storage Alternative would render all the waste suitable for disposal at WIPP or another appropriate facility. The Preferred Alternative

would result in the least potential long-term impacts to the local environment because the treated waste would leave the INEEL.

The Non-Thermal Treatment Alternative would result in smaller near-term potential impacts to air quality than the Preferred Alternative and the Treatment and Storage Alternative, but more than the No Action Alternative. Under the Non-Thermal Treatment Alternative, there would be less potential health risk over the short term, but a portion of the RCRA waste (i.e., hazardous organic wastes) and all of the PCB waste would remain in storage at the INEEL indefinitely. The long-term potential impacts of indefinite storage under the Non-Thermal Treatment Alternative are smaller than the No Action Alternative but larger than the Preferred Alternative. If the wastes were not isolated from the environment in a disposal facility, they could enter the environment and impact public health and the environment via the air or groundwater pathways.

In conclusion, the potential short-term environmental impacts from any of the action alternatives are small. The Preferred Alternative results in the least long-term potential impacts and is the only alternative that meets all regulatory and legal commitments. In addition, the Preferred Alternative is also consistent with DOE's long-range plans to dispose of this waste. DOE therefore believes that the Preferred Alternative is the Environmentally Preferable Alternative.

Mitigation

DOE is committed to operating the INEEL in compliance with all applicable laws, regulations, executive orders, departmental orders, permits and compliance agreements. Volume 1, Section 5.19 of the AMWTP EIS presents an overview of the mitigation measures that will be taken to minimize the risks associated with the construction and operation of the proposed AMWTP facility (e.g., watering of soil for dust control, strong "Stop Work" stipulations in the event that cultural resources or human remains are discovered, and runoff control). DOE considers these to be routine mitigation measures that do not require a mitigation action plan to be prepared (see 10 CFR 1021.331(a)).

Decision

DOE selects the Preferred Alternative of the AMWTP EIS (construct and operate an AMWTP facility at the INEEL in accordance with DOE's contract with BNFL Inc). DOE will treat 65,000 cubic meters of INEEL waste for offsite disposal and could treat up to 120,000 cubic meters of additional waste from the INEEL or other DOE sites.

DOE anticipates that construction of the AMWTP facility will begin during the 1999 construction season. Under the Settlement Agreement/Consent Order, construction of the AMWTP facility will be completed by December 31, 2002, and operation of the facility will begin by March 31, 2003.

The AMWTP treatment contract requires 65 percent volume reduction and compliance with RCRA LDR standards, TSCA requirements, and the WIPP WAC, as applicable. The facility and equipment will be capable of processing up to 85,000 cubic meters of waste in the first 13 years of operation. The Preferred Alternative as analyzed in the EIS includes the treatment processes of supercompaction, macroencapsulation, incineration, and microencapsulation. The potential exists that not all of these treatment processes will be used because future changes in disposal requirements might necessitate changes in treatment processes, with resulting modifications to contract specifications. Other changes or substitutions to the proposed processes may occur, provided the performance requirements specified in the contract are met. For example, although vitrification originally was analyzed in the EIS for the treatment of incinerator ash, it is no longer being considered as a treatment process. Any proposed substitution or major change in a treatment process would be evaluated where appropriate under NEPA.

DOE made this decision after considering the following factors associated with the Preferred Alternative:

- public comments on the EIS;
- a small potential for short-term environmental impacts;
- a waste form that will be ready for disposal at WIPP or another appropriate disposal facility;
- if WIPP or another appropriate disposal facility is unable to receive and dispose of INEEL waste, the treated waste will be in a form that would minimize potential impacts to the public and the environment during storage;
- consistency with DOE policy and previous decisions;
- compliance with negotiated agreements and commitments (e.g. Settlement Agreement/Consent Order) and regulatory requirements under RCRA and TSCA;
- smallest long-term potential impacts from continued management of this waste;
- cost effectiveness as shown in the AMWTP EIS Alternatives Cost Study; and
- use of commercially available, proven technologies.

After consideration of all relevant information and data, DOE has decided to implement the Preferred Alternative.

Issued in Washington, D.C. this 22nd day of March 1999.

James M. Owendoff,

Acting Assistant Secretary for Environmental Management.

[FR Doc. 99–8606 Filed 4–6–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC99–57–000]

AES Eastern Energy, L.P., AEE 2, L.L.C.; Notice of Filing

April 1, 1999.

Take notice that on March 26, 1999, AES Eastern Energy, L.P. and AEE 2, L.L.C. tendered for filing an application under Section 203 of the Federal Power Act for authorization to further transfer certain jurisdictional facilities associated with the sale of two of six coal-fired plants located in New York State and currently owned by NGE Generation, Inc. The two plants will be transferred to a wholly-owned subsidiary of AES Eastern Energy, L.P., AEE 2, L.L.C., rather than held by it directly, as previously authorized by the Commission.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before April 8, 1999. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://

www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson,

Acting Secretary.

[FR Doc. 99–8520 Filed 4–6–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. EC98–40–000; ER98–2770–000; and ER98–2786–000]

American Electric Power Company and Central and South West Corporation; Notice of Informal Settlement Conference

April 1, 1999.

Take Notice that an informal settlement conference will be convened in this proceeding commencing at 9:00 a.m. on Tuesday, April 13, 1999 at the offices of the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, for the purpose of exploring the possible settlement in the above-referenced dockets.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined by 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, please contact James A: Pepper at (202) 208–0556, Charles F. Reusch at (202) 208–0401, Edith A. Gilmore at (202) 208–2158, or Gary D. Levenson at (202) 208–1210.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–8522 Filed 4–6–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP95–408–026]

Columbia Gas Transmission Corporation; Notice of Refund Report

April 1, 1999.

Take notice that on March 22, 1999, Columbia Gas Transmission Corporation (Columbia) tendered for filing with the Federal Energy Regulatory Commission its Refund Report made to comply with the November 22, 1996 Settlement in Docket No. RP95–408, *et al.* as approved by the Commission on April 17, 1997.

On February 20, 1999, Columbia made refunds, as billing credits, in the amount of $137,801.69. The credits represent a deferred tax refund based on the sale of certain gathering facilities to Columbia Natural Resources. These refunds were made pursuant to Stipulation II, Article III, Section G(2) of the Settlement.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before April 8, 1999. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–8525 Filed 4–6–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–373–016]

Koch Gateway Pipeline Company; Notice of Filing of Refund Report

April 1, 1999.

Take notice that on March 29, 1999, Koch Gateway Pipeline Company (Koch) tendered for filing its Refund Report and supporting narrative in accordance with the Commission's Order issued in Docket No. RP97–373 on August 3, 1998, 84 FERC ¶ 61,142 (1998).

The August 3, 1998 order directed Koch to refund to customers charged a rate in excess of the maximum settlement rates during the period December 1, 1997 through August 31, 1998.

Koch states that copies of the filing have been served upon all reflected customers, state commissions and all parties on the official service list.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before April 8, 1999. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–8526 Filed 4–6–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–404–004]

Mississippi River Transmission Corporation; Notice of Compliance Filing

April 1, 1999.

Take notice that on March 29,1999, Mississippi River Transmission Corporation (MRT) tendered for filing as part of its Gas Tariff, Third Revised Volume No. 1, the following revised tariff sheets to become effective March 17, 1999:

2nd Sub Third Rev. Sheet No. 99
3rd Sub Original Sheet No. 99A
3rd Sub Original Sheet No. 99B
3rd Sub Original Sheet No. 99C
3rd Sub Original Sheet No. 99D
3rd Sub Original Sheet No. 99E
Substitute Original Sheet No. 99F
Substitute Original Sheet No. 99G

MRT states that the purpose of this filing is to comply with the Commission's Order Accepting Tariff Sheets, Subject to Conditions, and Denying Rehearing issued on March 16, 1999. These tariff sheets set forth the method MRT will use to allocate firm capacity that become available for subscription on MRT's system.

MRT states that a copy of this filing is being mailed to each of MRT's customers and to the state commissions of Arkansas, Illinois, and Missouri.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make

protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–8527 Filed 4–6–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. SA99–16–000]

The Montana Power Company; Notice of Petition for Adjustment and Rate Ejection

April 1, 1999.

Take notice that on March 19, 1999, The Montana Power Company (MPC) filed a petition for adjustment and notice of rate election pursuant to Section 284.123(b)(1)(ii) of the Commission's regulations. MPC requests waiver of the rate petition filing required by the Commission's November 3, 1997 order [81 FERC ¶ 61,156 (1997)], and permission to switch from its Commission-approved rate for Section 311 interruptible transportation (IT) service to its city-gate rate of $0.2480 per Dkt for comparable IT service.

MPC is a Hinshaw pipeline organized under the laws of the State of Montana and subject to the jurisdiction of the Montana Public Service Commission. Montana states that is request to use a state-approved rate for interstate IT service is consistent with its current use of a city-gate rate for Section 311 firm transportation and interruptible storage services.

Any person desiring to participate in this rate proceeding must file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules of Practice and Procedures. All such motions or protests must be filed with the Secretary of the Commission on or before April 15, 1999. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make Protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this application are on file with the Commission and are available for public inspection. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–8528 Filed 4–6–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–276–000]

Northern Natural Gas Company; Notice of Request Under Blanket Authorization

April 1, 1999.

Take notice that on March 29, 1999, Northern Natural Gas Company (Northern), 1111 South 103rd Street, Omaha, Nebraska 68124–1000, filed in Docket No. CP99–276–000 a request pursuant to sections 157.205, 157.212, and 157.216, of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212, 157.216) for authorization to upgrade an existing delivery point in Stearns County, Minnesota under Northern's blanket certificate issued in Docket No. CP82–401–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Northern states that it proposes to upgrade the delivery point to accommodate natural gas deliveries to Northern States Power—Minnesota (NSP–MN) under currently effective throughput service agreements. Northern states that NSP–MN has requested the upgrade of the existing delivery point to provide increased natural gas service to the St. Cloud #2 town border station to meet 1999 Peak Day 2000 requirements. Northern states that the estimated incremental volumes proposed to be delivered to NSP–MN at the delivery point is 807 MMBtu on a peak day and 254,347 MMBtu on an annual basis. Northern states that the estimated cost to upgrade the delivery point is $24,000.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–8523 Filed 4–6–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–277–000]

Northwest Pipeline Corporation; Notice of Application

April 1, 1999.

Take notice that on March 30, 1999, Northwest Pipeline Corporation (Applicant), 295 Chipeta Way, Salt Lake City, Utah, 84158, filed in Docket No. CP99–277–000 an application pursuant to Sections 7(b) and 7(c) of the Natural Gas Act, as amended, and Subpart F of the Regulations of the Federal Energy Regulatory Commission's (Commission) thereunder, for permission and approval to: (1) Construct and operate 2,200 feet of relocated 26-inch mainline and the permanent operation of an emergency mainline block valve located near North Bonneville, Skamania County, Washington; and (2) abandon in place approximately 1,391 feet of the replaced 26-inch mainline, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that the total estimated cost to construct the proposed facilities and abandon the replaced facilities is approximately $2,636,000.

Any person desiring to be heard or to make any protest with reference to said application should on or before April 8, 1999, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding.

Any person wishing to become a party to the proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, and if the Commission on its own review of the matter finds that the abandonment is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provide for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–8519 Filed 4–6–99; 8:45 am]

BILLING CODE 6717–01–M

UNITED STATES OF AMERICA

Federal Energy Regulatory Commission

[Docket No. ER99–540–001, et al.]

Pacific Gas and Electric Company, et al.; Electric Rate and Corporate Regulation Filings

March 30, 1999.

Take notice that the following filings have been made with the Commission:

1. Pacific Gas and Electric Company

[Docket No. ER99–540–001]

Take notice that on March 25, 1999, Pacific Gas and Electric Company (PG&E), tendered for filing an amendment between PG&E, Western Area Power Administration (Western) and the United States of America, Department of Energy, Oakland Operations Office (DOE/OAK) (collectively, Parties), called "Amendment to the Settlement for Power Delivery to the United States Department of Energy Laboratories" (Amendment).

On November 6, 1998, PG&E submitted the "Settlement Agreement for Power Delivery to the United States Department of Energy Laboratories" (Agreement) to the Federal Energy Regulatory Commission (FERC) for filing and acceptance. In a January 13, 1999 letter (Compliance Letter) the FERC directed PG&E to, within 15 days, revise the Agreement by "remov[ing] the retail rate adders and the charge for local distribution services". The Parties sought and were granted two extensions to file the Compliance letter revisions. This Amendment is intended to implement the Compliance Letter revisions.

Copies of this filing have been served upon DOE/OAK, Western and the California Public Utilities Commission.

Comment date: April 14, 1999, in accordance with Standard Paragraph E at the end of this notice.

2. Elwood Marketing, LLC

[Docket No. ER99–1465–001]

Take notice that on March 25, 1999, Elwood Marketing, LLC tendered for filing a revised code of conduct in compliance with the order issued by the Commission on March 12, 1999 in the above captioned docket. Elwood Marketing, LLC, 86 FERC] 61,269 (1999).

Comment date: April 14, 1999, in accordance with Standard Paragraph E at the end of this notice.

3. Illinois Power Company

[Docket No. ER99–1650–000]

Take notice that on March 25, 1999, Illinois Power Company tendered for filing a response to the deficiency letter issued by the Director, Division of Rate Applications, Office of Electric Power Regulation in this docket on March 22, 1999.

Comment date: April 14, 1999, in accordance with Standard Paragraph E at the end of this notice.

4. Avista Corporation

[Docket No. ER99–2253–000]

Take notice that on March 25, 1999, Avista Corporation, tendered for filing with the Federal Energy Regulatory Commission pursuant to 18 CFR Section 35.13, an executed Mutual Netting Agreement allowing for arrangements of amounts which become due and owing to one Party to be set off against amounts which are due and owing to the other Party with American Electric Power.

Avista Corporation requests waiver of the prior notice requirement and requests an effective date of March 1, 1999.

Comment date: April 14, 1999, in accordance with Standard Paragraph E at the end of this notice.

5. UAE Lowell Power LLC

[Docket No. ER99–2255–000]

Take notice that on March 25, 1999, UAE Lowell Power LLC (ULP), tendered for filing an application for waivers and blanket approvals under various regulations of the Commission and for an order accepting ULP's FERC Electric Rate Schedule No. 2 to be effective on May 1, 1999, or on the date ULP's acquisition of the UAE Lowell Power Facility, a generation facility in Massachusetts closes.

Under its Rate Schedule No. 2, ULP intends to sell ancillary services generated by the Facility into the NEPOOL ancillary services markets.

Comment date: April 14, 1999, in accordance with Standard Paragraph E at the end of this notice.

6. Moreau Manufacturing Corporation

[Docket No. ER99–2256–000]

Take notice that on March 25, 1999, Moreau Manufacturing Corporation tendered for filing an amendment to its Unit Power Sales agreement with Niagara Mohawk Power Corporation.

Comment date: April 14, 1999, in accordance with Standard Paragraph E at the end of this notice.

7. Southwest Power Pool

[Docket No. ER99–2257–000]

Take notice that on March 25, 1999, Southwest Power Pool (SPP), tendered for filing an Agreement for Capacity and Energy Services in Southwest Power Pool (Agreement).

SPP states that the Agreement is intended to allow each party to the Agreement to call on other parties to provide capacity and energy when needed.

SPP requests waiver of the 60 days notice requirement of Section 35.3 of the Commission's Regulation, 18 CFR 35.3, to allow an effective date of May 1, 1999, for the filing.

Comment date: April 14, 1999, in accordance with Standard Paragraph E at the end of this notice.

8. Niagara Mohawk Power Corporation

[Docket No. ER99–2258–000]

Take notice that on March 25, 1999, Niagara Mohawk Power Corporation tendered for filing notice that effective the March 15, 1999, Rate Schedule FERC No. 184, effective date January 1, 1988, and filed with the Federal Energy Regulatory Commission by Niagara Mohawk Power Corporation is to be canceled.

Notice of the proposed cancellation has been served upon Moreau Manufacturing Corporation and Finch, Pruyn & Company, Incorporated.

Comment date: April 14, 1999, in accordance with Standard Paragraph E at the end of this notice.

9. Select Energy, Inc.

[Docket No. ER99–2259–000]

Take notice that on March 25, 1999, Select Energy, Inc. (Select), tendered for filing a long-term market based wholesale power contract with Georgetown Municipal Light Department, pursuant to Select's market-based rate authorization.

Select requests an effective date of March 1, 1999.

Copies of the filing were served upon Georgetown Municipal Light Department and the Massachusetts Department of Telecommunications and Energy.

Comment date: April 14, 1999, in accordance with Standard Paragraph E at the end of this notice.

10. Arizona Public Service Company

[Docket No. ER99–2260–000]

Take notice that on March 25, 1999, Arizona Public Service Company (APS), tendered for filing Umbrella Service Agreements to provide Short-Term Firm Point-to-Point Transmission Service to PG&E Energy Trading—Power, L.P., and Short-Term Firm and Non-Firm Point-to-Point Transmission Service to Mieco, Inc., under APS' Open Access Transmission Tariff.

A copy of this filing has been served on PG&E Energy Trading—Power, L.P., Mieco, Inc., and the Arizona Corporation Commission.

Comment date: April 14, 1999, in accordance with Standard Paragraph E at the end of this notice.

11. Consolidated Edison Company Of New York, Inc.

[Docket No. ER99–2261–000]

Take notice that on March 25, 1999, Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing a service agreement to provide firm transmission service pursuant to its Open Access Transmission Tariff to PP&L Energy Marketing Center (PP&L).

Con Edison states that a copy of this filing has been served by mail upon PP&L.

Comment date: April 14, 1999, in accordance with Standard Paragraph E at the end of this notice.

12. Consolidated Edison Company Of New York, Inc.

[Docket No. ER99–2262–0000]

Take notice that on March 25, 1999 Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing a service agreement to provide firm transmission service pursuant to its Open Access Transmission Tariff to the New York Power Authority (NYPA).

Con Edison states that a copy of this filing has been served by mail upon NYPA.

Comment date: April 14, 1999, in accordance with Standard Paragraph E at the end of this notice.

13. Wisconsin Electric Power Company

[Docket No. ER99–2263–000]

Take notice that on March 25, 1999, Wisconsin Electric Power Company (Wisconsin Electric), tendered for filing electric service agreements under its Market Rate Sales Tariff (FERC Electric Tariff, Original Volume No. 8) and its Coordination Sales Tariff (FERC Electric Tariff, Original Volume No. 2) with DukeSolutions, Inc.

Wisconsin Electric respectfully requests an effective date of March 24, 1999, to allow for economic transactions.

Copies of the filing have been served on DukeSolutions, Inc., the Michigan Public Service Commission, and the Public Service Commission of Wisconsin.

Comment date: April 14, 1999, in accordance with Standard Paragraph E at the end of this notice.

14. Northeast Utilities Service Company

[Docket No. ER99–2264–000]

Take notice that on March 25, 1999, Northeast Utilities Service Company (NUSCO) on behalf of its affiliates, The Connecticut Light and Power Company, Western Massachusetts Electric Company, Holyoke Water Power Company, Holyoke Power and Electric Company, and Public Service Company of New Hampshire, tendered for filing a Service Agreement with H.Q. Energy Services (U.S.) Inc., under the NU System Companies' Sale for Resale, Tariff No. 7.

NUSCO requests an effective date of March 25, 1999, or such other earliest date as permitted by the Commission.

NUSCO states that a copy of this filing was mailed to HQ Energy Services (U.S.) Inc.

Comment date: April 14, 1999, in accordance with Standard Paragraph E at the end of this notice.

15. Central Illinois Light Company

[Docket No. ER99–2265–000]

Take notice that on March 25, 1999, Central Illinois Light Company (CILCO), 300 Liberty Street, Peoria, Illinois 61602, tendered for filing with the Commission a substitute Index of Point-To-Point Transmission Service Customers under its Open Access Transmission Tariff and service agreements with three new customers, PG&E Energy Trading-Power, L.P., Alliant Energy Industrial Services, Inc., and DukeSolutions, Inc.

CILCO requested an effective date of March 22, 1999.

Copies of the filing were served on the affected customers and the Illinois Commerce Commission.

Comment date: April 14, 1999, in accordance with Standard Paragraph E at the end of this notice.

16. Moreau Manufacturing Corporation

[Docket No. ER99–2266–000]

Take notice that on March 25, 1999, Moreau Manufacturing Corporation tendered for filing an amendment to its Unit Power Sales agreement with Niagara Mohawk Power Corporation.

Moreau requests waiver of the requirement for sixty days advance notice and a retroactive effective date of January 1, 1988.

Comment date: April 14, 1999, in accordance with Standard Paragraph E at the end of this notice.

17. Public Service Company of New Mexico

[Docket No. ER99–2267–000]

Take notice that on March 25, 1999, Public Service Company of New Mexico (PNM), tendered for filing executed service agreements, for point-to-point transmission service under the terms of PNM's Open Access Transmission Service Tariff, with Colorado River Storage Project Customer Service Center of Western Area Power Administration (2 agreements, dated March 23, 1999, for Non-Firm and Short-Term Firm Service).

PNM's filing is available for public inspection at its offices in Albuquerque, New Mexico.

Comment date: April 14, 1999, in accordance with Standard Paragraph E at the end of this notice.

18. Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power)

[Docket No. ER99–2270–000]

Take notice that on March 25, 1999, Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power), tendered for filing unexecuted network integration transmission service and network operating agreements for Monongahela Power Company's wholesale customers the City of Philippi, Harrison Rural Electrification Association and the City of New Martinsville.

The effective date for each agreement corresponds to the dates authorized by the Commission in Docket No. ER99–1141–000.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission, and all parties of record.

Comment date: April 14, 1999, in accordance with Standard Paragraph E at the end of this notice.

19. Avista Corporation

[Docket No. ER99–2254–000]

Take notice that on March 25, 1999, Avista Corporation tendered for filing with the Federal Energy Regulatory Commission pursuant to 18 CFR Section 35.13, an executed Mutual Netting Agreement allowing for arrangements of amounts which become due and owing to one Party to be set off against amounts which are due and owing to the other Party with Merchant Energy Group of the Americas, Inc.

Avista Corporation requests waiver of the prior notice requirement and requests an effective date of March 1, 1999.

Comment date: April 14, 1999, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers

Secretary.

[FR Doc. 99–8583 Filed 4–6–99; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–241–000]

ANR Pipeline Company; Notice of Intent To Prepare in Environmental Assessment for the Project and Request for Comments on Environmental Issues

April 1, 1999.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the Wisconsin Expansion Project Construction and operation of facilities by ANR Pipeline Company (ANR) in Kendall and McHenry Counties, Illinois and Waupaca and Rock Counties, Wisconsin.[1] These facilities would consist of about 3.11 miles of 16-inch and 42-inch-diameter pipeline, and 23,000 horsepower (hp) of compression. This EA will be used by the Commission in its decisionmaking process to determine whether the projects is in the public convenience and necessity. The application and other supplemental filings in this docket are available for viewing on the FERC Internet website (www.ferc.fed.us). Click on the "RIMS" link, select "Docket #" from the RIMS Menu, and follow the instructions.

Similarly, the "CIPS" link on the FERC Internet website provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings. From the FERC Internet website, click on the "CIPS" link, select "Docket #" from the CIPS menu, and follow the instructions.

If you are a landowner receiving this notice, you may be contacted by a pipeline company representative about the acquisition of any easement to construct, operate, and maintain the proposed facilities. The pipeline company would seek to negotiate a mutually acceptable agreements. However, if the project is approved by the Commission, that approval conveys with it the right of eminent domain. Therefore, it easement negotiations fail to produce an agreement, the pipeline company could initiate condemnation proceedings in accordance with state law. A fact sheet addressing a number of typically asked questions, including the use of eminent domain, is attached to this notice as appendix 1.[2]

[1] ANR's application was filed with the Commission under Section 7 of the Natural Gas Act and Part 157 of the Commission's regulations.

Summary of the Proposed Project

ANR want to install certain additional loop pipeline and expand the capacity of its facilities in Illinois and Wisconsin to increase its transmission capacity by up to 194 million Decatherms per day of natural gas between the ANR Joliet Hub and its Wisconsin market area. ANR seeks authority to construct and operate:

- About 3.0 miles of 42-inch-diameter pipeline loop at its Michigan Leg South System in Kendall County, Illinois;
- Two 10,000-horsepower (ph) compressor units at its existing Woodstock Compressor Station in McHenry County, Illinois;
- One 1,500-hp compressor unit at its existing Weyauwega Compressor Station in Waupaca County, Wisconsin;
- About 0.11 mile of 16-inch-diameter pipeline from the Weyauwega Compressor Station to ANR's Marinette Junction tap site on its existing 24-inch-diameter mainline in Waupaca County, Wisconsin; and
- One 1,500-hp compressor unit at its existing Janesville Compressor Station in Rock County, Wisconsin and minor related facilities.

The location of the project facilities is shown in appendix 1.[2]

Land Requirement for Construction

Construction of the proposed facilities would require about 57.4 acres of land. Following construction, about 42.9 acres would be maintained as permanent right-of-way. The remaining 14.5 acres of land would be restored and allowed to revert to its former use. All construction at ANR's Woodstock Compressor Station in McHenry County, Illinois and its Janesville Compressor Station in Rock County, Wisconsin would occur within each locations' 20-acre site.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us to discover and address concerns the public may have about proposals. We call this "scoping". The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of

[2] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies are available from the Commission's Public Reference and Files Maintenance Branch, 888 First Street, N.E., Washington, D.C. 20426, or call (202) 208–1371. Copies of the appendices were sent to all those receiving this notice in the mail.

Intent, the Commission requests public comments on the scope of the issues it will address in the EA. All comments received are considered during the preparation of the EA. State and local government representatives are encouraged to notify their constitutents of this proposed action and encourage them to comment on their areas of concern.

The EA will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- Geology and soils
- Water resources, fisheries, and wetlands
- Vegetation and wildlife
- Air quality and noise
- Land use
- Endangered and threatened species
- Public safety
- Cultural resources

We will also evaluate possible alternatives to the proposed project or portions of the projects, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to Federal, State, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we make our recommendations to the Commission.

To ensure your comments are considered, please carefully follow the instructions in the public participation section on page 4 of this notice.

Currently Identified Environmental Issues

We have already identified several issues that we think deserve attention based on the preliminary review of the proposed facilities and the environmental information provided by ANR. This preliminary list of issues may be changed based on your comments and our analysis.

- Two federally listed endangered or threatened species may occur in the proposed project area.
- Noise levels around the compressor stations would increase.
- Effects of construction and operation of the proposed facilities on near-by residences.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the project. By becoming a commentor, your concerns will be addressed in the EA and considered by the Commission. You should focus on the potential environmental effects of the proposal, alternatives to the proposal, and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Send two copies of your letter to: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First St., N.E., Room 1A, Washington, DC 20416;
- Label one copy of the comments for the attention of the Environmental Review and Compliance Branch, PR–11.1;
- Reference Docket No. CP99–241–000; and
- Mail your comments so that they will be received in Washington, DC on or before May 3, 1999.

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding known as an "intervenor". Intervenors play a more formal role in the process. Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must provide 14 copies of its filing to the Secretary of the Commission and must send a copy of its filings to all other parties on the Commission's service list for this proceeding. If you want to become an intervenor you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) (see appendix 3). Only intervenors have the right to seek rehearing of the Commission's decision.

You do not need intervenor status to have your environmental comments considered. Additional information about the proposed project is available from Mr. Paul McKee of the Commission's Office of External Affairs at (202) 208–1088 or on the FERC website (www.ferc.fed.us) using the "RIMS" link to information in this docket number. For assistance with access to RIMS, the RIMS helpline can be reached at (202) 208–2222. Access to the texts of formal documents issued by the Commission with regard to this docket, such as orders and notices, is also available on the FERC website using the "CIPS" link. For assistance with access to CIPS, the CIPS helpline can be reached at (202) 208–2474.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–8521 Filed 4–6–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 1991–009, Idaho]

City of Bonners Ferry; Notice of Availability of Final Environmental Assessment

April 1, 1999.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for a new license for the Moyie River Hydroelectric Project. The project is located near Moyie Springs, in Boundary County, Idaho.

On September 15, 1998, the Commission staff issued a draft environmental assessment (DEA) for the project and requested that comments be filed with the Commission within 30 days. Comments on the DEA were filed and are addressed in the final environmental assessment (FEA) for the project.

The FEA contains the staff's analysis of the potential environmental impacts of the project and concludes that licensing the project, with appropriate environmental protective measures, would not constitute a major federal action that would significantly affect the quality of the human environment.

Copies of the FEA are available for review in the Public Reference Room, Room 2A, of the Commission's offices at 888 First Street, NE., Washington, DC 20426. The EA may also be viewed on the web at http://www.ferc.fed.us/online/rims.htm (please call (202) 208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–8585 Filed 4–6–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Scoping Meetings and Site Visit and Soliciting Scoping Comments

April 1, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Major New License.

b. *Project No.:* P–2661–012.

c. *Date filed:* September 24, 1998.

d. *Applicant:* Pacific Gas and Electric Company.

e. *Name of Project:* Hat Creek Hydroelectric Project.

f. *Location:* On Hat Creek in Shasta County, California. About 6.57 acres of the project occupy lands of the U.S. Forest Service, Shasta National Forest.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Terry Morford, Manager, Hydro Generation, Pacific Gas and Electric Company, P.O. Box 770000, N11C, San Francisco, California 94177, (415) 973–4603.

i. *FERC Contact:* David Turner, David.Turner@FERC.FED.US, (202) 219–2844.

j. *Deadline for filing scoping comments:* June 7, 1999:

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules of Practice and Procedures require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Status of Environmental Analysis:* This application is not ready for environmental analysis at this time.

l. *Description of Project:* The run-of-river project consists of two developments: Hat Creek No. 1 and Hat Creek No. 2.

Hat Creek No. 1 consists of: (1) A 12-foot-high, 231-foot-long concrete buttress overflow diversion dam impounding a 13-acre reservoir at a water surface elevation of 3,188 feet (referred to as Cassel Pond); (2) a 2,270-foot-long, 9-foot-deep, 30-foot-wide canal with a hydraulic capacity of about 600 cfs; (3) a 14-foot-high, 750-foot-long shotcreted earthfill forebay with an overflow spillway, having a surface area of about 2 acres; (4) a 1,600-foot-long, riveted steel penstock that varies in inside diameter from 12 feet at the intake to 7 feet-six inches at the powerhouse; (5) a 43 foot by 56.5 foot reinforced concrete powerhouse containing a Francis/Vertical shaft turbine with a generating capacity of 10,000 kilowatt (kW).

Hat Creek No. 2 consists of: (1) Crystal Lake, a natural lake with a surface area of 115 acres at a water surface elevation of 2,980 feet: (2) a 29-foot-high, 120-foot-long concrete gravity overflow diversion dam impounding an 89-acre reservoir at a water surface elevation of 2,975 feet (referred to as Baum Lake); (3) a 4,520 foot-long, 7-foot-deep, 18-foot-wide reinforced concrete flume, with a hydraulic capacity of 600 cfs; (4) a 414-foot-long riveted steel penstock with an inside diameter varying from 14 feet at the intake to 7 feet-six inches at the powerhouse; and (5) a 43 foot by 56.5 foot reinforced concrete powerhouse containing a Francis/Vertical shaft turbine with a generating capacity of 10,000 kW.

m. *Locations of Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, D.C. 20426, or by calling (202) 208–1371. This filing may be viewed on http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

n. *Scoping Process:* The Commission intends to prepare an Environmental Assessment (EA) on the project in accordance the National Environmental Policy Act. The EA will consider both site-specific and cumulative environmental impacts and reasonable alternatives to the proposed action.

Scoping Meetings

The Commission will hold scoping meetings, one in the daytime and one in the evening, to help us identify the scope of issues to be addressed in the EA.

The daytime scoping meeting will focus on resource agency concerns, while the evening scoping meeting is primarily for public input. All interested individuals, organizations, and agencies are invited to attend one or both of the meetings, and to assist the staff in identifying the scope of the environmental issues that should be analyzed in the EA. The times and locations of these meetings are as follows:

Evening Meeting

Wednesday May 5, 1999, 7:00 p.m. until 10:00 p.m., Burney Senior Center, 20635 Roff Way, Burney, California 96013

Daytime Meeting

Thursday, May 6, 1999, 9 a.m. until 12:00 p.m., Redding Senior Center, 2290 Benton Drive, Redding, California 96003–2152

To help focus discussions, we will distribute a Scoping Document (SD1) outlining the subject areas to be addressed in the EA to the parties on the Commission's mailing list. Copies of the SD1 also will be available at the scoping meetings.

Site Visit

The applicant and Commission staff will conduct a project site visit on Wednesday, May 5, 1999. We will meet at the Hat Creek No. 1 powerhouse parking lot at 9 a.m.

Objectives

At the scoping meetings, the staff will: (1) summarize the environmental issues tentatively identified for analysis in the EA; (2) solicit from the meeting participants all available information, especially quantifiable data, on the resources at issue; (3) encourage statements from experts and the public on issues that should be analyzed in the EA, including viewpoints in opposition to, or in support of, the staff's preliminary views; (4) determine the resource issues to be addressed in the EA; and (5) identify those issues that require a detailed analysis, as well as those issues that do not require a detailed analysis.

Procedures

The meetings will be recorded by a stenographer and will become part of the formal record of the Commission proceeding on the project. Individuals presenting statements at the meetings will be asked to sign in before the meeting starts and to clearly identify themselves for the record.

Individuals, organizations, and agencies with environmental expertise and concerns are encouraged to attend the meetings and to assist the staff in defining and clarifying the issues to be addressed in the EA.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–8524 Filed 4–6–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2494–002]

Puget Sound Energy, Inc.; Notice of Meeting

April 1, 1999.

A meeting will be convened by staff of the Office of Hydropower Licensing on April 23, 1999, at 1:30 p.m. EDT at the Commission's Headquarters, room 62–26, located at 888 First Street, NE, Washington, DC.

By letter dated March 26, 1999, Puget Sound Energy requested a meeting to provide an update on the White River collaborative settlement process and provided an outline of issues to be discussed.

We will not discuss issues dealing with the pending rehearing of the Commission's December 19, 1997, order issuing license for the project. We will restrict discussion primarily to process issues related to setting up and conducting a collaborative settlement process.

If a federal agency wishes to participate by teleconference, they need to call 1–700–991–1854 and enter access code 25369. A non-federal agency should call 1–800–545–4387 and an operator will answer. They will need to give the operator the conference identification number: M58619. The operator will ask them for their name and phone number. The AT&T conference operator will then call them back and they will be part of this conference call.

Any person wishing to attend or needing additional information should contact John Smith at (202) 219–2460 or e-mail at john.smith@ferc.fed.us.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–8584 Filed 4–6–99; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6320–6]

Agency Information Collection Activities: Continuing Collection; Comment Request; Registration of Fuels and Fuel Additives—Health-effects Research Requirements for Manufacturers

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that EPA is planning to submit the following continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB): Registration of Fuels and Fuel Additives—Health-effects Research Requirements for Manufacturers (40 CFR part 79—Subpart F) (EPA ICR Number 1696.03, OMB Control Number 2060–0297, expiration date: 7–31–99). Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before June 7, 1999.

ADDRESSES: Fuels and Energy Division, Office of Mobile Sources, Office of Air and Radiation, Mail Code 6406J, U.S. Environmental Protection Agency, Washington, DC 20460. A paper or electronic copy of the ICR may be obtained without charge by contacting the person listed below.

FOR FURTHER INFORMATION CONTACT: James W. Caldwell, (202) 564–9303, fax: (202) 565–2085, caldwell.jim@epa.gov.

SUPPLEMENTARY INFORMATION: *Affected entities:* Entities potentially affected by this actien are those which manufacture or import gasoline or diesel fuel, or manufacture or import an additive for gasoline or diesel fuel.

Title: Registration of Fuels and Fuel Additives—Health-effects Research Requirements for Manufacturers (40 CFR part 79—Subpart F), OMB Control Number 2060–0297, EPA ICR Number 1696.03, Expiring: 7–31–99.

Abstract: In accordance with the regulations at 40 CFR part 79, Subparts A, B, C, and D, Registration of Fuels and Fuel Additives, manufacturers (including importers) of gasoline and diesel fuel, and manufacturers (including importers) of additives for gasoline or diesel fuel, are required to have their products registered by EPA prior to their introduction into commerce. Registration involves providing a chemical description of the fuel or additive, and certain technical, marketing, and health-effects information. The development of health-effects data, as required by 40 CFR part 79, Subpart F, is the subject of this ICR. The information collection requirements for Subparts A through D, and the supplemental notification requirement of Subpart F (indicating how the manufacturer will satisfy the research requirements) are covered by a separate ICR (EPA ICR Number 309.09, OMB Control Number 2060–1050). The health-effects information will be used to determine if there are any products whose evaporative or combustion emissions pose an unreasonable risk to public health, thus meriting further investigation and potential regulation. This information is required for specific groups of fuels and additives as defined in the regulations. For example, all gasolines and gasoline additives which consist of only carbon, hydrogen, oxygen, nitrogen, and/or sulphur, and which involve a gasoline oxygen content of less than 1.5 weight percent, fall into a "baseline" group. Oxygenates, such as ethanol and methyl tertiary butyl ether (MTBE), when used in gasoline at oxygen levels of at least 1.5 weight percent, define separate "nonbaseline" groups for each oxygenate. Additives which contain elements other than carbon, hydrogen, oxygen, nitrogen, and/or sulphur fall into separate "atypical" groups. There are similar grouping requirements for diesel fuels and additives.

Manufacturers may perform the research independently or may join with other manufacturers to share in the costs for each applicable group. Several research consortiums (groups of manufacturers) have been formed. The largest consortium, organized by the American Petroleum Institute (API), represents most of the manufacturers of baseline and nonbaseline gasolines, diesel fuels, and additives. The research is structured into three tiers of requirements for each group. Tier 1 requires an emissions characterization and a literature search for information on the health effects of those emissions. Voluminous Tier 1 data were submitted by API and others in 1997. Tier 2 requires short-term inhalation exposures of laboratory animals to emissions to screen for adverse health effects. Alternative Tier 2 testing can be required in lieu of the standard Tier 2 if EPA concludes that such testing would be more appropriate. The EPA reached that conclusion with respect to gasoline and gasoline-oxygenate blends, and alternative requirements have been established for the API consortium for baseline gasoline and six gasoline-oxygenate blends. A similar situation exists with the Ethyl Corporation and its manganese additive MMT, and alternative requirements have been proposed. The API submitted Tier 2 data for diesel in 1997. Tier 3 provides for follow-up research, if necessary. No Tier 3 requirements have been established, and it is unlikely that any will be during the next three years. Thus, Tier 3 is not addressed in this ICR. An agency may not conduct or

sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15.

The EPA would like to solicit comments to:

(i) evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) enhance the quality, utility, and clarity of the information to be collected; and

(iv) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Burden Statement: There are approximately 200 fuel manufacturers, 700 additive manufacturers, 600 registered fuels, and 5500 registered additives. Due to the costs, it is likely that only limited additional Tier 1 research will be done. Future fuels and additives will almost exclusively be those that can group with existing Tier 1 data, and likely will come from manufacturers that have already paid for the Tier 1 research. It is estimated that new Tier 1 research will cost $0.5 million per product, and that there will be only one Tier 1 submission over the next three years. Standard Tier 2 activity also will be very limited. The EPA has concluded that existing data cover standard Tier 2 for baseline diesel. Baseline gasoline, the six major nonbaseline gasoline oxygenates, and the atypical gasoline additive MMT, are subject to alternative Tier 2 requirements. It is estimated that new standard Tier 2 research will cost $1 million per product, and that there will only be four standard Tier 2 submissions over the next three years. It is estimated that the alternative Tier 2 testing for gasoline and oxygenates will cost $15 million over five years. It is estimated that the alternative Tier 2 testing for MMT will cost $10 million over five years. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Dated: March 25, 1999.

John W. Holley,

Acting Director, Fuels and Energy Division.

[FR Doc. 99–8632 Filed 4–6–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6320–7]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; National Estuary Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: National Estuary Program, EPA ICR Number 1500.04, OMB Control Number 2040–0138, expiration date: June 30, 1999. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before May 7, 1999.

FOR FURTHER INFORMATION CONTACT: Contact Sandy Farmer at EPA by phone at (202) 260–2740, by email at farmer.sandy@epamail.epa.gov, or download off the Internet at http://www.epa.gov/icr and refer to EPA ICR No. 1500.04.

SUPPLEMENTARY INFORMATION: *Title:* National Estuary Program (OMB Control No. 2040–0138; EPA ICR No. 1500.04) expiring 6/30/99. This is a request for extension of a currently approved collection.

Abstract: Annual Workplans: The National Estuary Program (NEP) involves collecting information from those state or local agencies or nongovernmental organizations that receive funds under section 320 of the Clean Water Act. The regulation requiring this information is found at 40 CFR part 35. Prospective grant recipients seek funding to develop or oversee and coordinate implementation of comprehensive conservation and management plans (CCMP) for estuaries of national significance. In order to receive funds, grantees must submit an annual workplan to EPA. The workplan consists of two parts: (a) progress on projects funded previously; and (b) new projects proposed with dollar amounts and completion dates. The workplan is reviewed by EPA and also serves as the scope of work for the grant agreement. EPA also uses these workplans to track performance of each of the 28 estuary programs currently in the NEP.

Biennial Reviews: EPA provides funding to NEPs after their CCMPs have been approved by the Administrator if such programs demonstrate adequate progress in implementing their CCMPs through a biennial review process. Biennial reviews are used to determine progress each NEP is making in implementing its CCMP and achieving environmental results. In addition to evaluating progress, the results are used to identify areas of weakness each NEP should address for long-term success in protecting and restoring their estuaries. EPA will also compile successful tools and approaches as well as lessons learned from all biennial reviews to transfer to the NEPs and other watershed programs. For this ICR cycle, biennial reviews will be required of the first 17 NEPs in FY1999 and the first 21 NEPs in FY2001. Biennial reviews are required in addition to annual workplans.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. The **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on 12/23/98 (63 FR 71115); no comments were received.

Burden Statement: The annual public recording and recordkeeping burden for this collection of information is estimated to average 100 hours per response for annual workplans and 250 hours per response for biennial review. Burden means the total time, effort or financial resources expended by persons to generate, maintain, retain or disclose or provide information to or for a

Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: state or local governments or nongovernmental organizations.

Estimated Number of Respondents: 28.

Frequency of Response: annual workplans; biennial reviews.

Estimated Total Annual Hour Burden: 5,967 hours.

Estimated Total Annualized Cost Burden: $0.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to EPA ICR No. 1500.04 and OMB Control No. 2040–0138 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, OP Regulatory Information Division (2137), 401 M Street, SW, Washington, DC 20460; and

Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for the EPA, 725 17th Street, NW, Washington, DC 20503.

Dated: March 31, 1999.

Joseph Retzer,

Director, Regulatory Information Division.

[FR Doc. 99–8633 Filed 4–6–99; 8:45 am]

BILLING 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–00593; FRL–6074–7]

Pesticides; Policy Issues Related to the Food Quality Protection Act

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: To assure that EPA's policies related to implementing the Food Quality Protection Act (FQPA) are transparent and open to public participation, EPA is soliciting comments on a draft policy paper entitled "Choosing a Percentile of Acute Dietary Exposure as a Threshold of Regulatory Concern." This notice is the seventh in a series concerning science policy documents related to FQPA and developed through the Tolerance Reassessment Advisory Committee (TRAC).

DATES: Written comments for this policy paper, identified by docket control number OPP–00593, should be submitted by June 7, 1999.

ADDRESSES: Comments may be submitted by mail, electronically or in person. Please follow the detailed instructions for each method as provided in Unit I.C. of the "SUPPLEMENTARY INFORMATION" section of this document.

FOR FURTHER INFORMATION CONTACT: Kathleen Martin, Environmental Protection Agency (7509C), 401 M St., SW., Washington, DC 20460. Telephone number: (703) 308-2857, fax: 703-305-5147, and e-mail address: martin.kathleen@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Notice Apply to Me?

You may be potentially affected by this notice if you manufacture or formulate pesticides. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS	Examples of potentially affected entities
Pesticide producers	32532	Pesticide manufacturers Pesticide formulators

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed could also be affected. If available, the North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this notice affects certain entities. If you have any questions regarding the applicability of this announcement to you, consult the person listed in the "FOR FURTHER INFORMATION CONTACT" section of this document.

B. How Can I Get Additional Information or Copies of This Document or Other Documents?

1. *Electronically.* You may obtain electronic copies of this document and the science policy paper at http://www.epa.gov/pesticides/. On the Office of Pesticide Program Home Page select "TRAC" and then look up the entry for this document. You can also go directly to the listings at the EPA Home Page at the **Federal Register** — Environmental Documents entry for this document under "Laws and Regulations" (http://www.epa.gov/fedrgstr/) to obtain this notice and the science policy paper.

2. *Fax on Demand.* You may request to receive a faxed copy of this document, as well as supporting information, by using a faxphone to call (202) 401–0527 and selecting item 6034. You may also follow the automated menu.

3. *In person or by phone.* If you have any questions or need additional information about this action, you may contact the person identified in the "FOR FURTHER INFORMATION CONTACT" section of this document. In addition, the official record for the science policy paper listed in the "SUMMARY" section of this document, including the public version, has been established under docket control number OPP–00593 (including comments and data submitted electronically as described below). A public version of each record, including printed, paper versions of any electronic comments, which does not include any information claimed as Confidential Business Information (CBI), is available for inspection in Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Public Information and Records Integrity Branch telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person or electronically. Be sure to include docket control number OPP–00593 in your correspondence.

1. *By mail.* Submit written comments to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

2. *In person or by courier.* Deliver written comments to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of

Pesticide Programs, Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

3. *Electronically.* Submit your comments and/or data electronically by e-mail to: opp-docket@epa.gov. Do not submit any information electronically that you consider to be CBI. Submit electronic comments as an ASCII file, avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on standard computer disks in WordPerfect 5.1/6.1 or ASCII file format. All comments and data in electronic form must be identified by the docket control number. Electronic comments on this notice may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI Information That I Want to Submit to the Agency?

You may claim information that you submit in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential will be included in the public docket by EPA without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please call the Public Information and Records Integrity Branch telephone number is (703) 305–5805.

E. What Should I Consider As I Prepare My Comments for EPA?

EPA invites you to provide your views on the various draft science policy papers, new approaches we have not considered, the potential impacts of the various options (including possible unintended consequences), and any data or information that you would like the Agency to consider. You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide solid technical information and/or data to support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate.

5. Indicate what you support, as well as what you disagree with.

6. Provide specific examples to illustrate your concerns.

7. Make sure to submit your comments by the deadline in this notice.

8. At the beginning of your comments (e.g., as part of the "Subject" heading), be sure to properly identify the document you are commenting on. You can do this by providing the docket control number assigned to the notice, along with the name, date, and **Federal Register** citation.

II. Background

On August 3, 1996, the Food Quality Protection Act of 1996 (FQPA) was signed into law. Effective upon signature, the FQPA significantly amended the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA). Among other changes, FQPA established a stringent health-based standard ("a reasonable certainty of no harm") for pesticide residues in foods to assure protection from unacceptable pesticide exposure; provided heightened health protections for infants and children from pesticide risks; required expedited review of new, safer pesticides; created incentives for the development and maintenance of effective crop protection tools for farmers; required reassessment of existing tolerances over a 10-year period; and required periodic re-evaluation of pesticide registrations and tolerances to ensure that scientific data supporting pesticide registrations will remain up-to-date in the future.

Subsequently, the Agency established the Food Safety Advisory Committee (FSAC) as a subcommittee of the National Advisory Council for Environmental Policy and Technology (NACEPT) to assist in soliciting input from stakeholders and to provide input to EPA on some of the broad policy choices facing the Agency and on strategic direction for the Office of Pesticide Programs. The Agency has used the interim approaches developed through discussions with FSAC to make regulatory decisions that met FQPA's standard, but that could be revisited if additional information became available or as the science evolved. As EPA's approach to implementing the scientific provisions of FQPA has evolved, the Agency has sought independent review and public participation, often through presentation of many of the science policy issues to the FIFRA Scientific Advisory Panel (SAP), a group of independent, outside experts who provide peer review and scientific advice to Office of Pesticide Programs (OPP).

In addition, as directed by Vice President Albert Gore, EPA has been working with the U.S. Department of Agriculture (USDA) and another subcommittee of NACEPT, the Tolerance Reassessment Advisory Committee (TRAC), chaired by the EPA Deputy Administrator and the USDA Deputy Secretary, to address FQPA issues and implementation. TRAC comprises more than 50 representatives of affected user, producer, consumer, public health, environmental, states and other interested groups. The TRAC has met five times as a full committee from May 27 through September 16, 1998.

The Agency has been working with the TRAC to ensure that its science policies, risk assessments of individual pesticides, and process for decision making are transparent and open to public participation. An important product of these consultations with TRAC is the development of a framework for addressing key science policy issues. The Agency decided that the FQPA implementation process and related policies would benefit from initiating notice and comment on the major science policy issues.

The TRAC identified nine science policy issue areas they believe were key to implementation of FQPA and tolerance reassessment. The framework calls for EPA to provide one or more documents for comment on each of the nine issues by announcing their availability in the **Federal Register**.

In accordance with the framework described in a separate notice published in the **Federal Register** of October 29, 1998 (63 FR 58038) (FRL–6041–5), EPA has been issuing a series of draft documents concerning nine science policy issues identified by the TRAC related to the implementation of FQPA. This notice announces the availability of one of those draft documents as identified in Unit I.C. of this document.

III. Summary of Draft Paper

EPA is responsible for regulating the nature and amount of pesticide residues in food under FFDCA. FFDCA section 408 authorizes EPA to set a tolerance or an exemption from the requirement of a tolerance if the Agency determines that the residues would be "safe." The Agency performs various types of risk assessments to evaluate the safety of pesticides in food, including analyses to determine the nature and the amounts of pesticides that people might be exposed to over a single day. This paper discusses how EPA applies the statutory safety standard to acute dietary risk assessments.

The Environmental Protection Agency's Office of Pesticide Programs has previously announced that, on an interim basis, it intends to regulate

pesticides at the 99.9th percentile of the distribution of estimated acute dietary exposures when probabilistic assessment techniques are used to model the distribution. EPA will compare this percentile of estimated exposure to the Population Adjusted Dose (PAD), a value that reflects an amount of a pesticide to which a person may safely be exposed in one day. This draft science policy paper describes OPP's interim policy, concerns that have been raised about it, associated public health issues, and OPP's plans for further evaluation and implementation. This policy has broad applicability to many pesticides and potentially significant impact on the assessment of these pesticides. Moreover, a number of concerns and issues have been raised about the policy. Therefore, the Agency is seeking public comment so that OPP policy is transparent and that the views of all interested parties are considered.

OPP's interim position with respect to assessing and regulating the food uses of pesticides, when using a probabilistic method of estimating acute dietary exposure, is as follows:

If the 99.9th percentile of acute dietary exposure (together with exposure from other non-dietary, non-occupational sources), as estimated by probabilistic (e.g., Monte Carlo) analysis, is *equal to or less than* the Population Adjusted Dose (PAD) for the pesticide, OPP will determine that the safety standard of FFDCA sec. 408(B)(2)(A) is met with respect to acute dietary risk. However, if the analysis indicates that exposure at the 99.9th percentile *exceeds* the PAD, OPP will conduct a sensitivity analysis to determine to what extent the estimated exposures at the high-end percentiles may be affected by unusually high food consumption or residue values. To the extent that one or a few values from the input data sets seem to "drive" the exposure estimates at the high end of exposure, OPP will consider whether these values are representative and should be used as the primary basis for regulatory decision making. The Office will also examine the consequence of removing such high-end food consumption or residue values when estimating the 99.9th percentile of exposure.

The first section of this paper provides an overview of OPP's present practice and interim policy for acute dietary risk assessment. It describes the statutory, regulatory and policy framework for this interim policy, as well as prior reviews and comments. In addition, this section provides background information on dietary risk assessment in general and explains how the previous system (DRES--Dietary Risk Evaluation System) and the current system (DEEM--Dietary Exposure Estimating Model) work, as well as what input data sources are used and how.

The second section addresses some of the specific issues and concerns raised about regulating at the 99.9th percentile. One issue is whether the nature of the databases available (i.e., robustness, adequacy, etc.) should preclude the use of the 99.9th percentile for regulatory purposes since some consider the uncertainties associated with this threshold of concern to be too great. Examples of data used are USDA's food consumption survey data, registrant crop field trials, USDA Pesticide Data Program (PDP) data, FDA monitoring data, market basket surveys, etc. Other issues include the treatment of data "outliers," representativeness and adequacy of the databases, and the impact of Agency default values on exposure estimates. Concerns, therefore, exist about whether the estimates of the 99.9th percentile of exposure are sufficiently representative of actual exposure to be meaningful. This paper summarizes these concerns and invites comment on them.

The third section addresses the issue of protectiveness of the 99.9th percentile with respect to the general public health. One view is that regulating at the 99.9th percentile is insufficiently conservative because very large numbers of people could be exposed every day to pesticide intakes which are estimated to exceed the Agency's "level of concern." This section also explores the contrary view that the interim policy is over-protective because of the conservative assumptions used in the estimation methods and the retention of potentially unrepresentative values in the data base. The section discusses as well as the view that, whether it over- or under-estimates actual exposure, the 99.9th percentile is simply too uncertain to be used in risk management decisions. This section also explains that OPP considers a number of factors in considering which percentile to use: The size of the exposed population and the proportion that might receive daily doses above the benchmark of safety, the aRfD; the level of confidence OPP has in its exposure estimates; and the extent to which such estimates may overstate potential exposure because they incorporate conservative assumptions or rely on atypical and unrealistic data. Further, to the extent understood, OPP considers by how much individual exposures would be estimated to exceed the aRfD. Finally, the OPP takes into account the degree of public health protection incorporated into the determination of the aRfD.

The fourth section addresses the areas in which OPP and USDA propose to collaborate in performing further exploratory analysis with the DEEM software and the 99.9th percentile issue.

The fifth and sixth sections list questions and issues on which the Agency would most like commenters to focus and respond, and provide a list of the documents referenced in this paper, respectively.

The Appendix, entitled "Primer on Interpretation of Exposure Distribution Curves," is a "plain English" guide to Monte Carlo analysis and how to interpret results from it.

IV. Questions/Issues for Comment

While comments are invited on any aspect of the draft paper, EPA is particularly interested in comments on the following questions and issues.

1. What are the appropriate statistical techniques for characterizing the uncertainty at the high end of the distribution of probabilistic exposure assessments? At what point does an exposure estimate become so uncertain that it would be inappropriate to use the estimate in regulatory decision making? How does uncertainty about one or more high-end values in a data set affect the reliability of the output of probabilistic models using that data set as an input?

2. Regarding the Agency's current methodology for performing Monte Carlo analyses, at what percentile of estimated exposure is it appropriate for the Agency to establish its threshold of concern? 99.99th, 99.9th, 99th, 95th, or some other percentile? What are the reasons for recommending that percentile? How should the characteristics of the data sets used as input to the assessment (e.g., the type of residue data, field trials vs. PDP monitoring data) affect the choice of a percentile exposure for OPP's threshold of concern?

3. If OPP chooses to set its threshold of concern lower than the 99.9th percentile, should any other steps, such as the application of an additional safety factor, be employed to assure that the statutory safety standard is satisfied?

4. Some advocate a "sliding regulatory scale" with more serious toxic effects regulated at higher thresholds; they contend that such an approach would explicitly acknowledge all aspects of the risk management decision and incorporate the nature of the toxic effects and the built-in conservatism on the hazard identification and dose response side of the equation. Instead of regulating at only a single percentile for all toxicological effects (regardless of severity), should the Agency regulate pesticides at a variety of percentiles, depending upon the toxic effect

observed? For example, would a lower threshold of regulation (perhaps the 98th percentile) be warranted for fully-reversible effects (such as mild anemia) or would a more stringent threshold (perhaps the 99.9th percentile or higher) be justified for severe, non-reversible effects (e.g., birth defects)? Finally, should the Agency regulate pesticides at different percentiles according to the nature and size of the subpopulation groups (i.e., use the 99.9th percentile for larger groups and another percentile for smaller groups)?

5. How should "outliers" be identified for food consumption data sets? For residue data sets? When an "outlier" is identified, how should the data point be handled in generating probabilistic exposure estimates?

6. If OPP conducts a Critical Exposure Contribution (CEC) analysis, and excludes one or more data points because they appear to drive the high-end estimates of exposure, should OPP perform an additional CEC analysis on any revised estimate of the exposure distribution?

7. Should OPP's probabilistic assessments attempt to reflect variability in human sensitivity to toxic effects, as suggested by the FIFRA Scientific Advisory Panel? If so, how should this be done?

V. Policies Not Rules

The draft policy document discussed in this notice is intended to provide guidance to EPA personnel and decision-makers, and to the public. As a guidance document and not a rule, the policy in this guidance is not binding on either EPA or any outside parties. Although this guidance provides a starting point for EPA risk assessments, EPA will depart from its policy where the facts or circumstances warrant. In such cases, EPA will explain why a different course was taken. Similarly, outside parties remain free to assert that a policy is not appropriate for a specific pesticide or that the circumstances surrounding a specific risk assessment demonstrate that a policy should be abandoned.

EPA has stated in this notice that it will make available revised guidance after consideration of public comment. Public comment is not being solicited for the purpose of converting any policy document into a binding rule. EPA will not be codifying this policy in the Code of Federal Regulations. EPA is soliciting public comment so that it can make fully informed decisions regarding the content of each guidance document.

The "revised" guidance will not be unalterable. Once a "revised" guidance document is issued, EPA will continue to treat it as guidance, not a rule. Accordingly, on a case-by-case basis EPA will decide whether it is appropriate to depart from the guidance or to modify the overall approach in the guidance. In the course of inviting comment on each guidance document, EPA would welcome comments that specifically address how a guidance document can be structured so that it provides meaningful guidance without imposing binding requirements.

VI. Contents of Docket

Document that are referenced in this notice will be inserted in the docket under the docket control number "OPP–00593." In addition, the documents referenced in the framework notice, which published in the **Federal Register** on October 29, 1998 (63 FR 58038) have also been inserted in the docket under docket control number OPP–00557.

List of Subjects

Environmental protection, Administrative practice and procedure, Agricultural commodities, pesticides and pests.

Dated: April 1, 1999.

Susan H. Wayland,

Acting Assistant Administrator for Prevention, Pesticides and Toxic Substances.

[FR Doc. 99–8636 Filed 4–6–99; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[PF–867; FRL–6069–8]

AgrEvo USA Company; Cry9C Plant-Pesticides; Notice of Filing of Pesticide Petition

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the amendment of a regulation to exempt from the requirement of a tolerance residues of plant-pesticides *Bacillus thuringiensis* subsp. *tolworthi* Cry9C and the genetic material necessary for the production of this protein in or on all raw agricultural commodities.

DATES: Comments, identified by the docket control number PF–867, must be received on or before May 7, 1999.

ADDRESSES: By mail submit written comments to: Information and Records Integrity Branch, Public Information and Services Divison (7502C), Office of Pesticides Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person bring comments to: Rm. 119, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Comments and data may also be submitted electronically by following the instructions under "SUPPLEMENTARY INFORMATION." No confidential business information should be submitted through e-mail.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). CBI should not be submitted through e-mail. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 119 at the address given above, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Mike Mendelsohn, Regulatory Action Leader, Biopesticides and Pollution Prevention Division, (7511C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 9th floor, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. 22202, telephone (703) 308–8715; e-mail:mendelsohn.mike@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of a certain pesticide chemical in or on all raw agricultural commodities under section 408 of the Federal Food, Drug, and Comestic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contain data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

The official record for this notice, as well as the public version, has been established for this notice of filing under docket control number PF–867 (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not

include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The official record is located at the address in "ADDRESSES" at the beginning of this document.

Electronic comments can be sent directly to EPA at:
opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comment and data will also be accepted on disks in Wordperfect 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket control number (insert docket number) and appropriate petition number. Electronic comments on this notice may be filed online at many Federal Depository Libraries.

Authority: 21 U.S.C. 346a.

List of Subjects

Environmental protection, Agricultural commodities, Food additives, Feed additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: March 24, 1999.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

Petition Summary

Below a summary of the pesticide petition is printed. The summary of the petition was prepared by the petitioner. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

AgrEvo USA Company

9F5050

EPA has received a pesticide petition 9F5050 from AgrEvo USA Company, Little Centre One, 2711 Centerville Rd., Wilmington, DE 19808, proposing the amendment of 40 CFR 180.1192 to exempt from the requirement of a tolerance residues of the plant-pesticides *Bacillus thuringiensis* subspecies *toliworthi* Cry9C protein and the genetic material necessary for the production of this protein in or on all raw plant agricultural commodities under section 408 of the Federal Food, Drug, and Comestic Act (FFDCA), 21 U.S.C. 346a(d).

Pursuant to section 408(d)(2)(A)(i) of the FFDCA, as amended, AgrEvo USA Company has submitted the following summary of information, data, and arguments in support of their pesticide petition. This summary was prepared by AgrEvo USA Company and EPA has not fully evaluated the merits of the pesticide petition. The summary may have been edited by EPA if the terminology used was unclear, the summary contained extraneous material, or the summary unintentionally made the reader conclude that the findings reflected EPA's position and not the position of the petitioner.

A. Product Name and Proposed Use Practices

Corn plants have been protected from lepidopteran insect pests such as European corn borer [*Ostrinia nubilalis* (Huber)], by expressing a Cry9C protein. The Cry9C protein expressed by the corn plants corresponds to the insecticidal moiety of the Cry9C crystal protein of a *Bacillus thuringiensis* subsp. *tolworthi* strain. The Cry9C protein poses no foreseeable risks to non-target organisms, including mammals, birds and non-target insects. Transgenic corn plants, expressing Cry9C protein, represents an excellent addition to growers' options for insect control that reduces or eliminates the need for chemical inputs and fits well within an integrated pest management program.

B. Product Identity/Chemistry

The *cry9C* gene, was isolated from the *B.t. tolworthi* strain, truncated and modified before it was stably inserted into corn plants. The tryptic core of the microbially produced Cry9C delta-endotoxin is similar to the Cry9C protein found in event CBH-351. The Cry9C protein was produced and purified from a bacterial host, for the purposes of mammalian toxicity studies. Product analysis that compared the Cry9C protein from the two sources included: SDS-PAGE, Western blots, N-terminal amino acid sequencing, glycosylation tests (for possible post-translational modifications) and insect bioassays.

No analytical method is included since this petition requests an exemption from the requirement of a tolerance.

C. Mammalian Toxicological Profile

Bacillus thuringiensis proteins have insecticidal properties and have been used commercially for more than 30 years. This long history of safe use is the primary reason that *Bt* proteins have been chosen as the basis for the first insecticidal plants produced by biotechnology. *Bt* mode-of-action can be divided into a series of critical steps: ingestion by the insect, specific binding to brush border membrane receptors, membrane insertion, and pore formation. *Bt* proteins do not bind or cause any other effects to mammalian gut membranes thereby displaying human safety properties. The Cry9C protein mode-of-action is apparently similar to that of the well known Cry1A proteins. Although *Bt* strains have been used for decades as sprayable microbial products, no confirmed cases of allergic reactions have been documented, despite dermal, oral and inhalation exposures. A reference to this is made by the EPA in a FR notice, dated August 16, 1995, (60 FR 42443)(FRL–4971–3).

In addition to the safe history of *Bt* proteins outlined above, several other studies were performed to provide evidence for mammalian safety of the Cry9C protein. An acute toxicological study was performed with mice, which demonstrated that the Cry9C protein had an LD_{50} >3,760 mg/kg. A test for *in vitro* digestibility under simulated gastric conditions showed that the Cry9C protein found in bacteria and the protein produced in plants was stable for 4 hours when exposed to simulated gastric juice. An amino acid sequence homology search performed using three different data banks (against 135,867 sequences) only found homology to other related *Bt* proteins. All other proteins in the data bank have no major stretches of sequence homology, indicating that the sequence homology is not significant. Therefore, no homology with any known allergen or protein toxin could be demonstrated.

The Cry9C protein or metabolites of the protein are not expected to interact with the immune system, the endocrine system or to have any carcinogenic activity since the protein sequence does not match any known allergens, hormones or since proteins, in general, are not known to be carcinogenic.

All living organisms contain DNA and there are no examples of nucleic acids causing any toxicological effects from dietary consumption. The genetic material necessary for the production of the Cry9C protein in plants includes the genetic construct that encodes the Cry9C protein and all other necessary genetic elements for it's expression. These elements include: a promotor, polylinker sequences, leader sequences and terminators and none of which are expected to cause any toxicological effects.

Taken together, the data supports the lack of mammalian toxicological effects

for the plant-pesticide *Bacillus thuringiensis* subsp. *tolworthi* Cry9C protein and the genetic material necessary for the production of this protein in or on all raw plant agricultural commodities.

D. Aggregate Exposure

Since the Cry9C protein is expressed in plant tissues, dermal or inhalation will be negligible to non-existent. Drinking water is unlikely to be contaminated with Cry9C protein due to the rapid degradation of plant materials in the soil. Processed plant products may allow for low levels of exposure to the Cry9C protein, but the lack of mammalian toxicity and the lack of sequence homology to known toxins or allergens, has already been demonstrated.

E. Cumulative Exposure

The unique mode-of-action of *Bt* proteins in general, coupled with the lack of mammalian toxicity for the Cry9C protein provides no basis for the expectation of cumulative exposure with other compounds.

F. Safety Determination

Bt microbial pesticides containing Cry proteins have been applied for more than 30 years to food and feed crops consumed by the U.S. population. There have been no human safety problems attributed to Cry proteins. The extensive mammalian toxicity studies performed to support the safety of *Bacillus thuringiensis* - containing pesticides clearly demonstrate that the tested isolates are not toxic or pathogenic (McClintock, et al., 1995, Pestic. Sci. 45:95-105). The lack of mammalian toxicity or allergenic properties of the Cry9C protein provides support for our request of an exemption from the requirement of a tolerance set forth in this petition. Non-dietary exposure of infants, children or the US population in general, to the Cry9C protein expressed in plant materials, are not expected due to the uses of this product within agricultural settings.

G. Existing Tolerances

An exemption from the requirement of a tolerance for residues of the insecticide, *Bacillus thuringiensis* subspecies *tolworthi* Cry9C protein and the genetic material necessary for its production in corn for feed use only; as well as in meat, poultry, milk, or eggs resulting from animals fed such feed was issued on May 22, 1998.

[FR Doc. 99–8260 Filed 4–6–99; 8:45 am]
BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPP–50857; FRL–6074–1]

Issuance of an Experimental Use Permit

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted an experimental use permit (EUP) to the following applicant. The permit is in accordance with, and subject to, the provisions of 40 CFR part 172, which defines EPA procedures with respect to the use of pesticides for experimental use purposes.

FOR FURTHER INFORMATION CONTACT: By mail: Maria Rodriguez, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: 1921 Jefferson Davis Highway, Rm. 251, CM #2, Arlington, VA, 703–305–6710, e-mail: rodriguez.maria@epa.gov.

SUPPLEMENTARY INFORMATION: EPA has issued the following EUP:

59981–EUP–1. Issuance. Fleming Laboratories, Inc., P.O. Box 34384, Charlotte, NC 28234. This experimental use permit allows the use of 313 pounds of the plant growth regulator (4-aminophenyl) arsonic acid on 50 acres of grapefruit to evaluate enhancement of ripening. The program is authorized only in the State of Florida. The experimental use permit is effective from February 28, 1999 to February 28, 2001. A tolerance has been established for residues of the active ingredient in or on grapefruit.

Persons wishing to review this EUP are referred to the designated contact person. Inquires concerning this permit should be directed to the person cited above. It is suggested that interested persons call before visiting the EPA office, so that the appropriate file may be made available for inspection purposes from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

Authority: 7 U.S.C. 136.

List of Subjects

Environmental protection, Experimental use permits.

Dated: March 30, 1999.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 99–8634 Filed 4–6–99; 8:45 am]
BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPP–00591; FRL–6071–1]

Pesticides; Policy Issues Related to the Food Quality Protection Act

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: To assure that EPA's policies related to implementing the Food Quality Protection Act (FQPA) are transparent and open to public participation, EPA is soliciting comments on a draft policy paper entitled "Data for Refining Anticipated Residue Estimates Used in Dietary Risk Assessments for Organophosphate Pesticides." This notice is the sixth in a series concerning science policy documents related to FQPA and developed through the Tolerance Reassessment Advisory Committee (TRAC).

DATES: Submit written comments for this policy paper, identified by docket control number OPP–00591, on or before June 7, 1999.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I.C. of the "SUPPLEMENTARY INFORMATION" section of this document.

FOR FURTHER INFORMATION CONTACT: Margaret Rice, Environmental Protection Agency (7508), 401 M St., SW., Washington, DC 20460; telephone number: (703) 308–8039; fax: 703–308–8041; e-mail: rice.margaret@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Notice Apply to Me?

You may be potentially affected by this notice if you manufacture or formulate pesticides. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS	Examples of potentially affected entities
Pesticide producers	32532	Pesticide manufacturers Pesticide formulators

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed could also be affected. If available, the North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this notice affects certain entities. If you have any questions regarding the applicability of this announcement to you, consult the technical person listed in the "FOR FURTHER INFORMATION CONTACT" section of this document.

B. How Can I Get Additional Information or Copies of This Document or Other Documents?

1. *Electronically.* You may obtain electronic copies of this document and the science policy paper at http://www.epa.gov/pesticides/. On the Office of Pesticide Program Home Page select "TRAC" and then look up the entry for this document. You can also go directly to the listings at the EPA Home Page at the **Federal Register** – Environmental Documents entry for this document under "Laws and Regulations" (http://www.epa.gov/fedrgstr/) to obtain this notice and the science policy paper.

2. *Fax on Demand.* You may request to receive a faxed copy of this document, as well as supporting information, by using a faxphone to call (202) 401–0527 and selecting item 6033. You may also follow the automated menu.

3. *In person or by phone.* If you have any questions or need additional information about this action, you may contact the person identified in the "FOR FURTHER INFORMATION CONTACT" section of this document. In addition, the official record for the science policy paper listed in the "SUMMARY" section of this document, including the public version, has been established under docket control number OPP–00591 (including comments and data submitted electronically as described below). A public version of each record, including printed, paper versions of any electronic comments, which does not include any information claimed as Confidential Business Information (CBI), is available for inspection in Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Public Information and Records Integrity Branch telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. Be sure to include docket control number OPP–00591 in your correspondence.

1. *By mail.* Submit written comments to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

2. *In person or by courier.* Deliver written comments to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

3. *Electronically.* Submit your comments and/or data electronically by e-mail to: opp-docket@epa.gov. Do not submit any information electronically that you consider to be CBI. Submit electronic comments as an ASCII file, avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on standard computer disks in WordPerfect 5.1/6.1 or ASCII file format. All comments and data in electronic form must be identified by the docket control number. Electronic comments on this notice may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI Information That I Want to Submit to the Agency?

You may claim information that you submit in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential will be included in the public docket by EPA without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please call the Public Information and Records Integrity Branch telephone number is (703) 305–5805.

E. What Should I Consider As I Prepare My Comments for EPA?

EPA invites you to provide your views on the various draft science policy papers, new approaches we have not considered, the potential impacts of the various options (including possible unintended consequences), and any data or information that you would like the Agency to consider. You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide solid technical information and/or data to support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate.

5. Indicate what you support, as well as what you disagree with.

6. Provide specific examples to illustrate your concerns.

7. Make sure to submit your comments by the deadline in this notice.

8. At the beginning of your comments (e.g., as part of the "Subject" heading), be sure to properly identify the document you are commenting on. You can do this by providing the docket control number assigned to the notice, along with the name, date and **Federal Register** citation.

II. Background

On August 3, 1996, the Food Quality Protection Act of 1996 (FQPA) was signed into law. Effective upon signature, the FQPA significantly amended the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA). Among other changes, FQPA established a stringent health-based standard ("a reasonable certainty of no harm") for pesticide residues in foods to assure protection from unacceptable pesticide exposure; provided heightened health protections for infants and children from pesticide risks; required expedited review of new, safer pesticides; created incentives for the development and maintenance of effective crop protection tools for farmers; required reassessment of existing tolerances over a 10-year period; and required periodic re-evaluation of pesticide registrations and tolerances to ensure that scientific data supporting pesticide registrations will remain up-to-date in the future. Subsequently, the Agency established the Food Safety Advisory Committee (FSAC) as a subcommittee of the National Advisory Council for

Environmental Policy and Technology (NACEPT) to assist in soliciting input from stakeholders and to provide input to EPA on some of the broad policy choices facing the Agency and on strategic direction for the Office of Pesticide Programs. The Agency has used the interim approaches developed through discussions with FSAC to make regulatory decisions that met FQPA's standard, but that could be revisited if additional information became available or as the science evolved. As EPA's approach to implementing the scientific provisions of FQPA has evolved, the Agency has sought independent review and public participation, often through presentation of many of the science policy issues to the FIFRA Scientific Advisory Panel (SAP), a group of independent, outside experts who provide peer review and scientific advice to OPP.

In addition, as directed by Vice President Albert Gore, EPA has been working with the U.S. Department of Agriculture (USDA) and another subcommittee of NACEPT, the Tolerance Reassessment Advisory Committee (TRAC), chaired by the EPA Deputy Administrator and the USDA Deputy Secretary, to address FQPA issues and implementation. TRAC comprises more than 50 representatives of affected user, producer, consumer, public health, environmental, States, and other interested groups. The TRAC has met five times as a full committee from May 27 through September 16, 1998.

The Agency has been working with the TRAC to ensure that its science policies, risk assessments of individual pesticides, and process for decision making are transparent and open to public participation. An important product of these consultations with TRAC is the development of a framework for addressing key science policy issues. The Agency decided that the FQPA implementation process and related policies would benefit from initiating notice and comment on the major science policy issues.

The TRAC identified nine science policy issue areas they believe were key to implementation of FQPA and tolerance reassessment. The framework calls for EPA to provide one or more documents for comment on each of the nine issues by announcing their availability in the **Federal Register**.

In accordance with the framework described in a separate notice published in the **Federal Register** of October 29, 1998 (63 FR 58038) (FRL–6041–5), EPA has been issuing a series of draft documents concerning nine science policy issues identified by the TRAC related to the implementation of FQPA. In addition to the nine science policy issues, the Agency has decided to make available other policy documents which are related to the implementation of FQPA, but which are not purely science policy issues. This notice announces the availability of one of those draft documents as identified in Unit I.C. of this document.

III. Summary of Draft Paper

The Food Quality Protection Act (FQPA) of 1996 requires EPA to reassess all existing tolerances, based on available information, according to new, more stringent standards. Among these new standards are specific determinations regarding the potential for increased sensitivity of infants, children, and other subpopulations to the pesticide, assessment of the potential for aggregate exposures from various sources (such as the diet, drinking water, and pesticide uses in and around the home) and cumulative assessments of pesticides with a common mechanism of toxicity. EPA anticipates that refinements, beyond those routinely applied to EPA's dietary exposure assessments, will be key to developing more realistic estimates of the actual residues on food as EPA proceeds through the aggregate and particularly the cumulative assessment of pesticides which have a similar toxic effect via a common mechanism of toxicity, for example, the organophosphates (OPs). Having more realistic estimates of residues ultimately improves the Agency's ability to make informed regulatory decisions that fully protect public health and sensitive subpopulations, including infants and children.

This document describes the types of data that can be used to refine residue estimates, outlines the basic characteristics of useful data, discusses how residue data and usage data are linked, and explains how EPA will use these types of data in its dietary exposure assessments. Bridging studies, which are used to quantify the difference in residues resulting from various application rates, are described in some detail. Also discussed are:

1. Residue decline studies, which can be used to quantify the differences in residues resulting from various pre-harvest intervals (PHIs).
2. Residue degradation studies, which characterize the decreasing amounts of residues over time.
3. Cooking and processing data.
4. Market basket data.
5. Data to quantify residues in meat and milk after cooking and pasteurization.

Finally, interested parties may provide existing and available data of the types described in this document to EPA. The practical experience of working with existing data will enable the Agency to refine both current assessments and the guidance that is being developed for conducting new studies.

IV. Questions/Issues for Comment

While comments are invited on any aspect of the draft policy paper, EPA is particularly interested in comments on the following questions and issues.

1. EPA proposes to review existing bridging, residue decline and other data and to develop guidance for conducting these kinds of studies. The purpose of these multi-rate, multi-PHI studies is to be able to use the full range of expected residue values (based on the full range of application rates and PHIs) in dietary exposure assessments and thereby produce more realistic estimates of dietary risk. Is this a reasonable and efficient approach? What other approaches should EPA consider?

2. EPA believes that between one and three field trials conducted at different locations (with three different application rates at each field trial and three independent samples collected at each rate or PHI) are needed to demonstrate the mathematical relationship between application rate or PHI and amount of residue. Is this sampling regime adequate to characterize the range of potential residues?

3. In developing its guidance, EPA has assumed that the relationship between application rates and/or PHIs and resulting residue levels is not necessarily the same for all chemicals. Is there any information available to suggest that this assumption is incorrect? Is there any information available to suggest that the relationship between application rates and/or PHIs and resulting residue levels for the organophosphates as a class may be similar?

4. EPA is willing to consider data on the prevalence of food processing practices, along with data to quantify residue reductions from such practices. Should information on the extent of food processing practices be validated? If so, how could this be accomplished?

V. Policies Not Rules

The draft policy document discussed in this notice is intended to provide guidance to EPA personnel and decision-makers, and to the public. As a guidance document and not a rule, the policy in this guidance is not binding on either EPA or any outside parties.

Although this guidance provides a starting point for EPA risk assessments, EPA will depart from its policy where the facts or circumstances warrant. In such cases, EPA will explain why a different course was taken. Similarly, outside parties remain free to assert that a policy is not appropriate for a specific pesticide or that the circumstances surrounding a specific risk assessment demonstrate that a policy should be abandoned.

EPA has stated in this notice that it will make available revised guidance after consideration of public comment. Public comment is not being solicited for the purpose of converting any policy document into a binding rule. EPA will not be codifying this policy in the Code of Federal Regulations. EPA is soliciting public comment so that it can make fully informed decisions regarding the content of each guidance document.

The "revised" guidance will not be unalterable. Once a "revised" guidance document is issued, EPA will continue to treat it as guidance, not a rule. Accordingly, on a case-by-case basis EPA will decide whether it is appropriate to depart from the guidance or to modify the overall approach in the guidance. In the course of inviting comment on each guidance document, EPA would welcome comments that specifically address how a guidance document can be structured so that it provides meaningful guidance without imposing binding requirements.

VI. Contents of Docket

Documents that are referenced in this notice will be inserted in the docket under the docket control number OPP–00591. In addition, the documents referenced in the framework notice, which published in the **Federal Register** on October 29, 1998 (63 FR 58038) have also been inserted in the docket under docket control number OPP–00557.

List of Subjects

Environmental protection, Administrative practice and procedure, Agricultural commodities, pesticides and pests.

Dated: March 26, 1999.

Marylouise M. Uhlig,

Acting Assistant Administrator for Prevention, Pesticides and Toxic Substances.

[FR Doc. 99–8259 Filed 4–6–99; 8:45 am]

BILLING CODE 6560–50–F

EXECUTIVE OFFICE OF THE PRESIDENT, OFFICE OF NATIONAL DRUG CONTROL POLICY

The Drug Free Communities Advisory Commission: Notice of Meeting

SUMMARY: In accordance with the Drug-Free Communities Act, the second meeting of the Drug Free Communities Advisory Commission will be held on April 27, 1999 in the 5th floor conference room of the Office of National Drug Control Policy, located at 750 17th Street NW, Washington, D.C. 20530. The meeting will commence at 8:30 AM, break for lunch at 12:00 PM and resume at 1:00 PM for the afternoon session. The agenda will include a discussion on grantee activities, future grant awards, the status of training and technical assistance and an update on program evaluation. There will be an opportunity for public comment from 4:30 PM until 5:00 PM.

FOR FURTHER INFORMATION: Please direct any questions to Edward Jurith, General Counsel, (202) 395–6709, Office of National Drug Policy, Executive Office of the President, Washington, D.C. 20503.

Signed at Washington, D.C. this 24th day of March, 1999.

Edward H. Jurith,

General Counsel.

[FR Doc. 99–8538 Filed 4–6–99; 8:45 am]

BILLING CODE 3115–01–P

FEDERAL COMMUNICATIONS COMMISSION

Technological Advisory Council

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The Federal Communications Commission has established an Advisory Committee, called the Technological Advisory Council ("the Council"), to advise the Commission on advances in technology that have resulted in innovations in how telecommunications services are provided to, and are accessed by, users of those services. Many of these advances are increasing the rate of convergence among categories of services that have traditionally been viewed as distinct, such as cable television services, telephony, data services, and internet services. Regulations must be examined in light of these technology advances, and the Federal Communications Commission ("FCC") must remain abreast of new developments in technology so that it can effectively fulfill its responsibilities under the Communications Act.

SUPPLEMENTARY INFORMATION: The purpose of the Council is to provide technical advice to the FCC and to make recommendations on the issues and questions presented to it by the FCC. The Council will address questions referred to it by the FCC Chairman, or by the FCC Chief Technologist or Chief Engineer. The questions referred to the Council will be directed to technical issues in the field of communications.

In order to ensure a balanced membership on the Council, the Commission will carefully select members on the basis of their technical knowledge. Members will be selected to balance the expertise and viewpoints that are necessary to address effectively the new technology issues that will be referred to the Council. Members will be recognized experts in their fields and, for private sector companies, individuals who hold technical executive positions such as Chief Technical Officer or Senior Technical Manager. The members will be chosen so that the largest possible diversity of interests, given the function to be performed, will be represented.

The formation of this Advisory Committee is in the public interest and is necessary to enable the FCC to perform its regulatory functions in light of technological advances in telecommunications. The Council's Charter has been filed in accordance with the requirements of the Federal Advisory Committee Act, Pub. L. 92–463, as amended.

FOR FURTHER INFORMATION CONTACT: Contact Stagg Newman at snewman@fcc.gov or 202–418–2478.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–8578 Filed 4–6–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Technological Advisory Council

AGENCY: Federal Communications Commission.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, this notice advises interested persons of the first meeting of the Technological Advisory Council ("Council"), which will be held at the Federal Communications Commission in Washington, DC.

DATES: Friday, April 30, 1999 at 10:00 a.m.

ADDRESSES: Federal Communications Commission, 445 12th St. S.W., Room TW–C305, Washington DC 20554.

SUPPLEMENTARY INFORMATION: The Council was established by the Federal Communications Commission to provide a means by which a diverse array of recognized technical experts from a variety of interests such as industry, academia, government, citizens groups, etc., can provide advice to the FCC on innovation in the communications industry. The purpose of this first meeting will be to organize the Council's efforts to fulfill its obligations under the charter.

Members of the general public may attend the meeting. The Federal Communications Commission will attempt to accommodate as many persons as possible. However, admittance will be limited to the seating available. There will be no public oral participation, but the public may submit written comments to Stagg Newman, the Council's Designated Federal Officer, before the meeting.

FOR FURTHER INFORMATION CONTACT: Contact Stagg Newman at snewman@fcc.gov or 202–418–2478.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–8579 Filed 4–6–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than April 21, 1999.

A. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Phillip George Newsom, Ennis, Texas; to acquire additional voting shares of Palmer Bancshares, Inc., Palmer, Texas, and thereby indirectly acquire Commercial State Bank, Palmer, Texas.

Board of Governors of the Federal Reserve System, April 1, 1999.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 99–8545 Filed 4–6–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 30, 1999.

A. Federal Reserve Bank of New York (Betsy Buttrill White, Senior Vice President) 33 Liberty Street, New York, New York 10045-0001:

1. Oswego County and Oswego County Bancorp, both of Oswego, New York; to become bank holding companies by acquiring Oswego County Savings Bank, Oswego, New York.

B. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

1. Centon Bancorp, Inc., Richton, Mississippi; to become a bank holding company by acquiring 100 percent of the voting shares of Richton Bank and Trust Company, Richton, Mississippi.

Board of Governors of the Federal Reserve System, April 1, 1999.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 99–8544 Filed 4–6–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 11:00 a.m., Monday, April 12, 1999.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, NW, Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Consideration of various alternative work arrangements at the Federal Reserve Board.

2. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

3. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Lynn S. Fox, Assistant to the Board; 202–452–3204.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at http://www.federalreserve.gov for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: April 2, 1999.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 99–8649 Filed 4–2–99; 4:26 pm]

BILLING CODE 6210–01–P

GENERAL SERVICES ADMINISTRATION

Environmental Assessment and Finding of No Significant Impact for Construction of GSA Federal Laboratories, Prince George's County, Maryland

Reply to the Attention of: Dawud Abdur-Rahman, National Capital Region, General Services Administration, 7th and D Sts., SW., Washington, DC 20407

All comments must be received by April 13, 1999.

The General Services Administration will publish a Final Environmental Assessment and Finding of No Significant Impact (FONSI) on Friday, March 12, 1999 for Construction of Federal Laboratories in Beltsville, Maryland. The Final EA will be available for public review and comment at the Beltsville Library, 4319 Sellman Road, Beltsville, Maryland 20705.

The General Services Administration (GSA), acting as development manager for Federal facilities, proposes to construct and operate Federal Laboratories in Prince George's County, Maryland. The proposed action would consist of the construction a 150,000 gross square foot (gsf) (13,935 gross square meters) National Laboratory and a 50,000 gsf (4,645 gross square meters) Fire Investigation, Research, and Education (F.I.R.E.) Center. The facilities would employ approximately 152 people.

The new facilities would improve administrative and operational efficiency and would facilitate communication and interaction among staff. The proposed action would provide state-of-the-art laboratories and research facilities. The new facilities will alleviate overcrowding and provide safe, secure, and modern laboratories. The F.I.R.E. Center will be one of very few such facilities in the world and will enhance Federal fire scene investigations. The Center will serve as a training center for advanced fire investigation and a repository for technical data related to fire investigation and research.

Finding

Pursuant to the provision of GSA Order ACM 1095.1D, the HB PBS P 1095.4B and the regulations issued by the Council of Environmental Quality, November 29, 1978, (40 CFR Parts 1500 to 1508), this is to advise you of our finding, based on the Final Environmental Assessment (EA), that the action described above is considered a major Federal action not significantly affecting the quality of the human environment.

Basis for Finding

The impacts of construction and operation of the proposed facilities on the environment were considered in an EA pursuant to the National Environmental Policy Act (NEPA) of 1969, as amended. The Final EA, which is available for review at the location listed above, is incorporated by reference into this Finding of No Significant Impact. Construction and operation of the proposed project would not have a significant adverse effect on the human environment.

Two alternate sites, the Ammendale Site and the Konterra Site, along with the No Action Alternative, were studied in detail in the EA. The EA describes the existing natural, physical social and cultural environment associated with each alternative. The EA also describes potential direct, indirect, and cumulative impacts associated with construction of the proposed facilities on each alternate site. Impacts of the No Action Alternative have also been analyzed.

Regardless of which of the two alternate sites is selected, moderate impacts will occur to the following resources: soils, forested areas, land use, aesthetics, utilities, and transportation facilities. If the Ammendale Site is selected, moderate impacts would also occur to Interior Forest Dwelling Species habitat. To mitigate potential impacts, GSA will implement the measures that are discussed in the Environmental Assessment.

This Finding of No Significant Impact will become final April 13, 1999 provided that no information leading to a contrary finding is received or comes to light during the 30-day public review period.

Nelson Alcalde,

Regional Administrator, National Capital Region, General Services Administration.

[FR Doc. 99–8576 Filed 4–6–99; 8:45 am]

BILLING CODE 6820–61–M

GENERAL SERVICES ADMINISTRATION

Implementation of Changes to the Small Business Competitiveness Demonstration Program

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Notice.

SUMMARY: Title VII of the "Business Opportunity Development Act of 1988" (Pub. L. 100–656) established the Small Business Competitiveness Demonstration Program to provide for the testing of specified innovative procurement methods and procedures. The program was conducted by nine (9) designated agencies, including GSA, over a four (4) year period from January 1, 1989 to December 31, 1992. Title VII of Public Law 100–656 was amended by the Small Business Opportunity Enhancement Act of 1992 (Pub. L. 102–366) to extend the demonstration program through the Omnibus Consolidated Appropriations Act (Pub. L. 104–208) for one year to September 1997. In 1997, Congress also extended the aspect of the Program covering expansion of small business participation in the dredging industry. In December 1997, the Small Business Reauthorization Act of 1997, was enacted into law. As a result the program is extended indefinitely along with amendments to be implemented. The law designated four (4) industry groups for testing whether the competitive capabilities of the specified industry groups will enable them to successfully compete on an unrestricted basis. The four (4) industry groups are: construction (except dredging); architectural and engineering (A&E) services (including surveying and mapping); refuse systems and related services (limited to trash/garbage collection services); and non-nuclear ship repair. Under the program, when a participating agency misses its small business participation goals, restricted competition is reinstituted only for those designated industry groups that failed to attain the goal. The small business goal is 40 percent of the total contract dollars awarded for construction, trash/garbage collection services, non-nuclear ship repair and architect-engineer services. This notice announces modifications to GSA's solicitation practices under the demonstration program based on a review of the agency's performance during the period from October 1, 1998 through September 30, 1999. Modifications to solicitation practices are outlined in the **SUPPLEMENTARY INFORMATION** section below and apply to solicitations issued on or after February 1, 1999.

EFFECTIVE DATE: February 1, 1999.

FOR FURTHER INFORMATION CONTACT: Cecelia L. Davis, Office of Acquisition Policy, (202) 219–0202.

SUPPLEMENTARY INFORMATION: Procurements of construction or trash/garbage collections with an estimated value of $25,000 or less and procurement of A&E services with an estimated value of $50,000 or less shall

be reserved for emerging small business when there is a reasonable expectation of obtaining offers from two or more (three or more for A&E procurements) that will be competitive in terms of market price, quality, and delivery. If no such expectation exists, the procurement shall be processed as a small business simplified acquisition set aside in accordance with FAR 13.105 or in accordance with FAR 19.5 or 19.8. If the contracting officer determines a procurement cannot be set aside for small business under FAR 19.5 or 19.8, the procurement may be made using unrestricted procedures. The use of simplified acquisition purchase procedures is not required under the reserve program; therefore, any procurement method may be used. The reserve program applies only to new awards. Modifications within the scope of work of contracts having an initial award value in excess of the $25,000 for construction and trash/garbage collection service or $50,000 for A&E service are not subject to the reserve program.

Procurements of construction or trash/garbage collection services with estimated value in excess of $25,000 and procurements of A&E services with an estimated value in excess of $50,000 shall be made on an unrestricted basis as long as annual reviews show that GSA (as an agency) has attained the 40 percent goals. The 40 percent goal will be applied to each of the three (3) major groups in construction (groups 15, 16, and 17), to trash/garbage collection, and to A&E services. However, if goal attainment (for GSA as an agency) in any major group drops below 40 percent, small business set asides will be imposed. The continued use of unrestricted procedures is unaffected by an agency's failure to meet the 15 percent goal for emerging small business. When annual reviews show that GSA as an agency has not attained the 40 percent goal, competition will be restricted to small business, in accordance with FAR 19.5, on future procurements by the GSA contracting activities (e.g., regions) that failed to attain the goal. Other GSA contracting activities that meet the goals will continue to use unrestricted procedures. Notwithstanding the Small Business Competitiveness Demonstration Program, contracts may be awarded under the 8(a) program at any time. These procurements shall be made in accordance with the following procedures.

Construction Service in Groups 15, 16 and 17

Procurements for construction services in SIC group 15 (except solicitations issued by Regions 4, 7, and 9), SIC group 16 and in SIC group 17 shall be conducted on an unrestricted basis.

Procurements for construction services in SIC group 15 issued by contracting activities in Regions 4, 7, and 9 shall be set-aside for small business when there is a reasonable expectation of obtaining competition from two or more small businesses. If no expectation exists, the procurements may be conducted on an unrestricted basis.

Region 4 (Southeast-Sunbelt) encompasses the states of Alabama, Florida, Georgia, Kentucky, North Carolina, South Carolina, Mississippi and Tennessee.

Region 7 (Greater Southwest) encompasses the states of Arkansas, Louisiana, Oklahoma, New Mexico and Texas.

Region 9 (Pacific Rim) encompasses the state of Arizona, California, Hawaii and Nevada.

Trash/Garbage Collection Services in PSC S205

Procurements for trash/garbage collection services in PSC S205 (except solicitations issued by contracting activities in Regions 4 and 6) shall be conducted on an unrestricted basis.

Procurements for trash/garbage collection services issued by contracting activities in Regions 4 and 6 shall be set aside for small business when there is a reasonable expectation of obtaining competition from two or more small businesses. If no expectation exists, the procurements may be conducted on an unrestricted basis.

Region 4 (Southeast-Sunbelt) encompasses the states of Alabama, Florida, Georgia, Kentucky, North Carolina, South Carolina, Mississippi and Tennessee.

Region 6 (Heartland) encompasses the states of Iowa, Kansas, Missouri and Nebraska.

Architech-Engineer Services (All PSC Codes Under the Demonstration Program)

Procurements for architect-engineer services (except solicitations issued by contracting activities in Regions 2, 4, 7, 10 and NCR) shall be conducted on an unrestricted basis.

Procurements for architect-engineer services issued by contracting activities in Regions 2, 4, 7, 10 and NCR shall be set aside for small business when there is a reasonable expectation of obtaining competition from two or more small businesses. If no expectation exists, the procurements may be conducted on an unrestricted basis.

Region 2 (Northeast and Caribbean) encompasses the states of New Jersey, New York and territories of Puerto Rico and the Virgin Islands.

Region 4 (Southeast-Sunbelt) encompasses the states of Alabama, Florida, Georgia, Kentucky, North Carolina, South Carolina, Mississippi and Tennessee.

Region 7 (Greater Southwest) encompasses the states of Arkansas, Louisiana, Okahoma, New Mexico and Texas.

Region 10 (Northwest-Arctic) encompasses the states of Alaska, Idaho, Oregon and Washington.

The National Capitol Region (NCR) encompasses the District of Columbia, Montgomery and Prince Georges counties in Maryland the cities of Alexandria, Fairfax and Falls Church and the counties of Arlington, Fairfax, Loudoun and Prince William in Virginia.

Non-Nuclear Ship Repair

GSA does not procure for non-nuclear ship repair.

Dated: March 26, 1999.

J. Les Davison,

Acting Deputy Associate Administrator for Acquisition Policy.

[FR Doc. 99–8577 Filed 4–6–99; 8:45 am]

BILLING CODE 6820–61–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

President's Council on Physical Fitness and Sports

AGENCY: Office of the Secretary, Office of Public Health and Science, HHS.

ACTION: Notice of meeting.

SUMMARY: As stipulated by the Federal Advisory Committee Act, the Department of Health and Human Service (DHHS) is hereby given notice that the President's Council on Physical Fitness and Sports will hold a meeting. This meeting is open to the public. A description of the Council's functions is included also with this notice.

DATES: May 3, 1999, from 10:00 a.m. to 3:00 p.m.

ADDRESSES: Department of Health and Human Services, Room 800 Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201.

FOR FURTHER INFORMATION CONTACT: Sandra Perlmutter, Executive Director,

President's Council on Physical Fitness and Sports, Room 738H Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, (202) 690–5187.

SUPPLEMENTARY INFORMATION: The President's Council on Physical Fitness and Sports (PCPFS) was established in 1956 by President Eisenhower after published reports indicated that American boys and girls were unfit compared to the children of Western Europe.

The Council has undergone two name and changes and several reorganizations before reaching its present status as a program office within the Office of Public Health and Science in the Department of Health and Human Services. It currently operates under directives issued in Executive Order 12345, as amended. PCPFS serves as a catalyst to promote, encourage, and motivate the development of physical fitness and sports participation for all ages. The primary functions of the Council include (1) to advise the President and Secretary concerning progress made in carrying out the provisions of the Executive Order and recommend to the President and Secretary, as necessary, actions to accelerate progress; (2) to advise the Secretary on matters pertaining to the ways and means of enhancing opportunities for participation in physical fitness and sports actions to extend and improve physical activity programs and services; and (3) to advise the Secretary on State, local, and private actions to extend and improve physical activity programs and services.

This meeting of the Council is being held to apprise members of the status of ongoing Council programs and activities, and to make plans for future directions.

Dated: March 30, 1999.

Sandra. P. Perlmutter,

Executive Director, President's Council on Physical Fitness and Sports.

[FR Doc. 99–8513 Filed 4–6–99; 8:45 am]

BILLING CODE 4160–17–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Interagency Committee on Smoking and Health: Notice of Recharter

This gives notice under the Federal Advisory Committee Act (Pub. L. 92–463) of October 6, 1972, that the charter for the Interagency Committee on Smoking and Health (ICSH) of the Centers for Disease Control and Prevention, Department of Health and Human Services, has been renewed for a 2-year period, through March 19, 2001.

FOR FURTHER INFORMATION CONTACT: Ms. Elizabeth Majestic, Deputy Director, Office on Smoking and Health, National Center for Chronic Disease Prevention and Health Promotion, CDC, 4770 Buford Highway, NE, M/S K–50, Atlanta, Georgia 30341, telephone 770/488–5709.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: March 30, 1999.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 99–8568 Filed 4–6–99; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 99066]

Primate Model for Studying the Pathogenesis of Measles Infections and for Development of Improved Measles Vaccines; Notice of Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 1999 funds for a cooperative agreement program to support research into the pathogenesis of measles virus in a primate model. This program addresses the "Healthy People 2000" priority area of Immunization and Infectious Diseases. The goal of this program is to assist researchers in defining the mechanism of immune protection from measles virus and to use this information to develop improved vaccines for worldwide measles control efforts.

Specifically, the purpose of the program is to achieve the following research goals:

1. Use the rhesus macaque as a primate model for measles infections. Studies should attempt to reproduce disease in rhesus that closely resembles measles in humans. It will be important to develop viral stocks which can reliably produce disease in rhesus by the intranasal route and to describe the pathogenesis of this disease in the animal host.

2. Characterize the immune response to natural measles disease and measles vaccination. Studies should attempt to measure differences between the immune response in animals receiving measles vaccines to those experiencing infection with a virulent strain. Efforts should be aimed at providing a complete description of the humoral, and especially, the cellular immune responses.

3. Development of improved measles vaccines. Research efforts should be directed at developing and testing novel vaccine formulations that could be used to stimulate an immune response in the presence of maternal antibody. Such vaccines would be used to protect newborns from measles infection or disease during their first year of life. Vaccines that could be used to stimulate or boost immunity in immunocompromized individuals should also be considered.

4. Evaluation of immune response to individual measles virus antigens. Research should be designed to measure the immune response generated by experimental measles vaccines and individual measles antigens. Efforts should be made to identify epitopes on measles proteins which are the most effective in inducing humoral and cellular immune responses in an outbred population.

B. Eligible Applicants

Applications may be submitted by public and private nonprofit organizations and by governments and their agencies; that is, universities, colleges, research institutions, hospitals, other public and private nonprofit organizations, State and local governments or their bona fide agents, and federally recognized Indian tribal governments, Indian tribes, or Indian tribal organizations.

Note: Public Law 104–65 states that an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, cooperative agreement, contract, loan, or any other form.

C. Availability of Funds

Approximately $300,000 is available in FY 1999 to fund approximately two awards. It is expected that the average award will be $150,000, ranging from $100,000 to $200,000. It is expected that the awards will begin on or about

September 30, 1999 and will be made for a 12-month budget period within a project period of up to three years. The funding estimate may change.

Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

Funding Preferences

Although applications for new studies are encouraged, funding preference will be given to the competing continuation application over applications for programs not already receiving support under the existing program. The current awardee has implemented vaccine research that requires continued support to become fully developed and to realize the benefits of continued vaccine development (see Background Information Attachment II).

D. Program Requirements

In conducting activities to achieve the purpose of this program, the recipient shall be responsible for the activities under 1., below, and CDC shall be responsible for conducting activities under 2., below:

1. Recipient Activities
   a. Develop study design to accomplish the research goals described above.
   b. Perform all inoculations of research animals. Maintain records of clinical observations and obtain samples for laboratory analysis.
   c. Perform laboratory analysis of samples obtained from study animals.
   d. Provide routine veterinary care, housing and other support for rhesus macaques to be used in experiments. Comply fully with PHS policies regarding research on animal subjects.
   e. Maintain sufficient numbers of rhesus macaques so that experiments can be completed within an appropriate amount of time.
   f. Develop experimental measles vaccines and evaluate them in the animal model.
   g. Analyze data and prepare manuscripts describing results of research investigations.
2. CDC Activities
   a. Provide technical assistance and advice for design and conduct of the research.
   b. Provide assistance in development of various preparations of measles virus antigens, recombinant viruses, rescued viruses or cDNA clones for use as experimental vaccines.
   c. Provide specialty reagents such as monoclonal and polyclonal antiserum and PCR primers as necessary.
   d. Assist in conducting specialized analysis of samples obtained from test animals. These may include special serological or immunological assays, as well as assays to detect and measure measles virus or measles virus RNA in various tissue samples. Assist with genetic characterization of viruses used in the study.
   e. Assist in data analysis and presentation.

E. Application Content

Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan. The narrative should be no more than 10 double-spaced pages, printed on one side, with one inch margins, and unreduced font.

F. Submission and Deadline

Application

Submit the original and two copies of PHS–5161–1 (OMB Number 0937–0189). Forms are in the application kit. On or before June 2, 1999, submit the application to: Gladys Gissentanna, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Announcement 99066, Centers for Disease Control and Prevention (CDC), 2920 Brandywine Road, Room 3000, Atlanta, Georgia 30341–4146.

Deadline: Applications shall be considered as meeting the deadline if they are either:

1. Received on or before the deadline date; or

2. Sent on or before the deadline date and received in time for orderly processing. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

Late Applications: Applications which do not meet the criteria in (a) or (b) above are considered late applications, will not be considered, and will be returned to the applicant.

G. Evaluation Criteria

Each application will be evaluated individually against the following criteria by an independent review group appointed by CDC (100 total points):

1. Background and Need (10 total points)
   Extent to which applicant demonstrates a clear understanding of the purpose and objectives of this proposed cooperative agreement.
2. Capacity (45 total points)
   a. Extent to which applicant describes adequate resources and facilities for conducting the project. Extent to which facilities for the safe handling of infectious agents are available. (5 points)
   b. Extent to which applicant documents that professional personnel involved in the project are qualified and have past experience and achievements in research related to that proposed in this cooperative agreement as evidenced by curriculum vitae, publications, etc. Extent to which the applicant demonstrates experience with virology, particularly the virology of measles virus. (10 points)
   c. Extent to which applicant demonstrates experience with viral pathogenesis and immunology in rhesus macaques or other primate system. Extent to which the applicant can demonstrate previous or ongoing experience with measles infections of primates. Extent to which the applicant can produce a measles infection that is similar to measles infections in humans in rhesus macaques following intranasal inoculation. (30 points)
3. Objectives and Technical Approach (45 total points)
   a. Extent to which applicant describes objectives of the proposed project which are consistent with the purpose and program requirements of this cooperative agreement and which are measurable and time-phased. (5 points)
   b. Extent to which the plan clearly describes applicant's technical approach/methods for conducting the proposed studies. Extent to which applicant describes specific study protocols or plans for the development of study protocols that are appropriate for achieving project objectives (also see Attachment III). (20 points)
   c. Extent to which applicant provides a detailed plan for evaluating study results and for evaluating progress towards achieving project objectives. (20 points)
4. Budget (Not Scored)
   Extent to which the proposed budget is reasonable, clearly justifiable, and consistent with the intended use of cooperative agreement funds.
5. Animal Subjects (Not Scored)
   Extent to which the application adequately address the

requirements of Public Health Policy on Humane Care and Use of Laboratory Animals.

H. Other Requirements

Technical Reporting Requirements Provide CDC with original plus two copies of:

1. progress reports (annual);
2. financial status report, no more than 90 days after the end of the budget period; and
3. final financial status and performance reports, no more than 90 days after the end of the project period.

Send all reports to: Gladys T. Gissentanna, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 2920 Brandywine Road, Room 3000, Atlanta, GA 30341–4146.

The following additional requirements are applicable to this program. For a complete description of each, see Attachment I in the application kit.

AR–3 Animal Subjects Requirements
AR–10 Smoke-Free Workplace Requirements
AR–11 Healthy People 2000
AR–12 Lobbying Restrictions
AR–15 Proof of Non-Profit Status

I. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under the Public Health Service Act Sections 301(a)[42 U.S.C. 241(a)], 311 [42 U.S.C. 243], and 317(k) (1) and (2)[42 U.S.C. 247b(k) (1)and (2)], as amended. The Catalog of Federal Domestic Assistance number is 93.283.

J. Where to Obtain Additional Information

To Receive additional written information and to request an application kit, call 1–888–GRANTS4 (1–888 472–6874). You will be asked to leave your name and address and will be instructed to identify the Announcement number of interest. Please refer to Program Announcement 99066. You will receive a complete program description, information on application procedures, an application package. If you have any questions after reviewing the contents of all the documents, business management technical assistance may be obtained from Gladys T. Gissentanna, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 2920 Brandywine Road, Room 3000, Atlanta, GA 30341–4146, telephone (770) 488–2753, e-mail address, gcg4@cdc.gov.

See also the CDC home page on the Internet: http://www.cdc.gov.

For program technical assistance, contact Paul A. Rota, Ph.D., Supervisory Microbiologist, Measles Section, National Center For Infectious Diseases, Centers for Disease Control and Prevention, 1600 Clifton Road, Mailstop C–22, Atlanta, GA 30333, telephone (404) 639–3308, fax (404) 639–4187, e-mail address, par1@cdc.gov.

Dated: April 1, 1999.

John L. Williams,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 99–8567 Filed 4–6–99; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Cardiovascular and Renal Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Cardiovascular and Renal Drugs Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on April 29, 1999, from 9 a.m. to 5:30 p.m., and on April 30, 1999, from 8:30 a.m. to 4 p.m.

Location: National Institutes of Health, Clinical Center, Bldg. 10, Jack Masur Auditorium, 9000 Rockville Pike, Bethesda, MD.

Contact Person: Joan C. Standaert, Center for Drug Evaluation and Research (HFD–110), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 419–259–6211, or Lauren W. Parcover (HFD–21), 301–827–7001, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12533. Please call the Information Line for up-to-date information on this meeting.

Agenda: On April 29, 1999, the committee will discuss new drug application (NDA) 19–865/S–007, Betapace® (sotalol), Berlex Laboratories, Inc., for prevention of the recurrence of chronic or paroxysmal symptomatic atrial fibrillation/atrial flutter. On April 30, 1999, the committee will discuss the interpretation of antiarrhythmic trials in patients with implanted ventricular defibrillators.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by April 21, 1999. Oral presentations from the public will be scheduled between approximately 9 a.m. and 10 a.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before April 21, 1999, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: March 26, 1999.

Michael A. Friedman,

Deputy Commissioner for Operations.

[FR Doc. 99–8500 Filed 4–6–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Drug Abuse Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). At least one portion of the meeting will be closed to the public.

Name of Committee: Drug Abuse Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on April 20, 1999, from 8:30 a.m. to 4 p.m.

Location: Center for Drug Evaluation and Research/Advisory Committee Conference Room, 5630 Fishers Lane, Rockville, MD.

Contact Person: Karen M. Templeton-Somers, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20057, 301–827–7001, or

FDA Advisory Committee Information Line, 1–800–741–8138 (301–439–0572 in the Washington, DC area), code 12535. Please call the Information Line for up-to-date information on this meeting.

Agenda: The committee will be discussing appropriate patient populations and outcome measures for clinical trials for drugs to treat alcohol use disorders.

Procedure: On April 20, 1999, from 8:30 a.m. to 1:30 p.m., the meeting is open to the public. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by April 6, 1999. Oral presentations from the public will be scheduled between approximately 8:30 a.m. to 9:30 a.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before April 13, 1999, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Closed Committee Deliberations: On April 20, 1999, from 1:30 p.m. to 4 p.m., the committee will review trade secret and/or confidential information relevant to pending investigational new drugs or new drug applications. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

FDA regrets that it was unable to publish this notice 15 days prior to the April 20, 1999, Drug Abuse Advisory Committee meeting. Because the agency believes there is some urgency to bring these issues to public discussion and qualified members of the Drug Abuse Advisory Committee were available at this time, the Commissioner concluded that it was in the public interest to hold this meeting even if there was not sufficient time for the customary 15-day public notice.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: March 30, 1999.

Michael A. Friedman,

Deputy Commissioner for Operations.

[FR Doc. 99–8590 Filed 4–6–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Peripheral and Central Nervous System Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting is open to the public.

Name of Committee: Peripheral and Central Nervous System Drugs Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on April 28 and 29, 1999, 8:30 a.m. to 5 p.m.

Location: Holiday Inn Gaithersburg, The Ballrooms, Two Montgomery Village Ave., Gaithersburg, MD.

Contact Person: Sandra Titus or Tony Slater, Food and Drug Administration, Center for Drug Evaluation and Research (HFD–21), 5600 Fishers Lane (for express delivery, 5630 Fishers Lane, rm. 1093), Rockville, MD 20857, 301–827–7001, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12543. Please call the Information Line for up-to-date information on this meeting.

Agenda: On April 28, 1999, the committee will discuss the safety and efficacy of new drug application (NDA) 20–884, Aggrenox™ (dipyridamole/aspirin capsules, Boehringer Ingelheim Pharmaceuticals, Inc.), proposed to reduce the combined risk of death and nonfatal stroke in patients who have had transient ischemia of the brain or completed ischemic stroke.

On April 29, 1999, the committee will discuss the safety and efficacy of NDA 20–399, Freedox® (tirilazad mesylate injection, Pharmacia and Upjohn, Inc.), proposed for the treatment of aneurysmal subarachnoid hemorrhage to improve survival and functional outcome in patients with poor neurologic function following the initial hemorrhage.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by April 21, 1999. Oral presentations from the public will be scheduled between approximately 1 p.m. and 2 p.m. on April 28 and 29, 1999. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before April 21, 1999, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: March 26, 1999.

Michael A. Friedman,

Deputy Commissioner for Operations.

[FR Doc. 99–8501 Filed 4–6–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Statement of Organization, Functions and Delegations of Authority

This notice amends Part R of the Statement of Organization, Functions and Delegations of Authority of the Department of Health and Human Services (DHHS), Health Resources and Services Administration (60 FR 56605 as amended November 6, 1995, as last amended at 64 FR 14000, dated March 23, 1999). This notice reflects the reorganization of the Maternal and Child Health Bureau.

I. Under Part R, HRSA, Maternal and Child Health Bureau (RM) make the following changes.

Section RM–10 Organization and Functions

Office of The Director (RM)

Provides national leadership and policy direction for the planning, development, implementation and evaluation of the programs and activities of the Bureau. These programs are designed to improve the health of women and childbearing age, infants, children, adolescents, and their families, of children with special health needs, and of persons with hemophilia. Specifically: (1) Oversees the day-to-day management and operations of the Bureau's Offices and Divisions; (2) coordinates all internal functions of the Bureau and facilities effective, collaborative relationships with other health and related programs; (3) establishes a program mission, goals,

objectives, and policy positions consistent with legislation and broad Administration guidelines; (4) serves as the focal point for managing the Bureau-wide strategic planning operation as it relates to long and short range programmatic goals and objectives for the Bureau; (5) works with other Bureaus to further the Agency goals and mission; (6) develops and administers internal operating policies and procedures and provides guidance and direction to Field Office staff, to State Health Officers, and to State Maternal and Child Health and Special Health Needs Directors; (7) serves as principal contact point to the Agency, the Department, Office of Management and Budget (OMB), and the White House on matters concerning the health status of America's mothers and children; (8) directs and coordinates the Bureau's program responsibilities, including the Maternal and Child Health block grants to States, contracts, and other funding arrangements in the areas of research, training, genetics, hemophilia, and health service improvement through regionally and nationally significant projects, a national program to improve emergency medical services for children, a Health Start program designed to strengthen and improve the delivery of health services to improve the outcome of pregnancy, a national program on traumatic brain injury and on injury prevention for children and adolescents, and a national abstinence education program; (9) directs and coordinates the planning, implementation and monitoring of a national maternal and child health data and information system based on State and local jurisdictions; (10) provides direction and serves as the focal point for international matters of concern to the health of mothers, children, and their families; (11) develops a policy statement and an action plan to address the health needs of mothers and children from culturally diverse groups; (12) directs and coordinates Bureau activities in support of Equal Opportunity programs; (13) provides direction for the Bureau's Civil Rights compliance activities; (14) provides information and reports on the Bureau's programs to public, health, education and related professional associations, the Congress, other Federal agencies, OMB, and the White House; (15) coordinates public communications and public affairs activities for the Bureau; (16) administers the implementation of the Privacy Act and the Freedom of Information Act in the Bureau; and (17) performs the executive secretariat functions and coordinates responses to General Accounting Office (GAO) audit reports and monitors the implementation of GAO recommendations.

Office of Program Development (RM–1)

Serves as the Bureau focal point for the management of the planning, evaluation, legislation, and legislative implementation activities, including the development, coordination, and dissemination of program objectives, policy positions, reports and strategic plans. Specifically: (1) advises and assists the Bureau Director and the Bureau in the development, coordination and management of legislative planning documents, responses to Departmental and HRSA initiatives, and information papers to support Bureau and Administration goals; (2) interprets evaluation requirements, develops, coordinates, and manages the preparation of the annual evaluation plans and activities, and conducts or contracts for specific evaluation projects related to the performance of MCHB programs; (3) provides staff services, disseminates information, and develops, coordinates, and manages Bureau activities relating to legislation and regulations, and develops and coordinates legislative proposals and regulations; (4) develops, coordinates, and manages Bureau activities related to the development, clearance, and dissemination of Federal Register notices, guidelines, final grant reports, and periodic and annual reports to other Federal and non-Federal agencies; (5) participates in the development of budget submissions related to the office's functions; (6) coordinates activities closely and continuously with the Office of Planning, Evaluation and Legislation, HRSA, and other MCHB Divisions and Offices in promoting program objectives and the mission of the Bureau; (7) provides liaison with public, private, professional, and voluntary organizations on programs related to MCHB planning and legislative issues; and (8) participates in international health activities of the Bureau.

Office of Operations and Management (RM1)

Plans, directs, coordinates, and evaluates Bureau-wide administrative and management activities; coordinates and monitors a program and administrative policy implementation; and maintains close liaison with officials of the Agency, and the Office of the Secretary on matters relating to these activities. Specifically: (1) serves as the Associate Administrator's and Bureau principal source for management and administrative advice and assistance for Headquarters and Field Office staff operations; (2) provides or serves as liaison for program support services and resources, such as procurement of equipment and supplies, space, property, etc.; (3) provides leadership on intergovernmental activities of the Bureau which requires central administrative direction or intergovernmental activities of the Bureau, which require central direction of cross cutting administrative issues affecting program activities; (4) participates in the development of strategic plans, regulatory activities, policy papers, and legislative proposals relating to MCH programs; (5) serves as liaison with the Office of Human Resources Development, HRSA, and coordinates personnel activities for the Bureau; (6) directs, conducts, and coordinates manpower management activities and advises on the allocation of personnel resources including intra- and interagency agreements of Federal assignees to MCH programs: (7) manages the performance appraisal and employee performance management systems; (8) develops and carries out a full range of financial management activities, including the annual budget formulation, presentation, and execution functions; (9) determines State allocation of MCH Block Grant funds based on formula and current census data; (10) is responsible for planning, directing, coordinating, and evaluating Bureau-wide grants management activities, including cooperative agreement operations; (11) coordinates the development and processing of Bureau contract procurement activities and maintains liaison with the Division of Grants and Procurement Management, HRSA; (12) plans, coordinates, and facilities the Bureau's intra- and interagency agreement activities; (13) provides organization and management analysis, develops policies and procedures for internal operation, and interprets and implements the Administration's management policies, procedures and systems; (14) coordinates the Bureau's program and administrative delegations of authority activities; (15) provides staff services in the operational planning and program analysis; (16) is responsible for paperwork management functions, including the development and maintenance of manual issuances; (17) provides direction regarding new developments in office management activities; (18) participates in international health activities of the Bureau; and (19) responsible for the

coordination of Bureau funds and resources for grants, contracts and cooperative agreements.

Division of Services for Children With Special Health Needs (RM2)

Provides national leadership in planning, directing, coordinating, monitoring, and evaluating national programs focusing on the promotion of health and prevention of disease among children with special health needs, and their families, with special emphasis on the development and implementation of family-centered, comprehensive, care-coordinated, community-based and culturally competed systems for care for such populations. Specifically: (1) Administers a program which supports the development of systems of care and services for children with special health care needs and their families; (2) develops policies and guidelines and promulgates standards for professional services and effective organization and administration of health programs for children with special health care needs and their families; (3) accounts for the administration of funds and other resources for grants, contracts and programmatic consultation and assistance; (4) coordinates with other MCHB Divisions and Offices in promoting program objectives and the mission of the Bureau; (5) provides consultation and technical assistance to State programs for children with special health care needs and to local communities, consistent with a Bureau wide technical assistance consultation plan, and in concert with other agencies and organizations; (6) provides liaison with public, private, professional and voluntary organizations on programs designed to improve services for children with special health care needs and their families; (7) develops and implements a national program for those at risk or living with genetic diseases, including a national program for persons with hemophilia, implementing a system of demonstration projects related to early identification, referral, treatment, education, and counseling information; (8) coordinates within this Agency and with other Federal programs (particularly Title XIX of the Social Security Act, Supplemental Security Income (SSI), Individuals with Disabilities Education Act (IDEA), and others) to extend and improve comprehensive, coordinated services and promote integrated State-based systems of care for children with special health care needs, including those with genetic disorders, and their families; (9) promotes the dissemination of information on preventive health services and advances in the care and treatment of children with special health care needs, including those with genetic disorders, and their families; (10) participates in the development of strategic plans, regulatory activities, policy papers, legislative proposals, and budget submissions relating to health services for children with special health care needs, including those with genetic disorders, and their families; (11) provide a focus for international health activities of the Bureau for services for children with special health care needs and their families; (12) participates in the development of interagency agreements concerning Federal assignees to State MCH programs; and (13) responsible for the administration of funds and other resources for grants, contracts, and cooperative agreements.

Division of Child, Adolescent,and Family Health (RM3)

Provides national leadership in planning, directing, coordinating, monitoring, and evaluating national programs focusing on the promotion of health and prevention of disease and injury among children, adolescents, and their families with special emphasis on the development and implementation of family-centered, comprehensive, coordinated, community based and culturally competent systems of care for such populations. Specifically: (1) administers a program which supports the development of systems of care and services for children, adolescents, and their families; (2) develops policies and guidelines and promulgates standards for professional services and effective organization and administration of health programs for children, adolescents, and their families; (3) accounts for the administration of funds and other resources for grants, contracts, and programmatic consultation and assistance; (4) coordinates with MCHB Divisions and Offices in promoting program objectives and the mission of the Bureau; (5) serves as the focal point within the Bureau in implementing programmatic statutory requirements for State programs for children, adolescents, and their families; (6) provides consultation and technical assistance to state programs for children, adolescents, and their families and to local communities, consistent with Bureau-wide technical assistance consultation plan, working with other agencies and organizations; (7) provides liaison with public, private, professional and voluntary organizations on programs designed to improve services for children, adolescents, and their families; (8) serves as the national focus for improving the health and well-being of adolescents; (9) carries out a national program on school staff development activities; (10) carries out a national program designed to improve the provision of emergency medical services for children; (11) carries out a national program on traumatic brain injury and on injury prevention for children and adolescents; (12) coordinates within this Agency and with other Federal programs (particularly Title XIX of the Social Security Act) to extend and improve comprehensive, coordinated services and promote integrated State-based systems of care for children, adolescents, and their families; (13) disseminates information on preventive health services and advances in the care and treatment of children, adolescents, and their families; (14) participates in the development of strategic plans, regulatory activities, policy papers, legislative proposals, and budget submissions relating to health services for children, adolescents, and their families; (15) provides a focus for international health activities for the Bureau for services for children, adolescents, and their families; and (16) responsible for the administration of funds and other resources for grants, contracts, and cooperative agreements.

Division of Research, Training and Education (RM4)

Provides national leadership in planning, directing, coordinating, monitoring, and evaluating national programs related to research, professional and public education activities focusing on the promotion of health and prevention of disease among women of reproductive age, infants, children, adolescents and their families, with special emphasis on the development and implementation of family-centered, comprehensive; care-coordinated, community-based and culturally competent systems of care for such population. Specifically: (1) administers a program which supports the development of systems of care and services for children, had their families; (2) develops policies and guidelines and promulgates standards through research, professional and public education and training activities for the Bureau; (3) accounts for the administration of funds and other resources for grants, contracts and programmatic consultation and assistance; (4) coordinates with other MCHB Divisions and Offices in promoting program objectives and the mission of the Bureau; (5) provides liaison with public, private, professional and voluntary organizations on programs and activities; (6) disseminates information on research, professional and public education and training activities to states and

localities; (7) participates in the development of strategic plans, regulatory activities, policy papers, legislative proposals, and budget submissions; (8) provides a focus for international health activities of the Bureau relating to research, professional and public education and training activities for the Bureau; and (9) responsible for the administration of funds and other resources for grants, contracts and cooperative agreements.

Division of Perinatal Systems and Women's Health (RM5)

Provides national leadership in planning, directing, coordinating, monitoring, and evaluating national programs focusing on perinatal, infant and women's health to improve and strengthen the access, delivery, quality, coordination and information of services for the targeted populations, especially for the vulnerable and high-risk. Specifically: (1) administers national programs on perinatal and women's health with an emphasis on infant mortality reduction and prevention; (2) provides policy direction, technical assistance, and professional consultation on Division programs; (3) accounts for the administration of funds and other resources for grants, contracts and programmatic consultation and assistance; (4) coordinates with other MCHB Divisions and Offices in promoting Division programs' objectives and mission of the Bureau; (5) serves as the focal point within the Bureau in implementing programmatic requirements for Division's program; (6) coordinates Division programs within the Agency and with other Federal programs; (7) provides liaison with public, private, professional and voluntary organizations for Division program; (8) disseminates information on Division programs; (9) participates in the development of strategic plans, regulatory activities, policy papers, legislative proposals, and budget submissions relating to Division programs; (10) provides a focus for international health activities of the Bureau for Division programs; and (11) responsible for the administration of funds and other resources for grants, contracts, and cooperative agreements.

Division of State And Community Health (RM6)

In collaboration with MCHB Division and Offices, serves as the organizational focus for the administration of responsibilities related to the MCH Block Grant to States Program. Specifically: (1) Provides national leadership, direction, coordination, and administrative oversight related to the development and management of the State MCH Block Grant applications and the annual report; (2) based on review of State Book grant applications and annual reports submitted by States, develops, plans, manages, and monitors a Bureau-wide program of technical assistance and consultation in collaboration with other Bureau Divisions and related health programs; (3) develops and manages a program for the collection, analysis and dissemination of National and State information and data to various constituencies including the public, States, and Congress about the Block Grant to States Program; (4) coordinates within this Agency and with other Federal programs (particularly Title XIX of the Social Security Act) to extend and improve comprehensive, coordinated services in the Block Grant to States Program; (5) develops, plans, manages, and monitors the abstinence only education grant program to the States; (6) develops, plans;, manages, and monitors the State Systems Development Initiative (SSDI) grant to the States program; (7) provides leadership and direction to the ten Field Office staffs in concert with the MCHB Division and HRSA; (8) participates in activities related to the Special Projects of Regional and National Significance (SPRANS) program to facilitate the dissemination of effective knowledge related to State MCH functions; (9) manages and monitors interagency agreements of Federal assignees to State MCH program; (10) participates in the development of strategic plans, regulatory activities, policy papers, legislative proposals and budget submissions relating to health services for women of childbearing age, infants, children, adolescents, children with special health care needs and their families; (11) participates in international health activities of the Bureau and coordinates the Pacific Basin activities; and (12) responsible for the administration of funds and other resources for grants, contracts, and cooperative agreements.

Office of Data and Information Management (RM7)

Provides national leadership in the identification and analysis of data needs and the utilization and implementation of a data strategy and program focusing on the promotion of health and prevention of disease among women of reproductive age; infants, children, adolescents and their families with special emphasis on the development and implementation of family-centered, comprehensive, care-coordinated; community-based and culturally competent systems of care for such population. Specifically: (1) develops, coordinates, and maintains a data and information system designed to improve implementation of Title V and other Bureau programs; (2) develops, coordinates, and implements systematic technical assistance and consultation on data and information systems, and evaluation approaches to State and local agencies and organizations or groups concerned with infants, children, adolescents, and children special health care needs; (3) through grants and contracts, provides support for a broad range of data collection, analyses and projects designed to improve the health status of infants, children, adolescents, and children with special health care needs; (4) coordinates and provides for a program of professional consultation and technical assistance through central and field office staff to State and local agencies and organizations; (5) develops, coordinates and disseminates data information; (6) plans, implements and monitors a system of placement of Federal employees assigned to the State health agencies; (7) coordinates and monitors the placement of CDC sponsored epidemiologist in State Agencies; and (8) provides for data program coordination at all levels of Bureau program operations through analyses of program data, trends and other issues concerning scientific and policy matters, the provision of health services and data and information related to the promotion of health and prevention of disease among infants, children, adolescents, and children with special health care needs.

Section RM–30 Delegations of Authority

All delegations and redelegations of authority which were in effect immediately prior to the effective date hereof have been continued in effect in them or their successors pending further redelegation. I hereby ratify and affirm all actions taken by any DHHS official which involved the exercise of these authorities prior to the effective date of this delegation.

This reorganization is effective upon date of signature.

Dated: March 25, 1999.

Claude Earl Fox,

Administrator.

[FR Doc. 99–8591 Filed 4–6–99; 8:45 am]

BILLING CODE 4160–15–M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Privacy Act of 1974; As Amended; Revisions to the Existing System of Records

AGENCY: Office of the Secretary, Department of the Interior.

ACTION: Proposed revisions to an existing system of record.

SUMMARY: In accordance with the Privacy Act of 1974, as amended (5 U.S.C. 552a), the Office of the Secretary is issuing public notice of its intent to modify an existing Privacy Act system of records notice, OS–52, "Passport and Visa Records." The revisions will update the address of the system location and the system manager.

EFFECTIVE DATE: These actions will be effective on or before April 2, 1999.

FOR FURTHER INFORMATION CONTACT: Chief, Division of Financial Management Services, National Business Center, U.S. Department of the Interior, 1849 C Street NW, MS–1313 MIB, Washington, DC 20240.

SUPPLEMENTARY INFORMATION: In this notice, the Department of the Interior is amending OS–52, "Passport and Visa Records," to update the address of the system location and system manager. Accordingly, the Department of the Interior proposed to amend the "Passport and Visa Records," OS–52 system notice in its entirety to read:

Sue Ellen Sloca,

Office of the Secretary Privacy Act Officer, National Business Center.

INTERIOR/OS–52

SYSTEM NAME

Passport and Visa Records—Interior, OS–52

SYSTEM LOCATION:

Division of Financial Management Services, National Business Center, U.S. Department of the Interior, 1849 C Street NW, MS–1313 MIB, Washington, DC 20240.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

(1) Employees of the Department of the Interior who travel on official business.

(2) Employees of independent agencies, councils, and commissions who are provided administrative support by the Department of the Interior who travel on official business.

(3) Individuals who travel on official business on behalf of the Department of the Interior.

CATEGORIES OF RECORDS IN THE SYSTEM:

Passports and visas.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

22 U.S.C. 211a.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The primary purpose of the system is to initiate, obtain and maintain passports and visas.

Disclosures outside the Department of the Interior may be made:

(1) To other Federal agencies, to transfer passports and visas.

(2) To the U.S. Department of Justice or in a proceeding before a court or adjudicative body when (a) the United States, the Department of the Interior, a component of the Department, or, when represented by the government, an employee of the Department is a party to litigation or anticipated litigation or has an interest in such litigation, and (b) the Department of the Interior determines that the disclosure is relevant or necessary to the litigation and is compatible with the purpose for which the records were compiled.

(3) To appropriate Federal, State, local or foreign agencies responsible for investigating or prosecuting the violation of or for enforcing or implementing a statute, rule, regulation, order or license, when the disclosing agency becomes aware of information indicating a violation or potential violation of a statute, rule, regulation, order or license.

(4) To a congressional office in connection with an inquiry an individual covered by the system has made to the congressional office.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Passports and visas are stored in a locked safe.

RETRIEVABILITY:

Passports and visas are filed and retrieved by the name of the individual to whom they are assigned.

SAFEGUARDS:

Passports and visas are stored in a locked room in a manipulation-proof, three-way-combination-lock, steel safe. Access to records is granted only to authorized personnel.

RETENTION AND DISPOSAL:

General Records Schedule No. 9, Item No. 4.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Division of Financial Management Services, National Business Center, U.S. Department of the Interior, 1849 C Street NW, MS–1313 MIB, Washington, DC 20240.

NOTIFICATION PROCEDURES:

Inquiries regarding the existence of records shall be addressed to the System Manager. The request must be in writing, signed by the requester, and meet the content requirements of 43 CFR 2.60.

RECORD ACCESS PROCEDURES:

A request for access to records shall be addressed to the System Manager. The request must be in writing, signed by the requester, and meet the content requirements of 43 CFR 2.63.

CONTESTING RECORD PROCEDURES:

A request for amendment of records shall be addressed to the System Manager. The request must be in writing, signed by the requester, and meet the content requirements of 43 CFR 2.71.

RECORD SOURCE CATEGORIES:

Employees of the Department who travel on official business; employees of independent agencies, councils, and commissions who are provided administrative support by the Department who travel on official business; and individuals who travel on official business on behalf of the Department.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 99–8548 Filed 4–6–99; 8:45 am]

BILLING CODE 4310–RK–M

DEPARTMENT OF THE INTERIOR

Office of Aircraft Services

Privacy Act of 1974; As Amended; Revisions to the Existing System of Records

AGENCY: Office of Aircraft Services, Department of the Interior.

ACTION: Proposed revisions to an existing system of records.

SUMMARY: In accordance with the Privacy Act of 1974, as amended (5 U.S.C. 552a), the Office of Aircraft Services is issuing public notice of its intent to modify an existing Privacy Act system of records, DOI–07, "Federal and Non-Federal Aviation Personnel, Equipment, and Mishap Information System." The revisions will reflect the reorganization of the Northwest Area Office and update the address of the Alaska Regional Office.

EFFECTIVE DATE: These actions will be effective April 7, 1999.

FOR FURTHER INFORMATION CONTACT: Director, Office of Aircraft Services, 2350 W. Robinson Road, Boise, Idaho 83705–5355.

SUPPLEMENTARY INFORMATION: The Office of Aircraft Services is amending the system notice for DOI–07, "Federal and Non-Federal Aviation Personnel, Equipment, and Mishap Information System" to reflect an organizational change within the agency. The Office of Aircraft Services' Northwest Area Office and Southwest Area Office were consolidated under one Area Director to form the West Area Office. Each office is identified by its geographical location, i.e., West Area Office—Boise and West Area Office—Phoenix. The notice is also being amended to update the address of the Alaska Regional Office. Accordingly, the Office Aircraft Services proposes to amend the "Federal and Non-Federal Aviation Personnel, Equipment, and Mishap Information System," DOI–07, in its entirety to read as follows:

Sue Ellen Sloca,

Office of the Secretary Privacy Act Officer, National Business Center.

INTERIOR/DOI–07

SYSTEM NAME:

Federal and Non-Federal Aviation Personnel, Equipment, and Mishap Information System—Interior, DOI–07.

SYSTEM LOCATION:

(1) National headquarters: Office of the Director, Aviation Safety Office, Office of Aircraft Services, 2350 W. Robinson Road, Boise, Idaho 83705–5355.

(2) Office of Aircraft Services, Division of Technical Services, 2350 West Robinson Road, Boise, Idaho 83705–5355.

(3) Office of Aircraft Services, Alaska Regional Office, 4837 Aircraft Drive, Anchorage, Alaska 95502–1052.

(4) Office of Aircraft Services, West Area Office—Boise, 2741 Airport Way, Boise, Idaho 83705.

(5) Office of Aircraft Services, West Area Office—Phoenix, One West Deer Valley Road, Susite 204, Phoenix, Arizona 85027.

(6) Office of Aircraft Services, East Area Office, 1954 Airport Road, Suite 101, Chamblee, Georgia 30341.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

(1) Professional, dual-function and incidental pilots, air crews, mechanics and ground personnel employed by Interior bureaus.

(2) Pilots, aircrews, mechanics, and ground personnel of commercial operators utilized by Interior bureaus.

(3) Pilots, aircrews, mechanics, and ground personnel of cooperating government agencies, organizations and private individuals.

CATEGORIES OF RECORDS COVERED BY THE SYSTEM:

The system contains information relative to certificates, qualifications, experience levels, training and proficiency, and performance of individuals. Identifying information pertaining to individuals includes name, birth date, and social security number of Federal Aviation Administration certificate number. The system also contains aviation mishap data pertaining to accidents, incidents, aviation hazards and maintenance deficiencies. This information includes accident summary, accident and other mishap reports, type of mishap, and pilot crewmember, and mechanic certificate number.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 USC 301; Reorganization Plan 3 of 1950.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The primary purposes of the system are:

(1) To determine if aircraft/crew/mechanic/ground personnel are in compliance with Office of Aircraft Services procedures and directives.

(2) To perform aircraft mishap trend analysis and develop statistical data for use in the Interior Aircraft Accident Prevention Program.

(1) To the U.S. Department of Justice or in a proceeding before a court or adjudicative body when, (a) the United States, the Department of the Interior, a component of the Department, or when represented by the government, an employee of the Department is a party to litigation or anticipated litigation or has an interest in such litigation, and (b) the Department of the Interior determines that the disclosure is relevant or necessary to the litigation and is compatible with the purpose for which the records were compiled.

(2) To appropriate Federal, State, local or foreign agencies responsible for investigating or prosecuting the violation of, or for enforcing or implementing a statute, rule, regulation, order, or license, when the disclosing agency becomes aware of a violation or potential violation of a statute, regulation, rule, order or license.

(3) To a Federal agency which has requested information necessary or relevant to the hiring, firing, or retention of an employee, or issuance of a security clearance, contract, license, pilot qualification card, grant or other benefit, but only to the extent that the information disclosed is relevant and necessary to the requesting agency's decision on the matter.

(4) To Federal, State, or local agencies or commercial businesses where necessary to obtain information relevant to the hiring or retention of an employee, or the issuance of a security clearance, license, pilot qualification card, grant or other benefit.

(5) To a congressional office in connection with an inquiry an individual covered by the system has made to the congressional office.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained manually, in file folders or on microfiche film, and/or electronically, in computer files.

RETRIEVABILITY:

(1) Records on Interior employees are indexed by name, date of birth, Social Security number, Federal Aviation Administration certificate number, agency, location duty classification, type of mishap, and accident summary.

(2) Records on commercial operator personnel are indexed by name, date of birth, Social Security number, Federal Aviation Administration certificate number, type of mishap, and accident summary.

(3) Records on cooperating government agencies, organizations, and private individuals are indexed by name, date of birth, Social Security number, Federal Aviation Administration certificate number, agency location, type of mishap and accident Summary

SAFEGUARDS:

Access to records is limited to Departmental employees who have an official need to use the records in the performance of their duties. When not in use by authorized personnel, paper and microfiche records are stored in locked file cabinets or in secured rooms. Electronically stored records are protected from unauthorized access through use of access codes, entry logs, and other system-based protection methods.

RETENTION AND DISPOSAL:

Records in this system are retained for seven (7) years and them destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

(1) National headquarters: Office of Aircraft Services, Aviation Safety Office, 2350 W. Robinson Road, Boise, Idaho 83705–5355.

(2) Chief, Division of Technical Services, Office of Aircraft Services, 2350 W. Robinson Road, Boise, Idaho 84705–5355.

(3) Regional Director, Alaska Regional Office, Office of Aircraft Services, 4837 Aircraft Drive, Anchorage, Alaska 99502–1052.

(4) Area Director, West Area Office—Boise, Office of Aircraft Services, 2741 Airport Way, Boise, Idaho 83705.

(5) Office of Aircraft Services, West Area Office—Phoenix, One West Deer Valley Road, Suite 204, Phoenix, Arizona 85027.

(6) Area Director, East Area Office, Office of Aircraft Services, 1954 Airport Road, Suite 101, Chamblee, Georgia 30341.

NOTIFICATION PROCEDURE:

A request for notification of the existence of records shall be addressed to the appropriate System Manager. The request must be in writing, signed by the requestor, and comply with the content requirements of 43 CFR 2.60.

RECORD ACCESS PROCEDURES:

A request for access to records shall be addressed to the appropriate System Manager. The request must be in writing, signed by the requestor, and comply with the content requirements of 43 CFR 2.63.

CONTESTING RECORD PROCEDURES:

A request for amendment of a record shall be addressed to the appropriate System Manager. The request must be in writing, signed by the requestor, and comply with the content requirements of 43 CFR 2.71.

EXEMPTIONS CLAIMED BY THE SYSTEM:

None.

[FR Doc. 99–8549 Filed 4–6–99; 8:45 am]

BILLING CODE 4310–RM–M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Privacy Act of 1974; As Amended; Deletion of an Existing System of Records

AGENCY: Office of the Secretary, Department of the Interior.

ACTION: Proposed deletion of an existing system of records.

SUMMARY: In accordance with the Privacy Act of 1974, as amended (5 U.S.C. 552a), the Office of the Secretary is issuing public notice of its intent to delete an existing Privacy Act system of records notice, OS–87, "Cash Receipts."

EFFECTIVE DATE: This action will be effective April 7, 1999.

FOR FURTHER INFORMATION CONTACT: Chief, Division of Financial Management Services, National Business Center, U.S. Department of the Interior, 1849 C Street NW, MS–1313 MIB, Washington, D.C. 20240.

SUPPLEMENTARY INFORMATION: In this notice, the Department of the Interior is deleting OS–87, "Cash Receipts," because a separate system of records, accessible by the names of individuals paying for goods or services in cash or receiving cash, is no longer being maintained by the National Business Center.

Sue Ellen Sloca,

Office of the Secretary Privacy Act Officer, National Business Center.

INTERIOR/OS–87

SYSTEM NAME:

Cash Receipts—Interior, OS–87.

ORIGINAL FEDERAL REGISTER PUBLICATION CITATION:

51 FR 25614, July 15, 1986.

REASON FOR DELETION:

The National Business Center no longer maintains a separate system of records relating to cash receipts from individuals and cash disbursements to individuals because it stopped transacting business in cash on October 1, 1998.

DISPOSITION OF RECORDS:

Records remaining from OS–87, "Cash Receipts," that have not yet officially been sechduled for destruction, in accordance with General Records Schedule No. 6, Item No. 1, will be retained by the National Business Center until their official destruction date. Requests for notification of the existence of records on named individuals, access to records on named individuals, and amendment of records on named individuals that were filed in "Cash Receipts," OS–87, which have not yet been destroyed, should be sent to the following address: Chief Division of Financial Management Services, National Business Center, U.S. Department of the Interior, 1849 C Street NW, MS–1313 MIB, Wasington, DC 20240.

[FR Doc. 99–8550 Filed 4–6–99; 8:45 am]

BILLING CODE 4310–RK–M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Privacy Act of 1974; As Amended; Revisions to the Existing System of Records

AGENCY: Office of the Secretary, Department of the Interior.

ACTION: Proposed revisions to an existing system of records.

SUMMARY: In accordance with the Privacy Act of 1974, as amended (5 U.S.C. 552a), the Office of the Secretary is issuing public notice of its intent to modify an existing Privacy Act system of records, OS–46, "Secretarial Subject Files." The revisions will update the address of the system location and the system manager, and the storage, retrievability, safeguards, and records retention and disposal statements.

EFFECTIVE DATE: These actions will be effective on April 7, 1999.

FOR FURTHER INFORMATION CONTACT: Office of the Secretary Records Officer, Division of Technology Services, National Business Center, U.S. Department of the Interior, 1849 C Street NW, MS–1414 MIB, Washington, DC 20240.

SUPPLEMENTARY INFORMATION: The Office of the Secretary is amending OS–46, "Secretarial Subject Files," to update the address of the system location and system manager and to more accurately describe how records contained in the system are stored, retrieved, safeguarded, retained and disposed of. Accordingly, the Department of the Interior proposes to amend the system notice for "Secretarial Subject Files," OS–46 in its entirety to read as follows:

Sue Ellen Sloca,

Office of the Secretary Privacy Act Officer, National Business Center.

INTERIOR/OS–46

SYSTEM NAMED:

Secretarial Subject Files—Interior, OS–46.

SYSTEM LOCATION:

Division of Technology Services, National Business Center, U.S. Department of the Interior, 1849 C Street NW, MS–1414 MIB, Washington, DC 20240.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals writing to or receiving correspondence from the following Department of the Interior officials: The Secretary, the Under Secretary, the Deputy Secretary, the Solicitor, the Assistant Secretaries, the Deputy

Assistant Secretaries, and individuals serving in these capacities.

CATEGORIES OF RECORDS IN THE SYSTEM:

Names of correspondents, date and subject of correspondence, official record copies of correspondence.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 391; 43 U.S.C. 1457; 44 U.S.C. 3101; Reorganization Plan 3 of 1950.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The primary purpose of the system is to document and support the operational, program and policy decisions of Departmental officials at the Secretarial level. Disclosures outside the Department of the Interior may be made:

(1) To the U.S. Department of Justice or to a court or adjudicative body with jurisdiction when (a) the United States, the Department of the Interior, a component of the Department, or when represented by the government, an employee of the Department is a party to litigation or anticipated litigation or has an interest in such litigation, and (b) the Department of the Interior determines that the disclosure is relevant or necessary to the litigation and is compatible with the purpose for which the records were compiled.

(2) To appropriate Federal, State, local or foreign agencies responsible for investigation or prosecuting the violation of or for enforcing or implementing a statute, rule, regulation, order or license, when the disclosing agency becomes aware of information indicating a violation of or a potential violating of a statute, regulation, rule, order or license.

(3) To a congressional office in connection with an inquiry an individual covered by the system has made to the congressional office.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Official record copies of correspondence are stored in file folders; an electronic copy of correspondence (dated January 1, 1997 or later) is stored in image files in a computer database. Index terms (for correspondence dated December 31, 1996 or earlier) are stored in index cards; index terms (for correspondence dated January 1, 1997 or later) are stored in a computer database.

RETRIEVABILITY:

Records are retrieved by name of correspondent and/or date or subject for correspondence.

SAFEGUARDS:

Official records copies of correspondence are stored in locked file cabinets, in a locked room. Computer image files are maintained in accordance with 43 CFR 2.51. Access to both paper and automated records is limited to persons whose official duties require such access.

RETENTION AND DISPOSAL:

Records are retained in accordance with the Office of the Secretary Comprehensive Records Disposal Schedule K–1. Official record copies of correspondence are stored on site for ten (10) years, at a Federal Records Center for an additional ten (10) years, and are offered to the National Archives and Records Administration for permentent retention after twenty (20) years.

SYSTEM MANAGER(S) AND ADDRESS:

Office of the Secretary Records Officer, Division of Technology Services, National Business Center, U.S. Department of the Interior, 1849 C Street NW. MS–1414 MIB, Washington, DC 20240.

NOTIFICATION PROCEDURES:

Inquires regarding the existence of records shall be addressed to the System Manager. The request must be in writing, signed by the requester, and meet the content requirements of 43 CFR 2.60.

RECORD ACCESS PROCEDURES:

A request for access to records shall be addressed to the System Manager. The request must be in writing, signed by the requester, and meet the content requirements of 43 CFR 2.63.

CONTESTING RECORD PROCEDURES:

A request for amendment of records shall be addressed to the System Manager. The requests must be writing, signed by the requester, and meet the content requirements of 43 CFR 2.71.

RECORD SOURCE CATEGORIES:

Individuals corresponding with or on behalf of the Department at the Secretarial level.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 99–8551 Filed 4–6–99; 8:45 am]
BILLING CODE 4310–RK–M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Privacy Act of 1974; As Amended; Revisions to the Existing System of Records

AGENCY: Office of the Secretary, Department of the Interior.

ACTION: Proposed revisions to an existing system of records.

SUMMARY: In accordance with the Privacy Act of 1974, as amended (5 U.S.C. 552a), the Office of the Secretary is issuing public notice of its intent to modify an existing Privacy Act system of records notice, OS–47, "Parking Assignment Record." The revisions will update the address of the system location and the system manager.

EFFECTIVE DATE: These actions will be effective on April 7, 1999.

FOR FURTHER INFORMATION CONTACT: Parking Program Coordinator, Division of Facilities Management Services, National Business Center, U.S. Department of the Interior, 1849 C Street NW, MS–1210 MIB, Washington, DC 20240.

SUPPLEMENTARY INFORMATION: In this notice, the Department of the Interior is amending OS–47, "Parking Assignment Record," to update the address of the system location and system manager. Accordingly, the Department of the Interior proposes to amend the "Parking Assignment Record," OS–47 system notice in its entirety to read:

Sue Ellen Sloca,

Office of the Secretary Privacy Act Officer, National Business Center.

INTERIOR/OS–47

SYSTEM NAME:

Parking Assignment Records—Interior, OS–47.

SYSTEM LOCATION:

Division of Facilities Management Services, National Business Center, U.S. Department of the Interior, 1849 C Street NW, MS–1210 MIB, Washington, DC 20240.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals requesting a parking permit or joining a carpool from both the Federal and private sector.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, Social Security number, telephone number at work, location of employment, service computation date (applicable to Federal employees only), home address, vehicle(s) make and model, State of vehicle registration,

license tag number, parking permit number, and number of carpool riders.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

40 U.S.C. 471, et. seq., FMC 74–1 FPMR Temporary Regulation D–69.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The primary purposes of the system are:

(1) To manage the assignment of parking permits.

(2) To assist individuals in locating carpools.

Disclosures outside the Department of the Interior may be made:

(1) To a Federal agency that has jurisdiction over parking spaces.

(2) To the U.S. Department of Justice or to a court or adjudicative body with jurisdiction when (a) the U.S. Department of the Interior, a component of the Department, or when represented by the Government, an employee of the Department is a party to litigation or anticipated litigation or has an interest in such litigation, and (b) the Department of the Interior determines that the disclosure is relevant or necessary to the litigation and is compatible with the purpose for which the records were compiled.

(3) To appropriate Federal, State, local or foreign agencies responsible for investigating or prosecuting the violation of or for enforcing or implementing a statute, rule, regulation, order or license, when the disclosing agency becomes aware of a potential violation of a statute, rule, regulation, order or license.

(4) To a congressional office in connection with an inquiry an individual covered by the system has made to the congressional office.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in a computer database.

RETRIEVABILITY:

By name of individual, Social Security number, telephone number at work, location of employment, service computation date (applicable to Federal employees only), zip code of home address, vehicle(s) make and model, State of vehicle registration, license tag number, parking permit number, and number of carpool riders.

SAFEGUARDS:

Records are maintained with safeguards meeting the requirements of 43 CFR 2.51 for computerized records.

RETENTION AND DISPOSAL:

Records are retained and disposed of in accordance with General Records Schedule No. 11, Item No. 4.

SYSTEM MANAGER(S) AND ADDRESS:

Parking Program Coordinator, Division of Facilities Management Services, National Business Center, U.S. Department of the Interior, 1849 C Street NW, MS–1210 MIB, Washington, DC 20240.

NOTIFICATION PROCEDURE:

Inquiries regarding the existence of records shall be addressed to the System Manager. The request must be in writing, signed by the requester, and meet the content requirements of 43 CFR 2.60.

RECORD ACCESS PROCEDURES:

A request for access to records shall be addressed to the System Manager. The request must be in writing, signed by the requester, and meet the content requirements of 43 CFR 2.63.

CONTESTING RECORD PROCEDURES:

A request for amendment of records shall be addressed to the System Manager. The request must be in writing, signed by the requester, and meet the content requirements of 43 CFR 2.71.

RECORD SOURCE CATEGORIES:

Individuals requesting a parking permit or joining a carpool.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 99–8552 Filed 4–6–99; 8:45 am]

BILLING CODE 4310–RK–M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Privacy Act of 1974; As Amended; Revisions to the Existing System of Records

AGENCY: Office of the Secretary, Department of the Interior.

ACTION: Proposed revisions to an existing system of records.

SUMMARY: In accordance with the Privacy Act of 1974, as amended (5 U.S.C. 552a), the Office of the Secretary is issuing public notice of its intent to modify an existing Privacy Act system of records notice, OS–86, "Accounts Receivable." The revisions will update the address of the system location and system manager.

EFFECTIVE DATE: These actions will be effective April 7, 1999.

FOR FURTHER INFORMATION CONTACT: Chief, Division of Financial Management Services, National Business Center, U.S. Department of the Interior, 1849 C Street NW, MS–1313 MIB, Washington, DC 20240.

SUPPLEMENTARY INFORMATION: In this notice, the Department of the Interior is amending OS–86, "Accounts Receivable," to update the address of the system location and system manager. Accordingly, the Department of the Interior proposes to amend the "Accounts Receivable," OS–86 system notice in its entirety to read:

Sue Ellen Sloca,

Office of the Secretary Privacy Act Officer, National Business Center.

INTERIOR/OS–86

SYSTEM NAME:

Accounts Receivable—Interior, OS–86.

SYSTEM LOCATION:

Divisional of Financial Management Services, National Business Center, U.S. Department of the Interior, 1848 C Street NW, MS–1313 MIB, Washington, DC 20240.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals owing money to the Office of the Secretary, including employees of the Department, former employees of the Department, business firms, institutions, and private citizens.

Note: Most of the records in this system which are pertain to individuals contain information about "sole proprietorships." However, some of the records which pertain to individuals also contain personal information. Only those records containing personal information are subject to the Privacy Act. The manual and automated filing systems in which these records are maintained also contain records concerning corporations and other business entities or organizations. These records, which do not pertain to individuals, are not subject to the Privacy Act.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, address, amount of money owed, basis for inclusion in system (including itemization of goods and services received or provided, and/or overpayments or under payments made by them or provided to them.)

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

(1) U.S.C. 5710–09. (2) FPMR 101–7. (3) Treasury Fiscal Requirements Manual. (4) 31 U.S.C. 3711.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The primary purpose of the system is to bill debtors for amounts owed and to follow-up on unpaid debts.

Disclosure outside the Department of the Interior may be made:

(1) To the U.S. Department of Justice or to a court or adjudicative body with jurisdiction when (a) the United States, the Department of the Interior, a component of the Department, or when represented by the government, an employee of the Department is a party to litigation or anticipated litigation or has an interest in such litigation, and (b) the Department of the Interior determines that the disclosure is relevant or necessary to the litigation and is compatible with the purpose for which the records were compiled.

(2) To appropriate Federal, state, local or foreign agencies responsible for investigating or prosecuting the violation of or for enforcing or implementing a statute, rule, regulation, order or license when the disclosing agency becomes aware of information indicating a violation or potential violation of a statute, rule, regulation, order or license.

(3) To a congressional office in connection with an inquiry an individual covered by the system has made to a congressional office.

(4) To disclose debtor information to the Internal Revenue Service, or to another Federal agency or its contractor, solely to aggregate information for the Internal Revenue Service, to collect debts owed the Federal government through the offset of tax refunds.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosure pursuant to 5 U.S.C. 552a(b)(12). Pursuant to 5 U.S.C. 552a(b)(12), disclosures may be made to a consumer reporting agency as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in manual and electronic form.

RETRIEVABILITY:

Records are retrieved by appropriation or fund to be credited.

SAFEGUARDS:

Manual records are stored in a locked room when not in active use. Automated records are maintained with safeguards meeting the requirements of 43 CFR 2.51 for computerized records.

RETENTION AND DISPOSAL:

Records are retained and disposed of in accordance with General Records Schedule No. 6, Item No. 1.

SYSTEM MANGER(S) AND ADDRESS:

Chief, Division of Financial Management Services, National Business Center, U.S. Department of the Interior, 1848 C Street NW, MS–1313 MIB, Washington, DC 20240.

NOTIFICATION PROCEDURES:

Inquiries regarding the existence of records shall be addressed to the System Manager. The request must be in writing, signed by the requester, and meet the content requirements of 43 CFR 2.60.

RECORD ACCESS PROCEDURES:

A request for access to records shall be addressed to the System Manager. The request must be in writing, signed by the requester, and meet the content requirements of 43 CFR 2.63.

CONTESTING RECORD PROCEDURES:

A request for amendment of records shall be addressed to the System Manager. The request must be in writing, signed by the requester, and meet the content requirements of 43 CFR 2.71.

RECORD SOURCE CATEGORIES:

Individuals owing money to the Office of the Secretary and relevant accounting records.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 99–8553 Filed 4–6–99; 8:45 am]

BILLING CODE 4310–RK–M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Privacy Act of 1974; As amended; Revisions to the Existing System of Records

AGENCY: Office of the Secretary, Department of the Interior.

ACTION: Proposed revisions to an existing system of records.

SUMMARY: In accordance with the Privacy Act of 1974, as amended (5 U.S.C. 552a), the Office of the Secretary is issuing public notice of its intent to modify an existing Privacy Act system of records notice, OS–69, "Freedom of Information Appeal Files." The revisions will update the name of the system and address of the system location and system manager.

EFFECTIVE DATE: These actions will be effective on May 7, 1999.

FOR FURTHER INFORMATION CONTACT: Department Freedom of Information Act Appeals Officer, Office of Information Resources Management, MS–5312 MIB, 1849 C Street NW, Washington, DC 20240.

SUPPLEMENTARY INFORMATION: The Department of the Interior is proposing to amend the system notice for OS–69, "Freedom of Information Appeal Files," to more accurately identify the system of records and to update the address of the system location and system manager. Accordingly, to the Department of the Interior proposes to amend the "Freedom of Information Appeal Files," OS–69, in its entirety to read as follows:

Sue Ellen Sloca,

Office of the Secretary Privacy Act Officer, National Business Center.

INTERIOR/OS–69

Freedom of Information Act Appeals Files—Interior, OS–69.

SYSTEM LOCATION:

U.S. Department of the Interior, Office of Information Resources Management, MS–5312 MIB,m 1849 C Street NW, Washington, DC 20240.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have filed appeals under Department of the Interior Freedom of Information Act (FOIA) appeal procedures.

CATEGORIES OF RECORDS IN THE SYSTEM:

FOIA appeals, FOIA requests and decisions on requests issued by bureaus and offices, records which track the processing of FOIA appeals, extension-of-time letters and related records, recommendations of the Office of the Solicitor and of other Department officials on appeals; and final decisions on appeals.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 552.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The primary purposes of the system are:

(1) To support action on FOIA appeals.

(2) To gather information for management and reporting purposes.

Disclosure outside the Department of the Interior may be made:

(1) To other Federal agencies having a subject matter interest in an appeal of a decision on a request.

(2) To the U.S. Department of Justice or in a proceeding before a court or adjudicative body when (a) the United States, the Department of the Interior, a component of the Department, or, when represented by the Government, an employee of the Department is a party to litigation or anticipated litigation or has an interest in such litigation, and (b) the Department of the Interior determines that the disclosure is relevant or necessary to the litigation and is compatible with the purpose for which the records were compiled.

(3) To appropriate Federal, State, local, or foreign agencies responsible for investigating or prosecuting the violation or for enforcing or implementing the statute, rule, regulation, order, or license, when the disclosing agency becomes aware of information indicating a violation or potential violation of a statute, regulation, rule, order, or license.

(4) To a congressional office in connection with an inquiry an individual covered by the system has made to the congressional office.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Appeal records are maintained in manual form in file folders. Appeal tracking information is maintained in computerized form on magnetic media.

RETRIEVABILITY:

Manual records are indexed by appeal number. A cross-reference list permits retrieval of records by appellant's name. Computer records are indexed by name of appellant, appeal number, date and subject of appeal.

SAFEGUARDS:

Records are maintained with safeguards meeting the requirements of 43 CFR 2.51.

RETENTION AND DISPOSAL:

Records are destroyed six years after final determination by agency, or three years after final adjudication by courts, in accordance with General Records Schedule No. 14, Item 12.

SYSTEM MANAGER(S) AND ADDRESS:

Freedom of Information Act Appeals Officer, U.S. Department of the Interior, Office of Information Resources Management, MS–5312 MIB, 1849 C Street NW, Washington, DC 20240.

NOTIFICATION PROCEDURES:

A request for notification of the existence of records shall be addressed to the System Manager. The request shall be in writing, signed by the requester, and comply with the content requirements of 43 CFR 2.60.

RECORD ACCESS PROCEDURES:

A request for access to records shall be addressed to the System Manager. The request shall be in writing, signed by the requester, and comply with the content requirements of 43 CFR 2.63.

CONTESTING RECORDS PROCEDURES:

A request for amendment of a record shall be addressed to the System Manager. The request shall be in writing, signed by the requester, and comply with the content requirements of 43 CFR 2.71.

RECORD SOURCE CATEGORIES:

Appellants; bureau, office and Department officials.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 99–8554 Filed 4–6–99; 8:45 am]

BILLING CODE 4310–RK–M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Privacy Act of 1974; As amended; Revisions to the Existing System of Records

AGENCY: Office of the Secretary, Department of the Interior.

ACTION: Proposed revisions to an existing system of records.

SUMMARY: In accordance with the Privacy Act of 1974, as amended (5 U.S:C. 552a), the Office of the Secretary is issuing public notice of its intent to modify an existing Privacy Act system of records notice, OS–71, "Freedom of Information Request Files System." The revisions will update the system name and number, the routine uses of records in the system, the addresses of the system locations and system managers, the description of categories of records in the system, the retention and disposal statement, and the record source categories.

EFFECTIVE DATE: These actions will be effective on April 7, 1999.

FOR FURTHER INFORMATION CONTACT: Departmental Freedom of Information Act Officer, Office of Information Resources Management, MS–5312 MIB, 1849 C Street NW., Washington, DC 20240.

SUPPLEMENTARY INFORMATION: In this notice, the Department of the Interior is amending the system notice for OS–71, "Freedom of Information Request Files System," to more accurately describe the Department-wide scope of the system of records and to more accurately identify the categories of records in the system; to update the routine uses of the data in the system to include disclosures to debt collection agencies, disclosures to other Federal agencies as required in performance of official duties in support of functions compatible with the collection of the data, and disclosures to a consumer reporting agency; to update the retention and disposal statement to reflect the current authority for retention; and to update the addresses of the system locations and system managers. Accordingly, the Department of the Interior proposes to amend the "Freedom of Information Act Request Files System, OS–71" in its entirety to read as follows:

Sue Ellen Sloca,

Office of the Secretary, Privacy Act Officer, National Business Center.

INTERIOR/DOI–71

SYSTEM NAME:

Freedom of Information Act Request Files—Interior, DOI–71.

SYSTEM LOCATION:

(1) U.S. Department of the Interior, Office of Information Resources Management, MS–5312 MIB, 1849 C Street, NW, Washington, DC 20240.

(2) Offices of Freedom of Information Act (FOIA) Officers for each of the Department's bureaus. (Consult the Appendix for addresses of bureau FOIA Officers.)

(3) Offices of other officials, nationwide, authorized to receive and respond to FOIA requests.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have submitted FOIA requests under Department of the Interior FOIA procedures.

CATEGORIES OF RECORDS IN THE SYSTEM:

FOIA requests, responses to FOIA requests, and related records; copies of subject documents; records which track the processing of FOIA requests and other records pertaining to the administration of the FOIA program.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 552.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The primary purposes of the system are:

(1) To support action on FOIA requests, appeals, and litigation.

(2) To gather information for management and reporting purposes.

(3) To administer the FOIA program.

Disclosure outside the Department of the Interior may be made:

(1) To other Federal, State, and local agencies with a subject matter interest in a request, or an appeal on or litigation of a decision on a request.

(2) To the U.S. Department of Justice or in a proceeding before a court or adjudicative body when (a) the United States, the Department of the Interior, a component of the Department, or, when represented by the Government, an employee of the Department is a party to litigation or anticipated litigation or has an interest in such litigation, and (b) the Department of the Interior determines that the disclosure is relevant or compatible with the purposes for which the records were compiled.

(3) To appropriate Federal, State, local, or foreign agencies responsible for investigating or prosecuting a violation or enforcing or implementing a statute, rule, regulation, order, or license, when the disclosing agency becomes aware of information indicating a violation or potential violation of a statute, regulation, rule, order, or license.

(4) To a congressional office in connection with an inquiry an individual covered by the system has made to the congressional office.

(5) To a debt collection agency for the purpose of collecting outstanding debts owed to the Department for fees associated with processing FOIA requests.

(6) To an official of another Federal agency to provide information needed in the performance of official duties related to reconciling or reconstructing data files, in support of the functions for which the records were collected and maintained.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a(b)(12). Pursuant to 5 U.S.C. 552a(b)(12), disclosures may be made to a consumer reporting agency as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 371(a)(3)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in manual and electronic format.

RETRIEVABILITY:

Records are retrieved by the name of the requester.

SAFEGUARDS:

Records are maintained with safeguards meeting the requirements of 43 CFR 2.51.

RETENTION AND DISPOSAL:

Records are retained and disposed of in accordance with General Records Schedule No. 14, Items 11 and 13, or equivalent items in bureau records schedules.

SYSTEM MANAGER(S) AND ADDRESS:

(1) Departmental FOIA Officer, U.S. Department of the Interior, Office of Information Resources Management, MS–5312 MIB, 1849 C Street, NW, Washington, DC 20240.

(2) Bureau FOIA Officers. (Consult the Appendix for addresses of bureau FOIA Officers.)

NOTIFICATION PROCEDURE:

A request for notification of the existence of records must be addressed to the appropriate System Manager. The request must be in writing, signed by the requester, and comply with the content requirements of 43 CFR 2.60.

RECORD ACCESS PROCEDURES:

A request for access must be addressed to the appropriate System Manager. The request must be in writing, signed by the requester, and comply with the content requirements of 43 CFR 2.63.

CONTESTING RECORD PROCEDURE:

A request for an amendment of a record must be addressed to the appropriate System Manager. The request must be in writing, signed by the requester, and comply with the content requirements of 43 CFR 2.71.

RECORD SOURCE CATEGORIES:

Individuals filing FOIA requests; Departmental officials (and officials of the Department of Justice) acting on requests, appeals, litigation and reporting requirements; and submitters of commercial and financial information.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 99–8555 Filed 4–6–99; 8:45 am]
BILLING CODE 4310–RK–M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Privacy Act of 1974; As Amended; Revisions to the Existing Systems of Records

AGENCY: Office of the Secretary, Department of the Interior.

ACTION: Proposed revisions to an existing system of records.

SUMMARY: In accordance with the Privacy Act of 1974, as amended (5 U.S.C. 552a), the Office of the Secretary is issuing public notice of its intent to modify an existing Privacy Act system of records notice, OS–35, "Library Circulation Control System." The revisions will update the address of the system location and system manager.

EFFECTIVE DATE: These actions will be effective April 7, 1999.

FOR FURTHER INFORMATION CONTACT: Library Contractor COTR, Division of Employee and Public Services, National Business Center, U.S. Department of the Interior, 1849 C Street NW, Washington, DC 20240.

SUPPLEMENTARY INFORMATION: In this notice, the Department of the Interior is amending OS–35, "Library Circulation Control System," to update the address of the system location and system manager. Accordingly, the Department of the Interior proposes to amend the "Library Circulation Control System," OS–35 in its entirety to read as follows:

Sue Ellen Sloca,

Office of the Secretary Privacy Act Officer, National Business Center.

INTERIOR/OS–35

SYSTEM NAME:

Library Circulation Control System—Interior, OS–35.

SYSTEM LOCATION:

U.S. Department of the Interior Library, 1849 C Street NW, Washington, DC 20240.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals borrowing library materials from the Department of the Interior library.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name and identification number of borrower; affiliation of borrower; work address and telephone number of borrower, call number and due date of items borrowed; other information identifying items borrowed.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

43 U.S.C. 67a. 1456, 1467; 40 U.S.C. 483(b); 44 U.S.C. 3101.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The primary purpose of the system is to control library materials borrowed. Disclosures outside the Department of the Interior may be made:

(1) To the U.S. Department of Justice or in a proceeding before a court or adjudicative body when (a) the United States, the Department of the Interior, a component of the Department or when represented by the Government, an employee of the Department is a party to litigation or anticipated litigation or has an interest in such litigation, and (b) the Department of the Interior determines that the disclosure is relevant or necessary to the litigation and is compatible with the purpose for which the records were compiled.

(2) To a congressional office in connection with an inquiry an individual covered by the system has made to the congressional office.

(3) To Federal, State, or local agencies that have requested information necessary or relevant to the hiring, firing or retention of an employee, or the issuance of a security clearance, contract, license, grant or other benefit.

(4) To appropriate Federal, State, local or foreign agencies responsible for investigating or prosecuting the violation of or for enforcing, implementing or administering a statute, rule, regulation, order, license, contract, grant or other agreement, when the disclosing agency becomes aware of information indicating a violation or potential violation of a statute, regulation, rule, order, license, contract, grant or other agreement.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in computer data files.

RETRIEVABILITY:

Records are retrievable by name or identification number of borrower, and by call number, due date, or other information relating to items borrowed.

SAFEGUARDS:

Records are maintained in computer files, within the library, and are accessible only by authorized persons. Computers allowing access to records are attended constantly during working hours; the library is locked after working hours.

RETENTION AND DISPOSAL:

Records are maintained for two years and then destroyed in accordance with instructions contained in the Office of the Secretary Administrative Handbook Number 7.

SYSTEM MANAGER(S) AND ADDRESS:

Library Contractor COTR, Division of Employee and Public Services, National Business Center, U.S. Department of the Interior, 1849 C Street NW, Washington, DC 20240.

NOTIFICATION PROCEDURES:

Inquiries regarding the existence of records shall be addressed to the System Manager. The request must be in writing, signed by the requester, and meet the content requirements of 43 CFR 2.60.

RECORD ACCESS PROCEDURES:

A request for access to records shall be addressed to the System Manager. The request must be in writing, signed by the requester, and meet the content requirements of 43 CFR 2.63.

CONTESTING RECORD PROCEDURES:

A request for access to records shall be addressed to the System Manager. The request must be in writing, signed by the requester, and meet the content requirements of 43 CFR 2.71.

RECORD SOURCE CATEGORIES:

Individuals borrowing materials from Departmental Library and materials borrowed from the Library.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 99–8556 Filed 4–6–99; 8:45 am]
BILLING CODE 4310–RK–M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Privacy Act of 1974; As Amended; Revisions to the Existing System of Records

AGENCY: Office of the Secretary, Department of the Interior.

ACTION: Proposed revisions to an existing system of records.

SUMMARY: In accordance with the Privacy Act of 1974, as amended (5 U.S.C. 552a), the Office of the Secretary is issuing public notice of its intent to modify an existing Privacy Act system of records notice, OS–45, "Security Clearance Files and Other Reference Files." The revisions will update the name of the system, the address of the system location and system manager, and the record storage statement.

EFFECTIVE DATE: These actions will be effective on April 7, 1999.

FOR FURTHER INFORMATION CONTACT: Security Manager, Division of Employee and Public Services, National Business Center, U.S. Department of the Interior, 1849 C Street NW, MS–1226 MIB, Washington, DC 20240.

SUPPLEMENTARY INFORMATION: In this notice, the Department of the Interior is amending OS–45, "Security Clearance Files and Other Reference Files" to update the name of the system to describe it more accurately and to update the address of the system location and system manager and the record storage statement to reflect changes that have occurred since the notice was last published. Accordingly, the Department of the Interior proposes to amend the system notice for "Security Clearance Files and Other Reference Files," OS–45 in its entirety to read as follows:

Sue Ellen Sloca,

Office of the Secretary Privacy Act Officer, National Business Center.

INTERIOR/OS–45

SYSTEM NAME:

Personnel Security Files—Interior, OS–45.

SYSTEM LOCATION:

Division of Employee and Public Services, National Business Center, U.S. Department of the Interior, 1849 C Street NW, MS–1226 MIB, Washington, DC 20240.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees in the Office of the Secretary, Bureau heads, Bureau Security Officers, and employees of other Departmental offices and of independent agencies, councils and commissions (which are provided administrative support), whose duties have been designated "special sensitive," "critical sensitive," "noncritical sensitive" or "clearance for FEMA special access program."

CATEGORIES OF RECORDS IN THE SYSTEM:

Copies of form SF–85, SF–86, of SF–171 as supplied by individuals covered by the system, copies of letters of transmittal between the Department of the Interior and the Office of Personnel Management concerning the individual's background investigation; copies of certification of clearance status and briefings and/or copies of debriefing certificates signed by individual, as appropriate. Card files contain case file summaries, case numbers and dispositions of case files following review.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Executive Order 10450.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES.

The primary purposes of the system are:

(1) To identify Office of the Secretary personnel who have been granted a security clearance.

(2) To identify heads of Bureaus and their respective Security Officers who have been granted a security clearance.

(3) To identify persons in a pending clearance status awaiting the results and adjudication of Office of Personnel Management investigations.

(4) To identify persons whose clearance has been terminated in the last five years due to an administrative down-grading, a transfer to another agency, employment at another agency, or retirement.

Disclosures outside the Department of the Interior may be made:

(1) To the U.S. Department of Justice or in a proceeding before a court or adjudicative body when (a) the United States, the Department of the Interior, a component of the Department, or when represented by the government, an employee of the Department is a party to litigation or anticipated litigation or has an interest in such litigation, and (b) the Department of the Interior determines that the disclosure is relevant or necessary to the litigation and is compatible with the purpose for which the records were compiled.

(2) To appropriate Federal, State, local or foreign agencies responsible for investigating or prosecuting the violation or for enforcing, implementing, or administering a statute, rule, regulation, order or license, when the disclosing agency becomes aware of information indicating a violation or potential violation of a statute, regulation, rule, order or license.

(3) To a congressional office in connection with an inquiry an individual covered by the system has made to the congressional office.

(4) To Federal, State, or local agencies that have requested information relevant or necessary to the hiring, firing or retention of an employee, or the issuance of a security clearance, license, contract, grant or other benefit.

(5) To Federal, State or local agencies where necessary to obtain information relevant to the hiring or retention of an employee or the issuance of a security clearance, license, contract, grant or other benefit.

(6) To the Office of Personnel Management for matters concerned with oversight activities (necessary for the Office of Personnel Management to carry out its legally-authorized Government-wide personnel management programs and functions.)

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper copies of records are maintained in file folders. Electronic records are stored on a non-removable hard disk. Back-up records are stored on removable diskettes.

RETRIEVABILITY:

Records are indexed by name of employee or covered individual.

SAFEGUARDS:

Records are stored in a locked room. Access to records is permitted only to cleared personnel on official business.

RETENTION AND DISPOSAL:

Records are maintained and disposed of in accordance with General Records Schedule No. 18, Item No. 23.

SYSTEM MANAGER(S) AND ADDRESS:

Security Manager, Division of Employee and Public Services, National Business Center, Department of the Interior, 1849 C Street NW, MS–1226, Washington, DC 20240.

NOTIFICATION PROCEDURE:

A request for notification of the existence of records shall be addressed to the System Manager. The request must be in writing, signed by the requester, and comply with the content requirements of 43 CFR 2.60.

RECORD ACCESS PROCEDURE:

A request for access shall be addressed to the System Manager. The request must be in writing, signed by the requester, and comply with the content requirements of 43 CFR 2.63.

CONTESTING RECORD PROCEDURE:

A request for an amendment of a record shall be addressed to the System Manager. The request must be in writing, signed by the requester, and comply with the content requirements of 43 CFR 2.71.

RECORD SOURCE CATEGORIES:

Individuals covered by the system. Other Federal agencies supplying data on individuals covered by the system.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 99–8557 Filed 4–6–99; 8:45 am]
BILLING CODE 4310–RK–M

DEPARTMENT OF THE INTERIOR

Office of Aircraft Services

Privacy Act of 1974; As Amended; Revisions to the Existing System of Records

AGNENCY: Office of Aircraft Services, Department of the Interior.

ACTION: Proposed revisions to an existing system of records.

SUMMARY: In accordance with the Privacy Act of 1974, as amended (5 U.S.C. 552a), the Office of Aircraft Services is issuing public notice of its intent to modify an existing Privacy Act system of records, OS–8, "Aircraft Services Administrative Management and Fiscal Records." The revisions will update the name and number of the system and the addresses of the system locations and system manager.

EFFECTIVE DATE: These actions will be effective April 7, 1999.

FOR FURTHER INFORMATION CONTACT: Director, Office of Aircraft Service, 2350 W. Robinson Road, Boise, Idaho 83704–5355.

SUPPLEMENTARY INFORMATION: The Office of Aircraft Services is amending OS–8, "Aircraft Services Administrative Management and Fiscal Records," to more accurately reflect the organizational placement of the system within the Department of the Interior's Privacy Act program and to update the addresses of the system locations in the national headquarters and regional office and the address of the system manager. Accordingly, the Office of Aircraft Services proposes to amend "Aircraft Services Administrative Management and Fiscal Records," OS–8 in its entirety to read as follows:

Sue Ellen Sloca,

Office of the Secretary, Privacy Act Officer, National Business Center.

INTERIOR/OAS–02

SYSTEM NAME:

Aircraft Services Administrative and Fiscal Records—Interior, OAS–02.

SYSTEM LOCATION:

(1) National headquarters: Office of Aircraft Services, 2350 W. Robinson Road, Boise, Idaho 83705–5355.

(2) Regional office: Office of Aircraft Services, Alaska Regional Office, 4837 Aircraft Drive, Anchorage, Alaska 95502–1052.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees of the Office of Aircraft Services.

CATEGORIES OF RECORDS COVERED BY THE SYSTEM:

(1) Payroll records, including pay, leave and cost distribution records, along with deductions for bonds, insurance, income taxes, allotments to financial institutions, overtime, authorizations, and related documents.

(2) Travel records, including administrative approvals, travel expenses claimed and/or paid, receipts for expenditure claims, government transportation requests, travel advance accounts and related records.

(3) Records of accountability for Government-owned property.

(4) Safety records, including claims under the Military Personnel and Civil Employees Claims Act.

(5) Government identification card records.

(6) Government driver's license records.

(7) Other administrative and fiscal management records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 3101, 5101–5115, 5501–5596, 5701–5709, 31 U.S.C. 66a 240–243, 40 U.S.C. 483(b), 43 U.S.C. 1467, 44 U.S.C. 3103, Executive Order No. 11807.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The primary purpose of the system is to support the administrative and fiscal management of the Office of Aircraft Services. Disclosure outside the Department of the Interior may be made:

(1) To the U.S. Department of the Treasury for preparation of (a) payroll checks, (b) payroll deduction and other checks to Federal, State and local agencies, and (c) checks for reimbursement of employees and others.

(2) To the Internal Revenue Service and to State, Commonwealth, Territorial, and local governments for tax purposes.

(3) To the Civil Service Retirement System and to other employee retirement programs.

(4) To other agencies having a subject matter interest in the records.

(5) To the U.S. Department of Justice or to a court or adjudicative body with jurisdiction when (a) the United States, the Department of the Interior, a component of the Department, or, when represented by the government, an employee of the Department is a party to litigation or anticipated litigation or has an interest in such litigation, and (b) the Department of the Interior determines that the disclosure is relevant or necessary to the litigation and is compatible with the purpose for which the records were compiled.

(6) To appropriate Federal, State, local or foreign agencies responsible for investigating or prosecuting the violation of, or for enforcing or implementing a statute, rule, regulation, order, or license, when the disclosing agency becomes aware of information pertaining to a violation or potential violation of a statute, regulation, rule, order or license.

(7) To a Federal agency which has requested information relevant or necessary to the hiring or retention of an employee, or issuance of a security clearance, license, pilot qualification card, grant or other benefit.

(8) To Federal, State, local agencies or commercial businesses where necessary to obtain information relevant to the hiring or retention of an employee, or the issuance of a security clearance, license, pilot qualification card, grant or other benefit.

(9) To a congressional office in connection with an inquiry an individual covered by the system has made to the congressional office.

(10) To other Federal agencies conducting computer matching programs to help eliminate fraud and abuse and to detect unauthorized overpayments made to individuals.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OR RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in manual and automated form.

RETRIEVABILITY:

Records may be retrieved by employee name or Social Security number.

SAFEGUARDS:

Access to and use of these records is limited to those persons whose official duties require such access. Records are maintained in accordance with 43 CFR 2.51.

RETENTION AND DISPOSAL:

Records are retained in accordance with approved records retention and disposal schedules.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Aircraft Services, 2350 W. Robinson Road, Boise, Idaho 83705–5355.

NOTIFICATION PROCEDURE:

Inquiries regarding the existence of records shall be addressed to the System Manager. The request must be in writing, signed by the requestor, and comply with the content requirements of 43 CFR 2.60.

RECORD ACCESS PROCEDURES:

A request for access shall be addressed to the System Manager. The request must be in writing, signed by the requester, and comply with the content requirements of 43 CFR 2.63.

CONTESTING RECORD PROCEDURES:

A petition for amendment shall be addressed to the System Manager. The request must be in writing, signed by the requester, and comply with the content requirements of 43 CFR 2.71.

RECORD SOURCE CATEGORIES:

Employees, supervisors, timekeepers.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 99–8558 Filed 4–6–99; 8:45 am]
BILLING CODE 4310–RM–M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Privacy Act of 1974; as Amended; Revisions to the Existing System of Records

AGENCY: Office of the Secretary, Department of the Interior.

ACTION: Proposed revisions to an existing system of records.

SUMMARY: In accordance with the Privacy Act of 1974, as amended (5 U.S.C. 552a), the Office of the Secretary is issuing public notice of its intent to modify and existing Privacy Act system of records notice, DOI–60, "Safety Management Information System." The revisions will update the address of the system location and the system manager.

EFFECTIVE DATE: These actions will be effective April 7, 1999.

FOR FURTHER INFORMATION CONTACT: Chief System Administrator, Safety Management Information system, Office of Managing Risk and Public Safety, U.S. Department of the Interior, 755 Parfet Street, Suite 354, Lakewood, Colorado 80215.

SUPPLEMENTARY INFORMATION: The Office of the Secretary is amending DOI–60, "Safety Management Information System" to update the address of the system location and system manager. Accordingly, the Department of the Interior proposes to amend the system notice for "Safety Management

Information System," DOI–60 in its entirety to read as follows:

Sue Ellen Sloca,

Office of the Secretary, Privacy Act Officer, National Business Center.

INTERIOR/DOI–60

SYSTEM NAME:

Safety Management Information System—Interior, DOI–60.

SYSTEM LOCATION:

U.S. Department of the Interior, Office of Managing Risk and Public Safety, 755 Parfet Street, Suite 364, Lakewood, Colorado 80215.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees of the Department of the Interior, contractors, concessionaires, and public visitors to Interior facilities who have been involved in an accident resulting in personal injury and/or property damage.

CATEGORIES OF RECORDS IN THE SYSTEM:

For individuals covered by the system: Name of individual; Social Security number, birth date, sex, home address, occupation, and salary (for employees of the Department only); date and location of the accident; data elements about the accident for analytical purposes; and a descriptive narrative concerning what caused the accident.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

(1) 5 U.S.C. 7901, (2) U.S.C. 2671–1680, (3) 31 U.S.C. 240–243, (4) 29 CFR Part 1960, (5) Executive Order 12196.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The primary purposes of the system are:

(1) To provide summary data of injury, illness and property loss information to the bureaus in a number of formats for analytical purposes in order for them to improve accident prevention policies, procedures, regulations, standards, and operations.

(2) To provide listings of individual cases to bureaus to insure that accidents occurring are reported through the Safety Management Information System.

(3) To adjudicate tort and employee claims.

Disclosures outside the Department of the Interior may be made:

(1) To a Federal, State or local government agency that has partial or complete jurisdiction over the claim or related claims.

(2) To provide the Department of Labor with quarterly summary listings of fatalities and disabling injuries and illnesses in compliance with 28 CFR 1960.6.

(3) To the U.S. Department of Justice or in a proceeding before a court or adjudicative body when (a) the United States, the Department of the Interior, a component of the Department, or, when represented by the government, an employee of the Department is a party to litigation or anticipated litigation or has an interest in such litigation, and (b) the Department of the Interior determines that the disclosure is relevant or necessary to the litigation and is compatible with the purpose for which the records were compiled.

(4) To appropriate Federal, State, local or foreign agencies responsible for investigating or prosecuting the violation of, or for enforcing or implementing, a statue, rule, regulation, order or license, when the disclosing agency becomes aware of information indicating a violation or potential violation of a statute, regulation, rule, order or license.

(5) To a congressional office in connection with an inquiry an individual covered by the system has made to the congressional office.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Official records are maintained and stored in electronic form on a host computer housed in the system location office. They are created and updated on the individual workstations of any/all employees and supervisors, Departmentwide, that can communicate, electronically, with the host computer.

RETRIEVABILITY:

Records are retrieved both by personal identifiers of covered individuals and by data elements associated with the accidents via-automated lookup tables.

SAFEGUARDS:

(1) Access to the records is limited to Departmental employees who have an official need to use the records in the performance of their duties. Access to the records is controlled by (a) required user identification codes and passwords, and by (b) unique identifying personnel characteristics of users.

(2) Personal information is electronically tagged upon input into the system by employees or supervisors. It is not displayed or printed from the workstations of individuals not authorized to have access to it. It is protected from unauthorized access, during transmission, by electronic transmission encryption.

(3) Records are stored in a controlled area, secured from unauthorized access by an electronic firewall, and maintained with safeguards meeting the requirements of "the Computer Security Guidelines for Implementing the Privacy Act of 1974" (43 CFR 2.51).

RETENTION AND DISPOSAL:

Records are retained in accordance with National Archives and Records Administration's General Record Schedules #10 (Item 50), #18 (Item 11), and #20.

SYSTEM MANAGER(S) AND ADDRESS:

Chief System Administrator, Safety Management Information System, Office of Managing Risk and Public Safety, U.S. Department of the Interior, 755 Parfet Street, Suite 354, Lakewood, Colorado 80215.

NOTIFICATION PROCEDURE:

A request for notification of the existence of records shall be addressed to the System Manager. The request must be in writing, signed by the requester, and comply with the content requirements of 43 CFR 2.60.

RECORD ACCESS PROCEDURES:

A request for access to records shall be addressed to the System Manager. The request must be in writing signed by the requester, and comply with the content requirements of 43 CFR 2.63.

CONTESTING RECORD PROCEDURES:

A request for amendment of a record shall be addressed to the System Manager. The request must be in writing, signed by the requester, and comply with the content requirements of 43 CFR 2.71.

RECORD SOURCE CATEGORIES:

Employees involved in accidents, supervisors of employees involved in accidents, supervisors of operations where public visitors are involved in accidents, officials responsible for oversight of contractors and concessionaires, safety professionals and other management officials.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 99–8559 Filed 4–6–99; 8:45 am]
BILLING CODE 4310–RK–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of an Environmental Assessment and Finding of No Significant Impact, and Receipt of an Application for an Incidental Take Permit for a Proposed Residential Development Called Palm Haven Subdivision, Unit 12, Highlands County, FL

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

Mr. Norbert Walz (Applicant) requests an incidental take permit (ITP) pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973 (U.S.C. 1531 *et seq.*), as amended (Act). The Applicant anticipates taking up to two families of the threatened Florida scrub-jay (*Aphelocoma coerulescens coerulescens*), one eastern indigo snake (*Drymarchon corais couperi*), and eight acres of sand skink (*Neoseps reynoldsi*) and blue-tailed mole skink (*Eumeces egregius lividus*) habitat, (collectively known as the "covered species") incidental to the improvement of an existing road and clearing of 22 single-family residential lots. The proposed residential development will occur in section 2, Township 35 South, Range 28 East, Highlands County, near Sebring and is a component of Unit 12 of the Palm Haven Subdivision.

The widening and paving of an existing dirt road and the clearing of 22 residential lots will destroy suitable habitat for the four species identified above. A more detailed description of the mitigation and minimization measures to address the effects of the Project to the protected species are outlined in the Applicant's Habitat Conservation Plan (HCP), the Service's Environmental Assessment (EA), and in the **SUPPLEMENTARY INFORMATION** section below.

The Service also announces the availability of an EA and HCP for the incidental take application. Copies of the EA and/or HCP may be obtained by making a request to the Regional Office (see **ADDRESSES**). Requests must be in writing to be processed. This notice also advises the public that the Service has made a preliminary determination that issuing the ITP is not a major Federal action significantly affecting the quality of the human environment within the meaning of Section 102(2)(C) of the National Environmental Policy Act of 1969, as amended (NEPA). The Finding of No Significant Impact (FONSI) is based on information contained in the EA and HCP. The final determination will be made no sooner than 30 days from the date of this notice. This notice is provided pursuant to Section 10 of the Act and NEPA regulations (40 CFR 1506.6).

The Service specifically requests information, views, and opinions from the public via this Notice on the federal action, including the identification of any other aspects of the human environment not already identified in the Service's EA. Further, the Service is specifically soliciting information regarding the adequacy of the HCP as measured against the Service's ITP issuance criteria found in 50 CFR Parts 13 and 17.

DATES: Written comments on the ITP application, EA, and HCP should be sent to the Service's Regional Office (see **ADDRESSES**) and should be received on or before May 7, 1999.

ADDRESSES: Persons wishing to review the application, HCP, and EA may obtain a copy by writing the Service's Southeast Regional Office, Atlanta, Georgia. Documents will also be available for public inspection by appointment during normal business hours at the Regional Office, 1875 Century Boulevard, Suite 200, Atlanta, Georgia 30345 (Attn: Endangered Species Permits), or Field Supervisor, U.S. Fish and Wildlife Service, Post Office Box 2676, Vero Beach, Florida 32961–2676. Written data or comments concerning the application, EA, or HCP should be submitted to the Regional Office. Requests for the documentation must be in writing to be processed. Comments must be submitted in writing to be adequately considered in the Service's decision-making process. Please reference permit number TE009033–0 in such comments, or in requests of the documents discussed herein.

FOR FURTHER INFORMATION CONTACT: Mr. Rick G. Gooch, Regional HCP Coordinator, (see **ADDRESSES** above), telephone: 404/679–7110, facsimile: 404/679–7081; or Mr. Mike Jennings, Fish and Wildlife Biologist, South Florida Ecosystem Office, Vero Beach, Florida (see **ADDRESSES** above), telephone: 561/562–3909.

SUPPLEMENTARY INFORMATION: The Florida scrub-jay (scrub-jay) occurs in xeric uplands (predominately oak scrub) of peninsular Florida. Sand skinks and blue-tailed mole skinks are restricted to xeric uplands in central Florida. The eastern indigo snake ranges throughout the southeastern United States, but is most commonly associated with xeric habitats. Increasing urban and agricultural development have resulted in habitat loss and fragmentation which has adversely affected the distribution and numbers of individuals of each of these species.

The scrub-jay is geographically isolated from other subspecies of scrub-jays found in Mexico and the Western United States. The scrub-jay is found exclusively in peninsular Florida and is restricted to scrub habitat. The total estimated population is between 7,000 and 11,000 individuals. Due to habitat loss and degradation throughout the State of Florida, it has been estimated that the scrub-jay has been reduced by at least half in the last 100 years.

The number and distribution of scrub-jays in southcentral Florida has been greatly reduced. Based on existing soils data, much of the historic and current scrub-jay habitat of interior Florida occurs along a 100-mile stretch of ancient dunes that are situated on a north-south axis from Osceola to Highlands counties. Much of this area of Florida was settled early because few wetlands restricted urban and agricultural development. Due to the effects of urban and agricultural development over the past 100 years, much of the remaining scrub-jay habitat is now relatively small and isolated. What remains is largely degraded due to lack of adequate land management.

Scrub-jays using the Project site and adjacent lands are considered part of a larger complex of scrub-jays that occupy xeric uplands of southcentral Florida. This complex of scrub-jay families is considered one of five remaining areas where relatively large numbers of birds remain demographically linked. The continued survival of scrub-jay in this subregion may be dependent on the maintenance of suitable habitat and the restoration of unsuitable habitat in Highlands County.

Scrub-jay use of the Project site and adjacent lands has been assessed on one occasion. In 1998, field investigations determined that two scrub-jay families used portions of the Project site as well as adjacent lands. Though no systematic surveys were conducted to delineate territorial boundaries, suitability of habitat within the Project site indicate that about three acres of suitable habitat exist. The close proximity of areas known to be used by scrub-jays and the fact that this species is territorial, suggests the suitable habitat within the Project site is used by one or both of the scrub-jay families known from the vicinity. Nesting, foraging, and security habitat exists within the Project site.

The Project site is part of a partially built-out, platted, subdivision that is bisected by many unimproved dirt roads. The Project site is bounded on

three sides by urban development and the site itself is negatively influenced by adjacent residents (e.g., trash dumping, off-road vehicle use, etc.). Due to the proximity of the Project site to existing residential development, fire has been actively excluded because of human safety concerns. As a result, the condition of the xeric habitat within and adjacent to the Project site is degraded; periodic fire is required to maintain habitat conditions suitable for the scrub-jay.

Many of the factors discussed above for the scrub-jay are also affecting the eastern indigo snake, sand skink, and blue-tailed mole skink within the Project site and vicinity. The eastern indigo snake is a wide-ranging species that is found in most upland communities, however, it is typically found in more xeric areas. This species has a relatively large territory size (100 to 200 acres) that may cover several vegetative community types. Indigo snakes are difficult to survey, so positive identification of occupied habitat is often problematic. Habitat loss and fragmentation are currently thought to be the primary threat to this species.

The sand skink and blue-tailed mole skink inhabit xeric uplands of central Florida. The sand skink is semi-fossorial while the blue-tailed mole skink is exclusively fossorial. These species spend much of their time buried in or on top of the dry, loose sandy soils of xeric uplands. As mentioned above, agricultural development over the past 100 years has resulted in the loss or degradation of up to 50 percent of the xeric uplands of central Florida. Accordingly, these species have declined in numbers and distribution.

Construction of the Project's infrastructure and subsequent construction of the individual homesites will likely result in death of, or injury to, scrub-jays, indigo snakes, sand skinks, and blue-tailed mole skinks, incidental to the carrying out of these otherwise lawful activities. Habitat alteration associated with the proposed residential development will reduce the availability of feeding, nesting, and sheltering habitat for these species.

The Applicant's HCP and the Service's EA describes the following minimization and mitigation strategy to be employed by the Applicant to offset the impacts of the Project to the scrub-jay:

- During lot preparation, the Applicant agrees to minimize loss of xeric vegetation, by restricting vegetation clearing to that necessary for construction.
- The Applicant shall use native xeric plants for ornamental purposes, and encourage such use by future homeowners.
- Compensate for the destruction of 3.04 acres of suitable scrub-jay habitat by acquiring and providing a management endowment for 6.08 acres of xeric upland habitat at a location specified by the Service, or
- Provide $13,406 in funding to be used for the acquisition and management of xeric uplands, public education, and/or research, as specified by the Service.

The EA considers the environmental consequences of two action alternatives, both of which would require issuance of an ITP. The preferred alternative would affect about eight acres of xeric uplands and a larger scale residential development plan would affect about 30 acres of xeric uplands. The no action alternative (not issue the ITP) may result in loss of habitat for federally listed species described above and exposure of the Applicant under Section 9 of the Act. The proposed action alternative is issuance of the ITP according to the HCP as submitted and described above. Under the proposed alternative, the effect of the minimization and mitigation strategy will be that the affected scrub-jay habitat within the Project site will be mitigated through a financial contribution or through fee simple acquisition of off-project suitable habitat areas. Funding for habitat acquisition or fee simple acquisition of habitat by the Applicant is expected to adequately compensate for the effect of the anticipated incidental take of eastern indigo snakes, sand skinks, and blue-tailed mole skinks, as described in the Service's EA. On-site minimization measures will provide short-term protection of some habitat for the covered species; however, the influences of urbanization will eventually erode the value of any xeric vegetation retained within the Project site.

As stated above, the Service has made a preliminary determination that the issuance of the ITP is not a major Federal action significantly effecting the quality of the human environment within the meaning of Section 102(2)(C) of NEPA. This preliminary information may be revised due to public comment received in response to this notice and is based on information contained in the EA and HCP. Similarly, the Service will evaluate the HCP and comments submitted thereon to determine whether the application meets the requirements of section 10(a) of the Act. If it is determined that those requirements are met, an ITP will be issued for incidental take of the covered species. The Service will also evaluate whether the issuance of a Section 10(a)(1)(B) ITP complies with Section 7 of the Act by conducting an intra-Service Section 7 consultation. The results of the consultation, in combination with the above findings, will be used in the final analysis to determine whether or not to issue the ITP; the final decision will be made no sooner than 30 days from the date of this notice.

Dated: April 1, 1999.

H. Dale Hall,

Deputy Regional Director.

[FR Doc. 99–8563 Filed 4–6–99; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–320–1330–01–24 1A]

Notice of Proposed Information Collection, OMB Approval No. 1004–0103

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Bureau of Land Management (BLM) announces its intention to request renewal of the existing approval to collect information from applicants who apply to purchase mineral materials from public lands under the mineral materials regulations. Respondents supply the information so that BLM can evaluate the environmental impacts of their proposals and determine their qualifications to receive a mineral materials contract.

DATES: BLM must receive comments on the proposed information collection by June 7, 1999, to assure its consideration of them.

ADDRESSES: Mail comments to: Director (630), Bureau of Land Management, 1849 C St., N.W., Mail Stop 401 LS, Washington, D.C. 20240. Send comments by means of the internet to: *WoComment@wo.blm.gov*. Please include "ATTN: 1004–0103" and your name and return address in your internet message.

You may hand deliver comments to the BLM Administrative Record, Room 401 L Street, N.W., Washington, D.C. BLM will make comments available for public review and comment at the L Street address during regular business hours (7:45 am to 4:15 pm), Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Durga N. Rimal, Solid Minerals Group, (202) 452–0350.

SUPPLEMENTARY INFORMATION: The regulations at 5 CFR 1320.8(d) require BLM to provide a 60-day notice in the **Federal Register** concerning the collection of information contained in Forms 3600–4 and 3600–5, to seek comments on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. BLM will review and analyze any comments sent in response to this notice and include them with its request for approval from the OMB under the Paperwork Reduction Act.

The Mineral Materials Act of 1947, as amended (Act), 30 U.S.C. 601 and 602, provides for the disposal of mineral materials, such as sand, gravel, and petrified wood, from the public lands by sale or free use. The Secretary disposes of such materials at his discretion, consistent with the regulations at 43 CFR Part 3600.

BLM uses the information that an applicant or permittee submits to: (1) determine if the sale of mineral materials is in the public interest, (2) mitigate the environmental impacts of mineral materials development, (3) get fair market value for the materials sold, and (4) prevent trespass removal of the materials.

Applicants must submit a written request to BLM to purchase mineral materials. Specific information requirements are not stated in the regulations, but all sales agreements are made on contract forms approved by the BLM Director. BLM uses two forms. Form 3600–4 is used when the sale value is less than $2,000, and the applicant fully pays the amount due when executing the contract. Form 3600–5 is used for sales of $2,000 or more and provides for installment payments. Both forms require the following information: (1) The applicant's name and address, (2) an authorized signature, and (3) the location and amount of the material to be purchased. BLM uses the information to enter into the binding contract and to identify and communicate with the applicant. Without binding contractual agreements, the federal government would not be able to require appropriate reclamation of disturbed sites, protect natural resources, or ensure regular payments for the public mineral materials sold.

Based on BLM's experience in administering the activities described, the public reporting burden for the information described is estimated to average 30 minutes per response. The respondents operators desiring sand, gravel, stone, and other mineral materials from lands under BLM jurisdiction. The frequency of response is once or twice per year.

The majority of respondents consist of permittees with sales contracts amounting to less than $2,000. Depending upon the site and the amount of materials, BLM, before processing the applications, may require applicants to provide an outline of a mining or reclamation plan at the time of applications. A majority of sales occur from community pits for which BLM has already developed a mining and reclamation plan, and there is no additional burden to applicants. The estimated average preparation time for completing Forms 3600–4 and 3600–5 and preparing any supporting documents is 30 minutes. Actual time varies from 15 minutes (most common) to several days for larger projects. The number of requests for sales averages 2,600 per year, with a total annual burden of 1,125 hours.

For sales contracts with terms exceeding 1 year, respondent must submit annual production reports for the duration of the contract. The average reporting burden for such respondents is about 30 minutes. The estimated number of production reports is 600 per year, with an estimated annual burden of 300 hours.

Applicants for sales contracts may test and sample deposits, with letters of use authorization from BLM. In an average year BLM issues about 100 letters of use authorization. The collective annual burden for this activity is estimated to be 75 hours. The total annual burden for all respondents is 1,500 hours.

BLM will summarize all responses to this notice and include them in the request for Office of Management and Budget approval. All comments will become part of the public record.

Dated: March 30, 1999.

Carole Smith,

BLM Information Clearance Officer.

[FR Doc. 99–8601 Filed 4–6–99; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV 910 0777 30]

Northeastern Great Basin Resource Advisory Council Meeting Location and Time

AGENCY: Bureau of Land Management, Interior.

ACTION: Resource Advisory Councils' Meeting Location and Time.

SUMMARY: In accordance with the Federal Land Policy and Management Act and the Federal Advisory Committee Act of 1972 (FACA), 5 U.S.C., the Department of the Interior, Bureau of Land Management (BLM), Council meetings will be held as indicated below. The agenda for the May 14, 1999 meeting includes: approval of minutes of the previous meeting, Standards and Guidelines for wild horses, pinyon-juniper, mining and recreation; a status report on the Fish Creek Interim Evaluation by Eureka County; Resource Advisory Council (RAC) member reports on constituent contacts regarding possible Wilderness legislation; 3809 draft mining regulations; report on a wild horse gentling initiative; renewal of the RAC Charter; and field manager reports on current BLM activities and planned actions for the Battle Mountain, Elko and Ely Field Offices. The Council will also determine subject matter for future meetings.

On May 15, 1999, the Council will take a field tour of the Fish Creek Wild Horse Herd Management Area.

All meetings are open to the public. Citizens may present written comments to the Council. Each formal Council meeting will also have time allocated for hearing public comments. The public comment period for the Council meeting is listed below. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited. The public may attend the field tour. Individuals who plan to attend or need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Curtis Tucker, Special Projects Coordinator, Ely District Office, 702 North Industrial Way, HC 33 Box 33500,

Ely, NV 89301–9408, telephone 775–289–1841.

DATES, TIMES: The time and location of the meeting is as follows: Northeastern Great Basin Resource Advisory Council meeting, May 14, 1999, starting at 9:00 a.m.; Eureka Opera House, Eureka, Nevada 89316; public comments will be at 11:30 a.m.; tentative adjournment 5:00 p.m. May 15, 1999, starting at 8:00 a.m., the field tour will depart from the Eureka Opera House in Eureka and return at approximately 4 p.m. Tentative adjournment will be at 4:30 p.m.

FOR FURTHER INFORMATION CONTACT: Curtis Tucker, Special Projects Coordinator, Ely District Office, 702 North Industrial Way, HC 33 Box 33500, Ely, NV 89301–9408, telephone 702–289–1841.

SUPPLEMENTARY INFORMATION: The purpose of the Council is to advise the Secretary of the Interior, through the BLM, on a variety of planning and management issues, associated with the management of the public lands.

Those planning to attend the tour should wear clothing suitable for hiking, including sturdy footwear, and provide their own food and water. Those wishing to use government transportation should contact Mr. Tucker prior to the meeting.

Dated: March 26, 1999.

Helen Hankins,

District Manager, Elko.

[FR Doc. 99–8600 Filed 4–6–99; 8:45 am]

BILLING CODE 4310–HC–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–030–1430–01; NMNM100779]

Notice of Realty Action; Recreation and Public Purposes (R&PP) Act Classification; New Mexico

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice of Realty Action; R&PP Act Classification.

SUMMARY: The following public land in Dona Ana County, New Mexico has been examined and found suitable for classification for lease or conveyance to Dona Ana County, New Mexico under the provision of the R&PP Act, as amended (43 U.S.C. 869 *et seq.*). Dona Ana County proposes to use the land for a Public Health Facility.

T. 22 S., R. 3 W, NMPM,
Sec. 18: Part of lot 12.
Containing 2.5 acres, more or less.

DATES: Comments regarding the proposed lease/conveyance or classification must be submitted on or before May 24, 1999.

ADDRESSES: Comments should be sent to the Bureau of Land Management, Las Cruces Field Office, 1800 Marquess, Las Cruces, New Mexico 88005.

FOR FURTHER INFORMATION CONTACT: Marvin M. James at the address above or at (505) 525–4349.

SUPPLEMENTARY INFORMATION: Lease or conveyance will be subject to the following terms, conditions, and reservations:

1. Provisions of the R&PP Act and to all applicable regulations of the Secretary of the Interior.
2. All valid existing rights documented on the official public land records at the time of lease/patent issuance.
3. All minerals shall be reserved to the United States, together with the right to prospect for, mine, and remove the minerals.
4. Any other reservations that the authorized officer determines appropriate to ensure public access and proper management of Federal lands and interests therein.

Upon publication of this notice in the **Federal Register**, the land will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for lease or conveyance under the R&PP Act and leasing under the mineral leasing laws. On or before May 24, 1999, interested persons may submit comments regarding the proposed lease/conveyance or classification of the land to the Field Manager, Las Cruces Field Office, 1800 Marquess, Las Cruces, New Mexico 88005. Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification will become effective 60 days from the date of publication of this notice.

Classification Comments: Interested parties may submit comments involving the suitability of the land for a Public Health Facility. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

Application Comments: Interested parties may submit comments regarding the specific use proposed in the application and plan of development, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for a Public Health Facility.

Dated: April 1, 1999.

Bill Merhege,

Acting Field Manager, Las Cruces.

[FR Doc. 99–8564 Filed 4–6–99; 8:45 am]

BILLING CODE 4310–VC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–030–1430–00; NMNM 96531 & NMNM 98501]

Notice of Realty Action; Recreation and Public Purposes (R&PP) Act Classification; New Mexico

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Correction notice.

SUMMARY: In **Federal Register** Volume 64, Page 13231, Number 51 of Wednesday, March 17, 1999, Notices, under the **SUMMARY** heading, change the legal description of "Parcel 1" to read:

Parcel 1

T. 29 S., R. 4 E., NMPM
Sec. 17, Lots 6, 8, and 9, W½2E½NE¼, SW¼4NE¼.
Containing 138.88 acres, more or less.
Dated: April 1, 1999.

Bill Merhege,

Acting Field Manager, Las Cruces.

[FR Doc. 99–8565 Filed 4–6–99; 8:45 am]

BILLING CODE 4310–VC–P

DEPARTMENT OF THE INTERIOR

Jimmy Carter National Historic Site Advisory Commission; Notice of Meeting

AGENCY: National Park Service, DOI, Jimmy Carter National Historic Site.

ACTION: Notice of advisory commission meeting.

SUMMARY: Notice is hereby given in accordance with the Federal Advisory Commission Act that a meeting of the Jimmy Carter National Historic Site Advisory Commission will be held at 8:30 a.m. to 4:00 p.m., at the following location and date.

DATES: April 15, 1999.

LOCATION: The Carter Library, One Copenhill, Atlanta, Georgia 30309.

FOR FURTHER INFORMATION CONTACT: Mr. Fred Boyles, Superintendent, Jimmy Carter National Historic Site, Route 1 Box 800, Andersonville, Georgia 31711, (912) 924–0343 Extension 105.

SUPPLEMENTARY INFORMATION: The purpose of the Jimmy Carter National

Historic Site Advisory Commission is to advise the Secretary of the Interior or his designee on achieving balanced and accurate interpretation of the Jimmy Carter National Historic Site.

The members of the Advisory Commission are as follows:

Dr. Henry King Stanford
Dr. James Sterling Young
Dr. Barbara J. Fields
Dr. Donald B. Schewe
Dr. Steven H. Hochman
Director, National Park Service, Ex-Officio member

The matters to be discussed at this meeting include the status of park development and planning activities. This meeting will be open to the public. However, facilities and space for accommodating members of the public are limited. Any member of the public may file with the commission a written statement concerning the matters to be discussed. Written statements may also be submitted to the Superintendent at the address above. Minutes of the meeting will be available at Park Headquarters for public inspection approximately 4 weeks after the meeting.

Dated: March 26, 1999.

Daniel W. Brown,

Regional Director Southeast Region.

[FR Doc. 99–8514 Filed 4–6–99; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

Privacy Act of 1974, as Amended; Systems of Records

AGENCY: Office of Surface Mining, Interior.

ACTION: Notice of deletion of two systems of records.

SUMMARY: Pursuant to the provisions of the Privacy Act of 1974, as amended (5 U.S.C. 552a), notice is hereby given that the Department of the Interior is deleting two systems of records managed by the Office of Surface Mining (OSM). One system of records, entitled "Property Control—Interior/OSMRE–4" has been re-examined and determined that the records contained in this system of records are covered by and maintained in "Personal Property Accountability Records—Interior/MMS–2," published in the **Federal Register** on February 18, 1999 (64 FR 8111). The other system of records, entitled "Safety Files—Interior/OSM–6" has been re-examined and determined that the records contained in this system of records are covered by and maintained in "Safety Management Information System—Interior/DOI–60," published in the **Federal Register** on January 6, 1997 (62 FR 767) and "Employee Medical File System—OPM/GOVT–10," published in the **Federal Register** on July 15, 1996 (61 FR 36919).

DATES: These actions will be effective April 7, 1999.

FOR FURTHER INFORMATION CONTACT: Barbara Russell, Chief, Office of Administration, Assistant Directorate, Finance and Administration, Office of Surface Mining, at (202) 208–2593.

SUPPLEMENTARY INFORMATION: Earlier Privacy Act Compilations list the systems of records with the prefix of "OSMRE" (e.g., OSMRE–4) when originally published in the **Federal Register**. The prefix was later changed to "OSM" in subsequent records systems for convenience; the content of the systems of records is the same.

The two systems of records being deleted and the reasons for deletion are listed below:

1. Interior/OSMRE–4, "Property Control," previously published in the **Federal Register** on December 27, 1988 (53 FR 52241). The records contained in this system of records are covered by and maintained in Interior/MMS–2, "Personal Property Accountability Records," published in the **Federal Register** on February 18, 1999 (64 FR 8111). Records can be located by contacting the System Manager(s) listed in MMS–2: Chief, Support Services Branch, Procurement and Support Services Division, Minerals Management Services Division, Minerals Management Service, Mail Stop 2520, 381 Elden Street, Herndon, Virginia 20170–4817 or Chief, Office of Administration, Office of Surface Mining, 1951 Constitution Avenue, NW, Washington, DC 20240.

2. Interior/OSM–6, "Safety Files," previously published in the **Federal Register** on March 31, 1978 (43 FR 13644). The records contained in this system of records are covered by and maintained in Interior/DOI–60, "Safety Management Information System," published in the **Federal Register** on January 6, 1997 (62 FR 767); and in OPM/GOVT–10, "Employee Medical File System," published in the **Federal Register** on July 15, 1996 (61 FR 36919). Records can be located by contacting the System Managers and following the procedures listed in those notices.

Robert Ewing,

Chief Information Officer, Office of Surface Mining.

[FR Doc. 99–8560 Filed 4–6–99; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining

Privacy Act of 1974, as Amended; Systems of Records

AGENCY: Office of Surface Mining, Interior.

ACTION: Notice of deletion.

SUMMARY: Pursuant to the provisions of the Privacy Act of 1974, as amended (5 U.S.C. 552a), notice is hereby given that the Department of the Interior is deleting one system of records managed by the Office of Surface Mining. The system of records entitled "Personnel Security Files—Interior/OSMRE–7," is deleted because the system is covered by and maintained in two other systems of records notices.

DATE: Action will be effective April 7, 1999.

FOR FURTHER INFORMATION CONTACT: Peggy Moran-Gicker, Office of Personnel, Office of Surface Mining, at (202) 208–2762.

SUPPLEMENTARY INFORMATION: Earlier Privacy Act Compilations list the systems of records with the prefix of "OSMRE" (e.g, OSMRE–7) when originally published in the **Federal Register**. The prefix was later changed to "OSM" in subsequent records systems for convenience; the content of the systems of records was the same. "Personnel Security Files—Interior/OSMRE–7" was previously published in the **Federal Register** on June 6, 1989 (54 FR 24270). The Office of Surface Mining has recently completed a Privacy Act review of OSMRE–7. It was determined that this system of records is covered by and maintained in Interior/OS–45, "Security Clearance Files and Other Reference Files" and OPM/Central–9, "Personnel Investigations Records." Therefore, we are deleting OSMRE–7 from the Privacy Act systems of records for the Department of the Interior. Records can be located by contacting the System Manager(s) and following the procedures listed in those notices.

Robert Ewing,

Chief Information Officer, Office of Surface Mining.

[FR Doc. 99–8561 Filed 4–6–99; 8:45 am]

BILLING CODE 4310–05–M

ACTION: Notice of deletion of two systems of records.

SUMMARY: Pursuant to the provisions of the Privacy Act of 1974, as amended (5 U.S.C. 552a), notice is hereby given that the Department of the Interior is deleting two systems of records managed by the Office of Surface Mining (OSM). The system of records entitled "Net Worth Determination File—Interior/OSMRE–10" and the system of records entitled "Collection Management Information System (CMIS)—Interior/OSMRE-11" both have been re-examined and determined not to be subject to the Privacy Act.

DATES: These actions will be effective April 7, 1999.

FOR FURTHER INFORMATION CONTACT: Mark H. White, Team Leader, Fee Accounting and Collections Team, Office of Surface Mining, at (303) 236–0330 X242.

SUPPLEMENTARY INFORMATION: Earlier Privacy Act Compilations list the system of records with the prefix of "OSMRE" (e.g., OSMRE–10 and OSMRE–11) when originally published in the **Federal Register**. The prefix was later changed to "OSM" in subsequent records systems for convenience; the content of the systems of records was the same. The two system of records notices being deleted and the reasons for deletion are listed below.

1. Interior, OSM–10, "Net Worth Determination File," previously published in the **Federal Register** on February 14, 1991 (56 FR 6032). A Privacy Act review of OSM–10 has recently been completed by OSM. An opinion issued on August 30, 1988 by the General Counsel, Office of Management and Budget (OMB) affirmed OMB's 1975 guidelines, which interpreted the statutory term "individual" to exclude natural persons acting in an entrepreneurial capacity from coverage of the Privacy Act. A review of the Net Worth Determination File indicated that the records solely contain information about persons acting in an entrepreneurial capacity. Therefore, the system is not subject to the Privacy Act and the notice is being deleted from the Department's compilation of Privacy Act systems of records notices.

2. Interior, OSM–11, "Collection Management Information System (CMIS)," previously published in the **Federal Register** on July 11, 1989 (54 FR 29108). A Privacy Act review of OSM–11 has also been completed by OSM. An opinion issued on August 30, 1988 by the General Counsel, Office of Management and budget (OMB) affirmed OMB's 1975 guidelines, which interpreted the statutory term "individual" to exclude natural persons acting in an entrepreneurial capacity from coverage of the Privacy Act. A review of CMIS indicated that the records solely contain information about persons acting in an entrepreneurial capacity. Therefore, the system is not subject to the Privacy Act and the notice is being deleted from the Department's compilation of Privacy Act systems of records notices.

Robert Ewing,

Chief Information Officer, Office of Surface Mining.

[FR Doc. 99–8562 Filed 4–6–99; 8:45 am]

BILLING CODE 4310–05–M

INTERNATIONAL TRADE COMMISSION

Investigation No. 731–TA–130 (Review)

Chloropicrin from China

Determination

On the basis of the record [1] developed in the subject five-year review, the United States International Trade Commission determines, pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act), that revocation of the antidumping duty order on chloropicrin from China would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

Background

The Commission instituted this review on November 2, 1998 (63 F.R. 58761), and determined on February 4, 1999, that it would conduct an expedited review (64 F.R. 9173, Feb. 24, 1999).

The Commission is scheduled to transmit its determination in this investigation to the Secretary of Commerce on April 1, 1999. The views of the Commission will be contained in USITC Publication 3175 (April 1999), entitled Chloropicrin from China: Investigation No. 731–TA–130 (Review).

Issued: March 26, 1999.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–8603 Filed 4–6–99; 8:45 am]

BILLING CODE 7020–02–P

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR § 207.2(f)).

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731-TA–814 (Preliminary)]

Creatine Monohydrate From the People's Republic of China

Determination

On the basis of the record [1] developed in the subject investigation, the United States International Trade Commission determines, pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. § 1673b(a)), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from the People's Republic of China of creatine monohydrate, provided for in subheading 2925.20.90 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value (LTFV).

Commencement of Final Phase of Investigation

Pursuant to section 207.18 of the Commission's rules, the Commission also gives notice of the commencement of the final phase of its investigation. The Commission will issue a final phase notice of scheduling which will be published in the **Federal Register** as provided in section 207.21 of the Commission's rules upon notice from the Department of Commerce (Commerce) of an affirmative preliminary determination in the investigation under section 733(b) of the Act, or, if the preliminary determination is negative, upon notice of an affirmative final determination in that investigation under section 735(a) of the Act. Parties that filed entries of appearance in the preliminary phase of the investigation need not enter a separate appearance for the final phase of the investigation. Industrial users, and, if the merchandise under investigation is sold at the retail level, representative consumer organizations have the right to appear as parties in Commission antidumping and countervailing duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigation.

Background

On February 12, 1999, a petition was filed with the Commission and the Department of Commerce by Pfanstiehl Laboratories, Inc., Waukegan, IL,

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR § 207.2(f)).

alleging that an industry in the United States is materially injured and is threatened with material injury by reason of LTFV imports of creatine monohydrate from the People's Republic of China. Accordingly, effective February 12, 1999, the Commission instituted antidumping investigation No. 731–TA–814 (Preliminary).

Notice of the institution of the Commission's investigation and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of February 22, 1999 (64 FR 8629). The conference was held in Washington, DC, on March 8, 1999, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on April 5, 1999. The views of the Commission will be contained in USITC Publication 3177 (April 1999), entitled *Creatine Monohydrate from the People's Republic of China: Investigation No. 731–TA–814 (Preliminary).*

Issued: March 30, 1999.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–8604 Filed 4–6–99; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 701–TA–375 (Final)]

Extruded Rubber Thread From Indonesia

AGENCY: United States International Trade Commission.

ACTION: Termination of investigation.

SUMMARY: On March 26, 1999, the Department of Commerce published notice in the **Federal Register** of a negative final determination of subsidies in connection with the subject investigation (64 FR 14695). Accordingly, pursuant to section 207.40(a) of the Commission's Rules of Practice and Procedure (19 CFR § 207.40(a)), the countervailing duty investigation concerning extruded rubber thread from Indonesia (investigation No. 701–TA–375 (Final)) is terminated.

EFFECTIVE DATE: March 26, 1999.

FOR FURTHER INFORMATION CONTACT: Jonathan Seiger (202–205–3183), Office of Investigations, U.S. International Trade Commission 500 E Street S.W., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http:www.usitc.gov).

Authority: This investigation is being terminated under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 201.10 of the Commission's rules (19 CFR 201.10).

By order of the Commission.

Issued: March 30, 1999.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–8605 Filed 4–6–99; 8:45 am]

BILLING CODE 7020–02–M

DEPARTMENT OF JUSTICE

Antitrust Division

International Competition Policy Advisory Committee (ICPAC); Notice of Hearings

The International Competition Policy Advisory Committee ("Advisory Committee") will hold hearings on April 22–23, 1999. The Advisory Committee was established by the Department of Justice to provide advice regarding issues relating to international competition policy; specifically, how best to cooperate with foreign authorities to eliminate international anticompetitive agreements, how best to coordinate United States' and foreign antitrust enforcement efforts in the review of multinational mergers, and how best to address issues that interface international trade and competition policy concerns. The hearings will be held at the Center for Strategic and International Studies, B–1 Conference Center, 1800 K Street, NW, Washington, DC. The agenda and current schedule for the hearings are as follows:

Day 1—April 22, 1999

9:00–9:30 Welcoming Remarks

9:30–12:00 Session One: Presentations on Confidential Information Sharing

12:00–1:00 Session Two: Presentation by Representatives of Trade Associations (Part I)

2:00–2:45 Session Two: Presentations by Representatives of Trade Associations (Part II)

2:45–4:00 Session Three: Presentations by Members of the ABA Antitrust Section Task Force

4:15–5:45 Session Four: Presentations by Members of the ABA International Section

Day 2—April 23, 1999

9:00–9:15 Welcoming Remarks

9:15–11:15 Session One: Presentations by Members of the ABA Antitrust Section Task Force

11:30–12:30 Session Two: Presentations on the Role of International Institutions in Competition Policy

1:30–3:00 Session Three: Presentations from Representatives of U.S. Businesses

3:15–4:15 Session Four: Presentations on Institution Building and Competition Law Advocacy

4:15–5:30 Session Five: Presentations by Economists

The hearings schedule is not final and may change. For the latest information about the hearings schedule or other matters related to the hearings, please check the Advisory Committee's website at: www.usdoj.gov/atr/icpac/icpac.htm or contact Marianne Pak of the Advisory Committee staff at (202) 353–9074.

Attendance is open to the interested public, limited by the availability of space. Persons needing special assistance, such as sign language interpretation or other special accommodations, should notify the contact person listed below as soon as possible. Members of the public may submit written statements by mail, electronic mail, or facsimile at any time before or after the hearings to the contact person listed below for consideration by the Advisory Committee. All written submissions will be included in the public record of the Advisory Committee. Oral statements from the public will not be solicited or accepted at the hearings. For further information contact: Merit Janow, c/o Marianne Pak, U.S. Department of Justice, Antitrust Division, 601 D Street, NW, Room 10011, Washington, DC 20530, Telephone: (202) 353–9074, Facsimile: (202) 353–9985, Electronic mail: icpac.atr@usdoj.gov.

Merit E. Janow,

Executive Director, International Competition Policy Advisory Committee.

[FR Doc. 99–8648 Filed 4–6–99; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Office of Justice Programs

[OJP(BJA)–1213]

RIN 1121–AA36

Prison Industry Enhancement Certification Program Guideline

AGENCY: Office of Justice Programs, Bureau of Justice Assistance (BJA), Justice.

ACTION: Issuance of final guideline.

SUMMARY: The Office of Justice Programs, Bureau of Justice Assistance (BJA), is issuing this final revision to its Prison Industry Enhancement Certification Program (PIECP) Guideline proposed for public comment on July 7, 1998, 63 FR 36710–36719. Under Title 18 U.S.C. 1761(c), BJA PIECP certification excepts participating agencies from certain Federal restraints placed on the marketability of prison-made goods by permitting the transport of such goods in interstate commerce and the sale of such goods to the Federal government. This Guideline addresses statutory amendments and reflects administrative experience gained by BJA since the last final PIECP Guideline published on March 29,1985 (50 FR 12661–64).

The publication of this Final Guideline is considered to be a Federal action that will not significantly affect the quality of the human environment. Therefore, preparation of an environmental impact statement is not necessary.

EFFECTIVE DATE: This Guideline is effective April 7, 1999; existing participants will have until April 7, 2000 to achieve compliance with all of the new requirements set forth in this Guideline except for those relating to the National Environmental Policy Act (NEPA). The new requirements implementing NEPA are effective immediately.

FOR FURTHER INFORMATION CONTACT: Jeffrey R. Hall, Law Enforcement Program Manager, Bureau of Justice Assistance, 810 Seventh Street, NW, Washington, DC 20531. Telephone: (202) 616–3255.

SUPPLEMENTARY INFORMATION:

Scope of Program Announcement

I. Introduction: Program Purposes and Objectives
II. Background of the Prison Industry Enhancement Certification Program (PIECP)
a. The Legislative History
1. Unregulated Prison Labor
2. Prisoner Idleness and Prisoners' Need for Job Skills Training
b. The PIECP Program
1. Current State of the Program
2. Future Challenges
c. Discussion of Comments
c. 1–11 (see Nos. pp 821–847)
III. Program Guidance
a. PIECP Purposes
b. Definitions
c. BJA's Initial Considerations for Determining Propriety of Work Pilot Project Certification
1. BJA's Exercise of Discretionary Authority To Define and Certify 50 Work Pilot Projects
2. Threshold Inquiry for Determining Applicability of PIECP Exception Status
d. Mandatory Program Criteria for PIECP Participation
1. Eligibility
2. Inmate Wages
3. Non-Inmate Worker Displacement
4. Benefits
5. Deductions
6. Voluntary PIECP Inmate Worker Participation
7. Consultation With Organized Labor
8. Consultation With Local Private Industry
9. Compliance With the National Environmental Policy Act (NEPA)
IV. PIECP Administration
a. Certificate Holders
1. Project Structure
2. Application Content
3. BJA Review
4. Standard or Provisional Certification
5. Certificate Holder Designation Authority
6. Certificate Holder Monitoring Responsibilities
b. Cost Accounting Centers' PIECP Exception Status
c. Compliance Reviews
1. Performance Reports
2. On-Site Monitoring Reviews
d. BJA's PIECP Administration
e. Exception Status Suspension/ Termination
1. Notice of Possible Compliance Violation
2. Voluntary Compliance Agreements
3. Failure To Achieve Compliance and Effect of Non-Compliance
4. PIECP Exception Status Suspension and Termination

I. Introduction: Program Purposes and Objectives

The Prison Industry Enhancement Certification Program (PIECP), codified at 18 U.S.C. 1761(c), was first authorized by the Justice System Improvement Act of 1979, Pub. L. No. 96–157, 93 Stat. 1215. The PIECP was expanded from 7 to 20 pilot projects under the Justice Assistance Act of 1984, Pub. L. 98–473 § 609k(a)(1), 98 Stat. 2077, 2102. In 1990, The Crime Control Act of 1990, Public Law 101–647 § 2906, 104 Stat. 4789,4914, raised to 50 the number of PIECP projects that may be excepted by the Bureau of Justice Assistance (BJA) from certain Federal restrictions on the marketability of prisoner-made goods, including the Ashurst-Sumners Act (18 U.S.C. 1761(a)) and the Walsh-Healey Act (41 U.S.C. 35).

Since its inception in 1979, the PIECP program has certified 38 work pilot projects throughout the country. Prison administrators find PIECP participation an effective way to address idleness among ever-increasing prison populations and as a cost-efficient method for providing inmates with marketable job skills. Taxpayers benefit because PIECP wage deductions result in reductions in incarceration costs. Inmate wages benefit society, generally, in that deducted amounts are authorized to address victim compensation, inmate family support needs and taxes. Lastly, PIECP industries obtain broad market access for their products because they are excepted from the Ashurst-Sumners Act prohibition against the interstate transport of prisoner-made goods and from the Walsh-Healey Act prohibition against certain contract sales of prisoner-made goods to the Federal government.

BJA first issued a Final Guideline to implement this program on March 29, 1985, 50 FR 12661–64. After providing an opportunity for public comment on the revised Guideline on July 7, 1998 (63 FR 36710–19), the agency now publishes this Final Guideline to offer updated program clarification. In so doing, the legislative underpinnings of relevant laws are examined and the scope of their applicability is defined. Compliance expectations are explained as program guidance. Refined administrative practices reflect experience gained by BJA over the past 14 years. The background history, guidance definitions and administrative requirements described in this Guideline are specific only to the PIECP and have no bearing on or relationship to the development, goals or administrative practices of any other prison industry program.

II. Background of the Prison Industry Enhancement Certification Program (PIECP)

a. Legislative History

1. Unregulated Prison Labor

The 19th Century evolution of industrial capitalism and private sector use of prisoner labor spawned a number of conditions that adversely affected several major segments of society. By the turn of the 20th Century, these segments joined in an organized appeal to Congress and state legislatures nationwide. They collectively asserted that the production and distribution of unregulated prisoner-made goods in interstate commerce needed to be

eliminated or, at a minimum, controlled.

Human rights activists turned the public's attention to poor prison work conditions and inmate exploitation. Organized labor argued that the demand for prisoner-made products, anywhere, necessarily displaced a possible demand for the product of free labor. Free enterprise manufacturers at the time were disturbed because manufacturers of prisoner-made goods did not bear the burden of overhead costs borne by private industry competitors. Prisoner-made goods were sold at below market prices. The viability of private industry competition was thereby undercut. In December 1924, Secretary of Commerce Herbert Hoover held a conference on the subject of the "ruinous and unfair competition between prison-made products and free industry and labor." 70 *Cong. Rec.* S656 (1928).

Then-Secretary Hoover authorized an advisory committee to study the problem. This committee issued a report to Congress in 1928 wherein Chairman of the Advisory Committee on Prison Industries, Arthur Davenport, submitted the following conclusions:

(1) Certain major factors in the normal cost of production which must be met by all manufacturers are entirely absent in the case of prison industries. If anything approaching normal efficiencies of operation can be attained with the use of prison facilities and labor, the total costs of production are . . . below those of the manufacturer who must meet large overhead expenses as well as employ free labor.

(2) It is the universal belief that prisoners should be usefully occupied whether as a part of their punishment or as a means of rehabilitation by teaching them the habits of industry. To this end nearly every State . . . provid[es] productive work for their prisoners . . .

(3) The volume of goods produced by prison labor is already very large in some lines, but as more prisoners are put to work, and the industries become more efficient, the output of our prisons will be greatly increased.

(4) The effect of placing on the open market a volume of goods which have been produced below normal costs, is to lower prices and disorganize the market * * * The increase in prison production which is predicted will exaggerate this evil and make it difficult if not impossible for manufacturers employing free labor to exist in trade where the prison output becomes heavy.

(5) The solution of this problem, if prison production is to continue * * * would seem to be the elimination, in one way or another, of the direct price competition of the prison products with so called "free products"* * *. 70 *Cong. Rec.* S656 (1928).

In closing, Chairman Davenport urged that solutions be found, "[o]therwise either prison industries must cease and prisoners kept in idleness or the manufacture of products competing with prison output will become impossible. Either of these developments would be disastrous * * *." *See* S. Rep. No. 344, 70th Cong., 1st Sess., re-printed, *Cong. Rec.* S656 (Dec. 15, 1928), "Statement of Prison Labor Problems as Shown by Report of Senate Committee."

Even if a state prohibited its own correctional institutions from producing and marketing prisoner-made goods, that same state had no jurisdiction to control such goods produced in other states, transported in interstate commerce and sold within its boundaries. As an initial solution to this problem, Congress enacted the Hawes-Cooper Act in 1929, Pub. L. 70–669, 45 Stat. 1084, recodified by Pub. L. 95–473, 92 Stat. 1449 (1978) [formerly codified at 49 U.S.C. 11507, omitted in the revision of Title 49 by Pub. L. 104–88, Title I § 102(a), 109 Stat. 804 (effective January 1, 1996); *See* S. Rep. No. 104–176]. This law divested prisoner-made products of their interstate character upon their arrival in the state of their destination and permitted the laws of that state to become operative with respect to the sale and distribution of such products. It was described, at the time of enactment, as an enabling act because it did not prohibit the transportation of prisoner-made goods or force the enactment of state legislation.

In 1935, Congress enacted the Ashurst-Sumners Act, Pub. L. 74–215, 49 Stat. 494 (1935), which authorized Federal criminal prosecutions of violations of state laws enacted pursuant to the Hawes-Cooper Act. Subsequent amendments to this law, including Pub. L. 76–851, 54 Stat. 1134 (1940), strengthened Federal enforcement authority by making any transport of prisoner-made goods in interstate commerce a Federal criminal offense. As amended, 18 U.S.C. 1761(a) now provides:

> Whoever knowingly transports in interstate commerce or from any foreign country into the United States any goods, wares, or merchandise manufactured, produced, or mined, wholly or in part by convicts or prisoners, except convicts or prisoners on parole, supervised release, or probation, or in any penal or reformatory institution, shall be fined under this title or imprisoned not more than two years, or both [herein referred to as the Ashurst-Sumners Act].

Certain prisoner-made products were excepted, by statute, from the Ashurst-Sumners Act prohibition, including "agricultural commodities or parts for the repair of farm machinery" as well as "commodities manufactured in a Federal, District of Columbia or State institution for use by the Federal Government, or by the District of Columbia, or by any State or Political subdivision of a State or not-for-profit organizations." Title 18 U.S.C. 1761(b).

The Walsh-Healey Act, 49 Stat. 2036 (1936), as amended in 1979 by Pub. L. No. 90–351, § 827(b) and codified at 41 U.S.C. 35, also controls the production of prisoner-made goods. This statute prohibits the use of prisoner labor to fulfill general government contracts which exceed $10,000. BJA certification pursuant to § 1761(c) excepts prisoner-made goods produced at PIECP work pilot projects from the Walsh-Healey Act contracting restrictions, as well as the Ashurst-Sumners Act interstate transportation restrictions.

2. Prisoner Idleness and Prisoners' Need for Job Skills Training

The PIECP exception to the Ashurst-Sumners and the Walsh-Healey Act restrictions was introduced into the Senate in 1979 after the 1978 Pontiac, Illinois prison riot. In the wake of that uprising, Senator Charles Percy (R–Ill.) stated:

> [L]ast summer in Pontiac, Illinois, our worst fears about the conditions in the Nation's prisons erupted into a nightmarish reality. The Pontiac prison riot of 1978 ended with three guards dead, three others seriously wounded, and $4 million in property damage * * *.
>
> The shopping list of problems and deficiencies in our prison system is long and well known. Overcrowding, old and obsolete facilities, lack of training or educational programs, crime within prison walls, frustration on the part of guards and inmates are all a part of the dreary picture * * *. Recidivism is now a substantial element in our overall crime rate, and prisons are often accurately characterized as a "school for crime," rather than a deterrent to crime * * *. 125 *Cong. Rec.* S11834 (1979).

These concerns caused Congress to take measures to encourage prison industries, provided that they not engage in unfair competition with private sector business and labor. Senator Percy's bill, now referred to as the Prison Industries Enhancement Act, Section 827 of the Justice System Improvement Act of 1979, Pub. L. 96–157, § 827(a), 93 Stat. 1215, was enacted on December 27, 1979. As amended, it now offers 50 certified projects an opportunity to participate in the

interstate market, provided certain safeguards to free-world labor and industry, and to prisoner-workers themselves, are met. *See* The Crime Control Act of 1990, Pub. L. 101–647, § 2906, 104 Stat. at 4914.

In describing the purpose of his introduced legislation, Senator Percy explained (125 *Cong. Rec.* S11834 (1979)):

> My amendment would do two basic things: First, it would authorize the [BJA] to encourage development of pilot demonstration projects for prison industry at the State level, involving private sector industry * * *. Under this approach, prison programs benefit from the private business, develop access to new markets, and attract needed capital. The goal of these pilot projects would be to create as realistic a working environment as possible within the prison walls, while enabling an inmate to become more self-sufficient to the benefit of himself, the prison system, and the taxpayer.
>
> Secondly, my amendment creates a partial exemption to two Federal laws which severely restrict the ability of State prison industries to market their goods * * *. When these laws were enacted decades ago, they represented significant reforms against exploitation of prison labor. Over the years, however, they have developed into heavy-handed roadblocks to growth among * * * prison industry programs * * *.
>
> My amendment would provide limited exemptions to these restrictions where inmates have been paid a wage comparable to that paid for similar work in the private sector in the locality * * *.

The statutory exception that was enacted to establish PIECP is codified at 18 U.S.C. 1761(c):

> * * * [the Federal marketability prohibitions] shall also not apply to goods, wares, or merchandise manufactured, produced, or mined by convicts or prisoners who—
>
> (1) Are participating in one of not more than 50 non-Federal prison work pilot projects designated by the Director of the Bureau of Justice Assistance; * * *

To become eligible for Bureau of Justice Assistance (BJA) certification, an applicant department of corrections must comply with specified statutory requirements. It must pay participating prisoners "wages not less than that paid for work of a similar nature in the locality in which the work was performed" and cannot take more than 80 percent in deductions from gross wages for specified purposes including taxes, reasonable charges for room and board, family support and victims' compensation. 18 U.S.C. 1761(c)(2).

Certain other conditions of employment must also be met. An eligible applicant cannot deprive participating offenders, solely because of their status as offenders, of the right to participate in benefits made available by the Federal or state government to other individuals on the basis of their employment, such as workmen's compensation. Title 18 U.S.C. 1761(c)(3). PIECP inmates must also participate on a voluntary basis and must have agreed to the specific deductions made from gross wages pursuant to 18 U.S.C. 1761(c)(2), and all other financial arrangements resulting from participation in such employment. Title 18 U.S.C. 1761(c)(4).

The note following 18 U.S.C. 1761, although not codified, is public law and adds two additional PIECP requirements on certified prison industries. The note requires participating prison industries to consult with local union organizations prior to initiating any project qualifying for a 1761(c) exemption. Also, the qualifying applicant must ensure that paid PIECP inmate employment will not result in the "displacement of employed workers, or be applied in skills, crafts, or trades in which there is a surplus of available gainful labor in the locality, or impair existing contracts for services." The Justice System Improvement Act of 1979 added these provisions which became § 827(c) of the Omnibus Crime Control and Safe Streets Act of 1968. *See* Pub. L. 96–157, 93 Stat. 1215, reprinted in 1979 U.S.C.C.A.N. 2471. In 1984, § 827(c) was redesignated § 819 of the Omnibus Crime Control and Safe Streets Act of 1968, as amended. *See* Pub. L. 98–473, 98 Stat. 2093.

If all eligibility requirements are met and an applicant acquires BJA certification, the agency is thereafter authorized to operate irrespective of Federal prohibitions on the marketing of state prisoner-made goods. Conversely, non-compliance with these statutory eligibility requirements could expose an industry to criminal prosecution under the Ashurst-Sumners Act. Title 18 U.S.C. 1761(a).

b. The PIECP Program

1. Current State of the Program

Currently, 38 departments of correction or umbrella authorities are PIECP Certificate Holders. Under the Justice System Improvement Act of 1979, Arizona, California, Idaho, Kansas, Minnesota, Nevada and Utah were certified. In 1984, under the Justice Assistance Act of 1984, 13 prisons work pilot projects were certified in: Alaska, Belnap County (NH), Connecticut, Iowa, Maine, Missouri, Nebraska, New Mexico, Oklahoma, Oregon, South Carolina, Strafford County (NH) and Washington State. Under the Crime Control Act of 1990, the following additional departments of correction were certified: Colorado, Delaware, Florida, Hawaii, Indiana, Louisiana, Maryland, Montana, North Carolina, Ohio, Red River County (TX), South Dakota, Tennessee, Texas, the Texas Youth Commission, Vermont, Virginia, Washington State Jail Industries Board and Wisconsin.

About 145 private sector businesses now work in partnership with PIECP certified projects to employ about 2,800 inmates. Either the department of corrections or the private sector enterprise retains project authority to direct and control inmate labor, depending on the management model used. Project implementation has resulted in the production of myriad products including such items as furniture, sheet metal, video equipment, clothing, food products, office products, mattresses, draperies, crutches and road signs. In addition, although service industries were not a threat to the private sector in 1935 and thus, were not included within the scope of the Ashurst-Sumners prohibition, a number of service industries have elected to comply with the PIECP requirements.

Between January 1979 and September 1998, PIECP projects generated approximately $113.7 million in gross inmate wages. Nearly half of this amount was diverted to non-inmate recipients: $8.9 million was deducted for victims of crime, $25.7 million was deducted for room and board payments, $5.8 million was deducted for family support and about $13.7 million was withheld in local, State and Federal taxes.

BJA monitors the performance of PIECP work pilot projects to ensure that they operate in full compliance with all legislative and administrative program requirements. Under a grant to the Correctional Industries Association (CIA), prison industry and other professionals conduct regular, on-site reviews of all PIECP projects. BJA responds to matters involving possible non-compliance by taking appropriate remedial action such as providing technical assistance or proposing a corrective action plan.

2. Future Challenges

PIECP is used nationwide as a cost-efficient way to provide inmates with work experience and training in marketable job skills, as well as to reduce idleness among growing prison populations.

Over time, the limit on the authorized number of pilot projects has been raised to meet the demands of interested applicants. When Congress last increased the project ceiling to 50, the House took into consideration a waiting

list of states and counties that had wanted to participate and noted that "the demand for certification by state and local governments indicates a need for this amendment which will enable the program to expand and other jurisdictions to apply." H.R. (I), 101st Cong. 202 (1990).

BJA administers PIECP with the objective of making participation available to as many qualified applicants as possible, within limits imposed by the statutory ceiling. This Guideline provides projects with clarity as to Federal participation requirements, as well as programmatic flexibility to allow for PIECP Project growth in ways that respond to local needs. The Federal requirements are intended to ensure that the interests of local business and organized labor are protected. In this way, BJA's administrative practices address concerns reflected in the legislative history pre-dating the onset of Federal regulation of prisoner-made goods.

Finally, this revised Guideline addresses novel issues presented by new PIECP participants, the private sector prisons. These entities are unique in that they render an essential service traditionally undertaken by public agencies and they do so for profit. Thus, BJA has altered some PIECP program requirements to insure program implementation remains consistent with Congressional intent. Congress enacted PIECP to introduce public departments of correction to private sector profit-making enterprises. Therefore, private prisons are invited to participate in PIECP only as Cost Accounting Centers (CACs) designated under the authority of departments of correction.

c. Discussion of Comments

BJA published a proposed Guideline in the **Federal Register** on July 7, 1998 for public comment. Written comments from public and private organizations were received. All comments have been considered by the BJA in this publication. This Guideline is final. The following is a summary of substantive comments and BJA's response.

1. Background on PIECP

Comment: BJA should retain the legislative history and background section. It is informative and useful.

BJA should explain that the background section does not accurately describe present day political, social or economic concerns regarding the implementation of prison industry programs.

Response: BJA provides the background and legislative history section to illustrate social, political and economic concerns that were predominant prior to 1940, before the Federal government first began regulating, as a criminal matter, the interstate transport of prisoner-made goods, as well as such concerns as they existed prior to the 1979 enactment of the PIECP exception to 18 U.S.C. 1761(a). BJA provides this background to inform PIECP Cost Accounting Centers about Congress' intent when developing the program's statutory requirements and exception authority.

Accordingly, no substantive change was made in the background section of the Guideline.

2. Program Purposes

Comment: BJA should modify its program purposes to add, as a purpose, introducing government to private sector profit-making enterprises. More specifically, BJA should endorse private sector prison options as a specific way to introduce state and local government agencies to private sector profit-making enterprises.

Response: Consistent with the legislative history of the PIECP, BJA exercises its administrative authority only to endorse PIECP as a cost-efficient means to address inmate idleness and to provide inmates with work experience and training in marketable job skills. Whether private sector partnerships or private prison contracts are suitable prison industry options for any given jurisdiction, is a state and or local matter for determination. State and local interests are uniquely poised to identify appropriate private sector profit-making enterprises, if any, to partner with prison industries. Thus, as a Federal agency, BJA is not prepared to adopt such a program purpose.

Accordingly, no change was made in the program purposes provision of the Guideline.

3. Definitions

Comment: BJA should modify the definitions so that references to departments of corrections include public or not-for-profit agencies sanctioned under state law to administer the Prison Industry Enhancement Certification Program.

BJA should add a definition of "chief state correctional officer," as the term is used in reference to the room and board deduction, so that it encompasses umbrella authorities where such models have been certified by BJA as prison work pilot projects.

With respect to the minimum wage definition, BJA should state that this PIECP program wage threshold is in no way intended, in and of itself, to ascribe to inmate workers "employee" status for purposes of other state and Federal laws.

BJA should re-define the locality definition. The proposed definition, which defers to state agencies for the making of such determinations, is too vague and subjective.

Response: BJA concurs with a number of recommendations to enhance the clarity of terms used in the Guideline. A definition for the term "departments of correction" is incorporated to clarify that state and local government agencies, and the instrumentalities thereof, including not-for-profit entities sanctioned under state law to administer PIECP, are eligible as potential PIECP Certificate Holders. A definition of the term "chief state correctional officer" is added to enhance guidance with respect to model specific implementation of the room and board deduction. Also, the scope of the minimum wage definition is more specifically defined in relation to PIECP purposes and the operation of other laws.

The locality definition has implications both with respect to the inmate wage requirement and the prohibition against private sector employee displacement. BJA directs all Cost Accounting Centers to obtain non-displacement projections and prevailing wage determinations from their appropriate state agencies and, in so doing, extends to the states an opportunity to locally influence implementation of the Federally authorized PIECP Project. BJA expects that by extending this opportunity, the states will exercise their authority so as to protect the interests of local labor groups and private sector competition. This approach was adopted to vest state agencies with authority and flexibility to respond to uniquely local economic trends and conditions. Accordingly, no change to the locality definition was made.

4. Eligibility

Comment: BJA should allow private prisons to independently qualify as Certificate Holders. Alternatively, restrictions affecting the designation of private prison industries, as Cost Accounting Centers (CAC), should be eased.

Umbrella authorities should not be allowed to qualify as eligible Certificate Holders. The certification of umbrella authorities circumvents the 50 project limit imposed on the program by Congress.

Response: Title 18 U.S.C. 1761(c)(1) authorizes BJA to exercise broad discretion in certifying PIECP prison work pilot projects. Two significant

considerations, however, weigh in favor of limiting Certificate Holder eligibility only to departments of correction and not private prisons. First, the legislative history of the PIECP reflects Congress' desire to craft an inmate work vehicle to advance state and local government interests, and specifically their need to gainfully occupy growing prison populations in marketable job skills. Second, as PIECP implementation could impact state and local private sector interests, BJA believes that the protection of those interests would be best served by reserving certification for those agencies which, by their very nature, are accountable to the public.

BJA will not authorize any PIECP certified project to designate CACs outside of its jurisdictional boundaries because the Bureau defers to individual state legislatures for determinations as to whether PIECP should be authorized within their jurisdictions. If a state legislature decides not to authorize PIECP implementation in public facilities, private facilities ought not be authorized to implement PIECP, in that same state, through a designation authorized by a Certificate Holder located in another state. BJA, however, incorporates amendments to the Final Guideline to allow any given state Certificate Holder to designate CACs within private prisons operating within that same state, even in the absence of a contract for incarceration services between that state and the private prison seeking to participate in PIECP. The BJA form used to accomplish the designation of a CAC within a private prison mu st reflect express approval of the designation by the Chief State Correctional Officer for the state in which the private prison CAC is located. *See* Section IV.(a)(5), *infra.*

CACs designated within private prisons must also retain on-file documentation reflecting approval of PIECP inmate worker participation by the state and local jurisdictions in which the PIECP inmate workers were convicted. In order to issue such approvals, the remanding state and local jurisdictions must also hold PIECP certificates. This requirement insures continuity of the necessary PIECP project authorization vis-a-vis the PIECP inmate workers, and is responsive to the statutory project ceiling number.

If inmate workers could not participate in PIECP within the boundaries of the state and local jurisdictions in which they were convicted, they should not be allowed to participate in PIECP in another state or local jurisdiction through an agreement for private prison incarceration services. Alternatively stated, state and local jurisdictions cannot be allowed to participate in PIECP indirectly through a contract with a private prison that has a PIECP-designated CAC, if they choose not to participate in PIECP directly, *i.e.*, had they incarcerated their inmates within their own state and local jurisdictional boundaries.

Title 18 U.S.C. 1761(c) offers BJA broad discretion with respect to defining a prison work pilot project for PIECP eligibility purposes. Umbrella authorities may represent a mix of agency members such as state and local departments of correction, and youth authorities. Any of these agency members may, through their respective umbrella authorities, designate CACs within themselves or private prisons located in their jurisdictional areas. In order to qualify for PIECP certification, umbrella authorities must be able to assure BJA that a central administration of the CACs can be accomplished to insure project-wide compliance with the guideline and the statute as well as responsible exercises of designation/undesignation authority. Since the inception of PIECP in 1980, BJA has certified several umbrella authorities. During that same period of time, Congress was advised of such projects and consistently increased the project ceiling. BJA interprets such action as tacit approval of BJA's certification of umbrella authority models.

Accordingly, changes are made in the eligibility provisions to ease restrictions on Certificate Holder designation of CACs within private prisons located within the Certificate Holder's jurisdiction. Private prisons are ineligible as independent PIECP Certificate Holders.

5. Inmate Wages

Comment: Authors of two comments claim that PIECP wage rates do not equal labor costs: BJA should allow Cost Accounting Centers (CACs) to make adjustments in prevailing wage rates to address the hidden, unusual costs of doing business in a prison environment such as the cost of transportation to rural areas, reduced production levels due to rapid turnover, and added expenses of worker training and start-up. Because these cost variables are significant and inherent in doing business within prisons, the PIECP wage requirement is not necessary to "level the playing field" with private sector competition.

From the perspective of one organized labor group, the proposed Guideline is an improvement over the 1985 PIECP guideline. BJA, however, is urged not only to encourage, but to require CACs to implement salary wage plans based on worker competency and seniority.

Regarding the wage self-determination option, in the proposed guideline, the following diverse comments were received: this option is an improvement in that it allows for CAC implementation in instances where state agencies are non-responsive to requests for prevailing wage determinations; this option imposes too great of an administrative burden on CACs; this option provides participants with an opportunity to avoid obtaining state agency wage determinations.

In instances where a private sector partner has both a non-inmate operation and a PIECP CAC in the same locality, the partner should be permitted to bypass a state agency's wage determination and use relevant non-inmate wage scales with respect to PIECP inmate workers performing the same job function.

BJA should clarify the meaning of the term of "notable tasks," as it is used in the Guideline with respect to identifying which inmate workers should be paid a PIECP wage.

Response: Title 18 U.S.C. 1761(c)(1) expressly states that PIECP wages must be paid at a rate which "is not less than that paid for work of a similar nature in the locality in which the work is performed." PIECP wage determinations must be based only on comparable non-inmate worker wages for performing work of a similar nature. Gross wages earned by PIECP inmate workers may be reduced only through an application of the four authorized wage deductions specified in 18 U.S.C. 1761(c)(2). Thus, the plain language of the PIECP exception statute provides BJA with no authority to allow wage deductions in addition to those set forth in 18 U.S.C. 1761(c)(2) and for the purpose of addressing the unusual costs of doing business in a prison environment, however meritorious such proposed adjustments might be.

The language of 18 U.S.C. 1761(c)(3) requires PIECP projects to pay wages based only on private sector wage amounts for performing similar work and it does not, as a matter of law, require the implementation of salary plans. BJA added this policy-based encouragement to advance program objectives.

The self-determination option, as reflected in the proposed guideline, was presented to address a recurring challenge confronting many PIECP Cost Accounting Centers (CACs). On occasion and through no fault of their own, CACs are unable to obtain timely, state agency responses to requests for wage determinations. The self-

determination option, which is available only when state non-responsiveness occurs, assists CACs to achieve compliance without relying on a determination by a third party. The method presented requires only the minimum amount of data collection and analysis necessary to yield a defensible, rationally-based wage determination. Availability of the self-determination option prevents CACs from paying a Federal minimum wage—the lowest possible PIECP wage, indefinitely, when payment of such a wage rate is unwarranted and the state remains non-responsive to wage determinations requests.

To ease the impact of PIECP implementation on any given locality's ecomony and labor force, BJA reserves two opportunities for states to affect the implementation of the Federal PIECP program within state boundaries. The requirement that proposed CACs must obtain wage rates from the relevant state agencies, is one of those opportunities. BJA reserves this opportunity for state participation in the program, without exception, to insure CACs respond to relevant, locally-based input from an objective source.

BJA introduces the Guideline concept of "notable tasks" as a way to assist CACs in identifying inmate workers to whom a PIECP prevailing wage should be paid. Questions arise as to whether inmates performing support functions, such as janitorial and maintenance services, necessary to CAC operations must be paid a PIECP wage. A more specific definition, in this regard, is not possible without compromising flexibility in the application. The Guideline offers specific administrative direction by identifying relevant considerations for determining whether a given task is "notable."

Accordingly, no change was made in the wage payment provisions of the Guideline.

6. Non-Inmate Worker Displacement

Comment: One representative from organized labor claimed that prisoner labor should never be allowed to compete with free-world labor because it undermines the private sector labor force and inmate rehabilitation. Another representative of organized labor generally endorsed the Guideline and the revised non-inmate worker displacement requirement, stating that it is an improvement over that which was issued in 1985.

The presumption of non-compliance, applicable when a private sector partner employs non-inmate and inmate workers in the same locality, is too vague and too restrictive on private sector partners.

The general language of this requirement makes it difficult to measure displacement in instances where other non-employee, non-inmate workers perform similar jobs or skills in the same locality. Any PIECP operation is likely to affect the private sector marketplace and, consequently, private sector jobs. The requirement ought not be construed in such a way so as to prohibit PIECP companies from engaging in normal business operations such as bidding for contracts on the open market after they have been designated as participating in a PIECP project. Also, BJA should not impede or discourage successful PIECP operations, already designated, from continuing operations even when there is a subsequent general downturn in the economy and, arguably, *de facto* displacement of non-inmate workers performing similar work in the locality.

This requirement is too restrictive in that it prohibits PIECP partners from outsourcing entry level jobs and redirecting their current private sector workforce toward higher skill level jobs.

The Guideline encourages potential Cost Accounting Centers to develop new jobs in a locality; this should not be implemented so as to adversely affect a CAC which decides not to follow the encouragement.

Response: Congress directs BJA to implement the PIECP program, a prison industry program that places prison made goods in competition with the private sector. BJA has no discretion to exercise in determining whether or not to implement this program.

One BJA purpose in revising the Guideline is to improve the program's responsiveness to organized labor's concerns. The agency is pleased that a segment of the labor community views its interests as better served through the re-issuance of the PIECP Guideline.

BJA acknowledges that implementing the non-inmate worker displacement prohibition may appear to work at cross purposes with encouraging the commercial success of PIECP Cost Accounting Centers (CACs). The agency must respond to a broad statutory mandate to insure that PIECP does not impair or displace private sector workers and is not applied in skills in which there is a surplus of available gainful labor. However, BJA cannot accomplish PIECP implementation if CAC's are prevented from attaining commercial success by engaging in typical competitive market practices. To address this concern, the guidance language is modified to reflect BJA's expectation that PIECP CACs will engage in typical business operations, such as bidding for contracts on the open market after project initiation.

While compliance is a continuing CAC responsibility, a violation of the non-displacement requirement is more likely to occur and is more discernable just prior to and immediately following CAC implementation than thereafter. For this reason, BJA will scrutinize CAC compliance with this provision just prior to and within one year following CAC implementation.

The agency devised a presumption of displacement which may be applicable in instances where a private sector partner retains non-inmate workers in the same locality. This presumption is modified in this Final Guideline to provide partners with a degree of flexibility to reallocate resources to their optimum use. Specifically, the presumption may be overcome if the private sector partner can demonstrate that non-inmate workers have been retained by the private sector partner in jobs at pay rates equal to or greater than that received in the previous position, that non-inmate employees have been provided an adequate opportunity for effective training in any new job skills and that the subject non-inmate employees are being retained by the private sector partner under reasonably similar or improved employment conditions.

BJA policy encouragement regarding the creation of new PIECP jobs is not a mandate. CACs which do not bring new jobs to their localities will not be penalized. For obvious reasons, however, CACs generating new jobs are easier for BJA to evaluate and are less likely to be the subject of local criticism.

Accordingly, changes are made in the non-inmate worker displacement provision to clarify the scope of the prohibition and to not unduly impede business decisions that lend themselves to effective commercial management and success of PIECP Cost Accounting Centers.

7. Benefits Requirement

Comment: A resolution of inconsistent Social Security requirements imposed on PIECP models should be accomplished at the Federal level between BJA, the Social Security Administration and the Internal Revenue Service. The disparate treatment of customer and employer models is arbitrary. Both models should be treated the same way for purposes of requiring projects to provide inmates with Social Security coverage.

BJA should clarify its position with respect to imposing the Federal

Unemployment Tax Act on PIECP models as a benefits requirement.

Response: The benefits requirement, as outlined in the proposed Guideline, elicited the greatest number of comments. Several Federal laws apply to wages earned by inmates in penal institutions. BJA, therefore, sought a Guideline review from both the Social Security Administration (SSA) and the Internal Revenue Service (IRS) to ascertain whether the PIECP benefits requirement, as proposed, was consistent with comparable laws administered by those Federal agencies.

Both the IRS and the SSA concluded that BJA's benefits requirement is consistent with comparable laws set forth in the Social Security Act, 42 U.S.C. 410(a)(7) and 418(c)(6)(B), and the Internal Revenue Code. Services performed in an institution by an inmate in the employ of a State, a political subdivision, or a wholly-owned instrumentality are excepted from Social Security employment by 26 U.S.C. 3121(b)(7). Section 3121(u)(2)(B)(ii)(II) also provides that such services are not subject to the Medicare tax.

In contrast to those inmate services performed in the employ of a state or governmental entity, there is no IRS or SSA exception for services of inmates performing services in the employ of a non-governmental entity (for example, a private corporation operating a prison or a private corporation operating under the PIECP employer model). PIECP Employer models must generally provide inmates with Social Security coverage.

BJA retains the customer and employer models to implement the PIECP benefits provision, 18 U.S.C. 1761(c)(3), in a manner consistent with other Federal laws addressing inmate wages. Specifically, the models are necessary in order to accord states and other governmental entities the Social Security employment or coverage exception status, as recognized by the IRS and the SSA. BJA will monitor and evaluate Cost Accounting Centers (CACs) in accordance with the guidance set forth in this Guideline, but will defer to the expertise of both the IRS and SSA should either of those agencies reach another conclusion with respect to the appropriate benefits treatment of inmate wages earned at any given CAC.

In the case of services performed by PIECP inmates, regardless of whether services are being performed under the customer or employer model, Federal Unemployment Tax Act taxes do not apply to such services. *See* Section 26 U.S.C. 3306(c)(21) which excepts from employment "service performed by a person committed to a penal institution."

Accordingly, no changes are made in the benefits requirement of the Guideline.

8. Deductions

Comment: BJA ought to expressly authorize the use of room and board deduction funds for the purpose of lowering costs otherwise incurred to maintain and operate a PIECP program.

The term "Chief State Correction Officer" should be amended to also include "responsible umbrella authorities."

Private prisons managing PIECP Cost Accounting Centers (CACs) should be required to demonstrate that any benefit derived through the taking of room and board deductions is passed on to states which provide public funds to cover such costs.

The authorized deduction for victims compensation ought to be made available to address a PIECP inmate's legal obligations to pay victim restitution.

Response: Consistent with the statutory mandate addressing the room and board deduction, BJA defers to state determinations—as reflected in regulations issued by Chief State Correctional Officers—with respect to determining the amounts of such deductions as well as identifying the specific needs to which such deducted amounts may be directed. BJA has authority to review room and board deductions to insure the amounts deducted are reasonable and are used to defray the costs of inmate incarceration. Specific amount determinations and budget line item uses are issues more appropriately determined at the state and local level.

In instances where the Certificate Holder is an umbrella authority, possibly composed of diverse state as well as local agencies, the umbrella authority may itself issue policy on this matter to guide its multijurisdictional membership. A definition of "Chief State Correctional Officer" is added to accommodate the administration of this deduction by such models.

The room and board deduction was authorized by Congress to lower incarceration costs otherwise borne by the public. Since private prison PIECP inmates' room and board expenses might otherwise be addressed in contracts for incarceration services between private prisons and public agencies, BJA requires private prison CACs to obtain written approval from their respective public agency clients before taking the room and board deduction. In devising this requirement, BJA insures notice of this possible revenue source is received by appropriate public agencies without unduly burdening contractual relations to which it is not a party.

BJA broadens its interpretation of the victims compensation authorized deduction to also include deductions deposited in funds established by law to facilitate victim restitution. Compensation and restitution serve substantially the same purpose in providing victims with financial redress for expenses incurred as a result of crime.

Although the statutory PIECP authorization, 18 U.S.C. 1761(c), does not require CACs to make tax deductions, the Internal Revenue Code requires federal income tax withholding if payments of wages are made to employees. BJA encourages all CACs to take whatever deductions, which may be necessary to comply with all Federal laws, including the Internal Revenue Code. As with the PIECP benefits provision, BJA defers to the IRS as the final authority with respect to making CAC tax withholding determinations.

Accordingly, changes are made in the deductions provision to clarify that the victims deduction may, in some instances, be used to address a PIECP worker's restitution obligations. Guidance regarding room and board deduction is simplified because of the inclusion of a definition for the term "Chief State Correctional Officer." Clarification is also provided with respect to tax deductions which may be necessary to facilitate CAC compliance with the Internal Revenue Code.

9. Voluntary Inmate Participation

Comment: BJA should accept inmate signatures on deduction notices as evidence of voluntary inmate participation. BJA should not require the execution of new inmate voluntary participation agreements each time the deductions affecting inmate wages are changed.

Response: The 18 U.S.C. 1761(c) expressly requires not only voluntary inmate employment, but also inmate agreement, in advance, of all deductions and financial arrangements affecting gross wages. While an inmate's signature on a notice form may signify receipt of notice, it does not necessarily reflect inmate agreement. Thus, the proposal is inadequate to insure compliance with the statutory requirement.

Accordingly, no change is made to the voluntary participation provision.

10. Consultation With Local Labor and Business

Comment: The consulation requirements reflected in the guideline exceed BJA's statutory authority. The requirements are overly burdensome and should not be implemented so as to compromise the competitive capablity of the Cost Accounting Centers (CACs).

BJA should accept as compliance with the labor consultation requirement, the presence of an organized labor representative on the board of an umbrella authority PIECP project.

With respect to consulation with organized labor, BJA should routinely require CAC consultation with both state and local union representatives. CACs should also be required to maintain documentation of such consultation, on file.

Response: BJA's labor consultation requirement is consistent with the mandate reflected in the statutory note to 18 U.S.C. 1761(c). The provision requiring notice to local business, is consistent with a provision reflected in the 1985 guideline as well as the legislative history of the program exception. In this revised Guideline, BJA provides specific guidance on the minimum amount of information necessary to insure provision of adequate consultation; it includes general information on the scope and nature of the proposed Cost Accounting Center, the proposed initiation date as well as notice of the requirement and an invitation to comment. Implementation of the consultation requirements is not intended to compromise the market competitiveness of a CAC, but to advise local economic interests which may be impacted by the project.

Labor consultation cannot automatically be achieved through labor participation on the board of a PIECP project. Such representation does not necessarily insure notice of the proposed CAC activities to the relevant local union representative in the locality to be affected.

While BJA issues this guidance to insure provision of consultation to a labor organization (*i.e.*, notice to a state labor organization, in the event a local organization cannot be identified or does not exist), BJA has no statutory authority to require notice to both state and local labor organizations on a routine basis.

Accordingly, no change is made to the consultation provisions.

11. Compliance With the National Environmental Policy Act (NEPA)

BJA should allow PIECP projects to defer to state environmental requirements and not impose a new national requirement.

BJA should provide Cost Accounting Centers (CACs) with technical assistance to facilitate compliance with this program requirement.

Response: BJA has no authority to allow CAC applicants to defer to state environmental requirements as a substitute for implementing the provisions of the National Environmental Policy Act (NEPA), 42 U.S.C. 4321–4347 (NEPA). BJA decisions on proposed PIECP certifications and designations consitute "Federal actions" as defined by 40 C.F.R. 1508.18 of the Council on Environmental Quality's (CEQ) regulations for implementing NEPA. As such, BJA has a federal obligation to insure that prior to decisions being made on requested certifications and designations, BJA implements the appropriate provisions of the CEQ regulations. These Federal implementation responsibilities, which can be shared with but cannot be delegated to Federal program applicants, have existed since the enactment of NEPA.

The technical assistance needs of CACs will be addressed through BJA, itself, as well as its contractor, the Correctional Industries Association.

Accordingly, no change was made to the proposed PIECP provision implementing the NEPA.

As a result of public review and comment, the final "Prison Industry Enhancement Certification Program" Guideline is revised to read as follows:

III. Program Guidance

a. PIECP Purposes

- To provide a cost-efficient means to address inmate idleness and to provide inmates with work experience and training in marketable job skills. BJA encourages private sector PIECP partners to consider post-incarceration employment to PIECP inmate workers.
- Through inmate wage deductions, to increase advantages to the public by providing departments of correction with a means for collecting taxes and partially recovering inmate room and board costs, by providing crime victims with a greater opportunity to obtain compensation, as well as by promoting inmate family support.
- Through PIECP participation conditions, to prevent unfair competition between prisoner-made goods and private sector goods.
- To prevent the exploitation of prisoner labor.

b. Definitions

Benefits refers to inmate benefit coverage required by 18 U.S.C. 1761(c)(3). PIECP projects must provide inmate workers appropriate benefits comparable to those made available by the Federal or state government to private sector employees. The scope of appropriate benefits coverage is impacted by whether the Cost Accounting Center is structured as an employer or customer model and whether the inmate labor work force is controlled by a public agency or the private sector.

BJA refers to the Bureau of Justice Assistance within the Office of Justice Programs, U.S. Department of Justice.

Certificate Holder refers to a department of corrections, or an alternate umbrella authority, which is approved by BJA for PIECP Project certification. Certificate Holders assume monitoring and designation responsibilities with respect to their designated Cost Accounting Centers. All PIECP prisoner-made goods are produced within Cost Accounting Centers that a Certificate Holder designates within itself, private prisons located in the same state or jurisdiction or, in the case or an umbrella authority, within its membership agencies.

Certification refers to an exercise of BJA's discretionary authority to designate a Prison Work Pilot Project pursuant to Title 18 U.S.C. 1761(c). BJA may issue either standard or provisional certifications to applicant projects. BJA certified projects are excepted from certain Federal marketability restraints on the transport of prisoner-made goods in interstate commerce, as provided in 18 U.S.C. 1761(a), and sales to the Federal government in excess of $10,000, 41 U.S.C. 35.

Chief State Correctional Officer refers either to the highest correctional officer for the jurisdiction in which the certified work pilot project is located or, with respect to umbrella authorities that control PIECP CACs within a mix of state and local jurisdictions, the authorities themselves.

Cost Accounting Center (CAC) refers to a distinct PIECP goods production unit of the industries system that is managed as a separate accounting entity under the authority of a Certificate Holder. All PIECP production activities are conducted within the context of a designated CAC which, generally, is structured either as a customer or employer model for purposes of determining PIECP inmate benefits. All CACs must operate in compliance with the provisions set forth in 18 U.S.C. § 1761(c) and this Guideline.

Customer Model is a form of a PIECP Cost Accounting Center management structure. In this model, the private sector is engaged in a CAC enterprise only to the extent that it purchases all or a significant portion of the output of a prison-based business owned and operated by a governmental entity, political subdivision or an instrumentality thereof. A customer model private sector partner assumes no major role in industry operations, does not direct production and has no control over inmate labor. These functions are performed, rather, by a department of corrections.

Deductions. CACs may elect to take deductions from a PIECP inmate worker's wages for certain authorized items. Deductions from PIECP inmate gross wages, if taken, may be made only for those items specified in 18 U.S.C. 1761(c)(2), including: payment of taxes, reasonable charges for room and board, allocations for family support and contributions to any funds established by law to compensate victims of crime (no less than 5 percent and no more than 20 percent). In no event may a PIECP inmate worker's total deductions exceed 80 percent of gross wages and each and every PIECP inmate worker must agree, in advance, to all deductions from gross wages.

Department of Corrections refers to state or local governmental entity or a political subdivision or instrumentality thereof, including not-for-profit entities, that are legally sanctioned by state legislatures to administer prison industries.

Designation is an exercise of a Certificate Holder's discretionary authority to bring a CAC within its certified PIECP Project. This exercise of authority results in an extension of PIECP exception status and an imposition of compliance requirements on an identified CAC operating within the certified PIECP Project.

Employer Model is a form of a PIECP management structure. In this model, the private sector owns and operates the CAC by controlling the hiring, firing, training, supervision, and payment of the inmate work force. The department of corrections assumes no major role in industry operations, does not direct production, and exercises minimum control over inmate labor performance. These functions are performed, rather, by the private sector.

Goods include tangible items, wares, and merchandise.

Locality means the geographic area impacted by the presence of a PIECP CAC operation. For PIECP CACs, it is relevant with regard to: determining inmate wages, providing consultation to appropriate labor and private sector organizations, and determining whether a PIECP CAC operation will displace the private sector labor force. All locality determinations must be documented as part of a Notice of Designation. As used in the calculation of CAC wage rates, *locality* is usually a matter for definition by the appropriate state agency which normally determines wage rates (*i.e.*, the State Department of Economic Security).

Minimum wage refers to the Federal minimum wage which is the lowest possible wage that can be paid to private sector employees under the Fair Labor Standards Act, 29 U.S.C. 206. Any special wage program, excepted by law from the minimum wage requirement in the private sector, may be used by a PIECP CAC as long as the CAC meets the same program participation conditions as private sector participants. The requisite payment of at least a minimum wage, by a CAC, is in no way intended by BJA to imply that PIECP inmate workers are employees for purposes of the PIECP statute or any other Federal law.

Monitoring refers to the process of examining Prison Work Pilot Project activities to ensure continuing compliance with 18 U.S.C. 1761(c) and this Guideline. It includes, at a minimum, BJA's receipt and analysis of performance reports and on-site CAC monitoring visits by BJA, BJA contractors and Certificate Holders.

NEPA means the National Environmental Policy Act, Pub. L. 91–190, 83 Stat. 852 (1970) (codified as amended at 42 U.S.C. 4321–4347; implemented under 40 C.F.R. pt. 1500).

Participation means engaging in the activities and operations of an 18 U.S.C. 1761(c) excepted PIECP Project.

PIECP means the Prison Industry Enhancement Certification Program as authorized by 18 U.S.C. 1761(c).

PIECP Exception Status. Any PIECP Project which produces prisoner-made goods pursuant to 18 U.S.C. 1761(c) is excepted from certain Federal restraints imposed on the marketability of prisoner-made goods, including 18 U.S.C. 1761(a) and 41 U.S.C. 35.

PIECP Inmate Worker is a convict or prisoner who performs notable tasks necessary to produce or transport goods in interstate commerce and for a Prison Work Pilot Project certified under 18 U.S.C. 1761(c). The PIECP Inmate Worker benefits from PIECP by receiving training and work experience.

Prevailing wage is a wage rate which is not less than that paid for work of a similar nature in the locality in which the work is to be performed, 18 U.S.C. 1761(c)(2).

Prison Industry means an organized utilization of inmate labor to produce goods or render services.

Prison Work Pilot Project (PIECP Project) refers to one of 50 non-Federal prison work pilot projects which may be designated by the Director of BJA under 18 U.S.C. 1761(c). This term encompasses the operations of the Certificate Holder's designated Cost Accounting Centers (CACs). Any Prison Work Pilot Project may consist of one or more CACs.

Prisoner includes prison and jail inmates, convicts and incarcerated juvenile offenders, and does not include prisoners on parole, probation, or supervised release. Title 18 U.S.C. 1761(a) does not regulate the transport of goods produced by prisoners on parole, supervised release, or probation.

Prisoner-made goods include all goods, wares, and merchandise manufactured, produced, or mined, wholly or in part, by convicts or prisoners (except convicts or prisoners on parole or probation).

Production is the forming anew or transforming of marketable goods. The term includes mining and manufacture and excludes services.

Provisional Certification is issued by BJA in instances where an applicant has not yet come into full compliance with all PIECP requirements, but such compliance appears imminent. It entitles the holder to PIECP exception status for an identified period of time, may be made contingent upon the occurrence of identified conditions, and may or may not be renewed by BJA.

Statutory Exception Status refers to a prison industry which meets the statutory requirements set forth in 18 U.S.C. 1761(b), and is thereby entitled to an exception from the prohibition set forth in 18 U.S.C. 1761(a).

Supervised Release. 18 U.S.C. 1761(a) states that the Ashurst-Sumners Act prohibition does not apply to "convicts on parole, supervised release, or probation." The reference to "supervised release" was added to 1761(a) in 1984, Pub. L. 98–473, 223, and is responsive to changes made at that same time in state and Federal Sentencing Guidelines. Policy statements issued by the U.S. Sentencing Commission explain that supervised release is a "new form of post-imprisonment supervision created by the Sentencing Reform Act." *See* Federal Sentencing Guidelines, 18 U.S.C.A. ch. 7, pt. A (1997).

Umbrella Authority refers to a type of Certificate Holder which is authorized by law to administer a PIECP Project and which consists of state and/or local departments of correction located

within the same state. A certified umbrella authority may designate CACs within its membership agencies, as well as within members' private prisons, and assumes responsibility for monitoring CAC compliance.

c. BJA's Initial Considerations for Determining Propriety of Work Pilot Project Certification

1. BJA's Exercise of Discretionary Authority To Define and Certify 50 Work Pilot Projects

(A) BJA may exercise discretionary authority to designate up to 50 non-Federal work pilot projects, 18 U.S.C. 1761(c).

(B) BJA may define PIECP eligibility qualifications and, in accordance with its own definitions, may exercise agency discretion to extend or withdraw certification privileges, as it deems appropriate.

2. Threshold Inquiry for Determining Applicability of PIECP Exception Status

Appropriate PIECP participants include prison industries whose activities would likely violate the 18 U.S.C. 1761(a) prohibition and would likely not fit within an 18 U.S.C. 1761(b) exception. BJA has devised an administrative approach for identifying such industries. This approach incorporates relevant sections 1761 (a) and (b) considerations, including whether a given prisoner-made item qualifies as an excepted agricultural product, whether a given prison industry activity qualifies as an unregulated service, and whether a product distribution activity qualifies as an intrastate distribution of goods. These considerations are reflected in the following threshold inquiry, which BJA will use to determine whether a prison industry should be encouraged to apply for PIECP exception status:

(A) Is a statutory exception applicable under 18 U.S.C. 1761(b)? The following prisoner-made items are excepted from the prohibition set forth in section 1761(a):

- Parts for the repair of farm machinery; or
- Commodities manufactured in a Federal, District of Columbia, or state institution for use by the Federal Government, or by the District of Columbia or by any state or political subdivision of a state or not-for-profit organizations. This exception is intended to inure to the benefit of the public; or
- Agricultural commodities grown or cultivated on a farm which retain continuing substantial identity through processing stages, if any. In making the determination as to whether a processing stage changes a product from an agricultural commodity to a manufactured commodity, a relevant consideration is whether the processing is incidental or ancillary to agricultural commodity growth and or cultivation. If the processing is incidental or ancillary in nature and is commonly undertaken by agricultural enterprises, then it would likely fall within the scope of the statutory exception.

(B) Could the contemplated activity trigger 18 U.S.C. 1761(a) by resulting in a production of goods by inmates in any penal or reformatory institution? The production of goods, which is regulated by 18 U.S.C. 1761(a), must be distinguished from inmate services which are not regulated by the criminal prohibition. The following factors are relevant in determining whether a given activity results in the production of prison-made goods:

- Has a tangible item been produced, manufactured or mined?
- Has a tangible item been formed or transformed?
- Has the activity resulted in the creation of property or in a new, marketable item?

(C) Could the contemplated activity trigger 18 U.S.C. 1761(a) by resulting in a post-production, interstate transportation of prisoner-made goods?

- Will there be transportation of prisoner-made goods into the flow of interstate commerce, *i.e.*, across state lines or from a foreign country into the United States?
- Is there a commercial economic enterprise present?

BJA will use this preliminary threshold inquiry to instill greater consistency in PIECP eligibility decision-making. If a prison industry activity falls within the scope of the § 1761(b) statutory exception, the involved industry need not seek § 1761(c) exception status to avoid § 1761(a) criminal sanctions. Additionally, if a prison industry activity would not result in the production of goods, interstate transport of prisoner-made goods, or does not in any other way trigger § 1761(a), the involved industry need not seek compliance with the requirements set forth in § 1761(c) or this Guideline.

This threshold inquiry was devised only for 18 U.S.C. 1761(c) programmatic purposes and does not reflect the Department of Justice's 18 U.S.C. 1761(a) prosecution guidelines. Thus, reliance on this Guideline, or any BJA determination based thereon, is not a complete defense to any civil or criminal action, but would depend on other factors as well.

d. Mandatory Program Criteria for PIECP Participation

1. Eligibility

All departments of correction and juvenile justice agencies authorized by law to administer prison industry programs are eligible to apply for PIECP certification; such governmental agencies are also eligible members of umbrella authorities, authorized by law to administer prison industry programs, that are seeking certification. PIECP Certificate Holders may designate CACs within themselves, as well as within private prisons located in the same state. A private prison industry may participate in PIECP only as designated CAC of the certified PIECP Project in its respective state and upon the approval of the Chief State Correctional Officer of that same state. CACs designated within private prisons must also retain on-file documentation reflecting approval of PIECP inmate worker participation by the state and local jurisdictions in which the PIECP inmate workers were convicted. In order to issue such approvals, the remanding state and local jurisdictions must also hold PIECP certificates. Non-compliance by any one designated CAC may result in PIECP exception status suspension and/or termination as to that CAC, and if warranted, its respective Certificate Holder. Also, within a reasonable period of time after certification, each Certificate Holder must have at least one CAC producing goods and operating under its authority or risk losing certification.

2. Inmate Wages

PIECP inmate workers must receive wages at a rate which is not less than that paid for work of a similar nature in the locality in which the work is to be performed. This requirement benefits society by allowing for the development of prison industries while protecting the private sector labor force and business from unfair competition that could otherwise stem from the flow of low-cost, prisoner-made goods into the marketplace. PIECP participants must, therefore, implement the prevailing wage requirements under like conditions experienced by private sector competition. Toward this end, the following requirements are applicable:

(A) Section 1761(c) requires that the PIECP wage amount be set exclusively in relation to the amount of pay received by similarly

situated non-inmate workers. In deriving the appropriate PIECP wage, 18 U.S.C. 1761(c)(2) does not allow other cost variables to be taken into consideration, such as unique expenses incurred as a result of undertaking production within the prison environment.

(B) Prevailing wage verification must be obtained by the appropriate state agency which determines wage rates (usually the Department of Economic Security).

(C) When making PIECP prevailing wage verifications and annual re-verifications, the responsible state agency should recommend the utilization of a non-inmate wage scale which will not result in the displacement of non-inmate workers performing similar work in the relevant locality.

(D) The PIECP prevailing wage must be received by those inmate workers performing notable tasks necessary to produce and/or transport goods in interstate commerce. If a similarly situated, private sector company is paying wages to obtain services that are necessary to production, *e.g.* refuse pickup, then the PIECP CAC must also pay such wages to the inmate provider of like services. In determining which tasks are covered, the following considerations are relevant: the amount of inmate time involved, effort and skill necessary to accomplish the task, the regularity of task performance, and whether the task would have been performed by the inmate absent PIECP production.

(E) The prevailing wage must be verified prior to the initiation of PIECP participation. Annually, thereafter, the PIECP participant must re-verify the adopted wage to ensure that it continues to be comparable to wages paid for work of a similar nature in the locality in which the project is located.

(F) If no such verification can be obtained from the State Department of Economic Security, or other similar department, the PIECP participant is responsible for establishing a reasonable prevailing wage. In such instances, the participant should retain on file, for BJA's review:

(1) relevant wage data from a sufficient number of competitors in the locality;

(2) data analyses for determining a reasonable prevailing wage result; and

(3) if possible, a written assessment of the reasonableness of the resulting prevailing wage determination by an appropriate state agency which normally determines wage rates.

(G) The PIECP prevailing wage can not be set below the Federal minimum wage, as defined in the Fair Labor Standards Act (FLSA), 29 U.S.C. 201 *et seq.* Payment of the Federal minimum wage, however, does not automatically achieve compliance with the prevailing wage requirement unless the prevailing wage for the comparable private sector industries is, in fact, the Federal minimum wage.

(H) Overtime, at one and a half times the rate of regular or prevailing wage, must be paid for prisoner hours worked in excess of 40 hours per week. *See* 29 U.S.C. 207(a) (a payment standard imposed on private sector competition).

(I) If a CAC pays a wage based on piece work, the project must apply a calculation to convert regular wages paid into a comparable hourly wage. The calculation should be used as a routine check to ensure that inmate workers, paid according to piece rate work, do not receive less than the Federal minimum wage. In instances where the CAC is paying Federal minimum wage and such a wage is less than the industry standard for the prevailing wage, the CAC must be able to identify inmate worker performance variances as justification for the wage rate.

(J) BJA strongly encourages the use of wage plans that take into consideration a PIECP worker's experience, seniority, and performance.

3. Non-Inmate Worker Displacement.

PIECP CAC operations must not result in displacement of employed workers; be applied in skills, crafts, or trades in which there is a surplus of available gainful labor in the locality; or significantly impair existing contracts. The term "displacement," as used in this provision, includes all such prohibited activities, as well as the inappropriate transfer of private sector job functions to PIECP inmates. This prohibition is intended to protect the private sector partner's non-inmate employees, as well as all other non-inmate workers who perform work of a similar nature in the same locality in which the CAC is located. This prohibition is not, however, intended to prohibit PIECP CACs from engaging in typical business operations, such as competing for business or bidding on contracts on the open market after their designation as Cost Accounting Centers.

(A) Regarding the possibility of displacement among non-inmate employees of private sector partners in the same locality as the CAC:

(1) BJA will presume non-compliance where there is a non-inmate worker's job function replacement by a PIECP inmate worker or where a non-inmate worker's job function is eliminated or adversely impacted, to a significant degree, and there is a concomitant assumption of a similar job function by a PIECP inmate worker. This presumption may be overcome if it can be demonstrated that the non-inmate workers have been retained by the private sector partner in jobs at pay rates equal to or greater than that received in previous positions, that non-inmate employees have been provided an adequate opportunity for effective training in any new job skills and that the subject non-inmate employees are being retained by the private sector partner under reasonably similar or improved employment conditions. When making this compliance evaluation, BJA will not consider the private sector partner's intent or economic viability.

(2) Prior to CAC initiation, the CAC applicant must provide BJA with written documentation reflecting the private sector partner's agreement not to displace its non-inmate employees with PIECP inmate labor in violation of the 18 U.S.C. 1761(c) statutory note.

(B) Prior to project initiation, all CAC applicants must show through written verification by the State Department of Economic Security (or other appropriate state agency) that the PIECP project will not result in displacement of non-inmate workers performing the same work, regardless of wage rate. In cases where an appropriate state agency cannot provide this service, the applicant CAC should propose to and confer with BJA as to alternative measures to address this requirement.

(C) While compliance is a continuing CAC obligation, BJA will scrutinize CAC compliance with the non-displacement requirement just prior to and within one year after the initiation date of CAC operations.

(D) In instances where BJA finds that CAC implementation results in private sector worker displacement, the CAC must either cease its operations or comply with a BJA-approved corrective action plan, if BJA proposes such a plan under Section IV. f. of this Guideline, *infra*.

(E) BJA strongly recommends that CAC job development be oriented toward the creation of new jobs within the locality.

4. Benefits.

PIECP projects must provide inmate workers appropriate benefits comparable to those made available by the Federal or State Government to private sector employees, including workers' compensation and, under certain circumstances, Social Security.

(A) By statute, in some states, inmates are not eligible to participate in workers' compensation programs. Provision of comparable workers' compensation benefits is acceptable as long as the CAC can demonstrate comparability of such benefits with those secured by the Federal or state Government for private sector employees.

(B) The PIECP CAC management model impacts whether the CAC must provide Social Security benefits to PIECP inmate workers. Where the employer model is utilized and the private sector directs and controls the PIECP inmate worker, the PIECP participant must provide PIECP inmate workers with Social Security benefits. Where a customer model is utilized and a governmental, or instrumentality thereof, directs or controls the PIECP inmate worker, BJA recognizes the applicability of other provisions of Federal law which may operate to preclude the provision of PIECP inmates with certain benefits, including Social Security.

5. Deductions.

Participating CACs are not required under 18 U.S.C. 1761(c) to take deductions from PIECP inmate wages. Deductions, however, may be required under other Federal statutes, such as the Internal Revenue Code. If a CAC elects to take deductions from a PIECP inmates' gross wages, such deductions can be taken only under the following conditions:

(A) Deductions from gross wages, if made, may be withheld only for the following authorized purposes:
(1) taxes (Federal, state, local);
(2) in the case of a state prisoner, reasonable charges for room and board as determined by regulations issued by the Chief State Correctional Officer;
(3) allocations for support of family pursuant to state statute, court order, or agreement by the offender; and
(4) contributions of not more than 20 percent, but not less than 5 percent of gross wages to any fund established by law to compensate the victims of crime.

Such deductions, in aggregate, cannot exceed 80 percent of gross wages.

(B) PIECP inmate workers must be paid, credited with, or otherwise benefit legally from, the 20 percent gross remainder. In this regard, the CAC may direct the 20 percent gross remainder to a PIECP inmate worker's expense accounts, savings accounts, or toward the settling of the worker's legal obligations, including the payment of fines and restitution.

(C) Each Certificate Holder, through its respective Chief State Correctional Officer, retains flexibility in determining appropriate room and board charges that may be deducted from PIECP inmate workers' gross wages. Except as to CACs within private prisons, the applicable regulations for determining this deduction are those issued by the Chief State Correctional Officer of the state in which the PIECP inmate is incarcerated.

(D) The legislative history of 18 U.S.C. 1761(c) reflects a Congressional intent to permit the use of the room and board deduction to lower costs otherwise incurred by the public for inmate incarceration. Thus, prior to making room and board deductions, private prison CACs must obtain written approval of any such proposed deductions from the Chief State Correctional Officers for those states from which the PIECP inmate workers were remanded.

(E) A PIECP inmate's gross wages may be subjected to a deduction for the purpose compensating crime victims if the deducted amount is deposited into a fund established by law for the purpose of providing crime victim compensation. State crime victim compensation funds typically qualify as authorized recipients of such deducted amounts.

The victims compensation deduction may also be used to address victim restitution as long as the deducted amounts are deposited into a fund established by law to address such victim interests. Amounts deducted by private prison CACs should be deposited in those crime victim compensation or restitution funds in states from which the PIECP inmates were remanded.

6. Voluntary PIECP Inmate Worker Participation

The Inmate Worker must indicate, in writing, that he or she:

(A) agrees voluntarily to participate in the PIECP project, and

(B) agrees voluntarily, and in advance, to specific deductions made from gross wages, as well as all other financial arrangements made as to earned PIECP wages.

7. Consultation With Organized Labor

PIECP CACs must:

(A) consult with representatives of local union central bodies or similar labor union organizations prior to the initiation of any certified or designated CAC project. CACs should consult with as many of such organizations as may have an interest in the trade or skill to be performed by the PIECP inmates. If there are no local union bodies or labor organizations, consultation must be made with the state union bodies or similar state-wide labor organizations.

(B) provide adequate information about the contemplated PIECP participation such as, at a minimum, an identification of the scope of the intended CAC and projected initiation date, as well as an explanation of the fact that statutory consultation is required and comments are invited. CACs should retain documentation reflecting provision of adequate consultation.

8. Consultation With Local Private Industry

PIECP CACs must:

(A) consult with representatives of local business that may be economically impacted by CAC production prior to beginning operations, and

(B) provide adequate information about the contemplated PIECP participation such as, at a minimum, an identification of the scope of the intended CAC and projected initiation date as well as an explanation of the fact that consultation is required and comments are invited. CACs should retain documentation reflecting provision of adequate consultation.

9. Compliance With the National Environmental Policy Act (NEPA)

The review and approval of PIECP certification applications as well as the designation of PIECP CACs must comply with NEPA and other related Federal environmental review requirements. *See* NEPA, 42 U.S.C.

4321–4347 and 40 CFR pt. 1500. *See also* 28 CFR pt. 61 (Department of Justice procedures for implementing NEPA); 28 CFR pt. 61 App. D (procedures specific to Federal actions undertaken by the Office of Justice Programs).

(A) A BJA PIECP certification, or a CAC designation under an issued certification, constitutes a "Federal action," as defined by 40 CFR 1508.18 of the Council on Environmental Quality's (CEQ) regulations for implementing NEPA. Consistent with CEQ regulations, PIECP applicants and CACs are required to submit for BJA review environmental data and information regarding their proposed activities and, if necessary, environmental assessments. Applicants and CACs must also assist BJA in the preparation of any required environmental impact statements.

(B) Title 28 CFR Part 61 App. D provides NEPA compliance guidance to PIECP applicants and CACs, including the following:

(1) Actions entailing minor renovation projects or remodeling do not normally require an environment impact statement or an environmental assessment, unless, for example the actions would be located in or potentially affect a floodplain; a wetland; a listed species or critical habitat for an endangered species; or a property that is listed on or may be eligible for listing on the National Register of Historic Places.

(2) Actions that normally require an environmental assessment, but not necessarily an environmental impact statement, include: renovations and expansions that change the basic prior use of a facility or substantially change its size; change in use of an existing facility that results in the increased production of liquid, gaseous, or solid wastes; new construction; research and technology whose anticipated and future application could be expected to have an effect on the environment; and new operations involving the use of hazardous, toxic, radioactive, or odorous materials. Assessments of such activities which result in BJA "findings of significant impact" will necessitate the preparation of environmental impact statements in compliance with NEPA and its implementing regulations.

(3) Additionally, no certification will be approved nor can any designation be provided or maintained if the application or designation includes a facility in non-compliance with any Federal, state, or local environmental law or regulation.

IV. PIECP Administration

a. Certificate Holders

BJA may exercise its discretionary authority to certify up to 50 Non-Federal PIECP Projects. Eligible applicants may seek certification by submitting an application to BJA in accordance with the requirements set forth in BJA's PIECP Certification Application, which will be provided upon request, and subpart IV.a.2, *infra*. BJA's review of submitted applications will be conducted as outlined in subparts IV.a.3 and a.4, *infra*. Once a certificate is issued, the holder assumes the authority and responsibilities set forth in subparts IV.a.5 and a.6, *infra*.

1. Project Structure

All departments of correction, authorized by law to administer prison industry programs, are eligible to apply for BJA certification. Certified applicants may designate one or a number of Cost Accounting Centers (CACs) under their authority. Certificate Holders may also under certain conditions designate CACs within private prisons located in their respective states or jurisdictions. BJA will consider alternative program structures suggested by certification applicants, including, but not limited to, applicant umbrella authorities, as described in subpart III. d.1, *supra*.

2. Application Content

All applications for PIECP Project Certification shall include the following:

(A) *Assurances of Authority.* The Certificate Holder must provide written assurance to BJA that it has in place appropriate statutory and administrative authority to meet all mandatory program criteria and, in particular, to monitor CAC compliance throughout the proposed PIECP Project.

(B) *Documentation to Show Compliance With Mandatory Program Criteria.* The applicant must submit all documentation necessary to show CAC compliance with the nine mandatory program criteria outlined in Section III. d., *supra*.

(C) *Project Description.* The applicant must describe key project elements, including the process to be used to designate and monitor compliance of CACs with 18 U.S.C. 1761(c) and this Guideline.

3. BJA Review

PIECP applications will be reviewed by BJA on a first-come, first-served basis. Awards of certification are discretionary exercises of authority by BJA under 18 U.S.C. 1761(c). No certification will be awarded, however, unless there is a determination that the applicant has met the mandatory participation criteria outlined in this Guideline. Applicants will be notified in writing of BJA's award or denial of certification. The hearing and appeal procedures set forth in 28 C.F.R. Part 18 do not apply to denied PIECP applicants. Certified applicants will be informed of the effective date of BJA's certification.

4. Standard or Provisional Certification

A standard certification may be issued by BJA to an approved Certificate Holder applicant when all mandatory program criteria have been met. When one or more mandatory program criteria have not been met, but when steps have been taken to ensure that those criteria will be met within a reasonable period of time, then a provisional certification may be issued by BJA in instances where the withholding of certification would significantly impair the applicant's ability to further develop its project. The terms of the provisional certification will be made specific to the nature of the unmet mandatory criteria and may be made contingent upon the occurrence of identified conditions. Provisional certifications may be issued for no longer than one year from the date of issuance and may be subject to renewal, at BJA's discretion.

5. Certificate Holder Designation Authority

(A) The Certificate Holder may exercise CAC designation authority with respect to department of correction prison industries operating under its jurisdiction, including in private prisons which are located in its respective state or jurisdiction. CACs designated within private prisons must also retain on-file documentation reflecting approval of PIECP inmate worker participation by the state and local jurisdictions in which PIECP inmate workers were convicted. In order to issue such approvals, the remanding state and local jurisdictions must also hold PIECP certificates.

To exercise this authority, a Certificate Holder must first determine that a proposed CAC has complied with the requirements set forth in this Guideline and in 18 U.S.C. 1761(c).

Whenever the Certificate Holder elects to exercise this authority after certification application approval, it must submit a Notice of Designation Form to BJA that provides the following information and documentation:

(1) Cost Accounting Center Name and Location;
(2) Proposed number of workers;
(3) Item(s) to be produced;
(4) Proposed consumer market (including anticipated geographic distribution);
(5) Description of private sector involvement, including models that will be used in working with private enterprise;
(6) Locality determination, and supporting justification;
(7) Description of inmate compensation plans;
(8) Documentation of prevailing wage verification;
(9) Identification of deductions and percentage of each to be taken from PIECP inmates' gross wages;
(10) Documentation of private sector partner's agreement not to displace its non-inmate employees in the same locality with PIECP inmate labor, if applicable;
(11) Documentation of non-displacement verification; and
(12) As to any CACs within private prisons, written approval from remanding jurisdiction of any proposed room and board deduction, in compliance with Section III.d.5.(E)of this Guideline, *supra*;
(13) As to any CACs within private prisons, written approval of the designation by the Chief State Correctional Officer for the jurisdiction in which the CAC is located; and
(14) Documentation of the environmental impacts of the CAC's existing and proposed activities.

(B) The Certificate Holder may, in its own discretion, undesignate any previously designated CAC. In such instances, the Certificate Holder must submit to BJA an Undesignation Form providing the following information:

(1) Cost Accounting Center Name and Location;
(2) Reasons for Undesignation; and
(3) Effective Date of Undesignation.

(C) BJA may, at any time deemed necessary to resolve compliance concerns and upon the issuance of written notice, suspend a Certificate Holder's authority to designate additional Cost Accounting Centers.

6. Certificate Holder Monitoring Responsibilities

As to all designated CACs, the Certificate Holder must assume the following monitoring responsibilities:

(A) Undertake all reporting and evaluation activities deemed necessary to ensure continuing designated CAC compliance; and
(B) Respond to all BJA requests for information and cooperation aimed at ensuring Project compliance.

b. Cost Accounting Centers' PIECP Exception Status

A CAC is entitled to operate under PIECP exception status.

1. To retain this status, the CAC must comply with all PIECP participation obligations to its Certificate Holder and to BJA, including:

(A) Maintaining continuous compliance with the requirements set forth in 18 U.S.C. 1761(c) and in III.d), *supra*, of this Guideline; and
(B) Responding to all monitoring requests for information and cooperation aimed at maintaining continued compliance with this Guideline.

2. The CAC must promptly report to the Certificate Holder any contemplated change in operations which may affect its ability to maintain statutory and Guideline compliance.

c. Compliance Reviews

1. Performance Reports

Within 30 days following the close of each calendar quarter, each CAC must submit a quarterly performance report to its Certificate Holder in a form prescribed by BJA. The performance report describes activities undertaken during the prescribed period. A consolidated report of all CAC activity must be submitted to BJA by the Certificate Holder within 45 days following the close of each calendar quarter.

2. On-Site Monitoring Reviews

BJA and BJA technical assistance contractors are authorized to perform desk and on-site reviews of all PIECP participants, including all CACs, as deemed necessary. On-site reviewers may request access to any and all documentation necessary to assist in determining compliance with the requirements of this Guideline and 18 U.S.C. 1761. Monitored participants will be advised in writing of the results of any such reviews. Immediate corrective action must be taken to address determinations of non-compliance and/or to respond to issues that raise compliance related-concerns for BJA.

d. BJA's PIECP Administration

BJA's PIECP responsibilities include the following:

1. Review and approval of Certificate Holder PIECP applications;
2. Monitoring to determine compliance status of operations within all CACs;
3. PIECP exception status termination or suspension for cause related to substantial non-compliance;
4. Liaison with other Federal agencies that may affect PIECP operations;
5. Provision of compliance-related technical assistance; and
6. Any and all other functions necessary to administer the program in compliance with 18 U.S.C. 1761(c).

e. PIECP Exception Status Suspension/ Termination

1. Notice of Possible Compliance Violation

Alleged facts indicative of non-compliance shall be communicated in writing by BJA to the involved Certificate Holder and the involved designated CAC. These parties must respond to the allegations, in writing, within 15 days after receipt of the notice of non-compliance determination. Immediate corrective action must be taken to address determinations of non-compliance.

2. Voluntary Compliance Agreements

If BJA determines that noncompliant practices persist, BJA may, in its discretion, propose a voluntary compliance agreement to the involved Certificate Holder.

3. Failure To Achieve Compliance and Effect of Non-Compliance

If a voluntary compliance agreement is not presented by BJA or is not accepted or adequately implemented by the Certificate Holder within 30 days after receipt of such an agreement, BJA may suspend the Certificate Holder's certification and/or CAC exception status.

4. PIECP Exception Status Suspension and Termination

A certification may be terminated by BJA if it has been inactive (no production within a designated CAC) or suspended for six consecutive months. A certification and/or designation may be suspended, and six months thereafter, terminated upon: (1) issuance of a notice of a determination that the Certificate Holder and/or designated CAC is not acting in compliance with

the requirements of 18 U.S.C. 1761, this Guideline or the conditions set forth in its certificate; or (2) in the discretion of the Director of BJA and upon a re-definition of a PIECP Project authorized under 18 U.S.C. 1761(c). Termination or suspension of the exception status of one designated CAC will not automatically impact the PIECP exception status of other CACs under the same certification unless the PIECP Project certification is suspended or terminated. The hearing and appeal procedures set forth in 28 C.F.R. Part 18 do not apply to PIECP applicants or participants who have had PIECP exception status suspended or terminated under this provision.

Dated: March 31, 1999.

Nancy Gist,

Director, Bureau of Justice Assistance.

[FR Doc. 99–8575 Filed 4–6–99; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF JUSTICE

National Institute of Corrections

Solicitation for a Cooperative Agreement

SUMMARY: The Department of Justice (DOJ), National Institute of Corrections (NIC) announces the availability of funds in FY '99 for a cooperative agreement to fund a multi-year project entitled Gender-Specific Responses: Research Practice and Guiding Principles.

Purpose: The National Institute of Corrections is seeking proposals for a cooperative agreement to provide planning assistance in designing a multi-year project on gender responsive strategies for women offenders. The assistance will be provided to the National Institute of Corrections' (NIC) Women Offenders' Initiative, a five person, Institute-wide team comprised of representatives from each of the four program divisions. The multi-year project is entitled Gender-Specific Responses: Research, Practice and Guiding Principles, and is described on page 47 of the NIC Service Plan for Fiscal Year 1999.

Authority: Pub. L. 93–415.

Funds Available: The maximum amount available is $20,000 for one cooperative agreement for the planning/design phase of the project. The planning assistance must be completed within a three month period.

Deadline for Receipt of Applications: Applications must be postmarked by 4:00 p.m., Eastern daylight time on Friday, April 30, 1999.

Addresses and Further Information: Requests for the application kit, which includes details on the project's objectives, etc., should be directed to Judy Evens, Grants Control Office, National Institute of Corrections, 320 First St, NW, Room 5007, Washington, DC 20534 or by calling 800–995–6423, ext. 159 or 202–307–3106, ext. 159. You may also obtain a copy of the kit by e-mailing Ms. Evens at *jevens@bop.gov*.

All technical and/or programmatic information on this announcement should be directed to Ms. Phyllis Modley at the above address or by calling 800–995–6423, ext. 133 or 202–307–3106, ext, or by e-mail at: *pmodley@bop.gov*.

Eligible Applicants: An eligible applicant may be: a private organization, non-profit organization, individual or institution.

Review Consideration: Applications received under this announcement will be subjected to an NIC 3 to 5 member Peer Review Process.

Number of Awards: One (1).

NIC Application Number: 99D02.

Other Information: The person or organization which is the successful applicant for this planning phase may not apply for the subsequent, multi-year development project.

Executive Order 12372:

This program is subject to the provisions of Executive Order 12372. Executive Order 12372 allows States the option of setting up a system for reviewing applications from within their States for assistance under certain Federal programs. Applicants (other than Federally-recognized Indian tribal governments) should contact their State Single Point of Contact (SPOC), a list of which is included in the application kit, along with further instructions on proposed projects serving more than on State.

The Catalog of Federal Domestic Assistance number is: 16.603

Dated: April 1, 1999.

Morris L. Thigpen,

Director, National Institute of Corrections.

[FR Doc. 99–8529 Filed 4–6–99; 8:45 am]

BILLING CODE 4410–36–M

DEPARTMENT OF JUSTICE

Federal Bureau of Prisons

National Institute of Corrections; Agency Information Collection Activities: Reinstatement, Without Change, of a Previously Approved Collection for Which Approval Has Expired

ACTION: Notice of information collection under review; Data base of offender job training and placement service providers.

The Department of Justice, Federal Bureau of Prisons, National Institute of Corrections has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted until June 7, 1999.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency/component, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies/components estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g. permitting electronic submission of responses.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact John E. Moore, 202–307–1300 Ext. 147, National Institute of Corrections, Office of Correctional Job Training and Placement, 320 First Street, N.W., Washington, D.C. 20534.

Overview of This Information Collection

(1) *Type of information collection:* Reinstatement, without change, of a

previously approved collection for which approval has expired.

(2) *The title of the form/collection:* Data base of Offender Job Training and Placement Service Providers.

(3) *The agency form number, if any, and the applicable component of the department sponsoring the collection:* Department of Justice, Bureau of Prisons, National Institute of Corrections, Office of Correctional Job Training and Placement.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Agencies and organizations involved in providing job counseling, training in job readiness skills, job development, and job placement services for offenders and/or ex-offenders to include public corrections, i.e. State and local Prison Systems; Jails; Departments of Probation and Parole; and Private For Profit and Private Not for Profit Agencies and Organizations.

Other: None.

Information gathered from the survey will be placed in a data base to be used primarily as a mailing list of service providers. The database is being used by the Office of Correctional Job Training and Placement to build a network of professionals providing these services, and it will facilitate the sharing of timely information to include notices of available training opportunities, publications, and technical assistance.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent too respond/reply:* It is estimated that approximately 75 surveys per year will be forwarded to programs for return and inclusion into the data base. The time burden of the 75 surveys is 10 minutes per survey.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total burden hour to complete the applications is 12 hrs. and 45 minutes annually.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW, Washington, D.C. 20530.

Dated: April 1, 1999.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 99–8504 Filed 4–6–99; 8:45 am]

BILLING CODE 4410–05–M

DEPARTMENT OF LABOR

Office of the Secretary

Women's Bureau; The National Women Veterans Art Design Search; Reopening and Extension of Search Period

AGENCY: Office of the Secretary, Labor.

ACTION: Reopening and Extension of the National Women Veterans Art Design Search.

SUMMARY: This document reopens and extends the period for U.S. military veterans to submit their original art work depicting the theme: "Hire a Vet: A Model of Success." This action is taken to permit additional U.S. military veterans to participate in the search.

DATES: Original art work must be received no later than September 7, 1999.

ADDRESSES: Send or deliver original art work and Artist Release Form (see Section A of this Notice) to Cheryl Edwards, U.S. Department of Labor, Women's Bureau, 200 Constitution Avenue, NW, Room S–3311, Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Cornelia H. Moore, Regional Administrator, U.S. Department of Labor Women's Bureau, Philadelphia, PA 19104, 1–800–379–9042 or visit the Women's Bureau website at http://www.dol.gov/dol/wb

SUPPLEMENTARY INFORMATION: In the **Federal Register** of September 3, 1998 (63 FR 47094), the Department of Labor published an announcement of the national women veterans original art search in which any U.S. military veteran can compete for first, second and third places for the best original art works that depict women as U.S. military veterans with a "Hire a Vet: A Model of Success" theme. Interested persons were requested to send or deliver their original art work on or before October 16, 1998.

Because of the continuing interest in the original art design search, the Women's Bureau believes that it is desirable to reopen and extend the period for all interested persons. Therefore, the search is reopened and extended to September 7, 1999. A copy of the September 3, 1998 **Federal Register** can be obtained from the U.S. Department of Labor, Women's Bureau, by calling 1-800–379–9042.

The winners will be notified on or before October 8, 1999. The first place winning entrant will be unveiled by the Secretary of Labor during the Department's Salute to Veterans program in November 1999.

A. Artist Licensing, Certification, and Release Form

In order for an artist to be eligible to receive any award for this National Women Veterans Original Art Search, the artist must have signed the following Artist Licensing, Certification, and Release Form:

I, ____, do hereby confer exclusive rights upon the United States Department of Labor (USDOL) to display (including on the Internet), reproduce, distribute, and sell reproductions of my entry in any form until November 30, 2001. Thereafter, I authorize USDOL the right to display my entry, as well as sell and distribute reproductions of my entry made prior to November 30, 2001.

I certify that this entry is my own original work for which I own all rights, and no other person is or will be authorized to reproduce or sell it for the duration of this agreement. I also certify that there has been no prior publication of this work. I understand that my entry will be returned with the hanging strips and blocks, used for exhibition of my entry, still attached. I hereby release USDOL, including the Women's Bureau, the Veterans' Employment and Training Service, and the United States Employment Service, from any and all liability for damage or loss of my entry.

Signature of Artist

Print Name

Address (including zip code)

Telephone Number and Fax Number (Including area codes)

* * * * *

Signed at Washington, DC, this 1st day of April 1999.

Delores L. Crockett,

Deputy Director, Women's Bureau.

[FR Doc. 99–8592 Filed 4–6–99; 8:45 am]

BILLING CODE 4510–23–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–35,522]

Great Northern Paper, Millinocket, Maine; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18(C) an application for administrative reconsideration was filed with the Acting Director of the Office of Trade Adjustment Assistance for workers at Great Northern Paper located in

Millinocket, Maine. The review indicated that the application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA–W–35,522; Great Northern Paper Millinocket, Maine (March 24, 1999)

Signed at Washington, DC this 31st day of March, 1999.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 99–8593 Filed 4–6–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Acting Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Acting Director, Office of Trade Adjustment Assistance, at the address shown below, not later than April 19, 1999.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Acting Director, Office of Trade Adjustment Assistance, at the address shown below, not later than April 19, 1999.

The petitions filed in this case are available for inspection at the Office of the Acting Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Signed at Washington, DC, this 15th day of March 1999.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

APPENDIX

[Petitions Instituted on 03/15/1999]

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
35,799	Louisiana Pacific (Wkrs)	Rogue River, OR	02/23/1999	Veneer.
35,800	WACO (Wkrs)	Waterbury, CT	02/24/1999	Sleepwear.
35,801	Continental Sprayers (Co.)	El Paso, TX	02/24/1999	Plastic Trigger Sprayers.
35,802	Fleming Potter Co, Inc (Wrkrs)	Peoria, IL	02/24/1999	Labels.
35,803	Outokumpu Copper Kenosha (USWA)	Kenosha, WI	02/24/1999	Light Gauge Brass, Copper Strip.
35,804	Veritas DGC Land (Co.)	Pearl, MS	02/23/1999	Gather Seismic Data for Oil Companies.
35,805	Operators and Consulting (Wrkrs)	Lafayette, LA	02/23/1999	Offshore Disatchers.
35,806	Phelps Dodge Chino Mining (Wrkrs)	Hurley, NM	02/26/1999	Copper Mining.
35,807	Kicks Fashions, Inc (Wrkrs)	New York, NY	02/23/1999	Ladies' & Girl's Knit Tops.
35,808	Paul Sebastian Inc (Wrkrs)	Ocean, NJ	02/24/1999	Men's and Ladies' Fragrances.
35,809	Globe Construction Co. (Wrkrs)	Hobbs, NM	02/02/1999	Oil Service.
35,810	4 Way Trucking (Wrkrs)	Hays, KS	02/25/1999	Trucking Services—Oilfield.
35,811	Rockwell Automation (IAMAW)	Madison, IN	02/25/1999	AC Fractional Motors.
35,812	Silicon Graphics, Inc (Wrkrs)	Eagan, MN	02/24/1999	Supercomputers.
35,813	Fentress Industries (Co.)	Jamestown, TN	02/26/1999	Ladies' Blazers.
35,814	Fairfield Southern RR (Wrkrs)	Fairfield, AL	02/22/1999	Transport Hot, Cold Rolled Steel.
35,815	Controlled Recovery, Inc (Wrkrs)	Hobbs, NM	02/17/1999	Crude Oil.
35,816	Chapman Services (Co.)	Odessa, TX	02/26/1999	Rental Oil Equipment.
35,817	Rawlings Sporting Goods (Wrkrs)	Ava, MO	02/17/1999	Footballs.
35,818	Gesell's Pump Sales ((Wrkrs)	Whittington, IL	02/23/1999	Oilfield Services.
35,819	Gandy Drill Pipe, LTD (Wrkrs)	Midland, TX	02/23/1999	Steel Pipe.
35,820	Stone Savannah River Pulp (UPIP)	Savannah, GA	02/23/1999	Bleach Market Pulp.
35,821	PMC Global Industries (Wrkrs)	Odessa, TX	02/22/1999	Gas Measurement Instruments.
35,822	Fashions Enterprises (Co.)	El Paso, TX	02/22/1999	Ladies' Suits, Skirts, Pants.
35,823	Land Management Group (Wrkrs)	Houston, TX	02/22/1999	Exploration Services.
35,824	Emerson Electric (Wrkrs)	El Paso, TX	02/21/1999	Electrical Switches.
35,825	Keystone Powdered Metal (Wrkrs)	St. Marys, PA	02/24/1999	Automotive Parts.
35,826	Harris Mud and Chemical (Wrkrs)	Olney, IL	02/23/1999	Oil, Gas Drilling.
35,827	Pennant Service Co (Co.)	Denver, CO	02/23/1999	Oil, Gas Well Services.
35,828	Brown Jordan (USWA)	Newport, AR	02/22/1999	Patio Furniture.
35,829	Lucia, Inc (Co.)	Elkin, NC	03/02/1999	Ladies's Apparel.
35,830	Hayes Microcomputers (Wrkrs)	Norcross, GA	02/19/1999	Microcomputer Modems.
35,831	La Brava LTD (Wrkrs)	Brooklyn, NY	02/23/1999	Ladies' Sportswear.
35,832	Red's Satellite Service (Co.)	Abilene, TX	02/24/1999	Oilwell Drilling and Services.
35,833	Vanity Fair Intimates (Co.)	Milton, FL	02/22/1999	Intimate Apparel.
35,834	Gambro Renal Care (Co.)	Newport News, VA	02/19/1999	Disposable Medical Devices.
35,835	Eaton Corporation (Co.)	Hamilton, IN	02/24/1999	Valves, Sensors, Actuation Devices.
35,836	Gloria Lingerie (UNITE)	Long Island, NY	02/24/1999	T–Shirts.
35,837	Datiani Fashions LTD (Wrkrs)	New York, NY	02/18/1999	Ladies' Dresses.

APPENDIX—Continued

[Petitions Instituted on 03/15/1999]

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
35,838	Equistar Chemicals L.P. (IAMAW)	Port Arthur, TX	02/14/1999	Polyethylene Plastic.
35,839	Topco, Inc (Co.)	Elizabeth, NJ	02/23/1999	Metal Stampings.
35,840	Ocean Energy (Co.)	Lafayette, LA	03/01/1999	Exploration, Development of Oil.
35,841	North American Knitting (Co.)	Mansfield, OH	03/03/1999	Knit Suits.
35,842	MKE Quantum Components (Co.)	Louisville, CO	02/25/1999	Head Gimbal Assembly.
35,843	Avery Dennison Office (Co.)	Rochelle, IL	02/19/1999	Index Dividers.
35,844	Seco Products Corp (Co.)	S. Plainfield, NJ	02/26/1999	Plastic Lids.
35,845	Pool California Energy (Co.)	Bakersfield, CA	02/04/1999	Oilfield Services.
35,846	US Axle, Inc (UAW)	Pottstown, PA	02/26/1999	Axles, Shafts.
35,847	Store Ready Co (Wrkrs)	Cressona, PA	02/23/1999	Hanging, Sagging & Preparing Garments.
35,848	Pool Company (Wrkrs)	Roosevelt, UT	03/05/1999	Oil Services.
35,849	Horace Small Manufacturing (Co.)	Nashville, TN	02/26/1999	Uniform Pants.
35,850	Cooper Cameron Valve (Wrkrs)	Missouri City, TX	02/25/1999	Internal Parts for Valves.
35,851	Advantage Lift Systems (Co.)	Williamson, PA	02/26/1999	Automotive Hoists.
35,852	Reading Anthracite (UMWA)	Pottsville, PA	02/22/1999	Coal Mining.
35,853	Titan Oil, Inc (Wrkrs)	Baker, MT	02/25/1999	Crude Oil.
35,854	Carolina Maid Products (Co.)	Granite Quarry, NC	03/03/1999	Ladies' Apparel.
35,855	Puget Plastics (Co.)	Tualatin, OR	03/02/1999	Computer Plastic Parts.
35,856	Suzette Fashions (UNITE)	Jersey City, NJ	03/01/1999	Ladies' Coats.
35,857	Johnstown Corporation (USWA)	Johnstown, PA	02/26/1999	Steel Castings.
35,858	Haggar Clothing (Co.)	Weslaco, TX	02/23/1999	Men's Pants and Coats.
35,859	Heckett Multiserv (Wkrs)	Slippery Rock, PA	02/20/1999	Repair Steel Mill Equipment.
35,860	Timken Latrobe Steel Co (USWA)	Latrobe, PA	03/01/1999	Specialy Steels.
35,861	Continental Emsco (Wkrs)	Hobbs, NM	02/23/1999	Downhole Pumps.
35,862	Flex O Lite (Wkrs)	Elwood, IN	03/01/1999	Safety Equipment.
35,863	Tultex (Co.)	Mayodan, NC	03/02/1999	Crewneck Fleece Sweatshirts.

[FR Doc. 99–8595 Filed 4–6–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–35, 610]

Ralston Purina Now Known as Ralston Purina, Gold Products Division, Olmsted, Illinois; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18(C) an application for administrative reconsideration was filed with the Acting Director of the Office of Trade Adjustment Assistance for workers at Ralston Purina, now known as Ralston Purina, Gold Products Division, Olmsted, Illinois. The application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA–W–35, 610; Ralston Purina, Now Known as Ralston Purina, Gold Products Division, Olmsted, Illinois (March 31, 1999)

Signed at Washington, D.C. this 1st day of April, 1999.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 99–8597 Filed 4–6–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility to Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Acting Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Acting Director, Office of Trade Adjustment Assistance, at the address shown below, not later than April 19, 1999.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Acting Director, Office of Trade Adjustment Assistance, at the address shown below, not later than April 19, 1999.

The petitions filed in this case are available for inspection at the Office of the Acting Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Signed at Washington, D.C., this 22nd day of March, 1999.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

APPENDIX

[Petitions Instituted on 03/22/1999]

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
35,864	Timken Co (The) (USWA)	Canton, OH	02/22/1999	Tapered Roller Bearings.
35,865	N F and M International (USWA)	Monaca, PA	03/11/1999	Titanium Bar.
35,866	Acutus Gladwin (Comp)	Blytheville, AR	03/12/1999	Maintenance for Casters & Molds.
35,867	Exide Electronics (Comp)	Leland, NC	02/25/1999	Power Systems.
35,868	3M, West Deptford Plant (Comp)	Thorofare, NJ	02/22/1999	Electrical Crimp Terminals.
35,869	CMS Oil and Gas Co (Comp)	Traverse City, MI	02/11/1999	Exploration, Production, Oil & Gas.
35,870	Kai Jay Jeanswear (Wrks)	Nesquchoning, PA	01/21/1999	Denium Jeans.
35,871	Morven Partners (Wrks)	Gorman, TX	02/11/1999	Peanuts.
35,872	B and H Apparel, Inc (Comp)	Mullins, SC	03/08/1999	Clothing Assembly.
35,873	Brand S, Inc (Comp)	Corvallis, OR	03/04/1999	Architectural/plywood.
35,874	Southwestern Energy Co (Wrks)	Oklahoma City, OK	02/22/1999	Crude Oil and Natural Gas.
35,875	E and H Industrial Supply (Comp)	Williston, ND	03/03/1999	Pumping Unit Bridles.
35,876	Equity Oil Co (Comp)	Salt Lake City, UT	03/05/1999	Clerical Staff—Oil and Gas.
35,877	Production Testing Serv. (Wrks)	Anchorage, AK	03/01/1999	Oil and Gas Testing.
35,878	VingCard, Inc (Comp)	Dallas, TX	03/03/1999	Plastic Keycards for Hotel Rooms.
35,879	Marui International (Wrks)	El Paso, TX	03/03/1999	Automotive Parts.
35,880	Henkel Corp., Chemical (Comp)	Los Angeles, CA	03/10/1999	Olechemicals (Veg Fatty Acids).
35,881	Perry and Perry, Inc (Comp)	Midland, TX	02/25/1999	Crude Oil.
35,882	Artcraft Industries (Wrks)	Milwaukee, WI	03/01/1999	Mass Transit Seating.
35,883A	Jones Drilling (Wrks)	All Locations, TX	03/04/1999	Oil, Gas Exploration, Drilling.
35,883B	Jones Drilling (Wrks)	All Locations, OK	03/04/1999	Oil, Gas Exploration, Drilling.
35,883	Jones Drilling (Wrks)	Midland, TX	03/04/1999	Oil, Gas Exploration, Drilling.
35,884	Siebe Appliance Control (Comp)	Winterset, IA	03/04/1999	Electronic Appliance Control Assembly.
35,885	Willamette Industries Inc (USWA)	Kingsport, TN	03/06/1999	Coated Paper.
35,886	Justin Boot Co (Wrks)	Sarcoxie, MO	03/03/1999	Leather Boots.
35,887	Hydroform USA, Inc. (Comp)	Carson, CA	03/08/1999	Airframe Parts and Assemblies.
35,888	North Power LLC (Wrks)	Arcade, NY	03/10/1999	Heavy Duty Alternators.
35,889	Omimex Energy, Inc (Comp)	Mason, MI	03/08/1999	Oil and Gas.
35,890	Morris Button Co (Wrks)	New York, NY	03/04/1999	Buttons.
35,891	Corinth Acquisition (Comp)	Corinth, MS	03/09/1999	Men's Jackets.
35,892	Martin Copeland Eyeware (Wrks)	Bristol, RI	03/08/1999	Eye Glass Frames.
35,893	Natchiq, Inc (Comp)	Anchorage, AK	03/08/1999	Oilfield Services.
35,894	Revelation Bra Co (Comp)	East Boston, MA	03/03/1999	Brassieres.
35,895	Guilford of Maine (Wrks	Newport, ME	03/15/1999	Fabric.
35,896	Electroalloys Corp (Wrks)	Elyria, OH	03/12/1999	Alloys.
35,897	West Bend Co (The) (PACE)	West Bend, WI	02/26/1999	Electric Kitchens Appliances.
35,898	American Alloys, Inc (Comp)	New Haven, WV	03/03/1999	Ferrosilicon.
35,899	Consolidation Coal (UMWA)	Osage, WV	03/05/1999	Steam Coal.
35,900	Item-Eye, Inc (Wrks)	New York, NY	02/10/1999	Sportswear.
35,901	American Cabinetry, Inc (Comp)	Cranbury, NJ	03/03/1999	Kitchen Cabinetry.
35,902	General Electric Ind. Sys (Comp)	Morison, IL	03/03/1999	Wall Thermostats.
35,903	Independence Mining Co (Comp)	Elko, NV	03/05/1999	Gold.
35,904	Carhartt, Inc (UFCW)	McKenzie, TN	02/28/1999	Bib Overalls.
35,905	Hughes—JVC Technology (Comp)	Carlsbad, CA	03/05/1999	Lare Screen Projectors.
35,906	Ribbon Narrow Fabrics (UAW)	Secaucus, NJ	03/05/1999	Cut Edge and Novelty Ribbons.
35,907	Grand Fashions, Inc (Wrks)	West New York, NJ	03/02/1999	Ladies' Coats.
35,908	Block Drug, Inc (Wrks)	Dayton, NJ	03/01/1999	Toothpaste, Toilet Bowl Cleaners.
35,909	O.S. Kelly Co (The) (Comp)	Springfield, OH	02/26/1999	Piano Plates.
35,910	Hytek Microsystems, Inc (Comp)	Carson City, NV	03/03/1999	Hybrid Components.
35,911	Morrow Snowboards, Inc (Wrks)	Salem, OR	03/01/1999	Snowboards.
35,912	Yamamoto Manufacturing (Wrks)	Beaverton, OR	03/09/1999	Printed Circuit Boards.
35,913	Salant Corp (Comp)	Long Island Cty, NY	03/10/1999	Men's and Children's Belts, Tides.
35,914	Plainville Oil Well Serv. (Wrks)	Plainville, KS	01/07/1999	Oil Well Services.
35,915	VF Jeanswear (Wrks)	Richland, MO	02/16/1999	Denim Jeans.

[FR Doc. 99–8596 Filed 4–6–99; 8:45 am]
BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–35,124]

Twinstar Semiconductor, Richardson, Texas; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18(C) an application for administrative consideration was filed with the Acting Director of the Office of Trade Adjustment Assistance for workers at Twinstar Semiconductor located in Richardson, Texas. The review indicated that the application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA–W–35,124; Twinstar Semiconductor
Richardson, Texas (March 24, 1999)

Signed at Washington, D.C. this 31st day of March, 1999.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 99–8594 Filed 4–6–99; 8:45 am]
BILLING CODE 4510–30–M

NATIONAL GAMBLING IMPACT STUDY COMMISSION

Meeting

AGENCY: National Gambling Impact Study Commission.

ACTION: Notice of Public Meeting; Change of Date.

SUMMARY: At its thirteenth regular meeting the National Gambling Impact Study Commission, established under Pub. L. 104–169, dated August 3, 1996, will conduct its normal meeting business; hear possible presentations from one or more subcommittees; continue its ongoing review of Commission research on economic and social gambling impacts; and deliberate on possible findings and recommendations for the Final Report.

DATES: Monday, May 17, 8:30 a.m. to 5:30 p.m. and Tuesday, May 18, 8:30 a.m. to 5:30 p.m.

ADDRESSES: The meeting site is not yet available, but will be located in the Washington, DC area.

Written comments can be sent to the Commission at 800 North Capitol Street, NW, Suite 450, Washington, DC 20002.

STATUS: The meeting will be open to the public both days.

CONTACT PERSONS: For further information contact Craig Stevens at (202) 523–8217 or write to 800 North Capitol St., NW, Suite 450, Washington, DC 20002.

SUPPLEMENTARY INFORMATION: This meeting was originally scheduled and announced for May 11–12 but has been moved to May 17–18, 1999. The exact meeting location will be announced as soon as arrangements are finalized. This information will be faxed to all individuals on the Commission's fax list, posted to the Commission's web site, *www.ngisc.gov.*, and announced in the **Federal Register**.

Tim Bidwill,

Special Assistant to the Chairman.

[FR Doc. 99–8537 Filed 4–6–99; 8:45 am]
BILLING CODE 6802–ET–P

NATIONAL SCIENCE FOUNDATION

Commission on the Advancement of Women and Minorities in Science, Engineering and Technology Development

In accordance with Pub. L. 105–255, the National Science Foundation announces the following meeting:

Name: Commission on the Advancement of Women and Minorities in Science, Engineering and Technology Development (5270).

Date and Time: April 14 (8:30 a.m. to 5:00 p.m.).

Place: Room 1235, National Science Foundation, 4201 Wilson Blvd., Arlington, VA.

Type of Meeting: Open.

Contact Person: Karen Pearce, Executive Secretary, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Phone (703) 306–1070.

Minutes: May be obtained from the Executive Secretary at the above address.

Purpose of Meeting: To conduct initial commission business, and to carry out the requirements in section 4 of Pub. L. 105–255, and Act to establish the Commission on the Advancement of Women, Minorities in Science, Engineering and Technology Development.

Agenda

Wednesday, April 14—8:30 a.m.—Breakfast Reception

1. Introduction of Commissioners and Commission Business, election of chair
2. Status of Women, Minorities, and Persons with Disabilities; An Overview
3. Academic View
4. Corporate View
5. Scope of Work and Future Meetings

Dated: April 1, 1999.

Janet Silva,

Acting Deputy Director, Division of Human Resource Management.

[FR Doc. 99–8546 Filed 4–6–99; 8:45 am]
BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Carolina Power & Light Company; H. B. Robinson Steam Electric Plant, Unit No. 2 Environmental Assessment and Finding of No Significant Impact

Docket No. 50–261

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License DPR–23 issued to Carolina Power and Light Company (the licensee) for operation of the H. B. Robinson Steam Electric Plant (HBRSEP), Unit 2, located at the licensee's site in Darlington County, South Carolina.

Environmental Assessment

Identification of the Proposed Action

The proposed action would amend the Facility Operating License to reflect a revision to the HBRSEP Updated Final Safety Analysis Report (UFSAR) to include the evaluation of a previously unanalyzed spent fuel cask drop scenario. The analysis also considered a second scenario of potential damage by lateral movement of the cask into plant equipment that results in damage to the valves while shipping with the valve covers removed. The cask drop scenario is hypothesized to occur during movement of spent fuel shipping cask model IF–300, without the cask valve covers installed, from the decontamination facility at the HBRSEP to the shipping railcar using a crane in a non-single-failure-proof configuration, i.e. using a non-redundant cask lifting yoke. The maximum potential height from which the cask could be dropped during the time of transfer with a non-redundant cask lifting yoke is 30 feet. The postulated accident associated with lateral movement of the cask could occur anytime during the general handling of the cask without the cask valve covers installed. The proposed action is in accordance with the licensee's request for NRC review dated August 28, 1997, as supplemented by letters dated June 17, 1998, October 29, 1998, and February 11, 1999.

The Need for the Proposed Action

At HBRSEP, Unit No. 2, loaded Spent Fuel Shipping Casks are shipped by rail

to CP&L's Shearon Harris Nuclear Power Plant (SHNPP), where the fuel is placed in long-term storage in the SHNPP spent fuel pool. With the cask valve covers installed the IF–300 shipping cask is designed to withstand being dropped from 30 feet onto an unyielding surface. The current Certificate of Compliance (CoC) for the IF–300 cask requires the valve box covers be fully installed. However, during a portion of the overall cask handling process, CP&L is constrained in its movement of this cask. The cask cannot be transferred by crane in the single-failure-proof configuration from the railcar to the cask decontamination area of the Fuel Handling Building (FHB) or returned to the railcar because the redundant lifting yoke cannot fit onto the cask while the cask is on the railcar. The maximum height of the cask while being lifted with a non-redundant yoke is 30 feet. The valve box covers must be removed to provide access to the valves for off-gas venting from the cask. Because the FHB cask decontamination area cannot accommodate installation or removal of the valve box covers, the covers are removed at the rail car and remain off the cask during all movements in the FHB. Lateral movement of the cask into plant equipment with the valve covers removed or a cask drop while the cask is being transferred using a non-redundant lifting yoke could result in damage to the valves, resulting in a release of noble gas and iodine gap activity to the environment. These scenarios create the possibility of a new or different kind of accident not previously evaluated. The consequences of the cask drop scenario would bound any consequences due to impact during lateral movement. For all of the above reasons, there is a need for a revision to the HBRSEP UFSAR to include the evaluation of a previously unanalyzed spent fuel cask drop scenario to allow the licensee to ship spent fuel using fuel handling procedures that are not currently within the plant's licensing basis.

Environmental Impacts of the Proposed Action

An evaluation has been performed by the licensee to determine the consequences of a postulated 30 foot cask drop accident with less than full integrity, i.e, with the valve box covers removed. The evaluation determined that, while the fuel components would be retained in the cask, the vent/drain valves may be damaged and thus not be gastight. Using the maximum activity loading for the IF–300 cask, this type of release has been evaluated and the whole body and thyroid doses which could result are a small fraction of those previously analyzed for the fuel handling accident in Section 15.7.3 of the UFSAR. The personnel involved in a cleanup after a postulated accident would need to decontaminate a maximum of one cubic foot of material with a dose rate of up to 10 rem/hr at one meter based on the limit established for the maximum allowable water remaining in the cask after loading operations. Personnel exposure rates could be effectively limited by use of temporary shielding and remote handling tools. The release of activity would not be sufficient to initiate the Control Room radiation alarm or pressurization mode of the Control Room ventilation system. The postulated dose to a Control Room occupant was calculated to be 3.5E–03 rem (whole body) and 7.8E–04 rem (thyroid). Dose assessments were performed using maximum potential releases assuming failure of the spent fuel within the cask and radionuclide release from damage to the valves. Calculated doses at the site boundary were 0.0072 rem (whole body) and 0.1233 rem (thyroid). This evaluation also concluded that it will also bound any consequences of the damage due to an impact during a lateral movement, since the dose risks would be a fraction of the consequences of cask drop with less than full integrity.

These results have been, in part, independently verified by the NRC staff. The NRC staff also reviewed the assumptions and methods of analysis in the licensee's radiological consequence analysis to ensure they are conservative, bounding, and consistent with the HBRSEP design basis. Based on the above evaluation, the staff concludes that the licensee has demonstrated with reasonable assurance that maximum radiological consequences of dropping an IF–300 cask at the HBRSEP are radiation doses to members of public that are a small fraction of the numerical criteria in 10 CFR Part 100 and are well within the acceptance criteria in the Standard Review Plan and, therefore, are acceptable. The Commission has completed its evaluation of the proposed action and concludes that there will be an insignificant increase in environmental impact on the dose consequences of a spent fuel cask drop with this change in shipping configuration.

The proposed action will not increase the probability or consequences of accidents previously analyzed. No changes are being made in the types of any effluents that may be released off-site and there is no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action does not involve any historic sites. It does not affect nonradiological plant effluents and has no other environmental impact. Therefore, there are no significant nonradiological environmental impacts associated with the proposed action.

Accordingly, the Commission concludes that there are no significant environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

The Spent Fuel Shipping Cask cannot be lifted in the single failure-proof configuration from the cask decontamination area of the FHB to the railcar with this configuration because the redundant lifting yoke cannot fit onto the cask while the cask is on the railcar. Therefore, alternatives to the proposed activity were considered which include (1) designing a new redundant lifting rig and modifying the shipping cask to allow the Spent Fuel Cask Crane to fit onto the cask while the cask is situated on the railcar; (2) modifying the FHB to accommodate installing the valve box covers on the Spent Fuel Shipping Cask in the cask decontamination area before movement of the cask to the railcar; or (3) ceasing spent fuel shipping operations and loading the spent fuel into Independent Spent Fuel Storage Installation (ISFSI) canisters. For the purposes of this review, the alternatives to the proposed action have been evaluated using the dollar value per Person-Rem of $2000 recommended by NUREG–1530, "Reassessment of NRC's Dollar Per Person-Rem Conversion Factor Policy." Since the postulated consequences at the Site Boundary have been calculated to be 0.0072 Rem, the proposed change to the UFSAR can be assigned a value of approximately $15 per person. From the HBRSEP, Unit No. 2 Emergency Plan, the most populous 90° sector out to 10 miles contained a population of 23,210. Therefore, a dollar value of $350,000 was used for comparison of the proposed activity with its alternatives.

Development of a redundant yoke and modification of the Spent Fuel Cask Crane will involve the design, fabrication, and installation of a one-of-a-kind redundant yoke that can be used for lifts of the Spent Fuel Shipping Cask that include lifting of the cask to the railcar. Modifying the FHB to accommodate installation of the valve box covers prior to lifting the Spent Fuel Shipping Cask from the cask

decontamination area to the railcar would involve a major modification to the unit to enclose a larger cask decontamination area within a controlled air space. It is difficult to provide accurate estimates for the cost of these alternatives because of the numerous variables involved. It is believed that the cost for either of these alternatives will be in excess of $1,000,000.

As an alternative to the proposed amendment, the staff considered denial of the requested amendment; thus, shipment of spent fuel to SHNPP could be terminated. The result of termination of spent fuel shipment would be to require the storage of additional spent fuel onsite until all existing capacity is used or additional capacity is added to allow continued operation until the termination of the HBRSEP, Unit No. 2, operating license on July 31, 2010. The Spent Fuel Pit has already been reracked with high density fuel storage racks, and the addition of storage capacity to the Spent Fuel Pit by further re-racking is not feasible. CP&L maintains an ISFSI license for 8 ISFSI canisters currently containing 56 spent fuel assemblies. No additional capacity is available under the current ISFSI license. The license could be amended to allow additional capacity using a new canister design, or a canister licensed under a general license could be used. The estimated cost of adding sufficient ISFSI storage capacity to permit operation of the unit until the end of the current operating license has been estimated to be approximately $5,000,000.

The action proposed by the licensee of performing the cask lifting operations between the decontamination facility and the railcar with the valve covers removed and using a non-redundant cask lifting yoke has no significant impact on the environment either from routine operations or from a postulated accident in this configuration. The postulated accident dose is only a small fraction of 10 CFR Part 100 limits and within the acceptance criteria of the Standard Review Plan. Therefore, the benefits of the proposed activity substantially outweigh the costs of the alternatives to the proposed activity. Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the "Final Environmental Statement Related to the Operation of H.B. Robinson."

Agencies and Persons Consulted

In accordance with its stated policy, on February 17, 1999, the staff consulted with the South Carolina State official, Virgil Autry, South Carolina Department of Health, Bureau of Radiological Health and Environmental Control. The State official had no comments.

Finding of No Significant Impact

On the basis of the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letters dated August 28, 1997, June 17, 1998, October 29, 1998, and February 11, 1999, which are available for public inspection at the Commission's Public Document Room, which is located at The Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Hartsville Memorial Library, 147 West College, Hartsville, South Carolina 29550.

Dated at Rockville, Maryland, this 31st day of March 1999.

For the Nuclear Regulatory Commission.

Sheri R. Peterson,

Section Chief, Project Directorate II/Section II–2, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 99–8598 Filed 4–6–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting

DATE: Weeks of April 5, 12, 19, and 26, 1999.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of April 5—Tentative

There are no meetings scheduled for the Week of April 5.

Week of April 12—Tentative

Wednesday, April 14

9:00 a.m. Briefing on Investigative Matters (Closed—Ex. 5 and 7)

11:00 a.m. Briefing on Remaining Issues Related to Proposed Restart of Millstone Unit 2 (Public Meeting) (Contact: William Dean, 301–415–2240)

Thursday, April 15

3:00 p.m. Affirmation Session (Public Meeting) (If needed)

Friday, April 16

9:30 a.m. Briefing on Rulemaking For Generally Licensed Devices (Public Meeting) (Contact: Patricia Holahan, 301–415–8125)

Week of April 19—Tentative

There are no meetings scheduled for the Week of April 19.

Week of April 26—Tentative

There are no meetings scheduled for the Week of April 26.

*The Schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (Recording)—(301) 415–1292. Contact Person for More Information: Bill Hill (301) 415–1661.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at:

http://www.nrc.gov/SECY/smj/schedule.htm

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to it, please contact the Office of the Secretary, Attn: Operations Branch, Washington, DC 20555 (301–415–1661). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to wmh@nrc.gov or *dkw@nrc.gov.*

Dated: April 2, 1999.

William M. Hill, Jr.,

SECY Tracking Officer, Office of the Secretary.

[FR Doc. 99–8758 Filed 4–5–99; 12:36 pm]

BILLING CODE 7590–01–M

NUCLEAR REGULATORY COMMISSION

Biweekly Notice; Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Pub. L. 97–415, the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. Pub. L. 97–

415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from March 13, 1999, through March 26, 1999. The last biweekly notice was published on March 24, 1999 (64 FR 14278).

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administration Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

By April 23, 1999, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC and at the local public document room for the particular facility involved. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The

final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington DC, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room for the particular facility involved.

Arizona Public Service Company, et al., Docket Nos. STN 50–528, STN 50–529, and STN 50–530, Palo Verde Nuclear Generating Station, Units Nos. 1, 2, and 3, Maricopa County, Arizona

Date of amendments request: February 26, 1999.

Description of amendments request: The proposed amendment would revise Technical Specification (TS) 3.5.3, "Emergency Core Cooling System—Operating," to extend the completion time for one inoperable low pressure safety injection subsystem from 72 hours to 7 days.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed amendment will extend the Completion Time for one inoperable low pressure safety injection (LPSI) subsystem in Technical Specification (TS) 3.5.3, Emergency Core Cooling Systems (ECCE)[S]—Operating, from 72 hours to 7 days. The LPSI subsystem is part of the ECCS train and part of the shutdown cooling subsystem. The LPSI components are not accident initiators in any accident previously evaluated. Therefore, this change does not involve a significant increase in the probability of an accident previously evaluated.

The LPSI system is primarily designed to mitigate the consequences of a large break loss of coolant accident (LOCA). These proposed changes do not affect any of the assumptions used in the deterministic LOCA analysis.

In order to evaluate the LPSI Completion Time extension with respect to the ECCS, probabilistic safety analysis (PSA) methods were utilized. The results of these analyses show no significant increase in the core damage frequency. As a result, there would be no significant increase in the consequences of an accident previously evaluated. These analyses are detailed in CE NPSD–995, Combustion Engineering Owners Group "Joint Applications Report for Low Pressure Safety Injection System AOT Extension," May 1995, as supplemented by updated PVNGS data provided in the attachment to this enclosure.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed amendment will extend the Completion Time for one inoperable low pressure safety injection (LPSI) subsystem in Technical Specification (TS) 3.5.3, Emergency Core Cooling Systems (ECCE)[S]—Operating, from 72 hours to 7 days. The proposed change does not change the design, configuration, or method of operation of the plant. Therefore, this change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed change does not involve a significant reduction in a margin of safety. The proposed amendment will extend the Completion Time for one inoperable low pressure safety injection (LPSI) subsystem in Technical Specification (TS) 3.5.3, Emergency Core Cooling Systems (ECCE)[S]—Operating, from 72 hours to 7 days. The proposed change does not affect the limiting conditions for operation or their bases used in the deterministic analyses to establish the margin of safety. PSA evaluations were used to evaluate these changes. These evaluations demonstrate that the changes will be risk neutral or risk beneficial for PVNGS. These evaluations are detailed in CE NPSD–995, as supplemented by updated data provided in the attachment to this enclosure.

The NRC staff has reviewed the licensee's analysis and, based on that review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendments request involve no significant hazards consideration.

Local Public Document Room location: Phoenix Public Library, 1221 N. Central Avenue, Phoenix, Arizona 85004.

Attorney for licensee: Nancy C. Loftin, Esq., Corporate Secretary and Counsel, Arizona Public Service Company, P.O. Box 53999, Mail Station 9068, Phoenix, Arizona 85072–3999.

NRC Project Director: William H. Bateman.

Consolidated Edison Company of New York, Docket No. 50–247, Indian Point Nuclear Generating Unit No. 2, Westchester County, New York

Date of amendment request: January 22, 1999.

Description of amendment request: The proposed amendment would revise Technical Specifications (TSs) Sections 3.7.D.1.g, 6.2.2.h and 6.3.1. Specifically, (1) Section 3.7.D.1.g would be revised to correct an editorial error; (2) Section 6.2.2.h would be revised to change the senior reactor operator license requirement for the Operations Manager; and (3) Section 6.3.1 would modify the qualification requirement for the Operations Manager.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change [to Section 3.7.D.1.g] is administrative in nature. It involves making an editorial change to provide the correct functional description of the breakers. This change does not affect possible initiating events for accidents previously evaluated or alter the configurations or operation of the facility. The Limiting Safety Systems Settings and Safety Limits specified in the current Technical Specifications

remain unchanged. Therefore, the proposed change to the subject Technical Specification would not increase the probability or consequences of an accident previously evaluated.

The proposed change [to Section 6.2.2.h] is administrative in nature. The individual who provides the day to day direction of the activities of the operating shift will still possess an SRO [Senior Reactor Operator] license and this proposed change is consistent with the statement in NUREG–1431, Section 5.2.2.f. This change does not affect possible initiating events for accidents previously evaluated or alter the configuration or operation of the facility. The Limiting Safety Systems Settings and Safety Limits specified in the current Technical Specifications remain unchanged. Therefore, the proposed change to the subject Technical Specification would not increase the probability or consequences of an accident previously evaluated.

The proposed change [to Section 6.3.1] is administrative in nature. The individual who provides the day to day direction of the activities of the operating shift will still possess an SRO license and this proposed change is consistent with the statement in NUREG–1431, Section 5.2.2.f. This change does not affect possible initiating events for accidents previously evaluated or alter the configuration or operation of the facility. The Limiting Safety Systems Settings and Safety Limits specified in the current Technical Specifications remain unchanged. Therefore, the proposed change to the subject Technical Specification would not increase the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

As stated above, the proposed change [to Section 3.7.D.1.g] is administrative in nature. The safety analysis of the facility remains complete and accurate. There are no physical changes to the facility and the plant conditions for which the design basis accidents have been evaluated are still valid. The operating procedures and emergency procedures are unaffected. Consequently, no new failure modes are introduced as a result of the proposed change. Therefore, the proposed change will not initiate any new or different kind of accident.

The proposed change [to Section 6.2.2.h] is administrative in nature. The safety analysis of the facility remains complete and accurate. There are no physical changes to the facility and the plant conditions for which the design basis accidents have been evaluated are still valid. The operating procedures and emergency procedures are unaffected. Consequently, no new failure modes are introduced as a result of the proposed changes. Therefore, the proposed change will not initiate any new or different kind of accident.

The proposed change [to Section 6.3.1] is administrative in nature. The safety analysis of the facility remains complete and accurate. There are no physical changes to the facility and the plant conditions for which the design basis accidents have been evaluated are still valid. The operating procedures and emergency procedures are unaffected. Consequently, no new failure modes are introduced as a result of the proposed changes. Therefore, the proposed change will not initiate any new or different kind of accident.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed change [to Section 3.7.D.1.g] is administrative in nature. Since there are no changes to the operation of the facility or physical design the Updated Final Safety Analysis Report (UFSAR) design basis, accident assumptions, or Technical Specification Bases are not affected. Therefore, the proposed changes will not result in a reduction in the margin of safety.

The proposed change [to Section 6.2.2.h] is administrative in nature. Since there are no changes to the operation of the facility or physical design the Updated Final Safety Analysis Report (UFSAR) design basis, accident assumptions, or Technical Specification Bases are not affected. Therefore, the proposed changes will not result in a reduction in the margin of safety.

The proposed change [to Section 6.3.1] is administrative in nature. Since there are no changes to the operation of the facility or physical design the Updated Final Safety Analysis Report (UFSAR) design basis, accident assumptions, or Technical Specification Bases are not affected. Therefore, the proposed changes will not result in a reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York 10610.

Attorney for licensee: Brent L. Brandenburg, Esq., 4 Irving Place, New York, New York 10003.

NRC Project Director: S. Singh Bajwa, Director.

Consolidated Edison Company of New York, Docket No. 50–247, Indian Point Nuclear Generating Unit No. 2, Westchester County, New York

Date of amendment request: January 22, 1999.

Description of amendment request: The proposed amendment would revise Technical Specifications (TSs) Section 4.3. Specifically, the revision would permit the reactor coolant system (RCS) leak test to be performed at normal operating pressure after it has been closed following normal opening in lieu of a hydrostatic test being performed at 2335 psig.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed license amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated. The change proposes a system leakage test for the RCS that is comparable to the hydrostatic test that it replaces, as acknowledged by the NRC approval of ASME Code Case N–498, "Alternative Rules for 10-Year Hydrostatic Pressure Testing for Class 1 and 2 Systems Section XI, Division 1," and the ASME [American Society for Mechanical Engineers] Boiler and Pressure Vessel Code, Section XI. [. . .] The proposed change to substitute a system leak test at normal operating pressure in lieu of the hydrostatic test at 2335 psig will minimize challenge to plant safety and demonstrate leak tightness of the RCS. Therefore, the proposed change would not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed license amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed changes do not involve the addition of any new or different type of equipment, nor do they involve the operation of equipment required for safe operation of the facility in a manner different from those addressed in the Updated Final Safety Analysis Report. [. . .] Based on industry experience, it is expected that any leaks would be discovered by the leak test at normal operating pressure.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed license amendment does not involve a significant reduction in a margin of safety. The proposed changes do not adversely affect performance of any safety related system or component, instrument operation, or safety system setpoints and do not result in increased severity of any of the accidents considered in the safety analysis. Although the current basis states that if the system does not leak at 2335 psig (operating pressure + 100 psig) it will be leak tight during normal operation, industry experience demonstrates that leaks are not discovered as a result of hydrostatic test pressure propagating a preexisting flaw through wall. In most cases, leaks are discovered when the system is at normal operating pressure. Also, testing will continue to be performed as required by the ASME Boiler and Pressure Vessel Code Section XI.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied.

Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York 10610.

Attorney for licensee: Brent L. Brandenburg, Esq., 4 Irving Place, New York, New York 10003.

NRC Project Director: S. Singh Bajwa, Director.

Florida Power and Light Company, Docket Nos. 50–250 and 50–251, Turkey Point Plant Units 3 and 4, Dade County, Florida

Date of amendment request: March 8, 1999.

Description of amendment request: The proposed amendments would delete certain requirements from Technical Specification (TS) Section 6.0 "Administrative Controls" that are adequately controlled by existing regulations, other than 10 CFR 50.36 and the TS. The amendments also relocate selected requirements from TS Section 6.0 to the licensee's controlled documents such as the Turkey Point Units 3 and 4 Updated Final Safety Analysis Report (UFSAR). The amendments also clarify certain provisions of TS Section 6.0. The proposed changes are to relocate, revise, delete, or clarify the following provisions of the TS:

Existing TS section	Subject	Proposed change
6.2.2.f	Administrative Controls on Working Hours of Plant Staff	Partly delete, partly relocate within TS.
Table 6.2–1	Minimum Shift Crew Composition	Clarify.
6.2.3	Shift Technical Advisor	Clarify.
6.4	Training	Delete.
6.5	Review and Audit	Relocate to UFSAR.
6.6	Reportable Event Action	Partly delete, partly relocate to UFSAR.
6.8.2	Review and Approval of Procedures	Relocate to UFSAR.
6.8.3	Temporary Changes to Procedures	Relocate to UFSAR.
6.8.4.b	In-Plant Radiation Monitoring	Relocate to UFSAR.
6.8.4.g	Radiological Environmental Monitoring Program	Relocate to UFSAR.
6.10	Record Retention	Relocate to UFSAR.
6.11	Radiation Protection Program	Relocate to UFSAR.
6.12	High Radiation Area	Clarify.
6.13	Process Control Program (PCP)	Relocate to UFSAR.
6.14	Offsite Dose Calculation Manual (ODCM)	Revise to reflect changes to 6.5 & 6.10.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Operation of the plant in accordance with the proposed amendments would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed amendments do not involve a significant increase in the probability or consequences of an accident previously evaluated because the proposed changes are administrative in nature. These proposed changes will not involve a significant increase in the probability or consequences of an accident previously evaluated because they do not affect assumptions contained in plant safety analyses, the physical design and/or operation of the plant, nor do they affect Technical Specifications that preserve safety analysis assumptions. None of the proposed changes involve a physical modification to the plant, a new mode of operation or a change to the UFSAR transient analyses. No Limiting Condition for Operation, ACTION statement or Surveillance Requirement is affected by any of the proposed changes. Also, these proposed changes, in themselves, do not reduce the level of qualification or training such that personnel requirements would be decreased. Further, the Proposed changes do not alter the design, function, or operation of any plant component. Therefore, the proposed changes do not affect the probability or consequences of accidents previously evaluated.

2. Operation of the plant in accordance with the proposed amendments would not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated. The changes being proposed are administrative in nature and do not affect assumptions contained in plant safety analyses, the physical design and/or modes of plant operation defined in the plant operating license, or Technical Specifications that preserve safety analysis assumptions. The proposed changes do not introduce a new mode of plant operation or surveillance requirement, nor involve a physical modification to the plant. The proposed changes are administrative in nature. The changes propose to revise, delete, or relocate the stated administrative control provisions from the TS to the UFSAR whereby adequate control of information is maintained. Furthermore, the proposed changes do not alter the design, function, or operation of any plant components. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Operation of the plant in accordance with the proposed amendments would not involve a significant reduction in a margin of safety.

The proposed changes do not involve a significant reduction in a margin of safety because they are administrative in nature. The operating limits and functional capabilities of the affected systems, structures, and components are unchanged by the proposed amendments. None of the proposed changes involve a physical modification to the plant, a new mode of operation or a change to the UFSAR transient analyses. No Limiting Condition for Operation, ACTION statement, or Surveillance Requirement is affected. Additionally, the proposed changes do not alter the scope of equipment currently required to be OPERABLE or subject to surveillance testing, nor does the proposed change affect any instrument setpoints or equipment safety functions. Therefore, the change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Florida International University, University Park, Miami, Florida 33199.

Attorney for licensee: M.S. Ross, Attorney, Florida Power & Light, P.O. Box 14000, Juno Beach, Florida 33408–0420.

NRC Project Director: Cecil O. Thomas.

GPU Nuclear, Inc. etal., Docket No. 50–219, Oyster Creek Nuclear Generating Station, Ocean County, New Jersey

Date of amendment request: December 23, 1998.

Description of amendment request: The proposed Technical Specification (TS) change request will change the surveillance frequency for verifying the operability of motor-operated isolation valves and condensate makeup valves in the Isolation Condenser TS 4.8.A.1 and Bases page from once per month to once per 3 months.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed TS change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed surveillance interval change does not alter the actual surveillance requirements, nor does it alter the limits and restrictions on plant operations. The reliability of systems and components relied upon to prevent or mitigate the consequences of accidents previously evaluated is not degraded by the proposed change to the surveillance interval. Assurance of system and equipment availability is maintained. The proposed change does not alter any system or equipment configuration.

Based on the above, the proposed change does not significantly increase the probability or consequences of a[n] accident previously evaluated.

2. The proposed TS change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed surveillance interval change does not alter the actual surveillance requirements, nor does it alter the limits and restrictions on plant operations. Assurance of system and equipment availability is maintained. The proposed change does not alter any system or equipment configuration nor does it introduce any new mechanisms which could contribute to the creation of a new or different kind of accident than previously evaluated.

3. The proposed TS changes do not involve a significant reduction in a margin of safety.

The proposed change extends the surveillance interval for verifying the operability of Isolation Condenser motor-operated isolation valves and condensate makeup valves from once per month to once per three months. The proposed change does not alter the actual surveillance requirements, the limits and restrictions on plant operations nor the design, function or manner of operation of any structures, systems or components. System availability and reliability are maintained. Accordingly, the proposed TS change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Ocean County Library, Reference Department, 101 Washington Street, Toms River, NJ 08753.

Attorney for licensee: Ernest L. Blake, Jr., Esquire, Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: Elinor G. Adensam.

GPU Nuclear, Inc. et al., Docket No. 50–219, Oyster Creek Nuclear Generating Station, Ocean County, New Jersey

Date of amendment request: February 12, 1999.

Description of amendment request: The proposed Technical Specification (TS) change will delete the organizational chart and the related organizational references from the Appendix B Environmental TS and revise the appearance and format of the Environmental TS.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated because deletion of the organization charts and other organizational references in the [Environmental Technical Specifications] ETS does not affect plant operation. GPU Nuclear will continue to inform the NRC of organizational changes through other required controls.

2. The proposed change does not create the possibility of a new or different type of accident than previously evaluated because the proposed change is administrative in nature, and no physical alteration of plant configuration, changes to setpoints or operating parameters are proposed.

3. The proposed change does not involve a significant reduction in the margin of safety because it does not alter the design, function or manner of operation of any structures, systems or components. Organizational structure or its representation does not directly impact the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Ocean County Library, Reference Department, 101 Washington Street, Toms River, NJ 08753.

Attorney for licensee: Ernest L. Blake, Jr., Esquire, Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: Elinor G. Adensam.

IES Utilities Inc., Docket No. 50–331, Duane Arnold Energy Center, Linn County, Iowa.

Date of amendment request: February 18, 1999.

Description of amendment request: The proposed amendment would revise Duane Arnold Energy Center (DAEC) Technical Specification (TS) Table 3.3.6.1–1, "Primary Containment Isolation Instrumentation," by deleting the manual initiation function of the high pressure coolant injection (HPCI) system and reactor core isolation cooling (RCIC) system isolation. A related condition as well as corresponding surveillance requirements and bases would also be deleted. Thus, the change would (1) revise Table 3.3.6.1–1 by removing items 3j. and 4.j.; (2) revise Note 2 to Surveillances to Licensing Condition for Operation (LCO) 3.3.6.1 by deleting information regarding items 3 j. and 4.j.; and (3) revise LCO 3.3.6.1 by removing Condition G and Surveillance Requirement 3.3.6.1.10.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

After reviewing this proposed amendment, we [the licensee] have concluded:

1. The proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated. The Manual Initiation Function for HPCI and RCIC Isolation is not considered to be an initiator for any accident previously evaluated in the UFSAR. Therefore, this change does not involve a significant increase in the probability of any previously evaluated accidents. The Manual Initiation push button channels introduce signals into HPCI and RCIC System isolation logics that are redundant to the automatic protective instrumentation and provide manual isolation capability only if a system initiation signal is present. Technical Specification Section 3.3.6.1 Condition G requires isolation of the System flowpath, which renders the System inoperable and reduces the availability of the System due to the failure of a manually initiated isolation, an isolation which is not assumed in any transient or accident analysis in the UFSAR. Removal of the Manual Initiation Function

for HPCI and RCIC from the Primary Containment Isolation Instrumentation Section of Technical Specifications does not affect the automatic protective instrumentation and the automatic isolation capability. Therefore, this change does not significantly increase the consequences of a previously analyzed accident.

2. The proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed change introduces no new mode of plant operation and does not involve physical modification to the plant. Therefore, it does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed amendment will not involve a significant reduction in a margin of safety. The proposed change deletes the Manual Initiation Function from Technical Specifications, but no significant reduction in a margin of safety is involved. Technical Specification Section 3.3.6.1 Condition G requires isolation of the System flowpath, which renders the System inoperable and reduces the availability of the System due to the failure of a manually initiated isolation, an isolation that is not assumed in any transient or accident analysis in the UFSAR. Removal of the Manual Initiation Function for HPCI and RCIC from the Primary Containment Isolation Instrumentation Section of Technical Specifications does not affect the automatic protective instrumentation and the isolation capability. This change is acceptable based on the fact that the Manual Initiation Function is not assumed in any accident or transient analysis in the UFSAR.

Based upon the above, we [licensee] have determined that the proposed amendment will not involve a significant hazards consideration.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Cedar Rapids Public Library, 500 First Street, SE., Cedar Rapids, IA 52401.

Attorney for licensee: Jack Newman, Al Gutterman, Morgan, Lewis & Bockius, 1800 M Street, NW., Washington, DC 20036–5869.

NRC Project Director: T.J. Kim, Acting.

Nebraska Public Power District, Docket No. 50–298, Cooper Nuclear Station, Nemaha County, Nebraska

Date of amendment request: March 1, 1999.

Description of amendment request: The proposed amendment would change the Cooper Nuclear Station (CNS) Technical Specifications (TSs) to revise the calibration frequency of the reactor recirculation flow transmitters from once every 184 days to once every 18 months. This calibration is required as part of TS Surveillance Requirement (SR) 3.3.1.1.10.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated. Changing the calibration frequency of the recirculation loop flow transmitters from 184 days to 18 months may increase the amount of drift experienced by the transmitters. However, CNS calculation (NEDC 98–024 [forwarded by letter dated March 10, 1999]) takes into account the 18 month calibration intervals. This calculation, performed in accordance with the General Electric (GE) setpoint methodology for CNS, demonstrates that the expected drift is not significant, and is consistent with past operating experience. Changing the calibration frequency of the flow transmitters does not change any of the precursors assumed in the accident analysis. Therefore, changing the calibration frequency for flow transmitters from 184 days to 18 months does not involve a significant increase in the probability of an accident previously evaluated in the USAR [Updated Safety Analysis Report].

The proposed change will not create the possibility of a new or different kind of accident than evaluated in the USAR. The proposed change does not result in any physical change to plant structures, systems, or components. The proposed change does not alter the form, fit, or function of any equipment or components credited in the accident analyses described in the USAR. Therefore, changing the test frequency does not create the possibility of a new or different kind of accident.

The proposed change will not involve a significant reduction in a margin of safety. This conclusion is based on the fact that the proposed change is consistent with the drift assumptions used in CNS approved calculation (NEDC 98–024). The calibration frequency of 18 months is consistent with the operating practices prior to conversion to Improved Technical Specifications, and is consistent with past operating practice at CNS. Therefore, changing the calibration frequency from 184 days to 18 months does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Auburn Memorial Library, 1810 Courthouse Avenue, Auburn, Nebraska 68305.

Attorney for licensee: Mr. John R. McPhail, Nebraska Public Power District, Post Office Box 499, Columbus, Nebraska 68602–0499.

NRC Project Director: George Dick, Acting.

Northeast Nuclear Energy Company (NNECO), et al., Docket Nos. 50–336 and 50–423, Millstone Nuclear Power Station, Unit Nos. 2 and 3, New London County, Connecticut

Date of amendment request: March 5, 1999.

Description of amendment request: The proposed amendment would relocate certain Technical Specification (TS) Section 6.0 administrative controls to the NRC-approved Northeast Utilities Quality Assurance Program (NUQAP) Topical Report. Specifically, Sections 6.2.3 (Unit 3 only), 6.5, 6.6 (partial), 6.7 (partial), and 6.10. The proposed amendment would also delete parts of Section 6.6 and 6.7 because their requirements are duplicated in existing regulations or elsewhere in the TS. In addition, the proposed amendment would modify the table of contents and other TS sections to incorporate the aforementioned changes (e.g., correct references).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

In accordance with 10 CFR 50.92, NNECO has reviewed the attached proposed changes and has concluded that they do not involve a Significant Hazards Consideration (SHC). The basis for this conclusion is that the three criteria of 10 CFR 50.92 are not compromised. The proposed changes are not a SHC because the proposed change will not:

1. Involve a significant increase in the probability or consequence of an accident previously evaluated.

No design basis accidents are affected by these proposed changes. The proposed changes relocate portions of the Technical Specifications to the NUQAP Topical Report or remove duplicate sections and are being proposed to eliminate the need for a T.S. change each time there is a related change in the administrative controls for the site.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

There are no changes in the way the plant is operated due to these revisions. The potential for an unanalyzed accident is not created. There is no impact on plant response, and no new failure modes are introduced. The proposed deletions and

editorial changes have no impact on safety limits or design basis accidents, and have no potential to create a new or unanalyzed event.

3. Involve a significant reduction in a margin of safety.

These changes do not directly affect any protective boundaries nor do they impact the safety limits for the protective boundaries. These proposed changes relocate portions of the administrative controls to the NUQAP Topical Report or are editorial in nature. Therefore, there is no reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Learning Resources Center, Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, Connecticut, and the Waterford Library, ATTN: Vince Juliano, 49 Rope Ferry Road, Waterford, Connecticut.

Attorney for licensee: Lillian M. Cuoco, Esq., Senior Nuclear Counsel, Northeast Utilities Service Company, P.O. Box 270, Hartford, Connecticut.

NRC Project Director: Elinor G. Adensam.

PECO Energy Company, Docket No. 50–353, Limerick Generating Station, Unit 2, Montgomery County, Pennsylvania

Date of amendment request: March 11, 1999.

Description of amendment request: The proposed revision to the Technical Specifications (TSs) involves a change to TS Section 2.1 and its associated TS Bases to revise the minimum critical power ratio (MCPR) Safety Limits for Cycle 6.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed TS changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The revised MCPR Safety Limits for LGS Unit 2 Technical Specifications, and their use to determine cycle-specific thermal limits, have been calculated using NRC-approved methods (i. e, GESTAR–II, Rev. 13) and are based on LGS, Unit 2, Cycle 6 specific inputs. The use of these methods assures that the SLMCPR [safety limit minimum critical power ratio] value is within the existing design and licensing basis, and cannot increase the probability or severity of an accident.

The basis for the MCPR Safety Limit calculation is to ensure that greater than 99.9 percent of all fuel rods in the core avoid transition boiling if the limit is not violated. The MCPR Safety Limit preserves the existing margin to transition boiling and fuel damage in the event of a postulated accident. The probability of fuel damage is not increased.

Therefore, the proposed TS changes do not involve an increase in the probability or consequences of an accident previously evaluated.

2. The proposed TS changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The MCPR Safety Limit is a Technical Specification numerical value designed to ensure that fuel damage from transition boiling does not occur as a result of the limiting postulated accident. The MCPR Safety Limit is not an accident initiator; therefore, it cannot create the possibility of any new type of accident. The new MCPR Safety Limits are calculated using NRC-approved methods (i.e., GESTAR–II, Rev. 13) and are based on LGS, Unit 2, Cycle 6 specific inputs.

Therefore, the proposed TS changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed TS changes do not involve a significant reduction in the margin of safety.

The margin of safety as defined in the TS Bases will remain the same. The new MCPR Safety Limits are calculated using NRC-approved methods (i.e., GESTAR–II, Rev. 13), which are in accordance with the current fuel design and licensing criteria, and are based on LGS, Unit 2, Cycle 6 specific inputs. The MCPR Safety Limit remains high enough to ensure that greater than 99.9 percent of all fuel rods in the core will avoid transition boiling if the limit is not violated, thereby preserving the fuel cladding integrity.

Therefore, the proposed TS changes do not involve a reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Pottstown Public Library, 500 High Street, Pottstown, PA 19464.

Attorney for licensee: J. W. Durham, Sr., Esquire, Sr. V.P. and General Counsel, PECO Energy Company, 2301 Market Street, Philadelphia, PA 19101.

NRC Project Director: Elinor G. Adensam.

PP&L, Inc., Docket No. 50–387, Susquehanna Steam Electric Station, Unit 1, Luzerne County, Pennsylvania

Date of amendment request: March 12, 1999.

Description of amendment request: The amendment would modify the Susquehanna Steam Electric Station, Unit 1, Technical Specifications Table 3.3.5.1–1 "Emergency Core Cooling System Instrumentation." The change updates the allowable values for both the Core Spray (CS) and Low Pressure Coolant Injection System (LPCI) "Reactor Steam Dome Pressure—Low" functions for initiation and injection permissive. Specifically, the allowable values are being changed from a specified minimum pressure to a specified allowable pressure band. This more restrictive allowable value range will prevent CS and LPCI system overpressurization while still permitting injection to prevent fuel clad temperature limits from being exceeded.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

This proposal does not involve an increase in the probability or consequences of an accident previously evaluated. The proposed amendment changes the "Reactor Steam Dome Pressure-Low" Allowable Values so to provide further assurance that the Core Spray and RHR systems will perform their LOCA [Loss-of-coolant accident] design basis function.

The functional design basis of the Core Spray and LPCI is to inject water into the reactor vessel to cool the core during a LOCA by opening the Core Spray and LPCI injection valves when reactor pressure drops below the reactor vessel low pressure permissive. The upper analytical limit for the permissive is the Core Spray and LPCI systems' maximum design pressure, and the lower analytical limit is the lowest pressure which allows injection to prevent exceeding the fuel cladding temperature limit. The new allowable values were selected to lie within the upper and lower limits to ensure there will be no change in the required logic or functions of the Core Spray and LPCI systems. These new values do not affect the LOCA or its "limiting fault" frequency of occurrence and do not introduce any new accidents or malfunctions of equipment important to safety. Since they do not affect the LOCA, they do not change the probability of occurrence of the LOCA. The new allowable values do not change the logic or function of the reactor vessel low pressure permissive. These new values simply provide the basis for which the associated pressure

instruments are to be set to ensure proper operation of Core Spray and LPCI within the design pressures as described above. Therefore, the change in allowable values does not increase the probability of occurrence or the consequences of an accident or malfunction of equipment important to safety.

Based upon the analysis presented above, PP&L [PP&L, Inc.] concludes that the proposed action does not involve an increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

This proposal does not create the probability of a new or different type of accident from any accident previously evaluated. The new allowable values do not change any plant systems, structures, or components, nor do they change any existing or create any new Core Spray and LPCI logic or functions. The new allowable values were selected to ensure the required operation of the Core Spray and LPCI systems within the design pressures described above.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in the margin of safety.

The change does not involve a reduction in the margin of safety. Technical Specification Bases Section B3.3.5.1 9 (ECCS Instrumentation) identifies that the low reactor steam dome pressure signals are used as permissives for operation of the low pressure ECCS subsystems. The new allowable values were selected so to not impact the logic, redundancy, operability or surveillance requirements for these subsystems. The new allowable values maintain the margin requirements that the Core Spray and LPCI system pressures such that they do not exceed their system maximum design pressures and that system pressures are high enough to ensure that the ECCS injection prevents the fuel peak cladding temperature from exceeding the limits of 10CFR50.46.

The margin of safety is unaffected by the proposed changes.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(C) are satisfied. Therefore, the NRC staff proposed to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, PA 18701.

Attorney for licensee: Bryan A. Snapp, Esquire, Assoc. General Counsel, PP&L, Inc., 2 North Ninth St., GENTW3, Allentown, PA 18101–1179.

NRC Project Director: Elinor G. Adensam.

PP&L, Inc., Docket No. 50–387, Susquehanna Steam Electric Station, Unit 1, Luzerne County, Pennsylvania

Date of amendment request: March 12, 1999.

Description of amendment request: This proposed amendment would revise the minimum critical power ratio safety limit in Technical Specification (TS) Section 2.1.1.2. Also, the proposed amendment would modify the references in TS Section 5.6.5 in order to include only those references that directly support the generation of the Core Operating Limit and to remove the reference for the Lead Use Assemblies, which will be discharged during the next Unit 1 refueling outage.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The applicable sections of the FSAR are Chapters 4.4 and 15. FSAR Chapter 4.4 describes the MCPR Safety Limit, and Chapter 15 describes the transient and accident analyses. The reference to be added to Section 5.6.5 of the Unit 1 Technical Specifications describes a NRC approved critical power correlation for ATRIUM™-10 fuel. This correlation is appropriate for use in conservative methodologies for generating MCPR Safety Limits and MCPR Operating Limits to assure safe operation of Unit 1 with ATRIUM™-10 fuel. A discussion of the impact of the proposed Technical Specification change is provided below.

The proposed change in critical power correlation does not physically affect the plant or its systems. Thus, it does not increase the probability of an accident previously evaluated.

A Unit 1 Cycle 12 MCPR Safety Limit analysis was performed for PP&L by SPC. This analysis used NRC approved methods described in ANF–524(P)(A), Revision 2 and Supplement 1 Revision 2. These methods will be used each cycle to calculate the Unit 1 Safety Limits. For Unit 1 Cycle 12, the critical power performance of the 9×9–2 and ATRIUM™-10 fuel was determined using the NRC approved ANFB and ANFB–10 correlations, respectively. The SAFETY LIMIT MCPR calculations statistically combine uncertainties on feedwater flow, feedwater temperature, core flow, core pressure, core power distribution, and uncertainties in the Critical Power Correlation. The SPC analysis used cycle specific power distributions and calculated MCPR values such that at least 99.9% of the fuel rods are expected to avoid boiling transition during normal operation or anticipated operational occurrences. The resulting two-loop and single-loop MCPR Safety Limits are included in the proposed Technical Specification change. Thus, the cladding integrity and its ability to contain fission products are not adversely affected.

Analyses of the Single Loop Pump Seizure accident with the NRC approved ANFB–10 correlation for ATRIUM™-10 fuel (Reference 1) will be performed to demonstrate that the NRC acceptance criterion (i.e., small fraction of 10CFR100 dose limits) is met. Analyses will also be performed to validate the conclusion that two-loop transients are more severe than those events analyzed in single-loop operation.

Changes to Section 2.1.1.2 reflect the change from a flow dependent MCPR Safety Limit to a single value MCPR Safety Limit for two-loop operation and single-loop operation.

Changes to Reference 5.6.5 delete the methodology used for critical power analyses for ATRIUM™-10 fuel and add the NRC approved ANFB–10 methodology to the list of approved methodologies. Other changes in Reference 5.6.5 are administrative in nature because they delete references not directly related to the generation of Core Operating Limits. No new analysis approaches are used due to these changes.

Changes to BASES Sections 2.1.1 and 3.2.2 reflect the inclusion of the ANFB–10 critical power correlation. The range of the applicability of the ANFB–10 is valid for pressures > 571 psia and bundle mass fluxes > 0.115×10^6 lb/hr-ft^2. These values assure that a valid CPR calculation will result at or above 25% of rated core thermal power, that is, reactor steam dome pressure ≥ 785 psig and core flow ≥ 10 Mlbm/hr.

Changes to BASES Sections 3.2.1, 3.2.2, 3.2.3, and 3.2.4 reflect the removal of Reference 7 for the ABB LUAs, since the four LUAs will be discharged from Unit 1 during the Unit 1 11th Refueling and Inspection Outage.

The consequences of transients and accidents will remain within the criteria approved by the NRC. The methodology used to perform the analyses has been previously approved by the NRC. Thus, analysis results using the new methodology will continue to provide assurance that the reactor will perform its design safety function during normal operation and design basis events. Therefore, the proposed action does not involve an increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes to the Unit 1 Technical Specifications (MCPR Safety Limits, removal of methodology references not directly supporting the generation of Core Operating Limits, removal of the two references describing previously approved methodology for applying ANFB to ATRIUM™-10 fuel, removal of the ABB LUA reference, and inclusion of the ANFB–10 correlation reference) do not require any physical plant modifications, physically affect any plant components, or entail changes in plant operation. Removal of the Unit 1 Cycle 11 footnote allows Unit 1 Cycle 12 and future cycle operation with NRC

approved methodology. Thus, the proposed change does not create the possibility of a previously unevaluated operator error or a new single failure. The consequences of transients and accidents will remain within the criteria approved by the NRC. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The applicable Technical Specification Sections include 2.1.1.2 and 5.6.5.

The changes to the Unit 1 Technical Specifications discussed in Item 1 above do not require any physical plant modifications, physically affect any plant components, or entail changes in plant operation. Therefore, the proposed change will not jeopardize or degrade the function or operation of any plant system or component governed by Technical Specifications. The consequences of transients and accidents will remain within the criteria approved by the NRC. The proposed MCPR Safety Limits and use of the ANFB–10 critical power correlation described in the reference added to Section 5.6.5 do not involve a significant reduction in the margin of safety as currently defined in the Bases of the applicable Technical Specification sections.

Therefore, the proposed change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, PA 18701.

Attorney for licensee: Bryan A. Snapp, Esquire, PP&L, Inc., 2 North Ninth St., Allentown, PA 18101.

NRC Project Director: Elinor G. Adensam.

STP Nuclear Operating Company, Docket Nos. 50–498 and 50–499, South Texas Project, Units 1 and 2, Matagorda County, Texas

Date of amendment request: March 2, 1999.

Description of amendment request: The proposed amendment would clarify the use of a "check valve with flow through the valve secured" as a means to isolate an affected containment penetration (i.e., a penetration with an inoperable penetration barrier) in Technical Specification 3.6.3 Action b.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed change does not involve an increase in the probability or consequences of an accident previously evaluated. The proposed change does not involve any hardware changes. The proposed change will clarify Technical Specification 3.6.3 Action b to allow the use of a check valve with the flow through the valve secured as a means to isolate an inoperable containment penetration. This change is consistent with the changes identified in NUREG–1431, "Improved Standard Technical Specifications for Westinghouse Plants", Specification 3.6.3 (Containment Isolation Valves), which identifies check valves with flow through the valve secured as a type of deactivated automatic valve, and with 10 CFR 50 Appendix A General Design Criteria 55 and 56, which include the use of check valves as "automatic isolation valves". The proposed change will not affect the containment isolation valve OPERABILITY requirements or associated isolation time limits established in the Specifications. Therefore the proposed change will not affect any safety margin or safety limit applicable to the facility. Therefore no increase in the probability or consequences of any accident previously evaluated will occur.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed change will clarify Technical Specification 3.6.3 Action b to allow the use of a check valve with the flow through the valve secured as a means to isolate an inoperable containment penetration. The proposed change will not involve any physical change to plant systems, structures, or components (SSC). This change is consistent with the changes identified in NUREG–1431, "Improved Standard Technical Specifications for Westinghouse Plants", Specification 3.6.3 (Containment Isolation Valves), which identifies check valves with flow through the valve secured as a type of deactivated automatic valve, and with 10 CFR 50 Appendix A General Design Criteria 55 and 56, which include the use of check valves as "automatic isolation valves". The proposed change only provides clarification to the existing Specification 3.6.3, and will not affect the established containment isolation valve OPERABILITY requirements or associated isolation time limits. Since the proposed change does not impact operation of the facility as presently approved, no possibility exists for a new or different kind of accident from those previously evaluated.

3. Does this change involve a significant reduction in a margin of safety?

The proposed change will clarify Technical Specification 3.6.3 Action b to allow the use of a check valve with the flow through the valve secured as a means to isolate an inoperable containment penetration. This change is consistent with the changes identified in NUREG–1431, "Improved Standard Technical Specifications for Westinghouse Plants", Specification 3.6.3 (Containment Isolation Valves), which identifies check valves with flow through the valve secured as a type of deactivated automatic valve, and with 10 CFR 50 Appendix A General Design Criteria 55 and 56, which include the use of check valves as "automatic isolation valves". The proposed change only provides clarification to the existing Specification 3.6.3, and will not affect the established containment isolation valve OPERABILITY requirements or associated isolation time limits. The proposed change does not involve a significant reduction in a margin of safety because the ability to isolate containment in the event of a release of radioactive material to the containment atmosphere or pressurization of the containment will be maintained. The margin of safety is defined by the established containment isolation valve OPERABILITY requirements and associated isolation time limits. The proposed change does not alter these operating restrictions and the margin of safety which assures the ability to isolate containment is not affected.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the request for amendments involves no significant hazards consideration.

Local Public Document Room location: Wharton County Junior College, J. M. Hodges Learning Center, 911 Boling Highway, Wharton, Texas 77488.

Attorney for licensee: Jack R. Newman, Esq., Morgan, Lewis & Bockius, 1800 M Street, NW., Washington, DC 20036–5869.

NRC Project Director: George Dick, Acting.

STP Nuclear Operating Company, Docket Nos. 50–498 and 50–499, South Texas Project, Units 1 and 2, Matagorda County, Texas

Date of amendment request: March 9, 1999.

Description of amendment request: The amendment request proposes that reference to the Independent Safety Engineering Group be removed from Technical Specification requirements, with supporting changes to the Operations Quality Assurance Plan.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed amendment is a programmatic and administrative change that

does not physically alter safety-related systems, nor does it affect the way in which safety-related systems perform their functions. The functions assigned to the Independent Safety Engineering Group are addressed by other organizations. Because the design of the facility and system operating parameters are not being changed, the proposed amendment does not involve an increase in the probability or consequences of any accident previously evaluated.

The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed amendment is a programmatic and administrative change that does not physically alter safety-related systems, nor does it affect the way in which safety-related systems perform their functions. The functions assigned to the Independent Safety Engineering Group are addressed by other organizations. Because the design of the facility and system operating parameters are not being changed, the proposed amendment does not create the possibility of a new or different kind of accident previously evaluated.

The proposed change does not involve a significant reduction in a margin of safety.

The proposed amendment is a programmatic and administrative change that provides assurance that plant operations continue to be conducted in a safe manner. The functions assigned to the Independent Safety Engineering Group are addressed by other organizations. As stated above the proposed amendment does not physically alter safety-related systems, nor does it affect the way in which safety-related systems perform their functions. Because the design of the facility and system operating parameters are not being changed, the proposed amendment does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the request for amendments involves no significant hazards consideration.

Local Public Document Room location: Wharton County Junior College, J. M. Hodges Learning Center, 911 Boling Highway, Wharton, Texas 77488.

Attorney for licensee: Jack R. Newman, Esq., Morgan, Lewis & Bockius, 1800 M Street, NW., Washington, DC 20036–5869.

NRC Project Director: George F. Dick, Acting.

STP Nuclear Operating Company, Docket Nos. 50–498 and 50–499, South Texas Project, Units 1 and 2, Matagorda County, Texas

Date of amendment request: March 15, 1999 (Supplement to October 29, 1998).

Description of amendment request: The proposed amendments were submitted by application dated October 29, 1998, to relocate Technical Specification (TS) 3/4.7.9 requirements for snubbers to the Technical Requirements Manual. The Commission issued a Notice of Consideration of Issuance of Amendments regarding its proposed no significant hazards consideration determination that was published in the **Federal Register** on December 16, 1998 (63 FR 69346).

Subsequently, by letter dated March 15, 1999, supplemental information was submitted to include TS 6.10.3.l to be relocated to the Technical Requirements Manual. This information is being noticed to provide for public comment on the issue of no significant hazards consideration.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The supplement to the amendment request relocates the record keeping requirements of Technical Specification 6.10.3.l to the Technical Requirements Manual. The change does not involve a physical alteration of the plant (no new or different type of equipment will be installed) or make changes in the methods governing normal plant operation. The change will not impose different requirements, and adequate control of information will be maintained. This change will not alter assumptions made in the safety analysis and licensing basis.

The Technical Requirements Manual is incorporated in the South Texas Project Updated Final Safety Analysis Report and will be maintained pursuant to 10 CFR 50.59. In addition, snubber operability is addressed in existing surveillance procedures that are also controlled by 10 CFR 50.59 and subject to the change control provisions imposed by plant administrative procedures, which endorse applicable regulations and standards.

Therefore, the supplement to the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The supplement to the amendment request relocates the record keeping requirements of Technical Specification 6.10.3.l to the Technical Requirements Manual. The change does not involve a physical alteration of the plant (no new or different type of equipment will be installed) or make changes in the methods governing normal plant operation. The change will not impose different requirements, and adequate control of information will be maintained. This change will not alter assumptions made in the safety analysis and licensing basis.

The Technical Requirements Manual is incorporated in the South Texas Project Updated Final Safety Analysis Report and will be maintained pursuant to 10 CFR 50.59. In addition, snubber operability is addressed in existing surveillance procedures that are also controlled by 10CFR50.59 and subject to the change control provisions imposed by plant administrative procedures, which endorse applicable regulations and standards.

Therefore, the change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the change involve a significant reduction in a margin of safety?

The supplement to the amendment request relocates the record keeping requirements of Technical Specification 6.10.3.l to the Technical Requirements Manual. The relocated requirements remain the same as the existing Technical Specifications. The change will not reduce a margin of safety because it has no impact on any safety analysis assumptions. Future changes to the relocated requirements will be evaluated per the requirements of 10CFR50.59.

Therefore, the supplement will not result in a reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the request for amendments involves no significant hazards consideration.

Local Public Document Room location: Wharton County Junior College, J. M. Hodges Learning Center, 911 Boling Highway, Wharton, Texas 77488.

Attorney for licensee: Jack R. Newman, Esq., Morgan, Lewis & Bockius, 1800 M Street, NW., Washington, DC 20036–5869.

NRC Project Director: George F. Dick, Acting.

Wisconsin Public Service Corporation, Docket No. 50–305, Kewaunee Nuclear Power Plant, Kewaunee County, Wisconsin

Date of amendment request: February 15, 1999.

Description of amendment request: The proposed amendment would revise requirements of Technical Specifications Section 6, "Administrative Controls," related to (1) plant manager's responsibilities, (2) plant staff titles and organization, (3) offsite and onsite review committee (4) reportable events, and (5) actions required in event of a safety limit violation.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards

consideration, which is presented below:

The proposed amendment will not change the intent of the TS or decrease WPSC's management support or involvement in activities at the Kewaunee Plant. Furthermore, it will not result in a decrease in the engineering or technical support supplied by the plant staff or the corporate support staff. The proposed changes are administrative in nature. They primarily involve the relocation of existing requirements to owner controlled documents; therefore, there are no significant hazards associated with this change. As an administrative change this will not result in a significant increase in the probability of occurrence or consequences of an accident. As an administrative change this will not create the possibility of a new or different kind of accident from any previously analyzed. This administrative change relocates existing requirements, and therefore, will not involve a significant decrease in the margin of safety.

In addition, the staff analyzed the proposed changes in accordance with the provisions of 10 CFR 50.92. The proposed change will not:

1. Involve a significant increase in the probability or consequence of an accident previously evaluated.

The analyses for the previously evaluated accidents are presented in Chapter 14 of the Updated Safety Analysis Report. There are 19 postulated accidents addressed therein. The proposed amendment would not affect the safety analysis assumptions or analytical models used for any of these analyses. Also, the calculated dose consequences for analyzed accidents would be unaffected. Therefore the proposed changes do not involve a significant increase in the probability or consequence of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any previously evaluated.

The proposed accident does not involve any physical change to the design of the physicality, or operation of the facility outside the bounds of the existing analyses. Thus, there is no possibility of creating a new or different kind of accident.

3. Involve a significant reduction in the margin of safety.

The proposed changes do not involve any physical changes to any of the fission product barriers or to the design or operation of any safety systems. Also, no safety limits, limiting safety systems settings, limiting conditions for operation or testing requirements would be affected. Therefore, the proposed changes do not involve a significant reduction in the margin of safety.

Based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: University of Wisconsin, Cofrin Library, 2420 Nicolet Drive, Green Bay, WI 54311–7001.

Attorney for licensee: Bradley D. Jackson, Esq., Foley and Lardner, P.O. Box 1497, Madison, WI 53701–1497.

NRC Project Director: Cynthia A. Carpenter.

Yankee Atomic Electric Company, Docket No. 50–29, Yankee Nuclear Power Station, Franklin County, Massachusetts

Date of amendment request: March 17, 1999.

Description of amendment request: Licensee submitted a License Amendment request to delete administrative Technical Specification (TS) requirements related to overtime restrictions. The licensee stated it will provide appropriate constraints on excessive overtime in its Administrative Procedures.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposed changes are administrative in nature and simply eliminate outdated requirements from the YNPS Technical Specifications. As such the changes will not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated. The administrative nature of the changes will not affect safety-related systems or components or their mode of operation and therefore, will not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Create the possibility of a new or different accident from any previously evaluated. The proposed changes do not modify any plant systems or components and, therefore, do not create the possibility of a new or different accident from any previously evaluated.

3. Involve a significant reduction in the margin of safety. The changes are administrative in nature involving the deletion of outdated requirements in the technical specifications; therefore, there will be no reduction in the margin of safety.

Based on the considerations noted above, it is concluded that the proposed changes will not endanger the public health and safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Greenfield Community College, 1 College Drive, Greenfield, Massachusetts 01301.

Attorney for licensee: Thomas Dignan, Esquire, Ropes and Gray, One International Place, Boston, Massachusetts 02110–2624.

NRC Project Director: Seymour H. Weiss.

Yankee Atomic Electric Company, Docket No. 50–29, Yankee Nuclear Power Station, Franklin County, Massachusetts

Date of amendment request: March 17, 1999.

Description of amendment request: Licensee submitted a License Amendment request to transfer Technical Specification Sections 6.7—Procedures and Programs and 6.9—Record Retention to the Yankee Decommissioning Quality Assurance Program (YDQAP).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposed changes are administrative in nature. Administrative requirements in Sections 6.7 and 6.9 of the YNPS Technical Specifications are to be transferred to the YDQAP which is the current location of related administrative requirements. As such the changes will not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated. The administrative nature of the changes will not affect safety-related systems or components or their mode of operation and therefore, will not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Create the possibility of a new or different accident from any previously evaluated. The proposed changes do not modify any plant systems or components and, therefore, will not create the possibility of a new or different accident from any previously evaluated.

3. Involve a significant reduction in the margin of safety. The changes are administrative in nature involving the relocation of administrative requirements from one licensing document to another licensing document currently containing related requirements; therefore, there will be no significant reduction in the margin of safety.

Based on the considerations noted above, it is concluded that the proposed changes will not endanger the public health and safety.

The NRC staff has reviewed the licensee's analysis and, based on this

review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Greenfield Community College, 1 College Drive, Greenfield, Massachusetts 01301.

Attorney for licensee: Thomas Dignan, Esquire, Ropes and Gray, One International Place, Boston, Massachusetts 02110–2624.

NRC Project Director: Seymour H. Weiss.

Yankee Atomic Electric Company, Docket No. 50–29, Yankee Nuclear Power Station, Franklin County, Massachusetts

Date of amendment request: March 17, 1999.

Description of amendment request: Licensee submitted a License Amendment request to consolidate management positions and to transfer Technical Specification review and audit functions to the Yankee Decommissioning Quality Assurance Program (YDQAP).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposed changes are administrative in nature and reflect a streamlining of the YAEC/YNPS management structure and procedures consistent with the on-going requirement to complete the remaining scope of YNPS decommissioning safely and efficiently. As such the changes will not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated. The administrative nature of the changes will not affect safety-related systems or components or their mode of operation and therefore, will not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Create the possibility of a new or different accident from any previously evaluated. The proposed changes do not modify any plant systems or components and, therefore, will not create the possibility of a new or different accident from any previously evaluated.

3. Involve a significant reduction in the margin of safety. Elimination of the Manager of Operations position and the Plant Superintendent position will not eliminate any of the responsibilities or functions currently assigned to these positions. These responsibilities or functions will be reassigned to an appropriately qualified YAEC/YNPS manager, i.e., the Decommissioning Manager. This change and replacement of the PORC and the NSARC review and audit functions with an independent safety review and an IRAC are consistent with the significant reduction in the scope and the complexity of activities at YNPS as the facility moves into the later stages of the decommissioning effort; therefore, there will be no significant reduction in the margin of safety.

Based on the considerations noted above, it is concluded that the proposed changes will not endanger the public health and safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Greenfield Community College, 1 College Drive, Greenfield, Massachusetts 01301.

Attorney for licensee: Thomas Dignan, Esquire, Ropes and Gray, One International Place, Boston, Massachusetts 02110–2624.

NRC Project Director: Seymour H. Weiss.

Previously Published Notices of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices either because time did not allow the Commission to wait for this biweekly notice or because the action involved exigent circumstances. They are repeated here because the biweekly notice lists all amendments issued or proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the **Federal Register** on the day and page cited. This notice does not extend the notice period of the original notice.

Entergy Operations, Inc., Docket No. 50–368, Arkansas Nuclear One, Unit No. 2, Pope County, Arkansas

Date of application for amendment: February 24, 1999.

Brief description of amendment: The amendment would revise Technical Specification Table 3.3–1, "Reactor Protective Instrumentation," Action 2, for Arkansas Nuclear One, Unit No. 2. The proposed change would add a footnote to Action 2 that would allow startup and operation with the functional units associated with the Channel "D" ex-core nuclear instrumentation to be maintained in the bypassed or tripped condition following the restart from Refueling Outage 2R13. This footnote is intended to support normal plant operations until such time that the Channel "D" ex-core detector assembly can be restored to an operable status.

Date of publication of individual notice in **Federal Register**: March 8, 1999 (64 FR 11067).

Expiration date of individual notice: April 7, 1999.

Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, AR 72801.

Notice of Issuance of Amendments to Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document rooms for the particular facilities involved.

CBS Corporation, Docket No. 50–22, Westinghouse Test Reactor, Waltz Mill, Pennsylvania

Date of application for amendment: September 28, 1998 supplemented on November 17, 1998.

Brief description of amendment: This amendment changes the license to reflect the new legal name of the licensee for the Westinghouse Test Reactor to CBS Corporation.

Date of issuance: March 25, 1999.

Effective Date: March 25, 1999.

Amendment No: 9.

Facility License No. TR–2: This amendment changes the license.

Date of initial notice in **Federal Register**: December 16, 1998, (63 FR 69334).

The Commission has issued a Safety Evaluation for this amendment dated March 25, 1999.

No significant hazards consideration comments received: No.

Local Public Document: N/A.

Commonwealth Edison Company, Docket Nos. 50–237 and 50–249, Dresden Nuclear Power Station, Units 2 and 3, Grundy County, Illinois

Docket Nos. 50–254 and 50–265, Quad Cities Nuclear Power Station, Units 1 and 2, Rock Island County, Illinois

Docket Nos. 50–373 and 50–374, LaSalle County Station, Units 1 and 2, LaSalle County, Illinois

Date of application for amendments: December 17, 1998.

Brief description of amendments: The amendments revised the respective facility Technical Specifications (TS) by adding a new Limiting Condition for Operations that provided an administrative enhancement by allowing testing required to return equipment to service to be conducted under administrative controls.

Date of issuance: March 16, 1999.

Effective date: Immediately, to be implemented within 60 days.

Amendment Nos.: 172, 167; 184, 181; 132, 117.

Facility Operating License Nos. DPR–19, DPR–25, DPR–29, DPR–30, NPF–11 and NPF–18.

The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register**: January 27, 1999 (64 FR 4153) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 16, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: for Dresden, Morris Area Public Library District, 604 Liberty Street, Morris, Illinois 60450; for Quad Cities, Dixon Public Library, 221 Hennepin Avenue, Dixon, Illinois 61021; for LaSalle, the Jacobs Memorial Library, 815 North Orlando Smith Avenue, Illinois Valley Community College, Oglesby, Illinois 61348–9692.

Commonwealth Edison Company, Docket Nos. 50–373 and 50–374, LaSalle County Station, Units 1 and 2, LaSalle County, Illinois

Date of application for amendments: August 14, 1998, as supplemented on October 13 and December 23, 1998.

Brief description of amendments: The amendments revised the Technical Specifications (TSs) to reflect the use of Siemens Power Corporation (SPC) ATRIUM–9B fuel. Specifically, the amendments incorporate the following into the TSs: (1) new methodologies that will enhance operational flexibility and reduce the likelihood of future plant derates; (2) administrative changes that adopt Improved Standard Technical Specification (iSTS) language where appropriate; and (3) changes to the Minimum Critical Power Ratio.

Date of issuance: March 16, 1999.

Effective date: Immediately, to be implemented prior to startup of Cycle 9 for Unit 1 and prior to startup of Cycle 8 for Unit 2.

Amendment Nos.: 131, 116.

Facility Operating License Nos. NPF–11 and NPF–18: The amendments revised the TSs.

Date of initial notice in **Federal Register**: November 4, 1998 (63 FR 59588). The December 23, 1998, submittal provided additional clarifying information that did not change the initial proposed no significant hazards consideration determination. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 16, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: Jacobs Memorial Library, 815 North Orlando Smith Avenue, Illinois Valley Community College, Oglesby, Illinois 61348–9692.

Commonwealth Edison Company, Docket Nos. 50–254 and 50–265, Quad Cities Nuclear Power Station, Units 1 and 2, Rock Island County, Illinois

Date of application for amendments: August 14, 1998, as supplemented by letters dated October 13, 1998, and December 23, 1998.

Brief description of amendments: The amendments changed the Quad Cities Technical Specifications (TS) to reflect the use of Siemens Power Corporation (SPC) ATRIUM–9B fuel. Specifically, the amendments incorporate the following into the TS: (a) new methodologies that will enhance operational flexibility and reduce the likelihood of future plant derates; (b) administrative changes that eliminate the cycle-specific implementation of ATRIUM–9B fuel and adopt Improved Standard Technical Specification language where appropriate; and (c) changes to the Minimum Critical Power Ratio (MCPR).

The amendment for Unit 1 also reflects the removal of Unit 1 specific pages incorporated into Unit 1 TS by Amendment No. 182 and are no longer applicable. The August 14, 1998, application superseded an August 29, 1997, application in its entirety (63 FR 2274).

Date of issuance: March 17, 1999.

Effective date: Immediately, to be implemented within 60 days.

Amendment Nos.: 185 & 182.

Facility Operating License Nos. DPR–29, DPR–30: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register**: September 9, 1998 (63 FR 48258) and November 4, 1998 (63 FR 59588). The October 13, 1998, submittal changed a reference to a recently NRC-approved additive constant uncertainty (ACU) generic methodology for ATRIUM–9B fuel (ANF–1125 (P)(A), supplement 1, Appendix E) from Appendix D which provided an interim value for ACU. This change was noticed on November 4, 1998 (63 FR 48258). The December 23, 1998, submittal provided additional clarifying information that did not change the initial proposed no significant hazards consideration determination. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 17, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: Dixon Public Library, 221 Hennepin Avenue, Dixon, Illinois 61021.

Commonwealth Edison Company, Docket Nos. 50–254 and 50–265, Quad Cities Nuclear Power Station, Units 1 and 2, Rock Island County, Illinois

Date of application for amendments: November 30, 1998.

Brief description of amendments: The amendments changed the technical specifications (TSs) by decreasing the Allowed Outage Time (AOT) from 67 days to 14 days for the Safe Shutdown Makeup Pump (SSMP).

Date of issuance: March 26, 1999.

Effective date: Immediately, to be implemented within 60 days.

Amendment Nos.: 186 & 183.

Facility Operating License Nos. DPR–29 and DPR–30: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register**: January 13, 1999 (64 FR 2246).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 26, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: Dixon Public Library, 221 Hennepin Avenue, Dixon, Illinois 61021.

Duke Energy Corporation, Docket Nos. 50–269, 50–270, and 50–287, Oconee Nuclear Station, Units 1, 2, and 3, Oconee County, South Carolina.

Date of application of amendments: September 30, 1998.

Brief description of amendments: The amendments increase the maximum fuel rod internal pressure in the spent fuel pool from 1200 pounds per square inch gauge (psig) to 1300 psig by changing the Updated Final Analysis Report (UFSAR) reference to the computer code used to determine the fuel rod internal pressure (TACO3 computer code would be added) in UFSAR Chapter 15. In addition, the amendments justify not increasing the overall effective decontamination factor for iodine as a consequence of a fuel handling accident and change the terminology used in the UFSAR from "fuel assembly gap gas pressure" to "fuel rod internal pressure."

Date of Issuance: March 26, 1999.

Effective date: As of the date of issuance and shall be implemented within 30 days from the date of issuance.

Amendment Nos.: Unit 1–301; Unit 2–301; Unit 3–301.

Facility Operating License Nos. DPR–38, DPR–47, and DPR–55: Amendments authorized change(s) to the FSAR.

Date of initial notice in **Federal Register**: November 4, 1998 (63 FR 59590).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 26, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: Oconee County Library, 501 West South Broad Street, Walhalla, South Carolina.

Entergy Operations, Inc., Docket No. 50–368, Arkansas Nuclear One, Unit No. 2, Pope County, Arkansas.

Date of application for amendment: February 25, 1999.

Brief description of amendment: This amendment revises Technical Specification (TS) Table 3.3–1, "Reactor Protective Instrumentation," Action 2, for Arkansas Nuclear One, Unit No. 2 (ANO–2). This change adds a footnote to Action 2 that allows startup and operation with the functional units associated with the Channel "D" ex-core nuclear instrumentation to be maintained in the bypassed or tripped condition following the restart from Refueling Outage 2R13. This footnote is intended to support normal plant operations until such time that the Channel "D" ex-core detector assembly can be restored to an operable status. This footnote will be in effect for a time period not to extend beyond Mid-Cycle Outage 2P99, which is the next planned entry into cold shutdown conditions for ANO–2. A Notice of Enforcement Discretion (NOED) related to TS Table 3.3–1, Action 2, was issued verbally on February 23, 1999. The NOED is documented in a letter dated February 25, 1999.

Date of issuance: March 23, 1999.

Effective date: As of the date of issuance.

Amendment No.: 202.

Facility Operating License No. NPF–6: Amendment revised the Technical Specifications.

Public comments requested as to proposed no significant hazards consideration (NSHC): Yes (64 FR 11067 dated March 8, 1999). The notice provided an opportunity to submit comments on the Commission's proposed NSHC determination. No comments have been received. The notice also provided for an opportunity to request a hearing by April 7, 1999, but indicated that if the Commission makes a final NSHC determination, any such hearing would take place after issuance of the amendment.

The Commission's related evaluation of the amendment, finding of exigent circumstances, and final NSHC determination are contained in a Safety Evaluation dated March 23, 1999.

Attorney for Licensee: Nicholas S. Reynolds, Esquire, Winston and Strawn, 1400 L Street, NW., Washington DC 20005–3502.

Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801.

FirstEnergy Nuclear Operating Company, Docket No. 50–440, Perry Nuclear Power Plant, Unit 1, Lake County, Ohio.

Date of application for amendment: November 2, 1995, and as supplemented by submittal dated January 7, 1999.

Brief description of amendment: This amendment revises technical specification requirements for handling irradiated fuel in the Primary Containment and the Fuel Handling Building, and selected specifications associated with performing core alterations.

Date of issuance: March 11, 1999.

Effective date: March 11, 1999.

Amendment No.: 102.

Facility Operating License No. NPF–58: This amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: December 6, 1995 (60 FR 62497).

The supplemental information contained clarifying information and did not change the initial no significant hazards consideration determination and did not change the scope of the original application.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 11, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: Perry Public Library, 3753 Main Street, Perry, OH 44081.

FirstEnergy Nuclear Operating Company, Docket No. 50–440, Perry Nuclear Power Plant, Unit 1, Lake County, Ohio.

Date of application for amendment: August 27, 1996, as supplemented by submittals dated April 9, 1997, July 22, 1998, December 3, 1998, and January 18, 1999.

Brief description of amendment: This amendment revised Technical Specification 3.6.1.3, "Primary Containment Isolation Valves (PCIVs)," and 3.6.1.9, "Main Steam Isolation Valve (MSIV) Leakage Control System (LCS)." The amendment reflects implementation of the revised accident source term in NUREG–1465, "Accident Source Terms for Light-Water Nuclear Power Plants" and permits the licensee to eliminate the MSIV LCS and increase the allowable leak rates of the MSIVs.

Date of issuance: March 26, 1999:

Effective date: March 26, 1999.

Amendment No.: 103.

Facility Operating License No. NPF–58: This amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: October 7, 1998 (63 FR 53958).

The supplemental information contained clarifying information and did not change the initial no significant hazards consideration determination and did not expand the scope of the original application.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 26, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: Perry Public Library, 3753 Main Street, Perry, OH 44081.

FirstEnergy Nuclear Operating Company, Docket No. 50–440, Perry Nuclear Power Plant, Unit 1, Lake County, Ohio.

Date of application for amendment: October 27, 1998.

Brief description of amendment: This amendment revised the minimum critical power ratio (MCPR) safety limit contained in TS 2.1.1.2. In addition, the amendment removes a note to TS 2.1.1.2 and a footnote to TS 5.6.5.b that references MCPR safety limit values as cycle specific.

Date of issuance: March 26, 1999:

Effective date: March 26, 1999.

Amendment No.: 104.

Facility Operating License No. NPF–58: This amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: December 2, 1998 (63 FR 66603).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 26, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: Perry Public Library, 3753 Main Street, Perry, OH 44081.

FirstEnergy Nuclear Operating Company, Docket No. 50–440, Perry Nuclear Power Plant, Unit 1, Lake County, Ohio.

Date of application for amendment: September 9, 1998, as supplemented by submittals dated January 6, March 4, and March 18, 1999.

Brief description of amendment: This amendment revises the design and licensing basis of containment isolation valves in the feedwater system. The amendment revises (1) Surveillance Requirement 3.6.1.3.11 of Technical Specification (TS) 3.6.1.3, "Primary Containment Isolation Valves (PCIVs)" to exclude the feedwater check valves from the hydrostatic test program, (2) TS 5.5.2, "Primary Coolant Sources Outside Containment," to stipulate that water leakage past the feedwater motor-operated containment isolation valves and the reactor water cleanup system return to feedwater line is added to the program, and (3) TS 5.5.12, "Primary Containment Leakage Rate Testing Program," to state that the feedwater check valves will be tested in accordance with the Inservice Testing Program (TS 5.5.6).

Date of issuance: March 26, 1999.

Effective date: March 26, 1999.

Amendment No.: 105.

Facility Operating License No. NPF–58: This amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: October 21, 1998 (63 FR 56262).

The supplemental information contained clarifying information and did not change the initial no significant hazards consideration determination and did not expand the scope of the original Federal Register notice.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 26, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: Perry Public Library, 3753 Main Street, Perry, OH 44081.

Florida Power and Light Company, et al., Docket Nos. 50–335 and 50–389, St. Lucie Plant, Unit Nos. 1 and 2, St. Lucie County, Florida.

Date of application for amendments: August 24, 1998.

Brief description of amendments: These amendments change the St. Lucie Technical Specifications (TSs) by both removing obsolete license conditions and revising the TSs. The amendments change the TSs to modify the St. Lucie Unit 1 TSs to add components, not previously described in the TSs, to the list of components that comprise an operable control room emergency ventilation system, to modify the Unit 1 and Unit 2 TSs surveillance requirements to clarify component operations, not previously described, that must be verified in response to a containment sump recirculation actuation signal, to delete from the facility operating license No. NPF–16 for Unit 2, license condition 2.C.19 to reflect the completion of the Unit 1 spent fuel pool re-rack and delete license condition 2.I to reflect the resolution of litigation and to modify license condition 2.B.5 to restore the original syntax of the license condition and license condition 2.F to update the references to current license conditions.

Date of Issuance: March 17, 1999.

Effective Date: These amendments shall be implemented within 30 days of receipt.

Amendment Nos.: 160 and 99.

Facility Operating License Nos. DPR–67 and NPF–16: Amendments revised the TSs.

Date of initial notice in **Federal Register**: September 23, 1998 (63 FR 50937).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 17, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: Indian River Junior College Library, 3209 Virginia Avenue, Fort Pierce, Florida 34954–9003.

GPU Nuclear, Inc. et al., Docket No. 50–219, Oyster Creek Nuclear Generating Station, Ocean County, New Jersey.

Date of application for amendment: September 3, 1998.

Brief description of amendment: The amendment revises Technical Specifications 3.4.A.10.e and 3.5.a.2.e to incorporate a Condensate Storage Tank water level of greater than 35 feet.

Date of Issuance: March 17, 1999.

Effective date: March 17, 1999, to be implemented within 30 days

Amendment No.: 204.

Facility Operating License No. DPR–16. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: February 10, 1999 (64 FR 6698).

The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated March 17, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: Ocean County Library, Reference Department, 101 Washington Street, Toms River, NJ 08753.

Illinois Power Company, Docket No. 50–461, Clinton Power Station, Unit 1, DeWitt County, Illinois.

Date of application for amendment: January 20, 1999, as supplemented February 4, 8, and 25, and March 5, 1999.

Brief description of amendment: The amendment changes the undervoltage relay setpoints.

Date of issuance: March 26, 1999.

Effective date: March 26, 1999.

Amendment No.: 122.

Facility Operating License No. NPF–62: The amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: January 28, 1999 (64 FR 4474).

The four supplemental submittals provided additional information and did not change the requested amendment or affect the proposed no significant hazards consideration.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 26, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: The Vespasian Warner Public Library, 120 West Johnson Street, Clinton, IL 61727.

Maine Yankee Atomic Power Company, Docket No. 50–309, Maine Yankee Atomic Power Station, Lincoln County, Maine

Date of application for amendment: April 13, 1998, as supplemented November 5, 1998.

Brief description of amendment: The proposed amendment would revise the Appendix A Technical Specifications to base the Limiting Condition for Operation for the fuel storage pool water level on a revised analysis of the fuel handling accident and a new analysis for radiological shielding during movement of irradiated fuel.

Date of issuance: March 16, 1999.

Effective date: March 16, 1999 (and shall be implemented no later than 30 days).

Amendment No.: 162.

Facility Operating License No. DPR–36: The amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: May 20, 1998 (63 FR 27763). The November 5, 1998, submittal provided additional clarifying information and did not change the initial proposed no significant hazards determination and did not expand the scope of the original application.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 16, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: Wiscasset Public Library, High Street, P.O. Box 367, Wiscasset, ME 04578.

Niagara Mohawk Power Corporation, Docket No. 50–220, Nine Mile Point Nuclear Station Unit No. 1, Oswego County, New York

Date of application for amendment: December 30, 1998.

Brief description of amendment: The amendment changes Technical Specification (TS) Tables 3.6.14–2 and 4.6.14–2 regarding the noble gas activity monitor channel operability requirement and daily sensor check surveillance requirement to be consistent with the conditions specified in TS 3.1.3.a for operability of the emergency cooling system. Also, this amendment corrects a clerical error in TS 4.6.15.d.

Date of issuance: March 16, 1999.

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 165.

Facility Operating License No. DPR–63: Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register**: February 10, 1999 (64 FR 6699).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 16, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Niagara Mohawk Power Corporation, Docket No. 50–410, Nine Mile Point Nuclear Station, Unit 2, Oswego County, New York

Date of application for amendment: November 19, 1998.

Brief description of amendment: This amendment changes surveillance frequencies in Technical Specifications 4.8.4.4a and 4.8.4.5a to require testing of the Electrical Protection Assemblies once every 6 months with the plant on-line rather than shut down.

Date of issuance: March 18, 1999.

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 86.

Facility Operating License No. NPF–69: Amendment revises the Technical Specifications

Date of initial notice in **Federal Register**: December 30, 1998 (63 FR 71970).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 18, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

North Atlantic Energy Service Corporation, et al., Docket No. 50–443, Seabrook Station, Unit No. 1, Rockingham County, New Hampshire

Date of amendment request: May 20, 1998, as supplemented by letter dated January 28, 1999.

Description of amendment request: Revise Technical Specifications Table 3.3–4 and associated bases to depict a change to the refueling water storage tank low-low level setpoint

Date of issuance: March 12, 1999.

Effective date: As of its date of issuance, to be implemented within 60 days.

Amendment No.: 60.

Facility Operating License No. NPF–86. Amendment revised the Technical Specifications

Date of initial notice in **Federal Register**: August 12, 1998 (63 FR 43205).

The supplemental letter provided clarifying information and did not change the staff's proposed no significant hazards determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 12, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: Exeter Public Library, Founders Park, Exeter, NH 03833.

Northeast Nuclear Energy Company, et al., Docket No. 50–336, Millstone Nuclear Power Station, Unit No. 2, New London County, Connecticut

Date of application for amendment: September 9, 1998, as supplemented February 19 and 26, 1999.

Brief description of amendment: The amendment resolves several previously identified technical specifications (TSs) compliance issues. Specifically, the amendment: (1) changed TS definitions 1.24, "Core Operating Limits Report," 1.27, "Engineering Safety Feature Response Time," and 1.31, "Radiological Effluent Monitoring and Offsite Dose Calculation Manual (REMODCM)"; (2) changed TS 3.0.2, "Limiting Condition for Operation," by adding a new TS 3.0.6 to the Limiting Condition for Operation TS section; (3) changed TS 4.0.5, "Surveillance Requirements"; (4) changed the mode applicability of TS 3.2.3, "Total Unrodded Integrated Radial Peaking—F_r^T"; (5) changed TS 3.3.2.1, "Engineered Safety Features Actuation System Instrumentation," by modifying TS Table 4.3–2 Table Notation (1) which it references; and (6) changed TS 3.4.1.1, "Reactor Coolant System—Reactor Coolant System Vents." The associated TS Bases sections were also changed.

Date of issuance: March 11, 1999.

Effective date: As of the date of issuance to be implemented within 60 days from the date of issuance.

Amendment No.: 230.

Facility Operating License No. DPR–65: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: October 21, 1998 (63 FR 56251).

The supplemental letters provided clarifying information that did not change the original proposed no significant hazards consideration determination or expand the scope of the original **Federal Register** notice.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 11, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: Learning Resources Center, Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, Connecticut, and the Waterford Library, ATTN: Vince Juliano, 49 Rope Ferry Road, Waterford, Connecticut.

Northeast Nuclear Energy Company, et al., Docket No. 50–336, Millstone Nuclear Power Station, Unit No. 2, New London County, Connecticut

Date of application for amendment: July 17, 1998, as supplemented November 10, 1998, and February 11, 1999.

Brief description of amendment: The amendment revises certain diesel generator (DG) action statements and surveillance requirements to improve overall DG reliability and availability.

Date of issuance: March 12, 1999.

Effective date: As of the date of issuance to be implemented within 60 days from the date of issuance.

Amendment No.: 231.

Facility Operating License No. DPR–65: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 12, 1998 (63 FR 43207).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 12, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: Learning Resources Center, Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, Connecticut, and the Waterford Library, ATTN: Vince Juliano, 49 Rope Ferry Road, Waterford, Connecticut.

Northern States Power Company, Docket No. 50–263, Monticello Nuclear Generating Plant, Wright County, Minnesota

Date of application for amendment: November 25, 1997, as supplemented September 25 and November 11, 1998, and January 28, 1999.

Brief description of amendment: The amendment revises the Technical Specifications for the condensate storage tank (CST) low level suction transfer setpoint for the high pressure coolant injection (HPCI) and reactor core isolation cooling (RCIC) systems to allow removing one CST from service for maintenance.

Date of issuance: March 19, 1999.

Effective date: March 19, 1999, with full implementation within 30 days.

Amendment No.: 105.

Facility Operating License No. DPR–22. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: December 18, 1998 (63 FR 69344) The November 25, 1997, letter and September 25 and November 11, 1998, supplements were referenced in the original **Federal Register** notice. The January 28, 1999, supplement provided an updated Technical Specification page following the incorporation of Amendment 103, issued December 23, 1998. This information was within the scope of the original **Federal Register** notice and did not change the staff's initial proposed no significant hazards considerations determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 19, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: Minneapolis Public Library, Technology and Science Department, 300 Nicollet Mall, Minneapolis, Minnesota 55401.

Northern States Power Company, Docket Nos. 50–282 and 50–306, Prairie Island Nuclear Generating Plant, Units 1 and 2, Goodhue County, Minnesota

Date of application for amendments: November 25, 1998.

Brief description of amendments: The amendments revise Technical Specifications 3.2 and Table 3.5–2B to allow limited inoperability of boric acid storage tank level channels and transfer logic channels to provide for required testing and maintenance of the associated components.

Date of issuance: March 17, 1999.

Effective date: March 17, 1999, with full implementation within 30 days

Amendment Nos.: 143 and 134.

Facility Operating License Nos. DPR–42 and DPR–60. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register**: December 16, 1998 (63 FR 69345).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 19, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: Minneapolis Public Library, Technology and Science Department, 300 Nicollet Mall, Minneapolis, Minnesota 55401.

Pacific Gas and Electric Company, Docket Nos. 50–275 and 50–323, Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2, San Luis Obispo County, California

Date of application for amendments: July 30, 1997, as supplemented by letter dated December 23, 1998.

Brief description of amendments: The amendments revise the combined Technical Specifications (TS) for the Diablo Canyon Power Plant (DCPP) Unit Nos. 1 and 2 by adding a Limiting Condition for Operation, trip setpoints, and surveillance requirements for a residual heat removal pump trip on refueling water storage tank level-low.

Date of issuance: March 26, 1999.

Effective date: March 26, 1999, to be implemented within 30 days from the date of issuance.

Amendment Nos.: Unit 1—130; Unit 2—128.

Facility Operating License Nos. DPR–80 and DPR–82: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register**: December 31, 1997 (62 FR 68312).

The December 31, 1997 supplemental letter provided additional clarifying information, did not expand the scope of the application as originally noted, and did not change the staff's proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 26, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: California Polytechnic State University, Robert E. Kennedy Library, Government Documents and Maps Department, San Luis Obispo, California 93407.

Pacific Gas and Electric Company, Docket Nos. 50–275 and 50–323, Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2, San Luis Obispo County, California

Date of application for amendments: August 26, 1997, as supplemented by letters dated October 14 and November 13, 1997, and January 29, 1998.

Brief description of amendments: The amendments approve a modification to the Diablo Canyon Power Plant (DCPP), Unit Nos. 1 and 2 auxiliary saltwater (ASW) system to bypass approximately 800 feet of Unit 1 and 200 feet of Unit 2 Class 1 ASW pipe, a portion of which is buried below sea level in the tidal zone outside the intake structure.

Date of issuance: March 26, 1999.

Effective date: March 26, 1999, and shall be implemented in the next

periodic update to the FSAR Update in accordance with 10 CFR 50.71(e).

Amendment Nos.: Unit 1—131; Unit 2—129.

Facility Operating License Nos. DPR–80 and DPR–82: The amendments revised the Final Safety Analysis Report Update.

Date of initial notice in **Federal Register**: September 16, 1997 (62 FR 48677).

The October 14 and November 13, 1997, and January 29, 1998, supplemental letters provided additional clarifying information, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 26, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: California Polytechnic State University, Robert E. Kennedy Library, Government Documents and Maps Department, San Luis Obispo, California 93407.

Public Service Electric & Gas Company, Docket Nos. 50–272 and 50–311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of application for amendments: September 25, 1996, as supplemented on October 29, 1997, March 16, 1998, and February 8, 1999.

Brief description of amendments: The amendments revise the Technical Specifications by revising the voltage and frequency acceptance criteria and the start-timing methodology for the emergency diesel generator surveillance testing.

Date of issuance: March 23, 1999.

Effective date: As of date of issuance, to be implemented within 60 days.

Amendment Nos: 218 and 200.

Facility Operating License Nos. DPR–70 and DPR–75. The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register**: October 23, 1996 (61 FR 5039).

The October 29, 1997, March 16, 1998, and February 9, 1999, letters provided clarifying information that did not change the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 23, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: Salem Free Public Library, 112 West Broadway, Salem, NJ 08079.

Public Service Electric & Gas Company, Docket Nos. 50–272 and 50–311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of application for amendments: September 17, 1998.

Brief description of amendments: The amendments revise Technical Specification 3/4.8.2, "Electrical Power Sources—Shutdown," for the AC distribution system and the 125-volt and 28-volt DC distribution systems. Specifically, the amendments change the Applicability and Action Statements, if less than the complement of equipment and buses are operable, to eliminate the need to establish containment integrity and to add the action to suspend core alterations, positive reactivity additions, and movement of irradiated fuel assemblies.

Date of issuance: March 24, 1999.

Effective date: As of the date of issuance, to be implemented within 60 days.

Amendment Nos.: 219 and 201.

Facility Operating License Nos. DPR–70 and DPR–75. The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register**: October 21, 1998 (63 FR 56257).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 24, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: Salem Free Public Library, 112 West Broadway, Salem, NJ 08079.

Tennessee Valley Authority, Docket Nos. 50–327 and 50–328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of application for amendments: April 6, 1995, as supplemented on August 21, 1995. (TS 95–19).

Brief description of amendments: The amendments change the licenses for Sequoyah Nuclear Plant, Units 1 and 2 by removing the license conditions that reference the post-accident sampling system (PASS). The PASS information has been placed in the Sequoyah Final Safety Analysis Report (FSAR). This Change is consistent with NUREG–1431, "Standard Technical Specifications—Westinghouse Plants."

Date of issuance: March 16, 1999.

Effective date: March 16, 1999.

Amendment Nos.: 243 and 233.

Facility Operating License Nos. DPR–77 and DPR–79: The amendments revise the licenses.

Date of initial notice in **Federal Register**: April 26, 1995 (60 FR 20527). The August 21, 1995, letter provided clarifying information that did not change the original no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 16, 1999.

No significant hazards consideration comments received: None.

Local Public Document Room location: Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, Tennessee 37402.

Vermont Yankee Nuclear Power Corporation, Docket No. 50–271, Vermont Yankee Nuclear Power Station, Vernon, Vermont

Date of application for amendment: April 23, 1998, as supplemented on January 25, 1999.

Brief description of amendment: The amendment changes the existing requirements for the Residual Heat Removal Service Water (RHRSW), Station Service Water (SSW) and Alternate Cooling Tower Systems (ACS) as identified in Technical Specifications (TSs) 4.5.C and 3/4.5.D.

Specifically, the changes are as follows:

(1) Specifications 3.5.D.3 and 4.5.D.3: This requirement is revised to delete the existing allowance for 7 days of operation after both SSW subsystems are made or found to be inoperable.

(2) Specification 4.5.C.1 and Specification 4.5.D.1: These requirements have been revised to relocate testing information related to pump flow and pressure testing characteristics for the RHRSW and SSW Systems, respectively, to the Technical Requirements Manual.

(3) Specifications 3.5.D.1, 3.5.D.2, 3.5.D.3, 4.5.D.2, 4.5.D.3, and associated Bases: All references to SSW "subsystem" have been replaced by "essential equipment cooling loop" to more accurately reflect the Vermont Yankee design and operation. In addition, certain operability clarifications have been made to the Bases relative to affected Specifications.

(4) Bases for Specification 3.5.D: The Bases have been revised to omit statements that imply that the ACS could provide adequate heat removal following a postulated accident. Other Bases additions have been made that include certain operability clarifications relative to affected Specifications.

Date of Issuance: March 11, 1999.

Effective date: As of the date of issuance, to be implemented within 30 days.

Amendment No.: 169.

Facility Operating License No. DPR–28: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: February 10, 1999 (64 FR 6713).

The January 25, 1999, supplement did not affect the original proposed no significant hazards consideration.

The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated March 11, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: Brooks Memorial Library, 224 Main Street, Brattleboro, Vermont 05301.

Wolf Creek Nuclear Operating Corporation, Docket No. 50–482, Wolf Creek Generating Station, Coffey County, Kansas

Date of amendment request: March 20, 1998, as supplemented by letters dated May 28, June 30, August 28, September 4, November 20, and December 8, 1998.

Brief description of amendment: The amendment revised the technical specifications (TS) to support a modification to the plant to increase the storage capacity of the spent fuel pool and increase the nominal fuel enrichment to 5% weight percent of U–235. The amendment also revised the TS to allow the storage of an additional 279 assemblies in the cask loading pit.

Date of issuance: March 22, 1999.

Effective date: March 22, 1999, to be fully implemented no later than December 31, 1999, except that the racks in the cask loading pit may be installed at a future time after the completion of the next refueling outage.

Amendment No.: 120.

Facility Operating License No. NPF–42: The amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: July 13, 1998 (63 FR 37601). The June 30, August 28, September 4, November 20, and December 8, 1998, supplemental letters provided additional clarifying information, did not expand the scope of the application as originally noticed, and did not change the staff's proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 22, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room locations: Emporia State University, William Allen White Library, 1200 Commercial Street, Emporia, Kansas 66801 and Washburn University School of Law Library, Topeka, Kansas 66621.

Wolf Creek Nuclear Operating Corporation, Docket No. 50–482, Wolf Creek Generating Station, Coffey County, Kansas

Date of amendment request: February 4, 1998, as supplemented by letter dated October 20, 1998.

Brief description of amendment: The amendment revises the requirements in Technical Specification Tables 3.3–3, 3.3–4 and 4.3–2 regarding the engineered safety features actuation system (ESFAS) Functional Unit 6.f, and adds a note to Table 4.3–2 to clarify the verification of time delays associated with ESFAS Functional Units 8.a and 8.b.

Date of issuance: March 23, 1999.

Effective date: March 23, 1999, to be implemented within 30 days from the date of issuance.

Amendment No.: 121.

Facility Operating License No. NPF–42. The amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: March 25, 1998 (63 FR 14491). The October 20, 1998, supplemental letter provided additional clarifying information, did not expand the scope of the application as originally noticed and did not change the staff's original proposed no significant hazards consideration determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 23, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room locations: Emporia State University, William Allen White Library, 1200 Commercial Street, Emporia, Kansas 66801 and Washburn University School of Law Library, Topeka, Kansas 66621.

Dated at Rockville, Maryland, this 31st day of March 1999.

For the Nuclear Regulatory Commission.

Suzanne C. Black,

Acting Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 99–8503 Filed 4–6–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

State of Ohio: NRC Staff Assessment of a Proposed Agreement Between the Nuclear Regulatory Commission and the Sate of Ohio; Correction

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of a proposed agreement with the State of Ohio; Correction.

SUMMARY: This document corrects two notices appearing in the **Federal Register** on March 18, 1999 (64 FR 13453), and March 25, 1999 (64 FR 14473). This action is necessary to correct the comment period expiration date in each notice.

FOR FURTHER INFORMATION CONTACT: David L. Meyer, Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, Washington, D.C. 20555–0001, telephone 301–415–7162, e-mail *dlm1@nrc.gov*.

1. In the **Federal Register** dated March 18, 1999, on page 13453, in the second column, under the **DATES** heading, April 19, 1999, is corrected to read April 12, 1999.

2. In the **Federal Register** dated March 25, 1999, on page 14473, in the second column, under the **DATES** heading, April 26, 1999, is corrected to read April 12, 1999.

Dated at Rockville, Maryland, this 1st day of April 1999.

For the Nuclear Regulatory Commission.

David L. Meyer,

Chief Rules and Directives Branch, Division of Administrative Services, Office of Administration.

[FR Doc. 99–8599 Filed 4–6–99; 8:45 am]

BILLING CODE 7590–01–P

PENSION BENEFIT GUARANTY CORPORATION

Request for Extension of Approval of a Collection of Information Under the Paperwork Reduction Act; Customer Service Focus Groups and Surveys

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of request for extension of OMB approval.

SUMMARY: The Pension Benefit Guaranty Corporation is requesting that the Office of Management and Budget extend its approval of a collection of information under the Paperwork Reduction Act. The purpose of the information collection, which will be conducted through focus groups and surveys over a three-year period, is to help the PBGC assess the efficiency and effectiveness with which it serves its customers and to design actions to address identified problems.

DATES: Written comments should be submitted to OMB at the address below within 30 days after April 7, 1999.

ADDRESSES: All written comments should be addressed to: Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for the

Pension Benefit Guaranty Corporation, 725 17th Street, NW., Room 10235, Washington, DC 20503. The request for approval and copies of the proposed collection of information will be available for public inspection at the PBGC Communications and Public Affairs Department, suite 240, 1200 K Street, NW., Washington, DC 20005, between the hours of 9 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Marc L. Jordan, Attorney, Office of the General Counsel, Suite 340, 1200 K Street, NW., Washington, DC 20005, 202–326–4024. (For TTY/TDD users, call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4024.)

SUPPLEMENTARY INFORMATION: An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

The PBGC is requesting that OMB extend its approval, for a three-year period, of a generic collection of information consisting of customer satisfaction focus groups and surveys (OMB control number 1212–0053; expires April 30, 1999). The collection is in furtherance of the goals described in Executive Order 12862, Setting Customer-Service Standards, which states that, in order to carry out the principles of the National Partnership for Reinventing Government (formerly, the National Performance Review), the Federal Government must be customer-driven. The Executive Order directs all executive departments and agencies that provide significant services directly to the public to provide those services in a manner that seeks to meet the customer service standards established in the Executive Order.

This collection of information enables the PBGC to explore issues of mutual concern (*e.g.*, kind and quality of desired services) with its major outside client groups, *i.e.*, participants and beneficiaries, plan sponsors and their affiliates, plan administrators, pension practitioners and others involved in the establishment, operation and termination of plans covered by the PBGC's insurance program. The areas of concern to the PBGC and its client groups change over time, and it is important that the PBGC have the ability to evaluate customer concerns quickly.

Participation in the focus groups and surveys will be voluntary. The PBGC will consult with OMB regarding each specific information collection during the approval period.

This voluntary collection of information will put a slight burden on a very small percentage of the public. The PBGC expects to conduct focus groups involving a total of approximately 225 persons each year, with a total annual burden of approximately 675 hours, including travel time. (Some portion of this time may be spent completing surveys at focus group meetings.) In addition, the PBGC expects to distribute written surveys to approximately 1,600 persons each year (in most cases as an adjunct to a focus group), with a total annual burden of approximately 200 hours.

On January 15, 1999, the PBGC published in the **Federal Register** a notice of intention to request extension of OMB approval of this collection. No comments were received in response to the notice.

Issued at Washington, D.C., this 31st day of March, 1999.

Stuart Sirkin,

Director, Corporate Policy and Research Department, Pension Benefit Guaranty Corporation.

[FR Doc. 99–8586 Filed 4–6–99; 8:45 am]

BILLING CODE 7708–01–P

RAILROAD RETIREMENT BOARD

Privacy Act of 1974; Proposed Changes to System of Records

AGENCY: Railroad Retirement Board.

ACTION: Notice of a proposed routine use.

SUMMARY: The purpose of this document is to give notice of a proposed routine use to one of the RRB's Privacy Act systems of records.

DATES: The new routine use will be effective 30 calendar days from the date of this publication (May 7, 1999), unless comments are received before this date which would result in a contrary determination.

ADDRESSES: Send comments to Beatrice Ezerski, Secretary to the Board, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092.

FOR FURTHER INFORMATION CONTACT: LeRoy Blommaert, Privacy Act Officer, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092, (312) 751–4548.

SUPPLEMENTARY INFORMATION:

I. Discussion of Proposed Routine Use

The Railroad Retirement Board currently furnishes the Bureau of Labor Statistics with the city, state, and five digit zip code of each person who receives unemployment benefits from the RRB. The Social Security Number is scrambled so that the information furnished is not individually identifiable. The Bureau uses this information to aggregate unemployment claims by county in its Local Area Unemployment Statistics (LAUS) program. The Bureau has requested that in addition the RRB furnish the physical street address. Furnishing the physical street address would, in cases where the address is a single family residence or where the apartment number is part of the address, identify the household of the person who received unemployment benefits. The Bureau has requested this additional information because they have found that a city and zip code does not always produce a unique county location (a zip code area may straddle two or more counties). A physical street address will always produce a valid county location.

The RRB currently discloses scrambled SSN, city and state address information pursuant to 5 U.S.C. 552a(b)(5), namely, "to a recipient who has provided the agency with advance adequate written assurance that the record will be used solely as a statistical research or reporting record and the record is to be transferred in a form that is not individually identifiable" It is the RRB's interpretation that furnishing the physical address requires the publication of a routine use because of the possibility that the record with this additional information would be individually identifiable.

II. Compatibility of Proposed Routine Use

We are proposing this routine use in accordance with the Privacy Act (5 U.S.C. 552a(b)(3)). The Privacy Act permits the disclosure of information about individuals without their consent for a routine use where the information will be used for a purpose which is compatible with the purpose for which the information was originally collected. The Office of management and Budget has indicated that a "compatible" use is a use which is necessary and proper. The RRB considers the disclosure of statistical information to the Department of Labor for use in developing unemployment statistics on a local area basis a proper use. To the extent that the disclosure of the physical address is necessary to achieve accurate local area unemployment statistics, the RRB believes the use is necessary as well.

III. Altered system report

On March 29, 1999, the Railroad Retirement Board filed an altered system report for this system with the chairmen of the designated Senate and House committees and with the Office of management and Budget. This was

done to comply with section 3 of the Private Act of 1974 and OMB Circular No. A–130, Appendix I.

By authority of the Board.

Beatrice Ezerski,

Secretary to the Board.

RRB–21

SYSTEM NAME: Railroad Unemployment and Sickness Insurance Benefit System—RRB.

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

* * * * *

Paragraph "ff" is added to read as follows:

* * * * *

ff. Scrambled Social Security Number and complete home address information of unemployment claimants may be furnished to the Bureau of Labor Statistics for use in its Local Area Unemployment Statistics (LAUS) program.

[FR Doc. 99–8539 Filed 4–6–99; 8:45 am]

BILLING CODE 7905–01

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration; (K2 Design,Inc., Common Stock, $.01 Par Value, and Redeemable Common Stock Purchase Warrants) File No. 1–11873

March 31, 1999.

K2 Design, Inc. ("Company") has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2–2(d) promulgated thereunder, to withdraw the above specified securities ("Securities") from listing and registration on the Boston Stock Exchange, Inc. ("BSE" or "Exchange").

The reasons cited in the application for withdrawing the Securities from listing and registration include the following:

The Securities of the Company have been listed for trading on the BSE and the Nasdaq SmallCap Market since July 26, 1996, pursuant to a Registration Statement on Form SB–2 which became effective on said date.

The Company has complied with the rules of the BSE by filing with the Exchange a certified copy of the resolutions adopted by the Company's Board of Directors authorizing the withdrawal of its Securities from listing on the BSE and by setting forth in detail to the Exchange the reasons for the proposed withdrawal and the facts in support thereof. In making the decision to withdraw its Securities from listing on the BSE, the Company considered the direct and indirect costs of maintaining dual listings of its Securities on the BSE and the Nasdaq SmallCap Market. The Company does not see any particular advantage in the dual trading of its Securities and believes that the dual listing, if continued, would fragment the market for its Securities.

The BSE has informed the Company that it has no objection to the Company's application to withdraw its Securities from listing on the Exchange.

The Company's application relates solely to the withdrawal from listing of its Securities from the BSE and shall have no effect upon the continued listing of the Securities on the Nasdaq SmallCap Market. By reason of Section 12(g) of the Act and the rules and regulations of the Commission thereunder, the Company shall continue to be obligated to file reports under Section 13 of the Act with the Commission.

Any interested person may, on or before April 21, 1999, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–8516 Filed 4–6–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 33–7664, File No. S7–12–99]

Securities Uniformity; Annual Conference on Uniformity of Securities Laws

AGENCY: Securities and Exchange Commission.

ACTION: Notice of conference; request for comments.

SUMMARY: The Commission and the North American Securities Administrators Association, Inc. today announced a request for comments on the proposed agenda for their annual conference to be held on April 19, 1999. This meeting seeks to carry out the policies and purposes of section 19(c) of the Securities Act of 1933, which are to increase cooperation between the Commission and state securities regulatory authorities in order to maximize the effectiveness and efficiency of securities regulation.

DATES: The conference will be held on April 19, 1999. We must receive your written comments by April 14, 1999 in order to be considered by conference participants.

ADDRESSES: Please send three copies of written comments to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 5th Street, NW, Washington, DC 20549–0609. Comments also can be sent electronically to the following E-mail address: rule-comments@sec.gov. Comment letters should refer to File No. S7–12–99; if E-mail is used, please include this file number on the subject line. Anyone can inspect and copy the comment letters at our Public Reference Room, 450 5th Street, NW, Washington, DC 20549. All electronic comment letters will be posted on the Commission's internet web site (http://www.sec.gov).

FOR FURTHER INFORMATION CONTACT: John D. Reynolds, Office of Small Business Review, Division of Corporation Finance, Securities and Exchange Commission, 450 5th Street, NW, Washington, DC 20549, Stop 3–4, (202) 942–2950.

SUPPLEMENTARY INFORMATION:

I. Discussion

The federal government and the states have jointly regulated securities offerings since the adoption of the federal regulatory structure in the Securities Act of 1933 (the "Securities Act").[1] Issuers trying to raise capital through securities offerings, as well as participants in the secondary trading markets, must comply with the federal securities laws as well as all applicable state laws and regulations. Parties involved in this process have long recognized the need to increase uniformity and cooperation between the federal and state regulatory systems so that capital formation can be made

[1] 15 U.S.C. 77a *et seq.*

easier while investor protections are retained.

Congress endorsed greater uniformity in securities regulation with the enactment of section 19(c) of the Securities Act in the Small Business Investment Incentive Act of 1980.[2] Section 19(c) authorizes the Commission to cooperate with any association of state securities regulators which can assist in carrying out that section's policy and purpose. Section 19(c) mandates greater federal and state cooperation in securities matters in order to:

- Maximize effectiveness of regulation;
- Maximize uniformity in federal and state standards;
- Minimize interference with the business of capital formation; and
- Reduce the costs, paperwork and burdens of raising investment capital, particularly by small business, and also reduce the costs of the government programs involved.

The Commission is required to conduct an annual conference to establish ways to achieve these goals. The 1999 meeting will be the sixteenth conference.

During 1996, Congress again examined the system of dual federal and state securities regulation. It considered the need for regulatory changes to promote capital formation, eliminate duplicative regulation, decrease the cost of capital and encourage competition, while at the same time promoting investor protection. Congress passed The National Securities Markets Improvement Act of 1996[3] (the "1996 Act") as a result of this reexamination. The 1996 Act contains significant provisions that realign the partnership between federal and state regulators. The legislation reallocates responsibility for regulation of the nation's securities markets between the federal government and the states in order to eliminate duplicative costs and burdens and improve efficiency, while preserving investor protections.

II. 1999 Conference

The Commission and the North American Securities Administrators Association, Inc. ("NASAA")[4] are planning the 1999 Conference on Federal-State Securities Regulation to be held April 19, 1999 in Washington, DC. At the conference, Commission and NASAA representatives will divide into working groups in the areas of corporation finance, market regulation and oversight, investment management, investor education, and enforcement. Each group will discuss methods to enhance cooperation in securities matters and improve the efficiency and effectiveness of federal and state securities regulation. Generally, only Commission and NASAA representatives may attend the conference to encourage open and frank discussion. However, each working group in its discretion may invite certain self-regulatory organizations to attend and participate in certain sessions.

The Commission and NASAA are preparing the conference agenda. We invite the public, securities associations, self-regulatory organizations, agencies, and private organizations to participate by submitting written comments on the issues set forth below. In addition, we request comment on other appropriate subjects. Conference attendees will consider all comments.

III. Tentative Agenda and Request for Comments

The tentative agenda for the conference consists of the following topics in the areas of corporation finance, investment management, market regulation and oversight, investor education, and enforcement.

(1) Corporation Finance Issues

The 1996 Act amended section 18 of the Securities Act[5] to preempt state blue-sky registration and review of offerings of "covered securities."[6] "Covered securities" are defined by section 18 and include several types of securities, including securities traded on the New York Stock Exchange, Inc. ("NYSE"), American Stock Exchange ("Amex") and the Nasdaq National Market System ("Nasdaq/NMS") (these securities as a group are called "nationally-traded" securities). Covered securities also include registered investment company securities and certain exempt securities and offerings.

The states retain some authority in connection with offerings of covered securities despite this preemption. Except for covered securities that are classified as nationally-traded securities, the states have the right to require fee payments and notice filings. The states also retain anti-fraud authority over all securities offerings, including offerings of covered securities.

Securities that are not "covered securities remain subject to state registration requirements. These securities generally include the securities of smaller companies, such as those quoted on the Nasdaq SmallCap market or the NASD's over-the-counter Bulletin Board, or in the "pink sheets." Securities issued in a private offering under section 4(2) of the Securities Act are not covered securities if the offering does not meet the safe harbor requirements of Rule 506 of Regulation D.[7] Also, securities issued under Regulation A[8] and Rules 504 and 505 of Regulation D are not covered securities.[9]

The states' authority over securities offerings, particularly their ability to register and review offerings of non-covered securities, continues the need for uniformity between the federal and state registration systems, where consistent with investor protection. The group will discuss ways to increase uniformity between the systems. Conferees will focus primarily on the following topics:

A. Reform of the Securities Offering Process

For many years, the Commission has been actively reexamining the regulatory framework for the offer and sale of securities under the federal securities laws. As a result of this work, the Commission issued a release in November 1998 proposing significant changes in the regulation of securities offerings and the disclosure system that applies to publicly reporting companies.[10] The proposals relate to five areas:

- Registration system reform;
- Communications around the time of a securities offering;
- Prospectus delivery requirements;
- Integration of private and public offerings; and
- Periodic reporting under the Securities Exchange Act of 1934 (the "Exchange Act").

The Commission's staff will summarize these proposals and describe the responses from the public received to date. While the group may consider various aspects of the proposals, the representatives will discuss primarily how the proposals would affect state regulation of offerings of non-covered securities. The group will focus on some or all of the following matters:

---

[2] Pub. L. 96–477, 94 Stat. 2275 (October 21, 1980).

[3] Pub. L. 104–290, 110 Stat. 3416 (October 11, 1996).

[4] NASAA is an association of securities administrators from each of the 50 states, the District of Columbia, Puerto Rico, Mexico and twelve Canadian Provinces and Territories.

[5] 15 U.S.C. 77r.

[6] 15 U.S.C. 77r (a) and (b).

[7] 17 CFR 230.501 through 230.508.

[8] 17 CFR 230.251 through 230.263.

[9] Other securities also are not considered covered securities. These include securities traded on regional exchanges and asset-backed and mortgage-backed securities.

[10] Securities Act Release No. 7606 (November 3, 1998) [63 FR 67174].

1. Registration System Reforms

The Commission proposed new Form B for large issuers that meet certain reporting and annual report requirements and had registered previously an offering of securities under the Securities Act which was declared effective by the Commission's staff. Form B also would be available to smaller issuers which meet the same requirements, but only when they offer securities to relatively sophisticated investors or knowledgeable investors.

These smaller issuers could use Form B for offerings to qualified institutional buyers as defined in Rule 144A[11] and for offerings to certain existing security holders, such as: rights offerings; securities offered under dividend or interest reinvestment plans; and offerings to holders of common stock, options, warrants and convertible securities.

Form B would replace Form S–3, the current abbreviated registration statement form, and provide issuers with more flexibility than under the current system. The issuer would be able to delay filing the Form B registration statement until shortly before the first sale of securities and would be able to determine when its registration statement becomes effective.

The Commission proposed new Form A for medium-sized issuers.[12] It would replace Form S–1, the current registration statement form used by most issuers. Form A would be used by issuers that do not meet the requirements to use Form B. Some Form A issuers would be able to specify the time of effectiveness of their registration statements. Form A issuers that are able to incorporate company information into their prospectuses would be able to control the timing of effectiveness if either:

- They have a public float equal to or greater than $75 million; or
- The Exchange Act annual report that is incorporated into the Form A registration statement was reviewed by the Commission's staff and amended to comply with any staff comments.

The group will discuss these proposed registration statement reforms and consider how they would operate with state registration procedures for offerings of non-covered securities.

2. Communications Around the Time of an Offering

Under current federal regulation, an issuer's communications to investors and the market are strictly limited around the time of an offering. The Commission's proposals in this area would loosen these restrictions while preserving the legal remedies to investors for inadequate disclosures.

The approach would depend upon the type of offering. For Form B offerings, issuers would be able to make oral and written communications in any format at any time regardless of whether the offering is imminent or ongoing. Those communciations of course would be subject to the liability provisions of the federal securities laws and would need to be filed with the Commission.

For non-Form B offerings, the Commission has proposed a bright-line safe harbor for all communications made before the 30-day period before the date of filing the registration statement. Communications within 30 days of filing would remain restricted although the Commission has proposed safe harbors for factual business communications and regularly released, forward-looking information. After the registration statement is filed, the Commission proposes to lift restrictions on communications. These post-filing communications would be subject to the liability provisions and would have to be filed with the Commission.

The group will discuss the proposed federal approach to communications. The conferees also will consider how the Commission's proposals would coordinate with state regulations applicable to communications.

3. Integration of Offerings

An issuer of securities that has commenced a private offering may decide to switch to a registered public offering. Similarly, an issuer may decide to end a registered offering and offer securities under a private exemption. The current federal rules prevent most companies from switching from registration to a private offering, and vice versa, in a timely fashion. The Commission has proposed changes to remove most of these impediments.

The Commission has proposed a safe harbor for issuers that have started a registered offering and wish to switch to a private offering. Under the safe harbor, the issuer may withdraw its registration statement and either wait 30 days to sell privately or sell privately sooner if it accepts a higher liability standard for written disclosures provided to purchasers.

Another safe harbor would apply to an issuer that has started a private offering and later decides to abandon it and file a registration statement. Under this proposal, the issuer could file a registration statement for a public offering immediately after abandonment of the private offering, unless it had offered the securities to persons ineligible to buy in a private offering. In that case, the issuer would need to wait 30 days before filing its registration statement.

The group will discuss the proposed integration safe harbors and consider how they would coordinate with state rules that apply in these situations.

B. Small Business Initiatives

1. Registration System Reform—Effects on Small Business Issuers

Certain Commission registration reform proposals are tailored to benefit smaller issuers. One important proposal would modify the definition of "small business issuer." In 1992 and 1993, the Commission adopted special forms for small issuers to use in registering under the Securities Act and Exchange Act and in reporting under the Exchange Act. The disclosure requirements of these forms are less extensive than those applicable to larger issuers. The Commission adopted the definition of "small business issuer" to distinguish the class of smaller issuers that would be permitted to use these special forms. A small business issuer generally is a company with revenues of less than $25 million and a public float of less than $25 million.[13]

The Commission proposed to change the definition by increasing the revenue level to $50 million and removing the public float limitation. This proposal would update the definition for the significant economic and market changes that have occurred since the definition was adopted in 1992. The proposal would significantly increase the number of public companies that would qualify as small business issuers.

Another important reform proposal would allow small business issuers to use Form B when offering securities to relatively sophisticated or knowledgeable investors. Small business issuers would be able to enjoy the various benefits of Form B in these offerings.[14]

Other reform proposals also would benefit smaller issuers. Under one proposal, a small business issuer whose registration statement has become effective would be allowed to increase the size of its offering by up to 50% of the maximum offering price of the earlier effective registration statement. The second registration statement for the additional offering amount would become effective automatically under certain circumstances. Another proposal

[11] 17 CFR 230.144A.

[12] The effects of the reform proposals on small business issuers are discussed under (1) B.1. below.

[13] 17 CFR 228.10. Other requirements also must be met.

[14] See discussion under (1) A.1. above.

would permit incorporation by reference of Exchange Act reports into Form SB–2, the basic registration statement for small business issuers. This change would permit earlier incorporation by reference than allowed currently.[15] Also, the Commission proposed a new Form SB–3, a registration statement form designed especially for small business issuers to use in business combinations.

The Commission's integration proposal, although applicable to all issuers, may benefit small business issuers in particular. Because small business issuers often have no market or only a limited market for their securities before a securities offering, they may be unable to predict investors' interest in their offerings. Once a smaller issuer begins an offering, it may wish to switch between a registered offering and an exempt offering depending upon the amount of investor interest in its securities. The integration proposal would permit an issuer to switch between registration and an exemption in a timely manner if certain conditions are met.[16]

The group will discuss the impact of these proposed changes, if adopted, and the need for any additional rulemaking in the small business area.

2. Rule 504

Rule 504 of Regulation D provides an exemption from the Securities Act registration requirements for offerings up to $1 million in any 12-month period, if certain conditions are met. Generally, Rule 504 is available only to the smallest companies that do not report under the Exchange Act. Under prior Rule 504, issuers were permitted to generally solicit and advertise in Rule 504 offerings, and the securities issued in those offerings were freely tradeable. The Commission recently amended Rule 504 to address concerns with the previous approach.[17] The revised rule limits the circumstances where general solicitation is permitted and freely tradeable securities are issued under the rule. Specifically, issuers may generally solicit and advertise and issue freely tradeable securities only in transactions that are either:

- Registered under state law requiring public filing and delivery of a substantive disclosure document to investors before sale; or
- Exempted under state law permitting general solicitation and general advertising so long as sales are made only to "accredited investors."[18]

Only companies that do not report under the Exchange Act may use Rule 504. Where an issuer becomes a reporting company during an ongoing Rule 504 offering, the issuer may not continue to rely on the rule after it becomes a reporting company. To address this case, one of the Commission's reform proposals would amend Rule 504 to permit an issuer that becomes a reporting company during an ongoing Rule 504 offering to continue to rely on the rule in that offering, if certain conditions are met.

The group will discuss the revisions and proposed amendment to Rule 504. Conferees will consider whether other changes are needed in the rule while at the same time preserving the ability of small companies to raise capital.

3. State Initiatives

The group will discuss several state initiatives designed to facilitate offerings by smaller issuers. These include:

- The Coordinated Equity Review ("CER") program;
- The Small Company Offering Registration ("SCOR") form; and
- The state regional review program for SCOR and Regulation A filings (the "Regional Review Program").

The CER program provides for a coordinated state review process for offerings of equity securities registered at the federal level. Under CER, the participating states coordinate with each other to produce one comment letter to an issuer which addresses both substantive and disclosure matters. To date, 38 states (out of 42 states that require registration of these offerings) have agreed to participate in the program. The states have reviewed approximately 32 registration statements under this program.

Many states use a similar coordinated program to review state registrations using the SCOR form, the "Regional Review Program." The SCOR form is a simplified question and answer format used for the registration of securities offerings with approximately 47 states. This form is used to register securities offerings exempt from federal registration under Rule 504 of Regulation D or Regulation A. Under the Regional Review Program, states in certain regions of the country elect one state to lead the review and issue comments on the filing. Three regional programs have been started to date and include about 22 of the states requiring registration of these offerings.[19] About 37 SCOR filings have been reviewed under the Regional Review Program. The SCOR form was adopted by NASAA in 1989. NASAA's Small Business Capital Formation and Regional Review Committee is considering certain revisions to update and modernize the form.

NASAA's representatives will discuss their experiences with the SCOR form and the state coordinated review programs, including issues which have arisen in their use. Participants will consider how these programs may be improved to increase uniformity between the federal and state levels.

C. Definition of Qualified Purchaser and Accredited Investor; NASAA's Model Accredited Investor Exemption

Section 18 of the Securities Act, after the 1996 Act, excludes from state regulation and review securities offerings to purchasers who are defined by Commission's rules to be "qualified purchasers."[20] A security sold to a "qualified purchaser" is a "covered security" subject to the same regulatory approach as other covered securities. The Commission is planning to propose a definition of "qualified purchaser" for this purpose. In this process, the Commission is considering whether changes should be made to the definition of "accredited investors" under the Securities Act, and whether the definitions of "qualified purchasers" and "accredited investors" should be similar or different. The Commission and state representatives will discuss the appropriate criteria for these two definitions.

The group also will discuss NASAA's Model Accredited Investor Exemption which was adopted in 1997. Generally, the model rule exempts offers and sales of securities from state registration requirements if, among other things, the securities are sold only to persons who are, or are reasonably believed to be, accredited investors. To date, 16 states have adopted the exemption and other states indicate that they intend to adopt the exemption in the near future. State representatives will share their

[15] Existing Form S–2 permits incorporation by reference if the issuer has been reporting for a three year period and meets other requirements. Proposed Form SB–2 would reduce the three year period to two years.

[16] See the discussion under (1) A. 3. above.

[17] Securities Act Release No. 7644 (February 25, 1999) [64 FR 11090].

[18] 17 CFR 230.501(a). The term *accredited investor*, as defined by the Securities Act and the Commission's rules, is intended to encompass those persons whose financial sophistication render the protections of the Securities Act registration process unnecessary. Offers and sales to these investors are afforded special treatment under the federal securities laws.

[19] A fourth regional program is forming now. It will consist of six states in the mid-Atlantic region and expects to accept filings in late spring 1999.

[20] 15 U.S.C. 77r(b)(3).

experiences with the exemption, including any issues that have arisen.

D. Plain English Disclosure

Beginning October 1, 1998, issuers filing Securities Act registration statements must use plain English writing principles when drafting the front part of prospectuses, *i.e.*, the cover page and the summary and risk factors sections.[21] These plain English principles include: active voice; short sentences; everyday language; tabular presentation or "bullet lists" for complex material, if possible; no legal jargon or highly technical business terms; and, no multiple negatives.

The Division of Corporation Finance, in its full review of a registration statement, examines the prospectus for compliance with the plain English requirements. If appropriate, the Division staff will issue comments to obtain improved plain English disclosures. The Division representatives will discuss their experiences with the plain English system. The group will consider any issues that have arisen and federal and state coordination needed to facilitate success of the system.

E. Year 2000 Disclosure Issues

The Commission and its staff have published several statements which provide guidance about the disclosure requirements of public companies facing year 2000 technology problems. The Commission recently provided guidance in a July 1998 release.[22] That release provides advice to public companies so they can determine whether their year 2000 issues should be disclosed in the Management's Discussion and Analysis of Financial Condition and Results of Operations section of their disclosure documents. The release also advises public companies to consider Year 2000 issues when preparing their financial statements and drafting other disclosures, such as risk factors and business description disclosures. The working group will consider this issue and discuss how to require and review disclosures on this matter in a consistent manner.

(2) Market Regulation Issues

A. Books and Records

Section 103 of the 1996 Act prohibits any state from imposing broker-dealer books and records requirements that differ from, or are in addition to, the Commission's requirements. In addition, the same section directs the Commission to consult periodically with the state securities authorities concerning the adequacy of the Commission's books and records requirements.

On October 2, 1998, the Commission reproposed amendments to the books and records rules to clarify and expand recordkeeping requirements with respect to purchase and sale documents, customer records, associated person records, customer complaints, and certain other matters. The reproposed amendments also specified the books and records that broker-dealers would make available at their local offices. The Commission modified the reproposed amendments to reduce the burden on broker-dealers without substantially detracting from the original objective of establishing rules that would facilitate examinations and enforcement activities of the Commission, self regulatory organizations ("SROs"), and state securities regulators.[23] Among other changes in the reproposed amendments, the Commission redefined the term "local office" to include a place where two or more associated persons regularly conduct a securities business. The original proposal[24] defined the term local office to include a place where one associated person conducted a securities business. Furthermore, as reproposed, a broker-dealer would be required to update its customer account records at least once every three years. The original proposal required broker-dealers to update the customer account records annually.

The comment period closed December 9, 1998. The Commission received approximately 120 comment letters in response to the release re-proposing the amendments. The Commission's staff has been reviewing the comments that have been submitted. The working group will discuss these efforts to amend Rules 17a–3 and 17a–4.

B. Central Registration Depository

The CRD system is a computer system operated by the National Association of Securities Dealers, Inc. ("NASD") and used by the Commission, the states and the SROs primarily as a means to facilitate registration of broker-dealers and their associated persons. The NASD is in the process of implementing a comprehensive plan to modernize the CRD and to expand its use by federal and state securities regulators as a tool for broker-dealer regulation. As a result of the NASD's efforts, the modernized CRD system ultimately is expected to provide the Commission, the SROs, and state securities regulators with: (1) Streamlined capture and display of data; (2) better access to registration and disciplinary information through the use of standardized and specialized computer searches; and (3) electronic filing of uniform registration and licensing forms, including Forms U–4, U–5, BD and BDW.

The NASD is preparing to implement the web-based form filing component of the modernized CRD system in the third quarter of 1999. In the past year, NASAA, the NASD, the Commission and others have worked together to modify Forms U–4, U–5 and BD in order to accommodate the electronic filing environment that will exist in the modernized CRD. At NASAA's Annual Fall conference held in October 1998, NASAA adopted new versions of Forms U–4 and U–5. The NASD has submitted, and the Commission is reviewing, a rule proposal to modify Forms U–4 and U–5. The NASD rule proposes additional formatting and technical changes to the forms in order to fully implement the web-based CRD system. Also, the Commission is considering revisions to the Form BD to accommodate web-based form filing.

In anticipation of the conversion to the web-based CRD system, the NASD is planning a two week transition period during which time registration activities will not be processed. This two week period is currently scheduled for the beginning of August 1999.

The conference participants will discuss the CRD modernization process, including the proposed changes to the forms and the transition period.

C. Micro-cap Fraud Rules

Rule 15c2–11 under the Exchange Act requires a broker-dealer to review current information about an issuer before it publishes a quotation for the issuer's security in the non-Nasdaq over-the-counter markets. Because of the rule's "piggyback" provision, generally only the first broker-dealer has to review this information. Once the security is quoted regularly for 30 days, other broker-dealers can "piggyback" off those quotes without reviewing any information about the issuer.

On February 17, 1998, the Commission proposed amendments to Rule 15c2–11 that would strengthen the rule in a number of ways.[25] The Commission received approximately

[21] Securities Act Release No. 7497 (January 28, 1998) [63 FR 6370].

[22] Securities Act Release No. 7558 (July 29, 1998) [63 FR 41394].

[23] Exchange Act Rel. No. 40518 (October 2, 1998) [63 FR 54404].

[24] Exchange Act Rel. No. 37850 (October 22, 1996) [61 FR 55593].

[25] Exchange Act Release No. 39670 (February 17, 1998) [63 FR 9661].

199 written comments from 193 commenters, including 68 identical letters from OTC Bulletin Board issuers in response to the release proposing amendments. Broker-dealers, trade associations, and law firms representing broker-dealers submitted 45% of the comment letters. OTC Bulletin Board issuers submitted 30% of the comment letters. State securities regulators and NASAA accounted for 5% of the comment letters. The majority of the comment letters opposed the proposed amendments. Because of the significant comments received, the Commission decided to modify some of these amendments and repropose them for public comment.[26] The reproposal acknowledges commenters' concerns about the initial proposal by limiting the scope of the rule principally to priced quotations and to those securities that are more likely to be the subject of improper activities. The provisions relating to the broker-dealer's obligations under the rule and the specified issuer information that the broker-dealer must obtain and review are essentially unchanged from the initial proposal. The reproposed amendments would:

- Eliminate the rule's piggyback provision and require all broker-dealers to review current issuer information before publishing priced quotations for a security;
- Limit the rule's applicability to priced quotations only (except in the case of the first broker-dealer to quote the security);
- Require broker-dealers publishing priced quotations for a security to review current information about the issuer at least annually;
- Require documentation of the broker-dealer's compliance with the rule; and
- Require broker-dealers publishing quotes in compliance with the rule to make the issuer information available at the request of customers, prospective customers, information repositories, and other broker-dealers to the extent that such information is not available through EDGAR, any other federal or state electronic information system, or an information repository.

However, the new amendments would narrow the scope of the rule to those kinds of securities most frequently involved in micro-cap fraud schemes by excluding the following securities:

- Securities with a worldwide average daily trading volume value of at least $100,000 during each of the six full calendar months immediately preceding the date of publication of a quotation, and convertible securities where the underlying security satisfies this threshold;
- Securities with a bid price of at least $50 per share;
- Securities of issuers with net tangible assets in excess of $10,000,000, based on audited financial statements; and
- Non-convertible debt, non-participatory preferred stock, and investment grade asset-backed securities.

The amendments also reorganize and simplify the rule's provisions consistent with the Commission's plain English program. The goals of the amendments are to deter fraudulent or manipulative quotations for OTC securities, improve the integrity of quotations for OTC securities, enhance broker-dealer responsibility for quotations for OTC securities, and provide market professionals, investors, and others with greater access to issuer information. The participants will discuss the recent reproposal and the effects of such reproposal, if adopted, and other ways to promote investor protection in the OTC market arena.

D. NASD Proposals

The NASD has undertaken several regulatory initiatives in the past two years. A new rule change limited the securities that a member can quote on the OTC Bulletin Board to the securities of issuers that are registered under section 12 of the Exchange Act, certain insurance companies, and registered closed-end investment companies, but only if they are current in their reporting obligations.

A proposed rule amendment would require clearing firms to (1) forward customer complaints about an introducing firm to the introducing firm and the introducing firm's designated examining authority ("DEA"), (2) notify complaining customers that the complaint has been forwarded to the introducing member and the introducing member's DEA, (3) provide introducing firms with a list of exception reports available to help the introducing firms supervise their activities, and (4) permit introducing firms to issue checks drawn on the clearing firm's account only after the introducing firm has notified the clearing firm, in writing, that it has established and will maintain and enforce appropriate supervisory procedures.

The NASD submitted a proposed rule that would provide guidelines that apply to the employment and supervision of unregistered persons who contact prospective and existing customers, and provide for heightened supervision of cold callers. This proposal is currently out for comment.

Finally, a new rule proposed by the NASD in 1998 would require a member to review current financial statements of an issuer prior to recommending a transaction in the issuer's OTC securities to a customer, and to deliver a disclosure statement to its customer prior to making an initial purchase of an OTC security for the customer, and annually thereafter.

These four initiatives are still being reviewed by the Commission. The working group will discuss the impact of the new rules, the status of the proposals, the comments received to date, and their implications for small businesses and NASAA members.

E. Arbitration

The NASD submitted to the Commission rule filings that focus on and deal with the eligibility rule, the contract rule, the creation of a discovery guide for arbitrators, whether punitive damages should be capped in arbitration, and the use of interim injunctive relief in arbitration. On June 22, 1998, the Commission approved an NASD rule filing which eliminated the NASD's regulatory requirement that securities industry employees arbitrate statutory employment discrimination claims.[27] Additionally, on December 29, 1998, the Commission approved by delegated authority the NYSE's proposal to exclude statutory employment discrimination claims from its arbitration forum unless all parties agreed to the arbitration after the claim arose.[28] On October 14, 1998, the Commission approved the NASD's rule change altering the system for selecting arbitrators by substituting for the current system of administrative appointment of arbitrators by NASD staff a new system whereby parties are provided with lists of arbitrators that they may rank by preference.[29] Recently, the Commission approved an NASD rule proposal to increase NASD

[26] Exchange Act Release No. 41110 (February 25, 1999) [64 FR 11124].

[27] Exchange Act Release No. 40109 (June 22, 1998) [63 FR 35299].

[28] Exchange Act Release No. 40858 (December 29, 1998) [64 FR 1051]. Commission staff is working with the regional exchanges to assure conforming changes to their rules. In December 1998, the Commission approved proposals substantially similar to the NYSE's filed by the Boston Stock Exchange and Chicago Stock Exchange. Exchange Act Release No. 40861 (December 29, 1998) [64 FR 1039] (Boston); Exchange Act Release No. 40873 (December 31, 1998) [64 FR 1253] (Chicago).

[29] Exchange Act Release No. 40556 (October 14, 1998) [63 FR 56957].

Regulation's arbitration fees and the honoraria it pays its arbitrators.[30]

The NASD filings resulted in part from its work with the Securities Industry Conference on Arbitration ("SICA"). The participants are likely to address some or all of the above proposed changes in the securities arbitration process.

F. Day Trading

"Day trading" has been in the news a great deal recently. A "day trader" can be loosely defined as someone who buys and sells stocks during the day, often within minutes, hoping to take profitable advantage of intraday swings in share prices. What particularly distinguishes a day trader from a more typical retail investor is that he or she, generally, will (1) not carry a position overnight; (2) try to make money on the "spreads" between the bids and offers; (3) trade through automatic order execution systems, and not on-line through the Internet, in order to obtain nearly instantaneous order execution; (4) look at historical buying patterns in order to determine if the stock is most actively sought during certain hours of the day, times of the year, etc., rather than looking at a company's fundamentals or growth prospects; (5) have the mind set of a "trader" rather than a long term investor; and (6) focus on trading in volatile stocks.

The Commission is looking carefully at the activity of firms that facilitate day trading. Areas that the Commission is looking into include: (1) Activities that may require broker-dealer or investment adviser registration with the Commission, or that may require registration with the Commission of sales of shares of day trading accounts or firms; (2) compliance by day trading firms with margin and short sale rules, including loans made to customers; (3) capital requirements; (4) the manner in which client funds are used; and (5) suitability requirements.

In early 1998, NASAA formed a task force to examine day trading. The work of the task force is ongoing. The participants are likely to address the task force's work.

G. Migration of Rogue Brokers

The federal securities laws do not currently prevent persons subject to disciplinary findings by state securities and insurance commissions, and federal banking agencies,[31] from entering the securities industry (and vice-versa). A 1994 General Accounting Office ("GAO") study raised similar concerns about the migration of unscrupulous brokers into the financial services industry, such as banking and insurance.[32] The GAO recommended that the Department of Treasury work with the Commission and other financial regulators to (1) increase disclosure of CRD information so that regulators can consider a broker's disciplinary history in allocating examination resources and employers can use the information in making hiring decisions and (2) determine whether legislation or additional reciprocal agreements between the Commission and other financial regulators are necessary to prevent the migration of unscrupulous brokers to other financial services industries.

In 1996, the Commission's staff met with representatives from the NASD, NASAA, and the National Association of Insurance Commissioners ("NAIC"), to discuss steps that could be taken to stem the migration of unscrupulous brokers. At that meeting, it was agreed that an important first step would be to complete the ongoing CRD modernization project. The participants also discussed ways for additional regulatory authorities to obtain access to the insurance industry's Producer Information Network ("PIN").[33]

The participants are likely to discuss the CRD modernization program and other avenues of information sharing between federal and state securities, insurance and banking regulators in order to address the possible migration of unscrupulous brokers.

Similarly, the group also expects to discuss whether it would be appropriate to amend the Exchange Act, to make persons subject to a "statutory disqualification" [34] if they have been found by a state securities or insurance commission, or state or federal banking agency, to have committed certain fraudulent acts or violated the statutes enforced by these agencies.

H. Year 2000

The Commission has been very active in addressing the potential problems for securities industry computer systems as a consequence of the date change on January 1, 2000 ("Year 2000").

In particular, the Commission adopted rules that require broker-dealers, non-bank transfer agents, and investment advisers to file with the Commission (and, in the case of broker-dealers, with their designated examining authority) reports regarding their Year 2000 efforts.[35] The first reports for broker-dealers and transfer agents were due August 31, 1998; the first reports for investment advisers were due December 7, 1998. The Commission brought enforcement actions against 37 broker-dealers and 9 transfer agents who failed to file the first report or filed it late, while the NASD brought 59 similar actions against broker-dealers.[36]

Broker-dealers and non-bank transfer agents are required to file a second report on April 30, 1999; larger broker-dealers and non-bank transfer agents are also required to file a report prepared by an independent public accountant regarding the broker-dealers' and the non-bank transfer agents' processes for preparing for the Year 2000. Investment advisers are required to file a second report on June 7, 1999.[37]

Also during the past year, the Commission has supported the industry's efforts to conduct an industry wide test for Year 2000 problems in March 1999. Commission staff has worked with test organizers and the SROs to identify key test participants. In particular, the Commission has approved new SRO rules that allow the SROs to mandate their member firms conduct Year 2000 testing. Commission staff also meets regularly with the SROs to discuss member readiness for Year 2000 and contingency planning.

Other Commission efforts regarding Year 2000 efforts include a moratorium on the implementation of new Commission rules that require major reprogramming of computer systems by Commission-regulated entities between June 1, 1999 and March 31, 2000 [38] and surveys of Year 2000 remediation efforts

---

[30] Exchange Act Release No. 41056 (February 16, 1999) [64 FR 10041].

[31] This includes the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation and the Office of Thrift Supervision.

[32] Securities Markets: Actions Needed to Better Protect Investors Against Unscrupulous Brokers (Letter Report, September 14, 1994, GAO/GGD–94–208).

[33] The NAIC's five year strategic plan, issued in 1993, included the development of a producer database and common insurance/producer licensing procedures. PIN, developed in 1995, is one of the tools to modernize the insurance licensing process. The insurance industry will have access to the Producer Database ("PDB") through PIN. PDB access will include all non-confidential information such as the states in which a producer is licensed, what type of license is held as well as the status of the license and lines of authority.

[34] Exchange Act Section 3(a)(39).

[35] Exchange Act Release Nos. 40162 and 40163 (July 2, 1998) [63 FR 37668, 37688]; Investment Advisers Act Release No. 1769 (October 1, 1998) [63 FR 54308].

[36] Exchange Act Release No. 40573 and 40574 (October 20, 1998) and 40695 (January 7, 1999).

[37] Exchange Act Release Nos. 40608 (October 28, 1998) [63 FR 59208] and 40587 (October 22, 1998) [63 FR 58630].

[38] Exchange Act Release No. 40377 (August 27, 1998) [63 FR 47051].

at the exchanges, Nasdaq and clearing agencies.

I. Examination Issues

State and federal regulators also will discuss various examination-related issues of mutual interest, including: summits and examination coordination; branch office examinations; micro-cap issues; and day trading.

(3) Investment Management Issues

A. Division of Regulatory Authority

Title III of the 1996 Act amended the Investment Advisers Act of 1940 ("Advisers Act") [39] to divide regulatory responsibility for investment advisers between the Commission and state securities regulators. The law generally requires advisers that have assets under management of $25 million or more, or that advise registered investment companies, to register with the Commission.[40] Advisers that have assets under management of less than $25 million must register with the appropriate state securities authorities.

On May 15, 1997, the Commission adopted rules to implement this division of regulatory authority,[41] including a requirement that each Commission-registered adviser indicate whether it was eligible for continued registration with the Commission and, if not, withdraw from Commission registration. Approximately 11,800 advisers withdrew from Commission registration and the Commission canceled the registrations of 4,200 advisers that failed to indicate whether they were eligible for continued registration with the Commission.[42] Approximately 8,500 investment advisers are currently registered with the Commission.

The conferees will discuss cooperation between Commission and state adviser programs, including sharing information about past examinations and monitoring advisers switching between federal and state registration.

B. Electronic Filing System

The 1996 Act requires the Commission to establish and maintain a "readily accessible telephonic or other electronic process" to receive public inquiries about the disciplinary histories of investment advisers and persons associated with investment advisers.[43] In October 1998, Commission staff announced that they would recommend that the Commission designate NASD Regulation, Inc. ("NASDR") to operate an electronic investment adviser registration system.[44] This decision was made jointly with a NASAA committee.

The Commission has been working with NASAA, the state securities authorities, and NASDR to develop a one-stop electronic filing system that investment advisers will use to apply for registration with the Commission or the appropriate state securities authorities, and to update their registration. The Commission and state authorities will have access to the resulting database to review adviser registration materials and the database will be available to the public on an Internet web site. Clients and prospective clients of investment advisers will be able to quickly obtain disciplinary and other information about investment advisers and persons associated with investment advisers.

The conferees will discuss the progress to date in creating this new electronic filing system.

C. Revised Registration and Disclosure Forms

The Commission and NASAA are revising the investment adviser registration and disclosure forms. The revised registration form would provide more useful information to the Commission and the state securities regulators. The new disclosure form would require advisers to provide clear and complete disclosures in plain English to clients and prospective clients.

The conferees will consider and discuss ways in which the forms can be made most useful to the Commission and state securities authorities, and clients and prospective clients of investment advisers.

(4) Investor Education and Assistance

The Commission currently pursues a number of programs to educate investors on how to invest wisely and to protect themselves from fraud and abuse. The states and NASAA have a longstanding commitment to investor education, and the Commission intends to complement those efforts to the greatest extent possible. The working group will discuss the following investor education initiatives and potential joint projects:

A. Financial Literacy 2001

In the spring of 1998, NASAA, the NASD, and the Investor Protection Trust ("IPT") joined forces to launch "Financial Literacy 2001" ("FL2001"), an unprecedented $1 million campaign targeting 25,000 high school teachers across America. The goal of FL2001 is to encourage—and make it easier for—teachers in every state to teach the basics on saving and investing. Working together, NASAA, the NASD, and the IPT have developed a state-by-state customized classroom guide and have begun to provide aggressive distribution and teacher training. During the working group session, the states will brief the Commission's staff on the progress of FL2001 and plans for dissemination of the FL2001 program in the coming year.

B. Plain English Update

In January 1998, the Commission approved new rules that require issuers to write the cover page, summary, and risk factors section of prospectuses in plain English. These rules apply to all registration statements filed with the Commission on or after October 1, 1998, and to all mutual fund disclosure statements filed on or after December 1, 1998. During the working group session, the participants will discuss the status of the Commission's plain English initiative.

C. Facts on Saving and Investing Campaign

In the spring of 1998, NASAA and the Commission, in conjunction with the Council of Securities Regulators of the Americas, launched the "Facts on Saving and Investing Campaign." The campaign is an ongoing, grassroots effort to educate individuals about saving, investing, and avoiding financial fraud. Twenty-one countries throughout the Western Hemisphere participated in the campaign's enormously successful kick-off week. In the U.S., campaign partners—including more than thirty government agencies, consumer organizations, and financial industry associations—held educational events and distributed information on saving and investing throughout the country. In the coming year, the campaign plans to target two key audiences—schools and

---

[39] 15 U.S.C. 80b–1 et seq.

[40] Advisers Act Section 203A(a), 15 U.S.C. 80b–3a. The Advisers Act also provides for registration with the Commission of advisers that have their principal office and place of business in a state that has not enacted an investment adviser statute (currently, Wyoming), or that have their principal office and place of business outside the United States. In addition, the Commission has adopted rules exempting five categories of investment advisers from the prohibition on registration with the Commission. See Rule 203A–2, 17 CFR 275.203A–2.

[41] Investment Advisers Act Rel. No. 1633 (May 15, 1997) [62 FR 28112].

[42] The Commission published a Notice of Intention to Cancel Registrations of Certain Investment Advisers on March 9, 1998. See Investment Advisers Act Rel. No. 1705 [63 FR 12526].

[43] 1996 Act Section 306.

[44] SEC News Release 98–120.

the workplace. During the working group session, participants will discuss the campaign and future campaign initiatives. The group also will discuss other initiatives for international investor education.

D. New Investor Education Programs

Participants in the working group session will brainstorm ideas for new investor education programs, including joint NASAA and Commission initiatives.

E. Investor Education Resources

Participants in the working group session will assess existing resources for investor education—including brochures, videotapes, online materials, and other media—and identify gaps. Conferees also will discuss the most efficient and effective ways to provide educational resources to individuals at the grassroots level.

(5) Enforcement Issues

In addition to the above topics, state and federal regulators will discuss various enforcement-related issues which are of mutual interest.

(6) General

There are a number of matters which are applicable to all, or a number, of the areas noted above. These include EDGAR, the Commission's electronic disclosure system, rulemaking procedures, training and education of staff examiners and analysts and sharing of information.

The Commission and NASAA request specific public comments and recommendations on the above-mentioned topics. Commenters should focus on the agenda but may also discuss or comment on other proposals which would enhance uniformity in the existing scheme of state and federal regulation, while helping to maintain high standards of investor protection.

Dated: March 31, 1999.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–8515 Filed 4–6–99; 8:45 am]

BILLING CODE 8010–01–P

SMALL BUSINESS ADMINISTRATION

Request for Proposal for the Drug-Free Workplace Demonstration Program

AGENCY: U.S. Small Business Administration.

ACTION: Request for Proposal.

SUMMARY: The U.S. Small Business Administration (SBA) plans to issue request for proposal (RFP) no. SBDC–99–0001 to invite applications from eligible intermediaries in accordance with the Drug-Free Workplace Act of 1998 (Act). The authorizing legislation is the Small Business Act, Section 21(c)(3)(T) and Section 27, 15 U.S.C. 648(c)(3)(T) and 654, (Title IX of Pub. L. 105–277).

The Act permits the SBA to make grants to eligible intermediaries for the purpose of providing financial and technical assistance to small businesses seeking to establish drug-free workplace programs. In establishing these DFWP programs, as contemplated by the Act, eligible intermediaries should provide outreach to the small business community and provide additional voluntary education for parents. Outreach must include educating small businesses on the benefits of a drug-free workplace and encouraging small business employers and employees to participate in drug-free workplace programs. Education for parents must include teaching them how to keep their children drug-free.

All applicants must meet the definition of "Eligible Intermediary" as defined in the Act. Any applicants not meeting the definition will be considered non-responsive and their proposals will not be technically evaluated. The Act defines "Eligible Intermediary" as an organization that:

1. has at least two years of experience in carrying out drug-free workplace programs;

2. has a drug-free workplace policy in effect;

3. is located in a State, the District of Columbia, or a territory of the United States; *and*

4. has as its purpose the development of comprehensive drug-free workplace programs, or supplying drug-free workplace services, or providing other forms of assistance and services to small businesses.

SBA is looking for applications that include innovative and creative approaches to address the Drug-Free Workplace Act of 1998. The grants should be viewed as an opportunity to develop a community-wide collaborative effort in which a plan for a system of action aimed at reducing drug abuse in small businesses can serve as a national demonstration model.

SBA will select successful applicants through a competitive process. Evaluation criteria will be included in the RFP. The successful applicants will receive a 12-month grant award to provide financial and technical assistance to small businesses seeking to implement drug-free workplace programs.

DATES: SBA will mail the RFP to interested parties between mid and late April 1999. The closing date will be 30 days later. SBA Headquarters must receive the applications/proposals by the date and time that will be specified in the RFP.

FOR FURTHER INFORMATION CONTACT: Joan Bready, Office of Small Business Development Centers, SBA, at (202) 205–7384 or Mina Wales, Office of Procurement and Grants Management, SBA, at (202) 205–7080.

Dated: April 1, 1999.

Johnnie Albertson,

Associate Administrator, Small Business Development Centers.

[FR Doc. 99–8531 Filed 4–6–99; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[License No. 05/05–5210]

Cactus Capital Company; Notice of Surrender of License

Notice is hereby given that Cactus Capital Company, 6660 N. High Street, #1B, Worthington, Ohio 43085, has surrendered its license to operate as a small business investment company under the Small Business Investment Act of 1958, as amended (the Act). Cactus Capital Company was licensed by the Small Business Administration on September 22, 1989.

Under the authority vested by the Act and pursuant to the regulations promulgated thereunder, the surrender was effective as of February 28, 1999, and accordingly, all rights, privileges, and franchises derived therefrom have been terminated. (Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies).

Dated: March 30, 1999.

Don A. Christensen,

Associate Administrator for Investment.

[FR Doc. 99–8532 Filed 4–6–99; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Southeastern States Regional Fairness Board Public Hearing

The Small Business Administration Region IV Heartland States Regional Fairness Board located in the geographical area of Omaha, Nebraska, will hold a public meeting at 12:30 p.m. on Friday, June 11, 1999 at the Executive West Hotel-Drinkwater Room,

830 Phillips Lane, Louisville, KY 40209. To receive comments and testimony from small businesses and representatives of trade associations concerning regulatory enforcement or compliance taken by federal agencies.

Transcripts of these proceedings will be posted on the Internet. These transcripts are subject only to limited review by the National Ombudsman.

For further information, write or call, Gary P. Peele (312) 353–0880.

Shirl Thomas,

Director, Office of External Affairs.

[FR Doc. 99–8535 Filed 4–6–99; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Region II Advisory Council Meeting; Public Meeting

The U.S. Small Business Administration Region II Advisory Council located in the geographical area of Buffalo, New York, will hold a public meeting at 10:00 a.m. on April 28, 1999, at the Protocol Restaurant 6766 Transit Road, Williamsville, New York, to discuss matters that may be presented by members of the Advisory Council, staff of the U.S. Small Business Administration or others present.

For further information, write or call Franklin J. Sciortino, District Director, (716) 551–4301, U.S. Small Business Administration, Room 1311, 111 West Huron Street, Buffalo, New York 14202.

Shirl Thomas,

Director of External Affairs.

[FR Doc. 99–8533 Filed 4–6–99; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Heartland States Regional Fairness Board Public Hearing

The Small Business Administration Region VI Heartland States Regional Fairness Board located in the geographical area of Omaha, Nebraska, will hold a public meeting at 1:00 p.m. on Tuesday, May 11, 1999 at the Greater Omaha Chamber of Commerce, 1301 Harney, Omaha, NE 68102. The space is being donated by the Chamber of Commerce. To receive comments and testimony from small businesses and representatives of trade associations concerning regulatory enforcement or compliance taken by federal agencies.

Transcripts of these proceedings will be posted on the Internet. These transcripts are subject only to limited review by the National Ombudsman.

For further information, write or call, Gary P. Peele (312) 353–0880.

Shirl Thomas,

Director, Office of External Affairs.

[FR Doc. 99–8534 Filed 4–6–99; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

AGENCY: Small Business Administration.

ACTION: Notice of Reporting Requirements Submitted for OMB Review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATES: Submit comments on or before May 7, 1999. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

COPIES: Request for clearance (OMB 83–1), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer.

ADDRESSES: Address all comments concerning this notice to: *Agency Clearance Officer*, Jacqueline White, Small Business Administration, 409 3rd Street, SW, 5th Floor, Washington, DC 20416; and *OMB Reviewer*, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Jacqueline White, Agency Clearance Officer, (202) 205–6629.

SUPPLEMENTARY INFORMATION:

Title: Title VII Study and Report.

Form No: 2107.

Frequency: On Occasion.

Description of Respondents: Service-Disabled Veterans who own and operate Small Businesses

Annual Responses: 3,000.

Annual Burden: 2,000.

Dated: March 29, 1999.

Jacqueline White,

Chief, Administrative Information Branch.

[FR Doc. 99–8530 Filed 4–6–99; 8:45 am]

BILLING CODE 8025–01–P

SOCIAL SECURITY ADMINISTRATION

Agency Information Collection Activities: Proposed Request and Comment Request

I. In compliance with Pub. L. 104–13, the Paperwork Reduction Act of 1995, SSA is providing notice of its information collection packages that require submission to the Office of Management and Budget (OMB). SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility and clarity; and on ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology.

The information collections, listed below, will be submitted to OMB within 60 days from the date of this notice. Comments and recommendations regarding the information collections would be most useful if received by the Agency within 60 days from the date of this publication. Comments should be directed to the SSA Reports Clearance Officer at the address listed at the end of this notice.

1. Coverage of Employees of State and Local Governments—20 CFR Part 404—0960–0425. This current rule contains reporting and recordkeeping requirements in 20 CFR Part 404 (see table below). The regulation sections cited require State and/or interstate instrumentalities to provide certain information to SSA that is needed to extend Social Security coverage to public sector workers for pre-1987 tax years, and to maintain accurate records of social security agreements. SSA would not be able to provide coverage to these workers and would be in violation of the statute requiring coverage if the information was not collected.

This rule applies to 52 state agencies who could submit modifications to their Social Security coverage agreements and 3 interstate instrumentalities who could submit agreements for coverage, and one annual response for each. In actuality, SSA may receive any number of reports from a few States and no reports from the remainder. From past experience, SSA anticipates that no error modifications will be filed for tax years prior to 1987, nor wage reports and contributions payments for an error situation where wages have never been reported for those years. In addition, the reporting requirements in sections 404.1242, :1251 and .1271(a)& (c) no longer exist so we are showing no public reporting burden for these sections. SSA plans to publish a Notice

of Proposed Rulemaking to eliminate the obsolete reporting requirements from these sections. For the remaining sections, SSA is basing the public burden estimates on the total number of respondents that could potentially report to us, although we anticipate the actual number will be less.

Section	Number of States	Frequency of response	Individual burden	Annual burden (in hours)
404.1203(a)	52	1	1 hour	52
404.1204(a) & (b)	52	1	30 minutes	26
404.1214(d)	[1]3	1	1 hour	3
404.1215	52	1	1 hour	52
404.1216(a) & (b)	52	1	1 hour	52
404.1220(b) & (c)	52	1	5 minutes	4
404.1225(a) & (b)	52	1	1 hour	52
404.1237(a), (b) & (c); .1239; .1243(a), (b), (c)	52	1	1 hour	52
404.1242	0	0	0	0
404.1247	52	1	1 hour	52
404.1249(a), (b) &(c)	52	52	1 hour	52
404.1251	0	0	0	0
404.1265	3	1	1 hour	3
404.1271(a) & (c)	0	0	hour	0
404.1271(b)	2	2	4 hours	16
404.1272	3	1	1	3
404.1292	3	1	5	15
Total				434

[1] Interstate Instrumentalities.

2. Current Rule Regarding Continuation of Full Benefit Standard for Persons Institutionalized—0960–0516. The information collected by the Social Security Administration will be used to determine if a recipient of Supplemental Security Income benefits, who is temporarily institutionalized, is eligible to receive a full benefit. The respondents will be such recipients and their physicians.

Number of Respondents: 60,000.
Frequency of Response: 1.
Average Burden Per Response: 5 minutes.
Estimated Average Burden: 5,000 hours.

II. The information collection listed below has been submitted to OMB for clearance. Written comments and recommendations on the information collection would be most useful if received within 30 days from the date of this publication. Comments should be directed to the SSA Reports Clearance Officer and the OMB Desk Officer at the addresses listed at the end of this notice. You can obtain a copy of the OMB clearance package by calling the SSA Reports Clearance Officer on (410) 965–4145, or by writing to him.

Statement Regarding the Inferred Death of an Individual by Reason of Continued and Unexplained Absence-0960–0002. The information collected on form SSA–723 is used to determine if the Social Security Administration may infer that a missing person is deceased. The respondents are individuals who know or are related to the missing person.

Number of Respondents: 3,000.
Frequency of Response: 1.
Average Burden Per Response: 30 minutes.
Estimated Average Burden: 1,500 hours.

SSA Address: Social Security Administration, DCFAM, Attn: Frederick W. Brickenkamp, 6401 Security Blvd., 1–A–21 Operations Bldg., Baltimore, MD 21235.

OMB Address: Office of Management and Budget, OIRA, Attn: Lori Schack, New Executive Office Building, Room 10230, 725 17th St., NW, Washington, D.C. 20503.

Dated: March 31, 1999.

Frederick W. Brickenkamp,

Reports Clearance Officer, Social Security Administration.

[FR Doc. 99–8508 Filed 4–6–99; 8:45 am]

BILLING CODE 4190–29–P

DEPARTMENT OF STATE

Office of the Deputy Assistant Secretary for Energy, Sanctions, and Commodities

[Public Notice 3023]

Receipt of Application for a Presidential Permit for Pipeline Facilities To Be Converted To Crude Oil Service on the Border of the United States

AGENCY: Department of State.

SUMMARY: The Department of State has received an application from Portland Pipe Line Corporation requesting a Presidential permit, pursuant to Executive Order 11423 of August 16, 1968, as amended by Executive Order 12847 of May 17, 1993, authorizing Portland to return to crude oil service an existing 18-inch pipeline, and to connect, operate and maintain this pipeline crossing the international boundary between the United States and Canada at a point near North Troy, Vermont. The pipeline has been operated in interstate natural gas transmission service by Granite State Gas Transmission, Inc. under a lease from Portland Pipe Line Corporation since 1987. Portland Pipe Line Corporation is a Maine corporation with its principal place of business in South Portland, Maine. The applicant proposes to return the pipeline to crude oil service no later than October 1, 1999.

DATES: Interested parties are invited to submit, in duplicate, comments relative to this proposal on or before May 15, 1999.

FOR FURTHER INFORMATION CONTACT: Matthew McManus, Division Chief, Energy Producing Countries, Department of State, Washington, DC. 20520. (202) 647–4557.

Matthew McManus,

Division Chief, Energy Producing Countries, Bureau of Economic and Business Affairs.

[FR Doc. 99–8617 Filed 4–6–99; 8:45 am]

BILLING CODE 4710–07–P

OFFICE OF THE U.S. TRADE REPRESENTATIVE

Identification of Priority Foreign Country Practices and Foreign Countries Engaging in Discriminatory Procurement Practices; Request for Public Comment

AGENCY: Office of the United States Trade Representative.

ACTION: Request for written submissions from the public.

SUMMARY: Executive Order 13116 of March 31, 1999 requires the United States Trade Representative (USTR): to review United States trade expansion priorities and to identify priority foreign country practices, the elimination of which is likely to have the most significant potential to increase United States exports, either directly or through the establishment of a beneficial precedent; and to identify foreign countries engaging in discriminatory government procurement practices. USTR is requesting written submissions from the public concerning practices that should be considered by the USTR for these purposes.

DATES: Submissions must be received by 12:00 noon on April 19, 1999.

ADDRESSES: Office of the U.S. Trade Representative, 600 17th Street, NW, Washington, D.C. 20508.

FOR FURTHER INFORMATION CONTACT: Questions concerning the filing of submissions should be directed to Sybia Harrison, Staff Assistant to Section 301 Committee, (202) 395–3432; legal questions regarding Executive Order 13116 and Super 301 should be addressed to Demetrios Marantis, Assistant General Counsel, (202) 395–9626; and legal questions regarding Title VII should be addressed to Stephen Kho, Assistant General Counsel, (202) 395–3581.

SUPPLEMENTARY INFORMATION: Pursuant to section 310 of the Trade Act of 1974 (referred to as "Super 301"), Executive Orders 12901 of March 3, 1994 (59 F.R. 10727) and 12973 of September 17, 1995 (60 F.R. 516655), and section 314 of the Uruguay Round Agreements Act, USTR submitted annual reports to the appropriate Congressional committees in calendar years 1989–90 and 1994–97 reviewing U.S. trade expansion priorities and identifying priority foreign country practices, the elimination of which is likely to have the most significant potential to increase U.S. exports. Pursuant to Title VII of the Omnibus Trade and Competitiveness Act of 1988, as amended, the President submitted annual reports to Congress in calendar years 1989–96 identifying foreign countries that failed to comply with their obligations under the Agreement on Government Procurement (GPA) and other government procurement agreements, or otherwise discriminated against U.S. products and services in government procurement.

By Executive Order 13116 of March 31, 1999, the President re-instituted Super 301 and Title VII procedures for calendar years 1999–2001. Part I of Executive Order 13116 requires the USTR, no later than April 30, to review United States trade expansion priorities and identify priority foreign country practices, the elimination of which is likely to have the most significant potential to increase United States exports, either directly or through the establishment of a beneficial precedent. Part II of Executive Order 13116 requires the USTR, no later than April 30, to review and identify other countries' compliance with the GPA and other government procurement agreement obligations, or otherwise maintain, in government procurement, a significant and persistent practice of discrimination against U.S. products or services which results in identifiable harm to United States businesses and whose products or services are acquired in significant amounts by the United States Government. The USTR must submit to the congressional committees of jurisdiction a report on the priority foreign country practices identified under Part I of the Executive Order and on countries identified under Part II of the Executive Order and publish the report(s) in the **Federal Register**. The USTR also may describe in the report(s) foreign country practices that may warrant identification in the future or that were not identified because they are being addressed by provisions under U.S. trade law, existing bilateral trade agreements, or in trade negotiations and progress is being made toward their elimination.

Executive Order 13116 also requires the Trade Representative to initiate investigations under section 302(b)(1) of the Trade Act of 1974 as amended (19 U.S.C. 2412 (b)(1)), no later than 90 days after submission of the report(s), with respect to any of the identified practices that have not been satisfactorily resolved in the interim.

Requirements for Submissions

The USTR invites submissions on priority foreign country practices and countries engaging in discriminatory government procurement practices that should be considered for identification under Executive Order 13116. If the practice was the subject of comments previously submitted in connection with the 1999 National Trade Estimate Report on Foreign Trade Barriers (1999 NTE Report), the present submission should identify the related comments in the NTE public docket and include any additional pertinent information, including information explaining why the practice rises to the level of a "priority foreign country practice" within the meaning of Executive Order 13116. If the practice was not the subject of comments submitted in connection with the 1999 NTE Report, the submission should: (1) include information on the nature and significance of the practice; (2) identify the United States product, service, intellectual property right, or foreign direct investment matter which is affected by the practice; and (3) provide any other information considered relevant. Such information may include information on the relevant trade or government procurement agreements to which a foreign country is a party, its compliance with those agreements, and any other information related to the factors set forth in Parts I and II of Executive Order 13116 for identification of priority foreign country practices and countries that engage in discriminatory government procurement practices.

Interested persons must provide twenty copies of any submission, in English, to Sybia Harrison, Staff Assistant to Section 301 Committee, Office of the United States Trade Representative, by noon on April 19, 1999. Because submissions will be placed in a public file, open to public inspection at USTR, business-confidential information should not be submitted. Inspection is by appointment only with the staff of the USTR Public Reading Room and can be arranged by calling Brenda Webb (202) 395–6186. The Reading Room is open to the public from 9:30 a.m. to 12 noon, and from 1 p.m. to 4 p.m., Monday through Friday.

Joanna McIntosh,

Chairman, Section 301 Committee.

[FR Doc. 99–8647 Filed 4–5–99; 8:45 am]

BILLING CODE 3190–U–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

[ALJ 99–0002 CIV]

In the Matter of Ashland, Inc.

AGENCY: United States Coast Guard, DOT.

ACTION: Notice of proposed penalty; opportunity to participate.

SUMMARY: The United States Coast Guard gives notice of the proposed

assessment of a Class II administrative penalty against Ashland Inc. for violations of the Federal Water Pollution Control Act (FWPCA). The alleged violations involve the discharge of approximately 1100 barrels of oil into and upon the waters of the Big Sandy River, Catlettsburg, Kentucky and adjoining navigable waters of the United States on or about December 21, 1997. Interested persons may participate or file comments in this proceeding.

DATES: Filings in this matter must be received no later than May 7, 1999.

ADDRESSES: Interested persons must submit all filings in this proceeding to the Hearing Docket Clerk. Filings should reference ALJ Docket number 99–0002–CIV.

If you file by mail, the address is Hearing Docket Clerk, Administrative Law Judge Docketing Center, United States Coast Guard, 40 South Gay Street, Room 412, Baltimore, Maryland 21202–4022.

If you file by fax, then send to (410) 962–1742.

If you file in person, then deliver the filings to the same address at Room 412 between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The public may inspect the administrative record for this Class II civil penalty proceeding at the same address and times.

FOR FURTHER INFORMATION CONTACT: Mr. George J. Jordan, Director of Judicial Administration, Office of the Chief Administrative Law Judge, Commandant (G-CJ), U.S. Coast Guard, 2100 Second Street SW., Washington, DC 20593–0001, Telephone (202) 267–2940.

SUPPLEMENTARY INFORMATION: This is a Class II civil penalty proceeding brought under section 311(b) of the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.), as amended by the Oil Pollution Act of 1990 (33 U.S.C. 1321(b)). The FWPCA requires that the Coast Guard publish notice of the proposed issuance of an order assessing a Class II civil penalty in the **Federal Register**.

If you wish to be an interested person, you must file written comments on the proceeding or written notice of intent to present evidence at any hearing held in this Class II civil penalty proceeding with the Hearing Docket Clerk. You must file no later than May 7, 1999. (33 CFR 20.404).

The following table explains how interested persons may participate in a Class II civil penalty proceeding.

If—	Then—
a hearing is scheduled	You will be given • Notice of any hearing; • A reasonable opportunity to be heard and to present evidence during any hearing; and • Notice and a copy of the decision 33 CFR 20.404
the proceeding is concluded without a hearing.	You may petition the Commandant of the Coast Guard to set aside the order and to provide a hearing. You must file the petition within 30 days after issuance of the administrative law judge's order. 33 CFR 20.1102

You can find the regulations concerning Class II civil penalty proceedings in 33 CFR Part 20.

This proceeding (ALJ Docket Number: 99–0002–CIV) results from an alleged discharge of approximately 1100 barrels of oil into Big Sandy River, Catlettsburg, Kentucky and adjoining navigable waters of the United States on or about December 21, 1997 and the following alleged violations of pollution prevention regulations.

(1) failure to terminate a transfer between the facility and a tank vessel when the person in charge of the vessel departed,

(2) failure to remain with the vessel during a transfer between the tank vessel and the facility;

(3) failure to maintain surveillance of that vessel by using a person who is responsible for the security of the vessel; and,

(4) failure to have a means of communication between the person in charge of the vessel transfer operation and the facility transfer operation.

The Coast Guard filed the Complaint on January 11, 1999 at New Orleans, LA.

The Respondent is Ashland, Inc., 1000 Ashland Drive, Russell, Kentucky 41169.

The Coast Guard seeks a civil penalty of $50,000.

Dated: March 25, 1999.

George J. Jordan,

Director of Judicial Administration, Office of the Chief Administrative, Law Judge, United States Coast Guard.

[FR Doc. 99–8570 Filed 4–6–99; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

[ALJ 99–0003–CIV]

In the Matter of TransAmerican Refining Corp.

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed penalty; opportunity to participate.

SUMMARY: The Coast Guard gives notice of the proposed assessment of a Class II administrative penalty against TransAmerican Refining Corp. for violations of the Federal Water Pollution Control Act (FWPCA). The alleged violations involve twenty-nine (29) oil transfer operations conducted at an onshore facility located at 15272 River Road, mile 125.5, New Orleans, LA that occurred on or about September 19, 1997 and continued through and including September 24, 1997. Interested persons may participate or file comments in this proceeding.

DATES: Comments must reach the Coast Guard no later than May 7, 1999.

ADDRESSES: You may mail comments to the Hearing Docket Clerk, Administrative Law Judge Docketing Center, United States Coast Guard, 40 South Gay Street, Room 412, Baltimore, Maryland 21202–4022. Comments may also be personally delivered to Room 412 at the same address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (410) 962–7434. You may also fax your comments to (410) 962–1742.

The Administrative Law Judge Docketing Center maintains the public docket for this matter. Comments will become part of this docket and will be available for inspection or copying in Room 412 at the address listed above.

FOR FURTHER INFORMATION CONTACT: Mr. George J. Jordan, Director of Judicial Administration, Office of the Chief Administrative Law Judge, Commandant (G-CJ), U.S. Coast Guard,

2100 Second Street SW., Washington, DC 20593–0001. The telephone number is (202) 267–2940.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to submit written comments. Persons submitting comments should include their name, address, identify this document (ALJ 99–0003-CIV), and state the reason for each specific comment. Please submit all comments and attachments in an unbound format on white paper no longer than 8½ by 11 inches, suitable for copying and electronic filing. Persons wanting acknowledgment or receipt of comments should enclose self-addressed, stamped postcards or envelopes.

Discussion

This is a Class II civil penalty proceeding brought under section 311(j) of the Federal Water Pollution Control Act (33 U.S.C. 1251 *et. seq.*) (FWCPA), as amended by the Oil Pollution Act of 1990 (33 U.S.C. 1321(j)). The FWPCA requires the Coast Guard to publish notice of the proposed issuance of an order assessing a Class II civil penalty in the **Federal Register**.

If you wish to be an interested person, you must file written comments on the proceeding or written notice of intent to present evidence at any hearing held in this Class II civil penalty proceeding with the Hearing Docket Clerk.

The following table explains how interested persons may participate in a Class II civil penalty proceeding.

If—	Then—
a hearing is scheduled	You will be given • Notice of any hearing; • A reasonable opportunity to be heard and to present evidence during any hearing; and • Notice and a copy of the decision 33 CFR 20.404
the proceeding is concluded without a hearing.	You may petition the Commandant of the Coast Guard to set aside the order and to provide a hearing. You must file the petition within 30 days after issuance of the administrative law judge's order. 33 CFR 20.1102

You can find the regulations concerning Class II civil penalty proceedings in 33 CFR Part 20.

This proceeding (ALJ 99–0003–CIV) results from 29 oil transfer operations violations that occurred at an onshore facility located at 15272 River Road, mile 125.5, New Orleans, LA on or about September 19, 1997 and continuing through and including September 24, 1997. The Coast Guard alleges that TransAmerican Refining Corp. conducted oil transfer operations without submitting the following items to the Captain of the Port New Orleans:

(1) A letter of intent to transfer oil;

(2) A facility response plan; and

(3) Two (2) copies of an operations manual for examination.

The Coast Guard further alleges that TransAmerican Refining Corp. failed to log the date and time of completion on twenty-nine (29) declarations of inspections and make an examined operations manual available to the person in charge during the oil transfers.

The Coast Guard filed the complaint on March 5, 1999 at New Orleans, LA.

The Respondent is TransAmerican Refining Corporation, Attention: Mr. Burgess E. McCraine, Jr., Campbell, McCraine, Sistrunk, Anzelmo, & Hardy, 3445 North Causeway Blvd, Suite 800, Metairie, LA 70002.

The Coast Guard seeks a civil penalty of $700,000.

Dated: March 25, 1999.

George J. Jordan,

Director of Judicial Administration, Office of the Chief Administrative Law Judge, United States Coast Guard.

[FR Doc. 99–8571 Filed 4–6–99; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Request Renewal From the Office of Management and Budget (OMB) of Current Public Collections of Information

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) the FAA invites public comment on 4 currently approved public information collections which will be submitted to OMB for renewal.

DATES: Comments must be received on or before June 7, 1999.

ADDRESSES: Comments on any of these collections may be mailed or delivered to the FAA at the following address: Ms. Judith Street, Room 612, Federal Aviation Administration, Standards and Information Division, APF–100, 800 Independence Ave., SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Ms. Judith Street at the above address or on (202) 267–9895.

SUPPLEMENTARY INFORMATION: The FAA solicits comments on any of the current collections of information in order to evaluate the necessity of the collection, the accuracy of the agency's estimate of the burden, the quality, utility, and clarity of the information to be collected, and possible ways to minimize the burden of the collection. Following are short synopses of the 4 currently approved public information collection activities, which will be submitted to OMB for review and renewal:

1. 2120–0009, Pilot Schools—FAR 141. The information is required from applicants who wish to be issued pilot school certificates and associated ratings. The number of applicants is estimated to be 860. Part 141 prescribes the requirements for issuing pilot school certificates, provisional pilot school certificates, and associated ratings to qualified applicants. The information on FAA Form 8420–6, Application for Pilot School certificates, is required from applicants who wish to be issued pilot school certificates and associated ratings. Pilot schools train private, commercial, flight instructor, and airline transport pilots, along with training for associated ratings on various types of aircraft. The information from the form is also necessary to assure continuing compliance with Part 141, renewal of certificate every 24 months, and for any amendments to pilot school certificates. The estimated total annual burden is 47,000 hours.

2. 2120–0027, Application for Certificate of Waiver or Authorization.

The respondents are those persons wishing authorization to deviate from certain prescribed regulations. The estimated number of applications is 25,000 with an annual burden of approximately 13,500 hours. This public reporting burden is imposed on persons that have a need to deviate from the provisions of the Federal Aviation Regulations (FAR) that govern use of airspace with the United States. This request also describes the burden associated with authorizations to make parachute jumps.

3. 2120–0507, Development of Major Repair Data. SFAR–36. This SFAR relieves qualifying applicants (aircraft maintenance, commercial aviation, aircraft repair stations, air carriers, air taxi and commercial operators) of the burden of obtaining FAA approval of data developed by them for major repair on a case-by-case basis and provides for one-time approvals. The estimated number of respondents is 20. The estimated annual burden is 500 hours.

4. 2120–0574, Aviation Safety Counselor of the Year Award. There is an estimated 200 people who will nominate a person to be considered for the Aviation Safety Counselor of the Year Award. The estimated total annual burden is 200 hours. This form is used to nominate private citizens for recognition of their volunteer services to the FAA. The agency will use the information on the form to select nine regional winners and one national winner. The respondents are private citizens involved in aviation.

Issued in Washington, DC, on April 1, 1999.

Patricia W. Carter,

Acting Manager, Standards and Information Division, APF–100.

[FR Doc. 99–8646 Filed 4–6–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent to Rule on Application to Impose and Use the Revenue from a Passenger Facility Charge (PFC) at MBS International Airport, Saginaw, Michigan

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Intent to Rule on Application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at MBS International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before May 7, 1999.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Detroit Airports District Office, Willow Run Airport, East, 8820 Beck Road, Belleville, MI 48111.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Ms. Elizabeth Owen, Airport Manager of the MBS International Airport, at the following address: MBS International Airport Commission, P.O. Box P, 8500 Garfield Road, Freeland, MI 48623.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the MBS International Airport Commission under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Jon Gilbert, Program Manager, Federal Aviation Administration, Detroit Airports District Office, Willow Run Airport, East, 8820 Beck Road, Belleville, MI 48111 (734–487–7281). The application may be reviewed in person at this same location.

SUPPLMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at MBS International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On March 2, 1999, the FAA determined that the application to impose and use the revenue from a PFC submitted by MBS International Airport Commission was substantially complete within the requirements of § 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than June 11, 1999.

The following is a brief overview of the application.

PFC Application No.: 99–03–C–00–MBS.

Level of the proposed PFC: $3.00.

Proposed charge effective date: January 1, 2000.

Proposed charge expiration date: August 31, 2005.

Total estimated PFC revenue: $4,234,048,000.

Brief description of proposed projects: (1) Acquire SRE plow with sand spreader, (2) Improve airport drainage (Phase I), (3) Primary power/telephone rehabilitation, (4) PFC preparation reimbursement, (5) Y2K compliance testing, (6) Master Plan update, (7) Improve airport drainage (Phase II), (8) Rehabilitate SRE ARFF access road, (9) Acquire SRE plow with dump box, (10) Rehabilitate entrance drive, (11) Rehabilitate service drive, (12) Perimeter fencing, (13) Rehabilitate Taxiway "C" and connectors, (14) Rehabilitate Runway 5/23, (15) Rehabilitate Runway 14/32, (16) Rehabilitate Taxiway "A", (17) Acquire SRE Snowblower Unit 41, and (18) Acquire SRE Snowblower Unit 20. Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Part 135, Air Taxi/Commercial Operators filing FAA Form 1800–31.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application, notice, and other documents germane to the application in person at the MBS International Airport Commission.

Issued in Des Plaines, Illinois, on March 31, 1999.

Philip M. Smithmeyer,

Acting Manager, Planning/Programming Branch, Airports Division, Great Lakes Region.

[FR Doc. 99–8645 Filed 4–6–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–33 (Sub-No. 134X)]

Union Pacific Railroad Company—Abandonment and Discontinuance of Trackage Rights Exemption—in Los Angeles County, CA

Union Pacific Railroad Company (UP) has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments and Discontinuances of Service and Trackage Rights* to abandon a 1.44-mile line of railroad on the Lincoln Park Drill (the Line) from milepost 486.30 near State Street to the end of the line at milepost 487.74 near Lincoln Park, and for discontinuance of overhead trackage rights over a 0.8-mile line of the Southern California Regional Rail Authority's (SCRRA Track) San Gabriel Subdivision from milepost 485.30 to milepost 486.10 near State Street, in Los Angeles County, CA. The

line traverses United States Postal Service Zip Codes 90032 and 90033.[1]

UP has certified that: (1) no local traffic has moved over the Line for at least 2 years; (2) there has been no overhead traffic on the SCRRA track during the past 2 years and any overhead traffic could be rerouted over other lines; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment and discontinuance shall be protected under *Oregon Short Line R. Co.— Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed. Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on May 7, 1999, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[2] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[3] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by April 19, 1999. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by April 27, 1999, with: Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW, Washington, DC 20423.

A copy of any petition filed with the Board should be sent to applicant's representative: Joseph D. Anthofer, General Attorney, Union Pacific Railroad Company, 1416 Dodge Street, Room 830, Omaha, NE 68179.

If the verified notice contains false or misleading information, the exemption is void *ab initio*.

UP has filed an environmental report which addresses the effects, if any, of the abandonment and discontinuances on the environment and historic resources. The Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by April 12, 1999. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423) or by calling SEA, at (202) 565–1545. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), UP shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned its line. If consummation has not been effected by UP's filing of a notice of consummation by April 7, 2000, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

Decided: March 31, 1999.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 99–8326 Filed 4–6–99; 8:45 am]

BILLING CODE 4915–00–P

[1] UP states that the SCRRA Track will continue to be operated by SCRRA.

[2] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[3] Each offer of financial assistance must be accompanied by the filing fee, which currently is set at $1000. *See* 49 CFR 1002.2(f)(25).

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[FI–28–96]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, FI–28–96 (TD 8801), Arbitrage Restrictions on Tax-Exempt Bonds (§ 1.148–5).

DATES: Written comments should be received on or before June 7, 1999 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulation should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5569, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Arbitrage Restrictions on Tax-Exempt Bonds.

OMB Number: 1545–1490.

Regulation Project Number: FI–28–96.

Abstract: This regulation provides guidance concerning the arbitrage restrictions applicable to tax-exempt bonds issued by state and local governments and contains rules regarding the use of proceeds of state and local bonds to acquire higher yielding investments. The regulation provides safe harbors for establishing the fair market value of all investments purchased for yield restricted defeasance escrows. Further, the regulation requires that issuers must retain certain records and information with the bond documents. The recordkeeping requirements are necessary for the IRS to determine that an issuer of tax-exempt bonds has not paid more than fair market value for nonpurpose investments under section 148 of the Internal Revenue Code.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: State, local, or tribal governments, and not-for-profit institutions.

Estimated Number of Respondents: 1,400.

Estimated Time Per Respondent: 1 hour.

Estimated Total Annual Burden Hours: 1,425.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information

unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: April 1, 1999.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 99–8639 Filed 4–6–99; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 2555

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 2555, Foreign Earned Income.

DATES: Written comments should be received on or before June 7, 1999 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Faye Bruce, (202) 622–6665, Internal Revenue Service, room 5577, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Foreign Earned Income.

OMB Number: 1545–0067.

Form Number: 2555.

Abstract: Form 2555 is filed by U.S. citizens and resident aliens who qualify for the foreign earned income exclusion and/or the foreign housing exclusion or deduction. This information is used by the IRS to determine if a taxpayer qualifies for the exclusion(s) or deduction.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 181,626.

Estimated Time Per Respondent: 3 hrs., 53 min.

Estimated Total Annual Burden Hours: 704,709.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 31, 1999.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 99–8640 Filed 4–6–99; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8814

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8814, Parents' Election To Report Child's Interest and Dividends.

DATES: Written comments should be received on or before June 7, 1999 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, Room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Faye Bruce, (202) 622–6665, Internal Revenue Service, Room 5577, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Parents' Election To Report Child's Interest and Dividends.

OMB Number: 1545–1128.

Form Number: 8814.

Abstract: Form 8814 is used by parents who elect to report the interest and dividend income of their child under age 14 on their own tax return. If this election is made, the child is not required to file a return.

Current Actions: There are no changes being made to Form 8814 at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 1,100,000.

Estimated Time Per Respondent: 53 min.

Estimated Total Annual Burden Hours: 979,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 31, 1999.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 99–8641 Filed 4–6–99; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 6251

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 6251, Alternative Minimum Tax—Individuals.

DATES: Written comments should be received on or before June 7, 1999 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Faye Bruce, (202) 622–6665, Internal Revenue Service, Room 5577, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Alternative Minimum Tax—Individuals.

OMB Number: 1545–0227.

Form Number: 6251.

Abstract: Form 6251 is used by individuals with adjustments, tax preference items, taxable income above certain exemption amounts, or certain credits to compute the alternative minimum tax, which is added to regular tax. The information on Form 6251 is used by the IRS to verify that the taxpayer correctly figured the tax.

Current Actions: There are no changes being made to Form 6251 at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 414,106.

Estimated Time Per Respondent: 6 hrs., 16 min.

Estimated Total Annual Burden Hours: 2,596,445.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 31, 1999.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 99–8642 Filed 4–6–99; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8801

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8801, Credit For Prior Year Minimum Tax—Individuals, Estates and Trusts.

DATES: Written comments should be received on or before June 7, 1999 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Faye Bruce, (202)

622–6665, Internal Revenue Service, Room 5577, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Credit For Prior Year Minimum Tax—Individuals, Estates and Trusts.

OMB Number: 1545–1073.

Form Number: 8801.

Abstract: Form 8801 is used by individuals, estates, and trusts to compute the minimum tax credit, if any, available from a tax year beginning after 1986 to be used in the current year or to be carried forward for use in a future year.

Current Actions: There are no changes being made to Form 8801 at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 38,744.

Estimated Time Per Respondent: 5 hr., 52 min.

Estimated Total Annual Burden Hours: 227,427.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 31, 1999.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 99–8643 Filed 4–6–99; 8:45 am]

BILLING CODE 4830–01–U

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition Determinations: "Dresden in the Ages of Splendor and Enlightenment: 18th Century Painting from the Old Masters Picture Gallery"

AGENCY: United States Information Agency.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85–5 of June 27, 1985 (50 FR 27393, July 2, 1985). I hereby determine that the objects to be included in the exhibit "Dresden in the Ages of Splendor and Enlightenment: 18th Century Painting from the Old Masters Picture Gallery," imported from abroad for temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to a loan agreement with the foreign lenders. I also determine that the exhibition or display of the listed exhibit objects at the Columbus Museum of Art, Columbus, OH, from on or about April 23, 1999, to on or about October 24, 1999, is in the national interest. Public Notice of these determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For a copy of the list of exhibit objects or for further information, contact Paul Manning, Assistant General Counsel, Office of the General Counsel, United States Information Agency, at 202/619–5997, or USIA, 301 4th Street, SW, Room 700, Washington, D.C. 20547–0001.

Dated: April 2, 1999.

Les Jin,

General Counsel.

[FR Doc. 99–8608 Filed 4–6–99; 8:45 am]

BILLING CODE 8230–01–M

federal register

Wednesday
April 7, 1999

Part II

Department of Transportation

Federal Transit Administration

49 CFR Part 611
Major Capital Investment Projects; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

49 CFR Part 611

[Docket No. FTA–99–5474]

RIN 2132–AA63

Major Capital Investment Projects

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Transportation Equity Act for the 21st Century (TEA–21) requires the Federal Transit Administration (FTA) to issue regulations on the manner in which candidate projects for capital investment grants and loans for new fixed guideway systems and extensions to existing systems ("new starts") will be evaluated and rated. This Notice of Proposed Rulemaking (NPRM) describes the procedures that FTA proposes to use in the project evaluation and rating process. When finalized, this rule will enable FTA and Congress to identify those new starts projects that should be funded, in part, by the Federal government.

DATES: Comments on this proposed rule must be submitted by July 6, 1999. Late-filed comments will be considered to the extent practicable.

ADDRESSES: Written comments must refer to the docket number appearing above and must be submitted to the United States Department of Transportation, Central Dockets Office, PL–401, 400 Seventh Street SW, Washington, DC 20590. All comments received will be available for inspection at the above address from 10:00 a.m. to 5:00 p.m., Monday through Friday, except Federal holidays. Those desiring the agency to acknowledge receipt of their comments should include a stamped, self-addressed postcard with their comments.

FOR FURTHER INFORMATION CONTACT: For program issues, John Day, Office of Policy Development, FTA, (202) 366–4060. For legal issues, Scott A. Biehl, Assistant Chief Counsel, FTA, (202) 366–4063.

SUPPLEMENTARY INFORMATION:

Electronic Access

Electronic access to this and other documents is available through FTA's home page on the World Wide Web, at http://www.fta.dot.gov.

Internet users can access all comments received by the U.S. DOT Dockets, Room PL–401, via the Docket Management System (DMS) on the DOT home page, at http://dms.dot.gov. The DMS is available 24 hours each day, 365 days each year. Please follow the instructions online for more information and help.

An electronic copy of this document may be downloaded using a modem and suitable communications software from the Government Printing Office's (GPO) Electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the Federal Register's home page, at *http://www.nara.gov/fedreg*, and the GPO database, at http://www.access.gpo.gov/nara.

Table of Contents

I. Background
II. History
  A. The First Policy Statement (1976)
  B. Policy on Rail Transit (1978)
  C. Statement of Policy on Major Urban Mass Transportation Capital Investments (1984)
  D. Surface Transportation and Uniform Relocation Assistance Act of 1987 (STURAA)
  E. Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA)
  F. Executive Order 12893 (1994)
  G. Policy Discussion Paper (1994)
  H. The 1996 Statement of Policy
III. Transportation Equity Act for the 21st Century (TEA–21)
  A. Significant Changes
  B. Other Changes
IV. Government Performance and Results Act of 1993
V. Outreach
VI. Today's Proposed Rule
VII. Section-By-Section Analysis
VIII. Request for Comments on Particular Issues
IX. Regulatory Evaluation
X. Regulatory Process Matters

I. Background

The Federal Transit Administration (FTA) is issuing this NPRM to carry out the requirements of Section 3009(e)(5) of TEA–21. The proposed regulation defines the process FTA will use to evaluate candidate new starts under 49 USC 5309.

These procedures will replace those in force since the December 19, 1996 **Federal Register** Notice [61 FR 67093–106], and the November 12, 1997 amendments to this Notice [62 FR 60756–58], which described the measures then used by FTA to evaluate candidate projects for discretionary new starts funding under the statutory criteria at that time.

This rule, together with the FTA/Federal Highway Administration (FHWA) planning and environmental regulations at 23 CFR Parts 450 and 771, will flesh out the requirements of 49 U.S.C. 5309(e). The statute now requires candidate projects to be "(A) based on the results of an alternatives analysis and preliminary engineering, (B) justified based on a comprehensive review of its mobility improvements, environmental benefits, cost effectiveness, and operating efficiencies, and (C) supported by an acceptable degree of local financial commitment, including evidence of stable and dependable financing sources to construct, maintain, and operate the system or extension." This rule sets forth the approach FTA proposes to use to evaluate candidate projects in terms of their justification and local financial commitment. Consistent with 49 U.S.C. 5309(e)(6), as amended by Section 3009(e) of TEA–21, these procedures will be used to approve candidate projects for entry into preliminary engineering and final design. These procedures will also be used to evaluate projects in order to make recommendations for funding in the annual report to Congress required by 49 U.S.C. 5309(o)(1).

II. History

Since the early 1970's, the Federal government has provided a large share of the Nation's capital investment in urban mass transportation, particularly for "new starts" (major new fixed guideway transit systems or extensions to existing fixed guideway systems). By the mid-1970's, because of the magnitude of the New Start commitments being proposed, the Department found it useful to publish a statement of Federal policy to ensure that the available resources would be used in the most prudent and effective manner.

A. The First Policy Statement (1976)

The first policy statement was issued in 1976 [41 FR 41512–14 (9/22/76)]. It introduced a process-oriented approach with the requirement that New Start projects be subjected to an analysis of alternatives, including a Transportation System Management (TSM) alternative that used no-capital and low-capital measures to make the best use of the existing transportation system. The Statement also required projects to be "cost-effective."

B. Policy on Rail Transit (1978)

The original policy was supplemented in 1978 by a "Policy on Rail Transit" [43 FR 9428–30 (3/7/78)]. This Statement reiterated the requirement for Alternatives Analysis, established requirements for local financial commitments to the project, established the concept of a contract providing for a multi-year commitment of Federal funds, with a maximum limit of Federal participation (the Full Funding Grant

Agreement—FFGA), and required that local governments undertake supporting local land use actions. This was supplemented by a 1980 policy statement that linked the Alternatives Analysis requirement to the Environmental Impact Statement development process [45 FR 71986–87 (10/30/80)].

C. Statement of Policy on Major Urban Mass Transportation Capital Investments (1984)

These principles were reiterated and refined in a May 18, 1984, Statement of Policy on Major Urban Mass Transportation Capital Investments [49 FR 21284–91]. The major feature of this Policy Statement was the introduction of an approach for making comparisons between competing projects. To do so, a rating system was established under which projects were evaluated in terms of a cost effectiveness index of forecast incremental cost per incremental rider for the build alternative, compared with the TSM alternative as the base. Further, index threshold values were established which projects had to pass in order to be considered for funding. In addition, the criteria to be used to judge local financial commitment were spelled out.

D. Surface Transportation and Uniform Relocation Assistance Act of 1987 (STURAA)

The principles of the 1984 policy statement were later incorporated into law with enactment by Congress of the Surface Transportation and Uniform Relocation Assistance Act of 1987 (STURAA) (Pub. L. 100–17). This act established in law a set of criteria which new starts projects had to meet in order to be eligible for Federal discretionary grants. Specifically, projects had to be "cost-effective" and "supported by an adequate degree of local financial commitment." STURAA also added a requirement for an annual report to Congress laying out the Department's recommendations for discretionary funding for new starts for the subsequent fiscal year.

To effectuate the requirements set forth in STURAA, on April 25, 1969 FTA (then the Urban Mass Transportation Administration) issued a Notice of Proposed Rulemaking [54 FR 17878–92]. This Proposed Rule would have codified the requirements of the 1984 Policy Statement and made the "Cost Per New Rider" Index and threshold values regulatory. However, in the FY 1990 and FY 1991 Appropriations Acts, Congress directed that this rulemaking not be advanced [See the Department of Transportation and Related Agencies Appropriations Act, 1990 (Pub. L. 101–164) and Department of Transportation and Related Agencies Appropriations Act, 1991 (Pub. L. 101–516)]. Thus, on February 3, 1993, this rulemaking was withdrawn [58 FR 6948].

E. Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA)

The Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) made substantial changes to the legislative basis for the criteria used to evaluate candidate projects. Specifically, the original requirement that a project be "cost-effective" was expanded; the new requirement specified that projects be "justified, based on a comprehensive review of its mobility improvements, environmental benefits, cost-effectiveness, and operating efficiencies." In addition, certain "considerations" and "guidelines" were established that were to be taken into account in determining how well the project meets the criteria.

F. Executive Order 12893 (1994)

On January 26, 1994, the President issued Executive Order 12893 [59 FR 4233–5], describing the principles which Federal agencies are to apply in determining how to invest in all forms of infrastructure, including transportation. The Order requires a systematic analysis of the costs and benefits of proposed investments, and sets out the parameters for such analysis. It calls for efficient management of infrastructure, including a focus on the operation and maintenance of facilities, as well as the use of pricing to manage demand, and calls for comparison of a comprehensive set of options and consideration of quantifiable and qualitative measures of benefits for all programs.

G. Policy Discussion Paper (1994)

Thereafter, in September 1994, FTA circulated a "policy discussion paper" to the transit industry and other stakeholders for comment. This paper detailed various approaches for evaluating proposed projects under the ISTEA criteria, and requested comment on nine specific issues. Interest was extensive, and a period of public comment, further analysis, additional industry input, and additional analysis ensued.

H. The 1996 Statement of Policy

On December 19, 1996, FTA issued a Notice in the **Federal Register** that formally adopted the ISTEA project justification criteria [61 FR 67093–106]. This Notice defined the criteria, established the process, and described the measures that would be used to evaluate candidate projects for discretionary new starts funding. This Notice also established a multiple-measure method of project evaluation, in a manner consistent with Executive Order 12893.

This Statement of Policy was amended on November 12, 1997, to incorporate Departmental guidance establishing a Department-wide standard for valuing travel time, and make other technical corrections [62 FR 60756–58].

III. Transportation Equity Act for the 21st Century (TEA–21)

On June 9, 1998, the Transportation Equity Act for the 21st Century (TEA–21) (Pub. L. 105–178) was enacted. TEA–21 leaves much of past law and policy regarding new starts intact, including the basic project justification criteria and the multiple-measure method of project evaluation. However, a number of significant changes were introduced.

A. Significant Changes

- Integration of the Major Investment Study (MIS) requirement into the FTA/FHWA planning and environmental regulations (23 CFR Part 450 and 23 CFR Part 771), elimination of the MIS as a separate requirement (see Section 1308 of TEA–21), and required streamlining of the environmental process (see Section 1309 of TEA–21);
- The requirement for FTA to establish overall project ratings of "highly recommended," "recommended," or "not recommended;"
- The requirement for FTA approval for a project to advance to the final design stage of the project development process; and
- The requirement that FTA publish regulations on the manner in which proposed projects will be evaluated and rated (the purpose of this rule).

B. Other Changes

- Several additional statutory "considerations" have been added to the project evaluation process, including the cost of sprawl, infrastructure cost savings due to compact land use, population density and current transit ridership in a corridor, and the technical capacity of the grantee to undertake the project.
- TEA–21 expressly prohibits FTA from considering the dollar value of mobility improvements (see Section 3010).
- The ISTEA exemptions from the FTA statutory project evaluation process, for proposed projects that

require less than one-third of the project funding from 49 U.S.C. 5309 or are part of a State Improvement Plan for air quality, were eliminated. The exemption remains for projects requiring less than $25 million in 49 U.S.C. 5309 funding.

• For evaluating local financial commitment, the consideration for local funding beyond the required non-Federal share has been incorporated into statute.

• A second annual report to Congress, in addition to the existing *Report on Funding Levels and Allocations of Funds*, is now required. This new "Supplemental New Starts Report," due each August, will include updated ratings for projects that have completed the alternatives analysis and preliminary engineering stages of development since the date of the last *Report on Funding Levels and Allocations of Funds*.

IV. Government Performance and Results Act of 1993

The Government Performance and Results Act (GPRA) was enacted in 1993 to provide for the establishment of strategic planning and performance measurement in the Federal Government. It is primarily intended to improve Federal program effectiveness and public accountability by promoting a new focus on results, service quality, and customer satisfaction.

In recognition of the GPRA's results-oriented focus, FTA intends to develop performance measures to evaluate our administration of the new starts program, and to measure the performance of Federal new starts investments. Both of these measures would be incorporated into FTA's management of new starts projects.

To evaluate FTA's own performance in the administration of the new starts program, we plan to develop indicators to measure the progress and cost of projects at the time they open for revenue service against the schedule and cost estimated in the FFGA (accounting for the fact that the actual project funding stream is dependent on Congressional appropriations). FTA invites comment on what indicators may be appropriate for this evaluation.

FTA is also interested in measuring the actual benefits of new starts once they have opened for revenue service. Toward that end, we plan to incorporate a "follow-up" mechanism into the new starts project development process to monitor the actual performance of a new starts project after it opens for revenue service. Measures should address the full range of benefits of new starts investments, such as those embodied in the statutory project justification criteria, while not imposing a large reporting burden on project sponsors. FTA invites comment on appropriate measures and timeframes for evaluation.

V. Outreach

The development of this proposed rule began with a series of outreach sessions conducted during the months of September and October 1998. Three workshops were held around the country: one in Portland, Oregon, in conjunction with the RailVolution Conference on September 14; one in Washington, DC on September 25; and one in New York City, in conjunction with the Annual Meeting of the American Public Transit Association (APTA) on October 8.

The purpose of these outreach sessions was to describe the changes made by TEA–21 to the new starts program, discuss how we plan to implement them, and solicit general comment on FTA's policies and procedures in managing the new starts program.

The comments received during this outreach process were generally supportive of our proposed approach to this rule, including the retention of the basic principles of the 1996 Statement of Policy.

VI. Today's Proposed Rule

This rule defines the process FTA proposes to use to make the statutory evaluation of project justification under 49 U.S.C. 5309(e) (1)-(4), and to approve entry into the preliminary engineering and final design stages of project development as required by 49 U.S.C. 5309(e)(6), for new starts projects proposed for funding under 49 U.S.C. 5309.

To a large degree, this proposed rule builds upon the December 19, 1996 Notice (as amended). The project justification criteria and the evaluation measures are largely unchanged by TEA–21. However, there are a number of important changes to the new starts program that are reflected in this rule. Major elements of the proposed rule are discussed below.

Major Elements of This Proposed Rule

• Establishment of overall project ratings of "highly recommended," "recommended," or "not recommended" to determine the eligibility of proposed projects for funding.

• Requirement for FTA approval before a proposed project can advance into preliminary engineering or final design, based on the evaluation and rating of the project.

• Incorporation of additional factors for consideration in FTA project evaluations, including reductions in infrastructure cost achieved through compact land use development, the cost of urban sprawl, population density, current transit ridership in the corridor, and the technical capacity of the grant recipient to construct the proposed project.

• Elimination of the exemption from the 49 U.S.C. 5309(e) project evaluation process for proposed projects with a Federal share of less than one-third, or that are part of State Implementation Plans for air quality.

VII. Section-by-Section Analysis

A. Section 611.1: Purpose and Contents

This section states that this rule is issued to meet the statutory requirement of Title 49, United States Code, Section 5309(e)(5).

This rule establishes the methodology by which FTA will evaluate proposed new starts projects as required by 49 U.S.C. 5309(e). The data collected as part of the planning and project development processes and related regulations, conducted under 23 CFR 450 and 23 CFR 771, will provide the basis for this evaluation. Applicants must follow these rules to be considered eligible for capital investment grants and loans for new fixed guideway systems or extensions ("new starts").

The results of this evaluation will be used by FTA to make the findings required by statute for proposed projects to advance into the preliminary engineering and final design stages of project development, and to develop funding recommendations for the President's annual budget request. They will also be used to determine which projects are eligible for funding commitments under Full Funding Grant Agreements.

The information collected and ratings developed under this rule will form the basis for the annual Report on Funding Levels and Allocations of Funds, as required under 49 U.S.C. 5309(o)(1), and the "Supplemental New Starts Report," as required by 49 U.S.C. 5309(o)(2). To ensure timely publication of these reports, this rule establishes cutoff dates for submission of project-specific information to be included in these reports.

B. Section 611.3: Applicability

This section states that this rule applies only to the evaluation of projects seeking Federal capital investment funds for new transit fixed guideway and extension projects ("new starts") under 49 U.S.C. 5309.

It also states that proposed projects are exempt from evaluation under this rule if the total amount of funding under 49 U.S.C. 5309 is less than $25,000,000, or if they are specifically exempt by statute. Such projects must still meet the requirements under 23 CFR 450 and 23 CFR 771, and the project development process described in this rule. Further, FTA must still have a basis to approve entry into preliminary engineering and final design, and make decisions regarding funding commitments—even for exempt projects. Sponsors of proposed projects that they believe to be exempt are therefore strongly urged to submit project evaluation information to FTA.

Finally, this section notes that projects for which a Federal funding commitment (FFGA) has been issued are not subject to reevaluation under this rule.

C. Section 611.5: Definitions

This section defines key terms used in this Part.

D. Section 611.7: Relation to Planning and Project Development Processes

New start projects, like all transportation investments in metropolitan areas, must emerge from a regional multimodal transportation planning process in order to be eligible for Federal funding. In addition, 49 U.S.C. 5309(e)(1) specifies that discretionary grants or loans for new starts may only be approved if a proposed project is based on the results of alternatives analysis and preliminary engineering, and that certain project justification and financial criteria have been met. To be eligible for FTA capital investment funds for a new start project, the proposed project must emerge from the metropolitan and/or Statewide planning process. Local officials must perform a corridor-level analysis of mode and alignment alternatives. This *alternatives analysis* will provide information on the benefits, costs, and impacts of alternative strategies, leading to the selection of a locally-preferred solution to the community's mobility needs. The FTA/FHWA planning and environmental regulations (23 CFR Parts 450 and 771), which required a Major Investment Study (MIS) that fulfilled the requirement for alternatives analysis, are being revised in accordance with TEA–21.

The approach taken in this regulation envisions alternatives analysis as a key planning tool, supplemented by subsequent project development analyses, for determining appropriate solutions to transportation issues. As FTA and FHWA approach modification of their joint planning and environmental regulations, this rule may have implications for that effort and vice versa. FTA is particularly interested in comments about the relationship between the alternatives analysis requirement and its relationship to the planning and project development processes. The agency also welcomes comments regarding appropriate strategies for considering management and operation strategies, including the TSM and no build options, in the context of planning and project development.

Federal financial support for the planning process is derived from a number of sources, including the Metropolitan Planning Program under 49 U.S.C. 5303, the State National Planning and Research Program under 49 U.S.C. 5313, and planning programs administered by the Federal Highway Administration. FTA Urbanized Area Formula funds under 49 U.S.C. 5307 and flexible funds under the Surface Transportation Program (STP) and the Congestion Mitigation and Air Quality (CMAQ) Program may also be used to support certain planning activities. Given the significant demands placed on the new start program, FTA does not support the use of 49 U.S.C. 5309 funds for initial planning activities. Moreover, as amended by TEA–21, 49 U.S.C. 5309(m)(2) limits the amount of new starts funding that can be used for purposes other than final design and construction to not more than 8 percent of funds appropriated. In evaluating the local financial commitment to a proposed project, FTA will therefore consider the degree to which initial planning activities are conducted without funding from section 5309.

When the sponsoring agency for a new start project desires to initiate the preliminary engineering phase of project development, it must submit a request to the FTA regional office. The request must provide information on the metropolitan and/or Statewide plan that identifies the project, including the adoption of the project into the metropolitan transportation plan and the programming of the preliminary engineering study in the TIP. The request must also address the project justification and local financial commitment criteria outlined below. (This information is normally developed as part of an alternatives analysis.) FTA will then evaluate the proposed project as required by 49 U.S.C. 5309(e)(6) and determine whether or not to advance the project into preliminary engineering. FTA approval to initiate preliminary engineering is not a commitment to fund final design or construction.

Where the sponsoring agency believes that a proposed project is exempt from evaluation under this rule, submission of project justification and financial commitment information to FTA is not required. However, without such information FTA will have no basis for approving an exempt project for entry into preliminary engineering and final design, and will be unable to make decisions on whether to recommend Federal funding commitments. Therefore, sponsors of exempt projects are strongly encouraged to submit information on project justification and financial commitment.

During the preliminary engineering phase, local project sponsors refine the design of the proposal, taking into consideration all reasonable design alternatives. The process results in estimates of project costs, benefits and impacts in which there is a higher degree of confidence. In addition, NEPA requirements are completed (for new starts, this will normally entail the completion of an environmental impact statement), project management concepts are finalized, any required funding sources are put in place, and safety matters are addressed. Information on project justification and the degree of local financial commitment will be continually updated and reported as appropriate. As part of their preliminary engineering activities, localities are encouraged to consider policies and actions designed to enhance the benefits of the project and its financial feasibility.

Project sponsors should ensure that safety considerations are weighed during the preliminary engineering phase. With regard to rail projects that will be subjected to Federal Railroad (FRA) safety jurisdiction, FTA will notify FRA of pending new starts because important decisions impacting rail safety should be made early in the planning and grant development process. FRA will forward any recommendations it has to FTA, which will forward them to the project sponsor.

A comprehensive preliminary engineering effort should address the evaluation criteria described in this rule.

Preliminary engineering is typically financed with 49 U.S.C. 5303 and 5307 funds, local revenues, and flexible funds under the STP and CMAQ programs.

Final Design is the last phase of project development, and includes right-of-way acquisition, utility relocation, and the preparation of final construction plans (including construction management plans), detailed specifications, construction

cost estimates, and bid documents. The final design stage cannot be initiated until environmental requirements have been satisfied, as evidenced by a Record of Decision (ROD) or a Finding of No Significant Impact (FONSI). Consistent with 49 U.S.C. 5309(e)(6), FTA will approve entry into final design based on the results of the project evaluation process. Final design is typically eligible for 49 U.S.C. 5309 new start funds.

E. Section 611.9: Project Justification Criteria

To make the statutory approvals required for a project to enter preliminary engineering and final design; for execution of an FFGA; and annual project funding recommendations, FTA will evaluate information developed through the planning and project development processes. The method used to make these determinations is a multiple measure approach in which the merits of candidate projects will be evaluated against a set of measures. These measures will also be used to determine which projects to recommend for funding in the report required by 49 U.S.C. 5309(o)(1). The ratings for each measure will be updated throughout the preliminary engineering and final design processes, as costs, benefits and impacts are more precisely defined. As a candidate project proceeds through the stages of the project development process, a greater degree of certainty is expected with respect to these measures. Measures have been established for each of the following criteria:

1. Mobility improvements;
2. Environmental benefits;
3. Operating efficiencies;
4. Cost effectiveness;
5. Transit-supportive existing land use policies and future patterns; and
6. Other factors, including:

(a) the degree to which the policies and programs (local transportation planning, programming and parking policies, etc.) are in place as assumed in the forecasts;

(b) project management capability; and

(c) additional factors relevant to local and national priorities and relevant to the success of the project.

In all cases, the proposed new start will be evaluated against both a no-build and TSM alternative. For each proposed project, FTA will assign one of five descriptive ratings ("high," "medium-high," "medium," "low-medium," or "low") for each of these six criteria.

The measures for these criteria are described in Appendix A to this proposed rule. FTA may amend or modify these measures in response to the results of ongoing research into methods for evaluating the benefits of transit investments.

"Transit-supportive land use policies and future patterns" is not listed among the project justification criteria contained in 49 U.S.C. 5309(e)(1)(B), but is listed as one of the "considerations" under 49 U.S.C. 5309(e)(3) that FTA must take into account when determining a proposed project's "justification." Consistent with past practice, we have included land use among the project justification criteria for a number of reasons. Transit-supportive local land use policies, which target development around the Federally-assisted project, have been an important indicator of future project success. Additionally, TEA–21 added two new land-use-related considerations to the project evaluation process: the reduction in local infrastructure costs achieved through compact land use development (49 U.S.C. 5309(e)(3)(B)), and the cost of suburban sprawl (49 U.S.C. 5309(e)(3)(C)). This appears to be a clear intent by Congress to give additional attention to this issue. In making the determination of project justification, 49 U.S.C. 5309(e)(3) requires the FTA to consider a variety of factors, as follows:

1. The direct and indirect costs of relevant alternatives;
2. Factors such as congestion relief, improved mobility, air pollution, noise pollution, energy consumption, and all associated ancillary and mitigation costs necessary to carry out each alternative analyzed and to recognize reductions in local infrastructure costs achieved through compact land use development;
3. Mass transportation-supportive existing land use policies and future patterns, and the cost of suburban sprawl;
4. The degree to which the project increases the mobility of the mass transportation dependent population or promotes economic development;
5. Population density and current transit ridership in the corridor;
6. The technical capability of the grant recipient to construct the project;
7. Differences in local land, construction, and operating costs; and
8. Other factors that the Secretary determines appropriate.

This represents a modest expansion of the "considerations" established by ISTEA. Specifically, Section 3009(e) of TEA–21 added the consideration for the cost of suburban sprawl noted in (3) above; for population density and current transit ridership in the corridor in (5) above; and for the technical capacity of the grantee to carry out the proposed project in (6) above. The "considerations" serve to illustrate the project justification criteria, providing further detail on specific information that should be collected and how the criteria should be evaluated. Much of the data required to consider these factors is already developed as part of the existing planning and project development processes, however, as required under 23 CFR 450 and 23 CFR 771.

When evaluating proposed new starts projects, FTA will apply these criteria to the project as proposed for Federal funding under 49 U.S.C. 5309. This means that if local project sponsors are seeking new starts funding at this time for a segment of a larger planned transit investment, only that specific segment will be evaluated.

F. Section 611.11: Local Financial Commitment

Section 5309(e)(1)(C) requires that proposed projects also be supported by an acceptable degree of local financial commitment, including evidence of stable and dependable financing sources to construct, maintain and operate the system or extension. This proposed rule retains the following criteria for evaluation of the local financial commitment to a proposed project:

1. The proposed share of total project costs from sources other than Section 5309, including Federal formula and flexible funds, the local match required by Federal law, any additional capital funding ("overmatch"), and the degree to which initial planning activities have been carried out without relying on funds from section 5309.
2. The strength of the proposed capital financing plan (rated "high," "medium-high," "medium," "low-medium," or "low").
3. The ability of the sponsoring agency to fund operation and maintenance of the entire system as planned once the guideway project is built. Ratings of "high," "medium-high," "medium," "low-medium," or "low" will be used to describe stability and reliability of operating revenue.

The measures for these criteria are carried over intact from those used previously, and are more fully explained in Appendix A. The only change is that "overmatch" was added as a statutory consideration by TEA–21.

G. Section 611.13: Overall Project Ratings

Perhaps the most significant change to this process brought by TEA 21 is the

requirement that FTA establish summary recommendations for each project, in addition to the ratings for each of the project justification criteria. Section 5309(e)(6) requires FTA to "evaluate and rate [each] project as 'highly recommended,' 'recommended,' or 'not recommended,'" based on the results of the project evaluation process. It also requires that ratings be assigned to each of the individual evaluation criteria.

FTA will combine the ratings for each of the financial rating factors and project justification criteria into overall "finance" and "justification" ratings. These ratings will then be combined into the single, overall project ratings required by TEA–21. For a proposed project to be rated as "recommended," it must be rated at least "medium" in terms of both finance and justification. To be "highly recommended," a proposed project must be rated at least "medium-high" for both finance and at justification. Proposed projects not rated at least "medium" in both finance and justification will be rated as "not recommended."

These ratings will be used both to approve entry into preliminary engineering and final design, and to recommend proposed projects for Federal funding commitments. A proposed project must receive a rating of at least "recommended" in order to be approved for any of these purposes.

It is important to note that a *rating* of "recommended" does not translate directly into a *funding* recommendation in any given fiscal year. Rather, the overall project ratings are intended by this proposed rule to reflect overall project merit. Proposed projects that are rated "recommended" or "highly recommended," *and* have been sufficiently developed for consideration of a Federal funding commitment (i.e., FFGA), will be eligible for funding recommendations in the Administration's proposed budget for a given fiscal year.

VIII. Request for Comments on Particular Issues

FTA seeks comment on the following issues, in particular:

1. Consistent with FTA's 1996 Statement of Policy and prior practice, this proposed rule does not establish "threshold" values for the statutory project justification criteria. Instead, we rate each project as "high," "medium-high," "medium," "low-medium," or "low" according to its individual merits under each of the measures. Should FTA establish "threshold" or "pass/fail" values for evaluating each of these criteria? If so, what thresholds are appropriate for each criterion?

2. FTA has historically relied on the measure of "cost per new rider" (more precisely, incremental cost per incremental rider) to indicate cost effectiveness, an approach retained in this proposed rule. Are there other means for measuring the cost effectiveness of a proposed new starts project?

3. 49 U.S.C. 5309(e)(3) establishes a number of "factors" that FTA must consider when evaluating proposed projects under the justification criteria. In particular, 49 U.S.C. 5309(e)(3)(F) directs us to "consider the technical capability of the grant recipient to construct the project," and 49 U.S.C. 5309(e)(3)(H) directs FTA to consider "other factors" as "appropriate." How should FTA evaluate the "technical capability" of project sponsors? What "other factors" might be appropriate?

4. FTA also seeks comment on how much relative attention should be given to each of the project justification criteria (mobility improvements, environmental benefits, operating efficiencies, cost effectiveness, land use and other factors) to establish the overall project ratings.

IX. Regulatory Evaluation

The Federal Transit Administration (FTA) has evaluated the industry-wide costs and benefits of the rule, Major Capital Investment Projects, which is required by section 3009(e) of the TEA–21. This rule will determine the process that FTA will use to evaluate and rate major capital investments under the statutory criteria in 49 U.S.C. 5309(e), which requires FTA to establish overall project ratings of "highly recommended," "recommended," or "not recommended," and to consider new criteria elements. The changes required by TEA–21 to FTA's pre-existing statutory criteria are relatively minor and affect FTA program management operations more than a recipient's operations. The preliminary regulatory evaluation is available for public inspection in the docket established for this rulemaking.

X. Regulatory Process Matters

A. Executive Order 12688

The FTA has evaluated the industry costs and benefits of the major capital investments rule and has determined that it is a significant rule under E.O. 12688 because of the significant policy issues involved in federally funding major capital investments. This rule will not, however, have an impact on the economy of $100 million or more.

B. Departmental Significance

This rule is a "significant regulation" as defined by the Department's Regulatory Policies and Procedures, because it involves an important departmental policy and will probably generate a great deal of public interest. The purpose of this rule is to establish how the Secretary will rate various major capital investment projects.

C. Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, the FTA has evaluated the effects of this rule on small entities. Based on this evaluation, the FTA hereby certifies that this action will not have a significant economic impact on a substantial number of small entities because this rule concerns only major capital investments, which are not usually undertaken by small entities.

D. Paperwork Reduction Act

This rule includes information collection requirements subject to the Paperwork Reduction Act; however, due to the fact that TEA–21 eliminated the MIS as a stand-alone requirement, the agency believes that a reduction in the paperwork burden is the likeliest outcome. Because the rule is related to two other proposed rulemakings, Environmental Procedures (currently codified at 49 CFR 622 and 23 CFR 771) and Planning (49 CFR 613 and 23 CFR 450) concerning similar issues, the agency is unable to determine the actual reduction in the paperwork burden. The NPRMs for these rules are expected to be issued later this year. The agency will submit a request for a Paperwork Reduction Act approval with the proposed Environmental and Planning rules. FTA currently collects information under an approved Paperwork Reduction Act request (control #2132–0529).

E. Executive Order 12612

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612 and it has been determined that the proposed rule does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment.

F. National Environmental Policy Act

The agency has determined that this proposed rule, if adopted, will have positive effects on the environment by encouraging the use of mass transit, which may reduce the use of single occupancy vehicles.

G. Energy Act Implications

This regulation should have a positive effect on energy consumption because, through the Federal investment mass transit projects, it would increase the use of mass transit.

H. Effects on the Year 2000 Computer Problem

This rule does not mandate business process changes or require modifications to computer systems that will detract recipients from using resources to address any possible year 2000 computer problems.

I. Unfunded Mandates Reform Act

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, of $100,000,000 or more in any one year.

List of Subjects in 49 CFR Part 611

Government Contracts, Grant programs—Transportation, Mass transportation.

Accordingly, for the reasons set out in the preamble, the Federal Transit Administration proposes to add 49 CFR part 611, reading as follows:

PART 611—MAJOR CAPITAL INVESTMENT PROJECTS

Sec.

611.1 Purpose and contents
611.3 Applicability
611.5 Definitions
611.7 Relation to Planning and Project Development Processes
611.9 Project Justification Criteria for Grants and Loans for Fixed Guideway Systems
611.11 Local financial commitment criteria
611.13 Overall Project Ratings

Appendix A to Part 611—Description of Measures Used for Project Evaluation

Authority: 49 U.S.C. 5309; 49 CFR 1.51

§611.1 Purpose and contents.

(a) This part prescribes the process that applicants must follow to be considered eligible for capital investment grants and loans for new fixed guideway systems or extensions to existing systems ("new starts"). Also, this part prescribes the procedures used by FTA to evaluate proposed new starts projects as required by 49 U.S.C. 5309(e), and the scheduling of project reviews required by 49 U.S.C. 5328(a).

(b) This part defines how the results of the evaluation described in paragraph (a) of this section will be used to:

(1) Approve entry into preliminary engineering and final design, as required by 49 U.S.C. 5309(e)(6);

(2) Rate projects as "highly recommended," "recommended," or "not recommended," as required by 49 U.S.C. 5309(e)(6);

(3) Assign individual ratings for each of the project justification criteria specified in 49 U.S.C. 5309(e)(1)(B) and (C);

(4) Determine project eligibility for Federal funding commitments, in the form of Full Funding Grant Agreements; and

(5) Determine funding recommendations for this program for the Administration's annual budget request.

(c) The information collected and ratings developed under this part will form the basis for the annual reports to Congress, required by 49 U.S.C. 5309(o)(1) and (2). For purposes of these reports, project information will be considered current as of the following dates:

(1) December 1 of each year, for the annual Report on Funding Levels and Allocations of Funds required by 49 U.S.C. 5309(o)(1) and due not later than the first Monday of each February; and

(2) July 1 of each year, for the annual Supplemental New Starts Report required by 49 U.S.C. 5309(o)(2) and due on the 31st day of August of each year.

§611.3 Applicability.

(a) This part applies to all proposals for Federal capital investment funds under 49 U.S.C. 5309 for new transit fixed guideway systems and extensions to existing systems.

(b) Projects described in paragraph (a) of this section are not subject to evaluation under this part if the total amount of funding from 49 U.S.C. 5309 will be less than $25 million, or if such projects are otherwise exempt from evaluation by statute.

(1) Exempt projects must still be rated by FTA for purposes of approving entry into preliminary engineering or final design, as required by 49 U.S.C. 5309(e)(6), or entering into a Federal funding commitment as required by 49 U.S.C. 5309(e)(7). Sponsors who believe their projects to be exempt are strongly encouraged to submit data for project evaluation as described in this part.

(2) Such projects are still subject to the requirements of 23 CFR part 450 and 23 CFR part 771.

(3) This part does not apply to projects for which a Federal funding commitment (FFGA) has already been issued.

(c) Consistent with 49 U.S.C. 5309(e)(8)(B), FTA will make decisions on the justification of proposed projects using expedited procedures as appropriate, for proposed projects that are:

(1) Located in a nonattainment area;

(2) Transportation control measures as defined by the Clean Air Act (42 U.S.C. 7401 *et. seq.*); and

(3) Required to carry out a State Implementation Plan.

(4) For such projects, FTA will complete action on approving entry into preliminary engineering and final design in less than the normal time.

§611.5 Definitions.

The definitions established by Titles 12 and 49 of the United States Code, the Council on Environmental Quality's regulation at 40 CFR parts 1500 through 1508, and FHWA–FTA regulations at 23 CFR parts 450 and 771 are applicable. In addition, the following definitions apply:

Alternatives analysis is a corridor level analysis which evaluates all reasonable mode and alignment alternatives for addressing a transportation problem, and results in the adoption of a locally preferred alternative by the appropriate State and local agencies and official boards.

Extension to existing fixed-guideway system means a newly-constructed extension to an existing fixed guideway system.

FFGA means a Full Funding Grant Agreement.

Final design is the final phase of project development, and includes the preparation of final construction plans (including construction management plans), detailed specifications, construction cost estimates, and bid documents.

Fixed guideway system means a mass transportation facility which utilizes and occupies a separate right-of-way, or rail line, for the exclusive use of mass transportation and other high occupancy vehicles, or uses a fixed catenary system and a right of way usable by other forms of transportation. This includes, but is not limited to, rapid rail, light rail, commuter rail, automated guideway transit, people movers, and exclusive facilities for buses and other high occupancy vehicles.

FTA means the Federal Transit Administration.

Full Funding Grant Agreement means an instrument that defines the scope of a project, the Federal financial contribution, and other terms and conditions.

Major transit investment means any project that involves the construction of a new fixed guideway system or extension of an existing fixed guideway system for use by mass transit vehicles.

New fixed guideway system means a newly-constructed fixed guideway system where no such system exists.

New start means a new fixed guideway system, or an extension to an existing fixed guideway system.

NEPA process means those procedures necessary to meet the requirements of the National Environmental Policy Act of 1969, as amended (NEPA), at 23 CFR part 771; the NEPA process is completed when a Record of Decision (ROD) or Findings of No Significant Impact (FONSI) is issued.

No-build alternative means a baseline case consisting of those elements in a region's transportation plan excluding the proposed new start.

Preliminary Engineering is the process by which the design of the proposed project is refined, estimates of project costs, benefits and impacts are developed, NEPA requirements are completed (for new starts, this will normally entail the completion of an environmental impact statement), project management concepts are finalized, and required funding sources are put in place.

Secretary means the Secretary of Transportation.

TEA–21 means the Transportation Equity Act for the 21st Century.

Transportation system management (TSM) alternative means a package of low to moderate cost improvements designed to make more efficient use of an existing transportation system. TSM alternatives typically include elements such as traffic engineering and signalization, transit operational changes, and modest capital.

§ 611.7 Relation to planning and project development processes.

To be eligible for FTA capital investment funding, a proposed project must be based on the results of alternatives analysis and preliminary engineering. The selected strategy must be included in the metropolitan transportation plan.

(a) *Planning considerations.* All new start projects proposed for funding assistance under 49 U.S.C. 5309 must emerge from the metropolitan and Statewide planning process, consistent with 23 CFR part 450.

(b) *Alternatives analysis. (1) To be eligible for FTA capital investment funding for a major fixed guideway transit project, local project sponsors must perform an alternatives analysis.*

(2) The alternatives analysis develops information on the benefits, costs, and impacts of alternative strategies, leading to the adoption of a locally preferred alternative.

(3) The alternative strategies evaluated in an alternatives analysis must include a TSM and no-build alternative, as well as the proposed new start.

(4) Exceptions:

(i) The requirement for an alternatives analysis shall not apply to certain new start projects that, by statute, are exempt from evaluation under this part.

(ii) Consistent with 49 U.S.C. 5309(e)(8), proposed projects are exempt from the project rating process if the amount of Section 5309 assistance being sought for the project is less than $25 million.

(iii) Projects for which FFGAs have been issued prior to [the effective date of the final rule] shall not be re-evaluated under this part.

(c) *Preliminary engineering.* Consistent with 49 U.S.C. 5309(e)(6) and 5328(a)(2), FTA will approve entry of a proposed project into preliminary engineering within 30 days of receipt of a formal request from the project sponsor(s).

(1) FTA's approval will be based on the results of its evaluation as described in this part.

(2) At a minimum, a proposed project must receive an overall rating of "recommended" to be approved for entry into preliminary engineering.

(d) *Final design.* (1) The final design stage cannot be initiated until environmental requirements have been satisfied, as evidenced by completion of the NEPA process.

(2) Consistent with 49 U.S.C. 5309(e)(6) and 5328(a)(3), FTA will approve entry of a proposed project into final design within 120 days of receipt of a formal request from the project sponsor(s).

(i) FTA's approval will be based on the results of the project evaluation described in this part.

(ii) At a minimum, a proposed project must receive an overall rating of "recommended" to be approved for entry into final design.

(e) *Full Funding Grant Agreements.* (1) FTA will determine whether to execute an FFGA based on the evaluations and ratings established by this part.

(2) An FFGA shall not be executed for a project that is not authorized for final design and construction by Federal law.

(3) FFGAs will be executed only for those projects which are rated as "recommended" or "highly recommended" and which are ready to utilize Federal new starts funds, consistent with available program authorization.

(4) In any instance in which FTA decides to provide financial assistance for construction of a new start project, FTA will negotiate an FFGA with the grantee during final design of that project. Pursuant to the terms and conditions of the FFGA:

(i) A maximum level of Federal financial contribution will be fixed;

(ii) The grantee will be required to complete construction of the project, as defined, to the point of initiation of revenue operations, and to absorb any additional costs incurred or necessitated;

(iii) FTA and the grantee will set a mutually agreeable schedule for anticipating Federal contributions during the final design and construction period; and

(iv) Specific annual contributions under the FFGA will be subject to the availability of budget authority and the ability of the grantee to use the funds effectively.

(5) The total amount of Federal obligations under Full Funding Grant Agreements and potential obligations under Letters of Intent will not exceed the amount authorized for new starts under 49 U.S.C. 5309.

(6) FTA may also make a "contingent commitment," which is subject to future congressional authorizations and appropriations, pursuant to 49 U.S.C. 5309(g), 5338(b), and 5338(h).

§ 611.9 Project justification criteria for grants and loans for fixed guideway systems.

In order to approve a grant or loan under 49 U.S.C. 5309, FTA must find that the proposed project is justified as described in section 5309(e)(1)(B).

(a) To make the statutory evaluations and assign ratings for proposed projects, as required by section 5309(e)(6), FTA will evaluate information developed locally through alternatives analyses and refined through preliminary engineering and final design.

(1) The method used to make this determination will be a Multiple Measure approach in which the merits of candidate projects will be evaluated against each of the criteria specified by section 5309(e)(1)(B).

(2) The measures for these criteria are specified in Appendix A to this part.

(3) The measures for these criteria will also be used to determine which projects to recommend for funding in the report required by section 5309(o)(1).

(4) The measures will be applied to the project as it has been proposed to FTA for funding under 49 U.S.C. 5309.

(5) The ratings for each of the criteria will be expressed in terms of descriptive indicators, as follows: "high," "medium-high," "medium," "low-medium," or "low."

(6) The ratings for each criterion will be updated throughout the preliminary

engineering and final design stages of project development, as costs, benefits and impacts are more precisely defined.

(7) As a candidate project proceeds through preliminary engineering and final design, a greater degree of certainty is expected with respect to these criteria.

(8) The proposed new start will be compared to both the TSM and no-build alternatives.

(b) The criteria are as follows:

(1) *Mobility improvements.*

(2) *Environmental benefits.*

(3) *Operating efficiencies.*

(4) *Cost-effectiveness.*

(5) *Transit supportive existing land use policies and future patterns.*

(6) *Other factors.* Additional factors, including but not limited to:

(i) The degree to which the programs and policies (local transportation planning, programming and parking policies, etc.) are in place as assumed in the forecasts,

(ii) Project management capability, including the technical capability of the grant recipient to construct the project, and

(iii) Additional factors relevant to local and national priorities and relevant to the success of the project.

(c) In evaluating proposed new starts projects under these criteria in paragraph (b) of the section, the following factors shall be considered:

(1) The direct and indirect costs of relevant alternatives;

(2) Factors such as congestion relief, improved mobility, air pollution, noise pollution, energy consumption, and all associated ancillary and mitigation costs necessary to carry out each alternative analyzed, and recognize reductions in local infrastructure costs achieved through compact land use development;

(3) Mass transportation-supportive existing land use policies and future patterns, and the cost of urban sprawl;

(4) The degree to which the project increases the mobility of the mass transportation dependent population or promotes economic development;

(5) Population density and current transit ridership in the corridor;

(6) The technical capability of the grant recipient to construct the project;

(7) Differences in local land, construction, and operating costs; and

(8) Other factors as appropriate.

(d) FTA may amend the measures for the criteria in paragraph (b) of this section, pending the results of ongoing studies regarding transit benefit evaluation methods.

(e) The individual ratings for each of the criteria in paragraph (b) of this section will be combined into a summary rating for project justification. "Other factors" will be considered as appropriate.

§ 611.11 Local financial commitment criteria.

In order to approve a grant or loan under 49 U.S.C. 5309, FTA must find that the proposed project is supported by an acceptable degree of local financial commitment, as required by section 5309(e)(1)(C). The local financial commitment to a proposed project will be evaluated according to the following measures:

(a) The proposed local share of project costs, defined as the percentage of capital costs to be met using funds from sources other than 49 U.S.C. 5309, including both the local match required by Federal law and any additional capital funding ("overmatch"), and the degree to which initial planning activities have been carried out without funding from section 5309;

(b) The strength of the proposed capital financing plan; and

(c) The ability of the local transit agency to fund operation of the system as planned once the guideway project is built.

(d) For each proposed project, ratings for paragraphs (b) and (c) of this section will be reported in terms of descriptive indicators, as follows: "high," "medium-high," "medium," "low-medium," or "low." For paragraph (a), of this section the percentage of Federal funding sought from 49 U.S.C. 5309 will be reported.

(e) The individual ratings for each measure described in this section will be combined into a summary rating for local financial commitment.

§ 611.13 Overall project ratings.

(a) The ratings developed for each of the project justification criteria and for local financial commitment (§§ 611.9 and 611.11) will form the basis for the overall rating for each project.

(b) Overall ratings of "highly recommended," "recommended," and "not recommended," as required by 49 U.S.C. 5309(e)(6), will be assigned to each proposed project.

(c) These ratings will be used to:

(1) Approve advancement of a proposed project into preliminary engineering and final design;

(2) Approve projects for FFGAs; and

(3) Make annual funding recommendations to Congress in the annual report on funding levels and allocations of funds required by 49 U.S.C. 5309(o)(1).

(d) Projects will receive overall ratings based on the following conditions:

(1) Projects will be rated as "recommended" if they receive a rating of "medium" or higher for both project justification (§ 611.9) and local financial commitment (§ 611.11)

(2) Projects will be rated as "highly recommended" if they receive a rating higher than "medium" for both local financial commitment and project justification.

(3) Projects will be rated as "not recommended" if they do not receive a rating of at least "medium" for both project justification and local financial commitment.

Appendix A to Part 611—Description of Measures Used for Project Evaluation

Project Justification

1. FTA will use several measures to evaluate candidate new starts projects according to the criteria established by 49 U.S.C. 5309(e)(1)(B). These measures have been developed according to the considerations identified at 49 U.S.C. 5309(e)(3) ("Project Justification"), consistent with Executive Order 12893. From time to time, FTA has published technical guidance on the application of these measures, and the agency expects it will continue to do so. Moreover, FTA may well choose to amend these measures, pending the results of ongoing studies regarding transit benefit evaluation methods.

2. The first four criteria listed in paragraphs (a) through (d) represent the benefits of proposed new start projects by comparing the new start project to either the TSM or no-build alternative. In order for this comparison to fairly reflect the benefit of the new start project, it is mandatory that planning factors external to the new start project and its supporting corridor bus service be the same among the TSM, no-build and new start project alternatives. For these alternatives, this means that highway and transit networks should be the same outside the corridor of the new start project, and the policies affecting travel demand and cost such as parking costs and land use, should also be the same.

3. The fifth criterion, "transit supportive existing land use policies and future patterns," reflects the importance of transit-supportive local land use policies as an indicator of ultimate project success.

(a) *Mobility Improvements.*

(1) The aggregate travel time savings per year (forecast year) anticipated from the new investment, compared to both the no-build and TSM alternatives. This aggregate includes the travel time savings of people using competitive modes, along with those on the trips made by transit. Travel time savings for those switching from highways to transit will be calculated using a consumer surplus approach, taking one-half of the total travel time savings for those riders assumed in the no-build or TSM alternatives. The net figure will be expressed in terms of the total projected travel time savings for the region.

(2) The net figure of travel time savings for low income households affected by the new start alternative, in comparison with the no-build and TSM alternatives.

(3) The absolute number of low income households located within ½ mile of

boarding points associated with the proposed system increment.

(b) *Environmental Benefits.*

(1) The annual forecast change in criteria pollutant emissions and in greenhouse gas emissions, ascribable to the proposed new investment, calculated in terms of tons for each criteria pollutant or gas;

(2) The forecast net change per year (forecast year) in the regional consumption of energy, ascribable to the proposed new investment, expressed in British Thermal Units (BTU);

(3) Current Environmental Protection Agency designations for the region's compliance with National Ambient Air Quality Standards.

(4) The new start alternative will be compared to both the no-build and TSM alternatives.

(c) *Operating Efficiencies.* The forecast change in operating cost per passenger-mile (forecast year), for the entire transit system. The new start will be compared to both the TSM and no-build alternatives.

(d) *Cost-Effectiveness.* The cost effectiveness of a proposed project shall be evaluated according to the incremental change in total capital and operating cost per incremental passenger, based on the forecast change in annual transit ridership (forecast year) and the annualized total (Federal and local) capital investment and operating cost. The new start will be compared to the no-build and TSM alternatives.

(e) *Transit supportive existing land use policies and future patterns.* Transit-supportive land use policies and patterns shall be evaluated according to the degree to which local land use policies are likely to foster transit supportive land use, measured in terms of the kinds of policies in place, and the commitment to these policies. The following seven factors will form the basis for this evaluation:

(1) Existing land use;

(2) Containment of sprawl;

(3) Transit-supportive corridor policies;

(4) Supportive zoning regulations near transit stations;

(5) Tools to implement land use policies;

(6) The performance of land use policies; and

(7) The value of any reductions in local infrastructure costs achieved through compact land use development.

(f) *Other factors.* Other factors that will be considered when evaluating projects for funding commitments include:

(1) The degree to which the policies and programs (local transportation planning, programming and parking policies, etc.) are in place as assumed in the forecasts;

(2) Project management capability, including the technical capability of the grant recipient to construct the project;

(3) Population and employment density in the corridor within ½ mile of the transit stops of the new start project, for current and forecast years;

(4) Current ridership potential for the new start project, determined by forecasting ridership for the new start project using today's land use and modifying the current transit network by inserting the new start project and necessary feeder bus service; and

(5) Additional factors relevant to local and national priorities and to the success of the project.

Local Financial Commitment

FTA will use the following measures to evaluate the local financial commitment to a proposed project:

(a) The proposed local share of project costs, defined as the percentage of capital costs to be met using funds from sources other than 49 U.S.C. 5309, including both the local match required by Federal law and any additional capital funding ("overmatch"). Consideration will be given to:

(1) The use of innovative financing techniques, as described in the May 9, 1995, **Federal Register** notice on *FTA's Innovative Financing Initiative* (60 FR 24682);

(2) The use of "flexible funds" as provided under the CMAQ and STP programs;

(3) The degree to which alternatives analysis and preliminary engineering activities were carried out without funding from section 5309; and

(4) The actual local share of the cost of recently-completed or simultaneously undertaken fixed guideway systems and extensions that are related to the proposed project under review (FTA's intent is to recognize that a region's local financial commitment to fixed guideway systems and extensions may not be limited to a single project).

(b) The strength of the proposed capital financing plan, according to:

(1) The stability and reliability of each proposed source of local match, including inter-governmental grants, tax sources, and debt obligations, with an emphasis on availability within the project development timetable;

(2) Whether adequate provisions have been made to cover unanticipated cost overruns; and

(c) The ability of the local transit agency to fund operation of the system as planned once the guideway project is built, according to:

(1) An evaluation of the operating revenue base; and

(2) Its ability to expand to meet the incremental operating costs associated with a new fixed guideway investment and any other new services and facilities.

Issued: April 1, 1999.

Gordon J. Linton,

Administrator.

[FR Doc. 99–8477 Filed 4–6–99; 8:45 am]

BILLING CODE 4910–57–P

VOL
64
ISS
66
AP
7
1999
UMI

federal register

Wednesday
April 7, 1999

Part III

The President

Proclamation 7177—Cancer Control Month, 1999

Proclamation 7178—National Child Abuse Prevention Month, 1999

VOL
64
ISS
66
AP
7
1999
UMI

Federa
Vol. 6
Wedne

Title

The

Federal Register
Vol. 64, No. 66
Wednesday, April 7, 1999

Presidential Documents

Title 3—

The President

Proclamation 7177 of April 1, 1999

Cancer Control Month, 1999

By the President of the United States of America

A Proclamation

Each year for more than half a century, our Nation has dedicated the month of April to reaffirming our commitment to developing more effective prevention, detection, and treatment of cancer and to recognizing the progress that we have made in fighting this devastating disease.

Today we are reaping the rewards of our long-standing efforts to combat cancer as researchers make remarkable progress virtually every day. Over the past several years, for example, scientists have identified genes involved in a number of cancers, including cancers of the breast, prostate, kidney, skin, and colon. In the first year of the Cancer Genome Anatomy Project at the National Cancer Institute (NCI), researchers succeeded in identifying more than 300,000 DNA sequences and 12,000 new genes—double the initial expectation. The newly created Cancer Genetics Network will help scientists answer the many clinical questions raised by these discoveries. This national network will link participating cancer research centers and strengthen their efforts not only to identify genes that predispose people to cancer, but also to learn better methods for counseling, testing, and monitoring people for cancer susceptibility. These and other recent advances are providing Americans with our most powerful weapons to defeat cancer: early detection and immediate treatment.

Recognizing the great promise such findings hold for our battle against cancer, my Administration has dedicated unprecedented Federal resources toward cancer research. The omnibus appropriations bill I signed this past October increased funding for the NCI by $400 million. This increase—the single largest increase in funding for cancer and medical research in history—sets the NCI budget at nearly $3 billion, enabling it to fund critical new research, including 10 new clinical trials for breast cancer treatment. Last year we saw one of the most significant advances to date in cancer prevention research with the discoveries from the landmark Breast Cancer Prevention Trial. This study, a national clinical trial sponsored by the NCI, found that the incidence of breast cancer fell by 49 percent among women taking the anti-estrogen drug tamoxifen. Based upon this finding, last October, the Food and Drug Administration approved tamoxifen for preventative use by women at risk for breast cancer.

Through the Department of Defense, we are also awarding $60 million in grants for prostate cancer research. These grants are funding innovative new studies to determine the causes of prostate cancer, develop new methods of prevention and detection, and discover groundbreaking new treatments to save lives. In addition, we have worked to accelerate the approval process for new cancer drugs to ensure that cancer patients have access to the latest and most effective treatments, all while maintaining the highest of safety standards.

Although these and other recent advances are encouraging, we must not be complacent. The occurrence of cancer is still too common, and the suffering it causes is incalculable. As we stand on the threshold of a new millennium, let us draw strength from the successes of the past and reaffirm our determination to treat, prevent, and ultimately eradicate cancer.

In 1938, the Congress of the United States passed a joint resolution (52 Stat. 148; 36 U.S.C. 150) requesting the President to issue an annual proclamation declaring April to be "Cancer Control Month."

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim April 1999 as Cancer Control Month. I invite the Governors of the 50 States and the Commonwealth of Puerto Rico, the Mayor of the District of Columbia, and the appropriate officials of all other areasunder the American flag to issue similar proclamations. I also ask health care professionals, private industry, community groups, insurance and managed care companies, and all other interested organizations and individuals to unite in renewing our Nation's commitment to controlling cancer.

IN WITNESS WHEREOF, I have hereunto set my hand this first day of April, in the year of our Lord nineteen hundred and ninety-nine, and of the Independence of the United States of America the two hundred and twenty-third.

William J. Clinton

[FR Doc. 99–8819
Filed 4–6–99; 8:45 am]
Billing code 3195–01–P

Presidential Documents

Proclamation 7178 of April 1, 1999

National Child Abuse Prevention Month, 1999

By the President of the United States of America

A Proclamation

Children bring happiness to our lives and hope to our future; they are our greatest joy and our most important responsibility. Whether as loving parents or concerned citizens, we must do everything we can to nurture them, protect them, raise them in an atmosphere of love and respect, and create for them an environment in which they can grow into healthy, well-adjusted, and productive adults.

Tragically, however, statistics confirm that not all of America's children enjoy the benefits of a safe, loving home. Instead, hundreds of thousands of children each year suffer abuse and neglect, most often at the hands of their own parents or other family members. The horrors of physical or emotional trauma deny these young people their childhood, and our abused children carry the psychological scars of their mistreatment throughout their lives. Worse yet, for some—particularly those under 3 years old—the abuse they endure is fatal.

My Administration is committed to promoting effective policies and innovative programs to protect children from harm and to mitigate the stresses on families that can ignite violence in the home. We have implemented a comprehensive agenda that includes increased funding at the State level to ensure that maternal and child health programs are expanded to include child protection, family preservation, and support; we have released prevention grants for community-based family services in all 50 States; and we have worked with the Congress to pass the Adoption and Safe Families Act of 1997, the Violent Crime Control and Law Enforcement Act of 1994, and the National Child Protection Act of 1993, all of which support child abuse prevention efforts in State and local jurisdictions.

Yet government programs alone cannot prevent child abuse. As a society that cares about the health and well-being of our children, we must forge caring, cooperative alliances that include government as a partner, but also involve schools, community organizations, businesses, religious groups, and especially parents and family members themselves—indeed, everyone who has a stake in the future of American families. During this special month, as we focus our Nation's attention on the disturbing problem of child abuse, let us remember that behind every heartbreaking statistic is a child whose health, happiness, and future depend on our ability to recognize the signs of abuse and our refusal to tolerate abuse in our homes and communities.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim April 1999 as National Child Abuse Prevention Month. I call upon all Americans to observe this month by demonstrating our gratitude to those who work to keep our children safe, and by taking action in our own communities to make them healthier places in which children can grow and thrive.

IN WITNESS WHEREOF, I have hereunto set my hand this first day of April, in the year of our Lord nineteen hundred and ninety-nine, and of

the Independence of the United States of America the two hundred and twenty-third.

William J. Clinton

[FR Doc. 99–8820
Filed 4–6–99; 8:45 am]
Billing code 3195–01–P

Reader Aids

Federal Register

Vol. 64, No. 66

Wednesday, April 7, 1999

CUSTOMER SERVICE AND INFORMATION

Federal Register/Code of Federal Regulations	
General Information, indexes and other finding aids	202–523–5227
Laws	523–5227
Presidential Documents	
Executive orders and proclamations	523–5227
The United States Government Manual	523–5227
Other Services	
Electronic and on-line services (voice)	523–4534
Privacy Act Compilation	523–3187
Public Laws Update Service (numbers, dates, etc.)	523–6641
TTY for the deaf-and-hard-of-hearing	523–5229

ELECTRONIC RESEARCH

World Wide Web

Full text of the daily Federal Register, CFR and other publications:

http://www.access.gpo.gov/nara

Federal Register information and research tools, including Public Inspection List, indexes, and links to GPO Access:

http://www.nara.gov/fedreg

E-mail

PENS (Public Law Electronic Notification Service) is an E-mail service that delivers information about recently enacted Public Laws. To subscribe, send E-mail to

listproc@lucky.fed.gov

with the text message:

subscribe publaws-l <firstname> <lastname>

Use listproc@lucky.fed.gov only to subscribe or unsubscribe to PENS. We cannot respond to specific inquiries at that address.

Reference questions. Send questions and comments about the Federal Register system to:

info@fedreg.nara.gov

The Federal Register staff cannot interpret specific documents or regulations.

FEDERAL REGISTER PAGES AND DATES, APRIL

15633–15914	1
15915–16332	2
16333–16600	5
16601–16796	6
16797–17078	7

CFR PARTS AFFECTED DURING APRIL

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
7177 17075
7178 17077

Executive Orders:
11223 (Amended by EO 13118) 16595
11269 (Amended by EO 13118) 16595
11958 (Amended by EO 13118) 16595
12163 (Amended by EO 13118) 16595
12188 (Amended by EO 13118) 16595
12260 (Amended by EO 13118) 16595
12293 (Amended by EO 13118) 16595
12301 (Amended by EO 13118) 16595
12599 (Amended by EO 13118) 16595
12703 (Amended by EO 13118) 16595
12884 (Amended by EO 13118) 16595
12981 (Amended by EO 13117) 16391
13116 16333
13117 16591
13118 16595

Memorandums:
March 23, 1999 (Amended by EO 13118) 16595

Administrative Orders:
Presidential Determination No. 99-18 of March 25, 1999 16337

5 CFR

351 16797
532 15915
870 16601
890 15633
1200 15916

7 CFR

301 15916
1753 16602

Proposed Rules:
28 15937
340 16364
905 15634
944 15634
1000 16026
1001 16026
1002 16026
1004 16026
1005 16026
1006 16026
1007 16026
1012 16026
1013 16026
1030 16026
1032 16026
1033 16026
1036 16026
1040 16026
1044 16026
1046 16026
1049 16026
1050 16026
1064 16026
1065 16026
1068 16026
1076 16026
1079 16026
1106 16026
1124 16026
1126 16026
1131 16026
1134 16026
1135 16026
1137 16026
1138 16026
1139 16026

9 CFR

1 15918
3 15918

Proposed Rules:
93 16655
201 15938

10 CFR

2 ..... 15636, 15920
10 15636
11 15636
25 15636
95 15636

Proposed Rules:
170 15876
171 15876

12 CFR

213 16612
226 16614
330 15653
611 16617
620 16617
935 ..... 16618, 16788

Proposed Rules:
933 16792
934 16792
935 16792

13 CFR

Proposed Rules:
120 15942
121 15708

14 CFR

39 ..... 15657, 15659, 15661,

15669, 15920, 16339, 16621, 16624, 16625, 16801, 16803, 16805, 16808, 16810
71 .....15673, 15674, 15675, 15676, 15678, 15679, 16024, 16340, 16341, 16342, 16343, 16344
91.....15912

Proposed Rules:
39 .....16364, 16366, 16656
71 .....15708, 16024, 16368, 16369, 16370, 16371
119.....16298
121.....16298
129.....16298
135.....16298
183.....16298

17 CFR
275.....15680
279.....15680

19 CFR
178.....16635
192.....16635
10.....16345
18.....16345
113.....16345
178.....16345

Proposed Rules:
19.....16865
146.....15873

21 CFR
26.....16347
510.....15683
520.....15683, 15684
522.....15683, 15685
558.....15683

Proposed Rules:
1.....15944
101.....15948

22 CFR
Ch. II.....15685
Ch. VI.....15686

23 CFR

Proposed Rules:
777.....16870

24 CFR
100.....16324

26 CFR
1.....15686, 15687
7.....15687
31.....15687
301.....16640
602 .....15687, 15688, 15873

Proposed Rules:
1.....16372

30 CFR

Proposed Rules:
206.....15949

33 CFR
100 .....16348, 16812, 16813
117.....16350, 16641
165 .....16348, 16641, 16642

Proposed Rules:
175.....15709
177.....15709
179.....15709
181.....15709
183.....15709

39 CFR
111.....16814

40 CFR
52.....15688, 15922
90.....16526
180 .....16840, 16843, 16850, 16856
261.....16643
300.....15926, 16351

Proposed Rules:
52 .....15711, 15949, 16659
70.....16659
82.....16373
180.....16874
185.....16874
186.....16874

41 CFR
Ch. 301 16352
60-250.....15690
60-999.....15690

45 CFR

Proposed Rules:
1635.....16383

46 CFR

Proposed Rules:
10.....15709
15.....15709
24.....15709
25.....15709
26.....15709
28.....15709
70.....15709
169.....15709
175.....15709

47 CFR
69.....16353

Proposed Rules:
0.....16388
1.....16661
2.....16687
25.....16880
25.....16687
69.....16389
73 .....15712, 15713, 15714, 15715, 16388, 16396
76.....16388

48 CFR
701.....16647
703.....16647
715.....16647
731.....16647
752.....16647
909.....16649
970.....16649
1333.....16651

49 CFR
195.....15926
533.....16860
571.....16358
581.....16359

Proposed Rules:
171.....16882
177.....16882
178.....16882
180.....16882
192.....16882, 16885
195.....16882, 16885
578.....16690
611.....17062

50 CFR
17.....15691
600.....16862
648 .....15704, 16361, 16362
660.....16862
679 .....16361, 16362, 16654

Proposed Rules:
17.....16397, 16890
223.....16396, 16397
224.....16397
226.....16397
600.....16414
648.....16417, 16891

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT APRIL 7, 1999

ENVIRONMENTAL PROTECTION AGENCY

Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
- Avermectin; published 4-7-99
- Propamocarb hydrochloride; published 4-7-99
- Tebufenozide; published 4-7-99
- Trichoderma hazianum KRL-AG2(ATCC →20847) etc.; published 4-7-99

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration

Human drugs:
- Drug products discontinued from sale for reasons of safety or effectiveness; list; published 3-8-99

Medical devices:
- Ear, nose, and throat devices—
  - Nasal dilator, intranasal splint, and bone particle collector; published 3-8-99

SECURITIES AND EXCHANGE COMMISSION

Securities:
- Compensatory benefit arrangements; offers and sales exemption; published 3-8-99
- Form S-8; securities offer and sale to consultants and advisors, and exercise of stock options by family members of employee optionees; published 3-8-99
- Seed capital exemption; published 3-8-99

STATE DEPARTMENT

Privacy Act; implementation; published 3-8-99

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:
- Eurocopter France; published 3-3-99
- Sikorsky; published 3-23-99

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT

Agricultural Marketing Service

Avocados grown in—
- South Florida; comments due by 4-16-99; published 3-17-99

Prunes (dried) produced in California; comments due by 4-15-99; published 1-25-99

AGRICULTURE DEPARTMENT

Farm Service Agency

Program regulations:
- Preferred lender program implementation and guaranteed loan regulations streamlining; comments due by 4-13-99; published 2-12-99

AGRICULTURE DEPARTMENT

Rural Business-Cooperative Service

Program regulations:
- Preferred lender program implementation and guaranteed loan regulations streamlining; comments due by 4-13-99; published 2-12-99

AGRICULTURE DEPARTMENT

Rural Housing Service

Program regulations:
- Preferred lender program implementation and guaranteed loan regulations streamlining; comments due by 4-13-99; published 2-12-99

AGRICULTURE DEPARTMENT

Rural Utilities Service

Program regulations:
- Preferred lender program implementation and guaranteed loan regulations streamlining; comments due by 4-13-99; published 2-12-99

COMMERCE DEPARTMENT

Census Bureau

Foreign trade statistics:
- Automated Export System; shipper's export data; electronic filing; comments due by 4-13-99; published 2-12-99

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Fisheries assistance programs; fishing capacity reduction program; comments due by 4-12-99; published 2-11-99

Fishery conservation and management:
- Northeastern United States fisheries—
  - Northeast multispecies; comments due by 4-13-99; published 3-29-99

DEFENSE DEPARTMENT

Federal Acquisition Regulation (FAR):
- Progress payments and related financing policies; comments due by 4-12-99; published 2-10-99

EDUCATION DEPARTMENT

Special education and rehabilitative services:
- Infants and toddlers with disabilities early intervention program; advice and recommendations request; comments due by 4-12-99; published 3-12-99

ENVIRONMENTAL PROTECTION AGENCY

Air pollutants, hazardous; national emission standards:
- Secondary aluminum production; comments due by 4-12-99; published 2-11-99

Air pollution control; new motor vehicles and engines:
- New nonroad spark-ignition engines rated above 19 kilowatts and new land-based recreational spark-ignition engines; comments due by 4-12-99; published 2-8-99

Air quality implementation plans; approval and promulgation; various States:
- Delaware; comments due by 4-12-99; published 3-11-99
- Iowa; comments due by 4-12-99; published 3-11-99
- Kentucky; comments due by 4-14-99; published 3-15-99

Air quality implementation plans; approval and promulgation; various States; air quality planning purposes; designation of areas:
- Ohio; comments due by 4-16-99; published 3-17-99

Air quality implementation plans; approval and promulgation; various States:
- Oregon; comments due by 4-14-99; published 3-15-99
- Texas; comments due by 4-14-99; published 3-15-99

Hazardous waste:
- Mixed low-level radioactive waste; storage, treatment, and disposition; comments due by 4-15-99; published 3-1-99

FEDERAL COMMUNICATIONS COMMISSION

Common carrier services:
- Inter-carrier compensation for Internet service provider (ISP)-bound traffic; comments due by 4-12-99; published 3-24-99

Radio broadcasting:
- Broadcast and cable EEO rules and policies; extension; comments due by 4-15-99; published 4-5-99
- Low power FM radio service; creation and operation; comments due by 4-12-99; published 2-16-99

FEDERAL HOUSING FINANCE BOARD

Federal home loan bank system:
- Consolidated obligations; joint and several liability allocation; comments due by 4-12-99; published 2-11-99

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

Thrift savings plan:
- Death benefits; transfer into G Fund after participant's death; comments due by 4-12-99; published 2-11-99

GENERAL SERVICES ADMINISTRATION

Federal Acquisition Regulation (FAR):
- Progress payments and related financing policies; comments due by 4-12-99; published 2-10-99

Federal property management:
- Purchase or lease determinations guidelines and use of private inspection, testing, and grading services; comments due by 4-12-99; published 2-10-99

Federal travel:
- Travel and relocation expenses test programs; comments due by 4-12-99; published 2-10-99

HEALTH AND HUMAN SERVICES DEPARTMENT

Children and Families Administration

Personal Responsibility and Work Opportunity

Reconciliation Act of 1996; implementation:
Child support enforcement program; revision or elimination of obsolete or inconsistent provisions; comments due by 4-12-99; published 2-9-99

HEALTH AND HUMAN SERVICES DEPARTMENT
Food and Drug Administration
Food for human consumption:
Food labeling—
Nutrient content claims; "healthy" definition; partial stay extension; comments due by 4-15-99; published 3-16-99
Human drugs and biological products:
In vivo radiopharmaceuticals used for diagnosis and monitoring—
Evaluation and approval; developing medical imaging drugs and biologics; guidance availability; comments due by 4-14-99; published 2-16-99

HEALTH AND HUMAN SERVICES DEPARTMENT
Health Care Financing Administration
Medicare:
Outpatient diabetes self-management training services; expanded coverage; comments due by 4-12-99; published 2-11-99

HOUSING AND URBAN DEVELOPMENT DEPARTMENT
Fair housing:
Fair Housing Act violations; civil penalties; comments due by 4-12-99; published 2-10-99

INTERIOR DEPARTMENT
Minerals Management Service
Royalty management:
Audit functions; delegation to States; comments due by 4-12-99; published 2-10-99
Federal and Indian leases; oil valuation; comments due by 4-12-99; published 3-12-99

INTERIOR DEPARTMENT
Reclamation Bureau
Farm operation in excess 960 acres, information requirements; and formerly excess land eligibility to receive non-full cost irrigation water; comments due by 4-12-99; published 3-11-99

INTERIOR DEPARTMENT
Surface Mining Reclamation and Enforcement Office
Permanent program and abandoned mine land reclamation plan submissions:
Pennsylvania; comments due by 4-12-99; published 3-12-99
Surface coal mining and reclamation operations:
Ownership and control mining operations; definitions, permit requirements, enforcement actions, etc.; comments due by 4-15-99; published 3-31-99

JUSTICE DEPARTMENT
Drug Enforcement Administration
Records, reports, and exports of listed chemicals:
Chemical mixtures that contain regulated chemicals; comments due by 4-16-99; published 2-12-99

JUSTICE DEPARTMENT
Immigration and Naturalization Service
Immigration:
Aliens—
Employment eligibility verification; acceptable receipts; comments due by 4-12-99; published 2-9-99

JUSTICE DEPARTMENT
Illegal Immigration Reform and Immigrant Responsibility Act and Debt Collection Improvement Act; implementation:
Employer sanctions, unfair immigration-related employment practice cases, and immigration-related document fraud; comments due by 4-13-99; published 2-12-99

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION
Federal Acquisition Regulation (FAR):
Progress payments and related financing policies; comments due by 4-12-99; published 2-10-99

SECURITIES AND EXCHANGE COMMISSION
Securities and investment companies:
Electronic Data Gathering, Analysis, and Retrieval (EDGAR) system modernization; comments due by 4-15-99; published 3-16-99
Securities:
International disclosure standards; foreign private issuers conformance; comments due by 4-12-99; published 2-9-99
Registered broker dealers and transfer agents and Year 2000 compliance; operational capability requirements; comments due by 4-12-99; published 3-11-99

TRANSPORTATION DEPARTMENT
Coast Guard
Drawbridge operations:
Florida; comments due by 4-12-99; published 2-9-99
Massachusetts; comments due by 4-14-99; published 3-15-99
Ports and waterways safety:
Hudson River, NY; safety zone; comments due by 4-13-99; published 2-12-99

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airworthiness directives:
Fairchild; comments due by 4-12-99; published 2-18-99
Fokker; comments due by 4-14-99; published 3-15-99
McDonnell Douglas; comments due by 4-16-99; published 3-2-99
Rolls-Royce Ltd.; comments due by 4-12-99; published 2-10-99
Texton Lycoming; comments due by 4-12-99; published 2-10-99
Class E airspace; comments due by 4-15-99; published 3-8-99
Restricted areas; comments due by 4-12-99; published 2-26-99

TRANSPORTATION DEPARTMENT
National Highway Traffic Safety Administration
Fuel economy standards:
Passenger autombiles; low volume manufacturer exemptions; comments due by 4-12-99; published 3-11-99

TREASURY DEPARTMENT
Alcohol, Tobacco and Firearms Bureau
Alcoholic beverages:
Distilled spirits, wine, and malt beverages; labeling and advertising—
Fill standards; comments due by 4-12-99; published 2-9-99

TREASURY DEPARTMENT
Customs Service
Automated Export System:
Shipper's export declarations and outbound vessel manifest information; electronic transmission; cross reference to Census Bureau regulations; comments due by 4-13-99; published 2-12-99

TREASURY DEPARTMENT
Internal Revenue Service
Income taxes:
Group-term life insurance coverage costs; uniform premium table; comments due by 4-13-99; published 1-13-99
Procedure and administration:
Timely mailing treated as timely filing/electronic postmark; comments due by 4-15-99; published 1-15-99

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–523–6641. This list is also available online at http://www.nara.gov/fedreg.

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at http://www.access.gpo.gov/nara/index.html. Some laws may not yet be available.

S. 314/P.L. 106–8
Small Business Year 2000 Readiness Act (Apr. 2, 1999; 113 Stat. 13)

H.R. 68/P.L. 106–9
Small Business Investment Improvement Act of 1999 (Apr. 5, 1999; 113 Stat. 17)

H.R. 92/P.L. 106–10
To designate the Federal building and United States

courthouse located at 251 North Main Street in Winston-Salem, North Carolina, as the "Hiram H. Ward Federal Building and United States Courthouse". (Apr. 5, 1999; 113 Stat. 20)

H.R. 158/P.L. 106–11

To designate the United States courthouse located at 316 North 26th Street in Billings, Montana, as the "James F. Battin United States Courthouse". (Apr. 5, 1999; 113 Stat. 21)

H.R. 233/P.L. 106–12

To designate the Federal building located at 700 East San Antonio Street in El Paso, Texas, as the "Richard C. White Federal Building". (Apr. 5, 1999; 113 Stat. 22)

H.R. 396/P.L. 106–13

To designate the Federal building located at 1301 Clay Street in Oakland, California, as the "Ronald V. Dellums Federal Building". (Apr. 5, 1999; 113 Stat. 23)

Last List April 5, 1999.

Public Laws Electronic Notification Service (PENS)

PENS is a free electronic mail notification service of newly enacted public laws. To subscribe, send E-mail to **listproc@lucky.fed.gov** with the text message:

subscribe PUBLAWS-L Your Name.

Note: This service is strictly for E-mail notification of new public laws. The text of laws is not available through this service. **PENS** cannot respond to specific inquiries sent to this address.

Now Available Online

through

GPO Access

A Service of the U.S. Government Printing Office

Federal Register

Updated Daily by 6 a.m. ET

Easy, Convenient, FREE

Free public connections to the online Federal Register are available through the GPO Access service.

To connect over the World Wide Web, go to the Superintendent of Documents' homepage at http://www. access. gpo.gov/su_docs/

To connect using telnet, open swais.access.gpo.gov and login as guest (no password required).

To dial directly, use communications software and modem to call (202) 512–1661; type swais, then login as guest (no password required).

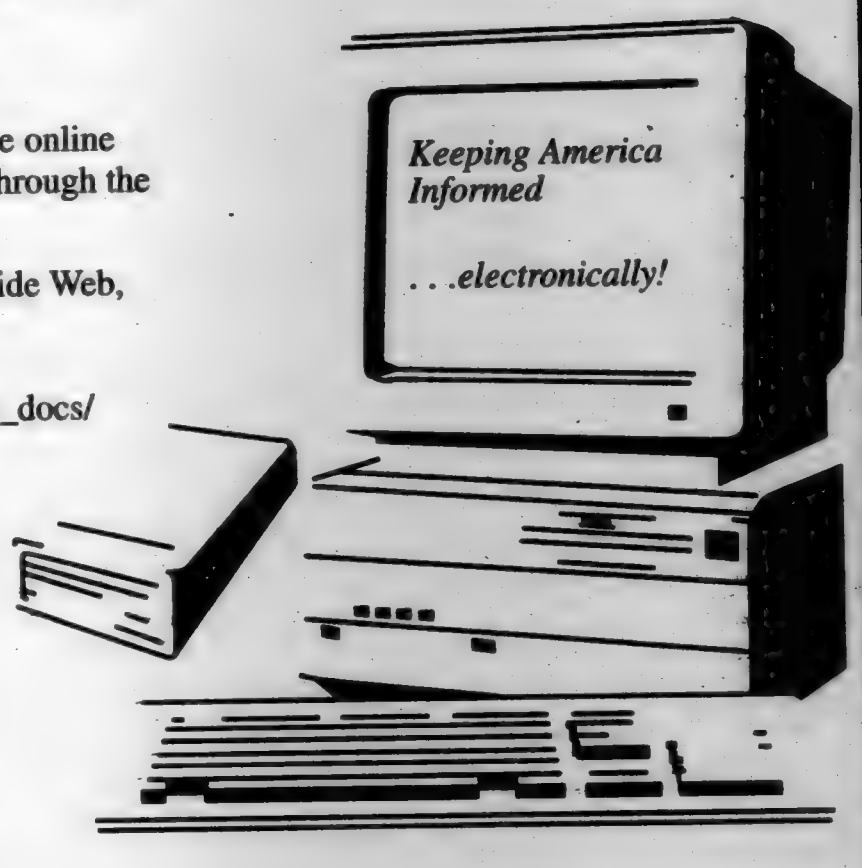

You may also connect using local WAIS client software. For further information, contact the GPO Access User Support Team:

Voice: (202) 512–1530 (7 a.m. to 5 p.m. Eastern time).
Fax: (202) 512–1262 (24 hours a day, 7 days a week).
Internet E-Mail: gpoaccess@gpo.gov

(Rev. 11/3)

VOL
64
ISS
66
AP
7
1999
UMI

Printed on recycled paper

VOL
64
ISS
67
AP
8
1999
UMI

4-8-99
Vol. 64

United S
Governm
Printing
SUPERINTEN
OF DOCUME
Washington,
OFFICIAL BU
Penalty for pr

UMI

THE PAPER AND INK USED IN THE ORIGINAL PUBLICATION MAY AFFECT THE QUALITY OF THE MICROFORM EDITION.

4–8–99
Vol. 64 No. 67

federal register

Thursday
April 8, 1999

United States
Government
Printing Office
SUPERINTENDENT
OF DOCUMENTS
Washington, DC 20402

OFFICIAL BUSINESS
Penalty for private use, $300

PERIODICALS
Postage and Fees Paid
U.S. Government Printing Office
(ISSN 0097–6326)

**********3-DIGIT 481
A FR UMI 346U DEC 99 R
UMI
PERIODICALS CHECK IN
PO BOX 1346
ANN ARBOR MI 48106

VOL
64
ISS
67
AP
8
1999
UMI

4-8-99
Vol. 64
Pages 17

4–8–99
Vol. 64 No. 67
Pages 17079–17270

federal register

Thursday
April 8, 1999

Briefings on how to use the Federal Register
For information on briefings in Washington, DC, see announcement on the inside cover of this issue.

The **FEDERAL REGISTER** is published daily, Monday through Friday, except official holidays, by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). The Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 is the exclusive distributor of the official edition.

The **Federal Register** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders, Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress, and other Federal agency documents of public interest.

Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless the issuing agency requests earlier filing. For a list of documents currently on file for public inspection, see http://www.nara.gov/fedreg.

The seal of the National Archives and Records Administration authenticates the Federal Register as the official serial publication established under the Federal Register Act. Under 44 U.S.C. 1507, the contents of the **Federal Register** shall be judicially noticed.

The **Federal Register** is published in paper and on 24x microfiche. It is also available online at no charge as one of the databases on GPO Access, a service of the U.S. Government Printing Office.

The online edition of the **Federal Register** is issued under the authority of the Administrative Committee of the Federal Register as the official legal equivalent of the paper and microfiche editions (44 U.S.C. 4101 and 1 CFR 5.10). It is updated by 6 a.m. each day the **Federal Register** is published and it includes both text and graphics from Volume 59, Number 1 (January 2, 1994) forward.

GPO Access users can choose to retrieve online **Federal Register** documents as TEXT (ASCII text, graphics omitted), PDF (Adobe Portable Document Format, including full text and all graphics), or SUMMARY (abbreviated text) files. Users should carefully check retrieved material to ensure that documents were properly downloaded.

On the World Wide Web, connect to the **Federal Register** at http://www.access.gpo.gov/nara. Those without World Wide Web access can also connect with a local WAIS client, by Telnet to swais.access.gpo.gov, or by dialing (202) 512-1661 with a computer and modem. When using Telnet or modem, type swais, then log in as guest with no password.

For more information about GPO Access, contact the GPO Access User Support Team by E-mail at gpoaccess@gpo.gov; by fax at (202) 512–1262; or call (202) 512–1530 or 1–888–293–6498 (toll free) between 7 a.m. and 5 p.m. Eastern time, Monday–Friday, except Federal holidays.

The annual subscription price for the **Federal Register** paper edition is $555, or $607 for a combined **Federal Register**, Federal Register Index and List of CFR Sections Affected (LSA) subscription; the microfiche edition of the **Federal Register** including the Federal Register Index and LSA is $220. Six month subscriptions are available for one-half the annual rate. The charge for individual copies in paper form is $8.00 for each issue, or $8.00 for each group of pages as actually bound; or $1.50 for each issue in microfiche form. All prices include regular domestic postage and handling. International customers please add 25% for foreign handling. Remit check or money order, made payable to the Superintendent of Documents, or charge to your GPO Deposit Account, VISA, MasterCard or Discover. Mail to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954.

There are no restrictions on the republication of material appearing in the **Federal Register.**

How To Cite This Publication: Use the volume number and the page number. Example: 64 FR 12345.

Printed on recycled paper.

SUBSCRIPTIONS AND COPIES

PUBLIC

Subscriptions:

Paper or fiche	202–512–1800
Assistance with public subscriptions	512–1806
General online information	202–512–1530; 1–888–293–6498

Single copies/back copies:

Paper or fiche	512–1800
Assistance with public single copies	512–1803

FEDERAL AGENCIES

Subscriptions:

Paper or fiche	523–5243
Assistance with Federal agency subscriptions	523–5243

FEDERAL REGISTER WORKSHOP

THE FEDERAL REGISTER: WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: Sponsored by the Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WASHINGTON, DC

WHEN: April 20, 1999 at 9:00 am.

WHERE: Office of the Federal Register
Conference Room
800 North Capitol Street, NW.
Washington, DC
(3 blocks north of Union Station Metro)

RESERVATIONS: 202–523–4538

Contents

Federal Register
Vol. 64, No. 67
Thursday, April 8, 1999

Agricultural Marketing Service
NOTICES
Agency information collection activities:
Proposed collection; comment request, 17144

Agriculture Department
See Agricultural Marketing Service
See Food and Nutrition Service
See Forest Service
See Rural Utilities Service

Air Force Department
RULES
User Charges; CFR Part removed, 17101

Army Department
See Engineers Corps

Centers for Disease Control and Prevention
NOTICES
Meetings:
Healthcare Infection Control Practices Advisory Committee, 17183
National Center for Infectious Diseases—Scientific Counselors Board, 17183

Coast Guard
RULES
Drawbridge operations:
Duluth Ship Canal, MN, 17101–17102
PROPOSED RULES
Drawbridge operations:
Oregon, 17134–17136
Pollution:
Non-petroleum oils; marine transportation-related facilities; response plans, 17221–17227

Commerce Department
See National Oceanic and Atmospheric Administration

Committee for the Implementation of Textile Agreements
NOTICES
Cotton, wool, and man-made textiles:
India, 17147–17148

Commodity Futures Trading Commission
NOTICES
Meetings:
Agricultural Advisory Committee, 17148

Comptroller of the Currency
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 17215–17218

Defense Department
See Air Force Department
See Engineers Corps

Education Department
NOTICES
Agency information collection activities:
Proposed collection; comment request, 17149–17150

Energy Department
See Federal Energy Regulatory Commission
NOTICES
Atomic energy agreements; subsequent arrangements, 17150

Engineers Corps
NOTICES
Environmental statements; notice of intent:
Sand Creek Watershed, NE; feasibility study, 17148–17149

Environmental Protection Agency
RULES
Acquisition regulations:
Agency protests; incorporate solicitation notice, 17109–17110
Air Programs
Pesticide products; State registration
Large municipal waste combustors located in States where State plans have not been approved; emission guidelines; implementation; correction, 17219
Air quality implementation plans; approval and promulgation; various States:
Colorado, 17102–17105
PROPOSED RULES
Air quality implementation plans; approval and promulgation; various States:
Colorado, 17136
Water programs:
Oil pollution; non-transportation-related facilities prevention and response, 17227–17267
NOTICES
Meetings:
Science Advisory Board, 17169–17170
Pesticide, food, and feed additive petitions:
Novartis Crop Protection, Inc., 17170–17171
Rutgers University, NJ, 17171–17179
Superfund; response and remedial actions, proposed settlements, etc.:
Caelus Devices Removal Site, CA, 17179
Memphis Container Site, TN, 17179–17180
Ware Shoals Dyeing and Printing Site, SC, 17180

Executive Office of the President
See Presidential Documents
See Trade Representative, Office of United States

Federal Aviation Administration
RULES
Airworthiness directives:
McDonnell Douglas, 17086–17087
Class E airspace; correction, 17219
PROPOSED RULES
Airworthiness directives:
Boeing, 17130–17133
Class E airspace, 17133–17134

NOTICES
Grants and cooperative agreements; availability, etc.:
Airport privatization pilot program, 17208–17210
Meetings:
Satellite Operational Implementation Team; Global Positioning System/Wide Area and Local Augumentation Systems; capabilities, 17210
Passenger facility charges; applications, etc.:
Waterloo Municipal Airport, IA, 17210

Federal Communications Commission
RULES
Radio stations; table of assignments:
Texas, 17108–17109
PROPOSED RULES
Radio stations; table of assignments:
Arizona, 17142, 17137
Arkansas, 17138–17138
California, 17140–17143
Colorado, 17138–17142
Kansas, 17137, 17143
NOTICES
Committees; establishment, renewal, termination, etc.:
Public Safety National Coordination Committee; chairperson contact, 17180

Federal Deposit Insurance Corporation
NOTICES
Agency information collection activities:
Proposed collection; comment request, 17180–17181

Federal Election Commission
NOTICES
Meetings; Sunshine Act, 17181

Federal Energy Regulatory Commission
RULES
Investigations:
Complaint procedures, 17087–17100
NOTICES
Hydroelectric applications, 17157–17169
Applications, hearings, determinations, etc.:
California Independent System Operator Corp. et al., 17150
Communications of Market Information Between Affiliates, 17150–17151
Destin Pipeline Co., L.L.C., 17151–17152
Distrigas of Massachusetts Corp., 17152
El Paso Natural Gas Co., 17153
Equitrans, L.P., 17153
Florida Gas Transmission Co., 17153–17154
Gulf States Transmission Corp., 17154
Mid Louisiana Gas Co., 17154
National Fuel Gas Supply Corp., 17154
Panhandle Eastern Pipe Line Co., 17155
Southern Natural Gas Co., 17155–17156
Vector Pipeline L.P., 17156
Vernon Ravenscroft, 17156
Williams Gas Pipelines Central, Inc., 17156–17157
Williston Basin Interstate Co., 17157

Federal Highway Administration
NOTICES
Transportation Equity Act for 21st Century; implementation:
Integration program and commercial vehicle intelligent transportation infrastructure deployment program, 17210–17214

Federal Maritime Commission
NOTICES
Investigations, hearings, petitions, etc.:
China Ocean Shipping (Group) Co., 17181

Federal Reserve System
NOTICES
Banks and bank holding companies:
Change in bank control, 17182
Formations, acquisitions, and mergers, 17182
Permissible nonbanking activities, 17182–17183

Federal Transit Administration
NOTICES
Transportation Equity Act for 21st Century; implementation:
Integration program and commercial vehicle intelligent transportation infrastructure deployment program, 17210–17214

Fish and Wildlife Service
RULES
Endangered and threatened species:
Bull trout; Jarbidge River, NV and ID, 17110–17125
NOTICES
Comprehensive conservation plans; availability, etc.:
Browns Park National Wildlife Refuge, CO, 17195–17196

Food and Drug Administration
NOTICES
Meetings:
Drug repackager workshop, 17183–17184

Food and Nutrition Service
RULES
Food distribution programs:
Oklahoma, Indian households; waiver authority, 17085

Forest Service
NOTICES
Environmental statements; notice of intent:
Colville National Forests, WA, 17144–17145

General Services Administration
RULES
Federal travel:
Relocation income tax allowance tax tables, 17105–17108

Health and Human Services Department
See Centers for Disease Control and Prevention
See Food and Drug Administration
See Health Care Financing Administration
See Inspector General Office, Health and Human Services Department
See National Institutes of Health
See Substance Abuse and Mental Health Services Administration

Health Care Financing Administration
See Inspector General Office, Health and Human Services Department
NOTICES
Meetings:
Medicare program; Skilled Nursing Facility Prospective Payment System and quality of care in nursing facilities, 17184–17185

Immigration and Naturalization Service
PROPOSED RULES
Immigration:
Aliens—
Mass influx of aliens; Attorney General authorization of State and Local law enforcement officers to enforce immigration law, 17128–17130

Indian Affairs Bureau
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 17196–17197

Inspector General Office, Health and Human Services Department
NOTICES
Program exclusions; list, 17185–17187

Interior Department
See Fish and Wildlife Service
See Indian Affairs Bureau
See Land Management Bureau
See Minerals Management Service

International Trade Commission
NOTICES
Import investigations:
Brazing copper wire and rod from—
New Zealand and South Africa, 17198
Cut-to-length steel plate from—
Various countries, 17198–17199

Justice Department
See Immigration and Naturalization Service
See Prisons Bureau

Land Management Bureau
NOTICES
Realty actions; sales, leases, etc.:
Nevada, 17197–17198

Legal Services Corporation
RULES
Legal assistance eligibility:
Maximum income levels, 17108

Minerals Management Service
NOTICES
Outer Continental Shelf Operations:
Western Gulf of Mexico—
Lease sales, 17198

National Aeronautics and Space Administration
NOTICES
Meetings:
NASA Advisory Council, 17199
Patent licenses; non-exclusive, exclusive, or partially exclusive:
Rohm and Haas Co., 17199–17200
Spartan School of Aeronautics, 17200

National Credit Union Administration
RULES
Credit unions:
Organization and operations—
Regulatory action; change of Central Liquidity Facility by laws description, 17085–17086

National Institutes of Health
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 17187–17188
Grants and cooperative agreements; availability, etc.:
Library of cDNA clones derived from mouse stem cells, 17188–17189
Meetings:
Director's Council of Public Representatives, 17189–17190
National Cancer Institute, 17190
National Center for Research Resources, 17191
National Institute of Arthritis and Musculoskeletal and Skin Diseases, 17191–17192
National Institute on Aging, 17191
Office of AIDS Research Advisory Council, 17192
Women's health research; biologic & molecular mechanisms for sex differences in pharmacokinetics, pharmacodynamics, and pharmacogenetics, 17192–17193
Women's Health Research Advisory Committee, 17192
Patent licenses; non-exclusive, exclusive, or partially exclusive:
Gilead Sciences, 17193

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
Alaska; fisheries of Exclusive Economic Zone—
Atka mackerel, 17126–17127
West Coast states and Western Pacific fisheries—
West Coast salmon, 17125–17126
NOTICES
Marine mammals:
Incidental taking; authorization letters, etc.—
30th Space Wing, U.S. Air Force; explosve testing; seals and sea lions, 17145–17146
Permits:
Marine mammals, 17146–17147

National Transportation Safety Board
NOTICES
Meetings:
Truck/Bus Safety; hearings, 17200

Nuclear Regulatory Commission
NOTICES
Applications, hearings, determinations, etc.:
Porstmouth Gaseous Diffusion Plant, 17200–17201
Southern Nuclear Operating Co., Inc., et al., 17201–17203
Wolf Creek Nuclear Operating Corp., 17203–17204

Office of United States Trade Representative
See Trade Representative, Office of United States

Postal Service
RULES
Domestic Mail Manual:
Delivery confirmation service; classification and fees
Stay of delivery confirmation service for customers sending mail to APO/FPO destinations, 17102

Presidential Documents
RULES
Foreign Affairs Reform and Restructuring Act of 1998; delegation of authority (Memorandum of Mar. 31, 1999), 17079

Kosovo:
Military assistance (Presidential Determination No. 99-20 of March 31, 1999), 17083
Refugee assistance (Presidential Determination No. 99-19 of March 31, 1999), 17081

Prisons Bureau
RULES
Donations; acceptance, 17269–17270

Public Health Service
See Centers for Disease Control and Prevention
See Food and Drug Administration
See National Institutes of Health
See Substance Abuse and Mental Health Services Administration

Railroad Retirement Board
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 17204

Rural Utilities Service
RULES
Electric loans:
Electric standards and specifications for materials and construction—
Electric overhead distribution lines; specifications and drawings (24.9/14.4 kV to 69 kV and 115 kV to 230 kV); correction, 17219

Securities and Exchange Commission
NOTICES
Agency information collection activities:
Proposed collection; comment request, 17204
Self-regulatory organizations; proposed rule changes:
Cincinnati Stock Exchange, Inc., 17204–17206
New York Stock Exchange, Inc., 17206–17208

Social Security Administration
RULES
Social security benefits:
Federal old age, survivors and disability insurance—
Guarantee cases; maximum family benefits, 17100–17101

State Department
NOTICES
Organization, functions, and authority delegations:
Under Secretary of State for Arms Control and International Security, 17208

Substance Abuse and Mental Health Services Administration
NOTICES
Federal agency urine drug testing; certified laboratories meeting minimum standards, list, 17193–17195

Surface Transportation Board
NOTICES
Railroad operation, acquisition, construction, etc.:
IMC Global Inc., 17214
Union Pacific Railroad Co., 17214

Textile Agreements Implementation Committee
See Committee for the Implementation of Textile Agreements

Trade Representative, Office of United States
NOTICES
Tariff Act of 1930:
Subsidies agreement countries—
Macedonia, 17208

Transportation Department
See Coast Guard
See Federal Aviation Administration
See Federal Highway Administration
See Federal Transit Administration
See Surface Transportation Board

Treasury Department
See Comptroller of the Currency
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 17214–17215

Separate Parts in This Issue

Part II
Department of Transportation, Coast Guard, and Environmental Protection Agency, 17221–17267

Part III
Department of Justice, Bureau of Prisons, 17269–17270

Reader Aids
Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

CFR PA
A cumulati
Reader Ai
3 CFR
Memorandu
March 31,
Administra
Presidenti
Determi
No. 99-19
1999 ....
No. 99-20
1999 ....
7 CFR
254.....
1728.....
8 CFR
Proposed
2.....
12 CFR
790.....
14 CFR
39.....
71.....
Proposed
39.....
71.....
18 CFR
1b.....
343.....
385.....
20 CFR
404.....
28 CFR
504.....
Proposed
65.....
32 CFR
812.....
33 CFR
117.....
Proposed
117.....
154.....
39 CFR
111.....
40 CFR
52.....
62.....
Proposed
52.....
112.....
41 CFR
302-11.....
45 CFR
1611.....
47 CFR
73.....
Proposed
73 (16 doc
17138,
48 CFR
1533.....
1552.....
50 CFR
17.....
660.....
679.....

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

3 CFR
Memorandums:
March 31, 1999 17079
Administrative Orders:
Presidential
Determinations;
No. 99-19 of March 31, 1999 17081
No. 99-20 of March 31, 1999 17083

7 CFR
254.....17085
1728.....17219

8 CFR
Proposed Rules:
2.....17108

12 CFR
790.....17085

14 CFR
39.....17086
71.....17219
Proposed Rules:
39.....17130
71.....17033

18 CFR
1b.....17087
343.....17087
385.....17087

20 CFR
404.....17100

28 CFR
504.....17270
Proposed Rules:
65.....17128

32 CFR
812.....17101

33 CFR
117.....17101
Proposed Rules:
117.....17134
154.....17222

39 CFR
111.....17102

40 CFR
52.....17102
62.....17219
Proposed Rules:
52.....17136
112.....17227

41 CFR
302-11.....17105

45 CFR
1611.....17108

47 CFR
73.....17108
Proposed Rules:
73 (16 documents) 17137, 17138, 17139, 17140, 17141, 17142, 17143

48 CFR
1533.....17109
1552.....17109

50 CFR
17.....17110
660.....17125
679.....17126

VOL
64
ISS
67
AP
8
1999
UMI

Federal R
Vol. 64, N
Thursday,

Title 3—

The Pr

[FR Doc. 9
Filed 4–7–
Billing cod

Federal Register
Vol. 64, No. 67
Thursday, April 8, 1999

Presidential Documents

Title 3—

The President

Memorandum of March 31, 1999

Delegation of the Functions Vested in the President by Sections 1601(e) and 1601(g) of the Foreign Affairs Reform and Restructuring Act of 1998, as Enacted in Public Law 105–277

Memorandum for the Secretary of State

By the authority vested in me by the Constitution and laws of the United States, including section 301 of title 3 of the United States Code, I hereby delegate to you the functions vested in the President by sections 1601(e) and 1601(g) of the Foreign Affairs Reform and Restructuring Act of 1998, as enacted in Public Law 105–277.

The functions delegated by this memorandum may be redelegated as appropriate.

You are authorized and directed to publish this memorandum in the **Federal Register.**

William J. Clinton

THE WHITE HOUSE,
Washington, March 31, 1999.

[FR Doc. 99–8901
Filed 4–7–99; 8:45 am]
Billing code 4710–10–M

UMI

VOL
64

ISS
67

AP
8

1999

[FR Doc. 9
Filed 4-7-
Billing cod

UMI

Presidential Documents

Presidential Determination No. 99–19 of March 31, 1999

Determination Pursuant to Section 2(c)(1) of the Migration and Refugee Assistance Act of 1962, as Amended

Memorandum for the Secretary of State

Pursuant to section 2(c)(1) of the Migration and Refugee Assistance Act of 1962, as amended, 22 U.S.C. 2601(c)(1), I hereby determine that it is important to the national interest that up to $25,000,000 be made available from the U.S. Emergency Refugee and Migration Assistance Fund to meet the urgent and unexpected needs of refugees and migrants.

These funds may be used to meet the urgent and unexpected needs of refugees, displaced persons, victims of conflict, and other persons at risk due to the Kosovo crisis. These funds may be used, as appropriate, to provide contributions to international and nongovernmental organizations.

You are authorized and directed to inform the appropriate committees of the Congress of this determination and the use of funds under this authority, and to arrange for the publication of this determination in the **Federal Register.**

William J. Clinton

THE WHITE HOUSE,
Washington, March 31, 1999.

[FR Doc. 99–8902
Filed 4–7–99; 8:45 am]
Billing code 4710–10–M

VOL
64
ISS
67
AP
8
1999
UMI

[FR Doc. 9
Filed 4–7–
Billing cod

Presidential Documents

Presidential Determination No. 99–20 of March 31, 1999

Drawdown of Articles and Services To Support International Relief Efforts Relating to the Kosovo Conflict

Memorandum for the Secretary of State [and] the Secretary of Defense

Pursuant to the authority vested in me by section 552(c)(2) of the Foreign Assistance Act of 1961, as amended (the "Act"), I hereby determine that:

(1) as a result of an unforeseen emergency, the provision of assistance under Chapter 6 of Part II of the Act in amounts in excess of funds otherwise available for such assistance is important to the national interests of the United States; and
(2) such unforeseen emergency requires the immediate provision of assistance under Chapter 6 of Part II of the Act.

I therefore direct the drawdown of up to $25 million in commodities and services from the inventory and resources of the Department of Defense to support international relief efforts for Kosovar refugees.

The Secretary of State is authorized and directed to report this determination to the Congress and to arrange for its publication in the **Federal Register.**

William J. Clinton

THE WHITE HOUSE,
Washington, March 31, 1999.

[FR Doc. 99–8903
Filed 4–7–99; 8:45 am]
Billing code 4710–10–M

VOL
64
ISS
67
AP
8
1999
UMI

Rule

This secti
contains r
applicabili
are keyed
Federal R
50 titles p

The Code
the Super
new book
REGISTE

DEPART

Food an

7 CFR P

RIN 0584

Food Di
Oklahon

AGENCY:
USDA.

ACTION:
effective

SUMMAR
effective
publishe
January
amends
Distribu
Househo
CFR Par
Food an
to grant
Tribal O
allow In
urban pl
No adve
intent to
received
commen
1999.

EFFECTIV

FOR FUR
Lillie F.
Househo
Distribu
Nutritio
Agricult
Avenue,
telephon

SUPPLEM
I. Proce
II. Back
Rule

I. Proce

Regulat

This a
the Regu

Rules and Regulations

Federal Register
Vol. 64, No. 67
Thursday, April 8, 1999

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 254

RIN 0584–AB56

Food Distribution Programs: FDPIHO—Oklahoma Waiver Authority

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule; Confirmation of effective date of direct final rule.

SUMMARY: This action confirms the effective date of the direct final rule, published in the **Federal Register** on January 8, 1999 (64 FR 1097), that amends regulations for the Food Distribution Program for Indian Households in Oklahoma (FDPIHO) at 7 CFR Part 254. The rule reinstates the Food and Nutrition Service's authority to grant waiver requests from Indian Tribal Organizations in Oklahoma to allow Indian tribal households living in urban places to participate in FDPIHO. No adverse comments nor notices of intent to submit adverse comments were received in response to that rule. The comment period ended February 8, 1999.

EFFECTIVE DATE: March 9, 1999.

FOR FURTHER INFORMATION CONTACT: Lillie F. Ragan, Assistant Branch Chief, Household Programs Branch, Food Distribution Division, Food and Nutrition Service, U.S. Department of Agriculture, Room 612, 4501 Ford Avenue, Alexandria, Virginia 22302, or telephone (703) 305–2662.

SUPPLEMENTARY INFORMATION:

I. Procedural Matters
II. Background and Discussion of Final Rule

I. Procedural Matters

Regulatory Flexibility Act

This action is not a rule as defined by the Regulatory Flexibility Act (5 U.S.C. 601–612) and is exempt from the provisions of that Act.

Paperwork Reduction Act

This action does not contain reporting or recordkeeping requirements subject to approval by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507).

Executive Order 12372

This program is listed in the Catalog of Federal Domestic Assistance Programs under No. 10.570, and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials (7 CFR part 3015, subpart V, and final rule-related notices published at 48 FR 29114, June 24, 1983, and 49 FR 22676, May 31, 1984.

II. Background and Discussion of Final Rule

On January 8, 1999, the Department published a direct final rule to amend the regulatory requirements for FDPIHO at 7 CFR Part 254. The rule expressed the Food and Nutrition Service's intent to reinstate the authority to grant waiver requests from Indian Tribal Organizations in Oklahoma to allow Indian tribal households living in urban places to participate in FDPIHO. It provided a 30-day comment period and stipulated that unless the Department received written adverse comments, or written notices of intent to submit adverse comments, the rule would become effective on March 9, 1999, which was 60 days after publication in the **Federal Register**. Since no adverse comments were received, this action confirms the rule's effective date as March 9, 1999.

Dated: March 25, 1999.

Samuel Chambers, Jr.,

Administrator, Food and Nutrition Service.

[FR Doc. 99–8762 Filed 4–7–99; 8:45 am]

BILLING CODE 3410–30–U

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 790

Description of NCUA; Requests for Agency Action

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final rule.

SUMMARY: Due to parallel changes to the descriptions of the Central Liquidity Facility's (CLF) Bylaws, NCUA Regulations must be changed to mirror the new descriptions. The position of Vice President to the CLF has been added and the duties of both the President and Vice President positions have been changed in the regulation.

DATES: Effective May 10, 1999.

FOR FURTHER INFORMATION CONTACT: Herbert S. Yolles, President, National Credit Union Central Liquidity Facility, 1775 Duke Street, Alexandria, VA 22314–3428. Telephone Number (703) 518–6360.

SUPPLEMENTARY INFORMATION: Pub. L. 96–630, Title XVIII, 12 U.S.C. 1795 et. seq., enacted in 1979, created the National Credit Union Central Liquidity Facility (CLF). Its purpose is to improve general financial stability by meeting the liquidity needs of credit unions and thereby encourage savings, support consumer and mortgage lending, and provide basic financial resources to all segments of the economy.

On February 16, 1994, to improve costs and efficiency of CLF operations, the NCUA Board approved the transfer of the CLF to the Office of Examination and Insurance, Division of Risk Management. Staffing was reduced to one full time employee, with the Director of the Division of Risk Management appointed by the NCUA Board to also serve as CLF President.

Due to approaching changes in the credit union environment, in December of 1998 the NCUA Board approved additional staffing changes to the CLF. The Office of Vice President was reinstated and a new staff position of part-time analyst was added. This new analyst position gives the CLF additional analytical depth and increased capacity to cover unexpected emergency developments and potential high-volume usage.

The Board is now amending its regulation which describes the

management staff of the CLF. The reference to the Director of the Office of Risk Management is deleted. The paragraph is corrected to read that the NCUA Board appoints the CLF President and CLF Vice President.

Regulatory Procedures

Regulatory Flexibility Act

The Regulatory Flexibility Act requires the NCUA to prepare an analysis to describe any significant economic impact any regulation may have on a substantial number of small credit unions. The changes made by this rule are merely housekeeping changes. Therefore, the NCUA Board has determined and certifies that, under the authority granted in 5 U.S.C. 605(b), this final rule will not have a significant economic impact on a substantial number of small credit unions. Accordingly, the Board has determined that a Regulatory Flexibility Act Analysis is not required.

Paperwork Reduction Act

The final rule has no information collection requirements; therefore, no Paperwork Reduction Act analysis is required.

Executive Order 12612

Executive Order 12612 requires NCUA to consider the effect of its actions on states interests. Since these are housekeeping changes only, there is no effect on state interests.

List of Subjects in 12 CFR Part 790

Credit unions.

By the National Credit Union Administration Board on March 30, 1999.

Becky Baker,

Secretary of the Board.

Accordingly, for the reasons set forth in the preamble, NCUA amends 12 CFR part 790 as set forth below:

PART 790—DESCRIPTION OF NCUA; REQUESTS FOR AGENCY ACTION

1. The authority citation for part 790 continues to read as follows:

Authority: 12 U.S.C. 1766, 12 U.S.C. 1789, 12 U.S.C. 1795f.

2. Amend § 790.2 by revising paragraph (b)6)(ii) to read as follows:

§ 790.2 Central and regional office organization.

* * * * *

(b) * * *

(6) * * *

(ii) *NCUA Central Liquidity Facility (CLF).* The CLF was created to improve general financial stability by providing funds to meet the liquidity needs of credit unions. It is a mixed-ownership government corporation under the Government Corporation Control Act (31 U.S.C. 9101 *et seq.*). The CLF is managed by the President, under the general supervision of the NCUA Board which serves as the CLF Board of Directors. The Chairman of the NCUA Board serves as the Chairman of the CLF Board of Directors. The Secretary of the NCUA Board serves as the Secretary of the CLF Board of Directors. The NCUA Board shall appoint the CLF President and Vice President.

[FR Doc. 99–8355 Filed 4–7–99; 8:45 am]

BILLING CODE 7535–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–55–AD; Amendment 39–11072; AD 99–06–08]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–10 and MD–11 Series Airplanes, and KC–10 (Military) Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; correction.

SUMMARY: This document corrects erroneous references that appeared in airworthiness directive (AD) 99–06–08 that was published in the **Federal Register** on March 12, 1999 (64 FR 12249). That AD contained incorrect references to certain paragraphs. This AD is applicable to certain McDonnell Douglas Model DC–10 and MD–11 series airplanes, and KC–10 (military) series airplanes. This AD requires a one-time inspection for blockage of the lubrication holes on the forward trunnion spacer assembly, and a one-time inspection of the forward trunnion bolt on the left and right main landing gear (MLG) to detect discrepancies; and repair, if necessary.

EFFECTIVE DATE: Effective April 16, 1999.

FOR FURTHER INFORMATION CONTACT: Ron Atmur, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5224; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: Airworthiness Directive (AD) 99–06–08, amendment 39–11072, applicable to certain McDonnell Douglas Model DC–10 and MD–11 series airplanes, and KC–10 (military) series airplanes, was published in the **Federal Register** on March 12, 1999 (64 FR 12249). That AD requires a one-time inspection for blockage of the lubrication holes on the forward trunnion spacer assembly, and a one-time inspection of the forward trunnion bolt on the left and right main landing gear (MLG) to detect discrepancies; and repair, if necessary.

As published, that AD contained four erroneous references to incorrect paragraphs. Paragraph (a) of the final rule states "For airplanes listed in McDonnell Douglas Service Bulletin MD11–32–074, dated December 15, 1997: Except as provided by paragraphs (c) and (d) of this AD * * *" However, the exception referenced in that paragraph should have been only to paragraph (c) because, unlike paragraphs (a) and (c) of the final rule, paragraph (d) applies to certain McDonnell Douglas Model DC–10–30, DC–10, –40, and KC–10(A) military series airplanes, not to Model MD–11 series airplanes.

Paragraph (b) of the final rule states "For airplanes listed in McDonnell Douglas Service Bulletin DC10–32–248, dated December 17, 1997: Except as provided by paragraph (e) of this AD * * *" However, the exception referenced in that paragraph also should have included paragraph (d) because, like paragraph (b) of the final rule, paragraph (d) applies to certain McDonnell Douglas Model DC–10–30, DC–10, –40, and KC–10(A) military series airplanes.

The last sentence in paragraphs (d) and (e) of the final rule states "* * * accomplish the requirements specified in paragraph (a) of this AD." Paragraph (d) of the final rule applies to certain McDonnell Douglas Model DC–10–30, DC–10–40, and KC–10A (military) series airplanes, and paragraph (e) applies to certain McDonnell Douglas Model DC–10–10 and DC–10–15 series airplanes. However, those paragraphs require accomplishment of the requirements specified in paragraph (a) of the final rule, which applies to certain McDonnell Douglas Model MD–11 series airplanes. The correct reference should have been to paragraph (b).

Since no other part of the regulatory information has been changed, the final rule is not being republished.

The effective date of this AD remains April 16, 1999.

§ 39.13 [Corrected]

On page 12251, in the third column, paragraph (a) of AD 99–06–08 is corrected to read as follows:

* * * * *

(a) For airplanes listed in McDonnell Douglas Service Bulletin MD11–32–074, dated December 15, 1997: Except as provided by paragraph (c) of this AD, within 24 months after the effective date of this AD, perform a one-time visual inspection of the lubrication holes on the forward trunnion spacer assembly on the MLG for blockage by opposing bushings, and perform a one-time visual inspection of the forward trunnion bolt on the left and right MLG for chrome flaking, galling, and corrosion in the grooves; in accordance with the service bulletin.

* * * * *

On page 12252, in the first column, paragraph (b) of AD 99–06–08 is corrected to read as follows:

* * * * *

(b) For airplanes listed in McDonnell Douglas Service Bulletin DC10–32–248, dated December 17, 1997: Except as provided by paragraphs (d) and (e) of this AD, within 24 months after the effective date of this AD, perform a one-time visual inspection of the lubrication holes on the forward trunnion spacer assembly on the MLG for blockage by opposing bushings, and perform a one-time visual inspection of the forward trunnion bolt on the left and right MLG for chrome flaking, galling, and corrosion in the grooves; in accordance with the service bulletin.

* * * * *

On page 12252, in the second column, paragraph (d) of AD 99–06–08 is corrected to read as follows:

* * * * *

(d) For Model DC–10–30, DC–10–40, and KC–10A (military) series airplanes on which the requirements specified in either paragraph (c)(1)(i) or (c)(2)(ii) of AD 96–03–05, amendment 39–9502, have been accomplished: Within 48 months after the effective date of this AD, accomplish the requirements specified in paragraph (b) of this AD.

* * * * *

On page 12252, in the second column, paragraph (e) of AD 99–06–08 is corrected to read as follows:

* * * * *

(e) For Model DC–10–10 and DC–10–15 series airplanes, on which the requirements specified in paragraph (a)(1)(i), (a)(2)(ii), (b)(2)(i), or (b)(2)(ii) of AD 96–16–01, amendment 39–9701, have been accomplished: Within 48 months after the effective date of this AD, accomplish the requirements specified in paragraph (b) of this AD.

* * * * *

Issued in Renton, Washington, on April 1, 1999.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–8688 Filed 4–7–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 1b, 343, and 385

[Docket No. RM98–13–000; Order No. 602]

Complaint Procedures

Issued March 31, 1999.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is revising its regulations governing complaints filed with the Commission under the Federal Power Act, the Natural Gas Act, the Natural Gas Policy Act, the Public Utility Regulatory Policies Act of 1978, the Interstate Commerce Act, and the Outer Continental Shelf Lands Act. The Final Rule is designed to encourage and support consensual resolution of complaints, and to organize the complaint procedures so that all complaints are handled in a timely and fair manner.

In order to organize the complaint procedures so that all complaints are handled in a timely and fair manner, the Commission is revising Rule 206 of its Rules of Practice and Procedure. Among other things, the Commission is requiring that complaints meet certain informational requirements, requiring answers to be filed in a shorter, 20-day time frame, and providing various paths for resolution of complaints, including Fast Track processing for complaints that are highly time sensitive. The Commission is also adding a new Rule 218 providing for simplified procedures for complaints where the amount in controversy is less than $100,000 and the impact on other entities is *de minimis*.

The Commission is codifying its current Enforcement Hotline procedures in Part 1b, Rules Relating to Investigations and revising its alternative dispute resolution regulations (Rules 604, 605 and 606) to conform to the changes made by the Administrative Dispute Resolution Act of 1996. Finally, the Commission is revising certain sections of Part 343, Procedural Rules Applicable to Oil Pipeline Proceedings, to conform to the changes in the Commission's complaint procedures in Part 385 of the regulations.

DATES: The regulations are effective May 10, 1999.

ADDRESSES: Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426.

FOR FURTHER INFORMATION CONTACT: David Faerberg, Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, (202) 208–1275.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in the Public Reference Room at 888 First Street, N.E., Room 2A, Washington, D.C. 20426.

The Commission Issuance Posting System (CIPS) provides access to the texts of formal documents issued by the Commission. CIPS can be accessed via Internet through FERC's Homepage (http://www.ferc.fed.us) using the CIPS Link or the Energy Information Online icon. The full text of this document will be available on CIPS in ASCII and WordPerfect 6.1 format. CIPS is also available through the Commission's electronic bulletin board service at no charge to the user and may be accessed using a personal computer with a modem by dialing 202–208–1397, if dialing locally, or 1–800–856–3920, if dialing long distance. To access CIPS, set your communications software to 19200, 14400, 12000, 9600, 7200, 4800, 2400, or 1200 bps, full duplex, no parity, 8 data bits and 1 stop bit. User assistance is available at 202–208–2474 or by E-mail to cipsmaster@ferc.fed.us.

This document is also available through the Commission's Records and Information Management System (RIMS), an electronic storage and retrieval system of documents submitted to and issued by the Commission after November 16, 1981. Documents from November 1995 to the present can be viewed and printed. RIMS is available in the Public Reference Room or remotely via Internet through FERC's Homepage using the RIMS link or the Energy Information Online icon. User assistance is available at 202–208–2222, or by E-mail to rimsmaster@ferc.fed.us.

Finally, the complete text on diskette in WordPerfect format may be purchased from the Commission's copy contractor, RVJ International, Inc. RVJ

International, Inc. is located in the Public Reference Room at 888 First Street, N.E., Washington, D.C. 20426.

The Commission has concluded, with the concurrence of the Administrator of the Office of Information and Regulatory Affairs of OMB that this rule is not a "major rule" as defined in section 351 of the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 804(2).

Before Commissioners: James J. Hoecker, Chairman; Vicky A. Bailey, William L. Massey, Linda Breathitt, and Curt Hébert, Jr.

I. Introduction

The Federal Energy Regulatory Commission (Commission) is revising its regulations governing complaints filed with the Commission under the Federal Power Act, the Natural Gas Act, the Natural Gas Policy Act, the Public Utility Regulatory Policies Act of 1978, the Interstate Commerce Act, and the Outer Continental Shelf Lands Act.[1] The Final Rule is designed to encourage and support consensual resolution of complaints, and to organize the complaint procedures so that all complaints are handled in a timely and fair manner.

In order to organize the complaint procedures so that all complaints are handled in a timely and fair manner, the Commission is revising Rule 206 of its Rules of Practice and Procedure.[2] Among other things, the Commission is requiring that complaints meet certain informational requirements, requiring answers to be filed in a shorter, 20-day time frame, and providing various paths for resolution of complaints, including Fast Track processing for complaints that are highly time sensitive. These changes should ensure that the Commission and all parties to a dispute have as much information as early in the complaint process as possible to evaluate their respective positions. The changes should also ensure that the process used to resolve a complaint is suited for the facts and circumstances surrounding the complaint, the harm alleged, the potential impact on competition, and the amount of expedition needed.

The Commission is adding a new Rule 218 providing for simplified procedures for complaints where the amount in controversy is less than $100,000 and the impact on other entities is de minimis.

The Commission is also taking a number of steps to support its policy of promoting consensual resolution of disputes among parties in the first instance. The recently created Dispute Resolution Service will work with all those interested in Commission activities to increase awareness and use of alternative dispute resolution (ADR) in all areas the Commission regulates. This new service will also help identify cases appropriate for ADR processes and conduct ADR processes, including convening sessions. In this Final Rule, the Commission is codifying its current Enforcement Hotline procedures in Part 1b, Rules Relating to Investigations.[3] This change will further publicize and establish the Hotline as a viable alternative to the filing of a formal complaint.

The Commission is also revising its alternative dispute resolution regulations (Rules 604, 605 and 606)[4] to conform to the changes made by the Administrative Dispute Resolution Act of 1996.[5] The ADRA of 1996 provides that the confidentiality provisions of the Act pre-empt the disclosure requirements of the Freedom of Information Act (FOIA). The ADRA of 1996 also eliminated provisions which allowed an agency to terminate the arbitration proceeding at any point prior to the issuance of an award, and to vacate or opt-out of an arbitration award within 30 days after the service of the award. By bringing existing Rules 604, 605, and 606 into compliance with the confidentiality, termination and opt-out provisions of the 1996 ADRA, the Commission will further foster an environment that promotes consensual resolution of disputes by eliminating provisions in its regulations which were seen as having a chilling effect on the use of ADR.[6]

The Commission is also revising certain sections of Part 343, Procedural Rules Applicable to Oil Pipeline Proceedings,[7] to conform to the changes in the Commission's complaint procedures in Part 385 of the regulations.

II. Background

The Commission first received requests to change its complaint procedures in filings arising out of a proceeding concerning interstate natural gas pipelines. The Pipeline Customer Coalition[8] filed a proposal for expedited procedures for the consideration and resolution of complaints filed with respect to natural gas pipeline rates, services, or practices.[9] The Interstate Natural Gas Association Of America (INGAA) filed its own proposal and comments in opposition to the Coalition's proposal.[10]

On March 30, 1998, in Docket No. PL98–4–000, the Commission held a symposium on the Commission's complaint procedures to determine (1) how well the Commission's current complaint procedures are working, (2) whether changes to the current complaint procedures are appropriate, and (3) what type of changes should be made.[11] Whereas the Coalition's and INGAA's proposals were restricted to complaints against pipelines, the purpose of the symposium was to discuss the Commission's complaint procedures on a generic basis. The Commission obtained a cross section of views from all segments of the gas, electric, and oil pipeline industries, as well as state regulatory agencies and members of the energy bar. The Commission received a number of comments following the symposium representing a broad range of interests from the natural gas pipeline, electric, and oil pipeline industries. As a result of a commitment made by representatives of various segments of the electric industry at the March 30, 1998 symposium, the Electric Industry Dispute Resolution Working Group (Electric Working Group)[12] filed

[1] In the Notice of Proposed Rulemaking (NOPR), the Commission inadvertently omitted a reference to the Outer Continental Shelf Lands Act (OCSLA) as one of the statutes under which complaints may be filed, and, therefore, affected by the proposed regulations.

[2] 18 CFR 385.206 (1998).

[3] 18 CFR Part 1b (1998).

[4] 18 CFR 385.604–606 (1998).

[5] Pub. L. 104–320, 110 Stat. 3870 (October 19, 1996).

[6] June 23, 1998 Comments of the American Arbitration Association in Docket No. PL98–4–000 at 5.

[7] 18 CFR Part 343 (1998).

[8] The Pipeline Customer Coalition consists of the American Iron and Steel Institute, the LDC Caucus of the American Gas Association, American Public Gas Association, Associated Gas Distributors, Georgia Industrial Group, Independent Petroleum Association of America, Natural Gas Supply Association, Process Gas Consumers, and United Distribution Companies.

[9] Comments and Petition of the Pipeline Customer Coalition, and Amended Petition of the Pipeline Customer Coalition for Proposed Rulemaking filed on May 31, 1996, and April 3, 1997, respectively, in Regulation of Negotiated Transportation Services of Natural Gas Pipelines, *et al.*, Docket Nos. RM96–7–000 and RM96–12–000.

[10] Comments and Petition of the Interstate Natural Gas Association of America filed on April 10, 1997, in Regulation of Negotiated Transportation Services of Natural Gas Pipelines, *et al.*, Docket Nos. RM96–7–000, RM96–12–000, and RM97–4–000.

[11] Symposium on Process and Reform: Commission Complaint Procedures, Docket No. PL98–4–000.

[12] The Electric Working Group includes representatives from American Public Power Association, Coalition for a Competitive Electric Market, Edison Electric Institute, Electric Power Supply Association, Illinois Municipal Electric Agency, National Rural Electric Cooperative Association and Transmission Access Policy Study Group, working with the assistance and support of the American Arbitration Association.

recommendations and proposed procedures for dispute resolution.[13]

On July 29, 1998, the Commission issued a notice of proposed rulemaking (NOPR) in Docket No. RM98–13–000.[14] The Commission received 57 comments on the NOPR representing all segments of the gas, electric, and oil pipeline industries.

III. Discussion

The natural gas and electric industries have undergone and will continue to undergo significant transformations as a result of changes to the Commission's regulatory policies. These industries are now operating in an environment which is increasingly driven by competitive market forces. Because of the short-term transactional nature of the electric and gas markets, and the fact that competitive changes happen quickly, timely and effective resolution of complaints has become more crucial. If the Commission is to use lighter-handed forms of regulation, it must have a complaint process that ensures that complainants will receive adequate protection and redress under the statutes administered and enforced by the Commission. Complaints enable the Commission to monitor activities in the marketplace and provide an early warning system for identifying potential problems. This Final Rule is necessary to provide assurance to the public that complaints will receive appropriate consideration and that complaints that require expedited consideration will receive it.

The revised regulations will encourage and support the resolution of disputes by the parties themselves prior to the filing of a formal complaint. If potential complaints can be resolved or the number of issues in a potential complaint can be reduced informally, the Commission then can focus its attention on the significant remaining issues raised in the formal complaints ultimately filed with the Commission.

The revised regulations organize the complaint procedures so that all complaints are handled in a timely, fair manner based upon an appropriate record. The regulations will assure that those complaints deserving of expedition receive it by recognizing that the appropriate process to be used for a particular complaint depends on many factors including the harm alleged and the facts and circumstances surrounding the complaint.

[13] Electric Industry Dispute Resolution Working Group Recommendations and Proposed Procedures for Dispute Resolution filed on June 23, 1998, in Symposium on Process and Reform: Commission Complaint Procedures, Docket No. PL98–4–000.

[14] 63 FR 41982 (Aug. 6, 1998).

The proceedings conducted over the past 12 months and the comments received in response to the Commission's NOPR have all served to emphasize the need to have in place procedures that will enable resolution without delay of disputes that will arise in the context of the rapidly moving competitive circumstances of today's federally regulated energy industries. This Final Rule must be viewed against a background of a more complex energy market where regulated companies are driven increasingly by competitive market forces. The dynamics of competitive markets and lighter-handed Commission regulation can be expected to change the nature of the complaints received. The Commission will be faced both with novel commercial problems and with requests for "real time" relief. These rules will allow the Commission to respond to the greater demands that will be placed upon it to expeditiously resolve disputes.

A. Informational Requirements for Complaints

The final rule revises Rule 206, set forth in section 385.206 of the Commission's regulations, to require that a complaint must satisfy certain informational requirements. A complaint must: (1) Clearly identify the action or inaction which is alleged to violate applicable statutory standards; (2) explain how the action or inaction violates applicable statutory standards; (3) set forth the business, commercial, economic or other issues presented by the action or inaction as such relate to or affect the complainant; (4) make a good faith effort to quantify the financial impact or burden (if any) created for the complainant as a result of the action or inaction; (5) indicate the practical, operational, or nonfinancial impacts imposed as a result of the action or inaction, including, where applicable, the environmental, safety or reliability impacts of the action or inaction; (6) state whether the issues presented are pending in an existing Commission proceeding or a proceeding in any other forum in which the complainant is a party, and if so, provide an explanation why timely resolution cannot be achieved in that forum; (7) state the specific relief or remedy requested, including any request for stay, extension of time, or other preliminary relief, and in cases seeking other preliminary relief, a detailed explanation of why such relief is required addressing: (i) the likelihood of success on the merits; (ii) the nature and extent of the harm if preliminary relief is denied; (iii) the balance of the relevant interests, *i.e.*, the hardship to nonmovant if preliminary relief is granted contrasted with the hardship to the movant if preliminary relief is denied; and (iv) the effect, if any, of the decision on preliminary relief on the public interest; (8) include all documents that support the facts in the complaint in possession of, or otherwise attainable by, the complainant, including, but not limited to, contracts, affidavits, and testimony; (9) state (i) whether the Enforcement Hotline, Dispute Resolution Service, tariff-based dispute resolution mechanisms, or other informal procedures were used; (ii) whether the complainant believes that alternative dispute resolution under the Commission's supervision could successfully resolve the complaint; (iii) what types of ADR procedures could be used; and (iv) any process that has been agreed on for resolving the complaint; (10) include a form of notice suitable for publication in the **Federal Register** and submit a copy of the notice on a separate 3½ inch diskette in ASCII format; and (11) explain with respect to requests for Fast Track processing pursuant to section 385.206(h), why the standard processes will not be adequate for expeditiously resolving the complaint.[15]

The Commission is adopting, as the final rule, the proposal in the NOPR with certain modifications. The NOPR had proposed to require complaints to include all documents that support the facts in the complaint. A number of commenters (Dynegy, American Public Power Association, Transmission Dependent Utility Systems) were concerned that they would not be able to meet the requirement to include all documents that support the facts in the complaint because, they asserted, in many instances relevant documents will be in the hands of the respondent. Section 385.206(b)(8) adopted in the final rule is modified from that proposed to request "all documents that support the facts in the complaint in possession of, or otherwise attainable by, the complainant, including, but not limited to, contracts, affidavits, and testimony." This should alleviate commenters' concerns.

The NOPR proposed to require complainants to quantify the financial impact or burden (if any) created for the complainant as a result of the action or inaction of the respondent. A number of commenters (Enron Capital and Trade, American Public Power Association, Missouri Public Service Commission) were concerned that they would not be able to meet the requirement to quantify

[15] The Fast Track process is describe in section H below.

the financial impact or burden (if any) created for the complainant as a result of the action or inaction. Section 385.206(b)(4) adopted in the final rule is modified from that proposed to require a complainant to "make a good faith effort to quantify the financial impact or burden (if any) created for the complainant as a result of the action or inaction."

The Pipeline Customer Coalition was concerned about having to reveal commercially sensitive information for the purposes of supporting a complaint. To protect such information, the Pipeline Customer Coalition proposed that (a) the complaint specifically indicate the absence of certain information that the complainant regards as commercially sensitive and (b) the complaint include a proposed protective order that could be adopted by the Commission to facilitate the disclosure of confidential factual data to the respondent and other parties to the complaint proceeding.

The Commission adopts here a procedure akin to that for oil pipelines filing applications for market power determinations where interested persons must execute an applicant-proposed protective agreement to receive the complete application. A complainant would file its complete complaint with a request for privileged treatment. The respondent and other parties would receive a redacted version of the complaint along with a complainant-proposed protective agreement. The respondent and parties would receive the privileged version of the complaint by executing the protective agreement and returning it to the complainant. Such a procedure has the advantage of enabling parties to resolve disclosure disputes through consensual agreement among themselves without the need for Commission involvement in every instance involving privileged information. The Commission could still step in if parties were unable to agree on protective conditions or expressed a need for the added assurance against disclosure that would be offered by a Commission-issued protective order. If necessary, the Commission could develop a model protective agreement akin to the model protective order developed recently by the Office of Administrative Law Judges.

Therefore, in section 385.206 adopted in the final rule, a new section (e) is added describing the privileged treatment procedures. A complainant may request privileged treatment of documents and information contained in the complaint pursuant to section 388.112 of the Commission's regulations.[16] In the event privileged treatment is requested, the complainant must file the original and three copies of its complaint with the information for which privileged treatment is sought and 11 copies of the pleading without the information for which privileged treatment is sought. The original and three copies must be clearly identified as containing information for which privileged treatment is sought. A complainant must provide a copy of its complaint without the privileged information and its proposed form of protective agreement to each entity that is to be served pursuant to section 385.206(c). An interested person must make a written request to the complainant for a copy of the complete complaint within 5 days after the filing of the complaint. The request must include an executed copy of the protective agreement. A complainant must provide a copy of the complete complaint to the requesting person within 5 days after receipt of the written request and an executed copy of the protective agreement. Any party can object to the proposed form of protective agreement.

Because of the 10 days that are provided to exchange information when the privileged treatment provisions are invoked, the Commission is providing in section 385.206(f) of the final rule that answers, interventions and comments are due 30 days after the complaint is filed when the privileged provisions are used. This will ensure that respondents will have the normal 20 days to file an answer once they have received the complete complaint.[17] In addition, section 385.206(f) provides that in the event there is an objection to the protective agreement, the Commission will establish the time when answers, interventions, and comments will be due.

Language used in the NOPR in proposed sections 385.206(b)(1) and (2) would have required a complainant to identify and explain "why the action or inaction is unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful, or is contrary to a condition in a certificate or license, a tariff provision, or the terms of an exemption." This language, however, may not describe all the statutory standards that could apply in a complaint situation. The Outer Continental Shelf Lands Act provides, for example, that pipelines must transport "without discrimination" and must provide "open and nondiscriminatory access." Accordingly, the informational requirements adopted in section 385.206(b)(1) and (2) of the final rule are modified from those proposed to require that complainants "identify the action or inaction which is alleged to violate applicable statutory standards or regulatory requirements," and explain "why the action or inaction violates applicable statutory standards or regulatory requirements." This will avoid any confusion that might have resulted from the language in the NOPR being construed in a way as to limit when complaints could be filed.

A number of commenters (Piedmont Natural Gas, Florida Cities, Joint Consumer Advocates) requested that a final rule provide complainants with discovery rights. The Commission will not include discovery rights as part of the final rule. However, the Commission recognizes that there will be instances in which information necessary to support a complainant's allegation is not readily available because it is in the hands of the respondent. In these cases, a complainant should file all the information that it has. It should also identify as support for a request for discovery the further information that it needs that is in the hands of the respondent. The Commission will address these situations on a case by case basis.

Should there be factual issues that require record development through hearing before an ALJ, discovery would be available as an element of the usual hearing process. A complainant that suggests a hearing as its procedural path could also include discovery requests with its complaint. If a hearing is established, the ALJ would control discovery.

B. Informal Resolution

The Commission strongly encourages parties to attempt informal resolution of their disputes prior to the filing of a formal complaint. The Commission therefore proposed in the NOPR that parties be required to explain whether alternative dispute resolution was tried and, if not, why. After considering the comments the Commission adopts the proposal in the NOPR.

In addition to such existing informal dispute resolution mechanisms as those in tariff provisions and the Commission's Enforcement Hotline, the Commission currently is developing an expanded alternative dispute resolution capability as part of its internal restructuring. Having these capabilities available should facilitate the informal resolution of many disputes and save parties the time and expense associated

[16] 18 CFR 388.112 (1998).

[17] See Section E below for a discussion of the time period for answers.

with the filing and resolution of a formal complaint. Parties to a dispute therefore should have sufficient means and incentive to resolve their disputes informally. A potential complainant, however, should be given the broadest possible options in how it wishes to proceed with a complaint. The Commission, therefore, will not mandate the use of informal procedures prior to filing a formal complaint as requested by certain parties (Williams, Koch, INGAA, Mobil Pipe Line, El Paso Energy, the Utility Coalition, Energy, and NYSE).

The Commission also requested comments on what type of professional assistance the Commission might provide to facilitate informal dispute resolution. Wisconsin Distributor Group stated that the Commission should publish on a regular basis industry specific status reports on complaints. Enron Capital and Trade stated that the Commission should have a publication or web site, to provide information about a party's options in filing a complaint and how the process could work, or a procedural hotline. Indicated Shippers stated that complaints should be posted on a web site because the Commission's Records and Information Management System (RIMS) is difficult to access and can be blurred. American Public Power Association stated that the Commission should establish a division of dispute resolution. Transmission Dependent Utility Systems stated that the Commission should have prefiling conferences for complaints in which Staff meets informally with parties and renders non-binding advice. EPSA stated informal procedures will be most effective if staff plays an active role. USDA-Rural Utilities Service stated that the Commission should post on its website the names of a case officer for each docket who is available to answer questions. In their reply comments, Pipeline Customer Coalition and Indicated Shippers supported the idea of the publication of a complaint status report.

Many of these ideas will prove valuable as the Commission moves towards greater reliance on the electronic exchange of information. The Commission is currently engaging in an internal review of its information technology capabilities and is examining the issue of public access to information and electronic filing in Docket No. PL98–1–000. [18] Although the Commission will put certain basic information about a party's options in filing a complaint on the FERC Homepage, the idea of a complaint status report, as well as other electronic access issues relating to complaints, will be considered as part of the broader review of information technology capabilities. In addition, the Commission's new Dispute Resolution Service will be a resource that can be used to aid in the informal resolution of disputes before, or after, a complaint is filed. Further, the Enforcement Hotline will continue to be available to resolve informal complaints prior to a formal filing.

[18] Public Access to Information and Electronic Filing.

C. Simultaneous Service

Section 385.206(c) adopted in the final rule is modified from that proposed to read:

> Any person filing a complaint must serve a copy of the complaint on the respondent, affected regulatory agencies, and others the complainant reasonably knows may be expected to be affected by the complaint. Service must be simultaneous with filing at the Commission for respondents and affected entities in the same metropolitan area as the complainant. Simultaneous or overnight service is acceptable for respondents and affected entities outside the complainant's metropolitan area. Simultaneous service can be accomplished through electronic mail, fax, express delivery, or messenger.

The NOPR proposed to require a complainant to serve a copy of the complaint on the respondent and all others who the complainant knows will be affected simultaneously with filing at the Commission. Certain commenters (Pipeline Customer Coalition, Williams Companies, Enron Capital, Dynegy, NRECA, ProLiance, Chevron Products Co.) were concerned that service on all parties who the complainant knows will be affected is speculative. Certain commenters (CPUC, USDA-Rural Utilities Service) also requested that simultaneous service include affected regulatory agencies. Finally, INGAA requested that service should be overnight for out of town residents and the same day for in town residents. These concerns and requests are reasonable and their substance is incorporated in the final rule in section 385.206(c).

INGAA requested that the Commission should explore the possibility of electronic service. Transmission Dependent Utility Systems asserted that serving all affected customers may be burdensome and that complainants should instead provide a detailed electronic notice. Missouri PSC asserted that the respondent should post the complaint on an EBB or the internet.

As discussed above, electronic filing issues, including electronic service, are being examined in Docket No. PL98–1–000 and thus should be addressed in that proceeding. In addition, issues concerning electronic access to information are being explored as part of the Commission's internal review of its information technology capabilities.

D. Notice of the Complaint

The NOPR proposed that the Commission issue a notice of complaint within two days. Certain commenters (Pipeline Customer Coalition, AOPL, Cenex Pipeline) requested that this be codified in the regulations. The Commission will not include such a requirement in the regulations.

The date of issuance of the notice of a complaint is not crucial to a speedy resolution of a complaint proceeding because the time for filing answers, comments, and interventions is calculated based on the date the complaint is filed rather than the date of the notice. Nevertheless, the Commission intends to issue all notices promptly and expects to be able to issue most notices within two days.

A number of commenters (Enron Pipeline, Koch Gateway, El Paso Energy, Equilon Pipeline, Williams, INGAA, Duke Energy, Consumers Energy, Oil Pipeline Shipper Group, and Express Pipeline Partnership) suggested that complaints be screened for deficiencies and, if necessary, dismissed prior to a notice being issued. Pipeline Customer Coalition opposes screening, stating that respondents should be required to identify any complaint deficiencies in their answers.

The Commission agrees with the Pipeline Customer Coalition that any deficiencies in a complaint should be pointed out in the answer and the Commission can make a decision based on all the pleadings. Further, in the Commission's experience it is unlikely that a complaint would be so patently deficient as to require a summary dismissal on procedural grounds. The Commission therefore will not adopt screening for deficiencies as part of the final rule.

E. Time Period for Answers, Comments, Interventions

Section 385.206(f) adopted in the final rule is modified from that proposed to require that answers, interventions, and comments to a complaint must be filed within 20 days after the complaint is filed, or, in cases where the complainant requests privileged treatment for information in its complaint, 30 days after the complaint is filed. The NOPR proposed to require answers, interventions and comments to complaints to be filed within 10 days

after the complaint is filed. Almost all the comments maintained that the proposed 10 day period for answers, comments, and interventions is too short. Parties suggested various alternatives which ranged from 10 business days to the current 30 day answer period. In the Commission's view a shorter response period, such as 20 days, is preferable to the current 30 day answer period. Twenty days should provide respondents with a sufficient amount of time to answer a complaint while being consistent with the goal of speeding up the complaint resolution process.

Certain commenters requested that the final rule provide for replies as requested. The Commission's regulations do not provide for replies to answers, and allowing replies in all instances would unnecessarily lengthen the complaint process.

F. Revisions to Oil Pipeline Regulations

The final rule revises certain sections of Part 343, Procedural Rules Applicable to Oil Pipeline proceedings, to conform with the changes to the Commission's complaint procedures.

A number of oil pipelines maintained that no change is needed for oil pipelines and the Commission should retain the current oil pipeline regulations concerning complaints. Section 343.2(c) of the oil pipeline regulations, which was adopted in response to the Energy Policy Act of 1992, provides specific substantive standards for filing complaints concerning both rate and non-rate matters. For rates established under section 342.3 (indexing), a complaint must allege reasonable grounds for asserting that the rate violates the applicable ceiling level, or that the rate increase is so substantially in excess of the actual cost increases incurred by the carrier that the rate is unjust and unreasonable, or that the rate decrease is so substantially less than the actual cost decrease incurred by the carrier that the rate is unjust and unreasonable.

For rates established under section 342.4(c) (other rate changing methodologies), a complaint "must allege reasonable grounds for asserting that the rate is so substantially in excess of the actual cost increases incurred by the carrier that the rate is unjust and unreasonable." For non-rate matters, a complaint "must allege reasonable grounds for asserting that the operations or practices violate a provision of the Interstate Commerce Act, or of the Commission's regulations." Section 343.4 requires a response to a complaint within 30 days after the complaint is filed. Finally, section 343.5 provides that the Commission "may require parties to enter into good faith negotiations to settle oil pipeline rate matters.

The Association of Oil Pipelines (AOPL) stated that the Commission adopted oil pipeline specific complaint regulations only four years ago. AOPL submitted that these regulations work for the oil pipeline industry. AOPL stated that oil pipelines are not going through the transitions facing the electric and natural gas industries and there is no reason to disrupt a procedure that works merely for the convenience of having one procedure that applies to all industries.

The final rule requires complaints concerning oil pipeline non-rate matters to comply with the changes to the Commission complaint procedures. Complaints concerning rates, however, are not subject to all the changes. While non-rate complaints are subject to the new substantive informational requirements adopted in section 385.206(b), rate complaints would be subject to the existing section 343.2(c) substantive rate requirements. While non-rate complaints would have to "identify the action or inaction which is alleged to violate applicable statutory standards or regulatory requirements" and "explain how the action or inaction violates applicable statutory standards or regulatory requirements," rate complaints instead would have to meet the section 343.2(c) requirements. Therefore, a sentence will be added to sections 343.2(c)(1) and (2) indicating that, in addition to meeting the requirements of the section, a complaint must also comply with the requirements of section 385.206, except sections 385.206(b)(1) and (2). In all other respects both rate and non-rate complaints would be treated the same. The remainder of the informational requirements adopted here in section 385.206(b) and the other procedural changes discussed throughout this Final Rule thus would be applied to all oil pipeline rate complaints. This will ensure the consistency of the complaint procedures for all industries regulated by the Commission, while preserving the rate complaint standards adopted as an integral part of the package of ratemaking changes enacted in response to the Energy Policy Act of 1992.

G. Content of Answers

Section 385.213 adopted in the final rule is modified from that proposed to require that answers include "all documents that support the facts in the answer in possession of, or otherwise attainable by, the respondent, including, but not limited to, contracts, affidavits, and testimony." This is parallel to the change made to the informational requirements for complaints. The NOPR proposed to revise Rule 213 to require that answers to complaints must include all documents that support the facts in the answer, including, but not limited to contracts, affidavits, and testimony.

The Commission rejects commenters' requests that the answer only admit or deny wrongdoing and not include documents. One of the purposes of revising the complaint procedures is to ensure that as much information as possible is available to the Commission and the parties to the proceeding as early as possible. An answer which simply admits or denies facts without any more would prolong the proceeding by requiring the Commission or other parties to request further information by other means.

In addition, the final rule is adopting for answers the same confidentiality provisions as those adopted for complaints as discussed in section A above. Thus, a respondent would file its complete answer with a request for privileged treatment pursuant to section 388.112 of the Commission's regulations. The complainant and other parties would receive a redacted version of the complaint along with a respondent-proposed protective agreement. The complainant and parties would receive the privileged version of the answer by executing the protective agreement and returning it to the respondent.

Section 385.213 adopted in the Final Rule is modified from that proposed to require the respondent to describe the formal or consensual process it proposes for resolving the complaint. This requirement was discussed in the NOPR but was not included in the proposed regulations.

In the NOPR, the Commission stated that, to the extent that a respondent does not comply with Rule 213, the Commission will consider granting the relief requested by the complainant based upon the pleadings alone. The Commission further stated that respondents filing what is in essence a general denial would do so at their own peril. Williams Companies contended that relief should not be granted by default. The Commission's discussion in the NOPR with respect to answers was not a new proposal. Rather, the Commission was only reiterating the procedure in section 385.213(c)(3) of its existing regulations, which provides for summary dispositions, pursuant to section 385.217, of answers that do not satisfy certain requirements.

H. Complaint Resolution Paths

Section 385.206(g) adopted in the final rule describes a number of procedural options that the Commission may use to resolve issues raised in complaints. These complaint resolution paths are (1) alternative dispute resolution, (2) decision on the pleadings by the Commission, and (3) hearing before an ALJ. Where a highly credible claim for relief is presented, and a persuasive showing is made that standard complaint resolution processing may not provide timely relief as quickly as circumstances may demand, the Commission will put the complaint on a Fast Track, to provide for expedited action by the Commission or an ALJ in a matter of weeks. The Fast Track process is described in section 385.206(h) of the regulations adopted by the final rule. Preliminary relief pending a resolution of the complaint by either the Commission or an ALJ may be requested. A ruling on preliminary relief by an ALJ would be appealable to the Commission. Such an appeal is provided for in section 385.206(g)(2) adopted in the final rule. It is not the same as an interlocutory appeal that would be filed pursuant to section 385.715 of the Commission's regulations.

The Commission in the NOPR did not propose to establish overall time limits within which complaints must be resolved. It did, however, describe target time frames that would allow a resolution of a complaint as expeditiously as possible given the issues, parties, circumstances, and the type of procedure used. A number of commenters (Pipeline Customer Coalition, Fertilizer Institute, NGSA, American Public Power Association, Electric Power Supply Association, USDA-Rural Utilities Service) requested that the Commission codify deadlines for actions in the proposed regulations. Other commenters (INGAA, El Paso Energy, Duke Energy) asserted that target dates, not strict deadlines, are appropriate.

The Commission intends to resolve complaints as quickly as possible but does not consider it necessary to codify deadlines in its regulations. Specific targets for action, however, will provide guidelines that may help meet an accelerated procedural agenda. The Commission, therefore, will adopt the target time frames discussed in the NOPR and below. At the same time, having target, rather than required, time frames will allow the Commission the flexibility to adjust when necessary to particular complicated issues and unforeseen circumstances.

(i) Alternative Dispute Resolution

Section 385.206(b)(9) of the final rule requires that a complainant state what types of ADR procedures could be used to resolve the complaint or describe any process that has been agreed on for resolving the complaint. Section 385.213(c)(4) of the final rule requires that the respondent in its answer describe the formal or consensual process it proposes for resolving the complaint. If there is agreement among the parties that a specific ADR procedure should be used, the Commission would simply assign the case to ADR. If there are competing proposals for the use of ADR, the Commission could attempt to obtain agreement from the affected parties for the use of one of the ADR proposals. If no agreement concerning the use of ADR can be reached, the complaint will be assigned to a settlement judge pursuant to section 385.603 of the Commission's regulations or resolved using one of the other complaint resolution paths.

Since ADR is a voluntary process, the time period in which a decision can be rendered is largely in the control of the affected parties. The Commission, however, would treat ADR resolution like uncontested settlements, and would therefore expect to issue any subsequent orders no later than 45 days after the ADR resolution is rendered.

(ii) Commission Decision on the Pleadings

Many complaints can be decided by the Commission based on the pleadings alone. These types of cases usually involve discrete issues that do not require development of a record before an ALJ.

The complaint would be assigned for consideration as soon as an answer is filed and a decision by the Commission would expect to issue within 60–90 days later. In some instances there might be a need to clarify the parties' understanding of facts at issue, but this could be accomplished through Staff data requests without affecting the overall time for resolving the complaint. The total time within which a Commission decision could be expected thus would be 110 days after a complaint is filed.

(iii) Hearing Before an ALJ

Complaints not set for ADR consideration and not appropriate for consideration on the pleadings alone would be set for hearing before an ALJ for development of a factual record. When a complaint is set for hearing before an ALJ, the objective will be for the ALJ to render an initial decision no later than 60 days after the case is set for hearing. Briefs on exceptions to an initial decision then would be due, under the Commission's rules, 30 days after the initial decision, and briefs opposing exceptions, 20 days thereafter. The Commission would expect to issue an order on the exceptions no later than 90 days after their filing. Thus, the total time for resolving these cases would be no more than 220 days from the filing of the complaint. In most instances it should be possible for an initial decision to be issued within 60 days because the issues raised in complaints are often narrow or discrete questions, and not the kind of wide range issues presented in general rate cases. However, because these are target timeframes, the ALJ will retain discretion to issue an initial decision in less or more time, taking into account the complexity of the case, the number of issues, or other factors.

A number of commenters (Enron, Enron Capital and Trade, Williams, Koch, INGAA, Entergy, Southern Companies, and Duke Energy) requested that complaints about changes to rates or tariffs be excluded from the proposed procedures. No category of complaint should be excluded from the proposed procedures. The Commission recognizes, however, that there will be complaint cases that might not lend themselves to an initial decision within 60 days. In such cases, involving large numbers of parties, more complex issues, or difficult circumstances, the Presiding ALJ could adjust the time frames as necessary to ensure development of a complete record. This should alleviate the commenters' concerns.

(iv) Fast Track Processing

In instances involving disputes that require relief more quickly than the usual target timeframes, the Commission will employ Fast Track processing as a complement to its standard complaint resolution paths. The Fast Track process is described in section 385.206(h) of the regulations adopted by the final rule. The Fast Track will be available when a complainant requests it and presents a highly credible claim and persuasive showing that the standard processes will not be capable of resolving the complaint promptly enough to provide meaningful relief. An example might be where a shipper seeks access to a pipeline under the Natural Gas Act, Natural Gas Policy Act or Outer Continental Shelf Lands Act, alleging that the pipeline has unjustifiably withheld service causing irreparable

harm. Another example might be where a transmission service provider allegedly is blocking a customer's access to disputed transmission capacity, essentially preventing a power purchase from an alternate supplier and causing irreparable harm. A complainant requesting Fast Track processing will be required to provide a satisfactory explanation concerning whether ADR has been pursued prior to filing the complaint.

Under Fast Track processing, there would be an immediate (same or next day) screening of a complaint alleging a need for accelerated action to ensure that the complaint warrants accelerated processing. If warranted, the answer period could be shortened to only several days. After the respondent filed its answer, a further screening would decide whether to assign the complaint for Fast Track processing. If the complaint failed to meet the criteria for Fast Track processing, the complaint would be processed under one of the standard complaint resolution paths.

Complaints found to require the Fast Track processing would be assigned for consideration expeditiously. The Commission expects to issue a procedural decision to institute a hearing, establish ADR or settlement procedures, if necessary and appropriate, within two or three days after receiving answers to the complaint. The Fast Track process, which is not appropriate for all complaints, seeks to provide all interested parties with prompt resolution of time sensitive complaints. Since this process is innovative and largely untested, the Commission may examine its results in a year and may consider appropriate changes or improvements to the process. Those that require record development would be assigned to an ALJ for a prompt hearing to receive oral testimony. Upon completing the hearing, the ALJ would issue an initial decision either in writing or by reading it into the record. An initial decision on a complaint assigned to Fast Track processing could be expected in significantly less time than the 60 days generally contemplated for complaints not directed to the Fast Track process. Hearing procedures may be compressed into only a few days if the circumstances warrant. Cases not presenting questions for which record development would be necessary would be assigned directly to the Commission for resolution based on the pleadings. It is expected that the Commission could issue an order on the merits within 20 days after the answer is filed.

Rulings on requests for preliminary relief also can be considered under the Fast Track process. Relief could be granted either by an ALJ, where the case has been set for hearing, or by the Commission, where the case has not been set for hearing.

Fast Track processing will be employed in only limited circumstances because of the extraordinarily compressed time schedule that would place a heavy burden on all parties to the proceeding. The Commission strongly encourages potential complainants to seek Fast Track processing sparingly and only in the most unusual cases that demand such accelerated treatment. A misuse of Fast Track processing could ultimately tax the Commission's limited resources and jeopardize the availability of the Fast Track procedures. Any continuing pattern of misuse by a particular party would also ultimately undermine that party's credibility when future requests for Fast Track processing are requested.

(v) Preliminary Relief

Any complaint can include a request for preliminary relief pending a final merits decision on the complaint itself. If the complaint is assigned for hearing, the ALJ will rule on the preliminary relief; the Commission will rule on preliminary relief requested as part of a complaint being considered based on the pleadings. Requests for preliminary relief would be acted on while the Commission or an ALJ is also considering the merits of the complaint. If the complaint has been designated for Fast Track processing, a ruling on preliminary relief would be almost immediate.

Where an ALJ acts on a request for preliminary relief, an appeal to the Commission will lie and may be filed within 7 days of the ALJ's decision. The Commission will issue a decision on the appeal promptly. Section 385.206(g) of the final rule has been revised from that proposed to provide for appeals of an ALJ's decision on preliminary relief. Decisions by the Commission on requests for preliminary relief would be subject to the Commission's rules on rehearing.

Complainants could request preliminary relief in the form of a stay or extension of time, or affirmative action. The standard for granting extensions of time would be the good cause showing, found in section 385.2008 of the Commission's regulations.[19] The standard applicable to requests for stay would be that set forth in section 705 of the Administrative Procedure Act, 5 U.S.C. 705 (1988), *i.e.*, the stay will be granted if "justice so requires." The standard for granting affirmative preliminary relief would be that employed by the courts for such relief, namely, the four part test described in the NOPR—(1) likelihood of success on the merits; (2) whether irreparable injury to the complainant will occur if the relief is not granted; (3) whether the injury outweighs harm to the respondent or other parties if the relief is granted; and (4) other public interest considerations.[20]

I. Simplified Procedures for Small Controversies

The Commission currently has in place, and is codifying in this Final Rule, Enforcement Hotline procedures. The Enforcement Hotline is a resource particularly well suited for resolving disputes over small amounts of money or seeking limited forms of relief. It provides a forum for the Hotline staff through discussion and negotiation to resolve disagreements brought informally to its attention. Many small controversies have been concluded successfully through the Hotline without the necessity of formal proceedings before the Commission, thus saving the disputing parties much time, effort, and money. The Commission, therefore, encourages parties with limited complaints to seek relief in the first instance through the Enforcement Hotline. The Commission also recognizes, however, that there will be instances where the Hotline staff has not been able to bring about a resolution of a dispute brought to it. For these cases the final rule is adopting a procedure for complaints involving small controversies that will allow them to be resolved more simply and expeditiously than more complicated matters. This procedure will be codified in new section 385.218. Although this procedure will be available to all complainants regardless of size, it will primarily benefit small customers who would typically have small amounts in dispute and who may not have the financial resources available to pursue a formal complaint under the regulations adopted here. A lack of financial resources should not be an impediment to injured parties seeking relief before this Commission.

The adopted procedure is based, in part, on the recommendations of the American Public Gas Association (APGA). The procedure will be available if the amount in controversy is less than $100,000 and the impact on other entities is de minimis. The procedure will be available to all customers, not

[19] 18 CFR 385.2008 (1998).

[20] *See* Virginia Petroleum Jobbers Ass'n. v. FPC, 259 F.2d 921, 925 (D.C. Cir. 1958).

just small customers. This answers the concerns of Enron Capital and Trade, Indicated Shippers, NGSA, EEI, and CSW Operating Companies who asserted that a small claims procedure should apply to small amounts as well as small customers. In the Commission's view, the $100,000 ceiling and the requirement of a de minimis impact on other customers should alleviate parties' concerns that a complex complaint could be filed under this procedure.

Complainants under the simplified procedure will be required to submit a short form complaint which states (1) the name of the complainant, (2) the name of the respondent, (3) a description of the relationship to the respondent, for example, firm shipper, competitor, etc., (4) the amount in controversy, (5) why the complaint will have a de minimis impact on other entities, (6) the facts and circumstances surrounding the complaint, including the legal or regulatory obligation breached by the respondent, and (7) the requested relief. The complainant is encouraged, but not required, to attach any relevant documents to its complaint.

The complainant will be required to simultaneously serve the complaint on the respondent and any other entity referenced in the complaint. A notice of the complaint will be issued promptly, usually within 2 days. The Commission is not codifying the notice period in the final rule because, as with regular complaints, the date of issuance of the notice of a complaint is not crucial to a speedy resolution of a complaint proceeding because the time for filing answers, comments, and interventions is calculated based on the date the complaint is filed rather than the date of the notice.

Answers, interventions and comments will be required within 10 days of the filing of the complaint. In cases where privileged treatment of documents is requested by the complainant, answers, interventions, and comments will be due within 20 days after the complaint is filed. This will account for the time needed for parties to execute protective agreements and receive the privileged information. It is the same approach that is being used for regular complaints. Given the more limited nature of complaints filed under the simplified procedure, the 10 day answer period should be sufficient. An answer to a complaint will have to follow the current practice under Rule 213. A respondent is encouraged, but not required, to provide any relevant documents.

APGA recommended that the Commission or a delegated official issue an order within 30 days after the answer and an aggrieved party be able to seek rehearing within 15 days after the decision. Because of the less complex nature of complaints filed under the simplified procedure it is likely that the Commission could issue an order more expeditiously than in other types of complaint cases, perhaps within as little as 30 days after an answer is filed. Requests for rehearing will have to be filed in accordance with the relevant statute, to the extent the statute provides for rehearing, and the Commission's regulations.

APGA suggested that the order issued not be published in the official reporter and not have precedential value. The Commission will not adopt such a proposal. It is important for the Commission to have a body of precedent on which both the Commission and potential complainants under the simplified procedure could rely.

J. Revisions to ADR Regulations

The final rule revises Rules 604, 605 and 606 to conform to the 1996 ADRA by eliminating the termination and opt-out provisions, and providing that the confidentiality provisions of the 1996 ADRA pre-empt the disclosure requirements of the FOIA.

A number of commenters (Wisconsin Distributor Group, INGAA, Equilon, AOPL) assert that ADR settlements should not be subject to notice and comments. A number of other commenters (Transmission Dependent Utility Systems, Missouri PSC, Joint Consumer Advocates) support notice and comment on ADR settlements. The final rule does not revise the regulations to indicate that settlement agreements reached through ADR are not subject to the notice and comment requirements of Rule 602 unless the Commission takes affirmative action within 30 days.

The changes concerning the termination, opt-out, and confidentiality provisions are to reflect the changes contained in the 1996 Administrative Dispute Resolution Act. The Commission will require ADR settlements to be subject to notice and comment because, in many instances, settlements entered into by regulated companies can affect parties who were not part of the ADR process.

K. Codification of Hotline Procedures

To make the Enforcement Hotline easier to use, the final rule codifies the current Hotline procedures in a new Section 1b.21.

A number of parties were concerned about parties' ability to make anonymous complaints. The Commission emphasizes that the final rule is not adopting any new procedures with respect to the Enforcement Hotline, but has simply codified its longstanding practice.

The Commission declines to adopt the proposal offered by several commenters that the Commission should separate Hotline functions from prosecutorial functions of the Enforcement Section. Parties respond to Hotline calls promptly because they know that Enforcement Staff may institute investigations if valid complaints cannot be resolved informally.

With respect to the issue of the availability of the Hotline to West Coast parties, calls after business hours can be handled by voice mail and the Hotline Staff will return the call the next business day. The Commission has also established an Enforcement Hotline e-mail address. It is hotline@ferc.fed.us.

L. Miscellaneous

EEI and the Utility Coalition stated that complaints should be able to be filed by both public utilities and their customers. NRECA stated that the Commission should not allow jurisdictional entities to file complaints against nonjurisdictional entities. Transmission Dependent Utility Systems stated that transmission customers should not be the subject of complaints.

In their reply comments, APPA and Transmission Access Policy Study Group asserted that the regulations proposed in the NOPR should not be expanded to provide for FERC jurisdiction over complaints seeking enforcement of filed rates against nonjurisdictional customers.

The Commission is not persuaded of the necessity of revising its regulations in this regard at this time. The circumstances under which the Commission has in the past and would in the future be requested to address nonjurisdictional customer conduct would involve situations such as a customer's failure to comply with the terms of public utility's tariff, rate schedules, or contracts. The Commission believes that the current approach taken by the regulations, which allows the Commission to address such matters on a case by case basis, does not need revision.

IV. Information Collection Statement

The following collection of information contained in this final rule is being submitted to the Office of Management and Budget (OMB) for review under Section 3507(d) of the

Paperwork Reduction Act of 1995.[21] FERC identifies the information provided under 18 CFR Part 385 as FERC–600. FERC–600 consolidates certain existing information collection requirements from the various FERC program offices into one information collection number and accounts for the incremental burden placed on persons filing under the proposed regulations.

The Commission in the NOPR solicited comments on the Commission's need for this information, whether the information will have practical utility, the accuracy of the provided burden estimates, ways to enhance the quality, utility, and clarity of the information to be collected, and any suggested methods for minimizing the burden on persons filing under the revised complaint procedures, including the use of automated information techniques. No comments were received.

Estimated Annual Burden: The burden estimates for complying with this final rule are as follows:

Data collection	Number of respondents	Number of responses	Hours per response	Total annual hours
FERC–600	75	75	14	1,050

Total Annual Hours for Collection (Reporting + record keeping, if appropriate) = 1,050.

Based on the Commission's experience with complaints, it is estimated that about 75 filings per year will be made over the next three years at a burden of 14 hours per filing, for a total annual burden of 1,050 hours under the proposed regulations. The Commission's expectation is that receiving more information in the complaint will lessen the subsequent burden on parties and will shorten the time for resolving a complaint. There is no annual reporting burden under the current regulations.

The OMB regulations require OMB to approve certain information collection requirements imposed by agency rule.[22] Accordingly, pursuant to OMB regulations, the Commission provided notice of its information collection to OMB. OMB did not comment or take any action on the NOPR. Therefore, an OMB control number was not given for this collection of information.

Title: FERC–600, Rules of Practice and Procedure

Action: Proposed Data Collection.

OMB Control No. 1902–_____

The respondent shall not be penalized for failure to respond to this collection of information unless the collection of information displays a valid OMB control number.

Respondents: Business or other for profit, including small businesses.

Frequency of Responses: Infrequent.

Necessity of Information: The final rule requires persons filing complaints and answers to complaints with the Commission to satisfy certain informational requirements, and to provide supporting documentation for the allegations in a complaint and answer to a complaint. The information will allow the Commission to properly evaluate a complaint and resolve it in a timely manner.

Internal Review: The Commission has assured itself, by means of its internal review, that there is specific, objective support for the burden estimates associated with the information collection requirements. The Commission's Offices of General Counsel, Pipeline Regulation, Electric Power Regulation, and Hydropower Licensing, will use the data to make decisions with respect to the merits of a complaint. This internal review determination involves among, other things, an examination of adequacy of design, cost, reliability, redundancy of the information to be required. These requirements conform to the Commission's plan for efficient information collection, communication, and management within the interstate natural gas pipeline, oil pipeline, electric and hydroelectric industries.

Interested persons may obtain information on the reporting requirements by contacting the following: Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, [Attention: Michael Miller, Office of the Chief Information Officer, Phone: (202) 208–1415, fax: (202) 208–2425, e-mail: mike.miller@ferc.fed.us].

Questions concerning the collection of information and the associated burden estimate should be sent to the contact listed above and to the Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC, 20503. [Attention: Desk Officer for the Federal Energy Regulatory Commission, phone: (202) 395–3087, fax: (202) 395–7285.

V. Environmental Analysis

The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.[23] The Commission has categorically excluded certain actions from these requirements as not having a significant effect on the human environment.[24] The actions proposed to be taken here fall within categorical exclusions in the Commission's regulations for rules that are clarifying, corrective, or procedural, for information gathering, analysis, and dissemination, and for sales, exchange, and transportation of natural gas that requires no construction of facilities.[25] Therefore, an environmental assessment is unnecessary and has not been prepared in this rulemaking.

VI. Regulatory Flexibility Act Certification

The Regulatory Flexibility Act (RFA) requires agencies to prepare certain statements, descriptions and analyses of proposed rules that will have a significant economic impact on a substantial number of small entities.[26] The Commission is not required to make such analyses if a rule would not have such an effect.[27]

The Commission does not believe that this rule would have such an impact on small entities. The majority of complaints filed with the Commission have been by companies who do not meet the RFA's definition of a small entity whether or not they are under the Commission's jurisdiction.[28] Further, the final rule will speed up the complaint process in general and in particular for those cases where small business entities have been the subject

[21] 44 U.S.C. 3507(d) (Supp. I 1995).

[22] 5 CFR 1320.11

[23] Order No. 486, Regulations Implementing the National Environmental Policy Act, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs. Preambles 1986–1990 ¶ 30,783 (1987).

[24] 18 CFR 380.4.

[25] *See* 18 CFR 380.4(a)(2)(ii), 380.4(a)(5), 380.4(a)(27).

[26] 5 U.S.C. 601–612 (1994).

[27] 5 U.S.C. 605(b)(1994).

[28] 5 U.S.C. 601(3)(1994).

of an alleged detriment. This proposed rule will be beneficial to small entities. Therefore, the Commission certifies that this rule will not have a significant economic impact on a substantial number of small entities.

VII. Effective Date And Congressional Notification

The regulations are effective May 10, 1999. The Small Business Regulatory Enforcement Fairness Act of 1996 requires agencies to report to Congress on the promulgation of certain final rules prior to their effective dates.[29] That reporting requirement applies to this Final Rule. The Commission has determined, with the concurrence of the Administrator of the Office of Information and Regulatory Affairs of OMB, that this rule is not a major rule as defined in section 351 of the Small Business Regulatory Enforcement Fairness Act of 1996.

List of Subjects

18 CFR Part 1b

Investigations.

18 CFR Part 343

Pipelines, Reporting and recordkeeping requirements.

18 CFR Part 385

Administrative practice and procedure, Electric power, Penalties, Pipelines, Reporting and recordkeeping requirements.

By the Commission.

David P. Boergers,

Secretary.

In consideration of the foregoing, the Commission amends Parts 1b, 343, and 385, Chapter I, Title 18, *Code of Federal Regulations*, as set forth below.

PART 1b—RULES RELATING TO INVESTIGATIONS

1. The authority citation for Part 1b is amended to read as follows:

Authority: 15 U.S.C. 717 *et seq.*; 16 U.S.C. 792 *et seq.*; 49 U.S.C. 60502; 49 A.P. U.S.C. 1–85; 42 U.S.C. 7101–7352; E.O. 12009, 42 FR 46267.

2. In section 1b.1, new paragraph (d) is added to read as follows:

§ 1b.1 Definition.

* * * * *

(d) *Enforcement Hotline* is a forum in which to address quickly and informally any matter within the Commission's jurisdiction concerning natural gas pipelines, oil pipelines, electric utilities and hydroelectric projects.

[29] 5 U.S.C. 801 (Supp. III 1997).

3. In Part 1b, new section 1b.21 is added to read as follows:

§ 1b.21 Enforcement hotline.

(a) The Hotline Staff may provide information to the public and give informal staff opinions. The opinions given are not binding on the General Counsel or the Commission.

(b) Any person may seek information or the informal resolution of a dispute by calling or writing to the Hotline at the telephone number and address in paragraph (f) of this section. The Hotline Staff will informally seek information from the caller and any respondent, as appropriate. The Hotline Staff will attempt to resolve disputes without litigation or other formal proceedings. The Hotline Staff may not resolve matters that are before the Commission in docketed proceedings.

(c) All information and documents obtained through the Hotline Staff shall be treated as non-public by the Commission and its staff, consistent with the provisions of section 1b.9 of this part.

(d) Calls to the Hotline may be made anonymously.

(e) Any person who contacts the Hotline is not precluded from filing a formal action with the Commission if discussions assisted by Hotline Staff are unsuccessful at resolving the matter. A caller may terminate use of the Hotline procedure at any time.

(f) The Hotline may be reached by calling (202) 208–1390 or toll free (877) 303–4340, by e-mail at hotline@ferc.fed.us, or writing to: Enforcement Hotline, Federal Energy Regulatory Commission, 888 First Street, N.E. Washington, D.C. 20426.

PART 343—PROCEDURAL RULES APPLICABLE TO OIL PIPELINE PROCEEDINGS

1. The authority citation for Part 343 continues to read as follows:

Authority: 5 U.S.C. 571–583; 42 U.S.C. 7101–7352; 49 U.S.C. 60502; 49 App. U.S.C. 1–85.

2. In section 343.2 paragraph (c) is revised to read as follows:

§ 343.2 Requirements for filing interventions, protests and complaints.

* * * * *

(c) *Other requirements for filing protests or complaints*—(1) *Rates established under § 342.3 of this chapter.* A protest or complaint filed against a rate proposed or established pursuant to § 342.3 of this chapter must allege reasonable grounds for asserting that the rate violates the applicable ceiling level, or that the rate increase is so substantially in excess of the actual cost increases incurred by the carrier that the rate is unjust and unreasonable, or that the rate decrease is so substantially less than the actual cost decrease incurred by the carrier that the rate is unjust and unreasonable. In addition to meeting the requirements of the section, a complaint must also comply with all the requirements of § 385.206, except § 385.206(b)(1) and (2).

(2) *Rates established under § 342.4(c) of this chapter.* A protest or complaint filed against a rate proposed or established under § 342.4(c) of this chapter must allege reasonable grounds for asserting that the rate is so substantially in excess of the actual cost increases incurred by the carrier that the rate is unjust and unreasonable. In addition to meeting the requirements of the section, a complaint must also comply with all the requirements of § 385.206, except § 385.206(b)(1) and (2).

(3) *Non-rate matters.* A protest or complaint filed against a carrier's operations or practices, other than rates, must allege reasonable grounds for asserting that the operations or practices violate a provision of the Interstate Commerce Act, or of the Commission's regulations. In addition to meeting the requirements of this section, a complaint must also comply with the requirements of § 385.206.

3. In section 343.4 paragraph (a) is revised to read as follows:

§ 343.4 Procedures on complaints.

(a) *Responses.* The carrier must file an answer to a complaint filed pursuant to section 13(1) of the Interstate Commerce Act within 20 days after the filing of the complaint in accordance with Rule 206.

* * * * *

PART 385—RULES OF PRACTICE AND PROCEDURE

1. The authority citation for Part 385 continues to read as follows:

Authority: 5 U.S.C. 551–557; 15 U.S.C. 717–717z, 3301–3432; 16 U.S.C. 791a–825r, 2601–2645; 31 U.S.C. 9701; 42 U.S.C. 7101–7352; 49 U.S.C. 60502; 49 App. U.S.C. 1–85.

2. In section 385.206, existing paragraph (b) is redesignated paragraph (f) and is revised, existing paragraph (c) is redesignated as paragraph (j), and new paragraphs (b), (c), (d), (e), (g), (h) and (i) are added to read as follows:

§ 385.206 Complaints (Rule 206).

* * * * *

(b) *Contents.* A complaint must:

(1) Clearly identify the action or inaction which is alleged to violate

applicable statutory standards or regulatory requirements;

(2) Explain how the action or inaction violates applicable statutory standards or regulatory requirements;

(3) Set forth the business, commercial, economic or other issues presented by the action or inaction as such relate to or affect the complainant;

(4) Make a good faith effort to quantify the financial impact or burden (if any) created for the complainant as a result of the action or inaction;

(5) Indicate the practical, operational, or other nonfinancial impacts imposed as a result of the action or inaction, including, where applicable, the environmental, safety or reliability impacts of the action or inaction;

(6) State whether the issues presented are pending in an existing Commission proceeding or a proceeding in any other forum in which the complainant is a party, and if so, provide an explanation why timely resolution cannot be achieved in that forum;

(7) State the specific relief or remedy requested, including any request for stay, extension of time, or other preliminary relief , and in cases seeking other preliminary relief, a detailed explanation of why such relief is required addressing:

(i) The likelihood of success on the merits;

(ii) The nature and extent of the harm if preliminary relief is denied;

(iii) The balance of the relevant interests, *i.e.*, the hardship to nonmovant if preliminary relief is granted contrasted with the hardship to the movant if preliminary relief is denied; and

(iv) The effect, if any, of the decision on preliminary relief on the public interest;

(8) Include all documents that support the facts in the complaint in possession of, or otherwise attainable by, the complainant, including, but not limited to, contracts, affidavits, and testimony;

(9) State

(i) Whether the Enforcement Hotline, Dispute Resolution Service, tariff-based dispute resolution mechanisms, or other informal procedures were used;

(ii) Whether the complainant believes that alternative dispute resolution (ADR) under the Commission's supervision could successfully resolve the complaint;

(iii) What types of ADR procedures could be used; and

(iv) Any process that has been agreed on for resolving the complaint.

(10) Include a form of notice suitable for publication in the **Federal Register** and submit a copy of the notice on a separate 3½ inch diskette in ASCII format;

(11) Explain with respect to requests for Fast Track processing pursuant to section 385.206(h), why the standard processes will not be adequate for expeditiously resolving the complaint.

(c) *Service.* Any person filing a complaint must serve a copy of the complaint on the respondent, affected regulatory agencies, and others the complainant reasonably knows may be expected to be affected by the complaint. Service must be simultaneous with filing at the Commission for respondents and affected entities in the same metropolitan area as the complainant. Simultaneous or overnight service is permissible for respondents and affected entities outside the complainant's metropolitan area. Simultaneous service can be accomplished by electronic mail, facsimile, express delivery, or messenger.

(d) *Notice.* Public notice of the complaint will be issued by the Commission.

(e) *Privileged Treatment.* (1) If a complainant seeks privileged treatment for any documents submitted with the complaint, the complainant must submit, with its complaint, a request for privileged treatment of documents and information under section 388.112 of this chapter and a proposed form of protective agreement. In the event the complainant requests privileged treatment under section 388.112 of this chapter, it must file the original and three copies of its complaint with the information for which privileged treatment is sought and 11 copies of the pleading without the information for which privileged treatment is sought. The original and three copies must be clearly identified as containing information for which privileged treatment is sought.

(2) A complainant must provide a copy of its complaint without the privileged information and its proposed form of protective agreement to each entity that is to be served pursuant to section 385.206(c).

(3) An interested person must make a written request to the complainant for a copy of the complete complaint within 5 days after the filing of the complaint. The request must include an executed copy of the protective agreement. Any person may file an objection to the proposed form of protective agreement.

(4) A complainant must provide a copy of the complete complaint to the requesting person within 5 days after receipt of the written request that is accompanied by an executed copy of the protective agreement.

(f) *Answers, interventions and comments.* Unless otherwise ordered by the Commission, answers, interventions, and comments to a complaint must be filed within 20 days after the complaint is filed. In cases where the complainant requests privileged treatment for information in its complaint, answers, interventions, and comments are due within 30 days after the complaint is filed. In the event there is an objection to the protective agreement, the Commission will establish when answers will be due.

(g) *Complaint Resolution Paths.* (1) One of the following procedures may be used to resolve complaints:

(i) The Commission may assign a case to be resolved through alternative dispute resolution procedures in accordance with sections 385.604–385.606, in cases where the affected parties consent, or the Commission may assign the case to a settlement judge in accordance with section 385.603;

(ii) The Commission may issue an order on the merits based upon the pleadings;

(iii) The Commission may establish a hearing before an ALJ;

(2) The Commission, or an ALJ, may act on requests for preliminary relief. In cases where the ALJ rules on a request for preliminary relief, an appeal to the Commission may be filed within 7 days of the ruling.

(h) *Fast Track Processing.* (1) The Commission may resolve complaints using Fast Track procedures if the complaint requires expeditious resolution. Fast Track procedures may include expedited action on the pleadings by the Commission, expedited hearing before an ALJ, or expedited action on requests for stay, extension of time, or other preliminary relief by the Commission or an ALJ.

(2) A complainant may request Fast Track processing of a complaint by including such a request in its complaint, captioning the complaint in bold type face "COMPLAINT REQUESTING FAST TRACK PROCESSING," and explaining why expedition is necessary as required by section 385.206(b)(11).

(3) Based on an assessment of the need for expedition, the period for filing answers, interventions and comments to a complaint requesting Fast Track processing may be shortened by the Commission from the time provided in section 385.206(f).

(4) After the answer is filed, the Commission will issue promptly an order specifying the procedure and any schedule to be followed.

(i) *Simplified Procedure for Small Controversies.* A simplified procedure for complaints involving small

controversies is found in section 385.218 of this subpart.

3. In section 385.213 paragraphs (c)(4) and (5) are added to read as follows:

§ 385.213 Answer (Rule 213).

* * * * *

(c) * * *

(4) An answer to a complaint must include all documents that support the facts in the answer in possession of, or otherwise attainable by, the respondent, including, but not limited to, contracts, affidavits, and testimony. An answer is also required to describe the formal or consensual process it proposes for resolving the complaint.

(5)(i) A respondent must submit with its answer any request for privileged treatment of documents and information under § 388.112 of this chapter and a proposed form of protective agreement. In the event the respondent requests privileged treatment under § 388.112 of this chapter, it must file the original and three copies of its answer with the information for which privileged treatment is sought and 11 copies of the pleading without the information for which privileged treatment is sought. The original and three copies must be clearly identified as containing information for which privileged treatment is sought.

(ii) A respondent must provide a copy of its answer without the privileged information and its proposed form of protective agreement to each entity that has been served pursuant to § 385.206 (c).

(iii) An interested person must make a written request to the respondent for a copy of the complete answer within 5 days after the filing of the answer. The request must include an executed copy of the protective agreement. Any person may file an objection to the proposed form of protective agreement.

(iv) A respondent must provide a copy of the complete answer to the requesting person within 5 days after receipt of the written request and an executed copy of the protective agreement.

* * * * *

4. New section 385.218 is added to read as follows:

§ 385.218 Simplified procedure for complaints involving small controversies (Rule 218).

(a) *Eligibility.* The procedures under this section are available to complainants if the amount in controversy is less than $100,000 and the impact on other entities is *de minimis.*

(b) *Contents.* A complaint filed under this section must contain:

(1) The name of the complainant;

(2) The name of the respondent;

(3) A description of the relationship to the respondent;

(4) The amount in controversy;

(5) A statement why the complaint will have a *de minimis* impact on other entities;

(6) The facts and circumstances surrounding the complaint, including the legal or regulatory obligation breached by the respondent; and

(7) The requested relief.

(c) *Service.* The complainant is required to simultaneously serve the complaint on the respondent and any other entity referenced in the complaint.

(d) *Notice.* Public notice of the complaint will be issued by the Commission.

(e) *Answers, Interventions and Comments.* (1) An answer to a complaint is required to conform to the requirements of § 385.213(c)(1), (2), and (3).

(2) Answers, interventions and comments must be filed within 10 days after the complaint is filed. In cases where the complainant requests privileged treatment for information in its complaint, answers, interventions, and comments must be filed within 20 days after the complaint is filed. In the event there is an objection to the protective agreement, the Commission will establish when answers, interventions, and comments are due.

(f) *Privileged Treatment.* If a complainant seeks privileged treatment for any documents submitted with the complaint, a complainant must use the procedures described in section 385.206(e). If a respondent seeks privileged treatment for any documents submitted with the answer, a respondent must use the procedures described in section 385.213(c)(5).

5. In section 385.604, paragraph (d)(3) is removed, paragraphs (d)(4), (d)(5), and (d)(6) are redesignated paragraphs (d)(3), (d)(4), and (d)(5), paragraph (g) is removed, and paragraph (d)(2) is revised to read as follows:

§ 385.604 Alternative means of dispute resolution (Rule 604).

* * * * *

(d) * * *

(2) For matters set for hearing under subpart E of this part, a proposal to use alternative means of dispute resolution must be filed with the presiding administrative law judge.

* * * * *

6. In section 385.605 paragraph (f) is removed, and paragraphs (a)(4) and (e)(2) are revised to read as follows:

§ 385.605 Arbitration (Rule 605).

(a) * * *

(4) An arbitration proceeding under this rule may be monitored as provided in Rule 604(f).

* * * * *

(e) * * *

(2) The award in an arbitration proceeding will become final 30 days after it is served on all parties.

* * * * *

6. In section 385.606 paragraph (d) is redesignated paragraph (d)(1) and paragraphs (d)(2) and (l) are added:

§ 385.606 Confidentiality in dispute resolution proceedings (Rule 606).

* * * * *

(d) * * *

(2) To qualify for the exemption established under paragraph (l) of this section, an alternative confidential procedure under this paragraph may not provide for less disclosure than confidential procedures otherwise provided under this rule.

* * * * *

(l) A dispute resolution communication that may not be disclosed under this rule shall also be exempt from disclosure under 5 U.S.C. 552(b)(3).

Note—The following appendix will not appear in the Code of Federal Regulations.

Appendix—List of Commenters

Adirondack Mountain Club
American Electric Power System
American Public Gas Association
American Public Power Association and Transmission Access Policy Study Group
American Arbitration Association
ANR Pipeline Company and Colorado Interstate Gas Company
Association of Oil Pipe Lines
Canadian Association of Petroleum Producers and Alberta Dept. of Energy
Cenex Pipeline, LLC
Chevron Products Company
Chevron Pipe Line Company
Columbia Gas Transmission Corporation and Columbia Gulf Transmission Company
Consumers Energy Company and Michigan Gas Storage Company
CSW Operating Companies
Duke Energy Companies
Dynegy Inc.
Edison Electric Institute
El Paso Energy Corporation Interstate Pipelines
Electric Power Supply Association
Enron Capital & Trade Resources Corp.
Enron Interstate Pipelines
Entergy Service, Inc.
Equilon Pipeline Company LLC
Express Pipeline Partnership
Fertilizer Institute
Florida Cities
Independent Petroleum Association of America
Indicated Shippers
Interstate Natural Gas Association of America
Joint Consumer Advocates
Keyspan Energy

Koch Gateway Pipeline Company
Lakehead Pipe Line Company, L.P.
Missouri Public Service Commission
Mobil Pipe Line Company
National Rural Electric Cooperative Association
Natural Gas Supply Association
New York State Electric & Gas Corporation
Oil Pipeline Shipper Group
Piedmont Natural Gas Company, Inc.
Pipeline Customer Coalition
ProLiance Energy, LLC
Public Utilities Commission of the State of California
Railroad Commission of Texas
Refinery Holding Company, L.P.
Southern Companies
TAPS Carriers
Transmission Dependent Utility Systems
United States Department of Agriculture—Rural Utilities Service
Utility Coalition
Williams Companies, Inc.
Wisconsin Distributor Group and Northern Distributor Group

[FR Doc. 99–8518 Filed 4–7–99; 8:45 am]
BILLING CODE 6717–01–P

SOCIAL SECURITY ADMINISTRATION

20 CFR Part 404

[Regulations No. 4]

RIN 0960–AE03

Maximum Family Benefits in Guarantee Cases

AGENCY: Social Security Administration.

ACTION: Final rule.

SUMMARY: This final rule amends our regulations to reflect section 310 of the Social Security Independence and Program Improvements Act of 1994. Section 310 provides that the guaranteed primary insurance amount is to be used in establishing the maximum family benefit.

EFFECTIVE DATE: This final rule is effective April 8, 1999.

FOR FURTHER INFORMATION CONTACT: Bill Hilton, Social Insurance Specialist, Office of Program Benefits, Social Security Administration, 3–D–25–Operations Building, 6401 Security Boulevard, Baltimore, MD 21235–6401, 410–965–2468 or TTY 410–966–5609. For information on eligibility, claiming benefits or coverage of earnings, call our national toll-free number, 1–800–772–1213 or TTY 1–800–325–0778.

SUPPLEMENTARY INFORMATION: The 1977 Amendments to the Social Security Act provided a guarantee for those receiving benefits on the Social Security record of an insured individual who received disability benefits at some earlier time, then stopped receiving disability benefits, and subsequently has become entitled to retirement or disability benefits or has died. This subsequent entitlement guarantee provides that the basic benefit amount, called the primary insurance amount, of the insured individual cannot be less than the primary insurance amount in effect in the last month of the insured individual's prior entitlement to disability benefits, increased under certain circumstances by any cost-of-living or general benefit increase since that time. This primary insurance amount guarantee is described in §§ 404.250 through 404.252 of our regulations.

The primary insurance amount guarantee of the 1977 Amendments, however, did not extend to the maximum family benefit payable on the insured individual's record, which is based on the primary insurance amount. (The maximum family benefit is a limit on the total amount of monthly benefits which may be paid for any month to an insured individual and his or her dependents or survivors.) Thus, we were computing the family maximum for subsequent entitlement using either the insured individual's eligibility year of the prior entitlement to disability or the current eligibility year. As a result, the maximum family benefit which is payable when the insured individual becomes reentitled to benefits or dies may be less than the maximum family benefit payable in the last month of the insured individual's prior entitlement to disability benefits.

Section 310 of Pub. L. 103–296, the Social Security Independence and Program Improvements Act of 1994, amended the Social Security Act so that the guaranteed primary insurance amount would be the basis for calculating the guaranteed maximum family benefit under a subsequent entitlement. The amendments made by section 310 also provide that, where the subsequent entitlement is to retirement or survivor benefits, we will determine the applicable maximum family benefit without applying the disability maximum family benefit cap described in § 404.403(d–1) of our regulations. The amendments made by section 310 apply when determining the total monthly benefits to which beneficiaries may be entitled based on the wages and self-employment income of an insured individual who, after having been previously entitled to disability insurance benefits, becomes entitled to retirement benefits, becomes reentitled to disability insurance benefits, or dies, after December 1995. Section 310 was effective for the maximum family benefit of workers who become reentitled to benefits or die (after previously having been entitled) after December 1995. We have followed this statutory amendment since it became effective. We are now amending § 404.403 of our regulations by adding paragraph (g) to reflect the changes made by section 310.

Regulatory Procedures

Justification For Final Rules

Pursuant to section 702(a)(5) of the Social Security Act, 42 U.S.C. 902(a)(5), the Social Security Administration follows the Administrative Procedure Act (APA) rulemaking procedures specified in 5 U.S.C. 553 in the development of its regulations. The APA provides exceptions to its prior notice and public comment procedures when an agency finds there is good cause for dispensing with such procedures on the basis that they are impracticable, unnecessary, or contrary to the public interest. We have determined that, under 5 U.S.C. 553(b)(B), good cause exists for dispensing with the prior notice and public comment procedures in this case. This regulation simply reflects statutory changes and does not involve the making of any discretionary policy. Therefore, opportunity for prior comment is unnecessary and we are issuing this change to our regulations as a final rule.

We also find good cause for dispensing with the 30-day delay in the effective date of a substantive rule provided for by 5 U.S.C. 553(d). As explained above, this regulation merely reflects a self-executing statutory change that has its own effective date. We believe it would be misleading and contrary to the public interest for the regulation to show a later effective date, because we must compute benefits as directed by the statute in all cases.

Executive Order 12866

We have consulted with the Office of Management and Budget (OMB) and determined that this final rule does not meet the criteria for a significant regulatory action under Executive Order 12866. Thus, it was not subject to OMB review. We have also determined that these rules meet the plain language requirement of Executive Order 12866 and the President's memorandum of June 1, 1998.

Paperwork Reduction Act

This final regulation imposes no new reporting/recordkeeping requirements subject to OMB clearance.

Regulatory Flexibility Act

We certify that this final regulation will not have a significant economic

impact on a substantial number of small entities because it affects only individuals. Therefore, a regulatory flexibility analysis as provided in the Regulatory Flexibility Act, as amended, is not required.

(Catalog of Federal Domestic Assistance Program Nos. 96.001, Social Security-Disability Insurance; 96.002, Social Security-Retirement Insurance; and 96.004, Social Security-Survivors Insurance)

List of Subjects in 20 CFR Part 404

Administrative practice and procedure, Blind, Disability benefits, Old-Age, Survivors and Disability Insurance, Reporting and recordkeeping requirements, Social Security.

Dated: March 30, 1999.

Kenneth S. Apfel,

Commissioner of Social Security.

For the reasons set out in the preamble, we are amending subpart E of part 404 of chapter III of title 20 of the Code of Federal Regulations as set forth below:

PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE (1950–)

Subpart E—[Amended]

1. The authority citation for subpart E of part 404 continues to read as follows:

Authority: Secs. 202, 203, 204(a) and (e), 205(a) and (c), 222(b), 223(e), 224, 225, and 702(a)(5) of the Social Security Act (42 U.S.C. 402, 403, 404(a) and (e), 405(a) and (c), 422(b), 423(e), 424a, 425, and 902(a)(5)).

2. Section 404.403 is amended by adding paragraph (g) to read as follows:

§ 404.403 Reduction where total monthly benefits exceed maximum family benefits payable.

* * * * *

(g) *Person previously entitled to disability insurance benefits.* If an insured individual who was previously entitled to disability insurance benefits becomes entitled to a "second entitlement" as defined in § 404.250, or dies, after 1995, and the insured individual's primary insurance amount is determined under §§ 404.251(a)(1), 404.251(b)(1), or 404.252(b), the monthly maximum during the second entitlement is determined under the following rules:

(1) If the primary insurance amount is determined under §§ 404.251(a)(1) or 404.251(b)(1), the monthly maximum equals the maximum in the last month of the insured individual's earlier entitlement to disability benefits, increased by any cost-of-living or ad hoc increases since then.

(2) If the primary insurance amount is determined under § 404.252(b), the monthly maximum equals the maximum in the last month of the insured individual's earlier entitlement to disability benefits.

(3) Notwithstanding paragraphs (g)(1) and (g)(2) of this section, if the second entitlement is due to the insured individual's retirement or death, and the monthly maximum in the last month of the insured individual's earlier entitlement to disability benefits was computed under paragraph (d–1) of this section, the monthly maximum is equal to the maximum that would have been determined for the last month of such earlier entitlement if computed without regard for paragraph (d–1) of this section.

[FR Doc. 99–8754 Filed 4–7–99; 8:45 am]

BILLING CODE 4190–29–P

DEPARTMENT OF DEFENSE

Department of the Air Force

32 CFR Part 812

User Charges

AGENCY: Department of the Air Force, Defense.

ACTION: Final rule; removal.

SUMMARY: The Department of the Air Force is amending Title 32, Chapter VII of the CFR by removing Part 812, User Charges. This rule is removed as AFR 177–8, User Charges and User Charges Report, was superseded by DFAS–DER–7000.6. DFAS–DER–7000.6, User Charges, was rescinded in September 1997.

EFFECTIVE DATE: April 5, 1999.

FOR FURTHER INFORMATION CONTACT: Ms. Holly McIntire, DFAS–DE/PMLP, 6760 E. Irvington Place, Denver, CO 80230–8000, (303) 676–7613.

SUPPLEMENTARY INFORMATION:

PART 812—[REMOVED]

Accordingly, 32 CFR, Chapter VII is amended by removing part 812.

Authority: 31 U.S.C. 9701.

Carolyn A. Lunsford,

Air Force Federal Register Liaison Officer.

[FR Doc. 99–8769 Filed 4–7–99; 8:45 am]

BILLING CODE 5001–05–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD09–99–002]

RIN–2115–AE47

Drawbridge Operation Regulations; Duluth Ship Canal (Duluth-Superior Harbor)

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation from regulations with request for comments.

SUMMARY: The Coast Guard has authorized a temporary deviation from the current operating regulations that govern the Duluth Aerial Lift Bridge over the Duluth Ship Canal. The temporary deviation is for the purpose of evaluating a proposed revised schedule for the bridge during the peak recreational vessel traffic season. The test schedule will be in effect from June 1, 1999, through August 31, 1999.

DATES: This deviation is effective from 6 a.m. on June 3, 1999, until 10 p.m. on August 31, 1999. Comments must be received by September 30, 1999.

ADDRESSES: Comments may be mailed or delivered to: Commander (obr), Ninth Coast Guard District, 1240 East Ninth Street, Room 2019, Cleveland, OH 44199–2060 between 6:30 a.m. and 3 p.m., Monday through Friday, except federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Scot M. Striffler, Project Manager, at (216) 902–6084.

SUPPLEMENTARY INFORMATION: The Coast Guard received a request from the City of Duluth to reduce the number of bridge openings for recreational vessel traffic at the Duluth Aerial Lift Bridge during the peak boating season. This action was requested to relieve vehicular traffic congestion in the vicinity of the bridge and reduce wear and tear on the operating machinery. The Coast Guard arranged a meeting on September 30, 1998, with City officials, marina owners/operators, commercial marine interests, and the Coast Guard Captain of the Port to discuss operating schedule options. A schedule was devised and approved by the participants, and the Coast Guard determined that a 90-day test period would be appropriate to decide if a revised schedule would accomplish the previously stated objectives, while still providing for the reasonable needs of navigation.

The Coast Guard encourages interested persons to submit comments

either for or against the schedule. Persons submitting comments should include their name, address, identify this document (CGD09–99–002), the specific section of this temporary schedule, and the reason(s) for each comment. The Coast Guard requests that all comments and attachments be submitted in an 8½" x 11" unbound format suitable for copying and electronic filing. Comments should be sent to Commander (obr), Ninth Coast Guard District, 1240 East Ninth Street, Room 2019, Cleveland, Ohio, 44199–2060. Comments received by the Coast Guard will be used in determining whether a full rulemaking process should be opened for a permanent change. Comments should be received at the address above by September 30, 1999.

The test schedule will not affect any government or commercial vessels transiting the bridge. Also, the bridge will open for all vessels during periods of severe weather and for vessels in distress.

From June 3 through August 31, 1999, between the hours of 6 a.m. and 10 p.m., Monday through Sunday, the bridge will open for recreational vessels only from 3 minutes before to 3 minutes after the hour and half-hour. The bridge shall open on signal for public and/or commercial vessels during all other times.

Dated: March 18, 1999.

J.F. McGowan,

Rear Admiral, U.S. Coast Guard Commander, Ninth Coast Guard District.

[FR Doc. 99–8473 Filed 4–7–99; 8:45 am]

BILLING CODE 4910–15–M

POSTAL SERVICE

39 CFR Part 111

Delivery Confirmation Service; Partial Stay of Applicability

AGENCY: Postal Service.

ACTION: Partial stay of applicability of final rule.

SUMMARY: The Postal Service is staying the applicability of a portion of its recently published final rule on Delivery Confirmation which set forth the Domestic Mail Manual standards adopted by the Postal Service to implement the Decision of the Governors of the Postal Service in Postal Rate Commission Docket No. R97–1, as it pertains to delivery confirmation service. The Postal Service is staying the applicability of Delivery Confirmation Service for customers sending mail to APO/FPO destinations. Effective immediately, customers cannot use Delivery Confirmation Service for mail sent to APO/FPO addresses.

DATES: Effective April 5, 1999, the applicability of the amendments to S918.1.2, S918.1.5 and S930.2.3b of the Domestic Mail Manual published in the **Federal Register** on Wednesday, March 10, 1999 (64 FR 12072) to mail to APO/FPO addresses is stayed until further notice as of 12:01 a.m. on April 5, 1999.

ADDRESSES: Any written comments should be mailed or delivered to John Gullo, Expedited/Package Services, 475 L'Enfant Plz SW RM 4267, Washington, DC 20260–4299. Copies of all written comments will be available for public inspection and photocopying between 9 a.m. and 4 p.m., Monday through Friday, at the above address.

FOR FURTHER INFORMATION CONTACT: John Gullo (202) 268–7322.

SUPPLEMENTARY INFORMATION: This change is necessary to address special military requirements for implementation of Delivery Confirmation service.

This stay will be effective immediately, and the contemplated service for mail to APO/FPO addresses will not be available until further notice.

List of Subjects in 39 CFR Part 111

Postal Service.

The Postal Service hereby stays the applicability of its amendments of March 10, 1999 to S918.1.2, S918.1.5 and S930.2.3b of the Domestic Mail Manual, which is incorporated by reference in the Code of Federal Regulations. See 39 CFR Part 111.

PART 111—[AMENDED]

1. The authority citation for 39 CFR Part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 3001–3011, 3201–3219, 3403–3406, 3621, 5001.

2. The applicability of amendments to S918.1.2, S918.1.5 and S930.2.3b of the Domestic Mail Manual to mail to APO/FPO addresses is stayed until further notice.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 99–8673 Filed 4–5–99; 4:47 pm]

BILLING CODE 7710–02–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CO–001–0025a; FRL–6319–7]

Approval and Promulgation of Air Quality Implementation Plans; Colorado; Removal and Replacement of Transportation Control Measure, Colorado Springs Element, Carbon Monoxide Section of the State Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving a revision to the Colorado State Implementation Plan (SIP), carbon monoxide (CO) section, Colorado Springs element. In a June 25, 1996, submission, Colorado requests that emission reductions from oxygenate use in gasoline be substituted for reductions associated with the previously approved (48 FR 55284, December 12, 1983) bus acquisition program because the bus program was not implemented due to the lack of federal funding. This revision satisfies certain requirements of part D and section 110 of the Clean Air Act (CAA), as amended in 1990.

DATES: This direct final rule is effective on June 7, 1999 without further notice, unless EPA receives adverse comments by May 10, 1999. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Written comments may be mailed to: Richard R. Long, Director, Air and Radiation Program, Mailcode 8P–AR, United States Environmental Protection Agency, Region VIII, 999 18th Street, Suite 500, Denver, Colorado 80202–2466.

Copies of the documents relevant to this action are available for public inspection during normal business hours at the following offices:

United States Environmental Protection Agency, Region VIII, Air and Radiation Program, 999 18th Street, Suite 500, Denver, Colorado 80202–2466; and,

United States Environmental Protection Agency, Air and Radiation Docket and Information Center, 401 M Street, SW, Washington, DC 20460.

Copies of the State documents relevant to this action are available for public inspection at: Colorado Air Pollution Control Division, Colorado Department of Public Health and Environment, 4300 Cherry Creek

Drive South, Denver, Colorado, 80246–1530.

FOR FURTHER INFORMATION CONTACT: Tim Russ, Air and Radiation Program, Mailcode 8P–AR, United States Environmental Protection Agency, Region VIII, 999 18th Street, Suite 500, Denver, Colorado 80202–2466, Telephone number: (303) 312–6479.

SUPPLEMENTARY INFORMATION:

I. Background

Part D of the CAA, which was added by the amendments of 1977, required States that were seeking an extension beyond 1982 to attain the CO National Ambient Air Quality Standard (NAAQS) to submit a revision to the SIP by July 1, 1982. This revision was to provide for attainment of the CO NAAQS by December 31, 1987. The Governor submitted the necessary SIP revision for Colorado Springs on June 24, 1982.

One of the CO control strategies described in the June 24, 1982, revision was a transportation control measure (TCM) involving improved public transit. This particular TCM required the acquisition of an additional 27 buses to supplement and expand the Colorado Springs fleet. Table 6.1 ("Percent Reductions in 1987 Ambient CO Concentrations Attributable To Control Measures") of Chapter 6, "Determination Of Air Quality Impacts Of The Proposed Plan", of the June 24, 1982, submittal indicated that the "Improved Public Transit" TCM, which included the purchase of the 27 new buses spaced over 1981, 1982, 1983, and 1984, would result in a 1.5% reduction in the 1987 CO emissions in Colorado Springs. It was, however, specifically noted in the June 24, 1982, SIP revision that acquisition of these additional buses would only be possible if sufficient Federal funding was provided. The 1982 SIP revision indicated that the City of Colorado Springs could contribute $1,252,800 and that $5,010,800 was needed from Federal funds. Federal funds were not available for this bus program and the additional 27 buses were not purchased by Colorado Springs.

On February 24, 1993, the Pikes Peak Area Council of Governments (PPACG) approved the substitution of emissions reduction credits from an oxygenated gasoline program for the bus acquisition TCM. The emission reductions from the oxygenated gasoline program had not previously been credited in the Colorado Springs CO element of the SIP. The State calculated there was at least an 11% reduction in CO emissions for the 1987–88 winter CO season due to the implementation of the oxygenated gasoline program. This more than compensates for the calculated 1.5% reduction in CO emissions from the non-implemented bus-purchase program contained in the SIP.

On December 15, 1994, PPACG's revision was adopted by the Colorado Air Quality Control Commission (AQCC). This revision became Chapter 10 "SIP Revision—December 1994" of the Colorado Springs CO section of the SIP. The Governor submitted the SIP revision to EPA on January 29, 1996.

Colorado's oxygenated gasoline program has been revised a number of times since its inception in 1987–88. The program has continuously provided emissions reductions greater than those that would have been realized through the implementation of the bus-purchase program. Details regarding Colorado's Federally approved oxygenated gasoline program can be found in the March 10, 1997, **Federal Register** (62 FR 10690). The State has recently revised the oxygenated gasoline program through a further shortening of the oxygenated gasoline program season. To date, EPA has not taken any action on this SIP revision. EPA notes, however, that the revised oxygenated gasoline program continues to more than compensate for the emission reductions that would have been realized if the bus-purchase program had been implemented in Colorado Springs.

II. Analysis of the State's Submittal

The CAA requires States to observe certain procedural requirements in developing SIP revisions for submittal to EPA. Section 110(a)(2) of the CAA requires that States provide reasonable notice and a public hearing before adopting SIP revisions. Following reasonable notice, the AQCC conducted a public hearing on this matter on December 15, 1994. Directly after the hearing, the AQCC revised the Colorado Springs CO SIP to substitute the oxygenated gasoline program for the bus-purchase program as a source of emissions reductions credits.

The Governor submitted this revision, for the Colorado Springs element of the SIP, to EPA on January 29, 1996. By operation of law under the provisions of section 110(k)(1)(B) of the CAA, the submittal was deemed complete on July 29, 1996.

III. Final Rulemaking Action

EPA is approving the revision to the Colorado State Implementation Plan (SIP), carbon monoxide (CO) section, Colorado Springs element, that the Governor of Colorado submitted to EPA on June 25, 1996, to satisfy certain requirements of part D and section 110 of the Clean Air Act (CAA), as amended in 1990. The revision substitutes Colorado's oxygenated gasoline program (contained in Colorado's Regulation No. 13) for the Colorado Springs bus purchase program, as a source of emissions reductions credits in the Colorado Springs CO element of the SIP. As noted above, EPA approved the bus purchase program as part of the Colorado Springs CO element of the SIP on December 12, 1983 (48 FR 55284), but the program was never implemented. This action has the effect of removing the bus purchase program from the EPA-approved SIP.

EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should adverse comments be filed. This rule will be effective June 7, 1999 without further notice unless the Agency receives adverse comments by May 10, 1999.

If EPA receives such comments, then EPA will publish a timely withdrawal of the direct final rule informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on this rule. Any parties interested in commenting on this rule should do so at this time. If no such comments are received, the public is advised that this rule will be effective on June 7, 1999 and no further action will be taken on the proposed rule.

IV. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, entitled "Regulatory Planning and Review."

B. Executive Order 12875: Enhancing the Intergovernmental Partnership

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a

description of the extent of EPA's prior consultation with representatives of affected state, local, and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of state, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's rule does not create a mandate on state, local, or tribal governments. The rule does not impose any enforceable duties on state, local, or tribal governments. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

C. Executive Order 13045

Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health and safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to E.O. 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

D. Executive Order 13084: Consultation and Coordination with Indian Tribal Governments

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate, or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, will result from this action.

G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to the publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

H. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 7, 1999. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

Nothing in this action should be construed as making any determination or expressing any position regarding Colorado's audit privilege and penalty immunity law, sections 13–25–126.5, 13–90–107, and 25–1–114.5, Colorado Revised Statutes, (Colorado Senate Bill

94–139, effective June 1,1994) or its impact upon any approved provision in the SIP, including the revision at issue here. The action taken herein does not express or imply any viewpoint on the question or whether there are legal deficiencies in this or any other Clean Air Act program resulting from the effect of Colorado's audit privilege and immunity law. A state audit privilege and immunity law can affect only state enforcement and cannot have any impact on federal enforcement authorities. EPA may at any time invoke its authority under the Clean Air Act, including, for example, sections 113, 167, 205, 211, or 213, to enforce the requirements or prohibitions of the state plan, independently of any state enforcement effort. In addition, citizen enforcement under section 304 of the Clean Air Act is likewise unaffected by a state audit privilege or immunity law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: March 24, 1999.

William P. Yellowtail,

Regional Administrator, Region VIII.

40 CFR part 52, Subpart G, is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart G—Colorado

2. Section 52.349 is amended by designating the existing text as paragraph (a) and by adding paragraph (b) to read as follows:

§ 52.349 Control strategy: Carbon monoxide.

* * * * *

(b) On June 25, 1996, the Governor of Colorado submitted a revision to the Colorado Springs element of the carbon monoxide (CO) portion of the Colorado State Implementation Plan (SIP). The revision to the Colorado Springs element was submitted to satisfy certain requirements of part D and section 110 of the Clean Air Act (CAA) as amended 1990. The revision substitutes Colorado's oxygenated gasoline program for the Colorado Springs bus purchase program as a source of emissions reductions credits in the Colorado Springs CO element of the SIP. This revision removes the bus purchase program from the EPA-approved SIP. EPA originally approved the bus purchase program as part of the Colorado Springs CO element of the SIP on December 12, 1983 (48 FR 55284).

[FR Doc. 99–8630 Filed 4–7–99; 8:45 am]

BILLING CODE 6560–50–P

GENERAL SERVICES ADMINISTRATION

41 CFR Part 302–11

RIN 3090–AG91

[FTR Amendment 80—1998 Edition]

Federal Travel Regulation; Relocation Income Tax (RIT) Allowance Tax Tables

AGENCY: Office of Governmentwide Policy, GSA.

ACTION: Final rule.

SUMMARY: The Federal, State, and Puerto Rico tax tables for calculating the relocation income tax (RIT) allowance must be updated yearly to reflect changes in Federal, State, and Puerto Rico income tax brackets and rates. The Federal, State, and Puerto Rico tax tables contained in this rule are for calculating the 1999 RIT allowance to be paid to relocating Federal employees.

EFFECTIVE DATE: This final rule is effective January 1, 1999, and applies to RIT allowance payments made on or after January 1, 1999.

FOR FURTHER INFORMATION CONTACT: Calvin L. Pittman, Office of Governmentwide Policy (MTT), Washington, DC 20405, telephone (202) 501–1538.

SUPPLEMENTARY INFORMATION: This amendment provides the tax tables necessary to compute the RIT allowance for employees who are taxed in 1999 on moving expense reimbursements.

A. Background

Section 5724b of Title 5, United States Code, provides for reimbursement of substantially all Federal, State, and local income taxes incurred by a transferred Federal employee on taxable moving and storage expense reimbursements. Policies and procedures for the calculation and payment of a RIT allowance is contained in the FTR (41 CFR part 302–11). The Federal, State, and Puerto Rico tax tables for calculating RIT allowance payments are updated yearly to reflect changes in Federal, State, and Puerto Rico income tax brackets and rates.

B. Executive Order 12866

The General Services Administration (GSA) has determined that this final rule is not a significant regulatory action for the purposes of Executive Order 12866 of September 30, 1993.

C. Regulatory Flexibility Act

This final rule is not required to be published in the **Federal Register** for notice and comment; therefore, the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, does not apply.

D. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed revisions do not impose recordkeeping or information collection requirements, or the collection of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 501 *et seq.*

E. Small Business Regulatory Enforcement Reform Act

This final rule is also exempt from congressional review prescribed under 5 U.S.C. 801 since it relates solely to agency management and personnel.

List of Subjects in 41 CFR Part 302–11

Government employees, Income taxes, Relocation allowances and entitlements, Transfers.

For the reasons set forth in the preamble, 41 CFR part 302–11 is amended to read as follows:

PART 302–11—RELOCATION INCOME TAX (RIT) ALLOWANCE

1. The authority citation for 41 CFR part 302–11 continues to read as follows:

Authority: 5 U.S.C. 5738; 20 U.S.C. 905(a); E.O. 11609, 36 FR 13747, 3 CFR, 1971–1975 Comp., p. 586.

2. Appendixes A, B, C, and D to part 302–11 are amended by adding the following tables at the end of each appendix, respectively:

Appendix A to Part 302–11—Federal Tax Tables For RIT Allowance

* * * * *

FEDERAL MARGINAL TAX RATES BY EARNED INCOME LEVEL AND FILING STATUS—TAX YEAR 1998

[The following table is to be used to determine the Federal marginal tax rate for Year 1 for computation of the RIT allowance as prescribed in §302–11.8(e)(1). This table is to be used for employees whose Year 1 occurred during calendar year 1998.]

Marginal tax rate	Single taxpayer		Heads of household		Married filing jointly/ qualifying widows and widowers		Married Filing Separately	
Percent	Over	But not over	Over	But not over	Over	But not over	Over	But not over
15	$7,229	$33,530	$12,964	$48,232	$16,858	$61,069	$8,685	$30,351
28	33,530	73,135	48,232	109,311	61,069	126,880	30,351	63,863
31	73,135	145,648	109,311	177,378	126,880	184,945	63,863	92,550
36	145,648	299,410	177,378	321,683	184,945	308,061	92,550	152,715
39.6	299,410		321,683		308,061		152,715	

Appendix B to Part 302–11—State Tax Tables For RIT Allowance

* * * * *

STATE MARGINAL TAX RATES BY EARNED INCOME LEVEL—TAX YEAR 1998

[The following table is to be used to determine the State marginal tax rates for calculation of the RIT allowance as prescribed in §302–11.8(e)(2). This table is to be used for employees who received covered taxable reimbursements during calendar year 1998.]

State (or district)	Marginal tax rates (stated in percents) for the earned income amounts specified in each column.[1 2]			
	$20,000–$24,999	$25,000–$49,999	$50,000–$74,999	$75,000 & Over
Alabama	5	5	5	5
Alaska	0	0	0	0
Arizona	2.9	3.3	3.9	5.17
Arkansas	4.5	7	7	7
If single status[3]	6	7	7	7
California	2	4	8	9.3
If single status[3]	4	9.3	9.3	9.3
Colorado	5	5	5	5
Connecticut	3	4.5	4.5	4.5
If single status[3]	4.5	4.5	4.5	4.5
Delaware	5.8	6.9	6.9	6.9
District of Columbia	8	9.5	9.5	9.5
Florida	0	0	0	0
Georgia	6	6	6	6
Hawaii	8	9.5	10	10
If single status[3]	9.5	10	10	10
Idaho	7.8	8.2	8.2	8.2
Illinois	3	3	3	3
Indiana	3.4	3.4	3.4	3.4
Iowa	6.8	7.55	9.98	9.98
If single status[3]	7.2	8.8	9.98	9.98
Kansas	3.5	6.25	6.25	6.45
If single status[3]	4.1	7.75	7.75	7.75
Kentucky	6	6	6	6
Louisiana	2	4	4	6
If single status[3]	4	4	6	6
Maine	4.5	7	8.5	8.5
If single status[3]	8.5	8.5	8.5	8.5
Maryland	5	5	5	5
Massachusetts	5.95	5.95	5.95	5.95
Michigan	4.4	4.4	4.4	4.4
Minnesota	8	8	8	8.5
If single status[3]	8	8.5	8.5	8.5
Mississippi	5	5	5	5
Missouri	6	6	6	6
Montana	6	9	10	11
Nebraska	3.49	5.01	6.68	6.68
If single status[3]	5.01	6.68	6.68	6.68
Nevada	0	0	0	0
New Hampshire	0	0	0	0
New Jersey	1.4	1.75	2.45	6.37
If single status[3]	1.4	3.50	5.525	6.37
New Mexico	3.2	6	7.1	8.5
If single status[3]	5	7.1	7.9	8.5
New York	4	6	7.125	7.125

STATE MARGINAL TAX RATES BY EARNED INCOME LEVEL—TAX YEAR 1998—Continued

[The following table is to be used to determine the State marginal tax rates for calculation of the RIT allowance as prescribed in § 302–11.8(e)(2). This table is to be used for employees who received covered taxable reimbursements during calendar year 1998.]

State (or district)	Marginal tax rates (stated in percents) for the earned income amounts specified in each column.[1] [2]			
	$20,000–$24,999	$25,000–$49,999	$50,000–$74,999	$75,000 & Over
If single status[3]	6	7.125	7.125	7.125
North Carolina	6	7	7	7.75
North Dakota	6.67	9.33	12	12
If single status[3]	8	10.67	12	12
Ohio	2.853	4.279	4.993	7.201
Oklahoma	4	7	7	7
If single status[3]	7	7	7	7
Oregon	9	9	9	9
Pennsylvania	2.8	2.8	2.8	2.8
Rhode Island[4]	27	27	27	27
South Carolina	7	7	7	7
South Dakota	0	0	0	0
Tennessee	0	0	0	0
Texas	0	0	0	0
Utah	7	7	7	7
Vermont[5]	25	25	25	25
Virginia	5	5.75	5.75	5.75
Washington	0	0	0	0
West Virginia	4	4.5	6	6.5
Wisconsin	6.55	6.93	6.93	6.93
Wyoming	0	0	0	0

[1] Earned income amounts that fall between the income brackets shown in this table (e.g., $24,999.45, $49,999.75) should be rounded to the nearest dollar to determine the marginal tax rate to be used in calculating the RIT allowance.

[2] If the earned income amount is less than the lowest income bracket shown in this table, the employing agency shall establish an appropriate marginal tax rate as provided in § 302–11.8(e)(2)(ii).

[3] This rate applies only to those individuals certifying that they will file under a single status within the States where they will pay income taxes. All other taxpayers, regardless of filing status, will use the other rate shown.

[4] The income tax rate for Rhode Island is 27 percent of Federal income tax liability for all employees. Rates shown as a percent of Federal income tax liability must be converted to a percent of income as provided in § 302–11.8(e)(2)(iii).

[5] The income tax rate for Vermont is 25 percent of Federal income tax liability for all employees. Rates shown as a percent of Federal income tax liability must be converted to a percent of income as provided in § 302–11.8(e)(2)(iii).

Appendix C to Part 302–11—Federal Tax Tables For RIT Allowance—Year 2

* * * * *

FEDERAL MARGINAL TAX RATES BY EARNED INCOME LEVEL AND FILING STATUS—TAX YEAR 1999

[The following table is to be used to determine the Federal marginal tax rate for Year 2 for computation of the RIT allowance as prescribed in § 302–11.8(e)(1). This table is to be used for employees whose Year 1 occurred during calendar years 1989, 1990, 1991, 1992, 1993, 1994, 1995, 1996, 1997, or 1998.]

Marginal tax rate	Single taxpayer		Heads of household		Married filing jointly/ qualifying widows & widowers		Married filing separately	
Percent	Over	But not over	Over	But not over	Over	But not over	Over	But not over
15	$7,288	$33,937	$13,132	$48,851	$17,078	$62,143	$8,480	$30,536
28	33,937	73,812	48,851	109,613	62,143	128,360	30,536	61,844
31	73,812	145,735	109,613	177,494	128,360	185,189	61,844	95,644
36	145,735	300,782	177,494	324,383	185,189	309,316	95,644	164,417
39.6	300,782		324,383		309,316		164,417	

Appendix D to Part 302–11—Puerto Rico Tax Tables for RIT Allowance

* * * * *

PUERTO RICO MARGINAL TAX RATES BY EARNED INCOME LEVEL—TAX YEAR 1998

[The following table is to be used to determine the Puerto Rico marginal tax rate for computation of the RIT allowance as prescribed in § 302–11.8(e)(4)(i).]

Marginal tax rate	Single filing status		Any other filing status	
Percent	Over	But not over	Over	But not over
12				$25,000
18		$25,000		
31	$25,000	50,000	$25,000	50,000
33	50,000		50,000	

Dated: March 24, 1999

David J. Barram,

Administrator of the General Services.

[FR Doc. 99–8685 Filed 4–7–99; 8:45 am]

BILLING CODE 6820–34–P

LEGAL SERVICES CORPORATION

45 CFR Part 1611

Eligibility: Income Level for Individuals Eligible for Assistance

AGENCY: Legal Services Corporation.

ACTION: Final rule.

SUMMARY: The Legal Services Corporation ("Corporation") is required by law to establish maximum income levels for individuals eligible for legal assistance. This document updates the specified income levels to reflect the annual amendments to the Federal Poverty Guidelines as issued by the Department of Health and Human Services.

EFFECTIVE DATE: April 8, 1999.

FOR FURTHER INFORMATION CONTACT: Victor M. Fortuno, General Counsel, Legal Services Corporation, 750 First Street NE., Washington, DC 20002–4250; 202–336–8810.

SUPPLEMENTARY INFORMATION: Section 1007(a)(2) of the Legal Services Corporation Act ("Act"), 42 U.S.C. 2996f(a)(2), requires the Corporation to establish maximum income levels for individuals eligible for legal assistance, and the Act provides that other specified factors shall be taken into account along with income.

Section 1611.3(b) of the Corporation's regulations establishes a maximum income level equivalent to one hundred and twenty-five percent (125%) of the Federal Poverty Guidelines. Since 1982, the Department of Health and Human Services has been responsible for updating and issuing the Poverty Guidelines. The revised figures for 1999 set out below are equivalent to 125% of the current Poverty Guidelines as published on March 18, 1999 (64 FR 13428).

List of Subjects in 45 CFR Part 1611

Legal services.

For reasons set out in the preamble, 45 CFR 1611 is amended as follows:

PART 1611—ELIGIBILITY

1. The authority citation for Part 1611 continues to read as follows:

Authority: Secs. 1006(b)(1), 1007(a)(1) Legal Services Corporation Act of 1974, 42 U.S.C. 2996e(b)(1), 2996f(a)(1), 2996f(a)(2).

2. Appendix A of Part 1611 is revised to read as follows:

APPENDIX A OF PART 1611—LEGAL SERVICES CORPORATION 1998 POVERTY GUIDELINES [1]

Size of family unit	48 contiguous States [2]	Alaska [3]	Hawaii [4]
1	$10,300	$12,900	$11,863
2	13,825	17,300	15,913
3	17,350	21,700	19,963
4	20,875	26,100	24,013
5	24,400	30,500	28,063
6	27,925	34,900	32,113
7	31,450	39,300	36,163
8	34,975	43,700	40,213

[1] The figures in this table represent 125% of the poverty guidelines by family size as determined by the Department of Health and Human Services.
[2] For family units with more than eight members, add $3,525 for each additional member in a family.
[3] For family units with more than eight members, add $4,400 for each additional member in a family.
[4] For family units with more than eight members, add $4,050 for each additional member in a family.

Dated: April 5, 1999.

Victor M. Fortuno,

General Counsel.

[FR Doc. 99–8602 Filed 4–7–99; 8:45 am]

BILLING CODE 7050–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 98–37; RM–9238]

Radio Broadcasting Services; Frankston and Palestine, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document reallots Channel 244C2 from Palestine, Texas, to Frankston, Texas, and modifies the authorization for Station KLIS, Palestine, to specify operation at Frankston, in response to a petition filed by Nicol/Excel Broadcasting, LLC. *See* 63 FR 17145, April 2, 1998. (On May 30, 1997, the license for Station KLIS, Palestine, Texas, was modified to

specify operation on Channel 244C2 in lieu of Channel 244A, BPH–97031IC.) The coordinates for Channel 244C2 at Frankston are 32–02–02 NL and 95–24–30 WL. With this action, this proceeding is terminated.

EFFECTIVE DATE: May 17, 1999.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 98–37, adopted March 10, 1999, and released April 2, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (Room 239), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW, Washington, DC 20036, (202) 857–3800, facsimile (202) 857–3805.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by removing Channel 244A at Palestine and adding Frankston, Channel 244C2.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–8740 Filed 4–7–99; 8:45 am]

BILLING CODE 6712–01–M

ENVIRONMENTAL PROTECTION AGENCY

48 CFR Parts 1533 and 1552

[FRL–6320–1]

Acquisition Regulation: Incorporate Solicitation Notice for Agency Protests

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct Final Rule.

SUMMARY: EPA is taking direct final action on amending the EPA Acquisition Regulation (EPAAR) (48 CFR Chapter 15) to include the solicitation notice of the filing requirements for Agency protests.

DATES: This rule is effective on July 7, 1999 without further notice, unless EPA receives adverse comments by June 7, 1999. If we receive adverse comments, we will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: Written comments should be submitted to the contact listed below at the following address: U.S. Environmental Protection Agency, Office of Acquisition Management (3802R), 401 M Street, SW, Washington, D.C. 20460. Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: Avellar.Linda@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 6.1 formal or ASCII file format. No confidential business information (CBI) should be submitted through e-mail. Electronic comments on this rule may be filed on-line at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: Linda Avellar, U.S. EPA, Office of Acquisition Management, (3802R), 401 M Street, SW, Washington, D.C. 20460, Telephone: (202) 564–4356.

SUPPLEMENTARY INFORMATION:

A. Background

This direct final rule includes the notice of filing requirements for Agency protests. This notice of filing is in accordance with the Federal Acquisition Regulation (FAR) 33.103(d)(4). EPA is publishing this rule without prior proposal because we view this as a non-controversial amendment and anticipate no adverse comment; usage of this notice of filing in Agency solicitations has been non-controversial. This rule will be effective on July 7, 1999 without further notice unless we receive adverse comments by June 7, 1999. If EPA receives adverse comments, we will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. We also will publish a notice of proposed rulemaking in a future edition of the **Federal Register**. We will address the comments on the direct final rule as part of that proposed rulemaking.

B. Executive Order 12866

The direct final rule is not a significant regulatory action for the purposes of Executive Order 12866; therefore, no review is required by the Office of Information and Regulatory Affairs within the Office of Management and Budget (OMB).

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because this direct final rule does not contain information collection requirements that require the approval of OMB under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

D. Regulatory Flexibility Act

The EPA certifies that this direct final rule does not exert a significant economic impact on a substantial number of small entities. The requirements to contractors under the rule impose no reporting, recordkeeping, or any compliance costs.

E. Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess their regulatory actions on State, local, and tribal governments, and the private sector. This direct final rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in one year. Any private sector costs for this action relate to paperwork requirements and associated expenditures that are far below the level established for UMRA applicability. Thus, the rule is not subject to the requirements of sections 202 and 205 of the UMRA.

F. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be economically significant as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to E.O. 13045 because it is not an economically significant rule as defined by E.O. 12866, and because it does not involve decisions on environmental health or safety risks.

G. Executive Order 12875

Under E.O. 12875, EPA may not issue a regulation that is not required by statute and creates a mandate upon a State, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, E.O. 12875 requires EPA to provide OMB a description of the extent of EPA's prior consultation with representatives of affected State, local, and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, E.O. 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates." Today's rule does not create a mandate on State, local, or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

H. Executive Order 13084

Under E.O. 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by tribal governments, or EPA consults with those governments. If EPA complies by consulting, E.O. 13084 requires EPA to provide to the OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, E.O. 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal government "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

I. National Technology Transfer and Advancement Act of 1995

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Pub. L. 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This rulemaking does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

J. Submission to Congress and the General Accounting Office

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

Authority: The provisions of this regulation are issued under 5 U.S.C. 301; Sec. 205(c), 63 Stat. 390, as amended, 40 U.S.C. 486(c).

List of Subjects in 48 CFR Parts 1533 and 1552

Government procurement.

Therefore, 48 CFR Chapter 15 is amended as set forth below:

PARTS 1533 AND 1552—[AMENDED]

1. The authority citations for part 1533 and for part 1552 continue to read as follows:

Authority: Sec. 205(c), 63 Stat. 390, as amended, 40 U.S.C. 486(c).

2. Section 1533.103, is revised to read as follows: 1533.103 Protests to the Agency.

Protests to the Agency are processed pursuant to the requirements of FAR 33.103. Contracting Officers must include in every solicitation the provision at 1552.233–70, Notice of Filing Requirements for Agency Protests.

3. Part 1552 is amended by adding the following new Section 1552.233–70:

1552.233–70 Notice of Filing Requirements for Agency Protests.

As prescribed in 1533.103, insert the following clause in all types of solicitations:

Notice of Filing Requirements for Agency Protests July 1999

Agency protests must be filed with the Contracting Officer in accordance with the requirements of FAR 33.103 (d) and (e). Within 10 calendar days after receipt of an adverse Contracting Officer decision, the protester may submit a written request for an independent review by the Head of the Contracting Activity. This independent review is available only as an appeal of a Contracting Officer decision on a protest. Accordingly, as provided in 4 CFR 21.2(a)(3), any protest to the GAO must be filed within 10 days of knowledge of the initial adverse Agency action.

Dated: March 1, 1999.

Betty L. Bailey,

Director, Office of Acquisition Management.

[FR Doc. 99–8479 Filed 4–7–99; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AF01

Endangered and Threatened Wildlife and Plants; Determination of Threatened Status for the Jarbidge River Population Segment of Bull Trout

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), determine threatened status for the Jarbidge River distinct population segment of bull trout (*Salvelinus confluentus*) from the Jarbidge River basin in northern Nevada and southern Idaho, with a special rule, pursuant to the Endangered Species Act of 1973, as amended (Act). The Jarbidge River population segment, composed of a single subpopulation with few individuals, is threatened by habitat degradation from past and ongoing land

management activities such as road construction and maintenance, mining, and grazing; interactions with non-native fishes; and incidental angler harvest. We based this final determination on the best available scientific and commercial information including current data and new information received during the comment period. This action continues protection for this population segment of the bull trout which was effective for a 240-day period beginning when we emergency listed this population segment on August 11, 1998.

EFFECTIVE DATE: This rule is effective on April 8, 1999.

ADDRESSES: The complete administrative file for this rule is available for inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, Nevada Fish and Wildlife Office, 1340 Financial Boulevard, Suite 234, Reno, Nevada 89502–7147.

FOR FURTHER INFORMATION CONTACT: Robert D. Williams, Field Supervisor, at the above address (telephone 775/861–6300; facsimile 775/861–6301).

SUPPLEMENTARY INFORMATION:

Background

Bull trout (*Salvelinus confluentus*), members of the family Salmonidae, are char native to the Pacific northwest and western Canada. They historically occurred in major river drainages in the Pacific northwest from about 41° N to 60° N latitude, from the southern limits in the McCloud River in northern California and the Jarbidge River in Nevada, north to the headwaters of the Yukon River in Northwest Territories, Canada (Cavender 1978; Bond 1992). To the west, bull trout range includes Puget Sound, various coastal rivers of Washington, British Columbia, Canada, and southeast Alaska (Bond 1992; Leary and Allendorf 1997). Bull trout are relatively dispersed throughout tributaries of the Columbia River basin, including its headwaters in Montana and Canada. Bull trout also occur in the Klamath River basin of south-central Oregon. East of the Continental Divide, bull trout are found in the headwaters of the Saskatchewan River in Alberta and the MacKenzie River system in Alberta and British Columbia (Cavender 1978; Brewin and Brewin 1997). Bull trout habitat in the Jarbidge River basin is a mosaic of land ownership, including Federal lands administered by the U.S. Forest Service (USFS) and U.S. Bureau of Land Management (BLM); State lands in Idaho; and private lands.

Bull trout were first described as *Salmo spectabilis* by Girard in 1856 from a specimen collected on the lower Columbia River (Cavender 1978). Bull trout and Dolly Varden (*Salvelinus malma*) were previously considered a single species (Cavender 1978; Bond 1992); however, they were formally recognized as separate species by the American Fisheries Society in 1980 (Robins *et al.* 1980).

Bull trout exhibit both resident and migratory life history strategies through much of the current range (Rieman and McIntyre 1993). Resident bull trout complete their life cycles in the tributary streams in which they spawn and rear. Migratory bull trout spawn in tributary streams, and juvenile fish rear from 1 to 4 years before migrating to either a lake (adfluvial), river (fluvial), or in certain coastal areas, saltwater (anadromous), to mature (Fraley and Shepard 1989; Goetz 1989). Resident and migratory forms may be found together, and bull trout may produce offspring exhibiting either resident or migratory behavior (Rieman and McIntyre 1993).

Compared to other salmonids, bull trout have more specific habitat requirements (Rieman and McIntyre 1993) that appear to influence their distribution and abundance. These habitat components include water temperature, cover, channel form and stability, valley form, stream elevation, spawning and rearing substrates, and migratory corridors (Oliver 1979; Pratt 1984, 1992; Fraley and Shepard 1989; Goetz 1989; Hoelscher and Bjornn 1989; Sedell and Everest 1991; Howell and Buchanan 1992; Rieman and McIntyre 1993, 1995; Rich 1996; Watson and Hillman 1997). Watson and Hillman (1997) concluded that watersheds must have specific physical characteristics to provide the necessary habitat requirements for bull trout spawning and rearing, and that the characteristics are not necessarily ubiquitous throughout watersheds in which bull trout occur. Because bull trout exhibit a patchy distribution, even in undisturbed habitats (Rieman and McIntyre 1993), fish would not likely occupy all available habitats simultaneously (Rieman *et al.* 1997).

Bull trout are typically associated with the colder streams in a river system, although individual fish can occur throughout larger river systems (Fraley and Shepard 1989; Rieman and McIntyre 1993, 1995; Buchanan and Gregory 1997; Rieman *et al.* 1997). For example, water temperature above 15° C (59° F) is believed to negatively influence bull trout distribution, which partially explains the generally patchy distribution within a watershed (Fraley and Shepard 1989; Rieman and McIntyre 1995). Spawning areas are often associated with cold-water springs, groundwater infiltration, and the coldest streams in a given watershed (Pratt 1992; Rieman and McIntyre 1993; Rieman *et al.* 1997).

All life history stages of bull trout are associated with complex forms of cover, including large woody debris, undercut banks, boulders, and pools (Oliver 1979; Fraley and Shepard 1989; Goetz 1989; Hoelscher and Bjornn 1989; Sedell and Everest 1991; Pratt 1992; Thomas 1992; Rich 1996; Sexauer and James 1997; Watson and Hillman 1997). Jakober (1995) observed bull trout overwintering in deep beaver ponds or pools containing large woody debris in the Bitterroot River drainage, Montana, and suggested that suitable winter habitat may be more restrictive than summer habitat. Maintaining bull trout populations requires stream channel and flow stability (Rieman and McIntyre 1993). Juvenile and adult bull trout frequently inhabit side channels, stream margins, and pools with suitable cover (Sexauer and James 1997). These areas are sensitive to activities that directly or indirectly affect stream channel stability and alter natural flow patterns. For example, altered stream flow in the fall may disrupt bull trout during the spawning period and channel instability may decrease survival of eggs and young juveniles in the gravel during winter through spring (Fraley and Shepard 1989; Pratt 1992; Pratt and Huston 1993).

Preferred spawning habitat generally consists of low gradient streams with loose, clean gravel (Fraley and Shepard 1989) and water temperatures of 5 to 9° C (41 to 48° F) in late summer to early fall (Goetz 1989). However, biologists collected young-of-the-year bull trout in high gradient stream reaches with minimal gravel within the Jarbidge River basin, indicating that spawning occurred in these areas or further upstream (Gary Johnson, Nevada Division of Wildlife (NDOW), pers. comm. 1998a; Terry Crawforth, NDOW, *in litt.* 1998). Pratt (1992) reported that increases in fine sediments reduce egg survival and emergence.

The size and age of maturity for bull trout is variable depending upon life history strategy. Growth of resident fish is generally slower than migratory fish; resident fish tend to be smaller at maturity and less fecund (Fraley and Shepard 1989; Goetz 1989). Resident adults range from 150 to 300 millimeters (mm) (6 to 12 inches (in)) total length and migratory adults commonly reach 600 mm (24 in) or more (Goetz 1989).

Bull trout normally reach sexual maturity in 4 to 7 years and live as long

as 12 years. Repeat and alternate year spawning have been reported, although repeat spawning frequency and post-spawning mortality are not well known (Leathe and Graham 1982; Fraley and Shepard 1989; Pratt 1992; Rieman and McIntyre 1996). Bull trout typically spawn from August to November during periods of decreasing water temperatures. However, migratory bull trout may begin spawning migrations as early as April, and move upstream as far as 250 kilometers (km) (155 miles (mi)) to spawning grounds in some areas of their range (Fraley and Shepard 1989; Swanberg 1997). Temperatures during spawning generally range from 4 to 10° C (39 to 51° F), with redds (spawning beds) often constructed in stream reaches fed by springs or near other sources of cold groundwater (Goetz 1989; Pratt 1992; Rieman and McIntyre 1996). Depending on water temperature, egg incubation is normally 100 to 145 days (Pratt 1992), and juveniles remain in the substrate after hatching. Time from egg deposition to emergence may surpass 200 days. Fry normally emerge from early April through May depending upon water temperatures and increasing stream flows (Pratt 1992; Ratliff and Howell 1992).

Bull trout are opportunistic feeders, with food habits primarily a function of size and life history strategy. Resident and juvenile bull trout prey on terrestrial and aquatic insects, macro-zooplankton, amphipods, mysids, crayfish, and small fish (Wyman 1975; Rieman and Lukens 1979 in Rieman and McIntyre 1993; Boag 1987; Goetz 1989; Donald and Alger 1993). Adult migratory bull trout are primarily piscivorous (fish eating) and are known to feed on various trout and salmon species (*Onchorynchus* spp.), whitefish (*Prosopium* spp.), yellow perch (*Perca flavescens*) and sculpin (*Cottus* spp.) (Fraley and Shepard 1989; Donald and Alger 1993).

In the Jarbidge River basin, bull trout occur with native redband trout (*Oncorhynchus mykiss*), mountain whitefish (*Prosopium williamsoni*), sculpin, bridgelip sucker (*Catostomus columbianus*), and various minnow (Cyprinidae) species. Introductions of non-native fishes, including brook trout (*Salvelinus fontinalis*), and hatchery rainbow trout (*O. mykiss*), have also occurred within the range of bull trout in the Jarbidge River basin. These non-native fishes have been associated with local bull trout declines and extirpations elsewhere in the species' range (Bond 1992; Ziller 1992; Donald and Alger 1993; Leary *et al.* 1993; Montana Bull Trout Scientific Group (MBTSG) 1996a).

Stocked brook trout failed to establish a self-sustaining population in the Jarbidge River system, but an introduced population still occurs in Emerald Lake, a high-elevation lake within the Jarbidge River watershed (T. Crawforth, *in litt.* 1998; Rich Haskins, NDOW, pers. comm. 1998; G. Johnson, pers. comm. 1998). Brook trout may spill out of the lake into the East Fork of the Jarbidge River during peak runoff events, although the lack of a defined outlet makes such an event appear unlikely (G. Johnson, pers. comm. 1994). NDOW's rainbow trout stocking program in the Jarbidge River system has been ongoing since the 1970s, and the Idaho Department of Fish and Game (IDFG) stocked rainbow trout in the Idaho portion of the East and West Forks of the Jarbidge River from 1970 to 1989 (Fred Partridge, IDFG, *in litt.* 1998).

Migratory corridors link seasonal habitats for all bull trout life history forms. The ability to migrate is important to the persistence of local bull trout subpopulations (Rieman and McIntyre 1993; Mike Gilpin, University of California, *in litt.* 1997; Rieman and Clayton 1997; Rieman *et al.* 1997). Migrations facilitate gene flow among local subpopulations if individuals from different subpopulations interbreed when some return to non-natal streams. Migratory fish may also re-establish extirpated local subpopulations.

Metapopulation concepts of conservation biology theory may be applicable to the distribution and characteristics of bull trout (Rieman and McIntyre 1993). A metapopulation is an interacting network of local subpopulations with varying frequencies of migration and gene flow among them (Meffe and Carroll 1994). Metapopulations provide a mechanism for reducing risk because the simultaneous loss of all subpopulations is unlikely. Although local subpopulations may become extinct, they can be reestablished by individuals from other local subpopulations. However, because bull trout exhibit strong homing fidelity when spawning and their rate of straying appears to be low, natural reestablishment of extinct local subpopulations may take a very long time. Habitat alteration, primarily through construction of impoundments, dams, and water diversions, has fragmented habitats, eliminated migratory corridors, and isolated bull trout, often in the headwaters of tributaries (Rieman *et al.* 1997).

Distinct Population Segments

The best available scientific and commercial information identifies five distinct population segments (DPSs) of bull trout in the United States—(1) Klamath River, (2) Columbia River, (3) Coastal-Puget Sound, (4) Jarbidge River, and (5) St. Mary-Belly River. The final listing determination for the Klamath River and Columbia River bull trout DPSs on June 10, 1998 (63 FR 31647), includes a detailed description of the rationale behind the DPS delineation. The approach is consistent with the joint National Marine Fisheries Service and Fish and Wildlife Service policy for recognizing distinct vertebrate population segments under the Act, published on February 7, 1996 (61 FR 4722). This final rule addresses only the Jarbidge River DPS. The Coastal-Puget Sound and St. Mary-Belly River bull trout DPSs will be the subject of a final rule expected to be published in June 1999.

Three elements are considered in the decision on whether a population segment could be treated as threatened or endangered under the Act—discreteness, significance, and conservation status in relation to the standards for listing. Discreteness refers to the isolation of a population from other members of the species and is based on two criteria—(1) marked separation from other populations of the same taxon resulting from physical, physiological, ecological, or behavioral factors, including genetic discontinuity; and (2) populations delimited by international boundaries. Significance is determined either by the importance or contribution, or both, of a discrete population to the species throughout its range. Four criteria were used to determine significance—(1) persistence of the discrete population segment in an ecological setting unusual or unique for the taxon; (2) evidence that loss of the discrete population segment would result in a significant gap in the range of the taxon; (3) evidence that the discrete population segment represents the only surviving natural occurrence of the taxon that may be more abundant elsewhere as an introduced population outside its historic range; and (4) evidence that the discrete population segment differs markedly from other populations of the taxon in its genetic characteristics. If a population segment is discrete and significant, its evaluation for endangered or threatened status is based on the Act's standards.

The Jarbidge River in southwest Idaho and northern Nevada is a tributary in the Snake River basin and contains the southernmost habitat occupied by bull trout. This population segment is discrete because it is geographically segregated from other bull trout in the Snake River basin by more than 240 km (150 mi) of unsuitable habitat and

several impassable dams on the mainstem Snake River and the lower Bruneau River. The occurrence of a species at the extremities of its range is not necessarily sufficient evidence of significance to the species as a whole. However, since the Jarbidge River possesses bull trout habitat that is disjunct from other patches of suitable habitat, the population segment is considered significant because it occupies a unique or unusual ecological setting, and its loss would result in a substantial modification of the species' range.

Status and Distribution

To facilitate evaluation of current bull trout distribution and abundance for the Jarbidge River population segment, we analyzed data on a subpopulation basis because fragmentation and barriers have isolated bull trout. A subpopulation is considered a reproductively isolated bull trout group that spawns within a particular area(s) of a river system. In areas where two groups of bull trout are separated by a barrier (e.g., an impassable dam or waterfall, or reaches of unsuitable habitat) that may allow only downstream access (i.e., one-way passage), both groups would be considered subpopulations. In addition, subpopulations were considered at risk of extirpation from natural events if they were—

(1) Unlikely to be reestablished by individuals from another subpopulation (i.e., functionally or geographically isolated from other subpopulations);

(2) Limited to a single spawning area (i.e., spatially restricted); and

(3) Characterized by low individual or spawner numbers; or

(4) Consisted primarily of a single life history form.

For example, a subpopulation of resident fish isolated upstream of an impassable waterfall would be considered at risk of extirpation from natural events if it had low numbers of fish that spawn in a relatively restricted area. In such cases, a natural event such as a fire or flood could eliminate the subpopulation, and subsequently, the impassable waterfall would prevent reestablishment of the subpopulation by downstream fish. However, a subpopulation residing downstream of the waterfall would not be considered at risk of extirpation because of potential reestablishment by fish from upstream. Because resident bull trout may exhibit limited downstream movement (Nelson 1996), our estimate of subpopulations at risk of extirpation by natural events may be underestimated. We based the status of subpopulations on modified criteria of Rieman *et al.* (1997), including the abundance, trends in abundance, and the presence of life history forms of bull trout.

We considered a bull trout subpopulation "strong" if 5,000 individuals or 500 spawners likely occur in the subpopulation, abundance appears stable or increasing, and life history forms historically present were likely to persist. A subpopulation was considered "depressed" if less than 5,000 individuals or 500 spawners likely occur in the subpopulation, abundance appears to be declining, or a life history form historically present has been lost (Rieman *et al.* 1997). If there was insufficient abundance, trend, and life history information to classify the status of a subpopulation as either "strong" or "depressed," the status was considered "unknown." It should be noted that the assignment of "unknown" status implies only a deficiency of available data to assign a subpopulation as "strong" or "depressed," not a lack of information regarding the threats. Section 4 of the Act requires us to make a determination solely on the best scientific and commercial data available.

The Jarbidge River DPS is currently believed to contain a single subpopulation in the East Fork, West Fork, and mainstem Jarbidge River in Idaho and Nevada, and headwater tributaries in Nevada (Service 1998), however, further definitive genetic analysis of population structure is needed. This population segment is isolated from other bull trout by a large expanse of unsuitable habitat. Although accounts of bull trout in the Jarbidge River basin date to the 1930s, both sampling and actual collections of bull trout were infrequent (Miller and Morton 1952; Johnson 1990; Johnson and Weller 1994). Therefore, historical distribution and abundance data are limited.

The current distribution of bull trout in the Jarbidge River basin primarily includes headwater streams above 2,200 meters (m) (7,200 feet (ft)) elevation within the Jarbidge Wilderness Area—the East Fork and West Fork Jarbidge River and Slide, Dave, Pine, Sawmill, Fall, and Cougar Creeks (Johnson and Weller 1994; G. Johnson, pers. comm. 1998a). There is no definitive information on whether bull trout have been extirpated from Jarbidge River headwater tributaries. However, recent surveys indicate that bull trout have likely been extirpated from one historical tributary, Jack Creek (G. Johnson, pers. comm. 1998a; T. Crawforth, *in litt.* 1998).

In 1934, bull trout were first collected in Dave Creek (East Fork Jarbidge River drainage) downstream of the Idaho-Nevada border (Miller and Morton 1952). They were later documented in the East Fork of the Jarbidge River in 1951 and the West Fork in 1954 (T. Crawforth, *in litt.* 1998). Zoellick *et al.* (1998) compiled survey data from 1954 through 1993 and estimated bull trout population size in the middle and upper headwater areas of the West and East Forks of the Jarbidge River at less than 150 fish/km (240 fish/mi). Low numbers of migratory (fluvial) bull trout were documented in the West Fork of the Jarbidge River from the 1970s through the mid-1980s (Johnson and Weller 1994). In 1985, 292 resident-size bull trout were estimated to reside in the West Fork (Johnson and Weller 1994). In 1993, the abundance of resident-size bull trout in the East Fork was estimated at 314 fish (Johnson and Weller 1994). During snorkel surveys conducted in October 1997, no bull trout were observed in 40 pools of the West Fork of the Jarbidge River. Biologists did not observe bull trout during surveys in the Idaho portion of the Jarbidge River basin in 1992 or 1995 (Warren and Partridge 1993; Allen *et al.* 1996). However, traps operated on the lower East and West Forks, during August through October 1997, captured a single small bull trout in Idaho on the West Fork. (Zoellick *et al.* 1996; T. Crawforth, *in litt.* 1998). The *Salvelinus confluentus* Curiosity Society (SCCS), a group of individuals interested in bull trout conservation, surveyed bull trout in the Jarbidge River in August 1998. During this 1-day survey, a total of approximately 40 stations were sampled throughout the West Fork of the Jarbidge River, Jack Creek, Pine Creek and tributaries, Dave Creek, Fall Creek and tributaries, Slide Creek and tributaries, and Sawmill Creek. A total of 66 adult and juvenile bull trout were reported as either collected or observed (Selena Werdon, Service, pers. comm. 1998). No bull trout were found in one historically occupied stream, Jack Creek, despite the removal of a fish barrier in 1997.

NDOW provided population estimates, based on extrapolations of SCCS data and NDOW surveys, which totaled about 1,800 fish in the West and East Forks of the Jarbidge River, and seven other creeks and tributaries (G. Johnson, pers. comm. 1998a). However, the value of this data is in question (see our response to "Issue 2"). Also, it is estimated that between 50 and 125 bull trout spawn throughout the Jarbidge River basin annually (G. Johnson, pers. comm. 1998b). Exact spawning sites and timing are uncertain (G. Johnson, pers. comm. 1998a). A total of three potential

resident bull trout redds were observed in the upper West Fork in 1995 and 1997 surveys (Ramsey 1997).

Adequate population trend information for bull trout in the Jarbidge River subpopulation is not available, although the current characteristics of bull trout in the basin include low numbers and disjunct distribution. These characteristics have been described as similar to that observed in the 1950s (Johnson and Weller 1994). Based on recent surveys, the bull trout population in the Jarbidge River basin is considered "depressed" in all of the occupied range. Migratory fish (fluvial) may be present in low abundance, but resident fish are the predominant life history form. Past and present activities within the Jarbidge River basin have likely restricted bull trout migration, thus reducing opportunities for bull trout reestablishment in areas where the fish are no longer found (Service 1998).

In 1998, the SCCS collected fin clips for genetic analysis from bull trout within the Jarbidge River basin. Although sample sizes from each stream varied and were typically small (less than 30 individuals), preliminary genetic analysis of these tissue samples using DNA microsatellites indicated that fish in the East and West Forks were highly differentiated, and that tributaries to the East Fork also showed differentiation (Jason Dunham, University of Nevada-Reno, *in litt.* 1998; Bruce Rieman, USFS, *in litt.* 1998; Paul Spruell, University of Montana, *in litt.* 1998). These preliminary data indicate the potential presence of multiple, tributary resident bull trout subpopulations, with limited gene flow among them, within the Jarbidge River basin (T. Crawforth, *in litt.* 1998; J. Dunham, *in litt.* 1998; B. Rieman, *in litt.* 1998).

In summary, we considered new, though limited, information submitted on the abundance, trends in abundance, and distribution of bull trout in the Jarbidge River population segment. Resident fish inhabit the East Fork and West Fork of the Jarbidge River and tributary streams, and extremely low numbers of migratory (fluvial) fish may still be present in the watershed (Zoellick *et al.* 1996; K. Ramsey, USFS, *in litt.* 1997; L. McLelland, NDOW, *in litt.* 1998; Crawforth, *in litt.* 1998). If the Jarbidge River DPS is extirpated, individuals from other areas are unlikely to reestablish this DPS due to the presence of dams downstream on the Snake and Bruneau Rivers and the 240 km (150 mi) of unsuitable, degraded habitat within these migratory corridors. Past and present activities within the Jarbidge River basin have likely restricted bull trout migration, thus reducing opportunities for bull trout reestablishment in areas where the fish are no longer found (Service 1998). There is no definitive information on whether bull trout have been extirpated from Jarbidge River headwater tributaries. However, recent surveys indicate that bull trout have likely been extirpated from one historical tributary, Jack Creek.

Previous Federal Action

On October 30, 1992, we received a petition to list the bull trout as an endangered species throughout its range from the following conservation organizations in Montana: Alliance for the Wild Rockies, Inc., Friends of the Wild Swan, and Swan View Coalition (petitioners). The petitioners also requested an emergency listing and concurrent critical habitat designation for bull trout populations in select aquatic ecosystems where the biological information indicated that the species was in imminent risk of extinction. A 90-day finding, published on May 17, 1993 (58 FR 28849), determined that the petitioners had provided substantial information indicating that listing of the species may be warranted. We initiated a rangewide status review of the species concurrent with publication of the 90-day finding.

On June 6, 1994, we concluded in our original 12-month finding that listing of bull trout throughout its range was not warranted due to unavailable or insufficient data regarding threats to, and status and population trends of, the species within Canada and Alaska. However, we determined that sufficient information on the biological vulnerability and threats to the species was available to support a warranted finding to list bull trout within the coterminous United States but this action was precluded due to higher priority listings.

On November 1, 1994, Friends of the Wild Swan, Inc. and Alliance for the Wild Rockies, Inc. (plaintiffs) filed suit in the U.S. District Court of Oregon (District Court) arguing that the warranted but precluded finding was arbitrary and capricious. After we "recycled" the petition and issued another 12-month finding for the coterminous population of bull trout on June 12, 1995 (60 FR 30825), the District Court issued an order declaring the plaintiffs' challenge to the original finding moot. The plaintiffs declined to amend their complaint and appealed to the Ninth Circuit Court of Appeals (Circuit Court), which found that the plaintiffs' challenge fell "within the exception to the mootness doctrine for claims that are capable of repetition yet evading review." On April 2, 1996, the Circuit Court remanded the case back to the District Court. On November 13, 1996, the District Court issued an order and opinion remanding the original finding to us for further consideration. Included in the instructions from the District Court were requirements that we limit our review to the 1994 administrative record, and incorporate any emergency listings or high magnitude threat determinations into current listing priorities. The reconsidered 12-month finding based on the 1994 Administrative Record was delivered to the District Court on March 13, 1997.

On March 24, 1997, the plaintiffs filed a motion for mandatory injunction to compel us to issue a proposed rule to list the Klamath River and Columbia River bull trout populations within 30 days based solely on the 1994 Administrative Record. On April 4, 1997, we requested 60 days to prepare and review the proposed rule. In a stipulation between the plaintiffs and us filed with the District Court on April 11, 1997, we agreed to issue a proposed rule in 60 days to list the Klamath River population of bull trout as endangered and the Columbia River population of bull trout as threatened based solely on the 1994 record.

We proposed the Klamath River population of bull trout as endangered and Columbia River population of bull trout as threatened on June 13, 1997 (62 FR 32268). The proposal included a 60-day comment period and gave notice of five public hearings in Portland, Oregon; Spokane, Washington; Missoula, Montana; Klamath Falls, Oregon; and Boise, Idaho. The comment period on the proposal, which originally closed on August 12, 1997, was extended to October 17, 1997 (62 FR 42092), to provide the public with more time to compile information and submit comments.

On December 4, 1997, the District Court ordered us to reconsider several aspects of the 1997 reconsidered finding. On February 2, 1998, the District Court gave us until June 12, 1998, to respond. The final listing determination for the Klamath River and Columbia River population segments of bull trout and the concurrent proposed listing rule for the Coastal-Puget Sound, St. Mary-Belly River, and Jarbidge River DPSs constituted our response.

We published a final rule listing the Klamath River and Columbia River population segments of bull trout as threatened on June 10, 1998 (63 FR 31647). On the same date, we also published a proposed rule to list the

Coastal-Puget Sound, Jarbidge River, and St. Mary-Belly River population segments of bull trout as threatened (63 FR 31693). On August 11, 1998, we issued an emergency rule listing the Jarbidge River population segment of bull trout as endangered due to river channel alteration associated with unauthorized road construction on the West Fork of the Jarbidge River, which we found to imminently threaten the survival of the distinct population segment (63 FR 42757).

Summary of Comments and Recommendations

In the June 10, 1998, proposed rule (63 FR 31693), we requested interested parties to submit comments or information that might contribute to the final listing determination for bull trout. We sent announcements of the proposed rule and notice of public hearings to at least 800 individuals, including Federal, State, county and city elected officials, State and Federal agencies, interested private citizens and local area newspapers and radio stations. We also published announcements of the proposed rule in 10 newspapers, the Idaho Statesman, Boise, Idaho; the Times-News, Twin Falls, Idaho; the Glacier Reporter, Browning, Montana; the Daily Inter Lake; Kalispell, Montana; the Great Falls Tribune, Great Falls, Montana; the Elko Daily Free Press, Elko, Nevada; the Bellingham Herald, Bellingham, Washington; the Olympian, Olympia, Washington; the Spokesman-Review, Spokane, Washington, and the Seattle Post-Intelligencer, Seattle, Washington. We held public hearings on July 7, 1998, in Lacey, Washington; July 9, 1998, in Mount Vernon, Washington; July 14, 1998, in East Glacier, Montana; and July 21, 1998, in Jackpot, Nevada. We accepted comments on the emergency rule for the Jarbidge River DPS until the comment period on the proposed rule ended on October 8, 1998.

We received 9 oral and 14 written comments (including electronic mail) on the proposed rule which pertained to the Jarbidge River DPS; other comments were generic to all three DPSs. Of those specific to the Jarbidge River DPS, four written comments also addressed the emergency rule. We also received comments on the Jarbidge River DPS from two Federal agencies, two State agencies, one county in Nevada, four environmental organizations, and nine individuals. We received comments from a member of the Nevada Congressional delegation. In addition, we solicited formal scientific peer review of the proposal in accordance with our July 1, 1994, Interagency Cooperative Policy (59 FR 34270). We requested six individuals, who possess expertise in bull trout biology and salmonid ecology, and whose affiliations include academia and Federal, State, and provincial agencies, to review the proposed rule by the close of the comment period. One individual responded to our request and their comments are also addressed in this section of the rule.

We considered all comments, including oral testimony presented at the public hearings, and also the comments from the only peer reviewer who responded to our request to review the proposed rule. A majority of comments supported the listing proposal for the Jarbidge River DPS, while seven comments were in opposition. Opposition was based on several concerns, including possible negative economic effects from listing bull trout; potential restrictions on activities; lack of solutions to the bull trout decline that would result from listing; and interpretation of data concerning the status of bull trout and their threats in the three population segments. The USFS (Ben Siminoe, USFS, *in litt.* 1998; Dave Aicher, USFS, pers. comm. 1998), BLM (Jim Klott, BLM, pers. comm. 1998), NDOW (G. Johnson, NDOW, pers. comm. 1998a; R. Haskins, NDOW, *in litt.* 1998), and IDFG (F. Partridge, IDFG, *in litt.* 1998) provided us with information on respective agency efforts to assess, evaluate, monitor, and conserve bull trout in habitats affected by each agency's management. Because multiple respondents offered similar comments, we grouped comments of a similar nature or point. These comments and our responses are presented below.

Issue 1: One respondent questioned our subpopulation definition and asked whether absolute reproductive isolation was required or only some level of population structuring that means reduced gene flow and some local adaptation. Several respondents questioned our single subpopulation designation for the Jarbidge River DPS given preliminary new genetic information which indicates the potential presence of multiple local tributary subpopulations, with limited gene flow. Some respondents also suggested that the bull trout in the Jarbidge River may better fit the definition of a metapopulation, as described in the proposed rule (63 FR 31693). Respondents pointed out that genetic information and changes in DPS population structuring have implications for risk assessment, as well as management and recovery strategies.

Our Response: We selected subpopulations as a convenient unit to analyze bull trout within population segments, and defined a subpopulation as "a reproductively isolated group of bull trout that spawns within a particular area of a river system." We identified subpopulations based on documented or likely barriers to fish movement (e.g., impassable barriers to movement and unsuitable habitat). To be considered a single subpopulation, two-way passage at a barrier is required, otherwise bull trout upstream and downstream of a barrier are each considered a subpopulation. Because it is likely that fish above a barrier could pass downstream and mate with fish downstream, absolute reproductive isolation was not required to be considered a subpopulation.

We viewed metapopulation concepts (see Rieman and McIntyre 1993) as useful tools in evaluating bull trout, but, in querying biologists both within the Service and elsewhere, we found considerable variability in the definition of a metapopulation and the types of data suggestive of a metapopulation. Some biologists may consider a subpopulation, as defined by us, as a metapopulation if it has multiple spawning areas. Likewise, subpopulations without reciprocal interactions (i.e., individuals from upstream of a barrier may mingle with individuals downstream, but not vice versa) may be considered components of a metapopulation consisting of more than one subpopulation. Because little genetic and detailed movement information exists throughout bull trout range in the population segments addressed in the proposed rule, we believe that barriers to movement was an appropriate consideration for identifying subpopulations.

We reviewed preliminary new genetic and other biological data developed since the June 10, 1998 (63 FR 31693), proposed rule and determined that there is insufficient information available to further divide the Jarbidge River DPS into more than one subpopulation at this time. We believe that barriers to movement (including unsuitable habitat) were an appropriate consideration for identifying subpopulations. However, we believe that additional samples of genetic data for several tributaries are needed to accurately define bull trout population structure within the Jarbidge River basin. We still consider this DPS to contain one subpopulation based on the following: (1) conclusive genetic data are not available due to limited sample sizes from many of the tributaries; (2) bull trout in these tributaries are not

physically reproductively isolated; and (3) barriers to movement exist.

We did consider this new genetic information and potential metapopulation structure in assessing the overall level of threat to this DPS. Although the existence of a potential metapopulation may reduce the risk of extinction for this DPS as a whole, the potential presence of unique genetic material in each tributary further elevates their individual relative importance within the DPS. The genetic diversity of all bull trout within the basin will be fully considered in future management and recovery planning in the Jarbidge River basin. As more complete genetic data become available, management and recovery actions may change accordingly.

Issue 2: Numerous respondents provided conflicting comments on the status and trend of bull trout in the Jarbidge River DPS. Respondents variously claimed that population status is either stable, increasing, or uncertain. Some respondents questioned the amount and reliability of survey data and sampling methodologies. One respondent noted that we did not evaluate the listing criteria with objective and quantitative methods, making it difficult to interpret new information in a consistent manner. The reviewer also noted that, although quantitative data are lacking for many local populations of bull trout, sufficient information exists to design an inventory program to describe their current distribution, relative abundance, and population structure.

Our Response: A species may be determined to be an endangered or threatened species due to the five factors listed in section 4(a)(1) of the Act (see the "Summary of Factors Affecting the Species" section). The Act requires us to base listing determinations on the best available commercial and scientific information.

The listing process includes an opportunity for the public to comment and provide new information for us to evaluate and consider before making a final decision. Aside from previously cited studies and reports in the proposed and emergency rules, we reviewed and considered new information regarding bull trout distribution and abundance for the Jarbidge River basin from NDOW (G. Johnson, pers. comm. 1998a; T. Crawforth, *in litt.* 1998) and the SCCS (S. Werdon, pers. comm. 1998). Data are often not available to make statistically rigorous inferences about a species' status (e.g., abundance, trends in abundance, and distribution). Historical and recent collections have consisted of a few, sporadic presence and absence-type surveys occurring years or decades apart, each reflecting a single point-in-time. No regular, standardized, quantitative surveys designed to detect population trends of bull trout over a period of time, with statistical testing to qualify data accuracy, have been done.

NDOW provided us with population estimates for streams in the Jarbidge River basin which they derived by extrapolating the number of bull trout collected or observed (via single-pass electrofishing or snorkeling) within 30-m (100-ft) stations to kilometers (miles) of stream habitat. For example, one bull trout per station equaled an average population density of 85 bull trout/km (52.8 bull trout/mi) in a particular stream reach. We believe these extrapolations are inaccurate since past surveys confirm that bull trout exhibit patchy distributions, and comparisons of such population estimates among years does not provide an accurate analysis of population trends. We specifically requested additional information from NDOW during the comment period, however, they did not provide information on the actual number of bull trout collected or observed, the sizes or life-stages of the fish, or the specific locations where fish were collected during 1998 surveys. This information would be useful for comparison with prior distribution and abundance data. Nevertheless, we believe overall numbers in the subpopulation are low, and that concentrations of fish are found in only a few headwater streams where suitable habitat remains. Overall, we found sufficient evidence exists that demonstrates the Jarbidge River population segment is threatened by a variety of past and on-going threats and is likely to become endangered in the foreseeable future.

Issue 3: Numerous respondents provided conflicting comments on the validity and level of impact from threats identified in the proposed and emergency rules. Some respondents also suggested additional threats to this population.

Our Response: Threats identified in the proposed rule for the Jarbidge River DPS include habitat degradation from past and ongoing land management activities such as road construction and maintenance, mining, and livestock grazing. Additional threats we evaluated included non-native rainbow trout stocking, angling for other fish species, migration barriers, and future natural events. We emergency listed the population due to habitat destruction on the West Fork of the Jarbidge River associated with unauthorized road construction, and the substantial risk of continued loss of bull trout habitat through additional unauthorized road construction. We believe the threats identified in the proposed and emergency rules threaten the continued existence of bull trout in the Jarbidge River system. However, respondents may have misconstrued our perceived level of threat associated with certain activities, livestock grazing in particular. We recognize that existing levels of livestock grazing provide relatively minor impacts to bull trout habitat throughout the Jarbidge River basin; however, all potential threats must be considered during the listing process.

Many of the threats addressed in the proposed rule were associated with residual effects from historical activities within the basin (e.g., mining) and some respondents felt they were no longer valid threats. We recognize that overall watershed conditions have improved from early this century, but impacts to bull trout habitat from such historical activities still exist (e.g., elevated water temperatures from mine adit discharges). Road construction and associated maintenance activities, especially those occurring within riparian areas or adjacent to occupied bull trout streams, have documented impacts on bull trout habitat conditions and thereby threaten bull trout.

Issue 4: Many respondents provided comments regarding prior and ongoing beneficial management and/or habitat rehabilitation measures for bull trout throughout the Jarbidge River watershed. Some respondents also stated that overall watershed conditions in the Jarbidge River basin are improving.

Our Response: Section 4(b)(1)(A) of the Act, requires us to make listing decisions solely on the best scientific and commercial data available after conducting a review of the status of the species. The Act also instructs us to consider existing regulatory mechanisms, including efforts by State, local and other entities to protect a species, including conservation plans or practices.

We recognize that numerous individual conservation actions and restoration projects have been undertaken by the USFS, BLM, States, conservation groups, and other entities for bull trout in the Jarbidge River basin. For example, the Jarbidge Bull Trout Task Force, established in 1994, completed a project to restore access for bull trout to Jack Creek in 1997. However, no bull trout were found in Jack Creek in 1998. The USFS has fenced some springs to protect riparian

areas and improve water quality, and implemented reclamation of old mine sites. Idaho and Nevada State angler harvest regulations for bull trout have also become more restrictive.

We are required to evaluate the current status and existing threats to bull trout in the Jarbidge River DPS in making this final listing determination. Altogether, watershed habitat recovery and actions taken to date are encouraging for initiating long-term bull trout conservation. However, we have found no documentation of changes in abundance and distribution of bull trout as a result of such actions. For example, surveys conducted by biologists did not find bull trout in Jack Creek during 1997 or 1998 after the removal of a culvert barrier. Although impacts to bull trout from historical and on-going activities still exist, we recognize that overall watershed conditions in the Jarbidge River basin have improved, and we are now finalizing our listing of bull trout as threatened, rather than as endangered (see "Issue 6" for further discussion).

Issue 5: Several respondents opposed the Federal listing entirely, while others supported listing the population as threatened or endangered. One respondent commented that we proposed this listing as a result of a lawsuit, rather than sound scientific evidence, as required by the Act.

Our Response: Although the timing of recent listing actions were prompted by petitions and legal action, we previously had substantial information on biological vulnerability and threats on file to support preparation of a bull trout listing proposal, and the decision to list was based solely on scientific data and threats identified during the status review process.

Issue 6: One respondent stated that the August 11, 1998, emergency listing was "inappropriate based on the level of threat" posed by unauthorized road reconstruction activities to reopen 2.4 km (1.5 mi) of road.

Our Response: Road construction and maintenance activities, especially those occurring within riparian areas or adjacent to streams, have substantial documented adverse impacts on bull trout habitats. The threats to bull trout from the unauthorized road construction activities on the West Fork of the Jarbidge River include both direct and indirect impacts. These activities occurred on a migratory corridor during the period when bull trout migrate and spawn. Migratory or resident bull trout may have been stranded and killed when the entire river was diverted and the existing wetted channel was filled. Elko County did not use Best Management Practices (BMPs) to protect instream aquatic habitat during construction, and large quantities of sediment from the disturbed area settled out in the river immediately downstream, filling in pools and interstitial spaces. The sediment plume traveled at least 5.6 km (3.5 mi) downstream (B. Siminoe, pers. comm. 1998), within known bull trout habitats. The newly created channel provided minimal instream or overhead cover, with few resting areas for migratory or resident fish, and at low flow, would impede bull trout migrations. We also anticipated long-term residual impacts such as sedimentation from the new roadbed, floodplain vegetation destruction, slope cuts, and channel instability. Elko County expressed their intentions to continue road reconstruction despite being informed of various regulatory prohibitions. The threat of continued unauthorized road reconstruction without the use of BMPs was considered in the emergency listing.

Issue 7: Several respondents opposed the proposed listing of the Jarbidge River population segment and expressed concerns because of possible restrictions on local activities such as road construction, livestock grazing, and mining, which might impact local residents. One respondent stated that human use and bull trout conservation were "mutually compatible goals." Another respondent stated that future actions needed for bull trout will be the same whether it is listed or remains a "sensitive species."

Our Response: Section 7(a)(2) of the Act, as amended, requires Federal agencies to insure that activities that they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. This could include Federal activities such as road construction, livestock grazing management, and mining permit issuance. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with us. Portions of the Jarbidge River population segment occur on lands administered by the USFS and BLM. We have already consulted with these Federal agencies for several such projects in the Jarbidge River basin during the emergency listing period. Federal and private actions that we authorize through section 7 consultation or through section 10 of the Act (Habitat Conservation Plans) will not result in significant impacts to bull trout. Future impacts to local residents from this final listing determination are expected to be minimal when compared with the requirements of existing laws, regulations, and procedures. See "Available Conservation Measures" section for a list of actions that would not result in a take of this species.

Issue 8: A respondent noted that we are probably correct in stating that critical habitat is presently not determinable. They noted that consistent patterns in juvenile fish distribution, primarily with respect to stream elevation and water temperature, are useful in predicting patches of spawning and rearing habitats, which are probably sensitive to land use and important for the overall productivity of local populations. Several respondents encouraged us to consider several issues such as designating all historic and existing bull trout habitat as critical, protecting roadless and riparian areas, providing suitable water temperatures, limiting sediment delivery, and other habitat management activities.

Our Response: Section 3 of the Act defines critical habitat to include the specific areas within the geographic area occupied by the species at the time it is listed, on which are found those physical or biological features essential to the conservation of the species and which may require special management considerations or protection. Critical habitat may also include specific areas outside of the geographic area occupied by the species at the time it is listed, upon determination that such areas are essential for the conservation of the species. At this time, we find that critical habitat is not determinable for the Jarbidge River population segment. We appreciate the comments and believe that information on patterns in fish distribution will likely be useful in future critical habitat designations. This and other habitat considerations will also be important during development of the recovery plan.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, we determine that the Jarbidge River population segment of bull trout should be classified as a threatened species. We followed procedures found at section 4(a)(1) of the Act and regulations (50 CFR part 424) implementing the listing provisions of the Act. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to the Jarbidge River population segment of bull trout (*Salvelinus confluentus*) are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

Land and water management activities that degrade and continue to threaten all of the bull trout population segments in the coterminous United States include dams, forest management practices, livestock grazing, agriculture and agricultural diversions, roads, and mining (Furniss *et al.* 1991; Meehan 1991; Nehlsen *et al.* 1991; Sedell and Everest 1991; Frissell 1993; McIntosh *et al.* 1994; MBTSG 1995a,b; 1996a,b).

Ongoing threats affecting bull trout habitat have maintained degraded conditions in the West Fork of the Jarbidge River (McNeill *et al.* 1997; J. Frederick, pers. comm. 1998a; Kathy Ramsey, USFS, pers. comm. 1998a). McNeill *et al.* (1997) indicates that at least 11.2 km (7 mi) of the West Fork of the Jarbidge River is affected by over a century of human activities such as road development and maintenance, mining, stream channelization and removal of large woody debris, residential development, and road and campground development on USFS lands. These activities removed the riparian canopy and much of the upland forest, reduced recruitment of large woody debris, and decreased channel stability (McNeill *et al.* 1997; K. Ramsey, *in litt.* 1997; J. Frederick, *in litt.* 1998a), which can lead to increased stream temperatures and bank erosion, and decreased long-term stream productivity. However, there is little documentation of increased stream temperatures and bank erosion and decreased stream productivity in the Jarbidge River system, but there is documentation of these kinds of degradation in other systems within the range of the bull trout.

Strict, cold water temperature requirements make bull trout particularly vulnerable to activities that warm spawning and rearing waters (Goetz 1989; Pratt 1992; Rieman and McIntyre 1993). Bull trout distribution in the Jarbidge River population segment is likely affected by elevated stream temperatures as a result of past forest practices. Although timber was historically removed from the Jarbidge River basin, forest management is not thought to be a major factor currently affecting bull trout habitat. However, existing habitat conditions still reflect the impacts of past harvesting practices.

Road construction and maintenance account for a majority of human-induced sediment loads to streams in forested areas (Shepard *et al.* 1984; Cederholm and Reid 1987; Furniss *et al.* 1991). Sedimentation affects streams by reducing pool depth, altering substrate composition, reducing interstitial space, and causing braiding of channels (Rieman and McIntyre 1993), which reduce carrying capacity. Sedimentation and the loss of pool-forming structures such as boulders and large wood reduces quantities of large, deep pools (USDA *et al.* 1993). Increasing stream basin road densities and associated effects have been shown to cause declines in bull trout (Quigley and Arbelbide 1997). Fewer bull trout are present within highly roaded basins, and bull trout are less likely to use highly roaded basins for spawning and rearing (Quigley and Arbelbide 1997).

Road densities within the Jarbidge Canyon are currently characterized as moderate (Ramsey 1998). Bull trout habitats in portions of the Jarbidge River basin are negatively affected by the presence and maintenance of roads, especially those immediately adjacent to or crossing occupied streams. The unauthorized road construction and associated alterations to the West Fork of the Jarbidge River within the Humboldt-Toiyabe National Forest by the Elko County (Nevada) Road Department prompted our emergency listing of the Jarbidge River DPS on August 11, 1998 (63 FR 42757). On July 22, 1998, a USFS employee observed a 5.6-km (3.5-mi) plume of sediment in the West Fork, which extended downstream from a site where Elko County was using heavy equipment to reconstruct part of a USFS road that washed out during a flood in 1995 (B. Siminoe, pers. comm. 1998). By the following day, Elko County road crews reconstructed approximately 275 m (300 yards (yds)) of road. To create the road, sections of river were loosely filled with material from adjacent hillsides and floodplain debris. The entire river flow was diverted into a straight channel created with a bulldozer and/or front-end loader. This channel lacked pools and had minimal cover, as mature trees adjacent to the new channel and other riparian vegetation were removed during channel construction. Sedimentation in the river downstream of the construction area was substantial. Federal agencies have implemented channel and floodplain habitat restoration and stabilization practices, but impacts from the road reconstruction to bull trout habitat will likely remain for years. Impacts from County road maintenance practices within the Jarbidge Canyon and elsewhere, such as surface grading and dumping fill directly into the river to stabilize the road also continue to negatively impact bull trout habitat.

Improper livestock grazing can promote streambank erosion and sedimentation, and limit the growth of riparian vegetation important for temperature control, streambank stability, fish cover, and detrital input. The steep terrain of the Jarbidge River basin is a deterrent to livestock grazing (J. Frederick, *in litt.* 1998a). Approximately 40 percent of public and private lands within the watershed are grazed, and ongoing livestock grazing is affecting about 3.2 km (2 mi) of the East Fork of the Jarbidge River and portions of Dave Creek and Jack Creek by increasing sediment input, removing riparian vegetation, and trampling banks (J. Frederick, pers. comm. 1998; G. Johnson, pers. comm. 1998b). However, the effects are localized, and livestock grazing is considered only a minor localized threat to bull trout habitat in the Jarbidge River basin.

Mining can degrade aquatic systems by generating sediment and heavy metals pollution, altering water pH levels, and changing stream channels and flow. Although not currently active, the effects of past mining in the Jarbidge River basin continue to adversely affect streams. Cyanide and/or mercury amalgamation mills were operated directly on the river, and spoil piles are still located adjacent to the river. These piles may be sources of sediment, acidity, and heavy metals. In addition, some old mine adits continue to discharge thermally-elevated groundwater. Water quality and temperatures associated with historical mining are still of concern.

Migration barriers have precluded natural recolonization by bull trout in the Jarbidge River basin into historically occupied sites. For example, an Elko County road culvert had prevented upstream movement of bull trout in Jack Creek, a tributary to the West Fork of the Jarbidge River, for approximately 17 years. Private and public funding was used to replace the culvert with a bridge in the fall of 1997 (J. Frederick, *in litt.* 1998b), but bull trout have yet to return to this stream. In addition to structural barriers, stream habitat conditions (e.g., water temperature) are likely barriers to bull trout movement within the Jarbidge River basin.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Declines in bull trout abundance have prompted States to institute restrictive fishing regulations and eliminate the harvest of bull trout in all waters in Idaho and Nevada. Similar restrictive regulations resulted in an increase in recent observations of adult bull trout in other areas of their range. However,

illegal harvest and incidental harvest still threaten bull trout.

Overutilization by angling is a concern for the Jarbidge River DPS of bull trout. Idaho prohibited harvest of bull trout in the Jarbidge River basin as of 1995 and has shortened fishing seasons and implemented a two trout limit. Until recently, Nevada allowed harvest of up to 10 trout per day, including bull trout. Anglers harvested an estimated 100 to 400 bull trout annually in the Jarbidge River basin (Johnson 1990; Pat Coffin, Service, pers. comm. 1994; P. Coffin, *in litt.* 1995). On the West Fork of the Jarbidge River in Nevada, fishing pressure is between 1,500 to 3,500 angler days per year; the East Fork annually receives 500 to 1,500 angler days (P. Coffin, pers. comm. 1996). Nevada State fishing regulations were recently amended to prohibit harvest of bull trout effective March 1, 1998 (Gene Weller, NDOW, *in litt.* 1997; G. Johnson, pers. comm. 1998b). In addition, Nevada reduced the daily and possession limits for other trout species in the Jarbidge River basin from 10 to 5 trout. We anticipate that these regulation changes will have a long-term positive effect on the conservation of bull trout. Inaccurate identification of bull trout by anglers could result in unauthorized harvest, further impacting already low population levels in this DPS. Even though State regulations now require all bull trout incidentally captured to be released immediately, some residual injuries or mortality are likely associated with capture and handling.

Overutilization for scientific purposes can be a concern for the Jarbidge River DPS of bull trout in the long-term. State regulations require a scientific collection permit to collect bull trout for educational and scientific purposes, but permit application and reporting requirements are minimal. Although many bull trout collected for scientific purposes may be documented as released alive (e.g., after taking fin clips for genetic analysis), collection techniques such as electrofishing, have documented short- and long-term harmful effects on salmonids, including mortality, physical damage, behavioral changes, and physiological disturbances. Other types of permitted scientific research (e.g., implantation of radio tags) may also result in the loss of individual bull trout.

C. Disease or Predation

Diseases affecting salmonids are likely to be present in the Jarbidge River population segment, but are not thought to be a factor threatening bull trout. Instead, interspecific interactions, including predation, likely negatively affect bull trout where non-native salmonids are introduced (Bond 1992; Donald and Alger 1993; Leary *et al.* 1993; MBTSG 1996a; J. Palmisano and V. Kaczynski, Northwest Forestry Resources Council, *in litt.* 1997).

The NDOW and IDFG have introduced non-native salmonids, including brook trout and hatchery rainbow trout within the range of bull trout in the Jarbidge River basin. However, brook trout stocked in Nevada failed to establish a self-sustaining population in the Jarbidge River system and the NDOW has not stocked brook trout since 1960 (Johnson and Weller 1994; G. Johnson, pers. comm. 1998b; T. Crawforth, *in litt.* 1998). In the West Fork of the Jarbidge River, only approximately 1 percent of the angler harvest from the 1960s through the 1980s was brook trout (Johnson 1990). Hatchery-reared rainbow trout have been stocked annually for decades in both Nevada and Idaho portions of the basin. IDFG stocked a total of approximately 52,783 hatchery rainbow trout in the East (75 percent) and West (25 percent) forks of the Jarbidge River from 1970 through 1989 (F. Partridge, *in litt.* 1998), but then discontinued their stocking program. NDOW's average annual catchable rainbow trout stocking numbers on the West Fork of the Jarbidge River were 4,242 fish in the1970s; 3,287 fish from 1980 to 1986; and 3,000 fish from 1987 to 1994 (except 1991) (Johnson and Weller 1994). NDOW's rainbow trout stocking program continued through 1998, however, NDOW will not stock rainbow trout in the Jarbidge River system in 1999 (Gene Weller, NDOW, pers. comm. 1999).

D. The Inadequacy of Existing Regulatory Mechanisms

The implementation and enforcement of existing Federal and State laws designed to conserve fishery resources, maintain water quality, and protect aquatic habitat have not been sufficient to prevent past and ongoing habitat degradation leading to bull trout declines and isolation. Regulatory mechanisms, including the National Forest Management Act, the Federal Land Policy and Management Act, the Public Rangelands Improvement Act, the Clean Water Act, the National Environmental Policy Act, Federal Power Act, State Endangered Species Acts and numerous State laws and regulations oversee an array of land and water management activities that affect bull trout and their habitat.

Regulatory mechanisms have been inadequate to protect bull trout habitat in the Jarbidge River basin. The Jarbidge Canyon Road parallels the West Fork of the Jarbidge River for much of its length and includes at least seven undersized bridges for the stream and floodplain. Maintenance of the road and bridges requires frequent channel and floodplain modifications that affect bull trout habitat, such as channelization; removal of riparian trees and beaver dams; and placement of rock, sediment, and concrete (McNeill *et al.* 1997; J. Frederick, pers. comm. 1998a; J. Frederick, *in litt.* 1998a). Periodic channelization in the Jarbidge River by unknown parties has occurred without oversight by the U.S. Army Corps of Engineers (COE) Clean Water Act section 404 regulatory program (Mary Jo Elpers, Service, pers. comm. 1998), and the USFS. Illegal road openings, such as the removal of road barriers and unauthorized grading, have also occurred within the Humboldt-Toiyabe National Forest.

In 1995, a flood event washed out a 2.4-km (1.5-mi) portion of the upper Jarbidge Canyon road, which led to the Jarbidge Wilderness Area boundary. The USFS conducted an environmental analysis on options for restoring access to the wilderness and initially planned to reconstruct the road in the floodplain, which would have included channelizing the river (McNeill *et al.* 1997). After an appeal, the USFS subsequently completed additional environmental analyses and issued an environmental assessment on June 29, 1998, with construction of a hillside trail as the preferred alternative.

On July 15, 1998, the Elko County Board of Commissioners passed a resolution directing the Elko County Road Department to reconstruct the road. On July 22, 1998, the USFS discovered that road construction was in progress and observed a 5.6-km (3.5-mi) plume of sediment downstream from the construction site. Prior to the issuance of cease and desist orders from the COE and Nevada Division of Environmental Protection (NDEP) on July 23, 1998, the County partially reconstructed approximately 275 m (300 yds) of road, created a new river channel, and diverted the flow of the river into the new channel. The County failed to implement BMPs and damaged or destroyed habitat within the river channel and floodplain. Elko County continues to publicly assert that it has jurisdiction over the road, but the Service, USFS, and Elko County are cooperatively exploring alternatives for public access in the area that would not adversely impact bull trout habitat.

The Nevada water temperature standards throughout the Jarbidge River

are 21° C (67° F) for May through October, and 7° C (45° F) for November through April, with less than 1° C (2° F) change for beneficial uses (NDEP, *in litt.* 1998). Water temperature standards for May through October exceed temperatures conducive to bull trout spawning, incubation, and rearing (Rieman and McIntyre 1993; Buchanan and Gregory 1997). Also, several old mines are releasing small quantities of warm groundwater and potential contaminants into the West Fork of the Jarbidge River.

In 1994, a local Bull Trout Task Force was formed to gather and share information on bull trout in the Jarbidge River basin. The task force is open to individuals from Elko and Owyhee counties, the towns of Jarbidge (Nevada) and Murphy Hot Springs (Idaho), road districts, private landowners, conservation organizations, NDOW, IDFG, BLM, USFS, and the Service. The task force was successful in 1997 in obtaining nearly $150,000 for replacing the Jack Creek culvert with a concrete bridge to facilitate bull trout passage into Jack Creek. However, the task force has not yet developed a comprehensive conservation plan addressing threats to bull trout in the Jarbidge River basin.

In 1995, the USFS amended its Forest Plan for the Humbolt National Forest to include the Inland Native Fish Strategy, which was developed by the USFS to provide an interim aquatic conservation strategy for inland native fish in eastern Oregon and Washington, Idaho, western Montana, and portions of Nevada. This strategy sets a "no net loss" objective and is guiding USFS actions within bull trout habitat in the Jarbidge River basin.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

Natural and human factors affecting the continued existence of bull trout include—previous introductions of non-native species that compete with bull trout; subpopulation habitat fragmentation and isolation caused by human activities; and the risk of local extirpations due to natural events such as droughts and floods.

Introductions of non-native species by the Federal government, State fish and game departments and unauthorized private parties across the range of bull trout has resulted in declines in abundance, local extirpations, and hybridization of bull trout (Bond 1992; Howell and Buchanan 1992; Leary *et al.* 1993; Donald and Alger 1993; Pratt and Huston 1993; MBTSG 1995b; Platts *et al.* 1995; John Palmisano and V. Kaczynski, *in litt.* 1997). Non-native species may exacerbate stresses on bull trout from habitat degradation, fragmentation, isolation, and species interactions (Rieman and McIntyre 1993). In some lakes and rivers, introduced species including rainbow trout and kokanee may benefit large adult bull trout by providing supplemental forage (Pratt 1992; MBTSG 1996a). However, the same introductions of game fish can negatively affect bull trout due to increased angling and subsequent incidental catch, illegal harvest of bull trout, and competition for space (Rode 1990; Bond 1992).

"The smaller and more isolated parts of the range (such as the bull trout remaining in the Jarbidge River basin) likely face a higher risk" of extirpation by natural events relative to other bull trout populations (Rieman *et al.* 1997). One such risk factor is fire. In 1992, a 4,850 hectare (12,000 acre) fire (Coffeepot Fire) occurred at elevations up to 2,280 m (7,500 ft), in areas adjacent to the Bruneau River basin and a small portion of the Jarbidge River basin. Although the Coffeepot Fire did not affect areas currently occupied by bull trout, similar conditions likely exist in nearby areas where bull trout occur. Adverse effects of fire on bull trout habitat may include loss of riparian canopy, increased water temperature and sediment, loss of pools, mass wasting of soils, altered hydrologic regime and debris torrents. Fires large enough to eliminate one or two suspected spawning streams are more likely at higher elevations where bull trout are usually found in the Jarbidge River basin (J. Frederick, *in litt.* 1998a; K. Ramsey, pers. comm. 1998b).

Other natural risks have been recently documented. The Jarbidge River Watershed Analysis indicates that 65 percent of the upper West Fork of the Jarbidge River basin has a 45 percent or greater slope (McNeill *et al.* 1997). Debris from high spring runoff flows in the various high gradient side drainages such as Snowslide, Gorge, and Bonanza gulches provide the West Fork of the Jarbidge River with large volumes of angular rock material. This material has moved down the gulches at regular intervals, altering the river channel and damaging the Jarbidge Canyon road, culverts, and bridge crossings. Most of the river flows are derived from winter snowpack in the high mountain watershed, with peak flows corresponding with spring snowmelt, typically in May and June (McNeill *et al.* 1997). Rain-on-snow events earlier in the year (January and February) can cause extensive flooding problems and have the potential for mass-wasting, debris torrents, and earth slumps, which could threaten the existence of bull trout in the upper Jarbidge River and tributary streams. In June 1995, a rain-on-snow event triggered debris torrents from three of the high gradient tributaries to the Jarbidge River in the upper watershed (McNeill *et al.* 1997). The relationship between these catastrophic events and the history of intensive livestock grazing, burning to promote livestock forage, timber harvest and recent fire control in the Jarbidge River basin is unclear. Debris torrents may potentially affect the long-term viability of the Jarbidge River bull trout subpopulation.

We have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by the Jarbidge River population segment of bull trout in determining to issue this rule. This population segment is characterized by low numbers of resident and migratory fish comprising a single, isolated subpopulation, within marginal habitat conditions for the species at the southern-most extremity of its range. The Jarbidge River DPS is vulnerable to extinction due to threats from activities such as road construction and maintenance, recreational fishing (intentional and unintentional harvest), rainbow trout stocking, mining, and grazing. Although some of these activities have been modified or discontinued in recent years, the lingering effects from these activities continue to affect water quality, contribute to channel and bank instability, and inhibit habitat and species recovery.

We emergency listed the Jarbidge River population segment of bull trout as endangered on August 11, 1998 (63 FR 42757), due to channel alteration associated with unauthorized road construction to repair the Jarbidge Canyon Road, damaged by a 1995 flood, on the West Fork of the Jarbidge River, and the substantial risk that such construction would continue. The construction activity had completely destroyed all aquatic habitat in this area, and introduced a significant amount of sediment into the river. Continued unauthorized reconstruction of the 2.4 km (1.5 mi) of the Jarbidge Canyon Road would have impacted 27 percent of the known occupied bull trout habitat in the West Fork Jarbidge River, which has among the highest reported densities of bull trout within the Jarbidge River DPS (Johnson and Weller 1994). The road construction would have also indirectly impacted an additional 21 km (13 mi) of bull trout habitat downstream of the construction site in the West Fork Jarbidge River, and potentially 45 km (28 mi) in the mainstem Jarbidge River.

Since the emergency listing of the Jarbidge River population segment, the USFS has restored some of the habitat. We have consulted with Federal agencies for several projects in the Jarbidge River basin such as old mining site reclamations, the creation of off-stream livestock watering sites, and fencing streams from livestock, that have helped reduce sedimentation into the Jarbidge River system. Following the issuance of a cease and desist order by the State of Nevada and COE to Elko County, the USFS hired stream restoration specialists to restore the damaged portion of the West Fork Jarbidge River. The specialists designed a plan to stabilize and enhance the river channel in its new location. Work crews removed the fine sediment in the river created by the road construction and placed large material such as woody debris, large rocks and boulders back into the river for bull trout habitat. The fine sediment removed from the river was used to repair floodplain damage upslope, and the streambanks were partially revegetated. The USFS will implement additional revegetation and erosion control measures in 1999. These restoration actions have helped to ameliorate some of the effects of the road construction on bull trout habitat. A residual, inaccessible road still exists, but the Service, USFS, and Elko County are cooperatively looking at alternatives for public access in the area that would not adversely impact bull trout habitat.

We have carefully assessed the best scientific and commercial information available regarding past, present, and future threats faced by this species in determining to make this rule final. Based on this evaluation, we have determined that the Jarbidge River population segment of bull trout should be listed as threatened. We emergency listed this species as endangered due to the threats posed by road construction in the West Fork of the Jarbidge River. Because of the restoration activity that has occurred in the West Fork of the Jarbidge River to repair the road construction damage, we believe this distinct population segment fits the definition of threatened as defined by the Act. Therefore, the action is to list the bull trout as threatened in the Jarbidge River population segment.

Critical Habitat

Critical habitat is defined in section 3 of the Act as—(i) the specific area within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection; and (ii) specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. "Conservation" means the use of all methods and procedures needed to bring the species to the point at which listing under the Act is no longer necessary.

Section 4(a)(3) of the Act, and implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time the species is determined to be endangered or threatened. Our regulations (50 CFR 424.12(a)) state that critical habitat is not determinable if information sufficient to perform required analysis of impacts of the designation is lacking or if the biological needs of the species are not sufficiently well known to permit identification of an area as critical habitat. Section 4(b)(2) of the Act requires us to consider economic and other relevant impacts of designating a particular area as critical habitat on the basis of the best scientific data available. The Secretary may exclude any area from critical habitat if he determines that the benefits of such exclusion outweigh the conservation benefits, unless to do such would result in the extinction of the species.

We find that the designation of critical habitat is not determinable for this distinct population segment based on the best available information. When a "not determinable" finding is made, we must, within 2 years of the publication date of the original proposed rule, designate critical habitat, unless the designation is found to be not prudent. We reached a "not determinable" critical habitat finding in the proposed rule and we specifically requested comments on this issue. While we received a number of comments advocating critical habitat designation, none of these comments provided information that added to our ability to determine critical habitat. Additionally, we did not obtain any new information regarding specific physical and biological features essential for bull trout in the Jarbidge River bull trout population segment during the open comment period including the five public hearings. The biological needs of bull trout in this population segment are not sufficiently well known to permit identification of areas as critical habitat. Insufficient information is available on the number of individuals or spawning reaches required to support viable subpopulations throughout the distinct population segment. In addition, we have not identified the extent of habitat required and specific management measures needed for recovery of this fish. This information is considered essential for determining critical habitat for this population segment. Therefore, we find that designation of critical habitat for the Jarbidge River population segment is not determinable at this time. We will protect bull trout habitat through enforcement of take prohibitions under section 9 of the Act, through the recovery process, through section 7 consultations to determine whether Federal actions are likely to jeopardize the continued existence of the species, and through the section 10 process for activities on non-Federal lands with no Federal nexus.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain activities. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402. Section 7(a)(2) requires Federal agencies to insure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with us.

The Jarbidge River bull trout population segment occurs on lands administered by the USFS and the BLM, and on various State-owned properties in Idaho, and on private lands. Federal agency actions that may require consultation as described in the preceding paragraph include COE involvement in projects such as the construction of roads and bridges, and the permitting of wetland filling and

dredging projects subject to section 404 of the Clean Water Act (33 U.S.C. 1344); USFS and BLM timber, recreation, mining, and grazing management activities; Environmental Protection Agency authorized discharges under the National Pollutant Discharge System of the Clean Water Act; and U.S. Housing and Urban Development projects.

The Act and its implementing regulations found at 50 CFR 17.31 set forth a series of general trade prohibitions and exceptions that apply to all threatened wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take (includes harass, harm, pursue, hunt, shoot, wound, kill, trap, or collect; or attempt any of these), import or export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It is also illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to our agents and State conservation agencies.

We may issue permits under section 10(a)(1) of the Act, to carry out otherwise prohibited activities involving threatened wildlife under certain circumstances. Regulations governing permits are at 50 CFR 17.32. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful activities. Permits are also available for zoological exhibition, educational purposes, or special purposes consistent with the purpose of the Act. You may address your requests for copies of the regulations concerning listed plants and animals, and general inquiries regarding prohibitions and permits, to the U.S. Fish and Wildlife Service, Ecological Services, Endangered Species Permits, 911 N.E. 11th Avenue, Portland, Oregon, 97232–4181 (telephone 503/231–2063; facsimile 503/231–6243).

It is our policy, published in the **Federal Register** on July 1, 1994 (59 FR 34272), to identify to the maximum extent practicable at the time a species is listed those activities that would or would not constitute a violation of section 9 of the Act. The intent of this policy is to increase public awareness of the effect of this listing on proposed and ongoing activities within the species' range. We believe the following actions would not be likely to result in a violation of section 9, provided the activities are carried out in accordance with any existing regulations and permit requirements:

(1) Actions that may affect bull trout in the Jarbidge River population segment and are authorized, funded or carried out by a Federal agency when the action is conducted in accordance with an incidental take statement issued by us pursuant to section 7 of the Act;

(2) Incidental catch and immediate release of Jarbidge River population segment bull trout in accordance with applicable State fish and wildlife conservation laws and regulations in effect on April 8, 1999 (see Special Rule section);

(3) State, local and other activities approved by us under section 4(d) and section 10(a)(1) of the Act.

With respect to the Jarbidge River bull trout population segment, the following actions likely would be considered a violation of section 9:

(1) Take of bull trout without a permit, which includes harassing, harming, pursuing, hunting, shooting, wounding, killing, trapping, capturing, or collecting, or attempting any of these actions, except in accordance with applicable State fish and wildlife conservation laws and regulations within the Jarbidge River bull trout population segment;

(2) To possess, sell, deliver, carry, transport, or ship illegally taken bull trout;

(3) Unauthorized interstate and foreign commerce (commerce across State or international boundaries) and import/export of bull trout (as discussed earlier in this section);

(4) Introduction of non-native fish species that compete or hybridize with, or prey on bull trout;

(5) Destruction or alteration of bull trout habitat by dredging, channelization, diversion, in-stream vehicle operation or rock removal, or other activities that result in the destruction or degradation of cover, channel stability, substrate composition, temperature, and migratory corridors used by the species for foraging, cover, migration, and spawning;

(6) Discharges or dumping of toxic chemicals, silt, or other pollutants into waters supporting bull trout that result in death or injury of the species; and

(7) Destruction or alteration of riparian habitat and adjoining uplands of waters supporting bull trout by recreational activities, timber harvest, grazing, mining, hydropower development, or other developmental activities that result in destruction or degradation of cover, channel stability, substrate composition, temperature, and migratory corridors used by the species for foraging, cover, migration, and spawning.

We will review other activities not identified above on a case-by-case basis to determine if a violation of section 9 of the Act may be likely to result from such activity. We do not consider these lists to be exhaustive and provide them as information to the public.

Questions regarding whether specific activities may constitute a violation of section 9 should be directed to the Field Supervisor of our Nevada Fish and Wildlife Office (see **ADDRESSES** section) for the Jarbidge River population segment.

Special Rule

Section 4(d) of the Act provides authority for us to promulgate special rules for threatened species that would relax specific prohibitions against taking. The final special rule included with this final listing allows for take of bull trout within the Jarbidge River DPS associated with certain activities for a period of 24 months. The special rule allows take for educational purposes, scientific purposes, the enhancement of propagation or survival of the species, zoological exhibition, and other conservation purposes consistent with the Act. The special rule also allows take that is incidental to recreational fishing activities, when conducted in accordance with State regulations, and provided that any bull trout caught are immediately returned to the stream. This special rule shall be in effect until April 9, 2001. At that time, all take prohibitions of the Act will be reinstated for the Jarbidge River population segment of the bull trout.

We believe that existing angling regulations and other bull trout conservation measures developed independently by the States (see following paragraphs) are adequate to provide continued short-term conservation of bull trout in the Jarbidge River DPS. However, we believe that the development by the States of Idaho and Nevada of a management and conservation plan covering the entire range of bull trout in the Jarbidge River DPS with the objective of recovery and eventual delisting of this DPS would most effectively protect bull trout from excessive taking, and thereby ensure the future continuation of State sport fisheries programs in the Jarbidge River system. Therefore, it is our intent to propose, in the near future, another special rule that would provide the States of Idaho and Nevada the opportunity to develop a management and conservation plan for the Jarbidge River population segment of the bull trout that, if approved, could extend the exceptions to the take prohibitions provided by the special rule included in

this final listing. Such a plan would be developed with public input (e.g., Jarbidge Bull Trout Task Force), peer-reviewed by the scientific community, and presented to the appropriate State Fish and Game/Wildlife Commissions. We would provide public notice in the **Federal Register** upon our approval of the plan.

We find that State angling regulations have become more restrictive in an attempt to protect bull trout in the Jarbidge River DPS in Idaho and Nevada. Bull trout harvest prohibitions and reduced daily/possession limits on other trout within the basin are currently in place throughout the Jarbidge River system, and the fishing season has been shortened in Idaho. The States, to varying extent, have also initiated public/angler awareness and education efforts relative to bull trout status, biology, and identification. IDFG has not stocked rainbow trout in the Jarbidge River system since 1989. NDOW will not stock rainbow trout in the Jarbidge River system in 1999 (Gene Weller, NDOW, pers. comm. 1999).

IDFG has prepared a State-wide Bull Trout Conservation Program Plan (Hutchinson *et al.* 1998). In the plan, IDFG commits to 1) ensuring that management, research, hatchery, and scientific permitting programs are consistent with the Endangered Species Act, and 2) implementing bull trout recovery actions in Idaho.

NDOW has a Bull Trout Species Management Plan that recommends management alternatives to ensure that human activities will not jeopardize the future of bull trout in Nevada (Johnson 1990). The recommended program identifies actions including bull trout population and habitat inventories, life history research, and potential population reestablishment; State involvement in watershed land use planning; angler harvest impact assessment; official State sensitive species designation for regulatory protection; and non-native fish stocking evaluation/prohibition and potential non-native fish eradications. NDOW scheduled these activities for implementation from 1991 to 2000, but many have yet to be initiated or fully implemented.

In the special rule for fishes we are making a minor editorial correction in the paragraph designations.

Paperwork Reduction Act for the Listing

This listing rule does not contain any new collections of information other than those already approved under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and assigned Office of Management and Budget clearance number 1018–0094. An agency may not conduct or sponsor, and a person is not required to respond to a collection of information, unless it displays a currently valid control number. For additional information concerning permit and associated requirements for threatened species, see 50 CFR 17.32.

Required Determinations for the Special Rule

Regulatory Planning and Review, Regulatory Flexibility Act, and Small Business Regulatory Enforcement Fairness Act

The special rule was not subject to Office of Management and Budget (OMB) review under Executive Order 12866.

a. This rule will not have an annual economic effect of $100 million or adversely affect an economic sector, productivity, jobs, the environment, or other units of the government. Therefore, a cost-benefit and full economic analysis is not required. Section 4(d) of the Act provides authority for us to promulgate special rules for threatened species that would relax the prohibition against taking. We find that State angling regulations have become more restrictive in an attempt to protect bull trout in the Jarbidge River in Idaho and Nevada. Bull trout harvest prohibitions and reduced daily/possession limits on other trout within the basin are currently in place throughout the Jarbidge River system, and the fishing season has been shortened in Idaho. The States, to varying extent, have also initiated public/angler awareness and education efforts relative to bull trout status, biology, and identification. We believe that existing angling regulations and other bull trout conservation measures developed independently by the States are adequate to provide continued short-term conservation of bull trout in the Jarbidge River. As a result, this special rule will allow recreational angling to take place in the Jarbidge River during the next 24 months under existing State regulations. The economic effects discussion addresses only the economic benefits that will accrue to the anglers who can continue to fish in the Jarbidge River.

This special rule will remove the threat of a take prohibition under section 9 of the Act and allow continued angling opportunities in Idaho and Nevada under existing State regulations. Data on the number of days of fishing under new State regulations are available for the East and West forks of the Jarbidge River in Nevada. We used these data to calculate angling days per river mile which was applied to the river segment in Idaho. Because of the lack of definitive data, we decided to do a worst case analysis. We analyzed the economic loss in angling satisfaction, measured as consumer surplus, if all fishing were prohibited in the Jarbidge River. Since there are substitute sites nearby where fishing is available, this measure of consumer surplus is a conservative estimate and would be a maximum estimate. The range of angling days in Nevada is from 2,000 to 5,000 (figures combine angler days in the East and West Fork of the Jarbidge River) annually. We estimate for Idaho a range of 3,600 to 9,000 angling days per year. A consumer surplus of $19.35 (1999 $) per day for trout fishing in Idaho and Nevada results in a range of benefits of $109,000 to $271,000 per year. The consumer surplus is a measurement of the satisfaction that an angler gets from pursuing the sport of fishing. Since this special rule will only be in place for 24 months, there is little need for discounting. Consequently, this special rule will have a small economic benefit on the United States economy, and even in the worst case, will not have an annual effect of $100 million or more for a significant rule making action.

b. This special rule will not create inconsistencies with other agencies' actions. The special rule allows for continued angling opportunities in accordance with existing State regulations.

c. This special rule will not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. This special rule does not affect entitlement programs.

d. This special rule will not raise novel legal or policy issues. There is no indication that allowing for continued angling opportunities in accordance with existing State regulations would raise legal, policy, or any other issues.

The Department of the Interior certifies that the final rule will not have a significant economic effect on a substantial number of small entities as defined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). A Regulatory Flexibility Analysis is not required. Accordingly, a Small Entity Compliance Guide is not required. No individual small industry within the United States will be significantly affected by allowing for continued angling opportunities in accordance with existing State regulations in the Jarbidge River for 24 months.

The special rule is not a major rule under 5 U.S.C. 801 *et seq.*, the Small

Business Regulatory Enforcement Fairness Act. This special rule:

a. Does not have an annual effect on the economy of $100 million or more. Trout fishing in the Jarbidge River basin generates, on average, expenditures by local anglers ranging from $168 thousand to $519 thousand per year. Consequently, the maximum benefit of this rule for local sales of equipment and supplies is no more than $519 thousand per year and most likely smaller because all fishing would not cease in the area even if the Jarbidge River were closed to fishing. The availability of numerous substitute sites would keep anglers spending at a level probably close to past levels.

b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. This special rule allows the continuation of fishing in the Jarbidge River and, therefore, allows for the usual sale of equipment and supplies by local businesses. This special rule will not affect the supply or demand for angling opportunities in southern Idaho or northern Nevada and therefore should not affect prices for fishing equipment and supplies, or the retailers that sell equipment.

c. Does not have significant adverse effects on competition, employment, investment productivity, innovation, or the ability of United States based enterprises to compete with foreign-based enterprises. The recreational spending of a small number of affected anglers, ranging from just over 600 to slightly over 1,500 anglers, will have only a small beneficial economic effect on the sportfish industry.

Unfunded Mandates Reform Act

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501, *et seq.*):

a. This special rule will not "significantly or uniquely" affect small governments. A Small Government Agency Plan is not required.

b. This special rule will not produce a Federal mandate of $100 million or greater in any year; that is, it is not a "significant regulatory action" under the Unfunded Mandates Reform Act.

Takings Implication

We have determined that this special rule has no potential takings of private property implications as defined by Executive Order 12630. The special rule would not restrict, limit, or affect property rights protected by the Constitution.

Federalism

This special rule will not have substantial direct effects on the States, in their relationship between the Federal Government and the States, or on the distribution of power and responsibilities among various levels of government. Therefore, in accordance with Executive Order 12612, we have determined that this special rule does not have sufficient federalism implications to warrant a Federalism Assessment.

Civil Justice Reform

The Department of the Interior has determined that this special rule meets the applicable standards provided in sections 3(a) and 3(b)(2) of Executive Order 12988.

National Environmental Policy Act

We have determined that an Environmental Assessment and Environmental Impact Statement, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

A complete list of all references cited herein is available upon request from the Nevada Fish and Wildlife Office (see **ADDRESSES** section).

Author. The primary author of this proposed rule is Selena Werdon, Nevada Fish and Wildlife Office, Reno, Nevada.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

Accordingly, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as follows:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

2. Amend § 17.11(h) by adding the following, in alphabetical order under FISHES, to the List of Endangered and Threatened Wildlife:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*	*	*		*
FISHES							
*	*	*	*	*	*		*
Trout, bull	*Salvelinus confluentus.*	U.S.A. (Pacific NW), Canada (NW Territories).	Jarbidge R. Basin (U.S.A.—ID, NV).	T	659	NA	17.44(x)
*	*	*	*	*	*		*

3. Amend § 17.44 by redesignating paragraph (v) bull trout as paragraph (w).

4. Amend § 17.44 by adding paragraph (x) to read as follows:

§ 17.44 Special rules—fishes.

* * * * *

(x) Bull trout (*Salvelinus confluentus*), Jarbidge River population segment.

(1) Prohibitions. Except as noted in paragraph (x)(2) of this section, all prohibitions of 50 CFR 17.31 and exemptions of 50 CFR 17.32 apply to the bull trout in the Jarbidge River

population segment within the United States.

(2) Exceptions. No person may take this species, except in the following instances in accordance with applicable State fish and wildlife conservation laws and regulations relevant to protection of bull trout in effect on April 8, 1999.

(i) For educational purposes, scientific purposes, the enhancement of propagation or survival of the species, zoological exhibition, and other conservation purposes consistent with the Act;

(ii) Incidental to State-permitted recreational fishing activities, provided that any bull trout caught are immediately returned to the stream.

(iii) The exceptions in paragraphs (x)(2) (i) and (ii) of this section will be in effect until April 9, 2001. At that time, all take prohibitions of the Act will be reinstated for the Jarbidge River population segment unless exceptions to take prohibitions are otherwise provided through a subsequent special rule.

(3) Any violation of applicable State fish and wildlife conservation laws or regulations with respect to the taking of this species is also a violation of the Endangered Species Act.

(4) No person may possess, sell, deliver, carry, transport, ship, import, or export, any means whatsoever, any such species taken in violation of this section or in violation of applicable State fish and conservation laws and regulations.

(5) It is unlawful for any person to attempt to commit, solicit another to commit, or cause to be committed, any offense defined in paragraphs (x)(2) through (4) of this section.

Dated: April 5, 1999.

Donald J. Barry,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 99–8850 Filed 4–7–99; 8:45 am]

BILLING CODE 4310–65–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 980429110–8110–01; I.D. 032499B]

Fisheries Off West Coast States and in the Western Pacific; West Coast Salmon Fisheries; Inseason Adjustments From Cape Falcon, OR, to Point Pitas, CA

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Inseason adjustments; request for comments.

SUMMARY: NMFS announces that a commercial salmon test fishery for all salmon except coho in the areas from Point Pillar (37°29'48" N. lat.) to Point Pigeon (37°10'54" N. lat.) and from Point Piedras Blancas (35°40'00" N. lat.) to Point Pitas (34°19'02" N. lat.), CA, that was tentatively scheduled to open April 2, 1999, will open April 14, 1999, run 3 days open and 4 days closed, and continue through the earlier of April 28, 1999, or the attainment of chinook quotas of 3,000 and 5,000 respectively. NMFS also announces that the commercial and recreational fisheries for all salmon except coho, in the areas from Cape Falcon to Humbug Mountain, OR, will open April 1, 1999, and continue through dates to be determined in the 1999 management measures for 1999 ocean salmon fisheries in the exclusive economic zone (EEZ). This action is necessary to conform to the 1998 announcement of management measures for 1999 salmon seasons opening earlier than May 1, 1999, and is intended to ensure conservation of chinook salmon.

DATES: Effective April 1, 1999, until the effective date of the 1999 management measures, which will be published in the **Federal Register** for the west coast salmon fisheries. Comments will be accepted through April 22, 1999.

ADDRESSES: Comments may be mailed to William Stelle, Jr., Regional Administrator, Northwest Region, NMFS, NOAA, 7600 Sand Point Way NE., Bldg. 1, Seattle, WA 98115–0070; or William Hogarth, Regional Administrator, Southwest Region, NMFS, NOAA, 501 W. Ocean Blvd., Suite 4200, Long Beach, CA 90802–4132. Information relevant to this document is available for public review during business hours at the Office of the Regional Administrator, Northwest Region, NMFS.

FOR FURTHER INFORMATION CONTACT: William Robinson, 206–526–6140, or Svein Fougner, 562–980–4030.

SUPPLEMENTARY INFORMATION: The 1999 April test fishery off southern California is a continuation of the test fishery initiated in April 1997, and is intended to evaluate the contribution of Sacramento River winter chinook and Central Valley spring chinook to the commercial catch off Morro Bay and Santa Barbara during the month of April. Sacramento River winter chinook are listed under the Federal and California State endangered species acts and Central Valley spring chinook are listed under the state act and proposed under the Federal act.

In the 1998 management measures for 1999 ocean salmon fisheries in the EEZ opening earlier than May 1, 1999 (63 FR 24973, May 6, 1998), NMFS announced that an experimental fishery would open between Point Sur and the U.S.-Mexican border for all salmon except coho, from April 2, 1999, through the earlier of April 29, 1999, or achievement of a chinook quota. Details regarding the season, the areas, the chinook quota, and participating vessels would be determined through an inseason recommendation of the Pacific Fishery Management Council (Council) at the November 1998 meeting.

At the November meeting, the Council decided to delay the final recommendation until its March meeting when there would be more information available about the status of the stocks in 1999. At the March 1999 meeting, the Council made its inseason recommendation to open the April test fishery in two locations: the area from Point Pillar to Point Pigeon and from Point Piedras Blancas to Point Pitas, CA. The Council also recommended adding an additional test area between Point Pillar and Point Pigeon to provide comparative data from the same year in a different area. In evaluating the effect of the test fishery to determine whether the overall impact of the proposed options for 1999 ocean fisheries on Sacramento River winter chinook will achieve NMFS consultation standards under the Endangered Species Act, the Council considered the results of the 1997 April test fishery from Point Lopez to Point Mugu and substantially increased its estimates of the incidental take of winter chinook associated with the fishery relative to the estimate used in evaluating the 1997 April test fishery.

The test fishery will be conducted from Point Pillar to Point Pigeon, for all salmon except coho, with a 3,000 chinook quota; from Point Piedras Blancas to Point Conception (34°27'00" N. lat.), for all salmon except coho, with a 2,500 chinook quota; and Point Conception to Point Pitas, for all salmon except coho, with a 2,500 chinook quota. The subareas and subquotas between Point Piedras Blancas and Point Pitas are intended to ensure that samples are collected uniformly over the entire area. The season will open 0001 hours local time, April 14, 1999, and operate on a schedule of 3 days open and 4 days closed, through the earlier of 2359 hours local time April 28, 1999, or attainment of chinook

quotas. All fish must be landed within 24 hours of closure and there is a daily possession and landing limit of 30 fish/day. The fishery will be open April 14–16, will be closed April 17–20, will be reopened April 21–23, will be closed April 24–27, and will be reopened April 28. The minimum size limit is 26 inches (66.0 cm) total length; all fish must be landed in the same area in which they were caught; all fish must be landed daily to ensure good tissue quality needed for genetic sampling; and all fish must be offloaded within 12 hours of reaching port and documented with a California Department of Fish and Game (CDFG) landing receipt (no transportation tickets). The southernmost boundary of the fishery is a line between Point Pitas and the eastern end of Anacapa Island (34°00'56" N. lat.); all other boundaries run due west of the referenced points to the outer limit of the EEZ. Landing limits and days open may be adjusted inseason to meet the requirements of data collection. If landing limits or open days are changed or the quota is attained in any area before April 28, 1999, the closure of the area and any other inseason action will be announced on the NMFS hot line and in a notice to mariners.

In the 1998 annual management measures for ocean salmon fisheries (63 FR 24973, May 6, 1998), inseason management guidance was provided to NMFS such that the Council would consider at the March 1999 meeting a recommendation to open commercial and recreational seasons for all salmon except coho in areas off Oregon. Due to the timing of the March and April Council meetings, where the major 1999 salmon seasons are developed, such action would be necessary to implement the opening of these seasons prior to May 1, 1999. In the 1998 management measures for 1999 ocean salmon fisheries, NMFS announced that the recreational fishery would not open until May 1, 1999, between Cape Falcon and Humbug Mountain, OR, for all salmon except coho, unless opened following an inseason recommendation of the Council at the March 1999 meeting. In addition, the Council could also consider inseason modifications to open or modify commercial fisheries off Oregon, for all salmon except coho, prior to May 1, 1999.

At the March 1999 meeting, the Council made its inseason recommendations to open the recreational and commercial fisheries, for all salmon except coho, from Cape Falcon to Humbug Mountain, OR, on April 1, 1999. The closing dates for both fisheries will be determined at the April 1999 meeting when the entire 1999 management measures for the 1999 ocean salmon fisheries are finalized.

The recreational fishery for all salmon except coho, from Cape Falcon to Humbug Mountain, OR, opens on April 1, 1999. The daily possession limit is two fish per day, with no more than six fish retained in 7 consecutive days. The minimum size limit is 20 inches (50.8 cm). Allowed gear is artificial lures and plugs of any size, or bait no less than 6 inches (15.2 cm) long (excluding hooks and swivels). All gear must have no more than two single point, single shank barbless hooks. Divers are prohibited and flashers may only be used with downriggers. Oregon State regulations describe a closure at the mouth of Tillamook Bay.

The commercial fishery for all salmon except coho, from Cape Falcon to Humbug Mountain, OR, opens on April 1, 1999. No more than four spreads are allowed per line. The minimum size limit is 26 inches (66.0 cm) (19.5 in (49.5 cm) head-off). Chinook not less than 26 inches (66.0 cm) (19.5 inches (49.5 cm) head-off) taken in open seasons south of Cape Falcon may be landed north of Cape Falcon only when the season is closed north of Cape Falcon. Oregon state regulations describe a closure at the mouth of Tillamook Bay.

The Regional Administrator consulted with representatives of the Council, Washington Department of Fish and Wildlife, Oregon Department of Fish and Wildlife, and the CDFG regarding these adjustments. The State of California will manage test commercial fisheries in state waters adjacent to these areas of the exclusive economic zone in accordance with this Federal action. As provided by the inseason notice procedures at 50 CFR 660.411, actual notice to fishermen of these actions will be given prior to 0001 hours local time, April 1, 1999, by telephone hotline number 206–526–6667 or 800–662–9825 and by U.S. Coast Guard Notice to Mariners broadcasts on Channel 16 VHF-FM and 2182 kHz.

Because of the need for immediate action, NMFS has determined that good cause exists for this document to be issued without affording a prior opportunity for public comment. This document does not apply to other fisheries that may be operating in other areas.

Classification

This action is authorized by 50 CFR 660.409 and 660.411 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: April 2, 1999.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–8766 Filed 4–7–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 990304063–9063–01; I.D. 040599A]

Fisheries of the Exclusive Economic Zone Off Alaska; Atka Mackerel in the Central Aleutian District of the Bering Sea and Aleutian Islands

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for Atka mackerel in the Central Aleutian District of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the first seasonal allowance of Atka mackerel total allowable catch (TAC) specified for the Central Aleutian District. NMFS is also opening fishing with trawl gear in Steller sea lion critical habitat in the Central Aleutian District for species for which directed fisheries are open.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), April 5, 1999, until 1200 hrs, A.l.t, September 1, 1999.

FOR FURTHER INFORMATION CONTACT: Andrew Smoker, 907–586-7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI exclusive economic zone according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The Final 1999 Harvest Specifications (64 FR 12103, March 11, 1999) established the first seasonal allowance, the period January 1, 1999 through April 15, 1999, of Atka mackerel TAC specified for the Central Aleutian District as 10,360 metric tons (mt).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region,

NMFS (Regional Administrator), has determined that the first seasonal allowance of Atka mackerel TAC specified for the Central Aleutian District has been reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 10,000 mt, and is setting aside the remaining 360 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance soon will be reached. Consequently, NMFS is prohibiting directed fishing for Atka mackerel in the Central Aleutian District of the BSAI.

Maximum retainable bycatch amounts may be found in the regulations at § 679.20(e) and (f).

On March 31, 1999, NMFS prohibited trawling within Steller sea lion critical habitat in the Central Aleutian District because the 1999 critical habitat percentage of the first seasonal allowance of Atka mackerel allocated to the Central Aleutian District had been reached (64 FR 16362, April 5, 1999). Regulations at 679.22(a)(8)(iii)(C) authorize opening Steller sea lion critical habitat in the Central Aleutian District to fishing with trawl gear after NMFS closes Atka mackerel to directed fishing within that district. NMFS, therefore, is opening critical habitat in the Central Aleutian District to fishing with trawl gear for species open to directed fishing.

Classification

This action responds to the best available information recently attained from the fishery. It must be implemented immediately to prevent overharvesting the 1999 first seasonal allowance of Atka mackerel specified for the Central Aleutian District of the BSAI. A delay in the effective date is impracticable and contrary to the public interest. Further delay would only result in overharvest. NMFS finds for good cause that the implementation of this action should not be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

This action is required by § 679.20 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: April 5, 1999.

Bruce Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–8759 Filed 4–5–99; 2:10 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 64, No. 67
Thursday, April 8, 1999

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF JUSTICE

8 CFR Part 2

28 CFR Part 65

[INS No. 1924–98; AG Order No. 2215–99]

RIN 1115–AF20

Powers of the Attorney General to Authorize State or Local Law Enforcement Officers To Enforce Immigration Law During a Mass Influx of Aliens

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Proposed rule.

SUMMARY: This rule proposes to implement section 103(a)(8) of the Immigration and Nationality Act (the Act), which permits the Attorney General to authorize any State or local law enforcement officer, with the consent of the head of the department, agency, or establishment under whose jurisdiction the individual is serving, to perform certain functions related to the enforcement of the immigration laws during a period of mass influx of aliens. This rule provides for a cooperative process by which State or local governments can agree to place authorized State or local law enforcement officer(s) under the direction of the Immigration and Naturalization Service (INS) in enforcing immigration laws, whenever the Attorney General determines that such assistance is necessary during a mass influx of aliens.

This rule also allows the Commissioner of the INS to enter into advance written "contingency" agreements with State and local law enforcement officials. The written agreements will explain the terms and conditions (including the reimbursement of expenses) under which State or local law enforcement officers an enforce immigration laws during a mass influx of aliens. The rule also ensures that appropriate notifications are made to Congress and the Administration. This rule is necessary to ensure that the INS can respond in an expeditious manner during a mass influx of aliens.

Finally, the rule ensures that the performance of duties under the special authorization is consistent with civil rights protections.

DATES: Written comments must be submitted on or before June 7, 1999.

ADDRESSES: Please submit written comments, in triplicate, to the Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, 425 I Street, NW, Room 5307, Washington, DC 20536. To ensure proper handling, please reference INS number 1924–98 on your correspondence. Comments are available for public inspection at the above address by calling (202) 514–3048 to arrange for an appointment.

FOR FURTHER INFORMATION CONTACT: George M. Waldroup, Special Assistant, Field Operations, Immigration and Naturalization Service, 425 I Street, NW, Room 7228, Washington, DC 20536, telephone (202) 305–7873.

SUPPLEMENTARY INFORMATION:

Background

Section 372 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) (Pub. L. 104–208, 110 Stat. 3009), added section 103(a)(8) of the Act (8 U.S.C. 1103(a)(8)) to permit the Attorney General to authorize any State or local law enforcement officer, with the consent of the head of the department, agency, or establishment under whose jurisdiction the individual is serving, to perform or exercise any of the powers, privileges, or duties conferred or imposed by the Act or implementing regulations upon officers or employees of the INS during a period of a mass influx of aliens. Under section 103(a)(8) of the Act, such Attorney General authorization to State or local law enforcement officers can occur only in the event that the Attorney General determines that "an actual or imminent mass influx of aliens arriving off the coast of the United States, or near a land border, presents urgent circumstances requiring an immediate Federal response." Any authority to enforce immigration laws that is given to State or local law enforcement officers under section 103(a)(8) of the Act can be exercised only during such a mass influx of aliens, as determined by the Attorney General. The implementation of this proposed rule will facilitate an expeditious and coordinated response during a mass influx of aliens, by enabling the Attorney General to draw upon the voluntary assistance of State and local resources.

Explanation of Changes

This rule implements the intent of section 103(a)(8) of the Act by providing a mechanism by which a trained cadre of State and/or local law enforcement officers will be available to enhance the Federal Government's ability to field an immediate and effective response to a mass influx of aliens.

State/local law enforcement officers cannot perform any functions of an INS officer or employee pursuant to 8 U.S.C. 1103(a)(8) and under the provisions of this rule until they successfully complete training prescribed by the INS in basic immigration law, enforcement fundamentals, civil rights law, and sensitivity and cultural awareness issues. INS will provide all necessary training materials and will conduct training sessions to designated officers at sites within their jurisdictional or commuting areas when possible. The employing State/local law enforcement agency, department, or establishment will be required to fund its officers' transportation, lodging, and subsistence costs as may be required.

This rule is an amendment to the existing regulations of the Department of Justice relating to the Immigration Emergency Fund. By tying reimbursement for actual expenses incurred to the Immigration Emergency Fund, this rule also seeks to assure State and local law enforcement agencies that they will not bear undue increased operational expenditures. However, this rule provides no guarantee of reimbursement for actual expenses incurred in excess of the balance of uncommitted funds in the Immigration Emergency Fund. Without additional appropriations to the Immigration Emergency Fund, any reimbursement would be contingent on supplemental appropriations and/or other funding that may be available. Execution of advance "contingency" agreements will expedite subsequent action by the Attorney General to give authority to State and/or local law enforcement officers to enforce immigration laws and will facilitate reimbursement of actual

expenditures in support of a Federal response to a mass influx of aliens, pursuant to existing financial requirements such as Congressional notification and recordkeeping.

Regulatory Flexibility Act

The Attorney General, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and, by approving it, certifies that this rule will not have a significant impact on a substantial number of small entities because of the following factors: (1) INS anticipates that participation in written agreements executed with State and/or local law enforcement agencies under section 103(a)(8) of the Act and this rule will be limited to those State or local law enforcement agencies whose jurisdiction is along the southern land border or the coastline of South Florida and who agree to provide assistance in a Federal response to a mass influx of aliens into the United States; (2) participation by State and/or local law enforcement agencies is voluntary and no State or local law enforcement agency outside the area of a mass influx of aliens would be affected by implementation of this rule; (3) this rule believes undue financial burdens on participating law enforcement agencies by providing for reimbursement of actual expenses incurred in direct support of a Federal response to a mass influx of aliens; and, (4) it is anticipated that delegation of authority to State/local law enforcement officers to enforce immigration law under the provisions of this rule will be infrequent and will occur only during times of an actual or imminent mass influx of aliens into the United States.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any 1 year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined in the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 804. This rule will not result in an annual effect on the economy of $100 million or more; a major increase in cost or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Executive Order 12866

This rule is considered by the Department of Justice to be a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review. Accordingly, this regulation has been submitted to the Office of Management and Budget for review.

Executive Order 12612

The regulation adopted herein will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among various levels of government. This rule provides for reimbursement through the Immigration Emergency Fund (contingent upon availability of such funds) and/or supplemental appropriation, of actual expenditures incurred by State/local law enforcement agencies whose law enforcement officers are supporting a Federal response to an actual or imminent mass influx of aliens. Therefore, in accordance with Executive Order 12612, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Executive Order 12988: Civil Justice Reform

This proposed rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

Paperwork Reduction Act

As contained in this rule under 28 CFR 65.85(e), the Attorney General will consider all applications from State or local governments for reimbursement of actual expenses incurred in direct support of a Federal response to a mass influx of aliens, until the maximum amount of money in the Immigration Emergency Fund has been expended. The information that must be included in the application for reimbursement is described in 28 CFR 65.85(c). The information required in 28 CFR 65.85(c) is considered an information collection which is covered under the Paperwork Reduction Act (PRA). This information collection has previously been approved by the Office of Management and Budget (OMB) under the PRA. The OMB control number for this approved information collection is 1115–0184.

List of Subjects

8 CFR Part 2

Authority delegations (government agencies).

28 CFR Part 65

Grant programs—law, Law enforcement, Reporting and recordkeeping requirements.

Accordingly, part 2 of chapter I of title 8 of the Code of Federal Regulations, and part 65 of chapter I of title 28 of the Code of Federal Regulations are proposed to be amended as follows:

TITLE 8—ALIENS AND NATIONALITY

PART 2—AUTHORITY OF THE COMMISSIONER

1. The authority citation for part 2 continues to read as follows:

Authority: 28 U.S.C. 509, 510; 5 U.S.C. 301; 8 U.S.C. 1103.

2. Section 2.1 is amended by:

(a) Designating the existing text as paragraph (a); and by

(b) Adding a new paragraph (b), to read as follows:

§ 2.1 Authority of the Commissioner.

* * * * *

(b) The Commissioner, pursuant to 28 CFR 65.84(a), may execute written contingency agreements with State and local law enforcement agencies regarding assistance under section 103(a)(8) of the Act, which may be activated in the event that the Attorney General determines that such assistance is required during a period of a mass influx of aliens, as provided in 28 CFR 65.83(d). Such contingency agreements shall not authorize State or local law enforcement officers to perform any functions of INS officers or employees under 8 U.S.C. 1103(a)(8) until the Attorney General determines that a mass influx of aliens exists, and specifically authorizes such performance.

TITLE 28—JUDICIAL ADMINISTRATION

PART 65—EMERGENCY FEDERAL LAW ENFORCEMENT ASSISTANCE

3. The authority citation for part 65 continues to read as follows:

Authority: The Comprehensive Crime Control Act of 1984, Title II, Chap. VI, Div. I, Subdiv. B, Emergency Federal Law Enforcement Assistance, Pub. L. 98–473, 98 Stat. 1837, Oct. 12, 1984 (42 U.S.C. 10501 *et seq.*); 8 U.S.C. 1101 note; Sec. 610, Pub. L. 102–140, 105 Stat. 832.

4. In § 65.83, a new paragraph (d) is added to read as follows:

§ 65.83 Assistance required by the Attorney General.

* * * * *

(d) If, in making a determination pursuant to paragraph (b) or (c) of this section, the Attorney General also determines that the situation involves an actual or imminent mass influx of aliens arriving off the coast of the United States, or near a land border, which presents urgent circumstances requiring an immediate Federal response, the Attorney General, pursuant to 8 U.S.C. 1103(a)(8), may authorize any State or local law enforcement officer to perform or exercise any of the powers, privileges, or duties conferred or imposed by the INA, or regulations issued thereunder, upon officers or employees of the INS. Such authorization must be with the consent of the head of the department, agency, or establishment under whose jurisdiction the officer is serving.

5. In § 65.84, paragraph (a) is revised to read as follows:

§ 65.84 Procedures for the Attorney General seeking State or local assistance.

(a)(1) When the Attorney General determines to seek assistance from a State or local government under § 65.83, or when the President has determined that an immigration emergency exists, the Attorney General shall negotiate the terms and conditions of that assistance with the State or local government. The Attorney General shall then execute a written agreement with appropriate State or local officials, which sets forth the terms and conditions of the assistance, including funding. Such written agreements can be reimbursement agreements, grants, or cooperative agreements.

(2) The Commissioner of INS may execute written contingency agreements regarding assistance under § 65.83(d) in advance of the Attorney General's determination pursuant to that section. However, such advance agreements shall not authorize State or local law enforcement officers to perform any functions of INS officers or employees under 8 U.S.C. 1103(a)(8) until the Attorney General has made the necessary determinations and authorizes such performance. Any such advance agreements shall contain precise activation procedures.

(3) Written agreements regarding assistance under § 65.83(d), including contingency agreements, shall include the following minimum requirements:

(i) The powers, privileges, or duties that State or local law enforcement officers will be authorized to perform or exercise and the conditions under which they may be performed or exercised;

(ii) The types of assistance by State and local law enforcement officers for which the Attorney General shall be responsible for reimbursing the relevant parties in accordance with the procedures set forth in paragraph (b) of this section;

(iii) A statement that the relevant State or local law enforcement officers are not authorized to perform any functions of INS officers or employees under 8 U.S.C. 1103(a)(8) until the Attorney General has made a determination pursuant to that section and authorizes such performance;

(iv) A requirement that State or local law enforcement officers cannot perform any authorized functions of INS officers or employees under 8 U.S.C. 1103(a)(8) until they have successfully completed an INS prescribed course of instruction in basic immigration law, enforcement fundamentals, civil rights law, and sensitivity and cultural awareness issues;

(v) A description of the duration of both the written agreement, and the authority the Attorney General will confer upon State or local law enforcement officers pursuant to 8 U.S.C. 1103(a)(8), along with a mechanism for amending, terminating, or extending the duration of authority and/or the written agreement;

(vi) A requirement that the performance of any INS officer functions by State or local law enforcement officers pursuant to 8 U.S.C. 1103(a)(8) be at the direction of the INS;

(vii) A requirement that any State or local law enforcement officer performing INS officer or employee functions pursuant to 8 U.S.C. 1103(a)(8) must adhere to the policies and standards set forth during the training, including applicable enforcement standards, civil rights law, and sensitivity and cultural awareness issues;

(viii) A listing by position (title and name when available) of the INS officers authorized to provide operational direction to State or local law enforcement officers assisting in a Federal response pursuant to 8 U.S.C. 1103(a)(8);

(ix) Provisions concerning State or local law enforcement officer use of Federal property or facilities, if any;

(x) A requirement that any department, agency, or establishment whose State or local law enforcement officer is performing INS officer or employee functions shall cooperate fully in any Federal investigation related to the written agreement; and

(xi) A procedure by which the appropriate law enforcement department, agency, or establishment will be notified that the Attorney General has made a determination under 8 U.S.C. 1103(a)(8) to delegate authority for State/local law enforcement officers to enforce immigration law under the provisions of the respective agreements.

* * * * *

6. In § 65.85, paragraph (e) is revised to read as follows:

§ 65.85 Procedures for State or local government applying for funding.

* * * * *

(e) The Attorney General will consider all applications from State or local governments until the Attorney General has expended the maximum amount available in the Immigration Emergency Fund. The Attorney General will make a decision with respect to any application submitted under this section, subject to the necessary notifications within the Administration or Congress, and containing the information described in paragraph (c) of this section, within 15 calendar days of such application.

* * * * *

Dated: April 1, 1999.

Janet Reno,

Attorney General.

[FR Doc. 99–8773 Filed 4–7–99; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–275–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 777 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Supplemental notice of proposed rulemaking; reopening of comment period.

SUMMARY: This document revises an earlier proposed airworthiness directive (AD), applicable to certain Boeing Model 777 series airplanes, that would have required repetitive inspections of the safety spring wear plate doublers attached to the auxiliary power unit (APU) firewall, measurement of wear of the doublers, and follow-on actions, if necessary. That proposed AD also would have provided for optional terminating action for the repetitive inspections. That proposal was prompted by reports indicating that excessive wear was found on the safety spring wear plate doublers on the APU

firewall of Boeing Model 777 series airplanes. This new action revises the proposed rule by extending the compliance time for a certain action and referencing a new service bulletin. For certain airplanes, this new action also adds a one-time inspection to detect improper clearance between the safety spring wear plate doubler and the APU firewall, and corrective action, if necessary. The actions specified by this new proposed AD are intended to detect and correct wear of the safety spring wear plate doublers on the APU firewall, which could result in a hole in the APU firewall, and consequent decreased fire protection capability.

DATES: Comments must be received by May 3, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–275–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Ed Hormel, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2681; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 98–NM–275–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–275–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to add an airworthiness directive (AD), applicable to certain Boeing Model 777 series airplanes, was published as a notice of proposed rulemaking (NPRM) in the **Federal Register** on November 23, 1998 (63 FR 64659). That NPRM would have required repetitive inspections of the safety spring wear plate doublers attached to the auxiliary power unit (APU) firewall, measurement of wear of the doublers, and follow-on actions, if necessary. That proposed AD also would have provided for optional terminating action for the repetitive inspections. That NPRM was prompted by reports indicating that excessive wear was found on the safety spring wear plate doublers on the APU firewall of Boeing Model 777 series airplanes. That condition, if not corrected, could result in a hole in the APU firewall, and consequent decreased fire protection capability.

Explanation of New Service Information

Since the issuance of that NPRM, the FAA has reviewed and approved Boeing Service Bulletin 777–53A0018, Revision 1, dated February 11, 1999. That service bulletin describes procedures for repetitive inspections of the safety spring wear plate doublers attached to the APU firewall, measurement of wear of the doublers, and follow-on actions, if necessary. Those procedures are essentially identical to the procedures described in Boeing Alert Service Bulletin 777–53A0018, dated June 29, 1998 (which was referenced as the appropriate source of service information for the actions proposed in the NPRM). However, among other things, Revision 1 of the service bulletin adds procedures for a one-time visual inspection to detect improper clearance between the safety spring wear plate doubler and the APU firewall, and installation of shims, if necessary, on certain airplanes that were modified previously in accordance with the original issue of the service bulletin. Improper clearance is defined in the service bulletin as the wear plate doubler being in contact with a chemically milled pocket in the APU firewall. Revision 1 of the service bulletin also describes procedures for an optional installation of wear sleeves on the ends of the APU door safety springs to provide additional protection against doubler wear. The new service bulletin revision also adds airplanes to the effectivity listing of the service bulletin.

This supplemental NPRM would require accomplishment of the actions specified in Revision 1 of the service bulletin described previously, except as discussed below.

Differences Between the Service Bulletin and the Supplemental NPRM

Operators should note that, although Revision 1 of the service bulletin specifies that the manufacturer may be contacted for disposition of certain repair conditions, this proposal would require the repair of those conditions to be accomplished in accordance with a method approved by the FAA.

Operators also should note that, as described previously, Revision 1 of the service bulletin describes procedures for an optional installation of wear sleeves on the ends of the APU door safety springs to provide additional protection against doubler wear. The FAA finds that installation of such wear sleeves does not eliminate the need for repetitive inspection of the existing wear plate doublers or replacement of the existing wear plate doublers with new stainless steel doublers. Therefore, the supplemental NPRM does not propose a requirement for the installation of such wear sleeves.

Related to the optional installation, operators should note that this AD is applicable to Boeing Model 777 series airplanes, having line numbers 001 through 156 inclusive. Though Boeing Model 777 series airplanes after line number 156 have stainless steel wear plate doublers installed prior to delivery, Model 777 series airplanes having line numbers 157 through 183 inclusive have been included in the effectivity listing of the service bulletin to allow operators of these airplanes the

option of installing wear sleeves on the ends of the APU door safety springs. Because the FAA is not requiring installation of such wear sleeves, Model 777 series airplanes having line numbers 157 through 183 inclusive would not be subject to this AD. Therefore, no change to the applicability of the supplemental NPRM is necessary.

Comments

Due consideration has been given to the comments received in response to the NPRM. One comment that has prompted a change in the proposal is explained below.

Request To Revise Proposed AD To Parallel the Service Bulletin

One commenter, the manufacturer, requests that the proposal be revised to parallel the Accomplishment Instructions specified in Boeing Alert Service Bulletin 777–53A0018, dated June 29, 1998. The commenter states that the AD, as proposed, would require repair of any damage to the APU firewall within 20 days after detection of wear. The service bulletin, however, recommends that, if any wear is through either doubler and into or through the firewall, temporary stainless steel patches should be installed within 20 days and the firewall should be repaired within 4,000 flight cycles after installation of the temporary patches. The commenter also points out that paragraph (e) of the proposed rule, which requires the repair of wear into or through the APU firewall within 20 days after detection, contradicts statements in the "Explanation of Requirements of the Proposed Rule" in the proposal, which reflects the recommendations of the service bulletin (repair with temporary patches within 20 days and permanent repair of the firewall within 4,000 flight cycles after installation of the temporary patches).

The FAA concurs with the commenter's request to revise the proposed AD to parallel the service bulletin. The FAA has reviewed the Accomplishment Instructions in the original issue of the alert service bulletin, and has determined that, in converting the instructions in the alert service bulletin into the proposed corrective actions stated in the NPRM, the FAA erroneously stated the compliance time for accomplishment of repairs if any wear penetrates into or through the APU firewall. Therefore, the FAA has revised paragraph (c) of this supplemental NPRM to clarify that the paragraph applies to conditions in which wear does not extend into the APU firewall. In addition, the FAA has revised paragraphs (d) and (e) of this supplemental NPRM to reflect the compliance times recommended in the service bulletin.

Conclusion

Since the changes described previously expand the scope of the originally proposed rule, the FAA has determined that it is necessary to reopen the comment period to provide additional opportunity for public comment.

Cost Impact

There are approximately 152 airplanes of the affected design in the worldwide fleet. The FAA estimates that 35 airplanes of U.S. registry would be affected by this proposed AD.

It would take approximately 2 work hours per airplane to accomplish the proposed inspection to detect wear of the safety spring wear plate doublers, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of this inspection proposed by this AD on U.S. operators is estimated to be $4,200, or $120 per airplane, per inspection cycle.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Should an operator be required to accomplish the temporary repair, it would take approximately 2 work hours per airplane to accomplish the repair, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the temporary repair action is estimated to be $120 per airplane.

Should an operator be required to accomplish the inspection to detect improper clearance between the safety spring wear plate doubler and the APU firewall, it would take approximately 1 work hour per airplane to accomplish the inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of this inspection proposed by this AD is estimated to be $60 per airplane.

Should an operator be required or elect to accomplish the replacement of the wear plate doublers, it would take approximately 3 work hours per airplane to accomplish the replacement, at an average labor rate of $60 per work hour. Required parts, if acquired from the manufacturer, would cost approximately $193 per airplane. Based on these figures, the cost impact of replacement of the wear plate doublers is estimated to be $373 per airplane.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Docket 98–NM–275–AD.

Applicability: Model 777 series airplanes, line numbers (L/N) 001 through 156 inclusive, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (h) of this AD.

The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct wear of the safety spring wear plate doublers on the auxiliary power unit (APU) firewall, which could result in a hole in the APU firewall, and consequent decreased fire protection capability, accomplish the following:

Initial Inspection

(a) Perform a visual inspection of the two safety spring wear plate doublers on the APU firewall, and measure any wear of the doublers, in accordance with Boeing Service Bulletin 777–53A0018, Revision 1, dated February 11, 1999, at the time specified in paragraph (a)(1), (a)(2), or (a)(3) of this AD, as applicable.

(1) For airplanes that have accumulated 6,000 total flight hours or less as of the effective date of this AD: Inspect and measure prior to the accumulation of 6,300 total flight hours.

(2) For airplanes that have accumulated between 6,001 and 10,000 total flight hours as of the effective date of this AD: Inspect and measure within 30 days after the effective date of this AD.

(3) For airplanes that have accumulated 10,001 total flight hours or more as of the effective date of this AD: Inspect and measure within 10 days after the effective date of this AD.

Note 2: Inspections, repairs, and modifications accomplished prior to the effective date of this AD in accordance with Boeing Alert Service Bulletin 777–53A0018, dated June 29, 1998, are considered acceptable for compliance with this AD, provided that the actions required by paragraph (f) of this AD, as applicable, are accomplished in accordance with Boeing Service Bulletin 777–53A0018, Revision 1, dated February 11, 1999.

Repetitive Inspections

(b) If, during the inspection required by paragraph (a) of this AD, the wear on each doubler measures less than 0.045 inch, repeat the inspection and measurement required by paragraph (a) of this AD thereafter at intervals not to exceed 60 days, in accordance with Boeing Service Bulletin 777–53A0018, Revision 1, dated February 11, 1999; until paragraph (g) of this AD has been accomplished.

(c) If, during the inspection required by paragraph (a) of this AD, the wear on either doubler measures greater than or equal to 0.045 inch, but does not penetrate into or through the APU firewall: Repeat the inspection and measurement required by paragraph (a) of this AD thereafter at intervals not to exceed 30 days, in accordance with Boeing Service Bulletin 777–53A0018, Revision 1, dated February 11, 1999; until paragraph (g) of this AD has been accomplished.

Corrective Actions

(d) If, during the inspection required by paragraph (a) of this AD, any wear penetrates through either doubler and into or through the APU firewall: Within 20 days after detection of the wear, accomplish either paragraph (d)(1) or (d)(2) of this AD in accordance with Boeing Service Bulletin 777–53A0018, Revision 1, dated February 11, 1999.

(1) Install a temporary stainless steel patch on both doublers, and within 4,000 flight cycles after installation of the temporary patch, accomplish the requirements of paragraph (e) of this AD.

(2) Accomplish the requirements of paragraph (e) of this AD.

(e) For airplanes on which wear is detected that penetrates through either doubler and into or through the APU firewall: Accomplish the requirements of paragraphs (e)(1) and (e)(2) of this AD at the time specified in paragraph (d) of this AD, as applicable.

(1) Repair the damage to the APU firewall in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

(2) Replace both existing wear plate doublers of the APU firewall with new stainless steel wear plate doublers in accordance with Boeing Service Bulletin 777–53A0018, Revision 1, dated February 11, 1999. Such replacement constitutes terminating action for the repetitive inspection requirements of paragraphs (b) and (c) of this AD.

One-Time Inspection

(f) For airplanes having L/N 001 through 037 inclusive that have been modified prior to the effective date of this AD in accordance with Boeing Alert Service Bulletin 777–53A0018, dated June 29, 1998: Within 4 years after the effective date of this AD, perform a one-time visual inspection to detect improper clearance between the safety spring wear plate doublers and the APU firewall, in accordance with Boeing Service Bulletin 777–53A0018, Revision 1, dated February 11, 1999.

(1) If the doublers are not in contact with the chemically milled pocket of the APU firewall, no further action is required by this paragraph.

(2) If the doublers are in contact with the chemically milled pocket of the APU firewall, prior to further flight, install shims between the safety spring wear plate doublers and the APU firewall, in accordance with Part 6 of the Accomplishment Instructions of the service bulletin.

Optional Terminating Action

(g) Replacement of the existing wear plate doublers of the APU firewall with new stainless steel wear plate doublers, in accordance with Boeing Service Bulletin 777–53A0018, Revision 1, dated February 11, 1999, constitutes terminating action for the repetitive inspection requirements of paragraphs (b) and (c) of this AD.

Alternative Methods of Compliance

(h) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(i) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on April 1, 1999.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–8687 Filed 4–7–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–AGL–22]

Proposed Modification of Class E Airspace; Juneau, WI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to modify Class E airspace at Juneau, WI. A Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to Runway (Rwy) 20 has been developed for Dodge County Airport. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approach. This action proposes to increase the radius of the existing controlled airspace for this airport.

DATES: Comments must be received on or before May 31, 1999.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, AGL–7, Rules Docket No. 99–AGL–22, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined

during normal business hours at the Air Traffic Division, Airspace Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: Michelle M. Behm, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 99–AGL–22." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Assistant Chief Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, SW, Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to 14 CFR part 71 to modify Class E airspace at Juneau, WI, to accommodate aircraft executing the proposed GPS Rwy 20 SIAP at Dodge County Airport by modifying the existing controlled airspace. Controlled airspace extending upward from 700 to 1200 feet AGL is needed to contain aircraft executing the approach. The area would be depicted on appropriate aeronautical charts. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9E dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore this, proposed regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

* * * * *

Paragraph 6005 Clasd E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL WI E5 Juneau, WI [Revised]

Juneau, Dodge County Airport, WI
(Lat. 43°25'36"N., long. 88°42'12"W.)

That airspace extending upward from 700 feet above the surface within an 8.2-mile radius of the Dodge County Airport, excluding that airspace within the Beaver Dam, WI, Oshkosh, WI, Hartford, WI, Watertown, WI, and Waupun, WI, Class E airspace areas.

* * * * *

Issued in Des Plaines, Illinois on March 29, 1999.

John A. Clayborn,

Acting Manager, Air Traffic Division.

[FR Doc. 99–8749 Filed 4–7–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD13–099–007]

Drawbridge Operations Regulations; Columbia River, OR

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to temporarily amend the operating regulations for the dual Interstate 5 drawbridges across the Columbia River, mile 106.5, between Portland, Oregon, and Vancouver, Washington. The temporary rule would enable the bridge owner to paint the lift towers of the northbound bridge by permitting the vertical lift span to be maintained in the closed (down) position from July 15 to September 15 in 1999 and 2000, provided that the water level at the bridge remains below 6 feet (Columbia River Datum or CRD) at all times.

DATES: Comments must reach the Coast Guard on or before June 7, 1999.

ADDRESSES: You may mail comments to Commander (oan), Thirteenth Coast

Guard District, 915 Second Avenue, Seattle, Washington 98174–1067 or deliver them to room 3510 between 7:45 a.m. and 4:15 p.m., Monday through Friday, except federal holidays.

FOR FURTHER INFORMATION CONTACT: John E. Mikesell, Chief, Plans and Programs Section, Aids to Navigation and Waterways Management Branch, Telephone (206) 220–7272.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should identify this rulemaking (CGD 13–99–007) and the specific section of this document to which each comment applies, and give the reson for each comment. Please submit two copies of all comments and attachments in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. Persons wanting acknowledgment of receipt of comments should enclose a stamped, self-addressed postcard or envelope. The Coast Guard will consider all comments received during the comment period. We may change the proposed rule in view of the comments.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the Coast Guard including the reasons why a hearing would be beneficial. If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

The purpose of the proposed temporary change to operation regulations to 33 CFR 117.869 is to permit the bridge owner to paint the lift span of the northbound bridge. According to the Oregon Department of Transportation, the entire structure is badly in need of painting to prevent further loss of steel through corrosion. The adjacent southbound bridge on I–5 is a newer structure and is not included in this painting project. Its draw span operates normally in unison with the southbound draw span and therefore will be affected by the proposed rule.

Current containment requirements to prevent pollution from the lead paint removal make it necessary to install an envelope around the towers which support the movable span and to isolate the wire ropes within the towers from contamination. This containment system makes it impossible to operate the lift span while it is in place. Derigging such a containment system can not be achieved in a timely fashion for opening the drawbridge for the passage of vessels.

The proposed closure periods are during that part of the year that coincides with lower water levels on the Columbia River. Most vessels are able to pass through one of the two higher fixed spans of the structure south of the drawspan when the river is low. This obviates the need for the dual drawbridges to open for these vessels. The containment system will not intrude into the two fixed spans at the same time that the drawspan is disabled.

The draw opening records show that from 1994 to 1998 the I–5 Bridges averaged 22.4 openings for commercial traffic in July, 15 in August for commercial traffic, and 12.4 for commercial traffic in September. The monthly average was considerably less for recreational vessels.

Since the main channel through the draw span is in line with the downstream railroad swing span, many vessels prefer not to maneuver from the middle of the river back to north bank or vice versa. The Coast Guard understands that openings are not solely demanded on the basis of vertical clearance at the fixed spans near the middle of the bridge. Weather and current related to particular vessels are important factors.

When the river gauge at the bridge is at zero (Columbia River Datum or CRD), the wide fixed span to the south of the lift span provides 58 feet of vertical clearance at the center and the higher and narrower span to the south of the wide span provides 72 feet of vertical clearance. The towboats plying the Columbia River generally require 52 feet or less of vertical clearance. With the river at 6 feet CRD, the wide span is no longer safely passable by towboats. The higher span, although passable, is farther south of the main channel. The limits of maneuverability would dictate that some vessel masters select the lift span channel in order to make a straight course through the downstream railroad bridge swing span.

The highest fixed span is also a less desirable alternative in that it is not an officially authorized channel as of this writing. Some vessel operators are forbidden by their insurance contracts from moving outside authorized channels.

The Coast Guard is particularly interested in determining if the proposed closed periods coincide with expected river levels for the months under consideration such that navigation will not be impeded. The Coast Guard requests comments on alternative closed periods of different lengths of time. The Oregon Department of Transportation requested that the Coast Guard authorize two 90-day closed periods in 1999 and 2000 that would take place between July 1 and October 31. The Coast Guard believes that 90-day periods are exceptionally long and might impede navigation significantly if higher water persists into July. We request comments addressing specific periods for minimal impact to navigation. Mariners are reminded that shorter closed periods may necessitate the approval of closure periods for more than the two years requested by the bridge owner to complete the same amount of work. In other words, the painting of the lift span may involve more than two consecutive summers to finish. The Coast Guard will consider approving the longer 90-day periods if navigational interests indicate that longer closed periods can be tolerated and are preferred to several shorter closures.

The regulations, which are currently in effect, authorize various weekday closed periods during the hours of heavy commuting on Interstate 5. At other times, the dual vertical lift spans open on signal for the passage of vessels.

Discussion of Proposed Rule

The Coast Guard proposes to temporarily amend 33 CFR 117.869 by allowing the drawspan of the subject bridges to remain closed for two 60-day periods from July 15 to September 15, during 1999 and 2000, provided that the river level at the bridge is lower than 6 feet Columbia River Datum at all times during the periods.

Regulatory Evaluation

This rule is not a significant regulatory action under 3(f) of the Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. It has not been reviewed by the Office of Management and Budget under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a full regulatory evaluation is unnecessary. The proposed rule would permit vital maintenance to be performed without unreasonable inconvenience to river traffic.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard considers whether this proposed rule, if adopted, will have a significant economic impact on a substantial number of small entities. "Small entities" include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdiction with populations of less than 50,000. Therefore, for the reasons discussed in the Regulatory Evaluation section above, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities. If, however, you think your business or organization qualifies as a small entity and that this rule will have a significant economic impact on your business or organization, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and in what way and to what degree this proposed rule will economically affect it.

Collection of Information

This proposal contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501–3520).

Federalism

The Coast Guard has analyzed this proposed rule in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this proposed rule and concluded that, under Figure 2–1, paragraph 32(e), of Commandant Instruction M16475.1C, this rule is categorically excluded from further environmental documentation because promulgation of changes to drawbridge regulations have been found not to have a significant effect on the environment. A written "Categorical Exclusion Determination" is not required for this proposed rule.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

For the reasons set out in the preamble, the Coast Guard proposes to amend part 117 of title 33, Code of Federal Regulations, as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

2. From July 15, 1999, to September 15, 2000, a new paragraph (a)(3) is added to § 117.869 to read as follows:

§ 117.869 Columbia River.

(a) * * *

(3) The draws of the dual Interstate 5 Bridges, mile 106.5, between Portland, OR and Vancouver, WA, need not open for the passage of vessels from July 15 to September 15, 1999, and July 15 to September 15, 2000, provided that the river level remains below 6 feet Columbia River Datum. If the river level rises to 6 feet or more, the bridges shall operate as provided in paragraphs (a)(1) and (2) of this section.

* * * * *

Dated: March 31, 1999.

Paul M. Blayney,

Rear Admiral, U.S. Coast Guard Commander, 13th Coast Guard District.

[FR Doc. 99–8745 Filed 4–7–99; 8:45 am]

BILLING CODE 4910–15–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CO–001–0025b; FRL–6319–8]

Approval and Promulgation of Air Quality Implementation Plans; Colorado; Removal and Replacement of Transportation Control Measure, Colorado Springs Element, Carbon Monoxide Section of the State Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing approval of a revision to the Colorado State Implementation Plan (SIP), carbon monoxide (CO) section, Colorado Springs element. In a June 25, 1996, submission, Colorado requests that emission reductions from oxygenate use in gasoline be substituted for reductions associated with the previously approved (48 FR 55284, December 12, 1983) bus acquisition program because the bus program was not implemented due to the lack of federal funding. This revision satisfies certain requirements of part D and section 110 of the Clean Air Act (CAA), as amended in 1990. In the Final Rules section of this **Federal Register**, EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial SIP revision and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

DATES: Comments on this proposed rule must be received in writing by May 10, 1999.

ADDRESSES: Written comments may be mailed to: Richard R. Long, Director, Air and Radiation Program (8P–AR), United States Environmental Protection Agency, Region VIII, 999 18th Street, Suite 500, Denver, Colorado 80202–2466.

Copies of the documents relevant to this action are available for public inspection between 8:00 a.m. and 4:00 p.m., Monday through Friday at the following office: United States Environmental Protection Agency, Region VIII, Air and Radiation Program (8P–AR), 999 18th Street, Suite 500, Denver, Colorado 80202–2466.

FOR FURTHER INFORMATION CONTACT: Tim Russ, Air and Radiation Program (8P–AR), United States Environmental Protection Agency, Region VIII, 999 18th Street, Suite 500, Denver, Colorado 80202–2466, Telephone number: (303) 312–6479.

SUPPLEMENTARY INFORMATION: See the information provided in the Direct Final action which is located in the Rules section of this **Federal Register**.

Dated: March 24, 1999.

William P. Yellowtail,

Regional Administrator, Region VIII.

[FR Doc. 99–8631 Filed 4–7–99; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99–101; RM–9494]

Radio Broadcasting Services; Augusta, KS

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed on behalf of L. Topaz Enterprises, Inc., requesting the allotment of Channel 263A to Augusta, Kansas, as that community's second local FM transmission service. Coordinates used for this proposal are 37–41–12 NL; 96–58–30 WL.

DATES: Comments must be filed on or before May 24, 1999, and reply comments on or before June 8, 1999.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554.

In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: L. Topaz Enterprises, Inc. c/o Dale A. Ganske, President, 3325 Conservancy Lane, Middleton, WI 53562.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 99–101, adopted March 24, 1999, and released April 2, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center (Room CY–A257), 445 Twelfth Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all ex parte contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible ex parte contacts.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–8744 Filed 4–7–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99–100; RM–9491]

Radio Broadcasting Services; Somerton, AZ

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed on behalf of L. Topaz Enterprises, Inc., requesting the allotment of Channel 260C3 to Somerton, Arizona, as that community's first local aural transmission service. Coordinates used for this proposal are 32–35–00 NL; 114–35–05 WL.

DATES: Comments must be filed on or before May 24, 1999, and reply comments on or before June 8, 1999.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: L. Topaz Enterprises, Inc., c/o Dale A. Ganske, President, 3325 Conservancy Lane, Middleton, WI 53562.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 99–100, adopted March 24, 1999, and released April 2, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center (Room CY–A257), 445 Twelfth Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–8743 Filed 4–7–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99–99; RM–9484]

Radio Broadcasting Services; Kensett, AR

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed on behalf of White County Broadcasters, requesting the allotment of Channel 289A to Kensett, Arkansas, as that community's first local commercial FM transmission service. Coordinates used for this proposal are 39–14–00 NL; 91–39–54 WL.

DATES: Comments must be filed on or before May 24, 1999, and reply comments on or before June 8, 1999.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: John F. Garziglia, Esq., Pepper & Corazzini, L.L.P., 1776 K Street, N.W., Suite 200, Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 99–99, adopted March 24, 1999, and released April 2, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center (Room

CY–A257), 445 Twelfth Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–8742 Filed 4–7–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99–98; RM–9483]

Radio Broadcasting Services; Judsonia, AR

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed on behalf of White County Broadcasters, requesting the allotment of Channel 237A to Judsonia, Arkansas, as that community's first local aural transmission service. Coordinates used for this proposal are 35–17–06 NL; 91–37–45 WL.

DATES: Comments must be filed on or before May 24, 1999, and reply comments on or before June 8, 1999.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: John F. Garziglia, Esq., Pepper & Corazzini, L.L.P., 1776 K Street, N.W., Suite 200, Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 99–98, adopted March 24, 1999, and released April 2, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center (Room CY–A257), 445 Twelfth Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–8741 Filed 4–7–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99–110; RM–9513]

Radio Broadcasting Services; Westcliffe, CO

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed on behalf of Mountain West Broadcasting, requesting the allotment of Channel 257A to Westcliffe, Colorado, as that community's first local aural transmission service. Coordinates used for this proposal are 38–04–10 NL and 105–31–42 WL.

DATES: Comments must be filed on or before May 24, 1999, and reply comments on or before June 8, 1999.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Mountain West Broadcasting, c/o Victor A. Michael, Jr., President, 6807 Foxglove Drive, Cheyenne, Wyoming 82009.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 99–110, adopted March 24, 1999, and released April 2, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center (Room CY–A257), 445 Twelfth Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–8739 Filed 4–7–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99–109; RM–9512]

Radio Broadcasting Services; Walsenburg, CO

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed on behalf of Mountain West Broadcasting, requesting the allotment of Channel 267C3 to Walsenburg, Colorado, as that community's second local FM transmission service. Coordinates used for this proposal are 37–37–27 NL and 104–46–47 WL.

DATES: Comments must be filed on or before May 24, 1999, and reply comments on or before June 8, 1999.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Mountain West Broadcasting, c/o Victor A. Michael, Jr., President, 6807 Foxglove Drive, Cheyenne, Wyoming 82009.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 99–109, adopted March 24, 1999, and released April 2, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center (Room CY–A257), 445 Twelfth Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–8738 Filed 4–7–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99–108; RM–9511]

Radio Broadcasting Services; Sawpit, CO

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed on behalf of Mountain West Broadcasting requesting the allotment of Channel 256C3 to Sawpit, Colorado, as that community's first local aural transmission service. Information is requested regarding the attributes of Sawpit, Colorado, to determine whether it is a *bona fide* community for allotment purposes. Coordinates used for this proposal are 37–59–36 NL and 108–00–12 WL.

DATES: Comments must be filed on or before May 24, 1999, and reply comments on or before June 8, 1999.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Victor A. Michael, Jr., President, Mountain West Broadcasting, 6807 Foxglove Drive, Cheyenne, WY 82009.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 99–108, adopted March 24, 1999, and released April 2, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center (Room CY–A257), 445 Twelfth Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all ex parte contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible ex parte contacts.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–8737 Filed 4–7–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99–107; RM–9510]

Radio Broadcasting Services; La Veta, CO

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed on behalf of Mountain West Broadcasting, requesting the allotment of Channel 277A to La Veta, Colorado, as that community's first local aural transmission service. Coordinates used for this proposal are 37–30–54 NL and 105–00–18 WL.

DATES: Comments must be filed on or before May 24, 1999, and reply comments on or before June 8, 1999.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Mountain West Broadcasting, c/o Victor A. Michael, Jr., President, 6807 Foxglove Drive, Cheyenne, Wyoming 82009.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 99–107, adopted March 24, 1999, and

released April 2, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center (Room CY–A257), 445 Twelfth Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–8736 Filed 4–7–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99–111; RM–9539]

Radio Broadcasting Services; Taft, CA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed on behalf of Mountain West Broadcasting, requesting the allotment of Channel 293A to Taft, California, as that community's second local FM transmission service. Coordinates used for this proposal are 35–08–18 NL and 119–27–30 WL.

DATES: Comments must be filed on or before May 24, 1999, and reply comments on or before June 8, 1999.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Mountain West Broadcasting, c/o Victor A. Michael, Jr., President, 6807 Foxglove Drive, Cheyenne, Wyoming 82009.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 99–111, adopted March 24, 1999, and released April 2, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center (Room CY–A257), 445 Twelfth Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–8735 Filed 4–7–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99–106; RM–9509]

Radio Broadcasting Services; La Jara, CO

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed on behalf of Mountain West Broadcasting, requesting the allotment of Channel 221A to La Jara, Colorado, as that community's first local aural transmission service. Coordinates used for this proposal are 37–16–30 NL and 105–57–35 WL.

DATES: Comments must be filed on or before May 24, 1999, and reply comments on or before June 8, 1999.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Mountain West Broadcasting, c/o Victor A. Michael, Jr., President, 6807 Foxglove Drive, Cheyenne, Wyoming 82009.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 99–106, adopted March 24, 1999, and released April 2, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center (Room CY–A257), 445 Twelfth Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–8734 Filed 4–7–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99–105; RM–9508]

Radio Broadcasting Services; Center, CO

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed on behalf of Mountain West Broadcasting, requesting the allotment of Channel 287A to Center, Colorado, as that community's first local aural transmission service. Coordinates used for this proposal are 37–45–00 NL and 106–06–24 WL.

DATES: Comments must be filed on or before May 24, 1999, and reply comments on or before June 8, 1999.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Mountain West Broadcasting, c/o Victor A. Michael, Jr., President, 6807 Foxglove Drive, Cheyenne, Wyoming 82009.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 99–105, adopted March 24, 1999, and released April 2, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center (Room CY-A257), 445 Twelfth Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–8733 Filed 4–7–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CAR Part 73

[MM Docket No. 99–104; RM–9507]

Radio Broadcasting Services; Beulah, CO

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed on behalf of Mountain West Broadcasting, requesting the allotment of Channel 230C3 to Beulah, Colorado, as a first local aural transmission service. As Beulah is not incorporated or listed in the U.S. Census, information is requested regarding the attributes of that locality to determine whether it is a *bona fide* community for allotment purposes. Coordinates used for this proposal are 37–53–23 NL and 105–01–13 WL.

DATES: Comments must be filed on or before May 24, 1999, and reply comments on or before June 8, 1999.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Mountain West Broadcasting, c/o Victor A. Michael, Jr., President, 6807 Foxglove Drive, Cheyenne, Wyoming 82009.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 99–104, adopted March 24, 1999, and released April 2, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center (Room CY-A257), 445 Twelfth Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CAR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, See 47 CAR 1.415 and 1.420.

List of Subjects in 47 CAR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–8732 Filed 4–7–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99–103; RM–9506]

Radio Broadcasting Services; Bayfield, CO

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed on behalf of Mountain West Broadcasting, requesting the allotment of Channel 237A to Bayfield, Colorado, as that community's first local commercial FM transmission service. *See* Supplementary Information, *infra*. Coordinates used for this proposal are 37–13–32 NL and 107–35–51 WL.

DATES: Comments must be filed on or before May 24, 1999, and reply comments on or before June 8, 1999.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Mountain West Broadcasting, c/o Victor A. Michael, Jr., President, 6807 Foxglove Drive, Cheyenne, Wyoming 82009.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No.

99–103, adopted March 24, 1999, and released April 2, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center (Room CY–A257), 445 Twelfth Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800.

Although Channel 237A is requested for allotment to Bayfield, Colorado, as that community's first local FM transmission service, Channel 296C has been proposed for allotment to Bayfield in the context of MM Docket No. 99–76 (RM–9400). *See Notice of Proposed Rule Making* adopted March 10, 1999 (DA 99–534). Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–8731 Filed 4–7–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99–102; RM–9495]

Radio Broadcasting Services; Wellton, AZ

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed on behalf of L. Topaz Enterprises, Inc., requesting the allotment of Channel 240A to Wellton, Arizona, as that community's second local FM transmission service. As Wellton is located within 320 kilometers (199 miles) of the U.S.-Mexico border, concurrence of the Mexican government to the proposed allotment of Channel 240A to that community will be required. Coordinates used for this proposal are 32–40–18 NL; 114–08–18.

DATES: Comments must be filed on or before May 24, 1999, and reply comments on or before June 8, 1999.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: L. Topaz Enterprises, Inc. c/o Dale A. Ganske, President, 3325 Conservancy Lane, Middleton, WI 53562.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 99–102, adopted March 24, 1999, and released April 2, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center (Room CY–A257), 445 Twelfth Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible ex parte contacts.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communication Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–8730 Filed 4–7–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99–112; RM–9540]

Radio Broadcasting Services; Thermal, CA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed on behalf of Mountain West Broadcasting, requesting the allotment of Channel 278A to Thermal, California, as a first local aural transmission service. As Thermal is not incorporated or listed in the U.S. Census, information is requested regarding the attributes of that locality to determine whether it is a *bona fide* community for allotment purposes. Coordinates used for this proposal are 33–38–42 NL and 116–08–30 WL.

DATES: Comments must be filed on or before May 24, 1999, and reply comments on or before June 8, 1999.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Mountain West Broadcasting, c/o Victor A. Michael, Jr., President, 6807 Foxglove Drive, Cheyenne, Wyoming 82009.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 99–112, adopted March 24, 1999, and released April 2, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center (Room CY–A257), 445 Twelfth Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this

one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–8791 Filed 4–7–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99–113; RM–9544]

Radio Broadcasting Services; Cimarron, KS

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed by Nancy Puopolo, requesting the allotment of Channel 222A to Cimarron, Kansas, as that community's first local aural transmission service. Coordinates used for this proposal are 37–48–41 NL and 100–23–09 WL.

DATES: Comments must be filed on or before May 24, 1999, and reply comments on or before June 8, 1999.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Nancy J. Puopolo, 37 Martin St., Rehoboth, MA 02769–2103.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 99–113, adopted March 24, 1999, and released April 2, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center (Room CY–A257), 445 Twelfth Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–8790 Filed 4–7–99; 8:45 am]

BILLING CODE 6712–01–P

Notices

Federal Register
Vol. 64, No. 67
Thursday, April 8, 1999

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Docket No. LS–99–008]

Notice of Request for Extension of a Currently Approved Information Collection

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), this notice announces the Agricultural Marketing Service's (AMS) intention to request an extension of a currently approved information collection used to compile and generate the livestock and meat market reports for the Livestock and Grain Market News Program.

DATES: Comments must be submitted on or before June 7, 1999.

ADDRESSES: Jimmy A. Beard; Assistant to the Chief; Livestock and Grain Market News Branch, Livestock and Seed Program, AMS-USDA, Room 2619 South Building, P.O. Box 96456, Washington, D.C. 20090.

FOR FURTHER INFORMATION CONTACT: Jimmy A. Beard, (202) 720–1050.

SUPPLEMENTARY INFORMATION:

Title: Livestock and Meat Market Reports.

OMB Number: 0581–0154.

Expiration Date of Approval: 01–31–2000.

Type of Request: Extension of a currently approved information collection.

Abstract: The Agricultural Marketing Act of 1946 (7 U.S.C. 1621, *et seq.*) directs and authorizes the collection and dissemination of marketing information including adequate outlook information, on a market area basis, for the purpose of anticipating and meeting consumer requirements aiding in the maintenance of farm income and to bring about a balance between production and utilization.

Under this market news program, USDA issues market news reports covering the livestock and meat trade, which includes a wide range of industry contacts, including packers, processors, producers, brokers, and retailers. These reports are compiled on a voluntary basis, in cooperation with the livestock and meat industry. The information provided by respondents initiates market news reporting, which must be timely, accurate, unbiased, and continuous if it is to be useful to the industry. The livestock and meat industry requested that USDA issue livestock and meat market reports in order to assist them in making immediate production and marketing decisions and as a guide in making sound marketing decisions. The industry uses the livestock and meat reports for assistance in making marketing and production decisions. Also, since the Government is a large purchaser of meat, the reporting and use of this data is helpful.

Estimate of Burden: Public reporting burden for this collection of information is estimated at .03 hours per response.

Respondents: Business or other for-profit, individuals or households, farms, Federal Government.

Estimated Number of Respondents: 450.

Estimated Number of Responses per Respondent: 520.

Estimated Total Annual Burden on Respondents: 7,020 hours.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the methodology and assumptions used; (3) ways to enhance quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments may be sent to: Jimmy A. Beard, Assistant to the Chief, Livestock and Grain Market News Branch, Livestock and Seed Program, AMS–USDA, Room 2619 South Building, P.O. Box 96456, Washington, D.C. 20090–6456.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record, and will be made available at the address above, during regular business hours.

Dated: April 5, 1999.

Barry L. Carpenter,

Deputy Administrator, Livestock and Seed Program.

[FR Doc. 99–8764 Filed 4–7–99; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Forest Service

Stimson ANILCA Access Easement, Colville National Forest, Pend Oreille County, WA

ACTION: Notice of intent to prepare environmental impact statement.

SUMMARY: The Forest Service, USDA, will prepare an environmental impact statement (EIS) on a site-specific proposal to grant an easement and authorize construction and reconstruction of specific roads across National Forest System (NFS) lands as requested by Stimson Lumber Company to access their lands. This request seeks legal access to approximately 2,480 acres in five separate sections of non-Federal land located within the Forest Boundary on the Sullivan Lake Ranger District. The proposed action is located approximately six miles south of Ione, Washington, within the LeClerc Creek watershed. The Proposed Action will be in compliance with the 1988 Colville National Forest Land and Resource Management Plan (Forest Plan) as amended, which provides the overall guidance for management of this area. The Colville National Forest invites written comments and suggestions on the scope of the analysis. The agency gives notice of the full environmental analysis and decision making process so that interested and affected people may be able to participate and contribute in the final decision.

DATES: Comments concerning the scope of this proposal should be received in writing by May 15, 1999.

ADDRESSES: Send written comments and suggestions to Fred C. Gonzalez, District Ranger, 12641 Sullivan Lake Road, Metaline Falls, Washington 99153.

FOR FURTHER INFORMATION CONTACT: Questions about this EIS should be directed to Tim Bertram, Interdisciplinary Team Leader, 12641 Sullivan Lake Road, Metaline Falls, Washington 99153 (phone: 509–446–7500).

SUPPLEMENTARY INFORMATION: The Proposed Action is to grant an easement to Stimson Lumber Company authorizing the construction, reconstruction, and use of seven segments of road, totaling approximately 2.69 miles, to access their property. Sections of land to be accessed are surrounded by NFS lands and no legal road access to the sections currently exists. Stimson Lumber Company seeks access pursuant to the Alaska National Interest Lands Conservation Act, (ANILCA). The ANILCA directs the Forest Service to grant access to inholdings of non-Federal land within the National Forest boundary for the reasonable use and enjoyment of those lands by the landowner. Stimson has stated that it intends to manage the lands to be accessed for long-term timber production utilizing conventional ground based logging systems. The applicant intends to build roads on the easement sufficient to support the intended use of the land.

The proposed Action may result in an amendment to the Forest Plan to provide additional standards and guidelines for the LeClerc Grizzley Bear Management Unit. The standards and guidelines would be based upon recommendations provided in the Interagency Grizzly Bear committee Task Force Report (as revised July 29, 1998).

This analysis will evaluate a range of alternatives for granting access for Stimson's inholdings. The access involves approximately 2.69 miles of road on 22 acres of NFS lands.

Analysis of effects will include both the project area on NFS lands as well as affects on non-federal Stimson lands accessed by the roads. Analysis areas will differ based on resource being assessed (watershed boundaries, grizzly bear management units, etc.).

The Draft EIS will be tiered to the Colville National Forest Land and Resource Management Plan. The Land and Resource Management Plan's Management Area direction for this project area is approximately 3 percent Old Growth Dependent Species Habitat (Management Area 1), 30 percent Wood/Forage Emphasis (Management Area 7), and 67 percent Winter Range (Management Area 8).

Preliminary issues include: (1) Under ANILCA and its implementing regulations, what would constitute reasonable access to Stimson land; (2) What would be the effects of granting access to Stimson land on natural resources including proposed, threatened, and endangered species habitat; and (3) Where is access mutually needed by both Stimson and the Forest Service to meet both economic concerns and natural resource objectives?

A range of alternatives will be considered, including a no-action alternative. Initial scoping began in May 1992 with notice and mailings to interested parties. An Interdisciplinary team was assigned on May 28, 1992 to identify and clarify issues, to explore and develop alternatives based on key issues, and to review and analyze potential environmental effects. An Environmental Assessment (EA), called the Stimson Cost-Share EA, was issued to the public for comment from July 16, 1997 to August 15, 1997. A Decision Notice/Finding of No Significant Impact was issued on March 6, 1998. The decision document was appealed and reversed by the Appeal Deciding Officer on June 15, 1998. comments from the EA comment period and the appeals have been incorporated in the preparation of this Notice and the Proposed Action.

The Environmental Protection Agency (EPA) will publish a Notice of Availability of the draft EIS in the **Federal Register.** The draft EIS is expected to be available by June, 1999. The comment period on the draft EIS will be 45 days from the date the EPA notice appears in the **Federal Register.** It is important that those interested in the management of the Colville National forest participate at that time.

The Forest Service believes it is important to give reviewers notice at this early stage of several court rulings related to public participation in the environmental review process.

First, reviewers of the draft EIS must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519,553 (1978). Also, environmental objections that could be raised at the draft EIS stage but that are not raised until after completion of the final EIS may be waived or dismissed by the courts. *City of Angoon* v. *Hodel,* 803 f. 2d 1016, 1022 (9th Cir., 1986) and *Wisconsin Heritages. Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this Proposed Action participate by the close of the 45 day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final EIS.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft EIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft EIS. Comments may also address the adequacy of the draft EIS or the merits of the alternatives formulated and discussed in the Statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

The final EIS is scheduled to be available by September 1999. In the final EIS, the Forest Service is required to respond to substantive comments received during the comment period for the draft EIS. The Lead Agency is the USDA Forest Service. The responsible official is Colville National Forest Supervisor, Robert L. Vaught, 765 South Main, Colville, WA 99114. The responsible official will decide which, if any, of the alternatives will be implemented. The decision and the rationale for the decision will be documented in the record of Decision, which will be subject to Forest Service Appeal Regulations (36 CFR Part 215).

Dated: March 30, 1999.

Robert L. Vaught,

Forest Supervisor.

[FR Doc. 99–8726 Filed 4–7–99; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 031599B]

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Rocket Launches

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of issuance of a letter of authorization.

SUMMARY: In accordance with the Marine Mammal Protection Act (MMPA), as amended, and implementing regulations, notification is hereby given that a 1-year letter of authorization to take small numbers of seals and sea lions was issued on April 2, 1999, to the 30th Space Wing, U.S. Air Force.

ADDRESSES: The letter of authorization and supporting documentation are available for review during regular business hours in the following offices: Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910, and the Southwest Region, NMFS, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802.

FOR FURTHER INFORMATION CONTACT: Kenneth R. Hollingshead, Office of Protected Resources, NMFS, (301) 713–2055, or Christina Fahy, NMFS, (562) 980–4023.

SUPPLEMENTARY INFORMATION: Section 101(a)(5)(A) of the MMPA (16 U.S.C. 1361 *et seq.*) directs NMFS to allow, on request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and regulations are issued. Under the MMPA, the term "taking" means to harass, hunt, capture, or kill or to attempt to harass, hunt, capture or kill marine mammals.

Permission may be granted for periods up to 5 years if NMFS finds, after notification and opportunity for public comment, that the taking will have a negligible impact on the species or stock(s) of marine mammals and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses. In addition, NMFS must prescribe regulations that include permissible methods of taking and other means effecting the least practicable adverse impact on the species and its habitat and on the availability of the species for subsistence uses, paying particular attention to rookeries, mating grounds, and areas of similar significance. The regulations must include requirements pertaining to the monitoring and reporting of such taking. Regulations governing the taking of seals and sea lions incidental to missile and rocket launches, aircraft flight test operations, and helicopter operations at Vandenberg Air Force Base, CA were published on March 1, 1999 (64 FR 9925), and remain in effect until December 31, 2003.

Issuance of this letter of authorization is based on a finding that the total takings will have no more than a negligible impact on the seal and sea lion populations off the Vandenberg coast and on the Northern Channel Islands.

Dated: April 2, 1999.

Art Jeffers,

Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 99–8767 Filed 4–7–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 033099D]

Marine Mammals; File No. 945–1499–00

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of application.

SUMMARY: Notice is hereby given that Glacier Bay National Park and Preserve, has applied in due form for a permit to take humpback whales (*Megaptera novaeangliae*), minke whales (*Balaenoptera acutorostrata*, and killer whales (*Orcinus orca*) for purposes of scientific research.

DATES: Written or telefaxed comments must be received on or before May 10, 1999.

ADDRESSES: The application and related documents are available for review upon written request or by appointment in the following office(s):

Permits and Documentation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713–2289); and

Regional Administrator, Alaska Region, 709 W. 9th Street, Federal Building, Room 461, P.O. Box 21668, Juneau, Alaska 99802 (907/586–7012).

Written comments or requests for a public hearing on this application should be mailed to the Chief, Permits and Documentation Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate.

Comments may also be submitted by facsimile at (301) 713–0376, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period. Please note that comments will not be accepted by e-mail or by other electronic media.

FOR FURTHER INFORMATION CONTACT: Jeannie Drevenak, 301/713–2289.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered fish and wildlife (50 CFR 222.23).

The applicant is requesting authorization to inadvertently harass up to 200 humpback whales (*Megaptera novaeangliae*) 20 minke whales (*Balaenoptera acutorostrata*) and 75 killer whales (*Orcinus orca*) annually for scientific research purposes during observational, photo-identification, prey assessment and acoustic monitoring activities, and collection of sloughed skin samples for export to New Zealand. Research will be conducted in the waters of Glacier Bay and Icy Strait, Alaska over a five year period. The applicant proposes to initiate this work on May 1, 1999.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: March 30, 1999.

Ann Hochman,

Acting Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 99–8615 Filed 4–7–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 032599C]

Marine Mammals; File No. 881–1443 and File No. 633–1483

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and

Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of applications for amendments.

SUMMARY: Notice is hereby given that the Alaska SeaLife Center (ASLC), P.O. Box 1329, Seward, AK 99664 has requested an amendment to scientific research and enhancement Permit No. 881–1443; and the Center for Coastal Studies (CCS), 59 Commercial Street, P.O. Box 1036, Provincetown, MA 02657 has requested an amendment to scientific research Permit No. 633–1483.

DATES: Written or telefaxed comments must be received on or before May 10, 1999.

ADDRESSES: The amendment requests and related documents are available for review upon written request or by appointment in the following office(s):

Permits and Documentation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910 (301/713–2289);

For the Alaska SeaLife Center (Permit No. 881–1443): Regional Administrator, Alaska Region, National Marine Fisheries Service, NOAA, P.O. Box 21688, Juneau, AK 99802–1668 (907/586–7221); and

For the Center for Coastal Studies (Permit No. 633–1483): Regional Administrator, Northeast Region, National Marine Fisheries Service, NOAA, One Blackburn Dr., Gloucester, MA 01930–0070 (978/281–9250).

Written comments or requests for a public hearing on these requests should be submitted to the Chief, Permits and Documentation Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on these particular amendment requests would be appropriate.

Comments may also be submitted by facsimile at (301) 713–0376, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period. Please note that comments will not be accepted by e-mail or other electronic media.

FOR FURTHER INFORMATION CONTACT: Sara Shapiro or Ruth Johnson, 301/713–2289.

SUPPLEMENTARY INFORMATION: The subject amendment to Permit No. 881–1443 (ASLC), issued on March 27, 1998 (63 FR 14905), and the subject amendment to Permit No. 633–1483 (CCS), issued on March 3, 1999 (64 FR 10276) are requested under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered fish and wildlife (50 CFR 222.23).

Permit No. 881–1443 (ASLC) authorizes the Permit Holder to: assess nutritional physiology, metabolic development, and clinical health under captive conditions of six harbor seals (*Phoca vitulina*) and three Steller sea lions (*Eumetopias jubatus*); conduct stable isotope and lipid metabolism studies on the harbor seals; and conduct a two-week fasting study as part of the controlled dietary studies. The Permit Holder requests authorization to conduct the following experiments on the Steller sea lions: reproductive chemistry and physiology; immunology; organochlorine testing; dive disorders; optimal foraging; and body condition.

Permit No. 633–1483 (CCS) authorizes the Permit Holder to: conduct behavioral observations of, and photo-identify Northern right whales (*Eubalaena glacialis*) during aerial and vessel surveys; place VHF tags on right whales during the course of vessel surveys; collect skin and blubber biopsy samples and sloughed skin; and export skin samples for genetic analysis. The Permit Holder requests authorization to approach, photo-identify, and collect, import and export tissue samples from free-ranging, entangled, and stranded humpback whales (*Megaptera novaeangliae*) and other balaenopterid species. CCS proposes to conduct this research in the U.S. waters of the Atlantic Ocean.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: April 1, 1999.

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 99–8760 Filed 4–7–99; 8:45 am]

BILLING CODE 3510–22–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in India

April 2, 1999.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: April 9, 1999.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.ustreas.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted, variously, for carryforward applied to the 1998 limits and an additional 5% allowance for 100 percent cotton garments made of handloomed fabrics.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 63 FR 71096, published on December 23, 1998). Also see 63 FR 68247, published on December 10, 1998.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

April 2, 1999.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 4, 1998, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, man–

made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in India and exported during the twelve-month period which began on January 1, 1999 and extends through December 31, 1999.

Effective on April 9, 1999, you are directed to adjust the limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
Levels in Group I	
314	8,101,059 square meters.
315	14,108,165 square meters.
334/634	160,923 dozen.
335/635	716,429 dozen.
336/636	958,106 dozen.
338/339	3,931,812 dozen.
340/640	2,127,435 dozen.
341	4,220,145 dozen of which not more than 2,532,085 dozen shall be in Category 341–Y [2].
342/642	1,247,394 dozen.
347/348	711,737 dozen.
351/651	290,544 dozen.
369–D [3]	1,350,698 kilograms.
369–S [4]	736,744 kilograms.
641	1,519,843 dozen.
Group II.	
200, 201, 220–227, 237, 239pt. [5], 300, 301, 331–333, 350, 352, 359pt. [6], 360–362, 600–604, 606 [7], 607, 611–629, 631, 633, 638, 639, 643–646, 649, 650, 652, 659pt. [8], 666, 669pt. [9], 670, 831, 833–838, 840–858 and 859pt. [10], as a group.	116,737,121 square meters equivalent.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1998.

[2] Category 341–Y: only HTS numbers 6204.22.3060, 6206.30.3010, 6206.30.3030 and 6211.42.0054.

[3] Category 369–D: only HTS numbers 6302.60.0010, 6302.91.0005 and 6302.91.0045.

[4] Category 369–S: only HTS number 6307.10.2005.

[5] Category 239pt.: only HTS number 6209.20.5040 (diapers).

[6] Category 359pt.: all HTS numbers except 6406.99.1550.

[7] Category 606: all HTS numbers except 5403.31.0040 (for administrative purposes Category 606 is designated as 606(1)).

[8] Category 659pt.: all HTS numbers except 6406.99.1510 and 6406.99.1540.

[9] Category 669pt.: all HTS numbers except 5601.10.2000, 5601.22.0090, 5607.49.3000, 5607.50.4000 and 6406.10.9040.

[10] Category 859pt.: only HTS numbers 6115.19.8040, 6117.10.6020, 6212.10.5030, 6212.10.9040, 6212.20.0030, 6212.30.0030, 6212.90.0090, 6214.10.2000 and 6214.90.0090.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.99–8786 Filed 4–7–99; 8:45 am]

BILLING CODE 3510–DR–F

COMMODITY FUTURES TRADING COMMISSION

Agricultural Advisory Committee Meeting

This is to give notice, pursuant to Section 10(a) of the Federal Advisory Committee Act, 5 U.S.C. App. 2, § 10(a), that the Commodity Futures Trading Commission's Agricultural Advisory Committee will conduct a public meeting on April 21, 1999 in the first floor hearing room (Room 1000) of the Commission's Washington, DC headquarters, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581. The meeting will begin at 1:00 p.m. and last until 5:00 p.m. The agenda will consist of the following:

Agenda

1. Welcoming Remarks.
2. Panel Discussion on Risk Management Strategies for Producers of Agricultural Commodities.
3. Panel Discussion on Legislative Initiatives for Crop Insurance and other Risk Management Proposals.
4. Status Report and Discussion of Potential Modifications of the Agricultural Trade Option Pilot Program.
5. Other Business.

The meeting is open to the public. The Chairman of the Advisory Committee, Commissioner David D. Spears, is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Advisory Committee should mail a copy of the statement to the attention of: The Agricultural Advisory Committee, c/o Commissioner David D. Spears, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581, before the meeting. Members of the public who wish to make oral statements should inform Commissioner Spears in writing at the foregoing address at least three business days before the meeting. Reasonable provision will be made, if time permits, for an oral presentation of no more than five minutes each in duration.

Issued by the Commission in Washington, DC on April 2, 1999.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 99–8652 Filed 4–7–99; 8:45 am]

BILLING CODE 6351–01–M

DEPARTMENT OF DEFENSE

Department of the Army Corps of Engineers

Intent to Prepare an Integrated Feasibility Report/Environmental Impact Statement for Environmental Restoration and Flood Control in the Sand Creek Watershed near Wahoo, Nebraska

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice of intent.

SUMMARY: Congress authorized the U.S. Army Corps of Engineers (COE) to conduct a reconnaissance study along the Lower Platte River and Tributaries, Nebraska in the interest of flood control, environmental restoration, and other purposes. The COE has conducted a reconnaissance study pursuant to this authority, and has determined that further study in the Sand Creek Watershed in the nature of a Feasibility-Phase Study is required to fulfill the intent of the study authority and to assess the extent of the Federal interest.

The goal of the integrated Feasibility Study/EIS will be to determine the alternative that provides a desired combination of environmental restoration, reduction of sedimentation and water quality improvement, while also providing flood damage reduction and recreation benefits.

Alternatives proposed for consideration are (1) a 637–surface acre multipurpose impoundment one mile north of Wahoo, Nebraska on Sand Creek locally known as the Lake Wanahoo proposal, (2) seven smaller impoundments upstream from the Lake Wanahoo site proposed by the Natural Resources Conservation Service (NRCS) in 1998, (3) two smaller impoundments upstream that were proposed by the COE back in 1960, (4) a combination of Lake Wanahoo and one of the old COE damsites, (5) a combination of Lake Wanahoo and the seven smaller upstream impoundments, and (6) one or more stream channel grade control structures starting at the Lake Wanahoo location and sized to provide wetlands without creating a structure needing a dam classification. The no COE action alternative will also be considered.

A single scoping meeting will be held in Wahoo, Nebraska in the Lower Platte North Natural Resources District (NRD) conference room from 7:00–9:00 pm on May 4, 1999. Scoping comments will be accepted by phone or mail at any time during the preparation of the Draft Feasibility Report/Draft EIS.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and Draft EIS should be directed to Candace M. Thomas, Chief, Environmental and Economics Section, Water Resources Branch, U.S. Army Corps of Engineers, 215 North 17th Street, Omaha, Nebraska 68102–4978, phone (402) 221–4575, email: Candice.M.Thomas@usace.army.mil

SUPPLEMENTARY INFORMATION: The Lower Platte North NRD is a cost-sharing sponsor in the preparation of the feasibility study/EIS, and would also be required to cost-share on any project that results from the study. The feasibility report and EIS will be integrated to reduce paperwork and redundancy, and to consolidate planning documentation into one consistent report.

A watershed planning approach has been taken in the Sand Creek watershed. A 1998 watershed plan prepared by the Lower Platte North NRD and the NRCS consists of 7 dams that will reduce rural and urban flood damages, reduce sedimentation and scour, enhance fish and wildlife habitat, enhance water quality, improve economic conditions, and provide recreational opportunities. That planning process was extended nearly three years for additional studies and consultation with the USFWS on the timing and flows of the Platte River and potential impacts on the endangered pallid sturgeon.

During the delay period, the Lower Platte North NRD also began pursuing a Lake Wanahoo project that would address some of the same flooding problems. The opportunity for building Lake Wanahoo stems from the redesign of U.S. Highway 77 from a two-lane highway to a four-lane expressway. This construction is scheduled to begin in 2002. The Lake Wanahoo dam embankment could also serve as the expressway crossing of Sand Creek.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 99–8765 Filed 4–7–99; 8:45 am]

BILLING CODE 3710–62–M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Acting Leader, Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: An emergency review has been requested in accordance with the Act (44 U.S.C. Chapter 3507(j)), since public harm is reasonably likely to result if normal clearance procedures are followed. Approval by the Office of Management and Budget (OMB) has been requested by April 19, 1999. A regular clearance process is also beginning. Interested persons are invited to submit comments on or before June 7, 1999.

ADDRESSES: Written comments regarding the emergency review should be addressed to the Office of Information and Regulatory Affairs, Attention: Danny Werfel, Desk Officer: Department of Education, Office of Management and Budget; 725 17th Street, N.W., Room 10235, New Executive Office Building, Washington, D.C. 20503. Comments regarding the regular clearance and requests for copies of the proposed information collection request should be addressed to Patrick J. Sherrill, Department of Education, 400 Maryland Avenue, S.W., 5624, Regional Office Building 3, Washington, D.C. 20202–4651, or should be electronically mailed to the internet address *Pat Sherrill@ed.gov*, or should be faxed to 202–708–9346.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Director of OMB provide interested Federal agencies and the public an early opportunity to comment on information collection requests. The Office of Management and Budget (OMB) may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purposes of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Leader, Information Management Group, Office of the Chief Information Officer, publishes this notice containing proposed information collection requests at the beginning of the Departmental review of the information collection. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. ED invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on respondents, including through the use of information technology.

Dated: April 5, 1999.

William E. Burrow,

Acting Leader, Information Management Group, Office of the Chief Information Officer.

Office of Postsecondary Education.

Type of Review: New.

Title: Application for Grants Under the Developing Hispanic-Serving Institutions Program.

Abstract: This information is required of institutions of higher education designated eligible to apply for grants as Hispanic-Serving Institutions under Title V, Part A of the Higher Education Act of 1965, as amended. This information will be used in the evaluation process to determine whether proposed activities are consistent with legislated activities, and to determine the dollar share of the Congressional appropriation.

Additional information: The Higher Education Amendments of 1998 made significant changes to the statutory authorization for Title III, Part A. Title V was created to replace Part A, section 316 of Title II and was named the

Developing Hispanic-Serving Institutions Program.

Frequency: Annually.

Affected Public: Not-for-profit institutions; State, local or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Burden:

Responses: 100

Burden Hours: 850

[FR Doc. 99–8748 Filed 4–7–99; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Office of Arms Control and Nonproliferation Policy; Proposed Subsequent Arrangement

AGENCY: Department of Energy.

ACTION: Subsequent Arrangement.

SUMMARY: The Department is providing a notice of a proposed "subsequent arrangement" under the Agreement for Cooperation in the Peaceful Uses of Nuclear Energy Between the United States of America and the European Atomic Energy Community (EURATOM) and the Agreement for Cooperation Between the Government of the United States of America and the Government of Canada Concerning the Civil Uses of Atomic Energy. This notice is being issued under the authority of section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160).

The subsequent arrangement concerns approval of RTD/CA(EU)–1 involving the return of 25,000 grams of fuel fabrication scrap, containing 23,280 grams of the isotope U–235 (93.15 percent enrichment) from UKAEA in Dounreay, United Kingdom, to, AECL in Chalk River, Canada. The material was originally transferred to the United Kingdom for the recovery of HEU under RTD/EU(CA)–15, which was implemented on October 28, 1997. The recovery process has now been completed and is ready for retransfer to Canada for use as target material for the production of Molybdenum 99.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

Dated: April 2, 1999.

For the Department of Energy.

Ed Fei,

Deputy Director, International Policy and Analysis Division, Office of Arms Control and Nonproliferation.

[FR Doc. 99–8757 Filed 4–7–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER99–473–001, ER99–418–001 and EL99–47–000]

California Independent System Operator Corporation and Pacific Gas and Electric Company; Notice of Initiation of Proceeding and Refund Effective Date

April 5, 1999.

Take notice that on April 2, 1999, the Commission issued an order in the above-indicated dockets initiating a proceeding in Docket No. EL99–47–000 under section 206 of the Federal Power Act.

The refund effective date in Docket No. EL99–47–000 will be 60 days after publication of this notice in the **Federal Register**.

David P. Boergers,

Secretary.

[FR Doc 99–8747 Filed 4–7–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IN99–2–000]

Communications of Market Information Between Affiliates; Declaratory Order

Issued April 1, 1999.

Before Commissioners: James J. Hoecker, Chairman; William L. Massey, Linda Breathitt, and Curt Hébert, Jr.

The Enforcement section, Office of the General Counsel (Enforcement), received a complaint on the Enforcement Hotline that a public utility informed its affiliate by phone to look the next day on the public utility's Internet website for an offer to sell energy. The following day, the public utility advertised discounted energy on its website for only a half-hour. The affiliate and another non-affiliated entity arranged to purchase the discounted energy from the public utility based on the posting. Three weeks later, another non-affiliate requested the same discount terms. The public utility refused to sell energy to that non-affiliate on the same terms at that time.

This scenario raises an issue of whether the public utility gave its affiliate an undue preference by telling the affiliate in advance to look on the public utility's website for information about an offer to sell energy. To provide guidance and eliminate any future uncertainty, the Commission clarifies that a public utility must not alert its affiliate to check for an electronic posting. Such a tip is market information that a utility cannot selectively disclose to an affiliate.

Background

The Hotline learned that a public utility was called by its power marketing affiliate which sought inexpensive energy for a specified term. Several days later, the public utility told its affiliate that the public utility would post on its web page an offer for energy sales with price information the following day.

The next day, the public utility posted on its website an offer to sell a certain quantity of megawatts of installed capacity and energy for a specified term at a particular price. The public utility posted the offer for 30 minutes.

On the day the offer was posted, the affiliate requested all of the megawatts posted. Later the same day, a non-affiliated entity requested a quantity of energy under the same terms given to the affiliate. The public utility agreed to that request as well.

Three weeks later, a second non-affiliated entity requested energy on the same terms that the public utility had given the affiliate and the first non-affiliated entity. The public utility responded that it could only offer capacity and energy on a month-to-month basis and at a different price than it had given the affiliate. When the second non-affiliated entity asked about the sales that the public utility had made to its affiliate and the first non-affiliated entity, the public utility replied that that offering was posted on its website on one day, and that the price had to go up after that day because the public utility faced new environmental requirements and other restrictions.

Discussion

This sale raises the issue of whether the public utility provided an undue preference to its affiliate by telling the affiliate to look for an offer prior to posting the offer on its website.[1] The

[1] There are several problems with this communication: the public utility gave advance notice of the posting to the affiliate—shortly after

Commission clarifies such an advance communication to an affiliate provides an undue preference in violation of section 205 of the Federal Power Act (FPA).

Under section 205 of the FPA, the Commission has jurisdiction over all rates and charges for the transmission or sale of electric energy for resale in interstate commerce by public utilities. Section 205(b) prohibits a public utility from making or granting undue preference or advantage to any person or subjecting any person to any undue preference or disadvantage or maintaining any unreasonable difference in rates, charges, services or facilities with respect to jurisdictional transmission or sales.

In *Detroit Edison Company, et al. (Detroit Edison)*, 80 FERC ¶ 61,348 at 62,197–98 (1997), and *Allegheny Power Service Corporation (Allegheny)*, 82 FERC ¶ 61,245 (1998), the Commission provided procedures for notice and posting of affiliate transactions. In particular, *Detroit Edison* established three conditions to guard against preferences to affiliates in sales: (1) A public utility may sell power to its affiliate only at a rate that is no lower than the rate it charges non-affiliates; (2) a public utility offering to sell power to an affiliated marketer must make the same offer, at the same time, to non-affiliated entities via its electronic bulletin board; and (3) the public utility must post simultaneously on its electronic bulletin board the actual price charged to its affiliate for all transactions.[2] However, *Detroit Edison* does not directly address whether a public utility may alert an affiliate to a prospective offering prior to actually posting the offering on its website.

In *UtiliCorp United, Inc., et al.* (in which the Commission authorized a public utility to sell power at market-based rates), the Commission specifically required that all market information that is shared with an affiliate must be shared with non-affiliates:

All market information shared with an affiliated power marketer must be disclosed simultaneously [to non-affiliates]. This includes information on sales or purchases that will not be made. . . . If there is *any* communication between the two concerning the utility's power or transmission business—broker-related or not, present or future, positive or negative, concrete or potential, significant or slight—it must be simultaneously communicated to all non-affiliates.[3]

Notifying an affiliate to look for a posting is market information that a public utility must communicate simultaneously to non-affiliates. This is consistent with the Commission's ruling in the transmission context that direct communication by phone is not equal to posting information on OASIS. In *American Electric Power Service Corporation, et al.*, The Commission ruled that transmission providers may not disseminate transmission information to merchant function employees or affiliated marketers by phone, while requiring non-affiliates to search the OASIS. Indeed, the Commission stated that transmission employees may not "selectively inform wholesale merchant employees that transmission information will be posted on the OASIS at a specific time."[4]

Therefore, the Commission clarifies that market information is not limited to an actual offer to sell or purchase power; it includes the timing of electronic postings. Public utilities may not selectively communicate any market information to or with affiliates. Market information that is given to an affiliate must be disclosed simultaneously to all non-affiliates.

By the Commission.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–8746 Filed 4–7–99; 8:45 am]

BILLING CODE 6717–01–M

---

the affiliate's telephone request for power. The public utility offered the power for sale for only a half-hour the following day. The short duration of the posting enhanced the value of the tip to look for the posting.

[2] The Commission did not specify what it means to "post" information on an "electronic bulletin board." With more pervasive use of the Internet, "posting" information regarding electric sales or transmission transactions generally means to place it on an Internet site.

[3] 75 FERC ¶ 61,168 at 61,557 (1996), *reh'g denied*, 76 FERC ¶ 61,192 (emphasis in original); *accord* Cambridge Electric Light Company, *et al.*, 85 FERC ¶ 61,217 at 61,898 (1998).

[4] 81 FERC ¶ 61,332 at 62,516 (1997).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. MT99–7–000]

Destin Pipeline Company, L.L.C.; Notice of Tariff Filing

April 2. 1999.

Take notice that on March 30, 1999, Destin Pipeline Company, L.L.C. (Destin) tendered for filing to become part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheets, to become effective on May 1, 1999:

Second Revised Sheet No. 123 Original Sheet No. 123a

Destin states that the purpose of this filing is to update Section 20 of the General Terms and Conditions of its Tariff relating to marketing affiliates.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc/fed/us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A Watson, Jr.,

Acting Secretary.

[FR Doc. 99–8699 Filed 4–7–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–266–000]

Destin Pipeline Company, L.L.C.; Notice of Proposed Changes to FERC Gas Tariff

April 2, 1999.

Take notice that on March 30, 1999, Destin Pipeline Company, L.L.C. (Destin) tendered for filing as part of its FERC Gas Tariff, Seventh Revised Volume No. 1, the following tariff sheets to become effective May 1, 1999:

First Revised Sheet No. 17
Second Revised Sheet No. 20
Second Revised Sheet No. 25
First Revised Sheet No. 26a
First Revised Sheet No. 66
First Revised Sheet No. 86
Third Revised Sheet No. 87
First Revised Sheet No. 90
Second Revised Sheet No. 194
First Revised Sheet No. 194a
Second Revised Sheet No. 210
First Revised Sheet No. 244

Destin states that the purpose of this filing is to revise its Tariff to incorporate certain modifications and clarifications to Rate Schedule FT–2, and to Section

12 (Nominations), and Section 14 (Resolution of Imbalances) of its General Terms and Conditions.

Destin states that the need for these modificaitons has arisen from Destin's day-to-day operating experience on its system during the initial months of service.

Destin states that copies of the filing will be served upon its shippers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings.

Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–8702 Filed 4–7–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–287–000]

Destin Pipeline Company, L.L.C.; Notice of Petition for Waiver of Tariff Provisions

April 2, 1999.

Take notice that on March 30, 1999, Destin Pipeline Company, L.L.C. (Destin) tendered for filing a petition for a limited waiver of its FERC Gas Tariff, Original Volume No. 1, in accordance with Section 161.3(b) of the Commission's Regulations, 18 CFR 161.3(b).

Destin requests a limited waiver of its Tariff to the extent necessary to make an adjustment to its shippers' transportation accounts for the months of September, 1998, through April, 1999.

In its initial months of operation, Destin has determined that its cashout provisions in Section 14 of the General Terms and Conditions of its Tariff can result in an inequity when a shipper's imbalance is a minor quantity, yet a large percentage of its monthly transported volume. For example, such a result could affect small working interest owners, shippers transporting Plant Thermal Reduction only, or shippers commencing service at the end of a month. Under Destin's current Tariff provision, the smallest system imbalances can incur the worst per unit cashout economics for a shipper.

Accordingly, Destin has filed on March 30, 1999, a proposed modification to Section 14 of the General Terms and Conditions of its Tariff to add a 5,000 Dth tolerance, within which a shipper will be cashed out at 100% of the High or Low Price, as applicable, regardless of the percentage of excess deliveries or receipts. This tariff change is proposed to be effective May 1, 1999.

In preparing its Tariff filing, Destin compiled a list of shippers from September, 1998, through February, 1999, with imbalances of less than 5,000 Dth that were subject to cashout tiers under Destin's Tariff. This information is attached as Appendix A to Destin's filing in this proceeding. Destin will make a subsequent informational filing in this proceeding to provide the list of shippers affected by the waiver for the period March–April, 1999, when such data is available.

Destin believes that any imbalances of less than 5,000 Dth occurring from September, 1998, through April, 1999, after which Destin's Tariff revision will be effective, should be cashed out at 100% of the High or Low Price, as applicable, rather than according to the premium tiers required in Section 14.1. Destin submits that the specific facts presented plus the inequitable result absent an adjustment constitute good cause for the Commission to grant a waiver of its Tariff to the extent necessary to allow Destin to make such an adjustment to its shippers' transportation accounts.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before April 9, 1999. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–8703 Filed 4–7–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT99–13–000]

Distrigas of Massachusetts Corporation; Notice of Proposed Changes in FERC Gas Tariff

April 2, 1999.

Take notice that on March 31, 1999, Distrigas of Massachusetts Corporation (DOMAC) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheet, to become effective June 1, 1999:

Sixth Revised Sheet No. 94

DOMAC states that the purpose of this filing is to record semiannual changes in DOMAC's index of customers.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–8695 Filed 4–7–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–270–000]

El Paso Natural Gas Company; Notice of Revenue Crediting Report

April 2. 1999.

Take notice that on March 31, 1999, El Paso Natural Gas Company (El Paso) tendered for filing its revenue crediting report for the calendar year 1998.

El Paso states that the report details El Paso's crediting of risk sharing revenues for the calendar year 1998 in accordance with Section 25.3 of the General Terms and Conditions of its Volume No. 1–A tariff.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before April 9, 1999. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A Watson, Jr.,

Acting Secretary.

[FR Doc. 99–8706 Filed 4–7–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT99–15–000]

Equitrans, L.P.; Notice of Proposed Change in FERC Gas Tariff

April 2, 1999.

Take notice that on March 31, 1999, Equitrans, L.P. (Equitrans), tendered for filing to become part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets, to become effective April 1, 1999:

Eleventh Revised Sheet No. 400
Fourteenth Revised Sheet No. 401

Equitrans states that this filing is made to update Equitrans' index of customers. In Order No. 581 the Commission established a revised format for the Index of Customers to be included in the tariffs of interstate pipelines and required the pipelines to update the index on a quarterly basis to reflect the changes in contract activity. Equitrans requests a waiver of the Commission's notice requirements to permit the tariff sheets to take effect April 1, 1999, the first calendar quarter, in accordance with Order No. 581.

Equitrans states that a copy of its filing has been served upon its customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–8697 Filed 4–7–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–273–000]

Florida Gas Transmission Company; Notice of Request Under Blanket Authorization

April 2, 1999.

Take notice that on March 26, 1999, Florida Gas Transmission Company (FGT), P.O. Box 1188, Houston, Texas 77251–1188, filed in Docket No. CP99–273–000 a request pursuant to Sections 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212) for authorization to construct and operate a delivery point for Clearwater Gas System (Clearwater), located in Pasco County, Florida, under FGT's blanket certificate issued in Docket No. CP82–553–000, pursuant to Section 7(c) of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

FGT proposes to construct, operate, and own an additional delivery point which will be coated on the Anclote Lateral, in Section 35, Township 26 South, Range 16 East, Pasco County, Florida. FGT states that the subject delivery point will include a tap, minor connecting pipe, electronic flow measurement equipment, and any other related appurtenant facilities necessary for FGT to transport for and deliver to Clearwater of up to 5,000 MMBtu per day and 1,825,000 MMBtu per year of natural gas. FGT declares that the proposed end-use of the gas will be commercial, industrial, and residential.

FGT states that Clearwater will reimburse FGT for the total costs of the proposed construction which is estimated to be $68,000 and includes Federal income tax gross-up. FGT asserts that Clearwater will construct, operate, and own the non-jurisdictional facilities which will include a meter and regulation station, minor piping, other related appurtenant facilities, and a fence and gate at the new station site.

FGT declares that the gas quantities proposed to be delivered by FGT to Clearwater at the subject delivery point will be within existing authorized levels of service and will have no incremental effect on FGT's pipeline system. Therefore, FGT asserts that the request, as proposed herein, will not impact their peak day deliveries nor will it impact FGT's annual gas deliveries to Clearwater.

Any person or the Commission staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commissions' Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for

authorization pursuant to Section 7 of the Natural Gas Act.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–8693 Filed 4–7–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. MT99–4–000]

Gulf States Transmission Corporation; Notice of Filing

April 2, 1999.

Take notice that on March 30, 1999, Gulf States Transmission Corporation (Gulf States), tendered for filing and acceptance Sub Second Revised Sheet No. 57 for inclusion in Gulf States FERC Gas Tariff, Original Volume No. 1. Gulf States requests that the revised tariff sheet be deemed effective February 12, 1999.

Gulf States that the tendered sheet is filed in compliance with the Order Accepting Tariff Sheets issued in this docket by the Federal Regulatory Energy Commission on March 17, 1999.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–8698 Filed 4–7–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–268–000]

Mid Louisiana Gas Company; Notice of Proposed Changes in FERC Gas Tariff

April 2, 1999.

Take notice that on March 31, 1999, Mid Louisiana Gas Company (Mid Louisiana) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets to become effective May 1, 1999:

Third Revised Sheet No. 77
Fourth Revised Sheet No. 78
Fourth Revised Sheet No. 79
Third Revised Sheet No. 87
Second Revised Sheet No. 88
Third Revised Sheet No. 157
Third Revised Sheet No. 166

Mid Louisiana states that the purpose of this filing is to comply with Commission Order No. 587–G, issued April 16, 1998 in Docket No. RM96–1–007 wherein the Commission adopted, by reference, certain standardized business procedures, Version 1.2 as submitted by the Gas Industry Standards Board (GISB).

Mid Louisiana requests that the Commission grant a waiver of the filing deadline as stipulated in the Order thereby allowing the indicated tariff sheets(s) be accepted to be effective May 1, 1999.

Pursuant to Section 154.7(a)(7) of the Commission's Regulations, Mid Louisiana respectfully requests waiver of any additional requirement of the Regulations in order to permit the tendered tariff sheet to become effective May 1, 1999, as submitted.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. all such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings.

Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–8704 Filed 4–7–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM99–5–16–000]

National Fuel Gas Supply Corporation; Notice of Tariff Filing

April 2, 1999.

Take notice that on March 31, 1999, National Fuel Gas Supply Corporation (National) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, the following tariff sheet to become, effective April 1, 1999.

Sixteenth Revised Sheet No. 9

National asserts that the purpose of this filing is to comply with the Commission's order issued February 16, 1996, in Docket No. RP94–367–000, *et al.*. Under Article I, Section 4, of the settlement approved in that order, National must redetermine quarterly the Amortization Surcharge to reflect revisions in the Plant to be Amortized, interest and associated taxes, and a change in the determinants. The recalculation produced an Amortization Surcharge of 9.60 cents per dth.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20416, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve the make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–8708 Filed 4–7–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM99–4–28–000]

Panhandle Eastern Pipe Line Company; Notice of Filing

April 2, 1999.

Take notice that on March 31, 1999, Panhandle Eastern Pipe Line Company (Panhandle) tendered for filing its Annual Flow Through of Cash-Out Revenues in Excess of Costs and Scheduling Charges Assessed Against Affiliates in accordance with Section 25 of the General Terms and Conditions (GT&C) of its FERC Gas Tariff, First Revised Volume No. 1.

Panhandle states that pursuant to Section 25(e) of the GT&C, the level of cash-out revenues in excess of costs and scheduling charges assessed against affiliates for the twelve months ended January 31, 1999, and the carryover amount established in Docket No. TM98–4–28–000 were not of sufficient magnitude to result in a reservation charge credit of at least one cent or a commodity charge credit of at least .01 cents. Accordingly, there will be no Section 25 adjustment in effect for the period May 1, 1999 through April 30, 2000. The net revenues for the twelve months ended January 31, 1999 will be carried over to be added to and considered with the net revenues in Panhandle's next filing made pursuant to Section 25 of the GT&C.

Panhandle further states that copies of this filing are being served on all affected customers and applicable state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be on or before April 9, 1999. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–8707 Filed 4–7–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT99–14–000]

Southern Natural Gas Company; Notice of Refund Report

April 2, 1999.

Take notice that on March 31, 1999, Southern Natural Gas Company (Southern Natural) tendered for filing a Refund Report.

Southern Natural states that pursuant to Section 38.3 of the General Terms and Conditions of Southern Natural's Tariff the Refund Report sets forth Excess Storage Usage Charges to be refunded to Rate Schedule CSS customers.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 first Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before April 9, 1999. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to be proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–8696 Filed 4–7–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–224–019]

Southern Natural Gas Company; Notice of GSR Refund Filing

April 2, 1999.

Take notice that on March 31, 1999, Southern Natural Gas Company (Southern) tendered for filing a refund report which calculates and allocates among its customers $947,157 of GSR amounts overcollected during 1998.

Southern states that copies of the filing were served upon all parties listed on the official service list compiled by the Secretary in these proceedings and interested State Commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before April 9, 1999. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–8701 Filed 4–7–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–269–000]

Southern Natural Gas Company; Notice of Proposed Changes to FERC Gas Tariff

April 2, 1999.

Take notice that on March 31, 1999, Southern Natural Gas Company (Southern) tendered for filing as part of its FERC Gas Tariff, Seventh Revised Volume No. 1, the following tariff sheets with the proposed effective date of April 1, 1999:

Tariff Sheets Applicable to Contesting Parties:
Forty Sixth Revised Sheet No. 14
Sixty Seventh Revised Sheet No. 15
Forty Sixth Revised Sheet No. 16

Sixty Seventh Revised Sheet No. 17
Tariff Sheets Applicable to Settling Parties:
Thirty Second Revised Sheet No. 14a
Thirty Eighth Revised Sheet No. 15a
Thirty Second Revised Sheet No. 16a
Thirty Eighth Revised Sheet No. 17a

Southern submits the revised tariff sheets to its FERC Gas Tariff, Seventh Revised Volume No. 1, to reflect a change in its FT/FT–NN Southern Energy Cost Surcharge, due to a decrease in the FERC interest rate effective April 1, 1999.

Southern states that copies of the filing were served upon all parties listed on the official service list compiled by the Secretary in these proceedings.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings.

Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–8705 Filed 4–7–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP98–131–000 and CP98–133–000]

Vector Pipeline L.P.; Notice of Availability of the Final Environmental Impact Statement for the Proposed Vector Pipeline Project

April 2, 1999.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared a Final Environmental Impact Statement (FEIS) on the natural gas pipeline facilities proposed by Vector Pipeline L.P. in the above-referenced dockets.

The FEIS was prepared to satisfy the requirements of the National Environmental Policy Act. The staff concludes that approval of the proposed project with the appropriate mitigating measures as recommended, would have limited adverse environmental impact. The FEIS also evaluates alternatives to the proposal, including system alternatives; major route alternatives; and route variations.

The FEIS addresses the potential environmental effects of the construction and operation of the following facilities:

- The construction of 267.9 miles of 42-inch-diameter pipeline extending from Joliet, Illinois in Will County to Oakland County, Michigan (Segment 1);
- The lease of 58.8 miles of an existing 36-inch-diameter pipeline in Michigan from Oakland County to St. Clair County (Segment 2);
- The construction of 3.5 miles of 42-inch-diameter pipeline in St. Clair County, Michigan terminating at the border of the United States and Canada near St. Clair, Michigan (Segment 3);
- The construction of two new compressor stations, each with 30,000 horsepower of compression;
- The construction of five meter stations;
- The construction of 20 new mainline valves, two pig launchers, and one pig receiver; and
- The construction of permanent access roads for access to compressor stations and valves.

The purpose of the proposed facilities would be to transport about 1.0 billion cubic feet per day of natural gas from the Chicago hub to the terminus of Vector Canada at the Dawn, Ontario hub and to markets in Michigan.

The FEIS has been placed in the public files of the FERC and is available for public inspection at: Federal Energy Regulatory Commission, Public Reference and Files Maintenance Branch, 888 First Street, NE., Room 2A, Washington, DC 20426, (202) 208–1371.

Copies of the FEIS have been mailed to Federal, state and local agencies, public interest groups, individuals who have requested the FEIS, newspapers, and parties to this proceeding. The FEIS may also be viewed on the web at http://www.ferc.fed.us/online/rims.htm (please call (202) 208–2222 for assistance).

Additional information about the proposed project is available from Paul McKee in the Commission's Office of External Affairs, at (202) 208–1088.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–8692 Filed 4–7–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 4055–024]

Vernon Ravenscroft; Availability of Draft Environmental Assessment

April 2, 1999.

A draft environmental assessment (DEA) is available for public review. The DEA is for a proposed amendment to increase the crest elevation of the Ravenscroft Ranch Project's canal spillway by six inches and the height of the operating penstock intake structures by two feet and to increase the operating water level on the project canal by six inches. The DEA finds that approval of the proposed amendment would not constitute a major federal action significantly affecting the quality of the human environment. The Ravenscroft Ranch Project is located on the Malad River, in Gooding County, Idaho.

The DEA was written by staff in the Office of Hydropower Licensing, Federal Energy Regulatory Commission. Copies of the DEA are available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 208–1371. The DEA may be viewed on the web at www.ferc.fed.us/online/rims.htm. Call (202) 208–222 for assistance.

Please submit any comments on the DEA within 30 days from the date of this notice. Any comments, conclusions, or recommendations that draw upon studies, reports, or other working papers of substance should be supported by appropriate documentation. Comments should be addressed to: the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Please affix Project No. 4055–024 to all comments.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–8718 Filed 4–7–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–279–000]

Williams Gas Pipeline Central, Inc., Notice of Request Under Blanket Authorization

April 2, 1999.

Take notice that on March 31, 1999, Williams Gas Pipelines Central, Inc.,

(Applicant), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP99–279–000 a request pursuant to Sections 157.205 and 157.216(b) of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.216) for approval to abandon by reclaim the facilities used for the receipt of transportation natural gas from Apache Corporation (Apache) located in Hemphill County, Texas, under Applicant's blanket certificate issued in Docket Nos. CP82–479–000, pursuant to Section 7(c) of the Natural Gas Act (NGA), all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Applicant states that the facilities were originally installed by Applicant in 1996 to receive transportation gas from Apache. Applicant further states that Apache installed the meter run and, as a result, is the owner of this part of the facilities. It is indicated that Applicant installed the tap, electronic flow measurement, and appurtenant facilities. Applicant asserts that Apache has consented to the abandonment. Applicant's cost to reclaim the facilities is approximately $1,624.

Any person or the Commission's Staff may, within 45 days of the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214), a motion to intervene and pursuant to Section 157.205 of the regulations under the Natural Gas Act (18 CFR 157.205), a protest to the request. If no protest is filed within the time allowed therefor, the proposed activities shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn 30 days after the time allowed for filing a protest the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–8694 Filed 4–7–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. MT99–8–000]

Williston Basin Interstate Company; Notice of Compliance Filing

April 2, 1999.

Take notice that on March 31, 1999, Williston Basin Interstate Pipeline Company (Williston Basin, tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, Tenth Revised Sheet No. 187, with an effective date of March 31, 1999.

Williston Basin is filing the proposed revision to its Tariff to reflect changes in Subsection 7.1 relating to shared policy making personnel. More specifically, Tenth Revised Sheet No. 187 was revised to reflect the fact that John K. Castleberry, President of Williston Basin, was named President and Chief Executive Officer of such company. This sheet also reflects the correction of two minor typographical errors.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–8700 Filed 4–7–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene and Protests

April 2, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* P–11667–000.

c. *Date Filed:* February 1, 1989.

d. *Applicant:* Universal Electric Power Corporation.

e. *Name of Project:* Pine Creek Dam.

f. *Location:* On the Little River in McCurtain Country, Oklahoma, utilizing federal lands administered by the U.S. Army Corps of Engineers.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. §§ 791 (a)-825(r).

h. *Applicant Contact:* Mr. Ronald S. Feltenberger, Universal Electric Power Corp., 1145 Highbrook Street, Akron, OH 44301, (330) 535-7115.

i. *FERC Contact:* Any questions on this notice should be addressed to Charles T. Raabe, E-mail address, Charles.Raabe@ferc.fed.us, or telephone (202) 219-2811.

j. *Deadline Date:* 60 days from the issuance date of this notice.

k. *Description of Project* The proposed project would utilize the existing U.S. Army Corps of Engineers' Pine Creek Dam and would consist of: (1) two new 100-foot-long, 52-inch-diamter penstocks; (2) a new 30-foot-long, 50-foot-wide, 20-foot-high powerhouse containing two generating units with a total installed capacity of 1,300-kW; (3) a new exhaust apron; (4) a new 6-mile-long, 14.7-kV transmission line; and (5) appurtenant facilities.

Applicant estimates that the average annual generation would be 8 GWh and that the cost of the studies to be performed under the terms of the permit would be $650,000. Project energy would be sold to utility companies, corporations, municipalities, aggregators, or similar entities.

l. *Locations of the application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Washington, D.C. 20426, or by calling (202) 208-1371. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call (202) 208-2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

m. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

A5. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before, the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing

preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

A7. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

A9. Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

A10. Proposed Scope of Studies Under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

B. Comments, Protests, or Motions To Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. An additional copy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–8709 Filed 4–7–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions to Intervene and Protests

April 2, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* P–11668–000.

c. *Date Filed:* February 1, 1999.

d. *Applicant:* Universal Electric Power Corporation.

e. *Name of Project:* Ballville Dam.

f. *Location:* On the Sandusky River in Sandusky County, Ohio.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. §§ 791(a)–825(r).

h. *Applicant Contact:* Mr. Ronald S. Feltenberger, Universal Electric Power Corp., 1145 Highbrook Street, Akron, OH 44301, (330) 535–7115.

i. *FERC Contact:* Any questions on this notice should be addressed to Charles T. Raabe, E-mail address, Charles.Raabe@ferc.fed.us, or telephone (202) 219–2811.

j. *Deadline Date:* 60 days from the issuance date of this notice.

k. *Description of Project:* The proposed project would consist of: (1) the existing 423-foot-long, 34-foot-high concrete-gravity type dam; (2) a reservoir having an 89-acre surface area and a 524-acre-foot storage capacity at normal pool elevation 640.7-feet m.s.l.; (3) two new 22-foot-long, 47-inch-diameter steel penstocks; (4) a new 12-foot-long, 12-foot-wide, 10-foot-high powerhouse containing two generating units with a total installed capacity of 2,000-kW; (5) a new discharge apron; (6) a new 1-mile-long, 14.7-kV transmission line; and (7) appurtenant facilities. The existing facilities are owned by the city of Freemont, Ohio.

Applicant estimates that the average annual generation would be 13 GWh and that the cost of the studies to be performed under the terms of the permit would be $1,000,000. Project energy would be sold to utility companies, corporations, municipalities, aggregators, or similar entities.

l. *Locations of the application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Washington, D.C. 20426, or by calling (202) 208–1371. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

m. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

A5. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

A7. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the

particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

A9. Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

A10. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. An additional copy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–8710 Filed 4–7–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions to Intervene and Protests

April 2, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* P–11669–000.

c. *Date Filed:* February 1, 1998.

d. *Applicant:* Universal Electric Power Corporation.

e. *Name of Project:* Hugo Dam.

f. *Location:* On the Kiamichi River in Choctaw County, Oklahoma, utilizing federal lands administered by the U.S. Army Corps of Engineers.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. §§ 791(a)–825(r).

h. *Applicant Contact:* Mr. Ronald S. Feltenberger, Universal Electric Power Corp., 1145 Highbrook Street, Akron, OH 44301, (330) 535–7115.

i. *FERC Contact:* Any questions on this notice should be addressed to Charles T. Raabe, E-mail address, Charles. Raabe@ferc.fed.us, or telephone (202) 219–2811.

j. *Deadline Date:* 60 days from the issuance date of this notice.

k. *Description of Project:* The proposed project would utilize the existing U.S. Army Corps of Engineers' Hugo Dam and would consist of: (1) two new 70-foot-long, 96-inch-diameter steel penstocks; (2) a new 45-foot-long, 25-foot-wide, 15-foot-high powerhouse containing two generating units with a total installed capacity of 2,000-kW; (3) a new exhaust apron; (4) a new 2-mile-long, 14.7-kV transmission line; and (5) appurtenant facilities.

Applicant estimates that the average annual generation would be 13 GWh and that the cost of the studies to be performed under the terms of the permit would be $800,000. Project energy would be sold to utility companies, corporations, municipalities, aggregators, or similar entities.

l. *Locations of the application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Washington, D.C. 20426, or by calling (202) 208–1371. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

m. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

A5. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

A7. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

A9. Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

A10. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–8711 Filed 4–7–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Request for Motions to Intervene and Protests

April 2, 1999.

Take notice that the following hydroelectric applications have been filed with the Commission and are available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* P–11683–000.

c. *Date filed:* February 16, 1999.

d. *Applicant:* Universal Electric Power Corp.

e. *Name of Project:* Michael J. Kirwan Dam Project.

f. *Location:* At the existing U.S. Army Corps of Engineers' Michael J. Kirwan Dam on the Mahoning River, near the Town of Wayland, Portage Country, Ohio.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. §§ 791 (a)—825(r).

h. *Applicant Contact:* Mr. Ronald S. Feltenberger, Universal Electric Power Corp., 1145 Highbrook Street, Akron, Ohio 44301, (330) 535–7115.

i. *FERC Contact:* Ed Lee (202) 219–2808 or E-mail address at Ed.Lee@FERC.fed.us.

j. *Comment Date:* 60 days from the issuance date of this notice.

k. *Description of Project:* The proposed project would utilize the existing U.S. Army Corps of Engineers' Michael J. Kirwan Dam, and would consist of the following facilities: (1) a new powerhouse to be constructed on the downstream side of the dam having an installed capacity of 1.323 megawatts; (2) a new .25-mile-long, 14.7-kilovolt transmission line; and (3) appurtenant facilities. The proposed average annual generation is estimated to be 8.11 gigawatthours. The cost of the studies under the permit will not exceed $750,000.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

m. Available Locations of Application: A copy of the application is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 888 North Capitol Street, N.E., Room 2–A, Washington, D.C. 20426, or by calling (202) 208–1371. A copy is also available for inspection and reproduction at Universal Electric Power Corp., Mr. Ronald S. Feltenberger, 1145 Highbrook Street, Akron, Ohio 44301, (330) 535–7115. A copy of the application may also be viewed or printed by accessing the Commission's website on the Internet at http://www.ferc.fed.us/online/rims.htm or call (202) 208–2222 for assistance.

A5. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

A7. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

A9. Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application preliminary specify which type of application). A notice of intent

must be served on the applicant(s) named in this public notice.

A10. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to director, Division of project Review, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–8712 Filed 4–7–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted For Filing and Soliciting Comments, Motions to Intervene, and Protests

April 2, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 11686–000.

c. *Date Filed:* February 22, 1999.

d. *Applicant:* Universal Electric Power Corporation.

e. *Name of Project:* Mosquito Creek Dam Hydroelectric Project.

f. *Location:* On the Mosquito Creek near the towns of Warren and Cortland, in Trumbull County, Ohio.

g. *Filed Pursuant to:* Federal Power Act, 16 USC §§ 791(a)–825(r).

h. *Applicant Contact:* Ronald S. Feltenberger, Universal Electric Power Corporation, 1145 Highbrook Street, Akron, Ohio 44301, (330) 535–7115.

i. *FERC Contact:* Any questions on this notice should be addressed to Tom Dean, E–mail address, thomas.dean@ferc.fed.us, or telephone 202–219–2778.

j. *Deadline for filing comments, motions to intervene, and protests:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules of Practice and Procedures require all intervenors filing documents with the Commission to serve a copy of the document on each person whose name appears on the official service list for the project.

Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of the Project:* the project would be located at the existing U.S. Army Corps of Engineers Mosquito Creek Dam and would consist of the following proposed facilities: (1) A 50–foot–long, 54–inch–diameter penstock; (2) a powerhouse on the tailrace side of the dam housing a single turbine generating unit with an installed capacity of 990 kW; (3) a 200–foot–long, 14.7 kV transmission line; and (4) other appurtenances.

Applicant estimates that the average annual generation would be 6,000 MWh and that the cost of the studies under the permit would be $500,000.

l. *Locations of the application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

m. A5, A7, A9, A10, B, C, and D2.

A5. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

A7. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

A9. Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary

permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

A10. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. An additional copy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–8713 Filed 4–7–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Comments, Motions to Intervene, and Protests

April 2, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 11687–000.

c. *Date Filed:* February 22, 1999.

d. *Applicant:* Universal Electric Power Corporation.

e. *Name of Project:* Newburgh L&D Hydroelectric Project.

f. *Location:* On the Ohio River near the town of Newburgh, in Warrick County, Indiana, and the town of Henderson, in Henderson County, Kentucky.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Ronald S. Feltenberger, Universal Electric Power Corporation, 1145 Highbrook Street, Akron, Ohio 44301, (330) 535–7115.

i. *FERC Contact:* Any questions on this notice should be addressed to Tom Dean, E-mail address, thomas.dean@ferc.fed.us, or telephone 202–219–2778.

j. *Deadline for filing comments, motions to intervene, and protests:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice and Procedures require all intervenors filing documents with the Commission to serve a copy of the document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of the Project:* The project would be located at the existing U.S. Army Corps of Engineers Newburgh Lock and Dam and would consist of the following proposed facilities: (1) eight 50-foot-long, 120-inch-diameter penstocks; (2) a powerhouse on the tailrace side of the dam housing eight turbine generating units with a total installed capacity of 15 MW; (3) a 1.5-mile-long, 14.7 kV transmission line; and (4) other appurtenances.

Applicant estimates that the average annual generation would be 92,000 MWh and that the cost of the studies under the permit would be $2,000,000.

l. *Locations of the application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 208–1371. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

m. A5, A7, A9, A10, B, C, and D2.

A5. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

A7. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

A9. Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

A10. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–8714 Filed 4–7–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

April 2, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 11688–000.

c. *Date Filed:* February 22, 1999.

d. *Applicant:* Universal Electric Power Corporation.

e. *Name of Project:* Uniontown L&D Hydroelectric Project.

f. *Location:* On the Ohio River near the town of Morganfield, in Union County, Kentucky, and the town of Mount Vernon, in Posey County, Indiana.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Ronald S. Feltenberger, Universal Electric Power Corporation, 1145 Highbrook Street, Akron, Ohio 44301, (330) 535–7115.

i. *FERC Contact:* Any questions on this notice should be addressed to Tom Dean, E-mail address, thomas.dean@ferc.fed.us, or telephone 202–219–2778.

j. *Deadline for filing comments, motions to intervene, and protests:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules of Practice and Procedures require all intervenors filing documents with the Commission to serve a copy of the document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of the Project:* The project would be located at the existing U.S. Army Corps of Engineers Uniontown Lock and Dam and would consist of the following proposed facilities: (1) eleven 50-foot-long, 120-inch-diameter penstocks; (2) a powerhouse on the tailrace side of the dam housing eleven turbine generating units with a total installed capacity of 22.5 kW; (3) a 500-foot-long, 14.7 kV transmission line; and (4) other appurtenances.

Applicant estimates that the average annual generation would be 138,000 MWh and that the cost of the studies under the permit would be $2,500,000.

l. *Locations of the application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

m. A5, A7, A9, A10, B, C, and D2.

A5. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

A7. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person

to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

A9. Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

A10. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. An additional copy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–8715 Filed 4–7–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions to Intervene, Protests, and Comments

April 2, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. Type of Application: Preliminary Permit.

b. Project No.: 11690–000.

c. Date filed: March 1, 1999.

d. Applicant: Alaska Village Electric Cooperative, Inc.

e. Name of Project: Old Harbor.

f. Location: On Mountain and Lagoon Creeks in Kodiak Island Borough. The project is partially within the Kodiak National Wildlife Refuge, administered by the U.S. Fish and Wildlife Service.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. §§ 791(a)–825(r).

h. Applicant Contact: Mr. Charles Y. Walls, General Manager, Alaska Village Electric Cooperative, Inc., 4831 Eagle Street, Anchorage, Alaska 99503–7497.

i. FERC Contact: Hector M. Pérez, hector.perez@ferc.fed.us, 202–219–2843.

j. Deadline for filing motions to intervene, protest and comments: 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's rules of practice and procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. The project would consist of the following new facilities: (1) An intake structure on Mountain Creek at elevation 840 feet mean sea level; (2) a 16-inch-diameter 3,200-foot-long steel penstock; (3) a powerhouse with an installed capacity of 500 kilowatts discharging into Lagoon Creek; (4) a 5,500-foot-long 480-volt buried transmission line; and (5) other appurtenances.

l. Locations of the application: A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371. The application may be viewed on http://www.ferc.fed.us/rims.htm (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

m. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

A5. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

A7. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license

application must conform with 18 CFR 4.30(b) and 4.36.

A9. Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

A10. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protests, or a motion to intervene in accordance with the requirements of rules of practice and procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–8716 Filed 4–7–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Intent to File an Application for a New License

April 2, 1999.

a. Type of Filing: Notice of Intent to File An Application for a New License.

b. Project No.: 287.

c. Date Filed: March 23, 1999.

d. Submitted By: Midwest Hydro, Inc.-current licensee.

e. Name of Project: Dayton Hydroelectric Project.

f. Location: On the Fox River near the City of Dayton, in La Salle County, Illinois.

g. Filed Pursuant to: Section 15 of the Federal Power Act.

h. Licensee Contact: Midwest Hydro, Inc., P.O. Box 167, 116 State Street, Neshkoro, WI 54960, Loyal Gake, (920) 293–4628.

i. FERC Contact: Any questions on this notice should be addressed to Tom Dean, E-mail address, thomas.dean@ferc.fed.us, or telephone (202) 219–2778.

j. Effective date of current license: August 1, 1979.

k. Expiration date of current license: April 10, 2004.

l. Description of the Project: The project consists of the following existing facilities: (1) A 594-foot-long, 23-foot-high arch-buttress dam; (2) a 200-acre reservoir extending about 3.5 miles upstream from the dam; (3) an 800-foot-long canal; (4) a powerhouse containing three generating units with a total installed capacity of 3,680 kW; (5) transmission facilities; and (6) other appurtenances.

m. Each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by April 10, 2002.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–8717 Filed 4–7–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Ready for Environmental Analysis and Soliciting Comments, Recommendations, Terms and Conditions, and Prescriptions

April 2, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. Type of Application: Major License.

b. Project No.: 10855–002.

c. Date filed: May 2, 1994.

d. Applicant: Upper Peninsula Power Company.

e. Name of Project: Dead River Hydroelectric Project.

f. Location: On the Dead River, in Marquette County, Michigan.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Applicant Contact: Mr. Clarence R. Fisher, President, Upper Peninsula Power Company, P.O. Box 130, 600 Lakeshore Drive, Houghton, MI 49931–0130, (906) 487–5000.

i. FERC Contact: Peter Leitzke, peter.leitzke@ferc.fed.us, or telephone (202) 219–2083.

j. Deadline for filing comments, recommendations, terms and conditions, and prescriptions: 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. Status of Environmental Analysis: This application has been accepted, and is ready for environmental analysis at this time.

l. Description of Project: The constructed project consists of the following developments: The Silver Lake Dam Development consists of the following existing facilities: (1) The 1,500-foot-long, 30-foot-high earth embankment Silver Lake Dam; (2) a 100-foot-long, 7.7 foot-high concrete ogee crest spillway; (3) a 1,491-foot-long, 34-foot-high concrete gravity outlet structure; (4) four earthen saddle dikes consisting of: (a) 200-foot-long, 5-foot-high dike 1; (b) 370-foot-long, 7-foot-high dike 2; (c) 170-foot-long, 6-foot-high dike 3; (d) 290-foot-long, 5-foot-high dike 4; (4) a reservoir having a surface area of 1,464-acres with a storage capacity of 33,513 acre-feet, and a normal water surface elevation of 1,486.25 feet M.S.L. There is no generation proposed at this development.

The Hoist Dam Development consists of the following existing facilities: (1) The 674-foot-long earthen embankment and concrete gravity Hoist Dam with sections varying in height from 6 to 63 feet; (2) a reservoir having a surface area of 3,202 acres with a storage capacity of 46,998 acre-feet, and normal water surface elevation of 1.347.5 feet M.S.L.; (3) an intake structure; (4) a 342-foot-long, 9-foot-wide, 10-foot-high tunnel; (5) a 193-foot-long, 7-foot diameter steel penstock; (6) a powerhouse containing 3 generating units with a total installed capacity of 4.40 MW; (7) a tailrace; (8) an existing 33-kV transmission line; and (9) other appurtenances. The estimated average annual generation is 15,643 MWh.

The McClure Dam Development consists of the following existing facilities; (1) The 839-foot-long, earth embankment and concrete gravity McClure Dam varying in height from 22 to 51.4 feet; (2) a reservoir having a surface area of 95.9 acres with a storage capacity of 1,870 acre-feet, and normal water surface elevation of 1,196.4 feet M.S.L.; (3) an intake structure; (4) a 13,302-foot-long, 7-foot-diameter steel, wood, and concrete pipeline; (5) a 40-foot-high, 30-foot-diameter concrete surge tank; (6) a powerhouse containing 2 generating units with a total installed capacity of 8.0 MW; (7) a tailrace; (8) a 33-kV transmission line; and (9) other appurtenances. The estimated average annual generation is 48,452 MWh.

m. Locations of the application: A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 208–1371. The application may be viewed on http://www.ferc.fed.us/rims.htm (call 202–208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

n. This notice also consists of the following standard paragraph: D10

D10. Filing and Service Responsive Documents—The application is ready for environmental analysis at this time, and the Commission is requesting comments, reply comments, recommendations, terms and conditions, and prescriptions.

The Commission directs, pursuant to Section 4.34(b) of the Regulations (see Order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991) that all comments, recommendations, terms and conditions and prescriptions concerning the application be filed with the Commission within 60 days from the issuance date of this notice. All reply comments must be filed with the Commission within 105 days from the date of this notice.

Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

All filings must (1) bear in all capital letters the title "COMMENTS", "REPLY COMMENTS", "RECOMMENDATIONS", "TERMS AND CONDITIONS", or "PRESCRIPTIONS;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, at the above address. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b), and 385.2010.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–8719 Filed 4–7–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene and Protests

April 2, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. Type of Application: Preliminary Permit.

b. Project No.: P–11626–000.

c. Date Filed: November 6, 1998.

d. Applicant: Universal Electric Power Corporation.

e. Name of Project: Sutton Dam.

f. Location: On the Elk River in Braxton County, West Virginia, utilizing federal facilities and lands administered by the U.S. Army Corps of Engineers.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Applicant Contact: Mr. Ronald S. Feltenberger, Universal Electric Power Corp., 1145 Highbrook Street, Akron, OH 44301, (330) 535–7115.

i. FERC Contact: Any questions on this notice should be addressed to Charles T. Raabe, E-mail address, Charles.Raabe@ferc.fed.us, or telephone (202) 219–2811.

j. Deadline Date: 60 days from the issuance date of this notice.

k. Description of Project: The proposed project would utilize the existing U.S. Army Corps of Engineers' Sutton Dam and would consist of: (1) Five new 50-foot-long, 54-inch-diameter penstocks; (2) a new 50-foot-long, 40-foot-wide, 25-foot-high powerhouse containing five 740-kW generating units for a total installed capacity of 3,700-kW; (3) a new discharge apron; (4) a new 1,200-foot-long, 14.7-kV transmission line; and (5) appurtenant facilities.

Applicant estimates that the average annual generation would be 24 GWh and that the cost of the studies to be performed under the terms of the permit would be $1,000,000. Project energy would be sold to utility companies, corporations, municipalities, aggregators, or similar entities.

l. Locations of the application: A copy of the application is available for

inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Washington, DC 20426, or by calling (202) 208–1371. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims/htm (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

m. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

A5. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

A7. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

A9. Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

A10. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of rules of practice and procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION" "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–8720 Filed 4–7–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions to Intervene and Protests

April 2, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. Type of Application: Preliminary Permit.

b. Project No.: P–11627–000.

c. Date Filed: November 6, 1998.

d. Applicant: Universal Electric Power Corporation.

e. Name of Project: R.D. Bailey Dam.

f. Location: On the Guyandot River in Wyoming and Mingo Counties, West Virginia, utilizing federal facilities and lands administered by the U.S. Army Corps of Engineers.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Applicant Contact: Mr. Ronald S. Feltenberger, Universal Electric Power Corp., 1145 Highbrook Street, Akron, OH 44301, (330) 535–7115.

i. FERC Contact: Any questions on this notice should be addressed to Charles T. Raabe, E-mail address, Charles.Raabe@ferc.fed.us, or telephone (202) 219–2811.

j. Deadline Date: 60 days from the issuance date of this notice.

k. Description of Project: The proposed project would utilize the existing U.S. Army Corps of Engineers' R.D. Bailey Dam and would consist of: (1) Two new 50-foot-long, 42-inch-diameter penstocks; (2) a new 50-foot-long, 40-foot-wide, 25-foot-high powerhouse containing a 3,000-kW generating unit; (3) a new exhaust apron; (4) a new 900-foot-long, 14.7-kV transmission line; and (5) appurtenant facilities.

Applicant estimates that the average annual generation would be 20 GWh and that the cost of the studies to be performed under the terms of the permit would be $1,000,000. Project energy would be sold to utility companies, corporations, municipalities, aggregators, or similar entities.

l. Locations of the application: A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Washington, D.C. 20426, or by calling (202) 208–1371. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call (202) 208–2222 for assistance). A copy

is also available for inspection and reproduction at the address in item h above.

m. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

A5. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

A7. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

A9. Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

A10. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of rules of practice and procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–8721 Filed 4–7–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene and Protests

April 2, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. Type of Application: Preliminary Permit.

b. Project No.: P–11654–000.

c. Date Filed: December 31, 1998.

d. Applicant: Universal Electric Power Corporation.

e. Name of Project: Gillham Dam.

f. Location: On the Cossatot River in Howard County, Arkansas, utilizing federal lands administered by the U.S. Army Corps of Engineers.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Applicant Contact: Mr. Ronald S. Feltenberger, Universal Electric Power Corp., 1145 Highbrook Street, Akron, OH 44301, (330) 535–7115.

i. FERC Contact: Any questions on this notice should be addressed to Charles T. Raabe, E-mail address, Charles.Raabe@ferc.fed.us, or telephone (202) 219–2811.

j. Deadline Date: 60 days from the issuance date of this notice.

k. Description of Project: The proposed project would utilize the existing U.S. Army Corps of Engineers' Gillham Dam and would consist of: (1) Two new 45-foot-long, 36-inch-diameter steel penstocks; (2) a new 35-foot-long, 40-foot-wide, 25-foot-high powerhouse containing two 660-kW generating units for a total installed capacity of 1,320-kW; (3) a new exhaust apron; (4) a new one-mile-long, 14.7-kV transmission line; and (5) appurtenant facilities.

Applicant estimates that the average annual generation would be 7,500 MWh and that the cost of the studies to be performed under the terms of the permit would be $800,000. Project energy would be sold to utility companies, corporations, municipalities, aggregators, or similar entities.

l. Locations of the application: A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Washington, DC 20426, or by calling (202) 208–1371. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call (202) 208–2222 for assistance). a copy is also available for inspection and

reproduction at the address in item h above.

m. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

A5. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

A7. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

A9. Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

A10. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of rules of practice and procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–8722 Filed 4–7–99; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[TRL 6320–9]

Science Advisory Board; Radiation Advisory Committee (RAC); Notification of Public Advisory Committee Meeting Open Teleconference Meeting

Pursuant to the Federal Advisory Committee Act, Pub. L. 92–463, notice is hereby given that the Science Advisory Board's (SAB's) Radiation Advisory Committee (RAC) will conduct a public teleconference meeting from 4:00 p.m. to 6:00 p.m. eastern time on Tuesday, April 27, 1999. for those wishing to physically attend the meeting, it will be held in the SAB Conference Room 3709 Waterside Mall, EPA Headquarters, 401 M Street, SW, Washington, DC 20460.

All times noted are Eastern Time. The meeting is open to the public, however, due to limited space, seating at the meeting will be on a first-come basis. Important Notice: Documents that are the subject of SAB reviews are normally available from the originating EPA office and are not available from the SAB Office. Information concerning availability of documents from the relevant Program Office is included below.

At this meeting, the RAC will attempt to reach closure on its April, 1999 draft advisory of an Office of Radiation and Indoor Air (ORIA) draft white paper. The ORIA draft white paper (37 pages in length) entitled "Proposed EPA Methodology for Assessing Risks from Indoor Radon Based on BEIR VI," dated February, 1999, proposes a methodology for assessing cancer risks from indoor radon in light of the National Academy of Sciences (NAS) Biological Effects of Ionizing Radiation (BEIR VI) committee document. The draft SAB/RAC advisory in review of the ORIA draft white paper focuses on the technical aspects of the Agency's methodology report. The first public meeting which initiated the advisory began on March 24, 1999 (see **Federal Register**, Vol. 64, No. 41, Wednesday, March 3, 1999, pp. 10294–10295). The charge questions to be answered include, but are not limited to the following:

(a) Is the overall approach of using the BEIR VI age-concentration model acceptable? (BEIR VI gives model options);

(b) What advice does the RAC have on refinements and extensions we (the Agency) are considering?; and

(c) Have we (the Agency) adequately accounted for the sources of uncertainty?

FOR FURTHER INFORMATION CONTACT: Members of the public wishing further information concerning the teleconference meeting, such as copies of the proposed meeting agenda or RAC draft advisory dated April, 1999, or who wish to submit written comments should contact Mrs. Diana L. Pozun at (202) 260–8432; fax (202) 260–7118, or via E-Mail: pozun.diana@epa.gov. Members of the public who wish to make a brief oral presentation to the Committee must contact Dr. K. Jack Kooyoomjian *in writing* (by letter or by fax—see contact information below) no later than 12 noon Eastern Time, Tuesday, April 20, 1999 in order to be included on the Agenda. In general, public comments at teleconferences will be normally limited to three minutes per speaker or organization. The request should identify the name of the individual making the presentation, the organization (if any) they will represent, and at least 35 copies of an outline of the issues to be addressed or of the presentation itself.

The SAB expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements. Written comments (at least 35 copies) received in the SAB Staff Office sufficiently prior to a meeting date, may be mailed to the relevant SAB committee or subcommittee prior to its meeting; comments received too close to the meeting date will normally be provided to the committee at its meeting. Written comments may be provided to the relevant committee or subcommittee up until the time of the meeting. For further information, contact Dr. K. Jack Kooyoomjian, Designated Federal Officer for the Radiation Advisory Committee, Science Advisory Board (1400), U.S. EPA, Washington, DC 20460, phone (202)–260–2560; fax (202)–260–7118; or via E-Mail at: kooyoomjian.jack@epa.gov.

For questions pertaining to the white paper, please contact Dr. Mary E. Clark, (6601J), ORIA, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460, tel. (202) 564–9348; fax (202)–565–2043; or E-mail: clark.marye@epa.gov. Documents pertaining to BEIR VI may also be obtained on the world wide web at the following address: http://www.nap.edu/reading room/ and search on "radon."

Additional information concerning the SAB, its structure, function, and composition, may be found on the SAB Website (http://www.epa.gov/sab) and in The annual Report of the Staff Director which is available from the SAB Publications Staff at (202) 260–4126 or via fax at (202) 260–1889.

Individuals requiring special accommodation at SAB meetings, including wheelchair access, should contact Dr. Kooyoomjian or Mrs. Pozun at least five business days prior to the meeting so that appropriate arrangements can be made.

Dated: April 1, 1999.

Donald G. Barnes,

Staff Director, Science Advisory Board.

[FR Doc. 99–8650 Filed 4–7–99; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[OPP–30471; FRL–6064–4]

Novartis; Applications to Register Pesticide Products

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of applications to register pesticide products containing new active ingredients not included in any previously registered products pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

DATES: Written comments must be submitted by May 10, 1999.

ADDRESSES: By mail, submit written comments identified by the document control number [OPP–30471] and the file symbols to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Environmental Protection Agency, Rm. 119, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

Comments and data may also be submitted electronically to: opp-docket@epamail.epa.gov. Follow the instructions under "SUPPLEMENTARY INFORMATION." No Confidential Business Information (CBI) should be submitted through e-mail.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. The public docket is available for public inspection in Rm. 119 at the Virginia address given above, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Cynthia Giles-Parker, Product Manager (PM-22), Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 247, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703 305–7740, e-mail: giles-parker.cynthia@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA received applications as follows to register pesticide products containing active ingredients not included in any previously registered products pursuant to the provision of section 3(c)(4) of FIFRA. Notice of receipt of these applications does not imply a decision by the Agency on the applications.

I. Products Containing Active Ingredients Not Included In Any Previously Registered Products

1. File Symbol: 100–ORO. Applicant: Novartis Crop Protection, P.O. Box 18300, Greensboro, NC 27419–8300. Product Name: CGA-279202 WG. Fungicide. Active ingredient: Trifloxystrobin 50.0%. Proposed classification/Use: General. For control of certain diseases on pome fruits, peanuts, grapes, curcurbits, and bananas.

2. File Symbol: 100–ORI. Applicant: Novartis Crop Protection. Product Name: CGA-279202 Technical. Fungicide. Active ingredient: Trifloxystrobin 98%. Proposed classification/Use: General. For formulating use only.

3. File Symbol: 100–OEN. Applicant: Novartis Crop Protection. Product Name: CGA-279202 WG Turf. Fungicide. Active ingredient: Trifloxystrobin 50.0%. Proposed classification/Use: General. For use on turf grass.

Notice of approval or denial of an application to register a pesticide product will be announced in the **Federal Register**. The procedure for requesting data will be given in the **Federal Register** if an application is approved.

Comments received within the specified time period will be considered before a final decision is made; comments received after the time specified will be considered only to the extent possible without delaying processing of the application.

II. Public Record and Electronic Submissions

The official record for this notice, as well as the public version, has been established for this notice under docket number [OPP–30471] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The official notice record is located at the address in "ADDRESSES" at the beginning of this document.

Electronic comments can be sent directly to EPA at:
opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comment and data will also be accepted on disks in Wordperfect 5.1/6.1 or ASCII file format. All comments and data in electronic form must be identified by the docket number [OPP–30471]. Electronic comments on this notice may be filed online at many Federal Depository Libraries.

Authority: 7 U.S.C. 136.

List of Subjects

Environmental protection, Pesticides and pest, Product registration.

Dated: March 30, 1999.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 99–8774 Filed 4–7–99; 8:45 am]
BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[PF–869; FRL–6071–2]

Notice of Filing of Pesticide Petitions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of pesticide petitions proposing the establishment of regulations for residues of certain pesticide chemicals in or on various food commodities.

DATES: Comments, identified by the docket control number PF–869, must be received on or before May 10, 1999.

ADDRESSES: By mail submit written comments to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticides Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person bring comments to: Rm. 119, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Comments and data may also be submitted electronically to: opp-docket@epamail.epa.gov. Follow the instructions under "SUPPLEMENTARY INFORMATION." No confidential business information should be submitted through e-mail.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). CBI should not be submitted through e-mail. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 119 at the address given above, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: The product manager listed in the table below:

Product Manager	Office location/telephone number	Address
Sidney Jackson	Rm. 272, CM #2, 703–305–7610, e-mail:jackson.sidney@epamail.epa.gov.	1921 Jefferson Davis Hwy, Arlington, VA
Lisa D. Jones	Rm. 259, CM #2, 703–308–9424, e-mail:jones.lisa@epamail.epa.gov.	Do.

SUPPLEMENTARY INFORMATION: EPA has received pesticide petitions as follows proposing the establishment and/or amendment of regulations for residues of certain pesticide chemicals in or on various food commodities under section 408 of the Federal Food, Drug, and Comestic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that these petitions contain data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

The official record for this notice of filing, as well as the public version, has been established for this notice of filing under docket control number [PF–869] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The official record is located at the address in "ADDRESSES" at the beginning of this document.

Electronic comments can be sent directly to EPA at:
opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in Wordperfect 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number (insert docket number) and appropriate petition number. Electronic comments on notice may be filed online at many Federal Depository Libraries.

List of Subjects

Environmental protection, Agricultural commodities, Food additives, Feed additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: April 2, 1999.

onald R. Stubbs, Acting

Director, Registration Division, Office of Pesticide Programs.

Summaries of Petitions

Petitioner summaries of the pesticide petitions are printed below as required by section 408(d)(3) of the FFDCA. The summaries of the petitions were prepared by the petitioners and represent the views of the petitioners. EPA is publishing the petition summaries verbatim without editing them in any way. The petition summary announces the availability of a description of the analytical methods

available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

1. Interregional Research Project No. 4 (IR-4)

PP 6E4766, 7E4898, 7E4899

EPA has received pesticide petitions [6E4766, 7E4898, 7E4899] from the Interregional Research Project Number 4 (IR-4) New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903 proposing, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing tolerances for residues of the insecticide imidacloprid [1-[(6-chloro-3-pyridinyl)methyl]-N-nitro-2-imidazolidinimine and its metabolites containing the 6-chloropyridinyl moiety, all expressed as 1-[(6-chloro-3-pyridinyl)methyl]-N-nitro-2-imidazolidinimine, in or on the raw agricultural commodities (RAC):

1. *PP 6E4766* proposes the establishment of a tolerance for cucurbits vegetables (Crop Group 9) at 0.5 parts per million (ppm).

2. *PP 7E4898* proposes the establishment of a tolerance for tuberous and corm vegetables at 0.3 ppm and dasheen (taro) at 3.5 ppm.

3. *PP 7E4899* proposes the establishment of a tolerance for watercress, upland at 3.5 ppm.

EPA has determined that the petitions contain data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of these petitions. Additional data may be needed before EPA rules on these petitions. Imidacloprid is produced by the Bayer Corporation (Bayer), the registrant.

A. Residue Chemistry

1. *Plant and animal metabolism.* The nature of the imidacloprid residue in plants and livestock is adequately understood. The residues of concern are combined residues of imidacloprid and it metabolites containing the 6-chloropyridinyl moiety, all calculated as imidacloprid.

2. *Analytical method.* The analytical method is a common moiety method for imidacloprid and its metabolites containing the 6-chloropyridinyl moiety using a permanganate oxidation, silyl derivatization, and capillary gas chromatography mass spectrometry (GC/MS) selective monitoring. This method has successfully passed a petition method validation in EPA labs. There is a confirmatory method specifically for imidacloprid and several metabolites utilizing GC/MS and high performance liquid chromotography using ultra-violet detection (HPLC-UV) which has been validated by the EPA as well. Imidacloprid and its metabolites are stable for at least 24 months in the commodities when frozen.

3. *Magnitude of residues.* For cucurbits, IR-4 performed 6 trials on cucumber, 6 trials on summer squash, and 6 trials on cantaloupe spread over two growing seasons (1992 and 1993). Trials conducted during the 1992 growing season used the following use pattern: i) a plant drench plus foliar applications, ii) a plant drench, iii) an in-furrow, and iv) a sidedress application. In 1993, IR-4 performed work on only the plant drench plus foliar treatment use pattern with a zero day pre-harvest interval (PHI).

The use pattern with the highest residue levels was the plant drench plus foliar application with a zero day. The maximum residues observed were 0.39 ppm for melon, 0.34 ppm for cucumber, and 0.28 ppm for summer squash. These maximum levels are all very similar and support the crop group concept and proposed 0.5 ppm proposed tolerance for imidacloprid on cucurbit vegetables.

Bayer believes that the data used to support the establishment of the imidacloprid 3.5 ppm leafy greens tolerance can be used to extend the tolerance to cover upland watercress. This is based on the similarities of upland watercress to upland cress and garden cress (members of crop subgroup 4A). The use patterns and restrictions for use on upland watercress would be the same as currently registered for garden cress and upland cress.

Even at exaggerated rates, imidacloprid residues in the potato tubers were only 0.25 ppm. Therefore, IR-4 contends that a crop subgroup tolerance for tuberous and corm vegetables to include dasheen (taro) is justified and appropriate, and no additional crop-specific data are required.

Although Dasheen (taro) leaves are seldom consumed, they are occasionally harvested from dasheen (taro) plantings grown primarily for the corms. In support of the proposed tolerance on dasheen (taro) leaves, IR-4 has noted that a tolerance of 3.5 ppm has been established on lettuce under pesticide petition (PP) 3F4231. IR-4 is requesting that the EPA use the data presented in PP 3F4231 to establish a tolerance for dasheen (taro) leaves. The proposed use pattern on taro does not include any foliar applications of imidacloprid. Therefore, it is unlikely that imidacloprid residues in or on taro leaves would exceed the proposed 3.5 ppm tolerance.

B. Toxicological Profile

1. *Acute toxicity.* The acute oral lethal dose $(LD)_{50}$ values for imidacloprid technical ranged from 424-475 milligram/kilogram body weight (mg/kg bwt) in the rat. The acute dermal LD_{50} was greater than 5,000 mg/kg in rats. The 4-hour rat inhalation lethal concentration $(LC)_{50}$ was > 69 mg/cubic meters (m 3) air (aerosol). Imidacloprid was not irritating to rabbit skin or eyes. Imidacloprid did not cause skin sensitization in guinea pigs.

2. *Genotoxicty.* Extensive mutagenicity studies conducted to investigate point and gene mutations, DNA damage and chromosomal aberration, both using *in vitro* and *in vivo* test systems show imidacloprid to be non-genotoxic.

3. *Reproductive and developmental toxicity.* A 2-generation rat reproduction study gave a no-observed adverse effect level (NOAEL) of 100 ppm (8 mg/kg bwt). Rat and rabbit developmental toxicity studies were negative at doses up to 30 mg/kg bwt and 24 mg/kg bwt, respectively.

4. *Subchronic toxicity.* 90-day feeding studies were conducted in rats and dogs. The NOAEL's for these tests were 14 mg/kg bwt/day (150 parts per million (ppm)) and 5 mg/kg bwt/day (200 ppm) for the rat and dog studies, respectively.

5. *Chronic toxicity/carcinogenicity.* A 2-year rat feeding/carcinogenicity study was negative for carcinogenic effects under the conditions of the study and had a NOAEL of 100 ppm (5.7 mg/kg/bwt in male and 7.6 mg/kg bwt female) for noncarcinogenic effects that included decreased body weight gain in females at 300 ppm and increased thyroid lesions in males at 300 ppm and females at 900 ppm. A 1-year dog feeding study indicated a NOAEL of 1,250 ppm (41 mg/kg bwt). A 2-year mouse carcinogenicity study that was negative for carcinogenic effects under conditions of the study and had a NOAEL of 1,000 ppm (208 mg/kg/day).

Imidacloprid has been classified under "Group E" (no evidence of carcinogenicity) by EPA's reference dose (RfD) committee. There is no cancer risk associated with exposure to this chemical. The RfD based on the 2-year rat feeding/carcinogenic study with a NOAEL of 5.7 mg/kg bwt and 100-fold uncertainty factor, is calculated to be 0.057 mg/kg bwt.

6. *Endocrine disruption.* The toxicology database for imidacloprid is

current and complete. Studies in this database include evaluation of the potential effects on reproduction and development, and an evaluation of the pathology of the endocrine organs following short- or long-term exposure. These studies revealed no primary endocrine effects due to imidacloprid.

C. Aggregate Exposure

Imidacloprid is a broad-spectrum insecticide with excellent systemic and contact toxicity characteristics with both food and non-food uses. Imidacloprid is currently registered for use on various food crops, tobacco, turf, ornamentals, buildings for termite control, and cats and dogs for flea control. Those potential exposures are addressed below:

1. *Dietary exposure.* For purposes of assessing the potential acute and chronic dietary exposure, the registrant, Bayer, has estimated exposure based on the Theoretical Maximum Residue Contribution (TMRC). The TMRC is obtained by using a model which multiplies the tolerance level residue for each commodity by consumption data. The consumption data, based on the National Food Consumption Survey (NFCS) 1989-92 data base, estimates the amount of each commodity and products derived from the commodities that are eaten by the U.S. population and various population subgroups.

i. *Acute.* For acute dietary exposure the model calculates a margin of exposure (MOE) by dividing the estimated human exposure into the NOAEL from the appropriate animal study. Commonly, EPA finds MOEs lower than 100 to be unacceptable. The EPA has determined that a NOAEL of 24 mg/kg/day from a developmental toxicity study in rabbits should be used to assess acute toxicity and the risk assessment should evaluate acute exposure to females 13 years.

The MOE for imidacloprid derived from previously established tolerances, including time limited tolerances, plus the use on dasheen (taro) proposed by IR-4 would be 628 for the U.S. population (48 States), 258 for nursing infants, and 929 for females 13+ years at the 99 percentile. These MOEs do not exceed the EPA's level of concern for acute dietary exposure.

ii. *Chronic.* The EPA has determined that the RfD based on the 2-year rat feeding/carcinogenic study with a NOAEL of 5.7 mg/kg bwt and 100-fold uncertainty factor, is calculated to be 0.057 mg/kg bwt. As published in the **Federal Registers** of December 13, 1995 (60 FR 64006), and June 12, 1996 (61 FR 2674) (petition to establish tolerances on leafy green vegetables (PP 5F4522/R2237)), the TMRC from published uses is 0.008358 mg/kg bwt/day which utilizes 14.7% of the RfD for the general population. For the most highly exposed subgroup in the population, non-nursing infants (< 1 year old), the TMRC for the published tolerances is 0.01547 mg/kg/day, which utilizes 27.1% of the RfD. Using these conservative assumptions, Bayer has determined that the TMRC from published and proposed uses is 0.008498 mg/kg bwt/day (15% of the RfD) for the general population and 0.015684 mg/kg/day (27.5% of the RfD) for the most highly exposed subgroup in the population, non-nursing infants (< 1 year old). Therefore, Bayer concludes that dietary exposure from the existing uses and proposed uses on cucurbits will not exceed the reference dose for any subpopulation (including infants and children).

iii. *Drinking water.* The EPA has determined that imidacloprid is persistent and could potentially leach into groundwater. However, there is no established Maximum Contamination Level (MCL) or health advisory levels established for imidacloprid in drinking water. EPA's "Pesticides in Groundwater Database" has no entry for imidacloprid. In addition, Bayer is not aware of imidacloprid being detected in any wells, ponds, lakes, streams, etc. from its use in the U.S. In studies conducted in 1995, imidacloprid was not detected in 17 wells on potato farms in Quebec, Canada. Therefore, Bayer concludes that contributions to the dietary burden from residues of imidacloprid in water would be inconsequential.

2. *Non-dietary exposure*—i. *Residential Turf.* Bayer has conducted an exposure study to address the potential exposures of adults and children from contact with imidacloprid treated turf. The population considered to have the greatest potential exposure from contact with pesticide treated turf soon after pesticides are applied are young children. Margins of safety (MOS) of 7,587 - 41,546 for 10-year old children and 6,859 - 45,249 for 5-year old children were estimated by comparing dermal exposure doses to the imidacloprid NOAEL of 1,000 mg/kg/day established in a 15-day dermal toxicity study in rabbits. The estimated safe residue levels of imidacloprid on treated turf for 10-year old children ranged from 5.6 - 38.2 $\mu g/cm^2$ and for 5-year old children from 5.1 - 33.5 $\mu g/cm^2$. This compares with the average imidacloprid transferable residue level of 0.080 $\mu g/cm^2$ present immediately after the sprays have dried. These data indicate that children can safely contact imidacloprid-treated turf as soon after application as the spray has dried.

ii. *Termiticide— Imidacloprid is registered as a termiticide.* Due to the nature of the treatment for termites, exposure would be limited to that from inhalation and was evaluated by Bayer. Data indicate that the MOS for the worst case exposures for adults and infants occupying a treated building who are exposed continuously (24 hours/day) are 8.0×10^7 and 2.4×10^8, respectively - and exposure can thus be considered negligible.

iii. *Tobacco smoke.* Studies have been conducted to determine residues in tobacco and the resulting smoke following treatment. Residues of imidacloprid in cured tobacco following treatment were a maximum of 31 ppm (7 ppm in fresh leaves). When this tobacco was burned in a pyrolysis study only 2% of the initial residue was recovered in the resulting smoke (main stream plus side stream). This would result in an inhalation exposure to imidacloprid from smoking of approximately 0.0005 mg per cigarette. Using the measured subacute rat inhalation NOAEL of 5.5 mg/m^3, Bayer believes that exposure to imidacloprid from smoking (direct and/or indirect exposure) would not be significant.

iv. *Pet treatment.* Bayer concludes that human exposure from the use of imidacloprid to treat dogs and cats for fleas does not pose unacceptable risks to human health since imidacloprid is not an inhalation or dermal toxicant and that while dermal absorption data are not available, imidacloprid is not considered to present a hazard via the dermal route.

D. Cumulative Effects

No other chemicals having the same mechanism of toxicity are currently registered, therefore, Bayer concludes that there is no risk from cumulative effects from other substances with a common mechanism of toxicity.

E. Safety Determination

1. *U.S. population—U.S. population in general.* Using the conservative exposure assumptions described above and based on the completeness and reliability of the toxicity data, Bayer concludes that total aggregate exposure to imidacloprid from all current uses including those currently proposed will utilize little more than 15% of the RfD for the U.S. population. EPA generally has no concerns for exposures below 100% of the RfD, because the RfD represents the level at or below which daily aggregate exposure over a lifetime will not pose appreciable risks to human health. Thus, it can be

concluded that there is a reasonable certainty that no harm will result from aggregate exposure to imidacloprid residues.

2. *Infants and children.* In assessing the potential for additional sensitivity of infants and children to residues of imidacloprid, the data from developmental studies in both rat and rabbit and a 2-generation reproduction study in the rat have been considered. The developmental toxicity studies evaluate potential adverse effects on the developing animal resulting from pesticide exposure of the mother during prenatal development. The reproduction study evaluates effects from exposure to the pesticide on the reproductive capability of mating animals through 2-generations, as well as any observed systemic toxicity.

FFDCA Section 408 provides that EPA may apply an additional safety factor for infants and children in the case of threshold effects to account for pre- and post- natal effects and the completeness of the toxicity database. Based on current toxicological data requirements, the toxicology database for imidacloprid relative to pre- and post-natal effects is complete. Further for imidacloprid, the NOAEL of 5.7 mg/kg bwt from the 2-year rat feeding/carcinogenic study, which was used to calculate the RfD (discussed above), is already lower than the NOAELs from the developmental studies in rats and rabbits by a factor of 4.2 to 17.5 times. Since a 100-fold uncertainty factor is already used to calculate the RfD, Bayer surmises that an additional uncertainty factor is not warranted and that the RfD at 0.057 mg/kg bwt/day is appropriate for assessing aggregate risk to infants and children.

Using the conservative exposure assumptions described above under aggregate exposure, Bayer has determined from a chronic dietary analysis that the percent of the RfD utilized by aggregate exposure to residues of imidacloprid ranges from 9.3% for nursing infants up to 32.2% for children (1-6 years). EPA generally has no concern for exposure below 100% of the RfD. In addition, the MOEs for all infant and children population groups do not exceed EPA's level of concern for acute dietary exposure. Therefore, based on the completeness and reliability of the toxicity data and the conservative exposure assessment, Bayer concludes that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the residues of imidacloprid, including all anticipated dietary exposure and all other non-occupational exposures.

F. International Tolerances

No CODEX Maximum Residue Levels (MRLs) have been established for residues of imidacloprid on any crops at this time.

2. IR-4 Project

PP 8E5034

EPA has received a pesticide petition (8E5034) from the Interregional Research Project Number 4 (IR-4), proposing pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing a tolerance for residues of the insecticide, spinosad in or on the raw agricultural commodities (RAC) tuberous and corm vegetables (crop subgroup 1C) at 0.03 parts per million (ppm). EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition. Spinosad is produced by Dow AgroSciences, Inc. (Dow), the registrant.

A. Residue Chemistry

1. *Plant metabolism.* The metabolism of spinosad in plants (apples, cabbage, cotton, tomato, and turnip), and animals (goats and poultry) is adequately understood for the purposes of this tolerance. A rotational crop study showed no carryover of measurable spinosad related residues in representative test crops.

2. *Analytical method.* There is a practical method (immunoassay) for detecting (0.005 ppm) and measuring (0.01 ppm) levels of spinosad in or on food with a limit of detection that allows monitoring of food with residues at or above the level set for this tolerance. The method has had a successful method tryout in the EPA's laboratories.

3. *Magnitude of residues.* Magnitude of residue studies were conducted for potatoes at 14 sites. No quantifiable residues were observed in treated field samples at an application rate of 0.11 pounds active ingredient (lb a.i.) per acre or at an exaggerated application rate of 0.55 lb a.i. per acre. A potato processing study is not required because there were no quantifiable residues in the RAC even at the 5x application rate (5x is the maximum theoretical concentration factor for potato). Potato is the representative crop for the tuberous and corm vegetables crop subgroup 1C.

B. Toxicological Profile

1. *Acute toxicity—Spinosad has low acute toxicity.* The rat oral lethal dose $(LD)_{50}$ is 3,738 milligram kilogram (mg/kg) for males and > 5,000 mg/kg for females, whereas the mouse oral LD_{50} is > 5,000 mg/kg. The rabbit dermal LD_{50} is > 5,000 mg/kg and the rat inhalation lethal concentration $(LC)_{50}$ is > 5.18 mg/liter(l) air. In addition, spinosad is not a skin sensitizer in guinea pigs and does not produce significant dermal or ocular irritation in rabbits. End use formulations of spinosad that are water based suspension concentrates have similar low acute toxicity profiles.

2. *Genotoxicty.* Short term assays for genotoxicity consisting of a bacterial reverse mutation assay (Ames test), an *in vitro* assay for cytogenetic damage using the Chinese hamster ovary cells, an *in vitro* mammalian gene mutation assay using mouse lymphoma cells, an *in vitro* assay for DNA damage and repair in rat hepatocytes, and an *in vivo* cytogenetic assay in the mouse bone marrow (micronucleus test) have been conducted with spinosad. These studies show a lack of genotoxicity.

3. *Reproductive and developmental toxicity.* Spinosad caused decreased body weights in maternal rats given 200 mg/kg/day by gavage, highest dose tested (HTD). This was not accompanied by either embryo toxicity, fetal toxicity, or teratogenicity. The no-observed adverse effect levels (NOAELs) for maternal and fetal toxicity in rats were 50 and 200 mg/kg/day, respectively. A teratology study in rabbits showed that spinosad caused decreased body weight gain and a few abortions in maternal rabbits given 50 mg/kg/day, HTD. Maternal toxicity was not accompanied by either embryo toxicity, fetal toxicity, or teratogenicity. The NOAELs for maternal and fetal toxicity in rabbits were 10 and 50 mg/kg/day, respectively. In a 2-generation reproduction study in rats, parental toxicity was observed in both males and females given 100 mg/kg/day HTD. Perinatal effects (decreased litter size and pup weight) at 100 mg/kg/day were attributed to maternal toxicity. The NOAEL for maternal and pup effects was 10 mg/kg/day.

4. *Subchronic toxicity.* Spinosad was evaluated in 13-week dietary studies and showed NOAELs of 4.89 and 5.38 mg/kg/day, respectively in male and female dogs; 6 and 8 mg/kg/day, respectively in male and female mice; and 33.9 and 38.8 mg/kg/day, respectively in male and female rats. No dermal irritation or systemic toxicity occurred in a 21-day repeated dose dermal toxicity study in rabbits given 1,000 mg/kg/day.

5. *Chronic toxicity.* Based on chronic testing with spinosad in the dog and the rat, the EPA has set a reference dose (RfD) of 0.027 mg/kg/day for spinosad. The RfD has incorporated a 100-fold safety factor to the NOAELs found in the chronic dog study to account for inter- and intra-species variation. The NOAELs shown in the dog chronic study were 2.68 and 2.72 mg/kg/day, respectively for male and female dogs. The NOAELs (systemic) shown in the rat chronic/carcinogenicity/ neurotoxicity study were 9.5 and 12.0 mg/kg/day, respectively for male and female rats. Using the Guidelines for Carcinogen Risk Assessment published September 24, 1986 (51 FR 33992), it is proposed that spinosad be classified as Group E for carcinogenicity (no evidence of carcinogenicity) based on the results of carcinogenicity studies in two species. There was no evidence of carcinogenicity in an 18-month mouse feeding study and a 24-month rat feeding study at all dosages tested. The NOAELs shown in the mouse carcinogenicity study were 11.4 and 13.8 mg/kg/day, respectively for male and female mice. A maximum tolerated dose was achieved at the top dosage level tested in both of these studies based on excessive mortality. Thus, the doses tested are adequate for identifying a cancer risk. Accordingly, a cancer risk assessment is not needed.

6. *Animal metabolism.* There were no major differences in the bioavailability, routes or rates of excretion, or metabolism of spinosyn A and spinosyn D following oral administration in rats. Urine and fecal excretions were almost completed in 48-hours post-dosing. In addition, the routes and rates of excretion were not affected by repeated administration.

7. *Metabolite toxicology.* The residue of concern for tolerance setting purposes is the parent material (spinosyn A and spinosyn D). Thus, there is no need to address metabolite toxicity.

8. *Neurotoxicity.* Spinosad did not cause neurotoxicity in rats in acute, subchronic or chronic toxicity studies.

9. *Endocrine disruption.* There is no evidence to suggest that spinosad has an effect on any endocrine system.

C. Aggregate Exposure

1. *Dietary exposure—i. Food.* For purposes of assessing the potential dietary exposure from use of spinosad on tuberous and corm vegetables as well as from other existing and pending spinosad crop uses, a conservative estimate of aggregate exposure is determined by basing the theoretical maximum residue concentration (TMRC) on the proposed tolerance level for spinosad and assuming that 100% of these proposed new crops and other pending and existing (registered for use) crops grown in the United State were treated with spinosad. The TMRC is obtained by multiplying the tolerance residue levels by the consumption data which estimates the amount of crops and related food stuffs consumed by various population subgroups. The use of a tolerance level and 100% of crop treated clearly results in an overestimate of human exposure and a safety determination for the use of spinosad on crops cited in this summary that is based on a conservative exposure assessment.

ii. *Drinking water.* Another potential source of dietary exposure are residues in drinking water. Based on the available environmental studies conducted with spinosad wherein it's properties show little or no mobility in soil, Dow concludes that there is no anticipated exposure to residues of spinosad in drinking water. In addition, there is no established maximum concentration level (MCL) for residues of spinosad in drinking water.

2. *Non-dietary exposure.* Spinosad is currently registered for use on a number of crops including cotton, fruits, and vegetables in the agriculture environment. Spinosad is also currently registered for outdoor use on turf and ornamentals at low rates of application (0.04 to 0.54 lb a.i. per acre) and indoor use for drywood termite control (extremely low application rates used with no occupant exposure expected). Thus, Dow believes that the potential for non-dietary exposure to the general population is considered negligible.

D. Cumulative Effects

The potential for cumulative effects of spinosad and other substances that have a common mechanism of toxicity is also considered. In terms of insect control, spinosad causes excitation of the insect nervous system, leading to involuntary muscle contractions, prostration with tremors, and finally paralysis. These effects are consistent with the activation of nicotinic acetylcholine receptors by a mechanism that is clearly novel and unique among known insecticidal compounds. Spinosad also has effects on the gamma aminobatopic acid (GABA) receptor function that may contribute further to its insecticidal activity. Based on results found in tests with various mammalian species, spinosad appears to have a mechanism of toxicity like that of many amphiphilic cationic compounds. There is no reliable information to indicate that toxic effects produced by spinosad would be cumulative with those of any other pesticide chemical. Thus Dow contends that it is appropriate to consider only the potential risks of spinosad in an aggregate exposure assessment.

E. Safety Determination

1. *U.S. population.* Using the conservative exposure assumptions and the proposed RfD described above, the aggregate exposure to spinosad use on tuberous and corm vegetables and other pending and existing crop uses will utilize 25.5% of the RfD for the U.S. population. A more realistic estimate of dietary exposure and risk relative to a chronic toxicity endpoint is obtained if average (anticipated) residue values from field trials are used. Inserting the average residue values in place of tolerance residue levels produces a more realistic, but still conservative risk assessment. Based on average or anticipated residues in a dietary risk analysis, the use of spinosad on tuberous and corm vegetables and other pending and existing crop uses will utilize 4.1% of the RfD for the U.S. population. EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Thus, Dow believes that there is reasonable certainty that no harm will result from aggregate exposure to spinosad residues on existing and pending crop uses.

2. *Infants and children.* In assessing the potential for additional sensitivity of infants and children to residues of spinosad, data from developmental toxicity studies in rats and rabbits and a 2-generation reproduction study in the rat are considered. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from pesticide exposure during prenatal development. Reproduction studies provide information relating to effects from exposure to the pesticide on the reproductive capability and potential systemic toxicity of mating animals and on various parameters associated with the well-being of pups.

FFDCA Section 408 provides that EPA may apply an additional safety factor for infants and children in the case of threshold effects to account for pre- and post-natal toxicity and the completeness of the database. Based on the current toxicological data requirements, the database for spinosad relative to pre- and post-natal effects for children is complete. Further, for spinosad, the NOAELs in the dog chronic feeding study which was used to calculate the

RfD (0.027 mg/kg/day) are already lower than the NOAELs from the developmental studies in rats and rabbits by a factor of more than 10-fold.

Concerning the reproduction study in rats, the pup effects shown at the HDT were attributed to maternal toxicity. Therefore, the registrant concludes that an additional uncertainty factor is not needed and that the RfD at 0.027 mg/kg/day is appropriate for assessing risk to infants and children.

In addition, the EPA has determined that the 10x factor to account for enhanced sensitivity of infants and children is not needed because:

i. The data provided no indication of increased susceptibility of rats or rabbits to in utero and/or post-natal exposure to spinosad. In the prenatal developmental toxicity studies in rats and rabbits and two-generation reproduction in rats, effects in the offspring were observed only at or below treatment levels which resulted in evidence of parental toxicity.

ii. No neurotoxic signs have been observed in any of the standard required studies conducted.

iii. The toxicology data base is complete and there are no data gaps.

Using the conservative exposure assumptions previously described (tolerance level residues), the percent RfD utilized by the aggregate exposure to residues of spinosad on tuberous and corm vegetables and other pending and existing crop uses is 51.2% for children 1 to 6 years old, the most sensitive population subgroup. If average or anticipated residues are used in the dietary risk analysis, the use of spinosad on these crops will utilize 9.4% of the RfD for children 1 to 6 years old. Thus, based on the completeness and reliability of the toxicity data and the conservative exposure assessment, the registrant concludes that there is reasonable certainty that no harm will result to infants and children from aggregate exposure to spinosad residues on the above proposed use including other pending and existing crop uses.

F. International Tolerances

There are no Codex maximum residue levels established for residues of spinosad on tuberous and corm vegetables or any other food or feed crop.

3. Zeneca Ag. Products

PP 7F4854, 7F4876, and 7F4853

EPA has received pesticide petitions [7F4854, 7F876, and 7F4853] from Zeneca Ag.Products, 1800 Concord Pike, P. O. Box 15458, Wilmington, DE 19850-5458 proposing, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing a tolerance for residues of sulfosate (the trimethylsulfonium salt of glyphosate, also known as glyphosate-trimesium in or on the raw agricultural commodity (RAC) the fruiting vegetables (except cucurbits) group at 0.05 ppm; the edible-podded legume vegetables subgroup at 0.5 ppm (of which no more than 0.3 ppm is trimethylsulfonium (TMS)), the succulent shelled pea and bean subgroup at 0.2 ppm (of which no more than 0.1 ppm is TMS); the dried shelled pea and bean (except soybean) subgroup at 6 ppm (of which no more than 1.5 ppm is TMS); in cattle, goat, hog, sheep, and horse kidney at 3.5 ppm; in cattle, goat, hog, sheep, and horse meat by-products, except liver and kidney, at 2.5 ppm; and to increase the tolerance in cattle, goat, hog, sheep, and horse fat to 0.2 ppm; in cattle, goat, hog, sheep, and horse meat to 0.6 ppm; in cattle, goat, hog, sheep, and horse liver to 0.75 ppm; in milk to 1.1 ppm; in poultry liver to 0.1 ppm; in poultry meat by-products to 0.25 ppm; in or on soybean seed to 21 ppm (of which no more than 13 ppm is TMS); in soybean hulls to 45 ppm (of which no more than 25 ppm is TMS); and in aspirated grain fractions to 1,300 ppm (of which no more than 720 ppm is TMS) at parts per million (ppm). EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

1. *Plant metabolism.* The metabolism of sulfosate has been studied in corn, grapes, and soybeans. EPA has concluded that the nature of the residue is adequately understood and that the only residues of concern are the parent ionsN-(phosphonomethyl)-glycine anion (PMG) and trimethylsulfonium cation (TMS).

2. *Analytical method.* Gas chromatography/mass selective (GC/MS) detector methods have been developed for PMG analysis in crops, animal tissues, milk, and eggs. Gas chromatography detection methods have been developed for TMS in crops, animal tissues, milk, and eggs.

3. *Magnitude of residues*—i. *Magnitude of residues in crops—Soybeans.* Residue data are available for sulfosate in a total of 20 trials conducted in 3 different EPA regions and 15 different States representing 99% of the soybean production in the U.S. The proposed tolerance of 21 ppm (of which no more than 13 ppm is TMS) for soybean seed will accommodate any residue resulting from the proposed use pattern.

Soybean seed for processing were obtained and samples were processed into hulls, meal, crude oil, refined oil, and soapstock. Aspirated grain fractions were also collected. Analysis of the treated samples showed that residue of both TMS and PMG accumulated in hulls but did not accumulate in any other processed fractions. The proposed tolerance of 45 ppm (of which no more than 25 ppm is TMS) for soybean hulls and 1,300 ppm (of which no more than 720 ppm is TMS) for aspirated grain fractions will accommodate any residue resulting from the proposed use pattern.

ii. *Fruiting vegetables (except curcurbits) group.* Residue data are available for sulfosate in a total of 12 trials in tomatoes conducted in 5 EPA regions and 5 different states; a total of 6 trials in bell peppers conducted in 5 EPA regions and 6 different States; and a total of 3 trials in chili peppers conducted in 3 EPA regions and 3 different States. The residue levels were below the limit of quantitation (LOQ) of 0.05 ppm in all samples. The proposed tolerance of 0.05 ppm will accommodate any residue resulting from the proposed use pattern.

Tomato fruits for processing were obtained and samples were processed into puree and paste. After adjusting the results for the exaggerated rate, no concentration occurred in the puree and paste. No tolerances are required for puree and paste at the proposed use rates.

iii. *Edible podded legume vegetables subgroup.* Residue data are available for sulfosate in a total of 9 trials conducted in 5 different EPA regions and 8 different States representing 94% of the edible podded beans and peas in the U.S. The proposed tolerance of 0.5 ppm (of which no more than 0.3 ppm is TMS) for the Edible podded legume vegetables subgroup will accommodate any residue resulting from the proposed use pattern.

iv. *Succulent shelled pea and bean subgroup.* Residue data are available for sulfosate in a total of 12 trials in 6 different EPA regions and 10 different States representing 97% of the green peas and lima beans in the United States. The proposed tolerance of 0.2 ppm (of which no more than 0.1 ppm is TMS) for the Succulent shelled pea and bean subgroup will accommodate any residue resulting from the proposed use pattern.

v. *Dried shelled pea and bean (except soybean) subgroup.* Residue data are available for sulfosate in a total of 14 trials conducted in 5 different EPA Regions and in 8 States representing 97% of dried pea and 96% of dried bean production in the United States. The proposed tolerance of 6 ppm (of which no more than 1.5 ppm is TMS) for the Dried shelled pea and bean (except soybean) subgroup will accommodate any residue resulting from the proposed use pattern.

vi. *Magnitude of residue in animals—Ruminants.* The maximum dietary burden in dairy cows results from a diet comprised of 20% aspirated grain fractions, 60% wheat forage, and 20% wheat hay for a total dietary burden of 409 ppm. The maximum dietary burden in beef cows results from a diet comprised of 20% aspirated grain fractions, 25% wheat forage, 25% wheat hay, 20% soybean hulls, and 10% soybean seed for a total dietary burden of 378 ppm. Comparison to a ruminant feeding study at a dosing level of 300 ppm indicates that the appropriate tolerance levels are 0.75 ppm in cattle, goat, hog, sheep, and horse liver; 3.5 ppm in cattle, goat, hog, sheep, and horse kidney; 2.5 ppm in cattle, goat, hog, sheep, and horse meat by-products, except kidney and liver; 0.6 ppm in cattle, goat, hog, sheep, and horse meat; 1.1 ppm in milk; and 0.2 ppm in cattle, goat, hog, sheep, and horse fat. All of these tolerances exceed existing tolerances in 40 CFR 180.489.

vii. *Poultry.* The maximum dietary burden in poultry results from a diet comprised of 40% soybean meal, 20% soybean hulls, 20% soybean seed, and 20% wheat milled by-products for a total dietary burden of 24 ppm. Comparison to a poultry feeding study at a dosing level of 50 ppm indicates that the appropriate tolerance levels are below established tolerances for poultry meat, fat, and eggs. The appropriate tolerance for poultry liver is 0.1 ppm and for poultry meat by-products is 0.25 ppm.

B. Toxicological Profile

1. *Acute toxicity.* Several acute toxicology studies have been conducted placing technical grade sulfosate in Toxicity Category III and IV.

2. *Genotoxicty.* Mutagenicity data includes two Ames tests with *Salmonella typhimurium*; a sex linked recessive lethal test with Drosophila melanoga; a forward mutation (mouse lymphoma) test; an *in vivo* bone marrow cytogenetics test in rats; a micronucleus assay in mice; an *in vitro* chromosomal aberration test in Chinese hamster ovary cells (CHO) (no aberrations were observed either with or without S9 activation and there were no increases in sister chromatid exchanges); and a morphological transformation test in mice (all negative). A chronic feeding/carcinogenicity study was conducted in male and female rats fed dose levels of 0, 100, 500 and 1,000 ppm (0, 4.2., 21.2 or 41.8 mg/kg/day in males and 0, 5.4, 27.0 or 55.7 mg/kg/day in females). No carcinogenic effects were observed under the conditions of the study. The systemic no-observable effect level (NOAEL) of 1,000 ppm (41.1/55.7 mg/kg/day for males and females, respectively) was based on decreased body weight gains (considered secondary to reduced food consumption) and increased incidences of chronic laryngeal and nasopharyngeal inflammation (males). A chronic feeding/carcinogenicity study was conducted in male and female mice fed dosage levels of 0, 100, 1,000 and 8,000 ppm (0, 11.7, 118 or 991 mg/kg/day in males and 0, 16, 159 or 1,341 mg/kg/day in females). No carcinogenic effects were observed under the conditions of the study at dose levels up to and including the 8,000 ppm highest dose tested (HDT) which may have been excessive. The systemic NOAEL was 1,000 ppm based on decreases in body weight and feed consumption (both sexes) and increased incidences of duodenal epithelial hyperplasia (females only). Sulfosate is classified as a Group E carcinogen based on no evidence of carcinogenicity in rat and mouse studies.

3. *Reproductive and developmental toxicity.* A developmental toxicity study in rats was conducted at doses of 0, 30, 100 and 333 mg/kg/day. The maternal (systemic) NOAEL was 100 mg/kg/day, based on decreased body weight gain and food consumption, and clinical signs (salivation, chromorhinorrhea, and lethargy) seen at 333 mg/kg/day. The reproductive NOAEL was 100 mg/kg/day, based on decreased mean pup weight. The decreased pup weight is a direct result of the maternal toxicity. A developmental toxicity study was conducted in rabbits at doses of 0, 10, 40 and 100 mg/kg/day with developmental and maternal toxicity NOAELs of 40 mg/kg/day based on the following: (1) Maternal effects: 6 of 17 dams died (2 of the 4 non-gravid dams); 4 of 11 dams aborted; clinical signs - higher incidence and earlier onset of diarrhea, anorexia, decreased body weight gain and food consumption; and, (2) Fetal effects: decreased litter sizes due to increased post-implantation loss, seen at 100 mg/kg/day (HDT). The fetal effects were clearly a result of significant maternal toxicity. A 2-generation reproduction study in rats fed dosage rates of 0, 150, 800 and 2,000 ppm (equivalent to calculated doses of 0, 7.5, 40, and 100 mg/kg/day for males and females, based on a conversion factor of 1 mg/kg-day = 20 ppm). The maternal (systemic) NOAEL was 150 ppm (7.5 mg/kg/day), based on decreases in body weight and body weight gains accompanied by decreased food consumption, and reduced absolute and sometimes relative organ (thymus, heart, kidney and liver) weights seen at 800 and 2,000 ppm (40 and 100 mg/kg/day). The reproductive NOAEL was 150 ppm (7.5 mg/kg/day), based on decreased mean pup weights during lactation (after day 7) in the second litters at 800 ppm (40 mg/kg/day) and in all litters at 2,000 ppm (100 mg/kg/day), and decreased litter size in the F0a and F1b litters at 2,000 ppm (100 mg/kg/day). The statistically significant decreases in pup weights at the 800 ppm level were borderline biologically significant because at no time were either the body weights or body weight gains less than 90% of the control values and because the effect was not apparent in all litters. Both the slight reductions in litter size at 2,000 ppm and the reductions in pup weights at 800 and 2,000 ppm appear to be secondary to the health of the dams. There was no evidence of altered intrauterine development, increased stillborns, or pup anomalies. The effects are a result of feed palatability leading to reduced food consumption and decreases in body weight gains in the dams.

4. *Subchronic toxicity.* Two subchronic 90-day feeding studies with dogs and a 1-year feeding study in dogs have been conducted. In the 1-year study dogs were fed 0, 2, 10 or 50 mg/kg/day. The NOAEL was determined to be 10 mg/kg/day based on decreases in lactate dehydrogenase (LDH) at 50 mg/kg/day. In the first 90-day study, dogs were fed dosage levels of 0, 2, 10 and 50 mg/kg/day. The NOAEL in this study was 10 mg/kg/day based on transient salivation, and increased frequency and earlier onset of emesis in both sexes at 50 mg/kg/day. A second 90-day feeding study with dogs dosed at 0, 10, 25 and 50 mg/kg/day was conducted to refine the threshold of effects. There was evidence of toxicity at the top dose of 50 mg/kg/day with a NOAEL of 25 mg/kg/day. Adverse effects from oral exposure to sulfosate occur at or above 50 mg/kg/day. These effects consist primarily of transient salivation, which is regarded as a pharmacological rather than toxicological effect, emesis and

non-biologically significant hematological changes. Exposures at or below 25 mg/kg/day have not resulted in significant biological adverse effects. In addition, a comparison of data from the 90-day and 1-year studies indicates that there is no evidence for increased toxicity with time. The overall NOAEL in the dog is 25 mg/kg/day.

5. *Chronic toxicity.* A chronic feeding/carcinogenicity study was conducted in male and female rats fed dose levels of 0, 100, 500 and 1,000 ppm (0, 4.2, 21.2 or 41.8 mg/kg/day in males and 0, 5.4, 27.0 or 55.7 mg/kg day in females). No carcinogenic effects were observed under the conditions of the study. The systemic NOAEL of 1,000 ppm (41.1/55.7 mg/kg/day for males and females, respectively) was based on decreased body weight gains (considered secondary to reduced food consumption) and increased incidences of chronic laryngeal and nasopharyngeal inflammation (males). A chronic feeding/carcinogenicity study was conducted in male and female mice fed dosage levels of 0, 100, 1,000 and 8,000 ppm (0, 11.7, 118 or 991 mg/kg/day in males and 0, 16, 159 or 1,341 mg/kg/day in females). No carcinogenic effects were observed under the conditions of the study at dose levels up to and including the 8,000 ppm HDT (highest dose may have been excessive). The systemic NOAEL was 1,000 ppm based on decreases in body weight and feed consumption (both sexes) and increased incidences of duodenal epithelial hyperplasia (females only). Sulfosate is classified as a Group E carcinogen based on no evidence of carcinogenicity in rat and mouse studies.

6. *Animal metabolism.* The metabolism of sulfosate has been studied in animals. The residues of concern for sulfosate in meat, milk, and eggs are the parent ions PMG and TMS only.

7. *Metabolite toxicology.* There are no metabolites of toxicological concern. Only the parent ions, PMG and TMS are of toxicological concern.

8. *Endocrine disruption.* Current data suggest that sulfosate is not an endocrine disruptor.

C. Aggregate Exposure

1. *Dietary exposure.*—i. *Food.* For the purposes of assessing the potential dietary exposure, Zeneca has utilized the tolerance level for all existing and pending tolerances; and the proposed maximum permissible levels of 0.05 ppm for the fruiting vegetables (except cucurbits) group; 0.5 ppm for the edible-podded legume vegetables subgroup; 0.2 ppm for the succulent shelled pea and bean subgroup; 6 ppm for the dried shelled pea and bean (except soybean) subgroup; 3.5 ppm for cattle, goat, hog, sheep, and horse kidney; 2.5 ppm for cattle, goat, hog, sheep, and horse meat by-products, except liver and kidney; 0.6 ppm for cattle, goat, hog, sheep, and horse meat; 0.75 ppm for cattle, goat, hog, sheep, and horse liver; 1.1 ppm for milk; 0.1 ppm for poultry liver; 0.25 ppm for poultry meat by-products; 21 ppm for soybean seed; 45 ppm for soybean hulls; 1300 ppm for aspirated grain fractions; and 100% crop treated acreage for all commodities. Assuming that 100% of foods, meat, eggs, and milk products will contain sulfosate residues and those residues will be at the level of the tolerance results in an overestimate of human exposure. This is a very conservative approach to exposure assessment.

ii. *Chronic exposure.* For all existing tolerances and pending tolerances; and the proposed maximum permissible levels proposed in this notice of filing, the potential exposure for the U.S. population is 0.018 mg/kg bwt/day (7.4% of RfD). Potential exposure for children's population subgroups range from 0.015 mg/kg bwt/day (6.1% of RfD) for nursing infants (<1 year old) to 0.076 mg/kg bwt/day (30.5%) for non-nursing infants. The chronic dietary risk due to food does not exceed the level of concern (100%) Acute exposure. The exposure to the most sensitive population subgroup, in this instance non-nursing infants, was 23.2% of the acute RfD. The acute dietary risk due to food does not exceed the level of concern (100%).

iii. *Drinking water.* Results from computer modeling indicate that sulfosate in groundwater will not contribute significant residues in drinking water as a result of sulfosate use at the recommended maximum annual application rate (4.00 lbs. a.i. acre -1). The computer model uses conservative numbers, therefore it is unlikely that groundwater concentrations would exceed the estimated concentration of 0.00224 parts per billion (ppb), and sulfosate should not pose a threat to ground water.

The surface water estimates are based on an exposure modeling procedure called Generic Expected Environmental Concentration (GENEEC). The assumptions of 1 application of 4.00 lbs. a.i. acre -1 resulted in calculated estimated maximum concentrations of 64 ppb (acute, based on the highest 56-day value) and 43 ppb (chronic, average). GENEEC modeling procedures assumed that sulfosate was applied to a 10-hectare field that drained into a 1-hectare pond, 2-meters deep with no outlet.

As a conservative assumption, because sulfosate residues in ground water are expected to be insignificant compared to surface water, it has been assumed that 100% of drinking water consumed was derived from surface water in all drinking water exposure and risk calculations.

To calculate the maximum acceptable acute and chronic exposures to sulfosate in drinking water, the dietary food exposure (acute or chronic) was subtracted from the appropriate (acute or chronic) RfD. Drinking water levels of concern (DWLOCs) were then calculated using the maximum acceptable acute or chronic exposure, default body weights (70 kg - adult, 10 kg - child), and drinking water consumption figures (2 liters - adult, 1 liter - child).

The maximum concentration of sulfosate in surface water is 64 ppb. The acute DWLOCs for sulfosate in surface water were all greater than 7,700 ppb. The estimated average concentration of sulfosate in surface water is 43 ppb which is much less than the calculated levels of concern (> 1,700 ppb) in drinking water as a contribution to chronic aggregate exposure. Therefore, for current and proposed uses of sulfosate, Zeneca concludes with reasonable certainty that residues of sulfosate in drinking water would not result in unacceptable levels of aggregate human health risk.

2. *Non-dietary exposure.* Sulfosate is currently not registered for use on any residential non-food sites. Therefore, residential exposure to sulfosate residues will be through dietary exposure only.

D. Cumulative Effects

There is no information to indicate that toxic effects produced by sulfosate are cumulative with those of any other chemical compound.

E. Safety Determination

1. *U.S. population*—i. *Acute risk.* Since there are no residential uses for sulfosate, the acute aggregate exposure only includes food and water. Using the conservative assumptions of 100% of all crops treated and assuming all residues are at the tolerance level for all established and proposed tolerances, the aggregate exposure to sulfosate will utilize 17.3% of the acute RfD for the U.S. population. The estimated peak concentrations of sulfosate in surface and ground water are less than DWLOCs for sulfosate in drinking water as a contribution to acute aggregate exposure. Residues of sulfosate in drinking water do not contribute significantly to the aggregate acute human health risk considering the

present uses and uses proposed in this action.

ii. *Chronic risk.* Using the conservative exposure assumptions described above, the aggregate exposure to sulfosate from food will utilize 7.4% of the chronic RfD for the U.S. population. The estimated average concentrations of sulfosate in surface and ground water are less than DWLOCs for sulfosate in drinking water as a contribution to chronic aggregate exposure. Residues of sulfosate in drinking water do not contribute significantly to the aggregate chronic human health risk considering the present uses and uses proposed in this action.

2. *Infants and children.* The database on sulfosate relative to pre- and post-natal toxicity is complete. Because the developmental and reproductive effects occurred in the presence of parental (systemic) toxicity, these data do not suggest an increased pre- or post-natal sensitivity of children and infants to sulfosate exposure. Therefore, Zeneca concludes, upon the basis of reliable data, that a 100-fold uncertainty factor is adequate to protect the safety of infants and children and an additional safety factor is unwarranted.

i. *Acute risk.* Using the conservative exposure assumptions described above, the aggregate exposure to sulfosate from food will utilize 23.2% of the acute RfD for the most highly exposed group, non-nursing infants. The estimated peak concentrations of sulfosate in surface and ground water are less than DWLOCs for sulfosate in drinking water as a contribution to acute aggregate exposure. Residues of sulfosate in drinking water do not contribute significantly to the aggregate acute human health risk considering the present uses and uses proposed in this action.

ii. *Chronic risk.* Using the conservative exposure assumptions described above, we conclude that the percent of the RfD that will be utilized by aggregate exposure to residues of sulfosate is 30.5% for non-nursing infants, the most highly exposed group. The estimated average concentrations of sulfosate in surface and ground water are less than DWLOCs for sulfosate in drinking water as a contribution to chronic aggregate exposure. Residues of sulfosate in drinking water do not contribute significantly to the aggregate chronic human health risk considering the present uses and uses proposed in this action.

F. International Tolerances

There are no Codex Maximum Residue Levels established for sulfosate.

[FR Doc. 99–8775 Filed 4–7–99; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6321–3]

Notice of Proposed Administrative Settlement Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act, as Amended by the Superfund Amendments and Reauthorization Act

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; request for public comment.

SUMMARY: In accordance with section 122(i) of the Comprehensive Environmental Response, Compensation and Liability Act, as amended by the Superfund Amendments and Reauthorization Act ("CERCLA"), notice is hereby given that a proposed administrative cost recovery settlement concerning the Caelus Devices Removal Site in Hollister, California was executed by the Agency on March 19, 1999. The proposed settlement resolves an EPA claim under section 107 of CERCLA against the following Respondents: the United States Navy, Helen Sperber, and Victor Edmundson. The proposed settlement was entered into under the authority granted EPA in section 122(h) of CERCLA, and requires the Respondents to pay $124,195.84 to the Hazardous Substances Superfund in settlement of past costs. For thirty (30) days following the date of publication of this document, the Agency will receive written comments relating to the settlement. The Agency's response to any comments received will be available for public inspection at three locations: the Hollister Public Library; the Environmental Protection Agency, Region 9, Library & Resource Center, 75 Hawthorne Street, San Francisco, California, 94105; and the Environmental Protection Agency, Region 9, Ms. Danielle Carr, Regional Hearing Clerk, 75 Hawthorne Street, San Francisco, California, 94105.

DATES: Comments must be submitted on or before May 10, 1999.

ADDRESSES: The proposed settlement as set forth in the Administrative Consent Order may be obtained from Ms. Danielle Carr, Regional Hearing Clerk, Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, California, 94105.

Comments regarding the proposed settlement should be addressed to Ms. Danielle Carr, Regional Hearing Clerk, Environmental Protection Agency, Region 9 at the address provided above, and should reference the Caelus Devices Removal Site located in Hollister, California (EPA Docket No. 99–05).

FOR FURTHER INFORMATION CONTACT: Julia A. Jackson, Assistant Regional Counsel, Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, California 94105, (415) 744–1348.

Dated: March 30, 1999.

Keith Takata,

Director, Superfund Division.

[FR Doc. 99–8778 Filed 4–7–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6321–5]

Memphis Container Site; Notice of Proposed Settlement

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Proposed Settlement.

SUMMARY: Pursuant to section 122(h) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), the United States Environmental Protection Agency (EPA) proposes to enter into an Agreement for the recovery of past response costs with Buckman Laboratories, Inc., Perma-Fix of Memphis, Inc., Croda Inks Corporation, IBC Manufacturing Company and Memphis Light, Gas & Water Division, (Settling Parties). Pursuant to the Agreement, the Settling Parties will reimburse EPA for a portion of response costs at the Memphis Container Superfund Site (the "Site") located in Memphis, Shelby County, Tennessee. EPA will consider public comments on the proposed settlement for thirty days. EPA may withdraw from or modify the proposed settlement should such comments disclose facts or considerations which indicate the proposed settlement is inappropriate, improper, or inadequate. Copies of the proposed settlement are available from: Ms. Paula V. Batchelor, U.S. Environmental Protection Agency, Region 4, Program Services Branch, Waste Management Division, 61 Forsyth Street, S.W., Atlanta, Georgia 30303.

Written comments may be submitted to Ms. Batchelor at the above address

within 30 days of the date of publication.

Dated: March 24, 1999.

Franklin E. Hill,

Chief, Program Services Branch, Waste Management Division.

[FR Doc. 99–8776 Filed 4–7–99; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6321–4]

Ware Shoals Dyeing and Printing Superfund Site Notice of Proposed Settlement

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; request for public comment.

SUMMARY: In accordance with section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended ("CERCLA"), 42 U.S.C. 9622(i), notice is hereby given of a proposed administrative settlement for recovery of past response costs concerning the Ware Shoals Dyeing and Printing Site in Ware Shoals, South Carolina with the following settling party: Mount Vernon Mills, Inc. The settlement requires the settling party to pay $310,000.00 to the Hazardous Substance Superfund. The settlement includes a covenant not to sue the settling party pursuant to section 107(a) of CERCLA, 42 U.S.C. 9607(a). The Agency will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate. Copies of the proposed settlement are available from: Attn: Paula V. Batchelor, Waste Management Division, U.S. EPA, Region 4, 61 Forsythe Street S.W., Atlanta, Georgia 30303, (404) 562–8887.

Written comments may be submitted to Ms. Batchelor within 30 calendar days of the date of publication.

Dated: March 24, 1999.

Franklin Hill,

Chief, Waste Programs Branch, Waste Management Division.

[FR Doc. 99–8777 Filed 4–7–99; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

[DA 99–642]

Public Safety National Coordination Committee

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The Public Safety and Private Wireless Division released this Public Notice advising of the establishment of procedures for oral or written contacts with the Chairperson of the Public Safety National Coordination Committee ("NCC"). The Notice requires that any person or entity that makes an oral or written presentation to the Chairperson of the NCC must provide a document which summarizes that presentation. This is to assure full public participation in the discussion of all matters of substance before the NCC.

DATES: Effective immediately.

ADDRESSES: Federal Communications Commission, 445 12th Street, S.W., Room 4–C207, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: D'wana R. Terry, telephone (202)418–0680. Press Contact, Meribeth McCarrick, Wireless Telecommunications Bureau, 202–418–0600, or e-mail, mmccarri@fcc.gov.

SUPPLEMENTARY INFORMATION: Following is the complete text of the Public Notice: The FCC has established the Public Safety National Coordination Committee, pursuant to the provisions of the Federal Advisory Committee Act, to advise the Commission on a variety of issues relating to the use of the 24 MHz of spectrum in the 764–776/794–806 MHz frequency bands (collectively, the 700 MHz band) that has been allocated to public safety services. *See* The Development of Operational, Technical and Spectrum Requirements For Meeting Federal, State and Local Public Safety Agency Communications Requirements Through the Year 2010 and Establishment of Rules and Requirements For Priority Access Service, WT Docket No. 96–86, *First Report and Order and Third Notice of Proposed Rulemaking*, FCC 98–191 (1998). The Federal Advisory Committee Act, Public Law 92–463, as amended, requires public notice of all meetings of the NCC. This is to assure full public participation in the discussion of all matters of substance before the NCC.

We wish to assure that all contacts regarding the merits or substance of any NCC consideration which occur outside the scope of formal meetings are a matter of record. Therefore, the NCC will require that any person or entity that makes an oral or written presentation to the Chairperson of the NCC (Kathleen Wallman) must provide a document which summarizes that presentation. In the case of an oral communication, the document must be a memorandum reflecting who initiated the contact and the substance of the conversation. In the case of a written contact, the document must be a copy of the letter or pleading constituting the written contact. All such documents must be labelled WTB–2.

Date: This requirement is effective immediately.

Address: Documents provided to the NCC for the public file should be sent to: D'wana R. Terry, Designated Federal Officer, Public Safety National Coordination Committee, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau, Federal Communications Commission, 445 Twelfth Street, S.W., Room 4–C207, Washington, D.C. 20554.

Supplementary Information: All submissions concerning such contacts will be available for public inspection during normal business hours in a file designated WTB–2 maintained in the Public Safety and Private Wireless Division, Wireless Telecommunications Bureau, Federal Communications Commission in Room 4–C207, 445 Twelfth Street, S.W., Washington, D.C. 20554.

Federal Communications Commission.

Herbert W. Zeiler,

Deputy Chief, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau.

[FR Doc. 99–8792 Filed 4–7–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice and request for comment.

SUMMARY: The FDIC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35). Currently, the FDIC is soliciting comments concerning an information

collection titled "Summary of Deposits."

DATES: Comments must be submitted on or before June 7, 1999.

ADDRESSES: Interested parties are invited to submit written comments to Tamara R. Manly, Management Analyst (Regulatory Analysis), (202) 898–7453, Office of the Executive Secretary, Room 4058, Attention: Comments/OES, Federal Deposit Insurance Corporation, 550 17th Street N.W., Washington, D.C. 20429. All comments should refer to "Summary of Deposits." Comments may be hand-delivered to the guard station at the rear of the 17th Street Building (located on F Street), on business days between 7:00 a.m. and 5:00 p.m. [FAX number (202) 898–3838; Internet address: comments@fdic.gov].

A copy of the comments may also be submitted to the OMB desk officer for the FDIC: Alexander Hunt, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, D.C. 20503.

FOR FURTHER INFORMATION CONTACT: Tamara R. Manly, at the address identified above.

SUPPLEMENTARY INFORMATION:

Proposal To Renew the Following Currently Approved Collection of Information

Title: Summary of Deposits.
OMB Number: 3064–0061.
Frequency of Response: Annually.
Affected Public: All financial institutions.
Estimated Number of Respondents: 6,400.
Estimated Time per Response: 3 hours.
Estimated Total Annual Burden: 19,200 hours.
General Description of Collection: The Summary of Deposits annual survey obtains data regarding the amount of deposits held at all offices of all banks in the United States. The survey data provides a basis for measuring the competitive impact of bank mergers and has additional use in banking research.

Request for Comment

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the estimates of the burden of the information collection, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

At the end of the comment period, the comments and recommendations received will be analyzed to determine the extent to which the collection should be modified prior to submission to OMB for review and approval. Comments submitted in response to this notice also will be summarized or included in the FDIC's requests to OMB for renewal of this collection. All comments will become a matter of public record.

Dated at Washington, D.C., this 30th day of March, 1999.

Federal Deposit Insurance Corporation.

James D. LaPierre,

Deputy Executive Secretary.

[FR Doc. 99–8782 Filed 4–7–99; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Notices

DATE AND TIME: Tuesday, April 13, 1999 at 10:00 a.m.

PLACE: 999 E Street, N.W., Washington, D.C.

STATUS: This Meeting Will Be Closed to the Public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. § 437g.

Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and Title 26, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration.

Internal personnel rules and procedures or matters affecting a particular employee.

DATE AND TIME: Thursday, April 15, 1999 at 10:00 a.m.

PLACE: 999 E Street, N.W., Washington, D.C. (Ninth Floor).

STATUS: This Meeting Will Be Open to the Public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes.

Advisory Opinion 1999–4: Republican Party of Minnesota and the Senate District 43 Committee by counsel, Tony P. Trimble.

Advisory Opinion 1999–5: Democratic Party of New Mexico by counsel, Joseph E. Sandler and Neil P. Reiff.

Advisory Opinion 1999–8: Citizens for Arlen Specter by its treasurer, Stephen J. Harmelin.

Administrative Matters.

PERSON TO CONTACT FOR INFORMATION: Mr. Ron Harris, Press Officer, Telephone: (202) 694–1220.

Mary W. Dove,

Deputy Secretary of the Commission.

[FR Doc. 99–8846 Filed 4–6–99; 12:37 pm]

BILLING CODE 6715–01–M

FEDERAL MARITIME COMMISSION

[Petition No. P3–99]

Petition of China Ocean Shipping (Group) Company for a Partial Exemption From the Controlled Carrier Act; Notice of Filing of Petition

Notice is hereby given that China Ocean Shipping (Group) company ("Petitioner") has petitioned for an exemption pursuant to Section 16 of the Shipping Act of 1984, 46 U.S.C. app. § 1715. Petitioner requests an exemption to allow it to publish rate decreases in U.S. foreign commerce [1] to be effective upon publication, without regard to whether they are the same as or lower than competing carriers' rates. (Petitioner currently has this right in the cross trades, it the rate decreases are not below rates of competing carriers. See the Commission's Order in Petition No. P1–98-*Petition of China Ocean Shipping (Group) Company for a Limited Exemption from Section 9(C) of the Shipping Act of 1984*, served March 27, 1998).

In other for the Commission to make a thorough evaluation of the petition for exemption, interested persons are requested to submit views or arguments in reply to the petition no later than May 7, 1999. Replies shall consist of an original and 15 copies, be directed to the Secretary, Federal Maritime Commission, Washington, D.C. 20573–0001, and be served on Petitioner's counsel: Richard D. Gluck, Esq., Garvey, Schubert & Barer, 1000 Potomac Street, N.W., Washington, D.C. 20007.

Copies of the petition are available for examination at the Office of the Secretary of the Commission, 800 N. Capitol Street, N.W., Room 1046, Washington, D.C.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 99–8677 Filed 4–7–99; 8:45 am]

BILLING CODE 6730–01–M

[1] The petition requests relief in both the bilateral trade and the cross trades. The bilateral trade is the trade between the United States and the People's Republic of China. The cross trades include the trades between the United States and foreign countries other than the People's Republic of China.

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than April 22, 1999.

A. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. Cathy Grissom Bolding, Nancy Grissom Wilson, both of Oklahoma City, Oklahoma, and Robert Randal Grissom, Ardmore, Oklahoma; to acquire voting shares of Lincoln Financial Corporation, Ardmore, Oklahoma, and thereby indirectly acquire voting shares of Lincoln Bank & Trust Company, Ardmore, Oklahoma.

2. Michael Dean Stevens and Kimberly S. Stevens, both of Sublette, Kansas; to acquire voting shares of Santa Fe Trail Banc, Shares, Inc., Sublette, Kansas, and thereby indirectly acquire voting shares of Centra Bank, Sublette, Kansas.

3. Rodger L. Van Loenen, Prairie View, Kansas; to acquire voting shares of Phillips Holdings, Inc., Phillipsburg, Kansas, and thereby indirectly acquire voting shares of Farmers State Bank, Phillipsburg, Kansas.

Board of Governors of the Federal Reserve System, April 2, 1999.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 99–8653 Filed 4–7–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 3, 1999.

A. Federal Reserve Bank of Philadelphia (Michael E. Collins, Senior Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105-1521:

1. Sterling Financial Corporation, Lancaster, Pennsylvania; to acquire 100 percent of the voting shares of Northeast Bancorp, Inc., North East, Maryland, and thereby indirectly acquire The First National Bank of North East, North East, Maryland.

B. Federal Reserve Bank of Chicago (Philip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1413:

1. Decatur Corporation, Leon, Iowa; to merge with Spectrum Bancorporation, Inc., Omaha, Nebraska, and thereby acquire Rushmore Financial Services, Inc., Omaha, Nebraska, Rushmore Bank & Trust Company, Rapid City, South Dakota, and F&M Bank, Watertown, South Dakota.

C. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. Central Financial Corporation, Hutchinson, Kansas; to acquire 10 percent of the voting shares of Mid-America Bancorp, Inc., Jewell, Kansas, and thereby indirectly acquire Heartland Bank, N.A., Jewell, Kansas.

D. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Sterling Bancshares, Inc., Houston, Texas, and Sterling Bancorporation, Inc., Wilmington, Delaware; to merge with B.O.A. Bancshares, Inc., Houston, Texas, and thereby indirectly acquire Houston Commerce Bank, Houston, Texas.

Board of Governors of the Federal Reserve System, April 2, 1999.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 99–8655 Filed 4–7–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 3, 1999.

A. Federal Reserve Bank of Boston (Richard Walker, Community Affairs Officer) 600 Atlantic Avenue, Boston, Massachusetts 02106-2204:

1. Passumpsic Bancorp, St. Johnsbury, Vermont; to engage *de novo* through its subsidiary, Passumpsic Bank, FSB, Littleton, New Hampshire, in operating a savings association, pursuant to § 225.28(b)(4)(ii).

Board of Governors of the Federal Reserve System, April 2, 1999.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 99–8654 Filed 4–7–99; 8:45 am]

BILLING CODE 6210–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Healthcare Infection Control Practices Advisory Committee (HICPAC): Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting.

Name: Healthcare Infection Control Practices Advisory Committee (formerly Hospital Infection Control Practices Advisory Committee).

Times and Dates:

8:30 a.m.-5 p.m., May 24, 1999.
8:30 a.m.-1 p.m., May 25, 1999.

Place: CDC, Auditorium A, 1600 Clifton Road, NE, Atlanta, Georgia 30333.

Status: Open to the public, limited only by the space available.

Purpose: The Committee is charged with providing advice and guidance to the Secretary, the Assistant Secretary for Health, the Director, CDC, and the Director, National Center for Infectious Diseases (NCID), regarding (1) the practice of hospital infection control; (2) strategies for surveillance, prevention, and control of infections (e.g., nosocomial infections), antimicrobial resistance, and related events in settings where healthcare is provided; and (3) perioidc updating guidelines and other policy statements regarding prevention of healthcare associated infections and healthcare-related conditions.

Matters to be Discussed: Agenda items will include an overview of the strategic direction of HICPAC; plan(s) for collaboration between HICPAC and professional organizations in developing guideline; plan(s)for evaluation of the Guideline for Prevention of Site Infection; review of the second draft of the Guideline for Environmental Controls in Healthcare Settings; and a review of CDC activities of interest to the Committee.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Michele L. Pearson, M.D., Medical Epidemiologist, Investigation and Prevention Branch, Hospital Infections Program, NCID, CDC, 1600 Clifton Road, NE, M/S E–69, Atlanta, Georgia 30333, telephone 404/639–6413.

The Director, Management Analysis and Services Office has been delegated the authority to sign Federal Register notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: April 2, 1999.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 99–8727 Filed 4–7–99; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Board of Scientific Counselors, National Center for Infectious Diseases: Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following committee meeting.

Name: Board of Scientific Counselors, National Center for Infectious Diseases (NCID).

Times and Dates:

9:00 a.m.-5:30 p.m., May 6, 1999.
8:30 a.m.-2:30 p.m., May 7, 1999.

Place: CDC, Auditorium B, 1600 Clifton Road, Atlanta, Georgia 30333.

Status: Open to the public, limited only by the space available.

Purpose: The Board of Scientific Counselors, NCID, provides advice and guidance to the Director, CDC, and Director, NCID, in the following areas: program goals and objectives; strategies; program organization and resources for infectious disease prevention and control; and program priorities.

Matters to be Discussed: Agenda items will include:

1. NCID Update—Dr. Hughes
2. Minority Health Program—Dr. Black
3. Bioterrorism Preparedness—Drs. Ostroff, Lillibridge, and Morse
4. Arctic Investigations Program—Dr. Butler
5. Discussion of Programs
6. Antimicrobial Resistance Dr. Bell
7. Economic Impact of pandemic Influenza—Dr. Meltzer
8. Scientific Updates
   a. Hepatitis C
   b. Malaysia Outbreak
9. Discussions and Recommendations

Other agenda items include announcements/introductions; follow-up on actions recommended by the Board December 1998; consideration of future directions, goals, and recommendations.

Agenda items are subject to change as priorities dictate.

Written comments are welcome and should be received by the contact person listed below prior to the opening of the meeting.

Contact Person for More Information: Diane S. Holley, Office of the Director, NCID, CDC, 1600 Clifton Road, M/S C–20, NE, Atlanta, Georgia 30333, telephone 404/639–0078.

The Director, Management Analysis and Services office has been delegated the authority to sign Federal Register notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: April 2, 1999.

Carolyn J. Russell,

Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 99–8729 Filed 4–7–99; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Drug Repackager Workshop

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of workshop.

The Food and Drug Administration, in cooperation with the North Central Association of Food and Drug Officials (NCAFDO), a local nonprofit organization, is announcing the following workshop: Drug Repackager Workshop. The topic to be discussed is current good manufacturing practices for the drug repackaging industry, including (but not limited to) stability testing and expiration dating for both solid and liquid oral dosage forms; packaging and labeling control; and separation of penicillin/cephalosporin operations from other drug products.

Date and Time: The workshop will be held on Tuesday, May 18, 1999, from 8:30 a.m. to 4 p.m. Send information regarding registration by May 10, 1999.

Location: The workshop will be held at Hamburger University at The Lodge on the McDonald's Office Campus, 2815 Jorie Blvd., Oak Brook, IL 60523.

Contact: Lorelei S. Jarrell, Preapproval Manager, Food and Drug Administration, 300 South Riverside Plaza, Chicago, IL 60606, 312–353–5863, ext. 146, FAX 312–886–3280, e-mail "ljarrell@fda.ora.gov".

Registration: Send registration information (including name, title, firm name, address, telephone, and fax number), along with a $75 registration fee (which will cover the actual cost of the facilities, continental breakfast, lunch, refreshments, and miscellaneous items) to Pat Lewis, Food and Drug Administration, 300 South Riverside Plaza, suite 550 South, Chicago, IL 60606, 312–353–5863, ext. 190, by May

10, 1999. Checks should be made payable to NCAFDO. There is limited seating, so registration will be honored on a first-come-first-served basis.

For hotel reservations, please contact The Lodge at McDonald's Office Campus, 2815 Jorie Blvd., Oak Brook, IL 60523. To obtain the preferred room rate of $159 per single room, please call the hotel at 630–990–5800, and state that you will be attending the Drug Repackager Workshop.

If you need special accommodations due to a disability, please contact Lorelei S. Jarrell at least 7 days in advance.

Dated: April 1, 1999.

William K. Hubbard,

Acting Deputy Commissioner for Policy.

[FR Doc. 99–8658 Filed 4–7–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[HCFA–1071–N]

Medicare Program; April 23, 1999 Open Town Hall Meeting to Discuss the Skilled Nursing Facility Prospective Payment System (SNF/PPS) and Quality of Care in Nursing Facilities

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice of meeting.

SUMMARY: This notice announces a Town Hall meeting to provide an opportunity for nursing homes, beneficiary advocates, and other interested parties to ask questions and raise issues regarding the prospective payment system for skilled nursing facilities and the quality of care in nursing facilities. The meeting represents one aspect of the evolving process for making our payment, coverage, and quality reviews more open and responsive to the public. The meeting will address the following topics:

- An update and future refinements to the skilled nursing facility/ prospective payment system including a discussion of nontherapy ancillary services and consolidated billing.
- Outpatient therapy caps and other Part B issues.
- Skilled nursing facility coverage and medical review.
- Nursing home enforcement and quality issues.

DATES: The meeting is scheduled for April 23, 1999 from 8:00 a.m. until 5:00 p.m., E.D.T.

ADDRESSES: The meeting will be held in the HCFA headquarters auditorium, 7500 Security Boulevard, Baltimore, Maryland, 21244.

FOR FURTHER INFORMATION CONTACT: Jackie Gordon, (410) 786–4517, or Martha Kuespert, (410) 786–4605.

SUPPLEMENTARY INFORMATION:

Background

We are announcing a Town Hall meeting to provide an opportunity for nursing homes, beneficiary advocates, and other interested parties to ask questions and raise issues regarding the skilled nursing facility (SNF) prospective payment system (PPS) and the quality of care in nursing homes. On May 12, 1998, we published an interim final rule with comment period to implement SNF PPS (63 FR 26252). Initially, we provided a 60-day period for public comment. In response to requests from the industry, we extended the comment period twice (see 63 FR 37498 (July 13, 1998) and 63 FR 65561 (November 27, 1998)). The comment period for the SNF PPS interim final rule ended on December 28, 1998. We are currently developing the final rule and we expect to publish it soon. In developing the final rule, we are considering all public comments properly submitted during the public comment period. We will not accept any further comments on the interim final rule at this Town Hall meeting; that is, this meeting does not mean we are extending the public comment period.

In addition to the implementation of SNF PPS, we have embarked on an ambitious program to improve the quality of care in all nursing facilities. These two major initiatives have had wide-ranging effects on nursing facilities. The public has raised questions about how we propose to implement various aspects of these initiatives; how they interrelate; and how, and to what extent, we currently anticipate acting on current research and experience as a means of initiating future improvements in our quality assurance and payment systems.

This Town Hall meeting provides a forum for addressing these issues. We anticipate participation by nursing homes, nursing home organizations, hospital organizations, professional medical and allied health organizations, therapy and other nursing home supplier organization groups, national nursing home advocacy organizations, the press, and other members of the public with an interest in future SNF PPS and quality of care nursing home issues.

We intend that the meeting will provide a forum for the aforementioned groups to ask questions and raise issues about SNF PPS and quality of care in nursing homes. We intend to discuss our research efforts and the general direction that we are moving toward concerning these topics.

The format of the meeting will include an overview of the SNF PPS and quality of care topics. There will be a panel for each of the following topics:

- An update and future refinements to the skilled nursing facility/ prospective payment system including a discussion of nontherapy ancillary services and consolidated billing.
- Outpatient therapy caps and other Part B issues.
- Skilled nursing facility coverage and medical review.
- Nursing home enforcement and quality issues.

We will allow short (10–20 minutes) presentations by the public and our staff on these topics. The meeting will conclude with a question-and-answer session during which the public may raise issues related to the topics discussed.

Individuals who wish to make a presentation or be panelists at the meeting must contact Jackie Gordon at (410) 786–4517 or via e-mail at JGordon2@hcfa.gov or Martha Kuespert at (410) 786–4605 or via e-mail MKuespert@hcfa.gov no later than April 16, 1999. It is important that parties wishing to participate at the meeting include the topic for the panel on which they wish to participate. Also, because of time constraints, only a limited number of parties will be able to make presentations. We will notify participants who have been selected to make a presentation. We will not assign presentation times until the end of the public notice period established by this notice.

While the meeting is open to the public, attendance is limited to space available. Individuals must register in advance as described below.

Registration

The Office of Professional Relations will handle registration for the meeting. Individuals may register by sending a fax to the attention of Bernice Harper, Ph.D., at the Office of Professional Relations. At the time of registration, please provide your name, address, telephone number, and fax number.

Receipt of your fax will constitute confirmation of your registration. You will be provided with meeting materials at the time of the meeting.

For fax registration, the number is 202–401–7438.

If you have questions regarding registration please contact either

Bernice Harper, Ph.D., at 202–690–7899 or I. David Wolfson, J.D., R.Ph., at 410–786–4585.

We will accept written questions or other materials, either before the meeting, or up to 14 days after the meeting. Written submissions should be sent to: Health Care Financing Administration, ATTN: Jackie Gordon, Room C5–06–25, 7500 Security Boulevard, Baltimore, Maryland 21244–1850. You may contact Ms. Gordon at: Telephone Number: (410) 786–4517, Fax Number (410) 786–0765, E-mail: JGordon2@hcfa.gov.

Authority: Section 1102 of the Social Security Act (42 U.S.C. 1302).

(Catalog of Federal Domestic Assistance Program No. 93.773 Medicare—Hospital Insurance Program; and No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: April 5, 1999.

Nancy-Ann Min DeParle,

Administrator, Health Care Financing Administration.

[FR Doc. 99–8849 Filed 4–7–99; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Inspector General

Program Exclusions: March 1999

AGENCY: Office of Inspector General, HHS.

ACTION: Notice of program exclusions During the month of March 1999, the HHS Office of Inspector General imposed exclusions in the cases set forth below. When an exclusion is imposed, no program payment is made to anyone for any items or services (other than an emergency item or service not provided in a hospital emergency room) furnished, ordered or prescribed by an excluded party under the Medicare, Medicaid, and all Federal Health Care programs. In addition, no program payment is made to any business or facility, e.g., a hospital, that submits bills for payment for items or services provided by an excluded party. Program beneficiaries remain free to decide for themselves whether they will continue to use the services of an excluded party even though no program payments will be made for items and services provided by that excluded party. The exclusions have national effect and also apply to all Executive Branch procurement and non-procurement programs and activities.

Subject city, state	Effective date
PROGRAM-RELATED CONVICTIONS	
ALVERA, CHRISTINE MIAMI, FL	04/20/1999
AWE, OLUWAFEMI AYORNDE MIAMI, FL	04/20/1999
BENDER, CYNTHIA ORANGE, CA	04/20/1999
BURK, KATHLEEN ANN GORDONVILLE, TX	04/20/1999
CASTILLO, REYNALDO LOS ANGELES, CA	04/20/1999
DAVIS, LAWERENCE VANCE JR BEAUMONT, TX	04/20/1999
F & J CAM, INC E MARLBORO, NJ	04/20/1999
FRIESEN, CAROL D F. WORTH, TX	04/20/1999
FUSILLO, ANA MARIE SAN JOSE, CA	04/20/1999
HIEKE, HARRY A JR NEWPORT NEWS, VA	04/20/1999
HOFFMAN, FRANK WARWICK, RI	04/20/1999
HOLMES, PHILIP J HILLSBORO, OH	04/20/1999
HOUSER, JAMES J FRANKLIN, PA	04/20/1999
JACKSON, KAREN RAMSEY N RICHLAND HILLS, TX	04/20/1999
JORGE, DAISY SANTANA COLEMAN, FL	04/20/1999
KNOLL, MARJORIE A LEWISTON, ME	04/20/1999
LALANI, TALAT YUMA, AZ	04/20/1999
LEE, WON KOO MONTEREY PARK, CA	04/20/1999
MALIK, ANIL SUNLAND, CA	04/20/1999
MENENDEZ, CARIDAD N BAY VILLAGE, FL	04/20/1999
MIDDLETON, JACQUELYN BATESBURG, SC	04/20/1999
NEGRON, EDWIN VALRICO, FL	04/20/1999
OKONGWU, BENNETH OBIOINMA MISSOURI CITY, TX	04/20/1999
OYHENART, DANIEL MIAMI, FL	04/20/1999
RATINOV, MIKHAIL BROOKLYN, NY	04/20/1999
RIVERA, EDGAR E WARWICK, RI	04/20/1999
SANTANA, IRIS COLEMAN, FL	04/20/1999
SCHEINER, DAVE E PHILADELPHIA, PA	01/25/1999
SLANE, AMY D COLUMBUS, OH	04/20/1999
SWAITHES, DAVID MANFORD BOONEVILLE, AR	04/20/1999
SYAL, PARVIN NORTHRIDGE, CA	04/20/1999
TOUCHSTONE, ALLEN LAUREL SPRINGS, NJ	04/20/1999
WRIGHT, SHARON THOMAS FT LAUDERDALE, FL	04/20/1999
FELONY CONVICTION FOR HEALTH CARE FRAUD	
SICKLES, KATHLEEN M LORTON, VA	04/20/1999
FELONY CONTROL SUBSTANCE CONVICTIONS	
HOCHADEL, KEITH J ALLIANCE, OH	04/20/1999
OSBORNE, RONALD T BEAVERCREEK, OH	04/20/1999
STREET, JUDY S RICHLANDS, VA	04/20/1999
PATIENT ABUSE/NEGLECT CONVICTIONS	
ANDERSON, ROBERT JAMES TAYLORVILLE, UT	04/20/1999
BARNES, REATHEE (RITA) D JACKSON, MS	04/20/1999
BROWN, CASSANDRA MARIE KANSAS CITY, MO	04/20/1999
CHEATHAM, PHYLLIS MACON, MS	04/20/1999
GILBERT, DENNIS ALAN FT WORTH, TX	04/20/1999
GILMORE, ISIAH BATON, ROUGE, LA	04/20/1999
GODFREY, DORETHA DARLING, SC	04/20/1999
HOUGH, IMANUEL, JR CHESTERFIELD, SC	04/20/1999
MULLEN, REBECCA RIVERSIDE, RI	04/20/1999
MUNN, BARBARA ANN BAKERSFIELD, CA	04/20/1999
SAMUELS, CONRAD MERIDIAN, MS	04/20/1999
THOMAS, JULIANN WEST VALLEY, UT	04/20/1999
WOODS, ALLEN A W VALLEY CITY, UT	04/20/1999
LICENSE REVOCATION/SUSPENSION/ SURRENDERED	
ALI, MOHAMMED J. WILLOWBROOK, IL	04/20/1999
ANDERSON, MICHAEL R. QUICKSBURG, VA	04/20/1999
BAMBARGER, JOYCE ELIZABETH FLOYD, VA	04/20/1999
BARTON, THERESSA L KELLERTON, IA	04/20/1999
BECKER, MICHAEL F MEDFORD, MA	04/20/1999
BELL, WILLIAM J WINTER HAVEN, FL	04/20/1999
BILLINGS, CYNTHIA S OSAGE, IA	04/20/1999
BILLUPS, GENEVA CHICAGO, IL	04/20/1999
BLOCK, MICHAEL NEW MILFORD, CT	04/20/1999
BOLL, MARY KATHERINE MINNEAPOLIS, MN	04/20/1999
BROWN, BARRY D TERRY, MS	04/20/1999
BROWN, REBECCA F	04/20/1999

Subject city, state	Effective date
SHAWSVILLE, VA	
CALHOUN, ELLEN HOWELL .. MECHANICSBURG, PA	04/20/1999
CARMICHAEL, DONALD S ..... ERIE, PA	04/20/1999
CARPENTER, CHARLOTTE ANN ..... STARKS, LA	04/20/1999
CARROLL, PEGGY ..... BEULAVILLE, NC	04/20/1999
CASTLE, RITA D ..... CHATHAM, VA	04/20/1999
CATT, KELLY ..... BRANDON, MS	04/20/1999
CHAIFFETZ, IRA N ..... LABANON, OH	04/20/1999
COLMAN, LAURENCE D ..... THORNHILL, ONTARIO, CA	04/20/1999
CONNELLY, THERESA ..... HAVERHILL, MA	04/20/1999
CONRAD, DOREEN G ..... POWHATAN, VA	04/20/1999
COOK, LARA K ..... ZANESVILLE, OH	04/20/1999
COOPER, GEORGE RUSSELL CONOVER, NC	04/20/1999
CURRO, JOHN J ..... DES MOINES, IA	04/20/1999
CURRY, SHEREE D ..... GLOUCESTER, VA	04/20/1999
DOLAN, RUTH D ..... BETHEL PARK, PA	04/20/1999
DUNIFER, CHARLES DELEON NELSONVILLE, OH	04/20/1999
DUNN, CHERYL FOWLER ..... WARRAN, PA	04/20/1999
DURAND, PIERRE O ..... BEDFORD, NH	04/20/1999
DWYER, LOIS JEAN ..... WATERVILLE, MN	04/20/1999
EASTON, ROBERT S JR ..... METAMORA, IL	04/20/1999
ELKINGTON, ROBIN LYNN ..... GENOA, WI	04/20/1999
FAIRHILL, MARK M ..... LOUISA, VA	04/20/1999
FELDER, THOMAS L ..... SPRINGFIELD, IL	04/20/1999
FIGUEROA-QUIGLEY, NANCY A ..... DELMAR, IA	04/20/1999
FLANIGAN, MELINDA ..... ANKENEY, IA	04/20/1999
FREDERICK, DONALD ..... ALEXANDRIA, NH	04/20/1999
FREY, CRAIG EDWARD ..... YORK, PA	04/20/1999
GARCIA, JOSEPHINE ..... JACKSON, MS	04/20/1999
GEARHART, DIANE RAE ..... PANORAMA, CA	04/20/1999
GLOVER, LEOLA GRACE ..... WELLSBORO, PA	04/20/1999
GRANT, BETTY ..... FARMVILLE, NC	04/20/1999
GREENE, MARY ELLEN ..... NIANTIC, CT	04/20/1999
HALE, MARY B ..... EDWARDSVILLE, IL	04/20/1999
HIRSCH, BERNARD H ..... BAKERSFIELD, CA	04/20/1999
HOSELY, MAJORIE EVELYN .. GULFPORT, MS	04/20/1999
HOSSEINIPOUR, AHMAD	04/20/1999
YOUNGSTOWN, OH	
HUFFINE, JENNIFER A ..... MARION, OH	04/20/1999
HUTCHINSON, TINA M ..... RICHMOND, VA	04/20/1999
JENSEN, DAVID ALLEN ..... BELLFLOWER, CA	04/20/1999
JOHNSON, KAYLIN DOUGLAS HUNTINGTON BCH, CA	04/20/1999
KALAN, BARBARA A ..... SALEM, MA	04/20/1999
KALLAY, HASHMIA S ..... PETERSBURG, VA	04/20/1999
KELCH, BENJAMIN P ..... COLUMBUS, OH	04/20/1999
KITCHEN, ALFRED G E ..... SANDUSKY, OH	04/20/1999
KNIGHT, CINDY A ..... DES MOINES, IA	04/20/1999
KNOP, JANAN S ..... DES MOINES, IA	04/20/1999
KOROL, GEORGE WALTER ... TUSTIN, CA	04/20/1999
LEA, MELINDA HOLLIMON ..... OTISVILLE, NY	04/20/1999
LICHY, PAULINE BECKER ..... AVON, MN	04/20/1999
MCALISTER, JOLENE B ..... PELLA, IA	04/20/1999
MCCORMAC, ORVILLE T ..... CUYAHOGA FALLS, OH	04/20/1999
MCGINNIS, SHERYL DIANNE BROOKLYN CTR, MN	04/20/1999
MCQUADE, CHRISTA A ..... LOGAN, OH	04/20/1999
MCSORLEY, THERESA A ..... PHILADELPHIA, PA	04/20/1999
MEDWEDEFF, RICHARD ..... JOSHUA TREE, CA	04/20/1999
MULLINS, SHAWNA E ..... CLINTWOOD, VA	04/20/1999
NIGLOSCHY, JEAN A ..... FRAMINGHAM, MA	04/20/1999
OLINGER, JEFFREY ..... HUNTINGTON, IN	04/20/1999
OLIVEIRA, MARYANNE ..... MARION, MA	04/20/1999
OLIVERIO, SALVATORE L ..... DOYLESTOWN, OH	04/20/1999
PAGE, ANTONETTE RUGGIERO ..... HAZELTON, PA	04/20/1999
PATRICK, SCOTT BENSON ... SACRAMENTO, CA	04/20/1999
PESOLA, MAE GRACE ..... VERNDALE, MN	04/20/1999
PHILLIPS, SOLVEIG ..... NEW BRITAIN, CT	04/20/1999
PORTER, JENISE R ..... NORFOLK, VA	04/20/1999
PORTER, CRYSTAL D ..... CHERRYVILLE, NC	04/20/1999
PRATT, KIM DANETTE ..... LOCKEFORD, CA	04/20/1999
PRICE, KIRK ..... SUWANNE, GA	04/20/1999
REID, LAURA L ..... OAK BLUFFS, MA	04/20/1999
ROBERTSON, DARLA GAIL ... MAY, TX	04/20/1999
ROBINSON, JULIA J ..... ARLINGTON, VA	04/20/1999
ROCHA, MARK W	04/20/1999
ANZA, CA	
ROFSKY, MARVIN ..... GARDEN GROVE, CA	04/20/1999
ROOSA, ROBERT C ..... AGAWAM, MA	04/20/1999
SAGGIOMO, GINA M ..... WINCHESTER, VA	04/20/1999
SANDERS, MARC R ..... SCOTTSDALE, AZ	04/20/1999
SCHER, STEPHEN BARRY .... PITTSBURGH, PA	04/20/1999
SEVERANCE, DONALD W ..... ELK GROVE, CA	04/20/1999
SHILLINGBURG, KENNETH A TOMS BROOK, VA	04/20/1999
SMELAND, PATRICIA ANN ..... NEWPORT NEWS, VA	04/20/1999
SMITH, DOROTHY L ..... PHOENIXVILLE, PA	04/20/1999
SMITH, JUDITH A ..... NORTON, VA	04/20/1999
SMITH, ADRIENNE D ..... FAIRVIEW HGTS, IL	04/20/1999
SMITH, SHEILA ..... SPRINGFIELD, IL	04/20/1999
SOSKI, AMY J ..... MONACA, PA	04/20/1999
STREIFEL, JOHN A ..... CAMARILLO, CA	04/20/1999
SULLIVAN, KEVIN PAUL ..... PUYALLUP, WA	04/20/1999
THAMES, JEALLEAN ..... JACKSON, MS	04/20/1999
THOMAS, DANYELLE D ..... RICHMOND, VA	04/20/1999
THOMAS, BETHANY CHRISTINE ..... HOUSTON, TX	04/20/1999
THOMAS, ESSIE ..... DAVENPORT, IA	04/20/1999
THURMAN, TERRY L ..... DAVENPORT, IA	04/20/1999
TODD, MICHELLE ..... INDIANOLA, MS	04/20/1999
TURNER, SHELLEY MARIE .... FARIBAULT, MN	04/20/1999
VANDERLINDEN, CHARLES D KNOXVILLE, IA	04/20/1999
VANDYNE, DONALD L ..... WYTHEVILLE, VA	04/20/1999
WAGNER, WILLIAM ..... INDIANAPOLIS, IN	04/20/1999
WAKE, RENEE M ..... DANBURY, IA	04/20/1999
WALDRON, GAIL ..... SAN DIEGO, CA	04/20/1999
WALDROUP, KIMBERLY D ..... KANNAPOLIS, NC	04/20/1999
WALKER, GLORIDA JOHNSON ..... CHINO, CA	04/20/1999
WILDEMAN, LEONARD H ..... TUCSON, AZ	04/20/1999
WILLIAMS, JUDITH D ..... DANVILLE, VA	04/20/1999
WINSHEIMER, WILLIAM G ..... CARLISLE, PA	04/20/1999
WIXSON, LIOARA I ..... SKOKIE, IL	04/20/1999
WONG, LELAND TRACY ..... LONG BEACH, CA	04/20/1999
WOODS, CHARLES J	04/20/1999

Subject city, state	Effective date
TUCSON, AZ	
FRAUD/KICKBACKS	
AMERICAN MEDICAL TECHNOLOGY LAKEWOOD, NJ	06/22/1998
DAVE E SCHEINER ASSOCIATES INC PHILADELPHIA, PA	01/25/1999
PIUCK, CHARLOTTE L OAKLAND, NJ	09/01/1998
UNIVERSAL HEALTH CARE SYSTEMS CARY, IL	10/15/1998
WEISS, WILLIAM CARY, IL	10/15/1998
OWNED/CONTROLLED BY CONVICTED/EXCLUDED	
ACLF MEDICAL SERVICES, INC MIAMI, FL	04/20/1999
AMERICAN PRUDENT CARE PHOENIX, AZ	04/20/1999
AYALA MEDICAL CENTER, INC HIALEAH, FL	04/20/1999
CARIDAD MEDICAL CENTER, CORP MIAMI, FL	04/20/1999
FREDERICK SPINAL CARE CENTER FREDERICK, MD	04/20/1999
MED-CARE & MEDICAL CTR OF DADE MIAMI, FL	04/20/1999
NESTOR GARCIA, MD, PA MIAMI, FL	04/20/1999
ST THOMAS MEDICAL CLINIC LOS ANGELES, CA	04/20/1999
TECHNIQUE MEDICAL DIAGNOSTICS MIAMI, FL	04/20/1999
VALRICO REHAB SERVICES, INC VALRICO, FL	04/20/1999
DEFAULT ON HEAL LOAN	
ABADURA, HUSSEIN PHILADELPHIA, PA	04/20/1999
ANDREWS, CHRIS E SHINGLE SPRINGS, CA	04/20/1999
BESHQOY, YOUSEF HUNTINGTON BCH, CA	04/20/1999
BOLDEN, CHARLES W MEYERSDALE, PA	04/20/1999
BORJESON, ROBBI LIN PHOENIX, AZ	04/20/1999
CREEF, MICHAEL S CHESAPEAKE, VA	04/20/1999
EPPERSON, ELAINE C POULSBO, WA	04/20/1999
HAECKEL, JOSEPH B GILROY, CA	04/20/1999
HAMILTON, WINIFRED SEATTLE, WA	04/20/1999
HEAD, PHILIP A JR GALVESTON, TX	04/20/1999
HENRY, CAMILLE M HYATTSVILLE, MD	04/20/1999
HERNANDEZ, NILO A JR MIAMI, FL	04/20/1999
HOFFMAN, JANICE S CANAL WINCHESTER, OH	04/20/1999
HONEYCUTT, JOHN G JASPER, AL	04/20/1999
HORVATH, THOMAS ISLAND PARK, NY	04/20/1999
JAY, WAYNE DOYLE IOLA, KS	04/20/1999
JORDEN, TERRANCE K BUFFALO, NY	04/20/1999
KELLY (SOLURI), LAURA FARMINGDALE, NY	04/20/1999
KHALSA, SATPURKHA S SANTA FE, NM	04/20/1999
KOCHENDORFER, GLEN R SEATTLE, WA	04/20/1999
KUCH, JAMES E BELLFLOWER, CA	04/20/1999
MICCICHE, ROBERT J PENSACOLA, FL	04/20/1999
MORGAN, DAVID E SR DICKENS, TX	04/20/1999
MUNOZ, RAFAEL A JACKSON HGTS, NY	04/20/1999
PORTER, BRENDA YVONNE KINGSTON, NY	04/20/1999
QUINN, MARK P BROOKLYN, NY	04/20/1999
RAMOS, MARITZA RIO PIEDRAS, PR	04/20/1999
RORER, RICHARD S ARLINGTON, TX	04/20/1999
ROSE, LORRAINE B RESEDA, CA	04/20/1999
TAYLOR, KENNETH D METARIE, LA	04/20/1999
WELNER, ALAN H NEW YORK, NY	04/20/1999
SETTLEMENT AGREEMENTS	
CHUNG, MELODY MIAMI, FL	11/17/1998
COCHRAN, CHERYL ANNAPOLIS, MD	01/07/1998
COCHRAN, TIMOTHY ANNAPOLIS, MD	01/07/1998
CORVO, SANDRA HIALEAH GARDENS, FL	10/19/1998
CORVO, RENE HIALEAH GARDENS, FL	10/19/1998
GALLOWAY PAIN CONTROL CTR, INC MIAMI, FL	11/17/1998
GILBERTO PEREZ-FRANCO HIALEAH, FL	10/19/1998
NORTHEAST MEDICAL SUPPLIES INC BURLINGTON, VT	08/24/1998
PEREZ-FRANCO, GILBERTO MIAMI, FL	10/19/1998
POPACK, SAMUEL BROOKLYN, NY	08/24/1998
RASKIN, YITCHOK BURLINGTON, VT	08/24/1998
RASKIN, DEVORAH BURLINGTON, VT	08/24/1998
UNITED MEDICAL, INC ANNAPOLIS, MD	01/07/1998

Dated: March 26, 1999.

Joanne Lanahan,

Director, Health Care Administrative Sanctions, Office of Inspector General.

[FR Doc. 99–8768 Filed 4–7–99; 8:45 am]

BILLING CODE 4150–04–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review; Comment Request; Organ Procurement Survey

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. No. 104–13) and Office of Management and Budget (OMB) regulations at 5 C.F.R. 1320 (60 FR 44978, August 29, 1995), this notice announces the intention of the Department of Clinical Bioethics, National Institutes of Health (NIHDCB) to request approval for a new information collection, the Organ Procurement Survey. The proposed information collection was previously published in the **Federal Register** on May 5, 1998, page 24815 and allowed 60-days for public comment. No public comments were received. However, a respondent group has been deleted. This collection will now only involve surveying Organ Procurement Organizations (OPOs). The purpose of this notice is to allow an additional 30 days for public comment. The National Institutes of Health may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

PROPOSED COLLECTION:

Title: Organ Procurement Survey. *Type of Information Collection Request:* NEW. *Need and Use of Information Collection:* Respondents for this telephone survey will be the directors of procurement (or executive director if the director of procurement is not available) of the 62 U.S. Organ Procurement Organizations (OPOs). Telephone interviews will last one half hour and are intended to provide information about OPOs' policies and practices regarding consent for organ donation. Data collected will help the National Institutes of Health (NIH) to serve patients at the NIH Clinical Center who are interested in the option of organ donation. The data collected will also help other medical professionals across the country in such consultation and will assist respondents and policy

makers in understanding the practice of organ donation nationwide. Results of the survey will be reported confidentially, either in the aggregate or stripped of individual identifiers. *Frequency of Response:* Once. *Affected Public:* Business or other for-profit; Not-for-profit institutions; Federal Government. *Type of Respondents:* OPOs. The annual reporting burden is as follows:

Type of respondents	Estimated number of respondents	Estimated number of responses per respondent	Average burden hours per response	Estimated total annual burden hours requested
OPOs (directors of procurement or executive directors)	62	1	0.5	31
Total	62			31

The annualized cost to respondents is estimated at; $3,000,00. There are no Capital Costs to report. There are no Operating or Maintenance Costs to report.

Request For Comments

Written comments and/or suggestions from the public and affected agencies should address one or more of the following points: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Direct Comments to OMB

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the: Office of Management and Budget, Office of Regulatory Affairs, New Executive Office Building, Room 10235, Washington, D.C. 20503, Attention: Desk Officer for NIH. To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact: Dr. David Wendler, Department of Clinical Bioethics, DCB, CC, NIH, Building 10, Room 1C 118, 9000 Rockville Pike, Bethesda, MD 20892–1156, or call non-toll-free number (301) 435–8726 or e-mail your request, including your address to: dwendler@nih.gov.

Comments Due Date

Comments regarding this information collection are best assured of having their full effect if received on or before May 10, 1999.

Dated: March 16, 1999.

David K. Henderson,

Deputy Director, Warren G. Magnuson Clinical Center, National Institutes of Health.

[FR Doc. 99–8670 Filed 4–7–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Cooperative Research and Development Agreement (CRADA) Opportunity to Develop a Library of New cDNA Clones Derived From Mouse Stem Cells

AGENCY: NIA, NIH, DHHS.

ACTION: Notice.

SUMMARY: The Laboratory of Genetics, in the National Institute on Aging (NIA), is seeking at least one collaborator to participate in a Cooperative Research and Development Agreement (CRADA) to develop uses for a growing library of new cDNA clones. The Laboratory of Genetics has been collecting the cDNA clones from mouse embryonic tissues. A current first cohort of 15,000 unique genes, with an average length of 1.5 kb, includes more than 40% that are previously unknown by comparison with all entries in dbEST (2/1/99); subsequent additional cohorts, aiming at more uniformly full-length clones and including comparable fractions of additional previously unknown genes, are in development. The NIA is interested in developing this unique cDNA library into a variety of prognostic, diagnostic, and therapeutic applications.

This opportunity is not necessarily limited to a single collaborator or a single CRADA; all viable proposals that are consistent with the mission of the NIA and the goals of the Laboratory of Genetics will be considered. If more than one acceptable CRADA proposal is received, NIA may require that each research plan be crafted to protect against overlap. The term of each CRADA will be up to five (5) years.

DATES: Interested parties should notify the National Cancer Institute's Technology Development & Commercialization Branch, in writing, of their intent to file a formal proposal no later than May 24, 1999. Formal proposals must be submitted to this office no later than June 7, 1999.

ADDRESSES: Inquiries and proposals regarding this opportunity should be addressed to Bruce D. Goldstein; NCI Technology Development & Commercialization Branch; Suite 450, 6120 Executive Blvd.; Rockville, Maryland, 20852 (Tel. # 301–496–0477, FAX # 301–402–2117). Scientific inquiries should be addressed to Dr. David Schlessinger, Chief; NIA Laboratory of Genetics, 5600 Nathan Shock Drive; Baltimore, Maryland, 21224 (Tel. # 410–558–8337, FAX # 410–558–8331). Copies of the PHS Model CRADA are available.

SUPPLEMENTARY INFORMATION: A CRADA is the anticipated joint agreement to be entered pursuant to the Federal Technology Transfer Act of 1986, as amended by the National Technology Transfer and Advancement Act (Pub. L. 104–113 (Mar. 7, 1995)) and by Executive Order 12591 of April 10, 1987.

A CRADA is an agreement designed to enable certain collaborations between Government laboratories and non-Government laboratories. It is not a grant, and is not a contract for the procurement of goods/services. THE NIA IS PROHIBITED FROM TRANSFERRING FUNDS TO A CRADA COLLABORATOR. Under a CRADA, the NIA can offer the selected collaborator(s) access to facilities, staff, materials, and expertise. The collaborator(s) may contribute facilities, staff, materials, expertise, and funding to the collaboration. A CRADA collaborator may elect an option to an exclusive or non-exclusive license to Government intellectual property rights

arising under the CRADA, and may qualify as a co-inventor of new technology developed under the CRADA. Any party is eligible to participate; however, as between two or more sufficient, overlapping research proposals (where the overlap cannot be cured), the NIA, as specified in 15 U.S.C. 3710a(c)(4), will give special consideration to small businesses, and will give preference to business units located in the U.S. that agree to manufacture CRADA products in the U.S.

The NIA's principal objectives for this CRADA opportunity are the rapid publication of research findings, and the timely commercialization of prognostic, diagnostic, or therapeutic products. In particular, under the present proposal, the specific goals of the CRADA may include, but are not necessarily be limited to, the development of the following technology:

- Development of one or more diagnostic assays using gene arrays;
- Creation of pharmaceutical compositions derived from specific cDNA sequences; and
- Development of improved informatics concerning the analysis of expression of cDNA sequences identified by NIA.

Collaborators are encouraged to recommend additional applications and technologies to be developed in their written proposals.

Policy Considerations

The rapid advancement of many important avenues of biomedical research depend on the ready access to high quality clones and sequences of mammalian cDNA. The NIA acknowledges that, to provide commercial parties an incentive to develop a technology into a product, patent applications sometimes must directly claim a genetic sequence or clone so that a related diagnostic, prognostic, or therapeutic invention will be adequately protected. At the same time, the NIA is concerned that patent applications claiming clones and their associated sequences "per se"—in other words, in the absence of a demonstrated diagnostic, prognostic, or therapeutic function—could have a chilling effect on other research into products that will benefit the public health. Consequently, the NIA is committed, wherever possible, to making such per se cDNA libraries, clones, and sequences publicly available, without restriction, in a timely manner (for example, by placing them in public databases and repositories). All successful collaborators will acknowledge NIA's policy and will take meaningful steps to accommodate it wherever possible.

Party Contributions

The role of NIA may include the following:

(1) Plan research studies, interpret research results, and, with the collaborator, jointly publish the conclusions;

(2) Provide collaborator with access to mouse-embryonic cDNA clones, sequence information, and other research data (both already collected and yet to be collected);

(3) Provide staff, expertise, & materials for the development and testing of promising products; and

(4) Provide work space and equipment for testing of any prototype compositions developed.

The role of the successful collaborator will include the following:

(1) Provide significant intellectual, scientific, and technical expertise in the development and manufacture of relevant products;

(2) Plan research studies, interpret research results, and, with NIA, jointly publish the conclusions;

(3) Provide to NIA a supply of materials, access to necessary proprietary technology and/or data, and as necessary for the project, staff and funding in support of the research goals; and

(4) Provide resources to develop and market any promising products.

Other contributions may be necessary for particular proposals.

Selection Criteria

Proposals submitted for consideration should address, as best as possible and to the extent relevant to the proposal, each of the following qualifications:

(1) Expertise:

A. Expertise in developing and producing high quality pharmaceutical compositions;

B. Demonstrated ability to secure national marketing and distribution of its products (international distribution a plus);

C. Demonstrated expertise in informatics, and in handling of arrays of clones and genes; and

D. Demonstrated intellectual ability in the prediction and verification of diagnostic, prognostic, and/or therapeutic products based on sequences and genetic properties.

(2) Reliability as a research partner:

A. Produces quality products in a timely manner (for example, as demonstrated by a history of meeting benchmarks in licenses);

B. Indications of high levels of satisfaction by industry with the collaborator's products; and

C. Commitment to supporting the advancement of scientific research, as evidenced by a willingness to publish research results in a prompt manner, and a willingness to be bound by DHHS and PHS policies regarding:

(i) the public distribution of unmodified genetic sequences and pure research tools,

(ii) the care and handling of animals, and

(iii) testing in human subjects.

Proposals MUST address the collaborator's policy on the handling of intellectual property rights in, and the public dissemination of, cDNA sequences, clones, and libraries to be developed under a prospective CRADA.

(3) Physical Resources:

A. An established headquarters, with office space and equipment;

B. Access to the organization during business hours by telephone, facsimile, courier, U.S. Post, e-mail, the World-Wide-Web, and other evolving technologies; and

C. Sufficient financial and material resources to support, at a minimum, the anticipated activities of the CRADA to meet the needs of NIA under the proposal.

Dated: March 19, 1999.

Kathleen Sybert,

Director, Technology Development & Commercialization Branch, National Cancer Institute, National Institutes of Health.

[FR Doc. 99–8672 Filed 4–7–99; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of the Director, National Institutes of Health; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice if hereby given of a meeting of the Director's Council of Public Representatives.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: Director's Council of Public Representatives.

Date: April 21, 1999.

Time: 8:30 am to 4:00 pm.

Agenda: Among topics proposed for discussion are: (1) Health disparities in the U.S.; (2) clinical trials database on Internet;

and (3) models of public participation in NIH priority setting and other activities.

Place: National Institutes of Health, Building 31, C Wing, Conference Room 10, 9000 Rockville Pike, Bethesda, MD 20892.

Contact Person: Anne Thomas, Director, Office of Communications and Public Liaison, Office of the Director, National Institutes of Health, 9000 Rockville Pike, Building 1, Room 344, Bethesda, MD 20892, (301) 496–4461.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.14, Intramural Research Training Award; 93.187, Undergraduate Scholarship Program for Individuals from Disadvantaged Backgrounds; 93.22, Clinical Research Loan Repayment Program for Individuals from Disadvantaged Backgrounds; 93.232, Loan Repayment Program for Research Generally; 93.39, Academic Research Enhancement Award; 93.936, NIH Acquired Immunodeficiency Syndrome Research Loan Repayment Program, National Institutes of Health, HHS)

Dated: April 1, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–8663 Filed 4–7–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel Interdisciplinary Studies in the Genetic Epidemiology of Cancer.

Date: May 3–4, 1999.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Ray Bramhall, PhD., Scientific Review Administrator, Special Review, Referral and Resources Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6130 Executive Blvd, Rockville, MD 20892, (301) 496–3428.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; (93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: April 1, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–8659 Filed 4–7–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel PAR–98–023 SMALL GRANTS PROGRAM FOR CANCER EPIDEMIOLOGY.

Date: April 28, 1999.

Time: 7:30 a.m. to 12:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Holiday Inn, Bethesda, MD 20017.

Contact Person: Michael B. Small, Mph, PhD, Scientific Review Administrator, National Cancer Institute, Division of Extramural Activities, 6130 Executive Blvd., Room 643, Bethesda, MD 20892 301–496–7929.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: April 1, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–8661 Filed 4–7–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Advisory Committee to the Director, National Cancer Institute.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: Advisory Committee to the Director, National Cancer Institute.

Date: April 19, 1999.

Time: 2:30 p.m. to 3:30 p.m.

Agenda: The purpose of the meeting will be to update the Committee on the progress of the NCI working groups.

Place: National Institutes of Health, 9000 Rockville Pike, Building 31, Room 11A10, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Susan J. Waldrop, Executive Secretary, National Institutes of Health, National Cancer Institute, Office of Science Policy, Bethesda, MD 20892, 301/496–1458.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: April 1, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–8662 Filed 4–7–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Research Resources; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4 and 552b(c)(6), Title 5 U.S.C. as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center for Research Resources Special Emphasis Panel General Clinical Research Centers Review Committee.

Date: May 6, 1999.

Time: 8:00 AM to Adjournment.

Agenda: To review and evaluate grant applications.

Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Charles G. Hollingsworth, DPH, Deputy Director, Office of Review, National Center for Research Resources, 6705 Rockledge Drive, MSC 7965, Room 6018, Bethesda, MD 20892–7965, 301–435–0806.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine 93.306; 93.333, Clinical Research, 93.333; 93.371, Biomedical Technology; 93.389, Research Infrastructure, National Institutes of Health, HHS)

Dated: April 1, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–8660 Filed 4–7–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Board of Scientific Counselors, NIA.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the NATIONAL INSTITUTE ON AGING, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, NIA, Review of the Laboratory of Clinical Investigations.

Date: May 10–11, 1999.

Closed: May 10, 1999, 7:00 p.m. to adjournment.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: Best Western Hotel & Conference Center, Fells Point Room, Baltimore, MD 21224.

Closed: May 11, 1999, 8:00 a.m. to 8:15 a.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: Gerontology Research Center, National Institutes of Health, 5600 Nathan Shock Drive, Baltimore, MD 21224–6825.

Open: May 11, 1999, 8:15 a.m. to 5:00 p.m.

Agenda: For presentations, discussion and poster session.

Place: Gerontology Research Center, National Institutes of Health, 5600 Nathan Shock Drive, Baltimore, MD 21224–6825.

Closed: May 11, 1999, 5:00 p.m. to 5:30 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: Gerontology Research Center, National Institutes of Health, 5600 Nathan Shock Drive, Baltimore, MD 21224–6825.

Contact Person: Dan L. Longo, MD, Scientific Director, National Institute of Aging, Gerontology Research Center, National Institutes of Health, 5600 Nathan Shock Drive, Baltimore, MD 21224–6825, 410–558–8110, dl14q@nia.nih.gov

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: March 31, 1999.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy, NIH.

[FR Doc. 99–8665 Filed 4–7–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel. The Role of Tau in Neurodegeneration.

Date: April 16, 1999.

Time: 1:30 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Courtyard Marriott, 4600 San Pablo Road, Jacksonville, FL 32224.

Contact Person: William A. Kachadorian, PhD, The Bethesda Gateway Building, 7201 Wisconsin Avenue/Suite 2C212, Bethesda, MD 20892, (301) 496–9666.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: March 31, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–8666 Filed 4–7–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C. as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material,

and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel.

Date: April 19, 1999.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Tommy L. Broadwater, PhD, Chief, Grants Review Branch, National Institutes of Health, NIAMS, Natcher Bldg., Room 5As25U, Bethesda, MD 20892, 301–594–4952.

Name of Committee: National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel.

Date: April 29, 1999.

Time: 8:30 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Bethesda, Delaware Room, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Barbara Detrick, PhD, Scientific Review Administrator, National Institutes of Health, MIAMS, Bldg. 45, Room 5AS25N, Bethesda, MD 20892, 301–594–4952.

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: April 1, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–8667 Filed 4–7–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of the Director, National Institutes of Health; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Office of AIDS Research Advisory Council.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: Office of AIDS Research Advisory Council.

Date: April 28–29, 1999.

Time: 8:45 a.m. to 4:30 p.m.

Agenda: The Office of AIDS Research Advisory Council agenda includes Overview of the HIV Prevention Science Agenda at NIH, NIH FY 2001 Plan for HIV-Related Research, and other Council business.

Place: National Institutes of Health, 9000 Rockville Pike, Building 31, Conference Room 6, Bethesda, MD 20892.

Contact Person: Linda Reck, Head, Program, Planning and Evaluation, Office of AIDS Research, NIH, Bethesda, MD 20892, (301) 403–8655.

(Catalogue of Federal Domestic Assistance Program Nos. 93.14, Intramural Research Training Award; 93.187, Undergraduate Scholarship Program for Individuals from Disadvantaged Backgrounds; 93.22, Clinical Research Loan Repayment Program for Individuals from Disadvantaged Backgrounds; 93.232, Loan Repayment Program for Research Generally; 93.39, Academic Research Enhancement Award; 93.936, NIH Acquired Immunodeficiency Syndrome Research Loan Repayment Program, National Institutes of Health, HHS)

Dated: March 31, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–8664 Filed 4–7–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of the Director, National Institutes of Health; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Advisory Committee on Research on Women's Health.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: Advisory Committee on Research on Women's Health.

Date: May 6, 1999.

Time: 1:30 PM to 6:00 PM.

Agenda: To provide advice to the Office of Research on Women's Health (ORWH) on its research agenda and to provide recommendations regarding ORWH activities.

Place: National Institutes of Health, Building 31, Conference Room 10, Bethesda, MD 20892.

Contact Person: Joyce Rudick, Director, Programs & Management, Office of Research on Women's Health, Office of the Director, National Institutes of Health, Building 1, Room 201, Bethesda, MD 20892, 301/402–1770.

(Catalogue of Federal Domestic Assistance Program Nos. 93.14, Intramural Research Training Award; 93.187, Undergraduate Scholarship Program for Individuals from Disadvantage Backgrounds; 93.22, Clinical Research Loan Repayment Program for Individuals from Disadvantaged Backgrounds; 93.232, Loan Repayment Program for Research Generally; 93.39, Academic Research Enhancement Award; 93.936, NIH Acquired Immunodeficiency Syndrome Research Loan Repayment Program, National Institutes of Health, HHS)

Dated: March 25, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–8669 Filed 4–7–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Public Health Service; Office of Research on Women's Health; Notice of Meeting—"Biologic & Molecular Mechanisms for Sex Differences in Pharmacokinetics, Pharmacodynamics and Pharmacogenetics"

Notice is hereby given that the Office of Research on Women's Health (ORWH), Office of the Director, National Institutes of Health (NIH), will convene a workshop on May 5, 1999, 8:30 am–5:45 pm; May 6, 1999 at 8:30 am–12:30 pm.

The research planning workshop will address current and future research on differences in the ways in which women and men respond to pharmacologic agents. This workshop will provide a forum for scientific discussion of the biologic and molecular mechanisms that underlie differences in the effects and action of drugs in women and men. While data are limited, studies have documented differences between women and men in the safety and effectiveness of some drugs and, on a molecular level, in differences in drug metabolizing enzymes. The workshop will feature scientific presentations that will delineate the current state of knowledge, identify emerging issues or continuing gaps in knowledge, and catalyze discussion of methods to assess and predict sex-based and individual variations in response to drugs. The program will feature leaders in the fields of pharmacokinetics, pharmacodynamics, pharmacogenetics, hormonal influences on drugs, and new technologies in drug development.

Also serving as co-sponsors of this research planning workshop are the Office of Women's Health of the U.S. Food and Drug Administration; National Heart, Lung and Blood Institute, National Human Genome Research Institute; National Institute on Aging;

National Institute of Child Health and Human Development; National Institute of Dental and Craniofacial Research; National Institute of Environmental Health Sciences; National Institute of General Medical Sciences; National Institute of Neurological Disorders and Stroke; and the Pain Consortium of the NIH.

Advance registration and confirmation of registration is required as seating is limited. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The workshop will be held at Lister Hill Auditorium, National Library of Medicine, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 30892. The contact person is Ms. Gloria Williams, KRA Corporation, 1010 Wayne Avenue, Suite 850, Silver Spring, Maryland 20910. To register please call Ms. Williams at (301) 562–2340.

Dated: March 30, 1999.

Ruth L. Kirschstein,

Deputy Director, NIH.

[FR Doc. 99–8671 Filed 4–7–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Exclusive License; A_3 Adenosine Receptor Agonists and Antagonists

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: This is notice, in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i), that the National Institutes of Health (NIH), Department of Health and Human Services, is contemplating the grant of an exclusive license worldwide to practice the invention embodied in: U.S. Patent Applicant Serial No. 60/092,292 filed July 10, 1998 entitled "A_3 Adenosine Receptor Antagonist", PCT application US97/01252 filed January 29, 1997 designating the U.S. entitled "Dihydropyridine, Pyridine, Benzophyranone and Triazoloquinazolone Derivatives Their Preparation And Their Use As Adenosine Receptor Antagonists" and 08/091,109 filed July 13, 1993 and abandoned and refiled as 08/163,324 on December 6, 1993 also now abandoned and refiled as 08/274,628 now issued as U.S. Patent No. 5,773,423 June 30, 1998 entitled "A_3 Adenosine Receptor Agonists", to Gilead Sciences, having a place of business in Foster City, California. The United States of America is the assignee of the patent rights in this invention.

DATES: Only written comments and/or application for a license which are received by the NIH Office of Technology Transfer on or before July 7, 1999 will be considered.

ADDRESSES: Requests for a copy of the patent applications, inquiries, comments and other materials relating to the contemplated license should be directed to: Charles Maynard, Technology Licensing Specialist, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, MD 20852–3804; Telephone: (301) 496–7056, ext. 243; Facsimile: (301) 402–0220; E-mail: MaynardC@od.nih.gov.

SUPPLEMENTARY INFORMATION: In an effort to develop an efficacious treatment involving the collection of various technology involving Adenosine receptors, the inventors posit that Adenosine may play several key physiological roles. In addition to its role in intermediary metabolism, adenosine displays a number of receptor-mediated physiological actions, including dilation of coronary vessels, inhibition of platelet aggregation, and inhabitation of lipolysis.

The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be limited to the field of human therapeutics and may be granted unless, within 90 days from the date of this published Notice, NIH receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Property filed competing applications for a license filed in response to this notice will be treated as objections to the contemplated license. Comments and objections submitted to response to this notice will not be made available for public inspection, and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

Dated: March 30, 1999.

Jack Spiegel,

Director, Division of Technology Development and Transfer, Office of Technology Transfer.

[FR Doc. 99–8668 Filed 4–7–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Current List of Laboratories Which Meet Minimum Standards To Engage In Urine Drug Testing for Federal Agencies, and Laboratories That Have Withdrawn From the Program

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice.

SUMMARY: The Department of Health and Human Services notifies Federal agencies of the laboratories currently certified to meet standards of Subpart C of Mandatory Guidelines for Federal Workplace Drug Testing Programs (59 FR 29916, 29925). A similar notice listing all currently certified laboratories will be published during the first week of each month, and updated to include laboratories which subsequently apply for and complete the certification process. If any listed laboratory's certification is totally suspended or revoked, the laboratory will be omitted from updated lists until such time as it is restored to full certification under the Guidelines.

If any laboratory has withdrawn from the National Laboratory Certification Program during the past month, it will be identified as such at the end of the current list of certified laboratories, and will be omitted from the monthly listing thereafter.

This Notice is now available on the internet at the following website: http://www.health.org/workpl.htm

FOR FURTHER INFORMATION CONTACT: Mrs. Giselle Hersh or Dr. Walter Vogl, Division of Workplace Programs, 5600 Fishers Lane, Rockwall 2 Building, Room 815, Rockville, Maryland 20857; Tel.: (301) 443–6014.

Special Note: Our office moved to a different building on May 18, 1998. Please use the above address for all regular mail and correspondence. For all overnight mail service use the following address: Division of Workplace Programs, 5515 Security Lane, Room 815, Rockville, Maryland 20852.

SUPPLEMENTARY INFORMATION: Mandatory Guidelines for Federal Workplace Drug Testing were developed in accordance with Executive Order 12564 and section 503 of Pub. L. 100–71. Subpart C of the Guidelines, "Certification of Laboratories Engaged in Urine Drug Testing for Federal Agencies," sets strict standards which laboratories must meet in order to conduct urine drug testing for Federal agencies. To become certified an

applicant laboratory must undergo three rounds of performance testing plus an on-site inspection.

To maintain that certification a laboratory must participate in a quarterly performance testing program plus periodic, on-site inspections.

Laboratories which claim to be in the applicant stage of certification are not to be considered as meeting the minimum requirements expressed in the HHS Guidelines. A laboratory must have its letter of certification from SAMHSA, HHS (formerly: HHS/NIDA) which attests that it has met minimum standards.

In accordance with Subpart C of the Guidelines, the following laboratories meet the minimum standards set forth in the Guidelines:

ACL Laboratories, 8901 W. Lincoln Ave., West Allis, WI 53227, 414–328–7840 (formerly: Bayshore Clinical Laboratory)

Advanced Toxicology Network, 15201 East I–10 Freeway, Suite 125, Channelview, TX 77530, 713–457–3784 / 800–888–4063 (formerly: Drug Labs of Texas, Premier Analytical Laboratories)

Advanced Toxicology Network, 3560 Air Center Cove, Suite 101, Memphis, TN 38118, 901–794–5770 / 888–290–1150

Aegis Analytical Laboratories, Inc., 345 Hill Ave., Nashville, TN 37210, 615–255–2400

Alabama Reference Laboratories, Inc., 543 South Hull St., Montgomery, AL 36103, 800–541–4931 / 334–263–5745

Alliance Laboratory Services, 3200 Burnet Ave., Cincinnati, OH 45229, 513–585–9000 (formerly: Jewish Hospital of Cincinnati, Inc.)

American Medical Laboratories, Inc., 14225 Newbrook Dr., Chantilly, VA 20151, 703–802–6900

Associated Pathologists Laboratories, Inc., 4230 South Burnham Ave., Suite 250, Las Vegas, NV 89119–5412, 702–733–7866 / 800–433–2750

Associated Regional and University Pathologists, Inc. (ARUP), 500 Chipeta Way, Salt Lake City, UT 84108, 801–583–2787/800–242–2787

Baptist Medical Center—Toxicology Laboratory, 9601 I–630, Exit 7, Little Rock, AR 72205–7299, 501–202–2783 (formerly: Forensic Toxicology Laboratory Baptist Medical Center)

Clinical Reference Lab. 8433 Quivira Rd., Lenexa, KS 66215–2802, 800–445–6917

Cox Health Systems, Department of Toxicology, 1423 North Jefferson Ave., Springfield, MO 65802, 800–876–3652/417–269–3093 (formerly: Cox Medical Centers)

Dept. of the Navy, Navy Drug Screening Laboratory, Great Lakes, IL, P.O. Box 88–6819, Great Lakes, IL 60088–6819, 847–688–2045/847–688–4171

Diagnostic Services Inc., dba DSI, 12700 Westlinks Drive, Fort Myers, FL 33913, 941–561–8200/800–735–5416,

Doctors Laboratory, Inc., P.O. Box 2658, 2906 Julia Dr., Valdosta, GA 31604, 912–244–4468

DrugProof, Division of Dynacare/ Laboratory of Pathology, LLC, 1229 Madison St., Suite 500, Nordstrom Medical Tower, Seattle, WA 98104, 206–386–2672/800–898–0180 (formerly: Laboratory of Pathology of Seattle, Inc., DrugProof, Division of Laboratory of Pathology of Seattle, Inc.)

DrugScan, Inc., P.O. Box 2969, 1119 Mearns Rd., Warminster, PA 18974, 215–674–9310

Dynacare Kasper Medical Laboratories*, 14940–123 Ave., Edmonton, Alberta, Canada T5V 1B4, 403–451–3702 / 800–661–9876

ElSohly Laboratories, Inc., 5 Industrial Park Dr., Oxford, MS 38655, 601–236–2609

Gamma-Dynacare Medical Laboratories*, A Division of the Gamma-Dynacare Laboratory Partnership, 245 Pall Mall St., London, ON, Canada N6A 1P4, 519–679–1630

General Medical Laboratories, 36 South Brooks St., Madison, WI 53715, 608–267–6267

Hartford Hospital Toxicology Laboratory, 80 Seymour St., Hartford, CT 06102–5037, 860–545–6023

Info-Meth, 112 Crescent Ave., Peoria, IL 61636, 309–671–5199/800–752–1835 (Formerly: Methodist Medical Center Toxicology Laboratory)

Integrated Regional Laboratories, 1400 Northwest 12th Ave., Miami, FL 33136, 305–325–5784 (Formerly: Cedars Medical Center, Department of Pathology)

LabCorp Occupational Testing Services, Inc., 1904 Alexander Drive, Research Triangle Park, NC 27709, 919–672–6900/800–833–3984 (Formerly: CompuChem Laboratories, Inc.; CompuChem Laboratories, Inc., A Subsidiary of Roche Biomedical Laboratory; Roche CompuChem Laboratories, Inc., A Member of the Roche Group)

LabCorp Occupational Testing Services, Inc., 4022 Willow Lake Blvd., Memphis, TN 38118, 901–795–1515/800–223–6339 (Formerly: MedExpress/National Laboratory Center)

LabOne, Inc., 10101 Renner Blvd., Lenexa, KS 66219, 913–888–3927/800–728–4064 (formerly: Center for Laboratory Services, a Division of LabOne, Inc.)

Laboratory Corporation of America Holdings, 69 First Ave., Raritan, NJ 08869, 908–526–2400/800–437–4986 (Formerly: Roche Biomedical Laboratories, Inc.)

Laboratory Specialists, Inc., 1111 Newton St., Gretna, LA 70053, 504–361–8989/800–433–3823

Marshfield Laboratories, Forensic Toxicology Laboratory, 1000 North Oak Ave., Marshfield, WI 54449, 715–389–3734 / 800–331–3734

MAXXAM Analytics Inc.*, 5540 McAdam Rd., Mississauga, ON, Canada L4Z 1P1, 905–890–2555 (formerly: NOVAMANN (Ontario) Inc.)

Medical College Hospitals Toxicology Laboratory, Department of Pathology, 3000 Arlington Ave., Toledo, OH 43614, 419–383–5213

MedTox Laboratories, Inc., 402 W. County Rd. D, St. Paul, MN 55112, 651–636–7466/800–832–3244

Methodist Hospital Toxicology Services of Clarian Health Partners, Inc., Department of Pathology and Laboratory Medicine, 1701 N. Senate Blvd., Indianapolis, IN 46202, 317–929–3587

MetroLab-Legacy Laboratory Services, 1225 NE 2nd Ave., Portland, OR 97232, 503–413–4512/800–950–5295

Minneapolis Veterans Affairs Medical Center, Forensic Toxicology Laboratory, 1 Veterans Drive, Minneapolis, Minnesota 55417, 612–725–2088

National Toxicology Laboratories, Inc., 1100 California Ave., Bakersfield, CA 93304, 805–322–4250

NWT Drug Testing, 1141 E. 3900 South, Salt Lake City, UT 84124, 801–268–2431/800–322–3361 (Formerly: NorthWest Toxicology, Inc.)

Oregon Medical Laboratories, P.O. Box 972, 722 East 11th Ave., Eugene, OR 97440–0972, 541–341–8092

Pacific Toxicology Laboratories, 6160 Variel Ave., Woodland Hills, CA 91367, 818–598–3110 (Formerly: Centinela Hospital Airport Toxicology Laboratory

Pathology Associates Medical Laboratories, 11604 E. Indiana, Spokane, WA 99206, 509–926–2400/800–541–7891

PharmChem Laboratories, Inc., 1505–A O'Brien Dr., Menlo Park, CA 94025, 650–328–6200/800–446–5177

PharmChem Laboratories, Inc., Texas Division, 7610 Pebble Dr., Fort Worth, TX 76118, 817–595–0294 (formerly: Harris Medical Laboratory)

Physicians Reference Laboratory, 7800 West 110th St., Overland Park, KS 66210, 913–339–0372/800–821–3627

Poisonlab, Inc., 7272 Clairemont Mesa Blvd., San Diego, CA 92111, 619–279–2600/800–882–7272
Quest Diagnostics Incorporated, 4444 Giddings Road, Auburn Hills, MI 48326, 810–373–9120/800–444–0106 (formerly: HealthCare/Preferred Laboratories, HealthCare/MetPath, CORNING Clinical Laboratories)
Quest Diagnostics Incorporated, National Center for Forensic Science, 1901 Sulphur Spring Rd., Baltimore, MD 21227, 410–536–1485 (formerly: Maryland Medical Laboratory, Inc., National Center for Forensic Science, CORNING National Center for Forensic Science)
Quest Diagnostics Incorporated, 4770 Regent Blvd., Irving, TX 75063, 972–916–3376/800–526–0947 (formerly: Damon Clinical Laboratories, Damon/MetPath, CORNING Clinical Laboratories)
Quest Diagnostics Incorporated, 875 Greentree Rd., 4 Parkway Ctr., Pittsburgh, PA 15220–3610, 412–920–7733/800–574–2474 (formerly: Med-Chek Laboratories, Inc., Med-Chek/Damon, MetPath Laboratories, CORNING Clinical Laboratories)
Quest Diagnostics of Missouri LLC, 2320 Schuetz Rd., St. Louis, MO 63146, 314–991–1311/800–288–7293 (formerly: Quest Diagnostics Incorporated, Metropolitan Reference Laboratories, Inc., CORNING Clinical Laboratories, South Central Division)
Quest Diagnostics Incorporated, 7470 Mission Valley Rd., San Diego, CA 92108–4406, 619–686–3200/800–446–4728 (formerly: Nichols Institute, Nichols Institute Substance Abuse Testing (NISAT), CORNING Nichols Institute, CORNING Clinical Laboratories)
Quest Diagnostics Incorporated, One Malcolm Ave., Teterboro, NJ 07608, 201–393–5590 (formerly: MetPath, Inc., CORNING MetPath Clinical Laboratories, CORNING Clinical Laboratory)
Quest Diagnostics Incorporated, 1355 Mittel Blvd., Wood Dale, IL 60191, 630–595–3888 (formerly: MetPath, Inc., CORNING MetPath Clinical Laboratories, CORNING Clinical Laboratories Inc.)
Scientific Testing Laboratories, Inc., 463 Southlake Blvd., Richmond, VA 23236, 804–378–9130
Scott & White Drug Testing Laboratory, 600 S. 31st St., Temple, TX 76504, 254–771–8379/800–749–3788
S.E.D. Medical Laboratories, 5601 Office Blvd., Albuquerque, NM 87109, 505–727–6300/800–999–5227
SmithKline Beecham Clinical Laboratories, 3175 Presidential Dr., Atlanta, GA 30340, 770–452–1590 (formerly: SmithKline Bio-Science Laboratories)
SmithKline Beecham Clinical Laboratories, 8000 Sovereign Row, Dallas, TX 75247, 214–637–7236 (formerly: SmithKline Bio-Science Laboratories)
SmithKline Beecham Clinical Laboratories, 801 East Dixie Ave., Leesburg, FL 34748, 352–787–9006 (formerly: Doctors & Physicians Laboratory)
SmithKline Beecham Clinical Laboratories, 400 Egypt Rd., Norristown, PA 19403, 610–631–4600/800–877–7484 (formerly: SmithKline Bio-Science Laboratories)
SmithKline Beecham Clinical Laboratories, 506 E. State Pkwy., Schaumburg, IL 60173, 847–447–4379/800–447–4379 (formerly: International Toxicology Laboratories)
SmithKline Beecham Clinical Laboratories, 7600 Tyrone Ave., Van Nuys, CA 91405, 818–989–2520/800–877–2520
South Bend Medical Foundation, Inc., 530 N. Lafayette Blvd., South Bend, IN 46601, 219–234–4176
Southwest Laboratories, 2727 W. Baseline Rd., Tempe, AZ 85283, 602–438–8507
Sparrow Health System, Toxicology Testing Center, St. Lawrence Campus, 1210 W. Saginaw, Lansing, MI 48915, 517–377–0520 (Formerly: St. Lawrence Hospital & Healthcare System)
St. Anthony Hospital Toxicology Laboratory, 1000 N. Lee St., Oklahoma City, OK 73101, 405–272–7052, Toxicology & Drug Monitoring Laboratory, University of Missouri Hospital & Clinics, 2703 Clark Lane, Suite B, Lower Level, Columbia, MO 65202, 573–882–1273
Toxicology Testing Service, Inc., 5426 N.W. 79th Ave., Miami, FL 33166, 305–593–2260
UNILAB, 18408 Oxnard St., Tarzana, CA 91356, 818–996–7300/800–492–0800 (formerly: MetWest-BPL Toxicology Laboratory)
Universal Toxicology Laboratories, LLC, 10210 W. Highway 80, Midland, Texas 79706, 915–561–8851/888–953–8851
UTMB, Pathology-Toxicology Laboratory, University of Texas Medical Branch, Clinical Chemistry Division, 301 University Boulevard, Room 5.158, Old John Sealy, Galveston, Texas 77555–0551, 409–772–3197

The following laboratory voluntarily withdrew on March 19, 1999 from the National Laboratory Certification Program:

Laboratory Corporation of America, 888 Willow St., Reno, NV 89502, 702–334–3400 (formerly: Sierra Nevada Laboratories, Inc.)

* The Standards Council of Canada (SCC) voted to end its Laboratory Accreditation Program for Substance Abuse (LAPSA) effective May 12, 1998. Laboratories certified through that program were accredited to conduct forensic urine drug testing as required by U.S. Department of Transportation (DOT) regulations. As of that date, the certification of those accredited Canadian laboratories will continue under DOT authority. The responsibility for conducting quarterly performance testing plus periodic on-site inspections of those LAPSA-accredited laboratories was transferred to the U.S. DHHS, with the DHHS' National Laboratory Certification Program (NLCP) contractor continuing to have an active role in the performance testing and laboratory inspection processes. Other Canadian laboratories wishing to be considered for the NLCP may apply directly to the NLCP contractor just as U.S. laboratories do. Upon finding a Canadian laboratory to be qualified, the DHHS will recommend that DOT certify the laboratory (**Federal Register**, 16 July 1996) as meeting the minimum standards of the "Mandatory Guidelines for Workplace Drug Testing" (June 9, 1994, 59 FR 29908–29931). After receiving the DOT certification, the laboratory will be included in the monthly list of DHHS certified laboratories and participate in the NLCP certification maintenance program.

Richard Kopanda,

Executive Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 99–8724 Filed 4–7–99; 8:45 am]

BILLING CODE 4160–20–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of Draft Comprehensive Conservation Plan for Browns Park National Wildlife Refuge, Maybell, CO

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: Pursuant to the Refuge Improvement Act of 1997, the U.S. Fish and Wildlife Service has published the Browns Park National Wildlife Refuge Draft Comprehensive Conservation Plan. This plan describes how the FWS intends to manage the Browns Park NWR for the next 10–15 years.

ADDRESSES: A copy of the Plan may be obtained by writing to U.S. Fish and Wildlife Service, Browns Park NWR, 1318 Highway 318, Maybell, CO 81640.

FOR FURTHER INFORMATION CONTACT: Carol Taylor, U.S. Fish and Wildlife Service, P.O. Box 25486 DFC, Denver, CO 80225, 303–236–8145 extension 661; fax 303–236–4792.

SUPPLEMENTARY INFORMATION: Browns Park NWR is located in northwest Colorado. Implementation of the Plan will focus on adaptive resource management of riparian, wetland, grassland, and semidesert shrubland habitats and improved opportunities for compatible wildlife-dependent recreation. Habitat monitoring and evaluation will be emphasized as the Plan is implemented. Opportunities for compatible wildlife-dependent recreation will continue to be provided.

Dated: April 1, 1999.

Terry T. Terrell,

Deputy Regional Director, Denver, Colorado.

[FR Doc. 99–8728 Filed 4–7–99; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice announces that the Information Collection Request for Student Transportation Mileage Form, OMB #1076–0134, has been submitted to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 25).

DATES: Submit comments and suggestions on or before May 10, 1999.

ADDRESSES: Written comments should be sent directly to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Desk Officer for the Department of the Interior, Docket Library, Room 10102, 725 17th Street, NW, Washington, DC 20503. Send copy of your comments to Dalton J. Henry, Bureau of Indian Affairs, Office of Indian Education Programs, 1849 C Street, NW, MS–3512 MIB, Washington, DC 20240–0001.

FOR FURTHER INFORMATION CONTACT: Copies of the collection of information may be obtained by contacting Dalton J. Henry, (202) 208–3550.

SUPPLEMENTARY INFORMATION:

I. Abstract

The information collection is needed to collect transportation mileage for Bureau funded schools for the purpose of allocating transportation funds. A request for comments on this information collection was published in the **Federal Register** on November 7, 1997 (62 FR 60255). No comments were received by the Bureau. After a review of the Burden of Hours, decision was made to change the Annual burden of hours from 158 to 696 and the 1.5 hours of completion time to fill the form was changed to 6 hours. This is not an actual increase in burden because it reflects a more accurate description of the number of buses and also the increasing number of tribes contracting for the school operation.

II. Request for Comments

Comments are invited on (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden (hours and cost) of the collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of the information on respondents, including through the use of automated collection techniques or other forms of information technology.

The Office of Management and Budget has up to 60 days to approve or disapprove the information collection but may respond after 30 days; therefore, comments submitted in response to this notice should be submitted to OMB within 30 days in order to assure their maximum consideration.

III. Data

Title: Office of Indian Education Programs Indian School Equalization Program (ISEP) Student Transportation.

OMB approval number: 1076–0134.

Frequency: Annually, during student count week.

Description of respondents: Tribal schools administrators.

Estimated completion time: 6 hours.

Annual responses: 116.

Annual burden hours: 696.

Bureau Clearance Officer: Nancy Jemison, 202–208–4174.

Dated: March 31, 1999.

Kevin Gover,

Assistant Secretary—Indian Affairs.

[FR Doc. 99–8656 Filed 4–7–99; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice announces that the Information Collection request for Adult Education Annual Report Form, OMB #1076–0120, has been submitted to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 25).

DATES: Submit comments and suggestions on or before May 10, 1999.

ADDRESSES: Written comments should be sent directly to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Desk Officer for the Department of the Interior, Docket Library, Room 10102, 725 17th Street, NW, Washington, DC 20503. Send copy of your comments to Dalton J. Henry, Bureau of Indian Affairs, Office of Indian Education Programs, 1849 C Street, NW, MS–3512 MIB, Washington, DC 20240–0001.

FOR FURTHER INFORMATION CONTACT: Copies of the collection of information may be obtained by contacting Dalton J. Henry, (202) 208–3550.

SUPPLEMENTARY INFORMATION:

I. Abstract

The information collection is necessary to assess the need for adult education programs in accordance with 25 CFR Part 46, Subpart A, Sections 46.20 Program Requirements and 46.30 Records and Reporting Requirements of Adult Education Program. A request for comments on this information collection was published in the **Federal Register** on November 7, 1997 (62 FR 60262). One comment was received by the Bureau, indicating that the reporting period did not coincide with the fiscal year of the contract period. The Bureau will maintain the reporting period with the correction of August 30, to August 1–July 31, to reflect the school year period.

II. Request for Comments

Comments are invited on (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden (hours and cost) of the collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of the information on respondents, including through the use of automated collection techniques or other forms of information technology.

The Office of Management and Budget has up to 60 days to approve or disapprove the information collection but may respond after 30 days; therefore, comments submitted in response to this notice should be submitted to OMB within 30 days in order to assure their maximum consideration.

III. Data

Title: Bureau of Indian Affairs Adult Education Program Annual Report Form.

OMB approval number: 1076–0120.

Frequency: Annually.

Description of respondents: Tribal Adult Education Program Administrators.

Estimated completion time: 4.0 hours.

Annual responses: 70.

Annual burden hours: 280.

Bureau Clearance Officer: Nancy Jemison, 202–208–4174.

Dated: March 24, 1999.

Kevin Gover,

Assistant Secretary—Indian Affairs.

[FR Doc. 99–8657 Filed 4–7–99; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–930–1430–01; N–61879]

Notice of Realty Action; Recreation and Public Purposes (R&PP) Act Classification; Nevada

AGENCY: Bureau of Land Management.

ACTION: Notice.

SUMMARY: The following described public lands in Esmeralda County, Nevada, have been examined and found suitable for conveyance (patent) to Esmeralda County under the provisions of the Recreation and Public Purposes Act of June 14, 1926, as amended (43 U.S.C 869 *et seq.*). Esmeralda County is currently using lands for a municipal solid waste transfer station to serve Silver Peak, Nevada, and the surrounding area. Esmeralda County will continue using the lands for this purpose once it is conveyed.

Mount Diablo Meridian, Nevada

T. 2 S., R. 39 E.,
Sec. 27, SW¼NE¼NW¼;
containing 10 acres, more or less.

The lands are not needed for Federal purposes. Conveyance is consistent with current BLM land use planning and would be in the public interest. The patent, when issued will be subject to the provisions of the Recreation and Public Purposes Act and applicable regulations of the Secretary of the Interior, and will contain the following reservations to the United States:

1. A right-of-way thereon for ditches and canals constructed by the authority of the United States pursuant to the Act of August 30, 1890 (43 U.S.C. 945);

2. All mineral deposits shall be reserved to the United States, together with the right to prospect for, mine, and remove such deposits under applicable laws and regulations as the Secretary of the Interior may prescribe; will contain the following provisions:

1. Esmeralda County, its successors or assigns, assumes all liability for and shall defend, indemnify, and save harmless the United States and its officers, agents, representatives, and employees (hereinafter referred to in this clause as the United States), from all claims, loss, damage, actions, causes of action, expense, and liability (hereinafter referred to in this clause as claims) resulting from, brought for, or on account of, any personal injury, threat of personal injury, or property damage received or sustained by any person or persons (including the patentee's employees) or property growing out of, occurring, or attributable directly or indirectly, to the disposal of solid waste on, or the release of hazardous substances from Mount Diablo Meridian, Nevada, T. 2 S., R. 39 E., sec. 27, SW¼NE¼NW¼, regardless of whether such claims shall be attributable to: (1) The concurrent, contributory, or partial fault, failure, or negligence of the United States, or (2) the sole fault, failure, or negligence of the United States;

2. No portion of the land shall under any circumstances revert to the United States if any such portion has been used for solid waste disposal or for any other purpose which may result in the disposal, placement, or release of any hazardous substance;

3. If, at any time, the patentee transfers to another party ownership of any portion of the land not used for the purpose specified in the application and approved plan of development, the patentee shall pay the Bureau of Land Management the fair market value, as determined by the authorized officer, of the transferred portion as of the date of transfer, including the value of any improvements thereon;

4. The above described land is to be used as a solid waste transfer station by Esmeralda County, Nevada. Upon closure, the site may contain small quantities of commercial and household hazardous waste as determined in the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6901), and defined in 40 CFR 261.4 and 261.5. Although there is no indication these materials pose any significant risk to human health or the environment, future land uses should be limited to those which do not penetrate the liner or final cover of the site unless excavation is conducted subject to applicable State and Federal requirements; and will be subject to valid existing rights.

Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Tonopah Field Station, 1553 South Main Street, Tonopah, Nevada.

Upon publication of this notice in the **Federal Register**, the above described land will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for conveyance under the Recreation and Public Purposes Act and leasing under the mineral leasing laws. For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments regarding the proposed conveyance or classification of the lands to the Acting Assistant Field Manager, Tonopah Field Station, P.O. Box 911, Tonopah, Nevada 89049.

Classification Comments:

Interested parties may submit comments involving the suitability of the land for a municipal solid waste transfer station. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

Application Comments.

Interested parties may submit comments regarding the specific use proposed in the application and plan of

development, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for a municipal solid waste transfer station.

Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification of the land will become effective 60 days from the date of publication in the **Federal Register**. The lands will not be conveyed until after the classification becomes effective.

Dated: March 26, 1999.

W. Craig MacKinnon,

Acting Assistant Field Manager, Tonopah.

[FR Doc. 99–8676 Filed 4–7–99; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Outer Continental Shelf, Western Gulf of Mexico, Oil and Gas Lease Sale 174

AGENCY: Minerals Management Service, Interior.

ACTION: Availability of the Proposed Notice of Sale.

Gulf of Mexico Outer Continental Shelf (OCS); Notice of Availability of the Proposed Notice of Sale for proposed Oil and Gas Lease Sale 174 ion the Western Gulf of Mexico. This Notice of Availability is published pursuant to 30 CFR 256.29(c), as a matter of information to the public.

With regard to oil and gas leasing on the OCS, the Secretary of the Interior, pursuant to section 19 of the ICS Lands Act, as amended, provides the affected States the opportunity to review the proposed Notice of Sale. The proposed Notice sets forth the proposed terms and conditions of the sale, including minimum bids, royalty rates, and rentals.

The proposed Notice for proposed Sale 174 and a "Proposed Sale Notice Package" containing information essential to potential bidders may be obtained from the Public Information Unit, Gulf of Mexico Region, Minerals Management Service, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394. Telephone: (504) 736–2519.

The final Notice of Sale will be published in the **Federal Register** at least 30 days prior to the date of bid opening. Bid opening is currently scheduled for August 25, 1999.

Dated: March 31, 1999.

Lucy Querques Denett,

Acting Director, Minerals Management Service.

[FR Doc. 99–8690 Filed 4–7–99; 8:45 am]

BILLING CODE 4310–MR–M

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731–TA–246–247 (Review) and 731–TA–207 (Review)]

Brazing Copper Wire and Rod From New Zealand and South Africa; Cellular Mobile Telephones and Subassemblies From Japan

AGENCY: United States International Trade Commission.

ACTION: Termination of five-year reviews.

SUMMARY: The subject five-year reviews were initiated in January 1999 to determine whether revocation of the existing antidumping duty orders would be likely to lead to continuation or recurrence of dumping and of material injury to a domestic industry. On April 1, 1999, the Department of Commerce published notice that it was revoking the orders because no domestic interested party responded to its notice of initiation by the applicable deadline (64 FR 15728, April 1, 1999). Accordingly, pursuant to section 207.69 of the Commission's Rules of Practice and Procedure (19 CFR 207.69), the subject reviews are terminated.

EFFECTIVE DATE: April 1, 1999.

FOR FURTHER INFORMATION CONTACT: Vera Libeau (202–205–3176), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

Authority: These reviews are being terminated under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.69 of the Commission's rules (19 CFR 207.69).

By order of the Commission.

Issued: April 1, 1999.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–8793 Filed 4–7–99; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

Invs. Nos. 701–TA–387–392 (Preliminary) and 731–TA–815–822 (Preliminary)

Certain Cut-to-Length Steel Plate From the Czech Republic, France, India, Indonesia, Italy, Japan, Korea, and Macedonia; Determinations

On the basis of the record [1] developed in the subject investigations, the United States International Trade Commission (Commission) determines, pursuant to section 703(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a)), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from France, India, Indonesia, Italy, and Korea of certain cut-to-length steel plate, provided for in headings 7208, 7210, 7211, 7212, 7225, and 7226 of the Harmonized Tariff Schedule of the United States, that are alleged to be subsidized by the Governments of the respective countries. The Commission further determines, pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)), that there is a reasonable indication that an industry in the United States is materially injured by reason of such imports from France, India, Indonesia, Italy, Japan, and Korea that are alleged to be sold in the United States at less than fair value (LTFV). Finally, pursuant to 19 U.S.C. 1677(24)(A), the Commission determines that the subject imports from the Czech Republic that are alleged to be sold at LTFV and the subject imports from Macedonia that are alleged to be subsidized and sold at LTFV are negligible.[2] The Commission's investigation with respect to the Czech Republic is thereby terminated pursuant to 19 U.S.C. 1673b(a)(1) and its investigation with respect to Macedonia are thereby terminated pursuant to 19

[1] The record is defined in sect. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] Chairman Lynn M. Bragg finds that there is a potential that such imports from the Czech Republic will imminently account for more than three percent of the total import volume of all such merchandise, and determines that there is a reasonable indication that an industry in the United States is threatened with material injury by reason of imports of the subject merchandise from the Czech Republic that are alleged to be sold at LTFV.

U.S.C. 1671b(a)(1) and 19 U.S.C. 1673b(a)(1).

Commencement of Final Phase Investigations

Pursuant to section 207.18 of the Commission's rules, the Commission also gives notice of the commencement of the final phase of its investigations. The Commission will issue a final phase notice of scheduling which will be published in the **Federal Register** as provided in section 207.21 of the Commission's rules upon notice from the Department of Commerce (Commerce) of affirmative preliminary determinations in the investigations under sections 703(b) and 733(b) of the Act, or, if the preliminary determinations are negative, upon notice of affirmative final determinations in the investigations under sections 705(a) and 735(a) of the Act. Parties that filed entries of appearances in the preliminary phase of the investigations need not enter a separate appearance for the final phase of the investigations. Industrial users, and, if the merchandise under investigation is sold at the retail level, representative consumer organizations have the right to appear as parties in Commission antidumping and countervailing duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations.

Background

On February 16, 1999, petitions were filed with the Commission and the Department of Commerce by Bethlehem Steel Corp. (Bethlehem, PA); U.S. Steel Group, a unit of USX Corp. (Pittsburgh, PA); Gulf States Steel, Inc. (Gadsden, AL); IPSCO Steel Inc. (Muscatine, IA); Tuscaloosa Steel Co.[3] (Tuscaloosa, AL); and the United Steelworkers of America (Pittsburgh, PA), alleging that an industry in the United States is materially injured and threatened with material injury by reason of imports from France, India, Indonesia, Italy, Korea, and Macedonia of certain cut-to-length steel plate that are subsidized by the Governments of the respective countries, and imports from the Czech Republic, France, India, Indonesia, Italy, Japan, Korea, and Macedonia of certain cut-to-length steel plate that are sold in the United States at LTFV. Accordingly, effective February 16, 1999, the Commission instituted countervailing duty investigations Nos. 701–TA–387–392 (Preliminary) and antidumping investigations Nos. 731–TA–815–822 (Preliminary).

Notice of the institution of the Commission's investigations and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of February 24, 1999 (64 FR 9174). The conference was held in Washington, DC, on March 9, 1999, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on April 2, 1999. the views of the Commission are contained in USITC Publication 3181 (April 1999), entitled Certain Cut-to-Length Steel Plate from the Czech Republic, France, India, Indonesia, Italy, Japan, Korea, and Macedonia (Investigations Nos. 701–TA–387–392 and 731–TA–815–822 (Preliminary)).

Issued: April 5, 1999.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–8794 Filed 4–7–99; 8:45 am]

BILLING CODE 7020–02–M

[3] Gulf States Steel, Inc., is not a petitioner with respect to the investigations on France. Tuscaloosa Steel Co. is not a petitioner with respect to the investigations on the Czech Republic, France, and Italy.

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (99–055)]

NASA Advisory Council, Life and Microgravity Sciences and Applications Advisory Committee, Commercial Advisory Subcommittee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act. Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Life and Microgravity Sciences and Applications Advisory Committee, Commercial Advisory Subcommittee.

DATES: Wednesday, April 21, 1999, 8:00 a.m. to 5:00 p.m.

ADDRESSES: NASA Headquarters, Conference Room 8E38, 300 E Street, SW, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Ms. Candace Livingston, Code UP, National Aeronautics and Space Administration, Washington, DC 20546, 202/358–0697.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public to the seating capacity of the room. Advance notice of attendance to the Executive Secretary is requested. The agenda for the meeting will include the following topics:

—Report from the LMSAAC Meeting
—Report from the SSUAS Meeting
—Vision of NASA Commercial Act
—Briefing and discussion of status of ISS Commercialization Plan and Non-Government Organization (NGO) Concept
—Status on Consolidation of CSC's Selection Guidelines, Technology Education Outreach Policies for Protection of Intellectual Property
—Discussion of Performance Goals and Targets
—Discussion of CAS Charter and Committee Effectiveness

It is imperative that the meeting be held on this date to accommodate the Scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

Dated: March 30, 1999.

Matthew M. Crouch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 99–8787 Filed 4–7–99; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (99–056)]

Notice of Prospective Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of prospective patent license.

SUMMARY: NASA hereby gives notice that Rohm and Haas Company of Philadelphia, Pennsylvania, has applied for an exclusive license to practice the invention described and claimed in U.S. Patent No. 5,658,649, entitled "Corrosion Resistant Coating," (NASA Case No. KSC–11600) which is assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. Written objections to the prospective grant of a license should be sent to the Kennedy Space Center.

DATES: Responses to this notice must be received by June 7, 1999.

FOR FURTHER INFORMATON CONTACT: Ms. Beth A. Vrioni, John F. Kennedy Space

Center, Mail Code: MM–E, Kennedy Space Center, FL 32899, telephone (407) 867–6225.

Dated: March 30, 1999.

Edward A. Frankle,

General Counsel.

[FR Doc. 99–8788 Filed 4–7–99; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (99–057)]

Notice of prospective patent license

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of prospective patent license.

SUMMARY: NASA hereby gives notice that Spartan School of Aeronautics, of Tulsa, Oklahoma, has applied for an exclusive license to practice the invention described and claimed in U.S. Patent No. 5,694,939, entitled "Autogenic-Feedback Training Exercise Method and System," which is assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. Written objections to the prospective grant of a license should be sent to Ames Research Center.

DATES: Responses to this notice must be received by June 7, 1999.

FOR FURTHER INFORMATION CONTACT: Patent Counsel, Ames Research Center, Mail Stop 202A–3, Moffett Field, CA 94035; telephone (650) 604–5104.

Dated: March 30, 1999.

Edward A. Frankle,

General Counsel.

[FR Doc. 99–8789 Filed 4–7–99; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL TRANSPORTATION SAFETY BOARD

Public Hearing

The National Transportation Safety Board will convene a public hearing beginning at 9:00 a.m., local time on Wednesday, April 14, 1999, at the Georgetown Conference Center, 3800 Reservoir Road, N.W., Washington, D.C. 20057 concerning Truck/Bus Safety. For more information, contact Jeanmarie Poole, NTSB Office of Highway Safety. at (202) 314–6448 or Lauren Peduzzi, NTSB Office of Public Affairs at (202) 314–6100.

Dated: April 2, 1999.

Rhonda Underwood,

Federal Register Liaison Officer.

[FR Doc. 99–8680 Filed 4–7–99; 8:45 am]

BILLING CODE 7533–01–M

NUCLEAR REGUATORY COMMISSION

[Docket 70–7002]

Amendment to Certificate of Compliance GDP–2 for the U.S. Enrichment Corporation, Portsmouth Gaseous Diffusion Plant, Portsmouth, Ohio

The Director, Office of Nuclear Material Safety and Safeguards, has made a determination that the following amendment request is not significant in accordance with 10 CFR 76.45. In making that determination, the staff concluded that: (1) there is no change in the types or significant increase in the amounts of any effluents that may be released offsite; (2) there is no significant increase in individual or cumulative occupational radiation exposure; (3) there is no significant construction impact; (4) there is no significant increase in the potential for, or radiological or chemical consequences from, previously analyzed accidents; (5) the proposed changes do not result in the possibility of a new or different kind of accident; (6) there is no significant reduction in any margin of safety; and (7) the proposed changes will not result in an overall decrease in the effectiveness of the plant's safety, safeguards, or security programs. The basis for this determination for the amendment request is described below.

The NRC staff has reviewed the certificate amendment application and concluded that it provides reasonable assurance of adequate safety, safeguards, and security and compliance with NRC requirements. Therefore, the Director, Office of Nuclear Material Safety and Safeguards, is prepared to issue an amendment to the Certificate of Compliance for the Portsmouth Gaseous Diffusion Plant (PORTS). The staff has prepared a Compliance Evaluation Report which provides details of the staff's evaluation.

The NRC staff has determined that this amendment satisfies the criteria for a categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for this amendment.

The United States Enrichment Corporation (USEC) or any person whose interest may be affected may file a petition, not exceeding 30 pages, requesting review of the Director's Decision. The petition must be filed with the Commission not later than 15 days after publication of this **Federal Register** Notice. A petition for review of the Director's Decision shall set forth with particularity the interest of the petitioner and how that interest may be affected by the results of the decision. The petition should specifically explain the reasons why review of the Decision should be permitted with particular reference to the following factors: (1) the interest of the petitioner; (2) how that interest may be affected by the Decision, including the reasons why the petitioner should be permitted a review of the Decision; and (3) the petitioner's areas of concern about the activity that is the subject matter of the Decision. Any person described in this paragraph (USEC or any person who filed a petition) may file a response to any petition for review, not to exceed 30 pages, within 10 days after filing of the petition. If no petition is received within the designated 15-day period, the Director will issue the final amendment to the Certificate of Compliance without further delay. If a petition for review is received, the decision on the amendment application will become final in 60 days, unless the Commission grants the petition for review or otherwise acts within 60 days after publication of this **Federal Register** Notice.

A petition for review must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW, Washington, DC, by the above date.

Since the application for amendment and the Commission's Compliance Evaluation Report contain proprietary information, they are not subject to public disclosure per 10 CFR 2.790.

Date of amendment request: August 7, 1998, as revised on February 24, 1999.

Brief description of amendment: USEC submitted a certificate amendment request for PORTS to reduce the minimum number of measurements that are required to determine the enriched uranium content of UF_6 cylinder receipts from Russian facilities for whom a valid historical database has been established so as to provide 99.9 percent confidence that a statistically significant shift in the mean uranium concentration will be detected. PORTS typically receives, from three blending facilities in Russia, several hundred 2.5-ton UF_6 cylinders per year

at enrichments less than 5 weight percent U–235. Currently, each cylinder's liquid sample obtained in Russia or at PORTS is required to be analyzed at PORTS to confirm the uranium concentration and enrichment indicated by the shipper. The proposed amendment would allow analysis of UF_6 samples at PORTS at a lower rate which provides 99.9 percent confidence that a statistically significant shift in the mean uranium concentration will be detected for each Russian supplier with a valid historical database. It is noted that the proposed amendment only lowers the analytical measurement rate for Russian-origin UF_6 cylinders. The current 100 percent liquid sampling requirement and the 100 percent nondestructive analysis requirement will not be altered by this amendment.

Basis for Finding of No Significance

1. The proposed amendment will not result in a change in the types or significant increase in the amounts of any effluents that may be released offsite.

This amendment significantly reduces the destructive sample analytical requirement for 2.5-ton UF_6 cylinders obtained from three Russian facilities which have established historical bases to provide 99.9 percent confidence that a statistically significant shift in uranium concentration will be detected. As such, it would likely result in a reduction in the analytical handling of UF_6 samples. This would reduce the likelihood of any accidental releases of UF_6 during analytical operations. Therefore, this amendment will not result in a significant change in the types or significant increase in the amounts of any effluents that may be released offsite.

2. The proposed amendment will not result in a significant increase in individual or cumulative occupational radiation exposure.

For the reasons provided in the assessment of criterion 1, the proposed amendment will not result in a significant increase in individual or cumulative occupational radiation exposures.

3. The proposed amendment will not result in a significant construction impact.

The proposed amendment does not involve any construction, therefore, there will be no construction impacts.

4. The proposed amendment will not result in a significant increase in the potential for, or radiological or chemical consequences from, previously analyzed accidents.

For the reasons provided in the assessment of criterion 1, the proposed amendment will not result in a significant increase in the potential for, or radiological or chemical consequences from, previously analyzed accidents.

5. The proposed amendment will not result in the possibility of a new or different kind of accident.

For the reasons provided in the assessment of criterion 1, the proposed amendment will not result in new or different kinds of accidents.

6. The proposed amendment will not result in a significant reduction in any margin of safety.

For the reasons provided in the assessment of criterion 1, the proposed amendment will not result in a significant reduction in any margin of safety.

7. The proposed amendment will not result in an overall decrease in the effectiveness of the plant's safety, safeguards, or security programs.

For the reasons provided in the assessment of criterion 1, the proposed amendment will not result in an overall decrease in the effectiveness of the plant's safety program.

The NRC staff has determined that the sampling and measurement plan as described in USEC's proposed amendment would provide an adequate systems performance capability for determining the uranium content of UF_6 cylinder receipts at PORTS from the three current Russian suppliers. The systems capability that would be provided by the proposed sampling rates, which would detect with a probability of over 0.99, a mean shift in concentration as small as one standard deviation. The resulting detection level would be of the same magnitude as the uncertainty associated with the PORTS analytical measurement system if the sampling plan is applied in a reasonably random way to assure the representativeness of data. Moreover, the proposed statistical approach is consistent with current commitments of other NRC licensees who receive low-enriched UF_6 cylinders of either domestic or foreign origin. It should be noted that this amendment only applies to those shippers of Russian material for whom a valid database has been established so as to provide 99.9 percent confidence that a statistically significant shift in the mean uranium concentration will be detected. Therefore, the NRC staff concludes that the proposed amendment will not result in an overall decrease in the effectiveness of the plant's safeguards program.

The staff has not identified any security related implications from the proposed amendment. Therefore, the proposed amendment will not result in an overall decrease in the effectiveness of the plant's security program.

Effective date: The amendment to GDP–2 will become effective immediately after issuance by NRC.

Certificate of Compliance No. GDP–2: Amendment will revise the PORTS Fundamental Nuclear Materials Control Plan and the PORTS Transportation Security Plan.

Local Public Document Room location: Portsmouth Public Library, 1220 Gallia Street, Portsmouth, Ohio 45662.

Dated at Rockville, Maryland, this 31st day of March 1999.

For the Nuclear Regulatory Commission.

Carl J. Paperiello,

Director, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 99–8771 Filed 4–7–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–348 and 50–364]

Southern Nuclear Operating Company, Inc., et al. Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License Nos. NPF–2 and NPF–8, issued to the Southern Nuclear Operating Company, Inc., et al. (the licensee) for operation of the Joseph M. Farley Nuclear Plant, Units 1 and 2, located in Houston County, Alabama.

The proposed amendment would modify Technical Specification 3/4.4.9, "Specific Activity," and the associated bases to increase the limit associated with dose equivalent iodine-131. The steady-state dose equivalent iodine-131 limit would be increased from 0.15microCurie/gram to 0.3 microCurie/gram and the transient limit for 80 percent to 100 percent power provided by Technical Specification Figure 3.4–1 will increase 9 microCurie/gram to 18 microCurie/gram with a corresponding increase in the 0 percent to 80 percent power limits.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the

amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Operation of Farley Units 1 and 2 in accordance with the proposed license amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The increase in the dose equivalent iodine limits, both steady-state and transient, will not increase the probability of any accident evaluated since no physical changes to the plant are being made. The consequences of any accident previously evaluated will not be significantly increased since the doses remain a small fraction of the regulatory limit.

2. The proposed license amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The increase in the dose equivalent iodine limits, both steady-state and transient, will not create the possibility of a new or different kind of accident from any accident previously evaluated since no physical changes to the plant are being made. The accidents of concern continue to be those that have previously been analyzed.

3. The proposed license amendment does not involve a significant reduction in a margin of safety.

The calculated potential radiological consequences from the main steam line break accident (the bounding event) remain within the regulatory exposure guidelines and have not changed significantly. Increase of the dose equivalent iodine limit along with a corresponding decrease of allowable steam line break primary-to-secondary steam generator leakage provides a compensating offsite dose effect. Although the calculated dose increases slightly, the dose remains within a small fraction of the regulatory limit (30.0 REM [roentgen equivalent man] at the LPZ [low-population zone] boundary). Consequently, there is no significant reduction in any margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By May 10, 1999, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Houston-Love Memorial Library, 212 W. Burdeshaw Street, Post Office Box 1369, Dothan, Alabama. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law

or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to M. Stanford Blanton, Exq., Balch and Bingham, Post Office Box 306, 1710 Sixth Avenue North, Birmingham, Alabama, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated April 2, 1999, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Houston-Love Memorial Library, 212 W. Burdeshaw Street, Post Office Box 1369, Dothan, Alabama.

Dated at Rockville, Maryland, this 5th day of April 1999.

For the Nuclear Regulatory Commission.

Jacob I. Zimmerman,

Project Manager, Section 1, Project Directorate II, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 99–8770 Filed 4–7–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–482]

Wolf Creek Nuclear Operating Corporation Wolf Creek Generating Station; Notice of Issuance of Amendment to Facility Operating License

The United States Nuclear Regulatory Commission (Commission) has issued Amendment No. 123 to Facility Operating License No. NPF–42 issued to Wolf Creek Nuclear Operating Corporation (the licensee) for operation of the Wolf Creek Generating Station (WCGS) located in Coffey County, Kansas.

The amendment is effective as of the date of issuance and shall be implemented by December 31, 1999. The implementation of the amendment includes the two license conditions which are being added to Appendix D of the license as part of the amendment.

The amendment replaces, in its entirety, the current Technical Specifications (TS) with a set of improved TS based on NUREG–1431, "Standard Technical Specifications, Westinghouse Plants," Revision 1, dated April 1995, including all approved changes to the standard TS; the Commission's Final Policy Statement, "NRC Final Policy Statement on Technical Specifications Improvements for Nuclear Power Reactors," published on July 22, 1993 (58 FR 39132); and 10 CFR 50.36, "Technical Specifications," as amended July 19, 1995 (60 FR 36953). In addition, the amendment adds two license conditions to Appendix D of the operating license that require (1) the relocation of current TS requirements into licensee-controlled documents, and (2) the first performance of new and revised surveillance requirements for the improved TS to be related to the implementation date for the improved TS. The implementation of the amendment and the license conditions will be completed by December 31, 1999, as stated in the amendment.

The application for the amendment, as supplemented, complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I.

Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the **Federal Register** on October 5, 1998 (63 FR 53471), February 26, 1999, (64 FR 9546) and supplemented for an additional beyond-scope issue in a notice published in the **Federal Register** on March 1, 1999 (64 FR 10028). No request for a hearing or petition for leave to intervene was filed following this notice.

The Commission has prepared an Environmental Assessment and has determined not to prepare an environmental impact statement related to the action to convert the current TS to the improved TS. Based on the Environmental Assessment, the Commission has concluded that the issuance of the amendment will not have a significant effect on the quality of the human environment beyond that described in the Final Environmental Statement (FES) related to the operation of WCGS (NUREG–0878 dated June 1982). The Environmental Assessment was published in the **Federal Register** on March 30, 1999 (64 FR 15186).

For further details with respect to the amendment see (1) the application for amendment dated May 15, 1997, as supplemented by letters in 1998 dated June 30, August 5, August 28, September 24, October 16, October 23, November 24, December 2, December 17, and December 21, and letters in 1999 dated February 4, March 5 (3 letters), March 25, and March 26, and (2) the Commission's related Safety Evaluation and Environmental Assessment. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW, Washington, DC, and at the local public document rooms located at the Emporia State University, Wiliam Allen White Library, 1200 Commercial Street, Emporia, Kansas 66801, and Washburn University School of Law Library, Topeka, Kansas 66621.

Dated at Rockville, Maryland, this 31st day of March 1999.

For the Nuclear Regulatory Commission.

Jack N. Donohew,

Senior Project Manager, Project Directorate IV–1, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 99–8772 Filed 4–7–99; 8:45 am]

BILLING CODE 7590–01–P

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Railroad Retirement Board (RRB) has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

Summary of Proposal(s)

(1) *Collection title:* Financial Disclosure Statement.

(2) *Form(s) submitted:* G–423.

(3) *OMB Number:* 3220–0127.

(4) *Expiration date of current OMB clearance:* 6/30/1999.

(5) *Type of request:* Extension of a currently approved collection.

(6) *Respondents:* Individuals or households.

(7) *Estimated annual number of respondents:* 1,200.

(8) *Total annual responses:* 1,200.

(9) *Total annual reporting hours:* 1,700.

(10) *Collection description:* Under the Railroad Retirement and the Railroad Unemployment Insurance Acts, the Railroad Retirement Board has authority to secure from an overpaid beneficiary a statement of the individual's assets and liabilities if waiver of the overpayment is requested.

FOR FURTHER INFORMATION CONTACT: Copies of the form and supporting documents can be obtained from Check Mierzwa, the agency clearance officer (312–751–3363). Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois, 60611–2092 and the OMB reviewer, Laurie Schack (202–395–7316), Office of Management and Budget, Room 10230, New Executive Office Building, Washington, DC 20503.

Chuck Mierzwa,

Clearance Officer.

[FR Doc. 99–8675 Filed 4–7–99; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension: Rule 17a–11; SEC File No. 270–94.

OMB Control No. 3235–0085.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Rule 17a–11 (17 CFR 240.17a–11) requires broker-dealers to give notice when certain specified events occur. Specifically, the rule requires a broker-dealer to give notice of a net capital deficiency on the same day that the net capital deficiency is discovered or a broker-dealer is informed by its designated examining authority or the Commission that it is, or has been, in violation of its minimum requirement under Rule 15c3–1 (17 CFR 240.15c3–1) of the Securities Exchange Act of 1934 ("Exchange Act").

Rule 17a–11 also requires a broker-dealer to send notice promptly (within 24 hours) after the broker-dealer's aggregate indebtedness is in excess of 1,200 percent of its net capital, its net capital is less than 5 percent of aggregate debit items, or its total net capital is less than 120 percent of its required minimum net capital. In addition, a broker-dealer must give notice if it fails to make and keep current books and records required by Rule 17a–3 (17 CFR 240.17a–3), if any material inadequacy is discovered as defined in Rule 17a–5(g) (17 CFR 240.17a–5(g)), and if backtesting exceptions are identified pursuant to Appendix F of Rule 15c3–1 (17 CFR 240.15c3–1f) for a broker-dealer registered as an OTC derivatives dealer.

The notice required by the rule alerts the Commission, self-regulatory organizations ("SROs"), and the Commodity Futures Trading Commission ("CFTC") if the broker-dealer is registered as a futures commission merchant, which have oversight responsibility over broker-dealers, to those firms having financial or operational problems.

Because broker-dealers are required to file pursuant to Rule 17a–11 only when certain specified events occur, it is difficult to develop a meaningful figure for the cost of compliance with Rule 17a–11. The Commission receives approximately 656 notices under this rule each year from approximately 362 broker-dealers. Each broker-dealer will spend approximately one hour per year complying with Rule 17a–11. Accordingly, the aggregate burden is estimated to be approximately 656 hours. With respect to those broker-dealers that must give notice under Rule 17a–11, the cost is approximately $10 per response for a total annual expense for all broker-dealers of $6,560.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information: (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, NW, Washington, DC 20549.

Dated: March 30, 1999.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–8684 Filed 4–7–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41238; File No. SR–CSE–99–03]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by The Cincinnati Stock Exchange, Inc., Relating to Transaction and Book Fees

March 31, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 1, 1999, the Cincinnati Stock Exchange,

[1] 15 U.S.C. 78s(b)(1)

[2] 17 CFR 240.19b–4.

Inc. ("CSE" or "Exchange"), filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CSE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CSE proposes to amend its schedule of books and transaction fees. The text of the proposed rule change is as follows (additions are italicized; deletions are in brackets):

Rule 11.10 National Securities Trading System Fees

A. Trading Fees

(a)–(i) No Change.

(j) Tape B Transactions. The CSE will not impose a transaction fee on Consolidated Tape B securities. In addition, Members will receive a *50 per cent* pro rata transaction credit of Tape B revenue.[3] [based on the following schedule:

Average Quarterly Exchange Tape B Transaction	Percentage of Tape B Revenue Credited
1–2.99%	10
3–4.99%	25
5–6.99%	30
7% and greater	40

(k) DD Issue/Book Fees. Designated Dealers will be charged a monthly book fee based on the following incremental schedule:

Number of Issues	Fee Per Issue
0 to *150* [500]	*$20.00* [25.00]
[500] *151* to *300* [750]	10.00
[751] *301* and higher	5.00

[The DD Issue/Book Fee shall be $5.00 per issue where there is only one Designated Dealer in that issue.]

(l)–(n) No Change.

B. Membership Fees.

No Change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CSE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CSE has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The CSE is modifying its book fees and is implementing an improvement to its CTA Network B ("Tape B") transaction credit in order to create additional incentives to trade on the Exchange. These actions are consistent with the CSE's ongoing efforts to remain the low-cost provider of exchange services in the National Market System. Book fees are charged to Designated Dealers for each issue in which they are registered as a specialist. The fee for the first tier of issues is reduced from $25 per issue to $20 per issue, and the upper limit of the first tier is reduced from 500 issues to 150 issues. Although the fee per issue for the second and third tiers will remain the same, the number of issues covered by the second tier is now 151 to 300, and the number of issues covered by the third tier is now 301 and higher. Finally, the limitation of the fee per issue to $5 for issues in which there is only Designated Dealer is deleted. Under the revised Tape B program, member firms will receive fifty percent (50%) of all Tape B revenue on a pro rata without regard to market share prerequisites.

2. Statutory Basis

The CSE believes the proposed rule change is consistent with section 6(b) of the Act,[4] in general, and furthers the objectives of section 6(b)(5),[5] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. In addition, the Exchange believes that the proposed rule change is consistent with section 6(b)(4) of the Act[6] in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among Exchange members by crediting members on a pro rata basis.

B. Self-Regulatory Organization's Statement on Burden on Competition

The CSE does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No comments were solicited in connection with the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Act[7] and subparagraph (f) of Rule 19b–4 thereunder[8] because it establishes or changes a due, fee, or other charge. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act.[9] Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications, relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room.

Copies of such filings will also be available for inspection and copying at the principal office of the CSE. All submissions should refer to File No. SR–CSE–99–03 and should be submitted by April 29, 1999.

---

[3] Telephone conversation between David Colker, President and Chief Operating Officer, CSE, and Daniel M. Gray, Special Counsel, Division of Market Regulation, Commission, on March 31, 1999.

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(5).

[6] 15 U.S.C. 78f(b)(4).

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f)(2).

[9] In reviewing the proposed rule change, the Commission considered its potential impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–8682 Filed 4–7–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41234; File No. SR–NYSE–99–01]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment No. 1 by the New York Stock Exchange, Inc. Relating to a Pilot for Adjusted Stabilization Measure of Specialist Performance

March 31, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 11, 1999, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") a proposed rule change regarding "adjusted stabilization" as a measure of specialist performance. The Exchange filed an amendment to its proposal on March 25, 1999.[3] The proposed rule change, as amended, is described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice and order to solicit comments on the proposed rule change and Amendment No. 1 from interested persons and to approve the proposal, as amended, until June 30, 2000, on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of a pilot program which would utilize a new measure of specialist performance that the NYSE refers to as an "adjusted stabilization" rate.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NYSE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for the Proposed Rule Change

1. *Purpose*

On November 21, 1997, the Commission approved a rule proposal to add, on a one-year pilot basis, a new measure of specialist performance that the NYSE refers to as an "adjusted stabilization" rate.[4] The pilot expired on November 21, 1998. The current rule filing clarifies the scope of the pilot and proposes to renew it through June 30, 2000.

The Exchange generally expects a specialist to stabilize stock price movements in the stocks traded by the specialist unit by buying and selling from its own account against the prevailing trend of the market. The rate at which the specialist performs such stabilizing function (*i.e.*, stabilization rate) is the percentage of shares purchased by specialists on minus and zero-minus ticks and the percentage of shares sold by specialists on plus and zero-plus ticks. This measurement focuses on the specialist's obligation as a dealer, which holds that a specialist must buy or sell securities as principal when such transactions are necessary to minimize an actual or reasonably anticipated short-term imbalance between supply and demand in the market.[5]

Under the proposal, the Exchange would adopt a new measure of specialist performance which it refers to as "adjusted stabilization." Adjusted stabilization would measure a specialist's proprietary purchases on zero-plus ticks on the current bid (provided the current bid is below the offer at the time of the immediately preceding trade) and proprietary sales on zero-minus tickets on the current offer (provided the current offer is above the bid at the time of the immediately preceding trade).[6] These trades would be grouped with stabilizing trades to determine the adjusted stabilization rate.

The Exchange believes that "adjusted stabilization" could be a useful measure of specialist performance in that it might reflect depth added to the market by specialists. In the example provided by the Exchange in Amendment No. 1,[7] the specialist's sale has added depth to the current market by allowing Broker B to complete his order at a single price, and the trade was executed at a price set by the market, not by the specialist.

Programming to initiate collection and storage of the data necessary to calculate adjusted stabilization percentages was completed in mid-1998. The Exchange then began to accumulate data to produce percentages for "rolling" three-month performance review periods. A separate programming effort was completed in November 1998 to revise: (1) the monthly report to the Allocation Committee (covering the three most recent months) that would provide each specialist unit's adjusted stabilization percentage, and (2) the monthly report to each specialist unit (covering the most recent month) that provides, for each stock and the unit overall, its dealer participation percentage, stabilization percentage, and the new adjusted stabilization percentage. To date, the Exchange has not released adjusted stabilization information collected during the initial pilot to the specialists or the Allocation committee. However, the Exchange will begin including each specialist unit's adjusted stabilization percentage in the monthly reports as soon as practicable after approval of the new pilot.[8]

---

[10] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Letter from Donald Siemer, Director, Market Surveillance, NYSE, to Richard Strasser, Assistant Director, Division of Market Regulation ("Division"), Commission, dated March 25, 1999 ("Amendment No. 1"). Amendment No. 1 provides further details regarding use of the specialist performance measure under the Exchange's Allocation Policy and provides an example of an adjusted stabilization transaction.

[4] *See* Securities Exchange Act Release No. 39344 (November 21, 1997), 62 FR 63592 (December 1, 1997).

[5] NYSE Rule 104.10(3) states, in pertinent part, "[t]ransactions on the Exchange for his own account affected by a member acting as specialist must constitute a course of dealings reasonably calculated to contribute to the maintenance of price continuity with reasonable depth, and to the minimizing of the effects of temporary disparity between supply and demand, immediate or reasonably to be anticipated."

[6] In Amendment No. 1, the Exchange provided the following example of an adjusted stabilization transaction: The market in XYZ is 25 4/16–25 8/16. The last sale is 25 6/16 on minus tick. Broker A enters the crowd and offers to sell 1,000 shares at 25 6/16. The quotation becomes 25 4/16–25 6/16. Broker B then enters the crowd with an order to buy 2,500 shares at the market. Broker A sells the 1,000 shares at 25 6/16 to Broker B. The specialist, whose dealer position is long, then fills the remainder of Broker B's order by selling, 1,500 shares at 25 6/16. Thus, the specialist's transaction would qualify as an adjusted stabilization transaction because the specialist is selling on a zero-minus tick on the current offer (*i.e.* 25 6/16) and that offer is above the bid at the time of the immediately preceding trade (*i.e.*, 25 4/16).

[7] *See* note 6.

[8] Telephone conversation between Donald Siemer, Director, Market Surveillance, NYSE, and

Under the new pilot, the Allocation Committee will receive information on each specialist's stabilization and adjusted stabilization percentages, along with other objective performance measures under the Allocation Policy, such as capital utilization. The Exchange expects that this data will assist the Committee in assessing the value added by specialists to the depth and liquidity of stocks that they currently trade. The Committee will use this information in making new stock allocation decisions.[9]

The new pilot would run through June 30, 2000, which would allow the Exchange to gain experience with this new performance measure. The Exchange will submit to the Commission a proposed rule change, no later than three months prior to the expiration of the pilot, either to continue, modify or terminate the pilot, or request permanent approval of the proposal.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b)[10] of the Act, in general, and furthers the objectives of Section 6(b)(5),[11] in particular, in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change will impose no inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR–NYSE–99–01 and should be submitted by April 29, 1999.

IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

The Commission finds, for the reasons set forth below, that the proposed rule change is consistent with the requirements of the Act and the rules and regulations under the Act applicable to a national securities exchange and, in particular, with the requirements of Section 6(b)[12] of the Act. Specifically, the Commission believes the proposal is consistent with the Section 6(b)(5)[13] requirement that the rules of an exchange be designed to facilitate transaction in securities.[14] Further, the Commission believes that the proposal is consistent with Section 11(b)[15] of the Act and Rule 11b–1[16] under the Act, which allows securities exchanges to permit exchange members to register as specialists, provided that the exchange requires the specialist to assist in maintaining a fair and orderly market.

The Commission believes that, under certain circumstances, "adjusted stabilization" transactions could reflect depth and liquidity added to the market by specialists. Thus, the Commission believes that "adjusted stabilization" could be a relevant measure of specialist performance because it might help the Exchange determine whether a specialist is assisting in maintaining a fair and orderly market.[17]

By providing for the performance measure on a pilot basis through June 30, 2000, the Exchange and the Commission will have the opportunity to study the effects of the use of the measure on the NYSE's allocation process. It is unclear to the Commission, at this point, whether adjusted stabilization transactions will, in practice, promote the maintenance of a fair and orderly market (*e.g.*, by adding depth or liquidity) in the stocks the specialist's unit trades. Accordingly, the Commission has requested the Exchange to report on the following matters when the Exchange proposes to renew or modify the proposal or when it seeks permanent approval for the pilot: (1) the impact "adjusted stabilization" transactions have had on the depth and liquidity of the stocks at issue; (2) the number of allocations reviewed by the Committee and the number of applicants for each allocation; (3) the monthly adjusted stabilization percentage as presented to the Allocation Committee for each allocation applicant; and (4) the Committee's allocation decisions and the effect, if any, an applicant's "adjusted stabilization" rate had on the allocation decision.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of the filing in the **Federal Register**. The Exchange will be able to continue to accumulate relevant data and provide such information to the specialists and the Allocation Committee for their use without further delay. The Commission also notes that the previous pilot was noticed for the full statutory period and the Commission received no comments on the proposal. Accordingly, the Commission does not believe that the current filing raises any regulatory issues not raised by the previous filing.

It is therefore ordered, pursuant to Section 19(b)(2)[18] of the Act, that the proposed rule change (SR–NYSE–99–01), as amended, is approved as a pilot through June 30, 2000, on an accelerated basis.

Anitra Cassas, Attorney, Division, Commission, on January 22, 1999.

[9] *See* Amendment No. 1.

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(5).

[14] In approving this rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[15] 15 U.S.C. 78k(b).

[16] 17 CFR 240.11b–1.

[17] The Commission notes that "adjusted stabilization" transactions would not constitute "stabilizing" as the Commission has defined that term under the Act. In particular, Regulation M under the Act defines "stabilizing" as "the placing of any bid, or the effecting of any purchase, for the purpose of pegging, fixing, or maintaining the price of a security." 17 CFR 242.100(b).

[18] 15 U.S.C. 78s(b)(2).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[19]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–8683 Filed 4–7–99; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF STATE

Office of the Secretary

[Public Notice 3022]

Delegation of Authority 229

By virtue of the authority vested in me by the laws of the United States, including the Foreign Assistance Act of 1961, the Arms Export Control Act, and the State Department Basic Authorities Act, and relevant delegations of authority, including the memorandum delegation signed by the President on November 4, 1997, and to the extent permitted by the law, I hereby delegate—

(a) all authorities vested in the Secretary of State (including all authorities delegated by the President to the Secretary of State by an act, order, determination, delegation of authority, regulation or executive order heretofore or hereinafter enacted or issued) that have been or may be delegated or redelegated to the Under Secretary of State for Arms Control and International Security—

(1) to John Holum for such period as he serves in the Department of State, except that, to the extent that such an authority derives from a delegation of authority from the President, this paragraph shall apply only to the extent that there is a statutory basis for delegating an authority to an individual with respect to whom the Senate has not provided advice and consent; and

(2) to the Assistant Secretary of State for Political-Military Affairs, for such functions as are within his area of responsibility, to the extent that such an authority derives from a delegation of authority from the President and the Office of the Legal Adviser has not identified a statutory basis for delegating the authority to an individual with respect to whom the Senate has not provided advice and consent; and

(b) to the Under Secretary of State for Arms Control and International Security all authorities that, before the effective date described in section 1201 of the Foreign Affairs Agencies consolidation Act of 1998 (the "Act") were vested in the Director of the United States Arms Control and Disarmament Agency and that, pursuant to amendments made by the Act, are now vested in the Secretary of State.

References in any previous delegations of authority to the Under Secretary for Arms Control and International Security Affairs shall hereinafter be deemed to be references to the Under Secretary for Arms Control and International Security except as specifically provided to the contrary.

This delegation of authority shall be without prejudice to the authority of any person to exercise any authority pursuant to any other applicable delegation of authority. Paragraph (a) of this delegation of authority shall cease to be effective upon the appointment by the President, with the advice and consent of the Senate, of an individual to the position of Under Secretary of State for Arms Control and International Security. The Secretary or the Deputy Secretary may at any time exercise any of the functions described above.

This delegation shall be published in the **Federal Register**.

Dated: March 30, 1999.

Madeleine Albright,

Secretary of State.

[FR Doc. 99–8644 Filed 4–7–99; 8:45 am]

BILLING CODE 4710–10–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Status of Former Yugoslav Republic of Macedonia Under Section 701(b) of the Tariff Act of 1930, as Amended

AGENCY: Office of the United States Trade Representative.

ACTION: Notice.

SUMMARY: Under Section 1–103(b) of Executive Order 12188 of January 2, 1980, the functions of the President under section 2(b) of the Trade Agreements Act of 1979 and section 701(b) of the Tariff Act of 1930, as amended ("the Act"), are delegated to the United States Trade Representative ("USTR") who shall exercise such authority with the advice of the Trade Policy Committee. In accordance with these provisions, the USTR has confirmed that the former Yugoslav Republic of Macedonia ("Macedonia") is a "Subsidies Agreement country" for purposes of Title VII of the Act.

The text of the USTR's determination is contained in annex I to this notice.

FOR FURTHER INFORMATION CONTACT: William D. Hunter, (202) 395–3582, Office of the General Counsel, Office of the United States Trade Representative, 600 17th Street NW, Washington, DC 20506.

Dated: April 1, 1999.

Susan G. Esserman,

General Counsel.

Former Yugoslav Republic of Macedonia Confirmation of Status Under Section 701(b) of the Tariff Act of 1930, as Amended

Under Section 1–103(b) of Executive Order 12188 of January 2, 1980, the functions of the President under section 2(b) of the Trade Agreements Act of 1979 and section 701(b) of the Tariff Act of 1930, as amended ("the Act"), are delegated to the United States Trade Representative who shall exercise such authority with the advice of the Trade Policy Committee.

I, Charlene Barshefsky, United States Trade Representative, in conformance with the provisions of section 2(b) of the Trade Agreements Act of 1979, section 701(b) of the Act, and section 1–103(b) of Executive Order 12188, do hereby determine that:

(1) There is an agreement in effect between the United States and the Former Yugoslav Republic of Macedonia which: (i) was in force on the date of the enactment of the Uruguay Round Agreements Act, and (ii) requires unconditional most-favored-nation treatment with respect to articles imported into the United States (Treaty of Commerce Between the United States of America and Serbia, October 3, 1946, 61 Stat. 2451); and

(2) The agreement does not expressly permit: (i) actions required or permitted by the GATT 1947 or GATT 1994, as defined in section 2(1) of the Uruguay Round Agreements Act, or required by the Congress, or (ii) nondiscriminatory prohibitions or restrictions on importation which are designed to prevent deceptive or unfair practices.

Therefore, in accordance with section 701(b)(3) of the Act, I hereby confirm that the Former Yugoslav Republic of Macedonia is a "Subsidies Agreement country" for purposes of Title VII of the Act.

April 1, 1999.

Charlene Barshefsky,

United States Trade Representative.

[FR Doc. 99–8674 Filed 4–7–99; 8:45 am]

BILLING CODE 3190–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. 29068]

Airport Privatization Pilot Program

AGENCY: Federal Aviation Administration (FAA), DOT.

[19] 17 CFR 200.30–3(a)(12).

ACTION: Notice of Receipt of Final Application of Stewart International Airport, Newburgh, New York; Request for Comments.

SUMMARY: The Federal Aviation Administration (FAA) is seeking information and comments from interested parties on the final application by the State of New York for participation of Stewart International Airport (SWF) in the airport privatization pilot program. The final application is accepted for review.

49 U.S.C. Section 47134 establishes an airport privatization pilot program and authorizes the Department of Transportation to grant exemptions from certain Federal statutory and regulatory requirements for up to five airport privatization projects. The application procedures require the FAA to publish a notice of receipt of the final application in the **Federal Register** and accept public comment on the final application for a period of 60 days.

DATES: Comments must be received by June 7, 1999. Comments that are received after that date will be considered only to the extent possible.

ADDRESSES: The SWF final application is available for public review in the Federal Aviation Administration, Office of Chief Counsel, Attention: Rules Docket (AGC–200), Docket No. 29088, 800 Independence Avenue, SW., Washington, DC 20591. The New York State Department of Transportation (NYSDOT), the airport sponsor, has also made a copy of the application available at the following locations:

Town Clerk's Office, Town of New Windsor, Town Hall, 555 Union Avenue, New Windsor, NY 12553.
Town Clerk's Office, Town of Newburgh, Town Hall, 20–26 Union Avenue, Newburgh, NY 12550.
Newburgh Free Library, 124 Grand Street, City of Newburgh, Newburgh, NY 12550.
Orange County Planning Department, 124 Main Street, Goshen, NY 10924.
Airport Director's Office, Airport Administration Building, 1035 First Street, Stewart International Airport, New Windsor, NY 12553.

Comments on the SWF final application must be delivered or mailed, in quadruplicate, to: the Federal Aviation Administration, Office of Chief Counsel, Attention: Rules Docket (AGC–200), Docket No. 29088, 800 Independence Avenue, SW., Washington, DC 20591. All comments must be marked "Docket No. 29088". Commenters wishing the FAA to acknowledge receipt of their comments must include a preaddressed, stamped postcard on which the following statement is made: "Comments to Docket No. 29088." The postcard will be date stamped and mailed to the commenter. Comments on this Notice may be delivered or examined in room 915G on weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m.

FOR FURTHER INFORMATION CONTACT: Kevin C. Willis, Compliance Specialist (AAS–400), (202–267–8741) Airport Compliance Division, Office of Airport Safety and Standards, Federal Aviation Administration, 800 Independence Ave. SW., Washington, DC 20591.

SUPPLEMENTARY INFORMATION: Section 149 of the Federal Aviation Administration Authorization Act of 1996, Pub. L. 104–264 (October 9, 1996) (1996 Reauthorization Act), added a new § 47134 to Title 49 of the U.S. Code. Section 47134 authorizes the Secretary of Transportation, and through delegation, the FAA Administrator, to exempt a sponsor of a public use airport that has received Federal assistance from certain Federal requirements in connection with the privatization of the airport by sale or lease to a private party. Specifically, the Administrator may exempt the sponsor from all or part of the requirements to use airport revenues for airport-related purposes (upon approval of 65 percent of the air carriers serving the airport and having 65 percent of the landed weight), to pay back a portion of Federal grants upon the sale of an airport, and to return airport property deeded by the Federal Government upon transfer of the airport. The Administrator is also authorized to exempt the private purchaser or lessee from the requirement to use all airport revenues for airport-related purposes, to the extent necessary to permit the purchaser or lessee to earn compensation from the operations of the airport (No air carrier approval is necessary for the latter exemption.)

On September 16, 1997, the FAA issued a notice of procedures to be used in applications for exemption under Airport Privatization Pilot Program (62 FR 48693). The notice of procedures and its public comments are available for review in FAA Rules Docket No. 28895. A request for participation in the Pilot program may be initiated by the filing of either a preliminary or final application for exemption with the FAA.

On December 16, 1997, the FAA issued a notice accepting for review, the Stewart International Airport preliminary application (62 FR 65845). This action permitted NYSDOT to select a private operator, negotiate an agreement and submit a final application to the FAA for exemption. The filing date of the NYSDOT preliminary application is October 23, 1997, the date the FAA received the preliminary application. On January 10, 1999, New York State Department of Transportation filed a final application.

The proceeds from the sale of lease of airport property are considered airport revenue and must be used in accordance with the requirements of 49 U.S.C. 47107(b) and 47133. In its final application, the State of New York has elected not to request an exemption under 49 U.S.C. 47134(b)(1) from 49 U.S.C. 47107(b) and 47133, on the basis that the State will use the proceeds from the lease of Stewart International Airport for purposes that are permitted under 47107(b) and 47133. In the application, the State of New York indicates that the initial lease payment will total $35 million. The State proposes to use $24.4 million of that amount to repay the State for funds contributed for the capital and operating costs of Stewart International Airport and Republic Airport during the past six years, in accordance with 49 U.S.C. 47107(I)(5). With regard to the use of the $10.5 million balance of the initial payment, the State of New York has included information in the application describing how this amount will be used for airport purposes in accordance with the statutory requirements and grant assurances concerning use of airport revenue. The FAA will conduct an appropriate review of the proposed uses of airport revenue separate and apart from its review of the State's application under the pilot program. The approval or disapproval of the pending § 47134 application is not conditioned upon the FAA's approval or disapproval of the State's request for reimbursement under § 47107(I)(5), because the funds must be used for a purpose consistent with § 47107(b) in any event.

On February 16, 1999, in an effort to clarify certain parts of the application, FAA staff requested responses to five questions from the State of New York and 12 questions from the private operator. Ten of the questions posed to the private operator required it to utilize confidential business or financial information in order to respond. In accordance with the airport privatization pilot program application procedures, 62 FR 48693, 48706 (September 16, 1997), the private operator has requested confidential treatment of this information. As a result, the responses to these 10 questions will not be available for public comment. Copies of the 17

questions and the seven responses available for public view and comment are included in Attachment 15 of the sponsor's application for public review.

The FAA has determined that the application is substantially complete. As part of its review of the SWF final application, the FAA will consider all comments and information submitted by interested parties during the 60-day comment period for this notice.

Issued in Washington, DC, on April 2, 1999.

David L. Bennett,

Director, Airport Safety and Standards.

[FR Doc. 99–8752 Filed 4–7–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

The Federal Aviation Administration (FAA) Satellite Operational Implementation Team (SOIT) Hosted Forum on the Capabilities of the Global Positioning System (GPS)/Wide Area Augmentation System (WAAS) and Local Area Augmentation System (LAAS)

AGENCY: Federal Aviation Administration.

ACTION: Notice of meeting.

NAME: FAA SOIT Forum on GPS/WAAS/LAAS Capabilities.

TIME AND DATE: 9:00 a.m.–5:00 p.m., May 17–18, 1999.

PLACE: The Holiday Inn Fair Oaks Hotel, 11787 Lee Jackson Memorial Highway, Fairfax, Virginia 22033.

STATUS: Open to the aviation industry with attendance limited to space available.

PURPOSE: The FAA SOIT will be hosting a public forum to discuss the FAA's GPS approvals and WAAS/LAAS operational implementation plans. This meeting will be held in conjunction with a regularly scheduled meeting of the FAA SOIT and in response to aviation industry requests to the FAA Administrator. Formal presentations by the FAA will be followed by a question and answer session. Those planning to attend are invited to submit proposed discussion topics.

REGISTRATION: Participants are requested to register their intent to attend this meeting by May 3, 1999. Names, affiliations, telephone and facsimile numbers should be sent to the point of contact listed below.

POINT OF CONTACT: Registration and submission of suggested discussion topics may be made to Mr. Steven Albers, phone (202) 267–7301, fax (202) 267–5086, or email at steven.CTR.albers@faa.gov.

Issued in Washington, D.C. on March 22, 1999.

Hank Cabler,

SOIT Co-Chairman.

[FR Doc. 99–8751 Filed 4–7–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application 99–03–C–00–ALO To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Waterloo Municipal Airport, Waterloo, IA

AGENCY: Federal Aviation Administration, (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Waterloo Municipal Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before May 10, 1999.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Central Region, Airports Division, 601 E. 12th Street, Kansas City, MO 64106.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Ms. Kim Bakker, Assistant Director of Aviation, Waterloo Municipal Airport, at the following address: Waterloo Municipal Airport, 2790 Airport Boulevard, Waterloo, Iowa 50703.

Air Carriers and foreign air carriers may submit copies of written comments previously provided to the City of Waterloo, Waterloo Municipal Airport, under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Lorna Sandridge, PFC Program Manager, FAA, Central Region, 601 E. 12th Street, Kansas City, MO 64106, (816) 426–4730. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at the Waterloo Municipal Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On March 24, 1999, the FAA determined that the application to impose and use the revenue from a PFC submitted by the City of Waterloo, Iowa, was substantially complete within the requirements of § 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than June 23, 1999.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00.

Proposed charge effective date: September, 1999.

Proposed charge expiration date: February, 2004.

Total estimated PFC revenue: $763,830.

Brief description of proposed project(s): Rehabilitate East General Aviation Apron; Terminal Building Modernization—Conceptual Plan; Terminal Building Modernization—Architectural Design; Taxiway 'D' Reconstruction; Terminal Building Modernization—Construction.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Waterloo Municipal Airport.

Issued in Kansas City, Missouri on March 24, 1999.

George A. Hendon,

Manager, Airports Division, Central Region.

[FR Doc. 99–8750 Filed 4–7–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Federal Transit Administration

Transportation Equity Act for the 21st Century; Implementation Information for the Intelligent Transportation Systems (ITS) Deployment Program

AGENCIES: Federal Highway Administration (FHWA), Federal Transit Administration (FTA), DOT.

ACTION: Notice.

SUMMARY: This document publishes implementation information on the

Intelligent Transportation Systems (ITS) Deployment Program described in sections 5208 and 5209 of the Transportation Equity Act for the 21st Century (TEA–21), enacted on June 9, 1998. The notice identifies the criteria for the two components of the ITS Deployment Program, namely the ITS Integration Program and the Commercial Vehicle Intelligent Transportation Infrastructure Deployment Program. Implementation information on this program was issued to the FHWA Division and the FTA Regional Offices on January 4, 1999, and is contained in this notice.

FOR FURTHER INFORMATION CONTACT: For the ITS Integration component of the ITS Deployment Program: Ms. Toni Wilbur, FHWA Office of Travel Management, HOTM, (202) 366–2199; or Mr. Ron Boenau, FTA Office of Mobility Innovation, TRI–11, (202) 366–0195; for the Commercial Vehicle ITS Infrastructure Deployment component of the ITS Deployment Program: Mr. Steve Crane, FHWA Office of Motor Carrier and Highway Safety, HMTE, (202) 366–0950; for legal issues: Mr. Wilbert Baccus, HCC–32, FHWA Office of the Chief Counsel (202) 366–0780; or Linda Sorkin, TCC–24, FTA Office of the Chief Counsel, (202) 366–1936, 400 Seventh Street SW., Washington, DC. 20590. FHWA office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays. FTA office hours are from 8:30 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

An electronic copy of this document may be downloaded using a modem and suitable communications software from the Government Printing Office Electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the **Federal Register**'s home page at: http://www.nara.gov/fedreg and the Government Printing Office's database at: http://www.access.gpo.gov/nara.

Background

The TEA–21 (Pub. L. 105–178, 112 Stat. 107) implementation material published in this notice is provided for informational purposes only. Specific questions on any of the material published in this notice should be directed to the contact persons named in the caption **FOR FURTHER INFORMATION CONTACT** for this program.

This implementation information applies to ITS projects in areas designated in either the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999 (Pub. L. 105–277, 112 Stat. 2681) or in section 5208(g) of TEA–21. Although the locations and funding amounts for the ITS Deployment Program have been designated by Congress, specific projects must contribute to the integration and interoperability of intelligent transportation systems, consistent with the criteria set forth in TEA–21.

Section 5208 of TEA–21 establishes the ITS Integration Program to accelerate the integration and interoperability of ITS systems in both metropolitan and rural areas, and provides criteria for the selection of projects that will support this goal. These criteria include the demonstration of a strong commitment to cooperation among agencies, jurisdictions, and the private sector, and a commitment to a comprehensive plan of fully integrated intelligent transportation system deployment in accordance with the national ITS architecture and standards. Public-private partnerships are encouraged, including arrangements that generate revenue to offset public investment costs and minimize the relative percentage and amount of Federal ITS funding. All ITS Integration Program projects must be part of approved plans and programs developed under applicable statewide and metropolitan transportation planning processes and applicable State air quality implementation plans, as appropriate, at the time at which Federal funds are sought. In addition, funding recipients must demonstrate a commitment to the long-term operations, management and maintenance of the system without continued reliance on Federal ITS funding.

The purpose of the Commercial Vehicle Intelligent Transportation Infrastructure Deployment Program, as described in section 5209 of TEA–21, is to improve the safety and productivity of commercial vehicles and drivers, and to reduce the costs associated with commercial vehicle operations and Federal and State commercial vehicle regulatory requirements. TEA–21 establishes criteria for identifying priority areas and encourages multistate cooperation and corridor development to improve the safety of commercial vehicle operations. Activities funded under the Commercial Vehicle Intelligent Transportation Infrastructure Deployment Program should advance the use of technology to increase the efficiency of the regulatory inspection processes, reduce administrative burdens, facilitate commercial vehicle inspections, and generally increase the effectiveness of enforcement efforts. Funds can also be used to enhance the safe passage of commercial vehicles across the United States and across international borders.

The FHWA and the FTA are publishing this notice to provide information to the public on the activities and/or projects that are eligible for funding under the ITS Deployment Program, the locations and amounts of funding, and how the TEA–21 criteria will be met for the candidate projects to be funded.

(Authority: 23 U.S.C. 315; sec. 5208, Pub. L. 105–178, 112 Stat. 458, (23 U.S.C. 502 nt.); sec. 5209, Pub. L. 105–178, 112 Stat. 460, (23 U.S.C. 502 nt.); 49 CFR 1.48).

Issued on: March 31, 1999.

Kenneth R. Wykle,

Federal Highway Administrator.

Gordon J. Linton,

Federal Transit Administrator.

The text of the FHWA and the FTA implementation guidelines memorandum follows: January 4, 1999 (HTV–3, TOA–2)

ACTION: Notification of Participation in the TEA–21 ITS Deployment Program, FHWA Deputy Administrator, FTA Deputy Administrator, FHWA Division Administrators, FTA Regional Administrators, Motor Carrier State Directors.

This is to notify you that areas within your State or region have been identified to participate in the Intelligent Transportation Systems (ITS) Deployment Program based on designations contained in either the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999, or in Section 5208(g)(2) of the Transportation Equity Act for the 21st Century (TEA–21).

While the FY 1999 Appropriations Act specifies the locations and amounts of funding, it does not designate specific projects to be funded. Rather, the Conference Report accompanying the FY 1999 Appropriations Act specifies that projects selected for funding "contribute to the integration and interoperability of intelligent transportation systems consistent with the criteria set forth in TEA–21."

The ITS Deployment Program authorized in TEA–21 includes two components. The ITS Integration component of the ITS Deployment Program is described in section 5208 of TEA–21. This program provides Federal ITS funding for the integration of multimodal ITS components in a variety of settings, including large regional or multi-State areas, metropolitan areas, and rural areas. Specific project

selection criteria are included in TEA–21.

The Commercial Vehicle Intelligent Transportation Infrastructure Deployment component of the ITS Deployment Program is described in section 5209 of TEA–21. This program provides Federal ITS funding to support the goal Congress established in TEA–21 to complete deployment of Commercial Vehicle Information Systems and Networks (CVISN) in a majority of States by September 30, 2003.

Progress towards this goal can only be achieved if those States designated in the FY 99 Appropriations Act use all or some of their funding to advance towards CVISN Level 1 Capabilities in their State.

Because this is a multimodal program, it will require close cooperation among FHWA Federal-aid and Motor Carrier staff, FHWA division offices and resource centers, FTA regional office staff and the appropriate headquarters offices. Areas designated for ITS Deployment Program funding will be required to submit project descriptions specifying the proposed use of these funds and indicating how the TEA–21 criteria will be met. We are finalizing guidance materials to assist you in working with the State and local agencies to implement the ITS Deployment Program. This material will be provided to you in the near future. It should be shared and discussed with the highway and transit officials in the State departments of transportation, and the appropriate local highway, transit, and metropolitan planning organizations as soon as possible after you receive it.

Attached is a list of the areas and the congressionally designated amounts contained in the FY 1999 Appropriations Act. As explained in the attachment, the actual amounts of funding available are less than the amount designated. This is due to the obligation limitation, the fact that the total amount of appropriation and authorization earmarks exceeds the TEA–21 program authorization, and the need to provide funding for national evaluations as specified in TEA–21.

Thank you in advance for your assistance in this important departmental initiative. If you have any questions about the ITS Deployment Program, please call Ms. Toni Wilbur, Federal Highway Administration (FHWA), (202) 366–2199; Mr. Ron Boenau, Federal Transit Administration (FTA), (202) 366–0195; or Mr. Steve Crane, FHWA Office of Motor Carrier and Highway Safety, (202) 366–0950.

/s/ signed by:
Nuria I. Fernandez.
/s/ signed by:
Gloria J. Jeff.

Attachment 1

December 23, 1998

FEDERAL HIGHWAY ADMINISTRATION

FEDERAL TRANSIT ADMINISTRATION

INTELLIGENT TRANSPORTATION SYSTEMS

FY 1999 FUNDING FOR CONGRESSIONALLY DESIGNATED PROJECTS

Congressionally Designated Amounts Versus Amounts Authorized

FY 1999 Congressional designations against the ITS Deployment Program total $114.8 million; $9.8 million in TEA–21, and $105 million in the FY 1999 DOT Appropriation Act (see column 2 of the attached worksheet). However, TEA–21 only authorizes $105 million for the ITS Deployment Program in FY 1999. Thus, the $114.8 million in Congressionally designated projects exceeds the FY 1999 available amount of $105.0 billion by $9.8 million. To adjust the Congressionally designated amounts downward to the authorized level, each Congressionally designated project was necessarily reduced by approximately 8.5% (see column 3 of the attached worksheet).

Reductions Required by Section 1102(f) of TEA–21

The ITS Program is not only subject to the overall obligation limitation on Federal-aid Highways but is also subject to proportional distribution of that limitation. In FY 1999, each State and/or program subject to the distribution of the FY 1999 Obligation Limitation receives an obligation limitation equal to 88.3% of the amounts "authorized" for FY 1999.

Basically, section 1102(f) states that any amounts for "allocated" programs which cannot be obligated within the distributed obligation limitation will be taken away from these programs and redistributed to the States. Implementation of this section will reduce the ITS Deployment Program from $105 million to $92.715 million, a reduction of 11.7%. This mandated 11.7% reduction ($12.285 million) has been applied proportionately to each Congressionally designated project as reflected in Column 5 of the attached worksheet.

Reductions for Project Evaluations

Section 5204(j) requires the Secretary to issue guidelines and requirements to ensure that independent evaluations will be made on ITS operational tests and deployment projects. This section also directs the establishment of evaluation funding to ensure adequate evaluations are carried out.

For fiscal year 1999, all ITS Deployment Program funding recipients will be required to conduct an evaluation that is locally funded and executed. Cross-cutting assessments of these local evaluations will be conducted by the ITS Joint Program Office and will include gathering data and disseminating results. More details on the scope of local evaluations will be included in the forthcoming ITS Deployment Program guidance materials.

In-depth, independent evaluations of selected projects of national significance (as determined by the ITS Joint Program Office), will also be required. Funding for the evaluations of significant projects will be derived by pooling 2% of each project amount (see Column 7 of the attached worksheet). Please note that projects III and IV on the attached worksheet were funded from the ITS Deployment Program in TEA–21, but are exempt from the evaluation requirement since they are research projects, not ITS operational tests or deployments.

Commercial Vehicle Information Systems and Networks (CVISN) (See Column 9)

In TEA–21 Congress established a goal to complete deployment of CVISN in a majority of States by September 30, 2003. The FHWA's State CVISN Level 1 deployment strategy consists of three key steps: Planning, Design, and Implementation and Deployment. Our strategy for States to achieve this goal will require the use of all or a portion of 1999 funds to complete at a minimum the next step. The first step, Planning, includes participation in two ITS/CVO training courses and the development of an ITS/CVO State business plan. This step is essential to promote ITS/CVO awareness and coalition building among the State agencies involved in CVO and with industry. This step is estimated to require a minimum of $50 thousand of Federal ITS Funds. The focus of the second step, Design, is for the State to establish its CVISN project team, including at a minimum a CVISN project manager and a system architect. Once these individuals have been selected, a State can participate in the Understanding ITS/CVO Technology training course and in three CVISN

workshops. These activities will assist the State in developing its CVISN Project Plan and Top-Level Design. This step is estimated to require at least $350 thousand of Federal ITS Funds. The final step is the Implementation and Deployment of CVISN Level 1 Capabilities. The total amount of Federal ITS Funds for the three steps is $3 million. This represents the 50% ITS Federal share of the estimated $6 to $10 million total cost, based on CVISN project plans submitted by the participating Pilot States. Column 9 lists the minimum amount of FY 99 funds that are needed to support the completion of the next step for States identified in the Congressional designations. Note, the States of Minnesota, Maryland, and Washington (in partnership with Oregon) have already received Federal ITS deployment funding prior to FY 99. The minimum amount available for the State of Minnesota is $2,000,000, for the State of Maryland is $1,976,673.76, and for the State of Washington is $1,582,939.02 to complete the third step.

FEDERAL HIGHWAY ADMINISTRATION / FEDERAL TRANSIT ADMINISTRATION—ANALYSIS OF FY 1999 ITS DEPLOYMENT PROGRAM FUNDING

Column 1 Project	Column 2 Congressionally Designated Amounts	Column 3 Designations Exceed Authorizations	Column 4 Total Authorized	Column 5 Section 1102(f) Reduction (11.7%)	Column 6 Subtotal	Column 7 Project Evaluation Reduction (2%)	Column 8 Adjusted Total Available	Column 9 Minimum for CVISN	Column 10 Available for Integration Projects
TEA—21 Earmarks:	$9,800,000.00	($836,585.37)	$8,963,414.63	($1,048,719.51)	$7,914,695.12	($113,067.07)	$7,801,628.05	$0.00	$7,801,628.05
1. Great Lakes ITS Implementation	2,000,000.00	(170,731.71)	1,829,268.29	(214,024.39)	1,615,243.90	(32,304.88)	1,582,939.02	0.00	1,582,939.02
2. Northeast ITS Implementation	5,000,000.00	(426,829.27)	4,573,170.73	(535,060.98)	4,038,109.76	(80,762.20)	3,957,347.56	0.00	3,957,347.56
3. Haz. Mat. Monitoring Systems	1,500,000.00	(128,048.78)	1,371,951.22	(160,518.29)	1,211,432.93	0.00	1,211,432.93	0.00	1,211,432.93
4. Translink—Texas Transp. Inst	1,300,000.00	(110,975.61)	1,189,024.39	(139,115.85)	1,049,908.54	0.00	1,049,908.54	0.00	1,049,908.54
FY 1999 Appropriation Act:	105,000,000.00	($8,963,414.63)	96,036,585.37	($11,236,280.49)	$84,800,304.88	($1,696,006.10)	$83,104,298.78	$9,861,612.80	$73,242,685.98
1. Amherst, Massachusetts	1,000,000.00	(85,365.85)	914,634.15	(107,012.20)	807,621.95	(16,152.44)	791,469.51	0.00	791,469.51
2. Arlington County, Virginia	750,000.00	(64,024.39)	685,975.61	(80,259.15)	605,716.46	(12,114.33)	593,602.13	0.00	593,602.13
3. Atlanta, Georgia	2,000,000.00	(170,731.71)	1,829,268.29	(214,024.39)	1,615,243.90	(32,304.88)	1,582,939.02	0.00	1,582,939.02
4. Brandon, Vermont	375,000.00	(32,012.20)	342,987.80	(40,129.57)	302,858.23	(6,057.16)	296,801.07	0.00	296,801.07
5. Buffalo, New York	500,000.00	(42,682.93)	457,317.07	(53,506.10)	403,810.98	(8,076.22)	395,734.76	0.00	395,734.76
6. Centre Valley, Pennsylvania	500,000.00	(42,682.93)	457,317.07	(53,506.10)	403,810.98	(8,076.22)	395,734.76	0.00	395,734.76
7. Cleveland, Ohio	1,000,000.00	(85,365.85)	914,634.15	(107,012.20)	807,621.95	(16,152.44)	791,469.51	0.00	791,469.51
8. Columbus, Ohio	1,000,000.00	(85,365.85)	914,634.15	(107,012.20)	807,621.95	(16,152.44)	791,469.51	0.00	791,469.51
9. Corpus Christi, Texas	900,000.00	(76,829.27)	823,170.73	(96,310.98)	726,859.76	(14,537.20)	712,322.56	0.00	712,322.56
10. Dade County, Florida	1,000,000.00	(85,365.85)	914,634.15	(107,012.20)	807,621.95	(16,152.44)	791,469.51	0.00	791,469.51
11. Del Rio, Texas	1,000,000.00	(85,365.85)	914,634.15	(107,012.20)	807,621.95	(16,152.44)	791,469.51	0.00	791,469.51
12. Delaware River, Pennsylvania	1,000,000.00	(85,365.85)	914,634.15	(107,012.20)	807,621.95	(16,152.44)	791,469.51	0.00	791,469.51
13. Fairfield, California	1,000,000.00	(85,365.85)	914,634.15	(107,012.20)	807,621.95	(16,152.44)	791,469.51	0.00	791,469.51
14. Fitchburg, Massachusetts	500,000.00	(42,682.93)	457,317.07	(53,506.10)	403,810.98	(8,076.22)	395,734.76	0.00	395,734.76
15. Greater Metro. Region—DC	5,000,000.00	(426,829.27)	4,573,170.73	(535,060.98)	4,038,109.76	(80,762.20)	3,957,347.56	0.00	3,957,347.56
16. Hammond, Louisiana	4,000,000.00	(341,463.41)	3,658,536.59	(428,048.78)	3,230,487.80	(64,609.76)	3,165,878.05	0.00	3,165,878.05
17. Houston, Texas	2,000,000.00	(170,731.71)	1,829,268.29	(214,024.39)	1,615,243.90	(32,304.88)	1,582,939.02	0.00	1,582,939.02
18. Huntington Beach, California	1,000,000.00	(85,365.85)	914,634.15	(107,012.20)	807,621.95	(16,152.44)	791,469.51	0.00	791,469.51
19. Huntsville, Alabama	1,000,000.00	(85,365.85)	914,634.15	(107,012.20)	807,621.95	(16,152.44)	791,469.51	0.00	791,469.51
20. Inglewood, California	1,500,000.00	(128,048.78)	1,371,951.22	(160,518.29)	1,211,432.93	(24,228.66)	1,187,204.27	0.00	1,187,204.27
21. Jackson, Mississippi	1,000,000.00	(85,365.85)	914,634.15	(107,012.20)	807,621.95	(16,152.44)	791,469.51	0.00	791,469.51
22. Kansas City, Missouri	500,000.00	(42,682.93)	457,317.07	(53,506.10)	403,810.98	(8,076.22)	395,734.76	0.00	395,734.76
23. Laredo, Texas	1,000,000.00	(85,365.85)	914,634.15	(107,012.20)	807,621.95	(16,152.44)	791,469.51	0.00	791,469.51
24. Middlesboro, Kentucky	3,000,000.00	(256,097.56)	2,743,902.44	(321,036.59)	2,422,865.85	(48,457.32)	2,374,408.54	0.00	2,374,408.54
25. Mission Viejo, California	1,000,000.00	(85,365.85)	914,634.15	(107,012.20)	807,621.95	(16,152.44)	791,469.51	0.00	791,469.51
26. Mobile, Alabama	2,500,000.00	(213,414.63)	2,286,585.37	(267,530.49)	2,019,054.88	(40,381.10)	1,978,673.78	0.00	1,978,673.78
27. Monroe County, New York	400,000.00	(34,146.34)	365,853.66	(42,804.88)	323,048.78	(6,460.98)	316,587.80	0.00	316,587.80
28. Montgomery, Alabama	1,250,000.00	(106,707.32)	1,143,292.68	(133,785.24)	1,009,527.44	(20,190.55)	989,336.89	0.00	989,336.89
29. Nashville, Tennessee	500,000.00	(42,682.93)	457,317.07	(53,506.10)	403,810.98	(8,076.22)	395,734.76	0.00	395,734.76
30. New Orleans, Louisiana	1,500,000.00	(128,048.78)	1,371,951.22	(160,518.29)	1,211,432.93	(24,228.66)	1,187,204.27	0.00	1,187,204.27
31. New York City, New York	2,500,000.00	(213,414.63)	2,286,585.37	(267,530.49)	2,019,054.88	(40,381.10)	1,978,673.78	0.00	1,978,673.78
32. New York/Long Island, NY	2,300,000.00	(196,341.46)	2,103,658.54	(246,128.05)	1,857,530.49	(37,150.61)	1,820,379.88	0.00	1,820,379.88
33. Oakland County, Michigan	1,000,000.00	(85,365.85)	914,634.15	(107,012.20)	807,621.95	(16,152.44)	791,469.51	0.00	791,469.51
34. Onandaga County, New York	400,000.00	(34,146.34)	365,853.66	(42,804.88)	323,048.78	(6,460.98)	316,587.80	0.00	316,587.80
35. Port Angeles, Washington	500,000.00	(42,682.93)	457,317.07	(53,506.10)	403,810.98	(8,076.22)	395,734.76	0.00	395,734.76
36. Raleigh-Wake County, NC	2,000,000.00	(170,731.71)	1,829,268.29	(214,024.39)	1,615,243.90	(32,304.88)	1,582,939.02	0.00	1,582,939.02
37. Riverside, California	1,000,000.00	(85,365.85)	914,634.15	(107,012.20)	807,621.95	(16,152.44)	791,469.51	0.00	791,469.51
38. San Francisco, California	1,500,000.00	(128,048.78)	1,371,951.22	(160,518.29)	1,211,432.93	(24,228.66)	1,187,204.27	0.00	1,187,204.27
39. Scranton, Pennsylvania	1,000,000.00	(85,365.85)	914,634.15	(107,012.20)	807,621.95	(16,152.44)	791,469.51	0.00	791,469.51
40. Silicon Valley, California	1,500,000.00	(128,048.78)	1,371,951.22	(160,518.29)	1,211,432.93	(24,228.66)	1,187,204.27	0.00	1,187,204.27
41. Spokane, Washington	450,000.00	(38,414.63)	411,585.37	(48,155.49)	363,429.88	(7,268.60)	356,161.28	0.00	356,161.28
42. Springfield, Virginia	500,000.00	(42,682.93)	457,317.07	(53,506.10)	403,810.98	(8,076.22)	395,734.76	0.00	395,734.76
43. St. Louis, Missouri	750,000.00	(64,024.39)	685,975.61	(80,259.15)	605,716.46	(12,114.33)	593,602.13	0.00	593,602.13
44. State of Alaska	1,500,000.00	(128,048.78)	1,371,951.22	(160,518.29)	1,211,432.93	(24,228.66)	1,187,204.27	350,000.00	837,204.27
45. State of Idaho	1,000,000.00	(85,365.85)	914,634.15	(107,012.20)	807,621.95	(16,152.44)	791,469.51	350,000.00	441,469.51
46. State of Maryland	2,500,000.00	(213,414.63)	2,286,585.37	(267,530.49)	2,019,054.88	(40,381.10)	1,978,673.78	1,978,673.78	0.00
47. State of Minnesota	7,100,000.00	(606,097.56)	6,493,902.44	(759,786.59)	5,734,115.85	(114,682.32)	5,619,433.54	2,000,000.00	3,619,433.54
48. State of Mississippi	1,000,000.00	(85,365.85)	914,634.15	(107,012.20)	807,621.95	(16,152.44)	791,469.51	350,000.00	441,469.51
49. State of Missouri	500,000.00	(42,682.93)	457,317.07	(53,506.10)	403,810.98	(8,076.22)	395,734.76	350,000.00	45,734.76
50. State of Montana	700,000.00	(59,756.10)	640,243.90	(74,908.54)	565,335.37	(11,306.71)	554,028.66	350,000.00	204,028.66
51. State of Nevada	575,000.00	(49,085.37)	525,914.63	(61,532.01)	464,382.62	(9,287.65)	455,094.97	350,000.00	105,094.97
52. State of New Jersey	3,000,000.00	(256,097.56)	2,743,902.44	(321,036.59)	2,422,865.85	(48,457.32)	2,374,408.54	350,000.00	2,024,408.54
53. State of New Mexico	1,000,000.00	(85,365.85)	914,634.15	(107,012.20)	807,621.95	(16,152.44)	791,469.51	350,000.00	441,469.51
54. State of New York	2,500,000.00	(213,414.63)	2,286,585.37	(267,530.49)	2,019,054.88	(40,381.10)	1,978,673.78	350,000.00	1,628,673.78
55. State of North Dakota	1,450,000.00	(123,780.49)	1,326,219.51	(155,167.68)	1,171,051.83	(23,421.04)	1,147,630.79	50,000.00	1,097,630.79
56. Commonwealth of Pennsylvania	14,000,000.00	(1,195,121.95)	12,804,878.05	(1,498,170.73)	11,306,707.32	(226,134.15)	11,080,573.17	350,000.00	10,730,573.17
57. State of Texas	1,000,000.00	(85,365.85)	914,634.15	(107,012.20)	807,621.95	(16,152.44)	791,469.51	50,000.00	741,469.51
58. State of Utah	3,600,000.00	(307,317.07)	3,292,682.93	(385,243.90)	2,907,439.02	(58,148.78)	2,849,290.24	350,000.00	2,499,290.24
59. State of Washington	2,000,000.00	(170,731.71)	1,829,268.29	(214,024.39)	1,615,243.90	(32,304.88)	1,582,939.02	1,582,939.02	0.00
60. State of Wisconsin	1,500,000.00	(128,048.78)	1,371,951.22	(160,518.29)	1,211,432.93	(24,228.66)	1,187,204.27	350,000.00	837,204.27
61. Temucula, California	250,000.00	(21,341.46)	228,658.54	(26,753.05)	201,905.49	(4,038.11)	197,867.38	0.00	197,867.38
62. Tucson, Arizona	1,000,000.00	(85,365.85)	914,634.15	(107,012.20)	807,621.95	(16,152.44)	791,469.51	0.00	791,469.51
63. Volusia County, Florida	1,000,000.00	(85,365.85)	914,634.15	(107,012.20)	807,621.95	(16,152.44)	791,469.51	0.00	791,469.51
64. Warren County, Virginia	250,000.00	(21,341.46)	228,658.54	(26,753.05)	201,905.49	(4,038.11)	197,867.38	0.00	197,867.38
65. Wausau-Stevens Point, WI	1,000,000.00	(85,365.85)	914,634.15	(107,012.20)	807,621.95	(16,152.44)	791,469.51	0.00	791,469.51
66. Westchester/Putnam Co., NY	500,000.00	(42,682.93)	457,317.07	(53,506.10)	403,810.98	(8,076.22)	395,734.76	0.00	395,734.76
67. White Plains, New York	1,000,000.00	(85,365.85)	914,634.15	(107,012.20)	807,621.95	(16,152.44)	791,469.52	0.00	791,469.52
Project Evaluations	0.00	0.00	0.00	0.00	0.00	1,809,073.17	1,809,073.17	0.00	1,809,073.17
GRAND TOTAL	$114,800,000.00	($9,800,000.00)	$105,000,004.00	($12,285,000.00)	$92,715,000.00	$0.00	$92,715,000.00	$9,861,612.80	$82,853,387.20

[FR Doc. 99–8569 Filed 4–7–99; 8:45 am]
BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33730]

IMC Global Inc.—Intracorporate Family Transaction Exemption—Trona Railway Company, LLC

IMC Global Inc. (IMC), a noncarrier, has filed a verified notice of exemption. The exempt transaction involves the merger of two IMC subsidiaries: Trona Railway Company, LLC (TR–LLC), currently a noncarrier,[1] and Trona Railway Company (Trona), a Class III railroad.[2] Trona will be merged into TR–LLC, with TR–LLC being the surviving entity following the merger.

The earliest the transaction could be consummated was March 25, 1999, the effective date of the exemption (7 days after the notice of exemption was filed).

The proposed merger is intended to modify IMC's corporate structure through the merger of Trona and TR–LLC in order to improve the financial viability of the applicants, to permit the merged company to enjoy the benefits afforded to limited liability companies under Delaware law, and to facilitate the recapitalization of certain noncarrier subsidiaries of IMC, including TR–LLC's direct corporate parent, IMC Chemicals Inc.

This is a transaction within a corporate family of the type specifically exempted from prior review and approval under 49 CFR 1180.2(d)(3). The parties state that the transaction will not result in adverse changes in service levels, significant operational changes, or a change in the competitive balance with carriers outside the corporate family.

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under sections 11324 and 11325 that involve only Class III rail carriers. Because this transaction involves Class III rail carriers only, the Board, under the statute, may not impose labor protective conditions for this transaction.

If the verified notice contains false or misleading information, the exemption is void *ab initio*. Petitions to reopen the proceeding to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to reopen will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33730, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Donald H. Smith, Esq., Sidley & Austin, 1722 I Street, NW., Washington, DC 20006.

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

Decided: March 31, 1999.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 99–8472 Filed 4–7–99; 8:45 am]
BILLING CODE 4915–00–P

[1] TR–LLC is a newly-formed limited liability company chartered in the State of Delaware.

[2] TR–LLC and Trona are both indirectly owned and controlled by IMC. Trona operates approximately 30 miles of rail line between Trona, CA, and a connection with the Union Pacific Railroad near Searles, CA. IMC also indirectly owns and controls The Hutchinson & Northern Railway Company, a Class III railroad, which operates 3 miles of rail line in the State of Kansas.

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33729]

Union Pacific Railroad Company—Trackage Rights Exemption—The Burlington Northern and Santa Fe Railway Company

The Burlington Northern and Santa Fe Railway Company (BNSF) has agreed to grant overhead trackage rights to Union Pacific Railroad Company (UP) over BNSF's rail line between (1) Rockview Junction, MO, BNSF milepost 141.7 (River Subdivision), and Jonesboro, AR, BNSF milepost 420.0 (Thayer South Subdivision), via Turrell, AR, BNSF milepost 282.3 (River Subdivision) and (2) Rockview Junction, MO, BNSF milepost 141.7 (River Subdivision), and KC Junction, TN, BNSF milepost 486.0 (Thayer South Subdivision), a total distance of approximately 350.4 miles.[1]

The transaction is scheduled to be consummated on or shortly after April 1, 1999.

The purpose of the trackage rights is permit UP to use BNSF trackage when UP's trackage is out of service for maintenance.

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.-Lease and Operate*, 360 I.C.C. 653 (1980).

This notice is filed under 49 CFR 1180.2(d)(7). If it contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33729, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423–0001. In addition, one copy of each pleading must be served on Joseph D. Anthofer, Esq., 1416 Dodge Street, #830, Omaha, NE 68179.

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

Decided: March 30, 1999.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 99–8327 Filed 4–7–99; 8:45 am]
BILLING CODE 4915–00–P

[1] On March 19, 1999, UP filed a petition for exemption in STB Finance Docket No. 33729 (Sub-No. 1), *Union Pacific Railroad Company—Trackage Rights Exemption—The Burlington Northern and Santa Fe Railway Company*, wherein UP requests that the Board permit the proposed overhead trackage rights arrangement described in the present proceeding to expire on July 31, 1999. That petition will be addressed by the Board in a separate decision.

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

March 29, 1999.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before May 10, 1999, to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–0731.
Regulation Project Number: PS–262–82 Final.
Type of Review: Extension.
Title: Definition of an S Corporation.
Description: The regulations provide the procedures and the statements to be filed by certain individuals for making the election under section 1361(d)(2), the refusal to consent to that election, or the revocation of that election. The statements required to be filed would be to verify that taxpayers are complying with requirements imposed by Congress under Subchapter S.
Estimated Number of Respondents: 1,005.
Estimated Burden Hours Per Respondent: 1 hour.
Frequency of Response: Other (Non-recurring).
Estimated Total Reporting Burden: 1,005 hours.
Clearance Officer: Garrick Shear, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW, Washington, DC 20224.
OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports Management Officer.
[FR Doc. 99–8755 Filed 4–7–99; 8:45 am]
BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

April 2, 1999.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before May 10, 1999 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–1643.
Regulation Project Number: REG–209484–87 Final.
Type of Review: Extension.
Title: Federal Insurance Contributions Act (FICA) Taxation of Amounts Under Employee Benefit Plans.
Description: This regulation provides guidance as to when amounts deferred under or paid from a nonqualified deferred compensation plan are taken into account as wages for purposes of the employment taxes imposed by the Federal Insurance Contributions Act (FICA). Section 31.3121(v)(2)–1(a)(2) requires that the material terms of a plan be set forth in writing.
Respondents: Business or other for-profit, Not-for-profit institutions.
Estimated Number of Respondents/Recordkeepers: 2,500.
Estimated Burden Hours Per Respondent/Recordkeeper: 5 hours.
Frequency of Response: On occasion, Other (once).
Estimated Total Reporting/Recordkeeping Burden: 12,500 hours.
Clearance Officer: Garrick Shear, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW, Washington, DC 20224.
OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports Management Officer.
[FR Doc. 99–8756 Filed 4–7–99; 8:45 am]
BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury.

ACTION: Submission for OMB review; comment request.

SUMMARY: The OCC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a continuing information collection, as required by the Paperwork Reduction Act of 1995. The OCC may not conduct or sponsor, and a respondent is not required to respond to, an information collection that has been extended, revised, or implemented unless it displays a currently valid Office of Management and Budget (OMB) control number. Currently, the OCC is soliciting comments concerning extension, without change, of an information collection titled (MA)—Securities Offering Disclosure Rules (12 CFR 16). The OCC also gives notice that it has sent the information collection to OMB for review.

DATES: You should submit your written comments to both OCC and the OMB Reviewer by May 10, 1999.

ADDRESSES: You should send your written comments to the Communications Division, Attention: 1557–0120, Third Floor, Office of the Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219. In addition, you can send comments by facsimile transmission to (202)874–5274, or by electronic mail to REGS.COMMENTS@OCC.TREAS.GOV.

FOR FURTHER INFORMATION CONTACT:
You may request additional information, a copy of the collection, or a copy of the supporting documentation submitted to OMB by contacting Jessie Gates or Camille Dixon, (202)874–5090, Legislative and Regulatory Activities Division (1557–0120), Office of the Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219.

SUPPLEMENTARY INFORMATION:
The OCC is proposing to extend OMB approval of the following information collection:
Title: (MA)—Securities Offering Disclosure Rules (12 CFR 16).
OMB Number: 1557–0120.
Form Number: None.
Abstract: This submission covers an existing regulation and involves no change to the regulation or to the information collections embodied in the regulation. The OCC requests only that OMB renew its approval of the information collections in the current regulation.
Under 12 U.S.C. 93a, the OCC is empowered to issue rules and regulations to carry out its responsibilities. The requirements in 12 CFR Part 16 enable the OCC to perform its responsibilities relating to offerings of securities by national banks by providing the investing public with facts about the condition of the bank, the reasons for raising new capital, and the terms of the offering. Part 16 requires national banks to conform generally to Securities and Exchange Commission rules.
The collections of information in Part 16 are found in:
12 CFR 16.3, 16.4, 16.5, 16.6, 16.7, 16.8, 16.15, 16.17, 16.18, 16.19, 16.20, and 16.30.
The following is a brief discussion of the elements of the information collection in each section of regulations:

Sections 16.3 and 16.15 require a national bank to file its registration statement with the OCC;

Section 16.4 states that the OCC may require a national bank to submit to the OCC certain communications not deemed an offer;

Section 16.5 provides an exemption for items that satisfy the requirements of SEC Rule 144 which, in turn, requires certain filings;

Section 16.6 requires a national bank to file documents with OCC and to make certain disclosures to purchasers in sales of nonconvertible debt;

Section 16.7 requires a national bank to file a notice with the OCC;

Section 16.8 requires a national bank to file offering documents with the OCC;

Section 16.15 requires a national bank to file a registration statement and sets forth content requirements for the registration statement;

Section 16.17 requires a national bank to file four copies of each document filed under Part 16, and requires filers of amendments or revisions to underline or otherwise indicate clearly any changed information;

Section 16.18 requires a national bank to file an amended prospectus when the information in the current prospectus becomes stale, or when a change in circumstances makes the current prospectus incorrect;

Section 16.19 requires a national bank to submit a request to OCC if it wishes to withdraw a registration statement, amendment, or exhibit;

Section 16.20 requires a national bank to file current and periodic reports as required by sections 12 and 13 of the Exchange Act (15 U.S.C. 78*l* and m) and SEC Regulation 15d (17 CFR 240.15d–1 through 240.15Aa–1); and

Section 16.30 requires a national bank to include certain elements and follow certain procedures in any request to OCC for a no-objection letter.

These information collection requirements ensure bank compliance with applicable Federal law, further bank safety and soundness, provide protections for banks and the public, and further public policy interests.

Type of Review: Extension, without change, of a currently approved collection.

Affected Public: Businesses or other for-profit.

Number of Respondents: 101.

Total Annual Responses: 101.

Frequency of Response: On occasion.

Estimated Total Annual Burden: 2,333 Hours.

OCC Contact: Jessie Gates or Camille Dixon, (202) 874–5090, Legislative and Regulatory Activities Division, OMB No. 1557–0120, Office of the Comptroller of the Currency, 250 E Street SW, Washington, DC 20219.

OMB Reviewer: Alexander Hunt, (202) 395–7340, Paperwork Reduction Project 1557–0120, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Comments

Your comment will become a matter of public record. You are invited to comment on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility;

(b) Whether the OCC's burden estimate is accurate;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Whether the OCC's estimates of the capital or startup costs and costs of operation, maintenance, and purchase of services to provide information are accurate.

Additionally, the OCC requests comments on the impact of this information collection on community banks. The OCC recognizes that community banks operate with more limited resources than larger institutions and may present a different risk profile. Thus, the OCC specifically requests comments on the impact of this information collection on community banks' current resources and available personnel with the requisite expertise, and whether the goals of Part 16 could be achieved, for community banks, through an alternative approach.

Dated: April 1, 1999.

Mark Tenhundfeld,

Assistant Director, Legislative & Regulatory Activities Division.

[FR Doc. 99–8783 Filed 4–7–99; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Information Collection; Submission for OMB Review; Comment Request

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury.

ACTION: Submission for OMB review; comment request.

SUMMARY: The OCC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a continuing information collection, as required by the Paperwork Reduction Act of 1995. The OCC may not conduct or sponsor, and a respondent is not required to respond to, an information collection that has been extended, revised, or implemented unless it displays a currently valid Office of Management and Budget (OMB) control number. Currently, the OCC is soliciting comments concerning extension of an information collection titled International Regulation (12 CFR 28). The OCC also gives notice that it has sent the information collection to OMB for review.

DATES: Comments are due by: May 10, 1999.

ADDRESSES: Your comments regarding this information collection are welcome. You should submit your comments to the OMB Reviewer and to the OCC's Communications Division, Attention: 1557–0102, Third Floor, Office of the Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219. Also, you can send your comments by facsimile transmission to (202) 874–5274, or by electronic mail to regs.comments@occ.treas.gov.

You can inspect and photocopy the comments at the OCC's Public Reference Room, between 9:00 a.m. and 5:00 p.m. on business days. You can make an appointment to inspect the comments by calling (202) 874–5043.

FOR FURTHER INFORMATION CONTACT: You can request additional information, a copy of the collection, or a copy of OCC's submission to OMB by contacting Jessie Gates or Camille Dixon, (202) 874–5090, Legislative and Regulatory Activities Division (1557–0102), Office of the Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219.

SUPPLEMENTARY INFORMATION: On June 15, 1998, the OCC published a request for comments in the **Federal Register** (63 FR 32695) concerning its request for extension without change of the information collection. No comments were received.

Title: International Regulation (12 CFR 28)

OMB Number: 1557–0102.

Form Number: None.

Abstract: This information collection covers an existing regulation and involves no change to the regulation or the information collection. The OCC requests only that OMB renew its approval of the information collection in the current regulation.

The International Banking Act of 1978, 12 U.S.C. 3101 *et seq.*, as

amended, requires collection of specific information relating to licensing applications and supervision of Federal branches and agencies of foreign banks in the United States and mandates recordkeeping requirements for capital equivalency deposits, voluntary liquidations, asset pledges, and asset maintenance requirements.

The International Lending Supervision Act of 1983 (Pub. L. 98–181, Title IX, 97 Stat. 1153, 12 U.S.C. 3906) mandates the reporting and disclosure requirements for international assets as well as the recordkeeping requirements for accounting for fees on international loans.

The regulation, 12 CFR 28, implements requirements imposed on national banks and Federal branches and agencies concerning international activities. This submission covers all of the information collections in 12 CFR 28. The following sections of regulations in 12 CFR 28 produce reportable burden:

Section 28.3 requires a national bank to notify the OCC when it takes certain actions regarding its foreign operations;

Section 28.14 requires a designation of one branch or agency to maintain consolidated information;

Section 28.15 requires a national bank to maintain records and to seek OCC approval before permitting withdrawal of certain foreign bank capital equivalency deposits;

Section 28.16 contains recordkeeping requirements and allows a foreign bank to apply to the OCC for an exemption to permit an uninsured Federal branch to accept or maintain certain deposit accounts;

Section 28.18 requires a Federal branch or agency to maintain records and to provide the OCC with a copy of certain reports filed with other Federal regulatory agencies;

Section 28.20 requires a foreign bank to obtain OCC approval to maintain certain assets;

Section 28.52 contains recordkeeping requirements and requires a banking institution to establish and maintain an Allocated Transfer Risk Reserve in certain circumstances; and

Section 28.53 requires a banking institution to maintain records regarding its accounting for fees on international loans.

These information collection requirements ensure bank compliance with applicable Federal law, further bank safety and soundness, provide protections for banks, and further public policy interests.

Type of Review: Renewal of OMB approval without change.

Affected Public: Businesses or other for-profit.

Number of Respondents: 170.

Total Annual Responses: 170.

Frequency of Response: On occasion.

Total Annual Burden Hours: 5,345.

OCC Contact: Jessie Gates or Camille Dixon, (202)874–5090, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 250 E Street SW, Washington, DC 20219.

OMB Reviewer: Alexander T. Hunt, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503.

Comments

Comments are invited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility;

(b) The accuracy of the agency's estimate of the burden of the collection of information;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: April 1, 1999.

Mark Tenhundfeld,

Assistant Director, Legislative & Regulatory Activities Division.

[FR Doc. 99–8784 Filed 4–7–99; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Information Collection; Submission for OMB Review; Comment Request

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury.

ACTION: Submission for OMB review; comment request.

SUMMARY: The OCC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a continuing information collection, as required by the Paperwork Reduction Act of 1995. The OCC may not conduct or sponsor, and a respondent is not required to respond to, an information collection that has been extended, revised, or implemented unless it displays a currently valid Office of Management and Budget (OMB) control number. Currently, the OCC is soliciting comments concerning extension of an information collection titled Fair Housing Home Loan Data System Regulation (12 CFR 27). The OCC also gives notice that it has sent the information collection to OMB for review.

DATES: Comments are due by: May 10, 1999.

ADDRESSES: Your comments regarding this information collection are welcome. You should send your written comments to the OMB Reviewer and to the OCC's Communications Division, Attention: 1557–0159, Third Floor, Office of the Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219. Also, you can send your comments by facsimile transmission to (202) 874–5274, or by electronic mail to regs.comments@occ.treas.gov.

You can inspect and photocopy the comments at the OCC's Public Reference Room, between 9:00 a.m. and 5:00 p.m. on business days. You can make an appointment to inspect the comments by calling (202) 874–5043.

FOR FURTHER INFORMATION CONTACT: You can request additional information, a copy of the collection, or a copy of OCC's submission to OMB by contacting Jessie Gates or Camille Dixon, (202) 874–5090, Legislative and Regulatory Activities Division (1557–0159), Office of the Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219.

SUPPLEMENTARY INFORMATION:

Title: Fair Housing Home Loan Data System Regulation (12 CFR 27).

OMB Number: 1557–0159.

Form Number: None.

Abstract: This submission covers an existing regulation and involves no change to the regulation or to the information collections embodied in the regulation. The OCC requests only that OMB renew its approval of the information collections in the current regulation. This regulation requires national banks to maintain records and to make occasional filings to the OCC, upon the OCC's request, regarding home loans and certain other real estate loans.

The Fair Housing Act (42 U.S.C. 3605) prohibits discrimination in the financing of housing on the basis of race, color, religion, sex, or national origin. The Equal Credit Opportunity Act (15 U.S.C. 1691 *et seq.*) prohibits discrimination in any aspect of a credit transaction on the basis of race, color,

religion, national origin, sex, marital status, age, receipt of income from public assistance, or exercise of any right under the Consumer Credit Protection Act. The OCC is responsible for ensuring that national banks comply with those laws. This information collection is needed to promote national bank compliance and for OCC to fulfill its statutory responsibilities.

This submission covers all of the information collections contained in 12 CFR Part 27. The following sections of regulations in Part 27 produce reportable burden:

Section 27.3 requires a national bank that is required to collect data on home loans under 12 CFR Part 203 to present the data on Federal Reserve Form FR HMDA–LAR, or in an automated format in accordance with the HMDA–LAR instructions, and to include one additional item (the reason for denial) on the HMDA–LAR. Section 27.3 also lists exceptions to HMDA–LAR recordkeeping requirements. Section 27.3 further lists the information that banks should obtain from an applicant as part of a home loan application, and states information that a bank must disclose to an applicant;

Section 27.5 requires a national bank to maintain the information for 25 months after the bank notifies the applicant of action taken on an application, or after withdrawal of an application; and

Section 27.7 requires that a bank submit the information to the OCC upon its request, prior to a scheduled examination.

These information collection requirements ensure bank compliance with applicable Federal law, further bank safety and soundness, provide protections for banks and the public, and further public policy interests.

Type of Review: Extension, without change, of a currently approved collection.

Affected Public: Businesses or other for-profit.

Number of Respondents: 2,400.

Total Annual Responses: 2,400.

Frequency of Response: On occasion.

Total Annual Burden: 4,369 Hours.

OCC Contact: Jessie Gates or Camille Dixon, (202)874–5090, Legislative and Regulatory Activities Division, OMB No. 1557–0159, Office of the Comptroller of the Currency, 250 E Street SW, Washington, DC 20219.

OMB Reviewer: Alexander Hunt, (202)395–7340, Paperwork Reduction Project 1557–0159, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Comments

Comments are invited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility;

(b) The accuracy of the agency's estimate of the burden of the collection of information;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

Additionally, the OCC requests comment on the impact of this information collection on community banks. The OCC recognizes that community banks operate with more limited resources than larger institutions and may present a different risk profile. Thus, the OCC specifically requests comments on the impact of this information collection on community banks' current resources and available personnel with the requisite expertise, and whether the goals of Part 27 could be achieved, for community banks, through an alternative approach.

Dated: April 1, 1999.

Mark Tenhundfeld,

Assistant Director, Legislative & Regulatory Activities Division.

[FR Doc. 99–8785 Filed 4–7–99; 8:45 am]

BILLING CODE 4810–33–P

Corrections

Federal Register
Vol. 64, No. 67
Thursday, April 8, 1999

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

7 CFR Part 1728

Electric Overhead Distribution Lines; Specifications and Drawings for 24.9/14.4 kV Line Construction

Correction

In rule document 99–7649, appearing on page 14813, in the issue of Monday, March 29, 1999, make the following corrections:

1. On page 14813, in the second column, the document subject heading is corrected to read as set forth above.

2. On the same page, in the third column, under **FOR FURTHER INFORMATION CONTACT:**, in the second line, "James K. Bohlik" should read "James L. Bohlk".

[FR Doc. C9–7649 Filed 4–7–99; 8:45 am]

BILLING CODE 1505–01–D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[AD–FRL–6185–4]

RIN 2060–ZA03

Federal Plan Requirements for Large Municipal Waste Combustors Constructed on or Before September 20, 1994

Correction

In rule document 98–29967 beginning on page 63191 in the issue of Thursday, November 12, 1998, make the following corrections:

1. On page 63192, in the first column, in the first full paragraph, in the 12th line, "Large" should read "large".

2. On the same page, in the second column, in the seventh line, "plane" should read "plan".

3. On the same page, in the third column, in the 13th line from the bottom, "not" should be added after "has".

4. On page 63193, in the third column, under "Regional Office Contacts", in the third line, "Plan" should read "plan".

5. On page 63195, in the second column, in the second line from the bottom, "so" should read "as".

6. On page 63196, in Table 4, under "Good Cumbustion Practices:" in the the fourth bulleted item, "100" should read "110".

7. On page 63198, in the third column, in the second full paragraph, in the third line, "State" should read "States".

8. On the same page, in the same column, in the same paragraph, in the Eighth line, "publsihed" should read "published".

9. On page 63199, in the first column, in the 10th line from the bottom, "ETA" should read "EPA".

10. On the same page, in the second column, in the third line, "permit" should read "permits".

11. On the same page, in the third column, in the 13th line, "farmer.sand@epamail.epa.gov" should read "farmer.sandy@epamail.epa.gov".

§ 62.14102 [Corrected]

12. On page 63202, in the third column, in § 62.14102(a), in the seventh line, "1994," should read "1994".

§ 62.14109 [Corrected]

13. On page 63206, in the third column, in § 62.14109(j), in the seventh line, "§ 62.14208" should read "§ 62.14108".

14. On the same page, in the same column, in § 62.14109(j), in the 14th line, "2000," should read "2000".

Subpart FFF [Corrected]

15. On page 63208, in Table 6 of subpart FFF, in the fourth column under Increment 2, in the first line, "01/19/02" should read "01/19/00".

[FR Doc. C8–29967 Filed 4–7–99; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98-AGL-77]

Modification of Class E Airspace; Grand Rapids, MI

Correction

In rule document 99–7451 beginning on page 14599, in the issue of Friday, March 26, 1999, make the following correction:

§ 71.1 [Corrected]

On page 14600, in the first column, under the heading **AGL MI E5 Grand Rapids, MI [Revised]**, in the ninth line, after the word "radius" add "of Kent County International Airport, and within a 6.0 mile radius".

[FR Doc. C9–7451 Filed 4–7–99; 8:45 am]

BILLING CODE 1505–01–D

UMI

VOL
64

ISS
67

AP
8

1999

UMI

federal register

Thursday
April 8, 1999

Part II

Department of Transportation

Coast Guard

Environmental Protection Agency

33 CFR Part 154

Response Plans for Marine Transportation-Related Facilities Handling Non-Petroleum Oils; Proposed Rule

40 CFR Part 112

Oil Pollution Prevention and Response; Non-Transportation-Related Facilities; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 154

[USCG–1999–5149]

RIN 2115–AF79

Response Plans for Marine Transportation-Related Facilities Handling Non-Petroleum Oils

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to amend its regulations requiring response plans for marine transportation-related facilities that handle, store, or transport animal fats or vegetable oils. Specifically, the proposal downgrades the initial classification of affected facilities, clarifies planning and equipment requirements, and further harmonizes our regulations with the Environmental Protection Agency's response planning regulations. This proposal addresses a statutory mandate and an industry petition.

DATES: Comments must reach the Docket Management Facility on or before July 7, 1999.

ADDRESSES: You may mail your comments to the Docket Management Facility, (USCG–1999–5149), U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington DC 20590–0001, or deliver them to room PL–401 on the Plaza level of the Nassif Building at the same address between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329. The Docket Management Facility maintains the public docket for this rulemaking. Comments, and documents as indicated in this preamble will become part of this docket and will be available for inspection or copying at room PL–401 on the Plaza level of the Nassif Building at the same address between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also access this docket on the Internet at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: For questions on this proposed rule, contact Mr. Mark Meza, Project Manager, Office of Response (G-MOR) Coast Guard, telephone 202–267–0304; email mmeza@comdt.uscg.mil. For questions on viewing, or submitting material to, the docket, contact Dorothy Walker, Chief, Dockets, Department of Transportation, telephone 202–366–9329.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages you to participate in this rulemaking by submitting written data, views, or arguments. You should include your name and address, identify this rulemaking (USCG–1999–5149) and the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and attachments in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing to the Docket Management Facility at the address under **ADDRESSES.** You should enclose a stamped, self-addressed postcard or envelope, if you want acknowledgment that we received your comments.

The Coast Guard will consider all comments received during the comment period. It may change this proposed rule in view of the comments.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the Docket Management Facility at the address under **ADDRESSES.** The request should include the reasons why a hearing would be beneficial. If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

On October 21, 1998, Congress passed the Omnibus Consolidated and Emergency Supplemental Appropriations Act of 1999 (Pub. L. 105–277). Section 343(b) of that act mandates the Coast Guard to amend, by March 31, 1999, 33 CFR part 154 to comply with the Edible Oil Regulatory Reform Act (EORRA) (Pub. L. 104–55).

On March 14, 1997, the National Oil Processors Association (NOPA) petitioned the Coast Guard to change response plan regulations for marine transportation-related (MTR) facilities to more fully differentiate animal fat and vegetable oil facilities from other oil facilities.

This notice of proposed rulemaking (NPRM) addresses the mandate from Congress and the petition from NOPA. This NPRM proposes amendments only to response plan requirements for MTR facilities that handle, store, or transport animal fats and vegetable oils.

Legislative and Regulatory History

On August 18, 1990, Congress passed the Oil Pollution Act of 1990 (OPA 90) (Pub. L. 101–380) in response to several major oil spills. OPA 90 amended section 311(j) of the Federal Water Pollution Control Act (FWPCA) (33 U.S.C. 1321(j)) establishing requirements, and an implementation schedule, for facility response plans. The FWPCA, as amended by OPA 90, directs the President to issue regulations requiring response plans for MTR facilities transferring oil.

The President delegated the authority to issue these regulations to the Commandant, U.S. Coast Guard via the Secretary of the Department of Transportation. On February 5, 1993, the Coast Guard published an interim final rule (IFR) in the **Federal Register** entitled "Response Plans for Marine Transportation-Related Facilities"(58 FR 7330).

On November 20, 1995, Congress passed the Edible Oil Regulatory Reform Act (EORRA). This Act requires Federal agencies to differentiate between fats, oils, and greases of animal, marine, or vegetable origin, and other oils and greases, in issuing regulations. The Act also requires Federal agencies to consider the environmental effects and the physical, chemical, biological, and other properties of the different classes of fats, oils, and greases.

On February 29, 1996, having met the requirements of the EORRA and based on comments received to the IFR, the Coast Guard published its final rule (FR) on response plans for MTR facilities in the **Federal Register** (61 FR 7890). These regulations are codified in 33 CFR part 154, subparts F through I. The final rule added two new subparts to the response plan regulations (subparts H and I). Subpart H contains planning requirements for animal fat and vegetable oil facilities and subpart I contains planning requirements for other non-petroleum oils facilities. The final rule also allows animal fat and vegetable oil facilities to propose needed response equipment and personnel for worst case discharges (WCD), rather than the specific equipment and personnel required for petroleum oil facilities.

On October 19, 1996 Congress passed the Coast Guard Authorization Act of 1996 (Pub. L. 104–324). Section 1130 of that act requires the Secretary of Transportation to submit to Congress an annual report describing how new Coast Guard regulations meet EORRA requirements. The Secretary of Transportation submitted reports on April 11, 1997, and March 3, 1998. The reports, available in the public docket for this proposed rule, describe how the Coast Guard's regulations meet the EORRA requirements.

In a letter dated March 14, 1997, NOPA filed a petition with the Coast Guard requesting amendments to the

MTR facility response plan regulations. The petition requested separate and appropriate regulations for facilities that handle animal fats and vegetable oils. A detailed listing of the petitioners' requests follows this section.

On October 27, 1997, Congress passed the Department of Transportation and Related Agencies Appropriations Act of 1998 (Pub. L. 105–66). Section 341 of that Act stated that the Coast Guard could not use any of the available funds to issue, implement, or enforce a regulation or to establish an interpretation or guideline under the EORRA that did not recognize and provide for differences in—

- Physical, chemical, biological, and other relevant properties; and
- Environmental effects.

On October 21, 1998, Congress passed the Omnibus Consolidated and Emergency Supplemental Appropriations Act of 1999. Section 343(b) of that act states that not later than March 31, 1999, the Coast Guard shall issue regulations amending 33 CFR part 154 to comply with the requirements of the EORRA.

On October 21, 1998, Congress also passed the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act of 1999 (Pub. L. 105–276), which contains a similar requirement for EPA to amend, not later than March 31, 1999, its regulations to comply with EORRA. On January 16, 1998, NOPA filed, with EPA, a petition virtually identical to the one filed with the Coast Guard. In a separate notice of proposed rulemaking (NPRM), EPA proposes modifications to its response plan rules for animal fat and vegetable oil facilities. Each agency's NPRM accounts for the characteristics of facilities in its jurisdiction. To further harmonize requirements, the two agencies have worked together to develop their respective NPRMs. The Coast Guard and EPA will continue to work together to draft their respective final rules.

Petition to the Coast Guard

The petition filed by NOPA requests the following changes to our existing regulations.

(a) *Downgrading the initial classification of affected facilities from significant and substantial harm to substantial harm.* The Coast Guard proposes this change. A detailed justification for downgrading the initial classification of animal fat and vegetable oil facilities follows this section.

(b) *Relaxing the current response time for response resources to be at a spill site from 12 hours to 24 hours.* The petitioners also requested that we relax response time in high volume ports (HVPs) from 6 hours to 12 hours. The Coast Guard does not propose relaxing response times. The request could have the effect of doubling the response time in the event of a spill. This change would significantly reduce the effectiveness of a response. Immediate action is critical when mitigating a spill. A quick response prevents problems with controlling and collecting oil. Control and collection are more difficult when the oil has dispersed or combined with water. Relaxing the times for delivery of dispersants limits their usefulness because dispersants, when needed, must be applied before significant emulsification and distribution of the oil.

(c) *Revising the regulations to explicitly state the alternative of taking no action if mitigation activity is more harmful to the environment.* The Coast Guard does not propose this change. Stating no action in the regulations may lead industry to conclude that no action is an option in any circumstance. The Federal On-Scene Coordinator (FOSC) already has the authority to decide on the appropriate level of response action, ranging from taking no action to taking vigorous and extensive action. Response levels are based on factors such as—

- Spill amount;
- Proximity to threatened areas;
- Type of oil;
- Weather conditions; and
- Currents and tides.

(d) *Relaxing the requirement for equipment exercises from semiannual to annual.* The Coast Guard does not propose this change. Such action would reduce by half the number of exercises for an animal fat or vegetable oil facility. Such action would make these exercises too infrequent. Semiannual equipment exercises ensure facilities maintain their ability to respond to spills.

(e) *Clarifying the provision that facilities may use public fire fighting resources under the terms of cooperative agreements.* The current wording in the regulations permits public resources that are supported by local municipal, county, city, or state organizations, as well as other resources, which may be supported by industry. However, under a separate regulatory project (USCG–1998–3497), the Coast Guard is reviewing the possible conditions under which the industry as a whole needs fire fighting resources, and may propose further guidelines based on that review. Therefore, the Coast Guard will retain the current wording in subpart H because it is sufficiently clear to meet the intent of the petitioner's request. We may revise the regulations in the future based on our ongoing review.

(f) *Allowing a facility, as a condition of participating in Area Exercises, be the lead exercise developer and final decision authority on exercise design.* The Coast Guard does not propose this change. The Coast Guard anticipates that the facility would, of necessity, be a key participant, and often the lead, in planning for an Area Exercise. However, to require their leadership and final approval would unduly limit the authority of the FOSC and constrain the Area Committee in fulfilling its statutory responsibilities.

(g) *Eliminating the requirement for annual plan reviews while retaining the requirement to report changes to plans as they occur.* The Coast Guard does not propose this change. The Coast Guard concluded that thorough and regular review of plans is desirable and necessary. Formal plan reviews ensure plan holders keep critical information such as phone contacts, reporting requirements, and equipment inventories up-to-date.

Discussion of Proposed Rule

The Coast Guard proposes the following three changes to our existing regulations.

(a) *Downgrading the initial classification of affected facilities from significant and substantial harm to substantial harm.* Initially, the Coast Guard would consider all animal fat and vegetable oil facilities as substantial harm facilities and the Captain of the Port (COTP) would have the authority to upgrade each facility to a significant and substantial harm based on the criteria in our proposed 33 CFR 154.1216(b). The Coast Guard's Marine Safety Information System (MSIS) database collects information on various marine activities. By using MSIS to review facility spill history between 1992 and 1998, we found that 28 of 31 spills (90%) of animal fats and vegetable oils were less than 1,000 gallons; 23 of 28 (82%) were less than 100 gallons. While animal fats and vegetable oils are just as damaging to the environment as other oils, when spilled in bulk, we propose to reclassify animal fat and vegetable oil facilities from significant and substantial harm to substantial harm taking into account this history of spills of very small amounts.

(b) *Requiring planning for an average most probable discharge (AMPD).* The spill history used to justify downgrading animal fat and vegetable oil facilities shows a pattern of relatively small spill volumes. These volumes meet the criteria for AMPD volumes defined in 33 CFR 154.1020. Accordingly, we

propose requiring AMPD planning. By proposing AMPD planning, the Coast Guard will further harmonize our regulations with EPA's. The Coast Guard does not think requiring AMPD planning will increase planning burdens for animal fat and vegetable oil facilities. Under 33 CFR 154.545, we already require oil facilities to plan for AMPD volumes. Animal fat or vegetable oil facilities may use the requirements under 33 CFR 154.545 to satisfy our proposed AMPD planning requirements. Our proposed 33 CFR 154.545(e) explicitly allows this option.

(c) *Requiring at least 1,000 feet of boom.* Current regulations require at least 1,000 feet of boom for Group I through Group IV petroleum oils. Groups of oils are explained in the definitions for persistent and non-persistent oils under 33 CFR 154.1020. Current regulations also require a minimum of 200 feet of boom for mobile and fixed substantial harm animal fat or vegetable oil facilities. We consider 200 feet inadequate for fixed animal fat or vegetable oil facilities. The Coast Guard proposes requiring, to be on scene within one hour, the greater of 1,000 feet of boom or twice the length of the longest vessel that regularly conducts operations at a fixed facility. The Coast Guard estimates that fixed animal fat and vegetable oil facilities already have access to at least 1,000 feet of boom through existing worse case discharge (WCD) volume planning. We do not propose any changes to the minimum requirement of 200 feet of boom for mobile facilities.

Changes Proposed by EPA

In its NPRM, EPA proposes tables to calculate planning volumes for animal fat or vegetable oil facilities. EPA's proposed tables are similar to existing tables in both agencies' regulations. Current Coast Guard and EPA regulations allow animal fat and vegetable oil facilities to determine how to calculate planning volumes. The Coast Guard and EPA allowed this self-determination because, when drafting the final rules, neither the Coast Guard nor EPA had the necessary data on animal fats and vegetable oils to create such tables. In addition, the agencies determined that current guidelines and practices provided the regulated industry with flexibility in meeting required planning criteria. Since then, EPA has obtained scientific studies and information on the behavior of animal fats and vegetable oils, and has used these studies to develop the proposed tables. These tables are based on the behavior of animal fats and vegetable oils and on their chemical and physical properties. The tables separate oils based on their specific gravity. Oils with a specific gravity greater than one generally sink below the water surface. As proposed by EPA, the owner or operator of a facility handling, storing, or transporting an oil with a specific gravity greater than one, is responsible for determining appropriate resources to mitigate such an oil spill. Proposed resources should include:

- Equipment to locate oil on the bottom or suspended in the water;
- Containment boom or other equipment to contain any oil floating on the surface; and
- Dredges, pumps or other equipment to recover oil from the bottom and shoreline.

At this time, the Coast Guard does not propose the tables. The Coast Guard seeks public comment on the appropriateness of the tables for the Coast Guard's distinct regulated community and geographic areas.

EPA has documents containing information used to create their proposed tables. EPA has provided copies of these documents to us to include in the Coast Guard docket. EPA has cited these documents in the notice of denial of petition to amend the facility response plan rule [62 FR 54508 (October 20, 1997)] and in their NPRM on Oil Pollution Prevention and Response at Non-Transportation-Related Facilities published elsewhere in today's **Federal Register**.

TABLE 1.—REMOVAL CAPACITY PLANNING

Spill location	Rivers and canals			Nearshore/inland Great Lakes		
Sustainability of on-water oil recovery	3 days			4 days		
Specific gravity (S.G.) of AF/VO oil	Percent natural loss	Percent recovered floating oil	Percent recovered onshore	Percent natural loss	Percent recovered floating	Percent recovered onshore
S.G.<0.8	40	15	45	50	20	30
0.8≤S.G.<1.0	20	15	65	30	20	50

TABLE 2.—EMULSIFICATION FACTORS

Specific gravity (S.G.) of AF/VO oil	Factor
S.G.<0.8	1.0
0.8≤S.G.<1.0	2.0

Planning Volume = WCD × T1 × T2;
Where
WCD = Worst case discharge volume defined in 33 CFR 1029.
T1 = Value from Table 1.
T2 = Value from Table 2.

Regulatory Evaluation

The Office of Management and Budget (OMB) has informally reviewed the proposed rule and has made a preliminary determination that the rule is not a significant regulatory action under section 3(f) of Executive Order 12866. OMB may reassess the significance depending on the comments received. This proposed rule is not significant under the regulatory policies and procedures of the Department of Transportation (44 FR 11040; February 26, 1979). A draft assessment is available in the docket for inspection or copying where indicated under **ADDRESSES**. A summary of the assessment follows:

Summary of Costs

As a result of research conducted by the Coast Guard Marine Safety Offices, the Coast Guard estimates that there are 80 fixed facilities affected by this proposed rule. This proposed rule includes three measures that impact industry. The first measure, downgrading animal fat or vegetable oil facilities from significant and substantial harm to substantial harm would not result in any additional costs to the industry. The second measure, requiring average most probable discharge planning, could result in minor additional costs to the industry by increasing the amount of information a facility has to report. The Coast Guard estimates that owners or operators of facilities will spend 4 hours changing their response plans. The additional cost per response would be $140 ($35 per hour × 4 burden hours). The total estimated annual cost for all 80 facilities would be $11,200 (80 facilities × $140 per response plan). Finally, the Coast Guard does not expect that requiring a

minimum amount of boom for fixed facilities will add any cost to the proposed rule. When planning for a WCD under current regulations, we estimate fixed animal fat and vegetable oil facilities, regardless of their classification, already identify in their response plans the greater of 1,000 feet or twice the length of the longest vessel that regularly conducts operations at the facility of boom, that can be deployed on scene within one hour of an incident. Therefore, the Coast Guard estimates that 100 percent of the regulated, fixed facilities already meet this requirement.

The proposed rule would decrease costs to the government. Those facilities downgraded from significant and substantial harm to substantial harm would not need Coast Guard approval of their response plans. Therefore, the workload of Coast Guard field units would decrease.

Summary of Benefits

The proposed rule would further harmonize Federal agency regulations, formalize discharge planning for smaller and more common spills, and maintain an adequate quantity of boom at the facilities. The downgrade in classification of affected facilities to substantial harm further harmonizes Coast Guard and EPA regulations. The Coast Guard found that 28 of 31 spills (90%) of animal fats and vegetable oils were less than 1,000 gallons; 23 of 28 (82%) were less than 100 gallons. Planning for the average most probable discharge would address these smaller, more frequent spills. Finally, the Coast Guard proposes that fixed facility owners and operators have ready access to 1,000 feet of boom or twice the length of the longest vessel that regularly conducts operations at the facility. This requirement ensures that adequate boom is readily available for most discharges and that existing levels of boom are maintained.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), the Coast Guard considers whether this proposed rule, if adopted, will have a significant economic impact on a substantial number of small entities. "Small entities" include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

An Initial Regulatory Flexibility Analysis discussing the impact of this proposed rule on small entities is available in the docket for inspection or copying where indicated under **ADDRESSES.**

The Coast Guard has identified 80 fixed animal fat and vegetable oil facilities that would be affected by this proposed rule. The proposed additional level of response planning would result in only minor additional informational reporting burdens. Each of the 80 affected facilities would incur 4 additional hours of information reporting burden. This would result in an additional cost of $140 per facility (4 hours × $35 per hour). The Coast Guard chose to require facilities to plan for AMPD spills because the spill history of these facilities shows a pattern of relatively small spill volumes.

Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities. If, however, you think that your business or organization qualifies as a small entity and that this proposed rule will have a significant economic impact on your business or organization, please submit a comment to the Docket Management Facility at the address under **ADDRESSES** explaining why you think it qualifies and in what way and to what degree this proposed rule will economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), the Coast Guard wants to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking process. If your small business or organization is affected by this rule and you have questions concerning its provisions or options for compliance, please contact the Project Development Division (G–MSR–1) at 202–267–0756.

The Small Business and Agriculture Regulatory Enforcement Ombudsman and 10 Regional Fairness Boards were established to receive comments from small businesses about Federal agency enforcement actions. The Ombudsman will annually evaluate the enforcement activities and rate each agency's responsiveness to small business. If you wish to comment on the enforcement actions of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This proposed rule provides for a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). As defined in 5 CFR 1320.3(c) "collection of information" includes reporting, recordkeeping, monitoring, posting, labeling, and other, similar actions. The title and description of the respondents, and an estimate of the total annual burden follow. Included in the estimate is the time for reviewing instructions, searching existing sources of data, gathering and maintaining the data needed, and completing and reviewing the collection.

Title: Response Plans For Marine-Transportation-Related Facilities Handling Non-petroleum Oils.

Summary of Collection: This proposed rule contains collection-of-information requirements in the following section: § 154.1220 and § 154.1225.

Need for Information: This proposed rule would require owners or operators of each facility to modify their facility response plans to plan for an AMPD of animal fats and vegetable oils.

Proposed Use of Information: The proposed use of this information is to ensure that such facilities are prepared to respond in the event of a spill incident. The information would be reviewed by the Coast Guard to assess the effectiveness of the facility response plans.

Description of the Respondents: An owner or operator of a facility that handles, stores or transports animal fats and vegetable oils.

Number of respondents: 80 facilities.

Frequency of Response: Annual.

Burden of response: 4 hours per respondent.

Estimated Total Annual burden: 320 hours.

As required by section 3507(d) of the Paperwork Reduction Act of 1995, the Coast Guard has submitted a copy of this proposed rule to the Office of Management and Budget (OMB) for its review of the collection of information.

The Coast Guard solicits public comment on the proposed collection of information to (1) evaluate whether the information is necessary for the proper performance of the functions of the Coast Guard, including whether the information would have practical utility; (2) evaluate the accuracy of the Coast Guard's estimate of the burden of the collection, including the validity of the methodology and assumptions used; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection on those who are to respond, as by allowing the submittal of responses by electronic means or the use of other forms of information technology.

Persons submitting comments on the collection of information should submit

their comments both to OMB and to the Docket Management Facility where indicated under **ADDRESSES** by the date under **DATES.**

Persons are not required to respond to a collection of information unless it displays a currently valid OMB control number. Before the requirements for this collection of information become effective, the Coast Guard will publish a notice in the **Federal Register** of OMB's decision to approve, modify, or disapprove the collection.

Federalism

The Coast Guard has analyzed this proposed rule under the principles and criteria contained in Executive Order 12612 and has determined that this proposed rule does not have sufficient implications for federalism to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this proposed rule and concluded that under figure 2–1, paragraph (34)(a) and (e), of Commandant Instruction M16475.lC, this proposed rule is categorically excluded from further environmental documentation. This rule will not result in—

(a) Significant cumulative impacts on the human environment;

(b) A substantial controversy or substantial change to existing environmental conditions;

(c) Impacts which are more than minimal on properties protected under 4(f) the DOT Act, as superseded by Public Law 97–449 and section 106 of the National Historic Preservation Act; or

(d) Inconsistencies with any Federal, State, or local laws, or administrative determinations relating to the environment. "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under **ADDRESSES.**

Other Executive Orders on the Regulatory Process

In addition to the statutes and Executive Orders already addressed in this preamble, the Coast Guard considered the following Executive Orders in developing this NPRM and reached the following conclusions:

E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights. This proposed rule will not effect a taking of private property or otherwise have taking implications under this Order.

E.O. 12875, Enhancing the Intergovernmental Partnership. This proposed rule will not impose, on any State, local, or tribal government, a mandate that is not required by statute and that is not funded by the Federal government.

E.O. 12988, Civil Justice Reform. This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of this Order to minimize litigation, eliminate ambiguity, and reduce burden.

E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks. This proposed rule is not an economically significant rule and does not concern an environmental risk to safety disproportionately affecting children.

List of Subjects in 33 CFR Part 154

Fire prevention, Hazardous substances, Oil pollution, Reporting and record keeping requirements.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 154 as follows:

PART 154—FACILITIES TRANSFERRING OIL OR HAZARDOUS MATERIALS IN BULK

1. The authority citation for part 154 continues to read as follows:

Authority: 33 U.S.C. 1231, 1321(j)(1)(C), (j)(5), (j)(6) and (M)(2); sec. 2, E.O. 12777, 56 FR 54757; 49 CFR 1.46.

Subpart F is also issued under 33 U.S.C. 2735.

§ 154.545 [Amended]

2. In § 154.545(e), add the words "and subpart H" after the words "of subpart F".

§ 154.1020 [Amended]

3. In § 154.1020, in the definition for *Facility that could reasonably be expected to cause significant and substantial harm*, remove all words after "under § 154.1015(c)" and add, in their place, the words "and § 154.1216.".

4. In § 154.1020, in the definition for *Facility that could reasonably be expected to cause substantial harm*, remove all words after "under § 154.1015(b)" and add, in their place, the words "and § 154.1216.".

5. Revise § 154.1210 to read as follows:

§ 154.1210 Purpose and applicability.

(a) The requirements of this subpart are intended for use in developing response plans and identifying response resources during the planning process. They are not performance standards.

(b) This subpart establishes oil spill response planning requirements for an owner or operator of a facility that handles, stores, or transports animal fats and vegetable oils including—

(1) A fixed MTR facility capable of transferring oil in bulk, to or from a vessel with a capacity of 250 barrels or more; and

(2) A mobile MTR facility used or intended to be used to transfer oil to or from a vessel with a capacity of 250 barrels or more.

6. Add § 154.1216 to read as follows:

§ 154.1216 Facility classification.

(a) The Coast Guard classifies facilities that handle, store, or transport animal fats or vegetable oils as "substantial harm" facilities because they may cause substantial harm to the environment by discharging oil.

(b) The COTP may change the classification of a facility that handles, stores, or transports animal fats or vegetable oils. The COTP will consider the following factors, and any other relevant factors, before changing the classification of a facility:

(1) The type and quantity of oils handled.

(2) The spill history of the facility.

(3) The age of the facility.

(4) The public and commercial water supply intakes near the facility.

(5) The navigable waters near the facility. *Navigable waters* is defined in 33 CFR 2.05–25.

(6) The fish, wildlife, and sensitive environments.

7. Revise § 154.1220 to read as follows:

§ 154.1220 Response plan submission requirements.

(a) The owner or operator of an MTR facility identified in § 154.1216 as a substantial harm facility, shall prepare and submit to the cognizant COTP a response plan that meets the requirements of this subpart and all sections of subpart F of this part, as appropriate, except §§ 154.1015, 154.1016, 154.1017, 154.1028, 154.1035, 154.1045 and 154.1047.

(b) The owner or operator of an MTR facility classified by the COTP under § 154.1216(b) as a significant and substantial harm facility, shall prepare and submit for review and approval of the cognizant COTP a response plan that meets the requirements of this subpart and all sections of subpart F of this part, as appropriate, except §§ 154.1015, 154.1016, 154.1017, 154.1028, 154.1045 and 154.1047.

(c) In addition to the requirements in paragraph (a) of this section, the response plan for a mobile MTR facility must meet the requirements of § 154.1041 subpart F.

8. In §.154.1225, revise the section heading and paragraphs (a) introductory

text, (a)(1), (b), (c), (d), and (e) to read as follows:

§ 154.1225 Specific response plan development and evaluation criteria for fixed facilities that handle, store, or transport animal fats and vegetable oils.

(a) The owner or operator of a fixed facility that handles, stores, or transports animal fats or vegetable oils must include information in the response plan that identifies—

(1) The procedures and strategies for responding to a worst case discharge and to an average most probable discharge of an animal fat or vegetable oil to the maximum extent practicable; and

* * * * *

(b) The owner or operator of a fixed facility must make sure the equipment listed in the response plan will operate in the geographic area(s) where the facility operates. To determine if the equipment will operate, the owner or operator must—

(1) Use the criteria in table 1 and section 2 of appendix C of this part; and

(2) Consider the limitations in the area contingency plan for the COTP zone where the facility is located, including—

(i) Ice conditions;

(ii) Debris;

(iii) Temperature ranges; and

(iv) Weather-related visibility.

(c) The owner or operator of a facility that handles, stores, or transports animal fats or vegetable oils must name the personnel and list the equipment, including those specified in § 154.1240, that are available by contract or by a method described in § 154.1228(a).

(d) The owner or operator of a facility that handles, stores, or transports animal fats or vegetable oils must ensure that the response resources in paragraph (c) of this section are able to effectively respond to an incident within the amount of time indicated in the following table, unless otherwise specified in § 154.1240:

	Tier 1 (hrs.)	Tier 2	Tier 3
Higher volume port area	6	N/A	N/A
Great Lakes	12	N/A	N/A
All other river and canal, inland, nearshore, and offshore areas	12	N/A	N/A

(e) The owner or operator of a facility that handles, stores, or transports animal fats or vegetable oils must—

(1) List in the plan the personnel and equipment that the owner or operator will use to fight fires.

(2) If there is not enough equipment or personnel located at the facility, arrange by contract or a method described in § 154.1228(a) to have the necessary personnel and equipment available to fight fires.

(3) Identify an individual located at the facility who will work with the fire department on fires, involving an animal fat or vegetable oil. The individual—

(i) Verifies that there are enough trained personnel and operating equipment within a reasonable distance to the incident to fight fires.

(ii) Can be the qualified individual defined in § 154.1020 or an appropriate individual located at the facility.

* * * * *

9. Add § 154.1240 to subpart H to read as follows:

§ 154.1240 Specific requirements for animal fats and vegetable oils facilities that could reasonably be expected to cause substantial harm to the environment.

(a) The owner or operator of a facility, classified under § 154.1216 as a facility that could reasonably expect to cause substantial harm to the environment, must submit a response plan that meets the requirements of § 154.1035, except as modified by this section.

(b) The plan does not need to list the facility or corporate organizational structure that the owner or operator will use to manage the response, as required by § 154.1035(b)(3)(iii).

(c) The owner or operator must ensure and identify, by contract or a method described in § 154.1228, that the response resources required under § 154.1035(b)(3)(iv) are available.

(d) For a fixed facility, the owner or operator must also identify—

(1) By contract, at least 1,000 feet of containment boom or two times the length of the longest vessel that regularly conducts operations at the facility, whichever is greater, and the means of deploying and anchoring the boom within 1 hour of an incident. Based on site-specific or facility-specific information, the COTP may require the facility owner or operator to make available additional quantities of containment boom within 1 hour of an incident;

(2) Adequate sorbent material located at the facility;

(3) Oil recovery devices and recovered oil storage capacity capable of being at the incident's site within 2 hours of an incident; and

(4) Other appropriate equipment necessary to respond to an incident involving the type of oil handled.

(e) For a mobile facility, the owner or operator must also—

(1) Meet the requirements of § 154.1041;

(2) Have at least 200 feet of containment boom and the means of deploying and anchoring the boom within 1 hour of an incident. Based on site-specific or facility-specific information, the COTP may require the facility owner or operator to make available additional quantities of containment boom within 1 hour of an incident;

(3) Have adequate sorbent material capable of being at the site of an incident within 1 hour of its discovery;

(4) Oil recovery devices and recovered oil storage capacity capable of being at incident's site within 2 hours of an incident; and

(5) Other equipment necessary to respond to an incident involving the type of oil handled.

Dated: March 24, 1999.

J.C. Card,

Vice Admiral, U.S. Coast Guard, Acting Commandant.

[FR Doc. 99–8274 Filed 4–2–99; 12:33 pm]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 112

[FRL–6319–1]

RIN 2050–AE64

Oil Pollution Prevention and Response; Non-Transportation-Related Facilities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule and advance notice of proposed rulemaking.

SUMMARY: EPA proposes to amend the Facility Response Plan (FRP) requirements in the Oil Pollution Prevention and Response regulation,

found at 40 CFR part 112 and promulgated under the Clean Water Act, for non-transportation-related facilities. The main purpose of this proposed rule is to provide a more specific methodology for planning response resources that can be used by owners or operators of facilities that handle, store, or transport animal fats and vegetable oils. EPA is issuing this proposed rule in response to Public Law 105–276, October 18, 1998, which requires EPA to issue regulations amending 40 CFR part 112 to comply with the Edible Oil Regulatory Reform Act. In addition, EPA is providing an advance notice for similar revisions that will be proposed for the Spill Prevention, Control, and Countermeasure Plan requirements, also found at 40 CFR part 112.

DATES: Send your comments on or before May 10, 1999.

ADDRESSES:

Comments: Address your comments on the proposed FRP rule to the Superfund Docket, Docket Number SPCC–9P, mail code 5203G, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Address your comments on the advance notice of proposed rulemaking for the Spill Prevention, Control, and Countermeasure (SPCC) rule to the Superfund Docket, Docket Number SPCC–10P, mail code 5203G, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Send three copies of your comments. You also may submit electronic comments in ASCII format to superfund.docket@epamail.epa.gov.

Docket: You may review materials concerning this rulemaking in the Superfund Docket, Suite 105, 1235 Jefferson Davis Highway, Crystal Gateway I, Arlington, VA 22202. You may inspect the docket (Docket Number SPCC–9P and SPCC–10P) between 9:00 a.m. and 4:00 p.m., Monday through Friday, excluding Federal holidays; and you may make an appointment to review the docket by calling 703–603–9232.

You may copy a maximum of 266 pages from any regulatory docket at no cost. If the number of pages copied exceeds 266, however, you will be charged an administrative fee of $25 and a charge of $0.15 per page for each page after 266. The docket will mail materials to you if you are outside of the Washington, DC metropolitan area.

FOR FURTHER INFORMATION CONTACT: Barbara Davis, Oil Program Center, U.S. Environmental Protection Agency, at 703–603–8823 (davis.barbara@epamail.epa.gov) concerning the FRP proposed rule; or Hugo Fleischman, Oil Program Center, U.S. Environmental Protection Agency, at 703–603–8769 (fleischman.hugo@epamail.epa.gov) concerning the advance notice of proposed rulemaking for the SPCC rule; or the RCRA/Superfund Hotline at 800–424–9346 (in the Washington, DC metropolitan area, 703–412–9810). The Telecommunications Device for the Deaf (TDD) Hotline number is 800–553–7672 (in the Washington, DC metropolitan area, 703–412–3323).

SUPPLEMENTARY INFORMATION: We organized the contents of this Preamble in the following outline:

I. Introduction
- A. Regulated Entities
- B. Statutory Authority
  1. The Oil Pollution Act of 1990 and the Clean Water Act
  2. Edible Oil Regulatory Reform Act
  3. Appropriations Act
- C. Background of this Rulemaking
  1. The Agency's Jurisdiction
  2. Coordination with the United States Coast Guard
  3. 1994 Final Facility Response Plan Rule
- D. FRP-Related Petitions
  1. Petition for Reconsideration
  2. Differentiating Animal Fats and Vegetable Oils from Other Oils
  3. Other Petitions Submitted to EPA and the USCG

II. Request for Comment and Discussion of Proposed Revisions
- A. Request for Comment
- B. Proposed Revisions
  1. Section 112.2 Definitions
  2. Section 112.20(a)(4) Preparation and Submission of Facility Response Plans for Animal Fat and Vegetable Oil Facilities
  3. Section 112.20(f) Facility Classification
  4. Section 112.20(h)(5) Response Planning Levels
  5. Other Changes
  6. Appendix E, Section 1.2 Definitions
  7. Appendix E, Section 3.0 Determining Response Resources Required for Small Discharges—Petroleum Oils and Non-petroleum Oils Other than Animal Fats and Vegetable Oils
  8. Appendix E, Section 4.0 Determining Response Resources Required for Medium Discharges—Petroleum Oils and Non-petroleum Oils Other than Animal Fats and Vegetable Oils
  9. Appendix E, Section 6.0 Determining the Appropriate Amount of Response Equipment
  10. Appendix E, Section 7.0 Calculating Planning Volumes for a Worst Case Discharge—Petroleum Oils and Non-petroleum Oils Other than Animal Fats and Vegetable Oils
  11. Appendix E, Section 8.0 Determining Response Resources Required for Small Discharges—Animal Fats and Vegetable Oils
  12. Appendix E, Section 9.0 Determining Response Resources Required for Medium Discharges—Animal Fats and Vegetable Oils
  13. Appendix E, Section 10.0 Calculating Planning Volumes for a Worst Case Discharge—Animal Fats and Vegetable Oils
- C. Advance Notice of Proposed Rulemaking

III. Bibliography

IV. Regulatory Analyses
- A. Executive Order 12866: OMB Review
- B. Executive Order 12875: Enhancing the Intergovernmental Partnership
- C. Executive Order 13084: Consultation and Coordination with Indian Tribal Governments
- D. Executive Order 13045: Children's Health
- E. Regulatory Flexibility Act
- F. Paperwork Reduction Act
- G. Unfunded Mandates
- H. National Technology Transfer and Advancement Act

V. Appendices to the Preamble

I. Introduction

A. Regulated Entities

Entities Potentially Regulated by this Proposal Include:

Category	NAICS codes
Starch and Vegetable Fats and Oils Manufacturing	NAICS 31122.
Warehousing and Storage	NAICS 493.
Petroleum and Coal Products Manufacturing	NAICS 324.
Petroleum Bulk Stations and Terminals	NAICS 42271.
Crude Petroleum and Natural Gas Extraction	NAICS 211111.
Transportation, Pipelines, and Marinas	NAICS 482–486/488112–48819/4883/48849/492/71393.
Electric Power Generation, Transmission, and Distribution	NAICS 2211.
Other Manufacturing	NAICS 31–33.
Gasoline Stations/Automotive Rental and Leasing	NAICS 4471/5321.
Heating Oil Dealers	NAICS 454311.
Coal Mining, Non-Metallic Mineral Mining and Quarrying	NAICS 2121/2123/213114/213116.
Heavy Construction	NAICS 234.

Category	NAICS codes
Elementary and Secondary Schools, Colleges	NAICS 6111–6113.
Hospitals/Nursing and Residential Care Facilities	NAICS 622–623.
Crop and Animal Production	NAICS 111–112.

This table is not exhaustive, but rather it provides a guide for you. Other types of entities not listed in the table could also be subject to the regulation. To determine whether this action affects your facility, you should carefully examine the criteria in § 112.1 and § 112.20 of title 40 of the Code of Federal Regulations. If you have questions regarding the applicability of this action to a particular facility, consult the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

B. Statutory Authority

1. The Oil Pollution Act of 1990 and the Clean Water Act

Congress enacted the Oil Pollution Act (OPA) (Public Law 101–380) to expand oil spill prevention and preparedness activities, improve response capabilities, ensure that shippers and oil companies pay the costs of spills that do occur, provide an additional economic incentive to prevent spills through increased penalties and enhanced enforcement, establish an expanded research and development program, and establish a new Oil Spill Liability Trust Fund, administered by the U.S. Coast Guard (USCG). Section 4202(a) of OPA amends the Clean Water Act (CWA) section 311(j) to require regulations for owners or operators of facilities to prepare and submit "a plan for responding, to the maximum extent practicable, to a worst case discharge, and to a substantial threat of such a discharge, of oil or a hazardous substance" (i.e., a facility response plan or FRP). This requirement applies to any offshore facility and to any onshore facility that, "because of its location, could reasonably be expected to cause substantial harm to the environment by discharging into or on the navigable waters, adjoining shorelines, or the exclusive economic zone" (i.e., a "substantial harm" facility).

Section 311(j)(1)(C) of the CWA authorizes the President to issue regulations establishing procedures, methods, equipment, and other requirements to prevent discharges of oil from vessels and facilities and to contain such discharges. By Executive Order 12777 (56 FR 54757, October 22, 1991), the President has delegated to EPA the authority to regulate non-transportation-related onshore facilities under sections 311(j)(1)(C) and 311(j)(5) of the CWA. The President has delegated similar authority over transportation-related onshore facilities, deepwater ports, and vessels to the U.S. Department of Transportation (DOT). Within DOT, the USCG is responsible for developing requirements for vessels and marine transportation-related facilities.

2. Edible Oil Regulatory Reform Act

Congress enacted the Edible Oil Regulatory Reform Act (EORRA) (33 U.S.C. 2720) on November 20, 1995. Under this law, EPA must, in the issuance or enforcement of any regulation or the establishment of any interpretation or guideline relating to the transportation, storage, discharge, release, emission, or disposal of a fat, oil, or grease, differentiate among and establish separate classes for animal fats and oils and greases, fish and marine mammal oils, and oils of vegetable origin (as opposed to petroleum and other oils and greases).

3. Appropriations Act

Under the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1999 (Public Law 105–276), which was signed into law on October 21, 1998, Congress directed EPA to issue regulations amending 40 CFR part 112 not later than March 31, 1999, to comply with the requirements of the Edible Oil Regulatory Reform Act (Public Law 104–55).

C. Background of this Rulemaking

1. The Agency's Jurisdiction

The Memorandum of Understanding (MOU) between DOT and EPA, dated November 24, 1971, established the definitions of non-transportation-related facilities and transportation-related facilities. The definitions in the 1971 MOU are in Appendix A to 40 CFR part 112.

2. Coordination with the United States Coast Guard

EPA and the USCG are proposing to modify their existing FRP rules for non-transportation-related facilities and marine transportation-related facilities that handle, store, and transport animal fats and vegetable oils. The two agencies have worked together closely to ensure uniformity in the proposed regulations whenever possible. Each agency is proposing requirements appropriate to the universe of facilities that it regulates. The two proposed rules reflect the similarities and differences in the nature and activities of facilities regulated by the two agencies. In EPA's proposed rule, the discussion of the rationale for revisions addresses the similarities and differences between EPA-regulated and USCG-regulated facilities.

3. 1994 Final Facility Response Plan Rule

On February 17, 1993, EPA ("we") published a proposed rule to revise the Oil Pollution Prevention Regulation, which was originally promulgated under the Clean Water Act (58 FR 8824, February 17, 1993). We received a total of 1282 comments on the proposed rule. We considered these comments in developing the final rule. On July 1, 1994, we published the final FRP rule amending 40 CFR part 112 to add new planning requirements for worst case discharges to implement section 311(j)(5) of the CWA, as amended by OPA (59 FR 34070, July 1, 1994). Under the authority of section 311(j)(1)(C) of the CWA, we also required planning for small and medium discharges of oil, as appropriate.

a. The Clean Water Act applies to non-petroleum oils. In the Preamble to the final FRP rule, we noted that for the purpose of CWA section 311(j) planning, the CWA includes non-petroleum oils. We pointed out that the definition of "oil" in the CWA includes oil of any kind (40 CFR part 112.2). The oils regulated by 40 CFR part 112 include animal fats and vegetable oils.

b. Different rule requirements for non-petroleum oils. The FRP rule requires certain facility owners and operators to prepare plans for responding to a worst case discharge of oil and to a substantial threat of such a discharge. It also includes requirements to plan for a small and medium discharge of oil.

In addressing comments on the proposed FRP rule, we agreed that certain response equipment and strategies used for petroleum oil spills may be inappropriate for non-petroleum oil. For non-transportation-related facilities under our jurisdiction, we adapted the USCG approach to

determine response resources for worst case discharges of non-petroleum oils. Owners or operators of these facilities must: (1) Show procedures and strategies for responding to the maximum extent practicable to a worst case discharge; (2) show sources of equipment and supplies necessary to locate, recover, and mitigate discharges; (3) demonstrate that the equipment identified will work in the conditions expected in the relevant geographic areas, and that the equipment and other resources will be able to respond within the required times (according to Table 1 of Appendix E to part 112); and (4) ensure the availability of required resources by contract or other approved means. Unlike petroleum oil facilities, owners or operators of non-petroleum facilities are not limited to using emulsification or evaporation factors in Appendix E (the Equipment Appendix) of the final rule to calculate response resources for their facilities. In the final FRP rule, we added Section 7.7 to Appendix E to reflect these changes. We stated that when there were results from research on such factors as emulsification or evaporation of non-petroleum oil, we might make additional changes (59 FR 34088, July 1, 1994). Based on our examination of recent research, we are today proposing these factors for animal fats and vegetable oils.

D. FRP-Related Petitions

1. Petition for Reconsideration

By a letter dated August 12, 1994, we received a "Petition for Reconsideration and Stay of Effective Date" of the OPA-mandated final FRP rule as the rule applies to facilities that handle, store, or transport animal fats or vegetable oils. The petition was submitted on behalf of seven agricultural organizations ("the Petitioners"): the American Soybean Association, the Corn Refiners Association, the National Corn Growers Association, the Institute of Shortening & Edible Oils, the National Cotton Council, the National Cottonseed Products Association, and the National Oilseed Processors Association.

a. Petitioners' request. To support their claims, the Petitioners submitted an industry-sponsored report titled "Environmental Effects of Releases of Animal Fats and Vegetable Oils to Waterways" (ENVIRON Corporation, 1993) and an associated study titled "Diesel Fuel, Beef Tallow, RBD Soybean Oil and Crude Soybean Oil: Acute Effects on the Fathead Minnow, *Pimephales Promelas*" (Aqua Survey, Inc., 1993). We received copies of both of these studies with a comment filed more than nine months after the close of the comment period for the FRP rulemaking. Based, in part, on these studies, the Petitioners asked us to create a regulatory regime for response planning for "non-toxic," non-petroleum oils separate from the framework established for petroleum oils and "toxic" non-petroleum oils. They suggested specific language revisions for the July 1, 1994, FRP rule. For facilities that handle, store, or transport animal fats and vegetable oils, their suggested revisions would: modify the definition of animal fats and vegetable oil (set out in Appendix E, Section 1.2 of the FRP rule); allow mechanical dispersal and "no action" options to be considered in lieu of the oil containment and recovery devices otherwise specified for response to a worst case discharge; require the use of containment booms only for the protection of fish and wildlife and sensitive environments; and increase the required on-scene arrival time for response resources at a spill from 12 hours (including travel time) to 24 hours plus travel time for medium discharges and worst case Tier 1 response resources.

b. Federal agency findings. The Federal natural resource trustee agencies who reviewed the ENVIRON study disagreed with many of the study's conclusions. The U.S. Fish and Wildlife Service (FWS) stated that the ENVIRON Report did not provide an accurate assessment of the dangers that non-petroleum oils pose to fish and wildlife and environmentally sensitive areas. The FWS further stated that key facts were misrepresented, incomplete, or omitted in the ENVIRON Report (U.S. Department of the Interior, Fish & Wildlife Service, 1994). The FWS stated that petroleum oils and vegetable oils and animal fats cause chronic effects from the fouling of coats and plumage in wildlife, which often leads to death. The National Oceanic and Atmospheric Administration (NOAA) also reviewed the ENVIRON study. NOAA evaluated the physical and chemical properties, toxicity, and environmental effects of spilled non-petroleum oils, including coconut, corn, cottonseed, fish, and palm oil, and indicated that some edible oils, when spilled, may have adverse environmental effects (U.S. Department of Commerce, National Oceanic and Atmospheric Administration, 1993). The views of the FWS and NOAA on the adverse effects of animal fats and vegetable oils are discussed in detail in the Preamble to the USCG final rule setting forth response plan requirements for marine transportation-related facilities (61 FR 7890, February 29, 1996); in our Notice and Request for Data (59 FR 53742, October 26, 1994); and in our Denial of Petition Requesting Amendment of the Facility Response Plan (62 FR 54508, October 20, 1997). We also discussed comments from a bird rescue organization describing the harmful effects of spilled animal fats and vegetable oils on birds (Frink, 1994).

In view of the differing scientific conclusions reached by the Petitioners, the FWS, and other groups and agencies, we asked for broader public comment on issues raised by the Petitioners in our October 26, 1994 Notice and Request for Data. We asked whether we should have different specific response approaches for releases of animal fats and vegetable oils (rather than increased flexibility), and for additional data and comments on the effects on the environment of releases of these oils. We also asked commenters to provide specific data comparing the properties and effects of petroleum and non-petroleum oils. We received fourteen comments and considered them in our evaluation of the petition. We did not receive any new data on these issues.

c. Denial of petition. On October 20, 1997, EPA denied the petition to amend the FRP rule. We found that the petition did not substantiate claims that animal fats and vegetable oils differ from petroleum oils in properties and effects and did not support a further differentiation between these groups of oils under the FRP rule. Instead, we found that a worst case discharge or substantial threat of discharge of animal fats and/or vegetable oils to navigable waters, adjoining shorelines, or the exclusive economic zone could reasonably be expected to cause substantial harm to the environment, including wildlife that may be killed by the discharge. We pointed out that the FRP rule already provides for different response planning requirements for petroleum and non-petroleum oils, including animal fats and vegetable oils.

We also disagreed with Petitioners' claim that animal fats and vegetable oils are non-toxic when spilled into the environment and should be placed in a separate category from other "toxic" non-petroleum oils. Information and data we reviewed from other sources indicate that some animal fats and vegetable oils, their components, and degradation products are toxic. Furthermore, we emphasized that toxicity is only one way that oil spills cause environmental damage. Most immediate environmental effects are physical effects, such as coating animals

and plants with oil, suffocating aquatic organisms from oxygen depletion, and destroying food supply and habitats. We noted that toxicity is not one of the criteria in determining which on-shore facilities are high-risk and must prepare response plans. Rather, the criteria for determining high-risk facilities are certain facility and locational characteristics, because we expect that discharges of oil from facilities with these characteristics may cause substantial harm to the environment.

2. Differentiating Animal Fats and Vegetable Oils From Other Oils

a. Properties of animal fats and vegetable oils. Petroleum oils, vegetable oils and animal fats, and other non-petroleum oils share common physical properties and produce similar environmental effects. When spilled in the aquatic environment, these oils and their constituents can float on water; dissolve or form emulsions in the water column; settle on the bottom as a sludge; or contaminate the adjacent shoreline, depending on their physical and chemical properties. Similar methods of removal and cleanup are used to reduce the harm created by spills of petroleum oils, animal fats and vegetable oils, and other non-petroleum oils. We have compared the properties and effects of animal fats and vegetable oils with petroleum oils in detail (See 62 FR 54508, October 20, 1997, and supporting technical documents). While the physical and chemical properties of vegetable oils and animal fats are highly variable, most fall within a range that is similar to the physical parameters for petroleum oils. Common properties—such as solubility, specific gravity, and viscosity—are responsible for the similar environmental effects of petroleum oils, vegetable oils, and animal fats.

In one respect, however, many petroleum oils differ from most vegetable oils and animal fats. Unlike most vegetable oils and animal fats, many petroleum oils have a high vapor pressure. The high vapor pressure of petroleum oils can lead to significant evaporation from spills. It may also produce exposure of nearby populations through the air pathway.

We describe some important properties of oil below.

Solubility. Solubility refers to the ability of a chemical to dissolve in water or solvents. Like petroleum oils, vegetable oils and animal fats have limited water solubility and high solubility in organic solvents.

Specific Gravity. Specific gravity is the ratio of the density of a material to the density of fresh water. Specific gravity determines whether an oil floats on the surface of a water body or sinks below the surface and how long oil droplets reside in the water. It can also give a general indication of other properties of the oil. For example, oils with a low specific gravity tend to be rich in volatile components and are highly fluid (International Tanker Owners Pollution Federation, 1987). The specific gravity of vegetable oils and animal fats whose properties we examined is within the range of specific gravity values for petroleum oils.

Viscosity. Viscosity refers to the resistance to flow. It controls the rate at which oil spreads on water and how deeply it penetrates the shore. Viscosity also determines how much energy organisms need to overcome resistance to their movement. At similar temperatures, the dynamic viscosity (shear stress/rate of shear) and kinematic viscosity (dynamic viscosity/density) of vegetable oils and animal fats are somewhat greater than those for light petroleum oils but less than those for heavy petroleum oils. The viscosity of canola oil represents a medium weight oil and is comparable to that of a lightly weathered Prudhoe Bay crude oil after it has evaporated by 10 percent (Allen and Nelson, 1983).

Vapor Pressure. Vapor pressure is the pressure that a solid or liquid exerts in equilibrium with its own vapor depending on temperature. It controls the evaporation rate of an oil spill and air concentrations. The higher the vapor pressure of an oil, the faster it evaporates. Vapor pressure varies over a wide range for petroleum oils, from moderately volatile diesel-like products to slightly volatile heavy crude oils and residual products. The vapor pressure of animal fats and vegetable oils is generally much lower than that of many petroleum oils. Evaporation is significant for many petroleum oil spills, some of which completely evaporate in one to two days, but it is rarely an important factor in spills of vegetable oils and animal fats. In some vegetable oils, however, there is a small volatile fraction that can evaporate. Thermal decomposition can also cause the formation of many volatile degradation products.

Surface Tension. The spreading of oil relates to surface tension (interfacial tension) in a complex manner. When the sum of the oil-water and oil-air interfacial tensions is less than the water-air interfacial tension, spreading is promoted. At 25 °C, the oil-water interfacial tension for canola oil is far less than that of Prudhoe Bay crude oil, suggesting that canola oil could spread more (Allen and Nelson, 1983). Surface tension measurements in the laboratory, however, are not necessarily predictive of the behavior of oil that is being transformed by many processes in the environment.

Emulsions. Emulsions are fine droplets of liquid dispersed in a second, immiscible liquid. When oil and water mix vigorously, they form a dispersion of water droplets in oil and oil droplets in water (Hui, 1996c). When mixing stops, the phases separate. Small water drops fall toward the interface between the phases, and the oil drops rise. The emulsion breaks. When an emulsifier is present, one phase becomes continuous, while the other remains dispersed. The continuous phase is usually the one in which the emulsifier is soluble.

The tendency of petroleum and non-petroleum oils to form emulsions of water-in-oil or oil-in-water depends on the unique chemical composition of the oil as well as temperature, the presence of stabilizing compounds, and other factors. When an emulsion is formed in the environment, the oil changes appearance and its viscosity can increase by many orders of magnitude. Removal of the oil becomes harder because of the increased difficulty in pumping viscous fluids with up to fivefold increases in volume.

The similar tendencies for formation of emulsions by petroleum oils, vegetable oils, and animal fats is described in greater detail in the discussion of Appendix E, Section 10 and Table 7.

Adhesions. Although the ability to form adhesions is difficult to measure and predict, adhesions influence the ease with which spilled oil can be physically removed from surfaces. When water is colder than the oil pour point, oils become viscous and tar-like or form semi-solid, spherical particles that are difficult to recover. Weathering and evaporation are slowed, and oils may become entrapped or encapsulated in ice and later may float on the surface when ice breaks up. In ice adhesion tests, canola oil and Prudhoe Bay crude oil had the same tendency to coat the surface of sea ice drawn up through an oil/water interface (Allen and Nelson, 1983). Neither oil adhered to submerged sea ice even after surface coating. This study suggests that some vegetable oils and petroleum oils have a similar ability to form adhesions under certain environmental conditions.

b. Environmental effects. Physical contact, destruction of food sources, and toxic contamination produce the harmful environmental effects of spills of petroleum oils, animal fats and vegetable oils, and non-petroleum oils other than animal fats and vegetable oils

(62 FR 54508, October 20, 1997). Nearly all of the most immediate and devastating environmental effects from oil spills, such as smothering of fish or coating of birds and mammals and their food with oil, are physical effects related to the physical properties of oils and their interactions with living systems.

These immediate physical effects and effects on food sources may not be considered the result of "toxicity" in the classic sense—i.e., effects that are produced when a chemical reacts with a specific receptor site of an organism at a high enough concentration for a sufficient length of time. Nevertheless, severe debilitation and death of fish and wildlife and destruction of their habitats can result from spills of animal fats and vegetable oils, other non-petroleum oils, and petroleum and petroleum products.

Like petroleum oils, animal fats and vegetable oils and their constituents can cause toxic effects that are summarized below. They can:

- Cause devastating physical effects, such as coating animals and plants with oil and suffocating them by oxygen depletion;
- Be toxic and form toxic products;
- Destroy future and existing food supply, breeding animals, and habitat;
- Produce rancid odors;
- Foul shorelines, clog water treatment plants, and catch fire when ignition sources are present; and
- Form products that linger in the environment for many years.

Adverse environmental effects can also occur long after the initial exposure to animal fats and vegetable oils because of the formation of toxic or persistent products in the environment, destruction of food sources and habitat, or diminished reproduction.

Scientific research and experience with actual spills have shown that spills of animal fats and vegetable oils kill or injure fish, birds, mammals, and other species and produce other undesirable effects. Waterfowl and other birds, mammals, and fish that are coated with animal fats or vegetable oils can die of hypothermia, dehydration and diarrhea, or starvation. They can also sink and drown or fall victim to predators. Fish and other aquatic organisms may suffocate because of the depletion of oxygen caused by spilled animal fats and vegetable oils in water. Animal fats and vegetable oils can kill or injure wildlife through physical effects or toxicity.

Spills of animal fats and vegetable oils have the same or similar devastating impacts on the aquatic environment as petroleum oils. Reports of real-world oil spills detail the environmental harm that can be produced by spills of vegetable oils and animal fats into the environment (62 FR 54508, October 20, 1997).

c. Toxicity. Adverse effects occur through both non-toxic and toxic mechanisms. Toxicity refers to adverse effects that are produced when a chemical reacts with a specific receptor site of an organism at a high enough concentration for a sufficient length of time. Toxicity is affected by the characteristics of the organisms and properties of the chemicals or mixtures involved, the duration of exposure and dose required to produce the effects, and the nature of the toxic effects (Klaassen et al., 1986).

Many factors determine the toxicity of chemicals or mixtures. The ingestion of small quantities of animal fats and vegetable oils in food by humans and animals is a completely different situation from spills of oil into the environment. These situations differ markedly in the extent and duration of exposure, the route of exposure, the composition of the chemicals involved, the organisms and ecosystems exposed, the circumstances surrounding the exposure, and the types of effects produced—factors that determine the toxicity and severity of the adverse effects of chemicals. Thus, even if the human or animal consumption of small quantities of oils in food were judged completely safe, no inferences could be drawn about the toxicity and other effects of animal fats and vegetable oils on environmental organisms exposed in the very different circumstances of oil spills.

The toxic effects from acute exposure to a chemical (e.g., a single dose) during a short period of time, such as 24 hours, may differ greatly from those produced by repeated or chronic exposures. Oil spills may result in chronic exposure if oil or its degradation products remain in the environment for a long time.

Petroleum Oils. Petroleum oils affect nearly all aspects of physiology and metabolism and produce impacts on numerous organ systems of plants and animals, as well as altering local populations, community structure, and biomass (Albers, 1995; National Academy of Sciences, 1985; International Agency for Research on Cancer, 1984). Commonly reported individual effects of petroleum oils include impaired reproduction and reduced growth, as well as death in plants, fish, birds, invertebrates, reptiles, and amphibians; blood, liver, and kidney disorders in fish, birds, and mammals; malformations in fish and birds; altered respiration or heart rate in invertebrates, fish, reptiles, and amphibians; altered endocrine function in fish and birds; altered behavior in many animal species; hypothermia in birds and mammals; impaired salt gland function in birds, reptiles, and amphibians; altered photosynthesis in plants; and increased cells in gills and fin erosion in fish. Among the group effects of petroleum are changes in local population and community structure in plants, invertebrates, and birds, and changes in biomass of plants and invertebrates.

Certain petroleum products and crude oil fractions are associated with increased cancer in refinery workers and laboratory animals (IARC, 1989). Many of these petroleum oils contain benzene and polynuclear aromatic hydrocarbons (PAHs), toxic constituents that are carcinogenic in humans and animals.

Vegetable Oils and Animal Fats. Some acute lethality tests suggest that petroleum oils are more toxic to some aquatic species than certain vegetable oils and animal fats. Other studies, however, show that vegetable oils are more toxic than certain petroleum oils (62 FR54508, October 20, 1997). In one study, no rats receiving mineral oil died, although smaller doses of the vegetable oils administered for a shorter time period killed rats (Boyd, 1973). Acute lethality tests are typically LC_{50} (lethal concentration 50) or LD_{50} (lethal dose 50) tests that do not describe a "safe" level but rather a level at which 50 percent of test organisms are killed under the experimental conditions of the test. Standard acute toxicity tests are not designed to test for the effects of spills of highly insoluble materials, such as oils, but to measure the toxicity of chemicals in normal use and disposal in effluents. Researchers have raised serious questions about the relevance of such tests to spills in the environment (NAS, 1985).

Animal fats and vegetable oils produce other types of acute toxicity as well. Like petroleum oils, animal fats and vegetable oils are laxatives that can produce diarrhea or lipid pneumonia in animals and can impair their ability to escape predators (Frink, 1994; USDOI/FWS, 1994). Clinical signs of toxicity in rats fed large amounts of corn oil or cottonseed oil for 4 or 5 days include decreased appetite, loss of body weight, diarrhea, fur soiling, incoordination, cyanosis (dark blue skin color from deficient oxygenation of the blood), and prostration, followed by respiratory failure and central nervous system depression, coma, and death (Boyd, 1973). Autopsies showed violent local irritation of the gastrointestinal tract

that allowed the absorption of oil droplets into the bloodstream. In tissues, the oil droplets produced inflammation, congestion in the blood vessels, and degenerative changes in the kidney, among other effects.

Animals exposed to vegetable oils and animal fats can manifest a range of chronic toxic effects. High levels of some types of fats increase growth and obesity but cause early death in several species of animals and may decrease their reproductive ability or the survival of offspring (NAS/NRC, 1995; French et al., 1953). On the other hand, the growth of some fish decreases with elevated levels of oils (NAS/NRC, 1981, 1983; Takeuchi and Watanabe, 1979; Stickney and Andrews, 1971, 1972). Mussels exposed to one of four vegetable oils began to die after 2 or 3 weeks of exposure (Salgado, 1995; Mudge, 1995, 1997a). Mussels exposed to low levels of sunflower oil exhibited growth inhibition, effects on shells and shell lining, and decreases in the foot extension activity that is essential to survival.

Studies have associated dietary fat consumption with the increased incidence of some types of cancer, including mammary and colon cancer, in laboratory animals and humans (Hui, 1996a; US Department of Health and Human Services, 1990; Food and Agriculture Organization/World Health Organization, 1994). The intake of dietary fat or certain types of fat has also been correlated with the incidence of coronary artery disease, diabetes, and obesity in epidemiological studies. High dietary fat intake has also been linked to altered immunity, changes in steroid excretion, and effects on bone modeling and remodeling in humans.

Some vegetable oils and animal fats contain toxic constituents, including specific fatty acids and oxidation products formed by processing, heating, storage, or reactions in the environment (Hui, 1996a; Berardi and Goldblatt, 1980; Yannai, 1980; Mattson, 1973). We have summarized the toxic effects of some of these constituents on the heart, red blood cells, and immune system, as well as effects on metabolism and impairment of reproduction and growth (62 FR 54508, October 20, 1997). In addition, some lipid oxidation products may play a role in development of cancer and atherosclerosis.

d. How properties and effects of oils are changed in the environment. The physical and chemical properties of petroleum and non-petroleum oils can change after spills into the environment (USDOC/NOAA, 1992, 1996; Lewis et al., 1995; ITOPF, 1987; NAS, 1985; Hui, 1996a). Primary weathering processes that affect the composition of oil include spreading, evaporation, dissolution, dispersion, emulsification, and sedimentation (USDOC/NOAA, 1992, 1994, 1996). Wind transport, photochemical degradation, and microbial degradation may also play important roles. These processes can change the composition, behavior, routes of exposure, persistence, and toxicity of the spilled oil. As the spilled oil is changed by these environmental processes, its toxicity may increase, decrease, or stay the same. These changes may reduce the volume of some oils and increase the volume in other oils because of their persistence in water or ability to form emulsions. While some weathering mechanisms are different for petroleum oils and animal fats and vegetable oils, spills of all of these oils can create heavy sludges and hardened exposed surfaces with aggregates or tars that can persist in the environment for many years (USDOC/NOAA, 1994; NAS, 1985; Mudge, 1995, 1997a, 1997b).

Oil can affect different parts of the ecosystem as its composition changes. For example, when the lighter fractions of petroleum oil dissolve or evaporate, the oil sinks and contaminates sediments and contributes to water column toxicity (USDOC/NOAA, 1992; Hartung, 1995; NAS, 1985). Spilled sunflower oil forms polymers that can wash ashore or sink and cover sediments, exposing benthic and intertidal communities to the oil (Mudge et al., 1993, 1995). Spilled soybean oil can change its environmental behavior, forming rubbery floating masses that move downstream and cover sediments on the bottom of water bodies or lodge on the shoreline (Minnesota, 1963; USDHHS/PHS, 1963).

e. How properties affect removal of spilled oils. In aquatic environments, the behavior of petroleum oils and vegetable oils and animal fats is similar. They can form a layer on water, settle out on sediments, foul shorelines and beaches, and form emulsions when there is agitation by surf, wind, rapidly flowing streams, or prolonged exposure to heat or light (Crump-Wiesner and Jennings, 1975; USDOC/NOAA, 1996). When the emulsions and surface films or masses are entangled with debris, they can settle to the bottom as sludge.

Because of the similarity in properties of petroleum and non-petroleum oils, including vegetable oils and animal fats, many similar methods are used for their containment, removal from the aquatic environment, and cleanup from shorelines when the oils are spilled in the environment. Canola oil and Prudhoe Bay crude oil exhibited similar behavior in field tests with certain types of spill control equipment, including their tendency to form emulsions with seawater in cold tempera tures and their affinity for surfaces (Allen and Nelson, 1983).

Because of its greater viscosity at cold temperatures, the recovery rate for canola oil with saturated mop fibers was 30 to 40 percent greater than that of crude oil; at warm temperatures, the recovered volume of canola oil was twice that of crude oil (Allen and Nelson, 1983). While canola oil penetrated fibers of sorbent pads at a slightly slower rate than Prudhoe Bay crude oil, saturation for both occurred within minutes. The volumes absorbed and recovered from saturated pads were nearly identical for both oils, with amounts absorbed increasing with reduced temperatures.

3. Other Petitions Submitted to EPA and the USCG

On January 16, 1998, we received a request from the Animal Fat/Vegetable Oil Coalition to modify the FRP rule as it applies to facilities that handle, store, or transport vegetable oils and animal fats. We met with Coalition representatives on April 6, 1998 to clarify their request. On April 9, 1998, we received a second request amending two items in the previous request. The requests ask us to revise the FRP rule by creating a separate category for response planning for animal fat/vegetable oil facilities and a separate Appendix with procedures for these facilities. The requests also include suggested language for the revised rule. The suggested language would make the following changes for facilities that handle, store, or transport vegetable oils and animal fats:

- Move the definitions of vegetable oils and animal fats from the Preamble and Appendix E of the current FRP rule to the definitions section, and modify the language slightly;
- State the applicability dates by which facilities storing vegetable oils and animal fats would need to comply with the rule;
- Limit requirements for submitting a facility response plan;
- Change the planning distance formula used in determining whether a facility storing vegetable oils and animal fats may present substantial harm;
- Revise the criteria considered by EPA Regional Administrators in determining whether a facility is a significant and substantial harm facility;
- Increase required response time from on-scene arrival time of 12 hours including travel time to 24 hours, with

a response commencing within 12 hours of discovery of a discharge;

- Eliminate planning for small or medium discharges of oil and eliminate tier planning requirements;
- Eliminate the definitions of non-persistent and persistent oil;
- Allow mechanical dispersal and "no action" options to be considered in lieu of the oil containment and recovery devices otherwise specified for response for a worst case discharge; and
- Make other changes in the rule language.

We address some of these issues in detail in this proposed rule. On March 14, 1997, the National Oilseed Processors Association filed a petition with the USCG requesting similar amendments to the marine-transportation-related facility response plan regulations. To further address these petitions, EPA and the USCG are requesting comments and information on how facilities that handle animal fats and vegetable oils should be regulated.

II. Request for Comment and Discussion of Proposed Revisions

A. Request for Comment

We request public comments on the usefulness of the new procedure and tables in the proposed rule for determining response equipment needs for facilities that handle, store, or transport animal fats and vegetable oils compared to the approach provided in the existing rule. In connection with these proposed changes, we invite public comment on new approaches or data that have been developed since the issuance of the rule, which would reduce the burden of FRP rule requirements without compromising environmental protection. We are interested in research in progress or planned research on the issues raised in this rule. We also request data and comments bearing on the issues raised in the requests for changes to the existing regulations.

In addition, we invite public comments for the purpose of securing information to develop possible future rules or policies. We seek data and comments on approaches for non-petroleum oils other than animal fats and vegetable oils that are not now required, but that would enhance the environmental protection the FRP rule provides.

B. Proposed Revisions

The main purpose of these revisions is to provide a more specific methodology for planning response resources that can be used by owners or operators of facilities that handle, store, or transport animal fats and vegetable oils. Specific proposed revisions are discussed below.

1. Section 112.2 Definitions

The FRP rule defines oil as "oil of any kind or in any form, including, but not limited to petroleum, fuel oil, sludge, oil refuse and oil mixed with wastes other than dredged spoil." (40 CFR 112.2). In response to comments on our 1993 proposed FRP rule (58 FR 8866, February 17, 1993), we set forth definitions for "animal fat," "vegetable oil, " "petroleum oil," "non-petroleum oil," and "other non-petroleum oil" in the Preamble to the final FRP rule (59 FR 34070, 34088 July 1, 1994) to assist owners or operators in distinguishing among oil types. We also define non-petroleum oil in Appendix E to the rule.

We propose to add the definitions of "animal fat," "non-petroleum oil," "petroleum oil," and "vegetable oil" to the FRP regulations in § 112.2. We believe that adding these definitions to the regulatory text will help the regulated community better understand the FRP rule. We have made slight revisions to the definitions to more closely reflect the language of the 1995 Edible Oil Regulatory Reform Act. According to the proposed definitions, non-petroleum oils other than animal fats and vegetable oils would include, but are not limited to, coal tar, silicone oils, and turpentine.

2. Section 112.20(a)(4) Preparation and Submission of Facility Response Plans for Animal Fat and Vegetable Oil Facilities

The current FRP rule includes requirements for the owner or operator of a facility to prepare and submit an FRP to the RA in § 112.20(a)(1), (a)(2), and (a)(3). The proposed rule includes a new § 112.20(a)(4) that describes the requirements for the facility owner or operator to prepare and submit an FRP using the new methodology for response planning for animal fats and vegetable oils. The proposed new methodology for calculating planning volumes for worst case discharges of animal fats and vegetable oils is discussed in Appendix E, Section 10.

The proposed requirements for preparation and submission of an FRP for animal fat and vegetable oil facilities are as follows:

- If you have an approved FRP, you would not have to prepare a new plan, unless there is a planned change in design, construction, operation, or maintenance or an unplanned event or change in facility characteristics. The existing FRP would be good for the 5-year period of approval. The requirements for submitting a new plan after planned or unplanned changes or events would be the same as in the current rule.
- If you have submitted an FRP to the RA and have not received approval, you would recalculate response resources using the new methodology. The new methodology is described in detail in the discussion of Appendix E, Section 10. If your FRP does not meet or exceed the recalculated estimate of response resources, you would prepare and submit a new plan to meet this estimate within 60 days of the effective date of this rule. A new plan would not be required, however, if your existing FRP meets or exceeds the new estimate of response resources.
- If you are preparing a new FRP, you would ensure that response resources meet or exceed the estimate obtained using the new methodology. You would submit the new plan prior to the start of operations as required by the existing FRP rule.
- If you are amending your FRP, you would recalculate the response resources using the new methodology and ensure that response resources meet or exceed the new estimate. If the plan does not meet or exceed the requirements, you would submit a new plan. In the proposed rule, the time requirements for submitting a new plan remain the same as in the existing FRP rule.

3. Section 112.20(f) Facility Classification

OPA requires agencies to classify facilities for the purposes of response planning based on the facility's expected ability to cause "substantial harm" or "significant and substantial harm" to the environment in the event of a spill or discharge. In § 112.20(f)(1), we indicate two sets of criteria that define a "substantial harm" facility for the purposes of response planning:

- Any non-transportation-related facility that transfers oil over water to or from vessels and has a total oil storage capacity greater than or equal to 42,000 gallons; or
- Any non-transportation-related facility that has a total oil storage capacity of greater than or equal to 1 million gallons and meets at least one of the following criteria: has insufficient secondary containment to contain the capacity of the facility's largest storage container in each storage area plus precipitation; is located in proximity to fish and wildlife and sensitive environments; is located in proximity to public drinking water intakes; or has experienced an oil spill greater than or equal to 10,000 gallons within the last five years.

The owner or operator of a facility that meets one of these requirements for "substantial harm" must prepare and submit to the Regional Administrator (RA) a response plan, or must self-certify that the facility does not meet the requirements of the FRP regulations and maintain that self-certification on file. An RA may determine that a facility could reasonably be expected to cause "significant and substantial harm" to the environment by considering the facility's frequency of past spills, the age of the facility's oil storage tanks, the facility's proximity to navigable waters, and other facility and Region-specific information, including local impacts on public health. If an RA makes such a determination, the RA must notify the facility owner or operator and must review and approve the response plan upon initial receipt of the plan and at least once every five years thereafter. The RA may require amendments to any "significant and substantial harm" FRP that does not meet the requirements in 40 CFR part 112. An appeals process allows facility owners or operators the opportunity to challenge the RA's determination.

Currently, the owner or operator determines whether or not the facility can be considered a "substantial harm" facility. Then, EPA and the USCG make the initial designation of facilities as "substantial harm" or "significant and substantial harm" and can subsequently reclassify them. For all types of oils, EPA designates a facility as "substantial harm" initially and then determines whether the facility meets criteria for "significant and substantial harm." The USCG has determined that any facility capable of transferring any type of oil to or from a vessel with a capacity of 250 barrels (10,500 gallons) or more, except for mobile facilities, could reasonably be expected to cause significant and substantial harm in the event of a discharge (33 CFR 154.1015(c)). The USCG considers non-petroleum oil facilities "significant and substantial harm" facilities unless they are reclassified. The USCG Captain of the Port may reclassify a facility based on certain relevant factors including, but not limited to: type and quantity of oil handled in bulk, facility spill history, age of facility, proximity to public and commercial water supply intakes, proximity to navigable waters, and proximity to sensitive environments.

EPA's response planning rules intentionally do not distinguish between types of oils for the purposes of determining "substantial harm" and "significant and substantial harm." We have decided not to modify the "substantial harm" and "significant and substantial harm" criteria or to distinguish between types of oils for the purposes of making the designation in this proposed rule. We have come to this decision because we believe that all oils addressed in the FRP rule have the potential to produce similar effects when released into the environment. The USCG is considering revisions to its classification scheme that would make its policy on initial classification more uniform with ours by initially classifying these facilities as "substantial harm."

4. Section 112.20(h)(5) Response Planning Levels

a. Summary of proposed rule. In the existing FRP rule, the response plan must include a discussion of three specific planning scenarios for all oil discharges—small (2,100 gallons or less), medium (between 2,100 and 36,000 gallons, or ten percent of the capacity of the largest tank), and worst case. Although we would add separate sections for animal fats and vegetable oils, we are proposing to keep the same response planning scenarios that are required in the existing rule. We are proposing no changes in the response planning level requirements for petroleum oils and non-petroleum oils other than to create separate regulatory sections for animal fats and vegetable oils. Because we understand that at the time of a spill certain factors may exist that counter the original assumptions used during response planning, we would continue to allow case-by-case deviations when such deviations afford equivalent environmental protection. Nothing in the response planning regulations is intended to limit the actions of the owner or operator of the facility provided that those actions are in accordance with the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), the Area Contingency Plan (ACP), and the Regional Contingency Plan and that the actions are approved by the Federal On-Scene Coordinator.

b. Comparison of facilities regulated by EPA and the USCG. Unlike EPA, the USCG currently requires response planning for non-petroleum oils (including animal fats and vegetable oils) at marine transportation-related facilities only for a worst case discharge. However, under 33 CFR 154.545 each facility must have ready access to enough containment material and equipment to contain any oil discharged on the water from operations at the facility. "Access" includes direct ownership, joint ownership, cooperative venture, or contractual agreement. The facility must establish response time limits, which are approved by the Captain of the Port, for deployment of containment material and equipment. These requirements were issued in 1980 and pre-date the OPA response planning requirements and were intended to prepare a facility for an "operational" discharge. The USCG proposed rule retains response planning for a worst case discharge and proposes planning for Average Most Probable Discharge that is similar to existing requirements for identifying response equipment for operational discharges.

EPA and the USCG regulate facilities with different physical activities and different response schemes to fit their environment. Each of the agencies addresses the most probable activities for the facilities under its jurisdiction. EPA's non-transportation-related facilities generally have a greater potential for large spills than USCG-regulated facilities. The worst case discharge from EPA-regulated facilities is often greater by an order of magnitude or more. EPA-regulated facilities also tend to have a larger number of oil transfers than USCG-regulated facilities, and they have a significant potential for small and medium discharges. Because of the greater diversity of structures and processes, oil can discharge in many ways over a range of volumes at EPA-regulated facilities. At these facilities, there is a wide range of activities, and many parameters can affect discharges. Causes of oil discharges at EPA-regulated facilities can include tank failure, deterioration of tanks or valves, transfer from tank cars to tank trucks, and discharges from processing units. At USCG-regulated facilities, however, discharges usually result from human error or equipment failure, such as a barge sinking, or failure of off loading lines or valves. The spill size associated with these transfer activities is determined primarily by pump rate and pipe diameter and covers a narrower range than discharge volumes at EPA-regulated facilities.

c. Rationale for planning for three response scenarios. EPA believes that discharges less severe than a worst case scenario may pose a serious threat to navigable waters, especially from the cumulative effects of several discharges, and that preparation to respond to smaller spills produces better overall protection of the nation's navigable waters. We have found that small spills of petroleum oils, vegetable oils, and animal fats oils can cause significant environmental damage (62 FR 54508, October 20, 1997). Real-world examples demonstrate that spills of animal fats and vegetable oils do occur and produce harmful environmental effects.

Various sizes of discharges can require different types and amounts of equipment, products, and personnel, and must therefore be addressed separately. For example, a facility may want to hire a contractor to support response to a worst case discharge scenario, but handle smaller, operational spills using its own personnel and equipment. To the extent that facility personnel are better able to address immediate actions associated with smaller spills, they will be better prepared to initiate a response to a worst case discharge until back-up resources arrive on-scene. Increased proficiency in handling the initial stages of a discharge can result in significant reductions in the extent of spill movement and associated impacts to the environment.

We recognize that this planning approach may not be appropriate for all facilities, including those where the range of possible spill scenarios is small. Under the proposed rule, as under the current rule, large facilities would need to plan for three discharge amounts, but a small facility may only need to plan for two scenarios or a single scenario if the worst case discharge falls within one of the specified ranges. Many commenters on the 1993 proposed FRP rule (58 FR 8824, February 17, 1993) recognized that planning for responses to more commonly occurring discharges may be more beneficial to facilities than planning for a worst case discharge with a lower probability of occurrence.

We have examined spill data for animal fats and vegetable oils to determine whether the distribution of discharge size for these oils is similar to the pattern for all oils. In the existing FRP rule, the planning volumes for discharges other than a worst case discharge are based on an analysis of Emergency Response Notification System (ERNS) data, which contains data on discharges from facilities, etc. These data showed that the average reported discharge is 1,300 gallons, and 99.5 percent of the discharges of all oils were less than approximately 36,000 gallons. The planning volume of 2,100 gallons or less for small discharges represents a realistic planning quantity. (See the Proposed FRP rule, 58 FR 8836, February 17, 1993).

In many of the ERNS records for spills, animal fats and vegetable oils could not be distinguished from other non-petroleum oils, or data on spill volume were incomplete. ERNS data for the entire U.S. show that approximately 150 oils spills each year are greater than 10,000 gallons; fewer than one percent of these larger discharges are positively identified as vegetable oil or animal fat.

We also reviewed data from the USCG's Marine Safety Information System from 1992 to 1998 and found 28 non-petroleum discharges from non-transportation-related facilities and from the non-transportation segment of a transportation facility. The size of discharges ranged from one gallon to 7,500 gallons. Most discharges (24) were less than 1,000 gallons and only 4 were greater than or equal to 1,000 gallons. Fifty percent of the discharges were less than 20 gallons and 93 percent were less than 1,500 gallons.

Other data demonstrate the occurrence of spills of animal fats and vegetable oils but do not provide estimates of spill size. Animal fats and vegetable oils were among the most frequently spilled organic materials, ranking sixth and seventh respectively, and were responsible for over 6 percent of all spills (384 of 6076 spills) of organic materials reported along the coasts and major waterways in the United States in 1973–1979 (Wolfe, 1986). Other authors estimate that at least 5 percent of all spill notifications are for vegetable oils and animal fats (Crump-Wiesner and Jennings, 1975). Of the 18,000 to 24,000 spills in the United States reported annually to the National Response Center and EPA Regions, 2 to 12 percent are from non-petroleum oils, including vegetable oils and animal fats (USEPA/OSWER, 1995, 1996).

These figures represent the minimum number of spills. It is likely that they greatly underestimate the actual number of spills because of significant underreporting. We made a comparison of reports of spills in Ohio of vegetable oil and soybean oil from January 1984 to June 1993 to the State of Ohio Environmental Protection Agency (Ohio EPA) and to the National Response Center (NRC). Only 7 of 27 reports (26 percent) to the Ohio EPA were also reported to the NRC (USEPA, 1994). There were a number of reports of vegetable and soybean oil spills to the NRC that were not on the State list (USEPA, 1994).

We have also compared spills of animal fats and vegetable oils that were reported to the State of Iowa and to the NRC between 1991 and 1996. Only 32 percent of the reports to Iowa were also reported to the NRC. Of 19 reports from fixed facilities, where the amount spilled was known, the size of discharges ranged from one gallon to 37,728 gallons. Most (13) were less than 1,000 gallons and only two were greater than 10,000 gallons.

d. Request for data and comment. Our figures on spill size suggest that the most commonly occurring discharges of animal fats and vegetable oils are small discharges. We request comment on the reliability of these data and whether these data are representative of spills of animal fats and vegetable oils at other facilities. We request that States or other parties who have data about the discharges of animal fats and vegetable oils provide this information to assist our rulemaking efforts.

In keeping with requirements of the Edible Oil Regulatory Reform Act, EPA has examined the properties and effects of classes of oils to determine how or whether to differentiate them in response planning levels. We have found that the properties and environmental effects are similar for petroleum oils, animal fats and vegetable oils, and other non-petroleum oils. We also analyzed the size of oil discharges. According to our data, the size distribution for spills of animal fats and vegetable oils is comparable to that of all other oils.

EPA solicits comments on whether it is feasible to require differentiated response planning levels for animal fats and vegetable oils. Members of the public have inquired as to whether we will modify the rule such that facilities would only be responsible for one or two planning levels instead of the three levels required in the existing rule. We presently have no basis for making this distinction in response planning levels for different classes of oils. Our existing information shows similar properties, effects, and spill size for animal fats and vegetable oils and other oils at EPA-regulated facilities. We solicit data justifying different levels of planning, such as combining small and medium discharge planning or eliminating some planning levels.

5. Other Changes

As described in the following sections, most of the proposed changes affect Appendix E to part 112, which assists facility owners and operators in determining the required FRP response resources. Some general changes include adding to the Appendix new Sections 8.0, 9.0, and 10.0 for animal fats and vegetable oils, renumbering of existing sections, and adding and renumbering definitions in Section 1.2.

6. Appendix E, Section 1.2 Definitions

a. Non-persistent oils and persistent oils. Sections 1.2.3 and 1.2.8. In the current FRP rule, the definitions of persistent and non-persistent oils rely on distillation criteria and specific gravity for petroleum oils and specific gravity for non-petroleum oils. We propose changing the definitions of

persistent and non-persistent oils to eliminate their applicability to animal fats and vegetable oils. The terms "persistent" and "non-persistent" would still apply to petroleum oils and non-petroleum oils other than animal fats and vegetable oils. The definitions would also be renumbered.

We are proposing to change these definitions because persistence or non-persistence of animal fats and vegetable oils does not depend merely on specific gravity. Instead, it depends on many environmental factors. The same oil may exhibit differing degrees of persistence in different environmental situations. In addition to the scientific imprecision of "persistent" and "non-persistent" for animal fats and vegetable oils, these terms do not determine response planning requirements for animal fats and vegetable oils in the current FRP rule or in the approach proposed in this rule.

In our evaluation of studies on the environmental fate of animal fats and vegetable oils, we found that the extent of degradation or persistence depends on many factors (62 FR 54508, October 20, 1997). Although some animal fats and vegetable oils can degrade rapidly, others persist in the environment years after the oil was spilled (Mudge et al., 1995; Mudge, 1995, 1997a, 1997b).

Every spill is different. Factors such as pH (acidity), temperature, oxygen concentration, dispersal of oil, the presence of other chemicals, soil characteristics, nutrient quantities, and populations of various microorganisms at the location of the spill profoundly influence the degradation of oil. Environmental processes can alter the chemical composition and environmental behavior of the spilled oils and influence their proximity to environmentally sensitive areas and the environmental damage they cause.

All oils can deplete oxygen and suffocate aquatic organisms. Under certain conditions, however, some animal fats and vegetable oils present a far greater risk to aquatic organisms than other oils spilled in the environment, as indicated by their greater biological oxygen demand (BOD). According to studies designed to measure the degradation of fats in wastewater, some food oils exhibit nearly twice the BOD of fuel oil and several times the BOD of other petroleum-based oils (Groenewold et al., 1982; Institute, 1985; Crump-Wiesner and Jennings, 1975). While the higher BOD of food oils is associated with greater biodegradability by microorganisms using oxygen, it also reflects the increased likelihood of oxygen depletion and suffocation of aquatic organisms under certain environmental conditions. Oil creates the greatest demand on the dissolved oxygen concentration in smaller water bodies, depending on the extent of mixing (Crump-Wiesner and Jennings, 1975). Furthermore, spilled animal fats and vegetable oils can cause long-term harm even if they remain in the environment for relatively short periods of time because they destroy existing and future food sources, reduce breeding animals and plants, and contaminate eggs and nesting habitats.

b. Definitions for groups of oils. Sections 1.2.1 and 1.2.9. We propose reclassifying the oil categories for animal fats and vegetable oils to further differentiate between classes of oils. We would add definitions of three new groups (Groups A, B, and C) for animal fats and vegetable oils. We have found that the specific gravity of most animal fats and vegetable oils falls within the range for Group 3 oils, so that we can reduce the number of categories for these oils. We are proposing to combine Groups 2, 3, and 4 into a single group (Group B) for animal fats and vegetable oils. No longer would animal fats and vegetable oils be considered Groups 1, 2, 3, 4, or 5 in our proposed rule. Rather, they would belong to Groups A, B, or C. These groups would be used in new Tables 6 and 7 in Appendix E to assist owners or operators of facilities that handle, store, or transport animal fats and vegetable oils in determining response equipment needs.

The groups of oils are based on the specific gravity of the animal fats and vegetable oils. Most of the common vegetable oils and animal fats found in commerce will be classified in Group B with a specific gravity greater than or equal to 0.8 but less than 1.0. Group A substances are defined as having a specific gravity of less than 0.8 and will include a few substances such as light greases. Group C substances are those with a specific gravity equal to or greater than 1.0 and are likely to drop below the water's surface.

7. Appendix E, Section 3.0 Determining Response Resources Required for Small Discharges—Petroleum Oils and Non-petroleum Oils Other Than Animal Fats and Vegetable Oils

The current FRP rule describes planning requirements for small discharges of all oils in one section (Section 3.0). We are proposing to add a new section (Section 8.0) for animal fats and vegetable oils. The planning requirements for small discharge of other oils would remain in Section 3.0.

Section 3.2. The proposed rule would clarify the requirements for response planning for small discharges at installations with both EPA-regulated and USCG-regulated facilities and describe current USCG requirements. This section would apply to petroleum oils and non-petroleum oils other than animal fats and vegetable oils. We would add a separate section (Section 8.2) for animal fats and vegetable oils.

Section 3.3. We propose minor revisions to clarify the determination of response resources. We would change the word "spill" to the more specific term "discharge" and change the number of the section mentioned in Section 3.3.3 to make it consistent with the new section numbers in the proposed rule.

8. Appendix E, Section 4. 0 Determining Response Resources Required for Medium Discharges—Petroleum Oils and Non-petroleum Oils Other Than Animal Fats and Vegetable Oils

The current FRP rule describes planning requirements for medium discharges of all oils in one section (Section 4.0). This section would apply to petroleum oils and non-petroleum oils other than animal fats and vegetable oils. We are proposing a new section (Section 9.0) for medium discharges of animal fats and vegetable oils.

Section 4.2. The proposed rule would clarify the requirements for response planning for medium discharges at EPA–USCG complexes and describe current USCG requirements. This section would apply to petroleum oils and non-petroleum oils other than animal fats and vegetable oils.

Section 4.4. We propose replacing the word "spill" with the more specific term "discharge."

9. Appendix E, Section 6.0. Determining the Appropriate Amount of Response Equipment

We will continue to use the criteria in Section 6.0 to determine the effective daily recovery capacity (EDRC) of oil recovery devices. These criteria are specified in Section 5.4. Section 6.0 provides for primary and alternative criteria for determining the EDRC of oil recovery devices. We have no data to suggest that a different EDRC would be appropriate for animal fats and vegetable oils. We request comment and data on the EDRC of oil recovery devices for animal fats and vegetable oils and whether different rates are appropriate for animal fats, vegetable oils, and petroleum oils with similar physical and chemical characteristics.

10. Appendix E, Section 7.0 Calculating Planning Volumes for a Worst Case Discharge—Petroleum Oils and Non-petroleum Oils Other Than Animal Fats and Vegetable Oils

In the current FRP rule, the worst case discharge of all oils is described in one section (Section 7.0). We propose adding new Section 10.0 for animal fats and vegetable oils and removing animal fats and vegetable oils from provisions in Section 7.0. We propose to modify Section 7.0 to include only petroleum oils and non-petroleum oils other than animal fats and vegetable oils. Our revisions would clarify that petroleum oils and non-petroleum oils other than animal fats and vegetable oils are included in Sections 7.0, 7.1, 7.7, 7.7.1, 7.7.2, and 7.7.3.

Section 7.7.5. Our revisions would require the facility owner or operator to ensure fire fighting resources by contract or other approved means. In the current rule, we recommend that the owner or operator ensure these resources. We propose this revision because although most oils do not easily catch fire by themselves, once oil fires begin, they are difficult to extinguish and can cause considerable environmental damage.

11. Appendix E, Section 8.0 Determining Response Resources Required for Small Discharges—Animal Fats and Vegetable Oils

In the current FRP rule, small discharges of all oils are included in one section (Section 3.0). We propose adding a new section (Section 8.0) for small discharges for facilities that handle, store, or transport animal fats and vegetable oils. The requirements for other oils would remain in Section 3.0. The planning requirements for small discharges of animal fats and vegetable oils would stay the same, except for the revisions that we propose below.

Section 8.2. The proposed rule would explain the requirements for response planning for small discharges at EPA–USCG complexes and describe current USCG requirements.

Section 8.3.1. The specific term "discharge" would replace "spill," which is used in current Section 3.3

Section 8.3.3. We would renumber the section referred to in current Section 3.3.3.

12. Appendix E, Section 9.0 Determining Response Resources Required for Medium Discharges—Animal Fats and Vegetable Oils

In the current FRP rule, medium discharges of all oils are included in one section (Section 4.0). We propose adding Section 9.0 for medium discharges for facilities that handle, store, or transport animal fats and vegetable oils. The requirements for other oils would remain in Section 4.0. The planning requirements for medium discharges of animal fats and vegetable oils would stay the same, except for the revisions that we propose below.

Section 9.2. The proposed rule would explain the requirements for response planning for medium discharges at EPA–USCG complexes and would separate sections for petroleum oils and non-petroleum oils. The proposed rule would clarify current USCG requirements.

Sections 9.4 and 9.6. We would renumber the sections described in current Sections 4.4 and 4.6.

Section 9.7. We are including a new example that demonstrates the method discussed in this Appendix for calculating response planning equipment for medium discharges.

13. Appendix E, Section 10.0 Calculating Planning Volumes for a Worst Case Discharge—Animal Fats and Vegetable Oils

a. *Summary of Proposed Revisions.* In the current FRP rule, worst case discharges for all oils are included in one section (Section 7.0), which includes separate provisions for non-petroleum oils (Section 7.7). We address the likely differences in responding to spills of petroleum oil as opposed to non-petroleum oils, and create an approach that allows owners or operators of facilities that handle, store, or transport non-petroleum oils the flexibility to determine appropriate response equipment within the framework established by the regulation. (See Section 7.7 of Appendix E to 40 CFR part 112.) We provide further flexibility by allowing the Regional Administrator to assess the adequacy of response plans, including those for non-petroleum facilities, to account for site-specific factors. We do not prescribe the type and amount of equipment that response plans for non-petroleum oil discharges must identify. As required at § 112.20(h)(3)(i), in cases where it is not appropriate to follow part of Appendix E to identify response resources to meet the facility response plan requirements, owners or operators must clearly demonstrate in the plan why use of Appendix E is not appropriate at the facility and make comparable arrangements for response resources.

Our review of FRPs submitted to date shows that most owners and operators of facilities that handle, store, or transport animal fats and vegetable oils have voluntarily employed the petroleum oil methodology for determining response resources. The petroleum oil methodology is appropriate for determining response resources for petroleum discharges at facilities that store both petroleum oils and animal fats and vegetable oils. We are proposing a similar approach with some different factors for derermining response resources for discharges of animal fats and vegetable oils at such facilities and at facilities that store only animal fats and vegetable oils.

We are proposing a separate section (Section 10.0) describing the approach for calculating planning volumes for a worst case discharge of animal fats and vegetable oils. This new section reflects recent knowledge about the emulsification and environmental fate of animal fats and vegetable oils. It clearly differentiates between animal fats and vegetable oils and other classes of oils. The definitions and groups of animal fats and vegetable oils described above—Groups A, B, and C—are included in this section. The requirements for other oils would remain in Section 7.0.

We propose two new tables for animal fats and vegetable oils—Table 6, Removal Capacity Planning Table for Animal Fats and Vegetable Oils, and Table 7, Emulsification Factors for Animal Fats and Vegetable Oils. These tables are discussed in detail below.

The proposed methodology includes paragraphs on the following topics:

Section 10.1. Accounting for the potential for loss of oil to the environment through physical, chemical, and biological processes and deposition of oil on the shoreline or on sediments when planning for on-water oil recovery.

Section 10.2. Steps in determining the on-water recovery capacity.

Section 10.3. Procedures to calculate the volume for shoreline cleanup resource planning and identify appropriate shoreline cleanup capacity.

Section 10.4. Identifying response resources with appropriate fire fighting capability.

Section 10.5. An example showing how the proposed method and tables would be applied.

Section 10.6. Procedures for Group C oils (oil with a specific gravity greater than 1.0).

Section 10.7. Procedures used to determine appropriate response plan development and evaluation criteria.

b. *Calculating planning volumes for a worst case discharge using the current FRP rule.* EPA and the USCG considered the components of the weathering process in developing criteria for

determining adequate response resources for the purpose of response planning for oils. These criteria considered loss to the environment, potential for on-water recovery, and potential for shoreline impact. In developing rules for response planning for facilities and tank vessels, EPA and the USCG have previously discussed the applicability, development, and use of these criteria in several **Federal Register** notices (62 FR 54508, October 20, 1997; 61 FR 7890, February 29, 1996; 61 FR 1081, January 12, 1996; 59 FR 34070, July 1, 1994; 58 FR 7330, February 5, 1993; 58 FR 7376, February 5, 1993; 57 FR 27514, June 19, 1992).

The current FRP rule details several steps to calculate planning volume for a worst case discharge of petroleum oils. These steps involve selecting factors from tables and multiplying these factors by other numbers. The rule includes a worksheet that explains these steps. If you are a petroleum oil facility owner or operator, you must follow the steps in Appendix E to identify response resources or, where not appropriate, clearly demonstrate in the response plan why use of Appendix E is not appropriate at your facility and make comparable arrangements for response resources.

Under the current rule, if you are an owner or operator of a facility that handles, stores, or transports petroleum oils, you would determine the worst case discharge, the oil groups at the facility, and the geographic areas in which the facility operates (Table 1). Next, you would determine the percentages of oil volume used to determine resource planning for recovery of floating oil and shoreline cleanup (based on Table 2). Then you would obtain the on-water oil recovery capacity by multiplying this figure by an emulsification factor (Table 3) and an on-water oil recovery resource mobilization factor (Table 4). This latter value depends on the geographic area where your facility operates (such as rivers and canals or inland/nearshore areas) and three levels of response tiers. As a facility owner or operator, you would have to plan for a certain proportion of response resources to arrive at the scene of the discharge within the time frames that correspond to the three response tiers. Next, you would determine whether the requirements for the three response tiers exceed the values for response capability caps by operating area (Table 5). You would have to ensure by contract or other approved means, as described in § 112.2, availability of the quantity of resources required to meet the cap. You would not need to contract for resources that are above the response capability caps in advance, but you must identify sources of additional response resources. Once you had determined the amount and type of response equipment that you need, you would have to identify the additional response resources available by contract or other approved means, as described in § 112.2. The equipment that you identify must be capable of operating effectively in the conditions where the facility operates and within the tier response times.

If you are the owner or operator of a non-petroleum oil facility, including an animal fat or vegetable oil facility, you would have greater flexibility than the owner or operator of a petroleum oil facility. You would have to show procedures and strategies for responding to the maximum extent practicable to a worst case discharge; show sources of equipment and supplies necessary to locate, recover, and mitigate discharges; demonstrate that the equipment identified will work in the conditions expected in the relevant geographic areas, and respond within the required times; and ensure the availability of required resources by contract or other approved means. You would not be limited to using the emulsification and evaporation factors in the petroleum tables (Tables 2 and 3).

c. *Calculating planning volumes for a worst case discharge of animal fats and vegetable oils under the proposed rule.* The proposed rule would make no changes in the methodology for calculating planning volumes for a worst case discharge of petroleum oils or non-petroleum oils other than animal fats and vegetable oils. For animal fats and vegetable oils, we propose to modify the methodology that is used to assess response equipment needs for petroleum oils to account for factors that are specific to animal fats and vegetable oils. With the proposed methodology, the owner or operator of an animal fat or vegetable oil facility would calculate response resources using the same steps that are used for petroleum oils, but some factors used in the calculation would be different. Section 10.0 describes the proposed methodology.

The proposed methodology includes two new tables to Appendix E (Table 6, Removal Capacity Planning for Animal Fats and Vegetable Oils, and Table 7, Emulsification Factors for Animal Fats and Vegetable Oils). For animal fats and vegetable oils, these tables would replace Tables 2 and 3, which apply to petroleum oils. Three existing tables (Table 1, Response Resource Operating Criteria; Table 4, On-Water Oil Recovery Resource Mobilization Factors; and Table 5, Response Capability Caps by Operating Area) would remain the same in the proposed methodology. We are including Table 5 to recognize the practical limitations on the availability of response resources. The use of response caps in the methodology for petroleum oils and animal fats and vegetable oils would prevent excessive planning requirements for response equipment that does not exist in general operating areas. Any equipment identified in a response plan would have to be capable of operating in the conditions expected in the geographic area(s) (i.e., operating environments) in which the facility operates using the criteria in Table 1 (see Section 10.7.2 of Appendix E). The proposed rule also includes an example (Section 10.5) and a new worksheet that shows a second example of the calculation of response resources for a worst case discharge of animal fat or vegetable oils (Attachment E–2).

If you are the owner or operator of an animal fat or vegetable oil facility who is using the proposed methodology, you would follow the steps listed in the new worksheet to determine response resources. First you would calculate the worst case discharge for your facility and determine the oil group and operating area. The oil group is listed in Table 7 and defined in Section 1.2 of this Appendix. The operating areas are defined in Section 1.1 of Appendix C and listed in Table 1 of Appendix E. In the next step, you would determine the percentage of your oil that is apportioned to the three segments listed in Table 6—oil lost to the environment, recovered floating oil, and oil onshore. By multiplying the percentage of oil on-water or onshore by the worst case discharge, you would determine on-water oil recovery or shoreline recovery. Next, you would multiply the on-water recovery or shoreline recovery by the emulsification factor, which is determined in Table 7. You would multiply that figure by the on-water oil recovery resource mobilization factors for the three response tiers in Table 4 and compare the values to the response capability caps in Table 5. You must ensure by contract, or other approved means, as described in § 112.2, availability of the quantity of resources to meet the applicable caps. You would not need to contract in advance for amounts of response resources above the caps, but you must identify sources of additional response resources.

d. *Removal capacity planning for animal fats and vegetable oils.* In the current FRP rule, owners or operators of non-petroleum oil facilities do not have to use the evaporation factors that apply

to petroleum oils in Table 2. Unlike petroleum oils, most animal fats and vegetable oils do not contain substantial amounts of volatile materials that evaporate. Compared to some petroleum oils, a greater proportion of spilled vegetable oils and animal fats usually remains in the water, collects on sediments or land, or contaminates biota (USDOC/NOAA, 1992, 1996; Hui, 1996a, 1996b).

We are proposing a new table, Table 6, Removal Capacity Planning Table for Animal Fats and Vegetable Oils. This table accounts for the potential for natural degradation of oil as spilled animal fats and vegetable oils undergo changes in the environment. Although we recognize that degradation is affected by many factors and conditions that are specific to each spill, we are proposing the percentages of loss and recovery in Table 6 to aid in response planning.

To arrive at the numbers in Table 6, EPA has examined numerous studies on the fate and effects of animal fats and vegetable oils in the environment (62 FR 54508, October 20, 1997). Experiments using three vegetable oils (olive oil, sunflower oil, and linseed oil) demonstrated that natural degradation occurred at a rate of between 3 and 8 percent per day (Mudge et al., 1994). At some stage during the degradation process, the oils polymerized and degradation rates were reduced to less than 1 percent per day. Polymerization, a chemical reaction in which a large number of relatively simple molecules combine to form a chain-like macromolecule, occurs spontaneously in the environment (Sax and Lewis, 1987). With polymerization, soybean oil and sunflower oil form a concrete-like aggregate with soil and sand that cannot be readily degraded by bacteria and may remain in the environment for many years after they are spilled (Minnesota, 1963; Mudge, 1995, 1997a, 1997b). Petroleum oils also undergo oxidation and polymerization reactions and can form tars that persist in the environment for years (NAS, 1985). Animal fats and vegetable oils can also be transformed by other chemical reactions, such as hydrolysis.

Another study, which is being conducted for EPA by Battelle Columbus Laboratories, measures the biodegradation of vegetable oils (Venosa and Alleman, Personal Communication, 1999). Preliminary data provide an estimate of the biodegradation of two vegetable oils that occurs under the conditions of the experiment. The experiment was carried out at three pH levels (5, .7, and 9) and at two temperatures (10 °C and 25 °C). Bacterial cultures were added to samples of crude soybean oil and crude canola oil, and oil was extracted from the samples at various times using standard method 5520B (APHA, 1992). Because this extractable oil includes lipids derived from the bacteria and other sources, the values represent the minimum amount of biodegradation of the samples. At 25 C at least 20 to 25 percent of the crude soybean oil was biodegraded after 25 days, and at least 15 to 39 percent of the crude canola oil was biodegraded after 36 days, depending on pH. At the lower temperature less biodegradation occurred. The total extractable oil was measured for a period up to 36 days. The sample was cloudy, indicating significant emulsification. During biodegradation an increase in toxicity was observed using the Microtox test (ASTM, 1997).

Other reports indicate that the degradation of animal fats and vegetable oils depends on a variety of factors. A summary of a group of studies by the British Ministry of Agriculture, Fisheries and Food (MAFF) explains that biodiesel (rape methyl ester), which was tested at three concentrations, disappeared from the waterbody, plants, and sediments more quickly than marine diesel (MAFF, 1996). Another report describes the deterioration of olive oil by hydrolysis, phytoxidation, and microbial action (Kiritsakis, 1991). The transformation of vegetable oils exposed to air and light has been measured in terms of deterioration of flavor (Hui, 1996a). A study of land disposal of cooking oils used in potato processing measured a decomposition of 70 to 76 percent of the oil in soils over 12 weeks (Smith, 1974). When adequate nitrogen was present, palm oil and soybean oil decomposed rapidly. Another study reported that various fungal species caused biochemical changes in the constituents of palm oil (Cornelius et al., 1965). Factors that affect the biodegradation of oils include pH, dispersal of oil, dissolved oxygen, presence of nutrients, soil type, type of oil, and the concentration of undissociated fatty acids in water (Ratledge, 1994; Venosa et al., 1996; Salanitro et al., 1997).

Based on the above information, we are suggesting that approximately 20 percent of the volume of a Group B animal fat or vegetable oil may be lost due to natural processes. We also expect that facilities could plan to recover from the water approximately 15 percent of the total oil discharged during a 3-day period of sustained operations in the Rivers and Canals operating environment. Due to the narrowness of many of these operating environments, the spilled oil is more likely to become stranded on the shoreline. We expect that facilities could plan to recover approximately 20 percent of the oil discharged during a 4-day period of sustained operations in the Nearshore, Inland, and Great Lakes operating environments. Because of the open nature of these operating environments, there will be a greater opportunity for on-water recovery before the oil is stranded on the shoreline. However, one study comparing canola oil (rapeseed oil) to crude oil indicates that under certain conditions a 30 to 40 percent increase in the recovery of canola oil is likely when compared to crude oil (Allen and Nelson, 1983). In actual spill situations, some responders have indicated that a larger percentage of the discharged animal fats or vegetable oils may be recovered on the water than the level we are proposing for on-water recovery in Table 6.

We request data and comments on the factors listed in Table 6, including whether higher factors (percentage recovered) for on-water recovery are appropriate. We are particularly interested in receiving data on recovery of animal fats and vegetable oils from oil spill contractors, such as Oil Spill Removal Organizations, or others who may have experience in responding to discharges of animal fats and vegetable oils. We are also interested in ongoing or planned research on animal fats and vegetable oils that relates to these factors.

e. *Emulsification factors for animal fats and vegetable oils.* The tendency of petroleum and non-petroleum oils to form emulsions of water-in-oil or oil-in-water depends on the unique chemical composition of the oil (NAS, 1985; Knowlton and Pearce, 1993; Fingas et al., 1995; Lewis et al., 1995). Emulsification also depends on tempera ture, the presence of stabilizing compounds, and other factors. Some oils contain natural emulsifiers, such as lecithin, or form compounds, such as monoglycerides, that are used as commercial emulsifiers (Hui, 1996c). When an emulsion is formed in the environment, the oil changes appearance, and its viscosity can increase by many orders of magnitude (USDOC/NOAA, 1994). Removal of the oil becomes harder because of the increased difficulty in pumping viscous fluids with up to fivefold increases in volume.

While there is no simple method for determining the tendency of oils to form emulsions in the environment, one study demonstrated that canola oil and crude oils have similar tendencies for emulsification in cold temperature tests

(Allen and Nelson, 1983). Each oil took up approximately 10 percent of the original volume in water globules that did not settle out for several hours in the shake test. Under warm conditions, canola oil formed small stable emulsions, while crude oil formed emulsions with large amounts of seawater.

Another study indicates that certain crude and refined vegetable oils form emulsions, ranging from 10 to 32 percent. The investigators observed that crude corn oil has a greater tendency to emulsify than refined corn oil (Calanog et al., 1999).

According to one scale, the characteristics of some animal fats and vegetable oils and petroleum oils are similar (Hui, 1996c). The hydrophilic-lyphophilic balance (HLB) scale characterizes the solubility of emulsifiers. The scale has been used by manufacturers seeking emulsifier systems with high stability and long shelf life. The original HLB scale ranges from 0 to 20. The low end of the scale signifies an emulsifier that is more soluble in oil than water, while emulsifiers in the high end of the scale are more soluble in water than in oil. Water/oil emulsions are most stable in the 3 to 6 range; oil/water emulsions are favored in the 11 to 15 range; and emulsions with intermediate values are generally not stable.

Some petroleum oils and vegetable oils and animal fats have a similar range of HLB values in water-in-oil and oil-in-water emulsions used in commercial products (Knowlton and Pearce, 1993). The required HLB values for water-in-oil emulsions are 5 for cottonseed oil, 4 to 6 for mineral oil, 6 for kerosene, and 7 for gasoline. For oil-in-water emulsions, HLB values for vegetable oils and animal fats include 5 for lard, 6 for tallow, 6 to 10 for cottonseed oil, 12 for menhaden oil, and 14 for castor oil; for other oils, HLB values for oil-in-water emulsions are 7 to 8 for petrolatum, 10 to 12 for mineral oils, 12 for kerosene, and 14 for petroleum naphtha.

While the physical properties of vegetable oils and animal fats are highly variable, most fall within a range that is similar to the physical parameters for petroleum oils (October 20, 1997, 63 FR 24508, Appendix I, Table 1). Common properties, such as solubility, specific gravity, and viscosity, are responsible for the similar environmental effects of discharges of petroleum oils and animal fats and vegetable oils. These common properties are also likely to result in similar emulsification factors between petroleum oils and animal fats and vegetable oils.

Based on similarities in chemical and physical characteristics of petroleum oils, vegetable oils, and animal fats, we are proposing emulsification factors for animal fats and vegetable oils which are similar to the emulsification factors for petroleum oils in corresponding oil groups. Emulsification factors are unitless multipliers that are used in calculating planning volumes for worst case discharges. The emulsification factors in Table 7 account for the increases in volume that result when discharged oil forms emulsions. For example, the emulsification factor of 2.0 means that the volume of the oil increases two-fold when emulsified with water under appropriate mixing conditions.

We request data on emulsification factors for animal fats or vegetable oils from either laboratory testing or from actual discharges.

f. *Example—Application of Response Capability Caps to determine response resources.* We propose to apply the Response Capability Caps in Table 5 in Appendix E to response equipment requirements for animal fats and vegetable oils. In reviewing response plans submitted by facilities that handle or store animal fats or vegetable oils, we discovered that most plan holders had voluntarily employed the petroleum oil methodology for determining response resources. In proposing a methodology for animal fats and vegetable oils that is similar to but different from the methodology for petroleum oils, we determined that it is appropriate to recognize the practical limitations on the availability of response resources. Failure to do this may result in excessive planning requirements for response equipment that does not exist in the general operating areas. See Appendix A in the preamble and Appendix B in the preamble for examples of the Planning Worksheet from Appendix E in 40 CFR part 112 and application of the values in proposed Tables 6 and 7. The examples demonstrate how the application of the Response Capability Caps is as relevant for vegetable oils and animal fats as it is for petroleum oils.

Determining the planning volume and response resources. To follow the methodology, you would establish the volume of the worst case discharge using one of the methods in Appendix D in part 112. Then you would identify the oil group using the definitions in Section 1.2 of Appendix E, identify the facility operating area using the definitions in Appendix C, and locate the appropriate operating area (spill location) in Table 6 in Appendix E. From Table 6, column Nearshore/Inland/Great Lakes, you would identify the "Percent Recovered Floating Oil" and the "Percent Recovered Oil from Onshore." You would multiply the "Percent Recovered Floating Oil" by the worst case discharge and multiply the resulting value by the proper emulsification factor in Table 7 to establish the on-water oil recovery volume in barrels. You would consult Table 4 in Appendix E to establish the On-Water Oil Recovery Resource Mobilization Factors. Then you would multiply the factors in each of the three tiers by the on-water oil recovery volume to determine the on-water recovery capacity (barrels per day) that must be planned to be on scene at the response times provided in Section 5.3 in Appendix E. You can check these values against the Response Capability Caps (expressed in barrels per day) in Table 5 for the specific operating area and date. The facility owner or operator (plan holder) must ensure by contract or other approved means the availability of response resources for the lesser of either the on-water recovery capacity or the capability caps. Response resources are required to be identified (but not contracted for in advance) for the volume above the response capability caps. The capability of oil recovery devices can be determined using Section 6.0 in Appendix E in part 112. To establish the shoreline cleanup volume, you would multiply the "Percent Recovered Oil from Onshore" from Table 6, column Nearshore/Inland/Great Lakes in Appendix E times the worst case discharge times the proper emulsification factor. The resulting volume must be used to identify an oil spill removal organization with the appropriate shoreline cleanup capability.

Comparison of planning volumes and response resources. Appendix C in this preamble provides an example of the application of existing regulations for petroleum oils. When the on-water recovery capacity (Part II of the Worksheets) is compared in each of the three examples in Appendix A, B, and C of the preamble, it is apparent that the required planning volume for animal fats and vegetable oils to be recovered from the water is less than for petroleum oils. The proposed rule will require lesser amounts of response equipment to be identified in a response plan for facilities that are located in the nearshore or inland operating areas relative to a similar facility with petroleum oil. It is also apparent that application of the Response Capability Caps in Table 5 in Appendix E limits the amount of daily recovery capacity

required to be ensured by contract or other approved means.

Section 10.5 in the proposed rule provides a similar example of calculating the planning volume from a worst case discharge of animal fats and vegetable oils into an Inland Operating Area. The planning volume for on-water recovery is for a worst case discharge of 21 million gallons (500,000 barrels) of Group B vegetable oil.

By using the Response Capability Caps in Table 5, facilities that handle or store oils are limited in the amount of response resources they must have under contract or otherwise identify in the FRP. The caps in Table 5 reflect the limits of technology and private removal capability. Table 5 also provides the increases in the response capability caps after February 18, 1998 to reflect the increase in private removal resources. One study by the USCG on the scheduled increases in removal resources indicates that the response capability caps that were scheduled for 1998 have been exceeded in many areas.

C. Advance Notice of Proposed Rulemaking

EPA requests comment concerning ways we might differentiate among the various classes of oils listed in the Edible Oil Regulatory Reform Act for purposes of the Spill Prevention, Control, and Countermeasure Rule, found at 40 CFR part 112. Those classes of oil are: animal fats and oils and greases, and fish and marine mammal oils; oils of vegetable origin, including oils from seeds, nuts, and kernels; and other oils and greases, including petroleum. We are interested in how we might differentiate in the prevention requirements for these classes of oils based on the physical, chemical, biological, and other properties of these oils, and on their environmental effects if discharged into the environment.

III. Bibliography

Albers, P.H. (1995). Oil, Biological Communities and Contingency Planning. In: L. Frink, K. Ball-Weir, and C. Smith, Editors, Wildlife and Oil Planning, Response, Research, and Contingency Planning. Tri-State Bird Rescue and Research, Newark, Delaware, pp. 1–9.

Allen, A. and W.C. Nelson. (1983). Canola Oil As a Substitute for Crude Oil in Cold Water Tests. Spills Technology Newsletter, January–February, pp. 4–10.

American Public Health Association (APHA), American Water Works Association, Water Pollution Control Federation. (1992). Standard Methods for the Examination of Water and Wastewater. 5520B—Partition Gravitation Method. American Public Health Association, Washington, D.C. 18th Edition.

Aqua Survey, Inc. (1993). Diesel Fuel, Beef Tallow, RBD Soybean Oil and Crude Soybean Oil: Acute Effects on the Fathead Minnow, Pimephales Promelas. Study # 93–136, May 21, 1993.

American Society for Testing and Materials (ASTM). (1997). Annual Book of ASTM Standards, Section 11. Water and Environmental. Volume 11.04., Designation D 5660–96. Standard Test Method for Assessing the Microbial Detoxification of Chemically Contaminated Water and Soil Using a Toxicity Test with a Luminescent Marine Bacterium. pp. 235–242.

Berardi, L.C. and L.A. Goldblatt. (1980). Gossypol. In: I.E. Liener, Editor, Toxic Constituents of Plant Foodstuffs. Second Edition, Academic Press, New York, NY, pp. 183–237.

Boyd, E.M. (1973). Toxicity of Pure Foods. CRC Press, Cleveland, OH, pp. 71–111.

Calanog, S. A., J.Y. Chen, and R.F. Toia. (1999). Preliminary Evaluation of Potential Impacts of Non-Petroleum Oils in the Aquatic Environment, Proceedings of the 1999 International Oil Spill Conference, March 8–11, 1999, Seattle, Washington, in press.

Cornelius, J.A., H.O.W. Eggins, and A. Wallbridge. (1965). Biodeterioration of Palm Oil Constituents Caused by Fungi. Intern. Biodeterior. Bull. 1:46–55.

Crump-Wiesner, H. J. and A.L. Jennings. (1975). Properties and Effects of Non-petroleum Oils. Pro. of 1975 Conference on Prevention and Control of Pollution. American Petroleum Institute, Washington, DC, pp. 29–32.

ENVIRON Corporation. (1993). Environmental Effects of Releases of Animal Fats and Vegetable Oils to Waterways. Arlington, VA, June 3, 1993.

Fingas, M., Z. Wang, P. Jokuty, P. Lambert, B. Fieldhouse, and G. Sergy. (1995). Oil Behaviour, Fate and Modeling Projects, Pro. Second International Oil Spill Research and Development Forum. International Maritime Organization, London, UK, Volume 1, May 1995, pp. 399–407.

Food and Agriculture Organization of the United Nations, World Health Organization (FAO/WHO). (1994). Fats and Oils in Human Nutrition. Expert Consultation, October 19–26, 1993, Rome. Published by FAO, pp. 1–102, 113–147.

French, C.E., R.H. Ingram, J.A. Uram, G.P. Barron, and R.W. Swift. (1953). The Influence of Dietary Fat and Carbohydrate on Growth and Longevity in Rats. J. Nutr. 51:329–339. Cited in: National Research Council, Nutrient Requirement of Laboratory Animals, 4th Edition. National Academy Press, Washington, DC, p. 20, 1995.

Frink, L. (1994). Statement on Regulatory Standards for the Transportation of Edible Oil. Tri-State Bird Rescue & Research, Inc., January 30, 1994.

Groenewold, J.C., R.F. Pico, and K.S. Watson. (1982). Comparison of BOD Relationships for Typical Edible and Petroleum Oils. Journal of the Water Pollution Control Federation, 54(4):398–405, April 1982.

Hartung, R. (1995). Assessment of the Potential for Long-Term Toxicological Effects of the Exxon Valdez Oil Spill on Birds and Mammals. In: P.G. Wells, J.N. Butler, and J.S. Hughes, Editors, Exxon Valdez Oil Spill: Fate and Effects in Alaskan Waters, American Society for Testing and Materials, Philadelphia, PA, pp. 693–725.

Hui, Y.H. (1996a). Bailey's Industrial Oil and Fat Products, Edible Oil and Fat Products: General Application. John Wiley & Sons, Inc., New York, NY, Volume 1, Fifth Edition, pp.1–280, 397–439.

Hui, Y.H. (1996b). Bailey's Industrial Oil and Fat Products, Edible Oil and Fat Products: Oils and Oilseeds. John Wiley & Sons, Inc., New York, NY, Volume 2, Fifth Edition, pp.1689.

Hui, Y.H. (1996c). Bailey's Industrial Oil and Fat Products, Edible Oil and Fat Products: Products and Application Technology. John Wiley & Sons, Inc., New York, NY, Volume 4, Fifth Edition, pp.1–655.

Institute of Shortening and Edible Oils, Inc. (1985). Treatment of Wastewaters from Food Oil Processing Plants in Municipal Facilities. October 1985, pp. 1–18.

International Agency for Research on Cancer (IARC). (1984). Evaluation of the Carcinogenic Risk of Chemicals to Humans: Polynuclear Aromatic Compounds, Part 2, Carbon Blacks, Mineral Oils and Some Nitroarenes. IARC, France, 33:29–31, 87–168.

International Agency for Research on Cancer (IARC). (1989). Evaluation of the Carcinogenic Risk of Chemicals to Humans: Occupational Exposures in Petroleum Refining: Crude Oil and Major Petroleum Fuels. IARC, France, 45:13–272.

Internationa1 Tanker Owners Pollution Federation Ltd. (ITOPF). (1987). Response to Marine Oil Spills, pp. I.5–I.11.

Kiritsakis, A.K. (1991). Olive Oil. American Oil Chemists' Society, Champaign, IL, pp. 25–33, 104–127, and 157–161.

Klaassen, C.D., M. O. Amdur, and J. Doull. (1986). Casarett and Doull's Toxicology. Macmillan Publishing Company, New York, NY, Third Edition, pp. 11–98, 519–635.

Knowlton, J. and S. Pearce. (1993). Emulsions In: Handbook of Cosmetic Science and Technology. Elsevier Advanced Technology, Oxford, U.K., First Edition, pp. 21–32, 95–118, 528–529.

Lewis, A., P.S. Daling, T. Strom-Kristiansen, and P.J. Brandvik. (1995). The Properties and Behavior of Crude Oil Spilled at Sea. Pro. Second International Oil Spill Research and Development Forum. International Maritime Organization, London, United Kingdom, Volume 1, May 1995, pp. 408–420.

Mattson, F.H. (1973). Potential Toxicity of Food Lipids. In: National Academy of Sciences, Toxicants Occurring Naturally in Foods. National Academy of Sciences Press, Washington, DC, pp. 189–209.

Ministry of Agriculture, Fisheries and Food (MAFF), Alternative Crops Unit, London. (1996). Degradation and Phytotoxicity of Biodiesel Oil—Executive Summary, pp. 1–2.

Minnesota Department of Conservation, Division of Game and Fish. (1963). Waterfowl Mortality Caused by Oil Pollution of the Minnesota and Mississippi Rivers in 1963. In: Proceedings of the 20th Annual Meeting of the Upper Mississippi River Conservation Committee, pp. 149–177.

Mudge, S.M. (1995). Deleterious Effects from Accidental Spillages of Vegetable Oils. Spill Science and Technology Bulletin 2 (2/3): 187–191.

Mudge, S.M. (1997a). Presentation, Third International Ocean Pollution Symposium, April 6–11, 1997, Harbor Branch Oceanographic Institution, Ft. Pierce, Florida.

Mudge, S.M. (1997b). Can Vegetable Oils Outlast Mineral Oils in the Marine Environment? Marine Pollution Bulletin.

Mudge, S.M., H. Saunders, and J. Latchford. (1994). Degradation of Vegetable Oils in the Marine Environment. Countryside Commission for Wales Report, CCW, Bangor, ME, pp. 1–41.

Mudge, S.M., I.D. Goodchild, and M. Wheeler. (1995). Vegetable Oil Spills on Salt Marshes. Chemistry and Ecology 10: 127–135.

Mudge, S.M., M.A. Salgado, and J. East. (1993). Preliminary Investigation into Sunflower Oil Contamination Following the Wreck of the M.V. Kimya. Marine Pollution Bulletin 26(1):40–43.

National Academy of Sciences (NAS), National Research Council (NRC). (1981). Nutrient Requirements of Coldwater Fishes. National Academy Press, Washington, DC, Number 16, pp. 6–53.

National Academy of Sciences (NAS), National Research Council (NRC). (1983). Nutrient Requirements of Warmwater Fishes and Shellfishes. National Academy Press, Washington, DC, Revised Edition, pp. 2–58.

National Academy of Sciences (NAS). (1985). Oil in the Sea—Inputs, Fates and Effects. National Academy Press, Washington, DC, pp. 89–547.

National Academy of Sciences (NAS), National Research Council (NRC). (1995). Nutrient Requirements of Laboratory Animals. National Academy Press, Washington, DC, Fourth Revised Edition.

Ratledge, C. (1994). Biodegradation of Oils, Fats, and Fatty Acids. In: C. Ratledge, Editor, Biochemistry of Microbial Degradation. Kluwer Academic Publishers, The Netherlands, pp. 89–141.

Salanitro, J.P., P. Dorn, M. Huesemann, K.O. Moore, I.A. Rhodes, L.M.R. Jackson, T.E. Vipond, M.M. Western, and H.L. Wisniewski. (1997). Crude Oil Hydrocarbon Bioremediation and Soil Ecotoxicity Assessment. Environ. Sci. Technol. 31:1769–1776.

Salgado, M. (1995). The Effects of Vegetable Oil Contamination on Mussels. PhD Thesis, School of Ocean Sciences, University of Wales, Menai Bridge, Gwynedd, United Kingdom. October 1995, pp. 1–219.

Sax, N.I. and R.J. Lewis, Jr. (1987). Hawley's Condensed Chemical Dictionary, 11th edition, Van Nostrand Reinhold Company, Inc., p. 939.

Smith, J.H. (1974). Decomposition in Soil of Waste Cooking Oils Used in Potato Processing. J. Environ. Quality, 3:279–281.

Stickney, R.R. and J.W. Andrews. (1971). Combined Effects of Dietary Lipids and Environmental Temperature on Growth, Metabolism and Body Composition of Channel Catfish (Ictalurus punctatus). J. Nutr. 101: 1703–1710. Cited in: NAS/NRC (1983), Nutrition Requirements of Warmwater Fishes and Shellfishes. National Academy Press, Washington DC, pp. 9–11.

Stickney, R.R. and J.W. Andrews. (1972). Effects of Dietary Lipids on Growth, Food Conversion, Lipid and Fatty Acid Composition of Channel Catfish. J. Nutr. 102: 249–258. Cited in: NAS/NRC (1983), Nutrition Requirements of Warmwater Fishes and Shellfishes. National Academy Press, Washington DC, pp. 9–11.

Takeuchi, T. and T. Watanabe. (1979). Studies on Nutritive Value of Dietary Lipids in Fish. XIX. Effect of Excessive Amounts of Essential Fatty Acids on Growth of Rainbow Trout. Bull. Jpn. Soc. Sci. Fish. 45: 1517–1519. Cited in: NAS/NRC (1983), Nutrient Requirements of Warmwater Fishes and Shellfishes. National Academy Press, Washington, DC, pp. 9–11.

U.S. Department of Commerce (USDOC), National Oceanic and Atmospheric Administration (NOAA). (1992). An Introduction to Oil Spill Physical and Chemical Processes and Information Management. April, 1992, Chapters 2 and 3, pp. 2–1 to 2–56 and 3–1 to 3–97.

U.S. Department of Commerce (USDOC), National Oceanic and Atmospheric Administration (NOAA). (1994). Options for Minimizing Environmental Impacts of Freshwater Spill Response. NOAA and American Petroleum Institute, September 1994, pp. 2–11, 122–124.

U.S. Department of Commerce (USDOC), National Oceanic and Atmospheric Administration (NOAA). (1996). Damage Assessment and Restoration Program. Injury Assessment: Guidance Document for Natural Resource Damage Assessment Under the Oil Pollution Act of 1990. Silver Spring, Maryland, Appendix C, Oil Behavior, Pathways, and Exposure, pp. C–1–24 and Appendix D, Adverse Effects From Oil, pp. D–1–69, August 1996.

U.S. Department of Commerce (USDOC), National Oceanic and Atmospheric Administration (NOAA). (1993). Memorandum of Record, from NOAA Hazardous Materials Response and Assessment Division, June 3, 1993.

U.S. Department of Health & Human Services (USDHHS), Public Health Service (PHS). (1963). Report on Oil Spills Affecting the Minnesota and Mississippi Rivers, Winter of 1962–1963. Cincinnati, OH, pp. 1–40.

U.S. Department of Health & Human Services (USDHHS). (1990). Healthy People 2000. Conference Edition, pp. 119–137, 390–436.

U.S. Department of the Interior (USDOI), Fish & Wildlife Service (FWS). (1994). Submitted to the U.S. Environmental Protection Agency, 1994. FWS Memorandum from Peter H. Albers, Leader, Contaminant Ecology Group to Oil Spill Response Coordinator,

December 29, 1993. USDOI, FWS. FWS Letter from Michael J. Spear, Assistant Director, Ecological Services, to Ms. Ana Sol Gutierrez, Research and Special Projects Administration, U.S. Department of Transportation, April 11, 1994.
U.S. Environmental Protection Agency (USEPA). (1994). Memorandum from Kathleen Bogan, ABB to Dana Stalcup, Oil Program Branch, USEPA, June 22, 1994.
U.S. Environmental Protection Agency (USEPA), Office of Solid Waste and Emergency Response (OSWER). Emergency Response Notification System (ERNS) database, 1996 and "An Overview of ERNS," March 1995.
Venosa, A.D. and B. Alleman (1999). Preliminary Results of Laboratory Experiments on the Biodegradability and Change in Toxicity of Vegetable Oils During Aerobic Biodegradation. Personal Communication to B. Davis. January 21, 1999.
Venosa, A.D., M.T. Suidan, B.A. Wrenn, K.L. Strohmeier, J.R. Haines, B.L. Eberhart, D. King, and E. Holder. (1996). Bioremediation of an Experimental Oil Spill on the Shoreline of Delaware Bay, Environ. Sci. Technol. 30:1764–1775.
Wolfe, D.A. (1986). Source of Organic Contaminants in the Marine Environment: Ocean Disposal and Accidental Spills. In: C.S. Giam and H.J.M. Dou, Editors, Strategies and Advanced Techniques for Marine Pollution Studies: Mediterranean Sea. Springer-Verlag, Berlin, pp. 237–288.
Yannai, S. (1980). Toxic Factors Induced by Processing. In: I.E. Liener, Editor, Toxic Constituents of Plant Foodstuffs, Academic Press, New York, NY, Second Edition, pp. 371–427.

IV. Regulatory Analyses

A. Executive Order 12866: OMB Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), we must determine whether the regulatory action is "significant" and therefore subject to review by the Office of Management and Budget (OMB). A "significant regulatory action" is an action that results in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise new legal or policy issues arising out of legal mandates, the President's priorities, or the principles in the Executive Order.

It has been determined that this rule is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review.

B. Executive Order 12875: Enhancing the Intergovernmental Partnership

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected State, local, and tribal governments, the nature of their concerns, any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's rule does not create a mandate on State, local, or tribal governments. The rule does not impose any enforceable duties on these entities. EPA believes that no State, local, or tribal governments are included in its FRP-regulated community. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

C. Executive Order 13084: Consultation and Coordination with Indian Tribal Governments

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to prove to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. EPA believes that no tribal governments are included in its FRP-regulated community. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

D. Executive Order 13045: Children's Health

Executive Order 13045: "Protection of Children from Environmental Health Risks and Safety Risks" (62 F.R. 19885, April 23, 1997) applies to any rule that : (1) is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. The proposed rule is not subject to Executive Order 13045, because it is not economically significant as defined in Executive Order 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. This is so, because the types of risks resulting from oil discharges do not have a disproportionate effect on children.

The public is invited to submit or identify peer-reviewed studies and data, of which the Agency may not be aware, that assessed results from early-life

exposure to vegetable oils and animal fats.

E. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (5 U.S.C. 601 et seq., as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996) whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities.

SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities. The following discussion explains our determination.

We have examined this rule's potential effects on small entities as required by the Regulatory Flexibility Act and have determined that this action will not have a significant economic impact on a substantial number of small entities. Based on a survey of FRPs, we have determined that out of approximately 29 companies that are affected by this rulemaking (because they have one or more FRP facilities with animal fats or vegetable oils), only about twelve meet the Small Business Administration's definition of a small business (Screening Analysis of the Facility Response Planning Requirements on Small Non-Petroleum Entities).

In this rulemaking, we are proposing to add a methodology that can be used by facilities to plan for the appropriate volume of response resources needed for a worst case discharge of an animal fat or vegetable oil, similar to the existing methodology provided for petroleum oils. As a result, the overall economic effect of this regulation has been determined to reduce the reporting and recordkeeping burden for facilities that are required to prepare and maintain plans for the discharge of vegetable oils and animal fats because they no longer will be required to provide additional documentation to support their determinations. We believe that facilities will save on the order of one to four labor hours in annual reporting and recordkeeping burden as a result of the proposed changes. These effects are discussed in greater detail in the Paperwork Reduction Act section of this Preamble. Furthermore, we believe that some facilities could realize additional cost savings as a result of calculations performed in estimating the appropriate amount of response planning resources needed to respond to a worst case discharge based on new information provided in proposed Tables 6 and 7. However, we have not attempted to quantify the total cost savings associated with this possibility in order to avoid overestimating the effects of the rulemaking. I hereby certify that this rule will not have a significant economic impact on a substantial number of small entities. This rule, therefore, does not require a regulatory flexibility analysis.

F. Paperwork Reduction Act

We will submit the information collection requirements in this proposed rule to OMB for approval as required by the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* We prepared Information Collection Request (ICR) documents (EPA ICR No. 1630.05), and you may obtain a copy by contacting Sandy Farmer, OP Regulatory Information Division; U.S. Environmental Protection Agency (2137); 401 M St., SW.; Washington, D.C. 20460 or by calling 202–260–2740. You may also view or download these ICRs at our ICR Internet site at http://www.epa.gov/icr.

The FRP rule (40 CFR 112.20–21) requires that owners or operators of facilities that could cause "substantial harm" to the environment by discharging oil into navigable waters or adjoining shorelines prepare plans for responding, to the maximum extent practicable, to a worst case discharge of oil, to a substantial threat of such a discharge, and, as appropriate, to discharges smaller than worst case discharges. All facilities subject to this requirement must submit their plans to us. In turn, we review and approve plans submitted by facilities identified as having the potential to cause "significant and substantial harm" to the environment from oil discharges. Other low-risk, regulated facilities are not required to prepare FRPs but are required to document their determination that they do not meet the "substantial harm" criteria.

Through this rulemaking, we propose to reduce the reporting and recordkeeping burden for facilities that are regulated under the FRP rule due to the storage of animal fats and vegetable oils by clarifying response planning requirements for these facilities. Specifically, we propose to add a new methodology to allow facilities to calculate planning volumes for a worst case discharge of animal fats or vegetable oils similar to the methodology provided for discharges of petroleum oils. Currently these facilities are required to identify in their plans the procedures used to determine the appropriate amount of resources needed to respond to a worst case discharge of a non-petroleum oil. As a result, we believe that the overall economic effect of this proposal will be to reduce the reporting and recordkeeping burden for these facilities.

In addition, we are proposing to allow case-by-case deviations for facility response planning levels and are soliciting comment on whether to allow facilities to combine response planning at either the small and medium stage, or the medium and large stage for discharges of vegetable oils and animal fats. We estimate the cost savings from this proposal to be minimal, as our Regional Administrators already give consideration to unique facility characteristics during their review of FRPs in allowing plan deviations.

We do not expect the number of facilities subject to the requirements to develop an FRP and maintain the plan on a year-to-year basis to change as a result of this proposed rulemaking. In the current ICR, we estimate that 5,465 facilities would be required to develop and submit FRPs. Of these 5,465 facilities, we estimate that approximately 61 facilities (owned or operated by 29 companies) are required to develop and submit FRPs due to the storage of vegetable oils and animal fats.

We have previously estimated that it requires between 85 and 126 hours for facility personnel in a large facility (i.e, total storage capacity greater than one million gallons) and between 21 and 44 hours for personnel in a medium facility (i.e., total storage capacity greater than 42,000 gallons and less than or equal to one million gallons) to comply with the annual, subsequent-year reporting and recordkeeping requirements of the FRP rule. We have also estimated that a newly regulated facility will require between 225 and 280 hours to prepare a plan in the first year. We estimate that the present information collection burden of the FRP rule for facilities that are regulated due to the storage of vegetable oils and animal fats to be approximately 5,979 hours a year. Through this rulemaking, we propose to reduce that burden by approximately four hours for a large facility and one hour for a medium facility. This proposed reduction would result in an annual average burden of 5,751 hours.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time required to perform the following tasks: (1) review instructions; (2) develop, acquire, install, and utilize technology and systems for the purpose of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; (3) adjust the existing ways to comply with any previously applicable instructions and requirements; (4) train personnel to be able to respond to a collection of information; (5) search data sources; (6) complete and review the collection of information; and (7) transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. We request your comments on our need for this information, the accuracy of the provided burden estimates, and the accuracy of the supporting analyses used to develop the burden estimates. We also request your suggestions on methods for further minimizing respondent burden, including the use of automated collection techniques. Send your comments and suggestions on the ICR to both:

(1) The Director, OP Regulatory Information Division; U.S. Environmental Protection Agency (2137); 401 M St., SW.; Washington, D.C. 20460, or E-mail to farmer.sandy@epa.gov; and

(2) The Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th St., NW.; Washington, D.C. 20503, marked "Attention: Desk Officer for EPA."

Include the ICR number in any correspondence. Because OMB must make a decision concerning the ICR between 30 and 60 days after April 8, 1999, OMB requests your comments by May 10, 1999. In the final rule, we will respond to any OMB or public comments we receive on the information collection requirements contained in this proposal.

G. Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or tribal governments or the private sector. This determination is based on the fact that the proposed revisions are designed to clarify the requirements for certain facilities that store vegetable oils and animal fats to comply with the FRP rule. The proposed revisions are designed to decrease the current reporting or recordkeeping burden and cost for these facilities and do not impose any additional requirements. EPA has also determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments for similar reasons. Furthermore, based on a survey of FRPs submitted to EPA, we did not identify any small governments that would be affected by this rulemaking.

H. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law No. 104–113, § 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This proposed rulemaking does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards. EPA welcomes comments on this aspect of the proposed rulemaking and, specifically, invites you to identify potentially applicable voluntary consensus standards and to explain why such standards should be used in this regulation.

BILLING CODE 6560–50–P

V. Appendices to the Preamble

Appendix A to the Preamble

Example 1 - Worksheet for Animal Fats and Vegetable Oils Discharge into Rivers and Canals Operating Areas

Worksheet to Plan Volume of Response Resources

All reference to appendices in this worksheet are to existing or proposed changes to appendices in 40 CFR part 112

Part I Background Information

Step (A) Calculate Worst Case Discharge in barrels (Appendix D) . . . . . **500,000** (A)

Step (B) Oil Group[1] (Table 7 and section 1.2 of Appendix E) . . . . . **B**

Step (C) Operating Area (choose one)

	Nearshore /Inland	x	or Rivers and Canals
	Great Lakes		

Step (D) Percentages of Oil (Table 6 of Appendix E)

Percent Lost to Natural Dissipation	Percent Recovered Floating Oil	Percent Oil Onshore
20 (D1)	15 (D2)	65 (D3)

Step (E1) On-Water Oil Recovery $\frac{\text{Step(D2)} \times \text{Step(A)}}{100}$ = **75,000** (E1)

Step (E2) Shoreline Recovery $\frac{\text{Step (D3)} \times \text{Step (A)}}{100}$ = **325,000** (E2)

Step (F) Emulsification Factor (Table 7 of Appendix E) . . . . . **2.0** (F)

Step (G) On-Water Oil Recovery Resource Mobilization Factor
(Table 4 of Appendix E)

Tier 1	Tier 2	Tier 3
.30	.40	.60
(G1)	(G2)	(G3)

[1] A facility that handles, stores, or transports multiple groups of oil must do separate calculations for each oil group on site except for those oil groups that constitute 10 percent or less by volume of the total oil storage capacity at the facility. For purposes of this calculation, the volumes of all products in an oil group must be summed to determine the percentage of the facility's total oil storage capacity.

Part II On-Water Oil Recovery Capacity (barrels/day)

Tier 1	Tier 2	Tier 3
45,000	60,000	90,000
Step (E1) x Step (F) x Step (G1)	Step (E1) x Step (F) x Step (G2)	Step (E1) x Step (F) x Step (G3)

Part III Shoreline Cleanup Volume (barrels) . . . 650,000
Step (E2) x Step (F)

Part IV On-Water Response Capacity By Operating Area
(Table 5 of Appendix E)
(Amount needed to be contracted for in barrels/day)

Tier 1	Tier 2	Tier 3
1,875	3,750	7,500
(J1)	(J2)	(J3)

Part V On-Water Amount Needed to be Identified, but not Contracted for in Advance (barrels/day)

Tier 1	Tier 2	Tier 3
43,125	56,250	82,500
Part II Tier 1 - Step (J1)	Part II Tier 2 - Step (J2)	Part II Tier 3 - Step (J3)

NOTE: To convert from barrels/day to gallons/day, multiply the quantities in Parts II through V by 42 gallons/barrel.

Appendix B to the Preamble
Example 2 - Worksheet for Animal Fats and Vegetable Oils Discharge into Inland Operating Area

Worksheet to Plan Volume of Response Resources
All reference to appendices in this worksheet are to existing or proposed changes to appendices in 40 CFR part 112

Part I Background Information

Step (A) Calculate Worst Case Discharge in barrels (Appendix D) — 500,000 (A)

Step (B) Oil Group[1] (Table 7 and section 1.2 of appendix E) . . . . . B

Step (C) Operating Area (choose one) . . . . . x Nearshore/Inland Great Lakes; ☐ or Rivers and Canals

Step (D) Percentages of Oil (Table 6 of Appendix)

Percent Lost to Natural Dissipation	Percent Recovered Floating Oil	Percent Oil Onshore
30 (D1)	20 (D2)	50 (D3)

Step (E1) On-Water Oil Recovery $\frac{\text{Step(D2) x Step(A)}}{100}$ — 100,000 (E1)

Step (E2) Shoreline Recovery $\frac{\text{Step (D3) x Step (A)}}{100}$ — 250,000 (E2)

Step (F) Emulsification Factor (Table 7 of Appendix E) . . . . . 2.0 (F)

Step (G) On-Water Oil Recovery Resource Mobilization Factor (Table 4 of Appendix E)

Tier 1	Tier 2	Tier 3
.15 (G1)	.25 (G2)	.40 (G3)

[1] A facility that handles, stores, or transports multiple groups of oil must do separate calculations for each oil group on site except for those oil groups that constitute 10 percent or less by volume of the total oil storage capacity at the facility. For purposes of this calculation, the volumes of all products in an oil group must be summed to determine the percentage of the facility's total oil storage capacity.

Appendix B to the Preamble (continued)
Example 2 (continued)

Part II On-Water Oil Recovery Capacity (barrels/day)

Tier 1	Tier 2	Tier 3
30,000	50,000	80,000
Step (E1) x Step (F) x Step (G1)	Step (E1) x Step (F) x Step (G2)	Step (E1) x Step (F) x Step (G3)

Part III Shoreline Cleanup Volume (barrels) . . . 500,000

Step (E2) x Step (F)

Part IV On-Water Response Capacity By Operating Area
(Table 5 of Appendix E)
(Amount needed to be contracted for in barrels/day)

Tier 1	Tier 2	Tier 3
12,500	25,000	50,000
(J1)	(J2)	(J3)

Part V On-Water Amount Needed to be Identified, but not Contracted for in Advance (barrels/day)

Tier 1	Tier 2	Tier 3
17,500	25,000	30,000
Part II Tier 1 - Step (J1)	Part II Tier 2 - Step (J2)	Part II Tier 3 - Step (J3)

NOTE: To convert from barrels/day to gallons/day, multiply the quantities in Parts II through V by 42 gallons/barrel.

Appendix C to the Preamble
Example 3 - Worksheet for Petroleum Oil Discharge into Inland Operating Areas

Worksheet to Plan Volume of Response Resources
All reference to appendices in this worksheet are to existing or proposed changes to appendices in 40 CFR part 112

Part I Background Information

Step (A) Calculate Worst Case Discharge in barrels (Appendix D) — 500,000 (A)

Step (B) Oil Group[1] (Table 3 and section 1.2 of Appendix E) 3

Step (C) Operating Area (choose one) — [x] Nearshore /Inland Great Lakes [ ] or Rivers and Canals

Step (D) Percentages of Oil (Table 2 of Appendix E)

Percent Lost to Natural Dissipation	Percent Recovered Floating Oil	Percent Oil Onshore
30	50	50
(D1)	(D2)	(D3)

Step (E1) On-Water Oil Recovery $\frac{\text{Step(D2) x Step(A)}}{100}$ — 250,000 (E1)

Step (E2) Shoreline Recovery $\frac{\text{Step(D3) x Step(A)}}{100}$ — 250,000 (E2)

Step (F) Emulsification Factor (Table 3 of Appendix E) . . . . . 2.0 (F)

Step (G) On-Water Oil Recovery Resource Mobilization Factor (Table 4 of Appendix E)

Tier 1	Tier 2	Tier 3
.15	.25	.40
(G1)	(G2)	(G3)

[1] A facility that handles, stores, or transports multiple groups of oil must do separate calculations for each oil group on site except for those oil groups that constitute 10 percent or less by volume of the total oil storage capacity at the facility. For purposes of this calculation, the volumes of all products in an oil group must be summed to determine the percentage of the facility's total oil storage capacity.

Appendix C to the Preamble (continued)
Example 2 (continued)

Part II On-Water Oil Recovery Capacity (barrels/day)

Tier 1	Tier 2	Tier 3
75,000	125,000	200,000
Step (E1) x Step (F) x Step (G1)	Step (E1) x Step (F) x Step (G2)	Step (E1) x Step (F) x Step (G3)

Part III Shoreline Cleanup Volume (barrels) . . 500,000

Step (E2) x Step (F)

Part IV On-Water Response Capacity By Operating Area
(Table 5 of Appendix E)
(Amount needed to be contracted for in barrels/day)

Tier 1	Tier 2	Tier 3
12,500	25,000	50,000
(J1)	(J2)	(J3)

Part V On-Water Amount Needed to be Identified, but not Contracted for in Advance (barrels/day)

Tier 1	Tier 2	Tier 3
62,500	100,000	150,000
Part II Tier 1 - Step (J1)	Part II Tier 2 - Step (J2)	Part II Tier 3 - Step (J3)

NOTE: To convert from barrels/day to gallons/day, multiply the quantities in Parts II through V by 42 gallons/barrel.

BILLING CODE 6560-50-C

List of Subjects in 40 CFR Part 112

Environmental protection, Fire prevention, Flammable materials, Materials handling and storage, Oil pollution, Oil spill response, Petroleum, Reporting and recordkeeping requirements, Tanks, Water pollution control, Water resources.

Dated: March 26, 1999.

Peter D. Robertson,

Acting Administrator.

For the reasons discussed in the Preamble, the Environmental Protection Agency proposes to amend 40 CFR part 112 as follows:

PART 112—OIL POLLUTION PREVENTION

1. The authority citation for part 112 continues to read as follows:

Authority: 33 U.S.C. 1321 and 1361; E.O. 12777 (October 18, 1991), 3 CFR, 1991 Comp., p. 351; 33 U.S.C. 2720.

2. Amend § 112.2 to add the following definitions in alphabetical order to read as follows:

§ 112.2 Definitions

* * * * *

Animal fat means non-petroleum oils, fats, and greases of animal, fish, or marine mammal origin.

* * * * *

Non-petroleum oil means oil of any kind that is not petroleum-based, including but not limited to: fats, oils, and greases of animal, fish, or marine mammal origin; and vegetable oils, including oils from seeds, nuts, fruits, and kernels.

* * * * *

Petroleum oil means petroleum in any form, including but not limited to crude oil, fuel oil, mineral oil, sludge, oil refuse, and refined products.

* * * * *

Vegetable oil means a non-petroleum oil or fat of vegetable origin, including but not limited to oils and fats derived from plant seeds, nuts, fruits, and kernels.

* * * * *

3. Amend § 112.20 by adding paragraph (a)(4) and revising the phrase "section 10" in paragraph (f)(1)(ii)(B) to read section 13 as follows:

§ 112.20 Facility response plans.

(a) * * *

(4) *Preparation and submission of response plans—Animal fat and vegetable oil facilities.* The owner or operator of any non-transportation-related facility that handles, stores, or transports animal fats and vegetable oils must prepare and submit a facility response plan as follows:

(i) *Facilities with approved plans.* The owner or operator of a facility with a facility response plan that has been approved by [effective date of the final rule] need not prepare or submit a revised plan except as otherwise required by paragraphs (b), (c), and (d) of this section.

(ii) *Facilities with plans that have been submitted to the Regional Administrator.* Except for facilities with approved plans as provided in (a)(4)(i) of this section, the owner or operator of a facility that has submitted a response plan to the Regional Administrator prior to [effective date of the final rule] must review the plan to determine if it meets or exceeds the applicable provisions of this part. An owner or operator need not prepare or submit a new plan if the existing plan meets or exceeds the applicable provisions of this part. If the plan does not meet or exceed the applicable provisions of this part, the owner or operator must prepare and submit a new plan by [date sixty days after the effective date of the final rule].

(iii) *Newly regulated facilities.* The owner or operator of a newly constructed facility that commences operation after [effective date of the final rule] must prepare and submit a plan to the Regional Administrator in accordance with paragraph (a)(2)(ii) of this section. The plan must meet or exceed the applicable provisions of this part. The owner or operator of an existing facility that must prepare and submit a plan after [effective date of the final rule] as a result of a planned or unplanned change in facility characteristics that causes the facility to become regulated under paragraph (f)(1) of this section, must prepare and submit a plan to the Regional Administrator in accordance with paragraphs (a)(2)(iii) or (iv) of this section, as appropriate. The plan must meet or exceed the applicable provisions of this part.

(iv) *Facilities amending existing plans.* The owner or operator of a facility submitting an amended plan in accordance with paragraph (d) of this section after [effective date of the final rule], including plans that had been previously approved, must also review the plan to determine if it meets or exceeds the applicable provisions of this part. If the plan does not meet or exceed the applicable provisions of this part, the owner or operator must revise and resubmit revised portions of an amended plan to the Regional Administrator in accordance with paragraphs (d) of this section, as appropriate. The plan must meet or exceed the applicable provisions of this part.

* * * * *

4. Amend § 112.21 by revising the phrase "section 10" to read "section 13" in the second sentence of paragraph (c).

5. Amend Appendix C to part 112 by revising phrase "section 10" to read "section 13" in the second sentence of section 2.3, the last sentence in section 4.0, and the second sentence of Attachment C–II, paragraph 3.

6. Amend Appendix D to part 112 by revising the phrase "section 10" to read "section 13" in the second sentence in section 1.4.

7. Appendix E to part 112 is amended by revising the phrase "section 10" to read "section 13" wherever it appears;

by revising the phrase "section 9.2" to read "section 12.2" wherever it appears;

by revising the word "spill" to read "discharge" wherever it appears;

by revising the phrase "non-petroleum oils" to read "non-petroleum oils other than animal fats and vegetable oils" wherever it appears;

by redesignating sections 1.2.1 through 1.2.7 as section 1.2.2 through 1.2.8, respectively, and by redesignating section 1.2.8 as 1.2.10;

by adding new sections 1.2.1 and 1.2.9 to read as set forth below;

by revising newly designated section 1.2.3 (2) to read as set forth below;

by revising newly designated section 1.2.4 to read as set forth below;

by revising the first sentence of newly designated section 1.2.8 (2) to read as set forth below;

by revising newly designated section 1.2.10 to read as set forth below;

by revising the phrase "section 4.3" to read "sections 4.3 and 9.3" in the third sentence of section 2.6;

by revising section 3.0 to read as set forth below;

by revising section 3.2 to read as set forth below;

by adding new sections 3.2.1 and 3.2.2 to read as set forth below;

by revising section 4.0 to read as set forth below;

by revising section 4.2 to read as set forth below;

by adding new sections 4.2.1 and 4.2.2 to read as set forth below;

by revising the phrase "Section 7" to read "Sections 7 and 10" in the second sentence of section 5.1;

by revising the phrase "Attachment E–1" to read "Attachments E–1 and E–2" in the third sentence of section 5.1;

by revising the phrase "sections 7.2 and 7.3 of this appendix" to read "sections 7.2 and 7.3 or sections 10.2 and 10.3 of this appendix" in the third sentence of section 5.3;

by revising the phrase "Table 2" to read "Table 2 and Table 6" in the fifth sentence of section 5.7;

by revising the phrase "Tables 2 and 3" to read "Tables, 2, 3, 6, 7" in the second sentence of section 5.8;

by revising section 7.0 to read as set forth below;

by revising the second sentence of section 7.2.1 to read as set forth below;

by revising the third sentence of section 7.4 to read as set forth below;

by revising the third sentence of section 7.6.3 to read as set forth below;

by revising the second sentence of section 7.7 to read as set forth below;

by revising section 7.7 (1) to read as set forth below;

by revising the second, third and fourth sentences of section 7.7.5 to read as set forth below;

by redesignating sections 8.0, 8.1 and 8.2 as sections 11.0, 11.1, 11.2, respectively, and revising those sections to read as set forth below;

by redesignating sections 9.0, 9.1, 9.2 and 9.3 as sections 12.0, 12.1, 12.2 and 12.3, respectively, and revising those sections to read as set forth below;

by redesignating sections 10.0, 10.1, 10.2 and 10.3 as sections 13.0, 13.1, 13.2 and 13.3, respectively, and revising those sections to read as set forth below; and

by adding new sections 8.0, 9.0, and 10.0 to read as set forth below.

Appendix E to Part 112—Determination and Evaluation of Required Response Resources for Facility Response Plans

* * * * *

1.2.1 *Animal fat* means non-petroleum oils, fats, and greases of animal, fish, or marine mammal origin. Animal fats are further classified based on specific gravity as follows:

(A) Group A—specific gravity less than 0.8.

(B) Group B—specific gravity equal to or greater than 0.8 and less than 1.0.

(C) Group C—specific gravity equal to or greater than 1.0.

1.2.2 * * *

1.2.3 * * *

(2) A non-petroleum oil, other than an animal fat or vegetable oil, with a specific gravity less than 0.8.

1.2.4 *Non-petroleum oil* means oil of any kind that is not petroleum-based, including but not limited to: fats, oils, and greases of animal, fish, or marine mammal origin; and vegetable oils, including oils from seeds, nuts, fruits, and kernels.

* * * * *

1.2.8 * * *

(2) A non-petroleum oil, other than an animal fat or vegetable oil, with a specific gravity of 0.8 or greater. * * *

* * * * *

1.2.9 *Vegetable oil* means a non-petroleum oil or fat of vegetable origin, including but not limited to oils and fats derived from plant seeds, nuts, fruits, and kernels. Vegetable oils are further classified based on specific gravity as follows:

(A) Group A—specific gravity less than 0.8.

(B) Group B—specific gravity equal to or greater than 0.8 and less than 1.0.

(C) Group C—specific gravity equal to or greater than 1.0.

1.2.10 Other definitions are included in § 112.2, section 1.2 of Appendices C and E, and section 3.0 of Appendix F.

* * * * *

3.0 Determining Response Resources Required for Small Discharges—Petroleum oils and non-petroleum oils other than animal fats and vegetable oils

* * * * *

3.2 Complexes that are regulated by EPA and the USCG must also consider planning quantities for the transportation-related transfer portion of the facility.

3.2.1 *Petroleum oils.* The USCG planning level that corresponds to EPA's "small discharge" is termed "the average most probable discharge." A USCG rule found at 33 CFR 154.1020 defines "the average most probable discharge" as a discharge of 50 barrels (2,100 gallons). Owners or operators of complexes that handle, store, or transport petroleum oils must compare oil spill volumes for a small discharge, and an average most probable discharge, and plan for whichever quantity is greater.

3.2.2 *Non-petroleum oils other than animal fats and vegetable oils.* Owners or operators of complexes that handle, store, or transport non-petroleum oils other than animal fats and vegetable oils must plan for oil spill volumes for a small discharge. There is no USCG planning level that directly corresponds to EPA's "small discharge." However, the USCG (at 33 CFR 154.545) has requirements to identify equipment to contain oil resulting from an operational discharge.

* * * * *

4.0 Determining Response Resources Required for Medium Discharges—Petroleum oils and non-petroleum oils other than animal fats and vegetable oils

* * * * *

4.2 Complexes that are regulated by EPA and the USCG must also consider planning quantities for the transportation-related transfer portion of the facility.

4.2.1 *Petroleum oils.* The USCG planning level that corresponds to EPA's "medium discharge" is termed "the maximum most probable discharge". The USCG rule found at 33 CFR part 154 defines "the maximum most probable discharge" as a discharge of 1,200 barrels (50,400 gallons) or 10 percent of the worst case discharge, whichever is less. Owners or operators of complexes that handle, store, or transport petroleum oils must compare spill volumes for a medium discharge and a maximum most probable discharge and plan for whichever quantity is greater.

4.2.2 *Non-petroleum oils other than animal fats and vegetable oils.* Owners or operators of complexes that handle, store, or transport non-petroleum oils other than animal fats and vegetable oils must plan for oil spill volumes for a medium discharge. For non-petroleum oils, there is no USCG planning level that directly corresponds to EPA's "medium discharge."

* * * * *

7.0 Calculating Planning Volumes for a Worst Case Discharge—Petroleum oils and non-petroleum oils other than animal fats and vegetable oils.

* * * * *

7.2.1 * * * See sections 1.2.3 and 1.2.8 of this appendix for the definitions of non-persistent and persistent oils, respectively. * * *

* * * * * *

7.4 * * * The facility owner or operator shall ensure, by contract or other approved means as described in § 112.2, the availability of these resources, * * *

* * * * *

7.6.3 * * * The facility owner or operator shall ensure, by contract or other approved means as described in § 112.2, the availability of these resources. * * *

7.7 * * * Refer to section 11 of this appendix for information on the limitations on the use of chemical agents for inland and nearshore areas.

7.7.1 * * *

(1) * * * Procedures and strategies for responding to a worst case discharge to the maximum extent practicable; and

* * * * *

7.7.5 * * * The owner or operator of a facility that handles, stores, or transports non-petroleum oils other than animal fats and vegetable oils that does not have adequate fire fighting resources located at the facility or that cannot rely on sufficient local fire fighting resources must identify adequate fire fighting resources. The owner or operator shall ensure, by contract or other approved means as described in § 112.2, the availability of these resources. The response plan must also identify an individual located at the facility to work with the fire department for fires of these oils. * * *

8.0 Determining Response Resources Required for Small Discharges—Animal fats and vegetable oils

8.1 A facility owner or operator shall identify sufficient response resources available, by contract or other approved means as described in § 112.2, to respond to a small discharge of animal fats or vegetable oils. A small discharge is defined as any discharge volume less than or equal to 2,100 gallons, but not to exceed the calculated worst case discharge. The equipment must be designed to function in the operating environment at the point of expected use.

8.2 Complexes that are regulated by EPA and the USCG must also consider planning quantities for the marine transportation-related portion of the facility.

8.2.1 Owners or operators of complexes that handle, transport, or store only animal fats or vegetable oils must plan for a small discharge. There is no USCG planning level that directly corresponds to EPA's "small discharge." Although the USCG does not have planning requirements for small discharges, they do have requirements (at 33 CFR 154.545) to identify equipment to

contain oil resulting from an operational discharge.

8.3 The response resources shall, as appropriate, include:

8.3.1 One thousand feet of containment boom (or, for complexes with marine transfer components, 1,000 feet of containment boom or two times the length of the largest vessel that regularly conducts oil transfers to or from the facility, whichever is greater), and a means of deploying it within 1 hour of the discovery of a discharge;

8.3.2 Oil recovery devices with an effective daily recovery capacity equal to the amount of oil discharged in a small discharge or greater which is available at the facility within 2 hours of the detection of a discharge; and

8.3.3 Oil storage capacity for recovered oily material indicated in section 12.2 of this appendix.

9.0 Determining Response Resources Required for Medium Discharges—Animal fats and vegetable oils

9.1 A facility owner or operator shall identify sufficient response resources available, by contract or other approved means as described in § 112.2, to respond to a medium discharge of animal fats or vegetable oils for that facility. This will require response resources capable of containing and collecting up to 36,000 gallons of oil or 10 percent of the worst case discharge, whichever is less. All equipment identified must be designed to operate in the applicable operating environment specified in Table 1 of this appendix.

9.2 Complexes that are regulated by EPA and the USCG must also consider planning quantities for the transportation-related transfer portion of the facility. The USCG planning level that corresponds to EPA's "medium discharge" is termed "the maximum most probable discharge." The USCG revisions to 33 CFR part 154 define "the maximum most probable discharge" as a discharge of 1,200 barrels (50,400 gallons) or 10 percent of the worst case discharge, whichever is less. Owners or operators of complexes must compare spill volumes for a medium discharge and a maximum most probable discharge and plan for whichever quantity is greater.

9.2.1 Owners or operators of complexes that handle, store, or transport animal fats or vegetable oils must plan for oil spill volumes for a medium discharge. For non-petroleum oils, there is no USCG planning level that directly corresponds to EPA's "medium discharge." Although the USCG does not have planning requirements for medium discharges, they do have requirements (at 33 CFR 154.545) to identify equipment to contain oil resulting from an operational discharge.

9.3 Oil recovery devices identified to meet the applicable medium discharge volume planning criteria must be located such that they are capable of arriving on-scene within 6 hours in higher volume port areas and the Great Lakes and within 12 hours in all other areas. Higher volume port areas and Great Lakes areas are defined in section 1.2 of Appendix C to this part.

9.4 Because rapid control, containment, and removal of oil are critical to reduce discharge impact, the owner or operator must determine response resources using an effective daily recovery capacity for oil recovery devices equal to 50 percent of the planning volume applicable for the facility as determined in section 9.1 of this appendix. The effective daily recovery capacity for oil recovery devices identified in the plan must be determined using the criteria in section 6 of this appendix.

9.5 In addition to oil recovery capacity, the plan shall, as appropriate, identify sufficient quantity of containment boom available, by contract or other approved means as described in § 112.2, to arrive within the required response times for oil collection and containment and for protection of fish and wildlife and sensitive environments. For further description of fish and wildlife and sensitive environments, see Appendices I, II, and III to DOC/NOAA's "Guidance for Facility and Vessel Response Plans: Fish and Wildlife and Sensitive Environments" (59 FR 14713, March 29, 1994) and the applicable ACP. While the Guidance does not set required quantities of boom for oil collection and containment, the response plan shall identify and ensure, by contract or other approved means as described in § 112.2, the availability of the quantity of boom identified in the plan for this purpose.

9.6 The plan must indicate the availability of temporary storage capacity to meet section 12.2 of this appendix. If available storage capacity is insufficient to meet this level, then the effective daily recovery capacity must be derated (downgraded) to the limits of the available storage capacity.

9.7 The following is an example of a medium discharge volume planning calculation for equipment identification in a higher volume port area: The facility's largest aboveground storage tank volume is 840,000 gallons. Ten percent of this capacity is 84,000 gallons. Because 10 percent of the facility's largest tank, or 84,000 gallons, is greater than 36,000 gallons, 36,000 gallons is used as the planning volume. The effective daily recovery capacity is 50 percent of the planning volume, or 18,000 gallons per day. The ability of oil recovery devices to meet this capacity must be calculated using the procedures in section 6 of this appendix. Temporary storage capacity available on-scene must equal twice the daily recovery capacity as indicated in section 12.2 of this appendix, or 36,000 gallons per day. This is the information the facility owner or operator must use to identify and ensure the availability of the required response resources, by contract or other approved means as described in § 112.2. The facility owner shall also identify how much boom is available for use.

10.0 Calculating Planning Volumes for a Worst Case Discharge—Animal fats and vegetable oils.

10.1 A facility owner or operator shall plan for a response to the facility's worst case discharge. The planning for on-water oil recovery must take into account a loss of some oil to the environment due to physical, chemical, and biological processes, potential increases in volume due to emulsification, and the potential for deposition of oil on the shoreline or on sediments. The procedures for animal fats and vegetable oils are discussed in section 10.7 of this appendix.

10.2 The following procedures must be used by a facility owner or operator in determining the required on-water oil recovery capacity:

10.2.1 The following must be determined: the worst case discharge volume of oil in the facility; the appropriate group(s) for the types of oil handled, stored, or transported at the facility (Groups A, B, C); and the facility's specific operating area. See sections 1.2.1 and 1.2.9 of this appendix for the definitions of animal fats and vegetable oils and groups thereof. Facilities that handle, store, or transport oil from different oil groups must calculate each group separately, unless the oil group constitutes 10 percent or less by volume of the facility's total oil storage capacity. This information is to be used with Table 6 of this appendix to determine the percentages of the total volume to be used for removal capacity planning. Table 6 of this appendix divides the volume into three categories: oil lost to the environment; oil deposited on the shoreline; and oil available for on water recovery.

10.2.2 The on-water oil recovery volume shall, as appropriate, be adjusted using the appropriate emulsification factor found in Table 7 of this appendix. Facilities that handle, store, or transport oil from different groups must compare the on-water recover volume for each oil group (unless the oil group constitutes 10 percent or less by volume of the facility's total storage capacity) and use the calculation that results in the largest on-water oil recovery volume to plan for the amount of response resources for a worst case discharge.

10.2.3 The adjusted volume is multiplied by the on water oil recovery resource mobilization factor found in Table 4 of this appendix from the appropriate operating area and response tier to determine the total on water oil recovery capacity in barrels per day that must be identified or contracted to arrive on-scene within the applicable time for each response tier. Three tiers are specified. For higher volume port areas, the contracted tiers of resources must be located such that they are capable of arriving on-scene within 6 hours for Tier 1, 30 hours for Tier 2, and 54 hours for Tier 3 of the discovery of a discharge. For all other rivers and canals, inland, nearshore areas, and the Great Lakes, these tiers are 12, 36, and 60 hours.

10.2.4 The resulting on water oil recovery capacity in barrels per day for each tier is used to identify response resources necessary to sustain operations in the applicable operating area. The equipment shall be capable of sustaining operations for the time period specified in Table 6 of this appendix. The facility owner or operator shall identify and ensure the availability, by contract or other approved means as described in § 112.2, of sufficient oil spill recovery devices to provide the effective daily oil recovery capacity required. If the required capacity exceeds the applicable cap specified in Table 5 of this appendix, then a facility owner or operator shall ensure, by contract or other approved means as described in § 112.2, only for the quantity of resources required to meet the cap, but shall identify

sources of additional resources as indicated in section 5.4 of this appendix. The owner or operator of a facility whose planning volume exceeded the cap in 1998 must make arrangements to identify and ensure the availability, by contract or other approved means as described in § 112.2, for additional capacity to be under contract by 2003, as appropriate. For a facility that handles multiple groups of oil, the required effective daily recovery capacity for each oil group is calculated before applying the cap. The oil group calculation resulting in the largest on water recovery volume must be used to plan for the amount of response resources for a worst case discharge, unless the oil group comprises 10 percent or less by volume of the facility's oil storage capacity.

10.3 The procedures discussed in sections 10.3.1–10.3.3 of this appendix must be used to calculate the planning volume for identifying shoreline cleanup capacity (for Groups A and B oils).

10.3.1 The following must be determined: the worst case discharge volume of oil for the facility; the appropriate group(s) for the types of oil handled, stored, or transported at the facility (Groups A or B); and the geographic area(s) in which the facility operates (i.e., operating areas). For a facility handling, storing, or transporting oil from different groups, each group must be calculated separately. Using this information, Table 6 of this appendix must be used to determine the percentages of the total volume to be used for shoreline cleanup resource planning.

10.3.2 The shoreline cleanup planning volume must be adjusted to reflect an emulsification factor using the same procedure as described in section 10.2.2 of this appendix.

10.3.3 The resulting volume shall be used to identify an oil spill removal organization with the appropriate shoreline cleanup capability.

10.4 A response plan must identify response resources with fire fighting capability appropriate for the risk of fire and explosion at the facility from the discharge or threat of discharge of oil. The owner or operator of a facility that handles, stores, or transports Group A or B oils that does not have adequate fire fighting resources located at the facility or that cannot rely on sufficient local fire fighting resources must identify adequate fire fighting resources. The facility owner or operator shall ensure, by contract or other approved means as described in § 112.2, the availability of these resources. The response plan must also identify an individual to work with the fire department for Group A or B oil fires. This individual shall also verify that sufficient well-trained fire fighting resources are available within a reasonable response time to a worst case scenario. The individual may be the qualified individual identified in the response plan or another appropriate individual located at the facility.

10.5 The following is an example of the procedure described in section 10.2 and 10.3 of this appendix. A facility with a 37.04 million gallon (881,904 barrel) capacity of several types of vegetable oils is located in the Inland Operating Area. The vegetable oil with the highest specific gravity stored at the facility is soybean oil (specific gravity 0.922, Group B vegetable oil). The facility has ten aboveground oil storage tanks with a combined total capacity of 18 million gallons (428,571 barrels) and without secondary containment. The remaining facility tanks are inside secondary containment structures. The largest aboveground oil storage tank (3 million gallons or 71,428 barrels) has its own secondary containment. Two 2.1 million gallon (50,000 barrel) tanks (that are not connected by a manifold) are within a common secondary containment tank area, which is capable of holding 4.2 million gallons (100,000 barrels) plus sufficient freeboard.

10.5.1 The worst case discharge for the facility is calculated by adding the capacity of all aboveground vegetable oil storage tanks without secondary containment (18.0 million gallons) plus the capacity of the largest aboveground storage tank inside secondary containment (3.0 million gallons). The resulting worst case discharge is 21 million gallons or 500,000 barrels.

10.5.2 With a specific worst case discharge identified, the planning volume for on-water recovery can be identified as follows:

Worst case discharge: 21 million gallons (500,000 barrels) of Group B vegetable oil
Operating Area: Inland
Planned percent recovered floating vegetable oil (from Table 6, column Nearshore/Inland/Great Lakes): Inland, Group B is 20%
Emulsion factor (from Table 7): 2.0
Planning volumes for on-water recovery: 21,000,000 gallons x .2 x 2.0 = 8,400,000 gallons or 200,000 barrels.

Determine required resources for on-water recovery for each of the three tiers using mobilization factors (from Table 4, column Inland/Nearshore/Great Lakes)

Inland operating area	Tier 1	Tier 2	Tier 3
Planning volume on water X	.15	.25	.40
Estimated Daily Recovery Capacity (bbls)	30,000	50,000	80,000

10.5.3 Because the requirements for On-Water Recovery Resources for Tiers 1, 2, and 3 for inland Operating Area exceed the caps identified in Table 5 of this appendix, the facility owner will contract for a response of 12,500 barrels per day (bpd) for Tier 1, 25,000 bpd for Tier 2, and 50,000 bpd for Tier 3. Resources for the remaining 17,500 bpd for Tier 1, 25,000 bpd for Tier 2, and 30,000 bpd for Tier 3 shall be identified but need not be contracted for in advance.

10.5.4 With the specific worst case discharge identified, the planning volume of onshore recovery can be identified as follows:

Worst case discharge: 21 million gallons (500,000 barrels) of Group B vegetable oil
Operating Area: Inland
Planned percent recovered floating vegetable oil from onshore (from Table 6, column
Nearshore/Inland/Great Lakes): Inland, Group B is 65%
Emulsion factor (from Table 7): 2.0
Planning volumes for shoreline recovery:
21,000,000 gallons x 0.65 x 2.0 =27,300,000 gallons or 650,000 barrels

10.5.5 The facility owner or operator shall, as appropriate, also identify or contract for quantities of boom identified in the response plan for the protection of fish and wildlife and sensitive environments within the area potentially impacted by a worst case discharge from the facility. For further description of fish and wildlife and sensitive environments, see Appendices I, II, and III to DOC/NOAA's "Guidance for Facility and Vessel Response Plans: Fish and Wildlife and Sensitive Environments," (see Appendix E to this part, section 1.1, for availability) and the applicable ACP. Attachment C–III to Appendix C provides a method for calculating a planning distance to fish and wildlife and sensitive environments and public drinking water intakes that may be adversely affected in the event of a worst case discharge.

10.6 The procedures discussed in sections 10.6.1–10.6.3 of this appendix must be used to determine appropriate response resources for facilities with Group C oils.

10.6.1 The owner or operator of a facility that handles, stores, or transports Group C oils shall, as appropriate, identify the response resources available by contract or other approved means, as described in § 112.2. The equipment identified in a response plan shall, as appropriate, include:

(1) Sonar, sampling equipment, or other methods for locating the oil on the bottom or suspended in the water column;

(2) Containment boom, sorbent boom, silt curtains, or other methods for containing the oil that may remain floating on the surface or to reduce spreading on the bottom;

(3) Dredges, pumps, or other equipment necessary to assess the impact of such discharges;

(4) Equipment necessary to assess the impact of such discharges; and

(5) Other appropriate equipment necessary to respond to a discharge involving the type of oil handled, stored, or transported.

10.6.2 Response resources identified in a response plan for a facility that handles, stores, or transports Group C oils under section 10.6.1 of this appendix shall be capable of being deployed on scene within 24 hours of discovery of a discharge.

10.6.3 A response plan must identify response resources with fire fighting capability. The owner or operator of a facility that handles, stores, or transports Group C

oils that does not have adequate fire fighting resources located at the facility or that cannot rely on sufficient local fire fighting resources must identify adequate fire fighting resources. The owner or operator shall ensure, by contract or other approved means as described in § 112.2, the availability of these resources. The response plan shall also identify an individual located at the facility to work with the fire department for Group C oil fires. This individual shall also verify that sufficient well-trained fire fighting resources are available within a reasonable response time to respond to a worst case discharge. The individual may be the qualified individual identified in the response plan or another appropriate individual located at the facility.

10.7 The procedures described in sections 10.7.1–10.7.5 of this appendix must be used to determine appropriate response plan development and evaluation criteria for facilities that handle, store, or transport animal fats and vegetable oils. Refer to section 11 of this appendix for information on the limitations on the use of chemical agents for inland and nearshore areas.

10.7.1 An owner or operator of a facility that handles, stores, or transports animal fats and vegetable oils must provide information in the response plan that identifies:

(1) Procedures and strategies for responding to a worst case discharge of animal fats and vegetable oils to the maximum extent practicable; and

(2) Sources of the equipment and supplies necessary to locate, recover, and mitigate such a discharge.

10.7.2 An owner or operator of a facility that handles, stores, or transports animal fats and vegetable oils must ensure that any equipment identified in a response plan is capable of operating in the geographic area(s) (i.e., operating environments) in which the facility operates using the criteria in Table 1 of this appendix. When evaluating the operability of equipment, the facility owner or operator must consider limitations that are identified in the appropriate ACPs, including:

(1) Ice conditions;

(2) Debris;

(3) Temperature ranges; and

(4) Weather-related visibility.

10.7.3. The owner or operator of a facility that handles, stores, or transports animal fats and vegetable oils must identify the response resources that are available by contract or other approved means, as described in § 112.2. The equipment described in the response plan shall, as appropriate, include:

(1) Containment boom, sorbent boom, or other methods for containing oil floating on the surface or to protect shorelines from impact;

(2) Oil recovery devices appropriate for the type of animal fat or vegetable oil carried; and (3) Other appropriate equipment necessary to respond to a discharge involving the type of oil carried.

10.7.4 Response resources identified in a response plan according to section 10.7.3 of this appendix must be capable of commencing an effective on-scene response within the applicable tier response times in section 5.3 of this appendix.

10.7.5 A response plan must identify response resources with fire fighting capability. The owner or operator of a facility that handles, stores, or transports animal fats and vegetable oils that does not have adequate fire fighting resources located at the facility or that cannot rely on sufficient local fire fighting resources must identify adequate fire fighting resources. The owner or operator shall ensure, by contract or other approved means as described in § 112.2, the availability of these resources. The response plan shall also identify an individual located at the facility to work with the fire department for animal fat and vegetable oil fires. This individual shall also verify that sufficient well-trained fire fighting resources are available within a reasonable response time to respond to a worst case discharge. The individual may be the qualified individual identified in the response plan or another appropriate individual located at the facility.

11.0 Determining the Availability of Alternative Response Methods

11.1 For chemical agents to be identified in a response plan, they must be on the NCP Product Schedule that is maintained by EPA. (Some States have a list of approved dispersants for use within State waters. Not all of these State-approved dispersants are listed on the NCP Product Schedule.)

11.2 Identification of chemical agents in the plan does not imply that their use will be authorized. Actual authorization will be governed by the provisions of the NCP and the applicable ACP.

12.0 Additional Equipment Necessary to Sustain Response Operations

12.1 A facility owner or operator shall identify sufficient response resources available, by contract or other approved means as described in § 112.2, to respond to a medium discharge of animal fats or vegetables oils for that facility. This will require response resources capable of containing and collecting up to 36,000 gallons of oil or 10 percent of the worst case discharge, whichever is less. All equipment identified must be designed to operate in the applicable operating environment specified in Table 1 of this appendix.

12.2 A facility owner or operator shall evaluate the availability of adequate temporary storage capacity to sustain the effective daily recovery capacities from equipment identified in the plan. Because of the inefficiencies of oil spill recovery devices, response plans must identify daily storage capacity equivalent to twice the effective daily recovery capacity required on-scene. This temporary storage capacity may be reduced if a facility owner or operator can demonstrate by waste stream analysis that the efficiencies of the oil recovery devices, ability to decant waste, or the availability of alternative temporary storage or disposal locations will reduce the overall volume of oily material storage requirement.

12.3 A facility owner or operator shall ensure that response planning includes the capability to arrange for disposal of recovered oil products. Specific disposal procedures will be addressed in the applicable ACP.

13.0 References and Availability

13.1 All materials listed in this section are part of EPA's rulemaking docket and are located in the Superfund Docket, 1235 Jefferson Davis Highway, Crystal Gateway 1, Arlington, Virginia 22202, Suite 105 (Docket Numbers SPCC–2P, SPCC–3P, and SPCC–9P). The docket is available for inspection between 9:00 a.m. and 4:00 p.m., Monday through Friday, excluding Federal holidays. Appointments to review the docket can be made by calling 703–603–9232. Docket hours are subject to change. As provided in 40 CFR part 2, a reasonable fee may be charged for copying services.

13.2 The docket will mail copies of materials to requestors who are outside the Washington, DC metropolitan area. Materials may be available from other sources, as noted in this section. As provided in 40 CFR part 2, a reasonable fee may be charged for copying services. The RCRA/Superfund Hotline at 800–424–9346 may also provide additional information on where to obtain documents. To contact the RCRA/Superfund Hotline in the Washington, DC metropolitan area, dial 703–412–9810. The Telecommunications Device for the Deaf (TDD) Hotline number is 800–553–7672, or, in the Washington, DC metropolitan area, 703–412–3323.

13.3 Documents

(1) National Preparedness for Response Exercise Program (PREP). The PREP draft guidelines are available from United Coast Guard Headquarters (G-MEP–4), 2100 Second Street, SW., Washington, DC 20593. (See 58 FR 53990, October 19, 1993, Notice of Availability of PREP Guidelines).

(2) "Guidance for Facility and Vessel Response Plans: Fish and Wildlife and Sensitive Environments' (published in the **Federal Register** by DOC/NOAA at 59 FR 14713, March 29, 1994.). The guidance is available in the Superfund Docket (see sections 13.1 and 13.2 of this appendix).

(3) ASTM Standards. ASTM F 715, ASTM F 989, ASTM F 631–80, ASTM F 808–83 (1988). The ASTM standards are available from the American Society for Testing and Materials, 1916 Race Street, Philadelphia, PA 19103–1187.

(4) Response Plans for Marine Transportation-Related Facilities, Interim Final Rule. Published by USCG, DOT at 58 FR 7330, February 5, 1993.

8. Amend the Tables to Appendix E to Part 112 by revising Table 2 and adding Tables 6 and 7 to read as follows:

TABLE 2 TO APPENDIX E—REMOVAL CAPACITY PLANNING TABLE FOR PETROLEUM OILS AND NON-PETROLEUM OILS OTHER THAN ANIMAL FATS AND VEGETABLE OILS

Spill location	Rivers and canals			Nearshore/inland		
Sustainability of on-water oil recovery	3 days			4 days		
Oil Group[1]	Percent natural dissipation	Percent recovered floating oil	Percent oil onshore	Percent natural dissipation	Percent recovered floating oil	Percent oil onshore
1 Non-persistent oils	80	10	10	80	20	10
2 Light crudes	40	15	45	50	50	30
3 Medium crudes and fuels	20	15	65	30	50	50
4 Heavy crudes and fuels	5	20	75	10	50	70

Group 5 oils are defined in section 1.2.8 of this appendix; the response resource considerations are outlined in section 7.6 of this appendix.

[1] Petroleum oil, non-petroleum oil, animal fat, and vegetable oil are defined in § 112.2

* * * * *

TABLE 6 TO APPENDIX E—REMOVAL CAPACITY PLANNING TABLE FOR ANIMAL FATS AND VEGETABLE OILS

Spill location	Rivers and canals			Nearshore/inland Great Lakes		
Sustainability of on-water oil recovery	3 days			4 days		
Oil group[1]	Percent natural loss	Percent recovered floating oil	Percent recovered oil from onshore	Percent natural loss	Percent recovered floating oil	Percent recovered oil from onshore
Group A	40	15	45	50	20	30
Group B	20	15	65	30	20	50

Group C oils are defined in section 1.2.1 and 1.2.9 of this appendix; the response resource procedures are discussed in section 10.6 of this appendix.

[1] Substances with a specific gravity greater than 1.0 generally sink below the surface of the water. Response resource considerations are outlined in section 8.6 of this appendix. The owner or operator of the facility is responsible for determining appropriate response resources for Group C oils including locating oil on the bottom or suspended in the water column; containment boom or other appropriate methods for containing oil that may remain floating on the surface; and dredges, pumps, or other equipment to recover animal fats or vegetable oils from the bottom and shoreline.

TABLE 7 TO APPENDIX E—EMULSIFICATION FACTORS FOR ANIMAL FATS AND VEGETABLE OILS

Oil Group[1]	
Group A	1.0
Group B	2.0

Group C oils are defined in section 1.2.1 and 1.2.9 of this appendix; the response resource procedures are discussed in section 10.6 of this appendix.

[1] Substances with a specific gravity greater than 1.0 generally sink below the surface of the water. Response resource considerations are outlined in section 8.6 of this appendix. The owner or operator of the facility is responsible for determining appropriate response resources for Group C oils including locating oil on the bottom or suspended in the water column; containment boom or other appropriate methods for containing oil that may remain floating on the surface; and dredges, pumps, or other equipment to recover animal fats or vegetable oils from the bottom and shoreline.

9. Amend the attachments to Appendix E by revising Attachment E–1 and Attachment E–1 Example and adding Attachment E–2 and Attachment E–2 Example to read as follows:

BILLING CODE 6560–50–P

Attachment E-1 --
Worksheet to Plan Volume of Response Resources for Worst Case Discharge - Petroleum Oils and Non-Petroleum Oils Other than Animal Fats and Vegetable Oils

Part I Background Information

Step (A) Calculate Worst Case Discharge in barrels (Appendix D) ☐ (A)

Step (B) Oil Group[1] (Table 3 and section 1.2 of this appendix) . . . . . ☐

Step (C) Operating Area (choose one). . . ☐ Nearshore /Inland Great Lakes ☐ or Rivers and Canals

Step (D) Percentages of Oil (Table 2 of this appendix)

Percent Lost to Natural Dissipation	Percent Recovered Floating Oil	Percent Oil Onshore
☐ (D1)	☐ (D2)	☐ (D3)

Step (E1) On-Water Oil Recovery $\frac{\text{Step(D2) x Step(A)}}{100}$ ☐ (E1)

Step (E2) Shoreline Recovery $\frac{\text{Step (D3) x Step (A)}}{100}$ ☐ (E2)

Step (F) Emulsification Factor (Table 3 of this appendix) . . . . . ☐ (F)

Step (G) On-Water Oil Recovery Resource Mobilization Factor
(Table 4 of this appendix)

Tier 1	Tier 2	Tier 3
(G1)	(G2)	(G3)

[1] A facility that handles, stores, or transports multiple groups of oil must do separate calculations for each oil group on site except for those oil groups that constitute 10 percent or less by volume of the total oil storage capacity at the facility. For purposes of this calculation, the volumes of all products in an oil group must be summed to determine the percentage of the facility's total oil storage capacity.

Part II On-Water Oil Recovery Capacity (barrels/day)

Tier 1	Tier 2	Tier 3
Step (E1) x Step (F) x Step (G1)	Step (E1) x Step (F) x Step (G2)	Step (E1) x Step (F) x Step (G3)

Part III Shoreline Cleanup Volume (barrels) . . . .

Step (E2) x Step (F)

Part IV On-Water Response Capacity By Operating Area
(Table 5 of this appendix)
(Amount needed to be contracted for in barrels/day)

Tier 1	Tier 2	Tier 3
(J1)	(J2)	(J3)

Part V On-Water Amount Needed to be Identified, but not Contracted for in Advance (barrels/day)

Tier 1	Tier 2	Tier 3
Part II Tier 1 - Step (J1)	Part II Tier 2 - Step (J2)	Part II Tier 3 - Step (J3)

NOTE: To convert from barrels/day to gallons/day, multiply the quantities in Parts II through V by 42 gallons/barrel.

Attachment E-1 Example --
Worksheet to Plan Volume of Response Resources
for Worst Case Discharge - Petroleum Oils and Non-Petroleum Oils Other than Animal Fats and Vegetable Oils

Part I Background Information

Step (A) Calculate Worst Case Discharge in barrels (Appendix D) . . . . . 170,000 (A)

Step (B) Oil Group[1] (Table 3 and section 1.2 of this appendix) 4

Step (C) Operating Area (choose one). [X] Nearshore /Inland Great Lakes [ ] or Rivers and Canals

Step (D) Percentages of Oil (Table 2 of this appendix)

Percent Lost to Natural Dissipation	Percent Recovered Floating Oil	Percent Oil Onshore
10 (D1)	50 (D2)	70 (D3)

Step (E1) On-Water Oil Recovery $\frac{\text{Step(D2)} \times \text{Step(A)}}{100}$ 85,000 (E1)

Step (E2) Shoreline Recovery $\frac{\text{Step(D3)} \times \text{Step(A)}}{100}$ 119,000 (E2)

Step (F) Emulsification Factor (Table 3 of this appendix) . . . . . 1.4 (F)

Step (G) On-Water Oil Recovery Resource Mobilization Factor
(Table 4 of this appendix)

Tier 1	Tier 2	Tier 3
0.15	0.25	0.40
(G1)	(G2)	(G3)

[1] A facility that handles, stores, or transports multiple groups of oil must do separate calculations for each oil group on site except for those oil groups that constitute 10 percent or less by volume of the total oil storage capacity at the facility. For purposes of this calculation, the volumes of all products in an oil group must be summed to determine the percentage of the facility's total oil storage capacity.

Part II On-Water Oil Recovery Capacity (barrels/day)

Tier 1	Tier 2	Tier 3
17,850	29,750	47,600
Step (E1) x Step (F) x Step (G1)	Step (E1) x Step (F) x Step (G2)	Step (E1) x Step (F) x Step (G3)

Part III Shoreline Cleanup Volume (barrels) 166,600

Step (E2) x Step (F)

Part IV On-Water Response Capacity By Operating Area
(Table 5 of this appendix)
(Amount needed to be contracted for in barrels/day)

Tier 1	Tier 2	Tier 3
10,000	20,000	40,000
(J1)	(J2)	(J3)

Part V On-Water Amount Needed to be Identified, but not Contracted for in Advance (barrels/day)

Tier 1	Tier 2	Tier 3
7,850	9,750	7,600
Part II Tier 1 - Step (J1)	Part II Tier 2 - Step (J2)	Part II Tier 3 - Step (J3)

NOTE: To convert from barrels/day to gallons/day, multiply the quantities in Parts II through V by 42 gallons/barrel.

Attachment E-2 --
Worksheet to Plan Volume of Response Resources
for Worst Case Discharge - Animal Fats and Vegetable Oils

Part I Background Information

Step (A) Calculate Worst Case Discharge in barrels (Appendix D) [ ] (A)

Step (B) Oil Group[1] (Table 7 and section 1.2 of this appendix) . . . . . [ ]

Step (C) Operating Area (choose one) . . . [ ] Nearshore /Inland Great Lakes [ ] or Rivers and Canals

Step (D) Percentages of Oil (Table 6 of this appendix)

Percent Lost to Natural Dissipation	Percent Recovered Floating Oil	Percent Oil Onshore
[ ] (D1)	[ ] (D2)	[ ] (D3)

Step (E1) On-Water Oil Recovery $\frac{\text{Step(D2)} \times \text{Step(A)}}{100}$ [ ] (E1)

Step (E2) Shoreline Recovery $\frac{\text{Step (D3)} \times \text{Step (A)}}{100}$ [ ] (E2)

Step (F) Emulsification Factor (Table 7 of this appendix) . . . . . [ ] (F)

Step (G) On-Water Oil Recovery Resource Mobilization Factor
(Table 4 of this appendix)

Tier 1	Tier 2	Tier 3
(G1)	(G2)	(G3)

[1] A facility that handles, stores, or transports multiple groups of oil must do separate calculations for each oil group on site except for those oil groups that constitute 10 percent or less by volume of the total oil storage capacity at the facility. For purposes of this calculation, the volumes of all products in an oil group must be summed to determine the percentage of the facility's total oil storage capacity.

Part II On-Water Oil Recovery Capacity (barrels/day)

Tier 1	Tier 2	Tier 3
Step (E1) x Step (F) x Step (G1)	Step (E1) x Step (F) x Step (G2)	Step (E1) x Step (F) x Step (G3)

Part III Shoreline Cleanup Volume (barrels) . . . . [ ]
Step (E2) x Step (F)

Part IV On-Water Response Capacity By Operating Area
(Table 5 of this appendix)
(Amount needed to be contracted for in barrels/day)

Tier 1	Tier 2	Tier 3
(J1)	(J2)	(J3)

Part V On-Water Amount Needed to be Identified, but not Contracted for in Advance (barrels/day)

Tier 1	Tier 2	Tier 3
Part II Tier 1 - Step (J1)	Part II Tier 2 - Step (J2)	Part II Tier 3 - Step (J3)

NOTE: To convert from barrels/day to gallons/day, multiply the quantities in Parts II through V by 42 gallons/barrel.

Attachment E-2 Example --
Worksheet to Plan Volume of Response Resources
for Worst Case Discharge - Animal Fats and Vegetable Oils

Part I Background Information

Step (A) Calculate Worst Case Discharge in barrels (Appendix D) . . . . . 500,000 (A)

Step (B) Oil Group[1] (Table 7 and section 1.2 of this appendix) . . . . . B

Step (C) Operating Area (choose one) [X] Nearshore /Inland Great Lakes [ ] or Rivers and Canals

Step (D) Percentages of Oil (Table 6 of this appendix)

Percent Lost to Natural Dissipation	Percent Recovered Floating Oil	Percent Oil Onshore
30 (D1)	20 (D2)	50 (D3)

Step (E1) On-Water Oil Recovery $\frac{\text{Step (D2)} \times \text{Step (A)}}{100}$ = 100,000 (E1)

Step (E2) Shoreline Recovery $\frac{\text{Step (D3)} \times \text{Step (A)}}{100}$ = 250,000 (E2)

Step (F) Emulsification Factor (Table 7 of this appendix) . . . . . 2.0 (F)

Step (G) On-Water Oil Recovery Resource Mobilization Factor
(Table 4 of this appendix)

Tier 1	Tier 2	Tier 3
0.15	0.25	0.40
(G1)	(G2)	(G3)

[1] A facility that handles, stores, or transports multiple groups of oil must do separate calculations for each oil group on site except for those oil groups that constitute 10 percent or less by volume of the total oil storage capacity at the facility. For purposes of this calculation, the volumes of all products in an oil group must be summed to determine the percentage of the facility's total oil storage capacity.

Part II On-Water Oil Recovery Capacity (barrels/day)

Tier 1	Tier 2	Tier 3
30,000	50,000	80,000
Step (E1) x Step (F) x Step (G1)	Step (E1) x Step (F) x Step (G2)	Step (E1) x Step (F) x Step (G3)

Part III Shoreline Cleanup Volume (barrels) 500,000
Step (E2) x Step (F)

Part IV On-Water Response Capacity By Operating Area
(Table 5 of this appendix)
(Amount needed to be contracted for in barrels/day)

Tier 1	Tier 2	Tier 3
12,500	25,000	50,000
(J1)	(J2)	(J3)

Part V On-Water Amount Needed to be Identified, but not Contracted for in Advance (barrels/day)

Tier 1	Tier 2	Tier 3
17,500	25,000	30,000
Part II Tier 1 - Step (J1)	Part II Tier 2 - Step (J2)	Part II Tier 3 - Step (J3)

NOTE: To convert from barrels/day to gallons/day, multiply the quantities in Parts II through V by 42 gallons/barrel.

10. Amend Appendix F to Part 112 by revising the phrase "section 10" to read "section 13" in the last sentence of section 1.3(4), in footnote 2 to section 1.4.2, in section 1.8.2(A), and in footnote 3 of the attachments to appendix F.

[FR Doc. 99–8275 Filed 4–2–99; 12:33 pm]
BILLING CODE 6560–50–C

VOL
64
ISS
67
AP
8
1999
UMI

federal register

Thursday
April 8, 1999

Part III

Department of Justice

Bureau of Prisons

28 CFR Part 504
Acceptance of Donations; Final Rule

DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Part 504

BOP–1075–F

RIN 1120–AA71

Acceptance of Donations

AGENCY: Bureau of Prisons, Justice.

ACTION: Final rule.

SUMMARY: In this document, the Bureau of Prisons is removing from the Code of Federal Regulations obsolete regulations concerning the acceptance of donations.

EFFECTIVE DATE: April 8, 1999.

ADDRESSES: Rules Unit, Office of General Counsel, Bureau of Prisons, HOLC Room 754, 320 First Street, NW., Washington, DC 20534.

FOR FURTHER INFORMATION CONTACT: Roy Nanovic, Office of General Counsel, Bureau of Prisons, phone (202) 514–6655.

SUPPLEMENTARY INFORMATION: The Bureau of Prisons is removing its regulations on the acceptance of donations (28 CFR part 504). A final rule on this subject was published in the **Federal Register** September 22, 1989 (54 FR 39094) and was amended November 17, 1993 (58 FR 60768).

Authority to accept donations for use by the Bureau of Prisons or Federal Prison Industries, Inc. was delegated by the Attorney General to the Director of the Bureau of Prisons in 28 CFR 0.96(s). This delegation was rescinded on January 28, 1999 (64 FR 4295). The Bureau is accordingly removing its regulations on the subject.

Because an immediate rescission is required pursuant to the change in delegated authority, the Bureau finds good cause for exempting the provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public comment, and delay in effective date. Members of the public may submit comments concerning this rule by writing to the previously cited address. These comments will be considered but will receive no response in the **Federal Register**.

Executive Order 12866

This rule falls within a category of actions that the Office of Management and Budget (OMB) has determined not to constitute "significant regulatory actions" under section 3(f) of Executive Order 12866 and, accordingly, it was not reviewed by OMB.

Executive Order 12612

This regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or on distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Regulatory Flexibility Act

The Director of the Bureau of Prisons, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and by approving it certifies that this regulation will not have a significant economic impact upon a substantial number of small entities for the following reasons: This rule pertains to the correctional management of offenders committed to the custody of the Attorney General or the Director of the Bureau of Prisons, and its economic impact is limited to the Bureau's appropriated funds.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by § 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Plain Language Instructions

We try to write clearly. If you can suggest how to improve the clarity of these regulations, call or write Roy Nanovic, Rules Unit, Office of General Counsel, Bureau of Prisons, 320 First St., Washington, DC 20534; telephone (202) 514–6655.

List of Subjects in 28 CFR Part 504

Administrative practice and procedure, Prisoners.

Kathleen Hawk Sawyer,

Director, Bureau of Prisons.

Accordingly, pursuant to the rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the Director, Bureau of Prisons in 28 CFR 0.96(o), subchapter A of 28 CFR, chapter V is amended as set forth below.

SUBCHAPTER A—GENERAL MANAGEMENT AND ADMINISTRATION

PART 504—[REMOVED]

1. In 28 CFR Subchapter A, Part 504 is removed.

[FR Doc. 99–8681 Filed 4–7–99; 8:45 am]

BILLING CODE 4410–05–P

Reader Aids

Federal Register

Vol. 64, No. 67

Thursday, April 8, 1999

CUSTOMER SERVICE AND INFORMATION

Federal Register/Code of Federal Regulations	
General Information, indexes and other finding aids	202–523–5227
Laws	523–5227
Presidential Documents	
Executive orders and proclamations	523–5227
The United States Government Manual	523–5227
Other Services	
Electronic and on-line services (voice)	523–4534
Privacy Act Compilation	523–3187
Public Laws Update Service (numbers, dates, etc.)	523–6641
TTY for the deaf-and-hard-of-hearing	523–5229

ELECTRONIC RESEARCH

World Wide Web

Full text of the daily Federal Register, CFR and other publications:

http://www.access.gpo.gov/nara

Federal Register information and research tools, including Public Inspection List, indexes, and links to GPO Access:

http://www.nara.gov/fedreg

E-mail

PENS (Public Law Electronic Notification Service) is an E-mail service that delivers information about recently enacted Public Laws. To subscribe, send E-mail to

listproc@lucky.fed.gov

with the text message:

subscribe publaws-l <firstname> <lastname>

Use listproc@lucky.fed.gov only to subscribe or unsubscribe to PENS. We cannot respond to specific inquiries at that address.

Reference questions. Send questions and comments about the Federal Register system to:

info@fedreg.nara.gov

The Federal Register staff cannot interpret specific documents or regulations.

FEDERAL REGISTER PAGES AND DATES, APRIL

15633–15914	1
15915–16332	2
16333–16600	5
16601–16796	6
16797–17078	7
17079–17270	8

CFR PARTS AFFECTED DURING APRIL

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
7177 17075
7178 17077

Executive Orders:
11223 (Amended by EO 13118) 16595
11269 (Amended by EO 13118) 16595
11958 (Amended by EO 13118) 16595
12163 (Amended by EO 13118) 16595
12188 (Amended by EO 13118) 16595
12260 (Amended by EO 13118) 16595
12293 (Amended by EO 13118) 16595
12301 (Amended by EO 13118) 16595
12599 (Amended by EO 13118) 16595
12703 (Amended by EO 13118) 16595
12884 (Amended by EO 13118) 16595
12981 (Amended by EO 13117) 16391
13116 16333
13117 16591
13118 16595

Administrative Orders:

Presidential Determinations:
No. 99-18 of March 25, 1999 16337
No. 99-19 of March 31, 1999 17079
No. 99-20 of March 31, 1999 17081

Memorandums:
March 23, 1999 (Amended by EO 13118) 16595
March 31, 1999 17083

5 CFR

351 16797
532 15915
870 16601
890 15633
1200 15916

7 CFR

254 17085
301 15916
1728 17219
1753 16602

Proposed Rules:
28 15937
340 16364
905 15634
944 15634
1000 16026
1001 16026
1002 16026
1004 16026
1005 16026
1006 16026
1007 16026
1012 16026
1013 16026
1030 16026
1032 16026
1033 16026
1036 16026
1040 16026
1044 16026
1046 16026
1049 16026
1050 16026
1064 16026
1065 16026
1068 16026
1076 16026
1079 16026
1106 16026
1124 16026
1126 16026
1131 16026
1134 16026
1135 16026
1137 16026
1138 16026
1139 16026

8 CFR

Proposed Rules:
2 17128

9 CFR

1 15918
3 15918

Proposed Rules:
93 16655
201 15938

10 CFR

2 ..... 15636, 15920
10 15636
11 15636
25 15636
95 15636

Proposed Rules:
170 15876
171 15876

12 CFR

213 16612
226 16614
330 15653
611 16617
620 16617
790 17085
935 ..... 16618, 16788

Proposed Rules:
933.....16792
934.....16792
935.....16792

13 CFR

Proposed Rules:
120.....15942
121.....15708

14 CFR

39.....15657, 15659, 15661, 15669, 15920, 16339, 16621, 16624, 16625, 16801, 16803, 16805, 16808, 16810, 17086
71.....15673, 15674, 15675, 15676, 15678, 15679, 16024, 16340, 16341, 16342, 16343, 16344, 17219
91.....15912

Proposed Rules:
39.....16364, 16366, 16656, 17130
71.....15708, 16024, 16368, 16369, 16370, 16371, 17133
119.....16298
121.....16298
129.....16298
135.....16298
183.....16298

17 CFR

275.....15680
279.....15680

18 CFR

1b.....17087
343.....17087
385.....17087

19 CFR

10.....16345
18.....16345
113.....16345
178.....16635, 16345
192.....16635

Proposed Rules:
19.....16865
146.....15873

20 CFR

404.....17100

21 CFR

26.....16347
510.....15683
520.....15683, 15684
522.....15683, 15685
558.....15683

Proposed Rules:
1.....15944
101.....15948

22 CFR

Ch. II.....15685
Ch. VI.....15686

23 CFR

Proposed Rules:
777.....16870

24 CFR

100.....16324

26 CFR

1.....15686, 15687
7.....15687
31.....15687
301.....16640
602.....15687, 15688, 15873

Proposed Rules:
1.....16372

28 CFR

504.....17270

Proposed Rules:
65.....17128

30 CFR

Proposed Rules:
206.....15949

32 CFR

812.....17101

33 CFR

100.....16348, 16812, 16813
117.....16350, 16641, 17101
165.....16348, 16641, 16642

Proposed Rules:
117.....17134
154.....17222
175.....15709
177.....15709
179.....15709
181.....15709
183.....15709

39 CFR

111.....16814, 17102

40 CFR

52.....15688, 15922, 17102
62.....17219
90.....16526
180.....16840, 16843, 16850, 16856
261.....16643
300.....15926, 16351

Proposed Rules:
52.....15711, 15949, 16659, 17136
70.....16659
82.....16373
112.....17227
180.....16874
185.....16874
186.....16874

41 CFR

Ch. 301.....16352
60-250.....15690
60-999.....15690
302-11.....17105

45 CFR

1611.....17108

Proposed Rules:
1635.....16383

46 CFR

Proposed Rules:
10.....15709
15.....15709
24.....15709
25.....15709
26.....15709
28.....15709
70.....15709
169.....15709
175.....15709

47 CFR

69.....16353
73.....17108

Proposed Rules:
0.....16388
1.....16661
2.....16687
25.....16880, 16687
69.....16389
73.....15712, 15713, 15714, 15715, 16388, 16396, 17137, 17138, 17139, 17140, 17141, 17142, 17143
76.....16388

48 CFR

701.....16647
703.....16647
715.....16647
731.....16647
752.....16647
909.....16649
970.....16649
1333.....16651
1533.....17109
1552.....17109

49 CFR

195.....15926
533.....16860
571.....16358
581.....16359

Proposed Rules:
171.....16882
177.....16882
178.....16882
180.....16882
192.....16882, 16885
195.....16882, 16885
578.....16690
611.....17062

50 CFR

17.....15691, 17110
600.....16862
648.....15704, 16361, 16362
660.....16862, 17125
679.....16361, 16362, 16654, 17126

Proposed Rules:
17.....16397, 16890
223.....16396, 16397
224.....16397
226.....16397
600.....16414
648.....16417, 16891

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT APRIL 8, 1999

INTERIOR DEPARTMENT
Fish and Wildlife Service
Endangered and threatened species:
Bull trout; Jarbidge River, NV and ID; published 4-8-99

JUSTICE DEPARTMENT
Prisons Bureau
Donations; acceptance; published 4-8-99

LEGAL SERVICES CORPORATION
Legal assistance eligibility:
Maximum income levels; published 4-8-99

SOCIAL SECURITY ADMINISTRATION
Social security benefits:
Federal old age, survivors and disability insurance—
Guarantee cases; maximum family benefits; published 4-8-99

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT
Agricultural Marketing Service
Avocados grown in—
South Florida; comments due by 4-16-99; published 3-17-99
Prunes (dried) produced in California; comments due by 4-15-99; published 1-25-99

AGRICULTURE DEPARTMENT
Farm Service Agency
Program regulations:
Preferred lender program implementation and guaranteed loan regulations streamlining; comments due by 4-13-99; published 2-12-99

AGRICULTURE DEPARTMENT
Rural Business-Cooperative Service
Program regulations:
Preferred lender program implementation and guaranteed loan regulations streamlining; comments due by 4-13-99; published 2-12-99

AGRICULTURE DEPARTMENT
Rural Housing Service
Program regulations:
Preferred lender program implementation and guaranteed loan regulations streamlining; comments due by 4-13-99; published 2-12-99

AGRICULTURE DEPARTMENT
Rural Utilities Service
Program regulations:
Preferred lender program implementation and guaranteed loan regulations streamlining; comments due by 4-13-99; published 2-12-99

COMMERCE DEPARTMENT
Census Bureau
Foreign trade statistics:
Automated Export System; shipper's export data; electronic filing; comments due by 4-13-99; published 2-12-99

COMMERCE DEPARTMENT
National Oceanic and Atmospheric Administration
Fisheries assistance programs; fishing capacity reduction program; comments due by 4-12-99; published 2-11-99
Fishery conservation and management:
Northeastern United States fisheries—
Northeast multispecies; comments due by 4-13-99; published 3-29-99

DEFENSE DEPARTMENT
Federal Acquisition Regulation (FAR):
Progress payments and related financing policies; comments due by 4-12-99; published 2-10-99

EDUCATION DEPARTMENT
Special education and rehabilitative services:
Infants and toddlers with disabilities early intervention program; advice and recommendations request; comments due by 4-12-99; published 3-12-99

ENVIRONMENTAL PROTECTION AGENCY
Air pollutants, hazardous; national emission standards:
Secondary aluminum production; comments due by 4-12-99; published 2-11-99
Air pollution control; new motor vehicles and engines:
New nonroad spark-ignition engines rated above 19 kilowatts and new land-based recreational spark-ignition engines; comments due by 4-12-99; published 2-8-99
Air quality implementation plans; approval and promulgation; various States:
Delaware; comments due by 4-12-99; published 3-11-99
Iowa; comments due by 4-12-99; published 3-11-99
Kentucky; comments due by 4-14-99; published 3-15-99
Air quality implementation plans; approval and promulgation; various States; air quality planning purposes; designation of areas:
Ohio; comments due by 4-16-99; published 3-17-99
Air quality implementation plans; approval and promulgation; various States:
Oregon; comments due by 4-14-99; published 3-15-99
Texas; comments due by 4-14-99; published 3-15-99
Hazardous waste:
Mixed low-level radioactive waste; storage, treatment, and disposition; comments due by 4-15-99; published 3-1-99

FEDERAL COMMUNICATIONS COMMISSION
Common carrier services:
Inter-carrier compensation for Internet service provider (ISP)-bound traffic; comments due by 4-12-99; published 3-24-99
Radio broadcasting:
Broadcast and cable EEO rules and policies; extension; comments due by 4-15-99; published 4-5-99
Low power FM radio service; creation and operation; comments due by 4-12-99; published 2-16-99

FEDERAL HOUSING FINANCE BOARD
Federal home loan bank system:
Consolidated obligations; joint and several liability allocation; comments due by 4-12-99; published 2-11-99

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD
Thrift savings plan:
Death benefits; transfer into G Fund after participant's death; comments due by 4-12-99; published 2-11-99

GENERAL SERVICES ADMINISTRATION
Federal Acquisition Regulation (FAR):
Progress payments and related financing policies; comments due by 4-12-99; published 2-10-99
Federal property management:
Purchase or lease determinations guidelines and use of private inspection, testing, and grading services; comments due by 4-12-99; published 2-10-99
Federal travel:
Travel and relocation expenses test programs; comments due by 4-12-99; published 2-10-99

HEALTH AND HUMAN SERVICES DEPARTMENT
Children and Families Administration
Personal Responsibility and Work Opportunity Reconciliation Act of 1996; implementation:
Child support enforcement program; revision or elimination of obsolete or inconsistent provisions; comments due by 4-12-99; published 2-9-99

HEALTH AND HUMAN SERVICES DEPARTMENT
Food and Drug Administration
Food for human consumption:
Food labeling—
Nutrient content claims; "healthy" definition; partial stay extension; comments due by 4-15-99; published 3-16-99
Human drugs and biological products:
In vivo radiopharmaceuticals used for diagnosis and monitoring—
Evaluation and approval; developing medical imaging drugs and biologics; guidance availability; comments due by 4-14-99; published 2-16-99

HEALTH AND HUMAN SERVICES DEPARTMENT
Health Care Financing Administration
Medicare:
Outpatient diabetes self-management training services; expanded coverage; comments due by 4-12-99; published 2-11-99

HOUSING AND URBAN DEVELOPMENT DEPARTMENT
Fair housing:
Fair Housing Act violations; civil penalties; comments due by 4-12-99; published 2-10-99

INTERIOR DEPARTMENT
Minerals Management Service
Royalty management:
Audit functions; delegation to States; comments due by 4-12-99; published 2-10-99
Federal and Indian leases; oil valuation; comments due by 4-12-99; published 3-12-99

INTERIOR DEPARTMENT
Reclamation Bureau
Farm operation in excess 960 acres, information requirements; and formerly excess land eligibility to receive non-full cost irrigation water; comments due by 4-12-99; published 3-11-99

INTERIOR DEPARTMENT
Surface Mining Reclamation and Enforcement Office
Permanent program and abandoned mine land reclamation plan submissions:
Pennsylvania; comments due by 4-12-99; published 3-12-99
Surface coal mining and reclamation operations:
Ownership and control mining operations; definitions, permit requirements, enforcement actions, etc.; comments due by 4-15-99; published 3-31-99

JUSTICE DEPARTMENT
Drug Enforcement Administration
Records, reports, and exports of listed chemicals:
Chemical mixtures that contain regulated chemicals; comments due by 4-16-99; published 2-12-99

JUSTICE DEPARTMENT
Immigration and Naturalization Service
Immigration:
Aliens—
Employment eligibility verification; acceptable receipts; comments due by 4-12-99; published 2-9-99

JUSTICE DEPARTMENT
Illegal Immigration Reform and Immigrant Responsibility Act and Debt Collection Improvement Act; implementation:
Employer sanctions, unfair immigration-related employment practice cases, and immigration-related document fraud; comments due by 4-13-99; published 2-12-99

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION
Federal Acquisition Regulation (FAR):
Progress payments and related financing policies; comments due by 4-12-99; published 2-10-99

SECURITIES AND EXCHANGE COMMISSION
Securities and investment companies:
Electronic Data Gathering, Analysis, and Retrieval (EDGAR) system modernization; comments due by 4-15-99; published 3-16-99
Securities:
International disclosure standards; foreign private issuers conformance; comments due by 4-12-99; published 2-9-99
Registered broker dealers and transfer agents and Year 2000 compliance; operational capability requirements; comments due by 4-12-99; published 3-11-99

TRANSPORTATION DEPARTMENT
Coast Guard
Drawbridge operations:
Florida; comments due by 4-12-99; published 2-9-99
Massachusetts; comments due by 4-14-99; published 3-15-99
Ports and waterways safety:
Hudson River, NY; safety zone; comments due by 4-13-99; published 2-12-99

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airworthiness directives:
Fairchild; comments due by 4-12-99; published 2-18-99
Fokker; comments due by 4-14-99; published 3-15-99
McDonnell Douglas; comments due by 4-16-99; published 3-2-99
Rolls-Royce Ltd.; comments due by 4-12-99; published 2-10-99
Texton Lycoming; comments due by 4-12-99; published 2-10-99
Class E airspace; comments due by 4-15-99; published 3-8-99
Restricted areas; comments due by 4-12-99; published 2-26-99

TRANSPORTATION DEPARTMENT
National Highway Traffic Safety Administration
Fuel economy standards:
Passenger autombiles; low volume manufacturer exemptions; comments due by 4-12-99; published 3-11-99

TREASURY DEPARTMENT
Alcohol, Tobacco and Firearms Bureau
Alcoholic beverages:
Distilled spirits, wine, and malt beverages; labeling and advertising—
Fill standards; comments due by 4-12-99; published 2-9-99

TREASURY DEPARTMENT
Customs Service
Automated Export System:
Shipper's export declarations and outbound vessel manifest information; electronic transmission; cross reference to Census Bureau regulations; comments due by 4-13-99; published 2-12-99

TREASURY DEPARTMENT
Internal Revenue Service
Income taxes:
Group-term life insurance coverage costs; uniform premium table; comments due by 4-13-99; published 1-13-99
Procedure and administration:
Timely mailing treated as timely filing/electronic postmark; comments due by 4-15-99; published 1-15-99

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–523–6641. This list is also available online at http://www.nara.gov/fedreg.

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at http://www.access.gpo.gov/nara/index.html. Some laws may not yet be available.

H.J. Res. 26/P.L. 106–14

Providing for the reappointment of Barber B. Conable, Jr. as a citizen regent of the Board of Regents of the Smithsonian Institution. (Apr. 6, 1999; 113 Stat. 24)

H.J. Res. 27/P.L. 106–15

Providing for the reappointment of Dr. Hanna H. Gray as a citizen regent of the Board of Regents of the Smithsonian Institution. (Apr. 6, 1999; 113 Stat. 25)

H.J. Res. 28/P.L. 106–16

Providing for the reappointment of Wesley S. Williams, Jr. as a citizen regent of the Board of Regents of the Smithsonian Institution. (Apr. 6, 1999; 113 Stat. 26)

H.R. 774/P.L. 106–17

Women's Business Center Amendments Act of 1999 (Apr. 6, 1999; 113 Stat. 27)

Last List April 7, 1999.

Public Laws Electronic Notification Service (PENS)

PENS is a free electronic mail notification service of newly enacted public laws. To subscribe, send E-mail to **listproc@lucky.fed.gov** with the text message:

subscribe PUBLAWS-L Your Name.

Note: This service is strictly for E-mail notification of new public laws. The text of laws is not available through this service. **PENS** cannot respond to specific inquiries sent to this address.

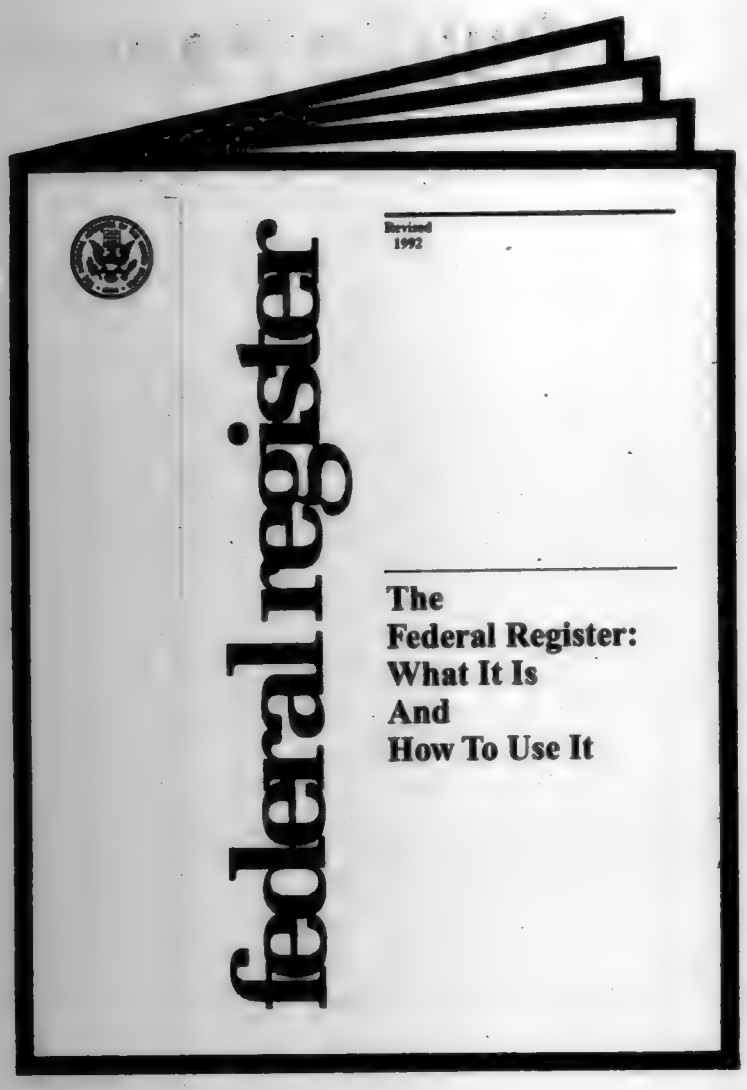

Announcing the Latest Edition

The Federal Register: What It Is and How to Use It

A Guide for the User of the Federal Register—Code of Federal Regulations System

This handbook is used for the educational workshops conducted by the Office of the Federal Register. For those persons unable to attend a workshop, this handbook will provide guidelines for using the *Federal Register* and related publications, as well as an explanation of how to solve a simple research problem.

Price $7.00

Superintendent of Documents **Publications** Order Form

Order Processing Code:
*** 6173**

☐ **YES**, enter my subscription(s) as follows:

Charge your order. It's Easy!

To fax your orders (202) 512–2250
Phone your orders (202) 512–1800

_____ copies of **The Federal Register – What it is and Hot To Use It,** at $7.00 per copy. Stock No. 069–000–00044–4.

The total cost of my order is $ _____. **Price includes regular domestic postage and handling** and is subject to change. International customers please add 25%

Company or personal name (Please type or print)

Additional address/attention line

Street address

City, State, ZIP code

Daytime phone including area code

Purchase order number (optional)

May we make your name/address available to other mailers? YES ☐ NO ☐

Please Choose Method of Payment:

☐ Check Payable to the Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐☐☐ – ☐
☐ VISA ☐ MasterCard Account
☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

☐☐☐☐ (Credit card expiration date)

Thank you for your order!

Authorizing signature (Rev.11/3)

Mail To: Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250–7954

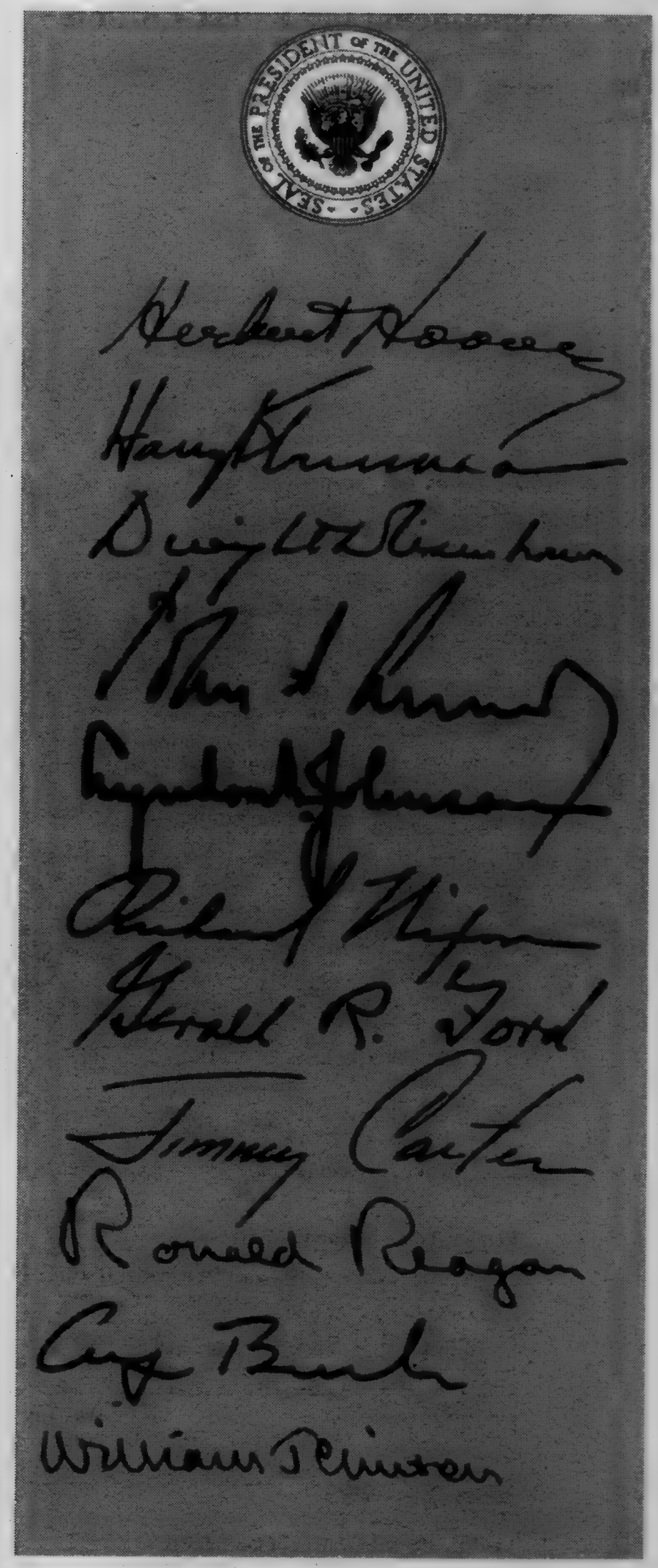

Public Papers of the Presidents of the United States

William J. Clinton

1993 (Book I)	**$51.00**
1993 (Book II)	**$51.00**
1994 (Book I)	**$56.00**
1994 (Book II)	**$52.00**
1995 (Book I)	**$60.00**
1995 (Book II)	**$65.00**
1996 (Book I)	**$66.00**
1996 (Book II)	**$72.00**
1997 (Book I)	**$69.00**

Published by the Office of the Federal Register,
National Archives and Records Administration

Mail order to:
Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250–7954

(Rev. 3/3/99)

VOL
64
ISS
67
AP
8
1999
UMI

The authentic text behind the news . . .

The Weekly Compilation of **Presidential Documents**

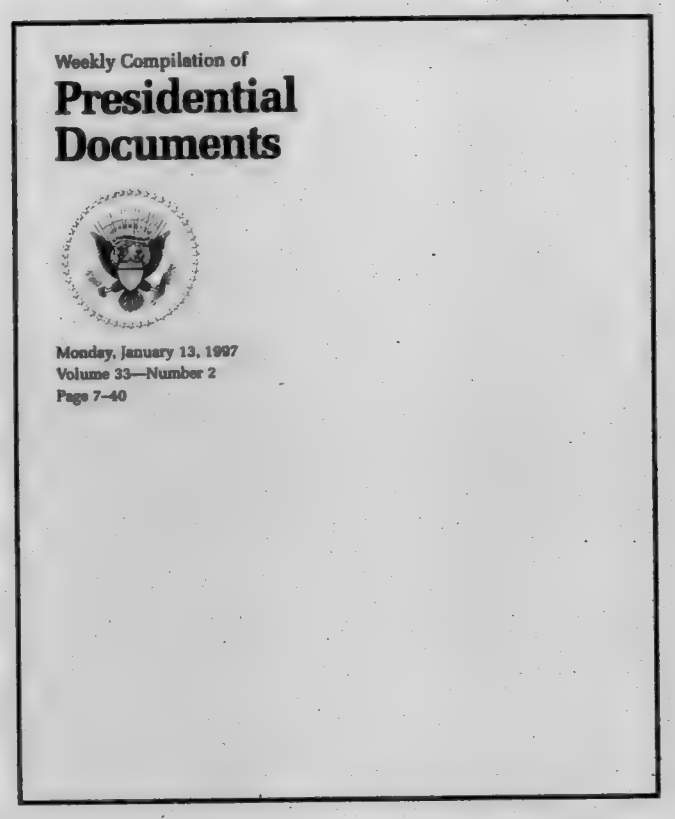

This unique service provides up-to-date information on Presidential policies and announcements. It contains the full text of the President's public speeches, statements, messages to Congress, news conferences, and other Presidential materials released by the White House.

The Weekly Compilation carries a Monday dateline and covers materials released during the preceding week. Each issue includes a Table of Contents, lists of acts approved by the President, nominations submitted to the Senate, a checklist of White House press releases, and a digest of other Presidential activities and White House announcements. Indexes are published quarterly.

Published by the Office of the Federal Register, National Archives and Records Administration.

Superintendent of Documents **Subscription** Order Form

Charge your order. It's Easy! MasterCard VISA

Order Processing Code:
*** 5420**

To fax your orders (202) 512–2250
Phone your orders (202) 512–1800

☐ **YES**, please enter _____ one year subscriptions for the **Weekly Compilation of Presidential Documents** (PD) so I can keep up to date on Presidential activities.

☐ $137.00 First Class Mail ☐ $80.00 Regular Mail

The total cost of my order is $ _____. **Price includes regular domestic postage and handling** and is subject to change. International customers please add 25%.

Company or personal name (Please type or print)

Additional address/attention line

Street address

City, State, ZIP code

Daytime phone including area code

Purchase order number (optional)

May we make your name/address available to other mailers? YES ☐ NO ☐

Please Choose Method of Payment:

☐ Check Payable to the Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐☐ – ☐
☐ VISA ☐ MasterCard Account
☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐
☐☐☐☐ (Credit card expiration date)

Thank you for your order!

Authorizing signature 11/3

Mail To: Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250–7954

are

of the
al

VISA

12–2250
12–1800

so I can

change.

ments
–

k you for
ur order!

11/3

-7954

VOL
64
ISS
67
AP
8
1999
UMI

Printed on recycled paper

VOL
64
ISS
68
AP
9
1999
UMI

4-9-99
Vol. 64

UMI

THE PAPER AND INK USED IN THE ORIGINAL PUBLICATION MAY AFFECT THE QUALITY OF THE MICROFORM EDITION.

United S
Governm
Printing
SUPERINTE
OF DOCUM
Washington,

OFFICIAL B
Penalty for p

4–9–99
Vol. 64 No. 68

federal register

Friday
April 9, 1999

United States
Government
Printing Office
SUPERINTENDENT
OF DOCUMENTS
Washington, DC 20402

OFFICIAL BUSINESS
Penalty for private use, $300

PERIODICALS
Postage and Fees Paid
U.S. Government Printing Office
(ISSN 0097–6326)

**********3-DIGIT 481
A FR UMI 346U DEC 99 R
UMI
PERIODICALS CHECK IN
PO BOX 1346
ANN ARBOR MI 48106

VOL
64
ISS
68
AP
9
1999
UMI

4-9-99
Vol. 64
Pages 17

ANN ARBOR MI 48106

4-9-99
Vol. 64 No. 68
Pages 17271–17500

federal register

Friday
April 9, 1999

Briefings on how to use the Federal Register
For information on briefings in Washington, DC, see announcement on the inside cover of this issue.

The **FEDERAL REGISTER** is published daily, Monday through Friday, except official holidays, by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). The Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 is the exclusive distributor of the official edition.

The **Federal Register** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders, Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress, and other Federal agency documents of public interest.

Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless the issuing agency requests earlier filing. For a list of documents currently on file for public inspection, see http://www.nara.gov/fedreg.

The seal of the National Archives and Records Administration authenticates the Federal Register as the official serial publication established under the Federal Register Act. Under 44 U.S.C. 1507, the contents of the **Federal Register** shall be judicially noticed.

The **Federal Register** is published in paper and on 24x microfiche. It is also available online at no charge as one of the databases on GPO Access, a service of the U.S. Government Printing Office.

The online edition of the **Federal Register** is issued under the authority of the Administrative Committee of the Federal Register as the official legal equivalent of the paper and microfiche editions (44 U.S.C. 4101 and 1 CFR 5.10). It is updated by 6 a.m. each day the **Federal Register** is published and it includes both text and graphics from Volume 59, Number 1 (January 2, 1994) forward.

GPO Access users can choose to retrieve online **Federal Register** documents as TEXT (ASCII text, graphics omitted), PDF (Adobe Portable Document Format, including full text and all graphics), or SUMMARY (abbreviated text) files. Users should carefully check retrieved material to ensure that documents were properly downloaded.

On the World Wide Web, connect to the **Federal Register** at http://www.access.gpo.gov/nara. Those without World Wide Web access can also connect with a local WAIS client, by Telnet to swais.access.gpo.gov, or by dialing (202) 512-1661 with a computer and modem. When using Telnet or modem, type swais, then log in as guest with no password.

For more information about GPO Access, contact the GPO Access User Support Team by E-mail at gpoaccess@gpo.gov; by fax at (202) 512–1262; or call (202) 512–1530 or 1–888–293–6498 (toll free) between 7 a.m. and 5 p.m. Eastern time, Monday–Friday, except Federal holidays.

The annual subscription price for the **Federal Register** paper edition is $555, or $607 for a combined **Federal Register**, Federal Register Index and List of CFR Sections Affected (LSA) subscription; the microfiche edition of the **Federal Register** including the Federal Register Index and LSA is $220. Six month subscriptions are available for one-half the annual rate. The charge for individual copies in paper form is $8.00 for each issue, or $8.00 for each group of pages as actually bound; or $1.50 for each issue in microfiche form. All prices include regular domestic postage and handling. International customers please add 25% for foreign handling. Remit check or money order, made payable to the Superintendent of Documents, or charge to your GPO Deposit Account, VISA, MasterCard or Discover. Mail to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954.

There are no restrictions on the republication of material appearing in the **Federal Register.**

How To Cite This Publication: Use the volume number and the page number. Example: 64 FR 12345.

Printed on recycled paper.

SUBSCRIPTIONS AND COPIES

PUBLIC
Subscriptions:
Paper or fiche 202–512–1800
Assistance with public subscriptions 512–1806
General online information 202–512–1530; 1–888–293–6498
Single copies/back copies:
Paper or fiche 512–1800
Assistance with public single copies 512–1803
FEDERAL AGENCIES
Subscriptions:
Paper or fiche 523–5243
Assistance with Federal agency subscriptions 523–5243

FEDERAL REGISTER WORKSHOP

THE FEDERAL REGISTER: WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: Sponsored by the Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WASHINGTON, DC

WHEN: April 20, 1999 at 9:00 am.

WHERE: Office of the Federal Register
Conference Room
800 North Capitol Street, NW.
Washington, DC
(3 blocks north of Union Station Metro)

RESERVATIONS: 202–523–4538

Contents

Federal Register
Vol. 64, No. 68
Friday, April 9, 1999

Agency for Health Care Policy and Research
NOTICES
Privacy Act:
Systems of records, 17383–17384

Agriculture Department
See Commodity Credit Corporation
See Forest Service
See Natural Resources Conservation Service

Alcohol, Tobacco and Firearms Bureau
RULES
Alcohol, tobacco, and other excise taxes:
Commerce in firearms and ammuninition; meaning of terms; technical amendments, 17291–17292

Arts and Humanities, National Foundation
See National Foundation on the Arts and the Humanities

Blind or Severely Disabled, Committee for Purchase From People Who Are
See Committee for Purchase From People Who Are Blind or Severely Disabled

Centers for Disease Control and Prevention
NOTICES
Agency information collection activities:
Proposed collection; comment request, 17384–17386
Grants and cooperative agreements; availability, etc.:
Healthy People 2000—
Educational programs in occupational safety and health, 17386–17391
Management care prevention promotion, 17394–17395
Young worker safety and health risks in construction, 17392–17394
Investigator-initiated prevention research in managed care, 17395–17397

Civil Rights Commission
NOTICES
Meetings; State advisory committees:
District of Columbia, 17313–17314

Coast Guard
RULES
Ports and waterways safety:
Bergen County United Way Fireworks, NY; safety zone; correction, 17439

Commerce Department
See International Trade Administration
See National Oceanic and Atmospheric Administration

Commission of Fine Arts
NOTICES
Meetings, 17349

Committee for Purchase From People Who Are Blind or Severely Disabled
NOTICES
Procurement list; additions and deletions, 17312–17313

Committee for the Implementation of Textile Agreements
NOTICES
Cotton, wool, and man-made textiles:
Philippines, 17349–17350

Commodity Credit Corporation
RULES
Loan and purchase programs:
Noninsured crop disaster assistance program, 17271–17272

Commodity Futures Trading Commission
PROPOSED RULES
Foreign futures and options transactions:
Access to electronic boards of trade; automated trading systems use; correction, 17439

Corporation for National and Community Service
PROPOSED RULES
Grants and cooperative agreements; availability, etc.:
AmeriCorps* programs—
Education awards, 17302–17308

Defense Department
See Navy Department
NOTICES
Agency information collection activities:
Proposed collection; comment request, 17350
Meetings:
National Security Education Board, 17350

Drug Enforcement Administration
PROPOSED RULES
Schedules of controlled substances:
Ketamine; placement into Schedule III, 17299–17301
Ketamine; placement into Schedule III; withdrawn, 17298–17299
NOTICES
Applications, hearings, determinations, etc.:
Johnson Matthey, Inc., 17415–17416
Lipomed, Inc., 17416
Reaves, Leonard E., III, M.D., 17416–17417
Robert Laboratories, Inc., 17417
Wildlife Laboratories, Inc., 17417–17418

Education Department
NOTICES
Grants and cooperative agreements; availability, etc.:
Postsecondary education—
Gaining early awareness and readiness for undergraduate programs, 17351

Employment Standards Administration
NOTICES
Agency information collection activities:
Proposed collection; comment request, 17418–17419
Minimum wages for Federal and federally-assisted construction; general wage determination decisions, 17419–17421

Energy Department
See Federal Energy Regulatory Commission

NOTICES
Applications, hearings, determinations, etc.:
Fraser Papers Inc., 17351–17352

Environmental Protection Agency
RULES
Air pollutants, hazardous; national emission standards:
Magnetic tape manufacturing operations, 17459–17464
PROPOSED RULES
Air pollutants, hazardous; national emission standards:
Magnetic tape manufacturing operations, 17465–17469
NOTICES
Confidential business information and data transfer, 17362
Environmental statements; availability, etc.:
Agency statements—
Comment availability, 17362–17364
Weekly receipts, 17364

Executive Office of the President
See Presidential Documents

Federal Aviation Administration
RULES
Air traffic operating and flight rules, etc.:
Anchorage, AK; terminal area description revised, 17439
Standard instrument approach procedures, 17272–17276
PROPOSED RULES
Aircraft overflights; impact on National Park System units, 17293–17295

Federal Communications Commission
NOTICES
Public safety radio communications plans:
California, 17364–17366
Radio services, special:
Fixed microwave services—
Broadwave Albany, L.L.C.; waiver, 17366–17367

Federal Deposit Insurance Corporation
NOTICES
Meetings; Sunshine Act, 17367

Federal Emergency Management Agency
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 17367–17368
Disaster and emergency areas:
Washington, 17368

Federal Energy Regulatory Commission
RULES
Natural Gas Policy Act:
Interstate natural gas pipelines—
Business practice standards, 17276–17279
NOTICES
Electric rate and corporate regulation filings:
Central Vermont Public Service, et al., 17354–17355
LG & E Capital Corp., et al., 17356–17359
Niagara Mohawk Power Corp. and Moreau Manufacturing Corp., et al., 17359–17361
Hydroelectric applications, 17361–17362
Applications, hearings, determinations, etc.:
Koch Gateway Pipeline Co., 17352–17353
Rockingham Power, L.L.C., et al., 17353
Transcontinental Gas Pipe Line Corp., 17353

Federal Housing Finance Board
NOTICES
Federal home loan bank system:
Community supportg review—
Members selected for review; list, 17368–17379

Federal Maritime Commission
NOTICES
Agreements filed, etc., 17379
Freight forwarder licenses:
Future Freight Systems, Inc., 17379–17380

Federal Reserve System
NOTICES
Agency information collection activities:
Reporting and recordkeeping requirements, 17380–17382
Banks and bank holding companies:
Change in bank control, 17382
Formations, acquisitions, and mergers, 17382–17383
Permissible nonbanking activities, 17383
Meetings; Sunshine Act, 17383

Financial Management Service
See Fiscal Service

Fine Arts Commission
See Commission of Fine Arts

Fiscal Service
RULES
Financial management services:
Automated clearing house; Federal agencies participation, 17471–17491

Fish and Wildlife Service
PROPOSED RULES
Migratory bird hunting:
HEVI-METAL as nontoxic shot material for waterfowl hunting; application for approval, 17308–17309
NOTICES
Endangered and threatened species:
Recovery plans—
Indiana bat, 17406–17407
Endangered and threatened species permit applications, 17405–17406
Marine mammals:
Annual report availability (1996 CY), 17407

Food and Drug Administration
PROPOSED RULES
Food for human consumption:
Food labeling—
Ingredients declaration, 17295–17298
NOTICES
Codex Alimentarius Commission:
Vitamin and mineral supplements; international guidelines background paper; comment request, 17397–17399
Meetings:
National Center for Toxicological Research Science Advisory Board, 17399

Forest Service
NOTICES
Appealable decisions; legal notice:
Northern region, 17310
Environmental statements; availability, etc.:
Beaverhead-Deerlodge National Forrest, MT, 17310–17311

Meetings:
Lake Tahoe Basin Federal Advisory Committee, 17311

Health and Human Services Department
See Agency for Health Care Policy and Research
See Centers for Disease Control and Prevention
See Food and Drug Administration
See National Institutes of Health
See Public Health Service

Housing and Urban Development Department
PROPOSED RULES
Public and Indian housing:
Operating fund allocation negotiated rulemaking committee; meetings, 17301–17302
NOTICES
Grants and cooperative agreements; availability, etc.:
Facilities to assist the homeless—
Excess and surplus Federal property, 17403

Interior Department
See Fish and Wildlife Service
See Land Management Bureau
See National Park Service
See Surface Mining Reclamation and Enforcement Office
NOTICES
Privacy Act:
Systems of records, 17403–17405

Internal Revenue Service
RULES
Procedure and administration:
Tax exempt organizations; public disclosure requirements, 17279–17291
NOTICES
Grants and cooperative agreements; availability, etc.:
Low income taxpayer clinic grant program, 17438

International Trade Administration
NOTICES
Antidumping:
Chrome-plated lug nuts from—
Taiwan, 17314–17317
Stainless steel round wire from—
Canada, 17324–17336
India, 17319–17323
Japan, 17317–17319
Korea, 17342–17347
Spain, 17323–17324
Taiwan, 17336–17342

International Trade Commission
NOTICES
Import investigations:
Polyester staple fiber from—
Korea and Taiwan, 17414–17415

Justice Department
See Drug Enforcement Administration

Labor Department
See Employment Standards Administration
See Occupational Safety and Health Administration
PROPOSED RULES
Wage rates predetermination procedures; and construction and nonconstruction contracts; labor standards provisions:
Davis-Bacon and Related Acts (DBRA) semi-skilled helper regulations, 17441–17458
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 17418

Land Management Bureau
NOTICES
Limited use designations:
Shasta County, CA, 17407–17408

Legal Services Corporation
NOTICES
Meetings; Sunshine Act, 17422–17423

National Archives and Records Administration
NOTICES
Agency information collection activities:
Proposed collection; comment request, 17423
Agency records schedules; availability, 17494–17495
Agency records schedules, notices of availability; format changes; comment request, 17493–17494

National Foundation on the Arts and the Humanities
NOTICES
Meetings; Sunshine Act, 17423–17424

National Gambling Impact Study Commission
NOTICES
Meetings, 17424

National Institutes of Health
NOTICES
Committees; establishment, renewal, termination, etc.:
National Institute of Allergy and Infectious Diseases; Chronic Fatigue Syndrome Coordinating Committee; membership, 17400
Inventions, Government-owned; availability for licensing, 17400–17402

National Oceanic and Atmospheric Administration
RULES
Marine mammals:
Commercial fishing operations; incidental taking—
Atlantic large whale take reduction plan, 17292
NOTICES
Endangered and threatened species:
Recovery plans—
Cook Inlet beluga whales, 17347
Marine mammals:
Incidental taking—
Small takes by harassment; Arctic waters, 17347–17348
Meetings:
Mid-Atlantic Fishery Management Council, 17348–17349

National Park Service
PROPOSED RULES
National Park System:
Aircraft overflights; impact on NPS units, 17293–17295
NOTICES
Environmental statements; availability, etc.:
Washita Battlefield National Historic Site, OK, 17408
Meetings:
Artic National Park and Preserve Subsistence Resource Commission, 17408–17409
Wrangell-St. Elias National Park Subsistence Resource Commission, 17409
National Trails System:
Management and operations; Director's order, availability, 17409–17410

Native American human remains and associated funerary objects:
Anchorage Museum of History and Art, AK; Chilkat robe or blanket, 17410
Bernice Pauahi Bishop Museum, Honolulu, HI; sandstone sections containing petroglyphs, 17410
Robert S. Peabody Museum of Archaeology, MA—Human remains, 17411
University of Nebraska State Museum, NE, 17411–17412

Natural Resources Conservation Service
NOTICES
Conservation Practices National Handbook:
Conservation practice standards, new or revised; comment request, 17311–17312

Navy Department
NOTICES
Meetings:
Chief of Naval Operations Executive Panel, 17350–17351

Nuclear Regulatory Commission
NOTICES
Applications, hearings, determinations, etc.:
Abdulshafi, A., Ph.D., 17424–17425
El-Naggar, Mohammed, Dr., 17425–17427
Todd, Dale, and Roof Systems Design, Inc., 17427–17428

Occupational Safety and Health Administration
NOTICES
Meetings:
Occupational Safety and Health National Advisory Committee, 17421–17422

Presidential Documents
PROCLAMATIONS
Special observances:
Equal Pay Day, National (Proc. 7179), 17497–17500

Public Debt Bureau
See Fiscal Service

Public Health Service
See Agency for Health Care Policy and Research
See Centers for Disease Control and Prevention
See Food and Drug Administration
See National Institutes of Health
NOTICES
Meetings:
National toxicology program—Scientific Counselors Board, 17402–17403

Securities and Exchange Commission
NOTICES
Self-regulatory organizations; proposed rule changes:
National Association of Securities Dealers, Inc., 17428–17430

State Department
NOTICES
Arms Export Control Act:
Export licenses; Congressional notifications, 17430–17432
Meetings:
International harmonization of chemical classification and labeling sytems; government activities, 17435
Private International Law Advisory Committee, 17435–17437

Surface Mining Reclamation and Enforcement Office
NOTICES
Privacy Act:
Systems of records, 17412–17414

Textile Agreements Implementation Committee
See Committee for the Implementation of Textile Agreements

Transportation Department
See Coast Guard
See Federal Aviation Administration
See Transportation Statistics Bureau

Transportation Statistics Bureau
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 17437

Treasury Department
See Alcohol, Tobacco and Firearms Bureau
See Fiscal Service
See Internal Revenue Service

Separate Parts In This Issue

Part II
Department of Labor, 17441–17458

Part III
Environmental Protection Agency, 17459–17469

Part IV
Department of Treasury, Fiscal Service, 17471–17491

Part V
National Archives and Records Administration, 17493–17495

Part VI
The President, 17497–17500

Reader Aids
Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

3 CFR
Proclamation:
7179.....17499

7 CFR
1437.....17271

14 CFR
93.....17439
97.....17277
Proposed Rules:
91.....17293
135.....17293

17 CFR
Proposed Rules:
1.....17439

18 CFR
284.....17276

21 CFR
Proposed Rules:
101.....17295
1308 (2 documents).....17298, 17299

24 CFR
Proposed Rules:
990.....17301

26 CFR
301.....17279
602.....17279

27 CFR
178.....17291

29 CFR
Proposed Rules:
1.....17442
5.....17442

31 CFR
210.....17472

33 CFR
165.....17439

36 CFR
Proposed Rules:
1.....17293
2.....17293
3.....17293
4.....17293
5.....17293
6.....17293
7.....17293

40 CFR
63.....17460
Proposed Rules:
63.....17465

45 CFR
Proposed Rules:
2522.....17302
2525.....17302
2526.....17302
2527.....17302
2528.....17302
2529.....17302

50 CFR
229.....17292
Proposed Rules:
20.....17308

UMI

VOL 64 ISS 68 AP 9 1999

UMI

Rul

This sec
contains
applicabi
are keye
Federal
50 titles

The Cod
the Supe
new boo
REGIST

DEPAR

Commo

7 CFR P

RIN 056

Nonins
Progra

AGENCY
USDA.

ACTION:
comme

SUMMAR
regulati
Nonins
Progra
the Co
(CCC) i
the Fed
and Ref
Current
the Exe
designe
yields f
being re
the Dep
Progra
authori
yields f
been re
at his d
Farm S
commit
official
prices,
Additio
interim
be cons
under N
provide

DATES:
April 9,
must be
1999 to

ADDRES
this rul
Nonins
Branch

Rules and Regulations

Federal Register
Vol. 64, No. 68
Friday, April 9, 1999

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1437

RIN 0560–AF46

Noninsured Crop Disaster Assistance Program

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Interim rule with request for comments.

SUMMARY: This interim rule amends the regulations with respect to the Noninsured Crop Disaster Assistance Program (NAP) which is conducted by the Commodity Credit Corporation (CCC) in accordance with section 196 of the Federal Agriculture Improvement and Reform Act of 1996 (1996 Act). Currently, the regulations specify that the Executive Vice President, CCC, or designee determines areas, prices, and yields for NAP. The regulations are being revised to inform the public that the Deputy Administrator for Farm Programs (DAFP) has been delegated the authority to determine areas, prices, and yields for NAP. The regulation has also been revised to specify that DAFP may at his discretion delegate to selected Farm Service Agency (FSA) State committees (STC's) and other FSA officials, authority to determine areas, prices, and yields for NAP. Additionally, amendments made by the interim rule specify that seed crops may be considered separate eligible crops under NAP if certain criteria is met, and provide a definition for industrial crops.

DATES: The interim rule is effective on April 9, 1999. Comments on this rule must be received on or before June 8, 1999 to be assured of consideration.

ADDRESSES: Submit comments regarding this rule to G. Sean O'Neill, Chief, Noninsured Assistance Programs Branch (NAPB), Production, Emergencies, and Compliance Division (PECD), Farm Service Agency (FSA), United States Department of Agriculture, STOP 0517, 1400 Independence Avenue, SW, Washington, DC 20250–0517; telephone (202) 720–9003; e-mail Sean__Oneill@wdc.fsa.usda.gov.

FOR FURTHER INFORMATION CONTACT: G. Sean O'Neill, telephone (202) 720–9003; e-mail Sean__Oneill@wdc.fsa.usda.gov.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This interim rule is issued in conformance with Executive Order 12866 and has been determined to be significant and therefore has been reviewed by OMB.

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable to this rule because neither FSA nor the CCC is required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

Environmental Evaluation

It has been determined by an environmental evaluation that this action will have no significant impact on the quality of the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is needed.

Executive Order 12988

The interim rule has been reviewed in accordance with Executive Order 12988. The provisions of this interim rule preempt State laws to the extent such laws are inconsistent with the provisions of this rule. Before any judicial action may be brought concerning the provisions of this rule, the administrative remedies must be exhausted.

Executive Order 12372

This program is not subject to the provisions of Executive Order 12372, which require intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

Unfunded Mandates Reform Act of 1995 (UMRA)

This rule contains no Federal mandates under the regulatory provisions of Title II of the UMRA for State, local, and tribal governments or the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Paperwork Reduction Act

This interim rule does not include any new or additional information collection requirements. The information relative to the criteria stated in the interim rule was previously collected during the 1996/1997 growing period under approved OMB control numbers 0560–0175 and 0560–0004.

Executive Order 12612

It has been determined that this rule does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment. The provisions contained in this rule will not have a substantial direct effect on States or their political subdivisions, or on the distribution of power and responsibilities among the various levels of Government.

Federal Assistance Programs

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

Background

The regulation reflects changes in existing definitions, additional definitions, and acreage reporting requirements. Changes include:

(1) Section 1437.2 is amended to specify that the Deputy Administrator for Farm Programs (DAFP) shall make determinations regarding NAP area and price and yield approvals and at DAFP's discretion, DAFP may further delegate authority to selected FSA State committees and other FSA officials to make determinations regarding NAP area and price and yield approvals.

(2) Section 1437.3 is amended to: (a) revise the definition of eligible crop to include the criteria for defining a crop intended for use as commercial seed; and (b) include a definition of industrial crops.

(3) Section 1437.4 is amended to specify that in the case of commercial seed, the seed intended use may be treated as a separate eligible crop if the criteria in § 1437.3 is met.

List of Subjects in 7 CFR Part 1437

Agricultural commodities, Disaster assistance, Reporting and recordkeeping requirements.

For the reasons set out in the Preamble, 7 CFR Chapter XIV is amended as set forth below.

PART 1437—NONINSURED CROP DISASTER ASSISTANCE PROGRAM REGULATIONS FOR THE 1998 AND SUCCEEDING CROP YEARS

1. The authority citation continues to read as follows:

Authority: 15 U.S.C. 714b and 714c and 7 U.S.C. 7333.

2. Revise the heading for part 1437 to read as set forth above.

3. In § 1437.2 paragraphs (f) and (g) are revised and paragraph (h) is added to read as follows:

§ 1437.2 Administration.

* * * * *

(f) The State committee will, in accordance with this part, recommend the geographical size and shape of the area where a natural disaster has occurred, and whether the area eligibility requirement has been satisfied. The recommendations must be approved by the Deputy Administrator for Farm Programs unless the State committee has been specifically delegated authority under paragraph (h) of this section.

(g) Except when a State committee has been authorized to approve NAP prices and yields according to paragraph (h) of this section, the Deputy Administrator for Farm Programs shall approve all yields and prices under this part.

(h) The Deputy Administrator for Farm Programs, may delegate to State committees authority to make area, price, and yield determinations specified in paragraphs (f) and (g) of this section. The delegation shall be in writing. State committees authorized and delegated to make area determinations referenced in paragraph (f) may do so only if the entire proposed NAP area resides entirely within the State or geographical region for which the State committee is responsible. If an area delineated according to § 1437.6 is both within and outside the region governed by the State committee, the Deputy Administrator for Farm Programs must approve the area. This decision to delegate or revoke delegated authority to any State committee or other FSA official to make any determination referenced in either paragraph (f) or (g) of this section is solely at the discretion of the Deputy Administrator for Farm Program and is not subject to administrative review.

4. In § 1437.3 the definition of eligible crop is revised and a new definition for industrial crops is added in proper alphabetical order and to read as follows:

§ 1437.3 Definitions.

* * * * *

Eligible crop means an agricultural commodity for which catastrophic coverage is not available and which is commercially produced for food or fiber as specified in this part. Eligible crop will also include floriculture, ornamental nursery, and Christmas tree crops, turfgrass sod, seed crops, aquaculture (including ornamental fish), and industrial crops. In the case of a crop that historically has multiple plantings in the same crop year that are planted or are prevented from being planted, each planting may be considered a different crop for determining payments under this part as determined by CCC. In the case of a crop, except for forage determined by CCC to be predominantly grazed, that has different varieties or types, each variety or type may be considered a separate crop for determining payments under this part, if CCC determines there is a significant difference in price or yield between the varieties or types. For the 1996 and subsequent crop years, a seed crop may be viewed as a separate crop, as determined by CCC, if all the following apply: The specific crop acreage is seeded, or intended to be seeded, with an intent of producing commercial seed as its primary intended use; there is no possibility of other commercial uses of production from the seed crop acreage without regard to market conditions; and the crop acreage planted, or intended to be planted, with an intended use of seed must have a growing period uniquely conducive to the production of commercial seed and such growing period is not conducive to the production of any other intended use. The unique growing period necessary for successful commercial seed production must be something that is physiologically required for the production of commercial seed (i.e. vernalization in a biennial crop such as carrots and onions) and where such physiological event renders the possibility of production of any other use of the crop acreage improbable. Commercial seed intended uses not meeting the aforementioned criteria shall be viewed as an intended use and a single crop together with all other intended uses of the crop type or variety.

* * * * *

Industrial crop means castor beans, chia, crambe, crotalaria, cuphea, guar, guayule, hesperaloe, kenaf, lesquerella, meadowfoam, milkweed, plantago, ovato, sesame, and other crops specifically designated by CCC that are either food or fiber or are used in food or fiber applications.

* * * * *

5. In § 1437.4 paragraph (a) is revised to read as follows:

§ 1437.4 Eligibility.

(a) Crops that are eligible for NAP benefits are any commercial agricultural crop (excluding livestock and their by-products), commodity, or acreage of a commodity grown for food or fiber for which catastrophic coverage is not available. Except for ornamental nursery and species or type or variety of a species of forage determined by CCC to be predominantly grazed, different types or varieties of a crop or commodity, may be treated as a separate eligible crop, if CCC determines there is a significant difference in price or yield. For the 1996 and subsequent crop years, as seed crop may be viewed as a separate crop if CCC determines the crop meets the definition of an "eligible crop" pursuant to § 1437.3.

* * * * *

Signed at Washington, DC, on April 5, 1999.

Keith Kelly,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 99–8763 Filed 4–8–99; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 29521; Amdt. No. 1924]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight

operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located; or

3. The Flight Inspection Area Office which originated the SIAP.

For Purchase—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, US Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd. Oklahoma City, OK. 73169 (Mail Address: P.O. Box 25082 Oklahoma City, OK. 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description on each SIAP is contained in the appropriate FAA Form 8260 and the National Flight Data Center (FDC)/Permanent (P) Notices to Airmen (NOTAM) which are incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation's Regulations (FAR). Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction of charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes SIAPs. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained in the content of the following FDC/P NOTAMs for each SIAP. The SIAP information in some previously designated FDC/Temporary (FDC/T) NOTAMs is of such duration as to be permanent. With conversion to FDC/P NOTAMs, the respective FDC/T NOTAMs have been canceled.

The FDC/P NOTAMs for the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these chart changes to SIAPs by FDC/P NOTAMs, the TERPS criteria were applied to only these specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Further, the SIAPs contained in this amendment are based on the criteria contained in the TERPS. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Navigation (air).

Issued in Washington, DC on April 2, 1999.

L. Nicholas Lacey,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

Authority: 49 U.S.C. 40103, 40113, 40120, 44701; 49 U.S.C. 106(g); and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

. . . *Effective Upon Publication*

FDC date	State	City	Airport	FDC Number	SIAP
02/24/99	KS.	KINGMAN	KINGMAN MUNI	9/1069	VOR/DME RWY 18, AMDT 1...
02/24/99	KS.	KINGMAN	KINGMAN MUNI	9/1071	GPS RWY 18, ORIG...
03/16/99	VA.	NEWPORT NEWS	NEWPORT NEWS/WILLIAMSBURG INTL.	9/1555	NDB OR GPS RWY 20 AMDT 3B...
03/16/99	VA.	NEWPORT NEWS	NEWPORT NEWS/WILLIAMSBURG INTL.	9/1556	NDB RWY 7 AMDT 3B...
03/16/99	VA.	NEWPORT NEWS	NEWPORT NEWS/WILLIAMSBURG INTL.	9/1557	NDB RWY 25 AMDT 4A...
03/16/99	VA.	NEWPORT NEWS	NEWPORT NEWS/WILLIAMSBURG INTL.	9/1558	LOC BC RWY 25 AMDT 13B...
03/16/99	VA.	NEWPORT NEWS	NEWPORT NEWS/WILLIAMSBURG INTL.	9/1559	ILS RWY 7 AMDT 30A...
03/16/99	VA.	NORFOLK	NORFOLK INTL	9/1566	GPS RWY 32 AMDT 1...
03/16/99	VA.	NORFOLK	NORFOLK INTL	9/1568	VOR/DME RWY 14 AMDT 2...
03/16/99	VA.	NORFOLK	NORFOLK INTL	9/1570	VOR/DME RNAV RWY 14 AMDT 4...
03/16/99	VA.	NORFOLK	NORFOLK INTL	9/1574	ILS RWY 23 AMDT 6B...
03/16/99	VA.	NORFOLK	NORFOLK INTL	9/1575	ILS RWY 5 AMDT 24...
03/16/99	VA.	NORFOLK	NORFOLK INTL	9/1581	NDB/DME OR GPS RWY 23 ORIG...
03/16/99	VA.	ORANGE	ORANGE COUNTY	9/1560	GPS RWY 7 ORIG...
03/16/99	VA.	ORANGE	ORANGE COUNTY	9/1562	VOR/DME OR GPS–AMDT 2...
03/16/99	VA.	PORTSMOUTH	HAMPTON ROADS	9/1561	GPS RWY 10 ORIG...
03/16/99	VA.	PORTSMOUTH	HAMPTON ROADS	9/1563	GPS RWY 28 ORIG...
03/16/99	VA.	PORTSMOUTH	HAMPTON ROADS	9/154	NDB OR GPS RWY 2 AMDT 6...
03/17/99	CA.	SACRAMENTO	SACRAMENTO MATHER	9/1621	VOR/DME OR GPS RWY 22L ORIG–A...
03/17/99	CA.	SACRAMENTO	SACRAMENTO MATHER	9/1622	ILS RWY 22L ORIG...
03/17/99	CA.	SACRAMENTO	SACRAMENTO MATHER	9/1623	VOR OR GPS RWY 4R ORIG...
03/17/99	CA.	SACRAMENTO	SACRAMENTO MATHER	9/1625	ILS RWY 22L ORIG...
03/17/99	CA.	SACRAMENTO	SACRAMENTO MATHER	9/1627	VOR/DME OR GPS RWY 22L ORIG–A...
03/17/99	OK.	ANTLERS	ANTLERS MUNI	9/1611	NDB RWY 35, AMDT 2A...
03/17/99	VA.	CHESAPEAKE	CHESAPEAKE MUNI	9/1597	LOC RWY 5 AMDT 2A,..
03/17/99	VA.	CHESAPEAKE	CHESAPEAKE MUNI	9/1598	VOR/DME RWY 23 AMDT 2A...
03/17/99	VA.	CHESAPEAKE	CHESAPEAKE MUNI	9/1599	NDB RWY 5 AMDT 1A.....
03/17/99	VA.	FRANKLIN	FRANKLIN MUNI-JOHN BEVERLY ROSE.	9/1591	VOR OR GPS RWY 9 AMDT 14...
03/17/99	VA.	FRANKLIN	FRANKLIN MUNI-JOHN BEVERLY ROSE.	9/1595	VOR/DME OR GPS RWY 27 AMDT 9A...
03/17/99	VA.	SUFFOLK	SUFFOLK MUNI	9/1589	GPS RWY 4 ORIG...
03/17/99	VA.	SUFFOLK	SUFFOLK MUNI	9/1590	GPS RWY 7 ORIG...
03/17/99	VA.	SUFFOLK	SUFFOLK MUNI	9/1592	NDB RWY 4 AMDT 1...
03/17/99	VA.	SUFFOLK	SUFFOLK MUNI	9/1593	LOC RWY 4 AMDT 1...
03/17/99	VA.	WAKEFIELD	WAKEFIELD MUNI	9/1596	NDB OR GPS RWY 20 AMDT 4...
03/18/99	OH.	NEWARK	NEWARK–HEATH	9/1647	GPS RWY 27, ORIG...
03/18/99	OH.	NEWARK	NEWARK–HEATH	9/1648	NDB OR GPS RWY 9, AMDT 6...
03/18/99	OH.	NEWARK	NEWARK–HEATH	9/1649	VOR OR GPS–A, AMDT 12...
03/18/99	OH.	NEWARK	NEWARK–HEATH	9/1650	VOR/DME RNAV RWY 27, AMDT 6...
03/18/99	TN.	JACKSON	MCKELLAR–SIPES REGIONAL	9/1645	ILS RWY 2, AMDT 7...
03/19/99	MA.	MANSFIELD	MANSFIELD MUNI	9/1673	NDB RWY 32 AMDT 6...
03/19/99	MA.	MANSFIELD	MANSFIELD MUNI	9/1674	GPS RWY 32 ORIG...
03/19/99	NE.	YORK	YORK MUNI	9/1671	GPS RWY 17, ORIG...
03/19/99	NE.	YORK	YORK MUNI	9/1672	GPS RWY 35, ORIG...
03/19/99	OH.	NEWARK	NEWARK–HEATH	9/1684	SDF RWY 9, AMDT 5...
03/22/99	OH.	CLEVELAND	CLEVELAND–HOPKINS INTL	9/1728	ILS RWY 28, AMDT 21...
03/24/99	GA.	SAVANNAH	SAVANNAH INTL	9/1750	MLS RWY 27, ORIG–A...
03/25/99	AK.	COLD BAY	COLD BAY	9/1878	LOC/DME BC RWY 32, AMDT 7...
03/25/99	AK.	HOMER	HOMER	9/1812	LOC/DME BC RWY 3, AMDT 9...
03/25/99	AK.	HOMER	HOMER	9/1815	LOC/DME BC RWY 21, AMDT 4...
03/25/99	AK.	HOMER	HOMER	9/1816	GPS RWY 21, ORIG...
03/25/99	AK.	HOMER	HOMER	9/1817	GPS RWY 3, ORIG...
03/25/99	AK.	HOMER	HOMER	9/1828	NDB–A, ORIG...
03/25/99	IL.	CHICAGO/ROMEOVILLE	LEWIS UNIVERSITY	9/1790	LOC/DME RWY 9, ORIG...
03/25/99	IN.	INDIANAPOLIS	INDIANAPOLIS INTL	9/1870	ILS RWY 5R, AMDT 2...
03/25/99	IN.	INDIANAPOLIS	INDIANAPOLIS INTL	9/1872	NDB OR GPS RWY 23L, AMDT 1...

FDC date	State	City	Airport	FDC Number	SIAP
03/25/99	IN.	INDIANAPOLIS	INDIANAPOLIS INTL	9/1874	VOR OR GPS RWY 14, AMDT 25...
03/25/99	IN.	INDIANAPOLIS	INDIANAPOLIS INTL	9/1875	ILS RWY 32, AMDT 17A...
03/25/99	IN.	INDIANAPOLIS	INDIANAPOLIS INTL	9/1876	ILS RWY 14, AMDT 4...
03/25/99	IN.	INDIANAPOLIS	INDIANAPOLIS INTL	9/1882	ILS RWY 23L, AMDT 2...
03/25/99	IN.	INDIANAPOLIS	INDIANAPOLIS INTL	9/1899	NDB OR GPS RWY 5R, AMDT 1...
03/25/99	IN.	INDIANAPOLIS	INDIANAPOLIS INTL	9/1926	NDB RWY 5L, ORIG...
03/25/99	MS.	OLIVE BRANCH	OLIVE BRANCH	9/1867	NDB OR GPS RWY 18, AMDT 4...
03/25/99	NJ.	NEWARK	NEWARK INTL	9/1895	VOR RWY 11 AMDT 1A...
03/25/99	NY.	POUGHKEEPSIE	DUTCHESS COUNTY	9/1888	VOR/DME RWY 6 AMDT 5A...
03/25/99	NY.	POUGHKEEPSIE	DUTCHESS COUNTY	9/1889	VOR OR GPS–A AMDT 10...
03/25/99	NY.	POUGHKEEPSIE	DUTCHESS COUNTY	9/1891	VOR/DME OR GPS RWY 24 AMDT 3A...
03/25/99	NY.	POUGHKEEPSIE	DUTCHESS COUNTY	9/1892	VOR/DME RNAV OR GPS RWY 6 AMDT 5...
03/25/99	NY.	POUGHKEEPSIE	DUTCHESS COUNTY	9/1968	ILS RWY 6 AMDT 5A...
03/25/99	SC.	NORTH MYRTLE BEACH.	NORTH MYRTLE BEACH/GRAND STRAND.	9/1863	VOR RWY 5 AMDT 20...
03/25/99	SC.	NORTH MYRTLE BEACH.	NORTH MYRTLE BEACH/GRAND STRAND.	9/1864	VOR RWY 23 AMDT 19...
03/25/99	SC.	NORTH MYRTLE BEACH.	NORTH MYRTLE BEACH/GRAND STRAND.	9/1865	ILS RWY 23 AMDT 10...
03/25/99	TX.	HEREFORD	HEREFORD MUNI	9/1807	GPS RWY 21, ORIG...
03/25/99	TX.	PANHANDLE	PANHANDLE-CARSON COUNTY	9/1809	GPS RWY 35, ORIG...
03/25/99	VA.	NORFOLK	NORFOLK INTL	9/1843	VOR/DME RWY 5 AMDT 4...
03/25/99	VA.	NORFOLK	NORFOLK INTL	9/1844	VOR RWY 23 AMDT 8...
03/25/99	VA.	NORFOLK	NORFOLK INTL	9/1845	VOR/DME RWY 32 AMDT 4...
03/25/99	VA.	WISE	LONESOME PINE	9/1818	LOC/DME RWY 24 ORIG...
03/26/99	IA.	OELWEIN	OELWEIN MUNI	9/1938	VOR/DME RNAV OR GPS RWY 13, AMDT 2...
03/26/99	IA.	OELWEIN	OELWEIN MUNI	9/1943	VOR OR GPS–A, AMDT 3...
03/26/99	IA.	OELWEIN	OELWEIN MUNI	9/1944	NDB RWY 13, AMDT 2...
03/26/99	IA.	SHENANDOAH	SHENANDOAH MUNI	9/1942	NDB OR GPS RWY 4, ORIG...
03/26/99	IA.	SHENANDOAH	SHENANDOAH MUNI	9/1947	VOR/DME OR GPS RWY 12, AMDT 3...
03/26/99	IN.	INDIANAPOLIS	INDIANAPOLIS INTL	9/1941	NDB OR GPS RWY 32, AMDT 14...
03/26/99	SC.	GREENVILLE	GREENVILLE DOWNTOWN	9/1970	NDB OR GPS RWY 36, AMDT 20...
03/26/99	TN.	MURFREESBORO	MURFREESBORO MUNI	9/1950	NDB RWY 18, ORIG–A...
03/29/99	FL.	TAMPA	VANDENBERG	9/2061	GPS RWY 23, ORIG...
03/29/99	FL.	TAMPA	VANDENBERG	9/2062	GPS RWY 18, AMDT 1...
03/29/99	GA.	ATLANTA	THE WILLIAM B. HARTSFIELD ATLANTA INTL.	9/2066	ILS RWY 9L, AMDT 5...
03/29/99	IA.	MARSHALLTOWN	MARSHALLTOWN MUNI	9/2021	GPS RWY 12, ORIG...
03/29/99	IA.	MONTICELLO	MONTICELLO MUNI	9/2019	NDB OR GPS–A, AMDT 3A...
03/29/99	IA.	MONTICELLO	MONTICELLO MUNI	9/2020	VOR/DME RNAV OR GPS RWY 31, AMDT 1A...
03/29/99	IA.	ORANGE CITY	ORANGE CITY MUNI	9/2036	NDB OR GPS RWY 34, AMDT 3...
03/29/99	IA.	SHELDON	SHELDON MUNI	9/2017	VOR OR GPS RWY 33, AMDT 1...
03/29/99	IA.	SHELDON	SHELDON MUNI	9/2018	NDB RWY 33, AMDT 6...
03/29/99	ID.	JEROME	JEROME COUNTY	9/2043	VOR/DME OR GPS–A AMDT 1...
03/29/99	MA.	BEVERLY	BEVERLY MUNI	9/2031	LOC RWY 16 AMDT 5A...
03/29/99	MA.	BEVERLY	BEVERLY MUNI	9/2032	GPS RWY 16 ORIG...
03/29/99	MA.	BEVERLY	BEVERLY MUNI	9/2033	VOR RWY 16 AMDT 4A...
03/29/99	MA.	BEVERLY	BEVERLY MUNI	9/2034	NDB OR GPS–A AMDT...
03/29/99	NY.	BINGHAMTON	BINGHAMTON REGIONAL/EDWIN A. LINK FILED.	9/2045	ILS RWY 34 AMDT 2...
03/29/99	NY.	BINGHAMTON	BINGHAMTON REGIONAL/EDWIN A. LINK FIELD.	9/2046	NDB OR GPS RWY 34 AMDT 17...
03/29/99	NY.	BINGHAMTON	BINGHAMTON REGIONAL/EDWIN A. LINK FIELD.	9/2047	VOR OR GPS RWY 10 AMDT 6...
03/29/99	NY.	BINGHAMTON	BINGHAMTON REGIONAL/EDWIN A. LINK FIELD.	9/2048	VOR/DME OR GPS RWY 28 AMDT 9...
03/29/99	NY.	BINGHAMTON	BINGHAMTON REGIONAL/EDWIN A. LINK FIELD.	9/2049	ILS RWY 16 AMDT 6...
03/29/99	PA.	EASTON	EASTON	9/2064	VOR/DME OR GPS–D ORIG–B...

FDC date	State	City	Airport	FDC Number	SIAP
03/29/99	SC.	COLUMBIA	COLUMBIA METROPOLITAN	9/2022	VOR/DME RNAV OR GPS RWY 5, ORIG–B...
03/29/99	SC.	GREENVILLE	GREENVILLE DOWNTOWN	9/2052	ILS RWY 36 AMDT 27...
03/29/99	SC.	GREENVILLE	GREENVILLE DOWNTOWN	9/2053	RADAR 1 ADMT 12...
03/31/99	IL.	GREENWOOD/WONDER LAKE.	GALT	9/2105	VOR OR GPS–A, AMDT 9...

[FR Doc. 99–8919 Filed 4–8–99; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 284

[Docket No. RM96–1–011; Order No. 587–K]

Standards For Business Practices Of Interstate Natural Gas Pipelines

Issued April 2, 1999.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final Rule.

SUMMARY: The Federal Energy Regulatory Commission is amending its regulations to incorporate by reference the most recent version of the standards, Version 1.3 promulgated July 31, 1998, by the Gas Industry Standards Board (GISB). These standards establish rules for conducting business practices and electronic communication with interstate natural gas pipelines.

DATES: Effective Date: The rule is effective May 10, 1999. The incorporation by reference of the publication listed in the rule is approved by the Director of the Federal Register of May 10, 1999.

Implementation Date: Pipelines must implement the regulations adopted in this rule by August 1, 1999.

ADDRESSES: Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT:

Michael Goldenberg, Office of the General Counsel, Federal Energy Regulatory Commission. 888 First Street, NE., Washington, DC 20426, (202) 208–2294.

Marvin Rosenberg, Office of Economic Policy, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 208–1283.

Kay Morice, Office of Pipeline Regulation, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 208–0507.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in the Public Reference Room at 888 First Street, NE., Room 2A, Washington, DC 20426.

The Commission Issuance Posting System (CIPS) provides access to the texts of formal documents issued by the Commission. CIPS can be accessed via Internet through FERC's Homepage (http://www.ferc.fed.us) using the CIPS Link or the Energy Information Online icon. The full text of this document will be available on CIPS in ASCII and WordPerfect 6.1 format. CIPS is also available through the Commission's electronic bulletin board service at no charge to the user and may be accessed using a personal computer with a modem by dialing 202–208–1397, if dialing locally, or 1–800–856–3920, if dialing long distance. To access CIPS, set your communications software to 19200, 14400, 12000, 9600, 7200, 4800, 2400, or 1200 bps, full duplex, no parity, 8 data bits and 1 stop bit. User assistance is available at 202–208–2474 or by E-mail to cipsmaster@ferc.fed.us.

This document is also available through the Commission's Records and Information Management System (RIMS), an electronic storage and retrieval system of documents submitted to and issued by the Commission after November 16, 1981. Documents from November 1995 to the present can be viewed and printed. RIMS is available in the Public Reference Room or remotely via Internet through FERC's Homepage using the RIMS link or the Energy Information Online icon. User assistance is available at (202) 208–2222, or by E-mail to rimsmaster@ferc.fed.us.

Finally, the complete text on diskette in WordPerfect format may be purchased from the Commission's copy contractor, RVJ International, Inc. RVJ International, Inc., is located in the Public Reference Room at 888 First Street, NE., Washington, DC 20426.

Before Commissioners: James J. Hoecker, Chairman; William L. Massey, Linda Breathitt, and Curt Hébert, Jr.

The Federal Energy Regulatory Commission (Commission) is amending § 284.10 of its regulations to incorporate by reference the most recent version, Version 1.3, of the consensus industry standards, promulgated by the Gas Industry Standards Board (GISB). The GISB standards establish uniform principles for conducting business and electronic communications with interstate natural gas pipelines.

I. Background

In Order Nos. 587, 587–B, 587–C, 587–G, 587–H, and 587–I [1] the Commission adopted regulations to standardize the business practices and communication methodologies of interstate pipelines in order to create a more integrated and efficient pipeline grid. In those orders, the Commission incorporated by reference consensus standards developed by GISB, a private, consensus standards developer composed of members from all segments of the natural gas industry.

On November 9, 1998, GISB filed with the Commission Version 1.3 of its standards. On December 17, 1998, the Commission issued a Notice of Proposed Rulemaking (NOPR) proposing to incorporate by reference Version 1.3 of the GISB standards. Comments were due by January 22, 1999. Comments were filed by Williston Basin Interstate Pipeline Company (Williston Basin) and, collectively, Process Gas Consumers, American Iron and Steel Institute, and Georgia Industrial Group (PGC, *et al.*).

[1] Standards For Business Practices Of Interstate Natural Gas Pipelines, Order No. 587, 61 FR 39053 (Jul. 26, 1996), III FERC Stats. & Regs. Regulations Preambles ¶ 31,038 (Jul. 17, 1996), Order No. 587–B, 62 FR 5521 (Feb. 6, 1997), III FERC Stats. & Regs. Regulations Preambles ¶ 31,046 (Jan. 30, 1997), Order No. 587–C, 62 FR 10684 (Mar. 10, 1997), III FERC Stats. & Regs. Regulations Preambles ¶ 31,050 (Mar. 4, 1997), Order No. 587–G, 63 FR 20072 (Apr. 23, 1998), III FERC Stats. & Regs. Regulations Preambles ¶ 31,062 (Apr. 16, 1998), Order No. 587–H, 63 FR 39509 (July 23, 1998), III FERC Stats. & Regs. Regulations Preambles ¶ 31,063 (July 15, 1998); Order No. 587–I, 63 FR 53565 (Oct. 6, 1998), III FERC Stats. & Regs. Regulations Preambles ¶ 31,067 (Sept. 29, 1998).

II. Discussion

The Commission is adopting Version 1.3 of GISB's consensus standards with an implementation date on the first day of the month occurring 90 days after publication of the final rule in the **Federal Register**. Version 1.3 of the GISB standards updates and improves the standards, with the principal changes occurring in the areas of confirmation practices, further standardization of the information provided on pipeline Internet web sites, and revisions to the data sets.[2] Commission adoption of these standards will keep the Commission regulations current.

GISB approved the standards under its consensus procedures.[3] As the Commission found in Order No. 587, adoption of consensus standards is appropriate because the consensus process helps ensure the reasonableness of the standards by requiring that the standards draw support from a broad spectrum of all segments of the industry. Moreover, since the industry itself has to conduct business under these standards, the Commission's regulations should reflect those standards that have the widest possible support. In § 12(d) of the National Technology Transfer and Advancement Act (NTT&AA) of 1995, Congress affirmatively requires federal agencies to use technical standards developed by voluntary consensus standards organizations, like GISB, as means to carry out policy objectives or activities.[4]

Because the Version 1.3 standards include the nomination and intra-day nomination standards adopted by the Commission in Order No. 587–H, separate reference to these standards in the regulations is no longer necessary and will be removed. The Commission also is continuing its previous practice by not incorporating standards 2.3.29 dealing with operational balancing agreements (OBAs), 2.3.30 dealing with netting and trading of imbalances, and 4.3.4 dealing with retention of electronic data. The Commission has issued its own regulations in these areas,[5] so that incorporation of the GISB standards is unnecessary and may cause confusion as to the applicable Commission requirements.

In its comments, Williston Basin does not object to the adoption of Version 1.3 of the standards. It suggests, however, that the Commission defer implementation of any future GISB standards until three months following the completion of the pipelines' transition to Internet communication by June 1, 2000. Williston Basin states that, as a relatively small interstate pipeline, it would have difficulty implementing any additional standards at the same time as it completes its transition to Internet communication and resolves any Year 2000 computer problems.

The Commission cannot, at this time, anticipate when it will require pipelines to implement additional standards developed by GISB. That will depend in part on GISB's schedule for revising its standards and the importance to the industry of the additional standards. For example, GISB still has not completed development of standards necessary to implement imbalance trading, which the Commission required in Order No. 587–G.

PGC, *et al.* object to the Commission's policy of not making copies of the standards available to the public for copying, leaving the public to obtain copies from GISB. They contend that if the Commission is requiring adherence to the standards, the Commission must make those standards available to the public for copying. The Commission previously responded to this contention in Order No. 587–A, explaining that when dealing with copyrighted material, the appropriate, and required, method for adoption is to incorporate the material by reference with the material being available from the source.[6] When the NOPR was issued, the standards were publicly available from GISB, and PGC, *et al.* do not contend that they encountered difficulty in obtaining them.

III. Implementation Schedule

Pipelines are required to implement this rule August 1, 1999. Pipelines must file revised tariff sheets to conform their tariffs to Version 1.3 of the standards not more than 60 and not less than 30 days prior to the implementation date.

IV. Notice of Proposed Use of Standards

Office of Management and Budget Circular A–119 (§ 11) (February 10, 1998) provides that, when a federal agency is issuing or revising a regulation that contains a standard, the agency must publish a statement in the preamble of a final rule identifying whether a voluntary consensus standard or a government-unique standard is being proposed. In this rule, the Commission is adopting Version 1.3 (July 31, 1998) of the voluntary consensus standards developed by GISB.

V. Information Collection Statement

OMB's regulations in 5 CFR 1320.11 require that it approve certain reporting and recordkeeping requirements (collections of information) imposed by an agency. Upon approval of a collection of information, OMB shall assign an OMB control number and an expiration date. Respondents subject to the filing requirements of this Rule shall not be penalized for failing to respond to these collections of information unless the collections of information display valid OMB control numbers.

The collections of information related to the subject Final Rule fall under the existing reporting requirements of: FERC–545, Gas Pipeline Rates: Rate Change (Non-Formal) (OMB Control No. 1902–0154) and FERC–549C, Standards for Business Practices of Interstate Natural Gas Pipelines (OMB Control No. 1902–0174). The following burden estimates are related only to this rule and include the costs of complying with GISB's version 1.3 standards. The burden estimates are primarily related to start-up for implementing the latest version of the standards and data sets and will not be on-going costs.

Public Reporting Burden:

---

[2] The following reflects the changes from the Version 1.2 standards previously adopted by the Commission. The list does not include the intra-day nomination standards that already were adopted in Order No. 587–H. Revised standards are: 1.3.3, 1.3.14, 1.3.24, 1.3.27, 2.3.9, 2.3.16, 2.3.20, and 4.3.16. New standards are: 1.3.35 through 1.3.38, 1.3.45, 1.3.46, 3.3.22, 4.1.16 through 4.1.21, 4.2.1 through 4.2.8, and 4.3.17 through 4.3.35. Revised data sets are: 1.4.1 through 1.4.6, 2.4.1 through 2.4.6, 3.4.1 through 3.4.3, 5.4.1 through 5.4.9, 5.4.11 through 5.4.13, 5.4.16, and 5.4.17. New data sets are: 1.4.7 and 3.4.4.

[3] This process first requires a super-majority vote of 17 out of 25 members of GISB's Executive Committee with support from at least two members from each of the five industry segments—interstate pipelines, local distribution companies, gas producers, end-users, and services (including marketers and computer service providers). For final approval, 67% of GISB's general membership must ratify the standards.

[4] Pub L. No. 104–113, § 12(d), 110 Stat. 775 (1996), 15 U.S.C. 272 note (1997).

[5] 18 CFR 284.10(c)(2)(i) (OBAs), (c)(2)(ii) (netting and trading of imbalances), and (c)(3)(v) (record retention).

[6] Order No. 587–A, 61 FR 55208, 55212–13 (Oct. 25, 1996), 77 FERC ¶ 61,061, at 61,232–33 (Oct. 21, 1996). *See* 5 U.S.C. 552 (a)(1) and (a)(3) (documents incorporated by reference need not be published in the **Federal Register** or provided by the agency); 1 CFR 51 (1998) (standards for approval of incorporation by reference).

ESTIMATED ANNUAL BURDEN

Data collection	No. of respondents	No. of responses per respondent	Hrs. per response	Total no. of hrs.
FERC–545	93	1	38	3,534
FERC–549C	93	1	2,610	242,730

The total annual hours for collection (including recordkeeping) are estimated to be 246,264. The average annualized cost per respondent is projected to be the following:

	FERC–545	FERC–549C
Annualized Capital/Startup Costs	$2,008	$137,888
Annualized Costs (Operations & Maintenance)	0	0
Total Annualized Costs	2,008	137,888

The Commission received no comments on the burden estimates and is submitting a copy of this Final Rule to OMB for information purposes because the Final Rule is not significantly different from the NOPR and OMB has not provided any comments on the NOPR.

The Commission regulations adopted in this order are necessary to further the process begun in Order No. 587 of standardizing business practices and electronic communications with interstate pipelines. Adoption of these regulations will update the Commission's regulations relating to business practices and communication protocols to conform to the latest version, Version 1.3, approved by GISB.

The Commission has assured itself, by means of its internal review, that there is specific, objective support for the burden estimates associated with the information requirements. The information required in this Final Rule will be reported directly to the industry users and later be subject to audit by the Commission. This information also will be retained for a three year period. The implementation of these data requirements will help the Commission carry out its responsibilities under the Natural Gas Act and conforms to the Commission's plan for efficient information collection, communication, and management within the natural gas industry.

Interested persons may obtain information on the reporting requirements by contacting the following: Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426 [Attention: Michael Miller, Office of the Chief Information Officer, phone (202) 208–1415, fax (202) 208–2425, E-mail mike.miller@ferc.fed.us]; or the Office of Management and Budget [Attention: Desk Officer for the Federal Energy Regulatory Commission, phone 202–395–3087, fax (202) 395–7285].

VI. Environmental Analysis

The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.[7] The Commission has categorically excluded certain actions from these requirements as not having a significant effect on the human environment.[8] The actions proposed to be taken here fall within categorical exclusions in the Commission's regulations for rules that are clarifying, corrective, or procedural, for information gathering, analysis, and dissemination, and for sales, exchange, and transportation of natural gas that requires no construction of facilities.[9] Therefore, an environmental assessment is unnecessary and has not been prepared in this rulemaking.

VII. Regulatory Flexibility Act Certification

The Regulatory Flexibility Act of 1980 (RFA)[10] generally requires a description and analysis of final rules that will have significant economic impact on a substantial number of small entities. The regulations adopted in this rule would impose requirements only on interstate pipelines, which are not small businesses, and, these requirements are, in fact, designed to reduce the difficulty of dealing with pipelines by all customers, including small businesses. Accordingly, pursuant to § 605(b) of the RFA, the Commission hereby certifies that the regulations adopted herein will not have a significant adverse impact on a substantial number of small entities.

[7] Order No. 486, Regulations Implementing the National Environmental Policy Act, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs. Preambles 1986–1990 ¶ 30,783 (1987).

[8] 18 CFR 380.4.

[9] See 18 CFR 380.4(a)(2)(ii), 380.4(a)(5), 380.4(a)(27).

[10] 5 U.S.C. 601–612.

VIII. Effective Date

These regulations will become effective May 10, 1999. The Commission has concluded, with the concurrence of the Administrator of the Office of Information and Regulatory Affairs of OMB, that this rule is not a "major rule" as defined in section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996.

List of Subjects in 18 CFR Part 284

Continental shelf, Incorporation by reference, Natural gas, Reporting and recordkeeping requirements.

By the Commission.

Linwood A. Watson, Jr.,

Acting Secretary.

In consideration of the foregoing, the Commission amends Part 284, Chapter I, Title 18, Code of Federal Regulations, as set forth below.

PART 284—CERTAIN SALES AND TRANSPORTATION OF NATURAL GAS UNDER THE NATURAL GAS POLICY ACT OF 1978 AND RELATED AUTHORITIES

1. The authority citation for Part 284 continues to read as follows:

Authority: 15 U.S.C. 717–717w, 3301–3432; 42 U.S.C. 7101–7532; 43 U.S.C. 1331–1356.

2. In section 284.10, paragraphs (b)(1)(i) through (v) are revised to read as follows:

§ 284.10 Standards for pipeline business operations and communications.

* * * * *

(b) * * *

(1) * * *

(i) Nominations Related Standards (Version 1.3, July 31, 1998);

(ii) Flowing Gas Related Standards (Version 1.3, July 31, 1998) with the exception of Standards 2.3.29 and 2.3.30;

(iii) Invoicing Related Standards (Version 1.3, July 31, 1998);

(iv) Electronic Delivery Mechanism Related Standards (Version 1.3, July 31, 1998) with the exception of Standard 4.3.4; and

(v) Capacity Release Related Standards (Version 1.3, July 31, 1998).

* * * * *

[FR Doc. 99–8691 Filed 4–8–99; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 301 and 602

[TD 8818]

RIN 1545–AV13

Public Disclosure of Material Relating to Tax-Exempt Organizations

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to the public disclosure requirements of section 6104(d) of the Internal Revenue Code (Code), as amended by the Tax and Trade Relief Extension Act of 1998. These final regulations apply only to tax-exempt organizations (organizations described in sections 501(c) or (d) and exempt under section 501(a)) other than private foundations. These final regulations provide guidance for tax-exempt organizations (other than private foundations) required to make their applications for tax exemption and annual information returns available for public inspection. In particular, these regulations provide guidance for tax-exempt organizations required to comply with requests made in person or in writing from individuals who seek a copy of those documents. These regulations describe how a tax-exempt organization can make those documents widely available and, therefore, not be required to provide copies in response to individual requests. These regulations also address the standards that apply in determining whether a tax-exempt organization is the subject of a harassment campaign and provide guidance on the applicable procedures for obtaining relief from the requirement that copies of documents be provided in response to requests.

DATES: These regulations are effective June 8, 1999.

FOR FURTHER INFORMATION CONTACT: Michael B. Blumenfeld, (202) 622–6070 (not toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collections of information contained in these final regulations have been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545–1560. Responses to these collections of information are mandatory.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

The estimated annual burden per respondent/recordkeeper varies from 0 hours to 55 hours, depending on individual circumstances with an estimated average of 30 minutes.

Comments on the accuracy of this burden estimate and suggestions for reducing the burden should be sent to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, OP:FS:FP, Washington, DC 20224, and to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

Books or records relating to this collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

This document contains amendments to the Procedure and Administration Regulations (26 CFR part 301) relating to the section 6104(d) public disclosure requirements applicable to tax-exempt organizations (organizations described in sections 501(c) or (d) and exempt from taxation under section 501(a)). Section 6104(d), as amended by section 14(b) of the Tax and Trade Relief Extension Act of 1998 (Division J of H.R. 4328, the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999) (Public Law 105–277, 112 Stat. 2681) (Tax and Trade Relief Extension Act of 1998), will apply to requests made to all tax-exempt organizations (other than private foundations) after June 8, 1999. Until such date, all tax-exempt organizations continue to be subject to the requirements of section 6104(e) as currently in effect, without regard to the Tax and Trade Relief Extension Act of 1998.

Although the Tax and Trade Relief Extension Act of 1998 extended fully to private foundations the public disclosure requirements that apply to other tax-exempt organizations, those requirements do not go into effect with respect to private foundations until the 60th day after the Secretary of the Treasury issues final regulations under section 6104(d) that apply to private foundations. In the meantime, private foundations continue to be subject to the public disclosure requirements under sections 6104(d) and (e) of the Internal Revenue Code, as in effect prior to the Tax and Trade Relief Extension Act of 1998.

Description of Current Law Section 6104(e)

Section 10702 of the Omnibus Budget Reconciliation Act of 1987 (OBRA '87) added subsection (e) to section 6104. Section 6104(e) requires each tax-exempt organization, including one that is a private foundation, to allow public inspection of the organization's application for recognition of tax exemption. Section 6104(e) also requires each tax-exempt organization, other than one that is a private foundation, to allow public inspection at the organization's principal office (and certain regional or district offices) of its three most recent annual information returns. (Section 6104(e) does not apply to private foundation annual information returns, which are subject to public disclosure under section 6104(d), as in effect prior to the Tax and Trade Relief Extension Act of 1998.) Under section 6104(e), each annual information return must be made available for a 3-year period beginning on the date the return is required to be filed or is actually filed, whichever is later. In Notice 88–120 (1988–2 C.B. 454), the IRS provided tax-exempt organizations with guidance for complying with the public inspection requirements.

The Taxpayer Bill of Rights 2 (TBOR2), enacted on July 30, 1996, amended section 6104(e) by adding additional public disclosure requirements. As amended, section 6104(e) requires each tax-exempt organization, including one that is a private foundation, to comply with requests, made either in person or in writing, for copies of the organization's application for recognition of tax exemption. Section 6104(e) also requires each tax-exempt organization, other

than one that is a private foundation, to comply with requests, made either in person or in writing, for copies of the organization's three most recent annual information returns. The organization must fulfill these requests without charge, other than a reasonable fee for reproduction and postage. If the request for copies is made in person, the organization generally must provide the requested copies immediately. If the request for copies is made in writing, the organization must provide the copies within 30 days. Section 6104(e) also provides that an organization is relieved of its obligation to provide copies upon request if, in accordance with regulations promulgated by the Secretary of the Treasury, (1) the organization has made the requested documents widely available, or (2) the Secretary of the Treasury determines, upon application by the organization, that the organization is subject to a harassment campaign such that a waiver of the obligation to provide copies would be in the public interest.

Issuance of Proposed Regulations Under Section 6104(e)

In Notice 96–48 (1996–2 C.B. 214), the IRS invited comments on the changes made by TBOR2. Twenty-two comments were received and considered in the drafting of a notice of proposed rulemaking (REG–246250–96), published in the **Federal Register** (62 FR 50533) on September 26, 1997. The IRS received twenty written comments on the proposed regulations and held a public hearing on February 4, 1998. After consideration of all the written comments regarding the proposed regulations, and the amendments made by the Tax and Trade Relief Extension Act of 1998, described below, those regulations are adopted as revised by this Treasury decision.

Amendments Made by the Tax and Trade Relief Extension Act of 1998

The Tax and Trade Relief Extension Act of 1998, which was enacted on October 21, 1998, amended section 6104(e) of the Internal Revenue Code to subject private foundations to the same rules regarding public disclosure of annual information returns that apply to other tax-exempt organizations. In addition, the Tax and Trade Relief Extension Act of 1998 repealed existing section 6104(d), and redesignated section 6104(e), as amended, as new section 6104(d). (Unless otherwise noted, all references in these final regulations to section 6104(d) are to section 6104(d) as amended by the Tax and Trade Relief Extension Act of 1998.)

The Tax and Trade Relief Extension Act of 1998 amendments apply to requests made after the later of December 31, 1998 or the 60th day after the Secretary of the Treasury issues regulations referred to in section 6104(d)(4) (relating to when documents are made widely available and when a particular request is considered part of a harassment campaign). This Treasury decision adopts final regulations under section 6104(d)(4) that are applicable to tax-exempt organizations other than private foundations. Accordingly, amendments to section 6104(d) will become applicable with respect to requests made to tax-exempt organizations other than private foundations after June 8, 1999.

Future Regulations Will Apply to Private Foundations

The IRS and the Treasury Department intend to issue shortly a notice of proposed rulemaking relating to the public disclosure requirements of section 6104(d) as those requirements apply to private foundations. Until 60 days after final regulations are issued, private foundations continue to be subject to sections 6104(d) and (e), as in effect prior to the Tax and Trade Relief Extension Act of 1998. For that reason, existing § 301.6104(d)–1, relating to public inspection of private foundation annual returns, is not affected by this Treasury decision.

Explanation of Provisions

Overview

The final regulations provide guidance concerning the application for tax exemption and annual information returns a tax-exempt organization, other than a private foundation, must make available for public inspection and must supply in response to requests for copies. The final regulations also provide guidance on (1) the place and time the organization must make these documents available for public inspection, (2) conditions the organization may place on requests for copies of the documents, and (3) the amount, form and time of payment of any fees the organization may charge. The final regulations also prescribe how an organization can make its application for tax exemption and annual information returns widely available. Finally, the final regulations provide guidance on the standards that apply in determining whether an organization is the subject of a harassment campaign and on the applicable procedures for obtaining relief from the general requirement that copies of documents be provided in response to requests.

Application for Tax Exemption

A tax-exempt organization, other than one that is a private foundation, must make its application for tax exemption available pursuant to these final regulations. An application for tax exemption includes the application form (such as Form 1023 or Form 1024) and any supporting documents filed by, or on behalf of, the organization in connection with its application. It also includes any letter or document issued by the IRS in connection with the application. Consistent with the guidance provided in Notice 88–120, if an organization filed its application before July 15, 1987, the final regulations provide that the organization is required to make available a copy of its application only if it had a copy of the application on July 15, 1987.

Annual Information Returns

A tax-exempt organization, other than one that is a private foundation, must make its three most recent annual information returns available pursuant to these final regulations. Generally, an annual information return includes Forms 990, 990–EZ, 990–BL, and Form 1065. It also includes, generally, all schedules and attachments filed with the IRS. An organization is not required, however, to disclose the parts of the return that identify names and addresses of contributors to the organization, nor is it required to disclose Form 990–T.

A few commentators asked that the final regulations exempt certain items reported on an application for tax exemption or an annual information return from disclosure. For example, one commentator observed that only an organization described in section 501(c)(3) is required by statute (section 6033) to report certain compensation information. By contrast, it is the regulations under section 6033 that require tax-exempt organizations described in other parts of section 501(c) or section 501(d) to report certain compensation information. Accordingly, the commentator asked that the final regulations require public disclosure of the compensation section of Form 990 only when it is a statutory requirement, as opposed to a regulatory requirement, to report such information. Because section 6104(d) requires, except for specific exceptions, disclosure of all the information reported on an application or return, the IRS and the Treasury Department decided that requiring public disclosure of compensation information required to be reported on an annual information return either by

statute or regulation is consistent with section 6104(d).

One commentator requested that final regulations require an organization that has not been determined by the IRS to be exempt from taxation under section 501(a) to make its application for tax exemption available for public inspection and to provide copies upon request. Section 301.6104(e)–1(b)(3) of the proposed regulations provided that an organization is not required to disclose its application for tax exemption until the IRS determines it is exempt from taxation. Section 6104(d)(1) requires an organization to disclose its application for tax exemption only where it is exempt under section 501(a). Thus, the statute does not require an organization to disclose its application for tax exemption while the application is pending or in a case where the IRS issues an adverse determination. Accordingly, the IRS and the Treasury Department continue to believe that the rule of the proposed regulation is consistent with the statute and have decided not to change this provision.

One commentator proposed that a special rule be included in the final regulations so that a religious or apostolic organization described in section 501(d) would not be required to publicly disclose a Schedule K–1 of Form 1065 because it contains taxpayer information with respect to the distributees (i.e., the ratable portions of the net income and expenses of the individual members of the organization). After the submission of this comment, the Internal Revenue Service Restructuring and Reform Act of 1998, Public Law 105–206 (112 Stat. 685) was enacted. Section 6019 of this Act amended Code sections 6104(b) and 6104(e) to provide specifically that organizations described in section 501(d) are not required to publicly disclose a Schedule K–1 filed by the organization. Consistent with this statutory modification of section 6104, the final regulations eliminate the requirement that a religious or apostolic organization described in section 501(d) disclose a Schedule K–1.

Place and Time Documents Must Be Available for Public Inspection

Section 6104(d) requires a tax-exempt organization to make its documents available for public inspection, and provide copies upon request, at its principal office and at certain regional or district offices. Under Notice 88–120, certain sites where services are provided (such as day care or health care) are not treated as regional or district offices for purposes of the public inspection requirements, provided that such sites do "not serve as offices of management staff (other than managers involved solely in managing the specific service of that service provider office)." The IRS and the Treasury Department recognize that many tax-exempt organizations maintain sites where their employees or volunteers solely provide services that further exempt purposes, including services provided directly to the public, but do not maintain administrative or management staff at such sites necessary to respond to public disclosure requests. Accordingly, the proposed regulations expanded the "service provider exception" of Notice 88–120 slightly. Under the proposed regulations, sites where the only services provided further exempt purposes (such as day care, health care or scientific or medical research) were excluded from the definition of a regional or district office. Thus, under the proposed regulations, a research organization that maintains a laboratory used solely by individuals conducting scientific research on behalf of the organization would not have to respond to public disclosure requests made at the laboratory even though the researchers are not providing direct services to the public. However, a research organization would have a public disclosure obligation at a laboratory if the organization also uses space at that location as offices for some of its management staff (other than those involved solely in managing the exempt function activities at the laboratory).

Several comments were received on this topic. One commentator expressed the view that the definition of regional or district office in the proposed regulations was reasonably well balanced. Other commentators, however, expressed concern that this definition would reduce the number of sites from which the documents could be obtained. One of these commentators expressed the view that exempting organizations from complying with public disclosure requests made at sites where employees engage solely in providing exempt services would unnecessarily complicate the determination whether an organization is required to respond to public disclosure requests at a particular site. This commentator suggested that the final regulations treat any site with 3 or more employees as a regional or district office where an organization must respond to requests for public inspection or copies. Another commentator expressed the view that the exception for sites dedicated solely to providing exempt services was reasonable, but suggested that the final regulations clarify what activities would constitute management activities that would require an organization to respond to public disclosure requests at the site.

The IRS and the Treasury Department believe that the "regional and district office" rule of section 6104(d) was intended to enhance the availability of documents in the case of an organization that maintains management staff at one or more offices in addition to its principal office. However, Congress explicitly recognized that the burden to an organization of complying with requests for public inspection or copies made at small regional or district offices (those with fewer than 3 employees) would outweigh the public benefit of increased availability of the documents. This rationale applies equally as well to certain sites of a tax-exempt organization where its employees and volunteers engage solely in providing services that further exempt purposes and which do not serve as an office for management staff. The IRS and the Treasury Department believe the rule expressed in the proposed regulations is consistent with the intent of the statute and prior IRS guidance, particularly in light of the new provisions that allow copies to be obtained by mail. Therefore, the rule of the proposed regulations is followed in the final regulations.

The proposed regulations prescribed how an organization that does not maintain a permanent office or whose office has very limited hours during certain times of the year can comply with the public inspection requirements. The proposed regulations also provided rules concerning the conditions the organization may impose on public inspections that are consistent with Notice 88–120. In this regard, the final regulations follow the proposed regulations.

The proposed regulations permitted a principal, regional, or district office of an organization to use an agent to process requests for copies. One commentator asked that the final regulations also allow a tax-exempt organization to retain a local agent to satisfy the organization's public inspection obligation. After careful consideration of this comment, the IRS and the Treasury Department have concluded that, to avoid potential inconvenience to members of the public, it is important that tax-exempt organizations make their applications and returns available for inspection at their offices. Therefore, the IRS and the Treasury Department did not adopt this comment.

Another commentator asked that the final regulations clarify that an organization may apply the same security measures to individuals that request inspection or copies that it applies to the public in general. The IRS and the Treasury Department have determined that the proposed regulations would not preclude a tax-exempt organization from implementing its normal security measures. Thus, no change is reflected in the final regulations.

Requirement to Furnish Copy to a Requester

The proposed regulations generally required that a tax-exempt organization accept requests for copies made in person at the same place and time that the specified documents must be available for public inspection. In general, the proposed regulations required that the copies be provided on the day of the request. However, the proposed regulations provided that, in unusual circumstances, an organization may provide the requested copies on the next business day. Some commentators expressed concern that a one-day delay may not be sufficient. In response to these comments, the final regulations provide that an organization must comply with requests for copies made in person by providing copies no later than the next business day following the day the unusual circumstances cease to exist. However, in no event may the period of delay exceed five business days. In response to another comment, the final regulations clarify that unusual circumstances include times when the organization's managerial staff capable of fulfilling the request attends an off-site meeting or convention.

When a request for copies is made in writing, the proposed regulations required that a tax-exempt organization mail the copies within 30 days from the date it receives the request. However, the proposed regulations provided that, if an organization requires advance payment of a reasonable fee for copying and postage, it may provide the copies within 30 days from the date it receives payment, rather than from the date of the initial request. In addition, the proposed regulations provided guidance as to what constitutes a request, when a request is considered received, and when copies are deemed provided. The final regulations follow the rules in the proposed regulations.

The proposed regulations provided that individuals may request a specific part of an application for tax exemption or annual information return. One commentator expressed concern that requiring a tax-exempt organization to provide a copy of only part of a document may create a significant burden on the tax-exempt organization because the organization would have to identify the particular information requested. In order to minimize this potential burden, without requiring the requester to pay for a copy of parts of a document that the requester has no interest in obtaining, the final regulations permit a requester to request a copy of any specifically identified part or schedule of an application or a return (except for information which is not subject to public disclosure under section 6104(d)(3)). For example, a requester may request a copy of Part V (List of Officers, Directors, Trustees and Key Employees) of Form 990.

Reasonable Fee for Providing Copies

Section 6104(d)(1)(B) permits an organization to charge a reasonable fee for the cost of copying and mailing documents in response to requests for copies. The proposed regulations stated that a fee was reasonable only if it did not exceed the fees the IRS charges for copies of tax-exempt organization tax returns and related documents. This fee is currently $1.00 for the first page and $.15 for each subsequent page. In addition, the proposed regulations allowed a charge for actual postage costs. Some commentators requested that the reasonable fee be greater than the amount stated in the proposed regulations. One commentator suggested that the final regulations allow organizations to consider personnel costs and not limit the fee to the IRS charge. The IRS and the Treasury Department are concerned that permitting organizations to charge a higher fee could hinder the public's ability to receive a copy of an application or return. Consequently, it was decided that, on balance, the reasonable fee set forth in the proposed regulations is appropriate. Thus, the final regulations adopt the reasonable fee provision of the proposed regulations.

The proposed regulations permitted an organization to collect payment in advance of providing the requested copies. Under the proposed regulations, if an organization receives a written request for copies with no payment enclosed, and the organization requires payment in advance, the organization must request payment within 7 days from the date it receives the request. The proposed regulations required an organization to accept payment made by cash or money order and, when the request is made in writing, also accept payment made by personal check. An organization is permitted to accept other forms of payment. One commentator asked for the elimination of the requirement to accept a personal check because an organization could be liable for bank charges if there are insufficient funds to cover the personal check. The final regulations generally follow the proposed regulations, except that the final regulations provide that a tax-exempt organization that accepts payment by credit card is not required to accept personal checks.

Consistent with the proposed regulations, the final regulations protect requesters from unexpected fees where a tax-exempt organization does not require prepayment and where a requester does not enclose prepayment with a request, by requiring that an organization must receive consent from a requester before providing copies for which the fee charged for copying and postage is in excess of $20.

Local and Subordinate Organizations

Some commentators stated that the proposed regulations were overly burdensome with respect to local or subordinate organizations recognized as tax-exempt under a group exemption letter or that file a group return pursuant to § 1.6033–2(d) and Rev. Proc. 80–27 (1980–1 C.B. 677). Specifically, they objected to the requirement that a local or subordinate organization make available copies of documents submitted by the central or parent organization to the IRS to include the local or subordinate organization in the group ruling, which often consists of lengthy lists or directories of names and addresses of affiliated organizations. In addition, one commentator expressed the view that the annual filing under Rev. Proc. 80–27 that a central or parent organization submits to the IRS to cover a local or subordinate organization under its group exemption letter does not constitute an application for tax exemption within the meaning of section 6104(d)(2)(A). In response to these comments, the final regulations reduce the burden on local and subordinate organizations. Under the final regulations, a local or subordinate organization that receives a request made in person for inspection or for a copy of its application for tax exemption is required to acquire, and make available within a reasonable amount of time (normally not more than two weeks), the application for a group exemption letter (if any) filed by the central or parent organization. In addition, a local or subordinate organization must also make available any documents submitted by the central or parent organization to the IRS to include the subordinate organization in

the group ruling. However, if the central or parent organization submits a list or directory of organizations covered by the group exemption letter, the local or subordinate organization need only provide the application for group exemption and those pages of the list or directory that refer to it. If a local or subordinate organization that does not file its own annual information return but is covered under a group return receives a request made in person for inspection or for a copy of its annual information return, the local or subordinate organization must make its group return available for inspection or provide copies within a reasonable amount of time (normally not more than two weeks). However, if the group return includes separate schedules with respect to each local or subordinate organization included in the group return, the local or subordinate organization receiving the request may omit any schedules relating only to other organizations included in the group return.

If the requester seeks inspection of an application for tax exemption or an annual information return, the local or subordinate organization may mail a copy of the applicable document to the requester within a reasonable amount of time (normally not more than two weeks) in lieu of allowing an inspection. In such a case, the local or subordinate organization may not charge for the copies without the consent of the requester. A local or subordinate organization must comply with written requests for copies in accordance with the general rules for written requests discussed above.

The final regulations also clarify, consistent with Notice 88–120, the obligation of the central or parent organization to comply, at its principal office, with requests for inspection or copies of documents relating to its local and subordinate organizations.

Making Applications and Information Returns Widely Available

The final regulations provide that a tax-exempt organization is not required to comply with requests for copies if the organization has made the requested documents widely available. The final regulations specify that an organization can make its application for tax exemption and/or its annual information returns widely available by posting the applicable document on the organization's World Wide Web page on the Internet or by having the applicable document posted on another organization's World Wide Web page as part of a database of similar materials, provided that the documents are posted in a format which meets the criteria set forth in the final regulations. An organization that makes its application for tax exemption and/or its annual information returns widely available must provide the individuals who request copies with the World Wide Web address where the documents are available.

The proposed regulations provided that an organization must post its documents on its World Wide Web page in a format that the IRS uses to post forms and publications. Unlike the proposed regulations, the final regulations do not enumerate one or more particular formats that must be used. Instead, the final regulations provide that the documents must be posted in a format that meets the following criteria. First, any individual with access to the Internet must be able to access, download, view and print the posted document in a format which exactly reproduces the image of the original document filed with the IRS, except for any information permitted to be withheld from public disclosure under section 6104(d). The final regulations require an exact reproduction because a format that does not exactly reproduce the image of the original document may raise questions about the accuracy or authenticity of the posted document. Second, the format must allow any individual with access to the Internet to access, download, view and print the posted document without payment of a fee to either the tax-exempt organization or the entity maintaining the World Wide Web page and without special computer hardware or software required for that format, other than software that is readily available to members of the public free of charge.

The IRS and the Treasury Department understand that some of the formats that the IRS itself uses to post forms and publications on the IRS World Wide Web page may not satisfy the criteria specified in the final regulations. For example, some of these formats could require users to have access to special hardware or software that is not commonly used by the public to access, download, view and print documents. The final regulations provide a one-year transition rule for any tax-exempt organization that posted its documents on the Internet on or before April 9, 1999 in a manner consistent with the proposed regulations. Until June 8, 2000 such an organization will be treated as having made its documents "widely available" for purposes of the final regulations even if the format used does not currently satisfy all of the criteria set forth in the final regulations.

Some commentators suggested that the final regulations permit an organization to post its documents on the Internet in HTML format. As discussed above, the approach of the final regulations is to identify the criteria that an Internet format must satisfy. The IRS and the Treasury Department understand that, currently, when a heavily formatted document, such as a tax return, is posted in HTML format, it may not exactly reproduce the image of the original document.

One format that currently satisfies the criteria set forth in the final regulations is Portable Document Format (PDF). PDF is designed to reproduce the image of the original document exactly. In addition, documents in the PDF format can be viewed, navigated and printed by anyone using the freely available reader software. Of course, there may be other formats that currently satisfy the criteria set forth in the final regulations. The IRS and the Treasury Department refer to PDF only for the purpose of illustrating an acceptable format. No inference should be drawn that the IRS and the Treasury Department view PDF as an especially or singularly qualified format, that IRS and the Treasury Department endorse or warrant a specific document format (or software used in connection with a format), or that use or failure to use a specific document format (or software used in connection with a format) will result in any preferential treatment from the IRS or the Treasury Department. The IRS and the Treasury Department note that a specific format that currently satisfies the "widely available" criteria set forth in the final regulations may be altered such that it no longer satisfies the "widely available" criteria in the future. Conversely, a specific format that does not currently satisfy the "widely available" criteria may be refined to satisfy the "widely available" criteria in the future.

As technology advances, the IRS and the Treasury Department anticipate that an increasing number of formats will meet the criteria set forth in the final regulations. Accordingly, the IRS and the Treasury Department do not intend to limit technologies that organizations may use to post their documents as long as the posted document is readily and freely accessible and appears, whether viewed on screen or in print, exactly as the original.

The IRS and the Treasury Department will continue to consider other additional methods by which applications and returns could be made widely available. Accordingly, the final regulations provide that the Commissioner may prescribe, by

revenue procedure or other guidance, additional methods that an organization can use to make its application for tax exemption and/or its annual information returns widely available.

Harassment Campaigns

The proposed regulations provided guidance in determining whether a tax-exempt organization is the subject of a harassment campaign such that requiring compliance with requests for copies that are part of the harassment campaign would not be in the public interest. Generally, the proposed regulations provided that a harassment campaign exists where the relevant facts and circumstances show that the purpose of a group of requests was to disrupt the operations of the tax-exempt organization rather than to obtain information. The proposed regulations also contained examples that evaluated whether particular situations constituted a harassment campaign and whether an organization had a reasonable basis for believing that a request was part of the harassment campaign. The final regulations retain this rule and the examples set forth in the proposed regulations.

The proposed regulations provided that an organization may suspend compliance with a request if the organization reasonably believes that the request is part of a harassment campaign. Commentators expressed concern that, if there is a delay in the issuance of an IRS determination as to whether the organization's belief is reasonable, the organization could be subject to significant penalties for the intervening period. The final regulations do not limit the penalties that may be retroactively imposed in cases where an organization is subsequently determined to have lacked a reasonable belief for suspending compliance. However, the IRS and the Treasury Department recognize that it may be appropriate to mitigate penalties in certain circumstances, especially where a delay in the issuance of a determination is completely outside the control of the organization requesting the determination. The IRS intends to publish a revenue procedure that will provide additional detail concerning harassment campaign determinations procedures and may prescribe rules concerning the imposition and mitigation of penalties.

The proposed regulations required an organization to file an application for a harassment campaign determination within 5 days after suspending compliance with a request that the organization believes to be part of such harassment campaign. One commentator asked that the time period for filing an application be expanded to either 10 or 15 business days. Another commentator observed, however, that such an extension of time would further delay compliance with requests for copies that an organization reasonably believes, but are determined not to be, part of a harassment campaign. The final regulations require an organization to file an application for a harassment determination within 10 business days after suspending compliance. The IRS and the Treasury Department believe that this time period strikes an appropriate balance by providing organizations sufficient time to prepare and file an application without substantially delaying access to copies of the documents. In addition, the final regulations allow an organization, without submitting an application, to disregard requests for copies in excess of two per month or four per year made by a single individual or sent from a single address.

Some commentators asked for clarification concerning the period that an organization may continue not to comply with requests for copies that are part of a harassment campaign once it has received such a determination. The IRS and the Treasury Department believe that the district director for the key district in which the organization's principal office is located (or such other person as the Commissioner may designate) should exercise reasonable discretion, based on the facts and circumstances of each case, in deciding the exact terms and conditions of a harassment campaign determination. Consequently, the final regulations do not change this provision of the proposed regulations.

Various comments concerned the examples of harassment campaigns and requests from members of the news media. In this regard, example 4 has been modified to better illustrate that a request made by a member of the news media is a strong factor tending to indicate that the request is not part of a harassment campaign.

Other Matters

The proposed regulations provided that an individual denied inspection, or a copy, of an application for tax exemption or an annual information return could seek assistance from the IRS by providing to the Director of the Exempt Organizations Division a statement that describes the request and the reason for the individual's belief that the denial was in violation of the legal requirements. The final regulations provide instead that such individuals should send their statements directly to the district director for the key district in which the principal office of the tax-exempt organization is located (or such other person as the Commissioner may designate). Finally, various comments raised questions regarding the availability of an administrative appeal of a harassment campaign determination and whether harassment campaign applications and determinations are publicly available. Whether an administrative appeal is available and whether a harassment campaign determination is publicly available are matters beyond the scope of these regulations, but may be addressed in subsequent guidance.

Effective Date

The final regulations are effective June 8, 1999.

Special Analyses

It is hereby certified that the collections of information in these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that the average time required to maintain and disclose the information required under these regulations is estimated to be 30 minutes for each tax-exempt organization. This estimate is based on the assumption that, on average, a tax-exempt organization will receive one request per year to inspect or provide copies of its application for tax exemption and its annual information returns. Less than 0.001 percent of the tax-exempt organizations affected by these regulations will be subject to the reporting requirements contained in the regulations. It is estimated that annually, approximately 1,000 tax-exempt organizations will make their documents widely available by posting them on the Internet. In addition, it is estimated that annually, approximately 50 tax-exempt organizations will file an application for a determination that they are the subject of a harassment campaign such that a waiver of the obligation to provide copies of their applications for tax exemption and their annual information returns is in the public interest. The average time required to complete, assemble and file an application describing a harassment campaign is expected to be 5 hours. Because applications for a harassment campaign determination will be filed so infrequently, they will have no effect on the average time needed to comply with the requirements in these regulations. In addition, a tax-exempt organization is allowed in these regulations to charge a reasonable fee for providing copies to requesters. Therefore, it is estimated

that on average it will cost tax-exempt organizations less than $10 per year to comply with these regulations, which is not a significant economic impact. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these regulations was submitted to Small Business Administration for comment on its impact on small business.

Drafting information. The principal author of these regulations is Michael B. Blumenfeld, Office of Associate Chief Counsel (Employee Benefits and Exempt Organizations), IRS. Other personnel from the IRS and the Treasury Department also participated in their development.

List of Subjects

26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR Parts 301 and 602 are amended as follows:

PART 301—PROCEDURE AND ADMINISTRATION

Paragraph 1. The authority citation for part 301 is amended by adding entries in numerical order to read as follows:

Authority: 26 U.S.C. 7805 * * *

Section 301.6104(d)–4 also issued under 26 U.S.C. 6104(e)(3);

Section 301.6104(d)–5 also issued under 26 U.S.C. 6104(e)(3); * * *

Par. 2. Sections 301.6104(d)–2 through 301.6104(d)–5 are added to read as follows:

§ 301.6104(d)–2 Table of contents.

This section lists captions contained in §§ 301.6104(d)–3 through 301.6104(d)–5.

§ 301.6104(d)–3 Public inspection and distribution of applications for tax exemption and annual information returns of tax-exempt organizations (other than private foundations).

(a) In general.
(b) Definitions.
(1) Tax-exempt organization.
(2) Private foundation.
(3) Application for tax exemption.
(i) In general.
(ii) No prescribed application form.
(iii) Exceptions.
(iv) Local or subordinate organizations.
(4) Annual information return.
(i) In general.
(ii) Exceptions.
(iii) Returns more than 3 years old.
(iv) Local or subordinate organizations.
(5) Regional or district offices.
(i) In general.
(ii) Site not considered a regional or district office.
(c) Special rules relating to public inspection.
(1) Permissible conditions on public inspection.
(2) Organizations that do not maintain permanent offices.
(d) Special rules relating to copies.
(1) Time and place for providing copies in response to requests made in person.
(i) In general.
(ii) Unusual circumstances.
(iii) Agents for providing copies.
(2) Request for copies in writing.
(i) In general.
(ii) Time and manner of fulfilling written requests.
(A) In general.
(B) Request for a copy of parts of document.
(C) Agents for providing copies.
(3) Fees for copies.
(i) In general.
(ii) Form of payment.
(A) Request made in person.
(B) Request made in writing.
(iii) Avoidance of unexpected fees.
(iv) Responding to inquiries of fees charged.
(e) Documents to be provided by regional and district offices.
(f) Documents to be provided by local and subordinate organizations.
(1) Applications for tax exemption.
(2) Annual information returns.
(3) Failure to comply.
(g) Failure to comply with public inspection or copying requirements.
(h) Effective date.

§ 301.6104(d)–4 Making applications and returns widely available.

(a) In general.
(b) Widely available.
(1) In general.
(2) Internet posting.
(i) In general.
(ii) Transition rule.
(iii) Reliability and accuracy.
(c) Discretion to prescribe other methods for making documents widely available.
(d) Notice requirement.
(e) Effective date.

§ 301.6104(d)–5 Tax-exempt organization subject to harassment campaign.

(a) In general.
(b) Harassment.
(c) Special rule for multiple requests from a single individual or address.
(d) Harassment determination procedure.
(e) Effect of a harassment determination.
(f) Examples.
(g) Effective date.

§ 301.6104(d)–3 Public inspection and distribution of applications for tax exemption and annual information returns of tax-exempt organizations (other than private foundations).

(a) *In general.* Except as otherwise provided in this section, if a tax-exempt organization (as defined in paragraph (b)(1) of this section), other than a private foundation (as defined in paragraph (b)(2) of this section), filed an application for recognition of exemption under section 501, it shall make its application for tax exemption (as defined in paragraph (b)(3) of this section) available for public inspection without charge at its principal, regional and district offices during regular business hours. Except as otherwise provided in this section, a tax-exempt organization, other than a private foundation, shall make its annual information returns (as defined in paragraph (b)(4) of this section) available for public inspection without charge in the same offices during regular business hours. Each annual information return shall be made available for a period of three years beginning on the date the return is required to be filed (determined with regard to any extension of time for filing) or is actually filed, whichever is later. In addition, except as provided in §§ 301.6104(d)–4 and 301.6104(d)–5, an organization shall provide a copy without charge, other than a reasonable fee for reproduction and actual postage costs, of all or any part of any application or return required to be made available for public inspection under this paragraph to any individual who makes a request for such copy in person or in writing. See paragraph (d)(3) of this section for rules relating to fees for copies.

(b) *Definitions.* For purposes of applying the provisions of section 6104(d), this section and §§ 301.6104(d)–4 and 301.6104(d)–5, the following definitions apply:

(1) *Tax-exempt organization.* The term *tax-exempt organization* means any organization that is described in section 501(c) or section 501(d) and is exempt from taxation under section 501(a).

(2) *Private foundation.* The term *private foundation* means a private foundation as defined in section 509(a).

(3) *Application for tax exemption*—(i) *In general.* Except as described in paragraph (b)(3)(iii) of this section, the term *application for tax exemption* includes any prescribed application form (such as Form 1023 or Form 1024), all documents and statements the Internal Revenue Service requires an applicant to file with the form, any

statement or other supporting document submitted by an organization in support of its application, and any letter or other document issued by the Internal Revenue Service concerning the application (such as a favorable determination letter or a list of questions from the Internal Revenue Service about the application). For example, a legal brief submitted in support of an application, or a response to questions from the Internal Revenue Service during the application process, is part of an application for tax exemption.

(ii) *No prescribed application form.* If no form is prescribed for an organization's application for tax exemption, the application for tax exemption includes—

(A) The application letter and copy of the articles of incorporation, declaration of trust, or other similar instrument that sets forth the permitted powers or activities of the organization;

(B) The organization's bylaws or other code of regulations;

(C) The organization's latest financial statements showing assets, liabilities, receipts and disbursements;

(D) Statements describing the character of the organization, the purpose for which it was organized, and its actual activities;

(E) Statements showing the sources of the organization's income and receipts and their disposition; and

(F) Any other statements or documents the Internal Revenue Service required the organization to file with, or that the organization submitted in support of, the application letter.

(iii) *Exceptions.* The term *application for tax exemption* does not include—

(A) Any application for tax exemption filed by an organization that the Internal Revenue Service has not yet recognized, on the basis of the application, as exempt from taxation under section 501 for any taxable year;

(B) Any application for tax exemption filed before July 15, 1987, unless the organization filing the application had a copy of the application on July 15, 1987; or

(C) Any material, including the material listed in § 301.6104(a)–1(i) and information that the Secretary would be required to withhold from public inspection, that is not available for public inspection under section 6104.

(iv) *Local or subordinate organizations.* For rules relating to applications for tax exemption of local or subordinate organizations, see paragraph (f)(1) of this section.

(4) *Annual information return*—(i) *In general.* Except as described in paragraph (b)(4)(ii) of this section, the term *annual information return* includes an exact copy of any return filed by a tax-exempt organization pursuant to section 6033. It also includes any amended return the organization files with the Internal Revenue Service after the date the original return is filed. The copy must include all information furnished to the Internal Revenue Service on Form 990, Return of Organization Exempt From Income Tax, or any version of Form 990 (such as Forms 990–EZ or 990–BL except Form 990–T) and Form 1065, as well as all schedules, attachments and supporting documents, except for the name and address of any contributor to the organization. For example, the annual information return includes Schedule A of Form 990 (containing supplementary information on section 501(c)(3) organizations), and those parts of the return that show compensation paid to specific persons (currently, Part V of Form 990 and Parts I and II of Schedule A of Form 990).

(ii) *Exceptions.* The term *annual information return* does not include Schedule A of Form 990–BL, Form 990–T, Exempt Organization Business Income Tax Return, Schedule K–1 of Form 1065 or Form 1120–POL, U.S. Income Tax Return For Certain Political Organizations, and the return of a private foundation. See § 301.6104(d)–1 for requirements relating to public disclosure of private foundation annual returns.

(iii) *Returns more than 3 years old.* The term *annual information return* does not include any return after the expiration of 3 years from the date the return is required to be filed (including any extension of time that has been granted for filing such return) or is actually filed, whichever is later. If an organization files an amended return, however, the amended return must be made available for a period of 3 years beginning on the date it is filed with the Internal Revenue Service.

(iv) *Local or subordinate organizations.* For rules relating to annual information returns of local or subordinate organizations, see paragraph (f)(2) of this section.

(5) *Regional or district offices*—(i) *In general.* A regional or district office is any office of a tax-exempt organization, other than its principal office, that has paid employees, whether part-time or full-time, whose aggregate number of paid hours a week are normally at least 120.

(ii) *Site not considered a regional or district office.* A site is not considered a regional or district office, however, if—

(A) The only services provided at the site further exempt purposes (such as day care, health care or scientific or medical research); and

(B) The site does not serve as an office for management staff, other than managers who are involved solely in managing the exempt function activities at the site.

(c) *Special rules relating to public inspection*—(1) *Permissible conditions on public inspection.* A tax-exempt organization may have an employee present in the room during an inspection. The organization, however, must allow the individual conducting the inspection to take notes freely during the inspection. If the individual provides photocopying equipment at the place of inspection, the organization must allow the individual to photocopy the document at no charge.

(2) *Organizations that do not maintain permanent offices.* If a tax-exempt organization does not maintain a permanent office, the organization shall comply with the public inspection requirements of paragraph (a) of this section by making its application for tax exemption and its annual information returns, as applicable, available for inspection at a reasonable location of its choice. Such an organization shall permit public inspection within a reasonable amount of time after receiving a request for inspection (normally not more than 2 weeks) and at a reasonable time of day. At the organization's option, it may mail, within 2 weeks of receiving the request, a copy of its application for tax exemption and annual information returns to the requester in lieu of allowing an inspection. The organization may charge the requester for copying and actual postage costs only if the requester consents to the charge. An organization that has a permanent office, but has no office hours or very limited hours during certain times of the year, shall make its documents available during those periods when office hours are limited or not available as though it were an organization without a permanent office.

(d) *Special rules relating to copies*—(1) *Time and place for providing copies in response to requests made in-person*—(i) *In general.* Except as provided in paragraph (d)(1)(iii) of this section, a tax-exempt organization shall provide copies of the documents it is required to provide under section 6104(d) in response to a request made in person at its principal, regional and district offices during regular business hours. Except as provided in paragraph (d)(1)(ii) of this section, an organization

shall provide such copies to a requester on the day the request is made.

(ii) *Unusual circumstances.* In the case of an in-person request, where unusual circumstances exist such that fulfilling the request on the same business day places an unreasonable burden on the tax-exempt organization, the organization must provide the copies no later than the next business day following the day that the unusual circumstances cease to exist or the fifth business day after the date of the request, whichever occurs first. Unusual circumstances include, but are not limited to, receipt of a volume of requests that exceeds the organization's daily capacity to make copies; requests received shortly before the end of regular business hours that require an extensive amount of copying; or requests received on a day when the organization's managerial staff capable of fulfilling the request is conducting special duties, such as student registration or attending an off-site meeting or convention, rather than its regular administrative duties.

(iii) *Agents for providing copies.* A principal, regional or district office of a tax-exempt organization subject to the requirements of this section may retain a local agent to process requests made in person for copies of its documents. A local agent must be located within reasonable proximity of the applicable office. A local agent that receives a request made in person for copies must provide the copies within the time limits and under the conditions that apply to the organization itself. For example, a local agent generally must provide a copy to a requester on the day the agent receives the request. When a principal, regional or district office of a tax-exempt organization using a local agent receives a request made in person for a copy, it must immediately provide the name, address and telephone number of the local agent to the requester. An organization that provides this information is not required to respond further to the requester. However, the penalty provisions of sections 6652(c)(1)(C), 6652(c)(1)(D), and 6685 continue to apply to the tax-exempt organization if the organization's local agent fails to provide the documents as required under section 6104(d).

(2) *Request for copies in writing*—(i) *In general.* A tax-exempt organization must honor a written request for a copy of documents (or the requested part) that the organization is required to provide under section 6104(d) if the request—

(A) Is addressed to, and delivered by mail, electronic mail, facsimile, or a private delivery service as defined in section 7502(f) to a principal, regional or district office of the organization; and

(B) Sets forth the address to which the copy of the documents should be sent.

(ii) *Time and manner of fulfilling written requests*—(A) *In general.* A tax-exempt organization receiving a written request for a copy shall mail the copy of the requested documents (or the requested parts of documents) within 30 days from the date it receives the request. However, if a tax-exempt organization requires payment in advance, it is only required to provide the copies within 30 days from the date it receives payment. For rules relating to payment, see paragraph (d)(3) of this section. In the absence of evidence to the contrary, a request or payment that is mailed shall be deemed to be received by an organization 7 days after the date of the postmark. A request that is transmitted to the organization by electronic mail or facsimile shall be deemed received the day the request is transmitted successfully. If an organization requiring payment in advance receives a written request without payment or with an insufficient payment, the organization must, within 7 days from the date it receives the request, notify the requester of its prepayment policy and the amount due. A copy is deemed provided on the date of the postmark or private delivery mark (or if sent by certified or registered mail, the date of registration or the date of the postmark on the sender's receipt). If an individual making a request consents, a tax-exempt organization may provide a copy of the requested document exclusively by electronic mail. In such case, the material is provided on the date the organization successfully transmits the electronic mail.

(B) *Request for a copy of parts of document.* A tax-exempt organization must fulfill a request for a copy of the organization's entire application for tax exemption or annual information return or any specific part or schedule of its application or return. A request for a copy of less than the entire application or less than the entire return must specifically identify the requested part or schedule.

(C) *Agents for providing copies.* A tax-exempt organization subject to the requirements of this section may retain an agent to process written requests for copies of its documents. The agent shall provide the copies within the time limits and under the conditions that apply to the organization itself. For example, if the organization received the request first (e.g., before the agent), the deadline for providing a copy in response to a request shall be determined by reference to when the organization received the request, not when the agent received the request. An organization that transfers a request for a copy to such an agent is not required to respond further to the request. If the organization's agent fails to provide the documents as required under section 6104(d), however, the penalty provisions of sections 6652(c)(1)(C), 6652(c)(1)(D), and 6685 continue to apply to the tax-exempt organization.

(3) *Fees for copies*—(i) *In general.* A tax-exempt organization may charge a reasonable fee for providing copies. A fee is reasonable only if it is no more than the per-page copying charge stated in § 601.702(f)(5)(iv)(B) of this chapter (fee charged by the Internal Revenue Service for providing copies to a requester), plus no more than the actual postage costs incurred by the organization to provide the copies. Before the organization provides the documents, it may require that the individual requesting copies of the documents pay the fee. If the organization has provided an individual making a request with notice of the fee, and the individual does not pay the fee within 30 days, or if the individual pays the fee by check and the check does not clear upon deposit, the organization may disregard the request.

(ii) *Form of payment*—(A) *Request made in person.* If a tax-exempt organization charges a fee for copying (as permitted under paragraph (d)(3)(i) of this section), it shall accept payment by cash and money order for requests made in person. The organization may accept other forms of payment, such as credit cards and personal checks.

(B) *Request made in writing.* If a tax-exempt organization charges a fee for copying and postage (as permitted under paragraph (d)(3)(i) of this section), it shall accept payment by certified check, money order, and either personal check or credit card for requests made in writing. The organization may accept other forms of payment.

(iii) *Avoidance of unexpected fees.* Where a tax-exempt organization does not require prepayment and a requester does not enclose payment with a request, an organization must receive consent from a requester before providing copies for which the fee charged for copying and postage exceeds $20.

(iv) *Responding to inquiries of fees charged.* In order to facilitate a requester's ability to receive copies promptly, a tax-exempt organization shall respond to any questions from potential requesters concerning its fees for copying and postage. For example,

the organization shall inform the requester of its charge for copying and mailing its application for exemption and each annual information return, with and without attachments, so that a requester may include payment with the request for copies.

(e) *Documents to be provided by regional and district offices.* Except as otherwise provided, a regional or district office of a tax-exempt organization must satisfy the same rules as the principal office with respect to allowing public inspection and providing copies of its application for tax exemption and annual information returns. A regional or district office is not required, however, to make its annual information return available for inspection or to provide copies until 30 days after the date the return is required to be filed (including any extension of time that is granted for filing such return) or is actually filed, whichever is later.

(f) *Documents to be provided by local and subordinate organizations*—(1) *Applications for tax exemption.* Except as otherwise provided, a tax-exempt organization that did not file its own application for tax exemption (because it is a local or subordinate organization covered by a group exemption letter referred to in § 1.508–1 of this chapter) must, upon request, make available for public inspection, or provide copies of, the application submitted to the Internal Revenue Service by the central or parent organization to obtain the group exemption letter and those documents which were submitted by the central or parent organization to include the local or subordinate organization in the group exemption letter. However, if the central or parent organization submits to the Internal Revenue Service a list or directory of local or subordinate organizations covered by the group exemption letter, the local or subordinate organization is required to provide only the application for the group exemption ruling and the pages of the list or directory that specifically refer to it. The local or subordinate organization shall permit public inspection, or comply with a request for copies made in person, within a reasonable amount of time (normally not more than 2 weeks) after receiving a request made in person for public inspection or copies and at a reasonable time of day. In a case where the requester seeks inspection, the local or subordinate organization may mail a copy of the applicable documents to the requester within the same time period in lieu of allowing an inspection. In such a case, the organization may charge the requester for copying and actual postage costs only if the requester consents to the charge. If the local or subordinate organization receives a written request for a copy of its application for tax exemption, it must fulfill the request in the time and manner specified in paragraph (d)(2) of this section. The requester has the option of requesting from the central or parent organization, at its principal office, inspection or copies of the application for group exemption and the material submitted by the central or parent organization to include a local or subordinate organization in the group ruling. If the central or parent organization submits to the Internal Revenue Service a list or directory of local or subordinate organizations covered by the group exemption letter, it must make such list or directory available for public inspection, but it is required to provide copies only of those pages of the list or directory that refer to particular local or subordinate organizations specified by the requester. The central or parent organization must fulfill such requests in the time and manner specified in paragraphs (c) and (d) of this section.

(2) *Annual information returns.* A local or subordinate organization that does not file its own annual information return (because it is affiliated with a central or parent organization that files a group return pursuant to § 1.6033–2(d) of this chapter) must, upon request, make available for public inspection, or provide copies of, the group returns filed by the central or parent organization. However, if the group return includes separate schedules with respect to each local or subordinate organization included in the group return, the local or subordinate organization receiving the request may omit any schedules relating only to other organizations included in the group return. The local or subordinate organization shall permit public inspection, or comply with a request for copies made in person, within a reasonable amount of time (normally not more than 2 weeks) after receiving a request made in person for public inspection or copies and at a reasonable time of day. In a case where the requester seeks inspection, the local or subordinate organization may mail a copy of the applicable documents to the requester within the same time period in lieu of allowing an inspection. In such a case, the organization may charge the requester for copying and actual postage costs only if the requester consents to the charge. If the local or subordinate organization receives a written request for a copy of its annual information return, it must fulfill the request by providing a copy of the group return in the time and manner specified in paragraph (d)(2) of this section. The requester has the option of requesting from the central or parent organization, at its principal office, inspection or copies of group returns filed by the central or parent organization. The central or parent organization must fulfill such requests in the time and manner specified in paragraphs (c) and (d) of this section.

(3) *Failure to comply.* If an organization fails to comply with the requirements specified in this paragraph, the penalty provisions of sections 6652(c)(1)(C), 6652(c)(1)(D), and 6685 apply.

(g) *Failure to comply with public inspection or copying requirements.* If a tax-exempt organization denies an individual's request for inspection or a copy of an application for tax exemption or an annual information return as required under this section, and the individual wants to alert the Internal Revenue Service to the possible need for enforcement action, the individual may provide a statement to the district director for the key district in which the applicable tax-exempt organization's principal office is located (or such other person as the Commissioner may designate) that describes the reason why the individual believes the denial was in violation of the requirements of section 6104(d).

(h) *Effective date.* This section is effective June 8, 1999.

§ 301.6104(d)–4 Making applications and returns widely available.

(a) *In general.* A tax-exempt organization is not required to comply with a request for a copy of its application for tax exemption or an annual information return pursuant to § 301.6104(d)–3(a) if the organization has made the requested document widely available in accordance with paragraph (b) of this section. An organization that makes its application for tax exemption and/or annual information return widely available must nevertheless make the document available for public inspection as required under § 301.6104(d)–3(a), as applicable.

(b) *Widely available*—(1) *In general.* A tax-exempt organization makes its application for tax exemption and/or an annual information return widely available if the organization complies with the requirements specified in paragraph (b)(2) of this section, and if the organization satisfies the requirements of paragraph (d) of this section.

(2) *Internet posting*—(i) *In general.* A tax-exempt organization can make its application for tax exemption and/or an annual information return widely available by posting the document on a World Wide Web page that the tax-exempt organization establishes and maintains or by having the document posted, as part of a database of similar documents of other tax-exempt organizations, on a World Wide Web page established and maintained by another entity. The document will be considered widely available only if—

(A) the World Wide Web page through which it is available clearly informs readers that the document is available and provides instructions for downloading it;

(B) the document is posted in a format that, when accessed, downloaded, viewed and printed in hard copy, exactly reproduces the image of the application for tax exemption or annual information return as it was originally filed with the Internal Revenue Service, except for any information permitted by statute to be withheld from public disclosure. (See section 6104(d)(3) and § 301.6104(d)–3(b)(3) and (4)); and

(C) any individual with access to the Internet can access, download, view and print the document without special computer hardware or software required for that format (other than software that is readily available to members of the public without payment of any fee) and without payment of a fee to the tax-exempt organization or to another entity maintaining the World Wide Web page.

(ii) *Transition rule.* A tax-exempt organization that posted its application for tax exemption or its annual information returns on a World Wide Web page on or before April 9, 1999 in a manner consistent with regulation project REG–246250–96 (1997 C.B. 627) (See § 601.601(d)(2) of this chapter.) will be treated as satisfying the requirements of paragraphs (b)(2)(i)(B) & (C) of this section until June 8, 2000 provided that an individual can access, download, view and print the document without payment of a fee to the tax-exempt organization or to another entity maintaining the World Wide Web page.

(iii) *Reliability and accuracy.* In order for the document to be widely available through an Internet posting, the entity maintaining the World Wide Web page must have procedures for ensuring the reliability and accuracy of the document that it posts on the page and must take reasonable precautions to prevent alteration, destruction or accidental loss of the document when posted on its page. In the event that a posted document is altered, destroyed or lost, the entity must correct or replace the document.

(c) *Discretion to prescribe other methods for making documents widely available.* The Commissioner, from time to time, may prescribe additional methods, other than an Internet posting meeting the requirements of paragraph (b)(2) of this section, that a tax-exempt organization may use to make its documents widely available.

(d) *Notice requirement.* If a tax-exempt organization has made its application for tax exemption and/or an annual information return widely available it must notify any individual requesting a copy where the documents are available (including the address on the World Wide Web, if applicable). If the request is made in person, the organization shall provide such notice to the individual immediately. If the request is made in writing, the notice shall be provided within 7 days of receiving the request.

(e) *Effective date.* This section is effective June 8, 1999.

§ 301.6104(d)–5 Tax-exempt organization subject to harassment campaign.

(a) *In general.* If the district director for the key district in which the organization's principal office is located (or such other person as the Commissioner may designate) determines that the organization is the subject of a harassment campaign and compliance with the requests that are part of the harassment campaign would not be in the public interest, a tax-exempt organization is not required to fulfill a request for a copy (as otherwise required by § 301.6104(d)–3(a)) that it reasonably believes is part of the campaign.

(b) *Harassment.* A group of requests for an organization's application for tax exemption or annual information returns is indicative of a harassment campaign if the requests are part of a single coordinated effort to disrupt the operations of a tax-exempt organization, rather than to collect information about the organization. Whether a group of requests constitutes such a harassment campaign depends on the relevant facts and circumstances. Facts and circumstances that indicate the organization is the subject of a harassment campaign include: a sudden increase in the number of requests; an extraordinary number of requests made through form letters or similarly worded correspondence; evidence of a purpose to deter significantly the organization's employees or volunteers from pursuing the organization's exempt purpose; requests that contain language hostile to the organization; direct evidence of bad faith by organizers of the purported harassment campaign; evidence that the organization has already provided the requested documents to a member of the purported harassing group; and a demonstration by the tax-exempt organization that it routinely provides copies of its documents upon request.

(c) *Special rule for multiple requests from a single individual or address.* A tax-exempt organization may disregard any request for copies of all or part of any document beyond the first two received within any 30-day-period or the first four received within any one-year-period from the same individual or the same address, regardless of whether the district director for the applicable key district (or such other person as the Commissioner may designate) has determined that the organization is subject to a harassment campaign.

(d) *Harassment determination procedure.* A tax-exempt organization may apply for a determination that it is the subject of a harassment campaign and that compliance with requests that are part of the campaign would not be in the public interest by submitting a signed application to the district director for the key district where the organization's principal office is located (or such other person as the Commissioner may designate). The application shall consist of a written statement giving the organization's name, address, employer identification number, and the name, address and telephone number of the person to contact regarding the application. The application must describe in detail the facts and circumstances that the organization believes support a determination that the organization is subject to a harassment campaign. The organization may suspend compliance with respect to any request for a copy of its documents based on its reasonable belief that such request is part of a harassment campaign, provided that the organization files an application for a determination within 10 business days from the day the organization first suspends compliance with respect to a request that is part of the alleged campaign. In addition, the organization may suspend compliance with any request it reasonably believes to be part of the harassment campaign until it receives a response to its application for a harassment campaign determination.

(e) *Effect of a harassment determination.* If the appropriate district director (or such other person as the Commissioner may designate) determines that a tax-exempt organization is the subject of a harassment campaign and it is not in the public interest to comply with requests

that are part of the campaign, such organization is not required to comply with any request for copies that it reasonably believes is part of the campaign. This determination may be subject to other terms and conditions set forth by the district director (or such other person as the Commissioner may designate). A person (as defined in section 6652(c)(4)(C)) shall not be liable for any penalty under sections 6652(c)(1)(C), 6652(c)(1)(D) or 6685 for failing to timely provide a copy of documents in response to a request covered in a request for a harassment determination if the organization fulfills the request within 30 days of receiving a determination from the district director (or such other person as the Commissioner may designate) that the organization is not subject to a harassment campaign. Notwithstanding the preceding sentence, if the district director (or such other person as the Commissioner may designate) further determines that the organization did not have a reasonable basis for requesting a determination that it was subject to a harassment campaign or reasonable belief that a request was part of the campaign, the person (as defined in section 6652(c)(4)(C)) remains liable for any penalties that result from not providing the copies in a timely fashion.

(f) *Examples.* The provisions of this section are illustrated by the following examples:

Example 1. V, a tax-exempt organization, receives an average of 25 requests per month for copies of its three most recent information returns. In the last week of May, V is mentioned in a national news magazine story that discusses information contained in V's 1996 information return. From June 1 through June 30, 1997 V receives 200 requests for a copy of its documents. Other than the sudden increase in the number of requests for copies, there is no other evidence to suggest that the requests are part of an organized campaign to disrupt V's operations. Although fulfilling the requests will place a burden on V, the facts and circumstances do not show that V is subject to a harassment campaign. Therefore, V must respond timely to each of the 200 requests it receives in June.

Example 2. Y is a tax-exempt organization that receives an average of 10 requests a month for copies of its annual information returns. From March 1, 1997 to March 31, 1997, Y receives 25 requests for copies of its documents. Fifteen of the requests come from individuals Y knows to be active members of the board of organization X. In the past X has opposed most of the positions and policies that Y advocates. None of the requesters have asked for copies of documents from Y during the past year. Y has no other information about the requesters. Although the facts and circumstances show that some of the individuals making requests are hostile to Y, they do not show that the individuals have organized a campaign that will place enough of a burden on Y to disrupt its activities. Therefore, Y must respond to each of the 25 requests it receives in March.

Example 3. The facts are the same as in *Example 2*, except that during March 1997, Y receives 100 requests. In addition to the fifteen requests from members of organization X's board, 75 of the requests are similarly worded form letters. Y discovers that several individuals associated with X have urged the X's members and supporters, via the Internet, to submit as many requests for a copy of Y's annual information returns as they can. The message circulated on the Internet provides a form letter that can be used to make the request. Both the appeal via the Internet and the requests for copies received by Y contain hostile language. During the same year but before the 100 requests were received, Y provided copies of its annual information returns to the headquarters of X. The facts and circumstances show that the 75 form letter requests are coordinated for the purpose of disrupting Y's operations, and not to collect information that has already been provided to an association representing the requesters' interests. Thus, the fact and circumstances show that Y is the subject of an organized harassment campaign. To confirm that it may disregard the 90 requests that constitute the harassment campaign, Y must apply to the applicable district director (or such other person as the Commissioner may designate) for a determination. Y may disregard the 90 requests while the application is pending and after the determination is received. However, it must respond within the applicable time limits to the 10 requests it received in March that were not part of the harassment campaign.

Example 4. The facts are the same as in *Example 3*, except that Y receives 5 additional requests from 5 different representatives of the news media who in the past have published articles about Y. Some of these articles were hostile to Y. Normally, the Internal Revenue Service will not consider a tax-exempt organization to have a reasonable belief that a request from a member of the news media is part of a harassment campaign absent additional facts that demonstrate that the organization could reasonably believe the particular requests from the news media to be part of a harassment campaign. Thus, absent such additional facts, Y must respond within the applicable time limits to the 5 requests that it received from representatives of the news media.

(g) *Effective date.* This section is effective June 8, 1999.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Paragraph 3. The authority for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 4. In § 602.101, paragraph (b) is amended by adding the following entries in numerical order to the table to read as follows:

§ 602.101 OMB Control numbers.

* * * * *

(b) * * *

CFR part or section where identified and described	Current OMB control No.
* * * * * * *	
301.6104(d)–3	1545–1560
301.6104(d)–4	1545–1560
301.6104(d)–5	1545–1560
* * * * * * *	

Approved: March 25, 1999.

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

Donald C. Lubick,

Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 99–8638 Filed 4–8–99; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 178

[T.D. ATF–411]

RIN: 1512–AB82

Technical Amendments (98R–376P)

AGENCY: Bureau of Alcohol, Tobacco and Firearms, Department of the Treasury.

ACTION: Final rule, Treasury decision.

SUMMARY: This Treasury decision changes the titles "Regional Director (Compliance)" to "Director of Industry Operations" and "Chief, Firearms and Explosives Licensing Center" to "Chief, National Licensing Center." It also replaces the term "region" with "division" and the term "regional counsel" with "Assistant Chief Counsel and Division Counsel." Finally, the decision replaces the words "local ATF office (compliance)" with "local ATF office." The changes are to provide clarity and uniformity throughout Title 27 Code of Federal Regulations (CFR).

DATES: Effective April 9, 1999.

FOR FURTHER INFORMATION CONTACT: Marsha D. Baker, Regulations Division, Bureau of Alcohol, Tobacco and Firearms, Washington, DC 20226, (202) 927–8230.

SUPPLEMENTARY INFORMATION: The Bureau of Alcohol, Tobacco and Firearms (ATF) administers regulations published in chapter I of Title 27 CFR. Upon reviewing Title 27, ATF determined that the regulations in part 178 should be revised to reflect the ATF field structure reorganization that established Directors of Industry Operations in place of Regional directors (compliance), Chief, National Licensing Center in place of Chief, Firearms and Explosives Licensing Center, and Assistant Chief Counsels and Division Counsels in place of Regional Counsels. The reorganization also replaces regions with divisions.

These amendments do not make any substantive changes and are only intended to make Title 27 consistent with the agency's reorganization.

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507) and its implementing regulations, 5 CFR part 1320, do not apply to this final rule because there are no recordkeeping or reporting requirements.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply to this final rule because no notice of proposed rulemaking is required.

Executive Order 12866

This final rule is not subject to the requirements of Executive Order 12866 because the regulations make nonsubstantive technical corrections to previously published regulations.

Administrative Procedure Act

Because this final rule merely makes technical amendments to improve the clarity of the regulations, it is unnecessary to issue this final rule with notice and public procedure under 5 U.S.C. 553(b).

Drafting Information: The principal author of this document is Marsha D. Baker, Regulations Division, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects in 27 CFR 178

Administrative practice and procedure, Arms and ammunition, Authority delegations, Customs duties and inspection, Exports, Imports, Military personnel, Penalties, Reporting requirements, Research, Seizures and forfeitures, Transportation.

Authority and Issuance

For the reasons discussed in the preamble, ATF amends 27 CFR Part 178 as follows:

PART 178—COMMERCE IN FIREARMS AND AMMUNITION

Paragraph 1. The authority citation for Part 178 continues to read as follows:

Authority: 5 U.S.C. 552(a); 18 U.S.C. 847, 921–930; 44 U.S.C. 3504 (h).

Par. 2. Section 178.11 is amended by removing the title in the definition "Chief, Firearms and Explosives Licensing Center" and adding in its place "Chief, National Licensing Center," by removing the definitions "Regional director (compliance)" and "Region," and by adding the definitions "Director of Industry Operations" and "Division" to read as follows:

§ 178.11 Meaning of terms.

* * * * *

Director of Industry Operations. The principal ATF official in a Field Operations division responsible for administering regulations in this part.

* * * * *

* * * * *

Division. A Bureau of Alcohol, Tobacco and Firearms Division.

* * * * *

Par. 3. Remove the words "Regional director (compliance)" each place it appears and add, in place thereof, the words "Director of Industry Operations" in the following sections:

(a) Section 178.22(a)(3) and (b);
(b) Section 178.25;
(c) Section 178.35;
(d) Section 178.47(c) and (d);
(e) Section 178.52(b);
(f) Section 178.71;
(g) Section 178.72;
(h) Section 178.73;
(i) Section 178.74;
(j) Section 178.76;
(k) Section 178.78;
(l) Section 178.111(b)(1) and (c);
(m) Section 178.115(a);
(n) Section 178.122(c);
(o) Section 178.123(c);
(p) Section 178.124(i);
(q) Section 178.125(h);
(r) Section 178.126;
(s) Section 178.130(e);
(t) Section 178.144(i)(4).

Par. 4. Remove the words "Chief, Firearms and Explosives Licensing Center" each place it appears and add, in place thereof, the words "Chief, National Licensing Center" in the following sections:

(a) Section 178.41(b) and (c);
(b) Section 178.45;
(c) Section 178.47;
(d) Section 178.48;
(e) Section 178.52;
(f) Section 178.53;
(g) Section 178.54;
(h) Section 178.56(b);
(i) Section 178.57(a);
(j) Section 178.60;
(k) Section 178.95;
(l) Section 178.127.

Par. 5. Remove the word "region" each place it appears in § 178.127 and add, in place thereof, the word "division."

Par. 6. Remove the words "regional counsel" each place they appear in section 178.76 and add, in place thereof, the words "Assistant Chief Counsel or Division Counsel."

Par. 7. Remove the words "local ATF office (compliance)" each place it appears in section 178.130(e) and add, in place thereof, the words "local ATF office."

Signed: February 8, 1999.

John W. Magaw,

Director.

Approved: March 12, 1999.

John P. Simpson,

Deputy Assistant Secretary, (Regulatory, Tariff and Trade Enforcement).

[FR Doc. 99–8869 Filed 4–8–99; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 229

[Docket No. 970129015–9082–10; I.D. 031997B]

RIN 0648–AI84

Taking of Marine Mammals Incidental to Commercial Fishing Operations; Atlantic Large Whale Take Reduction Plan Regulations; Partial Stay

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule; partial stay.

SUMMARY: On February 16, 1999, NMFS issued a final rule implementing the Atlantic Large Whale Take Reduction Plan (ALWTRP). This document stays the provisions concerning gear marking requirements for all fisheries regulated by the ALWTRP (published on February 16, 1999) until November 1, 1999. The remainder of 50 CFR 229.32 is not changed.

DATES: In regulations published at 64 FR 7529 (February 16, 1999), paragraphs § 229.32 (b), (c)(3)(ii), (c)(4)(ii), (c)(5)(ii), (d)(2)(ii), (d)(3)(ii), (d)(4)(ii), (d)(5)(ii), and (f)(2) are stayed until November 1, 1999.

FOR FURTHER INFORMATION CONTACT: Douglas Beach, NMFS, Northeast Region, 978-281-9254; Katherine Wang, NMFS, Southeast Region, 727-570-5312; or Gregory Silber, NMFS, Office of Protected Resources, 301-713-2322.

SUPPLEMENTARY INFORMATION:

Background

On February 16, 1999, NMFS published a final rule (64 FR 7529) implementing the ALWTRP. The effective date given in the regulatory text of 64 FR 7529 pertaining to gear marking of all fisheries regulated by the ALWTRP was April 1, 1999. It was generally noted in the Response to Comments portion of the final rule (64 FR 7544) that, although gear marking is an important data gathering device, the proposed scheme published in the Interim Final Rule on July 22, 1997 (62 FR 39157), was not likely to be as effective as expected. NMFS also stated in the final rule (64 FR 7545) that, as requested in other comments, that the Gear Advisory Group (GAG) and the Atlantic Large Whale Take Reduction Team (ALWTRT) would be tasked with reviewing the current scheme, and if recommendations were provided, NMFS would modify the scheme.

The GAG met in October 1998, and the ALWTRT met on February 8-10, 1999. The ALWTRT discussed the gear marking scheme in detail and recommended by consensus (NMFS members abstaining) that NMFS suspend the implementation of the gear marking requirement until November 1, 1999, or until a better system is designed. The ALWTRT recommended a specific course of action be followed to provide an appropriate gear marking scheme that could be implemented by NMFS by November 1, 1999. They asked that the GAG be reconvened quickly to design a better system for approval by the ALWTRT. The criteria established by the ALWTRT for an appropriate gear marking system were: (1) the system should identify the buoy lines by individual fishermen; (2) the system should apply to all waters affected by the plan; (3) it should be easily implemented by the affected fisheries; (4) to allow identification when the gear is not removed from a whale, the system should allow identification of gear type from a photograph; and (5) the system should allow identification of where the gear had been set.

The ALWTRT asked that, in order to minimize unnecessary confusion and expense for fishermen, the existing gear marking provision be stayed until November 1, 1999. This would assure that, should the GAG or ALWTRT not be able to reach a consensus on an appropriate gear marking scheme, the existing final rule gear marking scheme would remain in place. NMFS notes that the final rule comments on gear marking state that gear marking does not, by itself, reduce risk but provides important data for fine tuning the ALWTRP. Therefore, NMFS is staying the gear marking regulations for all fisheries affected by the ALWTRP so that the GAG and ALWTRT will have time to provide a more appropriate scheme to be implemented through the appropriate rulemaking process.

Dated: April 5, 1999.

Andrew A. Rosenberg,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 99–8907 Filed 4–8–99; 8:45 am]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 64, No. 66
Friday, April 9, 1999

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 91 and 135

DEPARTMENT OF INTERIOR

National Park Service

36 CFR Parts 1, 2, 3, 4, 5, 6, and 7

[Docket No. 27643; Notice No. 94–4]

RIN 2120–AF46

Overflights of Units of the National Park System

AGENCY: Federal Aviation Administration; National Park Service.

ACTION: Advanced notice of proposed rulemaking (ANPRM); Disposition of comments.

SUMMARY: This document disposes of comments received in response to an ANPRM published in the **Federal Register** on March 17, 1994. The ANPRM sought public comment on general policy options and specific recommendations for voluntary and regulatory actions to address the impacts of aircraft overflights on national parks. This document summarizes those comments and provides an update to the public on matters concerning air tours over units of the national park system.

ADDRESSES: The complete docket, No. 27643, including a copy of the ANPRM and comments on it, may be examined in the Rules Docket, Room 915G, Office of Chief Counsel, Federal Aviation Administration, 800 Independence Ave., SW, Washington, DC, 20591, weekdays (except Federal holidays), from 8 a.m. until 5 p.m.

FOR FURTHER INFORMATION CONTACT: Gary Davis, Air Transportation Division (AFS–200), Federal Aviation Administration, 800 Independence Ave., SW., Washington, DC 20591, telephone: (202) 267–4710.

SUPPLEMENTARY INFORMATION:

Background

On March 17, 1994, the FAA and the National Park Service (NPS) jointly issued an ANPRM titled Overflights of Units of the National Park System (59 FR 12740). The ANPRM cited the commitment of both Secretary Babbitt and (then) Secretary Pena to address the issue that increased flights over the Grand Canyon and other national parks have diminished the park experience for park visitors and that measures should be taken to preserve the quality of the park experience. This ANPRM sought comments and suggestions that could minimize the adverse impacts (e.g., noise) of commercial air tour operations and other overflights affecting units of the national park system.

The FAA and the NPS sought public comment and recommendations on a number of options, including voluntary measures, the use of the Grand Canyon Model, a prohibition of flights during flight-free time periods, altitude restrictions, flight-free zones and flight corridors, restrictions on noise through allocation of aircraft noise equivalencies, and incentives to encourage use of quiet aircraft. In addition, the FAA and NPS asked specific questions, from both a technical and a policy perspective. For example, the agencies asked whether commercial flights should be banned from some parks, and what criteria should be used in making these determinations. In the ANPRM the FAA also asked the public to consider categories other than air tour/sightseeing operations, and the factors to be considered for addressing recommendations regarding overflights. The agencies sought comment on the use of quiet technology, and whether overflights should be conducted under the regulations of part 135. The use of special operations specifications was questioned, as well as the use of the Grand Canyon, with its extensive regulation of airspace, and Hawaii, which at the time was undergoing a public planning process, as models for other parks. The full range of questions is found at 52 FR 12745 (March 17, 1994).

The FAA received over 30,000 comments in response to the ANPRM, most of which were duplicate form letters (one form letter accounts for over 24,000 comments). Some of the comments included references to other studies and analyses of overflights issues, which the FAA considered in its review. Of the comments received, other than form letters, slightly more than half favor further regulation, and slightly less than half oppose further regulation. Of the form letters, most of which were collected and submitted by air tour operators, over 90% oppose further regulation.

Commenters included individual park users, air tour operators and their representatives, environmental organizations, state and local organizations, and congressional representatives.

Summary of Comments

The following is a brief summary of the comments received. While space does not permit an in depth discussion of every comment, this summary presents an overview of the public positions on the most important issues related to overflights.

(1) *Voluntary measures.* Many commenters state that the voluntary measures already in place, such as the 2,000 foot minimum altitude guideline, are not working. Some of these commenters argue that such measures fail because aircraft operators do not recognize the inherent conflict between solitude and noise.

Other commenters argue that voluntary measures work, stating that the few operators who refuse to comply with the voluntary programs are at fault, not the industry as a whole. Several of the commenters note that pilots who make the effort to comply with existing voluntary guidelines are not recognized and are often criticized along with pilots who are not following voluntary guidelines.

(2) *National rule versus park-specific rules.* Although the ANPRM did not specifically address a national rule versus park-specific rules, there were some who commented on this issue. Generally, those persons do not think that a general rule could cover all park situations because of the variations among parks in such areas as ambient sound levels. For example, Air Line Pilots Association (ALPA) points to the amount of air traffic and unusual terrain at the Grand Canyon, which require specific regulations for that park.

Several commenters, including the Alaska Regional Office of the National Parks and Conservation Association, recommend separate regulations for national parks in Alaska because, in

some instances, air travel may be the only way to access these parks.

Some commenters suggest flexible regulations that could adjust to the varying considerations of parks (e.g., rules that could vary the spacing of flight-free times).

(3) *Regulation of sightseeing versus regulation of all commercial overflights.* Several commenters recommend extending overflight regulation to other types of aircraft that create noise over national parks, including military aircraft, NPS aircraft used for administrative and park maintenance flights, and commercial jets. Several commenters suggest distinguishing between private and commercial flight operations over parkland zones.

(4) *Grand Canyon and Hawaii as models.* Some commenters support applying the same limits used at the Grand Canyon and Hawaii to other parks, while other commenters oppose such measures.

(a) *Flight-free zones and corridors.* Several commenters oppose the imposition of flight-free zones because they would create higher traffic density and therefore increase the possibility of accidents, as well as produce greater noise impacts. Some of these commenters point to the experience at the Grand Canyon stating that SFAR 50–2 has created more compressed air traffic resulting in less safety and increased noise problems. Others say that 84 percent of the Grand Canyon is already traffic-free, and therefore additional flight-free zones and corridors are unnecessary.

Other commenters support the establishment of such corridors over certain sections of national parks. For example, several commenters support a two mile wide no-fly buffer zone around the entire perimeter of Hawaii's national parkland.

(b) *Flight-free times.* Some commenters are against establishing flight-free time periods and say that they would do little to mitigate the negative impacts of overflights. Some air tour operators say that these restrictions would also have substantial economic consequences on their operations.

Other commenters support the establishment of flight-free times or days, some of whom recommend capping the total number of flights allowed per day over national park. For example, the Grand Canyon Chapter of the Sierra Club recommends restricting the total number of flights at Grand Canyon National Park to pre-1975 levels in order to reduce crowding in flight corridors, thereby lessening noise impacts and increasing safety.

(c) *Altitude restrictions.* Many commenters suggest imposing specific minimum flight altitudes, for example, the Grand Canyon Chapter of the Sierra Club recommends that altitude restrictions not allow flights below 14,500 feet mean sea level.

Some commenters, such as the Grand Canyon Air Tourism Association, oppose blanket altitude restrictions that do not take geographic structures into account. Other commenters argue that altitude restrictions could be dangerous in weather that necessitates IFR operations.

(5) *Use of noise budgets and incentives for quiet aircraft technology.* Most commenters oppose the adoption of noise budgets because they are difficult to administer and are not cost effective. For example, the Grand Canyon Air Tourism Association says that noise budgets would be difficult to apply to the Grand Canyon because they would require expensive noise monitoring to ensure equal implementation by operators. Others argue that noise budgets would not substantially relieve the overall noise problem.

Several commenters support the adoption of noise budgets because they would provide operators with an incentive to operate quiet aircraft. A number of commenters recommend that if noise budgets are adopted, they should be grandfathered to the current noise level.

Regarding the use of quiet aircraft technology, some commenters support governmental incentives to encourage operators to use quiet aircraft. Such incentives could include tax benefits, fee abatements, loan programs, and increased allocations on the number of flights allowed. Several air tour operators point out that without such incentives, air tour operators could not afford to use quiet aircraft technologies.

(6) *Factors for evaluating recommendations.* One commenter, the Sierra Club Legal Defense Fund, says that the FAA and NPS, in evaluating recommendations, should ask: Will the measures be effective in eliminating aircraft noise in noise sensitive areas? Are fundamental park values, including natural quiet and protection of wildlife habitats, fully preserved by the rulemaking? Can the FAA and NPS implement effective management and enforcement strategies?

Another commenter, Helicopter Association International, recommends the creation of a Federal Advisory Committee to conduct studies, analyze information, and recommend regulatory actions on the issue of overflights over national parks.

(7) *The need for special operations specifications for conducting sightseeing flights.* Some commenters say that special operations specifications for air tour operators are unnecessary, while others support referencing the operation as part of operator specifications.

Some commenters, addressing air tour operations in Hawaii, recommend that air tour operators conducting operations over water or mountains be required to have special safety equipment and appropriate pilot training. These commenters also recommend that low-altitude aircraft operators in Hawaii adhere to instrument flight rules and minimum flight regulations.

(8) *Certificate under Part 121 or Part 135.* Most commenters agree that tour operation flights should be conducted under part 135. Commenters do not support conducting these flights under part 121, and several commenters argue that the safety record would not improve if the requirements of part 121 were imposed. These commenters also argue that operating under part 121 would not be cost effective.

(9) *Specific parks that should be regulated.* Some commenters mention specific parks or areas that should be regulated. These areas include: Polipoli State Park in Maui, Guadalupe Mountains National Park in west Texas, Chiricahua National Monument in southeastern Arizona, Catskill Park, Adirondak Park, the Shawangunk Ridge, Allegany State Park, Glacier National Park, the Great Smoky Mountains National Park, Fort Vancouver National Historic Site, the Jamaica Bay wildlife preserve, Grand Teton National Park, Jedediah Smith Wilderness Area, and the Grand Canyon National Park.

(10) *Justification.* Some commenters object to the justification for rulemaking presented in the ANPRM. Several commenters state that NPS has not conducted a study that would show that the park experience has been derogated by air tour operations. Others commented that noise studies being prepared for the NPS are biased against aircraft operations and should not be used in their present form for any of the future decisions regarding the use of airspace over NPS land.

As to the authority to regulate, commenters were divided: some state that the FAA should continue to regulate airspace, others suggest that NPS should have authority so that it can regulate all visitors to a park. Certain commenters question whether the FAAct gives the agency the authority to "protect" the population on the ground from aircraft noise.

FAA Response

The FAA appreciates the time and effort that persons expended to respond to this ANPRM. Although comments concerning overflights of the national parks, and specifically how those flights should be regulated, are somewhat polarized, many commenters gave the FAA specific advice that will be helpful in future rulemaking. Commenters have indicated, for example, that different parks have different needs, and that even within parks, some areas may have different priorities for restoring 'natural quiet'. We understand that while quiet technology aircraft can make a difference in noise levels, there must be some incentive for operators to obtain expensive equipment. Overall, both the FAA and NPS have gained a better understanding of the various positions on these issues, both from those representing air tour operators and those interested in preserving the beauty and quiet in our national parks.

Subsequent Rulemaking Efforts

On April 22, 1996, President Clinton issued a Memorandum to address the significant impacts on visitor experience in national parks. In this memorandum the President set out three goals: to place appropriate limits on sightseeing aircraft at the GCNP; to address the potential impact of noise at Rocky Mountain National Park; and, for the national park system as a whole, to establish a framework for managing aircraft operations over those park units identified in the NPS 1994 study as priorities for maintaining or restoring the natural quiet.

In response to this memorandum, the FAA and NPS established, under the authority of the Aviation Rulemaking Advisory Committee (ARAC) and the National Park Service Advisory Board, a National Parks Overflights Working Group (NPOWG). The NPOWG members were selected to represent balanced interests that included the air tour operators, general aviation users, other commercial interests, environmental and conservation organizations, and Native Americans. The NPOWG was given the task of reaching consensus on a recommended NPRM which would establish a process for reducing or preventing the adverse effects of commercial air tour operations over units of the National Park System.

The NPOWG met from May through November 1997. In December 1997, members presented a concept paper to both the ARAC and the NPS Advisory Board. Both advisory groups accepted the proposed concept, which provides a mechanism, a process, whereby each unit of the National Park System will determine the necessary restrictions for that unit based on a park management plan that will be developed by the FAA with guidance from the NPS and with input from all interested parties.

Following the acceptance of the concept by the ARAC and NPS Advisory Board, the FAA and NPS are assisting the NPOWG in developing an NPRM. The FAA anticipates that when the NPRM is ready for publication, it would also plan public meetings to gain additional comment on how the concept would work for individual parks.

Issued in Washington, DC on April 5, 1999.

David Traynham,

Assistant Administrator for Policy, Planning, and International Aviation.

Jacqueline Lowey,

Deputy Director, National Park Service.

[FR Doc. 99–8920 Filed 4–8–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 101

[Docket No. 98P–0968]

Food Labeling: Declaration of Ingredients

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to amend its ingredient labeling regulations to permit the use of "and/or" labeling for the various fish species used in the production of processed seafood products, i.e., surimi and surimi-containing foods. This action responds to a petition submitted by the National Fisheries Institute (NFI) requesting more flexible ingredient labeling for the fish ingredients used in the production of surimi products. This proposed rule would permit manufacturers of surimi and surimi-containing products to maintain a single label inventory identifying all of the fish species that may be used in the manufacture of the surimi product.

DATES: Comments by June 23, 1999. See section VIII of this document for the proposed effective date of a final rule based on this document.

ADDRESSES: Written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Felicia B. Satchell, Center for Food Safety and Applied Nutrition (HFS–158), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–5099.

SUPPLEMENTARY INFORMATION:

I. Background

"Surimi" is a fish protein product made from minced fish meat that has been washed to remove fat, blood, pigments, odorous and other undesirable substances and that has been mixed with cryoprotectants such as sugar or sorbitol to prevent freezer burn (Ref. 1). The fish species used in surimi and surimi-containing products are primarily Alaskan pollock, Pacific whiting/hake, cod, and arrowtooth flounder. As an intermediate processed seafood product, surimi is then used in the formulation of a variety of finished seafood products, such as imitation crab and lobster meat.

Section 403(i)(2) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 343(i)(2)) provides that the label of a food like surimi that is fabricated from two or more ingredients must bear the common or usual name of each ingredient. Section 403(i)(2) of the act further provides that when compliance with this requirement is impracticable, or results in deception or unfair competition, FDA can establish exemptions by regulation. FDA's regulations implementing section 403(i)(2) of the act generally require that ingredients used to fabricate a food must be declared on the label by their common or usual name in descending order of predominance by weight (§ 101.4(a)(1) and (b)(2) (21 CFR 101.4(a)(1) and (b)(2))). However, under section 403(i)(2) of the act, FDA has, through rulemaking, issued exceptions to the requirement in § 101.4(a)(1) and (b)(2) when the agency has concluded that compliance with these provisions is impracticable or may result in deception or unfair competition. For example, FDA allows "and/or" ingredient labeling when the agency believes it is impracticable for manufacturers to adhere to a fixed ingredient profile. The most recent rulemaking where FDA has provided for the use of "and/or" labeling is in the declaration of wax and resin coatings on fresh fruits and vegetables (58 FR 2850 at 2875, January 6, 1993).

With respect to the general requirements for compliance with section 403(i)(2) of the act, the agency has specifically outlined in guidance documents how ingredients in certain foods should be declared. For processed and/or blended seafood products that

are composed, all or in part, of surimi, FDA's Compliance Policy Guide (CPG) 540.700 advises that manufacturers of these products should declare the specific names of all seafoods used in the product in the ingredient statement in descending order of predominance. To comply with section 403(i)(2) of the act and § 101.4(a) and (b), ingredient statements on the labels of surimi and surimi-containing products that are made from more than one fish species must declare each of the fish species used to fabricate that food in descending order of predominance by weight (§ 101.4(a)).

II. The Petition

A. Requested Provisions

FDA received a citizen petition from the NFI (filed October 13, 1998, Docket No. 96P–0968) (hereinafter referred to as the petition) requesting that the agency revise CPG 540.700 to permit the use of "and/or" labeling in the ingredient declaration of the fish species used in surimi and surimi-containing foods (Ref. 2). Specifically, the petition requested that the CPG be revised as follows:

> The specific names of all seafoods used in the product shall appear in the ingredient statement in descending order of predominance ("pollock" must be used as opposed to "white fish"; "snow crab" rather than "crab"), except that, if the manufacturer is unable to adhere to a constant pattern of fish species in the product, the listing of species need not be in descending order of predominance. Fish species not present in the product may be listed if they are sometimes used in the product. Such ingredients shall be identified by words indicating that they may or may not be present, such as "or," "and/or," or "contains one or more of the following:".

The petition contends that the requested action would alleviate significant quality, manufacturing, logistical, and financial burdens that the surimi industry currently faces, yet still ensure that consumers receive truthful, nonmisleading information about the composition of surimi and surimi-containing products.

B. Basis for Requested Provisions

The request in the petition for permission to use "and/or" labeling for surimi-containing products was based on several arguments. While the agency finds merit in all of the arguments discussed in the petition, it will only discuss in this document those arguments that pertain to the standards set out in section 403(i)(2) of the act and form the primary basis on which the agency has been persuaded to propose an exception to the existing ingredient labeling regulations.

1. Due to Seasonality and Quota Limitations, Manufacturers are Unable To Adhere to a Constant Pattern of Fish Species in Producing Surimi and Surimi-Containing Foods

According to the petition, the commercial availability of a specific fish species used in the manufacture of surimi and surimi-containing foods is variable and depends upon several factors out of the manufacturer's control, including: The length of the harvesting season, the quota limitations for each species, and the cost. Each fish species is available for harvesting only during certain periods of the year. For example, the harvest season for pollock "A" normally opens in mid-January and runs through mid-February. The harvest season for Pollock "B" typically runs from mid-September through mid-October. Similarly, the harvest season for Pacific whiting begins in May and continues into the summer.

Harvest quotas will also impact on the availability of a particular fish species. According to the petition, only limited quantities of specific fish species may be harvested during a given season. Due to provisions established under the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*), harvest quotas are established through the National Fishery Management Program and are managed by regional fishery management councils. Once a quota has been filled, no more of that species may be harvested until the next season. (Thus, the actual length of a harvest season can be unpredictable, depending upon the type and number of companies or vessels entering a fishery, and the pace with which applicable quotas are filled.) Quotas fluctuate according to estimated species biomass, and, therefore, vary from season to season, and from year to year. In sum, the petition contends that, because surimi can be and is made from a variety of fish species, the variability in harvest seasons and quotas confounds prediction of the specific composition of surimi that will be available at any given time for processing into a finished seafood product.

2. FDA's Current Ingredient Labeling Requirements Place Unwarranted Burdens on Manufacturers of Surimi and Surimi-containing Foods by Forcing Them to Maintain and Coordinate Several Inventories of Species-specific Surimi and Contingent Labels That Declare the Specific Fish Species Used to Make the Surimi

The petition states that the associated label storage burdens (i.e., maintaining different label inventories for surimi-containing foods that account for all possible fish species or predominance combinations) are compounded because frozen surimi quickly loses its functionality during storage, and manufacturers are constantly forced to adjust overall product formulations to maintain consistent quality.[1] Therefore, the petition argues that modification of the existing ingredient labeling requirements would not only significantly reduce the economic burden on surimi manufacturers, but also promote the goal of effective management of harvestable resources.

The petition contends that because of the inventory constraints on holding multiple labels for the same product, administrative difficulties of ensuring that correct labels are used, and logistical problems of having multiple product codes for the same item, companies are effectively forced to produce finished surimi food products from single fish species. This becomes a problem, however, due to the limitations of availability of various fish species used to make surimi. Consequently, the petition contends that it is impracticable for manufacturers of surimi and surimi-containing foods to comply with the existing ingredient labeling regulations and that an exception in the form of "and/or" labeling is warranted. According to the petition, permitting the use of a single label that declares each of the fish species that may be present in the product would ease the impracticability and unwarranted burdens of the existing ingredient labeling requirements.

The petition also explains that, because the fish ingredients used in surimi are decharacterized through processing, the specific fish species used in surimi is unimportant and neither characterizes the food nor influences consumers' purchase decisions. According to the petition, finished surimi products have similar economic value and nutritional attributes regardless of the species originally used in its manufacture.

As noted previously, the fish species used in surimi and surimi-containing products are primarily Alaskan pollock, Pacific whiting/hake, cod, and

[1] The petition further mentioned that the limitations created by the existing ingredient labeling requirements also hinder the ability of the seafood industry to use conventional and innovative surimi processing technologies to optimize the yield of both target fish species (e.g., pollock, cod, Pacific whiting) and nontarget, by catch species (e.g., arrowtooth flounder) and that the North American Pacific Fishery Management Council has imposed increased utilization and recovery mandates on seafood harvesters and processors.

arrowtooth flounder. When making surimi, the fish are processed shortly after they are caught. They are headed, gutted, gilleted, skinned, deboned, and minced. Once minced, the meat is processed through a series of washes. After each wash, the minced fish is pressed through a rotary screen to dewater the product. The wash and screening steps are critical in removing blood, fat, pigments, and enzymes characteristic of the particular fish species used. Each wash step, beginning with the first, removes features associated with taste, smell, and color. The resultant fish ingredient is further refined, mixed with cryoprotectants, extruded into blocks, and frozen.

The petition argues that this processing produces a completely decharacterized myofibrillar (i.e., muscle fiber) protein such that even the most sophisticated laboratory techniques cannot determine with certainty the source fish of the protein. Likewise, the petition argues, this processing allows the interchangeability of different fish species because regardless of the fish species used, the resultant myofibrillar proteins are functionally interchangeable.

III. Agency Response

The agency has considered the arguments raised in the petition and finds that there is considerable merit in the need for more flexible ingredient labeling with regard to the particular fish species used in the production of surimi and surimi-containing foods. Information available to the agency (Ref. 1) supports the position stated in the petition that the processing of surimi sufficiently decharacterizes the fish protein such that the species from which the fish protein is derived is no longer distinguishable. In addition, the agency recognizes the limitations imposed by harvesting seasons and quotas on the availability of specific fish species, and the impracticability of maintaining different label inventories to reflect any and all possible formulation combinations. Consequently, the agency tentatively concludes that the existing ingredient labeling requirements are impracticable for the declaration of the fish ingredient in surimi and surimi-containing foods. Moreover, the agency is persuaded by the arguments presented in the petition that the use of a more flexible ingredient labeling requirement will not disadvantage consumers because the specific source of the fish protein has little bearing on the economic value, taste, or quality of the finished food. Under the provision the agency is proposing in this document, consumers who use the ingredient label to avoid certain foods for health-related reasons will still receive adequate information about the basic nature of the food and will be able to make informed purchase decisions. Thus, the agency tentatively finds that, like other permitted uses of "and/or" ingredient labeling, the use of such labeling for the declaration of the fish species in processed seafood products is consistent with other exceptions to the ingredient labeling requirements and would not compromise the type or amount of information received by the consumer regarding surimi and surimi-containing foods.

The agency notes, however, that the action requested in the petition, i.e., revision of CPG 540.700, is not an appropriate mechanism for the type of relief requested. As set out in section 403(i)(2) of the act, FDA can affirmatively sanction the use of "and/or" labeling only through notice and comment rulemaking. Thus, the agency is proposing to amend its ingredient labeling regulations in § 101.4(b) to provide for the use of "and/or" labeling of the specific fish species used in the fabrication of surimi and surimi-containing foods. (The agency notes that at the time a final rule is issued in this matter, a revised CPG also will be issued to reflect the final rule.)

IV. The Proposal

As noted in section III of this document, revising the CPG is not an appropriate mechanism to provide for the use of "and/or" labeling in the ingredient declaration of the fish protein species in surimi and surimi-containing foods. Consequently, the agency is not proposing the language that was suggested in the petition. However, the agency believes that the language that it is proposing in this document will effectively permit manufacturers of surimi and surimi-containing foods to maintain a single label inventory for use on such products formulated from protein derived from a variety of fish species. Furthermore, the agency believes that the action it is proposing in this document is consistent with its other provisions providing flexibility in ingredient declaration of certain ingredients. Specifically, the agency is proposing that the specific fish species may be declared using "and/or" labeling to list the fish species that are sometimes used in the food. Considering the information presented in the petition regarding the processing of the fish ingredient coupled with other information available to the agency describing the production of surimi (Ref. 1), the agency believes that a term such as "fish protein" could be used to describe the fish ingredient used in the production of surimi. For example, a manufacturer of a processed seafood product that contains surimi could list the various fish species that might be used to produce the surimi in the product's list of ingredients by stating "fish protein (contains one or more of the following: Pollock, cod and/or pacific whiting)."

V. Analysis of Economic Impacts

A. Benefit-Cost Analysis

FDA has examined the impacts of this proposed rule under Executive Order 12866. Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). According to Executive Order 12866, a regulatory action is "significant" if it meets any one of a number of specified conditions, including having an annual effect on the economy of $100 million; adversely affecting in a material way a sector of the economy, competition, or jobs; or if it raises novel legal or policy issues. FDA finds that this proposed rule is not a significant regulatory action as defined by Executive Order 12866. In addition, it has been determined that this proposed rule is not a major rule for the purpose of congressional review. For the purpose of congressional review, a major rule is one which is likely to cause an annual effect on the economy of $100 million; a major increase in costs or prices; significant effects on competition, employment, productivity, or innovation; or significant effects on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

FDA agrees with the petitioner that the current combination of seasonal species harvests, harvesting limits, labeling regulations, and limited product storage times places an unwarranted and costly logistical burden on surimi manufacturers. This combination of circumstances forces surimi manufacturers to maintain and coordinate several inventories of species-specific surimi and contingent labels that declare the specific fish species used to make the surimi. The convergence of these conditions also hampers the seafood industry's efforts to use conventional and innovative surimi processing technologies to optimize fishery yield.

This proposed rule will mitigate the logistical burden faced by surimi manufacturers. Because surimi manufacturers will be able to maintain a single label inventory and use innovative technologies, they will be able to operate more efficiently. Because of lower production costs, consumers may see slightly lower prices for surimi. Because of the greater flexibility for species usage, the goals of fisheries management will be easier to achieve.

This proposed rule will not result in any increase in societal costs. Because the proposed rule is permissive, there are no costs imposed on producers. Because the new labels adequately inform consumers, there will be no costs to them in terms of lost information or increased search costs.

B. Small Entity Analysis

FDA has examined the impacts of this proposed rule under the Regulatory Flexibility Act (RFA). The RFA (5 U.S.C. 601–612) requires Federal agencies to consider alternatives that would minimize the economic impact of their regulations on small businesses and other small entities. In compliance with the RFA, FDA finds that this proposed rule will not have a significant impact on a substantial number of small entities.

Because this proposed rule imposes no costs, it will not have a significant impact on a substantial number of small entities. Accordingly, under the RFA (5 U.S.C. 601–612), the agency certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities.

C. Unfunded Mandates Reform Act of 1995

FDA has examined the impacts of this proposed rule under the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). This rule does not trigger the requirement for a written statement under section 202(a) of the UMRA because it does not impose a mandate that results in an expenditure of $100 million (adjusted annually for inflation) or more by State, local, and tribal governments in the aggregate, or by the private sector, in any one year.

VI. Environmental Impact

The agency has determined under 21 CFR 25.30(k) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VII. Paperwork Reduction Act of 1995

This proposed rule contains ingredient declaration provisions that fall within the scope of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The agency tentatively concludes that the proposed provisions set forth below for the declaration of fish ingredients using "and/or" labeling would not impose any new information collection requirements because they create an exception from existing ingredient declaration requirements to make compliance easier. The ingredient declaration burden under § 101.4(b) has been approved by the Office of Management and Budget (OMB control number 0910–0381). To ensure that no additional burden has been overlooked, however, FDA seeks public comment on this tentative conclusion.

VIII. Comments and Proposed Dates

Interested persons may, on or before June 23, 1999, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above, between 9 a.m. and 4 p.m., Monday through Friday.

FDA proposes that any final rule that may issue based on this proposal become effective on the date that it is published in the **Federal Register**.

IX. References

The following references have been placed on display at the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Lee, C. M., "Surimi Process Technology," *Food Technology*, pp. 69–80, 1984.

2. Letter from Roy E. Martin to the Food and Drug Administration, dated October 13, 1998.

List of Subjects in 21 CFR Part 101

Food labeling, Nutrition, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 101 is amended as follows:

PART 101—FOOD LABELING

1. The authority citation for 21 CFR part 101 continues to read as follows:

Authority: 15 U.S.C. 1453, 1454, 1455; 21 U.S.C. 321, 331, 342, 343, 348, 371.

2. Section 101.4 is amended by adding paragraph (b)(23) to read as follows:

§ 101.4 Food; designation of ingredients.

* * * * *

(b) * * *

(23) When processed seafood products contain fish protein ingredients consisting primarily of the myofibrillar protein fraction from one or more fish species and the manufacturer is unable to adhere to a constant pattern of fish species in the fish protein ingredient, because of seasonal or other limitations of species availability, the common or usual name of each individual fish species need not be listed in descending order of predominance. Fish species not present in the fish protein ingredient may be listed if they are sometimes used in the product. Such ingredients must be identified by words indicating that they may not be present, such as "or", "and/or", or "contains one or more of the following:", e.g., "fish protein (contains one or more of the following: Pollock, cod, and/or pacific whiting)".

Dated: March 27, 1999.

William K. Hubbard,

Acting Deputy Commissioner for Policy.

[FR Doc. 99–8795 Filed 4–9–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

[DEA–182N]

Schedules of Controlled Substances: Proposed Placement of Ketamine Into Schedule III

AGENCY: Drug Enforcement Administration, Department of Justice.

ACTION: Notice of withdrawal of proposed rule.

SUMMARY: The Drug Enforcement Administration (DEA) is withdrawing a Notice of Proposed Rulemaking (NPRM) which was published on June 2, 1981 (46 FR 29484). This NPRM proposed the placement of the substance ketamine, and salts thereof, into Schedule III of the Controlled Substances Act (CSA). In 1981, however, the DEA concluded that evidence of actual abuse was not sufficient to proceed with the rulemaking process. The DEA did not withdraw the NPRM, but continued to monitor the diversion and abuse of the drug. In light of additional evidence, the DEA now has sufficient data to proceed with the control of ketamine.

So as to eliminate any confusion which may arise regarding the basis of the proposed action, the DEA is withdrawing the original NPRM (46 FR 29484) and under a separate notice in this issue of the **Federal Register**, the DEA is publishing a new NPRM which proposes the placement of the substance ketamine, its salts, isomers, and salts of isomers, into Schedule III of the CSA.

DATES: The proposed rule is withdrawn on April 9, 1999.

FOR FURTHER INFORMATION CONTACT: Frank Sapienza, Chief, Drug and Chemical Evaluation Section, Drug Enforcement Administration, Washington, D.C. 20537; Telephone: 202–307–7183; FAX: 202–307–8570.

SUPPLEMENTARY INFORMATION: On June 2, 1981, the DEA published a notice of proposed rulemaking (NPRM) in the **Federal Register** (46 FR 29484). The NPRM proposed to add the noncontrolled substance ketamine and any salts thereof to Schedule III of the Controlled Substances Act (21 U.S.C. 801 *et seq.*). The DEA received seven letters in response to the NPRM. Comments in support of the proposed action were received from the American Veterinary Medical Association and a professor at the Texas A & M University, College of Veterinary Medicine. Comments in opposition were received from the Warner-Lambert Company, the Humane Society of the United States, the Division of Comparative Medicine at the Johns Hopkins University School of Medicine, the Department of Laboratory Animal Medicine at the Southwest Foundation for Research and Education, and the Director of Scientific Support Services, Primate Research Institute at the New Mexico State University. No requests for a hearing were received.

The DEA, after careful consideration, determined to postpone proceeding with the proposed regulatory action. While the substance's potential for abuse was established, the DEA concluded that the number of documented cases of abuse of the substance was insufficient to justify the regulatory action in 1981. The DEA did not withdraw the NPRM and terminate further rulemaking on the proposal, but continued to monitor the diversion and abuse of ketamine. In 1992, an increase in the number of cases of diversion and abuse was first noted. Elsewhere in this issue of the **Federal Register**, the DEA publishes a new NPRM, which results from the current experience as it relates to the diversion and abuse of ketamine. So as to eliminate any confusion which might arise regarding the basis of the proposed action, the DEA is withdrawing the 1981 NPRM (46 FR 29484 June 2, 1981) and terminating further rulemaking on this proposal.

Dated: April 2, 1999.

Donnie R. Marshall,

Deputy Administrator.

[FR Doc. 99–8812 Filed 4–8–99; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[DEA–183P]

21 CFR Part 1308

Schedules of Controlled Substances: Proposed Placement of Ketamine Into Schedule III

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule is issued by the Deputy Administrator of the Drug Enforcement Administration (DEA). It proposes the placement of the substance ketamine, including its salts, isomers, and salts of isomers, into Schedule III of the Controlled Substances Act (CSA). This proposed action is based on an evaluation of the relevant data by the DEA and a recommendation from the Assistant Secretary for Health and Surgeon General of the Department of Health and Human Services (DHHS) that ketamine and products containing it be placed into Schedule III of the CSA. The effect of this proposed action will be to discourage the diversion and abuse of ketamine, and subject ketamine to the regulatory, civil and criminal controls of a Schedule III controlled substance.

DATES: Comments and objections must be received on or before June 8, 1999.

ADDRESSES: Comments and objections should be submitted in quintuplicate to the Deputy Administrator, Drug Enforcement Administration, Washington, D.C. 20537; Attention: DEA Federal Register Representative/CCR.

FOR FURTHER INFORMATION CONTACT: Frank Sapienza, Chief, Drug and Chemical Evaluation Section, Drug Enforcement Administration, Washington, D.C. 20537; Telephone: 202–307–7183; FAX: 202–307–8570.

SUPPLEMENTARY INFORMATION: Ketamine hydrochloride has been marketed in the United States since 1971 as a rapid-acting general anesthetic. It is used in both human and veterinary practice. Chemically, ketamine is related to PCP, a Schedule II controlled substance. The effects produced with use of ketamine are similar, although less intense and shorter in duration, to those produced by PCP.

The DHHS, by letter of March 18, 1981, recommended to the DEA that ketamine and products containing it be place into Schedule III of the CSA. The DEA published a notice of proposed rulemaking (NPRM) (46 FR 29484, June 2, 1981) which proposed the placement of the substance ketamine and salts thereof, into Schedule III of the CSA. In response to the NPRM, the DEA received seven letters. Comments in support of the proposed action were received from the American Veterinary Medical Association and a professor at the Texas A & M University, College of Veterinary Medicine. Comments in opposition were received from the Warner-Lambert Company, the Humane Society of the United States, the Division of Comparative Medicine at the Johns Hopkins University School of Medicine, the Department of Laboratory Animal Medicine at the Southwest Foundation for Research and Education, and the Director of Scientific Support Services, Primate Research Institute at the New Mexico State University. On review of the comments and the yearly average of four documented instances of diversion or abuse between 1975 and 1981, the DEA determined that the incidence of actual abuse was not sufficient to sustain the scheduling action. The DEA continued to monitor the situation.

The DEA summarized the relatively little actual abuse information available to it, and by letter of August 14, 1984, asked the DHHS if its previous recommendation for control of ketamine as a Schedule III controlled substance should stand. The DHHS, by letter of November 29, 1984, requested the information of abuse to which the DEA had referred. The DEA furnished the information to the DHHS by letter of February 18, 1985. By letter of September 8, 1986, the DHHS reaffirmed the recommendation to place ketamine into Schedule III of the CSA. On this occasion, as earlier, the DEA determined that the incidence of actual abuse, roughly five documented cases of diversion or abuse per year for the 1980–1986 period, was not sufficient to sustain the scheduling action and continued to monitor the situation.

Since 1992, 775 reports of ketamine diversion or abuse have been received by the DEA. The incidence of law enforcement encounters of individuals selling the drug, under its influence, or who had it in their possession, along with the wide geographic distribution of the encounters, the involvement of teenagers and young adults, the occurrence of veterinary clinic

burglaries directed at ketamine, the spreading notoriety of ketamine as a party drug, "Special K" or "K", and the number of ketamine abuse related hospital emergency department visits have caused the DEA to reconsider the noncontrolled status of the drug.

In 1998, the DEA submitted the DHHS information relevant to each of the eight factors which are determinative of control under the CSA. By letter of December 17, 1998, the Assistant Secretary for Health and Surgeon General responded recommending that ketamine be added to Schedule III. Enclosed with the letter was a document which summarized the findings related to the factors which the CSA requires the Secretary to consider [21 U.S.C. 811(c)].

The factors considered by the Assistant Secretary for Health and Surgeon General and the DEA with respect to ketamine were:

(1) Its actual or relative potential for abuse;

(2) Scientific evidence of its pharmacologocial effect;

(3) The state of current scientific knowledge regarding the drug or other substance;

(4) Its history and current pattern of abuse;

(5) The scope, duration, and significance of abuse;

(6) What, if any, risk there is to the public health;

(7) Its psychic or physiological dependence liability; and

(8) Whether the substance is an immediate precursor of a substance already controlled under the CSA.

Ketamine is used in human and veterinary medicine to produce a unique anesthetic state characterized by sedation, immobility, marked analgesia, and amnesia. Since 1992, the DEA has documented more than 568 incidents of the sale and/or use of the drug in schools by minors, on college campuses, at night clubs and rave dances, incidents of public intoxication and improper operation of a motor vehicle while under the influence of ketamine, burglaries of veterinary clinics in which ketamine was the sole item targeted, and the sale of ketamine as a drug of abuse to undercover police. During the same period of time, 207 ketamine abuse related visits to hospital emergency departments were recorded by the Drug Abuse Warning Network.

The pharmacological and behavioral effects of ketamine are similar, but somewhat less intense and shorter in duration, to those of PCP. Low dose intoxication with ketamine results in impaired attention, learning, and memory functions. Higher doses may result in ataxia, dizziness, elevated blood pressure, mental confusion, hyperexcitability, catalepsy (the inability to move), convulsions, a delusional dream-like, hallucinations, and psychosis. Long-term use of ketamine is associated with hallucinatory flashbacks and as inability to concentrate. Several case reports suggest that psychological dependence and tolerance develop in humans after long-term use of ketamine. Behavioral and physical dependence have been demonstrated in animals.

Diversion of ketamine pharmaceutical products from practitioners has been the most frequently documented source of the drug, with the primary sources being veterinary clinics. The liquid pharmaceutical product is injected or, more commonly, evaporated and the resultant powder inhaled (snorted). Clandestine manufacture of ketamine has not been encountered. In contrast to that of PCP, the synthesis of ketamine is difficult.

Ketamine is presently regulated as a controlled substance in 18 states; 15 states have placed it into Schedule III, two states have placed it into Schedule IV, and Massachusetts has designated it as a Class A substance. By letter of July 10, 1996, the President of Fort Dodge Animal Health asked the DEA to place ketamine into Schedule III of the CSA. That position reflected the belief "that moving the product to a Schedule III classification is in the best interest of the veterinary industry and the public." In letters to the DEA earlier that same year, the New Jersey Veterinary Medical Association and 43 veterinarians licensed by that State urged the DEA to place ketamine into Schedule III, as a means to limit the abuse of the drug while ensuring its continued availability for appropriate veterinary use.

Relying on the scientific and medical evaluation and the recommendation of the Assistant Secretary for Health in accordance with section 201(b) of the CSA [21 U.S.C. 811(b)], and the independent review of the DEA, the Deputy Administrator of the DEA, pursuant to sections 201(a) and 201(b) of the CSA [21 U.S.C. 811(a) and 811(b)], finds that:

(1) Based on information now available, ketamine has a potential for abuse less than the drugs or other substances in Schedules I and II.

(2) Ketamine hydrochloride has a currently accepted medical use in treatment in the United States; and

(3) Abuse of ketamine may lead to moderate or low physical dependence or high psychological dependence.

Based on these findings, the Deputy Administrators of the DEA concludes that ketamine, its isomers, salts, and salts of isomers, should be placed into Schedule III of the CSA.

Interested persons are invited to submit their comments, objections, or requests for a hearing, in writing, with regard to this proposal. Requests for a hearing should state, with particularity, the issues concerning which the person desires to be heard. All correspondence regarding this matter should be submitted to the Deputy Administrator, Drug Enforcement Administration, Washington, D.C. 20537. Attention: DEA Federal Register Representative/CCR. In the event that comments, objections, or requests for a hearing raise one or more issues which the Deputy Administrator finds warrant a hearing, the Deputy Administration shall order a public hearing by notice in the **Federal Register**, summarizing the issues to be heard and setting the time for the hearing.

In accordance with the provisions of the CSA [21 U.S.C. 811(a)], this action is a formal rulemaking "on the record after opportunity for a hearing." Such proceedings are conducted pursuant to the provisions of 5 U.S.C. 556 and 557 and, as such, are exempt from review by the Office of Management and Budget pursuant to Executive Order (E.O.) 12866, section 3(d)(1). The Deputy Administrator, in accordance with the Regulatory Flexibility Act [5 U.S.C. 605(b)], has reviewed this proposed rule and by approving it, certifies that it will not have a significant economic impact on a substantial number of small entities. Ketamine products are prescription drugs used as anesthetics in hospitals and clinics. Handlers of ketamine are likely to handle other controlled substances which are already subject to the regulatory requirements of the CSA.

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under provisions of the Unfunded Mandates Reform Act of 1995.

This rule is not a major rule, as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States based companies to compete with foreign based

companies in domestic and export markets.

This rule will not have substantial direct effects on the United States, on the relationship between the national government and the United States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with E.O. 12612, it is determined that this rule, if finalized, will not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 21 CFR Part 1308

Administrative practice and procedure, Drug traffic control, Narcotics, Prescription drugs.

Under the authority vested in the Attorney General by section 201(a) of the CSA [21 U.S.C. 811(a)], and delegated to the Administrator of the DEA by the Department of Justice regulations (28 CFR 0.100) and redelegated to the Deputy Administrator pursuant to 28 CFR 0.104, the Deputy Administrator hereby proposes that 21 CFR part 1308 be amended as follows:

PART 1308—[AMENDED]

1. The authority citation for 21 CFR 1308 continues to read as follows:

Authority: 21 U.S.C. 811, 812, 871(b), unless otherwise noted.

2. Section 1308.13 is proposed to be amended by redesignating the existing paragraphs (c)(5) through (c)(11) as (c)(6) through (c)(12).

3. Section 1308.13 is proposed to be amended by adding a new paragraph (c)(5) to read as follows:

§ 1308.13 Schedule III.

* * * * *

(c) Depressants.

* * * * *

(5) Ketamine, its salts, isomers, and salts of isomers . . 7285 [Some other names for ketamine: (±)-2-(2-chlorophenyl)-2-(methylamino)-cyclohexanone.

* * * * *

Dated: April 2, 1999.

Donnie R. Marshall,

Deputy Administrator.

[FR Doc. 99–8815 Filed 4–8–99; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 990

[Docket No. FR–4425–N–03]

Negotiated Rulemaking Committee on Operating Fund Allocation; Meetings

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of Negotiated Rulemaking Committee Meetings.

SUMMARY: This notice announces the second and third meetings of the Negotiated Rulemaking Committee on Operating Fund Allocation. These meetings are sponsored by HUD for the purpose of discussing and negotiating a proposed rule that would change the current method of determining the payment of operating subsidies to public housing agencies (PHAs).

DATES: The second committee meeting will be held on April 13 and April 14, 1999. On April 13, 1999, the meeting will begin at approximately 9:30 am and run until completion; on April 14, 1999, the meeting will begin at approximately 9:00 am and run until approximately 4:00 pm.

The third committee meeting will be held on May 13 and may 14, 1999. On May 13, 1999, the meeting will begin at approximately 9:30 am and run until completion; on May 14, 1999 the meeting will begin at approximately 9:00 am and run until approximately 4:00 pm.

ADDRESSES: The second and third committee meetings will take place at the Hyatt Dulles Hotel (Concorde Ballroom), 2300 Dulles Corner Boulevard, Herndon, VA 22071.

FOR FURTHER INFORMATION CONTACT: Joan DeWitt, Director, Funding and Financial Management Division, Public and Indian Housing, Room 4216, Department of Housing and Urban Development, 431 Seventh Street, SW, Washington, DC 20410–0500; telephone (202) 708–1872 ext. 4035 (this telephone numbers is not toll-free). Hearing or speech-impaired individuals may access this number via TTY by calling the toll-free federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: The Secretary of HUD has established the Negotiated Rulemaking Committee on Operating Fund Allocation to negotiate and develop a proposed that would change the current method of determining the payment of operating subsidies to PHAs. The establishment of the committee is required by the Quality Housing and Work Responsibility Act of 1996 (Pub.L. 105–276, approved October 21, 1998; 112 Stat. 2461) (the "Public Housing Reform Act"). The Public Housing Reform Act makes extensive changes to HUD's public and assisted housing programs. These changes include the establishment of an Operating Fund for the purpose of making assistance available to PHAs for the operation and management of public housing. The Public Housing Reform Act requires that the assistance to be made available from the new Operating Fund be determined using a formula developed through negotiated rulemaking procedures.

On March 16, 1999 (64 FR 12920), HUD published a notice in the **Federal Register** that announced: (1) The establishment of the negotiated rulemaking committee; (2) the names of the committee members; and (3) the dates, location, and agenda for the first committee meeting. The second and third meetings of the negotiated rulemaking committee will take place as described in the **DATES** and **ADDRESSES** section of this notice.

The agenda planned for the committee meetings includes: (1) The adoption of committee protocols, as appropriate; (2) defining the goals for the operating fund formula; (3) discussing the various methods for translating these goals into a formula-based allocation system; and (4) the scheduling of future meetings.

In accordance with the General Services Administration (GSA) regulations implementing the Federal Advisory Committee Act, HUD normally publishes a **Federal Register** meeting notice at least 15 calendar days before the date of an advisory committee meeting. The GSA regulations, however, also provide that an agency may give less than 15 days notice if the reasons for doing so are included in the **Federal Register** meeting notice. (See 41 CFR 10–6.1015(b).) Due to the difficulty in obtaining suitable hotel and conference room accommodations in the Washington, DC area during April, 1999, it has not been possible for HUD to announce the date and location of the second committee meeting before today. Given the strict statutory deadline for implementation of the Operating Fund formula, HUD believes it is imperative that the negotiations for development of the formula not be delayed. Failure to publish the Operating Fund final rule on a timely basis will delay the provision of operating subsidies to PHAs. Accordingly, rather than defer the negotiations, HUD has decided to proceed with the second committee meeting on April 13 and April 14, 1999.

The meetings will be open to the public without advance registration. Public attendance may be limited to the space available. Members of the public may make statements during the meeting, to the extent time permits, and file written statements with the committee for its consideration. Written statements should be submitted to the address listed in the **FOR FURTHER INFORMATION** section of this notice. Summaries of committee meetings will be available for public inspection and copying at the address in the same section.

Dated: April 7, 1999.

Harold Lucas,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 99–9004 Filed 4–8–99; 8:45 am]

BILLING CODE 4210–33–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

45 CFR Parts 2522, 2525, 2526, 2527, 2528, and 2529

RIN 3045–AA09

AmeriCorps Education Awards

AGENCY: Corporation for National and Community Service.

ACTION: Proposed rule.

SUMMARY: The Corporation proposes to amend several provisions relating to the AmeriCorps education award, including those governing the process for determining a participant's eligibility and the ways in which participants may use the award. These changes will promote efficiency and consistency in providing education awards to AmeriCorps participants.

DATES: Written comments should be received on or before June 8, 1999.

ADDRESSES: Comments may be mailed or delivered to Gary Kowalczyk, Coordinator of National Service Programs, Corporation for National and Community Service, 1201 New York Avenue NW, Washington, DC 20525, sent by facsimile transmission to (202) 565–2784, or sent electronically to gkowalcz@cns.gov. Copies of all communications received will be available for review at the Corporation by members of the public.

FOR FURTHER INFORMATION CONTACT: Gary Kowalczyk, Coordinator of National Service Programs, Corporation for National and Community Service, (202) 606–5000, ext. 340. T.D.D. (202) 565–2799. This proposed rule may be requested in an alternative format for persons with visual impairments.

SUPPLEMENTARY INFORMATION: Pursuant to the National and Community Service Act of 1990, as amended (42 U.S.C. 12501 *et seq.*), the Corporation for National and Community Service ("the Corporation"), through the National Service Trust, provides education awards and interest benefits to AmeriCorps participants who successfully complete a term of service in an approved national service position. AmeriCorps participants who successfully complete a term of national service receive an education award and student loan interest benefits from the National Service Trust. The AmeriCorps education award may be used to pay for specified educational costs and to repay certain types of student loans. In addition, upon a participant's successful completion of a term of service, the National Service Trust will pay the interest on certain types of student loans that accrued during the term.

On March 23, 1994 (59 FR 13772), the Corporation published final rules covering its grant programs, including general provisions regarding the provision of a partial education award for participants who are released because of compelling personal circumstances before completing their terms of service. On June 15, 1994 (59 FR 30709), the Corporation published interim final rules for the National Service Trust governing the AmeriCorps education award and related interest benefits. This notice of proposed rulemaking is intended to clarify the rules applicable to the determination of compelling personal circumstances as well as several National Service Trust rules concerning the education award.

Because AmeriCorps*State/National is administered under different legal authorities than AmeriCorps*National Civilian Community Corps and AmeriCorps*VISTA, in several instances (e.g., eligibility criteria, grievance procedure) the proposed rules govern the former but not the latter.

Eligibility Criteria for AmeriCorps* State/National

The proposed rule clarifies the eligibility criteria for AmeriCorps*State/National participants by making clear that 16 year olds may participate only if they are considered "out-of-school" and serving in a specified type of program and by making other technical changes.

The proposed rule also lists the type of documentation acceptable to establish an individual's status as a U.S. citizen, U.S. national, or lawful permanent resident alien (LPRA) for purposes of eligibility to participate in AmeriCorps. The Corporation strongly discourages the use of INS Form I–9, Employment Eligibility Verification, because that form includes categories of non-citizens who may be eligible for employment but who are not eligible under the more narrow eligibility for participation in AmeriCorps. Also, programs should note that a Social Security card or a driver's license is not acceptable for documenting citizenship, national, or LPRA status because individuals outside the three categories may obtain those forms of identification. In addition, programs should note that an application for permanent-resident status is not sufficient to establish eligibility to participate in AmeriCorps. Finally, programs should understand that no other non-citizens (for example, refugees, asylees, parolees, or individuals holding visas) are eligible to participate in AmeriCorps.

Release for Compelling Personal Circumstances

The proposed rule clarifies the circumstances under which an AmeriCorps participant who does not complete a term of service may receive a pro-rated education award. The proposed rule makes clear that a participant in an AmeriCorps*State/National program has the primary responsibility for demonstrating that compelling personal circumstances make completion of a term unreasonably difficult or impossible. Under the proposed rule, the program makes this determination and must document the basis for its decision.

The proposed rule gives examples of situations that would constitute compelling personal circumstances and examples of situations that are not considered compelling personal circumstances. These revisions are intended to increase consistency across all AmeriCorps programs in approving pro-rated education awards. The examples of compelling personal circumstances include those that are unforeseeable (e.g., serious illness). The examples also include circumstances that may be foreseeable but which the Corporation has determined, for public policy reasons, should not involve a penalty for those who leave service early (e.g, military service obligation, welfare to work transition). Programs may not make a determination of compelling personal circumstances solely to avoid a dispute involving a participant.

The proposed rule will supercede guidance previously provided by the Corporation in the provisions of its AmeriCorps*State/National cooperative agreements and related materials. For example, the proposed rule will

supercede AmeriCorps*State/National Grants Guidance 2 which authorizes a pro-rated education award to full-time members who fall less than five percent short of completing 1700 hours of service for reasons other than chronic truancy, tardiness, or performance problems.

The proposed rule restates that programs may, after determining that compelling personal circumstances are present, either suspend the individual's term to allow completion at a later time or release the individual and approve a pro-rated education award. The proposed rule removes precatory language encouraging programs to suspend, rather than release, individuals to maximize the service opportunities available to participants. However, it remains the Corporation's policy to encourage this outcome whenever possible.

Release for Cause

The proposed rule makes clear for AmeriCorps* State/National programs that if compelling personal circumstances are not present, the only other type of release is one for cause. A release for cause may cover a wide variety of circumstances and does not necessarily mean that a participant has engaged in wrongdoing or misconduct. The proposed rule removes language that may have indicated otherwise. The proposed rule includes additional guidance to AmeriCorps* State/National programs handling grievances filed by participants to contest a release for cause.

Suspension and Reinstatement

The proposed rule restates provisions regarding the suspension of a term of service and the process for reinstating suspended participants. For members placed in suspension status while they contest a release for cause, programs may not provide federally-funded benefits beyond those attributable to service actually performed without obtaining written approval from the Corporation.

References to Stafford Loan Forgiveness

The proposed rule removes references to Stafford Loan Forgiveness. Congress eliminated authority for this program in the Higher Education Amendments of 1998, Pub. L. 105–244.

School-to-Work Programs

The proposed rule makes minor technical amendments to reflect the current structure of the School-to-Work program.

Qualified Student Loans

The proposed rule provides examples of the types of loans that are eligible for repayment and adds a specific reference to other loans that may be designated as such by Congress. This is intended to encompass provisions in appropriations laws that expand the list of qualified student loans. For the past several years, Congress has used appropriations laws, rather than an amendment to the National and Community Service Act itself, to classify as a qualified student loan any loan made directly to a student by the Alaska Commission on Postsecondary Education.

First and Second Terms of Service

By statute, an individual may receive an education award for only the first and second term of service for which an education award is approved for successful completion. The proposed rule clarifies the circumstances under which a term of service counts as a first or second term for which an education award may be provided. The proposed rule makes clear that if an individual is released for reasons other than misconduct prior to completing fifteen percent of the term of service, that term does not count as one of the two terms for which an education award may be provided.

Amount of Education Award

The proposed rule clarifies the provisions regarding the amount of the education award for various terms of service.

Procedures for Accessing an Education Award and Related Interest Benefits

The proposed rule clarifies the steps necessary to access an education award.

Executive Order 12866

The Corporation has determined that this regulatory action is not a "significant" rule within the meaning of Executive Order 12866 because it is not likely to result in: (1) An annual effect on the economy of $100 million or more, or an adverse and material effect on a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal government or communities; (2) the creation of a serious inconsistency or interference with an action taken or planned by another agency; (3) a material alteration in the budgetary impacts of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) the raising of novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866.

Regulatory Flexibility Act

The Corporation has determined that this regulatory action will not result in (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets. Therefore, the Corporation has not performed the initial regulatory flexibility analysis that is required under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) for major rules that are expected to have such results.

Other Impact Analyses

Because the proposed changes do not authorize any information collection activity outside the scope of existing regulations, this regulatory action is not subject to review and approval under the Paperwork Reduction Act of 1995 (44 U.S.C. 3500 *et seq.*). If the Corporation proposes to modify any of the forms used in connection with determining eligibility of individuals for payments from the National Service Trust, the Corporation will comply with clearance procedures as provided under the Paperwork Reduction Act.

For purposes of Title II of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1531–1538, as well as Executive Order 12875, this regulatory action does not contain any federal mandate that may result in increased expenditures in either Federal, State, local, or tribal governments in the aggregate, or impose an annual burden exceeding $100 million on the private sector.

List of Subjects

45 CFR Part 2522

AmeriCorps, Grant programs-social programs, Reporting and recordkeeping requirements, Volunteers.

45 CFR Part 2525

Grant programs-social programs, Student aid, Volunteers.

45 CFR Part 2526

Grant programs-social programs, Student aid, Volunteers.

45 CFR Part 2527

Grant programs—social programs, Student aid, Volunteers.

45 CFR Part 2528

Grant programs—social programs, Student aid, Volunteers.

45 CFR Part 2529

Grant programs—social programs, Student aid, Volunteers.

For the reasons stated in the preamble, chapter XXV, title 45 of the Code of Federal Regulations is proposed to be amended as follows:

PART 2522—AMERICORPS PARTICIPANTS, PROGRAMS, AND APPLICANTS

1. The authority citation for part 2522 continues to read as follows:

Authority: 42 U.S.C. 12501 *et seq.*

2. Section 2522.200 is revised to read as follows:

§ 2522.200 What are the eligibility requirements for an AmeriCorps participant?

(a) *Eligibility.* An AmeriCorps participant must—

(1)(i) Be at least 17 years of age at the commencement of service; or

(ii) Be an out-of-school youth 16 years of age at the commencement of service participating in a program described in § 2522.110(b)(3) or § 2522.110(g);

(2)(i) Have a high school diploma or its equivalent; or

(ii) Not have dropped out of elementary or secondary school to enroll as an AmeriCorps participant and must agree to obtain a high school diploma or its equivalent prior to using the education award; or

(iii) Obtain a waiver from the Corporation of the requirements in paragraphs (a)(2)(i) and (a)(2)(ii) of this section based on an independent evaluation secured by the program demonstrating that the individual is not capable of obtaining a high school diploma or its equivalent; or

(iv) Be enrolled in an institution of higher education on an ability to benefit basis and be considered eligible for funds under section 484 of the Higher Education Act of 1965 (20 U.S.C. 1091);

(3) Be a citizen, national, or lawful permanent resident alien of the United States.

(b) *Primary documentation of status as a U.S. citizen or national.* The following are acceptable forms of certifying status as a U.S. citizen or national:

(1) A birth certificate showing that the individual was born in one of the 50 states, the District of Columbia, Puerto Rico, Guam, the U.S. Virgin Islands, American Samoa, or the Northern Mariana Islands;

(2) A United States passport;

(3) A report of birth abroad of a U.S. Citizen (FS–240) issued by the State Department;

(4) A certificate of birth-foreign service (FS 545) issued by the State Department;

(5) A certification of report of birth (DS–1350) issued by the State Department;

(6) A certificate of naturalization (Form N–550 or N–570) issued by the Immigration and Naturalization Service; or

(7) A certificate of citizenship (Form N–560 or N–561) issued by the Immigration and Naturalization Service.

(c) *Primary documentation of status as a lawful permanent resident alien of the United States.* The following are acceptable forms of certifying status as a lawful permanent resident alien of the United States:

(1) Permanent Resident Card, INS Form I–551;

(2) Alien Registration Receipt Card, INS Form I–551;

(3) A passport indicating that the INS has approved it as temporary evidence of lawful admission for permanent residence; or

(4) A Departure Record (INS Form I–94) indicating that the INS has approved it as temporary evidence of lawful admission for permanent residence.

(d) *Secondary documentation.* If primary documentation is not available, the program must obtain written approval from the Corporation that other documentation is sufficient to demonstrate the individual's status as a U.S. citizen, U.S. national, or lawful permanent resident alien.

3. Section 2522.230 is revised to read as follows:

§ 2522.230 Under what circumstances may AmeriCorps participants be released from completing a term of service, and what are the consequences?

An AmeriCorps program may release a participant from completing a term of service for compelling personal circumstances as demonstrated by the participant, or for cause.

(a) *Release for compelling personal circumstances.* (1) An AmeriCorps program may release a participant upon a determination by the program, consistent with the criteria listed in paragraphs (a)(5) through (a)(6) of this section, that the participant is unable to complete the term of service because of compelling personal circumstances.

(2) A participant who is released for compelling personal circumstances and who completes at least 15 percent of the required term of service is eligible for a pro-rated education award.

(3) The participant has the primary responsibility for demonstrating that compelling personal circumstances prevent the participant from completing the term of service.

(4) The program must document the basis for any determination that compelling personal circumstances prevent a participant from completing a term of service.

(5) Compelling personal circumstances include:

(i) Those that are beyond the participant's control, such as, but not limited to:

(A) A participant's disability or serious illness;

(B) Disability, serious illness, or death of a participant's family member if this makes completing a term unreasonably difficult or impossible; or

(C) Conditions attributable to the program or otherwise unforeseeable and beyond the participant's control, such as a natural disaster, a strike, relocation of a spouse, or the nonrenewal or premature closing of a project or program, that make completing a term unreasonably difficult or impossible;

(ii) Those that the Corporation, has for public policy reasons, determined as such, including:

(A) Military service obligations;

(B) Acceptance by a participant of an opportunity to make the transition from welfare to work; or

(C) Acceptance of an employment opportunity by a participant serving in a program that includes in its approved objectives the promotion of employment among its participants.

(6) Compelling personal circumstances do not include leaving a program:

(i) To enroll in school;

(ii) To obtain employment, other than in moving from welfare to work or in leaving a program that includes in its approved objectives the promotion of employment among its participants; or

(iii) Because of dissatisfaction with the program.

(7) As an alternative to releasing a participant, an AmeriCorps *State/National program may, after determining that compelling personal circumstances exist, suspend the participant's term of service for up to two years (or longer if approved by the Corporation based on extenuating circumstances) to allow the participant to complete service with the same or similar AmeriCorps program at a later time.

(b) *Release for cause.* (1) A release for cause encompasses any circumstances

other than compelling personal circumstances that warrant an individual's release from completing a term of service.

(2) AmeriCorps programs must release for cause any participant who is convicted of a felony or the sale or distribution of a controlled substance during a term of service.

(3) A participant who is released for cause may not receive any portion of the AmeriCorps education award or any other payment from the National Service Trust.

(4) An individual who is released for cause must disclose that fact in any subsequent applications to participate in an AmeriCorps program. Failure to do so disqualifies the individual for an education award, regardless of whether the individual completes a term of service.

(5) An AmeriCorps *State/National participant released for cause may contest the program's decision by filing a grievance. Pending the resolution of a grievance procedure filed by an individual to contest a determination by a program to release the individual for cause, the individual's service is considered to be suspended. For this type of grievance, a program may not—while the grievance is pending or as part of its resolution—provide a participant with federally-funded benefits (including payments from the National Service Trust) beyond those attributable to service actually performed, without the program receiving written approval from the Corporation.

(c) *Suspended service.* (1) A program must suspend the service of an individual who faces an official charge of a violent felony (e.g., rape, homicide) or sale or distribution of a controlled substance.

(2) A program must suspend the service of an individual who is convicted of possession of a controlled substance.

(3) An individual may not receive a living allowance or other benefits, and may not accrue service hours, during a period of suspension under this provision.

(d) *Reinstatement.* (1) A program may reinstate an individual whose service was suspended under paragraph (c)(1) of this section if the individual is found not guilty or if the charge is dismissed.

(2) A program may reinstate an individual whose service was suspended under paragraph (c)(2) of this section only if the individual demonstrates the following:

(i) For an individual who has been convicted of a first offense of the possession of a controlled substance, the individual must have enrolled in a drug rehabilitation program;

(ii) For an individual who has been convicted for more than one offense of the possession of a controlled substance, the individual must have successfully completed a drug rehabilitation program.

PART 2525—NATIONAL SERVICE TRUST: PURPOSE AND DEFINITIONS

1. The authority citation for part 2525 continues to read as follows:

Authority: 42 U.S.C. 12601–12604.

2. Section 2525.10 is revised to read as follows:

§ 2525.10 What is the National Service Trust?

The National Service Trust is an account in the Treasury of the United States from which the Corporation makes payments of education awards, pays interest that accrues on qualified student loans for AmeriCorps participants during terms of service in approved national service positions, and makes other payments authorized by Congress.

3. Section 2525.20 is amended by revising the definitions for "Approved school-to-work program," "Education award," and "Qualified student loan" and by adding a definition for "Current educational expenses" in alphabetical order to read as follows:

§ 2525.20 Definitions.

* * * * *

Approved school-to-work program. The term *approved school-to-work program* means a program that is involved in a federally-approved school-to-work system, as certified by a State, designated local partnership, or other entity that receives a grant under the School-to-Work Opportunities Act of 1994 (20 U.S.C. 6101 *et seq.*).

* * * * *

Current educational expenses. The term *current educational expenses* means the cost of attendance for a period of enrollment that begins after an individual receives an education award.

Education award. The term *education award* means the financial assistance available under parts 2526 and 2528 of this chapter for which an individual in an approved AmeriCorps position may be eligible.

* * * * *

Qualified student loan. The term *qualified student loan* means any loan made, insured, or guaranteed pursuant to title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 et seq.), other than a loan to a parent of a student pursuant to section 428B of such Act (20 U.S.C. 1078–2), any loan made pursuant to title VII or VIII of the Public Service Health Act (42 U.S.C. 292a et seq.), or any other loan designated as such by Congress. This includes, but is not necessarily limited to, the following:

(1) *Federal Family Education Loans.* (i) Subsidized and Unsubsidized Stafford Loans.

(ii) Supplemental Loans to Students (SLS).

(iii) Federal Consolidation Loans.

(iv) Guaranteed Student Loans (predecessor to Stafford Loans).

(v) Federally Insured Student Loans (FISL).

(2) *William D. Ford Federal Direct Loans.* (i) Direct Subsidized and Unsubsidized Stafford Loans.

(ii) Direct Subsidized and Unsubsidized Ford Loans.

(iii) Direct Consolidation Loans.

(3) *Federal Perkins Loans.* (i) National Direct Student Loans.

(ii) National Defense Student Loans.

(4) *Public Health Service Act Loans.* (i) Health Education Assistance Loans (HEAL).

(ii) Health Professions Student Loans (HPSL).

(iii) Loans for Disadvantaged Students (LDS).

(iv) Nursing Student Loans (NSL).

(v) Primary Care Loans (PCL).

* * * * *

PART 2526—ELIGIBILITY FOR AN EDUCATION AWARD

1. The heading for part 2526 is revised to read as set forth above.

1a. The authority citation for part 2526 continues to read as follows:

Authority: 42 U.S.C. 12601–12604.

2. Section 2526.10 is revised to read as follows:

§ 2526.10 Who is eligible to receive an education award from the National Service Trust?

(a) *General.* An individual is eligible to receive an education award from the National Service Trust if the individual—

(1) Is a citizen, national, or lawful permanent resident alien of the United States;

(2) Is either at least 17 years of age at the commencement of service or is an out-of-school youth 16 years of age at the commencement of service participating in a program described in § 2522.110(b)(3) or (g) of this chapter;

(3) Successfully completes a term of service in an approved national service position.

(b) *High school diploma or equivalent.* To use an education award, an individual must—

(1) Have received a high school diploma or its equivalent; or

(2) Be enrolled at an institution of higher education on the basis of meeting the standard described in paragraph (1) or (2) of subsection (a) of section 484 of the Higher Education Act of 1965 (20 U.S.C. 1091) and meet the requirements of subsection of section 484; or

(3) Have received a waiver described in § 2522.200(b) of this chapter.

(c) *Prohibition on duplicate benefits.* An individual who receives a post-service benefit in lieu of an education award may not receive an education award for the same term of service.

(d) *Penalties for false information.* Any individual who makes a materially false statement or representation in connection with the approval or disbursement of an education award or other payment from the National Service Trust may be liable for the recovery of funds and subject to civil and criminal sanctions.

3. Section 2526.20 is revised to read as follows:

§ 2526.20 Is an AmeriCorps participant who does not complete an originally-approved term of service eligible to receive a pro-rated education award?

(a) *Compelling personal circumstances.* A participant who is released prior to completing an originally-approved term of service for compelling personal circumstances and who completes at least 15 percent of the originally-approved term of service is eligible for a pro-rated education award.

(b) *Release for cause.* A participant who is released prior to completing an originally-approved term of service for cause is not eligible for any portion of an education award.

§ 2526.30 [Removed]

§ 2526.60 [Redesignated as § 2526.30]

4. Section 2526.30 is removed and § 2526.60 is redesignated as § 2526.30.

§ 2526.40 [Removed]

§ 2526.70 [Redesignated as § 2526.40]

5. Section 2526.40 is removed and § 2526.70 is redesignated as § 2526.40.

§ 2526.40 [Amended]

6. Newly redesignated § 2526.40 is amended in paragraph (b)(2) by removing the words "under § 2526.40".

§ 2526.50 [Removed]

§ 2526.80 [Redesignated as § 2526.50]

7. Section 2526.50 is removed and § 2526.80 is redesignated as § 2526.50.

8. Newly redesignated § 2526.50 is revised to read as follows:

§ 2526.50 Is there a limit on the number of education awards an individual may receive?

(a) *First and second terms of service.* An individual may receive an education award for only the first and second terms of service for which an education award is available, regardless of the length of the term.

(b) *Release for cause.* Except as provided in paragraph (c) of this section, a term of service from which an individual is released for cause counts as one of the two terms of service for which an individual may receive an education award.

(c) *Early release.* If a participant is released for reasons other than misconduct prior to completing fifteen percent of a term of service, the term will not be considered one of the two terms of service for which an individual may receive an education award.

§ 2526.90 [Redesignated as § 2526.60]

9. Section 2526.90 is redesignated as § 2526.60 and revised to read as follows:

§ 2526.60 May an individual receive an education award and related interest benefits from the National Service Trust as well as other loan cancellation benefits for the same service?

No. An individual may not receive an education award and related interest benefits from the National Service Trust for a term of service and have that same service credited toward repayment, discharge, or cancellation of other student loans.

§ 2526.100 [Removed]

10. Section 2526.100 is removed.

PART 2527—DETERMINING THE AMOUNT OF AN EDUCATION AWARD

1. The heading for part 2527 is revised to read as set forth above.

1a. The authority citation for part 2527 continues to read as follows:

Authority: 42 U.S.C. 12601–12604.

2. Section 2527.10 is revised to read as follows:

§ 2527.10 What is the amount of an AmeriCorps education award?

(a) *Full-time term of service.* The education award for a full-time term of service of at least 1,700 hours is $4,725.

(b) *Part-time term of service.* The education award for a part-time term of service of at least 900 hours is $2,362.50.

(c) *Reduced part-time term of service.* The education award for a reduced part-time term of service of fewer than 900 hours is—

(1) An amount equal to the product of—

(i) The number of hours of service required to complete the reduced part-time term of service divided by 900; and

(ii) 2,362.50; or

(2) An amount as determined otherwise by the Corporation.

(d) *Release for compelling personal circumstances.* The education award for an individual who is released from completing an originally-approved term of service for compelling personal circumstances is equal to the product of—

(1) The number of hours completed divided by the number of hours in the originally-approved term of service; and

(2) The amount of the education award for the originally-approved term of service.

1. Revise part 2528 to read as follows:

PART 2528—USING AN EDUCATION AWARD

Sec.

2528.10 For what purposes may an education award be used?
2528.20 What steps are necessary to use an education award to repay a qualified student loan?
2528.30 What steps are necessary to use an education award to pay all or part of the current cost of attendance at an institution of higher education?
2528.40 Is there a limit on the amount of an individual's education award that the Corporation will disburse to an institution of higher education for a given period of enrollment?
2528.50 What happens if an individual withdraws or fails to complete the period of enrollment in an institution of higher education for which the Corporation has disbursed all or part of that individual's education award?
2528.60 What steps are necessary to use an education award to pay expenses incurred in participating in an approved school-to-work program?
2528.70 What happens if an individual withdraws or fails to complete the period of enrollment in an approved school-to-work program for which the Corporation has disbursed all or part of that individual's education award?

Authority: 42 U.S.C. 12601–12604.

§ 2528.10 For what purposes may an education award be used?

(a) *Authorized uses.* An education award may be used—

(1) To repay qualified student loans in accordance with § 2528.20;

(2) To pay all or part of the current cost of attendance at an institution of higher education in accordance with § 2528.30 through § 2528.50;

(3) To pay expenses incurred in participating in an approved school-to-work program in accordance with § 2528.60 through § 2528.70.

(b) *Multiple uses.* An education award is divisible and may be applied to any

combination of loans, costs, or expenses described in paragraph (a) of this section.

§ 2528.20 What steps are necessary to use an education award to repay a qualified student loan?

(a) *Required information.* Before disbursing an amount from an education award to repay a qualified student loan, the Corporation must receive—

(1) An individual's written authorization and request for a specific payment amount;

(2) Identifying and other information from the holder of the loan as requested by the Corporation and necessary to ensure compliance with this part.

(b) *Payment.* When the Corporation receives the information required under paragraph (a) of this section, the Corporation will pay the holder of the loan and notify the individual of the payment.

(c) *Aggregate payments.* The Corporation may establish procedures to aggregate payments to holders of loans for more than a single individual.

§ 2528.30 What steps are necessary to use an education award to pay all or part of the current cost of attendance at an institution of higher education?

(a) *Required information.* Before disbursing an amount from an education award to pay all or part of the current cost of attendance at an institution of higher education, the Corporation must receive—

(1) An individual's written authorization and request for a specific payment amount;

(2) Information from the institution of higher education as requested by the Corporation, including verification that—

(i) It has in effect a program participation agreement under section 487 of the Higher Education Act of 1965 (20 U.S.C. 1094);

(ii) Its eligibility to participate in any of the programs under title IV of the Higher Education Act of 1965 has not been limited, suspended, or terminated;

(iii) It has in effect a fair and equitable refund policy, consistent with the requirements of paragraphs (b) and (c) of section 484B of the Higher Education Act of 1965 (20 U.S.C. 1091b), and must ensure an appropriate refund to the Corporation if an individual who has used an education award withdraws or otherwise fails to complete the period of enrollment for which the education award was provided;

(iv) Individuals using education awards to pay for the current cost of attendance at that institution do not comprise more than 15 percent of the institution's total student population;

(v) The amount requested will be used to pay all or part of the individual's cost of attendance;

(vi) The amount requested does not exceed the difference between:

(A) The individual's cost of attendance; and

(B) The sum of the individual's estimated student financial assistance for that period under part A of title IV of the Higher Education Act and the individual's veterans' education benefits as defined in section 480(c) of the Higher Education Act (20 U.S.C. 1087vv(c)).

(b) *Payment.* When the Corporation receives the information required under paragraph (a) of this section, the Corporation will pay the institution and notify the individual of the payment.

(c) *Installment payments.* The Corporation will disburse the education award to the institution of higher education in at least two separate installments, none of which exceeds 50 percent of the total amount. The interval between installments may not be less than one-half of the period of enrollment, except as necessary to permit the second installment to be paid at the beginning of the second semester, quarter, or other division of a period of enrollment.

§ 2528.40 Is there a limit on the amount of an individual's education award that the Corporation will disburse to an institution of higher education for a given period of enrollment?

Yes. The Corporation's disbursement from an individual's education award for any period of enrollment may not exceed the difference between—

(a) The individual's cost of attendance for that period of enrollment, determined by the institution of higher education in accordance with section 472 of the Higher Education Act of 1965 (20 U.S.C. 1987ll); and

(b) The sum of—

(1) The individual's estimated financial assistance for that period under part A of title IV of the Higher Education Act; and

(2) The individual's veterans' education benefits as defined under section 480(c) of the Higher Education Act (20 U.S.C. 1087vv(c)).

§ 2528.50 What happens if an individual withdraws or fails to complete the period of enrollment in an institution of higher education for which the Corporation has disbursed all or part of that individual's education award?

(a)(1) An institution of higher education that receives a disbursement of education award funds from the Corporation must have in effect, and must comply with, a fair and equitable refund policy that includes procedures for providing a refund to the Corporation if an individual for whom the Corporation has disbursed education award funds withdraws or otherwise fails to complete a period of enrollment.

(2) For purposes of this part, an institution of higher education's refund policy is deemed "fair and equitable" if it is consistent with the requirements of paragraphs (b) and (c) of section 484B of the Higher Education Act of 1965 (20 U.S.C. 1091b).

(b) The Corporation will credit any refund received for an individual under paragraph (a) of this section to the individual's education award allocation in the National Service Trust.

§ 2528.60 What steps are necessary to use an education award to pay expenses incurred in participating in an approved school-to-work program?

(a) *Required information.* Before disbursing an amount from an education award to pay expenses incurred in participating in an approved school-to-work program, the Corporation must receive—

(1) An individual's written authorization and request for a specific payment amount;

(2) Information from the school-to-work program as requested by the Corporation, including verification that—

(i) It is involved in a federally-approved school-to-work system, as certified by a State, designated local partnership, or other entity that receives a grant under the School-to-Work Opportunities Act of 1994 (20 U.S.C. 6101);

(ii) The amount requested will be used to pay all or part of the individual's cost of participating in the school-to-work program;

(iii) It will ensure an appropriate refund, consistent with the requirements of paragraphs (b) and (c) of section 484B of the Higher Education Act of 1965 (20 U.S.C. 1091b), to the Corporation if an individual who has used an education award withdraws or otherwise fails to complete the period of enrollment for which the education award was provided.

(b) *Payment.* When the Corporation receives the information required under paragraph (a), the Corporation will pay the program and notify the individual of the payment.

§ 2528.70 What happens if an individual withdraws or fails to complete the period of enrollment in an approved school-to-work program for which the Corporation has disbursed all or part of that individual's education award?

(a)(1) An approved school-to-work program that receives a disbursement of education award funds from the Corporation must provide a fair and equitable refund to the Corporation if an individual for whom the Corporation has disbursed education award funds withdraws or otherwise fails to complete a period of enrollment.

(2) For purposes of this part, a refund is deemed "fair and equitable" if it is an amount consistent with the requirements of paragraphs (b) and (c) of section 484B of the Higher Education Act of 1965 (20 U.S.C. 1091b).

(b) The Corporation will credit any refund received for an individual under paragraph (a) of this section to the individual's education award allocation in the National Service Trust.

1. Revise part 2529 to read as follows:

PART 2529—PAYMENT OF ACCRUED INTEREST

Sec.

2529.10 Under what circumstances will the Corporation pay interest that accrues on qualified student loans during an individual's term of service in an approved AmeriCorps position?
2529.20 What steps are necessary to obtain forbearance in the repayment of a qualified student loan during an individual's term of service in an approved AmeriCorps position?
2529.30 What steps are necessary for using funds in the National Service Trust to pay interest that has accrued on a qualified student loan during a term of service for which an individual has obtained forbearance?

Authority: 42 U.S.C. 12601–12604.

§ 2529.10 Under what circumstances will the Corporation pay interest that accrues on qualified student loans during an individual's term of service in an approved AmeriCorps position?

(a) *Eligibility.* The Corporation will pay interest that accrues on an individual's qualified student loan, subject to the limitation on amount in paragraph (b) of this section, if—

(1) The individual successfully completes a term of service in an approved AmeriCorps position; and

(2) The holder of the loan approves the individual's request for forbearance during the term of service.

(b) *Amount.* The percentage of accrued interest that the Corporation will pay is the lesser of—

(1) The product of—

(i) The number of hours of service completed divided by the number of days for which forbearance was granted; and

(ii) 365 divided by 17; and

(2) 100.

(c) *Supplemental to education award.* A payment of accrued interest under this part is supplemental to an education award received by an individual under parts 2526 through 2528 of this chapter.

(d) *Limitation.* The Corporation is not responsible for the repayment of any accrued interest in excess of the amount determined in accordance with paragraph (b) of this section.

(e) *Suspended service.* The Corporation will not pay any interest expenses that accrue on an individual's qualified student loan during a period of suspended service.

§ 2529.20 What steps are necessary to obtain forbearance in the repayment of a qualified student loan during an individual's term of service in an approved AmeriCorps position?

(a) An individual seeking forbearance must submit a request to the holder of the loan.

(b) If, before approving a request for forbearance, the holder of the loan requires verification that the individual is serving in an approved AmeriCorps position, the Corporation will provide verification upon a request from the individual or the holder of the loan.

§ 2529.30 What steps are necessary for using funds in the National Service Trust to pay interest that has accrued on a qualified student loan during a term of service for which an individual has obtained forbearance?

(a) The Corporation will make payments from the National Service Trust for interest that has accrued on a qualified student loan during a term of service which the individual has successfully completed and for which an individual has obtained forbearance, after the following:

(1) The program verifies that the individual has successfully completed the term of service and the dates upon which the term of service began and ended;

(2) The holder of the loan verifies the amount of interest that has accrued during the term of service.

(b) When the Corporation receives all necessary information from the program and the holder of the loan, the Corporation will pay the holder of the loan and notify the individual of the payment.

Dated: March 31, 1999.

Thomas L. Bryant,

Acting General Counsel.

[FR Doc. 99–8363 Filed 4–8–99; 8:45 am]
BILLING CODE 6050–28–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

Migratory Bird Hunting; Application for Approval of HEVI-METAL™ as a Nontoxic Shot Material for Waterfowl Hunting

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of application.

SUMMARY: We are providing public notification that Standard Resources Corporation, of Cherry Hill, New Jersey, has applied for approval of HEVI–METAL™ shot as nontoxic for waterfowl hunting in the United States. The Service has initiated review of HEVI–METAL™ under the criteria set out in Tier 1 of the revised nontoxic shot approval procedures contained in 50 CFR 20.134.

DATES: A comprehensive review of the Tier 1 information is to be concluded no later than June 8, 1999.

ADDRESSES: The Standard Resources Corporation (Standard) application may be reviewed in Room 634 at the Fish and Wildlife Service, Office of Migratory Bird Management, 4401 N. Fairfax Drive, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Jon Andrew, Chief, Office of Migratory Bird Management, (703) 358–1714, or James R. Kelley, Jr., Wildlife Biologist, Office of Migratory Bird Management, (703) 358–1964.

SUPPLEMENTARY INFORMATION: We continue to provide opportunity for submission for approval of alternative types of shot for waterfowling that, when spent, does not pose a significant toxic hazard to migratory birds and other wildlife when ingested. Currently, only bismuth-tin and steel shot are unconditionally approved for use in waterfowling. Tungsten-iron (published October 7, 1998; 63 FR 54016), tungsten-polymer (published October 7, 1998; 63 FR 54022), and tungsten-matrix (published October 19, 1998; 63 FR 55840) shot types received temporary conditional approval for the 1998–99 waterfowl hunting season. We are currently reviewing applications for approval for shot types other than those previously referenced in this notice. We anticipate that approval of additional suitable candidate shot materials as nontoxic is feasible in the near future.

On January 25, 1999, Standard submitted its application with the counsel that it contained all of the specified information for a complete Tier 1 submission. Tier 1 approval for

HEVI–METAL™ is being sought under the revised test protocol for nontoxic approval procedures for shot and shot coatings that we published in 50 CFR 20.134 (December 1, 1997; 62 FR 63608).

We have determined that Standard's application is complete, and have initiated a comprehensive review of the Tier 1 information. After this review, we will either: (1) publish a Notice of Review to inform the public that the Tier 1 test results are inconclusive; or (2) publish a proposed rule for approval of the candidate shot. We will indicate in a Notice of Review if we will require other tests before nontoxic approval of HEVI–METAL™ shot is again considered. If review of the Tier 1 application results in a preliminary determination that the candidate material does not pose a significant hazard to migratory birds, other wildlife, and their habitats, we will proceed with a rulemaking that proposes to approve the candidate shot.

HEVI–METAL™ pellets have specific gravity of 11.0 g/cm^3 and are composed of 50 percent tungsten, 35 percent nickel, and 15 percent iron. Part A of the application contains a statement of proposed use, a chemical and physical description of the shot material, a statement of the expected variability of shot during production, an estimate of yearly production, and a 5-pound sample of the fabricated shot. Part B of the application contains a discussion of the acute toxicities of HEVI–METAL™ components to mammals and to birds, limited information on the fate of ingested shot on a small sample of captive-reared mallard ducks, and a summary of the known toxicities of HEVI–METAL™ components for vertebrates. Part C of the application considers the effects of firing on the shot, the half-life of components of breakdown products, the estimated environmental concentration in soil and water, and other environmental impacts of components of the shot. References are provided to support the information and conclusions contained in the application; the list of references cited is available from us upon request.

Authorship: The primary author of this document is James R. Kelley, Jr., Wildlife Biologist, Office of Migratory Bird Management.

Dated: April 2, 1999.

Jamie Rappaport Clark,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 99–8921 Filed 4–8–99; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register
Vol. 64, No. 68
Friday, April 9, 1999

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Newspaper Used for Publication of Legal Notice of Appealable Decisions for the Northern Region; Idaho, Montana, North Dakota, and portions of South Dakota and Eastern Washington

AGENCY: Forest Service, USDA.
ACTION: Notice.

SUMMARY: This notice lists the newspapers that will be used by all Ranger Districts, Forests, and the Regional Office of the Northern Region to publish legal notice of all decisions subject to appeal under 36 CFR parts 215 and 217 and to publish notices for public comment and notice of decision subject to the provisions of 36 CFR part 215. The intended effect of this action is to inform interested members of the public which newspapers will be used to publish legal notices for public comment or decisions; thereby allowing them to receive constructive notice of a decision, to provide clear evidence of timely notice, and to achieve consistency in administering the appeals process.

DATES: Publication of legal notices in the listed newspapers will begin with decisions subject to appeal that are made on or after April 15, 1999. The list of newspapers will remain in effect until another notice is published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Acting Regional Appeals and Litigation Coordinator; Northern Region; P.O. Box 7669; Missoula, Montana 59807. Phone: (406) 329–3647.

The newspapers to be used are as follows:

Northern Regional Office

Regional Forester decisions in Montana: The Missoulian, Great Falls Tribune, and The Billings Gazette
Regional Forester decisions in Northern Idaho and Eastern Washington: The Spokesman Review
Regional Forester decisions in North Dakota: Bismarck Tribune
Regional Forester decisions in South Dakota: Rapid City Journal
Beaverhead/Deerlodge—Montana Standard
Bitterroot—Ravalli Republic
Clearwater—Lewiston Morning Tribune
Custer—Billings Gazette (Montana), Rapid City Journal (South Dakota)
Dakota Prairie National Grasslands—Bismarck Tribune (North Dakota), Rapid City Journal (South Dakota)
Flathead—Daily Interlake
Gallatin—Bozeman Chronicle
Helena—Independent Record
Idaho Panhandle—Spokesman Review
Kootenai—Daily Interlake
Lewis & Clark—Great Falls Tribune
Lolo—Missoulian
Nez Perce—Lewiston Morning Tribune

Supplemental notices may be placed in any newspaper, but time frames/deadlines will be calculated based upon notices in newspapers of record listed above.

Dated: April 5, 1999.
Kathleen A. McAllister,
Deputy Regional Forester.
[FR Doc. 99–8880 Filed 4–8–99; 8:45 am]
BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Keystone-Quartz Ecosystem Management Project, Beaverhead-Deerlodge National Forest, Beaverhead County, Montana

AGENCY: Forest Service, USDA.
ACTION: Notice; intent to prepare environmental impact statement.

SUMMARY: The Forest Service will prepare an environmental impact statement to document the analysis and disclose the environmental impacts of a proposed action to manipulate forest and range vegetation on about 1200 acres. This area lies at the northern end of the Pioneer Mountains, three miles south of Wise River, Montana.

The proposed action would thin about 1042 acres of Douglas-fir forest to improve wildlife habitat, release about 85 acres of aspen/shrub communities to restore wildlife habitat, thin about 21 acres of dense lodgepole pine to improve overall forest health, and restore about 43 acres of shrub/grass habitat that has been lost to conifer succession.

DATES: Initial comments concerning the scope of the analysis should be received in writing no later than April 26, 1999.

ADDRESSES: The responsible official is Cynthia A. Tencick, District Ranger, Wise River Ranger District, PO Box 100, Wise River, MT 59762. Send written comments to the responsible official.

FOR FURTHER INFORMATION CONTACT: Brian Quinn, Interdisciplinary Team Leader, Wise River Ranger District, or phone: (406) 683–3900.

SUPPLEMENTARY INFORMATION: About 65% of the Douglas-fir thinning will be done using slashing and prescribed fire, and 35% using wood product removal and prescribed fire. Aspen/shrub restoration will be done using commercial timber harvest. Lodgepole pine thinning will be done by the sale of fence materials. Shrub/grass restoration will be done using slashing and prescribed fire.

The project area is located in the Keystone, Spring, Titan, Lime Kiln and Quartz Hill drainages (T1S, R11W, Sections 10, 11, 12 and 14; and T1S, R10W, Sections 16, 17, 20, 29 and 30). The scope of this proposal is limited to specific forest thinning, timber harvest, prescribed burning and other stand treatments, area improvements and related mitigation requirements lying within the affected area.

Public participation is important to this analysis. Part of the goal of public involvement is to identify additional issues and to refine the general, tentative issues. A scoping notice describing the project was mailed to those who requested information on timber harvest and burning activities on the Beaverhead-Deerlodge National Forests. The Montana Department of Fish, Wildlife and Parks has been involved in the development of this proposal and will be consulted through the analysis and decision making process. The United States Fish and Wildlife Service will be consulted concerning effects to threatened and endangered species.

Preliminary issues identified by Forest Service specialists include effects to vegetation, wildlife habitat, and the existing character of inventoried roadless areas. Timber harvest and

prescribed fire are proposed in Inventoried Roadless Area 1–010. No road building is proposed in an inventoried roadless area. The analysis will consider all reasonably foreseeable activities, including proposed actions on adjacent BLM lands.

People may visit with Forest Service officials at any time during the analysis and prior to the decision. Two periods are specifically designated for comments on the analysis: (1) During the scoping process and (2) during the draft EIS period.

During the scoping process, the Forest Service is seeking additional information and comments from Federal, State and local agencies and other individuals or organization who may be interested in or affected by the proposed action. The agency invites written comments and suggestions on this action, particularly in terms of identification of issues and alternative development.

The draft EIS should be available for review in April, 1999. The final EIS is scheduled for completion in June, 1999.

The comment period on the draft EIS will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at CFR 1503.3 in addressing these points.

The responsible official who will make the decision on this proposal after considering comments and responses, environmental consequences discussed in the final EIS, and applicable laws, regulations, and policies. The decision and reasons for the decision will be documented in a Record of Decision.

Dated: March 29, 1999.

Cynthia A. Tencick,

District Ranger.

[FR Doc. 99–8896 Filed 4–8–99; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Lake Tahoe Basin Federal Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Lake Tahoe Basin Federal Advisory Committee will hold a meeting on May 7, 1999, in Incline Village, Nevada. This Committee, established by the Secretary of Agriculture on December 15, 1998, (64 FR 2876) is chartered to provide advice to the Secretary on implementing the terms of the Federal Interagency Partnership on the Lake Tahoe Region and other matters raised by the Secretary.

DATES: The meeting will be held May 7, 1999, beginning at 9:00 a.m. and ending at 4:30 p.m.

ADDRESSES: The meeting will be held at the Donner Room inside the Hyatt Lake Tahoe, Country Club Drive and Lake Shore Boulevard, Incline Village, Nevada.

FOR FURTHER INFORMATION CONTACT: Juan Palma or Sherry Hazelhurst, Lake Tahoe Basin Management Unit, Forest Service, 870 Emerald Bay Road, Suite 1, South Lake Tahoe, CA 96150, (530) 573–2642.

SUPPLEMENTARY INFORMATION: The committee will meet jointly with the Lake Tahoe Basin Executives Committee. Items to be covered on the agenda include: (1) Subcommittee Reports; (2) Agency Briefings; (3) Environmental Improvement Program (EIP) Review and Comment; (4) Washoe Commitments Update; (5) Basin Transportation Planning (MPO); (6) FACA Procedures for Subcommittee Meetings; (7) Future Agenda Development; and (8) Open Public Comment. All Lake Tahoe Basin Federal Advisory Committee meetings are open to the public. Interested citizens are encouraged to attend. Issues may be brought to the attention of the Committee during the open public comment period at the meeting or by filing written statements with the secretary for the Committee before or after the meeting. Please refer any written comments to the Lake Tahoe Basin Management Unit at the contact address stated above.

Dated: April 5, 1999.

Bradley E. Powell,

Acting Regional Forester, Pacific Southwest Region.

[FR Doc. 99–8881 Filed 4–8–99; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Notice of Proposed Changes in the NRCS National Handbook of Conservation Practices for Review and Comment

AGENCY: Natural Resources Conservation Service (NRCS).

ACTION: Notice of proposed changes in the NRCS National Handbook of Conservation Practices for review and comment.

SUMMARY: Notice is hereby given of the intention of NRCS to issue a series of new or revised conservation practice standards in its National Handbook of Conservation Practices. These standards include Conservation Crop Rotation, Pond Sealing or Lining—Flexible Membrane, Streambank and Shoreline Protection, Waste Storage Facility, Waste Treatment Lagoon, and Water Well. NRCS State Conservationists who choose to adopt these practices for use within their States will incorporate them into Section IV of their Field Office Technical Guide. These practices may be used in conservation systems that treat highly erodible land or on land determined to be wetland.

EFFECTIVE DATES: Comments will be received on or before June 8, 1999. This series of new or revised conservation practice standards will be adopted after the close of the 60-day period.

FOR FURTHER INFORMATION CONTACT: Single copies of these standards are available from NRCS–CED in Washington, DC. Submit individual inquiries in writing to William Hughey, National Agricultural Engineer, Natural Resources Conservation Service, Post Office Box 2890, Room 6139–S, Washington, DC 20013–2890.

SUPPLEMENTARY INFORMATION: Section 343 of the Federal Agriculture Improvement and Reform Act of 1996 requires NRCS to make available for public review and comment proposed revisions to conservation practice standards used to carry out the highly erodible land and wetland provisions of the law. For the next 60 days, NRCS will receive comments relative to the proposed changes. Following that period, a determination will be made by NRCS regarding disposition of those comments, and a final determination of change will be made.

Signed at Washington DC on April 2, 1999.

Pearlie S. Reed,

Chief, Natural Resources Conservation Service, Washington, DC.

[FR Doc. 99–8836 Filed 4–8–99; 8:45 am]

BILLING CODE 3410–16–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed Additions to Procurement List.

SUMMARY: The Committee has received proposals to add to the Procurement List a commodity and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: May 10, 1999.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Gateway 3, Suite 310, 1215 Jefferson Davis Highway, Arlington, Virginia 22202–4302.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a) (2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodity and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities. I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodity and services to the Government.

2. The action will result in authorizing small entities to furnish the commodity and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodity and services proposed for addition to the Procurement List. Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following commodity and services have been proposed for addition to Procurement List for production by the nonprofit agencies listed:

Commodity

Kit, Marine Corps Demolition, Advanced
1375–00–NSH–0001
NPA: Chautauqua County Chapter, NYSARC, Jamestown, New York

Services

Computer Facilities Management Services, Federal Center, Defense Reutilization & Marketing Service (DRMS), 74 North Washington, Battle Creek, Michigan
NPA: Peckham Vocational Industries, Inc., Lansing, Michigan
Base Supply Center, Nellis Air Force Base, Nevada
NPA: Lions Club Industries, Inc., Durham, North Carolina
Base Supply Center, Holloman Air Force Base, New Mexico
NPA: San Antonio Lighthouse, San Antonio, Texas
Laundry/Dry Cleaning (all non-hospital laundry), Fort Carson, Colorado
NPA: Goodwill Industrial Services Corporation, Colorado Springs, Colorado
Operation of Individual Equipment Element Store, Nellis Air Force Base, Nevada
NPA: Lions Club Industries, Inc., Durham, North Carolina
Operation of Individual Equipment Element Store, Holloman Air Force Base, New Mexico
NPA: San Antonio Lighthouse, San Antonio, Texas
Warehouse Operation, U.S. Geological Survey, Western Region, 1020 O'Brien Drive, Menlo Park, California
NPA: VTF Services, Palo Alto, California

Beverly L. Milkman,

Executive Director.

[FR Doc. 99–8898 Filed 4–8–99; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to and Deletions from the Procurement List.

SUMMARY: This action adds to the Procurement List commodities and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes from the Procurement List commodities and services previously furnished by such agencies.

EFFECTIVE DATE: May 10, 1999.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Gateway 3, Suite 310, 1215 Jefferson Davis Highway, Arlington, Virginia 22202–4302.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: On February 19 and 26, 1999, the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (63 F.R. 8291, 9469 and 9470) of proposed additions to and deletions from the Procurement List:

Additions

The following comments pertain to Grounds Maintenance, Shaw Air Force Base, South Carolina: Comments were received from the current contractor for this grounds maintenance service. The contractor stated that adding the contract to the JWOD Program would have a significantly detrimental impact on the company and its ability to be competitive. The contractor noted that the firm was a small business and said that the contract in question represented a specific amount of its annual General and Administrative dollars.

The Committee noted that the percentage of the contractor's estimated annual revenue was below the level the Committee considers to represent possible severe adverse impact. Because the contractor provided no context for the comment on its General and Administrative dollars and the amount itself was not substantial, the Committee was not persuaded that losing it would have a significant detrimental impact on the firm. The Committee also considered that although several other contracts previously held by the contractor have been placed in the JWOD Program over the past decade, the contractor's sales have risen by almost 50 percent. Even taking into account inflation, this level of increase shows that the firm has not been severely adversely impacted by past actions.

The following material pertains to all of the items being added to the Procurement List:

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the commodities and services and impact of the additions on the current

or most recent contractors, the Committee has determined that the commodities and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and services to the Government.

2. The action will not have a severe economic impact on current contractors for the commodities and services.

3. The action will result in authorizing small entities to furnish the commodities and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities and services proposed for addition to the Procurement List.

Accordingly, the following commodities and services are hereby added to the Procurement List:

Commodities

Aqua Plunger Mop
M.R. 1026
Soup Spoon Ladle
M.R. 806

Services

Central Facility Management, U.S. Secret Service Headquarters, 930 H Street, NW, Washington, DC
Grounds Maintenance, Shaw Air Force Base, South Carolina
Janitorial/Custodial, Veterans Affairs Outpatient Clinic, 25 N. 32nd Street, Camp Hill, Pennsylvania
Janitorial/Custodial, U.S. Army Reserve Center, Fort Jackson, South Carolina

This action does not affect current contracts awarded prior to the effective date of this addition or options that may be exercised under those contracts.

Deletions

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action may not result in any additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action will not have a severe economic impact on future contractors for the commodities and services.

3. The action may result in authorizing small entities to furnish the commodities and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities and services deleted from the Procurement List.

After consideration of the relevant matter presented, the Committee has determined that the commodities and services listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Accordingly, the following commodities and services are hereby deleted from the Procurement List:

Commodities

Kit, Shaving Surgical Preparation
6530–00–676–7372
Surgical Dressing Set
6530–00–105–5826
Box, Filing
7520–00–139–3734

Services

Administrative Services, Naval Air Station, Jacksonville, Florida
Assembly, Living Kit, Basic and Supplemental, Commissary Warehousing, Homestead Air Force Base, Florida
Corrosion Control of Fuel Pipelines, Manchester Naval Fuel Department, Manchester, Washington
Disposal Support Services, Defense Reutilization and Marketing Office, Agana, Guam
Fast Pack/Carton Recycling and Pallet Repair, Sacramento Army Depot, Sacramento, California
Food Service Attendant, Naval Air Station Cecil Field, Florida
Food Service Attendant, Homestead Air Force Base, Florida,
Food Service Attendant, Naval Security Group Activity,
Homestead Air Force Base, Florida
Grounds Maintenance, Andersonville National Historic Site, Route 1, Box 85, Andersonville, Georgia
Grounds Maintenance, U.S. Postal Service, 1088 Nandino Boulevard, Lexington, Kentucky
Grounds Maintenance, Camp Bonneville, Camp Bonneville, Washington
Grounds Maintenance, National Oceanic and Atmospheric Administration, National Marine Fisheries Service, 2725 Montlake Boulevard East, Seattle, Washington
Janitorial/Custodial, Naval Station, Mobile, Alabama
Janitorial/Custodial, Riverside National Cemetery, 22495 Van Buren Blvd., Riverside, California
Janitorial/Custodial, Federal Building, 100 North Warren, Saginaw, Michigan
Janitorial/Custodial, Lewistown Flight Service Station, Lewistown, Montana
Janitorial/Custodial, BEQ Naval Station, Staten Island, New York
Janitorial/Custodial, Newark Air Force Base, Ohio,
Janitorial/Custodial, Bonneville Power Administration, 11743 NE Sumner Street, Portland, Oregon
Janitorial/Custodial, Tennessee Air National Guard, Nashville Metro Airport, Nashville, Tennessee
Janitorial/Grounds Maintenance, Naval Industrial Reserve Ordnance Plant, Rochester, New York
Laundry Service, Military Entrance Processing Station, 1222 Spruce Street, St. Louis, Missouri
Microfilm/Microfiche Reproduction, Newark Air Force Station, Ohio
Operation of Tool Crib, Kelly Air Force Base, Texas
Planting and Transplanting Horticultural Materials, USFS, Bend Pine Nursery Market, 63095 Deschutes Market Road, Bend, Oregon
Reproduction Service, Headquarters, U.S. Marine Corps, Clarendon Square Office Building, 3033 Wilson Boulevard, Arlington, Virginia
Tray Delivery Service, Department of Veterans Affairs Medical Center, 3601 South 6th Avenue, Tucson, Arizona

Beverly L. Milkman,

Executive Director.

[FR Doc. 99–8899 Filed 4–8–99; 8:45 am]

BILLING CODE 6353–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the District of Columbia Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the District of Columbia Advisory Committee to the Commission will convene at 12:45 p.m. and adjourn at 4:30 p.m. on May 3, 1999, at the JC Penney Government Relations Office, Suite 1015, 1156 15th Street NW, Washington, DC 20036. The purpose of the meeting is to provide new member orientation, review past civil rights monitoring activity, and plan future projects.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Lewis Anthony, 202–483–3262, or Ki-Taek Chun, Director of the Eastern Regional Office, 202–376–7533 (TDD 202–376–8116). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, March 30, 1999.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 99–8892 Filed 4–8–99; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–810]

Chrome-Plated Lug Nuts From Taiwan; Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Final Results of Antidumping Duty Administrative Review.

SUMMARY: On October 7, 1998, the Department of Commerce (the Department) published the preliminary results of administrative review of the antidumping duty order on chrome-plated lug nuts from Taiwan. The review covers 18 manufacturers/exporters and the period September 1, 1996, through August 31, 1997. Based on our analysis of the comments received, the dumping margins have not changed from those presented in the preliminary results.

EFFECTIVE DATE: April 9, 1999.

FOR FURTHER INFORMATION CONTACT: Ron Trentham or Thomas Futtner, Office of AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–6320 or 482–3814, respectively.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act), by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations refer to the regulations codified at 19 CFR part 351 (1998).

Background

On October 7, 1998, the Department published the preliminary results (63 FR 53875) of its administrative review of the antidumping duty order on chrome-plated lug nuts from Taiwan (September 20, 1991, 56 FR 47737). The Department has now completed this administrative review in accordance with section 751 of the Act.

Scope of the Review

The merchandise covered by this review is one-piece and two-piece chrome-plated lug nuts, finished or unfinished, which are more than $1^{1}/_{16}$ inches (17.45 millimeters) in height and which have a hexagonal (hex) size of at least $^{3}/_{4}$ inches (19.05 millimeters) but not over one inch (25.4 millimeters), plus or minus $^{1}/_{16}$ of an inch (1.59 mm). The term "unfinished" refers to unplated and/or unassembled chrome-plated lug nuts. The subject merchandise is used for securing wheels to cars, vans, trucks, utility vehicles, and trailers. Zinc-plated lug nuts, finished or unfinished, and stainless-steel capped lug nuts are not within the scope of this review. Chrome-plated lock nuts are also not within the scope of this review.

During the period of review, chrome-plated lug nuts were provided for under subheading 7318.16.00.00 of the Harmonized Tariff Schedule (HTS). Although the HTS subheading is provided for convenience and Customs purposes, our written description of the scope of this review is dispositive. This review covers the following firms: Gourmet Equipment (Taiwan) Corporation ("Gourmet"), Buxton International Corporation ("Buxton"), Chu Fong Metallic Electric Co.("Chu Fong"), San Chien Industrial Works, Ltd. ("San Chien"), Anmax Industrial Co., Ltd. ("Anmax)", Hwen Hsin Enterprises Co., Ltd. ("Hwen Hsin"), San Shing Hardware Works Co. ("San Shing"), Trade Union International Inc./Top Line ("Trade Union"), Uniauto, Inc. ("Uniauto"), Wing Tang Electrical Manufacturing Company ("Wing Tang") and Multigrand Industries Inc. ("Multigrand"), and the period September 1, 1996, through August 31, 1997. Buxton, Chu Fong, San Chien, Anmax, Hwen Hsin, San Ching, Trade Union, Uniauto, Wing Tang and Multigrand failed to completely respond to the Department's questionnaire and therefore were assigned an adverse facts available rate of 10.67 percent. Questionnaires were sent to Transcend International, Kwan How Enterprises Co., Kwan Ta Enterprises Co., Ltd., Everspring Plastic Corporation, Gingen Metal Corp., Goldwanate Associates, Inc., Kuang Hong Industries Inc., but were returned as undeliverable. These firms therefore received the "all others" rate of 6.93 percent.

Analysis of Comments Received

We invited interested parties to comment on the preliminary results. We received timely comments from one respondent, Gourmet, and rebuttal comments from petitioner, Consolidated International Automotive. Based on the comments received, we have not changed our determination with respect to Gourmet for the final results.

Comments

Respondent argues that it has cooperated fully and that the Department cannot require it to provide information that is impossible for Gourmet to provide, or in a form which Gourmet simply does not have. In such a situation, the Department must consider any other independent information which is sufficient to substantiate the sales and other data provided in Gourmet's submissions.

In this instance, because Gourmet does not have audited financial statements, Gourmet argues that the Department must rely on other forms of independent substantiation. Gourmet argues that the Department has a long-standing practice to accept whatever substantiation is available to satisfy itself that the data submitted can be relied upon. In this review, Gourmet submitted bank records as a means to independently substantiate its response. Gourmet points to the *Notice of Final Determination of Sales at less Than Fair Value: Collated Roofing Nails from Taiwan*, 62 FR 51,427 (October 1, 1997), where the Department stated that where a respondent submitted sales and cost data based on unaudited financial statements, verification may be based on the respondent's "tax return or any other independent source ."

Gourmet argues that the use of facts available is not warranted under section 776(a) of the Act (19 USC1677e(a)) because the necessary information is on the record. Gourmet has responded to all of the Department's requests for information with the exception of one document, audited financial statements, which do not exist and therefore can not be withheld. Gourmet argues that, unlike the situation in previous reviews in this review where it stated that its data was unverifiable, its submitted data can and should be verified. Gourmet points to *Borden, Inc.* v. *United States*, 4 F. Supp. 2d 1221 (Ct. Int'l Trade 1998) (*Borden*), where the court found that the Department is required to consider information submitted by a party even if that information does not precisely conform to the Department's request, as long as the party has cooperated to the best of its ability.

Gourmet acknowledges that section 776(a) of the Act may apply because the Department may take the position that Gourmet has failed to provide the requested information in the form and manner requested. However, Gourmet disagrees with its applicability for two reasons. First, while Gourmet failed to provide information in the form of audited financial statements, it provided the same information in the form of bank records. Second, the application of facts available pursuant to section 776(a)(2)(B) of the Act is conditional on an additional finding that the provisions set out in section 782(e) of the Act (19 U.S.C. 1677m(e)) have not been met. Gourmet points to *Borden*, where the court said section 782(e) of the Act requires that no matter how unsatisfactory the Department may find the information submitted, it must still use that information rather than facts available, so long as the criteria of that provision have been met.

Gourmet argues that its situation is similar to that in the *Notice of Final Determination of Sales at Less Than Fair Value: Certain Preserved Mushrooms from Chile*, 63 FR 56,613 (October 22, 1998) (*Chile Mushrooms*). In that case, the Department concluded that resort to facts available was not required where independent auditors were unable to reconcile the respondent's books and records with its financial statements and were "otherwise unable to account for significant assets and liabilities," and where the respondent, like Gourmet, was not legally obligated to have audited financial statements. Gourmet states that the Department correctly concluded that the law would not permit rejection of the submitted data in its entirety because the respondent had met the five conditions of 782(e) of the Act (19 U.S.C. 1677m(e)).

Because Gourmet has provided such independent substantiation and has cooperated to the best of its ability, the Department may not decline to use Gourmet's submitted information in making its determination. Gourmet maintains that the information was submitted on time, can be verified, is complete and reliable, can be used without undue difficulty, and Gourmet has demonstrated that it has acted to the best of its ability in providing information.

Even if the Department does decline to use such information and resorts instead to "facts available," the Department must find that Gourmet has cooperated to the best of its ability and therefore that an adverse inference would be unwarranted. Gourmet claims that it has provided complete responses to all of the Department's questionnaires. Gourmet undertook extraordinary efforts to produce alternative forms of records to satisfy the Department's requirement for independent substantiation of submitted information.

Gourmet asserts that the Department incorrectly concluded that its submissions could not be reconciled to its financial statements in this review, as it did in the fourth administrative review even though the facts are different. In this review, unlike the fourth, Gourmet does not admit its submission cannot be reconciled. On the contrary, Gourmet has submitted detailed reconciliation statements to its tax return and bank statements. Furthermore, the Department's requirements for verifiable submissions as discussed in a Memorandum from Thomas Futtner to Holly Kuga, Aug. 20, 1998, does not mandate the submission of audited financial statements.

If the Department finds the information that Gourmet submitted to be unverifiable, it does not follow that Gourmet has not acted to the best of its ability. The Department has failed to articulate any basis for finding that Gourmet failed to cooperate. In *Allied-Signal Aerospace Co.* v. *United States*, 996 F.2d 1185 (Fed. Cir. 1993) (*Allied-Signal*), the court held that where a respondent "supplied as much of the requested information as it could and offered to provide the remaining information in a simplified form, . . . [i]t was unreasonable for the ITA to have characterized respondent's behavior as a refusal to cooperate." The court went on to say that "the respondent failed to provide a complete response to the requested information because it was unable to, not because it refused to." The court made a similar distinction in *Borden* where it stated "Commerce has articulated no reason for finding the respondent's failure was an unwillingness, rather than simply an inability, to cooperate, other than vague hints that respondent was cooking the books."

Petitioner disagrees. As in previous reviews, Gourmet failed to submit verifiable information that would allow Commerce to tie the company's questionnaire response with its financial data. Petitioner argues that the problem is not simply the form of information, but rather its substance. Gourmet has been subject to previous reviews and has been well aware of the deficiencies in its previous submissions, yet Gourmet has made no showing of inability to prepare the requested information. Petitioner argues that Commerce was correct to apply facts available to Gourmet when it submitted information that had already been found to be deficient.

Petitioner argues that the deficiencies in Gourmet's response justify the application of facts available under the statute. Under section 776(a)(2)(B) of the Act, Gourmet failed to provide requested information, not simply the form of the information, but the substance of the information. In terms of the statute, Gourmet's information is so incomplete that it cannot serve as a reliable basis for determining constructed value since Gourmet's financial information can not be reconciled with its questionnaire response and is, therefore, unverifiable.

Petitioner argues that Gourmet did not act to the best of its ability in providing the information and meeting the Department's requirements. Gourmet had participated in previous reviews where it provided similarly deficient information and was sanctioned for doing so. Petitioner argues that Gourmet could have corrected these deficiencies but rather chose to submit the same substantively incomplete and formally, nonconforming information.

Petitioner argues that *Borden* does not support Gourmet's position. *Borden* does not address the applicability of section 776(a)(2)(D) of the Act (19 U.S.C. 1677e(a)(2)(D)) to the deficient information provided; by contrast in this review, Commerce has found that the information submitted by Gourmet cannot be verified. *Borden* does not preclude Commerce from applying facts available to the deficient response, rather *Borden* requires Commerce to make the additional finding that the respondent failed to act to the best of its ability. This deficiency is not present in this review since Commerce expressly stated "that Gourmet has failed to cooperate by not acting to the best of its ability." In *Borden*, the court noted that the respondent had changed accounting methods and amended its questionnaire responses in attempting to respond to the questionnaires. This situation is plausible in an investigation, but not the sixth administrative review.

Petitioner also argues that *Allied-Signal* does not support Gourmet's position. Unlike the facts in *Allied-Signal*, Gourmet has not shown that it cannot provide the required information or that it would be unable to prepare the necessary information.

Department's Position

We agree with petitioner. The Department finds that the use of facts available is warranted under section 776(a) of the Act because the information in Gourmet's questionnaire

response cannot be verified. Moreover, we have used an adverse inference in applying the facts available, in accordance with section 776(b) of the Act, because Gourmet has failed to cooperate by not acting to the best of its ability in this case. For a more complete explanation of Gourmet's deficiencies (which include proprietary information) *see* Memorandum from Thomas Futtner to Holly Kuga, August 20, 1998 (Futtner Memo).

Gourmet has failed to demonstrate that the information which it placed on the record accurately reflects all of the relevant sales made by the company during the period of review and its cost of production. While Gourmet did possess relevant financial statements, it was not able to demonstrate that the information it reported to the Department agrees with those financial statements. Nor did it provide any evidence of factors beyond its control which caused such discrepancies or any reasonable basis for the Department to determine that its questionnaire response was accurate despite these discrepancies. Gourmet has been aware of, but has not corrected, deficiencies in its accounting system even though these deficiencies caused the Department to use facts available for the last several administrative reviews.

The Department does not reject questionnaire responses simply because the respondent does not have an audited financial statement. In such situations, the Department looks to other financial records, prepared for purposes independent of the antidumping proceeding, such as tax statements, which attest to the veracity of a respondent's accounting system and information submitted to the Department. (*see, e.g., Collated Roofing Nails from Taiwan*). In this case, Gourmet possesses relevant (albeit unaudited) financial statements. As Gourmet has acknowledged, however, the financial statements conflict with, and hence do not support, its questionnaire response. *See* Futtner Memo.

Borden does not support Gourmet's contention. Although in *Borden* the court noted that the Department must consider submitted information if that information meets the requirements of section 782(e) of the Act, Gourmet's information does not meet those requirements. Gourmet's submissions are not verifiable and therefore do not meet the requirements of section 782(e)(2). While these submissions are for the most part in the form requested by the Department, their content is unreliable. *See* Futtner Memo. Moreover, in *Borden*, the court approved the Department's use of adverse facts available in that case.

Further, *Allied-Signal* is not relevant to this case. In *Allied-Signal*, where the Court held that the respondent had "supplied as much of the requested information as it could and offered to provide the remaining information in a simplified form,...[i]t was unreasonable for the ITA to have characterized respondent's behavior as a refusal to cooperate." That case did not involve evidence on the record indicating a fundamental discrepancy between information in the questionnaire response and the respondent's financial statements. Although Gourmet has participated in several antidumping administrative reviews and is thoroughly familiar with the Department's requirements, it has consistently failed to comply with the Department's standards by continuing to provide unverifiable data.

In addition, Gourmet's reliance on *Chile Mushrooms* is misplaced. *Chile Mushrooms* did not involve a fundamental disagreement between the questionnaire response and the respondent's financial records. Rather certain issues were raised by the findings of an independent audit of the respondent's records. We determined that these findings were either irrelevant for our purposes or could be adequately addressed by adjustments and the use of partial FA. In this case, we are not dealing the results of an independent audit or with information that may be rendered useful by the application of partial facts available.

Gourmet is incorrect that the Department is basing its facts available decision on the findings in previous reviews, where Gourmet admitted that its submissions could not be reconciled. The Department treats each administrative review separately. Based on the information on the record in the instant review, we have determined that Gourmet's accounting system and the information submitted to the Department are unreliable. *Id.*. Reliance on the accounting system used for the preparation of the financial statements is a key and vital part of the Department's determination that a company's sales and constructed value data are credible. Section 776(a)(2)(D) of the Act states that the Department "shall, subject to section 782(d), use the facts otherwise available in reaching the applicable determination under this title" if an interested party or any other person provides information but the information cannot be verified. Because Gourmet's submissions are not reconcilable to its financial statements and Gourmet has provided no acceptable explanation and no reasonable alternative support for its submission, it is unverifiable.

Despite the admitted discrepancies between its financial statements and its questionnaire response, Gourmet argued that its questionnaire response nonetheless could be verified using other information, such as bank records. In attempting to demonstrate this, however, it became clear that the records that it was attempting to rely on could not adequately substantiate its response without requiring the Department essentially to perform a complete audit of Gourmet's financial records. This is not the purpose of a verification, which is fundamentally a spot check of selected data—not a detailed examination of a respondent's entire accounting system. We believe that Gourmet has had sufficient notice of the Department's requirements for verifiable submissions and ample opportunity to provide information that is amenable to verification. Yet Gourmet has continued to provide unverifiable data. Therefore, we determine that Gourmet has failed to cooperate by not acting to the best of its ability, and thus we are using an adverse inference in our application of facts available.

Section 776(b) of the Act provides that, in selecting from the facts available, adverse inferences may be used when an interested party fails to cooperate by not acting to the best of its ability to comply with requests for information. *See also* Statement of Administrative Action ("SAA") accompanying the URAA, H.R. Doc. No. 316, 103d Cong., 2d Sess. 870 (1994). Section 776(b) of the Act authorizes the Department to use as adverse facts available information derived from the petition, the final determination from the less than fair value (LTFV) investigation, a previous administrative review, or any other information placed on the record.

Section 776(c) of the Act requires the Department to corroborate, to the extent practicable, secondary information used as FA. Secondary information is described in the Statement of Administrative Action (SAA) (at 870) as "[i]nformation derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise."

The SAA further provides that "corroborate" means simply that the Department will satisfy itself that the secondary information to be used has probative value (*see* SAA at 870). Thus, to corroborate secondary information, the Department will, to the extent

practicable, examine the reliability and relevance of the information used. However, unlike other types of information, such as input costs or selling expenses, there are no independent sources for calculated dumping margins. The only source for margins is an administrative determination. Thus, in an administrative review, if the Department chooses as total adverse facts available a calculated dumping margin from a prior segment of the proceeding, it is not necessary to question the reliability of the margin from that time period (*i.e.*, the Department can normally be satisfied that the information has probative value and that it has complied with the corroboration requirements of section 776(c) of the Act). *See, e.g., Elemental Sulphur from Canada: Preliminary Results of Antidumping Duty Administrative Review*, 62 FR at 971 (January 7, 1997) and *Antifriction Bearings (Other than Tapered Roller Bearings) and Parts Thereof from France, Germany, Italy, Japan, Singapore, and the United Kingdom* 62 FR 2801 (January 15,1997) (*AFBs 1997*).

As to the relevance of the margin used for adverse FA, the Department stated in *Tapered Roller Bearings from Japan; Final Results of Antidumping Duty Administrative Review*, 62 FR 47454 (September 9, 1997), that it will consider information reasonably at its disposal as to whether there are circumstances that would render a margin irrelevant. Where circumstances indicate that the selected margin is not appropriate as adverse FA, the Department will disregard the margin and determine an appropriate margin. *See also Fresh Cut Flowers from Mexico; Preliminary Results of Antidumping Duty Administrative Review*, 60 FR 49567 (September 26, 1995). We have determined that there is no evidence on the record that would indicate that the 10.67 percent rate, a rate calculated from the LTFV investigation, is irrelevant or inappropriate as an adverse facts available rate for the respondent in the instant review. Therefore, we have applied, as adverse FA, the highest margin for any firm in any segment of this proceeding, 10.67 percent, as the rate for Gourmet.

Final Results of Review

As a result of this review, we have determined that the following margins exist for the period September 1, 1996, through August 31, 1997.

Manufacturer/exporter	Percent margin
Gourmet Equipment (Taiwan) Corporation	10.67
Buxton International/Uniauto	10.67
Chu Fong Metallic Electric Co.	6.93
Transcend International	6.93
San Chien Industrial Works, Ltd	10.67
Anmax Industrial Co., Ltd	10.67
Everspring Plastic Corp.	6.93
Gingen Metal Corp.	6.93
Goldwanate Associates, Inc.	6.93
Hwen Hsin Enterprises Co., Ltd.	10.67
Kwan How Enterprises Co., Ltd.	6.93
Kwan Ta Enterprises Co., Ltd.	6.93
Kuang Hong Industries Ltd.	6.93
Multigrand Industries Inc.	6.93
San Shing Hardware Works Co., Ltd.	10.67
Trade Union International Inc./Top Line	10.67
Uniauto, Inc.	10.67
Wing Tang Electrical Manufacturing Company	10.67

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. The Department will issue appraisement instructions concerning all respondents directly to the U.S. Customs Service.

We will assess antidumping duties on the above firms' entries at the same rate as their above stated dumping margins since the margins are not calculated rates, but are rates based upon facts available pursuant to section 776 of the Act.

Further, the following cash deposit requirements will be effective for all shipments of the subject merchandise, entered, or withdrawn from warehouse, for consumption on or after the publication date of these final results of administrative review, as provided for by section 751(a)(1) of the Act: (1) the cash deposit rate for the reviewed firms will be the rates indicated above; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or in the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous review or the original investigation, the cash deposit rate will be 6.93%, the all others rate established in the LTFV investigation.

These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO. Timely written notification or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of the APO is a sanctionable violation.

This administrative review and notice are in accordance with section 751(a)(1)(B) and 777(i)(1)of the Act.

Dated: April 5, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99–8922 Filed 4–8–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–844]

Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Round Wire From Japan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: April 9, 1999.

FOR FURTHER INFORMATION CONTACT: Jarrod Goldfeder or John Brinkmann at (202) 482–1784 or (202) 482–5288, respectively, Office of AD/CVD Enforcement 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise

indicated, all citations to Department of Commerce (Department) regulations refer to the regulations codified at 19 CFR Part 351 (April 1998).

Final Determination

We determine that stainless steel round wire from Japan is being sold, or is likely to be sold, in the United States at less than fair value (LTFV), as provided in section 733 of the Act. The estimated margins are shown in the *Continuation of Suspension of Liquidation* section of this notice.

Case History

The preliminary determination in this investigation was issued on November 12, 1998. *See Notice of Preliminary Determinations of Sales at Less Than Fair Value and Postponement of Final Determinations—Stainless Steel Round Wire From Canada, India, Japan, Spain, and Taiwan; Preliminary Determination of Sales at Not Less Than Fair Value and Postponement of Final Determination—Stainless Steel Round Wire From Korea*, 63 FR 60402 (November 18, 1998) (preliminary determination).

Scope of Investigation

The scope of this investigation covers stainless steel round wire (SSRW). SSRW is any cold-formed (*i.e.*, cold-drawn, cold-rolled) stainless steel product of a cylindrical contour, sold in coils or spools, and not over 0.703 inch (18 mm) in maximum solid cross-sectional dimension. SSRW is made of iron-based alloys containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. Metallic coatings, such as nickel and copper coatings, may be applied.

The merchandise subject to this investigation is classifiable under subheadings 7223.00.1015, 7223.00.1030, 7223.00.1045, 7223.00.1060, and 7223.00.1075 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise under investigation is dispositive.

Period of Investigation

The period of the investigation (POI) is January 1, 1997, through December 31, 1997. This period corresponds to the four most recent fiscal quarters prior to the month of the filing of the petition (*i.e.*, March 1998).

Facts Available

Suzuki Metal Industry Co., Ltd. (Suzuki) and Nippon Seisen Co., Ltd. (Nippon Seisen) did not respond to our questionnaires. Section 776(a)(2) of the Act provides that, if an interested party (A) withholds information that has been requested by the Department; (B) fails to provide such information in a timely manner or in the form or manner requested subject to sections 782(c)(1) and (e) of the Act; (C) significantly impedes a proceeding under the antidumping statute; or (D) provides such information but the information cannot be verified, the Department shall, subject to subsection 782(d) of the Act, use facts otherwise available in reaching the applicable determination. Because these firms failed to respond to our questionnaires and because the relevant subsections of section 782 of the Act do not apply, we must use facts otherwise available to calculate the dumping margins for these companies.

Section 776(b) of the Act provides that adverse inferences may be used when an interested party fails to cooperate by not acting to the best of its ability to comply with the Department's requests for information. *See also* Statement of Administrative Action accompanying the URAA, H.R. Rep. No. 316, Vol.1, 103d Cong., 2d Sess. 870 (1994) (SAA). The lack of response by Suzuki and Nippon Seisen to the Department's antidumping questionnaires constitutes a failure by these respondents to act to the best of their abilities to comply with a request for information, within the meaning of section 776 of the Act. Thus, the Department has determined that, in selecting among the facts otherwise available, an adverse inference is warranted.

Because we were unable to calculate margins for these respondents in this investigation, we assigned these respondents the highest margin in the petition (recalculated by the Department, as appropriate). This approach is consistent with Department practice. *See Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Wire Rod from Germany*, 63 FR 40433 (July 29, 1998). The highest petition margin is 29.56 percent.[1]

Section 776(b) states that an adverse inference may include reliance on information derived from the petition or any other information placed on the record. *See also* SAA at 829–831. Section 776(c) of the Act provides that, when the Department relies on secondary information (such as the petition) in using the facts otherwise available, it must, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal.

During our pre-initiation analysis of the petition, we reviewed the adequacy and accuracy of the secondary information in the petition from which the margins were calculated, to the extent that appropriate information was available for this purpose. *See Initiation of Antidumping Duty Investigations: Stainless Steel Round Wire from Canada, India, Japan, the Republic of Korea, Spain, and Taiwan*, 63 FR 26150, 26151 (May 12, 1998). However, we are aware of no other independent sources of information that would enable us to corroborate the components of the margin calculation in the petition further. The implementing regulation to section 776 of the Act, 19 CFR 351.308(c), states that "[t]he fact that corroboration may not be practicable in a given circumstance will not prevent the Secretary from applying an adverse inference as appropriate and using the secondary information in question." Additionally, we note that the SAA at 870 specifically states that, where "corroboration may not be practicable in a given circumstance," the Department may nevertheless apply an adverse inference. Finally, the margins calculated for respondents in the other round wire investigations are in many instances of the same order of magnitude as the margins in the corresponding petitions, suggesting that the information contained in the round wire petitions is generally reliable.

Interested Party Comments

No parties commented on the preliminary determination.

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, we are directing the Customs Service to continue to suspend liquidation of all entries of stainless steel round wire from Japan that are entered, or withdrawn from warehouse, for consumption on or after November 18, 1998, the date of publication of the preliminary determination in the **Federal Register**. The Customs Service shall continue to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the normal value exceeds the U.S. price, as indicated in

[1] At the time of initiation, we did not accept the U.S. and home market packing data set forth in the petition, and we revised the dumping margins in that petition so as to not reflect any adjustment for packing. In reviewing the petition margin calculations for the preliminary determination in the Japan case, we noted that the denominator for the margins was erroneously based on home market price, rather than U.S. price. We have revised the margins accordingly. *See* Memorandum from Jarrod Goldfeder to the file, dated November 19, 1998.

the chart below. The suspension of liquidation instructions will remain in effect until further notice. The weighted-average dumping margins are as follows:

Exporter/manufacturer	Weighted-average margin percentage
Nippon Seisen	29.56
Suzuki	29.56
All Others	15.20

Section 735(c)(5)(B) of the Act provides that, where the estimated weighted-average dumping margins established for all exporters and producers individually investigated are zero or *de minimis* margins or are determined entirely under section 776 of the Act, the Department may use any reasonable method to establish the estimated all-others rate for exporters and producers not individually investigated. In this case, the margin assigned to the two companies investigated is based on facts available. Therefore, consistent with the SAA, at 873, we are using an alternative method. As our alternative, we have based the all-others rate on a simple average of the margins in the petition, as revised at the time of initiation of this investigation.

ITC Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission (ITC) of our determination. As our final determination is affirmative, the ITC will, within 45 days, determine whether these imports are materially injuring, or threaten material injury to, the U.S. industry. If the ITC determines that material injury or threat of material injury does not exist, the proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing the Customs Service to assess antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

We are issuing and publishing this determination in accordance with sections 735(d) and 777(i)(1) of the Act.

Dated: April 2, 1999.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–8923 Filed 4–8–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–814]

Stainless Steel Round Wire From India; Final Determination of Sales at Less Than Fair Value

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final determination of antidumping duty investigation.

EFFECTIVE DATE: April 9, 1999.

FOR FURTHER INFORMATION CONTACT: Diane Krawczun or Richard Rimlinger, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–0198 or (202) 482–4477, respectively.

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to Department of Commerce (Department) regulations refer to the regulations codified at 19 CFR Part 351 (April 1998).

Final Determination

We determine that stainless steel round wire from India is being sold, or is likely to be sold, in the United States at less than fair value (LTFV), as provided in section 735 of the Act. The estimated margins are shown in the *Continuation of Suspension of Liquidation* section of this notice.

Case History

The Department issued the preliminary determination in this investigation on November 12, 1998. *See Notice of Preliminary Determinations of Sales at Less Than Fair Value and Postponement of Final Determinations—Stainless Steel Round Wire From Canada, India, Japan, Spain, and Taiwan; Preliminary Determination of Sales at Not Less Than Fair Value and Postponement of Final Determination—Stainless Steel Round Wire From Korea*, 63 FR 60402 (November 18, 1998) (preliminary determination). Since the preliminary determination, the following events have occurred.

In December 1998 and January 1999, we conducted on-site verifications of the questionnaire responses submitted by Raajratna Metal Industries Limited (Raajratna). We received case briefs from the petitioners [1] and the respondent on February 19, 1999, and we received rebuttal briefs from the same parties on February 26, 1999. We held a public hearing on March 11, 1999.

Scope of Investigation

The scope of this investigation covers stainless steel round wire (SSRW). SSRW is any cold-formed (*i.e.*, cold-drawn, cold-rolled) stainless steel product of a cylindrical contour, sold in coils or spools, and not over 0.703 inch (18 mm) in maximum solid cross-sectional dimension. SSRW is made of iron-based alloys containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. Metallic coatings, such as nickel and copper coatings, may be applied.

The merchandise subject to this investigation is classifiable under subheadings 7223.00.1015, 7223.00.1030, 7223.00.1045, 7223.00.1060, and 7223.00.1075 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise under investigation is dispositive.

Period of Investigation

The period of the investigation (POI) is January 1, 1997, through December 31, 1997. This period corresponds to the respondent's four most recent fiscal quarters prior to the month of the filing of the petition (*i.e.*, March 1998).

Fair Value Comparisons

To determine whether sales of stainless steel round wire from India were made at less than fair value, we compared the export price (EP) to the normal value (NV). Our calculations followed the methodologies described in the preliminary determination except as noted below. *See also* our analysis memorandum dated April 2, 1999, which has been placed in the file.

Export Price and Constructed Export Price

For the price to the United States, we used EP as defined in section 772 of the Act. We calculated EP based on the same methodology used in the preliminary determination, except that we calculated an amount for U.S.

[1] ACS Industries, Inc., Al Tech Specialty Steel Corp., Branford Wire & Manufacturing Company, Carpenter Technology Corp., Handy & Harman Specialty Wire Group, Industrial Alloys, Inc., Loos & Company, Inc., Sandvik Steel Company, Sumiden Wire Products Corp., and Techalloy Company, Inc.

indirect selling expenses for Raajratna's EP sales as an offset to its home-market commissions in accordance with § 351.410(e) of the Department's regulations (*see* our response to Comment 3, below).

Normal Value

We used NV as defined in section 773 of the Act. We calculated NV based on the same methodology used in the preliminary determination. We based NV on CV where there was no above-cost HM sale for comparison. In accordance with section 773(e)(1) of the Act, we calculated CV based on the sum of Raajratna's cost of materials, fabrication, general expenses, profit and U.S. packing costs. In general expenses, we included HM indirect selling expenses and an amount we calculated to cover expenses Raajratna incurred in its Mumbai sales office on certain sales which Raajratna had reported.

Section 776(a)(1) of the Act provides that, if necessary information is not available on the record, the Department shall, subject to section 782(d) of the Act, use facts otherwise available in reaching the applicable determination.

Raajratna indicated in its response that it was unable to segregate and report its U.S. indirect selling expenses. In addition, Raajratna did not report its home-market (HM) indirect selling expenses. As facts available, we calculated an indirect selling expense factor as an offset for Raajratna's HM commissions which we deducted from NV. We used the same factor to deduct HM indirect selling expenses from HM price in our determination of whether HM sales were made below the cost of production (COP) and to add HM indirect selling expenses to constructed value (CV).

Also, Raajratna did not report all of its general and administrative (G&A) expenses with respect to its Mumbai (Bombay) sales office which assisted Raajratna in obtaining raw materials for the manufacture of subject merchandise and in the completion of certain sales. We calculated an amount based on Raajratna's response to cover these expenses.

Cost of Production

In accordance with section 773(b)(3) of the Act, we calculated the weighted-average COP, by model, based on the sum of Raajratna's cost of materials, fabrication, general expenses, and packing costs. We relied on the COPs submitted by Raajratna except in the following instances where the submitted costs were not quantified or valued appropriately: (1) we calculated an amount for Raajratna's HM indirect selling expenses which we deducted from HM price for COP comparisons and added to CV for NV comparisons; (2) we used a revised financial expense ratio using cost of sales in the denominator; (3) we included in Raajratna's G&A expense portions of expenses incurred in Raajratna's Mumbai office; (4) we used a model-specific yield-loss rate to calculate direct materials costs; and (5) we added HM packing expenses to COP.

Currency Conversions

As in the preliminary determination, we made currency conversions in accordance with section 773A of the Act. The Department's preferred source for daily exchange rates is the Federal Reserve Bank.

Verification

As provided in section 782(i)(1) of the Act, we verified the information submitted by the respondent for use in our final determination. We used standard verification procedures, including examination of relevant accounting and production records, as well as original source documents provided by the respondent.

Interested Party Comments

Comment 1. Export Incentive System—Adjustment to EP

Raajratna argues that the Department should add to EP amounts received as export incentives under the Indian Government's Duty Entitlement Passbook (DEPB) System. Raajratna argues that the DEPB benefits received from the Indian Government are directly related to exports and are part of Raajratna's net returns on its U.S. sales. Raajratna argues further that, alternatively, the Department should treat the DEPB benefits as a circumstance-of-sale (COS) adjustment to NV because the DEPB program is linked directly to Raajratna's U.S. sales. Raajratna cites *Fuel Ethanol From Brazil*, 51 FR 5572 (1986), and *Acetylsalicylic Acid From Turkey*, 52 FR 24492 (1987) to support its position.

The petitioners respond that Raajratna is not entitled to an adjustment for reported DEPB benefits because it failed to meet the Department's two-prong test for a duty-drawback adjustment. Specifically, the petitioners note that Raajratna was unable to provide at verification information which would link the claimed refund amount to actual imports of raw materials. The petitioners also argue that the prior determinations Raajratna cited are irrelevant and inapplicable because both cases precede the Department's two-prong test for making duty-drawback adjustments to NV. The petitioners state that, in *Fuel Ethanol From Brazil*, the Department determined that premiums received under an export credit program directly related to the export sales were COS adjustments but that, because Raajratna's reported DEPB adjustments do not qualify as COS adjustments, *Fuel Ethanol From Brazil* is inapplicable for this final determination. The petitioners argue further that Raajratna's reliance upon *Acetylsalicylic Acid From Turkey* is also misplaced because the payment at issue was not a government benefit but the result of an arm's-length contract.

Department's Position: Section 772(c)(1)(B) of the Act requires the Department to make an upward adjustment to NV for import duties rebated by reason of exportation to the United States. We interpret this requirement to apply only when the respondent meets our two-prong test *i.e.*, that (1) the import duty and rebate are directly linked to, and dependent upon, one another; and (2) there were sufficient imports of the imported material to account for the duty drawback received for the export of the manufactured product (*see e.g., Final Results of Antidumping Duty Administrative Review: Oil Country Tubular Goods from Korea*, 64 FR 13169, 13172 (March 17, 1999)). We found during the sales verification that, although Raajratna demonstrated actual receipt of refund amounts under the DEPB system, it could not supply information establishing how the Government of India calculates the amount refunded to Raajratna. (*See Sales Verification Report.*) We also found that Raajratna's consumption of imported wire rod dropped significantly during the POI. *Id.* In addition, we found during the cost verification that the incentive credits received under the DEPB system are not based on the actual amount of the duty paid. (*See* Verification of Cost of Production and Constructed Value Data for Raajratna Metal Industries, Ltd., dated February 9, 1999.) Therefore, because Raajratna established neither a direct link between the import duty paid by suppliers and passed on to Raajratna, nor sufficient imports of wire rod to account for the duty it received, we are unable to adjust EP for duty drawback under section 772(c)(1)(B) of the Act.

The prior determinations cited by Raajratna are unsupportive because both cases precede the establishment of the two-prong test. *See Huffy Corp.* v. *U.S.*, 632 F. Supp. 50 (CIT 1986). In addition, contrary to Raajratna's assertion, benefits received under the DEPB

system do not qualify for a COS adjustment because benefits received constitute revenue to Raajratna. COS adjustments reflect selling expenses incurred by a respondent; however, we found at verification that the DEPB refunds were not tied to any selling expenses nor were they based on actual customs duties Raajratna paid to purchase raw materials for the manufacture of subject merchandise. *Cost Verification Report* at 2, 11; *Sales Verification Report* at 8. Indeed, Raajratna's DEPB benefits were based on the FOB sales prices of Raajratna's finished goods for export and exceeded substantially the amount of customs duties Raajratna paid to import raw materials directly. Thus, we have denied Raajratna a COS adjustment. (*See* section 773(a)(6)(C)(iii) of the Act and section 351.410(b) of the Department's regulations.) Raajratna's reliance upon *Fuel Ethanol From Brazil* is unsupportive here because, in this case, we find that Raajratna's DEPB benefits do not qualify for a COS adjustment since they were unrelated to differences in selling expenses. Thus, we have denied Raajratna an adjustment to EP for refund amounts under the DEPB system.

Comment 2: Export Incentive System—CV Adjustment

Raajratna argues that, if the Department does not increase U.S. prices to reflect the DEPB incentive, it should reduce Raajratna's CV by the export incentive earned on Raajratna's U.S. sales. Raajratna argues that an adjustment to CV is appropriate because the purpose of the export incentive is to reduce the cost of materials to the extent of the import duties incurred. Raajratna also argues that reducing CV by this incentive is consistent with Department precedent, citing *Stainless Steel Bar From India*, 62 FR 10540 (March 7, 1997) (*SS Bar From India I*), *Stainless Steel Bar From India*, 63 FR 13622 (March 20, 1998) (*SS Bar From India II*), *Solid Urea From the Former German Democratic Republic*, 62 FR 61271 (1997) (*Solid Urea From Germany*), *Camargo Correa Metais* v. *United States*, Slip Op. 98–152 (CIT 1998) (*Camargo Correa Metais*), and *AK Steel Corp.* v. *United States*, Slip Op. 97–152 (CIT 1997) (*AK Steel Corp.*).

The petitioners argue that the Department should not use the DEPB incentive as an offset to Raajratna's CV. The petitioners argue that no statutory provision exists which allows for such an offset. The petitioners contend that the DEPB incentive is not granted in order to offset any additional costs Raajratna incurred in purchasing raw materials. The petitioners argue that, since the Department's regulations and Antidumping Manual define CV as the costs of producing the subject merchandise exported to the United States as if it were sold in the home market, CV represents non-export sales made in the home market. Raajratna rebuts petitioners' characterization of CV, citing *Ad Hoc Committee of Florida Producers of Gray Portland Cement* v. *United States*, Slip Op. 98–131 at 23 (CIT 1998).

The petitioners argue further that, because Raajratna's claimed DEPB incentives were unrelated to (and exceeded) the actual amount of import duties paid, the Department should not use the incentive amounts to reduce Raajratna's COP or CV. Also, because Raajratna classifies the DEPB incentive as a revenue on its income statement, the petitioners argue that offsetting Raajratna's CV by the DEPB benefits constitutes a deviation from Raajratna's normal accounting practice and violates section 773(f)(1)(A) of the Act, the Statement of Administrative Action (H. Doc. 316, 103d Cong., 2d Sess. 821, 834–835 (SAA)), and Department practice.

The petitioners reject the cases cited by Raajratna as unsupportive, arguing that the respondent in *Camargo Correa Metais* received a government credit for use against future tax liability in the home market, which the Court of International Trade (CIT) determined to constitute a refund of the tax. The petitioners distinguish this case in that the import duties Raajratna paid were not refunded upon exportation because the DEPB incentives it received were not based upon import duties paid on raw materials. The petitioners also argue that *AK Steel Corp.* and *Solid Urea From Germany* are unsupportive because they demonstrate the Department's long-standing practice to base COP upon a producer's actual costs and to refuse to restate such costs to exclude government payments which are linked to specific costs.

Finally, the petitioners argue that, if the Department determines that the DEPB incentives should offset Raajratna's reported raw materials costs, the Department should cap the DEPB amount by the level of import duties and apply it only to Raajratna's CV and not to its COP. The petitioners note that Raajratna requests only that its CV material costs be adjusted for DEPB benefits. The petitioners argue further that an offset to COP for the DEPB benefits is improper because no correlation exists between the import duties paid and the DEPB benefits received upon exportation.

Department's Position: We found at verification that the DEPB refunds were unrelated to the customs duties Raajratna paid to purchase raw materials for the manufacture of subject merchandise. *Cost Verification Report* at 2, 11; *Sales Verification Report* at 8. Indeed, Raajratna's DEPB benefits were based on the FOB sales prices of Raajratna's finished goods for export and exceeded substantially the amount of customs duties Raajratna paid to import raw materials directly. Therefore, because we find no link between the revenue Raajratna received and its cost of purchasing raw materials, we are unable to decrease Raajratna's COM to reflect the DEPB benefits received.

Although Raajratna cited prior decisions and precedent in support of its position, the facts of this case indicate that an offset for raw materials costs is not warranted here. First, *AK Steel Corp.* did not address the issue of a downward adjustment to production costs to reflect government benefits, as Raajratna maintains. In *Solid Urea from Germany*, the Department agreed with the respondents that, where government payments were linked to specific costs and recorded in the respondent's financial statements, the respondent's COP should reflect government benefits received. *Solid Urea from Germany* at 61273. Here, Raajratna could not link its DEPB payments to specific costs and records the payments as revenue; thus to capture the DEPB benefits in Raajratna's COP calculation would be inconsistent with *Solid Urea from Germany*. In *Camargo Correa Metais*, the Department and the CIT found that a government tax credit, which constituted a refund, should be deducted from the respondent's CV calculation. *Id.* at 3. Here, however, we found that import duties Raajratna paid were not refunded upon exportation because the DEPB incentives were not directly based upon import duties Raajratna had paid on raw materials. Further, *SS Bar from India I* did not address an adjustment to CV for government benefits received. Finally, Raajratna cites to *SS Bar from India II*, in which the Department did not discuss the reasons justifying an adjustment to the respondent's CV costs for government credits received. *Id.* However, in the original less-than-fair-value investigation for that case, the Department explained that the facts of the case warranted an adjustment to CV for government credits received because the revenues were "directly related" to its purchases of domestic raw materials used to produce subject merchandise

and represented an appropriate offset to the respondent's raw materials costs. *Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Bar from India*, 59 FR 66915, 66920 (December 28, 1994). Because in this case we found no link between Raajratna's DEPB credits received and its raw materials costs, we find no justification for an offset to CV for those credits. Thus, where NV is based on CV, we have made no adjustment to Raajratna's raw materials costs for DEPB credits it received.

Comment 3: COP and CV Calculation

The petitioners argue that the Department should revise Raajratna's reported G&A expense ratio to include expenses incurred in its Mumbai office. The petitioners note that Raajratna included in its G&A expense ratio only the salary of the Mumbai-office employee performing liaison functions but not the expenses incurred in performing those functions. The petitioners argue that there are other legitimate G&A costs incurred by the Mumbai office for Raajratna's operation as a whole and that these should be included in COP and CV in accordance with the Department's long-standing practice.

Department's Position: We agree with the petitioners that we should include Raajratna's Mumbai-office expenses in the COP and CV calculation. We verified that the Mumbai office is a trading office which purchases raw materials consumed in the manufacturing process of the subject merchandise and occasionally facilitates HM sales. To calculate its general expenses, Raajratna included only the salary of the employee assigned to the Mumbai office. Raajratna excluded from the calculation of its G&A rate office expenses associated with maintaining that employee at the Mumbai office. Consistent with our normal methodology, we have allocated a portion of the total expenses of the Mumbai office to the merchandise under investigation. (*See Fresh Atlantic Salmon*, 63 FR at 31433.)

Comment 4: HM Indirect Selling Expenses

The petitioners argue that Raajratna did not report HM indirect selling expenses in its calculation of COP and that the Department should deduct these expenses from net HM prices before making the comparison to COP.

Department's Position: We agree that we should deduct HM indirect selling expenses from net price in our COP calculation. We calculated a HM indirect selling expense amount for Raajratna by calculating an indirect selling expense factor and applying it to Raajratna's HM sales. We deducted this amount from net price for COP. (*See* Final Determination Analysis Memorandum: Stainless Steel Round Wire From India, dated April 2, 1999.) We also added HM indirect selling expenses to our CV calculations.

Comment 5: Packing Expenses

The petitioners argue that the Department should add packing expenses to the calculation of Raajratna's COP or deduct packing expenses from the "net price COP" calculation.

Department's Position: We agree that we must deduct packing costs from net price for COP, which we compare to the cost of manufacturing, in order to achieve an apples-to-apples comparison. Therefore, we have deducted packing expenses from net price for COP for the final determination. This is consistent with the methodology we employed for all other SSRW investigations (*see, e.g.*, Preliminary Determination Analysis Memorandum—SSRW from Canada, Central Wire, dated November 12, 1998).

Comment 6: Commission Offset

The petitioners argue that the Department should use facts available for Raajratna's commission offset because Raajratna reported HM commissions but not U.S. commissions or U.S. indirect selling expenses. The petitioners argue that the Department should either omit the deduction for HM commissions from its calculation of HM prices or set the U.S. offset to the value of the HM commission.

Department's Position: We agree that Raajratna reported no U.S. commissions or U.S. indirect selling expenses. However, rather than omit the deduction for HM commissions or set the U.S. offset to the value of the HM commission, we have calculated an indirect selling expense amount by allocating all indirect selling expenses incurred by Raajratna over all sales in both markets. We then offset HM commissions by this amount for the final determination in accordance with section 351.410(e) of the Department's regulations. (*See Final Determination Analysis Memorandum: Stainless Steel Round Wire From India*, dated April 2, 1999.)

Comment 7: Financial Expense Ratio

Raajratna noted that the Department should revise its financial expense ratio based on the Department's verification findings.

Department's Position: We agree with Raajratna that we should revise the financial expense ratio according to our findings at verification and have made this adjustment for the final determination based on a company-wide cost-of-sales amount.

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, we are directing the Customs Service to continue to suspend liquidation of all entries of stainless steel round wire from India that are entered, or withdrawn from warehouse, for consumption on or after November 18, 1998, the date of publication of the preliminary determination in the **Federal Register**. The Customs Service shall require a cash deposit or the posting of a bond equal to the weighted-average amount by which the normal value exceeds the EP, as indicated in the chart below. These instructions suspending liquidation will remain in effect until further notice.

The weighted-average dumping margins are as follows:

Exporter/manufacturer	Weighted-average margin (percent)
Raajratna	18.64
All Others	18.64

ITC Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission (ITC) of our determination. As our final determination is affirmative, the ITC will, within 45 days, determine whether these imports are materially injuring, or threaten material injury to, the U.S. industry. If the ITC determines that material injury or threat of material injury does not exist, the proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing the Customs Service to assess antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

We are issuing and publishing this determination in accordance with sections 735(d) and 777(i)(1) of the Act.

Dated: April 2, 1999.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–8924 Filed 4–8–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–469–808]

Notice of Final Determination of Sales at Less Than Fair Value—Stainless Steel Round Wire From Spain

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: April 9, 1999.

FOR FURTHER INFORMATION CONTACT: Thomas Schauer or Robin Gray, Office of AD/CVD Enforcement 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–4852 or (202) 482–4023, respectively.

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to Department of Commerce ("the Department") regulations refer to the regulations codified at 19 CFR Part 351 (April 1998).

Final Determination

We determine that stainless steel round wire from Spain is being sold, or is likely to be sold, in the United States at less than fair value (LTFV), as provided in section 735 of the Act. The estimated margins are shown in the *Continuation of Suspension of Liquidation* section of this notice.

Case History

The preliminary determination in this investigation was issued on November 12, 1998. *See Notice of Preliminary Determinations of Sales at Less Than Fair Value and Postponement of Final Determinations—Stainless Steel Round Wire From Canada, India, Japan, Spain, and Taiwan; Preliminary Determination of Sales at Not Less Than Fair Value and Postponement of Final Determination—Stainless Steel Round Wire From Korea*, 63 FR 60402 (November 18, 1998) (preliminary determination).

Scope of Investigation

The scope of this investigation covers stainless steel round wire (SSRW). SSRW is any cold-formed (*i.e.*, cold-drawn, cold-rolled) stainless steel product of a cylindrical contour, sold in coils or spools, and not over 0.703 inch (18 mm) in maximum solid cross-sectional dimension. SSRW is made of iron-based alloys containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. Metallic coatings, such as nickel and copper coatings, may be applied.

The merchandise subject to this investigation is classifiable under subheadings 7223.00.1015, 7223.00.1030, 7223.00.1045, 7223.00.1060, and 7223.00.1075 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise under investigation is dispositive.

Period of Investigation

The period of the investigation (POI) is January 1, 1997, through December 31, 1997. This period corresponds to the four most recent fiscal quarters prior to the month of the filing of the petition (*i.e.*, March 1998).

Facts Available

Inoxfil did not respond to our questionnaire. Section 776(a)(2) of the Act provides that, if an interested party (A) withholds information that has been requested by the Department; (B) fails to provide such information in a timely manner or in the form or manner requested subject to sections 782(c)(1) and (e) of the Act; (C) significantly impedes a proceeding under the antidumping statute; or (D) provides such information but the information cannot be verified, the Department shall, subject to subsection 782(d) of the Act, use facts otherwise available in reaching the applicable determination. Because this firm did not respond to our questionnaire and because the relevant subsections of section 782 of the Act do not apply, we must use facts otherwise available to calculate the dumping margins for this company.

Section 776(b) of the Act provides that adverse inferences may be used when an interested party fails to cooperate by not acting to the best of its ability to comply with the Department's requests for information. *See also* Statement of Administrative Action accompanying the URAA, H.R. Rep. No. 316, Vol.1, 103d Cong., 2d Sess. 870 (1994) (SAA). The lack of response by Inoxfil to the Department's antidumping questionnaire constitutes a failure by this respondent to act to the best of its ability to comply with a request for information, within the meaning of section 776 of the Act. Thus, the Department has determined that, in selecting among the facts otherwise available, an adverse inference is warranted.

Because we were unable to calculate margins for this respondent in this investigation, we assigned this respondent the highest margin in the petition (recalculated by the Department, as appropriate). This approach is consistent with Department practice. *See Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Wire Rod from Germany*, 63 FR 40433 (July 29, 1998) (*Stainless Steel Wire Rod From Germany*). The highest petition margin is 35.80 percent.[1]

Section 776(b) states that an adverse inference may include reliance on information derived from the petition or any other information placed on the record. *See also* SAA at 829–831. Section 776(c) of the Act provides that, when the Department relies on secondary information (such as the petition) in using the facts otherwise available, it must, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal.

During our pre-initiation analysis of the petition, we reviewed the adequacy and accuracy of the secondary information in the petition from which the margins were calculated, to the extent that appropriate information was available for this purpose. *See Initiation of Antidumping Duty Investigations: Stainless Steel Round Wire from Canada, India, Japan, the Republic of Korea, Spain, and Taiwan*, 63 FR 26150, 26151 (May 12, 1998). However, we are aware of no other independent sources of information that would enable us to corroborate the components of the margin calculation in the petition further. The implementing regulation to section 776 of the Act, 19 CFR 351.308(c), states that "[t]he fact that corroboration may not be practicable in a given circumstance will not prevent the Secretary from applying an adverse inference as appropriate and using the secondary information in question."

[1] At the time of initiation, we revised petition margins based on price-to-price comparisons because the petitioners had not provided sufficient support for the home market freight figures used in their calculations. We made no additional revisions to the petition margins.

Additionally, we note that the SAA at 870 specifically states that, where "corroboration may not be practicable in a given circumstance," the Department may nevertheless apply an adverse inference. Finally, the margins calculated for respondents in the other round-wire investigations are in many instances of the same order of magnitude as the margins in the corresponding petitions, suggesting that the information contained in the round-wire petitions is generally reliable.

Interested Party Comments

No parties commented on the preliminary determination.

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, we are directing the Customs Service to continue to suspend liquidation of all entries of stainless steel round wire from Spain that are entered, or withdrawn from warehouse, for consumption on or after November 18, 1998, the date of publication of the preliminary determination in the **Federal Register**. The Customs Service shall continue to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the normal value exceeds the U.S. price, as indicated in the chart below. The suspension of liquidation instructions will remain in effect until further notice. The weighted-average dumping margins are as follows:

Exporter/manufacturer	Weighted-average margin percentage
Inoxfil	35.80
All Others	24.40

Section 735(c)(5)(B) of the Act provides that, where the estimated weighted-average dumping margins established for all exporters and producers individually investigated are zero or *de minimis* margins or are determined entirely under section 776 of the Act, the Department may use any reasonable method to establish the estimated all-others rate for exporters and producers not individually investigated. In this case, the margin assigned to the only company investigated is based on facts available. Therefore, consistent with the SAA, at 873, we are using an alternative method. As our alternative, we have based the all-others rate on a simple average of the margins in the petition, as revised at the time of initiation of this investigation.

ITC Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission (ITC) of our determination. As our final determination is affirmative, the ITC will, within 45 days, determine whether these imports are materially injuring, or threaten material injury to, the U.S. industry. If the ITC determines that material injury or threat of material injury does not exist, the proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing the Customs Service to assess antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

We are issuing and publishing this determination in accordance with sections 735(d) and 777(i)(1) of the Act.

Dated: April 2, 1999.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–8925 Filed 4–8–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–122–829]

Notice of Final Determination of Sales at Less Than Fair Value—Stainless Steel Round Wire from Canada

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: April 9, 1999.

FOR FURTHER INFORMATION CONTACT: Thomas Schauer or Robin Gray, Office of AD/CVD Enforcement 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–4852 or (202) 482–4023, respectively.

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 ("the Act") by the Uruguay Round Agreements Act ("URAA"). In addition, unless otherwise indicated, all citations to Department of Commerce ("the Department") regulations refer to the regulations codified at 19 C.F.R. Part 351 (April 1998).

Final Determination

We determine that stainless steel round wire from Canada is being sold, or is likely to be sold, in the United States at less than fair value ("LTFV"), as provided in section 735 of the Act. The estimated margins are shown in the *Continuation of Suspension of Liquidation* section of this notice.

Case History

The preliminary determination in this investigation was issued on November 12, 1998. *See Notice of Preliminary Determinations of Sales at Less Than Fair Value and Postponement of Final Determinations—Stainless Steel Round Wire From Canada, India, Japan, Spain, and Taiwan; Preliminary Determination of Sales at Not Less Than Fair Value and Postponement of Final Determination—Stainless Steel Round Wire From Korea*, 63 FR 60402 (November 18, 1998) ("preliminary determination"). Since the preliminary determination, the following events have occurred.

In January 1999, we conducted on-site verifications of the questionnaire responses submitted by Central Wire Industries Ltd. ("Central Wire") and Greening Donald Co. Ltd. ("Greening Donald") (collectively "the respondents").

We received case briefs from the petitioners [1] and both respondents on February 23, 1999, and we received rebuttal briefs from the same parties on March 2, 1999. We held a public hearing and a proprietary hearing on March 11, 1999.

Scope of Investigation

The scope of this investigation covers stainless steel round wire ("SSRW"). SSRW is any cold-formed (*i.e.*, cold-drawn, cold-rolled) stainless steel product of a cylindrical contour, sold in coils or spools, and not over 0.703 inch (18 mm) in maximum solid cross-sectional dimension. SSRW is made of iron-based alloys containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. Metallic coatings, such as nickel and copper coatings, may be applied.

The merchandise subject to this investigation is classifiable under

[1] ACS Industries, Inc., Al Tech Specialty Steel Corp., Branford Wire & Manufacturing Company, Carpenter Technology Corp., Handy & Harman Specialty Wire Group, Industrial Alloys, Inc., Loos & Company, Inc., Sandvik Steel Company, Sumiden Wire Products Corporation, and Techalloy Company, Inc.

subheadings 7223.00.1015, 7223.00.1030, 7223.00.1045, 7223.00.1060, and 7223.00.1075 of the *Harmonized Tariff Schedule of the United States* ("HTSUS"). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise under investigation is dispositive.

Period of Investigation

The period of the investigation ("POI") is January 1, 1997, through December 31, 1997. This period corresponds to each respondent's four most recent fiscal quarters prior to the month of the filing of the petition (*i.e.*, March 1998).

Fair Value Comparisons

To determine whether sales of stainless steel round wire from Canada to the United States were made at less than fair value, we compared the export price ("EP") or constructed export price ("CEP"), as appropriate, to the normal value. Our calculations followed the methodologies described in the preliminary determination except as noted below. *See* also the company-specific analysis memoranda dated March 31, 1999, which have been placed in the file.

Export Price and Constructed Export Price

For the price to the United States, we used EP or CEP as defined in section 772 of the Act. We calculated EP and CEP based on the same methodology we used in the preliminary determination, with the following exceptions:

1. We calculated and deducted U.S. duties from EP for certain sales for which Central Wire did not report the duties. *See* comment 11, below.
2. We recalculated Central Wire's indirect selling expenses to account for the fact that Central Wire's sales were made in mixed currencies. *See* comment 4, below.
3. We excluded Greening Donald's U.S. consignment sales from our analysis. *See* comment 12, below.

Normal Value

We used normal value as defined in section 773 of the Act. As in the preliminary determination, we excluded certain sales for both respondents pursuant to section 773(b) of the Act because we found that these sales were made below the cost of production within an extended period of time in substantial quantities and were not at prices which permit recovery of all costs within a reasonable period of time. We calculated normal value based on the same methodology we used in the preliminary determination, with the following exceptions:

1. We revised the list of Central Wire's home-market sales which we determined to have been made outside the ordinary course of trade. *See* comment 2, below.
2. We recalculated Central Wire's indirect selling expenses to account for the fact that Central Wire's sales were made in mixed currencies. *See* comment 4, below.

Cost of Production

In accordance with section 773(b)(3) of the Act, we calculated the weighted-average cost of production ("COP"), by model, based on the sum of each respondent's cost of materials, fabrication, general expenses, and packing costs. We relied on the submitted COP data except in the following specific instances where Greening Donald's submitted costs were not quantified or valued appropriately:

1. We included certain costs which Greening Donald did not report in its submitted costs. *See* comment 13, below.
2. We calculated Greening Donald's general and administrative expenses ("G&A") in accordance with our normal methodology which is based on the producing company as a whole. *See* comment 14, below.
3. We calculated Greening Donald's financial expenses based on the total operations of the consolidated corporation (*i.e.*, the Thyssen Group). *See* comment 16, below.
4. We included foreign-exchange gains and losses related to Greening Donald's cash accounts and accounts payable accounts in the COP and constructed value ("CV"). *See* comment 16, below.
5. We relied on Greening Donald's normal books and records kept in accordance with Canadian generally accepted accounting principles, and we included the year-end depreciation adjustment in the calculation of Greening Donald's costs. *See* comment 20, below.
6. During the POI, Greening Donald purchased certain major inputs from an affiliated supplier and from unaffiliated suppliers. In order to follow our normal practice of using the highest of transfer price, market price, or the affiliate's cost of production to calculate the cost of affiliated-party inputs, we calculated an adjustment which we applied to the per-unit direct material cost of all products incorporating this input. *See* comment 18, below.
7. Greening Donald asserted that its reported variances represented the weighted-average cost of fiscal year 1997 and the first quarter of fiscal year 1998. It also stated that the denominator it used in the calculation of the reported variance rates was based on cost-of-sales information rather than cost-of-manufacturing information. For the final determination, we used the variance rates based on the POI cost of manufacturing to calculate COP and CV.

Currency Conversions

As in the preliminary determination, we made currency conversions in accordance with section 773A of the Act. The Department's preferred source for daily exchange rates is the Federal Reserve Bank.

Verification

As provided in section 782(i)(1) of the Act, we verified the information submitted by the respondents for use in our final determination. We used standard verification procedures, including examination of relevant accounting and production records, as well as original source documents provided by the respondents.

Interested Party Comments

Comment 1: *Substantial Transformation.* The respondents argue that the Department's preliminary determination that wire rod is substantially transformed in the production of round wire yields a fundamentally unfair result. The respondents contend that they must pay both "non-NAFTA" tariff duties and estimated dumping duties on the same wire used to produce stainless steel round wire because this wire is classified both as "Canadian" and as "foreign" under essentially identical Customs and Department of Commerce substantial-transformation tests. The respondents contend that the rod imported (into Canada) is not physically or chemically substantially transformed in Canada such that it merits classification as a Canadian product subject to dumping duties. The respondents observe that the Court of International Trade ("CIT") has ruled that wire rod is not substantially transformed into round wire in the context of a Customs case, citing *Superior Wire* v. *United States*, 669 F. Supp. 472 (CIT 1987) ("*Superior Wire*"), affirmed 867 F. 2d 1409 (Fed. Cir. 1989). The respondents contend that the CIT, in *Superior Wire*, noted that the end use of wire is determined by the rod input.

The respondents also contend that wire rod constitutes an essential active component which defines the key chemical and physical parameters of the finished wire and that the level of accuracy required for accurate model

matching in a dumping analysis is not necessary in a substantial-transformation analysis. The respondents contend that the substantial-transformation test requires a substantial change in the physical and chemical properties, not small differences which may be implicated in applying the model-matching criteria.

The respondents contend further that the Department's analysis of the end-uses of stainless steel wire is too specific. Citing *Final Determination of Sales at Less than Fair Value: Static Random Access Memory Semiconductors from the Republic of Korea*, 63 FR 8934 (February 23, 1998), the respondents argue that the Department rarely considers changes in specific end-uses as opposed to general end-use categories sufficient to qualify as substantial transformation.

In addition, the respondents contend that the Department, lacking contrary evidence from the petitioners, should base its determination of relative investment for rod production versus wire drawing on uncontested evidence provided by the respondents. Citing *Brass Sheet and Strip from Canada*, 58 FR 6615, 6617 (February 1, 1993), *Granular Polyetrafluoroethylene Resin from Italy*, 58 FR 26100, 26102 (April 30, 1993), and section 351.402(c)(2) of the Department's regulations, the respondents contend that the value added in the wire-drawing process is insignificant and, according to Departmental policy, it does not qualify as a substantial transformation of the product. Alternatively, the respondents suggest, the Department should classify those wire products found to have particularly low value-added transformations as a product of the country from which the rod was purchased and, therefore, not subject to this investigation.

The respondents argue further that the substantial-transformation test the Department applied constitutes an "administrative determination of general application," as defined by Article 1 of the World Trade Organization ("WTO") Agreement on the rules of origin and, therefore, subject to that agreement. The respondents request that the Department explain its rationale behind its belief that Article 2 of the WTO Agreement on Rules of Origin does not require the Department to apply the country-of-origin determinations made by Customs. Considering the totality of the factors on the record in this case, the respondents request that the Department reverse its decision and terminate the investigation of SSRW from Canada.

The petitioners agree with the Department's preliminary determination that stainless steel wire rod is substantially transformed into round wire. According to the petitioners, the respondents have not made any significantly different arguments than they did prior to the preliminary determination and, moreover, the information they have submitted in support of their arguments only serves to confirm that the Department's preliminary determination is correct.

The petitioners argue that the scope of an antidumping investigation is not based on Customs rules of origin nor on the WTO rules of origin. The petitioners assert that there is nothing in the current rules that requires the Department to apply Customs country-of-origin determinations for purposes of antidumping or countervailing duty proceedings. The petitioners, citing the WTO Agreement on Rules of Origin, Article 1 n.1, contend that the respondents ignore the plain language of the WTO Rules of Origin Agreement that says its provisions do not apply to "those determinations made for purposes of defining 'domestic like product' or 'like products of the domestic industry' or similar terms wherever they apply." Moreover, the petitioners argue, even if the WTO Agreement on Rules of Origin were applicable to antidumping proceedings, there is no existing agreement on the actual origin for specific products.

The petitioners also argue that Customs Service determinations on classification or origin of a product are not binding on the Department. The petitioners assert that there are important policy reasons why the Department should not be bound by Customs Service rulings, claiming that, because of the difficult standards that have been established regarding claims of circumvention, industries that rely on a single major raw material input might not be able to obtain any relief from dumping or unfair subsidization of the downstream product.

The petitioners assert further that the respondents are not disproportionately affected by the Department's substantial-transformation ruling. The petitioners observe that both respondents use U.S.-origin wire rod to make wire that they import to the United States and that this wire qualifies for a NAFTA tariff. Furthermore, the petitioners claim that, even when the respondents use wire rod imported from countries other than the United States, they are not any different than the respondents in the other stainless steel round wire investigations.

The petitioners also assert that the respondents' reliance on *Superior Wire* is misplaced. The petitioners observe that *Superior Wire* concerned carbon steel wire, which is a different product than the one covered in this investigation. Citing *The Making, Shaping and Treating of Steel*, a standard industry reference, the petitioners claim that carbon steel and stainless steel products are quite different. The petitioners also observe that the *Superior Wire* ruling was made in the context of a voluntary restraint agreement, which is completely different from the context of an antidumping investigation. The petitioners conclude that the factual analysis of *Superior Wire* is limited to the facts of that case alone and is of no precedential value in this case. The petitioners also note that, for its preliminary determination in this investigation, the Department determined that the characteristics of stainless steel round wire are not predetermined by the rod input but, rather, that the wire rod is altered in the process of making it into round wire. The petitioners also observe that, although the respondents argue that the Department's end-use analysis is too specific, they do not suggest any alternatives.

Finally, the petitioners argue that the respondents' reliance on the data they presented regarding the value added to wire rod by the cold-drawing process is misplaced. Since these data are unverified estimates. The petitioners also assert that, based on the Greening Donald's cost data, the record indicates that the value added to wire rod by the cold-drawing process is significant.

Department's Position: We continue to find, as we stated in the Memorandum to Richard W. Moreland dated November 12, 1998 ("November 12 memorandum"), that stainless steel wire rod cold-drawn in Canada to produce stainless steel round wire is substantially transformed into a Canadian product and is within the scope of this investigation, regardless of the origin of the stainless steel wire rod input. The cold-drawing process results in a product with physical properties and end-uses that are distinct from those of the stainless steel wire rod input, thus transforming the rod into a new and different article. The stainless steel round wire industry is distinct from the stainless steel wire rod industry and the value added by the cold-drawing process is significant.

Furthermore, the respondents' reliance on *Superior Wire* is misplaced. *Superior Wire* was a ruling on carbon steel wire, not stainless steel wire.

Superior Wire, at 479, held that "the wire rod dictates the final form of the finished wire." Regardless of what circumstances may apply in the carbon steel wire industry, this statement is demonstrably not true here, as is described in detail in the November 12 memorandum.

Although the respondents argue that our substantial-transformation analysis is too specific by incorporating model-matching criteria, their argument that we should only take into account the "overall parameters" and not "small model-matching criteria" in our analysis is unconvincing. First, it is not clear why model-matching criteria such as size and tensile strength would not be part of the "parameters" of round wire. Second, it is unclear why we should not consider a change in wire rod such that the finished product (round wire) is, for example, one-third of the diameter of the rod input to be substantial. The analysis in the November 12 memorandum, at pages 4–5, demonstrates that the chemical composition, or grade, of the wire is not the only physical characteristic of the round wire. We use additional characteristics to define two products that are identical, and all those characteristics are changed by the drawing process.

Moreover, we disagree with the respondents' assertion that the end-use of wire is determined by the rod input. Again, the respondents' reliance on *Superior Wire* is misplaced. As we stated in the November 12 memorandum, at page 5, the cold-drawing process results in a product with end-uses that are distinct from those of the wire-rod input. Whatever the circumstances may be in the carbon steel wire industry, it is clear that the end-uses of stainless steel wire are dependent on factors other than the grade of the wire-rod input. The respondents have not cited any evidence on the record of this investigation or to any industry reference that suggests otherwise. Given these circumstances, we conclude that the circumstances examined in *Superior Wire* simply do not apply here.

Furthermore, we disagree with to the respondents' argument that our end-use analysis is too specific. In their case brief, quoting from Greening Donald's December 29, 1998, submission, the respondents state that "the Department is correct in noting that, within each set of general end-uses, there may be more specific end-uses. The drawing process may make SSRW more suitable for one rather than another specific end-use: nevertheless, the grade of the wire rod has pre-determined the general set of end-uses for which the wire may be used. Thus, for example, neither AISI 304 nor AISI 316 could provide the high temperature resistance required to produce a high temperature conveyor belt. By contrast, AISI 314 would provide the necessary "high temperature resistance." Thus, the respondents consider "high temperature conveyor belts" to be a general end-use. "Spring wire," that is, wire used to produce springs, which we used in an example in the November 12 memorandum, at page 5, is no less general an end-use than the example cited by the respondents. Moreover, the respondents' citation to *Semiconductors from the Republic of Korea* is inapposite. In that case, we determined that "[p]rocessed wafers produced in Korea, but packaged, or assembled into memory modules, in a third country, are included in the scope; processed wafers produced in a third country and assembled or packaged in Korea are not included in the scope." Thus, it is the processed wafers that are the subject merchandise, not the packaging or memory modules. In this case, it is the stainless steel round wire that is subject to this investigation. How it is packaged is not relevant to our substantial transformation analysis.

With regard to the respondents' argument that the investment required to draw wire is less than the investment required to produce rod, we agree that this can be a factor in our determination as to whether a product is substantially transformed. We do not agree that it is a controlling factor. Our review of the record indicates that "[t]he facilities, machinery and expertise needed to cold-draw stainless rod into stainless wire are distinct from those needed to produce stainless rod." *See* November 12 memorandum, at page 5. The respondents have not cited any evidence to contradict this. Thus, we find that the stainless steel round wire industry is separate and distinct from the stainless steel wire rod industry, and the two industries are not interchangeable. For this reason, we do not consider the relative levels of investment required in the industries to be as relevant in this proceeding as the fact that stainless steel round wire is a product with physical properties, that end-uses are distinct from those of stainless steel wire rod, and that the industries are distinct.

We also disagree with the respondents' assertion that the value added by the drawing process is insignificant. The cost data submitted by the respondents indicates that, on average, the value added by the drawing process is greater than the threshold suggested by the cases they cite. Furthermore, section 351.402(c)(2) of our regulations establishes whether we should apply the special rule in section 772(e) of the Act and is inapposite to a substantial-transformation determination. Section 772(e) of the Act directs that the Department may calculate the margins on further-manufactured merchandise in instances where the value added by an affiliated party is likely to exceed substantially the value of the subject merchandise. Neither section 772(e) of the Act nor 19 C.F.R. 351.402(c)(2) affect the Department's determination of whether a product is substantially transformed.

Finally, we reiterate that the disciplines of the WTO Agreement on Rules of Origin that are currently in effect under Article 2 of the Agreement simply do not require us to apply the country-of-origin determinations made by the Customs Service when making determinations in AD or CVD proceedings. Therefore, we have not altered our preliminary determination regarding our substantial transformation decision for this final determination.

Central Wire Comments

Comment 2: Ordinary Course of Trade. Central Wire argues that the Department should exclude all of the sales that it claimed were made outside the ordinary course of trade from the home-market sales used to calculate normal value. Central Wire contends that the statute directs the Department to base normal value only on sales that are made in commercial quantities and that are made in the ordinary course of trade and that the Department will consider the totality of circumstances in examining this issue, citing *Murata Mfg. Co.* v. *United States*, 820 F. Supp. 603, 607 (CIT 1993).

Central Wire notes that the Department excluded some of its claimed outside-the-ordinary-course-of-trade sales from the calculation of normal value because the Department found that some of the sales had aberrational pricing. Central Wire contends, however, that the standard the Department applied was too restrictive and argues that it would be more appropriate to use a 25-percent price difference between the sale and other sales of similar products made within the ordinary course of trade, rather than the 50-percent price difference the Department used, to determine whether an individual sale is outside the ordinary course of trade.

Central Wire also notes that the Department excluded some of its claimed outside-the-ordinary-course-of-trade sales from the calculation of

normal value because the Department found, based on Central Wire's descriptions in its responses, that the circumstances of the sales demonstrated that they were made outside the ordinary course of trade. However, Central Wire claims, there were some sales that it reported as outside the ordinary course of trade which the Department did not exclude and for which the Department did not explain why it had not excluded the sales. With regard to these sales, Central Wire contends that the Department's findings at verification demonstrate that all of its claimed outside-the-ordinary-course-of-trade sales were, in fact, made outside the ordinary course of trade and should be excluded from the Department's dumping calculations.

The petitioners contend that the information on the record does not provide a sufficient basis to support Central Wire's claims. The petitioners argue that Central Wire essentially claimed sales it made to new customers or sales of products with different specifications to existing customers as outside the ordinary course of trade. The petitioners argue that this does not demonstrate that a sale is outside the ordinary course of trade and observe that Central Wire had a number of "one-time" sales to customers that it did not claim were made outside the ordinary course of trade. The petitioners contend that, to do business in a competitive market, a producer has to accommodate its customers' needs, to sell to new customers, even to solicit new customers, and that it should not be a commercial irregularity that Central Wire sometimes sells to less-desirable customers or that it could sometimes take advantage of the market situation and charge a higher-than-normal price for identical or similar merchandise to other customers. The petitioners also argue that the nature of the customer, such as whether it was a supplier to Central Wire, should not be a factor in determining whether a sale was made outside the ordinary course of trade.

Central Wire rebuts that the Department should not accept the petitioners' argument regarding Central Wire's claimed outside-the-ordinary-course-of-trade sales on procedural grounds because, according to Central Wire, the petitioners never raised the issue of its claimed outside-the-ordinary-course-of-trade sales previously in this investigation. Central Wire argues that, if the Department accepts the petitioners arguments, it will leave respondents unable to respond adequately to allegations made by petitioners adequately. Moreover, Central Wire contends that it conservatively identified its sales as being outside the ordinary course of trade and that, perhaps, additional sales may have been able to be similarly identified.

Department's Position: We agree with the petitioners in part. A company may well obtain new customers or sell different products to existing customers, and it may even seek such business actively. In addition, the record shows that Central Wire had a number of apparent "one-time" sales which it did not claim as outside the ordinary course of trade. Thus, the fact that Central Wire has some sales to customers to which it does not normally sell or sells products that the customer does not normally buy does not demonstrate, in itself, that a sale is outside the ordinary course of trade. However, this fact, in conjunction with other circumstances, such as aberrational pricing, may lead us to conclude that a sale is outside the ordinary course of trade. In this case, we have reconsidered our analysis of Central Wire's claimed outside-the-ordinary-course-of-trade sales. We have accepted portions of Central Wire's claim that certain sales were made outside the ordinary course of trade and excluded those sales from our normal value calculation. We determined that one-time, small-quantity sales that had unusual circumstances, such as aberrational pricing, were outside the ordinary course of trade. Due to the business-proprietary nature of the information, please see the Memorandum from Thomas Schauer to Richard W. Moreland dated April 2, 1999, for a complete description of the sales we excluded and the circumstances which led us to conclude that they were outside the ordinary course of trade.

Furthermore, we disagree with Central Wire's assertion that we should use a threshold of 25 percent to determine aberrational prices instead of the 50-percent threshold we used for the preliminary determination. Central Wire argues that the lower threshold is more appropriate on the theory that the threshold we used was too "restrictive," given the nature of SSRW sales and the frequent presence of a market price for a particular product. However, Central Wire did not explain how the nature of SSRW sales renders a 25-percent threshold more appropriate, nor did it point to any evidence in support of its claim. In addition, Central Wire did not explain how the frequent presence of a market price for particular products suggests that a lower threshold would be more appropriate. We must ensure that our consideration is tailored in a manner that does not result in excluding sales that, while different from the majority of sales, are not outside the ordinary course of trade. Therefore, the standard for determining whether a sale is outside of the ordinary course of trade needs to be high in order to prevent potential manipulation of a sales database that would result in excluding sales not outside the ordinary course of trade. Central Wire has presented no convincing argument to support its claim that the threshold we used in our analysis was inappropriate. Therefore, we have not changed our threshold for this case in our analysis.

Finally, we disagree with Central Wire that we should reject the petitioners' arguments on procedural grounds. Central Wire should read the record more carefully. The petitioners have voiced their concern about Central Wire's claimed outside-the-ordinary-course-of-trade sales in a number of submissions prior to its case brief at various stages of this investigation. Further, when we receive comments in a case brief, we consider all issues raised in the context of the record as it stands at that time. Thus, there is no reason to reject the petitioners' arguments as a procedural matter.

Comment 3: Quantity-Band Matching. Central Wire argues that the Department should account for variations in prices due to quantities sold. Central Wire claims that section 773(a)(1) of the Act directs the Department to compare U.S. sales only to home-market sales made in the usual commercial quantities. Central Wire claims further that section 773(a)(6) of the Act, as well as the Department's regulations at 19 C.F.R. 351.409, directs the Department to adjust its price comparisons if there is a difference in price due wholly or in part to differences in the quantities of the normal value sale and the EP sale being compared.

Central Wire contends that, though the Department has historically been reluctant to make quantity adjustments pursuant to 19 C.F.R. 351.409, there is no reason why the Department should not make a quantity adjustment in Central Wire's case. Central Wire acknowledges that the quantity-adjustment regulation does not appear to be tailored for, nor does it account for, Central Wire's circumstances because Central Wire does not grant quantity discounts, *per se,* although it does effectively impose a surcharge for low-quantity sales.

Central Wire suggests that the Department compare U.S. sales to home-market sales made within the same "quantity band" which Central Wire suggested prior to the preliminary determination. By matching within the

same quantity bands, Central Wire argues, the Department would minimize the need for a quantity adjustment. Citing *Framing Stock from the United Kingdom*, 61 FR 51411, 51420 (October 2, 1996) ("*Framing Stock*"), Central Wire contends that the Department has used the quantity-band concept for matching purposes in prior cases. Central Wire also claims that an examination of prices within each of the quantity bands demonstrates that the average prices at each quantity band differ from each other in both the U.S. and home markets. Finally, Central Wire suggests, if the Department can not match the identical or most similar product within the same quantity band, that the Department make an adjustment based on the difference in the weighted-average prices across quantity bands.

The petitioners assert that, section 771(16) of the Act requires the Department to compare the subject merchandise based on the products' physical characteristics. The petitioners argue that, because the quantity of the product has nothing to do with the physical characteristics of round wire, quantity bands should not be used as a matching criterion. The petitioners, citing *United Eng'g & Forging* v. *United States*, 779 F. Supp. 1375, 1381–82 (CIT 1991), also argue that the courts have upheld the Department's practice of not using volume as a criterion for selecting the most similar merchandise.

The petitioners argue further that because Central Wire has not demonstrated that during the POI it granted quantity discounts of at least the same magnitude on 20 percent or more of sales of the foreign like product for that country or the discounts reflect savings specifically attributable to the production of different quantities, criteria required in the Department's regulations, it is not eligible for a quantity discount.

In addition, the petitioners assert that the circumstances in *Framing Stock* are different from the instant situation. In that case, according to the petitioners, the respondent asked for a quantity adjustment for its products and the Department determined that a quantity adjustment was warranted in certain instances but not in others. In any event, the petitioners contend, the respondent in that case was seeking a quantity adjustment and not a new product-matching criterion based on sales quantities.

Finally, the petitioners argue that, even if there were not clear statutory and case precedents against comparing products on the basis of quantities, Central Wire has not provided convincing evidence to attribute price differences between its sales to differences in quantities. The petitioners argue that, in its price analysis, Central Wire did not control for certain differences, such as differences in merchandise sold among the claimed quantity bands or differences in expenses such as freight or packing for each sale. The petitioners also contend that price differences could also be caused by a number of other reasons such as the timing of the sale, customers' relationships with the supplier, and market conditions for finished products and raw materials. The petitioners conclude that it would be inappropriate to make any quantity adjustment or compare across quantity bands without taking these other factors into account.

Department's Position: Central Wire did not demonstrate that the difference in prices among its claimed quantity bands were wholly or partly due to the differences in quantities. Central Wire's price analysis did not account for many factors that might more reasonably be said to cause the differences in prices. For example, Central Wire presumably has different product mixes within the different claimed quantity bands. If one claimed quantity band consists mainly of sales of fine wire and another claimed quantity band consists mainly of sales of wire that has undergone only one draw, then that, in our view, would be a more likely explanation of any difference in prices. Also, Cental Wire's analysis reflected gross prices, and did not take other factors, such as differences in packing or freight expenses, into account. Thus, because Central Wire has not demonstrated that any differences in price among its claimed quantity bands is wholly or partly due to the differences in quantities, it would be inappropriate to attempt to match products using Central Wire's claimed quantity bands as a matching criterion. Therefore, we have not attempted to match products by quantity bands.

With respect to making an adjustment if we make comparisons of products sold at different quantities, our regulation at 19 C.F.R. 351.409 states that "the Secretary will make a reasonable allowance for any difference in quantities to the extent the Secretary is satisfied that the amount of any price differential * * * is wholly or partly due to that difference in quantities." The regulation identifies the standards we use to determine whether any price differential is wholly or partly due to that difference in quantities: "[t]he Secretary normally will calculate normal value based on sales with quantity discounts only if * * * the exporter or producer granted quantity discounts of at least the same magnitude on 20 percent or more of sales of the foreign like product" or "the exporter or producer demonstrates to the Secretary's satisfaction that the discounts reflect savings specifically attributable to the production of the different quantities." Central Wire did not grant quantity discounts nor did it demonstrate that any difference in prices were specifically attributable to the production of the different quantities. In addition, Central Wire did not demonstrate how any evidence on the record, such as price lists, supported its claim that prices varied by quantity. Therefore, we have not made any quantity adjustments.

Comment 4: *Allocation of Indirect Selling Expenses.* Central Wire disagrees with the Department's re-allocation of its reported U.S. and home-market indirect selling expense adjustments. Claiming that there is no evidence on the record that it incurred indirect selling expenses on a value basis rather than a weight basis, Central Wire argues that there is no conceptual, accounting, or economic justification for the Department's preference for a value-based allocation.

Central Wire argues further that, in the event that the Department continues to re-allocate its indirect selling expenses on a value basis, the Department should adjust its re-allocation methodology to reflect the fact that some of the sales values in the Department's calculation are in U.S. dollars while other values are in Canadian dollars.

The petitioners agree with the Department's reallocation of Central Wire's indirect selling expenses, contending that the Department's normal practice is to require that a respondent allocate indirect selling expenses based on sales value rather than on sales quantity. The petitioners also observe that a volume allocation would likely allocate a smaller portion of the expenses to small-sized, more expensive wire than to relatively inexpensive larger wire.

Department's Position: In the *Final Determination of Sales at Less Than Fair Value: Stainless Steel Plate in Coils From Belgium*, 64 FR 15476 (March 31, 1999), we stated that, in calculating indirect selling expenses, "the Department should use a value-based allocation rather than a quantity-based one," and that "the Department's normal practice is to base calculations of [selling, general, and administrative expenses] based on value [or cost]." While Central Wire claims that there is no evidence on the record that it incurred indirect selling expenses on a

value basis rather than a weight basis, neither is there any evidence to support a conclusion that Central Wire incurred these expenses on a weight rather than value basis. Because there is no evidence on the record demonstrating the need to deviate from our normal practice, we have reallocated Central Wire's indirect selling expenses on a value basis. Moreover, based on our findings at verification, we have revised our calculation for varying currencies in our re-allocation worksheet. *See* Central Wire Final Determination Analysis Memorandum dated March 31, 1999.

Comment 5: Post-Verification Cost Submission. The petitioners argue that the Department should not accept the cost data which Central Wire submitted after verification because the changes Central Wire made to its data were more extensive than necessary as indicated by the Department's verification report. Although Central Wire presented corrections to the verifiers at the beginning of verification, the petitioners contend that certain changes, such as production quantities and the number of products sold, should not have been affected by those corrections. The petitioners also claim that Central Wire reported its costs based on the products sold during the POI, whereas the Department asked for respondents to report costs based on the products produced during the POI.

The petitioners also contend that Central Wire did not reconcile its reported costs for subject merchandise to its normal accounting records, thereby preventing the Department from performing certain verification procedures.

Finally, the petitioners argue that Central Wire should not be allowed to use verification as an opportunity to make substantial revisions to its submitted responses. The petitioners conclude that, in light of these facts, the Department should not use the cost databases submitted by Central Wire after verification and instead use the databases Central Wire submitted prior to verification.

Central Wire argues that the Department should use the databases that Central Wire submitted subsequent to verification. Central Wire contends that its revised costs correct inaccuracies in its previous submissions, the Department verified these revised costs, and it did not in any way modify the total cost of goods sold it used to calculate costs of production. Central Wire argues further that the Department is required by law and practice to accept its new information as it is demonstrably more accurate than its earlier information and was submitted in a timely manner. Central Wire contends that the number of products and the production quantities changed because of corrections presented at the start of the sales verification. Finally, citing *Certain Corrosion-Resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate From Canada: Final Results of Antidumping Duty Administrative Reviews and Determination To Revoke in Part*, 64 FR 2173 (January 13, 1999), Central Wire argues that the fact that its data is based on sales quantities rather than production quantities is not a basis for rejecting Central Wire's costs. Central Wire contends that, because it does not maintain production records which would allow it to calculate model-specific costs on the basis of production quantities, it acted to the best of its ability in reporting its costs.

Department's Position: The cost data Central Wire submitted after verification is accurate. By applying the cost variances in Exhibit 8 of the cost-verification report dated February 8, 1999, to the model-specific standard costs in Exhibit 7 of the cost-verification report dated February 8, 1999, we obtained the same cost figures that Central Wire submitted after verification. Because we verified the data in Exhibits 7 and 8 of the cost-verification report by tying the data to Central Wire's audited financial statements, we are satisfied that the cost-of-production data in Central Wire's submission is accurate. With regard to the number of control numbers and production quantities, we agree with Central Wire that the cause of the difference is due to corrections presented at the start of verification.

Although the petitioners are correct that Central Wire reported its revised costs based on the products sold during the POI, this is the manner in which Central Wire reported its original costs. In addition, we never asked Central Wire to revise its methodology for calculating costs nor is there any evidence on the record suggesting that Central Wire's methodology is distortive. In light of these facts and because the revised database contains data which we verified to be accurate, it would be inappropriate to reject Central Wire's revised database in favor of its original database.

Furthermore, while we normally would share the petitioners' concerns regarding the accuracy of post-verification revisions, in this case we requested that Central Wire revise and resubmit its databases pursuant to our findings at verification. Because we requested the data and because Central Wire met the deadline we imposed upon it for submitting the revised data, we determine that Central Wire's revisions were filed in a timely manner. Thus, because Central Wire's information is timely filed and verified to be accurate, we have used the revised databases Central Wire submitted.

Comment 6: General and Administrative Expenses. The petitioners argue that the Department should recalculate Central Wire's reported general and administrative expense ratio to include certain expenses which Central Wire did not include in its general and administrative expense calculation.

Central Wire contends that it did include the expenses to which the petitioners refer in its general and administrative expense calculation.

Department's Position: Exhibit 4 of the cost-verification report dated February 8, 1999, demonstrates that Central Wire included these expenses in its general and administrative expense calculation. Therefore, no adjustment is necessary.

Comment 7: Alleged Consignment Sales. The petitioners contend that the Department found that Central Wire did not report certain sales in its home-market database and that the Department should include these sales in its margin calculation for Central Wire for the final determination. The petitioners argue further that, to the extent that the data the Department collected are not sufficient, the Department should resort to partial facts available to fill in the blanks for information not on the record.

Central Wire argues that it reported these sales properly. Central Wire contends that, during the period of time in which these sales occurred, the consignment agreement with the consignee had not been concluded and thus Central Wire prepared an invoice at the time of shipment. Central Wire asserts that it did not begin issuing usage invoices for shipments to the consignee until after reaching a consignment agreement. According to Central Wire, the existence of the consignment agreement therefore explains why merchandise was shipped in 1996 but had sales dates in 1997.

Department's Position: We disagree with the petitioners. The record shows that Central Wire did not enter into a consignment agreement with the consignee until October 1996. Furthermore, according to the Department's Central Wire Sales Verification Report dated February 8, 1999, at page 7, for shipments to the consignee "prior to the signing of the consignment agreement, [Central Wire]

invoiced the consignment sales at the time of delivery to the consignee rather than the time of usage." Thus, these sales can be distinguished from the shipments to the consignee after the agreement was made. In the case of sales Central Wire made prior to the agreement, the date that the price and quantity were set was the date of shipment and the customer was responsible for payment at that time. In the case of sales after the agreement, the price and quantity were not set until the customer actually used the merchandise, at which time Central Wire issued a usage invoice for the merchandise. In this case, the customer was not responsible for payment until Central Wire issued the usage invoice. Therefore, we conclude that Central Wire excluded the sales made prior to the agreement from its home-market sales database properly because they occurred prior to the POI. *See* Memorandum from Thomas Schauer to Richard W. Moreland dated April 2, 1999 for further discussion of this issue.

Comment 8: Inventory Carrying Costs. The petitioners argue that the Department should not consider certain inventory carrying costs as direct expenses as Central Wire claimed. The petitioners contend that Central Wire is the owner of the merchandise during the inventory carrying period in question and thus these expenses should be treated as any other inventory carrying expense. The petitioners contend further that the facts were different in *Stainless Steel Wire Rod From France,* 58 FR 68865 (December 29, 1993), which Central Wire cited to support its claim. The petitioners state that Central Wire reported the date that the consignee *used* the merchandise as the date of sale rather than the date when Central Wire *shipped* the merchandise to the consignee.

Central Wire asserts that the petitioners do not demonstrate that the Department's decisions applicable to these circumstances are wrong, nor do they distinguish this situation with the situation in the case it cited in claiming these expenses as direct. Central Wire contends that, because it is the Department's practice to treat consignment inventory carrying costs as direct expenses, the Department deducted them from normal value in the preliminary determination as direct expenses appropriately. Central Wire cites *Stainless Steel Wire Rod From France,* 58 FR 68865, 68870 (December 29, 1993), and *Flat-Rolled Steel From France,* 58 FR 37125, 37133 (July 9, 1993), in support of its contention.

Department's Position: Central Wire's situation is similar to that of Usinor, a respondent in *Flat-Rolled Steel From France,* in which we treated the expense of holding inventory at the customer's warehouse as a direct expense. In that case, the "merchandise [was] shipped to a warehouse selected by the customer and the customer assumes the warehousing expense. Usinor [did] not invoice the customer until it [was] notified that the customer has withdrawn the material from the warehouse." *See* Concurrence Memorandum (public version), dated June 17, 1993 for *Final Determinations in Antidumping Duty Investigations of Certain Hot-Rolled Carbon Steel Flat Products, Certain Cold-Rolled Carbon Steel Flat Products, Certain Corrosion-Resistant Carbon Steel Flat Products, and Certain Cut-to-Length Carbon Steel Plate From France* (Investigations A–427–806 through 809), at pp. 10–11. Similarly, in this case, because the so-called "consignee" is itself the customer for this merchandise and this "consignment" arrangement is a term of sale, these expenses are direct in nature. Therefore, we have not changed our treatment of these expenses for the final determination.

Comment 9: Freight Expense. The petitioners argue that the Department should restate Central Wire's reported freight expense for CEP sales. The petitioners observe that, in instances in which Wire Industries, Central Wire's U.S. affiliate, included goods on more than one invoice in a shipment, Central Wire calculated the per-unit inland freight by dividing the freight expense by the gross weight of the shipment rather than the net weight, thereby understating the expense. The petitioners argue that, because Central Wire did not revise its reported inland freight expense in the CEP sales listing based on the Department's verification findings, the Department should revise the expense for the final determination. Because it is not possible to determine from the record which sales are affected by this understatement, the petitioners argue that the Department should adjust the freight expense for all CEP sales.

Central Wire argues that the Department should accept its reported inland freight. Citing the sales-verification report, Central Wire contends that this type of calculation was infrequent and only has a minimal effect on the actual adjustment. Given the infrequent nature of this calculation and the minuscule impact of this calculation, Central Wire concludes that it would be inappropriate for the Department to make an upward adjustment to freight for all of its CEP sales.

Department's Position: We found at verification that this calculation affected only a small proportion of its CEP sales. *See* the Department's Central Wire sales-verification report dated February 8, 1999, at page 9. Section 777A(a)(2) of the Act directs that "[f]or purposes of determining the export price (or constructed export price) * * * the administering authority may * * * decline to take into account adjustments which are insignificant in relation to the price or value of the merchandise." Section 351.413 of our regulations defines "insignificant adjustments" as any individual adjustment having an *ad valorem* effect of less that 0.33 percent of the export price, constructed export price, or normal value. The sales-verification report demonstrates that the effect of Central Wire's calculation was less than 0.33 percent of price. *Ibid.* We conclude from the facts on the record that Central Wire's calculation for these few sales will not affect the margin significantly. It would be inappropriate to increase the freight expense for all of Central Wire's CEP sales because the verification report demonstrates that this allocation affected a minority of these sales. Therefore, we have not revised Central Wire's reported freight expense.

Comment 10: Fuel Surcharge. The petitioners argue that, because the Department found that Central Wire did not include a fuel surcharge for one CEP transaction in its inland-freight calculation for one product, the Department should adjust the freight expense for all CEP sales of that product for the final determination.

Central Wire argues that the Department should not make an adjustment because the effect is minuscule and that it only affected one sale. Central Wire argues further that, in the event that the Department does make the change the petitioners suggest, the Department should not rely on the petitioners' formula because it is mathematically incorrect.

Department's Position: We found at verification that Central Wire inadvertently did not include a fuel surcharge incurred on one shipment in its reported freight expense. It is clear from Exhibit 12a of the Department's Central Wire sales-verification report dated February 8, 1999, that the fuel surcharge affects several different products. However, in examining the data on the record, we conclude that it is not possible for us to include the fuel surcharge except for the individual product we verified. To correct this error for the one product accurately, we allocated the freight surcharge to that product in the same manner as Central

Wire calculated the freight expense and recalculated the total freight accordingly.

With regard to the rest of the products affected, we do not have the data on the record to include the fuel surcharge in Central Wire's freight expenses. Because it is clear from Exhibit 12a of Central Wire's sales-verification report dated February 8, 1999, that the effect is substantially less than 0.33 percent of the price of the sale we verified, correction of this error will not affect the margin significantly. Therefore, because it is impossible for us to correct the error except for the one product and because the effect of the error is insignificant, we have restated Central Wire's reported freight expense only for the one product.

Comment 11: U.S. Customs Duties. The petitioners contend that Central Wire did not report U.S. duties for certain EP sales with "delivered" terms of sale. The petitioners claim there is no reason why Central Wire would not incur U.S. duties for such sales and argue that the Department should use the higher of the duty rates which the Department verified for EP sales to calculate the duties for these sales.

Central Wire argues that it reported U.S. duties correctly, which the Department verified. Central Wire also asserts that it was incumbent on the petitioners to raise this issue prior to verification so that the Department could address it at verification.

Department's Position: We requested that Central Wire report the unit amount of any customs duty paid on the subject merchandise in our questionnaire. Although Central Wire stated in its narrative questionnaire response that it reported duties on all sales for which they were incurred, the EP sales database did not reflect these duties for certain sales. There is no explanation on the record showing why these specific EP sales would not have U.S. duty expenses related to them nor is there any evidence that Central Wire did not incur these expenses for these sales. Because these were "delivered" sales, which means that Central Wire was responsible for all shipping costs to the customer, we assume that Central Wire did, in fact, incur these expenses. In determining the amount of duties paid on the subject merchandise and in accordance with section 776(a) of the Act, we have used the average U.S. duty rate for other EP sales with the same sales terms to calculate the U.S. duties for these sales.

Greening Donald Comments

Comment 12: U.S. Consignment Sales. The petitioners argue that the Department should treat Greening Donald's U.S. consignment sales as CEP sales because the merchandise was sold by or for Greening Donald's account after importation into the United States and because the consignee is substantially involved in selling in the United States on behalf of Greening Donald.

The respondent argues that the Department should continue to treat its consignment sales as EP sales because the title of goods remains with Greening Donald and that the consignee acts independently of Greening Donald in terms of sales, pricing, and region, as the Department confirmed at verification. The respondent argues that these facts do not meet the Department's test for distinguishing between EP and CEP sales and thus the Department should consider these sales to be EP sales.

Department's Position: Section 772(b) of the Act defines CEP as "the price at which the subject merchandise is first sold (or agreed to be sold) in the United States *before or after* the date of importation by or for the account of the producer or exporter of the subject merchandise" (emphasis added). Section 772(a) of the Act defines EP as "the price at which the subject merchandise is first sold (or agreed to be sold) *before* the date of importation by the producer or exporter of the subject merchandise" (emphasis added). The record is clear that Greening Donald did not make a sale prior to the time that the subject merchandise was imported into the United States. Therefore, we agree with the petitioners that Greening Donald's consignment sales are CEP sales. However, because we did not request Greening Donald to report the consignee's sales to the unaffiliated customer in the United States and because we do not otherwise have the prices of those sales, we cannot treat these sales as required by the statute and the regulations. Furthermore, these sales represent less than five percent of Greening Donald's total sales to the United States. Therefore, we have disregarded these U.S. sales for purposes of calculating Greening Donald's margin for the final determination.

Comment 13: Certain Supplies. Greening Donald argues that, in its preliminary determination, the Department erred by including in its manufacturing costs the cost for certain supplies purchased during the POI but not used until after the POI. Greening Donald claims that these costs should be excluded from the calculation of COP and CV because the expenses cannot properly be matched to the merchandise that was sold during the POI, citing *AK Steel Corporation* v. *United States,* No 96–05–01312, Slip. Op. 97–152 (CIT 1997). Greening Donald asserts that, because the supplies were purchased during the POI but they were not used until after the POI, inclusion of the cost of these supplies in the COP and CV calculations would distort the reported costs. The respondent also cites *Small Diameter Circular Seamless Carbon and Alloy Steel, Standard, Line and Pressure Pipe from Italy,* 60 FR 31981, 31991 (June 19, 1995), in which the Department refused to include the respondent's reported cost reversals that were recorded during the POI but that related to operational expenses of a prior period, in support of its position.

Greening Donald asserts that its normal books and records distort costs because they do not reflect the cost associated with the production and sale of the merchandise. Greening Donald claims that in such instances the Department allows or makes adjustments to the respondent's costs as reported in the normal books and records, citing *Static Random Access Memory Semiconductors from The Republic of Korea,* 63 FR 8934, 8937 (February 23, 1998), and *Static Random Access Memory Semiconductors from Taiwan,* 63 FR 8909, 8920 (February 23, 1998). Therefore, Greening Donald argues that such an adjustment should be made in this instance to conform to the Statement of Administrative Action, H. Doc, 316, 103d Cong., 2d Sess. 821 (1994) ("SAA") which states that "costs will be allocated using a method that reasonably reflects and accurately captures all of the actual costs incurred in producing and selling the product under investigation" and *Antidumping Duties; Countervailing Duties; Final Rule,* 62 FR 27295–27379, 27362 (May 19, 1997).

The petitioners agree with the Department's denial of Greening Donald's claim to exclude the cost of certain supplies from its COP. The petitioners point out that, during verification, Greening Donald was unable to substantiate the quantity and value of the supplies in question that it consumed during the POI. The petitioners also observe that Greening Donald recorded the cost of the supplies in question in its financial statements, which were in accordance with Canadian generally accepted accounting principles ("GAAP"). Thus, the petitioners argue that the Department should continue to include these costs in Greening Donald's COP for its final analysis.

Department's Position: We have not accepted Greening Donald's claim that

we should exclude from the calculation of COP and CV the expense that the respondent recognized for certain supplies during the POI. Section 773(f) of the Act directs the Department to calculate costs based upon the respondent's records, provided that such records are kept in accordance with respondent's home-country GAAP and reasonably reflect the costs associated with the production of the merchandise. In this case, Greening Donald's independent auditors accepted the company's treatment of these supplies (*i.e.*, written-off or expensed fully during the period).

We disagree with Greening Donald's contention that we should depart from the costs that it calculates in the ordinary course of business and exclude the portion of the costs that relate to supplies that it may have not consumed during the POI. First, the amount the company wishes to capitalize is merely an approximation because the company does not maintain inventory or movement records that identify the actual quantity and the value of the supplies in question. *See* Greening Donald Cost Verification Report at page 15. Thus, Greening Donald's proposed adjustment could not be substantiated with production or accounting records. In circumstances where there is an absence of verifiable information supporting a party's claim, our practice is to rely on the amounts recorded in the books and records of the respondent. *See Final Determination of Sales at Less Than Fair Value: Small Diameter Circular Seamless Carbon and Alloy Steel, Standard, Line and Pressure Pipe From Italy*, 60 FR 31981 (June 19, 1995). Second, it is also likely that Greening Donald actually consumed some supplies during the POI which it purchased and expensed in prior periods. If we were to adopt Greening Donald's proposed methodology, we would not only exclude some of the current purchases, we would also include a portion of purchases from prior periods. Since this information is not on the record and the company's normal method of recognizing the full expense when purchased is acceptable under Canadian GAAP, we have not excluded these costs for the final determination.

Comment 14: General and Administrative Expenses. Greening Donald argues that the Department should accept the method the company used to calculate its reported general and administrative (G&A) expense ratio. Greening Donald asserts that its reported G&A expense ratio was based on the company's historic allocations and is the appropriate methodology and consistent with past practice. Greening Donald states that it first allocated the company's G&A expenses to its separate operating divisions using historic allocations which it uses in the ordinary course of business. It argues that it based these allocations on the operating realities of the company's business. Greening Donald states that it allocated each division's portion of the G&A expense to its merchandise over its cost-of-sales figures. If it simply computed G&A expenses on a company-wide basis as a percentage of cost of sales, Greening Donald argues that the result would over-allocate G&A expenses to the subject merchandise. Moreover, Greening Donald states that the Department does not always use the company-wide cost-of-sales figure as the allocation base when the results are distortive. To support this assertion, Greening Donald cites *Dynamic Random Access Memory Semiconductors of One Megabit of Above from the Republic of Korea*, 61 FR 20216, 20217 (May 6, 1996).

If the Department does revise its G&A expense ratio based on the company-wide cost-of-sales figure, Greening Donald argues that it should use the company's unconsolidated cost-of-sales figure based on the sum of its divisional profit and loss ("P&L") statements. Greening Donald claims that this step is necessary because the cost-of-sales figure on the company-wide financial statements represents a consolidated figure of the three divisions which excludes inter-divisional transfer amounts. According to Greening Donald, the Department's normal practice is to calculate the G&A expense rate based on a respondent company's unconsolidated statements and cites *Stainless Steel Wire Rod from Japan*, 63 FR 40434 (Comment 8) (July 29, 1998), to support this assertion.

The petitioners argue that the Department should calculate Greening Donald's G&A ratio in accordance with the Department's normal methodology. According to the petitioners, the respondent did not follow the instructions in the Department's questionnaire which requires respondents to calculate the G&A expense ratio based on the company's audited financial statements. Instead, the petitioners comment, Greening Donald reported a G&A expense ratio for its wire division that was based on allocations of its total company G&A expenses to each division. The petitioners argue that this method is inappropriate because it is based on historic allocations that Greening Donald could not substantiate with source records. The petitioners also disagree with Greening Donald's concern that the Department should use an unconsolidated cost-of-sales figure if the Department does decide to revise its G&A expense ratio. According to the petitioners, Greening Donald is using an incorrect reference to the term "consolidation." The petitioners note that the three operating divisions of the company are not independent companies so their internal P&L statements do not represent unconsolidated financial statements. The petitioners also contend that Greening Donald's cost-of-sales figure is not on the same basis as the reported cost of manufacturing ("COM") because the reported cost-of-sales figure includes packing expenses, freight, and certain adjustments not included in COM.

Department's Position: Normally, we calculate G&A based on the producing company as a whole and not on a divisional or product-specific basis. *See Fresh Atlantic Salmon from Chile*, 63 FR 31412, 31433 (Comment 29) (June 9, 1998). This approach recognizes the general nature of these expenses and the fact that they relate to the company as a whole. The Department's methodology also avoids any distortions that may result if greater amounts of company-wide general expenses are allocated disproportionally between products. In this instance, Greening Donald deviated from the Department's normal methodology and calculated its G&A expenses using an internal accounting methodology, under which the company charged some G&A expenses directly to each of its production divisions.

Both parties agree that it is our normal practice to calculate the G&A expense rate based on the respondent's unconsolidated operations (plus a portion of G&A expenses incurred by affiliated companies on behalf of the respondent). *See Stainless Steel Wire Rod from Japan*, 63 FR 40434 (comment 8) (July 29, 1998). However, Greening Donald's divisions are not separate entities that require consolidation but merely separate business units that make up a single corporation. Thus, we agree with the petitioners that we can not consider the divisional P&L statements as "unconsolidated" financial statements. As for Greening Donald's concern that the corporate-wide cost-of-sales figure is understated because it excludes inter-divisional transfer amounts, we disagree. It would be inappropriate to allocate G&A expense to inter-company transactions since the amount would normally be eliminated when preparing the company-wide financial statements. Even in the cases where two separate but affiliated companies are collapsed

into one entity for the purposes of an antidumping analysis, the Department eliminates inter-company transactions from the calculation of cost of sales, in effect treating them as a single company. *See Certain Cut-to-Length Carbon Steel Plate from Brazil*, 63 FR 12744, 12749 (Comment 8) (March 16, 1998).

As for Greening Donald's citation to *Dynamic Random Access Memory Semiconductors of One Megabit or Above from the Republic of Korea*, 61 FR 20216, 20217 (May 6, 1996), the Department's position addressed the basis of allocating indirect selling expenses and not general expenses. Thus, the circumstances were different and not related to the calculation of the G&A expense ratio. For the reasons stated above, we have calculated Greening Donald's G&A expense ratio in accordance with our normal methodology using a cost-of-sales figure that was on the same basis as the reported COM.

Comment 15: Financial Expenses. The petitioners contend that Greening Donald did not use the financial statements at the highest level of consolidation to calculate its financial-expense ratio. Thus, the petitioners recommend that the Department revise the company's financial expenses accordingly.

Greening Donald claims that it calculated its financial expense ratio in accordance with the Department's instructions and, thus, should not be revised. According to Greening Donald, there is no requirement in the Department's questionnaire that the level of consolidation must be the highest level of consolidation. Greening Donald believes that the calculation of financial expense should be based on the level of consolidation that excludes operations unrelated to the production of subject merchandise.

Department's Position: We agree with the petitioners that Greening Donald did not calculate its financial expenses using information from the consolidated financial statements of the highest level. Specifically, Greening Donald used Thyssen Industrie's consolidated financial statements. However, Thyssen Industrie's financial statement data is consolidated into the Thyssen Group's financial statements. As we have stated repeatedly and the CIT has upheld, we recognize the fungible nature of a corporation's invested capital resources. We allocate the interest expense related to the debt portion of the capitalization of the corporation, as appropriate, to the total operations of the consolidated corporation (*i.e.*, Thyssen Group). More important, our established practice of requiring the use of consolidated financial statements recognizes the fungible nature of invested capital resources such as debt and equity of the controlling entity within a consolidated group of companies and that the controlling entity within a consolidated group has the power to determine the capital structure of each member company (*e.g.*, Thyssen Industrie) within its group. *See E.I. Du Pont de Nemours & Co.* v. *U.S.*, Slip. Op. 98–7 (CIT 1998), *Camargo Correa Metals, S.A.* v. *U.S.*, 17 CIT 897 (CIT August 13, 1993), and *Aramid Fiber Formed of Poly Para-Phenylene Terephthalamide From the Netherlands; Final Results of Antidumping Administrative Review*, 62 FR 38059, 38060 (July 16, 1997).

Comment 16: Foreign-Exchange Losses. The petitioners state that the Department should follow its normal practice and include Greening Donald's foreign-exchange losses generated from accounts payable in the calculation of COP and CV. As support for their position, the petitioners cite several Department determinations in which the Department included this expense in respondent's cost.

Greening Donald recognizes that it is the Department's practice to include foreign-exchange gains and losses related to all accounts except accounts receivable accounts. Thus, if the Department decides to include these amounts, Greening Donald contends that it should include both the gains and losses generated from accounts payable and cash accounts. Greening Donald requests further that the Department reconsider its policy in regards to foreign-exchange gains and losses related to accounts receivable. The respondent argues that the Department should treat these gains and losses the same way it treats gains and losses from short-term investments which are used to adjust financing costs.

Department's Position: To calculate its reported costs, Greening Donald excluded foreign-exchange gains and losses. However, our normal practice is to include a portion of these foreign-exchange gains and losses in the calculation of COP and CV. Specifically, it is our normal practice to distinguish between exchange gains and losses realized or incurred in connection with sales transactions and those associated with purchase transactions. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Steel Wire Rod from Trinidad and Tobago*, 63 FR 9177, 9181 (February 24, 1998) (*"Steel Wire Rod from Trinidad and Tobago"*). We normally include in the calculation of COP and CV the foreign-exchange gains and losses that result from transactions related to a company's manufacturing activities. We do not consider exchange gains and losses from sales transactions to be related to the manufacturing activities of the company. *See, e.g., Steel Wire Rod from Trinidad and Tobago* and *Final Determination of Sales at Less Than Fair Value: Fresh Atlantic Salmon from Chile*, 63 FR 31411, 31430 (June 9, 1998). Accordingly, for purposes of the final determination, we have included only the foreign-exchange gains and losses that relate to maintaining accounts payable and cash accounts. We disallowed foreign-exchange gains and losses arising from sales transactions in the COP and CV calculation.

Comment 17: Inventory Write-Downs. The petitioners argue that the Department should revise Greening Donald's reported costs to include losses for inventory adjustments. Citing *Canned Pineapple Fruit from Thailand*, 60 FR 29553, 29571 (June 5, 1995), the petitioners claim that it is the Department's practice to include inventory write-downs and write-offs in the cost of production.

According to Greening Donald, the write-down portion of its inventory adjustment is associated with finished-goods inventory and, as such, it should not be included in cost of production. To support its assertion, Greening Donald cites *Stainless Steel Wire Rod from Italy*, 63 FR 40422, 40430 (July 29, 1998), in which the Department excluded this type of expense.

Greening Donald claims that the other component of its inventory adjustment is due to changes in the price of wire rod which affect the cost of production. However, Greening Donald contends, because wire rod prices increased, not decreased, during the POI, the net amount of inventory was a gain or a write-up to materials inventory. Thus, Greening Donald asserts, the net effect on the cost of production, were the Department to adjust for this, would be to reduce its costs of production. Greening Donald observes that, in any event, the amount of these adjustments would have no material effect on the reported cost.

Department's Position: We agree with the respondent that inventory write-downs which are made to value finished-goods inventory at the lower of cost or market should not be considered a part of COM. We derive the product-specific costs during the POI from the cost of products manufactured, not sold. Thus the value of beginning and ending finished-goods inventory does not affect the calculation. Therefore, consistent with our most recent determinations, we have excluded this expense from the calculation of COP and CV. *See, e.g., Stainless Steel Wire Rod from Italy*, 63

FR 40422, 40429 (July 29, 1998). We disagree that *Canned Pineapple Fruit from Thailand* is relevant because of facts specific to that case. In *Canned Pineapple Fruit from Thailand*, we found that "inventory write-downs are a normal, recurring period adjustment made annually by (the respondent)."

We agree with the respondent that its adjustment to its wire-rod prices held in inventory is minor. Specifically, Greening Donald normally records a variance to reflect the gain or loss that occurs when its wire-rod standard costs are updated. During the fiscal year, Greening Donald experienced a favorable variance (reduction in costs) while during the POI it experienced an unfavorable variance (increase in costs). Because the variance relates to the value of raw materials, which are a component of COM, we consider it more appropriate to include the variance related to the POI rather than the fiscal year. However, we have not made this adjustment for the final determination due to the immaterial impact the variance has on the reported costs.

Comment 18: Affiliated-Party Inputs. The petitioners state that the Department should value major inputs between affiliated companies at the higher of transfer price, market price, or the cost to the affiliated supplier. Therefore, the petitioners suggest that, in order to reflect properly the value of certain wire rod Greening Donald purchased from an affiliated party, the Department should use the average price Greening Donald paid to unaffiliated suppliers for the same input during the POI.

The respondent, citing section 773(f)(3) of the Act, argues that the major-input rule would be applicable if the affiliated suppliers were the producers of the wire rod sold to Greening Donald and the Department had reason to believe or suspect that the price of the major input between affiliated parties was below the cost of production. With regard to the first condition, the respondent states that this affiliated supplier did not produce the input but purchased it from an unaffiliated supplier. As to the second condition, the respondent claims that the price this affiliated supplier paid for the input was lower than the price it charged to Greening Donald. Therefore, according to the respondent, the Department has no reason to believe that the transfer price is below the cost of production. In addition, the respondent argues, even if the Department determines to make the adjustment the petitioners suggest, it should use a weighted-average price based on home-market purchases from unaffiliated suppliers.

Department's Position: We agree with the petitioners that the major-input rule should be applied to Greening Donald's purchases of certain wire rod obtained from an affiliated party. As a result, we disagree with the respondent's narrow definition of the term "producer" as it is used in section 773(f)(3) of the Act. The intent of this section and the related regulations is to account for the possibility of shifting costs to an affiliated party. This possibility arises when an input passes to the responding company through the hands of an affiliated supplier, regardless of the value added to the product by the affiliated supplier.

Sections 773(f)(2) and (3) of the Act specify the treatment of transactions between affiliated parties for purposes of reporting cost data (for use in determining both COP and CV) to the Department. Section 773(f)(2) of the Act indicates that the Department may disregard such transactions if the amount representing that element (the transfer price) does not fairly reflect the amount usually reflected (typically the market price) in the market under consideration. Under these circumstances, the Department may rely on the market price to value inputs purchased from affiliated parties. Section 773(f)(3) of the Act indicates that, if transactions between affiliated parties involve a major input, then the Department may value the major input based on the COP if the cost is greater than the amount (higher of transfer price or market price) that would be determined under section 773(f)(2) of the Act. Therefore, for the final determination, we have made an adjustment to increase the transfer price to a market price using the adjustment factor Greening Donald suggests.

Comment 19: Miscellaneous Taxes and Expenses. The petitioners contend that the Department should revise Greening Donald's COP to include the Ontario capital tax, large-corporation tax, bad-debt expenses; miscellaneous income and expense, and discount income. According to the petitioners, Greening Donald inadvertently omitted these expenses.

The respondent states that it has already corrected this omission. According to Greening Donald, it provided a revised submission on December 29, 1998, that included these items in the calculation of COP and CV. Therefore, the respondent claims no further adjustment is needed to include them. However, Greening Donald does believe that the Department should now make an adjustment to remove the large-corporation tax and the Ontario capital tax included in the calculation of COP and CV because they relate to taxes paid on capital stock and, as such, they should not be included in the calculation of COP and CV.

Department's Position: We agree with the respondent that it included these expenses included in the calculation of COP and CV. *See* the Department's Greening Donald Cost Verification Report at page 4, step I.A. Thus, no further adjustment is necessary to include these expenses.

With regard to the respondent's claim that we should not include the large-corporation tax and the Ontario capital tax in Greening Donald's reported COP, we have stated our position on this issue in several previous cases. In those cases, we included payments to governments, other than income taxes, that are periodic general taxes levied on the company and which are not based on revenues. Thus, it is appropriate to include them in the calculation of the company's general expense. *See, e.g., Certain Corrosion-Resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate from Canada*, 62 FR 18448, 18465 (April 15, 1997).

Comment 20: Auditor's Adjustment. The petitioners argue that the Department should revise Greening Donald's reported cost to include an adjustment the company's independent auditors made. The petitioners point out that this adjustment is included in Greening Donald's financial statements which are prepared in accordance with Canadian GAAP. As such, the petitioners claim that the expense should be included in the calculation of COP and CV.

The respondent argues that this adjustment was made by the outside accountants only for the purposes of calculating Greening Donald's tax liability. According to the respondent, the adjustment is not included in the company's internal books and records which are maintained in accordance with Canadian GAAP.

Department's Position: We agree with the petitioners that it is appropriate to include this year-end adjustment in the calculation of COP and CV. Specifically, Greening Donald excluded from its reported costs a year-end adjustment that reconciles the depreciation expense reported in its cost accounting systems with the depreciation expense reported in the audited financial statements. As a result, there is a difference between the actual manufacturing costs in the financial statements and the manufacturing costs Greening Donald submitted. We do not find relevant Greening Donald's claim that the

outside accountants made this adjustment merely for tax purposes. First, Greening Donald's audited financial statements, which were prepared in accordance with Canadian GAAP, include this adjustment. Moreover, Greening Donald provided no explanation as to why recognition of this adjustment distorts costs. Consistent with our normal practice, we rely on the respondent's normal books and records kept in accordance with the respondent's home country's generally accepted accounting principles. Thus, we have included this adjustment in the calculation of COP and CV.

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, we are directing the Customs Service to continue to suspend liquidation of all entries of stainless steel round wire from Canada that are entered, or withdrawn from warehouse, for consumption on or after November 18, 1998, the date of publication of the preliminary determination in the **Federal Register**. The Customs Service shall continue to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the normal value exceeds the U.S. price, as indicated in the chart below. The suspension of liquidation instructions will remain in effect until further notice. The weighted-average dumping margins are as follows:

Exporter/manufacturer	Weighted-average margin percentage
Central Wire	11.79
Greening Donald	11.18
All Others	11.64

ITC Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission ("ITC") of our determination. As our final determination is affirmative, the ITC will, within 45 days, determine whether these imports are materially injuring, or threaten material injury to, the U.S. industry. If the ITC determines that material injury or threat of material injury does not exist, the proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing the Customs Service to assess antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

We are issuing and publishing this determination in accordance with sections 735(d) and 777(i)(1) of the Act.

Dated: April 2, 1999.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–8926 Filed 4–8–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–829]

Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Round Wire from Taiwan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: April 9, 1999.

FOR FURTHER INFORMATION CONTACT: Gabriel Adler or Kris Campbell at (202) 482–1442 or (202) 482–3813, respectively, Group 1, Office of AD/CVD Enforcement 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, D.C. 20230.

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to Department of Commerce (Department) regulations refer to the regulations codified at 19 CFR Part 351 (April 1998).

Final Determination

We determine that stainless steel round wire from Taiwan is being sold, or is likely to be sold, in the United States at less than fair value (LTFV), as provided in section 735 of the Act. The estimated margins are shown in the *Suspension of Liquidation* section of this notice.

Case History

The preliminary determination in this investigation was issued on November 12, 1998. *See Notice of Preliminary Determinations of Sales at Less Than Fair Value and Postponement of Final Determinations—Stainless Steel Round Wire From Canada, India, Japan, Spain, and Taiwan; Preliminary Determination of Sales at Not Less Than Fair Value and Postponement of Final Determination—Stainless Steel Round Wire From Korea*, 63 FR 64042 (November 18, 1998) (preliminary determination). Since the preliminary determination, the following events have occurred:

In January and February 1999, we conducted on-site verifications of the questionnaire responses submitted by respondent Tien Tai Electrode Co., Ltd. (Tien Tai) and its affiliate [1] Kuang Tai Metal Industry Co., Ltd. (Kuang Tai).[2]

The petitioners [3], Tien Tai/Kuang Tai, and Rodex submitted case briefs on February 23, 1999, and rebuttal briefs on March 2, 1999. We held a public hearing on March 11, 1999.

Scope of Investigation

The scope of this investigation covers stainless steel round wire (SSRW). SSRW is any cold-formed (*i.e.*, cold-drawn, cold-rolled) stainless steel product of a cylindrical contour, sold in coils or spools, and not over 0.703 inch (18 mm) in maximum solid cross-sectional dimension. SSRW is made of iron-based alloys containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. Metallic coatings, such as nickel and copper coatings, may be applied.

The merchandise subject to this investigation is classifiable under subheadings 7223.00.1015, 7223.00.1030, 7223.00.1045, 7223.00.1060, and 7223.00.1075 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise under investigation is dispositive.

Period of Investigation

The period of the investigation (POI) is January 1, 1997, through December 31, 1997. This period corresponds to each respondent's four most recent fiscal quarters prior to the month of the filing of the petition (*i.e.*, March 1998).

[1] As explained in the preliminary determination, for purposes of this investigation we are treating Tien Tai and Kuang Tai as a single entity.

[2] Verification of respondent Rodex Fasteners Corp. (Rodex) was conducted in September and October 1998, prior to the issuance of the preliminary determination.

[3] The petitioners are ACS Industries, Inc., Al Tech Specialty Steel Corp., Branford Wire & Manufacturing Company, Carpenter Technology Corp., Handy & Harman Specialty Wire Group, Industrial Alloys, Inc., Loos & Company, Inc., Sandvik Steel Company, Sumiden Wire Products Corporation, and Techalloy Company, Inc.

Fair Value Comparisons

To determine whether sales of stainless steel round wire from Taiwan to the United States were made at LTFV, we compared the export price (EP) to the normal value. Our calculations followed the methodologies described in the preliminary determination, except as noted below and in company-specific analysis memoranda dated April 2, 1999, which have been placed in the file.

Export Price

We used the same methodology to calculate EP as that described in the preliminary determination.

Normal Value

We used the same methodology to calculate normal value as that described in the preliminary determination, except that for Tien Tai, we revised the reported credit expenses to correct an error in the credit period.

Cost of Production

We used the same methodology to calculate cost of production (COP) as that described in the preliminary determination, except in the following specific instances:

1. Rodex

We corrected two errors made in the preliminary determination with respect to a year-end auditor's adjustment to the reported labor and overhead costs. *See* Rodex comment 3.

2. Tien Tai

We made an adjustment for wire rod input costs. We included in general expenses (1) the value of stock bonuses made to employees and directors, (2) R&D expenses, (3) certain foreign exchange gains and losses, and excluded from general expenses certain non-operating income. Further, we reduced the cost of sales of the companies by the verified inter-company transactions. Finally, we eliminated the double-counting of packing expenses of Kuang Tai.

Unit of Weight for Tien Tai

We corrected a clerical error in the margin program for Tien Tai involving the unit of weight used to calculate the total amount of dumping.

Currency Conversions

As in the preliminary determination, we made currency conversions into U.S. dollars based on the exchange rates in effect on the dates of the U.S. sales, in accordance with section 773A of the Act. We relied on exchange rates certified by the Federal Reserve Bank.

Interested Party Comments

A. Tien Tai/Kuang Tai

Comment 1: Costs for Inter-Company Raw Material Purchases. The petitioners argue that the extent of Tien Tai's purchases of wire rod from Kuang Tai was understated, and not disclosed until verification. The petitioners also contend that because Tien Tai and Kuang Tai are a single entity for purposes of this investigation, they should have reported their respective acquisition cost of the wire rod in question rather than the inter-company transfer price. Finally, the petitioners argue that there were also critical flaws in the reporting of costs for wire rod Kuang Tai obtained from Walsin, an affiliated supplier. Specifically, they argue that: (1) the reported costs of manufacturing of certain grades of rod supplied by Walsin were understated relative to the costs on Walsin's books; (2) Walsin's reported selling, selling, general and administrative (SG&A) expenses did not include miscellaneous general expenses and contained errors in the allocation of selling expenses, and (3) Walsin's reported interest expense did not include amounts for long-term interest expense. According to the petitioners, these omissions warrant the rejection of the submitted cost data in its entirety and the application of adverse facts available. In the alternative, the petitioners request application of partial facts available with respect to the COP and constructed value (CV) data.

The respondents argue that the application of adverse facts available is not warranted. According to the respondents, the Department has verified the correct quantity and value of transfers of wire rod among Tien Tai and Kuang Tai, as well as the wire rod obtained by Kuang Tai from Walsin, and has all the necessary data to value these inputs.

DOC Position: We disagree with the petitioners that the application of total facts available is warranted. While the Department found discrepancies between the questionnaire responses and the companies' records with respect to the transfers of stainless steel wire rod between Tien Tai and Kuang Tai, the discrepancies were minor.

With respect to the valuation of these inputs, we note that section 773(f) of the Act and section 351.407 of the Department's regulations provide that we will normally determine the value of a major input obtained from an affiliate based on the higher of transfer price, market price or cost of production. However, in cases where the transfer of inputs occurs between companies that the Department has collapsed (*i.e.*, has determined to treat as a single entity for purposes of an antidumping proceeding), the Department does not consider the transfer price or market value in the valuation of the inputs. Rather, the valuation of transactions between the collapsed companies is based on the actual cost to the group as a whole. *See Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products from Korea: Final Results of Antidumping Duty Administrative Reviews*, 62 FR 18404, 18429–18431 (April 15, 1997).[4] Under the above standard, and because neither Tien Tai nor Kuang Tai is a producer of wire rod, the Department's preference in this case would have been to rely on the affiliate's acquisition cost of the wire rod inputs. Although we discovered at verification that the respondents had not submitted these costs, we also determined, by examining purchases of several different grades of wire rod, that the reported transfer price was consistently greater than or equal to the acquisition cost. *See* Tien Tai/Kuang Tai cost verification report, dated February 12, 1999, at exhibits 20, 22, 37, and 38. Therefore, as facts available, we have relied on the reported transfer price to value the inputs in question.

With respect to Walsin, we find that the omissions noted do not warrant the use of adverse facts available. These are relatively minor errors that are easily corrected based on verified data on the record. *See* memorandum from Peter Scholl to Neal Halper, dated April 2, 1999, which has been placed on the record.

Comment 2: Adjustments to G&A. The petitioners make the following arguments with respect to adjusting the respondents' general and administrative (G&A) expenses and G&A ratio.

First, the petitioners argue that Tien Tai has not established which foreign exchange gains were associated with manufacturing activities. According to the petitioners, the Department's practice is to disallow sales-related exchange rate gains from the calculation of G&A expenses when these are not shown to be related to manufacturing activities, and therefore the Department should disallow the exchange gains reported by the respondents. The petitioners add that Tien Tai's exchange losses, as well as Kuang Tai's exchange gains and losses, should be accounted for as part of total interest expenses.

Next, the petitioners contend that the Department should disallow various claimed offsets to G&A expenses. According to the petitioners: (1) an offset for repair income should be rejected because the income does not

[4] We note that our determination was also upheld by the Court of International Trade. *See AK Steel Corp. v. United States*, Slip Op. 98–159, 1998 Ct. Intl. Trade LEXIS 182, at *28–32 (Ct. Int'l Trade, Nov. 23, 1998).

stem from the company's core business; (2) Kuang Tai double counted the offset for scrap sales by reducing both the cost of manufacturing and G&A expenses by the same amount; and (3) miscellaneous other offsets are unrelated to production, and should be rejected.

The petitioners also argue that the respondents failed to include certain items in the reported G&A expenses, namely: (1) cash and stock bonuses to employees, directors and supervisors, (2) research and development (R&D) expenditures, and (3) bad debt. Further, the petitioners argue that the Department should reduce the cost of sales denominator in the G&A calculation to eliminate the effect of inter-company transactions. Finally, the petitioners argue that the Department should revise the cost of goods sold denominator used to calculate the G&A ratio to exclude any packing costs not otherwise included in the cost of manufacturing.

The respondents address some, but not all, of the petitioners' points regarding G&A. First, the respondents argue that their reporting of scrap revenue is correct, and that no adjustment is necessary to the G&A ratio in this regard. Next, the respondents claim that the Department verified all income offsets to G&A, and should not reject these offsets. The respondents also claim that bad debts are associated with third country sales, and should therefore not be allocated to subject merchandise. Further, the respondents claim that the Department verified the proper classification of reported G&A expenses, including R&D expenses.

With respect to the elimination of inter-company transactions from the cost of goods sold denominator used in the calculation of the G&A ratio, the respondents argue that the Department should eliminate the transactions based on the price paid by Tien Tai and Kuang Tai to unaffiliated suppliers for the inputs in question, rather than the resale price for those inputs charged by Tien Tai and Kuang Tai to each other.

DOC Position: We address the petitioners' various points in turn. First, we agree with the petitioners with respect to foreign exchange gains and losses. It is the Department's practice to distinguish between exchange gains and losses generated by sales transactions and those generated by loans payable and the purchases of production inputs. *See Notice of Final Results and Partial Rescission of Antidumping Duty Administrative Review: Certain Welded Carbon Steel Pipe and Tube from Turkey,* 63 FR 35190, 35198 (June 29, 1998). The Department typically excludes from the COP and CV calculation those foreign exchange gains and losses generated by sales transactions because we do not consider them to relate to the manufacturing activities of the company. *See Notice of Final Determination of Sales at Less Than Fair Value: Steel Wire Rod from Trinidad and Tobago,* 63 FR 9177, 9182 (February 24, 1998). Even though it was requested by the Department in its supplemental Section D questionnaire dated September 30, 1998, Tien Tai failed to segregate foreign exchange gains between those generated by sales transactions, purchase transactions, and loans payable. We have therefore excluded all of Tien Tai's foreign exchange gains from the calculation of COP and CV. We further agree that Tien Tai's foreign exchange losses and Kuang Tai's foreign exchange gains and losses should be included in the COP and CV calculations because none of these amounts were shown to relate to sales transactions.

We agree with the petitioners in part concerning their arguments on G&A. We agree that machinery repair income is not part of the general operations of the company and therefore should be excluded from the calculation of G&A expenses. We agree that Kuang Tai double counted the offset for scrap sales by both reducing the cost of manufacturing and G&A expenses by the same amount. Therefore, we have excluded scrap income from the G&A expense calculation. We disagree with the petitioners' argument regarding the other items listed as non-operating income and expense in the G&A expense calculation, because we find that they are related to the company's general operations. *See Final Results and Partial Rescission of Antidumping Duty Administrative Review: Certain Pasta from Italy,* 64 FR 6615, 6627 (February 10, 1999) ("G&A expenses are those expenses which relate to the general operations of the company as a whole rather than to the production process").

We agree with the petitioners that it is appropriate to include cash and stock bonuses to employees, directors and supervisors. The amounts distributed, whether in the form of stock or cash, represent compensation for services that the individual has provided to the company. Therefore, in accordance with section 773(f)(1)(A) of the Act, we have determined that it is appropriate to include these amounts in the calculation of COP and CV. We acknowledge that the respondents' treatment of these distributions as reductions to equity is in accordance with Taiwan GAAP. However, we find that this treatment is contrary to the requirements of section 773(f)(1)(A) of the Act, as it does not reasonably reflect the respondents' cost of production because the stock transferred to employees in exchange for their labor is a cost to the company. *See Final Determination of Sales at Less Than Fair Value: Static Random Access Memory Semiconductors From Taiwan,* 63 FR 8909, 8921–8922 (February 23, 1998)("amounts distributed * * * whether in the form of stock or cash, represent compensation for services which the individual has provided to the company").

Also, we agree with the petitioners that it is appropriate to include R&D expenditures in the COP. R&D are the planned efforts of a company to discover new information that will help create a new product, process or technique. The R&D projects listed by the respondents could benefit subject merchandise and are properly treated as period expenses since their future benefit is undetermined.

We do not agree with the petitioners that Tien Tai's bad debt expense should be included in the G&A expense calculation. Bad debt expense results from the inability to collect payment from customers for sales, and is appropriately accounted for as a selling expense. *See Final Results of Antidumping Duty Administrative Review: Porcelain-On-Steel Cookware from Mexico,* 63 FR 38373, 38381 (July 16, 1998).

We agree with the petitioners that it is correct to reduce the cost of sales denominator in the G&A calculation to eliminate the effect of inter-company transactions. It would be inappropriate to combine the cost of goods sold of Kuang Tai and Tien Tai without adjustment, because this would in effect double count cost of sales for those transactions between the two companies (i.e., inputs sold to one company which are used to produce another product would be included as cost of sales at the input level and at the level of the final product sold). For the final determination, we have eliminated from the cost of goods sold denominator the value of sales between Tien Tai and Kuang Tai based on the prices charged between the affiliates. *See Final Results of Antidumping Duty Administrative Review: Certain Cut-to-Length Carbon Steel Plate from Brazil,* 63 FR 12744, 12749 (March 16, 1998).

Finally, we agree with the petitioners that it is appropriate to revise the cost of goods sold denominator used to calculate the G&A ratio to exclude any packing costs not otherwise included in the cost of manufacturing, to which the G&A ratio is applied. We have adjusted

the cost of goods sold determination accordingly.

Comment 3: Interest Expenses. The petitioners argue that the Department should make the following revisions to the submitted interest expense ratio: (1) reduce the cost of goods sold denominator by the amount of revenue on the sale of scrap, since the reported cost of manufacturing is also net of that revenue; (2) eliminate inter-company transactions; and (3) revise the cost of goods sold denominator to exclude any packing costs not otherwise included in the cost of manufacturing.

The respondents contend that no adjustment is appropriate with respect to scrap revenue. With respect to the elimination of inter-company transfers, the respondents argue that the Department should rely on the prices they paid for the inputs in question, rather than the transfer prices paid to each other. The respondents do not address the petitioners' argument with respect to packing costs.

DOC Position: We agree with the petitioners that the cost of goods sold denominator should be reduced by the amount of revenue on the sale of scrap, since the reported cost of manufacturing is also net of that revenue. With respect to the elimination of inter-company transactions, we also agree with the petitioners, and have eliminated the value of sales between Tien Tai and Kuang Tai based on the prices charged between the affiliates, for the same reasons explained with respect to the calculation of G&A expenses in comment 2 above. Finally, we agree with the petitioners that it is appropriate to revise the cost of goods sold denominator used to calculate the interest ratio to exclude any packing costs not otherwise included in the cost of manufacturing to which the interest expense ratio is applied. We have adjusted the cost of production denominator accordingly.

Comment 4: Product/Packing Form. The petitioners argue that the Department should incorporate the "product form" into the model matching hierarchy.[5] According to the petitioners, the pricing data submitted by Tien Tai and Kuang Tai indicate significant price differences in otherwise identical products that are sold in different product forms. In particular, the petitioners cite instances of individual invoices with multiple transactions, where Tien Tai charges consistently higher per-pound prices for small spools of a given product than for larger spools of the identical product. The petitioners further argue that, across the POI, comparison of weighted-average prices also show price differences according to variations in packing form and size. The petitioners contend that, given these price differences, the Department can only achieve "apples-to-apples" product comparisons by taking product form into consideration in its model matching.

The respondents argue that, with rare exceptions, the "product form" is generally not taken into consideration in the pricing of them, and should therefore not be incorporated as a criterion in the Department's model match. According to the respondents, the Department confirmed at verification through examination of numerous invoices that identical products packed in different forms and sizes had identical gross unit prices. The respondents further contend that it is not appropriate to infer a form/price relationship from a comparison of weighted-average prices since prices can be significantly affected by independent variables such as date of sale, customer, and quantity of sale.

DOC Position: Based on the record of this case, we disagree with the petitioners that it is appropriate to incorporate the "product form" into the model matching characteristics.

At the outset of this case, interested parties were provided with an opportunity to comment on significant product characteristics to be incorporated into model matching. Neither the petitioners nor the respondents made any mention of "product form" in their otherwise detailed comments. (Nor, for that matter, did the respondents in the companion investigations of round wire from Korea, India, or Canada make any reference of product form as a possible matching criterion.) Upon receipt and analysis of Tien Tai/Kuang Tai's sales data, the petitioners filed a submission noting that for certain U.S. sales of identical models on a given invoice there was an unexplained variance in unit price, and surmised that the price variance might be due to differences in product form. The petitioners did not provide any evidence that product form is a pricing consideration in the wire industry generally, instead focusing entirely on Tien Tai/Kuang Tai's data.

The Department has sought, through supplemental questionnaires to Tien Tai/Kuang Tai on this issue, as well as through extensive examination of randomly selected sales documentation at verification, to determine whether there was a distinct correlation between product form and pricing contained in the sales data submitted by Tien Tai and Kuang Tai. With respect to the first two elements of product form (packing form and packing material), we have found no clear evidence of a correlation with price in either the U.S. or home market.[6] With respect to packing size, we have found that, on some invoices for U.S. sales, Tien Tai charged its sole U.S. customer a premium for wire sold in small spools relative to wire sold in larger spools. However, Tien Tai/Kuang Tai has argued that this pricing pattern is unique to the transactions in question, and the record does not suggest otherwise. Indeed, counsel for the petitioners themselves conceded at the case hearing that there was no conclusive evidence of a relationship between packing form and pricing with respect to Tien Tai/Kuang Tai's home market sales. *See* Case Hearing Transcript at 132. Given the above, we do not believe the record supports the incorporation of product form as a matching criterion.

Comment 5: Reporting of Packing Costs. The petitioners allege that the respondents' claim for a home market packing adjustment should be denied because Tien Tai/Kuang Tai did not take into account that certain packing materials were reused, thus overstating packing costs. The petitioners further allege that there were several discrepancies in the reported home market and U.S. packing costs.

The respondents argue that their packing costs were correctly reported and verified, and should be relied upon in the final determination.

DOC Position: We disagree with the petitioners' assertion that the cost of reusable packing materials in the home market was overstated. As noted at verification, Kuang Tai recycled metal bobbins used in home market sales. *See* Tien Tai/Kuang Tai Cost Verification Report at 7 (referring to Kuang Tai's use of "metal spools", *i.e.*, metal bobbins). Kuang Tai did not include any cost for the metal bobbins in the reporting of home market packing costs. *See* Sales Verification Exhibit KT–15. Thus, if anything, the cost of the Kuang Tai's recycled metal bobbins was conservatively understated by the respondents.

---

[5] As the petitioners define it, the "product form" is composed of three elements: packing form (*e.g.*, a spool or a coil); the packing material (*e.g.*, in the case of a spool, metal or wood), and packing size (*e.g.*, in the case of a spool, the weight of the spool plus wire).

[6] The comparisons provided by the petitioners do not account for a number of factors, most notably differences in customers and time. Moreover, there are numerous examples on the record, including many found through random search at verification, of identical products packed in different forms/materials that have the same unit price.

With respect to the other miscellaneous discrepancies alleged by the petitioners, we note that at verification we found evidence of only a single error, which involved the over-reporting of home market packing costs for KW 25KG products. We have corrected this error for the final determination.

Comment 6: U.S. and Home Market Credit Expenses. The petitioners argue that the respondents misreported their U.S. and home market credit expenses. According to the petitioners, the Department should, as facts available, disregard Tien Tai/Kuang Tai's claim for a credit expense adjustment for its home market sales, and rely on the highest reported credit expense as facts available for the respondents' U.S. sales.

The respondents argue that there is no basis for applying facts available to their credit expenses. They contend that they revised their U.S. credit expenses in a timely manner at the outset of verification, and that the mistakes with respect to home market credit expenses were minor and correctable based on verification findings.

DOC Position: We disagree with the petitioners that the application of facts available is appropriate. The respondents identified an error with respect to U.S. credit expenses at the outset of verification, and provided verifiable corrections. An error with respect to home market credit expenses was identified at verification, but it can be easily corrected based on revised data obtained and examined during the verification. For a detailed explanation of the correction of these errors, *see* the Tien Tai/Kuang Tai sales analysis memo from Sanjay Mullick to Kris Campbell, dated April 2, 1999.

Comment 7: Double-Counting of Packing Costs. Kuang Tai argues that it inadvertently included packing costs in the pool of manufacturing costs allocated to all of its products, such that packing costs have been reported both in the cost of manufacturing and as a separate packing adjustment. According to the respondent, the error was not detected at the cost verification, but the exhibits taken during the verification establish that packing is in fact double counted. Kuang Tai requests that the Department remedy this double counting by removing packing from the cost of manufacturing.

The petitioners argue that the verification exhibits do not establish the error claimed by the respondent, and moreover, that any such error would call into question the general reliability of the submitted cost data. Further, the petitioners argue that Kuang Tai's claim reveals that the respondent did not allocate any overhead to packing costs. According to the petitioners, the Department should reject the respondent's request, and apply total adverse facts available. In the alternative, the petitioners propose that the Department apply partial facts available with respect to packing overhead.

DOC Position: We agree with Kuang Tai that the verification record establishes that packing was double-counted. (For an explanation of our analysis of the record in this regard, please *see* the Tien Tai/Kuang Tai cost analysis memorandum, from Peter Scholl to Neal Halper, dated April 2, 1999). Therefore, we have eliminated packing expenses from Kuang Tai's reported cost of manufacturing. As for the petitioners' argument with respect to packing overhead, we note that Kuang Tai was unable to allocate any overhead specifically to packing, but did allocate total overhead to cost of manufacturing, such that the overhead expenses were nonetheless included in the reported costs.

B. Rodex

Comment 1: Facts Available. The petitioners argue that the Department should apply facts available for certain omissions and errors found at verification, namely (1) unreported U.S. and home market sales; (2) U.S. sales of wire for which no coating had been reported, but which were coated with Apex, a lubricant; (3) packing expenses, the reporting of which was found to contain errors; and (4) duty drawback, the calculation of which contained errors. The petitioners contend that the Department should not simply correct these errors by relying on data collected at verification, but rather apply adverse facts available.

Rodex argues that use of adverse facts available is unwarranted, as the omissions and errors cited by the petitioners were minor in nature and corrected at the preliminary determination through use of verified data on the record.

DOC Position: We agree with Rodex that the application of adverse facts available is not warranted. Unlike the cases cited by the petitioners in which the Department applied best information available (the precursor to facts available under the pre-URAA antidumping statute), the omissions and errors referenced by the petitioners in this case were, both individually and in the aggregate, minor in scope and immaterial. While the general purpose of verification is not to gather new information, but rather to verify the information already submitted, it is the Department's practice to correct minor errors found at verification. *See Notice of Final Determination of Sales at Less Than Fair Value: Static Random Access Memory Semiconductors from Taiwan*, 63 FR 8909, 8929 (February 23, 1998). Moreover, to the extent that Rodex identified several of the minor errors in question at the outset of verification, it did so at the Department's specific instruction to identify any clerical errors at that point. *See* letter from the Department of Commerce to Rodex, dated November 15, 1998, (transmitting sales verification agenda), at 1.

With respect to the first point raised by the petitioners, the Department noted at verification that the respondent had not reported a relatively small number of sales, which had dates of sale in the POI but date of invoice after the POI.[7] Because the sales in question were few in number, the Department collected and verified the sales data for these transactions. We have continued to rely on the sales data in question for this final determination.

The Department also found at verification that four U.S. sales reported as having no coating had in fact been coated with Apex. We verified that no other U.S. sales, and no home market sales, were coated with Apex. *See* Rodex Sales Verification Report at 4. Because the omission in question was minor and remedied through verified data, there is no need for the application of adverse facts available.

With respect to packing costs, we found at verification that a few home market sales had been shipped in reusable containers. In the preliminary determination, we set the packing cost for such sales to zero and increased the reallocated total packing costs to the other sales, which resulted in a small increase to packing costs. Again, to the limited extent that the error created any distortion in the margin calculation, that distortion was fully corrected.

As for duty drawback, the calculation errors in question were also very minor (accounting for a discrepancy of less than one-tenth of one percent), and were identified by the respondent at the outset of verification as a clerical error.

[7] The error was due to a misunderstanding arising from the Department's supplemental instruction to Rodex to change the basis for date of sale. In its first questionnaire response, Rodex based the date of sale on the date of invoice. After determining that the date of sales confirmation was a more appropriate basis for the date of sale, the Department instructed Rodex to revise its sales databases accordingly. Although Rodex complied with this request by reporting the date of sales confirmation for all previously reported sales, it did not additionally report certain sales with date of sales confirmation within the POI and invoice date outside of the POI.

We have therefore relied on the corrected duty drawback expense calculation provided by Rodex at verification.

Comment 2: Potential Reimbursement of Antidumping Duties. The petitioners contend that Rodex agreed to reimburse its customers for payment of potential antidumping duties. According to the petitioners, the Department should deduct the amount of calculated duties from the export price to determine the cash deposit rate to be applied to Rodex's entries.

Rodex argues that it has not to date reimbursed any customer for antidumping duties, since there has never been an antidumping duty order on round wire. Rodex contends that it was unaware of the Department's regulations at the time that it expressed a willingness to reimburse its customers for potential antidumping duties, and that in the event that an antidumping order is imposed, it will not reimburse any duties.

DOC Position: We disagree with the petitioners that the Department should adjust the export price for potential reimbursement of antidumping duties. Section 351.402(f)(1)(i)(B) of the Department's regulations provides that the Department will deduct the amount of any antidumping duty which the producer reimbursed to the importer. For that provision to be triggered, an antidumping duty order must have been imposed, and antidumping duties levied. Since neither of those events has occurred to date, the provision is not applicable in this case. In the event that an antidumping order is imposed pursuant to this final determination, and administrative reviews of that order are requested, the Department will closely examine whether Rodex has reimbursed, or agreed to reimburse, its customers for antidumping duties in the relevant period of review.

Comment 3: Year-End Auditor's Adjustment. Rodex argues that the Department made two errors in the allocation of net foreign exchange losses to wire products. First, Rodex alleges that the Department transposed the amounts to be allocated with respect to direct labor and overhead. Second, Rodex alleges that the Department inadvertently allocated the full amount of the losses to wire products, even though the company produced other products.

The petitioners do not dispute Rodex's allegation of a transposition error. However, the petitioners contend that since the auditor's adjustment had not been reported to the Department and was found at verification, the Department should make an adverse inference and allocate the adjustment fully to wire products.

DOC Position: We agree with Rodex. We have corrected the transposition error, and, since the adjustment in question applies equally to all of Rodex's products, have reallocated the adjustment to both wire and Rodex's other product lines.

Comment 4: Net Foreign Exchange Losses.

Rodex argues that the Department incorrectly allocated net foreign exchange losses only to wire products, rather than to all of Rodex's products, which include fasteners. Rodex also argues that the Department erred by applying the amount of foreign exchange losses as an upward adjustment to raw material cost, rather to G&A expenses, since the expenses are classified as non-operating general expenses in the company's records.

The petitioners respond that the Department correctly adjusted for net foreign exchange losses, and that it is the Department's normal practice to include foreign exchange gains and losses relating to raw materials in the calculation of total raw material costs.

DOC Position: We agree with the petitioners. All of Rodex's products, including both wire and fasteners, are made from wire rod. Since Rodex suffered net foreign exchange losses in connection with purchases of rod, we allocated those net losses to all wire rod purchases, thus increasing equally the material costs of both wire and fasteners. With respect to the classification of these expenses, we note that the losses arise directly from purchases of materials, and it is the Department's practice to adjust material costs for exchange losses related to purchases of materials. *See, e.g., Circular Welded Non-Alloy Steel Pipe and Tube from Mexico: Final Results of Antidumping Duty Administrative Review*, 62 FR 37014, 37026 (July 10, 1997). Therefore, we have adjusted material costs, rather than G&A expenses, for the exchange losses.

Suspension of Liquidation

In accordance with section 735(c)(1)(C) of the Act, we are directing the Customs Service to suspend liquidation of all entries of stainless steel round wire from Taiwan produced and exported by Tien Tai/Kuang Tai that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final determination in the **Federal Register**. Also, in accordance with section 735(c)(1)(B) of the Act, we are directing the Customs Service to continue to suspend liquidation of all entries of stainless steel round wire from Taiwan from all other producers and exporters that are entered, or withdrawn from warehouse, on or after November 18, 1998, the date of publication of the preliminary determination in the **Federal Register**. The Customs Service shall require a cash deposit or the posting of a bond equal to the weighted-average amount by which the normal value exceeds the EP, as indicated in the chart below. These instructions suspending liquidation will remain in effect until further notice. The weighted-average dumping margins are as follows:

Exporter/Manufacturer	Weighted-average margin percentage
Rodex	3.94
Tien Tai/Kuang Tai	4.75
All Others	4.47

Section 735(c)(5)(A) of the Act directs the Department to exclude all zero and *de minimis* weighted-average dumping margins, as well as dumping margins determined entirely under facts available under section 776 of the Act, from the calculation of the "all others" rate. Since neither of the calculated margins in this investigation are zero, *de minimis*, or based entirely under facts available, we have included both margins in the calculation of the all others rate.

ITC Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission (ITC) of our determination. As our final determination is affirmative, the ITC will, within 45 days, determine whether these imports are materially injuring, or threaten material injury to, the U.S. industry. If the ITC determines that material injury or threat of material injury does not exist, the proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing the Customs Service to assess antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

This determination is published pursuant to sections 735(d) and 777(i)(1) of the Act.

Dated: April 2, 1999.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–8927 Filed 4–8–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–830]

Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Round Wire from Korea

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: April 9, 1999.

FOR FURTHER INFORMATION CONTACT: Gabriel Adler or Kris Campbell at (202) 482–1442 or (202) 482–3813, respectively, Group 1, Office of AD/CVD Enforcement 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to Department of Commerce (Department) regulations refer to the regulations codified at 19 CFR Part 351 (April 1998).

Final Determination

We determine that stainless steel round wire from Korea is being sold, or is likely to be sold, in the United States at less than fair value (LTFV), as provided in section 735 of the Act. The estimated margins are shown in the *Suspension of Liquidation* section of this notice.

Case History

The preliminary determination in this investigation was issued on November 12, 1998. *See Notice of Preliminary Determinations of Sales at Less Than Fair Value and Postponement of Final Determinations—Stainless Steel Round Wire From Canada, India, Japan, Spain, and Taiwan; Preliminary Determination of Sales at Not Less Than Fair Value and Postponement of Final Determination—Stainless Steel Round Wire From Korea*, 63 FR 64042 (November 18, 1998) (preliminary determination). Since the preliminary determination, the following events have occurred:

In January and February 1999, we conducted on-site verifications of the questionnaire responses submitted by respondent Korea Sangsa Co., Ltd. (Korea Sangsa) and its affiliate Korea Sangsa America, Inc. (KOSA).

The petitioners [1] and the respondent submitted case briefs on February 26, 1999, and rebuttal briefs on March 5, 1999. We held a public hearing on March 11, 1999.

Scope of Investigation

The scope of this investigation covers stainless steel round wire (SSRW). SSRW is any cold-formed (*i.e.*, cold-drawn, cold-rolled) stainless steel product of a cylindrical contour, sold in coils or spools, and not over 0.703 inch (18 mm) in maximum solid cross-sectional dimension. SSRW is made of iron-based alloys containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. Metallic coatings, such as nickel and copper coatings, may be applied.

The merchandise subject to this investigation is classifiable under subheadings 7223.00.1015, 7223.00.1030, 7223.00.1045, 7223.00.1060, and 7223.00.1075 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise under investigation is dispositive.

Period of Investigation

The period of the investigation (POI) is January 1, 1997, through December 31, 1997. This period corresponds to the respondent's four most recent fiscal quarters prior to the month of the filing of the petition (*i.e.*, March 1998).

Fair Value Comparisons

To determine whether sales of stainless steel round wire from Korea to the United States were made at LTFV, we compared the export price (EP) or constructed export price (CEP), as appropriate, to the normal value (NV). Our calculations followed the methodologies described in the preliminary determination, except as noted below and in the sales analysis memorandum from Valerie Ellis to Kris Campbell, dated April 2, 1999, which has been placed in the file.

[1] The petitioners are ACS Industries, Inc., Al Tech Specialty Steel Corp., Branford Wire & Manufacturing Company, Carpenter Technology Corp., Handy & Harman Specialty Wire Group, Industrial Alloys, Inc., Loos & Company, Inc., Sandvik Steel Company, Sumiden Wire Products Corporation, and Techalloy Company, Inc.

Export Price and Constructed Export Price

We used the same methodology to calculate EP and CEP as that described in the preliminary determination, except in the following specific instances:

1. We established two separate averaging periods to account for the precipitous drop of the Korean won at the end of the POI. *See* comment 1.
2. We reallocated indirect selling expenses incurred by Korea Sangsa's U.S. affiliate entirely to CEP sales. *See* comment 3.
3. We disallowed the CEP offset that was granted at the preliminary determination. *See* comment 4.

Normal Value

We used the same methodology to calculate normal value (NV) as that described in the preliminary determination, with the exception that we averaged normal value for two separate periods to account for the precipitous drop of the Korean won at the end of the POI. *See* comment 1.

Cost of Production

We used the same methodology to calculate cost of production (COP) as that described in the preliminary determination, except in the following specific instances:

1. We recalculated the G&A expense ratio to include expenses of affiliates involved in the production of subject merchandise, and to exclude certain non-operating income. *See* comment 11.
2. We reduced the cost of manufacturing by the sale of scrap. *See* comment 12.
3. We reduced the cost of manufacturing by the rental income. *See* comment 12.
4. The interest expense ratio was recalculated to create a combined ratio including all affiliates. *See* comment 13.
5. We recalculated the net cost of goods sold used in the G&A and interest expense ratio calculation to include the sales value of inter-company sales. *See* comment 13.

Currency Conversions

As explained in the preliminary determination, our analysis of Federal Reserve data on the U.S. dollar-Korean won exchange rate showed that the won declined rapidly at the end of 1997, losing over 40 percent of its value between the beginning of November and the end of December. The decline was, in both speed and magnitude, many times more severe than any change in the dollar-won exchange rate during the previous eight years. Had the won rebounded quickly enough to recover all or almost all of the initial loss, the Department might have considered the won's decline at the end of 1997 as nothing more than a sudden but only momentary drop, despite the magnitude

of that drop. As it was, however, there was no significant rebound. Therefore, we have not changed our preliminary determination that the decline in the won at the end of 1997 was so precipitous and large that the dollar-won exchange rate cannot reasonably be viewed as having simply fluctuated during this time, *i.e.*, as having experienced only a momentary drop in value. As a result, in making this final determination, the Department has continued to use daily rates exclusively for currency-conversion purposes for home market sales matched to U.S. sales occurring between November 1, 1997, and December 31, 1997. Further, as discussed in Comment 1, below, we have considered these two months as a separate averaging period from the first ten months of the POI.

Interested Party Comments

A. Sales Issues

Comment 1: Averaging Periods. The petitioners argue that the Department should account for the effect of the severe depreciation of the Korean won toward the end of the POI by relying on separate averaging periods corresponding to the pre-and post-depreciation periods. According to the petitioners, the Department's regulations provide that average-to-average price comparisons may be performed over periods shorter than the POI where the normal values, export prices, or constructed export prices for sales in an averaging group differ significantly over the POI. The petitioners contend that if the Department does not rely on two separate averaging periods in this case, the respondent's dumping throughout the majority of the POI will be masked by the effect of the devalued Korean currency in the last few months of the period. The petitioners request that the averaging periods be divided using fiscal quarters (*i.e.*, the first period corresponding to the first three quarters of 1997, the second period corresponding to the last quarter).

Korea Sangsa argues that the Department's established currency conversion policy fully accounts for the effects of the devaluation of the Korean won, and that there is no legal basis or rational need for any additional adjustment. According to the respondent, its pricing behavior and selling activities in the U.S. and home markets did not change throughout the POI, and the company should not be penalized for currency movements outside of its control.

DOC Position: We agree with the petitioners that separate averaging periods should be used. Under section 777A(d)(1)(A) of the Act , the Department has wide latitude in calculating the average prices used to determine whether sales at less than fair value exist. More specifically, under 19 CFR 351.414(d)(3), the Department may use shorter averaging periods where normal value varies significantly over the POI. In the instant case, NV (in dollars) in the last two months of the POI differs significantly from NV earlier in the POI due primarily to a significant change in the underlying dollar value of the won. This significant change is evidenced by the precipitous drop in the won's value that began in November 1997 and continued through the end of the POI, without a quick, significant rebound. In the span of two months, the won's value decreased by more than 40 percent in relation to the dollar. Consequently, it is appropriate to use two averaging periods to avoid the possibility of a distortion in the dumping calculation. Moreover, we disagree with respondent's claim that the use of averaging periods is dependent upon a change in a respondent's selling practices. We note that in *Notice of Final Determination of Sales at Less Than Fair Value: Certain Preserved Mushrooms from Indonesia*, 63 FR 72268, 72272 (December 31, 1998), the Department stated that "in addition to changes in selling practices, we believe that we should also consider other factors, such as prolonged large changes in exchange rates, in determining whether it is appropriate to use more than one averaging period." Therefore, we have used two averaging periods for the final determination, and calculated a weighted average of the resulting margins. Because the rapid devaluation of the Korean won began in November 1997, we have defined the first period to extend from January through October, and the second period from November through December.

We note that, as explained above in *Currency Conversions*, we have continued to use daily exchange rates for the period November through December 1997.

Comment 2: Correction of Errors at Verification. The petitioners allege that the errors identified by Korea Sangsa at the outset of verification were so extensive that the Department should not accept these corrections without penalty. Korea Sangsa claims that the Department found no significant errors at verification and should continue to rely on the company's verified data.

DOC Position: We do not agree that Korea Sangsa's errors were so pervasive as to warrant the application of adverse facts available. It is standard Department practice to accept corrections of minor errors identified by a respondent at the outset of verification. *See Notice of Final Determination of Sales at Less Than Fair Value: Static Random Access Memory Semiconductors from Taiwan*, 63 FR 8909, 8929 (February 23, 1998). The errors identified by Korea Sangsa affected only a few variables (*e.g.*, invoice number, credit expenses) with respect to a small percentage of sales. *See* Korea Sangsa sales verification report, dated February 19, 1999, at 2. Based on established verification procedures, we are satisfied that the revised information presented at the outset of verification was correct, and have relied on this information for this final determination.

Comment 3: Allocation of Indirect Selling Expenses to CEP Sales. The petitioners argue that the Department should allocate U.S. indirect selling expenses incurred by the respondent's U.S. affiliate (KOSA) entirely to CEP sales, and not EP sales, since KOSA performs negligible activities in connection with EP sales.

Korea Sangsa asserts that while KOSA plays a limited role with respect to EP sales, at least a portion of the indirect selling expenses are properly allocable to these sales, and provided separate EP and CEP ratios to support its proposed allocation.

DOC Position: We agree with the petitioners that U.S. indirect selling expenses should be allocated only to CEP sales. The record indicates that KOSA's role with respect to EP sales is limited to the transmittal of purchase orders to its parent company in Korea and the occasional receipt of payment, whereas KOSA plays a much more active role with respect to CEP sales. The methodology advanced by the respondent allocates slightly more expenses to CEP sales than to EP sales, but this result reflects merely that the company's reported sales had a higher ratio of CEP to EP sales than did the company's total sales, and does not capture the fact that, in terms of selling activities, KOSA also plays a significantly more active role with respect to CEP sales. Since the respondent has not isolated the expenses associated with the negligible role played by the affiliate with respect to the EP sales, we have allocated the expenses in question entirely to CEP sales.

Comment 4: CEP Offset. The petitioners argue that Korea Sangsa should not be granted a CEP offset, given findings at verification confirming that there is no difference in selling functions in the home and U.S. markets.

Korea Sangsa asserts that the Department should continue to grant the CEP offset. The respondent claims that normal value in this case includes several selling functions not found in the adjusted CEP, including the arrangement of freight and warehousing, as well as direct selling expenses such as the arranging of bank transactions for local letter of credit sales.

DOC Position: We agree with the petitioners that a CEP offset is not appropriate given the facts of this case. The record indicates that the respondent's selling functions in the home market are very limited, and do not extend significantly beyond those performed with respect to its U.S. affiliate. Although Korea Sangsa arranges for movement of the merchandise on behalf of its home market customers, it also arranges for movement of the merchandise to its U.S. affiliate. Korea Sangsa does arrange banking transactions for local letter of credit sales as well as cutting services, but such functions were performed for only a small percentage of all home market sales during the POI. Given that the selling functions performed with respect to home market customers do not differ significantly from those performed with respect to the U.S. affiliate, we find that sales to both home market and U.S. customers are made at the same level of trade, so that a CEP offset is not necessary. This is consistent with similar determinations in recent cases. *See, e.g., Industrial Nitrocellulose From the United Kingdom; Notice of Final Results of Antidumping Duty Administrative Review,* 64 FR 6609, 6614 (Feb. 10, 1999).

Comment 5: U.S. Credit. The petitioners argue that the Department should impute a credit expense for all sales in which reported payment date occurred after the reported ship date.

Korea Sangsa asserts that for a number of sales involving letters of credit, it presented the sales documents to its bank upon shipment and immediately obtained from the bank the invoice value of the transaction. The respondent further claims that the bank levied a discount charge for the period between shipment and estimated customer payment to the bank, which Korea Sangsa reported as a bank charge. Korea Sangsa contends that the Department should not impute an additional credit expense for these sales. The respondent also contends that it reported imputed credit expenses for all other sales.

DOC Position: We agree with Korea Sangsa that, for EP sales where the respondent receives payment from its bank immediately upon shipment, there is no need to impute a credit expense. For such sales, as in the preliminary determination, we have made an adjustment for the charges levied by the bank, which constitute actual interest expenses arising from the lag between the date of shipment and the date of customer payment. For all other sales, to the extent that the date of payment follows the date of shipment, we have made adjustments for imputed credit expenses.

Comment 6: Clarification of Matching Methodology. The petitioners request that the Department clarify its policy with respect to situations where there are two equally similar home market products (in terms of physical characteristics) that could serve as comparison merchandise for a given U.S. product. The petitioners note that the Department has in the past either (1) relied on an average of the prices of the two products, or (2) selected the home market product with the more similar variable cost. The petitioners note that the Department followed the latter approach in the preliminary determination, and contend that the former approach is more sensible.

Korea Sangsa argues that the Department should continue to find the most similar home market match as in the preliminary determination.

DOC Position: In situations where, based on the reported product characteristics, there are two or more "equally similar" home market products, we have in the past relied on the home market product with the closest variable cost of manufacture to that of the U.S. product. *See, e.g., Certain Welded Carbon Steel Pipes and Tubes From India; Final Results of Antidumping Duty Administrative,* 63 FR 32825 (June 16, 1998). We have followed this methodology for the final determination.

Comment 7: Packing Form/Model Matching. The petitioners suggest that the Department may want to consider the appropriateness of including packing form in the model matching criteria for the purpose of making price to price comparisons.

Korea Sangsa claims that, given the lack of any findings at verification suggesting that form affects price comparability, the Department should not incorporate packing form into the model match methodology.

DOC Position: We agree with Korea Sangsa that packing form should not be incorporated into the model match methodology. The petitioners have not provided evidence that packing form is a consideration in pricing in the wire industry generally, and our analysis of the respondent's pricing data suggests no clear correlation between wire prices and packing form. Therefore, the Department has determined that there is no basis for including these criteria in our model matching.

Comment 8: Grade Comparisons. Korea Sangsa argues that the Department erred in comparing U.S. sales of grade 302 wire to home market sales of grade 303 wire, rather than to sales of more similar grade 304 wire. According to Korea Sangsa, it is commonly accepted in the wire industry that grade 302 and 304 wire are generally interchangeable and used in non-free-machining applications, whereas the grade 303 wire sold by Korea Sangsa contains significant amounts of copper, sulfur, and other chemical elements (which the other two grades lack), and is used for free-machining applications. Korea Sangsa suggests that the Department can correct this error with a revision to the results of the program used to determine similarity of grades, by modifying the values assigned to the specific grades in question.

According to the petitioners, the Department should consider general comments on matching methodologies, and not consider requests for *ad hoc* revisions to the results of those methodologies. The petitioners argue that the respondent's objection to the Department's model matching is based on a limited comparison of two specific grades, and does not advance a comprehensive approach to matching of grades.

DOC Position: We agree with the petitioners. Although Korea Sangsa has provided evidence that in certain respects grade 302 wire is more similar to grade 304 wire than to grade 303 wire (for instance, that grades 302 and 304 contain little or no copper or sulfur, while grade 303 contains significant amounts of those elements), the respondent has not addressed the methodology used in the preliminary determination for purposes of determining grade similarity. This methodology relied on the standard chemical composition of each grade, and ranked four chemical elements (nickel, molybdenum, chromium, and carbon) in a hierarchy. Rather than propose a systematic revision to this hierarchy with respect to copper, sulfur, and other elements, the respondent has identified a specific unfavorable result of the Department's methodology, and proposed an *ad hoc* change to this result. Absent comments from interested parties on the relative importance of copper, sulfur, and other elements, we have no way of gauging what other grade comparisons might be affected by consideration of those elements.

Therefore, we have continued to rely on the methodology for determination of grade similarity that was used in the preliminary determination.

Comment 9: Overdraft Rates. Korea Sangsa asserts that the Department should include the company's overdraft rate in the calculation of short-term lending rates during the POI. According to Korea Sangsa, in the preliminary determination the Department deviated from its practice of basing the interest rate for the calculation of imputed credit on all short-term borrowing, including overdraft loans. The respondent cites to two determinations in which the Department relied on overdraft rates: *Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination With Final Antidumping Duty Determination: Stainless Steel Plate in Coils From Italy*, 63 FR 47246 (Sept. 4, 1998), and *Extruded Rubber Thread From Malaysia: Final Results of Countervailing Duty Administrative Review*, 62 FR 48985 (Sept. 18, 1997).

The petitioners do not specifically address the issue of overdraft rates, stating that the Department has discretion to determine the appropriate basis for calculating the respondent's home market borrowing rate. However, the petitioners note that the rate reported by Korea Sangsa appears to be overstated. The petitioners point out that the interest rate reported by the respondent is above the range of rates listed in the company's audited financial statements.

DOC Position: We disagree with Korea Sangsa that the reported overdraft rates should be included in the calculation of imputed credit. For purposes of calculating imputed credit expenses, it is the Department's policy to use a short-term interest rate tied to the currency in which the sales are denominated. We will base this interest rate on the respondent's weighted-average short-term borrowing experience in the currency of the transaction. *See* Policy Statement 98–2. In this case, the overdraft rate in question is several times higher than the respondent's regular short-term borrowing rate, and does not appear to bear any relation to normal commercial borrowing by the respondent (the total POI amount of overdraft borrowing, when compared to the total amount of regular short-term borrowing, indicates that overdraft borrowing is exceptionally rare).

The countervailing duty cases cited by the respondent are inapposite, in that they did not involve the calculation of imputed credit. (For example, in *Stainless Steel Plate in Coils from Italy*, we used overdraft rates to calculate benchmarks on long-term (rather than short-term) loans, in connection with the valuation of subsidies in Italy.) The respondent has not identified any precedent establishing that the Department's practice is to include overdraft rates (especially aberrationally high overdraft rates) in the calculation of short-term interest rates for purposes of calculating imputed credit. Given this, we have continued to exclude these rates from the calculation of the home market short-term interest rate. Regarding the petitioners' claim that the reported interest rate is inconsistent with the range of rates in the notes to the financial statements, we found at verification that the reported rate was consistent with the respondent's books and records.

B. Cost Issues

Comment 10: Inflation/Cost Averaging. The petitioners argue that there was significant inflation in Korea during the POI, as evidenced by the increase in Korea Sangsa's cost in won for one grade of wire rod, the principal input used in the production of round wire. The petitioners contend that, given such inflation, the Department should index Korea Sangsa's monthly costs and perform monthly cost and price comparisons.

Korea Sangsa claims that Korea did not suffer significant inflation during the POI. The respondent contends that neither the Korean consumer price index nor the producer price index for the period indicate a rate of inflation even approaching the level at which the Department will normally consider making an adjustment. The respondent also asserts that the petitioners' allegations regarding Korea Sangsa's wire rod purchases are misleading, and that in fact, the price of at least one grade of wire rod actually decreased for some months of the POI. Finally, while the respondent concedes that there may have been some inflationary pressure on the company in the final month of the POI, the respondent asserts that such pressure could not have been reflected in the costs of production of merchandise sold during the POI.

DOC Position: We disagree with the petitioners that monthly costs should be indexed for inflation and that we should perform monthly cost and price comparisons. Based on our assessment of information on the record, we find that the inflation rate in Korea during the POI was not significant enough to warrant any adjustment to our calculation methodology. The Department uses a different calculation methodology for economies experiencing high inflation. This is because money can lose purchasing power at such a rate that comparison of transactions that have occurred at different times, even within the same POI, are misleading. The annualized inflation rate during the POI did not reach such levels in this case. Therefore, we have continued to rely on the methodology for price and cost comparisons that was used in the preliminary determination.

Comment 11: Calculation of G&A Expenses. The petitioners claim that the Department should revise its calculation of G&A expenses to reflect findings at verification, namely to include: (1) exchange losses experienced by collapsed affiliate Korea Welding Electrode Co., Ltd. (Koweld) in connection with accounts payable, (2) amounts for actual payments of severance indemnities, and (3) amounts for "special" and extraordinary depreciation.

Korea Sangsa contends that, to the extent that the Department finds it necessary to include Koweld's exchange losses in the G&A ratio, the Department should also adjust the G&A ratio to reflect Koweld's offsetting exchange gains. With respect to severance payments and depreciation, the respondent claims that all such costs were correctly reported and verified, and therefore, no revisions are necessary for the final determination.

DOC Position: We agree with petitioner that the foreign exchange losses realized in connection with loans and accounts payable should be included in the COP and CV calculations. It is the Department's practice to distinguish between exchange gains and losses generated by sales transactions and those generated by loans payable and the purchases of production inputs. *See Notice of Final Results and Partial Recission of Antidumping Duty Administrative Review: Certain Welded Carbon Steel Pipe and Tube from Turkey*, 63 FR 35190, 35198 (June 29, 1998). The Department typically excludes from the COP and CV calculation those foreign exchange gains and losses generated by sales transactions because we do not consider them to relate to the manufacturing activities of the company. *See Notice of Final Determination of Sales at Less Than Fair Value: Steel Wire Rod from Trinidad and Tobago*, 63 FR 9177, 99182 (February 24, 1998). We also agree with respondents that the offsetting foreign exchange gains realized in connection with accounts payable and loans should be included in the COP and CV calculations. Thus, we

have included both exchange gains and losses in our calculation of COP and CV.

We disagree with the petitioners that the actual payments for severance indemnities should be included in the calculation of G&A expenses. Annually, the respondent accrues in its accounting books and records amounts for severance indemnities. The actual severance payments to employees are not recorded as expenses to Korea Sangsa. Rather, the annual accrual is recorded as an expense in the books and records of the company. We agree with Korea Sangsa that it correctly reported the provision for severance payments in its reported costs. Accordingly, we made no adjustment for actual severance payments in Korea Sangsa's G&A expense calculation.

We disagree with the petitioners that respondents have not included "special and extraordinary" depreciation expenses in the reported costs. We note from our verification that Korea Sangsa included regular and special depreciation in its calculation of the cost of manufacturing. In addition, depreciation expense related to assets used in the general operations of the company were included in the reported G&A expenses. *See* cost verification exhibit 9. Thus, we made no adjustment to Korea Sangsa's reported costs.

Comment 12: Offset to Costs for Rental Income and Scrap Revenues. Korea Sangsa asserts that the Department should allow an offset to reported costs for income from the rental of machinery to affiliated parties, as well as from revenues from the sale of scrap.

The petitioners contend that Korea Sangsa has not shown that the machinery in question was related to production activities, and therefore no offset should be granted in connection with the rental of that machinery. The petitioners also assert that to the extent that the Department allows an offset for revenue from the sale of scrap, it should also reduce the respondent's cost of sales by any revenue from the sale of scrap in order to ensure that the interest and G&A expense ratios are calculated on the same basis as the cost of manufacture figure to which they are applied.

DOC Position: We agree with Korea Sangsa that in this instance the rental income that represents amounts paid by collapsed affiliate Myung Jin. Co. (MJC) to Korea Sangsa should be allowed as an offset to the cost of manufacture. It has been determined for this proceeding that MJC and Korea Sangsa should be collapsed into a single entity for cost and sales reporting purposes. Thus, if the income from the rental of the equipment is not used to offset the cost incurred by Korea Sangsa, costs would be double counted, first as maintenance and depreciation costs to Korea Sangsa, and second as a rental expense included in factory overhead for MJC's Daesong Factory. Therefore, for the final determination, we have reduced the cost of manufacture for the rental income.

With respect to the issue of scrap, we also agree with Korea Sangsa. It is Department practice to allow an offset to cost of manufacturing by revenue generated from sales of scrap. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Wire Rod from Taiwan*, 63 FR 40461, 40472 (July 29, 1998). In keeping with this practice, we will allow this offset for the final determination. Further, we agree with the petitioners that the interest and G&A ratios should be calculated on the same basis as the cost of manufacturing figure to which they are applied. Therefore, since we have reduced cost of manufacturing by the revenue generated from the sales of scrap and rental income, we have also reduced the denominator used in the G&A and interest expense calculation.

Comment 13: Elimination of Inter-Company Sales. Korea Sangsa asserts that it has correctly eliminated inter-company sales from the cost-of-goods sold (COGS) denominator used to calculate the G&A and interest ratios. The respondent contends that it is appropriate to reduce that denominator by the *cost* of those sales (*i.e.*, the price paid by the respondent to an unaffiliated supplier for merchandise that the respondent resold to an affiliate), rather than by the *sales value* of those transactions (*i.e.*, the price paid by the affiliate to the respondent for that merchandise).

The petitioners claim that COGS denominator should be reduced by the cost of the inter-company sales to the respondent's affiliate, which is based on the sales value realized by Korea Sangsa.

DOC Position: We agree with the petitioner that the COGS denominator should be reduced by the transfer price between affiliates. If the Department reduced the denominator by only the amount paid by the respondent to an unaffiliated supplier for the purchase of the merchandise in question, it would leave in that denominator an element of profit or loss realized by the respondent upon resale of the merchandise to its affiliate, thus not fully eliminating the effect of the inter-company sales. Therefore, we have used the sales value of the inter-company sales to calculate net COGS used in the G&A and interest ratio calculations.

Comment 14: Allocation of Packing Labor Costs. The petitioners contend that the Department determined that packing for the U.S. and home markets was identical, but that at verification the Department found that packing labor had been allocated disproportionately to U.S. products. According to the petitioners, this discrepancy calls into question the general reliability of the reported packing costs, warranting the application of facts available.

Korea Sangsa asserts that it has correctly allocated packing labor costs to home market and U.S. products, and that no adjustment to this allocation is necessary for the final determination.

DOC Position: We disagree with the petitioners that the application of facts available is appropriate. At verification, we confirmed that the pool of packing costs allocated to round wire sold in the U.S. and home markets included all appropriate costs. We also observed that labor involved in packing merchandise for both the U.S. and home markets did not appear to vary, and noted that the respondent appeared to have slightly over-allocated packing labor cost to U.S. products. Upon review, we have determined that the allocation of packing labor costs appears reasonable. Accordingly, no adjustment was necessary.

Suspension of Liquidation

In accordance with section 735(c)(1)(C) of the Act, we are directing the Customs Service to suspend liquidation of all entries of stainless steel round wire from Korea, that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final determination in the **Federal Register**. The Customs Service shall require a cash deposit or the posting of a bond equal to the weighted-average amount by which the normal value exceeds the EP or CEP, as indicated in the chart below. These instructions suspending liquidation will remain in effect until further notice.

The weighted-average dumping margins are as follows:

Exporter/manufacturer	Weighted-average margin percentage
Korea Sangsa	3.07
All Others	3.07

ITC Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission (ITC) of our determination. As our final determination is affirmative, the ITC

will, within 45 days, determine whether these imports are materially injuring, or threaten material injury to, the U.S. industry. If the ITC determines that material injury or threat of material injury does not exist, the proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing the Customs Service to assess antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

This determination is published pursuant to sections 735(d) and 777(i)(1) of the Act.

Dated: April 2, 1999.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–8928 Filed 4–8–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 032399A]

Regulations Governing the Taking and Importing of Marine Mammals; Endangered and Threatened Fish and Wildlife; Cook Inlet Beluga Whales

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of receipt of petitions.

SUMMARY: NMFS announces the receipt of two petitions to list the Cook Inlet population of beluga whales under the Endangered Species Act (ESA) and one petition to designate the population as depleted under the Marine Mammal Protection Act (MMPA). NMFS also announces that it has determined that the petitioned actions may be warranted.

ADDRESSES: Requests for copies of the petitions should be addressed to Chief, Marine Mammal Division (PR2), Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Division Chief, Protected Resources Management Division, Alaska Region, NMFS, (907) 586–7235; Brad Smith/Barbara Mahoney, Protected Resources Management Division, Alaska Region, NMFS, (907) 271–5006; or Margot Bohan/Dean Wilkinson, Office of Protected Resources, NMFS, (301) 713–2322.

SUPPLEMENTARY INFORMATION:

Background

The MMPA (16 U.S.C. 1361–1407) contains provisions for interested parties to petition for a species or stock to be designated as "depleted" (16 U.S.C. 1383(b)). Section 4 of the ESA (16 U.S.C. 1531–1543) and 50 CFR part 424 contain provisions allowing interested parties to petition for a species (including any subspecies or, in the case of vertebrates, a distinct population segment which interbreeds when mature) to be listed as threatened or endangered. If a petition presents substantial information, a review is conducted to determine if a species should be designated as depleted or listed as endangered or threatened. Determinations are made based on the best available scientific data.

Petitions Received

On January 21, 1999, NMFS received a petition from the State of Alaska to designate the Cook Inlet beluga stock as depleted. On March 3, 1999, NMFS received a petition, on behalf of Joel Blatchford, a Native Alaskan beluga hunter, the Alaska Center for the Environment, the Alaska Community Action on Toxics, the Alaska Wildlife Alliance, the Center of Biological Diversity, the Center for Marine Conservation, the National Audubon Society, and the Trustees for Alaska to list Cook Inlet belugas as endangered under the ESA on an emergency basis. On March 10, 1999, NMFS received another petition from the Animal Welfare Institute to change the status of Cook Inlet beluga whales to depleted under the MMPA and endangered under the ESA.

Presentation of Substantial Information

NMFS has determined that each of these petitions presents substantial information indicating that the petitioned action may be warranted. A copy of the petitions and information submitted with the petitions is available upon request (see **ADDRESSES**).

NMFS recently commenced a review of the status of the Cook Inlet population of beluga whales, in collaboration with the Alaska Beluga Whale Committee and the Cook Inlet Marine Mammal Council. The agency solicited information and public comments in conjunction with the status review to ensure that the review is complete and is based on the best available information. Completion of the status review is expected in early April. NMFS will evaluate the merits of listing of the Cook Inlet beluga whale as threatened or endangered under the ESA based on the findings of this status review. NMFS will also evaluate the merits of designating the Cook Inlet beluga whale as depleted under the MMPA based on this review.

Dated: April 2, 1999.

Andrew A. Rosenberg,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 99–8905 Filed 4–8–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 032499A]

Small Takes of Marine Mammals Incidental to Specified Activities; Offshore Oil and Gas Activities in the Beaufort Sea

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Request for panel nominations.

SUMMARY: The Marine Mammal Protection Act (MMPA) requires Incidental Harassment Authorizations (IHAs) issued thereunder, to prescribe, where applicable, the requirements for an independent peer review of research and monitoring plans for those activities that take marine mammals incidental to the activity and where the activity may affect the availability of a species/stock of marine mammal for taking for subsistence uses in Arctic waters. In addition, NMFS regulations require similar review for Letters of Authorization (LOAs) issued under the MMPA for activities in Arctic waters. Because of increasing activities and potential MMPA authorizations in Arctic waters, NMFS wishes to expand its present list of peer review participants. NMFS is therefore accepting nominations from the public for consideration as potential reviewers of monitoring and research plans in the Arctic.

DATES: Nominations must be received no later than May 24, 1999.

ADDRESSES: Nominations should be addressed to Donna Wieting, Acting Chief, Marine Mammal Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910–3225. Additional information may be obtained by writing to this address or by telephoning the contact listed here.

FOR FURTHER INFORMATION CONTACT: Kenneth R. Hollingshead, NMFS, (301) 713–2055.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional taking of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, notice of a proposed authorization is provided to the public for review.

Permission may be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses, and the permissible methods of taking and requirements pertaining to the monitoring and reporting of such taking are set forth.

On April 10, 1996 (61 FR 15884), NMFS published an interim rule establishing, among other things, procedures for issuing LOAs under section 101(a)(5)(A) and IHAs under section 101(a)(5)(D) of the MMPA.

Section 101(a)(5)(D)(ii)(III) of the MMPA requires authorizations to prescribe, where applicable, the requirements for the "independent peer review of proposed monitoring plans or other research proposals where the proposed activity may affect the availability of a species or stock for taking for subsistence uses..." This requirement was codified at 50 CFR 216.107. However, due to time constraints, it is often necessary for the peer review process to be substantially completed prior to issuance of the authorization.

Procedure

If an activity, taking place in Arctic waters, has the potential to cause an adverse impact on those marine mammals taken in subsistence harvests, applicants are required to submit to NMFS a complete draft Monitoring Plan (Plan) for assessing impacts to marine mammals, either with an IHA application but no later than 120 days prior to the date an IHA is expected to be issued. The timing of the submission minimizes potential conflicts among user groups over whether a proposed Plan is adequate for determining the effects of the proposed activity on stocks of marine mammals needed for subsistence purposes.

Upon receipt of a small take application and draft Plan, NMFS reviews the documents and makes a preliminary determination on whether the activity has the potential to adversely affect the availability of a species or stock for subsistence uses. If NMFS makes a preliminary determination that the activity has the potential to adversely affect the availability of a species or stock for subsistence uses, NMFS will (1) establish an independent peer-review panel to critique the Plan and provide comments and recommendations on improving monitoring, (2) convene a peer review workshop to discuss and evaluate the Plan prior to requesting independent peer review, or (3) consult with the Marine Mammal Commission (MMC), the Alaska Eskimo Whaling Commission (AEWC), and either the North Slope Borough (NSB), or another Native Alaskan Interest Group as appropriate to determine the level of review appropriate for the activity. The Plan, and NMFS' preliminary determination on the level of peer review, is also made available to the public at the time of publication in the **Federal Register** of a notice of receipt of an IHA or LOA application. If a peer review workshop is convened, independent peer review is requested on the Plan after incorporation of any workshop recommendations. Peer review usually is also conducted on the results of any monitoring program that has previously undergone peer review.

As an example of a peer-review process, applicants involved in oil and gas exploration and development activities in the U.S. Beaufort Sea coordinate activities with NMFS and NSB residents and provide a Plan several months prior to an activity's commencement. In most years, a peer-review workshop is scheduled to review the Plan. That procedure is likely to continue into the future. For this type of activity, the workshop normally includes 6 to 10 experts in the fields of population ecology, survey design, acoustics, and marine mammal behavior. Workshop participants are selected by NMFS, in consultation with the MMC, the AEWC, the NSB and the applicant, all of whom may have scientific representation. Normally, the workshop is chaired by NMFS and minutes from the workshop are prepared within 2 weeks by a rapporteur assigned to assist the Chair, and made available to the general public upon request. Often, the Plan is modified subsequent to the workshop and submitted to NMFS for acceptance and submission to the independent peer review panel. Selected independent peer reviewers (usually 3 to 4) are experts in one or more of the previously mentioned scientific areas who are not currently employed or contracted by either the affected Alaskan native organization, or NMFS. To avoid a potential conflict of interest, marine mammal scientists who are currently employed or contracted by potential applicants may be selected for the peer review panel, but would not be requested to peer review the Plans of their employer.

Nominations Solicited

NMFS requests interested persons to submit recommendations, comments, information, and suggestions concerning potential peer-reviewers (see **ADDRESSES**). Nominators should ensure that the potential applicant is a biological scientist, familiar either with monitoring techniques for assessing marine mammal populations, and/or knowledgeable on life history parameters of Arctic marine mammals and willing to review a maximum of 1 monitoring plan and resulting research report per year without compensation. Upon receipt of an interest in participating as an independent peer reviewer, NMFS may solicit additional information, including, where necessary, curriculum vitae of the interested individual. Applicants who are currently employed or contracted by NMFS, the NSB, or the AEWC cannot be selected.

Dated: April 5, 1999.

Art Jeffers,

Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 99–8906 Filed 4–8–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 040599B]

Mid-Atlantic Fishery Management Council (MAFMC); Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings.

SUMMARY: The Mid-Atlantic Fishery Management Council, its Executive Committee, and its Surf Clam and Ocean Quahog, Comprehensive Management, Information and Education, Tilefish, and Squid,

Mackerel and Butterfish Committees will hold public meetings.

DATES: The meetings will be held from April 27–29, 1999. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: The meetings will be held at the Sheraton Atlantic City West, 6821 Black Horse Pike, Atlantic City, NJ; telephone: 609–272–0200.

Council Address: Mid-Atlantic Fishery Management Council, 300 S. New Street, Dover, DE 19904; telephone: 302–674–2331.

FOR FURTHER INFORMATION CONTACT: Daniel T. Furlong, Executive Director, Mid-Atlantic Fishery Management Council; telephone: 302–674–2331, ext. 19.

SUPPLEMENTARY INFORMATION:

Meeting Dates and Agendas

On Tuesday, April 27 the Surf Clam and Ocean Quahog Committee will meet from 9:00 a.m. until noon. The Comprehensive Management Committee will meet from 1:00 p.m. until 5:00 p.m. There will be a Tilefish Committee scoping meeting from 7:00 p.m. until 8:00 p.m.

On Wednesday, April 28 the Executive Committee will meet from 8:00 a.m. until 10:00 a.m. The Information and Education Committee will meet from 10:00 a.m. until 11:00 a.m. The Tilefish Committee will meet from 10:00 a.m. until noon. The Squid, Mackerel and Butterfish Committee will meet from 1:00 p.m. until 5:00 p.m.

On Thursday, April 29 the Council will meet from 8:00 a.m. until noon.

Agenda items for the meetings include discussion of preliminary results of economic models for surf clams and ocean quahogs; convening of workshop on scup to discuss ways to reduce bycatch in small mesh fisheries; discussion of Information and Education Committee plans for 1999; review of results of March 31–April 1 meetings on tilefish, and discussion of possible tilefish management measures; review of 1999 quota specifications for *Illex*; review of the status of Amendment 8 to squid, mackerel, and butterfish fishery management plan, and potential for framework actions for squid, mackerel and butterfish; review of quota setting procedures and other management measures for the year 2000 *Illex* fishing season, including seasonal restrictions and in-season quota adjustments based on outcome of pending stock assessment; discussion of Amendment 9 management measures, including real-time management of the *Illex* fishery and limited entry for the Atlantic mackerel fishery; approve staff reorganization and address Executive Committee and industry advisory appointment policy.

Although other issues not contained in this agenda may come before the Council/Committees for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, such issues may not be the subject of formal Council/Committee action during these meetings. Council/Committee actions will be restricted to those issues specifically identified in the agenda listed in this notice.

Special Accommodations

The meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Joanna Davis at least five days prior to the meeting dates.

Dated: April 5, 1999.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–8908 Filed 4–8–99; 8:45 am]

BILLING CODE 3510–22–F

COMMISSION OF FINE ARTS

Notice of Meeting

In a departure from our regular third-Thursday-of-the-month meetings, the next meeting of the Commission of Fine Arts is scheduled for Wednesday, April 21, 1999 at 10:00 a.m. in the Commission's offices at the National Building Museum (Pension Building), Suite 312, Judiciary Square, 441 F Street, NW., Washington, DC 20001. Items of discussion will include designs for projects affecting the appearance of Washington, DC, including buildings and parks.

Inquiries regarding the agenda and requests to submit written or oral statements should be addressed to Charles H. Atherton, Secretary, Commission of Fine Arts, at the above address or call 202–504–2200. Copies of the meeting's draft agenda are usually available one week before the meeting. Individuals requiring sign language interpretation for the hearing impaired should contact the Secretary at least 10 days before the meeting date.

Dated in Washington, DC, 1 April 1999.

Charles H. Atherton,

Secretary.

[FR Doc. 99–8891 Filed 4–8–99; 8:45 am]

BILLING CODE 6330–01–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in the Philippines

April 2, 1999.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs reducing limits.

EFFECTIVE DATE: April 13, 1999.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.ustreas.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being reduced for carryforward applied to the 1998 limits.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 63 FR 71096, published on December 23, 1998). Also see 63 FR 67050, published on December 4, 1998.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

April 2, 1999.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 30, 1998, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man–made fiber textiles and textile products and silk blend and other vegetable fiber apparel, produced or manufactured in the Philippines and exported during the twelve-month period which began on January 1,

1999 and extends through December 31, 1999.

Effective on April 13, 1999, you are directed to adjust the limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
Levels in Group I	
338/339	2,201,081 dozen.
345	174,595 dozen.
347/348	2,054,024 dozen.
361	1,952,374 numbers.
433	3,206 dozen.
443	38,768 numbers.
634	468,714 dozen.
638/639	2,261,110 dozen.
647/648	1,239,377 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1998.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.99–8929 Filed 4–8–99; 8:45 am]

BILLING CODE 3510–DR–F

DEPARTMENT OF DEFENSE

Office of the Secretary

Proposed Collection; Comment Request

AGENCY: Office of the Assistant Secretary of Defense for Health Affairs.

ACTION: Notice.

In accordance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Assistant Secretary of Defense for Health Affairs announces the proposed extension of a currently approved collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed extension of collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received June 8, 1999.

ADDRESSES: Written comments and recommendations on the information collection should be sent to TRICARE Management Activity—Aurora, Office of Program Requirements, 16401 E. Centretech Parkway, ATTN: Graham Kolb, Aurora, CO 80011–9043.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection, please write to the above address or call TRICARE Management Activity, Program Requirements Branch at (303) 676–3580.

Title, Associated Form, and OMB Number: CHAMPUS Claim Patient's Request for Medical Payment, DD Form 2642, OMB Number 0720–0006.

Needs and Uses: This form is used solely by beneficiaries claiming reimbursement for medical expenses under the TRICARE Program [formerly the Civilian Health and Medical Program of the Uniformed Services (TRICARE/CHAMPUS)]. The information collected will be used by TRICARE/CHAMPUS to determine beneficiary eligibility, other health insurance liability, certification that the beneficiary received the care, and reimbursement for the medical services received.

Affected Public: Individual or households.

Annual Burden Hours: 239,000.

Number of Respondents: 956,000.

Responses per Respondent: 1.

Average Burden per Response: 15 minutes.

Frequency: On occasion.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

This collection instrument is for use by beneficiaries under the TRICARE Program [formerly the Civilian Health and Medical Program of the Uniformed Services (TRICARE/CHAMPUS)]. TRICARE/CHAMPUS is a health benefits entitlement program for the dependents of active duty Uniform Services members and deceased sponsors, retirees and their dependents, dependents of Department of Transportation (Coast Guard) sponsors, and certain North Atlantic Treaty Organizations, National Oceanic and Atmospheric Administration, and Public Health Service eligible beneficiaries. DD Form 2642 is used solely by TRICARE/CHAMPUS beneficiaries to file for reimbursement of costs paid to provider and suppliers for authorized health care services or supplies.

Dated: April 5, 1999.

L.M. Bynum,

Alternate OSD, Federal Register Liaison Officer, Department of Defense.

[FR Doc. 99–8799 Filed 4–8–99; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Group of Advisors to the National Security Education Board Meeting

AGENCY: National Defense University, Department of Defense.

ACTION: Notice of meeting.

SUMMARY: Pursuant to Public Law 92–463, notice is hereby given of a forthcoming meeting of the Group of Advisors to the National Security Education Board. The purpose of the meeting is to review and make recommendations to the Board concerning requirements established by the David L. Boren National Security Education Act, Title VII of Public Law 102–183, as amended.

DATES: April 19–20, 1999.

ADDRESSES: Montana State University, Museum of the Rockies, 600 West Kagy Boulevard, Bozeman, MT 59717–2730.

FOR FURTHER INFORMATION CONTACT: Dr. Edmond J. Collier, Deputy Director, National Security Education Program, 1101 Boulevard, Suite 1210, Rosslyn P.O. Box 20010, Arlington, Virginia 22209–2248; (703) 696–1991. Electronic mail address: colliere@ndu.edu

SUPPLEMENTARY INFORMATION: The Group of Advisors meeting is open to the public.

Dated: April 5, 1999.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense

[FR Doc. 99–8800 Filed 4–8–98; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Department of the Navy

Closed Meeting of the Chief of Naval Operations (CNO) Executive Panel

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The CNO Executive Panel is to conduct the mid-term briefing of the Naval Warfare Innovation Task Force to the Chief of Naval Operations. This meeting will consist of discussions relating to the organization and operation of the Naval War College,

Navy Warfare Development Command, and Strategic Studies Group.

DATES: The meeting will be held on April 29, 1999 from 1:30 p.m. to 2:30 p.m.

ADDRESSES: The meeting will be held at the office of the Chief of Naval Operations, 2000 Navy Pentagon, Washington, DC 20350–2000.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Christopher Agan, CNO Executive Panel, 4401 Ford Avenue, Suite 601, Alexandria, Virginia 22302–0268, telephone (703) 681–6205.

SUPPLEMENTARY INFORMATION: Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. 2), these matters constitute information that relates solely to the internal rules and practices of the agency. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in 5 U.S.C. section 552(b)(2).

Dated: March 31, 1999.

Pamela A. Holden,

Lieutenant Commander, Judge Advocate General's Corps, Federal Register Liaison Officer.

[FR Doc. 99–8893 Filed 4–8–99; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

[CFDA No. 84.334]

Office of Postsecondary Education; Gaining Early Awareness and Readiness for Undergraduate Programs (GEAR UP); Notice Announcing a Two-Tier Review Process for Applications Received Under the Fiscal Year (FY) 1999 Competition

SUMMARY: The Secretary announces the use of a two-tier review process to evaluate applications submitted for new awards under the FY 1999 GEAR UP program for Partnership grants. The Secretary takes this action to ensure a thorough review and assessment of the large number of applications expected to be received under the FY 1999 competition. This competition was announced previously in a notice published in the **Federal Register** on March 2, 1999 (64 FR 10190). That notice, however, did not explain that a two-tier review process is to be used in the evaluation of GEAR UP Partnership applications. Because the announcement of a two-tier review process does not affect the contents of the applications in this competition, the date by which applications must be received remains as originally announced, April 30, 1999.

SUPPLEMENTARY INFORMATION: The Department will follow the procedures in the Education Department General Administrative Regulations (EDGAR), 34 CFR part 75, except as indicated below.

Application Review Procedures

The Secretary will use a two-tier process for reviewing applications for Partnership grants in this competition. At each tier of the review process, panels of experts will read the applications under consideration to determine which applications are most deserving of further consideration in light of the published selection criteria. Reviewers will forward recommended applications and applications recommended with reservations to Tier II for further consideration. The same evaluation criteria and procedures will be used in Tier II as in Tier I with the goal of funding the highest quality applications until available funds are exhausted. If all applications of comparable merit cannot be funded, the Secretary will use the competitive priority already published. If applications are still of comparable merit after the competitive priority has been applied, the Secretary will determine which application contributes most to the mission of GEAR UP.

Waiver of Proposed Rulemaking

In accordance with the Administrative Procedure Act (5 U.S.C. 553), it is the practice of the Secretary to offer interested parties the opportunity to comment on proposed regulations. However, since this notice merely establishes procedural requirements for review of applications and does not create substantive policy, proposed rulemaking is not required under 5 U.S.C. 553(b)(A).

FOR FURTHER INFORMATION CONTACT: Sylvia Ross, Office of Postsecondary Education, U.S. Department of Education, 400 Maryland Avenue, SW, Room 6248, Portals Building, Washington, DC 20202. Telephone (202) 708–4650, e-mail Sylvia__Ross@ed.gov, or fax (202) 260–4269. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

Electronic Access To This Document

Anyone may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or portable document format (pdf) via the Internet at either of the following sites:

http://ocfo.ed.gov/fedreg.htm
http://www.ed.gov/news.html

To use the pdf you must have the Adobe Acrobat Reader Program with Search, which is available free at either of the previous sites. If you have questions about using the pdf, call the U.S. Government Printing Office at (202) 512–1530 or, toll free, at 1–888–293–6498.

Note: The official version of a document is the document published in the **Federal Register**.

Program Authority: 20 U.S.C. 1070a–21

Dated: April 6, 1999.

David A. Longanecker,

Assistant Secretary for Postsecondary Education.

[FR Doc. 99–8909 Filed 4–8–99; 8:45 am]

BILLING CODE 4000–01–U

DEPARTMENT OF ENERGY

[FE Docket No. PP–11–2]

Application To Amend Presidential Permit Fraser Papers Inc.

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of application.

SUMMARY: Fraser Papers Inc. (Fraser) has applied to amend Presidential Permit PP–11–1 authorizing it to construct, connect, operate and maintain electric transmission facilities across the U.S. border with Canada.

DATES: Comments, protests, or requests to intervene must be submitted on or before May 10, 1999.

ADDRESSES: Comments, protests, or requests to intervene should be addressed as follows: Office of Coal & Power Import and Export (FE–27), Office of Fossil Energy, U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585–0350.

FOR FURTHER INFORMATION CONTACT: Ellen Russell (Program Office) 202–586–9624 or Michael T. Skinker (Program Attorney) 202–586–6667.

SUPPLEMENTARY INFORMATION: The construction, connection, operation, and maintenance of facilities at the international border of the United States

for the transmission of electric energy between the United States and a foreign country is prohibited in the absence of a Presidential permit issued pursuant to Executive Order (EO) 10485, as amended by EO 12038.

On March 29, 1999, Fraser filed an application with the Office of Fossil Energy (FE) of the Department of Energy (DOE) to amend Presidential Permit PP–11–1 issue by DOE on July 31, 1996. Fraser is a Delaware corporation and the owner and operator of a paper mill in Madawaska, Maine. Presidential Permit PP–11–1 authorized Fraser to operate and maintain one, three-phase, 6.6-kilovolt (kV) transmission line and one, three-phase, 69–kV transmission line at the U.S.-Canada border. Each of these transmission lines is approximately one mile in length (approximately 1/10-mile within the United States) and they connect Fraser's paper mill located in Madawaska, Maine, to a pulp mill located in Edmundston, New Brunswick, Canada, and owned by Fraser's affiliate, Fraser Papers Inc. (Canada).

Fraser proposes to reconductor the 69–kV transmission line to allow for eventual operation at 138–kV. However, the reconductored facilities would continue to be operated at 69–kV. Fraser asserts that it will make no change to transmission towers located within the United States or in the St. John River, the United States border with Canada.

Fraser's U.S. paper mill and its Canadian pulp mill each have on-site electric generating facilities to produce electric energy for internal use. The facilities authorized by Presidential Permit PP–11–1 are used to transmit electric energy between Fraser's U.S. and Canadian facilities depending upon the need and availability of electrical supply at each location. Fraser's international transmission facilities do not connect with any part of the U.S. electric power system, thereby precluding third party use of these transmission facilities.

Procedural Matters

Any person desiring to become a party to this proceeding or to be heard by filing comments or protests to this application should file a petition to intervene, comment or protest at the address provided above in accordance with 385.211 or 385.214 of the FERC's Rules of Practice and Procedures (18 CFR 385.211, 385.214). Fifteen copies of each petition and protest should be filed with the DOE on or before the date listed above. Additional copies of such petitions to intervene or protests also should be filed directly with: John P. Borgwardt, General Counsel, Fraser Papers Inc., 70 Seaview Avenue, PO Box 10055, Stamford, CT 06904.

Before a Presidential permit may be issued or amended, the DOE must determine that the proposed action will not adversely impact on the reliability of the U.S. electric power supply system. In addition, DOE must consider the environmental impacts of the proposed action (i.e., granting the Presidential permit, with any conditions and limitations, or denying the permit) pursuant to NEPA. DOE also must obtain the concurrence of the Secretary of State and the Secretary of Defense before taking final action on a Presidential permit application.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above. In addition, the application may be reviewed or downloaded from the Fossil Energy Home Page at: http://www.fe.doe.gov. Upon reaching the Fossil Energy Home page, select "Regulatory" and then "Electricity" from the options menu.

Issued in Washington, D. C., on April 5, 1999.

Anthony J. Como,

Manager, Electric Power Regulation Office of Coal & Power Im/Ex, Office of Fossil Energy.

[FR Doc. 99–8884 Filed 4–8–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–284–000]

Koch Gateway Pipeline Company; Notice of Application

April 5, 1999.

Take notice that on April 1, 1999, Koch Gateway Pipeline Company (Koch Gateway), P. O. Box 1478, Houston, Texas 77521–1478, filed, in Docket No. CP99–284–000, an application pursuant to section 7(b) of the Natural Gas Act and Part 157 of the Commission's Regulations for an order permitting and approving the abandonment in place of the western portion of its Latex-Fort Worth Mainline facilities (West Index 1 line) located in Tarrant, Dallas, and Kaufman Counties, Texas, as more fully set forth in the application which is on file with the Commission and open to public inspection. This filing may be viewed on the web at http:/// www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Specifically, Koch Gateway requests authorization to abandon in place approximately 102.08 miles of its West Index 1 line and associated laterals of the facilities. Koch Gateway describes the facilities as consisting of various diameter-sized pipe from 4-inch to 20-inch. Additionally, Koch Gateway requests permission to abandon the service it provides on these facilities to its single firm customer, Lone Star Gas Company (Lone Star). Koch Gateway contends that it has not been able to attract or maintain substantial gas markets in the Dallas/Forth Worth area along West Index 1. Therefore, Koch Gateway maintains it cannot compete in this market due to shifts in supplies, increased competition, low current demand for transportation, increasing operating costs, and the lack of economic benefits.

Koch Gateway has requested an abandonment date of June 1, 1999, but will not abandon the facilities and services until the last customer served by Lone Star has been converted to an alternative form of energy service.

Any person desiring to be heard or to make any protest with reference to said application should on or before April 26, 1999, file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 and 385.211) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a motion to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be

unnecessary for Koch Gateway to appear or to be represented at the hearing.

David P. Boergers,

Secretary.

[FR Doc. 99–8853 Filed 4–8–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99–1567–000, etc]

Rockingham Power, L.L.C., et al.; Notice of Issuance of Order

April 5, 1999.

In the matter of: Rockingham Power, L.L.C., Docket Nos. ER99–1567–000; Elwood Energy LLC, ER99–1695–000; Somerset Power LLC, ER99–1712–000; Lake Road Generating Company, L.P., ER99–1714–000; CinCap VI, LLC, ER99–1727–000; Empire District Electric Company, ER99–1757–000; Duke Energy South Bay LLC, ER99–1785–000; New Energy Partners, L.L.C., ER99–1812–000; (Not consolidated); Notice of Issuance of Order.

Rockingham Power, L.L.C., Elwood Energy, LLC, Somerset Power LLC, Lake Road Generating Company, L.P., CinCap VI, LLC, Empire District Electric Company, Duke Energy South Bay LLC, and New Energy Partners, L.L.C. (hereafter, "the Applicants") filed with the Commission rate schedules in the above-captioned proceedings, respectively, under which the Applicants will engage in wholesale electric power and energy transactions at market-based rates, and for certain waivers and authorizations. In particular, certain of the Applicants may also have requested in their respective applications that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances and securities and assumptions of liabilities by the Applicants. On March 31, 1999, the Commission issued an order that accepted the rate schedules for sales of capacity and energy at market-based rates (Order), in the above-docketed proceedings.

The Commission's March 31, 1999 Order granted, for those Applicants that sought such approval, their request for blanket approval under Part 34, subject to the conditions found in Appendix B in Ordering Paragraphs (2), (3), and (5):

(2) Within 30 days of the date of this order, any persons desiring to be heard or to protest the Commission's blanket approval of issuances of securities or assumptions or liabilities by the Applicants should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211 and 385.214.

(3) Absent a request to be heard within the period set forth in Ordering Paragraph (2) above, if the Applicants have requested such authorization, the Applicants are hereby authorized to issue securities and assume obligations and liabilities as guarantor, indorser, surety or otherwise in respect of any security of another person; provided that such issue or assumption is for some lawful object within the corporate purposes of the Applicants; compatible with the public interest, and reasonably necessary or appropriate for such purposes.

(5) The Commission reserves the right to modify this order to require a further showing that neither public nor private interests will be adversely affected by continued Commission approval of the Applicants' issuances of securities or assumptions of liabilities.* * *

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is April 30, 1999.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE, Washington, DC 20426.

David R. Boergers,

Secretary.

[FR Doc. 99–8854 Filed 4–8–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–278–000]

Transcontinental Gas Pipe Line Corporation; Notice of Request Under Blanket Authorization

April 5, 1999.

Take notice that on March 31, 1999, Transcontinental Gas Pipe Line Corporation (Transco), P.O. Box 1396, Houston, Texas 77251, filed in Docket No. CP99–278–000 a request pursuant to sections 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211) for authorization to construct a delivery point for Rockingham Power L.L.C. (RP), a provider of electricity and energy services in North Carolina, under Transco's blanket certificate issued in Docket No. CP82–426–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection. The application may be viewed on the web at www.ferc.fed.us. Call (202) 208–2222 for assistance.

Transco states that the delivery point will consist of two sixteen-inch (16″) valve tap assemblies, a meter station with one eight-inch (8″) orifice meter tube and two twelve-inch (12″) orifice meter tubes, and other appurtenant facilities. The proposed delivery point will be installed at or near milepost 1368.36 on Transco's mainline in Rockingham County, North Carolina. Transco states that RP will construct, or cause to be constructed, appurtenant facilities to enable it to receive gas from Transco at such point and move the gas to a new RP winter/summer peaking power facility.

Transco states the new delivery point will be used by RP to receive up to 221.8 MMcf (at 500 psig) of gas per day from Transco on a capacity release, secondary firm or interruptible basis. The gas delivered through the new delivery point will be used by RP as fuel for its peaking power facility. Transco states that RP is not currently a transportation customer of Transco. Upon completion of the delivery point, Transco will commence transportation service to RP or its suppliers pursuant to Transco's Rate Schedules FT, FT–R or IT and part 284(G) of the Commission regulations. The addition of the delivery point will have no significant impact on Transco's peak day or annual deliveries, and is not prohibited by Transco's FERC Gas Tariff.

Transco has estimated the total costs of Transco's proposed facilities to be approximately $1,158,000.00. RP will reimburse Transco for all costs associated with such facilities.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

David P. Boergers,

Acting Secretary.

[FR Doc. 99–8852 Filed 4–8–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99–1336–001, et al.]

Central Vermont Public Service, et al.; Electric Rate and Corporate Regulation Filings

April 2, 1999.

Take notice that the following filings have been made with the Commission:

1. Central Vermont Public Service

[Docket No. ER99–1336–001]

Take notice that on March 29, 1999, Central Vermont Public Service Corporation (Central Vermont) filed its compliance filing pursuant to the Commission's March 12, 1999 order in North American Electric Reliability Council, et al., 86 FERC ¶ 61,275 (1999). Central Vermont notified the Commission that the ISO-New England, Inc. (ISO-New England) and the New England Power Pool (NEPOOL) are responsible for transmission loading relief procedures referred to in that proceeding. Central Vermont concurs with the ISO-New England and NEPOOL's compliance filing in this proceeding.

Comment date: April 19, 1999, in accordance with Standard Paragraph E at the end of this notice.

2. Boston Edison Company

[Docket No. ER99–1337–001]

Take notice that on March 29, 1999, Boston Edison Company (Boston Edison) filed its compliance filing pursuant to the Commission's March 12, 1999 order in North American Electric Reliability Council, et al., 86 FERC ¶ 61,275 (1999). Boston Edison notified the Commission that it agrees to adopt NERC TLR procedures. Also, Boston Edison notified the Commission that the ISO-New England, Inc. (ISO-New England) and the New England Power Pool (NEPOOL) are responsible for transmission loading relief procedures referred to in that proceeding. Boston Edison concurs with the ISO-New England and NEPOOL's compliance filing in this proceeding.

Comment date: April 19, 1999, in accordance with Standard Paragraph E at the end of this notice.

3. Vermont Electric Power Company

[Docket No. ER99–1339–001]

Take notice that on March 29, 1999, Vermont Electric Power Company, Inc. (VELCO) submitted for filing, in compliance with the Commission's December 16, 1998 and March 12, 1999 orders in Docket Nos. EL98–52–000, *et al.*: (1) interim procedures for transmission loading relief to address parallel flows associated with native load transactions and network service, and (2) interim procedures for redispatch solutions to congestion management problems. VELCO requests an effective date coincident with its filing, and therefore respectfully requests waiver of any otherwise applicable Commission requirements as necessary to permit such an effective date.

Comment date: April 19, 1999, in accordance with Standard Paragraph E at the end of this notice.

4. Montaup Electric Company

[Docket No. ER99–1414–002]

Take notice that on March 29, 1999, Montaup Electric Company (Montaup) filed its compliance filing pursuant to the Commission's March 12, 1999 order in North American Electric Reliability Council, et al., 86 FERC ¶ 61,275 (1999). Montaup notified the Commission that the ISO-New England, Inc. (ISO-New England) and the New England Power Pool (NEPOOL) are responsible for transmission loading relief procedures referred to in that proceeding. Montaup concurs with the ISO-New England and NEPOOL's compliance filing in this proceeding.

Comment date: April 19, 1999, in accordance with Standard Paragraph E at the end of this notice.

5. Central Power and Light Company, West Texas Utilities Company, Public Service Company of Oklahoma and Southwestern Electric Power Company

[Docket No. ER99–2296–000]

Take notice that on March 29, 1999, Central Power and Light Company, Public Service Company of Oklahoma, Southwestern Electric Power Company and West Texas Utilities Company (collectively, the CSW Operating Companies) tendered for filing a service agreement for short-term sales establishing LG&E Energy Marketing, Inc. (LG&E Energy) as a customer under the CSW Operating Companies' market-based rate power sales tariff.

The CSW Operating Companies request an effective date of March 1, 1999 for the agreement with LG&E Energy and, accordingly, seek waiver of the Commission's notice requirements.

The CSW Operating Companies state that a copy of the filing was served on LG&E Energy.

Comment date: April 19, 1999, in accordance with Standard Paragraph E at the end of this notice.

6. Florida Power & Light Company

[Docket No. ER99–2297–000]

Take notice that on March 29, 1999, Florida Power & Light Company (FPL) tendered for filing an Exhibit A for the Crawley Delivery Point to the unexecuted Network Service Agreement Among Florida Power & Light Company, Seminole Electric Cooperative, Inc., Clay Electric Cooperative, Inc., Glades Electric Cooperative, Inc., Lee County Electric Cooperative, Inc., Peace River Electric Cooperative, Inc., and Suwannee Valley Electric Cooperative, Inc., (NSA), and the Amendment No. 1 to the Agreement For Connection Of Facilities Between FPL, SECI and Peace River Electric Cooperative, Inc.

FPL requests that the Exhibit A for the Crawley Delivery Point and the Amendment No. 1 to the Agreement For Connection Of Facilities be permitted to become effective on March 1, 1999.

FPL states that this filing is in accordance with Part 35 of the Commission's regulations.

Comment date: April 19, 1999, in accordance with Standard Paragraph E at the end of this notice.

7. Cinergy Services, Inc.

[Docket No. ER99–2298–000]

Take notice that on March 29, 1999, Cinergy Services, Inc. (Cinergy) tendered for filing a Firm Point-To-Point Service Agreement under Cinergy's Open Access Transmission Service Tariff (the Tariff) entered into between Cinergy and DukeSolutions, Inc. (DSI).

Cinergy and DSI are requesting an effective date of March 15, 1999.

Comment date: April 19, 1999, in accordance with Standard Paragraph E at the end of this notice.

8. American Electric Power Service Corporation

[Docket No. ER99–2299–000]

Take notice that on March 29, 1999, the American Electric Power Service Corporation (AEPSC), tendered for filing executed service agreements under the Wholesale Market Tariff of the AEP Operating Companies (Power Sales Tariff). The Power Sales Tariff was accepted for filing effective October 10, 1997 and has been designated AEP Operating Companies' FERC Electric Tariff Original Volume No. 5.

A copy of the filing was served upon the parties and the State Utility Regulatory Commissions of Indiana, Kentucky, Michigan, Ohio, Tennessee, Virginia and West Virginia.

Comment date: April 19, 1999, in accordance with Standard Paragraph E at the end of this notice.

9. Cleco Trading & Marketing LLC

[Docket No. ER99–2300–000]

Take notice that on March 29, 1999, Cleco Trading & Marketing LLC (Cleco Trading) petitioned the Commission for acceptance of Cleco Trading & Marketing LLC Rate Schedule FERC No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission regulations.

Cleco Trading intends to engage in wholesale electric power and energy purchases and sales as a marketer. Cleco Trading is not in the business of generating or transmitting electric power. Cleco Trading is an affiliate of Cleco Corporation, a public utility subject to the Commission's jurisdiction under the Federal Power Act, 16 U.S.C. § 791a, *et seq.*

Comment date: April 19, 1999, in accordance with Standard Paragraph E at the end of this notice.

10. Cinergy Services, Inc.

[Docket No. ER99–2301–000]

Take notice that on March 15, 1999, Cinergy Services, Inc. (Cinergy) tendered for filing a Non-Firm Point-To-Point Service Agreement under Cinergy's Open Access Transmission Service Tariff (the Tariff) entered into between Cinergy and DukeSolutions, Inc. (DSI).

Cinergy and DSI are requesting an effective date of March 15, 1999.

Comment date: April 19, 1999, in accordance with Standard Paragraph E at the end of this notice.

11. Florida Power & Light Company

[Docket No. ER99–2302–000]

Take notice that on March 29, 1999 Florida Power & Light Company (FPL) tendered for filing proposed service agreements with PP&L, Inc. for Short-Term Firm and Non-Firm transmission service under FPL's Open Access Transmission Tariff.

FPL requests that the proposed service agreements be permitted to become effective on March 25, 1999.

FPL states that this filing is in accordance with Part 35 of the Commission's regulations.

Comment date: April 19, 1999, in accordance with Standard Paragraph E at the end of this notice.

12. New Century Services, Inc.

[Docket No. ER99–2303–000]

Take notice that on March 29, 1999, New Century Services, Inc. on behalf of Cheyenne Light, Fuel and Power Company, Public Service Company of Colorado, and Southwestern Public Service Company (collectively Companies) tendered for filing a Service Agreement under their Joint Open Access Transmission Service Tariff for Firm Point-to-Point Transmission Service between the Companies and American Electric Power Service Corporation.

The Companies request that the Agreement be made effective on March 2, 1999.

Comment date: April 19, 1999, in accordance with Standard Paragraph E at the end of this notice.

13. PP&L, Inc.

[Docket No. ER99–2304–000]

Take notice that on March 29, 1999, PP&L, Inc. (PP&L) filed a Service Agreement dated March 9, 1999 with West Penn Power Company d/b/a Allegheny Energy (AE) under PP&L's Market-Based Rate and Resale of Transmission Rights Tariff, FERC Electric Tariff, Revised Volume No. 5. The Service Agreement adds AE as an eligible customer under the Tariff.

PP&L requests an effective date of March 29, 1999 for the Service Agreement.

PP&L states that copies of this filing have been supplied to AE and to the Pennsylvania Public Utility Commission.

Comment date: April 19, 1999, in accordance with Standard Paragraph E at the end of this notice.

14. PP&L, Inc.

[Docket No. ER99–2305–000]

Take Notice that on March 29, 1999, PP&L, Inc. (PP&L) filed a Service Agreement dated March 3, 1999, with Niagara Mohawk Energy Marketing, Inc. (Niagara) under PP&L's Market-Based Rate and Resale of Transmission Rights Tariff, FERC Electric Tariff, Original Revised Volume No. 5. The Service Agreement adds Niagara as an eligible customer under the Tariff.

PP&L requests an effective date of March 29, 1999 for the Service Agreement.

PP&L states that copies of this filing have been supplied to Niagara and to the Pennsylvania Public Utility Commission.

Comment date: April 19, 1999, in accordance with Standard Paragraph E at the end of this notice.

15. Public Service Company of New Mexico

[Docket No. ER99–2306–000]

Take notice that on March 29, 1999, Public Service Company of New Mexico (PNM) tendered for filing, a Mutual Netting/Close-out Agreement between PNM and Reliant Energy Services, Inc. (Reliant).

PNM requested waiver of the Commission's notice requirement so that service under the PNM/Reliant netting agreement may be effective as of April 1, 1999.

Copies of the filing were served on Southern and the New Mexico Public Regulation Commission.

Comment date: April 19, 1999, in accordance with Standard Paragraph E at the end of this notice.

16. Illinois Power Company

[Docket No. ER99–2319–000]

Take notice that on March 29, 1999, Illinois Power Company submitted for filing an amendment to its unexecuted Network Operating Agreement for service to Southern Illinois Power Cooperative, Inc. The amendment is filed in compliance with the Commission's order issued in Docket No. ER99–1331–000 on March 12, 1999.

Comment date: April 19, 1999, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–8867 Filed 4–8–99; 8:45 am]

BILLING CODE 6717–01–U

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG99–103–000, et al.]

LG&E Capital Corporation, et al.; Electric Rate and Corporate Regulation Filings

March 31, 1999.

Take notice that the following filings have been made with the Commission:

1. LG&E Capital Corporation

[Docket No. EG99–103–000]

On March 25, 1999, LG&E Capital Corporation (Capital Corp.), a Kentucky corporation with its principal place of business at 220 West Main Street, Louisville, Kentucky 40202, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Capital Corp. proposes to construct, own and operate two 164 megawatt combustion turbine electric generating units in Mercer County, Kentucky. The units are scheduled to be completed in July 1999 and to be in service by August 1, 1999. All capacity and energy from the plant will be sold exclusively at wholesale.

Comment date: April 21, 1999, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

2. PDI Canada, Inc.

[Docket No. EG99–104–000]

Take notice that on March 29, 1999, PDI Canada, Inc., a Wisconsin corporation with its headquarters at 677 Baeten Road, Green Bay, WI 54304, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

PDI Canada, Inc. is a wholly-owned subsidiary of WPS Power Development, Inc., which in turn is a wholly-owned, indirect subsidiary of WPS Resources Corporation, headquartered in Green Bay, Wisconsin. WPS Resources Corporation is an exempt public utility holding company. Its subsidiaries include Wisconsin Public Service Corporation, an electric and natural gas public utility serving portions of northeastern Wisconsin and the upper peninsula of Michigan. PDI Canada, Inc. will be taking title to and operating the assets located in Canada being divested by Maine & New Brunswick Electrical Power Company, Limited, a wholly owned subsidiary of Maine Public Service Company. These assets include a 34.4 MW generating facility and appurtenant transmission facilities located in the province of New Brunswick, Canada. The Maine Public Utilities Commission, in its Docket 98–584, is considering among other things whether allowing PDI Canada, Inc. to be an eligible facility will benefit consumers, is in the public interest, and does not violate State law.

Comment date: April 21, 1999, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

3. United States Department of Energy, Bonneville Power Administration

[Docket No. EL99–49–000]

Take notice that on March 23, 1999, Bonneville Power Administration filed a Petition for Expedited Declaratory Order Approving an Amendment to Bonneville Power Administration's Open Access Transmission Tariff and for Exemption in Lieu of Filing Fee.

Comment date: April 16, 1999, in accordance with Standard Paragraph E at the end of this notice.

4. Enron Power Marketing, Inc. versus United States Department of Energy—Bonneville Power Administration

[Docket No. EL99–51–000]

Take notice that on March 26, 1999, Enron Power Marketing, Inc. (EPMI) filed its complaint against the Bonneville Power Administration (BPA) pursuant to 16 U.S.C. 824e, h (1994) and 18 CFR 385.206.

Comment date: April 20, 1999, in accordance with Standard Paragraph E at the end of this notice.

5. Northeast Utilities Service Company; Connecticut Light & Power Company and Western Massachusetts Electric Company

[Docket Nos. ER90–373–008 and ER90–390–008; Docket No. EL90–39–005]

Take notice that on March 29, 1999, Northeast Utilities Service Company (NUSCO) tendered for filing a refund report in compliance with the Commission's order in *Northeast Utilities Service Company, et al.*, 86 FERC ¶61,161 (1999).

Comment date: April 28, 1999, in accordance with Standard Paragraph E at the end of this notice.

6. Harbor Cogeneration Company

[Docket No. ER99–1248–001]

Take notice that on April 5, 1999, Harbor Cogeneration Company tendered for filing amendments to its rate schedule and code of conduct in the above-referenced docket.

Comment date: April 15, 1999, in accordance with Standard Paragraph E at the end of this notice.

7. Carolina Power & Light Company

[Docket No. ER99–1308–000]

Take notice that on March 26, 1999, Carolina Power & Light Company amended the original filing made in this Docket on January 15, 1999.

Copies of the filing were served upon the North Carolina Utilities Commission and the South Carolina Public Service Commission.

Comment date: April 15, 1999, in accordance with Standard Paragraph E at the end of this notice.

8. New England Power Pool Inc., ISO New England Inc.

[Docket No. ER99–1414–001]

Take notice that on March 26, 1999, the New England Power Pool (NEPOOL) and ISO New England Inc. (the ISO), tendered for filing a notice that they have adopted, to the extent necessary, the Transmission Loading Relief procedures, including those relating to native load transactions and network service in other control areas, promulgated by the North American Electric Reliability Council, and that the Restated NEPOOL Open Access Transmission Tariff should be considered modified to effect the adoption of those procedures. This notice was filed in compliance with the Commission's orders in *North American Electric Reliability Council, et al.*, 86 FERC ¶ 61,275 (1999) and *North American Electric Reliability Council*, 85 FERC ¶ 61,353 (1998).

NEPOOL and the ISO state that copies of these materials were sent to all entities on the service list in the captioned docket, to the participants in the New England Power Pool, and to the New England state governors and regulatory commissions.

Comment date: April 15, 1999, in accordance with Standard Paragraph E at the end of this notice.

9. CMS Generation Michigan Power, L.L.C.

[Docket No. ER99–1970–000]

Take notice that on March 26, 1999, CMS Generation Michigan Power, L.L.C. (Michigan Power), tendered for filing a request for a change in the effective date of a wholesale power sales tariff

previously tendered for filing on March 1, 1999, to permit Michigan Power to make wholesale electric generation sales to eligible customers at up to cost-based ceiling rates.

Michigan Power requests an effective date of April 12, 1999.

Copies of this filing were served upon the Michigan Public Service Commission.

Comment date: April 15, 1999, in accordance with Standard Paragraph E at the end of this notice.

10. New York State Electric & Gas Corporation

[Docket No. ER99–1980–000]

Take notice that on March 1, 1999, New York State Electric & Gas Corporation (NYSEG), tendered for filing pursuant to Part 35 of the Federal Energy Regulatory Commission's Rules of Practice and Procedure, 18 CFR part 35, a service agreement (the Service Agreement), under which NYSEG provide capacity and/or energy to Electric Clearinghouse, Inc. (ECI), in accordance with NYSEG's FERC Electric Tariff, Original Volume No. 1.

NYSEG has requested waiver of the notice requirements so that the Service Agreement with ECI becomes effective as of March 2, 1999.

NYSEG has served copies of the filing upon the New York State Public Service Commission and ECI.

Comment date: April 15, 1999, in accordance with Standard Paragraph E at the end of this notice.

11. Niagara Mohawk Power Corporation

[Docket No. ER99–2268–000]

Take notice that on March 26, 1999, Niagara Mohawk Power Corporation (Niagara Mohawk), tendered for filing with the Federal Energy Regulatory Commission an executed, amended Transmission Service Agreement between Niagara Mohawk and the Power Authority of the State of New York (NYPA) to permit NYPA to deliver power and energy from NYPA's FitzPatrick Plant, Bid Process Suppliers and Substitute Suppliers to the points where Niagara Mohawk's transmission system connects to its retail distribution system west of Niagara Mohawk's constrained Central-East Interface. This Transmission Service Agreement specifies that NYPA has signed on to and has agreed to the terms and conditions of Niagara Mohawk's Open Access Transmission Tariff as filed in Docket No. OA96–194–000.

Niagara Mohawk requests an effective date of March 1, 1999. Niagara Mohawk has requested waiver of the notice requirements for good cause shown.

Niagara Mohawk has served copies of the filing upon New York Public Service Commission and NYPA.

Comment date: April 15, 1999, in accordance with Standard Paragraph E at the end of this notice.

12. Niagara Mohawk Power Corporation

[Docket No. ER99–2269–000]

Take notice that on March 26, 1999, Niagara Mohawk Power Corporation (Niagara Mohawk), tendered for filing with the Federal Energy Regulatory Commission an executed amended Transmission Service Agreement between Niagara Mohawk and the Power Authority of the State of New York (NYPA) to permit NYPA to deliver power and energy from NYPA's FitzPatrick Plant, Bid Process Suppliers and Substitute Suppliers to the points where Niagara Mohawk's transmission system connects to its retail distribution system East of Niagara Mohawk's constrained Central-East Interface. This Transmission Service Agreement specifies that NYPA has signed on to and has agreed to the terms and conditions of Niagara Mohawk's Open Access Transmission Tariff as filed in Docket No. OA96–194–000.

Niagara Mohawk requests an effective date of March 1, 1999. Niagara Mohawk has requested waiver of the notice requirements for good cause shown.

Niagara Mohawk has served copies of the filing upon New York Public Service Commission and NYPA.

Comment date: April 15, 1999, in accordance with Standard Paragraph E at the end of this notice.

13. Cambridge Electric Light Company

[Docket No. ER99–2271–000]

Take notice that on March 26, 1999, Cambridge Electric Light Company (Cambridge), tendered for filing a Non-Firm Point-to-Point Transmission Service Agreement between Cambridge and Merchant Energy Group of the Americas, Inc., (MEGA). Cambridge states that the service agreement sets out the transmission arrangements under which Cambridge will provide non-firm point-to-point transmission service to MEGA under Cambridge's open access transmission tariff accepted for filing in Docket No. ER97–1337–000, subject to refund and issuance of further orders.

Comment date: April 15, 1999, in accordance with Standard Paragraph E at the end of this notice.

14. Delmarva Power & Light Company

[Docket No. ER99–2272–000]

Take notice that on March 26, 1999, Delmarva Power & Light Company (Delmarva), tendered for filing a 3rd Revised Supplement to its FERC Rate Schedule No. 99, with respect to Delmarva's partial requirements service agreement with the City of Seaford. The proposed change would decrease base demand and energy rates by 0.222520% or about $1,869.00 annually (based on actual billing data for calendar year 1995).

Delmarva proposes an effective date of March 1, 1999. Delmarva asserts that the decrease and the proposed effective date is in accord with the service agreement with the City of Seaford as accepted for filing as Rate Schedule No. 99 and eight supplements in Docket No. ER95–1039–000, which service agreement provides for changes in rates that correspond to the level of changes in rates approved by the Delaware Public Service Commission for Delmarva's non-residential retail customers.

Copies of the filing were served on the City of Seaford and the Delaware Public Service Commission.

Comment date: April 15, 1999, in accordance with Standard Paragraph E at the end of this notice.

15. Penobscot Hydro, LLC

[Docket No. ER99–2273–000]

Take notice that on March 26, 1999, Penobscot Hydro, LLC (Penobscot), tendered for filing the Transitional Power Sales Agreement under which Penobscot will sell capacity and energy at negotiated rates to Bangor Hydro-Electric Company under Penobscot's pending Market-Based Rate Tariff in Docket No. ER99–1940–000.

Penobscot has requested that the Commission waive its notice requirements to permit the agreement to become effective April 30, 1999.

Comment date: April 15, 1999, in accordance with Standard Paragraph E at the end of this notice.

16. Carolina Power & Light Company

[Docket No. ER99–2274–0000]

Take notice that on March 26, 1999, Carolina Power & Light Company (CP&L), tendered for filing an executed Service Agreement with DukeSolutions, Inc., under the provisions of CP&L's Market-Based Rates Tariff, FERC Electric Tariff No. 4.

CP&L is requesting an effective date of March 1, 1999, for this Agreement.

Copies of the filing were served upon the North Carolina Utilities Commission and the South Carolina Public Service Commission.

Comment date: April 15, 1999, in accordance with Standard Paragraph E at the end of this notice.

17. Carolina Power & Light Company

[Docket No. ER99–2275–000]

Take notice that on March 26, 1999, Carolina Power & Light Company (CP&L), tendered for filing a Service Agreement for Firm Point-to-Point Transmission Service with Carolina Power & Light—Wholesale Power Department. Service to this Eligible Customer will be in accordance with the terms and conditions of Carolina Power & Light Company's Open Access Transmission Tariff.

CP&L is requesting an effective date of April 1, 1999, for this Agreement.

Copies of the filing were served upon the North Carolina Utilities Commission and the South Carolina Public Service Commission.

Comment date: April 15, 1999, in accordance with Standard Paragraph E at the end of this notice.

18. Illinois Power Company

[Docket No. ER99–2276–000]

Take notice that on March 26, 1999, Illinois Power Company (Illinois Power), 500 South 27th Street, Decatur, Illinois 62526, tendered for filing a Power Sales Tariff, Service Agreement under which Soyland Power Cooperative, Inc., will take service under Illinois Power Company's Power Sales Tariff. The agreements are based on the Form of Service Agreement in Illinois Power's tariff.

Illinois Power has requested an effective date of March 1, 1999.

Comment date: April 15, 1999, in accordance with Standard Paragraph E at the end of this notice.

19. Southern California Edison Company

[Docket No. ER99–2277–000]

Take notice that on March 26, 1999, Southern California Edison Company (SCE), tendered for filing notice of cancellation of Service Agreement No. 7, under FERC Electric Tariff, Original No. 5, effective April 1, 1998, and filed with the Federal Energy Regulatory Commission by Southern California Edison Company is to be canceled.

Notice of the proposed cancellation has been served upon the Public Utilities Commission of the State of California and Southern California Edison Company—Generation Business Unit.

Comment date: April 15, 1999, in accordance with Standard Paragraph E at the end of this notice.

20. Illinois Power Company

[Docket No. ER99–2278–000]

Take notice that on March 26, 1999, Illinois Power Company (Illinois Power), 500 South 27th Street, Decatur, Illinois 62526, tendered for filing a Power Sales Tariff, Service Agreement under which Ottertail Power will take service under Illinois Power Company's Power Sales Tariff. The agreements are based on the Form of Service Agreement in Illinois Power's tariff.

Illinois Power has requested an effective date of March 1, 1999.

Comment date: April 15, 1999, in accordance with Standard Paragraph E at the end of this notice.

21. Southern Indiana Gas and Electric Company

[Docket No. ER99–2279–000]

Take notice that on March 26, 1999, Southern Indiana Gas and Electric Company (SIGECO), tendered for filing service agreements for firm and non-firm transmission service under Part II of its Transmission Services Tariff with DukeSolutions, Inc.

SIGECO has entered into service agreements for firm and non-firm transmission service with DukeSolutions, Inc., dated March 23, 1999.

Copies of the filing were served upon each of the parties to the service agreement.

Comment date: April 15, 1999, in accordance with Standard Paragraph E at the end of this notice.

22. Commonwealth Electric Company

[Docket No. ER99–2280–000]

Take notice that on March 26, 1999, Commonwealth Electric Company (Commonwealth), tendered for filing a Non-Firm Point-to-Point Service Agreement between Commonwealth and Merchant Energy Group of the Americas, Inc., (MEGA). Commonwealth states that the service agreement sets out the transmission arrangements under which Commonwealth will provide Non-Firm Point-to-Point Transmission Service to MEGA under Commonwealth's open access transmission tariff accepted for filing in Docket No. ER97–1341-000, subject to refund and issuance of further orders.

Comment date: April 15, 1999, in accordance with Standard Paragraph E at the end of this notice.

23. Southern California Edison Company

[Docket No. ER99–2281–000]

Take notice that on March 26, 1999, Southern California Edison Company (SCE) tendered for filing notice that effective March 27, 1999, Rate Schedule FERC Nos. 251, 252, 253, 254, 255, effective August 1, 1990, and Rate Schedule FERC Nos. 251.4, 252.4, 253.4, 254.5, 255.4 effective April 1, 1998, filed with the Federal Energy Regulatory Commission by Southern California Edison Company, are to be canceled.

Notice of the proposed cancellation has been served upon City of Anaheim, City of Azusa, City of Banning, City of Colton, City of Riverside, and the Public Utilities Commission of the State of California.

Comment date: April 15, 1999, in accordance with Standard Paragraph E at the end of this notice.

24. Illinois Power Company

[Docket No. ER99–2282–000]

Take notice that on March 26, 1999, Illinois Power Company (Illinois Power), 500 South 27th Street, Decatur, Illinois 62526, tendered for filing firm and non-firm transmission agreements under which OGE Energy Resources, Inc., will take transmission service pursuant to its open access transmission tariff.

The agreements are based on the Form of Service Agreement in Illinois Power's tariff.

Illinois Power has requested an effective date of March 1, 1999.

Comment date: April 15, 1999, in accordance with Standard Paragraph E at the end of this notice.

25. Northwestern Wisconsin Electric Company

[Docket No. ER99–2283–000]

Take notice that on March 26, 1999, Northwestern Wisconsin Electric Company, tendered for filing proposed changes in its Transmission Use Charge, Rate Schedule FERC No. 2. The proposed changes would increase revenues from jurisdictional sales by $19,197.91 based on the 12 month period ending April 30, 1999. Northwestern Wisconsin Electric Company is proposing this rate schedule change to more accurately reflect the actual cost of transmitting energy from one utility to another based on current cost data. The service agreement for which this rate is calculated calls for the Transmission Use Charge to be reviewed annually and revised on May 1.

Northwestern Wisconsin Electric Company requests this Rate Schedule Change become effective May 1, 1999.

Copies of this filing have been provided to the respective parties and to the Public Service Commission of Wisconsin.

Comment date: April 15, 1999, in accordance with Standard Paragraph E at the end of this notice.

26. AEE 2, L.L.C.

[Docket No. ER99–2284–000]

Take notice that on March 26, 1999, AEE 2, L.L.C. (AEE 2), c/o Mr. Henry Aszklar, 1001 North 19th Street, Arlington, Virginia 22209, tendered for filing with the Federal Energy Regulatory Commission an application for authority to charge market-based rates for wholesale sales of energy, capacity and ancillary services.

AEE 2 respectfully requests expedited action on this application by April 6, 1999, and waiver of advance notice for the rates to become effective upon the transfer of the New York Assets.

Comment date: April 15, 1999, in accordance with Standard Paragraph E at the end of this notice.

27. Duke Energy Corporation

[Docket No. ER99–2286–000]

Take notice that on March 26, 1999, Duke Power, a division of Duke Energy Corporation (Duke), tendered for filing a Service Agreement for Market Rate Sales under Rate Schedule MR, FERC Electric Tariff First Revised Volume No. 3 (the MRSAs), between Duke and Cargill-Alliant, LLC, and between Duke and PP&L Energy Plus Co.

Comment date: April 15, 1999, in accordance with Standard Paragraph E at the end of this notice.

28. Black Hills Corporation

[Docket No. ER99–2287–000]

Take notice that on March 26, 1999, Black Hills Corporation (Black Hills), tendered for filing an application for an order authorizing Black Hills to make wholesale sales of electric power at market-based rates.

Comment date: April 15, 1999, in accordance with Standard Paragraph E at the end of this notice.

29. Cinergy Services, Inc.

[Docket No. ER99–2288–000]

Take notice that on March 26, 1999, Cinergy Services, Inc. (Cinergy), as agent for and on behalf of its operating companies, The Cincinnati Gas & Electric Company (CG&E) and PSI Energy, Inc. (PSI), tendered for filing its revised list of retail customers having the option to receive firm point-to-point buy-through transmission service under the Cinergy Operating Companies' Open Access Transmission Tariff.

Cinergy states that it has served copies of its filing on the customers currently affected as well as the regulatory commissions of Indiana, Ohio and Kentucky.

Comment date: April 15, 1999, in accordance with Standard Paragraph E at the end of this notice.

30. Midwest Energy, Inc.

[Docket No. ER99–2289–000]

Take notice that on March 26, 1999, Midwest Energy, Inc. (Midwest), tendered for filing with the Federal Energy Regulatory Commission two executed Transaction Service Agreements (TSA) entered into between Midwest and Kansas City & Light and Midwest and Western Resources. These TSA's govern the sale of power under Midwest's Wholesale Service Tariff.

Midwest states that it is serving copies of the instant filing to its customers, State Commissions and other interested parties.

Comment date: April 15, 1999, in accordance with Standard Paragraph E at the end of this notice.

31. Commonwealth Chesapeake Company, LLC

[Docket No. TX99–1–000]

Take notice that on March 23, 1999, Commonwealth Chesapeake Company, LLC (CCC) filed with the Federal Energy Regulatory Commission an application requesting the Commission order Delmarva Power & Light Company to provide transmission service pursuant to Section 211 of the Federal Power Act.

CCC has requested firm transmission service. Copies of CCC's Application have been served on all affected parties.

Comment date: April 30, 1999, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–8835 Filed 4–8–99; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC99–58–000, et al.]

Niagara Mohawk Power Corporation and Moreau Manufacturing Corporation, et al.; Electric Rate and Corporate Regulation Filings

April 1, 1999.

Take notice that the following filings have been made with the Commission:

1. Niagara Mohawk Power Corporation and Moreau Manufacturing Corporation

[Docket No. EC99–58–000]

Take notice that on March 29, 1999, Niagara Mohawk Power Corporation and Moreau Manufacturing Corporation (collectively, the Applicants) tendered for filing an application under Section 203 of the Federal Power Act for approval to transfer certain jurisdictional facilities associated with the transfer from Moreau to Niagara Mohawk of Moreau's hydroelectric generating station. The Applicants also tendered for filing an application pursuant to Section 8 of the Federal Power Act for authorization to transfer to Niagara Mohawk the license for the hydroelectric generating station, and to substitute Niagara Mohawk for Moreau as applicant for a new license for the station.

Comment date: April 28, 1999, in accordance with Standard Paragraph E at the end of this notice.

2. SCC–L2 L.L.C.

[Docket No. EG99–82–000]

Take notice that on March 31, 1999, SCC–L2, L.L.C. (SCC–L2), a Delaware limited liability company with its principal place of business at Chicago, Illinois, filed with the Federal Energy Regulatory Commission an Amendment to Application for Determination of Exempt Wholesale Generator Status pursuant to Part 365 of the Commission's regulations.

The Facility that will be leased by SCC–L2 would consist of a 440 MW natural gas-fired simple cycle power plant in Lowndes County, Mississippi and related equipment. The proposed power plant is expected to commence commercial operation during the second, or early in the third, quarter 1999. All capacity and energy from the plant will be sold exclusively at wholesale.

Comment date: April 22, 1999, in accordance with Standard Paragraph E at the end of this notice. The

Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

3. PDI New England, Inc.

[Docket No. EG99–105–000]

Take notice that on March 29, 1999, PDI New England, Inc., d/b/a WPS New England Generation, Inc., a Wisconsin corporation with its headquarters at 677 Baeten Road, Green Bay, WI 54304, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

PDI New England, Inc. is a wholly-owned subsidiary of WPS Power Development, Inc., which in turn is a wholly-owned, indirect subsidiary of WPS Resources Corporation, headquartered in Green Bay, Wisconsin. WPS Resources Corporation is an exempt public utility holding company. Its subsidiaries include Wisconsin Public Service Corporation, an electric and natural gas public utility serving portions of northeastern Wisconsin and the upper peninsula of Michigan. PDI New England, Inc. will be taking title to and operating certain assets located in Maine being divested by Maine Public Service Company (MPS). These assets include a generating facilities with total capacity of approximately 36 MW and related assets located in the northern Maine, and a 3.3455% interest in the Wyman No. 4 Unit, a generating facility in southern Maine. The Maine Public Utilities Commission, in its Docket 98–584, is considering among other things whether allowing PDI New England, Inc. to be an eligible facility will benefit consumers, is in the public interest, and does not violate State law.

Comment date: April 22, 1999, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of those that concern the adequacy or accuracy of the application.

4. Monroe Power Company

[Docket No. EG99–106–000]

Take notice that on March 30, 1999, Monroe Power Company (Applicant), filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator (EWG) status pursuant to Part 365 of the Commission's regulations. Applicant will own and operate a single gas combustion turbine located in Monroe, Georgia. Applicant will sell energy and capacity associated with the facility exclusively at wholesale.

Comment date: April 22, 1999, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

5. Central Maine Power Company

[Docket No. ER99–1413–001]

Take notice that on March 29, 1999, the Central Maine Power Company submitted a notice that they have adopted, to the extent necessary, the Transmission Loading Relief procedures, including those relating to native load transactions and network service in other control areas, promulgated by the North American Electric Reliability Council, and that the Central Maine Power Company Open Access Transmission Tariff should be considered modified to effect the adoption of those procedures. This notice was filed in compliance with the Commission's order in *North American Electric Reliability Council, et al.* 86 FERC ¶ 61,275 (1999) and *North American Electricity Council,* 86 FERC ¶ 61,353 (1998).

Copies of this filing were sent to all parties on the service list in the captioned docket, as well as all parties on the service list in Docket No. EL98–52–000.

Comment date: April 16, 1999, in accordance with Standard Paragraph E at the end of this notice.

6. Northeast Utilities Service Company

[Docket No. ER99–1459–001]

Take notice that on March 29, 1999, Northeast Utilities Service Company (NUSCO), tendered for filing a notice adopting the North American Electric Reliability Council Transmission Loading Relief Procedures in compliance with the Commission's order in *North American Electric Reliability Council, et al.*, 86 FERC ¶ 61,275 (1999).

Comment date: April 16, 1999, in accordance with Standard Paragraph E at the end of this notice.

7. New England Power Company

[Docket No. ER99–1476–001]

Take notice that on March 29, 1999, New England Power Company submitted for filing notice that it has adopted the Transmission Loading Relief procedures proposed by the North American Electric Reliability Council and that its open access transmission tariff—New England Power Company, FERC Electric Tariff, Original Volume No. 9—should be considered so modified. This notice was submitted in compliance with the Commission's March 12, 1999 order in North American Electric Reliability Council, 86 FERC ¶ 61,275 (1999).

Comment date: April 16, 1999, in accordance with Standard Paragraph E at the end of this notice.

8. Maine Electric Power Company

[Docket No. ER99–1690–001]

Take notice that on March 29, 1999, the Maine Electric Power Company submitted a notice that they have adopted, to the extent necessary, the Transmission Loading Relief procedures, including those relating to native load transactions and network service in other control areas, promulgated by the North American Electric Reliability Council, and that the Maine Electric Power Company Open Access Transmission Tariff should be considered modified to effect the adoption of those procedures. This notice was filed in compliance with the Commission's order in *North American Electric Reliability Council, et al.*, 86 FERC ¶61,275 (1999) and *North American Electricity Council,* 86 FERC ¶61,353 (1998).

Copies of this filing were sent to all parties on the service list in the captioned docket, as well as all parties on the service list in Docket No. EL98–52–000.

Comment date: April 16, 1999, in accordance with Standard Paragraph E at the end of this notice.

9. Duke Electric Transmission, a division of Duke Energy Corporation

[Docket No. ER99–2285–000]

Take notice that on March 26, 1999, Duke Electric Transmission, a division of Duke Energy Corporation (Duke) tendered for filing Firm Point-to-Point Transmission Service Agreements between Duke and Carolina Power & Light Company, dated February 12, 1999, and Duke and Duke Power, a division of Duke Energy Corporation, dated February 12, 1999.

Duke requests that the Transmission Service Agreements become effective March 1, 1999.

Comment date: April 15, 1999, in accordance with Standard Paragraph E at the end of this notice.

10. Southwest Power Pool

[Docket No. ER99–2290–000]

Take notice that on March 29, 1999, Southwest Power Pool (SPP) tendered for filing seven executed service agreements for loss compensation service under the SPP Tariff.

SPP requests an effective date of March 1, 1999 for each of these agreements.

Copies of this filing were served upon all signatories.

Comment date: April 19, 1999, in accordance with Standard Paragraph E at the end of this notice.

11. Southwest Power Pool

[Docket No. ER99–2291–000]

Take notice that on March 29, 1999, Southwest Power Pool (SPP) tendered for filing executed service agreements for short-term firm point-to-point and non-firm point-to-point transmission service under the SPP Tariff with Energy Transfer Group (Energy Transfer), L.L.C. and LG&E Energy Marketing, Inc. (LG&E Energy).

Copies of this filing were served upon all signatories.

SPP requests an effective date of March 5, 1999 for the agreements with Energy Transfer, and an effective date of February 25, 1999 for the agreements with LG&E Energy.

Comment date: April 19, 1999, in accordance with Standard Paragraph E at the end of this notice.

12. PJM Interconnection, L.L.C.

[Docket No. ER99–2292–000]

Take notice that on March 29, 1999, PJM Interconnection, L.L.C. (PJM) submitted for filing a supplement to the Emergency Reliability Service Agreement between PJM and the New England Power Pool (NEPOOL) to implement the Commission-approved locational marginal price pricing methodology set forth in the PJM Open Access Transmission Tariff.

Copies of this filing were served upon all PJM members and all state regulatory commissions in the PJM and NEPOOL control areas.

Comment date: April 19, 1999, in accordance with Standard Paragraph E at the end of this notice.

13. New York State Electric & Gas Corporation

[Docket No. ER99–2293–000]

Take notice that on March 29, 1999, New York State Electric & Gas Corporation (NYSEG) filed executed Network Service and Network Operating Agreements between NYSEG and Energy Cooperative of Western New York, Inc. These Agreements specify that the Transmission Customer has agreed to the rates, terms and conditions of NYSEG's currently effective open access transmission tariff and other revisions to the OATT applicable to all customers who take service under its retail access program.

NYSEG has served copies of the filing on the New York State Public Service Commission and the Transmission Customer.

Comment date: April 19, 1999, in accordance with Standard Paragraph E at the end of this notice.

14. Wisconsin Electric Power Company

[Docket No. ER99–2294–000]

Take notice that on March 29, 1999, Wisconsin Electric Power Company (Wisconsin Electric), tendered for filing a short-term Firm Transmission Service Agreement between itself and Minnesota Power, Inc. (MPEX). The Transmission Service Agreement allows MPEX to receive firm transmission service under Wisconsin Energy Corporation Operating Companies FERC Electric tariff, Volume No. 1.

Also included in Wisconsin Electric's submittal is an assignment of Service Agreement Nos. 57 and 57.1 from National Gas & Electric L.P. to PanCanadian Energy Services L.P. (PCES L.P.).

Wisconsin Electric requests an effective date coincident with its filing and waiver of the Commission's notice requirements in order to allow for economic transactions as they appear.

Copies of the filing have been served on MPEX, PCES L.P., the Public Service Commission of Wisconsin and the Michigan Public Service Commission.

Comment date: April 19, 1999, in accordance with Standard Paragraph E at the end of this notice.

15. Southern Indiana Gas and Electric Company

[Docket No. ER99–2295–000]

Take notice that on March 29, 1999, Southern Indiana Gas and Electric Company (SIGECO) tendered for filing the Wholesale Energy Service Agreement dated February 26, 1999 by and between Southern Indiana Gas and Electric Company and Delmarva Power and Light Company concerning the provision of electric service to Delmarva Power and Light Company, as an umbrella service agreement under its market-based Wholesale Power Sales Tariff.

SIGECO requests that the agreement become effective March 1, 1999.

Comment date: April 19, 1999, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR part 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–8834 Filed 4–8–99; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Recreation Plan Amendment and Soliciting Comments, Motions to Intervene, and Protests

April 5, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. Application Type: Amendment of Recreation Plan.

b. Project No.: 2113–106.

c. Date Filed: March 11,1999.

d. Applicant: Wisconsin Valley Improvement Company.

e. Name of Project: Wisconsin Valley Project.

f. Location: This amendment will affect project lands on the shore of Rice Lake, in Oneida and Lincoln Counties, Wisconsin. The project utilizes U.S. Forest Service lands within the Nicolet and Ottawa National Forests, and lands of the Lac Vieux Desert Band of Chippewa Indians.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Applicant Contact: Mr. Robert W. Gall, Wisconsin Valley Improvement Company, 2301 N. Third Street, Wausau, WI 54403, (715) 848–2976.

i. FERC Contact: Any questions on this notice should be addressed to Patti Pakkala, by e-mail at patti.pakkala@ferc.fed.us, or telephone at (202) 219–0025.

j. Deadline for filing comments and or motions: May 13, 1999.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, Mail Code: DLC HL–11.1, 888 First Street, NE., Washington, DC 20426.

Please include the project number (2113–106) on any comments or motions filed.

k. Description of Amendment: The amendment will involve recreation site numbers 1, 2, and 7, as previously approved by the Commission on January 8, 1999. Specifically, the application requests Commission approval of the following changes: (1) delete new Site 7 from the recreation plan; (2) accelerate the development of Site 2 as an alternative to constructing new Site 7; and (3) close Site 1 when Site 2 is completed.

l. Locations of the Application: A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 208–1371. The filing may be viewed on http://www.ferc.fed.us/online/rims.htm (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. This notice also consists of the following standard paragraphs: B, C1 and D2.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 285.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C1. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Secretary.

[FR Doc. 99–8855 Filed 4–8–99; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–140279; FRL–6071–5]

Access to Confidential Business Information by Battelle Memorial Institute

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has authorized its contractor Battelle Memorial Institute (BMI), of Columbus, Ohio, access to information which has been submitted to EPA under sections 4, 5, 6, 8(a), 11, and 21 of the Toxic Substances Control Act (TSCA). Some of the information may be claimed or determined to be confidential business information (CBI).

DATES: Access to the confidential data by BMI occurred as a result of an approved waiver dated March 4, 1999, which requested granting BMI immediate access to TSCA CBI. This waiver was necessary to allow BMI to provide statistical, mathematical, field data collection and technical analysis support and planning for the Office of Pollution Prevention and Toxics (OPPT) programs.

FOR FURTHER INFORMATION CONTACT: Christine M. Augustyniak, Associate Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–545, 401 M St., SW., Washington, DC 20460, (202) 554–1404, TDD: (202) 554–0551; e-mail: TSCA-Hotline@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Under contract number 68–W9–9033, contractor BMI of 505 King Avenue, Columbus, OH, will assist OPPT by providing statistical, mathematical, field data collection and technical analysis support and planning for OPPT programs.

In accordance with 40 CFR 2.306(j), EPA has determined that under EPA contract number 68–W9–9033, BMI will require access to CBI submitted to EPA under sections 4, 5, 6, 8(a), 11 and 21 of TSCA to perform successfully the duties specified under the contract. BMI personnel will be given access to information submitted to EPA under sections 4, 5, 6, 8(a), 11, and 21 of TSCA. Some of the information may be claimed or determined to be CBI.

EPA is issuing this notice to inform all submitters of information under sections 4, 5, 6, 8(a), 11, and 21 of TSCA that EPA may provide BMI access to these CBI materials on a need-to-know basis only. All access to TSCA CBI under this contract will take place at EPA Headquarters and BMI's Columbus, OH facility.

BMI will be authorized access to TSCA CBI at their facility under the EPA *TSCA Confidential Business Information Security Manual.* Before access to TSCA CBI is authorized at BMI's site, EPA will perform the required inspection of its facility and ensure that the facility is in compliance with the manual. Upon completing review of the CBI materials, BMI will return all transferred materials to EPA.

Clearance for access to TSCA CBI under this contract may continue until March 2, 2004.

BMI personnel will be required to sign nondisclosure agreements and will be briefed on appropriate security procedures before they are permitted access to TSCA CBI.

List of Subjects

Environmental protection, Access to confidential business information.

Dated: April 2, 1999.

Allan S. Abramson,

Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 99–8831 Filed 4–8–99; 8:45 am]

BILLING CODE 6560–60–F

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6241–6]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared March 15, 1999 Through March 19, 1999 pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act

and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of FEDERAL ACTIVITIES AT (202) 564–7167.

Summary of Rating Definitions Environmental Impact of the Action

LO—Lack of Objections

The EPA review has not identified any potential environmental impacts requiring substantive changes to the proposal. The review may have disclosed opportunities for application of mitigation measures that could be accomplished with no more than minor changes to the proposal.

EC—Environmental Concerns

The EPA review has identified environmental impacts that should be avoided in order to fully protect the environment. Corrective measures may require changes to the preferred alternative or application of mitigation measures that can reduce the environmental impact. EPA would like to work with the lead agency to reduce these impacts.

EO—Environmental Objections

The EPA review has identified significant environmental impacts that must be avoided in order to provide adequate protection for the environment. Corrective measures may require substantial changes to the preferred alternative or consideration of some other project alternative (including the no action alternative or a new alternative). EPA intends to work with the lead agency to reduce these impacts.

EU—Environmentally Unsatisfactory

The EPA review has identified adverse environmental impacts that are of sufficient magnitude that they are unsatisfactory from the standpoint of public health or welfare or environmental quality. EPA intends to work with the lead agency to reduce these impacts. If the potentially unsatisfactory impacts are not corrected at the final EIS stage, this proposal will be recommended for referral to the CEQ.

Adequacy of the Impact Statement

Category 1—Adequate

EPA believes the draft EIS adequately sets forth the environmental impact(s) of the preferred alternative and those of the alternatives reasonably available to the project or action. No further analysis or data collection is necessary, but the reviewer may suggest the addition of clarifying language or information.

Category 2—Insufficient Information

The draft EIS does not contain sufficient information for EPA to fully assess environmental impacts that should be avoided in order to fully protect the environment, or the EPA reviewer has identified new reasonably available alternatives that are within the spectrum of alternatives analyzed in the draft EIS, which could reduce the environmental impacts of the action. The identified additional information, data, analyses, or discussion should be included in the final EIS.

Category 3—Inadequate

EPA does not believe that the draft EIS adequately assesses potentially significant environmental impacts of the action, or the EPA reviewer has identified new, reasonably available alternatives that are outside of the spectrum of alternatives analyzed in the draft EIS, which should be analyzed in order to reduce the potentially significant environmental impacts. EPA believes that the identified additional information, data, analyses, or discussions are of such a magnitude that they should have full public review at a draft stage. EPA does not believe that the draft EIS is adequate for the purposes of the NEPA and/or Section 309 review, and thus should be formally revised and made available for public comment in a supplemental or revised draft EIS.

On the basis of the potential significant impacts involved, this proposal could be a candidate for referral to the CEQ.

Draft EISs

ERP No. D–AFS–J65290–UT Rating EC2, Snowbird Ski and Summer Resort Master Development Plan, Implementation, Special-Use-Permit and COE Section 404 Permit, Salt Lake and Lake Counties, Salt Lake City, UT.

Summary: EPA expressed environmental concerns over potential adverse impacts to water quality, especially increased metal concentrations, and to air quality from the proposed action.

ERP No. D–AFS–J65292–WY Rating EC2, Cold Springs Ecosystem Management Project, Implementation, Enhancement of Tree Harvesting and Sale, Medicine Bow-Routt National Forests, Douglas Ranger District, Converse and Albany Counties, WY.

Summary: EPA expressed environmental concerns over potential adverse impacts to water quality.

ERP No. D–BLM–K65204–AZ Rating EC2, Hualapai Mountain Land Exchange/Plan Amendment, Implementation, Kingman and Dutch Flat, Mohave County, AZ.

Summary: EPA expressed environmental concerns regarding potential impacts to wildlife, air quality, and water resources from future development.

ERP No. D–NPS–B65007–VT Rating LO1, Marsh-Billings National Historical Park, General Management Plan, Implementation, Woodstock, VT.

Summary: EPA had no objections to the proposed project.

ERP No. D–NPS–D61050–MD Rating EO2, National Harbor Project, Construction and Operation along the Potomac River on a 534 acre site adjacent to the Capital Beltway and Oxon Hill Manor, COE Section 10 and 404 Permits, Prince George's County, MD.

Summary: EPA expressed environmental objections about potential adverse impacts to aquatic resources, especially fin fish and aquatic plants and wetlands. EPA suggests that the final EIS include a broader range of alterative.

ERP No. D–NPS–J61101–MT Rating EC2, Glacier National Park, General Management Plan, Implementation, Waterton Glacier International Peace Park, Lake National Park, Flathead and Glacier, MT.

Summary: EPA expressed environmental concerns about adverse impacts to water quality and wetland and requested a full air quality impact analysis be included in the final EIS.

ERP No. D–NPS–K61221–CA Rating LO, Fort Baker Site, Golden Gate National Recreation Area, Comprehensive Management Plan, Implementation, Marin County, CA.

Summary: EPA expressed a lack of objection for the proposed action.

Final EISs

ERP No. F–AFS–B65006–VT Sugarbush Ski Resort Project, Improvements and Development, Special-Use-Permit, Green Mountain National Forest, Rochester Range District, Fayston and Warren, Washington County, VT.

Summary: EPA's concerns about impacts to water quality and wildlife habitate were adequately addressed.

ERP No. F–NOA–A91065–00 Atlantic Tunas, Swordfish and Sharks, Highly Migratory Species Fishery Management Plan.

Summary: Review of the Final EIS/Regulation was not deemed necessary. No formal comment letter was sent to the preparing agency.

Dated: April 06, 1999.
William D. Dickerson,
Office of Federal Activities.
[FR Doc. 99–8935 Filed 4–8–99; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6241–5]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 OR (202) 564–7153.

Weekly receipt of Environmental Impact Statements Filed March 29, 1999 Through April 02, 1999 Pursuant to 40 CFR 1506.9.

EIS No. 990099, Draft EIS, COE, CA, Arroyo Pasajero Watershed Feasibility Investigation, Implementation, Flood Damage Reduction Plan, San Joaquin River Basin, City of Huron, Fresno County, CA, Due: May 24, 1999, Contact: Jerry Fuentes (916) 557–7490.

EIS No. 990100, Draft Supplement, COE, MO, St. Johns Bayou and New Madrid Floodway, Channel Enlargement and Improvement, Flood Control, National Economic Development (NED) Mississippi River & Tributaries, MO, Due: May 24, 1999, Contact: John Rumancik (901) 544–3975.

EIS No. 990101, Draft EIS, COE, IL, WI, Upper Des Plaines River Flood Damage Reduction Project, Recommended Plan to Construction a Lateral Storage Area, National Economic Development (NED), Lake County, IL and Kenosha and Racine Counties, WI, Due: May 24, 1999, Contact: Keith Ryder (312) 353–6400.

EIS No. 990102, Draft Supplement, FHW, CA, Devil's Slide Bypass Improvements, CA–1 To Half Moon Bay Airport to Linda Mar Boulevard, Updated Information, Funding and COE Section 404 Permit, Pacifica and San Mateo Counties, CA, Due: May 24, 1999, Contact: Robert F. Tally (916) 498–5020.

EIS No. 990103, Draft Supplement, FHW, CA, CA–125 South Route Location, Adoption and Construction, between CA–905 on Otay Mesa to CA–54 in Spring Valley, Updated and Additional Information, Funding and COE Section 404 Permit, San Diego County, CA, Due: May 10, 1999, Contact: C. Glenn Clinton (916) 498–5037.

EIS No. 990104, Draft EIS, AFS, AL, Longleaf Restoration Project, Implement a Systematic Five-Year Program for Restoration of the Native Longleaf Pine, Conecuh National Forest, Conecuh Ranger District, Covington and Escambia Counties, AL, Due: May 24, 1999, Contact: Robert Taylor (334) 222–2555.

EIS No. 990105, Draft EIS, FHW, NY, Stewart Airport Access Transportation Improvement Project, A New Interchange on I–84 at Drury Lane, Reconstruction of Drury Lane and a new East-West Connector Road from Drury Lane to Stewart International Airport, Funding, Towns of Montgomery, Newburgh and New Windsor, Orange County, NY, Due: June 01, 1999, Contact: Harold J. Brown (518) 431–4157.

EIS No. 990106, Final Supplement, NOA, Comprehensive Amendment Addressing Essential Fish Habitat in Fishery Management Plans for the South Atlantic Region for Shrimp, Red Drum, Coral, Coral Reefs and Live/Hard Bottom Habitat, Spiny Lobster Snapper-Grouper, Coastal Migratory Pelagics and Golden Crab, South Atlantic Region, Due: May 10, 1999, Contact: Michael Burnette (727) 570–5305.

EIS No. 990107, Final EIS, FRC, MI, IN, IL, Vector Pipeline Project, Natural Gas Pipeline and Associated above ground Facilities Construction and Operation, Approval, Joliet, IL to Vector Canada at the International Border near St. Clair, MI, several counties, MI, IN, and IL, Due: May 10, 1999, Contact: Paul McKee (202) 208–2222.

EIS No. 990108, Draft Supplement, AFS, ID, Grade-Dukes Timber Sale, Proposal to Harvest and Regenerate Timber, Implementation, Cuddy Mountain Roadless Area, Payette National Forest, Weiser Ranger District, Washington County, Idaho, Due: May 24, 1999, Contact: Dautis Pearson (208) 253–0134.

EIS No. 990109, Draft EIS, USN, GU, Agana Naval Air Station Disposal and Reuse, Implementation, Guam, Due: May 24, 1999, Contact: John Bigay (808) 471–9338.

EIS No. 990110, Final Supplement, COE, CA, Napa River and Napa Creek Flood Protection Project, New and Refined Information, City of Napa, Napa County, CA, Due: May 10, 1999, Contact: Karen Shaffer (916) 557–6734.

EIS No. 990111, Final EIS, COE, OR, Coos Bay-North Bend Water Board Water Supply Expansion Project, (Formerly Known as Joe Ney and Upper Pony Creek Reservoirs Expansion Project), COE Section 10 and 404 Permits, Coos County, OR, Due: May 27, 1999, Contact: David Kurkoski (503) 808–4377.

Dated: April 6, 1999.
William D. Dickerson,
Director, Office of Federal Activities.
[FR Doc. 99–8936 Filed 4–8–99; 8:45 am]
BILLING CODE 6560–50–U

FEDERAL COMMUNICATIONS COMMISSION

[DA 99–641]

Request for Waiver by Sacramento County, California, to Obtain a License to Obtain a License for a Frequency Allocated for Exclusive Paging Operations (929.0125 MHz)

AGENCY: Federal Communications Commission.

ACTION: Notice; comments requested.

SUMMARY: This document seeks comment on a request by Sacramento County California, for waiver of the Commission's rules to permit it to use the frequency 929.0125 MHz for a local alert paging system that would support public safety services provided in Sacramento and Yolo Counties, California. Sacramento also seeks waiver of a licensing freeze that currently governs frequencies in the 929–930 MHz band allocated for exclusive paging operations.

DATES: Comments are due on or before April 12, 1999, and reply comments are due on or before April 19, 1999.[1]

ADDRESSES: Federal Communications Commission, Office of the Secretary, 445 Twelfth Street, S.W., TW–325, Washington, D.C. 20554. SW, Washington, D.C. 20554. A copy of each filing should be sent to International Transcription Services, Inc. (ITS), 1231 20th Street, N.W., Washington, D.C. 20036, (202) 857–3800, and John Fernandez, Federal Communications Commission, Wireless Telecommunications Bureau, Public Safety and Private Wireless Division, Policy and Rules Branch, 445 Twelfth Street, S.W., Room 4–C400, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: John Fernandez at the Public Safety and Private Wireless Division, Policy and Rules Branch (202) 418–0680.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Public Notice*, DA 99–641, released on April 1, 1999 (DA 99–641). The full text of the *Public Notice* is available for inspection and copying during normal business

[1] Editorial Note: This document was received at the Office of the Federal Register on April 7, 1999.

hours in the Public Safety and Private Wireless Division of the Wireless Telecommunications Bureau, Federal Communications Commission, 445 Twelfth Street, S.W., Room 4–C207, Washington, D.C. 20554. The complete text of this *Public Notice* may also be purchased from the Commission's duplicating contractor, International Transcription Services, 1231 20th Street, NW, Washington, DC 20036, 202–857–3800. Alternative formats (computer diskette, large print, audio cassette and Braille) are available to persons with disabilities by contacting Martha Contee at (202) 418–0260, TTY (202) 418–2555, or at mcontee@fcc.gov.

1. On December 16, 1998, the County of Sacramento, California ("Sacramento County" or "the County") filed a Request for Waiver ("Waiver Request") of a licensing freeze that currently governs frequencies in the 929–930 MHz band allocated for exclusive paging operations. Sacramento County requests a waiver of the licensing freeze to permit it to use the frequency 929.0125 MHz for a local alert paging system that would support public safety services provided in Sacramento and Yolo Counties, California. The frequency is currently unassigned in the Sacramento, California, area, according to the County, except for co-channel licensee Stanford University Hospital. The County states that Stanford University Hospital concurs with the County's request to use the channel together on a shared basis.

2. The County filed the instant Waiver Request as part of its previously pending application (Application File No. D103979). The County now requests waiver of the licensing freeze and any other Commission rules necessary to grant its application, pursuant to Section 337(c) of the Communications Act of 1934, as amended, 47 U.S.C. 337(c). Section 337(c) states that the Commission shall grant an application by an entity seeking to provide public safety services to the extent necessary to permit the use of unassigned frequencies, if the Commission makes five specific findings: (1) no other spectrum allocated for public safety use is immediately available; (2) there will be no harmful interference to other spectrum users entitled to protection; (3) public safety use of the frequencies is consistent with other public safety spectrum allocations in the geographic area in question; (4) the unassigned frequencies were allocated for their present use not less than two years prior to the grant of the application at issue; and (5) the grant of the application is consistent with the public interest. "Public safety services" are defined by 47 U.S.C. 337(f)(1) as services, the sole or principal purpose of which is to protect the safety of life, health, or property, that are provided by state or local governmental entities or by non-governmental entities authorized by the governmental entity whose primary mission is the provision of such services, and that are not made commercially available to the public by the provider.

3. Sacramento County avers that the record developed in pending Application File No. D103979, together with the instant Waiver Request, demonstrates that the County has satisfied all of the statutory requirements for a grant pursuant to Section 337(c)(1).

4. Interested parties may file comments on the Waiver Request on or before April 12, 1999. Parties interested in submitting reply comments must do so on or before April 19, 1999. All comments should reference the subject Waiver Request by Sacramento County, California, DA 99–641, and should be filed with the Office of the Secretary, Federal Communications Commission, 445 Twelfth Street, S.W., TW–325, Washington, D.C. 20554. A copy of each filing should be sent to International Transcription Services, Inc. (ITS), 1231 20th Street, N.W., Washington, D.C. 20036, (202) 857–3800, and John Fernandez, Federal Communications Commission, Wireless Telecommunications Bureau, Public Safety and Private Wireless Division, Policy and Rules Branch, 445 Twelfth Street, S.W., Room 4–C400, Washington, D.C. 20554.

5. The full text of the Waiver Request, comments, and reply comments will be available for inspection and duplication during regular business hours in the Public Safety and Private Wireless Division of the Wireless Telecommunications Bureau, Federal Communications Commission, 445 Twelfth Street, S.W., Room 4–C207, Washington, D.C. 20554. Copies also may be obtained from ITS.

6. Unless otherwise provided, requests for waiver of the Commission's rules are subject to treatment by the Commission as restricted proceedings for *ex parte* purposes under section 1.1208 of the Commission's rules, 47 CFR 1.1208. Because of the policy implications and potential impact of this proceeding on persons not parties to the waiver request, we believe it would be in the public interest to treat this case as a permit-but-disclose proceeding under the *ex parte* rules. *See* sections 1.1200(a) and 1.1206 of the Commission's rules, 47 CFR 1.1200(a), 1.1206. Therefore, subsequent to the release of this Public Notice, *ex parte* presentations that are made with respect to the issues involved in the subject Waiver Request will be allowed but must be disclosed in accordance with the requirements of section 1.1206(b) of the Commission's rules, 47 CFR 1206(b).

Federal Communications Commission.

Herbert W. Zeiler,

Deputy Chief, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau.

[FR Doc. 99–9017 Filed 4–8–99; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

[DA 99–632]

Request for Waiver by San Mateo County, California, To Obtain a License for Thirty-one Frequencies Allocated for Paging Control Operations

AGENCY: Federal Communications Commission.

ACTION: Notice; extension of time for filing reply comments.

SUMMARY: This document extends the time for filing reply comments on a waiver request by San Mateo County, California, to permit it to use thirty-one frequencies for public safety purposes that are now allocated for point-to-multipoint paging control operation in the San Francisco, California, area.

DATES: Reply comments are due on or before April 12, 1999.[1]

ADDRESSES: Federal Communications Commission, Office of the Secretary, 445 Twelfth Street, S.W., TW–325, Washington, D.C. 20554. SW, Washington, D.C. 20554. A copy of each filing should be sent to International Transcription Services, Inc. (ITS), 1231 20th Street, N.W., Washington, D.C. 20036, (202) 857–3800, and Peter J. Daronco, Federal Communications Commission, Wireless Telecommunications Bureau, Public Safety and Private Wireless Division, Policy and Rules Branch, 445 Twelfth Street, S.W., Room 4–C431, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Peter J. Daronco at the Public Safety and Private Wireless Division, Policy and Rules Branch (202) 418–0680.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Order*, DA 99–632, released on March 31, 1999 (DA 99–632). The full text of the Order is available for inspection and copying

[1] Editorial Note: This document was received at the Office of the Federal Register on April 7, 1999.

during normal business hours in the Public Safety and Private Wireless Division of the Wireless Telecommunications Bureau, Federal Communications Commission, 445 Twelfth Street, S.W., Room 4–C207, Washington, D.C. 20554. The complete text of this *Order* may also be purchased from the Commission's duplicating contractor, International Transcription Services, 1231 20th Street, NW, Washington, DC 20036, 202–857–3800. Alternative formats (computer diskette, large print, audio cassette and Braille) are available to persons with disabilities by contacting Martha Contee at (202) 418–0260, TTY (202) 418–2555, or at mcontee@fcc.gov.

1. On January 28, 1999, San Mateo County, California (the County), filed the captioned application and request for waiver of the Commission's Rules ("Waiver Request") pursuant to Section 337(c) of the Communications Act of 1934, as amended, 47 U.S.C. 337(c). On March 18, 1999, the Commission released a *Public Notice* seeking comment on the County's Waiver Request under the following deadline dates: March 29, 1999, for filing comments, and April 5, 1999, for filing reply comments. *See* Wireless Telecommunications Bureau Seeks Comment on Request for Waiver by San Mateo County, California, to Obtain a License for Thirty-one Frequencies Allocated for Paging Control Operations, *Public Notice*, DA 99–537 (rel. March 18, 1999), 64 FR 14915 (March 29, 1999).

2. On March 19, 1999, the County filed a Motion for Extension of Time (*Motion*) to extend the deadline date for filing reply comments to April 12, 1999. The County states that the specific comment schedule adopted in the *Public Notice* imposes severe constraints on the County because its counsel will be traveling and unable to address this matter from March 26 to April 5, 1999. The County avers that these circumstances will make it nearly impossible for it to provide full and complete reply comments by April 5, 1999, and it requests a seven (7) day extension of deadline date for reply comments.

3. It is the policy of the Commission that extensions of time are not routinely granted. 47 CFR 1.46(b). Upon review, however, we agree that an extension will afford parties the necessary time to coordinate and file reply comments that will facilitate the compilation of a more complete record in this proceeding. We believe that a seven (7) day extension of time for filing reply comments should provide an adequate opportunity for all parties to prepare and file responsive and complete reply comments in this proceeding without causing undue delay to the Commission's consideration of this proceeding.

4. Accordingly, pursuant to the authority of Section 4(j) of the Communications Act of 1934, as amended, 47 U.S.C. 154(j), and section 1.46 of the Commission's Rules, 47 CFR 1.46, *It Is Ordered* that the Motion for Extension of Time filed by the County of San Mateo, California, on March 19, 1999, is granted. Interested parties shall file reply comments in the captioned proceeding no later than April 12, 1999.

5. This action is taken under delegated authority pursuant to sections 0.131 and 0.331 of the Commission's rules, 47 CFR 0.131, 0.331.

Federal Communications Commission.

John J. Borkowski,

Chief, Policy and Rules Branch, Public Safety & Private Wireless Division, Wireless Telecommunications Bureau.

[FR Doc. 99–9018 Filed 4–8–99; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

[DA 99–494]

Broadwave Albany, L.L.C., et al. Requests for Waiver of Fixed Microwave Service Rules

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: On March 11, 1999, the Public Safety and Private Wireless Division released a public notice seeking comment on requests made by Broadwave Albany, L.L.C., *et al.*, (Broadwave), for waiver of various part 101 rules. Broadwave submitted the waiver requests in order to provide multichannel video programming, including the retransmission of local television broadcast signals, to approximately 212 markets throughout the United States. Broadwave also proposes to provide internet services to consumers in these various markets.

DATES: Comments are due no later than April 12, 1999 and reply comments are due no later than April 22, 1999.

ADDRESSES: Federal Communications Commission, Office of the Secretary, 445 Twelfth Street, SW, TW–A325, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Michael Pollak or Shellie Blakeney of the Policy and Rules Branch, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau at (202) 418–0680.

SUPPLEMENTARY INFORMATION:

1. On January 8, 1999, Broadwave filed requests for waiver of sections 101.105, 101.107, 101.109, 101.111, 101.115, 101.139 and 101.603 of the Commission's rules, 47 CFR 101.105, 101.107, 101.109, 101.111, 101.115, 101.139, 101.603, as well as any other fixed microwave radio service rules necessary to permit the processing of its applications pertaining to deployment of service in the 12.2–12.7 GHz band. Broadwave seeks authority to provide multichannel video programming, including the retransmission of local television broadcast signals, to approximately 212 markets throughout the United States. Broadwave also proposes to provide internet services to consumers in these various markets.

2. In its waiver requests, Broadwave argues that compliance with the technical limitations contained in sections 101.105, 101.107, 101.109, 101.111 and 101.115 of the Commission's rules would inhibit its proposed operations by impeding the introduction of a service that would directly compete with cable television. Broadwave further argues that the additional requested waivers (such as exceptions to sections 101.39 and 101.603) are necessary in order to ensure the expeditious deployment of its proposed services.

3. We note that the 12.2–12.7 GHz band is the subject of an ongoing rulemaking proceeding and was one of the bands listed in the International Bureau's Public Notice No. SPB–141, released on November 2, 1998, establishing a final cut-off date to file applications for non-geostationary satellite orbit fixed satellite service in the 12.2–12.7 GHz frequency band that may be mutually exclusive with previously filed applications of Skybridge, L.L.C. (Skybridge). *See* Amendment of parts 2 and 25 of the Commission's rules to Permit Operation of NGSO FSS Systems Co-Frequency with GSO and Terrestrial Systems in the Ku-Band Frequency Range and Amendment of the Commission's rules to Authorize Subsidiary Terrestrial Use of the 12.2–12.7 GHz Band by Direct Broadcast Satellite Licensees and Their Affiliates, *Notice of Proposed Rulemaking*, ET Docket No. 98–206, FCC 98–310 (rel. November 24, 1998). Broadwave filed applications for use of the 12.2–12.7 GHz frequency band, proposing to use technology developed by Northpoint Technology to enable sharing of this spectrum with existing direct broadcast satellite, geostationary satellite and other fixed microwave systems. Broadwave asserts that its proposed service will be on a secondary,

non-interfering basis to direct broadcast satellite services and on a co-primary basis with any new fixed satellite services, such as that proposed by Skybridge.

4. Requests for waiver of the Commission's rules are subject, unless otherwise provided, to treatment by the Commission as restricted proceedings for *ex parte* purposes under section 1.1208 of the Commission's rules, 47 CFR 1.1208. Because of the policy implications and the potential impact of this proceeding on other proceedings, as well as, persons not parties to the waiver requests, we believe it would be in the public interest to treat this case as a permit-but-disclose proceeding under the *ex parte* rules. *See* sections 1.1200(a) and 1.1206 of the Commission's rules, 47 CFR 1.1200(a), 1.1206. Therefore, any *ex parte* presentations that are made with respect to the issues involved in the subject waivers, subsequent to the release of this Public Notice, will be permissible but must be disclosed in accordance with the requirements of section 1.1206(b) of the Commission's rules, 47 CFR 1.1206(b).

5. The full text of the Requests for Waivers, comments, and reply comments are available for public inspection and duplication during regular business hours in the Public Safety and Private Wireless Division, Wireless Telecommunications Bureau, 445 Twelfth Street, S.W., 4–C207, Washington, DC 20554. Copies also may be obtained from ITS, 1231 20th Street, N.W., Washington, DC 20036, (202) 857–3800.

Federal Communications Commission.

D'wana R. Terry,

Chief, Public Safety & Private Wireless Division, Wireless Telecommunications Bureau.

[FR Doc. 99–8937 Filed 4–8–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Sunshine Act Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 10:00 a.m. on Thursday, April 8, 1999, the Federal Deposit Insurance Corporation's Board of Directors will meet in closed session, pursuant to sections 552b(c)(2), (c)(4), (c)(6), (c)(8), and (c)(9)(A)(ii) of Title 5, United States Code, to consider (1) reports from the Office of Inspector General, and (2) matters relating to the Corporation's supervisory activities.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550—17th Street, N.W., Washington, D.C.

Requests for further information concerning the meeting may be directed to Mr. Robert E. Feldman, Executive Secretary of the Corporation, at (202) 898–6757.

Dated: April 7, 1999.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 99–8995 Filed 4–7–99; 11:16 am]

BILLING CODE 6714–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Activities: Submission for OMB Review; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency is submitting a request for review and approval of an expired information collection. The request is submitted under the emergency processing procedures in Office of Management and Budget (OMB) regulation 5 CFR 1320.13. FEMA is requesting that this information collection be approved by April 5, 1999, for use through October 1999.

FEMA plans to follow this emergency request with a request for a 3-year approval. The request will be processed under OMB's normal clearance procedures in accordance with the provisions of OMB regulation 5 CFR 1320.10. To help us with the timely processing of the emergency and normal clearance submissions to OMB, FEMA invites the general public to comment on the proposed collection of concerning the continuing collection of information, which is necessary for individuals to apply for disaster assistance benefits. The forms serve as a basic screening and referral document for a number of other Federal and State disaster aid programs by identifying applicant's disaster related needs and, in some cases, determining whether applicants meet the basic eligibility requirements of these other programs.

SUPPLEMENTARY INFORMATION: This collection is in accordance with FEMA's responsibilities under 44 CFR section 206.3 to provide an orderly and continuing means of assistance by the Federal Government to State and local governments. The assistance provided helps to alleviate the suffering and damage that result from major disasters and emergencies. Under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, Public Law 93–288, as amended, FEMA may provide assistance to meet immediate threats to life and property or provide for temporary housing resulting from a major disaster. Under the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Public Law 104–193, FEMA determines eligibility for disaster assistance through verification of citizenship or qualified alien status.

Collection of Information:

Title: Disaster Assistance Registration, Applicant Statement/Authorization, Declaration of Applicant.

Type of Information Collection: Reinstatement with change of a previously approved collection.

OMB Number: 3067–0009.

Form Numbers: FEMA Forms 90–69, 90–69A (Spanish version) Disaster Assistance Registration; 90–69B, 90–69C (Spanish version) Applicant Statement/Authorization; 90–69 D, 90–69 E (Spanish version) Declaration of Applicant.

Abstract: The information serves as the application for FEMA's Disaster Housing Program and the Individual and Family Grant Program and is relayed to other Federal and State agencies administering disaster relief programs appropriate to the applicant's needs. Without this information, eligibility for disaster assistance cannot be determined. The information is obtained by telephone calls to the Teleregistration Center or from a face-to-face interview. Applicants are provided a statement regarding the Privacy Act and they sign a statement certifying the accuracy of their information. They also sign a statement reflecting their United States citizenship or qualified alien status.

Affected Public: The forms are used only in Presidentially declared major disasters or emergencies to allow individuals, farmers, small business owners, private non-profit organizations to apply for Federal disaster assistance and to be referred to other appropriate State and local agencies.

Estimated Total Annual Burden Hours:

FEMA forms	No. of respondents	Frequency of response	Hours per response	Annual burden hours (rounded)
90–69	540,000	1 time	15 minutes or .25	135,000
90–69A				
90–69B				
90–69C				
90–69D	345,600	1 time	2 minutes or .03333	11,520
90–69E				
Total				146,520

Estimated Cost: All costs are part of customary and usual business practices.

Comments

Written comments are solicited to: (a) Evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) enhance the quality, utility, and clarity of the information to be collected; and, (d) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses. Comments should be received within 30 days of the date of this notice.

Addresses: Interested persons should submit written comments to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attn: Desk Officer for FEMA, 725 17th Street, NW, Room 10102, Washington, DC 20503.

For Further Information Contact: For additional information, contact Kathy Fields, Operations Officer, National Processing Service Center, Denton, TX (940) 591–7109. Contact Ms. Anderson at (202) 646–2625 for copies of the proposed collection of information.

Dated: March 29, 1999.

Reginald Trujillo,

Director, Program Services Division, Operations Support Directorate.

[FR Doc. 99–8904 Filed 4–8–99; 8:45 am]

BILLING CODE 6718–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1255–DR]

Washington; Amendment No. 3 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Washington, (FEMA–1255–DR), dated October 16, 1998, and related determinations.

EFFECTIVE DATE: March 26, 1999.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Washington is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of October 16, 1998:

Residential properties located at 205 and 330 Highland Park Drive, within the City of Kelso (Cowlitz County) for Individual Assistance and Public Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program)

Robert J. Adamcik,

Deputy Associate Director, Response and Recovery Directorate.

[FR Doc. 99–8900 Filed 4–8–99; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL HOUSING FINANCE BOARD

[No. 99–N–4]

Federal Home Loan Bank Members Selected for Community Support Review

AGENCY: Federal Housing Finance Board.

ACTION: Notice.

SUMMARY: The Federal Housing Finance Board (Finance Board) is announcing the Federal Home Loan Bank (FHLBank) members it has selected for the 1998–99 fifth quarter review cycle under the Finance Board's community support requirement regulation. This notice also prescribes the deadline by which FHLBank members selected for review must submit Community Support Statements to the Finance Board.

DATES: FHLBank members selected for the 1998–99 fifth quarter review cycle must submit completed Community Support Statements to the Finance Board on or before May 31, 1999.

ADDRESSES: FHLBank members selected for the 1998–99 fifth quarter review cycle must submit completed Community Support Statements to the Finance Board either by regular mail: Office of Policy, Research and Analysis, Program Assistance Division, Federal Housing Finance Board, 1777 F Street, N.W., Washington, D.C. 20006; or by electronic mail: BATESP@FHFB.GOV.

FOR FURTHER INFORMATION CONTACT: Penny S. Bates, Program Analyst, Office of Policy, Research and Analysis, Program Assistance Division, by telephone at 202/408–2574, by electronic mail at BATESP@FHFB.GOV, or by regular mail at the Federal Housing Finance Board, 1777 F Street, N.W., Washington, D.C. 20006. A telecommunications device for deaf persons (TDD) is available at 202/408–2579.

SUPPLEMENTARY INFORMATION:

I. Selection for Community Support Review

Section 10(g)(1) of the Federal Home Loan Bank Act (Bank Act) requires the

Finance Board to promulgate regulations establishing standards of community investment or service that FHLBank members must meet in order to maintain access to long-term advances. *See* 12 U.S.C. 1430(g)(1). The regulations promulgated by the Finance Board must take into account factors such as the FHLBank member's performance under the Community Reinvestment Act of 1977 (CRA), *id.* 2901 et seq., and record of lending to first-time homebuyers. *Id.* 1430(g)(2).

Pursuant to the requirements of section 10(g) of the Bank Act, the Finance Board has promulgated a community support requirement regulation that establishes standards a FHLBank member must meet in order to maintain access to long-term advances and review criteria the Finance Board must apply in evaluating a member's community support performance. *See* 12 CFR part 936. The regulation includes standards and criteria for the two statutory factors—CRA performance and record of lending to first-time homebuyers. *Id.* § 936.3. Only members subject to the CRA must meet the CRA standard. *Id.* § 936.3(b). All members, including those not subject to CRA, must meet the first-time homebuyer standard. *Id.* § 936.3(c).

Under the rule, the Finance Board selects approximately one-eighth of the members in each FHLBank district for community support review each calendar quarter. *Id.* § 936.2(a). The Finance Board will not review an institution's community support performance until it has been a FHLBank member for at least one year. Selection for review is not, nor should it be construed as, any indication of either the financial condition or the community support performance of the member.

Each FHLBank member selected for review must complete a Community Support Statement and submit it to the Finance Board by the May 31, 1999 deadline prescribed in this notice. *Id.* § 936.2(b)(1)(ii) and (c). On or before May 1, 1999, each FHLBank will notify the members in its district that have been selected for the 1998–99 fifth quarter community support review cycle that they must complete and submit to the Finance Board by the deadline a Community Support Statement. *Id.* § 936.2(b)(2)(i). The member's FHLBank will provide a blank Community Support Statement Form, which also is available on the Finance Board's web site at WWW.FHFB.GOV. Upon request, the member's FHLBank also will provide assistance in completing the Community Support Statement.

The Finance Board has selected the following members for the 1998–99 fifth quarter community support review cycle:

FEDERAL HOME LOAN BANK OF BOSTON—DISTRICT 1

People's Bank	Bridgeport, CT
Maritime Bank and Trust Company	Essex, CT
Farmington Savings Bank	Farmington, CT
Glastonbury Bank & Trust	Glastonbury, CT
Savings Bank of Manchester	Manchester, CT
Liberty Bank	Middletown, CT
Naugatuck Savings Bank	Naugatuck, CT
Citizens National Bank	Putnam, CT
The Equity Bank	Wethersfield, CT
Windsor Federal S&LA	Windsor, CT
Windsor Locks S&LA	Windsor Locks, CT
Co-operative Bank of Concord	Acton, MA
University Credit Union	Boston, MA
Brockton Credit Union	Brockton, MA
Dedham Cooperative Bank	Dedham, MA
Everett Credit Union	Everett, MA
Framingham Co-operative Bank	Framingham, MA
Benjamin Franklin Savings Bank	Franklin, MA
Dean Cooperative Bank	Franklin, MA
Greenfield Savings Bank	Greenfield, MA
Hanscom Federal Credit Union	Hanscom AFB, MA
Economy Co-operative Bank	Merrimac, MA
Mayflower Cooperative Bank	Middleborough, MA
Pacific National Bank of Nantucket	Nantucket, MA
Compass Bank	New Bedford, MA
First Citizens' Federal Credit Union	New Bedford, MA
North Shore Bank	Peabody, MA
Berkshire Bank	Pittsfield, MA
Pittsfield Cooperative Bank	Pittsfield, MA
Sharon Co-operative Bank	Sharon, MA
Slade's Ferry Trust Company	Somerset, MA
Central Co-operative Bank	Somerville, MA
Savers Co-operative Bank	Southbridge, MA
Springfield Institution for Savings	Springfield, MA
Stoneham Co-operative Bank	Stoneham, MA
Martha's Vineyard Co-operative Bank	Vineyard Haven, MA
Ware Co-operative Bank	Ware, MA
United Co-operative Bank	West Springfield, MA
Westfield Savings Bank	Westfield, MA
Flagship Bank and Trust Company	Worcester, MA
Cushnoc Bank and Trust Company	Augusta, ME
United Bank	Bangor, ME
First National Bank of Damariscotta	Damariscotta, ME
Gardiner Savings Institution, FSB	Gardiner, ME
Machias Savings Bank	Machias, ME
Katahdin Federal Credit Union	Millinocket, ME

Centerpoint Bank	Bedford, NH
Connecticut River Bank, N.A.	Charleston, NH
Claremont Savings Bank	Claremont, NH
Peoples Bank of Littleton	Littleton, NH
Triangle Credit Union	Nashua, NH
Lake Sunapee Bank, F.S.B.	Newport, NH
Sugar River Savings Bank	Newport, NH
Olde Port Bank and Trust Company	Portsmouth, NH
Piscataqua Savings Bank	Portsmouth, NH
Service Credit Union	Portsmouth, NH
Domestic Bank	Cranston, RI
Rhode Island Hospital Trust National Bank	Providence, RI
Warwick Credit Union	Warwick, RI
Washington Trust Company	Westerly, RI
Bennington Co-operative S&LA, Inc.	Bennington, VT
Factory Point National Bank	Manchester Cen., VT
Heritage Family Credit Union	Rutland, VT
Passumpsic Savings Bank	St. Johnsbury, VT

FEDERAL HOME LOAN BANK OF NEW YORK—DISTRICT 2

Ocwen Federal Bank FSB	West Palm Beach, FL
First Savings Bank of New Jersey, SLA	Bayonne, NJ
American Savings Bank of New Jersey	Bloomfield, NJ
Clifton Savings Bank, S.L.A.	Clifton, NJ
Sussex County Bank	Franklin, NJ
The First National Bank of Hope	Hope, NJ
Little Falls Bank	Little Falls, NJ
Metropolitan State Bank	Montville, NJ
Magyar Savings Bank	New Brunswick, NJ
Lusitania Savings Bank, fsb	Newark, NJ
Roebling Savings Bank	Roebling, NJ
Franklin Savings Bank, S.L.A.	Salem, NJ
Pulaski Savings Bank	Springfield, NJ
Monroe Savings Bank, SLA	Williamstown, NJ
Cayuga Bank	Auburn, NY
BSB Bank & Trust Company	Binghampton, NY
Ponce de Leon Federal Bank	Bronx, NY
Atlantic Liberty Savings, F.A.	Brooklyn, NY
Community Capital Bank	Brooklyn, NY
Olympian Bank	Brooklyn, NY
Bank of Castile	Castile, NY
Catskill Savings Bank	Catskill, NY
Cohoes Savings Bank	Cohoes, NY
Fulton Savings Bank	Fulton, NY
Astoria Federal Savings and Loan	Lake Success, NY
First Federal Savings of Middletown	Middletown, NY
Amalgamated Bank of New York	New York, NY
United Orient Bank	New York, NY
Pittsford Federal Credit Union	Pittsford, NY
Northfield Savings Bank	Staten Island, NY
Empire Federal Credit Union	Syracuse, NY
Tarrytowns Bank, FSB	Tarrytown, NY
CFS Bank	Westbury, NY
Bank & Trust of Puerto Rico	Hato Rey, PR

FEDERAL HOME LOAN BANK OF PITTSBURGH—DISTRICT 3

The Travelers Bank	Newark, DE
Delaware First Bank, FSB	Wilmington, DE
Wilmington Savings Fund Society	Wilmington, DE
C&G Savings Bank	Altoona, PA
Ambler S&LA	Ambler, PA
First Star Savings Bank	Bethlehem, PA
First FS&LA of Bucks County	Bristol, PA
Greater Delaware Valley Savings Bank	Broomall, PA
Sharon Savings Bank	Darby, PA
ESB Bank, F.S.B.	Ellwood City, PA
County Savings Association	Essington, PA
Bank of Hanover and Trust Company	Hanover, PA
Hatboro Federal Savings	Hatboro, PA
First FS&LA of Hazleton	Hazleton, PA
Security Savings Association of Hazleton	Hazleton, PA
William Penn Savings and Loan Association	Levittown, PA
Willow Grove Bank	Maple Glen, PA
First Keystone Federal Savings Bank	Media, PA

Morton Savings and Loan Association	Morton, PA
Nesquehoning Savings Bank	Nesquehoning, PA
Third Federal Savings Bank	Newtown, PA
Malvern Federal Savings Bank	Paoli, PA
First Savings Bank of Perkasie	Perkasie, PA
Crusader Savings Bank, fsb	Philadelphia, PA
Fox Chase Federal Savings Bank	Philadelphia, PA
Second FS&LA of Philadelphia	Philadelphia, PA
Washington Savings Association	Philadelphia, PA
Bell FS&LA of Bellevue	Pittsburgh, PA
Great American FS&LA	Pittsburgh, PA
Mellon Bank, F.S.B.	Pittsburgh, PA
National City Bank of Pennsylvania	Pittsburgh, PA
Progressive Home FS&LA	Pittsburgh, PA
Patriot Bank	Pottstown, PA
Mercer County State Bank	Sandy Lake, PA
North Penn S&LA	Scranton, PA
Pennview Savings Bank	Souderton, PA
Slovenian S&LA of Canonsburg	Strabane, PA
First National Bank of West Chester	West Chester, PA
Bank of Iaeger	Iaeger, WV
Bank of Mount Hope, Inc.	Mount Hope, WV
Community Bank of Parkersburg	Parkersburg, WV
Poca Valley Bank	Walton, WV
AmeriBank	Welch, WV

FEDERAL HOME LOAN BANK OF ATLANTA—DISTRICT 4

Covington County Bank	Andalusia, AL
United Bank	Atmore, AL
AmSouth Bank	Birmingham, AL
Peoples Bank of North Alabama	Cullman, AL
First American Bank	Decatur, AL
The Citizens Bank	Enterprise, AL
Eufala Bank & Trust Company	Eufala, AL
First Commercial Bank	Good Hope, AL
Merchants Bank	Jackson, AL
Farmers and Merchants Bank	Lafayette, AL
Bank of Mobile	Mobile, AL
Colonial Bank	Montgomery, AL
Eagle Bank of Alabama	Opelika, AL
Community Spirit Bank	Red Bay, AL
Peoples Bank & Trust Company	Selma, AL
First Federal of the South	Sylacauga, AL
First National Bank	Talladega, AL
United Security Bank	Thomasville, AL
Century National Bank	Washington, DC
Citrus and Chemical Bank	Bartow, FL
Mackinac Savings Bank	Boynton Beach, FL
First Bank of Clewiston	Clewiston, FL
Regent Bank	Davie, FL
Dunnellon State Bank	Dunnellon, FL
Gateway American Bank of Florida	Ft. Lauderdale, FL
Desjardins Federal Savings Bank	Hallandale, FL
Bank of Inverness	Inverness, FL
Educational Community Credit Union	Jacksonville, FL
Monticello Bank	Jacksonville Bch., FL
First Federal Savings Bank of Florida	Live Oak, FL
Helm Bank	Miami, FL
Tropical Federal Credit Union	Miami, FL
Eastern Financial Credit Union	Miramar, FL
SunTrust Bank	Ocala, FL
Bank at Ormond By-the-Sea	Ormond Beach, FL
First Community Bank of Palm Beach County	Pahokee, FL
Peoples First Community Bank	Panama City, FL
Century Bank, F.S.B.	Sarasota, FL
Highlands Independent Bank	Sebring, FL
Raymond James Bank, FSB	St. Petersb. Bch., FL
Southern Exchange Bank	Tampa, FL
United Southern Bank	Umatilla, FL
Federal Employees Credit Union	West Palm Beach, FL
Sterling Bank	West Palm Beach, FL
Bank of Adairsville	Adairsville, GA
Farmers and Merchants Bank	Adel, GA
Montgomery County Bank	Ailey, GA
AGE Federal Credit Union	Albany, GA

First Colony Bank	Alpharetta, GA
Citizens Trust Bank	Atlanta, GA
First Union National—Georgia	Atlanta, GA
Union County Bank	Blairsville, GA
Peoples Bank of Fannin County	Blue Ridge, GA
First National Bank of Haralson County	Buchanan, GA
Bank of Chickamauga	Chickamauga, GA
SunTrust Bank, West Georgia, N.A.	Columbus, GA
Bank of Dahlonega	Dahlonega, GA
The Peoples Bank	Eatonton, GA
Gainesville Bank and Trust	Gainesville, GA
First Citizens Bank	Glennville, GA
South Georgia Bank, FSB	Glennville, GA
SunMark Community Bank	Hawkinsville, GA
Community Trust Bank	Hiram, GA
Northeast Georgia Bank	Lavonia, GA
The Peoples Bank	Lithonia, GA
The Community Bank	Loganville, GA
Westside Bank & Trust Company	Marietta, GA
Metter Banking Company	Metter, GA
First Security National Bank	Norcross, GA
Family Federal Savings Bank	Pelham, GA
Crossroads Bank of Georgia	Perry, GA
Independent Bank and Trust Company	Powder Springs, GA
Citizens First Bank	Rome, GA
Farmers and Merchants Bank	Summerville, GA
Bank of Thomas County	Thomasville, GA
Citizens Bank and Trust	Trenton, GA
Farmers and Merchants Bank	Washington, GA
Back and Middle River FS&LA	Baltimore, MD
Bay-Vanguard Federal Savings Bank	Baltimore, MD
Hull Federal Savings Bank	Baltimore, MD
Ideal Federal Savings Bank	Baltimore, MD
Northfield Federal Savings	Baltimore, MD
Provident Bank of Maryland	Baltimore, MD
Susquehanna Bank	Baltimore, MD
Vigilant Federal S&LA	Baltimore, MD
F&M Bank—Allegiance	Bethesda, MD
TMB Federal Credit Union	Cabin John, MD
Cecil Federal Savings Bank	Elkton, MD
IR Federal Credit Union	Riverdale, MD
GrandBank	Rockville, MD
State Employees' Credit Union	Towson, MD
Randolph Bank and Trust Company	Asheboro, NC
Rowan Savings Bank, SSB	China Grove, NC
Cabarrus Bank of North Carolina	Concord, NC
Central Carolina Bank and Trust Company	Durham, NC
Mechanics & Farmers Bank	Durham, NC
Macon Savings Bank, Inc., SSB	Franklin, NC
Hertford Savings Bank, SSB	Hertford, NC
Bank of Carolinas	Landis, NC
Industrial Federal Savings Bank	Lexington, NC
Lexington State Bank	Lexington, NC
Liberty Savings and Loan Association	Liberty, NC
First Savings and Loan Association	Mebane, NC
Mount Gilead Savings and Loan Association	Mount Gilead, NC
State Employees' Credit Union	Raleigh, NC
Taylorsville Savings Bank, SSB	Taylorsville, NC
Anson Savings Bank, SSB	Wadesboro, NC
Cooperative Bank for Savings, Inc., SSB	Wilmington, NC
Branch Banking and Trust Company	Wilson, NC
Home Federal S&LA	Bamberg, SC
Bank of Greeleyville	Greeleyville, SC
The County Bank	Greenwood, SC
Greer State Bank	Greer, SC
Kingstree Federal S&LA	Kingstree, SC
Bank of Clarendon	Manning, SC
Anderson Brothers Bank	Mullins, SC
Pickens S&LA	Pickens, SC
Bank of Travelers Rest	Travelers Rest, SC
Napus Federal Credit Union	Alexandria, VA
Bank of Southside Virginia	Carson, VA
Apple Federal Credit Union	Fairfax, VA
Dominion Savings Bank	Front Royal, VA
Farmers and Merchants Bank	Harrisonburg, VA
First Colonial Bank, F.S.B.	Hopewell, VA

Imperial Savings and Loan Association	Martinsville, VA
Lee Bank and Trust Company	Pennington Gap, VA
Bank of Rockbridge	Raphine, VA
Marathon Bank	Winchester, VA

FEDERAL HOME LOAN BANK OF CINCINNATI—DISTRICT 5

Farmers Bank and Trust Company	Bardstown, KY
Wilson and Muir Bank and Trust Company	Bardstown, KY
Bank of Marshall County	Benton, KY
Bank of Cadiz and Trust Company	Cadiz, KY
Bank of Columbia	Columbia, KY
First Federal Savings Bank	Cynthiana, KY
Harrison Deposit Bank and Trust Company	Cynthiana, KY
Ft. Thomas Savings Bank	Ft. Thomas, KY
Fulton Bank	Fulton, KY
New Farmers National Bank of Glasgow	Glasgow, KY
First State Bank of Greenville	Greenville, KY
Farmers Bank	Hardinsburg, KY
Peoples Bank and Trust Company	Hazard, KY
Hopkinsville Federal Savings Bank	Hopkinsville, KY
Planters Bank, Inc.	Hopkinsville, KY
THE BANK—Oldham County	LaGrange, KY
Leitchfield Deposit Bank & Trust Company	Leitchfield, KY
Central Bank and Trust Company	Lexington, KY
L&N Federal Credit Union	Louisville, KY
Citizens Bank of Kentucky	Madisonville, KY
Farmers Bank and Trust Company	Madisonville, KY
Farmers Bank & Trust Company	Marion, KY
United Community Bank	Marrowbone, KY
Exchange Bank	Mayfield, KY
Monticello Banking Company	Monticello, KY
Pioneer Bank	Munfordville, KY
South Central Bank of Daviess County	Owensboro, KY
Salt Lick Deposit Bank	Owingsville, KY
Blue Grass Federal S&LA	Paris, KY
First Commonwealth Bank	Prestonburg, KY
Commerce Exchange Bank	Beachwood, OH
Belpre Savings Bank	Belpre, OH
The First Bremen Bank	Bremen, OH
Farmers Citizens Bank	Bucyrus, OH
Cambridge Savings Bank	Cambridge, OH
Centennial Savings Bank	Cincinnati, OH
Eagle Savings Bank	Cincinnati, OH
Findlay Savings Bank	Cincinnati, OH
Guardian Savings Bank, F.S.B.	Cincinnati, OH
Mercantile Savings Bank	Cincinnati, OH
Oakley Improved Building and Loan Company	Cincinnati, OH
Union Savings Bank	Cincinnati, OH
Westwood Homestead Savings Bank	Cincinnati, OH
Winton Savings and Loan Company	Cincinnati, OH
County Savings Bank	Columbus, OH
First Community Bank	Columbus, OH
Conneaut Savings & Loan Company	Conneaut, OH
Commercial Bank	Delphos, OH
Fort Jennings State Bank	Fort Jennings, OH
Lincoln Savings and Loan Association	Ironton, OH
People's Building Loan and Savings Company	Lebanon, OH
Lower Salem Commercial Bank	Lower Salem, OH
First Bank of Marietta	Marietta, OH
Marietta Savings Bank	Marietta, OH
Great Lakes Bank	Mentor, OH
American Savings and Loan Association	Middletown, OH
Farmers State Bank	New Washington, OH
First National Bank	Orrville, OH
Chippewa Valley Bank	Rittman, OH
Mutual Federal Savings Bank	Sidney, OH
Strongsville Savings Bank	Strongsville, OH
Central Federal Savings and Loan Association	Wellsville, OH
Peoples Savings and Loan Company	West Liberty, OH
Farmers State Bank	West Salem, OH
Wilmington Savings Bank	Wilmington, OH
Brighton Bank	Brighton, TN
Twin City Federal Savings Bank	Bristol, TN
Cumberland Bank	Carthage, TN
Highland Federal Savings and Loan Association	Crossville, TN

Security Federal Savings Bank	Elizabethton, TN
Lauderdale County Bank	Halls, TN
Carroll Bank and Trust	Huntingdon, TN
First National Bank of Manchester	Manchester, TN
The Home Bank of Tennessee	Maryville, TN
Home Banking Company	Selmer, TN

FEDERAL HOME LOAN BANK OF INDIANAPOLIS—DISTRICT 6

Bedford Federal Savings Bank	Bedford, IN
FCN Bank, NA	Brookville, IN
Montgomery SA, FA	Crawfordsville, IN
Decatur Bank and Trust Company	Decatur, IN
United Fidelity Bank	Evansville, IN
Springs Valley Bank and Trust Company	French Lick, IN
Pacesetter Bank	Hartford City, IN
First Federal Savings Bank	Huntington, IN
Campbell and Fetter Bank	Kendallville, IN
Progressive Federal Savings Bank	Lawrenceburg, IN
River Valley Financial Bank	Madison, IN
Fidelity Federal Savings Bank	Marion, IN
State Bank of Markle	Markle, IN
First State Bank of Middlebury	Middlebury, IN
Citizens Financial Services, FSB	Munster, IN
Community Bank of Southern Indiana	New Albany, IN
Regional Federal Savings Bank	New Albany, IN
Ameriana Bank of Indiana, FSB	New Castle, IN
AmericanTrust FSB	Peru, IN
Spencer County Bank	Santa Claus, IN
Jackson County Bank	Seymour, IN
Shelby County Bank	Shelbyville, IN
Sobieski FS & LA of South Bend	South Bend, IN
Security Federal Bank, F.S.B.	St. John, IN
Terre Haute Savings Bank	Terre Haute, IN
Frances Slocum Bank and Trust Company	Wabash, IN
Ann Arbor Commerce Bank	Ann Arbor, MI
Flagstar Bank	Bloomfield Hills, MI
Charlevoix State Bank	Charlevoix, MI
Dearborn Federal Savings Bank	Dearborn, MI
MFC First National Bank	Escanaba, MI
Michigan National Bank	Farmington Hills, MI
Bank West, FSB	Grand Rapids, MI
AmeriBank, FSB	Holland, MI
Bank of Lakeview	Lakeview, MI
Financial Health Credit Union	Lansing, MI
State Employees Credit Union	Lansing, MI
Independent Bank-South Michigan	Leslie, MI
State Savings Bank	Manistique, MI
Mason State Bank	Mason, MI
Community Federal Credit Union	Plymouth, MI
Team One Credit Union	Saginaw, MI
Sidney State Bank	Sidney, MI
Research Federal Credit Union	Warren, MI
First Bank	West Branch, MI

FEDERAL HOME LOAN BANK OF CHICAGO—DISTRICT 7

Oxford Bank and Trust	Addison, IL
Heartland Bank and Trust Company	Bloomington, IL
Peoples Bank of Kankakee County	Bourbonnais, IL
Bridgeview Bank and Trust Company	Bridgeview, IL
First American Bank	Carpentersville, IL
United Community Bank	Chatham, IL
Amalgamated Bank of Chicago	Chicago, IL
Austin Bank of Chicago	Chicago, IL
Community Bank of Lawndale	Chicago, IL
First Savings Bank of Hegewisch	Chicago, IL
St. Paul Federal Bank for Savings	Chicago, IL
First Savings Bank of Danville	Danville, IL
First Mutual Bank, S.B.	Decatur, IL
Clover Leaf Bank, SB	Edwardsville, IL
Illinois Community Bank	Effingham, IL
Washington Savings Bank	Effingham, IL
Elgin Financial Savings Bank	Elgin, IL
Harris Bank Frankfort	Frankfort, IL
Union Savings Bank	Freeport, IL

Central Trust & Savings Bank	Geneseo, IL
UnionBank/Northwest	Hanover, IL
Bank of Homewood	Homewood, IL
Farmers State Bank and Trust Company	Jacksonville, IL
Commonwealth Credit Union	Kankakee, IL
First FS&LA of Kewanee	Kewanee, IL
Johnson Bank Illinois	Lake Forest, IL
Logan County Bank	Lincoln, IL
Twin Oaks Savings Bank	Marseilles, IL
Okaw Building and Loan, s.b.	Mattoon, IL
Blackhawk State Bank	Milan, IL
BankPlus	Morton, IL
George Washington Savings Bank	Oak Lawn, IL
Bank of Palmyra	Palmyra, IL
Edgar County Bank & Trust Company	Paris, IL
First FS&LA of Pekin	Pekin, IL
First National Bank	Pinckneyville, IL
Mercantile Trust and Savings Bank	Quincy, IL
State Street Bank and Trust Company	Quincy, IL
North County Savings Bank	Red Bud, IL
American Bank of Rock Island	Rock Island, IL
First Savanna Savings Bank	Savanna, IL
First State Bank of Shannon-Polo	Shannon, IL
First S&LA of South Holland	South Holland, IL
Charter Bank, S.B.	Sparta, IL
Security Bank, s.b.	Springfield, IL
Stillman BancCorp, NA	Stillman Valley, IL
Argo Federal Savings Bank, F.S.B.	Summit, IL
Villa Park Trust and Savings Bank	Villa Park, IL
Citizens First State Bank	Walnut, IL
Hill-Dodge Banking Company	Warsaw, IL
Alpha Community Bank	Washburn, IL
State Bank of Waterloo	Waterloo, IL
Cardunal Savings Bank, FSB	West Dundee, IL
F&M Bank—Algoma	Algoma, WI
First American Credit Union	Beloit, WI
Jackson County Bank	Black River Falls, WI
Marine Bank and Savings	Cedarburg, WI
State Bank of Cross Plains	Cross Plains, WI
Community Bank of Elkhorn	Elkhorn, WI
AM Community Credit Union	Kenosha, WI
Time Federal Savings Bank	Medford, WI
M&I Marshall & Isley Bank	Milwaukee, WI
Community Bank Spring Green	Spring Green, WI
Tomahawk Community Bank, S.S.B.	Tomahawk, WI
West Allis Savings Bank	West Allis, WI

FEDERAL HOME LOAN BANK OF DES MOINES—DISTRICT 8

Security State Bank	Anamosa, IA
State Savings Bank	Baxter, IA
Linn Area Credit Union	Cedar Rapids, IA
United Security Savings Bank, F.S.B.	Cedar Rapids, IA
Citizens State Bank	Clarinda, IA
Cresco Union Savings Bank	Cresco, IA
DeWitt Bank and Trust Company	DeWitt, IA
Denver Savings Bank	Denver, IA
Hardin County Savings Bank	Eldora, IA
Peoples State Bank	Elkader, IA
Peoples Trust and Savings Bank	Grand Junction, IA
Midstates Bank, N.A.	Harlan, IA
Hills Bank and Trust Company	Hills, IA
First State Bank	Huxley, IA
Iowa Falls State Bank	Iowa Falls, IA
Citizens Bank	Leon, IA
Libertyville Savings Bank	Libertyville, IA
Maquoketa State Bank	Maquoketa, IA
Union State Bank	Monona, IA
Citizens State Bank	Monticello, IA
Mount Vernon Bank and Trust Company	Mount Vernon, IA
Community Bank of Muscatine	Muscatine, IA
Iowa State Bank	Orange City, IA
Horizon Federal Savings Bank	Oskaloosa, IA
Iowa Trust and Savings Bank	Oskaloosa, IA
Peoples Bank and Trust	Rock Valley, IA
Union State Bank	Rockwell City, IA

Security State Bank	Sheldon, IA
Fremont County Savings Bank	Sidney, IA
Bank Plus	Swea City, IA
Washington State Bank	Washington, IA
Guidant Life Insurance Company	West Des Moines, IA
Guidant Mutual Insurance Company	West Des Moines, IA
Guidant Specialty Mutual Insurance Company	West Des Moines, IA
Sterling State Bank	Austin, MN
Currie State Bank	Currie, MN
State Bank of Delano	Delano, MN
Inter Savings Bank, fsb	Edina, MN
Stearns Bank of Evansville	Evansville, MN
1st United Bank	Faribault, MN
Fortress Bank	Houston, MN
Lake City Federal S&LA	Lake City, MN
Lake Area Bank	Lindstrom, MN
Voyager Bank	Mankato, MN
Norwest Bank Minnesota, N.A.	Minneapolis, MN
Bayside Bank	Minnetonka, MN
The American Bank of Nashwauk	Nashwauk, MN
State Bank of New Prague	New Prague, MN
Nicollet State Bank	Nicollet, MN
Reliastar Bank (fka Citizens Savings Bank)	St. Cloud, MN
St. James Federal S&LA	St. James, MN
RoundBank	Waseca, MN
Community Bank Winsted	Winsted, MN
Citizens Bank	Amsterdam, MO
Bank of Jacomo	Blue Springs, MO
Boonslick Bank	Boonville, MO
Community State Bank of Bowling Green	Bowling Green, MO
Mississippi County S&LA	Charleston, MO
Clayco State Bank	Claycomo, MO
Union State Bank and Trust of Clinton	Clinton, MO
First National Bank and Trust Company	Columbia, MO
Meramec Valley Bank	Ellisville, MO
New Era Bank	Fredericktown, MO
Bank Star One	Fulton, MO
American Loan and Savings Association	Hannibal, MO
Central Trust Bank	Jefferson City, MO
Pony Express Bank	Kearney, MO
Lafayette County Bank of Lexington/Wellington	Lexington, MO
Peoples Security Bank	Licking, MO
Regional Missouri Bank	Marceline, MO
Nodaway Valley Bank	Maryville, MO
Independent Farmers Bank	Maysville, MO
Heritage State Bank	Nevada, MO
Palmyra Saving & Building Association, F.A.	Palmyra, MO
Perry County Savings Bank, FSB	Perryville, MO
The Citizens Bank of Pilot Grove, Missouri	Pilot Grove, MO
Farmers Bank of Portageville	Portageville, MO
Pulaski Bank, a Federal Savings Bank	Saint Louis, MO
The Merchants and Farmers Bank of Salisbury	Salisbury, MO
Community Bank of Pettis County	Sedalia, MO
Empire Bank	Springfield, MO
Bank of the BootHeel	Steele, MO
Bank of Washington	Washington, MO
West Plains Savings and Loan Association	West Plains, MO
First and Farmers Bank	Portland, ND
First International Bank & Trust	Watford City, ND
Norwest Bank South Dakota, N.A.	Sioux Falls, SD

FEDERAL HOME LOAN BANK OF DALLAS—DISTRICT 9

Community Bank	Cabot, AR
Farmers Bank and Trust Company	Clarksville, AR
First Arkansas Valley Bank	Dardanelle, AR
Bank of Eureka Springs	Eureka Springs, AR
Community Bank FSB	Fayetteville, AR
McIlroy Bank and Trust	Fayetteville, AR
First National Bank of Fort Smith	Fort Smith, AR
Bank of the Ozarks, nwa	Jasper, AR
Simmons First Bank	Kenset, AR
Bank of Lake Village	Lake Village, AR
First State Bank	Lonoke, AR
Union Bank of Mena	Mena, AR
First Bank of Montgomery County	Mount Ida, AR

Bank of the Ozarks, wca	Ozark, AR
First State Bank	Parkin, AR
Bank of Salem	Salem, AR
First Security Bank	Searcy, AR
Springdale Bank and Trust	Springdale, AR
UNICO Bank F.S.B.	Trumann, AR
Bank of Yellville	Yellville, AR
Fidelity Bank and Trust Company	Baton Rouge, LA
First National Bank	Gonzales, LA
Schwegmann Bank and Trust Company	Harvey, LA
Washington Life Insurance Company	Lafayette, LA
Globe Homestead Federal Savings Association	Metairie, LA
State-Investors Savings and Loan, FSA	Metairie, LA
City Bank and Trust of Shreveport	Shreveport, LA
First Federal Savings Bank	Shreveport, LA
Home FS&LA of Shreveport	Shreveport, LA
Citizens Bank and Trust Company of Vivian	Vivian, LA
Cleveland Community Bank, s.s.b.	Cleveland, MS
First National Bank of Bolivar County	Cleveland, MS
First Federal Bank for Savings	Columbia, MS
SOUTHBank, a FSB	Corinth, MS
Quitman County Federal Credit Union	Marks, MS
Community First National Bank	Las Cruces, NM
Pioneer Savings Bank	Roswell, NM
First National Bank of Santa Fe	Santa Fe, NM
Liberty Bank, SSB	Austin, TX
International Bank of Commerce—Brownsville	Brownsville, TX
First American Bank Texas, S.S.B.	Bryan, TX
American Bank, N.A.	Corpus Christi, TX
Pacific Southwest Bank	Corpus Christi, TX
Bank of the Southwest	Dallas, TX
Bluebonnet Savings Bank, FSB	Dallas, TX
Guaranty Federal Bank, F.S.B.	Dallas, TX
State Bank and Trust Company, Dallas	Dallas, TX
Del Rio Bank & Trust Company	Del Rio, TX
Western Bank and Trust	Duncanville, TX
Mid-Coast Savings Bank, S.S.B.	Edna, TX
Bank of the West	El Paso, TX
Houston Savings Bank, fsb	Houston, TX
New Era Life Insurance Company	Houston, TX
OmniBank, N.A.	Houston, TX
Southwest Bank of Texas, N.A.	Houston, TX
First National Bank of Hughes Springs	Hughes Springs, TX
Brazos Bank, N.A.	Joshua, TX
International Bank of Commerce	Laredo, TX
East Texas National Bank of Marshall	Marshall, TX
Interstate Bank, ssb	Perryton, TX
Cypress Bank, FSB	Pittsburg, TX
Benchmark Bank	Quinlan, TX
Peoples State Bank	Rocksprings, TX
Texas State Bank	San Angelo, TX
State Bank & Trust of Seguin, Texas	Seguin, TX
Cedar Creek Bank	Seven Points, TX
Citizens Bank of Lubbock County	Slaton, TX
Southside Bank	Tyler, TX
First Victoria National Bank	Victoria, TX
Texas Bank	Weatherford, TX
International Bank of Commerce	Zapata, TX

FEDERAL HOME LOAN BANK OF TOPEKA—DISTRICT 10

Gateway Credit Union	Aurora, CO
FirstBank of Avon	Avon, CO
Canon National Bank	Canon City, CO
Ent Federal Credit Union	Colorado Springs, CO
First State Bank, Colorado Springs	Colorado Springs, CO
Citizens State Bank of Cortez	Cortez, CO
Guaranty Bank and Trust Company	Denver, CO
1st Choice Bank	Greeley, CO
Commercial Bank of Leadville	Leadville, CO
The State Bank	Rocky Ford, CO
FirstBank of Vail	Vail, CO
Community State Bank	Coffeyville, KS
First National Bank	Conway Springs, KS
City State Bank	Fort Scott, KS
Liberty Savings Association, FSA	Fort Scott, KS

First FS&LA of Independence	Independence, KS
First National Bank	Independence, KS
Iola Bank and Trust Company	Iola, KS
MidAmerican Bank & Trust Company, N.A.	Leavenworth, KS
Kansas State Bank of Manhattan	Manhattan, KS
Kansas State Bank	Overbrook, KS
Rose Hill State Bank	Rose Hill, KS
Bennington State Bank	Salina, KS
Security State Bank	Scott City, KS
First Federal Savings & Loan	WaKeeney, KS
Kaw Valley State Bank and Trust Company	Wamego, KS
Fidelity Bank	Wichita, KS
Columbus Federal Savings Bank	Columbus, NE
Crete State Bank	Crete, NE
Equitable Building and Loan Association, FSB	Grand Island, NE
Home FS&LA of Grand Island	Grand Island, NE
Hershey State Bank	Hershey, NE
Nebraska National Bank	Kearney, NE
Home FS&LA of Nebraska	Lexington, NE
Lincoln Federal Savings Bank of Nebraska	Lincoln, NE
Security Federal Savings	Lincoln, NE
Sherman County Bank	Loup City, NE
First National Bank Northeast	Lyons, NE
Madison County Bank	Madison, NE
Pinnacle Bank	Mitchell, NE
Bank of Norfolk	Norfolk, NE
First American Savings Bank, FSB	Omaha, NE
Sidney Federal Savings and Loan Association	Sidney, NE
Dakota County State Bank	S. Sioux City, NE
Tecumseh Building and Loan Association	Tecumseh, NE
Farmers State Bank	Wallace, NE
Bank of Commerce	Adair, OK
Federal Credit Union	Bartlesville, OK
Bank of Cordell	Cordell, OK
Grand Lake Bank	Grove, OK
Bank of Hydro	Hydro, OK
Citizens State Bank	Okemah, OK
First Enterprise Bank	Oklahoma City, OK
Union Bank and Trust Company	Oklahoma City, OK
Will Rogers Bank	Oklahoma City, OK
Community Bank and Trust Company	Tulsa, OK
ONECU Federal Credit Union	Tulsa, OK

FEDERAL HOME LOAN BANK OF SAN FRANCISCO—DISTRICT 11

Fremont Investment and Loan	Anaheim, CA
Vista Federal Credit Union	Burbank, CA
Palomar Savings and Loan	Escondido, CA
First Bank and Trust	Huntington Bch., CA
La Jolla Bank, F.S.B.	La Jolla, CA
Eastern International Bank	Los Angeles, CA
People's Bank of California	Los Angeles, CA
Napa National Bank	Napa, CA
Wescom Credit Union	Pasadena, CA
San Diego County Credit Union	San Diego, CA
Chevron Federal Credit Union	San Francisco, CA
United Commercial Bank	San Francisco, CA
Bank USA	Santa Cruz, CA
Luther Burbank Savings	Santa Rosa, CA
Sentinel Community Bank	Sonora, CA
Tracy Federal Bank, F.S.B.	Tracy, CA

FEDERAL HOME LOAN BANK OF SEATTLE—DISTRICT 12

National Bank of Alaska	Anchorage, AK
First Bank	Ketchikan, AK
First S&LA of America	Dededo, GU
Realty Finance, Inc.	Hilo, HI
Central Pacific Bank	Honolulu, HI
Territorial Savings and Loan Association	Honolulu, HI
Farmers and Merchants State Bank	Boise, ID
Home FS&LA of Nampa, Idaho	Nampa, ID
Valley Bank of Helena	Helena, MT
American Bank of Montana	Livington, MT
Centennial Bank	Eugene, OR
Liberty Federal Bank, A S.B.	Eugene, OR

Chetco Federal Credit Union	Harbor, OR
Bank of Southern Oregon	Medford, OR
West Coast Bank	Newport, OR
Pioneer Trust Bank, N.A.	Salem, OR
Wood Products Credit Union	Springfield, OR
Draper Bank and Trust	Draper, UT
McKay Dee Hospital Credit Union	Ogden, UT
American Investment Bank, N.A.	Salt Lake City, UT
Mountain America Credit Union	Salt Lake City, UT
Zions First National Bank of Utah	Salt Lake City, UT
Kitsap Community Federal Credit Union	Bremerton, WA
The Wheatland Bank	Davenport, WA
Washington State Bank NA	Federal Way, WA
Issaquah Bank	Issaquah, WA
First Community Bank of Washington	Lacey, WA
Cowlitz Bank	Longview, WA
Pacific Northwest Bank	Seattle, WA
United Savings and Loan Bank	Seattle, WA
Viking Community Bank	Seattle, WA
Spokane Teachers Credit Union	Spokane, WA
Sound Banking Company	Tacoma, WA
TAPCO Credit Union	Tacoma, WA
First Savings Bank of Washington	Walla Walla, WA
Equality State Bank	Cheyenne, WY
Security First Bank	Cheyenne, WY
Ranchester State Bank	Sheridan, WY

II. Public Comments

To encourage the submission of public comments on the community support performance of FHLBank members, on or before May 1, 1999, each FHLBank will notify its Advisory Council and nonprofit housing developers, community groups, and other interested parties in its district of the members selected for community support review in the 1998–99 fifth quarter review cycle. 12 CFR 936.2(b)(2)(ii). In reviewing a member for community support compliance, the Finance Board will consider any public comments it has received concerning the member. *Id.* 936.2(d). To ensure consideration by the Finance Board, comments concerning the community support performance of members selected for the 1998–99 fifth quarter review cycle must be delivered to the Finance Board on or before the May 31, 1999 deadline for submission of Community Support Statements.

By the Federal Housing Finance Board.

William W. Ginsberg,

Managing Director.

[FR Doc. 99–8934 Filed 4–8–99; 8:45 am]

BILLING CODE 6725–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984.

Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, NW., Room 962. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

Agreement No.: 202–006190–089

Title: Venezuelan American Maritime Association

Parties:

APL Co. Pte. Ltd.
Consorcio Naviero de Occidente C.A.
Crowley American Transport, Inc.
King Ocean Services de Venezuela
Seaboard Marine of Florida, Inc.

Synopsis: The proposed modification would authorize the parties to discuss and agree upon the terms of their respective individual service contracts, to exchange information concerning these contracts, and agree on voluntary service contract guidelines. The modification also makes other conforming and administrative changes.

Agreement No.: 202–009648–107

Title: Inter-American Freight Conference D/B/A/ East Coast South America Association

Parties:

Alianca Transportes Maritimos S.A.
APL Co. Pte. Ltd.
Columbus Line
Crowley American Transport
Ivaran Lines Limited
Libra Navegacao SA
Mexican Line Limited
P&O Nedlloyd B.V.

Synopsis: The proposed amendment modifies Article 6(d) to authorize the agreement counsel to act as agent for the parties in executing and filing amendments to the Agreement. It also modifies Article 14(a) to authorize the parties to discuss the terms and procedures of their individual service contracts and adopt voluntary guidelines.

By Order of the Federal Maritime Commission.

Dated: April 5, 1999.

Ronald D. Murphy,

Assistant Secretary.

[FR Doc. 99–8830 Filed 4–8–99; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR part 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, DC 20573.

Future Freight Systems Inc., 48 Third Street, South Kearny, NY 07032, Officers: Joseph Sade, President, Owen Colin Stewart, Vice President.

Dated: April 5, 1999.
Ronald D. Murphy,
Assistant Secretary.
[FR Doc. 99–8829 Filed 4–8–99; 8:45 am]
BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Agency information collection activities: Announcement of Board approval under delegated authority and submission to OMB

AGENCY: Board of Governors of the Federal Reserve System

SUMMARY

Background. Notice is hereby given of the final approval of proposed information collections by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 CFR 1320.16 (OMB Regulations on Controlling Paperwork Burdens on the Public). Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the OMB 83-Is and supporting statements and approved collection of information instrument(s) are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

FOR FURTHER INFORMATION CONTACT:
Chief, Financial Reports Section--Mary M. West--Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202-452-3829)
OMB Desk Officer--Alexander T. Hunt--Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503 (202-395-7860)

Final approval under OMB delegated authority of the extension for three years, without revision, of the following reports:

1. *Report title:* Notification of Foreign Branch Status
Agency form number: FR 2058
OMB Control number: 7100-0069
Frequency: On occasion
Reporters: State member banks, national banks, bank holding companies, Edge and agreement corporations.
Annual reporting hours: 20 hours.
Estimated average hours per response: 15 minutes.
Number of respondents: 80
Small businesses are not affected.
General description of report: This information collection is mandatory (12 U.S.C. 321, 601, 602, 615, and 1844(c)) and is not given confidential treatment.
Abstract: Member banks, bank holding companies, and Edge and agreement corporations are required to notify the Federal Reserve System of the opening, closing, or relocation of an approved foreign branch. The notice requests information on the location and extent of service provided by the branch, and is filed within thirty days of the change in status. The Federal Reserve System needs the information requested on the FR 2058 form to fulfill supervisory responsibilities specified in Regulation K including the supervision of foreign branches of U.S. banking organizations.

Regulation K, "International Banking Operations," sets forth the conditions under which a foreign branch may be established. For their initial establishment of foreign branches, organizations must request prior Federal Reserve approval as directed in Attachment A of the FR K-1, "International Applications and Prior Notifications Under Subparts A and C of Regulation K" (OMB No. 7100-0107). For subsequent branch establishments into additional foreign countries, organizations must give the Federal Reserve System forty-five days prior written notice using Attachment B of FR K-1. Organizations use the FR 2058 notification to notify the Federal Reserve when any of these branches has been opened, closed, or relocated.

2. *Report title:* International Applications and Prior Notifications under Subparts A and C of Regulation K.
Agency form number: FR K-1
OMB control number: 7100-0107
Effective date: May 10, 1999.
Frequency: On occasion
Reporters: State member banks, national banks, bank holding companies, Edge and agreement corporations, and certain foreign banking organizations.
Annual reporting hours: 636 hours.
Estimated average hours per response: Attachments A - G: 10; Attachments H, I: 15; and Attachment J: 20.
Number of respondents: 36
Small businesses are not affected.
General description of report: This information collection is mandatory (12 U.S.C. 601-604(a), 611-631, 1843(c)(13), 1843(c)(14), and 1844(c)) and is not given confidential treatment. The applying organization has the opportunity to request confidentiality for information that it believes will qualify for a Freedom of Information Act exemption.
Abstract: The FR K-1 comprises a set of applications and notifications that govern the formation of Edge or agreement corporations and the international and foreign activities of U.S. banking organizations. The applications and notifications collect information on projected financial data, purpose, location, activities, and management. The Federal Reserve requires these applications for regulatory and supervisory purposes and to allow the Federal Reserve to fulfill its statutory obligations under the Federal Reserve Act and the Bank Holding Company Act of 1956.
Regulatory Flexibility Act Statement: The Board certifies that the extension of the above applications and notifications is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

Final approval under OMB delegated authority of the extension for three years, with revision, of the following reports:

1. *Report title:* Reports Related to Public Welfare Investments of State Member Banks.
Agency form number: FR H-6
OMB control number: 7100-0278
Effective date: May 10, 1999.
Frequency: Event-generated
Reporters: State member banks.
Annual reporting hours: 78 hours.
Estimated average hours per response: Investment Notice: 2; Application: 2.75; Extension of divestiture period: 5
Number of respondents: 35
Small businesses are not affected.
General description of report: This information collection is required to obtain a benefit (12 U.S.C. 338a) and is generally not given confidential treatment. However, if the information collected contains an examination rating (or other supervisory information), that information would be exempt from disclosure (5 U.S.C. 552(b)(4)).
Abstract: The FR H-6 comprises of an investment notice, application for Board approval of an investment, and request for extension of the divestiture period of an investment. The state member banks may make certain public welfare investments without prior Board approval, they need only notify the Federal Reserve. Certain other public welfare investments require prior approval and the request must be submitted to the Board. If an investment ceases to conform to certain requirements the state member bank must divest itself of the investment. In some cases the bank must submit a

request for extension of the divestiture period. The proposed revisions for the FR H-6 would conform the information collection with the recently revised Regulation H. The Board is eliminating the requirement that, to avoid applying for Board approval, the investment must be smaller than 2 percent of capital and surplus. This should result in fewer applications and more notices of investments not requiring Board approval. Additionally, a requirement has been added to the application for Board approval: if the bank is not permitted to make the investment without Board approval, the institution must explain the reason(s) why the investment is ineligible.

Regulatory Flexibility Act Analysis: Pursuant to section 605(b) of the Regulatory Flexibility Act (RFA) (5 U.S.C. 605(b)) the Federal Reserve hereby certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities.

2. Report title: Application for Prior Approval to Become a Bank Holding Company, or for a Bank Holding Company to Acquire an Additional Bank or Bank Holding Company

Agency form number: FR Y-3
OMB control number: 7100-0121
Frequency: Event-generated
Reporters: Corporations seeking to become bank holding companies, or bank holding companies and state chartered banks that are members of the Federal Reserve System
Annual reporting hours: 30,443 hours.
Estimated average hours per response: Section 3(a)(1): 49 hours; Section 3(a)(3) and 3(a)(5): 59.5 hours
Number of respondents: Pursuant to Section 3(a)(1): 274; Pursuant to Section 3(a)(3) and 3(a)(5): 286
Small businesses are affected.
General description of report: This information collection is mandatory (12 U.S.C. sections 1842(a)(1), (a)(3), and (a)(5) and 12 U.S.C. section 1844(c)). Individual respondent data are available to the public except any portions which have been granted confidential treatment at the applicant's request (5 U.S.C. 552 (b)(4) and (b)(8)).

Abstract: This application collects information concerning proposed bank holding company formations, acquisitions, and mergers between banks and bank holding companies for review by the Federal Reserve. The application collects financial and managerial information and data on competitive and public convenience factors.

Current Actions: Tier 3 capital is now included in the information requested for question 4.d of the FR Y-3 due to changes in the international risk-based capital standards. Information on debt servicing has been added to the FR Y-3 to conform the report with revisions to sections 225.24 and 225.17 of Regulation Y.

Clarifications have been made to the "Competition and Convenience and Needs" section of the application to remove certain outdated references. Question 11 of this section has been clarified and question 12 of this section has been revised to conform with proposed changes to the Interagency Bank Merger Act Application (FR 2070; OMB No. 7100-0171). In addition, clarifications were made to the publication requirements for this application.

3. Report title: Application for Prior Approval to Engage Directly or Indirectly in Certain Nonbanking Activities.

Agency form number: FR Y-4
OMB control number: 7100-0121
Frequency: Event-generated
Reporters: Bank holding companies
Annual reporting hours: 4,147 hours.
Estimated average hours per response: Post-consummation: 0.50 hours; Expedited notification: 5 hours; Complete notification: 12 hours.
Number of respondents: Post-consummation: 29; Expedited notification: 92; Complete notification: 306.
Small businesses are affected.
General description of report: This information collection is mandatory (12 U.S.C. § 1843 and 1844 (c)). Individual respondent data are available to the public except any portions granted confidential treatment at the applicant's request (5 U.S.C. § 552(b)(4) and (8)).

Abstract: This form is completed by a bank holding company seeking prior approval (1) to acquire or retain the assets or shares of a nonbank company or (2) to engage *de novo* in nonbank activities. Most applications require information on the proposed transaction, information on competition and public benefits, and financial and managerial information. For applications to engage *de novo* in nonbank activities permissible under Regulation Y, less detailed information is required.

Current Actions: The Federal Reserve has revised the FR Y-4 to reflect changes to Regulation Y that provide for two separate streamlined procedures for certain nonbanking proposals that are intended to reduce significantly regulatory burden and to improve the ability of well-run bank holding companies to respond quickly to changes in the market place. The FR Y-4 has become a notification form instead of an application.

Final approval under OMB delegated authority the implementation of the following report:

1. Report title: Notice for Prior Approval to Become a Bank Holding Company, or for a Bank Holding Company to Acquire an Additional Bank or Bank Holding Company

Agency form number: FR Y-3N
OMB control number: 7100-0121
Frequency: Event-generated
Reporters: Corporations seeking to become bank holding companies, or bank holding companies and state chartered banks that are members of the Federal Reserve System.
Annual reporting hours: 945 hours.
Estimated average hours per response: 5 hours.
Number of respondents: 189
Small businesses are affected.
General description of report: This information collection is mandatory (12 U.S.C. § 1844(c)). Individual respondent data are available to the public except any portions which have been granted confidential treatment at the applicant's request (5 U.S.C. 552 (b)(4) and (b)(8)).

Abstract: The Federal Reserve is implementing the FR Y-3N due to Regulation Y revisions that provide for streamlined processes for reviewing applications and notifications from respondents meeting certain qualifying criteria. The FR Y-3N requests substantially less information than the previous FR Y-3 for respondents that meet the qualifying criteria.

Current Actions: The FR Y-3N reporting form is used for: (1) notifications filed using the abbreviated notice procedures for certain BHC formations, as described in section 225.17 of Regulation Y; (2) notifications filed to acquire shares, assets, or control of a bank, or a merger or consolidation between BHCs, filed under the streamlined procedures described in section 225.14 of Regulation Y, and (3) notifications filed to acquire a nonbank insured depository institution that require approval under section 4 of the BHC Act, if the BHC and the proposal would meet all of the criteria for expedited action under section 225.14 if the nonbank insured depository institution were a bank.

Board of Governors of the Federal Reserve System, April 5, 1999.

Jennifer J. Johnson

Secretary of the Board.

[FR Doc. 99–8824 Filed 4–8–99; 8:45am]
Billing Code 6210–01–F

FEDERAL RESERVE SYSTEM

Agency information collection activities: Announcement of Board approval under delegated authority and submission to OMB

AGENCY: Board of Governors of the Federal Reserve System

SUMMARY

Background. Notice is hereby given of the final approval of a proposed information collection by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 CFR 1320.16 (OMB Regulations on Controlling Paperwork Burdens on the Public). Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the OMB 83-Is and supporting statements and approved collection of information instrument(s) are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

FOR FURTHER INFORMATION CONTACT: Chief, Financial Reports Section--Mary M. West--Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202-452-3829).

OMB Desk Officer--Alexander T. Hunt--Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503 (202-395-7860)

Final approval under OMB delegated authority of the extension for three years, without revision, of the following report:

1. Report title: Recordkeeping Requirements Associated with the Real Estate Lending Standards Regulation.

Agency form number: FR H-5

OMB Control number: 7100-0261

Effective Date: May 10, 1999.

Frequency: Aggregate report: Quarterly; Policy Statement: On occasion.

Reporters: State Member Banks.

Annual reporting hours: 20,100 hours.

Estimated average hours per response: Aggregate Report: 5 hours; Policy Statement: 20 hours.

Number of respondents: Aggregate Report: 989; Policy Statement: 16. Small businesses are affected.

General description of report: This information collection is mandatory (12 U.S.C. 1828(o)). Since this is a recordkeeping requirement the Federal Reserve does not collect this information and confidentiality under the Freedom of Information Act (FOIA) is not generally an issue.

Abstract: This information collection is a recordkeeping requirement contained in the Board's Regulation H (12 CFR 208.51) that implements section 304 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA). It requires state member banks to adopt and maintain a written real estate lending policy. Also, banks must identify their loans in excess of the supervisory loan-to-value limits and report (at least quarterly) the aggregate amount of the loans to the bank's board of directors.

Regulatory Flexibility Act Statement: Pursuant to section 605(b) of the Regulation Flexibility Act (RFA) (5 U.S.C. 605(b)) the Federal Reserve hereby certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities.

Board of Governors of the Federal Reserve System, April 5, 1999.

Jennifer J. Johnson.

Secretary of the Board.

[FR Doc. 99–8825 Filed 4–8–99; 8:45am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than April 23, 1999.

A. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

1. Michael E. Golden, and Steven D. Schwartz, both of Boca Raton, Florida; to acquire voting shares of Southern Security Bank Corporation, Hollywood, Florida, and thereby indirectly acquire voting shares of Southern Security Bank, Hollywood, Florida.

Board of Governors of the Federal Reserve System, April 5, 1999.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 99–8827 Filed 4–8–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 3, 1999.

A. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

1. Citizens Bancshares of Southwest Florida, Naples, Florida; to become a bank holding company by acquiring 100 percent of the voting shares of Citizens National Bank of Southwest Florida, Naples, Florida (in organization).

Board of Governors of the Federal Reserve System, April 5, 1999.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 99–8826 Filed 4–8–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 23, 1999.

A. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

1. Southern Security Bank Corporation, Hollywood, Florida; to acquire First Colonial Securities Group, Inc., Boca Raton, Florida, and thereby engage in providing financial and investment advisory services, pursuant to § 225.28(b)(6) of Regulation Y; in agency transactional services for customer investments, pursuant to § 225.28(b)(7) of Regulation Y; and in investment transactions as principal, pursuant to § 225.28(b)(8) of Regulation Y.

B. Federal Reserve Bank of San Francisco (Maria Villanueva, Manager of Analytical Support, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105-1579:

1. Wells Fargo & Company, San Francisco, California; Norwest Mortgage, Inc., Des Moines, Iowa; and Norwest Ventures, LLC, Des Moines, Iowa; to engage *de novo* through their subsidiary, New England Home Loans, LLC, Hamden, Connecticut, through a joint venture with Beazley Mortgage LLC, New Haven, Connecticut, in mortgage lending, pursuant to § 225.28(b)(1) of Regulation Y.

Board of Governors of the Federal Reserve System, April 5, 1999.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 99–8828 Filed 4–8–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

TIME AND DATE: 10:00 a.m., Wednesday, April 14, 1999.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any matters carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Lynn S. Fox, Assistant to the Board; 202–452–3204.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at http://www.federalreserve.gov for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: April 7, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–8986 Filed 4–7–99; 10:53 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Health Care Policy and Research Privacy Act of 1974; Annual Publication of Systems of Records

AGENCY: Agency for Health Care Policy and Research, HHS.

ACTION: Annual publication of revisions to HHS Privacy Act system notices.

SUMMARY: The Agency for Health Care Policy and Research (AHCPR) is publishing this notice in accordance with the Office of Management and Budget Circular No. A–130, Appendix I, Federal Agency Responsibilities for Maintaining Records About Individuals, which requires that agencies review each system of records annually and publish any minor changes in the **Federal Register**.

AHCPR has completed the annual review of its systems of records and is publishing below (1) the table of contents which lists all active systems of records in AHCPR, and (2) those minor changes which an individual needs to know to obtain his or her records, such as changes in the system location of records or the address of system managers.

Dated: March 29, 1999.

John M. Eisenberg,

Administrator.

Table of Contents

09–35–0001 Agency for Health Care Policy and Research, Grants Information and Tracking System with Contracts Component (GIAnT), HHS/AHCPR/OM

09–35–0002 Agency for Health Care Policy and Research, Medical Expenditure Panel Survey (MEPS) and National Medical Expenditure Survey 2 (NMES 2), HHS/AHCPR/CCFS

09–35–0001

SYSTEM NAME:

Grants Information and Tracking System With Contracts Component (GIAnT), HHS/AHCPR/OM.

Minor changes have been made to this system notice. The following category is hereby revised:

SYSTEM MANAGER(S) AND ADDRESS:

GIAnT Policy-Coordinating Official, GIAnT Administrator, Office of Management, Agency for Health Care Policy and Research, Executive Office Center, 2101 E. Jefferson Street, Rockville, Maryland 20852, (301) 594–1439.

Director, Division of Grants Management, Office of Management, AHCPR, Executive Office Center, Suite 601, 2101 E. Jefferson Street, Rockville, Maryland 20852.

09–35–0002

SYSTEM NAME:

Medical Expenditure Panel Survey (MEPS) and National Medical Expenditure Survey 2 (NMES 2), HHS/AHCPR/CCFS.

Minor changes have been made to this system notice. The following category is hereby revised:

SYSTEM MANAGER(S) AND ADDRESS:

Director, Survey Operations Team, CCFS/AHCPR, Executive Office Center, Suite 501, 2101 East Jefferson Street, Rockville, Maryland 20852.

[FR Doc. 99–8823 Filed 4–8–99; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control And Prevention

[INFO–99–14]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of section 3506 (c) (2) (A) of the Paperwork Reduction Act of 1995, the Centers for Disease Control and Prevention is providing opportunity for public comment on proposed data collection projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 639–7090.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques for other forms of information technology. Send comments to Seleda Perryman, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Project

1. An Evaluation Study of Tuberculosis Control and Prevention Measures Implemented in Large City and County Jails—New—The Centers for Disease Control and Prevention (CDC), National Center for HIV, STD, TB Prevention (NCHSTP), Division of TB Elimination, Field Services proposes to conduct a survey to determine the extent that jails have implemented the 1996 recommendations of the Advisory Council for the Elimination of Tuberculosis, Prevention and Control of Tuberculosis in Correctional Facilities [MMWR 1996:45 (No. RR–8)]. The purpose of this evaluation is to determine to what extent the recommendations have been implemented and to identify barriers for implementation of the recommendations. The objectives are to define the knowledge of the recommendations among correctional staff, to identify barriers for the adoption and implementation of the recommendations, and to initiate a dialogue between public health and correctional officials on how to utilize the study results for improving TB control and prevention in the jails.

This project will assess the types and adequacy of the TB control measures that are in place in jails. The first component of this project is a survey of the largest jails to define the size of the TB problem in their populations, to review the infection control procedures that are in place, and determine the tracking mechanisms for information concerning skin test results and completion of therapy. The second component consists of on-site observation of the infection control process to observe the processing and evaluation of inmates and the infection control infrastructure (e.g., isolation procedures).

The evaluation project will be voluntary and only correctional staff will participate; no prisoners will be interviewed or asked to complete a written survey. The total cost to respondents is $0.00.

Respondents	Number of respondents	Responses per respondent	Hours per response (in hrs.)	Total burden hours
Mail survey including initial contact	50	1	2	100
Site visits	10	1	12	120
Total	.....	.....	.....	220

2. Gene-Environment Interactions in Beryllium Sensitization and Disease Among Current and Former Beryllium Industry Workers—NEW National Institute for Occupational Safety and Health (NIOSH) Beryllium is a light weight metal with wide application in modern technology. The size of the USA workforce at risk of beryllium exposure is estimated at approximately 30,000, with exposed workers in primary production, nuclear power and weapons, aerospace, scrap metal reclaiming, specialty ceramics, and electronics industries. Demand for beryllium is growing worldwide, which means that increasing numbers of workers are likely to be exposed. An acute pneumonitis due to occupational exposure to beryllium was common in the 1940s and 1950s, but has virtually disappeared with improvements in work-site control measures. Even with the improved controls, as many as 5% of currently-exposed workers will develop chronic beryllium disease (CBD).

CBD is a chronic granulomatous lung disease mediated through a poorly understood immunologic mechanism in workers who become sensitized. Sensitization can be detected using a blood test, that is used by the industry as a screening tool. The screening test for sensitization was first reported in 1989, but many questions remain about the natural history of sensitization and disease, as well as exposure risk factors. Sensitized workers, identified through workplace screening programs, undergo clinical diagnostic tests to determine whether they have CBD. The proportion of sensitized workers who have beryllium disease at initial clinical evaluation has varied from 41–100% in different workplaces. Sensitized workers often develop CBD with follow-up, but whether all sensitized workers will eventually develop beryllium disease is unknown. Early diagnosis at the subclinical stage and careful follow-up seems prudent in that CBD usually responds to corticosteroid treatment. However, the efficacy of screening in

preventing adverse outcomes of the disease has not yet been evaluated. While recent research has suggested that a genetic determinant of the immune response could be a susceptibility factor, this has not been well characterized.

The National Institute of Occupational Safety and Health (NIOSH) wants to determine how beryllium workers and former workers develop beryllium disease and how to prevent it. Through the proposed study, NIOSH has the opportunity to contribute to the scientific understanding of this disease in the context of environmental and genetic etiologic factors. The goals of this investigation are to: (1) Determine the incidence of beryllium sensitization or disease over a 6-year period; (2) seek an association with exposure measurements; (3) identify a genetic determinant of susceptibility to CBD; and (4) characterize that genetic determinant to ascertain if it is associated with clinical impairment or progression of disease. Through a greater understanding of the environmental and genetic risk factors associated with the onset and progression of CBD, NIOSH will be able to develop strategies for both primary and secondary prevention applicable to beryllium-exposed workers. The total cost to respondents is $0.00.

Respondents	Number of respondents	Responses per respondent	Hours per response (in hrs.)	Total burden hours
Former Workers	175	1	0.5	87.5

3. Health Message Development and Pretesting System—NEW—Office of the Director, Office of Communications (OC). The Centers for Disease Control and Prevention (CDC) is the federal government's principal agency for research on preventable causes of death and disease, including dissemination of information for the prevention and control of certain diseases and injuries. The CDC provides communication between the agency and a variety of audiences, including Congress, other executive agencies, state and local governments, scientific and medical communities and institutions, academic institutions, voluntary organizations, the press, the general public, and members of the public diagnosed with certain diseases. Because CDC is mandated to communicate with these audiences about disease prevention and control, and because CDC programs are based on solid science, a science-based data collection system for developing and pretesting audience messages is necessary. Special circumstance surround the timeliness of this data collection system.

First of all, CDC receives mandates from Congress to provide the public with certain health information within a specified time frame. Secondly, CDC may need to act quickly in response to media interest in specific health-related subjects. The media can quickly escalate health issues in the public's mind and indeed, they often drive communication efforts on health issues that are acute, controversial, or threatening. In these situations, CDC will need to quickly conduct research to learn the best way to counteract misinformation or reinforce correct information through a health communication campaign. Thirdly, CDC prevention and control recommendations are often part of consensus conferences with multiple sister agencies and private and public sector partners. Because we need to translate the scientific messages that may be released from a consensus conference or alliance meeting, CDC is often in need of fast and effective ways of testing these message translations for the public and the media on a very short timeline. Finally, many CDC programs are working with private or public sector partners who can provide paid placement for CDC messages. CDC needs an empirically-driven system of comparing messages across audience groups and across disease problems to assist partners with selecting the most effective messages for partnerships. Partners look to CDC to provide this leadership in communication science and research. This means that CDC needs a database system that can house the aggregate data from all message pretesting and allow researchers to compare messages to each other and to standardized effectiveness scores.

It is critical to CDC's mission and mandates to provide credible and effective messages to the many audiences we serve. Formative evaluation provides CDC with the most accepted and powerful tool available to make health messages as useful as possible for the audiences we serve. Without formative evaluation, CDC staff and experts will be unable to empirically predict the effectiveness of health materials and messages, and CDC would not be able to predict when messages are insensitive, offensive, or create unintended negative effects.

CDC needs a system that can not *only* test program messages using an empirical and accepted methodology, but *also* provides access to a system that is fast and effective at reaching a wide variety of audiences *and* provides comparison data for decision-making. The proposed system will allow CDC to provide audiences with the best scientific health information, in ways that are relevant to the audience, based on empirical communication research, and in a timely fashion.

This OMB submission is for message development and pretesting research of 130 messages per year for each of three years. The testing system will provide message development and pretesting research for 15 Centers, Institutes and Offices at CDC and across a wide range of program areas.

Response burden for each type of formative research method are summarized below. The estimated annual total burden hours are 6,945 across 130 different studies (CDC-wide). The total cost to respondents is $0.00.

Formative research method	Number of studies conducted across CDC	Number of respondents per study	Response per respondent	Hours per response (in hrs.)	Total burden hours
Focus Groups [1]	59	48	1	1.5	4,248
Central Location Intercept Interviews [2]	22	125	1	0.25	687
In-depth Interviews	34	15	1	1.0	510
Omnibus Surveys [3]	15	1,000	1	.10	1,500

Formative research method	Number of studies conducted across CDC	Number of respondents per study	Response per respondent	Hours per response (in hrs.)	Total burden hours
Total	130	1,188			6,945

[1] Based on the average number of 6 focus groups conducted by CDC and other organizations for each specific health program with 8 people per group.
[2] Based on the industry average of 125 people per pretest session.
[3] Based on the industry average of 1,000 people per omnibus poll and 6 minutes of telephone interview time.

Dated: April 2, 1999.

Nancy Cheal,

Acting Associate Director for Policy, Planning, and Evaluation, Centers for Disease Control and Prevention (CDC).

[FR Doc. 99–8725 Filed 4–8–99; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 99041]

Grants for Education Programs in Occupational Safety and Health; Notice of Availability of Funds for Fiscal Year 2000

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2000 funds for training grants in occupational safety and health. This program addresses the "Healthy People 2000" priority area of occupational safety and health. The purpose of the program is to provide an adequate supply of qualified personnel to carry out the purposes of the Occupational Safety and Health Act. The objective of the program is to award funds to eligible institutions or agencies to assist in providing an adequate supply of qualified professional occupational safety and health personnel. Funds are awarded for Occupational Safety and Health Education and Research Center Training Grants (ERCs) and for Long-Term Training Project Grants (TPGs). (See "D. Program Guidelines and Requirements".)

B. Eligible Applicants

Any public or private educational or training agency or institution that has demonstrated competency in the occupational safety and health field and is located in a State, the District of Columbia, or U.S. Territory is eligible to apply for a training grant.

Note: Public Law 104–65 states that an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, cooperative agreement, contract, loan, or any other form.

C. Availability of Funds and Types of Training Awards

In total, approximately $12,700,000 is expected to be available in FY 2000 to fund ERC and TPG programs.

1. For ERCs

Approximately $10,450,000 of the total funds available will be utilized as follows:

a. Approximately $8,000,000 is available to award eleven non-competing continuation and four competing continuations or new ERCs. Awards will range from $400,000 to $800,000 with the average award being $530,000.

b. Approximately $1,200,000 is available to award nine supplemental non-competing and three competing continuation or new training grants to support the development and presentation of continuing education and short courses and academic curricula for trainees and professionals engaged in the management of hazardous substances. Program support is available for faculty and staff salaries, trainee costs, and other costs to provide training and education for occupational safety and health and other professional personnel engaged in the evaluation, management, and handling of hazardous substances.

c. Approximately $250,000 is available to award four supplemental non-competing continuation grants. These awards will support the development of specialized educational programs in agricultural safety and health within the existing core disciplines of industrial hygiene, occupational medicine, occupational health nursing, and occupational safety.

d. Approximately $1,000,000 is available to award fifteen supplemental non-competing continuation grants to support the enhancement of the ERCs research training mission through the support of pilot project research training programs.

2. For TPGs

Approximately $2,250,000 of the total funds available will be utilized as follows:

a. To award approximately twenty-four, non-competing continuation and fifteen competing continuation or new TPG programs. Awards will range from approximately $10,000 to $500,000, with the average award being $58,000. These awards will support academic programs in the core disciplines (i.e., industrial hygiene, occupational health nursing, occupational/industrial medicine, and occupational safety and ergonomics) and relevant components (e.g., occupational injury prevention, industrial toxicology, ergonomics). These awards are intended to augment the scope, enrollment, and quality of training programs rather than to replace funds already available for current operations.

3. It is expected that awards will begin on or about 7/1/00 and will be made for a 12-month budget period within a project period of up to five years. Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

D. Program Guidelines and Requirements

The following are intended to serve as applicant guidelines and requirements:

1. An ERC shall be an identifiable organizational unit within the sponsoring organization. Applicants must meet the following characteristics in order to be considered responsive. If the characteristics are not met, the application will be considered non-responsive and will not be reviewed.

a. Cooperative arrangements with a medical school or teaching hospital (with an established program in preventive or occupational medicine); with a school of nursing or its equivalent; with a school of public health or its equivalent; or with a school of engineering or its equivalent. It is expected that other schools or departments with relevant disciplines and resources shall be represented and shall contribute as appropriate to the

conduct of the total program, e.g., epidemiology, toxicology, biostatistics, environmental health, law, business administration, and education. Specific mechanisms to implement the cooperative arrangements between departments, schools/colleges, universities, etc., shall be demonstrated in order to assure that the intended multidisciplinary training and education will be engendered.

b. An ERC Director who possesses a demonstrated capacity for sustained productivity and leadership in occupational health and safety education and training. The Director shall oversee the general operation of the ERC Program and shall, to the extent possible, directly participate in training activities. A Deputy Director shall be responsible for managing the daily administrative duties of the ERC and to increase the ERC Director's availability to ERC staff and to the public.

c. Program Directors who are full-time faculty and professional staff representing various disciplines and qualifications relevant to occupational safety and health who are capable of planning, establishing, and carrying out or administering training projects undertaken by the ERC. Each academic program, as well as the continuing education and outreach program shall have a Program Director.

d. Faculty and staff with demonstrated training and research expertise, appropriate facilities and ongoing training and research activities in occupational safety and health areas.

e. A program for conducting education and training in four core disciplines: occupational physicians, occupational health nurses, industrial hygienists, and occupational safety personnel. There shall be a minimum of five full-time students in each of the core programs, with a goal of a minimum of 30 full-time students (total in all of core programs together). ERCs are encouraged to recruit and train minority students to help address the under-representation of minorities among the occupational safety and health professional workforce. Although it is desirable for an ERC to have the full range of core programs, an ERC with a minimum of three components of which two are in the core disciplines is eligible for support providing it is demonstrated that students will be exposed to the principles and issues of all four core disciplines. In order to maximize the unique strengths and capabilities of institutions, consideration will be given to the development of: new and innovative academic programs that are relevant to the occupational safety and health field, e.g., ergonomics, industrial toxicology, occupational injury prevention, and occupational epidemiology; and to innovative technological approaches to training and education. ERCs must also document that the program covers an occupational safety and health discipline in critical need or meets a specific regional workforce need. Each core program curriculum shall include courses from non-core categories as well as appropriate clinical rotations and field experiences with public health and safety agencies and with labor-management health and safety groups. Where possible, field experience shall involve students representing other disciplines in a manner similar to that used in team surveys and other team approaches. ERCs should address the importance of providing training and education content related to special populations at risk, including minority workers and other sub-populations specified in the National Occupational Research Agenda (NORA) special populations at risk category.

f. A specific plan describing how trainees will be exposed to the principles of all other occupational safety and health core and allied disciplines. Consortium ERCs generally have geographic, policy and other barriers to achieving this ERC characteristic and, therefore, must give special, if not innovative, attention to thoroughly describing the approach for fulfilling the multidisciplinary interaction between students.

g. Demonstrated impact of the ERC on the curriculum taught by relevant medical specialties, including family practice, internal medicine, dermatology, orthopedics, pathology, radiology, neurology, perinatal medicine, psychiatry, etc., and on the curriculum of undergraduate, graduate and continuing education of primary core disciplines as well as relevant medical specialities and the curriculum of other schools such as engineering, business, and law.

h. An outreach program to interact with and help other institutions or agencies located within the region. Programs shall be designed to address regional needs and implement innovative strategies for meeting those needs. Partnerships and collaborative relationships shall be encouraged between ERCs and TPGs. Programs to address the under-representation of minorities among occupational safety and health professionals shall be encouraged. Specific efforts should be made to conduct outreach activities to develop collaborative training programs with academic institutions serving minority and other special populations, such as Tribal Colleges and Universities. Examples of outreach activities might include activities such as: Interaction with other colleges and schools within the ERC and with other universities or institutions in the region to integrate occupational safety and health principles and concepts within existing curricula (e.g., Colleges of Business Administration, Engineering, Architecture, Law, and Arts and Sciences); exchange of occupational safety and health faculty among regional educational institutions; providing curriculum materials and consultation for curriculum/course development in other institutions; use of a visiting faculty program to involve labor and management leaders; cooperative and collaborative arrangements with professional societies, scientific associations, and boards of accreditation, certification, or licensure; and presentation of awareness seminars to undergraduate and secondary educational institutions (e.g., high school science fairs and career days) as well as to labor, management and community associations.

i. A specific plan for preparing, distributing and conducting courses, seminars and workshops to provide short-term and continuing education training courses for physicians, nurses, industrial hygienists, safety engineers and other occupational safety and health professionals, paraprofessionals and technicians, including personnel from labor-management health and safety committees, in the geographical region in which the ERC is located. The goal shall be that the training be made available to a minimum of 400 trainees per year representing all of the above categories of personnel, on an approximate proportional basis with emphasis given to providing occupational safety and health training to physicians in family practice, as well as industrial practice, industrial nurses, and safety engineers. Priority shall be given to establishing new and innovative training technologies, including distance learning programs and to short-term programs designed to prepare a cadre of practitioners in occupational safety and health. Where appropriate, it shall be professionally acceptable that Continuing Education Units (as approved by appropriate professional associations) may be awarded. These courses should be structured so that higher educational institutions, public health and safety agencies, professional societies or other appropriate agencies can utilize them to provide training at the local level to occupational health and safety

personnel working in the workplace. Further, the ERC shall conduct periodic training needs assessments, shall develop a specific plan to meet these needs, and shall have demonstrated capability for implementing such training directly and through other institutions or agencies in the region. The ERC should establish and maintain cooperative efforts with labor unions, government agencies, and industry trade associations, where appropriate, thus serving as a regional resource for addressing the problems of occupational safety and health that are faced by State and local governments, labor and management.

j. A Board of Advisors or Consultants representing the user and affected population, including representatives of labor, industry, government agencies, academic institutions and professional associations, shall be established by the ERC. The Board should meet at least annually to advise an ERC Executive Committee and to provide periodic evaluation of ERC activities. The Executive Committee shall be composed of the ERC Director and Deputy Director, academic Program Directors, the Directors for Continuing Education and Outreach and others whom the ERC Director may appoint to assist in governing the internal affairs of the ERC.

k. A plan to incorporate research training into all aspects of training and, in research institutions, as documented by on-going funded research and faculty publications, a defined research training plan for training doctoral-level researchers in the occupational safety and health field. The plan will include how the ERC intends to strengthen existing research training efforts, how it will integrate research training activities into the curriculum, field and clinical experiences, how it will expand these research activities to have an impact on other primarily clinically-oriented disciplines, such as nursing and medicine, and how it will build on and utilize existing research opportunities in the institution. Each ERC is required to identify or develop a minimum of one, preferably more, areas of research focus related to work environment problems. Consideration shall be given to the CDC/NIOSH priority research areas identified in the National Occupational Health Research Agenda (NORA). (This publication may be obtained from NIOSH). The research training plan will address how students will be instructed and instilled with critical research perspectives and skills. This training will emphasize the importance of developing and working on interdisciplinary teams appropriate for addressing a research issue. It should also prepare students with the skill necessary for developing research protocols, pilot studies, outreach efforts to transfer research findings into practice, and successful research proposals. Such components of research training will require the ERCs to strive toward developing the faculty composition and administrative infrastructure essential to being Centers of Excellence in Occupational Safety and Health Research Training that are required to train research leaders of the future. The plan should address the incremental growth of such elements and evaluation of the plan commensurate with funds available. In addition to the research training components, the plan will also include such items as specific strategies for obtaining student and faculty funding, plans for acquiring equipment, if appropriate, and a plan for developing research-oriented faculty.

l. Evidence in obtaining support from other sources, including other Federal grants, support from States and other public agencies, and support from the private sector including grants from foundations and corporate endowments, chairs, and gifts.

2. TPG applicants must document that the program covers an occupational safety and health discipline in critical need or meets a specific regional workforce need. There shall be a minimum of three full-time students in each academic program. Applicants should address the importance of providing training and education content related to special populations at risk, including minority and disadvantaged workers. The types of training currently eligible for support are:

a. Graduate training for practice, teaching, and research careers in occupational safety and health. Priority will be given to programs producing graduates in areas of greatest occupational safety and health need. Strong consideration will be given to the establishment of innovative training technologies including distance learning programs.

b. Undergraduate and other pre-baccalaureate training providing trainees with capabilities for positions in occupational safety and health professions.

c. Special technical or other programs for long-term training of occupational safety and health technicians or specialists.

d. Special programs for development of occupational safety and health training curricula and educational materials, including mechanisms for effectiveness testing and implementation.

E. Application Content

Competing Applications

Use the information in the Program Guidelines and Requirements and Other Requirements sections to develop the application content. Your application will be evaluated on the basis of the Program Guidelines and Requirements, Other Requirements, and Evaluation Criteria sections listed, so it is important to follow them in laying out your program plan. The narrative should be no more than 15 single-spaced pages per program, printed on one side, with one inch margins, and unreduced font.

Note: Please consult the detailed Recommended Outline for Preparation of Competing New/Renewal Training Grant Applications provided in each application kit (CDC 2.145 A).

Noncompeting Continuation Applications

For noncompeting continuation applications submitted within the approved project period, include:

1. Brief progress report describing the accomplishments of the preceding budget period;

2. New or significantly revised items or information (objectives, scope of activities, operational methods, evaluation), that is not in the initial application; and

3. Annual budget and justification.

Note: Please consult the detailed Recommended Outline for Preparation of Non-competing Renewal (Continuation) Training Grant Applications (CDC 2.145 B) provided in each application kit.

F. Submission and Deadline

Applications should be clearly identified as an application for an ERC Training Grant or TPG grant.

Application

Deadline for New, Competing Continuation, and Supplemental Applications (CDC 2.145 A ERC or TPG): July 1, 1999

Deadline for Non-competing Continuation Applications (CDC 2.145 B ERC or TPG): November 15, 1999

Submit the original and two copies of CDC 2.145 A or B (OMB Number 0920–00261). Forms are in the application kit. Submit the application to:

Anne Foglesong, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Announcement 99041

Centers for Disease Control and Prevention (CDC), 2920 Brandywine Road, Room 3000, Atlanta, Georgia 30341–4146

Deadline: Applications shall be considered as meeting the deadline if they are either:

(a) Received on or before the deadline date; or

(b) Sent on or before the deadline date and received in time for orderly processing. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

Late Applications: Applications which do not meet the criteria in (a) or (b) above are considered late applications, will not be considered, and will be returned to the applicant.

G. Evaluation Criteria

In reviewing ERC grant applications, consideration will be given to:

1. Plans to satisfy the regional needs for training in the areas outlined by the application, including projected enrollment, recruitment and current workforce populations. Special consideration should be given to the development of programs addressing the under-representation of minorities among occupational safety and health professionals. Indicators of regional need should include measures utilized by the ERC such as previous record of training and placement of graduates. The need for supporting students in allied disciplines must be specifically justified in terms of user community requirements.

2. Extent to which arrangements for day-to-day management, allocation of funds and cooperative arrangements are designed to effectively achieve the Characteristics of an Education and Research Center.

3. The establishment of new and innovative programs and approaches to training and education relevant to the occupational safety and health field and based on documentation that the program meets specific regional workforce needs. In reviewing such proposed programs, consideration shall be given to the developing nature of the program and its capability to produce graduates who will meet such workforce needs.

4. Extent to which curriculum content and design includes formalized training objectives, minimal course content to achieve certificate or degree, course descriptions, course sequence, additional related courses open to occupational safety and health students, time devoted to lecture, laboratory and field experience, and the nature of specific field and clinical experiences including their relationships with didactic programs in the educational process.

5. Academic training including the number of full-time and part-time students and graduates for each core program, the placement of graduates, employment history, and their current location by type of institution (academic, industry, labor, etc.). Previous continuing education training in each discipline and outreach activity and assistance to groups within the ERC region.

6. Methods in use or proposed methods for evaluating the effectiveness of training and outreach including the use of placement services and feedback mechanisms from graduates as well as employers, innovative strategies for meeting regional needs, critiques from continuing education courses, and reports from consultations and cooperative activities with other universities, professional associations, and other outside agencies.

7. Competence, experience and training of the ERC Director, the Deputy ERC Director, the Program Directors and other professional staff in relation to the type and scope of training and education involved.

8. Institutional commitment to ERC goals.

9. Academic and physical environment in which the training will be conducted, including access to appropriate occupational settings.

10. Appropriateness of the budget required to support each academic component of the ERC program, including a separate budget for the academic staff's time and effort in continuing education and outreach.

11. Evidence of the integration of research experience into the curriculum, field and clinical experiences. In institutions seeking funds for doctoral and post-doctoral (physician training) level research training, evidence of a plan describing the research and research training the ERC proposes. This shall include goals, elements of the program, research faculty and amount of effort, support faculty, facilities and equipment available and needed, and methods for implementing and evaluating the program.

12. Evidence of success in attaining outside support to supplement the ERC grant funds including other Federal grants, support from States and other public agencies, and support from the private sector including grants from foundations and corporate endowments, chairs, and gifts.

13. Evidence of a strategy to evaluate the impact that the ERC and its programs have had on the DHHS Region. Examples could include a continuing education needs assessment, a workforce needs survey, consultation and research programs provided to address regional occupational safety and health problems, the impact on primary care practice and training, a program graduate data base to track the contributions of graduates to the occupational safety and health field, and the cost effectiveness of the program.

14. Past performance based on evaluation of the most recent CDC/NIOSH Objective Review Summary Statement and the grant application Progress Report (Competing Continuation applications only).

In reviewing supplements to ERC projects, consideration will be given to:

1. Hazardous Substance Training Program in ERCs—The evaluation criteria are as follows:

a. Relevance of the proposed project to each element of the characteristics of a hazardous substance training program.

b. Comprehensiveness and soundness of the training plan developed to carry out the proposed activities. This is based on a documented need for the training and evidence to support the approach used to provide the required training. It includes descriptions of the scope and magnitude of the hazardous substance problem in the applicable DHHS Region and current activities and training efforts.

c. Education and experience of the Project Director, faculty, and staff assigned to this project with respect to handling, managing or evaluating hazardous substance sites and to the training of professionals in this field.

d. Creativity and innovation of the project leadership with respect to marketing the courses, structure in attracting trainees and/or providing incentives for training.

e. Extent to which the applicant considered the work of relevant agencies involved in hazardous substance activities and cooperated with these agencies in developing and implementing this training program.

f. Suitability of facilities and equipment available for this project.

g. Appropriateness of the budget to carry out the planned activities.

2. Agricultural Safety and Health Education Programs in ERCs—The evaluation criteria are as follows:

a. Evidence of a needs assessment directed to the overall contribution of the training program toward meeting the job market, especially within the applicant's region, for qualified personnel to carry out the purposes of the Occupational Safety and Health Act of 1970. The needs assessment should consider the regional requirements for

outreach, continuing education, information dissemination and special industrial or community training needs that may be peculiar to the region.

b. Evidence of a plan to satisfy the regional needs for training in the areas outlined by the application, including protected enrollment, recruitment and current workforce populations. The need for supporting students in allied disciplines must be specifically justified in terms of user community requirements.

c. The extent to which arrangements for day-to-day management, allocation of funds and cooperative arrangements are designed to effectively achieve characteristics of an ERC.

d. The extent to which curriculum content and design includes formalized training objectives, minimal course content to achieve certificate or degree, course descriptions, course sequence, additional related courses open to occupational safety and health students, time devoted to lecture, laboratory and field experience, and the nature of specific field and clinical experiences including their relationships with didactic programs in the educational process.

e. Previous record of academic training in agricultural safety and health including the number of full-time and part-time students and graduates for each core program, the placement of graduates, employment history, and their current location by type of institution (academic, industry, labor, etc.). Previous record of continuing education training in agricultural safety and health and record of outreach activity and assistance to agricultural groups within the ERC region.

f. Methods in use or proposed for evaluating the effectiveness of training and services including the use of placement services and feedback mechanisms from graduates as well as employers, critiques from continuing education courses, and reports from consultations and cooperative activities with other universities, professional associations, and other outside agencies.

g. The competence, experience and training of the Center Director, the Deputy Center director, the Program directors and other professional staff in relation to the type and scope of training and education involved.

h. Institutional commitment to Center goals.

i. Academic and physical environment in which the training will be conducted, including access to appropriate occupational agricultural settings.

j. Appropriateness of the budget required to support each academic component of the ERC program, including a separate budget for the academic staff's time and effort in continuing education and outreach.

k. Evidence of a plan describing the agricultural safety and health training the Center proposes. This shall include goals, elements of the program, faculty and amount of effort, support faculty, facilities and equipment available and needed, and methods for implementing and evaluating the program.

l. Evidence of success in attaining outside support to supplement the ERC grant funds including other federal grants, support from states and other public agencies, and support from the private sector including grants from foundations and corporate endowments, chairs, and gifts.

3. Hazardous Substance Academic Training Program in ERCs—The evaluation criteria are as follows:

a. Evidence of a needs assessment directed to the overall contribution of the proposed training program toward meeting the job market, especially within the applicant's region, for qualified state, local and other qualified professional personnel. The needs assessment should consider the regional requirements for hazardous substance training, information dissemination and special industrial, labor or community training needs that may be peculiar to the region.

b. Evidence of a plan to satisfy the regional needs for training in the areas outlined by the application, including projected enrollment, recruitment and current workforce populations.

c. The extent to which arrangements for day-to-day management, allocation of funds and cooperative arrangements are designed to effectively achieve characteristics of an ERC.

d. The extent to which curriculum content and design includes formalized training objectives, minimal course content to achieve a degree, course descriptions, course sequence, additional related courses open to occupational safety and health students, time devoted to lecture, laboratory and field experience, and the nature of specific field and clinical experiences including their relationships with didactic programs in the educational process.

e. Previous record of academic training in hazardous substances including the number and type of students trained. Previous record of continuing education training in hazardous substances, outreach activity and assistance to hazardous substance groups within the ERC's region.

f. Methods in use or proposed for evaluating the effectiveness of training and services including the use of placement services and feedback mechanisms from graduates as well as employers, critiques from continuing education courses, and reports from consultations and cooperative activities with other universities, professional associations, and other outside agencies.

g. The competence, experience and training of the Center Director, the Deputy Center Director, the Program Directors and other professional staff in relation to the type and scope of training and education involved.

h. Institutional commitment to Center goals.

i. Academic and physical environment in which the training will be conducted.

j. Appropriateness of the budget required to support the training courses developed, including accounting for the academic staff's time.

k. Evidence of a plan describing the hazardous substances training the Center proposes. This shall include goals, elements of the program, faculty and amount of effort, support faculty, facilities and equipment available and needed, and methods for implementing and evaluating the program.

l. Evidence of success in attaining outside support to supplement the ERC grant funds including other federal grants, support from states and other public agencies, and support from the private sector including grants from foundations and corporate endowments, chairs, and gifts.

4. ERC Supplemental Pilot Project Research Training Programs—The evaluation criteria are as follows:

a. Relevance of the proposed program, including objectives that are specific and consistent.

b. Adequacy of the plan proposed to conduct the pilot projects program, including procedures for reviewing and funding projects, the scientific review mechanism, program quality assurance. Human Subjects—Are the procedures proposed adequate for the protection of human subjects and are they fully documented? Are all procedures in compliance with applicable published regulations?

c. Extent to which the applicant demonstrates collaboration with other research training institutions in the region, including NIOSH Training Project Grantees.

d. Education and experience of the proposed Research Training Program Director and faculty in the occupational safety and health field, including the utilization of pilot projects as a research training mechanism.

e. Appropriateness of the proposed budget to carry out the planned activities.

f. Adequacy of the plan to evaluate the effectiveness of the proposed pilot projects program.

g. Gender and minority issues—Are plans to include both sexes and minorities and their subgroups adequately developed (as appropriate for the scientific goals of the project)? Are strategies included for the recruitment and retention of human subjects?

In reviewing TPG applications, consideration will be given to:

1. Need for training in the program area outlined by the application. This should include documentation of a plan for student recruitment, projected enrollment, job opportunities, regional need both in quality and quantity, and for programs addressing the under-representation of minorities in the profession of occupational safety and health.

2. Potential contribution of the project toward meeting the needs for graduate or specialized training in occupational safety and health.

3. Curriculum content and design which should include formalized program objectives, minimal course content to achieve certificate or degree, course sequence, related courses open to students, time devoted to lecture, laboratory and field experience, nature and the interrelationship of these educational approaches. There should also be evidence of integration of research experience into the curriculum, field and clinical experiences.

4. Previous records of training in this or related areas, including placement of graduates.

5. Methods proposed to evaluate effectiveness of the training.

6. Degree of institutional commitment: Is grant support necessary for program initiation or continuation? Will support gradually be assumed? Is there related instruction that will go on with or without the grant?

7. Adequacy of facilities (classrooms, laboratories, library services, books, and journal holdings relevant to the program, and access to appropriate occupational settings).

8. Competence, experience, training, time commitment to the program and availability of faculty to advise students, faculty/student ratio, and teaching loads of the program director and teaching faculty in relation to the type and scope of training involved. The program director must be a full-time faculty member.

9. Admission Requirements: Student selection standards and procedures, student performance standards and student counseling services.

10. Advisory Committee: Membership, industries and labor groups represented; how often they meet; who they advise, role in designing curriculum and establishing program need.

11. Evidence of a strategy to evaluate the impact that the program has had on the region. Examples could include a workforce needs survey, consultation and research programs provided to address regional occupational safety and health problems, a program graduate data base to track the contributions of graduates to the occupational safety and health field, and the cost effectiveness of the program.

12. Past performance based on evaluation of the most recent CDC/NIOSH Objective Review Summary Statement and the grant application Progress Report (Competing Continuation applications only).

H. Other Requirements

Technical Reporting Requirements Provide CDC with original plus two copies of

1. progress reports (annual and may be incorporated as component of non-competing continuation applications);

2. financial status report, no more than 90 days after the end of the budget period; and

3. final financial status and performance reports, no more than 90 days after the end of the project period.

Send all reports to:

Anne Foglesong, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 2920 Brandywine Road, Room 3000, Atlanta, GA 30341–4146

The following additional requirements are applicable to this program. For a complete description of each, see Attachment 1 in the application kit.

AR–1* .. Human Subjects Requirements.
AR–2* .. Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research.
AR–3* .. Animal Subjects Requirements.
AR–10 .. Smoke-Free Workplace Requirements.
AR–11 .. Healthy People 2000.
AR–12 .. Lobbying Restrictions.

*= Applies to ERC Supplemental Pilot Project Research Training Program applications only.

Data collection initiated under this training grant program has been approved by the Office of Management and Budget under Number 0920–0261. "Training Grants, Application and Regulations—42 CFR Part 86," Expiration Date 11/30/2000.

I. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under section 21(a) of the Occupational Safety and Health Act [29 U.S.C. 670 (a)]. The Catalog of Federal Domestic Assistance number is 93.263.

J. Where to Obtain Additional Information

Please refer to Program Announcement 99041 and specify ERC or TPG when you request information. To receive additional written information and to request an application kit, call 1–888–GRANTS4 (1–888–472–6874). You will be asked to leave your name and address and will be instructed to identify the announcement number of interest. If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from:

Anne Foglesong, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Announcement 99041, Centers for Disease Control and Prevention (CDC), 2920 Brandywine Road, Room 3000, Atlanta, GA 30341–4146, telephone (770) 488–2724, Email address: anf3@cdc.gov

For program technical assistance, contact: John T. Talty, Principal Engineer, Office of Extramural Coordination and Special Projects, National Institute for Occupational Safety and Health Centers for Disease Control and Prevention (CDC), 4676 Columbia Parkway, Mailstop C–7, Cincinnati, OH 45226–1998, telephone (513) 533–8241, Email address: jtt2@cdc.gov.

This and other CDC announcements are available through the CDC homepage on the Internet. The address for the CDC home page is: <http://www.cdc.gov>.

Dated: April 2, 1999.

Diane D. Porter,

Acting Director, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention (CDC).

[FR Doc. 99–8822 Filed 4–8–99; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 99064]

National Institute for Occupational Safety and Health; Research on Young Worker Safety and Health Risks in Construction; Notice of Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 1999 funds for a cooperative agreement program for researching safety and health risks to young workers associated with specific jobs or tasks in the construction industry. This program addresses the "Healthy People 2000" priority area(s) of Occupational Safety and Health. The purpose of the program is to provide empirical data that can guide efforts to prevent deaths and injuries of youth less than 18 years of age working in construction in the United States, with a focus on data needed to determine if changes are needed in existing regulations that prohibit youth less than 18 years of age from working in particularly hazardous activities (29 CFR Part 570, Subpart E—Hazardous Orders).

B. Eligible Applicants

Applications may be submitted by public and private nonprofit and for-profit organizations and by governments and their agencies; that is, universities, colleges, research institutions, hospitals, other public and private nonprofit and for-profit organizations, State and local governments or their bona fide agents, and federally recognized Indian tribal governments, Indian tribes, or Indian tribal organizations.

Note: Pub. L. 104–65 states that an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, cooperative agreement, contract, loan, or any other form.

C. Availability of Funds

Approximately $550,000 is available in FY 1999 to fund approximately three to five awards. It is expected that the average award will be $145,000, ranging from $90,000 to $180,000. It is expected that the awards will begin on or about September 1, 1999, and will be made for a 12-month budget period within a project period of up to three years. Funding estimates may change.

Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

Funding Preferences

Funding preferences may be given to applications covering differing types of construction work to obtain information on a wide spectrum of construction activities and minimize duplicative efforts.

D. Cooperative Activities

In conducting activities to achieve the purpose of this program, the recipient will be responsible for activities under A. (Recipient Activities), and CDC/NIOSH will be responsible for the activities listed under B. (CDC/NIOSH Activities).

A. Recipient Activities

1. Develop and implement a study protocol.
2. Analyze data and interpret findings.
3. Disseminate study results to the occupational safety and health community.
4. Publish study findings.

B. CDC/NIOSH Activities

1. Provide scientific and technical collaboration in the development of the study design, protocol, and data analysis.
2. Assist in the development of a research protocol for Institutional Review Board (IRB) review by all cooperating institutions participating in the research project. The CDC IRB will review and approve the protocol initially and on at least an annual basis until the research project is completed.
3. Assist awardees on data analysis, and interpretation of findings.

E. Application Content

Use the information in the Cooperative Activities, Other Requirements and Evaluation Criteria sections to develop the application content. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan. The narrative should be no more than 30 double-spaced pages. The original and each copy of the application must be submitted unstapled and unbound. All materials must be typewritten, double-spaced, with unreduced type (font size 12 point) on 8½″ by 11″ paper, with at least 1″ margins, headers, and footers, and printed on one side only. Do not include any spiral or bound materials or pamphlets. Appendices should have indexes and include (1) Support letters (2) information on key personnel (3) other supporting documentation.

F. Submission and Deadline

Letter of Intent (LOI)

Your letter of intent should include the following information. The letter of intent must be submitted on or before May 28, 1999, to: Sheryl Heard, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Announcement 99064, Centers for Disease Control and Prevention (CDC), 2920 Brandywine Road, Room 3000, Atlanta, Georgia 30341.

Application

Submit the original and two copies of PHS 5161–1 (OMB Number 0937–0189). Forms are in the application kit. On or before June 30, 1999, submit the application to: Sheryl Heard, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Announcement 99064, Centers for Disease Control and Prevention (CDC), 2920 Brandywine Road, Room 3000, Atlanta, Georgia 30341.

Deadline: Applications shall be considered as meeting the deadline if they are either:

(a) Received on or before the deadline date; or

(b) Sent on or before the deadline date and received in time for orderly processing. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

Late Applications: Applications which do not meet the criteria in (a) or (b) above are considered late applications, will not be considered, and will be returned to the applicant.

G. Evaluation Criteria

Each application will be evaluated individually against the following criteria by an independent review group appointed by CDC.

1. Background and Need (20 points total)

The extent to which the applicant understands the general objectives of the proposed agreement:

(a) describing available data on youth employment and occupational injuries and hazardous exposures in construction work (5 points);

(b) identifying gaps in information on safety and health risks for youth working in construction (5 points); and,

(c) illustrating how the research results could be used to guide decisions about revisions to existing Hazardous Orders (work activities prohibited for youth less than 18 years of age because they are considered especially hazardous) and/or identifying new areas for consideration as potential Hazardous Orders. 10 points

2. Study Design (20 points)

The extent to which specific research questions and/or hypotheses are described. The extent to which the applicant provides a detailed description of overall design and methods selected for the study. The extent to which the applicant describes the theory and rationale for the study, and if relevant, how factors such as limited employment of youth less than 18 years in specific occupations or tasks (e.g. because of existing Hazardous Orders or Human Subject concerns) are factored into the study design. The extent to which the applicant demonstrates that the study population and/or setting can be generalized to other work settings doing similar work.

3. Study Population and Methods (15 points total)

The extent to which the proposed study will meet study objectives. Extent to which the applicant describes the study population, including information on the ages and work experience of the study population. The extent to which the study population and/or setting in which the study or analyses are undertaken are adequate for achieving the desired objectives. The extent to which the applicants demonstrate the ability to address modifying factors that may vary across work sites, such as characteristics of equipment, training and supervision, and job experience of workers. (10 points)

The extent to which the applicant has met the CDC policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed research. This includes: (a) The proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation; including anticipated levels of representation of these groups in the sampling plan; (b) the proposed justification when representation is limited or absent; (c) a statement as to whether the design of the study is adequate to measure differences when warranted; d) a statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with community(ies) and recognition of mutual benefits. (5 points)

4. Goals and Objectives (15 points)

The extent to which the applicant has included goals and objectives that are specific, measurable, time-phased, feasible to be accomplished during the project period, and which address all activities necessary to accomplish the purpose of the application. The extent to which the applicant clearly states the evaluation method for evaluating the accomplishments. The extent to which a qualified plan is proposed that will help achieve the goals stated in the application.

5. Staffing, Facilities and Resources (15 points)

The extent to which job descriptions, proposed staffing, staff qualifications and experience, and curricula vitae for both the proposed and current staff indicate the applicant's ability to carry out the objectives of the program. Adequacy of the applicant's facilities, equipment, and other resources available for performance of the project.

6. Collaboration (15 points)

The extent to which concurrence with the applicant's plans by all other involved parties is specific and documented, e.g. support for proposed activities as well as commitment to participate (e.g. letters of support and/or memorandum of understanding). The extent to which the partners are clearly described and their qualifications for their component of the proposed work are explicitly stated. The extent to which the applicants demonstrate access to work sites or datasets that are critical to study completion.

7. Budget Justification (Not Scored)

The budget will be evaluated to the extent that it is reasonable, clearly justified, and consistent with limited use of funds.

8. Human Subjects (Not Scored)

If human subjects will be involved, the extent to which the applicant describes how will they be protected, i.e., describe the review process which will govern their participation.

H. Other Requirements

Technical Reporting Requirements

Provide CDC with original plus two copies of:

1. Semiannual progress reports;
2. Financial status report, no more than 90 days after the end of the budget period; and
3. Final financial status and performance reports, no more than 90 days after the end of the project period.

Send all reports to: Sheryl Heard, Grants Management Specialist, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 2920 Brandywine Road, Room 3000, Atlanta, GA 30341.

The following additional requirements are applicable to this program. For a complete description of each, see Attachment I (included in the application package).

AR–1 .... Human Subjects Requirements.
AR–2 .... Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research.
AR–9 .... Paperwork Reduction Act Requirements.
AR–10 .. Smoke-Free Workplace Requirements.
AR–11 .. Healthy People 2000.
AR–12 .. Lobbying Restrictions.

I. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under section 20 (a) and 22 (e)(7) of the Occupational Safety and Health Act of 1970, [29 U.S.C. 669 (a) and 671 (e)(7)]. The Catalog of Federal Domestic Assistance number is 93.262.

J. Where to Obtain Additional Information

To receive additional written information and to request an application kit, call 1–888–GRANTS4 (1–888 472–6874). You will be asked to leave your name and address and will be instructed to identify the Announcement number of interest.

If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from: Sheryl Heard, Grants Management Specialist, Procurement and Grants Office, Announcement 99064, Centers for Disease Control and Prevention (CDC), 2920 Brandywine Road, Room 3000, Atlanta, GA 30305–2209, telephone (770) 488–2723, Email address SLH3@cdc.gov.

For program technical assistance, contact: Dawn N. Castillo, M.P.H., Telephone: (304) 285–6012, Email: dnc0@cdc.gov, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention (CDC), Division of Safety Research, 1095 Willowdale Road, Mailstop P–180, Morgantown, WV 26505.

See also the CDC home page on the Internet: http://www.cdc.gov.

Special Hazard Review: Child Labor Research Needs: Recommendations from the NIOSH Child Labor Working Team. Cincinnati, OH: U.S. Department of Health and Human Services, Public Health Service, Centers for Disease Control and Prevention, National Institute for Occupational Safety and Health, DHHS (NIOSH) Publication No.

97–143, 1997. 59 FR 26164. Department of Labor: Child Labor Regulations, Orders and Statements of Interpretation; Proposed Rules, May 13, 1994.

Dated: April 2, 1999.

Diane D. Porter,

Acting Director, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention (CDC).

[FR Doc. 99–8821 Filed 4–8–99; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 99029]

Cooperative Agreement for Promoting Prevention in Managed Care Notice of Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 1999 funds for a cooperative agreement program for Promoting Prevention in Managed Care. This announcement relates to all of the priority areas of "Healthy People 2000." Its purpose is to promote the attainment of the objectives outlined in "Healthy People 2000" through strengthening the infrastructure supporting the science and practice of prevention in managed care.

B. Eligible Applicants

Applications may be submitted by private sector, nonprofit, managed care membership organizations who: (1) Provide an array of services and products (e.g., technical support, publications, training and continuing education, communication and information sharing, etc.) to member plans in at least 20 States; and (2) whose member plans and affiliated entities can demonstrate past and current experience conducting public domain, prevention research (i.e., research in the areas of health promotion, disease prevention, and chronic disease management) in the managed care environment.

Note: Pub. L. 104–65 states that an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, cooperative agreement, contract, loan, or any other form.

C. Availability of Funds

Approximately $400,000 is available in FY 1999 for approximately 2–3 awards. It is expected that the average award will range from approximately $133,000 to $200,000 per award. It is expected that awards will begin on or about September 1, 1999, for a 12 month budget period within a project period of up to 5 years. Funding estimates may change.

Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by the successful completion of required activities and reports, and by the availability of funds.

D. Program Requirements

In conducting activities to achieve the purposes of this program, the recipient will be responsible for the activities under Recipient Activities, and CDC will be responsible for the activities under CDC Activities.

Recipient Activities

1. Develop and strengthen mechanisms, programs, and initiatives which further the purpose, goals and objectives of this cooperative agreement.

2. Facilitate the timely, bi-directional flow of information between the public health and managed care communities.

3. Facilitate communication, information sharing, and collaboration among the public, private and academic research communities.

4. Develop conferences, meetings, seminars and symposia which explore and expand areas of commonality around prevention between the public health and managed care sectors.

5. Initiate and/or coordinate multiplan and network managed care, prevention research initiatives.

CDC Activities

1. Provide technical assistance and monitor the progress of this cooperative agreement.

2. Foster the formation and growth of national and regional public-private partnerships which support prevention research and evidence-based prevention practice.

3. Assist with the development of conferences, meetings, seminars, and symposia which explore and expand areas of commonality around prevention between the public health and managed care sectors.

E. Application Content

Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan.

F. Submission and Deadline

Submit the original and five copies of PHS–398 (OMB Number 0925-0001) (adhere to the instructions on the Errata Instruction Sheet for PHS 398). Forms are in the application kit. On or before June 7, 1999, submit the application to: Sharron Orum, Grants Management Specialist, Procurement and Grants Office, Grants Management Branch, Centers for Disease Control and Prevention (CDC), 2920 Brandywine Road, Room 3000, Atlanta, Georgia 30341, Announcement 99029.

Deadline: Applications shall be considered as meeting the deadline if they are either: (a) Received on or before the deadline date; or (b) Sent on or before the deadline date and received in time for objective review. (Applicants must request a legibly dated U.S. Postal Service postmark or a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of time and date of mailing.)

Late Applications: Applications which do not meet the criteria in (a) or (b) above are considered late applications, will not be considered, and will be returned to the applicant.

G. Evaluation Criteria

Each application will be evaluated individually against the following criteria by an independent review group appointed by CDC.

1. Organizational Description (15 percent)

The extent to which the applicant's existing organizational structure, mission, goals, objectives, activities, functions and membership are consistent with the purpose of this Program Announcement.

2. Goals and Objectives (35 percent)

The extent to which the applicant's proposed goals and objectives meet the required activities specified under the "Recipient Activities" section of this announcement, and are measurable, specific, time-phased and realistic.

3. Methods (35 percent)

The extent to which the applicant's plan for conducting the required activities is realistic and appropriate to the stated goals and objectives, acceptable to the communities it seeks to serve, and feasible within existing programmatic and fiscal restrictions.

4. Evauuation (15 percent)

The extent to which the applicant has developing mechanisms for evaluating and reevaluating progress toward stated goals which include end-user feedback.

The extent to which the applicant builds in the capacity for mid-course correction(s) based on those evaluations.

5. Budget (Not scored)

The extent to which the budget is reasonable in the amount(s) requested, justified by the application content, and consistent with the intentions of this announcement.

H. Other Requirements

Technical Reporting Requirements Provide CDC with original plus two copies of:

1. An annual progress report
2. A financial status report, no more than 90 days after the end of the budget period; and
3. A final financial status and performance report, no more than 90 days after the end of the project period.

Send all reports to: Sharron Orum, Grants Management Specialist, Procurement and Grants Office, Grants Management Centers for Disease Control and Prevention (CDC), 2920 Brandywine Road, Room 3000, Atlanta, GA 30341.

The following additional requirements are applicable to this program. For a complete description of each, see Attachment I in the application package.

AR–7 .... Executive Order 12372 Review.
AR–8 .... Public Health System Reporting Requirements.
AR–9 .... Paperwork Reduction Act Requirements.
AR–10 .. Smoke-Free Workplace Requirements.
AR–11 .. Healthy People 2000.
AR–12 .. Lobbying Restrictions.
AR–15 .. Proof of Non-Profit Status.
AR–20 .. Conference Activities within Grants/Cooperative Agreement.

I. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under the Public Health Service Act (42 U.S.C. 301 and 317(k)(2)), as amended. The Catalog of Federal Domestic Assistance number is 93.283.

J. Where to Obtain Additional Information

Please refer to Program Announcement Number 99029 when requesting information. To receive additional written information and to request an application kit, call 1–888–GRANTS4 (1–888–472–6874). You will be asked to leave your name and address and will be instructed to identify the Announcement number of interest. If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from: Sharron Orum, Grants Management Specialist, Procurement and Grants Office, Grants Management Branch Centers for Disease Control and Prevention (CDC), 2920 Brandywine Road, Room 3000, Atlanta, GA 30341, Telephone: (770) 488–2716, Email address: spo2@cdc.gov.

See also the CDC home page on the Internet: http://www.cdc.gov

For program technical assistance, contact: Deborah Rogers Mercy, Centers for Disease Control and Prevention (CDC), Office of Managed Care/OPPE, Room 2035, 1600 Clifton Road, M/S D33, Atlanta, GA 30333, Telephone: (404) 639–4943, Email address: dem2@cdc.gov.

Dated: April 5, 1999.

John L. Williams,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 99–8882 Filed 4–8–99; 8:45 am]
BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 99108]

Cooperative Agreement for Promoting Investigator-Initiated Prevention Research in Managed Care; Notice of Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) Epidemiology Program Office, Division of Prevention Research and Analytic Methods in cooperation with the Office of Prevention Research, announces the availability of fiscal year (FY) 1999 funds for a cooperative agreement program for investigator-initiated prevention research in managed care settings. Despite spending significantly more money per capita on health than any other country in the world, recommended and effective preventive services are not routinely delivered in the United States.

The primary purpose of this program is to fund research designed to increase the utilization of priority preventive services in the United States. Desirable secondary outcomes include: (1) Improvements in surveillance and information systems, (2) furthering the science of performance measurement, (3) novel public-private partnerships for health, and (4) interventions which reduce racial and ethnic disparities in the receipt of priority preventive services.

This program relates to the following priority areas of "Healthy People 2000": Immunization and infectious disease, sexually transmitted diseases, tobacco, heart disease and stroke, cancer, and clinical preventive services.

B. Eligible Applicants

Applications are invited from non-profit and for-profit managed care plans and their affiliated research entities and membership organizations.

Applicant Requirements:

1. A principal investigator (PI) who has conducted research in managed care settings, published findings in peer-reviewed journals, and has specific authority and responsibility to carry out the proposed project.
2. Demonstrated experience (on the applicant's project team) in conducting, evaluating, and publishing prevention or health services research in peer reviewed journals.
3. Effective and well-defined working relationships within the performing organization and with outside entities to ensure successful implementation of proposed activities.
4. A match between the applicant's proposed theme and research objectives and the program interests described in this notice.

Note: Pub. L. 104–65 states that an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, cooperative agreement, contract, loan, or any other form.

C. Availability of Funds

Approximately $750,000 will be available in FY 1999 to award 3–5 projects. Funding will range from approximately $150,000 to $250,000 per award. Awards are expected to begin on or about September 1, 1999, for 12-month budget period within a project period of up to two years. Proposals for one year projects are encouraged. Funding estimates may change.

Continuation awards for projects with approved two year project periods will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

D. Program Requirements

In conducting activities to achieve the purposes of this program, the recipient will be responsible for the activities under Recipient Activities, and CDC will be responsible for the activities under CDC Activities.

Recipient Activities

1. Design and conduct a prevention research project addressing one or more of the following questions:

a. Evaluating the ability of health plans to monitor the delivery of one or more priority preventive services;

b. Estimating the delivery of one or more priority preventive services, particularly those not measurable via available administrative data, and assessing the validity of such estimates;

c. Evaluating health plan structural, environmental, and organizational factors associated with the delivery of one or more priority preventive services;

d. Evaluating interventions designed to increase the use of one or more priority preventive services.

2. Collect, analyze, interpret, present and publish research project results.

CDC Activities

1. Provide technical assistance, advice and coordination; and assure that CDC guidelines regarding conflict of interest, Institutional Review Boards (IRBs), etc., are followed.

2. Assist in the monitoring of field data collection, helping to ensure standardization in methods; and assist in the interpretation and reporting of the collected information.

3. Assist by providing advice in the management and technical performance of the investigation.

4. Assist in promoting project findings to the scientific community at large.

E. Application Content

Your application should include:

1. A narrative description of the project's focus that justifies the need and presents the scientific basis for the proposed research. This focus should be grounded in the information provided in this program announcement and in applicable sections of "Healthy People 2000."

2. A description of the expected outcome(s) and their relevance to reducing morbidity, mortality, disability and economic loss.

3. Specific, measurable, time-phased objectives.

4. A detailed plan describing the methods by which the objectives will be achieved, including their sequence.

5. A comprehensive evaluation plan.

6. A description of the principal investigator's role and responsibilities.

7. A description of the proposed project staff regardless of funding source. It should include: Title, qualifications, experience, percentage of time which will be devoted to the project, project responsibilities, and the portion of salary which will be paid for under this proposal.

8. A description of other activities which are related to, but will not be supported by the grant.

9. When applicable, a description of the involvement of other participating organizations/groups and their relationship to the proposed project. Include a clear statement of roles and commitments including letters of support.

10. A detailed one year budget and, when applicable, a projected second year budget.

An applicant organization has the option of having specific employee salary and fringe benefit figures omitted from copies of the application which will be made available to outside review groups. To exercise this option, the applicant must use asterisks, on the original and five copies of the application, to indicate those individuals for whom salaries and fringe benefits are not shown. Subtotals must still be shown. In addition, the applicant must submit an additional copy of page four of Form PHS–398, completed in full, with salary and fringe amounts shown. This budget page will be reserved for internal staff use only.

F. Submission and Deadline

Submit the original and five copies of PHS–398 (OMB Number 0925–0001) (adhere to the instructions on the Errata Instruction Sheet for PHS 398). Forms are in the application kit. On or before June 7, 1999 submit the application to: Sharron Orum, Grants Management Specialist, Procurement and Grants Office, Grants Management Branch, Centers for Disease Control and Prevention (CDC), 2920 Brandywine, Room 3000, Atlanta, Georgia 30341, Announcement 99108.

Deadline: Applications shall be considered as meeting the deadline if they are either:

(a) Received on or before the deadline date; or

(b) Sent on or before the deadline date and received in time for objective review. (Applicants must request a legibly dated U.S. Postal Service postmark or a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of date and time of mailing.)

Late Applications: Applications which do not meet the criteria in (a) or (b) above are considered late applications, will not be considered, and will be returned to the applicant.

G. Evaluation Criteria

Upon receipt, applications will be reviewed by CDC staff for completeness and responsiveness as outlined under Eligible Applicants, subtitle, Applicant Requirements (Items 1–4). Incomplete applications and applications that are not responsive will be returned to the applicant without further consideration. Applications that are complete and responsive may be subjected to a preliminary evaluation by a peer review group to determine if the application is of sufficient technical and scientific merit to warrant further review (triage); the CDC will withdraw from further consideration applications judged to be noncompetitive and promptly notify the principal investigator/program director and the official signing for the applicant organization. Those applications judged to be competitive will be further evaluated by a dual review process. Awards will be made based on priority score ranking by the Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP) appointed by CDC, programmatic priorities and needs as determined by a secondary review committee, and the availability of funds.

The first review in the dual review process will be the peer review of all competitive applications by the SEP. Reviewers will comment on the following aspects of the application (significance, approach, innovation, investigators, and environment) in their written critiques in order to judge the likelihood that the proposed research will have a substantial impact on the pursuit of program goals. Each of these criteria will be addressed and considered by the reviewers in assigning the overall score, weighing them as appropriate for each application. Note that the application does not have to be strong in all categories to be judged likely to have a major scientific impact and thus deserve a high priority score. For example, an investigator may propose to carry out important work that by its nature is not innovative but is essential to move a field forward.

The SEP will also evaluate the appropriateness of the proposed project budget; the adequacy of plans to include racial and ethnic minorities and their subgroups, children and both genders as appropriate to the scientific goals of the research; the provisions for the protection of human subjects; and the safety of the research environment.

1. Significance: Does the study address a significant issue or problem affecting the monitoring, delivery, and/or evaluation of priority preventive services? If the aims of this application are achieved how will scientific knowledge be advanced? How will the public's health be advanced?

2. Approach: Are the conceptual framework, design, methods, and analyses adequately developed, well-integrated, and appropriate to the aims of the project? Does the applicant acknowledge potential problem areas and consider alternative tactics? Are

there plans to regularly evaluate progress toward the stated objective(s)? Is an appropriate work plan included?

Has the applicant met the CDC Policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed research? This includes:

a. The proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation.

b. The proposed justification when representation is limited or absent.

c. A statement as to whether the design of the study is adequate to measure differences when warranted.

d. A statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with community(ies) and recognition of mutual benefits.

3. Innovation: Does the project employ novel concepts, approaches, or methods? Are its aims innovative? Does it challenge existing paradigms? Will it test the efficacy of new methodologies or technologies?

4. Investigator(s): Is the principal investigator an experienced researcher? Have any of the investigators conducted research in the area of proposed study?

5. Environment: Will the proposed research setting contribute to the probability of success? Does the proposed study take advantage of any unique features of research setting? Are there any collaborative agreements? Is there evidence of institutional/organizational support? Is there evidence of appropriate interest, commitment, and cooperation among the investigators and other interested parties as evidenced by letters detailing the nature and extent of involvement?

6. Human Subjects: Does the application adequately address the requirements of 45 CFR Part 46 for the protection of human subjects?

7. Biohazards: Are any hazards procedures proposed which would affect the safety and well-being of the research subjects and/or investigators?

8. Budget: Does the proposed budget seem appropriate? Does the proposed study length seem reasonable? Would you propose any modifications?

The secondary review committee, in the course of its review, will consider the following factors:

a. The results of the peer review (SEP).

b. The significance of the proposed activities in relation to the priorities and objectives stated in Healthy People 2000 and this program announcement.

c. National needs.

d. Program balance including currently funded research and organizational considerations.

e. Budgetary considerations.

H. Other Requirements

Technical Reporting Requirements Provide CDC with original plus two copies of:

1. An annual progress report;

2. A financial status report, no more than 90 days after the end of the budget period; and

3. A final financial status and performance reports, no more than 90 days after the end of the project period.

Send all reports to: Sharron Orum, Grants Management Specialist, Procurement and Grants Office, Grants Management Branch, Centers for Disease Control and Prevention (CDC), 2920 Brandywine, Room 3000, Atlanta, GA 30341.

The following additional requirements are applicable to this program. For a complete description of each, see Attachment I in the application package.

AR–1	Human Subjects Requirements.
AR–2	Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research.
AR–8	Public Health System Reporting Requirements.
AR–9	Paperwork Reduction Act Requirements.
AR–10	Smoke-Free Workplace Requirements.
AR–11	Healthy People 2000.
AR–12	Lobbying Restrictions.

I. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under the Public Health Service Act [42 U.S.C. sections 301 and 317(k)(2)], as amended. The Catalog of Federal Domestic Assistance number is 93.283.

J. Where to Obtain Additional Information

Please refer to Program Announcement Number 99108 when requesting information. To receive additional written information and to request an application kit, call 1–888–GRANTS4 (1–888–472–6874). You will be asked to leave your name and address and will be instructed to identify the Announcement number of interest. If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from: Sharron Orum, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 2920 Brandywine, Room 3000, Atlanta, GA 30341, Telephone: (770) 488–2716, Email address: spo2@cdc.gov.

See also the CDC home page on the Internet: http://www.cdc.gov.

For program technical assistance, contact: Betsy L. Thompson, Centers for Disease Control and Prevention (CDC), Epidemiology Program Office, Div. of Prevention Research and Analytic Methods, Rm 1050B, 1600 Clifton Road, M/S D01, Atlanta, GA 30333, Telephone: (404) 639–3806, Email address: bst0@cdc.gov.

Dated: April 5, 1999.

John L. Williams,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 99–8848 Filed 4–8–99; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99N–0391]

International Standard-Setting Activities; Codex Alimentarius Commission; Committee on Nutrition and Foods for Special Dietary Uses; Background Paper to Identify Perspectives and Issues Pertaining to International Guidelines on Vitamin and Mineral Supplements

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; request for comments.

SUMMARY: The Food and Drug Administration (FDA) is asking interested persons to submit comments that will be used by the U.S. delegate to the Codex Committee on Nutrition and Foods for Special Dietary Uses (CCNFSDU) to prepare a background paper to be considered by the CCNFSDU prior to its considering the appropriateness of establishing guidelines for vitamin and mineral supplements for the purposes of international trade. The background paper will discuss the range of concerns and the differences in rationales on this topic. The United States, which has indicated its opposition to the development of such guidelines, has been asked to participate in the development of this background paper along with other governments. FDA is accepting this request in its role as the agency representing the United States in the CCNFSDU.

DATES: Submit written comments by June 8, 1999.

ADDRESSES: Submit written comments and recommendations to the Dockets Management Branch (HFA–305), Food

and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Robert J. Moore, Center for Food Safety and Applied Nutrition (HFS–456), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–4605.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Codex Alimentarius Commission (Codex) is the joint food standards program of the Food and Agriculture Organization of the United Nations (FAO) and the World Health Organization (WHO). This program was established in 1962 and develops food standards, codes of practice, and other guidelines to help protect the health and economic interests of consumers and to facilitate and encourage fair international trade in food. The Codex accomplishes these actions through the use of subordinate committees that develop food standards, codes of practice, and other guidelines for consideration and adoption by the Codex and member countries.

In the United States, the U.S. Department of Agriculture (USDA), FDA, and other agencies manage and carry out U.S. Codex activities. Executive direction of this effort comes from the U.S. manager for Codex, a responsibility of the Food Safety and Inspection Service (FSIS) of USDA. For more information on U.S. Codex activities and the responsibilities of the U.S. delegates to Codex committees, see the **Federal Registers** of May 27, 1998 (63 FR 28966), and February 12, 1998 (63 FR 7118), respectively. Under section 491 of the Trade Agreements Act of 1979 (19 U.S.C. 2578), as amended, and the Uruguay Round Agreements Act, Pub. L. 103–465, 108 Stat. 4809, FSIS must inform the public of the sanitary and phytosanitary standard setting activities of international standard-setting organizations, such as Codex. The most recent annual notice was published in the May 27, 1998, **Federal Register**. That notice identified FDA as the responsible agency for the United States with respect to the activities of the CCNFSDU (63 FR 28966 at 28973). Accordingly, the U.S. delegate to the CCNFSDU is from FDA.

This notice solicits information and comments relative to the content of a background document that is intended to identify the nature of and basis for differences in perspectives on establishing guidelines for vitamin and mineral supplements in international trade. This document is a component of the sanitary and phytosanitary standard-setting activities of the CCNFSDU with regard to its consideration of guidelines for vitamin and mineral supplements (Ref. 1).

II. Background

Germany proposed a process to consider the development of guidelines for vitamin and mineral supplements at the October 1995 meeting of the CCNFSDU. Germany submitted the draft proposed guidelines (Ref. 2), which were intended to address such issues as the composition and labeling of vitamin and mineral supplements, including lists of allowable vitamins and minerals and their sources, minimum and maximum levels, permissible additives, packaging, labeling requirements, and permissible claims. Codex circulated the proposal to member governments for comment, and it was considered at the October 7 to 11, 1996, CCNFSDU committee meeting (Ref. 3).

At that meeting, the United States, through its delegate, indicated its opposition to the development of the guidelines. Such guidelines would not affect dietary supplements within the United States, whose sale and marketing is regulated under the Federal Food, Drug, and Cosmetic Act, as amended by the Dietary Supplement Health and Education Act of 1994. However, such guidelines, were they developed and adopted by other countries, could affect international trade in vitamin and mineral supplements. In particular, such guidelines could have ramifications for those U.S. manufacturers of dietary supplements that export their products to countries that adopt such guidelines.

CCNFSDU did not reach consensus on many aspects of the draft proposed guidelines, but nonetheless, they forwarded the draft proposed guidelines to Codex and recommended that the draft proposed guidelines be advanced to the next level of consideration. Codex considered the recommendation of the committee at its June 23 to 28, 1998, meeting in Rome, Italy (Ref. 4). The United States, through its delegate, again indicated its opposition to the advancement of the guidelines during the Codex meeting.

Codex did not advance the draft proposed guidelines to the next level of consideration, but instead Codex returned them to the CCNFSDU for further discussion and consideration. Codex also advised the CCNFSDU to reconsider whether there was a need to proceed with the development of the guidelines.

The CCNFSDU considered the draft proposed guidelines again at its September 21 to 25, 1998, meeting (Ref. 1). A copy of this document may be downloaded from the internet at "www.fao.org/es%2A/esn/codex/reports.htm". The CCNFSDU discussed the draft proposed guidelines and decided that while it was premature to stop work on the draft proposed guidelines, there was not enough agreement to advance the proposed draft guidelines for vitamin and mineral supplements to the next level of consideration. Consequently, the draft proposed guidelines remained at their current level of consideration. Because there was no consensus on the need for the proposed guidelines or what they should contain, the CCNFSDU decided that it would be useful to reconsider the basis for continuing work on the draft proposed guidelines. The CCNFSDU believed that it would facilitate its work if it could prepare a background paper that would: (1) Provide "a neutral and objective presentation on the issues that should be considered on this subject", (2) "help understand the rationale behind the different approaches", and (3) "be useful to study in depth the principles justifying each particular position in order to find a common ground for discussion" (Ref. 1).

The CCNFSDU chair asked the U.S. Government to contribute to this background paper, which will be considered at the next meeting of the CCNFSDU in the year 2000. The U.S. delegate agreed to this request. The U.S. delegate concluded that there is value in assisting with the development of an objective background paper that addresses the various perspectives, approaches, and difficulties associated with developing guidelines for international trade in vitamin and mineral supplements. This activity is consistent with the U.S. interests in this matter and will facilitate the decisionmaking process of the CCNFSDU.

III. Request for Comments

Interested persons may, on or before June 8, 1999, submit to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Based on the interest of the CCNFSDU in identifying the pros and cons of developing guidelines for vitamin and mineral supplements and in identifying

the various factors and principles pertaining to international guidelines for vitamin and mineral supplements, FDA is asking for comments that identify the range of perspectives associated with the manufacture, use, and regulation of such products, as well as the specific issues that the paper should address. Moreover, the CCNFSDU intends to develop a paper that considers only issues relevant to vitamin and mineral supplements. The CCNFSDU does not intend that the paper will consider the addition of vitamins and minerals to conventional foods nor products containing other ingredients or substances, for example herbs or other botanicals. Accordingly, comments on such matters will not assist the U.S. delegate to contribute to the CCNFSDU paper.

For the purposes of international trade, FDA has identified topics that should be addressed in the background paper. The topics identified for comment are as follows: (1) Topic 1 focuses on terminology, such as the use of the terms "food supplements" or "dietary supplements," as compared to "vitamin and mineral supplements;" (2) topic 2 focuses on the purpose and role of vitamin and mineral supplements; (3) topic 3 focuses on the concept of "approved nutrients" (i.e., a positive or negative list of nutrients for use in the supplements of issue); (4) topic 4 focuses on setting maximum levels for vitamins and minerals in supplement form; (5) topic 5 focuses on setting minimal limits for vitamins and minerals in such products; (6) topic 6 focuses on purity and good manufacturing practices; (7) topic 7 focuses on labeling, warning statements, and claims; and (8) topic 8 focuses on packaging and marketing.

For each topic, specific comments would be most helpful if they addressed the following: (1) Is there a need for the topic? (2) What are the various perspectives on the topic and what the difficulties in addressing these perspectives? and (3) What are the options for making decisions about the topic?

We also welcome comments on the inclusion of additional topics. It would be most helpful if the additional topic(s) could be addressed in a fashion so as to respond to the three basic questions identified for the other topics listed previously.

IV. References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Codex Alimentarius Commission, "Report of the Twenty-First Session of the Codex Committee on Nutrition and Foods for Special Dietary Uses," ALINORM 99/26, FAO/WHO, Rome, 1998.

2. Codex Alimentarius Commission, "Report of the Twentieth Session of the Codex Committee on Nutrition and Foods for Special Dietary Uses," ALINORM 97/26, FAO/WHO, Rome, 1996.

3. Codex Alimentarius Commission, "Report of the Nineteenth Session of the Codex Committee on Nutrition and Foods for Special Dietary Uses," ALINORM 95/26, FAO/WHO, Rome, 1995.

4. Codex Alimentarius Commission, "Report of the Twenty-Second Session of the Codex Alimentarius Commission," ALINORM 97/4, FAO/WHO, Rome, 1997.

Dated: April 2, 1999.

William K. Hubbard,

Acting Deputy Commissioner for Policy.

[FR Doc. 99–8796 Filed 4–8–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Science Advisory Board to the National Center for Toxicological Research; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). At least one portion of the meeting will be closed to the public.

Name of Committee: Science Advisory Board to the National Center for Toxicological Research (NCTR).

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on April 26, 1999, 12 noon to 5:30 p.m., and April 27, 1999, 8:30 a.m. to 1 p.m.

Location: NCTR, Bldg. #12, Conference Center, Jefferson, AR.

Contact Person: Ronald F. Coene, NCTR (HFT–10), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–6696, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–9572 in the Washington, DC area), code 12559. Please call the Information Line for up-to-date information on this meeting.

Agenda: The board will be presented with draft reports on evaluations of three of NCTR's programs in Biochemical Toxicology, Genetic Toxicology, and Molecular Epidemiology, for their review, discussion, and approval. The draft reports are the products of three site visit teams who conducted on-site reviews over the last year. The staff from these programs will provide a preliminary response to the issues raised and recommendations made. Two progress reports will be presented to the board on the recommendations it made at its last meeting on NCTR's Neurotoxicology Program and Biometry and Risk Assessment Program. The NCTR Director will also provide a center update.

Procedure: On April 26, 1999, from 12 noon to 5:30 p.m., and April 27, 1999, from 8:30 a.m. to 12 noon, the meeting is open to the public. Interested persons may present data, information, or views, orally or in writing, on issues pending before the board. Written submissions may be made to the contact person by April 15, 1999. Oral presentations from the public will be scheduled between approximately 11 a.m. and 12 noon on April 27, 1999. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before April 15, 1999, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Closed Committee Deliberations: On April 27, 1999, from 12 noon to 1 p.m., the meeting will be closed to permit discussion where disclosure would constitute a clearly unwarranted invasion of personal privacy (5 U.S.C. 552b(c)(6)). This portion of the meeting will be closed to permit discussion of information concerning individuals associated with the research programs at NCTR.

The Commissioner approves the scheduling of meetings at locations outside the Washington, DC area on the basis of the criteria of 21 CFR 14.22 of FDA's regulations relating to public advisory committees.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: April 1, 1999.

Michael A. Friedman,

Deputy Commissioner for Operations.

[FR Doc. 99–8938 Filed 4–8–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Nomination of Chronic Fatigue Syndrome Coordinating Committee

The Office of Public Health and Science (OPHS) requests nominations for a representative to serve on the Chronic Fatigue Syndrome Coordinating Committee (CFSCC). Nominations are solicited for a representative of a voluntary organization concerned with the problems of individuals with chronic fatigue syndrome (CFS).

Information Required

Each nomination shall consist of a package that at a minimum includes:

A. A letter of nomination that clearly states the name and affiliation of the nominee, the nominator's basis for the nomination, and the category for which the person is nominated;

B. The name, return address, and daytime telephone number at which the nominator may be contacted. Organizational nominators must identify a principal contact person in addition to contact information.

C. A copy of the nominee's curriculum vitae.

All nomination information for a nominee must be provided in a complete single package. Incomplete nominations cannot be considered. Nomination materials must bear original signatures and facsimile transmissions or copies are not acceptable.

Dates: All nominations must be received at the address below by no later than 4 p.m. EDT on May 3, 1999.

Addresses: All nomination packages shall be submitted to Lillian Abbey, Executive Secretary, National Institutes of Health, National Institute of Allergy and Infectious Diseases, Division of Microbiology and Infectious Diseases, Solar Building, Room 3A–26, 6003, Executive Boulevard, Bethesda, Maryland 20892.

For Further Information Contact: Lillian Abbey at the above address or at 301–496–1884 between 9 a.m. and 3 p.m. EDST.

Dated: April 1, 1999.

Anthony S. Fauci,

Director, National Institute of Allergy and Infectious Diseases, National Institutes of Health.

[FR Doc. 99–8874 Filed 4–8–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7057; fax: 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Electroacoustic Imaging Methods and Apparatus

Han Wen, Robert S. Balaban (NHLBI)
Serial No. 60/104,823 filed 30 Dec 98
Licensing Contact: John Fahner-Vihtelic; 301/496–7735 ext. 270; jf36z@nih.gov

Recently, an electroacoustic imaging apparatus and two electroacoustic imaging methods have been developed. The two methods are "forward" and "reverse" electroacoustic imaging which requires the application of a probing signal, and the detection and measurement of an induced signal to produce images. The electroacoustic apparatus offers the advantage of generating 2D and 3D images non-invasively. It can simultaneously image several contrast mechanisms, including the Hall effect, the thermoacoustic effect, and the electroaccoustic effect. Although this device uses a Piezoelectric transducer, fiberoptic acoustic sensors can also be substituted to take advantage of advances in acoustic wave detection technology. This technology is available for licensing opportunities.

Ultrasound Array and Electrode Array for Hall Effect Imaging

Han Wen, Robert S. Balaban (NHLBI)
Serial No. 60/102,478 filed 30 Sep 98
Licensing Contact: John Fahner-Vihtelic; 301/496–7735 ext. 270; jf36z@nih.gov

Recent developments in ultrasound probe design and ultrasound detector array technology have provided means for optimal ultrasound signal detection and 2D/3D image reconstruction in Hall Effect Imaging (HEI). The new developments include an electrode array, and an ultrasound array configured and controlled to provide rapid image acquisition with high contrast and definition. The electrode array contains split electrodes that control the direction of the electrical currents responsible for 2D/3D image generation. The ultrasound array contains shielded ultrasound sensors which overcome the problem of electromagnetically induced ultrasonic noise that interferes with data acquisition. In this design each element of the ultrasound array is connected to a commercially-available preamplifier which can be coupled to a separate channel of data acquisition circuitry, or digitizer that allows for digital data acquisition. This technology is available for licensing opportunities.

Human Cancer Antigen TRP2

M Parkhurst, Sa Rosenberg, Y Kawakami (NCI)
Serial No. 60/105,577 filed 26 Oct 98
Licensing Contact: Elaine Gese; 301/496–7056 ext. 282; e-mail: eg46t2nih.gov

The current invention embodies the identification of a nine amino acid peptide derived from the melanoma antigen known as tyrosinase-related protein 2 (TRP2). The TRP2 peptide is capable of stimulating cytotoxic T lymphocytes which specifically react with, and lyse, melanoma cells in the context of HLA–A0201. HLA–A0201 is the most common subtype of HLA–A2, which is the most commonly expressed family of Class I MHC molecules in melanoma patients in the U.S. It therefore is believed that the TRP2 peptide, along or in combination with HLA–A2-specific peptides from other melanoma antigens, could be used as an immunotherpeutic vaccine for the prevention and treatment of melanoma in a large percentage of patients having that form of cancer. In addition, the peptide could prove useful as a diagnostic reagent for evaluating the efficacy of immunization in these patients.

Spectral Cloning—An Innovative Technical and Conceptual Approach to the Cloning and Characterization of Every Chromosomal Aberration in Cancer Samples

Ilan R. Kirsch (NCI)
DHHS Reference No. E–216–97/1 filed 29 Jun 98; PCT/US98/13557
Licensing Contact: Manja Blazer; 301/496–7056 ext. 224; e-mail: mb379e@nih.gov

The invention described in this application provides methods and related apparatus permitting the detection and characterization of all chromosomal abnormalities found in a biological sample such as leukemia, carcinoma or sarcoma.

Cancer is a disease caused by genetic instability. Genetic Instability is revealed as the DNA point mutations, insertions, deletions, amplifications, and translocations that distinguish a tumor from the normal tissue from which it arose. Identification of these DNA alterations associated with tumor development provides insight into: (a) the process by which the DNA was altered; and (b) the genes themselves whose alteration contributes to malignant transformation. Thus, cloning and characterizing chromosomal translocations (one particularly dramatic example of genetic instability) gives insight into:

- Cancer etiology
- Interaction of a gene with the environment and therefore preventive strategies
- Structural reconfigurations of DNA that accompany malignant transformation and therefore potential utility for early diagnosis
- Cellular functions and pathways that are targets for malignant transformation and therefore identify potential candidates for anti-cancer therapies.

Novel Thioesters and Uses Thereof

Jim A. Turpin, Yongsheng Song, John K. Inman, Mingjun Huang, Anders Wallqvist, Andrew Maynard, David G. Covell, William G. Rice, Ettore Appella (NCI & NIAID)
Serial No. 60/089, 842 filed 19 Jun 1998
Licensing Contact: J. Peter Kim; 301/496–7056 ext. 264; e-mail: jk141n@nih.gov

The human immunodeficiency virus (HIV) is the causative agent of acquired immunodeficiency syndrome (AIDS). Drug-resistance is a critical factor contributing to the gradual loss of clinical benefit to treatments for HIV infection. Accordingly, combination therapies have further evolved to address the mutating resistance of HIV. However, there has been great concern regarding the apparent growing resistance of HIV strains to current therapies.

The present invention provides for a novel family of thioesters and uses thereof. These thioesters are capable of inactivating viruses by a variety of mechanisms, particularly by complexing with metal ion-complexing zinc fingers. The invention further provides for methods for inactivating a virus, such as the human immunodeficiency virus (HIV), using these compounds, and thereby also inhibiting transmission of the virus.

Methods and Compositions for Making Dendritic Cells From Expanded Populations of Monocytes and for Activating T Cells

EL Nelson, SL Strobl (NCI)
DHHS Reference No. E–181–97/1 filed 20 May 98 (PCT Application PCT/US98/10311), based upon U.S. Provisional Patent Application 60/047, 348
Licensing Contact: Elaine Gese; 301/496–7056 ext. 282; e-mail: eg46t@nih.gov

The current invention embodies methods for easily generating large numbers of dendritic cells from IL–3 cultured populations of monocytes. Dendritic cells are potent antigen presenting cells which are capable of mediating a variety of cell-mediated (T cell) immune responses, and therefore are clearly of value for use in immunotherapy. In addition, dendritic cells are quite rare in peripheral blood and therefore cannot be isolated in sufficient numbers of use in therapeutic applications. This method significantly enhances the generation of human dendritic cells from peripheral blood monocytes making possible more extensive use and study of this unique cell population and thereby clearly serving to overcome these difficulties. In addition to the methods embodied in the invention, *ex vivo* therapeutic applications, pharmaceutical compositions and diagnostic methods are claimed, as are cell cultures for making the dendritic cells.

Method and Composition for Detecting Dihydropyrimidine Dehydrogenase Splicing Mutations

Frank J. Gonzalez, Pedro Fernandez-Salguero (NCI)
DHHS Reference No. E–157–94/1 filed 20 Mar 96
Licensing Contact: Girish Barua; 301/496–7056 ext. 263; e-mail: gb18t@nih.gov

Dihydropyrimidine dehydrogenase (DPD) is the first and rate limiting enzyme in the three step metabolic pathway of the catabolism of thymidine and uracil. In mammals, this pathway is the route for synthesis of beta-alanine. DPD can be considered an enzyme that is expressed in most cells, but has been studied extensively in liver, lymphocytes, and the CNS. DPD is responsible for the metabolism of fluoropyrimidine drugs, such as the much used chemotherapeutic agent 5-fluorouracil.

The invention covers isolated nucleic acids that code for DP. It also includes nucleic acids that code for a DPD polypeptide that specifically binds to an antibody generated against an immunogen consisting of DPD polypeptide and its amino acid sequence. Also claimed are methods for determining whether a cancer patient is at risk of a toxic reaction to 5-fluorouracil. The methods involve analyzing DPD DNA or mRNA a sample from the patient to determine the amount of intact DPD nucleic acid.

Peptidomimetic Inhibitors of Cathepsin D and Plasmepsins I and II

Pavel Majer, Jack Collins, Sergei V. Gulnik, John W. Erickson (NCI)
Serial No. 08/603,737 filed 20 Feb 96; U.S. Patent 5,849,691 issued 15 Dec 98
Licensing Contact: Girish Barua; 301/496–7056 ext. 263; e-mail: gb18t@nih.gov

The invention relates to the design and synthesis of linear and cyclic inhibitors of cathespin D and plasmepsins I and II. The present invention also relates to the uses of these inhibitors for inhibiting invasion and metastasis of cancerous cells. It also covers the use of cathepsin D and plasmepsin I and II inhibitors for the prevention and treatment of Alzheimer's disease and malaria.

Transframe Peptide Inhibitor of Viral Protease

John Louis Medabalimi (NIDDK)
Serial No. 08/539,432 filed 05 Oct 95; U.S. Patent No. 5,872,210, issued 16 Feb 99
Licensing Contact: J. Peter Kim; 301/496–7056 ext. 264; e-mail: jk141n@nih.gov

The present invention is directed to small, water-soluble peptides isolated from a native virus inhibitory sequence. The native peptide is involved in the step-wise autocatalytic maturation of the virally encoded protease in a pH dependent manner. the isolated peptide and its derivatives also inhibit the mature protease. The peptides and its derivatives may be used to treat virally

infected cells, in preparing vaccine formulations, in generating clinically relevant antibodies and anti-idiotypic antibodies, and generating a screening assay or a kit that can be used to identify other similarly acting protease inhibitors.

Dated: April 1, 1999.

Jack Spiegel,

Director, Division of Technology Development and Transfer, Office of Technology Transfer.

[FR Doc. 99–8875 Filed 4–8–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

National Toxicology Program; National Toxicology Program (NTP) Board of Scientific Counselors' Meeting; Review of Draft NTP Technical Reports.

Pursuant to Public Law 92–463, notice is hereby given of the next meeting of the NTP Board of Scientific Counselors' Technical Reports Review Subcommittee on May 21, 1999, in the Rodbell Auditorium, Building 101, South Campus, National Institute of Environmental Health Sciences (NIEHS), 111 Alexander Drive, Research Triangle Park, North Carolina. The meeting will begin at 8:45 a.m. on May 21 and is open to the public. The agenda topic is the peer review of draft Technical Reports of long-term toxicology and carcinogenesis studies from the National Toxicology Program.

Tentatively scheduled to be peer reviewed on May 21 are draft Technical Reports of four two-year studies, listed alphabetically, along with supporting information in the attached table. All studies were done using Fischer 344 rats and B6C3F_1 mice. The order of review is given in the far right column of the table. By April 21, 1999, full copies of these draft reports will be available for free on the Internet for public review and comment through the Environmental Health Information Service (EHIS) at *http://ehis.niehs.nih.gov*. Printed copies can be obtained, as available, from: Central Data Management, MD E1–02, P.O. Box 12233, Research Triangle Park, NC 27709 (919/541–3419), FAC (919/541–3687), email: *CDM@niehs.nih.gov*.

Public comment on any of the Technical Reports is welcome. Persons wanting to make a formal presentation regarding a particular Technical Report must notify the Executive Secretary by telephone at 919/541–3971, by FAX at 919/541–0295, by mail, or by email at hart@niehs.nih.gov, by no later than May 18, 1999, and, if possible, provide a written copy in advance of the meeting so copies can be made and distributed to all Subcommittee members and staff, and made available at the meeting for public.Written statements could supplement and may expand on the oral presentation. Oral presentations should be limited to no more than five minutes.

The Program would welcome receiving toxicology and carcinogenesis information from completed, ongoing, or planned studies by others as well as current production data, human exposure information, and use patterns for any of the chemicals listed in this announcement. Please contact Central Data Management at the address given above, and they will relay the information to the appropriate staff scientist.

The Executive Secretary, Dr. Larry G. hart, P.O. Box 12233, Research Triangle Park, North Carolina 27709, will furnish agenda and a roster of Subcommittee members prior to the meeting, Summary minutes subsequent to the meeting will be available upon request to Central Data Management.

Dated: April 2, 1999.

Samuel. H. Wilson,

Deputy Director, National Institute of Environmental Health Sciences.

SUMMARY DATA FOR TECHNICAL REPORTS TENTATIVELY SCHEDULED FOR REVIEW AT THE MEETING OF THE NTP BOARD OF SCIENTIFIC COUNSELOR'S TECHNICAL REPORTS REVIEW SUBCOMMITTEE MAY 21, 1999

Chemical CAS No.	Technical report No.	Primary uses	Route/exposure levels	Review order
Anthraquinone 84–65–1	TR–94	Intermediate in the manufacture of dyes and other organics. Organic inhibitor. Catalyst. Accelerator in nickel electroplating. Improving adhesion and heat stability of tire cord..	Feed: ..... Rats: 0, 469, 938, 1875, or 3750 ppm Mice: 0, 833, 2500, or 7500 ppm	3
Emodin 518–82–1	TR–493	Major component of natural laxative drugs of plant origin. Medicine, natural plant dye..	Feed: ..... Rats: 0, 280, 830, or 2500 ppm; ..... Mice: 0, 160, 312, 625, or 1250 pp, (60/sex/species/group).	2
Fumonisin B_1 116355–83–0.	TR–496	Mycotoxin produced by certain strains of fusarium moniliforme, a commonly occurring fungi on U.S. agricultural products, especially corn. No known uses..	Feed: ..... Rats & Mice: 0, 15, 50,100, or 150 ppm.	4
Gallium Arsenide 1303–00–0.	TR–492	Semiconductors. Magnetoresistance devices. Light-emitting diodes. Microwave generation..	Inhalation ..... Rats: 0, 0.01, 0.1, or 1.0 mg/m^3; ..... Mice: 0, 0.1, 0.5, or 1.0 mg/m^3, (50/group).	1

[FR Doc. 99–8876 Filed 4–8–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

National Toxicology Program; Board of Scientific Counselors' Meeting

Pursuant to Public Law 92–463, notice is hereby given of a meeting of the National Toxicology Program (NTP) Board of Scientific Counselors, U.S. Public Health Service, in the Rodbell Auditorium, Building 101, South Campus, National Institute of Environmental Health Sciences (NIEHS), 111 Alexander Drive, Research Triangle Park, North Carolina, on May 20, 1999.

Agenda

The meeting will be open to the public from 8:45 a.m. to adjournment with attendance limited only by space available. The primary agenda topic will be an initial evaluation and review of the direction and priorities of the recently established NTP Center for the Evaluation of Risks to Human Reproduction (CERHR). There will be a presentation on the background, purpose, status, and current activities of the Center. In addition, there will be presentations by representatives of regulatory agencies on the value of the Center to public health issues and health regulatory issues, on the evaluative process employed by the Center, on the initial chemicals considered and selected for evaluation, and there will be a demonstration of the Center's website. In the afternoon, there will be a discussion of the process for development of a Year 2000 White Paper on Toxicology and the NTP. Additionally, there will be updates presented on the NIEHS Investigations of Causes of Amphibian Malformations, on the Center for the Evaluation of Alternative Toxicological Methods, and on recent or upcoming activities of the Report on Carcinogens and Technical Reports Review Subcommittees. Finally, the Board will review concept proposals on (1) rodent disease diagnostic laboratories, and (2) genetic monitoring of inbred rodents.

Public Input Encouraged

To facilitate planning for the meeting, persons interested in providing formal written or oral input on the directions, priorities, and operations of the NTP Center for the Evaluation of Risks to Human Reproduction must notify the Executive Secretary, Dr. Larry G. Hart, P.O. Box 12233, Research Triangle Park, NC 27709 (telephone 919/541–3971; FAX 919/541–0295; or email at hart@niehs.nih.gov). Written comments for consideration by the Board and the NTP must be received by May 12, 1999. Individuals wanting to make a formal presentation during the Board's public comment session must notify the Executive Secretary by no later than May 17, 1999, and, if possible, provide a written copy in advance of the meeting, so copies can be made for distribution to Board members, staff, and the public. Formal presentations should be limited to no more than five minutes. Background information on the Center and Center operations were described in a **Federal Register** notice (pg. 68782, vol. 63, No. 239). Copies of the notice and additional information on the Center are available on the NTP website (*http://ntp-server.niehs.nih.gov*) or the CHRHR website (http://cerhr.niehs.nih.gov). Copies of this background information may be requested from Dr. Larry Hart at the address and phone number listed above.

The Executive Secretary will furnish an agenda and a roster of Board members and ad hoc expert reviewers prior to the meeting. Summary minutes subsequent to the meeting will be available upon request to Central Data Management, MD E1–02, P.O. Box 12233, Research Triangle Park, NC 27709 (919/541–3419), FAX (919/541–3687), email: *CDM@niehs.nih.gov*.

Dated: April 2, 1999.

Samuel H. Wilson,

Deputy Director, National Institute of Environmental Health Sciences.

[FR Doc. 99–8877 Filed 4–8–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4432–N–14]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

EFFECTIVE DATE: April 9, 1999.

FOR FURTHER INFORMATION CONTACT: Mark Johnston, Department of Housing and Urban Development, Room 7256, 451 Seventh Street SW, Washington, DC 20410; telephone (202) 708–1226; TTY number for the hearing- and speech-impaired, (202) 708–2565, (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: April 1, 1999.

Fred Karnas, Jr.,

Deputy Assistant Secretary for Economic Development.

[FR Doc. 99–8511 Filed 4–8–99; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Privacy Act of 1974; As Amended; Revisions to the Existing System of Records

AGENCY: Office of the Secretary, Department of the Interior.

ACTION: Proposed revisions to an existing system of records.

SUMMARY: In accordance with the Privacy Act of 1974, as amended (5 U.S.C. 552a), the Office of the Secretary is issuing public notice of its intent to modify an existing Privacy Act system of records notice, OS–88, "Travel." The revisions will update the name of the system and the address of the system location and system manager.

EFFECTIVE DATE: These actions will be effective April 9, 1999.

FOR FURTHER INFORMATION CONTACT: Chief, Division of Financial Management Services, Department of the Interior, 1849 C Street NW., MS–1313 MIB, Washington, DC 20240.

SUPPLEMENTARY INFORMATION: In this notice, the Department of the Interior is amending OS–88, "Travel," to update the name of the system and the address of the system location and system manager. Accordingly, the Department of the Interior proposes to amend the "Travel," OS–88, system notice in its entirety to read as follows:

Sue Ellen Sloca,

Office of the Secretary Privacy Act Officer, National Business Center.

INTERIOR/OS–88

SYSTEM NAME:

Travel Management Records—Interior, OS–88.

SYSTEM LOCATION:

Division of Financial Management Services, National Business Center, U.S. Department of the Interior, 1849 C Street NW., MS–1313 MIB, Washington, DC 20240.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

(1) Employees of the Office of the Secretary.

(2) Employees of independent agencies, councils, and commissions

(which are supported, administratively, by the Office of the Secretary).

(3) Persons serving the Department in other capacities, without compensation, to the extent authorized under 5 U.S.C.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, home address and Social Security number of traveler; destination, travel itinerary, mode and purpose of travel, date(s) of travel, expenses incurred, advances received, claims, reimbursements, and authorizations.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 5701 et seq.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES.

The primary purpose of the system is to process travel authorizations and claims. Disclosures outside the Department of the Interior may be made:

(1) To the U.S. Treasury for payment of claims.

(2) To the State Department for passports.

(3) To the U.S. Department of Justice or in a proceeding before a court or adjudicative body with jurisdiction when (a) the United States, the Department of the Interior, a component of the Department or when represented by the Government, an employee of the Department is a party to litigation or anticipated litigation or has an interest in such litigation, and (b) the Department of the Interior determines that the disclosure is relevant or necessary to the litigation and is compatible with the purpose for which the records were compiled.

(4) To appropriate Federal, State, local or foreign agencies responsible for investigating or prosecuting the violation of or for enforcing, implementing or administering a statute, rule, regulation, order, license, contract, grant or other agreement, when the disclosing agency becomes aware of information indicating a violation or potential violation of a statute, regulation, rule, order, license, contract, grant or other agreement.

(5) To a Federal agency which has requested information relevant or necessary to the hiring or retention of an employee, or issuance of a security clearance, license, contract, grant or other benefit.

(6) To Federal, State, local agencies or commercial businesses where necessary to obtain information relevant to the hiring or retention of an employee, or the issuance of a security clearance, license, contract, grant or other benefit.

(7) To a congressional office in connection with an inquiry an individual covered by the system has made to the congressional office.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a(b)(12). Pursuant to 5 U.S.C. 552a(b)(12), disclosures may be made to a consumer reporting agency as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in manual and automated form.

RETRIEVABILITY:

Records are retrieved by name and/or account number of traveler.

SAFEGUARDS:

Manual records are stored in a locked room when not in active use. Automated records are maintained with safeguards meeting the requirements of 43 CFR 2.51 for computerized records.

RETENTION AND DISPOSAL:

Records are retained and disposed of in accordance with General Records Schedule No. 9, Item No. 3.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Division of Financial Management Services, National Business Center, U.S. Department of the Interior, 1848 C Street NW., MS–1313 MIB, Washington, DC 20240.

NOTIFICATION PROCEDURES:

Inquiries regarding the existence of records shall be addressed to the System Manager. The request must be in writing, signed by the requester, and meet the content requirements of 43 CFR 2.60.

RECORD ACCESS PROCEDURES:

A request for access to records shall be addressed to the System Manager. The request must be in writing, signed by the requester, and meet the content requirements of 43 CFR 2.63.

CONTESTING RECORD PROCEDURES:

A request for amendment of records shall be addressed to the System Manager. The request must be in writing, signed by the requester, and meet the content requirements of 43 CFR 2.71.

RECORD SOURCE CATEGORIES:

Travelers, employing offices of travelers, and standard travel management sources.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 99–8844 Filed 4–8–99; 8:45 am]

BILLING CODE 4310–RM–M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Privacy Act of 1974; As Amended; Revisions to the Existing Systems of Records

AGENCY: Office of the Secretary, Department of the Interior.

ACTION: Proposed revisions to an existing system of records.

SUMMARY: In accordance with the Privacy Act of 1974, as amended (5 U.S.C. 552a), the Office of the Secretary is issuing public notice of its intent to modify an existing Privacy Act system of records notice, OS–51, "Property Accountability and Control System." The revisions will update the address of the system location and system manager and the categories of individuals covered by the system and categories of records in the system statements.

EFFECTIVE DATE: These actions will be effective April 9, 1999.

FOR FURTHER INFORMATION CONTACT: Chief, Property Management Section, Division of Logistic Services, National Business Center, U.S. Department of the Interior, 1849 C Street NW, MS–1731 MIB, Washington, DC 20240.

SUPPLEMENTARY INFORMATION: In this notice, the Department of the Interior is amending OS–51, "Property Accountability and Control System," to update the address of the system location and system manager, and to clarify the description of individuals covered by the system and categories of records in the system statements. Accordingly, the Department of the Interior proposes to amend the "Property Accountability and Control System," OS–51 in its entirety to read as follows:

Sue Ellen Sloca,

Office of the Secretary Privacy Act Officer, National Business Center.

INTERIOR/OS–51.

SYSTEM NAME:

Property Accountability and Control System—Interior, OS–51

SYSTEM LOCATION:

Property Management Section, Division of Logistic Services, National Business Center, U.S. Department of the Interior, 1849 C Street NW, MS–1731 MIB, Washington, DC 20240.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

(1) Individuals designated as Custodial Officers in the Office of the Secretary.

(2) Individuals in independent agencies, councils, and commissions (which are supported, administratively, by the Office of the Secretary) who are charged with the management of property assigned to their agency, council, or commission.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name and identification code assigned to individual Custodial Officer or property manager. Data describing each piece of property assigned.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

40 U.S.C. 483.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

The primary purpose of the system is to manage property assigned to offices, agencies, councils and commissions.

Disclosure outside the Department of the Interior may be made:

(1) To the U.S. Department of Justice or in a proceeding before a court or adjudicative body with jurisdiction when (a) the United States, the Department of Interior, a component of the Department or when represented by the Government, an employee of the Department is a party to litigation or anticipated litigation or has an interest in such litigation, and (b) the Department of the Interior determines that the disclosure is relevant or necessary to the litigation and is compatible with the purpose for which the records were compiled.

(2) The appropriate Federal, State, local or foreign agencies responsible for investigating or prosecuting the violation of or for enforcing, implementing or administering a statute, rule, regulation, order, license, contract, grant or other agreement, when the disclosing agency becomes aware of information indicating a violation or potential violation of a statute, regulation, rule, order, license, contract, grant or other agreement.

(3) To the General Accounting Office, in response to audits.

(4) To a congressional office in connection with an inquiry an individual covered by the system has made to the congressional office.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in computer data files.

RETRIEVABILITY:

Records are retrieved by Custodial Officer (or property manager) codes, and by codes describing and identifying property managed.

SAFEGUARDS:

Records are accessible only by authorized persons and are maintained in accordance with safeguards meeting the Computer Security Act of 1987.

RETENTION AND DISPOSAL:

Records are retained and disposed of in accordance with General Records Schedule No. 3, Item No. 10a.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Property Management Section, Division of Logistic Services, National Business Center, U.S. Department of the Interior, 1849 C Street NW, MS–1731 MIB, Washington, DC 20240.

NOTIFICATION PROCEDURES:

Inquiries regarding the existence of records shall be addressed to the System Manager. The request must be in writing, signed by the requester, and meet the content requirements of 43 CFR 2.60.

RECORD ACCESS PROCEDURES:

A request for access to records shall be addressed to the System Manager. The request must be in writing, signed by the requester, and meet the content requirements of 43 CFR 2.63.

CONTESTING RECORD PROCEDURES:

A request for amendment of records shall be addressed to the System Manager. The request must be in writing, signed by the requester, and meet the content requirements of 43 CFR 2.71.

RECORD SOURCE CATEGORIES:

Custodial Officer or property manager.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 99–8845 Filed 4–8–99; 8:45 am]

BILLING CODE 4310–RF–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*):

PRT–009472

Applicant: Oregon Zoo (formerly Metro Washington Park Zoo).

The applicant requests a permit to import one female wild-caught Asian Elephant (*Elephas maximus*) from Sabah Wildlife Department, Malaysia for the purpose of enhancement of the survival of the species though captive breeding.

PRT–009127

Applicant: Charles Meryman, Riverview, FL.

The applicant requests a permit to import the sport-hunted trophy of a straight horned markhor (*Capra falconeri jerdoni*) or a Kabul markhor (*Capra f. megaceros*) from the Northwest Frontier Province of Pakistan for the purpose of enhancement of the survival of the species.

PRT–009880

Applicant: Patrick F. Taylor, New Orleans, LA.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

PRT–009879

Applicant: Mark C. Fisher, Missoula, MT.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

PRT–009878

Applicant: Jeffrey E. Baier, Lynnwood, WA.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

PRT–009877

Applicant: Robert H. Sterchi, Loudon, TN.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

PRT–009876

Applicant: Robert L. Sterchi, Loudon, TN.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

PRT–009875

Applicant: Gregory H. Murtland, Livonia, MI.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

PRT–783956

Applicant: Wildlife Conservation Society, Bronx, NY.

The applicant requests an amendment and renewal of a permit to import blood and tissue samples from live animals and carcasses, respectively, obtained opportunistically from wild origin tapirs (Tapiridae), deer (Cervidae), felids (Felidae), canids (Canidae), caiman (Alligatoridae), falcons (Falconidae), psittacines (Psittacidae), storks (Ciconiidae), and vultures (Cathartidae) in Bolivia for the purpose of scientific research. This notification covers activities conducted by the applicant over a five year period.

PRT–009695

Applicant: University of Illinois, Chicago, IL.

The applicant requests a permit to import biological samples taken from Cuban sandhill cranes (*Grus canadensis nesiotes*) in Cuba for the purpose of Scientific research.

PRT–009989

Applicant: Jerome C. Stohlman, Lebanon, OH.

The applicant requests a permit to import sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purposes of enhancement of the survival of the species.

PRT–009991

Applicant: Peter J. Cassinelli, Cincinnati, OH.

The applicant requests a permit to import sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purposes of enhancement of the survival of the species.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

Documents and other information submitted with the application are available for review, *subject to the requirements of the Privacy Act and Freedom of Information Act,* by any party who submits a written request for a copy of such documents to the above address within 30 days of the date of publication of this notice.

Dated: April 5, 1999.

MaryEllen Amtower,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 99–8817 Filed 4–8–99; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of the Agency Draft Indiana Bat (Myotis sodalis) Revised Recovery Plan for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability and public comment period.

SUMMARY: The Fish and Wildlife Service (Service) announces the availability for public review of the Agency Draft Indiana Bat (*Myotis sodalis*) Revised Recovery Plan. The species has been documented in 26 states in eastern North America. The Service solicits review and comment from the public on this draft plan.

DATES: Comments on the agency draft revised recovery plan must be received on or before June 8, 1999 to receive consideration by the Service.

ADDRESSES: Persons wishing to review the draft revised recovery plan may obtain a copy from the Service's website at www.fws.gov/r3pao/bat.pdf, or purchase a copy by contacting the Fish and Wildlife Reference Service, 5430 Grosvenor Lane, Suite 110, Bethesda, Maryland 20814 (telephone: 301/492–6403 or 800/582–3421). Written comments and materials regarding the plan should be addressed to: Field Supervisor, U.S. Fish and Wildlife Service, 608 East Cherry Street, Room 200, Columbia, Missouri 65201 (telephone 573/876–1911). Comments and materials received will be available for public inspection by appointment, during normal business hours, at the above U.S. Fish and Wildlife Service address.

FOR FURTHER INFORMATION CONTACT: Dr. Paul McKenzie at the U.S. Fish and Wildlife Service above address, or telephone 573/876–1911, ext. 107.

SUPPLEMENTARY INFORMATION:

Background

Restoring an endangered or threatened animal or plant to the point where it is again a secure, self-sustaining member of its ecosystem is a primary goal of the Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species in the United States. Recovery plans describe actions considered necessary for conservation of the species, establish criteria that identifies recovery levels necessary to reclassify to threatened or delist them, and estimate time and cost to implement the recovery measures needed. The Service revises existing recovery plans to reflect important new biological information (i.e., substantially rewriting some portions of the plan) or significant conceptual changes that need to be made.

The Endangered Species Act of 1973 (Act) as amended 916 U.S.C. 1531 *et seq.*), requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires that public notice and an opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during a public comment period prior to approval of each new or revised recovery plan. The Service and other Federal agencies will also take these comments into account in the course of implementing approved recovery plans.

The document under review is the Agency Draft Indiana Bat (*Myotis sodalis*) Revised Recovery Plan. The species was listed as endangered on March 11, 1967 (32 FR 4001), under the Endangered Species Preservation Act of October 15, 1966 (80 Stat. 926; 16 U.S.C. 668a[c]). Based on censuses taken at hibernacula, the total, known Indiana bat population was estimated at 353,000 bats in 1995–1997. This represents a decline of about 60 percent since population surveys began in the 1960s. The most severe declines have occurred in Kentucky, where 180,000 bats were lost between 1960 and 1997, and in Missouri, where 250,000 bats were lost between 1980 and 1997.

Indiana bats winter in caves or mines that satisfy their highly specific needs

for cold (but not freezing) temperatures during hibernation. The fact that Indiana bats congregate and form large aggregations in only a small percentage of known caves suggests that very few caves meet their requirements. Exclusion of Indiana bats from hibernacula by blockage of entrances, gates that do not allow for bat flight or proper air flow, and human disturbance to hibernating bats have been major documented causes of Indiana bat declines.

During the summer, Indiana bats roost in trees and forage for insects primarily in riparian and upland forest. The most important characteristics of roost trees are probably structural (i.e., exfoliating bark with space for bats to roost between the bark and the bole of the tree). To a limited extent, tree cavities and crevices are also used for roosting. Maternity colonies use multiple primary roost trees which are used by a majority of the bats most of the summer, and a number of "secondary" roosts that are used intermittently and by fewer bats, especially during periods of precipitation or extreme temperatures. Thus, there may be more than a dozen roosts used by some Indiana bat maternity colonies. Indiana bats feed exclusively on flying insects.

The Indiana Bat Recovery Plan was approved by the Service in 1983. In October 1966, the Service solicited input from Service personnel, species experts, and state agencies within the range of the species on the Technical Draft Indiana Bat Revised Recovery Plan, prepared by the Indiana Bat Recovery Team. The agency draft incorporates most of the comments and suggestions received on the technical draft. The agency draft identifies priority research tasks that will help determine the limiting factors for the species. This is essential before adequate steps can be taken to halt the continued decline in the species' numbers. The current agency draft reflects an increased emphasis on necessary following discussions among members of the Indiana Bat Recovery Team and comments received from reviewers of the technical draft.

The primary objectives of the agency draft revised recovery plan are to: (1) Summarize research findings that have accumulated since the original plan was approved in 1983, (2) identify priority research tasks intended to pinpoint reasons for the species' continued precipitous decline, and (3) establish realistic objectives that will lead to the recovery and eventual delisting of the species. The species may be reclassified to threatened following documentation of stable or increasing populations for three consecutive census periods (6 years) and permanent protection [i.e., public ownership or long-term easement/lease, and gate/fence [where necessary and feasible)] at all Priority One hibernacula. Delisting will be considered when the reclassification criteria are met, in addition to protection and documentation of stable or increasing populations for three consecutive census periods at 50 percent of the Priority Two hibernacula in each state, and the overall population level must be restored to that of 1980. The year 1980 was chosen as the baseline for the Indiana bat because some of the currently known major hibernacula were not known prior to 1980, and it is the first year that systematic surveys were conducted at all major hibernation sites. In addition, the 1980 level is believed to be sufficient to maintain enough genetic diversity to enable the species to persist over a large geographical area and avoid extinction.

Public Comments Solicited

The Service solicits written comments on the recovery plan described. All comments received by the date specified above will be considered prior to approval of the revised recovery plan.

Authority

The authority for this action is Section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: April 2, 1999.

Charles M. Wooley,

Assistant Regional Director, Ecological Services, Region 3, Fort Snelling, Minnesota.

[FR Doc. 99–8818 Filed 4–8–99; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Marine Mammal Annual Report Availability, Calendar Year 1996

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability of calendar year 1996 marine mammal annual report.

SUMMARY: The U.S. Fish and Wildlife Service and the Biological Resources Division of the U.S. Geological Survey have issued their joint 1996 annual report on marine mammals under the jurisdiction of the U.S. Department of the Interior, as required by section 103(f) of the Marine Mammal Protection Act of 1972. The report covers the period January 1 to December 31, 1996, and was submitted to Congress on February 25, 1999. This notice informs you that the 1996 report is available and that copies may be obtained on request to the Service.

ADDRESSES: You should address written requests for copies to: Publications Unit, U.S. Fish and Wildlife Service, National Conservation Training Center, Route 1, Box 166, Shepherd Grade Road, Shepherdstown, WV 25443.

FOR FURTHER INFORMATION CONTACT: Jeffrey L. Horwarth, Division of Fish and Wildlife Management Assistance, Telephone (703) 358–1718.

SUPPLEMENTARY INFORMATION: The U.S. Department of the Interior is responsible for eight species of marine mammals, as assigned by the Marine Mammal Protection Act of 1972. These species are polar bear, sea and marine otters, walrus, manatees (three species) and dugong. Administrative actions discussed include appropriations, marine mammals in Alaska, endangered and threatened marine mammal species, law enforcement activities, scientific research and public display permits, certificates of registration, research, Outer Continental Shelf environmental studies and international activities.

Dated: March 31, 1999.

Jamie Rappaport Clark,

Director.

[FR Doc. 99–8889 Filed 4–8–99; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–360–1220–00]

Designation of Off-Road Vehicle Use Areas and Trails Within Shasta County, California

SUMMARY: The BLM has formulated off-road vehicle use designations for public lands within the Lower Clear Creek and Mule Mountain management areas located in Shasta County, California. These designations were specified within the Record of Decision for the Redding Resource Area Management Plan approved June, 1993. Under authority of 43 CFR 8342, motor vehicles within the Lower Clear Creek and Mule Mountain management areas are "limited" to designated roads and trails.

Roads and trails available for all registered motor vehicles on public land within the management area will be signed and include two roads connecting Muletown Road to two separate parcels of private property located within Township 31 North,

Range 6 West, sections 21 and 22, of the Mount Diablo Meridian. These private property access roads will be available for public motor vehicle use as long as they are properly maintained under private rights-of-way. Maps illustrating these road locations are available at the BLM's Redding Field Office.

Roads available for motor vehicles registered for highway-use only include: Muletown Road, Placer Street, Cloverdale Road, Clear Creek Road, and China Gulch Drive. These public road systems are controlled by Shasta County. Maps illustrating these road locations are available from the Shasta County Public Works Department.

Background

The BLM prepared an environmental impact statement and approved a record of decision (ROD) for the Redding Resource Area Management Plan in 1993. The ROD provides off-highway vehicle designations for public lands administered by the BLM. The BLM's main objective for managing lands within the Lower Clear Creek and Mule Mountain management areas is to: "Enhance non-motorized recreation opportunities by establishing a Greenway from the Sacramento River to the Whiskeytown Unit of the National Recreation Area along Clear Creek (Resource Management Plan, 1993)".

The identification of available roads and trails under the "limited" designation was further evaluated within an environmental assessment for the Lower Clear Creek Greenway—Motor Vehicle Designations prepared in 1999. The authority for this off-road vehicle designation is 43 CFR 8342. Any person who fails to comply with the terms of an off-road vehicle use designation is subject to arrest and fines of up to $100,000 and/or imprisonment not to exceed 12 months under the authority of 43 CFR 8340.0–7. Exceptions apply to authorized BLM employees, contractors, law enforcement personnel, fire prevention crews and others given express permission by the BLM authorized officer.

DATES: This off-road vehicle designation will take effect April 9, 1999.

FOR FURTHER INFORMATION CONTACT: Charles M. Schultz, Field Manager, Bureau of Land Management, 355 Hemsted Drive, Redding, CA 96002.

Charles M. Schultz,

Redding Area Manager.

[FR Doc. 99–8897 Filed 4–8–99; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

National Park Service

General Management Plan, Environmental Impact Statement, Washita Battlefield National Historic Site, Oklahoma

AGENCY: National Park Service.

ACTION: Notice of intent to prepare an environmental impact statement for the general management plan, Washita Battlefield National Historic Site (NHS).

SUMMARY: Under the provisions of the National Environmental Policy Act, the National Park Service is preparing an environmental impact statement for the general management plan (GMP) for Washita Battlefield NHS. This statement will be approved by the Director, Intermountain Region.

Washita Battlefield NHS was established by Public Law 104–333 on November 12, 1996, to provide for the preservation and interpretation of the Battle of the Washita. The battle, which occurred on November 27, 1868, was one of the largest engagements between Plains tribes and the United States Army on the Southern Great Plains. The site is a registered National Historic Landmark. The GMP is needed to guide the protection and preservation of the natural and cultural environments, considering a variety of interpretive visitor experiences that enhance the enjoyment and understanding of the park resources.

The effort will result in a comprehensive plan that encompasses preservation of natural and cultural resources, provision for visitor use and interpretation, and development of necessary and appropriate facilities. In cooperation with local interests, attention will also be given to resources outside the boundaries that affect the integrity of park resources. Alternatives to be considered include no-action, the preferred alternative, and other alternatives addressing the following major issues:

- How can the important natural and cultural resources be best protected and preserved, while providing for visitor use for present and future generations?
- What level and type of use is appropriate to be consistent with the park's purpose, and to relate to the park's significance?
- What facilities are needed to meet the mission goals of the park regarding natural and cultural resource management, visitor use and interpretation, partnerships, and park operations?

The National Park Service is planning to hold public scoping meetings regarding the GMP during the week of May 10th. Specific dates, times, and locations will be announced in the local media, and can be obtained by contacting the park superintendent. The purpose of these meetings is to explain the planning process and to obtain comments concerning appropriate resource management; desired visitor use, interpretation, and facilities; and issues that need to be resolved. In addition to attending scoping meetings, people wishing to provide input to this initial phase of developing the GMP may address comments to the superintendent. Scoping comments should be received no later than 60 days from the publication of this Notice of Intent.

FOR FURTHER INFORMATION CONTACT: Contact Superintendent Sarah Craighead, Washita Battlefield National Historic Site, P.O. Box 890, Cheyenne, Oklahoma 73628; Tel: (580) 497–2742; Fax: (580) 497–2712; e-mail: craighead__sarah@nps.gov.

Dated: March 31, 1999.

Sarah Craighead,

Superintendent, Washita Battlefield NHS.

[FR Doc. 99–8840 Filed 4–8–99; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

Announcement of Subsistence Resource Commission Meeting

SUMMARY: The Superintendent of Gates of the Arctic National Park and Preserve and the Chairperson of the Subsistence Resource Commission for Gates of the Arctic National Park and Preserve announce a forthcoming meeting of the Gates of the Arctic National Park and Preserve Subsistence Resource Commission. The following agenda items will be discussed:

(1) Call to order.
(2) Roll call.
(3) Approval of summary of minutes from January 14–15, 1998 meeting.
(4) Review agenda.
(5) Superintendent's introduction of guests and staff and review of Commission function and purpose.
(6) Superintendent's Management/ Research report.
  a. Administration and management.
  b. Park operations.
  c. Resource management.
  d. Subsistence program.
(7) Public and agency comments.
(8) Old business.
  a. SRC Chairs meeting report.
  b. Subsistence Management Plan work session.
  c. Review traditional use area report.

(9) New business.
a. Hunting plan work session.
(10) Election of Officers.
(11) Set time and place of next Subsistence Resource Commission meeting.
(12) Adjournment.

DATES: The meeting dates are: The meeting will begin at 8:30 a.m. on Tuesday, April 20, 1999, and conclude at approximately 5 p.m. The meeting will reconvene at 8:30 a.m. on Wednesday, April 21, 1999, and adjourn at 5 p.m.

ADDRESSES: The meeting location is: Sophie Station Hotel in Fairbanks, Alaska.

FOR FURTHER INFORMATION CONTACT: Steve Ulvi, Management Assistant, 201 First Avenue, Doyon Bldg., Fairbanks, Alaska 99701. Phone (907) 456–0352.

SUPPLEMENTARY INFORMATION: The Subsistence Resource Commissions are authorized under Title VIII, Section 808, of the Alaska National Interest Lands Conservation Act, Pub. L. 96–487, and operate in accordance with the provisions of the Federal Advisory Committees Act.

Paul R. Anderson,

Acting Regional Director.

[FR Doc. 99–8839 Filed 4–8–99; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Announcement of Subsistence Resource Commission Meeting

SUMMARY: The Superintendent of Wrangell-St. Elias National Park and the Chairperson of the Subsistence Resource Commission for Wrangell-St. Elias National Park announce a forthcoming meeting of the Wrangell-St. Elias National Park Subsistence Resource Commission. The following agenda items will be discussed:

(1) Call to Order (Chairman).
(2) Roll Call: Confirmation of Quorum.
(3) Introduction of Commission members and guests.
(4) Review Agenda.
(5) Superintendent's welcome and review of the Commission purpose.
(6) Commission membership status.
(7) Election of Chair and Vice Chair.
(8) Public and other agency comments.
(9) Review and approval of minutes from November 17–18, 1998 meeting.
(10) Report on Eastern Interior/ Southcentral Proposal Coordination Meeting.
(11) Report on SAC meeting.
(12) Superintendent's report.
(13) Wrangell-St. Elias National Park and Preserve staff reports.
a. Cordova hearing.
b. Status of Malaspina Forelands ATV study project.
(14) Old business:
a. Status report on inclusion of Healy Lake as a resident zone community.
b. Status of EA/rulemaking to add Northway, Tetlin, Tanacross and Dot Lake as resident zone communities (Dot Lake proposed boundary)
c. Possible restrictions of the harvest of ewe sheep.
d. Subsistence Hunting Program Recommendation 97–01 (establish minimum residency requirements for resident zone communities).
e. Review National Park Service response to Harry Kalmakoff (customary trade letter).
f. Status report on Hunting Plan Recommendation 96–1 and 96–2 (letter sent to all SRC Chairs 11/18/98).
g. Access to Inholdings (Chapter 5: Access, page 1).
h. Status report on draft subsistence plan, hunt maps, and subsistence brochure for Wrangell-St. Elias National Park and Preserve.
(15) New Business:
a. Inclusion of four wheeler's in draft subsistence plan (Chapter 5: access, page).
b. Federal Subsistence Program update.
(1) Review actions taken by Regional Councils on Federal Subsistence Program
(2) Status on Individual C&T proposals.
(3) Update on C&T Task Group.
(4) Review 1999–2000 Federal Subsistence Board proposals for Units 5, 6, 11, 12, and 13.
c. Update on Federal Fish Management.
(16) Public and other agency comments.
(17) Subsistence Resource Commission work session to develop proposals/ finalize recommendations.
(18) Set time and place of next Subsistence Resource Commission meeting.
(19) Adjourn meeting.

DATES: The meeting will begin at 9 a.m. on Tuesday, April 20, 1999, and conclude at approximately 5 p.m. The meeting will reconvene at 9 a.m. on Wednesday, April 21, 1999, and adjourn at approximately 5 p.m. The meeting will adjourn earlier if the agenda items are completed.

LOCATION: The meeting location is: Dot Lake Community Hall, Dot Lake, Alaska.

FOR FURTHER INFORMATION CONTACT: Jonathan B. Jarvis, Superintendent, Wrangell-St. Elias National Park and Preserve, P.O. Box 439, Copper Center, Alaska 99573. Phone (907) 822–5234.

SUPPLEMENTARY INFORMATION: The Subsistence Resource Commission is authorized under Title VIII, Section 808, of the Alaska National Interest Lands Conservation Act, Pub. L. 96–487, and operates in accordance with the provisions of the Federal Advisory Committees Act.

Paul R. Anderson,

Acting Regional Director.

[FR Doc. 99–8838 Filed 4–8–99; 8:45 am]

BILLING CODE 4310–01–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Availability of Draft Director's Order Concerning National Scenic and Historic Trails

AGENCY: National Park Service, DOI.

ACTION: Notice of availability.

SUMMARY: The National Park Service is updating its system of internal policy instructions. When new policy and procedural documents are proposed which might affect parties outside the Service, this information is made available for public review and comment. Draft Director's Order #45–1, "National Trails System," clarifies the status of components of the National Trails System within the National Park System and gives instructions on how such trails are assigned for management and operations.

DATES: Written comments will be accepted until May 15, 1999.

ADDRESSES: Copies of the draft Director's Order 45–1 are available from Steve Elkinton, National Park Service, Room 3622, USDOI, 1849 C St., NW, Washington, DC 20240, (202) 565–1177, or by e-mail at steve__elkinton@nps.gov.

FOR FURTHER INFORMATION CONTACT: Steve Elkinton, at (202) 565–1177.

SUPPLEMENTARY INFORMATION: The purpose of Director's Order 45–1 is to clarify the administrative status within the National Park Service (NPS) of those national scenic and national historic trails administrated by NPS, and to ensure that such trails are able to operate on an equitable basis with other NPS units. Even though NPS has administered national trails since 1968, few policy directives have been issued to systematically guide their management and administration. In the past, trail administrators and their partners may have developed policy statements as needed for individual

trails through planning and partnership agreements. This Director's Order sets forth NPS responsibilities for all its National Trails System components.

Dated: March 26, 1999.

Katherine H. Stevenson,

Associate Director, Cultural Resource Stewardship and Partnerships.

[FR Doc. 99–8837 Filed 4–8–99; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent to Repatriate a Cultural Item in the Possession of the Anchorage Museum of History and Art, Anchorage, AK

AGENCY: National Park Service

ACTION: Notice

Notice is hereby given under the Native American Graves Protection and Repatriation Act, 43 CFR 10.10 (a)(3), of the intent to repatriate a cultural item in the possession of the Anchorage Museum of History and Art which meets the definition of "object of cultural patrimony" under Section 2 of the Act.

The cultural item is a Chilkat robe or blanket (Cat. No. 73.92.1) made in the traditional style of mountain goat wool and cedarbark.

In 1973, Mr. Elton E. Engstrom signed a conditional deed of gift conveying this cultural item to the Anchorage Museum of History and Art. In 1999, Mr. Engstrom and the Anchorage Museum of History and Art signed a second unconditional deed of gift which declared the original deed of gift null and void; and which transferred ownership of this cultural item to the Anchorage Museum of History and Art as an unconditional gift. The Anchorage Museum of History and Art has no information regarding Mr. Engstrom's acquisition of this cultural item.

Based on consultation with representatives of the Wolf House (Grooch Hit) of the Kaagwaantaan and the Central Council of Tlingit and Haida, evidence of cultural affiliation and the cultural patrimony of this object has been shown by: recounting oral traditions of the connection beween their clan and the wolf; maintaining that robes were communal property that could not be alienated without approval of the members of the house; and producing a photograph showing the robe being used as a symbol of the clan and house in a funerary situation.

Officials of the Anchorage Museum of History and Art have determined that, pursuant to 43 CFR 10.2 (d)(4), this cultural item has ongoing historical, traditional, and cultural importance central to the culture itself, and could not have been alienated, appropriated, or conveyed by any individual. Officials of the Anchorage Museum of History and Art have also determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity which can be reasonably traced between this item and the Kaagwaantaan Wolf House, represented by the Central Council of the Tlingit and Haida Indian Tribes.

This notice has been sent to officials of the Kaagwaantaan Wolf House and the Central Council of the Tlingit and Haida Indian Tribes. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these objects should contact W.A. Van Horn, Curator of Collections, Anchorage Museum of History and Art, 121 W. 7th Ave., Anchorage, AK 99501; telephone: (907) 343-4326 before May 10, 1999. Repatriation of this object to the Central Council of the Tlingit and Haida Indian Tribes on behalf of the Kaagwaantaan Wolf House may begin after that date if no additional claimants come forward.

Dated: March 26, 1999.

Francis P. McManamon,

Departmental Consulting Archeologist, Manager, Archeology and Ethnography Program.

[FR Doc. 99–8886 Filed 4–8–99; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent to Repatriate Cultural Items from Molokai, HI in the Possession of the Bernice Pauahi Bishop Museum, Honolulu, HI

AGENCY: National Park Service

ACTION: Notice

Notice is hereby given under the Native American Graves Protection and Repatriation Act, 43 CFR 10.10 (a)(3), of the intent to repatriate cultural items in the possession of the Bernice Pauahi Bishop Museum, Honolulu, HI which meet the definition of "object of cultural patrimony" under Section 2 of the Act.

The cultural items are three sections of sandstone containing petroglyphs.

In 1909, Bishop Museum staff J.F.G. Stokes; with permission from George P. Cooke, manager of the Molokai Ranch; carved out and collected these sections of sandstone containing petroglyphs. These sections (nos. 9935-37) cam from an area called Kalaina Wawae (the feet of Kalaina), known for its numerous oblong depressions said to represent human footprints. One *mo'olelo*, or traditional story, associated with this site is that a prophetess named Kalaina made the imprints, thus foretelling the eventual arrival of boot-wearing foreigners.

Based on known Native Hawaiian traditions and practice, these sections of Kalaina Wawae are consistent with an object of cultural patrimony, and could not have been alienated, appropriated, or conveyed by any individual. Consultation evidence presented by Hui Malama I Na Kupuna O Hawai'i Nei, on behalf of its members on Molokai and the Native Hawaiian community of the island of Molokai, supports this conclusion.

Officials of the Bishop Museum have determined that, pursuant to 43 CFR 10.2 (d)(4), these cultural items have ongoing historical, traditional, and cultural importance central to the culture itself, and could not have been alienated, appropriated, or conveyed by any individual. Officials of the Bishop Museum have also determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity which can be reasonably traced between these items and Hui Malama I Na Kupuna O Hawai'i Nei.

This notice has been sent to officials of Hui Malama I Na Kupuna O Hawai'i Nei, the Office of Hawaiian Affairs, Moloka'i Museum and Culture Center, Lili'uokalani Trust, Alapa'i Hanapi, Lawrence Aki, and Walter Ritte. Representatives of any other Native Hawaiian organization that believes itself to be culturally affiliated with these objects should contact Valerie Free, Bernice Pauahi Bishop Museum, 1525 Bernice Street, Honolulu, HI 96817; telephone: (808) 847–8205 before May 10, 1999. Repatriation of these objects to Hui Malama I Na Kupuna O Hawai'i Nei on behalf of its members on Molokai and the Native Hawaiian community of Molokai may begin after that date if no additional claimants come forward.

Dated: March 26, 1999.

Francis P. McManamon,

Departmental Consulting Archeologist, Manager, Archeology and Ethnography Program.

[FR Doc. 99–8888 Filed 4–8–99; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF THE INTERIOR

National Park Service

Correction— Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects from Pecos Valley, NM in the Possession of the Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, MA; and the Robert S. Peabody Museum of Archaeology, Phillips Academy, Andover, MA

AGENCY: National Park Service
ACTION: Notice

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains and associated funerary objects from Pecos Valley, NM in the possession of the Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, MA; and the Robert S. Peabody Museum of Archaeology, Phillips Academy, Andover, MA.

A detailed assessment of the human remains was made by Peabody Museum of Archaeology and Ethnology and Robert S. Peabody Museum of Archaeology professional staff in consultation with representatives of the Apache Tribe of Oklahoma, the Comanche Tribe of Oklahoma, the Hopi Tribe, the Jicarilla Apache Tribe, the Kiowa Tribe, the Mescalero Apache Tribe, the Navajo Nation, Pueblo of Cochiti, the Pueblo of Jemez, Pueblo of Santo Domingo, the Pueblo of Zuni, and the Wichita and Affiliated Tribes.

Between 1915-1929, human remains representing 1,787 individuals were recovered from Pecos Pueblo and mission church sites during excavations conducted under the auspices of Phillips Academy by Alfred Vincent Kidder. No known individuals were identified. The 498 associated funerary objects include ceramic vessels, bone awls, bone beads, effigies, bone tubes, ceramic fragments, projectile points, stone scrapers, chipped stone implements, a red paint stone, stone pendants, shell pendants, ceramic ladles, ceramic pipes, wrappings, soil samples, antler tools, faunal bone implements, stone knives, stone drills, pieces of obsidian, lumps of paint, hammerstones, stone shaft straighteners, a stone palette, faunal remains, fossils, a piece of copper ore, polishing stones, and textiles.

Based on the above mentioned information, officials of the Peabody Museum of Archaeology and Ethnology and the Robert S. Peabody Museum of Archaeology have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of 1,921 individuals of Native American ancestry. Officials of the Peabody Museum of Archaeology and Ethnology and the Robert S. Peabody Museum of Archaeology have also determined that, pursuant to 43 CFR 10.2 (d)(2), the 534 objects listed above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Officials of the Robert S. Peabody Museum of Archaeology have also determined that, pursuant to 43 CFR 10.2 (d)(2), the 19 objects from the three caches at Pecos Pueblo listed above are reasonably believed to have been made exclusively to be placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the Peabody Museum of Archaeology and Ethnology and the Robert S. Peabody Museum of Archaeology have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity which can be reasonably traced between these Native American human remains and associated funerary objects and the Pueblo of Jemez.

This notice has been sent to officials of the Apache Tribe of Oklahoma, the Comanche Tribe of Oklahoma, the Hopi Tribe, the Jicarilla Apache Tribe, the Kiowa Tribe, the Mescalero Apache Tribe, the Navajo Nation, Pueblo of Cochiti, the Pueblo of Jemez, Pueblo of Santo Domingo, the Pueblo of Zuni, and the Wichita and Affiliated Tribes. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains and associated funerary objects should contact Barbara Issac, Repatriation Coordinator, Peabody Museum of Archaeology and Ethnology, 11 Divinity Ave., Cambridge, MA 022138; telephone (617) 495-2254; or James W. Bradley, Director, Robert S. Peabody Museum of Archaeology, Phillips Academy, Andover, MA 01810; telephone: (978) 749-4490, before May 10, 1999. Repatriation of the human remains and associated funerary objects to the Pueblo of Jemez may begin after that date if no additional claimants come forward.

Dated: March 26, 1999.

Francis P. McManamon,

Departmental Consulting Archeologist, Manager, Archeology and Ethnography Program.

[FR Doc. 99–8887 Filed 4–8–99; 8:45 am]
BILLING CODE 4310–70–F

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains from Barrow, AK in the Possession of the University of Nebraska State Museum, University of Nebraska-Lincoln, Lincoln, NE

AGENCY: National Park Service
ACTION: Notice

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains from Barrow, AK in the possession of University of Nebraska State Museum, University of Nebraska-Lincoln, Lincoln, NE.

A detailed assessment of the human remains was made by University of Nebraska-Lincoln professional staff in consultation with representatives of North Slope Borough as the authorized representative of the Native Village of Barrow Inupiat Traditional Government.

Between 1914 and 1916, human remains representing one individual were collected from Point Barrow by T.L. Richardson under unknown circumstances. At a later date, these human remains were donated to the University of Nebraska State Museum by Mrs. C. Boellstorff. No known individuals were identified. No associated funerary objects are present.

Based on the area from which these human remains were recovered and the condition of the remains, this individual has been identifed as Native American. Based on the location of these human remains, this individual has been determined to be Inupiat.

Based on the above mentioned information, officials of the University of Nebraska-Lincoln have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of one individual of Native American ancestry. Officials of the University of Nebraska-Lincoln have also determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity which can be reasonably traced between these Native American human remains and the Native Village of Barrow Inupiat Traditional Government.

This notice has been sent to officials of the North Slope Borough and the Native Village of Barrow Inupiat Traditional Government. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains and

associated funerary objects should contact Dr. Priscilla Grew, University of Nebraska, 302 Canfield Administration Building, Lincoln, NE 68588-0433; telephone: (402) 472-3123, before May 10, 1999. Repatriation of the human remains to the North Slope Borough as the authorized representative of the Native Village of Barrow Inupiat Traditional Government may begin after that date if no additional claimants come forward.

The National Park Service is not responsible for the determinations within this notice.

Dated: March 26, 1999.

Francis P. McManamon,

Departmental Consulting Archeologist, Manager, Archeology and Ethnography Program.

[FR Doc. 99–8885 Filed 4–8–99; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

Privacy Act of 1974; As Amended; Revisions to the Existing System of Records

AGENCY: Office of Surface Mining, Interior.

ACTION: Proposed revisions to an existing system of records.

SUMMARY: In accordance with the Privacy Act of 1974, as amended (5 U.S.C. 552a), the Office of Surface Mining (OSM) is issuing public notice of its intent to modify an existing Privacy Act system of records notice, OSM–8, "Employment and Financial Interests Statements—States and Other Federal Agencies." The revisions will update the System Name, System Location address, System Manager(s); accurately define the Categories of Individuals Covered by the System, Categories of Records in the System, Authority for Maintenance of the System, Safeguards, Retention and Disposal; and clarify the Notification Procedure, Record Access Procedures and Contesting Record Procedures.

EFFECTIVE DATE: 5 U.S.C. 552a(e)(11) requires that the public be provided a 30-day period in which to comment on the intended use of the information in the system of records. The Office of Management and Budget, in its Circular A–130, requires an additional 10-day period (for a total of 40 days) in which to make these comments. Any persons interested in commenting on this revised system of records may do so by submitting comments in writing to the U.S. Department of the Interior, Office of Surface Mining, Privacy Officer, 1951 Constitution Avenue, NW, Mail Stop 262–SIB, Washington, DC 20240. Comments received within 40 days of publication in the **Federal Register** will be considered. The system will be effective as proposed at the end of the comment period, unless comments are received which would require a contrary determination.

ADDRESS: Send written comments to the U.S. Department of the Interior, Office of Surface Mining, Privacy Act Officer, Mail Stop 262–SIB, 1951 Constitution Avenue, NW, Washington, DC 20240. You may also hand deliver comments to the same address.

FOR FURTHER INFORMATION CONTACT: Chief, Office of Personnel, Office of Surface Mining, 1951 Constitution Avenue, NW, Washington, DC 20240.

SUPPLEMENTARY INFORMATION: Earlier Privacy Act Compilations list the systems of records with the prefix "OSMRE" (e.g., OSMRE–8) as originally published in the **Federal Register**. The prefix was changed to "OSM" in subsequent records systems for convenience. The OSM is proposing to amend the system notice for OSM–8 "Employment and Financial Interests Statements—States and Other Federal Agencies," previously published in the **Federal Register** on June 6, 1989 (54 FR 24270). This revision is needed to update required data elements as well as the System Name, System Location, System Manager(s) and Address. This revision more precisely defines the Categories of Individuals Covered by the System, Categories of Records in the System, Authority for Maintenance of the System, as well as Safeguards, and Retention and Disposal policies and practices; and makes minor clarifying changes to the Notification Procedure, Record Access Procedures and Contesting Record Procedures.

Accordingly, the OSM proposes to amend the "Employment and Financial Interests Statements—States and Other Federal Agencies," OSM–8 in its entirety to read as follows:

Robert Ewing,

Chief Information Officer, Office of Surface Mining.

INTERIOR/OSM–8

SYSTEM NAME:

Employment and Financial Interests Statements—States and Federal Agencies.

SYSTEM LOCATION:

Office of Surface Mining Reclamation and Enforcement (OSM), Department of the Interior, 1951 Constitution Avenue, NW, Room 340, Washington, DC 20240.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

1. Office of Surface Mining employees by 30 CFR 706.15(a); 2. The head of each State regulatory authority who is required to file a financial statement with the Director of the Office of Surface Mining Reclamation and Enforcement by 30 CFR 705.15; 3. Federal employees, other than Interior Department employees, who are required to file a financial interest statement by 30 CFR 706.11(b) and who file with the Director of the Office of Surface Mining Reclamation and Enforcement in accordance with 30 CFR 706.15(c); and 4. State employees, and Federal employees other than Interior Department employees, whose financial interest statements are referred to the Department of the Interior in accordance with 30 CFR 705.19(a)(3) or 30 CFR 706.19(c).

CATEGORIES OF RECORDS IN THE SYSTEM:

Contains statements of employment and financial interests forms for Federal employees (OGE Form 450 & DI–1993), and for State employees (Form 23). Also contains records of decisions, analysis of financial holdings, employee statements, pertinent comments from supervisors, agency heads, and the Solicitor's Office, and related records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sections 201 (c) and (f) and 517(g) of Pub. L. 95–87 and 30 CFR 705 and 706.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The primary uses of the records are: (a) To review employee financial interests and determine employee compliance or non-compliance with the applicable statute and regulations; (b) to record the fact that the employee has been made aware of specifically directed legislation or regulations covering his organization and duties and that he or she is in compliance with such specific legislation or regulations; and (c) to provide an adequate system of records for auditors performing compliance audits. Disclosures outside the Department of the Interior may be made (1) to the Department of Justice or in a proceeding before a court or adjudicative body when (a) the United States, the Department of the Interior, a component of the Department, or, when represented by the government, an employee of the Department is a party to litigation or anticipated litigation or has an interest in such litigation, and (b) the Department of the Interior

determines that the disclosure is relevant or necessary to the litigation and is compatible with the purpose for which the records were compiled: (2) of information indicating a violation or potential violation of a statute, regulation, rule, order or license, to appropriate Federal, State, or local agencies responsible for investigating or prosecuting the violation or, (3) to Federal, State or local agencies where necessary to obtain information relevant to resolving prohibited financial interest situations or to litigation which may affect the hiring or retention of an employee; (4) to a Congressional office from the record of an individual in response to an inquiry made at the request of that individual.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in file orders.

RETRIEVABILITY:

Filed alphabetically by employee name.

SAFEGUARDS:

Maintained in a safe having a three-position dial-type, manipulation proof, combination lock.

RETENTION AND DISPOSAL:

Records will be destroyed six years after receipt unless needed in an ongoing investigation (National Archives and Records Administration, General Records Schedule, 1, Item 24). Records referred will be returned to the referring agency for disposal in accordance with that agency's disposal policy.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Office of Personnel, Office of Surface Mining, Department of the Interior, 1951 Constitution Ave., NW, Room 340, Washington, DC 20240.

NOTIFICATION PROCEDURE:

To determine whether information is maintained on you in this system, write to the System Manager. See 43 CFR 2.60.

RECORD ACCESS PROCEDURES;

To see your records, write to the System Manager. Describe as specifically as possible the record sought and mark the request "Privacy Act Request for Access." See 43 CFR 2.63.

CONTESTING RECORD PROCEDURES:

A petition for amendment shall be addressed to the System Manager and meet the content requirements of 43 CFR 2.71.

RECORD SOURCE CATEGORIES:

Present or past Federal or State employees required to file employment and financial interests statements.

[FR Doc. 99–8842 Filed 4–8–99; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

Privacy Act of 1974; As Amended; Revisions to the Existing System of Records

AGENCY: Office of Surface Mining, Interior.

ACTION: Proposed revisions to an existing system of records.

SUMMARY: In accordance with the Privacy Act of 1974, as amended (5 U.S.C. 552a), the Office of Surface Mining (OSM) is issuing public notice of its intent to modify an existing Privacy Act system of records notice, OSM–12, "Application for Blaster Certification in Federal Program States and on Indian Lands-Computer Tracking System." The revisions will update the System Name, System Location addresses, System Manager(s), further define the Authority for Maintenance of the System, and clarify the Notification Procedure and Record Access Procedures.

EFFECTIVE DATE: 5 U.S.C. 552a (e)(11) requires that the public be provided a 30-day period in which to comment on the intended use of the information in the system of records. The Office of Management and Budget, in its Circular A–130, requires an additional 10-day period (for a total of 40 days in which to make these comments. Any persons interested in commenting on this revised system of records may do so by submitting comments in writing to the U.S. Department of the Interior, Office of Surface Mining, Privacy Officer, 1951 Constitution Avenue, NW, Mail Stop 262–SIB, Washington, DC 20240. Comments received within 40 days of publication in the **Federal Register** will be considered. The system will be effective as proposed at the end of the comment period, unless comments are received which would require a contrary determination.

ADDRESSES: Send written comments to the U.S. Department of the Interior, Office of Surface Mining, Privacy Act Officer, Mail Stop 262–SIB, 1951 Constitution Avenue, NW, Washington, DC 20240. You may also hand deliver comments to the same address.

FOR FURTHER INFORMATION CONTACT: Federal Blaster Certification Program Coordinator, Office of Surface Mining, 530 Gay Street, SW, Suite 500, Knoxville, Tennessee 37902.

SUPPLEMENTARY INFORMATION: Earlier Privacy Act Compilations list the systems of records with the prefix "OSMRE" (e.g., OSMRE–12) as originally published in the **Federal Register**. The prefix was changed to "OSM" in subsequent records systems for convenience. The OSM is proposing to update and amend the system notice for OSM–12 "Application for Blaster Certification in Federal Program States and on Indian Lands-Computer Tracking System," which was previously published in the **Federal Register** on August 27, 1986 (51 FR 30554), to more accurately and clearly describe the System Name, System Location, System manager(s) and addresses. In addition, this revision further defines the Authority for Maintenance of the System by adding one citation, and clarifies the Notification Procedure and Record Access Procedures.

Accordingly, the OSM proposes to amend the "Application for Blaster Certification in Federal Program States and on Indian Lands-Computer Tracking System," OSM–12 in its entirety to read as follows:

Robert Ewing,

Chief Information Officer, Office of Surface Mining.

INTERIOR/OSM–12

SYSTEM NAME:

Blaster Certification, OSM–12.

SYSTEM LOCATION:

Office of Surface Mining Reclamation and Enforcement (OSM), Department of the Interior, Washington, DC 20240 and Field Offices in Knoxville, Tennessee; Casper, Wyoming; Albuquerque, New Mexico; and Tacoma, Washington. For specific addresses of Field Offices contact the program coordinator at the address given below.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The system contains applicants for certification as blasters in Federal Program States and on Indian Lands. Each application will be for one type of blaster certificate or purpose, from the following categories; issuance, renewal, reissuance, reexamination, replacement, or reciprocity. The application form will contain information on; personal data, examination dates, employment history, blasting experience, education, blaster training, blaster certification history,

law violation history, and personal affirmation of all of the above information.

CATEGORIES OF RECORDS IN THE SYSTEM:

(1) Complete application information submitted by candidate; (2) Application Status Reports listing; the number received, incomplete, complete and not scheduled for examination, list of rejected applications, and list of applicants scheduled for examination; (3) Report Generation menu, contains; summary report of receipt of applications and alphabetic directory of Federal licensed blaster; (4) Certification Status reports contain; listing of certifications due to expire, expired certificates and a list or revoked or suspended certificates; (5) Query processing sub-systems to access information on candidates by social security number, last name, and print output of entire application information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1201 et seq., and 30 CFR 750.19, 816.61, 900, 910, 912, 921, 922, 933, 937, 939, 941, 942, 947, and 955.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The primary uses of the records are to: (a) Review and applicant's background, status, employment history, blasting experience and violation status; (b) record the fact that the person is in compliance with specific State and Federal authority and regulations; (c) maintain adequate control and access of record information; (d) serve as a tool for OSM to grant as blaster certificate for issuance, renewal, reissuance and reciprocity status, administration and notification procedure; (e) provide an adequate system of records for the Department, and for compliance within the Department for a Federal program; (f) enable, OSM to track appropriate actions when a blasting violation occurs, or a discrepancy with application information and the affirmation by the applicant; (g) verify the status of a blaster when queried by state or mining company official; and (h) enable OSM as the regulatory authority to effectively monitor its program requirements.

Disclosure outside the Department of the Interior may be made to: (1) The appropriate Federal, State, local or foreign agency responsible for obtaining information relevant to a Federal blaster for investigating, prosecuting, enforcing or implementing a statue, rule, regulation or order when OSM becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation; (2) the U.S. Department of Justice or in a proceeding before a court or adjudicative body when; (a) the United States, the Department of the Interior, a component of the Department, or, when represented by the government, an employee of the Department is a party to litigation or anticipated litigation or has an interest in such litigation, and (b) the Department of the Interior determines that the disclosure is relevant or necessary to the litigation and is compatible with the purpose for which the records were compiled; (3) to a congressional office from the record of an individual in response to an inquiry the individual has made to the congressional office; (4) to a State or mining company officials to verify that an individual is or is not a certified blaster under the Federal programs.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in manual form in secured file cabinets; and recorded on computer magnetic media.

RETRIEVABILITY:

For each Field Office, information is filed and retrievable by social security number and last name alphabetically, or date of entry. For each Field Office, information is filed alphabetically by applicant, candidate, or blasters, and consolidated in summary format at the Knoxville Field Office.

SAFEGUARDS:

Maintained in locked file cabinets for manual files, standard password files on computer and software, and accessible only by those authorized persons. Manual records are maintained in OSM areas occupied by OSM personnel during working hours with buildings locked off hours.

RETENTION AND DISPOSAL:

Data stored on magnetic media will be retained until it is determined that the information is no longer needed or required. Manual records will be retained for a minimum of 6 years to serve as verification and backup material. ADP printout records will be updated and disposed of periodically, when superseded or recertification of a certified blaster occurs. Records are disposed of in accordance with items 25 through 30 of General Records Schedule 14.

SYSTEM MANAGER(S) AND ADDRESS:

Federal Blaster Certification Program Coordinator, Office of Surface Mining, 530 Gay Street, SW, Suite 500, Knoxville, Tennessee 37902.

NOTIFICATION PROCEDURE:

To determine whether information is maintained on you in this system, write to the appropriate State designated OSM Field Office Director. See 43 CFR 2.60.

RECORD ACCESS PROCEDURES:

To see your records, write to the State designated OSM Field Office Director. Describe as specifically as possible the records sought and mark the request "Privacy Act Request for Access." See 43 CFR 2.63.

CONTESTING RECORD PROCEDURES:

A petition for amendment shall be addressed to the designated OSM Field Office Director and meet the content requirements of 43 CFR 2.71.

RECORD SOURCE CATEGORIES:

(1) Application for Blaster Certification in Federal Program States and on Indian Lands. (2) Federal Blaster Examination Test Scores and Status. (3) State program approved certified blasters records. (4) State and Federal criminal or law violation records.

[FR Doc. 99–8843 Filed 4–8–99; 8:45 am]
BILLING CODE 4310–05–M

INTERNATIONAL TRADE COMMISSION

Investigations Nos. 731–TA–825–826 (Preliminary)

Certain Polyester Staple Fiber From Korea and Taiwan

AGENCY: United States International Trade Commission.

ACTION: Institution of antidumping investigations and scheduling of preliminary phase investigations.

SUMMARY: The Commission hereby gives notice of the institution of investigations and commencement of preliminary phase antidumping investigations Nos. 731–TA–825–826 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. § 1673b(a)) (the Act) to determine whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Korea and Taiwan of certain polyester staple fiber, provided for in subheading 5503.20.00 of the Harmonized Tariff Schedule of

the United States (HTS), that are alleged to be sold in the United States at less than fair value.[1] Unless the Department of Commerce extends the time for initiation pursuant to section 732(c)(1)(B) of the Act (19 U.S.C. § 1673a(c)(1)(B)), the Commission must reach a preliminary determination in antidumping investigations in 45 days, or in this case by May 17, 1999. The Commission's views are due at the Department of Commerce within five business days thereafter, or by May 24, 1999.

For further information concerning the conduct of these investigations and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207).

EFFECTIVE DATE: April 2, 1999.

FOR FURTHER INFORMATION CONTACT: Jozlyn Kalchthaler (202–205–3457), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION:

Background

These investigations are being instituted in response to a petition filed on April 2, 1999, by E.I. Dupont de Nemours, Inc., Wilmington, DE; NanYa Plastics Corporation, America, Lake City, SC; KoSa, Spartanburg, SC; Wellman, Inc., Shrewsbury, NJ; and Intercontinental Polymers, Inc., Charlotte, NC.

Participation in the Investigations and Public Service List

Persons (other than petitioners) wishing to participate in the investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in sections 201.11 and 207.10 of the Commission's rules, not later than seven days after publication of this notice in the **Federal Register**. Industrial users and (if the merchandise under investigation is sold at the retail level) representative consumer organizations have the right to appear as parties in Commission antidumping investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List

Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these investigations available to authorized applicants representing interested parties (as defined in 19 U.S.C. § 1677(9)) who are parties to the investigations under the APO issued in the investigations, provided that the application is made not later than seven days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference

The Commission's Director of Operations has scheduled a conference in connection with these investigations for 9:30 a.m. on April 23, 1999, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. In the event that the Commission is closed for business on April 23, the conference will be held at 9:30 a.m. on April 22, 1999. Parties wishing to participate in the conference should contact Jozlyn Kalchthaler (202–205–3457) not later than April 20, 1999, to arrange for their appearance. Parties in support of the imposition of antidumping duties in these investigations and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

Written Submissions

As provided in sections 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before April 28, 1999, a written brief containing information and arguments pertinent to the subject matter of the investigations. Parties may file written testimony in connection with their presentation at the conference no later than three days before the conference. If briefs or written testimony contain BPI, they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means.

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.12 of the Commission's rules.

By order of the Commission.

Issued: April 6, 1999.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–8883 Filed 4–8–99; 8:45 am]

BILLING CODE 7020–02–P

[1] These investigations include synthetic staple fibers of polyesters, the foregoing not carded, combed, or otherwise processed for spinning and measuring 3.3 decitex (3 denier) or more in diameter. This merchandise is cut to lengths varying from 25 mm (1 inch) to 127 mm (5 inches), inclusive. Merchandise subject to the investigations may be coated, usually with a silicone or other finish, or not coated.

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importation of Controlled Substances; Notice of Application

Pursuant to Section 1008 of the Controlled Substances Import and Export Act (21 U.S.C. 958(I)), the Attorney General shall, prior to issuing a registration under this Section to a bulk manufacturer of a controlled substance in Schedule I or II and prior to issuing a regulation under Section 1002(a) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with Section 1301.34 of Title 21, Code of Federal Regulations (CFR), notice is hereby given that on December 23, 1998, Johnson Matthey, Inc., Custom Pharmaceuticals Department, 2003 Nolte Drive, West Deptford, New Jersey 08066–1742, made application by renewal to the Drug Enforcement Administration to be registered as an importer of the basic classes of controlled substances listed below:

Drug	Schedule
Phenylacetone (8501)	II
Opium, raw (9600)	II
Poppy Straw Concentrate (9670)	II

The phenylacetone will be imported for conversion to amphetamine base, isomers and salts thereof for sale in bulk form to customers. The firm plans to import the raw opium and concentrate of poppy straw for the bulk manufacture of controlled substances.

Any manufacturer holding, or applying for, registration as a bulk manufacturer of these basic classes of controlled substances may file written comments on or objections to the application described above and may, at the same time, file a written request for a hearing on such application in accordance with 21 CFR 1301.43 in such form as prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than May 10, 1999.

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1301.34(b), (c), (d), (e), and (f). As noted in a previous notice at 40 FR 43745–46 (September 23, 1975), all applicants for registration to import a basic class of any controlled substance in Schedule I or II are and will continue to be required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1301.34(a), (b), (c), (d), (e), and (f) are satisfied.

Dated: March 24, 1999.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 99–8809 Filed 4–8–99; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importation of Controlled Substances; Notice of Application

Pursuant to Section 1008 of the Controlled Substances Import and Export Act (21 U.S.C. 958(i)), the Attorney General shall, prior to issuing a registration under this Section to a bulk manufacturer of a controlled substance in Schedule I or II and prior to issuing a regulation under Section 1002(a) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with Section 1301.34 of Title 21, Code of Federal Regulations (CFR), notice is hereby given that on January 23, 1999, Lipomed, Inc., One Broadway, Cambridge, Massachusetts 02142, made application to the Drug Enforcement Administration to be registered as an importer of the basic classes of controlled substances listed below:

Drug	Schedule
Cathinone (1235)	I
Methaqualone (2565)	I
Lysergic acid diethylamide (7315)	I
Marihuana (7360)	I
Tetrahydrocannabinols (7370)	I
Mescaline (7381)	I
3,4,5-Trimethoxyamphetamine (7390).	I
4-Bromo-2,5-dimethoxyamphetamine (7391).	I
4-Methyl-2,5-dimethoxyamphetamine (7395).	I
2,5-Dimethoxyamphetamine (7396).	I
2,5-Dimethoxy-4-ethylamphetamine (7399).	I
3,4-Methylenedioxyamphetamine (7400).	I
3,4-Methylenedioxy-N-ethylamphetamine (7404).	I
3,4-Methylenedioxymethamphetamine (7405).	I
Psilocybin (7437)	I
Psilocyn (7438)	I
Acetyldihydrocodeine (9051)	I
Dihydromorphine (9145)	I
Heroin (9200)	I
Tilidine (9750)	I
Amphetamine (1100)	II
Methamphetamine (1105)	II
Amobarbital (2125)	II
Secobarbital (2315)	II
Phencyclidine (7471)	II
Cocaine (9041)	II
Codeine (9050)	II
Dihydrocodeine (9120)	II
Oxycodone (9143)	II
Hydromorphone (9150)	II
Benzoylecgonine (9180)	II
Hydrocodone (9193)	II
Levorphanol (9220)	II
Methadone (9250)	II
Dextropropoxyphene, bulk (non-dosage forms) (9273).	II
Morphine (9300)	II
Thebaine (9333)	II
Oxymorphone (9652)	II
Alfentanil (9737)	II
Fentanyl (9801)	II

The firm plans to import small reference standard quantities of finished commercial product from its sister company in Switzerland for sale to its customers for drug testing and pharmaceutical research and development.

Any manufacturer holding, or applying for, registration as a bulk manufacturer of these basic classes of controlled substances may file written comments on or objections to the application described above and may, at the same time, file a written request for a hearing on such application in accordance with 21 CFR 1301.43 in such form as prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than May 10, 1999.

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1301.34(b), (c), (d), (e), and (f). As noted in a previous notice at 40 FR 43745–46 (September 23, 1975), all applicants for registration to import basic classes of any controlled substances in Schedule I or II are and will continue to be required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1301.34(a), (b), (c), (d), (e), and (f) are satisfied.

Dated: March 1, 1999.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 99–8810 Filed 4–8–99; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 97–8]

Leonard E. Reaves, III, M.D.; Removal of Stay of Revocation

On August 13, 1998, the then-Acting Deputy Administrator of the Drug Enforcement Administration (DEA)

issued a final order revoking DEA Certificate of Registration AR2127377 issued to Leonard E. Reaves, III, M.D. (Respondent), effective September 18, 1998. *See* 63 F.R 44471 (August 19, 1998). The then-Acting Deputy Administrator further ordered that the revocation be stayed for six months from the effective date of the order "during which time Respondent must present evidence to the Acting Deputy Administrator of his completion of a training course regarding controlled substances, and of his ongoing treatment for his codependency problems [and] must request modification, if necessary, of his 1995 renewal application to accurately reflect what schedules he wishes to be registered in to effectively treat his patient population." *Id.*

The then-Acting Deputy Administrator noted that should Respondent fail to provide this information in a timely manner, the stay would be removed and Respondent's DEA Certificate of Registration would be revoked and any pending applications for renewal would be denied.

The Deputy Administrator finds that more than six months have passed since the effective date of the final order regarding Respondent's DEA Certificate of Registration, and Respondent has not presented any evidence to the Deputy Administrator of his completion of a training course regarding controlled substances or of his ongoing treatment for his codependency problems. In addition, the Deputy Administrator has not received a request from Respondent to modify his 1995 renewal application.

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that the stay placed on the revocation of DEA Certificate of Registration AR2127377 pursuant to the final order dated August 13, 1998, be, and it hereby is removed. The Deputy Administrator further orders that DEA Certificate of Registration AR2127377, previously issued to Leonard E. Reaves, III, M.D., be, and it hereby is revoked and any pending renewal applications be, and they hereby are denied. This order is effective May 10, 1999.

Dated: April 1, 1999.

Donnie R. Marshall,

Deputy Administrator.

[FR Doc. 99–8814 Filed 4–8–99; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importation of Controlled Substances; Notice of Application

Pursuant to Section 1008 of the Controlled Substances Import and Export Act (21 U.S.C. 958(i)), the Attorney General shall, prior to issuing a registration under this Section to a bulk manufacturer of a controlled substance in Schedule I or II and prior to issuing a regulation under Section 1002(a) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with Section 1301.34 of Title 21, Code of Federal Regulations (CFR), notice is hereby given that on January 25, 1999, Roberts Laboratories, Inc., 4 Industrial Way West, Eatontown, New Jersey 07724–2274, made application by renewal to the Drug Enforcement Administration to be registered as an importer of propiram (9649), a basic class of controlled substance listed in Schedule I.

The firm plans to import the propiram to manufacture in bulk for product development.

Any manufacturer holding, or applying for, registration as a bulk manufacturer of this basic class of controlled substance may file written comments on or objections to the application described above and may, at the same time, file a written request for a hearing on such application in accordance with 21 CFR 1301.43 in such form as prescribed by 21 CFR 1316.47.

Any such comments, objections, or requests for a hearing may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than May 10, 1999.

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1301.34(b), (c), (d), (e), and (f). As noted in a previous notice at 40 FR 43745–46 (September 23, 1975), all applicants for registration to import a basic class of any controlled substance in Schedule I or II are and will continue to be required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1301.34(a), (b), (c), (d), (e), and (f) are satisfied.

Dated: March 19, 1999.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 99–8811 Filed 4–8–99; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances Notice of Registration

By Notice dated December 23, 1998, and published in the **Federal Register** on January 4, 1999, (64 FR 182), Wildlife Laboratories, Inc., 1501 Duff Drive, Suite 600, Fort Collins, Colorado 80524, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as an importer of the basic classes of controlled substances listed below:

Drug	Schedule
Etorphine Hydrochloride (9059) ...	II
Carfentanil (9743)	II

The firm plans to import the listed controlled substances to produce finished products for distribution to its customers.

No comments or objections have been received. DEA has considered the factors in Title 21, United States Code, Section 823(a) and determined that the registration of Wildlife Laboratories, Inc. to import the listed controlled substances is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971, at this time. DEA has investigated Wildlife Laboratories, Inc. on a regular basis to ensure that the company's continued registration is consistent with the public interest. These investigations have included inspection and testing of the company's physical security systems, audits of the company's records, verification of the company's compliance with state and local news, and a review of the company's background and history. Therefore, pursuant to Section 1008(a) of the Controlled Substances Import and Export Act and in accordance with Title 21, Code of Federal Regulations, Section 1301.34, the above firm is granted registration as an importer of the basic classes of controlled substances listed above.

Dated: March 17, 1999.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 99–8813 Filed 4–8–99; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

April 2, 1999.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor, Acting Departmental Clearance Officer, Pauline Perrow (202–219–5096 ext. 165) or by E-Mail to Perrow-Pauline@dol.gov.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for BLS, DM, ESA, ETA, MSHA, OSHA, PWBA, or VETS, Office of Management and Budget, Room 10235, Washington, DC 20503 (202–395–7316), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Employment Standards Administration (ESA).

Title: Certification of Funeral Expenses.

OMB Number: 1215–0027 (Revision).

Frequency: On-occasion.

Affected Public: Business or other for-profit.

Number of Respondents: 195.

Estimated Time Per Respondent: LS–265 15 minutes.

Total Burden Hours: 49.

Total Annualized capital/startup costs: $0.

Total annual costs (operating/maintaining systems or purchasing services): $70.00.

Description: This form is used to request basic information relative to the amount of funeral expenses incurred. The information is submitted to OWCP district offices that have responsibility for monitoring and processing death cases. The information is usually incorporated into a compensation order at the time death benefits are ordered paid in a case.

Agency: Employment Standards Administration (ESA).

Title: Worker Information—Terms and Conditions of Employment.

OMB Number: 1215–0187 (Extension).

Frequency: On-occasion.

Affected Public: Individuals and households, business or other for-profit; farms.

Number of Respondents: 160,000.

Estimated Time Per Respondent: 32 minutes.

Total Burden Hours: 85,333.

Total Annualized Capital/startup costs: $0.

Total Annual (operating/maintaining): $24,000.

Description: Form WH–516 is an optional form which a farm labor contractor, agricultural employer or agricultural association can use to disclose in writing the terms and conditions of employment to migrant and seasonal agricultural workers. Although use of the form is optional, disclosure of the terms and conditions of employment is required by MSPA.

Agency: Employment Standards Administration (ESA).

Title: Housing Occupancy Certificate-Migrant and Seasonable Agricultural Worker Protection Act.

OMB Number: 1215–0158 (Revision).

Frequency: On-occasion.

Affected Public: Individuals and households; business or other for-profit; farms.

Number of Respondents: 60.

Estimated Time Per Respondent: 3 minutes.

Total Burden Hours: 4.

Total Annualized Capital/startup costs: $0.

Total Annual (operating/maintaining): $0.

Description: The information collected on Form WH–520 identifies the housing for which certification is being requested; the expected dates of occupancy of the housing; occupancy rates; and the name, address and telephone number of the person(s) who own and/or will control the housing when it is occupied. The form is completed by a Wage and Hour Division Investigator based upon the oral responses of the applicant and an inspection of the housing.

Agency: Employment Standards Administration (ESA).

Title: Payment of Compensation Without Award.

OMB Number: 1215–0022 (Extension).

Frequency: On-occasion.

Affected Public: Business or other for-profit.

Number of Respondents: 900.

Estimated Time Per Respondent: 15 minutes.

Total Burden Hours: 6,750.

Total Annualized Capital/startup costs: $0.

Total Annual (operating/maintaining): $10,000.

Description: The LS–206 is a basic claims form which is used by insurance carriers and self-insurers to report the start of compensation benefits. It requests only basic data relating to the compensation benefits which are to be paid.

Agency: Employment Standards Administration (ESA).

Title: Notice of Controversion of Right to Compensation.

OMB Number: 1215–0023 (Extension).

Frequency: On-occasion.

Affected Public: Business or other profit.

Number of Respondents: 900.

Estimated Time Per Respondent: 15 minutes.

Total Burden Hours: 4,500.

Total Annualized Capital/startup costs: $0.

Total Annual (operating/maintaining): $7,000.

Description: This LS–207 form is a basic claims form which is used by insurance carriers and self-insurers to controvert compensation benefits. It requests only basic data relating to the reason(s) that benefits are not paid.

Pauline Perrow,

Acting Department Clearance Officer.

[FR Doc. 99–8930 Filed 4–8–99; 8:45 am]

BILLING CODE 4510–27–M

DEPARTMENT OF LABOR

Employment Standards Administration

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment Standards Administration is soliciting comments concerning the following proposed extension collection: Rehabilitation Action Report (OWCP–44). A copy of the proposed information collection request can be obtained by contacting the office listed below in the addressee section of this notice.

DATES: Written comments must be submitted to the office listed in the addressee section below on or before June 9, 1999. The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

ADDRESSES: Ms. Patricia A. Forkel, U.S. Department of Labor, 200 Constitution Ave., N.W., Room S–3201, Washington, D.C. 20210, telephone (202) 693–0339 (this is not a toll-free number), fax (202) 693–1451.

SUPPLEMENTARY INFORMATION:

I. Background

The Office of Workers' Compensation programs administers the Federal Employees' Compensation Act, which provides, in pertinent part, that eligible injured workers are furnished vocational rehabilitation services. The costs of these services are paid from the Employees' Compensation Fund. The Rehabilitation Action Report (OWCP–44) is submitted by the rehabilitation counselor to report transition periods in the vocational rehabilitation process and to request prompt claims adjudicatory action.

II. Current Actions

The Department of Labor seeks an extension of approval to collect this information in order to render timely decisions on eligibility for benefits.

Type of Review: Extension.
Agency: Employment Standards Administration.
Title: Rehabilitation Action Report.
OMB Number: 1215–0182.
Agency Number: OWCP–44.
Affected Public: Business of other for-profit; individuals or households.
Total Respondents: 7,000.
Frequency: On occasion.
Total Responses: 7,000.
Time per Response: 30 minutes.
Estimated Total Burden Hours: 3,500.
Total Burden Cost (capital/startup): $0.
Total Burden Cost (operating/maintenance): $0.

Dated: April 2, 1999.

Margaret J. Sherrill,

Chief, Branch of Management Review and Internal Control, Division of Financial Management, Office of Management, Administration and Planning, Employment Standards Administration.

[FR Doc. 99–8931 Filed 4–8–99; 8:45 am]
BILLING CODE 4510–27–M

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and superseded decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department.

Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, N.W., Room S–3014, Washington, D.C. 20210.

Modifications to General Wage Determination Decisions

The number of decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

Connecticut
CT990001 (Mar. 12, 1999)
CT990003 (Mar. 12, 1999)
CT990004 (Mar. 12, 1999)
Maine
ME990022 (Mar. 12, 1999)
ME990026 (Mar. 12, 1999)
New York
NY990002 (Mar. 12, 1999)
NY990003 (Mar. 12, 1999)
NY990004 (Mar. 12, 1999)
NY990005 (Mar. 12, 1999)
NY990007 (Mar. 12, 1999)
NY990008 (Mar. 12, 1999)
NY990009 (Mar. 12, 1999)
NY990010 (Mar. 12, 1999)
NY990011 (Mar. 12, 1999)
NY990013 (Mar. 12, 1999)
NY990014 (Mar. 12, 1999)
NY990015 (Mar. 12, 1999)
NY990016 (Mar. 12, 1999)
NY990017 (Mar. 12, 1999)
NY990018 (Mar. 12, 1999)
NY990021 (Mar. 12, 1999)
NY990022 (Mar. 12, 1999)
NY990026 (Mar. 12, 1999)
NY990032 (Mar. 12, 1999)
NY990033 (Mar. 12, 1999)
NY990037 (Mar. 12, 1999)
NY990039 (Mar. 12, 1999)
NY990040 (Mar. 12, 1999)
NY990041 (Mar. 12, 1999)
NY990042 (Mar. 12, 1999)
NY990045 (Mar. 12, 1999)
NY990046 (Mar. 12, 1999)
NY990047 (Mar. 12, 1999)
NY990048 (Mar. 12, 1999)
NY990049 (Mar. 12, 1999)
NY990051 (Mar. 12, 1999)
NY990060 (Mar. 12, 1999)
NY990072 (Mar. 12, 1999)
NY990074 (Mar. 12, 1999)
NY990075 (Mar. 12, 1999)
NY990076 (Mar. 12, 1999)
NY990077 (Mar. 12, 1999)

Volume II

None

Volume III

Florida
FL990001 (Mar. 12, 1999)
FL990009 (Mar. 12, 1999)
FL990010 (Mar. 12, 1999)
FL990011 (Mar. 12, 1999)
FL990014 (Mar. 12, 1999)
FL990015 (Mar. 12, 1999)
FL990017 (Mar. 12, 1999)
FL990032 (Mar. 12, 1999)
FL990066 (Mar. 12, 1999)
Georgia
GA990004 (Mar. 12, 1999)
GA990023 (Mar. 12, 1999)
GA990044 (Mar. 12, 1999)
GA990053 (Mar. 12, 1999)
GA990065 (Mar. 12, 1999)
Mississippi
MS990031 (Mar. 12, 1999)

Volume IV

Illinois
IL990018 (Mar. 12, 1999)
Michigan
MI990001 (Mar. 12, 1999)
MI990002 (Mar. 12, 1999)
MI990003 (Mar. 12, 1999)
MI990004 (Mar. 12, 1999)
MI990005 (Mar. 12, 1999)
MI990007 (Mar. 12, 1999)
MI990012 (Mar. 12, 1999)
MI990017 (Mar. 12, 1999)
MI990030 (Mar. 12, 1999)
MI990031 (Mar. 12, 1999)
MI990034 (Mar. 12, 1999)
MI990060 (Mar. 12, 1999)
MI990062 (Mar. 12, 1999)
MI990066 (Mar. 12, 1999)
MI990067 (Mar. 12, 1999)
MI990068 (Mar. 12, 1999)
MI990069 (Mar. 12, 1999)
MI990070 (Mar. 12, 1999)
MI990071 (Mar. 12, 1999)
MI990072 (Mar. 12, 1999)
MI990073 (Mar. 12, 1999)
MI990074 (Mar. 12, 1999)
MI990075 (Mar. 12, 1999)
MI990076 (Mar. 12, 1999)
MI990077 (Mar. 12, 1999)
MI990078 (Mar. 12, 1999)
MI990079 (Mar. 12, 1999)
MI990080 (Mar. 12, 1999)
MI990081 (Mar. 12, 1999)
MI990082 (Mar. 12, 1999)
MI990083 (Mar. 12, 1999)
MI990084 (Mar. 12, 1999)
Minnesota
MN990005 (Mar. 12, 1999)
MN990007 (Mar. 12, 1999)
MN990008 (Mar. 12, 1999)
MN990012 (Mar. 12, 1999)
MN990015 (Mar. 12, 1999)
MN990017 (Mar. 12, 1999)
MN990027 (Mar. 12, 1999)
MN990031 (Mar. 12, 1999)
MN990035 (Mar. 12, 1999)
MN990039 (Mar. 12, 1999)
MN990043 (Mar. 12, 1999)
MN990045 (Mar. 12, 1999)
MN990046 (Mar. 12, 1999)
MN990058 (Mar. 12, 1999)
MN990061 (Mar. 12, 1999)

Volume V

Kansas
KS990006 (Mar. 12, 1999)
KS990007 (Mar. 12, 1999)
KS990008 (Mar. 12, 1999)
KS990009 (Mar. 12, 1999)
KS990011 (Mar. 12, 1999)
KS990012 (Mar. 12, 1999)
KS990013 (Mar. 12, 1999)
KS990015 (Mar. 12, 1999)
KS990016 (Mar. 12, 1999)
KS990018 (Mar. 12, 1999)
KS990019 (Mar. 12, 1999)
KS990020 (Mar. 12, 1999)
KS990021 (Mar. 12, 1999)
KS990022 (Mar. 12, 1999)
KS990023 (Mar. 12, 1999)
KS990025 (Mar. 12, 1999)
KS990026 (Mar. 12, 1999)
KS990029 (Mar. 12, 1999)
KS990063 (Mar. 12, 1999)
Louisiana
LA990001 (Mar. 12, 1999)
LA990004 (Mar. 12, 1999)
LA990005 (Mar. 12, 1999)
LA990012 (Mar. 12, 1999)
LA990014 (Mar. 12, 1999)
LA990018 (Mar. 12, 1999)
LA990040 (Mar. 12, 1999)
LA990055 (Mar. 12, 1999)
Missouri
MO990001 (Mar. 12, 1999)
MO990002 (Mar. 12, 1999)
MO990003 (Mar. 12, 1999)
MO990004 (Mar. 12, 1999)
MO990005 (Mar. 12, 1999)
MO990006 (Mar. 12, 1999)
MO990007 (Mar. 12, 1999)
MO990008 (Mar. 12, 1999)
MO990009 (Mar. 12, 1999)
MO990010 (Mar. 12, 1999)
MO990011 (Mar. 12, 1999)
MO990013 (Mar. 12, 1999)
MO990014 (Mar. 12, 1999)
MO990015 (Mar. 12, 1999)
MO990016 (Mar. 12, 1999)
MO990017 (Mar. 12, 1999)
MO990019 (Mar. 12, 1999)
MO990029 (Mar. 12, 1999)
MO990042 (Mar. 12, 1999)
MO990043 (Mar. 12, 1999)
MO990045 (Mar. 12, 1999)
MO990047 (Mar. 12, 1999)
MO990049 (Mar. 12, 1999)
MO990050 (Mar. 12, 1999)
MO990051 (Mar. 12, 1999)
MO990052 (Mar. 12, 1999)
MO990054 (Mar. 12, 1999)
MO990055 (Mar. 12, 1999)
MO990057 (Mar. 12, 1999)
MO990058 (Mar. 12, 1999)
MO990059 (Mar. 12, 1999)
MO990060 (Mar. 12, 1999)
MO990062 (Mar. 12, 1999)
MO990063 (Mar. 12, 1999)
MO990064 (Mar. 12, 1999)
MO990065 (Mar. 12, 1999)
MO990067 (Mar. 12, 1999)
MO990070 (Mar. 12, 1999)
MO990072 (Mar. 12, 1999)
Texas
TX990002 (Mar. 12, 1999)
TX990003 (Mar. 12, 1999)
TX990004 (Mar. 12, 1999)
TX990005 (Mar. 12, 1999)
TX990007 (Mar. 12, 1999)
TX990010 (Mar. 12, 1999)
TX990013 (Mar. 12, 1999)
TX990014 (Mar. 12, 1999)
TX990015 (Mar. 12, 1999)
TX990033 (Mar. 12, 1999)

TX990034 (Mar. 12, 1999)
TX990037 (Mar. 12, 1999)
TX990055 (Mar. 12, 1999)
TX990060 (Mar. 12, 1999)
TX990061 (Mar. 12, 1999)
TX990062 (Mar. 12, 1999)
TX990081 (Mar. 12, 1999)
TX990093 (Mar. 12, 1999)
TX990117 (Mar. 12, 1999)

Volume VI

Idaho
ID990002 (Mar. 12, 1999)
ID990003 (Mar. 12, 1999)
Oregon
OR990001 (Mar. 12, 1999)
South Dakota
SD990002 (Mar. 12, 1999)
SD990024 (Mar. 12, 1999)
Washington
WA990002 (Mar. 12, 1999)
Wyoming
WY990004 (Mar. 12, 1999)
WY990005 (Mar. 12, 1999)
WY990006 (Mar. 12, 1999)
WY990007 (Mar. 12, 1999)
WY990008 (Mar. 12, 1999)
WY000023 (Mar. 12, 1999)

Volume VII

None

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon and Related Acts." This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

The general wage determinations issued under the Davis-Bacon and related Acts are available electronically by subscription to the FedWorld Bulletin Board System of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at 1–800–363–2068.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the seven separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates are distributed to subscribers.

Signed at Washington, DC, this 2nd day of April, 1999.

Margaret J. Washington,

Acting Chief, Branch of Construction Wage Determinations.

[FR Doc. 99–8582 Filed 4–8–99; 8:45 am]

BILLING CODE 4510–27–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

National Advisory Committee on Occupational Safety and Health; Notice of Meeting

Notice is hereby given of the date and location of the next meeting of the National Advisory Committee on Occupational Safety and Health (NACOSH), established under section 7(a) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 656) to advise the Secretary of Labor and the Secretary of Health and Human Services on matters relating to the administration of the Act. NACOSH will hold a meeting on May 11 and 12, 1999, in Room S 4215 A–C of the Department of Labor Building located at 200 Constitution Avenue NW, Washington, D.C. The meeting is open to the public and will begin at 1:00 p.m. lasting until approximately 5:00 p.m. the first day, May 11. On May 12, the meeting will begin at 8:30 a.m. and last until approximately 4:00 p.m.

During its November 1998 meeting, NACOSH decided that one of its areas of activity over the next two years would be to study OSHA's standard-setting and regulatory process. The Committee plans to continue this study at its May meeting by studying the use of advisory committees in addition to the 6(b) process. As examples, the committee will discuss both the Steel Erection Negotiated Rulemaking Committee and the current Standards Advisory Committee on Metalworking Fluids. NACOSH will invite key players who were or are involved in the activities of each of these committees to participate in a panel discussion on the morning of May 12th. These include representatives from industry, labor and the public, as well as the involved government officials from OSHA and NIOSH. Members of the public are invited to submit written comments. Presenters will be asked to address issues/questions similar to those that were used in discussing the development of the methylene chloride standard under the standard 6(b) process at the February 10–11 meeting. Some of these are: How did you become involved in the process? How would you define our role? How would you define OSHA's role in the process? What are/were the key issues in the process (e.g., technical, economic and political feasibility); scope of the standard; nature of the regulated community)? What are/were your expectations for the process? What will you consider a successful outcome? What are the strengths and limitations of the process? How could the process be improved? What advice would you give OSHA if it were to embark on another rulemaking using the same process?

Other agenda items will include: an overview of current activities of the Occupational Safety and Health Administration (OSHA) and the National Institute for Occupational Safety and Health (NIOSH), work group reports and a panel discussion of the use of partnerships both in OSHA and NIOSH.

Written data, view or comments for consideration by the committee may be submitted, preferably with 20 copies, to Joanne Goodell at the address provided below. Any such submissions received prior to the meeting will be provided to the members of the Committee and will be included in the record of the meeting. Because of the need to cover a wide variety of subjects in a short period of time, there is usually insufficient time on the agenda for members of the public to address the committee orally. However, any such requests will be considered by the Chair who will determine whether or not time permits. Any request to make an oral presentation should state the amount of time desired, the capacity in which the person would appear, and a brief outline of the content of the presentation. Individuals with disabilities who need special accommodations should contact Theresa Berry (phone: 202–693–1999; FAX: 202–293–1641) one week before the meeting.

An official record of the meeting will be available for public inspection in the OSHA Technical Data Center (TDC) located in Room N2625 of the Department of Labor Building (202–693–2350). For additional information contact: Joanne Goodell, Occupational Safety and Health Administration (OSHA); Room N–3641, 200 Constitution Avenue NW, Washington, D.C., 20210 (phone: 202–693–2400; FAX 202–293–1641; e-mail joanne.goodell@osha-no.osha.gov; or at www.osha.gov).

Signed at Washington, D.C., this 2nd day of April, 1999.

Charles N. Jeffress,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 99–8932 Filed 4–8–99; 8:45 am]

BILLING CODE 4510–26–M

LEGAL SERVICES CORPORATION

Sunshine Act Meeting

TIME AND DATE: The Board of Directors of the Legal Services Corporation will meet on April 17, 1999. The meeting will begin at 9:00 a.m. and continue until conclusion of the Board's agenda.

LOCATION: Hilton Hotel, 5000 Seminary Road, Alexandria, Virginia 22311.

STATUS OF MEETING: Open, except that a portion of the meeting may be closed pursuant to a vote of the Board of Directors to hold an executive session. At the closed session, the Corporation's General Counsel will report to the Board on litigation to which the Corporation is or may become a party, and the Board may act on the matters reported. The closing is authorized by the relevant provisions of the Government in the Sunshine Act [5 U.S.C. 552b(c)(10)] and the corresponding provisions of the Legal Services Corporation's implementing regulation [45 CFR 1622.5(h)]. A copy of the General Counsel's Certification that the closing is authorized by law will be available upon request.

MATTERS TO BE CONSIDERED:

Open Session

1. Approval of agenda.
2. Approval of minutes of the Board's meeting of February 22, 1999.
3. Approval of minutes of the executive session of the Board's meeting of February 22, 1999.
4. Chairman's Report.
5. Members' Report.
6. President's Report
7. Inspector General's Report.
8. Appointment of the membership of each committee of the Board and appointment of each committee's chairperson.
9. Consider and act on the Board's meeting schedule, including designation of locations, for year 2000.
10. Consider and act on the report of the Board's Operations and Regulations Committee.
- Consider and act on the Committee's recommendation regarding proposed final rule, 45 CFR Part 1641, Debarment, Suspension and Removal of Recipient Auditors.
- Consider and act on the Committee's recommendation regarding final rule, 45 CFR Part 1628, Recipient Fund Balances.
- Consider and act on the committee's recommendation regarding the Inspector General's level of compensation.

11. Consider and act on the report of the Board's Committee on Provision for the Delivery of Legal Services.
12. Consider an act on proposed amendment(s) to the Corporation's 403(b) Thrift Plan that are intended to increase the Corporation's employer contribution level to more closely track the Federal retirement plans.
13. Consider and act on the resolution to recognize and thank the law firm of Covington & Burling for outstanding *pro bono* efforts for the Corporation.
14. Report on the status of the special panel the board authorized the Board Chair to establish to study and report back to the board on issues relating to LSC grantees' representation of legal alien workers and the requirement that they be "present in the United States."
15. Dissolution of the Board's 1998 Annual Performance Reviews Committee.

Closed Session

16. Briefing [1] by the Inspector General on the activities of the OIG.
17. Consider and act on the General Counsel's report on potential and pending litigation involving the Corporation.
18. Consider and act on a request for indemnification.

Open Session

19. Consider and act on other business.
20. Public comment.

CONTACT PERSON FOR INFORMATION: Victor M. Fortuno, General Counsel and Secretary of the Corporation, at (202) 336–8810.

SPECIAL NEEDS: Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments. Individuals who have a disability and need an accommodation to attend the meeting may notify Shannon Nicko Adaway, at (202) 336–8810.

Dated: April 6, 1999.

Victor M. Fortuno,

General Counsel.

[FR Doc. 99–9020 Filed 4–7–99; 12:59 pm]

BILLING CODE 7050–01–P

[1] Any portion of the closed session consisting solely of staff briefings does not fall within the Sunshine Act's definition of the term "meeting" and, therefore, the requirements of the Sunshine Act do not apply to any such portion of the closed session. 5 U.S.C. 552(b)(a)(2) and (b). See also 45 CFR § 1622.2 & 1622.3

LEGAL SERVICES CORPORATION

Sunshine Act Meeting

TIME AND DATE: The Operations and Regulations Committee of the Legal Services Corporation Board of Directors will meet on April 16, 1999. The meeting will begin at 10:00 p.m. and continue until the Committee concludes its agenda.

LOCATION: Hilton Hotel, 5000 Seminary Road, Alexandria, Virginia 22311.

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

1. Approval of agenda.
2. Approval of minutes of the Committee's meeting of February 21, 1999.
3. Consider public comment and consider and act on final rule, 45 CFR Part 1641, Debarment, Suspension and Removal of Recipient Auditors.
4. Consider public comment and consider and act on final rule, 45 CFR Part 1628, Recipient Fund Balances.
5. Develop a recommendation to make to the Board regarding setting of the compensation level for the Corporation's Inspector General.
6. Consider and act on other business.
7. Public comment.

CONTACT PERSON FOR INFORMATION: Victor M. Fortuno, General Counsel and Secretary of the Corporation, at (202) 336–8810.

SPECIAL NEEDS: Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments. Individuals who have a disability and need an accommodation to attend the meeting may notify Shannon Nicko Adaway, at (202) 336–8810.

Dated: April 6, 1999.

Victor M. Fortuno,

General Counsel.

[FR Doc. 99–9021 Filed 4–7–99; 12:59 pm]

BILLING CODE 7050–01–P

LEGAL SERVICES CORPORATION

Sunshine Act Meeting

TIME AND DATE: The Committee on Provision for the Delivery of Legal Services of the Legal Services Corporation Board of Directors will meet on April 16, 1999. The meeting will begin at 2:00 p.m. and continue until the Committee concludes its agenda.

LOCATION: Hilton Hotel, 5000 Seminary Road, Alexandria, Virginia 22311.

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

1. Approval of agenda.

2. Approval of minutes of the Committee's meeting of February 20, 1999.

3. Report by the Corporation's Office of Program Performance on the state planning process.

4. Consider and act on other business.

5. Public comment.

CONTACT PERSON FOR INFORMATION: Victor M. Fortuno, General Counsel and Secretary of the Corporation, at (202) 336–6810.

SPECIAL NEEDS: Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments. Individuals who have a disability and need an accommodation to attend the meeting may notify Shannon Nicko Adaway, at (202) 336–6810.

Dated: April 6, 1999.

Victor M. Fortuno,

General Counsel.

[FR Doc. 99–9022 Filed 4–7–99; 12:59 pm]

BILLING CODE 7050–01–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice.

SUMMARY: NARA is giving public notice that the agency proposes to request extension of a currently approved information collection used when veterans or other authoized individuals request information from or copies of documents in military service records. The public is invited to comment on the proposed information collection pursuant to the Paperwork Reduction Act of 1995.

DATES: Written comments must be received on or before June 8, 1999 to be assured of consideration.

ADDRESSES: Comments should be sent to: Paperwork Reduction Act Comments (NHP), Room 3200, National Archives and Records Administration, 8601 Adelphi Rd, College Park, MD 20740–6001; or faxed to 301–713–6913; or electronically mailed to tamee.fechhelm@arch2.nara.gov.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the proposed information collections and supporting statements should be directed to Tamee Fechhèlm at telephone number 301–713–6730, or fax number 301–713–6913.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13), NARA invites the general public and other Federal agencies to comment on proposed information collections. The comments and suggestions should address one or more of the following points: (a) whether the proposed collection information is necessary for the proper performance of the functions of NARA; (b) the accuracy of NARA's estimate of the burden of the proposed information collections; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of information technology. The comments that are submitted will be summarized and included in the NARA request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this notice, NARA is soliciting comments concerning the following information collection:

Title: Request Pertaining to Military Records.

OMB number: 3095–0029.

Agency form number: SF 180.

Type of review: Regular.

Affected public: Veterans, their authorized representatives, state and local governments, and businesses.

Estimated number of respondents: 850,100.

Estimated time per response: 5 minutes.

Frequency of response: On occasion (when respondent wishes to request information from a military personnel record).

Estimated total annual burden hours: 172,300 hours.

Abstract: In accordance with rules issued by the Department of Defense (DOD) and Department of Transportation (DOT, US Coast Guard), the National Personnel Records Center (NPRC) of the National Archives and Records Administration (NARA) administers military service records of veterans after discharge, retirement, and death. When veterans and other authorized individuals request information from or copies of documents in military service records, they must provide in forms or in letters certain information about the veteran and the nature of the request. Federal agencies, military departments, veterans, veterans' organizations, and the general public use Standard Forms (SF) 180, Request Pertaining to Military Records, in order to obtain information from military service records stored at NPRC. The authority for this information collection is contained in 36 CFR 1228.162.

Dated: April 5, 1999.

L. Reynolds Cahoon,

Assistant Archivist for Human Resources and Information Services.

[FR Doc. 99–8816 Filed 4–8–99; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Sunshine Act Meeting

AGENCY: Institute of Museum and Library Services.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the agenda of a forthcoming meeting of the National Museum Services Board. This notice also describes the function of the board. Notice of this meeting is required under the Government through the Sunshine Act (Public Law 94–409) and regulations of the Institute of Museum and Library Services, 45 CFR 1180.84.

TIME AND DATE: 10:30 am–12:30 pm—Friday, May 14, 1999.

STATUS: Open.

ADDRESSES: The Westin Crown Center Hotel, One Pershing Road, Kansas City, MO 64108, (816) 474–4400.

FOR FURTHER INFORMATION CONTACT: Elizabeth Lyons, Special Assistant to the Director, Institute of Museum and Library Services, 1100 Pennsylvania Avenue, NW., Room 510, Washington, DC 20506, (202) 606–4649.

SUPPLEMENTARY INFORMATION: The National Museum Services Board is established under the Museum Services Act, Title II of the Arts, Humanities, and Cultural Affairs Act of 1976, Public Law 94–462. The Board has responsibility for the general policies with respect to the powers, duties, and authorities vested in the Institute under the Museum Services Act.

The meeting on Friday, May 14, 1999 will be open to the public. If you need special accommodations due to a disability, please contact: Institute of Museum and Library Services, 1100 Pennsylvania Avenue, NW., Washington, DC 20506—(202) 606–8536—TDD (202) 606–8636 at least seven (7) days prior to the meeting date.

Agenda

75th Meeting of the National Museum Services Board

The Westin Crown Center Hotel, One Pershing Drive, Kansas City, MO, Friday, May 14, 1999

10:30–12:30 pm

I. Chairperson's Welcome and Minutes of the 74th NMSB Meeting—February 5, 1999
II. Director's Report
III. Appropriations Report
IV. Legislative/Public Affairs Report
V. Office of Research and Technology Report
VI. Office of Museum Services Program Reports
A. David Ucko's Report on the 21st Century Learners Meeting in Washington, DC on March 22–23, 1999
VII. Office of Library Services Program Reports

Dated: April 1, 1999.

Linda Bell,

Director of Policy, Planning and Budget, National Foundation on the Arts and Humanities, Institute of Museum and Library Services.

[FR Doc. 99–8953 Filed 4–6–99; 4:41 pm]

BILLING CODE 7036–01–M

NATIONAL GAMBLING IMPACT STUDY COMMISSION

Meeting

AGENCY: National Gambling Impact Study Commission.

ACTION: Notice of public meeting.

SUMMARY: At its twelfth regular meeting the National Gambling Impact Study Commission, established under Public Law 104–169, dated August 3, 1996, will conduct its normal meeting business; hear possible presentations from one or more subcommittees; continue its ongoing review of Commission research on economic and social gambling impacts; and deliberate on possible findings and recommendations for the Final Report.

DATES: Tuesday, April 27, 8:30 a.m. to 5:30 p.m. and Wednesday, April 28, 8:30 a.m. to 5:30 p.m.

ADDRESSES: The meeting site will be: Hall of the States, Room 385, 444 North Capitol Street, NW, Washington, DC 20001.

Written comments can be sent to the Commission at 800 North Capitol Street, NW, Suite 450, Washington, DC 20002.

STATUS: The meeting will be open to the public both days.

CONTACT PERSONS: For further information contact Craig Stevens at (202) 523–8217 or write to 800 North Capitol St., NW, Suite 450, Washington, DC 20002.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public both days. However, due to limited seating, members of the media planning to attend are kindly asked to contact Craig Stevens to secure arrangements. Individual subcommittees, including the Regulation, Enforcement & Internet Subcommittee, may meet on Monday, April 26 from 6:00 p.m. to 11:00 p.m. at the Phoenix Park Hotel located at 520 North Capitol Street. For information on individual subcommittee meetings, please contact Mr. Craig Stevens, Communications and Logistics Coordinator, at 202–523–8217.

Tim Bidwill,

Special Assistant to the Chairman.

[FR Doc. 99–8933 Filed 4–8–99; 8:45 am]

BILLING CODE 6802–ET–P

NUCLEAR REGULATORY COMMISSION

[IA 98–058]

A. Abdulshafi, Ph.D.; Order Prohibiting Involvement in NRC-Licensed Activities

I

Dr. A. Abdulshafi, Ph.D. (Dr. Abdulshafi) is the Owner, President, and Radiation Safety Officer of DAS Consult, Inc. (DAS or Licensee), an NRC licensee who is the holder of Byproduct Material License No. 34–26551–01 issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR part 30. The license authorizes possession and use of moisture density gauges containing byproduct material in accordance with the conditions specified therein. The license was originally issued on February 2, 1994, and is due to expire on February 28, 2004.

II

Between June 19 and 25, 1998, a special inspection of licensed activities was conducted to determine if licensed material was being used, stored, or transferred in accordance with NRC requirements. The inspection was initiated because the Licensee failed to pay its annual fee, and attempts to contact the Licensee by telephone and by mail were unsuccessful. The inspector discovered that in January, 1997, the Licensee had sold its physical assets, including six moisture density gauges containing byproduct material, to Diversified Global Enterprises Company (DGE), an entity which was not authorized to possess or use such material either by the NRC or by an Agreement State. The gauges contained sufficient quantities of cesium-137 and americium-241 to require persons who possess these devices to hold a specific NRC license. NRC regulations at 10 CFR 30.41, provide, in part, that licensees may not transfer byproduct material except to a person authorized to receive such byproduct material under the terms of a specific or general license issued by the Commission or an Agreement State.

In March 1997, two months after the sale of DAS physical assets to DGE, by a letter to NRC Region III dated March 24, 1997, Dr. Abdulshafi requested that the DAS license be amended to reflect a change in office location. The letter forwarded payment for the amendment as well as the annual fee. The letter did not indicate that the gauges had been sold or transferred. After May 1997, DGE moved the gauges to another location and the business association between Dr. Abdulshafi and DGE ended. As a result of the NRC special inspection, Dr. Abdulshafi retrieved the gauges from DGE and properly transferred them to another company authorized to possess and receive them.

On June 29, 1998, an investigation was initiated by the NRC Office of Investigations (OI) to determine whether the transfer of byproduct material to DGE was a willful violation. At the predecisional enforcement conference held with Dr. Abdulshafi and NRC staff by telephone on January 5, 1999, Dr. Abdulshafi agreed that a violation involving the improper transfer of licensed material occurred. He maintained that his actions were not deliberate, but were the result of personal problems and a misunderstanding between himself and DGE. In his OI testimony, however, Dr. Abdulshafi stated that during the negotiations preceding the January, 1997, sale of physical assets, he advised DGE that DGE must have an NRC license to possess the gauges, knowing that DGE did not possess a license. Moreover, Dr. Abdulshafi acknowledged continuing to advise Dr. El-Naggar, President of DGE, and possibly other DGE officials at various times between January and April 1997, that DGE needed to obtain an NRC license in order to possess the gauges. Based on the evidence obtained by OI and a predecisional enforcement conference with Dr. Abdulshafi on January 5, 1999, the NRC staff concludes that in January, 1997, Dr. Abdulshafi, Owner, President and Radiation Safety Officer of DAS,

deliberately transferred nuclear material to DGE, a person not authorized to possess or use such material, in violation of 10 CFR 30.41.

III

Based on the above, it appears that Dr.Abbdulshafi engaged in deliberate misconduct in violation of 10 CFR 30.10(a)(1), causing the Licensee to be in violation of 10 CFR 30.41(a) and (b)(5). Dr. Abdulshafi deliberately transferred six Troxler moisture density gauges containing byproduct material to a person not authorized to possess or use such material.

The NRC must be able to rely upon licensees and their employees to comply with NRC requirements, including the requirement that byproduct material may be transferred only to persons authorized to receive such materials, in order to protect public health and safety. Dr. Abdulshafi's deliberate action in causing the Licensee to violate 10 CFR 30.41 has raised serious doubt as to whether he can be relied upon to comply with NRC requirements.

Consequently, I lack the requisite reasonable assurance that licensed activities can be conducted in compliance with the Commission's requirements and that the health and safety of the public will be protected if Dr. Abdulshafi were permitted at this time to be involved in NRC-licensed activities. Therefore, the public health, safety and interest require that Dr. Abdulshafi be prohibited from any involvement in NRC-licensed activities for a period of one year from the effective date of this Order. Additionally, Dr. Abdulshafi is required to notify the NRC of his subsequent employment in NRC-licensed activities for a one year period following the prohibition period.

IV

Accordingly, pursuant to sections 81, 161b, 161i, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202, 10 CFR 30.10, and 10 CFR 150.20, it is hereby ordered that:

1. Dr. Abdulshafi is prohibited from engaging in NRC-licensed activities for one year from the effective date of this Order. NRC-licensed activities are those activities that are conducted pursuant to a specific or general license issued by the NRC, including, but not limited to, those activities of Agreement State licensees conducted pursuant to the authority granted by 10 CFR 150.20.

2. If Dr. Abdulshafi is involved in NRC-licensed activities on the effective date of this Order, he must immediately cease such activities, and inform the NRC of the name, address and telephone number of the licensee, and provide a copy of this Order to the licensee.

3. For a period of one year after the one year period of prohibition has expired, Dr. Abdulshafi shall, within 20 days of acceptance of each employment offer involving NRC-licensed activities or his becoming involved in NRC-licensed activities, as defined in Paragraph IV.1 above, provide notice to the Director, Office of Enforcement, U. S. Nuclear Regulatory Commission, Washington, DC 20555, of the name, address, and telephone number of the employer or the entity where he is, or will be, involved in the NRC-licensed activities. In the first such notification, Dr. Abdulshafi shall include a statement of his commitment to compliance with regulatory requirements and the basis why the Commission should have confidence that he will now comply with applicable NRC requirements.

The Director, OE, may, in writing, relax or rescind any of the above conditions upon a demonstration by Dr. Abdulshafi of good cause.

V

In accordance with 10 CFR 2.202, Dr. Abdulshafi must, and any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing on this Order, within 20 days of the date of this Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically admit or deny each allegation or charge made in this Order and shall set forth the matters of fact and law on which Dr. Abdulshafi or other person adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, ATTN: Rulemakings and Adjudications Staff, Washington, DC 20555. Copies also shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Deputy Assistant General Counsel for Enforcement at the same address, to the Regional Administrator, NRC Region III, 801 Warrenville Road, Lisle, IL 60532, and to Dr. Abdulshafi if the answer or hearing request is by a person other than Dr. Abdulshafi. If a person other than Dr. Abdulshafi requests a hearing, that person shall set forth with particularity the manner in which his or her interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by Dr. Abdulshafi, or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section IV above shall be effective and final 20 days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section IV shall be final when the extension expires if a hearing request has not been received.

Dated at Rockville, Maryland this 31st day of March 1999.

For the Nuclear Regulatory Commission.

Malcolm R. Knapp,

Deputy Executive Director for Regulatory Effectiveness.

[FR Doc. 99–8872 Filed 4–8–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[IA 98–059]

Dr. Mohamed El-Naggar; Order Prohibiting Involvement in NRC-Licensed Activities

I

Dr. Mohamed El-Naggar (Dr. El-Naggar) is the owner of Diversified Global Enterprise Company (DGE), neither an NRC licensee nor an Agreement State licensee. DGE purchased the physical assets of DAS Consult, Inc., (DAS or Licensee), including, in particular, DAS assets subject to an NRC license. DAS is the holder of Byproduct Material License No. 34–26551–01 issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR part 30. The license authorized possession and use of moisture density gauges containing byproduct material in accordance with the conditions specified therein.

II

Between June 19 and 25, 1998, the NRC conducted an inspection of DAS's

licensed activities to determine if byproduct material was being used, stored, or transferred in accordance with NRC regulations. The inspection was initiated because DAS failed to pay its annual fee and attempts to contact the Licensee by telephone and mail were unsuccessful. The NRC inspector discovered that, in January 1997, the physical assets of DAS, including six moisture density gauges containing certain byproducts material, were sold to DGE. The gauges contained sufficient quantities of cesium-137 and americium-241 to require persons who possess these devices to hold a specific NRC license. No person may receive or possess byproduct material except as authorized by a specific or general license as required pursuant to Section 81 of the Atomic Energy Act of 1954, as amended, and 10 CFR 30.3. Neither Dr. El-Naggar nor DGE had an NRC license.

On June 29, 1998, the NRC Office of Investigations (OI) initiated an investigation to determine, among other things, whether DGE possessed six moisture density gauges containing byproduct material in willful violation of NRC requirements. Based on the evidence obtained by OI and during a predecisional enforcement conference with Dr. A. Abdulshafi, the owner of DAS, on January 5, 1999, the NRC staff concludes that DGE, through the conduct of Dr. El-Naggar, possessed byproduct material in deliberate violation of NRC requirements. Between January and May 1997, the gauges containing byproduct material remained at the original DAS location on Kenny Road, where they were tendered by Dr. A. Abdulshafi, and trained gauge users who had been authorized to use the devices under the DAS license. On or about June 1997, DGE moved the gauges to another location, and the business association between DGE and DAS ended. Dr. El-Naggar was repeatedly informed by one of his employees between May and June 1997 that DGE was required to have an NRC license to possess the gauges. However, Dr. El-Naggar did not submit an application for an NRC license. In June 1998, as a result of the NRC inspection at DAS, DAS retrieved the gauges from DGE and properly transferred them to a company authorized to possess and use them.

Between December 1, 1998 and January 20, 1999, three attempts were made by the NRC staff to schedule a predecisional enforcement conference with Dr. El-Naggar. The NRC staff was unsuccessful in scheduling this conference with Dr. El-Naggar.

III

Based on the above, it appears that Dr. El-Naggar, owner of DGE, deliberately violated Section 81 of the Atomic Energy Act of 1954, as amended, and 10 CFR 30.3. Specifically, the NRC has concluded that Dr. El-Naggar, knowingly possessed six Troxler moisture density gauges containing byproduct material without an NRC license. Dr. El-Naggar's conduct has raised serious doubt as to whether he can be relied upon to comply with NRC requirements. Consequently, in light of the nature of the violation, the length of time the noncompliance existed, and the deliberate nature of the violation, I lack the requisite reasonable assurance that licensed activities can be conducted in compliance with the Commission's requirements and that the health and safety of the public will be protected if Dr. El-Naggar were permitted to be involved in any NRC-licensed activities. Therefore, the public health, safety and interest require that Dr. El-Naggar be prohibited from any involvement in NRC-licensed activities for a period of one year from the effective date of this Order. Additionally, Dr. El-Naggar is required to notify the NRC of his subsequent employment in NRC-licensed activities for a one year period following the prohibition period.

IV

Accordingly, pursuant to sections 81, 161b, 161i, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202, 10 CFR 30.3, and 10 CFR 150.20, *It is hereby ordered that:*

1. Dr. El-Naggar is prohibited from engaging in NRC-licensed activities for one year from the effective date of this Order. NRC-licensed activities are those activities that are conducted pursuant to a specific or general license issued by the NRC, including, but not limited to, those activities of Agreement State licensees conducted pursuant to the authority granted by 10 CFR 150.20.

2. If Dr. El-Naggar is involved in NRC-licensed activities on the effective date of this Order, he must immediately cease such activities, and inform the NRC of the name, address and telephone number of the licensee, and provide a copy of this Order to the licensee.

3. For a period of one year after the one year period of prohibition has expired, Dr. El-Naggar shall, within 20 days of his acceptance of each employment offer involving NRC-licensed activities, or his becoming involved in NRC-licensed activities, as defined in Paragraph IV.1 above, provide notice to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, of the name, address, and telephone number of the employer or the entity where he is, or will be, involved in the NRC-licensed activities. In the first such notification, Dr. El-Naggar shall include a statement of his commitment to compliance with regulatory requirements and the basis why the Commission should have confidence that he will not comply with applicable NRC requirements.

The Director, OE, may, in writing, relax or rescind any of the above conditions upon demonstration by Dr. El-Naggar of good cause.

V

In accordance with 10 CFR 2.202, Dr. El-Naggar must, and any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing on this Order, within 20 days of the date of this Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically admit or deny each allegation or charge made in this Order and shall set forth the matters of fact and law on which Dr. El-Naggar or other persons adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, ATTN: Rulemakings and Adjudications Staff, Washington, DC 20555. Copies also shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Deputy Assistant General Counsel for Enforcement at the same address, to the Regional Administrator, NRC Region III, 801 Warrenville Road, Lisle, IL 60532, and to Dr. El-Naggar if the answer or hearing request is by a person other than Dr. El-Naggar. If a person other than Dr. El-Naggar requests a hearing, that person shall set forth with particularity the manner in which his or her interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by Dr. El-Naggar or a person whose interest is adversely affected, the Commission will issue an Order designating the time and

place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section IV above shall be effective and final 20 days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section IV shall be final when the extension expires if a hearing request has not been received.

For the Nuclear Regulatory Commission.

Dated at Rockville, Maryland this 31st day of March 1999.

Malcolm R. Knapp,

Deputy Executive Director for Regulatory Effectiveness.

[FR Doc. 99–8870 Filed 4–8–99; 8:45 am]

BILLING CODE 7590–01–M

NUCLEAR REGULATORY COMMISSION

[IA 98–066, EA 98–538, Docket No. 150–00019, License No. MD–33–095–01 (expired)]

Dale Todd and Roof Systems Design, Inc., Bayamon, Puerto Rico 00961; Order Prohibiting Involvement in NRC Licensed Activities

I

Mr. Dale Todd is employed as the President of Roof Systems Design, Inc. (RSDI). RSDI is a Pennsylvania Corporation, formerly doing business in Laurel, Maryland and now doing business in Bayamon, Puerto Rico. RSDI (a Maryland Licensee) possessed and used radioactive materials at its Laurel, Maryland facility under the authority of Maryland License No. MD–33–095–01, Amendment No. 2, issued by the Maryland Department of the Environment (MDE), Radioactive Materials and Compliance Division (RMCD) on May 31, 1994, pursuant to the Maryland Radiation Act, and in reliance on statements and representations made by RSDI. RSDI's Maryland license authorized RSDI to receive, acquire, possess and transfer, within the State of Maryland, Americium-241 (not to exceed 50 millicuries per source) contained in Troxler model 3216 moisture gauges used to locate areas of high moisture content in roof systems. On May 31, 1998, Maryland License No. MD–33–095–01, Amendment No. 2, expired.

II

On April 23, 1998, the Nuclear Regulatory Commission (NRC) was notified by MDE/RMCD, that Mr. Todd had moved RSDI equipment and operations to the Commonwealth of Puerto Rico, an area within the NRC's jurisdiction. An investigation by the NRC Office of Investigations (OI) was initiated on May 8, 1998, to determine whether Mr. Todd and RSDI were in unauthorized possession of moisture gauges containing byproduct material, without a specific or general license issued by the NRC. Based on the evidence developed, OI determined that RSDI willfully possessed and used Troxler moisture gauges, containing byproduct material, in the Commonwealth of Puerto Rico without a specific or general license issued by the NRC. Specifically, on May 8, 1998, Mr. Todd and RSDI were found to be in possession of four Troxler Model Number 3216 moisture gauges in Puerto Rico, each containing approximately 40 millicuries of Americium-241 without having obtained an NRC license, in violation of 10 CFR 30.3 and 10 CFR 150.20. In addition, based on statements Mr. Todd made to OI, the gauges were used at job sites in Puerto Rico, including Searle Pharmaceutical in 1992 and Ft. Buchanan and Intel in Las Piedras in September 1997 without a specific or general license issued by the NRC, in violation of 10 CFR 30.3.

Mr. Todd acknowledged to OI that he was aware that the jobs in Puerto Rico required an NRC license and that one had not been obtained. In addition, Mr. Todd told OI that he and RSDI also conducted licensed activities in New Jersey, Pennsylvania, and Virginia, areas of NRC jurisdiction, without a specific or general NRC license.

On May 12, 1998, Confirmatory Action Letter (CAL) 2–98–003 was sent to Mr. Todd confirming that he agreed to transfer the four RSDI gauges to an authorized recipient by June 7, 1998.

Mr. Todd confirmed that the four moisture gauges were transferred to an authorized recipient by letter to Mr. Mark Lesser of the NRC, dated June 11, 1998. In addition to the May 12, 1998 CAL, the NRC also sent Mr. Todd a December 30, 1998 letter that informed him of the terms of the Confirmatory Order and that requested Mr. Todd to inform the NRC whether he consented to the issuance of the Order. Mr. Todd informed the NRC in a facsimile dated December 31, 1998, that he understood the terms of this Order and that he consented to the issuance of the Order; however, he expressed reservation concerning the scope of the rights he was waiving. By letter dated January 11, 1999, a Confirmatory Order was forwarded to Mr. Todd for his signature. Subsequently, on February 18, 1999, NRC contacted Mr. Todd to discuss the proposed Order, at which time he indicated agreement with its provisions and his intent to sign and facsimile the Order to the NRC. To date, no response has been received from Mr. Todd.

III

The Commission's regulations in 10 CFR 30.3 specify that, except for persons exempt as provided in Parts 30 or 150, no person shall manufacture, produce, transfer, receive, acquire, own, possess, or use byproduct material except as authorized in a specific or general license issued by the NRC. In accordance with 10 CFR 150.20(a), any person who holds a specific license from an Agreement State, where the licensee maintains an office for directing the licensed activity and retaining radiation safety records, is granted an NRC general license to conduct the same activity in a non-Agreement State, provided the provisions of 10 CFR 150.20(b)(1) have been met. Pursuant to 10 CFR 150.20(b)(1), persons engaging in such activity must file 4 copies of NRC Form-241, "Report of Proposed Activities in Non-Agreement States", with the Regional Administrator of the appropriate NRC regional office. Based on the facts set forth above in Part II, and the fact that Mr. Todd and RSDI never filed an application for a specific license or obtained a general license under 10 CFR part 150 by filing NRC Form 241 and/or maintaining a Maryland office, the NRC has concluded that Mr. Todd and RSDI willfully possessed and used Troxler moisture gauges, without a specific or general license issued by the NRC, in violation of 10 CFR 30.3. Furthermore, based on the facts that (1) Mr. Todd told OI that he knew that his and RSDI's activities in Puerto Rico required an NRC license and (2) Mr. Todd chose not to obtain an NRC license, the NRC has concluded that Mr. Todd and RSDI have engaged in deliberate misconduct, in violation of 10 CFR 30.10. Both Mr. Todd's and RDSI's past activities raise serious doubt as to whether they can be relied upon to comply with NRC requirements in the future.

Mr. Todd's and RDSI's failure to obtain a specific or general license resulted in the NRC being uninformed that activities involving the use of radioactive materials were being conducted in areas of NRC jurisdiction. Because of Mr. Todd's and RSDI's failure to file NRC Form 241, the NRC

was denied the opportunity to inspect the licensee's facility and to verify that radioactive materials were being safely used and stored. Furthermore, the NRC was informed by the State of Maryland that Mr. Todd and RSDI committed a similar violation as a Maryland Licensee. Specifically, RSDI was issued a civil penalty in 1987 by the State of Maryland for the use of radioactive material without a license.

In view of the foregoing, I lack the requisite reasonable assurance that licensed activities can be conducted in compliance with NRC requirements and that the health and safety of the public would be protected if Mr. Todd or RSDI were permitted at this time to be involved in NRC-licensed activities. Therefore, the public health, safety and interest require that Mr. Todd and RSDI be prohibited from any involvement in NRC-licensed activities for a period of one year from the date of this Order. Additionally, Mr. Todd and RSDI are required to notify the NRC of their first involvement in NRC-licensed activities following the prohibition period.

IV

Accordingly, pursuant to sections 81,161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202, 10 CFR 30.3, 10 CFR 30.10 and 10 CFR 150.20, It is hereby ordered, that:

1. For a period of one (1) year from the date of this Order, Mr. Dale Todd and RSDI are prohibited from engaging in or exercising control over individuals engaged in NRC-licensed activities. NRC-licensed activities are those activities which require a specific or general license issued by the NRC including, but not limited to, those activities of Agreement State licensees conducted pursuant to the authority granted by 10 CFR 150.20. This prohibition includes, but is not limited to: (1) using licensed materials or conducting licensed activities in any capacity within the jurisdiction of the NRC; and (2) supervising or directing any licensed activities conducted within the jurisdiction of the NRC.

2. At least five (5) days prior to the first time that Mr. Dale Todd and/or RSDI engage in or exercise control over NRC-licensed activities, during a period of five (5) years following the one year prohibition stated in Section IV.1 above, the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, shall be notified in writing of the name, address, and telephone number of the NRC or Agreement State licensee and the location where the licensed activities will be performed. The notice shall be accompanied by a statement, under oath or affirmation, that Mr. Dale Todd and/or RSDI understand the applicable NRC requirements and are committed to compliance with NRC requirements. Mr. Dale Todd and/or RSDI also should provide a basis as to why the Commission should have confidence that Mr. Dale Todd and/or RSDI will now comply with applicable NRC requirements.

The Director, Office of Enforcement, U. S. Nuclear Regulatory Commission, may relax or rescind, in writing, any of the above conditions upon a showing by Mr. Dale Todd and/or RSDI of good cause.

V

In accordance with 10 CFR 2.202, Mr. Todd and RSDI must, and any person adversely affected by this Order may, submit an answer to this Order, and may request a hearing on this Order, within 20 days of its issuance. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically admit or deny each allegation or charge made in this Order and shall set forth the matters of fact and law on which Mr. Todd and RSDI or other persons adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, ATTN: Chief, Rulemakings and Adjudications Staff, Washington, DC 20555. Copies also shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Deputy Assistant General Counsel for Enforcement at the same address, and to the Regional Administrator, NRC Region II, Atlanta Federal Center, 61 Forsyth Street, S.W., Suite 23T85, Atlanta, Georgia 30303–3415 and to Mr. Todd, if the answer or hearing request is by a person other than Mr. Todd. If a person other than Mr. Todd requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by Mr. Todd or RSDI or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section IV above shall be final 20 days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section IV shall be final when the extension expires if a hearing request has not been received.

Dated this 31st day of March 1999.

For the Nuclear Regulatory Commission.

Malcolm R. Knapp,

Deputy Executive Director for Regulatory Effectiveness.

[FR Doc. 99–8871 Filed 4–8–99; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41243; File No. SR–NASD–99–09]

Self-Regulatory Organizations; Notice of Extension of the Comment Period for the Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to the Establishment of an Agency Quotation in Nasdaq

April 1, 1999.

On February 3, 1999, the National Association of Securities Dealers, Inc. ("NASD" or "Association") through its wholly owned subsidiary the Nasdaq Stock Market, Inc. ("Nasdaq") filed with the Securities and Exchange Commission ("Commission") a proposal to permit the separate display of customer orders by market makers in Nasdaq through a market maker agency identification symbol ("Agency Quote"). Notice of the proposed rule change was published for comment on March 11, 1999.[1]

To give the public additional time to comment on the proposal, the Commission is extending the comment period for the NASD's Agency Quote proposal to June 1, 1999. A copy of the proposed rule change is available in the Commission's Public Reference Room in File No. SR–NASD–99–09.

Interested persons are invited to submit written data, views, and

[1] Securities Exchange Act Release No. 41128 (march 2, 1999), 64 FR 12198.

arguments concerning the foregoing, including whether the proposed rule change is consistent with the Securities Exchange Act of 1934. Persons making written submissions should file six copies thereof with Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filings will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–99–09 and should be submitted by June 1, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[2]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–8797 Filed 4–8–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41244; File No. SR–NASD–99–12]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Establishment of a Pilot Program To Provide Daily Share Volume Reports via NasdaqTrader.com

April 1, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 18, 1999, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its wholly owned subsidiary, Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. On March 24,1 999, Nasdaq filed Amendment No. 1 which replaces and supersedes the initial proposal.[3] The Commission is publishing this notice to solicit comments on the proposed rule change as contained in Amendment No. 1 from interested persons.

I. Self-regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq is filing a proposed rule change to amend NASD Rule 7010 to establish a fee for the Volume and Issue Data Package provided through the NasdaqTrader.com.web site. The text of the proposed rule change is provided below in italics.

(p) NasdaqTrader.com Volume and Issue Data Package Fee

The charge to be paid by the subscriber for each entitled user receiving the Nasdaq Volume and Issue Data Package via NasdaqTrader.com shall be $75 per month. The charge to be paid by market data vendors for this information shall be $50 per month for each end user receiving the information through the data vendor. The availability of this service through NasdaqTrader.com shall be limited to NASD members. Qualified Institutional Buyers and data vendors. The Volume and Issue Data Package includes:

(1) Daily share Volume reports.

(2) Daily Issue Data.

(3) Month Volume Summaries.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of, and basis for, the proposed rule change, and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Nasdaq proposes to establish a fee for a voluntary trading data distribution facility, accessible to NASD members, buy-side institutions (*i.e.*, Qualified Institutional Buyers ("QIBs")[4] and market data vendors through its "NasdaqTrader.com" web site. Under the proposal, subscribers to this service as well as retail customers of participating market data vendors, will be able to obtain the Volume and Issue Data Package, proposed to be named Nasdaq Post Data℠.

Post Data℠ will consist of three separate reports that will be provided as a single package. The first item will be the Daily Share Volume Report, to be named Nasdaq Volume Post℠, which will provide subscribers with access to T+1 daily share volume in each Nasdaq security, listing the volume by each NASD member firm that reports volume in the security and has voluntarily chosen to permit the dissemination of this information. The daily share volume will be verified for accuracy by Nasdaq's Automated Confirmation Transaction Service ("ACT"). The second item, the Daily Issue Data report, will contain a summary of the previous day's activity for every Nasdaq issue. The third item, Monthly Summaries, will provide monthly trading volume statistics for the top 50 market participants broken down by industry sector, security, or type of trading (*e.g.*, block or total).

Post Data℠ will be made available in two ways through the NasdaqTrader.com web site. The information will be provided to market data vendors to be redistributed to their retail customers for which the data vendor will pay a $50 per month fee to Nasdaq for each end user obtaining this information. The information will also be provided directly to subscribers, limited to NASD members and non-NASD member QIBs, for a fee of $75 per month. Fees from system subscribers and vendor users will be used to offset the costs associated with the ongoing enhancement, maintenance and marketing of the NasdaqTrader.com web site. The fee paid by direct system subscriber swill be used to offset the

---

[2] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] On February 18, 1999, Nasdaq submitted its initial proposal to provide only T+1 daily share volume reports in each Nasdaq security to market data vendors, NASD members, and non-NASD member Qualified Institutional Buyers ("QIBs") as defined in Rule 144A under the Securities Act of 1933. 17 CFR 230.144A. After discussions with at least one market data vendor, and internal discussions at Nasdaq, Nasdaq filed Amendment No. 1 on March 24, 1999. The revised proposal will provide the same information in Nasdaq's original proposal to market data vendors, NASD members, and non-NASD member QIBs, as well as daily issue summaries of the previous day's activity for every Nasdaq issue, and monthly summaries of trading volume statistics for the top 50 market participants broken down by industry sector, security, or type of trade.

[4] For purposes of this service, Nasdaq will rely on the definition of "Qualified Institutional Buyer" found in Rule 144A under the Securities Act of 1933. 17 CFR 230.144A.

cost associated with the ongoing maintenance and administration of the Nasdaq web security infrastructure.

This proposal is a direct response to requests from professional Nasdaq market participants to increase the availability of Nasdaq-verified trading data through NasdaqTrader.com. Sell-side traders use share volume to display their trading activity in specific Nasdaq issues while buy-side representatives use similar data to determine which sell-side firm to select for execution of their orders. Post Data℠ will provide a secure, controlled mechanism to allow these parties to view such data and make informed choices regarding their trading partners.

Modifications to Post Data℠ during the pilot period will be limited to minor enhancements to the content of the package.[5] Any such modifications will be provided at no additional cost to the subscribers, and would be available to data vendors for redistribution.

Nasdaq recognizes the proprietary and confidential nature of the data contained in Post Data℠. As such, Nasdaq has established a secure information display and retrieval environment through the combined use of User IDs, passwords and digital certificates. To further protect NASD member firms' proprietary data, the service is designed so that the information will only be made available to the member firm itself, unless that member determines voluntarily to submit the information to be included in the Nasdaq Volume Post℠ Report for dissemination to other subscribers or vendors.

Concerns for data protection, and the system security requirements needed to encourage greater disclosure of proprietary trading statistics, also shaped Nasdaq's determination to make Post Data℠ available only to NASD member firms, market data vendors, and QIBs.[6] It is Nasdaq's belief that these groups represent the largest number of market participants who may benefit from the availability of the voluntarily disclosed, Nasdaq-verified trading volumes. At the same time, these participants are also the most likely to possess the requisite staff and resources to comply with the system security mandates. Moreover, the QIBs consist of entities registered with various regulatory bodies, which Nasdaq believes provides an additional layer of protection against the improper use of its members' proprietary trading data. Finally, the definition of QIB on which Nasdaq seeks to rely has already been adopted by the Commission as a standard delineating the characteristics of institutional market participants.

Given the commercial uncertainties associated with the launching of any new data product, Nasdaq will be establishing this new service as a 12 month pilot program, beginning from the date of Commission approval, to evaluate user interest. At the end of the 12 month pilot, Nasdaq will evaluate the program and make a determination to either terminate the program, continue the program for an additional 12 month pilot, or continue the program as a permanent feature of NasdaqTrader.com.

Nasdaq believes that the proposed rule change is consistent with the provisions of Sections 15A(b)(5)[7] and 15A(b)(6)[8] of the Act. Section 15A(b)(5) requires the equitable allocation of reasonable fees and charges among members and other users of facilities operated or controlled by a national securities association. Section 15A(b)(6) requires that the rules of the association be designed to foster cooperation and coordination with persons engaged in facilitating transactions in securities and that are not designed to permit unfair discrimination between customers, issuers, brokers or dealers. Nasdaq believes that this program involves a reasonable fee assessed only to users and other persons utilizing the system and will provide useful information to all direct and indirect subscribers on a non-discriminatory basis.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change, as amended, will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR–NASD–99–12 and should be submitted by April 30, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–8798 Filed 4–8–99; 8:45 am]

BILLING CODE 8010–01–M

[5] Nasdaq has represented to the Commission that changes to the content of the package will be limited to stylistic, non-substantive changes. Telephone conversation between Scott W. Anderson, Attorney, Office of the General Counsel, Nasdaq, and Joseph P. Morra, Attorney, Division of Market Regulation, Commission, on March 30, 1999.

[6] *See supra* note 4.

[7] 15 U.S.C. 78o–3(b)(5).

[8] 15 U.S.C. 78o–3(b)(6).

[9] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice No. 3019]

Office of Defense Trade Controls; Notifications to the Congress of Proposed Export Licenses

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Department of State has forwarded the attached Notifications of Proposed

Export Licenses to the Congress on the dates shown on the attachments pursuant to section 36(c) and in compliance with section 36(e) of the Arms Export Control Act (22 U.S.C. 2776).

EFFECTIVE DATE: As shown on each of the three (3) letters.

FOR FURTHER INFORMATION CONTACT: Mr. William J. Lowell, Director, Office of Defense Trade Controls, Bureau of Political-Military Affairs, Department of State {(703) 875–6644}.

SUPPLEMENTARY INFORMATION: Section 38(e) of the Arms Export Control Act mandates that notifications to the Congress pursuant to section 36(c) must be published in the **Federal Register** when they are transmitted to Congress or as soon thereafter as practicable.

Dated: April 5, 1999.

William J. Lowell,

Director, Office of Defense Trade Controls.

BILLING CODE 4710–25–P

United States Department of State

Washington, D.C. 20520

MAR 19 1999

Dear Mr. Speaker:

Pursuant to section 36(c) of the Arms Export Control Act, I am transmitting herewith certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves technical assistance agreements with Russia providing for the marketing and sale of satellite launch services utilizing Proton rocket boosters and the performance of associated integration and launch services from Kazakhstan.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin
Assistant Secretary
Legislative Affairs

Enclosure:
Transmittal No. DTC 39-98

The Honorable
J. Dennis Hastert,
Speaker of the House of Representatives.

United States Department of State

Washington, D.C. 20520

MAR 8 1999

Dear Mr. Speaker:

Pursuant to section 36(c) of the Arms Export Control Act, I am transmitting herewith certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount $50,000,000 or more.

The transaction contained in the attached certification involves the export of two (2) Area Weapons Effect Simulator(AWES) systems to the United Kingdom for use by the Ministry of Defence.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin

Barbara Larkin
Assistant Secretary
Legislative Affairs

Enclosure:
Transmittal No. DTC 54-99

The Honorable
J. Dennis Hastert,
Speaker of the House of Representatives.

United States Department of State

Washington, D.C. 20520

MAR 24 1999

Dear Mr. Speaker:

Pursuant to section 36(c) of the Arms Export Control Act, I am transmitting herewith certification of a proposed license for the export of major defense services sold commercially under a contract in the amount of $50,000,000 or more.

The transaction described in the attached certification involves the sale of one (1) AN/FPS-129 Radar System to the Government of Norway.

The United States Government is prepared to license the export of this item having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin

Barbara Larkin
Assistant Secretary
Legislative Affairs

Enclosure:
Transmittal No. DTC 63-99

The Honorable
J. Dennis Hastert,
Speaker of the House of Representatives.

[FR Doc. 99-8911 Filed 4-8-99; 8:45 am]
BILLING CODE 4710-25-C

DEPARTMENT OF STATE

[Public Notice 3024]

Notice of a Public Meeting Regarding Government Activities on International Harmonization of Chemical Classification and Labeling Systems

AGENCY: Bureau of Oceans and International Environmental and Scientific Affairs (OES), Department of State.

SUMMARY: This public meeting will provide an update on current activities related to international harmonization since the previous public meeting, conducted January 11, 1999 (See Department of State Public Notice 2955 on pages 1266–1267 of the **Federal Register** of January 8, 1999). The meeting will also offer interested organizations and individuals the opportunity to provide information and views for consideration in the development of United States Government policy positions. For more complete information on the harmonization process, please refer to State Department Public Notice 2526, pages 15951–15957 of the **Federal Register** of April 3, 1997.

The meeting will take place from 10 a.m. until noon on May 27, 1999, in Room N 5437 A–D, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, D.C. Attendees should use the entrance at C and Third Streets NW. To facilitate entry, please have a picture ID available and/or a U.S. Government building pass if applicable.

FOR FURTHER INFORMATION CONTACT: For further information or to submit written comments or information, please contact Mary Frances Lowe, U.S. Department of State, OES/ENV, Room 4325, 2201 C Street NW., Washington, D.C. 20520. Phone (202) 647–4284, fax (202) 647–5947. A public docket is also available for review at the Department of Labor (OSHA docket H–022H).

SUPPLEMENTARY INFORMATION: The Department of State is announcing a public meeting of the interagency committee concerned with the international harmonization of chemical hazard classification and labeling systems (an effort referred to as the "globally harmonized system" or GHS). The purpose of the meeting is to provide interested groups and individuals with an update on activities since the January 11, 1999, public meeting, a preview of upcoming international meetings, and an opportunity to submit additional information and comments for consideration in developing U.S. Government positions. Representatives of the following agencies participate in the interagency group: the Department of State, the Environmental Protection Agency, the Department of Transportation, the Occupational Safety and Health Administration, the Consumer Product Safety Commission, the Food and Drug Administration, the Department of Commerce, the Department of Agriculture, the Office of the U.S. Trade Representative, and the National Institute of Environmental Health Sciences.

The Agenda of the public meeting will include:

1. Introduction
2. Reports on recent international meetings
   —Second meeting of the Inter-Organization Program for the Sound Management of Chemicals (IOMC)/ International Labour Organisation Working Group on Hazard Communication, January 26–27, 1999, Geneva Switzerland.
   —Thirteenth Consultation of Coordinating Group for the Harmonization of Chemical Classification Systems, January 28–29, 1999, Geneva Switzerland.
   —Third meeting of the Organization for Economic Cooperation and Development Expert Group on Classification Criteria for Mixtures, February 1–3, 1999, Paris France.
3. Preparation for upcoming meetings
   —Third meeting of the Inter-Organization Program for the Sound Management of Chemicals (IOMC)/ International Labour Organisation Working Group on Hazard Communication, June 21–23, 1999, Dublin, Ireland. This group will consider final terms of reference and preparation of a detailed review document describing current hazard communications programs.
   —Fourteenth Consultation of the Coordinating Group for the Harmonization of Chemical Classification Systems, June 24–25, 1999, Dublin, Ireland. Among other issues, this group will consider long and short terms implementation issues and more detailed terms of reference for an ongoing joint committee on transport of dangerous goods and the GHS and a GHS subcommittee.
   —Fourth meeting of the Organization for Economic Cooperation and Development Expert Group on Classification Criteria for Mixtures, June 28–29, 1999, Dublin, Ireland. This group will focus on approaches and options for harmonization of existing systems for classifying chemical mixtures according to their health and environmental hazards.
   —UN Committee of Experts on the Transport of Dangerous Goods, July 5–16, 1999, Geneva, Switzerland.
4. Public Comments
5. Concluding Remarks

Interested parties are invited to submit their comments as soon as possible for consideration in the development of U.S. positions and to present their views orally and/or in writing at the public meeting. Participants may address other topics relating to harmonization of chemical classification and labeling systems and are particularly invited to identify issues of concern to specific sectors that may be affected by the GHS. Participants who attended and participated in recent international sessions may also offer their observations on the results of the sessions.

All written comments will be placed in the public docket (OSHA docket H–022H). The docket is open from 10 am until 4 pm, Monday through Friday, and is located at the Department of Labor, Room 2625, 200 Constitution Avenue NW, Washington, DC. (Telephone: 202–219–7894; Fax: 202–219–5046). The public may also consult the docket to review previous **Federal Register** notices, comment received, Questions and Answers about the GHS, a response to comments on the April 3, 1997, **Federal Register** notice, and other relevant documents.

Dated: April 2, 1999.

Michael Metelits,

Director, Office of Environmental Policy, Bureau of Oceans and International Environmental and Scientific Affairs.

[FR Doc. 99–8915 Filed 4–8–99; 8:45 am]

BILLING CODE 4710–09–M

DEPARTMENT OF STATE

[Public Notice #3000]

Secretary of State's Advisory Committee on Private International Law (ACPIL) Study Group on Protection of Incapacitated Adults; Meeting Notice

There will be a public meeting of the Study Group on Incapacitated Adults of the Secretary of State's Advisory Committee on Private International Law on Monday, May 3, 1999. The meeting will be held from 9:30 a.m. to 4:30 p.m. in the 9th Floor Conference Room, American Bar Association, 740 15th St., NW, Washington, DC 20005.

The purpose of the meeting is to consider legal issues related to the project of the Hague Conference on Private International Law to prepare a

multilateral convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation in Respect of the Protection of Adults. The meeting will assist the Department of State prepare the U.S. position for the special diplomatic session of the Hague Conference on Private International Law on September 20—October 2, 1999, which will adopt the final text of the convention.

The Study Group meeting will consider a draft text of the convention prepared at the Hague Special Commission session on Incapacitated Adults, September 3–12, 1997. Comments received will assist the Department of State in formulating comments on the draft text for submission to the Permanent Bureau of the Hague Conference for circulation to all the participating states in advance of the September 1999 diplomatic session, as well as in preparing for the final negotiations.

The draft convention sets up rules for jurisdiction and the law to be applied to proceedings to take measures for the protection of adults who are in some way unable to make appropriate decisions regarding themselves or their property. Such measures include the appointment of guardians with limited or general powers and the execution by an adult of powers of attorney or similar documents to become effective in the event of incapacity. The draft convention sets up the standards for recognition and enforcement by the states parties of the measures of protection undertaken pursuant to the convention. Finally, the draft convention establishes a system of cooperation between national authorities to ensure that appropriate information is exchanged and action taken.

Persons interested in the draft convention or in attending the May 3 Study Group meeting in Washington may request copies of the draft convention and the report of the September 1997 Special Commission session of the Hague Conference. Requests may be sent to Ms. Rosie Gonzales by fax at 202–776–8482, by phone at 202–776–8420 or by email to pildb@his.com. Please include your request, name, phone number, and mailing address.

The Study Group meeting is open to the public up to the capacity of the meeting room. Any person wishing to attend should provide Ms. Gonzales with his or her name to facilitate admission to the building. It would also be helpful to include affiliation, address, telefax and telephone numbers, and email address for purposes of updating the Department's contact list.

Those unable to attend but wishing to have their views considered by the Department of State may send their views, attention Ms. Gonzales, to the above fax number or email address, or to the following address: Office of the Assistant Legal Adviser for Private International Law, Suite 203, South Building, 2430 E St., NW, Washington, DC 20037–2800.

Jeffrey D. Kovar,

Assistant Legal Adviser for Private International Law.

[FR Doc. 99–8912 Filed 4–8–99; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF STATE

[Public Notice #3005]

Secretary of State's Advisory Committee on Private International Law (ACPIL) Study Group on Judgments; Meeting Notice

There will be a public meeting of the Study Group on Judgments of the Secretary of State's Advisory Committee on Private International Law on Friday, May 7, 1999, from 9:30 AM to 4:30 PM in Room 5951 of the U.S. Department of State, 2201 C Street, NW, Washington, DC.

The purpose of the meeting is to consider legal issues related to the project of the Hague Conference on Private International Law to prepare a multilateral convention on jurisdiction and the recognition and enforcement of foreign civil judgments. The meeting will assist the Department of State prepare the U.S. position for the fourth negotiating session of the Hague Conference's Special Commission on June 7–18, 1999.

The meeting will consider a report prepared by the drafting group of the Hague Special Commission at the third negotiating session in November 1998, which will be before the delegates to the fourth session in June 1999. The drafting committee report includes a preliminary first draft of a limited number of the provisions of a future draft convention. This text does not represent the views of any particular government, but is the first attempt to put into treaty language various approaches discussed so far in the Special Commission to resolving some of the many complex issues posed by a global convention. Included, for example, are draft provisions on jurisdiction in tort, contract, and over branches; provisional and protective measures; recognition and enforcement of judgments; damages; and concurrent and declining jurisdiction.

The Study Group will also consider other issues that will be before the delegates to the June 1999 session of the Special Commission, including: litigation involving governments or governmental entities as plaintiffs or defendants; the structure and geographic scope of the convention; class actions and multiple defendants; the independence of the court issuing the judgments and the fairness of the proceedings; public policy exception to enforcement; the relationship of the convention to other treaties on the same subject; review or oversight of operation of the convention; and how the convention is to work in countries that are federal states. It is expected that additional texts will emerge from the drafting group at the end of the June 1999 session, including possibly a complete draft convention. Currently, a diplomatic session of the Hague Conference is scheduled for October 2000 to complete and adopt and final text of the convention.

Persons interested in the draft convention or in attending the May 7 Study Group meeting in Washington may request a copy of the report of the drafting committee. Requests may be sent to Ms. Rosie Gonzales by fax at 202–776–8482, by phone at 202–776–8420 or by email to pildb@his.com. Please include your request, name, phone number, and mailing address.

The Study Group meeting is open to the public up to the capacity of the meeting room. As access to the State Department building is controlled, any person wishing to attend should provide Ms. Gonzales with his or her name, social security number, and date of birth by no later than Monday, May 3, to facilitate admission to the building. It would also be helpful to include affiliation, address, telefax and telephone numbers, and email address for purposes of updating the Department's contact list. Participants should be sure to use only the C Street entrance of the State Department, between 21st and 23rd Streets, NW, where someone will be present to assist them.

Those unable to attend but wishing to have their views considered may send their views, attention Ms. Gonzales, to the above fax number or email address, or to the following address: Office of the Assistant Legal Adviser for Private International Law, Suite 203, South

Building, 2430 E St., NW, Washington, DC 20037–2800.

Jeffrey D. Kovar,

Assistant Legal Adviser for Private International Law.

[FR Doc. 99–8913 Filed 4–8–99; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF STATE

[Public Notice #3006]

Secretary of State's Advisory Committee on Private International Law (ACPIL) General Meeting on Developments in Private International Law; Meeting Notice

There will be a general meeting of the Secretary of State's Advisory Committee on Private International Law (ACPIL) on Monday, May 10, 1999, from 9 a.m. to 5 p.m., and Tuesday, May 11, from 9 a.m. to 3 p.m., at the Department of State in Washington, DC.

The general meeting agenda will include a review of activities of international organizations specializing in this field, including the International Institute for Unification of Private Law (UNIDROIT), the Hague Conference on Private International Law, the United Nations Commission on International Trade Law (UNCITRAL), the Inter-American Specialized Conference on Private International Law (CIDIP) sponsored by the Organization of American States (OAS), and other international organizations, as appropriate.

Topics for discussion, subject to available time, will include the proposed Hague convention on jurisdiction and the recognition and enforcement of foreign civil judgements; current electronic commerce developments, including electronic signatures, cross-border recognition, jurisdiction, and electronic transfer of rights; international commercial finance negotiations, including receivables financing and aircraft and space equipment financing; OAS projects on secured interests, uniform Inter-American bills of lading, and private law jurisdiction and applicable law aspects of cross-border environmental damage; problems in implementation of the Hague Convention on the Civil Aspects of International Child Abduction, legislative issues for implementation of the Hague Convention on Intercountry Adoption, and proposals for agreements on child support and protection of incapacitated adults; and developments in international commercial arbitration, including proposed rules for the 1975 Panama Convention, and proposals for changes to the 1958 New York Convention.

The relation between developments in regional bodies such as the EU and the OAS and global bodies such as the UN, UNIDROIT and the Hague Conference will also be considered. Additional topics may be considered as time permits.

Members of the general public may attend up to the capacity of the meeting room, and participate subject to the direction of the Chair. The meeting will be held in Conference Room 1107 at the Department of State; entry should be only via the Diplomatic entrance at 2201 "C" Street, NW. As access to the building is controlled, the office indicated below should be notified not later than Monday, May 3 of the name, address, social security number, date of birth, and firm or affiliation of persons wishing to attend.

To register for the meeting or to request copies of documents on particular topics, please contact the Office of the Assistant Legal Adviser for Private International Law (L/PIL), attention Ms. Rosie Gonzales, at 2430 E Street, NW, Suite 203, South Building, Washington, DC 20037–2800, or notify Ms. Gonzales by fax at (202) 776–8482 or by e-mail at pildb@his.com.

Harold S. Burman,

Advisory Committee Executive Director.

[FR Doc. 99–8914 Filed 4–8–99; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF TRANSPORTATION

Bureau of Transportation Statistics

Reports, Forms and Recordkeeping Requirements; Agency Information Collection Activity Under OMB Review

AGENCY: Bureau of Transportation Statistics, DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for extension of currently approved collections. The ICR describes the nature of the information collection and its expected burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on November 12, 1998 [63 FR, page 63349].

DATES: Comments must be submitted on or before May 10, 1999.

FOR FURTHER INFORMATION CONTACT: Bernie Stankus, (202) 366–4387, DOT, Office of Airline Information, Room 4125, K–25, 400 Seventh Street, NW., Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION:

Bureau of Transportation Statistics (BTS)

Title: Report of Financial and Operating Statistics for Large Certificated Air Carriers.

Type of Request: Extension of a currently approved Collection.

OMB Control Number: 2138–0013.

Form(s): BTS Form 41.

Affected Public: Large certificated air carriers.

Abstract: Large certificated air carriers submit BTS Form 41, which provides basic financial, traffic, employment, and operating data. DOT uses the data in safety surveillance, international negotiations, airport improvement, air traffic control, etc.

Estimated Annual Burden Hours: 33,121.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street, NW., Washington, DC 20503, Attention BTS Desk Officer.

Comments are Invited on: whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology. A comment to OMB is most effective if OMB receives it within 30 days of publication.

Issued in Washington, DC, on April 5, 1999.

Timothy E. Carmody,

Director, Office of Airline Information, Bureau of Transportation Statistics.

[FR Doc. 99–8916 Filed 4–8–99; 8:45 am]

BILLING CODE 4910–FE–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Low Income Taxpayer Clinic Grant Program: Availability of Fiscal Year 1999 Grant Application Package

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: This document contains a Notice that the IRS has made available the grant application package for parties interested in applying for a Low Income Taxpayer Clinic Grant for Fiscal Year 1999.

DATES: Grant applications for Fiscal Year 1999 funds must be submitted to the IRS by May 10, 1999.

ADDRESSES: Send completed grant applications to: Internal Revenue Service, Attn: LITC Program Manager, OP:C:A:E:E, NCFB Room C–7–171, 5000 Ellin Road, Lanham, MD 20706. Copies of the grant application package can be downloaded from the IRS Internet site at: *http://www.irs.ustreas.gov.*

FOR FURTHER INFORMATION CONTACT: Eli McDavid, Customer Education, Assistance Section, (202) 283–0181 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

Section 3601 of the IRS Restructuring and Reform Act of 1998, Public Law No. 105–206, added new section 7526 to the Internal Revenue Code ("Code"). Section 3601 authorizes the IRS, subject to the availability of appropriated funds, to make grants to provide matching funds for the development, expansion, or continuation of qualified low income taxpayer clinics. Section 3601 authorizes the IRS to provide grants to qualified organizations that provide legal assistance to low-income taxpayers having disputes with the IRS or operate programs to inform individuals, for whom English is a second language, about their rights and responsibilities under the Code.

Comments and Analysis

In Notice 99–9 (1999–4 IRB 23)(see § 601.601(d)(2)), the IRS solicited comments on a draft grant application package. In written submissions, commentators expressed concern about various matters, including the IRS's view of the scope of the grant program in terms of the types of organizations eligible to apply for and receive grant funds and the potential burden on clinics of gathering information to establish their clients' status as qualifying low income taxpayers. The IRS took all of the commentators' comments and concerns into consideration in formulating the final grant application package. The final grant application package reflects what the IRS believes is a proper balance between the commentators' concerns and the implementation of Congressional intent in enacting the grant program. Interested parties are encouraged to provide comments on the IRS's administration of the grant program on an ongoing basis.

Deborah A. Butler,

Assistant Chief Counsel, Office of Assistant Chief Counsel (Field Service).

[FR Doc. 99–8679 Filed 4–8–99; 8:45 am]

BILLING CODE 4830–01–U

Corrections

Federal Register
Vol. 64, No. 68
Friday, April 9, 1999

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 1

Access to Automated Boards of Trade

Correction

In proposed rule document 99–6829, beginning on page 14159, in the issue of Wednesday, March 24, 1999, make the following corrections:

1. On page 14160, in the first column, in the second full paragraph, in the 12th line, before "countries" add "country or within".

2. On the same page, in the third column, in the first full paragraph, in the 21st line from the bottom, "regulatory" should read "regulator".

3. On page 14161, in the third column, under the heading *A. Definitions*, in the first paragraph, in the 15th line, "FMC" should read "FCM", and in the 16th line, "rule" should read "Rule".

4. On page 14163, in the first column, in the first full paragraph, in the eighth line, "creates" should read "create".

5. On the same page, in the second column, in the third paragraph, in the 10th line, "A a" should read "As a", and in the 11th line, "alter-native" should read "alternative".

6. On page 14164, in the second column, in the first full paragraph, in the fourth line from the bottom, "aboard" should read "abroad".

7. On page 14165, in the third column, in the first full paragraph, in the seventh line, "petitioners" should read "petitioner", and in the fourth line from the bottom, "regulatory" should read "regulator".

8. On page 14166, in the first column, in the first full paragraph, in the 16th line, "30.30" should read "30.10".

9. On page 14169, in the third column, in the sixth line from the bottom, "memebers" should read "members".

10. On page 14170, in the second full paragraph, in the 11th line, "(or its affiliate" should read "(or its affiliate)".

11. On page 14171, in the second column, in the 13th line, "and" should read "any".

12. On page 14174, in the second column, in the second line, "2(a)91)(A)" should read "2(a)(1)(A)".

§ 1.71 [Corrected]

13. On page 14175, in the first column, in § 1.71(c)(1), in the first line, the paragraph designation "((c)(1)" should read "(c)(1)".

14. On the same page, in the same column, in § 1.71(c)(2), in the second line, delete "Medicare" and add "commission merchant".

[FR Doc. C9–6829 Filed 4–8–99; 8:45 am]
BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD01-99-018]

RIN 2115-AA97

Safety Zone: Bergen County United Way Fireworks, Hudson River, Manhattan, NY

Correction

In the temporary final rule, document 99–8475, beginning on page 16642, in the issue of Tuesday, April 6, 1999, in the preamble, the DATES section is corrected to read as follows:

DATES: This rule is effective from 9:30 p.m. Saturday, April 10, 1999 until 11:00 p.m. Sunday, April 11, 1999. For rain date, refer to the regulatory text set out in this rule.

[FR Doc. C9–8475 Filed 4–8–99; 8:45 am]
BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 93

[Docket No. 29029; Amendment No. 93–77]

RIN 2120–AG45

Anchorage, Alaska, Terminal Area

Correction

In rule document 99–7625, beginning on page 14972, in the issue of Monday, March 29, 1999, make the following corrections:

§ 93.53 [Corrected]

1. On page 14976, in the second column, in § 93.53, in the first paragraph, in the 16th line from the bottom, "lat. 61°16′13″N." should read "lat. 61°17′13″N.".

§ 93.55 [Corrected]

2. On page 14976, in the third column, in § 93.55(b), in the second line, "an" should read "and".

3. On the same page, in the same column, in § 93.55(c), in the eighth line, "Seaward" should read "Seward".

4. On the same page, in the same column, in § 93.55(e), in the fourth line, "long. 149°43735″W." should read "long. 149°37′35″W.".

5. On page 14977, in the first column, in § 93.55(f), in the second line, "an" should read "and".

6. On the same page, in the same column, in § 93.55(f), in the 10th line, "61°40723″N." should read "61°07′23″N.".

7. On the same page, in the same column, in § 93.55(f), in the 17th line, "Rod" should read "Road".

§ 93.65 [Corrected]

8. On page 14977, in the third column, in § 93.65(d), in the second line, "AFB;" should read "AFB,".

[FR Doc. C9–7625 Filed 4–8–99; 8:45 am]
BILLING CODE 1505–01–D

VOL
64
ISS
68
AP
9
1999
UMI

federal register

Friday
April 9, 1999

Part II

Department of Labor

Employment Standards Administration, Wage and Hour Division

29 CFR Parts 1 and 5

Procedures for Predetermination of Wage Rates; Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction and to Certain Nonconstruction Contracts; Proposed Rule

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

Office of the Secretary

29 CFR Parts 1 and 5

Procedures for Predetermination of Wage Rates; Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction and to Certain Nonconstruction Contracts

AGENCY: Wage and Hour Division, Employment Standards Administration, Labor.

ACTION: Proposed rule.

SUMMARY: This document is a proposal resulting from the reexamination by the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor (Wage and Hour) of regulations previously issued to govern the employment of "helpers" on federally-financed and assisted construction contracts subject to the prevailing wage standards of the Davis-Bacon and Related Acts (DBRA).

Based on the Department's experience both prior to and during implementation of the suspended regulations, and a reexamination of the reasons and data underlying promulgation of the suspended helper regulations, Wage and Hour proposes to amend the regulations to incorporate its longstanding policy allowing use of helpers only where their duties are clearly defined and distinct from journeymen and laborer classifications in the area.

DATES: Comments are due June 8, 1999.

ADDRESSES: Submit written comments to John Fraser, Deputy Administrator, Wage and Hour Division (ATTN: Government Contracts Team), Employment Standards Administration, U.S. Department of Labor, Room S–3020, 200 Constitution Avenue, N.W., Washington, DC 20210. Any commenters desiring notification of receipt of comments should include a self-addressed, stamped post card.

FOR FURTHER INFORMATION CONTACT: William W. Gross, Director, Office of Wage Determinations, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Room S–3028, 200 Constitution Avenue, NW, Washington, DC 20210. Telephone (202) 692–0062. (This is not a toll free number.)

SUPPLEMENTARY INFORMATION:

I. Paperwork Reduction Act

This rule does not contain any new information collection requirements and does not modify any existing requirements. Thus, the rule contains no reporting or recordkeeping requirements subject to the Paperwork Reduction Act of 1995.

II. Background

The Department's longstanding practice regarding the issuance of helper classifications, apart from the periods, as discussed below, when the suspended "helper" regulations were implemented, has been to allow the use of helpers on construction projects covered by the labor standards provisions of the Davis-Bacon and Related Acts only where (1) the duties of the helper are clearly defined and distinct from those of the journeyman or laborer, (2) the use of such helpers is an established prevailing practice in the area, and (3) the term "helper" is not synonymous with "trainee" in an informal training program.

On May 28, 1982, Wage and Hour published revised final Regulations, 29 CFR Part 1, Procedures for Predetermination of Wage Rates, and 29 CFR Part 5, Subpart A—Davis-Bacon and Related Acts Provisions and Procedures (47 FR 23644 and 23658, respectively), containing the following four new provisions intended to allow contractors to expand their use of helpers on Davis-Bacon covered projects at wages lower than those paid to skilled journeyworkers:

- A new definition of the term "helper," allowing a helper's duties to overlap with those of a journeylevel worker:

A *helper* is a semi-skilled worker (rather than a skilled journeyman mechanic) who works under the direction of and assists a journeyman. Under the journeyman's direction and supervision, the helper performs a variety of duties to assist the journeyman such as preparing, carrying and furnishing materials, tools, equipment, and supplies and maintaining them in order; cleaning and preparing work areas; lifting, positioning, and holding materials or tools; and other related, semi-skilled tasks as directed by the journeyman. A helper may use tools of the trade at and under the direction and supervision of the journeyman. The particular duties performed by a helper vary according to area practice. (29 CFR 5.2(n)(4), 47 FR 23667.)

- A provision allowing a helper classification to be included in the wage determination if it was an "identifiable" local practice. 29 CFR 1.7(d), 47 FR 23655.
- A provision limiting the number of helpers to two for every three journeyworkers. 29 CFR 5.5(a)(4)(iv), 47 FR 23670.
- A provision allowing the addition of helper classifications on contracts containing wage determinations without helper classifications. 29 CFR 5.5(a)(1)(ii)(A), 47 FR 23688.

These regulations were challenged in a lawsuit brought by the Building and Construction Trades Department, AFL–CIO, and a number of individual unions. On December 23, 1982, the U.S. District Court for the District of Columbia held that the new helper regulations conflicted with the Davis-Bacon Act and enjoined DOL from implementing the regulations. *See Building and Construction Trades Department, AFL–CIO, et al.* v. *Donovan, et al.*, 553 F. Supp. 352 (D.D.C. 1982). The court held that the regulations improperly defined the helper classification in terms of the level of supervision instead of in the traditional terms of the tasks performed. *Id.* at 355.

On appeal, the U.S. Court of Appeals for the District of Columbia affirmed in part and reversed in part. *Building and Construction Trades Department, AFL–CIO, et al.* v. *Donovan, et al.*, 712 F.2d 611 (D.C. Cir. 1983), *cert. denied*, 464 U.S. 1069 (1983). The court upheld the Department's authority to allow the increased use of helpers and concluded that the Secretary's regulatory definition of a helper was "not clearly unreasonable." *Id.* at 630. However, the court struck down the regulation allowing for the issuance of a helper wage rate where helpers were only "identifiable." *Id.* at 624.

On remand, the district court lifted the injunction as it applied to the helper definition, but maintained it as to the remaining helper regulations. The district court added that the Secretary "may, however, submit to this Court reissued regulations governing the use of helpers, and if these regulations conform to the decision of the Court of Appeals, they will be approved." 102 CCH Labor Cases ¶34,648, p. 46,702 (D.D.C. 1984).

In accordance with the district court's order, DOL published in the **Federal Register** (52 FR 31366, August 19, 1987) proposed revisions to the helper regulations to add the requirement that helpers must prevail in an area in order to be recognized. After analyzing the comments on this proposal, the Department, on January 27, 1989, published a revised final rule governing the use of semi-skilled helpers on

federal and federally assisted construction contracts subject to the Davis-Bacon and Related Acts (54 FR 4234).

On September 24, 1990, the district court vacated its injunction, and on December 4, 1990, Wage and Hour published a **Federal Register** notice implementing the helper regulations, effective February 4, 1991 (55 FR 50148).

In April 1991, Congress passed the Dire Emergency Supplemental Appropriations Act of 1991, Public Law 102–27 (105 Stat. 130), which was signed into law on April 10, 1991. Section 303 of Public Law 102–27 (105 Stat. 152) prohibited the Department of Labor from spending any funds to implement or administer the helper regulations as published, or to implement or administer any other regulation that would have the same or similar effect. In compliance with this directive, the Department did not implement or administer the helper regulations for the remainder of fiscal year 1991.

After fiscal year 1991 concluded and subsequent continuing resolutions expired, a new appropriations act was passed which did not include a ban restricting the implementation of the helper regulations. On January 29, 1992, Wage and Hour issued All Agency Memorandum No. 161, instructing the contracting agencies to include the helper contract clauses in contracts for which bids were solicited or negotiations were concluded after that date. On April 21, 1992, the U. S. Court of Appeals for the District of Columbia invalidated the regulation that prescribed a ratio of two helpers for every three journeyworkers as being without sufficient support in the record, but upheld the remaining helper provisions. *Building and Construction Trades Department, AFL–CIO* v. *Martin*, 961 F.2d 269 (D.C. Cir. 1992). To comply with this ruling, on June 26, 1992, Wage and Hour issued a **Federal Register** notice removing 29 CFR 5.5(a)(4)(iv) from the Code of Federal Regulations. 57 FR 28776. Further advice regarding implementation of the helper regulations in light of the lifting of the appropriations ban and the court action was given in All Agency Memorandum No. 163, dated June 22, 1992, and All Agency Memorandum No. 165, dated July 24, 1992.

Subsequently, Section 104 of the Department of Labor Appropriations Act of 1994, Public Law 103–112, enacted on October 21, 1993, prohibited the Department of Labor from expending funds to implement or administer the helper regulations during fiscal year 1994.

Accordingly, on November 5, 1993, Wage and Hour published a **Federal Register** notice (58 FR 58954) suspending the regulations governing the use of semi-skilled helpers on DBRA-covered contracts, and reinstating the Department's prior policy regarding the use of helpers. The Department of Labor Appropriations Act for fiscal year 1995 again barred the Department from expending funds with respect to the helper regulations. Section 102, Public Law 103–333. That prohibition extended into fiscal 1996 as a result of several continuing resolutions. There was no such prohibition in the Department of Labor's Appropriations Acts for fiscal 1996 and 1997, Public Law 104–134, enacted on April 26, 1996 and Public Law 104–208, enacted on September 30, 1996.

On August 2, 1996, Wage and Hour published in the **Federal Register** (61 FR 40366) a proposal to continue to suspend the implementation of the helper regulations while additional rulemaking procedures are undertaken to determine whether further amendments should be made to those regulations. On December 30, 1996, a final rule was published in the **Federal Register** (61 FR 68641) continuing the suspension. Pursuant to that final rule, the November 5, 1993 suspension of the helper regulations continues in effect until Wage and Hour either (1) issues a final rule amending (and superseding) the suspended helper regulations; or (2) determines that no further rulemaking is appropriate, and issues a final rule reinstating the suspended regulations.

By decision dated July 23, 1997, the U.S. District Court for the District of Columbia upheld the Department's December 30 final rule continuing the suspension of the helper regulations until the completion of rulemaking proceedings. *Associated Builders & Contractors, Inc.* v. *Herman*, C.A. No. 96–1490, 1997 WL 525268 (D.D.C. July 23, 1997). The Associated Builders and Contractors had filed suit challenging the Department's failure to immediately reinstate the rule when the appropriations ban was lifted. The district court dismissed the suit, ruling that any error in failing to act immediately to issue a new effective date for the rule was mooted by the suspension rulemaking completed in December. The court observed that the Department was not required to ignore changed circumstances in the two-and-a-half years since the rule was last implemented, and went on to hold that the December rule was a valid rule, supported by the record, and consistent with the requirements of the Davis-Bacon Act.

III. Discussion

During the period following the passage of the appropriations act for fiscal year 1996, Wage and Hour has carefully considered whether the suspended regulations governing the use of helpers should be modified. Seventeen years have passed since Wage and Hour first promulgated the regulations, and more than five years have passed since the Department's last attempt to put a revised version of those regulations in effect was curtailed by legislative action. The final helpers rule, which first became effective on February 4, 1991, was originally proposed and adopted because it was believed that it would result in employment practices on federal construction projects that more closely mirrored the private construction industry's practice of using helpers, which was assumed to be widespread, and would at the same time effect significant savings in federal construction costs. It was also believed that the expanded helper definition would provide additional job and training opportunities to unskilled workers, in particular women and minorities.

Implementation of the suspended helper definition and development of enforcement guidelines proved, however, to be more difficult than was anticipated, particularly in light of the court-ordered abandonment of the ratio provision.

Furthermore, the Department's experience with surveys conducted to implement the regulation and information from the surveys, and other data sources which were previously unavailable or not examined, indicated that the use of helpers was not as widespread as previously thought. Wage and Hour was also concerned about the possible negative impact of the suspended regulation on formal apprenticeship and training programs. These concerns, and the controversy evidenced by the rule's long history of litigation and by Congressional action over the 1989 final rule, led Wage and Hour to reexamine the basis and effect of the semi-skilled helper regulations.

As the Circuit Court of Appeals noted in its 1983 decision upholding the Secretary's authority to adopt a new definition of helper, it is within the Secretary's province to alter or overturn administrative rulings upon reconsideration of relevant facts. *See Building and Construction Trades Department, AFL–CIO* v. *Donovan*, 712 F.2d 611, 629 (D.C. Cir. 1983). The court

also made clear the authority of the Secretary to choose from among various regulatory programs the one he or she believes will best serve the purpose of the statute. As the Court of Appeals acknowledged, the Secretary is especially entitled to deference when his or her "decision turns on the enforceability of various regulatory schemes." *Donovan*, 712 F.2d at 629. An important factor to consider in making that choice is whether a particular regulatory scheme is sufficiently capable of practical and efficient administration and enforcement to achieve the statutory goal.

Wage and Hour has preliminarily concluded, after a full review of the suspended rule and all available information, that it is likely that the suspended rule cannot be enforced effectively. Furthermore, a key underpinning of the rule, that helper use is widespread, has been seriously undermined by an examination of all available data sources. Wage and Hour also believes that the suspended helper rule, if fully implemented, could have a negative impact on apprenticeship and training.

Wage and Hour therefore carefully considered a number of alternative approaches, focusing particularly on consistency with the purposes of the Act, enforceability, administrative feasibility, and ease of compliance. Although not a primary consideration, Wage and Hour also considered the potential impact of the various alternatives on employment and training opportunities for unskilled workers, including women and minorities. A necessary consideration was also consistency with the Department's "reinvention" efforts to revise and improve the Davis-Bacon wage determination process.[1]

After a thorough review, Wage and Hour has preliminarily concluded that the current, longstanding practice of recognizing helpers only where they are a separate and distinct class with clearly defined duties is the sole alternative considered that is both capable of effective enforcement and administration, and at the same time fully consistent with the purposes of the Act.

Comments are invited on the regulation proposed, as well as the other alternatives considered, including the Department's analysis and conclusions thereon.

Problems With the Suspended Helper Definition

1. The Suspended Helper Definition Would Be Difficult To Administer and Enforce

Wage and Hour has preliminarily concluded that the suspended regulation poses significant administrative difficulties, and cannot be effectively enforced in a manner consistent with the goals of the statute. The Department's experience in trying to develop enforcement guidelines to implement the helper regulations during the period they were in effect (from February 4, 1991 to April 10, 1991, and from January 29, 1992 to October 21, 1993) has led Wage and Hour to conclude that a supervisory-based, semi-skilled helper definition would be difficult to administer and enforce consistent with the purpose of the statute, namely to identify and preserve the locally prevailing wage for construction job classifications.

The suspended regulation defines a helper, not by the traditional test of the specific tasks performed by the worker, but as "a semi-skilled worker" who "may use tools of the trade at and under the direction and supervision of the journeyman." The suspended helper definition is the first and only instance of determining a Davis-Bacon classification solely on the basis of the worker's skill level and work-site supervision. Furthermore, the definition is internally inconsistent in that the examples given of the types of assistance the helper might provide to a journeyworker are not semi-skilled but rather are largely unskilled duties commonly performed by laborers.[2] Thus, the suspended definition specifically allows extensive overlap with duties performed by both journeylevel craft workers and laborers, instead of providing an objective means for distinguishing between helpers and other classifications.

During the period the suspended regulation was in effect, Wage and Hour tried to develop enforcement guidelines to implement the regulation. A fundamental problem that emerged was how to make a meaningful distinction between semi-skilled and skilled workers under the suspended definition. Wage and Hour has traditionally identified and differentiated among job classifications on the basis of the tasks performed by each classification. Among the issues Wage and Hour struggled with in trying to develop enforcement guidelines were: (1) What it means to be semi-skilled; (2) how to identify the line between a semi-skilled and skilled journeyworkers; (3) whether at some point a semi-skilled helper could acquire sufficient skills to qualify as a skilled worker, and how to determine when that had occurred; (4) whether a skilled worker could accept a position as a semi-skilled helper—and therefore be paid the lower helper wage rate—without violating the regulation or the intent of the Act; and (5) whether hiring as a semi-skilled helper a skilled worker who failed to disclose his skill level would violate the regulation or the Act.

The supervision aspect of the suspended helper definition likewise provides little assistance in distinguishing a helper from other classifications of workers. The definition states that a " 'helper' * * * works under the direction of and assists a journeyman. Under the journeyman's direction and supervision, the helper performs a variety of duties to assist the journeyman * * *." Supervision by a journeyworker is not a practical standard for distinguishing semi-skilled helpers from others on the worksite, as even laborers and journeylevel construction workers may work under the "direction and supervision" of other journeyworkers. The definition does not indicate the nature or amount of direction and supervision that helpers must receive to distinguish them from others on the worksite. The definition similarly provides little meaningful guidance for distinguishing between a "semi-skilled helper" who uses the tools of the trade, and a journeyworker with little experience, thus increasing the instances in which journeyworkers may be misclassified as helpers.

In addition, the definition's allowance of significant overlap between the duties of helpers and those of laborers increases the difficulty of identifying helpers as a distinct classification. Although the definition states that a helper must be "semi-skilled," the unskilled tasks listed in the definition as examples of a helper's duties are

---

[1] Wage and Hour is currently considering two potentially viable options:

(1) Through procedural changes and the application of technology, reengineer the current wage survey system to make it more efficient and to produce more accurate and timely wage determinations.

(2) Use redesigned and expanded BLS survey instruments—the Occupational Employment Statistics (OES) Survey and the National Compensation Survey (NCS, formerly known as "Comp 2000"), when these are available, and modified as may be needed—for Davis-Bacon prevailing wage/fringe benefits determination purposes. (The OES survey would use government-wide Standard Occupational Classification (SOC) definitions, which are currently undergoing review. See 60 FR 10998 (February 28, 1995), 60 FR 52284 (October 5, 1995), and 62 FR 36338 (July 7, 1997).)

[2] *E.g.*, "preparing, carrying and furnishing materials, tools, equipment, and supplies and maintaining them in order; cleaning and preparing work areas; lifting, positioning, and holding materials or tools. * * *" 47 FR 23667.

commonly performed by unskilled laborers. Thus, it would be difficult to distinguish between a laborer and a helper when a worker is performing only unskilled work. It may theoretically be possible for a helper under this definition to be distinguished from a laborer if the helper directly assists a particular class of journeyworker(s) and uses the tools of the trade. However, based on a further review of the duties of laborers who assist craft workers, together with the Department's experience in conducting conformance surveys during the brief period the suspended regulation was in effect, and the low wages paid helpers in the Current Population Survey (CPS), Wage and Hour now believes—contrary to its earlier assumptions—that many laborers also assist journeylevel workers and that laborers sometimes use tools of the trade to perform certain limited duties (e.g., demolition/removal of materials, building of scaffolding or forms). The overlap of duties therefore increases the likelihood that helpers will displace laborers, or that laborers will be misclassified as helpers. For example, a laborer working under the supervision of a journeyworker could be classified as a lower-paid "helper" simply by adding to his or her duties a few relatively low-skilled tasks.[3]

Wage and Hour recognized the subjectivity of the suspended definition when it first proposed the helper regulations in 1981, and sought "to protect against possible abuse" by proposing to establish a maximum ratio of helpers to journeyworkers. Wage and Hour originally proposed a 1:5 ratio, then settled on a ratio of 2 helpers for every 3 journeyworkers in the final regulation. (46 FR 41456, August 14, 1981; 47 FR 23658, May 28, 1982). While not a guarantee against misclassification in any particular case, the ratio would at least have decreased the likelihood of widespread misclassification between journeyworkers and helpers and provided one objective measure for compliance and enforcement. As the Court stated in its 1983 decision, the ratio "increased the likelihood that gross violations will be caught, or at least that evasion will not get too far out of line." 712 F.2d. at 630. In rejecting the 2:3 ratio in its 1992 decision on the ground that the rulemaking record lacked adequate support for that particular numeric ratio, the Court of Appeals deprived Wage and Hour of the mechanism designed to mitigate the possibility of abuse.

What remains is a vague standard that Wage and Hour has preliminarily concluded is not amenable to effective enforcement. Thus, Wage and Hour believes that the suspended regulation does not define helpers in a manner sufficient to differentiate readily between semi-skilled helpers and journeyworkers or laborers, as a practical matter, in day-to-day compliance and enforcement. Contractors would likely find it difficult to apply the regulation in classifying their workers and could find themselves unwittingly in violation of prevailing wage requirements due to misclassification. It would also be difficult to prevent unscrupulous contractors from taking advantage of the uncertainties created by the definition by intentionally misclassifying large numbers of workers.

The definitional problems discussed above are compounded by evidence that the term "helper" has multiple, quite different meanings within the construction industry. A review of comments received in response to the Department's rulemaking proposal to continue the suspension of the helper rule (61 FR 40366) disclosed that some contractors use the term "helper" to refer to skilled workers who are less experienced, *i.e.*, those who use tools of a trade to perform some tasks, but have not been trained in the full range of journeylevel work. Others use the term to refer to workers who perform unskilled laborer duties that are related to the work of skilled journeyworkers, as a short-term entry level job, or as a longer-term specialized worker to perform a limited range of work duties that somewhat overlaps those of the craft journeylevel worker. Still others use the term helper to refer to employees with little or no experience in the construction industry, *i.e.*, untrained entry level workers. Wage and Hour believes that these variations in the use of the term helper may exist in any given local area where use of helper classifications is prevalent. Direct assistance to, or supervision by, a journeyworker—the central component of the suspended regulatory definition—does not appear to be an important consideration for commenters in distinguishing helpers from other workers. Thus, it appears that the suspended definition, and perhaps any regulatory definition of helpers, does not adequately reflect the actual and varied practice in the construction industry as a whole or even in any particular area. However, Wage and Hour is interested in obtaining further evidence regarding how helpers are in fact used by contractors, particularly any data regarding whether there is in fact a generally recognized definition of helpers that is capable of being objectively identified.

Wage and Hour also believes it would be difficult for it to conduct a meaningful wage determination process concerning helpers in light of the likelihood that contractors responding to area wage surveys would ascribe very different meanings to the term "helpers." Thus, contrary to basic principles of the Davis-Bacon Act, it is assumed that workers who perform quite different work would likely be grouped together for purposes of determining prevailing wage rates for a single class of "helpers" within a given area. Moreover, Wage and Hour believes that some contractors may report workers as helpers, whereas other contractors might report the same type of worker as a laborer or craft journeyworker. Such data would not provide a meaningful basis for determining prevailing wage rates for the affected classifications, as required by the statute.

2. Helpers Are Less Widespread Than Previously Believed.

The belief that a distinct class known as "helpers" was in widespread use in the construction industry was a key assumption underlying the Department's development of the helper regulation. Indeed, in the preamble to the proposed rule published in 1987, the Secretary projected that helpers would be determined to be prevailing in two-thirds to 100% of all craft classifications. 52 FR 31366, 31369–370 (August 19, 1987).[4] The Department's actual experience with the helper regulation reflects a different picture.

During implementation of the suspended regulations, Wage and Hour collected data and determined whether helpers prevailed in various areas, in accord with the Court's ruling and the requirements of the now-suspended rule. Thus, implementation of the suspended regulations, albeit brief, did provide some data and insight into whether the use of helpers is, in fact, widespread in the construction industry.

The data Wage and Hour received in implementing the regulations failed to substantiate the prior assumption that the use of helpers is widespread.

[3] As set forth in the economic impact analysis set forth herein, the Current Population Survey (CPS) indicates that average earnings for helpers are less than the average earnings received by laborers.

[4] This was amended by the statement (without quantification) in the final rule that this would be reduced somewhat to the extent that collectively bargained rates were recognized as prevailing and did not provide for use of a helper classification. 54 FR 4242.

Whether analyzed by individual classifications covered or by surveys completed (each of which would include various classifications), the survey data showed a substantially lower rate of helper use than was anticipated. For example, a review of the wage schedules issued based on the 78 prevailing wage surveys completed during the period the rule was in effect,[5] revealed that the use of helpers prevailed with respect to only 69, or 3.9 percent, of the 1763 classifications included in wage schedules. Of the 69 classifications in which helpers prevailed, only 48, or 2.7 percent of the 1763 classifications, were in the non-union sector.[6] This is particularly noteworthy because it had been assumed in the past that helpers would almost always be found to prevail for classifications in the non-union sector.

Furthermore, use of helpers was not prevailing in any classifications in 43 of the 78 surveys conducted, covering 229 of 328 counties surveyed. The 78 surveys included two in which the resulting wage schedules contained only collectively bargained rates, ten surveys in which the schedules contained only open shop rates, and 66 mixed schedules, 51 of which contained 50 percent or more open shop rates. In 13 of the 35 surveys where a helper classification was issued, the only helper classification found to prevail was a union helper. A total of only 48 open shop helper classifications were found to prevail. Thus, in only 20 of the 78 surveys conducted, covering only 52 of 328 counties surveyed, were *any* open shop helper classifications found to prevail. *See* 61 FR 68644–68645.

The conclusion that helpers are less widespread than had been expected is also supported by the Economic Impact and Flexibility Analysis. The 1996 Current Population Survey (CPS), compiled and published by the Bureau of Labor Statistics (BLS) and the Bureau of the Census, which Wage and Hour believes is most likely to be representative of the distribution of employment of helpers in the construction industry, shows that helpers account for only 1.2 percent of total construction industry employment. Data from the Occupational Employment Statistics ("OES") program, which formed the basis for earlier analyses of helper employment, shows that helpers comprise 8.7 percent of the total construction workforce—higher than the CPS data but a much lower incidence than the Department's economic impact analysis in 1987 and 1989 would suggest. Furthermore, as is discussed more fully in the Economic Impact Analysis, *infra*, the OES figure is based on a helper definition that appears to correspond to what is commonly considered to be laborers' or tenders' work and does not appear to envision that helpers use tools of the trade—an important component of the definition in the suspended regulation. For this reason Wage and Hour believes that the OES figure significantly overstates the use of helpers in the construction industry.[7]

3. The Suspended Regulation Could Have a Negative Impact on Formal Apprenticeship and Training Programs

Wage and Hour has long been of the view that formal structured training programs are more effective than informal on-the-job training alone. Workers enrolled in formal apprenticeship training programs are more likely to achieve journeylevel status, and to do so more quickly, than workers trained informally, who may become stuck in low-paying jobs. Apprenticeship programs are also more likely to produce better skilled, more productive and safety-conscious workers.[8]

Although not its primary concern in this rulemaking, Wage and Hour is concerned about the potential impact of the suspended regulations on formal apprenticeship and training programs. An acknowledged goal of Wage and Hour when it proposed the suspended helpers definition was to encourage training for unskilled and semi-skilled workers, including in particular, women and minorities,[9] (47 FR 23647 (May 28, 1982)) and to that end Wage and Hour encourages formal training and work advancement to assure that workers—particularly young, minority, and female workers—are not frozen into low paying, low skilled jobs. Because the Department's experience suggests that some contractors may establish apprenticeship programs to take advantage of the lower wages which can be paid apprentices and trainees on Davis-Bacon projects,[10] Wage and Hour believes that the suspended helper regulations could undermine effective training in the industry if contractors use helpers, who may never become journeylevel workers, in lieu of apprentices and trainees participating in formal programs.

The Proposed Rule—Helpers as a Separate and Distinct Class with Clearly Defined Duties Which Do Not Overlap With Laborer or Journeyman Classifications

Wage and Hour proposes to amend the regulations to reflect the longstanding policy of recognizing helpers as a distinct classification on DBRA-covered work only where Wage and Hour determines that (1) the duties of the helpers are not performed by other classifications in a given area, *i.e.*, the duties of the helper are clearly defined and distinct from those of the journeyworker and laborer; [11] (2) the use of such helpers is an established prevailing practice in the area; and (3) the term "helper" is not synonymous

---

[5] Not included in the 69 helper classifications are instances where the number of helpers actually used or the number of contractors using helpers was not enough to provide an adequate basis for determining a prevailing wage rate. (Wage and Hour procedures at the time these surveys were conducted required that there be at least 6 workers employed by at least 3 employers if the contractor-response rate to the survey was less than 50 percent, and at least 3 workers employed by at least 2 employers if the response rate was 50 percent or more.)

[6] Fifteen of the 21 union-sector helpers classifications were elevator constructor helpers—a classification historically recognized nationwide in the union sector of the constructor trade.

[7] As discussed in the Impact Analysis, there are strengths and weaknesses to both the CPS and the OES data sources. For example, CPS is a household survey and it may be that a carpenter's helper would self-report his or her duties and occupation as a carpenter. The Impact Analysis also contains an alternative estimate of the number of helpers, utilizing the percentage of laborers in the CPS workforce to adjust the OES data. Under that methodology, described further in the Impact Analysis, helpers constitute 3.4% of the total construction workforce.

[8] Indicative of the lesser efficacy of informal training is the report issued by the Business Roundtable, which found that more than 60 percent of its member respondents said they could not find adequate numbers of skilled workers, and 75 percent said the trend had accelerated in the past ten years. 203 Daily Labor Report (DLR) A–9 (Oct. 21, 1997). The report associated the problem with the "lack of a unified approach to training nonunion trades workers," which surfaced 14 years ago, and "the lack of a consistent delivery method and commitment to training by other than a small minority of major contractors." Significantly, the Bureau of Apprenticeship and Training reports almost three times as many union as non-union apprentices (77,163 union apprentices, compared to 28,542 non-union apprentices, out of data reported for 36 states (14 states and the of Columbia do not maintain data byP union affiliation)).

[9] Wage and Hour has no data to support or refute the proposition that employment of helpers leads to an increase in minority and female skilled employment in the non-union sector.

[10] Effective training for targeted under-represented or economically disadvantaged workers who are not qualified for apprenticeship programs can be designed under the existing regulations. For example, the Step-Up Program developed by the Department of Housing and Urban Development (HUD) provides disadvantaged workers with training necessary for them to move on to other more skilled jobs or into a formal apprenticeship program.

[11] For example, roofing subcontractors, like other specialty subcontractors, often do not hire laborers, and might employ helpers to perform duties such as bringing materials to the roof and removing the old roof.

with "trainee" in an informal training program.[12]

This approach retains the duties-based classification distinction that provides an objective basis for administration and enforcement. It provides clear criteria to facilitate compliance. It is also consistent with the intent of the Davis-Bacon Act to assure that workers employed on federal and federally-assisted construction work be paid at least the wages paid to workers doing similar work on similar construction in the area. Lack of overlapping duties should also discourage contractor misclassification and/or abuse. This approach also encourages contractors to establish or participate in structured training programs leading to journeylevel status if they want to pay subminimum rates to entry-level or less skilled workers.

Unlike some of the other alternatives considered, this policy concerning helpers does not require Wage and Hour to make a fact-bound inquiry in each case to assess a worker's skill level and the nature of work-site supervision to determine whether the worker will be recognized as a "helper" for Davis-Bacon prevailing wage compliance and enforcement purposes. The requirement that helpers be separate and distinct from journeylevel workers and laborers should also facilitate collection of wage data to establish the prevailing wage rates to be paid on DBRA-covered construction work.

Although this proposal could be said to disregard local area practices in those instances where there may be a prevailing practice of employing "helpers" who do not meet the regulatory test set forth above, it appears that there is wide variation in how helpers are used, such that change in practices by contractors would be likely under any definition. Wage and Hour has been unable to identify a generally accepted definition of helper that corresponds to industry practices. Similarly, Wage and Hour has been unable to find a practical method of determining prevailing practice regarding how helpers are in fact utilized in an area.

[12] Where Wage and Hour has determined that this standard is met, the helper classification will be listed on the wage determination. Where no helper is listed on the wage determination, a contractor who believes that use of a helper classification meeting the criteria is prevailing in the locality may request an additional classification in accordance with 29 CFR 5.5(a)(1)(ii). Like other classifications, the particular duties such a helper may perform are determined by area practice.

Discussion of Other Alternatives Considered

1. Add a Ratio Requirement to the Suspended Helper Definition

Wage and Hour recognized that the broad scope of the helper rule's definition created the potential for abuse when it originally proposed to amend the regulations to allow the expanded use of helpers. The rule as proposed in 1981, as well as subsequent modifications, sought "to protect against possible abuse" by establishing a maximum ratio of helpers to journeyworkers. In 1992, the Court of Appeals ruling nullified the ratio of two helpers to every three journeyworkers because that specific numeric ratio had not been justified in the rulemaking record. As noted in the foregoing discussion, the inherent definitional problems regarding the suspended "helper" rule were compounded by elimination of the ratio provision, which was intended to ameliorate the possible overuse of helpers.

Since the Court of Appeals ruling does not prevent Wage and Hour from implementing a ratio, provided it has support in the rulemaking record, implementation of a new ratio was the first alternative considered. Implementation of a ratio provision would be essential if the suspended rule were implemented, since it would reduce the potential for abuse. However, adoption of such a provision would not address or resolve the inherent definitional problems discussed above, which make it extremely difficult under the suspended rule for contractors, as well as Wage and Hour and contracting agencies, to identify helpers for Davis-Bacon enforcement and wage determination purposes.

Furthermore, determination of an appropriate ratio standard —either a single nationwide ratio or local ratios— would be difficult. While a nationwide ratio would not accord with local practices, local ratios would present significant administrative and enforcement concerns, and would require substantial resources for implementation.

2. Change the "Helper" Definition To Emphasize the Semi-Skilled Nature of the Classification

The intention of Wage and Hour in promulgating the suspended rule was to allow the expanded employment on Davis-Bacon covered projects of helpers who are "semi-skilled," in other words, they perform some journeylevel duties, but not the entire range of journeylevel work. This attempt to define helpers as similar to but less skilled than a journeyworker resulted in a helper definition that is internally inconsistent, since the specific tasks listed as within the scope of a helper's duties are commonly performed by unskilled workers. Wage and Hour therefore considered possible modifications to the helper definition to emphasize the semi-skilled nature of helpers, elaborate on the supervisory relationship of the journeyworkers with the helper and the craft-specific assistance provided, and expressly limit the unskilled work the helper may perform.

This approach to the definition would help assure that the "helper" classification would be a true "semi-skilled" classification rather than a broad catch-all classification that can perform everything from laborer duties to an undefined assortment of skilled tasks overlapping the work of the journeyworkers. Such a definition would therefore aid in distinguishing helpers from laborers. However, this alternative would not resolve the administrative and enforcement problems that stem from the overlap of duties between journeyworkers and helpers. Furthermore, Wage and Hour is concerned that this type of definition, with its emphasis on semi-skilled duties, may result in helper classifications being used to replace, rather than supplement, the use of apprentices and trainees registered in bona fide training programs.

3. Define "Helpers" Based on the Bureau of Labor Statistics, Occupational Employment Statistics (OES) Dictionary of Occupations, Which Focuses on Unskilled Duties and the Worker's Interaction With Journeylevel Craft Workers

The Bureau of Labor Statistics Occupational Employment Statistics (OES) Dictionary of Occupations classification scheme includes a broad category titled "Helpers, Laborers, and Material Movers, Hand, Exclud[ing] Agriculture and Forestry Laborers." The work of helpers so defined in the construction industry is currently described generally as follows:

> Help workers in the construction trades, such as Bricklayers, Carpenters, Electricians, Painters, Plumbers and Surveyors. Perform duties such as furnishing tools, materials and supplies to other workers; cleaning work areas, machines, and tools; and holding materials or tools for other workers.

Use of this approach would provide for definitional consistency with other uses of the OES data and would take advantage of a standard definition that could be easily followed and understood by contractors from whom data is collected for various purposes,

including Davis-Bacon prevailing wage surveys. The OES definitions would focus on the role of the helper in assisting the journeyworker, in accord with the Department's intention that such a role be a key component of any definition selected.

These definitions, which would eliminate the "semi-skilled" characterization from the definition and highlight unskilled duties, could provide a more practical basis for distinguishing helpers from journeyworkers. On the other hand, laborers may often perform the same work encompassed within the OES helper definition, thereby raising significant problems in conducting wage and area practice surveys and in enforcement. It may be difficult for contractors to determine whether workers performing similar or identical duties are "laborers" or "helpers" when submitting Davis-Bacon survey data and in classifying workers on Davis-Bacon projects. In turn, Wage and Hour believes it would likely be difficult for it to determine whether contractors have properly classified workers paid as helpers as distinguished from laborers on Davis-Bacon projects, and therefore whether contractors have submitted accurate wage data in regard to helpers.

4. Explicitly Delineate the Semi-Skilled Tasks Performed by Each Helper Classification

The "job family" concept is currently employed for certain occupations under the McNamara-O'Hara Service Contract Act. An employee who performs only lower level duties that are associated with a particular job family may be classified and paid at the lower level helper rate; however, an employee who performs some lower level duties and some higher level duties must be paid the higher level journeylevel rate for all of the employee's work time.

In effect, this approach would allow for the expanded use of helpers, with differentiation based on the skill and knowledge required to perform particular duties. Once the duties or tasks that the helpers could perform were clearly defined, wage data could be collected on that basis, and contractors could reasonably be expected to comply with the wage requirements for the various classifications employed on their contracts, thereby facilitating administration and enforcement.

However, developing clear definitions of the duties or tasks that helpers to each journeylevel craft worker would be allowed to perform would be very difficult. It would require extensive occupational analyses and further rulemaking to promulgate helpers duties descriptions. Furthermore, this alternative—like other alternatives considered—presumably would result in uniform, nationwide definitions, departing from the principle that classifications are determined based on local area practice.

IV. Executive Order 12866; § 202 of the Unfunded Mandates Reform Act of 1995; Small Business Regulatory Enforcement Fairness Act

Wage and Hour has determined that this proposed rule should be treated as "economically significant" within the meaning of Executive Order 12866 and as a major rule within the meaning of the Small Business Regulatory Enforcement Fairness Act. This proposed rule would continue the status quo which has been in effect since November 1993, and therefore it would have no economic impact compared to current practices. However, various alternatives considered would result in potential savings which could be in excess of $100 million per year. Therefore a full economic impact analysis has been prepared.

However, for purposes of the Unfunded Mandates Reform Act of 1995, this rule does not include any federal mandate that may result in increased annual expenditures in excess of $100 million by state, local and tribal governments in the aggregate, or by the private sector. The requirements of the Unfunded Mandates Reform Act, 2 U.S.C. 1532, do not apply here because the proposed rule does not include a "Federal mandate." The term "Federal mandate" is defined to include either a "Federal intergovernmental mandate" or a "Federal private sector mandate." 2 U.S.C. 658(6). Except in limited circumstances not applicable here, those terms do *not* include an enforceable duty which is "a condition of Federal assistance" or "a duty arising from participation in a voluntary program." 2 U.S.C. 658(5)(A)(I) and (7)(A). A decision by contractors to bid on Federal or Federally-assisted construction contracts is purely voluntary in nature, and their duty to meet Davis-Bacon requirements are "conditions of Federal assistance" which arise "from participation in a voluntary Federal program."

Similarly, the proposed rule is not an "unfunded mandate" within the meaning of Executive Order 12875 since it does not create any unfunded mandate not currently required by the Davis-Bacon and Related Acts and regulations thereunder. Furthermore, most of the funds necessary to pay the direct costs incurred by State, local and tribal governments under projects subject to the Davis-Bacon and related Acts are provided by the Federal Government.[13] Thus, any additional savings to States if the proposed rule increased use of helpers allowed on Davis-Bacon projects would not be significant.

V. Economic Impact and Flexibility Analysis on Davis-Bacon Helper Regulations

Summary

This document presents an Economic Impact Analysis comparing the proposed rule governing the use of helpers under the Davis-Bacon and Related Acts to the suspended rule. The basic process utilized to estimate the potential savings impact of the suspended regulation is to compare the occupational distribution of workers with, and without helpers. The alternative occupational employment patterns are then assessed in terms of their costs, based upon the annual earnings of the workers in the occupations affected by the suspended regulation: journeyworkers, apprentices, laborers, and helpers. The total wage bill with the suspended regulation in force is then subtracted from the wage bill estimated without the regulation. The difference, then, is the estimated savings.

The principal finding of the analysis is that any impact which would result from the increased use of helpers under the suspended rule, or any of the other alternatives considered, would be relatively modest. Potential savings are estimated to be from $72.8 million (utilizing Current Population Survey—CPS data) to $296.0 million (utilizing Occupational Employment Statistics—OES data). A methodology that is OES-based, but utilizes CPS data to estimate the number of laborers and helpers in the OES, provides an estimate of $108.6 million in possible savings. This alternative OES estimate was developed to compensate for the likelihood that OES data overestimate the number of helpers.[14] In any case, for reasons discussed below, Wage and Hour believes that the potential savings are likely to be closer to $72.8 million than to $296.0 million.

Relative to total construction expenditures covered by the Davis-

[13] It is significant that no such entities commented on the proposed rule published in August 1996.

[14] As explained in detail below, OES has no distinct classification for laborer. This characteristic of the OES program, in combination with the helper OES definition that includes workers who would normally be classified as construction laborers, inflates the OES helper total.

Bacon and Related Acts, these potential cost savings are very small, ranging from 0.2 percent to 1.0 percent. As discussed below, the estimated savings are far less than previously believed. For the most part, changes in the savings potential resulted from the use of improved data, including information derived from experience administering the suspended regulations, which temporarily expanded the use of helpers.

A. Introduction

Over the years, Wage and Hour has prepared and updated regulatory impact and flexibility analyses in connection with proposed and final regulations governing the use of semi-skilled helpers under the Davis-Bacon and Related Acts. Specifically, cost savings derived from the increased use of helpers were estimated in the August 14, 1981 proposed rule (46 FR 41456); the May 28, 1982 final rule (47 FR 23644); the August 19, 1987 proposed rule (52 FR 31366); and the January 27, 1989 final rule (54 FR 4234). Wage and Hour is now updating its cost estimates in connection with the proposed rule being published today, as set forth above.

This latest economic impact analysis has the advantage of utilizing information not previously available. For example, for the first time, survey data are available from a limited period when the regulations expanding the use of helpers were actually being implemented. Other data sources, utilized for the first time in such an analysis, include:

- Estimates of apprentice employment, based upon information provided by the Bureau of Apprenticeship and Training (BAT) from its Apprentice Information System (AIMS).
- F.W. Dodge construction reports.
- Detailed published occupational information and unpublished Bureau of Labor Statistics (BLS) tabulations from the Current Population Survey (CPS).
- National Occupational Employment Statistics (OES) Program data.

B. Assumptions and Data Sources

1. Assumptions

a. There is a strong positive correlation between the value of construction and the level of construction employment. This assumption is derived from the fact that labor costs generally are considered to constitute a significant proportion of total construction expenditures.

b. Under the suspended rule, helpers would replace laborers, apprentices, and journeyworkers in proportion to the number of workers in each of these occupations. The previous helper impact analysis assumed that helpers would only replace journeyworkers, and measured only the wage differentials from this replacement effect. This exaggerated the estimates of possible cost savings from the expanded use of helpers. Since wage rates generally reflect skill levels, the relative closeness of average annual earnings for helpers, laborers, and apprentices, compared to journeyworkers, strongly suggests that this assumption was incorrect. These wage data suggested that helpers (at $9,008 per year) are more likely to assume the duties of laborers (at $15,907 per year) and apprentices (at $12,564 per year) than journeyworkers (at $23,007 per year).[15] In fact, had the redistribution of employment been strictly in accordance with occupational wages, savings estimates would have been reduced significantly (see Estimating Process, Step 2).

The assumption that helpers would perform tasks previously performed by laborers and apprentices, as well as journeyworkers, is also based upon comments made by general contractors surveyed during the processing of helper conformance requests during the period February 1992 to October 1993. These comments indicated that the job title "laborer" was often applied to those performing the work of a "helper" (as defined in the suspended regulations). In order to take the middle ground for this analysis, it is assumed that when a helper classification is added, the jobs which would be performed by helpers were previously those of laborers, apprentices, and journeyworkers, in the same proportion as their relative occupational employment.

c. Utilizing the decision rules specified in Section 1.7(d), 29 CFR of the suspended regulations (see Section C, Part 2, Estimating Process, Step 3, below), helpers would be likely to "prevail" for a limited number of classes in areas that represent about half the construction employment covered by the Davis-Bacon and Related Acts. This estimate is based on the findings of prevailing wage surveys conducted during the period from February 1992 to October 1993. This is generally consistent with the small number of helpers relative to total construction employment found in the CPS, OES, and adjusted OES databases, only 1.3 percent, 8.7 percent, and 3.4 percent of construction employment, respectively.[16]

d. The proportion of employment by occupation would be consistent in all areas, and therefore the average national proportion of helpers, apprentices, laborers, and journeyworkers would be the same in areas where helpers prevail and where they do not. One could, of course, contend that a proportion higher than the national average should be used for helpers in the half of Davis-Bacon construction in which it is assumed that some helpers would prevail. However, some helpers would also be employed in the much larger group of classifications in which helpers would not be determined to prevail. Furthermore, an analysis of helper employment from Davis-Bacon surveys during the period when the suspended Regulation was in effect, found that in areas where helpers prevailed for one or more classifications, versus those where no helpers prevailed, the percent helpers were of total employment was almost identical (1.8 percent vs. 1.7 percent). Therefore, it is reasonable to assume that, on average, the level of helpers employed in areas where helpers prevail would be consistent with the level of helper employment overall.

e. Approximately one-third of public, non-Federal construction projects receive Federal assistance. This estimate is based upon the extensive experience of the Office of Federal Contract Compliance Programs (OFCCP) with F.W. Dodge data (which classifies public projects into Federal and public non-Federal classifications) to select construction sites for compliance inspections (only Federal and Federally-assisted projects are inspected by OFCCP). However, since not all types of Federal assistance trigger Davis-Bacon and Related Acts coverage, recent prevailing wage surveys were used to determine the average proportion of public, non-Federal construction covered by the Davis-Bacon and Related Acts. Based upon a study of 34 prevailing wage surveys, approximately 23 percent of the value of public non-Federal construction is covered by Davis-Bacon.

f. Except for the specific requirements of Davis-Bacon, such as those concerning helpers, primary characteristics of the labor force, i.e., occupational distribution, work assignments, etc. under Davis-Bacon are

[15] Source: 1996 BLS/CPS.

[16] Based upon the results of the methodology utilized, if the suspended regulations were in effect, the proportion of helpers to total employment would increase from 1.3 to 1.4 percent (CPS), 8.7 to 9.2 percent (OES) and 3.4 to 3.5 percent (Adjusted OES, hereafter "AdjOES").

comparable to those of the labor force not covered by prevailing wages.

2. Data Sources

Databases from which estimates were developed include:

- The BAT AIMS Reporting System (number of apprentices).
- The BLS/Bureau of the Census CPS (total construction industry employment, distribution of employment by selected occupation, and total annual earnings by occupation).
- The BLS OES Program (total construction industry employment and distribution of employment for selected occupational combinations).
- F.W. Dodge Construction Reports (construction value by ownership).
- Wage and Hour Division Regional Survey Planning Reports (RSPR) (public construction value by wage determinations reflecting union, open shop, and mixed wage rates).
- Information gained through conduct of Wage and Hour Division wage surveys.

There are significant differences in the CPS and OES data, some of which are due to the way the data are collected. The CPS is a household survey and relies on information provided by residents, whereas the OES is an establishment survey, with data usually provided by employers' personnel offices. The most apparent difference is in the total number of construction workers. In the CPS survey, the total number is much higher than in the OES, in part because the OES does not count the self-employed. (See tables in Section C.1.b., below.)

Although they constitute the best available data on occupational employment and wages in the construction industry, neither the CPS nor the OES is ideal for the purpose of this analysis. In fact, there are a number of differences between the two surveys that are of particular importance to this analysis. Specifically, each has strengths and weaknesses that impact the helper savings derived from database use.

For the purpose of estimating the impact of the proposed helper regulation, the Current Population Survey has the following strengths:

- The CPS survey includes those workers not covered by State unemployment insurance—primarily self-employed workers. This latter group is particularly important since the construction industry includes a significant number of workers (e.g., painters, carpenters, and plumbers) who are independent contractors, and therefore self-employed. Davis-Bacon prevailing wage requirements extend to every laborer and mechanic working on a covered project, regardless of contractual relationship, including the self-employed (independent contractors). Thus, the CPS number of construction workers, particularly the skilled workers who are more likely to be self-employed, reflects the universe of construction employment that is relevant to this analysis.
- The CPS provides separate employment totals for helper, apprentice, laborer, and journeyworker classes, all of which are needed to conduct this impact analysis.
- The CPS provides annual average earnings for the above classes. These data are also essential to estimating the impact of implementing the suspended rule.

For purposes of this analysis, the CPS survey program also has the following weaknesses:

- CPS is a household survey, rather than an establishment survey. In general, household surveys are likely to produce less accurate and consistent wage and classification information than establishment surveys. Self-reporting can result in some workers exaggerating their level of responsibility or wages. For example, a carpenter's helper may self-report his or her duties and occupation as carpenter.[17]
- The CPS data on annual earnings include wages earned outside construction, although construction is the industry of longest employment for each worker.
- Apprentice data, other than four separately identified classes, are combined with data for the associated journeyworkers. This has the effect of inflating journeyworker employment totals and lowering journeyworker wages.
- CPS responses can be provided by the worker's spouse or adult child if the worker is unavailable.

For the purpose of estimating potential savings, the OES Program exhibits three particular strengths:

- The OES Program utilizes standard occupational definitions, describing those workers who should be reported in each.
- Establishment (i.e., employer) personnel staff usually provides the survey data requested. This, together with the standard definitions, is likely to result in more accurate and consistent assignment of occupational classes, and more accurate wage reporting than that characteristic of surveys with self-reporting of workers, such as the CPS.
- The OES sample size (1.2 million employers) is larger than the CPS sample size (50,000), with one-third of the 1.2 million establishments surveyed each year. This large sample increases the number of participating establishments and reduces sampling error.

Weaknesses of the OES survey program, for purposes of this analysis, include:

- The OES does not provide a specific employment total for "laborer." Instead, laborers appear to be combined with craft helpers, as well as in an OES occupational category titled "All Other Helpers, Laborers, and Material Movers, Hand." Since it is assumed that some helpers would replace laborers under the suspended regulation, separate laborers and helpers totals are required for development of an accurate savings estimate.
- The OES definitions of the various helper classifications are very similar to unskilled laborers who provide assistance to journeyworkers. (Helpers "perform duties such as furnishing tools, materials and supplies to other workers; cleaning work areas, machines, and tools; and holding materials or tools for other workers.") Thus, the OES craft helper may often be an unskilled worker (and thus a laborer) rather than the semi-skilled worker required in the suspended regulation. As a result, laborer employment in the OES likely is, to a great extent, included with helper employment, thereby overstating the number of helpers.
- The OES survey collects only hourly wage data and does not collect annual hours worked data. At the same time, OES counts jobs rather than employees. As a result, if one person holds a job at more than one establishment, each one of those jobs will be counted, providing a total that exceeds the number of employees. Since labor costs are computed by multiplying the number of employees times annual CPS wages, the OES jobs count acts to overestimate costs.
- The OES excludes those who are self-employed (independent contractors) and those not covered by State unemployment insurance, thus significantly understating the total number of construction workers and the number of construction workers in the Davis-Bacon workforce.
- All apprentice data are combined with the journeyworker data, thus overstating the number of journeyworkers.

[17] A 1973 comparison of CPS earnings reported by those surveyed versus corresponding IRS records indicated that exaggeration is minimal. See Herriot, Roger A., and Spiers, Emmet F., "Measuring the Impact on Income Statistics of Reporting Differences between the Current Population Survey and Administrative Sources," Unpublished, 1973.

Based principally on the fact that at this time the OES does not have a separate classification for laborer, together with the fact that OES does not collect data on self-employed individuals, Wage and Hour believes that the CPS data are more likely than the OES data to be representative of the distribution of employment in construction by occupation for helpers and laborers. However, given that neither database is ideal for this purpose, and the fact that OES data are also relevant, both CPS and OES will be used to develop a range of possible savings estimates.

3. Measuring Helpers and Laborers

The major difficulty in developing an impact analysis to estimate potential savings from the expanded use of Davis-Bacon helpers is the dearth of data that reasonably represent the employment of helpers as defined by the suspended regulations, and of laborers. As noted in the Data Sources section, above, the Current Population Survey (CPS) does have separate categories for helper and laborer. However, the survey does not contain standard occupational definitions. Therefore, there can be no assurance that the number of those reported as helpers truly corresponds to the definition in the suspended regulation. For example, it is believed that some helpers—defined by the regulation as semi-skilled workers who may use tools of the trade—may actually be reported in the CPS as journeyworkers. On the other hand, many laborers may be reported as helpers.

Also, as noted above, although the Occupational Employment Statistics (OES) program includes the use of standard occupational definitions, it has *no* distinct category for laborers and the helper definitions used in the survey are quite different than the definitions in the suspended regulations. In fact, the OES helper definition likely includes many laborers who primarily work with or assist journeyworkers. Also, many of those reported as helpers under OES may not be semi-skilled at all, but unskilled workers who perform "duties of lesser skill" and do not have the knowledge and abilities necessary to use tools of the trade. Therefore, Wage and Hour believes that the OES employment totals for helpers likely include many laborers and unskilled helpers.

Since the OES database has no distinct class for laborer, the methodology to estimate potential savings using OES data requires development of a methodology for separating laborers from helpers. Therefore, OES classes were identified that by their terms appeared to primarily include laborers. The classes selected for that purpose included Helpers, Mechanic and Repairer; Helpers, Extractive Workers; Freight, Stock, and Material Movers, Hand; Vehicle Washers and Equipment Cleaners; and Other Helpers, Laborers, & Material Movers, Hand. On the one hand, given these job titles, some workers other than laborers would be included in these totals. On the other hand, the total number of laborers derived from this process (262,310) is well below what would be expected, leading one to believe that many laborers are included in the OES craft helper employment totals.

Corroborating evidence that this approach to the OES data without further adjustment overestimates the number of helpers, underestimates the number of laborers, and therefore overestimates potential savings, when utilized in a helpers impact analysis, may be found in both Decennial Census and CPS data. The Decennial Census estimates 949,000 construction laborers (a ratio of 1 laborer for every 5 journeymen), the CPS estimates 988,000 (1 laborer for every 4 journeymen), and OES estimates just 262,310 (1 laborer for every 10 journeymen).[18]

One way to compensate for this likely undercount of laborers and overestimate of helpers is to determine what percent laborers constitute in the CPS universe, and apply that to the OES data. The laborer category is chosen for this purpose because it is the least likely to suffer from error due to the reporting workers exaggerating their duties. In the CPS, the laborers constitute 18.8 percent of the total for journeymen, apprentices, laborers, and helpers. Multiplying that percent times the comparable OES total provides an adjusted number of OES laborers. Subtracting the adjusted laborer total from the laborer-helper combination (called helper) in OES yields an adjusted number for helpers. While this figure (and therefore the potential savings estimate) is probably an improvement over the unadjusted OES helper total, one cannot be certain of problems that may have inappropriately affected the resulting estimates, since two dissimilar databases have been combined.[19]

In light of these problems, it is advised that the estimates included in this impact analysis be considered with caution. *All* the figures provided should be treated as very rough measures that provide a general range within which possible savings could fall.

C. Key Data Elements, Estimating Process and Computations

1. Key Data Elements

a. Value of total construction starts, 1996:

Total: $321,736,705,000
Federally owned: $10,799,923,000
Public-Non-Fed: $87,122,347,000

b. Construction industry employment, and average annual earnings, 1996:

TABLE 1.—CONSTRUCTION INDUSTRY EMPLOYMENT AND AVERAGE TOTAL EARNINGS, TOTAL AND SELECTED OCCUPATIONS, CPS DATABASE, 1996

Data source and occupation	Total employment*	Percent of total	Average total annual earnings**
CPS	9,333,000	100.000	N.A.
Construction Trades, Except Supervisors and Apprentices***	3,958,000	42.409	$23,007
Apprentices	192,000	2.057	12,564
Helpers	124,000	1.329	9,008
Laborers	988,000	10.586	15,907
Other Occupations****	4,071,000	43.619	N.A.

*CPS data include the incorporated self-employed.
**Total average annual earnings data are for workers who reported their longest job during the year to be in the construction industry. The data are for 1996. Compensation for non-construction work by these workers is included.

[18] Since the OES universe is 60.7 percent of the CPS universe, one would expect the OES laborers total to be about 600,000.

[19] As discussed below, it is also necessary to utilize CPS wage data, thereby combining dissimilar data bases with attendant problems.

*** The CPS figure for four classes of apprentices is 48,000, while the BAT/AIMS total for all occupations is 192,000. For this purpose, the BAT apprentice figure was utilized, with the 144,000 "additional" apprentices subtracted from the CPS construction trades total, based on the assumption that a number of apprentices self-reported their occupation to be journeyworkers. AIMS data are generated as part of the national apprenticeship program and represent active apprentices at the end of the year. Since several states do not report these data, BAT staff estimated the U.S. total based upon the percent of construction employment represented by the missing States.

**** Other occupations include Executive, Administrative, and Managerial positions; Technical, Sales, and Administrative Support; etc., and others, such as those in Service occupations.

TABLE 2.—CONSTRUCTION INDUSTRY EMPLOYMENT AND AVERAGE TOTAL EARNINGS, TOTAL AND SELECTED OCCUPATIONS, OES DATABASE, 1996

Data source and occupation	Total employment *	Percent of total	Average total annual earnings **
OES	5,666,150	100.000	N.A.
Construction Trades Except Supervisors and Apprentices ***	2,064,900	36.443	N.A.
Apprentices	192,000	3.389	N.A.
Helpers ****	495,600	8.747	N.A.
Laborers *****	262,310	4.629	N.A.
Other Occupations	2,651,340	46.793	N.A.

* Excludes self-employed and those not covered by UI.

** Data on wages provided in hourly rates only.

*** Since all apprentices are combined with OES journeyworkers, the BAT apprentice total of 192,000 was subtracted from the OES journeyworker total.

**** Likely includes significant numbers of unskilled helpers and laborers who primarily work with or assist journeyworkers.

***** Figure taken from a catchall classification that includes "All Other Helpers, Laborers, And Material Movers, Hand," plus the OES classifications of Helpers, Mechanic and Repairer; Helpers, Extractive Workers; Freight, Stock, and Material Movers, Hand; and Vehicle Washers and Equipment Cleaners.

TABLE 3.—CONSTRUCTION INDUSTRY EMPLOYMENT AND AVERAGE TOTAL EARNINGS, TOTAL AND SELECTED OCCUPATIONS, ADJUSTED OES DATABASE, 1996

Data source and occupation	Total employment *	Percent of total	Average total annual earnings **
Adjusted OES	5,666,150	100.000	N.A.
Construction Trades Except Supervisors and Apprentices ***	2,064,900	36.443	N.A.
Apprentices	192,000	3.389	N.A.
Helpers ****	191,126	3.373	N.A.
Laborers	566,784	10.003	N.A.
Other Occupations	2,651,340	46.793	N.A.

* Excludes self-employed and those not covered by UI.

** Hourly rates only.

*** BAT figure subtracted from journeyworker total.

**** The OES reports a laborer/helper combination employment of 757,910 (Helpers, Laborers, & Material Movers, Hand). To separate laborer from helper, the percent that CPS laborers (988,000) are of the CPS employment sum (5,262,000) for journeyman, apprentices, laborers, and helpers (18.8 %) was multiplied by the comparable OES employment total (3,014,810). That product (566,784) then was adopted as the OES laborer total, and subtracted from the laborer/helper combination to yield the OES helper figure (191,126).

2. Estimating Process and Computations

A 5-step estimating process was developed and utilized to approximate annual savings that might have been realized in 1996 from the increased use of helpers, if the suspended regulations had been implemented:

Step 1: *Davis-Bacon Employment.* Determine the value of construction covered by the Davis-Bacon and Related Acts. This is achieved by adding 100 percent of Federal construction starts value to 23 percent of the value of public, non-Federal construction starts. Divide that sum by the total value of construction starts to obtain the proportion that Davis-Bacon covered construction is of total construction value. Multiply the Davis-Bacon proportion times total construction employment to estimate the share of total construction employment allocated to Davis-Bacon construction.

Value of DB Construction =
($10,799,923,000) + (0.23 × $87,122,347,000) = $30,838,062,810

Proportion DB is of Total =
$30,838,062,810/$321,736,705,000 = 9.585%

DB Employment =
CPS: 9,333,000 × 0.09585 = 894,568
OES: 5,666,150 × 0.09585 = 543,100
AdjOES: 5,666,150 × 0.09585 = 543,100

Step 2: *Occupational Employment, 1996.* First, the number of additional apprentices, estimated by BAT and above the CPS apprentice's estimate, was added into the CPS construction apprentices total, and subtracted from the journeyworkers total. The BAT apprentice total was similarly subtracted from the OES journeyman/apprentice combination, and established as the OES apprentice total, both unadjusted and adjusted.

Then, 1996 Davis-Bacon employment for the number of journeyworkers, laborers, apprentices, and helpers is obtained. (Note that these on-site construction workers are the only occupations likely to be impacted by any helper regulation.) This is accomplished for each occupational group by multiplying their corresponding adjusted CPS/OES proportions times total Davis-Bacon construction employment. However, since procedures in effect in 1996 prohibited the use of helpers on Davis-Bacon work, the number of helpers computed must be allocated (added) to the number of Davis-Bacon journeyworkers, laborers, and apprentices. This allocation is made in

proportion to each occupational group's composition of covered employment, in order to obtain final estimates of total Davis-Bacon employment for the selected occupational groups. (As indicated under Assumption 2, had this employment been distributed based upon closeness of occupational wage, helper savings would have been significantly reduced.)

DB Journeyworker Employment =
CPS: 894,568 × 0.42409 = 379,377
OES: 543,100 × 0.36443 = 197,922
AdjOES: 543,100 × 0.36443 = 197,922
DB Laborer Employment =
CPS: 894,568 × 0.10586 = 94,699
OES: 543,100 × 0.04629 = 25,140
AdjOES: 543,100 × 0.10003 = 54,326
DB Apprentice Employment =
CPS: 894,568 × 0.02057 = 18,401
OES: 543,100 × 0.03389 = 18,406
AdjOES: 543,100 × 0.03389 = 18,406
DB Helper Employment =
CPS: 894,568 × 0.01329 = 11,889
OES: 543,100 × 0.08747 = 47,505
AdjOES: 543,100 × 0.03373 = 18,319
Subtotals:
CPS: 504,366
OES: 288,973
AdjOES: 288,973

TABLE 4.—DATA FOR "NO HELPER" HELPER ADJUSTMENT

Occupation	CPS No.	CPS %	OES No.	OES %	AdjOES No.	AdjOES %
Journeyworker	379,377	0.77034	197,922	0.81966	197,922	0.73127
Laborer	94,699	0.19229	25,140	0.10411	54,326	0.20072
Apprentice	18,401	0.03736	18,406	0.07623	18,406	0.06801
Total	492,477	0.99999	241,468	1.00000	270,654	1.00000

Helper Adjustment

DB Journeyworkers =
CPS: 379,377 + (11,889 × 0.77034 = 388,536
OES: 197,922 + (47,505 × 0.81966) = 236,860
AdjOES: 197,922 + (18,319 × 0.73127) = 211,318
DB Laborers =
CPS: 94,699 + (11,889 × 0.19229) = 96,985
OES: 25,140 + (47,505 × 0.10411) = 30,086
AdjOES: 54,326 + (18,319 × 0.20072) = 58,003
DB Apprentices =
CPS: 18,401 + (11,889 × 0.03736) = 18,845
OES: 18,406 + (47,505 × 0.07623) = 22,027
AdjOES: 18,406 + (18,319 × 0.06801) = 19,652

Step 3: *Occupational Employment (52 FR 31368).* Determine Davis-Bacon employment for the number of journeyworkers, laborers, apprentices, and helpers likely to be employed if the Regulations published in 52 FR 31368 were in effect throughout 1996. For the employment half in which helpers do not prevail for any classes, Step 2 proportions are utilized; for the half in which helpers do prevail for a limited number of classes, proportions reflect average national employment of helpers.

Employment of DB Journeyworkers (CPS: 0.77034; OES: 0.81996; AdjOES: .73127) + Laborers (CPS: 0.19229; OES: 0.10411; AdjOES: .20072) + Apprentices (CPS: 0.03736; OES: 0.07623; AdjOES: .06801) =
CPS: 504,366
OES: 288,973
AdjOES: 288,973

Half DB Selected Occupation Employment (CPS: 252,183; OES: 144,487; AdjOES: 144,487)

Where Helpers Are *Not* Likely To Prevail:

Journeyworkers =
CPS: 252,183 × 0.77034 = 194,267
OES: 144,487 × 0.81966 = 118,430
AdjOES: 144,487 × 0.73127 = 105,659
Laborers =
CPS: 252,183 × 0.19229 = 48,492
OES: 144,487 × 0.10411 = 15,043
AdjOES: 144,487 × 0.20072 = 29,001
Apprentices =
CPS: 252,183 × 0.03736 = 9,422
OES: 144,487 × 0.07623 = 11,014
AdjOES: 144,487 × 0.06801 = 9,827

Half DB Selected Employment (CPS: 252,183; OES: 144,487; AdjOES: 144,487) Where Helpers *Are* Likely To Prevail for Some Occupations

TABLE 5.—DATA FOR HELPER ADJUSTMENT, INCLUDING HELPERS

Occupation	CPS No.	CPS %	OES No.	OES %	AdjOES No.	AdjOES %
Journey-worker	379,377	0.75219	197,922	0.68492	197,922	0.68492
Laborer	94,699	0.18776	25,140	0.08700	54,326	0.18800
Apprentice	18,401	0.03648	18,406	0.06369	18,406	0.06369
Helper	11,889	0.02357	47,505	0.16439	18,319	0.06339
Total	504,366	1.00000	288,973	1.00000	288,973	1.00000

Journeyworkers =
CPS: 252,183 × 0.75219 = 189,690
OES: 144,487 × 0.68492 = 98,962
AdjOES: 144,487 × 0.68492 = 98,962
Laborers =
CPS: 252,183 × 0.18776 = 47,350
OES: 144,487 × 0.08700 = 12,570
AdjOES: 144,487 × 0.18800 = 27,164
Apprentices =
CPS: 252,183 × 0.03648 = 9,200
OES: 144,487 × 0.06369 = 9,202
AdjOES: 144,487 × 0.06369 = 9,202
Helpers =
CPS: 252,183 × 0.02357 = 5,944
OES: 144,487 × 0.16439 = 23,752
AdjOES: 144,487 × 0.06339 = 9,159
Total:
Journeyworkers =
CPS: 194,267 + 189,690 = 383,957
OES: 118,430 + 98,962 = 217,392
AdjOES: 105,659 + 98,962 = 204,621
Laborers =
CPS: 48,492 + 47,350 = 95,842
OES: 15,043 + 12,570 = 27,613
AdjOES: 29,001 + 27,164 = 56,165
Apprentices =
CPS: 9,422 + 9,200 = 18,622
OES: 11,014 + 9,202 = 20,216
AdjOES: 9,827 + 9,202 = 19,029
Helpers =
CPS: 5,944
OES: 23,752

AdjOES: 9,159

Step 4: *Alternative Wage Bills.* Since half of Davis-Bacon employment is estimated to be in areas in which helpers would *not* be found to prevail for any classification, such employment would not have been affected by the proposed regulation change. For the remaining half, the occupational group totals—both before and after a possible regulation change—are multiplied by the corresponding annual salaries.[20]

Alternative Wage Bills (1996)

CPS: (388,536 × 23,007) + (96,985 × 15,907) + (18,845 × 12,564) = 8,939,047,752 + 1,542,740,395 + 236,768,580 = 10,718,556,727

OES: (236,860 × 23,007) + (30,086 × 15,907) + (22,027 × 12,564) = 5,449,438,020 + 478,578,002 + 276,747,228 = 6,204,763,250

AdjOES: (211,318 × 23,007) + (58,003 × 15,907) + (19,652 × 12,564) = 4,861,793,226 + 922,653,721 + 246,907,728 = 6,031,354,675

Suspended Regulation

CPS: (383,957 × 23,007) + (95,842 × 15,907) + (18,622 × 12,564) + (5,944 × 9,008) = 8,833,698,699 + 1,524,558,694 + 233,966,808 + 53,543,552 = 10,645,767,753

OES: (217,392 × 23,007) + (27,613 × 15,907) + (20,216 × 12,564) + (23,752 × 9008) = 5,001,537,744 + 439,239,991 + 253,993,824 + 213,958,016 = 5,908,729,575

AdjOES: (204,621 × 23,007) + (56,165 × 15,907) + (19,029 × 12,564) + (9,159 × 9008) = 4,707,715,347 + 893,416,655 + 239,080,356 + 82,504,272 = 5,922,716,630

Step 5: *Estimated Annual Savings.* Subtract the Davis-Bacon wage bill computed assuming helper employment from the comparable wage bill with no helpers employed. The difference is an estimate of potential 1996 savings. Divide that total by the value of Davis-Bacon construction to obtain savings as a percent of 1996 Davis-Bacon-covered construction starts.

Short-term Annual Savings:

CPS: 10,718,556,727 − 10,645,767,753 = *$72,788,974*

OES: 6,204,763,250 − 5,908,729,575 = *$296,033,675*

AdjOES: 6,031,354,675 − 5,922,716,630 = *$108,638,045*

[20] Note that this methodology counts each additional helper towards potential cost savings. However, results of relevant Davis-Bacon wage surveys indicate that only a small proportion of helpers would be in classifications in which helpers prevail, thereby substantially reducing savings realized.

Savings as a Proportion of the Value of 1996 Davis-Bacon Construction Starts =

CPS: $72,788,974/$30,838,062,810 = 0.00236 or 0.236 percent;

OES: 296,033,675/$30,838,062,810 = 0.00960 or 0.960 percent;

AdjOES: $108,638,045/$30,838,062,810 = 0.00352 or 0.352 percent.

D. Findings

Given the above assumptions, data, process, and computations, several key findings are established concerning the economic impact of the suspended regulation:

1. *Davis-Bacon Employment.* The workforce on construction projects covered by the Davis-Bacon and Related Acts is estimated to be under 1 million workers (CPS: 894,568; OES: 543,100; AdjOES: 543,100).

Occupational Employment (No Helpers). Davis-Bacon employment for relevant occupations was estimated without the employment of helpers. Under this scenario, employment for those occupations impacted directly by the helper regulation was as follows:

Journeyworkers—CPS: 388,536; OES: 236,860; AdjOES: 211,318;'Laborers—CPS: 96,985; OES: 30,086; AdjOES: 58,003; and Apprentices—CPS: 18,845; OES: 22,027; AdjOES: 19,652.

Occupational Employment (Helpers). In this case, Davis-Bacon occupational employment in areas where it is assumed helpers would prevail for at least one classification was as follows:

Journeyworkers:
CPS: 383,957
OES: 217,392
AdjOES: 204,621

Laborers:
CPS: 95,842
OES: 27,613
AdjOES: 56,165

Apprentices:
CPS: 18,622
OES: 20,216
AdjOES: 19,029

Helpers:
CPS: 5,944
OES: 23,752
AdjOES: 9,159

Wage Bills and Savings. Total earnings for each of the two employment patterns described above were estimated as follows:

Without helpers:
CPS: $10,718,556,727
OES: $6,204,763,250
AdjOES: $6,031,354,675;

With helpers:
CPS: $10,645,767,753
OES: $ 5,908,729,575
AdjOES: $ 5,922,716,630

Therefore, possible savings are estimated to range from $72.8 million (CPS) or 0.236 percent of the value of 1996 Davis-Bacon construction starts, to $108.6 million (AdjOES) or 0.352 percent, to 296.0 million (OES) or .960 percent. However, it should be noted that these short-term savings realized through increased use of helpers could be partially offset in the long run by higher journeyworkers' wage rates.

This follows from the fact that helper use has been most extensive among contractors who traditionally do not sponsor formal apprenticeship and training programs. As increased helper use on Davis-Bacon contracts might lead to contract gains for such employers, reduced use of apprenticeship programs might lead to a somewhat smaller supply of journeyworkers. This could cause a modest increase in journeyworkers' wage rates, in the long run.

These findings indicate that previous Department of Labor estimates of savings that could be attributed to the expanded use of helpers have been greatly overstated. For example, while the current analysis places possible annual savings from $72.8 to $108.6 to $296.0 million, earlier estimates (1982 and 1989) placed such savings at $687.1 million and $760.5 million (all 1996 dollars). While the current estimates' ratios of savings to the value of Davis-Bacon construction starts are only 0.00236 to 0.00352 to 0.00960, estimates of the comparable 1982 and 1989 savings ratios would have been over twice what today's data indicate. In addition, some State laws restrict the use of helpers on public construction, thereby further reducing potential savings from those estimated for Federal regulations that expand the use of helpers.

Several factors appear to be responsible for the wide variation in savings estimates:

• The value of construction covered by the Davis-Bacon and Related Acts, as a proportion of total construction value, about 9.6 percent, is significantly less than was previously assumed. Earlier estimates of 18 percent and higher appear to have been based upon the assumption that all non-Federal public construction is covered. However, examination of available information does *not* confirm that assumption. For example, experience working with F.W. Dodge information indicates that the majority of city, county, and State-owned construction has no Federal assistance. Specifically, by identifying non-Federal public construction projects through F.W. Dodge reports, and then determining their Davis-Bacon coverage through completed wage survey forms for those projects, it

becomes clear that the majority of such construction is not covered.

• The previously utilized assumption that helpers would prevail for 67 percent to 100 percent of the trades (and on projects representing 67 to 100 percent of the Davis-Bacon employment) is not confirmed by survey experience under the previously proposed regulations or by other relevant information. For the 78 wage surveys conducted under the new regulations, rates were recommended for helpers in one or more classifications in just 35 of these data collection efforts. Although all 12 open shop areas surveyed found one or more helper classifications to prevail, they prevailed for only 20 percent of the classes represented. For the 64 mixed area surveys, helpers were found to prevail in 30 surveys, but for only 6 percent of the classes. No helpers were found to prevail in the two area surveys that found all prevailing rates to be union. Furthermore, 30 percent of the helper classifications that were found to prevail were union helpers—especially elevator constructor helpers, a classification negotiated nationwide in that trade. Therefore, the assumption in this analysis that one or more helper classifications prevail in areas that represent half of Davis-Bacon covered employment is probably inflated in terms of estimating the actual prevalence of helpers.

• Previous estimates of the proportion that helper employment is of total construction employment appears to have overstated that classification's workforce standing. For example, the 1976–77 compensation study, upon which many of the early helper savings estimates were based, found that helpers comprised just 3.2 percent of the survey universe. Because of the survey's concentration in metropolitan/union areas and the fact that enough helper data were found to publish for only four construction trades, that proportion was doubled and tripled when developing alternative savings estimates. Later estimates of helper employment proportions assumed that 15 percent of total construction employment fell into that classification. As noted above, CPS, AdjOES, and OES estimates are approximately 1.3, 3.4, and 8.7 percent, respectively.

• The assumption that helpers will replace journeyworkers exclusively was not supported by experience during implementation of the suspended regulation. For example, personnel who processed helper conformance actions have indicated that often construction contractors surveyed reported that workers meeting the definition of helper in the regulations were classified by the contractors as laborers. Similarly, the low wage rates paid helpers are indicative of their lower skill level, increasing the likelihood of substitution for laborers. Recognizing helpers may perform work of laborers and apprentices, as well as journeyworkers, narrows the differential between the wage bills incurred before and after helper expansion. In fact, in the short run, helpers may disproportionately assume work of laborers and apprentices. In the longer run, supply problems in obtaining quality skilled journeyworkers may well appear, as helpers displace apprentices, and subsequently, apprentice-trained journeyworkers.

E. Possible Economic Impact of Helper Alternatives

A number of different approaches were considered in developing the proposed regulation to define the circumstances in which helpers may be used on Davis-Bacon projects. In addition to the proposal that helpers only be permitted where the prevailing practice is to use helpers with duties that do not overlap with those of a journeyworker or laborer, Wage and Hour considered four other alternatives: (1) Add a ratio requirement to the suspended helper definition; (2) change the helper definition to emphasize the semi-skilled nature of the classification; (3) define helpers in accordance with the OES definition which focuses on unskilled duties; and (4) delineate the semi-skilled tasks performed by each helper classification.

Section D of this Impact Analysis estimated helper use under the suspended rule in areas where helpers would prevail. Alternatives 1–4 involved changing the helpers definition or their use. Each alternative would likely result in greater use of helpers than under the proposed rule, but less than under the suspended rule. Similarly, the economic impact of the alternatives would presumably yield some portion but not all, of the savings anticipated under the suspended rule.

Given that each alternative encompassed many possible variations and outcomes, and that there is no data source that would provide appropriate information on these variations and outcomes, it is not possible to provide detailed estimates of the economic impacts of the four alternatives. However, discussed below are the factors likely to affect the economic impact of the alternatives.

Proposed Rule—Helpers Used in Accordance With Current Practice

The proposed rule would reflect the longstanding, and current, practice of recognizing helpers only where helper duties are separate and distinct from those of journeyworkers and laborers. As it would continue a practice that has been in effect for many years, the proposed rule is expected to have no economic impact.

Alternative 1—Add a Helper to Journeyworker Ratio Requirement to the Suspended Rule

Adding a ratio, whether one ratio that applies nationally or a number of local ratios, to the suspended rule would have the effect of limiting the number of helpers allowed on Davis-Bacon sites, as compared to the number that could be utilized under the suspended rule alone. Where the practice of employers under the suspended rule without a ratio would result in the use of more helpers than allowed under a ratio cap, the economic impact would be lower savings with the cap than without it. On the other hand, allowing helpers to be used under a rule that combined the suspended rule with a ratio would allow greater helper use than exists currently and would likely result in savings. The amount of savings to be achieved would depend on the ratio chosen.

Alternative 2—Emphasize Semi-Skilled Nature of the Helper Classification

Changing the suspended rule to emphasize the "semi-skilled" nature of the helper classification would likely result in less use of helpers than there would be under the suspended rule, but more than under the rule currently in effect. The extent of helper use would depend on the scope of duties allowed under such a helper classification. Thus, some savings would be achieved, but less than would be expected under the suspended rule. The amount of savings would also be impacted by how such a definition affected the relative substitution of helpers for laborers and journeyworkers. As it could be expected that emphasizing the semi-skilled nature of the helper classification would result in little or no substitution for laborers, the decrease in savings as compared to the suspended rule would be less dramatic.

Alternative 3—Emphasize Unskilled Duties

As with Alternative 2, defining helpers by limiting their duties to unskilled duties would also result in less use of helpers than there would be under the suspended rule, but more than under the rule currently in effect.

While some savings would be achieved, this amount would be less than expected under the suspended rule. Again, the effect of the rule on the substitution of helpers for laborers versus journeyworkers would impact the degree of savings. Under this alternative, it could be expected that few, if any, helpers would replace journeyworkers, resulting in greater savings than would be expected under Alternative 2.

Alternative 4—Delineate Semi-Skilled Tasks for Each Helper Classification

The extent of savings, as compared to current practice, under this alternative would depend on the scope of the tasks allowed to be performed by helpers assisting in each craft. Again, savings would be expected relative to current practice, but in an amount less than would be achieved under the suspended rule. As in Alternative 2, limiting helpers to semi-skilled duties would likely result in less substitution for laborers, and the decrease in savings as compared to the suspended rule would be less dramatic.

F. Benefits

Wage and Hour originally believed that the primary benefits to be gained from promulgation of the suspended helper regulation would be a construction workforce on Federal construction projects that more closely mirrored the private construction workforce's widespread use of helpers, and significant cost savings in Federal construction costs. As is more fully explained previously in this document, Wage and Hour now believes that the use of helpers is less widespread than originally thought and that the cost savings would be a small fraction of the amount originally computed.

On the other hand, this proposal would allow Wage and Hour to arrive at a definition of helper that would be capable of effective administration and enforcement consistent with the purpose of the Davis-Bacon Act. The alternatives considered would lessen the overlap with other classifications, and would also provide a more objective means by which both government agencies and contractors can distinguish between helpers and other classifications, consistent with the underlying purpose of the Davis-Bacon Act. All of the alternatives would to varying degrees ameliorate the potential for misclassification and abuse of helper classifications, thereby providing fairer competitive bidding on Federal and federally-assisted construction projects. Finally, Wage and Hour believes that this proposal could help preserve effective training in the construction industry. A discussion of the possible benefits provided by each of the specific proposed alternatives immediately follows.

The proposed rule would continue the current practice which requires that helper duties be separate and distinct from those of the journeyworker and laborer. By retaining the traditional duties-based classification distinction, it would provide clear criteria that can be objectively administered and enforced, and that facilitate contractor compliance. Because classifications would not have overlapping duties under this alternative, there would be less opportunity for contractor misclassification and abuse. Wage and Hour also believes that this approach would encourage contractors to establish or participate in structured training programs that would aid workers in achieving journeylevel status.

Alternative 1, which would provide use of a national ratio, or a number of local ratios, would reduce to some extent the potential for abuse of the helper classification by contractors seeking to gain an unfair competitive advantage, whether implemented in conjunction with the suspended helper definition or with one of the other proposed alternatives.

Alternative 2 would change the helper definition to emphasize the semi-skilled nature of the classification by modifying the suspended definition to emphasize semi-skilled duties. The modified definition under this alternative might possibly aid in differentiating the helper from journeyworker and laborer classifications by emphasizing the "semi-skilled" nature of the work performed by helpers, the supervisory relationship between journeyworkers and helpers, and the craft-specific assistance provided by the helper. This definition would also expressly limit the unskilled work the helper may perform in an attempt to distinguish helpers from laborers.

Alternative 3, which would utilize the OES definition of helper, would provide a more objective definition of helper than the suspended definition. By focusing on unskilled duties and the helper's interaction with journeylevel craft workers, this alternative could provide a more practical basis for distinguishing helpers from journeyworkers.

Alternative 4, which would in essence adopt the "job family" concept currently utilized under the McNamara-O'Hara Service Contract Act, would allow for the expanded use of helpers, with differentiation based on the skill and knowledge required to perform various duties. This would result in clearer definitions of helper classifications on a craft-by-craft basis, which would facilitate administration and enforcement.

VI. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, Public Law 96–354 (94 Stat. 1164; 5 U.S.C. 601 *et seq.*), Federal agencies are required to prepare and make available for public comment an initial regulatory flexibility analysis that describes the anticipated impact of proposed rules that would have a significant economic impact on small entities. Wage and Hour is of the view that a Regulatory Flexibility Analysis is not necessary for the proposed rule because the proposed regulation would not result in any changes in requirements for small businesses. Furthermore, if Wage and Hour were to propose implementing the suspended rule or any of the alternatives considered, it would not be more costly than current regulatory requirements and therefore would not have a significant economic impact on a substantial number of small entities. Furthermore, Wage and Hour is of the view, as discussed in the preamble, that neither the suspended rule nor any of the alternatives considered would accomplish the objectives of the statute. Notwithstanding, because of widespread interest in the rule, Wage and Hour has prepared the following Regulatory Flexibility Analysis, which compares the proposed rule to the suspended rule and should be considered in conjunction with the analysis set forth in the preamble and the analysis under Executive Order 12866.

(1) Reasons Why Action Is Being Considered

In 1982, over fifteen years ago, Wage and Hour published final regulations which, among other things, would have allowed contractors to use "semi-skilled" helpers on Davis-Bacon covered projects at wages lower than those paid to skilled journeyworkers. These rules represented a sharp departure from Wage and Hour's longstanding practice of not allowing overlap of duties between job classifications. To protect against possible abuse, a provision was included limiting the number of helpers which could be used on a covered project to a maximum of two helpers for every three journeyworkers. This ratio provision was subsequently invalidated by the U.S. Court of Appeals for the District of Columbia.

As discussed in greater detail above, during its existence, the helper rule has been the subject of considerable

litigation and Congressional attention. The rule has been enjoined by the district court and modified on two occasions as a result of court of appeals decisions. It has twice been implemented for short periods of time. It has also been suspended on two occasions as the result of Congressional action prohibiting Wage and Hour from spending any funds to implement or administer the helper rule. On December 30, 1996, the suspension was continued pending completion of this rulemaking.

The helper rule was originally proposed and adopted because it was believed that it would result in a construction workforce on Federal construction projects that more closely mirrored the private construction's "widespread" use of helpers and, at the same time, effect significant cost savings in federal construction costs. It was also believed that the expanded definition would provide additional job and training opportunities for unskilled workers, in particular women and minorities. The Department's subsequent efforts to develop enforcement guidelines led it to conclude that administration of the revised helper rule would be much more difficult than anticipated, especially in light of the court's invalidation of the ratio provision. Moreover, new data, including the Department's experience implementing the helper regulations, indicated that the use of helpers is not as widespread as previously thought. Wage and Hour is also concerned about the possible negative effect of the helper regulations on formal apprenticeship and training programs. These factors, and the obvious controversy evidenced by the rule's long history of litigation and by Congressional actions prohibiting implementation of the rule, led Wage and Hour to reexamine the helper rule and consider several alternative approaches to govern employment of helpers on DBRA-covered projects.

(2) Objectives of and Legal Basis for Rule

These regulations are issued under the authority of the Davis-Bacon Act, 40 U.S.C. 276a, *et seq.*, Reorganization Plan No. 14 of 1950, 5 U.S.C. Appendix, and the Copeland Act, 40 U.S.C. 276c. The objective of these regulations is to establish the most appropriate approach to governing employment of helpers on DBRA-covered projects. Wage and Hour believes the proposed rule is the only alternative considered that is both consistent with the purposes of the Davis-Bacon Act and capable of practical and efficient administration, enforcement, and compliance.

(3) Number of Small Entities Covered Under the Rule

Size standards for the construction industry are established by the Small Business Administration (SBA), and are expressed in millions of dollars of annual receipts for affected entities, *i.e.*, Major Group 15, Building Construction—General Contractors and Operative Builders, $17 million; Major Group 16, Heavy Construction (non-building), $17 million; and Major Group 17, Special Trade Contractors, $7 million. The overwhelming majority of construction establishments would have annual receipts under these levels. According to the Census, 98.7 percent of these establishments have annual receipts under $10 million. Therefore, for the purpose of this analysis, it is assumed that virtually all establishments potentially affected by this rule would meet the applicable criteria used by the SBA to define small businesses in the construction industry.

As explained above, however, the proposed rule would cause no impact on small entities since it does not propose to make any changes in requirements applicable to small businesses. Implementation of the suspended rule or any of the alternatives considered would expand the use of helpers and could result in some savings. The impact would depend upon the specifications of the alternative relative to current practice. Even relative to unlimited use, however, possible savings would be very modest, ranging from 0.239 percent of the value of Davis-Bacon annual construction starts (CPS), to 0.359 (adjusted OES), and 0.958 (unadjusted OES) percent.

(4) Reporting, Recordkeeping and Other Compliance Requirements of the Rule

There are no reporting or recording requirements for contractors under the proposed rule. Nor would there be any such requirements under the suspended rule or any of the alternatives considered. The compliance requirements under any rule regarding helpers would merely require contractors who use helpers to do so in accordance with a chosen definition and pay helpers at least the appropriate prevailing wages for helpers as set by the Department.

(5) Relevant Federal Rules Duplicating, Overlapping or Conflicting With the Rule

There are currently no Federal rules that duplicate, overlap or conflict with this proposed rule.

(6) Differing Compliance or Reporting Requirements for Small Entities

The proposed rule contains no reporting, recordkeeping, or other compliance requirements specifically applicable to small businesses or that differ from such requirements applicable to the Davis-Bacon contracting industry as a whole. Such different treatment would not seem feasible since virtually all employers in the industry are small businesses.

(7) Clarification, Consolidation, and Simplification of Compliance and Reporting Requirements

The compliance and reporting requirements of the proposed rule, the suspended rule, and each of the alternatives considered, as well as the advantages and disadvantages of each, are described in the preamble above, which discusses issues such as ease of compliance for contractors.

(8) Use of Other Standards

The Davis-Bacon Act requires the Secretary to determine the prevailing wages and fringe benefits to be paid to the classes of workers to be employed on a project. Therefore compliance by contractors can only be achieved through design standards. The proposed rule, the suspended rule, and the alternative approaches to employing helpers on DBRA-covered projects are discussed in the preamble above and are not repeated here.

(9) Exemption From Coverage for Small Entities

Exemption from coverage under this rule for small entities would not be appropriate given the statutory mandate of the Davis-Bacon Act that all contractors (large and small) performing on DBRA-covered contracts must pay its workers prevailing wages and fringe benefits as determined by the Secretary of Labor. Further, exclusion of such small businesses from data collected to determine prevailing wages and fringe benefits for helpers would be impractical and would distort such determinations, possibly to the detriment of small businesses.

VII. Document Preparation

This document was prepared under the direction and control of John R. Fraser, Deputy Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor.

Signed at Washington, D.C., this 1st day of April, 1999.

Bernard E. Anderson,

Assistant Secretary for Employment Standards.

[FR Doc. 99–8566 Filed 4–7–99; 8:45 am]

BILLING CODE 4510–27–P

VOL 64 ISS 68 AP 9 1999 UMI

federal register

Friday
April 9, 1999

Part III

Environmental Protection Agency

40 CFR Part 63

National Emission Standards for Hazardous Air Pollutants for Source Categories: Amendment for Hazardous Air Pollutants Emissions From Magnetic Tape Manufacturing Operations; Direct Final Rule and Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[FRL–6321–8]

RIN 2060–AH71

National Emission Standards for Hazardous Air Pollutants for Source Categories: Amendment for Hazardous Air Pollutants Emissions From Magnetic Tape Manufacturing Operations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is taking direct final action to amend National Emission Standards for Hazardous Air Pollutants (NESHAP) From Magnetic Tape Manufacturing Operations, codified as subpart EE to 40 CFR part 63. The existing standards allow facility owners or operators to leave a limited number of solvent storage tanks uncontrolled if they control coating operations at a level greater than the standards otherwise require. EPA is publishing this final amendment to provide another compliance option for facility owners and operators. If facility owners or operators increase the control of hazardous air pollutant (HAP) emissions from coating operations beyond what the standards otherwise require, this final amendment gives them the choice of leaving a limited number of solvent storage tanks and/or a limited number of pieces of mix preparation equipment uncontrolled. EPA believes this final amendment will not decrease the stringency of the existing standards.

DATES: *Effective Date.* This final rule amendment is effective on June 8, 1999 without further notice, unless EPA receives adverse comments on this rulemaking by May 10, 1999 or a request for a hearing concerning the accompanying proposed rule is received by EPA by April 19, 1999. If EPA receives timely adverse comment or a timely hearing request, EPA will publish a withdrawal in the **Federal Register** informing the public that this direct final rule will not take effect.

ADDRESSES: *Comments.* Interested parties may submit comments on this rulemaking in writing (original and two copies, if possible) to Docket No. A–91–31 to the following address: Air and Radiation Docket and Information Center (6102), US Environmental Protection Agency, 401 M Street, S.W., Room 1500, Washington, D.C. 20460. Public comments on this rulemaking will be accepted until May 10, 1999.

Docket. A docket containing supporting information used in developing this direct final rule amendment is available for public inspection and copying at the EPA's docket office located at the above address in Room M–1500, Waterside Mall (ground floor). The public is encouraged to phone in advance to review docket materials. Appointments can be scheduled by phoning the Air Docket Office at (202) 260–7548. Refer to Docket No. A–91–31. A reasonable fee may be charged for copying docket materials.

FOR FURTHER INFORMATION CONTACT: Michele Aston, U.S. Environmental Protection Agency, Policy, Planning, and Standards Group, Emission Standards Division, Mail Drop 13, Research Triangle Park, NC 27711; electronic mail address aston.michele@epa.gov; telephone number (919) 541–2363; facsimile number (919) 541–0942.

SUPPLEMENTARY INFORMATION: We are publishing this rule amendment without prior proposal because we consider this to be a noncontroversial amendment, and we do not expect to receive any adverse comment. We believe that this change to the previously promulgated rule will increase compliance flexibility for affected sources without any adverse environmental consequences. However, in the "Proposed Rules" section of this **Federal Register** publication, we are publishing a separate document that will serve as the proposal for this amendment, in the event we receive adverse comment or a hearing request and this direct final rule is subsequently withdrawn. This final rule amendment will be effective on June 8, 1999 without further notice, unless we receive adverse comment on this rulemaking by May 10, 1999 or a request for a hearing concerning the accompanying proposed rule is received by EPA by April 19, 1999. If EPA receives timely adverse comment or a timely hearing request, we will publish a withdrawal in the **Federal Register** informing the public that this direct final rule will not take effect. In that event, we will address all public comments in a subsequent final rule, based on the proposed rule amendment published in the "Proposed Rules" section of this **Federal Register** document. The EPA will not provide further opportunity for public comment on this action. Any parties interested in commenting on this amendment must do so at this time.

Regulated entities. Entities potentially regulated by this action include any facility engaged in the surface coating of magnetic tape. This includes, but is not limited to, the following magnetic tape products: audio and video recording tape, computer tape, the magnetic stripes of media involved in credit cards and toll tickets, bank transfer ribbons, instrumentation tape, and dictation tape. Regulated categories and entities are shown in Table 1.

TABLE 1.—REGULATED CATEGORIES AND ENTITIES

Entity category	Description
Industrial	Any facility that is engaged in the surface coating of magnetic tape (SIC 3695 & 2675).
Federal Government: Not affected	
State/Local/Tribal Government: Not affected	

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that the EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated.

Internet. The text of this **Federal Register** document is also available on the EPA's web site on the Internet under recently signed rules at the following address: http://www.epa.gov/ttn/oarpg/rules.html. The EPA's Office of Air and Radiation (OAR) homepage on the Internet also contains a wide range of information on the air toxics program and many other air pollution programs and issues. The OAR's homepage address is: http://www.epa.gov/oar/.

Electronic Access and Filing Addresses. The official record for this rulemaking, as well as the public version, has been established for this rulemaking under Docket No. A–91–31 (including comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as confidential business information (CBI), is available for inspection from 8 a.m. to 5:30 p.m., Monday through Friday, excluding legal holidays. The official rulemaking record is located at the address listed in the **ADDRESSES** section at the beginning of this preamble.

Interested parties may submit comments on this rulemaking electronically to the EPA's Air and

Radiation Docket and Information Center at: "A-and-R-Docket@epamail.epa.gov." Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 6.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number (A–91–31). No CBI should be submitted through electronic mail. Electronic comments may be filed online at many Federal Depository Libraries.

Outline. The information in this preamble is organized as follows:

I. Authority
II. Background
III. Regulatory Requirements and Performance Standards
A. Original compliance option for solvent storage tanks
B. What information we used to establish the new compliance option
C. Why we chose to allow the new compliance option
D. How the new compliance option affects you as a manufacturer
IV. Administrative Requirements
A. Executive Order 12866: "Significant Regulatory Action Determination"
B. Regulatory Flexibility
C. Paperwork Reduction Act
D. Unfunded Mandates Reform Act
E. Docket
F. Executive Order 12875: Enhancing the Intergovernmental Partnership
G. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks
H. Executive Order 13084: Consultation and Coordination with Indian Tribal Governments
I. Submission to Congress and the General Accounting Office
J. National Technology Transfer and Advancement Act

I. Authority

The statutory authority for this action is provided by sections 101, 112, 114, 116, and 301 of the Clean Air Act, as amended (42 U.S.C. 7401, 7412, 7414, 7416, and 7601).

II. Background

On December 15, 1994, we published in the **Federal Register** the final rule containing national standards for reducing HAP in facilities that manufacture magnetic tape (see 59 FR 64580). Since then, a regulated facility has asked us to consider alternative compliance options for a narrow aspect of the regulation.

This amendment is very similar to the existing provision at 40 CFR 63.703(c)(4), but adds an optional approach for compliance. The new approach requires the same enhanced control efficiency for coating operations as required by the provisions published in 1994. We expect this amendment to protect the environment as well as the rule published in 1994, while offering the regulated community more flexibility for compliance.

III. Regulatory Requirements and Performance Standards

A. Original Compliance Option for Solvent Storage tanks

In the final rule published in 1994, we included a compliance option for owners or operators of facilities that manufacture magnetic tape (referred to as operators in the rest of this preamble). It allows them to leave uncontrolled the emissions from certain solvent storage tanks in return for better controlling the largest emissions source at their facilities. Through that alternative compliance provision, we allow operators to vent emissions from these tanks to the atmosphere, rather than routing them through a control device. (See 40 CFR 63.703(c)(4)—as published December 15, 1994—for this option.) As explained in the 1994 preamble, we concluded then that added control at the coating operations would offset emissions from the uncontrolled storage tanks (see 59 FR 64590–64592, December 15, 1994.)

B. What Information We Used To Establish the New Compliance Option

Since 1994, we've received detailed technical information from a facility that manufactures magnetic tape (see Docket No. A–91–31). It compares estimates for HAP emissions from uncontrolled solvent storage tanks to those for uncontrolled pieces of mix preparation equipment. The facility asked us to allow more flexibility in the types of equipment that can be left uncontrolled in exchange for a higher level of control of the coating operations at the facility. In evaluating this request, we've generally compared the amount of HAP emissions that may be uncontrolled under the 1994 published rule's alternative provision with those HAP emissions that may be uncontrolled under the added options in today's rule. For this analysis, we incorporate by reference our rationale for the existing alternative compliance options which was included in our preamble for the 1994 published rule.

At magnetic tape manufacturing facilities, solvent storage tanks and mix preparation equipment are typically covered, even if the headspace vapors aren't vented to a control device. Emissions from a given solvent storage tank at a manufacturing facility vary depending on throughput, tank size, solvents stored in the tanks, and other factors. Emissions from a given piece of mix preparation equipment vary for similar reasons, and also vary based on the amount that the temperature of the mix increases during mixing.

The facility's detailed technical information estimates their maximum potential emissions under process constraints in the milling operations. The facility's solvent storage tanks and mix preparation equipment have varying characteristics, including capacity. Their largest tanks and mix preparation equipement are 20,000 gallons and 1200 gallons, respectively. The solvent storage tanks have fixed roofs with conservation vents, so the facility used standard calculations for these tanks to estimate emissions. For solvent recovery tanks, they believed this method may not be appropriate because they maintain most tanks at nearly constant levels with a mechanical weir. However, we don't know of a better way to calculate emissions for these tanks, so we'd use the same method unless rigorous monitoring ensured a constant level of liquid in the tank. Therefore, we decided to include tanks from the solvent recovery unit in our evaluation of the data.

The facility estimated emissions for their mix preparation equipment using our calculation methods for batch processes, which we believe is appropriate for this application. In developing the regulations, we estimated emissions from the entire mix preparation operation. But their method estimates emissions for pieces of mix equipment, which requires more detailed information than we had while developing the regulations. At the same time, we believe this facility's solvent storage tanks and mix preparation equipment are representative of the tanks and equipment used by the rest of the regulated magnetic tape industry, so we used their data to analyze the requested alternative compliance approach.

C. Why We Chose To Allow the New Compliance Option

The 1994 published rule restricts the capacity of the solvent storage tanks we allowed to be uncontrolled to 20,000 gallons each but doesn't restrict other parameters that affect emissions. Therefore, we believe it's reasonable to use the highest emitting tanks in this comparison if they don't exceed the capacity restriction. For the magnetic tape manufacturing facility we studied, we found the maximum potential HAP emissions from a solvent storage tank and from a piece of mix preparation

equipment were 1.6 tons/yr (tpy) and 1.9 tpy, respectively.

Because maximum emissions are similar, we believe it's reasonable for facility operators to leave uncontrolled some mix preparation equipment and some solvent storage tanks, if they better control their coating operations. But they must leave fewer pieces of mix preparation equipment uncontrolled because the maximum emissions from mix preparation equipment are greater than those from solvent storage tanks. Also, some tanks had emissions as low as 0.01 tpy, whereas the lowest level for mix preparation equipment was 0.1 tpy. Based on all the data, it's reasonable to allow manufacturers to leave uncontrolled half as many pieces of mix preparation equipment as of solvent storage tanks. This 2-to-1 ratio makes up for the wider range of HAP emissions in the tanks.

As noted above, the 1994 published rule's alternative compliance approach limits the capacity of solvent storage tanks that can be left uncontrolled. Our amendment also uses a capacity limit of 1,200 gallons for each piece of mix preparation equipment that can be left uncontrolled. We believe the equipment at this facility is representative of equipment in the industry. In any case, limiting maximum capacity makes sure the size of uncontrolled mix preparation equipment is no larger than the size used for the estimates supporting this amendment.

D. How the New Compliance Option Affects You as a Manufacturer

Today's final rule amendment affects you if, as a facility owner or operator, you choose to increase the overall control efficiency of your coating operations for magnetic tape. As the final rule was published in 1994, 40 CFR 63.703(c) allowed you to leave HAP solvent storage tanks uncontrolled if you increase the overall control efficiency of your coating operations. Under today's final rule amendment, you may still leave uncontrolled 10, 15, or 20 tanks in exchange for controlling your coating operations to an overall efficiency of 97, 98, or 99 percent, respectively. Under today's amendment, however, you may leave uncontrolled one piece of mix preparation equipment in exchange for two solvent storage tanks left uncontrolled under the 1994 rule. For example, you could leave uncontrolled six solvent storage tanks and two pieces of mix preparation equipment if you achieve an overall efficiency of 97 percent—instead of 10 solvent storage tanks. See the amendment to 40 CFR 63.703(c)(4) for combinations you may use to comply with the new alternative provisions.

We believe this amendment will limit HAP emissions from facilities that manufacture magnetic tape at least as much as provisions in the 1994 rule. Furthermore, the amendment will give you more flexibility to meet the regulation. We don't expect our amendment to pose any problems for enforcement or permitting because it's essentially similar to the 1994 rule, which affected facilities are following now. We expect you'll like this amendment because you may be able to save money and other resources, compared to the compliance approaches under the 1994 rule. Also, if you decide not to follow the amended provisions, they won't burden you—they merely give you another option, and the regulation is otherwise virtually unchanged.

IV. Administrative Requirements

A. Executive Order 12866: "Significant Regulatory Action Determination'

Under Executive Order 12866 (58 FR 51735, October 4, 1993) the Agency must determine whether the regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety in State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlement, grants, user fees, or loan programs of the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Because the annualized cost of this final rule amendment would be significantly less than $100 million and would not meet any of the other criteria specified in the Executive Order, it has been determined that this action is not a "significant regulatory action" under the terms of Executive Order 12866, and is therefore not subject to OMB review.

Executive Order 12866 also encourages agencies to provide a meaningful public comment period, and suggests that in most cases the comment period should be 60 days. However, in consideration of the very limited scope of this amendment, the EPA considers 30 days to be sufficient in providing a meaningful public comment period for this rulemaking.

B. Regulatory Flexibility

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. The EPA determined that this amendment to the Magnetic Tape Manufacturing Operations does not have a significant impact on a substantial number of small entities. The EPA has also determined that is not necessary to prepare a regulatory flexibility analysis in connection with this action.

C. Paperwork Reduction Act

This amendment does not include or create any information collection activities subject to the Paperwork Reduction Act, and therefore no information collection request (ICR) will be submitted to OMB for review in compliance with the Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.*

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the

Administrator publishes with the final rule an explanation of why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

As noted above, this amendment is of very narrow scope, and provides a compliance alternative very similar to one already available in the promulgated regulation. The EPA has determined that this action contains no regulatory requirements that might significantly or uniquely affect small governments. EPA has also determined that this action does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. Thus, today's action is not subject to the requirements of sections 202 and 205 of the UMRA.

E. Docket

The docket includes an organized and complete file of all the information upon which EPA relied in taking this direct final action. The docketing system is intended to allow members of the public and industries involved to readily identify and locate documents so that they can effectively participate in the rulemaking process. Along with the proposed and promulgated standards and their preambles, the contents of the docket, except for certain interagency documents, will serve as the record for judicial review. (See CAA section 307(d)(7)(A).)

F. Executive Order 12875: Enhancing the Intergovernmental Partnership

Under Executive Order 12875, the EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of the EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires the EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's action does not create a mandate on State, local or tribal governments. The amendments to the rule do not impose any new or additional enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this action.

G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045 applies to any rule that the EPA determines (1) economically significant as defined under E.O. 12866, and (2) the environmental health or safety risk addressed by the rule has a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This amendment to the National Emissions Standards for Magnetic Tape Manufacturing Operations is not subject to E.O. 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), because it is not an economically significant regulatory action as defined by E.O. 12866, and it does not address an environmental health or safety risk that would have a disproportionate effect on children.

H. Executive Order 13084: Consultation and Coordination With Indian Tribal Governments

Under Executive Order 13084, the EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separate identified section of the preamble to the rule, a description of the extent of the EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires the EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

This amendment to National Emissions Standards for Magnetic Tape Manufacturing Operations does not significantly or uniquely affect the communities of Indian tribal governments. The amendments to the rule do not impose any new or additional enforceable duties on these entities. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this action.

I. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, the EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller general of the General Accounting Office prior to publication of the rule in today's **Federal Register**. This action to amend the currently effective rule is not a "major rule" as defined by 5 U.S.C. 804(2).

J. National Technology Transfer and Advancement Act

Under section 12(d) of the National Technology Transfer and Advancement Act (NTTA), Public Law 104–113 (March 7, 1996), the EPA is required to use voluntary consensus standards in its regulatory and procurement activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, business practices, etc.) which are adopted by voluntary consensus standard bodies. Where available and potentially applicable voluntary consensus standards are not used by the EPA, the NTTA requires the Agency to provide

Congress, through OMB, an explanation of the reasons for not using such standards. This action does not put forth any technical standards; therefore, consideration of voluntary consensus standards was not required.

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Coating operation, Hazardous air pollutant, Magnetic tape manufacturing, Mix preparation equipment, Solvent storage tank.

Dated: April 1, 1999.

Carol M. Browner,

Administrator.

Chapter I, Part 63 of the Code of Federal Regulations are amended as follows:

PART 63—NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR SOURCE CATEGORIES

1. The authority citation for part 63 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart EE—National Emission Standards for Magnetic Tape Manufacturing Operations

2. Section 63.703 is amended by revising paragraph (c)(4) (i), (ii) and (iii) to read as follows:

§ 63.703 Standards.

* * * * *

(c) * * *

(4) In lieu of controlling HAP emissions from each solvent storage tank and piece of mix preparation equipment to the level required by paragraph (c)(1) of this section, an owner or operator of an affected source may elect to comply with one of the options set forth in paragraph (c)(4)(i), (ii) or (iii) of this section.

(i) Control HAP emissions from all coating operations by an overall HAP control efficiency of at least 97 percent in lieu of either:

(A) Controlling up to 10 HAP solvent storage tanks that do not exceed 20,000 gallons each in capacity; or

(B) Controlling 1 piece of mix preparation equipment that does not exceed 1,200 gallons in capacity and up to 8 HAP solvent storage tanks that do not exceed 20,000 gallons each in capacity; or

(C) Controlling up to 2 pieces of mix preparation equipment that do not exceed 1,200 gallons each in capacity and up to 6 HAP solvent storage tanks that do not exceed 20,000 gallons each in capacity; or

(D) Controlling up to 3 pieces of mix preparation equipment that do not exceed 1,200 gallons each in capacity and up to 4 HAP solvent storage tanks that do not exceed 20,000 gallons each in capacity; or

(E) Controlling up to 4 pieces of mix preparation equipment that do not exceed 1,200 gallons each in capacity and up to 2 HAP solvent storage tanks that do not exceed 20,000 gallons each in capacity; or

(F) Controlling up to 5 pieces of mix preparation equipment that do not exceed 1,200 gallons each in capacity.

(ii) Control HAP emissions from all coating operations by an overall HAP control efficiency of at least 98 percent in lieu of either:

(A) Controlling up to 15 HAP solvent storage tanks that do not exceed 20,000 gallons each in capacity; or

(B) Controlling 1 piece of mix preparation equipment that does not exceed 1,200 gallons in capacity and up to 13 HAP solvent storage tanks that do not exceed 20,000 gallons each in capacity; or

(C) Controlling up to 2 pieces of mix preparation equipment that do not exceed 1,200 gallons each in capacity and up to 11 HAP solvent storage tanks that do not exceed 20,000 gallons each in capacity; or

(D) Controlling up to 3 pieces of mix preparation equipment that do not exceed 1,200 gallons each in capacity and up to 9 HAP solvent storage tanks that do not exceed 20,000 gallons each in capacity; or

(E) Controlling up to 4 pieces of mix preparation equipment that do not exceed 1,200 gallons each in capacity and up to 7 HAP solvent storage tanks that do not exceed 20,000 gallons each in capacity; or

(F) Controlling up to 5 pieces of mix preparation equipment that do not exceed 1,200 gallons each in capacity and up to 5 HAP solvent storage tanks that do not exceed 20,000 gallons each in capacity; or

(G) Controlling up to 6 pieces of mix preparation equipment that do not exceed 1,200 gallons each in capacity and up to 3 HAP solvent storage tanks that do not exceed 20,000 gallons each in capacity; or

(H) Controlling up to 7 pieces of mix preparation equipment that do not exceed 1,200 gallons each in capacity and up to 1 HAP solvent storage tank that does not exceed 20,000 gallons in capacity.

(iii) Control HAP emissions from all coating operations by an overall HAP control efficiency of at least 99 percent in lieu of either:

(A) Controlling up to 20 HAP solvent storage tanks that do not exceed 20,000 gallons each in capacity; or

(B) Controlling 1 piece of mix preparation equipment that does not exceed 1,200 gallons in capacity and up to 18 HAP solvent storage tanks that do not exceed 20,000 gallons each in capacity; or

(C) Controlling up to 2 pieces of mix preparation equipment that do not exceed 1,200 gallons each in capacity and up to 16 HAP solvent storage tanks that do not exceed 20,000 gallons each in capacity; or

(D) Controlling up to 3 pieces of mix preparation equipment that do not exceed 1,200 gallons each in capacity and up to 14 HAP solvent storage tanks that do not exceed 20,000 gallons each in capacity; or

(E) Controlling up to 4 pieces of mix preparation equipment that do not exceed 1,200 gallons each in capacity and up to 12 HAP solvent storage tanks that do not exceed 20,000 gallons each in capacity; or

(F) Controlling up to 5 pieces of mix preparation equipment that do not exceed 1,200 gallons each in capacity and up to 10 HAP solvent storage tanks that do not exceed 20,000 gallons each in capacity; or

(G) Controlling up to 6 pieces of mix preparation equipment that do not exceed 1,200 gallons each in capacity and up to 8 HAP solvent storage tanks that do not exceed 20,000 gallons each in capacity; or

(H) Controlling up to 7 pieces of mix preparation equipment that do not exceed 1,200 gallons each in capacity and up to 6 HAP solvent storage tanks that do not exceed 20,000 gallons each in capacity; or

(I) Controlling up to 8 pieces of mix preparation equipment that do not exceed 1,200 gallons each in capacity and up to 4 HAP solvent storage tanks that do not exceed 20,000 gallons each in capacity; or

(J) Controlling up to 9 pieces of mix preparation equipment that do not exceed 1,200 gallons each in capacity and up to 2 HAP solvent storage tanks that do not exceed 20,000 gallons each in capacity; or

(K) Controlling up to 10 pieces of mix preparation equipment that do not exceed 1,200 gallons each in capacity.

* * * * *

[FR Doc. 99–8779 Filed 4–8–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[FRL–6321–7]

RIN 2060–AH71

National Emission Standards for Hazardous Air Pollutants for Source Categories: Amendment for Hazardous Air Pollutants Emissions From Magnetic Tape Manufacturing Operations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to amend National Emission Standards for Hazardous Air Pollutants (NESHAP) From Magnetic Tape Manufacturing Operations, codified as subpart EE to 40 CFR part 63. The existing standards allow facility owners or operators to leave a limited number of solvent storage tanks uncontrolled if they control coating operations at a level greater than the standards otherwise require. EPA is publishing this proposed amendment to provide another compliance option for facility owners and operators. If facility owners or operators increase the control of hazardous air pollutant (HAP) emissions from coating operations beyond what the standards otherwise require, this final amendment gives them the choice of leaving a limited number of solvent storage tanks and/or a limited number of pieces of mix preparation equipment uncontrolled. EPA believes this proposed amendment will not decrease the stringency of the existing standards.

We don't consider this amendment controversial and expect no negative comments, so we're also publishing it as a direct final rule in the Final Rules section of this **Federal Register** publication. We'll consider any negative comments about today's direct final rule to also be negative comments about this proposal. We'll take no further action unless, within the time allowed (see **DATES**, below), we receive negative comments about the proposal or final rule, or we receive a request for a public hearing on the proposal. If we take no further action, the amendment will become effective on the date in the **DATES** section of the associated direct final rule.

DATES: *Comments.* The EPA will accept comments regarding the proposed amendment on or before May 10, 1999. Additionally, a public hearing regarding the proposed amendment will be held if anyone requesting to speak at a public hearing contacts the EPA by April 19, 1999. If a hearing is requested, the hearing will be held at the EPA Office of Administration Auditorium, Research Triangle Park, NC. on April 30, 1999 beginning at 10:00 a.m.. For more information about submittal of comments and requesting a public hearing, see the **SUPPLEMENTARY INFORMATION** section in this preamble.

ADDRESSES: *Comments.* Interested parties having comments on this action may submit these comments in writing (original and two copies, if possible) to Docket No. A–91–31 at the following address: Air and Radiation Docket and Information Center (6102), US Environmental Protection Agency, 401 M Street, S.W., Room 1500, Washington, D.C. 20460. The EPA requests that a separate copy of the comments also be sent to the contact person listed in the following paragraph of this preamble.

FOR FURTHER INFORMATION CONTACT: Michele Aston, U.S. Environmental Protection Agency, Policy, Planning, and Standards Group, Emission Standards Division, Mail Drop 13, Research Triangle Park, NC 27711; electronic mail address aston.michele@epamail.epa.gov; telephone number (919) 541–2363; facsimile number (919) 541–0942.

SUPPLEMENTARY INFORMATION: Regulated entities. Entities potentially regulated by this action include any facility that is engaged in the surface coating of magnetic tape. This includes, but is not limited to, the following magnetic tape products: audio and video recording tape, computer tape, the magnetic stripes of media involved in credit cards and toll tickets, bank transfer ribbons, instrumentation tape, and dictation tape. Regulated categories and entities are shown in Table 1.

TABLE 1.—REGULATED CATEGORIES AND ENTITIES

Entity category	Description
Industrial	Any facility that is engaged in the surface coating of magnetic tape (SIC 3695 & 2675)
Federal Government: Not affected.	
State/Local/Tribal Government: Not affected.	

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that the EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated.

Internet. The text of this **Federal Register** document is also available on the EPA's web site on the Internet under recently signed rules at the following address: http://www.epa.gov/ttn/oarpg/rules.html. The EPA's Office of Air and Radiation (OAR) homepage on the Internet also contains a wide range of information on the air toxics program and many other air pollution programs and issues. The OAR's homepage address is: http://www.epa.gov/oar/.

Electronic Access and Filing Addresses. The official record for this rulemaking, as well as the public version, has been established for this rulemaking under Docket No. A–91–31 (including comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as confidential business information (CBI), is available for inspection from 8 a.m. to 5:30 p.m., Monday through Friday, excluding legal holidays. The official rulemaking record is located at the address listed in the **ADDRESSES** section at the beginning of this preamble document.

Interested parties having comments on this action may submit these comments electronically to the EPA's Air and Radiation Docket and Information Center at: "A-and-R-Docket@epamail.epa.gov." Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 6.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number (A–91–31). No CBI should be submitted through electronic mail. Electronic comments may be filed online at many Federal Depository Libraries.

Public Hearing. If EPA receives a request to make an oral presentation at a hearing concerning this proposal by April 19, 1999, the public hearing will be held at the EPA Office of Administration Auditorium, Research Triangle Park, NC on April 30, 1999 beginning at 10 a.m. Persons interested in making an oral presentation or inquiring as to whether a hearing is to be held should contact Michele Aston, (see **FOR FURTHER INFORMATION CONTACT** section of this preamble document.)

Docket. Docket A–91–31 contains the supporting information for the original NESHAP and this action. This **Federal Register** document and other materials related to this proposed rule are

available for review in the docket. The docket is available for public inspection and copying at the EPA's docket office located at the above address in Room M–1500, Waterside Mall (ground floor). The public is encouraged to phone in advance to review docket materials. Appointments can be scheduled by phoning the Air Docket Office at (202) 260–7548. A reasonable fee may be charged for copying docket materials.

Outline. The information in this preamble is organized as follows:

I. Authority
II. Background
III. Proposed Amendment
IV. Administrative Requirements
A. Public Hearing
B. Executive Order 12866: "Significant Regulatory Action Determination'
C. Regulatory Flexibility
D. Paperwork Reduction Act
E. Unfunded Mandates Reform Act
F. Docket
G. Executive Order 12875: Enhancing the Intergovernmental Partnership
H. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks
I. Executive Order 13084: Consultation and Coordination with Indian Tribal Governments
J. National Technology Transfer and Advancement Act

I. Authority

The statutory authority for this action is provided by sections 101, 112, 114, 116, and 301 of the Clean Air Act, as amended (42 U.S.C. 7401, 7412, 7414, 7416, and 7601).

II. Background

On December 15, 1994, we published in the **Federal Register** the final rule containing national standards for reducing HAP in facilities that manufacture magnetic tape (see 59 FR 64580). Since then, a regulated facility has asked us to consider alternative compliance options for a narrow aspect of the regulation.

This proposed amendment is very similar to the existing provision at 40 CFR 63.703(c)(4) but adds an optional approach for compliance. The new approach requires the same enhanced control efficiency for coating operations as existing provisions. We expect this proposed amendment to protect the environment as well as the rule issued in 1994 while offering the regulated community more flexibility for compliance.

III. Proposed Amendment

We're proposing to amend the emission standards for magnetic tape manufacturing so facilities will have another compliance option if they choose to control their coating operations to an overall HAP reduction efficiency greater than 95%. Under the existing standards, facility owners or operators may choose to control HAP emissions for all coating operations by an overall efficiency of at least 97%, 98%, or 99%, instead of controlling 10, 15, or 20 HAP solvent storage tanks, respectively. This amendment would allow them to control their coating operations to those higher efficiencies in exchange for leaving uncontrolled a limited number of pieces of mix preparation equipment, combined with a limited number of HAP solvent storage tanks.

For further information on this proposed amendment and our rationale, see the associated direct final rule published in the Final Rules section of today's **Federal Register**. We incorporate all such information in this proposal by reference.

IV. Administrative Requirements

A. Public Hearing

A public hearing will be held, if requested, to provide opportunity for interested persons to make verbal presentations regarding this regulation in accordance with 42 U.S.C. 7004(b)(1); 40 CFR part 25. Persons wishing to make a verbal presentation on this proposed rule amendment must contact Michele Aston of the U.S. EPA, at the address given in the **ADDRESSES** section of this document, no later than April 19, 1999. If a public hearing is held, written statements may be submitted at the hearing, and EPA will also include in the record any rebuttal or supplementary information submitted in written form within 30 days following the date of the hearing. Any written statements not submitted at the hearing should be sent to EPA at the addresses given in the **ADDRESSES** section of this document. If a public hearing is held, a verbatim transcript of the hearing, and written statements provided at or following the hearing will be available for inspection and copying during normal business hours at the EPA address for docket inspection given in the **ADDRESSES** section of this preamble.

B. Executive Order 12866: "Significant Regulatory Action Determination"

Under Executive Order 12866 (58 FR 51735, October 4, 1993) the Agency must determine whether the regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety in State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlement, grants, user fees, or loan programs of the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Because the annualized cost of the proposed rule amendment would be significantly less than $100 million and would not meet any of the other criteria specified in the Executive Order, it has been determined that this action is not a "significant regulatory action" under the terms of Executive Order 12866, and is therefore not subject to OMB review.

Executive Order 12866 also encourages agencies to provide a meaningful public comment period, and suggests that in most cases the comment period should be 60 days. However, in consideration of the very limited scope of this amendment, the EPA considers 30 days to be sufficient in providing a meaningful public comment period for this regulatory action.

C. Regulatory Flexibility

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. The EPA determined that this amendment to the Magnetic Tape Manufacturing Operations does not have a significant impact on a substantial number of small entities. EPA certifies that this action will not have a significant economic impact on a substantial number of small entities.

D. Paperwork Reduction Act

This amendment does not include or create any information collection activities subject to the Paperwork Reduction Act, and therefore no information collection request (ICR) will be submitted to OMB for review in

compliance with the Paperwork Reduction Act, 44 U.S.C. 3501, et seq.

E. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation of why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

As noted above, this proposed amendment is of very narrow scope, and provides a compliance alternative very similar to one already available in the promulgated regulation. The EPA has determined that this action contains no regulatory requirements that might significantly or uniquely affect small governments. EPA has also determined that this action does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. Thus, today's action is not subject to the requirements of sections 202 and 205 of the UMRA.

F. Docket

The docket is an organized and complete file of the administrative record upon which any final rule is based. The docketing system is intended to allow members of the public and industries involved to readily identify and locate documents so that they can effectively participate in the rulemaking process. All written comments on this proposal submitted in a timely manner will be included in the docket. Along with the proposed and promulgated standards and their preambles, the contents of the docket, except for certain interagency documents, will serve as the record for judicial review. (See CAA section 307(d)(7)(A).)

G. Executive Order 12875: Enhancing the Intergovernmental Partnership

Under Executive Order 12875, the EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of the EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires the EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's action does not create a mandate on State, local or tribal governments. The amendments to the rule do not impose any new or additional enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this action.

H. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045 applies to any rule that the EPA determines (1) economically significant as defined under E.O. 12866, and (2) the environmental health or safety risk addressed by the rule has a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This amendment to the National Emissions Standards for Magnetic Tape Manufacturing Operations is not subject to E.O. 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), because it is not an economically significant regulatory action as defined by E.O. 12866, and it does not address an environmental health or safety risk that would have a disproportionate effect on children.

I. Executive Order 13084: Consultation and Coordination With Indian Tribal Governments

Under Executive Order 13084, the EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separate identified section of the preamble to the rule, a description of the extent of the EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires the EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's amendments do not significantly or uniquely affect the communities of Indian tribal government. The amendments to the rule do not impose any new or additional enforceable duties on these entities. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this action.

J. National Technology Transfer and Advancement Act

Under section 12(d) of the National Technology Transfer and Advancement Act (NTTA), Public Law 104–113 (March 7, 1996), the EPA is required to use voluntary consensus standards in its regulatory and procurement activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, business practices, etc.) which are adopted by voluntary consensus standard bodies. Where available and potentially applicable voluntary consensus standards are not used by the EPA, the NTTA requires the Agency to provide Congress, through OMB, an explanation of the reasons for not using such standards. This amendment does not put forth any technical standards; therefore, consideration of voluntary consensus standards was not required.

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Coating operation, Hazardous air pollutant, Magnetic tape manufacturing, Mix preparation equipment, Storage tank.

Dated: April 1, 1999.

Carol M. Browner,

Administrator.

Chapter I, Part 63 of the Code of Federal Regulations are amended as follows:

PART 63—NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR SOURCE CATEGORIES

1. The authority citation for part 63 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart EE—National Emission Standards for Magnetic Tape Manufacturing Operations

2. Section 63.703 is amended by revising paragraph (c)(4)(i), (ii) and (iii) to read as follows:

§ 63.703 Standards.

* * * * *

(c) * * *

(4) In lieu of controlling HAP emissions from each solvent storage tank and piece of mix preparation equipment to the level required by paragraph (c)(1) of this section, an owner or operator of an affected source may elect to comply with one of the options set forth in paragraph (c)(4)(i), (ii), or (iii) of this section.

(i) Control HAP emissions from all coating operations by an overall HAP control efficiency of at least 97 percent in lieu of either:

(A) Controlling up to 10 HAP solvent storage tanks that do not exceed 20,000 gallons each in capacity; or

(B) Controlling 1 piece of mix preparation equipment that does not exceed 1,200 gallons in capacity and up to 8 HAP solvent storage tanks that do not exceed 20,000 gallons each in capacity; or

(C) Controlling up to 2 pieces of mix preparation equipment that do not exceed 1,200 gallons each in capacity and up to 6 HAP solvent storage tanks that do not exceed 20,000 gallons each in capacity; or

(D) Controlling up to 3 pieces of mix preparation equipment that do not exceed 1,200 gallons each in capacity and up to 4 HAP solvent storage tanks that do not exceed 20,000 gallons each in capacity; or

(E) Controlling up to 4 pieces of mix preparation equipment that do not exceed 1,200 gallons each in capacity and up to 2 HAP solvent storage tanks that do not exceed 20,000 gallons each in capacity; or

(F) Controlling up to 5 pieces of mix preparation equipment that do not exceed 1,200 gallons each in capacity.

(ii) Control HAP emissions from all coating operations by an overall HAP control efficiency of at least 98 percent in lieu of either:

(A) Controlling up to 15 HAP solvent storage tanks that do not exceed 20,000 gallons each in capacity; or

(B) Controlling 1 piece of mix preparation equipment that does not exceed 1,200 gallons in capacity and up to 13 HAP solvent storage tanks that do not exceed 20,000 gallons each in capacity; or

(C) Controlling up to 2 pieces of mix preparation equipment that do not exceed 1,200 gallons each in capacity and up to 11 HAP solvent storage tanks that do not exceed 20,000 gallons each in capacity; or

(D) Controlling up to 3 pieces of mix preparation equipment that do not exceed 1,200 gallons each in capacity and up to 9 HAP solvent storage tanks that do not exceed 20,000 gallons each in capacity; or

(E) Controlling up to 4 pieces of mix preparation equipment that do not exceed 1,200 gallons each in capacity and up to 7 HAP solvent storage tanks that do not exceed 20,000 gallons each in capacity; or

(F) Controlling up to 5 pieces of mix preparation equipment that do not exceed 1,200 gallons each in capacity and up to 5 HAP solvent storage tanks that do not exceed 20,000 gallons each in capacity; or

(G) Controlling up to 6 pieces of mix preparation equipment that do not exceed 1,200 gallons each in capacity and up to 3 HAP solvent storage tanks that do not exceed 20,000 gallons each in capacity; or

(H) Controlling up to 7 pieces of mix preparation equipment that do not exceed 1,200 gallons each in capacity and up to 1 HAP solvent storage tank that does not exceed 20,000 gallons in capacity.

(iii) Control HAP emissions from all coating operations by an overall HAP control efficiency of at least 99 percent in lieu of either:

(A) Controlling up to 20 HAP solvent storage tanks that do not exceed 20,000 gallons each in capacity; or

(B) Controlling 1 piece of mix preparation equipment that does not exceed 1,200 gallons in capacity and up to 18 HAP solvent storage tanks that do not exceed 20,000 gallons each in capacity; or

(C) Controlling up to 2 pieces of mix preparation equipment that do not exceed 1,200 gallons each in capacity and up to 16 HAP solvent storage tanks that do not exceed 20,000 gallons each in capacity; or

(D) Controlling up to 3 pieces of mix preparation equipment that do not exceed 1,200 gallons each in capacity and up to 14 HAP solvent storage tanks that do not exceed 20,000 gallons each in capacity; or

(E) Controlling up to 4 pieces of mix preparation equipment that do not exceed 1,200 gallons each in capacity and up to 12 HAP solvent storage tanks that do not exceed 20,000 gallons each in capacity; or

(F) Controlling up to 5 pieces of mix preparation equipment that do not exceed 1,200 gallons each in capacity and up to 10 HAP solvent storage tanks that do not exceed 20,000 gallons each in capacity; or

(G) Controlling up to 6 pieces of mix preparation equipment that do not exceed 1,200 gallons each in capacity and up to 8 HAP solvent storage tanks that do not exceed 20,000 gallons each in capacity; or

(H) Controlling up to 7 pieces of mix preparation equipment that do not exceed 1,200 gallons each in capacity and up to 6 HAP solvent storage tank that do not exceed 20,000 gallons each in capacity; or

(I) Controlling up to 8 pieces of mix preparation equipment that do not exceed 1,200 gallons each in capacity and up to 4 HAP solvent storage tanks that do not exceed 20,000 gallons each in capacity; or

(J) Controlling up to 9 pieces of mix preparation equipment that do not exceed 1,200 gallons each in capacity and up to 2 HAP solvent storage tanks that do not exceed 20,000 gallons each in capacity; or

(K) Controlling up to 10 pieces of mix preparation equipment that do not exceed 1,200 gallons each in capacity.

* * * * *

[FR Doc. 99–8780 Filed 4–8–99; 8:45 am]

BILLING CODE 6560–50–P

VOL
64
ISS
68
AP
9
1999
UMI

federal register

Friday
April 9, 1999

Part IV

Department of the Treasury

Fiscal Service

31 CFR Part 210

Federal Government Participation in the Automated Clearing House; Final Rule

DEPARTMENT OF THE TREASURY

Fiscal Service

31 CFR Part 210

RIN 1510–AA39

Federal Government Participation in the Automated Clearing House

AGENCY: Financial Management Service, Fiscal Service, Treasury.

ACTION: Final Rule.

SUMMARY: The Department of the Treasury, Financial Management Service (Service), is revising its regulation, 31 CFR Part 210 (Part 210), governing the use of the Automated Clearing House (ACH) system by Federal agencies (agencies). The ACH system is the primary electronic funds transfer (EFT) system used by agencies to make payments, and the Service anticipates that agencies increasingly will use the ACH system to collect funds. Part 210 provides the regulatory foundation for use of the ACH system by agencies. It defines the rights and liabilities of agencies, Federal Reserve Banks, financial institutions, and the public, in connection with ACH credit entries, debit entries, and entry data originated or received by an agency through the ACH system.

DATES: This rule is effective May 10, 1999. The incorporation by reference of the publication listed in the rule is approved by the Director of the Federal Register as of May 10, 1999.

ADDRESSES: This rule is available on the Financial Management Service's ACH web site at the following address: http://www.fms.treas.gov/ach/.

FOR FURTHER INFORMATION CONTACT: Walt Henderson, Senior Financial Program Specialist, at (202) 874–6705; Mary Bailey, Financial Program Specialist, at (202) 874–6749; Natalie H. Diana at (202) 874–6590; Cynthia L. Johnson, Director, Cash Management Policy and Planning Division, at (202) 874–6590; or Margaret Marquette, Senior Attorney, at (202) 874–6681.

SUPPLEMENTARY INFORMATION:

I. Background

A. Introduction

The ACH system is a nationwide EFT system which provides for the interbank clearing of credit and debit transactions and for the exchange of information among participating financial institutions. The Federal Government (Government) is the largest single user of the ACH system, originating and receiving millions of transactions each month. As the Government's financial manager, the Service collects and disburses funds for most agencies. In fiscal year 1998, approximately 63% of payments made by the Department of the Treasury (Treasury) were made through the ACH system. In addition, a growing number of transactions involving the collection of funds by agencies are being made through the ACH system. In fiscal year 1998, over $1.1 trillion in corporate tax payments was collected electronically.

Two laws are responsible for the substantial increase in the use of the ACH system by agencies. Provisions in the North American Free Trade Agreement Implementation Act (NAFTA), Pub. L. No. 103–182, sec. 523 (codified at 26 U.S.C. 6302(h)) mandate the use of EFT for the collection of certain Federal taxes. Provisions in the Debt Collection Improvement Act of 1996 (DCIA), Pub. L. No. 104–134, require that most Federal payments (other than payments under the Internal Revenue Code of 1986) be made by EFT.

To meet the NAFTA requirements, the Service, in conjunction with the Internal Revenue Service and Federal Reserve Banks, implemented the Electronic Federal Tax Payment System (EFTPS) which enables taxpayers to pay Federal taxes by EFT. 31 CFR Part 203 (Payment of Federal Taxes and the Treasury Tax and Loan Program) addresses the rights and responsibilities of taxpayers, financial institutions, and Federal Reserve Banks in connection with EFTPS. 63 FR 5644.

On September 25, 1998, Treasury published a final rule, 31 CFR Part 208 (Part 208), implementing the requirement of the DCIA that agencies convert from check to EFT payments, subject to the waiver authority of the Secretary of the Treasury. 63 FR 51490.

The Service anticipates that the ACH system will be the dominant, though not exclusive, EFT system used by agencies to make payments and to collect funds. Part 210 provides the regulatory foundation for use of the ACH system by agencies.

B. Proposed Rulemakings

On September 30, 1994, the Service published a Notice of Proposed Rulemaking with respect to Part 210. 59 FR 50112. After considering the comments received on the 1994 proposed rule, and taking into account developments since that proposal was issued, the Service issued a new Notice of Proposed Rulemaking on February 2, 1998 (NPRM). 63 FR 5426. The NPRM proposed to adopt the ACH rules developed by the National Automated Clearing House Association (NACHA) (ACH Rules) as the rules governing all Government ACH transactions, with twelve exceptions for which the Service proposed to establish special rules as a matter of Federal law.

The Service received 26 comment letters on the NPRM. Commenters generally supported the adoption of the ACH Rules as the rules governing Government ACH transactions, but had differing views regarding the twelve proposed exceptions. Some financial institutions commented that Federal payments should be subject to the ACH Rules without variation or exception, commenting that imposing liability on financial institutions for losses resulting from Government errors and omissions will damage efforts to expand the use of the ACH as a vehicle for making Federal payments, and may have pricing implications for recipients of Federal payments. Other financial institutions and agencies commented that certain of the twelve proposed exceptions were not appropriate. Specific comments are discussed in the section-by-section analysis below.

C. Final Rule

Part 210, which implements Treasury's statutory responsibility to collect and disburse public funds, establishes the rights and duties of parties to transactions originated or received by agencies through the ACH system, just as other Treasury rules regulate the rights of parties to Treasury checks.[1]

The ACH Rules, which are developed and updated by NACHA, allocate rights and liabilities among participants to an ACH transaction. Financial institutions agree to be bound by the ACH Rules when they join an ACH association. The ACH Rules are structured upon the premise that five entities participate in the ACH system. They are: (1) The originator, which is the person or entity that agrees to initiate ACH entries in accordance with an arrangement with a receiver; (2) the originating depository financial institution (ODFI), which is the institution that receives payment instructions from the originator and forwards the entries to an ACH Operator; (3) the ACH Operator, which is a central clearing facility, operated by a Federal Reserve Bank or a private organization, that receives entries from ODFIs, distributes the entries to appropriate receiving depository financial institutions (RDFIs), and performs the settlement function for the affected financial institutions; (4) the RDFI, which is the institution that receives ACH entries from the ACH Operator and posts them to the accounts

[1] 31 CFR Part 240.

of its depositors; and (5) the receiver, which is a natural person or organization that has authorized an originator to initiate an ACH entry to the receiver's account with the RDFI.

In initiating and receiving Government entries, agencies, Federal Reserve Banks, and the Service operate in unique capacities that differ from the roles contemplated by the ACH Rules. These differences are a result of the statutory authorities that govern Government payments and collections and that distinguish Government payments from commercial payments involving private parties and financial institutions.

Because the ACH Rules employ terminology that is based upon private industry financial institution-customer relationships, the definitions used in the ACH Rules do not address the roles of agencies, the Service, and the Federal Reserve Banks with respect to the origination or receipt of an ACH entry. Due to the bifurcation of function between certifying and disbursing agencies, Government operations do not conform to the definitions in the ACH Rules. From a functional perspective, the agency that certifies an ACH entry to the Service performs a function that is analogous to that of the originator of the entry for purposes of the ACH Rules. In disbursing the payment, the Service is acting as the ODFI and the Federal Reserve Bank is the originating ACH Operator with respect to the entry. Similarly, an agency that receives a payment through the ACH system functions as the receiver, while the Service functions as the RDFI, and the Federal Reserve Bank functions as the receiving ACH Operator for the entry.

The ACH Rules generally require ODFIs and RDFIs to assume responsibility for entries originated and received by their customers. ODFIs and RDFIs must make certain warranties with respect to entries originated and received by their customers and are liable to other participants in the ACH system for breach of those warranties. The ACH Rules do not impose direct liability upon originators and receivers; any losses resulting from an act or omission by an originator or receiver are imposed on the ODFI or RDFI. The ODFI or RDFI can seek recourse against the originator or receiver if it has the right to do so under the contract between the parties and/or applicable state law.

The Service does not believe that it is appropriate to assume liability arising from the acts and omissions of agencies originating and receiving ACH entries. Accordingly, although it is the Service's view that agencies operate as originators and receivers and the Service operates as an ODFI and RDFI from a functional perspective, the Service believes it is appropriate to impose upon agencies that originate or receive ACH entries the obligations and liabilities imposed on ODFIs and RDFIs, respectively, for purposes of the ACH Rules. Part 210 therefore is structured on the premise that agencies are subject to all of the obligations and liabilities imposed on ODFIs and RDFIs under the ACH Rules, except as otherwise provided in Part 210.

After reviewing the comments and further considering the issues raised, the Service has determined to preempt 11 provisions of the ACH Rules.[2] In view of the special nature of Government entries, and the importance of protecting public funds, the Service believes that it is in the best interest of the public to preempt the 11 provisions of the ACH Rules described briefly below, for reasons discussed in more detail in the section-by-section analysis.

The following five ACH Rules are preempted entirely and are excluded specifically from Part 210's definition of "applicable ACH Rules" (see § 210.2(d)):

1. ACH members. Part 210 preempts the limitation on the applicability of the ACH Rules to members of an ACH association.

2. Compensation. Part 210 preempts the compensation rules set forth in the ACH Rules.

3. Rules Enforcement. Part 210 preempts the requirement under the ACH Rules that participants agree to be subject to a national system of fines to ensure compliance with the ACH Rules.

4. Reclamation. The reclamation provisions of Subpart B preempt all ACH Rules related to the reclamation of entries and the liability of participants that otherwise would apply to benefit payments.

5. Timing of Origination. Part 210 preempts the requirement set forth in the ACH Rules that a credit entry be originated no more than two banking days before the settlement date of the entry.

In addition to the foregoing five provisions of the ACH Rules which Part 210 entirely preempts through the definition of "applicable ACH Rules," six other provisions of the ACH Rules are preempted in part by operation of specific sections of Part 210. Those provisions are:

1. Verification of identity of recipient (see §§ 210.4(a) and 210.8(b)(2)). Under the ACH Rules, a receiver must authorize an entry before the entry may be originated and the ODFI must warrant that the authorization is valid. The ODFI thus bears the ultimate liability for any loss resulting from a forged authorization under the ACH Rules. Part 210 imposes a different rule for Government entries. Specifically, under § 210.4(a), a financial institution that accepts an authorization from a recipient must verify the identity of the recipient. The financial institution is liable to the Government for all entries made in reliance on a forged authorization that the institution has accepted. Thus, Part 210 preempts the ODFI warranty and liability provisions of the ACH Rules by allocating liability to the RDFI if it accepts a forged authorization.

2. Authorization for debit entries to agencies (see §§ 210.4(a)(2) and 210.8(b)(1)). Part 210 preempts the ACH Rules with respect to the form of authorization required to initiate debit entries to an agency. The ACH Rules require that every entry be authorized by the receiver, but only require that the authorization be in writing in the case of debit entries to a consumer account. Under § 210.4(a), no person or entity (including any financial institution) may initiate or transmit a debit entry to an agency, other than a reversal of a credit entry, unless the agency has expressly authorized in writing (or through a similarly authenticated authorization) the origination of the entry by that particular originator. An ODFI transmitting an entry in violation of this requirement would be liable for the amount of the transaction, plus interest, under § 210.8(b)(1).

3. Liability of the Government

(a) Amount of damages (see § 210.6). In general, the ACH Rules impose liability on an RDFI or ODFI for all losses, liabilities, or claims incurred by another depository financial institution (DFI), ACH Operator, or ACH Association as a result of the RDFI's or ODFI's breach of any warranty. Thus, under the ACH Rules, an agency that originates payments would be liable for all losses resulting from any breach by it of an applicable warranty under the ACH Rules. Similarly, an agency that receives payments would be liable for all losses resulting from any breach by it of an applicable warranty under the ACH Rules.

Section 210.6 limits an agency's liability to the amount of the entry whether it is originating or receiving

[2] The NPRM proposed to preempt 12 provisions of the ACH Rules. As discussed in the section-by-section analysis, the final rule deletes from the listing of provisions to be preempted the provision related to arbitration and replaces it with a provision related to rules enforcement. In addition, the provision related to prenotifications has been deleted, leaving a total of 11 provisions to be preempted.

ACH entries. Therefore, an agency would not be liable to a DFI, ACH Operator, or ACH Association for interest, attorneys' fees, or other consequential damages. In addition, in certain circumstances, an agency's liability may be reduced further by the amount of the loss caused by the financial institution's negligence.

(b) Liability of Federal Reserve Banks (see § 210.7(a)). Part 210 preempts section 11.5 of the ACH Rules, which provides that a Federal Reserve Bank is not the agent of an RDFI or ODFI. Part 210 provides that Federal Reserve Banks are Fiscal Agents of the Treasury in carrying out their duties as the Government's ACH Operator and are not liable to any party other than the Treasury for their actions under Part 210.

4. Liability of financial institutions (see § 210.8(b)). Part 210 preempts the provisions of the ACH Rules that would operate to make a financial institution liable to the Government for any loss, liability or claim relating to an entry in an amount exceeding the entry. The ACH Rules impose liability on an RDFI or ODFI for all losses, liabilities, or claims incurred by another DFI, ACH Operator, or ACH Association as a result of the RDFI's or ODFI's breach of any warranty. Under Part 210, a financial institution would not be liable to the Government for interest, attorneys' fees, or other consequential damages, except in the case of an unauthorized debit to an agency, as discussed above.

5. Reversals (see § 210.6(f)). Part 210 requires agencies initiating reversals to certify that the reversal does not violate applicable law or regulations. This requirement is not imposed under the ACH Rules. In addition, Part 210 applies the ACH Rules relating to indemnification to the Government, but limits the extent of the indemnification to the amount of the individual entry(ies) being reversed.

6. Account requirements for Federal payments (see § 210.5). Part 210 imposes a requirement with respect to ACH credit entries representing Federal payments other than vendor payments that is not imposed under the ACH Rules, i.e., that such payments be deposited to an account at a financial institution "in the name of" the recipient, with three exceptions discussed in the section-by-section analysis. The term "account" for purposes of § 210.5 is intended to mean a deposit account and not a loan account or general ledger account. The Service is aware that NACHA has approved a change to the ACH Rules, which will become effective in September 2000, to permit the crediting of ACH credits to a financial institution general ledger account or to a loan account. Because of the consumer protections associated with the crediting of Federal payments to a deposit account, including those available under Regulation E (12 CFR Part 205) and Regulation DD (12 CFR Part 230), as well as the availability of Federal deposit or share insurance, the Service does not intend to accept this ACH Rule with respect to payments other than vendor payments.

In addition to preempting the provisions of the ACH Rules listed above, Part 210 also establishes, as a matter of Federal law, certain rights and obligations that are not addressed in the ACH Rules. For example, the ACH Rules generally do not address the rights and liabilities between receivers and originators, nor do the ACH Rules address rights and liabilities between ODFIs and originators, or between RDFIs and receivers. Under the ACH Rules, an ODFI is responsible for entries originated by its customers. The ODFI must make certain warranties with respect to any entry originated by its customer, and is liable for breach of those warranties. The ODFI's ability to seek recourse against the originator in the event of a loss for which the ODFI is liable under the ACH Rules is beyond the purview of the ACH Rules and would be governed by the contract between the ODFI and originator and applicable state law.

The Service is establishing some of these rights in Part 210 with respect to agencies vis-a-vis originators or receivers of Government entries. For example, Part 210 provides that an agency will be liable to a recipient for any loss sustained by the recipient as a result of the agency's failure to originate a credit or debit entry in accordance with Part 210, and limits that liability to the amount of the entry. Neither the basis nor the extent of an originator's liability to a receiver is addressed in the ACH Rules. In addition, the ACH Rules do not address the circumstances in which an entry, in fact, is "authorized." The determination of whether a valid authorization exists ordinarily would depend on the contract between the parties and applicable state law. Part 210 establishes certain circumstances in which an entry shall be deemed to be unauthorized.

D. Future Changes to Subpart B

The NPRM solicited preliminary comment on the reorganization of Subpart B in order to allow for the increasing use of automated processes to effect reclamations, rather than requiring reclamations to be conducted on the basis of paper-driven procedures. In addition, the Service requested comment on ways in which the reclamation process might be restructured in the future to operate more efficiently as a fully automated process.

In order to begin formulating a preliminary approach to implementing an automated reclamation process, the Service solicited comment on whether the protection afforded to financial institutions by the limited liability provisions of Subpart B is outweighed by the processing costs of handling reclamations. In particular, the Service requested comment on an approach in which an RDFI would be liable for the amount of any post-death entries received, regardless of whether the RDFI had actual or constructive knowledge of the death.

Although commenters generally expressed conceptual support for increased automation of reclamation processing, most commenters did not favor moving toward an automated reclamation process at this time. One agency questioned the business case for replacing the current paper reclamation process with a form of automated reclamation. That agency indicated that the use of death notification entries (DNEs) has significantly reduced the number of reclamation requests produced and that, at the same time, payment cycling is causing a significant reduction in reclamations because the agency has additional time to receive and act on reports of recipients' deaths. The agency commented that these enhancements reduce the need for a future electronic reclamation process.

Some financial institutions commented that the approach outlined in the NPRM would substantially increase financial institutions' losses from reclamations without a corresponding reduction in expenses. One financial institution pointed out that it would expect to perform much of the same research under the Service's suggested approach as it currently does in order to pursue reimbursement from the surviving depositor(s) or the estate of the decedent. Another financial institution expressed support for assuming liability for any payments received within a one-year period of the recipient's death, but recommended that the Service continue the existing limitations on financial institution liability for payments received more than one year after the death of the recipient.

II. Section-by-Section Analysis of Part 210

The title of Part 210 has been changed to "Federal Government Participation in the Automated Clearing House" to reflect the broadened scope of the regulation to cover all types of transactions that are handled, or that may in the future be handled, over the ACH system.

As revised, Part 210 is comprised of two subparts. Subpart A sets forth rules applicable to all ACH credit and debit entries and entry data originated or received by an agency, which are defined in the proposed rule as "Government entries." Subpart B contains the rules for the reclamation of benefit payments. Subpart C, which dealt with discretionary salary allotments, has been deleted as unnecessary because it is redundant of rules that appear elsewhere. For example, regulations issued by the Office of Personnel Management, at 5 CFR Part 550, address the circumstances under which salary and savings allotments may be made.

Section 210.1—Scope; Relation to Other Regulations

Part 210 formerly covered only ACH payments made by the Government. In the NPRM, the Service proposed to broaden the scope of Part 210 to cover all entries and entry data originated or received by an agency through the ACH system. Section 210.1 is revised as proposed in the NPRM. Thus, Part 210 as amended applies to collections and the information entries that are handled through the ACH system, as well as to Federal payments made through the ACH system.

Part 210 establishes the general legal and operational framework applicable to all "Government entries" as defined in the rule. Federal tax payments made by ACH debit or credit are governed by 31 CFR Part 203, which sets forth the rights and responsibilities of taxpayers, financial institutions, and Federal Reserve Banks in connection with EFTPS. ACH credits and debits originated by the Bureau of the Public Debt to pay principal or interest on, and to collect payment for the purchase of, United States securities are governed by 31 CFR Part 370.

Both Part 203 and Part 370 impose certain requirements with respect to the payments subject to those regulations that are inconsistent with the provisions of Part 210. Federal tax payments received by the Government through the ACH system that are governed by Part 203 and ACH entries for the purchase of, or payment of principal and interest on, United States securities that are governed by Part 370 are not subject to any provision of Part 210 that is inconsistent with Part 203 or Part 370, respectively.

Section 210.2—Definitions

The Service is revising this section, as proposed, to provide that any term not defined in Part 210 shall have the meaning given to that term in the ACH Rules. In addition, for clarity and simplification, the Service is adding, removing, or redesignating certain other terms, as indicated below.

The Service is deleting certain definitions from Part 210 because Part 210, as revised, uses these terms in the same way as the ACH Rules. Thus, the definitions of the terms "banking day," "business day," and "prenotification," have been deleted. In addition, the term "payment" is not defined in revised Part 210 because Part 210 uses instead the ACH terms "entry" and "credit." Similarly, the term "payment date" is not defined because Part 210 uses instead the ACH term "settlement date."

Other terms previously defined in Part 210, such as "allotment," "allotter," "discretionary allotment," "employee," and "nonbenefit payment" have been deleted because they are not used in revised Part 210. The terms "account," "payment instruction," and "Federal Reserve Bank" have been deleted as unnecessary.

The Service has added a definition of "ACH Rules" at § 210.2(a). This definition explains that the ACH Rules consist of the NACHA Operating Rules and the NACHA Operating Guidelines.

The Service also has added a definition of "actual or constructive knowledge" at § 210.2(b). This phrase is used in Subpart B in connection with determining a financial institution's liability for post-death and post-legal incapacity payments. The addition of this definition is intended to clarify that in reference to the death or legal incapacity of a recipient of benefit payments or the death of a beneficiary, the RDFI is deemed to have actual knowledge of the death or legal incapacity when it has received, by whatever means, any information of the death or incapacity and has had a reasonable opportunity to act upon the information. Moreover, if the RDFI would have discovered the death or legal incapacity if it had followed commercially reasonable business practices, the RDFI will be deemed to have constructive knowledge of the death or incapacity. For example, an RDFI would have actual knowledge of a death or legal incapacity through a communication of that fact by an executor of the deceased recipient's or beneficiary's estate, a family member, another third party, or the agency issuing the benefit payment. On the other hand, if an RDFI misplaced a letter sent through the mail containing notice of death or legal incapacity, or failed to open or read the letter, the RDFI would be deemed to have constructive knowledge of the death even though it did not have actual knowledge.

Although Part 210 previously did not contain a definition of "actual or constructive knowledge," the reclamation provisions of Subpart B of Part 210 provided that a financial institution is deemed to have knowledge of the death or legal incapacity of a recipient or the death of a beneficiary if the financial institution would have discovered the death or legal incapacity if it had exercised due diligence. The Service is not changing that standard, but is adding this definition to clarify that the basis for determining whether a financial institution has constructive knowledge of the death or legal incapacity is whether commercially reasonable business practices would have resulted in discovery of the information.

Financial institutions questioned whether the addition of a definition of "actual or constructive knowledge" might be viewed to broaden the circumstances under which a financial institution can be liable in reclamation cases. Several commenters asked whether financial institutions would have an obligation to check obituaries, noting that Part 210 previously provided expressly that there is no such obligation. One commenter stated that banks should not be responsible for acting on the basis of unconfirmed information, regardless of its source, and therefore suggested that the definition of actual or constructive knowledge include the concept that the information should come from an official source such as a death certificate, written communication from a decedent's personal representative, or a copy of a court order adjudicating a recipient's incapacity. The same commenter pointed out that under the proposed standard, a bank might be deemed to have knowledge of death prior to the time when the information is, or should have been, brought to the attention of an employee who handles benefit payments. The commenter urged that banks be permitted an opportunity to communicate the information to the responsible individual or department.

The deletion of the language formerly in Part 210 stating that financial institutions are not required to check obituaries does not mean that financial

institutions must check obituaries. The standard of constructive knowledge set forth in the final rule, i.e., whether commercially reasonable business practices would have resulted in discovery of the recipient's death or incapacity, is a flexible concept. For example, what is a commercially reasonable practice for a large money center bank may not be commercially reasonable for a small rural bank. Similarly, business practices that are not today technologically feasible or cost-effective may become standard industry practices at some future time. Thus, with regard to whether financial institutions should be responsible for acting on the basis of unconfirmed information, the Service declines to adopt a rule under which a financial institution has knowledge of the death of a recipient only if the information comes from an "official source." Rather, whether a financial institution would be deemed to have knowledge of a recipient's death would depend on whether, given all the facts and circumstances, a similarly situated financial institution would reasonably conclude that the information was reliable.

The Service agrees that financial institutions need a reasonable period of time to act on information of death or incapacity and, as indicated above, has incorporated a provision to this effect in the final definition. Some commenters indicated that banks utilizing batch processing systems cannot activate a hold on an account following receipt of notice until evening or the following day, depending on the processing schedule. Accordingly, the Service believes that a reasonable period of time will not exceed one business day, i.e., twenty four hours, excluding weekends or holidays.

The Service has added a definition of "agency" at § 210.2(c) to mean any department, agency, or instrumentality of the United States Government, or a corporation owned or controlled by the Government of the United States. Part 210 formerly used the term "program agency." The change is not intended to alter the scope of Part 210. The definition is identical to the definition of agency in Part 208, which sets forth rules governing the mandatory use of EFT by Federal agencies, except that the definition of agency for purposes of Part 210 expressly excludes Federal Reserve Banks.

For purposes of Subpart B, which governs reclamations, "agency" means the agency that certified the benefit payment(s) being reclaimed.

Section 210.2(d) defines the term "applicable ACH Rules" to mean the ACH Rules with an effective date on or before September 17, 1999, which are made applicable to "Government entries" pursuant to § 210.3. Part 210 completely preempts those ACH Rules that: govern claims for compensation or reclamation of benefit payments; provide for rules enforcement procedures; limit the applicability of the ACH Rules to members of an ACH association; or require that a credit entry be originated no more than two banking days before the settlement date of the entry. Therefore, these ACH Rules have been excluded from the term "applicable ACH Rules." As discussed above in the Introduction, Part 210 also preempts certain other provisions of the ACH Rules through operation of particular sections of Part 210.

In the NPRM, the Service proposed to preempt the requirement under the ACH Rules that disputes among participants be settled by arbitration procedures set forth in the ACH Rules. Since the ACH Rules have been amended, effective March 19, 1999, to make arbitration voluntary rather than mandatory, the Service no longer believes it is necessary to preempt the arbitration provisions of the ACH Rules. However, since publication of the NPRM, NACHA has adopted a rule that became effective on December 18, 1998, establishing a national system of fines applicable to both financial institutions and access participants for violation of the provisions of the ACH Rules. The Service does not believe it is in the public interest to subject the Treasury General Account (TGA) to an unquantified liability based on an untested system of fines; therefore, at this time the Service is not incorporating in Part 210 those provisions of the ACH Rules dealing with enforcement for noncompliance. However, the Service intends to work with agencies to achieve Government-wide compliance with all ACH Rule requirements, including applicable time frames.

Other than the requirement that credit entries be originated no more than two banking days before the settlement date of the entry, any technical or timing requirements imposed on DFIs under the ACH Rules constitute applicable ACH Rules, and will be binding on agencies and financial institutions, unless preempted. Thus, for example, agencies will be subject to the timing requirements for reversals and returns.

Many commenters objected to permitting agencies to originate an entry more than two banking days before the settlement date of the entry. Some financial institutions pointed out that production and storage costs are incurred by an RDFI to warehouse ACH entries and that expanding the origination window increases the risk to which the RDFI is exposed. For example, several financial institutions pointed out that a DNE is ineffective to cause the automated return of a benefit payment that has already been received but is being held or warehoused pending settlement. Some agencies also indicated that there is no reason that the Government cannot adhere to the two-day origination deadline eventually, and that it would benefit the Government to do so by allowing agencies more time to process reports that affect continuing payment entitlement. The Service anticipates that in the future agencies will be able to adhere to the two-day window and expects to revise Part 210 accordingly at that time. However, because there is not uniform operational capability to meet the two-day window at this time, the Service has retained this preemption of the ACH Rules in the final rule.

The Service is adding a definition of "authorized payment agent" at § 210.2(e) in connection with the account requirements set forth at § 210.5. The definition has been reworded slightly from the proposed definition in order to correspond to the definition of "authorized payment agent" for purposes of Part 208.

In the case of a beneficiary who is physically or mentally incapable of managing his or her payments, § 210.5 would permit an authorized payment agent to receive the payments on behalf of the beneficiary. The Social Security Act, the Veterans' Benefits Act, and the Railroad Retirement Act contain provisions permitting a benefit payment to be made to an individual or organization other than the beneficiary when doing so is in the best interest of the beneficiary.[3] The Social Security Administration (SSA) and the Railroad Retirement Board use the term "representative payee" to refer to individuals and organizations that have been selected to receive benefits on behalf of a beneficiary who is "legally incompetent or mentally incapable of managing benefit payments." The Department of Veterans Affairs uses the term "fiduciary" to refer to individuals or organizations appointed to serve in similar circumstances. The definition of the term "recipient" in former § 210.2 refers to representative payees and fiduciaries. SSA, the Railroad Retirement Board, and the Department of Veterans Affairs have issued detailed regulations addressing the qualifications

[3] *See* 42 U.S.C. 1383(a)(2)(A)(ii)(i); 38 U.S.C. 5502(a)(1); 45 U.S.C. 231k, respectively.

and duties of representative payees and fiduciaries.[4] The rules governing these representational relationships are longstanding and well established. Therefore, the Service believes that it is appropriate to rely on existing agency regulations in defining the term "authorized payment agent."

Other agencies also may provide for payment to representative payees and fiduciaries. While not specifically mentioned by name, the phrase "or other agency" in the definition is intended to refer to such agencies.

The Service has added a definition of "Automated Clearing House or ACH" in § 210.2(f) to make it clear that the electronic fund transfers that are subject to Part 210 are limited to those effected through an EFT system that has adopted the ACH Rules.

The definition of "beneficiary" in § 210.2(g) has been reworded slightly from the definition previously set forth in Part 210 to reflect the addition of a definition of benefit payment, but substantively is unchanged from the previous definition.

The definition of "benefit payment" in § 210.2(h) is similar to the definition previously set forth in Part 210. The regulation lists several types of benefit payments for purposes of convenience and illustration. It should be noted, however, that the term "benefit payment" includes, but is not limited to, the specific examples set forth at § 210.2(h).

The Service has added to Part 210 a definition of "Federal payment." The definition in § 210.2(i) is identical to the definition of that term in Part 208 except that the definition of Federal payment in Part 208 excludes payments under the Internal Revenue Code of 1986, whereas the term "Federal payment" in § 210.2(i) includes those payments. Payments under the Internal Revenue Code of 1986 are excluded in Part 208 because the DCIA expressly provides that payments under the Internal Revenue Code of 1986 are not subject to the DCIA's mandatory EFT requirements. However, payments that the Internal Revenue Service or a taxpayer elects to make using the ACH system are subject to Part 210 and thus are included within the definition of Federal payment at § 210.2(i).

The definition of "financial institution" in § 210.2(j) is identical to the definition contained in Part 208 except that the Service has added a sentence noting that, in Part 210, a financial institution may be referred to as an Originating Depository Financial Institution (ODFI) or a Receiving Depository Financial Institution (RDFI), depending on whether it is originating or receiving entries to or from its ACH Operator.

The definition of "financial institution" makes specific reference to banks, savings banks, credit unions, savings associations, and United States-based foreign bank branches. The definition has been designed to reflect the class of entities that can participate directly in the ACH system, i.e., financial institutions that are authorized by law to accept deposits.

The term "Government entry" is defined in § 210.2(k) as an ACH credit or debit entry or entry data originated or received by an agency. As noted above, Part 210 previously applied only to credit entries originated by an agency for the purpose of making payments. As amended, Part 210 has a broader scope; it applies to all entries originated or received by an agency, whether made for the purpose of payments or collections or for information purposes.

The Service has added a definition of the "Green Book" in § 210.2(l) to clarify that financial institutions that originate or receive Government entries are subject to the procedures and guidelines published by the Service in the Green Book, as provided at § 210.3(c).

The term "notice of reclamation" at § 210.2(m) means a notice issued by the Government in a paper, electronic, or other form in order to initiate a reclamation. This definition clarifies that the Government is not limited to a paper-based means of communication and opens the way for an automated reclamation procedure. The definition of "notice of reclamation" is moved to the definition section of Part 210 from § 210.13(a), where it was previously located.

The Service has preserved the definition of "outstanding total" in Part 210 without substantive change.

The definition of "recipient" in § 210.2(o) is substantially similar to the corresponding definition in Part 208. The term includes an authorized payment agent that receives a payment on behalf of a beneficiary.

The term "Service" has been added at § 210.2(p) to mean the Financial Management Service, Department of the Treasury.

The term "Treasury" has been added at § 210.2(q) to mean the United States Department of the Treasury.

The Service has added a definition of the term "Treasury Financial Manual" at § 210.2(r) to clarify that the Service may publish procedures and guidelines applicable to Government entries in the Treasury Financial Manual. The Treasury Financial Manual contains procedures to be observed by all agencies with respect to central accounting, financial reporting, and other Government-wide fiscal responsibilities of the Treasury.

Section 210.3—Governing Law

Section 210.3(a) provides that the rights and obligations of the United States and the Federal Reserve Banks with respect to all Government entries are governed by Part 210, which has the force and effect of Federal law. This approach is consistent with *Clearfield Trust Co.* v. *United States*, 318 U.S. 363 (1943), and its progeny, which support the principle that the Government can establish the rules that govern Federal payments and collections and that Federal law applies whenever Treasury engages in its sovereign function of collecting and disbursing public funds, regardless of the method used to carry out this function.

One commenter requested clarification regarding the extent to which Article 4A of the Uniform Commercial Code (UCC Article 4A) is applicable to Government entries. Treasury consistently has taken the position that under *Clearfield Trust*, state law, including the Uniform Commercial Code, is inapplicable to Federal payments and collections, except to the extent that the state law is incorporated in Federal law. However, UCC Article 4A is incorporated in the ACH Rules, which the Service is adopting, and, therefore, will apply to Government entries except as preempted in Part 210.

Section 210.3(b)(1) provides that Part 210 incorporates by reference the applicable ACH Rules published in Parts I, II, and IV of the 1999 NACHA Rule Book (including any rule changes in effect on or before September 17, 1999), as modified by Part 210. NACHA has approved an amendment to the ACH Rules that, effective September 2000, will permit the crediting of entries to non-deposit accounts. The Service does not intend to accept this amendment for payments subject to § 210.5.

Section 210.3(b)(2) describes how subsequent amendments to the ACH Rules will be handled. The proposed rule provided that Government entries would be governed by any amendment to the ACH Rules that became effective after a specified date only if the Service accepted the amendment by publishing notice to that effect. Many commenters urged the Service to change this position. Several financial institutions and agencies recommended that the Service provide that amendments to the ACH Rules are deemed accepted unless

[4] *See* 20 CFR Parts 404, 410, 416, 266, and 348; and 38 CFR Part 13, respectively.

the Service expressly rejects the amendment by publishing notice to that effect in the **Federal Register**.

Federal regulations require that any changes to a publication incorporated by reference in a Federal regulation be published in the **Federal Register**.[5] Accordingly, the Service may not adopt an approach whereby amendments to the ACH Rules are deemed accepted unless expressly rejected. In order to mitigate the uncertainty and inconvenience to financial institutions that would result from a lag in addressing ACH Rule amendments, the Service intends to work closely with NACHA to track proposed ACH Rule changes and to respond to such changes in a timely manner. The Service anticipates that it will publish a **Federal Register** notice addressing ACH Rule changes within 90 days of NACHA's publication of its rule book, which is published annually.

For the above reasons, Part 210 states that amendments effective after September 17, 1999, will not apply to Government entries unless the Service expressly accepts such amendments by publishing notice of acceptance in the **Federal Register**. In addition, § 210.3(b)(2) provides that with respect to any future amendment that the Service determines to accept, the date of applicability of the amendment to Government entries will be the effective date of the rulemaking specified by the Service in the **Federal Register** notice that expressly accepts the amendment.

Section 210.3(c) provides that any person or entity that originates or receives a Government entry must comply with the instructions and procedures issued by the Service, including the Treasury Financial Manual and the Green Book. As indicated above, the Service has moved certain requirements that previously were set forth in the regulation itself to the Green Book and the Treasury Financial Manual. In light of the proposed relocation of these provisions, the Service believes it is important to make explicit in the regulation the Service's longstanding policy that the requirements set forth in the Green Book and the Treasury Financial Manual are binding upon financial institutions and agencies to the same extent as the regulation itself.

The requirements set forth in the Green Book and the Treasury Financial Manual, including those provisions that the Service is relocating from the regulation to the Green Book or Treasury Financial Manual, are procedural, rather than substantive, in nature. Changes to the substantive rights and liabilities of parties to a Government entry will be made through amendments to Part 210 itself in accordance with administrative rulemaking requirements.

Section 210.4—Authorizations and Revocations of Authorizations

Section 210.4(a) provides that each debit and credit entry subject to Part 210 must be authorized in accordance with the applicable ACH Rules and the additional requirements set forth in this section. The liability of a financial institution for failing to comply with the authorization requirements is set forth at § 210.8(b)(2).

Section 210.4(a)(1) provides that the agency or RDFI that accepts the recipient's authorization shall verify the identity of the recipient and, in the case of a written authorization that bears the recipient's signature, the validity of the signature. Traditionally, recipients of benefit payments, such as Social Security and Veterans benefits, enrolled in Direct Deposit by completing a Form 1199A with the assistance of their financial institution. In recent years, in order to encourage recipients to use Direct Deposit, SSA and other agencies have become directly involved in the enrollment process by accepting Direct Deposit authorizations over the phone with the assistance of trained customer service representatives. Part 210 acknowledges that the enrollment process may be completed by the recipient's financial institution or by the agency. In addition, § 210.4(a) encourages automated enrollments by removing the requirement that the financial institution sign the authorization form. Section 210.4(a) recognizes that signature verification may not be possible or practical in an automated enrollment process.

Part 210 imposes an absolute requirement that the RDFI or agency accepting the authorization verify the recipient's identity and, where appropriate, the recipient's signature. The Service leaves to the discretion of the financial institution or agency accepting an authorization the steps it will take to verify the recipient's identity.

Some commenters requested that the Service clarify that a financial institution that accepts an authorization is not required to verify that the recipient, in fact, is entitled to receive the payment(s) in question. Financial institutions, in particular, commented that the RDFI is not in a position to determine who is entitled to the payment being authorized. The Service agrees that the financial institution is not in a position to know whether the customer, in fact, is entitled to the payment(s) being authorized. Section 210.4(a) requires only that the identity of the recipient be verified; the financial institution is not liable for determining whether the customer is entitled to the payment.

Agencies and other commenters supported the requirement that the RDFI verify the identity of the recipient as a means of reducing fraud. Financial institutions and ACH associations generally objected to the imposition of liability on financial institutions that accept and process enrollments, rather than on the ODFI, as provided for in the ACH Rules. Financial institutions further commented that if the ACH Rules are preempted in this respect, financial institutions should not be held to a strict liability standard. These institutions urged the Service to adopt a "commercially reasonable business practices" standard of care, or an "actual or constructive knowledge" of a fraud standard. Financial institutions argued that they cannot be an insurer against all fraud and that a strict liability standard creates a disincentive for financial institutions to participate in the enrollment process.

The Service continues to believe that the authorization process represents an opportunity to reduce fraud which could otherwise result in significant losses to the Government. Because a financial institution that accepts an authorization from a customer has an obligation to know the customer and is in a position to verify a written signature, the Service believes it is appropriate to hold the financial institution strictly liable for verifying the identity of the customer.

Under § 210.4(a)(2), an originator and an ODFI are prohibited from initiating a debit entry to an agency, other than a reversal of a credit entry, without the express permission, in writing or similarly authenticated, of the agency. The Service has conducted pilot programs to test the initiation of debit entries to the Government. These pilots indicate that the use of debit entries to the Government is a cost-efficient payment mechanism that benefits both the Government and the payee-recipient. However, in order to protect the interests of the Government, the Service believes that it is appropriate to require the prior written or similarly authenticated authorization, just as the ACH Rules require prior written authorization in the case of debits to a consumer account. In the case of recurring entries, the agency is required to give an authorization only once, prior to the first entry.

[5] See 1 CFR 51.11.

As proposed, § 210.4(a)(2) did not provide an exception from the authorization requirements for a reversal of a credit entry previously sent to an agency. Since a reversal of a credit entry is a debit entry, some commenters questioned whether proposed § 210.4(a)(2) would limit or restrict a financial institution's right to reverse a credit entry. It was not the Service's intention to require a prior written authorization before the initiation of a reversal, and the final rule has been revised to clarify this point.

Section 210.4(b) specifies the terms to which a recipient agrees by executing an authorization for an agency to initiate an ACH entry. Under § 210.4(b)(1), a recipient agrees to be bound by Part 210 and, under § 210.4(b)(2), the recipient agrees to provide accurate information.

Section 210.4(b)(3) provides that the recipient agrees to verify the recipient's identity to the satisfaction of the party that accepts the authorization, whether this is the RDFI or the agency. The imposition of this requirement on recipients complements the duty of the party accepting the authorization to verify the recipient's identity.

Section 210.4(b)(4) provides that a new authorization supersedes any existing authorization that is inconsistent with the new authorization.

Under § 210.4(b)(5), the recipient agrees that the Government may reverse any duplicate or erroneous entry as provided in § 210.6(f).

Section 210.4(c)(1) provides that, in the case of a recipient of benefit payments, a change in the recipient's ownership of the account results in the termination of the authorization. The purpose of this provision is to ensure that payments are not deposited to an account to which a recipient no longer has access or in which the recipient's ownership interest has changed.

Some commenters questioned whether an authorization is revoked as a result of any change in the ownership of an account, even if that change does not affect the recipient's ownership interest in the account. These commenters questioned whether, for example, the addition of a co-signatory on the account would cause the authorization to be revoked. It is not the Service's intent that an authorization be revoked as a result of a change in ownership of an account where the recipient's interest is not adversely affected. The wording of 210.4(c)(1) has been changed accordingly.

Under § 210.4(c)(2), the death or legal incapacity of a recipient of benefit payments or the death of a beneficiary results in the termination of the authorization.

Section 210.4(c)(3) provides that the closing of the recipient's account at the RDFI results in termination of the authorization. In addition, this section requires the RDFI to provide 30 days written notice to the recipient prior to closing the account to which benefit payments currently are being sent, except in cases of fraud.

Final § 210.4(c)(3) is unchanged from the NPRM except that the 30-day notice requirement is limited in the final rule to accounts to which benefit payments currently are being sent. Most financial institutions commented that the 30-day notice requirement was an improper interference with their customer relationships. Financial institutions pointed out that banks routinely close accounts in cases of excessive overdrafts or in instances of fraud, and noted that the 30-day period would require banks to establish a separate account closing process for accounts receiving Federal ACH transactions. Some agencies also questioned whether it was appropriate for the Service to regulate account closing in this fashion, indicating that they had not had a problem with closed accounts. However, the Service believes that the notice requirement protects recipients from being deprived of timely access to their funds as a result of an account being closed without sufficient notice to allow the recipient to make other arrangements to receive the funds. Because the Service is concerned that a recipient of benefit payments may suffer hardship if the account to which his or her benefit payments are being sent is closed, the final rule has been limited to address this class of recipients.

One agency commenting on the proposed rule requested clarification regarding situations in which payments are sent to an account that has been kept open by a financial institution notwithstanding the recipient's request that the account be closed. The agency stated that, in its view, "the only criterion that should apply in such a situation is whether the recipient has closed the account at the financial institution. . . . When a recipient can provide proof that an account has been closed, all Federal payments subsequently received by the financial institution must be returned."

The effect of 210.4(c) is that payments sent to an account that has been closed must be returned by the financial institution. However, Part 210 does not establish the circumstances in which a financial institution can or must close an account. A financial institution's right or obligation to close a customer's account is established by the terms of the account agreement between the financial institution and the customer and applicable state or Federal laws. Thus, a recipient's assertion that an account has been closed is not necessarily sufficient to require the financial institution to return funds sent to the account. There may be situations in which a recipient wishes to close an account but does not have a legal right to do so. This could occur, for example, when the account has been overdrawn and language in the deposit contract provides that the financial institution may keep the account open until the overdraft is settled. In such a case, a financial institution's obligation to return a payment depends on whether the closing of the account, in fact, has been accomplished, not upon the recipient's desire to close the account or belief that the account has been closed. The Service emphasizes that it is the actual closing of the account as a legal matter, and not the recipient's desire or attempts to close the account, that imposes an obligation on the financial institution to return payments under § 210.4(c).

In order to eliminate any unnecessary interruptions in ACH services to recipients when any of the events described in § 210.4(c)(4) occurs, § 210.4(c)(4) states that an authorization will not terminate upon the insolvency or closure of the RDFI, provided that a successor is named for the institution. If no successor is named, the Government may transfer temporarily the authorization to a consenting financial institution for a period of no longer than 120 days.

The Service has deleted the provision formerly contained in § 210.4(e) that stated that, except as authorized by law or other regulations, Part 210 shall not be used to effect an assignment of a payment. The Service believes that a prohibition against assignments is not appropriate in Part 210. Other Federal laws, such as the Social Security Act, govern the assignment of benefits.

Section 210.5—Account Requirements for Federal Payments

Section 210.5 imposes restrictions on the type of account to which Federal payments may be deposited. Section 210.5(a) reiterates the general rule set forth in Part 208 that Federal payments other than vendor payments must be deposited to an account at a financial institution in the name of the recipient. The phrase "notwithstanding ACH Rule 2.1.2" indicates that § 210.5 imposes a requirement not imposed under the applicable ACH Rules, i.e., that the account be "in the name of" the recipient, with certain exceptions discussed below. This section is designed to ensure that payments reach

the intended recipient by requiring that such payments be deposited into an account in which the recipient has an ownership interest. Vendor payments are excluded under § 210.5(a) because the Service is aware that under current commercial practices many vendors designate an account in a general corporate name to receive payments in the name of a subsidiary or designate a bank account in the name of an accountant or other service provider for the receipt of payments.

Proposed § 210.5 would have imposed these restrictions only on benefit payments, which by definition excluded Federal retirement payments. Upon further consideration, the Service has determined that Federal retirement payments need not be excluded from the account restrictions. In the situation most often cited, that in which a surviving spouse is entitled to a deceased recipient's retirement payment, the surviving spouse is considered to be the recipient and, therefore, the payment would be deposited into the surviving spouse's account. The final rule parallels Part 208, which requires that all Federal payments other than vendor payments be deposited to an account in the name of the recipient, with two exceptions.

The first exception, related to authorized payment agents, is unchanged from the proposed rule. The second exception, related to investment accounts, contains two changes from the proposed rule. First, the exception has been expanded to cover investment accounts established through an investment company registered under the Investment Company Act of 1940, in addition to investment accounts established through a securities broker or dealer registered under the Securities Exchange Act of 1934. Second, the requirement contained in the proposed rule that the investment account and all associated records be structured so that the recipient's interest is protected under applicable Federal or State deposit insurance regulations has been deleted. The reasons for these changes are discussed in detail in the final rulemaking for Part 208. 63 FR 51490, 51500. Additionally, in order to ensure consistency with Part 208, § 210.5(b)(3) has been added. Section 210.5(b)(3) provides that the Secretary of the Treasury may waive the requirements of § 210.5(a) in any case or class of cases.

A number of commenters requested additional guidance on various aspects of § 210.5. Some commenters questioned whether the account must be solely in the name of the recipient, which would preclude the use of joint accounts, and whether master-subaccounts can be established with limited access by the beneficiary. One agency commented that it has no way of knowing the account title at the financial institution and cannot be expected to monitor industry practices in this regard.

The part 208 final rulemaking release contains an extensive discussion of the restrictions on accounts to which Federal payments can be sent, and addresses the issues raised by commenters on proposed § 210.5. See 63 FR 51490, 51499. The Service does not believe it is necessary to duplicate that discussion here, and refers readers to the Part 208 rulemaking release. However, in response to the question raised by commenters as to whether § 210.5 would prohibit the use of a joint account between the recipient and a spouse or other member of the recipient's family, the Service emphasizes that § 210.5 does not require that the recipient's name be the only name on the account, and thus would not prohibit the use of such a joint account. In addition, as discussed in the Part 208 rulemaking release, § 210.5 does not prevent recipients of Federal salary payments from making discretionary allotments, as such allotments are made prior to the time the recipient's payment is deposited into an account at a financial institution.

The Service is aware that NACHA has approved an amendment to the ACH Rules (effective September 2000), which permits the crediting of entries to general ledger accounts and loan accounts. The Service does not intend to accept that amendment with respect to Federal payments other than vendor payments.

Section 210.6—Agencies

The title of this section has been changed from "The Federal Government" to "Agencies." Section 210.6 sets forth a number of obligations and liabilities to which agencies that initiate or receive Government entries are subject. These obligations and liabilities are in addition to, or different from, the obligations and liabilities that otherwise would be imposed under the applicable ACH Rules. For example, the authorization and reversal requirements of §§ 210.6(a) and (f) constitute additional obligations. The liability provisions of §§ 210.6(b), (c), (d), and (f) expand as well as limit the liability that an agency would otherwise be subject to under the applicable ACH Rules. Specifically, an agency's liability is broader than it would be under the applicable ACH Rules because an agency is liable for a failure to act "in accordance with this part [210]." However, the extent of an agency's potential liability is capped by the amount of the entry(ies), which is a limitation on the liability generally provided for under the applicable ACH Rules.

Section 210.6 is largely unchanged from the NPRM except that § 210.6(b) of the NPRM, relating to prenotifications, has been deleted and the subsections of § 210.6 have been renumbered accordingly. A prenotification is a non-value informational entry sent through the ACH system that contains the same information that will be carried on subsequent entries (with the exception of the dollar amount and transaction code). Under the ACH Rules, prenotifications are optional for all entries. The Service had proposed at § 210.6(b) of the NPRM to modify the ACH Rules by requiring prenotifications for debit entries initiated by an agency. The purpose of the proposed requirement was to ensure that a debit initiated by an agency would be applied against the correct account at the intended financial institution.

In light of comments received, the Service has deleted this requirement from the final rule. The purpose of a prenotification is to verify the accuracy of the account information to ensure that when a live entry is received, it can be posted to the correct account. However, a prenotification does not provide notice to the owner of the account to be debited, and thus does not serve as a protection against a debit to an incorrect account. Moreover, requiring prenotifications for debit entries may impede the implementation and operation of programs such as point-of-sale check payment capture, in which ACH debits are initiated against a consumer account at the time a purchase of goods or services takes place. Requiring prenotification also would effectively preclude agencies from effecting reversals of credit entries, as a number of commenters pointed out. For these reasons, the Service has deleted from the final rule the requirement that agencies utilize prenotifications before initiating debit entries.

Section 210.6(a) requires an agency to obtain prior written authorization from the Service in order to receive ACH credit or debit entries. The Service requires this process in order to make software and operational changes to permit the receipt of entries by the agency. Section 210.6(a) is not intended to reduce or change the liability of originators or ODFIs for the initiation of an unauthorized entry to an agency;

rather, it is an operational requirement imposed by the Service on agencies.

Sections 210.6(b)–(d) set forth an agency's liability to various parties in connection with Government entries. Section 210.6(b) provides that an agency will be liable to the recipient for any loss sustained as a result of the agency's failure to originate a credit or debit entry in accordance with Part 210. This section further provides that the agency's liability will be limited to the amount of the entry.

Several financial institutions urged the Service to reconsider this limitation on liability, pointing out that losses resulting from agency errors may be shifted unfairly to the RDFI. One commenter gave an example of an agency's initiation of a duplicate debit entry to a receiver's account, in which case the account might become overdrawn, resulting in returned checks and related charges for which the receiver would attempt to recover compensation. If the receiver's right of recovery from the Government were limited to the amount of the entry, the receiver might seek compensation from the RDFI for a refund of charges and other damages resulting from the return of checks, loss of use of funds, etc.

To address this concern, § 210.8(b) of the final rule provides that a financial institution will not be liable to any party for any loss resulting from an agency's error or omission in originating an entry. This provision does not affect a financial institution's responsibilities to its customer to resolve errors under the Electronic Fund Transfer Act or Regulation E. Rather, this provision establishes that a financial institution is not liable for consequential damages resulting from an agency's error.

The ACH Rules do not address the basis for, or the extent of, the liability of an originator or ODFI to a receiver. A receiver's rights against an originator or ODFI for failing to properly originate an entry ordinarily would be governed by contract and state law. Section 210.6(b) establishes a recipient's rights against an agency in these circumstances as a matter of Federal law: an agency will be liable for any loss sustained by a recipient, up to the amount of the entry, as a result of the agency's failure to originate a credit or debit entry in accordance with Part 210.

Section 210.6(c) establishes that an agency may be liable to an originator or an ODFI for any loss sustained by the originator or ODFI resulting from the agency's failure to credit an ACH entry to the agency's account in accordance with part 210. The agency's liability would be limited to the amount of the entry(ies). The ACH Rules do not address the liability of an RDFI to an originator. Under the ACH Rules, if an RDFI fails to properly credit an ACH entry to the designated account within the applicable time limitations, the RDFI will have breached a warranty to the ACH Operator, ACH Association, and ODFI, and may be liable to one of those parties for any losses resulting from the RDFI's breach. Whether the originator has any recourse in such a situation depends on its contract with its ODFI and on state law.

Section 210.6(c) preempts the ACH Rules with respect to the extent of an agency's liability to an ODFI by limiting that liability to the amount of the entry(ies). In addition, § 210.6(c) establishes, as a matter of Federal law, that an agency may be liable directly to an originator in an amount not exceeding the amount of the entry(ies).

Section 210.6(d) provides that an agency's liability to an RDFI for losses sustained by the RDFI in processing a duplicate or erroneous entry will be limited to the amount of the entry(ies). The phrase "[e]xcept as otherwise provided in this Part 210" is intended to preserve the allocation to the RDFI of liability in connection with the RDFI's failure to comply with, for example, the authorization requirements. While Part 210 previously addressed processing errors by an agency, the final rule refers to duplicate and erroneous entries, as defined in the ACH Rules, in order to describe specifically the type of errors or the nature of the losses for which an agency is liable.

Under the ACH Rules, an ODFI is liable for losses caused by its origination of duplicate or erroneous entries. Part 210 subjects agencies to the liability imposed on ODFIs under the ACH Rules for originating erroneous and duplicate entries, but preempts the ACH Rules in three respects. First, an agency is not liable for all costs incurred by the RDFI, such as attorneys' fees, but is liable only up to the amount of the entry. Second, § 210.6(d) uses comparative negligence and reduces an agency's liability to the extent the loss results from the financial institution's failure to follow standard commercial practices and exercise due diligence. Third, § 210.6(d) excludes credit entries received by an RDFI after the death or legal incapacity of a recipient of benefit payments or the death of a beneficiary. It should be noted that liability in connection with any benefit payment to a deceased recipient is not covered under § 210.6(d), but is governed solely by Subpart B.

Several commenters questioned how the comparative negligence standard would be administered and what negligence would consist of in this context. One commenter questioned whether the costs of apportioning negligence might exceed the benefit to the Government of limiting its liability in this fashion.

What will constitute negligence on the part of a financial institution in a particular context depends on the relevant facts and circumstances. Although the Service recognizes that there may be costs associated with investigating and determining the causes of a particular loss, the Service believes it is important to retain this provision in order to apportion liability appropriately in cases where an agency and a financial institution share responsibility for a loss. For example, if an agency erroneously originated a credit entry to an incorrect account, and the person who received the misdirected funds brought the mistake to the attention of the financial institution, the financial institution could incur liability if it failed to take appropriate action and the agency subsequently was unable to recover the erroneously transmitted funds.

Section 210.6(e) is unchanged from § 210.6(f) of the proposed rule, except that the word "final" has been added in recognition that a Federal Reserve Bank's crediting of an account can be reversed if actual and final funds are not collected in settlement of a credit item at or before 8:30 a.m. Eastern Time on the banking day following the settlement date.

Section 210.6(f) addresses the Government's initiation of reversals. As discussed in the analysis of § 210.4(b) above, a recipient who executes an authorization agrees, among other things, that the Government may reverse duplicate or erroneous entries or files, as provided in § 210.6(f).

The ACH Rules permit an originator to reverse duplicate or erroneous entries and permit an ODFI, originator, or originating ACH Operator to reverse duplicate or erroneous files within five banking days of the settlement date of the duplicate or erroneous file or entry. For purposes of the ACH Rules, and as used herein, a duplicate entry is an entry that is a duplicate of an entry previously initiated by the originator or ODFI and an erroneous entry is an entry that orders payment to or from a receiver not intended to be credited or debited by the originator or that orders payment in a dollar amount different than what was intended by the originator.

Under the ACH Rules, the ODFI and/or originating ACH Operator must indemnify the RDFI against any losses the RDFI incurs as a result of effecting

a reversal. Consequently, in the event that the RDFI reverses an entry or file initiated by the ODFI, but the RDFI cannot recover the amount of the entry from the receiver (because, for example, the receiver has withdrawn the funds and closed the account), it is the ODFI or originator who bears the loss.

The ability to effect reversals is an important way for the Government to reduce losses resulting from overpayments and misdirected entries. If a reversal is effected expeditiously, in many cases the receiver may not be aware that the erroneous or duplicate entry occurred, and thus the funds may be available in the account for recovery by the RDFI and, ultimately, the Government.

With respect to certain types of payments, however, the Government's ability to reverse a duplicate payment or overpayment to a recipient may be constrained due to the existence of various Federal statutory provisions governing the manner in which the Government may recover overpayments. For example, in the context of Federal benefit payments, the Government may be required to provide notice and a hearing prior to taking action to recover payments, or may be limited in the amount, timing, or manner in which an overpayment is recovered. Part 210 does not address the operation of these requirements because the applicable requirements may vary depending on the type of payment. It is the agency's responsibility to determine before certifying a reversal that the reversal will not violate any applicable laws or regulations.

One commenter requested that the Service clarify how the certification requirement of § 210.6(f) affects the indemnification of the RDFI and other parties to a transaction as provided under ACH Rule 2.4.5. The certification requirement represents an additional obligation of any agency that originates a reversal. The certification requirement is intended to function as an intra-Governmental warranty and is not intended to affect the indemnification of the RDFI or other parties to a transaction under ACH Rule 2.4.5. and Part 210.

Several commenters requested clarification as to whether the Government, when initiating reversals, would be bound by any ACH Rule requirements that generally apply with respect to reversals, such as the five-day reversal deadline. It is the intention of the Service that all ACH Rule requirements apply to Government-initiated reversals except that the extent of the Government's indemnification would be limited to the amount of the entry(ies). Therefore, an agency that reverses a Government entry must do so within the five-day deadline.

Section 210.7—Federal Reserve Banks

Section 210.7 sets forth the role and responsibilities of the Federal Reserve Banks.

The settlement of ACH entries is determined by the ACH Operator which, in the case of Government entries, is a Federal Reserve Bank. The Service has deleted as unnecessary the provisions previously in Part 210 relating to funds availability since those requirements are addressed under Federal Reserve Bank Operating Circular No. 4 on ACH Items.

Some commenters were concerned that a change in the timing of payments would result from the deletion from § 210.7 of language stating that Federal Reserve Banks are to make available to the financial institution the amount specified in a payment instruction, and debit the TGA, on the payment date. Part 210 previously defined the payment date as the date upon which funds are to be available for withdrawal by the recipient, and on which the funds are to be made available to the financial institution by the Federal Reserve Bank, and provided that "if the payment date is not a business day for the financial institution receiving a payment, or for the Federal Reserve Bank from which it received such payment, then the next succeeding business day for both shall be deemed to be the payment date." The Service is not changing the foregoing timing requirements, which are consistent with the Federal Reserve Bank Operating Circular on ACH items.

Some agencies indicated that the time frame of settlement under the ACH system may conflict with statutory requirements regarding when certain payments must be made. For example, the Office of Personnel Management (OPM) commented that the Civil Service annuity benefit is payable "on the first business day of the month after the month or period for which it has accrued." Therefore, OPM indicated that it cannot legally request another payment date when the first day of the month is on a Saturday, which is a business day for purposes of the relevant statute, but which is not a settlement date under the ACH Rules. The Railroad Retirement Board commented that the Railroad Retirement Act prohibits issuing payments before the first day of the next calendar month.

The Service recognizes that agencies subject to statutory constraints on payment dates will need to address the interaction of those constraints with the timing of ACH payments. Because different statutes present different issues and limitations, the Service believes that these issues must be addressed on a case-by-case basis. Where statutory payment requirements potentially conflict with the use of the ACH system, the Service urges the paying agency to work with the Service in order to resolve those issues. For example, a statute that requires that payment be made no later than the first business day of the month may allow for the initiation of payments one or two days early in order to ensure that the recipient receives the funds no later than the statutorily prescribed payment date. On the other hand, this approach would not be a viable solution in the context of a statute that requires that payment be made no earlier than the first business day of the month. Because statutes differ, the Service is not in a position to adopt a uniform approach to these issues.

Section 210.7(a), which is unchanged from the proposed rule, specifies that each Federal Reserve Bank, as the Fiscal Agent of the Treasury, serves as the Government's ACH Operator for Government entries. The phrase "notwithstanding Section 11.5 and Article 8 of the ACH Rules" has been added to clarify that the Service is preempting the ACH Rule that provides that a Federal Reserve Bank is not an agent of an RDFI or ODFI.

Section 210.7(b), also unchanged from the proposed rule, has been added to Part 210 to ensure that the Service is aware of new ACH applications at an agency so that proper accounting can take place and correct credit can be given in the Treasury investment program as an agency receives ACH transactions. Agencies desiring a routing number should obtain approval from the Service prior to requesting a routing number from a Federal Reserve Bank.

Section 210.8—Financial Institutions

Section 210.8 addresses the obligations of financial institutions with respect to Government entries, which were previously set forth at § 210.7. The Service has removed as unnecessary many of the provisions of previous § 210.7 because they are addressed in the ACH Rules. For example, former § 210.7(e) has been deleted since the ACH Rules adequately cover the inability of an RDFI to credit an account indicated in an entry. In addition, former §§ 210.7(f)(1), (f)(2), and (f)(4) have been deleted since the ACH Rules address these provisions.

The Service had proposed at § 210.8(a) of the NPRM to require RDFIs to verify that the account number and one other item of information in a prenotification entry both relate to the

same account. A prenotification, as described in the ACH Rules, is a non-dollar entry, sent through the ACH system, which contains the same information (with the exception of the dollar amount and Standard Entry Class Code) that will be carried on subsequent entries. The ACH Rules do not require that RDFIs verify prenotifications in this manner; thus, the proposed requirement and the corresponding liability to which a financial institution would have been subject for failing to verify a prenotification would have superseded the ACH Rules with respect to agency-initiated prenotifications.

Several agencies commenting on the proposed rule supported the verification requirement because, in the words of one commenter, "[t]his will ensure that subsequent Federal direct deposit payments are credited to the intended party, not just into an account that happens to coincide with a valid account number at the RDFI." Other agencies indicated that they did not intend to use prenotifications and did not believe the proposed verification requirement was necessary.

All of the financial institutions commenting on the NPRM objected to the proposed requirement. Financial institutions commented that they rely on account numbers alone in processing entries, as permitted by the ACH Rules and UCC Article 4A, and that they presently cannot perform the proposed verification in an automated processing environment. Therefore, in order to comply with the requirement, financial institutions would be required either to manually process Government entries or to develop and implement new processing systems. Many banks commented that they cannot invest in new processing systems at this time, especially in view of Year 2000 requirements and related systems testing. Some financial institutions indicated that if the verification requirement were imposed, the costs of processing Government entries would increase and they might shift these costs to payment recipients. Some commenters also noted that, in the case of payments made to representative payees, beneficiary information relating to the payment may not be listed on the account in any manner since financial institutions typically have information only on persons who are authorized to sign on the account.

Financial institutions also argued that shifting losses to banks is inconsistent with basic principles of electronic payment law, pointing out that both UCC Article 4A and the ACH Rules provide that the RDFI may make payment on the basis of account number alone.

After considering the comments received, the Service has decided not to include in Part 210 a requirement that upon receipt of a prenotification an RDFI verify one other identifying data element in addition to the recipient's account number. The Service does not believe it is in the best interest of the public to implement a requirement that would make it more expensive for financial institutions to receive and process electronic Government payments or that would require manual processing of Government entries. The Service acknowledges the rationale for allowing RDFIs to rely on account number alone, as set forth in the commentary to UCC Article 4A–207(b)(1): "If the [RDFI] has both the account number and the name of the beneficiary supplied by the originator of the funds transfer, it is possible for the [RDFI] to determine whether the name and number refer to the same person, but if a duty to make that determination is imposed on the [RDFI] the benefits of an automated payment are lost. Manual handling of payment orders is both expensive and subject to human error."

Moreover, the Service believes that more data is needed regarding the causes of misdirected Government entries. Without information as to the types of Government entries that are misdirected and the reasons for such mistakes, the Service is concerned that the verification requirement would eliminate any incentive for agencies to follow commercially reasonable standards in initiating payments. The Service does not believe it is appropriate to impose on financial institutions liability for losses resulting from agency errors.

Although data regarding misdirected entries is not available, the Service has anecdotal information that suggests that many misdirected entries are a result of human error by agency personnel who key in account numbers. The Service is particularly concerned with agency practices in which account information is processed through a single manual key entry, and urges agencies to review their enrollment practices and to consider adopting more stringent key entry procedures such as scanning a voided check or performing a double-key entry, or instituting some other verification procedure to avoid key entry mistakes. The Service encourages agencies to review their enrollment practices and intends to work with agencies to develop data regarding the extent and causes of misdirected ACH entries and to formulate ways of reducing such errors.

The Service also understands that, in some cases, misdirected entries occur as a result of financial institutions' errors in enrolling recipients or in transmitting notifications of change (NOCs). The Service believes that it is appropriate to hold financial institutions responsible for losses caused by their errors in enrolling recipients and has revised § 210.8(b)(2) accordingly, as discussed below.

The Service has redesignated former § 210.7(g) of Part 210 as § 210.8(a) without making any substantive change.

Section 210.8(b) provides that financial institutions shall be subject to liability for failing to handle an entry in accordance with Part 210 and that the amount of that liability will be limited to the amount of the entry, except as otherwise specifically provided in §§ 210.8(b)(1) and (2). The phrase "[n]otwithstanding ACH Rules 2.2.3, 2.4.5, 2.5.2, 4.2, and 7.7.2" indicates that the liabilities imposed on financial institutions under this section may be in addition to, or different from, the liabilities that otherwise would be imposed under the applicable ACH Rules. To the extent that Part 210 imposes duties on a financial institution not imposed under the applicable ACH Rules, § 210.8(b) correspondingly imposes liabilities on a financial institution not imposed under the applicable ACH Rules. However, the extent of the liability to which a financial institution would be subject would not exceed the amount of the entry (except in the case of unauthorized debits).

The ACH Rules generally provide that an RDFI or ODFI is liable for all claims, losses, liabilities, or expenses, including attorneys' fees and costs, resulting directly or indirectly from the breach by the RDFI or ODFI of its obligations. Under UCC Article 4A, which would apply to credit entries to non-consumer accounts, the liability of financial institutions that fail to handle entries properly generally does not extend to all resulting losses, but does include imputed interest in certain circumstances. Because Part 210, as a general matter, limits the Government's liability to the amount of an entry, the Service believes that as a matter of equity the liability of financial institutions similarly should be limited. Accordingly, § 210.8(b) preempts the extent of the liability to which financial institutions are subject under both the ACH Rules and UCC Article 4A by limiting that liability to the amount of the entry. Thus, for example, if an agency originated a credit entry to a corporate vendor and the RDFI failed to credit the entry to the vendor's account

in a timely manner, § 210.8(b) would limit the RDFI's liability to the Government to the amount of the entry, thereby preempting the UCC Article 4A rule that imposes liability on the financial institution for imputed interest for the period of the delay. Section 210.8(b) does not affect a financial institution's liability under Subpart B.

Although financial institutions generally objected to changing the liability provisions of the ACH Rules for Government entries, most financial institutions indicated that if the final rule limited the liability of the Government to the amount of an entry, the liability of financial institutions should be correspondingly limited under § 210.8(b).

Section 210.8(b) of the final rule also provides that a financial institution will not be liable to any third party for any loss resulting from an agency's error or omission in originating an entry. The Service has added this provision to the final rule to address comments by several financial institutions that limiting an agency's liability to the amount of an entry, as set forth at § 210.6, may have the effect of shifting losses resulting from an agency error to the RDFI. As discussed above, one commenter gave an example of an agency's initiation of a duplicate debit entry to a receiver's account, in which case the account might become overdrawn, resulting in returned checks and related charges for which the receiver would attempt to recover compensation. If the receiver's right of recovery from the Government were limited to the amount of the entry, the receiver might seek compensation from the RDFI for a refund of charges and other damages resulting from the return of checks, loss of use of funds, etc. Section 210.8(b) addresses this situation by providing that the receiver cannot recover against the RDFI for these damages.

Section 210.8(b)(1) is unchanged from the proposed rule except that the reference to "reserve account" has been changed to "account" in response to comments that Federal Reserve Banks also maintain clearing accounts for financial institutions in some cases. Section 210.8(b)(1) clarifies that a financial institution may not originate or transmit a debit entry to an agency without the prior written authorization of the agency. As previously discussed, debit entries to the TGA represent a significant security concern for the Service. By expanding the use of the ACH system to allow for Government payments by a debit to the TGA, the possibility of unauthorized debits to the TGA arises. In carrying out its fiscal responsibility, the Service believes it is necessary to take precautions to ensure that such debits do not occur. Therefore Part 210 requires special security measures not imposed under the ACH Rules.

The ACH Rules provide that a receiver must have authorized the initiation of an entry to the receiver's account before the entry is originated and that the ODFI must warrant that the authorization is valid. Section 210.8(b)(1) goes beyond the ACH Rules by requiring that an agency authorize the debit entry, and that the authorization be in writing or similarly authenticated.

Under Part 210 as amended, a financial institution is liable for any unauthorized debit entries initiated to an agency in violation of this requirement. In connection with this, the Government also must be able to recover the interest that it would have derived from the use of the debited funds had they remained in the TGA. Therefore, a financial institution's liability for unauthorized debit entries to the TGA includes imputed interest under § 210.8(b)(1). This provision is an exception to the general limitation of a financial institution's liability to the amount of an entry. The Service believes it is necessary to impose this additional liability in order to avoid any potential loss of public funds resulting from an unauthorized debit to the TGA.

Section 210.8(b)(2) restates the third and fourth sentences of former § 210.11(b) and addresses the RDFI's liability in situations where the financial institution accepts a forged authorization. Under the ACH Rules, a receiver must authorize an entry before the entry may be originated and the ODFI must warrant that the authorization is valid. The ODFI or the originator thus bears the ultimate liability for any loss resulting from a forged or invalid authorization. Similarly, under UCC Article 4A, the ODFI or originator generally bears the risk of loss if an entry is originated to a receiver not entitled to the payment. Section 210.8(b)(2) operates to preempt these ACH and UCC Article 4A rules in situations where a financial institution accepts the recipient's authorization and fails to verify the identity of the recipient. If the financial institution accepts a forged authorization, the financial institution rather than the Government will be liable for the entries effected in reliance on the forged authorization.

The Service has revised § 210.8(b)(2) of the final rule to provide that an RDFI that transmits to an agency an authorization containing an incorrect account number shall be liable for any resulting loss, up to the amount of the payment(s) made on the basis of the incorrect number. With respect to NOCs that contain incorrect account information, the Service believes that the treatment of erroneous NOCs are appropriately addressed under the ACH Rules. The ACH Rules provide that an RDFI that transmits an NOC warrants that the information contained within the NOC is correct, and that the RDFI is liable for any loss or liability resulting from a breach of this warranty. (See ACH Rules, Article Five, Section 5.3) Accordingly, a financial institution that transmits to an agency an NOC containing erroneous information will be liable to the agency for the amount of any resulting misdirected entry.

In the case of a misdirected entry that an agency believes was the result of an incorrect account number in an authorization or NOC transmitted by an RDFI, the agency shall carry out an investigation to determine the cause of the error. If the agency determines that the loss in fact resulted from an RDFI's transmission of an incorrect account number, the agency may instruct the Service to direct the appropriate Federal Reserve Bank to debit the RDFI's account for the amount of the misdirected payment(s). The agency may not issue such an instruction until it has notified the RDFI of the results of its investigation and provided the RDFI a reasonable opportunity to respond.

Section 210.8(c) sets forth the conditions under which the obligation for the amount of an entry is acquitted. The word "final" has been added to the wording in the proposed rule in recognition that a credit entry may be reversed after crediting by a Federal Reserve Bank if the Reserve Bank does not receive actually and finally collected funds in settlement of the item at or before 8:30 a.m. Eastern Time on the banking day following the settlement date. Section 210.8(c) also has been revised from the proposed rule to clarify that the originator's obligation, in addition to any obligation of the ODFI, is discharged upon final crediting. The final rule also provides that, in the case of a debit entry originated by an agency against an account, full acquittance does not occur until the underlying payment is final.

Subpart B—Reclamation of Benefit Payments

The Service has restructured Subpart B of Part 210 by adding a new § 210.9—Parties to the reclamation. The other five sections comprising Subpart B (§§ 210.10 through 210.14) are a

reorganization of the four previous sections on reclamations in Part 210. As discussed above, the reclamation provisions of Subpart B completely preempt the reclamation provisions of the ACH Rules with respect to benefit payments received by an RDFI after the death or legal incapacity of a recipient or the death of a beneficiary. Any provisions of the ACH Rules dealing with reclamation of benefit payments are not applicable ACH Rules as defined in § 210.2. The Service has not changed significantly the obligations and liabilities of agencies and financial institutions in effect under former Part 210.

In order to simplify the regulation and enhance its flexibility with respect to automating reclamations, the Service has moved certain procedures and guidelines from Subpart B to the Service's Green Book or Treasury Financial Manual. As discussed above with respect to Subpart A, the Green Book and the Treasury Financial Manual do not introduce new rights and obligations that are not contained in Part 210. Instead, they provide specific operational directions and procedures which put the regulatory requirements into practice. The Service has the authority to enforce the requirements set forth in the Green Book and the Treasury Financial Manual in the same manner that it enforces regulations.

Section 210.9—Parties to the Reclamation

The Service has added this new section to delineate the differing roles of the financial institution, the Service, and the agency that certified the benefit payments in question.

Section 210.9(a) restates provisions of former §§ 210.7(a) and 210.14(d) of Part 210, which provided that by accepting and handling benefit payments, a financial institution agrees to the provisions of Subpart B, including the reclamation actions and the debiting of the financial institution's Federal Reserve Bank account for any reclamation amount for which it is liable.

Section 210.9(b) clarifies that the Service performs only disbursing and collection functions on behalf of agencies and does not make decisions as to the underlying obligations themselves. For example, if a financial institution or recipient has a question about the amount of a reclamation, the Service will respond that the amount was determined by the appropriate agency. In addition, if a financial institution or recipient disputes the facts underlying a death or date of death, that party should discuss the dispute with the appropriate agency. After resolution, the Service will carry out the reclamation in accordance with the direction of the agency that certified the payment or directed the Service to reclaim the funds in question.

Section 210.10—RDFI Liability

This section defines the liability of RDFIs for benefit payments received after the death or legal incapacity of a recipient or death of a beneficiary, and limits the extent of that liability.

Section 210.10(a) restates the rule set forth at § 210.12(a) of previous Part 210, but moves the limited liability provisions to the next section to make it clear that an RDFI is presumed liable for all benefit payments received after the death or legal incapacity of a recipient or death of a beneficiary unless the RDFI meets the qualifications for limited liability set forth in § 210.11. An RDFI has no right to limit its liability with respect to benefit payments received after it knows of the death or incapacity of a recipient or death of a beneficiary and has had a reasonable opportunity to act on that knowledge. Accordingly, the RDFI is required to return all benefit payments received after it learns of the death or legal incapacity of a recipient or death of a beneficiary. This obligation applies whether the RDFI has received a notice of reclamation or learned of the death or legal incapacity on its own.

In addition, § 210.10(a) requires that the RDFI immediately notify a paying agency if the RDFI learns of the death or legal incapacity of a recipient or death of a beneficiary from a source other than notice from the agency. Some financial institutions, while recognizing that it may be in the institution's best interest to provide agencies with such notice, commented that financial institutions should not incur further liability by failing to provide the notice.

Under § 210.11(d) as proposed, an RDFI that failed to notify an agency as required by § 210.10(a) would have forfeited its right to limit its liability. The Service agrees that proposed § 210.11(d) could potentially impose a harsh result in some circumstances, particularly where no loss is caused by the RDFI's failure to comply with the notice requirement. Accordingly, the Service has amended § 210.11(d) to provide that an RDFI that fails to comply with any provision of Subpart B in a timely and accurate manner, including the notice requirements at § 210.13, will be liable to the Government for any loss resulting from its act or omission.

Section 210.10(d) provides that an RDFI's liability for post-death and post-incapacity payments is limited to the most recent six years of payments. Previously, RDFIs were subject under Part 210 to potentially unlimited liability in situations where an agency is unaware of the death or legal incapacity of the recipient or the death of a beneficiary and continues to make payments to the account for a number of years. Financial institutions that commented on the proposed rule supported shortening the time frame for initiating reclamations, although several financial institutions urged the Service to adopt a shorter period than six years. Some agencies supported the proposed time limit, while other agencies objected to it.

Section 210.10(d) also provides an exception to the six-year limitation where the amount in the account when the RDFI receives the notice of reclamation and has had a reasonable opportunity to act on the notice exceeds the six-year amount for which the RDFI otherwise would be liable. In such a case, the RDFI would be liable for the total amount of all post-death or post-incapacity payments, up to the amount in the account.

In addition, § 210.10(d) requires that an agency that initiates a reclamation must do so within 120 days after the date that the agency receives notice of the death or incapacity of the recipient or death of the beneficiary. This provision is intended to encourage agencies to act in a timely manner in initiating reclamations, and to protect RDFIs from liability in the event an agency does not act expeditiously. Some agencies commented that the 120-day period was an adequate and appropriate period deadline, whereas other agencies commented that 120 days is too short a period in view of exception processing delays on the part of the Service that occur with respect to certain non-recurring entries. Financial institutions commenting on this provision supported a shortened deadline for initiating reclamations and generally felt that 120 days was appropriate.

Section 210.10(e) is unchanged from the proposed rule except that the reference to "reserve account" has been changed to "account" to reflect the fact that a Federal Reserve Bank may also maintain clearing accounts for financial institutions in some cases. Section 210.10(e) restates a rule of reclamations previously set forth at §§ 210.13(c) and (d): the Government has the right to debit the RDFI's account at its Federal Reserve Bank for the full amount of all post-death or post-incapacity benefit payments owed to an agency or for a lesser amount as a result of the RDFI's ability to limit its liability. Such action,

if necessary, represents a last step in reclaiming funds that have not otherwise been recovered.

The 60-day time period for an RDFI to return funds, which was previously set forth at § 210.13(c), is a procedural item that may change with the automation of reclamations. Therefore, the Service has relocated this requirement to the Green Book.

Section 210.11—Limited Liability

The Service has not changed the criteria that an RDFI must meet in order to limit its liability under Subpart B, but has reworded the provisions setting forth the criteria for greater clarity.

Section 210.11(a) provides the basis for calculating an RDFI's liability if it is eligible to limit its liability because it did not have actual or constructive knowledge of the death or incapacity of a recipient or the death of a beneficiary. The formula is taken from previous § 210.12(b) and, although reworded, does not change significantly the substantive operation of the previous formula.

Former § 210.12(d) of Part 210 contained rules addressing the circumstances in which an RDFI is "deemed to have knowledge" of the death or incapacity using a standard of "due diligence." The Service, believing that the description of due diligence may be confusing or difficult to apply in this context, proposed to utilize a definition of "actual or constructive knowledge" set forth at proposed § 210.2.

Formerly under Part 210, one of the factors relevant to determining the extent of an RDFI's limited liability was the amount in the account. Former § 210.13(b)(2)(i) defined the "amount in the account" to mean the balance in the account when the RDFI has received a notice of reclamation and has had a reasonable time to take action based on its receipts, plus any additions to the account balance made before the RDFI returns the notice of reclamation to the Government. Part 210 previously provided that a reasonable time to take action was not later than the close of business on the day following the receipt of the notice of reclamation.

The Service has experienced many instances in which the "amount in the account" for reclamation purposes has been reduced by automated teller machine (ATM) withdrawals and the RDFI cannot provide information regarding the identity of the withdrawer. The Service therefore proposed in the NPRM to define the "amount in the account" as the account balance at the time the RDFI receives the notice of reclamation and to eliminate the "reasonable time to take action" language formerly at § 210.13(b)(2)(i).

A number of financial institutions commenting on the proposed rule objected to the calculation of the amount in the account on the basis that they cannot take immediate action to prevent withdrawals upon receipt of a notice of death. One commenter noted that approximately one-half of community banks utilize batch processing systems, in which a hold placed on an account cannot be activated until evening or the following day, depending on the processing schedule. As discussed above with respect to the definition of "actual and constructive knowledge," the Service has revised the definition to provide financial institutions with a reasonable opportunity to take action after receiving notice of death or incapacity. The Service believes that one business day will normally constitute a reasonable opportunity to take action.

Section 210.11(b) sets forth the steps an RDFI must take in order to qualify for limited liability. By requiring an RDFI to certify the information required in § 210.11(b)(1) and (2), the burden of demonstrating qualification for limited liability is placed on the RDFI. Failure to meet this burden results in the full liability of the RDFI under proposed § 210.10.

Section 210.11(b)(2) incorporates the last sentence of former § 210.13(b)(1), and adds the requirement that the RDFI certify the date the RDFI first had actual or constructive knowledge of the death or legal incapacity of the recipient or death of the beneficiary even if such knowledge was obtained first through notice received from the agency. As proposed, § 210.11(b)(2) stated that the RDFI must certify the date the RDFI first had "information" of the death or incapacity. Some commenters questioned the meaning of the word "information," as opposed to the phrase "actual or constructive knowledge." Because "information" was intended to refer to actual or constructive knowledge, § 210.11(b)(2) has been revised to eliminate any apparent inconsistency.

Requiring these certifications, in combination with the authority of the Government to debit the RDFI's account as provided in § 210.10(e), underscores that the burden is on the RDFI to demonstrate its qualification for limited liability.

Former § 210.13(b)(2)(ii) has been relocated to § 210.11(b)(3) of the final rule.

Section 210.11(c) provides the payment and collection procedures which apply if an RDFI qualifies for limited liability. After an RDFI returns the amount specified in § 210.11(a)(1), if the agency is unable to collect the remaining amount of the outstanding total, the Government will debit the RDFI's account at its Federal Reserve Bank (or the correspondent account utilized by the RDFI) for the amount specified in § 210.11(a)(2), which is the *lesser* of: (i) the benefit payments received by the RDFI from the agency within 45 days after the death or legal incapacity of the recipient or death of the beneficiary, or (ii) the *balance* of the outstanding total. It should be noted that in no instance will the RDFI be liable for more than the outstanding total because the amount potentially recoverable under § 210.11(a)(2) cannot exceed the balance of the unrecovered outstanding total.

As proposed in the NPRM, § 210.11(d) would have provided that an RDFI would forfeit its right to limit its liability if the RDFI failed to comply with any provision of Subpart B. One financial institution commented that the proposed expanded liability in § 210.11(d) was inappropriate and unfair, and that only a violation of those provisions that relate directly to the qualifications for limited liability stated in § 210.11(a) and (b) should cause a financial institution to lose its right to limit its liability. The Service has revised § 210.11(d) to provide that a financial institution that violates any provision of Subpart B shall be liable to the Government for any loss resulting from its act or omission, in addition to any amount(s) for which the RDFI is liable under § 210.10 or § 210.11(a).

Section 210.12—RDFI's Rights of Recovery

Section 210.12(a) restates the principle set forth in former § 210.14(c) that in reclaiming funds from an RDFI, the Government is not directing or authorizing the RDFI to debit the recipient's account. Any rights that an RDFI may have to recover the amount of reclaimed funds from a recipient are a matter of applicable state law and the contract between the RDFI and the recipient. Subpart B neither limits nor expands those rights.

Section 210.12(b) restates without substantive change former § 210.14(d) of Part 210.

Section 210.13—Notice to Account Owners

Section 210.13 is based on former § 210.14(a) of Part 210, but has been changed slightly to provide for the possibility of an automated reclamation process by the addition of the phrase

"or otherwise provide to the account owner(s)" to the existing requirement that notice be mailed. In addition, the phrase "any notice required by the Service to be provided to account owners as specified in the Green Book" has been substituted for the specific reference to the "Notice to Account Owners" to allow for more flexibility in changing the format of the required notice.

Part 210 formerly required that RDFIs notify account owners of any actions to be taken by the RDFI with respect to the account in connection with a reclamation action. The Service believes that this requirement may intrude unnecessarily into the relationship between the RDFI and its customer and conflicts with the principle that reclamations are actions between the Government and the RDFI, and not between the Government and the recipient. Actions taken by an RDFI with respect to a customer account, and any notice to the customer in connection with those actions, are a matter of State law or contract, not Federal law.

Section 210.14—Erroneous Death Information

This section is based upon former § 210.15 of Part 210, with certain additions and deletions. Much of former § 210.15 was procedural information which the Service has moved to the Green Book, where it is more appropriately located. In particular, the Service has relocated to the Green Book the procedures that RDFIs are to follow in correcting erroneous death information (previously codified in § 210.15(a)(1) and (2) and § 210.15(c)). The Service also has moved to the Green Book the 60-day time limit for the RDFI to return the completed notice of reclamation to the Government in order for the RDFI to limit its liability for the payments made after the death or legal incapacity of the recipient or death of the beneficiary. This 60-day limit is a requirement for the paper-based reclamation procedure. Any automated reclamation procedures developed or used by the Government would not be bound by the same time limit as the paper process since an automated procedure theoretically could be completed in less time.

The provisions at § 210.14(b) direct questions and disputes to the agency issuing directions on reclamations. These provisions clarify that the Service only performs disbursing and collection functions on behalf of the agencies and does not make decisions as to the underlying obligations.

Subpart C—Discretionary Salary Allotments

The Service has removed Subpart C from Part 210. Subpart C provided that discretionary allotments from Federal employees' wage and salary payments permitted by the issuing agency could be made through the ACH system and were subject to Part 210. The Service determined that Subpart C was redundant since the substance of Subpart C was covered in other regulations. For example, regulations issued by the Office of Personnel Management, at 5 CFR Part 550, address the circumstances under which discretionary allotments may be made. Subpart A of Part 210 sets forth the rules governing all ACH credit entries made by an agency, including any savings and salary allotment payments. For these reasons, specific provisions for the use of the ACH system to allow for discretionary allotments in Part 210 are unnecessary.

III. Rulemaking Analysis

Treasury has determined that this regulation is not a significant regulatory action as defined in Executive Order 12866.

It is hereby certified that this rule will not have a significant economic impact on a substantial number of small entities. Accordingly, a Regulatory Flexibility Act analysis is not required.

There is no collection of information contained in this rule and, therefore, the Paperwork Reduction Act does not apply.

List of Subjects in 31 CFR Part 210

Automated Clearing House, Electronic funds transfers, Fraud, Incorporation by reference.

Authority and Issuance

For the reasons set out in the preamble, 31 CFR Part 210 is revised to read as follows:

PART 210—FEDERAL GOVERNMENT PARTICIPATION IN THE AUTOMATED CLEARING HOUSE

Sec.

210.1 Scope; relation to other regulations.
210.2 Definitions.
210.3 Governing law.

Subpart A—General

210.4 Authorizations and revocations of authorizations.
210.5 Account requirements for Federal payments.
210.6 Agencies.
210.7 Federal Reserve Banks.
210.8 Financial institutions.

Subpart B—Reclamation of Benefit Payments

210.9 Parties to the reclamation.
210.10 RDFI liability.
210.11 Limited liability.
210.12 RDFI's rights of recovery.
210.13 Notice to account owners.
210.14 Erroneous death information.

Authority: 5 U.S.C. 5525; 12 U.S.C. 391; 31 U.S.C. 321, 3301, 3302, 3321, 3332, 3335, and 3720.

§ 210.1 Scope; relation to other regulations.

This part governs all entries and entry data originated or received by an agency through the Automated Clearing House (ACH) network, except as provided in paragraphs (a) and (b) of this section. This part also governs reclamations of benefit payments.

(a) Federal tax payments received by the Federal Government through the ACH system that are governed by part 203 of this title shall not be subject to any provision of this part that is inconsistent with part 203.

(b) ACH credit or debit entries for the purchase of, or payment of principal and interest on, United States securities that are governed by part 370 of this title shall not be subject to any provision of this part that is inconsistent with part 370.

§ 210.2 Definitions.

For purposes of this part, the following definitions apply. Any term that is not defined in this part shall have the meaning set forth in the ACH Rules.

(a) *ACH Rules* means the Operating Rules and the Operating Guidelines published by the National Automated Clearing House Association (NACHA), a national association of regional member clearing house associations, ACH Operators and participating financial institutions located in the United States.

(b) *Actual or constructive knowledge,* when used in reference to an RDFI's knowledge of the death or legal incapacity of a recipient or death of a beneficiary, means that the RDFI received information, by whatever means, of the death or incapacity and has had a reasonable opportunity to act on such information or that the RDFI would have learned of the death or incapacity if it had followed commercially reasonable business practices.

(c) *Agency* means any department, agency, or instrumentality of the United States Government, or a corporation owned or controlled by the Government of the United States. The term agency does not include a Federal Reserve Bank.

(d) *Applicable ACH Rules* means the ACH Rules with an effective date on or

before September 17, 1999, as published in Parts I, II, and IV of the "1999 ACH Rules: A Complete Guide to Rules & Regulations Governing the ACH Network," except:

(1) ACH Rule 1.1 (limiting the applicability of the ACH Rules to members of an ACH association);

(2) ACH Rule 1.2.2 (governing claims for compensation);

(3) ACH Rule 1.2.4 and Appendix Eleven (governing the enforcement of the ACH Rules);

(4) ACH Rules 2.2.1.8; 2.6; and 4.7 (governing the reclamation of benefit payments);

(5) ACH Rule 8.3 and Appendix Two (requiring that a credit entry be originated no more than two banking days before the settlement date of the entry—see definition of "Effective Entry Date" in Appendix Two).

(e) *Authorized payment agent* means any individual or entity that is appointed or otherwise selected as a representative payee or fiduciary, under regulations of the Social Security Administration, the Department of Veterans Affairs, the Railroad Retirement Board, or other agency making Federal payments, to act on behalf of an individual entitled to a Federal payment.

(f) *Automated Clearing House or ACH* means a funds transfer system governed by the ACH Rules which provides for the interbank clearing of electronic entries for participating financial institutions.

(g) *Beneficiary* means a natural person other than a recipient who is entitled to receive the benefit of all or part of a benefit payment.

(h) *Benefit payment* is a payment for a Federal entitlement program or for an annuity, including, but not limited to, payments for Social Security, Supplemental Security Income, Black Lung, Civil Service Retirement, Railroad Retirement annuity and Railroad Unemployment and Sickness benefits, Department of Veterans Affairs Compensation and Pension, and Worker's Compensation.

(i) *Federal payment* means any payment made by an agency. The term includes, but is not limited to:

(1) Federal wage, salary, and retirement payments;

(2) Vendor and expense reimbursement payments;

(3) Benefit payments; and

(4) Miscellaneous payments including, but not limited to, interagency payments; grants; loans; fees; principal, interest, and other payments related to United States marketable and nonmarketable securities; overpayment reimbursements; and payments under Federal insurance or guarantee programs for loans.

(j)(1) *Financial institution* means:

(i) Any insured bank as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813) or any bank which is eligible to apply to become an insured bank under section 5 of such Act (12 U.S.C. 1815);

(ii) Any mutual savings bank as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813) or any bank which is eligible to apply to become an insured bank under section 5 of such Act (12 U.S.C. 1815);

(iii) Any savings bank as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813) or any bank which is eligible to apply to become an insured bank under section 5 of such Act (12 U.S.C. 1815);

(iv) Any insured credit union as defined in section 101 of the Federal Credit Union Act (12 U.S.C. 1752) or any credit union which is eligible to apply to become an insured credit union pursuant to section 201 of such Act (12 U.S.C. 1781);

(v) Any savings association as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813) which is an insured depository institution as defined in such Act (12 U.S.C. 1811 *et seq.*) or is eligible to apply to become an insured depository institution under the Federal Deposit Insurance Act (12 U.S.C. 1811 *et seq.*); and

(vi) Any agency or branch of a foreign bank as defined in section 1(b) of the International Banking Act, as amended (12 U.S.C. 3101).

(2) In this part, a financial institution may be referred to as an Originating Depository Financial Institution (ODFI) if it transmits entries to its ACH Operator for transmittal to a Receiving Depository Financial Institution (RDFI), or it may be referred to as an RDFI if it receives entries from its ACH Operator for debit or credit to the accounts of its customers.

(k) *Government entry* means an ACH credit or debit entry or entry data originated or received by an agency.

(l) *Green Book* means the manual issued by the Service which provides financial institutions with procedures and guidelines for processing Government entries.

(m) *Notice of reclamation* means notice sent by electronic, paper, or other means by the Federal Government to an RDFI which identifies the benefit payments that should have been returned by the RDFI because of the death or legal incapacity of a recipient or death of a beneficiary.

(n) *Outstanding total* means the sum of all benefit payments received by an RDFI from an agency after the death or legal incapacity of a recipient or the death of a beneficiary, minus any amount returned to, or recovered by, the Federal Government.

(o) *Recipient* means a natural person, corporation, or other public or private entity that is authorized to receive a Federal payment from an agency.

(p) *Service* means the Financial Management Service, Department of the Treasury.

(q) *Treasury* means the United States Department of the Treasury.

(r) *Treasury Financial Manual* means the manual issued by the Service containing procedures to be observed by all agencies and Federal Reserve Banks with respect to central accounting, financial reporting, and other Federal Government-wide fiscal responsibilities of the Treasury.

§ 210.3 Governing law.

(a) *Federal Law.* The rights and obligations of the United States and the Federal Reserve Banks with respect to all Government entries, and the rights of any person or recipient against the United States and the Federal Reserve Banks in connection with any Government entry, are governed by this part, which has the force and effect of Federal law.

(b) *Incorporation by reference—applicable ACH Rules.*

(1) This part incorporates by reference the applicable ACH Rules, including rule changes with an effective date on or before September 17, 1999, as published in Parts I, II, and IV of the "1999 ACH Rules: A Complete Guide to Rules & Regulations Governing the ACH Network." The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies of the "1999 ACH Rules" are available from the National Automated Clearing House Association, 607 Herndon Parkway, Suite 200, Herndon, Virginia 20170. Copies also are available for public inspection at the Office of the Federal Register, 800 North Capitol Street, N.W., Suite 700, Washington, D.C. 20001.

(2) Any amendment to the applicable ACH Rules that takes effect after September 17, 1999, shall not apply to Government entries unless the Service expressly accepts such amendment by publishing notice of acceptance of the amendment to this part in the **Federal Register**. An amendment to the ACH Rules that is accepted by the Service shall apply to Government entries on the effective date of the rulemaking specified by the Service in the **Federal**

Register notice expressly accepting such amendment.

(c) *Application of this part.* Any person or entity that originates or receives a Government entry agrees to be bound by this part and to comply with all instructions and procedures issued by the Service under this part, including the Treasury Financial Manual and the Green Book. The Treasury Financial Manual is available for downloading at the Service's web site at http://www.fms.treas.gov/ or by calling (202) 874–9940 or writing the Directives Management Branch, Financial Management Service, Department of the Treasury, 3700 East West Highway, Room 500C, Hyattsville, MD 20782. The Green Book is available for downloading at the Service's web site at http://www.fms.treas.gov/fmsnews.html or by calling (202) 874–6540 or writing the Product Promotion Division, Financial Management Service, Department of the Treasury, 401 14th Street, S.W., Room 309, Washington, D.C. 20227.

Subpart A—General

§ 210.4 Authorizations and revocations of authorizations.

(a) *Requirements for authorization.* Each debit and credit entry subject to this part shall be authorized in accordance with the applicable ACH Rules and the following additional requirements:

(1) The agency or the RDFI that accepts the recipient's authorization shall verify the identity of the recipient and, in the case of a written authorization requiring the recipient's signature, the validity of the recipient's signature.

(2) Unless authorized in writing, or similarly authenticated, by an agency, no person or entity shall initiate or transmit a debit entry to that agency, other than a reversal of a credit entry previously sent to the agency.

(b) *Terms of authorizations.* By executing an authorization for an agency to initiate entries, a recipient agrees:

(1) To the provisions of this part;

(2) To provide accurate information;

(3) To verify the recipient's identity to the satisfaction of the RDFI or agency, whichever has accepted the authorization;

(4) That any new authorization inconsistent with a previous authorization shall supersede the previous authorization; and

(5) That the Federal Government may reverse any duplicate or erroneous entry or file as provided in § 210.6(f) of this part.

(c) *Termination and revocation of authorizations.* An authorization shall remain valid until it is terminated or revoked by:

(1) With respect to a recipient of benefit payments, a change in the recipient's ownership of the deposit account as reflected in the deposit account records, including the removal of the name of the recipient, the addition of a power of attorney, or any action which alters the interest of the recipient;

(2) The death or legal incapacity of a recipient of benefit payments or the death of a beneficiary;

(3) The closing of the recipient's account at the RDFI by the recipient or by the RDFI. With respect to a recipient of benefit payments, if an RDFI closes an account to which benefit payments currently are being sent, it shall provide 30 calendar days written notice to the recipient prior to closing the account, except in cases of fraud; or

(4) The RDFI's insolvency, closure by any state or Federal regulatory authority or by corporate action, or the appointment of a receiver, conservator, or liquidator for the RDFI. In any such event, the authorization shall remain valid if a successor is named. The Federal Government may temporarily transfer authorizations to a consenting RDFI. The transfer is valid until either a new authorization is executed by the recipient, or 120 calendar days have elapsed since the insolvency, closure, or appointment, whichever occurs first.

§ 210.5 Account requirements for Federal payments.

(a) Notwithstanding ACH Rule 2.1.2, an ACH credit entry representing a Federal payment shall be deposited into an account at a financial institution. For all payments other than vendor payments, the account at the financial institution shall be in the name of the recipient, except as provided in paragraph (b) of this section.

(b)(1) Where an authorized payment agent has been selected, the Federal payment shall be deposited into an account titled in accordance with the regulations governing the authorized payment agent.

(2) Where a Federal payment is to be deposited into an investment account established through a securities broker or dealer registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934, or an investment account established through an investment company registered under the Investment Company Act of 1940 or its transfer agent, such payment may be deposited into an account designated by such broker or dealer, investment company, or transfer agent.

(3) The Secretary of the Treasury may waive the requirements of paragraph (a) of this section in any case or class of cases.

§ 210.6 Agencies.

Notwithstanding ACH Rules 2.2.3, 2.4.5, 2.5.2, 4.2, and 7.7.2, agencies shall be subject to the obligations and liabilities set forth in this section in connection with Government entries.

(a) *Receiving entries.* An agency may receive ACH debit or credit entries only with the prior written authorization of the Service.

(b) *Liability to a recipient.* An agency will be liable to the recipient for any loss sustained by the recipient as a result of the agency's failure to originate a credit or debit entry in accordance with this part. The agency's liability shall be limited to the amount of the entry(ies).

(c) *Liability to an originator.* An agency will be liable to an originator or an ODFI for any loss sustained by the originator or ODFI as a result of the agency's failure to credit an ACH entry to the agency's account in accordance with this part. The agency's liability shall be limited to the amount of the entry(ies).

(d) *Liability to an RDFI or ACH Association.* Except as otherwise provided in this part, an agency will be liable to an RDFI for losses sustained in processing duplicate or erroneous credit and debit entries originated by the agency. An agency's liability shall be limited to the amount of the entry(ies), and shall be reduced by the amount of the loss resulting from the failure of the RDFI to exercise due diligence and follow standard commercial practices in processing the entry(ies). This section does not apply to credits received by an RDFI after the death or legal incapacity of a recipient of benefit payments or the death of a beneficiary as governed by Subpart B of this part. An agency shall not be liable to any ACH association.

(e) *Acquittance of the agency.* The final crediting of the amount of an entry to a recipient's account shall constitute full acquittance of the Federal Government.

(f) *Reversals.* An agency may reverse any duplicate or erroneous entry, and the Federal Government may reverse any duplicate or erroneous file. In initiating a reversal, an agency shall certify to the Service that the reversal complies with applicable law related to the recovery of the underlying payment. An agency that reverses an entry shall indemnify the RDFI as provided in the applicable ACH Rules, but the agency's liability shall be limited to the amount of the entry. If the Federal Government

reverses a file, the Federal Government shall indemnify the RDFI as provided in the applicable ACH Rules, but the extent of such liability shall be limited to the amount of the entries comprising the duplicate or erroneous file. Reversals under this section shall comply with the time limitations set forth in the applicable ACH Rules.

§ 210.7 Federal Reserve Banks.

(a) *Fiscal Agents.* Each Federal Reserve Bank serves as Fiscal Agent of the Treasury in carrying out its duties as the Federal Government's ACH Operator under this part. As Fiscal Agent, each Federal Reserve Bank shall be responsible only to the Treasury and not to any other party for any loss resulting from the Federal Reserve Bank's action, notwithstanding Section 11.5 and Article 8 of the ACH Rules. Each Federal Reserve Bank may issue operating circulars not inconsistent with this part which shall be binding on financial institutions.

(b) *Routing Numbers.* All routing numbers issued by a Federal Reserve Bank to an agency require the prior approval of the Service.

§ 210.8 Financial institutions.

(a) *Status as a Treasury depositary.* The origination or receipt of an entry subject to this part does not render a financial institution a Treasury depositary. A financial institution shall not advertise itself as a Treasury depositary on such basis.

(b) *Liability.* Notwithstanding ACH Rules 2.2.3, 2.4.5, 2.5.2, 4.2, and 7.7.2, if the Federal Government sustains a loss as a result of a financial institution's failure to handle an entry in accordance with this part, the financial institution shall be liable to the Federal Government for the loss, up to the amount of the entry, except as otherwise provided in this section. A financial institution shall not be liable to any third party for any loss or damage resulting directly or indirectly from an agency's error or omission in originating an entry. Nothing in this section shall affect any obligation or liability of a financial institution under Regulation E, 12 CFR part 205, or the Electronic Funds Transfer Act, 12 U.S.C. 1693 *et seq.*

(1) An ODFI that transmits a debit entry to an agency without the prior written or similarly authenticated authorization of the agency, shall be liable to the Federal Government for the amount of the transaction, plus interest. The Service may collect such funds using procedures established in the applicable ACH Rules or by instructing a Federal Reserve Bank to debit the ODFI's account at the Federal Reserve Bank or the account of its designated correspondent. The interest charge shall be at a rate equal to the Federal funds rate plus two percent, and shall be assessed for each calendar day, from the day the Treasury General Account (TGA) was debited to the day the TGA is recredited with the full amount due.

(2) An RDFI that accepts an authorization in violation of § 210.4(a) shall be liable to the Federal Government for all credits or debits made in reliance on the authorization. An RDFI that transmits to an agency an authorization containing an incorrect account number shall be liable to the Federal Government for any resulting loss, up to the amount of the payment(s) made on the basis of the incorrect number. If an agency determines, after appropriate investigation, that a loss has occurred because an RDFI transmitted an authorization or notification of change containing an incorrect account number, the agency may instruct the Service to direct a Federal Reserve Bank to debit the RDFI's account for the amount of the payment(s) made on the basis of the incorrect number. The agency shall notify the RDFI of the results of its investigation and provide the RDFI with a reasonable opportunity to respond before initiating such a debit.

(c) *Acquittance of the financial institution.* The final crediting of the correct amount of an entry received and processed by the Federal Reserve Bank and posted to the TGA shall constitute full acquittance of the ODFI and the originator for the amount of the entry. Full acquittance shall not occur if the entries do not balance, are incomplete, are incorrect, or are incapable of being processed. In the case of funds collected by an agency through origination of a debit entry, full acquittance shall not occur until the underlying payment becomes final.

Subpart B—Reclamation of Benefit Payments

§ 210.9 Parties to the reclamation.

(a) *Agreement of RDFI.* An RDFI's acceptance of a benefit payment pursuant to this part shall constitute its agreement to this subpart. By accepting a benefit payment subject to this part, the RDFI authorizes the debiting of the Federal Reserve Bank account utilized by the RDFI in accordance with the provisions of § 210.10(e).

(b) *The Federal Government.* In processing reclamations pursuant to this subpart, the Service shall act pursuant to the direction of the agency that certified the benefit payment(s) being reclaimed.

§ 210.10 RDFI liability.

(a) *Full liability.* An RDFI shall be liable to the Federal Government for the total amount of all benefit payments received after the death or legal incapacity of a recipient or the death of a beneficiary unless the RDFI has the right to limit its liability under § 210.11 of this part. An RDFI shall return any benefit payments received after the RDFI learns of the death or legal incapacity of a recipient or the death of a beneficiary, regardless of the manner in which the RDFI discovers such information. If the RDFI learns of the death or legal incapacity of a recipient or death of a beneficiary from a source other than notice from the agency, the RDFI shall immediately notify the agency of the death or incapacity.

(b) *Notice of Reclamation.* Upon receipt of a notice of reclamation, an RDFI shall provide the information required by the notice of reclamation and return the amount specified in the notice of reclamation in a timely manner.

(c) *Exception to liability rule.* An RDFI shall not be liable for post-death benefit payments sent to a recipient acting as a representative payee or fiduciary on behalf of a beneficiary, if the beneficiary was deceased at the time the authorization was executed and the RDFI did not have actual or constructive knowledge of the death of the beneficiary.

(d) *Time limits.* An agency that initiates a reclamation must do so within 120 calendar days after the date that the agency receives notice of the death or legal incapacity of a recipient or death of a beneficiary. An agency shall not reclaim any post-death or post-incapacity payment(s) made more than six years prior to the most recent payment made by the agency to the recipient's account; provided, however, that if the account balance at the time the RDFI receives the notice of reclamation exceeds the total amount of all post-death or post-incapacity payments made by the agency during such six-year period, this limitation shall not apply and the RDFI shall be liable for the total amount of all payments made, up to the amount in the account at the time the RDFI receives the notice of reclamation and has had a reasonable opportunity (not to exceed one business day) to act on the notice.

(e) *Debit of RDFI's account.* If an RDFI does not return the full amount of the outstanding total or any other amount for which the RDFI is liable under this subpart in a timely manner, the Federal Government will collect the amount outstanding by instructing the appropriate Federal Reserve Bank to

debit the account utilized by the RDFI. The Federal Reserve Bank will provide advice of the debit to the RDFI.

§ 210.11 Limited liability.

(a) *Right to limit its liability.* If an RDFI does not have actual or constructive knowledge of the death or legal incapacity of a recipient or the death of a beneficiary at the time it receives one or more benefit payments on behalf of the recipient, the RDFI's liability to the agency for those payments shall be limited to:

(1) An amount equal to: (i) The amount in the account at the time the RDFI receives the notice of reclamation and has had a reasonable opportunity (not to exceed one business day) to act on the notice, plus any additional benefit payments made to the account by the agency before the RDFI responds in full to the notice of reclamation, or

(ii) The outstanding total, whichever is less; plus

(2) If the agency is unable to collect the entire outstanding total, an additional amount equal to:

(i) The benefit payments received by the RDFI from the agency within 45 days after the death or legal incapacity of the recipient or death of the beneficiary, or

(ii) The balance of the outstanding total, whichever is less.

(b) *Qualification for limited liability.* In order to limit its liability as provided in this section, an RDFI shall:

(1) Certify that at the time the benefit payments were credited to or withdrawn from the account, the RDFI had no actual or constructive knowledge of the death or legal incapacity of the recipient or death of the beneficiary;

(2) Certify the date the RDFI first had actual or constructive knowledge of the death or legal incapacity of the recipient or death of the beneficiary, regardless of how and where such information was obtained;

(3)(i) Provide the name, address, and any other relevant information of the following person(s):

(A) Co-owner(s) of the recipient's account;

(B) Other person(s) authorized to withdraw funds from the recipient's account; and

(C) Person(s) who withdrew funds from the recipient's account after the death or legal incapacity of the recipient or death of the beneficiary.

(ii) If persons are not identified for any of these subcategories, the RDFI must certify that no such information is available and why no such information is available; and

(4) Fully and accurately complete all certifications on the notice of reclamation and comply with the requirements of this part.

(c) *Payment of limited liability amount.* If the RDFI qualifies for limited liability under this subpart, it shall immediately return to the Federal Government the amount specified in § 210.11(a)(1). The agency will then attempt to collect the amount of the outstanding total not returned by the RDFI. If the agency is unable to collect that amount, the Federal Government will instruct the appropriate Federal Reserve Bank to debit the account utilized by the RDFI at that Federal Reserve Bank for the amount specified in § 210.11(a)(2).

(d) *Violation of Subpart B.* An RDFI that fails to comply with any provision of this subpart in a timely and accurate manner, including but not limited to the certification requirements at § 210.11(b) and the notice requirements at § 210.13, shall be liable to the Federal Government for any loss resulting from its act or omission. Any such liability shall be in addition to the amount(s) for which the RDFI is liable under § 210.10 or § 210.11, as applicable.

§ 210.12 RDFI's rights of recovery.

(a) *Matters between the RDFI and its customer.* This subpart does not authorize or direct an RDFI to debit or otherwise affect the account of a recipient. Nothing in this subpart shall be construed to affect the right an RDFI has under state law or the RDFI's contract with a recipient to recover any amount from the recipient's account.

(b) *Liability unaffected.* The liability of the RDFI under this subpart is not affected by actions taken by the RDFI to recover any portion of the outstanding total from any party.

§ 210.13 Notice to account owners.

Provision of notice by RDFI. Upon receipt by an RDFI of a notice of reclamation, the RDFI immediately shall mail to the last known address of the account owner(s) or otherwise provide to the account owner(s) a copy of any notice required by the Service to be provided to account owners as specified in the Green Book. Proof that this notice was sent may be required by the Service.

§ 210.14 Erroneous death information.

(a) *Notification of error to the agency.* If, after the RDFI responds fully to the notice of reclamation, the RDFI learns that the recipient or beneficiary is not dead or legally incapacitated or that the date of death is incorrect, the RDFI shall inform the agency that certified the underlying payment(s) and direct the Service to reclaim the funds in dispute.

(b) *Resolution of dispute.* The agency that certified the underlying payment(s) and directed the Service to reclaim the funds will attempt to resolve the dispute with the RDFI in a timely manner. If the agency determines that the reclamation was improper, in whole or in part, the agency shall notify the RDFI and shall return the amount of the improperly reclaimed funds to the RDFI. Upon certification by the agency of an improper reclamation, the Service may instruct the appropriate Federal Reserve Bank to credit the account utilized by the RDFI at the Federal Reserve Bank in the amount of the improperly reclaimed funds.

Dated: April 6, 1999.

Richard L. Gregg,

Commissioner.

[FR Doc. 99–8873 Filed 4–8–99; 8:45 am]

BILLING CODE 4810–35–P

VOL
64
ISS
68
AP
9
1999
UMI

federal register

Friday
April 9, 1999

Part V

National Archives and Records Administration

Format for Notices of "Records Schedules; Availability and Request for Comments"; Notice

Records Schedules; Availability and Request for Comments; Notice

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Format for Notices of "Records Schedules; Availability and Request for Comments"

AGENCY: National Archives and Records Administration, Office of Records Services—Washington, DC.

ACTION: Request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notices at least once a month of pending records disposition schedules submitted by Federal agencies. Once approved by NARA, schedules provide mandatory instructions on what happens to records when no longer needed for current Government business. Schedules call for the permanent retention and eventual transfer to the National Archives of the United States of records that have historical or other research value. Most records, however, lack such value and are approved for destruction after a specified period.

NARA began publishing **Federal Register** notices about schedules in 1985. This process alerts members of the public to pending schedules in which they may have an interest. Members of the public may request copies of schedules and provide NARA with comments. Until recently, notices of pending schedules contained only the name of the agency which submitted the schedule, the NARA-assigned control number, and an extremely brief summary of the records proposed for destruction. In 1998, NARA modified the format of notices. Notices now provide the total number of items covered by the schedule and the number of items proposed for disposal as well as more information concerning the types of records covered by the schedule. In addition, the explanatory information concerning the scheduling process included in each notice points out that NARA staff usually prepare appraisal memorandums concerning the records covered by a proposed schedule and that these too may be requested. (Our most recent notice of pending schedules is published elsewhere in this separate part of the **Federal Register**.)

NARA seeks public comments so we can assess and improve the effectiveness of **Federal Register** notices. We are especially interested receiving input concerning the following questions:

(1) Is the current format for notices, including the introductory material explaining the scheduling process, clear and easy to understand?

(2) Is the information provided about individual schedules sufficient to alert readers to pending schedules in which they have an interest? If not, what additional information would you need?

(3) Would it be easier for readers to locate notices of pending schedules if NARA were to publish such notices on only one specified day of the week?

(4) Are there any other ways in which NARA can use the **Federal Register** process to enhance public input concerning pending schedules?

DATES: Comments must be received on or before July 8, 1999.

ADDRESSES: Comments may be sent electronically to records.mgt@arch2.nara.gov (comments sent electronically must be in the body of the message or be in WordPerfect 6.1 or Word 6.0 if they are sent as attachments); by FAX to 301–713–6852; or by mail to Director, Life Cycle Management Division (NWML), National Archives and Records Administration, 8601 Adelphi Rd., College Park, MD 20740–6001.

FOR FURTHER INFORMATION CONTACT: Marie Allen, Director, Life Cycle Management Division (NWML), National Archives and Records Administration, 8601 Adelphi Rd., College Park, MD 20740–6001. Telephone: (301) 713–7110. E-mail: records.mgt@arch2.nara.gov.

Dated: March 26, 1999.

Michael J. Kurtz,

Assistant Archivist for Records Services—Washington, DC.

[FR Doc. 99–8878 Filed 4–8–99; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration, Office of Records Services—Washington, DC.

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Once approved by NARA, records schedules provide mandatory instructions on what happens to records when no longer needed for current Government business. They authorize the preservation of records of continuing value in the National Archives of the United States and the destruction, after a specified period, of records lacking administrative, legal, research, or other value. Notice is published for records schedules in which agencies propose to destroy records not previously authorized for disposal or reduce the retention period of records already authorized for disposal. NARA invites public comments on such records schedules, as required by 44 U.S.C. 3303a(a).

DATES: Requests for copies must be received in writing on or before May 24, 1999. Once the appraisal of the records is completed, NARA will send a copy of the schedule. NARA staff usually prepare appraisal memorandums that contain additional information concerning the records covered by a proposed schedule. These, too, may be requested and will be provided once the appraisal is completed. Requesters will be given 30 days to submit comments.

ADDRESSES: To request a copy of any records schedule identified in this notice, write to the Life Cycle Management Division (NWML), National Archives and Records Administration (NARA), 8601 Adelphi Road, College Park, MD 20740–6001. Requests also may be transmitted by FAX to 301–713–6852 or by e-mail to records.mgt@arch2.nara.gov. Requesters must cite the control number, which appears in parentheses after the name of the agency which submitted the schedule, and must provide a mailing address. Those who desire appraisal reports should so indicate in their request.

FOR FURTHER INFORMATION CONTACT: Michael L. Miller, Director, Modern Records Programs (NWM), National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001, telephone (301)713–7110.

SUPPLEMENTARY INFORMATION: Each year Federal agencies create billions of records on paper, film, magnetic tape, and other media. To control this accumulation, agency records managers prepare schedules proposing retention periods for records and submit these schedules for NARA's approval, using the Standard Form (SF) 115, Request for Records Disposition Authority. These schedules provide for the timely transfer into the National Archives of historically valuable records and authorize the disposal of all other records after the agency no longer needs to conduct its business. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. Most schedules, however, cover records of only one office or program or a few series of records. Many

of these update previously approved schedules, and some include records proposed as permanent.

No Federal records are authorized for destruction without the approval of the Archivist of the United States. This approval is granted only after a thorough consideration of their administrative use by the agency of origin, the rights of the Government and of private persons directly affected by the Government's activities, and whether or not they have historical or other value.

Besides identifying the Federal agencies and any subdivisions requesting disposition authority, this public notice lists the organizational unit(s) accumulating the records or indicates agency-wide applicability in the case of schedules that cover records that may be accumulated throughout an agency. This notice provides the control number assigned to each schedule, the total number of schedule items, and the number of temporary items (the records proposed for destruction). It also includes a brief description of the temporary records. The records schedule itself contains a full description of the records at the file unit level as well as their disposition. If NARA staff has prepared an appraisal memorandum for the schedule, it too, includes information about the records. Further information about the disposition process is available on request.

Schedules Pending

1. Department of the Air Force, Agency-wide (N1–AFU–99–3, 2 items, 2 temporary items). Forms relating to individual Survival, Evasion, Resistance, and Escape instructors including qualifications, training, and proficiency. Included are electronic copies of forms created using word processing and form filler software that are used to generate paper copies.

2. Department of the Air Force, Agency-wide (N1–AFU–99–6, 2 items, 2 temporary items). Checklists used to evaluate instructors in formal training courses. Included are electronic copies of forms created using word processing and form filler software that are used to generate paper copies.

3. Department of Commerce, National Oceanic and Atmospheric Administration (N1–23–99–1, 35 items, 15 temporary items). Records created by various units of the Coast and Geodetic Survey, primarily in the period 1817–1969. Included are seismograms and incomplete abstracts of earthquake reports, foreign seismograms and reports, general administrative reports and correspondence, aerial photographs, foreign tide readings, U.S. and foreign magnetic observations, instrument evaluation records, compass surveys, and magnetic declination charts. Files proposed for permanent retention date from the early 19th century through the late 1960s and include triangulation station descriptions, bench mark descriptions, earthquake report abstracts, seismological bulletins and special studies, operations logbooks, annual reports, ship and field office correspondence and reports, correspondence relating to aeronautical charting committees, aerial photographs and negatives, tidal observations and reports, international observatory station records, and research and development correspondence files.

4. Department of Defense, Defense Logistics Agency (N1–361–99–2, 11 items, 11 temporary items). Records relating to programs and services in agency Child Development Centers. Included are registers, activity schedules, lesson plans, annual reports, files on employees, and files on individual children, such as medical histories and records documenting the child's activities and development. Electronic copies of records created using electronic mail, word processing, and other office automation applications are also included.

5. Department of Energy, Federal Energy Regulatory Commission (N1–138–99–5) 4 items, 4 temporary items). Case files, working papers, and records created as documentation of the planning, creation, testing, maintenance, and use of computer systems. Included are electronic copies of documents created using electronic mail and word processing.

6. Department of Energy, Agency-wide (N1–434–98–5, 5 items, 5 temporary items). Contractor employee pay records containing pay data on each employee. This schedule also increases the retention period for levy and garnishment records and reports, registers, and other records relating to retirement of agency employees, which were previously approved for disposal. Also included are electronic copies of documents created using electronic mail and word processing.

7. Department of Energy, Agency-wide (N1–434–98–6, 8 items, 8 temporary items). Records relating to employee pension plans and casualty insurance plans. These records include policies, endorsements, reports, studies, and correspondence. This schedule also increases the retention period for real property records and reports of inventory surveys, which were previously approved for disposal. Also included are electronic copies of documents created using electronic mail and word processing.

8. Department of Energy, Agency-wide (N1–434–98–12, 4 items, 4 temporary items). Records relating to personal and official foreign travel. These records include forms, reports, correspondence, and electronic copies of documents created using electronic mail and word processing.

9. Department of the Treasury, Bureau of Engraving and Printing (N1–318–98–1, 1 item, 1 temporary item). Plate history cards created by the Office of Currency and Stamp Printing, ca. 1878–1960. The cards were used for work control and accountability for active and inactive numbered engraving plates, rolls, and dies used to manufacture U.S. Government securities.

10. Federal Reserve System, Board of Governors (N1–82–99–1, 7 items, 7 temporary items). Files of the Office of the Secretary pertaining to computer operations, century date conversion (Y2K), and employee performance ratings. Included are records related to the development, installation, testing, operation, and maintenance of computer applications, work stations, networks, Web sites, and other systems (not including data generated on the systems) as well as files concerning the agency's Year 2000 efforts such as plans, strategies, testing plans, research papers, and publications. Also included are electronic copies of documents created using electronic mail and word processing. In addition, this schedule increases the retention period of employee performance rating records which were previously approved for disposal.

Dated: March 26, 1999.

Michael J. Kurtz,

Assistant Archivist for Record Services—Washington, DC.

[FR Doc. 99–8879 Filed 4–8–99; 8:45 am]

BILLING CODE 7515–01–P

VOL
64
ISS
68
AP
9
1999
UMI

federal register

Friday
April 9, 1999

Part VI

The President

Proclamation 7179—National Equal Pay Day, 1999

VOL
64
ISS
68
AP
9
1999
UMI

Federal
Vol. 64
Friday,

Title

The

Federal Register
Vol. 64, No. 68
Friday, April 9, 1999

Presidential Documents

Title 3—

The President

Proclamation 7179 of April 7, 1999

National Equal Pay Day, 1999

By the President of the United States of America

A Proclamation

We live in a time of remarkable promise. Our Nation's economy is the strongest we have experienced in a generation, creating more than 18 million new jobs since 1993 and the fastest growth in real wages in more than two decades. American women have contributed greatly to this record of success; unfortunately, they have not enjoyed an equal share in the prosperity they have helped to create.

The typical woman who works full-time year-round earns approximately 75 cents for every dollar the typical man earns. An African American woman earns just 65 cents and a Hispanic woman earns 55 cents for each dollar that a white man earns. In the course of a week, this pay gap can mean one less bag of groceries, skipping a trip to the doctor, missing a rent payment, or not being able to pay for day care. Over the course of a working lifetime, it can mean thousands of dollars, a smaller pension, and fewer savings to provide for a comfortable retirement. And when a working woman is denied equal pay, it doesn't just hurt her; it also hurts her family. In more than 10 million American households today, the mother is the only breadwinner.

Americans have always believed in justice and equality. We have always believed that those who work hard should be able to provide a decent living for themselves and their children. If we are to live up to those ideals, we must ensure that women do not suffer wage discrimination. We must continue vigorous enforcement of existing laws, such as the Equal Pay Act and Title VII of the Civil Rights Act, so that no employer undervalues or underpays the work performed by women. To strengthen Department of Labor and Equal Employment Opportunity Commission efforts to end wage discrimination and expand opportunities in the workplace for women, my Administration has included a $14 million Equal Pay Initiative in my proposed balanced budget for fiscal year 2000. This initiative will provide more resources to identify wage discrimination, to educate workers and employers about their rights and responsibilities, and to bring more women into better-paying jobs. We will also work with the Congress to pass the proposed Paycheck Fairness Act—legislation designed to strengthen laws that prohibit wage discrimination.

As we observe National Equal Pay Day, let us reaffirm our commitment to justice and equality in the workplace, and let us build a Nation for the 21st century where the talents, efforts, and hard work of American women will be rightly appreciated and fairly rewarded.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States of America, do hereby proclaim April 8, 1999, as National Equal Pay Day. I call upon Government officials, law enforcement agencies, business leaders, educators, and the American people to recognize the full value of the skills and contributions of women in the labor force. I urge all employers to review their wage practices and to ensure that all their employees are paid equitably for their work.

IN WITNESS WHEREOF, I have hereunto set my hand this seventh day of April, in the year of our Lord nineteen hundred and ninety-nine, and of the Independence of the United States of America the two hundred and twenty-third.

William J. Clinton

[FR Doc. 99-9148
Filed 4-8-99; 8:45 am]
Billing code 3195-01-P

Reader Aids

Federal Register

Vol. 64, No. 68

Friday, April 9, 1999

CUSTOMER SERVICE AND INFORMATION

Federal Register/Code of Federal Regulations	
General Information, indexes and other finding aids	202–523–5227
Laws	523–5227
Presidential Documents	
Executive orders and proclamations	523–5227
The United States Government Manual	523–5227
Other Services	
Electronic and on-line services (voice)	523–4534
Privacy Act Compilation	523–3187
Public Laws Update Service (numbers, dates, etc.)	523–6641
TTY for the deaf-and-hard-of-hearing	523–5229

ELECTRONIC RESEARCH

World Wide Web

Full text of the daily Federal Register, CFR and other publications:

http://www.access.gpo.gov/nara

Federal Register information and research tools, including Public Inspection List, indexes, and links to GPO Access:

http://www.nara.gov/fedreg

E-mail

PENS (Public Law Electronic Notification Service) is an E-mail service that delivers information about recently enacted Public Laws. To subscribe, send E-mail to

listproc@lucky.fed.gov

with the text message:

subscribe publaws-l <firstname> <lastname>

Use listproc@lucky.fed.gov only to subscribe or unsubscribe to PENS. We cannot respond to specific inquiries at that address.

Reference questions. Send questions and comments about the Federal Register system to:

info@fedreg.nara.gov

The Federal Register staff cannot interpret specific documents or regulations.

FEDERAL REGISTER PAGES AND DATES, APRIL

15633–15914	1
15915–16332	2
16333–16600	5
16601–16796	6
16797–17078	7
17079–17270	8
17271–17500	9

CFR PARTS AFFECTED DURING APRIL

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
7177 17075
7178 17077
7179 17499

Executive Orders:
11223 (Amended by EO 13118) 16595
11269 (Amended by EO 13118) 16595
11958 (Amended by EO 13118) 16595
12163 (Amended by EO 13118) 16595
12188 (Amended by EO 13118) 16595
12260 (Amended by EO 13118) 16595
12293 (Amended by EO 13118) 16595
12301 (Amended by EO 13118) 16595
12599 (Amended by EO 13118) 16595
12703 (Amended by EO 13118) 16595
12884 (Amended by EO 13118) 16595
12981 (Amended by EO 13117) 16391
13116 16333
13117 16591
13118 16595

Administrative Orders:

Presidential Determinations:
No. 99-18 of March 25, 1999 16337
No. 99-19 of March 31, 1999 17079
No. 99-20 of March 31, 1999 17081

Memorandums:
March 23, 1999 (Amended by EO 13118) 16595
March 31, 1999 17083

5 CFR

351 16797
532 15915
870 16601
890 15633
1200 15916

7 CFR

254 17085
301 15916
1437 17271
1728 17213
1753 16602

Proposed Rules:
28 15937
340 16364
905 15634
944 15634
1000 16026
1001 16026
1002 16026
1004 16026
1005 16026
1006 16026
1007 16026
1012 16026
1013 16026
1030 16026
1032 16026
1033 16026
1036 16026
1040 16026
1044 16026
1046 16026
1049 16026
1050 16026
1064 16026
1065 16026
1068 16026
1076 16026
1079 16026
1106 16026
1124 16026
1126 16026
1131 16026
1134 16026
1135 16026
1137 16026
1138 16026
1139 16026

8 CFR

Proposed Rules:
2 17128

9 CFR

1 15918
3 15918

Proposed Rules:
93 16655
201 15938

10 CFR

2 ..... 15636, 15920
10 15636
11 15636
25 15636
95 15636

Proposed Rules:
170 15876
171 15876

12 CFR

213 16612
226 16614
330 15653
611 16617
620 16617
790 17085

935.....16618, 16788
Proposed Rules:
933.....16792
934.....16792
935.....16792

13 CFR

Proposed Rules:
120.....15942
121.....15708

14 CFR

39 .....15657, 15659, 15661, 15669, 15920, 16339, 16621, 16624, 16625, 16801, 16803, 16805, 16808, 16810, 17086
71 .....15673, 15674, 15675, 15676, 15678, 15679, 16024, 16340, 16341, 16342, 16343, 16344, 17219
91.....15912
93.....17439
97.....17277
Proposed Rules:
39 .....16364, 16366, 16656, 17130
71 .....15708, 16024, 16368, 16369, 16370, 16371, 17133
91.....17293
119.....16298
121.....16298
129.....16298
135.....16298, 17293
183.....16298

17 CFR

275.....15680
279.....15680
Proposed Rules:
1.....17439

18 CFR

1b.....17087
284.....17276
343.....17087
385.....17087

19 CFR

10.....16345
18.....16345
113.....16345
178.....16635, 16345
192.....16635
Proposed Rules:
19.....16865
146.....15873

20 CFR

404.....17100

21 CFR

26.....16347
510.....15683
520.....15683, 15684
522.....15683, 15685
558.....15683
Proposed Rules:
1.....15944
101.....15948, 17295
1308.....17298, 17299

22 CFR

Ch. II.....15685
Ch. VI.....15686

23 CFR

Proposed Rules:
777.....16870

24 CFR

100.....16324
Proposed Rules:
990.....17301

26 CFR

1.....15686, 15687
7.....15687
31.....15687
301.....16640, 17279
602 .....15687, 15688, 15873, 17279
Proposed Rules:
1.....16372

27 CFR

178.....17291

28 CFR

504.....17270
Proposed Rules:
65.....17128

29 CFR

Proposed Rules:
1.....17442
5.....17442

30 CFR

Proposed Rules:
206.....15949

31 CFR

210.....17472

32 CFR

812.....17101

33 CFR

100 .....16348, 16812, 16813
117 .....16350, 16641, 17101
165 .....16348, 16641, 16642, 17439
Proposed Rules:
117.....17134
154.....17222
175.....15709
177.....15709
179.....15709
181.....15709
183.....15709

36 CFR

Proposed Rules:
1.....17293
2.....17293
3.....17293
4.....17293
5.....17293
6.....17293
7.....17293

39 CFR

111.....16814, 17102

40 CFR

52 .....15688, 15922, 17102
62.....17219
63.....17460
90.....16526
180 .....16840, 16843, 16850, 16856
261.....16643
300.....15926, 16351
Proposed Rules:
52 .....15711, 15949, 16659, 17136
63.....17465
70.....16659
82.....16373
112.....17227
180.....16874
185.....16874
186.....16874

41 CFR

Ch. 301 16352
60-250.....15690
60-999.....15690
302-11.....17105

45 CFR

1611.....17108
Proposed Rules:
1635.....16383
2522.....17302
2525.....17302
2526.....17302
2527.....17302
2528.....17302
2529.....17302

46 CFR

Proposed Rules:
10.....15709
15.....15709
24.....15709
25.....15709
26.....15709
28.....15709
70.....15709
169.....15709
175.....15709

47 CFR

69.....16353
73.....17108
Proposed Rules:
0.....16388
1.....16661
2.....16687
25.....16880, 16687
69.....16389
73 .....15712, 15713, 15714, 15715, 16388, 16396, 17137, 17138, 17139, 17140, 17141, 17142, 17143
76.....16388

48 CFR

701.....16647
703.....16647
715.....16647
731.....16647
752.....16647
909.....16649
970.....16649
1333.....16651
1533.....17109
1552.....17109

49 CFR

195.....15926
533.....16860
571.....16358
581.....16359
Proposed Rules:
171.....16882
177.....16882
178.....16882
180.....16882
192.....16882, 16885
195.....16882, 16885
578.....16690
611.....17062

50 CFR

17.....15691, 17110
229.....17292
600.....16862
648 .....15704, 16361, 16362
660.....16862, 17125
679 .....16361, 16362, 16654, 17126
Proposed Rules:
17.....16397, 16890
20.....17308
223.....16396, 16397
224.....16397
226.....16397
600.....16414
648.....16417, 16891

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT APRIL 9, 1999

AGRICULTURE DEPARTMENT
Commodity Credit Corporation
Loan and purchase programs:
- Noninsured crop disaster assistance program; published 4-9-99

ENVIRONMENTAL PROTECTION AGENCY
Air quality implementation plans; approval and promulgation; various States:
- California; published 3-10-99
- Minnesota; published 2-8-99

HEALTH AND HUMAN SERVICES DEPARTMENT
Children and Families Administration
Child support enforcement program:
- Program operations standards; State case closure procedures, etc.; published 3-10-99
- Voluntary paternity acknowledgment process; State plan requirements, etc.; published 3-10-99

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airworthiness directives:
- Boeing; published 3-5-99
- British Aerospace; published 3-5-99

TREASURY DEPARTMENT
Alcohol, Tobacco and Firearms Bureau
Alcohol, tobacco, and other excise taxes:
- Commerce in firearms and ammuninition; meaning of terms; technical amendments; published 4-9-99

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT
Agricultural Marketing Service
Avocados grown in—
- South Florida; comments due by 4-16-99; published 3-17-99

Prunes (dried) produced in California; comments due by 4-15-99; published 1-25-99

AGRICULTURE DEPARTMENT
Farm Service Agency
Program regulations:
- Preferred lender program implementation and guaranteed loan regulations streamlining; comments due by 4-13-99; published 2-12-99

AGRICULTURE DEPARTMENT
Rural Business-Cooperative Service
Program regulations:
- Preferred lender program implementation and guaranteed loan regulations streamlining; comments due by 4-13-99; published 2-12-99

AGRICULTURE DEPARTMENT
Rural Housing Service
Program regulations:
- Preferred lender program implementation and guaranteed loan regulations streamlining; comments due by 4-13-99; published 2-12-99

AGRICULTURE DEPARTMENT
Rural Utilities Service
Program regulations:
- Preferred lender program implementation and guaranteed loan regulations streamlining; comments due by 4-13-99; published 2-12-99

COMMERCE DEPARTMENT
Census Bureau
Foreign trade statistics:
- Automated Export System; shipper's export data; electronic filing; comments due by 4-13-99; published 2-12-99

COMMERCE DEPARTMENT
National Oceanic and Atmospheric Administration
Fisheries assistance programs; fishing capacity reduction program; comments due by 4-12-99; published 2-11-99

Fishery conservation and management:
- Northeastern United States fisheries—
  - Northeast multispecies; comments due by 4-13-99; published 3-29-99

DEFENSE DEPARTMENT
Federal Acquisition Regulation (FAR):
- Progress payments and related financing policies; comments due by 4-12-99; published 2-10-99

EDUCATION DEPARTMENT
Special education and rehabilitative services:
- Infants and toddlers with disabilities early intervention program; advice and recommendations request; comments due by 4-12-99; published 3-12-99

ENVIRONMENTAL PROTECTION AGENCY
Air pollutants, hazardous; national emission standards:
- Secondary aluminum production; comments due by 4-12-99; published 2-11-99

Air pollution control; new motor vehicles and engines:
- New nonroad spark-ignition engines rated above 19 kilowatts and new land-based recreational spark-ignition engines; comments due by 4-12-99; published 2-8-99

Air quality implementation plans; approval and promulgation; various States:
- Delaware; comments due by 4-12-99; published 3-11-99
- Iowa; comments due by 4-12-99; published 3-11-99
- Kentucky; comments due by 4-14-99; published 3-15-99

Air quality implementation plans; approval and promulgation; various States; air quality planning purposes; designation of areas:
- Ohio; comments due by 4-16-99; published 3-17-99

Air quality implementation plans; approval and promulgation; various States:
- Oregon; comments due by 4-14-99; published 3-15-99
- Texas; comments due by 4-14-99; published 3-15-99

Clean Air Act:
- Interstate ozone transport reduction—
  - Nitrogen oxides budget trading program; Section 126 petitions; findings of significant contribution and rulemaking; technical correction and added documents; comments due by 4-11-99; published 3-3-99

Hazardous waste:
- Mixed low-level radioactive waste; storage, treatment, and disposition; comments due by 4-15-99; published 3-1-99

FEDERAL COMMUNICATIONS COMMISSION
Common carrier services:
- Inter-carrier compensation for Internet service provider (ISP)-bound traffic; comments due by 4-12-99; published 3-24-99

Radio broadcasting:
- Broadcast and cable EEO rules and policies; extension; comments due by 4-15-99; published 4-5-99
- Low power FM radio service; creation and operation; comments due by 4-12-99; published 2-16-99

FEDERAL HOUSING FINANCE BOARD
Federal home loan bank system:
- Consolidated obligations; joint and several liability allocation; comments due by 4-12-99; published 2-11-99

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD
Thrift savings plan:
- Death benefits; transfer into G Fund after participant's death; comments due by 4-12-99; published 2-11-99

GENERAL SERVICES ADMINISTRATION
Federal Acquisition Regulation (FAR):
- Progress payments and related financing policies; comments due by 4-12-99; published 2-10-99

Federal property management:
- Purchase or lease determinations guidelines and use of private inspection, testing, and grading services; comments due by 4-12-99; published 2-10-99

Federal travel:
- Travel and relocation expenses test programs; comments due by 4-12-99; published 2-10-99

HEALTH AND HUMAN SERVICES DEPARTMENT
Children and Families Administration
Personal Responsibility and Work Opportunity

Reconciliation Act of 1996; implementation:

Child support enforcement program; revision or elimination of obsolete or inconsistent provisions; comments due by 4-12-99; published 2-9-99

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration

Food for human consumption:

Food labeling—

Nutrient content claims; "healthy" definition; partial stay extension; comments due by 4-15-99; published 3-16-99

Human drugs and biological products:

In vivo radiopharmaceuticals used for diagnosis and monitoring—

Evaluation and approval; developing medical imaging drugs and biologics; guidance availability; comments due by 4-14-99; published 2-16-99

HEALTH AND HUMAN SERVICES DEPARTMENT

Health Care Financing Administration

Medicare:

Outpatient diabetes self-management training services; expanded coverage; comments due by 4-12-99; published 2-11-99

HOUSING AND URBAN DEVELOPMENT DEPARTMENT

Fair housing:

Fair Housing Act violations; civil penalties; comments due by 4-12-99; published 2-10-99

INTERIOR DEPARTMENT

Minerals Management Service

Royalty management:

Audit functions; delegation to States; comments due by 4-12-99; published 2-10-99

Federal and Indian leases; oil valuation; comments due by 4-12-99; published 3-12-99

INTERIOR DEPARTMENT

Reclamation Bureau

Farm operation in excess 960 acres, information requirements; and formerly excess land eligibility to receive non-full cost irrigation water; comments due by 4-12-99; published 3-11-99

INTERIOR DEPARTMENT

Surface Mining Reclamation and Enforcement Office

Permanent program and abandoned mine land reclamation plan submissions:

Pennsylvania; comments due by 4-12-99; published 3-12-99

Surface coal mining and reclamation operations:

Ownership and control mining operations; definitions, permit requirements, enforcement actions, etc.; comments due by 4-15-99; published 3-31-99

JUSTICE DEPARTMENT

Drug Enforcement Administration

Records, reports, and exports of listed chemicals:

Chemical mixtures that contain regulated chemicals; comments due by 4-16-99; published 2-12-99

JUSTICE DEPARTMENT

Immigration and Naturalization Service

Immigration:

Aliens—

Employment eligibility verification; acceptable receipts; comments due by 4-12-99; published 2-9-99

JUSTICE DEPARTMENT

Illegal Immigration Reform and Immigrant Responsibility Act and Debt Collection Improvement Act; implementation:

Employer sanctions, unfair immigration-related employment practice cases, and immigration-related document fraud; comments due by 4-13-99; published 2-12-99

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Federal Acquisition Regulation (FAR):

Progress payments and related financing policies; comments due by 4-12-99; published 2-10-99

SECURITIES AND EXCHANGE COMMISSION

Securities and investment companies:

Electronic Data Gathering, Analysis, and Retrieval (EDGAR) system modernization; comments due by 4-15-99; published 3-16-99

Securities:

International disclosure standards; foreign private issuers conformance; comments due by 4-12-99; published 2-9-99

Registered broker dealers and transfer agents and Year 2000 compliance; operational capability requirements; comments due by 4-12-99; published 3-11-99

TRANSPORTATION DEPARTMENT

Coast Guard

Drawbridge operations:

Florida; comments due by 4-12-99; published 2-9-99

Massachusetts; comments due by 4-14-99; published 3-15-99

Ports and waterways safety:

Hudson River, NY; safety zone; comments due by 4-13-99; published 2-12-99

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:

Fairchild; comments due by 4-12-99; published 2-18-99

Fokker; comments due by 4-14-99; published 3-15-99

McDonnell Douglas; comments due by 4-16-99; published 3-2-99

Rolls-Royce Ltd.; comments due by 4-12-99; published 2-10-99

Texton Lycoming; comments due by 4-12-99; published 2-10-99

Class E airspace; comments due by 4-15-99; published 3-8-99

Restricted areas; comments due by 4-12-99; published 2-26-99

TRANSPORTATION DEPARTMENT

National Highway Traffic Safety Administration

Fuel economy standards:

Passenger autombiles; low volume manufacturer exemptions; comments due by 4-12-99; published 3-11-99

Motor vehicle safety standards:

Lamps, reflective devices, and associated equipment—

Headlighting; comments due by 4-11-99; published 2-8-99

TREASURY DEPARTMENT

Alcohol, Tobacco and Firearms Bureau

Alcoholic beverages:

Distilled spirits, wine, and malt beverages; labeling and advertising—

Fill standards; comments due by 4-12-99; published 2-9-99

TREASURY DEPARTMENT

Customs Service

Automated Export System:

Shipper's export declarations and outbound vessel manifest information; electronic transmission; cross reference to Census Bureau regulations; comments due by 4-13-99; published 2-12-99

TREASURY DEPARTMENT

Internal Revenue Service

Income taxes:

Group-term life insurance coverage costs; uniform premium table; comments due by 4-13-99; published 1-13-99

Procedure and administration:

Timely mailing treated as timely filing/electronic postmark; comments due by 4-15-99; published 1-15-99

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–523–6641. This list is also available online at http://www.nara.gov/fedreg.

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at http://www.access.gpo.gov/nara/index.html. Some laws may not yet be available.

H.J. Res. 26/P.L. 106–14

Providing for the reappointment of Barber B. Conable, Jr. as a citizen

regent of the Board of Regents of the Smithsonian Institution. (Apr. 6, 1999; 113 Stat. 24)

H.J. Res. 27/P.L. 106–15

Providing for the reappointment of Dr. Hanna H. Gray as a citizen regent of the Board of Regents of the Smithsonian Institution. (Apr. 6, 1999; 113 Stat. 25)

H.J. Res. 28/P.L. 106–16

Providing for the reappointment of Wesley S. Williams, Jr. as a citizen regent of the Board of Regents of the Smithsonian Institution. (Apr. 6, 1999; 113 Stat. 26)

H.R. 774/P.L. 106–17

Women's Business Center Amendments Act of 1999 (Apr. 6, 1999; 113 Stat. 27)

Last List April 7, 1999.

Public Laws Electronic Notification Service (PENS)

PENS is a free electronic mail notification service of newly enacted public laws. To subscribe, send E-mail to **listproc@lucky.fed.gov** with the text message:

subscribe PUBLAWS-L Your Name.

Note: This service is strictly for E-mail notification of new public laws. The text of laws is not available through this service. **PENS** cannot respond to specific inquiries sent to this address.

Would you like to know...

if any changes have been made to the Code of Federal Regulations or what documents have been published in the Federal Register without reading the Federal Register every day? If so, you may wish to subscribe to the *LSA (List of CFR Sections Affected)*, the *Federal Register Index*, or both.

LSA • List of CFR Sections Affected

The LSA (List of CFR Sections Affected) is designed to lead users of the Code of Federal Regulations to amendatory actions published in the Federal Register. The LSA is issued monthly in cumulative form. Entries indicate the nature of the changes—such as revised, removed, or corrected. $27 per year.

Federal Register Index

The index, covering the contents of the daily Federal Register, is issued monthly in cumulative form. Entries are carried primarily under the names of the issuing agencies. Significant subjects are carried as cross-references. $25 per year.

A finding aid is included in each publication which lists Federal Register page numbers with the date of publication in the Federal Register.

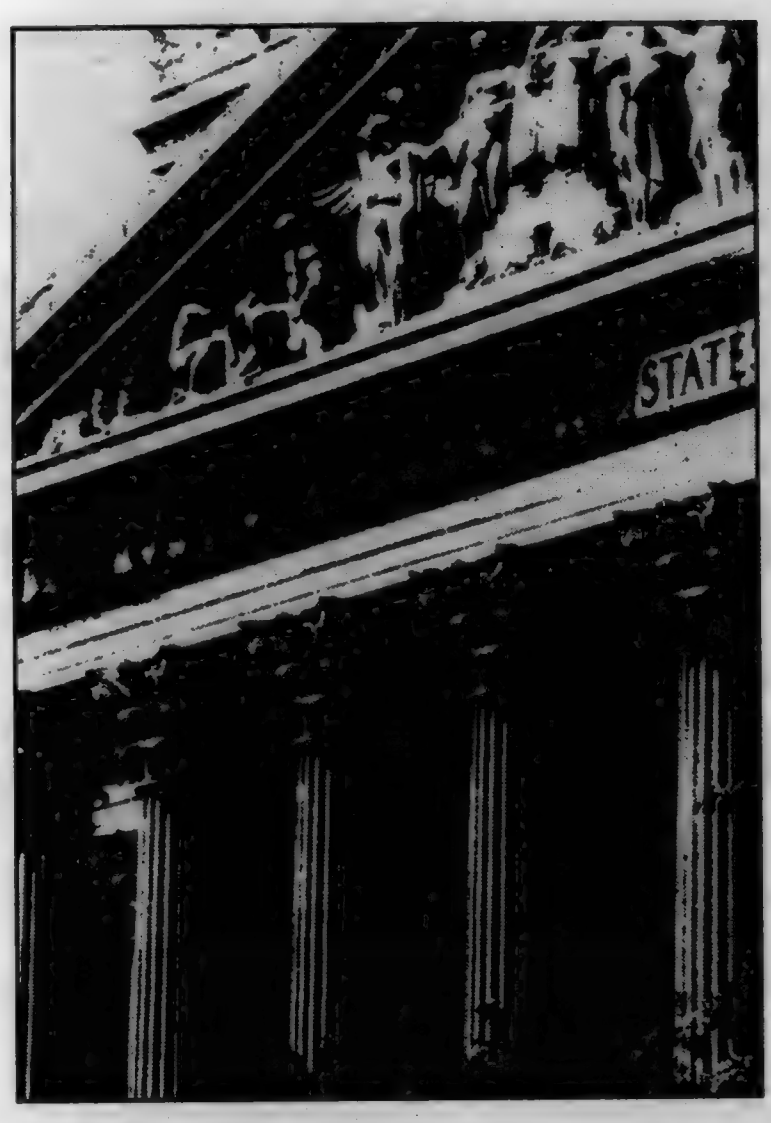

Superintendent of Documents **Subscription** Order Form

Order Processing Code:
*** 5421**

Charge your order. It's Easy!

To fax your orders (202) 512–2250
Phone your orders (202) 512–1800

☐ **YES**, enter the following indicated subscriptions for one year:

_____ **LSA (List of CFR Sections Affected)**, (LCS) for $27 per year.
_____ **Federal Register Index** (FRUS) $25 per year.

The total cost of my order is $ _____. **Price includes regular domestic postage and handling** and is subject to change. International customers please add 25%.

Company or personal name (Please type or print)

Additional address/attention line

Street address

City, State, ZIP code

Daytime phone including area code

Purchase order number (optional)

May we make your name/address available to other mailers? YES ☐ NO ☐

Please Choose Method of Payment:

☐ Check Payable to the Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐.☐☐ – ☐
☐ VISA ☐ MasterCard Account
☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

☐☐☐☐ (Credit card expiration date)

Thank you for your order!

Authorizing Signature 1/97

Mail To: Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250–7954

INFORMATION ABOUT THE SUPERINTENDENT OF DOCUMENTS' SUBSCRIPTION SERVICE

Know when to expect your renewal notice and keep a good thing coming. To keep our subscription prices down, the Government Printing Office mails each subscriber *only one renewal notice*. You can learn when you will get your renewal notice by checking the number that follows month/year code on the top line of your label *as shown in this example:*

A renewal notice will be sent approximately 90 days **before the shown date.**

```
AFR SMITH212J                DEC97 R 1
JOHN SMITH
212 MAIN STREET
FORESTVILLE MD 20704
```

A renewal notice will be sent approximately 90 days **before the shown date.**

```
AFRDO SMITH212J              DEC97 R 1
JOHN SMITH
212 MAIN STREET
FORESTVILLE MD 20704
```

To be sure that your service continues without interruption, please return your renewal notice promptly. If your subscription service is discontinued, simply send your mailing label from any issue to the Superintendent of Documents, Washington, DC 20402–9372 with the proper remittance. Your service will be reinstated.

To change your address: Please SEND YOUR MAILING LABEL, along with your new address to the Superintendent of Documents, Attn: Chief, Mail List Branch, Mail Stop: SSOM, Washington, DC 20402–9373.

To inquire about your subscription service: Please SEND YOUR MAILING LABEL, along with your correspondence, to the Superintendent of Documents, Attn: Chief, Mail List Branch, Mail Stop: SSOM, Washington, DC 20402–9373.

To order a new subscription: Please use the order form provided below.

Superintendent of Documents **Subscription** Order Form

Order Processing Code:
*** 5468**

Charge your order. It's Easy! MasterCard VISA

To fax your orders (202) 512–2250
Phone your orders (202) 512–1800

☐ **YES**, enter my subscription(s) as follows:

_____ subscriptions to **Federal Register (FR);** *including* the daily Federal Register, monthly Index and List of CFR Sections Affected (LSA), at $607 each per year.

_____ subscriptions to **Federal Register**, *daily only* (FRDO), at $555 each per year.

The total cost of my order is $_____. **Price includes regular domestic postage and handling**, and is subject to change. International customers please add 25%.

Company or personal name (Please type or print)

Additional address/attention line

Street address

City, State, ZIP code

Daytime phone including area code

Purchase order number (optional)

May we make your name/address available to other mailers? YES ☐ NO ☐

Please Choose Method of Payment:

☐ Check Payable to the Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐☐☐ – ☐
☐ VISA ☐ MasterCard Account
☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

☐☐☐☐ (Credit card expiration date)

Thank you for your order!

Authorizing signature 11/3

Mail To: Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250–7954

Microfiche Editions Available...

Federal Register

The Federal Register is published daily in 24x microfiche format and mailed to subscribers the following day via first class mail. As part of a microfiche Federal Register subscription, the LSA (List of CFR Sections Affected) and the Cumulative Federal Register Index are mailed monthly.

Code of Federal Regulations

The Code of Federal Regulations, comprising approximately 200 volumes and revised at least once a year on a quarterly basis, is published in 24x microfiche format and the current year's volumes are mailed to subscribers as issued.

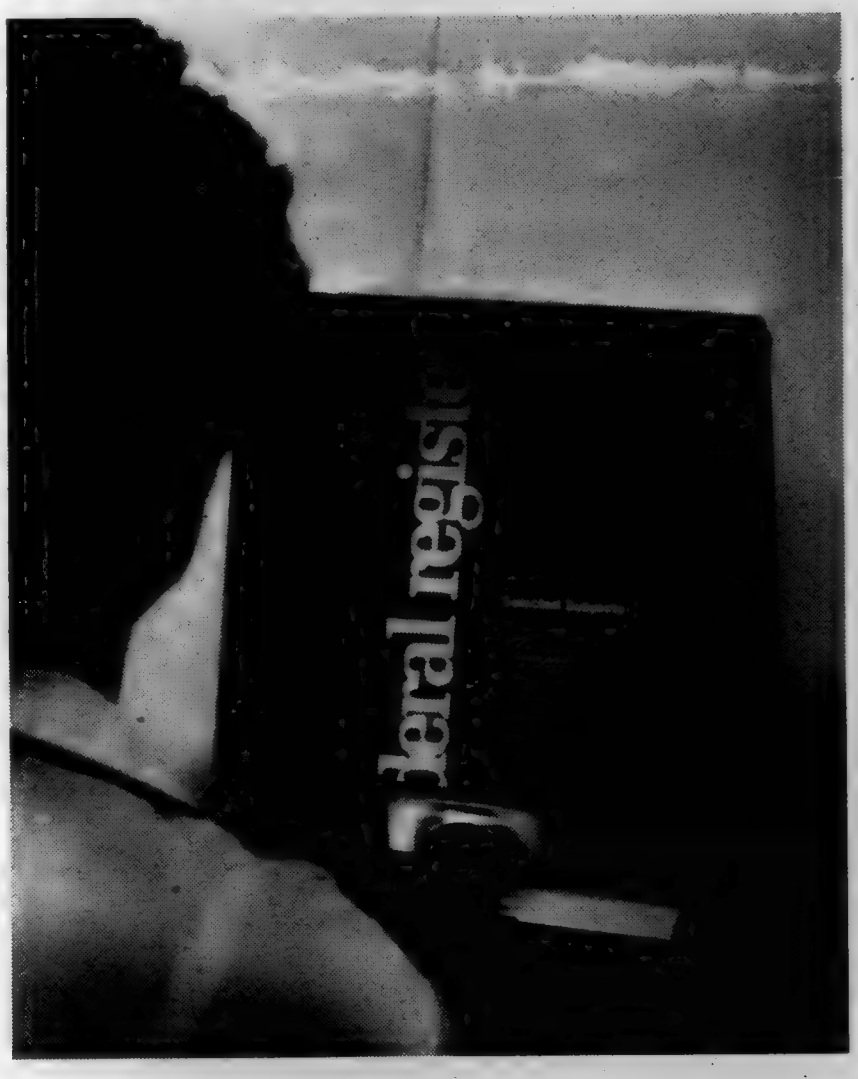

Microfiche Subscription Prices:

Federal Register:

One year: $220.00
Six months: $110.00

Code of Federal Regulations:

Current year (as issued): $247.00

Superintendent of Documents **Subscription** Order Form

Order Processing Code:
*** 5419**

Charge your order. It's Easy! MasterCard VISA

To fax your orders (202) 512–2250
Phone your orders (202) 512–1800

☐ **YES**, enter the following indicated subscription in 24x microfiche format:

_____ **Federal Register** (MFFR) ☐ One year at $220 each ☐ Six months at $110

_____ **Code of Federal Regulations** (CFRM7) ☐ One year at $247 each

The total cost of my order is $_____. **Price includes regular domestic postage and handling** and is subject to change. International customers please add 25%.

Company or personal name (Please type or print)

Additional address/attention line

Street address

City, State, ZIP code

Daytime phone including area code

Purchase order number (optional)

May we make your name/address available to other mailers? YES ☐ NO ☐

Please Choose Method of Payment:

☐ Check Payable to the Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐☐☐–☐
☐ VISA ☐ MasterCard Account
☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐
☐☐☐☐ (Credit card expiration date)

Thank you for your order!

Authorizing signature 11/3

Mail To: Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250–7954

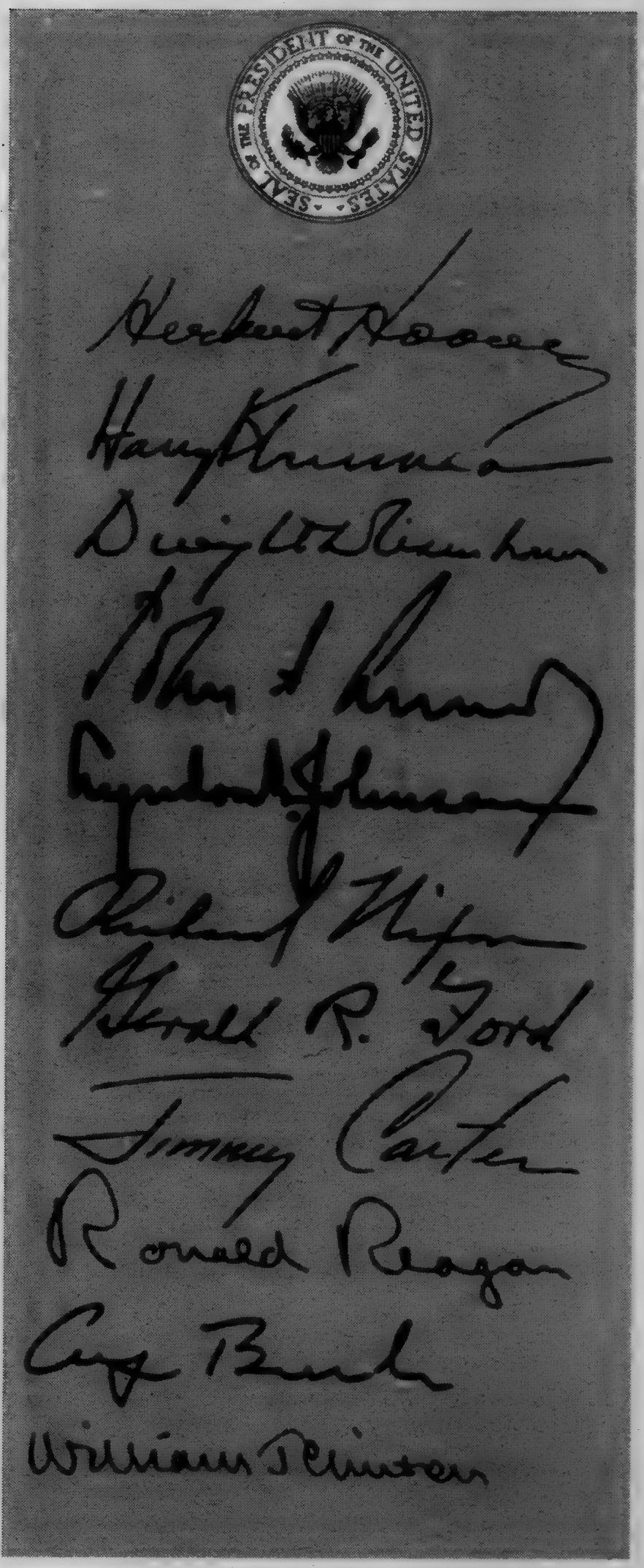

Public Papers of the Presidents of the United States

William J. Clinton

1993 (Book I)	**$51.00**
1993 (Book II)	**$51.00**
1994 (Book I)	**$56.00**
1994 (Book II)	**$52.00**
1995 (Book I)	**$60.00**
1995 (Book II)	**$65.00**
1996 (Book I)	**$66.00**
1996 (Book II)	**$72.00**
1997 (Book I)	**$69.00**

Published by the Office of the Federal Register,
National Archives and Records Administration

Mail order to:
Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250–7954

(Rev. 3/3/98)

VOL
64
ISS
68
AP
9
1999
UMI

Now Available Online

through

GPO Access

A Service of the U.S. Government Printing Office

Federal Register

Updated Daily by 6 a.m. ET

Easy, Convenient, FREE

Free public connections to the online Federal Register are available through the GPO Access service.

To connect over the World Wide Web, go to the Superintendent of Documents' homepage at http://www. access. gpo.gov/su_docs/

To connect using telnet, open swais.access.gpo.gov and login as guest (no password required).

To dial directly, use communications software and modem to call (202) 512–1661; type swais, then login as guest (no password required).

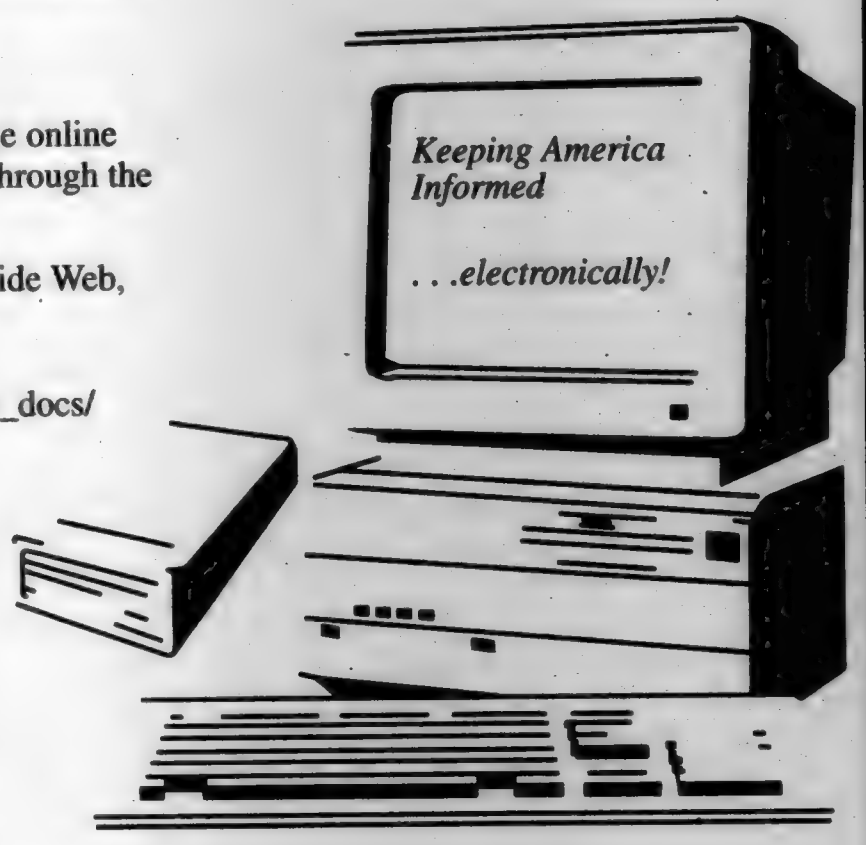

You may also connect using local WAIS client software. For further information, contact the GPO Access User Support Team:

Voice: (202) 512–1530 (7 a.m. to 5 p.m. Eastern time).
Fax: (202) 512–1262 (24 hours a day, 7 days a week).
Internet E-Mail: gpoaccess@gpo.gov

(Rev. 11/3)

VOL
64
ISS
68
AP
9
1999
UMI

Printed on recycled paper

VOL
64
ISS
69
AP
12
1999
UMI

4–12–99
Vol. 64

UMI

THE PAPER AND INK USED IN THE ORIGINAL PUBLICATION MAY AFFECT THE QUALITY OF THE MICROFORM EDITION.

United Sta
Governme
Printing O
SUPERINTENDE
OF DOCUMENT
Washington, DC

OFFICIAL BUSI
Penalty for priva

4–12–99
Vol. 64 No. 69

federal register

Monday
April 12, 1999

United States
Government
Printing Office
SUPERINTENDENT
OF DOCUMENTS
Washington, DC 20402

OFFICIAL BUSINESS
Penalty for private use, $300

**********3-DIGIT 481
A FR UMI 346U DEC 99 R
UMI
PERIODICALS CHECK IN
PO BOX 1346
ANN ARBOR MI 48106

PERIODICALS
Postage and Fees Paid
U.S. Government Printing Office
(ISSN 0097–6326)

VOL
64
ISS
69
AP
12
1999
UMI

4-12-99
Vol. 64
Pages 17

4–12–99
Vol. 64 No. 69
Pages 17501–17940

federal register

Monday
April 12, 1999

Briefings on how to use the Federal Register
For information on briefings in Washington, DC, see announcement on the inside cover of this issue.

The **FEDERAL REGISTER** is published daily, Monday through Friday, except official holidays, by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). The Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 is the exclusive distributor of the official edition.

The **Federal Register** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders, Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress, and other Federal agency documents of public interest.

Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless the issuing agency requests earlier filing. For a list of documents currently on file for public inspection, see http://www.nara.gov/fedreg.

The seal of the National Archives and Records Administration authenticates the Federal Register as the official serial publication established under the Federal Register Act. Under 44 U.S.C. 1507, the contents of the **Federal Register** shall be judicially noticed.

The **Federal Register** is published in paper and on 24x microfiche. It is also available online at no charge as one of the databases on GPO Access, a service of the U.S. Government Printing Office.

The online edition of the **Federal Register** is issued under the authority of the Administrative Committee of the Federal Register as the official legal equivalent of the paper and microfiche editions (44 U.S.C. 4101 and 1 CFR 5.10). It is updated by 6 a.m. each day the **Federal Register** is published and it includes both text and graphics from Volume 59, Number 1 (January 2, 1994) forward.

GPO Access users can choose to retrieve online **Federal Register** documents as TEXT (ASCII text, graphics omitted), PDF (Adobe Portable Document Format, including full text and all graphics), or SUMMARY (abbreviated text) files. Users should carefully check retrieved material to ensure that documents were properly downloaded.

On the World Wide Web, connect to the **Federal Register** at http://www.access.gpo.gov/nara. Those without World Wide Web access can also connect with a local WAIS client, by Telnet to swais.access.gpo.gov, or by dialing (202) 512-1661 with a computer and modem. When using Telnet or modem, type swais, then log in as guest with no password.

For more information about GPO Access, contact the GPO Access User Support Team by E-mail at gpoaccess@gpo.gov; by fax at (202) 512–1262; or call (202) 512–1530 or 1–888–293–6498 (toll free) between 7 a.m. and 5 p.m. Eastern time, Monday–Friday, except Federal holidays.

The annual subscription price for the **Federal Register** paper edition is $555, or $607 for a combined **Federal Register**, Federal Register Index and List of CFR Sections Affected (LSA) subscription; the microfiche edition of the **Federal Register** including the Federal Register Index and LSA is $220. Six month subscriptions are available for one-half the annual rate. The charge for individual copies in paper form is $8.00 for each issue, or $8.00 for each group of pages as actually bound; or $1.50 for each issue in microfiche form. All prices include regular domestic postage and handling. International customers please add 25% for foreign handling. Remit check or money order, made payable to the Superintendent of Documents, or charge to your GPO Deposit Account, VISA, MasterCard or Discover. Mail to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954.

There are no restrictions on the republication of material appearing in the **Federal Register.**

How To Cite This Publication: Use the volume number and the page number. Example: 64 FR 12345.

Printed on recycled paper.

SUBSCRIPTIONS AND COPIES

PUBLIC
Subscriptions:
Paper or fiche 202–512–1800
Assistance with public subscriptions 512–1806
General online information 202–512–1530; 1–888–293–6498
Single copies/back copies:
Paper or fiche 512–1800
Assistance with public single copies 512–1803
FEDERAL AGENCIES
Subscriptions:
Paper or fiche 523–5243
Assistance with Federal agency subscriptions 523–5243

FEDERAL REGISTER WORKSHOP

THE FEDERAL REGISTER: WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: Sponsored by the Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WASHINGTON, DC

WHEN: April 20, 1999 at 9:00 am.
WHERE: Office of the Federal Register
Conference Room
800 North Capitol Street, NW.
Washington, DC
(3 blocks north of Union Station Metro)
RESERVATIONS: 202–523–4538

Contents

Federal Register

Vol. 64, No. 69

Monday, April 12, 1999

Agency for International Development
RULES
Commodities and services financed by USAID; rules and procedures; administrative revisions, 17535

Agriculture Department
See Animal and Plant Health Inspection Service
See Food Safety and Inspection Service
See Forest Service
See Natural Resources Conservation Service
See Rural Business-Cooperative Service
RULES
Import quotas and fees:
Dairy tariff-rate quota licensing, 17501–17505
NOTICES
Privacy Act:
Systems of records, 17604–17607

Air Force Department
RULES
Aircraft:
Leasing U.S. Air Force aircraft and related equipment to nongovernment organizations; CFR part removed, 17545
NOTICES
Environmental statements; notice of intent:
Evolved expendable launch vehicle program, 17635–17636
Privacy Act:
Systems of records, 17636–17639

Alcohol, Tobacco and Firearms Bureau
PROPOSED RULES
Alcoholic beverages:
Distilled spirits, wine, and malt beverages; labeling and advertising—
Fill standards, 17588–17589

Animal and Plant Health Inspection Service
PROPOSED RULES
Interstate transportation of animals and animal products (quarantine):
Texas (Splenetic) fever in cattle; incorporation by reference, 17573–17574

Army Department
See Engineers Corps
NOTICES
Meetings:
Command and General Staff College Advisory Committee, 17639–17640
Privacy Act:
Systems of records, 17641–17642

Census Bureau
NOTICES
Agency information collection activities:
Proposed collection; comment request, 17615–17616

Centers for Disease Control and Prevention
NOTICES
Imports:
Used tire casings from Asia; certification requirement cancellation, 17671–17672

Children and Families Administration
RULES
Personal Responsibility and Work Opportunity Reconciliation Act of 1996; implementation:
Temporary Assistance for Needy Families program, 17719–17931

Coast Guard
NOTICES
Meetings:
Commercial Fishing Industry Vessel Advisory Committee, 17713–17714
Towing Safety Advisory Committee, 17714

Commerce Department
See Census Bureau
See International Trade Administration
See National Oceanic and Atmospheric Administration
See National Telecommunications and Information Administration
See Technology Administration

Commodity Futures Trading Commission
NOTICES
Meetings; Sunshine Act, 17626

Corporation for National and Community Service
NOTICES
Foster grandparent and senior companion programs; income eligibility levels, 17626–17627

Customs Service
RULES
Merchandise; special classes:
Byzantine ecclesiastical and ritual ethnological material from Cyprus; import restrictions, 17529–17531

Defense Department
See Air Force Department
See Army Department
See Defense Logistics Agency
See Engineers Corps
See Navy Department
NOTICES
Privacy Act:
Systems of records, 17627–17635

Defense Logistics Agency
NOTICES
Privacy Act:
Systems of records, 17642–17644

Employment and Training Administration
NOTICES
Environmental statements; availability, etc.:
Jacksonville, FL; Job Corps Center, 17685–17686

Energy Department
See Federal Energy Regulatory Commission
NOTICES
Grants and cooperative agreements; availability, etc.:
Sciences and engineering training for Native American, African American, Hispanic American, Asian-Pacific American, women and disabled students, 17649–17650
Meetings:
Fusion Energy Sciences Advisory Committee, 17650
Secretary of Energy Advisory Board, 17651
Applications, hearings, determinations, etc.:
Phillips Alaska Natural Gas Corp. and Marathon Oil Co., 17649

Engineers Corps
NOTICES
Environmental statements; availability, etc.:
Queen Anne's County, MD; Site 104; open-water placement of dredged material
Comment period extension, 17644
Environmental statements; notice of intent:
Nashua, Hudson, Litchfield, and Merrimack, NH; circumferential highway project, 17644–17645

Environmental Protection Agency
RULES
Air programs:
Pulp, paper, and paperboard industries; effluent limitations guidelines, pretreatment standards, and new source performance standards
Interpretation and technical amendments, 17555–17565
Air quality implementation plans; approval and promulgation; various States; air quality planning purposes; designation of areas:
Georgia, 17551–17555
Air quality implementation plans; approval and promulgation; various States:
Iowa, 17548–17551
Washington, 17545–17547
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
Clopyralid, 17565–17567
PROPOSED RULES
Air quality implementation plans; approval and promulgation; various States; air quality planning purposes; designation of areas:
Georgia, 17593
Air quality implementation plans; approval and promulgation; various States:
California, 17589–17592
Iowa, 17592–17593
Washington, 17592
Superfund program:
National oil and hazardous substances contingency plan—
National priorities list update, 17593–17598
NOTICES
Agency information collection activities:
Proposed collection; comment request, 17660–17662
Submission for OMB review; comment request, 17662–17663
Hazardous waste:
Project XL program; site-specific projects—
Exxon Fairmont Coke Works Superfund Site clean up, 17663–17664
Superfund; response and remedial actions, proposed settlements etc.:
Atlantic Wood Industries, Inc., 17664

Equal Employment Opportunity Commission
NOTICES
Memorandum of understanding:
Department of Labor, 17664–17669

Executive Office of the President
See Trade Representative, Office of United States

Federal Aviation Administration
RULES
Airworthiness directives:
Aerospatiale, 17522–17524
Boeing, 17514–17522, 17524–17526
Dornier, 17512–17514
Class B and C airspace, 17933–17935
Standard instrument approach procedures, 17526–17529
PROPOSED RULES
Class D airspace; correction, 17717

Federal Communications Commission
NOTICES
Meetings:
Public Safety National Coordinating Committee, 17669–17670

Federal Emergency Management Agency
RULES
Flood elevation determinations:
Various States, 17567–17572
PROPOSED RULES
Flood elevation determinations:
Various States, 17598–17603

Federal Energy Regulatory Commission
NOTICES
Electric rate and corporate regulation filings:
Pacific Gas & Electric Co., et al., 17652–17657
Hydroelectric applications, 17657–17659
Meetings:
Pacific Gas & Electric Co.; licensing, 17659
Meetings; Sunshine Act, 17659–17660
Applications, hearings, determinations, etc.:
Algonquin Gas Transmission Co., 17651–17652
SCC-L2, L.L.C., 17652

Federal Maritime Commission
NOTICES
Investigations, hearings, petitions, etc.:
Transpacific Stabilization Agreement, 17670

Federal Reserve System
NOTICES
Banks and bank holding companies:
Formations, acquisitions, and mergers, 17670–17671
Permissible nonbanking activities, 17671

Fish and Wildlife Service
NOTICES
Reports and guidance documents; availability, etc.:
Giant panda research reports, 17675–17676

Food and Drug Administration
NOTICES
Agency information collection activities:
Proposed collection; comment request, 17672–17673

Reports and guidance documents; availability, etc.:
Center for Drug Evaluation and Research and Center for Biologics Evaluation Research; formal dispute resolution: appeals above Division level; correction, 17673
Prescription Drug User Fee Act products; formal meetings with sponsors and applicants; industry guidance; correction, 17673

Food Safety and Inspection Service
NOTICES
Food labeling:
Meat and poultry products; organic certification, 17607–17608

Forest Service
NOTICES
Agency information collection activities:
Proposed collection; comment request, 17608–17611
Environmental statements; notice of intent:
Humboldt-Toiyabe National Forest, NV, 17611

Health and Human Services Department
See Centers for Disease Control and Prevention
See Children and Families Administration
See Food and Drug Administration
See Health Care Financing Administration
See Public Health Service

Health Care Financing Administration
NOTICES
Agency information collection activities:
Proposed collection; comment request, 17673–17674

Immigration and Naturalization Service
NOTICES
Agency information collection activities:
Proposed collection; comment request, 17678–17682

Indian Affairs Bureau
RULES
Indian Gaming Regulatory Act:
Class III (casino) gaming on Indian lands; authorization procedures when States raise Eleventh Amendment defense, 17535–17545
PROPOSED RULES
Land and water:
Land held in trust for benefit of Indian tribes and Indians; title acquisition, 17574–17588

Interior Department
See Fish and Wildlife Service
See Indian Affairs Bureau
See Land Management Bureau
See Minerals Management Service
See National Park Service

International Trade Administration
NOTICES
Agency information collection activities:
Proposed collection; comment request, 17616
Antidumping:
Fresh and chilled Atlantic Salmon from—
Norway, 17616–17617
Committees; establishment, renewal, termination, etc.:
United States-Egypt President's Council, 17617–17618
Countervailing duties:
Pasta from—
Italy, 17618–17624

Justice Department
See Immigration and Naturalization Service
See Justice Programs Office
See Parole Commission
See Victims of Crime Office

Justice Programs Office
NOTICES
Agency information collection activities:
Proposed collection; comment request, 17682–17684

Labor Department
See Employment and Training Administration
See Occupational Safety and Health Administration
NOTICES
Memorandum of understanding:
Equal Employment Opportunity Commission, 17664–17669

Land Management Bureau
PROPOSED RULES
Minerals management:
Oil and gas leasing—
Federal oil and gas resources; protection against drainage by operations on nearby lands resulting in lower royalties from Federal leases, 17598
NOTICES
Closure of public lands:
Idaho, 17676
Realty actions; sales, leases, etc.:
Montana, 17676
Nevada, 17676–17677

Medicare Payment Advisory Commission
NOTICES
Meetings, 17688

Minerals Management Service
NOTICES
Royalty management:
Phosphate production on western public lands; royalty computation; correction, 17717

National Aeronautics and Space Administration
PROPOSED RULES
Acquisition regulations:
Agency protests; mandatory solicitation provision, 17603

National Council on Disability
NOTICES
Meetings:
International Watch advisory committee; conference call, 17688

National Credit Union Administration
NOTICES
Meetings; Sunshine Act, 17688–17689

National Highway Traffic Safety Administration
NOTICES
Agency information collection activities:
Proposed collection; comment request, 17714–17715
Motor vehicle safety standards; exemption petitions, etc.:
Electric Vehicles International LLC, 17715–17716

National Oceanic and Atmospheric Administration
NOTICES
Coastal zone management programs and estuarine sanctuaries:
State Programs—
Evaluation findings availability, 17624
Meetings:
Gulf of Mexico Fishery Management Council, 17624–17625

National Park Service
NOTICES
Meetings:
Death Valley National Park Advisory Commission, 17678
Manzanar National Historic Site Advisory Commission, 17678
National Preservation Technology and Training Board, 17678

National Telecommunications and Information Administration
NOTICES
Satellite Communications and role of intergovernmental satellite organizations, 17625–17626

Natural Resources Conservation Service
NOTICES
Environmental statements; availability, etc.:
Buena Vista Watershed, VA; record of decision, 17612

Navy Department
NOTICES
Privacy Act:
Systems of records, 17645–17649

Nuclear Regulatory Commission
RULES
Independent storage of spent nuclear fuel and high-level radioactive waste; licensing requirements:
30-day hold in loading spent fuel after preoperational testing of independent spent fuel storage installations; etc., 17510–17512
Radiation protection standards:
Uranium recovery facilities; radiological criteria for license termination, 17506–17510
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 17689
Environmental statements; availability, etc.:
Yankee Atomic Electric Co., 17690
Reports; availability, etc.:
Uranium recovery facilities; benchmark dose modeling for radiological criteria for license termination, 17690–17695
Site decommissioning plans; sites:
Fansteel facility; Muskogee, OK, 17695–17696
Applications, hearings, determinations, etc.:
Yankee Atomic Electric Co., 17689–17690

Occupational Safety and Health Administration
NOTICES
State plans; standards approval, etc:
Oregon, 17686–17688

Office of United States Trade Representative
See Trade Representative, Office of United States

Parole Commission
NOTICES
Meetings; Sunshine Act, 17684

Pension Benefit Guaranty Corporation
NOTICES
Alternative dispute resolution; policy statement, 17696

Presidential Documents
PROCLAMATIONS
Special observances:
D.A.R.E. Day, National (Proc. 7180), 17937–17940

Public Health Service
See Centers for Disease Control and Prevention
See Food and Drug Administration
NOTICES
Organization, functions, and authority delegations:
Centers for Disease Control and Prevention, 17674–17675

Rural Business-Cooperative Service
NOTICES
Grants and cooperative agreements; availability, etc.:
Rural cooperative development, 17612–17613
Rural cooperative opportunities and problems research (FY 99), 17613–17615

Securities and Exchange Commission
NOTICES
Intermarket Trading System; plan amendments, 17700–17702
Self-regulatory organizations; proposed rule changes:
Chicago Board Options Exchange, Inc., 17702–17703
Emerging Markets Clearing Corp., 17704–17707
National Association of Securities Dealers, Inc., 17707–17709
Options Clearing Corp., 17709–17711
Stock Clearing Corporation of Philadelphia, 17711–17712
Applications, hearings, determinations, etc.:
Bestfoods, 17696–17697
Eaton Vance Management, et al., 17697–17698
Public utility holding company filings, 17698–17700

State Department
RULES
Arms Export Control Act:
International Traffic in Arms regulations—
Commercial arms transfers; model regulations; implementation, 17531–17535

Technology Administration
NOTICES
Grants and cooperative agreements; availability, etc.:
Experimental Program to Stimulate Competitive Technology; correction, 17717

Trade Representative, Office of United States
NOTICES
World Trade Organization:
Dispute settlement panel establishment requests—
Hot-rolled lead and bismuth carbon steel products from the United Kingdom, 17712–17713

Transportation Department
See Coast Guard
See Federal Aviation Administration
See National Highway Traffic Safety Administration

NOTICES
Aviation proceedings:
Agreements filed; weekly receipts, 17713
Meetings:
Amtrak Reform Council, 17713

Treasury Department
See Alcohol, Tobacco and Firearms Bureau
See Customs Service

Victims of Crime Office
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 17684–17685

Separate Parts In This Issue

Part II
Department of Health and Human Service, Administration for Children and Families, 17719–17931

Part III
Department of Transportation, Federal Aviation Administration, 17933–17935

Part IV
The President, 17937–17940

Reader Aids
Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

3 CFR
Proclamation:
7180.....17939
7 CFR
6.....17501
9 CFR
Proposed Rules:
72.....17573
10 CFR
40.....17506
72.....17510
14 CFR
39 (4 documents).....17512, 17514, 17522, 17524
71.....17934
97 (2 documents).....17526, 17528
Proposed Rules:
71.....17717
19 CFR
12.....17529
22 CFR
121.....17531
123.....17531
124.....17531
126.....17531
201.....17535
25 CFR
291.....17535
Proposed Rules:
151.....17574
27 CFR
Proposed Rules:
4.....17588
5.....17588
7.....17588
32 CFR
863.....17545
40 CFR
52 (3 documents).....17545, 17548, 17551
63.....17555
81.....17551
180.....17565
Proposed Rules:
52 (4 documents).....17589, 17592, 17593
81.....17593
300.....17593
43 CFR
Proposed Rules:
3100.....17598
3106.....17598
3130.....17598
3160.....17598
44 CFR
65 (2 documents).....17567, 17569
67.....17571
Proposed Rules:
67.....17598
45 CFR
260.....17720
261.....17720
262.....17720
263.....17720
264.....17720
265.....17720
48 CFR
Proposed Rules:
1833.....17603

VOL 64 ISS 69 AP 12 1999 UMI

Rule

This sectio
contains r
applicabilit
are keyed
Federal R
50 titles pe

The Code
the Superi
new books
REGISTE

DEPART

Office of

7 CFR Pa

Adjustm
Tariff-Ra
Regulati
Quota Y

AGENCY:

ACTION: F

SUMMARY
new leve
transfers
2 for cert
licenses
licensees
Authorit

EFFECTIV

FOR FURT
Richard
Manager

Rules and Regulations

Federal Register
Vol. 64, No. 69
Monday, April 12, 1999

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 6

Adjustment of Appendices to the Dairy Tariff-Rate Import Quota Licensing Regulation for the 1999 Tariff-Rate Quota Year

AGENCY: Office of the Secretary, USDA.

ACTION: Final rule.

SUMMARY: This document announces the new levels of cumulative annual transfers from Appendix 1 to Appendix 2 for certain dairy product import licenses permanently surrendered by licensees or revoked by the Licensing Authority.

EFFECTIVE DATE: April 12, 1999.

FOR FURTHER INFORMATION CONTACT: Richard P. Warsack, Dairy Import Quota Manager, Import Policies and Programs Division, STOP 1029, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Washington, DC 20250–1029 or telephone at (202) 720–9439.

SUPPLEMENTARY INFORMATION: The Foreign Agricultural Service (FAS), under a delegation of authority from the Secretary of Agriculture, administers the Dairy Tariff-Rate Quota Licensing Regulation codified at §§ 6.20–6.36 that provides for the issuance of licenses to import certain dairy articles under tariff-rate quotas (TRQs) as set forth in the Harmonized Tariff Schedule of the United States. These dairy articles may only be entered into the United States at the low-tier tariff by or for the account of a person or firm to whom such licenses have been issued and only in accordance with the terms and conditions of the regulation.

Licenses are issued on a calendar year basis, and each license authorizes the license holder to import a specified quantity and type of dairy article from a specified country of origin. The Import Programs Group, Import Policies and Programs Division, Foreign Agricultural Service, U.S. Department of Agriculture, issues these licenses and in conjunction with the U.S. Customs Service monitors their use.

The regulation at 7 CFR 6.34(a) states: "Whenever a historical license (Appendix 1) is not issued to an applicant pursuant to the provisions of § 6.23, is permanently surrendered or is revoked by the Licensing Authority, the amount of such license will be transferred to Appendix 2." Section 6.34(b) provides that the cumulative annual transfers will be published in the **Federal Register**. Accordingly, this document sets out revised Appendices for the 1999 tariff-rate quota year.

Richard P. Warsack,
Licensing Authority.

List of subjects in 7 CFR part 6

Agricultural commodities, Cheese, Dairy products, Imports, Reporting and recordkeeping requirements.

Accordingly, 7 CFR part 6 is amended as follows:

1. The authority citation for part 6, Subpart—Dairy Tariff-Rate Import Quota Licensing continues to read as follows:

Authority: Additional U.S. Notes 6, 7, 8, 12, 14, 16–23 and 25 to Chapter 4 and General Note 15 of the Harmonized Tariff Schedule of the United States (19 U.S.C. 1202), Pub. L. 97–258, 96 Stat. 1051, as amended (31 U.S.C. 9701), and secs. 103 and 404, Pub. L. 103–465, 108 Stat. 4819 (19 U.S.C. 3513 and 3601).

2. Appendices 1, 2 and 3 to Subpart—Dairy Tariff-Rate Import Quota Licensing are revised to read as follows:

BILLING CODE 3410–10–P

Appendices 1, 2 and 3 to Subpart--Dairy Tariff-Rate Import Quota Licensing

Articles Subject to: Appendix 1, Historical Licenses; Appendix 2, Nonhistorical Licenses; and Appendix 3, Designated Importer Licenses for Quota Year 1999

Article by Additional U.S. Note Number and Country of Origin NON-CHEESE ARTICLES	Appendix 1	Appendix 2	Appendix 3	
			Tokyo Round	Uruguay Round
Butter (Note 6)	5,697,582	679,418		
EU-15	83,978	12,183		
New Zealand	131,256	19,337		
Other Countries	64,037	9,898		
Any Country	5,418,311	638,000		
Dried Skim Milk (Note 7)	600,076	3,860,924		
Australia	600,076			
Canada		219,565		
Any Country		3,641,359		
Dried Whole Milk (Note 8)	3,175	2,728,125		
New Zealand	3,175			
Any Country		2,728,125		
Dried Buttermilk/Whey (Note 12)	224,981			
Canada	161,161			
New Zealand	63,820			
Butter Substitutes containing over 45 percent of butterfat and/or butter oil (Note 14)		5,560,500		
Any Country		5,560,500		
TOTAL: NON-CHEESE ARTICLES	6,525,814	12,828,967		

Article by Additional U.S. Note Number and Country of Origin CHEESE ARTICLES	Appendix 1	Appendix 2	Appendix 3	
			Tokyo Round	Uruguay Round
Cheese and substitutes for cheese (except cheese not containing cow's milk and soft ripened cow's milk cheese, cheese (except cottage cheese) containing 0.5 percent or less by weight of butterfat and articles within the scope of other import quotas provided for in this subchapter) (Note 16)	24,205,278	7,265,453	9,661,128	6,730,000
Argentina	7,690		92,310	
Australia	535,628	5,542	758,830	1,458,333
Canada	1,031,946	109,054		
Costa Rica				1,550,000
Czech Republic				200,000
EU-15	15,941,269	6,391,163	1,132,568	1,955,000
Of which Portugal is:	127,536	1,773	223,691	
Israel	79,696		593,304	
Iceland	294,000		29,000	
New Zealand	4,534,333	281,139	6,506,528	
Norway	124,982	25,018		
Poland	917,497	18,727		300,000
Slovak Republic				600,000
Switzerland	607,602	63,810	548,588	416,667
Uruguay				250,000
Other Countries	130,635	71,000		
Any Country		300,000		
Blue-mold cheese (except Stilton produced in the United Kingdom) and cheese and substitutes for cheese containing, or processed from, Blue-mold cheese (Note 17)	2,348,967	132,034		366,667
Argentina	2,000			
EU-15	2,346,966	132,034		250,000
Chile				66,667
Czech Republic				50,000
Other Countries	1			

Article by Additional U.S. Note Number and Country of Origin CHEESE ARTICLES	Appendix 1	Appendix 2	Appendix 3	
			Tokyo Round	Uruguay Round
Cheddar Cheese, and cheese and substitutes for cheese containing, or processed from, Cheddar cheese (Note 18)	3,687,483	596,373	519,033	6,358,333
Australia	942,397	42,102	215,501	1,041,667
Chile				183,333
Czech Republic				50,000
EU-15	61,932	201,068		833,333
New Zealand	2,557,280	239,188	303,532	4,250,000
Other Countries	125,874	14,015		
Any Country		100,000		
American-type cheese, including Colby, washed curd and granular cheese (but not including Cheddar) and cheese and substitutes for cheese containing or processed from such American-type cheese (Note 19)	2,878,980	269,906	357,003	
Australia	843,993	37,005	119,002	
EU-15	190,758	146,575		
New Zealand	1,680,364	81,635	238,001	
Other Countries	163,865	4,691		
Edam and Gouda cheese, and cheese and substitutes for cheese containing, or processed from, Edam and Gouda cheese (Note 20)	5,420,056	186,346		1,043,333
Argentina	119,003	5,997		110,000
Czech Republic				100,000
EU-15	5,161,334	127,666		833,333
Norway	114,318	52,682		
Other Countries	25,401	1		
Italian-type cheeses, made from cow's milk, (Romano made from cow's milk, Reggiano, Parmesan, Provolone, Provoletti, Sbrinz, and Goya-not in original loaves) and cheese and substitutes for cheese containing, or processed from, such Italian-type cheeses, whether or not in original loaves (Note 21)	6,578,228	942,319	795,517	4,965,000
Argentina	3,996,111	129,372	367,517	1,890,000
EU-15	2,569,117	812,883		583,333
Poland				1,325,000
Romania				416,667
Uruguay			428,000	750,000
Other Countries	13,000	64		

Article by Additional U.S. Note Number and Country of Origin CHEESE ARTICLES	Appendix 1	Appendix 2	Appendix 3	
			Tokyo Round	Uruguay Round
Swiss or Emmenthaler cheese other than with eye formation, Gruyere-process cheese and cheese and substitutes for cheese containing, or processed from, such cheeses (Note 22)	5,892,174	759,140	823,519	316,667
EU-15	4,464,267	687,727	393,006	316,667
Switzerland	1,353,147	66,340	430,513	
Other Countries	74,760	5,073		
Cheese and substitutes for cheese, containing 0.5 percent or less by weight of butterfat (except articles within the scope of other tariff-rate quotas provided for in this subchapter), and margarine cheese (Note 23)	3,900,044	524,864	1,050,000	
EU-15	3,730,968	519,032		
Israel			50,000	
New Zealand			1,000,000	
Poland	169,075	5,832		
Other Countries	1			
Swiss or Emmenthaler cheese with eye formation (Note 25)	18,395,551	3,901,781	9,557,945	2,433,333
Argentina	9,115		70,885	
Australia	209,698		290,302	
Canada			70,000	
Czech Republic				400,000
Hungary				800,000
EU-15	13,363,935	3,112,894	4,003,172	1,066,666
Iceland	149,999		150,001	
Israel	27,000			
Norway	3,213,658	441,652	3,227,690	
Switzerland	1,336,871	347,234	1,745,895	166,667
Other Countries	85,275	1		
TOTAL: CHEESE ARTICLES	73,306,761	14,578,216	22,764,145	22,213,333

[FR Doc. 99-8761 Filed 4-9-99; 8:45 am]
BILLING CODE 3410-10-C

NUCLEAR REGULATORY COMMISSION

10 CFR Part 40

RIN 3150–AD65

Radiological Criteria for License Termination of Uranium Recovery Facilities

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The U. S. Nuclear Regulatory Commission (NRC) is amending its regulations regarding decommissioning of licensed thorium mills and uranium recovery facilities to provide specific radiological criteria for the decommissioning of lands and structures. This final rule uses the existing soil radium standard to derive a dose criterion (benchmark approach) for the cleanup of byproduct material other than radium in soil and for the cleanup of surface activity on structures to be released for unrestricted use. This final rule is intended to provide a clear and consistent regulatory basis for determining the extent to which lands and structures can be considered to be decommissioned.

EFFECTIVE DATE: This regulation becomes effective on June 11, 1999.

FOR FURTHER INFORMATION CONTACT: Frank Cardile, telephone: (301) 415–6185; e-mail: fpc@nrc.gov; or Elaine Brummett, telephone: (301) 415–6606, e-mail: esb@nrc.gov, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION:

I. Introduction
II. Background
III. Summary of Public Comments and Responses to Comments
IV. Agreement State Compatibility
V. Final Environmental Assessment: Availability
VI. Paperwork Reduction Act Statement
VII. Regulatory Analysis
VIII. Regulatory Flexibility Certification
IX. Backfit Analysis
X. Small Business Regulatory Enforcement Fairness Act
XI. Criminal Penalties

I. Introduction

The NRC is amending its regulations regarding decommissioning of licensed thorium mills and uranium recovery (UR) facilities (conventional uranium mills and uranium extraction processes such as in situ leach (ISL) facilities) to provide radiological criteria for the decommissioning of lands and structures. These criteria apply to the decommissioning of licensed UR facilities subject to the NRC's jurisdiction and will also apply to thorium mills if any become licensed in the future. The criteria apply to decommissioning of UR facilities that operate through their normal lifetime and to those that may be shut down prematurely. The NRC will apply these criteria in determining the adequacy of remediation of residual radionuclides resulting from the possession or use of byproduct material.[1]

The intent of this rulemaking is to provide a clear and consistent regulatory basis for determining the extent to which lands and structures at UR facilities must be remediated before decommissioning of a site can be considered complete and the license terminated. The NRC has previously applied site release criteria for decommissioning on a site-specific basis using existing guidance for surface activity and radionuclides other than radium in soil. The NRC believes that inclusion of criteria in the regulations will result in more efficient and consistent licensing actions related to site remediation activities.

II. Background

On August 22, 1994 (59 FR 43200), the NRC published a proposed rule to amend 10 CFR Part 20 of its regulations "Standards for Protection Against Radiation" to include radiological criteria for license termination as subpart E. The proposed rule applied to uranium mills and other NRC-licensed facilities, but did not apply to mill tailings or to soil radium cleanup at mills because they are regulated under 10 CFR Part 40, Appendix A.

On July 21, 1997 (62 FR 39058), the NRC published a final rule that codified radiological criteria for license termination for NRC licensees, but excluded UR facilities. The NRC excluded UR facilities from the scope of the final cleanup rule to allow further consideration of the issues unique to the decommissioning of these facilities. These unique issues include the existing regulatory framework for UR facilities and the nature of contamination at UR facilities, both of which are discussed below.

Under the existing regulatory framework for UR facilities, the Environmental Protection Agency (EPA) has the authority to set cleanup standards for uranium and thorium mills and, based on that authority, issued regulations in 40 CFR Part 192 that contain some decommissioning criteria for these facilities. NRC's regulations in 10 CFR Part 40, Appendix A, Criterion 6(6), conform to EPA's standards for radium in soil. Appendix A also provides ground-water protection criteria.

Therefore, this rulemaking addresses only the radiological criteria for decommissioning of lands and structures. The rule only applies to those UR facilities that do not have an approved decommissioning plan for buildings and soil when the rule becomes effective. The sites with approved decommissioning plans may request an amendment to their license to adopt the criteria of this rule after the revision to Criterion 6(6) is promulgated.

The applicable cleanup standards for soil radium in 10 CFR Part 40, Appendix A, Criterion 6(6), address the main contaminant at uranium mills in the large areas where windblown contamination from the tailings pile has occurred, and to a lesser extent, at ISLs in holding/settling ponds and process or bleed solution spills. These standards require that the concentration of radium (Ra-226 at UR facilities, Ra-228 at thorium mills) not exceed the background level by more than 5 pCi/g (0.19 Bq/g) in the first 15 cm (6 inches) of soil and 15 pCi/g (0.56 Bq/g) for every subsequent 15 cm (6 inch) layer. However, in other mill and ISL site areas proximate to locations where radium contamination exists (e.g., under/around the mill/process building, in a yellow cake storage area, and under/around an ore crusher), uranium (U-nat) is the radionuclide of concern. At least one mill site must also address soil cleanup of thorium (Th–230, the parent of Ra–226, is usually in approximate equilibrium (same activity concentration) with Ra–226) because thorium is more mobile in the acidic milling solutions and leaches farther into the ground than the radium under raffinate ponds and heap leach pads. Because 10 CFR Part 40, Appendix A, does not have cleanup standards for surface activity or for soil contamination from radionuclides other than radium, NRC guidance documents have been the source of cleanup criteria for residual uranium, thorium, and building surface activity.

An additional difficulty for remediation of UR facilities is that the residual radionuclides to be addressed in the site decommissioning are also present in the surrounding background soil in elevated and widely variable concentrations. Some mill sites even have uranium mine pits and/or piles of

[1] As defined in 10 CFR Part 40, byproduct material is the tailings or wastes produced by the extraction of uranium or thorium from any ore processed primarily for its source material content, including discrete surface wastes resulting from uranium solution extraction processes.

overburden soil containing low-grade ore on or adjacent to the areas to be remediated. This complicates the determination of background values and limits the ability of the licensee to distinguish residual radioactivity from naturally occurring (in-situ) radioactivity.

To allow for consideration of these issues, the NRC also published, on July 21, 1997 (62 FR 39093), a request for additional comments on regulatory options for decommissioning of UR facilities. Included as part of the request was a discussion of an option to codify a dose objective for radionuclides other than radium (uranium and thorium) at UR facilities consistent with the radium cleanup standard. Under this approach, UR facilities would use the dose, excluding radon, from radium at the cleanup standard in existing 10 CFR Part 40, Appendix A, Criterion 6(6), as a benchmark for the cleanup of building surface activity and radionuclides other than radium in soil. Commenters were requested to provide input on options for decommissioning and, specifically, on the benchmark approach.

Use of the benchmark approach would provide for a common dose criterion across a UR site for those areas contaminated with radium and for those areas contaminated with other radionuclides.

The radium dose benchmark approach would require UR licensees subject to the rule to calculate the potential total effective dose equivalent to the average member of the critical group for the site that would result from the radium standard within 1000 years, based upon site-specific parameters. These licensees would be required to provide justification for the models and parameters selected in the dose calculations. The dose from the 5 pCi/g (0.19 Bq/g) radium standard would be applicable for most of the site contamination. Licensees would then remediate the site such that the residual radionuclides (byproduct material) remaining on the site that are distinguishable from background would not result in a dose that is greater than that which would result from the radium soil standard. The radionuclides of concern are uranium and thorium, because it is assumed that the progeny of Ra–226 are at acceptable levels when the radium standard is achieved. Licensees would also be required to demonstrate that doses were "as low as is reasonably achievable" (ALARA). In the unlikely event that a site benchmark dose (before application of ALARA) exceeds 100 mrem/yr (1 mSv/yr), the NRC staff would consult with the Commission before approving such a benchmark dose.

III. Summary of Public Comments and Responses to Comments

Comments received on the 1994 proposed rule for 10 CFR Part 20 subpart E were summarized in NUREG/CR–6353 and in the final rule notice (62 FR 39058, July 21, 1997). The eleven responses (nine commenters) to the July 21, 1997, request for additional comments on radiological criteria for UR facilities are addressed here.

A. Comments on Approach to the Criteria

One commenter indicated that the standards should be technically-based, protective of human health, and based on a substantial fraction of the 100 mrem/yr (1 mSv/yr) public dose limit. The use of dose-objective standards was encouraged. Evaluation of radon and thoron exposure was considered essential. This commenter also pointed out that the benchmark approach would codify a different dose limit for each facility.

The EPA commented that the soil radium standard of 5 pCi/g (0.19 Bq/g) is consistent with the minimally acceptable dose limit of 15 mrem/yr (0.15 mSv/yr) for the residential scenario, and that for other land use scenarios, the cleanup standards are more stringent for Ra-226, Ra-228, Th-232, and Th-230. The EPA also cautioned that a dose limit for uranium cleanup should not exceed 15 mrem/yr (0.15 mSv/yr).

A third commenter stated that the proposed rule is not acceptable because doses resulting from the benchmark approach could exceed 100 mrem/yr; NRC's existing guidance on cleanup of uranium, thorium, and surface activity should be used to set the minimum requirements; the expected dose from the radium standard should be clarified; the radon dose should be included in demonstrating compliance; and the time frame for dose modeling should be 10,000 years. The commenter also indicated that the proposed approach seems to allow a total dose of twice the radium dose; and that if more types of areas are to be included than those indicated in the proposal, then the enlargement of scope would require additional notice and review.

Six other commenters supported the Ra-226 benchmark dose approach for cleanup of other radionuclides such as U-nat, Th-230, and Th-232. These commenters indicated that the existing regulatory framework is appropriate and provides for flexibility to allow optimum tailings disposal on a site-specific basis. One of these commenters also pointed out that uranium mill sites will be turned over to the custodial care of the Department of Energy (DOE) or the State for long-term care, effectively eliminating substantial portions of these sites from the public exposure pathways. In addition, some of the vicinity properties remediated with neighboring abandoned mills (under the DOE's's Uranium Mill Tailings Remedial Action Project) have deposits of contamination (Ra-226, Th-230, or U-nat) above the limits remaining under the supplemental standards provisions of 40 CFR 192.21.

A. Response: The NRC agrees with the need to develop regulations that are protective of public health and safety with regard to decommissioning of UR facilities. NRC has previously addressed considerations related to radioactivity and dose to the public, public health aspects, fraction of the 100 mrem/yr (1 mSv/yr) dose, and the rationale for excluding the radon dose in Sections A.2.2.1, A.2.2.2, and F.6 of the July 21,1997, **Federal Register** notice (62 FR at 39060–64 and 39082) for the final rule for 10 CFR Part 20, subpart E; those discussions remain applicable to this final rulemaking.

As discussed above, the UR facilities have large areas contaminated with radium in soils where the existing radium standard is applied. The NRC believes that it is important to promulgate cleanup standards for other residual radionuclides that are consistent with the radium cleanup standards. Use of such an approach would result in a common dose criterion across an entire UR site, both for those areas contaminated with radium and for those areas contaminated with uranium and thorium. As noted above, the 5 pCi/g radium standard was promulgated by EPA for UR sites. The 5 pCi/g radium value has also been recommended as an exemption level by the Board of Directors of the Conference of Radiation Control Program Directors (October 1998) for the Suggested State Regulations on technologically enhanced naturally occurring radioactive materials.

The NRC staff's preliminary dose modeling, using realistic parameter values and the RESRAD code, indicates that at typical UR facilities, where the background radiation results in doses of over 200 mrem/yr (2.0 mSv/yr), the Ra-226 standard of 5 pCi/g (0.19 Bq/g) could typically result in a potential peak annual dose on the order of 20 to 35 mrem/yr (0.2 to 0.35 mSv/yr) to the average member of the critical group. Although it is possible that some site-

specific parameter values and subsurface contamination could result in a higher benchmark dose than that estimated by the staff for the various scenarios, the staff has high confidence that a site-specific dose using the benchmark approach will typically be a small fraction of 100 mrem/yr (1 mSv/yr), and in all cases will not exceed 100 mrem/yr (1 mSv/yr). The rule also requires licensee's to demonstrate that doses are ALARA which should result in a potential dose of less than 25 mrem/yr (0.2 mSv/yr) from the residual Ra-226 on the remediated site for most sites. Therefore, the potential health risk should be similar to the NRC dose limit established for other facilities in Part 20, subpart E, and approximate the level suggested in the EPA comment.

The radium benchmark dose modeling results are greater than the 5 pCi/g (0.19 Bq/g) radium modeling results reported by the EPA. The main reason for the difference in results is that the EPA modeled a much smaller area of contamination than that used by NRC staff (100 m^2 versus 404,687 m^2). Also, EPA modeled a much smaller fraction of time an individual would spend outdoors (0.02 versus 0.25) and used a less conservative root depth value (0.9 versus 0.25 meters) which generally decreases the calculated potential dose. What is not factored into the dose modeling is the low probability of anyone constructing a house or growing a large garden on the areas of residual contamination at these facilities. The UR facilities are in semi-arid (7–15 inches (18–39 cm) annual precipitation), sparsely populated areas (1–13 persons/$mile^2$ (0.4–5 persons/km^2)) where mining and grazing (3 cows/acre (1 cow/1348 m^2)) are the main land uses.

The existing regulatory framework does not provide criteria for the cleanup of radionuclides other than radium in soil. Also, the existing guidance does not provide dose criteria, so additional criteria are warranted. In areas where there is more than one residual radionuclide, the benchmark dose would apply to the sum of all radionuclides present in that area (i.e., radium, uranium, thorium, etc.). This is indicated in the rule text, and in draft guidance for implementation of the benchmark approach, where it is stated that, for each 100 m^2 area, the unity rule will apply such that the sum of the ratios for each radionuclide of the concentration present to the concentration limit may not exceed "1" (i.e., unity). The rule text and guidance also stipulate that the total effective dose equivalent limit is based on the peak annual dose within a 1000 year period to the average member of the critical group. This time frame is in keeping with the EPA regulatory time frame for these facilities (40 CFR Part 192).

Only portions of uranium mill sites and no portion of ISL facilities are anticipated to be turned over to the custodial care of Government entities. The radium standard applies to all areas of a site except the disposal cell, regardless of future use. The NRC staff plans a similar approach for the criteria for other radionuclides. The restricted use of areas that will be in perpetual custodial care could be considered under the ALARA provision, if cleanup is difficult or expensive in these areas.

B. Radionuclides at UR Sites are Naturally Occurring and of Variable Concentration in Nature

Several commenters indicated that the residual radionuclides at UR sites (uranium, thorium, radium) are naturally occurring in the local environment and that there is significant variability in soil background concentrations of these radionuclides, in particular at UR facilities where uranium pit mines or mineral outcrops exist. This leads to variability in potential dose such that the 25 mrem/yr (0.25 mSv/yr) dose in Part 20 subpart E would be indiscernible in the natural variability of background at a UR site. Any concentration standard must account for the significant variability in background and state that the limits are for "concentrations above background" at the different areas of the site. Also, two commenters indicated that a statistical approach, not just an average value, should be used to determine the background values for a site.

It was also mentioned that measurement of U-238 and Th-230 at levels above background, which result in an annual dose to residents of 25 mrem (0.25 mSv), would not be possible using reasonably available field techniques and that the additional cost of laboratory analyses to demonstrate compliance could be $100,000 per acre.

Several commenters stated that there is no reliable way to distinguish natural (in situ) ore material from processed (licensed) ore. A related concern was that decommissioning standards for UR facilities must not regulate mining activities and the associated ore material that may be present at UR sites.

B. Response: As noted above in Section II, and as described in the rule implementation guidance, the radionuclide dose limit is applied to the level of licensed (byproduct) material distinguishable from background. Site cleanup guidance indicates that background values should be based on areas with characteristics similar to the contaminated area(s) and that distinct areas of the site could have different background values. Statistical approaches, such as those discussed in the Multi-Agency Radiation Survey and Site Investigation Manual (NUREG–1575, 1997), will be considered.

Field measurements for soil U-nat and Th-230 in general are difficult and not just in the concentration equivalent of 25 mrem/yr (0.25 mSv/yr). Laboratory measurements are practical because site-specific dose modeling provides derived concentration limits for U-nat and Th-230 that can exceed current guideline values. For most sites, cleanup of soil U-nat and Th-230 would involve less than an acre (4,047 m^2). Therefore, the costs of sampling and of laboratory analysis for these radionuclides would be a minor part of the decommissioning costs.

Distinguishing in situ ore from processed ore material can be a problem on some sites and is addressed in the guidance. The NRC will regulate only NRC-licensed materials remaining at UR facilities, not in situ ore or mine waste. In determining compliance with the new regulation, the NRC staff will consider 10 CFR 40.42 (j) and (k) that state, in part, that as a final step in decommissioning, the licensee shall demonstrate that the site is suitable for release and that reasonable effort has been made to eliminate residual radioactive contamination.

C. Considerations of Risks, Costs, and Benefits of Cleanup

Several commenters pointed out that the actual risk of excavating and moving dirt (construction and transport accident risks that are actuarial) must be compared against health risks of radiation exposure which have not been demonstrated below 10 rem/yr (0.1 Sv/yr). The risk of cleaning up areas to below regional background levels would likely result in net human health and environmental detriment. Lowering of the current radium standard for uranium and thorium could cause undue economic burden to industry and the Government based on the need for cleanup of large soil areas and would not result in significant (if any) risk reduction.

At ISL facilities, lowering dose criteria could result in large areas retroactively becoming disposal areas requiring substantial and costly cleanup, and could inhibit efficiency of mining if irrigation practices with restoration fluids were effectively prohibited.

C. Response: The NRC considered the risk of the cleanup work in the regulatory analysis. The radium standard is not lowered by the rulemaking; therefore, there is no undue economic burden for licensees. Providing a radium benchmark dose standard for U-nat and Th-230 should not result in significant decrease in the soil concentration allowed to remain, compared to current guidance.

D. Regulatory Guidance

Several commenters offered suggestions for regulatory guidance and requested that the regulatory guidance implementing the standard include determination of background and dose modeling flexibility.

D. Response: The NRC recognizes that there may be difficulties in the determination of background concentrations of radionuclides at some UR facility sites. The NRC staff has prepared guidance (in the form of evaluation criteria) on mill site cleanup in the draft Standard Review Plan (SRP) for reclamation plans. This draft SRP will soon be published for public comment. The NRC staff is preparing another chapter of this SRP to address the implementation of the radium benchmark dose approach and dose modeling flexibility for this unique set of licensees. This chapter will also be published as a draft for public comment before finalization and incorporation into the SRP.

IV. Agreement State Compatibility

This rule will be a matter of compatibility between the NRC and the Agreement States, thereby providing consistency among State and Federal safety requirements. The final rule on radiological criteria for license termination for nuclear facilities issued July 21, 1997 (62 FR 39058), was determined to be a Division 2 matter of compatibility under the previous Commission policy for Agreement State compatibility. As noted for that final rule (at 62 FR 39079), Division 2 rules address basic principles of radiation safety and regulatory functions. Although Agreement States must address these principles in their regulations, the use of language identical to that in NRC rules is not necessary if the underlying principles are the same. Also, the Agreement States may adopt requirements more stringent than NRC rules. Under the current NRC policy, Category C compatibility would be consistent with that indicated in 62 FR 39079, and, hence, the NRC has determined that this rule will be a Category C matter of compatibility.

V. Finding of No Significant Environmental Impact: Availability

The NRC has determined under the National Environmental Policy Act of 1969, as amended, and the regulations in Subpart A of 10 CFR Part 51, that this rule will not be a major Federal action significantly affecting the quality of the human environment and, therefore, an environmental impact statement is not required. The final rule amends the NRC's regulations in 10 CFR Part 40 to include radiological dose criteria for decommissioning of lands and structures at UR facilities. The rule will affect 11 current NRC licensees. The environmental impact of this rule will be insignificant compared to current practice and to the decommissioning process in general because the areas requiring cleanup for residual radionuclides other than radium are small.

The final environmental assessment and finding of no significant impact on which this determination is based are available for inspection in the NRC Public Document Room, 2120 L Street NW (Lower Level), Washington, DC. Single copies of the environmental assessment and the finding of no significant environmental impact are available from Elaine Brummett, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Mailstop T7–J9, Washington, DC 20555–0001, telephone (301) 415–6066.

VI. Paperwork Reduction Act Statement

This final rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.). Existing requirements were approved by the Office of Management and Budget, approval number 3150–0014.

Public Protection Notification

If an information collection does not display a currently valid OMB control number, the NRC may not conduct or sponsor, and a person is not required to respond to, the information collection.

VII. Regulatory Analysis

The NRC has prepared a regulatory analysis on this final regulation. The analysis examines the costs and benefits of the alternatives considered by the NRC. The analysis is available for inspection in the NRC Public Document Room, 2120 L Street NW (Lower Level), Washington, DC. Single copies of the analysis may be obtained from Frank Cardile, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Mailstop T–C24, Washington, DC 20555–0001, telephone (301) 415–6185.

VIII. Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the NRC certifies that this rule, if adopted, does not have a significant economic impact upon a substantial number of small entities. The rule will affect 11 current NRC licensees and any future licensees who will be conducting uranium milling operations. These licensees are not small entities as defined in 10 CFR 2.810.

IX. Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR 50.109, does not apply to this final rule and therefore, a backfit analysis is not required for this final rule because these amendments do not involve reactor operations and do not involve any provisions that would impose backfits as defined in 10 CFR 50.109(a)(1).

X. Small Business Regulatory Enforcement Fairness Act

In accordance with the Small Business Regulatory Enforcement Fairness Act of 1996, the NRC has determined that this action is not a "major" rule and has verified this determination with the Office of Information and Regulatory Affairs, Office of Management and Budget.

XI. Criminal Penalties

For the purposes of Section 223 of the Atomic Energy Act (AEA), the NRC is issuing the final rule under one or more of sections 161b, 161i, or 161o of the AEA. Willful violations of the rule will be subject to criminal enforcement.

List of Subjects in 10 CFR Part 40

Criminal penalties, Government contracts, Hazardous materials transportation, Nuclear materials, Reporting and recordkeeping requirements, Source material, Uranium.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 552 and 553; the NRC is adopting the following amendments to 10 CFR Part 40.

PART 40—DOMESTIC LICENSING OF SOURCE MATERIAL

1. The authority citation for Part 40 continues to read as follows:

Authority: Secs. 62, 63, 64, 65, 81, 161, 182, 183, 186, 68 Stat. 932, 933, 935, 948,

953, 954, 955, as amended, secs. 11e(2), 83, 84, Pub. L. 95–604, 92 Stat. 3033, as amended, 3039, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2014(e)(2), 2092, 2093, 2094, 2095, 2111, 2113, 2114, 2201, 2232, 2233, 2236, 2282); sec. 274, Pub. L. 86–373, 73 Stat. 688 (42 U.S.C. 2021); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); sec. 275, 92 Stat. 3021, as amended by Pub. L. 97–415, 96 Stat. 2067 (42 U.S.C. 2022); 193, 104 Stat. 2835 as amended by Pub. L. 104–134, 110 Stat. 1321, 1321–349 (42 U.S.C. 2243).

Section 40.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 40.31(g) also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Section 40.46 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 40.71 also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

2. In 10 CFR Part 40, Appendix A, Criterion 6(6), a second paragraph is added to read as follows:

Appendix A to Part 40

* * * * *

I. Technical Criteria

* * * * *

Criterior 6 * * *

(6) * * *

Byproduct material containing concentrations of radionuclides other than radium in soil, and surface activity on remaining structures, must not result in a total effective dose equivalent (TEDE) exceeding the dose from cleanup of radium contaminated soil to the above standard (benchmark dose), and must be at levels which are as low as is reasonably achievable. If more than one residual radionuclide is present in the same 100-square-meter area, the sum of the ratios for each radionuclide of concentration present to the concentration limit will not exceed "1" (unity). A calculation of the potential peak annual TEDE within 1000 years to the average member of the critical group that would result from applying the radium standard (not including radon) on the site must be submitted for approval. The use of decommissioning plans with benchmark doses which exceed 100 mrem/yr, before application of ALARA, requires the approval of the Commission after consideration of the recommendation of the NRC staff. This requirement for dose criteria does not apply to sites that have decommissioning plans for soil and structures approved before June 11, 1999.

* * * * *

Dated at Rockville, Maryland, this 6th day of April 1999.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

[FR Doc. 99–9035 Filed 4–9–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 72

RIN 3150–AG02

Elimination of Reporting Requirement and 30-Day Hold in Loading Spent Fuel After Preoperational Testing of Independent Spent Fuel Storage or Monitored Retrievable Storage Installations

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations to eliminate the requirement that a report of the preoperational testing of an independent spent fuel storage installation or monitored retrievable storage installation be submitted to the NRC at least 30 days before the receipt of spent fuel or high-level radioactive waste. Experience has shown that the NRC staff does not need the report or the holding period because the NRC staff is on site and evaluates preoperational testing as it occurs. This amendment will eliminate an unnecessary regulatory impact on licensees.

EFFECTIVE DATE: May 12, 1999.

FOR FURTHER INFORMATION CONTACT: Gordon Gundersen, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–6195, e-mail geg1@nrc.gov.

SUPPLEMENTARY INFORMATION:

Background

On September 14, 1998 (63 FR 49046), the NRC published a proposed rule in the **Federal Register** that would amend NRC's regulations in 10 CFR part 72 to eliminate a preoperational testing reporting requirement and a 30-day hold in loading spent fuel. Part 72 requires that the conditions for a site-specific license (10 CFR 72.24(g)) and the conditions for a Certificate of Compliance (CoC) (10 CFR 72.236(l)) contain requirements for the performance of preoperational testing by the site-specific licensee or the general licensee, respectively. The licensee is required to complete the preoperational testing program described in the applicable Safety Analysis Report (SAR) before spent fuel is loaded into an independent spent fuel storage installation (ISFSI) or before spent fuel or high-level radioactive waste (HLW) is loaded into a monitored retrievable storage installation (MRS). Information on the preoperational test program, including the specific tests and their acceptance criteria, are contained in the SAR submitted by the site-specific licensee or by the certificate holder for the design of the spent fuel storage cask to be used by the general licensee.

Section 72.82(e) requires licensees to submit to the NRC a report of the preoperational test acceptance criteria and test results at least 30 days before the receipt of spent fuel or HLW for loading into an ISFSI or MRS. However, the licensee is not required to submit test procedures, only a summary report of the test results. A copy of this report is subsequently placed in the NRC Public Document Room (PDR). The purpose of the 30-day period is to establish a sufficient hold point to ensure that the NRC has sufficient time to inspect a new licensee's preparations and, if necessary, exercise its regulatory authority before spent fuel is received at an ISFSI or spent fuel and HLW at an MRS. The licensee is not required to obtain NRC approval of the report before commencing loading operations.

Comments on the Proposed Rule

The Commission received four letters commenting on the proposed rule. Copies of the letters are available for public inspection and copying for a fee at the Commission's Public Document Room, located at 2120 L Street, NW. (Lower Level), Washington, DC. One letter was from NEI, one letter from a CoC holder, and two letters were from utilities holding 10 CFR part 50 reactor licenses. All of the letters supported the proposed rule. One utility quantified the savings of eliminating the 30-day hold as more than $300,000.

Discussion

The requirement for a preoperational test report and 30-day hold period was added to the part 72 regulations governing licensing requirements for ISFSIs and an MRS at the time they became effective on November 28, 1980 (45 FR 74693), and before the NRC staff had any practical experience in licensing such facilities. However, in the intervening period, the Commission's practice has been for the NRC staff to maintain an extensive oversight presence during the preoperational testing phase of ISFSIs, reviewing the acceptance criteria, preoperational test, and test results as

they occur. Thus, NRC staff has had immediate access to the licensee's procedures and test results, and has not needed either a preoperational test report or a 30-day hold period in order to complete its inspection activities and determine whether any further regulatory action is needed before the licensee begins to load spent fuel or HLW.

The NRC inspection program now in place (i.e., Inspection Manual Chapter 2690 and Inspection Procedures 60854 and 60855) ensures that the NRC staff will review the licensee's normal, abnormal, and emergency operating procedures, (including loading and unloading procedures), as well as observe implementation of those procedures during preoperational testing. Consequently, NRC staff is in a position to ensure that the licensee has resolved any problems before loading spent fuel into the ISFSI. NRC staff documents the results of the inspection of the preoperational test program in a written inspection report, which is subsequently placed in the PDR. This report contains conclusions on whether the licensee has adequately completed the preoperational test program, an assessment of the licensee's performance in completing the preoperational test program, and an assessment of the licensee's readiness to begin loading spent fuel or HLW.

Notwithstanding that the current regulation ensures that the NRC will be notified by the licensee before it begins loading spent fuel, other regulations and processes provide adequate assurance that the NRC will be aware of a licensee's anticipated loading activities. For ISFSIs at operating reactor sites, the Commission expects that on-site NRC resident inspector staff would be aware of any potential fuel loading activities. Additionally, general licensees are required by 10 CFR 72.212(b)(1)(i) to notify the NRC at least 90 days before spent fuel loading begins. For site-specific licensees, the fact that a license has been issued serves as adequate notice to the NRC that spent fuel loading activities are planned. Further, site-specific licensees are also required by 10 CFR 72.70(a) to submit a final safety analysis report to the Commission at least 90 days before spent fuel loading begins.

The public will retain the ability to review a description of the preoperational tests and their acceptance criteria because this information is contained in the SAR, which is available for review in the NRC PDR. Relevant information on the preoperational test program and the results of the preoperational test program both remain available for public review in the SAR and the inspection report, respectively.

The NRC staff's experience has also been that the 30-day hold established by 10 CFR 72.82(e) creates a potentially significant financial burden for licensees because, during the 30-day period, the licensee can perform no loading activities even though the licensee is ready to load spent fuel or HLW. This has resulted in five requests for exemptions in the last 3 years (1995–1998) by licensees and the need for the NRC staff to expend time processing these requests. The elimination of this regulation will preclude the need for exemption requests, enable the licensee to use the crew assembled for fuel transfer while the lessons of preoperational testing are fresh in their minds, and contribute to the efficiency of operations by avoiding unnecessary idle time. The NRC on-site inspection staff observing the spent fuel loading will similarly benefit.

Therefore, the Commission is removing 10 CFR 72.82(e) from NRC's regulations because neither the report nor the 30-day hold period are needed for regulatory purposes and that taking this action will relieve licensees from an unnecessary regulatory burden. Although elimination of this reporting requirement will reduce the information which has been available to the public, the alternative sources of information available to the public on preoperational test activities are sufficient to allow for public review.

Environmental Impact: Categorical Exclusion

The NRC has determined that this final rule is the type of action described as a categorical exclusion in 10 CFR 51.22(c)(3)(iii). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this final rule.

Paperwork Reduction Act Statement

This final rule decreases the burden on licensees by eliminating 10 CFR 72.82(e) and the associated reporting burden. The burden reduction for this information collection is estimated to average 40 hours per request. Because the burden for this information collection is insignificant, Office of Management and Budget (OMB) clearance is not required. Existing requirements were approved by the Office of Management and Budget, approval number 3150-0132.

Public Protection Notification

If a means used to impose an information collection does not display a currently valid OMB control number, the NRC may not conduct or sponsor, and a person is not required to respond to, the information collection.

Regulatory Analysis

The amendment will eliminate the requirement that 10 CFR part 72 licensees submit a report of the preoperational test acceptance criteria and test results at least 30 days before the receipt of spent fuel or HLW on the grounds that NRC's inspection program ensures that the NRC staff will be present for observance of preoperational testing to ensure that a licensee is prepared to safely load spent fuel or HLW. Thus, the report and the 30-day hold period are not needed for NRC's regulatory activities.

The benefit of the rule is that elimination of a report and 30-day hold period not needed by the NRC will reduce an unnecessary regulatory impact on licensees resulting from the 30-day waiting period following submittal of a report of the preoperational test criteria and test results to the NRC. During this period, the licensees can perform no loading activities even though the licensee is ready to load spent fuel or HLW. This imposes a potentially significant financial burden on licensees. The rule will also relieve both licensees and the NRC staff from the need to process exemption requests. The Commission has received and approved several requests for exemption from 10 CFR 72.82(e) and envisions that most future Part 72 licensees will also apply for exemption from this regulation.

An impact of the final rule will be that a report of the preoperational test criteria and test results will no longer be available. However, information on the preoperational test criteria is contained in the SAR, which is available for review in the NRC PDR. In addition, NRC inspection reports will contain NRC findings on the preoperational testing and assessments on the licensee's readiness to commence loading spent fuel. These inspection reports are available in the NRC Public Document Room system. The NRC also considered the alternative of shortening rather than eliminating the hold period but rejected this alternative because it would have retained a requirement not needed for regulatory purposes and thus would have imposed an unnecessary regulatory burden on licensees.

Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980 as amended 5 U.S.C. 605(b), the Commission certifies that this final rule will not have a

significant economic impact on a substantial number of small entities. This final rule would affect only the operators of ISFSIs. These companies do not fall within the scope of the definition of "small entities" set forth in the Regulatory Flexibility Act or the Small Business Size Standards set out in regulations issued by the Small Business Administration at 13 CFR part 121.

Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR 72.62, does not apply to this rule, because this amendment does not involve any provisions that would impose backfits as defined in 10 CFR 72.62(a). Therefore, a backfit analysis is not required for this final rule.

Small Business Regulatory Enforcement Fairness Act

In accordance with the Small Business Regulatory Enforcement Fairness Act of 1996, the NRC has determined that this action is not a "major rule" and has verified this determination with the Office of Information and Regulatory Affairs, Office of Management and Budget.

Compatibility of Agreement State Regulations

Under the "Policy Statement on Adequacy and Compatibility of Agreement State Programs," approved by the Commission on June 30, 1997, and published in the **Federal Register** on September 3, 1997 (62 FR 46517), this rule is classified as compatibility Category "NRC." Compatibility is not required for Category "NRC" – regulations. The NRC program elements in this category are those that relate directly to areas of regulation reserved to the NRC by the AEA, or the provisions of Title 10 of the Code of Federal Regulations. Although an Agreement State may not adopt program elements reserved to NRC, it may wish to inform its licensees of certain requirements, by a mechanism that is consistent with the particular State's administrative procedure laws but does not confer regulatory authority on the State.

List of Subjects in 10 CFR Part 72

Criminal penalties, Manpower training programs, Nuclear materials, Occupational safety and health, Reporting and recordkeeping requirements, Security measures, Spent fuel.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 553; the NRC is adopting the following amendment to 10 CFR part 72.

PART 72—LICENSING REQUIREMENTS FOR THE INDEPENDENT STORAGE OF SPENT NUCLEAR FUEL AND HIGH-LEVEL RADIOACTIVE WASTE

1. The authority citation for part 72 continues to read as follows:

Authority: Secs. 51, 53, 57, 62, 63, 65, 69, 81, 161, 182, 183, 184, 186, 187, 189, 68 Stat. 929, 930, 932, 933, 934, 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2201, 2232, 2233, 2234, 2236, 2237, 2238, 2282); secs. 274, Pub. L. 86–373, 73 Stat. 688, as amended (42 U.S.C. 2021); sec. 201, as amended, 202, 206, 88 Stat. 1242, as amended 1244, 1246 (42 U.S.C. 5841, 5842, 5846); Pub. L. 95–601, sec. 10, 92 Stat. 2951 as amended by Pub. L. 102–486, sec. 7902, 106 Stat. 3123 (42 U.S.C. 5851); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332); secs. 131, 132, 133, 135, 137, 141, Pub. L. 97–425, 96 Stat. 2229, 2230, 2232, 2241, sec. 148, Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10151, 10152, 10153, 10155, 10157, 10161, 10168).

Section 72.44(g) also issued under sec. 142(b) and 148 (c), (d), Pub. L. 100–203, 101 Stat. 1330–232, 1330–236 (42 U.S.C. 10162(b), 10168 (c), (d)). Section 72.46 also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97–425, 96 Stat. 2230 (42 U.S.C. 10154). Section 72.96(d) also issued under sec. 145(g), Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10165(g)). Subpart J also issued under secs. 2(2), 2(15), 2(19), 117(a), 141(h), Pub. L. 97–425, 96 Stat. 2202, 2203, 2204, 2222, 2224 (42 U.S.C. 10101, 10137(a), 10161(h)). Subparts K and L are also issued under sec. 133, 98 Stat. 2230 (42 U.S.C. 10153) and sec. 218(a), Stat. 2252 (42 U.S.C. 10198).

§ 72.82 [Amended]

2. Section 72.82 is amended by removing paragraph (e).

Dated at Rockville, Maryland, this 23rd day of March 1999.

For the Nuclear Regulatory Commission.

William D. Travers,

Executive Director for Operations.

[FR Doc. 99–9041 Filed 4–9–99; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–157–AD; Amendment 39–11114; AD 99–08–06]

RIN 2120–AA64

Airworthiness Directives; Dornier Model 328–100 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all Dornier Model 328–100 series airplanes, that requires repetitive lubrication of the engine control push-pull cables, and installation of heating tubes on the control cables in the cockpit area and in the left-hand and right-hand engine balconies, which terminates the repetitive lubrication requirement. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to prevent ice from building up on the engine control push-pull cables, which could result in friction or jamming of the engine controls, and consequent reduced controllability of the airplane.

DATES: Effective May 17, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the **Federal Register** as of May 17, 1999.

ADDRESSES: The service information referenced in this AD may be obtained from FAIRCHILD DORNIER, DORNIER Luftfahrt GmbH, P.O. Box 1103, D–82230 Wessling, Germany. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all Dornier Model 328–100 series airplanes was published

as a supplemental notice of proposed rulemaking (NPRM) in the **Federal Register** on January 28, 1999 (64 FR 4370). That action proposed to require repetitive lubrication of the engine control push-pull cables. That action also proposed to require the installation of heating tubes on the control cables in the cockpit area and in the left-hand and right-hand engine balconies, which would terminate the repetitive lubrication requirement.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

The FAA estimates that 50 airplanes of U.S. registry will be affected by this AD, that it will take approximately 4 work hours per airplane to accomplish the required lubrication, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact on U.S. operators is estimated to be $12,000, or $240 per airplane.

The FAA estimates that the installation of heating tubes on the control cables required in this AD action will take approximately 50 work hours per airplane to accomplish, and that the average labor rate is $60 per work hour. Required parts will be supplied by the manufacturer at no cost to the operators. Based on these figures, the cost impact on U.S. operators is estimated to be $150,000, or $3,000 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

99–08–08 Dornier Luftfahrt GMBH: Amendment 39–11114. Docket 98–NM–157–AD.

Applicability: All Model 328–100 series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent ice from building up on the engine control push-pull cables, which could result in friction or jamming of the engine controls, and consequent reduced controllability of the airplane, accomplish the following:

(a) Within 2 months after the effective date of this AD, lubricate the engine control push-pull cables in accordance with Dornier Alert Service Bulletins ASB–328–76–022, dated December 22, 1997, and ASB–328–76–015, Revision 3, dated January 9, 1998. Repeat the lubrication thereafter at intervals not to exceed 300 flight hours until the actions required by paragraph (b) of this AD are accomplished.

(b) Within 6 months after the effective date of this AD, accomplish the actions specified in paragraphs (b)(1) and (b)(2) of this AD. Accomplishment of these actions constitutes terminating action for the repetitive lubrication requirement of paragraph (a) of this AD.

(1) Install heating tubes on the control cables in the cockpit area in accordance with Dornier Service Bulletin SB–328–76–254, dated June 30, 1998, or Revision 1, dated August 6, 1998.

(2) Install heating tubes on the control cables in the left and right engine balconies in accordance with Dornier Service Bulletin SB–328–76–267, Revision 1, dated September 25, 1998, or Revision 2, dated October 8, 1998.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(e) The actions shall be done in accordance with Dornier Alert Service Bulletin ASB–328–76–022, dated December 22, 1997; Dornier Alert Service Bulletin ASB–328–76–015, Revision 3, dated January 9, 1998; Dornier Service Bulletin SB–328–76–254, dated June 30, 1998; Dornier Service Bulletin SB–328–76–254, Revision 1, dated August 6, 1998; Dornier Service Bulletin SB–328–76–267, Revision 1, dated September 25, 1998; and Dornier Service Bulletin SB–328–76–267, Revision 2, dated October 8, 1998, as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from FAIRCHILD DORNIER, DORNIER Luftfahrt GmbH, P.O. Box 1103, D–82230 Wessling, Germany. Copies may be inspected at the FAA, Transport Airplane Directorate,

1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in German airworthiness directives 1998–105, dated January 30, 1998, and 1997–148/6, dated December 3, 1998.

(f) This amendment becomes effective on May 17, 1999.

Issued in Renton, Washington, on March 31, 1999.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–8536 Filed 4–9–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–325–AD; Amendment 39–11116; AD 99–08–10]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747–100, –200, –300, –SP, and –400F Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to all Boeing Model 747–100, –200, –300, –SP, and –400F series airplanes.

Among other things, this amendment requires repetitive leak tests of the lavatory drain system and repair, if necessary; installation of a cap or flush/fill line ball valve on the flush/fill line; periodic seal changes; and replacement of any "donut" type valves installed in the waste drain system. This amendment is prompted by continuing reports of damage to airframes and damage to property on the ground, caused by "blue ice" that forms from leaking lavatory drain systems on transport category airplanes and subsequently dislodges from the airplane fuselage. The actions specified by this AD are intended to prevent damage to airframes and property on the ground that is associated with the problems of "blue ice" that forms from leaking lavatory drain systems on transport category airplanes and subsequently dislodges from the airplane fuselage.

DATES: Effective May 17, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 17, 1999.

ADDRESSES: This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Don Eiford, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington; telephone (425) 227–2788; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all Boeing Model 747–100, –200, –300, –SP, and –400F series airplanes was published in the **Federal Register** on June 15, 1998 (63 FR 32624). That action proposed to require repetitive leak tests of the lavatory drain system and repair, if necessary; installation of a cap or flush/fill line ball valve on the flush/fill line; periodic seal changes; and replacement of any "donut" type valves installed in the waste drain system.

The actions specified in that proposal are intended to prevent damage to airframes and property on the ground that is associated with the problems of "blue ice" that forms from leaking lavatory drain systems on transport category airplanes and subsequently dislodges from the airplane fuselage.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

1. Support for the Proposal

Two commenters support the proposed rule.

2. Request To Revise the Unsafe Condition

One commenter, the airplane manufacturer, requests that the proposed rule be revised to remove reference to "engine damage" in the description of the unsafe condition. The airplane manufacturer bases this request on the fact that it is not aware of any in-service reports of engine damage due to "blue ice" on Model 747 series airplanes.

The FAA concurs. Since the FAA has not received any reports of engine damage due to "blue ice" on Model 747 series airplanes, reference to "engine damage" in the description of the unsafe condition has been removed from the AD.

3. Request To Extend Leak Test Intervals for Model 747 Series Airplanes

One commenter requests that the leak test intervals be specified in flight cycles rather than flight hours as proposed in the Notice of Proposed Rulemaking (NPRM). The commenter also requests that, if the intervals are retained as flight hours, all of the intervals should be extended. The commenter points out that a typical "C" check on Model 747 series airplanes is between 5,000 and 6,000 flight hours, as compared to typical "C" checks of Models 727 and 737 series airplanes, which are generally between 3,000 and 4,000 flight hours. Since most of the wear and damage is caused by opening and closing the valve, which happens during a flight cycle, and is not directly related to the number of flight hours, flight cycles are more critical than flight hours with regard to the potential for leakage. Because Model 747 series airplanes have a low number of flight cycles per hour, the fleet should be allowed a greater leak test interval than the interval specified for Models 727 and 737 series airplanes.

The FAA does not concur that the leak test intervals should be specified in flight cycles rather than flight hours. The commenter did not provide any specific data that correlated the number of flight hours to the number of flight cycles for the Boeing Model 747 fleet and the Boeing 727 and 737 fleets. Additionally, existing "blue ice" Airworthiness Directives for other airplanes presently specify the leak test intervals in terms of flight hours. To change the leak test intervals from flight hours to flight cycles could result in an operator having some airplanes operating under flight hours intervals and other airplanes operating under flight cycle intervals, which may be burdensome for the operator.

However, the FAA does concur that certain leak test intervals can be extended somewhat for Model 747 series airplanes for the reasons the commenter suggested. Specific extensions of leak tests for certain valves are discussed later in this disposition of comments.

4. Requests To Extend PneuDraulics Leak Test Intervals

One commenter requests that the leak test interval for the PneuDraulics service panel drain valve be revised from 2,000 to 4,000 flight hours. The commenter advises that the PneuDraulics service panel drain valve specified in paragraph

(a) of the proposal has had in excess of 800,000 flight hours of service history documented by operators in FAA-approved maintenance programs with only two leakage events reported.

The FAA concurs that, for the reasons provided by the commenter, extension of the leak test interval from 2,000 flight hours to 4,000 flight hours for those PneuDraulics valves is justified. Since that service history was obtained when the operators were using FAA-approved maintenance programs that required reporting of any leakage, the FAA has high confidence that this data is representative of the actual leakage rates. Paragraph (a)(3) of the final rule has been revised to reflect the 4,000 flight hour leak test interval.

5. Request To Extend Leak Test Interval for Certain Shaw Aero Valves

The commenter requests that the leak test interval for certain Shaw Aero service panel drain valves be extended from 1,000 flight hours to 2,000 flight hours. The commenter states that data submitted previously to the FAA indicates that there are nearly 8,000 Shaw Aero service panel drain valves on airplanes that have accumulated in excess of 50 million flight hours over the past 10 years. The commenter points out that, on all of the airplanes on which Shaw Aero service panel drain valves were installed during production, there were less than ten reports of leakage during that time that could have been attributed to a Shaw Aero Devices service panel drain valve.

In addition, the commenter states that Boeing has presented data to the FAA showing that the Shaw Aero service panel drain valve has been the baseline unit installed on Model 737 series airplanes since January 1991, and on Model 757 series airplanes since July 1992. All Boeing service data available through February 1996 indicates that all versions of the Shaw service panel drain valves can be attributed to less than 0.60 percent of the reports of leakage on Model 737 and 757 series airplanes.

The commenter states that the data presented shows ample evidence to support a leak test interval equal to the PneuDraulics valve, which was granted a leak test interval extension based on only 412 valves installed on aircraft flown over a much shorter interval than the 10 year period cited for the Shaw valves. Additionally, the commenter points out that industry experience clearly indicates that the main problems occur after two years of residue build-up on the sealing surfaces of any valve, irrespective of the design features. The commenter points out that meaningful data must be gathered over a period of at least two years.

Additionally, the commenter advises that several airlines have collected, or are in the process of collecting, data in order to submit a request for extended leak test intervals for their fleets. In fact, the commenter states that it has attached a copy of one such draft request that indicates that there have been only two cases reported of any evidence of leakage on a fleet of 163 Boeing Model 727 series airplanes that have accumulated 325,678 flight hours on Shaw Aero Devices 332 series valves.

The FAA concurs with the commenter's request to extend certain interval times based on the general extension of intervals given to Model 747 series airplanes explained previously. Those intervals have been extended for certain Shaw Aero service panel drain valves from 1,000 to 1,500 flight hours. The leak test interval for certain other Shaw Aero service panel drain valves has been increased from 600 to 800 flight hours. The FAA has revised certain sub-paragraphs of paragraph (a) of the final rule to reflect those extensions of the leak test intervals.

This commenter also states that in over 50 million flight hours on 8,000 valves only four instances of leakage have been reported. However, data the FAA has received indicates that most instances of leakage are not reported. Leakage from a service panel drain valve is not a reportable event as required by Part 21.3 of the Federal Aviation Regulations (14 CFR part 21.3). The service history data was not collected as part of an FAA-approved maintenance program that requires reporting of service panel drain valve leakage. Therefore, the FAA does not have a high level of confidence that the reported leakage rates are necessarily representative of the actual leakage rate in service. As an example, a Boeing report cited by the commenter listed 157 total reports of leakage for 662 Boeing Model 747 series airplanes for the history of the fleet up until April of 1996, when the data was collected. However, the FAA recently received a copy of a report regarding ice on certain airplanes arriving at Narita Airport in Japan during a two-week period in February 1998. For 562 arrivals of Boeing Model 747 series airplanes that were inspected during the two-week period, there were 14 instances of ice found at lavatory service panels. While some of those instances were caused by leakage from the flush/fill lines instead of the waste drain valve, the fact remains that a two-week period of actual inspection at one airport revealed 14 instances of leakage compared to 157 cases of leakage reported by operators to Boeing for the entire operating history of the Model 747 fleet until 1996. Clearly, the amount of actual leakage is not reflected in the number reported by operators to Boeing.

In regard to the commenter's statement that several operators are in the process of gathering data regarding performing leak checks, the FAA has not received that data as of this date. Without reviewing the actual data and information, the FAA cannot provide a decision to extend the leak test interval. Therefore, no change is necessary to the final rule in this regard.

6. Request To Extend the Leak Test Interval for Certain Service Panel Ball Valves

The same commenter requests that the leak test interval (currently 1,000 flight hours) be extended for Kaiser Electroprecision service panel ball valves, Part Number (P/N) 2651–357. The commenter contends that the Kaiser Electroprecision service panel ball valve is designed considerably different than the other valves that are subject to the proposed 1,000-flight-hour intervals for valves. The commenter notes that the Kaiser "Expander" valve, P/N 0218–0032, and Shaw Aero "Posi-Lift" valve, P/N 10101000C( ), are subject to the proposed 1,000-flight-hour intervals also. The commenter points out that Kaiser P/N 2651–357 is considered a ball valve. The commenter questions that if the FAA considers similarity of valves in determining an appropriate leak test interval, Kaiser P/N 2651–357 is at least equivalent to a PneuDraulics P/N 9527 series valve. The commenter points out that P/N 9527 series valves are essentially only a half-ball valve. Since Kaiser makes the in-line ball valve, P/N 2651–278, which has a 4,500-flight-hour leak test interval, Kaiser's experience in manufacturing reliability should be considered when setting an initial leak test interval for the panel ball valve, P/N 2651–357. The commenter concludes that a new valve such as this should not receive a "generic" 1,000-flight-hour leak test, but rather should be considered for an extension of the leak test interval based on its design and similarity to other valves.

The FAA concurs that Kaiser Electoprecision panel ball valve, P/N 2651–357( ) series can be extended from the proposed 1,000-flight-hour interval. In fact, the FAA has recently approved the leak test interval for that panel ball valve to be extended from 1,000 to 2,000 flight hours. The FAA based this extension on similarity to the Kaiser

Electroprecision in-line drain valve, the service history of over 20 panel ball valves with an average of over 2,000 flight hours per valve and with no reports of leakage, and other data and analysis. The FAA considers similarity of valves, the manufacturer's experience, and manufacturing reliability in setting the initial leak test interval for a particular valve. These factors are also considered in determining the amount of in-service monitoring by operators that is required for an extension of the leak test interval. The intent of requiring service experience in addition to similarity analysis is to make sure that there are no unforeseen design deficiencies in a valve for which similarity is claimed. Similarity can be used to reduce the amount of in-service experience needed for a particular valve to receive an extension of the leak test interval. Therefore, paragraph (a)(4) of the final rule specifies the 2,000-flight-hour interval for the Kaiser Electoprecision panel ball valve, P/N 2651–357( ) series.

7. Request To Use Optional Method

One commenter requests that the proposal be revised to allow use of Monogram P/N 4803–76 or P/N 4803–96 series vacuum breaker check valve as an option to the installation of a lever lock cap on the flush/fill line or a ball valve on the flush/fill line. Another commenter requests that the proposal be revised to allow use of either a vacuum breaker check valve or an automatic shut-off valve as an option to installing a lever lock cap on the flush/fill line or a ball valve on the flush/fill line. The commenters point out that such an option to installing flush/fill line ball valves was permitted in the "blue ice" AD for McDonnell Douglas Model DC–10 series airplanes [AD 96–12–18, amendment 39–9661 (61 FR 29009, June 7, 1996)].

The FAA concurs with the commenter's request. Vacuum breaker check valves, Monogram P/N 4803–86, installed on McDonnell Douglas Model DC–10 series airplanes, and Monogram P/N 4803–76 and –96 installed on Boeing Model 747 series airplanes are similar to each other in design and function. The FAA has determined that those valves are adequate to install as an alternative to installing a lever lock cap of the flush/fill line or a ball valve on the flush/fill line. The FAA also has determined that installation of an automatic shut-off valve is an adequate method to prevent leakage from the flush/fill line. Certain paragraphs of this AD [(a), (b)(3), and (a)(9)(ii)] have been revised to add provisions to install vacuum breaker valves as an option to installing a lever lock cap or ball valve on the flush/fill line. Additionally, the final rule has been revised to add provisions in paragraphs (b)(3) and (a)(9)(iv) of this AD to install and test a shut-off valve per Boeing specification number 60B50341 as an option to installing a lever lock cap or flush/fill line ball valve on the flush/fill line.

In addition to listing optional valves for the flush/fill line, the FAA also added vacuum leak test procedures as discussed in comment 10 below, and reorganized the seal change and leak test requirements previously contained in paragraph (a)(8) of the NPRM, and moved them into paragraphs (a)(9) and (a)(10) of the final rule.

8. Request To Revise Specifications of the Leak Test of the Toilet Tank Dump Valve

The commenter, the airplane manufacturer, points out that the proposal specifies that the toilet tank be filled with a "minimum of 10 gallons of water/rinsing fluid" prior to performing the leak test of the toilet tank dump valve. The commenter requests that the specifications for the leak test be changed to require "a minimum of 10 gallons of water/rinsing fluid for tanks with less than 30 gallons capacity, and a minimum of 20 gallons of water/rinsing fluid for tanks with more than 30 gallons capacity." The commenter states that due to the wide variation in toilet tank sizes on the Model 747 fleet, 10 gallons may not be adequate in some cases to properly conduct a leak test.

The FAA concurs that the amount of fluid in the tank should be sufficient to test for leakage of the toilet tank dump valve, and that the specifications for conducting the leak test should be revised. The intent of specifying that the leak test be performed with "a minimum of 10 gallons" was to indicate that sufficient fluid be used to perform a valid leak test, without having to completely fill the tank and risk a spill of fluid inside the airplane. Since some Model 747 series airplanes are equipped with toilet tanks that are considerably larger than tanks in other airplanes, an increase in the minimum amount of fluid used to perform the test is considered necessary for airplanes with the larger tanks. The FAA has revised the final rule to specify the requested revision.

9. Request To Revise Table 1 of the Proposal

The commenter requests that Table 1 of the proposal be revised to correct the serial numbers of 10101000B–A–1 valves and to add 10101000C–R and 10101000C–G valves to Table 1.

The FAA concurs with the request to correct the serial numbers for 10101000B–A–1 valves and has revised Table 1 accordingly. However, the FAA does not concur with the commenter's request to add the two additional valves to Table 1. The FAA has determined that those valves are not used on the airplanes affected by this AD. Further, the FAA has removed certain other part numbers of valves (10101000B–A and 10101000C–A) listed in Table 1 of the proposal since they are not eligible for the 1,000-flight-hour leak test interval. Additionally, Note 2 of the AD has been revised to specify that Table 1 of the AD contains only valves that are eligible for a leak check interval of 1,500 hours.

10. Request To Use Vacuum Tool

One commenter requests that the proposal be revised to allow testing of the inner seal of the service panel valve with a vacuum tool for a period of one minute without any fluid upstream of the valve. This same commenter states that testing with air (vacuum tool) is more stringent than testing with water. The commenter points out that when testing with air, a leak path is detected readily within one minute because the pressure gauge will move indicating a loss of vacuum. The commenter also points out that previous AD's have permitted leak testing with a vacuum tool. A second commenter states that by allowing a leak test without requiring that the inner door of the service panel be covered with fluid, the likelihood of "blue showers" (i.e., uncontrolled leakage of waste tank drain line inside the airplane) would be reduced.

The FAA concurs with the request to allow a vacuum leak test procedure for the reasons the commenter provided. The FAA has revised paragraphs (a), (a)(10)(ii), and Note 3 of the final rule to add provisions and instructions for the use of vacuum leak test procedures. However, the FAA does not concur with the request to establish a period of one minute for the vacuum leak test. The commenter did not provide sufficient evidence to support reducing the leak test period from five minutes to one minute. Therefore, no change is necessary to the final rule regarding the time period required for the leak test.

11. Request To Revise "Dump Valve" Terminology

One commenter requests that paragraph (a)(5)(i) of the proposal be revised to change the current wording of "dump valve" to the correct terminology of "toilet tank dump valve." The commenter points out that changing the terminology in that particular paragraph would make the

use of the term "toilet tank dump valve" consistent throughout the proposal. The FAA concurs and has revised the final rule accordingly.

12. Request To Clarify Seal Replacement Interval

One commenter requests that the compliance time for replacement of seals be revised to clarify that the seal replacement interval would begin when the new valve is installed or a new airplane is delivered.

The FAA concurs. Installation of a new valve or delivery of a new airplane would also mean that a new seal is in place. Therefore, the FAA considers that a new valve installation or delivery of a new airplane constitutes the "last documented seal change." The FAA has revised paragraphs (a)(1) and (a)(9) of the final rule to reflect this change. The FAA points out that, for the purposes of this AD, a "new" airplane is one that has accumulated less than 100 total flight hours or 30 calendar days, whichever occurs later, since the issuance of the original airworthiness certificate.

13. Request To Correct a Part Number

One commenter requests that paragraphs (a)(8)(ii) and (b)(2) of the proposal be revised to reflect the correct part number for the flush/fill ball valve. The commenter advises that the correct part number is Kaiser Electroprecision part number series 0062–0010, not "0062–0009," as specified in the proposal. The FAA concurs with the commenter's request, and has revised paragraphs (a)(9)(iii) and (b)(2) of the final rule to reflect the correct part numbers.

14. Request To Extend the Seal Change Interval

One commenter requests that paragraph (a)(1)(ii) of the proposal be revised to reduce the seal change interval from 6,000 to 5,000 flight hours for the PneuDraulics valve. The commenter states that the seal in a ball-valve or half-ball valve located at the service panel is subjected to a significantly greater dynamic action than that of a seal in a flapper-type valve. The distance that the ball or half-ball drags across the seal subjects the seal to considerably more wear that the wear experienced by an O-ring seal in a flapper-type valve as it moves from a sealed to an unsealed position. The plastic seals used in the ball or half-ball valves are much less forgiving and less compressible than elastomer type seals used in flapper-type valves. Therefore, the ball or half-ball valves are more susceptible to being damaged by foreign objects and consequent leakage. The potential for ice, hardened debris, and "black tar" to build up on the ball at the service panel makes the seals more susceptible to damage by service and maintenance personnel than the seals of an in-line ball valve. Additionally, the commenter contends that the performance of the seals in the in-line ball valve cannot be replicated in-service on ball or half-ball valves used at the service panel. Service panel components also experience greater temperature fluctuations (−65 degrees Fahrenheit to +130 degrees Fahrenheit) than those experienced by components upstream.

The FAA does not concur with the commenter's request to reduce the seal change interval for the PneuDraulics valve. The commenter did not provide any specific data to demonstrate that ball valve seals or half-ball valve seals actually do have greater failure rates than flapper type valves. The FAA established the seal change interval for the PneuDraulics valve based on data submitted by an operator and the valve manufacturer. No change is necessary to the final rule.

15. Request To Standardize the Requirements for Extension of the Leak Test

One commenter, a valve manufacturer, requests that the proposal be revised to require "equivalent" criteria for extending the leak tests of all valves. The manufacturer states that certain criteria were required to obtain leak test extensions for its product, but that other valves were not subjected to the same stringent criteria. The commenter notes that valves with components prone to multiple failure and easily damaged seals will leak if exposed to the hourly usage schedules (as proposed in the NPRM). The commenter contends that a valve with exposed soft seals can leak immediately after successfully passing a test if damaged by ice, tools, or loss of the donut plug. The commenter further contends that the valves should have a primary seal and a secondary seal as required by the specifications of the airplane manufacturer for panel valves.

The FAA does not concur that the final rule should be revised in regard to establishing "equivalent" criteria for extending the leak test intervals. The FAA has required all operators requesting an extension to provide service history and data to support any extensions of leak test intervals. Previous service experience, similarity to existing valves, and the quality of the data are considered in determining an appropriate extension of the leak check interval for each valve. No change is necessary to the final rule.

16. Request To Establish Consistent Testing Intervals for Components

One commenter, the airplane manufacturer, states that it is concerned that test and maintenance intervals for a particular part number component may not be consistent across all models. The commenter requests that any increased intervals for a specific component be applied to all models using that component.

The FAA does not concur. As explained in a previous disposition of comment (number 3), the flight cycles per flight hours are different on various airplane models. Therefore, the cyclic wear on various components differs according to the airplane model on which the component is installed. Consequently, the FAA cannot approve consistent flight hour intervals for leak checks on specific components that apply to all airplane models.

Operators who wish to take advantage of the increase in leak test intervals may request information concerning the existence of approved alternative methods of compliance, in accordance with Note 5 of this AD. Additionally, paragraph (d) of this AD provides for any operator to request approval of an alternative method of compliance that provides an acceptable level of safety.

17. Request To Provide a Maintenance Option

One commenter, the airplane manufacturer, requests that the FAA add a maintenance option to the AD that would permit operators to revise their FAA-approved maintenance program to include the requirements specified in the proposal. The commenter points out that such a revision would permit operators to justify extending leak test intervals to intervals that are consistent with their regularly scheduled maintenance.

The FAA does not concur. The FAA did not provide the maintenance option in this AD based on information it received that few operators were inclined to revise their maintenance program to incorporate the requirements of this AD. Additionally, comments submitted regarding previous "blue ice" AD's that did contain the maintenance option stated that the proposed AD's were "too long, and hard to understand." The FAA's intent by not specifying the maintenance option in this AD is to simplify and clarify the requirements of this AD. No change to the final rule is necessary in that regard. However, if an operator wishes to request approval for revision of its

maintenance program, a request should be submitted to the FAA in accordance with the provisions of paragraph (d) of this AD.

18. Request To Include Terminating Action in the AD

One commenter, the airplane manufacturer, requests that a provision for terminating action be included in the AD. The commenter agrees that incorporation of the proposed AD requirements such as "donut" lug removal, seal replacement, rinse system upgrade, and installation of improved drain valves will result in reduced incidences of "blue ice." However, if an operator incorporates the requirements of the proposed AD, and revises its maintenance program to include seal replacement and/or seal visual inspections, the commenter considers those actions to be sufficient to provide terminating action.

The FAA does not concur. The FAA finds that previous requests for terminating action based on the installation of certain valves have been unsuccessful. Accomplishment of the requirements of this AD will ensure that an effective and uniform program to prevent incidents of "blue ice" is in effect for the entire fleet. Therefore, no change to the final rule is necessary in that regard.

19. Request To Remove the Requirement to Replace "Donut" Valves

One commenter, an airline operator, requests that the proposal be revised to remove the requirement "to replace 'donut' valves with another FAA-approved valves within 5,000 flight hours." The commenter points out that other AD's concerning "blue ice" have not required replacement of "donut" valves. Further, the commenter contends that the repetitive leak test intervals specified in the proposal will address the safety considerations. The commenter states that, based on financial considerations, the replacement of "donut" valves should be an option for operators.

The FAA does not concur with the request to remove the requirement to replace "donut valves." The FAA finds that several incidents of "blue ice" were caused by "donut" valve leakage on airplanes, despite a required leak test at intervals of 200 hours. Additionally, the largest and most potentially dangerous pieces of "blue ice" have been associated with "donut" valves. Based on the continued problems associated with the use of "donut" valves, the FAA has determined that those valves must be replaced. No change to the final rule is necessary in that regard. Regarding current AD's addressing "blue ice," continuing to require the leak test intervals for the "donut" valves may motivate operators to replace the "donut" valves. However, if the FAA finds that "donut" valves continue to be a source of "blue ice," additional rulemaking may be considered.

20. Request To Call Out Part Numbers by Name

One commenter requests that lever/lock caps manufactured in accordance with an FAA-Parts Manufacturer Approval granted to Shaw Aero Devices be called out by part number the same way the Kaiser flush/fill ball valve part number is called out in the proposal. The commenter did not provide an explicit reason for this request.

The FAA does not concur. Reference to lever lock caps as "FAA-approved lever lock caps" rather than specific part numbers that are called out has been the standard practice in the development of the "blue ice" AD's. Therefore, the Shaw Aero Devices lever lock cap, part number 580–116, is encompassed in the final rule as an "FAA-approved lever lock cap." However, the Kaiser flush/fill line ball is not a lever lock cap and would not be encompassed by the phrase "FAA-approved lever lock caps." Consequently, the Kaiser valve part number is specifically called out in the final rule. No change is necessary to the final rule in that regard.

21. Requests To Revise the Cost Impact Information

One commenter, a parts manufacturer, requests that the cost impact information, below, be revised to reflect an optional use of a hand held vacuum pump as the most cost effective method to perform the leak tests. The commenter points out that a hand held vacuum pump takes less time and does not require fuel to power-up the airplane.

The FAA does not concur with the commenter's request. The cost impact figures provided in an AD are intended to provide an approximate cost of performing required tasks. The FAA has no way of determining the specific cost figures of each possible method of accomplishing a required task. The cost estimates, as provided, are simply estimates based on the best information the FAA has available at the time the rule is developed. No change is necessary to the final rule in that regard.

Another commenter states that the work hours necessary to install the flush/fill line cap is estimated in the proposal to be 1 work hour per cap. The commenter requests that the work hour estimate be revised to include heating the flush/fill line to prevent ice build-up within the line behind the cap. The commenter provided no work hour figures that would include heating of the flush/fill line.

The FAA does not concur. Heating for the line behind the flush/fill cap may be considered a good practice and possibly the most practical solution where flush/fill lines take a long time to drain. The FAA typically provides cost estimates only for those actions that are required to be accomplished. In this case, heating of the line behind the flush/fill cap is not necessary when operators allow the flush/fill line to drain before closing the cap. The FAA considers it to be the operator's choice to allow the flush/fill line to drain after servicing, or to install heating for the flush/fill line. Therefore, no change is necessary to the final rule.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

There are approximately 711 Model 747 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 201 airplanes of U.S. registry and 89 U.S. operators will be affected by this AD.

The waste drain system leak test and outer cap inspection will take approximately 6 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact on U.S. operators of the waste drain system leak test and outer cap inspection is estimated to be $72,360, or $360 per airplane, per test/inspection.

Certain airplanes (i.e., those that have "donut" type drain valves installed) may be required to be leak tested as many as 15 times each year. Certain other airplanes having other valve configurations will be required to be leak tested as few as 1 time each year. Based on these figures, the annual (recurring) cost impact of the required repetitive leak tests on U.S. operators is estimated to be between $360 and $5,400 per airplane, per year.

With regard to replacement of "donut" type drain valves, the cost of a new valve is approximately $1,200. However, the number of leak tests for an airplane that is flown an average of

3,000 flight hours a year is thereby reduced from 15 tests to 3 tests. The cost reduction because of the number of tests required is approximately equal to the cost of the replacement valve. Therefore, no additional cost would be incurred.

The FAA estimates that it will take approximately 1 work hour per airplane lavatory drain to accomplish a visual inspection of the service panel drain valve cap/door seal and seal mating surfaces, at an average labor rate of $60 per work hour. As with leak tests, certain airplanes will be required to be visually inspected as many as 15 times or as few as 3 times each year. Based on these figures, the annual (recurring) cost impact of the required repetitive visual inspections on U.S. operators is estimated to be between $180 and $900 per airplane, per year.

The installation of the flush/fill line cap will take approximately 1 work hour per cap to accomplish, at an average labor rate of $60 per work hour. The cost of required parts will be $275 per cap. There are an average of 4 caps per airplane. Based on these figures, the cost impact on U.S. operators of these requirements of this AD is estimated to be $269,340, or $1,340 per airplane, per replacement cycle.

The seal replacements of the drain valves required by paragraph (a) of this AD will require approximately 2 work hours to accomplish, at an average labor cost of $60 per hour. The cost of required parts will be $200 per each seal change. Based on these figures, the cost impact on U.S. operators of these requirements of this AD is estimated to be $64,320, or approximately $320 per airplane, per replacement.

The number of required work hours, as indicated above, is presented as if the accomplishment of the actions of this AD will be conducted as "stand alone" actions. However, in actual practice, these actions could be accomplished coincidentally or in combination with normally scheduled airplane inspections and other maintenance program tasks. Therefore, the actual number of necessary "additional" work hours would be minimal in many instances. Additionally, any costs associated with special airplane scheduling should be minimal.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the current or proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

The FAA recognizes that the obligation to maintain aircraft in an airworthy condition is vital, but sometimes expensive. Because AD's require specific actions to address specific unsafe conditions, they appear to impose costs that would not otherwise be borne by operators. However, because of the general obligation of operators to maintain aircraft in an airworthy condition, this appearance is deceptive. Attributing those costs solely to the issuance of this AD is unrealistic because, in the interest of maintaining safe aircraft, prudent operators would accomplish the required actions even if they were not required to do so by the AD.

A full cost-benefit analysis has not been accomplished for this proposed AD. As a matter of law, in order to be airworthy, an aircraft must conform to its type design and be in a condition for safe operation. The type design is approved only after the FAA makes a determination that it complies with all applicable airworthiness requirements. In adopting and maintaining those requirements, the FAA has already made the determination that they establish a level of safety that is cost-beneficial. When the FAA, as in this AD, makes a finding of an unsafe condition, this means that the original cost-beneficial level of safety is no longer being achieved and that the required actions are necessary to restore that level of safety. Because this level of safety has already been determined to be cost-beneficial, a full cost-benefit analysis for this AD would be redundant and unnecessary.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Compliance: Required as indicated, unless accomplished previously.

98–08–10 Boeing: Amendment 39–11116. Docket 97–NM–325–AD.

Applicability: All Model 747–100, –200, –300, –SP, and –400F series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent airframe damage, and/or hazard to persons or property on the ground as a result of "blue ice" that has formed from leakage of the lavatory drain system or flush/fill systems and dislodged from the airplane, accomplish the following:

(a) Accomplish the applicable requirements of paragraphs (a)(1) through (a)(11) of this AD at the time specified in each paragraph. If the waste drain system incorporates more than one type of valve, only one of the waste drain system leak test procedures (the one that applies to the equipment with the longest leak test interval) must be conducted at each service panel location. The waste drain system valve leak tests specified in this AD shall be performed in accordance with the following requirements: The toilet tank dump valve leak test must be performed by filling the toilet tank with water/rinsing fluid to fill the toilet tank to a level that submerges the toilet

tank dump valve seals with sufficient fluid to perform a valid test, and testing for leakage after a period of five minutes. For guidance, a minimum of 10 gallons is considered sufficient for a tank of 30 gallons or less capacity, and 20 gallons of fluid is considered sufficient for a tank with more than 30 gallons capacity. For tests of service panel drain valves, unless otherwise specified by this AD: Fluid shall completely cover the upstream end of the valve being tested; the direction of the 3 pounds per square inch differential pressure (PSID) shall be applied across the valve in the same direction as occurs in flight; the other waste drain system valves shall be open; and the minimum time to maintain the differential pressure shall be 5 minutes. As an alternative to the above test procedure for the service panel drain valves and in-line drain valves, a vacuum test may be done in accordance with Shaw Aero Devices Document ILS–193, Operation Instructions for the Waste Drain Valve Inner Flapper and Lavatory Rinse/Fill Valve Leak Test Tool, dated November 17, 1998, using a minimum of 3 PSID across the in-line drain valve or waste drains system service panel valve inner door for a period of 5 minutes. Any movement of the needle of the pressure gauge during the test period constitutes failure of the test. Other leak test tools may by used for this test if approved per paragraph (d) of this AD. Any revision of the seal change intervals or leak test intervals must be approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

(1) Replace the valve seals with new valve seals in accordance with the applicable schedule specified in paragraphs (a)(1)(i), (a)(1)(ii), and (a)(1)(iii) of this AD. For purposes of determining seal replacement times specified in this AD: If a new valve is installed or a "new airplane" is delivered, it is considered that the new valve installation or airplane delivery constitutes the "last documented seal change." A "new airplane" for the purposes of this AD is an airplane that has accumulated less than 100 total flight hours or 30 calendar days, whichever occurs later, since the issuance of the original airworthiness certificate.

(i) For each lavatory drain system that has an in-line drain valve installed, Kaiser Electroprecision part number series 2651–278 or a Kaiser Electroprecision service panel ball valve, part number series 2651–357: Replace the seals within 5,000 flight hours after the effective date of this AD, or within 48 months after the last documented seal change, whichever occurs later. Thereafter, repeat the replacement of the seals at intervals not to exceed 48 months.

(ii) For each lavatory drain system that has a PneuDraulics part number series 9527 valve: Replace the seals within 5,000 flight hours after the effective date of this AD, or within 18 months of the last documented seal change, whichever occurs later. Thereafter, repeat the replacement of the seals at intervals not to exceed 18 months or 6,000 flight hours, whichever occurs later.

(iii) For each lavatory drain system that has any other type of drain valve: Replace the seals within 5,000 flight hours after the effective date of this AD, or within 18 months after the last documented seal change, whichever occurs later. Thereafter, repeat the replacement of the seals at intervals not to exceed 18 months.

(2) For each lavatory drain system that has an in-line drain valve installed, Kaiser Electroprecision part number series 2651–278: Within 6,000 flight hours after the effective date of this AD, and thereafter at intervals not to exceed 6,000 flight hours, accomplish the procedures specified in paragraphs (a)(2)(i) and (a)(2)(ii) of this AD:

(i) Conduct a leak test of the toilet tank dump valve (in-tank valve that is spring loaded closed and operable by a T-handle at the service panel) and the in-line drain valve. Take precautions to avoid overfilling the tank and spilling fluid into the airplane. The in-line drain valve leak test must be performed with a minimum of 3 PSID applied across the valve.

(ii) If a service panel valve or cap is installed, perform a visual inspection of the service panel drain valve outer cap/door seal and the inner seal (if the valve has an inner door with a second positive seal), and the seal mating surfaces for wear or damage that may allow leakage.

(3) For each lavatory drain system that has a service panel drain valve installed, PneuDraulics part number series 9527: Within 4,000 flight hours after the effective date of this AD, accomplish the requirements of paragraphs (a)(3)(i) and (a)(3)(ii) of this AD. Thereafter, repeat the leak tests at intervals not to exceed 4,000 flight hours.

(i) Conduct leak tests of the toilet tank dump valve and service panel drain valve. Take precautions to avoid overfilling the tank and spilling fluid into the airplane. The leak test of the service panel drain valve must be performed with a minimum of 3 PSID applied across the valve inner door/closure device.

(ii) Perform a visual inspection of the outer cap/door and seal mating surface for wear or damage that may cause leakage.

(4) For each lavatory drain system that has a service panel drain valve installed, Kaiser Electroprecision part number series 2651–357–(2) or higher –() (dash number): Within 2,000 flight hours after the effective date of this AD, and thereafter at intervals not to exceed 2,000 flight hours, conduct a leak test of the toilet tank dump valve and service panel drain valve. Take precautions to avoid overfilling the tank and spilling fluid into the airplane. The service panel drain valve leak test must be performed with a minimum of 3 PSID applied across the valve.

(5) For each lavatory drain system that has a service panel drain valve installed, Kaiser Electroprecision part number series 0218–0032 or Shaw Aero part number/serial number as listed in Table 1 of this AD: Within 1,500 flight hours after the effective date of this AD, and thereafter at intervals not to exceed 1,500 flight hours, accomplish the requirements of paragraphs (a)(5)(i) and (a)(5)(ii) of this AD:

TABLE 1.—SHAW AERO VALVES APPROVED FOR 1,500 FLIGHT HOUR LEAK TEST INTERVAL

Shaw waste drain valve part number	Serial numbers of part number valve approved for 1,500 hour leak test interval
331 Series, 332 Series	All.
10101000B–A–1	0201 and higher.
10101000BA2	0130 and higher.
10101000C–A–1	0277 and higher.
10101000CN OR C–N	3649 and higher.
Certain 10101000B valves	Any of these "B" series valves that incorporate the improvements of Shaw Service Bulletin 10101000B–38–1, dated October 7, 1994, and are marked "SBB38–1–58"
Certain 10101000C valves	Any of these "C" series valves that incorporate the improvements of Shaw Service Bulletin 10101000C–38–2 dated October 7, 1994, and are marked "SBC38–2–58".

Note 2: Table 1 is a list of approved Shaw valves that are eligible for a 1,500 hour leak test, including those valves approved by Parts Manufacturer Approval (PMA) or Supplemental Type Certificate (STC) for installation on Boeing Model 747 series airplanes that are subject to this AD.

(i) Conduct a leak test of the toilet tank dump valve and service panel drain valve. Take precautions to avoid overfilling the tank and spilling fluid into the airplane. The service panel drain valve leak test must be performed with a minimum of 3 PSID applied across the valve inner door/closure device.

(ii) For each valve, perform a visual inspection of the outer cap/door and seal mating surface for any wear or damage that may cause leakage.

(6) For each lavatory drain system that has a service panel drain valve installed, Kaiser Electroprecision part number series 0218–0026; or Shaw Aero Devices part number series 10101000B or 10101000C [except as specified in paragraph (a)(4) of this AD]: Within 800 flight hours after the effective date of this AD, and thereafter at intervals not to exceed 800 flight hours, accomplish the requirements of paragraphs (a)(6)(i) and (a)(6)(ii) of this AD:

(i) Conduct a leak test of the toilet tank dump valve and the service panel drain valve. Take precautions to avoid overfilling the tank and spilling fluid on the airplane. The service panel drain valve leak test must be performed with a minimum 3 PSID applied across the valve inner door/closure device.

(ii) Perform a visual inspection of the outer cap/door and seal mating surface for wear or damage that may cause leakage.

(7) For each lavatory drain system with a lavatory drain system valve that incorporates either "donut" plug, Kaiser Electroprecision part number 4259–20 or 4259–31; Kaiser Roylyn/Kaiser Electroprecision cap/flange part numbers 2651–194C, 2651–197C, 2651–216, 2651–219, 2651–235, 2651–256, 2651–258, 2651–259, 2651–260, 2651–275, 2651–282, 2651–286; Shaw Aero Devices assembly part number 0008–100; or other FAA-approved equivalent parts; accomplish the requirements of paragraphs (a)(7)(i), (a)(7)(ii), and (a)(7)(iii) of this AD at the times specified in those paragraphs. For the purposes of this paragraph [(a)(7)], "FAA-approved equivalent part" means either a "donut" plug which mates with the cap/flange part numbers listed above, or a cap/flange which mates with the "donut" plug part numbers listed above, such that the cap/flange and "donut" plug are used together as an assembled valve.

(i) Within 250 flight hours after the effective date of this AD, and thereafter at intervals not to exceed 250 flight hours, conduct leak tests of the toilet tank dump valve and the service panel drain valve. Take precautions to avoid overfilling the tank and spilling fluid on the airplane. The service panel drain valve leak test must be performed with a minimum 3 PSID applied across the valve.

(ii) Perform a visual inspection of the outer door/cap and seal mating surface for wear or damage that may cause leakage. This inspection shall be accomplished in conjunction with the leak tests of paragraph (a)(7)(i).

(iii) Within 5,000 flight hours after the effective date of this AD, replace the donut valve [part numbers per paragraph (a)(7) of this AD] with another type of FAA-approved valve. Following installation of the replacement valve, perform the appropriate leak tests and seal replacements at the intervals specified for that replacement valve, as applicable.

(8) For each lavatory drain system not addressed in paragraphs (a)(2), (a)(3), (a)(4), (a)(5), (a)(6), or (a)(7) of this AD: Within 250 flight hours after the effective date of this AD, and thereafter at intervals not to exceed 250 flight hours, accomplish the requirements of paragraphs (a)(8)(i) and (a)(8)(ii) of this AD:

(i) Conduct a leak test of the toilet tank dump valve and the service panel drain valve. Take precautions to avoid overfilling the tank and spilling fluid on the airplane. The service panel drain valve leak test must be performed with a minimum 3 PSID applied across the valve inner door/closure device.

(ii) Perform a visual inspection of the outer cap/door and seal mating surface for wear or damage that may cause leakage.

(9) For flush/fill lines: Within 5,000 flight hours after the effective date of this AD, perform the requirements of paragraph (a)(9)(i), (a)(9)(ii), (a)(9)(iii), or (a)(9)(iv) of this AD, as applicable. Thereafter, repeat the requirements at intervals not to exceed 5,000 flight hours, or 48 months after the last documented seal change, whichever occurs later. For the purpose of determining seal replacement times required by this AD: If a new valve has been installed or a new airplane has been delivered, the new valve installation or airplane delivery may be considered to constitute the "last documented seal change." For the purposes of this AD, a "new airplane" is defined as an airplane that has accumulated less than 100 total flight hours or 30 calendar days, whichever occurs later, since the issuance of the original airworthiness certificate.

(i) If a lever lock cap is installed on the flush/fill line of the subject lavatory, replace the seals on the toilet tank anti-siphon (check) valve and the flush/fill line cap. Perform a leak test of the toilet tank anti-siphon (check) valve with a minimum of 3 PSID across the valve, in accordance with paragraph (a)(10)(i) or (a)(10(ii), or (a)(10)(iii) of this AD, as applicable.

(ii) If a vacuum breaker check valve having Monogram part number series 4803–76 or 4803–96 is installed on the subject lavatory, prior to further flight, replace the seals/o-rings in the vacuum breaker check valve. Perform a leak test of the vacuum breaker check valve in accordance with paragraph (a)(10)(i) or (a)(10)(ii) of this AD, as applicable. Verify proper operation of the vent line vacuum breaker in accordance with paragraph (a)(10)(iii) of this AD.

(iii) If a flush/fill ball valve having Kaiser Electroprecision part number series 0062–0010 is installed on the flush/fill line of the subject lavatory, replace the seals in the flush/fill ball valve and the toilet tank anti-siphon valve. Perform a leak test of the toilet tank anti-siphon valve with a minimum of 3 PSID across the valve, in accordance with paragraph (a)(10)(i) or (a)(10)(ii) of this AD, as applicable.

(iv) If a shut-off valve having Boeing Specification #SCD 60B50341 is installed on the flush/fill line of the subject lavatory, replace the seals in the shut-off valve. Perform a leak test of the shut-off valve with a minimum of 3 PSID across the valve, in accordance with paragraph (a)(10)(ii) of this AD. At the time the test is performed, ground handling bus power must be removed from the shutoff valve and level sensor. This can be accomplished by de-energizing the ground handling bus completely (refer to Boeing Maintenance Manual 38–32–00/1 and 24–22–00/201 as an additional source of service information) or by removing ground handling bus supplied power to only the shutoff valve and waste level sensor. To remove ground handling bus supplied power to the shutoff valve and waste level sensor, open the ground service lavatory lights circuit breaker supplying 115V AC to the shutoff valve and the lavatory tank fill control circuit breaker supplying 28 V DC to the level sensor. These circuit breakers are located on panel P14 of Model 747–100, –200, –300 and SP airplanes, and on panel P414 of Model 747–400F series airplanes.

(10) Perform the tests specified in paragraph (a)(9) of this AD in accordance with the instructions of paragraph (a)(10)(i), (a)(10)(ii), or (a)(10)(iii) of this AD, as applicable.

(i) Leak test the toilet tank anti-siphon valve or the vacuum breaker check valve by filling the bowl above the toilet tank approximately half-full with water/rinsing fluid (at least 2 inches above the flapper in the bowl). Apply 3 PSID across the valve in the same direction as occurs in flight. The vent line vacuum breaker on vacuum breaker check valves must be pinched closed or plugged for this leak test. If there is a cap/valve at the flush/fill line port, the cap/valve must be removed or opened during the test. Test for leakage at the flush/fill line port for a period of 5 minutes.

Note 3: The leak test may be accomplished by pressurizing the airplane or by performing the leak test using Boeing vacuum test rig described in Boeing Maintenance Manual, 38–32–00/501, which is considered to be an additional source of service information for this test, if the toilet tank is filled to the level specified in paragraph (a)(10)(i) of this AD.

(ii) As an alternative to the leak tests of the flush/fill line valve specified in paragraph (a)(10)(i) of this AD, a vacuum test may be done using a minimum of 3 PSID across the anti-siphon valve, vacuum breaker valve, or shut-off valve in the flush/fill line for a period of 5 minutes, in accordance with Shaw Aero Devices Document ILS–193 (Operation Instructions for the waste Drain Valve Inner Flapper and Lavatory Rinse/Fill Valve Leak Test Tool) dated November 17, 1998. The vent line vacuum breaker on vacuum breaker check valves must be pinched closed or plugged for this leak test. If there is a cap/valve at the flush/fill line port, the cap/valve must be removed/open during the test. Any movement of the needle of the pressure gauge during the test period constitutes failure of the test and shall be considered evidence of leakage. Other leak test tools may by used for this test if approved in accordance with paragraph (d) of this AD.

(iii) Verify proper operation of the vent line vacuum breaker by filling the tank and testing at the fill line port for back drainage after disconnecting the fluid source from the flush/fill line port. As an alternative to the above test technique, verify proper operation of the vent line vacuum breaker in accordance with the procedures of the applicable component maintenance manual. If back drainage does not occur, prior to further flight, replace the vent line vacuum breaker or repair the vacuum breaker check valve in accordance with the appropriate component maintenance manual to obtain proper back drainage.

(11) If evidence of leakage or valve damage that may cause leakage is found during the leak tests and inspections required by paragraph (a) of this AD or at any other time: Accomplish the requirements of paragraph (a)(11)(i), (a)(11)(ii), or (a)(11)(iii) of this AD, as applicable.

(i) If any leakage is discovered, prior to further flight, perform the requirements of paragraphs (a)(11)(i)(A) and (a)(11)(i)(B) of this AD.

(A) Repair the leakage in accordance with the applicable component repair or maintenance manual.

(B) Perform the appropriate leak test, as specified in paragraph (a) of this AD; thoroughly clean the surfaces adjacent to any leakage to remove any horizontal fluid residue streaking. Cleaning must be to the extent that any future appearance of a horizontal fluid residue streak would indicate that the system is leaking.

Note 4: For purposes of this AD, "leakage" is defined as any visible leakage, if observed during a leak test. At any time other than during a leak test, "leakage" is defined as the presence of ice in the service panel, horizontal fluid residue streaks, or ice trails originating at the service panel. The fluid residue is usually, but not necessarily, blue in color.

(ii) If any worn or damaged seal is found, or if any damaged seal mating surface is found and that wear or damage could result in a leak, prior to further flight, repair or replace it in accordance with the valve manufacturer's maintenance manual.

(iii) In lieu of performing the requirements of paragraph (a)(11)(i) or (a)(11)(ii) of this AD: Prior to further flight, drain the affected lavatory system and placard the lavatory inoperative until repairs are accomplished.

(b) For all airplanes: Unless accomplished previously, within 5,000 flight hours after the effective date of this AD, install one of the caps/valves specified in paragraph (b)(1), (b)(2), (b)(3), or (b)(4) of this AD on each flush/fill line of all lavatories.

(1) Install an FAA-approved lever/lock cap on the flush/fill line. Or

(2) Install a flush/fill ball valve Kaiser Electroprecision part number series 0062–0010 on the flush/fill line. Or

(3) Install a vacuum breaker valve, Monogram part number series 4803–76 or 4803–96 on the flush/fill line. Or

(4) Install a shut-off valve, Boeing specification number 60B50341, on the flush/fill line.

(c) For any affected airplane acquired after the effective date of this AD: Before any operator places into service any airplane subject to the requirements of this AD, a schedule for the accomplishment of the leak tests required by this AD shall be established in accordance with either paragraph (c)(1) or (c)(2) of this AD, as applicable. After each leak test has been performed once, each subsequent leak test must be performed according to the new operator's schedule, in accordance with paragraph (a) of this AD.

(1) For airplanes that have been maintained previously in accordance with this AD, the first leak test to be performed by the new operator must be accomplished in accordance with the previous operator's schedule or with the new operator's schedule, whichever results in the earlier accomplishment date for that leak test.

(2) For airplanes that have not been maintained previously in accordance with this AD, the first leak test to be performed by the new operator must be accomplished prior to further flight, or in accordance with a schedule approved by the FAA Principal Maintenance Inspector (PMI), but within a period not to exceed 250 flight hours.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office, Transport Airplane Directorate, Operators shall submit their requests through an appropriate FAA PMI, who may add comments and then send it to the Manager, Seattle ACO.

Note 5: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(f) Except as provided in paragraph (a) of this AD, the vacuum leak tests of the service panel drain valves and in-line drain valves, and vacuum leak tests of the service panel drain valves and flush/fill line valves, if accomplished, shall be done in accordance with Shaw Aero Devices, Doc. ILS–193, Operation Instructions for the Waste Drain Valve Inner Flapper and Lavatory Rinse/Fill Valve Leak Test Tool, dated November 1998. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Shaw Aero Devices, Inc., 12291 Towne Lake Drive, Ft. Myers, Florida 33913. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on May 17, 1999.

Issued in Renton, Washington, on April 1, 1999.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–8686 Filed 4–9–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–175–AD; Amendment 39–11115; AD 99–08–09]

RIN 2120–AA64

Airworthiness Directives; Aerospatiale Model ATR42 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Aerospatiale Model ATR42–300 and –320 series airplanes, that currently requires a one-time inspection of the main landing gear (MLG) actuator fitting bolt holes for correct alignment, and rework of the fitting surface and bolt replacement, if necessary. This amendment requires replacement of the MLG actuator fitting bolts with new, improved bolts. This amendment also revises the applicability of the existing AD. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to prevent failure of the MLG actuator fitting bolts, which could result in the inability to retract the MLG and attain an adequate climb gradient.

DATES: Effective May 17, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 17, 1999.

ADDRESSES: The service information referenced in this AD may be obtained from AI(R) American Support, Inc., 13650 Mclearen Road, Herndon, Virginia 20171. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 90–19–06,

amendment 39–6727 (55 FR 37457, September 12, 1990), which is applicable to certain Aerospatiale Model ATR42–300 and –320 series airplanes, was published in the **Federal Register** on August 13, 1998 (63 FR 43335). The action proposed to require replacement of the MLG actuator fitting bolts with new, improved bolts. The action also proposed to revise the applicability of the existing AD.

Comments Received

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Request To Extend Compliance Time

One commenter requests that the compliance time for accomplishment of the replacement be extended from the proposed 7 months to 13 months after the date of its letter (August 20, 1998). The commenter states that such an extension would allow the replacement to be accomplished during a regularly scheduled "heavy check", and thereby eliminate any additional expenses that would be associated with special scheduling.

The FAA concurs that the compliance times can be extended somewhat. The FAA's intent was that the replacement be conducted during a regularly scheduled maintenance visit for the majority of the affected fleet, when the airplanes would be located at a base where special equipment and trained personnel would be readily available, if necessary. Based on the information supplied by the commenter, the FAA now recognizes that 10 months corresponds more closely to the interval representative of most of the affected operators' normal maintenance schedules. Paragraph (a) of the final rule has been revised to reflect a compliance time of 10 months. The FAA does not consider that this extension will adversely affect safety. In addition, under the provisions of paragraph (b) of the final rule, the FAA may approve requests for adjustments to the compliance time if data are submitted to substantiate that such an adjustment would provide an acceptable level of safety.

Request to Reference Latest Service Bulletin

One commenter requests that the proposed AD be revised to reference Revision 1 of Avions de Transport Regional Service Bulletin ATR42–53–0112, dated April 22, 1998. The commenter states that Revision 1 clarifies the instructions for the replacement and description of the work to be accomplished. The FAA concurs. Since issuance of the NPRM, the Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, has approved and the FAA has reviewed Revision 1 of the subject service bulletin. The FAA finds that the replacement procedures specified in Revision 1 are essentially identical to those described in the original version of the service bulletin (which was referenced in the proposed AD as the appropriate source of service information for accomplishment of the replacement). Therefore, the FAA has revised paragraph (a) of the final rule to include Revision 1 of the subject service bulletin as an additional source of service information.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

There are approximately 79 airplanes of U.S. registry that will be affected by this AD.

The new replacement that is required in this AD action will take approximately 12 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts will cost approximately $250 per airplane. Based on these figures, the cost impact of the required replacement of this AD on U.S. operators is estimated to be $76,630, or $970 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–6727 (55 FR 37457, September 12, 1990), and by adding a new airworthiness directive (AD), amendment 39–11115, to read as follows:

98–06–09 Aerospatiale: Amendment 39–11115. Docket 98–NM–175–AD. Supersedes AD 90–19–06, Amendment 39–6727.

Applicability: Model ATR42–200, –300 –320, and –500 series airplanes; except for airplanes on which either Aerospatiale Modification 4052 or Avions de Transport Regional Service Bulletin ATR42–53–0097, dated November 7, 1997, or Revision 1, dated January 20, 1997, has been accomplished; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by

this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the main landing gear (MLG) actuator fitting bolts, which could result in the inability to retract the MLG and attain an adequate climb gradient, accomplish the following:

Required Replacement

(a) Within 10 months after the effective date of this AD, replace the MLG actuator fitting bolts with new, improved bolts in accordance with Avions de Transport Regional Service Bulletin ATR42–53–0112, dated January 20, 1998, or Revision 1, dated April 22, 1998.

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(d) The replacement shall be done in accordance with Avions de Transport Regional Service Bulletin ATR42–53–0112, dated January 20, 1998, or Avions de Transport Regional Service Bulletin ATR42–53–0112, Revision 1, dated April 22, 1998, which contains the following list of effective pages:

Page number	Revision level shown on page	Date shown on page
1, 9–11, 14, 16, 19	1	April 22, 1998.
2–8, 12, 13, 15, 17, 18	Original	January 20, 1998.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from AI(R) American Support, Inc., 13850 Mclearen Road, Herndon, Virginia 20171. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in French airworthiness directive 97–115–070(B)R1, dated February 11, 1998.

(e) This amendment becomes effective on May 17, 1999.

Issued in Renton, Washington, on April 1, 1999.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–8689 Filed 4–9–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–292–AD; Amendment 39–11125; AD 99–08–19]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain Boeing Model 747 series airplanes. This action requires replacement of the auxiliary power unit (APU) fuel boost pump with a serviceable pump. This amendment is prompted by findings from a design review and analysis, conducted as part of an accident investigation, of APU fuel boost pumps installed on certain Boeing Model 747 series airplanes. The actions specified in this AD are intended to prevent potential failures within the electrical motor assembly of the APU fuel boost pump (which could result in leakage of fuel from the electrical connector) or electrical arcing across the connector pins of the pump, and consequent fuel fire.

DATES: Effective April 27, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 27, 1999.

Comments for inclusion in the Rules Docket must be received on or before June 11, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–292–AD, 1601 Lind Avenue, SW, Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW, Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW, Suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Chris Hartonas, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW, Renton, Washington 98055–4056; telephone (425) 227–2864; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: As part of the accident investigation into the TWA Flight 800 accident of July 1996, the FAA participated in an engineering design review and analysis of the electrical connectors of Lear Romec auxiliary power unit (APU) fuel boost pumps. It has been determined that the Lear Romec component maintenance manual specifies an incorrect part number for that connector. Electrical connectors of Lear Romec APU fuel boost pumps incorporate a silicone insulating material. The results of that review and analysis indicate that contact with fuel can deteriorate the silicone insulating material in the electrical connectors during normal APU operation, due to the silicone material's incompatibility with fuel. Damage to the electrical connectors could cause failures within the electrical motor assembly of the APU fuel boost pump, which is located at the left-hand rear spar-to-landing-gear support beam. Such failures of the APU fuel boost pump could result in fuel leakage from the electrical connector, or the possibility of electrical arcing across the connector pins of the pump, and, if not corrected, could result in a fuel fire.

Other Relevant Rulemaking

On November 26, 1997, the FAA issued AD 97–25–06, amendment 39–10230 (62 FR 63622, December 1, 1997).

[A correction of the rule was published in the **Federal Register** on January 2, 1998 (63 FR 4).] That AD required disconnection of the electrical connector to the scavenge pump of the center wing tank; a one-time inspection to identify the part number of the electrical connector; and replacement of the pump with a new pump, if necessary. The intent of that AD is to prevent potential failures within the electrical motor assembly of the scavenge pump on certain Boeing Model 747 series airplanes; such failures could result in leakage of fuel from the electrical connector into the main landing gear wheel well, or electrical arcing within the scavenge pump motor, and consequent fuel fire in the wheel well.

Since the issuance of AD 97–25–06, the FAA received a report of damage to the internal wiring of a scavenge pump. The connector of that scavenge pump had been replaced with a Lear Romec-supplied connector, in accordance with the requirements of AD 97–25–06. AD 97–25–06 was superseded by AD 98–14–17, amendment 39–10650 (63 FR 36836, July 8, 1998), to require a one-time inspection to identify the scavenge pump motor-impeller unit and to require replacement of a certain Lear Romec pump.

Certain electrical connectors on APU fuel boost pumps manufactured by Lear Romec incorporate the same silicone insulating material as that used on those scavenge pump connectors. The unsafe condition and its cause, as identified in AD 98–14–17, are similar to those addressed in this amendment.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Service Bulletin 747–28A2209, Revision 1, dated February 18, 1999, which describes procedures for a one-time visual inspection to identify the part number of the APU fuel boost pump. The service bulletin also describes procedures for replacement of any Lear Romec APU boost pump having an unacceptable part number, and provides two choices for the replacement pump: a pump that has been reworked, or a pump that has been manufactured by another supplier. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition, except as described below.

Differences Between AD and Relevant Service Information

The effectivity of the service bulletin specifies certain line positions. The applicability of this AD is further limited to those airplanes installed with certain boost pumps. (The only action required by this AD is the replacement of those boost pumps.)

Explanation of the Requirements of the Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design, this AD is being issued to prevent potential failures within the electrical motor assembly of the APU fuel boost pump, which could result in leakage of fuel from the electrical connector, or electrical arcing across the connector pins of the pump, and consequent fuel fire. This AD requires accomplishment of the actions specified in Boeing Service Bulletin 747–28A2209, Revision 1.

Determination of Rule's Effective Date

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 98–NM–292–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket.

A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

99–08–19 BOEING: Amendment 39–11125. Docket 98–NM–292–AD.

Applicability: Model 747 series airplanes, line positions 001 through 1150 inclusive; equipped with an auxiliary power unit (APU) fuel boost pump manufactured by Lear Romec and having Lear Romec part number (P/N) RR24640B; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent potential failures within the electrical motor assembly of the APU fuel boost pump, which could result in fuel leakage from the electrical connector, or electrical arcing across the connector pins of the pump, and consequent fuel fire, accomplish the following:

(a) Within 90 days after the effective date of this AD, replace the APU fuel boost pump as specified by either paragraph (a)(1) or (a)(2) of this AD, in accordance with Boeing Service Bulletin 747–28A2209, Revision 1, dated February 18, 1999.

(1) Replace the pump with a pump that has been reworked in accordance with the service bulletin. Or

(2) Replace the pump with an FAA-approved pump manufactured by a supplier other than Lear Romec, in accordance with the service bulletin.

(b) As of the effective date of this AD, no person shall install on any airplane an APU fuel boost pump having Lear Romec P/N RR24640B.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) The replacement shall be done in accordance with Boeing Service Bulletin 747–28A2209, Revision 1, dated February 18, 1999. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on April 27, 1999.

Issued in Renton, Washington, on April 5, 1999.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–8957 Filed 4–9–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 29520; Amdt. No. 1923]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference—approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region which the affected airport is located; or

3. The Flight Inspection Area Office which originated the SIAP.

For Purchase—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedure Standards Branch (AMCAFS–420, Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK. 73169 (Mail Address: P.O. Box 25082 Oklahoma City, OK. 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Forms 8260–3, 8260–4, and 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies

the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (NFDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPS, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Navigation (air).

Issued in Washington, DC on April 2, 1999.

L. Nicholas Lacey,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120, 44701; and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN;§ 97.25 LOC, LOC/DME, LDA, LDA/DME,SDF,SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

. . . Effective May 20, 1999

Bakersfield, CA, Meadows Field, GPS RWY 30R, Orig
Hanford, CA, Hanford Muni, GPS RWY 32, Amdt 1
Oakdale, CA, Oakdale, GPS RWY 10, Orig
Oakland, CA, Metropolitan Oakland Intl, VOR/DME RWY 27L, Amdt 11
Oakland, CA, Metropolitan Oakland Intl, ILS RWY 27R, Amdt 32
Oakland, CA, Metropolitan Oakland Intl, NDB RWY 27R, Amdt 5
Oakland, CA, Metropolitan Oakland Intl, GPS RWY 27L, Orig
Oroville, CA, Oroville Muni, VOR OR GPS–A, Amdt 6
Oroville, CA, Oroville Muni, NDB RWY 1, Amdt 3
Oroville, CA, Oroville Muni, GPS RWY 1, Orig
Grand Junction, CO, Walker Field, GPS RWY 29, Orig
Kissimmee, FL, Kissimmee Muni, VOR/DME OR GPS–A, Amdt 7B, CANCELLED
Kissimmee, FL, Kissimmee Muni, NDB RWY 15, Amdt 9B, CANCELLED
Kissimmee, FL, Kissimmee Muni, VOR/DME OR GPS RWY 15, Amdt 5A, CANCELLED
Orlando, FL, Kissimmee Muni, VOR/DME OR GPS–A, Orig
Orlando, FL, Kissimmee Muni, NDB RWY 15, Orig
Orlando, FL, Kissimmee Muni, GPS RWY 6, Orig
Orlando, FL, Kissimmee Muni, GPS RWY 15, Orig
Orlando, FL, Kissimmee Muni, GPW RWY 33, Orig
Nashville, GA, Berrien County, RADAR–1, Amdt 1, CANCELLED
Belleville, IL, Scott AFB/Midamerica, ILS RWY 14R, Orig, CANCELLED
Belleville, IL, Scott AFB/Midamerica, ILS RWY 32L, Orig, CANCELLED
Belleville, IL, Scott AFB/Midamerica, NDB RWY 32L, Orig, CANCELLED
Belleville, IL, Scott AFB/Midamerica, GPS RWY 14 R, Orig, CANCELLED
Belleville, IL, Scott AFB/Midamerica, GPW RWY 32L, Orig, CANCELLED
Chicago/Romeoville, IL, Lewis University, GPS RWY 9, Orig
Chicago/Romeoville, IL, Lewis University, GPS RWY 27, Amdt 2
Huntington, IN, Huntington Muni, VOR/DME–A, Orig
Terre Haute, IN, Sky King, VOR–B, Orig
Ankeny, IA, Ankeny Regional, GPS RWY 36, Amdt 1
Rock Rapids, IA, Rock Rapids Muni, NDG RWY 16, Amdt 2
Rock Rapids, IA, Rock Rapids Muni, GPS RWY 16, Orig
Rock Rapids, IA, Rock Rapids Muni, GPS RWY 34, Orig
Baton Rouge, LA, Baton Rouge Metropolitan/Ryan Field, RADAR–1, Amdt 10
Lake Charles, LA, Chennault Intl, VOR OR GPS RWY 33L, Amdt 3
Lake Charles, LA, Chennault Intl, ILS RWY 15R, Amdt 4
Lake Charles, LA, Chennault Intl, RADAR–1, Amdt 1
Duluth, MN, Duluth Intl, GPS RWY 21, Orig
International Falls, MN, Falls Intl, VOR OR GPS RWY 13, Amdt 13
International Falls, MN, Falls Intl, VOR RWY 31, Amdt 15
International Falls, MN, Falls Intl, VOR/DME OR TACAN RWY 31, Amdt 4
International Falls, MN, Falls Intl, LOC BC RWY 13, Amdt 9
International Falls, MN, Falls Intl, NDB OR GPS RWY 31, Amdt 8
International Falls, MN, Falls Intl, ILS RWY 31, Amdt 8
Little Falls, MN, Little Falls-Morrison County, NDB RWY 30, Amdt 6
Little Falls, MN, Little Falls-Morrison County, GPS RWY 30, Orig
Jackson, MS, Jackson Intl, GPS RWY 16L, Orig
Jackson, MS, Jackson Intl, GPS RWY 16R, Orig
Jackson, MS, Jackson Intl, GPS RWY 34L, Orig
Jackson, MS, Jackson Intl, GPS RWY 34R, Orig
Fort Leonard Wood, MO, Waynesville Regional Airport at Forney Field, NDB/DME RWY 14, Amdt 1
Lexington, NC, Davidson County, VOR/DME OR GPS RWY 8, Amdt 6, CANCELLED
Lexington, NC, Davidson County, NDB RWY 8, Amdt 5, CANCELLED
Lexington, NC, Davidson County, VOR OR GPS–A, Amdt 4A, CANCELLED
Cleveland, OH, Cleveland-Hopkins Intl, ILS RWY 23L, Amdt 17
Cleveland, OH, Cleveland-Hopkins Intl, VOR/DME RNAV OR GPS RWY 10, Amdt 12
Columbus, OH, Ohio State University, GPS RWY 27L, Amdt 1
Hartsville, SC, Hartsville Muni, GPS RWY 3, Orig
Hartsville, SC, Hartsville Muni, GPS RWY 21, Orig
Walterboro, SC, Waterboro Muni, GPS RWY 5, Orig

Walterboro, SC, Walterboro Muni, GPS RWY 17, Orig
Walterboro, SC, Walterboro Muni, GPS RWY 23, Orig
Walterboro, SC, Walterboro Muni, GPS RWY 35, Orig
Midland, TX, Midland Intl, VOR/DME RNAV RWY 16R, Amdt 3
Midland, TX, Midland Intl, VOR/DME RNAV RWY 34L, Amdt 2
Midland, TX, Midland Intl, GPS RWY 16R, Orig
Midland, TX, Midland Intl, GPS RWY 34L, Orig
Midland, TX, Midland Intl, RADAR–1, Amdt 5
Portage, WI, Portage Muni, VOR/DME OR GPS–A, Amdt 1
Portage, WI, Portage Muni, VOR/DME RNAV OR GPS RWY 17, Amdt 4

...Effective 15 July 1999

Decatur, AL, Pryor Field Regional, GPS RWY 18, Orig
Griffin, GA, Griffin-Spalding County, GPS RWY 14, Orig
Griffin, GA, Griffin-Spalding County, GPS RWY 32, Orig
Murray, KY, Kyle-Oakley Field, GPS RWY 5, Amdt 1
Murray, KY, Kyle-Oakley Field, GPS RWY 23, Amdt 1

Note: The FAA published the following amendments in Docket No. 29487, Amdt No. 1919 to Part 97 of the Federal Aviation Regulations (64 FR 13336, dated Thursday, March 18, 1999), under sections 97.23; 97.27; 97.29 and 97.33 effective May 20, 1999, which are hereby changed to read as follows:

Fort Huachuca/Sierra Vista, AZ, Sierra Vista Muni-Libby AAF, VOR RWY 26, Amdt 3
Fort Huachuca/Sierra Vista, AZ, Sierra Vista Muni-Libby AAF, NDB RWY 26, Amdt 3
Fort Huachuca/Sierra Vista, AZ, Sierra Vista Muni-Libby AAF, ILS RWY 26, Amdt 2
Fort Huachuca/Sierra Vista, AZ, Sierra Vista Muni-Libby AAF, GPS RWY 26, Orig

[FR Doc. 99–8917 Filed 4–9–99; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 29522; Amdt. No. 1925]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAP's) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which the affected airport is located; or
3. The Flight Inspection Area Office which originated the SIAP.

For Purchase—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located

By Subscription—Copies of all SIAP's, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd. Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082 Oklahoma City, OK 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes SIAP's. The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 14 CFR 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Form 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAP's, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. The SIAP's contained in this amendment are based on the criteria contained in the United States Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports.

The FAA has determined through testing that current non-localizer type, non-precision instrument approaches developed using the TERPS criteria can be flown by aircraft equipped with a Global Positioning System (GPS) and or Flight Management System (FMS) equipment. In consideration of the above, the applicable SIAP's will be altered to include "or GPS OR FMS" in the title without otherwise reviewing or modifying the procedure. (Once a stand alone GPS or FMS procedure is developed, the procedure title will be altered to remove "or GPS or GMS" from these non-localizer, non-precision instrument approach procedure titles.)

The FAA has determined through extensive analysis that current SIAP's intended for use by Area Navigation (RNAV) equipped aircraft can be flown by aircraft utilizing various other types of navigational equipment. In consideration of the above, those SIAP's currently designated as "RNAV" will be redesignated as "VOR/DME RNAV" without otherwise reviewing or modifying the SIAP's.

Because of the close and immediate relationship between these SIAP's and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are, impracticable and

contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Navigation (air).

Issued in Washinton, DC on April 2, 1999.

L. Nicholas Lacey,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 continues to read:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40113–40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

2. Amend 97.23, 97.27, 97.33 and 97.35, as appropriate, by adding, revising, or removing the following SIAP's, effective at 0901 UTC on the dates specified:

...Effective May 20, 1999

Bettles, AK, NBD OR GPS–A, Amdt 8 CANCELLED
Bettles, AK, NDB–A, Amdt 8
Cold Bay, AK, Cold Bay, VOR/DME OR TACAN OR GPS–A, Orig-A CANCELLED
Cold Bay, AK, Cold Bay, VOR/DME OR TACAN–A, Orig-A
Dead Horse, AK, NDB OR GPS–A, Amdt 2A, CANCELLED
Dead Horse, AK, NDB–A, Amdt 2A
Kenai, AK, Kenai Muni, NDB OR GPS–A, Amdt 3, CANCELLED
Kenai, AK, Kenai Muni, NDB–A, Amdt 3
King Salmon, AK, King Salmon, VOR OR TACAN OR GPS RWY 11, Amdt 11, CANCELLED
King Salmon, AK, King Salmon, VOR OR TACAN RWY 11, Amdt 11
King Salmon, AK, King Salmon, VOR OR TACAN OR GPS RWY 29 Amdt 8, CANCELLED
King Salmon, AK, King Salmon, VOR OR TACAN RWY 29, Amdt 8
Kotzebue, AK, Kotzebue/Ralph Wien Memorial, NDB OR GPS–A, Orig, CANCELLED
Kotzebue, AK, Kotzebue/Ralph Wien Memorial, NDB–A, Orig
Port Heiden, AK, Port Heiden, NBD/DME OR GPS RWY 5, Amdt 1 CANCELLED
Port Heiden, AK, Port Heiden, NBD/DME RWY 5, Amdt 1
Port Heiden, AK, Port Heiden, NBD/DME OR GPS RWY 13, Amdt 1 CANCELLED
Port Heiden, AK, Port Heiden, NBD/DME RWY 13, Amdt 1
Talkeetna, AK, Talkeetna, VOR OR GPS–A, Amdt 9A, CANCELLED
Talkeetna, AK, Talkeetna, VOR–A, Amdt 9A
Bakersfield, CA, Meadows Field, VOR OR GPS RWY 30R, Amdt 7, CANCELLED
Bakersfield, CA, Meadows Field, VOR RWY 30R, Amdt 7
Crescent City, CA, Jack McNamara Field, VOR/DME OR GPS RWY 11, Amdt 12, CANCELLED
Crescent City, CA, Jack McNamara Field, VOR/DME RWY 11, Amdt 12
Crescent City, CA, Jack McNamara Field, VOR/DME OR GPS RWY 35, Amdt 10, CANCELLED
Crescent City, CA, Jack McNamara Field, VOR/DME RWY 35, Amdt 10
Oakdale, CA, Oakdale, VOR OR GPS RWY 10, Amdt 5B, CANCELLED
Oakdale, CA, Oakdale, VOR RWY 10, Amdt 5B
Oakland, CA, Metropolitan Oakland Intl, VOR/DME or GPS RWY 27L, Amdt 10A, CANCELLED
Oakland, CA, Metropolitan Oakland Intl, VOR/DME RWY 27L, Amdt 10A
Oroville, CA, Oroville Muni, NDB OR GPS RWY 1, Amdt 2A CANCELLED
Oroville, CA, Oroville Muni, NDG RWY 1, Amdt 2A
Zephyrhills, FL, Zephyrhills Muni, NDB OR GPS RWY 4, Orig, CANCELLED
Zephyrhills, FL, Zephyrhills Muni, NDB RWY 4, Orig
Denison, IA, Denison Muni, NDB OR GPS RWY 30, Amdt 4A, CANCELLED
Denison, IA, Denison Muni, NDB RWY 30, Amdt 4A
Maquoketa, IA, Maquoketa Muni, NBD OR GPS RWY 15, Amdt 2B CANCELLED
Maquoketa, IA, Maquoketa Muni, NBD RWY 15, Amdt 2B
Rock Rapids, IA, Rock Rapids Muni, NBD OR GPS RWY 16, Amdt 1, CANCELLED
Rock Rapids, IA, Rock Rapids Muni, NBD RWY 16, Amdt 1
Chicago/Romeoville, IL, Lewis University, VOR OR GPS RWY 9, Amdt 1, CANCELLED
Chicago/Romeoville, IL, Lewis University, VOR RWY 9, Amdt 1
Little Falls, MN, Little Falls-Morrison County, NBD OR GPS RWY 30, Amdt 5, CANCELLED
Little Falls, MN, Little Falls-Morrison County, NBD RWY 30, Amdt 5
Jackson, MS, Jackson Intl, NDB OR GPS RWY 16L, Amdt 4A, CANCELLED
Jackson, MS, Jackson Intl, NDB RWY 16L, Amdt 4A
Roxboro, NC, Roxboro/Person County, NBD OR GPS RWY 6, Amdt 3, CANCELLED
Roxboro, NC, Roxboro/Person County, NBD RWY 6, Amdt 3
Bartlesville, OK, Bartlesville Muni, VOR OR GPS RWY 17, Amdt 10, CANCELLED
Bartlesville, OK, Bartlesville Muni, VOR RWY 17, Amdt 10
Bartlesville, OK, Bartlesville Muni, VOR/DME OR GPS RWY 35, Amdt 5, CANCELLED
Bartlesville, OK, Bartlesville Muni, VOR/DME RWY 35, Amdt 5
Clinton, OK, Clinton-Sherman, VOR OR GPS RWY 35L, Amdt 11A, CANCELLED
Clinton, OK, Clinton-Sherman, VOR RWY 35L, Amdt 11A
Columbia, SC, Columbia Metropolitan, VOR/DME RNAV OR GPS RWY 5, Orig-B, CANCELLED
Columbia, SC, Columbia Metropolitan, VOR/DME RNAV RWY 5, Orig-B
Walterboro, SC, Walterboro Muni, NDB OR GPS RWY 23, Amdt 11A, CANCELLED
Walterboro, SC, Walterboro Muni, NDB RWY 23, Amdt 11A
College Station, TX, College Station Easterwood Field, VOR OR TACAN OR GPS RWY 10, Amdt 18A, CANCELLED
College Station, TX, College Station Easterwood Field, VOR OR TACAN RWY 10, Amdt 18A
College Station, TX, College Station Easterwood Field, NDB OR GPS RWY 34, Amdt 11B, CANCELLED
College Station, TX, College Station Easterwood Field, NDB RWY 34, Amdt 11B
Wise, VA, Lonesome Pine, VOR/DME RNAV OR GPS RWY 24, Amdt 2, CANCELLED
Wise, VA, Lonesome Pine, VOR/DME RNAV RWY 24, Amdt 2
Casper, WY, Natrona County Intl, VOR/DME OR GPS RWY 3, Amdt 3, CANCELLED
Casper, WY, Natrona County Intl, VOR/DME RWY 3, Amdt 3

[FR Doc. 99–8918 Filed 4–9–99; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR PART 12

[T.D. 99–35]

RIN 1515–AC46

Import Restrictions Imposed On Byzantine Ecclesiastical and Ritual Ethnological Material from Cyprus

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations by imposing emergency import restrictions on certain ecclesiastical and ritual ethnological

material from Cyprus representing the Byzantine period, ranging in date from approximately the 4th century A.D. through approximately the 15th century A.D. These restrictions are being imposed pursuant to a determination of the United States Information Agency issued under the terms of the Convention on Cultural Property Implementation Act in accordance with the United Nations Educational, Scientific and Cultural Organization (UNESCO) Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property. The document contains the Designated List describing the Byzantine ecclesiastical and ritual ethnological material from Cyprus to which the restrictions apply.

EFFECTIVE DATE: April 12, 1999.

FOR FURTHER INFORMATION CONTACT: (Legal Aspects) Donnette Rimmer, Intellectual Property Rights Branch (202) 927–2273; (Operational Aspects) Joan E. Sebenaler, Trade Operations (202) 927–0402.

SUPPLEMENTARY INFORMATION:

Background

The value of cultural property, whether archaeological or ethnological in nature, is immeasurable. Such items often constitute the very essence of a society and convey important information concerning a people's origin, history, and traditional setting. The importance and popularity of such items regrettably makes them targets of theft, encourages clandestine looting of archaeological sites, and results in their illegal export and import.

The U.S. shares in the international concern for the need to protect endangered cultural property. The appearance in the U.S. of stolen or illegally exported artifacts from other countries where there has been pillage has, on occasion, strained our foreign and cultural relations. This situation, combined with the concerns of museum, archaeological, and scholarly communities, was recognized by the President and Congress. It became apparent that it was in the national interest for the U.S. to join with other countries to control illegal trafficking of such articles in international commerce.

The U.S. joined international efforts and actively participated in deliberations resulting in the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (823 U.N.T.S. 231 (1972)). U.S. acceptance of the 1970 UNESCO Convention was codified into U.S. law as the "Convention on Cultural Property Implementation Act" (Pub. L. 97–446, 19 U.S.C. 2601 et seq.) ("the Act"). This was done to promote U.S. leadership in achieving greater international cooperation towards preserving cultural treasures that are of importance to the nations from where they originate and to achieving greater international understanding of mankind's common heritage.

During the past several years, import restrictions have been imposed on archaeological and ethnological artifacts of a number of signatory nations. These restrictions have been imposed either as a result of requests for emergency protection received from those nations or pursuant to bilateral agreements between the United States and other countries.

This document amends the regulations by adding additional ethnological artifacts to the list of articles for which importation restrictions exist.

Cyprus

Under § 303(a)(3) of the Cultural Property Implementation Act (19 U.S.C. 2602(a)(3)), Cyprus, a State Party to the 1970 UNESCO Convention, asked the U.S. Government to impose import restrictions on certain categories of archeological and/or ethnological material the pillage of which, it was alleged, jeopardizes the national cultural patrimony of Cyprus. Notice of receipt of this request was published by the United States Information Agency (USIA) in the **Federal Register** (63 FR 49154) on September 14, 1998.

The request was forwarded to the Cultural Property Advisory Committee, which conducted a review and investigation and submitted its report in accordance with the provisions of 19 U.S.C. 2605(f) to the Deputy Director, USIA. Pursuant to the provisions of 19 U.S.C. 2603(a)(3), the Committee found the situation in Cyprus to be an emergency, and recommended that emergency import restrictions be imposed on certain Byzantine ritual and ecclesiastical ethnological material from Cyprus. The Deputy Director, pursuant to the authority vested in him under Executive Order 12555 and USIA Delegation Order 86–3, considered the Committee's recommendations and on March 4, 1999, the Acting Director made the determination that emergency import restrictions be applied.

The Commissioner of Customs, in consultation with the Acting Director of the USIA, has developed a list of types of covered ritual and ecclesiastical ethnological material from Cyprus representing the Byzantine period. The materials on this list are subject to § 12.104a(b), Customs Regulations (19 CFR 12.104a(b)). As provided in 19 U.S.C. 2601 *et seq.*, and § 12.104a(b), Customs Regulations, listed materials from this area may not be imported into the U.S. unless accompanied by documentation certifying that the material left Cyprus legally and not in violation of the laws of Cyprus.

In the event an importer cannot produce the certificate, documentation, or other evidence required by § 12.104c, Customs Regulations (19 CFR 12.104c) at the time of making entry, § 12.104d, Customs Regulations (19 CFR 12.104d) provides that the port director shall take custody of the material until the certificate, documentation, or evidence is presented. Section 12.104e provides that if the importer states in writing that he will not attempt to secure the required certificate, documentation, or evidence, or the importer does not present the required certificate, documentation, or evidence to Customs within the time provided, the material shall be seized and summarily forfeited to the U.S. in accordance with the provisions of Part 162, Customs Regulations (19 CFR Part 162).

List of Ecclesiastical and Ritual Ethnological Material from Cyprus Representing the Byzantine Period

Ecclesiastical and ritual ethnological material from Cyprus representing the Byzantine period dating from approximately the 4th century A.D. through the 15th century A.D., includes the categories listed below. The following list is representative only.

I. Metal

A. Bronze

Ceremonial objects include crosses, censers (incense burners), rings, and buckles for ecclesiastical garments. The objects may be decorated with engraved or modeled designs or Greek inscriptions. Crosses, rings and buckles are often set with semi-precious stones.

B. Lead

Lead objects date to the Byzantine period and include ampulla (small bottle-shaped forms) used in religious observance.

C. Silver and Gold

Ceremonial vessels and objects used in ritual and as components of church treasure. Ceremonial objects include censers (incense burners), book covers, liturgical crosses, archbishop's crowns, buckles, and chests. These are often decorated with molded or incised geometric motifs or scenes from the Bible, and encrusted with semi-precious

or precious stones. The gems themselves may be engraved with religious figures or inscriptions. Church treasure may include all of the above, as well as rings, earrings, and necklaces (some decorated with ecclesiastical themes) and other implements (e.g., spoons).

II. Wood

Artifacts made of wood are primarily those intended for ritual or ecclesiastical use during the Byzantine period. These include painted icons, painted wood screens (iconstasis), carved doors, crosses, painted wooded beams from churches or monasteries, thrones, chests and musical instruments. Religious figures (Christ, the Apostles, the Virgin, and others) predominate in the painted and carved figural decoration. Ecclesiastical furniture and architectural elements may also be decorated with geometric or floral designs.

III. Ivory and Bone

Ecclesiastical and ritual objects of ivory and bone boxes, plaques, pendants, candelabra, stamp rings, crosses. Carved and engraved decoration includes religious figures, scenes from the Bible, and floral and geometric designs.

IV. Glass

Ecclesiastical objects such as lamps and ritual vessels.

V. Textiles—Ritual Garments

Ecclesiastical garments and other ritual textiles from the Byzantine period. Robes, vestments and altar clothes are often of a fine fabric and richly embroidered in silver and gold. Embroidered designs include religious motifs and floral and geometric designs.

VI. Stone

A. Wall Mosaics

Dating to the Byzantine period, wall mosaics are found in ecclesiastical buildings. These generally portray images of Christ, Archangels, and the Apostles in scenes of Biblical events. Surrounding panels may contain animal, floral, or geometric designs.

B. Floor Mosaics

Floor mosaics from ecclesiastical contexts. Examples include the mosaics at Nea Paphos, Kourion, Kouklia, Chrysopolitissa Basilica and Campanopetra Basilica. Floor mosaics may have animal, floral, geometric designs, or inscriptions.

VII. Frescoes/Wall Paintings

Wall paintings from the Byzantine period religious structures (churches, monasteries, chapels, etc.) Like the mosaics, wall paintings generally portray images of Christ, Archangels, and the Apostles in scenes of Biblical events. Surrounding paintings may contain animal, floral, or geometric designs.

Inapplicability of Notice and Delayed Effective Date

This amendment is being made without notice or public procedure, pursuant to 5 U.S.C. 553(b)(B), because the action being taken is of an emergency nature and such notice or public procedure would be impracticable and contrary to the public interest. For the same reasons, pursuant to 5 U.S.C. 553(d)(3), a delayed effective date is not required.

Regulatory Flexibility Act

Because no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply.

Executive Order 12866

This amendment does not meet the criteria of a "significant regulatory action" as described in E.O. 12866.

Drafting Information

The principal author of this document was Keith B. Rudich, Esq., Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects in 19 CFR Part 12

Customs duties and inspections, Imports, Cultural property.

Amendment to the Regulations

Accordingly, Part 12 of the Customs Regulations (19 CFR Part 12) is amended as set forth below:

PART 12—[AMENDED]

1. The general authority and specific authority citation for Part 12, in part, continue to read as follows:

Authority: 5 U.S.C. 301, 19 U.S.C. 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States (HTSUS)), 1624;

* * * * *

Sections 12.104 through 12.104i also issued under 19 U.S.C. 2612;

* * * * *

2. In § 12.104g(b) the list of emergency actions imposing import restrictions on described articles of cultural property of State Parties is amended by adding Cyprus in appropriate alphabetical order as follows:

§ 12.104g Specific items or categories designated by agreements or emergency actions.

* * * * *

(b) * * *

State party	Cultural property	T.D. number
* * *	* * *	*
Cyprus	Byzantine ecclesiastical and ritual ethnological materials from Cyprus.	99–35

Approved: March 30, 1999.

Raymond W. Kelly,

Commissioner of Customs.

Dennis M. O'Connell,

Acting Deputy Assistant Secretary of the Treasury.

[FR Doc. 99–8992 Filed 4–9–99; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF STATE

22 CFR Parts 121, 123, 124 and 126

[Public Notice 3026]

Amendments to the International Traffic in Arms Regulations

AGENCY: Bureau of Political-Military Affairs, State.

ACTION: Final rule.

SUMMARY: The President of the United States at the 1998 Summit of the Americas in Santiago, Chile, discussed with the Summit leaders the importance of strengthening protections against the new transnational threats facing the region, including the production, distribution, and abuse of narcotics,

illegal arms trafficking and terrorism. To combat these threats and to strengthen the hemisphere's common security, the President agreed to implement model regulations on commercial arms transfers. In furtherance of this objective, the Secretaries of State, Commerce and Treasury are directed to implement the Model Regulations for the Control of the International Movement of Firearms, Their Parts and Components, and Ammunition ("Model Regulations"). In responding to the President's directive, the ITAR was reviewed and it was determined that the predominant sections requiring change are the US Munitions List (USML), the Canadian exemption, and the personal use exemption for firearms and ammunition. Review of the Canadian exemption resulted in removal of the exemption for several USML items, including all Category I firearms and Category III ammunition for the firearms in Category I. It was also determined that the language should be revised to seek better understanding and compliance by US exporters of the current requirements of the ITAR and AECA when using the existing exemption: specifically, those of Part 123 dealing with reexport or retransfer, and congressional notifications, and of Part 124 that any production of a USML article in Canada requires prior written approval in accordance with Part 124 of the ITAR. In carrying out these initiatives, §§ 121.1, 121.9, 123.17, 124.13 and 126.5 of the International Traffic in Arms Regulations (ITAR) are being amended.

EFFECTIVE DATE: April 12, 1999.

FOR FURTHER INFORMATION CONTACT: Rose Biancaniello, Deputy Director Licensing, Office of Defense Trade Controls, Department of State, Phone (703) 812–2568 or Fax (703) 875–6647.

SUPPLEMENTARY INFORMATION: This amendment, in addition to responding to the President's directive on implementing the "Model Regulations," requires a license for additional critical military technologies identified on the USML and provides specific regulatory references to ensure proper compliance is exercised over the export of all items covered by the USML. The amendments also enhance State's ability to more efficiently, accurately and factually respond to inquiries from the Congress. In addition, compliance with the regulations will be enhanced, since the amendment benefits U.S. Customs in its efforts to carry out enforcement activities related to illegal exports. Recent escalation in defense companies' voluntary disclosures, discussions with the Canadian Government and the use of the Canadian exemption by unregistered companies provides evidence that unauthorized exports are taking place both from the US and by Canadian persons in possession of US defense articles and defense services. Therefore, revising the current ITAR language will assist in preventing future violations by companies participating in the export, directly or indirectly, of U.S. defense articles or defense services to unauthorized end-users and end-uses. Also, the lack of a license for transactions currently authorized under § 126.5 has eliminated documentation, made impossible USG review of significant transactions and increased the difficulty to track, interdict or verify the end-use and end-user violations. Therefore, § 126.5 has been amended to assist U.S. industry by providing a better understanding of when a license is required, when the exemption can be utilized, and the criteria for use of the exemption. These changes are being made in consultation with the Government of Canada in order to reduce the risks of illegal trafficking. To ensure the efficacy of this amendment in enhancing compliance with the ITAR and the AECA, further review will be conducted during the next several months to determine whether additional steps are necessary to ensure that the USG is, in all instances, able to enforce the defense export control mandates established in the law.

To carry out the President's Directive, ITAR § 121.1, Category I, Firearms, is amended to move firearms spare parts and accessories from paragraph (a) to paragraph (d) and to move technical data and defense services currently in paragraph (d) to a new paragraph (e). In addition, incorrect cites in paragraph (a) are being corrected. Also, § 121.9 is amended to exclude from the USML certain types of accessories and attachments for firearms. § 123.17 (a) is amended to reduce the value of the parts and components that may be shipped subject to this exemption from $500 to $100. This change maintains the original intent behind the exemption, which was to provide an expeditious manner for exporters to replace minor parts (e.g. springs, nuts) damaged during the initial shipment, while maintaining controls necessary to implement the "Model Regulations." In addition, ITAR § 124.13 is amended to require a license for the export of all technical data exported for use in the manufacture of defense articles. Also being amended is § 126.5 of the ITAR. The amendment expands the defense articles and related technical data that are not exempt from licensing to include all Category I firearms and Category III ammunition for such firearms and certain defense articles and related technical data defined in categories IV, XIII, XIV, and XV of the USML. Therefore, the exemption does not apply to the following defense articles, defense services and related technical data for the following items:

(1) Category I—Firearms;

(2) Category III ammunition for the firearms in Category I; and

(3) Category IV (a), (b), (c), (d), (f) and (g)—Launch Vehicles, Guided Missiles, Ballistic Missiles, and Rockets. (This does not include bombs, grenades, torpedoes, depth charges, land and naval mines in IV (a); components, parts, accessories and attachments in IV(h); and related technical data for these items covered by Part 125.); and

(4) Nuclear weapons strategic delivery systems and all components, parts, accessories, attachments specifically designed for such systems and associated equipment;

(5) Naval nuclear propulsion equipment listed in Category VI(e); and

(6) Aircraft listed in Category VIII(a); and

(7) Category XIII(b) and XIII(j) (e.g. stealth); and

(8) Toxicological Agents and Equipment and Radiological Equipment listed in Category XIV(a) through (d); and

(9) Spacecraft, Remote Sensing Satellites, and Military Communications Satellites listed in Category XV(a), (b), and (c); and

(10) Nuclear Weapons Design and Test Equipment listed in Category XVI; and

(11) All Classified Articles, Technical Data and Defense Services, including Category XVII; and

(12) Submersible and oceanographic vessels and related articles listed in Category XX(a) through (d); and

(13) All USML items and related technical data identified on the Missile Technology Control Regime (MTCR) Annex.

The amendment also states the regulatory sections of the ITAR that must be complied with when using the exemption.

In addition to amending the ITAR, to fully implement the "Model Regulations," the Office of Defense Trade Controls has modified its firearms licensing practices. All requests for a license or other approval to export firearms and/or ammunition must be accompanied with a firm order. A letter of intent will no longer be accepted for any firearms and/or ammunition request. An import authorization or a certification that the importing country does not issue import authorizations must also accompany all requests. DTC will continue the policy to require a Form DSP–83 (Nontransfer and Use Certificate) for any application for a quantity of 50 or more firearms. Any request that does not have the required documentation will be subject to being Returned Without Action (RWA).

However, in implementing the "Model Regulations," any request for authorization to export to an OAS member country will be immediately RWA'd if the request does not include an import authorization. Any request for relief from this requirement will be denied. The current OAS member states that have agreed to the "Model Regulations" are: Antigua and Barbuda, Argentina, The Bahamas, Barbados, Belize, Bolivia, Brazil, Canada, Chile, Colombia, Costa Rica, Dominica, Dominican Republic, Ecuador, El Salvador, Grenada, Guatemala, Guyana, Haiti, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Suriname, Trinidad and Tobago, United States of America, Uruguay, and Venezuela.

This change in licensing practices does not affect any change in any country's status as an ITAR § 126.1 proscribed destination. Also, the validity period of any license for the export of firearms and ammunition will be adjusted from the four-year period stated in § 123.21 of the ITAR to reflect a time period consistent with the validity period of the import authorization. Applicants may continue to use valid licenses or other approvals until all the authorized material has been exported or until the license has expired, unless otherwise advised by the Office of Defense Trade Controls. Any exporter that has used an exemption that no longer exists in the ITAR, for an activity that will continue following this publication, has 30 days from publication of this notice to apply for a license or other approval. Any previously exempted activity for which a license or other approval has not been submitted within 30 days and assigned a DTC case number must cease or the U.S. person will be considered to be in violation of the AECA and the ITAR.

This amendment involves a foreign affairs function of the United States and, thus, is excluded from the procedures of Executive Order 12866 (68 FR 51735) and 5 U.S.C. 533 and 554, but has been reviewed internally by the Department to ensure consistency with the purposes thereof. This amendment has been found to be a minor rule within the meaning of the Small Business Regulatory Enforcement Fairness Act of 1996, Public Law 104–121 (the "Act"). Interested parties are invited to submit written comments to the Department of State, Office of Defense Trade Controls, ATTN: Regulatory Change, Room 200, SA–6, Washington, D.C. 20520–0602.

List of Subjects in 22 CFR Part 121

Arms and munitions, Exports.

Accordingly, for the reasons set forth above, Title 22, Chapter I, Subchapter M, Parts 121, 123, 124 and 126 are being amended as follows:

PART 121—THE UNITED STATES MUNITIONS LIST

1. The authority citation for part 121 continues to read as follows:

Authority: Secs. 2, 38, and 71, Pub. L. 90–629, 90 Stat. 744 (22 U.S.C. 2752, 2778, 2797); E.O. 11958, 42 FR 4311; 3 CFR 1077 Comp., p. 79; 22 U.S.C. 2658.

2. In § 121.1 Category I—Firearms is revised to read as follows:

§ 121.1 General. The United States Munitions List.

* * * * *

Category I—Firearms

*(a) Nonautomatic, semi-automatic and fully automatic firearms to caliber .50 inclusive. (See § 121.9 and §§ 123.17 and 123.18 of this subchapter.)

(b) Riflescopes manufactured to military specifications; firearm silencers and suppressers, including flash suppressors. (See Category XII(c) for night sighting devices.)

*(c) Insurgency-counterinsurgency type firearms or other weapons having a special military application (e.g. close assault weapons systems) regardless of caliber.

*(d) Components, parts, accessories and attachments for the articles in paragraphs (a) through (c) of this category. All the components, parts, accessories and attachments covered by this paragraph, except barrels, cylinders, receivers (frames) or complete breach mechanisms, are non-SME (see § 120.7).

(e) Technical data (as defined in § 120.10 of this subchapter) and defense services (as defined in § 120.9 of this subchapter) directly related to the defense articles enumerated in paragraphs (a) through (d) of this category. (See § 125.4 of this subchapter for exemptions.) Technical data directly related to the manufacture or production of any defense articles enumerated elsewhere in this category that are designated as Significant Military Equipment (SME) shall itself be designated SME.

* * * * *

3. Section 121.9 is amended by revising paragraph (a) to read as follows:

§ 121.9 Firearms.

(a) Category I includes revolvers, pistols, rifles, carbines, fully automatic rifles, submachine guns, machine pistols and machine guns to .50 inclusive. It includes combat shotguns. It excludes other shotguns with barrels 18″ or longer, BB, pellet, and muzzle loading (black powder) firearms. It also excludes accessories and attachments for firearms that do not enhance the usefulness, effectiveness, or capabilities of the firearm, its components and parts (e.g. belts, slings, after market rubber grips, cleaning kits).

* * * * *

PART 123—LICENSES FOR THE EXPORT OF DEFENSE ARTICLES

4. The authority citation for part 123 continues to read as follows:

Authority: Secs. 2 and 38, Pub. L. 90–629, 90 Stat. 744 (22 U.S.C. 2752, 2778); 22 U.S.C. 2753; E.O. 11958, 42 FR 4311; 3 CFR 1977 Comp., p. 79; 22 U.S.C. 2658.

4a. Section 123.4 is amended by revising paragraph (a) to read as follows:

§ 123.4 Temporary import license exemptions.

(a) District Directors of Customs shall permit the temporary import (and subsequent export) without a license, for a period of up to 4 years, of unclassified U.S.-origin defense items (including any items manufactured abroad pursuant to U.S. Government approval) if the item temporarily imported:

(1) Is serviced (e.g., inspection, testing, calibration or repair, including overhaul, reconditioning and one-to-one replacement of any defective items, parts or components, but excluding any modifications, enhancement, upgrade or other form of alteration or improvement that changes the basic performance of the item), and is subsequently returned to the country from which it was imported. Shipment may be made by the U.S. importer or a foreign government representative of the country from which the goods were imported; or

(2) Is to be enhanced, upgraded or incorporated into another item which has already been authorized by the Office of Defense Trade Controls for permanent export; or

(3) Is imported for the purpose of exhibition, demonstration or marketing in the United States and is subsequently returned to the country from which it was imported; or

(4) Has been rejected for permanent import by the Department of the Treasury and is being returned to the country from which it was shipped; or

(5) Is approved for such import under the U.S. Foreign Military Sales (FMS) program pursuant to an executed U.S. Department of Defense Letter of Offer and Acceptance (LOA).

* * * * *

5. Section 123.15 is amended by revising paragraph (b) to read as follows:

§ 123.15 Congressional notification for licenses.

(a) * * *

(b) Persons who intend to export defense articles and defense services

pursuant to any exemption in this subchapter under the circumstances described in the first sentence of paragraph (a) of this section must notify the Office of Defense Trade Controls by letter of the intended export and, prior to transmittal to Congress, provide a signed contract and a DSP–83 signed by the applicant, the foreign consignee and end-user.

6. Section 123.17 is amended by revising paragraph (a) to read as follows:

§ 123.17 Exports of firearms and ammunition.

(a) Except as provided in § 126.1 of this subchapter, District Directors of Customs shall permit the export without a license of components and parts for Category I(a) firearms, except barrels, cylinders, receivers (frames) or complete breech mechanisms when the total value does not exceed $100 wholesale in any transaction.

* * * * *

PART 124—AGREEMENTS, OFF-SHORE PROCUREMENT AND OTHER DEFENSE SERVICES

7. The authority citation for part 124 continues to read as follows:

Authority: Secs. 2, 38, and 71, Pub. L. 90–629, 90 Stat. 744 (22 U.S.C. 2752, 2778, 2797); E.O. 11958, 42 FR 4311; 3 CFR 1977 Comp., p. 79; 22 U.S.C. 2658.

9. Section 124.13 is amended by revising paragraph (e) to read as follows:

§ 124.13 Procurement by United States persons in foreign countries (offshore procurement).

* * * * *

(e) Licenses issued pursuant to this section must be renewed upon their expiration if offshore procurement is to be extended beyond the period of validity of the original approved license. In all instances a license for offshore procurement must state as the purpose "Offshore procurement in accordance with the conditions established in the ITAR, including § 124.13. No other use will be made of the technical data." If the technical data involved in an offshore procurement arrangement is otherwise exempt from the licensing requirements of this subchapter (e.g. § 126.4), the DSP–5 referred to in the first sentence of this section is not required. However, the exporter must comply with the other requirements of this section and provide a written certification to the Office of Defense Trade Controls annually of the offshore procurement activity and cite the exemption under which the technical data was exported. The exemptions under § 125.4 of this subchapter may not be used to establish offshore procurement arrangements.

PART 126—GENERAL POLICIES AND PROVISIONS

10. The authority citation for part 126 continues to read as follows:

Authority: Secs. 2, 38, 40, 42, and 71, Pub L. 90–629, 90 Stat. 744 (22 U.S.C. 22752, 2778, 2780, 2791, and 2797); 22 U.S.C. 2778; E.O. 11958, 42 FR 4311; 3 CFR, 1977 Comp., p. 79; 22 U.S.C. 2658; 22 U.S.C. 287c; E.O. 12918, 59 FR 28205, 3 CFR, 1994 Comp., p. 899.

11. Section 126.5 is revised to read as follows:

§ 126.5 Canadian exemptions.

(a) District Directors of Customs and postmasters shall permit the permanent or temporary export without a license of any unclassified equipment or unclassified technical data to Canada for end-use in Canada by Canadian citizens or return to the United States, or temporary import of Canadian-origin items from Canada for end-use in the United States or return to Canada for a Canadian citizen, with the exception of the defense articles, defense services and related technical data listed in paragraphs (b), (c), and (d) of this section.

(b) The exemption provided in paragraph (a) of this section does not apply to the following ITAR part 121, § 121.1 defense articles, defense services, or related technical data:

(1) Category I—Firearms;

(2) Category III ammunition for the firearms in Category I;

(3) Category IV (a), (b), (c), (d), (f) and (g)—Launch Vehicles, Guided Missiles, Ballistic Missiles and Rockets. (This does not include bombs, grenades, torpedoes, depth charges, land and naval mines in IV (a); components, parts, accessories and attachments in IV(h); and related technical data for these items covered by part 125 of this subchapter.)

(4) Nuclear weapons strategic delivery systems and all components, parts, accessories, attachments specifically designed for such systems and associated equipment;

(5) Naval nuclear propulsion equipment listed in Category VI(e);

(6) Aircraft Listed in Category VIII(a));

(7) Category XIII (b) (e.g. military information security systems, cyptrographic devices, software, and components) and XIII (j) (e.g. stealth);

(8) Toxicological Agents and Equipment and Radiological Equipment listed in Category XIV(a) through (d);

(9) Spacecraft, Remote Sensing Satellites, and Military Communications Satellites listed in Category XV(a), (b), and (c);

(10) Nuclear Weapons Design and Test Equipment listed in Category XVI;

(11) All Classified Articles, Technical Data and Defense Services, including Category XVII;

(12) Submersible and oceanographic vessels and related articles listed in Category XX(a) through (d);

(13) All USML items and related technical data on the Missile Technology Control Regime (MTCR) Annex.

(c) Defense articles, defense services, or related technical data for use by a foreign national other than a Canadian citizen.

(d) Any defense service covered by part 124 of this subchapter.

(e) Any export involving defenses articles and defense services for which congressional notification is required in accordance with § 123.15 and 124.11 of this subchapter.

(f) Related requirements. The exemption provided in this section from requiring a license for export does not exempt the exporter from the following:

(1) Registration as an exporter as required by the Arms Export Control Act and part 122 of this subchapter;

(2) The exporter, or any party to the transaction must be eligible as described in § 120.1 (c) and (d) of this subchapter;

(3) The requirement for filing a Shippers' Export Declaration or notification letter required by § 123.22 of this subchapter;

(4) Written documentation that the defense article is:

(i) For end-use in Canada by a Canadian citizen, and

(ii) For use by non-Canadians, in Canada, or export from Canada to another foreign destination, requires prior written approval of the US Government;

(5) Obtaining a completed DSP–83 for all significant military equipment;

(6) Maintenance of records as required by § 122.5 of this subchapter.

Note: It is the responsibility of the exporter of record to determine in writing the Canadian end-use and end-user. In any instance when such written documentation is not available, this exemption may not be used. Further, in any instance when the exporter has knowledge that the defense article exempt from licensing is being exported for use by a non-Canadian citizen or for export to another foreign destination, other than the United States, an export license must be obtained prior to the transfer to Canada. The request should state the ultimate foreign end-user and end-use with Canada as an intermediate destination. The role of the Canadian parties should be defined. Should an instance exist when a defense article or related technical data was

properly exported, either using a license or an exemption, and there is a reason to change either the end-use or the end-user, the requirements of § 123.9 of this subchapter apply.

Dated: March 25, 1999.

John D. Holum,

Acting Under Secretary of State for Arms Control and International Security Affairs and Director, U.S. Arms Control and Disarmament Agency.

[FR Doc. 99–9033 Filed 4–9–99; 8:45 am]

BILLING CODE 4710–25–U

AGENCY FOR INTERNATIONAL DEVELOPMENT

22 CFR Part 201

RIN 0412–AA41

Rules and Procedures Applicable to Commodity Transactions Financed by USAID: Administrative Revisions

AGENCY: United States Agency for International Development.

ACTION: Final rule.

SUMMARY: USAID Regulation 1 is being amended to update the coverage and the expiration date on OMB's approval of information collection requirements in accordance with the Paperwork Reduction Act. The name and address of the responsible USAID office is updated. Also, ZIP Codes and office name are being changed.

DATES: Effective May 12, 1999.

FOR FURTHER INFORMATION CONTACT: Kathleen O'Hara, Office of Procurement, Policy Division (M/OP/P) USAID, Washington, DC 20523–7801. Telephone: (202) 712–4759, facsimile: (202) 216–3395, e-mail address: kohara@usaid.gov.

SUPPLEMENTARY INFORMATION: This amendment is editorial in nature and, therefore, is being published as a final rule with an effective date thirty days from publication since all the changes are already in effect. This rule will not have an impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* and is not a major rule under 5 U.S.C. 804. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

List of Subjects in 22 CFR Part 201

Administrative practice and procedure, Commodity procurement, Grant programs—foreign relations.

Accordingly 22 CFR part 201 is amended as follows:

1. The authority citation continues to read as follows:

Authority: Sec. 621, Pub. L. 87–195, 75 Stat. 445 (22 U.S.C. 2381), as amended; E.O. 12163, Sept. 29, 1979, 44 FR 56673; 3 CFR 1979 Comp., p. 435.

Subpart A—Definitions and Scope of This Part

2. Section 201.03 is revised to read as follows:

§ 201.03 OMB approval under the Paperwork Reduction Act.

(a) OMB has approved the following information collection and recordkeeping requirements established by this part 201 (OMB Control No. 0412–0514, expiring July 31, 2000):

Sec.
201.13(b)(1)
201.13(b)(2)
201.15(c)
201.31(f)
201.31(g)
201.32(b)
201.32(c)
201.51(c)
201.52(a)
201.74

(b) USAID will use the information requested in these sections to verify compliance with statutory and regulatory requirements and to assist in the administration of USAID-financed commodity programs. The information is required from suppliers in order to receive payment for commodities or commodity-related services. The public reporting burden for this collection of information is estimated to average a half hour per response, including the time required for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Procurement, Policy Division (M/OP/P), U.S. Agency for International Development, 1300 Pennsylvania Avenue, Washington, DC 20523–7801, and the Office of Management and Budget, Paperwork Reduction Project (0412–0514), Washington, DC 20503.

Subpart C—Procurement Procedures Responsibilities of Importers

§ 201.23 [Amended]

3. In § 201.23, paragraph (c) is amended by removing "20523–1414" from the second sentence and adding "20523–7700 in its place.

Subpart D—Responsibilities of Suppliers

§ 201.301 [Amended]

4. Section 201.31 is amended by removing "20523–1419" from the last sentence in paragraph (f) and adding "20523–7900" in its place, and by removing "20523–0208" from the second sentence in paragraph (g) and adding "20523–7702" in its place.

§ 201.302 [Amended]

5. Section 201.32 is amended by removing "20523–0280" in the first sentence of paragraph (b) and adding "20523–7792" in its place, and by removing "20523–1415" from paragraph (c) and adding "20523–7900" in its place.

Subpart F—Payment and Reimbursement

§ 201.51 [Amended]

6. Section 201.51 is amended by removing "Letter of Commitment Branch" and "20523–0208" from the fourth sentence in paragraph (c)(4) and adding "Cash Management and Payment Division (M/FM/CMP)" and "20523–7702," respectively, in their places.

§ 201.52 [Amended]

7. Section 201.52 is amended by removing "20523–1419" in paragraph (a)(2)(iii)(C) and adding "20523–7900" in its place; by removing "20523–1415" is paragraph (a)(4)(iii) and adding "20523–7900" in its place; and by removing "20523–0208" in paragraph (a)(4)(iii)(B) and adding "20523–7702" in its place.

Subpart G—Price Provisions

§ 201.67 [Amended]

8. Section 201.67 is amended by removing "20523–0209" in paragraph (a)(5)(ii) and adding "20523–7702" in its place.

Dated: March 8, 1999.

Marcus L. Stevenson,

Procurement Executive.

[FR Doc. 99–8890 Filed 4–9–99; 8:45 am]

BILLING CODE 6116–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 291

RIN 1076–AD67

Class III Gaming Procedures

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Final rule.

SUMMARY: The Department is issuing regulations prescribing procedures to permit Class III gaming when a State interposes its immunity from suit by an Indian tribe in which the tribe accuses the state of failing to negotiate in good faith. The rule announces the Department's determination that the Secretary may promulgate Class III gaming procedures under certain specified circumstances. It also sets forth the process and standards pursuant to which any procedures would be adopted.

EFFECTIVE DATE: These regulations take effect on May 12, 1999.

FOR FURTHER INFORMATION CONTACT: Paula Hart, Indian Gaming Management Staff, Bureau of Indian Affairs, Department of the Interior, MS 2070–MIB, 1849 C Street NW, Washington, DC 20240, Telephone (202) 219–4066.

SUPPLEMENTARY INFORMATION: Congress enacted the Indian Gaming Regulatory Act (IGRA), 25 U.S.C. 2701–2721, to provide a statutory basis for the operation and regulation of Indian gaming and to protect Indian gaming as a means of generating revenue for tribal governments. Prior to the enactment of IGRA, states generally were precluded from any regulation of gaming on Indian reservations. See *California* v. *Cabazon Band of Mission Indians*, 480 U.S. 202 (1987). The IGRA, by offering States an opportunity to participate with Indian tribes in developing regulations for Indian gaming, "extends to the States a power withheld from them by the Constitution." *Seminole Tribe of Florida* v. *State of Florida*, 517 U.S. 44, 58 (1996).

Since IGRA's passage in 1988, more than 200 compacts in 24 States have been successfully negotiated by tribes and States, and approved by the Secretary. Today, Indian gaming generates significant revenue for Indian tribes. As required by IGRA, gaming revenues are being devoted primarily to providing essential government services such as roads, schools, and hospitals, as well as economic development.

The IGRA divides Indian gaming into three categories. This rule addresses only the conduct of Class III gaming, which primarily includes slot machines, casino games, banking card games, dog racing, horse racing, and lotteries. 25 U.S.C. 2703(8); 25 CFR 502.4. Under IGRA, the conduct of "Class III gaming activities" is lawful on Indian lands only if such activities: (1) Are authorized by an ordinance adopted by the governing body of the tribe and approved by the Chairman of the National Indian Gaming Commission (NIGC), (2) are located in a State that permits such gaming for any purpose by any person, organization, or entity, and (3) are conducted in conformance with a Tribal-State compact. 25 U.S.C. 2710(d)(1)(B). The regulations that follow relate primarily to this third requirement, i.e., the Tribal-State compact.

Under IGRA, a tribe interested in operating Class III gaming initiates the compacting process by requesting the State to enter into negotiations to develop the Tribal-State compact. 25 U.S.C. 2710(d)(3)(A). Upon receiving such a request, the State is obliged "to negotiate with the Indian tribe in good faith to enter into such a compact." Id. If the State fails to negotiate in good faith, the tribe may initiate an action against the State in Federal district court. 25 U.S.C. 2710(d)(7)(A)(i). If the court finds that the State has failed to negotiate in good faith, it must order the State and the tribe to conclude a compact within 60 days. 25 U.S.C. 2710(d)(7)(B)(iii). If the State and tribe fail to conclude a compact within that period, each side must submit their last best offer to a court-appointed mediator, who selects one of the proposals. 25 U.S.C. 2710(d)(7)(B)(iv). If the State consents to the mediator's proposal it is treated as a Tribal-State compact. 25 U.S.C. 2710(d)(7)(B)(vi). If the State does not consent, the Secretary of the Interior (Secretary) shall prescribe procedures (1) which are consistent with the proposed compact selected by the mediator, the provisions of IGRA, and the relevant provisions of State laws, and (2) under which Class III gaming may be conducted on the Indian lands over which the Indian tribe has jurisdiction. 25 U.S.C. 2710(d)(7)(B)(vii).

In *Seminole Tribe of Florida* v. *Florida*, the Supreme Court held that a State may assert an Eleventh Amendment immunity defense to avoid a lawsuit brought by a tribe alleging that the State did not negotiate in good faith. After the Seminole decision, some States have signaled their intention to assert immunity to any suit in Federal court. Claiming immunity will, if no further action is taken, create an effective State veto over IGRA's dispute resolution system and therefore will stalemate the compacting process. This rule contemplates that the Secretary may prescribe Class III gaming procedures to end the stalemate.

On May 10, 1996, the Bureau of Indian Affairs (BIA) published an Advance Notice of Proposed Rulemaking (ANPR) in response to the United States Supreme Court's decision in *Seminole Tribe of Florida* v. *Florida*. 61 FR 21394 (May 10, 1996). In that ANPR, the Department posed, among others, the question of "[w]hether and under what circumstances, the Secretary is empowered to prescribe 'procedures' for the conduct of Class III gaming when a State interposes an Eleventh Amendment defense to an action pursuant to 25 U.S.C. 2710(d)(7)(B)." The Secretary, in consultation with the Solicitor, has determined that he possesses legal authority to promulgate procedures setting out the terms under which Class III gaming may take place when a State asserts its immunity from suit. The Secretary's authority arises from the statutory delegation of powers contained in 25 U.S.C. 2710(d)(7)(B)(vii) of IGRA and 25 U.S.C. 2 and 9.

Summary of the Rule

The rule tracks IGRA's negotiation and mediation process, adjusted only to the extent necessary to reflect the unavailability of tribal access to Federal court where a State refuses to waive sovereign immunity. The rule applies only where a tribe asserts that a State is not negotiating in good faith, files suit against the State in Federal court in accordance with IGRA, but cannot proceed in Federal court because the State refuses to waive its sovereign immunity from suit. In cases in which a State chooses not to assert a sovereign immunity defense, the rule will not apply. Instead, the negotiation and mediation process set forth in section 2710(d)(7) of IGRA would continue under the supervision of the court.

In those cases in which a State interposes a sovereign immunity defense to a tribal lawsuit in Federal court, the regulation establishes a process for obtaining State participation in the compacting process, prior to the Secretary's identification of procedures.

The steps set forth in the rule include:

1. Following dismissal on grounds of sovereign immunity of a tribe's suit brought pursuant to 25 U.S.C. 2710(d)(7) against a State, the tribe will have the opportunity to submit a request to the Department to establish gaming procedures. The procedures submitted by the tribe will be required to address all of the issues identified in the rule, including the scope of the gaming activities being requested by the tribe and detailed mechanisms for regulation of the gaming, including assurances that games will be conducted fairly and that the financial integrity of the entire operation will be safeguarded. The tribe will be asked to provide a legal analysis supporting the proposed scope of gaming in view of State prohibitions and other policies on specific types of gaming.

2. The Department will notify the tribe within 15 days that it has received the proposal and whether it is complete. Within

30 days the Department will notify the tribe whether it is eligible for procedures.

3. Following issuance of a notice of completeness and eligibility, the Department will notify the State of the tribe's request for the issuance of procedures, and solicit the State's comments on the tribe's proposed procedures, including any comments on the proposed scope of gaming. The State will also be invited to submit alternative proposed procedures within 60 days.

4. Based on its review of the submissions of the tribe and the State, and if the State has not submitted an alternative proposal, the Department will advise the State and Indian tribe of: (a) its approval of the tribe's proposal if the Secretary determines that there are no objections to the proposals; (b) its convening of an informal conference with the State and tribe within 30 days for the purpose of resolving any areas of disagreement.

5. If the State offers an alternative proposal, the Secretary will appoint a mediator who will receive "last best offers" from the State and tribe. The mediator must then submit to the Secretary the proposed procedures that best comport with applicable Federal and State law. Within 60 days of receipt of the mediator's recommendation, the Secretary must notify the State and tribe of his decision to approve or disapprove the procedures submitted by the mediator, or prescribe such procedures as he determines appropriate that are consistent with State law and the provisions of IGRA.

Review of Public Comments

Sixty-seven (67) comments were submitted in response to the January 22, 1998, **Federal Register** publication of the proposed rule, 25 CFR 291.

Section 291.1 Purpose and Scope

Nearly all of the comments from the States reiterated or expanded on comments previously submitted arguing that the Secretary lacks legal authority to promulgate these regulations. Comments from the Indian tribes likewise reiterated prior comments in support of the Secretary's authority to adopt the proposed regulation.

Response: The Department adheres to the reasoning set forth in the January 22, 1998 **Federal Register** publication in support of the Secretary's authority to adopt the proposed regulation. In addition, a recent case, *Spokane Tribe of Indians* v. *Washington State,* 139 F.3d 1297 (9th Cir. 1998)(Spokane II), casts doubt on the legal authority relied upon by the States in their comments to the proposed rule. In Spokane II, the court noted that an earlier opinion (*Spokane Tribe of Indians* v. *Washington State,* 28 F.3d 991 9th Cir. 1994)(Spokane I)) questioned the Eleventh Circuit court of appeals' statement in *Seminole Tribe of Florida* v. *Florida,* 11 F.3d 1016 (1994) supporting the approach subsequently taken in our proposed rule. The Spokane II court noted that the statement in Spokane I: was in the context of our (incorrect) assumption that tribes could sue states. We were pointing out that the Eleventh Circuit's suggestion would not be as close to the Congress' intent as the scheme Congress in fact passed. True. But the Supreme Court has now told us that Congress' scheme is unconstitutional; the Eleventh Circuit's suggestion is a lot closer to Congress' intent than mechanically enforcing IGRA against tribes even when states refuse to negotiate. 139 F.3d at 1301–02.

As an adjunct to the argument that the Secretary lacks authority, the States assert that the Secretary's authority under the statute is limited to circumstances where a court has made a finding that a State has failed to negotiate in "good faith" with an Indian tribe over Class III gaming procedures. The State strenuously objects to any role for the Secretary in evaluating whether a State has negotiated in "good faith." Their objection is based on alleged bias that the Secretary might have due to the trust responsibility owed by the Federal government to the Indian tribes. The States also assert that the Secretary lacks expertise to make such a finding. The final regulation eliminates the requirement that the Secretary make a finding on the "good faith" issue. States will be invited to participate in mediation if they wish. They can also submit comments on the proposed scope of gaming (the issue most often contested in negotiations) and on any other matter pertaining to an Indian tribe's proposed procedures. The Secretary will take those views into account in his decision-making process. Congress' intent was to ensure a role for the States in developing the terms and conditions under which Class III Indian gaming would take place. The approach taken in the regulation is consistent with that intent.

Several comments suggested that the rule be expanded to explicitly include compact renewals.

Response: This recommendation was adopted because the authority granted the Secretary in IGRA to issue Class III gaming procedures speaks only in terms of entire compacts, and a renewal of an entire compact falls within this authority. Section 291.2(b) was added in the definition section to make clear the term "compact" as used in the regulations includes compact renewals.

Several comments suggested the scope be expanded to include compact amendments.

Response: This recommendation was not adopted because the authority granted to the Secretary in IGRA to issue Class III gaming procedures speaks only in terms of entire compacts, not to amendments.

One comment suggested the scope was too narrow because it limits the application to when the tribe has brought an action in Federal court and the State has asserted its immunity from such suit, and the court has dismissed the action.

One comment suggested that if the State issues a letter of intent to raise its immunity defense, then this should suffice to trigger the Class III gaming procedures.

Response: These recommendations were not adopted because the statutory trigger in IGRA for the Secretary to issue Class III gaming procedures is the filing of a lawsuit.

One comment suggested the proposed scope would clog the courts in futile litigation and stonewall the IGRA process for several years. The comment suggested it should be sufficient for the State to assert its immunity in just one tribe's lawsuit.

Response: This recommendation was not adopted because the statutory trigger in IGRA for the Secretary to issue Class III gaming procedures is the filing of a lawsuit because of the particular parties' failure to conclude a compact. The regulation cannot dispense with the requirement that each tribe be involved in a lawsuit. The regulation must be the same for each tribe.

Section 291.2 Definitions

Paragraph (b) was added to make clear the regulations apply to compact renewals as suggested by several comments. See *Summary of Comments* under section 291.1.

Section 291.3 When May an Indian Tribe Ask the Secretary To Issue Class III Gaming Procedures?

One comment recommended that paragraph (b) be revised to state that if the tribe and State failed to negotiate a compact 180 days after the State received the tribe's request, or if the State previously asserted its Eleventh Amendment immunity in an action brought by any tribe, or if the State unequivocally refused to enter into or continue negotiations.

Response: This recommendation was not adopted because the regulation tracks the statutory requirements in 25 U.S.C. 2710(d)(7)(A) and (B).

One comment suggested that section (c) be reworded.

Response: This recommendation was not adopted because the words track the statutory language in 25 U.S.C. 2710(d)(7)(A)(i) and (B)(ii)(II).

One comment suggested broadening paragraph (d) to included *any* tribal action in which the State declined to waive its immunity.

Response: This recommendation was not adopted for the same reason expressed for one comment under § 291.1, which is that the statute requires the particular parties to be unable to conclude a compact and a lawsuit is initiated as a result. The regulation must have the same criteria for each tribe.

Several comments suggested broadening paragraph (d) to include the State's assertion of any immunity, whether it be the Eleventh Amendment, Tenth Amendment, or otherwise.

Response: These recommendations were not adopted because the regulation explicitly deals with Eleventh Amendment immunity, and not with other potential barriers.

One comment recommended that paragraph (d) require the State to either choose the court process or the Secretarial process out of concern that the Eleventh Amendment immunity defense could be raised late in the appeal process.

Response: This recommendation was not adopted because the regulation explicitly deals with the Secretarial process once the State successfully asserts its Eleventh Amendment immunity.

Several comments suggested that instead of requiring an actual assertion of the State's immunity, the regulation should only require documentation of the State's intention to assert such immunity.

Response: This recommendation was not adopted because the statutory trigger for the Class III gaming procedures is an initiation of a lawsuit. The scope of the regulations provides for procedures where the State actually raised its Eleventh Amendment immunity and the case was dismissed as a result.

Numerous comments suggested deleting paragraph (e) because the requirement that the action be dismissed for each tribe is burdensome, wasteful and time consuming.

One comment suggested that the requirement that each action be dismissed could place tribal attorneys in an awkward position under Rule 11 of the Federal Rules of Civil Procedure.

Several comments recommended that in place of requiring a dismissal for each lawsuit, require clear proof of the State's intention to raise its Eleventh Amendment immunity.

Response: These recommendations were not adopted because the Secretary's authority under IGRA for Class III gaming procedures is only triggered by a lawsuit and the regulatory trigger must be the same for each tribe.

The words "because of lack of jurisdiction" were deleted from paragraph (e) to clarify that the scope of the regulations is limited to when the State actually raises its Eleventh Amendment immunity and the case was dismissed on that ground. One comment agreed that the scope of section 291.3 is consistent with the suggestions made by the 11th Circuit in the *Seminole* decision.

Section 291.4 What Must the Proposal Requesting Class III Gaming Procedures Contain?

One comment suggested adding the words "if any" at the end of paragraph (c) because a tribe's gaming ordinance or resolution need not be approved by the NIGC prior to the negotiation and completion of a gaming compact.

Response: This recommendation was adopted because approval of the tribe's ordinance or resolution by the NIGC is not required before Class III gaming procedures are approved, but the ordinance or resolution must be approved by the NIGC before gaming is conducted.

Two comments suggested adding the words "if any" at the end of paragraph (d) because not all tribes have organic documents.

Response: These recommendations were adopted.

A few comments suggested clarifying paragraph (g) because a "copy of court proceedings" is ambiguous and provides no useful guidance on what exact documents need to be submitted.

Response: These recommendations were adopted, and paragraph (g) was amended to include a list of specific documents in language suggested by one of the comments.

One comment suggested revising paragraph (h) to enumerate specific examples of factual and legal authority for the scope of gaming.

Response: This recommendation was not adopted because the regulations leave it up to a tribe's discretion what it wishes to submit for the factual and legal authority.

One comment stated paragraph (i) was ambiguous, unnecessary and onerous because the regulation appeared to expand the NIGC's existing monitoring and enforcement authority.

Another comment suggested paragraph (i) be revised to include only a regulatory scheme for a federal agency role. One comment stated the NIGC is the proper monitoring and enforcement agency and other designation was unnecessary.

Another comment suggested the BIA is precluded from compelling a State to participate in monitoring and enforcement in the absence of a voluntary agreement.

Response: To accommodate the concerns raised by the comments, the term "federal" was deleted from paragraph (i) to make clear that if the tribe envisions the State to have a role in monitoring and enforcement by mutual and voluntary agreement, the tribe must submit this regulatory scheme to the Secretary in its Class III gaming procedures proposal. In addition, a new section 291.12 is added to the regulations to clarify the NIGC's monitoring and enforcement roles.

One comment suggested it was unreasonable for tribes to have to submit an accounting system under paragraph (j)(1). The comment recommended having the tribes submit a certification that it will operate its accounting system in accordance with the specified standards, principals and NIGC regulations.

One comment suggested the provision was perplexing because a tribe should not have to submit applicable NIGC regulations. The drafters did not intend either of these interpretations.

Response: Both recommendations were adopted, and the language and punctuation in paragraph (j)(1) was changed for clarification.

One comment recommended referencing the NIGC regulations for internal control standards in paragraph (j)(4).

Response: This recommendation was adopted.

Several comments suggested that the requirements under paragraph (j)(8) were beyond the statutory requirements, beyond NIGC regulatory requirements, and created low thresholds.

Response: These recommendations have been adopted, and paragraph (j)(8) has been amended to be more consistent with 25 U.S.C. 2710(b)(2)(D) and NIGC regulations.

A few comments suggested the Secretary will be inundated with background information documents, licensing documents and the like; but, the regulation only requires submission of rules governing these issues.

One comment recommended deleting the words "all gaming activities . . . count rooms" in paragraph (j)(10) as being duplicative because they were already covered under (j)(4).

Response: This recommendation was adopted.

Several comments addressed the need for flexibility in how tribes handle disputes under paragraph (j)(11).

One comment recommended adding the words "and/or tribal judicial process" in addition to the administrative process in paragraph (j)(11) to accommodate different tribal processes.

Response: This recommendation was adopted.

One comment under paragraph (j)(11) recommended adding a provision for tribes acquiring insurance and a waiver of tribal sovereign immunity thereunder.

Response: This recommendation was not adopted because it is beyond the scope of these regulations.

One comment under paragraph (j)(15) suggested adding language in case a tribe chooses not to serve liquor at the gaming facility.

Response: This recommendation was adopted. For clarification, reference to the statutory definition of liquor under a Secretarially approved ordinance/resolution was incorporated.

Several comments recommended deleting the word autonomous from paragraph (j)(16) as being confusing because tribal gaming commissions are to some degree subject to the jurisdiction of the Tribal Council or other tribal governing body, and the Secretary should not be making that determination.

Response: This recommendation was adopted and the language deleted for clarification.

Several comments suggested changing the word "commission" to accommodate the variety of tribal regulatory structures, such as departments, individuals, and offices.

Response: These recommendations were adopted and the word was changed to "entity."

One comment suggested paragraph (j)(17) is vague and recommended providing reasonable standards that dictate when a tribe must provide administrative appeal rights, including what facts trigger the process, what due process rights attach and remedies available.

Response: This recommendation was not adopted because the regulations should not impose particular administrative appeal processes on the tribes. The regulations provide for such an appeal process while accommodating tribal flexibility of its own administration.

One comment suggested paragraph (j)(17) was partially unnecessary because the NIGC already had enforcement and investigatory mechanisms.

Response: To clarify the intent of paragraph (j)(17), the word "tribal" was added to make clear this provision relates to tribal enforcement and investigatory mechanisms, not Federal or State. Paragraph (j)(18) was added in response to a comment on the duration of the Class III gaming procedures. See Summary of Comments under section 291.15.

Section 291.5 Where must the proposal requesting Class III gaming procedures be filed?

No comments were received on this section.

Section 291.6 What must the Secretary do upon receiving the proposal?

Several comments suggested changing the time frames in sections 291.3, 4 and 6 to be the same.

Response: In response to this comment, language has been added to make clear that the review in paragraph (a) is not substantive, but instead a limited review as to whether all the information required under section 291.4 is present in the application. The review in paragraph (b) is substantive and as such requires a longer period of time than the review in paragraph (a). A 60-day time frame is reasonable and necessary to make the substantive determination.

Section 291.7 What must the Secretary do if it has been determined that the Indian tribe is eligible to request Class III gaming procedures?

Numerous comments recommended deleting the requirement that the State be notified once the Secretary determines the tribe is eligible for Class III gaming procedures.

One comment suggested it was beyond the Secretary's authority because IGRA explicitly provides for consultation with the tribe, but does not require consultation with the State.

Many commentors suggested that the State should not be involved in the Class III gaming procedures process because they believe it would give the State another opportunity to stonewall, delay or subvert the IGRA process after it already asserted its Eleventh Amendment immunity in the lawsuit.

Response: These recommendations were not adopted because IGRA does not prohibit the consultation of the States. Further, the regulations attempt to track the IGRA process in which the participation of all parties is contemplated.

Several comments supported section 291.7 as written to ensure and encourage State involvement in the process and to maintain fairness in the process as contemplated by IGRA.

One comment suggested that the Governor and Attorney General may not be the proper authorities in the particular State with whom to consult, and that the Governor and Attorney General may have opposing views.

Response: This recommendation was not adopted because the Attorney General is invited to participate in the procedures since he/she represented the State in the lawsuit which was dismissed due to the Eleventh Amendment immunity. It is anticipated that in situations where the Governor is not the proper official, the Governor may notify the Secretary if actual authority has been delegated and/or rests with another State official, department, commission, or other entity.

Several comments suggested that the 60 days in paragraph (b) is too long.

One comment recommended that absent good cause shown, the State should be allowed no more than 30 days.

Response: These recommendations were not adopted because 60 days allows time for the State to conduct a thorough and substantive review of the tribe's proposal.

Numerous comments were received on paragraph (b)(2) from both the states and tribes.

One comment suggested that by transferring to the Secretary the authority to determine a State's good faith, the tribes have no incentive to negotiate in good faith and will often proceed directly to the Class III gaming procedures.

Many comments suggested deleting this paragraph because the Secretary has no authority to pass judgment in a quasi-judicial determination upon the State's conduct.

Some comments suggested that the Secretary would not be able to make such a determination in the absence of cross-examining witnesses and judging credibility.

Some comments suggested a good faith determination by the Secretary will destroy the neutrality of the Class III gaming procedures.

One comment suggested the paragraph be deleted because the Secretary would be making a judicial determination without any of the safeguards of a judicial proceeding, contrary to the IGRA scheme.

Response: These recommendations have been adopted and paragraph (b)(2) has been deleted.

One comment noted that the regulations were ambiguous, and appeared to grant the Secretary authority to proceed with the Class III gaming procedures irrespective of the good faith determination outcome.

The comment suggested that the good faith determination be made at the outset in order to proceed with the procedures process.

One comment suggested the paragraph provided no standard for the Secretary to follow in making a good faith determination, and suggested placing the burden on the State to prove good faith.

Response: These recommendations were not adopted because the good faith determination has been deleted from the regulations.

One comment suggested deleting paragraph (b)(3) because State law does not apply to activities conducted on Indian lands except regarding the scope of gaming.

This recommendation was not adopted because the language in paragraph (b)(3) tracks the requirement and language in IGRA, section 2710 (d)(7)(B)(vii)(I).

One comment suggested revising paragraph (c) to require the State to address all the issues listed in section 291.4 when it submits an alternate proposal.

Response: This recommendation was not adopted because 291.4 is applicable only to the tribal applicant.

One comment suggested deleting paragraph (c) because the State should not be allowed to submit a proposal if the Secretary determines the State did not negotiate in good faith.

Response: This recommendation was not adopted because the good faith determination has been deleted from the regulations.

Section 291.8 What must the Secretary do at the expiration of the 60-day comment period if the State has not submitted an alternative proposal?

One comment suggested deleting the 60-day reference to the comment period in section 291.7.

Response: This recommendation was not adopted in order to retain clarity.

Several comments objected to the discussion of the "scope of gaming" as being either too broad, or too narrow.

Response: These recommendations were not adopted, because the applicable scope of gaming must be determined on a case-by-case basis. The summary of the law and the United States' position as set forth in the proposed rule remains the standard for analyzing the scope of gaming issue. 63 FR 3289, 3292–3293 (January 22, 1998).

Several comments suggested deleting paragraph (a)(4) as being troubling, unnecessary and inappropriate.

Response: These recommendations have not been adopted because this paragraph is consistent with the requirement as set forth in IGRA, section 2710(b)(7)(B)(vii)(I).

Numerous comments were received from both States and tribes under paragraph (a)(8) similar to those received under section 291.7(b)(2).

Several comments suggested eliminating this paragraph as being beyond the authority of the Secretary, unnecessary, unclear and irrelevant.

Several comments suggested the Secretary could not impartially and properly adjudicate the issue because of the trust responsibility to tribes, a conflict of interest, and a lack of knowledge concerning the intricacies of the negotiation between the State and tribe.

Response: These recommendations were adopted and paragraph (a)(8) has been deleted.

One comment suggested that the Secretary publish his/her determination on the good faith issue.

Response: This recommendation was not adopted because the good faith determination has been deleted from the regulations.

One comment suggested paragraph (a)(8) appeared to be a drafting error.

Response: This comment's concern is alleviated because the paragraph has been deleted.

One comment suggested the paragraph be revised to include specific examples of State action which would be considered as evidence of bad faith.

Response: This recommendation was not adopted because the good faith determination has been deleted from the regulations.

Several comments suggested changing the 60-day time frame in paragraph (b) because it was too long or unnecessary if a State does not submit an alternate proposal.

Response: These recommendations were not adopted because the 60-day time frame is reasonable for a substantive review if the State submits comments under section 291.7(b). If the State does not submit comments, the Secretary may not need the entire 60 days.

One comment suggested deleting the requirement that the Secretary notify the State.

Response: This recommendation was not adopted because the State is an involved party in the Class III gaming procedures process as contemplated by IGRA. Paragraph (b)(2) was deleted as unnecessary. If the Secretary determines that the State's alternative proposal contains no objections to the tribe's proposal, the proposal is approved. If the Secretary determines there are unresolved issues and areas of disagreement between the State's alternative proposal and the tribal proposal, then the parties will be invited to participate in an informal conference.

One comment suggested paragraph (b)(3) is confusing because if the State does not submit an alternative proposal, then how can the Secretary make a determination of unresolved issues and areas of disagreement.

Response: This recommendation was not adopted because the State can comment on the tribe's proposal under section 291.7(b) without necessarily submitting an alternative proposal. Further, if the Secretary makes a determination that there are no objections to the tribe's proposal, he/she can approve the proposal.

One comment suggested it was inappropriate under paragraph (b)(3) to invite the State to participate in an informal conference because the unresolved issues and areas of disagreement may be exclusively tribal.

Response: This recommendation was not adopted because the unresolved issues and areas of disagreement are between the parties.

One comment suggested revising paragraph (b)(3) to include a time frame in which the informal conference would be held.

Response: This recommendation was adopted and language was added to state that the parties will be invited to participate in an informal conference within 30 days of receiving the Secretary's notice.

Several comments suggested the 30-day time frame in paragraph (c) was excessive and should be shortened.

Response: This recommendation was not adopted because 30 days is reasonable and necessary for the Secretary to prepare a written report summarizing the informal conference and making a final decision either setting forth the procedures or disapproving the proposal.

One comment suggested deleting the requirement that the Secretary prepare and mail the report and final decision to the State in paragraph (c).

Response: This recommendation was not adopted because the State is an involved party in the Class III gaming procedures process as contemplated by IGRA.

Section 291.9 What must the Secretary do at the end of the 60-day comment period if the State provides comments offering an alternative proposal for Class III gaming procedures?

Several comments suggested deleting section 291.9 as unnecessary and inconsistent with the IGRA scheme.

One comment suggested it served no legitimate purpose since it adds an additional 60 days to a process which

will ultimately end up in mediation anyway where the parties can present their objections and counter-proposals.

Reponse: These recommendations were adopted and the section has been deleted and rewritten to provide automatic appointment of a mediator.

One comment received under 291.10 recommended specifying the number of days in which the mediator will be appointed.

Response: This recommendation was adopted under the newly revised Section 291.9 and language was added saying the mediator shall be appointed within 30 days of the Secretary receiving the State's alternative proposal. See Summary of Comments under section 291.10.

Section 291.10 What must the Indian tribe do when it receives the State's alternative proposal for Class III gaming procedures?

Several comments recommended this section be deleted as unnecessary and inconsistent with the IGRA scheme or be revised to provide for automatic appointment of a mediator.

Response: The recommendation to delete as unnecessary and inconsistent was adopted, and the recommendation to revise is adopted under the new revised section 291.9.

The comment further recommended to revise the section and specify the number of days in which the mediator will be appointed.

Response: This recommendation was adopted and language was added to the new revised section 291.9 saying the mediator shall be appointed within 30 days of receiving the State's alternative proposal. See Summary of Comments under section 291.9.

One comment recommended revising the section to provide for a mechanism that establishes procedures if the Secretary disapproves the State's alternative proposal.

Response: This comment was not adopted because this paragraph has been deleted.

Section 291.11 What must the Secretary do if the Indian tribe files timely objections to the State's alternative proposal?

Several comments recommended setting forth qualifications of the mediator. One comment recommended requiring the mediator have familiarity and knowledge of IGRA.

Response: This recommendation was not adopted because it is unnecessary.

One comment recommended that the tribe have considerable input into the Secretary's selection.

Response: This recommendation was not adopted to maintain a fairness and timeliness in the process.

One comment recommended conflict of interest standards.

Response: This recommendation was adopted and the new revised section 291.9 includes such standards.

Several comments recommended the section be revised to include a specific time period in which the Secretary must appoint the mediator. One comment recommended 20 days.

Response: These recommendations were partially adopted, and the new revised section 291.9 includes a 30-day time period as being reasonable and necessary.

One comment suggested revising the section to include a time frame in which the mediator issues a decision.

Response: This recommendation was not adopted in order to remain consistent with IGRA requirements, to maintain flexibility in the mediation process and to avoid imposition of time constraints on the mediator. During the mediation process, the parties are free to mutually consent to self-imposed time constraints. The IGRA does not impose such constraints on the mediator or mediation process. This section was deleted as unnecessary due to the automatic appointment of a mediator under revised section 291.9 and the sections were renumbered accordingly.

Section 291.12 What is the role of the mediator appointed by the Secretary?

This section was renumbered section 291.10 due to the deletion of sections 291.9 and 291.10 of the proposed rule.

Several comments recommended imposing specific procedural guidelines and specific time lines on the mediator and mediation process.

Response: These recommendations were not adopted in order to be consistent with IGRA and to maintain flexibility in the mediation process. During the mediation process, the parties are free to mutually consent to self-imposed procedures and/or time lines. The IGRA does not impose procedures or deadlines on the mediator or mediation process.

One comment recommended revising the section to include the requirement that the mediator apply the canons of construction by which all ambiguities should be resolved in favor of the tribe.

Response: This recommendation was not adopted because the mediator's discharge of his or her responsibilities will be guided by applicable law, including canons of statutory construction which will be applied by the mediator as applicable.

One comment suggested the words "opportunity to be heard" as being ambiguous and recommended specifying whether it requires an oral hearing unless the parties waive the requirement.

Response: This recommendation was not adopted because the mediation process is not a formal administrative or adjudicatory process. The mediation process requires flexibility and the parties are free to mutually consent to self-imposed procedures.

Section 291.13 What must the Secretary do upon receiving the proposal selected by the mediator?

This section was renumbered section 291.11 due to the deletion of sections 291.9 and 291.10 of the proposed rule.

One comment suggested changing the 60-day requirement to 45 days which IGRA provides for approval or disapproval of gaming compacts.

Response: This recommendation was not adopted because 60 days is reasonable and necessary to make substantive determinations regarding the mediator's selected proposal.

One comment recommended that paragraph (b) be revised to list only the disapproval criteria for compacts as set forth in IGRA, section 2710(b)(8).

Response: This recommendation was not adopted because the Class III gaming procedures must comply not only with section 2710(b)(8) of IGRA but also must comply with the requirements for Class III gaming procedures in section 291.4 and the requirements in section 2710(b)(7)(B)(vii).

One comment recommended providing for automatic approval of the mediator's selected proposal because under IGRA, the compact must be approved except for enumerated reasons set forth in section 2710(b)(8).

Response: This recommendation was not adopted because the Class III gaming procedures must comply not only with section 2710(b)(8) of IGRA, but also with the requirements for Class III gaming procedures in section 291.4 and the requirements in section 2710(b)(7)(B)(vii) of IGRA.

One comment recommended revising the section to include the requirement that when deciding whether to approve or disapprove the proposal selected by the mediator, the Secretary must apply the canons of construction by which all ambiguities should be resolved in favor of the tribe.

Response: This recommendation was not adopted because the Secretary's discharge of his or her responsibilities will be guided by applicable law, including canons of statutory

construction which will be applied by the Secretary as applicable.

Several comments recommended changing paragraph (c) to require the Secretary to issue procedures if the mediator's proposal is rejected.

Response: This recommendation was adopted and the word "may" in paragraph (c) was replaced by the word "shall" to more closely track the statutory language in 25 U.S.C. 2710(d)(7)(B)(vii).

One comment recommended specifying a time frame within which the Secretary prescribes procedures under paragraph (c).

Response: This recommendation was adopted and a 60-day requirement has been added.

One comment suggested paragraph (c) was confusing because it appeared the Secretary was adopting the mediator's selected proposal even though he/she was rejecting it.

Response: This recommendation was adopted and language was added to clarify that the Secretary will use the mediator's selected proposal as much as possible while comporting with IGRA and relevant provisions of State law.

One comment recommended under paragraph (c) the Secretary be required to explain in writing the specific reasons for disapproval.

Response: This recommendation was not adopted because that requirement is already specified in paragraph (a). The words "in the event" were changed to "if" for clarification.

Section 291.14 When do Class III gaming procedures for an Indian tribe become effective?

This section was renumbered section 291.13 due to the deletions of sections 291.9 and 291.10 of the proposed rule.

Language referencing section 291.10(b)(1) was deleted because section 291.10 has been deleted due to the new revised section 291.9.

One comment recommended specifying that the Secretary shall have 15 days to publish the procedures in the **Federal Register**.

Another comment recommended adding the words "as soon as possible" to make sure there is no delay.

Response: These recommendations were not adopted as being unnecessary or too vague, and to remain consistent with IGRA's language. The IGRA does not provide for a specific publication time, but it is the Secretary's intention to publish the notice expeditiously.

Section 291.15 How can Class III gaming procedures approved by the Secretary be amended?

This section was renumbered section 291.14 due to the deletions of sections 291.9 and 291.10 of the proposed rule.

One comment suggested the section is unwieldy if the regulations do not take the States out of the Class III gaming procedures process.

Response: This recommendation was not adopted because it cannot be assumed that the States will fail to participate in amendments. States are involved parties as contemplated by IGRA.

One comment suggested this section erroneously made amendments to the Class III gaming procedures subject to the process in section 291.3.

Response: This recommendation was adopted and the section was clarified to explicitly exclude procedures amendments to the requirements of section 291.3.

One comment recommended a two-tiered approach to Class III gaming procedures amendments.

Response: This recommendation was not adopted in order to keep the same process applicable to amendments as to original proposals.

One comment suggested specifying the duration of Class III gaming procedures. The comment recommended stating the procedures would be valid in perpetuity or for a term certain, unless the Secretary either approves an amendment to the procedures or repeals them, or unless the Indian tribe requires cancellation. The comment recommended that procedures remain in effect regardless of any changes in state law during the length of the term.

Response: This recommendation was partially adopted and a new section 291.15 was added to provide that procedures will remain in effect for the duration specified in the procedures themselves, or until amended. In addition, section 291.4(j) was amended to require the Indian tribe's proposal to address the length of time the procedures will remain in effect. Finally, this new section will not address the effect of any changes in state law on existing procedures because the effect of any such change is not explicitly resolved by IGRA, and has not been settled by the courts. Accordingly, the Department has determined not to take a position on this issue in these regulations.

One comment suggested the regulations do not state whether the Secretary's decisions can be appealed or if the decisions are considered final.

Response: This recommendation was not adopted because the Department of the Interior (Department) already has regulations specifying appealability in 25 CFR § 2 *et seq.*

Executive Order 12866

This is a significant rule under Executive Order (E.O.) 12866 and has been reviewed by Office of Management and Budget (OMB).

Regulatory Flexibility Act

The Department certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* Indian tribes are not considered to be small entities for purposes of this Act.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule does not have an annual effect on the economy of $100 million or more.

This rule will not cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies or geographic regions and does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability to U.S.-based enterprises to compete with foreign-based enterprises.

Unfunded Mandates Act of 1995

This regulation imposes no unfunded mandate on any governmental or private entity and is in compliance with the provisions of the Unfunded Mandates Act of 1995.

Executive Order 12630

The Department has determined that this rule does not have significant "takings" implications. The rule does not pertain to "taking" of private property interests, nor does it impact private property.

Executive Order 12612

The Department has determined that this rule does not have significant Federalism effects.

As explained above, the Secretary has determined that he has the statutory authority to adopt procedures to permit Indian gaming in appropriate circumstances. Secretarial authority was expressly provided in IGRA with respect to the judicially-supervised mediation scheme. It would be exercised under the rule in a manner consistent with the statutory directive

and congressional intent. The rule provides the opportunity for States to voluntarily participate in a mediation process under the auspices of the Secretary. As the Supreme Court noted in *Seminole*, Congress may, under the Constitution, choose to withhold from States any authority over Indian gaming. Under the rule, the Secretary would be tracking the scheme set forth by Congress and the rule would afford the States as much opportunity to participate as where it does not claim immunity from suit.

Executive Order 12988

The Department has certified to OMB that these regulations meet the applicable standards provided in sections (3)(a) and 3(b)(2) of E.O. 12988.

Paperwork Reduction Act of 1995

Sections 291.4, 291.10, 291.12, and 291.15 contain information collection requirements. The BIA has submitted a request for emergency clearance by OMB for this collection of information.

The information requested will be unique for each tribe and may be changed when necessary to fit the needs of the tribe.

All information is to be collected upon the submission of a request by a tribe for Class III gaming procedures. The annual reporting and record keeping burden for the collection of information is estimated to average 1,000 hours for each response and we estimate there will be approximately 12 respondents. The collection will include time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the information. The total annual burden is estimated to be 12,000 hours.

The Paperwork Reduction Act of 1995 requires us to tell you that a Federal Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

NEPA Statement

The Department has determined that this proposed rule does not constitute a major Federal action significantly affecting the quality of the human environment and that no detailed statement is required pursuant to the National Environmental Policy Act of 1969.

Drafting Information: The primary author of this proposed rule is George Skibine, Director, Indian Gaming Management Staff, Bureau of Indian Affairs.

List of Subjects in 25 CFR Part 291

Indians—business and finance, Indians—Gaming

For the reasons given in the preamble, part 291 is added to Title 25, Chapter 1 of the Code of Federal Regulations to read as set forth below.

PART 291—Class III Gaming Procedures

Sec.

291.1 Purpose and scope.
291.2 Definitions.
291.3 When may an Indian tribe ask the Secretary to issue Class III gaming procedures?
291.4 What must a proposal requesting Class III gaming procedures contain?
291.5 Where must the proposal requesting Class III gaming procedures be filed?
291.6 What must the Secretary do upon receiving a proposal?
291.7 What must the Secretary do if it has been determined that the Indian tribe is eligible to request Class III gaming procedures?
291.8 What must the Secretary do at the expiration of the 60-day comment period if the State has not submitted an alternative proposal?
291.9 What must the Secretary do at the end of the 60-day comment period if the State offers an alternative proposal for Class III gaming procedures?
291.10 What is the role of the mediator appointed by the Secretary?
291.11 What must the Secretary do upon receiving the proposal selected by the mediator?
291.12 Who will monitor and enforce tribal compliance with the Class III gaming procedures?
291.13 When do Class III gaming procedures for an Indian tribe become effective?
291.14 How can Class III gaming procedures issued by the Secretary be amended?
291.15 How long do Class III gaming procedures remain in effect?

Authority: 5 U.S.C. 301; 25 U.S.C. sections 2,9 and 2710.

§ 291.1 Purpose and scope.

The regulations in this part establish procedures that the Secretary will use to promulgate rules for the conduct of Class III Indian gaming when:

(a) A State and an Indian tribe are unable to voluntarily agree to a compact and;

(b) The State has asserted its immunity from suit brought by an Indian tribe under 25 U.S.C. 2710(d)(7)(B).

§ 291.2 Definitions

(a) All terms have the same meaning as set forth in the definitional section of IGRA, 25 U.S.C. section 2703(1)–(10).

(b) The term "compact" includes renewal of an existing compact.

§ 291.3 When may an Indian tribe ask the Secretary to issue Class III gaming procedures?

An Indian tribe may ask the Secretary to issue Class III gaming procedures when the following steps have taken place:

(a) The Indian tribe submitted a written request to the State to enter into negotiations to establish a Tribal-State compact governing the conduct of Class III gaming activities;

(b) The State and the Indian tribe failed to negotiate a compact 180 days after the State received the Indian tribe's request;

(c) The Indian tribe initiated a cause of action in Federal district court against the State alleging that the State did not respond, or did not respond in good faith, to the request of the Indian tribe to negotiate such a compact;

(d) The State raised an Eleventh Amendment defense to the tribal action; and

(e) The Federal district court dismissed the action due to the State's sovereign immunity under the Eleventh Amendment.

§ 291.4 What must a proposal requesting Class III gaming procedures contain?

A proposal requesting Class III gaming procedures must include the following information:

(a) The full name, address, and telephone number of the Indian tribe submitting the proposal;

(b) A copy of the authorizing resolution from the Indian tribe submitting the proposal;

(c) A copy of the Indian tribe's gaming ordinance or resolution approved by the NIGC in accordance with 25 U.S.C. 2710, if any;

(d) A copy of the Indian tribe's organic documents, if any;

(e) A copy of the Indian tribe's written request to the State to enter into compact negotiations, along with the Indian tribe's proposed compact, if any;

(f) A copy of the State's response to the tribal request and/or proposed compact, if any;

(g) A copy of the tribe's Complaint (with attached exhibits, if any); the State's Motion to Dismiss; any Response by the tribe to the State's Motion to Dismiss; any Opinion or other written documents from the court regarding the State's Motion to Dismiss; and the Court's Order of dismissal;

(h) The Indian tribe's factual and legal authority for the scope of gaming specified in paragraph (j)(13) of this section;

(i) Regulatory scheme for the State's oversight role, if any, in monitoring and enforcing compliance; and

(j) Proposed procedures under which the Indian tribe will conduct Class III gaming activities, including:

(1) A certification that the tribe's accounting procedures are maintained in accordance with American Institute of Certified Public Accountants Standards for Audits of Casinos, including maintenance of books and records in accordance with Generally Accepted Accounting Principles and applicable NIGC regulations;

(2) A reporting system for the payment of taxes and fees in a timely manner and in compliance with Internal Revenue Code and Bank Secrecy Act requirements;

(3) Preparation of financial statements covering all financial activities of the Indian tribe's gaming operations;

(4) Internal control standards designed to ensure fiscal integrity of gaming operations as set forth in 25 CFR Part 542;

(5) Provisions for records retention, maintenance, and accessibility;

(6) Conduct of games, including patron requirements, posting of game rules, and hours of operation;

(7) Procedures to protect the integrity of the rules for playing games;

(8) Rules governing employees of the gaming operation, including code of conduct, age requirements, conflict of interest provisions, licensing requirements, and such background investigations of all management officials and key employees as are required by IGRA, NIGC regulations, and applicable tribal gaming laws;

(9) Policies and procedures that protect the health and safety of patrons and employees and that address insurance and liability issues, as well as safety systems for fire and emergency services at all gaming locations;

(10) Surveillance procedures and security personnel and systems capable of monitoring movement of cash and chips, entrances and exits of gaming facilities, and other critical areas of any gaming facility;

(11) An administrative and/or tribal judicial process to resolve disputes between gaming establishment, employees and patrons, including a process to protect the rights of individuals injured on gaming premises by reason of negligence in the operation of the facility;

(12) Hearing procedures for licensing purposes;

(13) A list of gaming activities proposed to be offered by the Indian tribe at its gaming facilities;

(14) A description of the location of proposed gaming facilities;

(15) A copy of the Indian tribe's liquor ordinance approved by the Secretary if intoxicants, as used in 18 U.S.C. 1154, will be served in the gaming facility;

(16) Provisions for a tribal regulatory gaming entity, independent of gaming management;

(17) Provisions for tribal enforcement and investigatory mechanisms, including the imposition of sanctions, monetary penalties, closure, and an administrative appeal process relating to enforcement and investigatory actions;

(18) The length of time the procedures will remain in effect; and

(19) Any other provisions deemed necessary by the Indian tribe.

§ 291.5 Where must the proposal requesting Class III gaming procedures be filed?

Any proposal requesting Class III gaming procedures must be filed with the Director, Indian Gaming Management Staff, Bureau of Indian Affairs, U.S. Department of the Interior, MS 2070-MIB, 1849 C Street NW, Washington, DC 20240.

§ 291.6 What must the Secretary do upon receiving a proposal?

Upon receipt of a proposal requesting Class III gaming procedures, the Secretary must:

(a) Within 15 days, notify the Indian tribe in writing that the proposal has been received, and whether any information required under § 291.4 is missing;

(b) Within 30 days of receiving a complete proposal, notify the Indian tribe in writing whether the Indian tribe meets the eligibility requirements in § 291.3. The Secretary's eligibility determination is final for the Department.

§ 291.7 What must the Secretary do if it has been determined that the Indian tribe is eligible to request Class III gaming procedures?

(a) If the Secretary determines that the Indian tribe is eligible to request Class III gaming procedures and that the Indian tribe's proposal is complete, the Secretary must submit the Indian tribe's proposal to the Governor and the Attorney General of the State where the gaming is proposed.

(b) The Governor and Attorney General will have 60 days to comment on:

(1) Whether the State is in agreement with the Indian tribe's proposal;

(2) Whether the proposal is consistent with relevant provisions of the laws of the State;

(3) Whether contemplated gaming activities are permitted in the State for any purposes, by any person, organization, or entity.

(c) The Secretary will also invite the State's Governor and Attorney General to submit an alternative proposal to the Indian tribe's proposed Class III gaming procedures.

§ 291.8 What must the Secretary do at the expiration of the 60-day comment period if the State has not submitted an alternative proposal?

(a) Upon expiration of the 60-day comment period specified in § 291.7, if the State has not submitted an alternative proposal, the Secretary must review the Indian tribe's proposal to determine:

(1) Whether all requirements of § 291.4 are adequately addressed;

(2) Whether Class III gaming activities will be conducted on Indian lands over which the Indian tribe has jurisdiction;

(3) Whether contemplated gaming activities are permitted in the State for any purposes by any person, organization, or entity;

(4) Whether the proposal is consistent with relevant provisions of the laws of the State;

(5) Whether the proposal is consistent with the trust obligations of the United States to the Indian tribe;

(6) Whether the proposal is consistent with all applicable provisions of IGRA; and

(7) Whether the proposal is consistent with provisions of other applicable Federal laws.

(b) Within 60 days of the expiration of the 60-day comment period in § 291.7, the Secretary must notify the Indian tribe, the Governor, and the Attorney General of the State in writing that he/she has:

(1) Approved the proposal if the Secretary determines that there are no objections to the Indian tribe's proposal; or

(2) Identified unresolved issues and areas of disagreements in the proposal, and invite the Indian tribe, the Governor and the Attorney General to participate in an informal conference, within 30 days of notification unless the parties agree otherwise, to resolve identified unresolved issues and areas of disagreement.

(c) Within 30 days of the informal conference, the Secretary must prepare and mail to the Indian tribe, the Governor and the Attorney General:

(1) A written report that summarizes the results of the informal conference; and

(2) A final decision either setting forth the Secretary's proposed Class III gaming procedures for the Indian tribe, or disapproving the proposal for any of the reasons in paragraph (a) of this section.

§ 291.9 What must the Secretary do at the end of the 60-day comment period if the State offers an alternative proposal for Class III gaming procedures?

Within 30 days of receiving the State's alternative proposal, the Secretary must appoint a mediator who:

(a) Has no official, financial, or personal conflict of interest with respect to the issues in controversy; and

(b) Must convene a process to resolve differences between the two proposals.

§ 291.10 What is the role of the mediator appointed by the Secretary?

(a) The mediator must ask the Indian tribe and the State to submit their last best proposal for Class III gaming procedures.

(b) After giving the Indian tribe and the State an opportunity to be heard and present information supporting their respective positions, the mediator must select from the two proposals the one that best comports with the terms of IGRA and any other applicable Federal law. The mediator must submit the proposal selected to the Indian tribe, the State, and the Secretary.

§ 291.11 What must the Secretary do upon receiving the proposal selected by the mediator?

Within 60 days of receiving the proposal selected by the mediator, the Secretary must do one of the following:

(a) Notify the Indian tribe, the Governor and the Attorney General in writing of his/her decision to approve the proposal for Class III gaming procedures selected by the mediator; or

(b) Notify the Indian tribe, the Governor and the Attorney General in writing of his/her decision to disapprove the proposal selected by the mediator for any of the following reasons:

(1) The requirements of § 291.4 are not adequately addressed;

(2) Gaming activities would not be conducted on Indian lands over which the Indian tribe has jurisdiction;

(3) Contemplated gaming activities are not permitted in the State for any purpose by any person, organization, or entity;

(4) The proposal is not consistent with relevant provisions of the laws of the State;

(5) The proposal is not consistent with the trust obligations of the United States to the Indian tribe;

(6) The proposal is not consistent with applicable provisions of IGRA; or

(7) The proposal is not consistent with provisions of other applicable Federal laws.

(c) If the Secretary rejects the mediator's proposal under paragraph (b) of this section, he/she must prescribe appropriate procedures within 60 days under which Class III gaming may take place that comport with the mediator's selected proposal as much as possible, the provisions of IGRA, and the relevant provisions of the laws of the State.

§ 291.12 Who will monitor and enforce tribal compliance with the Class III gaming procedures?

The Indian tribe and the State may have an agreement regarding monitoring and enforcement of tribal compliance with the Indian tribe's Class III gaming procedures. In addition, under existing law, the NIGC will monitor and enforce tribal compliance with the Indian tribe's Class III gaming procedures.

§ 291.13 When do Class III gaming procedures for an Indian tribe become effective?

Upon approval of Class III gaming procedures for the Indian tribe under either § 291.8(b), § 291.8(c), or § 291.11(a), the Indian tribe shall have 90 days in which to approve and execute the Secretarial procedures and forward its approval and execution to the Secretary, who shall publish notice of their approval in the **Federal Register**. The procedures take effect upon their publication in the **Federal Register**.

§ 291.14 How can Class III gaming procedures approved by the Secretary be amended?

An Indian tribe may ask the Secretary to amend approved Class III gaming procedures by submitting an amendment proposal to the Secretary. The Secretary must review the proposal by following the approval process for initial tribal proposals, except that the requirements of § 291.3 are not applicable and he/she may waive the requirements of § 291.4 to the extent they do not apply to the amendment request.

§ 291.15 How long do Class III gaming procedures remain in effect?

Class III gaming procedures remain in effect for the duration specified in the procedures or until amended pursuant to § 291.14.

Dated: April 1, 1999.

Kevin Gover,

Assistant Secretary—Indian Affairs.

[FR Doc. 99–8910 Filed 4–9–99; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF DEFENSE

Department of the Air Force

32 CFR Part 863

Leasing U.S. Air Force Aircraft and Related Equipment to Nongovernment Organizations

AGENCY: Department of the Air Force, DOD.

ACTION: Final rule; removal.

SUMMARY: The Department of the Air Force is amending the Code of Federal Regulations (CFR) by removing its rule on Leasing U.S. Air Force Aircraft and Related Equipment to Nongovernmental Organizations. This rule is removed, as the current information contained in it does not reflect current policy of AFI 64–103, May 1997.

EFFECTIVE DATE: April 7, 1999.

FOR FURTHER INFORMATION CONTACT: Mr. Eric Kattner, Headquarters, U.S. Air Force, SAF/AQCP, 1500 Wilson Blvd., 7th Floor, Arlington, VA 22209–2404, (703) 588–7059.

List of Subjects in 32 CFR Part 863

Aircraft, Government Property

PART 863—[REMOVED]

Accordingly, and under the authority of 10 U.S.C. 2667, 32 CFR, Chapter VII is amended by removing Part 863.

Carolyn A. Lunsford,

Air Force Federal Register Liaison Officer.

[FR Doc. 99–8981 Filed 4–9–99; 8:45 am]

BILLING CODE 5001–05–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[WA 68–7143–a; FRL–6322–5]

Approval and Promulgation of Implementation Plans: Washington

AGENCY: Environmental Protection Agency.

ACTION: Direct final rule.

SUMMARY: Environmental Protection Agency (EPA) approves the revisions to the Washington State Implementation Plan (SIP) submitted by the Washington Department of Ecology on March 2, 1999 amending two portions of the Spokane County Air Pollution Control Agency's (SCAPCA) Regulation I, Article IV. The revisions to the SIP for the Spokane particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM10) nonattainment area simply adds a

definition so that previously approved control measures would continue to be implemented should the area be redesignated as attainment or the pre-existing PM–10 standard is revoked.

DATES: This direct final rule is effective on June 11, 1999 without further notice, unless EPA receives adverse comment by May 12, 1999. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Written comments should be addressed to: Montel Livingston, SIP Manager, Office of Air Quality (OAQ–107), EPA, 1200 Sixth Avenue, Seattle, Washington 98101.

Documents which are incorporated by reference are available for public inspection at the Air and Radiation Docket and Information Center, Environmental Protection Agency, 401 M Street, SW, Washington, D.C. 20460. Copies of material submitted to EPA may be examined during normal business hours at the following locations: EPA, Region 10, Office of Air Quality, 1200 Sixth Avenue (OAQ–107), Seattle, Washington 98101, and State of Washington Department of Ecology, 300 Desmond Drive, Lacey, Washington 98503.

FOR FURTHER INFORMATION CONTACT: George Lauderdale, Office of Air Quality (OAQ–107), EPA, Seattle, Washington 98101, (206) 553–6511.

SUPPLEMENTARY INFORMATION:

I. Background

Spokane, Washington, was designated a PM–10 nonattainment area on November 15, 1990. The major sources of particulate air pollution are fugitive dust and residential wood combustion. Industrial emissions are a minor source of PM–10 within the nonattainment area. On January 27, 1997, see 62 FR 3800, EPA approved the SIP for PM–10 for the Spokane nonattainment area. The approved attainment plan contains specific regulations which implement control measures for residential wood combustion, paved surfaces, unpaved roads, and other measures. These measures are being fully implemented and the area has not monitored PM–10, 24-hour or annual, violations since 1994. Some of the control measures in the approved SIP are contained in the Spokane County Air Pollution Control Authority (SCAPCA) regulations. Specifically SCAPCA Regulation I , includes standards of control for particulate matter on paved and unpaved surfaces and roads.

II. Summary of Action

SCAPCA amended SCAPCA Regulation I (effective February 13, 1999) and submitted the amendments to Ecology for inclusion in the SIP. The changes will preserve the applicability of Section 6.14 Standards for Control of Particulate Matter on Paved Surfaces, and Section 6.15 Standards for Control of Particulate Matter on Unpaved Roads, should the area be redesignated attainment or the pre-existing PM–10 standard be revoked for Spokane. SCAPCA has added a definition to both sections that requires continued implementation of the control measures in the Spokane PM–10 nonattainment area even if EPA were to redesignate the area to attainment or revoke the pre-existing PM–10 standard. On February 26, 1999, after full public hearing, Ecology adopted the revisions as part of the SIP and on March 2, 1999, submitted the revisions to EPA for approval.

EPA has reviewed the proposed SIP revision and determines that it is consistent with the Clean Air Act and applicable regulations and requirements. Therefore, EPA is approving the two minor rule changes to the SCAPCA Regulation I as a revision to the Washington PM–10 SIP for the Spokane nonattainment area.

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should adverse comments be filed. This rule will be effective June 11, 1999 without further notice unless the Agency receives adverse comments by May 12, 1999.

If the EPA receives such comments, then EPA will publish a notice withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period. Parties interested in commenting should do so at this time. If no such comments are received, the public is advised that this rule will be effective on June 11, 1999 and no further action will be taken on the proposed rule.

III. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order (E.O.) 12866, Regulatory Planning and Review.

B. Executive Order 12875

Under Executive Order 12875, Enhancing the Intergovernmental Partnership, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.

Today's rule does not create a mandate on State, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

C. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be economically significant as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This rule is not subject to E.O. 13045 because it is does not involve decisions intended to mitigate environmental health or safety risks.

D. Executive Order 13084

Under Executive Order 13084, Consultation and Coordination with Indian Tribal Governments, EPA may not issue a regulation that is not

required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co., v. U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major" rule as defined by 5 U.S.C. 804(2).

H. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 11, 1999. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Particulate matter.

Note: Incorporation by reference of the Implementation Plan for the State of Washington was approved by the Director of the Office of Federal Register on July 1, 1982.

Dated: March 31, 1999.

Chuck Clarke,

Regional Administrator, Region 10.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 et seq.

Subpart WW—Washington

2. Section 52.2470 is amended by adding paragraph (c)(79) to read as follows:

§ 52.2470 Identification of plan.

* * * * *

(c) * * *

(79) February 22, 1999, letter from WDOE submitting a revision and replacement pages to the State Implementation Plan for the Spokane PM–10 Attainment Plan that will preserve the applicability of Section 6.14 Standards for Control of Particulate Matter on Paved Surfaces, and Section 6.15 Standards for Control of Particulate Matter on Unpaved Roads, should the area be redesignated as attainment or the pre-existing PM–10 standard is revoked for Spokane.

(i) Incorporation by reference.

(A) Spokane County Air Pollution Control Authority's Regulation I., Article VI: Section 6.14 Standards for Control of Particulate Matter on Paved Surfaces and; Section 6.15 Standards for Control of Particulate Matter on Unpaved Roads, effective February 13, 1999.

[FR Doc. 99–8942 Filed 4–9–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IA 068–1068a; FRL–6322–1]

Approval and Promulgation of Implementation Plans; State of Iowa

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking final action to approve a State Implementation Plan (SIP) revision submitted by the state of Iowa. This revision approves numerous updates of the state's air program rules and ensures that the state's SIP is current with Federal requirements. The effect of this action is to ensure Federal enforceability of the state's air program rule revisions.

DATES: This direct final rule is effective on June 11, 1999 without further notice, unless EPA receives adverse comment by May 12, 1999. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Comments may be addressed to Wayne Kaiser, Environmental Protection Agency, Air Planning and Development Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101.

Copies of the state submittal are available at the following addresses for inspection during normal business hours: Environmental Protection Agency, Air Planning and Development Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101; and the Environmental Protection Agency, Air and Radiation Docket and Information Center, Air Docket (6102), 401 M Street, SW, Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Wayne Kaiser at (913) 551–7603.

SUPPLEMENTARY INFORMATION: This section provides additional information by addressing the following questions:

What is a SIP?
What is the Federal approval process for a SIP?
What does Federal approval of a state regulation mean to me?
What is being addressed in this notice?
What action is the EPA taking?

What Is a SIP?

Section 110 of the Clean Air Act (CAA) requires states to develop air pollution regulations and control strategies to ensure that state air quality meets the national ambient air quality standards established by EPA. These ambient standards are established under section 109 of the CAA, and they currently address six criteria pollutants. These pollutants are: carbon monoxide, nitrogen dioxide, ozone, lead, particulate matter, and sulfur dioxide.

Each state must submit these regulations and control strategies to EPA for approval and incorporation into the Federally enforceable SIP.

Each Federally approved SIP protects air quality primarily by addressing air pollution at its point of origin. These SIPs can be extensive, containing state regulations or other enforceable documents and supporting information such as emission inventories, monitoring networks, and modeling demonstrations.

What Is the Federal Approval Process for a SIP?

In order for state regulations to be incorporated into the Federally enforceable SIP, states must formally adopt the regulations and control strategies consistent with state and Federal requirements. This process generally includes a public notice, public hearing, public comment period, and a formal adoption by a state-authorized rulemaking body.

Once a state rule, regulation, or control strategy is adopted, the state submits it to EPA for inclusion into the SIP. EPA must provide public notice and seek additional public comment regarding the proposed Federal action on the state submission. If adverse comments are received, they must be addressed prior to any final Federal action by EPA.

All state regulations and supporting information approved by EPA under section 110 of the CAA are incorporated into the Federally approved SIP. Records of such SIP actions are maintained in the Code of Federal Regulations (CFR) at Title 40, Part 52, entitled "Approval and Promulgations of Implementation Plans." The actual state regulations which are approved are not reproduced in their entirety in the CFR outright but are "incorporated by reference," which means that EPA has approved a given state regulation with a specific effective date.

What Does Federal Approval of a State Regulation Mean to Me?

Enforcement of the state regulation before and after it is incorporated into the Federally approved SIP is primarily a state responsibility. However, after the regulation is Federally approved, EPA is authorized to take enforcement action against violators. Citizens are also offered legal recourse to address violations as described in the CAA.

What Is Being Addressed in This Notice?

The Iowa Department of Natural Resources (IDNR) revised a number of its rules in order to maintain equivalency with Federal requirements, to update adoption by reference to Federal rules, to provide clarifications, to remove obsolete rules, and to correct internal citations. The revised rule chapters are: Chapter 20, "Scope of Title—Definitions—Forms—Rules of Practice"; Chapter 22, "Controlling Pollution"; Chapter 23, "Emissions Standards for Contaminants"; Chapter 24, "Excess Emission"; Chapter 25, "Measurement of Emissions"; Chapter 29, "Qualifications in Visual Determinations of the Opacity of Emissions"; and Chapter 31, "Nonattainment Areas," 567 Iowa Administrative Code. Specific Chapter paragraphs and subparagraphs which were revised are: 20.1, 20.2, 20.3(4), 20.3(6)—rescinded, 22.1(1), 22.1(2), 22.1(3), 22.1(4), 22.4, 22.4(1), 22.4(3), 22.5(2), 22.5(4), 22.5(6), 22.5(10), 22.8(1), 22.203(1), 22.300(2), 22.300(8), 23.1(6), 23.2(3), 23.3(2), 24.1(2), 25.1(7), 25.1(9), 25.1(10), 25.1(12), 29.1, and 31.2.

The general subject matter of the revisions included, but was not limited to, updating the definition of "volatile organic compound," updating the reference to EPA Guideline on Air Quality Models (Revised), updating the reference to the Federal prevention of significant deterioration program at 40 CFR 52.21, providing additional restrictions in the open burning rule, and updating the reference to EPA opacity method at 40 CFR part 60.

These revisions to the Iowa SIP were submitted by Larry Wilson, IDNR Director, on August 12, 1998. The state effective date for these revisions is May 13, 1998.

Have the Requirements for Approval of a SIP Revision Been Met?

The state submittal has met the public notice requirements for SIP submissions in accordance with 40 CFR section 51.102. The submittal also satisfied the completeness criteria of 40 CFR part 51, appendix V. In addition, as explained above and in more detail in the technical support document which is part of this document, the revision meets the substantive SIP requirements of the CAA, including section 110 and implementing regulations.

What Action Is EPA Taking?

EPA is processing this action as a direct final action because the revisions make routine revisions to the existing

rules which are noncontroversial. Therefore, we do not anticipate any adverse comments.

Conclusion

Final Action

EPA is taking final action to approve, as an amendment to the Iowa SIP, rule revisions submitted by the state of Iowa on August 12, 1998.

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should adverse comments be filed. This rule will be effective June 11, 1999 without further notice unless the Agency receives adverse comments by May 12, 1999.

If EPA receives such comments, then EPA will publish a document withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period. Parties interested in commenting should do so at this time. If no such comments are received, the public is advised that this rule will be effective on June 11, 1999, and no further action will be taken on the proposed rule.

Administrative Requirements

A. Executive Order (E.O.) 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866, entitled "Regulatory Planning and Review."

B. E.O. 12875

Under E.O. 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local or tribal government, unless the Federal Government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, E.O. 12875 requires EPA to provide to OMB a description of the extent of EPA's prior consultation with representatives of affected state, local, and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, E.O. 12875 requires EPA to develop an effective process permitting elected officials and other representatives of state, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's rule does not create a mandate on state, local, or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

C. E.O. 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997) applies to any rule that: (1) is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to E.O. 13045 because it is not an economically significant regulatory action as defined by E.O. 12866, and it does not address an environmental health or safety risk that would have a disproportionate effect on children.

D. E.O. 13084

Under E.O. 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal Government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, E.O. 13084 requires EPA to provide to OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, E.O. 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian tribes. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

E. Regulatory Flexibility Act (RFA)

The RFA generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and Subchapter I, Part D of the CAA do not create any new requirements but simply approve requirements that the state is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-state relationship under the CAA, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.*, v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act") signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to state, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a

Federal mandate that may result in estimated annual costs of $100 million or more to either state, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves preexisting requirements under state or local law and imposes no new requirements. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, result from this action.

G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the U.S. Comptroller General prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

H. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 11, 1999. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review, nor does it extend the time within which a petition for judicial review may be filed and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: March 29, 1999.

Dennis Grams,

Regional Administrator, Region VII.

Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart Q—Iowa

2. In § 52.820 the following entries for paragraph (c), EPA-approved regulations, are revised to read as follows:

§ 52.820 Identification of plan.

* * * * *

(c) EPA-approved regulations.

EPA–APPROVED IOWA REGULATIONS

Iowa citation	Title	State effective date	EPA approval date	Comments
Iowa Department of Natural Resources Environmental Protection Commission [567]				
Chapter 20—Scope of Title-Definitions-Forms-Rule of Practice				
567–20.1	Scope of Title	5/3/98	April 12, 1999 [FR cite].	
567–20.2	Definitions	5/3/98	April 12, 1999 [FR cite].	
567–20.3	Air Quality Forms Generally	5/3/98	April 12, 1999 [FR cite].	
*	* * *	*	* *	*
Chapter 22—Controlling Pollution				
567–22.1	Permits Required for New or Existing Stationary Sources.	5/3/98	April 12, 1999 [FR cite].	
*	* * *	*	* *	*
567–22.4	Special Requirements for Major Stationary Sources Located in Areas Designated Attainment or Unclassified (PSD).	5/3/98	April 12, 1999 [FR cite].	
567–22.5	Special Requirements for Nonattainment Areas	5/3/98	April 12, 1999 [FR cite].	
567–22.8	Permit by Rule	5/3/98	April 12, 1999 [FR cite].	
*	* * *	*	* *	*
567–22.203	Voluntary Operating Permit Applications	5/3/98	April 12, 1999 [FR cite].	
*	* * *	*	* *	*
567–22.300	Operating Permit by Rule for Small Sources	5/3/98	April 12, 1999 [FR cite].	
Chapter 23—Emission Standards for Contaminants				
567–23.1	Emission Standards	5/3/98	April 12, 1999 [FR cite] ..	Sections 23.1(2)–(5) are not approved in the SIP
567–23.2	Open Burning	5/3/98	April 12, 1999 [FR cite].	
567–23.3	Specific Contaminants	5/3/98	April 12, 1999 [FR cite] ..	Section 23.3(3)(d) is not part of the approved SIP.

EPA–APPROVED IOWA REGULATIONS—Continued

Iowa citation	Title	State effective date	EPA approval date	Comments
*	* * *	*	*	*
	Chapter 24—Excess Emissions			
567–24.1	Excess Emission Reporting	5/3/98	April 12, 1999 [FR cite].	
*	* * *	*	*	*
	Chapter 25—Measurement of Emissions			
567–25.1	Testing and Sampling of New and Existing Equipment.	5/3/98	April 12, 1999 [FR cite].	
*	* * *	*	*	*
	Chapter 29—Qualification in Visual Determination of the Opacity of Emissions			
567–29.1	Methodology and Qualified Observer	5/3/98	April 12, 1999 [FR cite].	
	Chapter 31—Nonattainment Areas			
*	* * *	*	*	*
567–31.2	Conformity of General Federal Actions to the Iowa SIP or Federal Implementation Plan.	5/8/98	April 12, 1999 [FR cite].	
*	* * *	*	*	*

[FR Doc. 99–8940 Filed 4–9–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[GA–42–1–9908a; FRL–6321–1]

Implementation Plan and Redesignation Request for the Muscogee County, Georgia Lead Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is simultaneously approving the lead state implementation plan (SIP) and redesignation request for the Muscogee County, Georgia, lead nonattainment area. Both plans dated September 28, 1998, were submitted by the State of Georgia for the purpose of demonstrating that the Muscogee County area has attained the lead National Ambient Air Quality Standard (NAAQS).

DATES: This direct final rule is effective June 11, 1999 without further notice, unless EPA receives adverse comment by May 12, 1999. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Comments may be mailed to Kimberly Bingham at the EPA Region 4 address listed below. Copies of the material submitted by Georgia Environmental Protection Division (EPD) may be examined during normal business hours at the following locations:

Air and Radiation Docket and Information Center (Air Docket 6102), U.S. Environmental Protection Agency, 401 M Street, SW, Washington DC 20460.

Environmental Protection Agency, Atlanta Federal Center, Region 4 Air Planning Branch, Atlanta Federal Center, 61 Forsyth Street, SW, Atlanta, Georgia 30303–3104.

Georgia Environmental Protection Division, Air Protection Branch, 4244 International Parkway, Suite 120, Atlanta, Georgia 30354.

FOR FURTHER INFORMATION CONTACT: Kimberly Bingham, Regulatory Planning Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, Region 4, Environmental Protection Agency, Atlanta Federal Center, 61 Forsyth Street, SW, Atlanta, Georgia 30303. The telephone number is (404)562–9038.

SUPPLEMENTARY INFORMATION:

I. Background—Lead SIP

Section 107(d)(5) of the Clean Air Act as amended in 1990 (CAA) provides for areas to be designated as attainment, nonattainment, or unclassifiable with respect to the lead NAAQS. Governors are required to submit recommended designations for areas within their states. When an area is designated nonattainment, the state must prepare and submit a SIP pursuant to sections 110(a)(2) and 172(c) of the CAA showing how the area will be brought into attainment.

On January 6, 1992, EPA designated the portion of Muscogee County around the GNB, Inc., lead smelter and battery production facility as nonattainment for lead. This nonattainment designation was based on lead NAAQS violations from monitors located near the GNB facility that were recorded the first, second, and fourth quarter of the calendar year 1991.

On July 23, 1993, Georgia EPD submitted a lead SIP for attaining the NAAQS in the Muscogee County lead nonattainment area. EPA found the SIP to be inadequate because it did not meet the requirements of section 172(c) of the CAA and requested that Georgia EPD make the necessary corrections and submit supplemental information to address the deficiencies. To comply, Georgia EPD submitted a supplemental modeling demonstration for the base

year 1996. Significant changes in the emission sources occurred at the GNB lead facility rendering the modeling inappropriate for the 1993 SIP submittal and inapplicable for the redesignation request. Specifically, the 1996 modeling showed a relaxation of the limits, the addition of new emission sources, revised stack heights, deleted sources, and relocated sources not addressed in the 1993 SIP submittal. Even though the total facility emissions and maximum modeling impacts decreased somewhat, the inventory was not reflective of the 1993 SIP inventory and the SIP emission limits were relaxed. As a result, Georgia EPD requested that the 1993 lead SIP be withdrawn and replaced with the new lead SIP submittal and redesignation request dated September 28, 1998.

II. Analysis of the State Submittal

The 1998 SIP revision was reviewed using the criteria established by the CAA in section 110(a)(2). Section 172(c) of the CAA specifies the provisions applicable to areas designated as nonattainment for any of the NAAQS. EPA has also issued a General Preamble describing how EPA will review SIPs and SIP revisions submitted under Title I of the CAA, including those state submittals containing lead nonattainment area SIP requirements (see generally 57 FR 13498 (April 16, 1992) and 57 FR 18070 (April 28, 1992)). Because the EPA is describing its interpretations here only in broad terms, the reader should refer to the General Preamble for a more detailed discussion of the interpretations of Title I advanced in today's approval and the supporting rationale (57 FR 13549, April 16, 1992).

A. Attainment Demonstration

Section 192(a) of the CAA requires that SIPs must provide for attainment of the lead NAAQS as expeditiously as practicable but not later than five years from the date of an area's nonattainment designation. The lead nonattainment designation for the Muscogee County area was effective on January 6, 1992; therefore, the latest attainment date permissible by statute would be January 6, 1997. The Muscogee County area has air quality data showing attainment of the lead NAAQS for the years 1992 through 1998 and to date for 1999, which meets the statutory requirement.

To demonstrate that the area will continue to be in attainment with the lead NAAQS, emission limits were obtained from the application of reasonable achievable control technologies (RACT) and workplace standards at the GNB facility. The emission limits were evaluated using air dispersion modeling. This modeling predicts the impact of emissions on the environment surrounding the facility and whether or not the area will attain the lead NAAQS. The modeling demonstration submitted by Georgia EPD for the GNB facility shows a predicted maximum ambient air lead concentration of 0.98 micro grams per cubic meter ($\mu g/m^3$) which is below the NAAQS for lead of 1.5 ($\mu g/m^3$)

B. Emissions Inventory

Section 172(c)(3) of the CAA requires that nonattainment plan provisions include a comprehensive, accurate, current inventory of actual emissions from all sources of relevant pollutants in the nonattainment area. Because it is necessary to support an area's attainment demonstration, the emission inventory must be received with the SIP submission.

Georgia EPD submitted an emissions inventory for the base year 1996. The inventory identifies the secondary lead smelter owned and operated by GNB as the sole major source of lead emissions in the Muscogee County area when violations were recorded. The EPA is approving the emissions inventory because it is accurate and comprehensive, and provides a sufficient basis for determining the adequacy of the attainment demonstration for this area consistent with the requirements of the CAA.

C. Reasonably Available Control Measures (RACM) (Including Reasonably Available Control Technology (RACT))

States with lead nonattainment areas must submit provisions to assure that RACM (including RACT) are implemented (see sections 172(c)(1)). Control measures have already been implemented at the GNB facility and include baghouses on several emissions points, environmental controls on blast furnaces, and improved lead related work practices and controls to minimize fugitive lead dust emissions. The control measures employed at the GNB facility were evaluated for reasonableness and technological and economical feasibility. EPA has determined that requirements for RACM (including RACT) have been met.

D. Other Measures including Emission Limitations, and Timetables

Pursuant to 172(c)(6) of the CAA, all nonattainment SIPs must contain enforceable emission limitations, other control measures, and schedules and timetables for compliance.

The emission limits for the GNB facility were submitted as a part of the lead SIP and used in the modeling study. The facility-wide emissions of lead for GNB are limited to 1.612 pounds per hour (lbs/hr). Any relaxation of the emission limits which results in a computer modeling prediction of a maximum quarterly lead concentration off the GNB plant property exceeding 0.98 $\mu g/m^3$ will require a revision of this lead SIP.

The CAA also requires that nonattainment SIPs include other measures and schedules and timetables for compliance that may be needed to ensure the attainment of the relevant NAAQS by the applicable attainment date. Because the Muscogee County area has been attaining the lead NAAQS since 1992 and met the attainment date of January 6, 1997, it was not necessary to require other control measures or a schedule and timetable for compliance with the NAAQS.

E. Computer Modeling

Section 110(a)(2)(K) of the CAA requires the use of air quality modeling to predict the effect on ambient air quality from any emissions of an air pollutant for which a NAAQS has been established. Therefore, Georgia EPD was required to submit a modeling demonstration with the lead SIP. Georgia EPD used the current long-term ISCLT3 and short-term ISCST3 models. The 1996 modeling results reveal that the maximum quarterly lead concentration was 0.98 $\mu g/m^3$ which is below the 1.5 $\mu g/m^3$ lead NAAQS. Furthermore, it is predicted that the maximum quarterly lead concentration in the year 2009, which is the required year for maintenance, shall be either at or below the 1996 value.

F. Reasonable Further Progress (RFP)

The SIP must provide for RFP, defined in section 171(1) of the CAA as such reductions in emissions of the relevant air pollutant as are required by section 172(c)(2), or may reasonably be required by the Administrator for the purpose of ensuring attainment of the applicable NAAQS by the applicable date.

The EPA reviewed the attainment demonstration for the area to determine whether annual incremental reductions different from those provided in the SIP should be required in order to ensure attainment of the lead NAAQS. The EPA found that the emission controls which have been implemented at the GNB facility in response to the 1991 NAAQS violations, have resulted in swift improvement in air quality in the Muscogee County nonattainment area. Furthermore, the air quality monitoring data indicates no exceedances of the

lead NAAQS since 1991 and the modeling study predicts no future exceedances. Therefore, no additional incremental reductions in emissions are needed.

G. New Source Review (NSR)

Section 172(c)(5)of the CAA requires that the submittal include a permit program for the construction and operation of new and modified major stationary sources. The federally approved Rule 391–3–1–.03—subsection (8)(c) of the Georgia Rules for Air Quality Control identifies the current specific permitting requirements for nonattainment areas in the State of Georgia. The federally approved Rule 391–2–1–.02 subsection (7)—Prevention of Significant Deterioration of Air Quality will replace this rule once the Muscogee County lead nonattainment area is redesignated to attainment. An analysis of the redesignation request is discussed later in this document. This rule meets the requirements of the CAA.

H. Contingency Measures

As provided in section 172(c)(9) of the CAA, all nonattainment area SIPs that demonstrate attainment must include contingency measures. Contingency measures should consist of other available measures that are not part of the area's control strategy. These measures must take effect without further action by the state or EPA, upon a determination that the area has failed to meet RFP or attain the lead NAAQS by the applicable attainment date.

The Georgia lead SIP contains the following three contingency measures: (1) speed breaker control of truck speed and minimization of re-entrainment of fugitive dust on the roadway; (2) enclosure of the drum dump for the oxide vacuum system, smelter vacuum system, and fugitive baghouses to contain any lead dust generated during cleaning; and (3) connection of the discharge from both vacuum systems to baghouses to provide secondary filtration. The SIP provides that all three measures be implemented within 60 days after notification to GNB by Georgia EPD that the NAAQS has been violated in the Muscogee County area.

The EPA is approving the lead SIP for Muscogee County, Georgia because it meets the requirements set forth in section 110(a)(2) and 172(c) of the CAA.

III. Background and Analysis of the Redesignation Request

On February 23, 1994, Georgia EPD submitted a request to redesignate the Muscogee County area to attainment for lead. The EPA could not approve this request because it did not meet the requirements sets forth in the CAA for redesignation requests. Subsequently, Georgia EPD requested that EPA withdraw the 1994 redesignation request and approve the new request dated September 28, 1998.

Pursuant to section 107(d)(3)(E) of the CAA, five requirements must be met before a nonattainment area can be redesignated to attainment. The following describes how each of the five requirements has been achieved.

A. Attainment of the Lead NAAQS

The EPA requires eight consecutive quarters or 2 calendar years of air quality monitoring data showing attainment to justify a redesignation to attainment. To demonstrate that the Muscogee County area is in attainment with the NAAQS for lead, Georgia EPD included air quality data for the years 1992–1998 in the submittal. The data has been quality assured, and can be found in EPA's Aerometric Information Retrieval System. This monitoring data which covers over 25 consecutive quarters without an exceedance, is adequate to demonstrate attainment of the lead NAAQS.

Modeling is also required to redesignate an area to attainment. The EPA believes that the modeling analysis included in the 1998 lead SIP also being approved in this document satisfies this requirement. Georgia EPD will continue to monitor the air quality of the Muscogee County area to verify continued maintenance of the lead NAAQS.

B. Section 110(k) SIP Approval

The SIP for the area must be fully approved under section 110(k) and must satisfy all requirements that apply to the area. Approval actions on SIP elements and the redesignation request may occur simultaneously as in the case of this lead SIP and redesignation request. The SIP elements for the lead SIP were discussed previously in the "Analysis of the State Submittal" section of this document. The EPA has determined that the approval of the lead SIP for the Muscogee County area meets the requirements of section 110(k).

C. Permanent and Enforceable Improvement in Air Quality

A state must be able to reasonably attribute the improvement in air quality to permanent and enforceable emission reductions. The implementation of RACM (including RACT) by the GNB facility provides enforceable and permanent emission reductions needed to attain and maintain the lead NAAQS. This is evidenced by the area having more than 25 consecutive quarters of clean air quality data. Furthermore, the modeling study shows that the area will remain in attainment through the year 2009. Subsequently, EPA has determined that there is a permanent and enforceable improvement in the air quality in Muscogee County.

D. Compliance With Sections 110(a)(2) and Part D of the CAA

To be redesignated to attainment, section 107(d)(3)(E) requires that an area must have met all applicable requirements of section 110(a)(2) and Part D of the CAA. The EPA has determined that the lead SIP for the Muscogee County area of Georgia meets the requirements of section 110(a)(2) and Part D of the CAA and is approving the submittal in this document. A detailed explanation of the requirements can be found in the "Analysis of the State Submittal" section of this document.

E. Maintenance Plan

Section 175(A) of the CAA requires states that submit a redesignation request to include a maintenance plan to ensure that the attainment of NAAQS for any pollutant is maintained. The plan must demonstrate continued attainment of the applicable NAAQS for at least ten years after the approval of a redesignation to attainment. Eight years after the redesignation, states must submit a revised maintenance plan demonstrating attainment for the ten years following the initial ten year period. To provide for the possibility of future NAAQS violations, the maintenance plan must contain such contingency measures as the Administrator deems necessary to assure that a state will promptly correct any violation of the standard that occurs after redesignation. The contingency provisions are to include a requirement that a state will implement all measures for controlling the air pollutant concerned that were contained in the SIP prior to redesignation.

Georgia EPD demonstrated that the lead SIP also being approved in this action is adequate to maintain compliance with the lead NAAQS for at least ten years. The EPA agrees that the lead SIP satisfies the requirements of section 175(A) of the CAA to show maintenance of the lead NAAQS. The control measures and lead emission limits included in the SIP have been implemented at the GNB facility to ensure the continued attainment of the lead NAAQS. The modeling demonstration supporting the lead SIP shows maintenance of the lead standard through 2009, meeting the requirement to show maintenance for ten years. The lead SIP also includes contingency

measures that will take effect if a violation of the lead NAAQS occurs. Since these measures were not implemented to attain the lead NAAQS, they can be used as contingency measure for maintenance. Georgia EPD has committed to submit a demonstration of maintenance for an additional ten years within eight years of approval of the redesignation request.

IV. Final action

EPA is approving the lead SIP and redesignation of the Muscogee County lead nonattainment area to attainment because the submittal meets the requirements of the CAA as discussed in this document. The EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should adverse comments be filed. This rule will be effective June 11, 1999 without further notice unless the Agency receives adverse comments by May 12, 1999.

If the EPA receives such comments, then EPA will publish a document withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period. Parties interested in commenting should do so at this time. If no such comments are received, the public is advised that this rule will be effective on June 11, 1999 and no further action will be taken on the proposed rule.

V. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order (E.O.) 12866, entitled "Regulatory Planning and Review."

B. Executive Order 12875

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's rule does not create a mandate on state, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

C. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to E.O. 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

D. Executive Order 13084

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective

and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major" rule as defined by 5 U.S.C. 804(2).

H. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 11, 1999. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Lead, Incorporation by reference, Intergovernmental relation, Reporting and recordkeeping requirements.

40 CFR Part 81

Environmental protection, Air pollution control, National parks, Wilderness areas.

Dated: March 18, 1999.

Michael V. Peyton,

Acting Regional Administrator, Region 4.

Chapter I, title 40, *Code of Federal Regulations*, is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart L—Georgia

2. Section 52.570 is amended by adding paragraph (c)(45) to read as follows:

§ 52.570 Identification of plan.

* * * * *

(c) * * *

(45) The State of Georgia submitted a lead SIP for the Muscogee County lead nonattainment area dated September 28, 1998.

(i) Incorporation by reference.

State Implementation Plan for Lead Columbus, Georgia Muscogee County, Requirements for the GNB facility that were adopted on September 28, 1998.

(ii) Other material. None.

* * * * *

PART 81—[AMENDED]

1. The authority citation for part 81 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart C—Section 107 Attainment Status Designations

2. In § 81.311, the attainment status table for lead is amended by revising the designation type and date entry for Muscogee County (part).

§ 81.311 [Amended]

GEORGIA—LEAD

Designated Area	Designation		Classification	
	Date	Type	Date	Type
* * *	*	*	*	*
Muscogee County (part)—That portion of the county which includes a circle with a radius of 2.3 kilometers with the GNB, Inc., lead smelting and battery production facility in the center.	June 11, 1999	Attainment		
* * *	*	*	*	*

[FR Doc. 99–8944 Filed 4–9–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[AD–FRL–6322–8]

National Emission Standards for Hazardous Air Pollutants for Source Category: Pulp and Paper Production

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; interpretation and technical amendments.

SUMMARY: Under the Clean Air Act (Act), EPA issued a final rule (63 FR 18504, April 15, 1998) to reduce hazardous air pollutant (HAP) emissions from the pulp and paper production source category. That rule (known as the Pulp and Paper national emission standard for hazardous air pollutants or pulp and paper NESHAP) is the air component of the integrated air and water rules for the pulp and paper industry (known as the Pulp and Paper Cluster Rules). The rule applies to pulp and paper production processes

included under Standard Industrial Classification (SIC) code 26.

This action makes interpretive amendments to certain regulatory text in the 1998 pulp and paper NESHAP. We are making these amendments to make certain that the rule's language reflects our stated intent and also to correct certain inadvertent omissions and minor drafting errors.

DATES: These amendments are effective April 12, 1999. The incorporation by reference of the publication listed in the amendments is approved by the Director of the Federal Register as of April 12, 1999.

ADDRESSES: Docket No. A–92–40, containing the supporting information for the original and amendments to 1998 NESHAP and this action, is available for your inspection and copying between 8:00 a.m. and 5:30 p.m., Monday through Friday except for Federal holidays, at the following address: U.S. Environmental Protection Agency, Air and Radiation Docket and Information Center (MC–6102), 401 M Street SW, Washington, DC 20460, or by calling (202) 260–7548. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen Shedd, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711; telephone (919) 541–5397 or e-mail at shedd.steve@epa.gov. For questions on compliance and applicability determinations, contact Mr. Seth Heminway, Office of Enforcement and Compliance Assessment (2223A), U.S. Environmental Protection Agency, 401 M Street SW, Washington, DC 20460; telephone (202) 564–7017 or e-mail at heminway.seth@epa.gov.

SUPPLEMENTARY INFORMATION:

Regulated Entities. Entities potentially regulated by this action include:

Category	SIC code	Examples of regulated entities
Industry	26	Pulp mills and integrated mills (mills that manufacture pulp and paper/paperboard) that chemically pulp wood fiber.

This table is not exhaustive. It lists the types of entities that we are now aware might be regulated by this action. To determine whether your facility is regulated by this action, you should carefully examine the applicability criteria in part 63, subparts A and S of title 40 of the Code of Federal Regulations.

Information Contacts. If you have questions about how this action applies to a particular situation or questions about compliance approaches, permitting, enforcement, and rule determinations, please contact the appropriate regional representative below.

Region I: Greg Roscoe, Chief, Air Pesticides and Toxics Enforcement Office, Office of Environmental Stewardship, U.S. EPA, Region I, JFK Federal Building (SEA), Boston, MA 02203; (617) 565–3221. Technical Contact for Applicability Determination, Susan Lancey, (617) 565–3587, (617) 565–4940 (Fax).

Region II: Mosey Ghaffari, Air Compliance Branch, U.S. EPA, Region II, 290 Broadway, New York, NY 10007–1866; (212) 637–3925, (212) 637–3998 (Fax).

Region III: Makeba Morris, U.S. EPA, Region III, 3AT10, 1650 Arch Street, Philadelphia, PA 19103; (215) 814–2187.

Region IV: Lee Page, U.S. EPA, Region IV, Atlanta Federal Center, 100 Alabama Street, Atlanta, GA 30303; (404) 562–9131.

Region V: Christina Prasinos (AE–17J), U.S. EPA, Region V, 77 West Jackson Street, Chicago, IL 60604–3590; (312) 886–6819, (312) 353–8289 (Fax).

Region VI: Michelle Kelly, Air Enforcement Branch (6EN–AA), U.S. EPA, Region VI, Suite 1200, 1445 Ross Avenue, Dallas, TX 75202–2733; (214) 665–7580, (214) 665–7446 (Fax).

Region VII: Gary Schlicht, Air Permits and Compliance Branch, U.S. EPA, Region VII, ARTD/APCO, 726 Minnesota Avenue, Kansas City, KS 66101; (913) 551–7097.

Region VIII: Tami Thomas-Burton, Air Toxics Coordinator, U.S. EPA, Region VIII, Suite 500, 999 18th Street, Denver, CO 80202–2466; (303) 312–6581, (303) 312–6064 (Fax).

Region IX: Ken Bigos, U.S. EPA, Region IX, A–5, 75 Hawthorne Street, San Francisco, CA 94105; (415) 744–1240.

Region X: Andrea Wallenweber, Office of Air Quality, U.S. EPA, Region X, OFFICE OF AIR QUALITY PLANNING AND STANDARDS–107, 1200 Sixth Avenue, Seattle, WA 98101; (206) 553–8760, (206) 553–0404 (Fax).

Technology Transfer Network. The Technology Transfer Network (TTN) is a network of EPA's electronic bulletin boards. The TTN provides information and technology exchange in various areas of air pollution control. Information regarding the basis and purpose of this action, the rule and other relevant documents can be found on the pulp and paper page of EPA's Unified Air Toxics World Wide Web site (UATW) at "http://www.epa.gov/ttn/uatw/pulp/pulppg.html". For more information on the TTN, call the HELP line at (919) 541–5384.

Outline. The technical amendments discussed in this preamble are grouped according to rule sections: emission standards and testing, and monitoring and recordkeeping.

The preamble is organized as follows:

I. Description of the Amendments and Interpretations
A. Emission Standards and Testing
1. May process modifications be used instead of add-on control devices to meet the bleaching system standards (§ 63.445)?
2. Must evaporator feed stage vapor and vacuum system condensates be controlled (§ 63.446)?
3. May a direct injection gas chromatography/flame ionization detection test method be used to measure methanol in liquid streams (§ 63.14 and § 63.457(c)(3))?
4. What are the minimum length and number of test runs required to demonstrate initial compliance (§ 63.457)?
B. Monitoring and Recordkeeping
1. Must continuous monitors for residence time and concentration be used for some control device alternatives (§ 63.453)?
2. What is the condensate tank "no detectable" emissions test frequency (§ 63.453)?
3. What must be done if the tests for condensate tanks indicate emissions (§ 63.453)?
4. May the repair period for closed-vent systems extend beyond 15 days as implied in the recordkeeping requirements (§ 63.453)?
5. Do the recordkeeping requirements in subpart RR apply to closed collection systems (§ 63.453)?
C. Typographical Corrections
II. Administrative Requirements
III. Legal Authority

I. Description of the Amendments and Interpretations

In today's action, we are amending several sections of the national emission standard for hazardous air pollutants from the pulp and paper industry issued

on April 15, 1998 (the "1998 NESHAP") in title 40, part 63, subpart S. These amendments clarify the intent and correct inadvertent omissions and minor drafting errors in the 1998 NESHAP. This section presents a description of each of the amendments.

A. Emission Standards and Testing

1. *May process modifications be used instead of add-on control devices to meet the bleaching system standards (§ 63.445)?*

Today's action revises the bleaching system standards (§ 63.445) to make clear that process modifications (e.g., 100 percent substitution of chlorine dioxide for chlorine and elimination of hypochlorite) may be used to achieve compliance with the chlorinated HAP emission limits for the bleaching system standards. The 1998 NESHAP requires equipment at subject bleaching stages to be enclosed and vented into a closed-vent system and routed to a control device that meets the specified emission limits (see § 63.445(c)).

Following promulgation of the 1998 NESHAP, commenters indicated that some mills may be able to achieve the concentration or mass emission limits specified in § 63.445(c) by process modifications without the use of an add-on control device. The commenters stated that as written, the 1998 NESHAP would preclude mills from using process modifications (e.g., 100 percent chlorine dioxide substitution for chlorine and elimination of hypochlorite) because the 1998 NESHAP specifies that the emissions must be captured and routed to a control device.

We did not intend to prevent you (owner or operator of the mill or reader, as appropriate) from using process modifications to achieve compliance with the standards for chlorinated HAP emissions. The outlet concentration control option was provided in the 1998 NESHAP in response to comments on the December 17, 1996 proposal (Pulp, Paper, and Paperboard Industry—Background Information for Promulgated Air Emission Standards, EPA–453/R–93–050b, pages 6–1 and 6–2) indicating that bleaching systems using high levels of chlorine dioxide substitution could have difficulty meeting a percent reduction limit due to low chlorine concentrations at the process equipment outlet. Also, the mass emission limit for bleaching system vents in the 1998 NESHAP was developed in response to comments on the March 8, 1996 supplemental **Federal Register** document (61 FR 9394, second column) indicating that new low-flow rate bleaching system technologies would not be able to meet either the percent reduction or outlet concentration limits (Air Docket A–92–40, item IV–B–29). Therefore, we provided for two standards to allow process modifications without the need for add-on controls. Thus, we do not intend to require enclosures and closed-vent systems for process equipment that achieve compliance using process modifications. A temporary enclosure may be necessary to measure the outlet concentration or mass emission limit during the initial performance test and other compliance demonstrations. It should be noted that the percent reduction alternative emission limit was not included in the amended language since this reduction alternative is inherently based on the use of an add-on control device.

2. *Must evaporator feed stage vapor and vacuum system condensates be controlled (§ 63.446)?*

Evaporator feed stage vapor and vacuum system condensates must be controlled. Today's action revises the standards for kraft pulping process condensates in the 1998 NESHAP (§ 63.446) to clarify which condensate streams from evaporator system weak liquor feed stages are subject to the standards. Our intention in the 1998 NESHAP was to collect all condensate streams from evaporator system stages where the majority of HAPs are discharged. The discussion in the next four paragraphs is intended to present the reader with a brief description of the evaporation process and provide background for identifying the regulated condensate streams.

The 1998 NESHAP (§ 63.446(b)(3)) specifies that the standards apply to certain kraft pulping process condensate streams. For the evaporator system, the 1998 NESHAP specifies that regulated streams are condensates from "each evaporator stage where weak liquor is introduced (feed stages)." The 1998 NESHAP defines the evaporator system as

> * * * all equipment associated with increasing the solids content and/or concentrating spent cooking liquor from the pulp washing system including pre-evaporators, multi-effect evaporators, concentrators, and vacuum systems, as well as associated condensers, hotwells, and condensate streams, and any other equipment serving the same function as those previously listed.

Evaporators are used to remove water and volatile contaminants (including HAPs) from weak liquor so that the spent cooking chemicals can be economically recovered and reused. After passing through the evaporator system, concentrated weak liquor (i.e., heavy or strong liquor) is burned in the recovery furnace to recover spent cooking chemicals and heat value contained in organic compounds remaining in the concentrated liquor.

An evaporator system is a series of interconnected evaporator stages called "effects" (thus the industry term "multi-effect evaporator). Each stage is operated at different pressures to evaporate water and contaminates (HAPs) from weak liquor. The evaporated vapors from one stage heat the next stage. Thus, the condenser of each stage condenses vapors from this and previous stages. These vapors typically do not exit the evaporator system until after entering the next stage or stages. Additionally, the vapors from the weak liquor feed stages have the highest HAP content since this is the initial contact of the weak liquor with heat. Later stages contain less HAPs (unless more weak liquor is fed into the effect) since the majority of HAPs are evaporated from the liquor in the previous stage(s).

The liquor feed stages in the evaporator system are operated under very high vacuum, usually maintained by steam ejectors or vacuum pumps. The condensates generated by these vacuum devices and their associated condensers also have high HAP content due to volatilization of compounds from the individual liquor feed stages.

Following issuance of the 1998 NESHAP, we received requests to clarify the 1998 NESHAP language regarding the subject condensates from evaporator system weak liquor feed stages. We intended to include the condensates from weak liquor feed stage vapors and condensates from weak liquor feed stage vacuum systems in the list of subject kraft pulping process condensates specified in the 1998 NESHAP (§ 63.446(b)). However, the 1998 NESHAP language used to describe the weak liquor feed stage vapor condensates was not accurate and the 1998 NESHAP language omitted weak liquor feed stage vacuum system condensates. Our intent is evident in EPA's analysis of the condensate characterization data (Air Docket A–92–40, item IV–B–9) submitted following proposal, the supplemental **Federal Register** document (March 8, 1996; 61 FR 9383; page 9390, second column), and communications between EPA and industry stakeholders (Air Docket A–92–40, items IV–E–65 and IV–E–71) following publication of the proposed rule.

Accordingly, we are amending § 63.446(b) to clarify that condensates from the vapors and vacuum systems for weak liquor feed stages are subject to the kraft pulping process condensate

standards. As noted above, the vapors from weak liquor feed stages may not be condensed in some evaporative systems until the following stage or stages. In this case, you must collect and control the condensates from these evaporator stages.

3. *May a direct injection gas chromatography/flame ionization detection test method be used to measure methanol in liquid streams (§ 63.14 and § 63.457(c)(3))?*

A specific direct injection gas chromatography/flame ionization detection (GC/FID) test method is being included in today's action as an additional and alternative test method for determining the methanol content of liquid streams. We are amending the test methods and procedures section of the 1998 NESHAP (§ 63.457(c)(3)) and the incorporation-by-reference section of the NESHAP general provisions (§ 63.14) to incorporate this test method.

As presented in the April 15, 1998 NESHAP preamble (63 FR 18529), the 1998 NESHAP specifies EPA Reference Method 305 for determining methanol content of liquid streams. As the 1998 NESHAP preamble notes, however, the GC/FID test method developed by the National Council of the Paper Industry for Air and Stream Improvement, Inc. (NCASI) had not been validated using EPA procedures (Method 301). However, we stated in the 1998 NESHAP preamble that if we approve this method using the Method 301 validation procedures, then the NCASI method would be approved as either an alternative or a replacement for Method 305 with a supplemental **Federal Register** document.

On February 18, 1998, the director of EPA's Emissions, Monitoring and Analysis Division (EMAD) approved NCASI's test method as an alternative test method to EPA Method 305 for measuring methanol in condensates. Since clarifying amendments to the 1998 NESHAP are being published in today's action, we decided to incorporate this NCASI test method into the 1998 NESHAP language to ease implementation and referencing.

Either EPA Method 305 or the NCASI method may be used for measuring the methanol content of liquid streams. However, the NCASI test method has been validated for only one HAP compound: methanol. So while this NCASI method can be used in other parts of the 1998 NESHAP where methanol is specified as a surrogate for HAP, this method may not be used for certain test requirements for biological treatment where we require a total measurement of all HAP compounds (not just methanol).

4. *What are the minimum length and number of test runs required to demonstrate initial compliance (§ 63.457)?*

For the initial performance tests, a minimum of three 1-hour test runs must be conducted during which either an integrated sample or four grab samples must be taken. Today's action clarifies the terminology used for test runs and samples in the vent sampling requirements in § 63.457(b)(5) and (b)(6) and adds the 1-hour test length specification to the liquid sampling requirements in § 63.457(c)(3).

Commenters to the 1998 NESHAP indicated that the language regarding the minimum length of the test run and number of test runs required by the NESHAP was unclear. In reviewing the 1998 NESHAP, we found two sections where clarification of the terminology used to describe test runs and samples is needed. Additionally, we inadvertently omitted specifying the minimum test run length for liquid sampling. The following discussion identifies the 1998 NESHAP language in question and the amendments in today's action to correct the rule language.

Performance tests are used to demonstrate compliance with a relevant standard based on conditions that reflect normal operations. As specified in the performance testing requirements section of the NESHAP general provisions (§ 63.7(e)(1)):

> Performance tests shall be conducted under such conditions as the Administrator specifies to the owner or operator based on representative performance (i.e., performance based on normal operating conditions) of the affected source.

The NESHAP general provisions (§ 63.7(e)(3)) also specify:

> * * * For the purpose of determining compliance with a relevant standard, the arithmetic mean of the results of the three runs shall apply.

For pulping and bleaching system vent standards, the 1998 NESHAP specifies in the test methods and procedures section (§ 63.457(b)(5)) that owners or operators must collect a minimum of three samples that are representative of normal conditions and average the results to determine vent gas pollutant concentrations. However, the terminology used in the 1998 NESHAP for vent sampling was incorrect since the term "samples" was used instead of the phrase "test runs." Section 63.457(b)(5) should have used the phrase "test runs" since the subsequent language in § 63.457(b)(6) refers the minimum sampling time for the test runs and also specifies the number of samples to be taken during the run. Therefore, we are changing the word "samples" to "test runs" in § 63.457(b)(5). Also, for additional clarity, we are adding the word "test" in front of the word "run" in § 63.457(b)(6).

For liquid stream sampling, the 1998 NESHAP specifies in the test methods and procedures section (§ 63.457(c)(3)) that owners or operators must collect a minimum of three samples that are representative of normal conditions and average the results to determine liquid stream total HAP or methanol concentrations. In drafting the 1998 NESHAP, we inadvertently omitted the minimum sampling time of each test run for liquid stream sampling. Although the liquid stream test methods referenced in the 1998 NESHAP (§ 63.457(c)(3)(i) and (c)(3)(ii)) are batch tests, we intended for the samples (either grab samples or composite samples) to be collected over a minimum period of 1 hour. Our intent for liquid stream sampling length is found in the test methods and procedures section (§ 63.451(i)(2)(iv)) of the December 17, 1993 proposal (63 FR 66181). Today's action corrects this omission and inserts the 1-hour sampling period language into § 63.457(c)(3).

Today's action amends the 1998 NESHAP to clarify that the initial performance tests for vent and liquid streams must consist of a minimum of three test runs and that the minimum sampling time for each test run is 1 hour. However, additional performance tests or longer sampling times may be needed to demonstrate compliance under normal operating conditions for equipment systems that have multiple operating scenarios or modes.

With regard to continuous compliance, the 1998 NESHAP did not specify frequencies and averaging periods for continuous monitoring since we intended to provide you flexibility in developing appropriate continuous monitoring strategies. As specified in the monitoring section of the 1998 NESHAP (§ 63.453(n)(4)), you must provide for the Administrator's approval the rationale for the selected operating parameter value, monitoring frequency, and averaging time. Since we have delegated this authority to State agencies, you have the flexibility to work out the specifics of continuous monitoring strategies with your permitting agencies. Additionally, we continue to hold workshops to discuss and identify continuous monitoring strategies with stakeholders.

B. Monitoring and Recordkeeping

1. *Must continuous monitors for residence time and concentration be used for some control device alternatives (§ 63.453)?*

Thermal oxidizers meeting the outlet concentration standard may continuously monitor either combustion temperature or outlet concentration. Today's action clarifies the monitoring requirements in the 1998 NESHAP (§ 63.453(b)) for thermal oxidizers used to control pulping system vent emissions. Additionally, today's action clarifies that residence time is an operating parameter to be demonstrated initially and when process changes occur that will impact residence time.

The 1998 NESHAP (§ 63.443(d)) contains the following alternative emission limits for thermal oxidizers:

(1) Reduce total HAP emissions by 98 percent or more by weight;

(2) Reduce the total HAP concentration at the outlet of the thermal oxidizer to 20 parts per million or less by volume (ppmv), corrected to 10 percent oxygen on a dry basis;

(3) Reduce total HAP emissions using a thermal oxidizer designed and operated at a minimum temperature of 871 °C (1600 °F) and a minimum residence time of 0.75 seconds; or

(4) Reduce total HAP emissions using a boiler, lime kiln, or recovery furnace by introducing the HAP emission stream with the primary fuel or into the flame zone.

The monitoring requirements for thermal oxidizers (§ 63.453(b)) specify that a continuous monitoring system (CMS) must be operated to measure the temperature in the firebox or in the ductwork immediately downstream of the firebox and before any substantial heat exchange occurs. This applies to each thermal oxidizer used to comply with the percent reduction, outlet concentration, and minimum design specification requirements. When complying with the outlet concentration or the minimum design requirements, you must monitor for the parameter specified and for the temperature and concentration limits specified.

In drafting the 1998 NESHAP, we intended that continuous compliance with each emission limit alternative (with the exception of using a boiler, lime kiln, or recovery furnace) be demonstrated by monitoring only the thermal oxidizer operating temperature as evidenced by the December 17, 1993 proposal (§ 63.453(b)) and the 1998 NESHAP preamble (63 FR 18511). As an option for monitoring temperature, we intended to allow you to continuously monitor only the thermal oxidizer outlet concentration if you are complying with the 20 ppmv outlet concentration emission limit (§ 63.443(d)(2)). However, the language in § 63.453(b) of the 1998 NESHAP is unclear. It incorrectly indicates that owners or operators complying with the 20 ppmv outlet concentration must continuously monitor the outlet concentration and temperature, and that owners or operators complying with the temperature and residence time specifications must continuously monitor the thermal oxidizer operating temperature, residence time, and HAP concentration.

Today's action amends the 1998 NESHAP to achieve the original intent as stated in the preamble (63 FR 18511). The amendment clarifies that mills that comply with the 20 ppmv emission limit must monitor either HAP concentration or temperature, but not both. The amendment also clarifies that monitoring of operating temperature is the only monitoring parameter requirement for demonstrating continuous compliance with the minimum temperature and residence time specification (§ 63.443(d)(3)). For the residence time requirement, you must demonstrate that the minimum residence time is being achieved (along with the operating temperature) and provide documentation to demonstrate this in the notification of compliance status. The minimum residence time must also be performed if the vent gas flow rate sent to the thermal oxidizer is increased above the flow rate established in the notification of compliance status.

2. *What is the condensate tank "no detectable" emissions test frequency (§ 63.453)?*

Today's action amends the monitoring requirements for closed collection systems (§ 63.453(l)) to clarify tests to determine "no detectable" emissions are to be conducted initially and annually.

In the standards for kraft pulping process condensates (§ 63.446(d)(2)(i)), the 1998 NESHAP specifies that condensate tanks used in the closed collection system for regulated condensate streams must be operated and designed with no detectable emissions as indicated by an instrument reading of less than 500 parts per million above background using EPA Reference Method 21. However, we inadvertently neglected to specify the schedule for conducting this Method 21 test. We intended this compliance monitoring to be conducted at the same frequency as that required for the closed-vent system Method 21 tests since the same test equipment and personnel are being used. Closed-vent systems are required to be tested initially and annually (§ 63.453(k)(3)). Today's amendment specifies that the "no detectable" emissions tests for closed collection systems must also be performed initially and annually.

For additional clarity and to better incorporate additional changes being made in today's action (see sections I.B.3 and I.B.5 of this preamble), we restructured the NESHAP paragraph where the monitoring requirements for closed collection systems are specified (§ 63.453(l)). We are changing the structure of § 63.453(l) to parallel that used for the enclosure and closed-vent system monitoring requirements (§ 63.453(k)). Consequently, several subsections are being added to § 63.453(l). These revisions are contained in amended § 63.453(l)(2). Additional changes to § 63.453(l) are discussed in sections I.B.3 and I.B.5 of this preamble.

3. *What must be done if the tests for condensate tanks indicate emissions (§ 63.453)?*

We are amending the closed collection system monitoring requirements (§ 63.453(l)) to clarify that pulp and paper mills must comply with the repair schedule requirements of subpart RR of this part (§ 63.964(b)) if condensate tank "no detectable" emissions tests indicate emissions. All detectable emissions measured on condensate tanks must be repaired according to the repair schedule in subpart RR of this part.

The kraft pulping process condensate standards of the 1998 NESHAP (§ 63.446(d)(2)(i)) state that condensate tanks used in the closed collection system must be designed and operated with no detectable emissions. The 1998 NESHAP (§ 63.453(l)) specifies that closed collection systems (which include condensate tanks) must meet the inspection and monitoring requirements of subpart RR of this part (§ 63.964) which provide a repair schedule. Section 63.964(b) of subpart RR of this part states:

(b) The owner or operator shall repair all detected defects as follows:

(1) The owner or operator shall make first efforts at repair of the defect no later than 5 calendar days after detection and repair shall be completed as soon as possible but no later than 15 calendar days after detection except as provided in paragraph (b)(2) of this section.

(2) Repair of a defect may be delayed beyond 15 calendar days if the owner or operator determines that repair of the defect requires emptying or temporary removal from service of the individual drain system and no alternative capacity is available at the facility site to accept the wastewater normally managed in the individual drain system. In this case, the owner or operator shall repair the defect at the next time the process or unit that is generating the wastewater managed in

the individual drain system stops operation. Repair of the defect shall be completed before the process or unit resumes operation.

We inadvertently omitted rule text in the 1998 NESHAP specifying that you must follow the repair schedule if the condensate tank tests indicate emissions. Our intent is evident since we included the repair schedule for defects in the continuous monitoring section (§ 63.453(f)(3)) of the December 17, 1993 proposal (58 FR 66182). In today's action, we are clarifying the 1998 NESHAP by explicitly specifying that the repair schedule requirements in subpart RR of this part (§ 63.964(b)(1) and (b)(2)) are triggered if the condensate tank "no detectable" emissions tests identify emissions.

As discussed previously in section I.B.2 of this preamble, the structure of the paragraph in the 1998 NESHAP specifying the monitoring requirements for closed collection systems (§ 63.453(l)) is being revised to parallel that used for the enclosure and closed-vent system monitoring requirements (§ 63.453(k)). As part of that restructuring, the revisions discussed in today's action regarding the repair schedule specified in subpart RR of this part for both condensate tanks and the rest of the closed collection system are contained in § 63.453(l)(3). One additional change to § 63.453(l) is discussed in section I.B.5 of this preamble.

4. *May the repair period for closed-vent systems extend beyond 15 days as implied in the recordkeeping requirements (§ 63.453)?*

Corrective actions or repairs of closed-vent system defects or leaks, under certain circumstances, may extend beyond the 15 calendar days specified in the 1998 NESHAP. Today's action corrects a drafting oversight in the requirements for inspection and repair of enclosures and closed-vent systems (§ 63.453(k)(6)(ii)).

In the monitoring requirements for enclosures and closed-vent systems (§ 63.453(k)(6)(ii)), the 1998 NESHAP specifies that corrective actions or repairs for enclosure and closed-vent system defects and leaks must be completed no later than 15 calendar days after the problem is identified. However, certain equipment may require more than the 15 calendar days to repair. It is not our intent to create a violation in cases where the failure to repair is beyond the control of the owner or operator, or where immediate repair would create greater emissions. The Agency's intent is evident since specific recordkeeping requirements (§ 63.454(b)(8) through (b)(10)) are triggered when repairs or corrective actions require more than 15 calendar days to complete indicating that the rule contemplates situations where it will take longer than 15 days to complete repairs. For these cases, owners or operators must record the reason for the delay in repair, the expected date of successful repair, and the actual date of successful repair. If the reasons for delaying the repair meet the conditions specified in the rule and the recordkeeping requirements are met, then repairs or corrective actions that require longer than 15 calendar days are allowed.

Today's action adds clarifying sentences to the monitoring requirements for enclosures and closed-vent systems (§ 63.453(k)(6)(ii)). Delays in corrective actions or repairs beyond 15 calendar days are allowed in cases where the corrective actions or repairs are technically infeasible without a process unit shutdown or where the emissions resulting from immediate repair would be greater than the emissions likely to result from the delay of repair. This language addressing corrective actions and repairs is consistent with provisions in the national emission standards, specifically for oil-water separators and organic water separators (§ 63.1047(d)(2) of subpart VV of this part) and in the national emission standards for organic hazardous air pollutants for equipment leaks (§ 63.172(i) of subpart H of this part).

5. *Do the recordkeeping requirements in subpart RR apply to closed collection systems (§ 63.453)?*

The recordkeeping requirements of subpart RR of this part do not apply to closed collection systems. Today's action amends the monitoring requirements for closed collection systems (§ 63.453(l)) to clarify that the recordkeeping requirements of subpart RR of this part are not in effect. Certain provisions of the national emission standards for individual drain systems (subpart RR of this part) are referenced in the 1998 NESHAP for convenience. In developing the 1998 NESHAP, we identified areas of overlap between subpart RR of this part and the pulp and paper NESHAP. However, additional overlap was identified since promulgation.

The closed collection system monitoring requirements in the 1998 NESHAP (§ 63.453(l)) specify that each closed collection system must comply with the inspection and monitoring requirements of subpart RR of this part (§ 63.964). However, the monitoring requirement section of subpart RR of this part contains references (§ 63.964(a)(1)(vi) and (b)(3)) to the recordkeeping requirements of subpart RR of this part (§ 63.965).

Today's action amends the pulp and paper 1998 NESHAP to specify that owners or operators are required to comply only with the closed collection system recordkeeping requirements specified in the pulp and paper 1998 NESHAP (§ 63.454) since the recordkeeping requirements specified in subpart RR of this part are redundant. As discussed previously in sections I.B.2 and I.B.3 of this preamble, the structure of the paragraph in the 1998 NESHAP specifying the monitoring requirements for closed collection systems (§ 63.453(l)) is being revised to parallel that used for the enclosure and closed-vent system monitoring requirements (§ 63.453(k)). The revisions to identify the overlap between the monitoring requirements of subpart RR of this part and the pulp and paper NESHAP discussed in this section are contained in § 63.453(l)(1)(i).

C. Typographical Corrections

Minor drafting errors and inadvertent omissions were identified in the 1998 NESHAP after promulgation. Today's action makes the following corrections:

- Changes "HAP's" to "HAPs" in the following sections: the definition of process wastewater treatment system (§ 63.441); the standards for kraft pulping process condensates section (§ 63.446(e)(3)); and the test methods and procedures section (§ 63.457(f)(1) and § 63.457(h)).
- Changes the word "sources" to "source" in the standards for the pulping system at kraft, soda, and semi-chemical processes (§ 63.443(b)(1)).
- Changes the word "uses" to "use" in the standards for the bleaching system (§ 63.445(a)(2)).
- Corrects text for the closed collection system design specifications in the standards for kraft pulping process condensates. In § 63.446(d)(l), delete the word "for", changes the words "closed" and "vent" to "closed-vent", and deletes the phrase "§ 63.693 as specified in."
- Corrects text for the clean condensate alternative standards (§ 63.447). In § 63.447(e)(2), delete the word "that", add the word "and" at the end of the paragraph in § 63.447(g)(1)(ii), and add the word "of" to § 63.447(g)(2) between the words "requirements" and "paragraphs."
- Corrects wording for the standards for enclosures and closed-vent systems (§ 63.450). In the § 63.450(b), add the word "in" before "§ 63.45(e)."
- Corrects wording for test methods and procedures section (§ 63.457). In § 63.457(b)(5)(ii)(C), change the word

"project" to "protect." In § 63.457(b)(5)(ii)(E)(*7*), change the word "an" to "a." In § 63.457(c)(2), the change the semicolon at the end of the paragraph to a period. Add the word "an" to § 63.457(c)(4)(i) between the words "into" and "Erlenmeyer" in the first sentence of the paragraph.

• Changes the acronym "CEM's" to "CEMs" in the comment column for the reference § 63.8(f)(6) in table 1 of the 1998 NESHAP (general provisions applicability to subpart S).

II. Administrative Requirements

A. Docket

The docket is an organized and complete file of all the information considered by EPA in the development of this rulemaking. The docket is a dynamic file, because material is added throughout the rulemaking development. The docketing system is intended to allow members of the public and industries involved to readily identify and locate documents so that you can effectively participate in the rulemaking process. Along with the proposed and promulgated standards and their preambles, the contents of the docket except for certain interagency documents will serve as the record in case of judicial review. (See section 307(d)(7)(A) of the Act.)

B. Paperwork Reduction Act

The EPA already submitted the information requirements of the 1998 NESHAP to the Office of Management and Budget (OMB) on April 27, 1998 for approval under the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.* An Information Collection Request (ICR) document has been prepared by EPA (ICR No. 1657.03), and a copy may be obtained from Sandy Farmer, Office of Policy, Planning, and Evaluation Regulatory Information Division; U.S. Environmental Protection Agency (2137); 401 M Street SW, Washington, DC 20460 or by calling (202) 260–2740. The information requirements are not effective until OMB approves them.

Today's amendments to the NESHAP will have no impact on the information collection burden estimates made previously. The amendments clarify the intent of the 1998 NESHAP and correct inadvertent omissions and minor drafting errors in the 1998 NESHAP. Consequently, the ICR has not been revised.

C. Executive Order 12866: "Significant Regulatory Action" Determination

Under Executive Order 12866, EPA must determine whether the regulatory action is "significant" and, therefore, subject to OMB review and the requirements of the Executive Order. The order defines "significant" regulatory action as one that is likely to lead to a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, public health or safety in State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

The NESHAP published on April 15, 1998 was considered significant under Executive Order 12866, and EPA accordingly prepared a regulatory impact analysis (RIA). The amendments published today clarify the intent of the 1998 NESHAP and correct inadvertent omissions and minor drafting errors in the 1998 NESHAP. The OMB evaluated this action and determined it to be nonsignificant; thus, it did not require OMB review.

D. Regulatory Flexibility Act .

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. The EPA determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this action. These amendments would not result in increased impacts to small entities and the changes to the 1998 NESHAP in today's action do not add new control requirements.

E. Unfunded Mandates Reform Act

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate, or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

The EPA has determined that the action promulgated today does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate or to the private sector. Therefore, the requirements of the Unfunded Mandates Act do not apply to today's action.

F. Executive Order 12875: Enhancing Intergovernmental Partnerships

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local, or tribal government unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the OMB a description of the extent of EPA's prior consultation with representatives of affected State, local, and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

While the final rule published on April 15, 1998 (1998 NESHAP) does not create mandates upon State, local, or tribal governments, EPA involved State and local governments in its development. Because today's action clarifies the intent of the 1998 NESHAP and corrects inadvertent omissions and minor drafting errors, today's action does not create a mandate upon State, local, or tribal governments.

G. Applicability of Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045 applies to any rule that EPA determines (1) is economically significant as defined under Executive Order 12866, and (2) the environmental health or safety risk addressed by the rule has a disproportionate effect on children. If

the regulatory action meets both criteria, EPA must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the order has the potential to influence the regulation. This rule falls into that category only in part: the minimum rule stringency is set according to a congressionally mandated, technology-based lower limit called the "floor," while a decision to increase the stringency beyond this floor can be partly based on risk considerations.

No children's risk analysis was performed for the 1998 NESHAP rulemaking because no alternative technologies exist that would provide greater stringency at a reasonable cost, and therefore the results of any such analysis would have no impact on the stringency decision. Today's action is not subject to Executive Order 13045 because it does not involve decisions on environmental health risks or safety risks that may disproportionately affect children.

H. Executive Order 13084: Consultations and Coordination With Indian Tribal Governments

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments or if EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's action does not significantly or uniquely affect the communities of Indian tribal governments. The final rule published on April 15, 1998 (1998 NESHAP) does not create mandates upon tribal governments. Because today's action clarifies the intent of the 1998 NESHAP and corrects inadvertent omissions and minor drafting errors, today's action does not create a mandate on tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this action.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) directs all Federal agencies to use voluntary consensus standards instead of government-unique standards in their regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, business practices) that are developed or adopted by one or more voluntary consensus standards bodies. Examples of organizations generally regarded as voluntary consensus standards bodies include the American Society for Testing and Materials (ASTM), the National Fire Protection Association (NFPA), and the Society of Automotive Engineers (SAE). The NTTAA requires Federal agencies like EPA to provide Congress, through the OMB, with explanations when an agency decides not to use available and applicable voluntary consensus standards.

Although this action does not involve any new technical standards, today's action does include the incorporation by reference of an alternative test method. The method was developed by NCASI, however, NCASI is not a voluntary consensus standards body. No voluntary consensus standards were identified for measuring methanol in pulping process condensates.

J. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C 804(2). These technical amendments will be effective April 12, 1999.

K. Immediate Effective Date

The EPA is making today's action effective immediately. The EPA has determined that the rule amendments being made in today's action are interpretive rules which are not subject to notice and comment requirements. The EPA has also determined that this rule may be made effective in less than 30 days because it is interpretive and relieves restrictions. See 5 U.S.C. 553(d)(1) and (2).

III. Legal Authority

These regulations are amended under the authority of sections 112, 114, and 301 of the Clean Air Act, as amended (42 U.S.C. sections 7412, 7414, and 7601).

List of Subjects in 40 CFR Part 63

Environmental protection, Administrative practice and procedure, Air pollution control, Incorporation by reference, Intergovernmental relations.

Dated: March 31, 1999.

Robert Brenner,

Acting Assistant Administrator, OAR.

For the reasons set out in the preamble, title 40, Chapter I of the Code of Federal Regulations is amended as follows:

PART 63—NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR SOURCE CATEGORIES

1. The authority citation for part 63 continues to read as follows:

Authority: 42 U.S.C. 7401, *et seq.*

Subpart A—General Provisions

2. Amend § 63.14 by adding paragraph (f) to read as follows:

§ 63.14 Incorporations by reference.

* * * * *

(f) The following material is available from the National Council of the Paper Industry for Air and Stream Improvement, Inc. (NCASI), P. O. Box 133318, Research Triangle Park, NC 27709–3318 or at http://www.ncasi.org:

NCASI Method DI/MEOH–94.02, Methanol in Process Liquids GC/FID (Gas Chromatography/Flame Ionization

Detection), August 1998, Methods Manual, NCASI, Research Triangle Park, NC, IBR approved for § 63.457(c)(3)(ii) of subpart S of this part.

Subpart S—National Emission Standards for Hazardous Air Pollutants from the Pulp and Paper Industry

3. Amend § 63.441 by revising the definition of "Process wastewater treatment system" to read as follows:

§ 63.441 Definitions.

* * * * *

Process wastewater treatment system means a collection of equipment, a process, or specific technique that removes or destroys the HAPs in a process wastewater stream. Examples include, but are not limited to, a steam stripping unit, wastewater thermal oxidizer, or biological treatment unit.

* * * * *

4. Amend § 63.443 by revising paragraph (b)(1) to read as follows:

§ 63.443 Standards for the pulping system at kraft, soda, and semi-chemical processes.

* * * * *

(b) * * *

(1) At each existing affected source, the total HAP emissions from each LVHC system shall be controlled.

* * * * *

5. Amend § 63.445 by revising paragraphs (a)(2) and (b) to read as follows:

§ 63.445 Standards for the bleaching system.

(a) * * *

(2) Bleaching systems bleaching pulp from kraft, sulfite, or soda pulping processes that use any chlorinated compounds; or

* * * * *

(b) The equipment at each bleaching stage, of the bleaching systems listed in paragraph (a) of this section, where chlorinated compounds are introduced shall be enclosed and vented into a closed-vent system and routed to a control device that meets the requirements specified in paragraph (c) of this section. The enclosures and closed-vent system shall meet the requirements specified in § 63.450. If process modifications are used to achieve compliance with the emission limits specified in paragraphs (c)(2) or (c)(3), enclosures and closed-vent systems are not required, unless appropriate.

* * * * *

6. Amend § 63.446 by revising paragraphs (b), (d)(1), and (e)(3) to read as follows:

§ 63.446 Standards for kraft pulping process condensates.

* * * * *

(b) The pulping process condensates from the following equipment systems shall be treated to meet the requirements specified in paragraphs (c), (d), and (e) of this section:

(1) Each digester system;

(2) Each turpentine recovery system;

(3) Each evaporator system condensate from:

(i) The vapors from each stage where weak liquor is introduced (feed stages); and

(ii) Each evaporator vacuum system for each stage where weak liquor is introduced (feed stages).

(4) Each HVLC collection system; and

(5) Each LVHC collection system.

* * * * *

(d) * * *

(1) Each closed collection system shall meet the individual drain system requirements specified in §§ 63.960, 63.961, and 63.962 of subpart RR of this part, except closed-vent systems and control devices shall be designed and operated in accordance with §§ 63.443(d) and 63.450, instead of in accordance with § 63.962(a)(3)(ii), (b)(3)(ii)(A), and (b)(3)(ii)(B)(5)(*iii*); and

* * * * *

(e) * * *

(3) Treat the pulping process condensates to reduce or destroy the total HAPs by at least 92 percent or more by weight; or

* * * * *

7. Amend § 63.447 by revising paragraphs (e)(2), (g)(1)(ii), and (g)(2) to read as follows:

§ 63.447 Clean condensate alternative.

* * * * *

(e) * * *

(2) The HAP emissions reduction occurring by complying with the clean condensate alternative technology.

* * * * *

(g) * * *

(1) * * *

(ii) The air pollution control technologies that would be used to meet the requirements of § 63.443(a)(1)(ii) through (a)(1)(v); and

* * * * *

(2) Estimates and basis for the estimates of total HAP emissions and emission reductions to fulfill the requirements of paragraphs (d), (e), and (f) of this section.

* * * * *

8. Amend § 63.450 by revising paragraph (b) to read as follows:

§ 63.450 Standards for enclosures and closed-vent systems.

* * * * *

(b) Each enclosure shall maintain negative pressure at each enclosure or hood opening as demonstrated by the procedures specified in § 63.457(e). Each enclosure or hood opening closed during the initial performance test specified in § 63.457(a) shall be maintained in the same closed and sealed position as during the performance test at all times except when necessary to use the opening for sampling, inspection, maintenance, or repairs.

* * * * *

9. Amend § 63.453 by revising paragraphs (b), (k)(6)(ii), and (l) to read as follows:

§ 63.453 Monitoring requirements.

* * * * *

(b) A CMS shall be operated to measure the temperature in the firebox or in the ductwork immediately downstream of the firebox and before any substantial heat exchange occurs for each thermal oxidizer used to comply with the requirements of § 63.443(d)(1) through (d)(3). Owners and operators complying with the HAP concentration requirements in § 63.443(d)(2) may install a CMS to monitor the thermal oxidizer outlet total HAP or methanol concentration, as an alternative to monitoring thermal oxidizer operating temperature.

* * * * *

(k) * * *

(6) * * *

(ii) The repair or corrective action shall be completed no later than 15 calendar days after the problem is identified. Delay of repair or corrective action is allowed if the repair or corrective action is technically infeasible without a process unit shutdown or if the owner or operator determines that the emissions resulting from immediate repair would be greater than the emissions likely to result from delay of repair. Repair of such equipment shall be completed by the end of the next process unit shutdown.

(l) Each pulping process condensate closed collection system used to comply with § 63.446(d) shall comply with the requirements specified in paragraphs (l)(1) through (l)(3) of this section.

(1) Each pulping process condensate closed collection system shall be visually inspected every 30 days and shall comply with the inspection and monitoring requirements specified in § 63.964 of subpart RR of this part, except:

(i) Owners or operators shall comply with the recordkeeping requirements of § 63.454 instead of the requirements specified in § 63.964(a)(1)(vi) and (b)(3) of subpart RR of this part.

(ii) Owners or operators shall comply with the inspection and monitoring requirements for closed-vent systems and control devices specified in paragraphs (a) and (k) of this section instead of the requirements specified in § 63.964(a)(2) of subpart RR of this part.

(2) Each condensate tank used in the closed collection system shall be operated with no detectable leaks as specified in § 63.446(d)(2)(i) measured initially and annually by the procedures specified in § 63.457(d).

(3) If an inspection required by this section identifies visible defects in the closed collection system, or if an instrument reading of 500 parts per million or greater above background is measured, then corrective actions specified in § 63.964(b) of subpart RR of this part shall be taken.

* * * * *

10. Amend § 63.457 by revising paragraphs (b)(5) introductory text, (b)(5)(ii)(C), (b)(5)(ii)(E)(*7*), (b)(6), (c)(2), (c)(3) introductory text, (c)(4)(i), (f)(1), (h), and (m)(1)(ii); by redesignating paragraph (c)(3)(ii) as paragraph (c)(3)(iii); and adding a new paragraph (c)(3)(ii) to read as follows:

§ 63.457 Test methods and procedures.

* * * * *

(b) * * *

(5) To determine vent gas concentrations, the owner or operator shall conduct a minimum of three test runs that are representative of normal conditions and average the resulting pollutant concentrations using the following procedures.

* * * * *

(ii) * * *

(C) Critical orifice. The critical orifice shall have a flow rate of 200 to 250 ml/min and shall be followed by a vacuum pump capable of providing a vacuum of 640 millimeters of mercury (mm Hg). A 45 millimeter diameter in-line Teflon 0.8 micrometer filter shall follow the impingers to protect the critical orifice and vacuum pump.

* * * * *

(E) * * *

(*7*) To prepare the 10 percent sulfuric acid solution, add 10 ml of concentrated sulfuric acid to 80 ml water in a 100 ml volumetric flask. Dilute to volume.

* * * * *

(6) The minimum sampling time for each of the three test runs shall be 1 hour in which either an integrated sample or four grab samples shall be taken. If grab sampling is used, then the samples shall be taken at approximately equal intervals in time, such as 15 minute intervals during the test run.

(c) * * *

(2) The volumetric flow rate of the entering and exiting liquid streams shall be determined using the inlet and outlet flow meters or other methods demonstrated to the Administrator's satisfaction. The volumetric flow rate measurements to determine actual mass removal shall be taken at the same time as the concentration measurements.

(3) The owner or operator shall conduct a minimum of three test runs that are representative of normal conditions and average the resulting pollutant concentrations. The minimum sampling time for each test run shall be 1 hour and the grab or composite samples shall be taken at approximately equally spaced intervals over the 1-hour test run period. The owner or operator shall use one of the following procedures to determine total HAP or methanol concentration:

* * * * *

(ii) For determining methanol concentrations, NCASI Method DI/MEOH–94.02, Methanol in Process Liquids by GC/FID, August 1998, Methods Manual, NCASI, Research Triangle Park, NC. This test method is incorporated by reference in § 63.14(f) of subpart A of this part.

* * * * *

(4) * * *

(i) Filter the sample through the filter paper, into an Erlenmeyer flask by applying a vacuum to the flask sidearm. Minimize the time for which vacuum is applied to prevent stripping of volatile organics from the sample. Replace filter paper as often as needed in order to maintain filter times of less than approximately 30 seconds per filter paper. No rinsing of sample container or filter bowl into the Erlenmeyer flask is allowed.

* * * * *

(f) * * *

(1) As the sum of all individual HAPs; or

* * * * *

(h) *Bleaching HAP concentration measurement.* For purposes of complying with the bleaching system requirements in § 63.445, the owner or operator shall measure the total HAP concentration as the sum of all individual chlorinated HAPs or as chlorine.

* * * * *

(m) * * *

(1) * * *

(ii) Multiply the total HAP mass determined in paragraph (m)(1)(i) of this section by 0.65 to determine the target HAP mass for the high-HAP fraction condensate stream or streams.

* * * * *

11. Table 1 of subpart S is amended by revising the entry for § 63.8(f)(6) to read as follows:

TABLE 1 TO SUBPART S—GENERAL PROVISIONS APPLICABILITY TO SUBPART S[a]

Reference	Applies to Subpart S	Comment
*	*	*
63.8(f)(6)	No	Subpart S does not specify relative accuracy test for CEMs.
*	*	*

[a] Wherever subpart A specifies "postmark" dates, submittals may be sent by methods other than the U.S. Mail (e.g., by fax or courier). Submittals shall be sent by the specified date, but a postmark is not required.

[FR Doc. 99–8950 Filed 4–9–99; 8:45 am]
BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300837; FRL–6074–5]

RIN 2070–AB78

Clopyralid; Extension of Tolerance for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation extends a time-limited tolerance for residues of the herbicide clopyralid in or on canola at 3 part per million (ppm) for an additional one and one-half year period. This tolerance will expire and is revoked on July 31, 2001. This action is in response to EPA's granting of an emergency exemption under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) authorizing use of the pesticide on canola. Section 408(l)(6) of the Federal Food, Drug, and Cosmetic Act requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under FIFRA section 18.

DATES: This regulation becomes effective April 12, 1999. Objections and requests for hearings must be received by EPA, on or before June 11, 1999.

ADDRESSES: Written objections and hearing requests, identified by the docket control number [OPP–300837], must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk identified by the docket control number, [OPP–300837], must also be submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epa.gov. Copies of electronic objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect 5.1/6.1 or ASCII file format. All copies of electronic objections and hearing requests must be identified by the docket control number [OPP–300837]. No Confidential Business Information (CBI) should be submitted through e-mail. Copies of electronic objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: By mail: Libby Pemberton, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 280, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, 703 308–9364, pemberton.libby@epa.gov.

SUPPLEMENTARY INFORMATION: EPA issued a final rule, published in the **Federal Register** of May 16, 1997 (62 FR 26949) (FRL–5718–2), which announced that on its own initiative under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a and (l)(6), as amended by the Food Quality Protection Act of 1996 (FQPA) (Pub. L. 104–170) it established a time-limited tolerance for the residues of clopyralid in or on canola at 3 ppm, with an expiration date of July 31, 1998. EPA extended the expiration date of this tolerance to January 31, 2000 in a **Federal Register** notice published June 10, 1998 (63 FR 31640–31642)(FRL–5789–8). EPA established the tolerance because section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under FIFRA section 18. Such tolerances can be established without providing notice or period for public comment.

EPA received a request to extend the use of clopyralid on canola for this year's growing season due to the continued emergency situation involving perennial sowthistle and Canadian thistle in Minnesota, Montana, and North Dakota. After having reviewed the submission, EPA concurs that emergency conditions exist. EPA has authorized under FIFRA section 18 the use of clopyralid on canola for control of perennial sowthistle and Canadian thistle in Minnesota, Montana, and North Dakota.

EPA assessed the potential risks presented by residues of clopyralid in or on canola. In doing so, EPA considered the safety standard in FFDCA section 408(b)(2), and decided that the necessary tolerance under FFDCA section 408(l)(6) would be consistent with the safety standard and with FIFRA section 18. The data and other relevant material have been evaluated and discussed in the final rule of May 16, 1997 (62 FR 26949) (FRL–5718–2). Based on that data and information considered, the Agency reaffirms that extension of the time-limited tolerance will continue to meet the requirements of section 408(l)(6). Therefore, the time-limited tolerance is extended for an additional one and one-half year period. EPA will publish a document in the **Federal Register** to remove the revoked tolerance from the Code of Federal Regulations (CFR). Although this tolerance will expire and is revoked on July 31, 2001, under FFDCA section 408(l)(5), residues of the pesticide not in excess of the amounts specified in the tolerance remaining in or on canola after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA and the application occurred prior to the revocation of the tolerance. EPA will take action to revoke this tolerance earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

I. Objections and Hearing Requests

The new FFDCA section 408(g) provides essentially the same process for persons to "object" to a tolerance regulation as was provided in the old section 408 and in section 409. However, the period for filing objections is 60 days, rather than 30 days. EPA currently has procedural regulations which govern the submission of objections and hearing requests. These regulations will require some modification to reflect the new law. However, until those modifications can be made, EPA will continue to use those procedural regulations with appropriate adjustments to reflect the new law.

Any person may, by June 11, 1999, file written objections to any aspect of this regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with

the Hearing Clerk, at the address given under the "ADDRESSES" section (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). EPA is authorized to waive any fee requirement "when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection." For additional information regarding tolerance objection fee waivers, contact James Tompkins, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 239, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 305–5697, tompkins.jim@epa.gov. Requests for waiver of tolerance objection fees should be sent to James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

If a hearing is requested, the objections must include a statement of the factual issues on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the requestor (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

II. Public Record and Electronic Submissions

EPA has established a record for this regulation under docket control number [OPP–300837] (including any comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 119 of the Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA.

Objections and hearing requests may be sent by e-mail directly to EPA at:

opp-docket@epa.gov.

E-mailed objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this regulation, as well as the public version, as described in this unit will be kept in paper form. Accordingly, EPA will transfer any copies of objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the Virginia address in "ADDRESSES" at the beginning of this document.

III. Regulatory Assessment Requirements

A. Certain Acts and Executive Orders

This final rule establishes a tolerance under section 408 of the FFDCA. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). Nor does it require any prior consultation as specficed by Executive Order 12875, entitled *Enhancing the Intergovernmental Partnership* (58 FR 58093, October 28, 1993), or special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994), or require OMB review in accordance with Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997).

In addition, since tolerances and exemptions that are established under section 408(l)(6) of FFDCA, such as the tolerance/exemption in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. Nevertheless, the Agency previously assessed whether establishing tolerances, exemptions from tolerances, raising tolerance levels or expanding exemptions might adversely impact small entities and concluded, as a generic matter, that there is no adverse economic impact. The factual basis for the Agency's generic certification for tolerance actions published on May 4, 1981 (46 FR 24950), and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

B. Executive Order 12875

Under Executive Order 12875, entitled *Enhancing the Intergovernmental Partnership* (58 FR 58093, October 28, 1993), EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to OMB a description of the extent of EPA's prior consultation with representatives of affected State, local, and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's rule does not create an unfunded Federal mandate on State, local, or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of

Executive Order 12875 do not apply to this rule.

C. Executive Order 13084

Under Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998), EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

IV. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the Agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: April 2, 1999.

Donald R. Stubbs,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346(a), and 371.

§ 180.431 [Amended]

2. In § 180.431, by amending the table in paragraph (b) by revising the date "1/31/00" for canola to read "7/31/01".

[FR Doc. 99–8946 Filed 4–9–99; 8:45 am]
BILLING CODE 6560–50–F

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 65

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: Modified base (1% annual chance) flood elevations are finalized for the communities listed below. These modified elevations will be used to calculate flood insurance premium rates for new buildings and their contents.

EFFECTIVE DATES: The effective dates for these modified base flood elevations are indicated on the following table and revise the Flood Insurance Rate Map(s) in effect for each listed community prior to this date.

ADDRESSES: The modified base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Matthew B. Miller, P.E., Chief, Hazards Study Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–3461, or (e-mail) matt.miller@fema.gov.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency makes the final determinations listed below of the final determinations of modified base flood elevations for each community listed. These modified elevations have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Associate Director has resolved any appeals resulting from this notification.

The modified base flood elevations are not listed for each community in this notice. However, this rule includes the address of the Chief Executive Officer of the community where the modified base flood elevation determinations are available for inspection.

The modifications are made pursuant to Section 206 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 et seq., and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified base flood elevations are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities.

These modified elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

The changes in base flood elevations are in accordance with 44 CFR 65.4.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Associate Director for Mitigation certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base

flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This final rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 65 is amended as follows:

PART 65—[AMENDED]

1. The authority citation for part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 65.4 [Amended]

2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Arizona:					
Maricopa (FEMA Docket No. 7260).	Unincorporated Areas.	October 23, 1998, October 30, 1998, Arizona Republic.	The Honorable Janice K. Brewer, Chairman, Maricopa County Board of Supervisors, 301 Jefferson Street, Phoenix, Arizona 85003.	September 23, 1998	040037
Maricopa (FEMA Docket No. 7260).	City of Phoenix	October 23, 1998, October 30, 1998, Arizona Republic.	The Honorable Skip Rimsza, Mayor, City of Phoenix, 200 West Washington Street, 11th Floor, Phoenix, Arizona 85003–1611.	September 23, 1998	040051
California:					
Los Angeles (FEMA Docket No. 7260).	Unincorporated Areas.	October 22, 1998, October 29, 1998, Daily Commerce.	The Honorable Yvonne Burke, Chairperson, Los Angeles County Board of Supervisors, 500 West Temple Street, Suite 821, Los Angeles, California 90012.	September 18, 1998	065043
San Diego (FEMA Docket No. 7264).	City of San Diego ...	November 10, 1998, November 17, 1998, San Diego Union-Tribune.	The Honorable Susan Golding, Mayor, City of San Diego, 202 C Street, 11th Floor, San Diego, California 92101.	October 19, 1998	060295
New Mexico:					
Bernalillo (FEMA Docket No. 7264).	City of Albuquerque	November 11, 1998, November 18, 1998, Albuquerque Journal.	The Honorable Jim Baca, Mayor, City of Albuquerque, P.O. Box 1293, Albuquerque, New Mexico 87103.	October 21, 1998	350002
Bernalillo (FEMA Docket No. 7260).	City of Albuquerque	October 23, 1998, October 30, 1998, Albuquerque Journal.	The Honorable Jim Baca, Mayor, City of Albuquerque, P.O. Box 1293, Albuquerque, New Mexico 87103.	September 18, 1998	350002
Bernalillo (FEMA Docket No. 7264).	Unincorporated Areas.	November 11, 1998, November 18, 1998, Albuquerque Journal.	The Honorable Steve Gallegos, Chairman, Bernalillo County, Board of Commissioners, One Civic Plaza Northeast, 10th Floor, Albuquerque, New Mexico 87102.	October 21, 1998	350001
Sanodoval (FEMA Docket No. 7264).	Village of Corrales ..	November 11, 1998, November 18, 1998, Albuquerque Journal.	The Honorable Gary Kanin, Mayor, Village of Corrales, P.O. Box 707, Corrales, New Mexico 87048.	October 21, 1998	350094
Sandoval (FEMA Docket No. 7264).	City of Rio Rancho	November 11, 1998, November 18, 1998, Albuquerque Journal.	The Honorable John Jennings, Mayor, City of Rio Rancho, 3900 Southern Boulevard, Rio Rancho, New Mexico 87124.	October 21, 1998	350146
Texas:					
Brazos (FEMA Docket No. 7260).	City of Bryan	October 20, 1998, October 27, 1998, Bryan-College Station Eagle.	The Honorable Lonnie Stabler, Mayor, City of Bryan, P.O. Box 1000, Bryan, Texas 77805.	September 18, 1998	480082
Tarrant (FEMA Docket No. 7264).	City of Dalworthington Gardens.	November 13, 1998, November 20, 1998, Fort Worth Star-Telegram.	The Honorable Al Taub, Mayor, City of Dalworthington Gardens, 2600 Roosevelt Drive, Dalworthington Gardens, Texas 76016.	October 19, 1998	481013
Denton (FEMA Docket No. 7260).	City of Highland Village.	October 21, 1998, October 28, 1998, Lewisville News.	The Honorable Austin Adams, Mayor, City of Highland Village, City Hall, 1500 F.M. 407, Highland Village, Texas 75077.	September 21, 1998	481105
Denton (FEMA Docket No. 7260).	City of Lewisville	October 21, 1998, October 28, 1998, Lewisville News.	The Honorable Bobbie J. Mitchell, Mayor, City of Lewisville, P.O. Box 299002, Lewisville, TX 75029–9002.	September 10, 1998	530074

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Washington: King (FEMA Docket No. 7260).	City of Bellevue	October 16, 1998, October 23, 1998, The Eastside Journal.	The Honorable Don Davidson, Mayor, City of Bellevue, P.O. Box 90012, Bellevue, Washington 98009–9102.	September 10, 1998	530074

(Catalog of Federal Domestic Assistance No. 83.100. "Flood Insurance")

Dated: April 1, 1999.

Michael J. Armstrong,

Associate Director for Mitigation.

[FR Doc. 99–9024 Filed 4–9–99; 8:45 am]

BILLING CODE 6718–04–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 65

[Docket No. FEMA–7260]

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Interim rule.

SUMMARY: This interim rule lists communities where modification of the base (1% annual chance) flood elevations is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified base flood elevations for new buildings and their contents.

DATES: These modified base flood elevations are currently in effect on the dates listed in the table and revise the Flood Insurance Rate Map(s) in effect prior to this determination for each listed community.

From the date of the second publication of these changes in a newspaper of local circulation, any person has ninety (90) days in which to request through the community that the Associate Director for Mitigation reconsider the changes. The modified elevations may be changed during the 90-day period.

ADDRESSES: The modified base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Matthew B. Miller, P.E., Chief, Hazards Study Branch, Mitigation Directorate, 500 C Street SW., Washington, DC 20472, (202) 646–3461, or (e-mail) matt.miller@fema.gov.

SUPPLEMENTARY INFORMATION: The modified base flood elevations are not listed for each community in this interim rule. However, the address of the Chief Executive Officer of the community where the modified base flood elevation determinations are available for inspection is provided.

Any request for reconsideration must be based upon knowledge of changed conditions, or upon new scientific or technical data.

The modifications are made pursuant to Section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR Part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified base flood elevations are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities.

The changes in base flood elevations are in accordance with 44 CFR 65.4.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Associate Director for Mitigation certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This interim rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 65 is amended as follows:

PART 65—[AMENDED]

1. The authority citation for part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 65.4 [Amended]

2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
California:					
Riverside	City of Murrieta	February 23, 1999, March 2, 1999, *The Press-Enterprise.*	The Honorable Chuck Washington, Mayor, City of Murrieta, 26442 Beckman Court, Murrieta, California 92562.	February 8, 1999	060751
Los Angeles	City of Santa Clarita.	November 27, 1998, December 4, 1998, *The Signal.*	The Honorable Jan Heidt, Mayor, City of Santa Clarita, 23920 Valencia Boulevard, Suite 300, Santa Clarita, California 91355.	November 12, 1998.	060729
Colorado:					
Pitkin	City of Basalt	February 10, 1999, December 4, 1999, *Snowmass Sun.*	The Honorable Rick Stevens, Mayor, Town of Basalt, 101 Midland Avenue, Basalt, Colorado 81621.	January 7, 1999	080052
Pitkin	Unincorporated Areas.	February 12, 1999, February 19, 1999, *Aspen Times.*	The Honorable Dorothea Farris, Chairperson, Pitkin County, Board of Commissioners, 530 East Main Street, Third Floor, Aspen, Colorado 81611.	January 7, 1999	080287
Nevada: Clark	Unincorporated Areas.	February 5, 1999, February 12, 1999, *Las Vegas Review-Journal.*	The Honorable Yvonne Atkinson Gates, Chairperson, Clark County Board of Supervisors, 500 Grand Central Parkway, Las Vegas, Nevada 89155.	January 12, 1999	320003
Oklahoma: Oklahoma.	City of Edmond	February 16, 1999, February 23, 1999, *Edmond Evening Sun.*	The Honorable Robert Rudkin, Mayor, City of Edmond, P.O. Box 2970, Edmond, Oklahoma 73083–2790.	January 19, 1999	400252
Texas:					
Travis	City of Austin	February 19, 1999, February 26, 1999, *Austin American-Statesman.*	The Honorable Kirk P. Watson, Mayor, City of Austin, 124 West Eight Street, Austin, Texas 78701.	January 22, 1999	480624
Brazos	City of College Station.	February 23, 1999, March 2, 1999, *Bryan-College Station Eagle.*	The Honorable Lynn Millhaney, Mayor, City of College Station, P.O. Box 9960, College Station, Texas 77842–0960.	January 8, 1999	480083
Tarrant	City of Fort Worth	February 5, 1999, February 12, 1999, *Fort Worth Star-Telegram.*	The Honorable Kenneth Barr, Mayor, City of Fort Worth, 1000 Throckmorton Street, Fort Worth, Texas 76102–6311.	January 8, 1999	480596
Tarrant	City of Hurst	February 10, 1999, February 17, 1999, *Dallas Morning News.*	The Honorable Bill Souder, Mayor, City of Hurst, 1505 Precinct Line Road, Hurst, Texas 76054.	January 12, 1999	480601
Denton	City of Lewisville	February 19, 1999, February 26, 1999, *Lewisville News.*	The Honorable Bobbie J. Mitchell, Mayor, City of Lewisville, P.O. Box 299002, Lewisville, Texas 75029–9002.	January 22, 1999	480195
Tarrant	City of North Richland Hills.	February 10, 1999, February 17, 1999, *Fort Worth Star-Telegram.*	The Honorable Charles Scoma, Mayor, City of North Richland Hills, P.O. Box 820609, North Richland Hills, Texas 76182–0609.	January 12, 1999	480607
Harris	City of Pasadena	February 17, 1999, February 24, 1999, *Pasadena Citizen.*	The Honorable Johnny Isbell, Mayor, City of Pasadena, P.O. Box 672, Pasadena, Texas 77501–0672.	January 22, 1999	480307
Ellis	City of Waxahachie.	February 12, 1999, February 19, 1999, *Waxahachie Daily Light.*	The Honorable Chuck Beatty, Mayor, City of Waxahachie, P.O. Box 757, Waxahachie, Texas 75165.	May 20, 1999	480211
Washington:					
King	City of Kent	February 2, 1999, February 9, 1999, *Seattle Times.*	The Honorable Jim White, Mayor, City of Kent, 220 Fourth Avenue South, Kent, Washington 98032–5895.	January 11, 1999	530080
King	Unincorporated Areas.	February 2, 1999, February 9, 1999, *Seattle Times.*	The Honorable Ron Simms, King County Executive, King County Courthouse, 516 Third Avenue, Room 400, Seattle, Washington 98104–2312.	January 11, 1999	530071

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance")

Dated: April 1, 1999.

Michael J. Armstrong,

Associate Director for Mitigation.

[FR Doc. 99–9025 Filed 4–9–99; 8:45 am]

BILLING CODE 6718–04–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: Base (1% annual chance) flood elevations and modified base flood elevations are made final for the communities listed below. The base flood elevations and modified base flood elevations are the basis for the floodplain management measures that each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM) showing base flood elevations and modified base flood elevations for each community. This date may be obtained by contacting the office where the FIRM is available for inspection as indicated in the table below.

ADDRESSES: The final base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Matthew B. Miller, P.E., Chief, Hazards Study Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–3461, or (e-mail) matt.miller@fema.gov.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency makes final determinations listed below of base flood elevations and modified base flood elevations for each community listed. The proposed base flood elevations and proposed modified base flood elevations were published in newspapers of local circulation and an opportunity for the community or individuals to appeal the proposed determinations to or through the community was provided for a period of ninety (90) days. The proposed base flood elevations and proposed modified base flood elevations were also published in the **Federal Register**.

This final rule is issued in accordance with Section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR Part 67.

FEMA has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR Part 60.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and FIRM available at the address cited below for each community.

The base flood elevations and modified base flood elevations are made final in the communities listed below. Elevations at selected locations in each community are shown.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Associate Director for Mitigation certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because final or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This final rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is amended as follows:

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.11 [Amended]

2. The tables published under the authority of § 67.11 are amended as follows:

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
ARKANSAS	
Crittenden County (Unincorporated Areas) (FEMA Docket No. 7266)	
Tyronza River:	
Approximately 3,000 feet west of Route 149 and approximately 4,250 feet north of City of Earle corporate limits	*205
Approximately 750 feet north of Route 64 and approximately 8,250 feet south of Route 184	*205
Blackfish Bayou:	
Approximately 1,000 feet east of Route 149 and approximately 4,000 feet south of Barham Road	*203
Approximately 1,000 feet south of U.S. Route 64 and 7,600 feet east of Desha Street	*203
Approximately 7,000 feet east of Route 149 and 7,000 feet south of U.S. Route 64	*203
Approximately 1,600 feet east of Route 149 and approximately 1,600 feet north of U.S. Route 64	*205
Maps are available for inspection at the Crittenden County Courthouse, 100 Court Square, Marion, Arkansas.	
Crawford County (and Incorporated Areas) (FEMA Docket No. 7266)	
Louemma Creek:	
Approximately 3,500 feet downstream of North Hills Boulevard	*419
Just upstream of Rena Road	*487
Approximately 200 feet upstream of Highway 59	*574
Louemma Tributary:	
Approximately 850 feet downstream of Highway 59	*477
Just upstream of Highway 59	*493
Approximately 3,700 feet upstream of Highway 59	*570
Rena Branch:	
Approximately 1,050 feet downstream of Sandstone Drive	*419
Just upstream of Old Uniontown Road	*458
Approximately 2,200 feet upstream of Blake Road	*523
Maps are available for inspection at 1003 Broadway, Van Buren, Arkansas.	
Maps are available for inspection at 300 Main Street Van Buren, Arkansas.	

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Earle (City), Crittenden County (FEMA Docket No. 7266)	
Blackfish Bayou:	
Approximately 2,000 feet east of Desha Street and approximately 1,200 feet south of Missouri Pacific Railroad	*203
Approximately 800 feet east of Route 149 and 2,000 feet north of Route 64	*205
Tyronza River:	
Approximately 400 feet west of Route 149 and approximately 400 feet south of northern corporate limits	*205
Approximately 5,200 feet west of Route 149 and approximately 1,200 feet south of Route 184	*205
Maps are available for inspection at the City of Earle City Hall, 1004 Second Street, Earle, Arkansas.	
CALIFORNIA	
East Palo Alto (City), San Mateo County (FEMA Docket No. 7266)	
San Francisco Bay:	
Approximately 150 feet downstream of Tulane Avenue	*8
Approximately 1,000 feet downstream of Cami	*8
San Francisquito Creek Overflow:	
Just downstream of Alberni Street	*11
Approximately 600 feet upstream of Green Street	*26
Maps are available for inspection at the City of East Palo Alto City Hall Annex, 2200 University Avenue, East Palo Alto, California.	
NEW MEXICO	
Clovis (City), Curry County (FEMA Docket No. 7254)	
West Second Street Drain:	
Approximately 2,250 feet upstream of confluence with Northeast Drain	*4,222
Just downstream of intersection of Thomas and West Seventh Street	*4,288
Northeast Drain:	
Approximately 5,000 feet downstream of Trades Road	*4,214
Approximately 200 feet upstream of 21st Street	*4,270
Approximately 1,250 feet upstream of Prince Street	*4,290
Thomas Ditch 2:	
Approximately 200 feet upstream of Thomas Ditch	*4,290
Approximately 1,350 feet upstream of Debra Street	*4,318
Northwest Drain:	
Approximately 200 feet upstream of confluence with Northeast Drain	*4,242
Approximately 1,900 feet upstream of Echols Avenue	*4,308
Thomas Ditch 1:	
Just downstream of Brady Avenue	*4,259
Just upstream of Jefferson Street	*4,296
Maps are available for inspection at the City of Clovis City Hall, 321 Connelly Street, Clovis, New Mexico.	
WASHINGTON	
Brewster (City), Okanogan County (FEMA Docket No. 7266)	
Swamp Creek:	
Just upstream of Bridge Street	*786
Approximately 2,550 feet above mouth, at the corporate limits	*915
Maps are available for inspection at the City of Brewster Clerk/Treasurer's Office, 105 South Third Street, Brewster, Washington.	

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance")

Dated: April 1, 1999.

Michael J. Armstrong,

Associate Director for Mitigation.

[FR Doc. 99–9026 Filed 4–9–99; 8:45 am]

BILLING CODE 6718–04–P

Proposed Rules

Federal Register
Vol. 64, No. 69
Monday, April 12, 1999

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 72

[Docket No. 96–067–1]

Texas (Splenetic) Fever in Cattle; Incorporation by Reference

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the Texas (splenetic) fever in cattle regulations by removing the section that describes the area of Texas quarantined because of ticks and replacing it with an incorporation by reference of the Texas Animal Health Commission's regulations that describe the same area. Because the quarantined area in Texas is defined and established by the Texas Animal Health Commission and an up-to-date description of the quarantined area is provided in the commission's regulations in the Texas Administrative Code, we do not believe that it is necessary to reproduce that description in our regulations. This proposed change in the regulations would eliminate the need to maintain a description of the Texas quarantined area in our regulations, thus reducing the volume of material included in those regulations, while continuing to provide for the treatment and inspection of cattle moved from the area of Texas quarantined for ticks.

DATES: We invite you to comment on this docket. We will consider all comments that we receive by June 11, 1999.

ADDRESSES: Please send your comment and three copies to Docket No. 96–067–1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road, Unit 118, Riverdale, MD 20737–1238.

Please state that your comment refers to Docket No. 96–067–1.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS rules, are available on the Internet at http://www.aphis.usda.gov/ppd/rad/webrepor.html.

FOR FURTHER INFORMATION CONTACT: Dr. Dave Wilson, Senior Staff Veterinarian, Emergency Programs, VS, APHIS, 4700 River Road Unit 41, Riverdale, MD 20737–1231; (301) 734–8073; or e-mail: Dave.D.Wilson@usda.gov.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 72, "Texas (Splenetic) Fever in Cattle" (referred to below as the regulations), restrict the interstate movement of cattle from areas quarantined because of the presence of ticks that are vectors of bovine babesiosis. This disease is referred to in the regulations as splenetic or tick fever. Splenetic or tick fever is a contagious, infectious, and communicable disease of cattle that causes cattle to become weak and dehydrated and can cause death. The areas quarantined because of ticks include all of Guam, the Northern Mariana Islands, Puerto Rico, and the U.S. Virgin Islands, as well as portions of Texas. These quarantined areas are described in §§ 72.3 and 72.5 of the regulations.

The quarantined area in Texas is defined and established by the Texas Animal Health Commission (TAHC) in its regulations in the Texas Administrative Code as part of that agency's program to control and eradicate fever ticks within Texas. The Animal and Plant Health Inspection Service (APHIS) reproduces the TAHC's description of the quarantined area in § 72.5 of the regulations in order to define the area of Texas from which the interstate movement of cattle is restricted to prevent the spread of splenetic or tick fever from that State.

During a review of our existing regulations, we concluded that the description of the quarantined area in Texas was not in agreement with the most recent description of that area promulgated by the TAHC in its regulations. Further, we concluded that it would be possible to omit the description of the quarantined area in Texas from our regulations, thereby eliminating six full pages of text from part 72, without negatively affecting our ability to provide for the inspection and treatment of cattle moved interstate from the Texas quarantined area.

We based this latter conclusion on the fact that all affected livestock owners within the Texas quarantined area are notified of their status by the TAHC under §§ 167.006 and 167.023 of the Texas Agriculture Code, and on the fact that the boundaries of the quarantined area in Texas are described in the TAHC's regulations in § 41.2 of title 4, part II, Texas Administrative Code (4 TAC 41.2). On the basis of those findings, we are proposing to remove the description of the Texas quarantined area in § 72.5 of our regulations and incorporate 4 TAC 41.2 by reference, thus ensuring that the inspection and treatment requirements of part 72 continue to be linked to a readily available description of the quarantined area in Texas.

The requirements of the Office of the Federal Register regarding the proper language of incorporation, which are found in 1 CFR 51.9(b), state that the language incorporating a publication by reference is precise and complete if it: (1) Uses the words "incorporated by reference;" (2) states the title, date, edition, author, publisher, and identification number of the publication; (3) informs the user that the incorporated publication is a requirement; (4) makes an official showing that the publication is in fact available by stating where and how copies may be examined and readily obtained with maximum convenience to the user; and (5) refers to 5 U.S.C. 552(a).

To comply with those requirements, we are proposing to revise § 72.5 to state that the area quarantined in Texas is the permanent quarantined area described in 4 TAC 41.2, which is incorporated by reference. Section 72.5 would also state that the incorporation by reference was approved by the Director of the Federal

Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51 and that copies of 4 TAC 41.2 may be obtained from the central office of the TAHC at 2105 Kramer Lane, Austin, TX 78758, or from area offices, which are listed in local Texas telephone directories, or from the TAHC's Internet homepage (www.tahc.state.tx.us/). Finally, § 72.5 would inform the reader that copies may also be inspected at APHIS' offices in Riverdale, MD, or at the Office of the Federal Register in Washington, DC.

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

This proposed rule would amend the Texas (splenetic) fever in cattle regulations to incorporate by reference the description of fever tick eradication areas contained in the Texas Administrative Code. Incorporating the TAHC's description of fever tick eradication areas by reference rather than continuing to reproduce the description in our regulations would eliminate the need for APHIS to maintain an up-to-date description of the quarantined area in Texas and reduce the volume of material included in our regulations, while continuing to provide for the treatment and inspection of cattle moved from the tick eradication area in Texas.

Our proposal to incorporate the description of fever tick eradication areas in Texas contained in the Texas Administrative Code is not expected to have an economic impact on any entities, large or small, because the description of Texas' tick eradication areas, which are defined and established by the TAHC, have merely been reproduced in APHIS' regulations in part 72. There would be no change in the quarantined area in Texas as a result of its description being removed from part 72, so no livestock or property owners in Texas would be affected by this proposed rule.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are in conflict with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Regulatory Reform

This action is part of the President's Regulatory Reform Initiative, which, among other things, directs agencies to remove obsolete and unnecessary regulations and to find less burdensome ways to achieve regulatory goals.

List of Subjects in 9 CFR Part 72

Animal diseases, Cattle, Quarantine, Transportation.

Accordingly, we are proposing to amend 9 CFR part 72 as follows:

PART 72—TEXAS (SPLENETIC) FEVER IN CATTLE

1. The authority citation for part 72 would continue to read as follows:

Authority: 21 U.S.C. 111–113, 115, 117, 120, 121, 123–126, 134b, and 134f; 7 CFR 2.22, 2.80, and 371.2(d).

2. Section 72.5 would be revised to read as follows:

§ 72.5 Area quarantined in Texas.

The area quarantined in Texas is the permanent quarantined area described in the regulations of the Texas Animal Health Commission (TAHC) in § 41.2 of title 4, part II, of the Texas Administrative Code (4 TAC 41.2), which is incorporated by reference. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the TAHC at 2105 Kramer Lane, Austin, TX 78758, and from area offices of the TAHC, which are listed in local Texas telephone directories. The TAHC also maintains a copy of its regulations on its Internet homepage at http://www.tahc.state.tx.us/. Copies may be inspected at the Animal and Plant Health Inspection Service, Veterinary Services, Emergency Programs, Suite 3B08, 4700 River Road, Riverdale, MD, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Done in Washington, DC, this 6th day of April 1999.

Joan M. Arnoldi,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 99–9007 Filed 4–9–99; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 151

RIN 1076–AD90

Acquisition of Title to Land in Trust

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Proposed rule.

SUMMARY: On September 18, 1980, we issued the first regulations governing the exercise of the Secretary of the Interior's authority to accept title to land in the name of the United States to be held in trust for the benefit of Indian tribes and individual Indians (*i.e.*, to "take land into trust"). These regulations have not undergone substantial revision since their adoption. We now propose to amend these regulations to make clearer that we will follow a process that is somewhat different, and we will apply a standard which is somewhat more demanding when a land-into-trust application involves title to lands which are located outside the boundaries of a reservation ("off-reservation lands"). In contrast, when the application involves lands located inside the boundaries of a reservation ("on-reservation lands"), we will apply a process and a standard which reflect a presumption in favor of acquisition of trust title to those lands. In addition, the proposed rule sets out the process we will use to comply with a mandate from Congress directing us to use our administrative procedures to place a particular tract of land into trust. Finally, the proposed rule establishes a framework in which a tribe without a reservation can establish a geographic boundary within which it may acquire land under the on-reservation provisions of the regulation.

DATES: Send comments before July 12, 1999.

ADDRESSES: If you wish to comment, you may submit your comments by any

one of several methods. See **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Terry Virden, Director, Office of Trust Responsibilities, Bureau of Indian Affairs, MS–4513, Main Interior Building, 1849 C Street, NW, Washington, DC 20240; by telephone at (202) 208–5831; or by telefax at (202) 219–1065.

SUPPLEMENTARY INFORMATION:

General Comments

You may mail comments to the Office of Trust Responsibilities, Bureau of Indian Affairs, 1849 C Street, NW, MS–4513–MIB, Washington, DC 20240.

Electronic Access and Filing

You may also comment via the Internet to [land__comments@ios.doi.gov]. Please submit Internet comments as an ASCII file avoiding the use of special characters and any form of encryption. Please also include "Attn: 1076–AD90" and your name and return address in your Internet message. If you do not receive a confirmation from the system that we have received your Internet message, contact the Office of Trust Responsibilities directly at (202) 208–5831.

Finally, you may hand-deliver comments to the Office of Trust Responsibilities, Bureau of Indian Affairs, 1849 C Street, N.W., MS–4513–MIB, Washington, D.C. 20240.

Our practice is to make comments, including the names and addresses of persons commenting, available for public review during regular business hours. Persons commenting as private individuals may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. There may also be circumstances in which we would withhold from the rulemaking record a commenter's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. We will not consider anonymous comments. Comments from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be available for public inspection in their entirety.

Specific Comments on Information Collection Aspects of the Rulemaking

Indian tribes and individuals must submit the information required under §§ 151.4, 151.9, 151.12, 151.15, and 151.18 to acquire land into trust, and 151.26 for approval of Tribal Acquisition Plans. We will use the information in making a determination on an application to take land into trust. The applicant must respond to this request to obtain a benefit. This table represents our estimate of the burden hours for reporting information collection under each section of this proposed rule.

Citation 25 CFR 151	Information	Average number of hours	Average number per year	Annual burden hours
151.4—For all applications	Submit completed written request as specified in sections 151.9, .12, and .15.	4–8	6,941	28,635
151.9—For on reservation acquisitions.	Applicants must submit:	4	95%=6,594	26,376
	(a) Copy of authority			
	(b) Explanation of need			
	(c) Explanation of ownership status (Tribe)			
	(d) Explanation of ownership status (Individual)			
	(e) Title Insurance			
	(f) Documentation for NEPA			
151.12—For off reservation acquisitions.	Applicants must submit:	8	4%=278	2,224
	(a) Copy of authority			
	(b) Explanation of need			
	(c) Description of proposed use			
	(d) Description of location of land			
	(e) Description of effect on state & political subdivisions			
	(f) Description of jurisdictional issues			
	(g) Title Insurance			
	(h) Documentation for NEPA			
	(i) Documentation that individual's request meets 151.13			
151.15—For mandatory acquisitions.	Applicants must submit:	.5	1%=69	[2] 35
	(a) Copy of authority			
	(b) Title Insurance			
	(c) Additional information upon request			
151.18—For Tribal Land Acquisition Plans (TLAP).	Applicants must submit:	8	.05%=325	[3] 2,600
	(a) Copy of authority			
	(b) Copy of tribal documents to establish TLAP			
	(c) Summary of purposes & goals			
	(d) Summary of tribe's history			
	(e) Description of TLAP			
	(f) Location of Rights-of-Way			
	(g) Description of effect on State & political subdivisions			
	(h) Description of jurisdictional & land use issues			
151.26—Recordkeeping	Maintaining each case file	([1])	6,941	578

[1] 5 minutes=1/12 hour.
[2] Rounded.
[3] Not included in total burden hours.

We invite your comments as to: (1) Whether the collection of information is necessary for the proper performance of the functions of the

Bureau, including whether the information will have practical utility;

(2) The accuracy of the Bureau's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) The quality, utility, and clarity of the information to be collected; and

(4) How to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated electronic, mechanical, or other forms of information technology.

Your comments regarding the burden estimate or any other aspect of this information collection should be sent to: Attention: Desk Officer for the Interior Department, Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street, NW, Washington DC 20503. Please note that OMB has up to 60 days to approve or disapprove the information collection but may respond after 30 days; therefore, public comments should be submitted to OMB within 30 days in order to assure their maximum consideration. Comments should also be sent to the Bureau of Indian Affairs, Office of Trust Responsibilities, 1849 C Street, NW, MS–4513–MIB, Washington, DC 20240.

Introduction and Summary

Congress has given the Secretary of the Interior discretionary authority to acquire title to land to be held in trust by the United States for the benefit of Indian tribes and individual Indians. Acquiring such title is commonly referred to as "taking land into trust." General statutory authority giving the Secretary discretion to acquire trust title to land is found in Section 5 of the Indian Reorganization Act of 1934 (the IRA), 25 U.S.C. 465:

> The Secretary of the Interior is hereby authorized, in his discretion, to acquire, through purchase, relinquishment, gift, exchange, or assignment, any interest in lands, water rights, or surface rights to land, within or without existing reservations, including trust or otherwise restricted allotments, whether the allottee be living or deceased, for the purpose of providing land to Indians.

Occasionally, Congress enacts other legislation granting the Secretary authority to take land into trust for some specific purpose. We refer to acquisitions of trust title under the IRA, and under other specialized statutes that grant discretionary authority to the Secretary, as "discretionary acquisitions of title."

The regulations proposed here would restructure how we review proposed discretionary acquisitions of title. We believe this restructuring will facilitate land-into-trust decisions which better reflect the modern-day needs and concerns of tribes, individual Indians, and surrounding non-Indian communities. Specifically, the proposed regulation sets forth an application process and review criteria which is more demanding when the land at issue is located outside the boundaries of an existing reservation or outside a Secretarially-approved Tribal Land Acquisition Area (collectively, "off-reservation acquisitions"), but which is less demanding when the land is located inside the boundaries of an existing reservation or inside a Secretarially-approved Tribal Land Acquisition Area (collectively, "on-reservation acquisitions"). In other words, the proposed regulations would make the application process easier for on-reservation acquisitions, while conversely requiring a more detailed analysis of a greater number of criteria for off-reservation acquisitions.

The purpose of creating these differing processes and criteria is two-fold. First, we intend to better carry out our responsibility to assist tribes in reestablishing ownership of, and jurisdiction over, land located within their own reservations. Second, we also intend to create a framework that adequately addresses the particular concerns that non-Indian governments have about the ramifications of placing off-reservation land into trust.

In addition, the proposed regulations delineate the procedure by which we process mandatory acquisitions of title. Mandatory acquisitions of title are trust acquisitions which Congress, by explicit statutory direction, requires the Secretary to accept through the administrative process. In other words, mandatory acquisitions are those which Congress has directed the Secretary to complete by removing any discretion in the administrative decision-making process. (Mandatory acquisitions of title are distinguishable from *legislative transfers of title*. Legislative transfers of title are those in which Congress directly places a parcel of land in trust, thereby removing the need for any administrative action to effectuate the transfer of title into trust status.)

Finally, the proposed regulations address the unique difficulties encountered by tribes which do not have reservations by including new provisions which set out a process by which those tribes may benefit from the on-reservation provisions of this regulation. In this process, a tribe without a reservation can designate a "Tribal Land Acquisition Area" in which it plans to acquire land. If the tribe obtains Secretarial approval of its Tribal Land Acquisition Area, the tribe will be able to apply to have title to the lands located within the Tribal Land Acquisition Area taken into trust under the on-reservations provisions of this regulation.

Discretionary Acquisitions On-Reservation

The General Allotment Act of 1887, 25 U.S.C. 331 *et seq.*, authorized the division, and distribution to individuals, of lands located within the boundaries of most Indian reservations across the country. This allotment policy was based in part on the theory that fee ownership of land would improve the economic condition of Indians, which at the time was acknowledged to be very poor. Unfortunately, in practice the primary beneficiaries of the Allotment Act were land speculators who quickly acquired large portions of land within Indian reservations, often at prices well below market value. Institute for Government Research, The Problem of Indian Administration 460–462 (L. Meriam, ed.) (Johnson Reprint Corporation 1971) (1928) (Meriam Report).

Implementation of the Allotment Act resulted in the alienation of as much as 90 million acres of land originally reserved to tribes by treaties and Executive Orders. Felix S. Cohen, Handbook of Federal Indian Law 138 (Michie Company) (1982 ed.) (Cohen). The loss of these tribal lands was catastrophic and generally is regarded by historians and others as being responsible for a precipitous decline in the economic, cultural, social and physical health of tribes and their members. *E.g.*, Charles F. Wilkinson, American Indians, Time and the Law 19–21 (Yale University Press 1987). To combat this downward spiral, in 1934 Congress passed the Indian Reorganization Act (IRA). Comment, Tribal Self-Government and Indian Reorganization Act of 1934, 70 Mich. L. Rev. 955, 960 (1972). One of the primary goals of the IRA was the restoration to tribal ownership of allotted land within existing reservations. *See*, Readjustment of Indian Affairs, Hearing before the Committee on Indian Affairs, 73d Cong. 2nd Sess. on H.R. 7902, at 16–1; Cohen, *supra* at 147. Although the IRA authorized appropriation to the Department of the Interior of two million dollars a year for land acquisition, since 1934 only $5.5 million has been appropriated by Congress for that purpose, all of it before 1950. Cohen at 150, note 51.

In the modern era tribes have taken full responsibility for rebuilding their reservation land bases, purchasing land from willing sellers and then applying to the Secretary to request that the land be taken into trust. Yet to date, less than eight percent of lands lost through allotment have been returned to tribal ownership. Cohen at 138, BIA's Annual Report for Indian Lands, 1996. Indeed, most applications requesting that we take land into trust have involved relatively small amounts of land. For example, in 1996 (the latest year for which data is available), the average amount of land involved in an application to take land in trust was about 30 acres. BIA's Annual Report for Indian Lands, 1996.

The proposed regulations are intended to promote the health and welfare of tribes and their members by better facilitating the restoration of on-reservation Indian lands into trust status. For example, the on-reservation provisions of the regulation provide that the tribe's stated need for the land will be accorded additional weight in recognition of the tribe's reasonable expectation that it benefit from the lands originally promised to it by treaty or Executive Order. For the same reason, because lands within reservation boundaries are subject to tribal governmental jurisdiction, the portion of the proposed rule governing on-reservation acquisitions does not specifically require submission of information concerning impacts on non-Indian communities, although State and local governments may comment on these impacts if they so desire. (In which case, the tribe will be given a copy of the comments and a reasonable amount of time in which to respond.)

Discretionary Acquisitions Off-Reservation

Congressional adoption of the land acquisition provisions of the IRA was based in part on Congress' understanding that the decimation of the tribal land base had resulted in substantial economic hardship for Indian tribes and their members. Hence, the regulations implementing the IRA anticipate the potential need for tribal trust land for economic development outside the boundaries of a reservation, particularly in situations in which a tribe's reservation is isolated or otherwise remote from centers of economic activity.

The acquisition of title by the United States in off-reservation circumstances can, however, have significant ramifications for local non-Indian communities. In particular, important jurisdictional matters (e.g., those involving law enforcement, land use planning, public education, and maintenance of utilities and roads) can become blurred. The effects of off-reservation acquisitions are in contrast to those caused by on-reservation acquisitions, as the effects of on-reservation acquisitions are just incremental additions to an already established set of circumstances, and not marked by the establishment of a new sovereign or jurisdictional presence.

For this reason, the proposed rule requires tribes wishing to take off-reservation land into trust to submit a substantial amount of information about how the proposed acquisition would impact the surrounding non-Indian community, and about how the tribe would address that impact. Requiring submission of this detailed information helps ensure that the concerns of local non-Indian governments are identified, reviewed and evaluated in our decision-making process.

Unlike the regulations currently in effect, the proposed regulations do not treat applications concerning land which is adjacent (contiguous) to a reservation as if the land were located on-reservation. Rather, applications concerning adjacent parcels are to be treated as off-reservation acquisitions, and will be subject to the same process and local non-Indian government consultation as are applications concerning other off-reservation lands. Of particular note is that we will require consultation with the state and local non-Indian governments in the state in which the adjacent land is located (even if the main body of the reservation lies across a state line).

The proposed regulation, however, would continue our policy (as articulated in the existing regulations) of giving greater weight to the tribe's need (vis-a-vis the objections of the local non-Indian community) the closer the land is to the tribe's reservation. Thus, the stated need for land adjacent to a reservation will be given greater weight in the context of the off-reservation criteria. In addition, tribal applicants wishing to conduct gaming on a parcel adjacent to land which has held reservation status since October 17, 1988 will continue to benefit from the "contiguity exception" mandated by Congress in the Indian Gaming Regulatory Act (IGRA) Section 20 requirements. (*See* 25 U.S.C. 2719(a)(1).)

The IRA land acquisition provisions authorize us to take off-reservation land into trust for the benefit of individual Indians. However, as a matter of general policy, we will approve applications from individual Indians for title to land located outside the boundaries of a reservation only under certain limited circumstances, in our discretion. For example, we will continue to accept title to interests in off-reservation land for the purpose of consolidating fractioned ownership of such land. Additionally, we will continue to accept title to lands purchased with funds obtained as the result of the voluntary sale of non-taxable Indian lands to any State, county, or municipality, or as the result of condemnation of such property by a State, county, or municipality, under 25 U.S.C. 409a.

Off-Reservation Acquisitions and Indian Gaming

If a tribe intends to use off-reservation land for gaming purposes, it must comply with the applicable requirements of Section 20 of the Indian Gaming Regulatory Act, 25 U.S.C. 2719 (IGRA) before gaming may occur on that land. In most cases, compliance with Section 20 of IGRA requires additional consultation with local non-Indian governments, a determination by the Secretary that the acquisition is "in the best interest of the tribe and not detrimental to the surrounding community," and a concurrence in that determination from the Governor of the State in which the land is located. *Id.*

If a tribe applies under these regulations to have title acquired in trust for a non-gaming purpose, and then at a later date decides that it would like to conduct gaming on that parcel, it will be authorized to engage in such gaming only if it complies with the requirements of Section 20 of IGRA. In other words, to game on a parcel of trust land acquired after October 17, 1988 (*i.e.*, the date of passage of IGRA), the tribe must submit to the same Section 20 analysis and obtain the same gubernatorial consent as would have been required if the parcel were originally taken into trust for the purpose of gaming.

Discretionary Acquisitions in Alaska

Both the current and the proposed regulations bar the acquisition of trust title in land in Alaska, unless an application for such acquisition is presented by the Metlakatla Indian Community or one of its members. (The lands of the Metlakatla Indian Community comprise the only Native land in Alaska currently designated as a "reservation" by the federal government.) The regulatory bar to acquisition of title in trust in Alaska in the original version of these regulations was predicated on an opinion of the Associate Solicitor, Indian Affairs ("Trust Land for the Natives of Venetie

and Arctic Village," September 15, 1978), which concluded that the Alaska Native Claims Settlement Act (ANCSA) precluded the Secretary from taking land into trust for Natives in Alaska (again, except for Metlakatla).

Although that opinion has not been withdrawn or overruled, we recognize that there is a credible legal argument that ANCSA did not supersede the Secretary's authority to take land into trust in Alaska under the IRA (*see* relevant IRA provision at 25 U.S.C. 473a). *See also* the Petition of Chilkoot Indian Association, Native Village of Larsen Bay, and Kenaitze Indian Tribe, requesting the Department to undertake a rulemaking to remove the prohibition on taking land in trust in Alaska (60 FR 1956 (1995). However, even if it were held that the Secretary retained authority to take land in trust in Alaska, whether to exercise that authority remains in the sound discretion of the Secretary.

In recent years blue-ribbon commissions and working groups (such as the State of Alaska's Rural Governance Commission) have been formed to address various related issues concerning tribal governments and Native lands in Alaska and to address such issues in the wake of the decision in *Alaska* v. *Native Village of Venetie Tribal Government*, 522 U.S. 520, 118 S. Ct. 948 (1998). In that decision, the court held that former Native Corporation lands owned in fee simple by the Native Village of Venetie Tribal Government were not validly set apart for the use of Indians as such, nor were they under the superintendence of the federal government, and thus did not meet the definition of "dependent Indian communities." *Id.* At 955. Since the lands did not qualify as dependent Indian communities, they did not meet the definition of Indian country and the Native Village of Venetie Tribal Government was not authorized to tax non-members. Of course, if land were taken in trust by the Secretary, such trust land then would qualify as Indian country and an Alaskan tribe would have all the powers that pertain within Indian country. We invite comment on the continued validity of the Associate Solicitor's opinion and issues raised by the petition noticed at 60 FR 1956 (1995) in light of the Supreme Court's ruling in the *Venetie* case.

The proposed regulations would make no change in the current regulations and would continue the bar against taking Native land in Alaska in trust. However, that bar would be subject to review pending the report of the Rural Governance Commission, or Congressional action clarifying that ANSCA lands are Indian country.

Mandatory Acceptance of Title

The implementation of specific statutes containing congressional mandates to acquire title to land in trust through our administrative process has not always been well-understood. To provide more clarity, the proposed rule includes new language that specifically identifies the types of acquisitions we consider "mandatory," and sets out the process by which we will acquire title.

The proposed regulation clarifies that an acquisition of title is "mandatory" if Congress has removed all discretion in determining whether to accept title to a particular tract of land. Situations in which all discretion has been removed include those situations in which Congress dictates that the Secretary "shall" acquire title to a parcel of land which is specifically identified by legal description, or to land which is purchased with certain, specified funds. In contrast, a statute which merely directs that the Secretary "shall" accept title to unidentified land within some broader geographic boundary, e.g. within certain named counties, still allows for some discretion. Hence we do not view acquisitions under such a statute as "mandatory" for the purposes of this regulation. By definition, mandatory acceptances of title rely on statutory authority which preempts the discretionary authority granted to the Secretary by the IRA. The Department will evaluate each statute on a case-by-case basis to determine whether it requires a mandatory acceptance of trust title.

The process for completing a mandatory acceptance of title is relatively simple. A tribe must submit an application that includes the identification of the federal statute which mandates the acquisition of title and include the same sort of title insurance information required for discretionary acquisition applications. Because of the mandatory character of such acquisitions, the regulation does not require compliance with the National Environmental Policy Act (NEPA). However, we strongly advise applicants, for their own protection, to conduct the same type of environmental assessment generally done under NEPA prior to acquisition of the property, or at least prior to submitting an application to have the property taken into trust.

As a final matter, we note the distinction between mandatory acquisitions where Congress directs the Secretary to complete the administrative process of accepting trust title, and "legislative transfers of title," where Congress directly transfers land into trust status on behalf of tribes or individual Indians. In the latter type of title transfer, Congress has removed the need for any administrative action to effectuate the title transfer.

Tribal Land Acquisition Areas for Tribes Without Reservations

There are a few tribes which do not benefit from the basic rights and opportunities inherent in having a reservation. For the most part, these are tribes recently restored to federal recognition by a federal statute which does not specifically designate a reservation, or they are tribes that have obtained federal recognition through the administrative Federal Acknowledgment Process, which as a matter of course does not provide for the designation of a reservation.

Federal policy for many decades has viewed the existence of a tribal land base as integral to the cultural, political, and economic well-being of a tribe. For example, most federal programs for Indians are in one way or another tied to the tribal land base. Because of the overwhelming importance of the tribal land base, and because the new regulations make it less burdensome for tribes to take land into trust on (as opposed to off-) reservation, we are proposing in these regulations an alternative mechanism by which reservation-less tribes may benefit from the on-reservation acquisition provisions to create a homeland.

The alternative mechanism is the use of a "Tribal Land Acquisition Area." A Tribal Land Acquisition Area is a geographic boundary designated by a reservation-less tribe within which the tribe plans to acquire land within a specified period of time under the more lenient on-reservation provisions of the proposed rule. In other words, the Tribal Land Acquisition Area would create a geographic boundary within which individual parcels would be treated as on-reservation for the purposes of acquiring trust title under these regulations.

Because establishment of a Tribal Land Acquisition Area will affect local non-Indian governments, we will require that the concerns of local non-Indian governmental entities be addressed before the Secretary will approve the creation of the Tribal Land Acquisition Area boundaries. For that reason, an application for Secretarial approval of a Tribal Land Acquisition Area requires submission of information similar to that required in applications for off-reservation acquisitions. However, because we view the need for

a homeland as fundamental, we will accord greater weight to the application of a reservation-less tribe, particularly in situations in which the tribe benefits from a federal statute directing the Secretary to acquire some land base for the tribe.

However, while off-reservation land located within a Tribal Land Acquisition Area may be treated as on-reservation land for acquisition purposes, such lands legally cannot be treated as on-reservation for the purposes of IGRA. In other words, title to land which is inside a Tribal Land Acquisition Area cannot be taken into trust for the purpose of gaming unless and until the requirements of section 20 of IGRA have been satisfied.

Part 151 of Title 25, Chapter I of the Code of Federal Regulations is proposed to be amended for the reasons set out below:

1. The authority for part 151 is revised to include the False Statements Accountability Act of 1996, 18 U.S.C. 1001.

2. Section 151.1 *Purpose and Scope,* is retitled as *What is the purpose of this part?,* and is reformatted and simplified.

3. Section 151.2 *Definitions,* is retitled as *How are key terms defined in this part?,* and is revised to update some of the definitions of terms used in this part and to include new terms used in this part. The definitions in this section apply only to this part.

4. Section 151.3 *Land acquisition policy,* has been deleted, although some of the substantive portions of the current § 151.3 have been incorporated into other parts of the proposed rule. A new § 151.3 is added entitled *To what types of transactions do these regulations apply?* The new § 151.3 incorporates some of the information that is in the current § 151.1.

5. Section 151.4 *Acquisitions in trust of lands owned in fee by an Indian,* is deleted because it is unnecessary given the rest of the proposed changes to this regulation. A new § 151.4 entitled *How does an individual Indian or a tribe apply to have title to land conveyed to the United States in trust?* is added to explain how to apply to have land taken into trust.

6. Section 151.5 *Trust acquisitions in Oklahoma under Section 5 of the I.R.A.,* is deleted because it is unnecessary. A new § 151.5 entitled *How do we process the request?* is added to provide more clarity about how we review requests to take land into trust.

7. Section 151.6 *Exchanges* is deleted because it is no longer necessary given the other sections of the part. A new § 151.6, entitled *How do we proceed after making a decision on the request?* is added.

8. Section 151.7 *Acquisition of fractional interests,* is renumbered and retitled as § 151.8, *Will we accept and hold in trust an undivided fractional interest in land for an individual Indian or a tribe?,* is reformatted to include acquisitions of "undivided" interest under the Indian Land Consolidation Act, and is revised for clarity. "Undivided fractional" is substituted for the word "fractional" to clarify that the "fractional" interest being acquired is not a geographically separate parcel of land. A new § 151.7 is added, *When does land attain trust status?,* to provide clarification as to how land technically attains trust status after we have decided to take it into trust.

9. Section 151.8 *Tribal consent for nonmember acquisitions* is renumbered and retitled as § 151.11 *Can an individual Indian or a tribe acquire land inside a reservation inside or an approved Tribal Land Acquisition Area of another tribe?* and is revised for clarity.

10. Section 151.9 *Requests for approval of acquisitions* is renumbered and retitled as § 151.4 *How does an individual Indian or a tribe apply to have title to land conveyed to the United States in trust?* A new § 151.9, *What information must be provided in a request involving land inside a reservation or inside an approved Tribal Land Acquisition Area?* is added.

11. Section 151.10 *On-reservation acquisitions,* is renumbered, retitled, and has been separated for clarity as § 151.5 *How do we process the application?,* § 151.9 *What information must be provided in a request involving land inside a reservation or inside an approved Tribal Land Acquisition Area?,* and § 151.10, *What criteria will we use to evaluate requests involving land inside a reservation or inside an approved Tribal Land Acquisition Area?* The new § 151.10 is revised to establish a uniform, nationwide, "minimum standard" set of criteria for the decision maker to consider in the evaluation of an application for an on-reservation trust acquisition. The requirement to furnish title evidence is transferred from the current § 151.13 to this section to incorporate title evidence as part of a complete application request.

12. Section 151.11 Off-reservation acquisitions, is renumbered, retitled, and has been separated for clarity as § 151.5 *How do we process a request?,* § 151.12 *What information must be provided in an application involving land outside a reservation and outside a Tribal Land Acquisition Area?,* and § 151.14 *What criteria will we use to evaluate a request involving land outside a reservation and outside a Tribal Land Acquisition Area?* The requirement to furnish title evidence is transferred from the current § 151.13 to this section to incorporate title evidence as part of a complete application request. In addition, a new § 151.11, *Can an individual Indian or a tribe acquire land inside a reservation or inside an approved Indian Land Acquisition Area of another tribe?,* is added, replacing the current § 151.8.

13. Section 151.12 *Action on requests* has been separated for clarity and is included as part of § 151.6 *How do we proceed after making a decision on the request?* A new § 151.12, *What information must be provided in a request involving land outside a reservation and outside a Tribal Land Acquisition Area?,* is added.

14. Section 151.13 *Title examination,* is renumbered, reorganized, and revised for clarity. The requirement to furnish title evidence is transferred from this section and incorporated in the new §§ 151.9 and 151.12 as part of a complete application request. Section (b), governing situations in which the title to the land has any liens, encumbrances, or infirmaties, has been integrated into § 151.6(c)(1). A new § 151.13, entitled *Can an individual Indian acquire land outside his or her own reservation?,* has been added to clarify the Secretary's policy regarding the acquisition of off-reservation lands by an individual Indian.

15. Section 151.14 *Formalization of acceptance* is renumbered and retitled as § 151.7 *When does the land attain trust status?* A new § 151.14, entitled *What criteria will we use to evaluate a request involving land outside a reservation or outside a Tribal Land Acquisition Area?,* is added to establish a uniform, basic, nationwide, "minimum standard" set of criteria for the decision maker to consider in the evaluation of an application for an off-reservation trust acquisition.

16. Section 151.15 *Information collection,* is renumbered and retitled as § 151.27 *Do information collections under this part have Office of Management and Budget approval?* Paragraph (a) is revised to include the new information collection requirements. A new § 151.15 entitled *What information must be provided in a request to process a mandatory transfer of title into trust status, and how will we process the request?* has been added to clarify the information needed to process mandatory acquisitions.

17. A new § 151.16 entitled *Can our determination that a transfer of title into trust status is mandatory be appealed?* is added for clarity.

18. A new § 151.17 entitled *What is a Tribal Land Acquisition Area?* has been added to clarify how a Tribal Land Acquisition Area can be used by tribes without reservations to benefit from the on-reservation provisions of this regulation.

19. A new § 151.18 entitled *What must be included in a request for Secretarial approval of a Tribal Land Acquisition Area?* has been added to describe what information must be submitted in the request.

20. A new § 151.19 entitled *How is a tribal request for Secretarial approval processed?* is added to describe how we will process the request for Secretarial approval of the Tribal Acquisition Area.

21. A new § 151.20 entitled *What criteria will we use to decide whether to approve a proposed Tribal Land Acquisition Area?* has been added to set out the criteria the Secretary will use to evaluate a Tribal Land Acquisition Area.

22. A new § 151.21 entitled *Can a tribe include in its Tribal Land Acquisition Area land inside another tribe's reservation or Tribal Land Acquisition Area?* is added for clarity.

23. A new § 151.22 entitled *If a Tribal Land Acquisition Area is not approved, is the tribe prohibited from acquiring land within it?* is added for clarity.

24. A new § 151.23 entitled *If a Tribal Land Acquisition Area is approved, does the land taken into trust within it attain reservation status?* is added for clarity.

25. A new § 151.24 entitled *Can a Tribal Land Acquisition Area be modified after approval?* has been added to state that a Tribal Land Acquisition Area can be modified after approval by submitting a request for Secretarial approval of the modifications in compliance with the criteria in this part.

26. A new § 151.25 entitled *What is the penalty for making false statements in connection with a request that we place land in trust?* has been added to notify applicants that they are subject to prosecution for knowingly and willfully making false statements on an application.

27. A new § 151.26 entitled *What recordkeeping and reporting requirements apply to acquisitions of trust title under this part?* has been added to notify contracted or compacted tribes that documents created in the application process are permanent federal records.

28. A new § 151.27 entitled *Do information collections under this Part have Office of Management and Budget approval?* is added for clarity.

Clarity of this regulation.

Executive Order 12866 requires each agency to write regulations that are easy to understand. We invite your comments on how to make this rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the rule clearly stated? (2) Does the rule contain technical language or jargon that interferes with its clarity? (3) Does the format of the rule (grouping and order of sections, use of questions as headings, paragraphing, etc.) aid or reduce its clarity? (4) Would the rule be easier to understand if it were divided into more (but shorter) sections? (A "section" appears in bold type and is preceded by the symbol "§" and a numbered heading; for example, § 151.1 What is the purpose of this part?) (5) Is the description of the rule in the Supplementary Information section of the preamble helpful in understanding the proposed rule? What else could we do to make the rule easier to understand?

Regulatory Planning and Review (E.O. 12866)

In accordance with the criteria in Executive Order 12866, this rule is not a significant regulatory action and is not subject to review by the Office of Management and Budget.

(a) The proposed amendments to this rule basically conform to the policies and practices that currently guide the Department's decision making on land into trust applications. Hence, we do not anticipate that this regulation will have a significant effect on the net amount of land taken into trust. The rule will not have an annual effect of $100 million or more on the economy. It will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. This rule simply identifies a "minimum standard" of criteria and requirements to be considered in the exercise of the Secretary's discretion to place lands in trust for individual Indians and tribes.

Looking at the overall picture of how much land we have taken into trust historically, the annual number of requests to place lands in trust has been small. Based on the BIA's Annual Report of Indian Lands for 1996, only 35 States have Indian lands, four of which have fewer than 1,000 acres of Indian lands. The 1996 report indicated that there were 6,941 total applications involving 212,000 acres cumulatively, i.e., the average amount of land involved in an application was only about 30 acres. Based on the annual caseload report for FY 1996, the total dollar amount Indians paid for acquisitions of land in trust is $19,420,303.81, less than 20% of $100 million. Some States and local governments may have a decrease in revenues derived from taxes. However, the loss in annual revenues for State and local jurisdictions will only be a fraction of the value of the land involved. Moreover, some tribes may choose to offset this loss by making payments in lieu of taxes, or supplying services to the local communities. In addition, the proposed rule would alter the final disposition of only a portion of the applications. Finally, any losses or gains to State or local tax rolls would be spread over several states. Thus, overall, the net changes in tax rolls due to this rule will be minimal, and will not significantly affect State or local governments.

(b) This rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another Federal agency. Actions taken by this rule will affect tribal or individual Indian land titles. The Department of the Interior, Bureau of Indian Affairs is the only governmental agency that makes the determination whether to take land into trust.

(c) This rule does not alter the budgetary effects or entitlement, grants, user fees, or loan programs or the rights or obligations of their recipients. This rule sets out the criteria and procedures the Secretary uses in determining whether to accept title of certain Indian lands to the United States, as trustee, for the benefit of an individual Indian or a tribe.

(d) This rule does not raise novel legal or policy issues. This rule is of an administrative, technical, and procedural nature. The land acquisition regulations have been in effect since 1980. We are proposing to amend them in order to clarify procedures and requirements.

Regulatory Flexibility Act

The Department of the Interior certifies that this regulation will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). A Regulatory Flexibility analysis is not required. See our initial analysis above item 1(a) under Regulatory Planning and Review. The effect on small entities will be minimal.

(a) It does not have an annual effect on the economy of $100 million or

more. As stated above, the effect on the economy will be minimal.

(b) It does not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. Actions taken by this rule will only affect title to tribal or individual Indian owned lands. While it may affect revenues collected by State or local jurisdictions, the effect as noted above, should be minimal.

(c) It does not result in significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. As stated above, actions under this rule will only affect title to tribal or individual Indian owned lands. This rule is of an administrative, technical, and procedural nature.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. See the initial analysis above, item 1(a) under Regulatory Planning and Review. This rule:

(a) Does not have an annual effect on the economy of $100 million or more. An economic analysis is not required.

(b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. Actions under this rule will only affect title to tribal or individual Indian owned lands.

(c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. Actions under this rule will only affect title to tribal or individual Indian owned lands.

Unfunded Mandates Reform Act

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*):

(a) The rule will not significantly or uniquely affect small governments, or the private sector. A Small Government Agency Plan is not required. Additional expenses may be incurred by the requesting tribe or individual Indian to provide information to the Secretary. Tribes or an individual Indian provide information in order to receive a benefit.

(b) This rule will not produce a federal mandate of a $100 million or greater in any year. The overall effect of this rule will be negligible to the State, local, or tribal governments or the private sector. See our analysis under Regulatory Planning and Review.

Takings (E.O. 12630)

With respect to Executive Order 12630, the rule does not have significant takings implications. A takings implication assessment is not required because actions under this rule do not constitute a taking. Tribes or individual Indians are voluntarily transferring title to the United States for their own benefit.

Federalism (E.O. 13083)

With respect to Executive Order 13083, the rule does not have significant federalism implications to warrant the preparation of a Federalism Assessment. The local tax base may be affected. However, this rule should not affect the relationship between State and Federal governments because actions in this rule apply only to a relatively small amount of land. Due to the loss of tax revenue, the relationship between the State and local governments with tribes and/or the Federal Government may be affected. However, because the loss of revenue is minimal and most of the land to be acquired will be within the boundaries of reservations where there is already a measure of Indian sovereignty, the effects are "insignificant" within the meaning of E. O. 13083. See the analysis under the Regulatory Planning and Review section.

Civil Justice Reform (E.O. 12988)

With respect to Executive Order 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order. This rule contains no drafting errors or ambiguity and is written to minimize litigation, provides clear standards, simplifies procedures, reduces burden, and is clearly written. These regulations do not preempt any statute. They do supersede the current land acquisition regulations and the current procedure for establishing Indian Land Consolidation Areas. They would not be retroactive with respect to any land already taken into trust, but would apply to pending applications.

Paperwork Reduction Act

This regulation does require an information collection from ten or more parties and a submission under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). The information collection requirements in §§ 151.4; 151.9; 151.12, 151.15, 151.18, and 151.26 under 44 U.S.C. 3501 *et seq.* have been submitted to the Office of Management and Budget for approval and assigned clearance number 1076-xxxx. This information is required from Indian tribes and individual Indians who wish to convey land into trust status.

The burden associated with these requests is presented in a table in the **ADDRESSES** section of the preamble, and public comments are requested on these collections.

National Environmental Policy Act

This rule does not constitute a major Federal action significantly affecting the quality of the human environment. A detailed statement under the National Environmental Policy Act of 1969 is not required because this rule is of an administrative, technical, and procedural nature.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of May 14, 1998, "Consultation and Coordination with Indian Tribal Governments" (FR Vol. 63, No. 96, Pages 27655–27657) and 512 DM 2, we have evaluated any potential effects upon Federally recognized Indian tribes and have determined that there are no potential adverse effects. No action is taken under this rule unless a tribe or an individual Indian voluntarily requests that the United States place land in trust for their benefit. Tribes will be asked for comments prior to publication as a final regulation of this rule and their comments will be considered prior to publication.

List of Subjects in 25 CFR Part 151

Indians—lands.

For the reasons set out in the preamble, we are proposing to revise Part 151 in Chapter I of Title 25, of the Code of Federal Regulations so that it will read as follows:

PART 151—ACQUISITION OF TITLE TO LAND IN TRUST

Subpart A—Purpose, Definitions, General

Sec.

151.1 What is the purpose of this part?
151.2 How are key terms defined in this part?
151.3 To what types of transactions does this part apply?
151.4 How does an individual Indian or a tribe apply to have title to land conveyed to the United States in trust?
151.5 How do we process a request?
151.6 How do we proceed after making a decision on a request?
151.7 When does the land attain trust status?

151.8 Will we accept and hold in trust an undivided fractional interest in land for an individual Indian or a tribe?

Subpart B—Discretionary Acquisitions of Title On-Reservation

151.9 What information must be provided in a request involving land inside a reservation or inside an approved Tribal Land Acquisition Area?
151.10 What criteria will we use to evaluate a request involving land inside a reservation or inside an approved Tribal Land Acquisition Area?
151.11 Can an individual Indian or a tribe acquire land inside a reservation or inside an approved Tribal Land Acquisition Area of another tribe?

Subpart C—Mandatory Acceptance of Title Off-Reservation

151.12 What information must be provided in a request involving land outside a reservation or outside a Tribal Land Acquisition Area?
151.13 Can an individual Indian acquire land outside his or her own reservation?
151.14 What criteria will we use to evaluate a request involving land outside a reservation or outside an approved Tribal Land Acquisition Area?

Subpart D—Mandatory Acquisitions of Title

151.15 What information must be provided in a request to process a mandatory transfer of title into trust status, and how will we process the request?
151.16 Can our determination that a transfer of title into trust status is mandatory be appealed?

Subpart E—Tribal Land Acquisition Areas

151.17 What is a Tribal Land Acquisition Area?
151.18 What must be included in a request for Secretarial approval of a Tribal Land Acquisition Area?
151.19 How is a tribal request for Secretarial approval processed?
151.20 What criteria will we use to decide whether to approve a proposed Tribal Land Acquisition Area?
151.21 Can a tribe include in its Tribal Land Acquisition Area land inside another tribe's reservation or Tribal Land Acquisition Area?
151.22 If a Tribal Land Acquisition Area is not approved, is the tribe prohibited from acquiring land within it?
151.23 If a Tribal Land Acquisition Area is approved, does the land taken into trust within it attain reservation status?
151.24 Can a Tribal Land Acquisition Area be modified after approval?

Subpart F—False Statements, Recordkeeping, Information Collection

151.25 What is the penalty for making false statements in connection with a request that we place land in trust?
151.26 What recordkeeping and reporting requirements apply to acquisitions of trust title under this part?
151.27 Do information collections under this part have Office of Management and Budget approval?

AUTHORITY: R.S. 161: 5 U.S.C. 301. Interpret or apply 46 Stat. 1106, as amended; 46 Stat. 1471, as amended; 48 Stat. 985, as amended; 49 Stat. 1967, as amended, 53 Stat. 1129; 63 Stat. 605; 69 Stat. 392, as amended; 70 Stat. 290, as amended; 70 Stat. 626; 75 Stat. 505; 77 Stat. 349; 78 Stat. 389; 78 Stat. 747; 82 Stat. 174, as amended; 82 Stat. 884; 84 Stat. 120; 84 Stat. 1874; 86 Stat. 216; 86 Stat. 530; 86 Stat. 744; 88 Stat. 78; 88 Stat. 81; 88 Stat. 1716; 88 Stat. 2203; 88 Stat. 2207; 18 U.S.C. 1001; 25 U.S.C. 2, 9, 409a, 450h, 451, 464, 465, 467, 487, 488, 489, 501, 502, 573, 574, 576, 608, 608a, 610, 610a, 622, 624, 640d–10, 1466, 1495, and other authorizing acts.

Subpart A—Purpose, Definitions, General

§ 151.1 What is the purpose of this part?

The purpose of this part is to describe the authorities, policies, and procedures that we use to decide whether to accept title to land in the name of the United States to be held in trust for the benefit of an individual Indian or a tribe.

§ 151.2 How are key terms defined in this part?

Alienation means a conveyance or transfer of title to property.

Bureau means the Bureau of Indian Affairs within the Department of the Interior.

Discretionary acquisitions of title means those acquisitions of trust title which we are authorized, but are not required, to accept administratively.

Encumbrance means a limitation on the title of property, such as a claim, lien, easement, charge, or restriction of any kind.

Fee simple land means title to land is absolute and clear of any condition or restriction, and with unconditional power of disposition.

Host tribe means the tribe having jurisdiction over the land being acquired.

Individual Indian means a person who:

(1) Is a member of a federally recognized tribe; or

(2) Was physically residing on a federally recognized Indian reservation as of June 1, 1934, and is a descendant of an enrolled member of a federally recognized tribe; or

(3) Possesses a total of one-half degree or more Indian blood of a federally recognized tribe.

Land means real property or any title interest therein, as defined by the statute that authorizes the land acquisition.

Legislative transfer of title means the direct transfer of title to land into trust status for the benefit of an individual Indian or Indian tribe by Congress through legislation. The regulations in this part do not apply to legislative transfers of title.

Mandatory acceptance of title means a conveyance of trust title which Congress has required the Secretary to accept if certain specified conditions over which the Secretary has no control are met.

Reservation means that area of land which has been set aside or which has been acknowledged as having been set aside by the United States for the use of the tribe, the exterior boundaries of which are more particularly defined in the final tribal treaty, agreement, Executive Order, federal statute, Secretarial Order, or judicial determination, except that in the State of Oklahoma, "reservation" means that area of land constituting the former reservation of the tribe. "Former reservation" means lands that are within the jurisdictional area of an Oklahoma Indian tribe and that are within the boundaries of the last reservation established by treaty, Executive Orders, or Secretarial Orders.

Restricted fee land means land for which an individual Indian or a tribe holds fee simple title subject to limitations or restrictions against alienation or encumbrance as set forth in the title and/or by operation of law.

Secretary means the Secretary of the Interior or an authorized representative.

Tribal Land Acquisition Area means a geographic boundary designated by a tribe that does not have a reservation, within which the tribe plans to acquire land over a specified period of time.

Tribe means any Indian tribe, nation, band, pueblo, town, community, rancheria, colony, or other group of Indians, which is recognized by the Secretary as eligible for the special programs and services provided by the Bureau of Indian Affairs, and listed in the **Federal Register** under Pub. L. 103–454, Act of Nov. 2, 1994 (108 Stat. 4791; 25 U.S.C. 479a (1994)).

Trust land means land, or an interest therein, for which the United States holds fee title in trust for the benefit of an individual Indian or a tribe.

Undivided fractional interest means that the interest of co-owners is in the entire property and that such interest is indistinguishable. The interest has not been divided out from the whole parcel. (Example: If you own ¼ interest in 160 acres, you do not own 40 acres. You own ¼ of the whole 160 acres because your ¼ interest has not been divided out from the whole 160 acres.)

We means the Secretary of the Interior or an authorized representative.

§ 151.3 To what types of transactions does this part apply?

(a) Except as provided in paragraphs (b) and (c) of this section, this part

applies to all fee simple land-to-trust, restricted fee land-to-trust, trust-to-trust, and land exchange transactions.

(b) This part does not apply to the following transactions:

(1) Fee to restricted fee or restricted fee to restricted fee;

(2) The transfer of title of trust land through inheritance or escheat; or

(3) The Legislative transfer of title into trust status.

(c) We will not accept title to land in trust in the State of Alaska, except for the Metlakatla Indian Community of the Annette Island Reserve of Alaska or its members.

§ 151.4 How does an individual Indian or a tribe apply to have title to land conveyed to the United States in trust?

Individual Indians and tribes must send us a written request asking that we accept title and place the land into trust.

(a) The request must:

(1) Identify the applicant (including the applicant's tribal affiliation);

(2) Include the legal description of the land to be acquired; and

(3) Include all information which shows that the proposed acquisition meets the applicable requirements in this section.

(b) The request does not need to be in any special form. However, we strongly urge the applicant to address each section of this part that is relevant to the type of acquisition (*e.g.*, on- or off-reservation, discretionary or mandatory), in the order it appears here. Constructing the request in this way will enable us to review the request more efficiently.

(c) We may also ask for additional information to aid us in reaching a decision.

§ 151.5 How do we process the request?

(a) After we receive the request, we will notify the State, county, and municipal governments having regulatory jurisdiction over the land. We will send all notices under this section by certified mail, return receipt requested. The notice will contain the information described in paragraph (a)(1) or (a)(2) of this section, as appropriate.

(1) If the request is for on-reservation lands or lands inside an approved Tribal Land Acquisition Area, the notice we send under this section will:

(i) Include the name of the applicant;

(ii) Describe the lands proposed to be taken in trust;

(iii) State the proposed use of the land; and

(iv) Invite the State and local governments from the State in which the land is located to comment in writing within 30 days on the proposed acquisition.

(2) If the request is for land outside a reservation and outside a Tribal Land Acquisition Area, the notice we send under this section will:

(i) Include the name of the applicant;

(ii) Describe the lands proposed to be taken in trust;

(iii) Describe the proposed use of the land; and

(iv) Invite the State and local governments from the State in which the land is located to comment in writing within 60 days on the acquisition's potential effects on the State and local governments, including on their regulatory jurisdiction, real property taxes, and special assessments.

(b) After the comment period has ended, we will send to the applicant copies of any comments made by State or local governments on the applicant's request. We will give the applicant a reasonable time in which to reply to the comments.

(c) Subject to restrictions on disclosure required by the Freedom of Information Act (5 U.S.C. 552), the Privacy Act (5 U.S.C. 552a), and the Trade Secrets Act (18 U.S.C. 1905) the request will be available for review at the local BIA agency or area office having administrative jurisdiction over the land.

(d) We will consider all the documentation that the applicant submits.

§ 151.6 How do we proceed after making a decision on the request?

(a) We will send the applicant a certified letter describing our decision to accept or deny a request. We will also send a copy of the decision letter to everyone (including State and local governments) who sent us written comments on the request. The notice to interested parties will explain that they have a right to appeal our decision under part 2 of this title.

(b) If our decision is to deny the request, we will take no further action.

(c) If our decision is to approve the request, after the exhaustion of administrative remedies we will:

(1) Complete a preliminary title examination. For both discretionary and mandatory acquisitions, after we examine the title evidence, we will notify the applicant of any liens, encumbrances, or infirmities. If the liens, encumbrances, or infirmities make title to the land unmarketable, we will require the applicant to eliminate the liens, encumbrances, or infirmities before we act on the application.

(2) Publish in the Federal Register, or in a newspaper of general circulation serving the affected area, a notice of the decision to take land into trust under this part. The notice will state that we have made a final decision to take land in trust and that we will accept title in the name of the United States no sooner than 30 days after the notice is published;

(3) Act on any judicial appeals that may be filed; and

(4) After the exhaustion of judicial remedies, accept trust title to the land by issuing or approving an appropriate instrument of conveyance.

§ 151.7 When does land attain trust status?

After the Secretary has published notice of intent to take the land into trust pursuant to § 151.6 (c)(2), the time period for appeal has run, all appeals rights have been exhausted, and all title objections have been cleared, we will approve or issue the appropriate instrument of conveyance. Only after these steps have been completed will the land attain trust status. The approved deed will then be recorded in the county where located, title evidence will be updated, a final title opinion will be issued and the deed will be recorded in the appropriate Bureau of Indian Affairs title plant under part 150 of this chapter.

§ 151.8 Will we accept and hold in trust an undivided fractional interest in land for an individual Indian or a tribe?

We will not accept and hold in trust for an individual Indian or a tribe an undivided fractional interest in land, except under one of the following conditions:

(a) The individual Indian or tribe already owns an undivided fractional restricted or trust interest in the land, and is acquiring the additional interest(s) to consolidate ownership.

(b) The individual Indian or tribe acquires the undivided fractional interest as the result of a gift under § 152.25(d) of this chapter and the conveyance does not result in further fractionation of interest in the land.

(c) The individual Indian or tribe is acquiring interest in fee and there are existing undivided fractional trust or restricted interests in the same land.

(d) The individual Indian or tribe offers and agrees to purchase the remaining undivided fractional trust or restricted interest in the land, at not less than fair market value.

(e) A specific statute grants the individual Indian or tribe the right to purchase an undivided fractional interest in trust or restricted land without offering to purchase all interests.

(f) A majority of the owners of the remaining undivided trust or restricted fractional interest agree in writing that the individual Indian or tribe may acquire the interest.

(g) Under the Indian Land Consolidation Act, 25 U.S.C. 2201 *et seq.*, a tribe may acquire an undivided fractional interest in trust or restricted land under these conditions:

(1) The land is inside the tribe's reservation, or inside an approved Tribal Land Consolidation Area, or is otherwise subject to the tribe's jurisdiction, and

(2) The tribe acquires the land:

(i) At not less than the fair market value; and

(ii) With the written consent of a majority of the owners of the remaining undivided fractional trust or restricted interest of this land.

(h) The tribe acquires, at not less than the fair market value, part or all of the undivided fractional interests in a parcel of trust or restricted land within the tribe's reservation, or subject to the tribe's jurisdiction and:

(1) Over 50 percent of the owners of the undivided fractional interests consent in writing to the acquisition; or

(2) An individual Indian makes an offer under paragraph (e) of this section.

(i) An individual Indian:

(1) Already owns an undivided fractional interest in the land;

(2) Offers to match a tribal offer to purchase under paragraph (d) of this section; and

(3) Has used and possessed the land for at least 3 years preceding the tribe's offer to purchase.

Subpart Part B—Discretionary Acquisitions of Title On-Reservation

§ 151.9 What information must be provided in a request involving land inside a reservation or inside an approved Tribal Land Acquisition Area?

A request from an individual Indian or a tribe asking that the United States accept title to land inside a reservation boundary or to land inside an approved Tribal Land Acquisition Area must include:

(a) A complete description, or a copy, of the federal statute that authorizes the United States to accept the land in trust and any limitations contained in the authority.

(b) An explanation of why the individual Indian or tribe needs land to be in trust and how the land will be used. This explanation is a crucial factor in determining if the request should be approved.

(c) If the applicant is a tribe, an explanation of whether the tribe:

(1) Already owns an undivided fractional trust or restricted interest in the land; and

(2) Maintains jurisdiction over the land.

(d) If the applicant is an individual Indian, an explanation of:

(1) Whether the applicant already owns an undivided fractional trust or restricted interest in the land;

(2) The amount of land that the applicant already owns and the status of the land (fee, restricted, or trust); and

(3) Whether the applicant needs assistance in handling real estate affairs. For example, tell us if the applicant is a minor or has been declared legally incompetent.

(e) Title insurance or an abstract of title that meets the *Standards for the Preparation of Title Evidence in Land Acquisitions by the United States,* issued by the U. S. Department of Justice.

(f) Documentation that we need to comply with 516 DM 6, Appendix 4, National Environmental Policy Act (NEPA) Revised Implementing Procedures, and 602 DM 2, Land Acquisitions: Hazardous Substances Determinations. (For copies of these directives, see the Department of Interior, Bureau of Indian Affairs web site at: <http://www.doi.gov/bureau-indian-affairs.html>.) Include a record of consultation with appropriate authorities regarding environmental, endangered species, water quality, fish and wildlife, wetlands, transportation, air quality, cultural, historical value, hazardous waste, and toxic material issues.

§ 151. 10 What criteria will we use to evaluate requests involving land inside a reservation or inside an approved Tribal Land Acquisition Area?

We will review all information submitted under § 151.9. We may decide to accept trust title to the land if the acquisition meets all of the following criteria:

(a) We determine that the conveyance is necessary to facilitate tribal self-determination, economic development, Indian housing, or land consolidation;

(b) There is legal authority that authorizes us to accept the land in trust;

(c) The request is complete (including all supporting documents);

(d) The request will benefit the economic and/or social condition of the applicant;

(e) There is title insurance or an abstract of title that meets the *Standards for the Preparation of Title Evidence in Land Acquisitions by the United States,* issued by the U. S. Department of Justice;

(f) There is information sufficient for compliance with 516 DM 6, Appendix 4, National Environmental Policy Act (NEPA) Revised Implementing Procedures, and 602 DM 2, Land Acquisitions: Hazardous Substances Determinations, including, a record of coordination with agencies having jurisdiction over cultural, historic, or natural resources; and

(g) We determine after mitigation of effects on the environment, cultural resources, historic resources, and endangered or threatened species, that the conveyance is consistent with applicable environmental, cultural, historic, or natural resources law.

§ 151.11 Can an individual Indian or a tribe acquire land inside a reservation or inside an approved Tribal Land Acquisition Area of another tribe?

An individual Indian or a tribe, including individual Indians and tribes in Oklahoma, may acquire land in trust on another tribe's reservation, or inside another tribe's approved Tribal Land Acquisition Area, if the host tribe's governing body consents in writing. No consent is required if:

(a) An individual Indian or tribe already owns an undivided fractional trust or restricted interest in the parcel of land to be acquired; or

(b) The proposed acquisition is inside a reservation or an approved Tribal Land Acquisition Area that is shared by two or more tribes, and the acquisition is for one of these tribes, or one of these tribes' members.

Subpart C—Discretionary Acquisitions Off-Reservation

§ 151.12 What information must be provided in a request involving land outside a reservation or outside a Tribal Land Acquisition Area?

A request from an individual Indian or a tribe asking that the United States accept title to land outside a reservation boundary and outside an approved Tribal Land Acquisition Area, must include:

(a) A complete description, or a copy of, the statutory authority that authorizes the United States to accept land in trust and any limitations contained in the authority;

(b) An explanation of the need of the individual Indian or tribe for land in trust and how the land will be used. This explanation is a crucial factor in determining if the request should be approved. The request must explain:

(1) Why the present land base is not appropriate for the activity contemplated in the request;

(2) Why the applicant needs the land in trust for the proposed use; and

(3) How trust status will benefit the applicant's economic and/or social conditions.

(c) A description of how the applicant will use the land. This description must include an explanation of:

(1) The past uses of the land;

(2) The present use of the land;

(3) The anticipated future uses of the land;

(4) The cultural or historical interest in the land;

(5) The objectives that the individual Indian or tribe hopes to attain; and

(6) If the acquisition is for housing:

(i) The projected number of units to be built; and

(ii) The number of members who will benefit.

(7) If the applicant is acquiring the land for business purposes, the tribe must provide a business plan that specifies the anticipated economic benefits of the proposed use.

(d) A description of the following:

(1) The location of the land relative to State boundaries;

(2) The distance of the land from the boundaries of the tribe's reservation;

(3) The distance of the land from the Bureau's agency or area office;

(4) The location of roads and rights-of-way that provide access to the land; and

(5) The location of land in relation to the tribe's other trust lands.

(e) A description of the effect on the State and its political subdivisions of removing the land from tax rolls. Describe any measures the applicant will take to reduce these effects. The description of effects must include an explanation of:

(1) The amount of annual taxes currently assessed by the local governments;

(2) The amount of annual revenue lost from special assessments to the local governments, if any;

(3) The amount of annual revenue lost from mineral receipts to the local governments, if any; and

(4) The local governments' ability to provide public safety services for the land.

(f) A description of any jurisdictional and land use infrastructure issues that might arise. The description must address each of the following issues.

(1) Zoning, including:

(i) The current zoning of the land;

(ii) Any proposed use conflicts with current zoning; and

(iii) Any tribal zoning ordinances.

(2) Law enforcement and cross-deputization, including:

(i) Who currently provides law enforcement services for the land;

(ii) Whether the tribe already has its own law enforcement;

(iii) Who will supply law enforcement if the land is approved for trust status; and

(iv) Any additional resources required to provide adequate law enforcement and how they will be funded.

(3) Safety factors, including:

(i) Who supplies fire protection service for the land;

(ii) Who supplies emergency medical service for the land; and

(iii) If the land is in a flood area or flood control area.

(4) Traffic, roads, and streets, including:

(i) Access to the land;

(ii) A description and quantification of anticipated increased traffic in the area from proposed use; and

(iii) A description of whether existing roads and streets are adequate to handle any anticipated increase in traffic caused by the proposed use.

(5) Sanitation, including whether:

(i) The land is on a city sewage system;

(ii) The land is served by an adequate sewage system that meets applicable standards;

(iii)Trash pickup service or another method of trash disposal is available for the land;

(iv) The city or another facility supplies services to the land;

(v) There is an adequate water supply for the proposed use and any future anticipated uses; and

(vi) Whether the tribe has water rights to the available water supply.

(6) Utilities, including:

(i) Whether a city or a rural electric company supplies electricity to the land; and

(ii) The source of heating for the land, such as: natural gas, propane, oil, coal, wood, electric, or solar.

(7) Whether there are any cooperative agreements or voluntary actions intended to address jurisdictional and land use conflicts.

(8) Whether the tribe has made any provisions to compensate the State or local governments for revenue lost because of the removal of the land from the tax rolls. (Include any increases in Title IX funding from the Indian Education Act or Impact Aid funding.)

(g) Whether there is title evidence that meets the *Standards for the Preparation of Title Evidence in Land Acquisitions by the United States*, issued by the U. S. Department of Justice. The evidence will be examined to determine if the applicant has marketable title.

(h) The documentation that we need to comply with 516 DM 6, Appendix 4, National Environmental Policy Act (NEPA) Revised Implementing Procedures, and 602 DM 2, Land Acquisitions: Hazardous Substances Determinations. (For copies of these directives, see the Bureau of Indian Affairs web site at: <http://www.doi.gov/bureau-indian-affairs.html>.) Include a record of consultation with appropriate authorities regarding environmental, endangered species, water quality, fish and wildlife, wetlands, transportation, air quality, cultural, historical value, hazardous waste, and toxic material issues.

(i) If the request is for an individual Indian, documentation demonstrating that the applicant's request meets one of the criteria described in § 151.13.

§ 151.13 Can an individual Indian acquire land outside his or her own reservation?

Except as provided in paragraphs (a) and (b) of this section, we will not accept title to land in trust outside an individual Indian's reservation. We may approve acquisitions of land outside an individual Indian's reservation if:

(a) The individual Indian already owns an undivided fractional trust or restricted interest in the property being acquired; or

(b) The individual Indian has sold trust or restricted interest in land and the money received from the sale is reinvested in other land selected and purchased with these funds, or the individual Indian is purchasing land with funds obtained as a result of a sale of trust or restricted land under 25 U.S.C. 409a.

§ 151.14 What criteria will we use to evaluate a request involving land outside a reservation or outside an approved Tribal Land Acquisition Area?

We will review all information submitted under section § 151.12. We may decide to place the land in trust if we determine that the application meets all of the following criteria:

(a) We determine that the conveyance is necessary to facilitate tribal self-determination, economic development, Indian housing, or land consolidation;

(b) There is legal authority that authorizes us to accept land in trust;

(c) The request is complete (including all supporting documents);

(d) The acquisition will benefit the tribe's economic and/or social conditions;

(e) There is title evidence that meets the *Standards for the Preparation of Title Evidence in Land Acquisitions by the United States*, issued by the U. S. Department of Justice;

(f) There is information sufficient for compliance with 516 DM 6, Appendix 4, National Environmental Policy Act (NEPA) Revised Implementing

Procedures, and 602 DM 2, Land Acquisitions: Hazardous Substances Determinations: a record of coordination with agencies having jurisdiction over cultural, historic, and natural resources;

(g) We determine after mitigation of impacts on the environment, cultural resources, historic resources, and endangered or threatened species, that the conveyance is consistent with applicable environmental, cultural and historic resources law, and the Endangered Species Act;

(h) We determine that any adverse impacts on local governments and communities are reasonable compared to the benefits flowing to the applicant from taking the land in trust;

(i) The Bureau of Indian Affairs is equipped to handle the additional responsibilities of this acquisition and has sufficient staff to perform inspections for rights-of-way, leasing, soil conservation, and oil and gas exploration, or any other responsibilities resulting from the acquisition of the land in trust status; and

(j) The location of the land relative to State boundaries, and its distance from the boundaries of the tribe's reservation, is reasonable based in part on the following:

(1) If the land is in a different state than the tribe's reservation, the tribe's justification of anticipated benefits from the acquisition will be subject to greater scrutiny.

(2) As the distance between the tribe's reservation or approved Tribal Land Acquisition area and the land to be acquired increases, the tribe's justification of anticipated benefits from the acquisition will be subject to greater scrutiny.

(3) As the distance between the tribe's reservation or approved Tribal Land Acquisition Area and the land to be acquired increases, the concerns raised by the state and local governments will be given greater weight.

Subpart D—Mandatory Acceptance of Title

§ 151.15 What information must be provided in a request to process a mandatory transfer of title into trust status, and how will we process the request?

(a) To help us determine whether we are mandated by legislation to accept trust title to a specific tract of land, we require submission of the following documentation:

(1) A complete description, or a copy of, the statutory authority that directs the United States to place the land in trust, and any limitations contained in that authority;

(2) Title insurance or an abstract of title that meets the *Standards for the Preparation of Title Evidence in Land Acquisitions by the United States,* issued by the U.S. Department of Justice; and

(3) Any additional information that we may request.

(b) If we determine that the transfer of title into trust status is mandatory, we will publish that determination and a notice of intent to take the land in trust in the **Federal Register**.

§ 151.16 Can our determination that a transfer of title into trust status is mandatory be appealed?

The Department's determination that a transfer of title into trust status is "mandatory" may be appealed according to requirements set forth in part 2 of this title.

Subpart E—Tribal Land Acquisition Areas

§ 151.17 What is a Tribal Land Acquisition Area?

A Tribal Land Acquisition Area is a geographic boundary designated by a reservation-less tribe within which the tribe plans to acquire land within a 10-year period. If the Secretary approves the Tribal Land Acquisition Area under this part, the reservation-less tribe can acquire parcels of land within the Tribal Land Acquisition Area during that 10-year period under the on-reservation provisions of this part.

§ 151.18 What must be included in a request for Secretarial approval of a Tribal Land Acquisition Area?

A request for Secretarial approval of a Tribal Land Acquisition Area must be made in writing, although we do not require that it take any special form. However, we strongly urge the applicant to address each applicable section of this part in the order it appears here. Constructing the application in this way will help us review the request more efficiently. To be complete, a request for Secretarial approval of a Tribal Land Acquisition Area must identify the applicant tribe, and must include:

(a) A complete description, or a copy, of the federal statute(s) that authorize the United States to accept land in trust on behalf of the tribe, and any limitations contained in that authority.

(b) Copies of tribal documents relating to the establishment of the Tribal Land Acquisition Area and the acquisition of land within it, including:

(1) A copy of the tribe's constitution and by-laws, corporate charter, resolution, or excerpts from those documents that identify and grant tribal officials the authority to acquire tribal lands on behalf of the tribe;

(2) A copy of a tribal resolution designating the Tribal Land Acquisition Area, including a legal description of the lands located within it; and

(3) A copy of a tribal resolution requesting that the Secretary approve the proposed Tribal Land Acquisition Area.

(c) A narrative summary that describes the purposes and goals for acquiring lands in trust within the Tribal Land Acquisition Area, including general information about whether the lands are to be used for residential, governmental, educational, economic development, or other purposes.

(d) A narrative of the tribe's history that explains:

(1) When the tribe was federally recognized, and whether it was through legislation, treaty, or the Bureau of Indian Affairs' Federal Acknowledgment Process; and

(2) If applicable, how the tribe became dispossessed of its former reservation lands.

(e) A description of the Tribal Land Acquisition Area, including:

(1) A legal description of the lands within the Tribal Land Acquisition Area;

(2) Information about whether the lands are within the tribe's former reservation or aboriginal homelands;

(3) Information about whether the lands are Federal lands, State lands, or private lands;

(4) Information about whether the lands overlap with another tribe's jurisdictional area;

(5) Information about the significance of the land to the tribe, including whether the land has any particular historical, cultural, religious, or other value to the tribe; and

(6) Information about the distance of the Tribal Land Acquisition Area from the Bureau's nearest agency or area office.

(f) A description of the location of roads and rights-of-way, or of additional rights-of-way that may be needed to provide access to lands located within the Tribal Land Acquisition Area.

(g) A description of the reasonably anticipated overall effect on the State and its political subdivisions of removing lands located within the Tribal Land Acquisition Area from tax rolls, and a description of any measures the applicant will take to reduce these effects. The description of effects must include an explanation of:

(1) The amount of annual taxes currently assessed by the local governments for lands located within the Tribal Land Acquisition Area;

(2) The amount of annual revenue which would be lost from special assessments to the local governments, if any;

(3) The amount of annual revenue lost from mineral receipts to the local governments, if any; and

(4) The local governments' ability to provide public safety services for lands located within the Tribal Land Acquisition Area.

(h) A description of any overall jurisdictional and land use infrastructure issues that might arise if the lands within the Tribal Land Acquisition Area is taken into trust. The description must address each of the following issues.

(1) Zoning, including:

(i) The current zoning of the land;

(ii) Any proposed use conflicts with current zoning; and

(iii) Applicable tribal zoning ordinances.

(2) Law enforcement and cross-deputization, including:

(i) Who currently provides law enforcement services for the land;

(ii) Whether the tribe already has its own law enforcement;

(iii) Who will supply law enforcement if the land is approved for trust status; and

(iv) Whether additional resources would be needed to provide adequate law enforcement.

(3) Safety factors, including:

(i) Who supplies fire protection service for lands located within the Tribal Land Acquisition Area;

(ii) Who supplies emergency medical service for lands located within the Tribal Land Acquisition Area; and

(iii) Information about whether lands located within the Tribal Land Acquisition Area are in a flood area or flood control area.

(4) Traffic, roads, and streets, including:

(i) A description of current access to the land;

(ii) A description and quantification of anticipated increased traffic in the area from proposed use; and

(iii) A description of whether existing roads and streets are adequate to handle any anticipated increase in traffic caused by the proposed use.

(5) Sanitation, including whether:

(i) The lands located within the Tribal Land Acquisition Area are on a city sewage system;

(ii) The lands located within the Tribal Land Acquisition Area are served by an adequate sewage system that meets applicable standards;

(iii) Trash pickup service or another method of trash disposal is available for lands located within the Tribal Land Acquisition Area;

(iv) The city or another facility supplies sanitation services to the lands located within the Tribe Land Acquisition Area;

(v) There is an adequate water supply for the proposed use and any future anticipated uses; and

(vi) Whether the tribe has water rights to the available water supply.

(6) Utilities, including:

(i) Whether a city or a rural electric company supplies electricity to lands located within the Tribal Land Acquisition Area; and

(ii) The source of heating for lands located within the Tribal Land Acquisition Area, such as: natural gas, propane, oil, coal, wood, electric, or solar.

(7) Whether there exist any cooperative agreements or voluntary actions intended to address jurisdictional and land use conflicts.

(8) Whether the tribe has made any provisions to compensate the State and local governments for revenue lost because of the removal of the lands from the tax rolls. (Include any increases in Title IX funding from the Indian Education Act or Impact Aid funding.)

§ 151.19 How is a tribal request for Secretarial approval processed?

When we receive a request for Secretarial approval of a Tribal Land Acquisition Area, we will review the supporting documentation to determine if the request meets the requirements of this part. If the request is complete, we will:

(a) Provide notice of the request for Secretarial approval to the Governor's Office, to appropriate local government officials, and to appropriate officials of tribes located within a 50-mile radius of the boundaries of the proposed Tribal Land Acquisition Area. Recipients of the notice will be provided 60 days from the date of receipt in which to comment on the proposed Tribal Land Acquisition Area and the request supporting it. Other interested parties may also submit comments during the 60-day consultation period.

(b) After the close of the consultation period, based on the criteria described in § 151.21, we will decide whether to approve the Tribal Land Acquisition Area. Our decision on whether to approve the Tribal Land Acquisition Area will be communicated in the form of a certified letter to the applicant. We also will provide notice of our decision to interested parties by sending a copy of the decision letter to everyone (including State and local governments) who sent us written comments on the request for approval.

(c) If we decide not to approve the Tribal Land Acquisition Area, we will take no further action.

(d) If we decide to approve the Tribal Land Acquisition Area, we will:

(1) Publish in the **Federal Register**, or in a newspaper of general circulation serving the affected area, a notice of the decision to approve the Tribal Land Acquisition Area; and

(2) Thereafter review requests to accept trust title land located within the Tribal Land Acquisition Area as "on-reservation" acquisitions under the applicable on-reservation provisions in this part.

§ 151.20 What criteria will we use to decide whether to approve a proposed Tribal Land Acquisition Area?

In general, because tribes without reservations are significantly disadvantaged, both in terms of cultural preservation and in terms of being ineligible for federal land-based programmatic funding and technical assistance, there is a presumption in favor of the tribe's need for at least some trust land. However, in determining whether to approve establishment of a Tribal Land Acquisition Area, we will consider the individual circumstances of each applicant tribe, surrounding community, and affected land base. There are some standard criteria which will help direct our decision-making process. These standard criteria include:

(a) The request must be complete and contain all supporting documents;

(b) The statutory basis upon which the tribe proposes creation of the Tribal Land Acquisition Area: if the tribe is the subject of a statute directing the Secretary to take some unspecified land into trust for the tribe's benefit the tribe will enjoy a greater presumption in favor of approval of its proposed Tribal Land Acquisition Area. (For example, there is statutory language such as "the Secretary shall take land into trust within the tribe's service area," or "the Secretary shall take land into trust within X and Y counties.")

(c) The size of the proposed Tribal Land Acquisition Area in relation to the size of the tribe's membership: we will look for a reasonable connection between the amount of land the tribe wishes to take into trust, and the basic trust needs (housing, health, employment opportunities) of the tribe's membership.

(d) The relationship of the tribe to the lands located within the Tribal Land Acquisition Area: we will give greater weight to a request for approval of a Tribal Land Acquisition Area that encompasses lands to which the tribe

has established a strong cultural, historical, and/or legal connection.

(e) The ability of the tribe and the local non-Indian community to adjust to the jurisdictional changes that will occur if the lands within the Tribal Land Consolidation Area are taken into trust, including:

(1) That there are adequate arrangements for provision of police and fire protecion and other emergency response for persons living within the Tribal Land Consolidation Area (whether living on trust or non-trust property);

(2) That there are adequate arrangements for provision of other municipal-type services, such as garbage removal, water, sewage;

(3) That adverse impacts on local governments and communities are reasonable compared to the benefits flowing to the applicant.

§ 151.21 Can a tribe include in its Tribal Land Acquisition Area land inside another tribe's reservation or Tribal Land Acquisition Area?

A tribe may include land inside the reservation boundaries or within an approved Tribal Land Acquisition Area of another tribe, if:

(a) The host tribe's governing body consents in writing;

(b) The tribe already owns undivided fractional trust or restricted interests in the tracts of land identified in its Tribal Land Acquisition Area; or

(c) The tracts of land to be included in the plan are inside a reservation or an approved Tribal Land Acquisition area that is shared by two or more tribes, and the plan is for one of these tribes.

§ 151.22 If a Tribal Land Acquisition Area is not approved, is the tribe prohibited from acquiring land within it?

No. However, the tribe will have to apply to have individual parcels taken into trust under the off-reservation provisions of this part.

§ 151.23 If a Tribal Land Acquisition Area is approved, does the land taken into trust within it attain reservation status?

No. Lands taken into trust within a Tribal Land Acqusition Area will enjoy "Indian country" status as that term has been defined in relevant federal statutes and caselaw. However, those lands do not attain "reservation" status by virtue of the Tribal Land Acquisition Area having been approved by the Secretary. Reservation status can only be attained if:

(a) The tribe has applied to the Secretary under 12 U.S.C. 467; or

(b) There is a specific federal statute designating the land as a reservation.

§ 151.24 Can a Tribal Land Acquisition Area be modified after approval?

Yes. However, the changes must be submitted with a request for approval in compliance with the criteria in this part and must be approved by the Secretary.

Subpart F—False Statements, Recordkeeping, Information Collection

§ 151.25 What is the penalty for making false statements in connection with a request that we place land into trust?

Anyone who knowingly and willfully makes a false statement in connection with a trust title acquisition request may be subject to criminal prosecution under the False Statements Accountability Act of 1996, 18 U.S.C. 1001.

§ 151.26 What recordkeeping and reporting requirements apply to acquisitions of trust title under this part?

(a) Each document that we hold or that is created in the development of a request asking for land to be placed in trust is a permanent federal case file record. The Bureau of Indian Affairs file will maintain each of the documents in accordance with National Archives and Records Administration requirements.

(b) The Secretary will negotiate with Indian tribes and tribal organizations compacting and contracting under Title I or Title IV of the Indian Self-Determination and Education Assistance Act, 25 U.S.C. 250 *et seq.*, to ensure that such tribes and tribal organizations also maintain each document in a case file in accordance with National Archives and Records Administration rules and requirements, and to ensure that they follow all Bureau reporting requirements concerning this part.

§ 151.27 Do information collections under this part have Office of Management and Budget approval?

(a) The information collection requirements contained in §§ 151.4; 151.9; 151.12; 151.15, 151.18, and 151.26 have been approved by the Office of Management and Budget under 44 U.S.C. 33501 *et seq.* and assigned clearance number 1076-xxxx. It is a requirement of the Paperwork Reduction Act that each respondent to any information collection be notified that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a current valid OMB control number pursuant to 35 U.S.C. 3506(c)(B)(V); 44 CFR 1320 8(b)(3)(vii). Indian tribes and individuals must submit the information required under these sections to acquire land into trust. We will use the information in making a determination on an application to take land into trust. The applicant must respond to this request to obtain a benefit.

(b) Public reporting for on-reservation information collection is estimated to average 4 hours per response, including the time for reviewing instructions, gathering and maintaining data, and completing and reviewing the information collected. Public reporting for off-reservation information collection is estimated to average 8 hours per response, including the time for reviewing instructions, gathering and maintaining data, and completing and reviewing the information collected. Comments regarding the burden estimate or any other aspect of this information collection should be sent to the Bureau of Indian Affairs, Information Collection Clearance Officer, 1849 C Street, NW, Washington, DC 20240; and Attention: Desk Officer, for the Department of the Interior, Office of Information and Regulatory Affairs [OMB Control Number 1076-xxxx], Office of Management and Budget, Docket Library, Room 10102, 725 17th Street, NW, Washington, DC 20502.

Dated: April 2, 1999.

Kevin Gover,

Assistant Secretary—Indian Affairs.

[FR Doc. 99–8851 Filed 4–9–99; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Parts 4, 5 and 7

[Notice No. 873; Re: Notice No. 872]

RIN 1512–AB89

Prohibition of Certain Alcohol Beverage Containers and Standards of Fill for Distilled Spirits and Wine (98R–452P)

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury.

ACTION: Proposed rule; extension of comment period.

SUMMARY: This notice extends the comment period for Notice No. 872, a notice of proposed rulemaking, published in the **Federal Register** on February 9, 1999. ATF has received a request to extend the comment period in order to provide sufficient time for all interested parties to respond to the issues raised in the notice.

DATES: Written comments must be received on or before May 10, 1999.

ADDRESSES: Send written comments to: Chief, Regulations Division, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 50221, Washington, DC 20091–0221, [Attention: Notice No. 872].

FOR FURTHER INFORMATION CONTACT: William H. Foster, Regulations Division, (202) 927–8210, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW, Washington, DC 20226. You may also write questions by e-mail to *whfoster@atfhq.atf.treas.gov*. ATF will not accept comments on the proposal that are submitted to this address.

SUPPLEMENTARY INFORMATION:

Background

On February 9, 1999, ATF published a notice of proposed rulemaking (NPRM) in the **Federal Register** soliciting comments from the public and industry on a proposal to amend the regulations to clarify the standards of fill for distilled spirits and wine. This notice also proposed regulations to prohibit certain alcohol beverage containers that are likely to mislead consumers as to the identity or character of the distilled spirits, wine, or malt beverage products or are likely to be confused with other (non-alcohol) food products. The comment period for Notice No. 872 closes on April 12, 1999.

However, ATF received a request from the National Association of Beverage Importers, Inc. (NABI) to extend the comment period an additional 30 days. NABI, representing the companies that import most of the alcohol beverages brought into the United States, stated that additional time was needed for it to obtain information from its members and foreign counterparts in order to prepare the association's comments.

In consideration of the above, ATF finds that an extension of the comment period is warranted and the Bureau is, therefore, extending the comment period until May 10, 1999.

Disclosure

Copies of Notice No. 872 and written comments will be available for public inspection during normal business hours at: ATF Reference Library, Room 6480, 650 Massachusetts Avenue NW, Washington, DC.

Drafting Information

The author of this document is Nancy M. Kern, Regulations Division, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects

27 CFR Part 4

Advertising, consumer protection, customs duties and inspections, imports, labeling, packaging and containers, and wine.

27 CFR Part 5

Advertising, consumer protection, customs duties and inspections, imports, labeling, liquors, and packaging and containers.

27 CFR Part 7

Advertising, beer, consumer protection, customs duties and inspection, imports, and labeling.

Authority and Issuance

This notice is issued under the authority contained in 26 U.S.C. 5368, 5301, 7805; 27 U.S.C. 205.

Signed: April 6, 1999.

John W. Magaw,

Director.

[FR Doc. 99–8993 Filed 4–9–99; 8:45 am]

BILLING CODE 4810–31–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 013–0139b; FRL–6322–3]

Approval and Promulgation of Implementation Plans; California State Implementation Plan, San Joaquin Valley Unified Air Pollution Control District; South Coast Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing a limited approval and limited disapproval of revisions to the California State Implementation Plan (SIP) which concern the control of particulate matter (PM) from open burning. The intended effect of proposing limited approval and limited disapproval of these rules is to regulate PM emissions in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). EPA's final action on this proposed rule will incorporate these rules into the federally approved SIP for San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD) and South Coast Air Quality Management District (SCAQMD). EPA has evaluated SJVUAPCD Rule 4103 and SCAQMD Rule 444 and is proposing a simultaneous limited approval and limited disapproval under provisions of the CAA regarding EPA action on SIP submittals and general rulemaking authority. These revisions, while strengthening the SIP or maintaining the SIP's control strategy, do not fully meet the CAA provisions regarding plan submissions and requirements for nonattainment areas. In this action, EPA also is proposing full approval of SCAQMD Rule 208 for incorporation into the California SIP. EPA has evaluated this rule and determined that it is consistent with the CAA and EPA regulations and will maintain the SIP's control strategy.

DATES: Comments must be received on or before May 12, 1999.

ADDRESSES: Comments may be mailed to: Andrew Steckel, Rulemaking Office AIR–4, Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Copies of the rules and EPA's evaluation report of the rules are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted rules are also available for inspection at the following locations:

Environmental Protection Agency, Air Docket (6102), 401 "M" Street, S.W., Washington, D.C. 20460

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 "L" Street, Sacramento, CA 95812

San Joaquin Valley Unified Air Pollution Control District, 1990 East Gettysburg Street, Fresno, CA 93726

South Coast Air Quality Management District, 21865 East Copley Drive, Diamond Bar, CA 91765

FOR FURTHER INFORMATION CONTACT: Al Petersen, Rulemaking Office, AIR–4, Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901, Telephone: (415) 744–1135.

SUPPLEMENTARY INFORMATION:

I. Applicability

The rules being proposed for limited approval and limited disapproval into the California SIP are SJVUAPCD Rule 4103, Open Burning (amended December 16, 1993) and SCAQMD Rule 444, Open Fires (amended October 2, 1987). SJVUAPCD Rule 4103 was submitted by the State of California to EPA on May 24, 1994. SCAQMD Rule 444 was submitted by the State of California to EPA on March 23, 1988.

The rule being for proposed for full approval into the California SIP is SCAQMD Rule 208, Permit for Open

Burning (amended January 5, 1990). SCAQMD Rule 208 was submitted by the State of California to EPA on May 13, 1991.

II. Background

On March 3, 1978, EPA promulgated a list of total suspended particulate (TSP) nonattainment areas under the provisions of the 1977 Clean Air Act (1977 CAA or pre-amended Act), that included the San Joaquin Valley Planning Area and South Coast Air Basin (43 FR 8964; 40 CFR 81.305). On July 1, 1987 (52 FR 24672) EPA replaced the TSP standards with new PM standards applying only to PM up to 10 microns in diameter (PM–10).[1] On November 15, 1990, amendments to the 1977 CAA were enacted. Public Law 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q. On the date of enactment of the 1990 CAA Amendments, PM–10 areas meeting the qualifications of section 107(d)(4)(B) of the Act were designated nonattainment by operation of law and classified as moderate or serious pursuant to section 188(a). The San Joaquin Valley Planning Area (now under the SJVUAPCD), the South Coast Air Basin (under the SCAQMD), and the Coachella Valley Planning Area (now under the SCAQMD) were among the areas designated nonattainment.

On February 8, 1993, EPA classified four nonattainment areas as serious nonattainment, including the San Joaquin Valley Planning Area, the South Coast Air Basin, and the Coachella Valley Planning Area in 58 FR 3334 (January 1, 1993). This **Federal Register** action for SCAQMD excludes the Los Angeles County portion of the Southeast Desert AQMA, otherwise known as the Antelope Valley Region in Los Angeles County, which is now under the jurisdiction of the Antelope Valley Air Pollution Control District, as of July 1, 1997.[2]

Section 189(a) of the CAA requires moderate PM–10 nonattainment areas to adopt reasonably available control measures (RACM), including reasonably available control technology (RACT) for stationary sources of PM–10. Section 189(b) of the CAA requires serious nonattainment areas with significant PM–10 sources to adopt best available control measures (BACM), including best available control technology (BACT). SCAQMD and SJVUAPCD are serious PM–10 nonattainment areas. SCAQMD has not identified Open Burning as a significant PM–10 source in their PM–10 BACM Plan, so EPA will evaluate the SCAQMD rules against RACM requirements. If the SCAQMD BACM Plan should be disapproved, EPA may require SCAQMD to submit additional Open Burning provisions to meet BACM requirements. SJVUAPCD has not identified Open Burning as a non-significant PM–10 source in their BACM Plan, so EPA will evaluate the SJVUAPCD rule against RACM and BACM requirements. However, EPA may identify additional BACM requirements for Open Burning upon review of the SJVUAPCD BACM Plan at a later date.

In response to section 110(a) and Part D of the Act, the State of California submitted many PM–10 rules for incorporation into the California SIP, including the rules being acted on in this document. This document addresses EPA's proposed action for SJVUAPCD Rule 4103, Open Burning, SCAQMD Rule 444, Open Fires, and SCAQMD Rule 208, Permit for Open Burning. SJVUAPCD Rule 4103 was amended December 16, 1993, submitted by the State of California for incorporation into the SIP on May 24, 1994, and found to be complete on July 14, 1994, pursuant to EPA's completeness criteria that are set forth in 40 CFR part 51, appendix V.[3] SCAQMD Rule 444, was amended October 2, 1987, and submitted by the State of California for incorporation into the SIP on March 23, 1988. SCAQMD Rule 208 was amended January 5, 1990, submitted by the State of California for incorporation into the SIP on May 13, 1991, and found to be complete on July 10, 1991. The following is EPA's evaluation and proposed action for these rules.

III. EPA Evaluation and Proposed Action

In determining the approvability of a PM–10 rule, EPA must evaluate the rule for consistency with the requirements of the CAA and EPA regulations, as found in section 110 and Part D of the CAA and 40 CFR part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans). EPA must also ensure that rules are enforceable and strengthen the SIP or maintain the SIP's control strategy.

The statutory provisions relating to RACM and BACM are discussed in EPA's "General Preamble," which give the Agency's preliminary views on how EPA intends to act on SIPs submitted under Title I of the CAA. See 57 FR 13498 (April 16, 1992), 57 FR 18070 (April 28, 1992), and 59 FR 41998 (August 16, 1994). In this proposed action, EPA is evaluating SCAQMD rules to determine if they fulfill the RACM requirements of CAA section 189(a) and is evaluating SJVUAPCD rules to determine if they fulfill the BACM requirements of CAA section 189(b).

For the purpose of assisting state and local agencies in developing RACM and BACM rules, EPA prepared a series of technical guidance documents on PM–10 source categories (See CAA section 190). The RACM guidance applicable to these rules is entitled, "Appendix C3—Prescribed Burning Control Measures" (57 FR 18072). The BACM guidance applicable to these rules is entitled, "Prescribed Burning Background Document and Technical Information Document for Best Available Control Measures' (EPA–450/2–92–003).

Submitted SJVUAPCD Rule 4103 replaces 25 rules in the existing SIP for the eight counties that now comprise the SJVUAPCD. SJVUAPCD Rule 4103 regulates open burning and reduces PM emissions. Although SJVUAPCD Rule 4103 strengthens the SIP by combining and unifying the rules of eight counties and by eliminating the exemption for one- and two-family dwellings to burn residential rubbish, EPA has determined that SJVUAPCD Rule 4103 does not meet the requirements of RACM and BACM by allowing exemptions for eight burning activities that could be limited to Permissive-Burn Days. Rule 4103 also does not meet the requirements of BACM for Prescribed Burning (including Agricultural Burning, Forest Management Burning, Range Improvement Burning, and Wildland Vegetation Management Burning) to require burner training, to require emission reduction techniques, to require a smoke management plan, and

---

[1] On July 18, 1997 EPA promulgated revised and new standards for PM–10 and PM–2.5 (62 FR 38651). EPA has not yet established specific plan and control requirements for the revised and new standards. This action is part of California's efforts to achieve compliance with the 1987 PM–10 standards.

[2] The State has recently changed the names and boundaries of the air basins located within the southeast Desert Modified AQMA. Pursuant to State regulation, the Coachella-San Jacinto Planning Area is now part of the Salton Sea Air Basin (California Code of Regulations, Title 17, 60114); the Victor Valley/Barstow Region in San Bernardino County and the Antelope Valley Region in Los Angeles County are now a part of the Mojave Desert Air Basin (California Code of Regulations, Title 17, 60109). In addition, in 1996 the California Legislature established a new local agency, the Antelope Valley Air Pollution Control District, to have the responsibility for local air pollution planning and measures in the Antelope Valley Region (California Health & Safety Code, 40406).

[3] EPA adopted the completeness criteria on February 16, 1990 (55 FR 5830) and, pursuant to section 110(k)(1)(A) of the CAA, revised the criteria on August 26, 1991 (56 FR 42216).

to require the second level of smoke dispersion evaluation during the day (the first level is the initial evaluation at the begining of the day).

Submitted SCAQMD Rule 444 regulates open burning and reduces PM emissions. On July 6, 1982, EPA approved into the SIP a version SCAQMD Rule 444, Open Fires, that had been adopted by the District on October 2, 1981. Although the submitted SCAQMD Rule 444 will strengthen the SIP by requiring an approved implementation plan for Wildland Vegetation Management burning, EPA has determined that SCAQMD Rule 444 does not meet the requirements of RACM for Prescribed Burning, because the rule does not base approval of a burn on an evaluation of an airshed's capacity to disperse PM–10 emissions from all types of Open Burning and Prescribed and other PM–10 sources, to encourage burner training by offering incentives, and to encourage the use of emission reduction techniques by offering incentives.

There is currently no version of the SCAQMD Rule 208, Permit for Open Burning, in the SIP. Rule 208 requires a written permit to conduct Open Burning pursuant to SCAQMD Rule 444, Open Fires. EPA has evaluated the submitted SCAQMD Rule 208 and has determined that it is consistent with the CAA, EPA regulations, and meets the criteria for RACM in the General Preamble. EPA proposes full approval of SCAQMD Rule 208 into the California SIP.

A detailed list of rules to be replaced and a discussion of rule deficiencies can be found in the Technical Support Documents for SJVUAPCD Rule 4103 and SCAQMD Rule 444, which are available from the U.S. EPA's Region IX office.

Because of the above deficiencies, EPA cannot grant full approval of SJVUAPCD Rule 4103 and SCAQMD Rule 444 under section 110(k)(3) and part D. Also, because the submitted rules are not composed of separable parts that meet all the applicable requirements of the CAA, EPA cannot grant partial approval of the rules under section 110(k)(3). However, EPA may grant a limited approval of the submitted rules under section 110(k)(3) in light of EPA's authority pursuant to section 301(a) to adopt regulations necessary to further air quality by strengthening the SIP. In order to strengthen the SIP, EPA is proposing a limited approval of SJVUAPCD Rule 4103, Open Burning and SCAQMD Rule 444, Open Fires, under sections 110(k)(3) and 301(a) of the CAA.

At the same time, EPA is also proposing a limited disapproval of SJVUAPCD Rule 4103 and SCAQMD Rule 444, because they contain deficiencies, and, as such, the rules do not fully meet the requirements of part D of the Act. Under section 179(a)(2), if the Administrator disapproves a submission under section 110(k) for an area designated nonattainment, based on the submission's failure to meet one or more of the elements required by the Act, the Administrator must apply one of the sanctions set forth in section 179(b) unless the deficiency has been corrected within 18 months of such disapproval. Section 179(b) provides two sanctions available to the Administrator: Highway funding and offsets. The 18-month period referred to in section 179(a) will begin on the effective date of EPA's final limited disapproval. Moreover, the final disapproval triggers the Federal implementation plan (FIP) requirement under section 110(c). It should be noted that the rules covered by this limited disapproval have been adopted by SJVUAPCD and SCAQMD and are currently in effect in SJVUAPCD and SCAQMD, respectively. EPA's final limited disapproval action will not prevent SJVUAPCD, SCAQMD, or EPA from enforcing these rules.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

IV. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order (E.O.) 12866, Regulatory Planning and Review.

B. Executive Order 12875

Under Executive Order 12875, Enhancing the Intergovernmental Partnership, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates." Today's rule does not create a mandate on State, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

C. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This rule is not subject to E.O. 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

D. Executive Order 13084

Under Executive Order 13084, Consultation and Coordination with Indian Tribal Governments, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a

summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities." Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

Authority: U.S.C. 7401 *et seq.*

Dated: March 22, 1999.

Alexis Strauss,

Acting Regional Administrator, Region IX.

[FR Doc. 99–8949 Filed 4–9–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[WA 69–7143–b; FRL–6322–4]

Approval and Promulgation of State Implementation Plans: Washington

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to approve the State Implementation Plan (SIP) revision to the particulate matter with an aerodynamic diameter less that or equal to nominal 10 micrometers (PM–10) SIP for the Spokane PM–10 nonattainment area submitted by the State of Washington and received at EPA on March 2, 1999. The revision, makes minor revisions to two sections of the Spokane County Air Pollution Control Authority's Regulation I, Article IV. The SIP revision was submitted by the State to satisfy certain Federal Clean Air Act requirements for a PM–10 nonattainment plan. In the Final Rules section of this **Federal Register**, the EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal amendment and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated. If the EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

DATES: Written comments must be received in writing by May 12, 1999.

ADDRESSES: Written comments should be addressed to Montel Livingston, Environmental Protection Specialist (OAQ–107), Office of Air Quality, at the EPA Regional Office listed below. Copies of the state submittal are available at the following addresses for inspection during normal business hours. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

Environmental Protection Agency, Region 10, Office of Air Quality, 1200 6th Avenue, Seattle, WA 98101.

FOR FURTHER INFORMATION CONTACT: George Lauderdale, Office of Air Quality (OAQ–107), EPA, 1200 6th Avenue, Seattle, WA 98101, (206) 553-6511.

SUPPLEMENTARY INFORMATION: For additional information, see the Direct Final rule which is located in the Rules section of this **Federal Register**.

Dated: March 31, 1999.

Chuck Clarke,

Regional Administrator, Region 10.

[FR Doc. 99–8943 Filed 4–9–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IA 068–1068b; FRL–6322–2]

Approval and Promulgation of Implementation Plans; State of Iowa

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the state of Iowa on August 12, 1998. This revision consists of routine updates to Iowa Administrative Code, Chapters 20, 22, 23, 24, 25, 29, and 31. Approval of this

SIP revision will make these rule revisions Federally enforceable.

In the final rules section of the **Federal Register**, EPA is approving the state's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no relevant adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no relevant adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this rule. If EPA receives relevant adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

DATES: Comments on this proposed rule must be received in writing by May 12, 1999.

ADDRESSES: Comments may be mailed to Wayne A. Kaiser, Environmental Protection Agency, Air Planning and Development Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101.

FOR FURTHER INFORMATION CONTACT: Wayne Kaiser at (913) 551–7603.

SUPPLEMENTARY INFORMATION: See the information provided in the direct final rule which is located in the rules section of the **Federal Register**.

Dated: March 29, 1999.

Dennis Grams,

Regional Administrator, Region VII.

[FR Doc. 99–8941 Filed 4–9–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[GA–42–1–9908b; FRL6321–2]

Implementation Plan and Redesignation Request for the Muscogee County, Georgia Lead Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) proposes to simultaneously approve the lead state implementation plan (SIP) and redesignation request for the Muscogee County, Georgia lead nonattainment area. Both plans dated September 28, 1998, were submitted by the State of Georgia for the purpose of demonstrating that the Muscogee County area has attained the lead National Ambient Air Quality Standard (NAAQS). In the final rules section of this **Federal Register**, the EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to the direct final rule, no further activity is contemplated in relation to this proposed rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

DATES: To be considered, comments must be received by May 12, 1999.

ADDRESSES: Written comments should be addressed to Kimberly Bingham, at the EPA Regional Office listed below. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day. Copies of the documents relative to this action are available for public inspection during normal business hours at the following locations:

Air and Radiation Docket and Information Center (Air Docket 6102), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460

U.S. Environmental Protection Agency, Region 4, Atlanta Federal Center, Air, Pesticides, and Toxics Management Division, Air Planning Branch, 61 Forsyth Street, Atlanta, Georgia 30303–3104.

FOR FURTHER INFORMATION CONTACT: Kimberly Bingham of the EPA Region 4, Air Planning Branch at (404) 562–9038 and at the above address.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule which is published in the rules section of this **Federal Register**

Dated: March 18, 1999.

Michael V. Peyton,

Acting Regional Administrator, Region 4.

[FR Doc. 99–8945 Filed 4–9–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–6321–6]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Notice of intent for partial deletion of the French Limited Superfund Site from the National Priorities List.

SUMMARY: The United States Environmental Protection Agency, Region 6 (EPA) announces its intent to delete a portion of the French Limited Superfund Site (Site) from the National Priorities List (NPL) and requests public comment on this action. The NPL constitutes Appendix B of 40 CFR part 300, which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, 42 U.S.C. 9605. This partial deletion is proposed in accordance with 40 CFR 300.425(e) and the Notice of Policy Change: Partial Deletion of Sites Listed on the National Priorities List.

This proposal for partial deletion pertains to all portions of the Site, excluding shallow groundwater, where appropriate response actions under CERCLA have been completed (Site Deletion Area). The Site Deletion Area consists of all properties located within the Site boundaries but does not include the shallow groundwater beneath the Site (Excluded Area). The Excluded Area will remain on the NPL and is not the subject of this partial deletion. CERCLA response activities will continue in the Excluded Area through 2006, and this partial deletion will not alter or abate those activities.

This proposal for partial deletion is based on the determination by EPA and the State of Texas, through the Texas Natural Resource Conservation Commission (TNRCC), that all appropriate actions under CERCLA have been implemented to protect human health and the environment and that no further response action is appropriate in the Site Deletion Area. In the Site Deletion Area, extensive sampling and cleanups have been completed at all surface and shallow subsurface areas that had contaminant levels above the Record of Decision (ROD) criteria.

DATES: The EPA will accept comments concerning its proposal for partial deletion until May 12, 1999.

ADDRESSES: Comments may be mailed to: Mr. Donn Walters, Community Relations Coordinator, U.S. EPA, Region 6 (6SF–PO), 1445 Ross Avenue, Dallas, Texas 75202–2733, 1–800–533–3508 or (214) 665–6483.

Information Repositories: Comprehensive information on the Site as well as information specific to this proposed partial deletion is available for review at EPA's Region 6 office in Dallas, Texas. The Administrative Record and the Deletion Docket for this Site are maintained in EPA's Region 6 Library and are available for viewing and copying. The address for Region 6 Library office is: U.S. EPA, Region 6, Library, 12th Floor (6MD–II), 1445 Ross Avenue, Dallas, Texas 75202–2733, (214) 665–6424 or 665–6427, (214) 665–2146 (FAX).

Hours of operation, excluding holidays: Monday—Friday 8 a.m.–4:30 p.m.

The administrative record and information specific to this proposal also are available for viewing at the French Limited Superfund Site information repositories located at: Crosby Branch Library, 135 Hare Road, Crosby, Texas 77532, (713) 328–3535.

Hours of operation, excluding holidays:

Monday 12 p.m.–8 p.m.
Tuesday–Thursday 10 a.m.–6 p.m.
Friday 1 p.m.–6 p.m.
Saturday 10 a.m.–2 p.m.

Texas Natural Resource Conservation Commission: 12118 North IH 35, Technical Park Center, Room 190, Building D, Austin, Texas 78753, (512) 239–2920.

Hours of operation, excluding holidays: Monday—Friday 8 a.m.–5 p.m., Rice University, Fondren Library, Government Publications, 6100 South Main, Houston, Texas 77005, (713) 527–4800

Hours of operation, excluding holidays: Monday–Thursday 7 a.m.–2 a.m.

Friday 7 a.m.–10 p.m.
Saturday 9 a.m.–10 p.m.
Sunday 11 a.m.–2 a.m.

FOR FURTHER INFORMATION CONTACT: Mr. Ernest R. Franke, Project Manager, U.S. EPA, Region 6 (6SF–AP), 1445 Ross Avenue, Dallas, Texas 75202–2733, (214) 665–8521.

SUPPLEMENTARY INFORMATION:

Table of Contents:

I. Introduction
II. NPL Deletion Criteria
III. Deletion Procedures
IV. Basis for Intended Partial Site Deletion
Appendix A—National Priorities List Deletion Docket—French Limited Superfund Site
Appendix B—Site Coordinate Boundaries—French Limited Superfund Site, Crosby, Texas

I. Introduction

The EPA Region 6 announces its intent to delete a portion of the French Limited Superfund Site, Crosby, Harris County, Texas, from the NPL, which constitutes Appendix B of the NCP, 40 CFR part 300, and requests comments on this proposal for partial deletion.

This proposal for partial deletion pertains only to the Site Deletion Area defined herein to consist of all portions of the Site, excluding shallow groundwater, where CERCLA response activities have been completed. The Site Deletion Area is the triangular 22.481-acre tract, including the former eight-acre waste lagoon, located immediately east of the intersection of, and bounded on two sides by, old U.S. Highway 90 and Gulf Pump Road near Crosby, Texas.

The Excluded Areas of the Site that will remain on the NPL and are not the subject of this partial deletion are defined herein to consist of the shallow aquifer (S1 and INT units) that is undergoing natural attenuation beneath the Site. CERCLA response activities will continue in the Excluded Area. The NPL is a list maintained by EPA of sites that EPA has determined present a significant risk to public health or the environment. Pursuant to 40 CFR 300.425(e)(3), "All releases deleted from the NPL are eligible for further Fund-financed remedial actions should future conditions warrant such action."

The EPA will accept comments concerning its intent for partial deletion for 30 days after publication of this document in the **Federal Register** and a newspaper of record.

Section II of this document explains the criteria for deleting sites from the NPL. Section III discusses procedures that EPA is using for this action. Section IV discusses the history of the Site and explains how the Site meets the deletion criteria.

II. NPL Deletion Criteria

The NCP establishes the criteria that EPA uses to delete sites from the NPL. In accordance with 40 CFR 300.425(e), sites may be deleted from the NPL where no further response is appropriate to protect public health or the environment. In making such a determination pursuant to § 300.425(e), EPA will consider, in consultation with the State, whether any of the following criteria have been met:

(a) Section 300.425(e)(1)(i): "Responsible parties or other persons have implemented all appropriate response actions required;"

(b) Section 300.425(e)(1)(ii): "All appropriate Fund-financed response under CERCLA has been implemented, and no further response action by responsible parties is appropriate; or"

(c) Section 300.425(e)(1)(iii): "The remedial investigation has shown that the release poses no significant threat to public health or the environment and, therefore, taking of remedial measures is not appropriate."

A partial deletion of a site from the NPL does not affect or impede the EPA's ability to conduct CERCLA response activities at areas not deleted and remaining on the NPL. In addition, deletion of a portion of a site from the NPL does not affect the liability of responsible parties or impede agency efforts to recover costs associated with response efforts.

III. Deletion Procedures

Deletion of a portion of a site from the NPL does not itself create, alter, or revoke any person's rights or obligations. The NPL is designed primarily for informational purposes and to assist EPA management.

Upon determination that at least one of the criteria described in § 300.425(e) of the NCP has been met, EPA may formally begin deletion procedures. The following procedures were used for the intended deletion of the Site Deletion Area from the NPL:

(1) The EPA consulted with the State of Texas on this proposed partial deletion from the NPL prior to developing this notice of intent for partial deletion.

(2) The EPA provided the State of Texas at least 30 working days for review of this notice of intent for partial deletion prior to its publication in the **Federal Register**, and the State of Texas, through the TNRCC, concurred with this proposed partial deletion decision.

(3) Concurrently with publication of this notice of intent for partial deletion, a document is being published in a newspaper of record and is being distributed to appropriate federal, state, and local officials, and other interested parties. Both notices announce a 30 day public comment period concerning this proposed partial deletion, which commences on the date of publication of this document in the **Federal Register** and a newspaper of record.

(4) The EPA has placed copies of information supporting the proposed partial deletion in the information

repositories listed above, which information is available for public inspection and copying. The notice in a newspaper of record also announces the availability of this notice of intent for partial deletion. The public is asked to comment on the EPA's proposal to delete the Site Deletion Area from the NPL. All critical documents needed to evaluate EPA's decision are listed on the Deletion Docket and are available for review and copying at the information repositories.

(5) Upon completion of the 30 day public comment period, the EPA will evaluate the comments and all new data submitted before issuing a final decision on the proposed partial deletion. The EPA will prepare a Responsiveness Summary that will address concerns presented by comments and new data and respond to each significant comment and all significant new data submitted during the comment period. Such Responsiveness Summary will be included in the final partial deletion package. Members of the public are encouraged to contact the EPA to obtain a copy of the Responsiveness Summary.

(6) If, after review of all public comments, the EPA determines that the partial deletion from the NPL is appropriate, the EPA will publish a final notice of final partial deletion in the **Federal Register**. The deletion of the Site Deletion Area does not actually occur until a final notice of partial deletion is published in the **Federal Register**. The EPA will place the final partial deletion package in the information repositories listed above once the final notice of partial deletion has been published in the **Federal Register**.

IV. Basis for Intended Partial Site Deletion

The following provides the EPA's rationale for deletion of the Site Deletion Area from the NPL and EPA's finding that the criterion in 40 CFR 300.425(e)(1)(i) has been satisfied.

Background

The French Limited Site is a 22.5-Sacre tract of land located adjacent to Highway US–90 in eastern Harris County, Texas, about 20 miles northeast of Houston. The Site is approximately triangular in shape. The Site is in the floodplain of the San Jacinto River, an area that was extensively used for sand mining in the 1950s and 1960s.

During the period of 1966 through 1971, the Site was permitted by the State of Texas to accept industrial waste material. About 80 million gallons of waste material, generated by Houston area responsible parties, were disposed in the main waste lagoon creating 300,000 cubic yards of contaminated sludges and soils. Some neutralization was done in 1971 and 1972, and the Site was closed to receiving wastes in 1973.

The main waste lagoon at the French Site was an abandoned sand pit, consisting of about eight acres with an average water depth of about 20 to 25 feet. The Site also included a drainage "slough" adjacent to the main pit that periodically received contaminants that were washed out of the lagoon during flooding events. A shallow aquifer was contaminated beneath the Site to a depth of approximately 50 feet and extended laterally offsite approximately 600 feet.

Overview of Regulatory Activities

After Site closure in 1973, a series of regulatory activities occurred which defined the remedial action objectives and implementation schedule for the French Limited Site. In 1981 the Site was listed on the NPL and triggered emergency actions, engineering studies, and regulatory enforcement actions (including a ROD and a consent decree (CD)), remedial action construction, and operations. A chronological summary of these activities is presented in Table 1.

TABLE 1.—SUMMARY OF REGULATORY ACTIVITIES

Date	Activity	Comments
1973	Site closed to receiving wastes	
1981	Site placed on NPL	
1982–1984	a. EPA and State conduct Remedial Investigation/ Feasibility Study (RI/FS) through a Cooperative Agreement.	Removal Action was necessary to stabilize lagoon dikes and replacement of sludges released during flood event.
	b. Emergency Removal Action performed by EPA.	
1984–1987	Potentially responsible parties (PRPs) conduct Supplemental RI/FS and Pilot Studies.	Pilot studies demonstrate bioremediation will be effective.
1988	ROD issued. Equipment development testing.	In situ bioremediation selected as remedy for lagoon: Clean-up levels established for lagoon and groundwater.
1989	a. Flood Wall constructed around lagoon.(June-Nov.).	Sheet-pile wall constructed around lagoon earlier than planned in response to flood. Work done under AOC.
	b. EPA Inspection of Construction of floodwall.	
	c. Responsible parties conduct shallow subsurface soil excavation and slough remediation under AOC.	
1990	a. Consent Decree between EPA and PRP signed.	
1990–1991	a. Lagoon Facilities designed and constructed.	Both lagoon and aquifer system designed and constructed under one construction package.
	b. Aquifer Facilities designed and constructed.	Construction Completed: December 1991.
	c. EPA Inspection of Construction of lagoon.	
1992–1993	a. Lagoon Bioremediation Operation.	Lagoon remediation is now complete. EPA issued the Certification of Completion for Lagoon Remediation in May 1995.

TABLE 1.—SUMMARY OF REGULATORY ACTIVITIES—Continued

Date	Activity	Comments
	b. EPA Oversight and Split Sampling for Remediation Verification. c. EPA approval of Site Remediation Report: Part A (Lagoon).	
1994	Preliminary Site Close Out Report	Preliminary Site Close Out Report documents that construction activities for the site have been completed in accordance with OSWER Directive 9320.2–06.
1992–1995	a. Aquifer In situ Bioremediation, Extraction, and Treatment Operations and Maintenance. b. EPA Oversight for Remediation Verification.	Operation of active aquifer remediation system was completed December 1995. Natural Attenuation Modeling Report finalized December 1995.
1996	a. EPA approval of Site Remediation Report: Part B (Aquifer). b. Site Closure Plan approved March 1996. c. EPA prepares Final Close Out Report and Notice of Intent for Deletion from the NPL.	Active aquifer remediation complete. EPA issued the Certificate of Completion for the Active Aquifer Remediation. EPA will prepare final deletion document upon successful attainment of groundwater cleanup criteria.
1996–2005	Natural attenuation of groundwater remediation and post closure monitoring. Five-Year reviews will be performed in 1999 and 2004.	Groundwater monitoring will track natural attenuation progress. FLTG will prepare periodic groundwater summaries and evaluations (See Site Closure Plan for specific deliverables).
2006–2025	Begin compliance monitoring for the remaining 20 years of post closure monitoring. Five-Year reviews will be performed in 2009, 2014, 2019, and 2024.	Groundwater monitoring ensures continued protection of human health and the environment. The groundwater monitoring results will be summarized in reports to be submitted to EPA and TNRCC (See Site Closure Plan for specific deliverables).

Record of Decision

The components of the selected remedy defined in the Record of Decision are as follows:

(a) The primary component of the selected remedy for French Limited is in situ biological treatment of the sludges and contaminated soils in the lagoon onsite.

(b) The contaminated groundwater will be recovered and treated during implementation of the in situ biological treatment process. Groundwater recovery and treatment will continue until modeling shows that a reduction in the concentration of volatile organics to a level which attains the 10^{-6} Human Health Criteria can be achieved through natural attenuation in 10 years or less.

(c) Surface water from the lagoon will be treated to at least the Texas surface water quality standards for San Jacinto River Segment 1001.

(d) Residues generated from the treatment process will be stabilized to prevent leachate generation and used as backfill in the lagoon. The remaining lagoon volume will be backfilled with clean soil. The surface will then be graded to promote drainage away from the Site.

(e) The final component of the remedy involves post-closure monitoring of the upper and lower aquifers for a period of 30 years. Post-closure monitoring is required under the Resource Conservation and Recovery Act (RCRA).

Consent Decree

In autumn 1988 and spring 1989, EPA negotiated a consent decree (CD) with FLTG, Inc. (FLTG) to conduct the remedy established in the 1988 ROD. The CD was effective in March 1990.

The first deliverable by FLTG pursuant to the CD was a remedial action plan (RAP) that established the design, construction and operations planning, and schedule requirements to meet the obligations of the CD. FLTG contracted ENSR Corporation to prepare the RAP and the subsequent design packages for the remedial action. The final approved RAP was submitted to EPA in October 1990.

A summary of the implementation of the selected remedy and criteria for the lagoon, aquifer, and surface water is presented in the following subsections.

Lagoon

The primary component of the selected remedy for the French Site was in situ biological treatment of the sludges and contaminated soils in the lagoon. The concentrations of contaminants in the sludges and soils were reduced to a $1x10^{-5}$ excess cancer risk that was tracked by the compounds and remediation standards shown in Table 2:

TABLE 2.—LAGOON SLUDGE/SOIL CLEAN-UP STANDARDS

Compound	Remediation standard, ppm*
Benzene	14
Benzo(a)Pyrene	9
Vinyl Chloride	43
PCB(Total)	23
Arsenic	7

*parts per million.

The biomass generated during the biological treatment process was stabilized in place and the remaining lagoon volume was backfilled with approximately 15 to 20 feet of clean soil. The surface was graded to promote drainage away from the Site.

The completion of the lagoon remediation is documented in the Site Remediation Summary Report: Part A, Lagoon Remediation Verification, May 1995.

Aquifer/Groundwater

The contaminated groundwater was recovered and treated in an above-

ground biological treatment facility. FLTG enhanced aquifer and groundwater remediation with the injection of oxygen and nutrients to stimulate subsurface in situ biological treatment processes. Active groundwater recovery and treatment operations continued until computer modeling showed that aquifer remediation goals could be met through natural attenuation within 10 years of system shut-off. Aquifer remediation goals are Maximum Concentration Levels (MCLs) or the $1x10^{-6}$ Human Health Criteria at the Site boundary. The active aquifer remediation system was shut off in December 1995. The completion of the active aquifer remediation is documented in the Site Remediation Summary Report: Part B Active Aquifer Verification, March 1996.

Surface Water

Surface water from the lagoon was treated to at least the Texas surface water quality standards for San Jacinto River Segment 1001 as specified in the remedial action plan.

Post-Closure Monitoring

The final component of the remedy involves post-closure monitoring of the upper and lower aquifers for a period of 30 years. Post-closure monitoring is required under RCRA. The French Limited Site closure plan was completed and approved by EPA in March 1996. The post-closure monitoring, as described in the plan, consists of 10 years of progress monitoring and 20 years of compliance monitoring. During the progress monitoring, 13 wells in the S1 unit and 18 wells in the INT unit will be sampled and analyzed for indicator compounds to evaluate natural attenuation progress.

During the 20-year compliance monitoring program, six wells in the S1 unit and eight wells in the INT unit will be sampled and analyzed for indicator compounds. In addition, several wells will monitor the gradient inside and outside the lagoon sheet-pile wall.

Community Involvement

The EPA has the lead responsibility for community involvement activities with TNRCC assistance. Meetings with the surrounding communities (Riverdale, Crosby, and Barrett Station) were held by both EPA and FLTG on a periodic basis to explain the ongoing response actions. The community relations plan was finalized in August 1989.

A community meeting was held at the Crosby High School on February 11, 1988, to present the preferred remedial alternatives as described in the proposed plan. The public comment period ran from January 25, 1988, through February 23, 1988. Several fact sheets were prepared by EPA before and after the ROD, administrative order, and CD were signed. There was a public comment period associated with the lodging of the CD with the federal court. EPA also issued press releases to local newspapers and has issued notices that the contents of the administrative record are available in four designated repositories for public review and copying. EPA and TNRCC conducted an open house in May 1995, to inform the residents and local officials of the progress regarding the completion of the remedial actions at the Site. During the public comment period for this proposed partial deletion, EPA and TNRCC will conduct an open house meeting in Crosby, Texas, to answer questions and receive public comments.

In addition to these public meetings and fact sheets, EPA, TNRCC, and FLTG prepared routine publications of progress, maintained a 24-hour telephone hot line, participated in community response projects, conducted group tours and technical seminars, and provided other community outreach programs.

Site Inspections

Beginning in 1987, EPA and TNRCC conducted monthly inspections of the Site, which was being cleaned up by the responsible parties. On February 14, 1996, EPA conducted an inspection of the Site including the former waste lagoon and aquifer remediation system. EPA determined that the remedial action performed in the Site Deletion Area was successful in protecting public health and the environment. Therefore, except for the Excluded Area, all appropriate response actions have been completed in the surface and subsurface soils.

Conclusions

In the Excluded Area, a 10-year period of natural attenuation, following four years of extraction, treatment, and in situ bioremediation of the shallow aquifer, is part of the 30-year post closure monitoring as described in the ROD. The active groundwater remediation operations continued until computer modeling showed that aquifer remediation goals (as specified in the ROD) could be met through natural attenuation within 10 years of system shut-off. System shut-off occurred December 15, 1995. The analysis supporting system shut down is documented in the Natural Attenuation Modeling Report dated December 1995.

During the 10-year (or less) natural attenuation phase of remediation, progress monitoring will be performed at selected groundwater wells to confirm the computer modeling predictions. FLTG will continue to collect and analyze groundwater from groundwater monitoring wells at selected locations at the Site. Upon successful achievement of aquifer cleanup criteria, EPA will initiate full deletion of the Site from the NPL and the FLTG will conduct post-closure monitoring activities for an additional 20 years to ensure protectiveness of the remedy. Pursuant to the NCP, five-year reviews will be required for the Site Deletion Area and the Excluded Area. The first five-year review was performed by EPA in December 1994. Five-year reviews will be required in years 1999, 2004, 2009, 2014, 2019, and 2024.

All EPA completion requirements for the Site Deletion Area have been met. Specifically, confirmatory sampling has verified that the surface and shallow subsurface soils cleanup criteria specified in the ROD have been achieved at remediated locations within the Site Deletion Area.

The Site Deletion Area will remain eligible for future Fund-financed response actions if future conditions warrant such action. Furthermore, this proposed partial deletion does not alter the status of the Excluded Area which are is not being deleted and which will remain on the NPL.

The EPA, with concurrence of the State of Texas, has determined that all appropriate CERCLA response actions have been completed at the Site Deletion Area. Therefore, EPA makes this proposal to delete that portion of the Site from the NPL.

Dated: March 31, 1999.

Jerry Clifford,

Acting Regional Administrator, Region 6.

Appendix A—National Priorities List Deletion Docket—French Limited Superfund Site

- Remedial Investigation Report, April 1985
- 1986 Field Investigation and Supplement Remedial Investigation Report, December 1986
- Feasibility Study Report, March 1987
- In Situ Bioremediation Demonstration Report, November 1987
- EPA Superfund Record of Decision: French Limited, Texas, March 24, 1988.
- 1988 Slough Investigation Report, October 1988
- *United States of America* vs. *French Limited Inc. et al:* Consent Decree Number H–89–2544, March 1989.
- Flood and Migration Control Wall Design Report, August 1989

- North Pit Remediation Report, November 1989
- Installation Report for Flood and Migration Control Wall, January 1990
- Remedial Action Plan by ENSR Consulting Inc., FLTG, Inc., September 1990.
- Bioremediation Facilities Design Report by ENSR Consulting Inc., FLTG, Inc., May 1991.
- Shallow Aquifer and Subsoil Remediation Facilities Design Report prepared by FLTG, Inc., July 1991.
- 1992, 1993, and 1994 Annual Groundwater Sampling and Comparison Reports prepared by CH2M HILL, 1993, 1994, and 1995.
- 1992, 1993, 1994, and 1995 Annual GW Sampling and Analysis Reports prepared by FLTG, Inc.
- Cell E Remediation Verification Report by FLTG, Inc., December 1992.
- Quality Assurance Validation of Cell E Subsoil Remediation Verification Samples by Flory Environmental Consultants, FLTG, Inc., February 15, 1993.
- EPA Cell E Remediation Verification Report, May 1993.
- Quality Assurance Validation of Cell D/F Remediation Verification Samples and Quality Assurance Report by FLTG, Inc., January 20, 1994.
- Superfund Preliminary Site Close Out Report prepared by EPA September 1994
- Aquifer Remediation System, Refinements, and Enhancement Reports prepared by FLTG, Inc., October 1994.
- DNAPL Study, Remedial Alternative Selection and Feasibility Design Report prepared by Applied Hydrology Associates, Inc., November 1994.
- EPA, First Five-Year Review (Type 1a), CERCLIS TXD–980514814, December 1994.
- EPA Split Sampling and Analysis for Cell D/F, April 1995.
- Site Remediation Summary Report: Part A, Lagoon Remediation Verification, EPA, May 1995.
- INT–11 DNAPL Area Cutoff Wall Installation and Permeability Certification Report prepared by Applied Hydrology Associates, August 1995.
- Natural Attenuation Modeling Report prepared by Applied Hydrology Associates, Inc., December 1995.
- Remediation Summary Report: Part B, Active Aquifer Verification prepared by FLTG, Inc. in March 1996.
- Site Closure Plan, French Limited Project prepared by Southwestern Environmental Consulting, Inc., March 1996.
- Superfund Site Closeout Report prepared by EPA, April 1996.

Appendix B—Site Coordinate Boundaries—French Limited Superfund Site, Crosby, Texas

The proposed partial deletion of the French Limited Superfund Site is described by the latitude and longitude coordinate points as shown on the attached map of Appendix B. The Geographic Coordinates are DMS units with NAD27 Datum as follows:

Map point no.	Latitude	Longitude
1.	N 29°52′46.87″	W 95°04′45.57″.
2.	N 29°52′54.97″	W 95°04′20.57″.
3.	N 29°52′46.99″	W 95°04′15.20″.

[FR Doc. 99–8781 Filed 4–12–99; 8:45 am]
BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Parts 3100, 3106, 3130, and 3160

[AA–610–08–4111–2410]

RIN 1004–AC54

Oil and Gas Leasing; Onshore Oil and Gas Operations

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed rule; extension of public comment period.

SUMMARY: The Bureau of Land Management (BLM) is extending the public comment period for the oil and gas drainage proposed rule published in the **Federal Register** on January 13, 1998, (63 FR 1936). A notice to reopen the comment period was published in the **Federal Register** on December 3, 1998, (63 FR 66776) and corrected on Jan. 13, 1999 (64 FR 2166). This extension is in response to requests that additional time is needed to complete consultations on the issue of applicability of the proposed rule to Tribal and individual Indian oil and gas leases.

DATES: Submit comments on or before June 4, 1999. BLM may not necessarily consider comments received after this time in developing the final rule.

ADDRESSES: If you wish to comment, you may submit your comments by any one of several methods. You may mail comments to the Bureau of Land Management, Administrative Record, 1849 "C" Street, NW, Room 401LS, Washington, DC 20240. You may also comment via the Internet to *WOComment@wo.blm.gov*. Please submit comments as an ASCII file avoiding the use of special characters and any form of encryption. Please also include "ATTN: AC54" and your name and return address in your Internet message. If you do not receive a confirmation from the system that we have received your Internet message, contact us directly on (202) 452–5030.

FOR FURTHER INFORMATION CONTACT: Donnie Shaw, Fluid Minerals Group, Bureau of Land Management, Mail Stop 401LS, 1849 "C" Street, NW, Washington, DC 20240; telephone (202) 452–0340 (Commercial or FTS). Individuals who use a telecommunication device for the deaf (TDD) may call the Federal Information Relay Service at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, except holidays, to reach the above information contact.

Dated: April 6, 1999.

Sylvia V. Baca,

Acting Assistant Secretary, Land and Minerals Management.

[FR Doc. 99–9054 Filed 4–9–99; 8:45 am]
BILLING CODE 4310–84–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA–7282]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Proposed rule.

SUMMARY: Technical information or comments are requested on the proposed base (1% annual chance) flood elevations and proposed base flood elevation modifications for the communities listed below. The base flood elevations and modified base flood elevations are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The comment period is ninety (90) days following the second

publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: The proposed base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Matthew B. Miller, P.E., Chief, Hazards Study Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–3461, or (e-mail) matt.miller@fema.gov.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency proposes to make determinations of base flood elevations and modified base flood elevations for each community listed below, in accordance with Section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed base flood and modified base flood elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

National Environmental Policy Act

This proposed rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Associate Director for Mitigation certifies that this proposed rule is exempt from the requirements of the Regulatory Flexibility Act because proposed or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This proposed rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This proposed rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This proposed rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet. (NGVD)	
				Existing	Modified
California	San Mateo (City) San Mateo County.	San Mateo Creek	Approximately 800 feet downstream of J. Hart Clinton Drive.	None	*7.0
			Approximately 55 feet upstream of El Cerrito Road.	None	*73
		San Mateo Creek Overflow.	Approximately 1,600 feet downstream of divergence from San Mateo Creek.	None	*7.0
			At divergence from San Mateo Creek	None	*12.0
Maps are available for inspection at the City of San Mateo City Hall, 330 West 20th Avenue, San Mateo, California.					
Send comments to The Honorable Arne Croce, City Manager, City of San Mateo, 330 West 20th Avenue, San Mateo, California 94403.					
Iowa	Dallas County and Incorporated Areas.	Little Walnut Creek	Approximately 3,200 feet downstream from County Road R–30.	None	*917
			Approximately 6,650 feet upstream from County Road R–22.	None	*1,016
		Walnut Creek	At 156th Street	None	*913
			Approximately 3,950 feet upstream of 230th Street.	None	*978
		Raccoon River	Approximately 51,000 feet downstream of County Road 90 (at County boundary).	None	*833
			Approximately 5,900 feet upstream of County Road R–16 (at confluence of North and South Raccoon Rivers).	None	*868
		North Raccoon River	Approximately 400 feet downstream of Interstate Highway 801.	None	*868
			Approximately 16,800 feet upstream of U.S. Highway 169.	None	*897

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet. (NGVD)	
				Existing	Modified
		Raccoon River Mill Slough	Approximately 2,300 feet downstream of Old Wiscotta Road (at downstream confluence with North Raccoon River).	None	*881
			Approximately 4,200 feet upstream of U.S. Highway 169 (at upstream confluence with North Raccoon River).	None	*890

Maps are available for inspection at the Dallas County Planning and Zoning Department, Dallas County Courthouse, 801 Court Street, Adel, Iowa.

Send comments to The Honorable Julius M. Little, Chairman, Dallas County Board of Supervisors, Dallas County Courthouse, 801 Court Street, Adel, Iowa 50003.

Maps are available for inspection at the City of Adel City Hall, 102 South Tenth Street, Adel, Iowa.

Send comments to The Honorable Tim Peters, Mayor, City of Adel, P.O. Box 248, Adel, Iowa 50003.

Maps are available for inspection at the City of Van Meter City Hall, 505 Grant Street, Van Meter, Iowa.

Send comments to The Honorable Jack Rockwell, Mayor, City of Van Meter, P.O. Box 160, Van Meter, Iowa 50261.

Maps are available for inspection at the City of Waukee City Hall, 410 Sixth Street, Waukee, Iowa.

Send comments to The Honorable Don Bailey, Mayor, City of Waukee, P.O. Box 847, Waukee, Iowa 50263.

Missouri	Lee's Summit (City), Cass and Jackson Counties.	Raintree Lake	Just west of Ward Road	None	*960

Maps are available for inspection at the Community Development Office, 207 Southwest Market, Lee's Summit, Missouri.

Send comments to The Honorable Karen R. Messerli, Mayor, City of Lee's Summit, 207 Southwest Market, Lee's Summit, Missouri 64063.

Oregon	Marion County (Unincorporated Areas).	Lake Labish Ditch	Approximately 2,200 feet downstream of Burlington Northern Railroad.	None	*130
			Approximately 50 feet downstream of Burlington Northern Railroad.	None	*132
		Claggett Creek	Backwater area along tributary to Claggett Creek, from approximately 300 feet upstream of Sieberg Street (along tributary drainage) to approximately 300 feet due west of the intersection of Verda Lane Northeast and Salem Parkway.	*130	*127
		Pudding River	Just upstream of Arndt Road and the Marion-Clackamas County border.	None	*95
			Just downstream of the Southern Pacific Railroad.	*99	*99
		Willamette River	Approximately 5,000 feet downstream of Newcomber Road (Extended).	*105	*104
			Approximately 2,500 feet upstream of Newcomer Road (Extended).	*105	*105

Maps are available for inspection at the City of Keizer City Hall, 930 Chemawa Road Northeast, Keizer, Oregon.

Send comments to The Honorable J. R. Bob Newton, Mayor, City of Keizer, P.O. Box 21000, Keizer, Oregon 97307.

Maps are available for inspection at the Marion County Planning Department, 3150 Lancaster Drive Northeast, Salem, OR.

Send comments to The Honorable Randy Franke, Chairman, Marion County Board of Commissioners, County Courthouse, 100 High Street Northeast, Salem, OR 97301.

Texas	Midland County and Incorporated Areas.	Playa MI7		None	*2,852
		Playa MI8		None	*2,843
		Playa MI9		None	*2,846
		Playa MI10		None	*2,845
		Playa MI11		None	*2,859
		Playa MI21		None	*2,826
		Playa MI22		None	*2,825
		Playa MI23		None	*2,826
		Playa MI25		None	*2,809
		Playa MI27		None	*2,812
		Playa MI31		None	*2,812
		Playa MI32		None	*2,809
		Playa MI33		None	*2,807

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet. (NGVD)	
				Existing	Modified
		Playa MI34		None	*2,807
		Playa MI38		None	*2,799
		Playa MI40		None	*2,807
		Playa MI41		None	*2,805
		Playa MI42		None	*2,806
		Playa MI43		None	*2,799
		Playa MI44		None	*2,788
		Playa MI46		None	*2,803
		Playa MI49		None	*2,783
		Playa MI50		None	*2,783
		Playa JA1		None	*2,864
		Playa JA2		None	*2,857
		Playa JA3		None	*2,842
		Playa JA4		None	*2,840
		Playa JA6		None	*2,860
		Playa JA7		None	*2,834
		Playa JA9		None	*2,828
		Playa JA10		None	*2,828
		Playa JA11		None	*2,823
		Playa JA11A		None	*2,827
		Playa JA12		None	*2,816
		Playa JA13		None	*2,814
		Playa JA15		None	*2,810
		Playa JA19		None	*2,872
		Playa JA23		None	*2,797
		Playa SC3		*2,806	*2,808
		Playa SC6		None	*2,815
		Playa SC10		*2,786	*2,788
		Playa SC11		None	*2,780
		Unnamed Playa	1,400 feet southeast of intersection of FM 307 and FM 715.	None	*2,744
		Unnamed Playa	1,150 feet northeast of intersection of FM 715 and East Highway 158.	None	*2,784
		Unnamed Playa	430 feet northwest of West County Road 111 and South County Route 1210.	None	*2,804
		Unnamed Playa	1,800 feet east of Playa JA6	None	*2,853
		Unnamed Playa	1,480 feet northwest of intersection of North Midland and Wood Drives.	None	*2,831
		Unnamed Playa	1,920 feet northwest of Playa JA10	None	*2,850
		Unnamed Playa	900 feet south of Playa MI40	None	*2,803
		Unnamed Playa	1,600 feet south of Playa MI40	None	*2,800
		Unnamed Playa	400 feet southeast of Playa MI42	None	*2,806
		Unnamed Playa	1,100 feet southeast of Playa MI42	None	*2,807
		Unnamed Playa	750 feet northwest of Playa MI43	None	*2,805
		Unnamed Playa	900 feet northwest of Playa MI43	None	*2,803
		Unnamed Playa	1,550 feet west of Playa MI42	None	*2,812
		Unnamed Playa	1,000 feet north of Playa MI43	None	*2,800
		Unnamed Playa	900 feet northeast of Playa MI43	None	*2,801
		Unnamed Playa	1,500 feet northeast of Playa MI43	None	*2,801
		Unnamed Playa	400 feet east of Playa MI43	None	*2,801
		Unnamed Playa	At intersection of Loop 250 North and North County Road 1160 (Todd Road).	None	*2,791
		Unnamed Playa	2,000 feet southeast of Playa MI43	None	*2,791
		Unnamed Playa	2,150 feet northeast of Playa MI50	None	*2,782
		Unnamed Playa	3,000 feet northwest of intersection of North county Route 1150 (Elkins Road) and East County Route 40.	None	*2,798
		Unnamed Playa	3,050 feet northeast of intersection of Elkins Road and East County Route 40.	None	*2,799
		Unnamed Playa	2,500 feet northeast of Playa MI42	None	*2,807
		Unnamed Playa	2,200 feet west of intersection of FM 1379 and East County Route 109.	None	*2,708
		Unnamed Playa	1,400 feet north of JA6	None	*2,872
		Unnamed Playa	1,910 feet northeast of JA6	None	*2,859
		Unnamed Playa	2,080 feet east of MI11	None	*2,855
		Unnamed Playa	2,950 feet northeast of MI11	None	*2,834
		Unnamed Playa	200 feet north of MI43	None	*2,800
		Unnamed Playa	80 feet west of MI43	None	*2,799
		Unnamed Playa	360 feet east of MI43	None	*2,807
		Mulberry Channcel	Just upstream of Wolfcamp Circle	None	*2,755

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet. (NGVD)	
				Existing	Modified
			Approximately 780 feet upstream of Fairgrounds Road.	None	*2,760
			Approximately 130 feet upstream of North Lincoln Street.	None	*2,765
			Approximately 180 feet downstream of North Lee Street.	None	*2,769
		Scharbauer Draw	Just upstream of State Route 349	*2,773	*2,772
			Just downstream of North A Street	*2,777	*2,776
			Approximately 200 feet downstream of Western Drive.	*2,783	*2,784
		South Draw	Approximately 800 feet upstream of confluence with Midland Draw.	*2,723	*2,725
			Approximately 3,200 feet downstream of State Route 158.	*2,735	*2,737
			Approximately 700 feet downstream of State Route 158.	*2,737	*2,739
			Approximately 920 feet upstream of FM 715.	*2,742	*2,744
		Industrial Channel	Approximately 900 feet upstream of confluence with Midland Draw.	*2,752	*2,751
			Approximately 300 feet downstream of Fairgrounds Road.	*2,760	*2,759
			Approximately 800 feet upstream of Fairgrounds Road.	*2,765	*2,763
			Approximtely 400 feet downstream of South Lee Street.	*2,769	*2,768
		Upper South Draw	Approximately 1,240 feet upstream of South County Route 1180.	*2,748	*2,751
			Approximately 800 feet upstream of Cotton Flat Road.	*2,765	*2,767
			Approximately 1,150 feet upstream of Santa Rosa.	*2,798	*2,795
			Approximately 150 feet upstream of Interstate Route 20.	*2,809	*2,812
		Jal Draw	Approximately 1,320 feet downstream of North I Street.	*2,790	*2,789
			Just upstream of Maxwell Drive	*2,807	*2,805
			Approximately 1,000 feet downstream of Loop 250.	*2,829	*2,830
			Approximately 150 feet downstream of Crowley Boulevard.	*2,840	*2,836
		Midland Draw	Approximately 400 feet upstream of Fairgrounds Road.	*2,760	*2,759
			Approximately 1,310 feet upstream of Loop 250.	*2,791	*2,788
			Approximtely 5,700 feet upstream of Mockingbird Lane.	*2,807	*2,805
			Approximately 5,630 feet upstream of Greentree Boulevard.	*2,823	*2,820

Maps are available for inspection at City Hall, 300 North Lorain, Midland, Texas.

Send comments to The Honorable Jeff Norwood, Midland County Judge, County Courthosue, 200 West Wall Street, Midland, Texas 79701.

Utah	Santa Clara (City) Washington County.	Lava Flow Wash	Approximately 1,100 feet downstream of Red Mountain Drive.	None	*2,846
			Approximtely 5,300 feet upstream of Red Mountain Drive.	None	*2,947
		Sand Hollow Wash	Approximately 2,200 feet downstream of Pearl Rose Drive (extended).	None	*2,690
			Approximately 2,100 feet upstream of Pearl Rose Drive (extended).	None	*2,728
		Santa Clara River	Approximately 7,500 feet downstream of Chapel Street.	None	*2,685
			Just upstream of Old Barn Road	None	*2,789
		Tuacahn Wash	Just upstream of Santa Clara Dike	None	*2,778
			Approximately 7,200 feet upstream of confluence with Lava Flow Wash.	None	*2,934

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet. (NGVD)	
				Existing	Modified
Maps are available for inspection at the City of Santa Clara City Hall, 2721 Santa Clara Drive, Santa Clara, Utah. Send comments to The Honorable Fred Rowley, Mayor, City of Santa Clara, P.O. Box 699, Santa Clara, Utah 84765.					

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Dated: April 1, 1999.

Michael J. Armstrong,

Associate Director for Mitigation.

[FR Doc. 99–9027 Filed 4–9–99; 8:45 am]

BILLING CODE 6718–04–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 1833

NASA FAR Supplement; Protests to the Agency

AGENCY: Office of Procurement, Contract Management Division, National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: NASA has a mandatory solicitation provision required to be inserted in all solicitations which informs potential bidders or offerors to whom Agency protests may be submitted. The provision provides that potential bidders or offerors may submit a protest directly to the Contracting Officer or alternatively to the Deputy Associate Administrator for Procurement, who will serve as or designate the official responsible for conducting an independent review of the protest. Based on our experience with protests submitted to the Agency, we are amending NASA regulations to address whether or not there is any appeal from or reconsideration of Agency protest decisions within NASA and whether or not NASA will continue to consider an Agency protest that is related to pending judicial proceedings or where the protester has filed a protest on the same procurement with the United States General Accounting Office prior to receipt of an Agency protest decision. The effect of this additional information is to give potential bidders or offerors a better understanding of NASA's process for considering protests to the Agency.

DATES: NASA will accept written comments until June 11, 1999.

ADDRESSES: Comments regarding this rule should be addressed as follows: National Aeronautics and Space Administration, Contract Management Division (Code HK/Beck), Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Dave Beck, (202) 358–0482.

SUPPLEMENTARY INFORMATION:

Regulatory Flexibility Act

The proposed rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because there are few protests of NASA procurements. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. Comments from small entities concerning the affected NASA FAR Supplement subparts will be considered in accordance with 5 U.S.C. 601. Such comments must be submitted separately and cite 5 U.S.C 601, *et seq.*

Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes to the NASA FAR Supplement do not impose any new recordkeeping or information collection requirements, or new collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget (OMB) under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 1833

Government procurement.

Tom Luedtke,

Acting Associate Administrator for Procurement.

Accordingly, it is proposed that 48 CFR part 1833 be amended as follows.

PART 1833—PROTESTS, DISPUTES, AND APPEALS

1. The authority citation for 48 CFR part 1833 continues to read as follows:

Authority: 42 U.S.C. 2473(c)(1).

Subpart 1833.1—Protests

2. Section 1833.103 is amended by revising the section heading, redesignating paragraph (b) as paragraph (f) and adding paragraph (c), paragraph (d) introductory text, and paragraph (d)(4) to read as follows:

1833.103 Protests to the agency. (NASA supplements paragraphs (c), (d) and (f))

(c) An independent review under the provision at 1852.233–70 is available as an alternative to a protest to the contracting officer, but not as an appeal of a protest decision. All independent reviews shall be conducted by the Deputy Associate Administrator for Procurement or designee. Such reviews are different from the Ombudsman Program described at 1815.7001.

(d) NASA shall summarily dismiss and take no further action upon any protest to the Agency if the substance of the protest is pending in judicial proceedings or the protester has filed a protest on the same acquisition with the United States General Accounting Office prior to receipt of an Agency protest decision.

(4) When a potential bidder or offeror submits an Agency protest to NASA to the Contracting Officer or alternatively requests an independent review, the decision of the Contracting Officer or the independent review official shall be final and is not subject to any appeal or reconsideration within NASA.

(f) Protests received at NASA offices or locations other than that of the cognizant contracting officer shall be immediately referred to the contracting officer for disposition (see 1833.106(a)). The contracting officer shall advise the Headquarters Office of the General Counsel (Code GK) of the receipt of the protest and the planned and actual disposition. This paragraph does not apply when the protester has requested an independent review under the provision at 1852.233–70.

[FR Doc. 99–9047 Filed 4–9–99; 8:45 am]

BILLING CODE 7510–01–P

Notices

Federal Register
Vol. 64, No. 69
Monday, April 12, 1999

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Privacy Act: Proposed Revision of an Existing System of Records

AGENCY: Office of the Secretary, USDA.

ACTION: Notice of proposed revision of an existing system of Records—USDA/FNS–9 (formerly known as USDA/FCS–9), entitled, Food Stamp Program Retailer Information.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, as amended, 5 U.S.C. 552a, the United States Department of Agriculture (USDA), Food and Nutrition Service (FNS), is giving notice that it proposes to revise the following system of records. This system was previously published under the agency's former name, the Food and Consumer Service, in the **Federal Register** on December 2, 1996 and a subsequent correction was published in the **Federal Register** on June 10, 1997.

In order to be in compliance with a new statutory provision in the Debt Collection Improvement Act of 1996 (DCIA), Pub. L. 104–134, FNS proposes to amend the fourth routine use which addresses the reporting of delinquent debts to the IRS for the purpose of offsetting a monetary penalty against a tax refund due to a debtor for violations committed under the Food Stamp Program.

In accordance with the Internal Revenue Service requirements, FNS is also proposing to revise the eighth routine use. The routine use will ensure that the employer identification numbers (EINs) contained in this system of records will not be disclosed to private entities which have contractual agreements with USDA.

In addition, FNS is proposing to add a new routine use which will notify the public that FNS may disclose the information in this system of records to State agencies that administer the Special Supplemental Nutrition Program for Women, Infants and Children (WIC).

EFFECTIVE DATE: This notice will be effective, without further notice, May 24, 1999, unless modified by a subsequent notice to incorporate comments received from the public. Comments must be received by the contact person listed below on or before May 12, 1999, to be assured consideration.

ADDRESSES: Comments should be addressed to: Thomas O'Connor, Director, Benefit Redemption Division, Food and Nutrition Service, USDA, Room 706, 3101 Park Center Drive, Alexandria, Virginia 22302. Telephone: (703) 305–2419.

FOR FURTHER INFORMATION CONTACT: Gregory K. Evans, Senior Policy Analyst, Room 706, 3101 Park Center Drive, Alexandria, Virginia 22302. Telephone: (703) 305–2419.

SUPPLEMENTARY INFORMATION: The Debt Collection Act of 1982 (Pub. L. 97–365), as amended, provides statutory authority for federal agencies to collect debts through administrative offset. The Debt Collection Improvement Act of 1996 (Pub. L. 104–134), expanded that statutory authority by requiring that any federal agency owed a past due, legally enforceable nontax debt that is over 180 days delinquent, refer such debt to the Department of the Treasury to participate in its offset program (also known as the Treasury Offset Program (TOP)) which includes administrative offset, the Federal Tax Refund Offset Program (FTROP), and Federal salary offset program. The TOP is a government-wide delinquent debt matching and payment offset system. Thus, FNS is proposing to amend the fourth routine use which is listed in USDA/FNS–9, so that FNS can fully comply with these legislative mandates.

This system of records contains personal information from owners and officers of firms and other entities currently participating in the Food Stamp Program, and those who have previously participated in the program. The following personal information regarding owners and officers is contained in the system: Name, home address, Social Security Number (SSN), and date of birth (DOB). The SSNs are collected only from owners of sole proprietorships, partnerships, principal shareholders of private corporations, and officers of cooperatives. Financial data (i.e., food sales, gross sales, food stamp redemption data) relative to each business entity currently authorized or previously authorized is also included in this system of records.

This system of records is not a financial management system that is used to track and identify financial payments which become delinquent; however, in order for FNS to participate in TOP, FNS must share with the Department of Treasury the personal identifying information (such as the debtor's name, DOB, home address, SSN and/or EIN (which is not considered a personal item of information)) of those individuals in this system of records for whom there is an outstanding delinquent debt owed to FNS. These debts originate from administrative actions (in the form of monetary penalties) taken against store owners and officers of stores who are found violating the Food Stamp Program regulations.

The fourth routine use which currently deals with disclosing information from this system of records to the Internal Revenue Service for the purpose of offsetting a debtor's tax refund in payment for a monetary penalty for food stamp violations, will be amended to notify the public that information (i.e., the debtor's name, home address, SSN and/or EIN) contained in this system of records may be disclosed to other Federal agencies (e.g., the Department of the Treasury) and other disbursing officials for offsets that are operated under the TOP.

Currently, once a determination is made to assess a fine or monetary penalty against a store owner or officer found violating the FSP, a demand for payment is forwarded to the individual. If the individual does not pay the debt, depending on the circumstances, he may receive from one to three demand letters from FNS. If the payment is not received with the prescribed time period, FNS refers that debt to a contract collection agency. If they cannot collect, the debt is either written off as uncollectible or referred to the Department of Justice for litigation and/or collection. Such collection efforts are

in accordance with the Federal Claims Collection Standards (FCCS) regulations, the Food Stamp Act, and the Food Stamp Program regulations. Based on the above, FNS is also amending the fourth routine use to notify the public that information from this system of records may be disclosed to contracted private collection agencies for claims collection action or the Department of Justice for litigation and/or collection action.

Currently, the fourth routine use states that, "USDA/FCS may disclose information from this system of records to the Internal Revenue Service for the purpose of offsetting a monetary penalty for violations committed under the Food Stamp Program against a tax refund that may be due to the debtor."

FNS proposes to revise the fourth routine use to permit USDA/FNS to release from this system of records information, including SSNs and EINs, to collect and report on delinquent debt. USDA/FNS will disclose this information to other Federal and State agencies (Note: SSNs and EINs will only be shared with Federal agencies), as well as private collection agencies, for purposes of claims collection actions including, but not limited to, administrative offset and referral to the Department of Justice for litigation.

Section 6109(f)(2)(B) of the Internal Revenue Code provides that, for purposes of sharing certain EINs by the Secretary of Agriculture with other agencies or instrumentalities of the United States, access to EINs shall be restricted *only to certain officers and employees of the United States*. Sections 301.6109–2(c) and (d) of the Procedure and Administration regulations also provide that *only certain officers and employees of the United States* are permitted access to EINs. The eighth routine use currently states that the information from this system of records can be disclosed to private entities which have contractual agreements with USDA. Based on the above, it has been determined that private entities which have contractual agreements with USDA are *not* permitted access to EINs. Thus, FNS is revising the routine use to reflect this position.

Lastly, the Privacy Act of 1974, as amended, provides that agencies that maintain a system of records shall publish a notice in the **Federal Register** of the existence and character of the system of records. This includes each routine use of the records contained in the system including categories of users and the purpose of such use. Thus, FNS is also proposing to add a new routine use number eleven to this system of records. The routine use will notify the public that FNS may disclose information in this system of records to State agencies that administer the Special Supplemental Nutrition Program for Women, Infants and Children (WIC).

A "Report on a Revised System," required by 5 U.S.C. 552a(r), as implemented by OMB Circular A–130, was sent to the Chairman, Senate Committee on Governmental Affairs, the Chairman, House Committee on Government Operations, and to the Administrator, Office of Information and Regulatory Affairs, of the Office of Management and Budget on April 5, 1999.

Since the publication of this system of records in the **Federal Register** on December 2, 1996, a correction has been made and now by way of this notice, we are amending two routine uses, adding another routine use, and changing the name of the agency. Thus, for clarification purposes, the proposed altered system of records is republished in its entirety below.

Signed at Washington, DC on April 5, 1999.

Dan Glickman,

Secretary of Agriculture.

USDA/FNS–9

SYSTEM NAME:

USDA/FNS–9 Food Stamp Program Retailer Information.

SECURITY CLASSIFICATION: None.

SYSTEM LOCATION:

The paper records (i.e., the applications for authorization and reauthorization) which contain the personal identifying information on retail and wholesale store owners and officers, and/or owners and officers associated with other entities, are located in a host computer database and in FNS field offices throughout the United States. The location of each FNS field office may be found in the local phone books. The host computer database which contains the Store Tracking and Redemption Subsystem (STARS) database, is located at the Benefit Redemption Systems Branch, PO Box 135, Minneapolis, Minnesota 55440.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The system consists of personal information from owners and officers of stores and other entities currently participating in the Food Stamp Program, as well as those owners and officers who have previously participated in the program. The individual paper records (i.e., applications for authorization) located in FNS field offices also contain personal information from owners and officers who applied for authorization to participate in the FSP but were denied authorization.

CATEGORIES OF RECORDS IN THE SYSTEM:

The applications for authorization and reauthorization are in the STARS database and located in the files of FNS field offices. The applications contain the following personal information regarding owners and officers: Name, home address, social security number, and date of birth. The SSNs are collected only from owners of sole proprietorships, partnerships, principal shareholders of private corporations, and officers of cooperatives. Financial data (i.e., food sales, gross sales, food stamp redemption data) relative to each entity currently authorized or previously authorized is in the STARS database.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 9 of the Food Stamp Act of 1977, as amended, (7 U.S.C. 2018); section 1735 of the Food, Agriculture, Conservation, and Trade Act of 1990 (Pub. L. 101–624, 104 Stat. 3359); section 205(c)(2)(C) of the Social Security Act (42 U.S.C. 405(c)(2)(C)); and section 6109(f) of the Internal Revenue Code of 1986 (26 U.S.C. 6109(f)).

PURPOSE(S):

This information will be shared with other Federal and State entities to assist in the administration and enforcement of the Food Stamp Act, as well as other Federal and State laws. The SSNs and EINs of store owners will only be shared with Federal agencies which maintain those numbers in their files. STARS is used primarily for tracking the authorization and food stamp redemption activity of owners and officers of entities currently participating in the Food Stamp Program, as well as those owners and officers who have previously participated in the Food Stamp Program.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Limitations on Disclosure under the Following Routine Uses (1) through (11):

Information obtained from applicants under the authority of 7 U.S.C. 2018(c) may be used or disclosed only as specified in 7 U.S.C. 2018(c). With the exception of the SSNs and EINs obtained from applicants, 7 U.S.C. 2018(c) gives FNS the authority to

disclose the contents of an initial application, or other information submitted by an applicant to other Federal and State law enforcement and investigative agencies for the purposes of administering or enforcing the Food Stamp Act or any other Federal or State law. 7 U.S.C. 2018(c) also limits the *use* of the information obtained by applicants. That is, the above mentioned entities may only use this information for purposes directly connected with the administration and enforcement of the Food Stamp Act or any other Federal or State law. Some of the information obtained from applicants is ownership information and sales and redemption data.

The *use* and *disclosure* of SSNs and EINs obtained by applicants is covered in the Social Security Act and the Internal Revenue Code. In accordance with the Social Security Act and the Internal Revenue Code, applicant social security numbers and employer identification numbers may be disclosed only to other Federal agencies authorized to have access to social security numbers and employer identification numbers and maintain these numbers in their files, and only when the Secretary of Agriculture determines that disclosure would assist in verifying and matching such information against information maintained by such other agency. 42 U.S.C. 405(c)(2)(C)(iii); 26 U.S.C. 6109(f).

(1) USDA/FNS may disclose information from this system of records to the Department of Justice (DOJ), a court or other tribunal, or another party before such tribunal, when USDA, any component thereof, or any employee of the USDA in his or her official capacity, any USDA employee in his or her individual capacity where DOJ (or USDA where it is authorized to do so) has agreed to represent the employee, or the United States where USDA determines that the litigation is likely to affect directly the operations of USDA or any of its components, is a party to the litigation or has an interest in such litigation, and USDA determines that the use of such records by DOJ, the court or other tribunal, or the other party before such tribunal is relevant and necessary to the litigation; provided, however, that in each case, USDA determines that such disclosure is compatible with the purpose for which the records were collected.

(2) In the event that material in this system indicates a violation of the Food Stamp Act or any other Federal or State law whether civil or criminal or regulatory in nature, and whether arising by general statute, or by regulation, rule or order issued pursuant thereto, USDA/FNS may disclose the relevant records to the appropriate agency, whether Federal or State, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation or order issued pursuant thereto.

(3) USDA/FNS may disclose records from this system of records to a congressional office from the record of an individual provided that individual gave the congressional office permission to inquire on his or her behalf.

(4) USDA/FNS may use information from this system of records, including SSNs and EINs, to collect and report on delinquent debt and may disclose the information to other Federal and State agencies, as well as private collection agencies, for purposes of claims collection actions including, but not limited to, administrative offset and referral to the Department of Justice for litigation. (Note: SSNs and EINs will only be disclosed to Federal agencies).

(5) USDA/FNS may disclose information from this system of records to other Federal and State agencies to respond to specific requests from such Federal and State agencies for the purpose of administering the Food Stamp Act as well as other Federal and State laws.

(6) USDA/FNS may disclose information from this system of records to other Federal and State agencies to verify information reported by applicants and participating firms, and to assist in the administration and enforcement of the Food Stamp Act as well as other Federal and State laws.

(7) USDA/FNS may disclose information from this system of records to other Federal and State agencies for the purpose of conducting computer matching programs.

(8) USDA/FNS may disclose information (excluding EINs) from this system of records to private entities having contractual agreements with USDA for designing, developing, and operating the system, and for verification and computer matching purposes.

(9) USDA/FNS may disclose an owner's home address to a financial institution to verify information contained on a redemption certificate (Form FCS–278B, formerly Form FNS–278B) submitted by a participating retailer. Authorized entities use these certificates when depositing food coupons at financial institutions. On occasion, particularly with small businesses, the owner's business address may also be the owner's home address.

(10) USDA/FNS will disclose information from this system of records to the Internal Revenue Service, for the purpose of reporting delinquent retailer and wholesaler monetary penalties of $600 or more for violations committed under the Food Stamp Program. USDA/FNS will report each delinquent debt to the Internal Revenue Service on Form 1099–C (Cancellation of Debt). USDA/FNS will report these debts to the Internal Revenue Service under the authority of the Income Tax Regulations (26 CFR parts 1 and 602) under section 6050P of the Internal Revenue Code.

(11) USDA/FNS may disclose information from this system of records to State agencies that administer the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC), authorized under section 17 of the Child Nutrition Act of 1966 for purposes of administering that Act and the regulations issued under that Act.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders, magnetic tapes, and computer disks.

RETRIEVABILITY:

In STARS, the personal identifying information is retrievable by owner's name and by SSN.

SAFEGUARDS:

1. *Authorized Users:* When designing, developing and/or operating a system of records on individuals, contractors are required to comply with all provisions of the Privacy Act. Contractors are required to maintain and protect the personal data and cannot release or share data without consulting with FNS. Access to records maintained within FNS is limited to those staff officials responsible for the subject system of records. Otherwise, access is limited to persons authorized and needing to use the records, including project directors, contract officers, programmers, analysts, statisticians, statistical clerks and key punch operators on the staff of the contractors or in the FNS.

2. *Physical Safeguards:* Paper records are stored in locked safes, locked files, and locked offices when not in use. Computer terminals used to process personal identifiable data are located in secured areas and are accessible only to authorized users. Back up records which are stored off-site shall be used and stored under the same secure conditions.

3. *Procedural Safeguards:* In order to access STARS, each authorized individual is given a personal access ID and password. The individual's password must be changed at least every 45 days or whenever the individual feels it might have been compromised.

Access to personal information contained in the STARS database and to the paper record files is restricted to those individuals who have been authorized by FNS and who have a need to know such information in the performance of their official duties in administering the Food Stamp Act and other Federal and State laws. SSNs cannot be viewed on screen in STARS by those individuals who are not specifically authorized to view them.

FNS personnel, project officers, and contract officers oversee compliance with these requirements. When appropriate, FNS personnel will review the site facilities to ensure that records have been maintained in accordance with the terms of this notice.

RETENTION AND DISPOSAL:

In STARS, the personal identifying information is maintained indefinitely. The applications for authorization and reauthorization are kept in the FNS field offices for three years and then destroyed pursuant to the applicable document retention and disposal schedule.

SYSTEM MANAGER(S) AND ADDRESS:

Thomas O'Connor, Director, Benefit Redemption Division, Food and Nutrition Service, United States Department of Agriculture, Room 706, 3101 Park Center Drive, Alexandria, Virginia 22302.

NOTIFICATION PROCEDURE:

Any individual may request information regarding this system of records from the System Manager. The request must be in writing.

RECORD ACCESS PROCEDURES:

An individual who wishes to request access to records in the system which pertains to him or her may submit a written request to the System Manager. The envelope and the letter should be marked, "Privacy Act Request". An individual may be required to reference the record by furnishing name, address, Social Security Number, and/or other identifiers needed by FNS.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information maintained in the system should direct their request to the System Manager. The request should include, as appropriate, the reasons for contesting it, and the proposed amendment to the information with supporting information to show how the record is inaccurate, incomplete, untimely, or irrelevant.

RECORD SOURCE CATEGORIES:

Information in this system comes from the authorization and reauthorization applications of stores and other entities which are currently participating in the Food Stamp Program, as well as information on file for those entities which have previously participated in the program. Personal information in this system of records is also obtained from the owners and officers of such entities as reported on the authorization and reauthorization applications.

The STARS database also keeps a food stamp redemption history on such entities. The database maintains the dollar amount of food stamp benefits accepted by each entity currently authorized or previously authorized.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 99–8976 Filed 4–9–99; 8:45 am]

BILLING CODE 3410–30–U

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. 99–002N]

"Certified Organic By" Labeling on Meat and Poultry Products

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Availability of labeling guidance.

SUMMARY: The Food Safety and Inspection Service (FSIS) is announcing the availability of guidance concerning the use of the claim "certified organic by (a certifying entity)" on the labeling of meat and poultry products. The claim "certified organic by (a certifying entity)" will be permitted on the labeling of meat and poultry products if the labeling is submitted to FSIS for approval, the labeling meets certain criteria, and the labeling submitted is accompanied by specified certification documentation that has been provided by the certifying entity to the meat or poultry producer seeking labeling approval.

ADDRESSES: Copies of FSIS's labeling guidance concerning the use of the claim "certified organic by (a certifying entity)" are available from the FSIS Docket Clerk in the FSIS Docket Room, Room 102, Cotton Annex, 300 12th Street, SW, Washington, DC 20250–3700, between 8:30 a.m. and 4:30 p.m., Monday through Friday, and on FSIS's homepage at www.fsis.usda.gov.

FOR FURTHER INFORMATION CONTACT: Dr. Robert Post, Director, Labeling and Additives Policy Division, Office of Policy, Program Development and Evaluation, Food Safety and Inspection Service, U.S. Department of Agriculture, (202) 205–0279.

Background

The United States Congress passed the Organic Foods Protection Act of 1990 (1) to establish national standards governing the marketing of certain agricultural products as organically produced, (2) to assure consumers that organically produced products meet a defined, consistent standard, and (3) to facilitate commerce in organically produced fresh and processed food. The Agricultural Marketing Service (AMS), United States Department of Agriculture (USDA), published a proposed rule in the **Federal Register** (62 FR 65850) on December 16, 1997, to permit the use of the term "organic" on the labeling of certain agricultural products. AMS received approximately 280,000 public comments in response to the proposal, which raised many complex issues. AMS has decided to publish a revised proposed rule that will address those issues and to seek further input and comment from interested parties.

A number of meat and poultry producers asked FSIS to permit the marketing of meat and poultry products bearing the claim "certified organic by (a certifying entity)" during the pendency of the rulemaking and before AMS issues its final rule. Because AMS's decision to issue a revised proposal and to seek further public comment before finalizing the organic standards rule will likely take some time, FSIS has decided in the interim to permit the use of the claim "certified organic by (a certifying entity)" on the labeling of meat and poultry products under certain conditions.

As indicated in FSIS's guidance documents, to use the claim "certified organic by (a certifying entity)" on the labeling of a meat or poultry product, processors will have to submit the labeling they want to use to FSIS for approval. Processors will also have to submit to FSIS, simultaneously with the labeling for which they are seeking approval, specified certification documentation provided to them by the certifying entity, including documentation that demonstrates that the certifying entity has standards for what constitutes an organic product, and that the certifying entity has a system for ensuring that that the

product it certifies as organic meets the standards it has established. The specific certification documentation that must be submitted to FSIS includes: (1) The name of the certified meat or poultry product and/or certified ingredient used in the meat or poultry product; (2) the certifying entity's name and address; (3) the name and signature of the responsible official of the certifying entity; (4) the date of certification, and (5) documentation from the certifying entity that (a) its criteria, i.e., standards, for what constitutes an organic product have been met by the product or ingredient for which labeling approval is being sought and (b) that the certifying entity employs a system for evaluating ongoing compliance with the criteria, i.e., standards, it has established.

As also indicated in FSIS's guidance document regarding this policy, the statement "certified organic by (a certifying entity)" must be followed by the name of the certifying entity on the labeling of a meat or poultry product. Upon approval, the claim "certified organic by (a certifying entity)" may appear anywhere on the labeling of a meat or poultry product in regard to the meat or poultry product portion certified and in regard to any nonmeat ingredients so certified. All words in the claim are to be contiguous and of the same size, style, and type. Further, as indicated in FSIS's guidance document, FSIS will also continue to permit the use of approved animal production claims and an approved claim of "natural" on the labeling of meat and poultry products.

In allowing the claim "certified organic by (a certifying entity)" to appear on the labeling of a meat or poultry product, FSIS is not defining the term "organic." AMS, supported by the National Organic Standards Board, is responsible for carrying out the Department's program under the Organic Foods Protection Act to define the term "organic" and to establish the circumstances in which it can be applied to agricultural products, including meat and poultry products.

Applications for approval of labeling bearing the claim "certified organic by (a certifying entity)" should be sent to the Labeling and Additives Policy Division, Office of Policy, Program Development and Evaluation, Food Safety and Inspection Service, USDA, Room 602, Cotton Annex, Washington, DC 20250–3700. Inquiries regarding labeling claims, including the labeling claim "certified organic by (a certifying entity)" or animal production claims, may be directed to Dr. Robert Post, Director, Labeling and Additives Policy Division. Staff of the Labeling and Additives Policy Division may be reached by telephone, at (202) 205–0279, for consultation.

Paperwork Requirements

Abstract: FSIS has reviewed the paperwork and recordkeeping requirements in this notice in accordance with the Paperwork Reduction Act. FSIS has submitted a request for an emergency clearance of these paperwork and recordkeeping requirements to OMB.

This notice, in conjunction with existing requirements, means that meat and poultry producers who want to market meat and poultry products that bear the labeling claim "certified organic by (a certifying entity)" will have to submit the labeling to FSIS for approval, along with the specified certification documentation that has been provided to the meat or poultry producer by the certifying entity. The certifying entity must have standards that list the criteria a meat or poultry product must meet to be certified organic and must have a system for ensuring that the product it certifies as organic meets those standards.

Estimate of Burden: FSIS estimates that it will take meat and poultry producers 2 hours to design and develop modified product labels. FSIS estimates that it will take certifying entities 40 hours to develop their organic standards and prepare their certification documentation.

Respondents: Meat and poultry producers, and certifying entities.

Estimated number of Respondents: 200 meat and poultry producers, and 44 certifying entities.

Estimated number of Responses per Respondent: FSIS estimates that each producer would modify approximately 4 product labels. Certifying entities would give their certification documentation to each meat and poultry producer once.

Estimated Total Annual Burden on Respondents: 3,360 hours Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (b) the accuracy of the Agency's estimate of the burden of the collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of collection of information on those who are to respond, including through use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to Lee Puricelli, Paperwork Specialist, see address above, and Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20253.

Done at Washington, DC on: April 5, 1999.

Thomas J. Billy,

Administrator.

[FR Doc. 99–9006 Filed 4–9–99; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Forest Service

Information Collection; Request for Comments; Special Use Administration

AGENCY: Forest Service, USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Forest Service announces its intent to request an extension of a currently approved information collection for the administration of special uses on National Forest System lands. The information helps the Forest Service ensure that the authorized use of Federal land is in the public interest and compatible with the mission of the agency. Respondents will include individuals, groups, organizations, businesses, corporations, and Federal, State, and local governments.

DATES: Comments must be received in writing on or before June 11, 1999.

ADDRESSES: All comments should be addressed to: Director, Lands Staff (mail stop 1124), Forest Service, USDA, P.O. Box 96090, Washington, D.C. 20090–6090 or email mscheibe/wo@fs.fed.us.

FOR FURTHER INFORMATION CONTACT: Mark Scheibel, Lands Staff, at (202) 205–1264.

SUPPLEMENTARY INFORMATION:

Background

The forms described in this request for extension of an information collection are used by the agency to issue and administer special use permits to use or occupy National Forest System lands. The data collected will be evaluated by the Forest Service to ensure that the authorized use of Federal land is in the public interest and is compatible with the mission of the agency. The data will help identify environmental and social impacts of special uses and will ascertain whether the agency is receiving a fair market

rental fee for the use of National Forest System lands. The data will be collected through application forms and stipulations in operating plans and special-use authorizations. There are four general categories of information requests: (1) initial and amended application process; (2) annual financial information; (3) preparing and updating operation and maintenance plans; and (4) compliance reports and information updates.

Application Process

Description of Information Collection

The following describes the information collection to be extended:

Title: SF–299, Application for Transportation and Utility Systems and Facilities on Federal Lands.

OMB Number: 0596–0082.

Expiration Date of Approval: June 30, 1998.

Type of Request: Extension of previously approved information collection.

Abstract: The information provided on this form is used by the authorized Forest Service officer to evaluate the applicant's technical capability and financial resources, the applicant's proposed operations, and the anticipated environmental impacts. This form is used by applicants requesting use of National Forest System lands for nonrecreational use.

Estimate of Burden: 8 hours.

Type of respondents: Individuals, businesses, corporations, and Federal, State, and local governments.

Estimated number of respondents: 1,500.

Estimated number of responses per respondent: 1.

Estimated total annual burden on respondents: 12,000 hours.

Description of Information Collection

The following describes the information collection to be extended:

Title: FS–2700–3a, Request for Termination of and Application for Special Use Permit.

OMB Number: 0596–0082.

Expiration Date of Approval: June 30, 1998.

Type of Request: Extension of previously approved information collection.

Abstract: The information provided on this form is used by the authorized Forest Service officer to facilitate issuance of a new authorization when private improvements authorized on National Forest System lands change ownership.

Estimate of Burden: 0.5 hours.

Type of respondents: Individuals, businesses, and corporations.

Estimated number of respondents: 1,000.

Estimated number of responses per respondent: 1.

Estimated total annual burden on respondents: 500 hours.

Description of Information Collection

The following describes the information collection to be extended:

Title: FS–2700–3b, Special Use Application and Permit for Noncommercial Group Use.

OMB Number: 0596–0082.

Expiration Date of Approval: June 30, 1998.

Type of Request: Extension of previously approved information collection.

Abstract: The information provided on this form is used by the authorized Forest Service officer to evaluate requests, such as group gatherings from noncommercial groups, to use National Forest System lands. These requests usually involve First Amendment rights that require a short, specific time frame (48 hours) for the agency to approve or deny the request.

Estimate of Burden: 1 hour.

Type of respondents: Individuals, groups, organizations.

Estimated number of respondents: 2,400.

Estimated number of responses per respondent: 1.

Estimated total annual burden on respondents: 2,400 hours.

Description of Information Collection

The following describes the information collection to be extended:

Title: FS–2700–3c, Special Use Application and Permit for Recreation Events.

OMB Number: 0596–0082.

Expiration Date of Approval: June 30, 1998.

Type of Request: Extension of previously approved information collection.

Abstract: The information provided on this form is used by the authorized Forest Service officer to evaluate requests for National Forest System lands for recreational events.

Estimate of Burden: 1 hour.

Type of respondents: Individuals, groups, organizations.

Estimated number of respondents: 2,000.

Estimated number of responses per respondent: 1.

Estimated total annual burden on respondents: 2,000 hours.

Annual Financial Information

Title V of the Federal Land Policy and Management Act of 1976, the Independent Offices Appropriation Act of 1952, and the Office of Management and Budget Circular A–25 require the Forest Service to collect rental fees that reflect fair market value for the use of National Forest System lands. Special use authorizations may contain specific terms and conditions requiring the holder to provide the authorized officer with the information necessary to calculate fair market value rental fees. Procedures for how the information is provided and when it is required are contained in the authorization terms and conditions. Information requests for financial information are provided to the authorized officer in a variety of ways. Several examples include gross revenues, value of capitol improvements, number of trips or customers served, or a listing of occupants in a communications site building.

Description of Information Collection

The following describes the information collection to be extended:

Title: FS–2700–7, Reconciliation of Sales for Fee Calculation.

OMB Number: 0596–0082.

Expiration Date of Approval: June 30, 1998.

Type of Request: Extension of previously approved information collection.

Abstract: The information provided on this form is used by the authorized Forest Service officer to determine the annual rental fee due the Federal government for use of National Forest System lands.

Estimate of Burden: 1 hour.

Type of respondents: Individuals, businesses, corporations, groups, and organizations.

Estimated number of respondents: 275.

Estimated number of responses per respondent: 1.

Estimated total annual burden on respondents: 275 hours.

Description of Information Collection

The following describes the information collection to be extended:

Title: FS–2700–8, Reconciliation of Gross Fixed Assets (GFA) to Booked Amounts.

OMB Number: 0596–0082.

Expiration Date of Approval: June 30, 1998.

Type of Request: Extension of previously approved information collection.

Abstract: The information provided on this form is used by the authorized Forest Service officer to determine the annual rental fee due the Federal Government for use of National Forest

System lands based on the gross fixed assets of the entity holding the permit.

Estimate of Burden: 1 hour.

Type of respondents: Individuals, businesses, corporations, groups, and organizations.

Estimated number of respondents: 275.

Estimated number of responses per respondent: 1.

Estimated total annual burden on respondents: 275 hours.

Description of Information Collection

The following describes the information collection to be extended:

Title: FS–2700–19, Fee Calculation for Concession Permits.

OMB Number: 0596–0082.

Expiration Date of Approval: June 30, 1998.

Type of Request: Extension of previously approved information collection.

Abstract: The information provided on this form is used by the authorized Forest Service officer to determine the annual rental fee due the Federal Government for concession permits.

Estimate of Burden: 1 hour.

Type of respondents: Individuals, businesses, corporations, groups, and organizations.

Estimated number of respondents: 275.

Estimated number of responses per respondent: 1.

Estimated total annual burden on respondents: 275 hours.

Description of Information Collection

The following describes the information collection to be extended:

Title: FS–2700–19a, USDA Forest Service Fee Calculation For Ski Area Permits.

OMB Number: 0596–0082.

Expiration Date of Approval: June 30, 1998.

Type of Request: Extension of previously approved information collection.

Abstract: The information provided on this form is used by the authorized Forest Service officer to determine the annual rental fee due the Federal Government for ski area permits.

Estimate of Burden: 1 hour.

Type of respondents: Individuals, businesses, corporations, groups, and organizations.

Estimated number of respondents: 100.

Estimated number of responses per respondent: 1.

Estimated total annual burden on respondents: 100 hours.

Description of Information Collection

The following describes the information collection to be extended:

Title: Business Practices (No specific agency form).

OMB Number: 0596–0082.

Expiration Date of Approval: June 30, 1998.

Type of Request: Extension of previously approved information collection.

Abstract: The information is provided to the Forest Service by the holder of the authorization when requested by the authorized Forest Service officer or as a term and condition of the authorization. There is no specific form involved. The information that is collected is usually maintained in a form that is customary for the type of business.

Estimate of Burden: 1 hour.

Type of respondents: Individuals, businesses, corporations, groups, and organizations.

Estimated number of respondents: 1,675.

Estimated number of responses per respondent: 1.5.

Estimated total annual burden on respondents: 2,513 hours.

Description of Information Collection

The following describes the information collection to be extended:

Title: Preparing and Updating Operation and Maintenance Plans (No specific agency form).

OMB Number: 0596–0082.

Expiration Date of Approval: June 30, 1998.

Type of Request: Extension of previously approved information collection.

Abstract: Special use authorizations may contain a clause requiring the holder of the special-use authorization to prepare or update an operation and maintenance plan, when the authorized Forest Service officer determines that the day-to-day operations of the authorized use needs to be specified. This information is useful to the holder of the special-use authorization and to the Forest Service, because it outlines procedures and policies used while the holder conducts operations or business on National Forest System lands. Typically, operation and maintenance plans include daily operating guidelines, fire abatement and control procedures, monitoring guidelines, maintenance standards, safety and emergency plans, and inspection standards and frequencies. Operation and maintenance plans are not required for all special use authorizations, but are usually necessary for complex operations, commercial uses, and situations involving sensitive environmental areas.

Estimate of Burden: 1 hour.

Type of respondents: Individuals, businesses, corporations, groups, and organizations, Federal, State, and local governments.

Estimated number of respondents: 35,000.

Estimated number of responses per respondent: 1.

Estimated total annual burden on respondents: 35,000 hours.

Description of Information Collection

The following describes the information collection to be extended:

Title: Compliance Reports and Information Updates (No specific agency form).

OMB Number: 0596–0082.

Expiration Date of Approval: June 30, 1998.

Type of Request: Extension of previously approved information collection.

Abstract: Special use authorizations may contain specific terms and conditions requiring the holder to provide the authorized Forest Service officer with compliance reports, information reports, and other information required by Federal law or required to properly manage National Forest System lands to ensure adequate protection of forest resources and public health and safety. Examples of compliance and information requests include dam maintenance inspection reports and logs required by the Reclamation Safety of Dams Act of 1978, the Federal Dam Safety Inspection Act of 1979, and the Dam Safety Act of 1983; documentation that authorized facilities passed safety inspections; documentation showing that the United States is covered in an insurance policy; notifications involving changes in corporation or partnership status; and documentation of compliance with nondiscrimination in Federally assisted programs as required by Title VI and VII of the Civil Rights Act of 1964.

Estimate of Burden: 1 hour.

Type of respondents: Individuals, businesses, corporations, groups, and organizations, Federal, State, and local governments.

Estimated number of respondents: 13,500.

Estimated number of responses per respondent: 1.

Estimated total annual burden on respondents: 13,500 hours.

Comments Are Invited

The agency invites comments on the following: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of this agency's estimate of the burden of the

proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Use of Comments

All comments received in response to this notice, including name and address when provided, will be summarized and included in the request for Office of Management and Budget approval. All comments will also become a matter of public record.

Dated: April 5, 1999.

Robert Lewis, Jr.,

Acting Associate Chief.

[FR Doc. 99–9044 Filed 4–9–99; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Oil and Gas Leasing; Humboldt-Toiyabe National Forest, White Pine and Nye Counties, Nevada

AGENCY: USDA Federal Energy Regulatory Commission.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The U.S. Department of Agriculture, Federal Energy Regulatory Commission will prepare an Environmental Impact Statement for the purposes of leasing National Forest System lands in the White Pine, Grant and Quinn Mountain Ranges (White Pine and Nye Counties, Nevada) for hydrocarbon exploration, development and production. This EIS will be prepared by the Forest Service in cooperation with the Bureau of Land Management, the Nevada Division of Minerals, and Nevada Division of Wildlife.

DATES: Written comments concerning the scope of the analysis should be received by May 10, 1999 to ensure timely consideration.

ADDRESSES: Send written comments to: Monica J. Schwalbach, Assistant Forest Supervisor, Humboldt-Toiyabe National Forest, P.O. Box 539, Ely, NV 89301.

FOR FURTHER INFORMATION: Direct questions about the project and the preparation of the EIS to Jim Winfrey, Project Team Leader, Humboldt-Toiyabe National Forest, P.O. Box 539, Ely, NV 89301. Telephone 775–3031.

SUPPLEMENTARY INFORMATION: Several proponents have requested portions of the Humboldt-Toiyabe National Forest be made available under the Bureau of Land Management's Competitive Oil and Gas Lease Sale. The Forest Service must complete an environmental analysis to determine if the lands are suitable for leasing and to identify the necessary conditions of approval prior to authorizing the BLM to offer these lands.

The proposal would affect approximately 553,135 acres of National Forest System lands. Preliminary internal scoping had identified several issues which will be addressed in the analysis process. The following list of issues is not intended to be all inclusive. Issues identified by the members of the interdisciplinary team are. (1) Threatened, endangered and sensitive species and other species of concerning including Bonneville cutthroat trout, mountain plover, sage grouse, bats, bighorn sheep, elk, and mule deer; (2) grazing; (3) surface and groundwater and cumulative effects to watershed; (4) heritage resources; (5) grazing; (6) noxious weeds; (7) roadless areas; (8) recreation opportunities; (9) visual, noise and air quality; (10) economic and social impacts; and (11) safety. These issues, and others identified during the scoping process will be used to develop alternatives to the proposed action. In addition, the No Action alternative will be considered in the analysis.

Public participation is important during the EIS scoping process. As part of the scoping process, the Forest Service is seeking information and comments from Federal, State, County and local agencies and other individuals or organizations who may be interested in or affected by the proposed actions. This input will be used in preparation of the draft EIS and final EIS.

Several government agencies will be invited to participate in this project as cooperating or participating agencies. These agencies include, but are not limited to, Bureau of Land Management, U.S. Fish and Wildlife Service, U.S. Environmental Protection Agency, Nevada Division of Environmental Protection, Nevada Division of Wildlife, and Nevada Division of Minerals.

The Forest Service is the lead agency for this project and Monica J. Schwalbach, Assistant Forest Supervisor is the responsible official. She will make the decision to determine which lands are suitable for leasing and any stipulations which should be included in a lease agreement. Applicable laws, Forest Service regulations and the Humboldt National Forest Land and Resource Management Plan (1986) will be taken into account throughout the analysis.

The Draft EIS is expected to be filed with the U.S. Environmental Protection Agency (EPA) and be available for review in October, 1999. At that time, EPA will publish a Notice of Availability of the Draft EIS in the **Federal Register**. The comment period on the Draft EIS will be at least 45 days from the date the EPA's Notice of Availability appears in the **Federal Register**.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of the draft EIS must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC, 435 U.S. 519, 553 (1978).* Also, environmental objections that could be raised at the draft environmental impact stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel, 803 F.2d 1016, 1022 (9th Cir. 1986)* and *Wisconsin Heritages, Inc.* v. *Harris, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980).* Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45 day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final EIS. To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft EIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft EIS. Comments may also address the adequacy of the draft EIS or the merits of the alternatives formulated or discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Monica J. Schwalbach,

Assistant Forest Supervisor.

[FR Doc 99–8960 Filed 4–9–99; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

National Resources Conservation Service

Buena Vista Watershed, Rockbridge County and City of Buena Vista, Virginia

AGENCY: U.S. Department of Agriculture, Natural Resources Conservation Service.

ACTION: Notice of Availability of Record of Decision.

SUMMARY: M. Denise Doetzer, Responsible Federal Official for projects administered under the provisions of Public Law 83–566, 16 U.S.C. 1001–1008, in the State of Virginia, is hereby providing notification that a record of decision to proceed with the installation of the Buena Vista Watershed project is available. Single copies of this record of decision may be obtained from M. Denise Doetzer at the address shown on the next page.

FOR FURTHER INFORMATION CONTACT: Ms. M. Denise Doetzer, State Conservationist, USDA, Natural Resources Conservation Service, Culpeper Building, Suite 209, 1606 Santa Rosa Road, Richmond, Virginia 23229–5014, telephone (804) 287–1691.

This activity is listed in the Catalog of Federal Domestic Assistance Under No. 10.904, Watershed and Flood Prevention, and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials.)

Dated: March 31, 1999.

M. Denise Doetzer,

State Conservationist.

[FR Doc. 99–8978 Filed 4–9–99; 8:45 am]

BILLING CODE 3410–16–M

DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

Inviting Preapplications for Rural Cooperative Development Grants

AGENCY: Rural Business-Cooperative Service, USDA.

ACTION: Notice.

SUMMARY: The Rural Business-Cooperative Service (RBS) announces the availability of approximately $1.75 million in competing Rural Cooperative Development Grant (RCDG) funds for fiscal year (FY) 1999. This action will comply with legislation which authorizes grants for establishing and operating centers for rural cooperative development. The intended effect of this notice is to solicit preapplications for FY 1999 and award grants before September 1, 1999.

DATES: The deadline for receipt of a preapplication is May 28, 1999. Preapplications received after that date will not be considered.

ADDRESSES: Entities wishing to apply for assistance should contact their USDA Rural Development State Office to receive further information and copies of the preapplication package.

FOR FURTHER INFORMATION CONTACT: James E. Haskell, Assistant Deputy Administrator, Cooperative Services, Rural Business-Cooperative Service, U.S. Department of Agriculture, Stop 3250, Room 4016, South Agriculture Building, 1400 Independence Avenue, S.W., Washington, DC 20250–3250. Telephone (202) 720–8460.

SUPPLEMENTARY INFORMATION: Rural Cooperative Development Grants (RCDG) is authorized by section 310B(e) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1932(e) and regulations are contained in 7 CFR part 4284, subpart F. The primary objective of the RCDG program is to improve the economic condition of rural areas through cooperative development. The program is administered through USDA Rural Development State Offices acting on behalf of RBS.

Grants will be awarded on a competitive basis to nonprofit corporations and institutions of higher education based on specific selection criteria. The priorities described in this paragraph will be used by RBS to rate preapplications. RBS review of preapplications will include the complete preapplication package submitted to the Rural Development State office. Points will be distributed according to ranking as compared with other preapplications on hand. Points will be awarded to each factor on a 5, 4, 3, 2, 1 basis depending on the applicant's ranking compared to other applicants.

(A) Preference will be given to applications that:

(1) Demonstrate a proven track record in administering a nationally coordinated, regionally or State-wide operated project;

(2) Demonstrate previous expertise in providing technical assistance to cooperatives in rural areas;

(3) Demonstrate the ability to assist in the retention of business, facilitate the establishment of cooperatives and new cooperative approaches, and generate employment opportunities that will improve the economic conditions of rural areas;

(4) Demonstrate the ability to create horizontal linkages among cooperative businesses within and among various sectors in rural areas of the United States and vertical linkages to domestic and international markets;

(5) Commit to providing technical assistance and other services to underserved and economically distressed rural areas of the United States;

(6) Commit to providing greater than a 25 percent matching contribution with private funds and in-kind contributions;

(7) Evidence transferability or demonstration value to assist rural areas outside of project area; and

(8) Demonstrate that any cooperative development activity is consistent with positive environmental stewardship.

Fiscal Year 1999 Preapplication Submission

Preapplications must include a clear statement of the goals and objectives of the project and a plan which describes the proposed project. Each preapplication received in the State office will be reviewed to determine if the preapplication is consistent with the eligible purposes outlined in 7 CFR part 4284, subpart F. Preapplications without supportive data to address selection criteria will not be considered. Copies of 7 CFR part 4284, subpart F, will be provided to any interested applicant by making a request to the Rural Development State office or RBS National office. Preapplications must be completed and submitted to the Rural Development State office as soon as possible, but no later than May 28, 1999. Preapplications received after May 28, 1999, will not be considered.

Each preapplication must contain the following:

(A) A detailed Table of Contents containing page numbers for each component of the preapplication.

(B) A project summary of 250 words or less on a separate page. This page must include the title of the project and the names of the primary project contacts and the applicant organization, followed by the summary. The summary should be self-contained and should describe the overall goals, relevance of the project, and a listing of all organizations involved in the project. The project summary should immediately follow the Table of Contents.

(C) A separate one-page information sheet which lists each of the eight evaluation criteria followed by the page numbers of all relevant material and documentation contained in the preapplication which supports that criteria. This page should immediately follow the project summary.

(D) An additional requirement for those applicants who have received funding under the RCDG program in

fiscal years 1997–98 is a summation, not to exceed three pages, of progress and results for all projects fully or partially funded by the RCDG program in those years. This summary should include the status of cooperative businesses organized and all eligible grant purpose activities listed under 7 CFR 4284.515. The summary should immediately follow the page described above in paragraph (c) documenting the location of evaluation criteria supporting material.

The National office will score applicants based on the grant selection criteria contained in 7 CFR part 4284, subpart F, and will select awardees subject to the availability of funds and the awardee's satisfactory submission of a formal application and related materials in accordance with subpart F. Entities submitting preapplications that are selected for award will be invited by the State office to submit a formal application prior to September 1, 1999. It is anticipated that grant awardees will be selected by September 1, 1999.

Dated: March 31, 1999.

Dayton Watkins,

Administrator, RBS.

[FR Doc. 99–8983 Filed 4–9–99; 8:45 am]

BILLING CODE 3410–XY–U

DEPARTMENT OF AGRICULTURE

Rural Business–Cooperative Service

Request for Proposals: Fiscal Year 1999 Funding Opportunity for Research on Rural Cooperative Opportunities and Problems

AGENCY: Rural Business–Cooperative Service, USDA.

ACTION: Notice.

SUMMARY: The Rural Business–Cooperative Service (RBS) announces the availability of approximately $1.0 million in competitive cooperative agreement funds allocated from FY 1999 appropriations. RBS hereby requests proposals from institutions of higher education or nonprofit organizations interested in applying for competitively awarded cooperative agreements for research related to agricultural and nonagricultural cooperatives serving rural communities. The intent of the funding is to encourage research on critical issues vital to the development and sustainability of cooperatives as a means of improving the quality of life in America's rural communities.

DATES: Cooperative agreement applications must be received on or before June 30, 1999. Proposals received after June 30, 1999, will not be considered for funding.

ADDRESSES: Send Proposals and other required materials to Dr. Thomas H. Stafford, Director, Cooperative Marketing Division, Rural Business–Cooperative Service, USDA, Stop 3252, Room 4204, 1400 Independence Avenue SW, Washington, DC 20250–3252. Telephone: (202)690–0368.

FOR FURTHER INFORMATION CONTACT: Dr. Thomas H. Stafford, Director, Cooperative Marketing Division, Rural Business–Cooperative Service, USDA, Stop 3252, Room 4204, 1400 Independence Avenue SW, Washington, DC 20250–3252. Telephone: (202) 690–0368.

SUPPLEMENTARY INFORMATION:

General Information

This solicitation is issued pursuant to the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 1999 making appropriations for programs administered by USDA's Rural Business–Cooperative Service (RBS) for the fiscal year ending September 30, 1999. The Rural Business–Cooperative Service (RBS) was established by the Department of Agriculture Reorganization Act of 1994. The mission of RBS is to improve the quality of life in rural America by financing community facilities and businesses, providing technical assistance, and creating effective strategies for rural development. RBS has authority to enter into cooperative agreements pursuant to section 607(b)(4) of the Rural Development Act of 1972, as amended by section 759A of the Federal Agriculture Improvement and Reform Act of 1996.

The primary objective of this funding is to encourage research through cooperative agreements on critical issues vital to the development and sustainability of user-owned cooperatives as a means of improving the quality of life in America's rural communities. Issue areas on which proposals should focus are:

(1) Production cooperatives (including joint management of farm operations) as a tool for small farm operators, as recommended by the National Commission on Small Farms.

(2) New generation cooperative equity management issues and their impact on the user-owned nature of the cooperative business.

(3) Cooperative structure, conduct and performance in selected industries.

(4) Can cooperatives compete for value-added markets?

(5) Governance and control issues in evolving cooperative structures and environments.

(6) The role of nonagricultural cooperatives in rural development.

(7) Evaluation of group action strategies, dispute resolution mechanisms, and justifiable terms available to contract growers and cooperatives in an increasingly industrialized agriculture.

(8) Assessment of farmer's markets organized as cooperatives. A cooperative agreement reflects a relationship between the United States Government and an eligible recipient where (1) The principal purpose of the relationship is the transfer of money, property, services, or anything of value to the eligible recipient to carry out research related to rural cooperatives; and (2) substantial involvement is anticipated between RBS acting for the United States Government, and the eligible recipient during the performance of the research in the agreement. A cooperative agreement is not a grant. Cooperative agreements are to be awarded on the basis of merit, quality, and relevance to advancing the purpose of federally supported rural development programs that increase economic opportunities in farming and rural communities.

All forms required to apply are available from the Cooperative Services Program web-site at www.usda.gov/rbs/coops/rrcop.htm, by calling (202) 690–0368, or faxing (202) 690–2723. Forms may also be requested via Internet by sending a message with your name, mailing address (not E-mail) and phone number to "thomas.stafford@usda.gov". When calling or e-mailing Cooperative Services, please indicate that you are requesting forms for Fiscal Year 1999 (FY 1999) Research on Rural Cooperative Opportunities and Problems (RRCOP). Forms will be mailed to you (not e-mailed or faxed) as quickly as possible. Forms are also usually available from the local university grants office.

Use of Funds

Funds may be used to pay up to 75 percent of the total cost for carrying out relevant projects. Applicants' contribution may be in cash or in-kind contribution and must be from nonfederal funds. Funds may not be used to: (1) Pay more than 75 percent of relevant project or administrative costs; (2) pay costs of preparing the application package; (3) fund political activities; or (4) pay costs incurred prior to the effective date of the cooperative agreement. Indirect costs may not exceed current negotiated rates. If no

rate has been negotiated, an indirect cost rate proposal must be submitted for approval.

Available Funds and Award Limitations

The amount of funds available for cooperative agreements in FY 1999 is approximately $1.0 million. Up to one-quarter of the total funds awarded will be allocated to research on nonagricultural cooperatives serving rural areas. Nonagricultural cooperatives include, but are not limited to housing, child care, health care, shared services, wholesale or retail consumer cooperatives, and credit unions. Agricultural cooperatives are user-owned and controlled businesses which purchase farm inputs, market farm products, or provide other services to their members. The actual number of cooperative agreements funded will depend on the quality of proposals received and the amount of funding requested. Maximum amount of Federal funds awarded for any one proposal will be $100,000. In 1998, a typical award ranged from $40,000 to $80,000 with an average award of $60,000.

Eligible Applicants

Proposals may be submitted by public or private colleges or universities, research foundations maintained by a college or university, or private nonprofit organizations. Under the Lobbying Disclosure Act of 1995, an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 (26 U.S.C. 501(c)(4)) which engages in lobbying activities, is not eligible to apply.

Methods for Evaluating and Ranking Applications

Applications will be evaluated by a panel of RBS technical experts. Applications will be evaluated competitively and points awarded as specified in the Evaluation Criteria and Weights section of this notice. After assigning points upon those criteria, applications will be listed in rank order and presented, along with funding level recommendations, to the Administrator of RBS, who will make the final decision on awarding of agreements. Applications will then be funded in rank order until all available funds have been expended. RBS reserves the right to make selections out of rank order to provide for a geographic or subject matter distribution of funded projects. In addition, timely completion of past cooperative agreements with RBS may be considered in awarding funds. With respect to any approved proposal, the amount of funding and the project period during which the project may be funded and will be completed, are subject to negotiation prior to finalization of the cooperative agreement.

Evaluation Criteria and Weights

RBS will initially determine whether the submitting organization is eligible and whether the application contains the information required by this notice. Prior to technical examination, each proposal will be reviewed for responsiveness to the funding solicitation. Proposals focusing on technical assistance, consulting, or problem solving for the benefit of a single cooperative are not encouraged. Submissions that do not fall within the guidelines as stated in the solicitation will be eliminated from the competition and will be returned to the applicant.

After this initial screening, RBS will use the following criteria to rate and rank proposals received in response to this notice of funding availability. The maximum number of points is 100. Failure to address any of the following criteria will disqualify the proposal.

(1) Relevance: Focuses on an agricultural or nonagricultural cooperatives serving rural areas and demonstrates a clear relationship with the research topics contained in this notice (maximum 20 points);

(2) Demonstrates potential to contribute innovative ideas or solutions to identified problems or issues (maximum 20 points);

(3) Shows capacity for broad applicability in facilitating new or improved cooperative development or new or improved cooperative approaches (maximum 15 points);

(4) Outlines a sound plan of work and appropriate methodology to accomplish the stated objective of the research (maximum 15 points);

(5) Adequately documents the need for and clearly defines the objectives of the research (maximum 10 points);

(6) Demonstrates cost effectiveness (maximum 10 points);

(7) Identifies qualified resources and personnel, including a demonstrated track-record of similar research (maximum 10 points).

Deliverables

Upon completion of the project, recipients will deliver the results of the research to RBS, in the form of a document of publishable quality, accompanied by all applicable supporting data. Publishable documents include, but are not limited to, manuscripts, videotapes, or software, or other media, as may be identified in approved proposals. RBS retains publishing rights to such documents, as well as rights to any raw or preliminary data collected as part of the project.

Content of a Proposal

A proposal should contain the following:

(1) *Form SF–424*, "Application for Federal Assistance."

(2) *Form SF–424A*, "Budget Information—Non-Construction Programs."

(3) *Form SF–424B*, "Assurances—Non-Construction Programs."

(4) *Form AD–1047*, "Certification Regarding Debarment, Suspension, and Other Responsibility Matters."

(5) *Form AD–1049*, "Certification Regarding Drug-Free Workplace Requirements."

(6) *Table of Contents:* For ease of locating information, each proposal must contain a detailed Table of Contents immediately following the required forms. The Table of Contents should include page numbers for each component of the proposal. Pagination should begin immediately following the Table of Contents.

(7) *Project Summary.* A summary of the Project Proposal, not to exceed one-page should include the following: title of the project; names of principal investigators and applicant organization; and a description of the overall goals and relevance of the project.

(8) *Project Proposal:* The application must contain a narrative statement describing the nature of the proposed research. The Proposal must include at least the following:

(i) Project Title. The title of the proposed project must be brief, yet represent the major thrust of the project.

(ii) Project Leaders. List the names and contact information for the principal investigators. Minor collaborators or consultants should be so designated and not listed as principal investigators.

(iii) Need for the Project. A concisely worded rationale for the research must be presented. Included should be a summarization of the body of knowledge (literature review) which substantiates the need for the research. The need for the proposed research must be clearly and directly related to the facilitation of new or improved cooperative approaches.

(iv) Objectives of the Project. Discuss the specific objectives of the project and the impact of the research on end-users.

(v) Procedures. Discuss the hypotheses or questions being asked and the methodology or approach to be used in carrying out the proposed research and accomplishing the

objectives. A description of any subcontracting arrangements to be used in carrying out the project must be included.

(vi) Time Table. A tentative schedule for conducting the major steps of the research must be included.

(vii) Expected Output. Describe how the results will be presented and disseminated. Include who will be responsible for any published output.

(viii) Coordination and Management Plan. Describe how the project will be coordinated among various participants and the nature of the collaborations. Describe plans for management of the project to ensure its proper and efficient administration. Describe scope of RBS involvement in the project.

(9) *Personnel Support.* To assist reviewers in assessing the competence and experience of proposed principal investigators, the following must be included for each:

(i) estimated time commitment to the project;

(ii) a one-page curriculum-vitae;

(iii) a chronological list of all publications during the past five years.

What to Submit

An original and two copies must be submitted in one package.

When and Where To Submit

Proposals must be received by close of business on June 30, 1999. Proposals must be sent to Dr. Thomas H. Stafford, Director, Cooperative Marketing Division, Rural Business-Cooperative Service, USDA, Stop 3252, Room 4204, 1400 Independence Avenue SW, Washington, DC 20250–3252.

Other Federal Statutes and Regulations That Apply

Several other Federal statutes and regulations apply to proposals considered for review and to cooperative agreements awarded. These include but are not limited to:

7 CFR part 15, subpart A-Nondiscrimination in Federally-Assisted Programs of the Department of Agriculture—Effectuation of Title VI of the Civil Rights Act of 1964.

7 CFR part 3015—USDA Uniform Federal Assistance Regulations.

7 CFR part 3017—Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)

7 CFR part 3018—New Restrictions on Lobbying

7 CFR part 3019—Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations

7 CFR part 3051—Audits of Institutions of Higher Education and Other Nonprofit Institutions

7 CFR part 3052—Audits of States, Local Governments, and Non-Profit Organizations

Paperwork Reduction Act

Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the collection of information requirements contained in this Notice have been approved under OMB control number 0570–0028.

Dated: April 1, 1999.

Dayton J. Watkins,

Administrator, Rural Business-Cooperative Service.

[FR Doc. 99–8974 Filed 4–9–99; 8:45 am]

BILLING CODE 3410–XY–U

DEPARTMENT OF COMMERCE

Bureau of the Census

Applicant Background Questionnaire

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before June 11, 1999.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5033, 14th and Constitution Avenue, NW, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Dayna Jacobs, Bureau of the Census, Field Division, SFC–2, Room 1408, Washington, DC 20233–5700, 301–457–4899.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Applicant Background Questionnaire is completed on a voluntary basis by applicants for temporary (Schedule A) positions with the Bureau of the Census at the time of application and testing. Temporary positions normally last 8–12 weeks, and applicants must meet the minimum qualifications of a written test. The expected number of applicants for temporary Census Bureau jobs is increasing significantly because of our efforts to hire over 800,000 enumerators for Census 2000. The questions on the Applicant Background Questionnaire are of a sensitive nature relating to race and national origin as well as medical disabilities. This information is useful in determining whether we have a representative sample of the community from which we are hiring. This allows the Bureau of the Census to adjust recruiting efforts quickly and to employ local applicants for indigenous hiring. Background information provided by applicants will not be used in applicant screening or selection and will not be available to the selecting official.

The Applicant Background Questionnaire asks the minimum number of questions to obtain the necessary information. Individuals complete the form only once and the Bureau of the Census does not obtain similar information from applicants prior to employment. The confidentiality of information contained on the BC–1431 will be maintained according to the Privacy Act. The questionnaire contains the Privacy Act statement.

II. Method of Collection

Individuals complete the BC–1431 only once. Based on past experience, the BC–1431 on average takes about 2.5 minutes to complete. The paper form is completed by the applicant at the time of testing.

III. Data

OMB Number: 0607–0494.

Form Number: BC–1431.

Type of Review: Regular Submission.

Affected Public: Decennial Census Job Applicants.

Estimated Number of Respondents: 3,200,000.

Estimated Time Per Response: 2.5 minutes.

Estimated Total Annual Burden Hours: 133,333.

Estimated Total Annual Cost: There is no cost to respondents except for their time.

Respondent's Obligation: Voluntary.

Legal Authority: P.L. 92–261, Equal Employment Opportunity Act of 1972 P.L. 94–311, Publication of Economic and Social Statistics for Americans of Spanish Origin or Descent 43 FR 38297, Information of Impact (Section 4) 5 U.S.C. 7201, Antidiscrimination Policy, Minority Recruitment Program.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: April 7, 1999.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 99–9051 Filed 4–9–99; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

International Trade Administration

BISNIS Publication Subscription Form

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burdens, invites the general public and other Federal agencies to take this opportunity to comment on the continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before June 11, 1999.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5033, 14th & Constitution Avenue, NW, Washington, DC 20230. Phone number: (202) 482–3272.

FOR FURTHER INFORMATION CONTACT: Request for additional information or copies of the information collection instrument and instructions should be directed to: Christopher Weiss, Market Access and Compliance, Business Information Service for the Newly Independent States (BISNIS) Room 7413, 14th & Constitution Avenue, NW, Washington, DC 20230; Phone number: (202) 482–4655 ext. 26, and fax number: (202) 482–2293.

SUPPLEMENTARY INFORMATION:

I. Abstract

The International Trade Administration's (ITA) Business Information Service for the Newly Independent States (BISNIS) program offers business information and counseling to U.S. companies seeking to export or to invest in the countries of the former Soviet Union. A critical component of the program is the dissemination of information regarding market conditions and opportunities in various industries and countries of the former Soviet Union. These information products provided by BISNIS are in the form of emails, faxes, and paper mailers. The Publication Subscription form is a quick way for interested parties to tell BISNIS which products they want and what is their industry and country interests.

II. Method of Collection

Internet, fax, mail, or telephone.

III. Data

OMB Number: 0625–XXXX.
Form Number: None.
Type of Review: Regular Submission.
Affected Public: Business or other for-profit firms.
Estimated Number of Respondents: 2,040.
Estimated Time Per Response: 5 minutes.
Estimated Total Annual Burden Hours: 170 hours.
Estimated Total Annual Costs: The estimated annual cost for this collection is $8,500.00 ($5,950.00 for respondents and $2,550.00 for federal government).

IV. Request for Comments

Comments are invited on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and costs) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: April 7, 1999.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 99–9052 Filed 4–9–99; 8:45 am]

BILLING CODE 3510–DA–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–403–601]

Fresh and Chilled Atlantic Salmon from Norway; Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Final Results of Antidumping Duty Administrative Review.

SUMMARY: On December 31, 1998, the Department of Commerce (the Department) published in the **Federal Register** the preliminary results of administrative review of the antidumping order on fresh and chilled Atlantic salmon from Norway. The review covers one manufacturer/exporter of the subject merchandise shipped to the United States during the period April 1, 1997, through March 31, 1998. We did not receive any comments on the preliminary results. The dumping margin for the reviewed company is unchanged from the preliminary results.

EFFECTIVE DATE: April 12, 1999.

FOR FURTHER INFORMATION CONTACT: John Conniff or Thomas Futtner, AD/CVD Enforcement, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone 202/482–1009 or 482–3814, respectively.

SUPPLEMENTARY INFORMATION:

Background

The Department published the preliminary results of this review on December 31, 1998 (63 FR 72244). The Department has now completed this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995,

the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations refer to the regulations codified at 19 CFR Part 351 (1998).

Scope of the Review

The merchandise covered by this review is fresh and chilled Atlantic salmon (salmon). It encompasses the species of Atlantic salmon (Salmo salar) marketed as specified herein; the subject merchandise excludes all other species of salmon: Danube salmon; Chinook (also called "king" or "quinnat"); Coho ("silver"); Sockeye ("redfish" or "blueback"); Humpback ("pink"); and Chum ("dog"). Atlantic salmon is whole or nearly whole fish, typically (but not necessarily) marketed gutted, bled, and cleaned, with the head on. The subject merchandise is typically packed in fresh water ice (chilled). Excluded from the subject merchandise are fillets, steaks, and other cuts of Atlantic salmon. Also excluded are frozen, canned, smoked or otherwise processed Atlantic salmon. Fresh and chilled Atlantic salmon is currently provided for under Harmonized Tariff Schedule (HTS) subheading 0302.12.00.02.09. The HTS item number is provided for convenience and Customs purposes. The written description remains dispositive.

Final Results of Review

The Department received no comments on its preliminary results and we did not make any changes to our analysis. Therefore, the margin from the preliminary results has not changed for the final results of review.

Manufacturer/Exporter	Margin (percent)
Nomir Group A/S	31.81

The Department shall determine, and the U.S. Customs Service shall assess, antidumping duties on all appropriate entries. We will assess antidumping duties on the above firm's entries at the same rate as its above stated dumping margin since the margin is not a calculated rate, but is a rate based upon facts available pursuant to section 776 of the Act.

Furthermore, the following deposit requirements will be effective for all shipments of the subject merchandise, entered, or withdrawn from warehouse, for consumption on or after the publication date of these final results of this administrative review, as provided for by section 751(a)(1) of the Act: (1) The cash deposit rate for the reviewed firm will be that firm's rate established in the final results of this administrative review; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this or a prior review, or the original less than fair value investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters not previously reviewed will be 23.80 percent, the "all others" rate established in the final determination of sales at less than fair value, published by the Department (56 FR 14920, April 12, 1991).

These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the terms of an APO is a sanctionable violation.

This administrative review and notice are in accordance with sections 751(a)(1)(B) and 777(i)(1)of the Act.

Dated: April 6, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99–9049 Filed 4–9–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

United States-Egypt Presidents' Council: Membership

AGENCY: International Trade Administration, Commerce Department.

ACTION: Notice of Membership Opportunity.

SUMMARY: The International Trade Administration of the U.S. Department of Commerce established and monitors the activities of the U.S.-Egypt Presidents' Council, the private sector component of the Gore-Mubarak Partnership. This notice announces membership opportunities for American business representatives on the U.S. side of the Council.

DATES: In order to receive full consideration, requests must be received no later than: Friday, May 7, 1999.

ADDRESSES: Please send your requests for consideration to Thomas Sams, Egypt Desk Officer, Office of the Near East, U.S. Department of Commerce either by fax on 202–482–0878 or by mail to Room H–2029B, U.S. Department of Commerce, 14th and Constitution Avenue, NW, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Tom Sams, Office of the Near East, Room H–2029B, U.S. Department of Commerce, Washington, DC 20230.

SUPPLEMENTARY INFORMATION: During his September, 1994 visit to Cairo, Vice President Gore, on behalf of President Clinton, and President Mubarak announced the "Gore-Mubarak Partnership for Growth and Development". This bilateral initiative includes the establishment of the United States-Egypt Presidents' Council. The purpose of the Council is to provide a forum through which American and Egyptian private sector representatives can provide advice to their respective governments that reflect their views, needs and concerns regarding private sector business development in Egypt and enhanced bilateral commercial ties. The Council exchanges information and encourages bilateral discussions that address the following areas:

- Factors that affect the growth of private sector business in Egypt, including disincentives to trade and investment and regulatory obstacles;
- Initiatives that the Government of Egypt might take to promote private sector business growth in Egypt;
- Identification and promotion of business opportunities in Egypt;
- Identifying further steps to facilitate and encourage the development of

commercial expansion between the two countries.

The U.S. section of the Council, chaired by the U.S. Secretary of Commerce, consists of fifteen members, all drawn from the private sector. They represent the diversity of American business with emphasis on: agribusiness and food processing, tourism, banking and investment, pharmaceuticals, services, information technology, electronics and other high technology industries, and manufacturing industries. Private sector members will serve in a representative capacity presenting the views and interests of their particular industry and as senior business representatives whose expertise on international business issues can be shared. Private sector members are not special government employees, and will receive no compensation for their participation in Council activities. Members participating in Council meetings and events will be responsible for their travel, living, and other personal expenses. Council members serve for two-year terms at the discretion of the Secretary.

In order to be eligible for membership in the U.S. section, potential candidates should be:

- a U.S. citizen residing in the United States;
- the President or CEO (or comparable level of responsibility of a private sector company (or, in the case of very large private sector companies, the head of a sizeable operating unit); or head of a non-profit organization that has a unique technical expertise and outstanding reputation; and
- not a registered foreign agent under the Foreign Agents Registration Act of 1938, as amended.

In reviewing eligible candidates, the Secretary of Commerce will consider such selection factors as:

- Experience and interest in the Egyptian market;
- Industry or service sector represented;
- export/investment experience; and
- contribution to diversity based on industry sectors, company size, location, and demographics.

Members will be selected who will best carry out the objectives of the Council as stated in the Terms of Reference establishing the U.S.-Egypt Presidents' Council.

To be considered for membership, please provide the following: name or manes and title(s) of the individual(s) requesting consideration; name and address of the company or organization sponsoring each individual; company's product, service or technical expertise; size of the company; export trade, investment, or international program experience and major markets; and a brief statement of why the candidate(s) should be considered for membership on the Council.

Dated: April 6, 1999.

Thomas R. Parker,

Director, Office of the Near East.

[FR Doc. 99–8985 Filed 4–9–99 8:45 am]

BILLING CODE 3510–DA–M

DEPARTMENT OF COMMERCE

International Trade Administration

[C–475–819]

Certain Pasta from Italy: Preliminary Results of Countervailing Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Preliminary Results of Countervailing Duty Administrative Review.

SUMMARY: The Department of Commerce is conducting an administrative review of the countervailing duty order on certain pasta from Italy for the period January 1, 1997, through December 31, 1997. We have preliminarily determined that certain producers/exporters have received net subsidies during the period of review. If the final results remain the same as these preliminary results, we will instruct the Customs Service to assess countervailing duties as detailed in the preliminary results of review. Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: April 12, 1999.

FOR FURTHER INFORMATION CONTACT: Vincent Kane, Sally Hastings, or Suresh Maniam, AD/CVD Enforcement, Group I, Office 1, Import Administration, U.S. Department of Commerce, Room 3099, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–2815, 482–3464 or 482–0176, respectively.

Background

On July 24, 1996, the Department of Commerce (the Department) published in the **Federal Register** (61 FR 38544) the countervailing duty order on pasta from Italy. On July 1, 1998, the Department published a notice of "Opportunity to Request Administrative Review" (63 FR 35909) of this countervailing duty order. We received timely requests for review and we initiated the review, covering the period January 1, 1997, to December 31, 1997, on August 27, 1998 (63 FR 45796), and September 9, 1998 (63 FR 48188). In accordance with 19 CFR 351.213(b), this review of the order covers the following producers or exporters of the subject merchandise for which a review was specifically requested: Audisio Industrie Alimentari S.p.A. ("Audisio"); the affiliated companies Delverde S.r.L., Tamma Industrie Alimentari di Capitanata S.r.L., Sangralimenti S.r.L., and Pietro Rotunno, S.r.L. ("Delverde/Tamma"); Pastificio Fabianelli S.p.A. ("Fabianelli"); and Pastificio Riscossa F.lli Mastromauro S.r.L. ("Riscossa"). This review covers 26 programs.

On September 15, 1998, we issued countervailing duty questionnaires to the Government of Italy ("GOI"), the Commission of the European Union ("EU"), and the above-named companies under review. The following seven companies which had requested to be included in this review withdrew their request on the noted dates: De Gi Ma S.r.L. and Pastificio Laporta S.a.s. on September 23, 1998; Industrie Alimentari Molisane S.r.L. and Pastificio Antonio Pallante S.r.L. on October 6, 1998; Pastificio Maltagliati S.p.A. on October 28, 1998; La Molisana Industrie Alimentari S.p.A. on November 4, 1998; and Petrini S.p.A. on November 5, 1998.

We received responses to our questionnaires and issued supplemental questionnaires throughout the period November 1998 through February 1999. Responses to supplemental questionnaires were received in March 1999.

The Department is conducting this administrative review in accordance with section 751(a) of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act ("URAA"), effective January 1, 1995 ("the Act").

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions of the Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations codified at 19 CFR Part 351 (1998).

Scope of Review

Imports covered by this review are shipments of certain non-egg dry pasta in packages of five pounds (2.27 kilograms) or less, whether or not enriched or fortified or containing milk or other optional ingredients such as chopped vegetables, vegetable purees, milk, gluten, diastases, vitamins, coloring and flavorings, and up to two percent egg white. The pasta covered by this scope is typically sold in the retail

market, in fiberboard or cardboard cartons or polyethylene or polypropylene bags, of varying dimensions.

Excluded from the scope of this review are refrigerated, frozen, or canned pastas, as well as all forms of egg pasta, with the exception of non-egg dry pasta containing up to two percent egg white. Also excluded are imports of organic pasta from Italy that are accompanied by the appropriate certificate issued by the Instituto Mediterraneo Di Certificazione ("IMC"), by Bioagricoop Scrl, by QC&I International Services, or by Ecocert Italia.

The merchandise subject to review is currently classifiable under item 1902.19.20 of the *Harmonized Tariff Schedule of the United States* ("*HTSUS*"). Although the *HTSUS* subheading is provided for convenience and customs purposes, the written description of the merchandise subject to the order is dispositive.

Scope Rulings

(1) On August 25, 1997, the Department issued a scope ruling that multicolored pasta, imported in kitchen display bottles of decorative glass that are sealed with cork or paraffin and bound with raffia, is excluded from the scope of the antidumping and countervailing duty orders (*see* Memorandum from Edward Easton to Richard Moreland, dated August 25, 1997).

(2) On July 30, 1998, the Department issued a scope ruling, finding that multipacks consisting of six one-pound packages of pasta that are shrink-wrapped into a single package are within the scope of the antidumping and countervailing duty orders. (*See* letter from Susan H. Kuhbach, Acting Deputy Assistant Secretary for Import Administration, to Barbara P. Sidari, Vice President, Joseph A. Sidari Company, Inc., dated July 30, 1998.)

(3) On October 26, 1998, we initiated a scope inquiry to determine whether a package weighing over five pounds as a result of industry packing tolerances may be within the scope of the antidumping and countervailing duty orders. A preliminary scope ruling was issued (*see* Memorandum from John Brinkmann to Richard Moreland, dated March 24, 1999).

Period of Review

The period of review ("POR") for which we are measuring subsidies is from January 1, 1997, through December 31, 1997.

Subsidies Valuation Information

Benchmarks for Long-term Loans and Discount Rates: The companies under review did not takeout any long-term, fixed-rate, lira-denominated loans or other debt obligations which could be used as benchmarks in any of the years in which grants were received or government loans under review were given. Therefore, for years prior to 1995, we used the Bank of Italy reference rate, adjusted upward to reflect the mark-up an Italian commercial bank would charge a corporate customer, as the benchmark interest rate for long-term loans and as the discount rate. For 1995 through 1997, we used the average interest rate on medium-and long-term loans as reported by the Bank of Italy based on a survey of 114 Italian banks. We continued to use the same mark-up as in *Certain Pasta From Italy: Final Results of Countervailing Duty Review*, 63 FR 43905, 43906 (August 17, 1998) ("*Pasta First Review*"), but we will examine at verification whether that mark-up includes fees, commissions and other expenses.

Allocation Period: In *British Steel plc.* v. *United States*, 879 F.Supp. 1254, 1289 (CIT 1995) ("*British Steel I*"), the U.S. Court of International Trade ("CIT" or "the Court") ruled against the allocation methodology for non-recurring subsidies that the Department had employed for the past decade, which was articulated in the *General Issues Appendix*, appended to *Final Countervailing Duty Determination; Certain Steel Products from Austria*, 58 FR 37225 (July 9, 1993) ("*GIA*"). In accordance with the Court's remand order, the Department determined that the most reasonable method of deriving the allocation period for nonrecurring subsidies is a company-specific average useful life ("AUL") of non-renewable physical assets. This remand determination was affirmed by the Court on June 4, 1996. *See British Steel plc* v. *United States*, 929 F.Supp 426, 439 (CIT 1996) ("*British Steel II*"). Accordingly, the Department has applied this method to those non-recurring subsidies that were not countervailed in the investigation. However, for non-recurring subsidies received prior to the POR and which have already been countervailed based on an allocation period established in earlier segments of this proceeding, it is neither reasonable nor practicable to reallocate those subsidies over a different period of time. Therefore, for purposes of these preliminary results, the Department is using the original allocation period assigned to each non-recurring subsidy received prior to the POR. This conforms with our approach in *Certain Carbon Steel Products from Sweden; Final Results of Countervailing Duty Administrative Review*, 62 FR 16549 (April 7, 1997).

For non-recurring subsidies received during the POR, each company under review submitted an AUL calculation based on depreciation and asset values of productive assets reported in its financial statements. Each company's AUL was derived by dividing the sum of average gross book value of depreciable fixed assets over the past 10 years by the average depreciation charges over this period. We found this calculation to be reasonable and consistent with our company-specific AUL objective. We have used these calculated AULs for the allocation period for non-recurring subsidies received during the POR.

Benefits to Mills: In cases where semolina (the input product to pasta) and the subject merchandise were produced within a single corporate entity, the Department has found that subsidies to the input product benefit total sales of the corporation, including sales of the subject merchandise, without conducting an upstream subsidy analysis. (*See, e.g., Final Affirmative Countervailing Duty Determination: Certain Softwood Lumber Products from Canada*, 57 FR 22570 (May 28, 1992); *Final Affirmative Countervailing Duty Determination: Industrial Phosphoric Acid from Israel*, 52 FR 25447 (July 7, 1987); *Final Affirmative Countervailing Duty Determination: Certain Pasta from Italy*, 61 FR 30288, at 30292 (June 14, 1996) ("*Pasta from Italy*").) Where appropriate, we have also included sales of semolina in calculating the *ad valorem* subsidy rate. However, for those companies where the mill is separately incorporated from the producer of the subject merchandise, we have not included subsidies for the milling operations in our calculations.

Changes in Ownership

One of the companies under review, Delverde/Tamma, purchased an existing pasta factory from an unaffiliated party. The previous owner of the purchased factory had received non-recurring countervailable subsidies prior to the transfer of ownership, which took place in 1991. Consistent with our practice in *Pasta First Review*, we have calculated the amount of the prior subsidies that passed through to Delverde with the acquisition of the factory, following the spin-off methodology described in the Restructuring section of the *GIA*, 58 FR at 37265.

Affiliated Parties

In *Pasta First Review*, we found that Delverde S.r.L. ("Delverde") and Tamma Industrie Alimentari, S.r.L. ("Tamma") warrant treatment as a single company with a combined rate due to the level of affiliation between the two companies. In this review, the respondents have provided no new information which would warrant a reconsideration of this determination. Therefore, we calculated a single countervailing duty rate for these companies by dividing their combined subsidy benefits by their combined sales.

Analysis of Programs

I. Programs Preliminarily Determined to Confer Subsidies

A. Industrial Development Grants

1. Law 64/86 Benefits

Law 64/86 provided assistance to promote industrial development in the Mezzogiorno (south of Italy). Grants were awarded to companies constructing new plants or expanding or modernizing existing plants. Pasta companies were eligible for grants to expand existing plants but not to establish new plants, because the market for pasta was deemed to be close to saturated. Grants were made only after a private credit institution chosen by the applicant made a positive assessment of the project.

In 1992, the Italian Parliament abrogated Law 64/86 and replaced it with Law 488/92 (see 2, below). This decision became effective in 1993. Projects approved prior to 1993, however, were authorized to receive grant amounts after 1993. Delverde/Tamma and Riscossa benefitted from industrial development grants under Law 64/86 during the POR.

In *Pasta from Italy*, the Department determined that these grants provide a countervailable subsidy within the meaning of section 771(5) of the Act. They provided a direct transfer of funds from the GOI bestowing a benefit in the amount of the grant. Also, these grants were found to be regionally specific within the meaning of section 771(5A) of the Act. In this review, neither the GOI nor the responding companies provided new information which would warrant reconsideration of this determination.

In *Pasta from Italy*, the Department treated independent development grants as "non-recurring" based on the analysis set forth in the Allocation section of the GIA, 58 FR at 37226. In the current review, we have found no reason to depart from this treatment. Therefore, we have allocated those grants which exceeded 0.5 percent of a company's sales in the year of receipt over time. (*See GIA* at 58 FR 37226.) To calculate the countervailable subsidy, we used our standard grant methodology. We divided the benefit attributable to each company in the POR by its sales in the POR. Thus, we determine the countervailable subsidy for these grants to be 2.18 percent ad valorem for Delverde/Tamma and 0.74 percent *ad valorem* for Riscossa.

2. Law 488/92 Benefits

In 1986, the EU initiated an investigation of the GOI's regional subsidy practices. As a result of this investigation, the GOI changed the regions eligible for regional subsidies to include depressed areas in central and northern Italy in addition to the Mezzogiorno. After this change, the areas eligible for regional subsidies are the same as those classified as Objective 1, Objective 2, and Objective 5(b) areas by the EU (*see* III., below). The new policy was given legislative form in Law 488/92 under which Italian companies in the eligible areas may apply for industrial development grants. (Loans are not provided under Law 488/92.) Law 488/92 was previously found countervailable in *Final Affirmative Countervail Duty Determination: Stainless Steel Plate in Coils from Italy*, 64 FR 15508, (March 31, 1999).

In the POR, Delverde/Tamma received grants under Law 488/92 for modernization of its pasta factory and warehouse and the production of pasta.

Based on information provided in the responses, we preliminarily determine that grants under Law 488/92 provide a direct transfer of funds from the GOI bestowing a benefit in the amount of the grant. Also, we preliminarily find these grants to be regionally specific within the meaning of section 771(5A) of the Act. We, therefore, preliminarily determine that these grants provide a countervailable subsidy within the meaning of section 771(5) of the Act.

We have determined that Law 488/92 grants are "non-recurring" based on the analysis set forth in the Allocation section of the *GIA*, 58 FR at 37226. In accordance with our practice, we have allocated these grants, which exceeded 0.5 percent of Delverde/Tamma's sales in the year of receipt, over time. (*See GIA* at 58 FR 37226.)

To calculate the countervailable subsidy, we used our standard grant methodology. We divided Delverde/Tamma's benefit attributable to the POR by the company's sales in the POR. Thus, we preliminarily determine the countervailable subsidy for this program to be 0.23 percent *ad valorem* for Delverde/Tamma.

B. Industrial Development Loans Under Law 64/86

Law 64/86 also provided reduced rate industrial development loans with interest contributions to companies constructing new plants or expanding or modernizing existing plants in the Mezzogiorno. The interest rate on these loans was set at the reference rate, with the GOI's interest contributions serving to reduce this rate. For the reasons discussed above, pasta companies were eligible for interest contributions to expand existing plants but not to establish new plants.

Delverde/Tamma received industrial development loans with interest contributions from the GOI. These loans were outstanding during the POR.

In *Pasta from Italy*, the Department determined that these loans were countervailable subsidies within the meaning of section 771(5) of the Act. They were a direct transfer of funds from the GOI providing a benefit in the amount of the difference between the benchmark interest rate and the interest rate paid by the companies after accounting for the GOI's interest contributions. Also, they were found to be regionally specific within the meaning of section 771(5A) of the Act. In this review, neither the GOI nor the responding companies provided new information which would warrant reconsideration of this determination.

It is the Department's practice to measure the benefit conferred by interest rebates using our loan methodology if the company knew in advance that the government was likely to pay or rebate interest on the loan at the time the loan was taken out. (*See, e.g., Certain Steel from Italy*, 58 FR 37331 (July 9, 1993).) Because, in this case, the recipients of the interest contributions knew, prior to taking out the loans, that the GOI would be likely to provide the interest contributions, we have allocated the benefit over the life of the loan for which the contribution was received. We divided Delverde/Tamma's benefit attributable to the POR by the company's sales in the POR. On this basis, we preliminarily determine the countervailable subsidy for this program to be 0.65 percent *ad valorem* for Delverde/Tamma.

C. Export Marketing Grants under Law 304/90

To increase market share in non-EU markets, Law 304/90 provides grants to encourage enterprises operating in the food and agricultural sectors to carry out pilot projects aimed at developing links

between Italian producers and foreign distributors, and improving services in those markets. Emphasis is placed on assisting small-and medium-sized producers.

In *Pasta from Italy*, the Department determined that the export marketing grants under Law 304 provided countervailable subsidies within the meaning of section 771(5) of the Act. The grants were a direct transfer of funds from the GOI providing a benefit in the amount of the grant. The grants were also found to be specific because their receipt was contingent upon anticipated exportation. In this review, neither the GOI nor the responding companies provided new information which would warrant reconsideration of this determination.

Delverde/Tamma received a grant under this program for an export sales pilot project in the United States prior to the POR.

Each project funded by Law 304/90 grants requires a separate application and approval, and the projects represent one-time events in that they involve an effort to establish warehouses, sales offices, and a selling network in new overseas markets. Therefore, in *Pasta from Italy*, the Department treated the grant received under this program as "non-recurring" based on the analysis set forth in the Allocation section of the *GIA*, 58 FR at 37226. Further, the Department found that the grant exceeded 0.5 percent of Delverde/Tamma's exports to the United States in the year it was received. Therefore, in accordance with our past practice, we allocated the benefits of this grant over time. In this review, neither the GOI nor the responding companies provided new information which would warrant reconsideration of this determination.

To calculate the countervailable subsidy, we used our standard grant methodology. We divided the benefit attributable to the POR by Delverde/Tamma's exports to the United States in the POR. On this basis, we preliminarily determine the countervailable subsidy to be 0.22 percent ad valorem for Delverde/Tamma.

D. Social Security Reductions and Exemptions

1. Sgravi Benefits

Pursuant to Law 1089 of October 25, 1968, companies located in the Mezzogiorno were granted a 10 percent reduction in social security contributions for all employees on the payroll as of September 1, 1968, as well as those hired thereafter. Subsequent laws (*e.g.*, Law 183/76, Law 30/97 and Sgravi Unico) authorized companies located in the Mezzogiorno to take additional reductions in social security contributions for employees hired during later periods, provided that the new hires represented a net increase in the employment level of the company. The additional reductions ranged from 10 to 20 percentage points. Further, for employees hired during the period July 1, 1976 to November 30, 1991, companies located in the Mezzogiorno were granted a full exemption from social security contributions for a period of 10 years, provided that employment levels showed an increase over a base period.

In *Pasta from Italy*, the Department determined that the social security reductions and exemptions were countervailable subsidies within the meaning of section 771(5) of the Act. They represented revenue foregone by the GOI and they conferred a benefit in the amount of the savings received by the companies. Also, they were found to be specific within the meaning of section 771(5A) of the Act because they are limited to companies located in the Mezzogiorno. In this review, neither the GOI nor the responding companies provided new information which would warrant reconsideration of this determination.

Delverde/Tamma and Riscossa received social security reductions and exemptions during the POR.

To calculate the countervailable subsidy, we divided each company's savings in social security contributions during the POR by that company's sales in the POR. On this basis, we preliminarily determine the countervailable subsidy from this program to be 0.31 percent ad valorem for Delverde/Tamma and 0.37 percent ad valorem for Riscossa.

2. Fiscalizzazione Benefits

In addition to the sgravi deductions described above, the GOI provides social security benefits of another type, called "fiscalizzazione." Fiscalizzazione is a nationwide measure which provides a reduction of certain social security payments related to health care or insurance. The program provides an equivalent level of deductions throughout Italy for contributions related to tuberculosis, orphans, and pensions. However, the program provides a higher deduction from contributions to the National Health Insurance system for manufacturing enterprises located in southern Italy compared to those located in northern Italy. Until July 31, 1995, the differential was 6.16 percent of base salary after which it was reduced to five percent. In 1996, the differential was reduced to four percent and it was further reduced to three percent on January 1, 1997.

In *Pasta from Italy*, the Department determined that the fiscalizzazione reductions were countervailable subsidies within the meaning of section 771(5) of the Act for companies with operations in southern Italy. They represented revenue foregone by the GOI and conferred a benefit in the amount of the greater savings accruing to companies in southern Italy. In addition, they were found to be regionally specific within the meaning of section 771(5A) of the Act. In this review, neither the GOI nor the responding companies provided new information which would warrant reconsideration of this determination.

Delverde/Tamma and Riscossa received the higher levels of fiscalizzazione deductions available to companies located in the Mezzogiorno during the POR.

To calculate the countervailable subsidy, we divided the excess fiscalizzazione deductions realized by each company in the POR by that company's sales in the POR. On this basis, we preliminarily determine the countervailable subsidy from this program to be 0.07 percent ad valorem for Delverde/Tamma and 0.21 percent ad valorem for Riscossa.

3. Law 407/90 Benefits

Law 407/90 grants a two-year exemption from social security taxes when a company hires a worker who has been previously unemployed for a period of two years or more. A 100 percent exemption was allowed for companies in southern Italy. However, companies located in northern Italy received only a 50 percent exemption.

In *Pasta from Italy*, the Department determined that the 100 percent exemptions provided under Law 407/90 to companies with operations in southern Italy were countervailable subsidies within the meaning of section 771(5) of the Act. They represented revenue foregone by the GOI and conferred a benefit in the amount of the greater savings accruing to the companies in southern Italy. In addition, the exemptions were found to be regionally specific within the meaning of section 771(5A) of the Act. In this review, neither the GOI nor the responding companies provided new information which would warrant reconsideration of this determination.

Delverde/Tamma received the higher level of Law 407/90 deductions available to companies located in the Mezzogiorno during the POR.

To calculate the countervailable subsidy, we divided the amount of the

Law 407/90 exemption which exceeds the amount available in northern Italy realized by Delverde/Tamma in the POR by the company's sales during the same period. On this basis, we preliminarily determine the countervailable subsidy from this program to be 0.00 percent ad valorem for Delverde/Tamma.

4. Law 863 Benefits

Law 863 provides for a reduction of social security payments of 25 percent for companies in northern Italy whose employees are participating in a training program. Companies in southern Italy receive a 100 percent reduction in social security payments for such employees.

In *Pasta from Italy*, the Department determined that Law 863 reductions were countervailable subsidies within the meaning of section 771(5) of the Act for companies with operations in southern Italy. They represented revenue foregone by the GOI and confer a benefit in the amount of the greater savings accruing to the companies in southern Italy. In addition, they were found to be regionally specific within the meaning of section 771(5A) of the Act. In this review, neither the GOI nor the responding companies provided new information which would warrant reconsideration of this determination.

Delverde/Tamma received the higher level of Law 863 deductions available to companies located in the Mezzogiorno during the POR.

To calculate the countervailable subsidy, we divided the amount of the Law 863 reductions which exceeds the amount available in northern Italy realized by Delverde/Tamma in the POR by the company's sales in that year. On this basis, we preliminarily determine the countervailable subsidy from this program to be 0.17 percent ad valorem for Delverde/Tamma.

E. Remission of Taxes on Export Credit Insurance under Article 33 of Law 227/77

The Special Section for Export Credit Insurance ("SACE") was created under Article 2 of Law 227/77 as the branch of the GOI responsible for the administration of government export credit insurance and guarantee programs. Pursuant to Article 3 of Law 227/77, SACE insures and reinsures political, catastrophic, economic, commercial and exchange-rate risks which Italian operators are exposed to in their foreign activities.

During the POR, only two private insurance companies, Societa Italiana Crediti S.p.A. ("SIAC") and La Viscontea S.p.A. ("LV"), had reinsurance agreements with SACE. Under the reinsurance agreements, the companies passed along a fixed percentage (*i.e.*, 30 percent) of their export credit insurance premia to SACE. In return, SACE assumed that same percentage of risk on export credit insurance policies sold by the companies (*i.e.*, SACE would pay 30 percent of any claim for which the companies would become liable).

Article 33 of Law 227/77 provides for the remission of insurance taxes on policies directly insured or reinsured with SACE. For reinsurance policies, this remission of insurance taxes applied not only to the portion of the risk covered by SACE, but also the remaining portion covered by the private insurance company. As a result, export credit insurance policies sold by SIAC and LV during the POR were totally exempt from the insurance tax by virtue of its reinsurance agreement with SACE. Export credit insurance policies sold by other private insurance companies, however, were not exempt from the insurance tax. The insurance tax rate was 12.5 percent of premia paid.

In *Pasta from Italy*, we determined that the exemption from the insurance tax for policies directly insured or reinsured with SACE was a countervailable subsidy within the meaning of section 771(5) of the Act. The exemption represents revenue foregone by the GOI and confers tax savings on the companies. Also, because export credit insurance was available only to exporters and was by its nature contingent upon export performance, we found the remission of taxes on export credit insurance to be specific within the meaning of section 771(5A) of the Act. In this review, neither the GOI nor the responding companies provided new information which would warrant reconsideration of this determination.

Fabianelli obtained export credit insurance from SIAC for its exports to the United States and, therefore, was exempted from the insurance tax. To calculate the benefit, we multiplied the premia paid by Fabianelli during the POR for exports to the United States by the insurance tax rate and divided the amount by the company's total exports to the United States in the POR. On this basis, we preliminarily determine the countervailable subsidy from this program to be 0.03 percent ad valorem for Fabianelli.

F. Export Restitution Payments

Since 1962, the EU has operated a subsidy program which provides restitution payments to EU pasta exporters based on the durum wheat content of their exported pasta products. Generally, under this program, a restitution payment is available to any EU exporter of pasta products, regardless of whether the pasta was made with imported wheat or wheat grown within the EU. The amount of the restitution payment is calculated by multiplying the prevailing restitution payment rate on the date of exportation by the weight of the unmilled durum wheat used to produce the exported pasta. The weight of the unmilled durum wheat is calculated by applying a conversion factor to the weight of the pasta. The EU calculates the restitution payment rate, on a monthly basis, by first computing the difference between the world market price of durum wheat and an internal EU price and then adding a monthly increment (in all months except June and July, which are harvest months). The EU will not normally allow the restitution payment rate to be higher than the levy that the EU imposes on imported durum wheat, as such a situation would lead to circular trade. Because there was no significant price difference between the EU price and the world market price on durum wheat in the POR, the restitution payment rate was zero during the POR. However, export restitution payments were received in the POR for shipments made prior to the POR. Fabianelli, Audisio, and Riscossa received export restitution payments during the POR for shipments to the United States.

In *Pasta from Italy*, the Department determined that export restitution payments were countervailable subsidies within the meaning of section 771(5) of the Act. Each payment represented a direct transfer of funds from the EU providing a benefit in the amount of the payment. The restitution payments were found to be specific because their receipt is contingent upon export performance. In this review, the GOI, the EU, and the responding companies did not provide new information which would warrant reconsideration of this determination.

In accordance with our normal practice of recognizing subsidy benefits when there is a cash-flow effect, we have calculated the subsidy rate for export restitution benefits based on the amount actually received during the POR. Export restitution benefits are not "automatic" in that their receipt is not certain until an application has been filed. The amounts received, while generally quite close to the amounts requested, do not always equal the amount indicated by the company on its request form. Thus, we have calculated the subsidy rate for export restitution benefits based on the amount actually received during the POR.

To calculate the subsidy, we divided the export restitution payments received by each company in the POR on shipments to the United States by that company's pasta exports to the United States in the POR. On this basis, we preliminarily determine the countervailable subsidy from this program to be 0.22 percent ad valorem for Delverde/Tamma, 0.42 percent ad valorem for Fabianelli, 1.03 percent ad valorem for Audisio, and 0.81 percent ad valorem for Riscossa.

III. Program For Which We Need More Information

European Social Fund—Objective 4

The European Social Fund ("ESF"), one of the Structural Funds of the EU, was created under Article 123 of the Treaty of Rome to improve employment opportunities for workers and to help raise their living standards. There are six different objectives identified by the Structural Funds: Objective 1 covers projects located in underdeveloped regions: Objective 2 addresses areas in industrial decline; Objective 3 relates to the employment of persons under 25; Objective 4 funds training for employees in companies undergoing industrial changes; Objective 5 pertains to agricultural areas; and, Objective 6 pertains to regions with very low population (*i.e.*, the far north). The ESF provides vocational training and employment aids.

In *Pasta from Italy* and *Pasta First Review*, the Department determined that ESF grants were regionally specific and constituted countervailable subsidies within the meaning of section 771(5) of the Act because such grants were provided to companies located in Objective 1, Objective 2, and Objective 5(b) regions. During the POR of the current review, Audisio received ESF assistance for training activities through a provincial body pursuant to EEC Reg. 2081/93 Objective 4. According to the responses, the training was funded by the ESF, the GOI through its Rotational Fund, and other participants. In the *Final Affirmative Countervailing Duty Determination: Steel Wire Rod from Italy*, 63 FR 40474 (July 29, 1998) and *Final Affirmative Countervailing Duty Determination: Stainless Steel Plate in Coils from Italy*, 64 FR 15508 (March 31, 1999), we altered the manner in which we determine the specificity of ESF programs. Therein, we examined the specificity of the funding under each Objective separately. However, we do not have sufficient information on the record to determine the specificity of the Objective 4 funding received by Audisio. Therefore, we have decided to seek more information on this program before our final determination.

IV. Programs Preliminarily Determined to Be Not Used

We examined the following programs and preliminarily determine that the producers and/or exporters of the subject merchandise did not apply for nor receive benefits under these programs during the POR:

A. Local Income Tax ("ILOR") Exemptions
B. VAT Reductions
C. Lump-Sum Interest Payment Under the Sabatini Law for Companies in Southern Italy
D. Export Credits Under Law 227/77
E. Capital Grants Under Law 675/77
F. Retraining Grants Under Law 675/77
G. Interest Contributions on Bank Loans Under Law 675/77
H. Interest Grants Financed by IRI Bonds
I. Preferential Financing for Export Promotion Under Law 394/81
J. Corporate Income Tax ("IRPEG") Exemptions
K. Urban Redevelopment Under Law 181
L. Debt Consolidation Law 341/95
M. Grant Received Pursuant to the Community Initiative Concerning the Preparation of Enterprises for the Single Market ("PRISMA")
N. European Agricultural Guidance and Guarantee Fund ("EAGGF")
O. European Regional Development Fund ("ERDF")

Preliminary Results of Review

In accordance with 19 CFR 351.221(b)(4)(i), we calculated an individual subsidy rate for each producer/exporter subject to this administrative review. For the period January 1, 1997 through December 31, 1997, we preliminarily determine the net subsidy rates for producers/exporters under review to be those specified in the chart shown below. If the final results of this review remain the same as these preliminary results, the Department intends to instruct Customs to assess countervailing duties at these net subsidy rates.

The Department also intends to instruct Customs to collect cash deposits of estimated countervailing duties at these rates on the f.o.b. value of all shipments of the subject merchandise from the producers/exporters under review entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

Because the URAA replaced the general rule in favor of a country-wide rate with a general rule in favor of individual rates for investigated and reviewed companies, the procedures for establishing countervailing duty rates, including those for non-reviewed companies, are now essentially the same as those in antidumping cases, except as provided for in section 777A(e)(2)(B) of the Act. The requested reviews will normally cover only those companies specifically named. *See* 19 CFR 351.213(b). Pursuant to 19 CFR 351.212(c), for all companies for which a review was *not* requested, duties must be assessed at the cash deposit rate, and cash deposits must continue to be collected, at the rate previously ordered. As such, the countervailing duty cash deposit rate applicable to a company can no longer change, except pursuant to a request for a review of that company. *See, Federal-Mogul Corporation and The Torrington Company* v. *United States*, 822 F.Supp. 782 (CIT 1993) and *Floral Trade Council* v. *United States*, 822 F.Supp. 766 (CIT 1993) (interpreting 19 CFR 353.22(e), the antidumping regulation on automatic assessment, which is identical to 19 CFR 355.22(g), the predecessor to 19 CFR 351.212(c)). Therefore, the cash deposit rates for all companies except those covered by this review will be unchanged by the results of these review.

We will instruct Customs to continue to collect cash deposits for non-reviewed companies, except Barilla G. e R. F.lli S.p.A. ("Barilla") and Gruppo Agricoltura Sana S.r.L. ("Gruppo") (which were excluded from the order during the investigation), at the most recent company-specific or country-wide rate applicable to the company. Accordingly, the cash deposit rates that will be applied to non-reviewed companies covered by this order are those established in the *Notice of Countervailing Duty Order and Amended Final Affirmative Countervailing Duty Determination: Certain Pasta ("Pasta") from Italy*, 61 FR 38544 (July 24, 1996), the most recently published countervailing duty rates for companies not reviewed in this administrative review.

These rates shall apply to all non-reviewed companies until a review of a company assigned these rates is requested. In addition, for the period January 1, 1997 through December 31, 1997, the assessment rates applicable to all non-reviewed companies covered by these orders are the cash deposit rates in effect at the time of entry, except for Barilla and Gruppo (which were excluded from the order during the original investigation).

Company	*Ad valorem* rate
Delverde, S.r.L.	4.05
Tamma Industrie Alimentari di Capitanata, S.r.L.	4.05
Audisio Industrie Alimentari S.p.A.	1.03
Pastificio Fabianelli S.p.A.	0.45
Pastificio Riscossa F.lli Mastromauro S.r.L	2.13

Public Comment

Interested parties may request a hearing not later than 30 days after the date of publication of this notice. Interested parties may submit written arguments in case briefs on these preliminary results within 30 days of the date of publication. Rebuttal briefs, limited to arguments raised in case briefs, may be submitted five days after the time limit for filing the case brief. Parties who submit an argument in this proceeding are requested to submit with the argument (1) a statement of the issue, and (2) a brief summary of the argument. Any hearing, if requested, will be held two days after the scheduled date for submission of rebuttal briefs. Copies of case briefs and rebuttal briefs must be served on interested parties in accordance with 19 CFR 351.303(f).

Parties to the proceeding may request disclosure of proprietary information under administrative protective order no later than 10 days after the representative's client or employer becomes a party to the proceeding, but in no event later than the date the case briefs, under 19 CFR 351.309(c)(ii), are due.

The Department will publish the final results of this administrative review, including the results of its analysis of issues raised in any case or rebuttal briefs or at a hearing.

This administrative review and notice are in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: April 2, 1999.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–9050 Filed 4–9–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Evaluation of State Coastal Management Programs and National Estuarine Research Reserves

AGENCY: Office of Ocean and Coastal Resource Management National Ocean Service National Oceanic and Atmospheric Administration Department of Commerce.

ACTION: Notice of availability of final evaluation findings.

SUMMARY: Notice is hereby given of the availability of the final evaluation findings for the Alaska, Delaware, Massachusetts, Pennsylvania, and Virgin Islands Coastal Management Programs, and the Chesapeake Bay (Virginia), Waquoit Bay (Massachusetts), and Old Woman Creek (Ohio) National Estuarine Research Reserves (NERRs). Sections 312 and 315 of the Coastal Zone Management Act of 1972 (CZMA), as amended, require a continuing review of the performance of coastal states with respect to approved coastal management programs and the operation and management of NERRs.

The States of Alaska, Delaware, Massachusetts, and Pennsylvania, and the Territory of the Virgin Islands were found to be implementing and enforcing their Federally approved coastal management programs, addressing the national coastal management objectives identified in CZMA section 303(2)(A)–(K), and adhering to the programmatic terms of their financial assistance awards.

Old Woman Creek, Waquoit Bay and Chesapeake Bay NERRs were found to be adhering to programmatic requirements of the NERR System. Copies of these final evaluation findings may be obtained upon written request from: Vickie Allin, Chief, Policy Coordination Division, Office of Ocean and Coastal Resource Management, NOS/NOAA, 1305 East-West Highway, 10th Floor, Silver Spring, Maryland 20910, (301) 713–3086, Extension 126.

Federal Domestic Assistance Catalog 11.419, Coastal Zone Management Program Administration.

Ted Lillestolen,

Deputy Assistant Administrator.

[FR Doc. 99–8984 Filed 4–9–99; 8:45 am]

BILLING CODE 3510–08–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 040699A]

Gulf of Mexico Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council (Council) will convene public meetings of the Mackerel Advisory Panel (AP) and Scientific and Statistical Committee (SSC).

DATES: The AP meeting is scheduled to begin at 8:00 a.m. on Monday, April 26, 1999 and adjourn at 3:30 p.m. The Standing and Special Mackerel SSC meeting will be convened at 8:00 a.m. on Tuesday, April 27, 1999 and will conclude at 12:00 noon. The Standing SSC will reconvene at 1:00 p.m. and finish its business by 3:30 p.m.

ADDRESSES: The meeting will be held at the at the Tampa Airport Hilton Hotel, 2225 Lois Avenue, Tampa, FL 33607; telephone: 813–877–6688.

Council address: Gulf of Mexico Fishery Management Council, 3018 U.S. Highway 301 North, Suite 1000, Tampa, FL 33619.

FOR FURTHER INFORMATION CONTACT: Dr. Richard Leard, Senior Fishery Biologist, at the Gulf of Mexico Fishery Management Council, 3018 U.S. Highway 301 North, Suite 1000, Tampa, FL 33619; telephone: 813–228–2815.

SUPPLEMENTARY INFORMATION: The SSC will review the 1999 stock assessment updates for both king and Spanish Mackerel, the Mackerel Stock Assessment Panel (MSAP) report, and the report of the Socioeconomic Panel (SEP) that includes economic and social information related to the range of acceptable biological catch (ABC) and other management considerations for mackerels in the Gulf of Mexico and South Atlantic. Based on this review, the SSC may recommend to the Council levels for total allowable catch (TAC), bag limits, size limits, commercial quotas, and other measures for these species for the 1999–2000 fishing season. The Mackerel AP will review the same information and formulate their recommendations based on their perspectives as users of these resources. The Standing SSC will review a recently completed report of a bycatch reduction device (BRD) evaluation study that was developed by NMFS. The SSC may make recommendations regarding the scientific validity of this study and/or future evaluation efforts.

Copies of the agendas can be obtained by calling 813–228–2815.

Although other issues not on the agenda may come before the SSC and Mackerel AP for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during these meetings. Actions will be restricted to those issues

specifically identified in the agendas listed as available by this notice.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Anne Alford at the Council (see **ADDRESSES**) by April 19, 1999.

Dated: April 7, 1999.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–9056 Filed 4–9–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

NATIONAL TELECOMMUNICATIONS AND INFORMATION ADMINISTRATION

[Docket No. 990405086–9086–01]

RIN 0660–ZA06

Market for Satellite Communications and the Role of Intergovernmental Satellite Organizations

AGENCY: National Telecommunications and Information Administration, Commerce.

ACTION: Notice, request for comments.

SUMMARY: The Department of Commerce requests comments regarding the advantages accorded signatories of intergovernmental satellite organizations (ISOs), in terms of immunities, market access, or otherwise, in the countries or regions served by the International Telecommunications Satellite Organization (INTELSAT) and the International Mobile Satellite Organization (Inmarsat), the reason for such advantages, and an assessment of progress toward fulfilling a pro-competitive privatization of those organizations. The International Anti-Bribery and Fair Competition Act of 1998 implements the Organization for Economic Cooperation and Development (OECD) Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (the OECD Convention). In that legislation, the U.S. Congress imposed certain reporting requirements for the Department of Commerce that are due on July 1, 1999 and each of the next five years. The House report on the legislation expresses an expectation for extensive fact-findings on the nature of the market for satellite communications and, in particular, the role of the ISOs, INTELSAT and Inmarsat. The Department notes that Inmarsat is scheduled for privatization on April 15, 1999. The reporting requirements monitor the implementation and enforcement of other nations' commitments under the OECD Convention and promote the reduction of privileges and immunities for the ISOs. This Request for Comments (RFC) will assist the Secretary of Commerce in responding to those reporting requirements regarding the ISOs' privileges and immunities.

DATES: Comments must be received by May 12, 1999.

ADDRESSES: The Department invites the public to submit written comments in paper or electronic form. Comments may be mailed to Milton Brown, National Telecommunications and Information Administration (NTIA), Room 4713, U.S. Department of Commerce, 14th and Constitution Avenue, NW, Washington, DC 20230. Paper submissions should include a version on diskette in ASCII, Word Perfect (please specify version), or Microsoft Word (please specify version) format.

Comments submitted in electronic form may be sent to isocomments@ntia.doc.gov. Electronic comments should be submitted in the formats specified above.

FOR FURTHER INFORMATION CONTACT: Milton Brown, NTIA/OCC, (202) 482–1816.

SUPPLEMENTARY INFORMATION:

Background

INTELSAT is a treaty-based global communications satellite cooperative with 143 member countries. INTELSAT was created to enhance global communications and to spread the risks of creating a global satellite system across telephone operating companies from many countries.[1] Inmarsat was created to improve the global maritime communications satellite system that would provide distress, safety, and communications services to seafaring nations in a cooperative, cost-sharing entity. Inmarsat is scheduled for privatization on April 15, 1999.

As intergovernmental satellite organizations, both INTELSAT and Inmarsat are governed by "Parties" and managed by "signatories." The Parties are the national government members of the INTELSAT and Inmarsat agreements. Signatories are designated by each party to participate in the commercial operations of the organization. They hold ownership interests in varying degrees. They also assist with the operation and management of the systems and are distributors of ISO services in their own countries. Signatories may be government-owned or controlled telecommunications monopolies or other telecommunications service providers. The publically traded Comsat Corp. is the U.S. Signatory to INTELSAT. ISOs are subject to oversight by the Assembly of Parties, and signatories are subject to oversight by their respective governments.

To implement public service obligations effectively and as part of the ISOs' unique treaty status, the ISOs benefit from certain privileges and immunities. As such, these ISOs are generally immune from suit, including private or public prosecution on antitrust charges. Moreover, neither ISO pays taxes on revenues, and exemption extends to import duties and taxes, communications and property taxes. Signatories, however, are subject to national taxes, including for their share of the organizations' distributed returns.

The International Anti-Bribery and Fair Competition Act of 1998 requires the Secretary of Commerce to submit a report to the House of Representatives and the Senate which contains information regarding the OECD Convention which includes the following: (1) A list of countries that have ratified the Convention; (2) a description of the domestic laws enacted by each party to the Convention that implements commitments under the Convention; and (3) an assessment of the measures taken by each party to the Convention during the previous year to fulfill its obligations under the Convention. See Pub. L. No 105–366, sec. 6(a). Accordingly, the Secretary of Commerce is required to report, inter alia, on the "terms of market access, government ownership, government contracts or connections, privileges and immunities, favorable treatment by national regulatory authorities or tax treatment . . . in the countries or regions served by the [ISOs], and the reasons for such advantages." H.R. REP. NO. 105–802, at 9 (1998). In preparation for this report, the Secretary of Commerce is required to seek and incorporate comments from the private sector, including competing satellite companies and satellite services users. Id.

We are now formally soliciting public comment on the advantages, in terms of immunities, market access, or otherwise, in the countries or regions served by INTELSAT and Inmarsat, the reasons for such advantages, and an assessment of progress toward fulfilling a pro-competitive privatization of those

[1] See Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, Including the Moon and Other Celestial Bodies.

organizations. "Pro-competitive privatization" is defined as "privatization that the President determines to be consistent with the United States policy of obtaining full and open competition to such organizations (or their successors), and nondiscriminatory market access, in the provision of satellite services." See Pub. L. No 105–366, sec. 5(a)(2). Respondents should find it useful to review the full text of the International Anti-Bribery and Fair Competition Act of 1998.

Kathy Smith,

Acting Chief Counsel.

[FR Doc. 99–8952 Filed 4–9–99; 8:45 am]

BILLING CODE 3510–60–P

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 3:00 p.m., Wednesday, April 28, 1999.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Enforcement Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 99–9208 Filed 4–8–99; 3:00 pm]

BILLING CODE 6351–01–M

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

National Senior Service Corps; Schedule of Income Eligibility Levels

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: This Notice revises the schedules of income eligibility levels for participation in the Foster Grandparent Program (FGP), and the Senior Companion Program (SCP) of the Corporation for National and Community Service (Corporation), published at 63 FR 19903 on April 22, 1998.

DATES: These guidelines go into effect on April 12, 1999.

FOR FURTHER INFORMATION CONTACT: Corporation for National and Community Service, National Senior Service Corps, Ruth Archie, 1201 New York Avenue NW, Washington, DC 20525, or by telephone at (202) 606–5000, ext. 289.

SUPPLEMENTARY INFORMATION: The revised schedules are based on changes in the Poverty Guidelines issued by the Department of Health and Human Services (DHHS), published in 64 FR 13428, March 18, 1999. In accordance with program regulations, the income eligibility level for each State, Puerto Rico, the Virgin Islands and the District of Columbia is 125 percent of the DHHS Poverty Guidelines, except in those areas determined by the Corporation to be of higher cost of living. In such instances, the guidelines shall be 135 percent of the DHHS Poverty levels. The level of eligibility is rounded to the next highest multiple of $5.00.

In determining income eligibility, consideration should be given to the following, as set forth in 59 FR 15120, March 31, 1994:

Allowable medical expenses are annual out-of-pocket expenses for health insurance premiums, health care services, and medications provided to the applicant, enrollee, or spouse and were not and will not be paid for by Medicare, Medicaid, other insurance, or by any other third party and, shall not exceed 15 percent of the applicable Corporation income guideline.

Annual inome is counted for the past 12 months and includes: The applicant or enrollee's income and the applicant or enrollee's spouse's income, if the spouse lives in the same residence. Sponsors may count the value of shelter, food, and clothing, if provided at no cost by persons related to the applicant, enrollee or spouse.

Any person whose income is not more than 100 percent of the DHHS Poverty Guideline for her/his specific family unit shall be given special consideration for participation in the Foster Grandparent and Senior Companion Programs.

1999 FGP/5CP Income Eligibility Levels
[Based on 125 percent of DHHS poverty guidelines]

States	Family units of— One	Two	Three	Four
All, except High Cost Areas, Alaska and Hawaii.	$10,300	$13,825	$17,350	$20,875

For family units with more than four members, add $3,525 for each additional member in all States except designated High Cost Areas, Alaska and Hawaii.

1999 FGP/SCP Income Eligibility Levels
[Based on 135 Percent of DHHS Poverty Guidelines]

	Family Units of One	Two	Three	Four
All, except Alaska & Hawaii	$11,125	$14,935	$18,740	$22,545
Alaska	13,935	18,685	23,440	28,190
Hawaii	12,815	17,190	21,560	25,935

(For family units with more than four members, add $3,807 for all areas, $4,755 for Alaska, and $4,375 for Hawaii, for each additional member.)

The income eligibility levels specified above are based on 135 percent of the DHHS poverty guidelines and are applicable to the following high cost metropolitan statistical areas and primary metropolitan statistical areas:

High Cost Areas

(Including all Counties/Locations Included in that Area as Defined by the Office of Management and Budget.)

Alaska

(All Locations.)

California

Los Angeles-Compton-San Gabriel-Long Beach-Hawthorne (Los Angeles County.)
Santa Barbara/Santa Maria/Lompoc (Santa Barbara County.)
Santa Cruz-Watsonville (Santa Cruz County.)
Santa Rosa-Petaluma (Sonoma County.)
San Diego-El Cajon (San Diego County.)
San Jose-Los Gatos (Santa Clara County.)
San Francisco/San Rafael (Marin County.)
San Francisco/Redwood City (San Mateo County.)
San Francisco (San Francisco County.)
Oakland-Berkeley (Alameda County.)
Oakland-Martinez (Contra Costa County.)
Anaheim-Santa Ana (Orange County.)
Oxnard-Ventura (Ventura County.)

District of Columbia/Maryland/Virginia

District of Columbia and Surrounding Counties in Maryland and Virginia. MD counties: Calvert, Charles, Cecil, Frederick, Montgomery and Prince Georges Counties. VA counties: Arlington, Fairfax, Loudoun, Prince William, Stafford, Alexandria City, Fairfax City, Falls Church City, Manassas City and Manassas Park City.

Hawaii

(All Locations.)

ILLINOIS

Chicago-Des Plaines-Oak Park-Wheaton-Woodstock (Cook, DuPage and McHenry Counties.)

MASSACHUSETTS

Fall River (Bristol County.)
Boston-Malden (Essex, Norfolk, Plymouth, Middlesex and Suffolk Counties.)
Salem-Gloucester (Essex County.)
Worcester (Worcester County.)
Brockton-Quincy-Braintree (Norfolk County.)
Dorchester (Suffolk County.)
Fitchburg-Leominster (Worcester County.)

NEW JERSEY

Bergen-Passaic-Paterson (Bergen and Passaic Counties.)
Middlesex-Somerset-Hunterdon (Hunterdon, Middlesex and Somerset Counties.)
Monmouth-Ocean-Spring Lake (Monmouth and Ocean Counties.)
Newark-East Orange (Essex, Morris, Sussex and Union Counties.)
Trenton (Mercer County.)

NEW YORK

Nassau-Suffolk-Long Beach-Huntington (Suffolk and Nassau Counties.)
New York-Bronx-Brooklyn (Bronx, Kings, New York, Putnam, Queens, Richmond and Rockland Counties.)
Westchester-White Plains-Yonkers-Valhalla (Westchester County.)

PENNSYLVANIA

Philadelphia-Doylestown-West Chester-Media-Norristown (Bucks, Chester, Delaware, Montgomery and Philadelphia Counties.)

WYOMING

(All Locations.)

The revised income eligibility levels presented here are calculated from the base DHHS Poverty Guidelines now in effect as follows:

1999 DHHS POVERTY GUIDELINES FOR ALL STATES

States	Family Units of One	Two	Three	Four
All, except Alaska/Hawaii	$8,240	$11,060	$13,880	$16,700
Alaska	10,320	13,840	17,360	20,880
Hawaii	9,490	12,730	15,970	19,210

Authority: These programs are authorized pursuant to 42 U.S.C. 5011 and 5013 of the Domestic Volunteer Service Act of 1973, as amended. The income eligibility levels are determined by the current guidelines published by DHHS pursuant to sections 652 and 673(2) of the Omnibus Budget Reconciliation Act of 1981 which requires poverty guidelines to be adjusted for Consumer Price Index changes.

Dated: April 7, 1999.

Thomas L. Bryant,

Acting General Counsel.

[FR Doc. 99–9046 Filed 4–9–99; 8:45 am]

BILLING CODE 6050–28–U

DEPARTMENT OF DEFENSE

Office of the Secretary

Privacy Act of 1974; System of Records

AGENCY: Office of the Secretary, DoD.

ACTION: Notice to amend a system of records.

SUMMARY: The Office of the Secretary of Defense proposes to amend a system of records notice in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: The amendment will be effective on May 12, 1999, unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to OSD Privacy Act Coordinator, Records Management Division, Washington Headquarters Services, 1155 Defense Pentagon, Washington, DC 20301–1155.

FOR FURTHER INFORMATION CONTACT: Mr. David Bosworth at (703) 588–0159.

SUPPLEMENTARY INFORMATION: The Office of the Secretary of Defense notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed amendments are not within the purview of subsection (r) of the Privacy Act (5 U.S.C. 552a), as amended, which would require the submission of a new or altered system report for each system. The specific changes to the record system being amended are set forth below followed by the notice, as amended, published in its entirety.

Dated: April 5, 1999.

L. M. BYNUM,
Alternate OSD Federal Register Liaison Officer, Department of Defense.

DHA 08

SYSTEM NAME:

Health Affairs Survey Data Base *(December 5, 1997, 62 FR 64364).*

CHANGE:

* * * * *

RETRIEVABILITY:

Delete the first paragraph under *Annual Beneficiary Survey:* and replace with '1. Beneficiary Records: Records of beneficiaries who have been mailed a survey may be retrieved by name and address for purposes of initiating follow-up contacts to obtain a response to the survey; but after 90 days, the name and address are permanently deleted so that the survey respondent cannot be identified.'

* * * * *

DHA 08

SYSTEM NAME:

Health Affairs Survey Data Base *(December 5, 1997, 62 FR 64364).*

SYSTEM LOCATION:

Primary location: Directorate of Information Management, Fort Detrick, MD 21702–5020.

Secondary locations: Survey distribution and response tracking files are located at the contractor facilities.

Survey result data files are located at the Office of the Assistant Secretary of Defense (Health Affairs), the Commanders and Intermediate Commanders of the Services Medical Treatment Facilities, the Surgeons General of the Military Services and Regional Managers of TRICARE facilities. The addresses for the secondary locations may be obtained from the Deputy Assistant Secretary of Defense (Health Budgets and Programs), Five Skyline Place, Suite 810, 5111 Leesburg Pike, Falls Church, VA 22041–3206.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Annual Beneficiary Survey: Individuals eligible for health care under Title 10 (including active duty personnel, reserve personnel and their family members (dependents); retired Armed Forces personnel and their family members; surviving dependents of deceased active duty and retired personnel; and certain others including individuals and their dependents affiliated with the U.S. Coast Guard, U.S. Public Health Service and the National Oceanic and Atmospheric Administration.

Customer Satisfaction Survey: Active duty members of the Armed Forces, civilian personnel, and contract personnel serving as health care providers for individuals eligible for health care under Title 10 in military medical and dental treatment facilities and other treatment settings.

CATEGORIES OF RECORDS IN THE SYSTEM:

Annual Beneficiary Survey: Name, rank, age, gender, race, address, sponsor Social Security Number and family member prefix code of individuals who will be surveyed; verification that a survey has been completed and returned by the individual; and response data from the completed surveys.

Customer Satisfaction Survey: Medical and dental care provider name, provider type, specialty and rank; medical treatment facility, and clinic where care was provided; and response data from the completed surveys.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; 10 U.S.C. 138, Assistant Secretaries of Defense; 10 U.S.C. 1071 (NOTE); 10 U.S.C. Chapter 55; and E.O. 9397 (SSN).

PURPOSE(S):

Annual Beneficiary Survey: The survey collects information concerning beneficiary attitudes, perceptions, and opinions about their individual health and health care (including access to care, health status, use of care, familiarity with programs and services available, and satisfaction with care received) in order to assess, plan, evaluate, and improve quality, efficiency, convenience and cost effectiveness of health care services. This process includes analyses of information related to special interest health care subjects, including health status, in order to validate current and/or forecast future health care needs or to implement plans in response to new health care requirements. Retaining beneficiary specifics allows for individual follow-up to improve response rates; scientific analysis of the data; and to validate survey responses by comparing responses to independent sources of data.

Customer Satisfaction Survey: The survey collects information concerning beneficiary attitudes, perceptions, and opinions about health care provided during specific visits (including access to care, quality of care, satisfaction with the specific care provider, and satisfaction with care received) in order to assess, plan, evaluate, and improve quality, efficiency, convenience and cost effectiveness of health care services. This process includes analyses of information related to special interest health care subjects, including health status, in order to validate current and/or forecast future health care needs or to implement plans in response to new health care requirements. Specific care provider information is analyzed in order to alert medical authorities to potential problem areas where additional educational and corrective measures may be required in order to improve customer satisfaction.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' set forth at the beginning of OSD's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Electronic records stored on magnetic and/or optical media.

RETRIEVABILITY:

Annual Beneficiary Survey:

1. Beneficiary Records: Records of beneficiaries who have been mailed a survey may be retrieved by name and address for purposes of initiating follow-up contacts to obtain a response to the survey; but after 90 days, the name and address are permanently deleted so that the survey respondent cannot be identified.

2. Response Records: Survey data is normally retrieved using demographic or other non-personalized elements.

3. The beneficiary and response records contain a randomly generated code which permits the identification of the survey respondent.

Customer Satisfaction Survey:

1. Beneficiary Records: Records of beneficiaries who have been mailed a survey may be retrieved by name and address, but the beneficiary identifying personal data is deleted 20 days after the mailing of the survey when follow-up correspondence (a reminder) is sent to all individuals being surveyed.

2. Response Records: Records of care providers who furnished care at a specific facility/clinic may be retrieved

only by the facility/clinic commander by name, rank (if military), provider type (e.g., physician, clinical nurse, etc.) and specialty (e.g., pediatrician.

SAFEGUARDS:

Media at the primary location are stored in a locked cage in a controlled access area when not in use; when maintained at the contract location, media are stored in cabinets or storage areas when not being used and are placed in a locked container or space within a building that is secured after hours. Result data that includes patient or provider identification is maintained in locked storage cabinets or locked areas in buildings that are secured after hours. Only authorized personnel who have received Privacy Act training are permitted access to information in the system.

Specific instructions are provided MTF commanders on the safeguards required in handling and maintaining Customer Satisfaction Survey information.

RETENTION AND DISPOSAL:

Hard copy surveys are destroyed after the information contained in survey responses is entered into a computer system.

Annual Beneficiary Survey: Data files with beneficiary specifics and results will be retained until an appraisal and schedule is obtained from the National Archives and Records Administration.

Customer Satisfaction Survey: Data files with results and provider specifics will be retained until an appraisal and schedule is obtained from the National Archives and Records Administration.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Assistant Secretary of Defense (Health Budgets and Programs), Five Skyline Place, Suite 810, 5111 Leesburg Pike, Falls Church, VA 22041–3206.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system contains information about themselves should address written inquiries to the Deputy Assistant Secretary of Defense (Health Budgets and Programs)/Program Review and Evaluation, Five Skyline Place, Suite 810, 5111 Leesburg Pike, Falls Church, VA 22041–3206.

Annual Beneficiary Survey: A beneficiary should provide full name, sponsor's Social Security Number, family member prefix, and current address and telephone number of the individual.

Customer Satisfaction Survey: A health care provider should provide name, current address, telephone number, and name of the medical facility and clinic should be supplied.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system should address written inquiries to the Deputy Assistant Secretary of Defense (Health Budgets and Programs), Five Skyline Place, Suite 810, 5111 Leesburg Pike, Falls Church, VA 22041–3206.

Annual Beneficiary Survey: A beneficiary should provide full name, sponsor's Social Security Number, family member prefix, and current address and telephone number of the individual.

Customer Satisfaction Survey: A health care provider should provide name, current address, telephone number, and name of the medical facility and clinic should be supplied.

CONTESTING RECORD PROCEDURES:

The OSD rules for accessing records and for contesting contents and appealing initial agency determinations are contained in OSD Administrative Instruction 81; 32 CFR part 311; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Sources include Services medical and dental treatment facilities and facilities contracted by DoD to perform medical care for Military members, former members and dependents. Survey information is provided by the individual patient or a parent or guardian of the individual patient. Demographic information that may be related to the patient is provided by the Defense Enrollment Eligibility Reporting System (DEERS), the Ambulatory Data System (ADS), and the Composite Health Care System (CHCS).

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 99–8803 Filed 4–9–99; 8:45 am]
BILLING CODE 5001–10–F

DEPARTMENT OF DEFENSE

Defense Finance and Accounting Service

Privacy Act of 1974; System of Records

AGENCY: Defense Finance and Accounting Service, DoD.

ACTION: Notice of system of records.

SUMMARY: The Defense Finance and Accounting Service proposes to add three system of records notice to its inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This action will be effective without further notice on (May 12, 1999) unless comments are received that would result in a contrary determination.

ADDRESSES: Privacy Act Officer, Defense Finance and Accounting Service, 1931 Jefferson Davis Highway, ATTN: DFAS/PE, Arlington, VA 22240-5291.

FOR FURTHER INFORMATION CONTACT: Mrs. Pauline E. Korpanty at (703) 607-3743.

SUPPLEMENTARY INFORMATION: The complete inventory of Defense Finance and Accounting Service record system notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed system reports, as required by 5 U.S.C. 552a(r) of the Privacy Act were submitted on March 30, 1999, to the House Committee on Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records About Individuals,' dated February 8, 1996, (61 FR 6427, February 20, 1996).

Dated: April 5, 1999.

L.M. BYNUM,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

T7340

SYSTEM NAME:

Defense Joint Military Pay System-Active Component.

SYSTEM LOCATION:

Air Force military member records are located at the Defense Accounting and Finance Service - Denver Center, 6760 East Irvington Place, Denver, CO 80279–3000.

Army military member records are located at the Defense Finance and Accounting Service - Indianapolis Center, 8899 E. 56th Street, Indianapolis, IN 46249–0001.

Navy military member records are located at the Defense Finance and Accounting Service - Cleveland Center, 1240 East Ninth Street, Cleveland, OH 44199–2055.

Marine Corps military member records are located at the Defense Finance and Accounting Service - Kansas City Center, 1500 East 95th Street, Kansas City, MO 64197–0001.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Active duty military members and their dependents; retired and separated military personnel; officers of the Air Reserve, Army Reserve, and Air National Guard on extended active duty; officers and airmen of the Air Reserve and Air National Guard on active duty where strength accountability remains with the reserve component; individuals to whom active duty military personnel authorize a direct payment of a portion of their pay; military academy cadets; Navy Reserve on extended active duty; Armed Forces Health Professional Scholarship Program (AFHPSP) students; former armed forces personnel who are entitled to receive either voluntary separation incentive (VSI) or special separation benefit (SSB).

CATEGORIES OF RECORDS IN THE SYSTEM:

TYPES OF RECORDS: Master individual military pay accounts; wage and tax summaries; leave and earnings statements; Basic Military Training master record; and other generated records substantiating or authorizing Active Component military pay and allowance entitlement, deduction, or collection actions.

PAY ENTITLEMENT AND ALLOWANCES: Base pay; allowances (such as basic allowance for subsistence, basic allowance for quarters, family separations, clothing maintenance, and monetary allowances); death gratuities; time-in-service; special compensation for positions such as medical, dental, veterinary, and optometry; special pay and bonus, such as foreign duty, proficiency, hostile fire, and diving duty; incentive pay such as flying duty, parachute duty, and submarine duty; and other entitlement in accordance with the DoD Pay and Allowance Entitlement Manual. Personnel and entitlement data necessary for payment of Voluntary Separation Incentive or SSB, including member's full name, Social Security Number, pay grade, branch of service, payment address, Form W–2 address, federal and state tax withholding data (Forms W–2 and W–4), and annual installment amount.

DEDUCTIONS FROM PAY: Federal and State income tax withholding rate and amount (including authorization control files), withholding for Federal Insurance Contributions Act (FICA), Serviceman's Group Life Insurance deductions, allotments (including allottee name and address, amount, term (in months), and account or policy number), bond authorizations (including bond owner and co-owner/beneficiary names and Social Security Numbers, and recipient's address), and indebtedness and collections.

OTHER PAY INFORMATION: Name, pay grade, Social Security Number, check issue, pay dates, leave account, payment address, and Form W–2 address.

DUTY STATUS: Status adjustments relating to leave, entrance on active duty, absent without leave, confinement, desertion, sick, injured, mentally incompetent, missing, interned, promotions and demotions, and separation document code; and Armed Forces Health Professions Scholarship Program gain.

PERSONNEL INFORMATION: Rank; enlistment contract or officer acceptance form identification; duty information (duty station, personnel assignment, and unit); security investigation; test scores; language proficiency; military and civilian off-duty education; training; awards; combat tours; aviation, pilot, and flying time data; lineal precedence number; limited duty officer/warrant officer footnote; temporary active duty data; power of attorney; years in service; promotional data.

PERSONAL INFORMATION: Date of birth, citizenship, marital status, home of record, dependent information, record of emergency data, population group, sex, ethnic group, and health care coverage.

SUPPORTING DOCUMENTATION: Includes, but is not limited to, travel orders and requests; payroll attendance lists and rosters; document records establishing, supporting, reducing, or canceling entitlement; certificates and statements changing address, name, military assignment, and other individual data necessary to identify and provide accurate and timely military pay and performance credit; allotment start, stop, or change records; declarations of benefits and waivers; military pay and personnel orders; medical certifications and determinations; death and disability documents; check issuing and cancellation records and schedules; payroll vouchers; money lists and accounting records; pay adjustment authorization records; system input certifications; member indebtedness and tax levy documentation; earnings statements; employees' wage and tax reports and statements; casual payment authorization and control logs; and other documentation authorizing or substantiating Active Component military pay and allowances, entitlement, deductions, or collections. Also inquiry files, sundry lists, reports, letters, correspondence, and rosters including, but not limited to, Congressional inquiries, Internal Revenue Service notices and reports, state tax and insurance reports, Social Security Administration reports, Department of Veterans Affairs reports, inter-DoD requests, Treasury Department reports, and health education and institution inquiries.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; 37 U.S.C.; and E.O. 9397 (SSN).

PURPOSE(S):

To ensure accurate and timely military pay and allowances to active component military members (including those who are enrolled at a military academy and those who participate in voluntary separation pay, Armed Forces Health Professions Scholarship Program, basic military trainees or payment to a financial organization through electronic fund transfer program (including allotments and issuance and cancellation of United States treasury checks and bonds)); to document and account for military pay and allowance disbursements and collections; to verify and account for system input transactions; to identify, correct, and collect overpayment; to establish, control, and maintain member indebtedness notices and levies; and to provide timely, complete master individual pay account review; and to provide internal and external managers with statistical and monetary reports and to maintain a record of related personnel data.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To the Treasury Department to provide information on check issues and electronic funds transfers.

To the Internal Revenue Service to report taxable earnings and taxes withheld, accounting, and tax audits, and to compute or resolve tax liability or tax levies.

To federal, state, and local agencies to conduct computer matching programs regulated by the privacy act of 1974, for those programs authorized by law.

To the Social Security Administration to report earned wages by members for the Federal Insurance Contribution Act (FICA), accounting or tax audits, and death notices.

To the Department of Veterans Affairs to report compensation, waivers, and

audits, life insurance accounting, disbursement and benefit determinations, and death notices.

To the American Red Cross and military relief societies to assist military personnel and their dependents in determining the status of monthly pay, dependents' allotments, loans, and related financial transactions; and to perform other relief-related duties as requested by the service member.

To Federal Reserve banks to distribute payments made through the direct deposit system to financial organizations or their processing agents authorized by individuals to receive and deposit payments in their accounts.

The 'Blanket Routine Uses' published at the beginning of the DFAS compilation of systems of records notices also apply to this system.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a(b)(12) may be made from this system to 'consumer reporting agencies' as defined in the Fair Credit Reporting Act, 14 U.S.C. 1681a(f) or the Federal Claims Collection Act of 1966, 31 U.S.C. 3701(a)(3). The purpose of this disclosure is to aid in the collection of outstanding debts owed to the Federal government; typically to provide an incentive for debtors to repay delinquent Federal government debts by making these debts part of their credit records.

The disclosure is limited to information necessary to establish the identity of the individual, including name, address, and taxpayer identification number (Social Security Number); the amount, status, and history of the claim; and the agency or program under which the claim arose for the sole purpose of allowing the consumer reporting agency to prepare a commercial credit report.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Data is recorded on magnetic tapes and disks, computer printouts, computer output products (microform and reports); file folders, notebooks, binders, card files, and bulk storage, and other documents.

RETRIEVABILITY:

Information is retrieved by name and Social Security Number.

SAFEGUARDS:

As a minimum, records are accessed by the person(s) responsible for servicing and authorized to use the record system in performance of their official duties, and who are properly screened and cleared for need-to-know. Additionally, at some centers, records are in office buildings protected by guards and controlled by personnel screening and visitor registers.

RETENTION AND DISPOSAL:

Disposition pending.

SYSTEM MANAGER(S) AND ADDRESS:

For Air Force military members, the system manager is the Director Military Pay, Defense Finance and Accounting Service - Denver Center, 6760 East Irvington Place, Denver, CO 80279–1500.

For the Army military members, the system manager is the Director Military Pay, Defense Finance and Accounting Service - Indianapolis Center, 8899 E. 56th Street, Indianapolis, IN 46249–0001.

For the Navy military members, the system manager is the Director Military Pay, Defense Finance and Accounting Service - Cleveland Center, 1240 East Ninth Street, Cleveland, OH 44199–2055.

For the Marine Corps military members, the system manager is the Director Military Pay, Defense Finance and Accounting Service - Kansas City Center, 1500 East 95th Street, Kansas City, MO 64197–0001.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to the Privacy Act Officer at the appropriate DFAS Center.

Individual should furnish full name, Social Security Number, current address, and telephone number.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system of records should address written inquiries to the Privacy Act Officer at the appropriate DFAS Center.

Individual should furnish full name, Social Security Number, current address, and telephone number.

CONTESTING RECORD PROCEDURES:

The DFAS rules for accessing records, for contesting contents and appealing initial agency determinations are published in DFAS Regulation 5400.11–R; 32 CFR part 324; or may be obtained from the Privacy Act Officer at any DFAS Center.

RECORD SOURCE CATEGORIES:

Individual members; DoD staff and field installations; recruiting, disbursing, and administrative offices; allotment and bond authorization forms; Social Security Administration, Treasury Department, Internal Revenue Service, Department of Veterans Affairs, and other federal agencies; financial, medical, and educational institutions; DoD Components; the on-line Allotment/Bond Authorization process, and the End-User Computer Equipment (EUCE); and state and local government agencies.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

T7346

SYSTEM NAME:

Defense Joint Military Pay System-Reserve Component.

SYSTEM LOCATION:

Navy reserve military member records are located at the Defense Finance and Accounting Service - Cleveland Center, 1240 East Ninth Street, Cleveland, OH 44199–2055.

Air Force reserve military member records are located at the Defense Finance And Accounting Service - Denver Center, 6760 East Irvington Place, Denver, CO 80279–5000.

Army reserve military member records are located at the Defense Finance and Accounting Service - Indianapolis Center, 8899 E. 56th Street, Indianapolis, IN 46249–0001.

Marine Corps reserve military member records are located at the Defense Finance and Accounting Service - Kansas City Center, 1500 East 95th Street, Kansas City, MO 64197–0001.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Active Air Reserve and Air National Guard Forces in a military pay status. U.S. Army Reserve and National Guard members in a military pay status. Marine Corps reservists in the Selected, Individual Ready, Standby, and Fleet Marine Corps Reserve categories. Active Naval reservists in pay and non-pay drill units. Naval Reserve Officer Training Corps students.

Reserve military on extended active duty are covered under the Defense Joint Military Pay System-Active Component.

CATEGORIES OF RECORDS IN THE SYSTEM:

TYPES OF RECORDS: Master individual military pay accounts; wage and tax summaries; leave and earnings statements; and other generated records substantiating or authorizing Reserve Forces military pay and allowance entitlement, deduction, or collection actions.

PAY ENTITLEMENTS AND ALLOWANCES: Base pay; allowances (such as basic allowance for subsistence, basic allowance for quarters, family separations, clothing maintenance and monetary allowances); special compensation for positions such as medical, dental, veterinary, and optometry; special pay and bonus, such as foreign duty, proficiency, hostile fire, and diving duty; incentive pay such as flying duty, parachute duty, and submarine duty; and other entitlements in accordance with the DoD Financial Management Regulations, Volume 7A.

DEDUCTIONS FROM PAY: Federal and state income tax withholding rate and amount (including authorization control files), withholding for Federal Insurance Contributions Act (FICA), Serviceman's Group Life Insurance deductions, allotments (including allottee name and address, amount, term (in months), and account or policy number), bond authorizations (including bond owner and co-owner/ beneficiary names and Social Security Numbers, and recipient's address), and indebtedness and collections.

OTHER PAY INFORMATION: Name, pay grade, Social Security Number, Reserve Forces calendar day performances (drill record), check issue, pay dates, leave account, payment address, and Form W–2 address.

DUTY STATUS: Status adjustments relating to leave, entrance on active duty, absent without leave, confinement, desertion, sick or injured, mentally incompetent, missing, interned, promotions and demotions, and separation document code.

PERSONNEL INFORMATION: Rank; enlistment contract or officer acceptance form identification; duty information (duty station, personnel assignment, and unit); security investigation; test scores; language proficiency; military and civilian off-duty education; training; awards; combat tours; aviation, pilot, and flying time data; lineal precedence number; limited duty officer/warrant officer footnote; temporary active duty data; power of attorney; years in service; promotional data.

PERSONAL INFORMATION: Date of birth, citizenship, marital status, home of record, dependent information, record of emergency data, population group, sex, ethnic group, and health care coverage.

SUPPORTING DOCUMENTATION: Includes, but is not limited to, travel orders and requests; payroll attendance lists and rosters; document records establishing, supporting, reducing, or canceling entitlements; certificates and statements changing address, name, military assignment, and other individual data necessary to identify and provide accurate and timely Air Reserve Forces military pay and performance credit; allotment start, stop, or change records; declarations of benefits and waivers; military pay and personnel orders; medical certifications and determinations; death and disability documents; check issuing and cancellation records and schedules; payroll vouchers; money lists and accounting records; pay adjustment authorization records; system input certifications; member indebtedness and tax levy documentation; earnings statements; employees' wage and tax reports and statements; casual payment authorization and control logs; and other documentation authorizing or substantiating Reserve Forces military pay and allowances, entitlements, deductions, or collections. Also inquiry files, sundry lists, reports, letters, correspondence, and rosters including, but not limited to, Congressional inquiries, Internal Revenue Service notices and reports, state tax and insurance reports, Social Security Administration reports, Department of Veterans Affairs reports, Treasury Department reports, inter-DoD requests, and health education and institution inquiries.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; 10 U.S.C., Chapter 11; 37 U.S.C.; and E.O. 9397 (SSN).

PURPOSE(S):

To ensure accurate and timely pay and allowances to Active Reserve component military members (including those who participate in Voluntary Separation Incentive, Armed Forces Health Professional Scholarship Program, Basic Military Training, and Naval Reserve Officers Training Corps programs) or payment to a financial organization through electronic fund transfer program (including allotments and issuance and cancellation of United States treasury checks and bonds); to document and account for reserve military pay and allowance disbursements and collections; to verify and account for system input transactions; to identify, correct, and collect overpayments; to establish, control, and maintain member indebtedness notices and levies; to provide timely, complete master individual pay account review; to provide internal and external managers with statistical and monetary reports and to maintain a record of related personnel data.'

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To the Treasury Department to provide information on check issues and electronic funds transfers.

To the Internal Revenue Service to report taxable earnings and taxes withheld, accounting, and tax audits; to compute or resolve tax liability or tax levies.

To the Social Security Administration to report earned wages by members for FICA; accounting or tax audits; and death notices.

To the Department of Veterans Affairs to report compensation, waivers, and audits; life insurance accounting; disbursement and benefit determinations; and death notices.

To National Guard Bureaus to furnish budget data to account for expenditures within established categories.

To individual National Guard state associations to furnish reports and associated checks regarding state sponsored life insurance premiums withheld.

To the American Red Cross and military relief societies to assist military personnel and their dependents in determining the status of monthly pay, dependents' allotments, loans, and related financial transactions, and to perform other relief-related duties as requested by the service member.

To Federal Reserve banks to distribute payments made through the direct deposit system to financial organizations or their processing agents authorized by individuals to receive and deposit payments in their accounts

To Federal, state, and local agencies to conduct computer matching programs regulated by the Privacy Act of 1974 for those programs authorized by law.

The 'Blanket Routine Uses' published at the beginning of the DFAS compilation of systems of records notices apply to this system.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a(b)(12) may be made from this system to 'consumer reporting agencies' as defined in the Fair Credit Reporting Act, 14 U.S.C. 1681a(f) or the Federal Claims Collection Act of 1966, 31 U.S.C. 3701(a)(3). The purpose of this disclosure is to aid in the collection of outstanding debts owed to the Federal

government; typically to provide an incentive for debtors to repay delinquent Federal government debts by making these debts part of their credit records.

The disclosure is limited to information necessary to establish the identity of the individual, including name, address, and taxpayer identification number (Social Security Number); the amount, status, and history of the claim; and the agency or program under which the claim arose for the sole purpose of allowing the consumer reporting agency to prepare a commercial credit report.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Data is recorded on magnetic tapes and disks, computer printouts, computer output products (microform and reports); file folders, notebooks, binders, card files, and bulk storage, and other documents.

RETRIEVABILITY:

Retrieved by individual's name and Social Security Number.

SAFEGUARDS:

As a minimum, records are accessed by person(s) responsible for servicing the record and who are authorized to use the record system in performance of their official duties. Additionally, at some Centers, records are in office buildings protected by guards and controlled by personnel screening and visitor registers.

RETENTION AND DISPOSAL:

Disposition pending.

SYSTEM MANAGER(S) AND ADDRESS:

For Navy reserve military members, the system manager is the Director of Military Pay Operations, Defense Finance and Accounting Service - Cleveland Center, 1240 East Ninth Street, Cleveland, OH 44199–2055.

For Air Force reserve military members, the system manager is the Director of Military Pay Operations, Defense Finance and Accounting Service - Denver Center, 6760 East Irvington Place, Denver, CO 80279–5000.

For Army reserve military members, the system manager is the Director of Military Pay Operations, Defense Finance and Accounting Service - Indianapolis Center, 8899 E. 56th Street, Indianapolis, IN 46249–0001.

For Marine Corps reserve military members, the system manager is the Director of Military Pay Operations, Defense Finance and Accounting Service - Kansas City Center, 1500 East 95th Street, Kansas City, MO 64197–0001.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to the Privacy Act officer at the appropriate DFAS Center.

Individuals should provide name, Social Security Number, or other information verifiable from the record itself.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves in this system of records should address written inquiries to the Privacy Act Officer at the appropriate DFAS Center.

Individuals should provide name, Social Security Number, or other information verifiable from the record itself.

CONTESTING RECORD PROCEDURES:

The DFAS rules for accessing records, for contesting contents and appealing initial agency determinations are published in DFAS Regulation 5400.11–R; 32 CFR part 324; or may be obtained from the Privacy Act Officer at any DFAS Center.

RECORD SOURCE CATEGORIES:

Individual members; DoD staff and field installations; recruiting, disbursing, and administrative offices; allotment and bond authorization forms; Social Security Administration, Treasury Department, Internal Revenue Service, Department of Veterans Affairs, and other federal agencies; financial, medical, and educational institutions; DoD components; the on-line Allotment/Bond Authorization process, and the End-User Computer Equipment (EUCE); and state and local agencies.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

T7347b

SYSTEM NAME:

Defense Military Retiree and Annuity Pay System.

SYSTEM LOCATION:

Military retiree pay records are located at the Defense Finance and Accounting Service - Cleveland Center, 1240 East Ninth Street, Cleveland, OH 44199-2055.

Annuitant pay records are located at the Defense Finance and Accounting Service - Denver Center, 6760 East Irvington Place, Denver, CO 80279–3000.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Military retirees, their dependents, and their survivors.

CATEGORIES OF RECORDS IN THE SYSTEM:

Military retiree and annuitant pay master files with supporting documentation relating to entitlements and deductions.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; 10 U.S.C., Chapter 73; and E.O. 9397 (SSN).

PURPOSE(S):

To maintain pay and personnel information for use in the computation of military retired pay and survivor annuity pay.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

Records are provided to the Internal Revenue Service for normal wage and tax withholding.

Disclosures are made to the Department of Veterans Affairs (DVA) regarding establishments, changes and discontinuing of DVA compensation to retirees and annuitants.

Information is provided to trustees or guardians of survivors (children).

The 'Blanket Routine Uses' published at the beginning of the DFAS compilation of systems of records notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in file folders/notebooks/binder/visible file binders/cabinets/card files, computer magnetic tapes and paper printouts, on roll microfilm, microfiche, and optical disk.

RETRIEVABILITY:

Retrieved by name and Social Security Number of the retiree or annuitant.

SAFEGUARDS:

Records are accessed by custodian of the record system and by person(s) responsible for servicing the record system in performance of their official

duties who are properly screened and cleared as need-to-know. Records are stored in security file containers/cabinets/vaults/locked cabinets or rooms, protected by guards, and controlled by personnel screening, visitor registers and computer system software.

RETENTION AND DISPOSAL:

Disposition pending.

SYSTEM MANAGER(S) AND ADDRESS:

For retiree pay records: Director of Retired Pay, Defense Finance and Accounting Service - Cleveland Center, 1240 East Ninth Street, Cleveland, OH 44199–2055.

For annuitant pay records: Defense Finance and Accounting Service - Denver Center, 6760 East Irvington Place, Denver, CO 80279–3000.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this record system should address written inquiries to the appropriate system manager, ATTN: Privacy Act Officer.

The requester should be able to provide name, Social Security Number, place of employment, or other information available from the record itself.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the appropriate system manager, ATTN: Privacy Act Officer.

The requester should be able to provide sufficient proof of identity, such as name, Social Security Number, place of employment, or other information available from the record itself.

Individuals seeking access to records in person may do so by visiting the Defense Finance and Accounting Service - Denver Center for annuitant pay records or the Director of Retired Pay, Defense Finance and Accounting Service - Cleveland Center for retiree pay records. Office hours are Monday through Friday, 8 a.m. - 3:30 p.m. The visitor must have identification such as a driver's license and Social Security card as positive proof of identity.

CONTESTING RECORD PROCEDURES:

The DFAS rules for accessing records, for contesting contents and appealing initial agency determinations are published in DFAS Regulation 5400.11–R; 32 CFR part 324; or may be obtained from the Privacy Act Officer at any DFAS Center.

RECORD SOURCE CATEGORIES:

From the individual concerned; financial, educational, and medical institutions; other DoD Components; state or local governments; and source documents such as reports. Members' survivors, members, guardians of survivors (children), private law firms which are executors of estates in casualty cases, and other government agencies such as the Department of Veterans Affairs and the Social Security Administration.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 99–8805 Filed 4–9–99; 8:45 am]
BILLING CODE 5001–10–F

DEPARTMENT OF DEFENSE

Defense Finance and Accounting Service

Privacy Act of 1974; System of Records

AGENCY: Defense Finance and Accounting Service, DoD.
ACTION: Notice of a system of records.

SUMMARY: The Defense Finance and Accounting Service proposes to add a system of records notice to its inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.
DATES: This action will be effective without further notice on May 12, 1999, unless comments are received that would result in a contrary determination.
ADDRESSES: Privacy Act Officer, Defense Finance and Accounting Service, 1931 Jefferson Davis Highway, ATTN: DFAS/PE, Arlington, VA 22240-5291.
FOR FURTHER INFORMATION CONTACT: Mrs. Pauline E. Korpanty at (703) 607-3743.
SUPPLEMENTARY INFORMATION: The complete inventory of Defense Finance and Accounting Service record system notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act was submitted on March 30, 1999, to the House Committee on Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records About Individuals,' dated February 8, 1996, (61 FR 6427, February 20, 1996).

Dated: April 5, 1999.

L.M. BYNUM,
Alternate OSD Federal Register Liaison Officer, Department of Defense.

T5015c

SYSTEM NAME:

Freedom of Information Act Requests.

SYSTEM LOCATION:

Defense Finance and Accounting Service, 1931 Jefferson Davis Highway, Arlington, VA 22240-5291.

Defense Finance and Accounting Service - Denver Center, 6760 E. Irvington Place, Denver, CO 80279-5000.

Defense Finance and Accounting Service - Indianapolis Center, Indianapolis, IN 46249-0001.

Defense Finance and Accounting Service - Cleveland Center, 1240 East Ninth Street, Cleveland, OH 44199-2055.

Defense Finance and Accounting Service - Kansas City Center, 1500 East 95th Street, Kansas City, MO 64997-0001.

Defense Finance and Accounting Service - Columbus Center, 4280 East 5th Avenue, Columbus, OH 43219-1879.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All individuals who have requested documents under the provisions of the Freedom of Information Act (FOIA) (5 U.S.C. 552).

CATEGORIES OF RECORDS IN THE SYSTEM:

Correspondence from the public requesting information under the Freedom of Information Act and the reply, which may include copies of the released record(s), denials, and appeals. Correspondence pertaining to the requests, the information released or withheld, summaries, logs of actions taken, and correspondence from and to other DoD and Federal agencies regarding specific requests of mutual interest.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 552, the Freedom of Information Act, as amended, as implemented by DFAS Regulation 5400.7-R.

PURPOSE(S):

To control administrative processing of requests for information made under the provisions of the Freedom of Information Act (FOIA), and to record statistics for the annual FOIA report.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C.

552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows.

The 'Blanket Routine Uses' published at the beginning of the DFAS compilation of systems of records notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSITION OF RECORDS IN THE SYSTEM:

STORAGE

Paper records in file folders and in automated formats.

RETRIEVABILITY

Retrieved by individual's name or by control number assigned to the individual case file.

SAFEGUARDS

As a minimum, records are accessed by person(s) responsible for servicing and authorized to use the record system in performance of their official duties, properly screened and cleared for the need to know. Additionally, at some locations, records are in office buildings protected by guards and controlled through personnel screening and visitor registers.

RETENTION AND DISPOSAL:

Records are retained for a minimum of 2 years; replies to requests for nonexistent records, to requesters who provide inadequate descriptions, and to those who fail to pay agency fees (request not appealed), 2 years; requests appealed, 6 years after final determination by agency; control logs, 6 years, report files, 2 years; administrative files, 2 years, then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

FOIA Officer, Defense Finance and Accounting Service, 1931 Jefferson Davis Highway, Arlington, VA 22240-5291.

FOIA Officer, Defense Finance and Accounting Service - Denver Center, 6760 E. Irvington Place, Denver, CO 80279-5000.

FOIA Officer, Defense Finance and Accounting Service - Indianapolis Center, Indianapolis, IN 46249-0001.

FOIA Officer, Defense Finance and Accounting Service - Cleveland Center, 1240 East Ninth Street, Cleveland, OH 44199-2055.

FOIA Officer, Defense Finance and Accounting Service - Kansas City Center, 1500 East 95th Street, Kansas City, MO 64997-0001.

FOIA Officer, Defense Finance and Accounting Service - Columbus Center, 4280 East 5th Avenue, Columbus, OH 43219-1879.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to the Privacy Act Officer at the appropriate DFAS Center.

Individuals should provide full name, current address and telephone number.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system of records should address written inquiries to the Privacy Act Officer at the appropriate DFAS Center.

Individuals should provide full name, current address and telephone number.

CONTESTING RECORD PROCEDURES:

The DFAS rules for accessing records, for contesting contents and appealing initial agency determinations are published in DFAS Regulation 5400.11–R; 32 CFR part 324; or may be obtained from the Privacy Act Officer at any DFAS Center.

RECORD SOURCE CATEGORIES:

Information in this system is obtained from requesters, from other federal agencies with collateral interest in a request, and from records which were the subject of requests.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 99–8806 Filed 4–9–99; 8:45 am]

BILLING CODE 5001–10–F

DEPARTMENT OF DEFENSE

Department of the Air Force

Notice of Intent To Prepare a Supplemental Environmental Impact Statement (SEIS) for the Evolved Expendable Launch Vehicle (EELV) Program

This notifies the public that the Department of the Air Force, through Space and Missile Systems Center's Evolved Expendable Launch Vehicle (EELV) System Program Office (SMC/MV), intends to supplement the EELV Final Environment Impact Statement (FEIS) and Record of Decision (ROD) dated June 8, 1998. The Air Force supplement will be prepared to further the purposes of the National Environmental Policy Act (NEPA) by inviting public involvement in the evaluation of a new, supplemental proposal to the action analyzed in the original NEPA document.

The FEIS documented the impact of implementing the EELV program. At that time, two baseline vehicle configurations were evaluated: (1) A liquid-oxygen/liquid-hydrogen core booster (with the option of small, strap-on solid rocket motors), and (2) a liquid-oxygen/kerosene core booster. The Supplemental Environmental Impact Statement (SEIS) will evaluate the proposed use of some EELV vehicle variants using large, strap-on solid rocket motors to reduce launch costs, increase mission launch options, protect launch schedules, and improve mission responsiveness. These launches would take place at Cape Canaveral Air Station (CCAS) in Florida and Vandenberg Air Force Base (VAFB) in California.

In 1994, a multi-agency Space Launch Modernization Plan was developed to evaluate national space launch systems and to improve United States launch capability. The current EELV program objectives evolved from the resulting study. The purpose of the development and deployment of the EELV is to meet the U.S. Government National Mission Model, both medium and heavy-lift, at a lower cost of launch to the nation than the present expendable launch systems (which consist primarily of Delta II, Atlas II, Titan II, and Titan IV). EELV is intended to launch national security, civil, and commercial payloads. No crew-rated or cargo-return missions are planned.

On October 16, 1998, the EELV System Program Office awarded Development Agreements and Initial Launch Services contracts to two contractors, McDonnell Douglas Corporation (a wholly-owned subsidiary of the Boeing Company) and Lockheed Martin Astronautics. Furthermore, the Air Force is preparing to enter into real property agreements with both contractors to permit the use of Air Force facilities for deployment of EELV systems. These decisions were supported by the June 8, 1998 ROD as premised upon in the EELV FEIS. Full descriptions of the previously analyzed EELV systems are available in the FEIS at the following Internet address: http://ax.laafb.af.mil/axf/EELV.htm.

In accordance with the Council on Environmental Quality Regulations implementing NEPA, specifically 40 CFR 1502.9(c), "an agency shall prepare supplements to either draft or final environmental impact statements when substantial changes in the proposed action are made relevant to environmental concerns." The proposed action to consider permitting the use of EELV vehicles using larger strap-on solid rocket motors may be considered a substantial change to the action

previously analyzed in the FEIS and would present different potential environmental impacts due to the use of different propellants. The size and number of solid rocket motors to be used on each launch vehicle will be proposed by the launch vehicle contractors, Lockheed Martin and the Boeing Company. The solid propellant to be used in the strap-on motors will most likely consist of ammonium perchlorate, aluminum, and organic binder. Details regarding propellant composition, propellant masses, and emissions impacts will be included in the SEIS. Because of the projected differences in the environmental impacts between the systems previously examined and the new alternative, the Department of the Air Force will prepare a supplement to the EELV FEIS.

The SEIS will analyze the potential environmental impacts resulting from the use of solid rocket motors on EELV vehicles. Both government and commercial launches will be analyzed to assess cumulative effects. The total EELV launch rate including launches using solid rocket motors are not expected to exceed those addressed in the FEIS. The first launch of a solid rocket motor variant is anticipated in 2001 at CCAS and 2002 at VAFB. EELV launches using solid rocket motors are not expected to exceed 7 to 12 per year from VAFB and 14 to 21 launches per year from CCAS.

The no-action alternative to the proposed action is to limit EELV launches from Air Force facilities to those launch vehicle variants previously analyzed in the FEIS. That is, the Government could choose not to permit the use of strap-on solid rocket motors. This would result in the use of only the systems considered in the June 1998 ROD.

Environmental issues to be analyzed in the SEIS include, but are not limited to: air quality, hazardous materials processing, hazardous waste, stratospheric impacts, health and safety, launch debris, launch noise, sonic boom impacts, construction modifications due to program changes from FEIS, and effects of new launch variants on biological species, ground waters, and all other natural and cultural resources.

The Air Force is soliciting public input and comments concerning the environmental aspects to be addressed in the SEIS. To ensure that the Air Force has sufficient time to fully consider public response, written comments need to be received no later than April 26, 1999. Comments should be mailed to: SMC/AXFV, Attn: Ted Krawczyk, Environmental Engineer, 2420 Vela Way, Suite 1467, El Segundo, CA 90245–4659. Comments may also be sent via fax (310) 363–1503, and e-mail: Theodore.Krawcyzk@losangeles.af.mil.

The SEIS is expected to be available for public review in Summer 1999. A notice of availability will be published in the **Federal Register** announcing issuance of the draft SEIS.

Carolyn A. Lunsford,

Air Force Federal Register Liaison Officer.

[FR Doc. 99–8977 Filed 4–9–99; 8:45 am]

BILLING CODE 5001–05–U

DEPARTMENT OF DEFENSE

Department of the Air Force

Privacy Act of 1974; System of Records

AGENCY: Department of the Air Force, DoD.

ACTION: Notice to amend systems of records.

SUMMARY: The Department of the Air Force proposes to amend three systems of records notices in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: The amendment will be effective on May 12, 1999, unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the Air Force Access Programs Manager, Headquarters, Air Force Communications and Information Center/ITC, 1250 Air Force Pentagon, Washington, DC 20330–1250.

FOR FURTHER INFORMATION CONTACT: Mrs. Anne Rollins at (703) 614–7819.

SUPPLEMENTARY INFORMATION: The Department of the Air Force's record system notices for records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed amendments are not within the purview of subsection (r) of the Privacy Act (5 U.S.C. 552a), as amended, which would require the submission of a new or altered system report for each system. The specific changes to the record systems being amended are set forth below followed by the notices as amended, published in their entirety.

Dated: April 5, 1999.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

F033 AFCA A

SYSTEM NAME:

Military Affiliate Radio System (MARS) Member Records *(June 11, 1997, 62 FR 31793).*

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete entry and replace with 'Air Force Communications Agency (AFCA), Air Force installations and Military Affiliate Radio System (MARS) member stations. Official mailing addresses are published as an appendix to the Air Force compilation of systems of records notices.'

* * * * *

SAFEGUARDS:

Delete entry and replace with 'Records are accessed by authorized personnel in the course of their official duties who are properly screened and cleared for need-to-know. Stored in locked file cabinets.'

RETENTION AND DISPOSAL:

Delete entry and replace with 'Retained until reassignment or termination of membership, then destroyed by tearing to pieces, shredding, pulping, macerating or burning.'

* * * * *

F033 AFCA A

SYSTEM NAME:

Military Affiliate Radio System (MARS) Member Records.

SYSTEM LOCATION:

Air Force Communications Agency (AFCA), Air Force installations and Military Affiliate Radio System (MARS) member stations. Official mailing addresses are published as an appendix to the Air Force compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Amateur Radio Operators licensed by United States Air Force (USAF) Military Affiliate Radio System.

CATEGORIES OF RECORDS IN THE SYSTEM:

MARS Personnel Action Notification and Application for Membership in Military Affiliate Radio System. Information includes individuals name, MARS call sign, amateur call sign,

mailing address, Federal Communications Commission license class, military status, telephone number, and date of birth.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 8013, Secretary of Air Force, powers and duties; delegation by; as implemented by Air Force Instruction 33-106.

PURPOSE(S):

To identify MARS members, to describe and update information concerning members, to assign call signs and designator, mailing address, amateur license, telephone number, and responsibilities.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' published at the beginning of the Air Force's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained on computer diskettes.

RETRIEVABILITY:

Retrieved by name, by call sign or designator and geographic location.

SAFEGUARDS:

Records are accessed by authorized personnel in the course of their official duties who are properly screened and cleared for need-to-know. Stored in locked file cabinets.

RETENTION AND DISPOSAL:

Retained until reassignment or termination of membership, then destroyed by tearing to pieces, shredding, pulping, macerating or burning.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Global Communications, HQ AFCA/GCGS, 203 W. Losey Street, Room 3065, Scott Air Force Base, IL 62225–5222.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information on themselves should address written inquiries to the Director, Global Communications, HQ AFCA/GCGS, 203 W. Losey Street, Room 3065, Scott Air Force Base, IL 62225–5222.

RECORD ACCESS PROCEDURES:

Individuals seeking to access records about themselves contained in this system should address written requests to the Director, Global Communications, HQ AFCA/GCGS, 203 W. Losey Street, Room 3065, Scott Air Force Base, IL 62225–5222.

CONTESTING RECORD PROCEDURES:

The Air Force rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Air Force Instruction 37–132; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Individual members and Military Affiliate Radio System officials.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

F036 USAFA D

SYSTEM NAME:

Class Committee Products *(October 15, 1997, 62 FR 53599).*

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete entry and replace with 'Office of the Registrar, Dean of the Faculty, HQ USAFA/DFR, 2354 Fairchild Drive, Suite 6D87, U.S. Air Force Academy, CO 80840-6210.'

* * * * *

CATEGORIES OF RECORDS COVERED IN THE SYSTEM:

After 'committees;' delete 'reports committee decisions' and insert 'Academy Board letter, Academic Review Committee Actions (ARC) (copies)'

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with 'Office of the Registrar, Dean of the Faculty, 2354 Fairchild Drive, Suite 6D87, U.S. Air Force Academy, CO 80840-6210.'

* * * * *

F036 USAFA D

SYSTEM NAME:

Class Committee Products.

SYSTEM LOCATION:

Office of the Registrar, Dean of the Faculty, HQ USAFA/DFR, 2354 Fairchild Drive, Suite 6D87, U.S. Air Force Academy, CO 80840-6210.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Air Force Academy cadets.

CATEGORIES OF RECORDS IN THE SYSTEM:

List of cadets academically deficient at progress reports; grades, instructor comment cards, military order of merit and other military and entrance data on cadets meeting committees; Academy Board letter, Academic Review Committee Actions (ARC) (copies) and includes worksheets with coded recommendations to the Academy Board at the end of the semester.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 8013, Secretary of the Air Force and 10 U.S.C., Chapter 903, U.S. Air Force Academy.

PURPOSE(S):

Provides data on academically deficient cadets to Academic Review Committee who makes recommendations concerning cadets' future to the Academy Board.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' published at the beginning of the Air Force's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in visible file binders/cabinets, electronically in the Cadet Administrative Management Information System (CAMIS) data base and on computer output products.

RETRIEVABILITY:

Retrieved by name.

SAFEGUARDS:

Records are accessed by person(s) responsible for servicing the record system in performance of their official duties and by authorized personnel who are properly screened and cleared for need-to-know. Records are stored in locked rooms, cabinets, and in computer storage devices protected by computer system software.

RETENTION AND DISPOSAL:

Destroyed one year after graduation or when purpose has been served,

whichever is sooner. Destruction is by tearing into pieces, shredding, pulping, macerating, or burning. Computer records are destroyed by degaussing or overwriting.

SYSTEM MANAGER(S) AND ADDRESS:

Office of the Registrar, Dean of the Faculty, 2354 Fairchild Drive, Suite 6D87, U.S. Air Force Academy, CO 80840-6210.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information on themselves should address written inquiries to or visit the Office of the Registrar, Dean of the Faculty, 2354 Fairchild Drive, Suite 6D87, U.S. Air Force Academy, CO 80840-6210.

RECORD ACCESS PROCEDURES:

Individuals seeking to access records about themselves contained in this system should address written requests to or visit the Office of the Registrar, Dean of the Faculty, 2354 Fairchild Drive, Suite 6D87, U.S. Air Force Academy, CO 80840-6210.

CONTESTING RECORD PROCEDURES:

The Air Force rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Air Force Instruction 37–132; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Records are compiled from cadet grading and rating cycles.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

F036 USAFA H

SYSTEM NAME:

United States Air Force Academy Athletic Records *(June 11, 1997, 62 FR 31793).*

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete entry and replace with 'Director of Athletics, HQ USAFA/AH, 2169 Field House Drive, Suite 111, U.S. Air Force Academy, CO 80840-4475.'

* * * * *

CATEGORIES OF RECORDS IN THE SYSTEM:

Add to end of entry '(5) Athletic Review Committee Action.'

* * * * *

PURPOSE(S):

Add to the end of paragraph (2), 'for news releases.'

* * * * *

STORAGE:

Delete entry and replace with 'Maintained in file folders, card files, on computers in the Sports Recruiting and Cadet Administrative Management Information data bases, and computer output products, and microfilm.'

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with 'Director of Athletics, HQ USAFA/HA, 2169 Field House Drive, Suite 111, U.S. Air Force Academy, CO 80840-4475.'

* * * * *

F036 USAFA H

SYSTEM NAME:

United States Air Force Academy Athletic Records.

SYSTEM LOCATION:

Director of Athletics, HQ USAFA/AH, 2169 Field House Drive, Suite 111, U.S. Air Force Academy, CO 80840-4475.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Air Force Academy applicants, nominees and cadets; members of coaches intercollegiate booster clubs; users of Academy athletic facilities.

CATEGORIES OF RECORDS IN THE SYSTEM:

(1) Applicants/Nominees: High school transcript, athletic questionnaire, correspondence, test scores.

(2) Cadets: (a) Athletic performance tests, (b) Counseling record, (c) Intramural record, (d) Physical education record, (e) Physical fitness test, (f) Sports publicity information.

(3) Physical fitness and endurance research.

(4) Reservation forms and mailing lists.

(5) Athletic Review Committee Action.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. Chapter 903, United States Air Force Academy.

PURPOSE(S):

(1) Verify and evaluate athletic and academic background for possible appointment to the Air Force Academy.

(2) Monitor cadet participation and progress in physical education/ intercollegiate/intramural programs for news releases.

(3) Establish standards and improve athletic programs.

(4) Contact booster club members and individuals who reserve Academy athletic facilities by mail and telephone.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

Record from this system of records may be used for news releases.

The 'Blanket Routine Uses' published at the beginning of the Air Force's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in file folders, card files, on computers in the Sports Recruiting and Cadet Administrative Management Information data bases, and computer output products, and microfilm.

RETRIEVABILITY:

By name and/or Social Security Number.

SAFEGUARDS:

Records are accessed by custodian of the record system and by person(s) responsible for servicing the record system in performance of their official duties. Records are stored in security file containers/cabinets, locked rooms and on computer storage devices protected by computer system software.

RETENTION AND DISPOSAL:

(1) Destroy one year after graduation or one year after cadet would have graduated.

(2) (a) Destroy 30 days after end of academic year. (b) Destroy upon graduation. (c) Destroy after 1 year. (d) Destroy when no longer needed. (e) Destroy after four academic years. (f) Destroy when no longer needed.

(3) Destroy when no longer needed.

(4) Destroy when no longer needed.

SYSTEM MANAGER(S) AND ADDRESS:

Director of Athletics, HQ USAFA/HA, 2169 Field House Drive, Suite 111, U.S. Air Force Academy, CO 80840-4475.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to or visit the Director of Athletics, HQ USAFA/HA, 2169 Field House Drive, Suite 111, U.S. Air Force Academy, CO 80840-4475.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained

in this system should address written inquiries to or visit Director of Athletics, HQ USAFA/HA, 2169 Field House Drive, Suite 111, U.S. Air Force Academy, CO 80840-4475.

CONTESTING RECORD PROCEDURES:

The Air Force rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Air Force Instruction 37–132; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Individual applicant, nominee or cadet; coaches, instructors and squadron athletic officers; educational institutions; the media; officers in charge of individual sports; Registrar's Office, and Curriculum and Scheduling Office; Stone Human Performance Laboratory; DOD agencies; individuals.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

F036 USAFA M

SYSTEM NAME:

Thomas D. White National Defense Award *(June 11, 1997, 62 FR 31793).*

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete entry and replace with 'Chief, Plans and Current Operations Division, HQ USAFA/XPO, 2304 Cadet Drive, Suite 350, U.S. Air Force Academy, CO 80840-5002.'

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with 'Chief, Plans and Current Operations Division, HQ UAFA/XPO, 2304 Cadet Drive, Suite 350, U.S. Air Force Academy, CO 80840-5002.'

* * * * *

RECORD SOURCE CATEGORIES:

Add to entry 'nominators'.

* * * * *

F036 USAFA M

SYSTEM NAME:

Thomas D. White National Defense Award.

SYSTEM LOCATION:

Chief, Plans and Current Operations Division, HQ USAFA/XPO, 2304 Cadet Drive, Suite 350, U.S. Air Force Academy, CO 80840-5002.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

United States citizens who have contributed significantly to the national defense and security of the United States.

CATEGORIES OF RECORDS IN THE SYSTEM:

Nominations and supporting biographical information on nominees for the Thomas D. White Defense Award.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 8013, Secretary of the Air Force: powers and duties; delegation by.

PURPOSE(S):

Data pertaining to the Thomas D. White National Defense Award is used by a selection board in identifying an appropriate recipient for the award. The elements, which may consist of citations, certificates, and/or trophies are prepared using information provided by the nominating activity.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' published at the beginning of the Air Force's compilation of record system notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in file folders, on microfiche and in computer databases.

RETRIEVABILITY:

Retrieved by Name.

SAFEGUARDS:

Records are accessed by person(s) responsible for servicing the record system in performance of their official duties and by authorized personnel who are properly screened and cleared for need-to-know. Records are stored in locked rooms and cabinets.

RETENTION AND DISPOSAL:

Retained in office files until superseded, obsolete, no longer needed for reference, or on inactivation. Records are destroyed by tearing into pieces, shredding, pulping, macerating or burning.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Plans and Current Operations Division, HQ UAFA/XPO, 2304 Cadet Drive, Suite 350, U.S. Air Force Academy, CO 80840-5002.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information on them should address inquiries to the Chief, Plans and Current Operations Division, HQ UAFA/XPO, 2304 Cadet Drive, Suite 350, U.S. Air Force Academy, CO 80840-5002.

RECORD ACCESS PROCEDURES:

Individuals seeking to access records about themselves contained in this system should address requests to the Chief, Plans and Current Operations Division, HQ UAFA/XPO, 2304 Cadet Drive, Suite 350, U.S. Air Force Academy, CO 80840-5002.

CONTESTING RECORD PROCEDURES:

The Air Force rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Air Force Instruction 37–132; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information obtained from previous employers, nominators, and from the individual.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 99–8802 Filed 4–9–99; 8:45 am]
BILLING CODE 5001–10–F

DEPARTMENT OF DEFENSE

Department of the Army;

Command and General Staff College (CGSC) Advisory Committee

AGENCY: U.S. Army Command and General Staff College, Ft. Leavenworth, KS.

ACTION: Notice of Meeting.

SUMMARY: In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463) announcement is made of the following committee meeting:

Name of Committee: U.S. Army Command and General Staff College (CGSC) Advisory Committee.

Dates of Meeting: 24–26 May 1999.

Place of Meeting: Bell Hall, Room 113, Fort Leavenworth, Kansas 66027–1352.

Time of Meeting: 17030–2000 on May 1999; 7030–2100 on 25 May 1999; and 0730–1400 on 26 May 1999.

Proposed Agenda:

1700–2000, 24 May: Review of CGSC educational program.
0730–2100, 25 May: Continuation of review.
0730–1030, 26 May: Continuation of review.
1030–1130, 26 May: Executive Session.
1300–1400, 26 May: Report to Commandant.

FOR FURTHER INFORMATION CONTACT: Dr. Philip J. Brookes, Committee's Executive Secretary, USACGSC Advisory Committee, 1 Reynolds Ave., Bell Hall, Room 123, Fort Leavenworth, Kansas 66027–1352; or phone (913) 684–2741.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is for the Advisory Committee to examine the entire range of college operations and, where appropriate, to provide advice and recommendations to the College Commandant and Faculty.

The meeting will be open to the public to the extent that space limitations of the meeting location permit. Because of these limitations, interested parties are requested to reserve space by contacting the Committee's Executive Secretary at the above address or phone number.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 99–8959 Filed 4–9–99; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Privacy Act of 1974; System of Records

AGENCY: Department of the Army, DoD.

ACTION: Notice to alter a system of records.

SUMMARY: The Department of the Army is altering a system of records notice in its existing inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended. The alteration adds a routine use to the system of records notice.

DATES: This proposed action will be effective without further notice on May 12, 1999, unless comments are received which result in a contrary determination.

ADDRESSES: Privacy Act Officer, Records Management Program Division, U.S. Total Army Personnel Command, ATTN: TAPC-PDR-P, Stop C55, Ft. Belvoir, VA 22060–5576.

FOR FURTHER INFORMATION CONTACT: Ms. Janice Thornton at (703) 806–4390 or DSN 656–4390.

SUPPLEMENTARY INFORMATION: The Department of the Army systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on March 30, 1999, to the House Committee on Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records About Individuals,' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: April 5, 1999.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

A0210–190 TAPC

SYSTEM NAME:

Individual Gravesite Reservation Files *(July 7, 1997, 62 FR 36270).*

CHANGES:

* * * * *

SYSTEM NAME:

Delete entry and replace with 'Individual Gravesite Interment Files.'

SYSTEM LOCATION:

Delete entry and replace with 'Commander, U.S. Total Army Personnel Command, ATTN: TAPC-PED-A, 2461 Eisenhower Avenue, Alexandria, VA 22331-0482 for Army post cemeteries and at Army installations.'

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with 'Active and former Armed Forces personnel and their dependents who are or will be interred in grave plots in Army post cemeteries or who reserved grave plots prior to 1975.'

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with 'Gravesite record of interment (DA Forms 2122 and 2123); reservations prior to 1961; deceased individuals' name, address, date of birth, date of death, and section of grave reserved or interred in, military service, or dependent name and the relationship to service member.'

* * * * *

PURPOSE(S):

Delete entry and replace with 'To maintain records of individuals interred in Army post cemeteries; to conduct periodic surveys to determine validity of reservations; and to respond to inquiries.'

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Add a new paragraph 'To the Department of Veteran Affairs for the purposes of issuing a government headstone.'

* * * * *

A0210–190 TAPC

SYSTEM NAME:

Individual Gravesite Interment Files.

SYSTEM LOCATION:

Commander, U.S. Total Army Personnel Command, ATTN: TAPC-PED-A, 2461 Eisenhower Avenue, Alexandria, VA 22331–0482 for Army post cemeteries and at Army installations.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Active and former Armed Forces personnel and their dependents who are or will be interred in grave plots in Army post cemeteries or who reserved grave plots prior to 1975.

CATEGORIES OF RECORDS IN THE SYSTEM:

Gravesite record of interment (DA Forms 2122 and 2123); reservations prior to 1961; deceased individuals' name, address, date of birth, date of death, and section of grave reserved or interred in, military service, or dependent name and the relationship to service member.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3013, Secretary of the Army.

PURPOSE(S):

To maintain records of individuals interred in Army post cemeteries; to conduct periodic surveys to determine validity of reservations; and to respond to inquiries.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To the Department of Veteran Affairs for the purposes of issuing a government headstone.

The 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders.

RETRIEVABILITY:

By individual's surname.

SAFEGUARDS:

Records are maintained in areas accessible only to authorized personnel having official need therefor in the performance of their duties. Records are kept in secure office areas in a secure building.

RETENTION AND DISPOSAL:

Permanent.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, U.S. Total Army Personnel Command, ATTN: TAPC-PED-A, 2461 Eisenhower Avenue, Alexandria, VA 23321–0482 for Army post cemeteries.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this records system should address written inquiries to the Commander, U.S. Total Army Personnel Command, ATTN: TAPC-PED-A, 2461 Eisenhower Avenue, Alexandria, VA 23321–0482.

Individual should provide full name of veteran, or deceased individual's name and sufficient details to permit locating pertinent records and signature.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Commander, U.S. Total Army Personnel Command, ATTN: TAPC-PED-A, 2461 Eisenhower Avenue, Alexandria, VA 23321–0482.

Individual should provide full name of veteran, or deceased individual's name and sufficient details to permit locating pertinent records and signature.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, contesting contents, and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual, his/her representative or next-of-kin; Army records and reports.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 99–8804 Filed 4–9–99; 8:45 am]
BILLING CODE 5001–10–F

DEPARTMENT OF DEFENSE

Department of the Army

Privacy Act of 1974; System of Records

AGENCY: Department of the Army, DoD.
ACTION: Notice to amend system of records.

SUMMARY: The Department of the Army is amending a system of records notice in its existing inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.
DATES: This proposed action will be effective without further notice on May 12, 1999, unless comments are received which result in a contrary determination.
ADDRESSES: Privacy Act Officer, Records Management Program Division, Army Records Management and Declassification Agency, ATTN: TAPC-PDD-RP, Stop C55, Ft. Belvoir, VA 22060–5576.
FOR FURTHER INFORMATION CONTACT: Ms. Janice Thornton at (703) 806–4390 or DSN 656–4390.
SUPPLEMENTARY INFORMATION: The Department of the Army systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the record system being amended are set forth below followed by the notice, as amended, published in its entirety. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: April 5, 1999.

L.M. Bynum,
Alternate OSD Federal Register Liaison Officer, Department of Defense.

A0210–130 DALO

SYSTEM NAME:

Laundry and Dry Cleaning Accounting Files *(February 22, 1993, 58 FR 10002).*

CHANGES:

* * * * *

SYSTEM NAME:

Delete entry and replace with 'Laundry Accounting Files'.

SYSTEM LOCATION:

Delete entry and replace with 'Laundry and Dry Cleaning Facilities located on Army installations world-wide. Official mailing addresses are published as an appendix to the Army's compilation of system of record notices'.

* * * * *

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete from entry 'and/or dry cleaning' and 'or dry cleaning'.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Add to entry 'Army Regulation 210-130, Laundry and Dry Cleaning Operations'.

* * * * *

PURPOSE(S):

Delete from entry 'and dry cleaning'.

* * * * *

STORAGE:

Delete 'magnetic tape'.

* * * * *

RETENTION AND DISPOSAL:

Delete 'or dry cleaning' from entry.

* * * * *

A0210–130 DALO

SYSTEM NAME:

Laundry Accounting Files.

SYSTEM LOCATION:

Laundry and Dry Cleaning Facilities located on Army installations world-wide. Official mailing addresses are published as an appendix to the Army's compilation of system of record notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All military personnel who are authorized payroll deduction service.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual's application for laundry start or stop deductions (DA Form 3799), laundry mark, organizational code number, amount deducted from pay monthly for laundry service, date, and organization name.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3013, Secretary of the Army and Army Regulation 210-130, Laundry and Dry Cleaning Operations.

PURPOSE(S):

To determine patrons authorized laundry service, to verify receipt and shipment of individual laundry bundles, and amount of money deducted from soldier's pay; for management and statistical reports.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records

or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file cabinets.

RETRIEVABILITY:

By individual's surname.

SAFEGUARDS:

Records are accessible only to authorized individuals having need therefor.

RETENTION AND DISPOSAL:

Records are retained for 1 year, after which they are destroyed by shredding/erasing, DA Form 3799 is retained indefinitely until laundry service is canceled by the individual.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Chief of Staff for Logistics, 500 Army Pentagon, ATTN: DALO-TST, Washington, DC 20310–0500.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Laundry Facility at the Army installation/activity where service was obtained.

Individual should provide name and pertinent data that will facilitate locating the record.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Laundry Facility at the installation providing service.

Individual should provide name and pertinent data that will facilitate locating the record.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual and DA Form 3799.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 99–8856 Filed 4–9–99; 8:45 am]
BILLING CODE 5001–10–F

DEPARTMENT OF DEFENSE

Defense Logistics Agency

Privacy Act of 1974; Systems of Records

AGENCY: Defense Logistics Agency, DOD.

ACTION: Notice to add systems of records.

SUMMARY: The Defense Logistics Agency proposes to add two systems of records to its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: This action will be effective without further notice on May 12, 1999, unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: CAAR, 8725 John J. Kingman Road, Suite 2533, Fort Belvior, VA 22060–6221.

FOR FURTHER INFORMATION CONTACT: Ms. Susan Salus at (703) 767–6183.

SUPPLEMENTARY INFORMATION: The Defense Logistics Agency notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed system reports, as required by 5 U.S.C. 522a(r) of the Privacy Act of 1974, as amended, weer submitted on March 29, 1999, to the House Committee on Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records About Individuals,' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: April 5, 1999.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

S400.50 CA

SYSTEM NAME:

Family Support Program Volunteer Files.

SYSTEM LOCATION:

Records are maintained by the Office of Human Resources, Corporate Administration, Headquarters, Defense Logistics Agency, 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 22060-6221, and the Commanders of the Defense Logistics Agency Primary Level Field Activities. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have volunteered to assist with family support programs.

CATEGORIES OF RECORDS IN THE SYSTEM:

The files contain name, Social Security Number, electronic and physical addresses, telephone numbers, date of birth, education and training, experience, honors and awards, and associated data. The file will also contain information pertaining to selection, duties, performance, and separation.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 136; Under Secretary of Defense for Personnel and Readiness; 10 U.S.C. 1588, Authority to accept certain voluntary services; and E.O. 9397 (SSN).

PURPOSE(S):

To screen volunteers who wish to assist with family support programs and to document participation in those programs. Records may also be used as a basis to waive or reduce fees associated with participation in DLA family or day care programs.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552(b)(3) as follows:

To government and private vendor training facilities and educational institutions for training purposes.

To physicians, dentists, medical technicians, hospitals, or health care providers in the course of obtaining emergency medical attention.

The 'Blanket Routine Uses' set forth at the beginning of DLA's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in paper and electronic form.

RETRIEVABILITY:

Records are retrieved by name or Social Security Number.

SAFEGUARDS:

Records are maintained in secure buildings or areas with access limited to only those individuals whose duties require access. The computer files are password controlled with system generated forced password-change protocols. Records are secured in locked or guarded buildings, locked offices, or locked cabinets during nonduty hours.

RETENTION AND DISPOSAL:

Files are retained for 2 years after the individual departs and then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Military Personnel and Quality of Life Group, Office of Human Resources, Headquarters, Defense Logistics Agency, 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 22060-6221, and the Commanders of the Defense Logistics Agency Primary Level Field Activities. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

NOTIFICATION PROCEDURES:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: CAAR, 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 22060-6221, or the Privacy Act Officer of the particular Defense Logistics Agency Primary Level Field Activities involved. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system should address written inquiries to the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: CAAR, 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 22060-6221, or the Privacy Act Officer of the particular Defense Logistics Agency Primary Level Field Activities involved. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

CONTESTING RECORD PROCEDURES:

The DLA rules for accessing records, for contesting contents and appealing initial agency determinations are contained in DLA Regulation 5400.21, 32 CFR part 323, or may be obtained from the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: CAAR, 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 22060–6221.

RECORD SOURCE CATEGORIES:

Information is provided by the record subject, individuals listed as references, employers, supervisors, and training facilities.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

S400.60 CA

SYSTEM NAME:

DLA Guest Lodging Files.

SYSTEM LOCATION:

Records are maintained by the Quality of Life Offices of the Defense Supply Center Columbus, 3990 Broad Street, Columbus, OH 43216-5000; the Defense Supply Center Richmond, 8000 Jefferson Davis Highway, Richmond, VA 23297-5000; and the Defense Depot Susquehanna Pennsylvania (DDSP-HMF), 2001 Mission Drive, Suite 1, New Cumberland, PA 17070-5002.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who apply to stay in DLA guest lodging during temporary duty travel, permanent change of station moves, house-hunting trips, and similar situations warranting facility use.

CATEGORIES OF RECORDS IN THE SYSTEM:

The files include name; Social Security Number; home and electronic addresses; home telephone number; travel order data; family member data; driver's license number; license plate number; vehicle number, make, model, and year; and billing and payment data.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 136, Under Secretary of Defense for Personnel and Readiness; E.O. 9397 (SSN); DoD Directive 4001.1, Installation Management; and DoD Directive 4165.63, DoD Housing.

PURPOSE(S):

The records are maintained to determine eligibility for facility use; to register and bill occupants for use of guest lodging; and to account for rentals, furnishings, and cash receipts. The records may also be used to prepare statistical reports, stripped of personal identifiers, on occupancy use and cost effectiveness.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552(b)(3) as follows:

The 'Blanket Routine Uses' set forth at the beginning of DLA's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in paper and electronic form.

RETRIEVABILITY:

Records are retrieved by name or Social Security Number.

SAFEGUARDS:

Records are maintained in secure buildings or areas with access limited to only those individuals whose duties require access. The computer files are password controlled with system generated forced password-change protocols. Records are secured in locked or guarded buildings, locked offices, or locked cabinets during nonduty hours.

RETENTION AND DISPOSAL:

Records are cutoff at the end of the fiscal year, retained for three fiscal years, and then destroyed. Rejected applications are destroyed 1 year from date of rejection.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Military Personnel and Quality of Life Group, Office of Human Resources, Headquarters, Defense Logistics Agency, 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 22060-6221; the Commanders of the Defense Supply Center Columbus, 3990 Broad Street, Columbus, OH 43216-5000; the Defense Supply Center Richmond, 8000 Jefferson Davis Highway, Richmond, VA 23297-5000; and the Defense Depot Susquehanna Pennsylvania (DDSP-HMF), 2001 Mission Drive, Suite 1, New Cumberland, PA 17070-5002.

NOTIFICATION PROCEDURES:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: CAAR, 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 22060-6221, or the Privacy

Act Officer of the particular DLA activity involved.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system should address written inquiries to the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: CAAR, 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 22060-6221, or the Privacy Act Officer of the particular DLA activity involved.

CONTESTING RECORD PROCEDURES:

The DLA rules for accessing records, for contesting contents and appealing initial agency determinations are contained in DLA Regulation 5400.21, 32 CFR part 323, or may be obtained from the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: CAAR, 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 22060–6221.

RECORD SOURCE CATEGORIES:

Information is provided by the record subject and gathered from travel orders.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 99–8807 Filed 4–9–99; 8:45 am]

BILLING CODE 5001–10–F

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Draft Environmental Impact Statement For Proposed Open-Water Placement of Dredged Material At Site 104 Queen Anne's County, Maryland

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Extension of Comment Period.

SUMMARY: The Baltimore District, U.S. Army Corps of Engineers is announcing today the extension of the comment period for the Draft Environmental Impact Statement For Proposed Open-Water Placement of Dredged Material At Site 104 Queen Anne's County, Maryland.

DATES: Submit comments on or before June 1, 1999.

ADDRESSES: Questions, comments, or requests for copies of the Draft Environmental Impact Statement should be directed to Mr. Wesley E. Coleman Jr. at the Corps of Engineers, Baltimore District (ATTN: CENAB-PL-P), P.O. Box 1715, Baltimore, MD 21203–1715. Or e-mail wesley.e.coleman@usace.army.mil

FOR FURTHER INFORMATION CONTACT: Mr. Wesley E. Coleman Jr. at facsimile (410) 962–4698.

SUPPLEMENTARY INFORMATION: A Notice of Availability (NOA) and a summary of the proposed action was published in the **Federal Register** (64 FR 9480) on February 26, 1999. The U.S. Army Corps of Engineers, Baltimore District is evaluating the potential use of Site 104 as an open-water placement area. Site 104 is located in the Chesapeake Bay one-half mile north of the Chesapeake Bay Bridge and one mile west of Kent Island. Open-water placement is proposed for approximately 18 million cubic yards of dredged material from the mainstem Chesapeake Bay channels leading to the port of Baltimore. The Maryland Port Administration has recommended the use of Site 104 for open-water placement of clean sediment beginning in 1999. No decision has been made to use the site. The Baltimore District will analyze and incorporate all public comments on this Draft Environmental Impact Statement before making a final decision.

The DEIS and associated technical appendices are available at the following area libraries:

Anne Arundel County Public Library, North County Branch, 1010 Eastway Drive, Glen Burnie, MD 21060; Queen Anne's County Free Library, 121 South Commerce Street, Centreville, MD 21617; Kent County Public Library, 408 High Street Chestertown, MD 21620; Frederick Douglas Library, University of MD, Eastern Shore, Backbone Road, Princess Anne, MD 21853–1299; Miller Library, Washington College, 300 Washington Avenue, Chestertown, MD 21620; MD State Law Library, Court of Appeals Building, 361, Rowe Boulevard, Annapolis, MD 21401; Queen Anne's County Public Library, Kent Island Branch, 200 Library Circle, Stevensville, MD 21666; Annapolis Library, 1410 West Street, Annapolis, MD 21401; Broadneck Library, 1275 Green Holly Drive, Annapolis MD 21401; Reference Library, State Department of Legislation, 90 State Circle, Annapolis MD 21401.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 99–9149 Filed 4–9–99; 8:45 am]

BILLING CODE 3710–41–P

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Intent to Prepare a Supplement to the Final Environmental Impact Statement (SEIS) for the New Hampshire Department of Transportation (NHDOT) Circumferential Highway Project—Nashua, Hudson, Litchfield, and Merrimack, New Hampshire

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice of Intent.

SUMMARY: The New England District of the U.S. Army Corps of Engineers announces its intent to prepare a Supplement to the Final Environmental Impact Statement (SEIS) for the New Hampshire Department of Transportation (NHDOT) Circumferential Highway Project-Nashua, Hudson, Litchfield, and Merrimack, New Hampshire. The Corps of Engineers will be evaluating a permit application for the proposed work under section 404 of the Clean Water Act.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and the SEIS should be addressed to Mr. Frank DelGiudice, Senior Project Manager, New England District, U.S. Army Corps of Engineers, 696 Virginia Road, Concord, MA 01742–2751. Phone: (978) 318–8832.

SUPPLEMENTARY INFORMATION:

1. The Nashua-Hudson region of southern New Hampshire is experiencing rapid population and economic growth which necessitates the expansion of the region's transportation system. The construction of a By-Pass Highway around Nashua's northeast quadrant is proposed to provide relief for existing and projected highway capacity deficiencies and to enhance traffic flow in the area. Various social, economic, and environmental impacts will occur and were documented for a Full Build Circumferential Highway in the Final Environmental Impact Statement (FEIS) published in October 1993. The applicant is proposing to proceed with a Partial Build including the northern segment from NH route 111 in the Town of Hudson northerly and westerly to an improved section of the FE Everett Turnpike in the Town of Merrimack. The Army Corps of Engineers will have to decide whether and under what circumstances to grant a Federal permit for the proposed Partial Build work. Therefore we have decided to prepare an SEIS to aid in agency decision making and to assure compliance with the National

Environmental Policy Act (NEPA). Evaluation and documentation of impacts to historic, archaeological, public park, and recreation areas will be prepared in conformance with Section 4(f) of the U.S. Department of Transportation Act.

2. That FEIS did not completely document impacts of a Partial Build, therefore a Supplement to the FEIS will be prepared to insure major issues associated with the Partial Build alternative have been identified. Due to the time elapsed since release of the FEIS, potential changes in transportation patterns and existing environmental conditions, the SEIS will include updates to the existing conditions information contained in the FEIS.

3. Proposed Action: The Partial Build project proposed by the applicant is a 7.50 mile long section of the previously studied 12 mile long 4-lane limited access circumferential highway. It is to be built on a new alignment located primarily easterly and northerly of the City of Nashua forming an arc around the central business districts of Nashua and Hudson. As documented in the FEIS, Alternative 9 was defined for the Full Build which was a combination of sections of other alternatives. The proposed Partial Build of Alternative 9 begins at NH Route 111 in the center of Hudson running northerly and then westerly through Litchfield, crossing the Merrimack River and returning to the FE Everett Turnpike at a new Exit 9 in Merrimack. The interchange at Exit 9 will include improvements to the FE Everett Turnpike in that section. The purpose of the proposed Partial Build is to add a new crossing of the Merrimack River north of the existing crossings connecting Nashua and Hudson to assist east-west traffic movements in the central and northern greater Nashua region. Should other reasonable and practicable alternatives arise out of the scoping process they too will be evaluated.

4. Alternatives: In the FEIS various alternative alignments were considered to reduce traffic in the region, particularly in the Central Business Districts of Nashua and Hudson. In addition to these alignments, No Action and Transportation System Management/Transportation Demand Management (TSM/TDM) alternatives were considered. Based on the consideration of the impacts presented and public input, Alternative 9 was defined for the Full Build which was a combination of other alternatives. The FEIS information separated the highway into a southern and northern segment.

a. *The Southern Segment*: A 0.75 mile section of the Southern Segment is currently being constructed as a connection from NH Route 3–A in southern Hudson to the new Exit 2 of the FE Everett Turnpike in southern Nashua. The remainder of the Southern Segment from NH Route 3–A to NH Route 111 is not being proposed as part of the project.

b. *The Northern Segment*: A 7.5 mile section from NH Route 111 in Hudson northerly and westerly to the FE Everett Turnpike in Merrimack has been defined which consists of four linked sections that have individual as well as additive benefits. The sections are: (1) From the FE Everett Turnpike, proposed Exit 9 southerly and easterly to US Route 3, Daniel Webster Highway in Merrimack; (2) from US Route 3, DW Highway in Merrimack, crossing the Merrimack River, easterly to NH Route 3-A in Litchfield; (3) from NH Route 3-A easterly to NH Route 102 in Litchfield; and (4) from NH Route 3-A in Litchfield southerly to NH Route 111 in Hudson.

c. *No Action Alternative*: Under the No Action Alternative, the traffic will continue to use the existing street and highway network.

d. *The TSM/TDM Alternative*: The purpose of studying the TSM/TDM alternative in the FEIS was to encourage maximum utilization and energy efficiency of the existing transportation system. Many projects have been implemented in the region for purposes of TSM and TDM improvements.

5. Scoping process:

a. Public meetings were conducted during the period of June 1990 to July 1992 introducing the Full Build project and soliciting comments. The Corps of Engineers has held a preliminary coordination meeting with Federal and State agencies to identify issues of concern to be studied in the SEIS.

b. The opportunity for public comment will occur at three times during the SEIS process. The first set of public meetings will be the Scoping/ Kick-off Meeting Workshops held in each impacted municipality in May 1999. The second opportunity will be at Public Informational workshops held in each municipality for purposes of informal comment on the Draft SEIS in the fall 1999. The third opportunity will be at the Public Hearing held by the Corps of Engineers immediately following the Public Informational Workshops in the fall of 1999.

c. It is anticipated that the following agencies will continue to accept Cooperating Agency status for the SEIS study:

(1) U.S. Environmental Protection Agency.

(2) U.S. Department of Interior—Fish and Wildlife Service.

(3) U.S. Department of Transportation—Federal Highway Administration.

(4) U.S. Department of Agriculture—Natural Resource Conservation Service.

d. The SEIS will analyze the potential social, economic, and environmental impacts to the region resulting from the proposed Partial Build. The study will include analysis of the updated existing traffic conditions and projections of the Partial Build and related impacts to air quality, noise, water quality, and wetlands. Construction and operational phase impacts of the four sections will be considered as well as cumulative and secondary impact. The SEIS will include the evaluation and documentation of impacts to historic, archeological, public park, and recreation areas will be prepared in conformance with Section 4(f) of the U.S. Department of Transportation Act.

6. Scoping Kick-off Meetings: The Corps of Engineers in coordination with NHDOT plans to hold four individual Scoping Kick-off Meeting Workshops in each of the affected municipalities. These workshops will be conducted with an open forum format and held at the following locations from 4:00 to 8:00 PM:

a. Tuesday, May 4, 1999—Griffen Memorial School, Litchfield, NH.

b. Thursday, May 6, 1999—Town Hall Court Room, Merrimack, NH.

c. Tuesday, May 11, 1999—Alvirne High School, Hudson, NH.

d. Thursday, May 13, 1999—City Hall Auditorium, Nashua, NH.

All interested agencies, organizations and publics are invited to attend this meeting. Sufficient local notification will be provided.

7. Availability: It is anticipated that the Draft SEIS would be made available for review in October 1999. The Final SEIS on this permit action is anticipated in late 1999.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 99–8958 Filed 4–9–99; 8:45 am]

BILLING CODE 3710–GT–P

DEPARTMENT OF DEFENSE

Department of the Navy

Privacy Act of 1974; System of Records

AGENCY: Department of the Navy, DoD.

ACTION: Delete and amend record systems.

SUMMARY: The Department of the Navy proposes to delete two systems of records and amend two systems of records notices in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES The actions will be effective on May 12, 1999 unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the Department of the Navy, PA/FOIA Policy Branch, Chief of Naval Operations (N09B30), 2000 Navy Pentagon, Washington, DC 20350–2000.

FOR FURTHER INFORMATION CONTACT: Mrs. Doris Lama at (202) 685–6545 or DSN 325–6545.

SUPPLEMENTARY INFORMATION: The Department of the Navy's record system notices for records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The Department of the Navy proposes to delete and amend systems of records notices in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. The deletions are not within the purview of subsection (r) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, which requires the submission of new or altered system report.

Dated: April 5, 1999.

L.M. Bynum,

Alternative OSD Federal Register Liaison Officer, Department of Defense.

Deletions

N05371–1

SYSTEM NAME:

Conflicts of Interest and Employment Activities (*February 22, 1993, 58 FR 10759*).

Reason: Records are no longer maintained or retrieved by name and/or personal identifier. All "personal" records have been destroyed.

N12950–4

SYSTEM NAME:

Naval Audit Training Database (*February 22, 1993, 58 FR 10826*).

Reason: System of records is no longer needed. The Department of the Navy's system of records notice N05000–2, entitled "Administrative Personnel Management System", meets the collection requirements.

Amendments

N04064–1

SYSTEM NAME:

USNA Laundry and Drycleaning Charge Account (*September 9, 1996, 61 FR 47483*).

CHANGES:

* * * * *

SYSTEM NAME:

Delete entry and replace with "USNA Laundry-Drycleaning Computer Business System."

* * * * *

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with "Individuals who utilize the Naval Academy Laundry and Drycleaning Plant as cash, credit, or charge customers."

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with "Information is collected on Form NDW–USNA–DMH–4064/14 and includes applicant's name; Social Security Number, rank (if applicable); branch of service; home and work addresses and telephone numbers. Information required to maintain the charge account records is obtained from the business system and/or recorded on accounts receivable, ledgers, journals, charge tickets and check listings, and to the business system database. Customer transaction information is collected via the computer business system which supports the billing process. In addition to customer transactions, the system maintains the customers' address, telephone number, and preference of provided service."

* * * * *

PURPOSE(S):

Delete entry and replace with "To allow for the establishment of an individual charge account at the Naval Academy Laundry and Drycleaning Plant. To allow for the tracking of customer usage of the Naval Academy Laundry and Drycleaning Plant. Information will be used for billing and management (resource allocation) purposes by the officials and employees of the Plant."

* * * * *

STORAGE:

Delete entry and replace with "Hard copy, magnetic minicassette tape form, and magnetic data cartridge."

RETRIEVABILITY:

Delete entry and replace with "Name and telephone number."

SAFEGUARDS:

Add to entry "Computer records are safeguarded through selective file access, passwords, and port controls."

* * * * *

N04064–1

SYSTEM NAME:

USNA Laundry-Drycleaning Computer Business system.

SYSTEM LOCATION:

Laundry and Drycleaning Plant, U.S. Naval Academy, 580 Kingwood Street, Annapolis, MD 21402–5052.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who utilize the Naval Academy Laundry and Drycleaning Plant as cash, credit, or charge customers.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information is collected on Form NDW–USNA–DMH–4064/14 and includes applicant's name; Social Security Number; rank (if applicable); branch of service; home and work addresses and telephone numbers. Information required to maintain the charge account records is obtained from the business system and/or recorded on accounts receivable, ledgers, journals, charge tickets and check listings, and to the business system database. Customer transaction information is collected via the computer business system which supports the billing process. In addition to customer transactions, the system maintains the customers' address, telephone number, and preference of provided service.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; 44 U.S.C. 3101; and E.O. 9397 (SSN).

PURPOSE(S):

To allow for the establishment of an individual charge account at the Naval Academy Laundry and Drycleaning Plant. To allow for the tracking of customer usage of the Naval Academy Laundry and Drycleaning Plant. Information will be used for billing and management (resource allocation) purposes by the officials and employees of the Plant.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the

DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The "Blanket Routine Uses" that appear at the beginning of the Navy's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Hard copy, magnetic minicassette tape form, and magnetic data cartridge.

RETRIEVABILITY:

Name and telephone number.

SAFEGUARDS:

Access to building is restricted to authorized persons only. Record files are not available to personnel not requiring access in the performance of their official duties. This is routinely limited to the billing clerk processing the application and recording activity on the account. Records are secured within a locked office in a locked building on a military installation when not actually in use. Computer records are safeguarded through selective file access, passwords, and port controls.

RETENTION AND DISPOSAL:

Hard copy records are retained in the current file area as long as the charge account is active. These records are then retired and kept in secured storage for two years and then destroyed. Cassette tape records are of two types, daily and journal (monthly recapitulation). These tapes are erased on a daily or monthly basis, respectively, during the preparation of the following day's or month's activity record.

SYSTEM MANAGER(S) AND ADDRESS:

Head, Laundry and Drycleaning Plant, U.S. Naval Academy, 580 Kingwood Street, Annapolis, MD 21402–5052.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Head, Laundry and Drycleaning Plant, U.S. Naval Academy, 580 Kingwood Street, Annapolis, MD 21402–5052.

Requesting individuals should specify their full names. Visitors should be able to identify themselves by any commonly recognized evidence of identity. Written requests must be signed by the requesting individual.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves should address written inquiries to the Head, Laundry and Drycleaning Plant, U.S. Naval Academy, 580 Kingwood Street, Annapolis, MD 21402–5052.

Requesting individuals should specify their full names. Visitors should be able to identify themselves by any commonly recognized evidence of identity. Written requests must be signed by the requesting individual.

CONTESTING RECORD PROCEDURES:

The Navy's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information in this system comes from the individual applying for the charge account, from daily laundry and drycleaning will-call tickets (charges for goods and services provided) and from records of payment by charge account holders (check listings).

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

N04064–2

SYSTEM NAME:

USNA Retail Customer Claim Record *(September 9, 1996, 61 FR 47483).*

CHANGES:

* * * * *

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with "Individuals who have filed claims against the Naval Academy Laundry and Drycleaning Plant for cash or credit settlement for damaged or lost articles."

* * * * *

N04064–2

SYSTEM NAME:

USNA Retail Customer Claim Record.

SYSTEM LOCATION:

Laundry and Drycleaning Plant, U.S. Naval Academy, 580 Kingwood Street, Annapolis, MD 21402–5052

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have filed claims against the Naval Academy Laundry and Drycleaning Plant for cash or credit settlement for damaged or lost articles.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information is collected on Form NDW–USNA–DMH–4064/15 and includes claimant's name; Social Security Number; rank (if applicable); home and work addresses and telephone numbers; description, original cost and date of purchase of item(s) for which claim is filed, and circumstances of loss or extent of damage; claim number, disposition, and remarks by approving authority.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; 44 U.S.C. 3101; and E.O. 9397 (SSN).

PURPOSE(S):

To investigate claims for cash or credit settlement for damaged or lost articles.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The "Blanket Routine Uses" that appear at the beginning of the Navy's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Hard copy form.

RETRIEVABILITY:

Name of customer and date laundry was turned in for cleaning.

SAFEGUARDS:

Access to building is restricted to authorized persons only. Record files are not available to personnel not requiring access in the performance of their official duties. This is limited to the official processing of the claim and the clerk who maintains the file and prepares the administrative paperwork. Records are secured within a locked office in a locked building on a military installation when not actually in use.

RETENTION AND DISPOSAL:

Retained in the current file area for one calendar year after the close of the individual's claim. The record is then stored for one more year and then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Head, Laundry and Drycleaning Plant, U.S. Naval Academy, 580 Kingwood Street, Annapolis, MD 21402–5052.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains

information about themselves should address written inquiries to the Head, Laundry and Drycleaning Plant, U.S. Naval Academy, 580 Kingwood Street, Annapolis, MD 21402–5052.

Requesting individuals should specify their full names. Visitors should be able to identify themselves by any commonly recognized evidence of identity. Written requests must be signed by the requesting individual.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves should address written inquiries to the Head, Laundry and Drycleaning Plant, U.S. Naval Academy, 580 Kingwood Street, Annapolis, MD 21402–5052.

Requesting individuals should specify their full names. Visitors should be able to identify themselves by any commonly recognized evidence of identity. Written requests must be signed by the requesting individual.

CONTESTING RECORD PROCEDURES:

The Navy's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Individual who filed the claim and offices who are processing the claim.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 99–8801 Filed 4–9–99; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Department of the Navy

Privacy Act of 1974; System of Records Notice

AGENCY: Department of the Navy, DoD.

ACTION: Notice to amend a record system.

SUMMARY: The Department of the Navy proposes to amend a system of records notice in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: The amendment will be effective on May 12, 1999, unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the Department of the Navy, PA/FOIA Policy Branch, Chief of Naval Operations (N09B30), 2000 Navy Pentagon, Washington, DC 20350–2000.

FOR FURTHER INFORMATION CONTACT: Mrs. Doris Lama at (202) 685–6545 or DSN 325–6545.

SUPPLEMENTARY INFORMATION: The Department of the Navy's record system notices for records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The Department of the Navy proposes to amend a system of records notice in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. The changes to the system of records are not within the purview of subsection (r) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, which requires the submission of new or altered systems report. The record system being amended is set forth below, as amended, published in its entirety.

Dated: April 5, 1999.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

N05820–1

SYSTEM NAME:

International Legal Hold Files *(February 22, 1993, 58 FR 10781).*

CHANGES:

* * * * *

SYSTEM NAME:

Delete entry and replace with "Foreign Criminal Jurisdiction Files".

SYSTEM LOCATION:

Delete entry and replace with "U.S. Naval Legal Officers in a foreign country and the Office of the Judge Advocate General (International and Operational Law Division), 1322 Patterson Avenue SE, Suite 3000, Washington, DC 20374–5066."

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with "Military personnel, members of civilian component and their dependents, and contractor employees and their dependents who have had criminal charges lodged against them in a foreign country."

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Add to entry "10 U.S.C. 1037".

PURPOSE(S):

In line 6, delete the word "the" and insert the words "foreign criminal litigation, foreign confinement, and".

* * * * *

RETENTION AND DISPOSAL:

Delete entry and replace with "Destroy when 2 years old or purpose is served, whichever is earlier".

SYTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with "Policy Official: Judge Advocate General, 1322 Patterson Avenue SE, Suite 3000, Washington, DC 20374–5066.

Record Holder: Commanding Officer, head of the organization in question, or the Deputy Assistant Judge Advocate General (International and Operational Law), 1322 Patterson Avenue SE, Suite 3000, Washington, DC 20374–5066. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices".

* * * * *

N05820–1

SYSTEM NAME:

Foreign Criminal Jurisdiction Files.

SYSTEM LOCATION:

U.S. Naval Legal Offices in a foreign country and the Office of the Judge Advocate General (International and Operational Law Division), 1322 Patterson Avenue SE, Suite 3000, Washington, DC 20374–5066.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Military personnel, members of civilian component and their dependents, and contractor employees and their dependents who have had criminal charges lodged against them in a foreign country.

CATEGORIES OF RECORDS IN THE SYSTEM:

Computerized summaries and card files containing copies of legal documents received and filed relative to the case, statements, affidavits, handwritten notes, and other miscellaneous data about the particular case.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; 10 U.S.C. 1037; and E.O. 9397 (SSN).

PURPOSE(S):

Used by foreign civilian attorneys in representing the accused, by the accused's military advisor in seeking an expeditious settlement of the case; by supervisory personnel in the performance of their official duties when monitoring foreign criminal litigation, foreign confinement, and legal hold status of the individuals involved.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The "Blanket Routine Uses" that appear at the beginning of the Navy's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on computers, magnetic tape, file folders and file cards.

RETRIEVABILITY:

Files are retrieved by name and Social Security Number.

SAFEGUARDS:

Only personnel in the International and Operational Law Department are authorized access. Offices are kept locked when not occupied. Computers are password protected.

RETENTION AND DISPOSAL:

Destroy when 2 years old or purpose is served, whichever is earlier.

SYSTEM MANAGER(S) AND ADDRESS:

Policy Official: Judge Advocate General, 1322 Patterson Avenue SE, Suite 3000, Washington, DC 20374–5066.

Record Holder.—Commanding Officer, head of the organization in question, or the Deputy Assistant Judge Advocate General (International and Operational Law), 1322 Patterson Avenue SE, Suite 3000. Washington, DC 20374–5066. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Commanding Officer, head of the organization in question, or the Deputy Assistant Judge Advocate General (International and Operational Law Division), 1322 Patterson Avenue SE, Suite 3000, Washington, DC 20374–5066. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

Individual should provide name, rate and service number, Military I.D. or any standard I.D. showing applicant's photo shall be sufficient for personal visits.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system, should address written inquiries to the Commanding Officer, head of the organization in question, or the Deputy Assistant Judge Advocate General (International and Operational Law), 1322 Patterson Avenue SE, Suite 3000, Washington, DC 20374–5066. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

Individual should provide name, rate and service number, Military I.D. or any standard I.D. showing applicant's photo shall be sufficient for personal visits.

CONTESTING RECORD PROCEDURES:

The Navy's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Foreign judicial system, accused, attorneys representing accused, military legal advisor, Provost Marshal's office, subject's commanding officer, witnesses, and the complainant.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 99–8857 Filed 4–9–99; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF ENERGY

[FE Docket No. 96–99–LNG]

Office of Fossil Energy; Phillips Alaska Natural Gas Corporation and Marathon Oil Company; Order Extending Authorization to Export Liquefied Natural Gas From Alaska

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice that DOE issued DOE/FE Opinion and Order No. 1473 (Order 1473) on April 2, 1999, extending the authorization held by Phillips Alaska Natural Gas Corporation and Marathon Oil Company (Applicants) to export liquefied natural gas (LNG) from the State of Alaska to Japan for an additional five years, from April 1, 2004, through March 31, 2009. The Applicants currently are authorized to export approximately 64.4 billion cubic feet of LNG per year. This export originally was approved by the Federal Power Commission in 1967 (37 F.P.C. ¶ 777). During the extension period, the natural gas to be exported will be produced from gas fields owned or controlled by the Applicants in the Cook Inlet area of Alaska. The natural gas will be manufactured into LNG at their existing liquefaction plant near Kenai, Alaska, and transported by tanker to Japan for sale to Tokyo Electric Power Company, Inc. and Tokyo Gas Company, Ltd., the two largest electric and gas utilities in Japan. In approving the export extension, DOE determined there are sufficient regional supplies of natural gas to satisfy local and export demand through the extension period and, in addition, an extension would continue tangible benefits to the Alaskan economy, energy production, and international trade.

Order 1473 may be found on the FE web site at http://www.fe.doe.gov, or on our electronic bulletin board at (202) 586–7853. It is also available for inspection and copying in the Office of Natural Gas & Petroleum Import & Export Activities docket room, 3E–033, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585–0334, (202) 586–9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, D.C., April 5, 1999.

John W. Glynn,

Manager, Natural Gas Regulation, Office of Natural Gas & Petroleum Import & Export Activities, Office of Fossil Energy.

[FR Doc. 99–9000 Filed 4–9–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Rocky Flats Field Office; Notice of Intent To Solicit Applications, Competitiveness for Financial Assistance

AGENCY: Rocky Flats Field Office (DOE).

ACTION: Notice of intent to solicit competitive applications/proposals for financial assistance.

SUMMARY: The Rocky Flats Field Office (RFFO) of the Department of Energy is entrusted to contribute to the welfare of the nation by providing the scientific foundation, technology, policy and institutional leadership necessary to achieve efficiency in energy use, diversity in energy sources, a more productive and competitive economy, improved environmental quality, and a secure National defense. RFFO intends

to fund a series of grants in special emphasis programs to encourage programs to train Native American, African American, Hispanic American, Asian-Pacific American, Women and Disabled Students to pursue training in the fields of sciences and engineering; and to fund local community projects contributing to diversity-related programs.

DATES: Applications may be submitted on or before May 12, 1999. Applications received within 30 days from the date of this announcement, will be considered; applications received after that date may or may not be considered depending on the status of proposal review and selection.

ADDRESSES: Department of Energy, Rocky Flats Field Office, Contracts Management Division, P.O. Box 928, B460, Golden, Colorado 80402–0928

FOR FURTHER INFORMATION CONTACT: Hugh Miller, Department of Energy Rocky Flats Field Office, P.O. Box 928, B460, Golden, Colorado 80402–0928, (303) 966–7411, for application forms and additional information. Completed applications or proposal must be sent to the addresses heading.

SUPPLEMENTARY INFORMATION: DOE is under no obligation to pay for any costs associated with the preparation or submission of applications/proposals. DOE reserves the right to fund, in whole or in part, any, all, or none of the applications/proposals submitted in response to this notice.

Availability Of Fiscal Year 1999 Funds

With this publication; DOE RFFO is announcing the availability of up to $300,000 in grant funds for fiscal year 1999. RFFO anticipates that six or less grants will be made for a total not to exceed $300,000. The awards will be made through a competitive process. Projects may cover a period of up to 3 years.

Restricted Eligibility

Eligible applicants for the purposes of funding under this notice include organizations residing in Colorado proposing to implement minority science and engineering projects in Colorado as described in the summary section of this announcement. Applicants are encouraged to propose project cost-sharing or sharing of in-kind services or resources. The awards will be made through a competitive process to organizations and institutions located in the State of Colorado. The Catalog of Federal Domestic Assistance number assigned to this program is 81.116.

Evaluation Criteria

Applications will be reviewed by a panel composed of Department of Energy RFFO representatives. Successful proposal(s) will be selected on the opinion of panel members of proposals most able to meet the objectives listed in the summary section of this announcement and best able to meet the needs of this office.

DOE RFFO hereby reserves the right to fund, in part or whole, any, all, or none of the proposals submitted in response to this request. All applicants will be notified in writing of the action taken on their applications. Applicants should allow approximately 90 days for DOE evaluation. The status of any application during the evaluation and selection process will not be discussed with applicants. Unsuccessful applications will not be returned to the applicant.

Issued in Golden, Colorado.

Dated: March 29, 1999.

Hugh G. Miller,

Contracting Officer.

[FR Doc. 99–9001 Filed 4–9–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Science; Fusion Energy Sciences Advisory Committee

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Fusion Energy Sciences Advisory Committee. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Wednesday, May 19, 1999, 1:00 p.m. to 6:00 p.m.; Thursday, May 20, 1999, 8:30 a.m. to 6:00 p.m.; and Friday, May 21, 1999, 8:30 a.m. to 12:00 noon.

ADDRESSES: Princeton Plasma Physics Laboratory (Melvin Gottlieb Auditorium); U.S. Route #1; Princeton, N.J., 08543.

FOR FURTHER INFORMATION CONTACT: Albert L. Opdenaker, Office of Fusion Energy Sciences; U.S. Department of Energy; 19901 Germantown Road; Germantown, MD 20874–1290; Telephone: 301–903–4927.

SUPPLEMENTARY INFORMATION:

Purpose of the Meeting

The Committee will hear presentations on fusion research at Princeton Plasma Physics Laboratory (PPPL), Naval Research Laboratory, and universities. The Committee will tour the PPPL facilities and receive a briefing on the three ongoing proof-of-principle programs.

Tentative Agenda

Wednesday, May 19, 1999

1:00 p.m.—Tour PPPL Facilities

6:00 p.m.—Briefing on Fusion Research at PPPL

Thursday, May 20, 1999

8:30 a.m.

Continue PPPL Briefing

Report on Status of Proof-of-Principle Programs

Briefing on Fusion Research at the Naval Research Laboratory

Briefing on Fusion Research at the Universities

Report on Status of the Goals and Metrics Panel Activities

6:00 p.m.—Adjourn

Friday, May 21, 1999

8:30 a.m.—Continue Discussions, Public Comments

12:00 noon—Adjourn

Public Participation

The meeting is open to the public. If you would like to file a written statement with the Committee, you may do so either before or after the meeting. If you would like to make oral statements regarding any of the items on the agenda, you should contact Albert L. Opdenaker at 301–903–8584 (fax) or albert.opdenaker@science.doe.gov (email). Please make your request for an oral statement at least 5 business days before the meeting. Reasonable provision will be made to include the scheduled oral statements on the agenda. The Chairperson of the Committee will conduct the meeting to facilitate the orderly conduct of business. Public comment will follow the 10-minute rule.

Minutes

We will make the minutes of this meeting available for public review and copying within 30 days at the Freedom of Information Public Reading Room; 1–190; Forrestal Building; 1000 Independence Avenue, S.W.; Washington, D.C., between 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, D.C., on April 7, 1999.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 99–9002 Filed 4–9–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Secretary of Energy Advisory Board; Notice of Open Meeting

AGENCY: Department of Energy.

SUMMARY: Consistent with the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770), notice is hereby given of the following advisory committee meeting: Name: Secretary of Energy Advisory Board—Task Force on Fusion Energy.

DATES AND TIMES: Thursday, April 29, 1999, 8:30 a.m.–5:00 p.m. and Friday, April 30, 1999, 8:30 a.m.–12:30 p.m.

ADDRESSES: Princeton Plasma Physics Laboratory, Conference Room B–318, Route 1 North, Plainsboro, New Jersey 08543.

FOR FURTHER INFORMATION CONTACT: Richard C. Burrow, Secretary of Energy Advisory Board (AB–1), U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, D.C. 20585, (202) 586–1709 or (202) 586–6279 (fax).

SUPPLEMENTARY INFORMATION: The purpose of the Task Force on Fusion Energy is to review the Department of Energy's plans for research and development of four fusion related technologies—pulsed-power, lasers, ion drivers, and magnetic fusion—and to provide advice to the Secretary of Energy Advisory Board on how to structure the Department's fusion energy programs, both inertial and magnetic. The review is to focus on the scientific quality of the programs, the goals and objectives of the programs, and the energy potential of each technology. The findings and recommendation of the Task Force on Fusion Energy are to comment on the goals and objectives of the Department's fusion energy related programs, provide a critique of the current development strategies, suggest changes in the overall fusion energy roadmap, and recommended funding levels.

Tentative Agenda

Thursday, April 29, 1999

8:30–8:45 a.m.—Opening Remarks, Introductions and Objectives—Dr. Richard Meserve, Task Force Chairman

8:45–10:45 a.m.—Briefing and Discussion: Fusion Energy Potential in the Energy Marketplace

10:45–11:00 a.m.—Break

11:00–12:00 p.m.—Briefing and Discussion: Fusion Energy's Links to Other Fields

12:00–1:00 p.m.—Lunch

1:00–2:00 p.m.—Briefing and Discussion: International Fusion Energy Programs and Collaborations

2:00–4:30 p.m.—Briefing and Discussion: Magnetic Fusion—Key Science Issues

4:30–4:45 p.m.—Public Comment Period

4:45 p.m.—Adjourn

Friday, April 30, 1999

8:30–8:35 a.m.—Opening Remarks and Objectives—Dr. Richard Meserve, Task Force Chairman

8:35–10:30 a.m.—Briefing and Discussion: Magnetic Fusion Portfolio

10:30–10:45 a.m.—Break

10:45–11:45 a.m.—Briefing and Discussion: Magnetic Fusion Technology

11:45–12:15 p.m.—Briefing and Discussion: Magnetic Fusion Summary and Budget Requirements

12:15–12:30 p.m.—Public Comment Period

12:30 p.m.—Adjourn

This tentative agenda is subject to change. The final agenda will be available at the meeting.

Public Participation

The Chairman of the Task Force is empowered to conduct the meeting in a fashion that will, in the Chairman's judgment, facilitate the orderly conduct of business. During its meeting in Plainsboro, New Jersey, the Task Force welcomes public comment. Members of the public will be heard in the order in which they sign up at the beginning of the meeting. The Task Force will make every effort to hear the views of all interested parties. Written comments may be submitted to Skila Harris, Executive Director, Secretary of Energy Advisory Board, AB–1, U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, D.C. 20585.

Minutes

Minutes and a transcript of the meeting will be available for public review and copying approximately 30 days following the meeting at the Freedom of Information Public Reading Room, 1E–190 Forrestal Building, 1000 Independence Avenue, SW, Washington, D.C., between 9:00 a.m. and 4:00 p.m., Monday through Friday except Federal holidays. Further information on the Task Force on Fusion Energy may be found at the Secretary of Energy Advisory Board's web site, located at http://www.hr.doe.gov/seab.

Issued at Washington, D.C., on April 7, 1999.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 99–9003 Filed 4–9–99; 8:45 am]

BILLING CODE 6450–01–U

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–271–000]

Algonquin Gas Transmission Company; Notice of Application

April 6, 1999.

Take notice that on March 25, 1999, Algonquin Gas Transmission Company (Algonquin), 5400 Westheimer Court, Houston, Texas 77251–1642, filed an application pursuant to Section 7(c) of the Natural Gas Act and Part 157 of the Commission's Regulations for a certificate of public convenience and necessity to construct, own, operate, and maintain a pipeline lateral, meter station, tap, and appurtenant facilities (collectively called the Lake Road Lateral) to render a firm lateral transportation service for up to 146,000 Dth/d to Lake Road Generating Company, L.P. (Lake Road), all as more fully set forth in the application which is on file with the Commission and open to public inspection. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Specifically, Algonquin proposes to construct, own, operate, and maintain 9,500 feet of 16-inch pipeline lateral extending from a point on its 24-inch and 30-inch mainline system in the Town of Putnam, Windham County, Connecticut to a proposed tie-in with the proposed Lake Road Plant, a new electric generating facility that will be located in Killingly County, Connecticut. The pipeline lateral is proposed to traverse the Quinebaug River by way of the horizontal directional drill method. Additionally, Algonquin will also construct a metering station, tap, and appurtenant facilities at the Lake Road Plant. The estimated cost of the proposed facilities is $4.7 million. The proposed in-service date is August 1, 2000, and Algonquin proposes to commence construction in May 2000. Algonquin states that it has entered into a Precedent Agreement and a Service Agreement with Lake Road to transport up to 146,000 Dth per day, for a primary term of 20 years. Algonquin states that the transportation service will be performed under Algonquin's

existing Part 284 Rate Schedule AFT–CL. Algonquin contends that gas will be delivered to the Lake Road Lateral by other shippers who have firm entitlements on the existing Algonquin system, or by shippers utilizing interruptible transportation or by firm capacity released by shippers with existing firm capacity rights on the system.

Any person desiring to participate in the hearing process or to make any protest with reference to said application should on or before April 15, 1999, file with the Federal Energy Regulatory Commission, 888 1st Street, NE, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. The Commission's rules require that protestors provide copies of their protests to the party or parties directly involved. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

A person obtaining intervenor status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by every one of the intervenors. An intervenor can file for rehearing of any Commission order and can petition for court review of any such order. However, an intervenor must submit copies of comments or any other filing it makes with the Commission to every other intervenor in the proceeding, as well as 14 copies with the Commission.

A person does not have to intervene, however, in order to have comments considered. A person, instead, may submit two copies of comments to the Secretary of the Commission. Commenters will be placed on the Commission's environmental mailing list, will receive copies of environmental documents and will be able to participate in meetings associated with the Commission's environmental review process. Commenters will not be required to serve copies of filed documents on all other parties. However, commenters will not receive copies of all documents filed by other parties or issued by the Commission and will not have the right to seek rehearing or appeal the Commission's final order to a federal court.

The Commission will consider all comments and concerns equally, whether filed by commenters or those requesting intervenor status.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Algonquin to appear or be represented at the hearing.

David P. Boergers,

Secretary.

[FR Doc. 99–8969 Filed 4–9–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99–1915–000]

SCC–L2, L.L.C.; Notice of Filing

April 6, 1999.

Take notice that on April 2, 1999, SCC–L2, L.L.C. (SCC–L2) filed a Supplement to its Application to the Commission for acceptance of SCC–L2 Rate Schedule FERC No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; the waiver of certain Commission regulations; acceptance and approval of two power purchase agreements with Enron Power Marketing, Inc. and an Interconnection Agreement with the Tennessee Valley Authority. The Supplement consists of the Interconnection Agreement with the Tennessee Valley Authority which had not been executed at the time SCC–L2 filed its Application.

SCC–L2 intends to engage in wholesale electric power and energy purchases and sales as a marketer.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before April 12, 1999. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–8970 Filed 4–9–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC99–59–000, et al.]

Pacific Gas and Electric Company, et al.; Electric Rate and Corporate Regulation Filings

April 5, 1999.

Take notice that the following filings have been made with the Commission:

1. Pacific Gas and Electric Company Geysers Power

[Docket No. EC99–59–000]

Take notice that on March 31, 1999, Pacific Gas and Electric Company (PG&E) and Geysers Power Company, LLC (Geysers Power) tendered for filing with the Federal Energy Regulatory Commission (FERC or the Commission) a Joint Application for Authorization to Transfer Jurisdictional Assets and Request for Expedited Approval Pursuant to Section 203 of the Federal Power Act (Joint 203 Application) in conjunction with a series of transactions through which PG&E will divest certain generating assets, and related FERC-jurisdictional facilities, by sale to Geysers Power.

Copies of this filing were served on the California Public Utilities Commission.

Comment date: April 30, 1999, in accordance with Standard Paragraph E at the end of this notice.

2. SCC–L1 L.L.C.

[Docket No. EG99–80–000]

Take notice that on March 31, 1999, SCC–L1, L.L.C. (SCC–L1), a Delaware limited liability company with its principal place of business at Chicago, Illinois, filed with the Federal Energy Regulatory Commission an Amendment to Application for Determination of Exempt Wholesale Generator Status pursuant to Part 365 of the Commission's regulations.

The Facility that will be leased by SCC–L1 would consist of a 460 MW natural gas-fired simple cycle power plant in Haywood County, Tennessee and related equipment. The proposed power plant is expected to commence commercial operation during the second, or early in the third, quarter 1999. All capacity and energy from the plant will be sold exclusively at wholesale.

Comment date: April 26, 1999, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

3. SCC–L3 L.L.C.

[Docket No. EG99–84–000]

Take notice that on March 31, 1999, SCC–L3, L.L.C. (SCC–L3), a Delaware limited liability company with its principal place of business at Chicago, Illinois, filed with the Federal Energy Regulatory Commission an Amendment to Application for Determination of Exempt Wholesale Generator Status pursuant to Part 365 of the Commission's regulations.

The Facility that will be leased by SCC–L3 would consist of a 390 MW natural gas-fired simple cycle power plant in Union County, Mississippi and related equipment. The proposed power plant is expected to commence commercial operation during the second, or early in the third, quarter 1999. All capacity and energy from the plant will be sold exclusively at wholesale.

Comment date: April 26, 1999, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

4. New Hampshire Electric Cooperative Inc. v. Public Service Company of New Hampshire

[Docket No. EL99–52–000]

Take notice that on March 29, 1999, New Hampshire Electric Cooperative, Inc. tendered for filing a Complaint Request for Initiation of Investigation, Motion for Consolidation for Purposes of Hearing and Decision and, to the Extent Necessary, Request for Rehearing of New Hampshire Electric Cooperative, Inc.

Comment date: April 30, 1999, in accordance with Standard Paragraph E at the end of this notice.

5. Michigan Gas Exchange, L.L.C.

[Docket No. ER99–1156–000]

Take notice that on March 31, 1999, Michigan Gas Exchange, L.L.C. (MGE) submitted its petitioned to the Commission for Change in Status. MGE amends that filing with additional statements.

Comment date: April 26, 1999, in accordance with Standard Paragraph E at the end of this notice.

6. Niagara Mohawk Power Corporation

[Docket No. ER99–2307–000]

Take notice that on March 30, 1999, Niagara Mohawk Power Corporation (NMPC) tendered for filing with the Federal Energy Regulatory Commission executed form Service Agreements between NMPC and multiple parties (Purchasers). The Service Agreements specify that the Purchasers have signed on to and have agreed to the terms and conditions of NMPC's Power Sales Tariff designated as NMPC's FERC Electric Tariff, Original Volume No. 2. This Tariff, approved by FERC on April 15, 1994, and which has an effective date of March 13, 1993, will allow NMPC and the Purchasers to enter into separately scheduled transactions under which NMPC will sell to the Purchasers capacity and/or energy as the parties may mutually agree.

In its filing letter, NMPC also included a Certificate of Concurrence for each Purchaser.

NMPC is requesting an effective date of April 1, 1999 for the agreements.

NMPC has served copies of the filing upon the New York State Public Service Commission, and the companies included in a Service List enclosed with the filing.

Comment date: April 19, 1999, in accordance with Standard Paragraph E at the end of this notice.

7. New York State Electric & Gas Corporation

[Docket No. ER99–2308–000]

Take notice that New York State Electric & Gas Corporation (NYSEG) on March 30, 1999 tendered for filing pursuant to Part 35 of the Federal Energy Regulatory Commission's Rules of Practice and Procedure, 18 CFR Part 35, a service agreement (the Service Agreement) under which NYSEG may provide capacity and/or energy to PP&L EnergyPlus Co. (PP&L EnergyPlus) in accordance with NYSEG's FERC Electric Tariff, Original Volume No. 3.

NYSEG has requested waiver of the notice requirements so that the Service Agreement with PP&L EnergyPlus becomes effective as of March 31, 1999.

NYSEG has served copies of the filing upon the New York State Public Service Commission and PP&L EnergyPlus.

Comment date: April 19, 1999, in accordance with Standard Paragraph E at the end of this notice.

8. Allegheny Power Service Corporation on behalf of Monongahela Power Company; The Potomac Edison Company; West Penn Power Company (Allegheny Power)

[Docket No. ER99–2309–000]

Take notice that on March 30, 1999, Allegheny Power Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power) filed Supplement No. 20 to add one (1) new Customer to the Market Rate Tariff under which Allegheny Power offers generation services.

Allegheny Power requests a waiver of notice requirements to make service available as of March 29, 1999, to Duke Energy Trading and Marketing, L.L.C.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission, and all parties of record.

Comment date: April 19, 1999, in accordance with Standard Paragraph E at the end of this notice.

9. Allegheny Power Service Corporation on behalf of Monongahela Power Company; The Potomac Edison Company, and West; Penn Power Company (Allegheny Power)

[Docket No. ER99–2310–000]

Take notice that on March 30, 1999, Allegheny Power Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power), filed Supplement No. 49 to add American Municipal Power-Ohio, Inc. to Allegheny Power Open Access Transmission Service Tariff which has been accepted for filing by the Federal Energy Regulatory Commission in Docket No. ER96–58–000.

Copies of the filing have been provided to the Public Utilities

Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission.

Comment date: April 19, 1999, in accordance with Standard Paragraph E at the end of this notice.

10. Carolina Power & Light Company

[Docket No. ER99–2311–000]

Take notice that on March 30, 1999, Carolina Power & Light Company (CP&L) tendered for filing revised versions of its market-based rate schedule and code of conduct. CP&L's proposed revisions to its market-based rate schedule enable it to sell energy and capacity at market-based rates to a marketing affiliate subject to the usual restrictions on sales by regulated utilities to affiliates engaged in power-marketing activities. CP&L's proposed revisions to its code of conduct authorize it to broker energy and capacity on behalf of its marketing affiliate, subject to certain restrictions designed to protect the CP&L ratepayers.

Comment date: April 19, 1999, in accordance with Standard Paragraph E at the end of this notice.

11. Southern California Edison Company

[Docket No. ER99–2312–000]

Take notice that on March 31, 1999, Southern California Edison Company (SCE) tendered for filing the Amendment No. 2 to the Los Angeles-Edison Exchange Agreement (Amendment) between SCE and The Department of Water and Power of the City of Los Angeles (Los Angeles).

The Amendment modifies certain rate and termination provisions of Los Angeles-Edison Exchange Agreement regarding the Palo Verde-Devers transmission service provided to Los Angeles under the agreement.

Copies of this filing were served upon the Public Utilities Commission of the State of California and all interested parties.

Comment date: April 20, 1999, in accordance with Standard Paragraph E at the end of this notice.

12. Agway Energy Services—PA, Inc.

[Docket No. ER99–2313–000]

Take notice that on March 31, 1999, Agway Energy Services—PA, Inc. (AES) petitioned the Commission for acceptance of AES–PA Rate Schedule FERC No. 1, the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission regulations.

AES intends to engage in wholesale electric power and energy purchases and sales as a marketer. AES is not in the business of generating or transmitting electric power.

Comment date: April 20, 1999, in accordance with Standard Paragraph E at the end of this notice.

13. Ohio Edison Company and Pennsylvania Power Company

[Docket No. ER99–2318–000]

Take notice that on March 30, 1999, Ohio Edison Company tendered for filing on behalf of itself and Pennsylvania Power Company, a Service Agreement with Duke Solutions, Inc. under Ohio Edison's Power Sales Tariff. This filing is made pursuant to Section 205 of the Federal Power Act.

Comment date: April 19, 1999, in accordance with Standard Paragraph E at the end of this notice.

14. Public Service Electric and Gas Company

[Docket No. ER99–2320–000]

Take notice that on March 30, 1999, Public Service Electric and Gas Company (PSE&G) of Newark, New Jersey, tendered for filing an agreement for the long-term sale of capacity and associated PJM Transmission to meet the Borough of Park Ridge, New Jersey full requirements (less NYPA Allocation) pursuant to the PSE&G Wholesale Power Market Based Sales Tariff, presently on file with the Commission.

PSE&G requests the agreement to be made effective as of March 1, 1999.

Copies of the filing have been served upon the Borough of Park Ridge and the New Jersey Board of Public Utilities.

Comment date: April 19, 1999, in accordance with Standard Paragraph E at the end of this notice.

15. Commonwealth Edison Company

[Docket No. ER99–2321–000]

Take notice that on March 30, 1999, Commonwealth Edison Company (ComEd) submitted for filing a Service Agreement for Network Integration Transmission Service (Service Agreement) between ComEd and Commonwealth Edison Company, in its wholesale merchant function, (WMD) and a Network Operating Agreement (Operating Agreement) between ComEd and WMD. These two agreements will govern ComEd's provision of network service for WMD under ComEd's Open Access Transmission Tariff (OATT).

ComEd requests an effective date of March 1, 1999.

Copies of this filing were served on WMD.

Comment date: April 19, 1999, in accordance with Standard Paragraph E at the end of this notice.

16. MEP Investments, LLC

[Docket No. ER99–2322–000]

Take notice that on March 30, 1999, MEP Investments, LLC, an indirect wholly owned subsidiary of UtiliCorp United Inc., tendered for filing a rate schedule to engage in sales at market-based rates. MEP included in its filing a proposed code of conduct and a generation market power study for UtiliCorp United Inc.

Comment date: April 19, 1999, in accordance with Standard Paragraph E at the end of this notice.

17. Aquila Energy Marketing Corporation

[Docket No. ER99–2323–000]

Take notice that on March 30, 1999, Aquila Energy Marketing Corporation filed amendments to its rate schedule and code of conduct.

Comment date: April 19, 1999, in accordance with Standard Paragraph E at the end of this notice.

18. Monroe Power Company

[Docket No. ER99–2324–000]

Take notice that on March 30, 1999, Monroe Power Company (MPC) tendered for filing a rate schedule enabling MPC to make wholesale sales of capacity, energy and ancillary services at market-based rates.

Comment date: April 19, 1999, in accordance with Standard Paragraph E at the end of this notice.

19. Consumers Energy Company

[Docket No. ER99–2325–000]

Take notice that on March 30, 1999, Consumers Energy Company (Consumers) tendered for filing an executed service agreement for Firm Point-To-Point Transmission Service with Engage Energy US, L.P. (Customer) pursuant to the Joint Open Access Transmission Service Tariff filed on December 31, 1996 by Consumers and The Detroit Edison Company (Detroit Edison).

The agreement has an effective date of March 25, 1999.

Copies of the agreement were served upon the Michigan Public Service Commission, Detroit Edison, and the Customer.

Comment date: April 19, 1999, in accordance with Standard Paragraph E at the end of this notice.

20. Pacific Gas and Electric Company

[Docket No. ER99–2326–000]

Take notice that on March 31, 1999, Pacific Gas and Electric Company

(PG&E) tendered for filing revisions to its Transmission Owner Tariff (TO Tariff) and Cost support for PG&E specific rates associated with the TO Tariff.

This filing proposes changes to PG&E's transmission access charges, which are calculated in accordance with the rate methodology set forth in PG&E's TO Tariff. Moreover, PG&E is providing cost support for PG&E's proposed transmission access charges and PG&E is continuing to request that the Commission establish the transmission revenue requirement to be used in designating wholesale and retail transmission access charges, but that it defer to the California Public Utilities Commission (CPUC) on the allocation of costs among retail classes and the design of retail access charges based on the allocated costs.

In addition, PG&E is proposing changes to the non-rate terms and conditions of its TO Tariff in order to: (a) reflect a regional/local rate methodology that resulted from a settlement-in-principle of Docket Nos. ER97–2358–000 and ER98–2351 and, (b) make other clarifications to the TO Tariff.

Copies of this filing have been served upon the CPUC and the California Independent System Operator Corporation.

Comment date: April 20, 1999, in accordance with Standard Paragraph E at the end of this notice.

21. Public Service Company of Colorado

[Docket No. ER99–2327–000]

Take notice that on March 31, 1999, Public Service Company of Colorado (PS Colorado) filed the Operating Reserve Supply Agreement between PS Colorado and Basin Electric Power Cooperative under PS Colorado's market-based rate schedule.

Comment date: April 20, 1999, in accordance with Standard Paragraph E at the end of this notice.

22. Public Service Company of Colorado

[Docket No. ER99–2328–000]

Take notice that on March 31, 1999, Public Service Company of Colorado (PS Colorado) filed a Power Supply Agreement for sales of Unit Contingent Capacity and Associated Energy to Basin Electric Power Cooperative under PS Colorado's market-based rate schedule.

Comment date: April 20, 1999, in accordance with Standard Paragraph E at the end of this notice.

23. South Eastern Electric Development Corporation

[Docket No. ER99–2329–000]

Take notice that on March 31, 1999, South Eastern Electric Development Corporation (South Eastern) petitioned the Commission for acceptance of its Rate Schedule FERC No. 1, the granting of certain blanket approvals, including the authority to sell electricity at market-based rates, and the waiver of certain of the Commission's Regulations.

Comment date: April 20, 1999, in accordance with Standard Paragraph E at the end of this notice.

24. FirstEnergy Corp.

[Docket No. ER99–2330–000]

Take notice that on March 31, 1999, FirstEnergy Corp. (FirstEnergy) filed an application for an order authorizing FirstEnergy to make wholesale sales of electric power at market-based rates as agent for, and on behalf of, the FirstEnergy Operating Companies.

Comment date: April 20, 1999, in accordance with Standard Paragraph E at the end of this notice.

25. Duke Electric Transmission, a division of Duke Energy Corporation

[Docket No. ER99–2331–000]

Take notice that on March 31, 1999, Duke Electric Transmission, a division of Duke Energy Corporation (Duke), tendered for filing an unexecuted Non-Firm Point-To-Point transmission service agreement and related Operating Agreement between Duke and Cherokee County Cogeneration Partners, L.P.

Comment date: April 20, 1999, in accordance with Standard Paragraph E at the end of this notice.

26. Sierra Pacific Power Company

[Docket No. ER99–2332–000]

Take notice that on March 31, 1999, Sierra Pacific Power Company (Sierra) tendered for filing pursuant to Section 205 of the Federal Power Act, three Wholesale Generation Tariffs applicable to sales of capacity and energy from the three "bundles" of generation that Sierra intends to divest. These tariffs permit sales at market-based rates and terms and conditions, subject to the obligation to provide recourse service at cost-based rates in accordance with the terms of the tariffs.

Sierra Pacific has requested that the Commission issue an order approving the tariffs no later than September 30, 1999, and that the Commission make the tariffs effective as of the date that ownership of each bundle is transferred to the purchaser.

Comment date: April 20, 1999, in accordance with Standard Paragraph E at the end of this notice.

27. New England Power Pool

[Docket No. ER99–2333–000]

Take notice that on March 31, 1999, the New England Power Pool (NEPOOL) Executive Committee filed a Service Agreement for Through or Out Service or In Service pursuant to Section 205 of the Federal Power Act and 18 CFR 35.13 of the Commission's regulations.

Acceptance of this Service Agreement will recognize the provision of Firm In Service transmission to Bangor Hydro Electric Company, in conjunction with Regional Network Service, in accordance with the provisions of the Restated NEPOOL Open Access Transmission Tariff filed with the Commission on December 31, 1996, as amended and supplemented.

NEPOOL requests a retroactive effective date of March 1, 1999 for commencement of transmission service.

Copies of this filing were sent to all NEPOOL members, the New England Public Utilities Commission and all parties to the transaction.

Comment date: April 20, 1999, in accordance with Standard Paragraph E at the end of this notice.

28. New England Power Pool

[Docket No. ER99–2334–000]

Take notice that on March 31, 1999, the New England Power Pool (NEPOOL) Executive Committee filed a Service Agreement for Through or Out Service or In Service pursuant to Section 205 of the Federal Power Act and 18 CFR 35.13 of the Commission's regulations.

Acceptance of this Service Agreement will recognize the provision of Firm In Service transmission to Northeast Utilities Service Company, in conjunction with Regional Network Service, in accordance with the provisions of the Restated NEPOOL Open Access Transmission Tariff filed with the Commission on December 31, 1996, as amended and supplemented. NEPOOL requests a retroactive effective date of March 1, 1999 for commencement of transmission service. Copies of this filing were sent to all NEPOOL members, the New England public utility commissioners and all parties to the transaction.

Comment date: April 20, 1999, in accordance with Standard Paragraph E at the end of this notice.

29. New England Power Pool

[Docket No. ER99–2335–000]

Take notice that on March 31, 1999, the New England Power Pool (NEPOOL)

Executive Committee submitted NEPOOL's proposals for a Congestion Management System and Multi-Settlement System. The NEPOOL Executive Committee states that the Congestion Management System proposal is being filed pursuant to NEPOOL's commitment to submit a Congestion Management System proposal to the Commission by March 31, 1999, and that the Multi-Settlement System proposal is being filed to comply with the Commission's December 17th Order in Docket No. OA97–237–000 *et al.*

The NEPOOL Executive Committee states that copies of these materials were sent to all participants in the New England Power Pool and to the New England state governors and regulatory commissions.

Comment date: April 20, 1999, in accordance with Standard Paragraph E at the end of this notice.

30. Illinois Power Company

[Docket No. ER99–2336–000]

Take notice that on March 31, 1999, Illinois Power Company (Illinois Power) tendered for filing an Amended And Restated Power Coordination Agreement between Illinois Power and Soyland Power Cooperative, Inc. concerning the provision of electric service to Soyland Power Cooperative, Inc., as a long-term service agreement under its market-based wholesale power sales tariff.

Comment date: April 20, 1999, in accordance with Standard Paragraph E at the end of this notice.

31. FPL Energy Services, Inc.

[Docket No. ER99–2337–000]

Take notice that on March 31, 1999, FPL Energy Services, Inc., (FPL Energy Services) tendered for filing a proposed rate schedule that would permit FPL Energy Services to make sales of energy, capacity, and ancillary services at market-based rates.

Comment date: April 20, 1999, in accordance with Standard Paragraph E at the end of this notice.

32. Nevada Power Company

[Docket No. ER99–2338–000]

Take notice that on March 31, 1999, Nevada Power Company (Nevada Power) tendered for filing pursuant to Section 205 of the Federal Power Act, five Wholesale Generation Tariffs applicable to sales of capacity and energy from the five "bundles" of generation that Nevada Power intends to divest. These tariffs permit sales at market-based rates and terms and conditions. The tariffs applicable to the three bundles located inside the Nevada Power load pocket impose a rate cap on sales that initially is set at the rate cap applicable to the California Power Exchange.

Nevada Power has requested that the Commission issue an order approving the tariffs no later than September 30, 1999, and that the Commission make the tariffs effective as of the date that ownership of each bundle is transferred to the purchaser.

Comment date: April 20, 1999, in accordance with Standard Paragraph E at the end of this notice.

33. Sierra Pacific Power Company, Sierra Pacific Power Company and Nevada Power Company

[Docket Nos. ER99–2339–000 and ER99–34–000 (Not Consolidated)]

Take notice that on March 30, 1999, Sierra Pacific Power Company (Sierra Pacific) tendered for filing pursuant to Section 205 of the Federal Power Act revisions to its transmission services rates under its open-access transmission tariff, FERC Original Volume No. 3. Sierra Pacific also has filed corresponding changes to its pro forma merger transmission tariff in Docket No. ER99–34–000.

Sierra Pacific has requested an effective date of June 1, 1999.

Comment date: April 19, 1999, in accordance with Standard Paragraph E at the end of this notice.

34. PJM Interconnection L.L.C.

[Docket No. ER99–2340–000]

Take notice that on March 31, 1999, PJM Interconnection L.L.C. tendered for filing a new Part IV to the PJM Interconnection L.L.C. Open Access Transmission Tariff (Tariff) and a new Schedule 6A to the Amended and Restated Operating Agreement of PJM Interconnection, L.L.C. (Operating Agreement), which together establish procedures for the interconnection of additional generation capacity to the PJM transmission system.

PJM requests an effective date of April 1, 1999, for the Tariff and Operating Agreement revisions.

Copies of this filing were served upon all PJM Members and the state electric regulatory commissions in the PJM control area.

Comment date: April 20, 1999, in accordance with Standard Paragraph E at the end of this notice.

35. TransAlta Energy Marketing (California) Inc.

[Docket No. ER99–2343–000]

Take notice that on March 31, 1999, TransAlta Energy Marketing (California) Inc. (TEMCal) tendered for filing an application for an order accepting its FERC Electric Rate Schedule No. 1 which will permit TEMCal to make wholesale sales of electric power and ancillary services to eligible customers in the California market at market-based rates.

Comment date: April 20, 1999, in accordance with Standard Paragraph E at the end of this notice.

36. Public Service Company of Colorado

[Docket No. ER99–2344–000]

Take notice that on March 31, 1999, Public Service Company of Colorado filed an amendment to an agreement with Holy Cross Electric Association, Inc.

Comment date: April 20, 1999, in accordance with Standard Paragraph E at the end of this notice.

37. NGE Generation, Inc.

[Docket No. ER99–2345–000]

Take notice that NGE Generation, Inc. (NGE Gen) on March 31, 1999, tendered for filing pursuant to Part 35 of the Federal Energy Regulatory Commission's Rules of Practice and Procedure, 18 CFR Part 35, a service agreement (the Service Agreement) under which NGE Gen may provide capacity and/or energy to Exelon Energy (Exelon) in accordance with NGE Gen's FERC Electric Tariff, Original Volume No. 1.

NGE Gen has requested waiver of the notice requirements so that the Service Agreement becomes effective as of April 1, 1999.

NGE Gen's filing of the Service Agreement is subject to the Commission's order issued on January 29, 1999 in Docket No. EC99–22–000.

NGE Gen has served copies of the filing upon the New York State Public Service Commission and Exelon.

Comment date: April 20, 1999, in accordance with Standard Paragraph E at the end of this notice.

38. Southwestern Electric Power

[Docket No. ER99–2346–000]

Take notice that on March 31, 1999, Southwestern Electric Power Company (SWEPCO) filed Amendment No. 2 to the Power Supply Agreement (PSA), dated February 10, 1993, as amended, between SWEPCO and East Texas Electric Cooperative, Inc. (ETEC). SWEPCO states that this filing reflects changes in the PSA to accommodate ETEC's decision to exercise its option under the PSA to receive transmission service pursuant to the Open Access Transmission Services Tariff of the Central and South West Companies

(CSW OATT) rather than pursuant to the PSA.

SWEPCO requests an effective date of January 1, 1999, the date ETEC began receiving transmission service under the CSW OATT and, accordingly, seeks waiver of the Commission's notice requirements. Copies of the filing have been served on ETEC and the Public Utility Commission of Texas.

Comment date: April 20, 1999, in accordance with Standard Paragraph E at the end of this notice.

39. Southwestern Electric Power Company

[Docket No. ER99–2347–000]

Take notice that on March 31, 1999, Southwestern Electric Power Company (SWEPCO) tendered for filing an estimated return on common equity (Estimated ROE) to be used in establishing estimated formula rates for wholesale service in Contract Year 1999 to Northeast Texas Electric Cooperative, Inc., the City of Bentonville, Arkansas, Rayburn Country Electric Cooperative, Inc., Cajun Electric Power Cooperative, Inc., Tex-La Electric Cooperative of Texas, Inc. and East Texas Electric Cooperative, Inc. SWEPCO provides service to these Customers under contracts which provide for periodic changes in rates and charges determined in accordance with cost-of-service formulas, including a formulaic determination of the return on common equity.

Copies of the filing were served upon the affected wholesale Customers, the Public Utility Commission of Texas, the Louisiana Public Service Commission and the Arkansas Public Service Commission.

Comment date: April 20, 1999, in accordance with Standard Paragraph E at the end of this notice.

40. Central Vermont Public Service Corporation

[Docket No. ER99–2348–000]

Take notice that on March 31, 1999, Central Vermont Public Service Corporation (Central Vermont) tendered for filing an executed Service Agreement with Duke Energy Trading and Marketing, L.L.C. under its FERC Electric Tariff No. 5. That tariff provides for the sale by Central Vermont of capacity, energy, and/or resold transmission capacity at or below Central Vermont's fully allocated costs.

Central Vermont requests an effective date of October 23, 1994 because the tendered contract is an assignment of Service Agreement No. 89 with Louis Dreyfus Electric Power, Inc. which became effective on October 23, 1994.

Comment date: April 20, 1999, in accordance with Standard Paragraph E at the end of this notice.

41. Central Vermont Public Service Corporation

[Docket No. ER99–2350–000]

Take notice that on March 31, 1999, Central Vermont Public Service Corporation (Central Vermont) tendered for filing an executed Service Agreement with Duke Energy Trading and Marketing, L.L.C. under its FERC Electric Tariff No. 8. The tariff provides for the sale by Central Vermont of capacity and/or energy at market rates.

Central Vermont requests waiver of the Commission's regulations to permit the service agreement to become effective on March 31, 1999.

Comment date: April 20, 1999, in accordance with Standard Paragraph E at the end of this notice.

42. Wisconsin Electric Power Company

[Docket No. ER99–2351–000]

Take notice that on March 31, 1999, Wisconsin Electric Power Company (Wisconsin Electric), tendered for filing a notification indicating its consent to the assignment of rights and obligations under an electric service agreement for its Coordination Sales Tariff (FERC Electric Tariff, Original Volume No. 2) as requested by the customer.

Wisconsin Electric respectfully requests March 31, 1999, as the effective date when Service Agreement No. 56 with National Gas & Electric L.P. is assigned to PanCanadian Energy Services Inc. (PanCanadian).

Copies of the filing have been served on PanCanadian, the Michigan Public Service Commission, and the Public Service Commission of Wisconsin.

Comment date: April 20, 1999, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–8994 Filed 4–9–99; 8:45 am]

BILLING CODE 6717–01–U

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Transfer of Licenses and Soliciting Comments, Motions to Intervene, and Protests

April 6, 1999.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. Application Type: Transfer of Licenses.

b. Projects Nos: (1) 2188–042, (2) 1869–035, (3) 2301–014.

c. Date Filed: March 19, 1999.

d. Applicants: Montana Power Company (MPC) and PP&L Montana, LLC (PPLM).

e. Name and Location of Projects: (1) Missouri-Madison: On the Missouri and Madison Rivers in Cascade, Gallatin, Lewis and Clark, and Madison Counties, Montana. The project occupies federal lands within Gallatin and Helena National Forests. (2) Thompson Falls: On the Clark Fork River in Sanders County, Montana. The project occupies Federal lands within Lolo National Forest. (3) Mystic Lake: On West Rosebud Creek in Stillwater County, Montana. The project occupies federal lands within Custer National Forest.

f. Filed Pursuant to: Federal Power Act, 16 U.S.C. Section 801.

g. Applicant Contacts: For MPC: Mr. Michael P. Manion, The Montana Power Company, 40 East Broadway, Butte, MT 59701 (406) 497–2456 and Mr. Nicholas W. Fels, Covington & Burling, P.O. Box 7655, 201 Pennsylvania Ave., NW, Washington, DC 20044–7566 (202) 662–5648. For PPLM: Mr. Robert W. Burke, Jr., PP&L Global, Inc., 11350 Random Hills Road, Fairfax, VA 22030–6044 (703) 293–2617 and Mr. David R. Poe, LeBoeuf, Lamb, Greene & MacRae, LLP, 1875 Connecticut Ave., NW, Suite 1200, Washington, DC 20009–5728 (202) 986–8039.

h. FERC Contact: Any questions on this notice should be addressed to James Hunter at (202) 219–2839, or e-mail address: james.hunter@ferc.fed.us.

i. Deadline for filing comments and or motions: May 13, 1999.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission 888 First Street, NE, Washington, DC 20426.

Please include the project numbers noted in item b above on any comments or motions filed.

j. Description of Proposal: Transfer of the licenses for these projects to PPLM is being sought in connection with PPLM's purchase of certain generation assets from MPC.

The transfer application was filed within five years of the expiration of the license for Project No. 2188, which is the subject of a pending relicense application. In Hydroelectric Relicensing Regulations Under the Federal Power Act (54 Fed. Reg. 23,756; FERC Stats. and Regs., Regs. Preamble 1986–1990 30,854 at p. 31,437), the Commission declined to forbid all license transfers during the last five years of an existing license, and instead indicated that it would scrutinize all such transfer requests to determine if the transfer's primary purpose was to give the transferee an advantage in relicensing (id. at p. 31,438 n. 318). The transfer would lead to the substitution of the transferee for the transferor as the applicant in the relicensing proceedings for Project No. 2188.

k. Locations of the application: A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371. The application may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item g above.

l. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If any agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Secretary.

[FR Doc. 99–8972 Filed 4–9–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice Of Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

April 6, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. Application Type: Amendment to License.

b. project No: 11243–016.

c. Date Filed: March 8, 1999.

d. Applicant: Whitewater Engineering Corp.

e. Name of Project: Power Creek.

f. Location: On Power Creek, near the town of Cordova, in southeast Alaska. The project is located entirely on Eyak River on Eyak Lands, a native corporation, and is adjacent to the Chugach National Forest.

g. Filed Pursuant to: 18 CFR 4.200.

h. Applicant contact: Thom A. Fisher, P.E., President, Whitewater Engineering Corp., 625 Cornwall Avenue, Bellingham, WA 98225 (360) 738–9999.

i. FERC Contact: Any questions on this notice should be addressed to Anumzziatta Purchiaroni at (202) 219–3297, or e-mail address:anumzziatta.purchironi@ferc.fed.us.

j. Deadline for filing comments and or motions: May 13, 1998.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy regulatory commission, 888 First Street, N.E., Washington, D.C. 20426.

Please include the project number (11243–016) on any comments or motions filed.

k. Description of Amendment: The licensee proposes to reroute the project transmission lien from the authorized subterranean route to an underwater routing beneath Eyak Lake near Cordova.

The line has not yet been built and the change does not involve a change in the project boundary.

l. Locations of the application: A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, D.C. 20426, or by calling (202) 208–1371. This filing may be viewed on http://www.ferc.fed.us/online/rims.htm (Call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

m. Individuals desiring to be included on the Commission's mailing should so indicate by writing to the Secretary of the Commission.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies

provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Secretary.

[FR Doc. 99–8973 Filed 4–9–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 137–002]

Pacific Gas & Electric Company; Notice of Public Meeting

April 6, 1999.

Take notice that the Commission staff will hold a public meeting with Pacific Gas & Electric Company (PG&E) the applicant for the Mokelumne Hydroelectric Project No. 137, the U.S. Forest Service, and other interested parties to discuss alternatives for completing the processing of this relicense.

The project is located on the Mokelumne River in Amador and Calaveras Counties, California. The meeting will be held on Wednesday, May 5, 1999, from 10:00 a.m. to 4:00 p.m. at the PG&E offices, 2740 Gateway Oaks Drive, in Sacramento, California. Expected participants need to give their names to David Moller (PG&E) at (415) 973–4696 so that they can get through security. All interested persons are invited to attend the meeting.

For further informaiton, please contact Robert Bell at (202) 219–2806.

David P. Boergers,

Secretary.

[FR Doc. 99–8971 Filed 4–9–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Sunshine Act Meeting

April 7, 1999.

The following notice of meeting is published pursuant to section 3(A) of the Government in the Sunshine Act (Pub. L. No. 94–409), 5 U.S.C. 552B:

AGENCY HOLDING MEETING: Federal Energy Regulatory Commission.

DATE AND TIME: April 14, 1999, 10:00 a.m.

PLACE: Room 2C, 888 First Street, N.E., Washington, DC 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

*Note—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: David P. Boergers, Secretary, Telephone (202) 208–0400. For a recording listing items stricken from or added to the meeting, call (202) 208–1627.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda: however, all public documents may be examined in the reference and information center.

Consent Agenda—Hydro, 717th Meeting—April 14, 1999; Regular Meeting (10:00 a.m.)

CAH–1.
OMITTED
CAH–2.
DOCKET# P–2213, 001, Public Utility District No. 1 of Cowlitz County, Washington
CAH–3.
OMITTED
CAH–4.
DOCKET# P–4715, 017, Felts Mills Energy Partners, L.P.
CAH–5.
DOCKET# P–2042, 008, Public Utility District No. 1 of Pend Oreille County, Washington

Consent Agenda—Electric

CAE–1.
DOCKET# ER99–2175, 000, New England Power Pool and ISO New England, Inc.
CAE–2.
DOCKET# ER99–994, 000, Wisconsin Public Service Corporation
CAE–3.
DOCKET# ER99–1550, 000, PJM Interconnection, L.L.C.
CAE–4.
DOCKET# ER99–1875, 000, Canadian Niagara Power Company, Limited
CAE–5.
DOCKET# ER99–1829, 000, Northeast Utilities Service Company
OTHER#S ER99–1936, 000, PDI New England, Inc. and PDI Canada, Inc.
ER99–1940, 000, Penobscot Hydro, LLC
CAE–6.
DOCKET# ER99–1914, 000, SCC–L1, L.L.C.
OTHER#S ER99–1915, 000, SCC–L2, L.L.C.
ER99–1942, 000, SCC–L3, L.L.C.
CAE–7.
DOCKET# ER99–1883, 000, California Power Exchange Corporation
CAE–8.
DOCKET# ER99–1964, 000, Ocean State Power II
OTHER#S ER99–1965, 000, Ocean State Power
CAE–9.
DOCKET# ER99–1913, 000, Virginia Electric and Power Company
CAE–10.
DOCKET# OA97–24, 004, Central Power and Light Company, West Texas Utilities Company and Southwestern Electric Power Company, et al.
OTHER#S ER98–4611, 002, Central Power and Light Company, West Texas Utilities Company and Southwestern Electric Power Company, et al.
CAE–11.
DOCKET# OA97–163, 000 Mid-Continent Area Power Pool
OTHER#S EL97–53, 000, Enron Power Marketing, Inc. v. Mid-Continent Area Power Pool
EL98–76, 000, Western Resources, Inc. v. Mid-Continent Area Power Pool
ER96–1447, 001, Mid-Continent Area Power Pool
ER97–1162, 000, Mid-Continent Area Power Pool
OA97–658, 000, Mid-Continent Area Power Pool
CAE–12.
DOCKET# EC99–1, 000, Sierra Pacific Power Company and Nevada Power Company
OTHER#S ER99–34, 000, Sierra Pacific Power Company and Nevada Power Company
CAE–13.
DOCKET# ER98–1438, 002, Midwest Independent Transmission System Operator, Inc.
OTHER#S EC98–24, 002, Cincinnati Gas & Electric Company, Commonwealth Edison Company, and Commonwealth Edison Company of Indiana, et al.
CAE–14.
DOCKET# ER99–1663, 000, Montaup Electric Company
CAE–15.
DOCKET# ER99–1855, 000, Petitioning Distribution Cooperatives
CAE–16.
OMITTED
CAE–17.
DOCKET# TX94–4, 000, Tex-La Electric Cooperative of Texas, Inc.
OTHER#S ER94–1385, 000, West Texas Utilities Company
ER94–1385, 001, West Texas Utilities Company
TX94–4, 001, Tex-La Electric Cooperative of Texas, Inc.
TX94–4, 002, Tex-La Electric Cooperative of Texas, Inc.
CAE–18.
DOCKET EC99–23, 001, Bangor Hydro-Electric Company

OTHER#S ER99–1166, 001, Bangor Hydro-Electric Company
CAE–19.
DOCKET# ER98–3220, 001, Carolina Power & Light Company
CAE–20.
DOCKET# TX98–4, 001, Prairieland Energy, Inc.
CAE–21.
DOCKET# OA97–24, 003, Central Power and Light Company, West Texas Utilities Company and Southwestern Electric Power Company, et al.
OTHER#S ER98–4609, 001, Central Power and Light Company, West Texas Utilities Company and Southwestern Electric Power Company, et al.
ER98–4611. 001, Central Power and Light Company, West Texas Utilities Company and Southwestern Electric Power Company, et al.
CAE–22.
DOCKET# RM87–3, 031, Annual Charges Under the Omnibus Budget Reconciliation Act of 1986 (CNG Power Services)
OTHER#S RM87–3, 032, Annual Charges Under the Omnibus Budget Reconciliation Act of 1986 (Citizens Power Sales)
RM87–3 033, Annual Charges Under the Omnibus Budget Reconciliation Act of 1986 (Phibro Inc.)
RM87–3, 034, Annual Charges Under the Omnibus Budget Reconciliation Act of 1986 (Vitol Gas & Electric LLC)
CAE–23.
DOCKET# EL91–29, 004, Southern Company Services, Inc.
OTHER#S EL94–85, 002, Southern Company Services, Inc.
CAE–24.
DOCKET# ER99–35, 001, Boston Edison Company
CAE–25.
DOCKET# EL99–10, 000, Western Systems Coordinating Council
CAE–26.
DOCKET# EL99–42, 000, City of Las Cruces, New Mexico v. El Paso, Electric Company
OTHER#S EL99–10, 001, City of Las Cruces, New Mexico v. El Paso, Electric Company
CAE–27.
DOCKET# ER99–42, 000, Montaup Electric Power Company v. El Paso Edison Company
CAE–28.
DOCKET# ER97–3593, 000, Sierra Pacific Power Company
OTHER#S ER97–4462, 000, Sierra Pacific Power Company

Consent Agenda—Gas and Oil

CAG–1.
DOCKET# PR99–4, 000, Consumers Energy Company
OTHER#S PR99–4, 001, Consumers Energy Company
CAG–2.
DOCKET# IS99–144, 000, SFPP, L.P.
CAG–3.
OMITTED
CAG–4.
OMITTED
CAG–5.
DOCKET# RP99–199, 002, Panhandle Easter Pipe Line Company
CAG–6.
DOCKET# RP99–200, 002, Trunkline Gas Company
CAG–7.
DOCKET# RP91–203, 068, Tennessee Gas Pipeline Company
OTHER#S RP92–132, 058, Tennessee Gas Pipeline Company
RP95–112, 025, Tennessee Gas Pipeline Company
CAG–8.
OMITTED
CAG–9.
DOCKET# RP95–197, 000, Transcontinental Gas Pipe Line Corporation
OTHER#s RP97–71, 000, Transcontinental Gas Pipe Line Corporation
CAG–10.
DOCKET# MG99–5, 001, Destin Pipeline Company, L.L.C.
CAG–11.
DOCKET# MG99–12, 000, Total Peaking Services, L.L.C.
CAG–12.
DOCKET# MG99–13, 000, Dynegy Midstream Pipeline, Inc.
CAG–13.
OMITTED
CAG–14.
DOCKET# CP98–761, 000, Viking Gas Transmission Company
OTHER#s CP99–140, 000, Viking Gas Transmission Company
CAG–15.
DOCKET# CP99–16, 000, Dauphin Island Gathering Partners
OTHER#s CP99–18, 000, Texas Eastern Transmission Corporation
CAG–16.
DOCKET# CP99–82, 000, Equitrans, L.P.
CAG–17.
DOCKET# CP97–26, 002, Trunkline LNG Company
CAG–18.
OMITTED
CAG–19.
DOCKET# CP96–809, 008, Maritimes & Northeast Pipeline, L.L.C.
OTHER#s CP96–178, 008, Maritimes & Northeast Pipeline, L.L.C.
OTHER#s CP96–809, 007, Maritimes & Northeast Pipeline, L.L.C.
OTHER#s CP97–238, 008, Maritimes & Northeast Pipeline, L.L.C.
OTHER#s CP98–724, 000, Maritimes & Northeast Pipeline, L.L.C.
OTHER#s CP98–797, 000, Maritimes & Northeast Pipeline, L.L.C.
CAG–20.
DOCKET# PL99–2, 000, Anticipated Demand for Gas in the Eastern Half of the United States

Hydro Agenda

H–1.
RESERVED

Electric Agenda

E–1.
RESERVED

Oil and Gas Agenda

I.
PIPELINE RATE MATTERS
PR–1.
RESERVED
II.
PIPELINE CERTIFICATE MATTERS
PC–1.
RESERVED

David P. Boergers,
Secretary.
[FR Doc. 99–9229 Filed 4–8–99; 3:47 pm]
BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6322–7]

Agency Information Collection Activities: Proposed Collection; Comment Request; Revision of the Information Collection Request for the National Pretreatment Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit the following proposed and/or continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB): Information Collection Request for the National Pretreatment Program (40 CFR part 403), EPA ICR 0002.08 (expires October 31, 1999), OMB Control Number 2040–009. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before June 11. 1999.

ADDRESSES: Interested persons may obtain a copy of this ICR without charge by contacting Jan Marie Pickrel, Office of Wastewater Management (4203), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, telephone number (202) 260–7904, E-mail address pickrel.jan@epa.gov.

FOR FURTHER INFORMATION CONTACT: Jan Marie Pickrel, telephone number (202) 260–7904, facsimile number (202) 260–1460, E-mail address pickrel.jan@epa.gov.

SUPPLEMENTARY INFORMATION:

Affected entities: Entities potentially affected by this action are those subject to the regulations under 40 CFR part 403, including private industries, State, local and Federal governments.

Title: Revision of the Information Collection Request for the National Pretreatment Program (40 CFR part 403),

EPA ICR 0002.08, OMB Control Number 2040–009. Expiration date is October 31, 2002.

Abstract: This Information Collection Request (ICR) calculates the burden and costs associated with managing the National Pretreatment Program mandated by sections 402(a) and (b) and 307(b) of the Clean Water Act. This ICR is a renewal of the Revision of the Information Collection Request for the National Pretreatment Program (OMB Control No. 2040–009, ICR No. 0002.08).

Management of the pretreatment program is the responsibility of the Office of Wastewater Management (OWM) in the Office of Water (OW), Environmental Protection Agency (EPA). The Clean Water Act requires EPA to develop national pretreatment standards to control discharges from Industrial Users (IUs) into Publicly Owned Treatment Works (POTWs). These standards limit the level of certain pollutants in IU wastewaters. EPA administers the pretreatment program through the National Pollutant Discharge Elimination System (NPDES) permit program. Under the NPDES permit program, EPA may approve State or individual POTW implementation of the pretreatment standards at their respective levels. OWM uses the data collected under the pretreatment program to monitor and enforce compliance with the regulations, as well as to authorize program administration at the State or local (POTW) level. The data collected from IUs includes the mass, frequency, and content of their discharges, their schedules for installing pretreatment equipment, and actual or anticipated discharges of wastes that violate pretreatment standards, have the potential to cause problems at the POTW, or are considered hazardous under the Resource Conservation and Recovery Act (RCRA). States and POTWs applying for approval of pretreatment programs submit data concerning their legal, procedural, and administrative bases for establishing such programs. This information may include surveys of IUs, local limits for pollutant concentration, and schedules for completion of major project requirements. IUs and POTWs submit written reports. These data may then be entered into the NPDES databases by the approved State or EPA.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15.

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) enhance the quality, utility, and clarity of the information to be collected; and

(iv) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Burden Statement: The information collection will involve an estimated 33,526 respondents at an annual cost of $90,597,238 to those respondents. The total annual cost to both respondents and government (excluding Federal government) is estimated at $94,933,075. The annual number of responses will be 202,882 or 6.05 responses per respondent. The time required for a response ranges from 15 minutes to 400 hours, with an average response time of 6.538 hours. An estimated 33,526 respondents are required to keep records at an average annual burden of 6.853 hours per record keeper. The pretreatment program will entail 229,741 hours of record keeping, 1,326,402 hours of reporting, and 209,013 hours for governments as users of the data, for a total of 1,765,156 burden hours.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Dated: March 20, 1999.

Michael B. Cook,

Director, Office of Wastewater Management.

[FR Doc. 99–8947 Filed 4–9–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6323–1]

Agency Information Collection Activities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit the following proposed and/or continuing Information Collection Requests (ICRs) to the Office of Management and Budget (OMB). Before submitting the ICRs to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collections as described below.

DATES: Comments must be submitted on or before June 11, 1999.

ADDRESSES: U.S. EPA, Office of Compliance, 401 M Street SW, Washington, D.C. 20460, Mail code 2223A.

Interested persons may obtain a copy of the ICR without charge by calling Sandy Farmer of OPPE at (202) 260–2740 or by e-mail at farmer.sandy@epamail.epa.gov.

FOR FURTHER INFORMATION CONTACT: Mr. Rafael Sánchez, United States Environmental Protection Agency, Office of Enforcement and Compliance Assurance, Office of Compliance, Manufacturing, Energy and Transportation Division, Energy and Transportation Branch (2223A), 401 M Street, S.W. Telephone: (202) 564–7028. Facsimile: (202) 564–0050.

SUPPLEMENTARY INFORMATION: *Affected entities:* Entities affected by this action are those owners and operators of benzene storage vessels that store benzene having a specific gravity within the range of specific gravities specified in ASTM D 836–84 for Industrial Grade Benzene, ASTM D 835–85 for Refined Benzene-535 and ASTM D 4734–87 for Refined Benzene-545.

Title: NESHAP for Benzene Emissions from Benzene Storage Vessels—40 CFR part 61, subpart Y, OMB No. 2060–0185, Expiration Date: 1/31/99.

Abstract: Respondents are all owners or operators of benzene storage vessels. It is estimated that 126 existing plants

are subject to the standard. All owners and operators of new or reconstructed plants would also have to respond.

In the General Provisions of 40 CFR part 61 applicable to storage vessels, up to four separate one-time-only reports are required for each owner or operator: notification of construction or reconstruction, initial source report; notification of physical/operational changes, notification of anticipated and actual startup. The initial source report is the only one of these reports that would be required from existing sources under the standard.

Certain records and reports are necessary to assist EPA and State agencies to which enforcement has been delegated in determining compliance with the standard.

An initial emissions test is not required because conducting an emission test is not feasible. Therefore, the format of the standard is that of an equipment standard. Owners or operators of vessels equipped with the specified controls are required to submit, along with the notifications required by the General Provisions, a report that describes the control equipment used to comply with the regulation. Thereafter, an annual visual inspection is required of the primary seal of internal floating roof vessels (IFR's) (in cases where no secondary seal is present). An annual seal gap measurement of the secondary seal system on external floating roof vessels (EFR's) is required. The following inspections are required every five years: (1) internal inspection of seal system on IFR's equipped with primary and secondary seals in situations where the owner or operator has decided to forego the annual visual inspection; and (2) measurement of gaps between the tank wall and primary seal on EFR's. An internal inspection in which the tank is emptied and degassed is required at least every 10 years for IFR's.

Another control option allowed is for owners or operators to equip vessels with closed-vent systems and 95-percent efficient control devices. It is expected that very few, if any, vessels will be equipped with these systems; however, owners or operators of vessels with such systems are required to submit, for the Administrator's approval, an operating plan describing system design specifications and an operation, maintenance, and inspection plan for the system. In the event the owner or operator has installed a flare, a report showing compliance with visible emission provisions shall be furnished to the Administrator. For closed-vent systems with control devices, quarterly reports are required informing the Administrator of each occurrence that results in excess emissions. Annual reports of the results of these inspections and seal gap measurements are required. These reports will identify each storage vessel that is determined to be out of compliance with the standard, the nature of the defects, and the date the vessel was emptied or the repair was made. The owner or operator will keep copies of all reports and records resulting from these inspections for two years.

The owner or operator of each benzene storage vessel will, for the life of the source, keep readily accessible records showing the dimension of the vessel and an analysis showing the capacity of the storage vessel. For each vessel with a closed vent system and 95-percent efficient control device, records of the operating plan will be kept for the life of the control device. Records of monitored parameters and maintenance will be kept for two years.

An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9.

The EPA would like to solicit comments to:

(i) evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) enhance the quality, utility, and clarity of the information to be collected; and

(iv) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Burden Statement: For subpart Y, EPA estimated the nationwide annualized cost to respondents at a $47,045/yr over a 3-year period. The respondent burden is estimated at 1,545 person-hours/yr. Respondent costs are estimated based on a cost of $14.50 per hour, and on an overhead rate of 110 percent (for a total cost per hour of $30.45). The annual reporting burden is estimated at a $39,372/yr over a 3-year period. The number of responses per year is estimated to be 162. The number of responses per respondent is estimated to be five. The total annual responses are estimated to be 810. The number of hours per response per year is estimated to be four. These estimates include the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Dated: April 2, 1999.

John B. Rasnic,

Director, Manufacturing, Energy and Transportation, Division, Office of Compliance.

[FR Doc. 99–9063 Filed 4–9–99; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6322–9]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; Reporting Requirements Under EPA's Voluntary Aluminum Industrial Partnership—EPA ICR No. 1867.01

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Reporting Requirements Under EPA's Voluntary Aluminum Industrial Partnership—EPA ICR No. 1867.01. The ICR describes the nature of the information collection and its expected burden and cost.

DATES: Comments must be submitted on or before May 12, 1999.

FOR FURTHER INFORMATION CONTACT: Contact Sandy Farmer at EPA by phone at (202) 260–2740, by email at farmer.sandy@epamail.epa.gov, or download off the Internet at http://www.epa.gov/icr and refer to EPA ICR No. 1867.01.

SUPPLEMENTARY INFORMATION:

Title: Reporting Requirements Under EPA's Voluntary Aluminum Industrial Partnership (EPA ICR No. 1867.01). This

is a new collection. As such there is no OMB Control No. for this ICR.

Abstract: In April 1993, President Clinton issued the Climate Change Action Plan, which establishes the nation's commitment to returning U.S. greenhouse gas emissions to their 1990 levels by the year 2000. EPA's Voluntary Aluminum Industrial Partnership (VAIP) is an important voluntary program contributing to the overall reduction in greenhouse gas emissions. This program focuses on reducing perfluorocarbon (PFC) emissions from aluminum smelting operations. The twelve companies that have joined the VAIP have cumulatively committed to reduce their PFC emissions 45 percent from 1990 levels by the year 2000. PFCs are very potent greenhouse gases that are persistent in the atmosphere and have a high global warming potential. The VAIP, along with Energy Star Buildings and Green Lights, Energy Star Labeling, and other EPA programs is a voluntary program aimed at preventing pollution rather than controlling it after its creation. All of these programs focus on greenhouse gas emissions.

EPA has developed this ICR to obtain authorization to collect information from companies participating in the VAIP. Companies that join the VAIP voluntarily agree to the following: designating a VAIP liaison; undertaking technically feasible and cost-effective actions to reduce PFC emissions; and reporting to EPA, on an annual basis, the success of such actions. The information contained in the annual reports of the companies that join the VAIP may be considered confidential business information and is maintained as such. EPA uses the data obtained from the companies to assess the success of the program in achieving its goals.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. The **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on September 18, 1998 (63 FR 49909); no comments were received.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 321.13 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Aluminum companies.

Estimated Number of Respondents: 12.

Frequency of Response: One per respondent per year.

Estimated Total Annual Hour Burden: 1,866 hours.

Estimated Total Annual Labor Cost Burden: $208,889.

Estimated Total Annual Operating and Maintenance Cost Burden: $17,509.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to EPA ICR No. 1867.01 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, Office of Policy, Regulatory Information Division (2137), 401 M Street, SW, Washington, DC 20460; and

Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW, Washington, DC 20503.

Dated: April 15, 1999.

Joseph Retzer,

Director, Regulatory Information Division.

[FR Doc. 99–8951 Filed 4–9–99; 8:45 am]

BILLING CODE 6560–60–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6323–2]

Regulatory Reinvention (XL) Pilot Projects

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability of the Project XL Proposed Final Project Agreement: Exxon Fairmont Coke Works Superfund Site Clean-up.

SUMMARY: EPA is requesting comments on a proposed Project XL Final Project Agreement (FPA) for Exxon Company, U.S.A. (hereafter "Exxon"). The FPA is a voluntary agreement developed collaboratively by Exxon, the West Virginia Division of Environmental Protection (WVDEP), the Fairmont Community Liaison Panel (FCLP) and EPA. Project XL, announced in the **Federal Register** on May 23, 1995 (60 FR 27282), gives regulated entities the flexibility to develop alternative strategies that will replace or modify specific regulatory or procedural requirements on the condition that they produce greater environmental benefits. EPA has set a goal of implementing fifty XL projects undertaken in full partnership with the states.

The draft FPA presents an alternative strategy for clean-up of the Sharon Steel Fairmont Coke Works Superfund Site located in Fairmont, WV. The Site was placed on the National Priorities List (NPL) by EPA under the Superfund clean-up program on December 23, 1996. Exxon is the only Potentially Responsible Party (PRP) working with the EPA and WVDEP to clean up the Site.

In the draft FPA, Exxon proposes that changes to the traditional Superfund clean-up process be made in (a) the regulatory approach used to characterize and clean-up the site, (b) risk assessment, (c) the management of onsite landfills (designation of an "Area of Contamination"), (d) mitigation requirements for EPA-created wetlands onsite, (e) the commercial/industrial redevelopment of the Site, (f) the stakeholder/community involvement process, (g) reduction of paperwork, (h) quality assurance and (i) the support of regulatory involvement. Mechanisms for the implementation of these proposed changes, which represent the regulatory flexibilities being requested, are also presented.

DATES: The period for submission of comments ends on May 12, 1999.

ADDRESSEES: All comments on the proposed Final Project Agreement should be sent to: Melissa Whittington, U.S. EPA, Region III, 1650 Arch Street (3HS23), Philadelphia, PA 19103, or John DuPree, U.S. EPA, Room M3802 (1802), 401 M Street, SW, Washington, DC 20460. Comments may also be faxed to Ms. Whittington at (215) 814–3002 or Mr. DuPree (202) 260–3125. Comments may also be received via electronic mail sent to: whittington.melissa@epa.gov or dupree.john@epa.gov.

FOR FURTHER INFORMATION CONTACT: To obtain a copy of the proposed Final Project Agreement or Fact Sheet, contact: Melissa Whittington, U.S. EPA, Region III, 1650 Arch Street (3HS23),

Philadelphia, PA 19103, or John DuPree, U.S. EPA, 401 M Street SW Room M3802 (1802), Washington DC 20460. The FPA and related documents are also available via the Internet at the following location: http://www.epa.gov/ProjectXL. In addition, public files on the project, including the FPA, are located at Marion County Library, 321 Monroe Street, Fairmont, WV 26554, (304) 366–1210. Questions to EPA regarding the documents can be directed to Melissa Whittington at (215) 814–3225 or John DuPree at (202) 260–4468. To be included on the Exxon Project XL mailing list about future public meetings, XL progress reports and other mailings from Exxon on the XL project, contact Art Chin at (908) 474–7295, Exxon Company, U.S.A., P.O. Box 728, Linden, NJ 07036. For information on all other aspects of the XL Program contact Christopher Knopes at the following address: Office of Reinvention, United States Environmental Protection Agency, 401 M Street, SW Room M3802 (Mail Code 1802), Washington, DC 20460. Additional information on Project XL, including documents referenced in this notice, other EPA policy documents related to Project XL, regional XL contacts, application information, and descriptions of existing XL projects and proposals, is available via the Internet at http://www.epa.gov/ProjectXL.

Dated: April 2, 1999.

Lisa Lund,

Deputy Associate Administrator, Office of Reinvention.

[FR Doc. 99–9064 Filed 4–9–99; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6322–6]

Atlantic Wood Industries, Inc. Superfund Site CERCLA § 122(h) Administrative Settlement; Notice of Proposed Administrative Settlement Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as Amended by the Superfund Amendments and Reauthorization Act

AGENCY: Environmental Protection Agency.

ACTION: Notice; request for public comment.

SUMMARY: In accordance with section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (CERCLA), 42 U.S.C. 9622(i), notice is hereby given of a proposed administrative cost recovery settlement concerning the Atlantic Wood Industries, Inc. Superfund Site, Portsmouth, Virginia (Proposed Settlement). The Proposed Settlement with Atlantic Wood Industries, Inc. and the United States Department of the Navy (Settling Parties) has been approved by the Attorney General, or her designee, of the United States Department of Justice. The Proposed Settlement was signed by the Regional Administrator of the U.S. Environmental Protection Agency (EPA), Region III, on April 1, 1999, pursuant to section 122(h) of CERCLA, 42 U.S.C. 9622(h), and is subject to review by the public pursuant to this document.

The Proposed Settlement resolves EPA's claim for past response costs under section 107 of CERCLA, 42 U.S.C. 9607, against the Settling Parties, and requires the Settling Parties to pay to the EPA Hazardous Substance Superfund $864,000 in reimbursement of Past Response Costs, which had totaled 1,133,287.51. This sum includes $700,000 reimbursement for Removal and RI/FS Oversight/Response Costs and $164,000 reimbursement for other non-oversight response costs. Atlantic Wood Industries, Inc. and the Navy have agreed among themselves that they will each pay 50% of the $864,000.

For thirty (30) days following the date of publication of this document, EPA will receive written comments relating to the proposed settlement. EPA will consider all comments received and may withdraw or withhold consent to the proposed settlement if such comments disclose facts or considerations which indicate the proposed settlement is inappropriate, improper, or inadequate. EPA's response to any written comments received will be available for public inspection at the U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, PA 19103.

DATES: Comments must be provided on or before May 12, 1999.

ADDRESSES: The proposed settlement agreement is available for public inspection at the U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, PA 19103. A copy of the proposed settlement agreement may be obtained from Suzanne Canning, Regional Docket Clerk (3RC00), U.S. Environmental Protection Agency, 1650 Arch Street, Philadelphia, PA 19103; telephone number (215) 814–2476. Comments should reference the "Atlantic Wood Industries, Inc. Superfund Site" and "EPA Docket No. III–98–014–DC" and should be forwarded to Suzanne Canning at the above address.

FOR FURTHER INFORMATION CONTACT: Charles Hayden (3RC44), (215) 814-2668, U.S. Environmental Protection Agency, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

Dated: April 1, 1999.

Thomas Voltaggio,

Acting Regional Administrator, Region III.

[FR Doc. 99–8948 Filed 4–9–99; 8:45 am]

BILLING CODE 6560–50–P

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DEPARTMENT OF LABOR

Coordination of Functions; Memorandum of Understanding

AGENCIES: Equal Employment Opportunity Commission and Department of Labor.

ACTION: Final notice.

SUMMARY: the Equal Employment Opportunity Commission (EEOC) and the Department of Labor (DOL), Office of Federal Contract Compliance Programs (OFCCP) have adopted final revisions to their 1981 Memorandum of Understanding, originally published at 46 FR 7435, Jan. 23, 1981. The revisions include updated charge processing procedures to increase coordination and efficiency and to minimize duplication in the agencies' overlapping EEO enforcement activities. Modeled on the 1992 joint rule for processing disability complaints under Section 503 of the Rehabilitation Act and Title I of the Americans with Disabilities Act, the revisions authorize OFCCP to act as EEOC's agent to process and resolve the Title VII component of complaints/charges dual filed with OFCCP under Executive Order 11246, as amended, and Title VII of the Civil Rights Act of 1964, as amended. The revisions also add a paragraph to address Title VII's confidentiality requirements. Additional minor changes have been made to update other sections of the 1981 agreement, such as changes in the titles of agency officials.

EFFECTIVE DATE: April 12, 1999.

FOR FURTHER INFORMATION CONTACT: Carol R. Miaskoff, Assistant Legal Counsel For Coordination, Equal Employment Opportunity Commission, (202) 663–4639 (voice), 202–663–7026 (TTY); or James I. Melvin, Director, Division of Policy, Planning, and Program Development, Office of Federal Contract Compliance Programs,

Department of Labor, (202) 693–0102 (voice), (202) 693–1308 (TTY).

SUPPLEMENTARY INFORMATION: The revised Memorandum of Understanding (MOU) sets forth complaint processing and information sharing procedures, as did the original 1981 MOU, to coordinate enforcement efforts under Executive Order 11246 and Title VII. The revised MOU retains the same general division of labor between the agencies as set forth in the 1981 agreement regarding Executive Order 11246 complaints filed with OFCCP. OFCCP will normally refer dual-filed complaints/charges of an individual nature to EEOC for processing, and will normally retain systemic or class dual-filed complaints/charges. The revised MOU authorizes OFCCP to act as EEOC's agent in processing and resolving the Title VII component of dual-filed complaints/charges that OFCCP retains under the agreement.

The agencies published a proposed notice on December 14, 1998, at 63 FR 68764, inviting public comment on the proposed changes to the 1981 MOU's charge processing provisions and the proposed new paragraph addressing Title VII's confidentiality requirements.

The agencies received 27 comments from a variety of stakeholders. Many of the commenters endorsed the proposed changes as steps that would strengthen EEO enforcement and increase the agencies' efficiency and effectiveness. One commenter criticized the proposed revisions on the grounds that they are an unauthorized expansion of OFCCP's powers. Another commenter challenged the general distribution of responsibilities between the agencies for systemic and class claims. Set out below are specific points and suggestions for changes raised by various commenters and the agencies' response.

Numerous commenters recommended broadening the scope of the MOU to authorize OFCCP to act as EEOC's agent in the course of OFCCP compliance reviews, in the interests of further maximizing the efficiency and effectiveness of the agencies' enforcement efforts. Three commenters opposed this view, and two commenters asked that the MOU explicitly provide that OFCCP's authority to act as EEOC's agent is limited to complaints and charges and does not extend to compliance reviews. An agency can delegate no more authority than it has. Because EEOC's enforcement authority under Title VII is premised on the receipt of charges, there can be no delegation to OFCCP when there is no charge/complaint. Therefore, the revised MOU retains the language published in the proposed notice stating that OFCCP is authorized to act as EEOC's agent only with respect to the Title VII component of complaints or charges filed with, and retained by, OFCCP pursuant to paragraph 7 of the MOU.

Numerous commenters recommended that the agencies consider the complaint's preference when requesting deviation from the MOU's normal charge referral procedures. Normally, OFCCP retains systemic or class claims and refers individual claims to EEOC. However, EEOC may request referral of systemic or class claims and OFCCP may request retention of individual claims, in appropriate cases. It is not necessary to consult with the complainant when OFCCP requests retention of an individual claim, given that the complaint/charge was filed with OFCCP in the first instance. When EEOC requests referral of systemic or class claims, it will consult with the charging party when appropriate and practical to do so. In any instance of charge referral under the MOU, OFCCP will continue to notify the complainant/charging party that her/his charge has been referred to the EEOC for processing.

Two commenters focused on the standards to be used by OFCCP when it processes Title VII claims pursuant to the MOU. The commenters mistakenly believed that the revised MOU omits language in the 1981 MOU that addressed the agencies' use of consistent internal enforcement standards and procedures. This language has not been omitted; it is included in its entirety as paragraph 9 in the revised MOU. One of the commenters remarked, in particular, that, in conciliating Title VII claims, OFCCP should follow EEOC's remedies policy, under which cases may be settled for "substantial" rather than "full" relief. This concern is addressed both by paragraph 9 of the revised MOU and, more explicitly, by language in paragraph 7 explaining that OFCCP's efforts to obtain relief in Title VII claims shall be "consistent with EEOC's standards for remedies." More generally, the two commenters emphasized that OFCCP should adhere to Title VII law on liability and damages when processing Title VII claims as EEOC's agent. This is consistent with the agencies' intent and the new MOU's delegation of authority, and we have therefore added a provision to this effect in the new MOU.

One commenter recommended that systemic or class Title VII claims in complaints filed with OFCCP be referred to EEOC in the first instance. The commenter argued that OFCCP should pursue only those systemic or class claims that EEOC has decided not to pursue. The division of labor between the agencies as contemplated by the revised MOU is a long-standing arrangement that, in the agencies' experience, has been and remains an effective means of coordinating enforcement functions. Since adoption of the 1981 MOU, OFCCP has retained systemic or class claims, with allowance for EEOC to request referral of these claims in appropriate cases. OFCCP is well-suited to process systemic and class claims given its thirty-plus years of systemic enforcement experience.

Two commenters opposed the revised MOU on the belief that it is an unauthorized expansion of OFCCP's powers. One commenter assumed that OFCCP will act as EEOC's agent in OFCCP compliance reviews which, for the reasons discussed above, will not be the case. The other commenter argued that the decision whether to delegate authority to OFCCP to investigate and seek damages in individual Title VII charges should be left to Congress. The revised MOU's delegation of authority to OFCCP to process and resolve the Title VII component of certain charges/complaints is consistent with EEOC's authority under Title VII and Executive Order 12067 to implement agreements and procedures that minimize duplication and maximize efficiency and coordination in EEO compliance and enforcement.

New paragraph 8 of the MOU addressed the application of Title VII's confidentiality provisions to OFCCP's receipt of certain information. After consideration by the agencies, the text of subparagraphs 8(a) and 8(b) of the MOU, as published in the proposed notice, has been revised to add references to the confidentiality provisions of the Trade Secrets Act and the Privacy Act, in addition to Title VII.

The text of new paragraphs 7 and 8 of the MOU is set out below. The entire text of the MOU is included as an Appendix. It is also available on EEOC's Home Page at www.eeoc.gov, and on DOL's Employment Standards

Administration Home Page at www.dol.gov/dol/esa.

Ida L. Castro,

Chairwoman, Equal Employment Opportunity Commission.

Alexis M. Herman,

Secretary of Labor.

Bernard E. Anderson,

Assistant Secretary, Employment Standards Administration.

Shirley J. Wilcher,

Deputy Assistant Secretary for Federal Contract Compliance.

New Paragraphs 7 and 8 of the Memorandum of Understanding

7. Processing of Complaints Filed With OFCCP

(a) Duel-Filed Complaints/Charges—Complaints of employment discrimination filed with OFCCP under Executive Order 11246 will be considered charges simultaneously filed under Title VII whenever the complaints also fall within the jurisdiction of Title VII. For the purpose of determining the timeliness of such a charge, which will be considered dual filed under this paragraph, the date the matter was received by OFCCP shall be deemed to be the date it was received by EEOC.

(b) Systemic or Class Allegations—OFCCP will retain, investigate, and resolve allegations of discrimination of a systemic or class nature on the basis of race, color, religion, sex, or national origin, over which it has jurisdiction. OFCCP shall promptly notify EEOC's Director, Office of Field Programs, of OFCCP's receipt of complaints/charges that include such allegations, by forwarding a copy of the complaint/charge (and third party certificate, if any). In addition, OFCCP shall make available to EEOC, upon request, information obtained in the investigation and processing of such allegations, pursuant to paragraphs 1 and 6(b) herein. In appropriate cases, may request that it be referred systemic or class allegations under Title VII so as to avoid duplication and assure effective law enforcement.

(c) Individual Allegations—OFCCP will refer to the appropriate EEOC field office allegations of discrimination of an individual nature on the basis of race, color, religion, sex, or national origin in dual filed complaints/charges. In appropriate cases OFCCP may request that it retain such allegations so as to avoid duplication and assure effective law enforcement.

(d) Appointment of OFCCP as EEOC's Agent—OFCCP will act as EEOC's agent for the purposes of receiving, investigating, and processing the Title VII component of complaints/charges that it retains under this paragraph. OFCCP shall investigate and process such dual filed complaints/charges as set forth in this subparagraph, and in a manner consistent with Title VII principles on liability and damages.

(1) Notice of Receipt of Complaint/Charge—Within ten days of receipt of the complaint/charge, OFCCP shall notify the contractor/respondent that it has received a charge of employment discrimination under Executive Order 11246 and Title VII. This notification shall state the date, place, and circumstances of the alleged unlawful employment practice(s).

(2) Fair Employment Practice Agency Deferral Perios—Pursuant to work-sharing agreements between EEOC and state and local agencies designated as fair employment practice agencies, the deferral for dual filed Title VII charges that OFCCP received will be waived.

(3) Not Reasonable Cause Findings—If the OFCCP investigation of a dual filed complaint/charge results in a not reasonable cause finding under Title VII, OFCCP will issue a Title VII dismissal and notice of right-to-sue. OFCCP will close the Title VII component of the complaint/charge and promptly notify EEOC's Director, Office of Field Programs, of the closure.

(4) Reasonable Cause Findings—

(i) Successful Conciliation—If the OFCCP investigation of a dual filed complaint/charge results in a reasonable cause finding under Title VII, OFCCP will issue a reasonable cause finding under Title VII. OFCCP will attempt conciliation to obtain relief, consistent with EEOC's standards for remedies, for all aggrieved persons covered by the Title VII charge. If conciliation is successful, the conciliation agreement will state that the complaint/charging party agrees to waive the right to pursue the subject issues further under Title VII. OFCCP will close the Title VII component of the complaint/charge, and promptly notify EEOC's Director, Office of Field Programs, of the closure.

(ii) Unsuccessful Conciliation—When conciliation is not successful, the Executive Order 11246 component of the complaint/charge will be considered for further OFCCP processing consistent with OFCCP's usual procedures. At the conclusion of OFCCP processing, OFCCP shall transmit the Title VII charge component to EEOC for any action EEOC deems appropriate. If EEOC declines to pursue further action, EEOC will close the Title VII charge and issue a notice of right-to-sue.

(5) Issuance of Notice of Right-to-Sue Upon Request—Consistent with the Title VII procedures set forth at 29 CFR 1601.28, after 180 days from the date the complaint/charge was filed, OFCCP shall promptly issue upon request a notice of right-to-sue on the Title VII component of a complaint/charge that it retains. Issuance of a notice of right-to-sue shall terminate further OFCCP processing of the Title VII component of the complaint/charge unless it is determined at that time or at a later time that it would effectuate the purposes of Title VII to further process the Title VII component of the complaint/charge.

(6) Subsequent Attempts to File an EEOC Charge Covering the Same Facts and Issues—If an individual who has already filed an OFCCP complaint/charge that is deemed dual filed under Title VII subsequently files a Title VII charge with EEOC covering the same facts and issues, EEOC will forward the charge to OFCCP for consolidated processing.

8. Confidentiality

(a) When EEOC provides information to OFCCP, then the confidentiality requirements of sections 706(b) and 709(e) of Title VII of the Civil Rights Act of 1964 apply to that information. When OFCCP receives the same information from a source independent of EEOC, the preceding sentence does not preclude disclosure of the information received from the independent source. However, OFCCP will also observe any confidentiality requirements imposed on such information by the Trade Secrets Act or the Privacy Act.

(b) When OFCCP obtains information from its receipt, investigation, and processing of the Title VII component of a dual filed charge, or when OFCCP creates documents that exclusively concern the Title VII component of a dual filed charge, OFCCP will observe any confidentiality requirements imposed on such information by the Trade Secrets Act, the Privacy Act, and sections 706(b) and 709(e) of Title VII of the Civil Rights Act of 1964.

(c) Questions concerning confidentiality under Title VII shall be directed to EEOC's Deputy Legal Counsel for Legal Services, Office of Legal Counsel.

(d) Questions concerning confidentiality under Executive Order 11246, as amended, or 38 U.S.C. 4212 (Section 402 of VEVRAA) shall be directed to OFCCP, Director, Division of Program Operations.

Appendix: Memorandum of Understanding

This Memorandum of Understanding (MOU) between the U.S. Department of Labor (DOL) and the Equal Employment Opportunity Commission (EEOC) is being

implemented to further the objectives of Congress under Section 715 of title VII of the Civil Rights Act of 1964, as amended by the Equal Employment Opportunity Act of 1972; of Executive Order 12067, 43 FR 28967; and Section 6 of Reorganization Plan No. 1 of 1978 (43 FR 19807). These objectives are to develop and implement agreements, policies and practices designed to maximize effort, promote efficiency, and eliminate conflict, completion, duplication and inconsistency among the operations, functions and jurisdictions of the parties to the MOU.

The parties to this MOU agree as follows:

1. The Office of Federal Contract Compliance Programs (OFCCP), Employment Standards Administration (ESA), DOL shall make available to the appropriate requesting official of the EEOC or his or her designee for inspection and copying and/or loan, any documents in its possession pertaining to the effective enforcement of administration of (a) Title VII of the Civil Rights Act of 1964, as amended; or (b) Reorganization Plan No. 1 of 1978 and Executive Order 12067. All documents will be made available within ten days of such request. Disclosure of such material by EEOC shall be in accordance with paragraph 5 of this Agreement. All transfers of information under this and other paragraphs of this MOU shall only be made where not otherwise prohibited by law.

2. The EEOC shall make available to the appropriate requesting official of the OFCCP or his or her designee for inspection had copying and/or loan any documents pertaining the enforcement and administration of Executive Order 11246; 38 U.S.C. 4212 of the Vietnam Era Veterans' Readjustment Assistance Act of 1974; Section 503 of the Rehabilitation Act of 1973; and Executive Order 12067. All documents in its possession (or to which it has access through a work-sharing agreement as described in paragraph 5(b) of this Agreement) will be made available within ten days of such request. Disclosure of such material by OFCCP shall be in accordance with paragraphs 5 and 8 of this Agreement.

3. "Appropriate Requesting Officials" shall, for the purpose of this Agreement, include the following officials, or their successors, or their designees:

(a) For the EEOC:

1. The Chair
2. The Executive Director
3. The General Counsel
4. Any Regional Attorney
5. Any Assistant and Associate General Counsel
6. Any District or Area Office Director
7. The Legal Counsel
8. Director, Office of Field Programs

(b) For the DOL:

1. The Secretary or Deputy Secretary of Labor
2. The Solicitor of Labor
3. Assistant Secretary for Employment Standards
4. The Deputy Assistant Secretary or Deputy Director, OFCCP
5. Associate Solicitor of Labor
6. Any OFCCP Area Office Director
7. Any Regional Solicitor of Labor
8. Any OFCCP Division Director

4. Requests directed to a headquarters office of one agency from a field office of the other shall first be forwarded through the headquarters of the requesting agency. Responses to all requests for informaiton shall be made to the official making such request, or his/her designee.

5. (a) All requests by third parties for disclosure of information shall be coordinated with the agency which initially compiled or collected the information.

(b) Subparagraph 5(a), above, is not applicable to requests for data in EEOC files made by any state or local agency designated as a 706 agency with whom EEOC has a current charge resolution contract and a work-sharing agreement containing provisions required by Sections 706 and 709 of Title VII of the Civil Rights Act of 1964, as amended. Provided, however, that any such agency shall not disclose any of the information, initially compiled by OFCCP, to the public without express written approval by the Deputy Assistant secretary for OFCCP.

6. EEOC and OFCCP shall establish procedures for notification and consultation at verious stages of their respective compliance activities in order to increase efficiency and ensure coordination and minimize duplication. Such procedures shall include:

(a) Establishment of an ongoing Compliance Coordination Committee (CCC) which shall meet at least quarterly to review pending and future compliance plans, the schedule of establishments to be reviewed, potential Commissioner Charges, and potential litigation, and to take such other steps as may be appropriate to increase efficiency and eliminate competition and duplication. Such committees shall be established both in headquarters and in the field. At the conclusion of each quarterly meeting, each field CCC shall forward to the Director, Office of Field Programs, EEOC, and the Director, Division of Program Operations, OFCCP, a report of the rsults of such meeting.

(b) Contact by each agency at the commencement of and during a field investigaiton or compliance review where appropriate to obtain information in the possession of the agency on the employer being investigated.

(c) Notification to OFCCP, in appropriate instances, when EEOC has made a finding of cause and has determined that attempts at conciliation are unsuccessful and that no lawsuit will be filed by EEOC.

(d) Consulation with the appropriate field office of OFCCP when an EEOC field office is contemplating recommending a Commissioner Charge or litigation, and coordination of its activities.

(e) Consultation with the appropriate field office of EEOC when an OFCCP Regional Office is contemplating recommending the issuance of an administrative complaint and coordination of its activities.

7. Processing of Complaints Filed with OFCCP.

(a) Dual-Filed Complaints/Charges—Complaints of employment discrimination filed with OFCCP under Executive Order 11246 will be considered charges simultaneously filed under Title VII whenever the complaints also fall within the jurisdiction of Title VII. For the purpose of determining the timeliness of such a charge, which will be considered dual filed under this paragraph, the date the matter was received by OFCCP shall be deemed to be the date it was received by EEOC.

(b) Systemic or Class Allegations—OFCCP will retain, investigate, and resolve allegations of discrimination of a systemic or class nature on the basis of race, color, religion, sex, or national origin, over which it has jurisdiction. OFCCP shall promptly notify EEOC's Director, Office of Field Programs, of OFCCP's receipt of complaints/charges that include such allegations, by forwarding a copy of the complaint/charge (and third party certificate, if any). In addition, OFCCP shall make available to EEOC, upon request, information obtained in the investigation and processing of such allegations, pursuant to paragraphs 1 and 6(b) herein. In appropriate cases, EEOC may request that it be referred systemic or class allegations under Title VII so as to avoid duplication and assure effective law enforcement.

(c) Individual Allegations—OFCCP will refer to the appropriate EEOC field office allegations of discrimination of an individual nature on the basis of race, color, religion, sex, or national origin in dual filed complaints/charges. In appropriate cases, OFCCP may request that it retain such allegations so as to avoid duplication and assure effective law enforcement.

(d) Appointment of OFCCP as EEOC's Agent—OFCCP will act as EEOC's agent for the purposes of receiving, investigating, and processing the Title VII component of complaints/charges that it retains under this paragraph. OFCCP shall investigate and process such dual filed complaints/charges as set for in this subparagraph, and in a manner consistent with Title VII principles on liability and damages.

(1) Notice of Receipt of complaint/charge—Within ten days of receipt of the complaint/charge, OFCCP shall notify the contractor/respondent that it has received a charge of employment discrimination under Executive Order 11246 and Title VII. This notification shall state the date, place, and circumstances of the alleged unlawful employment practice(s).

(2) Fair Employment Practice Agency Deferral Period—Pursuant to work-sharing agreements between EEOC and state and local agencies designated as fair employment practice agencies, the deferral period for dual filed Title VII charges that OFCCP receives will be waived.

(3) Not Reasonable Cause Findings—If the OFCCP investigation of a dual filed complaint/charge results in a not reasonable cause finding under Title VII, OFCCP will issue a Title VII dismissal and notice of right-to-sue. OFCCP will close the Title VII component of the complaint/charge and promptly notify EEOC's Director, Office of Field Programs, of the closure.

(4) Reasonable Cause Findings—

(i) Successful Conciliation—If the OFCCP investigation of a dual filed complaint/charge results in a reasonable cause finding under Title VII, OFCCP will issue a reasonable cause finding under Title VII. OFCCP will attempt conciliation to obtain relief, consistent with EEOC's standards for

remedies, for all aggrieved persons covered by the Title VII charge. If conciliation is successful, the conciliation agreement will state that the complainant/charging party agrees to waive the right to pursue the subject issues further under Title VII. OFCCP will close the Title VII component of the compliant/charge, and promptly notify EEOC's Director, Office of Field Programs, of the closure.

(ii) Unsuccessful Conciliation—When conciliation is not successful, the Executive Order 11246 component of the compliant/charge will be considered for further OFCCP processing consistent with OFCCP's usual procedures. At the conclusion of OFCCP processing, OFCCP shall transmit the Title VII charge component to EEOC for any action EEOC deems appropriate. If EEOC declines to pursue further action, EEOC will close the Title VII charge and issue a notice of right-to-sue.

(5) Issuance of Notice of Right-to-Sue Upon Request—Consistent with the Title VII procedures set froth at 29 CFR 1601.28, after 180 days from the date the complaint/charge was filed, OFCCP shall promptly issue upon request a notice of right-to-sue on the Title VII component of a compliant/charge that it retains. Issuance of a notice of right-to-sue shall terminate further OFCCP processing of the Title VII component of the complaint/charge unless it is determined at that time or at a later time that it would effectuate the purposes of Title VII to further process the Title VII component of the compliant/charge.

(6) Subsequent Attempts to File an EEOC Charge Covering the Same Facts and Issues—If an individual who has already filed an OFCCP complaint/charge that is deemed dual filed under Title VII subsequently files a Title VII charge with EEOC covering the same facts and issues, EEOC will forward the charge to OFCCP for consolidated processing.

8. Confidentiality.

(a) When EEOC provides information to OFCCP, then the confidentiality requirements of sections 706(b) and 709(e) of Title VII of the Civil Rights Act of 1964 apply to that information. When OFCCP receives the same information from a source independent of EEOC, the preceding sentence does not preclude disclosure of the information received from the independent source. However, OFCCP will also observe any confidentiality requirements imposed on such information by the Trade Secrets Act or the Privacy Act.

(b) When OFCCP obtains information from its receipt, investigation, and processing of the Title VII component of a dual filed charge, or when OFCCP creates documents that exclusively concern the Title VII component of a dual filed charge, OFCCP will observe any confidentiality requirements imposed on such information by the Trade Secrets Act, the Privacy Act, and sections 706(b) and 709(e) of the Civil Rights Act of 1964.

(c) Questions concerning confidentiality under Title VII shall be directed to EEOC's Deputy Legal Counsel for Legal Services, Office of Legal Counsel.

(d) Questions concerning confidentiality under Executive Order 11246, as amended, or 38 U.S.C. 4212 (Section 402 of VEVRAA) shall be directed to OFCCP, Director, Division of Program Operations.

9. OFCCP and EEOC seek to ensure consistent compliance and enforcement standards and procedures that will facilitate consistency of compliance determinations. The agencies also seek to make the most efficient use of their available resources through coordination. Accordingly, the CCC shall advise in the development of standards and procedures for both agencies, including, but not limited to:

- Criteria and mechanisms for selecting industries and organizations for review and investigation;
- Procedures for routine access to and exchanges of electronic data bases, including, but not limited to, lists of proposed and completed compliance reviews, systemic, ELI and individual cases and conciliation agreements and settlements;
- Consistent analytical approaches to identifying and defining employment discrimination and determining appropriate remedies;
- Uniform training programs and training materials;
- Joint Policy statements;
- Procedures for coordinated collection, sharing and analysis of data;
- Joint projects to develop consistent definitions and to share expertise, foster consistency, and reduce duplicative efforts in such areas as: analysis of employee selection procedures, labor market availability and use of employment statistics;
- Procedures to be utilized in obtaining compliance with OFCCP or EEOC requests for data and information, pursuant to investigations under either Title VII or Executive Order 11246.

10. EEOC and OFCCP shall conduct periodic reviews of the implementation of this agreement, on an ongoing basis.

[FR Doc. 99–9065 Filed 4–9–99; 8:45 am]
BILLING CODE 6570–01–M and 4510–27–M

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Department of Labor

Coordination of Functions; Memorandum of Understanding

AGENCY: Equal Employment Opportunity Commission and Department of Labor.

ACTION: Final notice.

SUMMARY: The Equal Employment Opportunity Commission (EEOC) and the Department of Labor (DOL), Employment Standards Administration (ESA) have adopted a Memorandum of Understanding to maximize the effectiveness of the laws they enforce that prohibit unlawful compensation discrimination.

EFFECTIVE DATE: April 12, 1999.

FOR FURTHER INFORMATION CONTACT: Carol R. Miaskoff, Assistant Legal Counsel For Coordination, Equal Employment Opportunity Commission, (202) 663–4639 (voice), 202–663–7026 (TTY); or James I. Melvin, Director, Division of Policy, Planning, and Program Development, Office of Federal Contract Compliance Programs, Employment Standards Administration, Department of Labor, (202) 693–0102 (voice), (202) 693–1308 (TTY).

SUPPLEMENTARY INFORMATION: The Memorandum of Understanding will enhance enforcement of the federal laws prohibiting compensation discrimination, which are enforced by the EEOC and by the SOL's ESA. The agreement will reduce duplication of effort and result in increased enforcement activity on the issue of compensation discrimination through training of ESA personnel, and through sharing of information and data concerning potential issues of compensation discrimination.

EEOC enforces the Equal Pay Act of 1963 (EPA) and Title VII of the Civil Rights Act of 1964, which prohibit pay discrimination on the basis of sex. ESA's Office of Federal Contract Compliance Programs (OFCCP) enforces nondiscrimination requirements that apply to federal government contractors, primarily Executive Order 11246, and include prohibitions against discrimination in compensation. ESA's Wage and Hour Division enforces federal standards for wages and hours of work.

Ida L. Castro,

Chairwoman, Equal Employment Opportunity Commission.

Alexis M. Herman,

Secretary of Labor.

Bernard E. Anderson,

Assistant Secretary, Employment Standards Administration.

Shirley J. Wilcher,

Deputy Assistant Secretary for Federal Contract Compliance.

MEMORANDUM OF UNDERSTANDING BETWEEN THE EMPLOYMENT STANDARDS ADMINISTRATION AND THE EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

I. Background and Purpose

The purpose of this Memorandum of Understanding (MOU) is to maximize the effectiveness of those laws enforced by the Employment Standards Administration (ESA) and the Equal Employment Opportunity Commission (EEOC) which prohibit unlawful compensation discrimination, and other unlawful compensation practices.

Historically, EEOC and ESA have maintained excellent working relationships in areas of mutual law

enforcement interest. EEOC enforces Title VII of the Civil Rights Act of 1964, and the Equal Pay Act of 1963, among other equal employment opportunity laws. The ESA Office of Federal Contract Compliance Programs (OFCCP) enforces Executive Order 11246, as amended, and other contract-based equal employment opportunity laws. The ESA Wage and Hour Division (WHD) enforces the Fair Labor Standards Act, the Family and Medical Leave Act (FMLA) and other laws establishing minimum wage and labor standards.

The agreement will enhance enforcement efforts to prohibit compensation discrimination and reduce duplication of effort. It will also result in increased enforcement activity on the issue of compensation discrimination through the training of ESA personnel, and through the sharing of information and data.

II. Agency Authorities and Responsibilities

Employment Standards Administration

Office of Federal Contract Compliance Programs: Executive Order 11246, as amended, and its implementing regulations, prohibit covered federal contractors from disciminating in employment on the basis of race, color, sex, religion, or national origin, and require them to take affirmative action to ensure that equal opportunity is provided in all aspects of employment, including compensation.

Wage and Hour Division

The Fair Labor Standards Act of 1938 (FLSA) establishes minimum federal standards for wages and hours of work. The Family and Medical Leave Act (FMLA) provides certain employees with up to 12 weeks of unpaid job-protected leave a year for qualifying family leave reasons.

EEOC

The Equal Pay Act of 1963 prohibits employers from paying employees at a rate less than employees of the opposite sex at the same establishment "for equal work on jobs the performance of which requires equal skill, effort, and responsibility, and which are performed under similar working conditions . . . 29 U.S.C. 206(d)(1). Title VII of the Civil Rights Act of 1964 protects individuals from employment discrimination based on sex, race, color, religion, and national origin.

III. Provisions

Training

Consistent with available resources, EEOC and ESA will develop and provide training to assist WHD enforcement staff in recognizing potential compensation discrimination. EEOC and ESA will determine the exact nature of the training, as well as costs and payment responsibilities, by consensus.

Transfer of Information

When, in the course of its enforcement activities, or through other sources, WHD learns of a potential issue of compensation discrimination, the WHD may, to the extent authorized by law, provide such information to OFCCP for a determination of the employer's contract status and for appropriate action. If OFCCP determines that the employer is not a federal contractor, but may be covered by the Equal Pay Act or Title VII, OFCCP may, to the extent authorized by law, provide the information to EEOC.

When in the course of its activities, OFCCP identifies potential issues of compensation discrimination, OFCCP may, to the extent authorized by law, share such information, as appropriate, with EEOC, as well as any other information that will enhance the effectiveness of the EEOC as an enforcement agency.

Likewise, when, in the course of its enforcement activities, EEOC identifies potential issues of compensation discrimination, EEOC may, to the extent authorized by law, share such information, as appropriate, with OFCP, as well as any other information that will enhance the effectiveness of the Employment Standards Administration's OFCCP and WHD as enforcement agencies or programs.

Exchanges of information will, generally, include any supporting documentation gathered during contact with employers, potential complainants, or other sources of information. The agency receiving information has the responsibility to ensure that any disclosures of the information are in conformance with all provisions of law that apply to the employees of the originating agency, including Section 706(b) and Section 709(e) of Title VII of the Civil Rights Act of 1964. The agency receiving the information is also bound to take all appropriate steps to assure that the information is protected from unauthorized disclosure or use.

ESA and EEOC will provide each other with semi-annual reports of actions taken on compensation discrimination referrals provided pursuant to this MOU. OFCCP and EEOC headquarters staff will meet periodically to coordinate enforcement on questions relating to compensation discrimination.

IV. Agreement

The provisions of this Memorandum of Understanding may be reviewed and jointly modified as appropriate when it is determined by ESA and EEOC that such review and modification is in the interest of their respective enforcement responsibilities.

[FR Doc. 99–9066 Filed 4–9–99; 8:45 am]
BILLING CODE 6570–01–M; 4510–27–M

FEDERAL COMMUNICATIONS COMMISSION

[DA 99–643]

Public Safety National Coordination Committee

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This Public Notice advises interested persons of a meeting of the Public Safety National Coordination Committee ("NCC"), which will be held at the Federal Communications Commission in Washington, D.C. The Federal Advisory Committee Act, Public Law 92–463, as amended, requires public notice of all meetings of the NCC. This notice advises interested persons of the initial meeting of the Public Safety National Coordination Committee.

DATES: April 29, 1999 at 10:00 a.m.—5:00 p.m.

ADDRESSES: Federal Communications Commission, Commission Meeting Room, Room TW-C305, 445 12th Street, S.W., Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: D'wana R. Terry, telephone (202) 418–0680. Press Contact, Meribeth McCarrick, Wireless Telecommunications Bureau, 202–418–0600, or e-mail mmccarri@fcc.gov.

SUPPLEMENTARY INFORMATION: Following is the complete text of the Public Notice: The FCC has established the Public Safety National Coordination Committee, pursuant to the provisions of the Federal Advisory Committee Act, to advise the Commission on a variety of issues relating to the use of the 24 MHz of spectrum in the 764–776/794–806 MHz frequency bands (collectively, the 700 MHz band) that has been allocated to public safety services. See The Development of Operational, Technical and Spectrum Requirements

For Meeting Federal, State and Local Public Safety Agency Communications Requirements Through the Year 2010 and Establishment of Rules and Requirements For Priority Access Service, WT Docket No. 96–86, *First Report and Order and Third Notice of Proposed Rulemaking*, FCC 98–191 (1998), 63 FR 58645, November 2, 1998. The Federal Advisory Committee Act, Public Law 92–463, as amended, requires public notice of all meetings of the NCC. This notice advises interested persons of the initial meeting of the Public Safety National Coordination Committee.

DATES: April 29, 1999; 10:00 a.m.–5:00 p.m.

ADDRESSES: Federal Communications Commission, Commission Meeting Room, Room TW–C305, 445 Twelfth Street, S.W., Washington, D.C. 20554.

SUPPLEMENTARY INFORMATION: The agenda for the first meeting is as follows:

1. Introduction and Welcoming Remarks
2. Approval of Agenda
3. Committee Charter and other administrative matters
4. Committee Structure
5. Work Program/Organization of Work
6. Meeting Schedule
7. Agenda for Next Meeting
8. Other Business
9. Closing Remarks

The NCC will have an open membership. Previous expressions of interest in membership have been received in response to the Public Notice released on January 29, 1999 inviting interested persons to become members and to participate in the NCC's processes. All persons who have identified themselves or have been designated as a representative of an organization are deemed members and are invited to attend. All other interested parties are invited to attend and to participate in the NCC processes and its meetings and to become members of the Committee. This policy will ensure balanced participation. Members of the general public may attend the meeting. To attend the first meeting of the Public Safety National Coordination Committee, please RSVP to Solita Griffis or Bertram Weintraub of the Policy and Rules Branch of the Public Safety and Private Wireless Division, Wireless Telecommunications Bureau of the FCC on or before April 22, 1999, by calling (202) 418–0680, by faxing (202) 418–2643, or by E-mailing at bweintra@fcc.gov or solitagriffis@fcc.gov. Please provide your name, the organization you represent, your phone number and fax number. This RSVP is for the purpose of determining the number of people who will attend this first meeting. The FCC will attempt to accommodate as many people as possible. However, admittance will be limited to the seating available. The public may submit written comments to the NCC's Designated Federal Officer before the meeting.

Federal Communications Commission

D'wana R. Terry,

Chief, Public Safety and Private Wireless Division Wireless Telecommunications Bureau.

[FR Doc. 99–9076 Filed 4–9–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL MARITIME COMMISSION

[Petition No. P2–99]

In Re: Request That the Commission Issue Section 15 Orders to the Members of the Transpacific Stabilization Agreement; Notice of Extension of Time

On April 2, 1999, 64 FR 15971, the Commission gave notice that a petition requesting the Commission to issue a section 15 order to the members of the Transpacific Stabilization Agreement had been filed by the Coalition for Fair Play in Ocean Shipping. That Notice established April 9, 1999, as the date set for replies. The Transpacific Stabilization Agreement has requested an extension of time to reply to the petition. TSA asks for a date at least 15 days following the latter of publication in the **Federal Register** or "proper service" by petitioner.

Time to reply will be extended to April 13, 1999, which is 15 days following receipt of the petition by TSA's counsel. Replies shall be directed to the Secretary, Federal Maritime Commission, Washington, DC 20573–0001, shall consist of an original and 15 copies, and shall be served on counsel for Petitioner, Carlos Rodriguez, Esq., Carols Rodriguez & Associates, 1710 Rhode Island Avenue, NW., Washington, DC 20036.

Copies of the petition are available for examination at the Office of the Secretary of the Commission, 800 N. Capitol Street, NW., Room 1046, Washington, DC.

Ronald D. Murphy,

Assistant Secretary.

[FR Doc. 99–9023 Filed 4–9–99; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 6, 1999.

A. Federal Reserve Bank of New York (Betsy Buttrill White, Senior Vice President) 33 Liberty Street, New York, New York 10045-0001:

1. Summit Bancorp, Princeton, New Jersey, and First Valley Corporation, Bethlehem, Pennsylvania; to acquire 100 percent of the voting shares of Prime Bancorp, Inc., Fort Washington, Pennsylvania, and thereby indirectly acquire Prime Bank, Philadelphia, Pennsylvania.

Board of Governors of the Federal Reserve System, April 6, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–8967 Filed 4–9–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval,

pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 7, 1999.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63102-2034:

1. Macks Creek Bancshares, Inc., Macks Creek, Missouri; to become a bank holding company by acquiring at least 80.6 percent of the voting shares of Bank of Macks Creek, Macks Creek, Missouri.

Board of Governors of the Federal Reserve System, April 7, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–9030 Filed 4–9–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 26, 1999.

A. Federal Reserve Bank of Chicago (Philip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1413:

1. Readlyn Bancshares, Inc., St. Paul, Minnesota; to engage *de novo* in making and servicing loans, pursuant to § 225.28(b)(1) of Regulation Y.

Board of Governors of the Federal Reserve System, April 6, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–8966 Filed 4–9–99; 8:45 am]

BILLING CODE 6210–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Cancellation of Requirement for Certification of Used Tire Casings from Asia Prior to Entry into the United States

AGENCY: Centers for Disease Control and Prevention (CDC), HHS.

ACTION: Notice of cancellation of requirement for certification of used tire casings from Asia prior to entry into the United States.

SUMMARY: Since January 1, 1988, CDC has required that all used tire casings imported from Asia must be certified as dry, clean, and free of insects, to prevent further importation of the Asian mosquito *Aedes albopictus*. Despite these efforts, the species is now widely established in 28 states. Because the certification requirements have not proved to be effective, CDC is proposing to rescind them, following a thirty (30)-day period for public comment.

DATES: Written Comments must be received on or before May 12, 1999.

FOR FURTHER INFORMATION CONTACT: Mr. James E. Barrow (404) 639–8107; E-mail jeb1@cdc.gov), Centers for Disease Control and Prevention, 1600 Clifton Rd., NE, National Center for Infectious Diseases, Division of Quarantine, Mail Stop E–03, Atlanta, Georgia, 30333.

SUPPLEMENTARY INFORMATION:

Background

Investigations conducted by CDC in 1986 established that *Aedes albopictus* and other mosquito species were being imported into the United States from Asia in used tire casings. Since these mosquitoes have the potential to transmit certain viral diseases to humans, such as dengue and other arboviruses including several that are native to the Americas, their presence was considered a potential public health threat. As of October 1, 1987, 15 states were known to be infested with *Aedes albopictus*. Interstate trade in used tires was believed to be a major factor in disseminating the species within the United States. Consequently, effective January 1, 1988, under the authority of section 361 of the Public Health Service Act (42 U.S.C. 264) and 42 CFR 71.32(c), CDC imposed a requirement that all used tire casings originating from Asia must be certified as being dry, clean, and disinsected. Specific measures for disinsection and certification were defined in a **Federal Register** notice dated November 20, 1987 (52 FR 44836). In order to monitor compliance with the requirements, the CDC Division of Quarantine conducted an energetic program of random inspections, which showed large-scale noncompliance, even though penalties were imposed.

Despite these enforcement efforts, *Aedes albopictus* has spread to 28 states, the approximate geographic limits of its potential distribution in the United States. A recent CDC study concluded that further colonization within those limits is inevitable. The study, published in the Journal of the American Mosquito Control Association in March 1998 (14:83–94), found that, because of the vast size and distribution of the existing population, the number of mosquitoes that could be introduced from overseas is insignificant. Because of its exploitation of natural and artificial habitats, *Aedes albopictus* is extremely difficult to control and should be considered a permanently established species in the United States. In addition, although it is capable of transmitting numerous viruses, there is to date no evidence of any transmission to humans in the United States. The

effect of the present requirement is therefore negligible, and the cost of the requirement, both to industry and government, can no longer be justified.

Accordingly, CDC is seeking public comment on its proposal to rescind the requirement for certification of used tire casings from Asia prior to entry into the United States. Comments are sought for thirty (30) days, after which CDC will publish in the **Federal Register** a notice and effective date of action.

Dated: April 6, 1999.

Joseph R. Carter,

Acting Associate Director of Management and Operation, Centers for Disease Control and Prevention (CDC).

[FR Doc. 99–8987 Filed 4–9–99; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99N–0670]

Agency Information Collection Activities: Proposed Collection; Comment Request; Labeling Requirements for Color Additives (Other Than Hair Dyes) and Petitions

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish a notice in the **Federal Register** concerning each collection of information, including each proposed extension of an existing collection of information, and allow 60 days for public comment in response to the notice. This notice solicits comments on requirements relating to the approval and labeling of color additives.

DATES: Submit written comments on the information collection requirements by June 8, 1999.

ADDRESSES: Submit written comments on the collection of information to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Peggy Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Labeling requirements for color additives (other than hair dyes)—21 CFR 70.25 and Petitions—21 CFR 71.1 (OMB Control Number 0910–0185—Extension)

Description: Section 721(a) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 379e) provides that a color additive shall be deemed to be unsafe unless the additive and its use are in conformity with a regulation that describes the condition(s) under which the additive may safely be used, or unless the additive and its use conform to the terms of an exemption for investigational use issued under section 721(f) of the act. Color additive petitions are submitted by individuals or companies to obtain approval of a new color additive or a change in the conditions of use permitted for a color additive that is already approved. Section 71.1 (21 CFR 71.1) specifies the information that a petitioner must submit in order to establish the safety of a color additive and to secure the issuance of a regulation permitting its use.

FDA scientific personnel review color additive petitions to ensure that the intended use of the color additive in or on food, drugs, cosmetics, and medical devices is suitable and safe. Color additive petitions were specifically provided for by Congress when it enacted the Color Additive Amendments of 1960 (Pub. L. 94–295). If FDA stopped accepting color additive petitions or stopped requiring them to contain the information specified in § 71.1, the number of new color additives approved would decrease.

FDA's color additive labeling requirements in § 70.25 (21 CFR 70.25) require that color additives that are to be used in food, drugs, devices, or cosmetics be labeled with sufficient information to ensure their safe use.

Description of Respondents: Business or other for profit.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Average Hours per Response	Total Hours	Total Operating & Maintenance Costs
70.25	5	1	5			
71.1	5	1	5	1,866	9,330	$14,200
Total	5		5		9,330	$14,200

[1] There are no capital costs associated with this collection of information.

This estimate is based on the average number of new color additive petitions received in 1997 and 1998. Although the burden varies with the type of petition submitted, a color additive petition involves analytical work and appropriate toxicology studies, as well as the work of drafting the petition itself. Because labeling requirements under § 70.25 for a particular color additive involve information required as part of the color additive petition safety review process, the estimate for the number of respondents is the same for § 70.25 as for § 71.1, and the burden hours for labeling are included in the estimate for § 71.1.

Color additives are subjected to payment of fees for the petitioning process. The listing fee for a color additive petition ranges from $1,600 to $3,000, depending on the intended use of the color and the scope of the requested amendment. A complete schedule of fees is set forth in 21 CFR 70.19. An average of two Category A and three Category B color additive petitions are expected per year. The maximum color additive petition fee for a Category A petition is $2,600 and the maximum color additive petition fee for a Category B petition is $3,000. Because an average of five color additive petitions are expected per calendar year, the estimated total annual cost burden to petitioners for this startup cost would be less than or equal to $14,200 (2 x $2,600 + 3 x $3,000 listing fees = $14,200).

Dated: April 5, 1999.

William K. Hubbard,

Acting Deputy Commissioner for Policy.

[FR Doc. 99–8954 Filed 4–9–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99D–0297]

Draft Guidance for Industry on Formal Dispute Resolution; Appeals Above the Division Level; Availability; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a notice that appeared in the **Federal Register** of March 19, 1999 (64 FR 13587). The document announced an opportunity for public comment on a draft guidance entitled "Formal Dispute Resolution; Appeals Above the Division Level." The notice was published with two inadvertent errors. This document corrects those errors.

FOR FURTHER INFORMATION CONTACT: Karen L. Nelson, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1482.

SUPPLEMENTARY INFORMATION: In FR Doc. 99–6749, appearing on page 13587 in the **Federal Register** of Friday, March 19, 1999, the following corrections are made:

1. On page 13587, in the first column, under the **DATES** caption, the last sentence is corrected to read "Written comments on the information collection provisions must be submitted to the Dockets Management Branch (address below) by May 19, 1999. All comments should be identified with the docket number found in brackets in the heading of this document."

2. On page 13589, in first column, the last paragraph of the document is removed.

Dated: April 6, 1999.

William K. Hubbard,

Acting Deputy Commissioner for Policy.

[FR Doc. 99–8997 Filed 4–9–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99D–0296]

Draft Guidance for Industry on Formal Meetings with Sponsors and Applicants for PDUFA Products; Availability; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a notice that appeared in the **Federal Register** of March 19, 1999 (64 FR 13591). The document announced an opportunity for public comment on a draft guidance entitled "Formal Meetings with Sponsors and Applicants for PDUFA Products." The notice was published with two inadvertent errors. This document corrects those errors.

FOR FURTHER INFORMATION CONTACT: Karen L. Nelson, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1482.

SUPPLEMENTARY INFORMATION: In FR Doc 99–6748, appearing on page 13591 in the **Federal Register** of Friday, March 19, 1999, the following corrections are made:

1. On page 13591, in the third column, under the **DATES** caption, after the last sentence two sentences are added to read "Written comments on the information collection provisions must be submitted to the Dockets Management Branch (address below) by May 19, 1999. All comments should be identified with the docket number found in brackets in the heading of this document."

2. On page 13594, in the first column, the last paragraph of the document is removed.

Dated: April 6, 1999.

William K. Hubbard,

Acting Deputy Commissioner for Policy.

[FR Doc. 99–8998 Filed 4–9–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–460]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Health Care Financing Administration.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Extension of a currently approved collection;

Title of Information Collection: Medicare Participating Physician or Supplier Agreement, HCFA–460;

Form No.: HCFA–460 (OMB# 0938–0373);

Use: The HCFA–460 is completed by nonparticipating physicians and

supplier if they choose to participate in Medicare Part B. By signing the agreement, the physician or supplier agrees to take assignment on all Medicare claims. To take assignment means to accept the Medicare allowed amount as payment in full for the services they furnish and to charge the beneficiary no more than the deductible and coinsurance for the covered service. In exchange for signing the agreement, the physician or supplier receives a significant number of program benefits not available to nonparticipating physicians and suppliers. The information is needed to know to whom to provide these benefits.;

Frequency: Once, unless re-enrolled;

Affected Public: Business or other for-profit, and Individuals or Households;

Number of Respondents: 45,000;

Total Annual Responses: 45,000;

Total Annual Hours: 11,250.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address: HCFA, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards, Attention: Dawn Willinghan, Room N2–14–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: March 31, 1999.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 99–8979 Filed 4–9–99; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

Centers for Disease Control and Prevention; Statement of Organization, Functions, and Delegations of Authority

Part C (Centers for Disease Control and Prevention) of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (45 FR 67772–76, dated October 14, 1980, and corrected at 45 FR 69296, October 20, 1980, as amended most recently at 64 FR 8396, dated February 19, 1999) is amended to reflect the restructuring of the Division of Public Health Surveillance and Informatics, Epidemiology Program Office (EPO), Centers for Disease Control and Prevention (CDC).

Section C–B, Organization and Functions, is hereby amended as follows:

Delete the functional statement for the *Division of Public Health Surveillance and Informatics (CB5)* and insert the following:

(1) Collects, performs analyses, and disseminates public health surveillance information; (2) manages and operates the National Electronic Telecommunications System for Surveillance (NETSS), the National Notifiable Diseases Surveillance System (NNDSS), and the 121 Cities Mortality Reporting System; plans, coordinates, and produces tables, graphs, maps, and figures for the "Annual Morbidity and Mortality Weekly Report (MMWR) Summary of Notifiable Diseases, U.S." and produces MMWR tables from NNDSS; (3) coordinates, develops, implements, and supports CDC-wide public health information systems, including informational and communications applications, directly, as well as in collaboration with other Centers/Institute/Offices (CIOs); (4) develops improved surveillance and public health informatics methods; (5) provides consultation, technical assistance, and training on public health surveillance and health information systems to CDC and to other agencies and domestic and international organizations; (6) coordinates activities of the CDC Surveillance Coordination Group; (7) provides policy and staff support for CDC's Health Information and Surveillance Systems Board; (8) coordinates a CDC-wide initiative aimed at building State and local capacity to perform the core public health function of assessment and use of data for policy development and assurance; (9) provides program support for the development and administration of a CDC training effort in public health informatics; and (10) provides guidance and supervision to EIS Officers and Preventive Medicine Residents assigned to the Division.

Delete the functional statement for the *Office of the Director (CB51)* and insert the following:

(1) Provides leadership and overall direction for the Division; (2) provides leadership and guidance on policy, program planning, program management, and operations; (3) establishes Division goals, objectives, and priorities; (4) monitors progress in implementation of projects and achievement of objectives; (5) provides management, administrative, and support services, and coordinates with appropriate EPO offices on program and administrative matters; (6) provides liaison with other CDC organizations, other governmental agencies, international organizations, the Council of State and Territorial Epidemiologists, and other constituent groups and partners; (7) provides leadership and direction, in collaboration with other CIOs, in the planning and development of computer software for use in surveillance and epidemiology, including testing and revising computer programs; (8) disseminates software for use by public health professionals; (9) plans, allocates, and monitors resources; (10) provides scientific leadership and guidance to the Division to assure highest scientific quality and ethical standards; (11) serves as the Executive Secretariat for CDC's Health Information and Surveillance Systems Board; (12) provides policy support to the Board, including coordination of the activities of the Board's subcommittees and work groups; (13) provides technical assistance, consultation, and guidance to the Board, CDC programs, and constituents on issues related to public health surveillance and health information systems and the Internet; and (14) plans and coordinates the activities of the CDC Surveillance Coordination Group.

Delete in their entirety the title and functional statement for the *Public Health Information Systems Branch (CB53)* and insert the following:

Applied Sciences Branch (CB54). (1) Provides scientific and epidemiologic leadership and direction in public health surveillance and health information systems to CDC and to other agencies and domestic and international organizations; (2) researches and develops new and innovative approaches to the use of technology in surveillance activities; (3) provides guidelines for development, evaluation, and integration of NETSS and other CDC surveillance systems; (4) promotes the dissemination and use of surveillance data; (5) evaluates applicability of outside standards and standard vocabularies to CDC data needs; (6) provides guidance and supervision to EIS Officers, Preventive Medicine Residents, and Public Health Practice Specialists; (7) coordinates a CDC-wide initiative aimed at building

State and local capacity to perform the core public health function of assessment and use of data for policy development and assurance; (8) responsible for management and technical assistance of the Assessment Initiative Cooperative Agreement; (9) provides program support for the development and administration of a CDC training effort in public health informatics; (10) designs curriculum and experiences for the CDC Public Health Informatics Fellowship; and (11) recruits candidates and provides supervision and oversite for the CDC Public Health Informatics Fellows.

Information Technology Branch (CB57). (1) Coordinates, designs, develops, implements, and supports CDC-wide public health, epidemiologic, scientific, and laboratory information systems, including database, informational, and communications applications, in collaboration with other CDC organizations with subject matter expertise and responsibility; (2) collaborates with CDC organizations to jointly develop, test, and implement CDC-wide public health information systems; (3) participates in the development or implementation of CDC plans for public health information systems; (4) researches and develops new and innovative approaches to public health applications development and database design; (5) determines appropriate technology architecture and methodology for Branch-developed systems; (6) maintains inventories and data dictionaries of CDC's public health data; (7) develops and recommends approaches for public health systems and interfaces between various information technologies for sharing data and performing cooperative applications processing; (8) determines, in consultation with CDC organizations and the CDC Systems Security Officer, applicable database and applications security measures in accordance with sensitivity and criticality of the data or system; (9) directly, as well as in collaboration with other CIOs, evaluates and recommends CDC-wide equipment and software acquisition for public health database and communications systems; (10) coordinates the provision of technical support and training in the use of CDC-wide public health information systems purchased or developed by the Branch; and (11) coordinates public health information resource management user groups.

Delete in their entirety the title and functional statement for the *Systems Operation and Information Branch (CB59)* and insert the following:

Surveillance Systems Branch (CB5A). (1) Provides support, technical assistance, and training for new, developmental systems and software for use in surveillance and epidemiology; (2) directly, as well as in collaboration with other CIOs, provides support, technical assistance, consultation, and training on computerized surveillance system development, maintenance, and operation for CDC, States, and international organizations; (3) provides service and support in the expansion of the NETSS; (4) plans and coordinates State-supported activities related to the NETSS; (5) analyzes needs and designs computer systems for use by public health professionals in the effective practice of public health surveillance and epidemiology; (6) assures user support for programs developed and released by the Division; (7) operates and maintains the NETSS, the NNDSS, and the 121 Cities Mortality Reporting System; (8) provides service and support to other CDC programs and State and local health departments to enable program-specific surveillance information to be collected and disseminated through the NETSS; (9) provides support, technical assistance, consultation, and training on surveillance system development, maintenance, and operation for CDC, States, and international organizations; (10) provides leadership and direction in the development of mainframe systems for use in surveillance and epidemiology, directly, as well as in collaboration with other CIOs; (11) plans, coordinates, and produces tables, graphs, maps, and figures for the Annual MMWR Summary of Notifiable Diseases, U.S.; (12) produces MMWR tables from NNDSS; (13) plans, coordinates and develops training and educational materials for all surveillance systems; (14) provides guidance in the development, implementation, and analysis of electronic public health data to international, State, and local groups; and (15) creates, maintains, disseminates, and archives historical public health data in an electronic format.

Dated: April 1, 1999.

Jeffrey P. Koplan,

Director.

[FR Doc. 99–9043 Filed 4–9–99; 8:45 am]

BILLING CODE 4160–18–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of Giant Panda Research Reports

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of the availability of the Zoological Society of San Diego's Giant Panda Research Reports.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces the availability of the Zoological Society of San Diego's (ZSSD) giant panda research reports. The Service issued a permit in 1995 to the ZSSD to import two giant pandas for scientific research. The ZSSD imported the pandas in September 1996. Their research is focused on investigations of the communication system of giant pandas, particularly olfaction. The ZSSD is required to submit an annual report summarizing their research results for each year. The Service is making the reports received to date available to help educate the public and to promote cooperation/collaboration in giant panda conservation efforts.

DATES: The Service will accept requests to obtain a copy of the research reports for 60 days after April 12, 1999.

ADDRESSES: Send your requests to obtain a copy of the research reports to the Chief, Office of Management Authority, U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, Room 700, Arlington, Virginia 22203. You may also send your request by fax at 703–358–2281.

FOR FURTHER INFORMATION CONTACT: Teiko Saito, Chief, Office of Management Authority, telephone (703) 358–2093 or fax (703) 358–2280, (see **ADDRESSES** section).

SUPPLEMENTARY INFORMATION: The giant panda is subject to strict protection by its listing as an endangered species under the U.S. Endangered Species Act (ESA) and it inclusion in Appendix-I of the Convention on International Trade in Endangered Species (CITES). The Service is responsible for protecting pandas by regulating certain activities, including whether to grant permits to allow their movement into and within the United States. In making these decisions under the ESA, the Service must determine whether the proposed activity is not likely to jeopardize the continued existence of the giant panda and would be for scientific research that promotes conservation of the species or enhancement of propagation or survival. Under CITES, the Service must determine if the activity would be for

purposes that are not detrimental to the survival of the species and that are not primarily commercial.

The ZSSD applied for and was granted a permit in 1995 to import two giant pandas for scientific research. They imported the pandas in September 1996. Conditions of the permit require the ZSSD to submit an annual report summarizing the research they conducted for that year. The ZSSD's research is primarily focused on investigating the communication system of giant pandas, particularly the olfactory modality. Their investigations on captive pandas can have implications for management of pandas in the wild. Olfactory signaling plays a key role in mate location, maintaining community social structure and spatial regulation. The ZSSD's panda research has four basic goals: (1) to develop new methodologies for assessing population trends and habitat use in China's spatially restricted reserves; (2) to increase the understanding of physiology, behavior, and reproductive biology, in particular those aspects that would assist in the management of the wild population; (3) to contribute to a more viable collaborative structure for international research efforts in all spheres where giant pandas are found; and (4) to contribute to the process of educating governments, conservation NGOs and the general public on the giant panda's attributes and vulnerability to extinction.

The ZSSD is addressing these goals through a series of studies that have specific aims. The reports reflect the progress that the ZSSD has made toward these goals.

Dated: March 30, 1999.

Teiko Saito,

Chief, Office of Management Authority.

[FR Doc. 99–9028 Filed 4–9–99; 8:45 am]

BILLING CODE 4310–55–U

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–065–1220–00]

AGENCY: Bureau of Land Management, Upper Columbia-Salmon Clearwater Districts, Idaho.

ACTION: Notice of Closure and Restriction Order for BLM Lands in Fiddle Creek Area, Order No. ID–060–14.

SUMMARY: By order, the following closures and restrictions apply to the area known as "Fiddle Creek," described as all public land administered by the Bureau of Land Management in T.25N., R.1E., sections 22, 23, and 27, Idaho County, Idaho.

(1) Camping is prohibited.

(2) The possession or consumption of alcoholic beverages by persons under the age of 21 is prohibited.

For the purpose of this closure, camping is defined as erecting a tent or shelter, preparing a sleeping bag or other bedding material for use, parking a motor vehicle, motor home or trailer for the apparent purpose of overnight occupancy.

The authority for establishing these closures and restrictions is Title 43, CFR, Section 8364.1.

The closures and restrictions are in effect from April 15, 1999 through April 20, 1999.

The closures and restrictions do not apply to:

(1) Any Federal, State, or local law enforcement, rescue or fighting force while in the performance of an official duty.

(2) Any Bureau of Land Management employee, agent, or contractor while in the performance of an official duty.

The closures and restrictions are necessary to protect persons, property, public lands and resources. Persons abusing alcohol cause a public disturbance, particularly at night, and create a risk to other persons on public lands.

Violation of this order is punishable by a fine not to exceed $1,000 and/or imprisonment not to exceed one year.

FOR FURTHER INFORMATION CONTACT: Greg Yuncevich, Area Manager, Bureau of Land Management, Cottonwood Field Office, Route 3, Box 181, Cottonwood, ID 83522.

Dated: March 3, 1999.

Fritz U. Rennebaum,

District Manager.

[FR Doc. 99–8956 Filed 4–9–99; 8:45 am]

BILLING CODE 4310–GG–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–070–99–1030–00]

Notice of Realty Action: Lease

AGENCY: Butte Field Office, Bureau of Land Management, DOI.

ACTION: Notice of Realty Action, proposal to lease Public Land in Lewis & Clark County, Montana.

SUMMARY: The Bureau of Land Management proposes to issue a non-competitive lease on the following described public land to resolve an unintentional occupancy trespass:

Principal Meridian, Montana

T. 12 N., R. 6 W., Sec. 36, a Metes and Bounds tract within Lot 35; comprising 0.90 acres.

The public land is located near Marysville, Montana approximately 20 miles northwest of Helena, Montana.

The lease would be issued under Section 302 of the Federal Land Policy and Management Act (FLPMA) of 1976: 43 U.S.C. 1732, and subsequent regulations found at 43 CFR Part 2920. The lease would be issued for a term of 30 years with the right of renewal. Fair market rental will be collected on 5 year intervals subject to reappraisal at the beginning of each period. A final determination on the lease of the public land will be made after completion of the environmental assessment.

DATES: For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the Butte Field Manager, P.O. Box 3388, Butte, Montana 59702.

FOR FURTHER INFORMATION CONTACT: Gary Beals, Realty Specialist, P.O. Box 3088, Butte, Montana 59702; telephone 406–494–5059.

Dated: March 30, 1999.

Merle Good,

Field Manager.

[FR Doc. 99–9032 Filed 4–9–99; 8:45 am]

BILLING CODE 4310–DN–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV030–5700–77; N–49077]

Notice of Realty Action: Amendment to Airport Lease; Lyon County, Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management has received a request to amend an airport lease for the Tiger Field Airport (BLM Public Airport Lease N–49077) pursuant to the Act of May 24, 1928 (49 U.S.C. 211–214) to extend the lease term for a 10-year period (October 19, 1999 through October 18, 2009), to partially assign the lease so that it is held by Sheri Hill and Toybox Enterprises, Inc. and to add 84.68 acres to the lease. The amended lease area would include the following described lands:

All that certain land situated in a portion of section 36, Township 20 North, Range 24 East, Mount Diablo Meridian, Lyon County, Nevada; beginning at the south ¼ corner of section 36, thence from said point of

beginning and along the southerly line of said section 36, north 89°25′26″ west a distance of 317.89 feet; thence leaving said southerly line, north 17°06′18″ west a distance of 4,800.87 feet; thence south 65°51′05″ west a distance of 1,159.26 feet to a point on the westerly line of said section 36; thence along the said westerly line, north 1°49′18″ west a distance of 1,182.74 feet to the northwest corner of said section 36; thence along the northerly line of said section 36, south 89°44′15″ east a distance of 1,713.19 feet to a point on the westerly right of way of U.S. Highway Alternate 95 as shown on said record of survey; thence along said right of way south 16°33′14″ east a distance of 3,979.45 feet to a point of intersection with the north-south ¼ section of said section 36; thence along said north-south ¼ section line, south 0°50′22″ west a distance of 1,477.39 feet to the point of beginning.

Containing 111.71 acres more or less.

DATES AND ADDRESSES: Upon publication of this notice in the **Federal Register**, those public lands described above, not previously segregated, will become segregated from appropriation under the public land and mining laws, but not the mineral leasing laws. For a period of 45 days after publication of this notice in the **Federal Register**, interested parties may submit comments to Margaret L. Jensen, Assistant Manager, Carson City Field Office, 5665 Morgan Mill Road, Carson City, Nevada 89701. Comments, including names and street addresses of respondents, will be available for public review at the above address during regular business hours. Individual respondents may request confidentiality. If you wish to withhold your name or street address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public inspection in their entirety.

SUPPLEMENTARY INFORMATION: On October 19, 1989, certain public lands in Lyon County, Nevada were leased to Leland B. Hill for public airport purposes. The lease was amended on June 14, 1995 to reflect an adjustment in lease boundaries. Leland B. Hill is now deceased and the original lease term of 10 years is nearing expiration. Airport use is anticipated to continue and increase based on residential and recreational development on adjoining private lands. For further information contact Jo Ann Hufnagle, Bureau of Land Management Carson City Field Office at (775) 885–6000.

Dated this 1st day of April, 1999.

Margaret L. Jensen,

Assistant Manager, Carson City Field Office.

[FR Doc. 99–8980 Filed 4–9–99; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–930–1430–01; N–51528]

Notice of Realty Action; Recreation and Public Purposes Act Classification; Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The following described land in Elko County, Nevada, has been examined and identified as suitable for classification for lease, with the option to purchase after development, under the provisions of the Recreation and Public Purpose (R&PP) Act of June 14, 1926, as amended, (43 U.S.C. 869 *et seq.*). The City of Elko proposes to use the land for expansion of the existing Elko municipal golf course.

Mount Diablo Meridian, Nevada

T. 34 N., R. 55 E.

Section 3, E½SW¼SW¼, W½SE¼SW¼, SE¼SE¼SW¼.

Containing 50.00 acres, more or less.

The lands are not needed for Federal purposes. Lease or conveyance is consistent with current BLM land use planning and would be in the public interest. The land would not be offered for lease until at least 60 days after the date of publication of this notice in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Detailed information concerning this action is available for review at the Bureau of Land Management, Elko Field Office, 3900 E. Idaho Street, Elko, Nevada.

SUPPLEMENTARY INFORMATION: The City of Elko has made application to acquire the land to expand the existing Elko municipal golf course. The action would allow construction of an additional nine holes. The lease/patent, when issued, would be subject to the provisions of the Recreation and Public Purpose Act, applicable regulations of the Secretary of the Interior, and will contain the following reservations to the United States:

1. A right-of-way thereon for ditches and canals constructed by the authority of the United States, Act of August 30, 1890, (43 U.S.C. 945).

2. All minerals shall be reserved to the United States, together with the right to prospect for, mine, and remove such deposits from the same under application law and such regulations as the Secretary may prescribe.

Upon publication of this Notice in the **Federal Register**, the above described land will be segregated from all other forms of appropriation under the public land laws except for lease or conveyance under the Recreation and Public Purpose Act, the general mining laws, and leasing under the mineral leasing laws. The segregative effect will terminate upon issuance of a patent or as specified in an opening order to be published in the **Federal Register**, whichever comes first.

For a period of 45 days from the date of this publication in the **Federal Register**, interested persons may submit comments regarding the proposed classification or conveyance of the land to the District Manager, Elko Field Office, 3900 E. Idaho St., Elko, Nevada, 89801. Any objections will be evaluated by the State Director, who may sustain, vacate or modify this realty action. In the absence of any adverse comments, the classification of the lands described in this Notice will become effective 60 days from the date of publication in the **Federal Register**.

CLASSIFICATION COMMENTS: Interested parties may submit comments involving the suitability of the land for a golf course. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

APPLICATION COMMENTS: Interested parties may submit comments regarding the specific use proposed in the application and plan of development, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for a golf course.

Dated: April 2, 1999.

David L. Stout,

Associate Field Manager.

[FR Doc. 99–9031 Filed 4–9–99; 8:45 am]

BILLING CODE 4310–HC–U

DEPARTMENT OF THE INTERIOR

National Park Service

Death Valley National Park, Advisory Commission; Notice of Meeting

Notice is hereby given in accordance with the Federal Advisory Commission Act that a meeting of the Death Valley National Park Advisory Commission will be held April 21 and 22, 1999; assemble at 8:30 a.m. in the Auditorium at Stove Pipe Wells Motel, Death Valley National Park, Death Valley, California.

The main agenda will include:

- Updates on various Development Concept Plans and other plans
- Updates on Fee Demonstration and other programs in the park
- Field trip to various locations within Death Valley National Park

The Advisory Commission was established by PL #03–433 to provide for the advice on development and implementation of the General Management Plan.

Members of the Commission are Janice Allen, Kathy Davis, Michael Dorame, Mark Ellis, Pauline Esteves, Stanley Haye, Sue Hickman, Cal Jepson, Joan Lolmaugh, Gary O'Connor, Alan Peckham, Michael Prather, Robert Revert, Wayne Schulz, and Gilbert Zimmerman.

This meeting is open to the public.

Richard H. Martin,

Superintendent, Death Valley National Park.

[FR Doc. 99–8841 Filed 4–9–99; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

Manzanar National Historic Site, Advisory Commission; Notice of Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the Manzanar National Historic Site Advisory Commission will be held at 1:00 p.m. on Friday, April 23, 1999, at the Inyo County Administrative Center, Board of Supervisors' Chambers, 224 N. Edwards Street (U.S. Highway 395), Independence, California, to hear presentations on issues related to the planning, development, and management of Manzanar National Historic Site.

The Advisory Commission was established by Public Law 102–248, to meet and consult with the Secretary of the Interior or his designee, with respect to the development, management, and interpretation of the site, including preparation of a general management plan for the Manzanar National Historic Site.

Members of the Commission are as follows:

Rose Ochi, Chairperson, William Michael, Vice Chairperson, Keith Bright, Martha Davis, Sue Kunitomi Embrey, Gann Matsuda, Vernon Miller, Mas Okui, Glenn Singley, Richard Stewart.

The main agenda items at this meeting of the Commission will include the following:

(1) Status report on the development of Manzanar National Historic Site by Superintendent Ross R. Hopkins.

(2) General discussion of miscellaneous matters pertaining to future Commission activities and Manzanar National Historic Site development issues.

(3) Public comment period.

This meeting is open to the public. It will be recorded for documentation and transcribed for dissemination. Minutes of the meeting will be available to the public after approval of the full Commission. A transcript will be available after June 1, 1999. For a copy of the minutes, contact the Superintendent, Manzanar National Historic Site, PO Box 426, Independence, CA 93526.

Dated: April 1, 1999.

Richard H. Martin,

Superintendent, Manzanar National Historic Site.

[FR Doc. 99–8868 Filed 4–9–99; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Preservation Technology and Training Board; Meeting

AGENCY: National Park Service, Department of the Interior.

ACTION: Notice of meeting of the National Preservation Technology and Training Board.

Notice is hereby given in accordance with the Federal Advisory Committee Act, 5 U.S.C. Appendix (1988), that the National Preservation Technology and Training Board will meet on May 10, 11 and 12, in Durango, Colorado.

The Board was established by Congress to provide leadership, policy advice, and professional oversight to the National Center for Preservation Technology and Training, as required under the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470).

The Board will meet on the campus of Fort Lewis College of Durango, Colorado in the Memorial Lounge at the CUB (student center) on the campus of Fort Lewis College in Durango, Colorado. Matters to be discussed will include, officer and task force reports on NCPTT development and systems, and Millenium projects; Northwestern University report; staff program updates; the establishment of non-Federal support for the Center's programs; grant application review report; grant program, and long range plan considerations.

Monday, May 10 the meeting will start at 8:30 a.m. and end at 5:00 p.m. On Tuesday, May 11 the meeting will start at 8:30 a.m. and end at 11:30 a.m. On Wednesday, May 12, the meeting will be begin at 8:30 a.m. and end at 11:30 a.m. Meetings will be open to the public. However, facilities and space for accommodating members of the public are limited and persons will be accommodated on a first-come, first-served basis. Any member of the public may file a written statement concerning the matters to be discussed with Dr. Elizabeth A. Lyon, Chair, National Preservation Technology and Training Board, P.O. Box 1269, Flowery Branch, Georgia 30542.

Persons wishing more information concerning this meeting, or who wish to submit written statements, may do so by contacting Mr. E. Blaine Cliver, Chief, HABS/HAER, National Park Service, 1849 C Street NW, Washington, DC 20240, telephone: (202) 343–9573. Draft summary minutes of the meeting will be available for public inspection about eight weeks after the meeting at the office of the Preservation Assistance Division, Suite 200, 800 North Capitol Street, Washington, DC.

Dated: April 7, 1999.

John A. Burns,

Acting Chief, HABS/HAER Designated Federal Official, National Park Service.

[FR Doc. 99–9055 Filed 4–9–99; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of Information Collection under Review: Application of Temporary Replacement Card.

The Department of Justice, Immigration and Naturalization Service (INS) has submitted the following

information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on August 13, 1998 at 63 FR 43417, allowing for a 60-day public comment period. No comments were received by the INS on this proposed information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until May 12, 1999. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Stuart Shapiro, Department of Justice Desk Officer, Room 10235, Washington, DC 20530; 202–395–7316.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Reinstatement without change of a previously approved collection.

(2) *Title of the Form/Collection:* Application of Temporary Replacement Card.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form I–695, Adjudications Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or Households. This information collected on this application will be used by the INS to consider application for replacement of temporary resident card. Also used to request a new card when previously lost, stolen or destroyed.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 396 responses at 10 minutes (.166) hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 66 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 5307, 425 I Street, NW., Washington, DC 20536.

Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW, Washington, DC 20530.

Dated: April 1, 1999.

Richard A. Sloan,

Department Clearance Officer, United States Department of Justice, Immigration and Naturalization Service.

[FR Doc. 99–8961 Filed 4–9–99; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of Information Collection under Review: Guidelines on Producing Master Exhibits for Asylum Applications.

The Department of Justice, Immigration and Naturalization Service (INS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on August 26, 1998 at 63 FR 45517, allowing for a 60-day public comment period. No comments were received by the INS on this proposed information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until May 12, 1999. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Stuart Shapiro, Department of Justice Desk Officer, Room 10235, Washington, DC 20530; 202–395–7316.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Reinstatement without change of a previously approved collection.

(2) *Title of the Form/Collection:* Guidelines for Producing Master Exhibits for Asylum Applications.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* No Agency Form Number,

Asylum Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstracts:* Primary: Not-for-Profit Institutions. Master Exhibits area means by which credible information on country conditions related to asylum applications are made available to Asylum and Immigration Officers for use in adjudicating cases.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 20 responses at 80 hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 1,600 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 5307, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW, Washington, DC 20530.

Dated: April 1, 1999

Richard A. Sloan,

Department Clearance Officer, United States Department of Justice, Immigration and Naturalization Service.

[FR Doc. 99–8962 Filed 4–9–99; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of Information Collection under Review: Emergency Federal Law Enforcement Assistance.

The Department of Justice, Immigration and Naturalization Service (INS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on August 27, 1998 at 63 FR 45863, allowing for a 60-day public comment period. No comments were received by the INS on this proposed information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until May 12, 1999. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Stuart Shapiro, Department of Justice Desk Officer, Room 10235, Washington, DC 20530; 202–395–7316.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Reinstatement without change of a previously approved collection.

(2) *Title of the Form/Collection:* Emergency Law Enforcement Assistance.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* No Agency Form Number, Office of General Counsel Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: State, Local or Tribal Governments. This collection of information is needed for the States and localities to submit claims for reimbursement in connection with immigration emergencies.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 10 responses at 30 hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 300 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Policy Directive and Instruments Branch, Immigration and Naturalization Service U.S. Department of Justice, Room 5307, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW., Washington, DC 20530.

Dated: April 1, 1999.

Richard A. Sloan,

Department Clearance Officer, United States Department of Justice, Immigration and Naturalization Service.

[FR Doc. 99–8963 Filed 4–9–99; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of information collection under review: Notice of Immigration Pilot Program.

The Department of Justice, Immigration and Naturalization Service (INS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork

Reduction Act of 1995. The information collection was previously published in the **Federal Register** on August 25, 1998 at 63 FR 45261, allowing for a 60-day public comment period. No comments were received by the INS on this proposed information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until May 12, 1999. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Stuart Shapiro, Department of Justice Desk Officer, Room 10235, Washington, DC 20530; 202–395–7316.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) Type of Information Collection: Reinstatement without change of a previously approved collection.

(2) Title of the Form/Collection: Notice of Immigration Pilot Program.

(3) Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: No Agency Form Number, Adjudications Division, Immigration and Naturalization Service.

(4) Affected public who will be asked or required to respond, as well as a brief abstract: Primary: Individuals or Households. This information collection is used by the Service to determine participants in the Pilot Immigration Program provided for by section 610 of the Appropriations Act. The Service will select regional center(s) that are responsible for promoting economic growth in a geographical area.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: 50 responses at 40 hours per response.

(6) An estimate of the total public burden (in hours) associated with the collection: 2,000 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 5307, 425 I Street, NW, Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW, Washington, DC 20530.

Dated: April 1, 1999.

Richard A. Sloan,

Department Clearance Officer, United States Department of Justice, Immigration and Naturalization Service.

[FR Doc. 99–8964 Filed 4–9–99; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of information collection under review; application to adjust status from temporary to permanent resident.

The Department of Justice, Immigration and Naturalization Service has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for "sixty days" until June 11, 1999.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) Type of Information Collection: *Reinstatement without change of previously approved collection.*

(2) Title of the Form/Collection: Application to Adjust Status from Temporary to Permanent Resident.

(3) Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form I–698. Adjudications Division, Immigration and Naturalization Service.

(4) Affected public who will be asked or required to respond, as well as a brief abstract: Primary: Individuals or households. This form will be used by the Service to collect necessary information to adjudicate the application for permanent residence and issue an Alien Registration Card.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: 1,179 responses at 1 hour per response.

(6) An estimate of the total public burden (in hours) associated with the collection: 1,179 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Policy Directives and

Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 5307, 425 I Street, NW, Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW, Washington, DC 20530.

Dated: April 1, 1999.

Richard A. Sloan,

Department Clearance Officer, United States Department of Justice, Immigration and Naturalization Service.

[FR Doc. 99–8965 Filed 4–9–99; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Office of Justice Programs

Bureau of Justice Assistance; Agency Information Collection Activities; Proposed Collection; Comment Request

ACTION: Notice of information collection under review; Reinstatement, without change, of a previously approved collection for which approval has expired; BJA-Byrne Formula Grant Program annual institutionalization survey for subgrants.

The Department of Justice, Office of Justice Programs has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. Office of Management and Budget approval is being sought for the information collection listed below. The proposed information collection was previously published in the **Federal Register** on May 2, 1997, allowing for a 60-day public comment period.

The purpose of this notice is to allow an additional 30 days for public comment until May 12, 1999. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer, Washington, D.C. 20503. Additionally, comments may be submitted to OMB via facsimile to 202–395–7285.

Comments may also be submitted to the Department of Justice (DOJ), Justice Management Division, Information Management and Security Staff, Attention: Department Deputy Clearance Officer, Suite 850, 1001 G Street, NW, Washington, D.C., 20530. Written comments and suggestions from the public and affected agencies should address one or more of the following points:

(1) evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency/component, including whether the information, will have practical utility;

(2) evaluate the accuracy of the agencies/components estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) enhance the quality, utility, and clarity of the information to be collected; and

(4) minimize the burden of the collection of information to those who are to respond, including through the use appropriate automated, electronic, mechanical, or other technological techniques or other forms of information technology, e.g. permitting electronic submissions of responses.

Overview of This Information Collection

(1) *Type of information collection:* Reinstatement, without change, of a previously approved collection for which approval has expired.

(2) *The title of the form/collection:* BJA-Byrne Formula Grant Program Annual Institutionalization Survey for Subgrants

(3) *The agency form number, if any, and the applicable component of the Department sponsoring the collection: Form:* None. Bureau of Justice Assistance, Office of Justice Programs, United Stated Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* State Government (State Administrative Agencies). *Other:* None. The Byrne Formula Grant Program was created by the Anti-Drug Abuse Act of 1988, and is designed to provide support to its constituency group of state and local criminal justice agencies to initiate innovative projects that respond effectively to crime problems and improve operations of the Nation's criminal justice system.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* The time burden of the 56 respondents to complete the surveys for all 3,936 projects funded in FY 1992, is 5 minutes per survey. The time burden of the 56 respondents to complete the surveys for the estimated 520 projects that were expected to continue after Byrne funding ceased in FY 1992, but were not refunded, is 45 minutes per survey.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total annual hour burden to complete surveys for the FY 1992 Byrne-funded projects and those that were not refunded is 720 annual burden hours.

Public comment on this proposed information collection is strongly encouraged.

Dated: April 6, 1999.

Brenda E. Dyer,

Department Deputy Clearance Officer, Department of Justice.

[FR Doc. 99–8989 Filed 4–9–99; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF JUSTICE

Office of Justice Programs

Bureau of Justice Statistics; Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of information collection under review; National crime victimization survey, Police public contact survey (Revision of a currently approved collection).

The Bureau of Justice Statistics, Office of Justice Programs, United States Department of Justice, has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. Office of Management and Budget (OMB) approval is being sought for information collection listed below. This proposed information collection was previously published in the **Federal Register** on February 22, 1999, allowing for 60 days for public comment.

The purpose of this notice is to allow an additional 30 days for public comments until May 12, 1999. This process is conducted in accordance with 5 Code of Federal Regulation, Part 1320, 10.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer, Washington, DC 20530. Comments may also be submitted to the

Department of Justice (DOJ), Justice Management Division, Information Management and Security Staff, Attention: Department Deputy Clearance Officer, Suite 850, 1001 G Street, NW, Washington, DC 20530.

Written comments and/or suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency/component, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's/component's estimate of the burden of the collection of information including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technologies collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information:

(1) *Type of information collection:* Regular collection (Revision of a currently approved collection.)

(2) *The title of the form/collection:* National Crime Victimization Survey, Police Public Contact Supplement.

(3) *The agency form number, if any, and the applicable component of the department sponsoring the collection:* PPCS–1.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Eligible respondents to the survey must be age 12 or older. The Police Public Contract Supplement fulfills the mandate set forth by the Violent Crime Control and Law Enforcement Act of 1994 to collect, evaluate, and publish data on the use of the excessive force by law enforcement personnel. The survey will be conducted as a supplement to the National Crime Victimization Survey in all sample households for a six (6) month period. *Other:* None.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* 94,500 respondent at an average of 0.05 hours (1 minute each) plus the 55 minutes for the NCVS questionnaire.

(6) *An estimate of the total public burden (in hours) associated with the collecton:* 4,734 total hours in addition to the 88,282 total hours for the NCVS questionnaire for a grand total of 93,016 hours.

If additional information is required, contact: Mrs. Brenda E. Dyer, Deputy Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Sutie 850, Washington Center, 1001 G Street, NW, Washington, DC 20530.

Dated: April 6, 1999.

Brenda E. Dyer,

Department Deputy Clearance Officer, Department of Justice.

[FR Doc. 99–8990 Filed 4–9–99; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF JUSTICE

Office of Justice Programs

Bureau of Justice Assistance; Agency Information Collection Activities; Proposed Collection; Comment Request

ACTION: Notice of information collection under review; (Reinvestment without change, of a previously approved collection for which approval has expired). Denial of Federal benefits for drug offenders.

The Department of Justice, Office of Community Oriented Policing Services, has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. Office of Management and Budget approval is being sought for the information collection listed below. This proposed information collection was previously published in the **Federal Register** on December 3, 1998, allowing for a 60-day public comment period.

The purpose of this notice is to allow an additional 30 days for public comment until May 12, 1999. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer, Washington, DC 20530. Additionally, comments may be submitted to OMB via facsimile to (202) 395–7285. Comments may also be submitted to the Department of Justice (DOJ), Justice Management Division, Information Management and Security Staff, Attention: Department Deputy Clearance Officer, Suite 850, 1001 G Street, NW, Washington, DC 20530.

Written comments and/or suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technologies collection techniques or other forms of information technology, e.g., permitting electronic submission of responses

Overview of this information:

(1) *Type of information collection:* Reinstatement without change, of a previously approved collection for which approval has expired.

(2) *The title of the form/collection:* Denial of Federal Benefits for Drug Offenders.

(3) *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* The form number is 3500/2, Office of Justice Programs, Bureau of Justice Assistance, United States Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* State Courts. *Other:* none.

The Denial of Federal Benefits for Drug Offenders, P.L. 100–690, contains a collection of information requirements to ensure that convicted offenders do not receive Federal benefits that have been denied by court action.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that 500 respondents will compete this form. A respondent will take an estimate of 5 minutes to complete each form.

(6) *An estimate of the total public (in hours) associated with the collection:* It is estimated that the total public burden associated with this collection is 41 annual burden hours.

If additional information is required contact: Mrs. Brenda E. Dyer, Deputy Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW, Washington, DC 20530.

Dated: April 7, 1999.

Brenda E. Dyer,

Department Deputy Clearance Officer, Department of Justice.

[FR Doc. 99–8991 Filed 4–9–99; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF JUSTICE

Parole Commission

Sunshine Act Meeting

Public Announcement

Pursuant To The Government In the Sunshine Act (Public Law 94–409) [5 U.S.C. Section 552b]

AGENCY HOLDING MEETING: Department of Justice, United States Parole Commission.

TIME AND DATE: 11:00 a.m., Wednesday, April 14, 1999.

PLACE: Friendship Heights Village Center, Classroom #2, 4433 South Park Avenue, Chevy Chase, Maryland 20815.

STATUS: Open.

MATTERS TO BE CONSIDERED:

The following matters have been placed on the agenda for the open Parole Commission meeting:

1. Approval of minutes of previous Commission meeting.
2. Reports from the Chairman, Commissioners, Legal, Chief of Staff, Case Operations, and Administrative Sections.
3. Discussion regarding the costs of Home Detention.
4. Discussion regarding the Special Parole Term Circuit Split.

AGENCY CONTACT: TOM KOWALSKI, Case Operations, United States Parole Commission, (301) 492–5962.

Dated: April 6, 1999.

Michael A. Stover,

General Counsel, U.S. Parole Commission.

[FR Doc. 99–9176 Filed 4–8–99; 2:21 am]

BILLING CODE 4410–31–M

DEPARTMENT OF JUSTICE

Parole Commission

Sunshine Act Meeting

AGENCY HOLDING MEETING: Department of Justice, United States Parole Commission.

DATE AND TIME: 9:30 a.m., Wednesday, April 14, 1999.

PLACE: Friendship Heights Village Center, Classroom #2, 4433 South Park Avenue, Chevy Chase, Maryland 20815.

STATUS: Closed-Meeting.

MATTERS CONSIDERED:

The following matter will be considered during the closed portion of the Commission's Business Meeting:

Appeals to the Commission involving approximately six cases decided by the National Commissioners pursuant to a reference under 28 CFR 2.27. These cases were originally heard by an examiner panel wherein inmates of Federal prisons have applied for parole or are contesting revocation of parole or mandatory release.

AGENCY CONTACT: Tom Kowalski, Case Operations, United States Parole Commission, (301) 492–5962.

Dated: April 6, 1999.

Michael A. Stover,

General Counsel, U.S. Parole Commission.

[FR Doc. 99–9177 Filed 4–8–99; 2:21 pm]

BILLING CODE 4410–31–M

DEPARTMENT OF JUSTICE

Office of Justice Programs

Office for Victims of Crime Agency; Information Collection Activities; Proposed Collection Comment Request

ACTION: Notice of information collection under review; Reinstatement with no change, of a previously approved collection for which approval has expired; Victims of Crime Act, Crime Victim Assistance Grant Program Performance Report.

Office of Management and Budget (OMB) approval is being sought for the information collected listed below. This proposed information collection was previously published in the **Federal Register** and allowed 60 days for public comment.

The purpose of this notice is to allow an additional 30 days for public comment from May 12, 1999. This process is conducted in accordance with 5 Code of Federal Regulation, Part 1320.10.

Written comments and/or suggestions regarding the item(s) contained in this notice especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Regulatory Affairs, Attention: Department of Justice Desk Officer, Washington, DC 20530. Additionally, comments may be submitted to OMB via facsimile to (202) 395–7285.

Written comments and suggestions from the public and affected agencies should addressed the following points:

(1) Does the proposed information collection instrument include all relevant program performance measures;

(2) Does the proposed information to be collected have practical utility;

(3) Does the proposed information to be collected enhance the quality and clarity of the information to be collected; and

(4) Does the proposed information to be collected minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information

(1) *Type of information collection:* Reinstatement, with no change, of a previously approved collection for which approval has expired.

(2) *The title of the form/collection:* Victims of Crime Act, Crime Victim Assistance Grant Program Performance Report.

(3) The agency form number if any, the applicable component of the Department sponsoring the collection. *Form:* OJP Admin. Form 7330 (Rev. 11/95), Office for Victims of Crime, Office of Justice Programs, U.S. Department of Justice.

(4) Affected public who will be asked or required to respond, as well as a brief abstract. *Primary:* State government. *Other:* None.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent/reply:* The information to compile these reports will be drawn from victim assistance program data to the 57 respondents (grantees). The number of victim assistance programs vary widely from state to state. A grantee could be responsible for compiling subgrant data for as many of 186 programs (Texas) to as few as four (4) programs (Guam). Therefore, the estimated clerical hours can range from 1 to 70 hours.

(6) *An estimate of the total burden (in hours) associated with the collection:* the current estimated recordkeeping and reporting burden is 1,197 (20 hours per respondent (estimated median) + 1 hour per respondent for recordkeeping × 57 respondents for recordkeeping = 1,197 hours). There is no increase in the annual recordkeeping and reporting burden.

If additional information is required contact: Ms. Brenda E. Dyer, Deputy Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice

Management Division, Suite 850, Washington, DC 20530.

Brenda E. Dyer,

Department Deputy Clearance Officer, United States Department of Justice.

[FR Doc. 99–8988 Filed 4–9–99; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF LABOR

Employment and Training Administration

Job Corps: Preliminary Finding of No Significant Impact (FONSI) for the New Job Corps Center Located Off Walgreen Road in Jacksonville, FL

AGENCY: Employment and Training Administration, Labor.

ACTION: Preliminary Finding of No Significant Impact (FONSI) for the New Job Corps Center to be located off of Walgreen Road in Jacksonville, Florida.

SUMMARY: Pursuant to the Council on Environmental Quality Regulation (40 CFR Part 1500–08) implementing procedural provisions of the National Environmental Policy Act (NEPA), and the Department of Labor, Employment and Training Administration, Office of Job Corps, in accordance with 29 CFR 11.11(d), gives notice that an Environmental Assessment (EA) has been prepared and the proposed plans for a new Job Corps Center will have no significant environmental impact. This Preliminary Finding of No Significant Impact (FONSI) will be made available for public review and comment for a period of 30 days.

DATES: Comments must be submitted by May 12, 1999.

ADDRESSES: Any comment(s) are to be submitted to Amy J. Knight, Employment and Training Administration, Department of Labor, 200 Constitution Avenue, NW, Room N–4659, Washington, DC 20210, (202) 219–5468 ext. 103 (this is not a toll-free number).

FOR FURTHER INFORMATION CONTACT: Copies of the EA and additional information are available to interested parties by contacting Melvin R. Collins, Regional Director, Region IV (Four), Office of Job Corps, 61 Forsyth Street, Atlanta, GA 30303, (404) 562–2382 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION:

The proposed development site is located approximately 2.9 miles northeast of the Jacksonville City Hall and is located off of Walgreen Road in Jacksonville, Duval County, Florida. The EA indicates that the site is located within an approximate 40-acre wooded and undeveloped parcel. The subject property has undeveloped parcels of land as well as land developed with commercial, industrial, and residential properties in the vicinity (one eighth mile).

The property is currently owned by JARU Inc., Mr. Lawrence and Linda DuBow, and Mr. Leonard Setzer. The site does not contain any structures, and historical aerial photographs indicate that the property has been wooded dating back to 1951, with the exception of a small residential structure that was historically found in the northeast corner of the subject property. The structure is no longer standing, but a portion of the foundation is still standing.

The proposed Jacksonville Job Corps Center will be a totally new facility utilizing a campus setting. The new Job Corps Center will replace the existing Job Corps facility currently located at 205 West Third Street in Jacksonville, Florida. The new facility will consist of multiple buildings which will support 272 Resident Students and 28 Non-resident Students. The new facility will consist of no fewer than eight buildings, including dormitories, vocational shops, maintenance and warehouse, cafeteria, physical fitness center, administration and support facilities, and classroom facilities. There will be one dormitory building for males and one dormitory building for females, with a capacity of 136 students each. Classroom space will be provided in an education building. There will also be a vocational education building, a cafeteria/culinary arts building, a recreation building, an administration and medical/dental building, and a maintenance/warehouse building. The gross area of the facility will be 151,500 square feet, not including proposed outdoor recreation areas. The proposed project will be constructed in accordance with local fire and building code requirements.

The construction of the Job Corps Center on this undeveloped parcel would be a positive asset to the area in terms of environmental and socioeconomic improvements, and long-term productivity. The construction of the proposed Job Corps Center will provide employment opportunities for Jacksonville, Florida area residents. The Job Corps program provides basic education, vocational skills training, work experience, counseling, health care and related support services for young adults; the program is designed to graduate students who are ready to participate in the local economy.

The proposed project will not have any significant adverse impact on any natural systems or resources. All construction or development activities that will possibly impact jurisdictional wetland areas will be conducted in compliance with federal and state requirements. There are no historically significant buildings on the site, and no areas of archaeological significance. No state or federal threatened or endangered species (proposed or listed) have been located on the subject property.

Air quality and noise levels should not be affected by the proposed development project in the light industrial area in Jacksonville, Florida. Due to the nature of the proposed project, it would not be a source of air pollutants or additional noise, except possibly during construction of the facility. All construction activities will be conducted in accordance with applicable noise and air pollution regulations, and all pollution sources will be permitted in accordance with applicable pollution control requirements. The proposed Job Corps Center will not significantly increase the vehicle traffic in the vicinity.

The proposed project will not have any significant adverse impact on the surrounding water, sewer, and storm water management infrastructure. Water and sewage service for the new facility will be provided by the Jacksonville Electric Authority (JEA). These utility systems are readily accessible and have sufficient capacity to accommodate the new Job Corps Center. All wastewater from the center will be treated at JEA's Main Street wastewater treatment plant. All drinking water will be provided by the JEA's Buckman water treatment plant, which is the municipal water supply for the surrounding area. Drinking water for the Buckman plant is obtained from deep wells into the Florida Aquifer. Storm water runoff from parking lots, sidewalks, and other structures will be managed in accordance with the requirements of the St. Johns River Water Management District (SJRWMD), and storm water runoff is not anticipated to adversely impact area surface water quality.

The City of Jacksonville, Office of Solid Waste and Resource Management, operates its own landfill (Trail Ridge Landfill). Municipal solid waste is collected weekly by the city. The estimated life remaining at the landfill is 21 years, based on recent implementation of a recycling program. Waste disposal at the new Job Corps Center will be provided by either the Office of Solid Waste and Resource Management, or one of several waste disposal contractors currently servicing the community. The construction and

relocation of the existing Job Corps Center to this new site is not expected to increase demand for space at the Trail Ridge Landfill.

JEA provides electrical service to the project site. Natural gas is provided by Florida Gas Transmission Company, and telephone service is provided by BellSouth. All of these utilities have distribution lines in the vicinity which have sufficient capacity to handle the increased service demand created by the new Job Corps Center. The increased demand for utility services is not expected to have a significant adverse affect on the environment.

Walgreen Road leads directly to the proposed project site but not onto the subject property. Walgreen Road connects to Golfair Road, to the south, which leads to several other main thoroughfares within the City of Jacksonville and is part of the Jacksonville Transit Authority route. These services can be used to access all aspects of the greater Jacksonville area. Roadways will need to be constructed on the new Job Corps Center project site, but no significant adverse affects are expected.

No significant adverse affects should be felt by the local medical, emergency, fire and police facilities. There are several primary providers of medical services in the Jacksonville area. The primary medical provider located closest to the subject property is the Methodist Medical Center. There are also private medical facilities located in the Jacksonville area. The Job Corps Center will also have a small medical and dental facility on-site for use by the residents as necessary.

Security services at the Jacksonville Job Corps will be provided by the center's staff, with two personnel on the day shift, three on evening shift, and two on the night shift. It is not anticipated that the Job Corps Center will need additional security support from the community. Police services are provided by the Jacksonville Police Department, the Duval County Sheriff's Office, and the Florida State Police. The Jacksonville Police substation serving the proposed subject property is the Zone 1, Substation Norwood, which is located at the Gateway Shopping Plaza. No police services will be adversely impacted by proposed Job Corps Center.

The City of Jacksonville will provide fire and emergency response to the project site. The closest station to the project site is Station # 2 located at 4th and North Main Street, which is approximately four blocks from the project site. Backup assistance will be from the Station # 1 at 611 Liberty Street. The Jacksonville Fire Department is a paid, professional fire-fighting organization providing 24-hour service. In addition, the Jacksonville area utilizes the 911 emergency call system for all emergencies, including fire and police. All fire and emergency services in the area are adequate for the project.

The proposed project population will not have a significant adverse sociological effect on the City of Jacksonville community. This area is characterized by a fairly diverse ethnicity, and offers numerous educational and recreational opportunities. Similarly, the proposed project will not have a significant adverse affect on demographic and socioeconomic characteristics of the area.

The alternatives considered in the preparation of this FONSI were as follows: (1) No Action; (2) Construction at an Alternate Site; and (3) Continue Construction as Proposed. The "No Action" alternative was not selected. The current Jacksonville Job Corps Center is located in a run-down facility that is inadequate to meet the educational, residential, and recreational needs of the staff, faculty, and students at the Center. The "Alternate Site" alternative was not selected. The Department of Labor, Employment and Training Administration solicited proposals for relocation properties on February 8, 1998, and received proposals for five properties in Jacksonville, Florida. Of the five proposed sites evaluated by the Department of Labor, Employment and Training Administration, only the subject property on Walgreen Road was determined to be suitable for construction of a Job Corps Center.

Due to the inadequate facilities currently occupied by the Jacksonville Job Corps Center, the lack of alternative construction sites, and the absence of any identified adverse environmental impacts from locating a Job Corps Center at the subject property, the "Continue Construction as Proposed" alternative was selected.

Based on the information gathered during the preparation of the EA, no environmental liabilities, current or historical, were found to exist on the proposed Job Corps Center site. The planned construction of a Job Corps Center on the undeveloped parcel located off of Walgreen Road in Jacksonville, Florida, will not create any significant adverse impacts on the environment.

Dated at Washington, DC, this 6th day of April, 1999.

Mary Silva,

Director of Job Corps.

[FR Doc. 99–9029 Filed 4–9–99; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

Oregon State Standards; Notice of Approval

1. Background.

Part 1953 of Title 29, Code of Federal Regulations, prescribes procedures under Section 18 of the Occupational Safety and Health Act of 1970 (hereinafter called the Act) by which the Regional Administrator for Occupational Safety and Health (hereinafter called Regional Administrator) under a delegation of authority from the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter called the Assistant Secretary (29 CFR 1953.4) will review and approve standards promulgated pursuant to a State plan which has been approved in accordance with Section 18(c) of the Act and 29 CFR Part 1902. On December 28, 1972, notice was published in the **Federal Register** (37 FR 28628) of the approval of the Oregon plan and the adoption of Subpart D to Part 1952 containing the decision.

The Oregon plan provides for adoption of State standards which are at least as effective as comparable Federal standards promulgated under Section 6 of the Act. Section 1953.20 provides that where any alteration in the Federal program could have an adverse impact on the at least as effective as status of the State program, a program change supplement to a State plan shall be required. The Oregon plan also provides for the adoption of Federal standards as State standards by reference.

The state submitted by letter dated September 13, 1989, from John A. Pompei, Administrator, to James W. Lake, Regional Administrator, and incorporated as part of the plan, State standard amendments comparable to 29 CFR 1926, Safety and Health Regulations for Construction, as published in the **Federal Register** (36 FR 75) on April 17, 1971. The Oregon Safety and Health Regulations for Construction are contained in OAR Division 3. The regulations were re-adopted by reference, but included a large number of State-initiated rules adopted in addition or in lieu of specific rules in 1926. The new Construction

rules became effective July 7, 1989 under Oregon Administrative Order 8–1989. Included were State-initiated amendments concerning fall protection and traffic control (Administrative Order 2–1989). On April 26, 1989, the State mailed the proposed amendment of rules to those on the Department of Insurance and Finance mailing list established pursuant to OAR 436–01–000 and to those on the Department's distribution list as their interest appeared. On June 15, 1994, the submittal was returned to the State for clarification of some issues and corrections of others. On October 29, 1996, the State submitted an explanation of the issues and its plan for making the necessary corrections. Since the corrections were minor and did not require an administrative order, they were made when the standards were reprinted. The final corrections were made in 1998.

On its own initiative, the State of Oregon has submitted by letter dated March 25, 1991, from John A. Pompei, Administrator, to James W. Lake, Regional Administrator, and incorporated as part of the plan, adoption of an Oregon-initiated rule, OAR 437–03–093, which makes the Motor Vehicle standard 1926.601 applicable to all construction job sites with no exceptions. The amendment was adopted March 18, 1991, effective April 15, 1991, under Administrative Order 5–1991.

On its own initiative, the State of Oregon has submitted by letter dated May 10, 1994, from John A. Pompei, Administrator, to James W. Lake, Regional Administrator, a repeal of OAR 437–050, 055 and 060 because they duplicate the requirements contained in 29 CFR 1926, Subpart X, Ladders. These standards originally received Federal Register approval (42 FR 62554) on December 13, 1977. At the same time Oregon also submitted a State-initiated amendment to its construction standards at OAR 437–03–020(1) to raise the minimum estimated cost of construction projects requiring flush toilet facilities from $500,000 to $1,000,000. The State standard amendments were adopted and effective April 27, 1994, under Administrative Order 1–1994.

In response to Federal standard changes, the State of Oregon has submitted by letter dated June 13, 1997, from Peter De Luca, Administrator, to Richard Terrill, Acting Regional Administrator, and incorporated as part of the plan, State standards comparable to 29 CFR 1926.57(f), (g), (h) and (i), 1926.103(d), (e), (f), (g), (h) and (i), 1926.416(a)(4), (f), (g) and 1926.417(d) contained in the incorporation of General Industry Safety and Health Standards Applicable to Construction Work and Technical Amendments, as published in the **Federal Register** (58 FR 35099) on June 30, 1993; and State standards comparable to the changes contained in the **Federal Register** (61 FR 9230) as published on March 7, 1996, Miscellaneous Minor and Technical Amendments, except minor and technical amendments to the following sections were not adopted: 29 CFR 1910.142(c)(4), 1910.142(i)(1), 1910.153, 1910.261(a)(3), 1910.261(a)(4), 1910.261(n), 1910.266(d)(3)(iv), 1910.266(e)(2)(i), 1910.266(f)(3)(ii), 1910.266(f)(3)(iii), 1910.266(f)(3)(iv), 1910.266(f)(4), 1910.266(f)(5)(i), 1910.268(f)(1), 1926.33(c)(13)(i), 1926.103(a)(2), 1926.1103, 13 Carcinogens and the associated deletions to 1926.1104 and .1106 through .1116, 1928.21(a)(6), 1928.51(b)(1), 1928.52, 1928,53, Appendix B to Subpart C and 1928.1027; and State standards comparable to the changes to 29 CFR 1910 and 1915, changes to Subpart C and D to 29 CFR 1926 and changes to the Cadmium standard contained in 1926.1127 as published in the **Federal Register** (61 FR 31427) on June 20, 1996, Consolidation of Repetitive Provisions; Technical Amendments. These changes were adopted and became effective on April 2, 1997, under Administrative Order 4–1997.

In response to Federal standard changes, the State has submitted by letter dated June 13, 1997, from Peter De Luca, Administrator, to Richard Terrill, Acting Regional Administrator, and incorporated as part of the plan, State standards identical to 29 CFR 1926.450 through .454, Safety Standards for Scaffolds Used in the Construction Industry as published in the **Federal Register** (61 FR 46051) on August 30, 1996, and corrections and partial stay published in the **Federal Register** (61 FR 59831) on November 25, 1996. In addition to adopting the federal standard, the state adopted three state initiated standards and added a note to clarify one standard. The state initiated standards require the employer to have the manufacturer's operating manual with manually propelled elevating aerial platforms, boom supported elevating work platforms and scissor lifts and that they follow all operating and maintenance instructions. The state rules were adopted and became effective on March 12, 1997, under Administrative Order 2–1997.

2. Decision

OSHA has determined that the State standards for Scaffolds in Construction, General Industry Standards Applicable to Construction Work and Technical Amendments, Miscellaneous Minor and Technical Amendments, and Consolidation of Repetitive Provisions (Technical Amendments) are at least as effective as the comparable Federal standards as required by Section 18(c)(2) of the Act. OSHA has also determined that the differences between the State and Federal standards are minimal and that the standards are thus substantially identical. OSHA has also determined that the State standards for Construction, Motor Vehicles, and repeal of duplicative Ladder standards are at least as effective as the comparable Federal standards, as required by Section 18(c)(2) of the Act. The re-adopted Construction standards have been in effect since July 7, 1989, the Motor Vehicle standard has been in effect since April 15, 1991, and the repeal of the Ladder standards and amendment of construction standards regarding flush toilet facilities have been in effect since April 27, 1994. During this time OSHA has received no indication of significant objection to the State's different standards either as to their effectiveness in comparison to the Federal standards or as to their conformance with the product clause requirements or Section 18(c)(2) of the Act. (A different state standard applicable to a product which is distributed or used in interstate commerce but be required by compelling local conditions and not unduly burden interstate commerce). OSHA approves all of the standards. However, the right to reconsider this approval is reserved should substantial objections be submitted to the Assistant Secretary. The state standards were adopted pursuant to ORS 654.025(2), ORS 656.726(3) and ORS 183.335.

3. Location of Supplement for Inspection and Copying

A copy of the standards, along with the approved plan, may be inspected and copied during normal business hours at the following locations: Office of the Regional Administrator, Occupational Safety and Health Administration, 1111 Third Avenue, Suite 715, Seattle, Washington 98101–3212; Oregon Occupational Safety and Health Division, Department of Consumer and Business Services, Salem, Oregon 97310; and the Office of State Programs, Occupational Safety and Health Administration, Room N–3476, 200 Constitution Avenue, NW,

Washington, D.C. 20210. An electronic copy of this **Federal Register** notice may be obtained from the OSHA home page, http://www.osha.gov. Click on **Federal Register** under the Regulation section.

4. Public Participation

Under 29 CFR 1953.2(c), the Assistant Secretary may prescribe alternative procedures to expedite the review process or for other good cause which may be consistent with applicable laws. The Assistant Secretary finds that good cause exists for not publishing the supplement to the Oregon State Plan as a proposed change and making the Regional Administrator's approval effective upon publication for the following reasons:

1. The standard amendments are as effective as the federal standards which were promulgated in accordance with federal law including meeting requirements for public participation.

2. The standard amendments were adopted in accordance with the procedural requirements of State law and further public participation would be repetitious.

This decision is effective April 12, 1999.

(Sec. 18, Pub. L. 91–596, 84 Stat. 6108 [29 U.S.C. 667]).

Signed at Seattle, Washington, this 16th day of October 1998.

Richard S. Terrill,

Acting Regional Administrator.

[FR Doc. 99–9048 Filed 4–9–99; 8:45 am]

BILLING CODE 4510–26–P

MEDICARE PAYMENT ADVISORY COMMISSION

Commission Meeting

AGENCY: Medicare Payment Advisory Commission.

ACTION: Notice of meeting.

SUMMARY: The Commission will hold its next public meeting on Thursday, April 29, 1999 and Friday, April 30, 1999 at the Embassy Suites Hotel, 1250 22nd Street, NW, Washington, DC. The meeting is tentatively scheduled to begin at 9:45 a.m. on April 29, and at 9:00 a.m. on April 30.

The Commission will discuss managed care for the frail elderly, quality assurance in the traditional medicare program, care for beneficiaries with end-stage renal disease, care at the end of life, health care errors, consumer choice, access to care, access to home health services, payment for graduate medical education, payment for physician services, and beneficiary financial liability.

Agendas will be mailed on April 9, 1999. The final agenda will be available on the Commission's web site (www.MedPCA.gov).

ADDRESSES: MedPAC's address is: 1730 K Street, NW, Suite 800, Washington, DC 20006. The telephone number is (202) 653–7220.

FOR FURTHER INFORMATION CONTACT: Diane Ellison, Office Manager, (202) 653–7220.

SUPPLEMENTARY INFORMATION: If you are not on the Commission mailing list and wish to receive an agenda, please call (202) 653–7220.

Murray N. Ross,

Executive Director.

[FR Doc. 99–8996 Filed 4–9–99; 8:45 am]

BILLING CODE 6820–BW–M

NATIONAL COUNCIL ON DISABILITY

Advisory Committee Conference Call

AGENCY: National Council on Disability (NCD).

SUMMARY: This notice sets forth the schedule of the forthcoming conference call for NCD's advisory committee—International Watch. Notice of this meeting is required under Section 10(a)(1)(2) of the Federal Advisory Committee Act (P.L. 92–463).

INTERNATIONAL WATCH: The purpose of NCD's International Watch is to share information on international disability issues and to advise NCD's International Committee on developing policy proposals that will advocate for a foreign policy that is consistent with the values and goals of the Americans with Disabilities Act.

DATE: May 19, 1999, 12:00 noon–1:00 p.m. edt.

FOR INTERNATIONAL WATCH INFORMATION, CONTACT: Lois T. Keck, Ph.D., Research Specialist, National Council on Disability, 1331 F Street NW., Suite 1050, Washington, DC 2004; 202–272–2004 (Voice), 202–272–2074 (TTY), 202–272–2022 (Fax), lkeck@ncd.gov (e-mail).

AGENCY MISSION: The National Council on Disability is an independent federal agency composed of 15 members appointed by the President of the United States and confirmed by the U.S. Senate. Its overall purpose is to promote policies, programs, practices, and procedures that guarantee equal opportunity for all people with disabilities, regardless of the nature of severity of the disability; and to empower people with disabilities to achieve economic self-sufficiency, independent living, and inclusion and integration into all aspects of society.

This committee is necessary to provide advice and recommendations to NCD on international disability issues.

We currently have balanced membership representing a variety of disabling conditions from across the United States.

OPEN CONFERENCE CALLS: These advisory committee conference calls of the National Council on Disability will be open to the public. However, due to fiscal constraints and staff limitations, a limited number of additional lines will be available. Individuals can also participate in the conference calls at the NCD office. Those interested in joining these conference calls should contact the appropriate staff member listed above.

Records will be kept of all International Watch conference calls and will be available after the meeting for public inspection at the National Council on Disability.

Signed in Washington, DC, on March 31, 1999.

Ethel D. Briggs,

Executive Director.

[FR Doc. 99–9053 Filed 4–9–99; 8:45 am]

BILLING CODE 6820–MA–M

NATIONAL CREDIT UNION ADMINISTRATION

Sunshine Act Meetings

TIME AND DATE: 10:00 a.m., Thursday, April 15, 1999.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, Virginia 22314–3428.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Request from a Federal Credit Union to Convert to a Community Charter.
2. Final Rule: Amendment to Part 701, NCUA's Rules and Regulations, Charitable Donations.
3. Interim Final Rule: Amendments to Part 745, NCUA's Rules and Regulations, Share Insurance.

RECESS: 11:15 a.m.

TIME AND DATE: 11:30 a.m., Thursday, April 15, 1999.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, Virginia 22314–3428.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Administrative Action under Section 107 of the Federal Credit Union Act and Part 701 of NCUA's Rules and Regulations. Closed pursuant to exemption (8).
2. Administrative Action under Section 206 of the Federal Credit Union

Act. Closed pursuant to exemptions (4) (7) and (8).

3. Two (2) Personnel Actions. Closed pursuant to exemptions (2) and (6).

FOR FURTHER INFORMATION CONTACT: Becky Baker, Secretary of the Board, Telephone (703) 518–6304.

Becky Baker,

Secretary of the Board.

[FR Doc. 99–9224 Filed 4–8–99; 3:37 pm]

BILLING CODE 7535–01–M

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: U. S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

1. Type of submission, new, revision, or extension: Extension.

2. The title of the information collection: 10 CFR part 81, Standard Specifications for Granting of Patent Licenses.

3. The form number if applicable: Not applicable.

4. How often the collection is required:

Application for licenses are submitted once. Other reports are submitted annually or as other events require.

5. Who will be required or asked to report:

Applicants for and holder of NRC licenses to NRC inventions.

6. An estimate of the number of responses: 0.

7. The estimated number of annual respondents: 0.

8. An estimate of the total number of hours needed annually to complete the requirement or request: 35 hours; however, no applications are anticipated during the next three years.

9. An indication of whether section 3507(d), Pub. L. 104–13 applies:

Not applicable.

10. Abstract: 10 CFR part 81 establishes the standard specifications for the issuance of licenses to rights in inventions covered by patents or patent applications invested in the United States, as represented by or in the custody of the Commission and other patents in which the Commission has legal rights.

A copy of the final supporting statement may be viewed free of charge at the NRC Public Document Room, 2120 L Street, NW (lower level), Washington, DC. OMB clearance requests are available at the NRC worldwide web site (http://www.nrc.gov/NRC/PUBLIC/OMB/index.html). The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions should be directed to the OMB reviewer listed below by May 12, 1999. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date.

Erik Godwin, Office of Information and Regulatory Affairs (3150–0121), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be submitted by telephone at (202) 395–3084.

The NRC Clearance Officer is Brenda Jo. Shelton, 301–415–7233.

Dated at Rockville, Maryland, this 5th day of April 1999.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 99–9040 Filed 4–9–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–029–LA–R; ASLBP No. 99–754–01–LA–R]

Yankee Atomic Electric Company (Yankee Nuclear Power Station) License Termination Plan; Notice of Hearings

Atomic Safety and Licensing Board

Before Administrative Judges; Charles Bechhoefer, Chairman, Dr, Thomas S. Elleman, Thomas D. Murphy.

April 6, 1999

This proceeding concerns the application of Yankee Atomic Electric Company (YAEC) for approval of a License Termination Plan for the Yankee Nuclear Power Station, a nuclear facility located near the town of Rowe, Franklin County, Massachusetts. On October 23, 1998, the Nuclear Regulatory Commission ruled that two petitioners for intervention, the New England Coalition On Nuclear Pollution (NECNP) and the Citizens Awareness Network (CAN), had standing (CLI–98–21, 48 NRC 185), and it remanded the proceeding to the Atomic Safety and Licensing Board to determine whether the petitioners had any admissible contentions that would entitle them to a hearing. On October 26, 1998, the Atomic Safety and Licensing Board for this proceeding was reconstituted to rule upon the hearing requests and to preside over the proceeding in the event that a hearing was ordered. 63 FR 58432 (October 30, 1998).

After holding a prehearing conference in Greenfield, Massachusetts, the Atomic Safety and Licensing Board issued a Prehearing Conference Order (LBP–99–14) on March 17, 1999, granting NECNP's and CAN's requests for a hearing and petitions for leave to intervene. The Order also permitted the Franklin Regional Council of Governments to participate as an interested governmental entity pursuant to 10 CFR § 2.715(c).

Please take notice that a hearing will be conducted in this proceeding. The reconstituted Atomic Safety and Licensing Board designated to preside over the proceeding consists of Dr. Thomas S. Elleman, Thomas D. Murphy, and Charles Bechhoefer, who will serve as Chairman of the Board.

During the course of the proceeding, the Board may hold one or more prehearing conferences pursuant to 10 CFR 2.752 and, if necessary, an evidentiary hearing. The public is invited to attend all these sessions.

Supplementing the opportunity afforded at the first prehearing conference, during some or all of these sessions, and in accordance with 10 CFR 2.715(a), any person not a party to the proceeding will be permitted to make a limited appearance statement, either in writing or (depending on time availability) orally, setting forth his or her position on the issues. These statements do not constitute testimony or evidence but may assist the Board and/or parties in the definition of issues being considered. To the extent that oral statements are permitted, the number of persons making such statements and the time allotted for each may be limited depending upon the time available at various sessions. Written statements may be submitted at any time. Written statements, and requests to make oral limited appearance statements, should be submitted to the Office of the Secretary, U.S. Nuclear Regulatory

Commission, Washington DC 20555, Attn: Rulemakings and Adjudications Staff. A copy of such statement or request should also be served on the Chairman of this Atomic Safety and Licensing Board, T3 F23, U.S. Nuclear Regulatory Commission, Washington DC 20555.

Documents relating to this proceeding are available for public inspection at the Commission's Local Public Document Room, Greenfield Community College, 1 College Drive, Greenfield, Massachusetts 01301, as well as at the Commission's Public Document Room, 2120 L St. NW, Washington DC 20555.

Rockville, MD, April 6, 1999.

For the Atomic Safety and Licensing Board.

Charles Bechhoefer,

Chairman, Administrative Judge.

[FR Doc. 99–9037 Filed 4–9–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–029]

Yankee Atomic Electric Company; Yankee Nuclear Power Station; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering the issuance of an amendment to the Yankee Atomic Electric Company (YAEC or licensee) license for the Yankee Nuclear Power Station (YNPS or plant) approving the License Termination Plan (LTP). YAEC submitted the LTP by letter dated May 15, 1997, by two separate letters dated December 18, 1997, and a fourth letter dated January 23, 1998. The plant is located in Rowe Township, Franklin County, Massachusetts.

Environmental Assessment

Identification of Proposed Action

The proposed action is issuance of a license amendment approving the LTP. The LTP is required by regulations to include: (A) A site characterization; (B) identification of dismantlement activities not completed under the Post Shutdown Activities Report (PSDAR)/ Decommissioning Plan at the time of submitting the LTP; (C) plans for site remediation; (D) detailed plans for the final radiation survey; (E) a description of the end use of the site, if restricted [The YAEC application does not include restrictions; therefore, this item is not included in YAEC's LRP]; (F) an updated site-specific estimate of remaining decommissioning costs; and (G) a supplement to the environmental report describing any new information or significant environmental change associated with the licensee's proposed termination activities.

The Need for the Proposed Action

Issuance of an amendment approving the LTP will allow the licensee to implement its final radiation survey plan to allow for a determination as to whether the release criteria for unrestricted use of the site after the YAEC license is terminated have been met.

Environmental Impacts of the Proposed Action

Issuance of the amendment approving the LTP will not have any significant effect on accident risk and probability of any other environmental impact is extremely remote.

The staff's review of the four YAEC submittals of May 15, 1997, December 18, 1997 (2), and January 23, 1998, has concluded that the environmental and safety consequences of accidents that may potentially result in a radiological release are greatly decreased given the plant's permanently shutdown and defueled status and that the fuel has decayed for seven years since it was removed from the reactor.

The licensee does not propose any disposal or relocation of fuel by this action. The proposed action does not increase the probability or consequences of any accidents, no changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in the allowable occupational or public radiation exposure. Therefore, the proposed action would result in no significant radiological environmental impact.

With regard to potential non-radiological impacts, the proposed action does not affect non-radiological plant effluents and has no other non-radiological environmental impact. Accordingly, the Commission concludes that there are no significant environmental impacts associated with the proposed action.

Alternative to the Proposed Action

Because the Commission concluded that there are no significant environmental effects that would result from the proposed action, any alternatives with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the action. Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any resources not evaluated in previous environmental reviews for the YNPS.

Agencies and Persons Consulted

On October 22, 1998, in accordance with its stated policy, the staff consulted with the Commonwealth of Massachusetts regarding the environmental impact of the proposed actions. The Commonwealth official had no comments.

Finding of No Significant Impact

Based upon the foregoing environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to this action, see the four YAEC submittals, referenced above, which are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW, Washington, DC 20555, and at the local public document room at the Greenfield Community College, 1 College Drive, Greenfield, Massachusetts 01301.

Dated at Rockville, Maryland, April 1, 1999.

For the Nuclear Regulatory Commission.

Robert A. Gramm,

Acting Director, Project Directorate IV & Decommissioning, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 99–9042 Filed 4–9–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Draft Guidance on the Benchmark Dose Modeling for the Radiological Criteria for License Termination of Uranium Recovery Facilities

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability; opportunity for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is soliciting comments on draft guidance for the radium benchmark dose approach, associated with the final rule, "Radiological Criteria for License

Termination of Uranium Recovery Facilities," that is in this publication. The guidance will be incorporated into the NRC final Standard Review Plan (SRP) for the Review of Reclamation Plans for Mill Tailings Sites and the SRP for In-Situ Leach Uranium Extraction License Applications. Public comments should be submitted within sixty (60) days of publication of this Notice.

SUPPLEMENTARY INFORMATION:

Background

In 10 CFR 40.4, uranium milling is defined as any activity resulting in byproduct material.[1] Therefore, Part 40, Appendix A, applies to in situ leach (ISL), heap leach, and ion-exchange facilities (i.e., uranium recovery (UR) facilities) that produce byproduct material, as well as to conventional uranium and thorium mills. The draft guidance only addresses UR facilities because there are no currently licensed or planned thorium mills.

Decommissioning of ISLs and mills are similar in that the type of soil and building contamination is the same, consisting mainly of residual radium (Ra-226) and uranium (U-nat). The applicable cleanup standards for soil radium in Criterion 6(6) address the main contaminant at uranium mills in the large areas (hundreds of acres) where windblown contamination from the tailings pile has occurred, and at ISLs in holding/settling ponds and process solution spills. In other mill and ISL site areas proximate to locations where radium contamination exists (e.g., under the mill or process building or in a yellowcake storage area), uranium would be the radionuclide of concern. Thorium (Th-230, the parent of Ra-226) would be the radionuclide of concern at some mill raffinate evaporation ponds.

Because Part 40, Appendix A, provides only decommissioning soil radium[2] and ground-water protection criteria, Criterion 6 (6) was amended to address criteria for residual radionuclides, other than radium in soil, for decommissioning of lands and structures at UR facilities. The final rule, "Radiological Criteria for License Termination of Uranium Recovery Facilities," added a paragraph after the radium in soil criteria in Criterion 6(6), to read:

> Byproduct material containing concentrations of radionuclides other than radium in soil, and surface activity on remaining structures, must not result in a total effective dose equivalent (TEDE) exceeding the dose from cleanup of radium contaminated soil to the above standard (benchmark dose), and must be at levels which are as low as is reasonably achievable.
>
> If more than one residual radionuclide is present in the same 100-square-meter area, the sum of the ratios for each radionuclide, of concentration present to the concentration limit, will not exceed "1" (unity). A calculation of the peak potential annual TEDE within 1000 years to the average member of the critical group that would result from applying the radium standard (not including radon) on the site, must be submitted for approval. If the benchmark dose, before application of ALARA, exceeds 100 mrem/yr, the staff will consult the Commission before approving the decommissioning plan. This requirement for dose criteria does not apply to sites that have decommissioning plans for soil and structures approved before the effective date of this rule.

The final rule, "Radiological Criteria for License Termination of Uranium Recovery Facilities," requires the use of the soil radium standard to develop a site-specific dose benchmark for the cleanup of residual radionuclides, other than radium, at UR sites. The radium benchmark approach ensures that the dose limit across the UR site will be equal for all radionuclides (other than radon).

The NRC-licensed sites subject to the new rule currently include four uranium mills (one operating, others in stand-by status), seven in situ leach (ISL) facilities, and any new UR facility licensed by NRC after promulgation of the rule (two ISL license applications are under review at NRC, also in the Agreement States, several ISLs in Texas could be affected by the rule). These sites are located in semi-arid (7–15 inches (18–39 cm) of precipitation), high evapo-transpiration, sparsely populated (1–5 people per sq. mile (0.4–3 per sq. km)) areas of New Mexico, Utah, Wyoming, and Nebraska. The land use around these facilities is predominately mining and ranching, and the potable water aquifer is usually 100–200 feet deep. Also, many of the sites have natural (in situ) uranium and/or radium deposits or mine pits that create a wide range of radium, thorium and uranium background values. Because of these unique properties and the specific regulations in 10 CFR Part 40, Appendix A, the UR facilities are exempt from the decommissioning criteria in Part 20 Subpart E, as specified in Section 20.1401(a).

The benchmark dose applies to surface cleanup (buildings or the top 15 cm (6 inches) of soil) of radionuclides other than radium and it is the estimated dose resulting from cleanup of areas to 5 pCi/g (0.19 Bq/g) Ra-226 at that site. For the small areas requiring the use of the radium subsurface soil standard, the estimated dose resulting from 15 pCi/g (0.56 Bq/g) Ra-226 at that site and for those areas, would be used. The same concept of regulation (using a Ra-228 benchmark dose) would be applicable to thorium mills, if any are licensed in the future.

The draft guidance on dose modeling and implementation of the radium benchmark approach was developed in conjunction with the final rule and the SRPs under development for uranium mill site reclamation and ISL licensing. The draft SRPs have already been published for comment as NUREG–1569 (NRC, 1997) and NUREG–1620 (NRC, 1999). After review of the comments received on the draft guidance, the final benchmark dose guidance will be incorporated into the final SRPs for UR facilities.

Draft Guidance: Standard Review Plan—Chapter 6

6.0 Decommissioning Plan for Soil and Buildings—The Radium Benchmark Dose Approach

A mill reclamation plan, required for licensing or license renewal, generally focuses on the tailings disposal cell and contains only brief mention of anticipated decommissioning activities. The licensee submits a detailed mill or ISL decommissioning plan and a soil cleanup/verification plan for NRC approval at least six months before decommissioning is to begin. The general requirements for a decommissioning plan, and the remediation and verification of soil Ra-226 contamination cleanup are addressed in Chapter 5 of the Standard Review Plan (SRP). This chapter discusses the evaluation of the radium benchmark dose approach for the cleanup of thorium and uranium, specifically dose modeling and its application to site cleanup activities that should be addressed in the decommissioning plan.

This chapter applies to those uranium recovery (UR) facilities licensed by the NRC and subject to the new requirements for cleanup of contaminated soil and buildings under 10 CFR Part 40, Appendix A, Criterion 6(6) (as amended in 1999). The facilities that did not have an approved

[1] Byproduct material means the tailings or waste produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its source material content, including discrete surface wastes resulting from uranium solution extraction processes.

[2] The concentration of radium, as a result of byproduct material, averaged over areas of 100 square meters, should not exceed the background level by more than 5 pCi/g (0.19 Bq/g) in the first 15 cm (6 inches) of soil, and 15 pCi/g (0.56 Bq/g) for every subsequent 15 cm (6 inch) layer.

decommissioning plan at the time the rule became final are required to reduce residual radioactivity, i.e., byproduct material, as defined by Part 40, to levels based on the potential dose, excluding radon, resulting from the application of the radium (Ra-226) standard at the site. This is referred to as the radium benchmark dose approach.

This chapter would also apply to any future thorium processing facilities and uranium heap leach operations, because Part 40 defines uranium milling as any activity resulting in byproduct material. This chapter also applies to any revised decommissioning plan submitted for NRC review and approval, after the final rule is effective. However, if a subject licensee can demonstrate that no contaminated buildings will remain, and that soil thorium or total uranium levels are not discernable from background, radium benchmark dose modeling is not required. Other aspects of decommissioning are addressed in Chapter 5 of this SRP.

In order for NRC staff to evaluate the radium benchmark dose modeling and the implementation of the modeling results, as proposed in the building and soil decommissioning plan, an understanding of the site conditions and site operations is essential. The required site information should be provided by the licensee, or relevant portions of previously submitted documents (e.g., environmental assessments, license renewal, reclamation plan, and characterization report) should be summarized and referenced. The information should include: (1) processes used at the facility; (2) type and location of possible contamination; (3) geologic and climatic data; and (4) surrounding land use information (also see Section 3 of Inspection Procedure 87654).

8.1 Radium Benchmark Dose Modeling

6.1.1 Areas of Review

In implementing the radium benchmark approach, the licensee calculates the peak potential dose for the site resulting from the 5 pCi/g (0.19 Bq/g) concentration of radium in the surface (top 15 cm (6 inches)) soil. The dose from the 15 pCi/g (0.56 Bq/g) subsurface radium limit would be calculated for any area that may require subsurface cleanup. The dose modeling review involves examination of the computer code or other calculations employed for the dose estimates, the code or calculation input values and assumptions, and the modeling results (data presentation).

6.1.2 Review Procedures

The radium benchmark dose modeling review consists of ascertaining that an acceptable dose modeling computer code or other type of calculation has been used; that input parameter values appropriate (reasonable considering long-term conditions and representative of the application) for the site have been used in the modeling; that a realistic (overly conservative is not acceptable as it would result in higher allowable levels of uranium or thorium which would not be ALARA) dose estimate is provided; and that the data presentation is clear and complete.

6.1.3 Acceptance Criteria

The radium benchmark dose modeling results will be acceptable if the dose assessment (modeling) meets the following criteria:

(1) Dose Modeling Codes and Calculations

The assumptions are considered reasonable for the site analysis and the calculations employed are adequate. Reference to documentation concerning the code or calculations is provided (for example, the RESRAD Handbook and Manual (Argonne, 1993a and b)).

The RESRAD code developed by the U.S. Department of Energy (version 5.82, 1998) (see website www.ead.anl.gov/resrad/html), may be acceptable for dose calculations because, while the RESRAD ground-water calculations have limitations, this does not impact the UR sites that have deep aquifers (ground-water exposure pathway is insignificant). The DandD code developed by the NRC (version 1.0, August 1998, see website *ftp://nwerftp.nwer.sandia.gov/nrc/DandD/*; also see the website at http://techconf.llnl.gov/radcri/dose-top.html) provides conservative default values, but does not allow for modeling subsurface soil contamination, and does not allow calculation of source removal due to soil erosion. Neither the RESRAD nor the DandD code would be adequate to model the dose from off-site contamination, but codes such as GenII would be considered.

If the code or calculation's assumptions are not acceptable for site conditions, adjustments have been made in the input to adequately modify these assumptions.

The RESRAD code assumes a circular contaminated zone. The shape factor (external gamma, screen R017) must be adjusted for a non-circular-shaped area.

The code or calculation provides an annual dose (total effective dose equivalent (TEDE)) estimate (mrem/yr). The DandD code provides the annual dose, but RESRAD calculates the highest instantaneous dose. However, RESRAD results are acceptable for long-lived radionuclides that do not move rapidly out of surface soils.

(2) Input Parameter Values

The code/calculation input data are appropriate for the site and represent current or long-term conditions, whichever is more applicable to the time of maximum dose. When code default values are used, they are justified as appropriate (representative) for the site. Excessive conservatism (i.e., upper bound value) is not used as this would result in a higher dose and thus higher levels of uranium and thorium would be allowed to remain on site.

Previously approved MILDOS code input parameter values may not be appropriate, because derived operational doses in the restricted area may be an order of magnitude higher than acceptable doses for areas to be released for unrestricted use.

Site-specific input values are demonstrated to be average values of an adequate sample size. Confidence limits are provided for important parameters so that the level of uncertainty can be estimated for that input value. Alteration of input values considers that some values are inter-related (see draft NUREG–1549, Appendix C) (NRC, 1998a) and relevant parameters are modified accordingly. The preponderance of important parameter values are based on site measurements and not conservative estimates. One or more models consider the annual average range of parameter values likely to occur within the next 200-year time period, for important parameters that can reasonably be estimated. Some other considerations for the input parameter values are as follows:

a. Exposure Pathways and Scenarios for the Critical Group

The scenario(s) chosen to model the potential dose to the average member of the critical group[3] from residual radionuclides at the site reflects reasonable probable future land use. The licensee has considered ranching, mining, home-based business, light industry, and residential farmer scenarios, and has justified the scenarios modeled.

Based on one or more of these projected (within 200 years is reasonably foreseeable) land uses to define the critical group(s), the licensee

[3] As defined in 10 CFR Part 20, "the group of individuals reasonably expected to receive the greatest exposure to residual radioactivity for any applicable set of circumstances."

has determined and justified what exposure pathways are probable for potential exposure of the critical group to residual radionuclides at the site.

Dairies are not likely to be established in the area of former UR facilities, and even if some milk cows were to graze in contaminated areas, the milk would probably be sent for processing (thus diluted), and not be consumed at the site. Therefore, milk consumption is not a likely ingestion exposure pathway. Also, a pond in the contaminated area providing a significant quantity of fish in the resident's diet is not likely, so the aquatic exposure pathway may not have to be modeled. However, the external gamma, plant ingestion, and inhalation pathways are likely to be important.

The radon pathway is excluded from the benchmark dose calculation as defined in Criterion 6(6) of Appendix A, to 10 CFR Part 40. This also reflects the approach in the main decommissioning rule (radiological criteria for license termination, Part 20 subpart E).

b. Source Term

If the RESRAD code is used, the input includes Pb-210 at the same input value as for Ra-226. The other radium progeny are automatically included in the code calculations. The chemical form of the contamination in the environment is considered in determining input values related to transport, or inhalation class (solubility in the lung) for dose conversion factors.

c. Time Periods

The time periods for calculation of the dose from soil Ra-226 include the 1000-year time frame. The calculated maximum annual dose and the year of occurrence is provided in the results.

d. Cover and Contaminated Zone

A cover depth of zero is used in the surface contamination model and a depth of at least 15 cm (6 inches) for the subsurface model. The values for area and depth of contamination are derived from site characterization data. The erosion rate value for the contaminated zone is less than the RESRAD default value because in regions drier than normal, the erosion rate is less, as discussed in the RESRAD Data Collection Handbook (Argonne, 1993a), and the value is justified. The soil properties are based on site data (sandy loam or sandy silty loam are typical for UR sites) and other input parameters are based on this demonstration of site soil type (see RESRAD Handbook pages, 23, 29, 77, and 105).

The evapo-transpiration coefficient for the semi-arid UR sites is between 0.6 and 0.99. The precipitation value is based on annual values averaged over at least 20 years, obtained from the site or a nearby meteorological station.

The irrigation rate value may be zero, or less than a code's default value, if supported by data on county or regional irrigation practices (e.g., irrigation water is obtained from a river not a well). The runoff coefficient value is based on the site's soil type, expected land use, and morphology of the region.

e. Saturated Zone

The dry bulk density, porosity, "b" parameter, and hydraulic conductivity values are based on local soil properties. The hydraulic gradient for an unconfined aquifer is approximately the slope of the water table. For a confined aquifer, it represents the difference in potentiometric surfaces over a unit distance.

If the RESRAD code is used, the nondispersion model parameter is chosen for areas greater than 1000 sq. meters (screen R014), and the well pump rate is based on irrigation, stock, or drinking water well pump rates in the area.

f. Uncontaminated and Unsaturated Strata

The thickness value represents the typical distance from the soil contamination to the saturated zone. Since the upper aquifer at UR sites is often of poor quality and quantity, the depth of the most shallow well used for irrigation or stock water in the region is chosen for the unsaturated zone thickness. A value of 18 meters (60 feet) is typical for most sites and 15 meters (50 feet) for the Nebraska site, but regional data are provided for justification. The density, porosity, and "b" parameter values are similar to those for the saturated zone or any changes are justified.

g. Distribution Coefficients and Leach Rates

The distribution coefficient (Kd) is based on the site's soil physical and chemical characteristics. The leach rate value of zero in the RESRAD code is acceptable as it allows calculation of the value. If a value greater than zero is provided, justification for the value is also provided.

h. Inhalation

An average inhalation rate value of approximately 8,395 m_3/yr is used for the activity assumed for the rancher or farmer scenario (based on Draft Letter Report, Sandia, 1998a). The mass loading for inhalation (air dust loading factor) value is justified based on the average level of airborne dust in the local region for similar activities as assumed in the model.

i. External Gamma

The shielding factor for gamma is in the range of 0.33 to 0.55 (PG–8–08, NRC 1994; DandD code screening default value), based mainly on the type (foundation, materials) of the house likely to be built on the site.

The time fractions for indoor and outdoor occupancy are similar to default values in RESRAD and draft guidance developed for the main decommissioning rule (NUREG/CR–5512, Volume 3, NRC, 1996b). For example, the staff would consider fraction values approximating 0.7 indoors and 0.15 outdoors for a resident working at home, and 0.5 outdoors and 0.25 indoors for the farmer scenario.

The site specific wind speed value is based on adequate site data (the average annual wind speed for the UR sites varies from 7 to 13 mph (3.1 to 5.5 meters/sec)). The maximum and annual average wind speed are also considered when justifying/evaluating proposed erosion rates.

j. Ingestion

Average consumption values (g/yr) for the various types of foods are based on average values as discussed in NUREG 5512, Volume 3, or the Sandia Draft Letter Reports (1998a and b), or are otherwise justified. Livestock ingestion parameters are default values, or are otherwise justified.

For sites with over 25 acres of contamination, the fraction of diet from the contaminated area is assumed to be 0.25 for the farmer scenario (Sandia 1998a), or is otherwise justified based on current or anticipated regional consumption practices for home-grown food. Because of the low level of precipitation in the UR facilities regions, extensive gardens or dense animal grazing are not likely, so the percentage of the diet from contaminated areas is likely to be lower than the code default value.

Note that the default plant mass loading factor in the DandD code can reasonably be reduced to 1 percent (Sandia, Draft Report, 1998c). The depth of roots is an important parameter for UR licensees using the RESRAD code. The value is justified based on the type of crops likely to be grown on the site in the future. For vegetable gardens, a value of 0.3 is more appropriate than the RESRAD default value of 0.9 meters that is reasonable for alfalfa or a similar deep-rooted plant.

(3) Presentation of Modeling Results

The radium benchmark dose modeling section of the decommissioning plan includes the code or calculation results as the maximum annual dose (TEDE) in mrem/yr, the year that this dose would occur, and the major exposure pathways by percentage of total dose. The modeling section also includes discussion of the likelihood of the various land use scenarios (reflecting the probable critical groups) modeled, and provides the variations in dose (dose distribution) created by changing key parameter values to reflect the range of dose values that are likely to occur on the site. The section also contains the results of a sensitivity analysis (RESRAD code can provide a sensitivity analysis via the graphics function) to identify the important parameters for each scenario.

Note: As indicated in Criterion 6(6), if a licensee submits a radium benchmark dose result that is 100 mrem/yr or higher, the staff will consult with the Commission before approving the decommissioning plan based on this value.

6.1.4 Evaluation Findings

If the staff review, as described in this section, results in the acceptance of the radium benchmark dose modeling, the following conclusions may be presented in the technical evaluation report (TER).

The staff has completed its review of the site benchmark dose modeling for the _____ uranium recovery facility. This review included an evaluation using the review procedures in the Title II SRP (NRC, 1999), Section 6.1.2, and the acceptance criteria outlined in SRP Section 6.1.3.

The applicant has provided an acceptable radium benchmark dose model and staff evaluation determines that: (1) the computer code or set of calculations used to model the benchmark dose is appropriate for the site; (2) input parameter values used in each model are site-specific or reasonably estimates; (3) the dose modeling information includes adequate estimates of dose uncertainty.

6.2 Implementation of the Benchmark Dose

6.2.1 Areas of Review

The results of the radium benchmark dose calculations are used to establish a surface and subsurface soil dose limit for residual radionuclides other than radium, as well as a limit for surface activity on structures that will remain after decommissioning. The staff reviews the licensee's conversion of the benchmark dose limit to soil concentration (pCi/g) or surface activity levels (dpm/100 cm ^{2}) as a first step to provide cleanup levels. Alternatively, the licensee can derive the estimated dose from the uranium or thorium contamination (as discussed in Section 6.1.3) and compare this to the radium benchmark dose.

The cleanup levels adequately consider the ALARA principle and the unity rule to demonstrate that the Part 40.42 (k) requirements (the premises are suitable for release and reasonable effort has been made to eliminate residual radioactive contamination) can be met.

6.2.2 Review Procedures

The decommissioning plan section on cleanup criteria will be evaluated for appropriate conversion of the radium standard benchmark dose to cleanup limits for soil uranium and thorium and/or surface activity concentration. The plan will also be examined to ensure reasonable application of the ALARA principle to the cleanup guideline values.

6.2.3 Acceptance Criteria

(1) The soil concentration limit is derived from the site radium dose estimate. The modeling performed to estimate mrem/year per pCi/g of Th–230 and/or U-nat follows the criteria listed in Section 6.1.3. In addition, the U-nat source term is represented as percent activity by 49.14% U–238, 49.14% U–234, and 0.71% U–235, or is based on analyses of the ore processed. For a soil uranium criterion, the chemical toxicity is considered in deriving a soil concentration limit if soluble forms of uranium are present.

Detailed justification for the inhalation pathway parameters is provided, such as the determination of the chemical form in the environment, to support the inhalation class.

The derived Th–230 soil limit will not cause any 100 square meter (m ^{2}) area to exceed the Ra–226 limit at 1000 years (i.e., current concentrations of 14 pCi/g Th–230 surface and 43 pCi/g subsurface, if Ra–226 is at approximately background levels).

(2) In conjunction with the activity limit, the ALARA principle is considered in setting cleanup levels (derived concentration guideline levels). The ALARA guidance in draft Regulatory Guide 4006 is considered.

In recent practice at mill sites, ALARA is implemented by removing at least two more inches (5 cm) of soil than is estimated to achieve the radium standard. (reduce any possible excess or borderline contamination). At mills, it is generally cheaper to remove more soil than to do sampling and testing that may indicate failure and require additional soil removal plus additional testing.

(3) The unity rule is applied to the cleanup if more than one residual radionuclide is present in a soil verification grid (100 m ^{2}). This means that the sum of the ratios for each radionuclide of the concentration present/concentration limit may not exceed "1" (i.e., unity).

(4) The subsurface soil standard, if it is to be used, is applied to small areas of deep excavation where at least 15 cm (6 inches) of compacted clean fill is to be placed on the surface.

(5) The surface activity limit for remaining structures is appropriately derived using an approved code or calculation.

If the DandD code is used, data is provided to support that 10% or less of the activity is removable; otherwise the resuspension factor is scaled to reflect the site-specific removable fraction. Note that this code assumes that the contamination is only on the floor, which can be overly conservative. If the RESRAD–Build code is used, the modeled distribution of contamination on walls vs. floor is justified.

6.2.4 Evaluation Findings

If the staff review, as described in this section, results in the acceptance of the application of the radium benchmark dose modeling to the site cleanup criteria, the following conclusions may be presented in the technical evaluation report.

The staff has completed its review of the proposed implementation of the benchmark dose modeling results for the _____ uranium recovery facility. This review included an evaluation using the review procedures in the Title II SRP, Section 6.2.2, and the acceptance criteria outlined in SRP Section 6.2.3.

The licensee has provided an acceptable implementation of the benchmark dose modeling results to the proposed site cleanup activities and staff evaluation determines that: (1) The cleanup criteria will allow the licensee to meet Part 40.42(k) and Part 40, Appendix A, criterion 6(6) requirements; (2) the soil and structures of the decommissioned site will permit termination of the license because public health and the environment will not be adversely affected by any residual radionuclides.

6.3 References

Argonne National Laboratory (for the U.S. Department of Energy), "Data Collection Handbook to Support Modeling the Impacts of Radioactive Material in Soil," ANL/EAIS–8, April 1993a.

Argonne National Laboratory (for the U.S. Department of Energy), "Manual for Implementing Residual Radioactive Material Guidelines Using RESRAD, Version 5.0," ANL/EAD/LD–2, September 1993b.

Sandia National Laboratories, "Review of Parameter Data for the NUREG–5512 Residential Farmer Scenario and Probability Distributions for the DandD Parameter Analysis," Draft Letter Report, January 30, 1998a.

Sandia National Laboratories, "Review of Parameter Data for the NUREG–5512 Building Occupancy Scenario and Probability Distributions for the DandD Parameter Analysis," Draft Letter Report, January 30, 1998b.

Sandia National Laboratories, "Comparison of the Models and Assumptions Used in the DandD 1.0, RESRAD 5.61, and RESRAD–Build Computer Codes with Respect to the Residential Farmer and Industrial Occupant Scenarios Provided in NUREG/CR5512." Draft Report, October 15, 1998c.

U. S. Nuclear Regulatory Commission, "Residual Radioactive Contamination from Decommissioning," NUREG/CR–5512, PNL–7994, Vol. 1, 1992.

U.S. Nuclear Regulatory Commission, Office of Nuclear Material Safety and Safeguards, Division of Waste Management, Policy and Guidance Directive PG–8–08, "Scenarios for Assessing Potential Doses Associated with Residual Radioactivity," May 1994.

U. S. Nuclear Regulatory Commission, "Residual Radioactive Contamination from Decommissioning—User's Manual," NUREG/CR–5512, Vol. 2, October 1996a.

U. S. Nuclear Regulatory Commission, "Residual Radioactive Contamination from Decommissioning—Parameter Analysis," (DRAFT FOR REVIEW), NUREG/CR–5512, Vol. 3, April 1996b.

U.S. Nuclear Regulatory Commission, Office of Nuclear Material Safety and Safeguards, "Draft Standard Review Plan for In Situ Leach Uranium Extraction License Applications," NUREG–1569, October 1997.

U.S. Nuclear Regulatory Commission, "Decision Methods for Dose Assessment to Comply With Radiological Criteria for License Termination," Draft NUREG–1549, July 1998a.

U.S. Nuclear Regulatory Commission, Draft Regulatory Guide–4006, "Demonstrating Compliance With the Radiological Criteria for License Termination," August 1998b.

U.S. Nuclear Regulatory Commission, Office of Nuclear Material Safety and Safeguards, "Draft Standard Review Plan for the Review of a Reclamation Plan for Mill Tailings Sites Under Title II of the Uranium Mill Tailings Radiation Control Act," NUREG–1620, January 1999.

Notice of Opportunity To Provide Comments

The Commission hereby provides notice of opportunity for public comment on the draft guidance addressing the radium benchmark approach for decommissioning UR facilities. Written comments should be sent, within sixty (60) days from the date of publication of this **Federal Register** Notice (FRN), to the Chief, Rule and Directives Branch, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Comments may also be provided electronically on the NRC Uranium Recovery Branch website and the final rule FRN may also be viewed (http://www.nrc.gov/NRC/NMSS/URANIUM/guidance.htm).

FOR FURTHER INFORMATION CONTACT: Ms. Elaine S. Brummett, Uranium Recovery and Low-Level Waste Branch, Mail Stop T7–J9, Division of Waste Management, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555–0001. Telephone 301/415–6606.

Dated at Rockville, Maryland, this 1st day of April 1999.

For the Nuclear Regulatory Commission.

N. King Stablein,

Acting Chief, Uranium Recovery and Low-Level Waste Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 99–9036 Filed 4–9–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 40–7580]

Notice of Consideration of Amendment Request for Decommissioning the Fansteel Facility in Muskogee, OK, and Opportunity for Hearing

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of Consideration of Amendment Request for Decommissioning the Fansteel Facility in Muskogee, Oklahoma and Opportunity for Hearing.

The U.S. Nuclear Regulatory Commission (the NRC) is considering issuance of an amendment to Source Material License No. SMB–911, issued to Fansteel, Inc. (the licensee), for the decommissioning of its facility in Muskogee, Oklahoma. The licensee requested the amendment in a letter dated July 6, 1998, and supplemented by a letter dated December 4, 1998.

The Fansteel site contains large amounts of soil contaminated with uranium and thorium. The licensee has indicated in its proposed Decommissioning Plan that, pursuant to 10 CFR 20.1401(b)(3), portions of the site will be remediated in accordance with Option 1 of the NRC's Branch Technical Position (BTP), "Disposal or Onsite Storage of Thorium or Uranium Wastes from Past Operations." The Decommissioning Plan also references an in-situ disposal area that would be built on a separate portion of the site. The NRC is not considering this proposal as part of the proposal for remediation of portions of the site under Option 1 of the BTP. The in-situ disposal area is considered as a separate plan and is not accepted at this time for lack of information in accordance with Subpart E of the license termination rule (10 CFR Part 20, Subpart E).

Radioactive contamination at Fansteel site is the result of previous operations. Previous operations at the Fansteel facility involved acid digestion of feed materials and have resulted in large volumes of soil and residues contaminated with natural uranium and thorium. Fansteel is currently authorized to reprocess these residues, as well as residues from site wastewater treatment operations, to further extract tantalum, niobium, and scandium to produce industrial products. Reprocessing will enable Fansteel to reduce the volume of radioactive waste requiring off-site disposal. The licensee's plan is to decommission the entire site after approximately 10 to 12 years of residue reprocessing.

Prior to the issuance of the proposed amendment, the NRC will have made findings required by the Atomic Energy Act of 1954, as amended, and the NRC's regulations. These findings will be documented in a Safety Evaluation Report and an Environmental Assessment. Approval of the decommissioning plan will be documented in an amendment to SMB–911.

The NRC hereby provides that this is a preceding on an application for amendment of a license falling within the scope of Subpart L, "Informal Hearing Procedures for Adjudication in Materials Licensing Proceedings," of NRC's rules and practice for domestic licensing proceedings in 10 CFR Part 2. Pursuant to Section 2.1205(a), any person whose interest may be affected by this proceeding may file a request for a hearing in accordance with Section 2.1205(d). A request for a hearing must be filed within thirty (30) days of the date of publication of the **Federal Register** notice.

The request for a hearing must be filed with the Office of Secretary either:

1. By delivery to the Docketing and Service Branch of the Secretary at One White Flint North, 11555 Rockville Pike, Rockville, MD 20852–2738; or

2. By mail or telegram addressed to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Attention: Docket and Service Branch.

In addition to meeting other applicable requirements of 10 CFR Part 2 of the NRC's regulations, a request for a hearing filed by a person other than an applicant must describe in detail:

1. The interest of the requester in the proceeding;

2. How the interest may be affected by the results of the proceeding, including the reasons why the requestor should be permitted a hearing, with particular reference to the factors set out in Section 2.1205(h).

3. The requester's areas of concern about the licensing activity that is the subject matter of the proceeding; and

4. The circumstances establishing that the request for a hearing is timely in accordance with Section 2.1205(d).

In accordance with 10 CFR Section 2.1205(f), each request for a hearing must also be served, by delivering it personally or by mail to:

1. The applicant, Fansteel, Inc., Number Ten Tantalum Place, Muskogee, OK, 74403–9296; Attention: Mr. John J. Hunter; and

2. The NRC staff, by delivering to the Executive Director for Operations, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852, or by mail, addressed to the Executive Director for Operations, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Questions with respect to this action should be referred to NRC's project manager for Fansteel, Inc., Michael Adjodha, at (301) 415–8147 or by electronic mail at mea1@nrc.gov.

For further details with respect to this action, the application for amendment request is available for inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC 20555.

Dated at Rockville, MD, this 6th day of April 1999.

For the Nuclear Regulatory Commission.

Theodore S. Sherr,

Chief, Licensing and International Safeguards Branch, Division of Fuel Cycle Safety and Safeguards, NMSS.

[FR Doc. 99–9039 Filed 4–9–99; 8:45 am]

BILLING CODE 7590–01–P

PENSION BENEFIT GUARANTY CORPORATION

Use of Alternative Dispute Resolution

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Statement of policy.

SUMMARY: The Pension Benefit Guaranty Corporation is announcing its policy to use alternative dispute resolution for resolving appropriate disputes in a timely and cost-efficient manner in accordance with the Administrative Dispute Resolution Act of 1996 and the Presidential Memorandum of May 1, 1998, implementing that act.

EFFECTIVE DATE: April 12, 1999.

FOR FURTHER INFORMATION CONTACT: Israel Goldowitz, Assistant General Counsel, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW, Washington, DC 20005–4026; 202–326–4020. (For TTY/TDD users, call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4020.)

SUPPLEMENTARY INFORMATION:

On October 8, 1991 (56 FR 50740), the Pension Benefit Guaranty Corporation requested comments to help it develop a policy on use of alternative dispute resolution in accordance with statutory requirements. The PBGC did not receive any comments.

The PBGC recognizes that, in appropriate circumstances, there may be more effective methods to resolve issues that would otherwise be resolved through adversarial administrative or judicial processes. Although there is never an entitlement to alternative dispute resolution, the voluntary use of alternative dispute resolution, such as mediation, fact-finding, neutral evaluation, and arbitration, often can provide faster, less expensive, and more effective resolution of disputes that arise with employees, contractors, the regulated community and others with whom the agency does business. In recognition of this, it is the PBGC's policy to ensure that its staff: (1) Will be knowledgeable about alternative means of dispute resolution, (2) will examine the suitability of using alternative means of dispute resolution to resolve issues that would otherwise be resolved through adversarial administrative or judicial processes, and (3) in appropriate disputes, will use alternative means of dispute resolution in a good faith effort to achieve consensual resolution of issues in controversy involving the agency.

Issued in Washington, DC, this 6th day of April, 1999.

David M. Strauss,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 99–8955 Filed 4–9–99; 8:45 am]

BILLING CODE 7708–01–P

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration; (Bestfoods, Common Stock, Par Value $.25) File No. 1–4199

April 5, 1999.

Bestfoods ("Company") has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2–2(d) promulgated thereunder, to withdraw the above specified security ("Security") from listing and registration on the Pacific Exchange, Inc. ("PCX" or "Exchange").

The reasons cited in the application for withdrawing the Security from listing and registration include the following:

The Security is currently listed for trading on the PCX, the Chicago Stock Exchange, and the New York Stock Exchange ("NYSE"). The Company has considered all the direct and indirect costs arising from maintaining these multiple listings and has determined to withdraw the Security from listing on the PCX and maintain its listing on the NYSE.

The Company has complied with the rules of the PCX by filing with the Exchange a certified copy of resolutions adopted by the Company's Board of Directors authorizing withdrawal of its Security from listing on the PCX as well as correspondence setting forth in detail to the Exchange the reasons for such proposed withdrawal, and the facts in support thereof.

The Exchange has informed the Company that it has no objection to the withdrawal of the Company's Security from listing on the Exchange.

This application relates solely to the withdrawal of the Security by the Company from listing on the PCX and shall have no effect upon the continued listing of such Security on the NYSE. By reason of section 12(b) of the Act and the rules and regulations of the Commission thereunder, the Company shall continue to be obligated to file reports under section 13 of the Act with the Commission and with the NYSE.

Any interested person may, on or before April 26, 1999, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on

the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–9012 Filed 4–9–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 23770; 812–11472]

Eaton Vance Management, et al.; Notice of Application

April 6, 1999.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of an application for an order pursuant to section 17(d) of the Investment Company Act of 1940 ("Act") and rule 17d–1 under the Act.

Summary of the Application: Applicants request an order to permit certain registered closed-end management investment companies to impose asset-based distribution fees.

Applicants: Eaton Vance Distributors, Inc. ("Distributors") and Eaton Vance Management (collectively, "Eaton Vance"); Boston Management and Research ("BMR"); Senior Debt Portfolio ("Portfolio"); Eaton Vance Prime Rate Reserves ("Prime Rate") and EV Classic Senior Floating-Rate Fund ("EV Classic") (each a "Fund" and, collectively, the "Funds").

Filing Dates: The application was filed on January 13, 1999. Applicants have agreed to file an amendment, the substance of which is included in this notice, during the notice period.

Hearing or Notification of Hearing: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on April 29, 1999, and should be accompanied by proof of service on applicant in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW, Washington, DC 20549–0609. Applicants, c/o Eaton Vance Management, Attn: Eric G. Woodbury, Esq., 24 Federal Street, Boston, MA 02110.

FOR FURTHER INFORMATION CONTACT: Rachel H. Graham, Senior Counsel, at (202) 942–0583, or Christine Y. Greenless, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch, 450 Fifth Street, NW, Washington, DC 20549–0102 (telephone (202) 942–8090).

Applicants' Representations

1. The Funds and the Portfolio are business trusts organized under Massachusetts and New York law, respectively, and are registered under the Act as closed-end management investment companies. The Funds invest their assets in the Portfolio pursuant to a master-feeder structure. Eaton Vance serves as principal underwriter and administrator for the Funds. BMR, a wholly-owned subsidiary of Eaton Vance Management, serves as investment adviser to the Portfolio and is registered under the Investment Advisers Act of 1940.

2. The Funds continuously offer their shares to the public at net asset value ("NAV"). The Funds do not redeem shares daily and there presently is no secondary market for their shares. Shareholders who wish to sell their shares depend on quarterly repurchase offers in which the Funds offer to repurchase shares at NAV (less any applicable early withdrawal charges). These repurchase offers are made pursuant to rule 23c–3 under the Act and an exemptive order.[1]

3. The Funds' shares currently are sold without a sales charge but are subject to maximum early withdrawal charges of 3% for Prime Rate shares and 1% for EV Classic shares.[2] EV Classic shares also are subject to an annual service fee of .15% of net assets, which is designed to meet the requirements of NASD Conduct Rule 2830(d) as if EV Classic was an open-end investment company.

4. Each Fund seeks to impose an annual distribution fee of .70% of net assets. Applicants represent that each Fund's distribution fee will comply with the requirements of NASD Conduct Rule 2830(d) as if each Fund was an open-end investment company.

5. While the Funds are paying distribution fees, BMR will waive .45% of its annual advisory fee from the Portfolio, and Eaton Vance Management will waive its annual administration fee of .25%. Applicants state that, as a result, the imposition of distribution fees will not increase the Funds' total operating expenses.

Applicants' Legal Analysis

1. Section 17(d) of the Act and rule 17d–1 under the Act, in relevant part, prohibit a principal underwriter for a registered investment company, acting as principal, from participating in any joint enterprise or arrangement in which the investment company is a participant, unless the SEC has issued an order authorizing the arrangement. In determining whether to grant such an order, the SEC considers whether the participation of the investment company in the proposed joint arrangement is consistent with the provisions, policies, and purposes of the Act and the extent to which such participation is on a basis different from or less advantageous than that of any other participant in the arrangement.

2. Rule 17d–3 under the Act provides an exemption from section 17(d) and rule 17d–1 to the extent necessary to permit open-end investment companies to enter into distribution arrangements pursuant to rule 12b–1.

3. Applicants request an order under section 17(d) and rule 17d–1 to permit Prime Rate and EV Classic to impose asset-based distribution fees. Applicants have agreed to comply with rules 12b–1 and 17d–3 as if Prime Rate and EV Classic were open-end investment companies. Applicants accordingly submit that the Funds' participation in the proposed distribution plans will satisfy the standards set forth in rule 17d–1.

Applicants' Condition

Applicants agree that the order granting the requested relief will be subject to the following condition:

Applicants will comply with rules 12b–1 and 17d–3 under the Act and with NASD Conduct Rule 2830(d), as amended from time to time, as if those rules applied to closed-end investment companies.

---

[1] *See Eaton Vance Management*, Investment Company Act Rel. Nos. 22670 (May 19, 1997) (notice) and 22709 (June 16, 1997) (order).

[2] *Id.*

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–9008 Filed 4–9–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–26997]

Filings Under the Public Utility Holding Company Act of 1935, as amended ("Act")

April 2, 1999.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the applications(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by April 27, 1999, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549–0609, and serve a copy on the relevant applicant(s) and/or declarants(s) at the address(es) specified below. Proof of service (by affidavit or, in case of any attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After April 27, 1999, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

GPU, Inc., et al. (70–7926)

GPU, Inc. ("GPU"), 300 Madison Avenue, Morristown, New Jersey 07962, a registered holding company, and its electric public utility subsidiaries, Jersey Central Power & Light Company, Metropolitan Edison Company ("Met-Ed"), and Pennsylvania Electric Company ("Penelec") (collectively, "GPU Subsidiaries" or together with GPU, "Applicants"), each of 2800 Pottsville Pike, Reading, Pennsylvania 19640 have filed a post-effective amendment under sections 6(a), 7, 32 and 33 of the Act and rules 53 and 54 under the Act.

By orders dated July 17, 1996 (HCAR No. 26544) and December 22, 1997 (HCAR No. 26801) ("December Order") (collectively "Orders"), the Commission, among other things, authorized the GPU Subsidiaries, from time to time through December 31, 2000, to issue, sell and renew unsecured promissory notes in amounts up to the limitations on short-term indebtedness contained in the GPU Subsidiaries' respective charters. GPU was authorized to issue, sell and renew unsecured short-term notes in amounts up to $250 million.

The December Order limited the amount of short-term indebtedness which Met-Ed and Penelec could have outstanding to the maximum amounts permitted by their respective charters. At the time the Orders were issued, the Met-Ed and Penelec charters, among other things, restricted the amount of unsecured debt that they could have outstanding without the consent of a majority of the preferred shareholders so long as preferred shares were outstanding. On February 19, 1999, Met-Ed and Penelec redeemed all of their remaining shares of cumulative preferred stock outstanding ($11.95 million and $16.55 million aggregate stated value, respectively). The Applicants state that as the preferred stock has been redeemed and is no longer outstanding, the associated limitations contained in the GPU Subsidiaries' charters on the issuance of unsecured debt are no longer applicable to Met-Ed and Penelec.

Applicants now seek authorization, through December 31, 2000, to: permit Met-Ed and Penelec to each issue and sell up to $150 million in short-term indebtedness from time to time. Applicants also propose, through December 31, 2003, to: (1) extend the period during which the GPU Subsidiaries may issue unsecured promissory notes under credit agreements or in the form of short-term indebtedness; (2) permit GPU to issue and sell commercial paper in amounts up to $100 million; and (3) extend GUP's authority to issue and sell short-term notes in amounts up to $250 million, under the terms and conditions of the Orders.

Cinergy Corp., et al. (70–9449)

Cinergy Corp., a registered holding company ("Cinergy"),[1] 139 East Fourth Street, Cincinnati, Ohio 45202, has filed a declaration under sections 12(b) and 13(b) of the Act and rules 45, 54, 80, 81, 86, 87, 89, 90, and 91 under the Act.

Cinergy requests authorization for its domestic nonutility subsidiaries to enter into service agreements with Cinergy's utility subsidiaries under which the nonutility subsidiaries may provide a range of services to the utility affiliates, and vice versa,[2] priced at "cost" as determined under rule 91 of the Act. Cinergy requests authorization for each of its domestic nonutility subsidiaries, including those formed after the date of the requested authorization, but excluding "foreign utility companies"[3] and "exempt telecommunications companies"[4] (each, a "Nonutility Company") to enter into a separate but substantially similar contract ("Service Agreement") with each of Cinergy's utility subsidiaries.

CG&E, an Ohio electric and gas utility company, and PSI, an Indiana electric and gas utility company, are Cinergy's two principal utility subsidiaries. CG&E is subject to state utility regulation by the Public Utilities Commission of Ohio ("Ohio Commission") and PSI is subject to state utility regulation by the Indiana Utility Regulatory Commission ("Indiana Commission"). Under provisions regarding affiliate contracts contained in settlement agreements dating from Cinergy's acquisition of CG&E and PSI in 1994,[5] CG&E and PSI submitted identical proposed forms of Service Agreements to the Ohio Commission and the Indiana Commission staff in August 1998 for their review prior to review by the

---

[1] Cinergy has two direct, wholly owned domestic retail public utility companies—The Cincinnati Gas & Electric Company ("CG&E") and PSI Energy, Inc. ("PSI"). CG&E has four direct, wholly owned domestic retail public utility companies—The Union Light, Heat and Power Company ("ULH&P"), Lawrenceburg Gas Company ("Lawrenceburg"), The West Harrison Gas and Electric Company ("West Harrison") and Miami Power Corporation ("Miami Power"). Through these subsidiaries, Cinergy provides retail electric service in north central, central and southern Indiana and retail electric and gas service in the southwestern portion of Ohio and adjacent areas of Indiana and Kentucky.

[2] Services rendered under the proposed service agreements by the utility subsidiaries to the nonutility affiliates are exempt from prior Commission approval by virtue of rule 87(b)(1) under the Act. Accordingly, Cinergy does not seek Commission authorization for those service transactions, which are an integral aspect of the proposed contracts.

[3] Foreign utility company ("FUCO") is defined in section 33 of the Act.

[4] Exempt telecommunications company ("ETC") is defined in section 34 of the Act.

[5] These merger-related settlement agreements with the Ohio Commission and the Indiana Commission (and other interested parties), as well as conditions agreed to by Cinergy in connection with related merger proceedings before the Kentucky Public Service Commission, were noted by the Commission in its order approving the acquisition of CG&E and PSI by Cinergy and related transactions. *See* HCAR No. 26146 (October 21, 1994).

Commission. In late January 1999 the Ohio Commission and the Indiana Commission staff completed their review and, based upon certain modifications made to the CG&E Service Agreement and assurances regarding certain costs that may arise under the PSI Service Agreement, cleared the CG&E and PSI Service Agreements for filing with the Commission.[6]

Cinergy states that the proposed Service Agreements with the utility subsidiaries of CG&E—ULH&P, Lawrenceburg, West Harrison and Miami Power (collectively with CG&E and PSI, the "Operating Companies")—do not require prior state commission review. According to Cinergy, except in regard to prior state commission review of amendments, the proposed Service Agreement for CG&E utility subsidiary conforms in all material respects to the CG&E Service Agreement, including the additional protections incorporated as a result of the Ohio Commission's review.

Cinergy Investments, Inc., a direct, wholly owned Nonutility Subsidiary of Cinergy ("Cinergy Investments"), holds interests in all of the Nonutility Companies, except for certain minor interests held by CG&E and PSI.[7] At December 31, 1998, Cinergy Investments had 11 direct wholly owned subsidiaries: Cinergy-Cadence, Inc., an "energy-related company" within the meaning of Rule 58 under the Act ("Rule 58 Company") which has a one-third ownership interest in a Rule 58 Company, Cadence Network LLC, which markets various energy management services to multi-site retail establishments; Cinergy Capital & Trading, Inc., a Rule 58 Company engaged in energy marketing and trading that has eight subsidiaries, each engaged in energy marketing or ownership or operation of exempt wholesale generators,[8] Cinergy Communications, Inc., an ETC; Cinergy Engineering, Inc., a Rule 58 Company engaged in utility-related engineering and other technical services; Cinergy-Centrus, Inc., an ETC; Cinergy-Centrus Communications, Inc., an ETC that holds a one-third ownership interest in Centrus LLP, also an ETC; Cinergy Resources, Inc., a Rule 58 Company engaged in energy marketing and trading; Cinergy Solutions, Inc.,[9] which, together with its 12 partly and wholly owned subsidiaries, primarily markets energy management services and engages in development, ownership and operation of district cooling and heating systems and qualifying facilities under the Public Utility Regulatory Policies Act of 1978, principally through a joint venture with a non-affiliate, Trigen Energy Corporation; Cinergy Supply Network, Inc., a Rule 58 Company, which engages in utility materials brokering services and, through its one-third-owned Rule 58 Company, Reliant Services, LLC, proposes to engage in underground utility facilities location and construction services; Cinergy Technology, Inc., which is engaged in commercialization of utility technologies and related investments;[10] and Enertech Associates, Inc., an inactive Rule 58 Company.

In general, the Service Agreements authorize the provision of services, including loans of employees, from the Operating Companies to the Nonutility Companies, and from the Nonutility Companies to the Operating Companies, priced at "cost." More specifically, upon receipt by a party to the Service Agreement of a written request for specified services, including, if applicable, the use of any related equipment, facilities, properties or other resources ("Services"), the receiving party would provide the requested Services if in its sole discretion it can do so without impairing its normal business operations. Services may include, but are not limited to, engineering and construction; operations and maintenance; equipment testing; information services; monitoring, surveying, inspecting, constructing, locating and marking of overhead and underground utility facilities; meter reading; materials management; vegetation management; and marketing and customer relations. In addition to the exclusion of transactions involving affiliated ETCs and FUCOs, affiliate transactions involving sales, leases, or other transfers of assets, goods, energy commodities (including electricity, gas, coal and other combustible fuels) or thermal energy products are outside the scope of the Service Agreements.

Any loans of employees by the company providing Services also would be at the service provider's sole discretion. While performing work on behalf of the client company, any loaned employees would be under its supervision and control, and the client company would be responsible for their actions.

All service requests would be in writing consistent with the form of service request appended to the Service Agreement. Each service request must identify the client company and proposed service provider, be authorized by an appropriate individual at both the client company and the service provider, include a detailed description of the proposed services and estimated costs, and specify the scheduled start date and completion date. In addition, all Services would be assigned to applicable activities, projects, programs or on other appropriate bases to enable specific work to be properly assigned. The client company may amend service requests from time to time, subject to certain conditions.

All Services would be rendered at the full cost, as computed in accordance with applicable rules, regulations and accounting standards, including rules 90 and 91 under the Act. As soon as practicable after the close of each month, any company providing Services would provide to each client company a statement reflecting the billing information necessary to identify the costs charged for that month. The client company is required to pay all amounts billed within 30 days of receipt of the billing statement.

The sole and exclusive responsibility of a company providing Services for any asserted deficiency would be to correct or repair the deficiency or re-perform the Services, at no additional cost to the client company. The service provider disclaims any additional warranties or remedies, and each client company agrees to accept Services on that basis. In addition, any company receiving Services agrees to indemnify the company providing those Services (including each of its officers, directors, employees and agents) from any losses, liabilities or claims arising from or in connection with the provision of the

[6] Cinergy states that, concurrently with the filing of this application with the Commission, PSI is submitting the proposed PSI Service Agreement to the Indiana Commission. According to Cinergy, that submission was not to initiate any proceeding before the Indiana Commission and did not seek any approval or other action by the Indiana Commission (beyond the clearance previously issued by its staff).

[7] CG&E has two nonutility subsidiaries—Tri-State Improvement Company, which acquires and holds property in support of the businesses of CG&E and its utility subsidiaries, and KO Transmission Company, a gas pipeline company. CG&E also holds limited partnership interests in several local venture capital and community development funds. PSI has one nonutility subsidiary, South Construction Company, which holds title to real estate not used and useful in PSI's business. PSI also holds limited partnership interests in several local venture capital and community development funds. Cinergy has pending a request in Commission File No. 70–8427 for an order releasing Commission jurisdiction over Cinergy's continued retention, through CG&E and PSI, of these nonutility businesses and interests.

[8] Exempt wholesale generator is defined in section 32 of the Act.

[9] Cinergy Solutions, Inc. was formed under Commission order dated February 7, 1997 (HCAR No. 26662).

[10] Cinergy has pending a request in Commission File No. 70–8427 for an order releasing Commission jurisdiction over Cinergy's continued retention of this entity.

Services. The indemnity applies regardless of negligence, willful misconduct, or breach of warranty by the company that provided the Services or any of its officers, directors, employees or agents.

Any amendment to a Service Agreement must be in writing executed by all of the parties. In addition, the CG&E and PSI Service Agreements (but not the form of Service Agreement for CG&E's utility subsidiaries) provide that any amendment to either of those Service Agreements, before being submitted to the Commission for its review, must first be submitted to the Ohio Commission and the Indiana Commission staff for their review (and submitted to certain other interested parties for informational purposes). As a result, the Ohio Commission and Indiana Commission staffs have effective veto power over any proposed amendment. Cinergy is precluded from seeking Commission approval of the contract or amendment, or must withdraw it, and may not put it into effect with respect to CG&E or PSI, if the Ohio Commission or Indiana Commission staff Disapprove it or find it unreasonable.

Additional Nonutility Companies may become parties to the Service Agreement after the original execution by executing appropriate signature pages. In the absence of any changes to the terms of the Service Agreement, merely adding new Nonutility Companies as signatories would not be considered an amendment, including for purposes of any prior state review.

The provision of Services would in all cases, be subject to any limitations or restrictions contained in any applicable current or future orders or authorizations, statutory provisions, rules or regulations, tariffs, or agreements of regulatory or governmental agencies having jurisdiction over the parties to the Service Agreement, including the Commission, the applicable state commission and the Federal Energy Regulatory Commission. To the extent, if any, that at any time any provision of the Service Agreement conflicts with any limitation or restriction of any regulatory agency, the limitation of restriction would control.

Northeast Utilities, et al. (70–9463)

Northeast Utilities ("NU"), 174 Brush Hill Avenue, West Springfield, Massachusetts 01090–0010, a registered holding company, and its service company subsidiary, Northeast Utilities Service Company ("NUSCO"), have filed an application-declaration under sections 6(a), 7, 9(a), 10 and 12(c) of the Act and rules 42 and 54 under the Act.

NU proposes to adopt a stockholder rights plan ("Plan") and to enter into a related Rights Agreement ("Agreement") with NUSCO, acting as transfer agent, to implement the Plan. Under the Plan, NU's Board of Trustees ("Board") proposes to declare a dividend of one right ("Right") for each outstanding share of NU common stock, $5.00 par value ("Common Stock"). The dividend will be payable to stockholders of record on the fifth business day after the Commission has issued an order requested in this filing ("Record Date"). Each Right would entitle the holder to purchase one share of Common Stock at a price of $65.00 per share, subject to adjustment ("Purchase Price").

Initially, the Rights may only be traded together with the Common Stock certificates that are outstanding on the Record Date. The Rights may not be exercised until the Distribution Date, which is defined in the Agreement as the earlier of two dates. The first is ten days after the first public announcement that any person or group has acquired beneficial ownership of fifteen percent or more of Common Stock ("Acquiring Person"), without Board approval ("Acquisition Event"). The second is ten business days (unless extended by the Board) after any person or group has commenced, or announced an intent to make, a tender or exchange offer which would, upon its consummation, result in the person or group becoming an Acquiring Person (this event, together with an Acquisition Event, "Triggering Events"). On the occurrence of either Triggering Event, each Right will be evidenced by a Right Certificate, which may then be traded independently of the Common Stock.

In the event that a person becomes an Acquiring Person, Right holders will have the right to receive Common Stock (or, in certain circumstances, cash, property, other NU securities or a reduction in the Purchase Price) having a value equal to two times the effective Purchase Price ("Discount Purchase Price"). If, after the Distribution Date, NU is acquired by another person, the Common Stock is changed into shares of another person, or fifty percent of NU's consolidated assets or earning power are sold or transferred to another person (in each case, a "Surviving Person"), each Right holder may exercise a Right and receive for each Right the common stock of the Surviving Person at the Discount Purchase Price. If a Triggering Event occurs, all Rights that are, were or subsequently become beneficially owned by an Acquiring Person, and certain other related persons, become null and void.

NU may redeem the Rights, as a whole, at an adjustable price of $.001 per Right, at any time prior to the close of business on the tenth day after the date that any person has become an Acquiring Person. At any time after any person or group becomes an Acquiring Person and before any person or group, other than NU and certain related entities, becomes the beneficial owner of fifty percent or more of the outstanding shares of Common Stock, the Board may direct the exchange of shares of Common Stock for all or any part of the Rights. The exchange would be at a rate of one Right per share of Common Stock or the equivalent in other NU securities or assets.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 99–8968 Filed 4–9–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41246; File No. 4–208]

Intermarket Trading System; Notice of Filing and Temporary Summary Effectiveness of Proposed Fourteenth Amendment to the ITS Plan To Link the PCX Application of the OptiMark System to the Intermarket Trading System ("ITS")

April 2, 1999.

I. Introduction

Pursuant to Rule 11Aa3–2 under the Securities Exchange Act of 1934 ("Exchange Act" or "Act"), notice is hereby given that on March 29, 1999, the Intermarket Trading System Operating Committee ("ITSOC") submitted to the Securities and Exchange Commission ("Commission") an amendment ("Fourteenth Amendment") to the restated ITS Plan.[1] The purpose of the amendment is to link the Pacific Exchange, Inc.'s ("PCX") Application of the OptiMark System ("PCX Application") to ITS. The Commission is publishing this notice to solicit comment on the amendment from interested persons. While comment is being solicited on the proposed amendment, the Commission

[1] The ITS is a National Market System plan approved by the Commission pursuant to Section 11A of the Act and Rule 11Aa3–2. *See* Exchange Act Release No. 19456 (January 27, 1983), 48 FR 4938.

has determined to make the proposed amendment summarily effective upon publication of notice on a temporary basis.[2]

ITS is a communications and order routing network linking eight national securities exchanges and the electronic over-the-counter market operated by the National Association of Securities Dealers, Inc. ("NASD"). ITS was designed to facilitate intermarket trading in exchange-listed equity securities based on current quotation information emanating from the linked markets.

Participants in the ITS Plan include the American Stock Exchange LLC, the Boston Stock Exchange, Inc., the Chicago Board Options Exchange, Inc., the Chicago Stock Exchange, Inc., the Cincinnati Stock Exchange, Inc., the NASD, the New York Stock Exchange, Inc., the PCX, and the Philadelphia Stock Exchange, Inc.

II. Background to the Amendment

On January 27, 1999, the Commission granted temporary exemptive relief to the ITS participants to exempt them from the ITS Plan provision requiring a Plan amendment to reflect the PCX Application interface with ITS.[3] The Commission granted this exemption to the participants, in part, because the PCX Application was scheduled to begin operating on January 29, and there was insufficient time to obtain authorization from each of the authorizing bodies of the participants before this date.[4] The PCX Application began operating pursuant to the exemption on January 29, 1999. The exemption expires on April 2, 1999.[5]

III. Description

The purpose of the Fourteenth Amendment is to link the PCX Application to ITS.[6] The PCX Application is a facility of the PCX that receives orders generated by the OptiMark System, an electronic matching system that, on a periodic "call" basis, processes certain qualifying expressions of trading interest (called "profiles"). Profiles may be created from the published quotations disseminated by the other participants at the commencement of the OptiMark System call reflecting the best bid and offer prices and associated sizes "CQS profiles").[7] The orders received by the PCX Application will be processed by the PCX to permit: (a) in the case of those orders reflecting a match between non-CQS profiles, appropriate execution on the PCX and reporting thereafter in accordance with the applicable PCX rules; and (b) in the case of those orders reflecting a match between a non-CQS profile and a CQS profile: (i) processing pursuant to Section 6(a)(ii)(A) or (ii) transmission to ITS pursuant to Section 6(a)(ii)(B), whichever is applicable.

The proposed amendment adds subsections (33A) and (33B) to Section 1 of the ITS Plan to define and include the terms "PCX Application" and "PCX Application Module." The proposed amendment also amends existing definitions set forth in subsections (11), (23), (34A), and (34B) to recognize the use of the PCX Application and the PCX Application Module.

The proposed amendment adds to Section 6(a)(ii) a description of the operation of the PCX Application and how PCX will access other participants' markets through ITS. The amendment also authorizes PCX to computer-generates ITS commitments.

In addition, the proposed amendment adds Section 8(h), which sets forth the parameters for the PCX Application's automated linkage to ITS. This section establishes the "PCX Application Formula" ("Formula") for calculating the "Percentage of PCX Application ITS Volume" ("PCX Application Percentage") and a "PCX Application Ceiling" ("Ceiling"). The Formula establishes a ceiling on the volume of trade-at commitments generated by the PCX Application, relative to the total volume of transactions resulting from the PCX Application. Specifically, the Formula has as its numerator the number of shares computer-generated by the PCX Application Module as ITS "trade-at" commitments that are executed in other ITS participant markets,[8] and as its denominator the same shares as in the numerator plus all shares executed on the PCX received from the PCX Application and reported to the Consolidated Tape Association by the PCX. The Formula results in the PCX Application Percentage. Section (h) provides that PCX may computer-generates "trade-at" commitments if the PCX Application Percentage does not exceed the agreed upon Ceiling as calculated over Rolling Calendar Quarters.[9] The Ceiling starts at 15% and will be reduced to 10% when the NYSE and PCX jointly request that the percentage be reduced. Section (h) provides that if the PCX Application Percentage exceeds the Ceiling then PCX must cease computer-generating "trade-at" commitments for a three-month period. However, during the first 24 calendar months following implementation of the PCX Application, the PCX retains the right to notify the ITSOC in writing, as specified in new Section (h)(iv), that it will undertake, or cause to be undertaken, system adjustments to the operation of the PCX Application in an effort to ensure future compliance with the PCX Application Ceiling. In the event of such notification, the PCX shall have, at a minimum, nine calendar months from the date of such notice (or such longer period as may be approved by all members of the ITSOC upon a showing of reasonable cause), to implement its

---

[2] Exchange Act Rule 11Aa3–2(c)(4) empowers the Commission to summarily put into effect on a temporary basis a Plan amendment "If the Commission finds that such action is necessary or appropriate in the public interest, for the protection of investors or the maintenance of fair and orderly markets, to remove impediments to, and perfect mechanisms of, a national market system or otherwise in furtherance of the purposes of the Act."

[3] The Commission has authority under Exchange Act Rule 11Aa3–2(f) to exempt participants in a national market system plan from the requirements of that plan. Exchange Act Rule 11Aa3–2(f) provides: "The Commission may exempt from the provisions of this section, either unconditionally or on specified terms and conditions, any self-regulatory organization, member thereof, or specified security, if the Commission determines that such exemption is consistent with the public interest, the protection of investors, the maintenance of fair and orderly markets and the removal of impediments to, and perfection of the mechanisms of, a national market system."

The Division of Market Regulation has delegated authority to grant an exemption in this instance pursuant to 17 CFR 200.30–3(a)(29). *See* Letter from Richard R. Lindsey, Director, Division of Market Regulation, Commission, to Allan A. Bretzer, Committee Chairman, ITSOC, dated January 27, 1999.

[4] In general, to amend the ITS Plan, the ITS participants vote on a particular amendment and, assuming unanimous approval, each participant goes back to its respective authorizing body, such as its Board of Directors or Executive Committee. Following ratification by each of the participants' authorizing bodies, the ITSOC submits a proposed amendment to the Commission, which publishes it for comment. An amendment to the ITS Plan is generally not effective until approved by the Commission. On January 21, 1999, the ITSOC unanimously voted to recommend to the participants' authorizing bodies an amendment to the Plan that would allow the PCX Application to link with ITS.

[5] The Commission extended the exemption until publication of this notice. *See* Letter from Belinda Blaine, Associate Director, Division of Market Regulation, Commission, to Allan A. Bretzer, Chairman, ITSOC, dated April 1, 1999.

[6] The Fourteenth Amendment is identical to the amendment approved by the ITSOC on January 21, 1999.

[7] For further discussion of the PCX Application, *see* Exchange Act Release No. 39086 (September 17, 1997), 62 FR 50036 (September 24, 1997) (order approving the PCX Application).

[8] "Trade-at" commitments are those commitments sent from the PCX Application when there is no match of non-CQS profiles, or a partial execution of a non-CQS profile, with the balance filled by another participant.

[9] "*Rolling Calendar Quarter*" means any three consecutive calendar months, with the first Rolling Calendar Quarter ending on the last business day of the first three full calendar months following the month in which the PCX Application commences operation, *i.e.*, April 30, 1999.

proposed system adjustments. During this 9-month period, the restrictions shall not apply. Notwithstanding other provisions, if, for any Rolling Calendar Quarter, the PCX Application Percentage exceeds 30%, the PCX must cease computer-generating "trade-at" commitments for three calendar months beginning the first business day of the second month following the end of such Rolling Calendar Quarter.

Finally, Section 8(h)(vi) provides that, each month, the PCX shall furnish the ITSOC with a report showing the number of shares for each component of the PCX Application Formula, as well as the number of executed shares resulting from "trade-through" commitments.[10]

IV. Discussion

The Commission has made a preliminary determination that the proposed amendment is consistent with the public interest, the protection of investors, the maintenance of fair and orderly markets, and the removal of impediments to, and perfection of the mechanisms of, a national market system. While comment is being solicited on the proposed amendment, the Commission therefore will make the amendment summarily effective on a temporary basis upon publication of notice of the amendment.[11]

The Commission believes that the linkage of the PCX Application to ITS will further the purposes of Section 11A of the exchange Act [12] and the development of the national market system by promoting economically efficient securities transactions, fair competition among markets, the best execution of customer orders, and an opportunity for orders to be executed without the participation of a dealer. The Commission notes that the PCX Application has been linked to ITS since January 29, 1999, under the same terms now being proposed. These terms were agreed upon by the ITS participants after extensive discussions.[13] The Commission believes that linking the PCX Application to ITS has provided, and potentially will continue to provide, a new and more efficient way to match and execute trading interest.[14] The Commission therefore believes it is appropriate to make the proposed amendment summarily effective on a temporary basis upon publication of notice of such amendment in order to allow the PCX Application to continue to be linked to ITS without interruption following termination of the ITS participants' exemptive relief.

V. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the proposed amendment, including whether the proposed Plan amendment is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed Plan amendment change that are filed with the Commission, and all written communications relating to the proposed Plan amendment change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such Plan amendment will also be available for inspection and copying at the principal office of the ITS. All submissions should refer to File No. 4–208 and should be submitted by May 3, 1999.

VI. Conclusion

The Plan amendment is hereby made summarily effective on a temporary basis not to exceed August 10, 1999 pursuant to Exchange Act Rule 11Aa3–2(c)(4).[15]

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[16]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–9011 Filed 4–9–99; 8:45 am]

BILLING CODE 8010–01–M

[10] A trade-through occurs when a transaction is effected at a price below the best prevailing bid, or above the best prevailing offer. The ITS Plan requires price continuity among the various markets by ensuring that the best national bids and offers are provided opportunities to trade with other markets effecting trades outside the best national quote.

[11] *See* Exchange Act Rule 11Aa3–2(c)(4).

[12] Section 11A(a)(1)(D) of the Act, 15 U.S.C. 78k–1(a)(1)(D).

[13] The participants agreed upon these amendments after the Commission published a proposal to amend the ITS Plan. *See* Exchange Act Release No. 40204 (July 15, 1998), 63 FR 39306 (July 22, 1998) ("Proposing Release"). The Commission received 30 comment letters on the Proposing Release, generally favoring linking the PCX Application to ITS.

[14] *See Id.*

[15] 17 CFR 240.11Aa3–2(c)(4).

[16] 17 CFR 200.30–3(a)(29).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41252; File No. SR–CBOE–99–09]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Inc. To List Index Options for an Additional Expiration Month

April 5, 1999.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 15, 1999, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to amend CBOE Rule 24.9, *Terms of Index Option Contracts,* to allow the Exchange to list up to seven expiration months, instead of the currently permitted six, for certain index options up until the expiration of those options in January 2000. The text of the proposed rule change is available at the Office of the Secretary, CBOE, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Although the Exchange spoke with staff in the Division of Market Regulation ("Division") at the Commission to give notice of its intent to file the proposed rule change, the Exchange did not provide the Commission with written notice and the text of the proposed rule change at least five business days prior to the date of filing the proposed rule change. Rule 19b–4(f)(6)(iii). However, the Commission has decided to waive the pre-filing requirement. On March 18, 1999, CBOE made technical amendments to the proposal. Telephone conversations between Timothy H. Thompson, Director, Regulatory Affairs, CBOE, and Kenneth Rosen and Joseph Morra, Attorneys, Division, Commission.

places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The Exchange is proposing to amend paragraph (a)(2) of CBOE Rule 24.9 to allow, for a limited time, the Exchange to list up to seven expiration months in certain index options. When options are listed for seven expiration months, one of those expiration months would be January 2000. Currently, CBOE Rule 24.9(a)(2) permits the Exchange to list only six expiration months in any index options at any one time.

Under the current application of the Rule, the Exchange generally will list three consecutive near term months and three months on a quarterly expiration cycle. For example, the Exchange currently lists options on the Standard & Poor's 500 Index ("SPX options") for the following expiration months: March 1999, April 1999, May 1999, June 1999, September 1999, and December 1999. After the March 1999 options expire, the exchange intends to list SPX options with an expiration month of March 2000. The Exchange believes it is necessary to list the March 2000 SPX options because a number of institutional customers commonly engage in a strategy where they purchase a new option with the same expiration month but for the next year when the options with the same expiration month in the current year expire. When the Exchange lists the March 2000 SPX options, it will have used its current allotment of six expiration months under CBOE Rule 24.9(a)(2).

The Exchange, however, has been approached by a number of institutional customers who are interested in trading SPX options and other index options with an expiration of January 2000. These customers have explained to the Exchange that they believe that index options expiring in January 2000 will provide a useful tool to hedge positions in stocks overlying particular index options or to hedge market exposure to the equity markets generally against the uncertainty presented by potential Year 2000 computer problems. By listing index options with a January 2000 expiration at this point, the Exchange will provide these customers with the opportunity to hedge their positions in an orderly fashion well in advance of the beginning of the Year 2000.

The Exchange recognizes that this request to expand the allowable expiration months for index options is a unique situation presented by the unusual risks presented by potential Year 2000 problems, and so the Exchange only intends to seek the ability to list seven expiration months until the January 2000 options expire.

The Exchange believes that it has the system capacity to more than adequately handle the series that would be permitted to be added by this proposal. In addition, the Exchange has received a letter from the Options Price Reporting Authority ("OPRA") stating that OPRA has the necessary capacity to handle the additional series that could be added through this proposal.

Because the temporary increase in the number of expiration months for index options would satisfy significant customer demand to address a unique hedging need and because the series could be added without presenting capacity problems, the Exchange believes this rule change is consistent with, and furthers the objectives of, section 6(b)(5) of the Act[4] in that it would remove impediments to the perfect the mechanism of a free and open market in a manner consistent with the protection of investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The CBOE does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not:

(i) Significantly affect the protection on competition; and

(ii) impose any significant burden on competition; and

(iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective[5] pursuant to section 19(b)(3)(A) of the Act[6] and Rule 19b–4(f)(6) thereunder.[7] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and argument concerning the foregoing including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR–CBOE–99–09, and should be submitted by May 3, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–9010 Filed 4–9–99; 8:45 am]

BILLING CODE 8010–01–M

---

[4] 15 U.S.C. 78f(b)(5).

[5] The Commission has waived the 5-day pre-filing requirement. *See supra* note 3.

[6] 15 U.S.C. 78s(b)(3)(A).

[7] 17 CFR 240.19b–4(f)(6). In reviewing this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41249; File No. SR–EMCC–99–03]

Self-Regulatory Organizations; Emerging Markets Clearing Corporation; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change Regarding Year 2000 Testing

April 5, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on March 26, 1999, the Emerging Markets Clearing Corporation ("EMCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which items have been prepared primarily by EMCC. The Commission is publishing this notice and order to solicit comments from interested persons and to grant accelerated approval of the proposal.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Under the proposed rule change, EMCC will require that all EMCC members participate in Year 2000 testing with EMCC no later than August 31, 1999.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the commission, EMCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. EMCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

EMCC's Rule 13 provides that, "The Corporation shall establish, as it deems necessary or appropriate, standards of financial responsibility, operational capability, experience and competence for membership." In connection with this standard, EMCC has determined that members that utilize its services must validate their Year 2000 readiness through participation in Year 2000 testing with EMCC. Members will be required to submit scripted data containing various dates to EMCC for processing and will be required to verify that they have received back the scripted results.

Members that fail to participate in Year 2000 testing with EMCC will be subject to appropriate disciplinary action in accordance with EMCC's rules. Such disciplinary action permits EMCC to limit or restrict a member's access to EMCC.

EMCC believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder. In particular, the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act,[3] which requires that the rules of a clearing agency be designated to promote the prompt and accurate clearance and settlement of securities transactions and, in general, to protect investors and the public interest.

(B) Self-Regulatory Organization's Statement on Burden on Competition

EMCC does not believe that the proposed rule change will impact or impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

EMCC will advise its members of the Year 2000 member testing requirement by Important Notice. No written comments have been solicited or received. EMCC will notify the Commission of any written comments received by EMCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Section 17A(b)(3)(F) of the Act[4] requires that the rules of a clearing agency has designed to promote the prompt and accurate clearance and settlement and securities transactions. The Commission believes that the proposed rule change is consistent with this obligation because the required Year 2000 testing should allow EMCC to address potential problems associated with its members' Year 2000 readiness. As a result, EMCC should be able to continue to provide prompt and accurate clearance and settlement of securities transactions before, on, and after Year 2000 without interruption.

EMCC requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after the publication of notice of the filing. The Commission finds good cause to approving the proposed rule change prior to the thirtieth day after the publication of notice of the filing because such approval will allow EMCC to implement its mandatory Year 2000 testing program in a timely manner.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of EMCC. All submissions should refer to the File No. SR–EMCC–99–03 and should be submitted by May 3, 1999.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[5] that the proposed rule change (File No. SR–EMCC–99–03) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–9014 Filed 4–9–99; 8:45 am]

BILLING CODE 8010–01–M

---

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified the text of the summaries prepared by EMCC.

[3] 15 U.S.C. 78q–1(b)(3)(F).

[4] 15 U.S.C. 78q–1(b)(3)(F).

[5] 15 U.S.C. 78s(b)(2).

[6] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41247; File No. SR–EMCC–99–2]

Self-Regulatory Organizations; Emerging Markets Clearing Corporation; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change Allowing EMCC To Conduct Trade Data Comparisons

April 2, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on March 8, 1999, as amended on March 18, 1999, and March 26, 1999, the Emerging Markets Clearing Corporation ("EMCC") filed with the Securities and Exchange Commission ("Commission") a proposed rule change as described in Items I and II below, which items have been prepared primarily by EMCC. The Commission is publishing this notice and order to solicit comments from interested persons and to grant accelerated approval of the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change will allow EMCC (1) to accept trade data directly from either members or service bureaus and (2) to compare trades.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, EMCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change to conduct trade data comparisons.[2] The text of these statements may be examined at the places specified in Item IV below. EMCC has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.[3]

[1] 15 U.S.C. 78s(b)(1).

[2] The complete text of the proposed rule change is attached as Exhibit A to EMCC's filing, which is available for inspection and copying at the Commission's public reference room and through EMCC.

[3] The Commission has modified the text of the summaries prepared by EMCC.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Currently, EMCC members submit transaction data for trades that will settle at EMCC to a "locked-in trade source." The locked-in trade source (currently Match-Em or Trax) compares the trade data and sends a locked-in trade to EMCC. The proposed rule change eliminates the procedures for submitting locked-in trades. Instead, EMCC will accept trade data directly from members or "service bureaus" and will compare the trades.[4] Members will be required to notify EMCC whether they will be submitting trade data directly or through a service bureau. EMCC will accept trade data only from the member's designated source.

The following paragraphs describe the changes to EMCC's Rules to allow trade data to be accepted directly from members or service bureaus and to allow EMCC to provide trade data comparisons.[5]

Rule 1—Definitions

The proposed rule change adds the terms "comparison operation." "conditional matching field," and "service bureau" to Rule 1.[6] The terms "locked-in trade" and "locked-in trade source" will be deleted because they will no longer be relevant.

The proposed rule change modifies the definition of "compared trade" to reflect that trade data will not be transmitted to EMCC by a locked-in trade source and that EMCC will compare the trade data. The definitions of Match-EM and Trax is modified to reflect that they will no longer be locked-in trade sources but "service bureaus."

Rule 4—Clearing Fund, Margin and Loss Allocation

The proposed rule change amends footnote 2 in Rule 4 to reflect that EMCC will no longer be accepting trade data from a locked-in trade source.

[4] The term service bureau is defined in EMCC's Rules as an entity designated by EMCC to submit trade data to EMCC on behalf of EMCC's members. At this time Match-Em and Trax are the two entities EMCC has designated as service bureaus.

[5] References to EMCC's rule numbers in this filing reflect numbering changes proposed in File No. SR–EMCC–99–10, Securities Exchange Act Release No. 40810, International Series Release No. 1174 (December 18, 1998), 63 FR 71532.

[6] The term comparison operation is defined in EMCC rules as the operations having to do with EMCC eligible instruments to which EMCC's Rules apply. The term conditional matching field is defined as a trade data field designated by EMCC as such. For the definition of service bureau, refer to footnote 4.

Rule 5—General Provisions and Rule 6—Receipt of Data

The proposed rule change deletes the portions of Rule 6 pertaining to the receipt of trade data from a locked-in trade source and moves Sections 2 and 3 of old Rule 6 to Sections 4 and 5 of Rule 5.

Rule 6—Comparison Operation

New Rule 6 governs EMCC's comparison operation. Rule 6 authorizes members to submit trade data concerning an EMCC eligible instrument transaction with another member to EMCC. EMCC members can submit trade data directly to EMCC or through a service bureau. If a member submits trade data to EMCC using a service bureau, the trade will be reported when EMCC accepts the trade data and not when the service bureau accepts the data.

Rule 6, Section 3 provides that trade data submitted to EMCC must (i) be in such formats, (ii) be submitted by such times, (iii) include such identifying details, and (iv) meet such operational parameters as established by EMCC or a qualified securities depository.[7] Once trade data is accepted by EMCC, EMCC will compare the trade data and will match it based on established criteria. The actual times, formats, and other details are set forth in EMCC's functional specifications. If trade data does not satisfy the EMCC's requirements, then EMCC will reject such trade data and notify the member. This section also states that if the trade data submitted by a member contains a field which has been identified as a conditional matching field and the trade data submitted by the counterparty also contains such conditional matching field, EMCC will not match the trade unless the conditional matching fields match.

Rule 6, Section 3 also contains three footnotes. Footnote 1 indicates that the formats for submission of trade data may vary depending upon whether a member submits trade data to EMCC directly or through a service bureau. Footnote 2 indicates that trade data that EMCC does not accept because of an ineligible ISIN, counterparty member, or interdealer broker field will not be reflected in any report. Footnote 3 indicates that, for the purposes of comparing a trade, a difference in net consideration amounts submitted by the counterparties to a transcript of less

[7] The term qualified securities depository is defined in EMCC's Rules as a securities depository which has entered into an agreement with EMCC to effect book-entry transfers of EMCC eligible instruments to and by EMCC.

than or equal to $25 will be considered a match. In addition, prices submitted by the counterparties to a transaction will be considered to match if the difference between the two price amounts is less than or equal to either price multiplied by .0001.

Rule 6, Section 4 governs the reporting of the results of the comparison operation.[8] Under the proposed rule change, trade data will be categorized as compared, uncompared, alleged, or rejected. These terms are defined as follows:

(1) Compared trades will be those trades for which a comparison has been effected;
(2) Uncompared will be those items which a member submitted but no corresponding data was received from a counterparty;
(3) Alleged will be those trades submitted by another member against the member and for which the member either did not submit any trade data or did not submit trade data which matched in all required respects;
(4) Rejected will be those items which did not meet the required operational parameters.

In addition to the reports described above, EMCC will continue producing "accepting trade reports" with respect to compared trades. The accepted trade reports will continue to indicate whether a trade is a "netting trade" or is to be settled on a trade-for-trade basis.[9] Footnote 4 of Section 4 provides that compared trades which are matched after the established cut-off time on SD–2 will settle on a trade-for-trade basis.

Pursuant to the proposed rule change, members will be able to modify a previously submitted uncompared trade by submitting new trade data so long as the new trade data includes the reference number previously assigned by the member to the uncompared trade. Members will not be able to modify the ISIN, trade date, or settlement date of an uncompared trade, and EMCC will reject any such modification. Modifications will be required to be submitted to EMCC in such form and by such time as EMCC establishes from time to time.

EMCC will continue to process alleged trades until the earlier of (1) the submission of matching trade data by the member against whom the trade is alleged or (2) the cut-off time for inclusion of compared trades on the SD–1 accepted trade report.

Each uncompared trade, including modified uncompared trades, will be included in the comparison operation until the earlier of (1) its designation as a compared trade and the reflection as such on an accepted trade report or (2) the cut-off time for inclusion of compared trades on the SD–1 accepted trade report. All trades remaining uncompared after such time will be processed in accordance with the provisions of Rule 8.

Proposed Rule 6, Section 6 will govern the submission of cancellation instructions. According to the proposal, EMCC will prohibit partial cancellations and will not cancel a compared trade unless it receives matching instructions from the counterparty. The accepted trade report will indicate whether a cancellation of a compared trade has been processed by EMCC.

Rule 7—Novation and Guaranty of Obligations and Receive, Deliver and Settlement Obligations

The proposed rule change amends Rule 7, Section 2 to explicitly state that transactions reported as canceled on an accepted trade report will result in the extinguishing of the related receive and deliver obligations previously created by EMCC.

Rule 8—Settlement Instructions Only Report

The production of the "settlement instructions only report" by EMCC and the effect of such reports will remain the same. The proposed changes to Rule 8 reflects the elimination of the locked-in trade source and the offering of comparison processing by EMCC.

Rule 15—Ceasing To Act for a Member; Rule 17—Insolvency of a Member; and Addendum B—Statement of Policy With Respect to Interdealer Broker Required Fund Deposits

The language referring to a locked-in trade source is being eliminated, and where appropriate, a reference to service bureau is being inserted.

Addendum A—Statement of Policy Pertaining to Inter-Dealer brokers Who Do Not Qualify Under the Provisions of Rule 2

Addendum A has expired and therefore is being eliminated.

In addition, the proposed rule change amends footnote 6 of Rule 4, Section 10 to provide that the limited use of clearing fund deposits as collateral for intraday financing proposes, as described in Section 10(2)(B), will expire on the date on which all members are netting members. There will no longer be a reference to expiration on EMCC's first anniversary as a registered clearing agency.

EMCC believes that the proposed rule change is consistent with the requirements Section 17A of the Act[10] and the rules and regulations thereunder because the ability to accept trade data directly from members and to offer comparison services will facilitate the prompt and accurate clearance and settlement of emerging market securities transactions.

(B) Self-Regulatory Organization's Statement on Burden on Competition

EMCC does not believe that the proposed rule change will impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments relating to the proposed rule change have been solicited or received. EMCC will notify the Commission of any written comments received by EMCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Section 17A(b)(3)(F) of the Act[11] requires that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions. The Commission believes that allowing EMCC to accept trade data directly from members should promote the prompt and accurate clearance and settlement of securities transactions by providing EMCC members with a choice of how they can best provide EMCC with trade data. Also, by allowing EMCC to conduct the comparison of trade data EMCC will be better able to make sure that the comparison of trades is conducted timely and accurately.

EMCC has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of the filing. The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after publication of notice because such approval will allow EMCC and its members to realize the benefits of having EMCC provide the additional services as soon as possible.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and

[8] Appendix B sets forth the information that will be contained in EMCC's reports indicating the results of its comparison operation. The categories of information contained in the reports will vary depending on the method by which a member submits data to EMCC.

[9] Rule 7 will continue to govern, receive, deliver, and settlement obligations relating to compared trades.

[10] 15 U.S.C. 78q–1.

[11] 15 U.S.C. 78q–1(b)(3)(F).

arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Copies of such filing also will be available for inspection and copying at the principal office of EMCC. All submissions should refer to File No. SR–EMCC–99–2 and should be submitted by May 3, 1999.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[12] that the proposed rule change (File No. SR–EMCC–99–2) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–9016 Filed 4–9–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41248; File No. SR–NASD–99–01]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment Nos. 1 and 2 Thereto by the National Association of Securities Dealers, Inc.; Relating to the Filing Fees Under the Corporate Financing Rule

April 2, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 11, 1999, the National Association of Securities Dealers, Inc. ("NASD"), through its wholly owned subsidiary NASD Regulation, Inc. ("NASD Regulation"), filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASD Regulation. On March 18, 1999, and March 23, 1999, NASD Regulation submitted to the Commission Amendment Nos. 1 and 2, respectively, to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASD Regulation is proposing to amend Section 6 of Schedule A to the NASD By-Laws and NASD Conduct Rule 2710 to simplify the fee structure for public offerings filed under NASD Conduct Rules 2710, 2720, and 2810. Below is the text of the proposed rule change. Proposed new language is in italics; proposed deletions are in brackets.

* * * * *

Schedule A to the NASD By-Laws

Assessments and fees pursuant to the provisions of Article VI of the By-Laws of the Corporation, shall be determined on the following basis.

Section 1–Section 5

No change.

Section 6—Fees for Filing Documents Pursuant to the Corporate Financing Rule

(a) [The] *There shall be a fee imposed for the filing of* initial documents relating to any offering filed with the NASD pursuant to the Corporate Financing Rule [shall be accompanied by a filing fee] equal to $500 plus .01% of the [gross dollar amount of the offering,] *proposed maximum aggregate offering price or other applicable value of all securities registered on an SEC registration statement or included on any other type of offering document (where not filed with the SEC), but shall* not [to] exceed [a fee of] $30,500. The amount of filing fee may be rounded to the nearest dollar.

(b) [Amendments] *There shall be an additional fee imposed for the filing of any amendment or other change* to the [initially filed documents which increase the number of securities being offered] *documents initially filed with the NASD pursuant to the Corporate Financing Rule* [shall be accompanied by an additional amount of filing fee] equal to .01% of the [per share offering price of the new or additional securities, multiplied by the number of new or additional securities being offered,] *net increase in the maximum aggregate offering price or other applicable value of all securities registered on an SEC registration statement, or any related SEC Rule 462(b) registration statement, or reflected on any SEC Rule 430A prospectus, or included on any other type of offering document. However, the aggregate of all filing fees paid in connection with an SEC registration statement or other type of offering document shall* not [to] exceed $30,500 [when aggregated with all fees previously paid].

[(c) the provisions of Rule 457 adopted under the Securities Act of 1933, as amended, shall govern the computation of filing fees for all offerings filed pursuant to this Section, including intrastate offerings, to the extent the terms of Rule 457 are not inconsistent with this Section.]

Section 7–Section 15

No change.

* * * * *

2710. Corporate Financing Rule—Underwriting Terms and Arrangements

(a) Definitions

For purposes of this Rule, the following terms shall have the meanings stated below. The definitions in Rule 2720 are incorporated herein by reference.

[(1) Gross Dollar Amount of the Offering]

[Public offering price of all securities offered to the public and securities included in any overallotment option, the registration price of securities to be paid to the underwriter and related persons, and the registration price of any securities underlying other securities;]

(2)–(6) renumbered (1)–(5)

(b) Filing Requirements

(1)–(9)

No change.

[(10) Filing Fees]

[(A) The initial documents relating to any offering filed with the Association pursuant to this Rule shall be accompanied by a filing fee equal to $500 plus .01% of the gross dollar amount of the offering, not to exceed a fee of $30,500. The amount of filing fee may be rounded to the nearest dollar.]

---

[12] 15 U.S.C. 78s(b)(2).

[13] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] NASD Regulation filed Amendment No. 1 which superseded the original rule filing in its entirety. *See* Letter from Joan C. Conley, Secretary, NASD Regulation, to Katherine A. England, Assistant Director, Market Regulation, Commission, dated March 17, 1999; Amendment No. 2 also superseded Amendment No. 1 and the original rule filing in its entirety. *See* Letter from Joan C. Conley, Secretary, NASD Regulation, to Katherine A. England, Assistant Director, Market Regulation, Commission, dated March 22, 1999.

[(B) Amendments to the initially filed documents which increase the number of securities being offered shall be accompanied by an additional amount of filing fee equal to .01% of the per share offering price of the new or additional securities, multiplied by the number of new or additional securities being offered, not to exceed $30,500 when aggregated with all fees previously paid.]

[(C) The provisions of SEC Rule 457 adopted under the Securities Act of 1933, as amended, shall govern the computation of filing fees for all offerings filed pursuant to this Rule, including intrastate offerings, to the extent the terms of Rule 457 are not inconsistent with subparagraph (A), (B) or (C) above.]

(11)–(13) renumbered (10–(12)

(c) No change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD Regulation included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASD Regulation has prepared summaries, set forth in Sections A, B, C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

NASD Conduct Rule 2710 (the "Corporate Financing rule") requires that NASD members file most proposed public offerings with the Corporate Financing Department ("Department") of NASD Regulation. The Department reviews these filings in order to determine whether the underwriting terms and arrangements are fair and reasonable pursuant to standards set forth in NASD Conduct Rules 2710, 2720, and 2810 prior to the commencement of the offering.

Certain aspects of the existing process by which Corporate Financing filing fees (as defined below) are calculated create unnecessary inefficiencies in the handling of such fees by NASD Regulation. NASD Regulation is proposing to amend its rules, as discussed below, to address these problems with respect to the Corporate Financing filing fees.

Elimination of Duplicate Provision—Section 6 of Schedule A to the NASD By-Laws ("Section 6 of Schedule A") and Paragraph (b)(10) of Conduct Rule 2710 include identical provisions that impose a fee on each filing, in the amount of $500 plus .01% of the value of securities, with a maximum filing fee limit of $30,500 (the "Corporate Financing filing fee"). NASD Regulation now proposes to eliminate paragraph (b)(10) of Conduct Rule 2710 in its entirety because it duplicates Section 6 of Schedule A. NASD Regulation further believes that Schedule A is the more appropriate location for provisions that impose fees on NASD members.

Method for Submission of Filing Fees—The language of Sections 6(a) and 6(b) of Schedule A currently specify that a filing fee will accompany an initial filing and amendments, in certain cases. NASD Regulation is proposing to eliminate this language so that it can have greater flexibility with respect to the manner in which filing fees are paid.[4]

Application of Fee to All Securities on Offering Document—Currently, offerings filed with the Department are charged a fee equal to $500, plus .01% of the gross dollar amount of the offering, not to exceed $30,500. The definition of the term "gross dollar amount of the offering" in Paragraph (a)(1) of Conduct Rule 2710 only allows NASD Regulation to collect a fee on "all securities offered to the public." This language is often interpreted by NASD members to impose a fee only with respect to those specific securities currently offered by the NASD member filing a proposed offering, even when the issuer has included other securities on the same offering document for later public sale by the same or another member. Further in the case of securities registered with the SEC pursuant to Rule 415, NASD members have argued that the Department should recalculate the filing fee each time a shelf takedown is made so that the NASD member is only responsible for the Corporate Financing filing fee that relates to the NASD member's specific shelf takedown. Such a piecemeal calculation of filing fees would be time-consuming and cause accounting difficulties.

NASD Regulation proposes to amend Section 6(a) to Schedule A to clarify that the Corporate Financing filing fee will be calculated on the proposed maximum aggregate offering price (or other applicable value) of all securities included on an SEC registration statement or any other type of offering document—regardless of whether the securities are to be currently "offered to the public." The term "proposed maximum aggregate offering price" is the same term used in the fourth column of the fee table on the cover of SEC registration statement forms to identify the total of the proposed public offering price of all securities to be registered on that registration statement. The inclusion of the words "other applicable value" is intended to cover debt securities or a situation in which the company only registers a dollar amount of securities without specifying the type of security. This is the same value that would also be included under the fourth column of the fee table titled "proposed maximum aggregate offering price" on the cover of SEC registration forms in the case where a debt issue or a dollar amount of securities is being registered with the SEC.

The NASD believes that this clarification will facilitate the calculation of Corporate Financing filing fees and remove issues of dispute that currently occur over whether securities included on an offering document are being currently "offered to the public." Since the calculation of the Corporate Financing filing fee will no longer be based on the "gross dollar amount of the offering," this definition is proposed to be eliminated in Paragraph (a)(1) of NASD Conduct Rule 2710.

Calculation of Fee on Amendments—Section 6(b) of Schedule A currently requires that NASD Regulation collects an additional filing fee when an amendment to the offering document decreases the number of securities being registered, regardless of whether there is any increase in the aggregate value of the securities that were included on the original offering document. This additional fee is calculated by multiplying the number of additional securities times their new offering price, and charging a fee of .01% of this product (with a limitation of $30,500 in total fees with respect to any offering filed). When such an amendment decreases the maximum aggregate offering price for the whole offering (as well as increasing the number of securities offered), the collection of an additional fee by the Department is not always warranted. Conversely, the Department is currently prohibited from collecting an additional fee when the

[4] NASD Regulation recently deleted Subsection (6)(c) of Schedule A to the NASD By-Laws and Subparagraph (b)(10)(C) of Conduct Rule 2710, which had mandated that Corporate Financing filing fees be paid in the form of a check or money order. *See* Securities Exchange Act Release No. 40706 (November 24, 1998), 63 FR 66618 (December 2, 1998).

amendment increases the maximum aggregate offering price of the securities offered, but does not increase the number of securities.

NASD Regulation is proposing to amend Section 6(b) of Schedule A to impose an additional fee for amendments only when there is an increase in the maximum aggregate offering price or other applicable value of all securities included on the offering document. Thus, an additional filing fee would be imposed in the amount of .01% of the net increase in the maximum aggregate offering price or other applicable value of all securities registered on an SEC registration statement or included on any other type of offering document, with a maximum of $30,500 charged for any offering. However, no refund will be made as a result of a net decrease in the maximum aggregate offering price or other applicable value.

The proposed change to Section 6(b) of Schedule A clarifies that NASD Regulation recognizes that there can be a net increase in the maximum aggregate offering price or other applicable value of an offering registered with the SEC through an amendment to the registration statement or through "any other change." The language also treats as an amendment a net increase in the maximum aggregate offering price or other applicable value that is reflected on an SEC Rule 430A prospectus[5] or filed in a related registration statement pursuant to SEC Rule 462(b).[6]

SEC Rule 457—Section 6(c) of Schedule A requires that Corporate Financing filing fees be computed according to SEC Rule 457, to the extent that SEC Rule 457 is not inconsistent with Section 6 of Schedule A. Originally, the Corporate Financing filing fee rule referenced SEC Rule 457 in order to calculate the Corporate Financing file fees in certain situations. The amendments proposed herein to the Corporate Financing filing fee rule would incorporate all necessary concepts for the calculation of such filing fees. Therefore, NASD Regulation proposes to eliminate Section 6(c), as the reference to SEC Rule 457 is no longer necessary.

2. Statutory Basis

NASD Regulation believes that the proposed rule change is consistent with the provisions of Section 15A(b)(5)[7] of the Act, which requires that the rules of a national securities association provide for the equitable allocation of reasonable dues, fee, and other charges among members. NASD Regulation believes that the proposed rule change provides for the equitable allocation of the fees paid by members in connection with the submission of proposed public offerings to the Department for review

B. Self-Regulatory Organization's Statement on Burden on Competition

NASD Regulation does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Socilitation of Comments

Interested persons are invited to submit written date, views, and arguments concerning the foregoing including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file No. SR–NASD–99–01 and should be submitted by May 3, 1999.

For the Commission, by the Division of Market Regulations, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–9009 Filed 4–9–99; 8:45 am]

BILLING CODE 8010–01–M

[5] SEC Rule 430A permits a registrant to omit certain information from a prospectus that is filed as part of a registration statement declared effective by the SEC if the omitted information is contained in a prospectus filed with the SEC pursuant to SEC Rule 424(b) or SEC Rule 497(h) within 15 business days after effectiveness. If the omitted information is not contained in a prospectus filed with the SEC within fifteen business days after effectiveness, it must be contained in an effective post-effective amendment to the registration statement. SEC Rule 430A permits a registrant to reflect in the prospectus filed pursuant to SEC Rule 424(b) or SEC Rule 497(h) or in a post-effective amendment to the registration statement a change in the volume of securities offered (if the total value of securities offered would not exceed that which was registered) or a change in the bona fide estimate of the maximum offering price range if the changes, in the aggregate, represent no more than a 20 percent change in the maximum aggregate offering price set forth in the fee table in the effective registration statement.

[6] SEC Rule 462(b) permits a registrant to file a registration statement that is effective upon filing if, among other things, the registration statement registers "additional securities of the same class(es) as were included in an earlier registration statement for the same offering and declared effective with the Commission."

[7] 15 U.S.C. 78o–3(b)(5).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41242; File No. SR–OCC–98–04]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change Concerning Required Clearing Fund Contributions

April 1, 1999.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on April 13, 1998, The Options Clearing corporation ("OCCC") filed with the Securities and Exchange Commission ("Commission") and on March 22, 1999, amended the proposed rule change (File No. SR–OCC–98–04) as described in Items I and II below, which items have been prepared primarily by OCC. The Commission is publishing this notice and order to solicit comments on the proposed rule change from interested persons and to grant accelerated approval of the proposal.

[1] 15 U.S.C. 78s(b)(1).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Under the proposed rule change, OCC will revise clearing members' required clearing fund contributions so that each clearing member will not be required to contribute a proportionate share of an amount equal to 5 percent of the average daily aggregate margin requirement of all clearing members with a sliding scale calculation of up to 7 percent if the amount of the clearing fund falls below $1 billion.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. OCC has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.[2]

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

As part of OCC's risk reduction system, the clearing fund is designed to provide a third line of defense in the event of a clearing member default to enhance OCC's capacity to perform its guarantee function. OCC's first two lines of defense are (1) the credit worthiness of each clearing member and (2) each clearing member's margin deposits. If a clearing member becomes insolvent and its margin deposits are inadequate or are not immediately available, the clearing fund provides OCC with a pool of highly liquid assets that are immediately available.

The clearing fund mutualizes among all of OCC's clearing members the risk of default of an individual clearing member. OCC's total clearing fund is comprised of two fund pools, the equity clearing fund and the non-equity clearing fund. Currently, each clearing member's required contribution to the clearing fund is its proportionate share of an amount equal to 7 percent of the average daily aggregate margin requirement for equity options and for non-equity options.[3] Each clearing member is subject to a minimum contribution of $75,000 for the equity clearing fund if it is approved to clear equity options and $75,000 for the non-equity clearing fund if it is approved to clear non-equity options. Should these pools of assets ever be depleted, each clearing member is obligated to provide a second contribution equal to its original contribution prior to being able to withdraw from OCC membership.

Under Article VIII of its by-laws, OCC may use the clearing fund to cover various contingencies which include compensation for losses suffered by OCC as a result of the failure of a clearing member or a bank to perform its obligations to OCC. OCC's clearing fund currently contains over $1 billion. OCC has studied the adequacy of its clearing fund and believes that the size of its clearing fund is excessive with respect to its potential exposure. Among other things, OCC's analysis of the clearing fund's adequacy included an assessment of the clearing fun's ability to cover OCC's exposure resulting from (1) the default of a clearing member during volatile market conditions and (2) a delay or failure of a letter of credit bank to meet its obligation to OCC in connection with the default of a clearing member.

After careful and deliberate discussions, OCC and its Board of Directors have determined that a more prudent level of the clearing fund may be achieved by reducing the overall fund size calculation from the current 7 percent of average aggregate daily margin requirement to 5 percent of average aggregate daily margin requirement. However, OCC will apply a sliding scale calculation if the 5 percent contributions level produces a clearing fund of less than $1 billion.

Specifically, the proposed rule change will amend Interpretation .01 to OCC Rule 1001 to provide that each clearing member's contribution to the clearing fund will be not less than 5 percent and not greater than 7 percent of its average daily aggregate margin requirement.[4] Interpretation .01 will also provide that if the 5 percent contribution level produces a clearing fund of less than $1 billion that contribution level will be increased until either (a) The clearing fund reaches $1 billion or (b) the contribution level reaches 7 percent.

OCC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act[5] and the rules and regulations thereunder because it reduces clearing members' required clearing fund contributions to a more efficient and prudent level while not adversely affecting OCC's ability to effectively manage its risks.

B. Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the proposed rule change would impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were not and are not intended to be solicited with respect to the proposed rule change, and none have been received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Section 17A(b)(3)(F) of the Act[6] requires that the rules of a clearing agency be designed to assure the safeguarding of securities and funds which are in the custody and control of the clearing agency or for which it is responsible. The Commission believes that the proposed rule change is consistent with OCC's obligations under Section 17A(b)(3)(F) because while it reduces the size of OCC's clearing fund by allowing OCC to lower its clearing members' required contributions, it still requires OCC to maintain a clearing fund which should be sufficient to cover OCC's exposure to a defaulting clearing member or to a defaulting bank that has issued a letter of credit to a defaulting clearing member.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the publication of notice of the filing. Approving prior to the thirtieth day after publication of notice will permit OCC to use the new clearing fund contribution requirements for its April calculation.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act.

---

[2] The Commission has modified the text of the summaries prepared by OCC.

[3] A clearing member's proportionate share is the percentage based on the clearing member's average daily open long and short positions during the month compared to the average daily open long and short positions held by all clearing members during the same month.

[4] OCC Rule 1001, which is not being amended, states that each clearing member's contribution shall be the greater of (1) $75,000 or (2) the clearing member's proportionate share of 5 percent, or such greater percentage as OCC's board may prescribe, of the average daily aggregate margin requirement.

[5] 15 U.S.C. 78q–1.

[6] 15 U.S.C. 78q–1(b)(3)(F).

Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW, Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of OCC. All submissions should refer to the file number SR–OCC–98–04 and should be submitted by May 3, 1999.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[7] that the proposed rule change (File No. SR–OCC–98–04) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–9013 Filed 4–9–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41251; File No. SR–SCCP–98–06]

Self-Regulatory Organizations; Stock Clearing Corporation of Philadelphia; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Reducing Certain Trade Recording Fees

April 5, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on December 31, 1998, the Stock Clearing Corporation of Philadelphia ("SCCP") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by SCCP. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

SCCP proposes permanent implementation of a reduction in SCCP's fee schedule for trade recording fees for trades that match with PACE orders.[2]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule

In its filing with the Commission, SCCP included statements concerning the purpose of and statutory basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. SCCP has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[3]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

SCCP proposes permanent implementation of its program that reduced SCCP's trade recording fees for trades that match with PACE orders. SCCP began providing reduced recording fees for trades that match with PACE for trades settling January 2, 1998, through April 30, 1998.[4] Subsequently, the pilot program has been extended through December 31, 1999.[5]

Prior to the implementation of the pilot program, SCCP charged a trade recording fee of $.47 per side for regular trades. SCCP is not bifurcating the category of trade recording fees for regular trades into trades not matching with PACE orders and trades matching with PACE orders. The trade recording fees for trades not matching with PACE orders remains $.47 per side. SCCP's trade recording fees for trades matching with PACE orders are now (i) $.27 per side for the first 2,500 trades per month and (ii) $.10 per side for trades in excess of 2,500 per month.

SCCP believes that the trade recording fee reduction is equitable and reasonable. SCCP states that the PACE System provides participants and their customers with automated order entry, execution, and processing. One of the benefits of small order entry systems, such as PACE, is that customers pay lower fees for the use of PACE as opposed to manual order entry. SCCP further states that another benefit of PACE is the increased efficiency associated with automated order processing. In fact, lower fees generally recognize the reduction of participant and exchange personnel involved in PACE transactions. Therefore, reducing the total cost of exchange trading, in an equitable fashion, should encourage additional PACE business, which in turn, extends the many benefits of PACE to additional customers.

SCCP notes that trades matching with PACE trades require that SCCP expend fewer technological and manual resources to accept and record than if the trades arrived at SCCP from a source other than PACE. SCCP receives information on trades from many different sources and then processes this trade information for its participants. These trades take place on a number of different platforms. For example, SCCP clears trades executed on the PACE system, the Intermarket Trading System ("ITS"), and from the Securities Industry Automation Corporation ("SIAC") over-the-counter system. In all, SCCP receives and records trades from approximately twelve different sources. All of these sources, except trades executed over PACE, require SCCP to expend additional technological and manual resources to process these trades.

Trades executed over PACE are received by SCCP from the PHLX. PACE trades received from the PHLX are already in a format that SCCP systems can read and process without further technological and manual manipulation. Trades executed and received from another source require SCCP to create and interface, create additional programming to transform the data received into a source that SCCP systems can process, and potentially require SCCP personnel to enter trades manually from hand written tickets. In other words, SCCP states that it must expend additionally resources to transform the data it receives from non-PACE sources in a format comparable to PACE data received from PHLX. Therefore, SCCP believes that a reduction in fees for trades that match with PACE orders recognizes the reduced resources needed by SCCP to process and record these trades.

For these reasons, SCCP believes that the proposed rule change is consistent

---

[7] 15 U.S.C. 78s(b)(2).

[8] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] PACE, an acronym for the Philadelphia Stock Exchange Automated Communication and Execution System, is a real time order routing and execution system.

[3] The Commission has modified parts of these statements.

[4] Securities Exchange Act Release No. 39630 (February 9, 1998), 63 FR 7848.

[5] Securities Exchange Act Release Nos. 39948 (May 4, 1998), 63 FR 25538, 40274 (July 22, 1998), 63 FR 40578 and 40885 (January 5, 1999), 64 FR 1851.

with Section 17A(b)(3)(D) of the Act,[6] which requires that the rules of a registered clearing agency provide for equitable allocation of reasonable dues, fees, and other charges for services which it provides to its participants.

(B) Self-Regulatory Organization's Statement on Burden on Competition

SCCP does not believe that the proposed rule change will impose any inappropriate burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change establishes or changes a due, fee, or other charge imposed by SCCP, it has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act[7] and Rule 19b–4(f)(2) thereunder.[8] At any time within sixty days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW, Washington, DC 20549. Copies of such filing will also be available for inspection and copying at SCCP. All submissions should refer to the File No. SR–SCCP–98–06 and should be submitted by May 3, 1999.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–9015 Filed 4–9–99; 8:45 am]

BILLING CODE 8010–01–M

[6] 15 U.S.C. 78q–1(b)(3)(D).

[7] 15 U.S.C. 78s(b)(3)(A)(ii).

[8] 17 CFR 240.19b–4(f)(2).

[9] 17 CFR 200.30–3(a)(12).

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. WTO/D–138]

WTO Dispute Settlement Proceeding Regarding U.S. Countervailing Duties on Certain Hot-Rolled Lead and Bismuth Carbon Steel Products Originating in the United Kingdom

AGENCY: Office of the United States Trade Representative.

ACTION: Notice; request for comments.

SUMMARY: The Office of the United States Trade Representative ("USTR") is providing notice of the request for the establishment of a dispute settlement panel under the Marrakesh Agreement Establishing the World Trade Organization ("WTO"), by the European Communities ("EC") to examine the imposition by the United States of countervailing duties on hot-rolled lead and bismuth carbon steel products ("leaded bar") from the United Kingdom. In this dispute, the EC alleges that such imposition of countervailing duties is inconsistent with obligations of the United States under the WTO Agreement of Subsidies and Countervailing measures ("SMC Agreement"). The USTR invites written comments from the public concerning the issues raised in this dispute.

DATES: Although USTR will accept any comments received during the course of the dispute settlement proceedings, comments should be submitted by May 21, 1999, to be assured of timely consideration by the USTR in preparing its first written submission to the panel.

ADDRESSES: Comments may be submitted to Sandy McKinzy, Litigation Assistant, Office of Monitoring and Enforcement, Room 122, Attn: Leaded Bar Dispute, Office of the U.S. Trade Representative, 600 17th Street, NW., Washington, DC 20508.

FOR FURTHER INFORMATION CONTACT: William D. Hunter, Office of the General Counsel, (202) 395–3582.

SUPPLEMENTARY INFORMATION: Pursuant to section 127(b)(1) of the Uruguay Round Agreements Act ("URAA") (19 U.S.C. 3537(b)(1)), the USTR is providing notice that on January 14, 1999, the EC submitted a request for the establishment of a WTO dispute settlement panel to examine the imposition by the United States of countervailing duties on leaded bar originating in the United Kingdom. On January 22, 1999, the EC submitted a revision of its request. The WTO Dispute Settlement Body established a panel for this purpose on February 17.

Major Issues Raised and Legal Basis of Complaint

In its request for the establishment of a panel, as revised, the EC alleges the following:

The US refuses to take account of the privatisation or change of ownership of the body receiving a subsidy, even, if at a full market price, and to consider whether the subsidy still provides a benefit when assessing or reassessing, the countervailable subsidy. Instead the US considers that the subsidy "travels with" the assets when they are transferred. The US allocates the amount of the subsidy to the new owners of the assets according to a methodology which has no rational basis and has never been explained or justified in the determinations.

In particular, no attempt has ever been made in the final determinations to justify or rationlise what benefits continue to result from subsidies following privatisation or sale of assets at fair market prices. The US methodology relied entirely on the presumption (based mostly on pre-WTO legislation and practice) that benefits from prior subsidies pass-through without the need to show that a benefit continues to be conferred as mandated by the [SCM Agreement].

The EC alleges that the imposition of countervailing duties in the circumstances described above constitutes a violation of Articles 1.1(b), 10, 14, and 19.4 of the SCM Agreement.

Public Comment: Requirements for Submissions

Interested persons are invited to submit written comments concerning the issues raised in this dispute. Comments must be in English and provided in fifteen copies to Sandy McKinzy at the address provided above. A person requesting that information contained in a comment submitted by that person be treated as confidential business information must certify that such information is business confidential and would not customarily be released to the public by the submitting person. Confidential business information must be clearly marked "BUSINESS CONFIDENTIAL"

in a contrasting color ink at the top of each page of each copy.

Information or advice contained in a comment submitted, other than business confidential information, may be determined by the USTR to be confidential in accordance with section 135(g)(2) of the Trade Act of 1974 (19 U.S.C. 2155(g)(2)). If the submitting person believes that information or advice may qualify as such, the submitting person—

(1) Must so designate the information or advice;

(2) Must clearly mark the material as "SUBMITTED IN CONFIDENCE" in a contrasting color ink at the top of each page of each copy; and

(3) Is encouraged to provide a non-confidential summary of the information or advice.

Pursuant to section 127(e) of the URAA (19 U.S.C. 3537(e)), the USTR will maintain a file on this dispute settlement proceeding, accessible to the public, in the USTR Reading Room: Room 101, Office of the United States Trade Representative, 600 17th Street, N.W., Washington, D.C. 20508. The public file will include a listing of any comments received by the USTR from the public with respect to the proceeding; the U.S. submissions to the panel in the proceeding, the submissions, or non-confidential summaries of submissions, to the panel received from other parties in the dispute, as well as the report of the dispute settlement panel, and, if applicable, the report of the Appellate Body. An appointment to review the public file (Docket WTO/D–138) may be made by calling Brenda Webb, (202) 395–6186. The USTR Reading Room is open to the public from 9:30 a.m. to 12 noon and 1 p.m. to 4 p.m., Monday through Friday.

A. Jane Bradley,

Assistant U.S. Trade Representative for Monitoring and Enforcement.

[FR Doc. 99–9067 Filed 4–9–99; 8:45 am]

BILLING CODE 3190–01–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed During the Week Ending April 2, 1999

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: OST–99–5457
Date Filed: March 29, 1999
Parties: Members of the International Air Transport Association
Subject:
PTC12 NMS-AFR 0061 dated 25 February 1999 (Mail Vote 992)
Mid Atlantic-Africa Resolution r1-r11
PTC12 NMS-AFR 0063 dated 23 March 1999 adopting (Mail Vote 992)
PTC12 NMS-AFR 0060 dated 16 February 1999
South Atlantic-Africa Resolutions r1-r16
Minutes—PTC12 NMS-AFR 0062 dated 16 February 1999 filed with Docket OST–99–5192
Tables—PTC12 NMS-AFR FARES 0042 dated 26 February 1999
PTC12 NMS-AFR FARES 0043 dated 9 March 1999—Technical Correction
PTC12 NMS-AFR FARES 0044 dated 23 March 1999
Intended Effective Date: 1 May 1999.

Docket Number: OST–99–5478
Date Filed: April 1, 1999
Parties: Members of the International Air Transport Association
Subject:
PTC23 EUR-SASC 0045 dated March 19, 1999
Europe-South Asian Subcontinent Resolution r1-r18
Minutes—PTC23 EUR-SASC 0046 dated March 23, 1999
Tables—PTC23 EUR-SASC Fares 0015 dated 23 March 1999
Intended effective date: July 1, 1999.

Dorothy W. Walker,

Federal Register Liaison.

[FR Doc. 99–9068 Filed 4–9–99; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Amtrak Reform Council; Notice of Meeting

AGENCY: Amtrak Reform Council.

ACTION: Notice of meeting.

SUMMARY: As provided in Section 203 of the Amtrak Reform and Accountability Act of 1997, the Amtrak Reform Council (ARC) gives notice of a meeting of the Council. The Council seeks comments from state transportation officials and rail freight operators concerning the current and future operation of intercity rail services over the Northeast Corridor (Washington, D.C.—Boston, MA). Opportunity for public comment will be provided. The Council will also take up such additional matters as the Council or its members deem appropriate.

DATES: The meeting is scheduled from 9:30 a.m. to 4:30 p.m., on Monday, April 26, 1999.

ADDRESSES: The meeting will be held in the Hancock Room of the Holiday Inn, Independence Plaza, 4th & Arch Streets, Philadelphia, PA (215–923–8660). The meeting is open to the public on a first-come, first-serve basis. Portions of the meeting may be closed to the public at the discretion of the Council, if proprietary information is to be discussed. Persons wishing to appear before the Council must advise the Executive Director by COB, April 21, 1999, by contacting the person listed below. Persons in need of special arrangements should contact the person listed below.

FOR FURTHER INFORMATION CONTACT: Deirdre O'Sullivan, Amtrak Reform Council, Room 7105, JM–ARC, 400 Seventh Street, S.W., Washington, D.C. 20590, or by telephone at (202) 366–0591; FAX: 202–493–2061.

SUPPLEMENTARY INFORMATION: The ARC was created by the Amtrak Reform and Accountability Act of 1997 (ARAA), as an independent commission, to evaluate Amtrak's performance, and make recommendations to Amtrak for achieving further cost containment, productivity improvements, and financial reforms. In addition, the ARAA requires: that the ARC monitor cost savings resulting from work rules established under new agreements between Amtrak and its labor unions; that the ARC provide an annual report to Congress that includes an assessment of Amtrak's progress on the resolution of productivity issues; and that after two years the ARC begin to make findings on whether Amtrak can meet certain financial goals and, if not, to notify the President and the Congress.

The ARAA provides that the ARC consist of eleven members, including the Secretary of Transportation and ten others nominated by the President or Congressional leaders. Each member is to serve a five year term.

Issued in Washington, D.C., on April 7, 1999.

Thomas A. Till,

Executive Director.

[FR Doc. 99–9045 Filed 4–9–99; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG–1999–5510]

Commercial Fishing Industry Vessel Advisory Committee

AGENCY: Coast Guard, DOT.

ACTION: Notice of meeting; change of location.

SUMMARY: The location of the Commercial Fishing Industry Vessel Advisory Committee (CFIVAC) meeting, on Wednesday, April 14, 1999, from 8:30 a.m. to 4:30 p.m., and Thursday, April 15, 1999, from 8:30 a.m. to 4:30 p.m., has been changed. The meeting has been moved from the Coast Guard National Pollution Funds Center, 4200 Wilson Blvd., Suite 1000, Arlington, VA to Coast Guard Headquarters, 2100 2nd Street, SW, Room 2415, Washington, DC.

FOR FURTHER INFORMATION CONTACT: For questions on this notice, contract Commander Mark A. Prescott, Executive Director of CFIVAC, or Lieutenant Commander Randy Clark, Assistant to the Executive Director, telephone 202–267–1181, fax 202–267–4570.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. App. 2.

Dated: April 6, 1999.

Howard L. Hime,

Acting Director of Standards, Marine Safety and Environmental Protection.

[FR Doc. 99–9070 Filed 4–9–99; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG–1999–5479]

Towing Safety Advisory Committee

AGENCY: Coast Guard, DOT.

ACTION: Notice of meetings.

SUMMARY: The Towing Safety Advisory Committee (TSAC) and its working groups will meet to discuss various issues relating to shallow-draft inland and coastal waterway navigation and towing safety. All meetings are open to the public.

DATES: TSAC will meet on Thursday, April 29, 1999, from 8 a.m. to 12:30 p.m. TSAC working groups will meet on Wednesday, April 28, 1999, from 8 a.m. to 3:30 p.m. These meetings may close early if all business is finished. Written material and requests to make oral presentations should reach the Coast Guard on or before April 19, 1999. Requests to have a copy of your material distributed to each member of the committee or working group should reach the Coast Guard on or before April 12, 1999.

ADDRESSES: TSAC will meet in room 2415, U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC. Working group meetings will be held in the same room. Send written material and requests to make oral presentations to Lieutenant Lionel Mew, Commandant (G–MSO–1), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001. This notice is available on the Internet at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: For questions on this notice, contact Lieutenant Lionel Mew, Assistant Executive Director of TSAC, telephone 202–267–0218, fax 202–267–4570.

SUPPLEMENTARY INFORMATION: Notice of these meetings is given under the Federal Advisory Committee Act, 5 U.S.C. App. 2.

Agendas of Meetings

Towing Safety Advisory Committee (TSAC) and working group meetings. The agendas tentatively include the following:

(1) Introduction of the new Chairman.

(2) Report of the Voyage Planning Working Group.

(3) Progress report from the Electronic Charting Working Group.

(4) Progress report from the Tug Assistance and Remote Anchor Retrieval Working Group.

(5) Report of the Communications Working Group.

(6) Progress Report from the Casualty Analysis Working Group.

(7) Discussion of the Final Rule on Licensing and Manning for Officers of Uninspected Towing Vessels.

(8) Status update on the National Marine Safety Incident Reporting System.

(9) Presentation by working groups of their accomplishments and further plans.

Procedural

Both meetings are open to the public. Please note that the meetings may close early if all business is finished. At the Chairs' discretion, members of the public may make oral presentations during the meetings. If you would like to make an oral presentation at a meeting, please notify the Assistant Executive Director no later than April 19, 1999. Written material for distribution at a meeting should reach the Coast Guard no later than April 19, 1999. If you would like a copy of your material distributed to each member of the committee or subcommittee in advance of a meeting, please submit 25 copies to the Assistant Executive Director no later than April 12, 1999.

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the meetings, contact the Assistant Executive Director as soon as possible.

Dated: April 5, 1999.

Howard L. Hime,

Acting Director of Standards, Marine Safety and Environmental Protection.

[FR Doc. 99–9071 Filed 4–9–99; 8:45 am]

BILLING CODE 4910–15–M

NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION

[Docket No. NHTSA–99–5485]

Reports, Forms, and Recordkeeping Requirements

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Request for public comment on proposed collection of information.

SUMMARY: Before a Federal agency can collect certain information from the public, it must receive approval from the Office of Management and Budget (OMB). Under procedures established by the Paperwork Reduction Act of 1995, before seeking OMB approval, Federal agencies must solicit public comment on proposed collections of information, including extensions and reinstatement of previously approved collections.

This document describes one collection of information for which NHTSA intends to seek OMB approval.

DATES: Comments must be received on or before June 11, 1999.

ADDRESSES: Comments must refer to the docket notice numbers cited at the beginning of this notice and be submitted to Docket Management, Room PL–401, 400 Seventh Street, SW, Washington, DC 20590. Please identify the proposed collection of information for which a comment is provided, by referencing its OMB clearance Number. It is requested, but not required, that 2 copies of the comment be provided. The Docket Section is open on weekdays from 10 a.m. to 5 p.m.

FOR FURTHER INFORMATION CONTACT: Complete copies of each request for collection of information may be obtained at no charge from Ms. Jennifer Higley, NHTSA, 400 Seventh Street, SW, Room 5238, NSC–01, Washington, DC 20590. Ms. Higley's telephone number is (202) 366–0743. Please identify the relevant collection of information by referring to its OMB Control Number.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995, before an agency submits a proposed

collection of information to OMB for approval, it must first publish a document in the **Federal Register** providing a 60-day comment period and otherwise consult with members of the public and affected agencies concerning each proposed collection of information. The OMB has promulgated regulations describing what must be included in such a document. Under OMB's regulation at 5 CFR 1320.8(d), an agency must ask for public comment on the following:

(i) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) how to enhance the quality, utility, and clarity of the information to be collected;

(iv) how to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g. permitting electronic submission of responses.

In compliance with these requirements, NHTSA asks for public comments on the following proposed collections of information:

(1) Title: 23 CFR Parts 1210 for Certification Requirements for State Laws Concerning Intoxicated Minor Age Drivers.

OMB Control Number: 2127–0582.

Affected Public: State Government.

Abstract: The National Highway System Designation (NHS) Act of 1995, Pub. L. 104–59, was signed into law on November 28, 1995. Section 320 of the Act established a new section 161 of Title 23, United States Code (Section 161), which requires the withholding of certain Federal-aid highway funds from States that do not enact and enforce "zero tolerance" laws. States must certify that they comply with section 161 which provides that these "zero tolerance" laws must consider an individual under the age of 21 who has a blood alcohol concentration of 0.02 percent or greater while operating a motor vehicle in the State, to be driving while intoxicated or driving under the influence of alcohol.

The requirements in the final rule (issued October 25, 1996), that States certify that they conform to the statutory requirements to avoid the withholding of Federal-aid highway funds, are considered to be information collection requirements as that term is defined by the Office of Management and Budget (OMB) in 5 CFR part 1320. The annual burden in FY 1999 and beyond is expected to be very low (probably zero hours) since the one-time reporting and recordkeeping requirements associated with this rule were already met by all States prior to the October 1, 1998, deadline for withholding funds. However, in the future, a State must meet these reporting requirements again if the State's zero tolerance law changes. Therefore, the Agency is now requesting comments on an extension of these reporting and recordkeeping requirements in order to keep them in effect beyond September 30, 1999, the current expiration date.

Estimated Annual Burden: 0 hours (if no State law changes) to 52 hours (maximum burden if all State laws change).

Number of Respondents: 52.

Adele Derby,

Associate Administrator for State and Community Services.

[FR Doc. 99–9069 Filed 4–9–99; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA 99–5476; Notice 1]

Electric Vehicles International; Application for Temporary Exemption From Federal Motor Vehicle Safety Standard No. 121

We are asking comments from the public on the application by Electric Vehicles International LLC ("EVI") of Anderson, Indiana, to be exempted from portions of Federal Motor Vehicle Safety Standard No. 121, *Air Brake Systems.* The statutory basis for this request is that "compliance would cause substantial economic hardship to a manufacturer that has tried in good faith to comply with the standard." 49 U.S.C. 30113.

We are publishing this notice of receipt of the application in accordance with our regulations on temporary exemptions. This action does not represent any judgment by us about the merits of the application.

The discussion below is based on information that EVI provided in its application.

Why EVI Needs an Exemption

EVI is requesting an exemption for three years. In August 1997, EVI was organized as a corporation, acquiring some of the assets of Specialty Vehicle Mfg. Corp. of California, a manufacturer of buses and trolleys for use in transit and shuttle service. EVI's goal is to turn the operation into "a first class bus company." It estimated its projected start-up costs at $4,000,000, and has raised $3,000,000 through a private placement offering.

Effective with vehicles manufactured on or after March 1, 1998, S5.1.6.1(a) of Standard No. 121 requires each single unit vehicle including buses to be equipped with an antilock brake system. EVI's product line consists of battery-powered and hybrid electric buses and trolleys, primarily used by transit agencies. Presently, it produces Generation III buses and trolleys. These vehicles are rated at 18,000 to 22,000 GVW, "so they do not fall in either the light vehicle or heavy vehicle class." It knows "from experience working with axle suppliers that it would take a minimum of 18–24 months to receive a prototype axle with antilock brakes." After receiving the prototype system, it would have to review for further design changes necessary to install on future vehicles.

Why Compliance Would Cause EVI Substantial Economic Hardship

To design, develop, and test an antilock brake system for a production rate of 50 to 300 vehicles per year would create a substantial increase in the price of the buses and trolleys that EVI intends to manufacture. If EVI is unable to obtain an exemption, it would have to "cease production and close the company." Its net loss for the 5 months it was in existence in 1997 was $437,900, increasing to $1,632,800 for the 12 months of 1998. The company had manufactured two vehicles as of the end of January 1998.

How EVI Has Tried in Good Faith to Comply With Standard No. 121

EVI's buses use an air-over-hydraulic brake system. The company has searched the industry to find an antilock brake system for vehicles defined as "medium duty vehicles." To date, it has been unable to find any manufacturer that has a system available to meet its braking requirements. Attachment 3 to EVI's application lists 19 manufacturers and suppliers that it contacted in its attempt to comply with the antilock brake system requirements in Standard No. 121.

Why an Exemption for EVI Would Be in the Public Interest and Consistent With the Objectives of Motor Vehicle Safety

The City of Anderson is assisting EVI financially with additional capital with the stipulation that EVI hire "at least

51% low and moderate income persons by creating jobs." EVI will offer prospective assembly positions extensive training in conjunction with the County's job training and partnership administration.

EVI enclosed data purporting to show that the total service and emergency brake stopping distance of its bus already comply with the maximum stopping distances specified in Table II of Standard No. 121, and will be unaffected by an exemption.

How To Comment on EVI's Application

We invite written comments on EVI's application. Please send them in two copies, referring to the docket and notice number, to: Docket Management, National Highway Traffic Safety Administration, room PL–401, 400 Seventh Street, SW, Washington, DC 20590. We shall consider all comments received before the close of business on the comment closing date below. Comments will be available for examination in the docket at the above address both before and after that date, between the hours of 10 a.m. and 5 p.m. To the extent possible, we will also consider comments filed after the closing date. When the Administrator has made a decision, we shall publish it in the **Federal Register**.

Comment closing date: May 12, 1999.

Authority: 49 U.S.C. 30113; delegations of authority at 49 CFR 1.50 and 501.4.

Issued on: April 6, 1999.

L. Robert Shelton,

Associate Administrator for Safety Performance Standards.

[FR Doc. 99–9005 Filed 4–9–99; 8:45 am]

BILLING CODE 4910–60–P

Corrections

Federal Register

Vol. 64, No. 69

Monday, April 12, 1999

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

Technology Administration

[Docket No. 990122027-9027-01]

RIN 0692-ZA02

Announcement of Availability of Funding for Competitions—Experimental Program to Stimulate Competitive Technology (EPSCoT)

Correction

In notice document 99–6719, beginning on page 13543, in the issue of Friday, March 19, 1999, make the following correction:

On page 13546, in the third column, in the heading *(3) Engagement With the Small High-Tech Business Community*, "*(202 points)*" should read " *(20 points)*".

[FR Doc. C9–6719 Filed 4–9–99; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Royalty Computation of Phosphate Production on Western Public Lands

Correction

In notice document 99–7394, beginning on page 14751, in the issue of Friday, March 26, 1999, make the following correction:

On page 14753, in Table 1, in the third column, the entry "–214" should read "–2.14".

[FR Doc. C9–7394 Filed 4–9–99; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99-ASW-06]

Proposed Revocation of Class D Airspace; Dallas NAS, Dallas, TX

Correction

In proposed rule document 99–8022 beginning on page 15708 in the issue of Thursday, April 1, 1999, the docket number is corrected to read as set forth above.

[FR Doc. C9–8022 Filed 4–9–99; 8:45 am]

BILLING CODE 1505–01–D

VOL
64
ISS
69
AP
12
1999
UMI

federal register

Monday
April 12, 1999

Part II

Department of Health and Human Services

Administration for Children and Families

45 CFR Part 260, et al.
Temporary Assistance for Needy Families Program (TANF); Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

45 CFR Parts 260, 261, 262, 263, 264, and 265

RIN 0970–AB77

Temporary Assistance for Needy Families Program (TANF)

AGENCY: Administration for Children and Families, HHS.

ACTION: Final rule.

SUMMARY: The Administration for Children and Families (ACF) issues regulations governing key provisions of the new welfare block grant program enacted in 1996—the Temporary Assistance for Needy Families, or TANF, program. It replaces the national welfare program known as Aid to Families with Dependent Children (AFDC) and the related programs known as the Job Opportunities and Basic Skills Training Program (JOBS) and the Emergency Assistance (EA) program.

These rules reflect new Federal, State, and Tribal relationships in the administration of welfare programs; a new focus on moving recipients into work; and a new emphasis on program information, measurement, and performance. They also reflect the Administration's commitment to regulatory reform.

EFFECTIVE DATES: These regulations are effective October 1, 1999.

FOR FURTHER INFORMATION CONTACT: Mack Storrs, Director, Division of Self-Sufficiency Programs, Office of Family Assistance, Administration for Children and Families (ACF), at 202–401–9289, or Ann Burek, Family Assistance Program Specialist, at 202–401–4528.

Deaf and hearing-impaired individuals may call the Federal Dual Party Relay Service at 1–800–877–8339 between 8 a.m. and 7 p.m. Eastern time.

SUPPLEMENTARY INFORMATION: On November 20, 1997, the Administration for Children and Families published a Notice of Proposed Rulemaking that covered key provisions of the new welfare block grant program, known as Temporary Assistance for Needy Families, or TANF. We provided an extended 90-day comment period, which ended on February 18, 1998. We offered commenters the opportunity to submit comments by mail or electronically via our Web site. A number of commenters took advantage of the electronic access, but a significant portion of the comments we received electronically duplicated comments we received in the mail.

Eight major national organizations (three associations representing State groups, three advocacy groups, and two labor organizations) and one Congressman requested the opportunity to present their comments to us orally. We granted their requests, holding four meetings in Washington in June, July, and August 1998. The national organizations focused largely on those issues that they had identified as priority concerns in their written statements. In a few instances, they modified their suggestions, endorsed comments that had been offered by other commenters, or provided clarifying information. The Congressman expressed his interest in: (1) Providing States more flexibility in operating their programs; (2) collecting data that would be adequate for the effective enforcement and oversight of TANF; and (3) placing sufficient emphasis on ensuring that States met their maintenance-of-effort (MOE) requirements and did not supplant existing State spending.

The discussions did not introduce any new policy concerns or proposals. They are part of the public record, and individuals interested in reviewing notes on these meetings have the same access to that information as they do to other comments that were submitted in written form.

Before discussing the comments in more detail, we want to point out that we changed the part and section references for this TANF rule. One commenter noted that our use of parts 270 through 275 for the TANF rules would likely cause confusion because the major Food Stamp rules used similar section numbers. In response to that comment, we have shifted all our part and section numbers down by ten; thus, for example, the provisions that appeared in part 270 of the NPRM appear in part 260 of this final rule.

To help you make your way through these changes, we include both NPRM and final-rule section references in this preamble discussion.

Comment Overview

After accounting for the duplications, we received nearly 270 comments on the NPRM. The largest number of comments came from State welfare agencies and social services departments, followed by advocacy groups and other State-level organizations. We also heard from a significant number of Governors, national associations, local government offices, Federal legislators, community-based organizations, State legislators, and the general public. We received a lesser number of comments from other Federal agencies and members of the educational, business, child care, research, Tribal, and organized labor communities.

The only policy area that generated a significant number of "single-issue" comments was domestic violence. We received about 25 comments from women's, legal, and other groups that focused exclusively on the domestic violence provisions in the NPRM. We also received a handful of comments, mostly from the general public, that focused exclusively on the role of education in promoting self-sufficiency.

A substantial majority of the comments that addressed our regulatory framework were positive. Commenters generally seemed to agree that it was helpful for our rules to provide specific guidance on how we intended to implement the penalty process and make penalty determinations. In fact, based on the detailed questions and comments we received, one could conclude that some commenters were looking for an expansion on the amount of detail contained in the rule.

On the positive side, in addition to support of particular policies, commenters indicated that the rules provided some helpful clarifications of the statute, expressed appreciation for our regulatory development process, noted "positive steps" we had taken, and noted numerous places where our proposed rules appropriately reflected the statute.

In general, however, many commenters had mixed views on the policy proposals on the NPRM, supporting some, but opposing others. For example, with respect to the domestic violence policies, most commenters supported the general approach and commended our encouragement of State implementation of the Family Violence Option. However, most also expressed a number of concerns about specific provisions in the proposed rules.

Likewise, many of the States, advocates, and national organizations supported the proposed rule in a number of areas (such as the flexibility afforded States to define work activities and the reduction in penalty liability for States that failed only the two-parent participation rate), but expressed objections to our approach on other major issues.

The policy issues that generated the most consistent negative reactions were separate State programs, child-only cases, and continuation of waivers. Commenters expressed major concerns that: the proposed rules would stifle

innovation; they were overly prescriptive and burdensome; they undermined the partnership between State and Federal governments and contravened Congressional intent; we presumed State guilt without evidence; and these policies could ultimately harm recipients.

We also received numerous negative comments from States and State representatives on the proposed data collection and reporting requirements. However, these same requirements generated a largely favorable reaction from other types of commenters.

In the preamble to the proposed rule, we discussed our general approach on the major cross-cutting issues up front, prior to the section-by-section analysis. Many of the commenters organized their comments in the same way, addressing the issues thematically instead of following the specific structure of the rule. This preamble follows that same basic format, presenting a separate discussion of our policies on the major cross-cutting issues (separate State programs, child-only cases, waiver continuations, and domestic violence) before proceeding to the section-by-section analysis.

We present most of the discussion of data collection and reporting issues in two places—the preamble for part 265 and the preamble discussion entitled the "Paperwork Reduction Act" in the "Regulatory Impact Analyses" section of the preamble.

We believe that structuring the preamble this way enables us to provide a clearer framework for the specific regulatory provisions and to represent the commenters' concerns most accurately.

For several reasons, we decided not to attempt precise numerical counts of the comments received. Based on the nature of the comments, we did not believe that the number of comments was a particularly meaningful statistic. First, because several of the comments had multiple signatories and some commenters provided general endorsements of the comments of other parties, we would have had to create somewhat arbitrary rules for developing counts. Also, commenters presented their views of the many overlapping and cross-cutting issues in many different ways; for example, some spoke generically about the major provisions of the rule, while others provided very specific suggestions about individual words and phrases. This diversity in the approach of commenters also hampered our ability to create meaningful counts. Nevertheless, we are confident that this preamble accurately conveys the scope and nature of the comments received.

We appreciate the time and attention that commenters gave to reviewing the NPRM and preparing their comments. As a result of their efforts, we have been able to resolve certain technical problems, incorporate numerous regulatory clarifications, and consider some alternative regulatory approaches.

Table of Contents

I. Overview: The Personal Responsibility and Work Opportunity Reconciliation Act
II. Regulatory Framework
  A. Pre-NPRM Process
  B. Related Regulations under Development
  C. Statutory Context
  D. Regulatory Reform
  E. Scope of This Rulemaking
  F. Applicability of the Rules
III. Principles Governing Regulatory Development
  A. Restrictions on Our Regulatory Authority
  B. State Flexibility
  C. Accountability for Meeting Program Requirements and Goals
IV. Discussion of Cross-Cutting Issues
  A. Separate State Programs
  B. Waivers
  C. Child-only Cases
  D. Treatment of Domestic Violence Victims
  E. Recipient and Workplace Protections
  F. Comments Beyond the Scope of the Rulemaking
  G. Additional Cross-Cutting Issues
V. Part 260—General Temporary Assistance for Needy Families (TANF) Provisions
VI. Part 261—Ensuring that Recipients Work
VII. Part 262—Accountability Provisions—General
VIII. Part 263—Expenditures of State and Federal TANF Funds
IX. Part 264—Other Accountability Provisions
X. Part 265—Data Collection and Reporting Requirements
XI. Regulatory Impact Analyses
  A. Executive Order 12866
  B. Regulatory Flexibility Analysis
  C. Assessment of the Impact on Family Well-Being
  D. Paperwork Reduction Act
  E. Unfunded Mandates Reform Act of 1995

I. Overview: The Personal Responsibility and Work Opportunity Reconciliation Act

On August 22, 1996, President Clinton signed "The Personal Responsibility and Work Opportunity Reconciliation Act of 1996"—or PRWORA—into law. This bipartisan welfare plan built upon previous Administration and State efforts to reform welfare. Even before PRWORA was enacted, many States were well on their way to changing their welfare programs into jobs programs. By granting Federal waivers, the Administration allowed 43 States—more than all previous Administrations combined—to require work, time-limit assistance, make work pay, improve child support enforcement, and encourage parental responsibility. The vast majority of States have chosen to continue or build upon these welfare demonstration projects.

PRWORA is dramatically changing the nation's welfare system into one that requires work in exchange for time-limited assistance. The law contains strong work requirements, performance bonuses to reward States for moving welfare recipients into jobs and reducing out-of-wedlock births, State maintenance-of-effort requirements, comprehensive child support enforcement, and supports for moving families from welfare to work—including increased funding for child care. It provides opportunities for State and local governments, working in partnership with communities groups and other agencies, to serve families in new, more creative, and more effective ways.

With the help of the strong economy, and new Federal and State policies, the percentage of welfare recipients working has tripled since 1992 and an estimated 1.5 million people who were on welfare in 1997 were working in 1998. All States met the first overall work participation rates required under TANF, and welfare caseloads have fallen to the lowest levels in 30 years.

The first title of this new law (Pub. L. 104–193) created a program called Temporary Assistance for Needy Families, or TANF, in recognition of its focus on moving recipients into work and time-limiting assistance. It repealed the existing welfare program known as Aid to Families with Dependent Children (AFDC), which provided cash assistance to needy families on an entitlement basis. It also repealed the related programs known as the Job Opportunities and Basic Skills Training program (JOBS) and Emergency Assistance (EA).

The new TANF program went into effect on July 1, 1997, except in States that elected to submit a complete plan and implement the program at an earlier date.

The new law reflects widespread, bipartisan agreement on a number of key principles:

- Welfare reform should help move people from welfare to work.
- Welfare should be a short-term, transitional experience, not a way of life.
- Parents should receive the child care and the health care they need to protect their children as they move from welfare to work.
- Child support programs should become tougher and more effective in securing support from absent parents.

• Because many factors contribute to poverty and dependency, solutions to these problems should not be "one size fits all." The system should allow States, Indian tribes, and localities to develop diverse and creative responses to their own problems.

• The Federal government should focus less attention on eligibility determinations and place more emphasis on program results.

• States should continue to make substantial investments of State funds in addressing the needs of low-income families.

This landmark welfare reform legislation has dramatically affected not only needy families, but also intergovernmental relationships. It challenges Federal, State, Tribal and local agencies to foster positive changes in the culture of the welfare system and to take more responsibility for program results and outcomes. It also challenges them to develop strong interagency collaborations and improve their partnerships with legislators, advocates, businesses, labor, community groups, and other parties that share their interest in helping needy families successfully transition into the mainstream economy.

The new law provides an unparalleled opportunity to achieve true welfare reform. It also presents very significant challenges for families and State and Tribal entities in light of the changing program structure, loss of Federal entitlements, creation of time-limited assistance, and new penalty and bonus provisions.

Most of the resources in the AFDC program went to support mothers raising their children alone. In the early years, the expectation was that these mothers would stay home and care for their children; in fact, in a number of ways, program rules discouraged work. Over time, as social and economic conditions changed, and more women entered the work force, the expectations changed. In 1988, Congress enacted the new JOBS program to provide education, training and employment that would help needy families avoid long-term welfare dependence. By 1994, 20 percent of the nonexempt adult AFDC recipients nationwide were participating in the JOBS program.

In spite of these changes, national sentiment supported more drastic change. Policy-makers, agency officials, and the public expressed frustration about the slow progress being made in moving welfare recipients into work and the continuing decline in family stability. States lobbied for more flexibility to reform their programs. While the Clinton Administration had supported individual reform efforts in almost every State, approving 80 waivers in its first five years, the waiver process was not an ideal way to achieve systemic change. It required separate Federal approval of each individual reform plan, limited the types of reforms that could be implemented, and enabled reforms to take place only one State at a time. Governors joined Congress and the President in declaring that the welfare system was "broken."

After more than two years of discussion and negotiation, PRWORA emerged as a bipartisan vehicle for comprehensive welfare reform. As President Clinton stated in his remarks as he signed the bill, ". . . this legislation provides an historic opportunity to end welfare as we know it and transform our broken welfare system by promoting the fundamental values of work, responsibility, and family."

The law gives States, and federally recognized Indian tribes, the authority to use Federal welfare funds "in any manner that is reasonably calculated to accomplish the purpose" of the new program. It provides them broad flexibility to set eligibility rules and decide what benefits are most appropriate. It also enables States to implement their new programs without getting the "approval" of the Federal government. In short, it offers States and Tribes an opportunity to try new, far-reaching changes that can respond more effectively to the needs of families within their own unique environments.

PRWORA redefines the Federal role in administration of the nation's welfare system. It limits Federal regulatory and enforcement authority, but gives the Federal government new responsibilities for tracking State performance. In a select number of areas, it calls for penalties when States fail to comply with program requirements, and it provides bonuses for States that perform well in meeting new program goals.

Under the new statute, program funding and assistance for families both come with new expectations and responsibilities. Adults receiving assistance are expected to engage in work activities and develop the capability to support themselves before their time-limited assistance runs out. States and Tribes are expected to assist recipients making the transition to employment. They are also expected to meet work participation rates and other critical program requirements in order to maintain their Federal funding and avoid penalties.

Some important indicators of the change in expectations are: time limits; higher participation rates; the elimination of numerous exemptions from participation requirements; and the statutory option for States to require individual responsibility plans. Taken together, these provisions signal an expectation that we must broaden participation beyond the "job-ready."

In meeting these expectations, States need to examine their caseloads, identify the causes of long-term underemployment and dependency, and work with families, communities, businesses, and other social service agencies in resolving employment barriers. In some cases, States may need to provide intervention services for families in crisis or may need to adapt program models to accommodate individuals with disabilities or other special needs. TANF gives States the flexibility they need to respond to such individual family needs. However, in return, it expects States to move towards a strategy that provides appropriate services for all needy families.

II. Regulatory Framework

A. Pre-NPRM Process

In the spirit of both regulatory reform and PRWORA, we implemented a broad and far-reaching consultation strategy prior to the drafting of the Notice of Proposed Rulemaking (NPRM). In Washington, we set up numerous meetings with outside parties to gain information on the major issues underlying the work, penalty, and data collection provisions of the new law. In our ten regional offices, we used a variety of mechanisms—including meetings, conference calls, and written solicitations—to garner views from "beyond the Beltway."

The purpose of these discussions was to gain a variety of informational perspectives about the potential benefits and pitfalls of alternative regulatory approaches. We spoke with a number of different audiences, including: representatives of State, Tribal, and local governments; nonprofit and community organizations; business and labor groups; and experts from the academic, foundation, and advocacy communities. We solicited both written and oral comments, and we worked to ensure that information and concerns raised during this process were shared with both the staff working on individual regulatory issues and key policy-makers.

These consultations were very useful in helping us identify key issues and evaluate policy options, and several commenters commended ACF on this process.

B. Related Regulations Under Development

This rule addresses the work, accountability, and data collection and reporting provisions of the new TANF program. We have also issued NPRM's and program guidance on several related provisions of the new law including: high performance bonuses (TANF–ACF–PI–98–1 and TANF–ACF–PI–98–05); illegitimacy reduction bonuses (63 FR 10263, March 2, 1998); and the Tribal TANF and Native Employment Works (i.e., "NEW") programs (63 FR 39365, July 22, 1998).

With a couple of minor exceptions, this rule does not address the provisions of the Welfare-to-Work (WtW) program at section 403(a)(5) of the Act, as created by section 5001(a)(1) of Pub. L. 105–33. The Secretary of Labor issued interim rules on these provisions and the provisions at section 5001(c), regarding WtW grants for Tribes, on November 18, 1997. A copy of the interim rules and other information about this program are available on the Web at http://wtw.doleta.gov.

The WtW provisions in this rule include the amendments to the TANF provisions at sections 5001(d) and 5001(g)(1) of Pub. L. 105–33. Section 5001(d) allows a State to provide WtW assistance to a family that has received 60 months of federally funded TANF assistance and specifies that "noncash" assistance under the WtW program is not treated as TANF "assistance" for purposes of the TANF time limit. Section 5001(g)(1) provides a new penalty that takes away WtW funds when a State fails to meet the basic MOE requirements.

Also, this rule does not include the provision at section 5001(g)(2), which requires repayment of WtW funds to the Secretary of Labor following a finding by the Secretary of Labor of misuse of funds. Since the Department of Labor is responsible for administering this penalty and receives any repaid funds, it would not be appropriate for us to issue rules on this provision.

Under section 5001(e) of Pub. L. 105–33, we have responsibility for regulating the WtW data reporting requirements, under section 411(a) of the Act, as amended. On October 29, 1998, we issued an interim-final rule that addresses these requirements, following consultation with the Department of Labor, State agencies, Private Industry Councils, and other affected parties (63 FR 57919).

As we pointed out in the NPRM preamble, there is an important relationship between this rulemaking and the rulemaking on Tribal programs. Under section 412 of the Social Security Act, federally recognized Tribes may elect to operate their own TANF programs, and Tribes that operated their own JOBS programs may continue to receive those funds to operate Tribal work programs. We published the NPRM for Tribal TANF programs on July 22, 1998 (see 63 FR 39365).

Tribal decisions on whether to elect the TANF option will depend on a number of factors, including the nature of services and benefits that will be available to Tribal members under the State program. Thus, Tribes have a direct interest in the regulations governing State programs.

Tribes also have an interest in these regulations because some of the rules we develop for State programs could eventually apply to the Tribal programs. In particular, we urge Tribes to note the data collection and reporting requirements at part 265. While the statute allows Tribes to negotiate certain program requirements, such as work participation rates and time limits, it subjects Tribal programs to the same data collection and reporting requirements as States.

We would also like to direct the Tribes to the maintenance-of-effort (MOE) policies discussed at § 263.1. In that section, we provide that State contributions to a Tribal program could count toward a State's MOE. Tribes should be aware of the important implications of this provision for both the funding of Tribal programs and State-Tribal relations.

In order for welfare reform to succeed in Indian country, it is important for State and Tribal governments to work together on a number of key issues, including data exchange and coordination of services. We remind States that Tribes have a right under law to operate their own programs. States should cooperate in providing the information necessary for Tribes to do so.

Likewise, Tribes should cooperate with States in identifying Tribal members and tracking receipt of assistance.

On December, 5, 1997, we issued a final rule to repeal the obsolete regulations for the EA, JOBS, and the IV–A child care programs and a few provisions covering administrative requirements of the AFDC program (see 62 FR 64301, December 5, 1997). This action resulted in the elimination of about 82 pages from the Code of Federal Regulations.

We have yet to issue a more detailed conforming rule that deletes or replaces obsolete AFDC and title IV–A references throughout chapter II. This second rulemaking will take additional time because the AFDC provisions are intertwined with provisions for other programs that are not repealed. Also, it is not clear that we should repeal all the AFDC provisions because Medicaid, foster care, and other programs have linkages to the AFDC rules. Because of these complexities and the nonurgent nature of the conforming changes, this latter rule is not an immediate agency priority.

PRWORA also changed other major programs administered by ACF, the Department, and other Federal agencies that may significantly affect a State's success in implementing welfare reform. For example, title VI of PRWORA repealed the child care programs that were previously authorized under title IV–A of the Social Security Act. In their place, it provided two new sources of child care funding (which we refer to collectively as the Child Care Development Fund). These funds go to the Lead Agency that administers the Child Care and Development Block Grant program. A major purpose of the increases in child care funding provided under PRWORA is to assist low-income families in their efforts to be self-sufficient. We issued final rules covering the Child Care and Development Fund on July 24, 1998 (see 63 FR 39935).

We encourage you to look in the **Federal Register** for actions on these related rules, take the opportunity to comment, and work to understand the important relationships among these programs in developing a comprehensive strategy that can provide support to all families that are working to maintain their family structure and become self-sufficient.

C. Statutory Context

These proposed rules reflect PRWORA, as enacted, and amended by Pub. L. 104–327, Pub. L. 105–33, Pub. L. 105–89, Pub. L. 105–178, and Pub. L. 105–200.

As we indicated in the NPRM preamble, the changes made by Pub. L. 104–327 are fairly limited in scope; we discuss them in the preamble on Contingency Fund MOE requirements at §§ 264.71, 264.72, and 264.77.

Pub. L. 105–33 (also known as The Balanced Budget Act of 1997) created the new Welfare-to Work (WtW) program, made a few substantive changes to the TANF program, and made numerous technical corrections to the TANF statute. We attempted to incorporate those amendments that were in our purview in the NPRM. However, commenters identified a couple of places where we did not fully

or correctly incorporate these amendments. We found a few more. We note these in the preamble discussion that follows and have made appropriate changes in the regulatory text.

We want to note a couple of additional legislative developments since the drafting of the NPRM that might affect a State's liability for penalties and the use of Federal TANF funds. We have made a couple of conforming changes in the rules to reflect these developments.

Under Pub. L. 105–89, known as the Adoption and Safe Families Act of 1997, Congress decreased the amount of money available to States through the "Contingency Fund" and increased the amount that States receiving contingency funds must remit, using a proportionate reduction. We discuss this provision in more detail in the preamble for subpart B of part 264, and we have changed the regulatory text to reflect this change.

Under Pub. L. 105–178, known as The Transportation Equity Act for the 21st Century, Congress: (1) (Effective in fiscal year 2001) reduced the cap on the amount that a State could transfer to the Social Services Block Grant from 10 percent to 4.25 percent; (2) created the "Job Access" competitive grant program to help communities develop transportation services that will help current and former welfare recipients and other low-income individuals access employment; and (3) specified that States could use their Federal TANF funds as part of the nongovernmental cost-sharing required under a Job Access program. None of these provisions directly affect the TANF rules, but they do change what would be an allowable use of Federal TANF funds. It is important that States understand these provisions if they wish to avoid a penalty for misuse of Federal TANF funds.

Under section 403 of The Child Support Performance and Incentives Act of 1998, Pub. L. 105–200, Congress amended section 404 of the Social Security Act to address the use of Federal TANF funds within the Job Access and Reverse Commute program. It imposed: (1) restrictions on the use of Federal TANF funds for this purpose, including "new spending" and "nonsupplantation" requirements; (2) a requirement that the preponderance of funds go to TANF recipients, former TANF recipients, certain noncustodial parents, and low-income individuals at risk of qualifying for the TANF program; and (3) a requirement that the services provided support participation in TANF work activities. It also imposed a cap on the total amount of Federal TANF funds that a State could use for this purpose, computed as the difference between 30 percent of the State Family Assistance Grant (SFAG) amount and the amount that a State was transferring that year to the Child Care and Development Block Grant or the Social Services Block Grant.

Consistent with treatment of the other restrictions on the grant at section 404, we have not directly incorporated these restrictions into the TANF rule. However, we note that we would consider expenditures in violation of these new provisions a misuse of funds.

We also point out that these provisions do not conflict with the restrictions at section 409(a)(7)(B)(iv) of the Act or § 263.6(a) and (c) of these rules. The TANF rules deal with the converse situation—the circumstances under which other State expenditures do not qualify under TANF's basic maintenance-of-effort provisions. The new provisions address the circumstances under which Federal TANF funds may count as nongovernmental expenditures under a separate program. They do not give States the authority to use Job Access funds for basic MOE purposes.

Further, the use of Federal TANF funds to support Job Access activities does not constitute a transfer of Federal TANF funds within the meaning of section 404(d)(1). Thus, they do not affect the "adjusted SFAG" amount that we use in determining the administrative cost cap and penalty amounts.

The Child Support Performance and Incentives Act also added a "rule of interpretation" to section 404(k)(3) of the Social Security Act, which indicates that the provision of transportation benefits to an individual who is not otherwise receiving TANF assistance would not be considered assistance. We have made a conforming change to our definition of assistance at § 260.31 to reflect this policy.

D. Regulatory Reform

In its latest *Document Drafting Handbooks*, the Office of the Federal Register has supported the efforts of the National Partnership for Reinventing Government and encouraged Federal agencies to produce more reader-friendly regulations. In drafting the proposed and final rule, we paid close attention to this guidance and worked to produce a more readable rule. We also provided electronic access to the document and gave readers the option to submit their comments electronically. We received a number of positive comments about how the NPRM was written and the electronic access.

Based in part on the positive reaction to the proposed rule, and in the spirit of facilitating understanding, we decided to retain much of the NPRM preamble discussion. We believe it will be useful for some readers in providing the overall context for the final regulations. However, where we are changing our policy in the final rule, or the context has changed since we issued the NPRM, we have made appropriate changes to the preamble. We also exercised some editorial discretion to make the discussion more succinct or clearer in places. Wherever we made significant changes in policy, the preamble notes and explains those changes.

In the proposed rule, we decided to incorporate a few statutory provisions as a frame of reference even though we did not intend to regulate or enforce State behavior in those areas. We thought the inclusion of this additional preamble discussion and regulatory text would help establish the broader context for other parts of the rulemaking document. These additions were primarily explanatory in nature or restatements of the statutory requirements. We indicated that readers could probably identify these additional provisions based on the language used and the surrounding preamble discussion and noted that subparts A and G of part 271 (which addressed the work provisions other than participation rates and penalties) and § 270.20 (which included the statutory goals of the program) as specific examples.

Commenters identified an additional item that would be helpful to include as a frame of reference—the nondiscrimination provisions found at section 408(d) of the Act. We decided to accept the suggestion and include these provisions in the final rule since commenters had not generally objected to including such material in the regulatory text of the NPRM, the inclusion will have informational value, and the change does not materially alter the scope of the rule. (See the discussion on "Recipient and Workplace Protections" for additional information.)

Likewise, based on comments we received on the domestic violence provisions in the proposed rule, we incorporated the statutory provisions on the Family Violence Option at a new § 260.52.

In the spirit of providing access to information, we included draft data collection and reporting forms as appendices to the proposed rules even though we did not intend to publish the forms as part of the final rule. We thought that the inclusion of the draft

forms would expand public access to this information and make it easier to comment on our data collection and reporting plans.

We believe that we succeeded in accomplishing these goals. Commenters responded in large numbers and specific detail to both the Paperwork Reduction Notice and the Proposed Rule. The changes to the final rule and to the companion appendices reflect our consolidated response to both sets of comments.

E. Scope of This Rulemaking

The NPRM and final rule reflect our decision to incorporate the work, data collection, and penalty provisions in a single regulatory package. While this decision resulted in a large rule, we think it enabled us to develop a more coherent regulatory framework and provided readers an opportunity to look at, and comment on, the many interconnected pieces at one time.

One downside of this decision was that the concentration of all these accountability provisions in one rule could have contributed to the perception among some commenters that the tone was punitive and the rule too penalty-focused. It is important to keep our broader regulatory and program agenda in mind as you assess the impact and meaning of this package. The total agenda includes rewards, as well as penalties, and tracks State performance along a variety of different measures, including job entries, success in the workplace, reductions in out-of-wedlock childbearing, and child poverty rates. It also includes annual reports to Congress on State program characteristics, recipient characteristics, and performance.

Our agenda also includes extensive research, evaluation, and technical assistance efforts. Throughout this preamble, you will find examples of how our efforts in these areas respond, in a nonregulatory fashion, to commenter concerns. It would be impractical and inappropriate to use this rulemaking as the vehicle for informing the public about the full agenda, but the "Promising Practices National Conferences" held in September 1998 and in Fiscal Year 1999 provide a good example. These meetings, which have the financial support of the Department of Health and Human Services (including both the Administration for Children and Families and the Substance Abuse and Mental Health Services Administration) and the Department of Labor, will provide State and local staff and other practitioners with practical ideas on a range of topics, such as preparing for the difficult task of moving clients with multiple barriers into work, creating jobs in isolated and high-risk communities, increasing support from noncustodial parents, promoting collaboration and achieving seamless delivery of services, changing welfare offices to job centers, promoting success in the workplace, and maintaining the investments in needy families.

F. Applicability of the Rules

As we indicated in policy guidance to the States and the NPRM, a State could operate its program under a reasonable interpretation of the statute prior to our issuance of final rules. Thus, in determining whether a State is subject to a penalty, we would not apply regulatory interpretations retroactively. We retained this basic policy, but modified it to clarify that the "reasonable interpretation" standard applies until the effective date of these final rules. You can find additional discussion of this policy at § 260.40 of the preamble.

III. Principles Governing Regulatory Development

A. Restrictions on Our Regulatory Authority

Under the new section 417 of the Act, the Federal government may not regulate State conduct or enforce any TANF provision except to the extent expressly provided by law. This limitation on Federal authority is consistent with the principle of State flexibility and the general State and congressional interest in shifting more responsibility for program policy and procedures to the States.

We interpreted this provision to allow us to regulate in two different kinds of situations: (1) Where Congress has explicitly directed the Secretary to regulate (for example, under the caseload reduction provisions, described below); and (2) where Congress has charged the Department of Health and Human Services (HHS) with enforcing penalties, even if there is no explicit mention of regulation. In this latter case, we believe we have an obligation to States to set out, in regulations, the criteria we will use in carrying out our express authority to enforce certain TANF provisions by assessing penalties.

In the preamble to the proposed rule, we indicated that we endeavored to regulate in a manner that did not impinge on a State's ability to design an effective and responsive program. A large number of commenters felt that our regulations would in fact have such a negative effect. In the subsequent discussion, you will note that we have revised provisions in key program areas that respond to these concerns.

At the same time, however, we remain committed to ensuring that States remain accountable for meeting TANF requirements. Thus, we will continue to monitor program developments so that we can make appropriate adjustments if programs fail to remain focused on TANF's statutory objectives.

B. State Flexibility

In the Conference Report to PRWORA, Congress stated that the best welfare solutions come from those closest to the problems, not from the Federal government. Thus, the legislation creates a broad block grant for each State to reform welfare in ways that work best. It gives States the flexibility to design their own programs, define who will be eligible, establish what benefits and services will be available, and develop their own strategies for achieving program goals, including how to help recipients move into the work force.

Under the law and the proposed rules, we indicated that States could implement innovative and creative strategies for supporting the critical goals of work and responsibility. For example, they could choose to expend funds on refundable earned income tax credits or transportation assistance that would help low-wage workers keep their jobs. They could also extend employment services to noncustodial parents, by including them within the definition of "eligible families."

To ensure that our rules supported the legislative goals of PRWORA, we indicated our commitment to gather information on how States were responding to the new opportunities available to them. We said that we reserved the right to revisit some issues, either through legislative or regulatory proposals, if we identified situations where State actions were not furthering the objectives of the Act.

A large number of commenters felt we had unduly limited State flexibility to design their programs, particularly with respect to expending funds in separate State programs, providing assistance to child-only cases, and continuing waivers, but also in areas like the definition of administrative costs, restrictions on domestic violence waivers that affected reasonable cause, and the definition of assistance.

We included some restrictions on State flexibility in the NPRM to protect against possible State policies that might undermine TANF goals or divert the Federal share of child support collections. However, in response to

these concerns and in recognition of the positive steps States have been taking to implement welfare reform, we have decided to remove some of the direct and perceived restrictions on State flexibility. We have also provided some important preamble language that helps clarify State flexibility to define needy families and spend both Federal TANF and State MOE funds in ways that support a wide range of families in diverse ways. We provide additional discussion of these changes and clarifications in subsequent sections of the preamble.

C. Accountability for Meeting Program Requirements and Goals

In the NPRM we recognized that States have enormous flexibility to design their TANF programs in ways that strengthen families and promote work, responsibility, and self-sufficiency. At the same time, however, TANF reflects a bipartisan commitment to ensuring that State programs support the goals of welfare reform. To this end, the statutory provisions on data collection, bonuses, and penalties are crucial because they allow us to track what is happening to needy families and children under the new law, measure program outcomes, and promote key program objectives.

Work

As we indicated in the NPRM, we believe the central goal of the new law is to move welfare recipients into work. The law reflects this important goal in a number of ways:

- Work receives prominent mention in the statutory goals at section 401 and the plan provisions in section 402;
- Section 407 establishes specific work participation rates each State must achieve;
- Section 409 provides significant financial penalties against any State that fails to achieve the required participation rates;
- Section 411 provides specific authority for the Secretary to establish data reporting requirements to capture necessary data on work participation rates; and
- Section 413 calls for ranking of States based on the effectiveness of their work programs.

The proposed and final rules reflect a similar, special focus on promoting the work objectives of the Act and ensuring that States meet the statutory requirements at sections 407, 409, and 411 of the Act. You should look at the rules in part 261, and the related preamble discussion, for specific details.

This Administration has repeatedly shown its commitment to promoting the work objectives of this new law. Before and since the legislation was passed, the President and the Administration have worked very hard to ensure that Congress passed strong work provisions and provided adequate child care funding and other program supports to help families making the transition from welfare to work.

These include the new Welfare to Work program (WtW), the Welfare-to-Work Tax Credit enacted in the Balanced Budget Act, Welfare-to-Work housing vouchers included in the Fiscal Year 1999 budget for the Department of Housing and Urban Development, and Job Access transportation grants.

WtW provides grants to States, localities, Indian Tribes, and other grantees to help them move long-term welfare recipients and certain noncustodial parents into lasting, unsubsidized jobs.

The Welfare to Work Tax Credit provides a credit equal to 35 percent of the first $10,000 in wages in the first year of employment, and 50 percent of the first $10,000 in wages in the second year, to encourage the hiring and retention of long-term recipients. (It complements the Work Opportunity Tax Credit, which provides a credit of up to $2,400 for the first year of wages to employers who hire long-term welfare recipients.)

Welfare-to-Work Housing vouchers will help current and former welfare recipients who need housing assistance to get or keep a job. Most of the housing vouchers (50,000 in FY 1999) will go to communities on a competitive grant basis.

The Transportation Equity Act for the 21st Century (TEA–21) authorizes $750 million over five years for competitive grants to communities to develop innovative transportation activities to help welfare recipients and other low-income workers (i.e., those with income up to 150 percent of poverty) get to work. (You can find more information about the Administration's initiatives at http://www.whitehouse/gov/wh/welfare.)

The President has also challenged America's businesses, its large nonprofit sector, and the executive branch of the Federal government to help welfare recipients go to work and succeed in the workplace.

In May 1997, the President helped to launch a new private-sector initiative to promote the hiring of welfare recipients by private-sector employers. The Welfare-to-Work Partnership, which started with 105 participating businesses, now includes over 10,000 businesses that have hired 410,000 welfare recipients. This partnership has produced a variety of materials to support businesses in these efforts, including the "Blueprint for Business" hiring manual and "The Road to Retention," a report of companies that have achieved higher retention rates for former welfare recipients. You can find information about the Welfare to Work Partnership at http://www.welfaretowork.org.

The Small Business Administration (SBA) is addressing the unique and vital role of small businesses, which account for over one-half of all private-sector employment. It is helping small businesses make connections to job training organizations and job-ready welfare recipients. It is also providing training and assistance to welfare recipients who wish to start their own businesses. Businesses can receive assistance through SBA's 1–800–U–ASK–SBA and through its network of centers, shops, and district offices. Information on SBA's Welfare to Work initiative (W2W) and other activities are available through the SBA home page at http://www.sba.gov.

In addition, the Vice President has developed a coalition of national civic, service, and faith-based groups committed to helping former welfare recipients succeed in the workforce—by providing mentoring, job training, child care, and other supports.

On March 8, 1997, the President directed all Federal agencies to submit plans describing the efforts they would make to respond to this challenge. Under the Vice President's leadership, Federal agencies committed to hiring at least 10,000 welfare recipients over the next four years. Agencies have already fulfilled this commitment—nearly two years ahead of schedule. (You can find additional information on this effort at http://www.welfaretowork.fed.gov.)

Meeting the Needs of Low-Income Families and Children

In a number of different ways, the new law works to ensure that the needs of low-income children and families are met. First, it provides a guaranteed base level of Federal funding for the TANF programs. Then, in times of special financial need, it makes nearly $2 billion in additional funding available through a Contingency Fund and up to $1.7 billion available for loans to States. It also authorizes several studies to monitor changes in the situations of needy children and families that occur after enactment. For example, it requires us to report on how certain children are affected by the provisions of the new law. It also requires us to track whether a State's child poverty rate increases as the result of the State's TANF program and requires States to initiate corrective actions when such increases occur.

These regulations work to further the objectives of these statutory provisions.

Most importantly, they work to ensure that the use of Federal and State funds is consistent with the provisions and purposes of TANF, that States maintain their investments on needy families, that recipients and other workers have the protections available to them that are intended under Federal law, and that we collect data from States that are necessary to assess program performance.

IV. Discussion of Cross-Cutting Issues

Overview of Comments

As we indicated earlier in the preamble, commenters expressed a number of major concerns with respect to our policies on separate State programs, child-only cases, and waiver continuations. In particular, they said: (1) In part because of the uncertainty they created, the proposed rules would stifle innovation and undermine the States' ability to meet the needs of their families; (2) the proposed rules were overly prescriptive and burdensome, too concerned about accountability and the taking of penalties, and not focused on outcomes; (3) they undermined the partnership between the State and Federal governments, fostered an adversarial relationship, violated the compact between the States and Washington in creating TANF, or contravened Congressional intent (if not the law) in regulating State behavior in these areas; (4) we presumed State guilt when there was no evidence that States were taking advantage of loopholes to evade the TANF provisions; and (5) our strict penalty policies, promotion of "work first" strategies, and inattention to recipient protections could ultimately harm recipients (e.g., prevent them from attaining jobs that paid a living wage or accessing appropriate treatment).

We disagree with commenters that claimed that we exceeded our regulatory and statutory authority in the NPRM. However, because of the evidence we have seen about States' commitment to develop programs that are consistent with the goals of TANF, these final rules reflect some significant changes in our policies on these three issues. You will find additional details in the following discussion.

A. Separate State Programs

Background

Section 409(a)(7) of the Social Security Act permits States to assist eligible families by expending maintenance-of-effort funds (MOE) under "all State programs." Thus, we recognize expenditures under the State's TANF program and/or separate State program(s). However, eligible families assisted through a separate State program are not generally subject to TANF requirements, including work participation requirements, child support collection requirements, the time limit on receipt of assistance, and data collection and reporting requirements. In other words, by definition, States operating separate programs avoid TANF requirements; they have more flexibility to use the funds available in these programs to help eligible families.

In the NPRM preamble, in a section entitled "Maintenance-of-Effort (MOE)," we stated that one of the most important provisions in the new law designed to protect needy families and children is the basic maintenance-of-effort (basic MOE) requirement in the TANF statute. This provision requires States to maintain a certain level of spending on welfare, based on historic (i.e., fiscal year (FY) 1994) expenditure levels. Because this provision is critical to the successful implementation of the law, Congress gave us the authority to enforce State compliance in meeting this requirement, and it received significant attention in the proposed rule.

We also directed readers to the data collection, work, and penalty provisions of the proposed rule, at parts 271–275, for provisions designed to: (1) ensure that States continue to make the required investments in meeting the needs of low-income children and families; (2) prevent States from either supplanting funds or using their MOE funds to meet extraneous program or fiscal needs; (3) give us adequate information to meet our statutory responsibility to determine what is happening in State programs; and (4) take a broad view of work effort, caseload reduction, and program performance.

We recognized that States have more flexibility in spending their State MOE funds than their Federal TANF funds, especially when they expend their MOE funds in separate State programs. However, at the same time, we reiterated concerns that we had first expressed in our policy guidance of January 1997, TANF–ACF–PA–97–1, that States could design their programs to avoid the work requirements of the new law or to avoid returning a share of their child support collections to the Federal government. Therefore, we proposed four measures to mitigate these potential negative consequences.

First, if we detected a significant pattern of diversion of families to a separate State program that achieves the effect of avoiding either the work participation rates or returning the Federal share of child support collections, we proposed to deny reasonable cause for certain penalties. For avoiding the work participation rates, reasonable cause relief would not be available with respect to penalties for failure to: meet minimum participation rates, implement time limits, maintain assistance to a custodial parent who cannot obtain child care for a child under age 6, and reduce assistance for recipients refusing without good cause to work. For diverting the Federal share of child support collections, reasonable cause would not be available with respect to the penalties for failure to: meet minimum participation rates, implement time limits, reduce assistance for recipients refusing without good cause to work, and cooperate with paternity establishment and child support enforcement requirements.

Second, for the same two diversion situations and penalties that we just discussed, we proposed that a State would not be eligible for a penalty reduction on the basis of making substantial progress during corrective compliance unless it corrected the diversion.

Third, we proposed to deny a State access to two possible reductions in the penalty for failing to meet work participation rates unless it "demonstrates that it has not diverted cases to a separate State program for the purpose of avoiding the work participation requirements."

Finally, we proposed to require that a State collect case-record data on participants in separate State programs if it wished to receive a high performance bonus; qualify for work participation caseload reduction credit; or be considered for a reduction in the penalty for failing to meet the work participation requirements.

In making these proposals, we noted that the Secretary has considerable discretion in determining whether to reduce penalties or grant a good cause exception. We argued that work was the most critical component in achieving the purposes of TANF and these limits on the relief on the work penalty were appropriate to prevent circumvention of this purpose.

We went on to say that implementation of the child support provisions was the other key component to achieving self-sufficiency. We spoke about the major Federal role in child support enforcement (particularly with regard to the operation of the New Hire Directory and the Federal Parent Locator Service), the continuing Federal interest in the effectiveness of these programs, and the continued Federal financial

commitment, under TANF, for needy families whose children have been deprived of parental support and care.

We expressed concern not just about the unintended, negative consequences of diverting cases to separate State programs for the Federal budget and the Federal government's ability to ensure an effective child support program, but also about reduced State accountability for ensuring that needy families take appropriate steps towards achieving self-sufficiency. We indicated that, in the interest of protecting the key goals of TANF, it was appropriate for the Secretary to use the discretion available to her to forgive penalties and set penalty amounts so as to ensure that States do not divert cases inappropriately.

We announced plans to monitor States' actions to determine if they constituted a significant pattern of diversion. For example, if, based on an examination of statistical or other evidence, we came to the conclusion that a State was assigning people to a separate State program in order to divert the Federal share of child support collections, or in order to evade the work requirements, we would conclude that this is a significant pattern of diversion and would deny the State the specified types of penalty relief.

We said a State would have opportunity to prove that this pattern was actually the result of State policies and objectives that were entirely unrelated to the goal of diversion, but we would make the final judgment as to what constitutes a significant pattern of diversion.

We placed the specific regulatory provisions associated with these policies in §§ 271.51(a), 271.52(b), 272.5(c) and (d), and 272.6(i)(2) of the proposed rule.

We also indicated our intent to propose that States seeking to receive high performance bonuses would be required to report on families served by separate State programs in the coming NPRM on high performance bonuses.

Comment Overview

We received dozens of comments on these proposals related to implementation of separate State programs. The commenters universally opposed the proposals and presented a variety of objections. Most wanted the provisions deleted entirely, but some suggested specific changes that we could make to the regulatory provisions if we did not delete them.

In summarizing these extensive comments, we first address those directed at deleting the provisions. Then we address the comments about possible refinements that we could make.

Commenters objected to both the negative tone of these rules and their effect in undermining State and local flexibility to serve needy families, including those with multiple barriers to employment. They noted that several States have created or were considering separate State programs to serve their most vulnerable families, such as legal noncitizens with poor language and literacy skills; single parents taking care of a disabled child; citizens not disabled enough to qualify for SSI, but unable to work 20 to 30 hours a week; refugees; and victims of domestic violence. They expressed fears that the proposed rules, if not modified, could have a significant chilling effect on the development of innovative approaches to serve working families and the most vulnerable populations. That is, States would be conservative in extending assistance to hard-to-serve or working families out of fear of incurring more and larger penalties. In fact, some commenters argued that, since TANF was not an entitlement program, some States might choose not to give such individuals assistance due to concerns about the penalty consequences.

Some argued that the proposals were contrary to the statute and Congressional intent. Their comments encompassed the following general points: (1) There is no statutory basis for the links between penalty relief and the operation of separate State programs. In deciding penalty relief, we should be looking only at the TANF program. (2) The statute clearly authorizes States to spend their basic MOE funds in separate State programs that are not subject to TANF requirements. Our proposals would punish States that elected to use this authority and preempt State and local authority over their own programs. (3) Our proposals would deny penalty relief where the statute requires such relief. (For example, the statute says that the Secretary "shall" reduce work participation penalties based on degree of noncompliance; thus, this reduction is not discretionary. The statute also provides that the Secretary could impose lesser penalties on a State that fails to correct a violation fully under corrective compliance.) Categorically denying penalty relief because of a State's legal and allowable actions on separate State programs is not appropriate.

In lieu of the proposed policies, many commenters recommended that we monitor State actions to determine if a State is pursuing legitimate policy objectives or avoiding TANF-related requirements. They noted the lack of evidence so far that States were abusing the flexibility available under the law; their view was that States have been using separate programs for constructive and appropriate purposes. One noted, if a few States try to take advantage of the flexibility in the law, Congress and the Department can work together to figure out an effective way to stop them.

Commenters also argued that the penalty consequences for operating separate State programs exceeded the magnitude of the purported offense. As a case example, a State could be operating a separate State program that represented only a small percent of its MOE expenditures, it barely missed its participation rate, and it had suffered a catastrophic natural disaster during the course of the year. The argument is that the State should get reasonable cause or penalty reduction because the State's failure could be attributed entirely to the natural disaster, the separate State program was an incidental matter, and, by any objective measure, the State's degree of noncompliance was minimal. Absolute loss of penalty relief in such a case would be arbitrary, at a minimum.

A related comment was that we should limit denial of penalty relief to situations where there is a direct relationship between the penalty at issue and the conduct of the State. Commenters argued that we should not deny penalty relief on four penalties when the State actions at issue were probably only directly connected to one penalty.

One suggestion for making the consequences more proportionate to the "offense" would be to not totally preclude eligibility for penalty relief, but to consider State policies on separate State programs as one of several factors affecting how difficult the penalty standard was for a State to achieve.

Others noted that we had not used clear or consistent language when articulating how a separate State program might affect the availability of penalty relief. The lack of clarity would make it difficult for States to predict the effect of these provisions and could produce unfair, arbitrary, and inconsistent outcomes. It could also mean that we unduly deter States from assisting needy families.

Commenters raised the following questions about the meaning of our proposals: (1) What is meant by "purpose" and "effect"? (2) Are the terms meant to define different concepts? (3) Does "purpose" refer to "sole purpose" or "one of the purposes"? (4) How would we determine, or a State prove, whether a

separate State program has the specified "purpose" or "effect"? (5) What is meant by a "significant" pattern of diversion? and (6) What criteria would we use to judge whether a State adequately demonstrated that it had not diverted cases to avoid penalties or divert child support? Relatedly, they objected to the fact that our proposed rules shifted the burden of proof about intent onto the States and to the difficulties attendant in proving a negative proposition.

Among the suggestions offered for addressing these concerns were: (1) Clarify the circumstances when a State will not face loss of penalty relief (e.g., identify reasonable and legitimate policy bases for separate State programs, using examples); (2) allow an up-front assessment of the acceptability of separate State programs that States could rely upon in deciding what options to pursue under separate State programs; (3) create clear, objective criteria for determining when a separate State program would trigger adverse consequences; and (4) err on the side of flexibility if we cannot make highly accurate determinations that programs are deliberately designed to avoid Federal rules.

Overall Response

When we were developing the proposed rules, obviously we were very concerned that States would use the flexibility available through separate State programs to avoid work participation requirements, divert the Federal share of child support collections, and otherwise undermine the goals or provisions of TANF. Within the authority that we have to make decisions on State penalties and bonuses, we proposed specific regulatory policies with respect to penalties, bonuses, and reporting in response to that concern.

However, as we have seen these programs evolve, our concerns about possible abuses have diminished. As commenters pointed out, States are generally using separate State programs to serve a variety of policy purposes consistent with the goals and provisions of PRWORA. For example: (1) They are supporting work and self-support—through State earned income credits, transportation, child care, or other work-related assistance; (2) they are helping families with special needs who are unable to engage in work activities for the requisite number of hours—e.g., families dealing with substance abuse, incapacity (or caring for a disabled child), literacy or ESL needs; (3) they are working to increase the economic viability of families—by providing financial aid for post-secondary education and support for other education or training activities, including activities for noncustodial parents; and (4) they are assisting individuals ineligible for the TANF program (e.g., using State funds to provide "Food Stamp" benefits for legal aliens who lost eligibility for assistance under PRWORA).

In the few cases where separate State programs are serving families that we would normally expect to see in the TANF program, we often see the same or similar level of work activity required under TANF; e.g., Florida's two-parent program and Maine's Parents-as-Scholars program are part of separate State programs, but expect parents to participate at the TANF level of hours, or more.

As commenters pointed out, if we developed policy to force States to provide services to families within the confines of the TANF statute, we would not necessarily achieve that end. An equally possible outcome could be that States would elect not to serve families, especially those hard-to-serve families that would be the most difficult to accommodate under the standard TANF rules.

We considered ways to redraft the NPRM policy so that we would not have the "chilling" effect on State innovation that commenters feared. A variety of options were available to us, ranging from wording changes, to clarifications of key terms, to setting up a process for pre-clearance of State proposals, to reducing the potential negative consequences to States if we found inappropriate diversion.

However, we were concerned that: (1) None of these options totally eliminated the potential "chilling" effects on State innovation; and (2) existing evidence did not indicate that there was a problem sufficient to justify such a strong policy response.

Thus, the final rules eliminate the proposed link between a State's decisions on implementing a separate State program and its eligibility for penalty relief. In particular, we removed the provisions related to separate State programs that were in the proposed rules at §§ 271.51(a), 271.52(b), 272.5 (c) and (d), and 272.6(i)(2).

However, we remain concerned about the possibility that States could use separate State programs to avoid the TANF work requirements (particularly for two-parent families) and to divert the Federal share of child support collections. Thus, at §§ 261.41(e) and 265.3(d)(1), we retained the NPRM provisions (which were at §§ 271.41(e) and 275.3(d)(1)) that, as a condition for receiving caseload reduction credits or a high performance bonus, States must report data on separate State programs and the recipients in them, through the SSP–MOE Data Report. However, we deleted the language that was in § 275.3(d)(1)(iii) indicating that States needed to submit the SSP–MOE Data Report if they wanted to be considered for a reduction in the penalty for failing to meet the work participation requirements. Also, as we discuss in the next section of the preamble, by changing the definition of assistance, we have limited the types of programs covered by this reporting. We have also reduced the types of data elements that must be reported.

This data collection is part of a broad strategy to monitor the scope and nature of separate State programs. This strategy starts with four data sources: (1) The quarterly TANF Financial Report (Appendix D); (2) the MOE section of the annual report (at § 265.9(c) and Appendix I); (3) the quarterly SSP–MOE Data Report; and (4) quarterly reports on child support collections. We would review data from these sources to identify States that might be using separate State programs either for the purpose of avoiding work or diverting the Federal share of child support collections. We would then make a preliminary assessment whether these States were operating separate State programs that were consistent with TANF goals. If we needed additional information for this assessment, we could supplement the official information with information gathered in single State audits or special studies (such as studies conducted by the Department's Office of the Inspector General).

The data collection on separate State programs will help enable us to: (1) Monitor the nature of these programs; (2) determine the extent to which cases are being shifted to separate State programs; (3) determine whether such shifts are having an adverse effect on the two work participation rates or the Federal share of child support collections; (4) develop a sound policy response in the event of adverse effects; (5) better assess a State's claim for a caseload reduction credit or high performance bonus; and (6) decide if a State's policies with respect to separate State programs should affect its ranking under section 413(d) of the Act.

In the proposed rule, we did not mention that the creation of separate State programs might affect the annual rankings of States based on the success of their work efforts. However, we have concluded that there could be circumstances under which we would

want to alter a State's ranking on this basis. For example, suppose the State with the highest percentage of placements in long-term jobs for its TANF cases achieved its placement rate and ranking by shifting all of its hard-to-serve cases from TANF to separate State programs. Obviously, this State would not merit a ranking as one of the five most successful States. We will consider if a State's separate State program had the effect of avoiding work requirements as one factor in determining the annual ranking of successful State programs.

We will incorporate a full analysis of the information that we have gathered on what has been happening with separate State programs in our annual report to Congress. For example, we intend to address issues such as: (1) What is the basic nature of these programs; (2) have there been changes in their size or scope; (3) who do these programs serve; (4) how do they differ from TANF recipients; (5) what types of benefits do they provide; (6) to what extent do work participation rates apply; (7) what participation rates are being achieved; and (8) is there any evidence of the diversion of Federal child support collections. By looking at this range of issues, we will be better able to assess whether States have diverted individuals from TANF with the apparent purpose of avoiding TANF program requirements.

In the High Performance Bonus guidance that we issued on March 17, 1998 (TANF–ACF–PI–98–01), we noted that a State's success in meeting TANF performance goals could be affected by its decision to fund a separate State program with its maintenance-of-effort (MOE) dollars and that such actions might advantage one State over another. For example, if a State had a separate State program similar to TANF in which it put recipients who were more difficult to employ, its TANF performance results could be unfairly inflated. In such cases, we would need to consider including outcomes for the caseload in separate State programs in the performance measures. We said we would analyze separate State program data, as well as other information we receive on the characteristics of the caseload and the nature of benefits provided in separate State programs, in assessing how and whether to adjust a State's TANF performance data.

On the issue of child support collections more specifically, while States have new flexibility in the way that they administer their TANF programs, they must continue to share a portion of child support collections with the Federal government. The need to share TANF-related collections could serve as a possible disincentive for States to pass through the full amount of child support to families and could create an incentive for States to serve needy families through separate State programs. State spending in these separate State programs continues to count under the basic MOE requirements, but States do not need to share the child support collected on behalf of families served by these programs.

At this point, we have no evidence that States are diverting child support collections. For example, we are not seeing dramatic decreases in the Federal share of collections or changes in the average collection per case. In the meantime, the Administration is engaged in a dialogue with stakeholders on child support program financing issues to look at ways to address these and other related concerns. We will work with these stakeholders and with Congress to develop any necessary legislation.

As a number of commenters suggested, under these final rules, we have adopted a strategy that includes gathering information, monitoring developments, and keeping our options open regarding future actions. Through our data collection, we will obtain substantial information on the characteristics of separate State programs, the families they serve, and the benefits they provide. This information will help us assess their potential impact on the achievement of TANF goals. We will consider proposing appropriate legislative or regulatory remedies, consistent with our legal authority, if we find that States are using the flexibility available under these rules to avoid work requirements, divert child support collections, or otherwise undermine the goals of TANF. However, we will not put any significant policy change into effect without appropriate prior consultation with States, Congress, and other interested parties.

Separate State Program Reporting

Comment: Commenters also argued that the stringent reporting requirements and the potential loss of caseload reduction credits, eligibility for high performance bonuses, and certain penalty relief for States that failed to comply with the reporting requirements also discouraged States from implementing innovative separate State programs.

Response: As we discuss in the preamble for § 260.31, we have made significant changes to the proposed definition of assistance. These changes have a significant effect on the scope of the disaggregated and aggregate reporting for both TANF and separate State programs. Like the TANF Data Report, the SSP–MOE Data Report only captures information on families receiving "assistance." Therefore, States do not have to provide detailed program and family characteristics data for families receiving other kinds of benefits and work supports. Thus, the data collection in the final rules responds to the commenters' concerns about the problems that would be inherent in requiring detailed reporting of case-record information from programs that bore little or no relationship, in substance or administration, to those providing traditional welfare benefits.

However, information on separate State programs is still very important under the final rule. Thus, we still expect States to submit SSP–MOE Data Reports containing data on separate State programs that are similar to the TANF program data as a condition of receiving caseload reduction credits or high performance bonuses. Also, we have strengthened the information we will collect on SSP–MOE spending by expanding reporting under the TANF Financial Report and expanding information on all MOE programs in the annual report (as discussed in § 265.9 and presented in Appendix I). Taken in combination, these data will help us ensure that each State has met its basic MOE requirement, properly evaluate State reports on caseload reduction credits, assess overall State performance, and report on program characteristics to the public, to the Department, and to Congress. We could also use the information to identify areas in which regulatory or legislative changes may be necessary.

Under the final rule, we do not require that States submit the SSP–MOE Data Report in order to qualify for penalty relief because the information in the report is not germane to the determination of its penalty amount.

The information in the SSP–MOE Data Report is germane to determining if States have achieved creditable caseload reductions and to assessing a State's overall performance under TANF. Thus, as stated previously, the final rule does require that a State submit an SSP–MOE Data Report if it wants to receive either a High Performance Bonus or a caseload reduction credit (though with reduced data elements).

Failure of a State to submit the MOE information required in either the TANF Financial Report or the annual report could affect a State's liability for a

reporting penalty or an MOE penalty, depending upon the nature of the failure.

You should review the preamble discussion at § 265.9 and Appendix I for information on annual aggregate reporting for MOE programs and the regulation at § 265.3(b) and (d) and appendices E, F, and G for more detailed information on the data collection for separate State programs in the SSP–MOE Data Report.

Finally, in the policy announcement and proposed rule, we advised States to think carefully about the risks to the long-term viability of their TANF programs if they relied too extensively on separate State programs to meet their MOE requirements. States cannot receive contingency funds unless their expenditures within the TANF program are at 100 percent of historic State expenditures. Thus, excessive State reliance on expenditures outside the TANF program to meet MOE requirements could make access to contingency funds difficult during economic downturns.

This restriction on Contingency Fund MOE raised some concerns on the part of commenters. However, it represents a clear reading of the statutory language. Thus, we have made no change in this final rule.

B. Waivers

Background

We have no direct interest in regulating section 415 of the Act; however, the continuation of waivers by a State might affect our application of certain of the penalty provisions within a State, specifically those regarding work and time-limit requirements. Thus, in order to administer the penalty provisions, we are providing notice concerning the rules that we will use in applying the penalties.

To improve access to, and understanding of, the regulations on waivers, we have moved all the waiver provisions to a new subpart C of part 260 of the final regulation and consolidated our preamble discussion in this section of the preamble. First, we summarize the NPRM provisions that appeared in various places in the NPRM and provide an overall summary of the comments. Then we discuss each provision in the final regulation, section by section, as well as the related comments.

Summary of NPRM Waiver Provisions

Under section 415, States that received approval for welfare reform waivers under section 1115 before enactment of PRWORA (August 22, 1996) have the option to operate their TANF programs under some or all of these waivers. For States electing this option, provisions of TANF that are inconsistent with the waivers do not take effect until applicable waivers expire.

Section 415 also provides for delaying the effect of provisions of TANF related to waivers approved after enactment, but prior to July 1, 1997. However, we do not address this specific provision in these rules because we approved no section 1115 waivers after enactment.

The meaning of the term "waiver" is important because it governs the scope of section 415. The NPRM defined waiver as consisting of both the specific technical provisions in the approved waiver list and the AFDC and JOBS requirements under prior law that did not need to be waived, but were integral and necessary to achieve the policy objective of the waived provision. Thus, the proposed definition of waiver depended on determining a State's intent.

The meaning of the term "inconsistent" is important because it governs the extent to which a State may delay the implementation of certain TANF requirements under section 415. The NPRM defined inconsistent to mean that complying with a TANF requirement would require a State to change a policy reflected in an approved waiver.

The proposed rule applied these definitions to determine when a State's waivers were inconsistent with the TANF work and time-limited assistance requirements under sections 407 and 408(a)(7) of the Act, respectively. To the extent that we determined inconsistencies existed, we would have based the work participation rates and time-limit exceptions on the waiver provisions rather than the requirements of sections 407 and 408(a)(7).

In particular, the NPRM allowed inconsistencies in two areas covered by section 407 (i.e., related to work). The first related to the types of activities that could count as work activities. Under the proposed definition, in addition to the expanded or revised activities specifically included in the technical waiver list (such as increased hours of job search), a waiver would have included the JOBS work activities that did not require waivers in order to be part of the State's program. The NPRM recognized that: (1) States had asked for waivers of the statutorily prescribed JOBS activities in order to provide what they considered to be the right mix of work activities; and (2) part of that mix included activities that did not require waivers under prior law. Thus, we would have considered such activities to be part of the waiver.

The second work inconsistency recognized in the NPRM related to the hours of participation necessary for a recipient to be counted as engaged in work for the purpose of calculating the participation rates. To the extent that the mandated hours of work in the waiver reflected the individual circumstances of the participant, either due to criteria in the waiver itself or under an individual self-sufficiency plan, we would have recognized an inconsistency with the fixed hours required by section 407.

The NPRM did not recognize, as inconsistent, waivers that served to increase the mandated hours of work for classes of recipients. The NPRM reasoned that there was no inconsistency in this case because TANF required those classes of recipients to participate for a greater number of hours than prior law required.

Further, the NPRM did not recognize any inconsistencies for exemptions that the State had had for work participation under AFDC. Under the demonstrations, States had obtained waivers to change the exemptions of individuals from participation in JOBS. We had assumed that the purpose for changing the exemptions was to require more individuals to participate. Since we believed the State's purpose was increasing participation, we reasoned that maintaining the AFDC statutory exemptions was not necessary or integral to achieving the waiver's purpose. Therefore, the NPRM did not recognize the AFDC statutory exemptions as part of the waiver for determining inconsistency with TANF.

In applying the definitions of "waiver" and "inconsistent" to time limits, the proposed rule recognized only those waivers that provided for terminating cash assistance because of the passage of time. We said that if a State would have to change its waiver policy on terminating assistance, due to the TANF time limit at section 408(a)(7), it could apply its waiver time limit instead of the TANF time limit. In general, individuals subject to a State time limit would concurrently be subject to the TANF time limit. Those individuals who were exempt from the State waiver time limit would not be subject to the TANF time limit until the State's waiver expired. In addition, if the extensions of the receipt of assistance under the State waiver limit exceeded the 20-percent limit on extensions allowed under TANF, the State's extensions would govern.

The NPRM did not recognize inconsistencies for States with waivers that: (1) had time limits that triggered work requirements, but did not result in the termination of assistance; or (2) had implemented comprehensive welfare reform initiatives under waivers that consciously chose not to include policies time-limiting assistance. Thus, in either of these situations, the State would have had to comply with the TANF time-limit requirements.

The NPRM also recognized one other type of inconsistency. TANF cases that were part of a research group, whose treatment policies were being maintained for the purpose of continuing an impact evaluation, could continue to be fully subject to prior law policies, except as modified by waivers. Further, the NPRM allowed for exclusion of such cases from the numerator and denominator of the work participation rates. Maintaining different requirements for these groups was necessary to avoid compromising the evaluation. Information on the research group would be the primary basis for impact and cost-benefit analyses of the effects of demonstration provisions and would be essential to all major components of an evaluation.

In the interest of balancing State flexibility with accountability and preserving the purposes of TANF (particularly those of encouraging work and focusing TANF on the provision of temporary support to families as they move to self-sufficiency), the NPRM also proposed certain other requirements. Specifically it: (1) Required Governors to certify waiver inconsistencies that a State believed apply in order to have the waiver rules apply in the penalty determinations; (2) denied certain forms of penalty relief to States continuing waivers that were inconsistent with TANF if States failed to meet work participation rates or time-limit requirements; and (3) proposed that we would publish information related to a State's success in meeting work participation rates and time-limit restrictions, as measured against both TANF and waiver requirements.

Because States operating under alternative waiver requirements could have an advantage compared to other States, we proposed that States continuing inconsistent waivers would not be eligible for a reasonable cause exception from a related work participation or time-limit penalty. Nor would they be eligible for a work participation rate penalty reduction based on severity of the failure or under our discretionary authority, as otherwise allowed in accordance with § 271.51(b)(3) or (c) of the NPRM. Further, in developing a corrective compliance plan, the NPRM proposed that a State would have to consider modifying its alternative waiver requirements as part of that plan. If a State then continued its waivers and failed to correct the violation, the NPRM proposed that it would not be eligible for a reduced penalty for noncompliance regardless of whether the State made significant progress towards achieving compliance or if the State's failure to comply was attributable to natural disaster or regional recession.

Overview of Comments

With few exceptions, the comments from States, organizations representing States, other organizations, and Congress relating to the proposed rules governing waiver inconsistencies strongly opposed our proposals.

Specifically, most commenters argued that our application of the proposed rule violated the spirit of the law and Congressional intent to encourage waivers. To support this argument, they cited the language at section 415(c), which directs the Secretary to encourage States to continue operating their waivers. They argued that our narrow interpretation of waiver inconsistencies, along with our decision to deny penalty relief, would discourage continuation of waivers and violated the principle of State flexibility in PRWORA. They asserted that the proposed policies would force States to abandon their waiver programs.

Finally, a number of commenters indicated that they found the definitions of "waiver" and "inconsistent" difficult to understand and apply to specific factual situations.

Overall Response

In response to the many comments we received, the final rules take a different approach to the relationship between the continuation of AFDC waivers and the TANF requirements. While the definition of "inconsistent" remains substantially the same, we have modified the definition of "waiver" to eliminate the proposed focus on intent. The new definition reflects the common use of the term, which refers to the policies that implement a particular area of reform in the demonstration. The revised definition allows the waiver to include a cluster of AFDC provisions with regard to work participation. Thus, it modifies how we would determine when work waivers are inconsistent.

We also made one change in the application of the term "inconsistent" to time limits; after further review, we believe that the NPRM did not adequately recognize a certain type of inconsistency.

Generally, the revised definition of "waiver" continues to reflect the philosophy that a narrow, technical definition would be inappropriate. Rather, as reflected in common usage, the term should recognize that States rarely implemented the technical waivers of the former section 402 of the Act in isolation. Instead, technical waivers were generally part of a cluster of policies and requirements related to administering a component of a State's welfare program. For example, States implemented components related to time limits, family caps, work activities and requirements, treatment of teen parents, income and resource eligibility, and treatment of two-parent families. Although the substantive policies making up the components and the combination of components differed from demonstration to demonstration, these component areas were the core elements of the reform efforts in various State demonstrations and were commonly referred to as waivers.

In the discussion that follows, the term "waiver" could have two distinct meanings; it could refer to either the technical waiver that was explicitly approved or the component of the demonstration. To avoid confusion, when we mean the technical use of the term (i.e., the waiver of an actual provision of former section 402 as reflected in the waiver list in the demonstration's terms and conditions), we will use the term "technical waiver." When we simply use the term "waiver," we are using it (as defined in these regulations at § 260.71) to mean the cluster of demonstration policies that the State implemented under its technical waiver. It is this broader definition that we will use to determine inconsistencies. The requirements and policies making up a waiver begin with one or more technical waivers, but could also include one or more related provisions of prior law.

The NPRM recognized this concept of including prior law provisions as part of its definition of waiver, but it depended on the State's intent in seeking the technical waiver to determine which AFDC provisions should be included. Many commenters objected to this reliance on the State's intent to operationalize a broader waiver definition. The final rule contains a simpler and more objective definition based on the demonstration component of which the technical waiver is a part.

Since our penalty authority that might be affected by waiver inconsistencies is related to work requirements at section 407 and time limits at section 408(a)(7),

we use those two sections to define the waiver components of work and time limits. We also limit our regulatory consideration of waivers to whether the waiver components that relate to work requirements and time limits are inconsistent with the respective provisions of the Act (i.e., section 407 for the work participation component and sanctions and section 408(a)(7) for the time-limit component). To the extent that a State's policies in the component area differ from the TANF policies, we will follow the waiver policies in making penalty determinations. You can find further discussion of the application of this definition in the section-by-section discussion that follows.

Although some commenters objected to our attempt to balance State flexibility and accountability, accountability to the purposes of TANF remains important under the final rule. We believe our modified approach will ensure accountability while allowing waiver policies to continue. We recognize that States, whether continuing waivers or not, have generally made serious and concerted efforts to promote the TANF objectives as they have implemented their programs. Further, as more and more States reach or approach the end of their waivers, our concerns about delays in the implementation of the TANF provisions have diminished. By the effective date of these rules, waiver authority will have expired for 14 States, and it will expire for the remaining 32 demonstration States within a few years. Moreover, for some of the remaining demonstration States, the limited scope of their waivers (e.g., limited to pilot sites or limited classes of recipients) means that the TANF provisions will be implemented broadly within the State, in spite of continuing waivers. Also, some of the remaining demonstration States have chosen to terminate waivers or to adopt modified policies that are more consistent with TANF than the original waivers.

Discussion of Specific Comments and Responses, by Section

(a) Section 260.70—What Is the Purpose of This Subpart?

We added this section to the regulation to clarify that the Department's authority and interest in identifying waiver inconsistencies is limited to the determination of penalties in three areas: (1) Failing to meet the work participation requirement; (2) failing to impose sanctions on nonparticipants; and (3) failing to meet the time-limit requirement.

Comment; A number of commenters asserted that we had totally exceeded our authority in regulating in this area. Some cited section 417 and said its provisions prohibited us from defining waiver inconsistencies at all, leaving authority for reasonable interpretation to individual States. Also, some commenters believed we should give States full authority to determine the extent to which waiver inconsistencies apply.

Response: We added this section to the final rule to clarify our interest in promulgating regulations on State waiver policies. In neither the NPRM nor the final rule have we shown any direct interest in regulating section 415, per se; however, continuation of waivers might affect the application of certain of the penalty provisions for a State, specifically those regarding work and time-limit requirements (under sections 407 and 408(a)(7) of the Act). Thus, we have the authority and responsibility to regulate in this area. In order to administer the penalty provisions on work and time limits fairly, we need to provide notice concerning the rules that we will use in applying these penalties. We limit our regulatory consideration of waivers to whether the waiver components relating to sections 407 and 408(a)(7) are inconsistent with the respective provision. To the extent that a State's policies in the component area are inconsistent with TANF policies, we will follow the waiver policies in making penalty determinations.

Comment: A few commenters specifically questioned the legitimacy of our stated objective for regulating in this area—to try to balance State flexibility to continue and test innovations begun under welfare reform waivers with accountability to the purposes of the TANF, particularly related to work and time-limit requirements. As some commenters noted, section 415 does not "ask HHS to balance State policies against the virtue of the law."

Response: Section 415 contains ambiguity in using the terms "waiver" and "inconsistent" without defining them. The Department's exercise of its work and time-limit penalty authority in a rational manner requires that we define those terms. As they are ambiguous on their face, we must look at Congressional intent. In this case, we find it necessary to try to balance the two potentially conflicting purposes of accountability and State flexibility to determine the meaning of the terms.

(b) Section 260.71—What Definitions Apply to This Subpart? (§ 270.30 of the NPRM)

In the final rule, we retain the definition of "inconsistent" given in the NPRM. We define inconsistent to mean that complying with the TANF work participation rates or sanction requirements at section 407 of the Act or the time-limit requirement at section 408(a)(7) of the Act would necessitate that a State change a policy reflected in an approved waiver.

However, as previously discussed, we have revised and simplified the definition of waiver. In the final rule, we define a waiver as consisting of the work participation or time-limit component of the State's demonstration project under section 1115 of the Act. The component includes the revised AFDC requirements indicated in the State's technical waiver list, as approved by the Secretary under the authority of section 1115, and the associated AFDC provisions that did not need to be waived.

Thus, the final rules for determining whether an inconsistency related to work exists depend on the existence of a technical waiver corresponding to any of the cluster of provisions included in section 407. These provisions include: allowable work activities; mandated hours of, and exemptions from, work participation; and applicable sanctions for noncompliance with work requirements. Under the modified definition of waiver, if a State has any single technical waiver enumerated in its list of approved waivers that corresponds to any provision of section 407, it may incorporate prior AFDC (and the related JOBS) work participation rules that were part of the cluster of policies implemented under the waivers. Under the final rule, the inclusion of prior law as part of the waiver does not depend on the original purpose or objective of the State in seeking approval of the waiver.

Finally, we have added definitions for "control group" and "experimental group" that recognize the definitions included in the terms and conditions of the State's demonstration. The NPRM had special rules for research, control, and experimental groups in States that were continuing evaluations to avoid tainting the evaluations. However, it did not define any of those terms. The final rule retains the basic policies that were in the proposed rules, but refers only to "control" and "experimental" groups. The revisions have the effect of making the policy clearer and addressing the concern of one commenter that the original terminology was not consistent

with its waiver approval and could undermine its ability to continue its evaluation.

Comment: Commenters generally supported certain inherent concepts of the proposed definitions for "waiver" and "inconsistent." In particular, they agreed that "waiver" should not include only the technical provisions listed in the documents approving the State's waivers, but should also encompass related and integral provisions of prior law. Similarly, they generally agreed that the term "inconsistent" should apply where a State would need to change its waiver policies in order to comply with TANF.

However, many commenters asserted that the proposed rules did not sufficiently recognize prior law as being integral to specific waivers. Thus, they argued the NPRM provisions would compel States to abandon policies they had implemented under waivers.

Many also objected that we presupposed State objectives in obtaining work and time-limit waivers and thus arbitrarily narrowed the breadth of applicable inconsistencies. In particular, they disagreed with our characterizations of the purpose of the waivers that eliminated exemptions from JOBS participation requirements under AFDC law and that increased the number of hours of mandatory work participation for certain classes of recipients, believing they were too limited. (Under the proposed rules, we would have disallowed inconsistencies applicable to these types of waivers based on the rationale that TANF itself eliminated prior law work exemptions and expanded hours of required work participation for these affected classes of recipients, and thus TANF requirements were consistent with the purpose of State waivers.) In effect, the commenters argued that States increased their work requirements to establish the appropriate universe of recipients who should be required to work and the appropriate level of work participation. They noted that these stated purposes were analogous to the purpose we had already recognized in the NPRM for accepting AFDC work activities as part of the waiver, i.e., to find the appropriate mix of participation activities.

A number of commenters further argued that section 415 did not confer on the Secretary the authority to judge a State's objectives.

Response: The final rules reflect our continued belief that regulating on how a State's waiver policies would affect the application of certain penalty provisions is well within our statutory authority. However, we recognize that the NPRM's reliance on our ability to judge the State's purpose in seeking a specific technical waiver was problematic, given the limited documentation available on the specific purposes of particular waivers. Therefore, we have recast the definition in terms of an objective demonstration component. Components were commonly recognized as parts of the demonstration and are readily identifiable for penalty determination purpose; one merely has to associate a technical waiver relating to work requirements or time limits with the corresponding TANF provision that is subject to penalty. Thus, while maintaining the concept that "waiver" includes both the technical waiver and some portion of the former AFDC provisions, we have revised the definition to remove its reliance on the State's purpose.

You can find a further discussion of the application of the new definition for work and time-limit policies at §§ 260.73 and 260.74.

Comment: Some of these commenters offered the perspective that a waiver should encompass the whole of prior AFDC law as part of the State's welfare reform strategy, not just specific individual waivers and limited related extensions of prior law.

Response: We disagree with the commenters that Congress intended waivers to cover the whole of prior AFDC law. Section 415 allows States to continue "one or more waivers to the extent they are inconsistent." The fact that it refers to one or more waivers and does not use the broader term, demonstration, in describing what is to be compared for inconsistency, indicates that Congress intended the determination of inconsistencies to be made on a more specific basis.

Comment: A number of commenters recommended that we modify the definition of "inconsistent" to include any prior law policy in effect under its demonstration that, if continued, but not recognized as inconsistent, would give the State reason to believe that it was at risk of being subject to a TANF penalty.

Response: We addressed this concern to some degree in the final rule by changing the definition of "waiver." A State may continue prior law policy that is part of a demonstration component area (e.g., work requirements) for which the State has a waiver. Continuation of prior law policy that is not in a policy area that is subject to penalties under TANF (i.e., not related to sections 407 or 408(a)(7)) is outside the scope of this final rule and is left to State discretion.

We declined to change the definition of "inconsistent" to mean a situation in which the State believes that continuing the policy would put it at risk of a penalty. Congress did not intend to eliminate penalties for States with waivers. Rather, it intended that we judge the conduct of such a State based on the requirements in the waiver, rather than in those in TANF, in determining whether a penalty is appropriate. If the State has waivers that are inconsistent with TANF, then the State may be subject to penalties if it fails to submit the required certification, fails to take the appropriate sanctions, fails to achieve the required participation rates under its own waiver policies, or otherwise violates its own waiver policies (e.g., exempts from time limits individuals subject to the State's demonstration time limit).

(c) Section 260.72—What Basic Requirements Must State Demonstration Components Meet for the Purpose of Determining If Inconsistencies Exist With Respect to Work Requirements or Time Limits? (§ 272.8 of the NPRM)

In the final rules, we have eliminated those NPRM provisions that would have denied penalty relief to States that continued waivers that were inconsistent with TANF, but failed to meet work participation rates or time-limit requirements. Specifically, the NPRM had proposed that waiver States ought not be eligible for: (1) A reasonable cause exception from any of four related work participation or time-limit penalties; or (2) a reduction of work penalty amounts based on severity of the failure or under our discretionary authority, as otherwise allowed in accordance with § 271.51(b)(3) or (c). We have also eliminated proposed rules that would have required a State, in developing a corrective compliance plan to address work or time-limit requirement failures, to consider modifying its alternative waiver requirements as part of its corrective compliance plan. Finally, we have decided not to deny a State that continues its waivers eligibility for a reduced penalty based on making significant progress towards achieving compliance with the work or time-limit requirements (as we had proposed and described in subparts B and C of part 271 and §§ 274.1 and 274.2 of the NPRM).

We had proposed imposing these rules on the basis that States operating under alternative waiver requirements were at an advantage compared to other States in being able to meet participation rates and comply with time-limit requirements. However, a

large number of commenters questioned whether the advantage that a waiver State had over other States in complying with specific TANF requirements was so great as to warrant such absolute restrictions; some noted the proposed rule was arbitrary in that we did not consider the degree of any advantage vis-a-vis other legitimate factors and situations that might result in noncompliance. Based on our assessment that our proposals might discourage States from continuing successful demonstration efforts, we have removed these restrictions on penalty relief.

In the final rules, at § 260.73(d), we retain the regulatory expectation to publish information about a State's success in meeting work participation rates, as measured against both TANF and waiver requirements. We do not expect to publish dual time-limit figures for States that have waivers of time limits that are inconsistent with the TANF requirements. Upon further review, for such States, we do not believe that it will be possible to compute the percentage of cases with an adult recipient that received more than 60 months of Federal TANF benefits under the standard TANF rules. Data reported in accordance with section 411(a) will not be sufficient to allow this calculation. We do not have the authority under section 411(a) to require waiver States to report the data that this calculation would require, and they are not germane to our penalty determinations. Therefore, we have deleted this specific regulatory expectation. However, we will be able to calculate dual work rates, and the final rules indicate our commitment to follow through on that proposal.

The final rules also clarify other necessary conditions that apply if a State wants us to use its inconsistent waiver policies and requirements in the penalty determination process.

First, the inconsistencies claimed must be within the scope of the approved waivers, both in terms of geographical coverage and coverage of the types of cases specified in the waiver approval package. For example, a State could not claim a statewide inconsistency if we approved its waiver policies for an eight-county pilot. Similarly, a State could not extend waivers to all adults when the approved waivers applied only to teen parents. Nor could waivers applicable only to two-parent families apply to other types of cases. However, a State that is no longer maintaining control group cases for the purpose of completing an impact evaluation may choose to apply approved waiver policies to cases formerly assigned to a control group.

Second, the State must have applied its waiver policies on a continuous basis from the date that it implemented its TANF program. Section 415(d) allows the State to "continue" one or more individual waivers (which, under the definitions enumerated in these final rules, means one or more individual demonstration components). Section 415(c) requires the Secretary to encourage States to "continue" their waivers. Implicit in both these provisions is that continuation of the waivers is necessary for a finding of inconsistency.

This "continuation" requirement does not prevent a State from modifying policies begun under waivers. TANF clearly provides States with the authority to modify waiver policies inconsistent with prior law, but consistent with TANF (e.g., related to eligibility rules such as income and resource standards). These rules clarify that a State may modify waiver provisions that are inconsistent with TANF, provided that, in doing so, it makes its policies more consistent with TANF. For example, a State could choose to reduce the geographical scope of waivers, applying waivers approved for statewide implementation in only certain parts of the State, or a State could choose to eliminate some exemptions applicable to work participation or time-limited assistance, retaining other exemptions that are still inconsistent with TANF.

We recognize that the issue of whether a State has continued waivers since the advent of TANF may be difficult to determine. Although ACF requested voluntary information on continuation, absent a final regulation, it never indicated a formal process or requirement for the States to submit such information about the continuation of the waiver policies. And, since States need not conduct evaluations as a condition of operating waivers, some States may have indicated that they were discontinuing their waivers, when in fact they intended only to notify us that they were discontinuing evaluations of the demonstration, not their waiver policies. Further, in the absence of final rules, some States may not have clearly understood how they should identify and report inconsistencies under their TANF plans. Also, although some may have indicated that they were continuing waivers with policies inconsistent with TANF, they may not have identified subsequent modifications in their operating policies.

Under these final rules, to determine if a State has continued its work participation or time-limit waiver component and, therefore, may claim applicable inconsistencies, we will accept the certification of the Governor regarding the actual practice of the State. Many of the former waiver policies (for example, variations in the counting of income and resources for eligibility purposes) are unrelated to work and time limits and need not be addressed in the certification. A State need address only the inconsistencies related to work provisions in section 407 and time limits in section 408(a)(7), as explained further below.

However, we wish to note that if a State has abandoned a policy provision that is inconsistent with TANF, the State has voided its waiver authority. Thus, it has lost its right to claim an inconsistency related to that provision. For example, a State that had technical waivers that allowed it to exempt all adult caretakers from work may have changed its policy to require participation of adult caretakers after it implemented TANF. While the State always had the flexibility subsequently to reinstate a policy exempting adult caretakers, we would not recognize this policy as an inconsistency in determining the work participation rates because the State had discontinued the prior technical waiver.

We treat each technical waiver separately for continuation purposes. If a State discontinues one technical waiver, we will continue to recognize other continuing technical waivers related to work (for example, when a State discontinues an exemption waiver, but continues unlimited job search as a work activity). However, there is no authority in section 415 to restore discontinued policies; the statute allows for consideration only of continued inconsistent policies.

Similarly, if a State had modified its implementation of the technical waiver to be more consistent with TANF, we would recognize only the modified policy as a continuation of the waiver.

Third, the Governor must certify the waiver inconsistencies that the State is claiming, including an affirmation that the State has not expanded the scope of its policies and has continued the policies under section 415 in the interim period since implementing TANF, as discussed above. This requirement continues a provision of the proposed rules, but provides new detail about the expected content of the certification, particularly as it pertains to claiming specific inconsistencies related to work and time-limit requirements. See §§ 260.73 and 260.74

for a more detailed discussion of work and time-limit inconsistencies.

Finally, these final rules clarify that, despite broadening the scope of inconsistencies that a State may claim compared to the NPRM, inconsistencies with sections 407 or 408(a)(7) do not create inconsistencies with the penalty provisions at section 409. Thus, they do not have the general effect of delaying the application of the work participation rate or time-limit penalties at §§ 261.50, 261.54, 264.1, and 264.2 or the data collection requirements at part 265.

We came to this decision because we never approved any waivers eliminating compliance with JOBS work participation rates (while they were operable) or voiding their applicability should they become operable. Our work component waivers only changed the substance of the work requirement. As for applicable data requirements, we never approved waivers that relieved States of data reporting requirements; thus, we approved no waivers that would be inconsistent with section 411 of the Act. The work and time-limit components affected by sections 407 and 408(a)(7) do not, of themselves, create inconsistencies because neither encompasses data collection requirements.

Comment: One commenter noted that when the waiver expires for a State providing extensions of assistance in excess of the 60-month Federal time limit, a State would need to comply fully with the 20-percent limit on extensions and that this could cause serious transition problems. The commenter recommended that we provide that "reasonable cause" include a reasonable transition time in the case of a State that had been implementing an inconsistent policy under an approved waiver.

Response: The "waiver terms and conditions" for demonstration projects affected by these regulations generally included a requirement that the State provide, and the Department approve, a plan to phase down and end the demonstration on the date the waiver approval expires. We did not authorize any waiver-related activities or costs to extend beyond the project period. Given that the project period for a waiver demonstration already includes a phase-down period, States should not require an additional transition period. In addition, we would remind States that they may fund cases above the 20-percent cap with State MOE dollars.

(d) Section 260.73—How Do Existing Welfare Reform Waivers Affect the Participation Rates and Work Rules? (§ 271.60 of the NPRM)

If a State is implementing a work participation component under a waiver as defined in this subpart, the requirements of section 407 of the Act will not apply in determining whether a penalty should be imposed, to the extent that they are inconsistent with the State's waiver work demonstration component.

To determine that the State's demonstration has a work component, the waiver list for the demonstration work participation component must include one or more specific provisions that directly correspond to provisions enumerated in section 407 (i.e., that cover allowable work activities, exemptions from participation, required hours of participation or sanctions for noncompliance with participation). In other words, the State's waiver list must include at least one technical waiver that changed the allowable JOBS activities, exemptions from JOBS participation, hours of required JOBS participation, or sanctions for noncompliance with JOBS participation.

After the Governor has certified the inconsistencies with section 407, we will calculate the State's work participation rates, if applicable, by: (1) Excluding cases exempted from participation under the demonstration and experimental and control group cases and not otherwise exempted; (2) defining work activities as defined in the demonstration in calculating the numerators of the rates; (3) including cases meeting the required number of hours of participation in work activities in accordance with waiver policy in calculating the numerators of the rates; and (4) excluding other cases exempt from participation under the waiver in calculating the denominators of the rates.

We will also determine whether a State is taking appropriate sanctions when an individual refuses to work based on the State's certified waiver policies. These final rules explicitly recognize waiver inconsistencies related to sanctions for noncompliance with work requirements; the proposed rules were silent on this matter. They also recognize exemptions from work and changes to the required hours of work. Finally, they continue to recognize inconsistencies related to allowable work activities, as we proposed in the NPRM.

It is important to stress that a State need not have a technical waiver in a particular part of the work component (e.g., work activities or exemptions) to claim that the *related* AFDC provisions for that part of the component are part of its waiver. Rather, the State needs one or more technical waivers related to a provision of section 407 to claim applicable prior law in all areas that are part of section 407.

Thus, a State with a waiver work component may delay implementing TANF requirements for work participation for individuals exempt from JOBS if such exemptions have been part of the State's continuing demonstration policies. A State with a demonstration work component, but without a technical waiver modifying JOBS exemptions, may still include all prior law exemptions (or a modification of these exemptions that is more consistent with TANF), if such exemptions have been part of the State's continuing policies for work participation. For States with waivers that eliminated some (but not all) JOBS exemptions, the remaining exemptions would apply, if they have been part of the State's continuing demonstration policy. However, because all States will need to conform to all TANF rules once their waivers expire, we urge States to plan accordingly.

Under these final rules, a State may claim inconsistencies applicable to hours of work if it has technical waivers related to section 407 and could, in an audit, provide written evidence (e.g., terms and conditions or policy manuals) to document that its waiver policies, as implemented, expressly provided for alternative rules with respect to the hours of work required of nonexempt individuals.

The ability to provide such written evidence is necessary because prior law did not generally have requirements for the number of hours an individual must work to be considered participating. Rather, prior law had a calculation methodology that included any JOBS participants as long as including them did not reduce average hours below 20 hours per week. If no written policy was in effect, we would hold the State to the TANF hours-of-work requirements.

Finally, a State may also choose to exempt, from the participation rate calculation, experimental and/or control group cases that are not otherwise exempt. It may remove experimental group cases as a class, control group cases as a class, or both experimental and control group cases on a class basis. However, it may not exclude such cases on an individual basis.

Comment: All those commenting on the subject supported counting towards the work participation rate calculation those work activities allowed under

waiver authority without regard to TANF restrictions, as we proposed in the NPRM. However, many commenters asserted that the rules should not restrict inconsistencies related to prior law exemptions from work participation, where those policies were part of a State's welfare reform program. In support of their position, several organizations and States argued that, because section 415(a)(2)(B) specifies that waivers approved after enactment may not affect the applicability of section 407 (concerning compliance with work participation rates), Congress fully intended the inverse to apply to waivers approved before enactment. Therefore, we should recognize all continued policies related to compliance with TANF work requirements as inconsistencies.

Response: Our revised waiver definition would allow the States with waiver work components to include all prior law exemptions, and other AFDC (and JOBS) work policies, as part of the waiver, if such policies were part of the welfare reform demonstration that the State implemented under its technical waiver(s).

Comment: A number of commenters asserted that hours of mandated work that were related to waivers and increased the JOBS requirements for a class of individuals should be claimable as an inconsistency.

Response: These comments addressed a problem with the reference to a State's intent in our proposed definition of waiver (an issue that we addressed earlier). Since the final rules rely on the existence of waiver work components, rather than intent, they recognize increased hours as part of the waiver. If the amount of the required hours under the waiver is inconsistent with the required hours under section 407, the Governor can certify the inconsistency.

Comment: Some commenters asserted that we could not even hold States operating under waivers to a work participation rate requirement—i.e., that we should delay the effect of section 407 in its entirety until State waiver authority expires.

Response: Under section 1115, there were limits on what we approved as part of a demonstration project. The Secretary only had authority to waive provisions of the AFDC program that were included in former section 402. That section contained the provisions regarding the determination of eligibility, the amount of assistance, and required procedures for State administration of the plan. The Secretary could, and did, grant waivers concerning the content of the JOBS program (the AFDC work program), which was included at section 402(a)(19). However, the required work participation rate associated with JOBS was at the former section 403(l). Since the Secretary had no authority to waive this provision, we never approved any requests from States to waive it.

Thus, no State has a waiver of participation rates that would conflict with the work participation rate penalty provision at the former section 409(a)(3). For a State to argue that the work penalty does not apply, it would have to show a technical waiver that is inconsistent with any application of the work penalty. However, waivers that create the content or substance of a State's demonstration work program are just that—definitions of the content of a work program. As such, they may be inconsistent with the content of the TANF work program at section 407 and may allow the State to substitute the substance of the work program in its demonstration for the program specified in section 407, to the extent that the State determines there is an inconsistency. However, there would be no inconsistency in applying the section 409(a)(3) work participation penalty as long as participation was determined under the State's demonstration work program.

Since the final rule bases the penalty under section 409(a)(3) on what was required participation under the State's demonstration work program, there is no inconsistency. Delay of the work participation penalty itself in these circumstances would fall outside any reasonable definition of waiver or inconsistency.

(e) Section 260.74—How Do Existing Welfare Reform Waivers Affect the Application of the Federal Time-Limit Provisions? (§ 274.1(e) of the NPRM)

If a State is implementing a time-limit component under a waiver, until the waiver expires, the provisions of section 408(a)(7) of the Act will not apply in determining whether to impose a penalty, to the extent that they are inconsistent with the waiver.

To determine that the State's demonstration has a time-limit component, the waiver list for a demonstration time-limit component must include provisions that directly correspond to the time-limit policies enumerated in section 408(a)(7) (i.e., that address which individuals or families are subject to, or exempt from, terminations of assistance based solely on the passage of time, or who qualifies for extensions to the time limit).

In general, the final rule requires a State with a waiver time-limit component to count, toward the Federal five-year limit, all months for which the adult who is subject to the State time limit receives assistance with Federal TANF funds, just as it would if it did not have an approved waiver.

The State need not count, toward the Federal five-year limit, any months for which an adult receives assistance with Federal TANF funds while the adult is exempt from the State's time limit under the State's approved waiver. Nor need the State count, toward the Federal five-year limit, months for which an adult subject to an adult-only State time limit under the State's waiver receives assistance with Federal TANF funds.

The State may continue to provide assistance with Federal TANF funds for more than 60 months, without a numerical limit, to families provided extensions to the State time limit, under the provisions of the terms and conditions of the approved waiver.

After the Governor certifies time-limit inconsistencies, we calculate the State's time-limit exceptions by: (1) Excluding, from the determination of the number of months of Federal assistance received by a family, any month in which the adult(s) (or children where a waiver only terminated assistance to adults) were exempt from State's time limit under the terms of the State's approved waiver; and (2) applying the State's waiver policies with respect to the availability of extensions to the time limit.

The changes that we have made to the framework of how we define waiver inconsistencies have less effect on inconsistencies related to time-limiting assistance than to work. The main reason for this difference is that no prior law policies existed governing time-limited assistance. All time limits were the result of waivers. Thus, there are fewer issues about what a time-limit waiver includes. However, there are significant issues about what is allowable as an inconsistency; under these rules, the constraining factor is whether a State's demonstration project has a time-limit component related to the provisions in section 408(a)(7).

Prior to the passage of PRWORA, a "time limit" could take any number of forms. However, under TANF, the penalty relates to the time limit in section 408(a)(7), which recognizes only time limits that terminate assistance with the passage of time (i.e., that terminate assistance to families with adults who received Federal TANF assistance for 60 months). Other parts of TANF address time limits in different contexts, such as those that trigger work requirements. However, these latter types of provisions are not subject to the penalty provision under section

408(a)(7), and we do not address them in this regulation.

Therefore, as we proposed under the NPRM, we are allowing time-limit inconsistencies only for those States with waiver policies that terminate assistance solely as the result of the duration of receipt. Under these rules, if a State has a technical waiver meeting this requisite, we compare its provisions with those at section 408(a)(7) to determine whether there are inconsistencies.

As with work participation, States may also choose to exempt experimental and/or control group cases that are not otherwise exempt from time limits. However, a State may exclude such experimental and control group cases only on a group basis, not on an individual basis.

Comment: Commenters generally agreed that inconsistencies should be recognized that allowed a State to: (1) exempt certain cases from having months counted toward the 60-month time limit; and (2) provide extensions to more than 20 percent of the caseload after reaching the limit.

Response: We have retained these policies in the final rule.

Comment: Some commenters argued that section 415 was designed to allow States to continue their welfare reform initiatives as a whole. On this basis, they maintained that any State that consciously chose not to include time-limited assistance provisions in the comprehensive welfare reform initiatives that it implemented under waivers should be able to claim a time-limit inconsistency.

Response: Section 415 was not designed to carry over prior law in its entirety, nor to delay TANF requirements where waivers did not exist prior to implementation. Rather, it allows delay in implementing new TANF provisions "to the extent such amendments are inconsistent with the waiver." Thus, we find no statutory basis for allowing inconsistencies to be claimed in this particular situation because no waiver exists.

Comment: Some commenters argued that we should also allow time-limit inconsistencies to apply where a State has implemented time limits that serve to trigger work requirements.

Response: We do not recognize other waiver provisions, such as those where States used "time limits" to trigger work requirements, as inconsistent with time limits. The purpose of this section of the regulation is to determine the applicability of the time-limit penalty at section 409(a)(9). This penalty applies to any failure to meet the time-limit requirements at section 408(a)(7). Time limits triggering work requirements are found in sections 402 and 407, not section 408(a)(7). Therefore, such policies do not fit within the definition of a waiver related to the time-limit component associated with 408(a)(7).

Comment: One commenter recommended that, if we retained the proposed rules related to time-limit waiver inconsistencies, the preamble discussion should clarify that "reduction waivers" (adult-only time limits) represent an inconsistency.

Response: We have incorporated this change in the final rule. States with waivers terminating assistance for adults only may choose to delay counting months toward the Federal 60-month time limit for as long as they continue to apply adult-only policies under their State time limit. While the proposed rules had required that time against the Federal time clock be counted for any month in which an adult was subject to the State time limit (i.e., that the Federal and State clocks would run concurrently), this policy would have had an effect that was inconsistent with the waiver policy. Because time charged against an adult would have ultimately resulted in the termination of benefits to the whole family under TANF, the proposed policy would have resulted in time being counted against child recipients. While children are protected from termination of benefits while the waiver is operable, counting time against adults in the case would have, in effect, counted time against the family's (and children's) length of receipt of assistance. This result would have been contrary to the purpose of the adult-only time-limit waivers, which was to exempt children from any effect of the time limit. Thus, in submitting a Governor's certification of continuing waiver inconsistencies, the State may claim a time-limit inconsistency for its adult-only time limit.

Comment: Another commenter said that we should allow all cases subject to a time limit adequate prior notice before a clock begins to count against them. Thus, States that have applied a reasonable statutory interpretation of section 415 to exempt cases from the Federal time limit should not have to count time retroactively against these cases (i.e., count time accrued prior to the effective date of the final rules).

Response: As we have previously stated, these rules apply only prospectively; until they are effective, the State's reasonable interpretation of the statute applies. An individual who was considered exempt from the Federal time limit under the State's reasonable interpretation of its waiver would only have the Federal limit apply prospectively, beginning October of 1999. This policy will allow States time to provide the recipient with adequate notice.

(f) Section 260.75—If a State Is Claiming a Waiver Inconsistency for Work or Time Limits, What Must the Governor Certify? (§ 272.8(a) of the NPRM)

If a State is claiming waiver inconsistencies, the Governor must certify that the State has continuously maintained applicable policies in operating its TANF program and that the inconsistencies claimed by the State do not expand the scope of the approved waivers. Further, the certification must identify the specific inconsistencies that the State chooses to continue with respect to work and time limits.

If the waiver inconsistency claim includes work provisions, the certification must specify the standards that will apply in lieu of the provisions in section 407. Specifically, it must include, as applicable: (1) Descriptions of two-parent and other cases that are exempt from participation, if any, for the purpose of determining the denominators of the work participation rates; (2) the rules for determining whether nonexempt two-parent and other cases are "engaged in work" for the purpose of calculating the numerators of the work participation rates, including descriptions of the countable work activities and minimum required hours; and (3) the penalty against an individual or family when an individual refuses to work. Again, the certification may include a claim of inconsistency with respect to hours of required participation in work activities only if the State has written evidence that, when implemented, the waiver policies established specific requirements related to hours of work for nonexempt individuals.

If the waiver inconsistency claim includes time-limit provisions, the Governor's certification must include the standards that will apply in lieu of the provisions at section 408(a)(7). It must specify the standards that will apply in determining: (1) Which families are not counted towards the Federal time limit; and (2) whether a family is eligible for an extension of its time limit on federally funded assistance.

If the State is continuing policies for evaluation purposes, the certification must specify any special work or time-limit standards that apply to the experimental and control group cases. The State may choose to exclude cases assigned to the experimental and

control groups that are not otherwise exempt, for the purpose of calculating the work participation rates or determining State compliance related to limiting assistance to families including adults who have received 60 months of TANF assistance. Thus, the State may exclude all experimental and control group cases, not otherwise exempt. However, it may not exclude such cases on an individual, case-by-case basis.

A State must provide the initial Governor's certification by October 1, 1999. It would be very helpful to receive the certification by July 1, 1999, in order to assess how inconsistencies will apply for data collection and reporting efforts before the effective date of the new requirements. We would like to resolve any issues about the treatment of waiver cases before the reporting requirements take effect, because it is much easier to code information correctly the first time than to modify the codes retroactively. In light of the number of States continuing waivers and some of the detailed, case-specific questions that we anticipate might arise, we want to build in ample time to resolve all issues by October 1, 1999. It will certainly be in a State's interest if we can resolve all questions by the effective date of the new requirements.

Also, we would point out that, until a State has submitted its Governor's certification, we will treat the State as a nonwaiver State in determining its compliance with work participation rate and time-limit standards. Likewise, if we determine that a Governor's certification does not comply with the requirements of this subpart, we will advise the State of the inconsistency and give it an opportunity to revise the certification. We will accept alternative rules for determining penalties related to work participation rates and time-limit exceptions only to the extent that they comply with the requirements of this part.

If a State modifies its waiver policies, after it provides the certification, in a way that has a substantive effect on the calculation of its work participation rates, time-limit exceptions, or sanctions, it must submit an amended certification by the end of the fiscal quarter in which the modifications take effect.

Comment: A few commenters questioned whether we had the authority specifically to require that Governors certify which waivers States were continuing. Some of these saw this requirement as an added burden that duplicated information already submitted in their State TANF plans or documented as part of their waiver approval.

Response: We disagree that we have no authority to require the certification. As discussed, the Department has had no formal process for determining a State's decisions on the continuation of waivers. The information that has been provided has been sporadic and is not necessarily current or complete. Since we will be relying on the State's determination that it has continued an inconsistent waiver component in making penalty determinations, we must have accurate, up-to-date information on the State's decision to continue its inconsistent work and time-limit components in order to make those penalty determinations correctly and on a timely basis. As such information is necessary to our implementation of the penalty provisions, we have authority under those provisions to collect it.

(g) Section 260.76—What Special Rules Apply to States That Are Continuing Evaluations of Their Waiver Demonstrations? (§ 271.60(c) and (d) and § 274.1(e)(4) of the NPRM))

If a State is continuing policies that employ an experimental design in order to complete an impact evaluation of a waiver demonstration, the experimental and control groups may be subject to prior law, except as modified by the waiver.

We have added definitions for experimental and control groups at § 260.71 (and cross-references at § 260.30). These definitions reference the terms and conditions in the State's demonstration.

Comment: One commenter suggested that we should allow any State in which more than half of its families are subject to waiver policies as part of a research group to apply the same waiver policies to the rest of the families in the State, as long as the State does not expand the geographical scope of the waiver authority. The same rule would apply to a county operating a waiver demonstration in a county-administered State. Another commenter indicated that States may be less likely to continue an evaluation if we do not allow a State to apply policies permitted for the research group to a broader set of families.

Response: While we sympathize with the commenters' desire to reduce administrative complexity, we do not see why the complexity is any greater when a majority of the caseload is in the experimental and control groups than when a minority is. Furthermore, implementing this policy would introduce complexities of its own in terms of the measurement required to determine what rules apply in a given jurisdiction. Since both the number of families in the experimental and control groups currently on assistance and the total number of families currently on assistance vary from month to month, rules could vary month to month. In contrast, the experimental and control groups are well-defined; a family is either assigned to them or not. Therefore, under the final rule, determining when and to which families to apply the pre-TANF policies is relatively simple.

C. Child-Only Cases

Background

The calculations for work participation rate and time-limit penalties center around the concept of "family." Under the proposed rules, we indicated that a State could develop its own definition of "family," with the proviso that States could not create definitions that excluded adults from cases solely for the purpose of avoiding penalties. To monitor that restriction, we proposed that States report annually on the number of cases excluded from penalty calculations, and the reasons for each exclusion. We said we would add families back into the calculation if we found they were excluded for the purpose of avoiding penalties. You may find the specific proposals in §§ 271.22(b)(2), 271.24(b)(2), and 274.1(a)(3) of the proposed rule.

These provisions reflected our concern that States might convert cases to child-only cases to avoid the statutory work participation and time-limit requirements. In part, our concern was a reaction to public comments that States and advocates made shortly after PRWORA's enactment suggesting that States might take such actions. It also reflected our view that such conversions would seriously undermine critical provisions of welfare reform.

Overview of Comments

Several commenters supported our decision to recognize that States had the primary authority to define "family." However, a large number of commenters, from a diversity of groups, opposed or expressed concerns about our specific proposals in this area. The comments generally objected to our distrust of States and the pre-emption of State decisions to define families as they deemed appropriate.

Several commenters challenged the statutory basis for our proposal. Some did not directly challenge our authority, but questioned the practicality of our proposed approach. Commenters pointed out inconsistencies in the language that we had used in different parts of the regulation and noted that

the determination of whether States created definitions for the sole purpose of avoiding penalties would involve subjective determinations of motive. To minimize these problems, they offered several suggestions about how we might clarify what types of cases might be subject to recalculation.

Under one proposal, States would describe their child-only cases in the State plan or procedures. We could then discuss beforehand with States the appropriateness of these cases. Other commenters offered a related suggestion that we set up a process for States to get approval of reasons for conversions up-front, but did not identify a specific format for the State submissions.

Another suggestion was that State definitions would automatically prevail, but that HHS would inform Congress if distortions of legislative intent seemed to result. In other words, in the absence of any documented abuses, we would simply gather information on what States are doing and permit States to use any definition of family that has a reasonable policy basis. Then, if we discover evidence that States were trying to subvert the TANF provisions, we could work with Congress in developing solutions.

Some commenters noted that child-only cases existed under AFDC and enumerated examples of child-only cases that we should acknowledge as acceptable, including: cases in which the adults have no legal liability for the care of the children, cases with recipients of SSI or other disability payments, cases with adults not receiving assistance because they exhausted shorter State-imposed time limits, cases with noncitizen parents or adults ineligible for other reasons (e.g., SSI receipt or a drug felony conviction), cases that were previously converted under approved waiver policies, and cases with elderly caretakers.

We also received suggestions that we should explicitly permit States to continue to provide assistance to children: (1) once the parent/relative loses eligibility due to the expiration of the five-year time limit; (2) whose parent/relative was sanctioned for failure to participate in work or cooperate with child support enforcement requirements; and (3) whose parent or caretaker would be better served by some other State program, such as if she is disabled.

In addition to specific objections or questions, many commenters expressed the overall concern that our proposal to control for inappropriate child-only cases may inhibit the State flexibility essential to TANF. State anxiety about Federal recalculation of penalty liability could create a "chilling effect" that caused States to limit child-only cases unnecessarily and inappropriately. In the words of one commenter, "the uncertainty of knowing whether their policy basis will be considered legitimate and how work participation rates and time-limit compliance will be measured by HHS could simply lead States to avoid serving children as child-only cases even if the result is not to serve the children at all."

Commenters did not want to see assistance to valid child-only cases undermined by our rules. Of particular concern was the effect of our proposals on State efforts to keep children in the homes of relatives, in lieu of foster care placements.

Others noted that, up to this point, we do not have evidence that States are converting cases to child-only cases for the purpose of avoiding TANF requirements; we have not observed significant changes in State policy or practice to create new child-only cases. Only if such changes actually occur should HHS develop corrective procedures.

Overall Response

When we were developing the proposed rules, we were very concerned that States would use the flexibility available in defining families to avoid work participation requirements, time limits, and other TANF requirements. Within the authority that we have to collect participation rate information and make decisions on State penalties, we proposed specific regulatory policies with respect to penalties and reporting in response to that concern. However, as we have seen the TANF programs evolve, our concerns about possible abuses have diminished.

While the number of child-only cases has been increasing over time, commenters correctly observed that the increases began well prior to TANF and that there is little indication so far that States are converting cases merely to avoid penalties. In fact, a couple of internal State analyses (i.e., in Florida and South Carolina) have found no evidence of conversion of cases to child-only cases from other statuses.

Also, commenters correctly noted that there were numerous child-only cases that were considered valid under prior law. Their existence under TANF therefore does not suggest that States are working to subvert TANF requirements in this manner. Over the past several years, there were a number of social and demographic changes underway that could have contributed to much of the growth in child-only cases. For example: (1) Because of the "crack" epidemic, some infants moved from the care of their mothers to the care of their grandmothers or other adult relatives (who may or may not have been needy); (2) in some places, immigration changes could have caused a growth in the number of eligible children with ineligible alien parents; and (3) in other places, States have made an effort to establish eligibility for SSI. (If parents became SSI-eligible, the children normally received assistance as child-only cases.)

Recently, we have seen a reduction in the total number of child-only cases. However, because the number of other types of cases has been declining faster, the proportion of child-only cases has not gone down. Thus, State success in moving more families to work may actually be causing an increase in the proportion of child-only cases.

At the same time, we disagree with the suggestion that it would be appropriate to provide federally funded assistance to children in child-only cases when their parents reach the 60-month limit on Federal assistance. Such a result would be consistent with an adult-only time limit, but does not seem consistent with the intent of the specific provision in the law. For example, the provisions on transfers to the Social Services Block Grant program suggest that children in families whose adults reached their 60-month limit were not expected to continue receiving federally funded TANF assistance.

While we disagree with the commenters' suggestion that we did not have legal authority to regulate in this area, we understand commenters' concern that the provisions in the proposed rules may do more harm than good. In the absence of clear evidence that States are converting cases to avoid the TANF rules, we have decided that the most appropriate response at this point is to give States leeway to define families in ways that they think are most appropriate while gathering better information on how child-only policies might be affecting the achievement of TANF goals.

However, the possible conversion of cases to child-only status to avoid TANF requirements remains a major policy concern. For example, such conversions could effectively eliminate restrictions on the amount of time that any family could receive federally funded TANF assistance or could undermine the statutory provisions on the treatment of sanction cases in the participation rate calculations. We therefore intend to track it closely. To that end, we have added one data element to the disaggregated case-record reporting that will identify cases that have been

converted to child-only status since the past month. We will use the quarterly TANF Data Report to monitor trends both in the aggregate number and type of child-only cases and the number of conversions. By monitoring these trends, we should be able to identify changes in State practice or caseload characteristics that would merit further investigation. If we saw a significant number of conversions to child-only status in a particular State (i.e., a number that was out of line with prior State numbers or the numbers for other States), we would look more closely at that State.

We have a variety of investigative tools available to us, including detailed analysis of the case-record information reported to us, the Single State Audit, supplemental reviews, and targeted studies (like the current ASPE study mentioned below).

We will incorporate a full analysis of the information we have gathered on what has been happening with child-only cases in our annual report to Congress.

As a number of commenters suggested, under these final rules, we have adopted a strategy that includes gathering information, monitoring developments, and keeping our options open regarding future actions. Through our data collection, we will obtain substantial information on the characteristics of child-only cases, trends in their number and type, and conversions. This information will help us assess the possible effect of such cases on the achievement of TANF goals. We will consider proposing appropriate legislative or regulatory remedies if we find that States are using the flexibility available under these rules to define families to avoid work requirements or time limits or otherwise undermine the goals of TANF. However, we will not put any significant policy change into effect without appropriate prior consultation with States, Congress, and other interested parties.

Tracking of Child-Only Cases

Comment: A significant number of commenters also objected to our proposals at §§ 271.22(b)(2)(i), 271.24(b)(2)(i), 274.1(a)(3)(i), and 275.9(a)(1) that States annually report to us on their child-only cases and advise us of the specific nature of each of the cases. Commenters generally felt it was an unjustified additional burden for States. Some objected to the specific wording of the requirement because it suggested that we expected case-by-case reporting of such cases rather than aggregated reporting.

Response: We have removed the requirement for annual reports on families excluded from work-rate and time-limit calculations and the reasons for their exclusion. The proposed language was not consistent in different parts of the NPRM package and caused some confusion.

Monitoring trends in the number and type of such cases remains an important issue. However, we decided that a different type of data would be more helpful in helping us track conversions. Thus, we have added a new data element to the TANF Data Report that will identify the specific cases that have become child-only cases. These new data will supplement other data on child-only cases available through the TANF and MOE–SSP data reports and give us a solid basis of information for assessing national and State trends in the number and nature of child-only cases. From other data elements in those reports, we will get disaggregated, case-level data on parents and other individuals who are in the household, but not in the family receiving assistance. We will get information on whether there are parents who are ineligible for receipt of Federal benefits, whether the cases are under sanction, and whether cases have no parent in the home. To provide still further supplemental information, the Office of the Assistant Secretary for Planning and Evaluation is undertaking a study in three States to explore the circumstances of child-only cases in more detail.

Together, these information sources will provide valuable insight into the nature of child-only cases and the types of services and assistance States are providing them. We will be able to track any significant changes in the number and types of such cases and be in a better position to determine if we need to pursue further action. Depending on what specifically is happening, an appropriate response could be information-sharing, consultations, technical assistance, or regulatory or legislative proposals.

To reflect our other decisions on child-only cases, we deleted the provisions at §§ 271.22(b)(2), 271.24(b)(2), and 274.1(a)(3) of the proposed rule that prohibited conversion of child-only cases for the purpose of avoiding penalties, indicated that we would add cases back into the work participation rate and time-limit calculations if we found that they had, and required separate annual reporting on child-only cases. We also deleted comparable annual reporting language at § 275.9(a)(1). We believe that we will have sufficient information through the TANF Data Report to monitor child-only cases; we determined that the separate annual reporting requirements were redundant.

D. Treatment of Domestic Violence Victims

Background

The Administration has shown a strong commitment to reducing domestic violence and helping victims of domestic violence access the safety and supportive services that they need to make transitions to self-sufficiency. In the proposed rule, we showed this commitment by promoting implementation of the Family Violence Option (FVO), a TANF State plan provision that provides a specific method for addressing the needs of domestic violence victims receiving welfare.

Under section 402(a)(7) of the Act, States may elect the FVO. This State plan option provides for identification and screening of domestic violence victims, referral to services, and waivers of program requirements for good cause. In the NPRM, we proposed to grant "reasonable cause" to States that either failed to meet the work participation rates or exceeded the limit on exceptions to the five-year time limit because of program waivers granted under this provision. To be considered for this purpose, a "good cause domestic violence waiver" would need to incorporate three components: (1) Individualized responses and service strategies, consistent with the needs of individual victims; (2) waivers of program requirements that were temporary in nature (not to exceed 6 months); and (3) in lieu of program requirements, alternative services for victims, consistent with individualized safety and service plans.

In addition, to be considered in determining reasonable cause for exceeding the time-limit exceptions, such waivers had to be in effect after an individual had received assistance for 60 months, and the individual needed to be temporarily unable to work.

Our proposed rules attempted to remain true to the statutory provisions on work and time limits and to ensure that election of the FVO was an authentic choice for States. In deciding to address these waiver cases under "reasonable cause" rather than through direct changes in the penalty calculations, we tried to both reflect the statutory language and maintain the focus on moving families to self-sufficiency. At the same time, we were giving States some protection from penalties when their failures to meet the

standard rates were attributable to the granting of good cause domestic violence waivers that were based on individual assessments, were temporary, and included individualized service and safety plans. We hoped our proposal would alleviate concern among States that attention to the needs of victims of domestic violence might place them at special risk of a financial penalty.

We welcomed comments on whether our proposed approach and language achieved the balance we were seeking.

Also, to ensure that these policies have the desired effect, we proposed to limit the availability of "reasonable cause" to States that have adopted the FVO. We indicated that we reserved the right to audit States claiming "reasonable cause" to ensure that good cause domestic violence waivers that States include in their "reasonable cause" documentation met the specified criteria. And we said we intended to monitor the number of good cause waivers granted by States and their effect on work and time limits. We wanted to ensure that States identify victims of domestic violence so that they may be appropriately served, rather than be exempted and denied services that could lead to independence. We also wanted to ensure that the provision of good cause waivers did not affect a State's overall effort in moving families towards self-sufficiency. Thus, we said we would be looking at information on program expenditures and participation levels to see if States granting good cause waivers were making commitments to assist all families in moving toward work.

If we found that good cause waivers were not having the desired effects, we said we might propose regulatory or legislative remedies to address the problems that we identified.

For additional discussion of our proposals, we referred readers to §§ 270.30, 271.52 and 274.3 of the preamble and proposed rule.

In the final rule, we have consolidated the provisions in a new subpart in order to make our policies more coherent. We have also made some changes to align the regulatory text more closely with the statutory language. For example, we modified the six-month time limit placed on good cause domestic violence waivers. Recognizing that the statute authorizes waivers for "as long as necessary," we have incorporated similar language in the rule, but called for six-month redeterminations. We have also incorporated statutory language describing the Family Violence Option, including its reference to confidentiality.

Comments and Responses

(a) General Approach

Most commenters generally approved of the way that the proposed rule attempted to protect victims of domestic violence. A significant number commended DHHS for recognizing the significance of domestic violence as a national problem and acknowledging the link between domestic violence and poverty. Many expressed the view that the approach we took was reasonable and provided States with the penalty protection that they needed. However, a few disagreed with the basic approach we took, and a substantial number of commenters raised concerns about specific aspects of the proposed rule.

Response: Our rules do not limit a State's authority to grant "good cause" waivers under the Family Violence Option, but they do limit the circumstances under which we will provide special penalty relief to States granting such waivers. In other words, if a State's waivers do not comply with the standards in these rules, the State does not get special consideration in our penalty determinations if it fails to meet the work participation requirements or exceeds the limit on Federal time-limit exceptions.

To emphasize this distinction, in the final rules, we created a new term "federally recognized good cause domestic violence waivers" at § 260.51. A "good cause domestic violence waiver" refers to any waiver granted by a State consistent with the FVO. A "federally recognized good cause domestic violence waiver" refers to a waiver that also meets the standards that we have established for special consideration in our penalty determinations.

As we discuss in more detail below, we made some additional changes to the proposed rule in response to the comments that we received. We also moved the provisions on domestic violence (including the definition provisions that were in § 270.30 of the proposed rule) to a new subpart B of part 260. In addition, we revised the language at § 264.30(b). The revised language explicitly recognizes that individuals may receive waivers of child support cooperation requirements under the FVO and that our rules would treat such waivers like good cause exceptions granted under the child support statute (at section 454(29) of the Act).

In summary, the final rule retains the same basic approach as the proposed rule—i.e., it gives States penalty relief if their failure to comply with the work participation rate or time-limit standards is attributable to the granting of good cause domestic violence waivers that meet certain Federal standards. It retains a requirement for service and safety plans, but makes important modifications related to policies on the duration of the waivers that we would recognize, confidentiality protections, work expectations, information that the State must provide with respect to its service strategies, and the standards for time-limit waivers. In addition, the preamble clarifies the flexibility available to States in delivering services to victims of domestic violence and the mechanisms in place for protecting victims from unfair penalties.

Comment: A minority of the commenters argued that we should exclude individuals granted waivers of work requirements under the FVO from the calculation that determines a State's overall work participation rates for each month in the fiscal year.

Response: We chose to address this as a State penalty-relief issue, in large part because we believe that keeping victims of domestic violence in the denominator of the work participation rates represents a better reading of the statute. Section 407 makes no reference to domestic violence cases or to a State's good cause waiver of work requirements under the Family Violence Option. In the statutory provisions on calculating work participation rates (at section 407(b)), there are only two explicit exemptions from the calculation: one for a single custodial parent of a child under 12 months old and the other for a recipient who is being sanctioned. There is no mention of the victims of domestic violence or cross-reference to the waivers granted under the FVO.

We believe that victims of domestic violence and the objectives of the Act will best be served if we maintain the integrity of the work requirements and promote appropriate services to the victims of domestic violence. We do not want our rules to create incentives for States to waive work requirements routinely, especially in cases where a recipient can work; service providers who work closely with victims of domestic violence attest that work is often a key factor in helping victims escape their violent circumstances.

We do realize that, in certain cases, working or taking steps toward independence may aggravate tensions with a batterer and place the victim in further danger. Under the final rule, States may provide temporary waivers of work requirements in such cases. Also, States may grant waivers to extend time limits to families that were not able to participate in work activities or to make due progress towards achieving

self-sufficiency within 60 months; we would give Federal recognition to waivers granted to extend time limits under such circumstances. We have revised the language on service plans to provide that work elements in a service plan should be consistent with the statutory expectations about ensuring safety and fairness. We have also modified the language on waivers to extend time limits (as discussed in a subsequent comment and response).

We continue to believe that removing victims of domestic violence from the work participation rate calculation could result in inappropriate exemptions or deferrals of work requirements for victims of domestic violence. As an alternative, commenters suggested that we could protect against this result by requiring States to give waiver recipients access to appropriate education and training services. However, we do not believe such a requirement would suffice; States will have an inherent interest in focusing their resources on individuals who are part of the participation rate calculations and who could put them at penalty risk.

Comment: Many commenters expressed general concerns about the proposed definition of the good cause domestic violence waiver. They argued that it should be more in line with the statutory language and less prescriptive.

Response: We added the extra criteria related to Federal recognition of waivers (at § 260.55) because we wanted to assure that victims of domestic violence would receive appropriate protections and services and the goals of TANF would be sustained. At the same time, as we have discussed, we have made a few modifications to the provisions that make the rules more consistent with the statute and responsive to the specific concerns that commenters raised.

To ensure that our rules promote access to appropriate services, we have added reporting requirements at §§ 260.54 and 265.9(b)(5) designed to ensure that States seeking Federal recognition of their good cause domestic violence waivers implement meaningful alternative service strategies for victims of domestic violence. The new reporting will tell us and other interested parties about the strategies and procedures States have put in place to ensure that these families receive appropriate supports. It will also give us information on the aggregate number of good cause domestic violence waivers granted by the State each year.

Comment: One commenter expressed concerns about the administrative burden that States would face in filing a claim of reasonable cause.

Response: We have not regulated specific requirements that States must meet in filing reasonable cause claims. While States must provide information sufficient to justify their claims, the burden associated with demonstrating reasonable cause should not be great. In fact, we would encourage States to present their reasonable cause arguments as succinctly as possible.

State data reporting systems will contain information on the number of cases that received federally recognized good cause domestic violence waivers every month. States will be able to rely on that data in justifying their reasonable cause claims.

(b) Time Limits on Good Cause Waivers

Comment: A significant number of commenters objected to the six-month durational limit that we placed on good cause domestic violence waivers. They said that six months did not provide enough time and that the length of waivers should be determined on a case-by-case-basis. They also argued that our proposed rule could create an additional administrative burden on States for cases where a waiver needed to be renewed. They noted that the six-month limit is neither required by statute nor consistent with the statutory language that waivers continue "as long as necessary." Finally, commenters noted that they found our policy authorizing extension or renewal of waivers only in the preamble language; at a minimum, they wanted this policy to be added to the regulatory text.

Response: In the NPRM we said that we did not intend that all good cause waivers should last six months. Rather, the length of the waiver should reflect the State's individualized determination of what length of time a client needs. This was our way of giving States significant leeway in how they implemented their Family Violence Option programs. However, we agree with the commenters that our rules should be more consistent with the statute and have revised the final rule accordingly. At the same time, the rule continues to assure that these cases will receive periodic attention from service workers. More specifically, like the statute, it allows for the waiver to be granted for "as long as necessary." However, at § 260.55(b) and (c), it also requires that a reassessment will take place every 6 months to determine if the waiver is still necessary and if the service plan is still appropriate.

(c) Adoption of the Family Violence Option

Comment: A small number of commenters expressed concern that, by providing special consideration only to States that have opted for the FVO, we could be penalizing States that did not choose the option.

Response: As we stated in the proposed rule, we consciously tied penalty relief to State implementation of the FVO because we felt the FVO provided a constructive framework for identifying, screening, and serving victims of domestic violence. Also, because the FVO is a State plan provision, there are some statutory expectations on States that adopt it, the public will have access to information about it, and consultation with local governments and private sector organizations will take place.

Comment: A couple of commenters said that we should mandate that any State seeking relief from penalties for not meeting work participation rates or for exceeding the cap on exemptions to the time-limits must officially adopt and properly implement the FVO within 60 days as part of the corrective plan.

Response: States have the option of submitting corrective plans for our review, and this final rule provides wide latitude to States in developing the content of those plans. In that context, we do not believe it would be appropriate to be very prescriptive about what a State must include related to adoption of the FVO. Also, we want States to adopt the FVO based on broad policy and programmatic considerations, not because such a step would give them a quick way to avoid penalty liability.

It is important that States understand that, to us, compliance means more than adoption of the Family Violence Option. In deciding whether a corrective compliance plan is acceptable, we will consider the strides that a State has already taken toward developing and implementing a broad strategy to serve victims of domestic violence and ensure their safety.

Comment: A small number of commenters expressed concern that the regulations should require all States to demonstrate that the Family Violence Option is being implemented statewide.

Response: We reviewed the TANF State plan provisions at section 402 and found no specific requirement that the provisions there be implemented on a statewide basis. In fact, because the statutory language at section 402(a)(1)(A)(i) refers to TANF as a "program, designed to serve all political subdivisions in the State (not necessarily in a uniform manner)," it would be a reasonable interpretation of the statute to conclude that plan provisions need not be implemented statewide.

If we were sure that a statewide requirement would produce the optimal policy results, we would have the authority to add such a requirement to our standards for waivers in determining penalty relief. However, we are not convinced that a statewideness requirement would result in better protections or more appropriate services for victims of domestic violence. For example, if a State could not enact statewide legislation for political reasons or could not implement a program in remote areas of the State for administrative reasons, a statewideness requirement might preclude any residents of the State from benefiting from the FVO.

Thus, under the statute and this rule, there can be variations in the implementation of the FVO across a State. However, we hope that all States will work toward statewide implementation because we believe that recipients would generally be better served under a statewide program. Also, we point out that States can expect broader protection against penalties if they implement statewide.

We would like to take this opportunity to clarify the meaning of the phrase "optional certification" in section 402(a)(7). Under this provision, election of the Family Violence Option is optional, i.e., States may use their own discretion in deciding if they will elect the option. However, for States that have adopted the option, the State plan certification is not optional. States adopting the option must submit the certification with their State plan or submit a State plan amendment and notify the Secretary of DHHS within 30 days.

(d) Scope of Penalty Relief Available

Comment: A couple of commenters pointed out that our "reasonable cause" proposal gave States very limited penalty relief with respect to FVO waivers. If a State did not fully meet the work participation rates or time-limit cap when we removed waiver cases from the calculations, it could get no other consideration. For example, our proposed rules did not consider such waivers in deciding whether a State qualified for penalty reductions under § 271.51 or in deciding the potential size of reductions under that provision.

Response: In the revised language at § 260.58(b), we indicate that we will consider good cause domestic violence waivers in deciding eligibility for, and the amount of, penalty reduction under § 261.51. In §§ 260.58(c) and 260.59(b), we indicate that we may take waivers into consideration in deciding if a State qualifies for penalty relief as the result of its performance under a corrective compliance plan.

Also, while §§ 260.58 and 260.59 set specific criteria for automatic reasonable cause determinations based on domestic violence waivers, under the revised language at § 262.5(a), the Secretary has some discretion to grant reasonable cause in cases where a State could not attribute its failure entirely to one of the established "reasonable cause" criteria. Thus, a State could request that we grant "reasonable cause" in cases where federally recognized good cause domestic violence waivers did not justify "reasonable cause" in and of themselves, but were one of several factors contributing to its failure.

Taking waivers into consideration in deciding penalty reduction under § 261.51 seemed to be a logical extension of our proposed "reasonable cause" provision. Under the statute and rules, the penalty reduction under § 261.51 is available based on the degree of noncompliance. If two States had the same participation rate, but one could attribute its failure in part to the granting of federally recognized good cause domestic violence waivers and the other could not, we think that the State granting waivers is complying to a greater degree and deserves a smaller penalty. The revised rules at § 260.58(b) reflect this philosophy.

The revised rules do not provide for automatic penalty relief for waivers granted during a corrective compliance period. As we have indicated in the response to another comment, we do not want States to look to the FVO as a quick fix for their penalty problems. Under these rules, at §§ 260.58(c) and 260.59(b), we reserve discretion whether to give an individual State credit for good cause domestic violence waivers in determining whether it has achieved compliance during the corrective compliance period. In making this decision, we would expect to look at evidence provided by the State that it had adopted the FVO and had implemented a broad, thoughtful, and long-term strategy for identifying and serving victims of domestic violence.

(e) Service Plans and Work Requirements

Comment: We received a number of comments on the requirement in the proposed rule that waivers be accompanied by service plans that "lead to work." They argued that this language diverted the focus of the FVO away from the safety considerations emphasized in the statute and that the reference to work had no statutory basis.

Response: As we indicated in the proposed rule, we believe that work is an important part of service plans because many victims of domestic violence need to make progress on that front in order to escape their abusive situations. In § 270.30 of the proposed rule, we indicated that good cause domestic violence waivers must be designed to lead to work. However, we recognize that, in the short-term, safety issues and other demands on the family may preclude specific steps toward work. Thus, we have added new regulatory text at § 260.55(c) to clarify that States have the ability to postpone work activities when safety or fairness issues would so indicate. For example, if a victim of domestic violence needs time to recover from injuries, secure safe and stable housing, and get her children resettled, or needs to stay at home or in a shelter to avoid danger, there may be a need to postpone work activities.

We encourage States to incorporate work activities as a key component of the service plan for victims of domestic violence, to the extent possible. Also, we note that, with our removal of the 6-month limit on the duration of waivers, these final rules may make it more feasible to do so.

Comment: Several commenters expressed concerns that the service plan requirements in the proposed rules would make victims of domestic violence more vulnerable to sanctions (i.e., penalty reductions) for not meeting welfare agency expectations. TANF caseworkers are trained to sanction participants who do not adhere to the caseworkers' instructions or who do not comply with eligibility conditions. Additionally, they stated that, in certain circumstances, an appropriate service plan for a victim may be to do nothing. Forcing victims to take specific steps within a fixed time frame may make their situation more precarious. They also argued that services provided by domestic violence counselors would be better for victims since these workers understand that developing a plan for the family's safety can be emotionally painful and may involve continuous reassessments.

Response: The FVO provides for waiver of program requirements "where compliance with such requirements would make it more difficult for individuals receiving assistance * * * to escape domestic violence or unfairly penalize such individuals. * * *" Thus, it would be inconsistent with the FVO for domestic violence victims to be more at risk of program sanctions than other individuals receiving assistance. In other words, States should be giving victims of domestic violence the same, or greater, access to "good cause" for failing to comply or cooperate with

work, personal responsibility, and child support requirements. They also should consider the needs of victims of domestic violence in deciding eligibility for State time-limit exemptions and exceptions.

In general, we view service plans not as additional requirements for victims of domestic violence, but as alternatives to normal program requirements. In developing these plans, and determining if an individual has good cause for not complying with a plan, States should take the other demands on the family and the family's ability to respond into account. States should also recognize that a battered woman often does not have control over her own actions and respect a victim's judgment of whether she can safely take certain action steps (e.g., move out of her home).

Comment: A significant number of commenters asked that we delete the requirement for a service plan because they felt it placed an additional burden on TANF caseworkers who may not be equipped to engage in this type of work and raised potential privacy issues. Commenters also wanted to see a requirement that States provide referrals to supportive services, as specified in the statute.

Response: Implicit in these comments seems to be an assumption that TANF caseworkers would have full responsibility for developing and enforcing service plans. This is not our assumption, and it is not consistent with the evolving nature of the TANF program. The TANF statute does not have the same statutory or regulatory requirements for "single State agency" administration that the AFDC program did. Thus, under TANF, other public and private agencies can make discretionary decisions on behalf of the TANF agency.

In the context of the FVO, States have a lot of flexibility in deciding the appropriate roles for TANF staff and domestic violence service providers in administering these provisions. The statutory language in section 402 provides for State referral of domestic violence victims to counseling and supportive services. It makes no distinction as to who will provide these services. Thus, services may be provided within the TANF agency, with referrals to specially trained agency staff, or by referrals to an outside agency. There is also no specification as to when these referrals can occur; for example, they could occur before or after the service plan is in place.

If there are concerns about the ability of TANF staff within a State to perform certain roles, e.g., because of resource constraints or expertise, the TANF agency can and should work with third parties on the development of service plans and the delivery of supportive services.

Also, readers should note that we modified the regulatory text in § 260.55 to include an expectation that assessments and service plans be developed by persons trained in domestic violence. This regulatory text does not prescribe any specific training curriculum, any specific staff credentials, or any specific administrative structure for delivering services. However, it does require that staff performing these functions have some training in domestic violence. The regulatory change reflects our view and the view of commenters about the critical importance of these activities. Staff need some level of special knowledge and expertise in order to make appropriate decisions in these highly sensitive case situations.

At the Federal level we have been investing resources to improve the capacity of TANF staff to screen, identify, and serve victims of domestic violence. We supported a project in Anne Arundel County, Maryland, to pilot test such an effort. In 1997, ACF awarded a grant to train all of Anne Arundel County's Department of Social Services staff on domestic violence. This training has now been incorporated into the regular training for all new employees. This project is one of the first in the nation and has become a model for other States considering adopting a State domestic violence curriculum. In addition, we are developing resource materials that agencies can use as part of our

Welfare and Domestic Violence Technical Assistance Initiative, under the National Resource Center on Domestic Violence. The first two "practice papers" issued under this initiative address the subjects of "Building Opportunities for Battered Women's Safety and Self-Sufficiency" and "Family Violence Protocol Development." You may contact the National Resource Center at its toll-free number, 1–800–537–2238.

Comment: A couple of commenters felt that our rules should specify that service plans should also provide for referrals to appropriate alternative support, such as SSI and child support.

Response: One of the expectations for all TANF recipients is to cooperate in establishing paternity and obtaining child support. Under both the Family Violence Option and the rules of the Child Support Enforcement program, the State may waive these requirements if the individual has "good cause" for not cooperating. Thus, we would expect child support referrals except in cases where it creates a risk to the family or is otherwise inappropriate.

Our rules generally expect that service plans will help enable victims to attain the skills necessary to "lead to work" and to become self-sufficient because economic self-sufficiency is a major goal of the TANF program. However, our rules also envision that the plans will reflect individualized assessments of the needs and circumstances of victims and their families. The rules recognize that work requirements are not necessarily appropriate in some cases and that some women will need extra time on assistance because of their current or past circumstances.

We would not prescribe the specific content of a State's assessments or the specific nature of its referrals. However, we would point out that, for a State's TANF program to achieve long-term success, families will need to receive appropriate supports and referrals. Also, based on State practice in recent years, it seems fairly clear to us that States understand the value of making appropriate referrals to SSI.

(f) Waivers of Time Limits

Comment: Some commenters felt that our regulatory interpretation on time-limit waivers appeared to be contrary to the purpose of the welfare reform statute. A majority recommended that the final regulations should allow States to "stop the clock" for families and give them good cause domestic violence waivers at the time they are at risk of violence, not just at the time that they approach the 60-month time limit. A number of commenters had similar concerns about the proposed language that only recognized time-limit waivers for cases that were "unable to work."

They felt that the proposed definition of good cause domestic violence waiver would not necessarily be consistent with an individual's circumstances. They argued that some domestic violence victims might need an extended period of time to set up a new household, help their children adjust to new surroundings, and receive counseling. If the trauma of the abusive relationship is substantial, a woman might not be psychologically ready to develop the employment skills that are required under TANF. In these types of cases, the clock should be stopped until the victim is healthy and feels safe enough to engage in work activities. Similarly, the clock should be stopped if States determine that abused women are not able to comply with the Federal work requirements. They also expressed concerns that our proposed policies

would treat victims inequitably, based on the particular timing of their domestic abuse situations.

Response: Although we have not adopted the specific suggestion of commenters to recognize waivers that "stop the clock" and automatically exempt families from the time limit, we have revised the final rules to give Federal recognition to a much broader array of waivers to extend the time limits. Under the final rules, we will recognize such waivers, based on need, due to current or past domestic violence or the risk of further domestic violence. Thus, States will be able to provide victims with specific assurances that: (1) They can receive assistance for as long as necessary to overcome the effects of abuse; and (2) extensions will be available in the future based on their current inability to move forward. For example, States could look at whether victims were unable to pursue work or child support for any period of time while they were on assistance or whether a current or prior unstable housing situation creates a need for extended assistance. As a result, States could advise a victim that the family will receive an extension for as long as necessary if the family accrues 60 months of assistance.

We encourage States to give victims the assurance they need that: (1) They will not be cut off assistance when they reach the Federal time-limit if they still need assistance; and (2) they will be able to return for assistance if the need recurs. Such assurances are important because they will alleviate pressure on victims to take steps that might jeopardize their personal or their family's safety. We intend to defer to State judgments on the need for such waivers and the length of time such waivers are needed. For example, if a State granted a waiver that extended a family's eligibility for assistance based on the length of time that the victim was unable to participate in work activities, we would recognize a State waiver that extended assistance for that period of time.

The disaggregated data reporting will indicate those cases whose time limit has been extended based on a federally recognized domestic violence waiver, as reported by the State. (We will also get information on the aggregate number of waivers granted under the annual report.)

As we have stated previously, we remain concerned that individuals granted waivers receive appropriate attention from TANF staff, access to services, and appropriate consideration of their safety issues. Therefore, we have added new annual reporting requirements at § 265.9(b)(5) that should give us insight into actual State practice in these waiver cases and tell us how frequently such waivers are being granted. In addition, at §§ 260.54, 260.58, and 260.59, we have specified that a State may receive special penalty consideration under these regulatory provisions if it submits this information. The primary purpose for creating criteria for Federal recognition of a State's good cause domestic violence waivers was to set in place a structure for ensuring that victims receive appropriate alternative services. In addition, the reporting will provide a public description of the basic strategies that the State has put in place.

Comment: A few commenters expressed concern about the proposed language in § 274.3 that appeared to require that the victim of domestic violence receive both a hardship exemption from the 60-month time limit and a separate good cause domestic violence waiver based on inability to work. The language in the NPRM stated that, in order to qualify for exclusion from the calculation of work participation rates, families must have good cause domestic violence waivers that were in effect after the family received a hardship exemption from the limit on receiving assistance for 60 or more months. They expressed concern that the effect of this requirement would be that a State wishing to use the FVO must include domestic violence as part of the hardship extension criteria. Commenters stated that this is not supported by law and could result in some States not being able to benefit from the penalty relief that we were trying to provide.

Response: The language in the NPRM apparently did require that both a hardship exemption and a good cause domestic violence waiver be in effect. We agree with the commenters that waivers should not have to meet both requirements, and we have deleted the problematic language from the final rule.

(g) Confidentiality

Comment: A large number of commenters expressed concerns about the lack of attention paid to confidentiality. Commenters argued that individual case files should not be kept. Such files could have a negative effect on victims, potentially discouraging them from seeking services and even endangering them, if special attention is not paid toward protecting the files. They asked us to clarify in both the preamble and final regulation that we would neither require nor expect States to include sensitive information in their files that could jeopardize a woman's safety or security. They recommended that States retain and report information in an aggregated form to protect the anonymity of victims and their children.

Response: We have revised the regulation to incorporate the statutory language on confidentiality found in the FVO (see § 260.52). We also encourage States to consider the special needs of victims of domestic violence and to consult with providers of domestic violence services as they develop procedures to "restrict the use and disclosure of information" on recipients, pursuant to section 402(1)(A)(iv). The experience of domestic violence service providers should help shed light on questions such as what information is sensitive, what particular cautions should be taken with victims of domestic violence, and what practices work best in ensuring confidentiality.

We recognize the importance of this issue. However, in order to administer these provisions and have effective and accountable programs, it will be necessary for States to maintain records that identify victims and recipients of good cause domestic violence waivers. Since it is vital to keep this information, States should consider whether their standard confidentiality safeguards are sufficient to protect victims or whether they should institute additional safeguards. For example, these could include establishing special safeguards for both computer and paper files, training TANF staff about the importance of confidentiality for domestic violence victims and specific procedures to be used in their workplace, using extreme caution when determining whether to release the whereabouts of victims to anyone, and handling disclosures of abuse with extreme sensitivity.

(h) Notice Requirements

Comment: A small number of commenters asked to see language in both the preamble and the text of the regulation requiring that States provide TANF applicants written notice when a request for a good cause domestic violence waiver is denied.

Response: Under section 402(a)(1)(B)(iii), in their TANF plans, States must set forth objective criteria for fair and equitable treatment and explain how they will provide opportunities for hearings for recipients who have been adversely affected. Although we are not regulating this provision, in light of the restrictions on our regulatory authority at section 417, we encourage States to send notices in these cases as a matter of fairness and

equity and to treat these waiver denials as adverse actions.

E. Recipient and Workplace Protections

Background

A number of commenters expressed concerns that the NPRM focused too much on penalties and was unacceptably silent on protections for needy individuals and families, including the protections available through Federal nondiscrimination and employment laws.

One concern of commenters was that the stringency of the proposed rules on issues like penalty relief, waivers, child-only cases, and separate State programs would make it less likely that hard-to-serve families would receive appropriate services and treatment. Throughout the final rule you will find responses to this latter concern.

However, commenters also had some specific suggestions as to how we could incorporate specific protections available in the TANF law and other Federal laws into these rules. It is this latter set of comments that we address in this section.

You will find discussion of some related comments and our response in the sections of the rules dealing with nondisplacement (at subpart G of part 261) and individual sanctions (at subpart A of part 261).

Comments and Responses

(a) Applicability of Other Federal Laws

Comment: Several commenters noted that there was no reference in the TANF regulations to the applicability of Federal employment laws to TANF-funded positions, such as the Fair Labor Standards Act (FLSA), the Occupational Safety and Health Act (OSHA) and title VII of the Civil Rights Act. They noted that welfare recipients are not exempted from such laws; rather they are entitled to a safe, healthy employment environment, per OSHA, and to equal protection under all other statutes that apply to the workplace.

We received a number of related comments about the lack of reference to Federal nondiscrimination laws, including the Americans with Disabilities Act, Equal Pay Act, and Age Discrimination in Employment Act.

In both cases, commenters argued that we needed to take a more active role in the enforcement of these laws. There were a variety of suggestions about how we should do that.

At one end of the spectrum, commenters want us to speak to the applicability of such statutes under the TANF program, reference guidance put out by the Department of Labor and EEOC, inform welfare systems about existing laws and enforcement procedures, and acknowledge the role of EEOC in addressing individual complaints.

At the other end were comments saying that we should actively engage in litigation or promote actions through other agencies with enforcement authority upon evidence of systemic violations or a pattern of substantiated complaints. One commenter explicitly indicated that we could defer to agencies of proper jurisdiction for enforcement.

Response: In the NPRM preamble, we had noted that our proposed rules did not cover the nondiscrimination provisions at section 408(d) of the Act. These provisions specify that any program or activity receiving Federal TANF funds is subject to: (1) the Age Discrimination Act of 1975; (2) section 504 of the Rehabilitation Act of 1973; (3) the Americans with Disabilities Act of 1990; and (4) title VI of the Civil Rights Act of 1964. We had decided not to include the provisions in the NPRM because ACF was not responsible for administering these provisions of law, and they were not TANF provisions.

We suggested that individuals with questions about the requirements of the nondiscrimination laws, or concerns about compliance of individual TANF programs with them, should address their comments or concerns to the Director, Office of Civil Rights, Department of Health and Human Services, 200 Independence Ave, SW, Room 522A, Washington, DC 20201.

We recognize that this language and approach did not adequately represent this Administration's commitment to the enforcement of civil rights and labor laws. In that context, we have decided that we should focus more attention on these protections in the final rule. We can do that without violating section 417 (in letter or spirit) or interfering with the jurisdiction of other Federal agencies. In light of the concerns raised in these comments, we believed it would be helpful to include the nondiscrimination provisions referenced at section 404(d) of the Act in the regulation. They appear at § 260.35(a).

In § 260.35(b), you will find new regulatory language designed to further clarify the protections applicable to TANF programs and activities. In this new clarifying language, we make the point that section 417 of the Act does not limit the effect of other Federal laws, including those that provide workplace and nondiscrimination protections. We also indicate that Federal employment laws and nondiscrimination laws apply to TANF beneficiaries in the same manner as they apply to other workers.

Based on comments we received in this subject area and on some of the fiscal issues being raised, we were concerned that some States were reading the limitations in section 417 more broadly, in effect to free States from all provisions of Federal law, except those in the new title IV–A. In fact, section 417 only limits regulation and enforcement of the TANF provisions. It does not affect the applicability of other Federal laws or the authority of other Federal agencies to enforce laws over which they have jurisdiction.

In addition to adding this new regulatory text at § 260.35, we added a new reporting requirement at § 265.9(b)(7). Under this provision each State must include a description of the grievance procedures that are in place in the State to resolve complaints that it receives about displacement.

Each State must create nondisplacement procedures under section 407(f) of the Act. This provision and the related provision at section 403(a)(5)(J) of the Act (which applies to the WtW program) reflects long-standing concern among unions, labor groups, and others about the possibility that placement of welfare recipients at work sites could displace other workers from their jobs.

States also are concerned about displacement because of its potential negative effect on their labor force and the long-term success of their TANF programs. At the same time, States are facing economic and programmatic pressures to move applicants and recipients into the workforce. For example, they want to avoid work participation rate and time-limit penalties, and they want to increase their job placements in order to qualify for a High Performance Bonus. In light of these countervailing pressures, we believe that it is important that we monitor State activity in this area. Thus, we are asking for information on the procedures available in the States to protect against displacement. We will incorporate a summary of this information on nondisplacement procedures as part of the characteristics of State programs that we feature in the annual report to Congress (pursuant to section 411(b)(3)). We can also make the descriptions publicly available to interested parties within the State.

To the extent that a State includes such a description in its State TANF plan, it could merely cross-reference the plan material in the annual report. It

would not need to resubmit the information.

In addition to these specific regulatory changes, we encourage States to exercise due care as they promote work and implement new job development, placement, and referral activities. They should not use TANF programs in any way that would cause displacement or compel people to endure discriminatory work places, unsafe work environments, or unfair work conditions in order to obtain assistance.

There is a potential that States without adequate nondisplacement procedures may have an unfair advantage in obtaining job placements. Therefore, as we work on developing proposed rules for the High Performance Bonus, we will consider State grievance procedures or the record of a State with respect to displacement complaints as potential factors in determining eligibility for, or the size of, a High Performance Bonus. We look forward to receiving public comments on this issue and other issues when we publish the High Performance Bonus NPRM shortly.

Finally, we wanted to use this opportunity to provide additional information to State agencies, employers, and the public about the workplace and nondiscrimination protections that do apply in TANF. We will not attempt to provide detailed information on how various other Federal laws would apply to the TANF program or to TANF recipients. Rather, our goal is to give enough background information so that readers will understand the basic context and know where to go for further information.

As commenters pointed out, the four Federal laws that are cited in section 408(d) of the Act are not the only Federal nondiscrimination and employment laws that are applicable to, and relevant for, the TANF program. Other laws that may come into play include the Fair Labor Standards Act (which covers issues like minimum wage and hours of work), the Family and Medical Leave Act, the Occupational Safety and Health Act, title IX of the Education Amendments of 1972, title VII of the Civil Rights Act of 1964 (title VII), and the Equal Pay Act. A variety of Federal agencies are responsible for enforcing these laws, and the enforcement tools available differ by program.

The Department is developing guidance that will provide an overview of the applicable civil rights laws and the enforcement mechanisms for each. We advise you to consult this guidance for information on which Federal agencies have jurisdiction over which types of complaints; for example, as one commenter pointed out, the Department's Office of Civil Rights may be the appropriate reference for certain issues, but the EEOC generally handles individual complaints of employment discrimination. We will provide access to the guidance through the Web, when it is available.

The U.S. Department of Labor (DOL), and the Equal Employment Opportunity Commission (EEOC) have also issued guidance on the applicability of Federal discrimination and employment laws to welfare recipients. In part, this guidance indicates that welfare recipients participating in certain types of activities may be "employees" and thus covered by the FLSA, OSHA, and title VII. You may access these two documents through links on our Web site. The DOL guidance is entitled "How Workplace Laws Apply to Welfare Recipients (May 1997)," and the EEOC guidance is entitled "Enforcement Guidance: Application of EEOC Laws to Contingent Workers Placed by Temporary Employment Agencies and Other Staffing Firms (Dec. 3, 1997)."

Likewise, the Internal Revenue Service (IRS) has issued guidance on the "Treatment of Certain Payments Received as Temporary Assistance for Needy Families (TANF)." IRS Notice 99–3, dated December 17, 1998, addresses the treatment of TANF payments under certain income and employment tax provisions. For example, it notes that, under the Internal Revenue Code, earned income for Earned Income Credit (EIC) purposes does not include amounts received for service in community service and work experience activities, to the extent that TANF subsidizes those amounts. It also specifies the conditions under which TANF payments would not be includible in an individual's gross wages, would not be earned income for EIC purposes, and would not be wages for employment tax purposes.

(b) Effect on Recipient Sanctions and State Penalties

Comment: We received a couple of comments saying that our regulations should provide that a person whose failure to comply with work participation requirements is caused by a violation of employment standards (e.g., a woman who leaves her job due to unremedied sexual harassment) may not suffer reduction or elimination of assistance, under section 407(e). Likewise, a few commenters suggested that we provide that State definitions of good cause (e.g., for failure to participate in work or meet responsibilities under an Individual Responsibility Plan) include workplace rights and/or discrimination situations.

Response: We have not directly required States to provide a good cause exception from the sanction provisions, as some of these comments suggest, because it is not clear that we have the authority to do so. Section 417 generally limits our regulatory authority, and the language at the end of section 407(e) indicates that State sanction decisions are "subject to such good cause and other exceptions as the State may establish." Thus, we believe that we should defer to State decisions on the specific definition of "good cause."

At the same time, we do not want to see TANF programs fostering work or participation that is in violation of Federal law. If we learn that violations are occurring, we will pursue additional enforcement, administrative, regulatory, or legislative remedies, as appropriate.

Comment: A commenter also suggested that we deny reasonable cause and penalty relief if a State does not have an adequate process in place for recipients to raise good cause.

Response: We have not made any changes to our regulation in response to this comment. Section 402(a)(1)(B)(iii) requires that the State plan must explain how the State "will provide opportunities for recipients who have been adversely affected to be heard in a State administrative or appeal process." Also, as we previously mentioned, section 407(e) indicates that States have discretion in establishing rules on good cause exceptions to sanctions. In light of these provisions, section 417, our lack of plan approval authority, and the general expectation under the TANF statute and rules that States will have discretion in deciding how services are delivered, we do not think it be appropriate to regulate a State's good cause process in this manner.

Comment: A couple of commenters said that we should not penalize States for failing to meet work requirements when their failure could be attributed to compliance with certain laws, such as employment discrimination. A related set of comments was that we should consider State efforts to comply with employment laws in determining whether a State gets reasonable cause or penalty reduction. For example, one said we should require States to develop "an effective enforcement plan for the employment rights of recipients in work programs" that include monitoring of laws as a prerequisite for getting a reduced penalty under § 261.51(a). One commenter said we should deny reasonable cause and penalty reductions if the State has no system in place for

monitoring and enforcing of compliance.

Response: We have not included any changes in our regulation in response to these comments. First, it was not clear to us that we should reward States for complying with other Federal laws. We thought it would be better to start with the presumptions that: (1) All States would comply with applicable Federal laws; and (2) we should rely on the procedures available under those other laws as the appropriate mechanisms for promoting compliance. We also had concerns about how we could incorporate such factors into our penalty determination decisions. We would not want to be making independent judgments about the level of State compliance with laws for which other agencies had jurisdiction. Further, it would be difficult for us to get timely, complete, and definitive compliance information from other agencies. Looking beyond Federal law to State and local laws would exacerbate these difficulties. Furthermore, we would have little assurance that official actions on official complaints accurately represented the overall level of compliance within the State, and we would have difficulty developing objective standards that would help convert evidence on violations—or State efforts to comply or enforce compliance—into objective, quantifiable standards.

(c) Procedural Requirements

Comment: A few commenters suggested that we require States to inform recipients of their rights and/or procedures for addressing violations. One commenter said we should require that staff be informed as well. One commenter also said we should require posting of appropriate nondiscrimination notices following the model under title VII of the Civil Rights Act.

Response: We recognize the value of providing full information to recipients, staff, and employees on these matters. However, we do not believe that imposing these requirements would be consistent with section 417 of the Act or the basic principle of State flexibility of the TANF legislation. Through the efforts by our Office of Civil Rights and other Federal agencies, we are making information on protections more widely available to the public, but in a framework more consistent with the TANF legislation.

You can find additional discussion about workplace protections in the preamble for part 261.

F. Comments Beyond the Scope of the Rulemaking

General

A few comments we received were outside the scope of this rulemaking. However, we wanted to take the opportunity to speak briefly to them in this preamble because they raise important TANF issues that merit discussion.

Special Issues

(a) Work Standards

Comment: We received some comments expressing concerns about the statutory provisions—most notably about the work participation rate requirements. Readers noted two specific concerns—their failure to recognize certain kinds of educational activities as participation and the inordinately high standards applicable to two-parent families.

Response: While certain policy decisions in this regulation respond to these concerns, to the extent that they represent statutory, and not regulatory, issues, they are beyond the scope of this rule. You may find additional discussion of this issue and our response in the preamble and rules for part 261.

(b) Drug Testing

Comment: One organization expressed its opposition to urine drug testing, provided a number of suggestions about guidelines we could issue to protect clients against unfair sanctions, asked that we promulgate guidance to States on how to conduct testing in a way that ensures the due process rights of clients, and suggested that treatment for addiction would be a more cost-effective approach than sanctions, in the long run, for States. It also asked that we remind States that the law allows sanctions only against the person who tests positive, not other family members.

Response: We are working with the Substance Abuse and Mental Health Services Administration (SAMHSA) on developing guidance and technical assistance materials that will help States deal effectively and appropriately with needy families that have substance abuse problems. In fact, we have developed an action plan of activities that we could undertake jointly with SAMHSA. Under that plan, we are co-sponsoring some sessions on substance abuse and welfare reform as part of our FY 1999 "Promising Practices" Conferences.

Regarding the commenter's last point, we assume the commenter is referring to section 902 of PRWORA, which says that the Federal government would not prohibit States from sanctioning welfare recipients who test positive for use of controlled substances. Clearly, this language envisions that sanctions in such cases would not extend beyond the individual to other family members.

Technically, we could claim the authority to regulate this provision because the limits to our regulatory authority at section 417 cover only those provisions in part IV–A of the Act. (Part IV–A of the Act incorporates section 103(a) of PRWORA, but not section 902 or the other sections.) However, requiring States to continue TANF benefits to other family members would contravene the intent of section 401(b) of the Act, which eliminates the entitlement to assistance under TANF, and the spirit of the TANF statute, in giving States discretion in deciding which families should receive benefits. Thus, while we might advise against sanctioning other family members, we decided not to regulate State decisions in this area.

(c) State Plan Requirements

Comment: One commenter asked that our regulations include specific requirements about State plan descriptions, due process, and notifications to recipients.

Response: In general, these are areas where we do not have clear, direct regulatory authority. However, there are places in the final rule where we have made changes that address this concern. One is in the section dealing with MOE expenditures. Because MOE expenditures must be made on behalf of "eligible families," in order for us to determine if State MOE expenditures are "qualified expenditures," State plans must contain information on how the State defines "needy families." The revised rule at § 263.2(b) contains a reference to this State plan requirement. Also, in the sections of the rule and preamble that deal with appropriate implementation of the work sanction provisions (§§ 261.54 through 261.57), we draw a connection between the adequacy of a State's notification and hearings processes and its eligibility for penalty relief. We believe these provisions are clearly within our regulatory authority, because of their connection to penalty enforcement, even though we do not have general regulatory or enforcement authority in these areas.

However, we would point out to States that the absence of regulation does not eliminate the requirements as the statute does address State responsibilities in these areas. Under section 402(a)(1)(B), the State plan must

set forth objective criteria for the delivery of benefits and the determination of eligibility and for fair and objective treatment. It must also explain how the State will provide opportunities for recipients who have been adversely affected to be heard in a State administrative or appeal process. Section 402(b) requires that States must notify the Secretary of plan amendments within 30 days, and section 402(c) requires that States make summaries of the plan and plan amendments available. Section 407(e) provides that State penalties against individuals (i.e., sanctions) are subject to such good cause and other exceptions as the State establishes, and it prohibits penalties against single custodial parents with children under age 6 who refuse to work and have a demonstrated inability to obtain needed child care.

(d) Tribal Issues

Comment: We also received a couple of comments concerned about the Tribal regulations and the consultation process used in that rulemaking.

Response: We have referred those comments to the Division of Tribal Services in the Office of Community Services for further consideration. At the same time, we would like to address a couple of concerns raised by the comments.

Comment: One commenter asked that we require States to coordinate with Tribes as part of the planning process. Another noted that the proposed rule did not provide specific mechanisms for building State-Tribal relationships. The commenter indicated that history of State-Tribal relationships over the past 200 years was primarily negative and suggested we add specific financial penalties or sanctions to foster cooperation.

Response: We believe it would be contrary to the spirit of this legislation and the restrictions placed on our regulatory authority by section 417 to require States or Tribes to take specific actions in this area. However, as indicated by our subsequent comments on State-Tribal coordination, for welfare reform to succeed in Indian country, States and Tribes need to work together in addressing administrative, economic, and service delivery issues. Thus, we have spent some time trying to identify ways to make coordination between States and Tribes easier and more beneficial, and we have included a few provisions in this rule designed to foster better coordination. More specifically, this rule: (1) allows State contributions to Tribal TANF programs to count towards the State MOE; (2) exempts individuals covered by Tribal TANF reporting from the State case-record reporting sample; and (3) gives States an option whether to include individuals in Tribal programs in the State work participation rate calculations. Also, we continue to look for opportunities outside of this rule—such as in our technical assistance and outreach initiatives—to enhance coordination of State and Tribal programs.

Comment: One commenter spoke about the concerns of Tribes and Tribal organizations in meeting the proposed TANF data collection and reporting requirements, in light of the limited resources available to Tribes. The commenter said that these requirements might prevent Tribes from implementing their own TANF programs and place those who do participate at risk of sanction. Because Tribes lack the same infrastructure as States, we should provide them administrative resources.

Response: Because the statute imposes the same reporting requirements on Tribes as States and specifies many of the data elements that must be reported, we have limited ability to reduce the reporting burden for Tribes. However, we have made a few adjustments, as we discuss in part 265. Also, we would point out that: (1) there are some reports that Tribes do not have to submit, including the MOE-SSP data report, which is inapplicable to Tribal programs; (2) Tribes are not subject to a penalty if they fail to submit complete, accurate, and timely reports; (3) in these rules, we try to facilitate State support of Tribal programs in the form of MOE expenditures, systems support, and infrastructure; and (4) we will be providing technical assistance to Tribal programs to help address their infrastructure needs.

G. Additional Cross-Cutting Issues

Pregnancy Prevention

Comment: One commenter asked that we address pregnancy prevention in the rules.

Response: This issue did not get much direct attention in the NPRM because of the scope of the regulatory package and our limited regulatory authority. However, it is clear from the statement of findings in section 101 of PRWORA, the stated TANF goals at § 260.20, the preamble discussions on allowable uses of Federal and MOE funds, and activities underway outside the scope of these rules that: (1) the TANF legislation recognizes out-of-wedlock pregnancy prevention as a critical component of welfare reform; and (2) subject to some general restrictions, States may spend Federal TANF and State MOE funds on pregnancy prevention efforts.

Because of the significance of this issue, in the final rule, we have added a limited amount of new reporting to capture information on State activities related to out-of-wedlock pregnancies. First, at § 265.9(b)(8), as part of their annual report, we are asking States to include a description of the out-of-wedlock pregnancy prevention activities they provide under their TANF program. Second, in the TANF Financial Report, we are asking States annually to provide a break-out of their expenditures on these activities—to the extent that such expenditures are not reflected in other reporting categories. (We have added similar requirements for reporting on activities related to the formation and maintenance of two-parent families.)

The TANF bonus provisions, which are the subject of separate rulemakings, also address this concern. First, there is a bonus under section 403(a)(2) for States that achieve the greatest reductions in their rates of out-of-wedlock childbearing (without increasing their abortion rates). We will also be considering inclusion of pregnancy prevention measures as we develop proposed rules for the High Performance Bonus, awarded under section 403(a)(4).

We would also point out that, under section 413(e) of the Act, we must rank States based on their rates of out-of-wedlock births for families receiving TANF assistance and conduct annual reviews of those States with the highest and lowest rankings. The TANF Data Report contains data collection related to this provision.

Program Coordination

Comment: One commenter complained that the lack of coordination between the U.S. Department of Agriculture and the Department of Health and Human Services shackled State efforts to meet Federal agency goals.

Response: We have worked diligently over many years to deal with some of the program inconsistency issues that have created administrative problems for States. We will continue our interagency efforts to coordinate program policies and minimize inconsistencies through active dialogue with the Department of Agriculture.

Rural and Transportation Issues

Comment: One commenter offered several suggestions in response to concerns about the effects of TANF in rural areas, including: (1) a rural set-aside of TANF evaluation funds to

determine whether there were inequities for rural areas; and (2) the use of existing rural networks to provide information on the effects of welfare reform in rural areas and lessons learned.

The commenter also suggested that we set guidelines for State implementation in rural areas.

The commenter's final suggestion was that we come up with a method to encourage innovative programs in rural areas as an alternative to State waivers or exemptions of rural residents.

Response: We referred the first two comments to the Director of the Office of Planning, Research and Evaluation for further consideration. At the same time, we would point out that a critical part of our overall research strategy is to ensure that our studies cover a broad diversity of geographic and demographic situations so that we can get a fuller understanding of the effects of our programs. In that context, in July of 1998, we announced that we would be awarding grants to State agencies to stimulate research of emerging approaches for welfare reform programs and policies in rural America. In the first phase of this project, we have awarded planning grants to increase knowledge about current rural strategies, develop new strategies that can be tested, and design evaluations for assessing these strategies. Contingent upon the availability of funds, we would then enter a second phase to fund implementation and evaluation activities.

With regard to rural implementation, we believe that setting guidelines would violate the principle of State flexibility in TANF and the restrictions on our regulatory authority at section 417. However, we will give consideration to rural concerns as we continue to develop our research and evaluation, technical assistance, and outreach agendas.

One of our goals in developing our technical assistance and outreach strategies is to foster efforts that help programs reach all families, including those in isolated communities. An area where we have made significant early progress is in the area of connecting needy individuals to work through more innovative uses of transportation resources and networks. We have been working with the Departments of Labor and Transportation to identify how new and existing resources can be used to address the transportation needs of low-income families and to highlight innovative approaches that have been developed at the community level. We expect these activities to develop further in response to the new Job Access program authorized under the Transportation Equity Act. You can find additional information on these transportation initiatives, including guidance on how TANF and other funds can support these activities and descriptions of program models, through the ACF Web site.

Comment: We received a related comment from a national public transportation group, which urged that TANF plans be developed at the local level with local public transit systems and metropolitan transportation planning organizations.

Response: We recognize the value of these local collaborations and are working on a variety of fronts to foster them. However, we have not included anything in our rule to require them because such a requirement would be beyond the scope of this rule and inconsistent with the limits of our regulatory authority at section 417.

Introduction to Section-by-Section Discussion

Following is a discussion of the regulatory provisions we have included in this package. The discussion follows the order of the regulatory text, addressing each part and section in turn.

V. Part 260—General Temporary Assistance for Needy Families (TANF) Provisions (Part 270 of the NPRM)

Subpart A—What Provisions Generally Apply to the TANF Program?

This subpart of the rules helps set the framework for the rest of the rule. For the convenience of the reader, it reiterates the goals stated in the new section 401. It also includes a set of definitions that are applicable to this part.

We received no comments on this section and have made no changes in the final rule.

Section 260.10—What Does This Part Cover? (§ 270.10 of the NPRM)

This section of the rules indicates that part 260 includes provisions that are applicable across all the TANF regulations in this rulemaking.

We received no comments on this section and have made no changes in the final rule.

Section 260.20—What Is the Purpose of the TANF Program? (§ 270.20 of the NPRM)

This section of the rules repeats the statutory goals of the TANF program. In brief, they include reducing dependency and out-of-wedlock pregnancies; developing employment opportunities and more effective work programs; and promoting family stability.

While we did not elaborate on the statutory language in the proposed rule, in the preamble we pointed out that, in a number of ways, the new law speaks to the need to protect needy and vulnerable children. We advised States to keep this implicit goal in mind as they implement their new programs.

Comment: A couple of commenters argued that we should do more in our rules to promote job preparation and/or marriage. One expressed explicit concern about the negative effect of the two-parent work participation rate on State support for two-parent families.

Response: This section of the regulation directly incorporates the statutory language and reflects the premise that States need and merit flexibility in deciding how to meet these goals. However, we have incorporated policies in other sections of the regulation to support State efforts in these areas. For example, our policy to let States define work activities will enable States to better support job preparation. Likewise, we have limited disincentives for States to serve two-parent families in TANF under our policy to limit the potential penalty States face when they fail only the two-parent participation rate (i.e., by basing the penalty on the proportion of the total caseload that two-parent cases represent). Also, we revised the calculation of caseload reduction credits in a couple of ways that address the commenters' latter concern. First, we allow the State an option of applying a credit based either on the two-parent caseload or on the overall caseload. Secondly, we provide for offsets in cases where the State has made eligibility changes that have the effect of increasing the caseload.

We have also made changes to help focus more attention on State efforts to promote the formation and maintenance of two-parent families. In recognition of the significance of this issue, we have added a limited amount of new reporting to capture information on State activities in this area. First, at § 265.9(b)(8), as part of their annual report, we are asking States to include a description of their activities to promote two-parent families. Second, in the TANF Financial Report, we are asking States annually to provide a break-out of their expenditures on these activities—to the extent that such expenditures are not reflected in other reporting categories. (We have added similar requirements for reporting on activities related to the prevention of out-of-wedlock pregnancies.)

In a related effort, the formula that we created to award high performances, under separate guidance, encourages State efforts to prepare recipients for work, by setting aside a substantial share of the monies for States whose recipients succeed in the workplace (i.e., retain jobs and show earnings gains).

Section 260.30—What Definitions Apply Under the TANF Regulations? (§ 270.30 of the NPRM)

General Explanation

(a) Scope

This section of the rule includes definitions of the terms used in parts 260 through 265. It also includes references to definitions that pertain only to individual parts or provisions. You can find the definition of terms that are specific only to individual parts or provisions in the appropriate individual parts of the final rules.

In drafting this section, we defined only a limited number of terms used in the statute and regulations. We understood that excessive definition of terms could unduly and unintentionally limit State flexibility in designing programs that best serve their needs. Commenters were generally supportive of this approach, but had specific concerns about specific terms, that we address below.

(b) General Terms to Note

In the proposed rule, we pointed out our use of the term "we" throughout the regulatory text and preamble—to mean the Secretary of the Department of Health and Human Services or any of the following individuals or agencies acting on her behalf: the Assistant Secretary for Children and Families, the Regional Administrators for Children and Families, the Department of Health and Human Services, and the Administration for Children and Families.

We also cited the terms "family" and "head-of-household" as examples of terms that we did not define. We said that States were thus free to define what types of families would be eligible for TANF assistance. (However, we also advised readers to look at several sections of the proposed rule because, while not defining the term "family," they addressed key requirements on the State that related to the State's definition. These sections included: work participation rates (§§ 271.22 and 271.24 of the NPRM), MOE requirements (subpart A of part 273), time limits (§ 274.1), and data collection definitions (§ 275.2). We received a number of comments on the proposed policies in these related areas, including the proposed provisions on child-only cases. Thus, you will find related discussion in those other sections of the preamble.)

In the final rule, we have added a definition of noncustodial parent. It clarifies that, under TANF, this term is not used in the narrow legal context to refer to parents lacking legal custody, but to parents who do not live in the same household as the minor child. It also does not refer to parents who live outside the State and are beyond the reach of the State's TANF program. We felt it was necessary to include a basic definition because we received so many questions about how the TANF rules on expenditures, data collection, work requirements, and time limits applied to this group of individuals. You will find additional discussion of noncustodial parent issues throughout the preamble that follows.

We decided not to define the individual work activities that count for the purpose of calculating a State's participation rates. We directed readers to the preamble discussion for § 273.13 and subpart C of part 271 in the NPRM, respectively, for additional discussion. While commenters generally supported our decision not to define work activities, we received a few comments in this area. We discuss these comments in the preamble to subpart C of part 261. (NOTE:

The reference to § 273.13 in the NPRM preamble was incorrect, and we deleted it.)

For reference purposes, we noted the use of the term "Act" to refer to the Social Security Act, as amended by the new welfare law, and "PRWORA" for the new law itself. Any section reference is a reference to a Social Security Act section, unless otherwise specified.

This part incorporates the major definitions from the PRWORA statute, including: "adult," "minor child," "eligible State," "Indian, Indian Tribe and Tribal organization," "State," and "Territories." (Readers should note that the term "State" includes the "Territories," unless specifically noted.) We include these definitions largely for the readers' convenience.

This part also incorporates some clarifying definitions, commonly used acronyms (such as ACF, AFDC, EA, IEVS, JOBS, MOE, PRWORA, TANF, and WtW), and commonly used terms and phrases (such as the Act and the Secretary). While the meaning of many of these terms is generally understood, we included them to ensure a common understanding and enable some reductions in regulatory text.

(c) Significant Fiscal Terms

This part also incorporates a number of definitions that have substantial policy significance, which we included for clarification purposes. For example, it incorporates terms that distinguish among several types of expenditures. These distinctions are critical because the applicability of the TANF requirements vary depending on the source of funds for the expenditures. In particular, it distinguishes between expenditures from the Federal TANF grant and from the State funds expended to meet MOE requirements (either within the TANF program or in separate State programs), as follows:

Federal expenditures. This is shorthand for the State expenditure of Federal TANF funds.

Qualified State Expenditures. This term refers to expenditures that count for basic MOE purposes (at section 409(a)(7)). (By regulation, many, but not all, of the requirements that apply for countable basic MOE expenditures also apply for Contingency Fund MOE purposes.)

Basic MOE. This term refers to the expenditure of State funds that a State must make in order to meet the basic MOE requirement for the TANF program and avoid the penalty specified at section 409(a)(7). (In the NPRM, we used the term "TANF MOE," but we changed the term in response to comments and concerns about confusing readers.)

Contingency Fund MOE. This term refers to expenditures of State funds that a State must make in order to meet the Contingency Fund MOE requirements under sections 403(b) and 409(a)(10). States must meet this MOE level in order to retain contingency funds made available to them for the fiscal year. Note that this term is more limited in scope than the term "basic MOE." See discussion at subpart B of part 264 for additional details.

State MOE expenditures. This term refers generically to any expenditures of State funds that may count for basic MOE or Contingency Fund purposes. It includes both State TANF expenditures and expenditures under separate State programs, where allowable.

State TANF expenditures. This term encompasses the expenditure of State funds within the State's TANF program. It identifies the only expenditures that can be counted toward the Contingency Fund MOE. It includes both commingled and segregated State TANF expenditures.

Commingled State TANF expenditures. This term identifies the expenditure of State funds, within the

TANF program, that are commingled with Federal TANF funds. Such expenditures may count toward both the State's basic MOE and Contingency Fund MOE. To the extent that expended State funds are commingled with Federal TANF funds, they are subject to the Federal rules.

Segregated State TANF expenditures. This term identifies State funds expended within the TANF program that are not commingled with Federal TANF funds. Such expenditures count for both basic MOE and Contingency Fund MOE purposes. They are not subject to many of the TANF requirements that apply only to Federal TANF funds (including time limits).

Separate State program (SSP). This term identifies programs operated outside of TANF in which the expenditure of State funds counts toward the basic MOE requirement, but not for Contingency Fund MOE. Expenditure of State funds must be made within the TANF program in order to count as MOE for Contingency Fund purposes.

It also incorporates terms to distinguish among different categories and amounts of TANF grant funds. These distinctions are important because they affect the size of grant adjustments and total funding available to the State. In some cases, different spending rules apply to different categories of funds.

State Family Assistance Grant (or SFAG). This term refers to the annual allocation of Federal TANF funds to a State under the formula at section 403(a)(1).

Adjusted State Family Assistance Grant, or "Adjusted SFAG." In the NPRM, we indicated this term refers to the grant awarded to a State through the formula and annual allocation at section 403(a)(1), minus any reductions due to the implementation of a Tribal TANF program to serve Indians residing in the State. In the final rule, we modified the definition to also exclude any funds transferred from TANF pursuant to section 404(d) of the Act. We explain this change in the Comment/Response section below. The distinction between "Adjusted SFAG" and "SFAG" is significant in determining spending limitations and the amount of penalties that might be assessed against a State under parts 261–265.

Federal TANF funds. This term includes not just amounts made available to a State through the SFAG, but also other amounts available under section 403, including bonuses, supplemental grants, and contingency funds. In expending Federal TANF funds, States are subject to more restrictions than they are in expending State MOE monies, as discussed under subpart B of part 263. (The NPRM used this term and the terms "Federal funds" and "TANF funds" interchangeably.)

(d) Cross-References

In § 260.30, you will find cross-references for the definitions of "assistance" and "WtW cash assistance." In the NPRM, the definition of "assistance" appeared at § 270.30. In the final rule, we decided to move it to its own separate section. You will find it in § 260.31. The discussion of the comments on our proposed definition appears in the corresponding preamble section. "WtW cash assistance" was not defined in the NPRM; in the final rule, it appears in § 260.32.

In the NPRM, we included definitions for the terms "Family Violence Option (FVO)," "good cause domestic violence waiver," and "victim of domestic violence" in section § 270.30 and explained them in this section of the preamble.

In the final rule, § 260.30 only contains cross-references for the definitions of the domestic violence terms. As we discussed earlier in the final rule, we have moved the domestic violence provisions to a new subpart B of part 260. The definitions appear at § 260.51. For the discussion of these provisions, you should go to the earlier preamble section entitled "Treatment of Domestic Violence Victims."

Likewise, in the final rule, we have moved the waiver definitions (including the definitions of "waiver" and "inconsistent") to a new subpart C of part 260. For the discussion of the waiver definitions and waiver policies, you should go to the earlier preamble section entitled "Waivers."

We received a few comments on the definition of child care terms that are relevant to the issue of whether single parents with children under age 6 may be sanctioned for failing to meet work requirements. For a discussion of those comments, you should go to §§ 261.56 and 261.57.

Finally, we would like you to note that we added a reference to § 263.0(b), which contains a definition of "administrative costs." We decided not to define "information technology and computerization costs needed for tracking or monitoring required by or under title IV-A of the Act." However, we do provide some regulatory language to explain the scope of the exclusion at §§ 263.2(a)(5) and 263.13(b). You will find a discussion of this language in the preamble for § 263.0. (These terms are important because States are subject to 15-percent caps on the amount of Federal TANF and State MOE funds that they may spend on administrative activities, exclusive of such computer-related costs.)

Additional Definitional Issues in § 260.30

(a) Fiscal Terms

Comment: A few commenters pointed out that the proposed rule had an apparent inconsistency in that the base for determining the administrative cost cap and the base for determining penalty amounts were different in States that chose to transfer funds to CCDBG (the Discretionary Fund of the CCDF).

Response: Not all commenters presented this as a definition comment, but we think the appropriate place to address it is by revising the definition of the "adjusted SFAG." The revised definition excludes amounts transferred to SSBG and the Discretionary Fund of the CCDF. This change has the effect of removing the transferred amounts from the base for both the administrative cost cap and the penalty calculations. We believe the exclusion is most consistent with the statutory provision at 404(d), which provides that transferred amounts are subject of the rules of the program to which they are transferred. You can find additional discussion of this issue in the preamble for § 263.0.

Comment: One commenter indicated that we had too many financial and program terms in the list of definitions and asked that we delete some. Of particular concern were: (1) the distinction between SFAG and TANF funds; and (2) State MOE expenditures versus State TANF expenditures, TANF funds and TANF MOE. The commenter recommended that a different term be used for either TANF MOE or State MOE expenditure.

Response: First, while "SFAG" and "TANF funds" are similar terms, they are not identical. It is important to make and understand the distinction. "SFAG" refers only to the basic Federal TANF block grant, the amount given to the State based on prior AFDC, JOBS, and EA payments. "Federal TANF funds" refers to Federal funds awarded to the State under section 403 of the Act, except for WtW funds. It thus includes any supplemental grants, bonuses, contingency funds. The "SFAG" amount (adjusted) is the base amount for determining any penalties assessed on the State. Most of the provisions on use of funds apply to all "Federal TANF funds," and thus extend to the funding provided under section 403, not just the basic TANF block grant amount.

We have modified the definition of Federal TANF funds slightly to clarify

that the term does not include WtW funds provided under section 403(a)(5). By statute (section 403(a)(5)(C)(v)), the restrictions on the use of TANF funds do not generally apply to WtW funds and the Secretary of Labor is responsible for administering the WtW grants. The exceptions are the TANF provisions on use of funds for administrative costs, Individual Development Accounts, and Employment Placement Programs. The Department of Labor has addressed the restriction on administrative costs for WtW funds separately in its WtW rules, we have made a conforming change to our IDA rules (at § 263.21), and we have not addressed use of WtW funds for Employment Placement Programs because the TANF rules do not directly address this issue. While the proposed rule contained three definitions related to maintenance-of-effort—Contingency Fund MOE, MOE, and TANF MOE, we believe it is best to keep three terms. Since the statute applies some different rules for the basic MOE requirement and Contingency Fund MOE, the rules need to include at least two terms. We included the third term—MOE—because there are many places where the same rules apply to both types of State expenditures, and it is more efficient to use the one short acronym than two longer terms.

As we noted earlier, we did decide to change the term "TANF MOE" to "basic MOE." We recognized that the term "TANF MOE" could cause confusion because States could expend funds outside the TANF program in meeting the basic MOE requirement; the term "TANF MOE" suggested that we were looking only at MOE expenditures under the TANF program.

The proposed rule also contained three terms for Federal TANF funds—TANF funds, Federal funds, and Federal TANF funds. In this case, the three terms were duplicative. We chose to eliminate the first two from the list of terms at § 260.30 and keep the definition for Federal TANF funds. We have made changes throughout the preamble and regulatory text to reflect this decision.

Comment: One commenter noted that our definition for "Contingency Fund MOE" contained an incorrect reference to child care expenditures.

Response: The commenter correctly noted that our proposed definition did not conform to the amendments in the Balanced Budget Act. We have revised the definition in the rules to remove the reference to child care expenditures. We also made conforming changes to the preamble discussion.

(b) Miscellaneous Issues

Comment: One commenter indicated that we needed a definition of Governor and that we should include the Mayor of the District of Columbia in that definition.

Response: We have added a standard definition that includes the Mayor of the District of Columbia and the chief executive officer of the eligible Territories as well.

Comment: One commenter wanted us to establish a Federal definition for "violating a condition of their parole or probation," like the one used in New York State. The commenter's suggestion would have the effect of limiting the scope of the "fugitive felon" provision at section 408(a)(9) by providing for uniform standards that exclude certain "technical violations."

Response: For several reasons (including the limits to our regulatory authority under section 417 and existing variations in State law), we believe that this definition is an appropriate area to leave to State discretion. Therefore, we have not included a Federal definition.

Miscellaneous Technical Changes To Note

Finally, we made a few minor changes based on our own internal reviews. First, we noted that the proposed definition of "eligible State" did not reflect the amendment made by the Balanced Budget Act. Under PRWORA, as enacted, an "eligible State" was one that had submitted a complete plan in the two-year period immediately preceding the fiscal year. Under the change, "an eligible State" is one that submitted a complete plan in the "27-month period ending with the close of the first quarter of the fiscal year." The final rule incorporates this revised language.

According to the Committee Report (H.R. Rep. No. 78, Part 1, 105th Cong., 1st sess., p. 38), the purpose of the amendment was to give States an additional quarter to submit their plans. However, the meaning of the new statutory language is a little more complicated. If you would like additional information, you may refer to guidance that we sent out on May 15, 1998 (OFA-TANF–PA–98–3). A copy of this document is available through the OFA Web page (at http://www.acf.dhhs.gov/ofa).

Secondly, we have added some cross-references to terms defined in other parts of the TANF rules, including "Individual Development Accounts" and "administrative costs."

Thirdly, as we have previously discussed, we created a new subpart A in part 260 for the definitions and other general provisions that were in part 270 of the NPRM, and we moved the definition of terms related to domestic violence and welfare reform waivers to new subparts of part 260. We believe this new structure will make our policies in these latter areas clearer and more coherent.

Finally, we added definitions for "Social Services Block Grant," "SSBG," "State agency," "CCDBG," and the "Discretionary Fund of the Child Care and Development Fund" because these terms were helpful in describing other provisions of these rules. These definitions are straightforward references, based on existing statutory and regulatory language.

§ 260.31 What Does the Term Assistance Mean? (New Section)

This is a new section in the final rule. The proposed rule contained the definition of assistance in § 270.30, with the other TANF definitions. However, because of the length and significance of this term, we decided to give it its own section.

(a) Background

In the NPRM we advised readers to note the definition of "assistance" proposed in this section. We indicated that PRWORA uses the terms "assistance" and "families receiving assistance" in many critical places, including: (1) most of the prohibitions and requirements at section 408, which limit the provision of assistance; (2) the numerator and denominator of the work participation rates in section 407(b); and (3) the data collection requirements of section 411(a). Largely through reference, the term also affects the scope of the penalty provisions in section 409. Thus, the definition of "assistance" is very important. At the same time, because TANF replaces AFDC, EA and JOBS, and provides much greater flexibility than these programs, what constitutes assistance is less clear than it was in the past.

Because TANF is a block grant, and it incorporates three different programs, a State may provide some forms of support under TANF that would not commonly be considered public assistance. Some of this support might resemble the types of short-term, crisis-oriented support that was previously provided under the EA program. Other forms might be more directly related to the work objectives of the Act and not have a direct monetary value to the family. We proposed to exclude some of these forms of support from the definition of assistance.

The general legislative history for this title indicated that Congress meant for this term to encompass more than cash assistance, but did not provide much specific guidance (H.R. Rep. No. 725, 104th Cong., 2d sess.). Likewise, our pre-NPRM consultations did not provide clear guidance or direction.

In our January 1997 guidance (TANF–ACF–PA–97–1), we expressed the view that the definition of assistance should encompass most forms of support. However, we recognized two basic forms of support that would not be considered welfare and proposed to exclude them from the definition of assistance. In brief, the two exclusions were: (1) services that had no direct monetary value and did not involve explicit or implicit income support; and (2) one-time, short-term assistance.

In the proposed rule, we clarified that child care, work subsidies, and allowances that cover living expenses for individuals in education or training were included within the definition of assistance. For this purpose, child care included payments or vouchers for direct child care services, as well as the value of direct child care services provided under contract or a similar arrangement. It did not include child care services such as information and referral or counseling, or child care provided on a short-term, ad hoc basis. Work subsidies included payments to employers to help cover the costs of employment.

We also proposed to define one-time, short-term assistance as assistance that is paid no more than once in any twelve-month period, is paid within a 30-day period, and covers needs that do not extend beyond a 90-day period. In response to the policy announcement, we had received a number of questions about what the term "one-time, short-term" meant. Based on our experience with the EA program, we realized that a wide range of interpretations was possible, and we were concerned that States might try to define as "short-term" or "one-time" many situations where assistance was of a significant and ongoing nature. Thus, we proposed to limit what was excluded as one-time, short-term assistance to items that were paid no more than one time a year over no more than a 30-day period for needs that did not extend beyond 90 days. We expressed the hope that our proposal would give States the flexibility to meet short-term and emergency needs (such as an automobile repair), without invoking too many administrative requirements and undermining the objectives of the Act. We welcomed comments on whether the proposed policy achieved this end.

In drafting the NPRM, we had considered allowing States to include additional kinds of benefits and services as assistance, at their option. However, we were concerned that varying State definitions would create additional comparability problems with respect to data collection and penalty determinations. Also, we were concerned that an expanded definition might have undesirable program effects (e.g., in extending child support assignment to cases where it would not be appropriate). Thus, we did not give States the option to expand the definition.

For those concerned about the inclusion of child care in the definition of assistance, we pointed out that the child care expenditures made under the Child Care and Development Fund (CCDF) are not subject to TANF requirements, and States have the authority to transfer up to 30 percent of their TANF grant to the Discretionary Fund of the CCDF program.

We also proposed to collect data on how much of the program expenditures were being spent on different kinds of "assistance" and "nonassistance." We referred readers to the discussion of the TANF Financial Report at part 275 of the NPRM for additional details.

We said that, if the data show that large portions of the program resources are being spent on aid that fell outside the definition of assistance, we would have concerns that the flexibility in our definition of assistance is undermining the goals of the legislation. We would then look more closely at the aid being provided outside the definition and try to assess whether work requirements, time limits, case-record data and child support assignment would be appropriate for those cases. If necessary, we would consider a change to the definition of assistance or other remedies.

Since we issued the NPRM, Congress enacted the Child Support Performance and Incentives Act of 1998. As we discussed earlier in the preamble, section 403 of that legislation included several provisions on the use of Federal TANF funds to help pay for transportation benefits for welfare recipients under the Job Access program. In a new section 404(k)(3) of the Social Security Act, there is a "rule of interpretation" indicating that the provision of transportation benefits to an individual who is not otherwise receiving TANF assistance, pursuant to these provisions, would not be considered assistance. We have added a new exclusion to the definition of assistance to reflect this provision. (Also, as we discuss later, the final rule incorporates other changes that exclude transportation benefits for employed families from the definition of assistance.)

(b) Overview of Comments

We received a number of comments supportive of the definition in our January 1997 guidance and the definition in the NPRM (which was derived from this guidance).

At the same time, a wide range of commenters—including States, advocates, and union groups—wanted to see changes to one or both of our proposed exclusions. A significant number of commenters indicated that this was one of the most important issues in the NPRM for them. All these commenters wanted to narrow the scope of benefits that would be considered within the definition of assistance; many expressed a particular concern about the treatment of supports for working families under the definition. Some wanted modest changes to the proposed definition, while a significant number sought significant additional exclusions, such as: (1) child care, transportation, and other work supports; and (2) work-based assistance, such as wage subsidies.

Moreover, subsequent discussions and materials that we have received suggest increasing concern about the proposed definition over time, as individuals have had more time to ponder its implications, States have further explored supports needed by families as they transition from welfare to work, and commenters have shared their concerns with other parties.

As the result of these comments, we have made some significant modifications to the definition of assistance. The modifications address the concerns of commenters both about the treatment of work supports and the exclusion for one-time, short-term assistance. We found substantial merit in the arguments made by commenters in both areas. Also, as States proceed with their implementation of TANF, they continue to explore and develop new, innovative ways to support low-income working families and to address the goals of the TANF program. As a result, their programs are beginning to look less like traditional welfare. TANF program requirements were created with a particular program model in mind. Applying the TANF requirements much more broadly makes limited policy sense.

Under the narrower definition of assistance in the final rule, States will have more flexibility in how they serve families—particularly working families—with their Federal TANF and

State MOE funds. They will also experience a significant reduction in the administrative burden associated with serving working families, providing refundable earned income tax credits, and administering Individual Development Accounts (because they will not have to provide disaggregated data in such circumstances).

With the change in the definition of assistance under the final rule, we will not be collecting disaggregated data on work supports and other types of benefits and services that are not assistance. To compensate for this loss, we have significantly revised the TANF Financial Report by adding a number of new reporting categories. We have also provided for new information on diversion programs to be included in the annual report.

At the same time, we remain concerned about the potential impact of this definition on the achievement of TANF goals. While we believe the revised definition in the final rule is sound, it is difficult to envision all of the consequences. Thus, we will monitor State programs and expenditures and periodically assess whether our definition continues to support the goals of the program. If aspects of the definition become problematic, we will pursue appropriate changes.

A detailed discussion of the comments and our policy decisions follows.

(c) The Appropriateness of a Federal Definition

Comment: A couple of commenters said we should let States create their own definitions of assistance.

Response: We do not believe this is a viable option. The definition is too central to all the accountability provisions in the statute. If we did not define this term, States might define assistance so narrowly as to undermine the key TANF provisions on child support, work requirements, and time limits. Also, wide variations in State definitions would exacerbate issues about the consistency of data collection, program information, work participation rates, time limits, and other penalty provisions.

Readers should understand that the definition of assistance does not substantially impede the flexibility each State has to set eligibility rules or to expend funds on a broad range of benefits, services, and supports for needy families in the State. The major effect of the definition is to determine the applicability of key TANF requirements to the benefits that a State does elect to provide. It does not circumscribe the types of allowable benefits; these may be inside or outside the definition of assistance.

We had indicated in the proposed rule that the definition did not apply to the MOE provisions at subpart A of part 273. We have included similar language in the final rule at § 260.31(c)(1). (We also made a conforming change in that paragraph that references Contingency Fund MOE as part of this exception). In addition, at § 260.31(c)(2), we have added language clarifying that the definition of assistance does not limit the types of benefits and services that States provide to individuals and families under the first statutory goal of TANF. This first statutory goal authorizes the provision of assistance, but does not mention other forms of benefits or services. However, in other places, the statute specifically authorizes expenditures of State and Federal funds that are "in any manner reasonably calculated to accomplish the purpose" of the program. Thus, the statute indicates that the word "assistance" needs to be interpreted more broadly in the context of this first TANF goal. (The new regulatory text refers only to the first goal of TANF; the other TANF goals do not use the term "assistance" and thus did not require clarification.)

Comment: Although one commenter said the proposed rule "effectively incorporates" the policy from the guidance (with clarification and elaboration), a number of respondents commented that the proposed definition represented a retreat from the definition provided in the guidance.

Response: We agree that the changes we proposed in the NPRM related to the exclusion for "one-time, short-term assistance" had the effect of narrowing what could have been excluded under our policy announcement. As discussed in the next comment, we have decided to ease the proposed restrictions on one-time, short-term assistance.

We do not believe that our proposed definition otherwise deviated from the definition in the guidance. It is our view that benefits such as child care and transportation subsidies, while not directly mentioned, were part of the definition of assistance in the January 1997 policy announcement (TANF–ACF–PA–97–1), as they involved subsidies or other forms of income support. Our intent in inserting the references to child care and transportation in the NPRM was to provide a clearer and more complete definition, not to make a substantive change.

(Nevertheless, as we discuss in the next section, on "Work Supports," the final rule excludes such supports for working families from the definition of assistance.)

Comment: Several commenters suggested that we should exclude assistance that was not cash assistance or financial assistance from our definition.

Response: As we discuss in the following comments, the legislative history does not support this approach. Rather, for both TANF and WtW, it suggests that Congress envisioned inclusion of at least some noncash benefits as assistance. Otherwise, it would have been superfluous to specifically exclude noncash WtW assistance from the time-limit requirement. In addition, wholesale exclusion of noncash benefits from the definition would create some peculiar incentives for States and could substantially distort their decisions about how to provide benefits.

(d) Work Supports

Comment: A significant number of commenters called for additional exclusions from the definition of assistance. While there was a fair amount of diversity in the specific suggestions, a significant number of commenters sought exclusions of: (1) assistance that is not like traditional welfare, but directed at achieving the work objectives of the Act (e.g., child care, transportation, and other work supports); and/or (2) work-based assistance, provided as either work subsidies to employers (especially payments to employers to cover the costs of supervision and training) or as compensation for work. Many commenters expressed specific concerns about the appropriateness of child support assignment and time limits in these cases. A number objected to our standard of "direct monetary value."

Some commenters spoke broadly about excluding work subsidies, assistance directed at achieving the work objectives of the Act, or work supports. Others focused on specific items such as child care, transportation, and earned income tax credits. A few commenters suggested that we borrow language from the caseload reduction provisions of the proposed rule and exclude "cases receiving only State earned income tax credits, transportation subsidies or benefits for working families that are not directed at their basic needs."

We received more comments in support of excluding child care than for other types of supportive services. Commenters expressed strong objections to the inclusion of child care, in large part due to concerns about the time-

limit implications. They also expressed disagreement with our proposition that States could transfer funds to the Child Care and Development Block Grant in order to avoid time limits for child care benefits; they argued that there were legislative and administrative barriers associated with these transfers. Some commenters argued that child care and transportation are not like cash. Since they are not fungible (i.e., available to meet a family's basic needs), they should be excluded from the definition of assistance on that basis. Other commenters said that it was unclear that Congress intended to extend child support assignment to additional forms of aid, such as child care and JOBS-related benefits; at a minimum, they requested that we clarify that States can take an assignment of less than the amount of assistance.

In addition to some of the prior arguments, the principal arguments that commenters presented for the exclusion of work subsidies (or payments to employers to cover the costs of employment and training) were: (1) such benefits primarily benefit employers, not recipients, and thus do not have direct monetary value to the family; (2) they should be viewed as the equivalent of tax credits or like other expenditures on training; (3) employees may use up their time limit by going through a series of subsidized jobs from which employers benefit, but that give employees no prospect of long-term employment; and (4) their inclusion will create administrative problems and make it difficult to jointly fund work subsidy programs.

Commenters also presented arguments for excluding assistance for which recipients worked. They argued that this assistance represented compensation for work, rather than assistance. Since recipients "earned" this assistance, commenters felt that it was inappropriate for the months to accrue against the time limit on assistance and for child support assignment to apply.

Response: We agree that there are good arguments for narrowing the definition of assistance to exclude work supports such as child care and transportation. While neither the statute nor the legislative history directly suggests that a significant subset of benefits should be excluded from the definition, there is also little direct evidence that Congress intended for time limits and data collection to apply to an array of new benefits (such as IDAs and new work supports) or to working families that have not traditionally been part of the welfare system. Rather, in reforming the welfare program, it seems Congress was trying to end dependence on welfare as a way of life for families and to facilitate the ability of families to work and become self-sufficient. Two of the main effects of defining a TANF benefit as assistance are to require that a family work so that it can become self-sufficient and to time limit that assistance. However, a work requirement is unnecessary if the adult is already working and the benefit that the family receives is a work support. Further, the need to time-limit work supports is mitigated since the family is already moving toward self-sufficiency; working families should eventually become independent.

One statutory provision that raised questions about Congressional intent was section 404(k)(3). This provision, which was part of the Child Support Performance and Incentives Act of 1998, provided a "rule of interpretation" that specified that transportation benefits provided under Job Access to an individual who was not otherwise receiving assistance under TANF would not be considered assistance. It suggests that Congress envisioned transportation to otherwise be included within the TANF definition of assistance. However, another, equally viable, interpretation of this Congressional action exists. The child support legislation was enacted while our interim guidance was in effect. Thus, Congress could have been providing a clarification of what was excluded from assistance in that context. In fact, the legislative history did not express any opinions about the interim definition in the policy guidance that we had issued (TANF–ACF–PA–97–1).

You will note that we have incorporated an exclusion that reflects this specific statutory provision. We recognize that it is largely duplicative of the general exclusion for work-related supportive services, including transportation, in § 260.31(b)(3). However, it is possible that some Job Access transportation benefits are not covered by the general provisions, and we wanted to ensure that the statutory exclusion received full weight. Under § 260.31(b)(7), therefore, we provide a categorical exclusion for transportation benefits received under Job Access by individuals who are not otherwise receiving TANF assistance.

The definition in these rules is generally consistent with commenter suggestions, but more specific in some areas. It provides that supports for working families (such as child care and transportation) would be excluded. This exclusion covers supportive services needed to cover employment-related needs and time spent by an employed individual in education and training needed for job retention and career advancement. (As discussed below, the education and training is also excluded.)

Except as provided in paragraphs (b), the exclusion does not cover supportive services related to participation in education, training, job search and related employment activities for nonworking families. Supportive services provided in this situation look more like traditional welfare than work supports. Also, the same rationale for excluding these individuals from the TANF program requirements, including work participation and time limits, does not exist for these families as exists for families that are already working.

The education and training activities themselves are generally excluded under paragraph (b)(6). The one exception would be if education or training benefits included allowances or stipends designed to provide income support; these particular types of education and training benefits would be considered assistance. Also, we would remind readers that under sections 401 and 407 of the Act education and training services should be directed at preparing individuals for work and moving them to self-sufficiency; they should not be of a general nature.

Our definition also specifies the types of items that would be considered as part of basic needs. The listed items (food, clothing, shelter, utilities, household goods, personal care items, and general incidental expenses) reflect those items that were represented in the majority of the State needs standards under prior law. The term "incidental expenses" covers items States included as part of basic needs such as telephones; small allowances for child care or transportation needs associated with keeping appointments, going to the store, or fulfilling other basic responsibilities; basic supplies for the medical cabinet; insurance premiums; and miscellaneous fees and expenses, to the extent consistent with State practice.

The definition excludes contributions to, and distributions from Individual Development Accounts (IDAs). Although the TANF statute includes IDA provisions, commenters did not specifically raise questions about the treatment of IDA benefits under the definition of assistance. However, interest has grown since the passage of the Assets for Independence Act (under title IV of Pub. L. 105–285). Since then, we have received numerous questions from interested parties, including State agencies and potential grantees, about how IDA benefits would be treated

under the TANF rules. We have several reasons for the specific exclusion in the final rule. First, many of the assets in IDA accounts represent deposits from the earnings of low-income families and the interest on those deposits. Thus, many of the assets do not represent assistance from TANF or any other governmental source. Second, when contributions are made into an IDA account from the TANF agency or other third parties, they only represent potential assistance at that point. The individuals whose funds are in the account are potential beneficiaries, but have very limited access to the funds in that account. The funds are not available to meet their basic needs. Furthermore, distributions from IDA accounts would normally be excluded under other provisions of our definition (e.g., as emergency benefits, for education, and as nonrecurrent, short-term benefits). Because the residual cases might be insignificant in terms of the amount of assistance involved and the tracking of such amounts might create very significant administrative burdens, we believed it would be appropriate to provide an umbrella exclusion for IDA benefits.

While we were convinced by the arguments for excluding supportive services for working families from the definition of assistance, we have noted a few consequences of this narrower definition of assistance that were of some concern. For example, many of the funding restrictions in section 408 are restrictions on which families may receive "assistance," section 404(e) of the Act only authorizes States to use the "rainy day" funds that they reserve for future years "for providing assistance," many working families will not be included in the TANF work participation rate calculations, and we will receive data on fewer families and types of benefits from the aggregated and disaggregated reporting.

In order to compensate for the loss of reporting, we have added some additional detail to the expenditure information required in the TANF Financial Report (see Appendix D). (See the preamble for § 263.11 and the Instructions for Completion of ACF–196 (the TANF Financial Report) in Appendix D for additional information on the use and reporting of reserved funds.)

Comment: One commenter asked whether expenditures on "work activities" were the same as expenditures on "employment services."

Response: We assume this commenter wanted to know if all expenditures on work activities, as specified in section 407(d) of the Act, would be excluded from the definition of assistance. The exclusions we provide in the final rules would generally cover the specified work activities, including on-the-job training, subsidized employment, and most education and training activities (i.e, since most do not represent income support). They would also cover payments to employers and third parties for supervision and training and payments under performance-based contracts for success in achieving job placements and job retention. As discussed above, there may be types of education and training benefits (e.g., stipends or allowances) that fall within the definition. Also, the definition does not generally exclude payments to individuals participating in work experience or community service (or any other work activity). Nor does it exclude needs-based payments to individuals in any work activity whose purpose is to supplement the money they receive for participating in the activity.

The distinction we make between work subsidies paid to employers and payments to participants in work experience and community service is similar to distinctions made under tax law. For example, we would refer you to Notice 93–3, issued by the Internal Revenue Service on December 17, 1998. This notice explains that TANF payments that meet certain conditions would not be income, earned income, or wages for Federal income and employment tax purposes. The notice provides that: "Payments by a governmental unit to an individual under a legislatively provided social benefit for the promotion of the general welfare that are not basically for services rendered are not includible in the individual's gross income and are not wages for employment tax purposes, even if the individual is required to perform certain activities to remain eligible for the payments. * * * Similarly, these payments are not earned income for Earned Income Credit (EIC) purposes." It also notes that, under amendments to the Internal Revenue Code under the Taxpayer Relief Act of 1997, Pub. L. 105–34, "earned income for EIC purposes does not include amounts received for [TANF work experience and community service activities] to which the taxpayer is assigned * * *, but only to the extent such amount is subsidized under [TANF]."

Our definition of assistance distinguishes between work subsidies paid to employers and community service and work experience on a similar basis. We believe that payments to participants in work experience and community service are closely associated with traditional welfare benefits and are designed primarily to meet basic needs rather than as compensation for services performed. This view is also reflected in the Conference Report, H. Rep. 105–217, for Pub. L. 105–34, which added the WtW program. In discussing the treatment of WtW cash assistance for time-limit purposes, it indicates that wage subsidies are indirect cash assistance. We believe the reference to wage subsidies as cash assistance is to such payments as part of work experience and community service where, as in the tax provisions, welfare law determines the size of the payments and limits the hours of work so that it is, in effect, assistance received indirectly. Thus, we generally include such subsidies in the definition of assistance.

We do not believe that the mere fact that the benefits received by recipients in work experience or community service activities are conditional on work is sufficient to view it as nonassistance. The expectation under TANF is that adult recipients will generally participate in work activities as a condition of receiving TANF. This expectation is evident in the work requirement in section 402(a)(1)(A)(ii) and the fact that Congress based the calculation for work participation in section 407 on all families with adults, instead of retaining the numerous exemptions that existed under JOBS.

The regulatory text also indicates that benefits conditioned on other work activities (e.g., job search) are not excluded from the definition of assistance. We do not think that anyone would conclude that such benefits would be excluded, because there would be no historical basis for such a conclusion. However, we decided to include the broader reference to foreclose any future questions.

Comment: One commenter said we should exclude on-site case management services provided by an employer under contract from the definition of assistance.

Response: Our definition already excludes case management services provided under the TANF program. It is irrelevant who provides the case management services.

Comment: One commenter noted that the preamble in the NPRM excluded "information about child care, child care referral services, child care counseling services and child care provide on an ad hoc basis" and asked that we add that language to the regulatory text.

Response: We do not believe it is appropriate or even possible to specify all types of excluded services in the regulatory text. However, we have inserted "child care information and referral" as an example of an excluded service.

(e) Nonrecurrent, Short-Term Benefits

Comment: We received a significant number of comments from respondents who were concerned about the narrowed exclusion for "one-time, short-term" assistance. The major concern of commenters was that the 30 existing State welfare diversion programs, together with their local variations, could not meet such a tight definition because they might provide more than one payment in a year if a family encounters an unforeseen subsequent crisis. They suggested broader language that would exclude short-term, episodic assistance for families in discrete circumstances and encompass nonrecurrent, short-term payments that could occur more than once in 12 months. They questioned the basis for creating restrictions based on the old EA definitions. They raised concerns about the negative effect on State innovation. They also raised concerns about the administrative burdens associated with tracking eligibility, especially when outside providers, such as emergency shelters, deliver emergency services or when a State is operating both diversion and emergency assistance programs and has not administratively connected those programs.

Response: In part, the narrower language in the proposed rule reflected a concern that States could avoid TANF requirements by changing the manner in which they assisted families. We did not believe that it would be appropriate to exempt families that received a substantial amount of assistance, assistance over a significant period of time, or assistance provided on a recurring basis from child support assignment, work requirements, and time limits. Based on prior experience with the Emergency Assistance program, we believed that States could expand the concept of one-time, short-term assistance to cover benefits that extended over time and encompassed substantial expenditures.

At the same time, we did not intend our definition to undermine existing State efforts to divert families from the welfare rolls by providing short-term relief that could resolve discrete family problems. Based on both the comments we received and other sources of information, we realize that diversion activities are an important part of State strategies to reduce dependency and that restrictive Federal rules in this area could stifle the States' ability to respond effectively to discrete family problems. We also understand that subjecting families in diversion programs to all the TANF administrative and programmatic requirements would not represent an effective use of TANF or IV–D resources. For example, it does not necessarily make sense to require that, for a single modest cash payment, the State must open up a TANF case, collect all the case-record data which that entails, require the assignment of rights to child support, open up a IV–D case, and start running a Federal time-limit clock.

Much of the aid provided through these programs is work-focused, and, under our definition, the benefits to these families are nonrecurrent and short-term in nature. Thus, we believe that excluding this aid from the definition of assistance does not undermine the TANF provisions on work, time limits, or self-sufficiency. However, as we proposed in the NPRM, we will be collecting aggregate information on expenditures on aid that is not assistance (i.e., on "nonassistance"). This information will be valuable in helping us to assess the extent to which benefits being provided with TANF and MOE funds fall under, or outside of, the major TANF program requirements.

Finally, we recognize that this is a policy area where policy and programs are evolving quite rapidly. Within the next year or two, we would expect to have a better knowledge base for assessing diversion programs and making policy judgments. For example, the Office of the Assistant Secretary for Planning and Evaluation and ACF are jointly sponsoring a study by George Washington University to examine the State diversion programs and activities and explore their Medicaid implications.

Thus, the final rules include a revised definition that excludes more than one payment a year, so long as such payments provide only short-term relief to families, are meant to address a discrete crisis situation rather than to meet ongoing or recurrent needs, and will not provide for needs extending beyond four months. The revised definition uses the term "nonrecurrent" rather than "one-time" because the former term is more consistent with the intended policy. A family may receive such benefits more than once. However, the expectation at the time they are granted is that the situation will not occur again, and such benefits are not to be provided on a regular basis. We believe the revised exclusion is limited enough in nature and scope not to undermine the statutory provisions of the TANF program, while giving States the flexibility to design effective diversion strategies.

The definition also would exclude supports provided to individuals participating in applicant job search. Applicant job search is a common form of diversion that clearly fits within the goals of TANF and within this exclusion's view of a "short-term" benefit. (The job search itself would be excluded under the general services exclusion at paragraph (6).)

Similarly, the definition would exclude supports for families that were recently employed, during temporary periods of unemployment, in order to enable them to maintain continuity in their service arrangements. Unnecessary disruptions in these arrangements could negatively affect the family's ability to re-enter the labor force quickly and, in the case of child care, could negatively affect the children in the family.

The four-month limitation reflects our belief that we could not maintain the integrity of the short-term exclusion without providing some regulatory framework. As written, the four-month limitation does not restrict the amount of accrued debts or liabilities (such as overdue rent) that a State may cover or impose a specific monetary limit on the amount of benefits that the State may provide.

You should note that we have added a new requirement at § 265.9(b)(6) for States to report annually on the nature of nonrecurrent, short-term benefits. More specifically, we are asking States to describe the benefits they are providing, including their eligibility criteria (together with any restrictions on the amount, duration, or frequency of payments), any policies they have instituted that limit such payments to families eligible for assistance or that have the effect of delaying or suspending eligibility for assistance, and any procedures or activities developed under the TANF program to ensure that individuals diverted from TANF assistance receive appropriate information about, referrals to, and access to Medicaid, food stamps, and other programs that provide benefits that could help them successfully transition to work.

To the extent that a State provides the required information either in the State plan or in the data it reports under § 265.9(b)(6), it would not have to duplicate this information.

Because of the tremendous importance of food stamp and Medicaid as supports for working families, we

strongly encourage States to maintain critical linkages among these programs because accessing these other program benefits could further the goals of TANF. In addition, diverting individuals from programs where they have an entitlement to benefits or to prompt action on a request for assistance could represent a violation of rules in the other programs.

According to the Health Care Financing Administration (HCFA), section 1931 of the Social Security Act establishes rules for Medicaid eligibility for low-income families based on the income and resources of the family. Under section 1931, States must provide Medicaid coverage at least to families with a dependent child living with them whose income and resources would have qualified them for AFDC benefits under the State plan in effect on July 16, 1996. Therefore, Medicaid eligibility is not tied to or based on eligibility for TANF-financed assistance. Also, States cannot limit Medicaid eligibility to families receiving TANF.

Medicaid regulations (at 42 CFR 435.906) require States to provide the opportunity for families to apply for Medicaid without delay.

In States that use joint TANF-Medicaid applications or utilize the State TANF agency to make Medicaid eligibility determinations, the TANF office is considered a Medicaid office. Therefore, in this situation, a TANF agency, like any Medicaid agency, must immediately furnish a Medicaid application (joint or separate) upon request and act upon that application promptly. If there is a delay in accepting or filing an application for TANF assistance (e.g., because the family is served through a diversion program, is subject to up-front job search requirements, or faces other behavioral or administrative requirements that delay assistance), the agency must make a Medicaid application available immediately. If there is a delay in processing the TANF portion of a joint application, the agency must process the Medicaid portion of the application immediately.

According to the Food and Nutrition Service (FNS), at the Department of Agriculture, in enacting PRWORA, Congress thoroughly reviewed the Food Stamp Act of 1977, as amended, and made changes to many of its provisions. However, it made clear that the Food Stamp Program continued to have a distinct set of nationwide application rights and responsibilities. Section 11(e) of the Food Stamp Act sets forth requirements that a State agency administering the Food Stamp Program must follow. Among other things, it requires that the Agency: (1) provide timely, accurate, and fair service for applicants for, and participants in, the Food Stamp Program; (2) develop an application containing the information necessary to comply with the Act; (3) permit an applicant household to apply to participate in the program on the same day the household first contacts the food stamp office in person during office hours; and (4) consider an application that contains the name, address, and signature of the applicant to be filed on the date the applicant submits the application.

Where PRWORA did not amend the Food Stamp Act, current food stamp regulations remained in effect. The regulations at 7 CFR 273.2(c) provide that: (1) each household has the right to file an application on the same day that it contacts the food stamp office during office hours; (2) the State agency must advise the household that it does not have to be interviewed before filing an application, and it may file an incomplete application as long as the applicant's name and address are recorded on an appropriately signed form; (3) State agencies shall encourage households to file an application form the same day the household contacts the food stamp office and expresses interest in obtaining food stamp assistance. If individuals express interest in the Food Stamp Program, or have concerns about food security, States have a responsibility to inform them about the Food Stamp Program and their right to apply; and (4) the State agency must make application forms readily accessible to potentially eligible households.

Although PRWORA amended section 11(e) of the Food Stamp Act by eliminating the requirement for joint processing of food stamp and TANF applications, State agencies that continue to do so must abide by the food stamp regulations at 7 CFR 273.2(j). These regulations set forth requirements regarding interviews, verification, and application processing procedures for joint applications. Most importantly, the regulations at 7 CFR 273.2(j)(1)(iii) provide that households whose public assistance applications are denied shall not be required to file new food stamp applications, but shall have their food stamp eligibility determined or continued on the basis of the original applications filed jointly for public assistance and food stamp purposes.

We advise you to look for additional guidance on food stamp and Medicaid requirements through the HCFA and FNS web sites (www.hcfa.gov/medicaid/medicaid.htm and www.usda.gov/fcs/, respectively).

We strongly believe that effective procedures to ensure that diverted individuals access Medicaid, food stamps, or other programs are critical to the success of TANF programs in achieving lasting employment for the families they serve. In addition, such procedures might help States avoid compliance and legal problems in the other programs. Given the importance of this issue, the additional information on State practices that we are requiring in the annual report will be extremely helpful in assuring the role TANF agencies are playing with individuals receiving diversion benefits.

While we dropped our proposal for a separate annual program and performance report, we still need information on key aspects of State programs in order to prepare the annual report to Congress required at section 411(b)(3) of the Act. To the maximum extent possible, we will draw upon data available through the State plans and other reports submitted by the States. However, because diversion benefits fall outside of the definition of assistance, and we have chosen not to set standards of completeness for State plan submissions, we may not have adequate information on this major feature of TANF programs to fulfill our responsibilities under section 411(b)(3).

The new reporting focuses on diversion because it is one of the major new tools States are using to achieve the work objectives of the Act and, under section 413(d), Congress has shown an interest in looking at State performance in this specific area. Also, the burden associated with providing this aggregate program information is substantially less than the burden that would be associated with providing disaggregated data; because diversion payments fall outside the definition of assistance, the disaggregated data requirements do not apply.

Comment: Several commenters also expressed concerns about the proposed limits on the amount of assistance and the meaning of the proposed 90-day restriction. Commenters were not sure whether the 90-day restriction represented a limit on the period of needs to be met or a limit on the total monetary value of assistance. They objected to both possible interpretations. While they generally seemed to prefer an interpretation that limited the duration of need that could be met, they also expressed concern about restrictions that would affect the States' ability to deal effectively with past debts or liabilities or meet needs that extended beyond 90 days.

Response: As discussed previously, we have replaced the 90-day limitation

with a more flexible four-month limitation. The new provision is more flexible with respect to past debts or liabilities; it merely limits the extent to which payments for future needs can be excluded from the definition of assistance. We also clarified in the preamble that the four-month limitation does not impose a specific monetary limit on the amount of benefits that may be excluded. Rather, the limitation reflects the period of time for which future needs can be addressed by a single "nonrecurrent, short-term" benefit.

When we issued the proposed rule, we did not necessarily envision a single Federal interpretation of the 90-day limitation. Our intent was to keep State payments for needs that were ongoing or extended over a significant period of time within the definition of assistance. We did not want a State to bundle several months' worth of assistance into a single assistance payment in order to avoid TANF requirements for itself or the family.

Our expectation for the language in the final rule is no different. It is appropriate for States to treat short-term assistance that addresses discrete episodes of need as "nonassistance." It is not appropriate for States merely to condense the time period over which they pay assistance to needy families so that they can categorize the benefits as "nonassistance" and avoid TANF requirements. Also, if a family's emergency is not resolvable within a reasonably short period of time, the State should not keep the case indefinitely in emergency status, but should convert it to a TANF assistance case.

At the same time, if a family receives aid in one month that falls under the nonrecurrent, short-term exclusion, but suffers a major set-back later in the year, develops a need for ongoing aid, and starts receiving TANF assistance, we would not require the State to re-define the month of initial aid as assistance and retroactively subject the family to TANF requirements.

(f) Benefits and Supports for Noncustodial Parents

Comment: Commenters also expressed some concern about the potential effects on the custodial parent and children (especially under time limits) when a noncustodial parent receives benefits. This issue was of particular concern in light of the focus given to assistance for noncustodial parents under Welfare-to-Work.

Response: Many services and supports that States might provide to noncustodial parents (such as transportation and most work activities) are excluded under the final definition of assistance. Also, as we discuss in the preamble to § 264.1, assistance provided to noncustodial parents does not count against the time limit of the custodial parent or children living in a different household unless the noncustodial parent is receiving assistance as a member of that same family and is the spouse of the head of the TANF household.

Comment: A couple of commenters expressed concern about the effect of assistance that might be paid to a noncustodial parent. For example, a noncustodial father is paying support. However, the noncustodial parent of a second child in the family is receiving assistance. The State takes the support paid by the first noncustodial father and reimburses itself for assistance paid to the noncustodial parent of the second child. The mother and two children are not receiving any assistance for themselves and do not receive any child support because the State is retaining it. Commenters believe that it would be unfair to the custodial parent and children if assistance provided to a noncustodial parent resulted in the custodial parent's losing her right to receive child support and remaining subject to child support cooperation requirements.

Response: We do not believe that the statute intends or requires this absurd result. Rather, the assignment of the rights to support by the custodial parent is only intended to cover assistance paid to the custodial parent and the child(ren) living with the custodial parent. It does not cover assistance that the noncustodial parent receives based on his or her inclusion in the family as a noncustodial parent. Thus, the State may not reimburse itself for assistance given to the noncustodial parent, as a noncustodial parent, from child support paid for the children. However, if noncustodial parents of a TANF child are receiving assistance as the custodial parents or caretakers of another TANF child, they may be subject to separate assignment requirements. They might also have responsibility under individual State law to reimburse the State for assistance provided.

(g) Benefits and Supports From the WtW Program

Comment: A couple of commenters said that we should exclude noncash assistance paid through WtW funds from the definition of assistance. One commenter indicated that we had mentioned this exclusion in the preamble to the NPRM, but did not exclude it in the regulatory text. Another commenter expressed particular concern about child care assistance under WtW because States do not have the same authority to transfer WtW funds to the Discretionary Fund of the Child Care and Development Fund as they do with Federal TANF funds.

Response: Section 408(a)(7)(G) of the Act, which was added by the Balanced Budget Act, provides that noncash assistance paid by WtW funds "shall not be considered assistance." However, this exclusion is only for the purpose of the time limit, and the regulation at § 264.1 provides that we will not count months of receipt of noncash WtW assistance against an individual's Federal clock.

We do not believe that the statutory language supports a broader exclusion of WtW assistance from the definition of assistance. However, the general changes we have made to the definition of assistance in this final rule should help alleviate this concern. Further, we would point out that many of the TANF requirements (such as participation rates) do not apply to WtW because they apply only to the "State program funded under this part." This latter phrase refers to TANF only, not to WtW. (At the same time, the spending restrictions generally do apply to WtW, as they refer to grants under section 403 and WtW grants are provided under section 403(a)(5).)

The Department of Labor has received numerous questions from its grantees about the definition of "noncash" assistance and asked us to define the term in our rules. At the new § 260.32, you will find a definition for WtW cash assistance. If a benefit falls within the definition of assistance, but does not meet the definition of "WtW cash assistance," it would be "noncash" assistance. Examples of "noncash" assistance would include housing vouchers or a State version of food stamps. You will find additional discussion in the preamble for § 260.32.

(h) Transitional Services

Comment: We received a few comments suggesting that we should explicitly exclude "transitional assistance" or services in support of continued employment from the definition of assistance.

Response: We do not believe it is possible to exclude "transitional assistance" from the definition of assistance without substantially altering the basic time-limited nature of the TANF program, and we find no statutory basis for such an exclusion.

The concept of "transitional" services for families that get a job and are no longer eligible for regular benefits is

recognized in the statute at section 411(a)(5), which requires a report on expenditures and a description of the services provided. However, the language there only addresses "transitional services." Thus, it does not indicate that Congress envisioned a full array of transitional benefits, including ongoing needs-based payments, being available to former recipients.

To the extent that States provide only supports for working families, such as child care and transportation or work subsidies, or work-related services such as counseling, coaching, referrals, and job retention and advancement services under their transitional services programs, we already exclude those services from the definition of assistance. Also, we would exclude short-term benefits such as cash assistance to stabilize a housing situation as "nonrecurrent, short-term" assistance.

States wanting to provide ongoing transitional payments that meet the definition of assistance to former recipients have three options: (1) fund those programs under TANF as assistance, but use different need standards than they do for other forms of TANF assistance; (2) fund those programs with MOE money under a separate State program; or (3) transfer the funds from TANF under section 404(d). If they fund transitional benefits with State-only money, the Federal time limit will not apply, regardless of whether they provide the benefits within TANF or in separate State programs. States may also provide transitional services without invoking time limits by transferring funds to either the Discretionary Fund of the Child Care and Development Fund or the Social Services Block Grant.

(i) Housing and Related Benefits

Comment: One commenter said the short-term, one-time rules should exclude some of the former EA benefits for arrears and shelter.

Response: The proposed and final language would both exclude certain payments for rent arrears, utility arrears, security deposits and other shelter-related expenses that were previously covered in State EA programs.

However, we cannot categorically state that all former EA benefits would be excludable from the definition of assistance. For example, in some cases, States claimed shelter expenses under EA that addressed long-term, ongoing needs of families.

Comment: One commenter said that we should not consider housing and utilities to be part of "income support."

Response: We disagree with the comment. Housing and utilities have traditionally been major components in the definition of basic needs used in determining welfare payments. Further, the TANF statute provides no basis for excluding them from the definition of assistance under TANF. However, certain shelter or utility costs might be excludable under the two general exclusions (i.e., because they are "nonrecurrent, short-term" or they entail services such as counseling that do not provide income support).

(j) Foster Care and Child Welfare

Comment: A few commenters asked that we exclude payments for foster care, out-of-home placements, and substitute care from the definition.

Response: With regard to foster care or other out-of-home maintenance payments, we would note that such costs are not allowable TANF costs under section 404(a)(1) of the Act since they are not reasonably calculated to further a TANF purpose. However, in some cases, where a State previously covered such benefits under its IV–A plan, they could be allowable TANF costs under section 404(a)(2).

There are additional costs related to foster care or out-of-home maintenance payments that may be allowable and referred to, in short-hand, as foster care. For example, there are costs for family preservation activities, such as counseling, home visits, and parenting training, that would be allowable TANF costs because they are reasonably calculated to enable a child to be cared for in his or her own home.

There may also be other costs that were authorized under a State's EA program for which Federal TANF funds could be used, under section 402(a)(2). Examples include costs such as administrative costs for activities associated with determining whether an emergency exists and costs for the temporary placement of the child, if determined necessary, while an investigation takes place.

Comment: One commenter asked that we strengthen the definition of assistance to urge States to use this flexibility in order to maintain families intact, where services can achieve that end.

Response: Both the proposed and final definitions exclude certain services directed at family preservation and certain forms of crisis intervention from the definition of assistance. Some commenters would have liked us to go further and exclude foster care, substitute care, and out-of-home placements. As we just discussed, maintenance payments for foster care, substitute care, and out-of-home placements (except perhaps temporary emergency placements during an investigation of abuse) are not eligible TANF expenditures unless allowable under section 404(a)(2).

(k) Emergency Assistance

Comment: In different ways, a few commenters asked that we exclude assistance provided under the prior EA program from the definition of assistance. Among their underlying concerns were assistance that was paid for longer than 90 days, emergency shelter, and certain child welfare services.

Response: We can find no legal justification for categorically excluding prior EA benefits from the definition. The statute authorizes States to use Federal TANF funds for activities that were previously authorized under EA, but otherwise does not give EA special status.

Most assistance that was provided under EA is excludable under one or more of the general exclusions. However, there were EA programs that provided assistance to families for basic needs and extended periods of time. If we categorically excluded all prior EA benefits from the definition of assistance, we could be perpetuating some of the same problems that existed under prior law.

(l) Other Definitional Issues

Comment: One commenter requested exclusion of emergency shelters for victims of domestic violence; of particular concern was the potential running of the time-limit clock when individuals were receiving such assistance.

Response: Depending upon the form and duration of this assistance, it might be excludable under one of the general exclusions we provide. We do not think a special, categorical exclusion is justified for this type of benefit.

However, we would point out that, under section 402(a)(7) of the Act, known as the Family Violence Option, States may waive program requirements, including time limits, for victims of domestic violence. If States exceed the 20-percent cap on time-limit exceptions as the result of granting such waivers, they may be eligible for reasonable cause. You should see the prior discussion entitled "Treatment of Domestic Violence Victims" and the regulatory text at subpart B of part 260 for additional information.

Comment: One commenter expressed concern about inclusion of relatively insignificant amounts of assistance and the negative effect of such a policy on

a family's willingness to seek assistance in light of time limits.

Response: While we understand the commenter's concern, we have no basis for protecting families that receive small amounts of assistance from the time limits; nothing in the statute or legislative history suggests that a family would have to be receiving a threshold payment level in order to be considered to be receiving assistance.

We have some early indication that families who have other income and are eligible for smaller amounts of assistance are not necessarily choosing to forego aid in order to reserve their months of assistance. We will be paying attention to this issue over the coming months.

Comment: One commenter expressed concern about a broad definition of assistance because other programs might count any aid in the form of "assistance" as income in determining eligibility for benefits.

Response: We must create a definition that conforms with the TANF statute and the statutory intent of the TANF program. In that context, we cannot assure that our definition will have no negative spill-over effects on other programs. However, the additional exclusions from the definition in the final rule should alleviate this concern. Further, if we find out that definition is having adverse effects on other programs, we are willing to work with the other programs in exploring ways to resolve such problems. For example, we have worked with the Office of Child Support Enforcement in revising guidance on the child support distribution rules so that the interim definition of TANF assistance did not inadvertently cause child support collections intended for families to be diverted to government coffers.

Comment: One commenter asked that we explicitly exclude supportive services provided to applicants from the definition of assistance, particularly when the case does not get approved for regular TANF benefits.

Response: We do not believe it is necessary to add this situation as a separate exclusion. We would expect such applicant services to be covered by the exclusion for nonrecurrent, short-term benefits or as supports for working families. Also, if we explicitly excluded applicant benefits, we might create an incentive for States to leave a case open rather than to complete the eligibility determination process. We would not want to create such an incentive; it is important for States to act on applications and provide assistance in a timely manner.

Comment: One commenter said we should clarify the definition of assistance to exclude such items as State tax refunds. A few commenters specifically suggested that we exclude earned income tax credits.

Response: We have excluded refundable earned income credits, but have otherwise not given special consideration to tax refunds in the definition. We had two basic concerns. First, we did not want to suggest that tax refunds were categorically appropriate as either Federal TANF or State MOE expenditures. It would depend on what the nature and purpose of the "refund" was. Any payments have to meet at least two tests—be an "expenditure" and be consistent with the purposes of the program. In the case of MOE, it would also have to be targeted at needy families. We believe a refundable earned income credit can meet these tests. However, the vast majority of tax refunds probably would not. For example, if a family gets a refund of its income taxes because of over-withholding, that refund check does not represent an allowable expenditure for Federal TANF or State MOE purposes. If there were tax refunds (analogous to refundable tax credits) that were allowable expenditures for TANF-related purposes, they would be included or excluded from the definition of assistance based on the existing principles and language in the definition.

We provide an exclusion for refundable earned income tax credits because we consider them a work support rather than basic income support. They normally serve to compensate low-income working families for some of the tax-related costs of employment. Thus, they more closely resemble work supports than traditional welfare payments.

(m) Tracking of Exclusions

Comment: A number of commenters objected to language in the preamble of the NPRM indicating that we would track State expenditures on assistance and nonassistance and look more closely if we found a large portion of program resources being spent on "nonassistance." We also received a few comments saying that we needed to collect more information on State TANF and MOE expenditures in order to maintain the integrity of the program and protect the interests of needy families.

Response: In the preamble of the proposed rule, we expressed concern that information showing large amounts of expenditures on nonassistance might indicate that the flexibility we provided in the definition of assistance might be undermining the goals of the legislation. We believe this is a valid concern and have not changed either the reporting requirements or our plans to look at this information. In fact, because we have significantly narrowed the definition of assistance (and thereby the categories of benefits and supports on which State must report disaggregated and aggregate data), we have decided to strengthen the fiscal reporting requirements. You will find a discussion of these changes in part 265 and the specific changes in Appendix D.

We are not saying that we will automatically change the definition of assistance or take other action if we find large amounts of resources on "nonassistance." In fact, commenters noted some valid reasons why we might expect to see growth in the amount of "nonassistance" as welfare reform progresses. For example, we might see increasing investments in interventions and prevention strategies (such as work supports, case management, mentoring, and job retention services). Thus, we would not presume that growth in "nonassistance" was inappropriate. However, we would want to understand and be able to explain the reason for the growth.

At this point, we are not going to prejudge State actions or write rules that unduly limit State flexibility to develop innovative programs that can effectively serve their needy families. However, in light of our responsibility for ensuring program accountability, the evolving and increasingly diverse nature of State TANF and MOE programs, and the flexibility inherent in these rules, we believe it is appropriate to gather information and monitor what is happening.

Section 260.32 What Does the Term "WtW Cash Assistance" Mean? (New Section)

This is a new section in the final rule. As we discussed briefly in the last section, the Department of Labor has received numerous questions about the definition of the terms "cash assistance" and "noncash assistance" because if assistance provided under WtW is noncash, it does not count against the TANF time limit. Therefore, at the request of the Department of Labor, we have added a definition of "WtW cash assistance" in this new § 260.32. This definition (in conjunction with the regulation at § 264.1(b)(1)(iii)) clarifies the circumstances under which benefits received by a family under WtW count against the TANF 60-month time limit. By statute (section 408(a)(7)(G) of the

Act), WtW "noncash assistance" does not count for this purpose.

In defining "WtW cash assistance" (i.e., what does count), we started with the presumption that, to be considered "WtW cash assistance," a benefit must fall within the definition of "assistance." Thus, services, work supports, and nonrecurrent, short-term benefits that are excluded from the definition of assistance at § 260.31(b) are not "WtW cash assistance." Also excluded are supportive services for nonworking families. Although they are assistance, these benefits are services designed to meet specific nonbasic needs and thus are not like cash.

Then, the definition clarifies what types of "assistance" under WtW would be considered "WtW cash assistance." First, it includes assistance designed to met a family's ongoing, basic needs. Second, it includes such benefits as cash assistance to the family, even when provided to participants in community service or work experience (or other work activities) and conditioned on work; the Conference Report (H. Rept. 105–217) specifically mentions "wage subsidies" as an example of WtW "cash assistance." Finally, our definition incorporates both cash payments and benefits in other forms that can be legally converted to currency (e.g., electronic benefit transfers and checks).

This definition does not limit the types of WtW benefits for which families that have received 60 months of TANF benefits are eligible. Under § 264.1(a)(3), State and local agencies may provide cash and noncash WtW assistance and other benefits to such families beyond the 60-month limit on assistance.

Section 260.33 When Are Expenditures on State or Local Tax Credits Allowable Expenditures for TANF-Related Purposes? (New Section)

As discussed previously, in § 260.30, we have added a definition of "expenditure" that helps define what would be a qualified expenditure of Federal TANF funds or State MOE funds. Within this definition of "expenditure," we indicate that refundable tax credits could be an expenditure. The purpose of this section is to clarify how to determine the amount of allowable expenditures in this situation. More specifically, it says that, for an earned income tax credit or other allowable credit, we would count as an expenditure only the State's actual payment to the family for that portion of the credit that the family did not use to offset their tax liability.

The family generally determines its income tax liability by following a number of basic steps. First, the family determines its adjusted gross income (income subject to a State's income tax). Then it applies any allowable exemptions and deductions to reduce the adjusted gross income. The net figure is the total amount of income that is subject to taxation. The taxable income is the basis for determining the amount of taxes owed. Then, the family applies any allowable credits to reduce the amount of taxes that it owes.

For example, a wage earner qualifies for a $200 earned income tax credit. The family's tax liability prior to the application of any credits is $75. When reconciling at the end of the income tax year, the eligible family uses the first $75 of the credit to reduce its State income tax liability to zero. If the State elects to refund any part of the remaining $125 in EITC, then the amount that it actually pays out to the family is a qualified expenditure and counts toward the State's TANF MOE. The $125 represents an actual outlay from State funds to provide extra money to the family. In this regard, the State has spent its own funds to provide a benefit to the family that is consistent with a purpose of TANF.

For emphasis, this section also reiterates that, in order to count as an expenditure of Federal TANF funds or State MOE funds, the purpose of the tax credit program must be reasonably calculated to accomplish one of the four purposes of the TANF program. We recognize that tax credits might be an appropriate and highly efficient method for getting benefits to needy families and want to support those efforts. In particular, State earned income tax credits provide valuable supports and incentives for low-income working families, and we do not want to discourage more States from establishing these policies. At the same time, we want to be sure that our policies support the goals of TANF and promote continued State investments in needy families.

Also, because tax credits represent an area of significant interest to States, the Congress, and fiscal authorities, we have added new lines to the TANF Financial Report that will tell us how many Federal and State dollars are going to refundable earned income tax credits or other refundable State and local credits.

The mere fact that the State issues a tax refund check to a taxpayer does not necessarily indicate that the family has received a refundable tax credit. For example, a TANF-eligible family could receive a refund check simply because the aggregate amount withheld from its paychecks exceeded its tax liability. Such a refund would not meet the definition of a refundable EITC.

For example, assume an individual has a $75 State income tax liability for a year. Yet, through withholding, he or she paid a total of $150 in State income taxes throughout the year. After reconciliation at the end of the income tax year, the amount that the State owes the individual due to tax withholding is not considered a refundable tax credit. Nor is the return of an individual's overpayment of taxes an expenditure of the State.

In determining the amount of MOE that may be claimed, all credits would be subtracted from the amount of the tax liability. The family's tax liability is the amount owed to the State prior to any adjustments for credits or payments. Any excess credit remaining that the State refunds to the family may count as an expenditure if the program for tax credits is reasonably calculated to accomplish a purpose of the TANF program.

Taking another example, suppose the wage earner, who has paid $150 through withholding, actually qualifies for an earned income tax credit of $200. The $125 portion of the credit that exceeds the individual's $75 State income tax liability could qualify as an expenditure if the State pays it out to the family. The $150 withheld is irrelevant to the calculation because this does not represent the family's actual income tax liability. If the family were to receive a $275 refund, $125 (the balance remaining of the EITC after the tax liability is subtracted) would qualify as an expenditure.

Tax relief measures, including nonrefundable tax credits, as well as exemptions, deductions, and tax rate cuts, that serve only to offset a family's income tax liability do not qualify as expenditures.

In addition, tax credits that serve to rebate a portion of another State or local tax, including sales tax credits and property tax credits, are not expenditures under the definition of expenditure at § 260.30. This definition is consistent with longstanding Federal policy on the meaning of expenditure, as reflected in the single definition for outlays and expenditures at 45 CFR 92.3.

Also, if a State administers more than one tax credit program allowable for Federal TANF or State MOE purposes, the State may count as an expenditure the amount by which the combined value of the allowable credits exceeds a TANF-eligible family's State income tax liability prior to application of all allowable credits.

The questions about State tax credits generally arose in the context of what is a "qualified State expenditure" for MOE purposes. In particular, the issue principally centered on whether States might count the portion of an earned income credit attributable to revenue loss toward their MOE. To properly address this issue, it is important to note that, in addition to the "eligible families" requirement discussed at § 263.2, the statute requires two key criteria to be met for MOE purposes. These criteria are: (1) the State's cost must be an expenditure; and (2) the expenditure must be reasonably calculated to accomplish a purpose of the TANF program. The second criterion is not a difficult standard to meet. States just need to be able to demonstrate that the specific tax benefit program is "reasonably calculated" to accomplish a purpose of the TANF program. Because more questions were raised as to what is an expenditure, this issue required more extensive deliberation.

To consider fully the argument that the entire cost of an earned income credit might represent an expenditure, we had to consider this issue within the broader framework of the full range of potential tax relief measures. Since we published the NPRM, we have received several inquiries regarding whether the cost of other tax relief measures were expenditures for MOE purposes.

An earned income credit is but one example of a tax relief measure. Some States also have other credits available to residents. These include, but are not limited to, property tax and homestead credits, child and dependent care credits, sales tax credits, credits for families that purchase a car seat, and credits for individuals with significant medical expenses. Tax relief also takes the form of income tax deductions and exemptions. Some States also offer tax credits to investors and businesses, e.g., credits that help or promote employment of low-income residents such as a rent reduction program credits, neighborhood assistance act credits, an enterprise zone act credits, day-care facility investment tax credits, and major business facility job-tax credits.

Few of these activities result in refunds in excess of any tax liability (whether it be income, sales, property tax liability). But, all of these activities cost the State lost tax revenue. Therefore, we had to consider whether lost revenue equals an expenditure. While the statute under 409(a)(7) uses the term "expenditures," it does not define it. However, since 1988, when the Department issued its common administrative rule at 45 CFR 92.3, the term expenditures has been defined as outlays, for purposes of Federal grant funds. Because Congress did not provide another definition of expenditure in the TANF statute, we have presumed that the existing regulation defining expenditure as an outlay is applicable.

To outlay is to expend, spend, lay out, or pay out. We therefore do not consider that a decrease in a State's revenue associated with a tax credit program or other tax relief measure meets the common rule definition of an "expenditure." Accordingly, we conclude that tax provisions that only serve to provide a family with relief from State taxes such as income taxes, property taxes, or sales tax represent a loss of revenue to the State, but not an expenditure. However, the portion of a tax credit that exceeds a family's income tax liability and is paid to the family is an expenditure. That expenditure would count toward a State's TANF MOE requirement if it is reasonably calculated to meet a purpose of the TANF program.

Arguably, accepting less revenue (taxes) from the income of families (or business), provides a financial benefit to the family (or business) by allowing them to retain a greater share of their own money. As such, tax relief activities in general can serve to complement welfare reform efforts. However, tax relief measures that solely provide a family (or business) with relief from various State taxes are not expenditures.

In determining that the common rule Federal definition of expenditures was appropriate to use in the TANF context, we also examined the broader policy implications. Including nonrefundable credits and other tax relief measures that served solely to reduce tax liability could redirect Federal TANF and State MOE expenditures away from the neediest families (who get no direct benefit from nonrefundable credits) and could allow States to claim as MOE an extremely wide range of tax cuts. We do not think this result would be consistent with the intent of TANF.

At § 263.2, you will find additional discussion about the treatment of tax credits and other tax provisions.

Section 260.35—What Other Federal Laws Apply to TANF? (New Section)

As we indicated in the section of the preamble entitled "Recipient and Workplace Protections," a number of commenters expressed concerns about the NPRM's failure to support the protections available to TANF recipients under Federal nondiscrimination and employment laws. We added this section to the regulations in response to those comments. Please see the earlier preamble section for a more detailed discussion of the commenters' concerns and our response.

Section 260.40—When Are These Provisions in Effect? (§ 270.40 of the NPRM)

Background

This section of the proposed rules provides the general time frames for the effective dates of the TANF provisions. As we noted in the NPRM, many of the penalty and funding provisions had statutorily delayed effective dates. For example, most penalties would not be assessed against States in the first year of the program, and reductions in grants due to penalties would not occur before FY 1998 because reductions take place in the year following the failure. We referred readers to the discussion on the individual regulatory sections for additional information.

We also made the important point that we did not intend to apply the TANF rules retroactively against States. We indicated that, with respect to any actions or behavior that occurred before final rules, we would judge State actions and behavior only against a reasonable interpretation of the statute.

As we reviewed the comments, we noted a discrepancy between this preamble discussion and the proposed regulatory text. The preamble indicated that States would operate under a "reasonable interpretation of the statute" until issuance of final rules; the regulatory text said that the "reasonable interpretation" standard would apply until the "effective date" of the final rules. As you will see in the regulatory text at § 260.40 of this final rule, the correct policy is that the "reasonable interpretation" standard applies to all State behavior prior to October 1, 1999, the effective date of these rules.

Also, in the proposed rule, at § 270.40(a), we incorporated language explaining when the statutory requirements went into effect for States implementing their TANF programs. Because States all implemented their TANF programs by July 1, 1997, as required by statute, this language is obsolete, and we deleted it from the final rule.

Comments and Responses

We received several comments on this section of the rule. Commenters' greatest concern was the effective date of the proposed rule.

Comment: A significant number of commenters asked that we delay the effective date of the final rule to allow

States time to implement all the regulatory provisions, e.g., to change their administrative rules, conduct staff training, make necessary computer systems modifications, and ensure data validity. Clearly, the major area of concern was the States' ability to implement new rules on data collection and reporting. We received three dozen comments that specifically asked for a phase-in period for meeting the reporting requirements.

A number of commenters did not offer a specific suggestion as to how long this phase-in period should be. Among the commenters who did make suggestions, the suggested period of time ranged from 9 months to 2 years. The most common suggestion was 12 months. Some commenters noted that States would be simultaneously addressing Year 2000 compliance problems and would need added time for that reason.

Response: In response to those comments, we have decided to make the effective date of the final rule the beginning of the next fiscal year. Our initial inclination was to make the rule generally effective within two to three months of publication, but to lag the data reporting requirements an additional six months. However, we realized that we could not successfully implement some of the general provisions until we had the revised data reporting in place. For example, we could not adjust a State's work participation rates based on the new welfare reform waiver provisions before the new reporting took effect. Also, many of the significant provisions in this rule (including the caseload reduction credit and the administrative cost caps) would be difficult to implement part way into a fiscal year.

To clarify the meaning of this effective date, States will continue program and fiscal reporting under the "emergency reporting" provisions for assistance provided, and expenditures made, through September 30, 1999. The last reports under this old system will be due November 14, 1999. States will begin reporting under these rules and the forms in the appendices effective with the first quarter of fiscal year 2000. The first TANF Data and Financial reports under these new requirements will be due February 14, 2000.

The timeframes we have provide in this final rule are fairly rigorous. Also, they are substantially shorter than many States requested. However, we think that States have sufficient resources to meet these deadlines, and they will receive our continued support in doing so. Any further delays could undermine the purposes of the law.

At the same time, we recognize that Y2K compliance and these new TANF requirements may be placing extraordinary, simultaneous demands on State staff and resources. For States that commit significant resources to achieve Y2K compliance in time, we have added a reasonable cause criterion at § 262.5(b)(1). This new provision will provide some penalty relief to States that cannot report one or both of their first two quarters of TANF data on time due to Y2K compliance activities. You will find additional discussion of that decision at §§ 262.5, 265.5, and 265.8.

Comment: Several commenters expressed support for our decision not to apply the rules retroactively. A few commenters expressed concerns about the "reasonable interpretation" standard we intended to apply prior to issuance of rules was too strenuous. One said we should exempt States from "all but the most flagrant program infractions." Another expressed concerns about the level of Secretarial discretion in such a standard and the lack of clear criteria about what it meant. Another asked that we accept any behavior that did not "contradict any provision of the law, court decisions or due process."

Response: This section of the rule retains our proposal to judge State actions prior to the effective date of these rules under a "reasonable interpretation of the statute" standard. We understand the commenters' interest in clearer criteria. However, the standard in the rule is a term of art and does in fact give most parties a very good sense of where one would draw the line. Also, to develop very specific criteria at this point would in fact amount to retroactive rulemaking, which we promised we would not do.

At the same time, we want to assure States that we recognize that this statute is complicated and do not intend to penalize anyone who has exercised reasonable discretion and judgment during the period before final rules take effect.

For example, we understand that there is a broad range of views about the interpretation of section 415 on continuation of waiver policies. Thus, in determining whether a State is liable for a penalty for failing work participation rates for FY 1997, 1998, or 1999, we would give substantial deference to the State's proposal for rate adjustments based on waiver policies that it continued.

Also, we point out that States have the opportunity to dispute any penalty finding through the administrative processes available at part 262. These processes provide a vehicle for addressing and resolving any disagreements about whether a State was operating under a "reasonable interpretation of the statute."

We disagree with that the view that the standard we proposed is too strenuous. We do not necessarily want to provide cover to States that pushed the envelope beyond reasonable bounds in terms of interpreting the statute.

Subpart B—Domestic Violence

As we have noted earlier, we decided to consolidate the regulatory provisions on domestic violence in this new subpart to part 260. You can find a discussion of these provisions and the comments received on the proposed rule in the earlier section of the preamble entitled "Treatment of Domestic Violence Victims."

Subpart C—Waivers

As we have noted earlier, we decided to consolidate the regulatory provisions on section 1115 waivers in this new subpart to part 260. You can find a discussion of these waiver provisions and the comments received on the proposed rule in the earlier section of the preamble entitled "Waivers."

VI. Part 261—Ensuring That Recipients Work

Section 261.1—What Does This Part Cover? (§ 271.1 of the NPRM)

This section identifies the scope of part 261 as the mandatory work requirements of TANF.

We did not receive any comments that relate solely to the scope of this part.

Section 261.2—What Definitions Apply to This Part? (§ 271.2 of the NPRM)

This section cross-references the general definitions for the TANF regulations established under part 260. We did not receive any comments on this section. We have responded to cross-cutting comments under other sections of this part.

Subpart A—What Are the Provisions Addressing Individual Responsibility?

During our extensive consultations, a number of groups and individuals asked how the requirements on individuals relate to the State participation requirements and penalties. To help clarify what the law expects of individuals (as opposed to the requirements that it places on States), we have decided to outline a recipient's statutory responsibilities as part of this regulation. In so doing, we only paraphrase the statute, without interpreting these provisions. Inclusion of these provisions in the regulation does not indicate our intent to enforce these statutory provisions; rather, we

have included the requirements in the regulation for informational and contextual reasons. Nevertheless, our expectation is that States will comply with these requirements.

Section 261.10—What Work Requirements Must an Individual Meet? (§ 271.10 of the NPRM)

PRWORA promotes self-sufficiency and independence by expanding work opportunities for welfare recipients while holding individuals to a high standard of personal responsibility for the support of their children. The legislation expands the concept of mutual responsibility, introduced under the Family Support Act of 1988. It espouses the view that income assistance to families with able-bodied adults should be transitional and conditioned upon their efforts to become self-sufficient. As States and communities assume new responsibilities for helping adults get work and earn paychecks quickly, parents face new, tougher work requirements.

The law imposes a requirement on each parent or caretaker to work (see section 402(a)(1)(A)(ii) of the Act). That requirement applies when the State determines the individual is ready to work, or after he or she has received assistance for 24 months, whichever happens first. For this requirement, the State defines the work activities that meet the requirement.

In addition, there is a requirement that each parent or caretaker participate in community service employment if he or she has received assistance for two months and is neither engaged in work in accordance with section 407(c) of the Act nor exempt from work requirements. The State must establish minimum hours of work and the tasks involved. A State may opt out of this provision if it chooses. A State may impose other work requirements on individuals, but there is no further Federal requirement to work.

Readers should understand that these individual requirements are different from the work requirements described at section 407 of the Act. Section 407 applies a requirement on each State to engage a certain percentage of its total caseload and a certain percentage of its two-parent caseload in specified work activities. For the State requirement, the law lists what activities meet the requirement. A State could choose to use this statutory list for the work requirement on individuals described above, but is not required to do so. Subpart B below explains more fully what the required work participation rates are for States and how we calculate them. Subpart C explains the work activities and the circumstances under which an individual is considered "engaged in work" for the purpose of those rates.

We made a minor change to the text of the regulation from the NPRM, removing the reference to the date that the community service employment provision took effect, since that date has already passed.

In addition to the comments discussed below, we received several comments in support of the language that we used in this section.

Comment: A few commenters suggested that this section should reference the fact that these work requirements must be consistent with the provisions of section 407(e)(2) of the Act, exempting a single custodial parent who cannot obtain needed child care from work.

Response: We agree that the work requirements on individuals should more clearly refer to the child care exception and have amended § 261.10(a) and (b) accordingly.

Comment: One commenter urged us to specify that individuals in active military service or participating in a National Community Services Act program be considered to be meeting the individual work requirement.

Response: As we indicated above, it is the State's prerogative and responsibility to define the activities it considers to meet these requirements; therefore, we have not modified the regulations in this area.

Comment: One commenter expressed concern that States will classify recipients prematurely as "job-ready" and urged us to ensure that States assess the needs of recipients properly.

Response: The statute vests responsibility for determining when a recipient is "job-ready" in the State. It requires each State to assess the skills, prior work experience, and employability of each recipient who is either 18 years of age or who has not completed high school (or equivalent) and is not attending secondary school (see § 261.11).

We agree with the commenter that it is important for States to assess individuals adequately before requiring them to work or engage in any activity; however, as we indicated above, this section of the regulation is intended to paraphrase the statute rather than to interpret it. We have included these provisions to clarify the differing work expectations that the statute imposes on individuals and States.

Section 261.11—Which Recipients Must Have an Assessment Under TANF? (§ 271.11 of the NPRM)

Each State must make an initial assessment of the skills, prior work experience, and employability of each recipient who is at least age 18 or who has not completed high school (or equivalent) and is not attending secondary school.

With respect to the timing of assessments, the State may make the assessment within 30 days of the date on which the individual is determined to be eligible for assistance, but may opt to increase this period to as much as 90 days.

Several commenters expressed support for the inclusion of this section in the regulations.

Comment: One commenter urged us to define what an appropriate assessment is to ensure that the examination of each recipient is thorough and sensitive to barriers that a recipient may hesitate to identify, such as domestic violence or substance dependence. Another suggested including guidelines or standards for assessments. Others urged us to indicate how we would address a State's noncompliance with this provision or to include a penalty related to this requirement.

Response: Because we have included this provision in the regulations for informational purposes, it would be inappropriate to define its terms or include standards. We expect States to comply with the requirements of this subpart, but including them in the regulations does not indicate our intent to create regulatory expectations or to enforce these statutory provisions. We do not have the authority to add a penalty related to this requirement.

Comment: One commenter suggested that we do not have authority to require assessment of recipients. Others expressed concern about which clients must be assessed and urged us to interpret the requirement to apply only to certain recipients, such as those who are subject to work requirements.

Response: Section 408(b)(1) of the Act requires the State to assess each recipient who is at least age 18 or who has not completed high school (or equivalent) and is not attending secondary school. The regulations reflect this language. Because we have included this provision for informational purpose, we do not think it is appropriate to interpret the statute further in this area.

Comment: One commenter thought that the regulations lacked clarity concerning the timing of assessments for

TANF recipients who had been receiving AFDC compared to the timing for those who become eligible for assistance after the State began its TANF program. Another urged us to allow States more time for conducting assessments.

Response: Because the statute specifies the timeframes in which States may comply with the requirement for an assessment, we do not think it is appropriate to modify those timeframes. However, we agree that it was confusing to describe two different assessment periods for different segments of a State's caseload. Since all States should already have conducted assessments of any recipients that they converted from AFDC to TANF, we have included only the description of the assessment period for new TANF cases in these regulations.

Section 261.12—What Is an Individual Responsibility Plan? (§ 271.12 of the NPRM)

A State may require individuals to adhere to the provisions of an individual responsibility plan. Developed in consultation with the individual on the basis of the initial assessment described above, the plan should set forth the obligations of both the individual and the State. It should include an employment goal for the individual and a plan to move him or her into private-sector employment as quickly as possible. The regulation includes more detailed suggestions for the content of an individual responsibility plan.

Comment: One commenter, acknowledging the ultimate goal of private-sector employment, thought that the individual responsibility plan should recognize and address all barriers to employment, such as mental health or literacy problems. Another commenter suggested that the State's responsibilities to the individual should be more explicit. Another commenter thought that paragraph (d) did not accurately reflect the statute.

Response: We agree that the plan should include whatever activities the State, in consultation with the individual, deems appropriate for overcoming barriers to employment. We reiterated the statute's list of possible plan obligations in paragraph (b) as examples, not as an exhaustive list. We think that paragraph (d) ensures that the plan will describe the State's obligation to the individual. States have the flexibility to draft the plan as explicitly as they find appropriate. We also understand the commenter's concern about the accuracy of paragraph (d) and have amended it to reflect the statute's references to services that enable an individual to obtain and keep employment and to job counseling.

Comment: Some commenters thought that we had overstepped our authority by including anything in the regulations about individual responsibility plans or that our language was too restrictive, preventing States from including plan requirements that do not relate to work. Others commended our inclusion of this section.

Response: As we indicated above, we have included this provision for informational and contextual purposes. In doing so, we paraphrased requirements specified in the statute. For this reason, we do not think we have overstepped our authority or that the language is more restrictive than the statute. Moreover, neither the regulations nor the statute prohibits a State from including in the individual responsibility plan other requirements that it finds appropriate for the individual.

Section 261.13—May an Individual Be Penalized for Not Following an Individual Responsibility Plan? (§ 271.13 of the NPRM)

If the individual does not have good cause, he or she may be penalized for not following the individual responsibility plan that he or she signed. The State has the flexibility to establish good cause criteria, as well as to determine what is an appropriate penalty to impose on the family. This penalty is in addition to any other penalties that the individual may have incurred.

We received comments expressing support for the inclusion of this section in the regulations.

Comment: Several commenters urged us to ensure that the good cause exception referred to in this section protects a recipient from penalty where the individual failed to follow the individual responsibility plan due to a violation of employment laws, such as sexual harassment or other forms of job discrimination. Another suggested we define the term "good cause" to give States guidance about the appropriate circumstances for imposing a penalty and urged a broad definition to cover the many barriers to employment that welfare recipients face. Another commenter wanted us to ensure that victims of domestic violence are protected from penalty, i.e., to define good cause to cover these individuals, regardless of whether the State has adopted the Family Violence Option (FVO).

Response: We do not believe it is necessary to define "good cause" exceptions. States have substantial experience in this area based on prior law. We encourage States to recognize the special needs of victims of domestic violence elsewhere in the preamble. Although we recognize that it is optional for States, we promote adoption of the FVO. We also encourage States to coordinate their policies on good cause determinations to provide consistent protection for families.

While we have chosen not to regulate "good cause" criteria, in order to protect individuals from violations of other employment laws, we have included a new regulatory section at § 260.35 to reference employment protections that exist under other Federal laws. These laws apply equally to welfare beneficiaries and other workers.

Comment: One commenter thought the regulations should explicitly state that a State may define "good cause" differently in different subdivisions.

Response: As we indicated above, States have the flexibility to define "good cause" as they deem appropriate. Under section 402(a)(1)(A)(i) of the Act, they also have the flexibility to implement their programs differently in different parts of the State. Thus, a State could vary its good cause criteria from one subdivision to another. Since the language of this section tracks that of the statute, we do not think it necessary or appropriate to amend the regulatory text in this regard.

Comment: One commenter urged us to ensure that the individual responsibility plan includes the individual's right to challenge the contents of the plan.

Response: States may design individual responsibility plans as they determine suitable. Because we have included this provision for informational and contextual purposes, we do not think it is appropriate for us to expand upon the provisions of the statute, which we have tracked closely in this section. However, section 402(a)(1)(B)(iii) of the Act requires the State to provide opportunities for recipients who have been adversely affected to be heard in a State administrative or appeal process. States should consider when and how to accommodate this recipient right in the development and implementation of individual responsibility plans.

Section 261.14—What Is the Penalty if an Individual Refuses To Engage in Work? (§ 271.14 of the NPRM)

If an individual refuses to engage in work in accordance with section 407 of the Act, the State must reduce the amount of assistance otherwise payable to the family pro rata (or more, at State

option) with respect to any period during the month in which the individual refused, subject to good cause and other exceptions determined by the State. These exceptions include the statutory exception for single custodial parents of children under the age of six who cannot obtain needed child care, which is included in the regulations at § 261.15. The State also has the option to terminate the case.

In addition to the child care exception, each State may establish its own criteria for determining when not to impose a penalty on an individual, that is, when an individual has "good cause" for not engaging in work. States may also establish other rules governing penalties as needed.

Under the Family Violence Option, a State may waive work requirements in cases where compliance would make it difficult for an individual to escape domestic violence or would unfairly penalize individuals who are or have been victimized by such violence or individuals who are at risk of abuse. The State must determine that the individual receiving the program waiver has good cause for failing to engage in work.

The final regulations include a cross-reference to the State penalty for failure to impose sanctions in accordance with section 407(e) of the Act (at § 261.54). We added this reference for the convenience of the reader; it does not represent an additional requirement.

Comment: We received many comments urging us to change the language of the regulations concerning the pro rata reduction of a recipient's assistance. The commenters thought that the way in which we paraphrased the statute altered its meaning and excluded certain types of pro rata reductions. Most urged us to clarify that a State can make a pro rata reduction based on any reasonable method; some asked us to indicate that a pro rata reduction is based on the head-of-household's share of assistance or on the share of those refusing to work. A few commenters also noted that States should have the flexibility to define the timeframe for applying a pro rata reduction. Several commenters suggested that the NPRM inappropriately restricted a State's ability to impose a greater penalty.

Response: We recognize that the language we used in the NPRM may have caused confusion concerning the meaning of a pro rata reduction, and we have modified the regulations to reflect the statutory language more closely. It was not our intention to prescribe one method of proration or to proscribe other legitimate methods; a State may make a pro rata reduction based on any reasonable method. With respect to imposing a greater penalty, we think that the NPRM's regulatory text and preamble were very clear that a State could impose a penalty greater than a pro rata reduction, up to and including terminating the case, and thus have not substantially altered the regulations in that regard.

Comment: One commenter, concerned about the burden on caseworkers of tracking an individual's participation, urged us to establish specific, fixed penalties on an individual for certain periods of time for refusal to work. The commenter gave an example of reducing the grant by the individual's share for the first month of refusal and gradually increasing it.

Response: As we indicated above, a State may establish any method of pro rata reduction that it chooses that comports with section 407(e) of the Act. Since we do not intend to dictate one proration method over another, it would not be appropriate to adopt the penalty scheme that the commenter suggests.

Comment: Several commenters expressed the same concern in this section that they did in § 261.13 regarding the applicability of employment protections to welfare recipients. They urged us to ensure that good cause exceptions in this section protect recipients from penalty where the individual refused to work due to a violation of employment laws, such as sexual harassment or other forms of job discrimination. Others urged us to provide guidance about appropriate good cause exceptions.

Response: States have the flexibility to define "good cause" as they deem appropriate. Because of the States' extensive experience in this area, we think it is not necessary to provide specific guidance regarding what good cause exceptions a State should acknowledge. However, we have included a new regulatory section at § 260.35 to reference employment protections under other laws that apply to working welfare recipients. We certainly agree that welfare recipients should not have to choose between unsafe or discriminatory working conditions and losing benefits, especially where there are protections under Federal law.

Comment: A commenter urged us to exempt from the work requirements any foster parents with birth children in the home.

Response: The statute does not provide for an exemption from the work requirements for such individuals; however, States may define "good cause" as they find appropriate. Since the statute specifically gives States the authority to establish good cause and other exceptions, we do not intend to dictate specific good cause criteria, other than the child care exception provided for at section 407(e)(2).

Section 261.15—Can a Family Be Penalized if a Parent Refuses To Work Because He or She Cannot Find Child Care? (§ 271.15 of the NPRM)

A State may not reduce or terminate assistance to a single custodial parent caring for a child under age six for refusing to engage in required work, if the parent demonstrates an inability (as determined by the State) to obtain needed child care. This exception applies to penalties the State imposes for refusal to engage in work in accordance with either section 407 or section 402(a)(1)(A)(ii) of the Act. The parent's demonstrated inability must be for one of the following reasons:

- Appropriate child care within a reasonable distance from the individual's home or work site is unavailable;
- Informal child care by a relative or under other arrangements is unavailable or unsuitable; or
- Appropriate and affordable formal child care arrangements are unavailable.

This penalty exception underscores the pivotal role of child care in supporting work and also recognizes that the lack of appropriate, affordable child care can create unacceptable hardships for children and families.

We have substantially modified this section of the regulations, in part by moving much of what constituted § 271.15 under the NPRM to a new section, § 261.56. This new section specifies the State's responsibilities in carrying out the penalty exception, while § 261.15 describes the impact of the provision on the individual. We have also moved the State penalty provision associated with this child care exception (formerly § 274.20) to a newly created § 261.57. Our intent in making these changes is to preserve the informational and contextual nature of subpart A of part 261 and to make the State's responsibilities and the possible penalty associated with them easier to follow. In this section of the rule, we have added cross-references to these two new sections for clarity.

Readers can find all comments associated with this exemption in the preamble discussion for § 261.56.

Section 261.16—Does the Imposition of a Penalty Affect an Individual's Work Requirement? (§ 271.16 of the NPRM)

Section 408(c) of the Act, as amended by section 5001(h) of Pub. L. 105–33,

clarifies that penalties against recipients under TANF "shall not be construed to be a reduction in any wage paid to the individual." In the NPRM, we indicated that imposing such a penalty does not require the State to reduce the number of hours of work required, as it would otherwise do if the individual's wages decreased, due to the provisions of the Fair Labor Standards Act.

In the final rule, we have modified this section of the regulations to reflect the statutory language more precisely. This change does not signify any shift in our interpretation of the provision: we continue to believe that Congress intended to permit a State to sanction an individual who is subject to the Fair Labor Standards Act (FLSA) without also being forced to reduce the individual's required hours of work. FLSA requirements, including the Federal minimum wage, apply to any welfare recipients that meet the broad definition of "employees" under that law, which includes participants in many work activities. By indicating that a penalty does not reduce the individual's wages, the State does not need to recalculate hours of work subject to FLSA. A State is, of course, free to decide to reduce the work hours of a sanctioned individual or to reassign the individual to activities that are not subject to FLSA.

In addition to the comments described below, we received several comments expressing support for the inclusion of this provision in the regulations. Others indicated that some readers were confused by the intent of this section; we hope the explanation above and the change in the regulatory text have reduced this confusion.

Comment: Some commenters urged us to delete the last clause in § 271.16 of the NPRM, which indicated that a penalty would not result in a reduction in the number of hours of required work. Others asked us to substitute the word "participation" for the word "work" in that clause.

Response: We have removed the last clause from the regulation because we did not want to preclude a State from reducing an individual's hours of work.

Comment: Some commenters thought this provision would act as an incentive for States to penalize recipients to avoid the minimum wage requirements and urged us to monitor sanctions under this provision by collecting data on State sanctions. Another commenter inquired whether this provision applied where the penalty is disqualification of the individual from the program, such as for an intentional program violation.

Response: The commenters seem to be suggesting that a State would have an incentive to penalize a recipient because this provision prevents the State from considering the penalty to be a reduction in wages and therefore it could engage the recipient in hours of work for which he or she is not compensated. We do not agree. An individual's hours of work are established in accordance with the FLSA based on the benefits the family receives, long before and independent of the sanctioning process. The State may only impose a work sanction for failure to engage in required work. If an individual thinks that the State has penalized him or her inappropriately, he or she has recourse to appeal the sanction decision; section 402(a)(1)(B)(iii) of the Act requires the State to provide opportunities for recipients who have been adversely affected to be heard in a State administrative or appeal process.

With respect to monitoring sanctions and application of this provision, readers should understand that no individual is sanctioned "under this provision"; rather, this provision applies to any recipient who is sanctioned. Thus, no sanctioned recipient is considered to have had a reduction in wages as a result of the penalty.

Readers should also note that we have improved the information we are collecting about sanctions and should refer to Appendix A for further discussion of these data requirements.

Comment: Some commenters urged us to clarify that a penalty against a family is not a reduction in assistance or other payments. They thought the phrase "reduction in any wage paid to the individual" raised doubt about this point. One commenter specified that States should be relieved of FLSA liability regardless of whether the individual is in a wage or nonwage work assignment.

Response: We think the language of the provision is clear and does not need further interpretation. As we indicated above, the FLSA requirements apply to any welfare beneficiaries that meet the broad definition of "employees" under that law; thus, the term "wage" is the appropriate one to use.

Comment: One commenter thought we should specifically state that the FLSA does not apply where the State has sanctioned an individual, so as to protect a State from reducing an individual's hours out of fear of violating the FLSA to the point where he or she would no longer count toward the participation rate. As an alternative, the commenter suggested that we deem an individual's hours of work, as determined by the FLSA, as automatically meeting the work requirement or give States broader authority to include the value of other benefits when calculating an individual's work obligation.

Response: Because the FLSA includes other provisions not affected by this provision, it would not be accurate to state that the FLSA does not apply. We think the regulatory language explains the interaction of the FLSA and this provision adequately. Regarding the commenter's suggested alternative, the statute is very clear about the number of hours an individual must be engaged in work to count toward the participation rate (see subpart B). Regarding the comment suggesting broad authority for a State to include other benefits in calculating an individual's work obligation, this matter is governed by the FLSA and thus is outside the scope of these regulations.

Comment: One commenter urged us to clarify that, although a sanction would not result in a reduction in the number of required hours of work, it might result in a reduction in certain activities, in order to comply with Federal, State and local labor laws.

Response: As we have indicated, this provision is intended to avoid forcing a State to reduce the hours an individual must work because his or her benefits decreased as a result of a penalty imposed under TANF, as it would otherwise have to do in accordance with Federal labor law. If the State chooses to reduce the individual's hours of work, or to shift the individual to other appropriate activities, it has the flexibility to do so. If there are State or local labor laws that restrict the State's actions in this area, it is the State's responsibility to adhere to applicable laws.

Subpart B—What Are the Provisions Addressing State Accountability?

Section 261.20—How Will We Hold a State Accountable for Achieving the Work Objectives of TANF? (§ 271.20 of the NPRM)

Work is the cornerstone of welfare reform. Research has demonstrated that early connection to the labor force helps welfare recipients make important steps toward self-sufficiency. The rigorous work participation requirements embodied in the legislation provide strong incentives to States to concentrate their resources in this crucial area.

This summary section makes the legislation's focus on work and the requirements for work clear, while other sections address each of these areas in more detail.

This section describes what a State must do to meet the overall and two-parent work participation rates. It explains that a State must submit data to allow us to measure each State's success with the work participation rates. It notes that a State meeting the minimum rates will have a reduced MOE requirement, while a State failing to meet them risks a financial penalty.

We received only one comment relating to this section alone.

Comment: Regarding the reference to data that a State must submit for us to calculate the participation rates, the commenter contended that the process for calculating the participation rates is too complicated. As an alternative the commenter suggested that a State should calculate its own participation rate, which we should then review.

Response: Section 411(a) of the Act requires States to report to us various data necessary to calculate the participation rates. Therefore, we think that it is clear that Congress intended us to make the calculations of the participation rates and gives us the authority to specify the data elements we need. As we have done prior to the publication of final regulations, we will continue to work in partnership with States to ensure that data are accurate and correctly portray their participation rates.

Section 261.21—What Overall Work Rate Must a State Meet? (§ 271.21 of the NPRM)

Section 407(a) of the Act establishes two minimum participation rates that a State must meet beginning with FY 1997.

The first, the overall work rate, is the percentage of all families receiving assistance who must participate in work activities by fiscal year. This section lists the statutory overall participation rate that applies to each fiscal year.

The second is the work rate for two-parent families, which we address at §§ 261.23 and 261.24.

We received no comments concerning this section.

Section 261.22—How Will We Determine a State's Overall Work Rate? (§ 271.22 of the NPRM)

This section of the regulation restates in clear terms the participation rate calculation specified in the statute. In particular, without changing its meaning, we have phrased the denominator in a way that we think is easier to understand than the statutory language.

We received many requests for guidance concerning how, for purposes of the participation rates, we treat a family that the State exempts from work requirements.

A State has the flexibility to establish any exemptions it chooses; however, with two exceptions (discussed below), the legislation offers no room to remove categories of recipients from the denominator, as prior law did. PRWORA embodies the views that: (1) Work is the best way to achieve independence; and (2) each individual should participate to his or her greatest ability. As waiver projects have demonstrated, innovative State programs can often find meaningful ways for nearly every recipient to participate in work-related activities. Therefore, the statute and the regulation require nearly all families to be included in the calculation of the participation rates.

The two exceptions to this requirement are certain families that are subject to a penalty and, at State option, families in which a single custodial parent is caring for a child under 12 months of age. When directed by the State's reported data to do so, we will disregard from the calculation for a month—that is, not include in either the numerator or the denominator—families: (1) Receiving assistance that are subject to a penalty for refusing to engage in work required in accordance with section 407 of the Act, but that have not been subject to a penalty for more than three of the last 12 months; and (2) in which a single custodial parent is caring for a child under one year of age. The latter exception is limited by statute to a maximum of 12 months for any parent. Although the first exception is not a State option under the statute, a State may choose to include a sanctioned family in the rate even though it has been subject to a penalty for three or fewer months in the last 12 because the family is nevertheless working enough hours to count toward the participation rate. In such a situation, we would include the family in both the numerator and denominator of the calculation.

The policy described above with respect to families subject to a penalty is slightly different from that of the NPRM. We are removing "excepted" families from the entire calculation, rather than just the denominator. We have made this change after reexamining Congressional intent. We think it unlikely that very many individuals would have been subject to a sanction while still working sufficient hours to count in the numerator, but we believe it would not be consistent with Congressional intent to permit inclusion in the numerator but not in the denominator. By creating the exception to inclusion in the denominator, Congress intended to avoid penalizing a State when it tries to get a nonparticipating individual to participate. However, Congress did not intend to create an advantage for such a State by allowing "excepted" individuals to be included in the numerator when they were not in the denominator. Therefore, if a State wishes to count a family in the numerator, that family must also appear in the denominator.

The regulation makes clear that a State may count as a month of participation any partial months of assistance, if, in each full week of assistance in that month, an adult in the family is engaged in work for the minimum weekly average number of hours. These families are already included in the denominator since they are recipients of assistance in that month.

This provision ensures that a State receives credit for its efforts in the first and last months that a family receives assistance. Without it, a State would have an inadvertent incentive to start and end assistance as close as possible to the beginning of the month, rather than as families need it. We think that measuring work in full weeks of assistance during a partial month is consistent with the spirit of PRWORA. We have established the same policy for partial months of assistance under the two-parent rate at § 261.24.

In the preamble to the proposed regulation for this section, we included a significant discussion about the relationship among waivers granted under the Family Violence Option (FVO), work participation rates, and a State's access to penalty forgiveness under "reasonable cause." We recognized that there were circumstances under which a State should and would temporarily waive work requirements for domestic violence victims. Two questions we considered were: (1) How such waivers would affect the calculation of the participation rates; and (2) how they would affect a State's penalty liability.

As we discussed earlier in the preamble, instead of changing the basic calculation of the work participation rates, we chose to address this situation through our penalty liability determinations. We chose this targeted approach so as not to provide blanket exemptions for those who have ever suffered domestic violence, but instead to provide appropriate protections and supports for TANF recipients who need them.

Because of the nature of the comments we received on the domestic

violence provisions in the proposed rule, we decided to consolidate the discussion of those comments in the preamble and to consolidate the regulatory provisions in a new subpart B of part 260. You can find the consolidated preamble discussion in the earlier section entitled "Treatment of Domestic Violence Victims."

As the result of the comments and the changes we made to part 260 of the rule, we have also revised the language that was proposed at § 271.52(b)(1). Under the revised language, we no longer define the criteria for "reasonable cause" related to federally recognized domestic violence waivers in this section, but cross-reference the regulatory provisions in part 260. Also, we have added language to § 261.52 indicating we would take waivers of work requirements granted under subpart B of part 260 into account in deciding if a State is eligible for a penalty reduction based on the degree of its noncompliance. Please see § 261.52 for further discussion of these issues.

We received many comments concerning our proposal to redefine "family" to include in the participation rate any families the State has excluded (based on defining a family as "child-only") for the purpose of avoiding a penalty. We have removed this provision from this section, as well as from § 261.24 describing the two-parent participation rate. Please refer to the earlier preamble discussion in the section entitled "Child-Only Cases" for further discussion of this decision and the comments that relate to it.

Comment: One commenter thought that the overall participation rate as we described it in this section could be interpreted as either having a State average the 12 monthly rates or calculate a weighted average, taking caseload size into account.

Response: The statute does not provide for a weighted average in calculating the participation rates; rather, it specifically states that the annual rate is the average of the State's monthly rates for the fiscal year. Moreover, readers should understand that States are not responsible for calculating the participation rates. We calculate the rates based on the data that States report to us. For further discussion of the required data and reporting provisions, please refer to part 265 of this chapter.

Comment: Several commenters suggested that we exclude certain groups of individuals from the participation rate, in addition to those specified in the regulations. In particular, various commenters urged us to remove from the rate calculation: women in the third trimester of a pregnancy; cases that include a child and a grandparent who is over 60 years of age; families not receiving cash assistance; individuals working for employers that engage in discriminatory conduct; cases engaged in federally mandated administrative reviews prior to a sanction; and individuals who have received assistance for fewer than 60 days and therefore are not required to participate. Another commenter agreed with our statement that States should establish whatever exemptions they choose, but thought those State-exempted individuals should be removed from the rate calculation.

Response: As we indicated in the NPRM and the above discussion, we believe the statute is very clear regarding the calculation of the participation rates and does not give us the flexibility to exclude additional categories of individuals from the calculations. The participation rates are written in terms of "families receiving assistance" that include an adult, thus we could not limit the rates to those receiving cash assistance. (For further discussion of the definition of assistance, please refer to § 260.30 of this chapter.)

Concerning individuals in work activities where the employer engages in discriminatory conduct, again, we do not think we have the latitude to remove such families from the denominator; however, we fully expect States to conduct programs that are lawful and uphold employment laws that apply to working welfare recipients. Please refer to the section entitled "Recipient and Worker Protections" for a more detailed discussion of this issue.

It is not entirely clear to us what the commenter means by "federally mandated administrative review process prior to being placed in sanction." There is no longer a federally mandated conciliation process, as there was under the JOBS program. It is possible that the commenter is referring to the provision at section 402(a)(1)(B)(iii) of the Act, requiring an explanation in the State plan of how the State will provide opportunities for recipients who have been adversely affected to be heard in a State administrative or appeal process. If so, recipients appealing an adverse action may already be under a sanction and therefore would not be included in the rate, if they have not been subject to one for more than three months in the last 12. Further, there is nothing in the statute to suggest that State administrative or appeal process should be lengthy; on the contrary, we hope States will establish expedited processes, in the interests of both the families and the State. We think there is neither the need nor the authority to remove such families from the participation rates.

Regarding the commenter's concern that individuals are not required to participate in work activities until they have received 60 days of assistance, the commenter is confusing the requirement on individuals to work with the requirement on States to achieve certain participation rates. Although the activities may be the same, they are separate requirements under the law. Please refer to the discussion at § 261.10 for further explanation of this distinction.

The statute is clear in giving a State the flexibility to establish "such good cause and other exceptions" as it chooses, but does not remove those with good cause exceptions from the rate calculations. We encourage States to adopt fair and practical good cause exceptions. While we understand the commenter's concern that a State has no incentive to create good cause exceptions if the excepted families remain in the denominator, it is worth noting that the overall participation rate leaves room to grant good cause exceptions under a variety of different circumstances.

Comment: A commenter suggested that there should be follow-up on individuals for three months following employment and that such individuals should be included in the participation rate as an incentive to States to find employment for recipients. The commenter stated that currently individuals are not included in the rate once they become employed.

Response: Neither the statute nor the regulations excludes employed recipients from the participation rate, as long as they are still actually receiving TANF assistance. In fact, unsubsidized employment is the first work activity that permits TANF recipients to be considered "engaged in work" and other forms of employment immediately follow it. Moreover, recognizing that the participation rate calculations did not give States credit for those who became employed and left the welfare rolls, Congress created a "caseload reduction credit" for that purpose. (See subpart D for discussion of the Caseload Reduction Credit.)

We do require States to collect data on families no longer receiving assistance (please refer to § 265.3), but we believe it is burdensome and impractical to require all States to follow such families for any period of time. We do agree that this is important information in understanding the effect of the TANF program and encourage States to

conduct follow-up studies where possible. Also, we have designed the initial high performance bonus system to give us follow-up information on the employment of recipients without imposing a substantial new burden on State TANF agencies.

Comment: One commenter stated that the denominator of the participation rate changes daily and that we need a standardized formula to allow programs to meet their goals. Another asked whether the rate is calculated based on a sample or the universe of cases, suggesting that the universe was preferable where feasible.

Response: While the denominator of the participation rate can change from month to month, States will have ongoing access to information about their caseloads, which should enable them to adjust for shifts in the number and types of cases. The participation rates are based on monthly data of families receiving assistance that include an adult. Therefore, a family that receives assistance for even one day in a month contributes to the total number of families receiving assistance in that month. We think the participation rate calculations are quite clear. However, we have incorporated some opportunities in the penalty relief provisions to consider a State's special circumstances. For example, in reducing the work participation penalty, the final rule adds a new adjustment factor that could help States that substantially increase the number of participants, but fail the participation rate because they are experiencing significant caseload increases.

Regarding whether a State should report the universe of caseload data, § 265.5 permits a State to report participation and other data for the universe or a sample of cases and outlines acceptable sampling methods. States should weigh the advantages and disadvantages of sampling and make their own decisions about whether to report on a universe or sample basis.

Comment: One commenter urged modifying the regulations to ensure that, if one parent in a two-parent family is subject to a penalty but the other parent continues to work the minimum hours required for the overall participation rate, the family should count toward the overall rate. If the second parent subsequently is subject to a penalty, the commenter thought we should measure the months of sanction in the last 12 months separately for each parent, thus maximizing the time a family would be excluded from one or both participation rates.

Response: First, we think it is clear in both the statute and these regulations that families, and not individuals, are subject to penalties. The State has the flexibility to determine the amount of the penalty, up to and including terminating the case, but must impose a penalty that is at least a pro rata reduction of the family's assistance (see § 261.14 for further discussion of pro rata reductions). Thus, we would look at whether the family, not the individual, is a sanction case.

If the family continues to receive assistance and meets the standard for being "engaged in work" under the overall rate while being sanctioned, as it would in the commenter's example, then the State may choose to count that family in the numerator and denominator of the calculation. However, since it is a family and not an individual that is subject to a penalty, should the other parent subsequently refuse to work and the State take action, it would simply be a second sanction for the family and does not call for separate tracking for purposes of calculating the denominator.

Comment: One commenter objected to the fact that two-parent families are counted twice, once in the two-parent participation rate, and once as part of the overall rate. The commenter thought that two-parent families should be counted only in their own rate.

Response: The composition of the overall participation rate is statutory. The two-parent rate measures State success with that sub-population, while the overall rate measures success with the entire caseload of families that include an adult.

Comment: Several commenters expressed support of the provision excluding a single custodial parent caring for a child under 12 months of age from the participation rate calculation. However, some commenters thought that we should not tie the exclusion from the rate to whether the State has adopted the option not to require the parent to engage in work. In essence, they argue that there are two separate decisions: whether to require the parent to work and whether to exclude the parent from the rate. Others questioned whether this provision allows for a one-time exclusion of up to 12 months or whether the parent could be excluded again should he or she be caring for another child under one year old.

Response: Based on the comments and after reexamining the statutory provision, we agree that we need not link the State's option not to require a single custodial parent of a child under 1 to work to the exclusion of such parents from the rate calculations. The State can make separate decisions about exempting and excluding a family from its rate. The statute describes a certain individual, that is, "a single custodial parent caring for a child who has not attained 12 months of age" and then separately indicates that "such an individual" may be disregarded in calculating the participation rates. We have re-written the regulation to allow disregard of a family with such an individual, since the rates actually measure families and not individuals.

Regarding whether this is a one-time provision or is renewable, the law plainly states that a parent may be disregarded from the rate for not more than 12 months. We interpret this language to mean a cumulative, lifetime limit of 12 months for any single custodial parent, but not necessarily a one-time disregard. Thus, if a parent were disregarded from the rate for four months while caring for one child under a year old, he or she could be disregarded for as much as 8 months with a subsequent baby.

Comment: We received many comments in support of the provision to give a State credit for a month of participation if the individual is engaged in work for the minimum average number of hours in each full week the family receives assistance in a partial month; however, some commenters found the provision too narrow to accommodate States that assign an individual to an activity weeks after the beginning of a benefit period. Some urged us to count an individual's time in assessment toward the participation rate. Another suggestion was that we should only consider a month of assistance (partial or full) to begin from the time the individual is assigned to a countable activity. One commenter thought we should only count families in the denominator from the first full month of assistance. One commenter asserted that we should include only recipients, and no applicants, in the participation rate; thus, this provision would affect only partial months following approval of assistance.

Response: The law and these regulations permit participation in only 12 specific work activities to count toward the participation rates. (Please refer to subpart C.) While we appreciate the time it takes a State to assess an individual and assign him or her to an activity, we do not have the flexibility to add assessment to the list of allowable activities. By the same token, we cannot simply decide that some period of time for which an individual receives assistance—such as time prior to assignment in a work activity or a partial month of assistance—should not

be considered a period of assistance and therefore exclude the individual's family from the participation rate for that month. On the contrary, if a family receives assistance for any portion of a month, then we must include the family in the denominator of the participation rate for that month, subject to the caveat in the paragraph below.

With respect to the assertion that we should not include applicants in the participation rate, we agree that States should not be forced to count individuals in the participation rates while their applications are pending. At the same time, we do not want to deny States that are successful in moving applicants into work activities credit for their efforts. It is for this very reason that we wanted to give States credit in the participation rates for a partial month of assistance where an adult works at a level equivalent to the standard for a full month. Further, under these final rules, we will give States some discretion to decide when a family begins to receive assistance, for the purposes of the participation rates. If a State pays benefits retroactively, i.e., for the period between application and approval, the State would have the option to consider the family to be receiving assistance either during the retroactive period or only during the month of payment.

This comment included an example in which the State "prorated [benefits] from the date of application," even though it did not approve the application until about four weeks later. Each State has some flexibility to decide when benefits begin; in this example, the State chose the date of application. The statute is unclear whether receipt of assistance for a prior period is assistance in that prior month or only during the month of payment. Thus, when a State chooses to pay retroactively back to the date of application, it has the option to choose whether the recipient is receiving assistance during the month or part of the month covered by the retroactive payment. Because many States require applicants to engage in some form of work, such as job search, this partial month provision should prove to be an advantage for States that pay benefits retroactively for the application period.

Section 261.23—What Two-Parent Work Rate Must a State Meet? (§ 271.23 of the NPRM)

As in § 261.21, this section restates the minimum work participation rates for two-parent families established in the statute.

As States are aware, the two-parent participation rate increases sharply. Congress has high expectations that States will help the vast majority of adults in two-parent families find jobs or participate in other work activities. We note that most States had difficulty meeting the less ambitious JOBS participation rates for unemployed parent families (UPs), the primary two-parent cases under AFDC, and about half the States subject to the rates in FY 1997 failed the two-parent TANF participation rate. For several reasons, the new rates under TANF are much more demanding than they were under JOBS. First, the TANF rate is a "two-parent" rate, not a rate just for UPs. Secondly, the denominator includes much more of the caseload; it recognizes many fewer exemptions. Finally, PRWORA lifted the restrictions on providing assistance to two-parent families. Thus, in some States, many more two-parent families could be eligible for assistance and subject to the work requirements than under prior law.

We strongly encourage each State to consider carefully what it must do to get two-parent families working. In some cases, States may need to make substantial changes to their program designs. In the first few years of operating TANF, the participation rates are at their lowest and caseload reduction credits may significantly reduce the minimum required rates. We think it is important for States to capitalize on this initial period to invest in program designs that will allow them to achieve the higher participation rates in effect in later years. We intend to assist States in this endeavor through technical assistance and by sharing promising models as they emerge.

We received only one comment relating to this section.

Comment: A commenter urged us to eliminate the two-parent participation rate once the two-parent caseload represents less than five percent of a State's overall caseload.

Response: We do not have the authority to eliminate the participation requirement related to the two-parent caseload. The statue is very clear about the required minimum rates that States must achieve and the penalty associated with failing to meet participation rates. We have tried to give States some relief with respect to the demanding two-parent participation rate through both the structure of the caseload reduction credit and the penalty reduction provisions. Please refer to subparts D and E for further discussion of these areas.

Section 261.24—How Will We Determine a State's Two-Parent Work Rate? (§ 271.24 of the NPRM)

The regulations express the two-parent work participation rate in terms very similar to those we used for the overall rate. Any family that includes a disabled parent is not considered a two-parent family for purposes of the participation rate. Thus, we do not include such a family in the numerator or denominator of the two-parent rate.

It is important to note that, in accordance with the statute, we calculate both participation rates in terms of families, not individuals. Whether we include the family in the numerator depends on the actions of individuals, but an entire family either counts toward the rate or does not. In the case of a two-parent family, whether a family counts may depend on the actions of both parents.

In response to issues raised by the comments, and questions raised by States dealing with interim participation rate calculations, we have added language to the final regulations clarifying what constitutes a two-parent family in the two-parent participation rate calculation. We have found that States had divergent readings of which parents to consider in determining whether a family was a two-parent family. Therefore, we included this provision to ensure greater consistency across States in measuring participation among two-parent families.

The final regulations state that, for the purposes of this calculation, a two-parent family includes, at a minimum, all families with two natural or adoptive parents (of the same minor child) receiving assistance and living in the home, unless both are minors and neither is a head-of-household.

The preamble to the NPRM indicated that providing a noncustodial parent with TANF services need not cause a State to consider the family a two-parent family for the participation rate. This policy has not changed in the final regulations and is consistent with the new definition of a two-parent family. A State may, but is not required to, treat a family in which a noncustodial parent receives TANF assistance as a two-parent family.

As in § 261.22, where States direct us to, we exclude from the participation rate calculation for a month the families that are subject to a penalty for refusing to engage in work required in accordance with section 407 of the Act, but have not been subject to a penalty for more than three of the last 12 months. This is a change from the NPRM, which only excluded them from

the numerator of the calculation. Please refer to the discussion at § 261.22 for an explanation of this change.

Section 408(a)(7) of the Act limits the receipt of Federal TANF assistance to 60 months for any family, unless the family qualifies for a hardship exception or disregard of a month of assistance. (In our discussion of § 264.1, we explain that months of receipt are disregarded when the assistance was received either: (1) by a minor child who was not the head of a household or married to the head of a household; or (2) while an adult lived in Indian country or in an Alaska Native Village with 50 percent or greater unemployment.) We have received inquiries concerning the effect of a time-limit exception or disregard on the participation rates. In fact, the time limit does not have a bearing on the calculation of the participation rate. All families must be included in the participation rate, unless they have been removed from the rate for one of the two work-related exemptions (i.e., the family is subject to a penalty, but has not been sanctioned for more than three of the last 12 months; or the parent is a single custodial parent of a child under one year of age and the State has opted to remove the family from the rate).

We received many of the same comments about the calculation of the two-parent participation rate that we received in connection with the calculation of the overall participation rate. In particular, please refer to the preamble for § 261.22 for discussion of the comments and our responses about excluding groups of recipients from the participation rate and counting partial months of participation.

As we indicated in § 261.22, we have not kept in the final rules our proposal to redefine families to include in the participation rate any families that the State has excluded (based on its defining a family as a child-only family) for the purpose of avoiding a penalty. Please refer to the earlier preamble section entitled "Child-Only Cases" for further discussion of this decision and the comments that relate to it.

Comment: One commenter asked what the definition of a two-parent family is and whether it includes a household in which both parents are not available for work. Another commenter stated a family's status as two-parent or not often changes in the course of a month and that, therefore, a family should not be considered a two-parent family in a month in which its status change.

Response: We believe that Congress did not intend to exclude from the definition of a two-parent family a family with two parents receiving assistance, neither of whom is disabled, even if they are "not available for work" or the family's status changed during the month. We interpret the statute to mean that, if a State grants assistance for both parents in a family (and neither is disabled), then it must be considered and reported as a two-parent family. If one parent is coming and going from the family in the month and the State does not provide assistance for that parent, then it seems reasonable not to consider it a two-parent family.

Comment: Several commenters noted that the NPRM did not define the term "disabled parent," thus making it unclear which families should be excluded from the two-parent participation rate. Some urged us to leave the definition to States or to define it broadly to accommodate State policy. Others specifically urged defining it to include people who are temporarily disabled or incapacitated.

Response: We have not defined the term "disabled parent" in the final regulations so that each State may define the term as it deems appropriate.

Comment: Commenters urged removing from the denominator all persons exempt from work requirements based on valid State welfare reform waivers in effect prior to enactment of PRWORA.

Response: Please refer to subpart C of part 260 for discussion of how we will treat welfare reform waivers under the participation rates.

Comment: One commenter thought that we should remove families that are subject to a penalty from the calculation for the entire duration of a penalty rather than only if they have been in penalty status for less than three of the last 12 months. Alternatively, the commenter thought we should remove such a family if it has been subject to a penalty for less than three months in a fiscal year instead of the preceding 12 months.

Response: We do not have the authority to make either of the changes the commenter suggested because the statute is very precise about this provision. It specifies that sanctioned families are removed from the rate, but not if the family has been subject to the penalty for more than three months within the preceding 12-month period.

Section 261.25—Does a State Include Tribal Families in Calculating These Rates? (§ 271.25 of the NPRM)

States have the option of including in the participation rates families in the State that are receiving assistance under an approved Tribal family assistance plan or under a Tribal work program. If the State opts to include such families, they must be included in the denominator as well as the numerator.

Comment: A commenter urged that any rewards or bonuses a State receives due to including Tribal participants in the calculations should be shared with the Tribes in question.

Response: Nothing in these regulations precludes a State from sharing rewards or bonuses with Tribes; however, we do not have the authority to require a State to do so.

Comment: One commenter was confused by our discussion in the preamble to the NPRM. We said that where the State opts to include families receiving assistance under a Tribal TANF or Tribal NEW program, the families must be in the denominator as well as the numerator "where appropriate." The commenter asked us to clarify whether a State is free to include or exclude such families from the numerator and denominator. The commenter also asked us to clarify the standards of participation and activities that applied for a State to count such a Tribal family.

Response: A State may, at its option, include or exclude families receiving assistance under a Tribal TANF or Tribal NEW program from the denominator of the State TANF participation rates. To be included in a State participation rate numerator for a month, a family must meet the standards for counting a family in that rate, both with respect to hours of participation and allowable activities. These standards apply whether the family receives assistance under a State TANF program, a Tribal TANF program, or a Tribal NEW program. We realize that many Tribal programs will have different standards of work and different activities, but to count toward a State rate, the family must meet the standards associated with that rate.

We wanted to be clear that, if a State did plan to count a family receiving assistance in a Tribal program, that family had to be included in just the same way that a State TANF family would be included, that is, in the denominator of the rate as well as the numerator. But since inclusion in the numerator is not automatic (because the family must meet the hours of participation in allowable activities), we added the phrase "where appropriate." Since this was confusing, we modified the preamble discussion in the final rules.

Subpart C—What Are the Work Activities and How Do They Count?

Section 261.30—What Are the Work Activities? (§ 271.30 of the NPRM)

Section 407(d) of the Act specifies the 12 work, training, and education activities in which individuals may participate in order to be "engaged in work" for the purpose of counting toward the work participation rate requirements. Congress did not define these activities further. While some have commonly understood meanings from their use over time or from prior employment and training programs, several of the activities, such as "vocational educational training" and "job readiness assistance," are subject to interpretation.

In considering whether to provide greater definition of the activities as part of the NPRM, we examined legislative intent and sought the views of a variety of groups on the matter. Most groups urged us to leave further definition to the States. Some urged us to define work activities in ways that fostered education while promoting work, emphasizing the importance of education and training in empowering many recipients to find meaningful employment, let alone to advance. Ultimately, we chose not to define the individual work activities in the NPRM in favor of giving States greater flexibility; we have not changed that position in the final regulations.

Because this flexibility could also be used in ways that do not further Congressional intent, under the data collection requirements at § 265.9, we are requiring each State to provide us with its definitions of work activities for its TANF program and with a description of work activities for any separate State program that requires them. We are concerned that different TANF definitions could affect the vulnerability of States to penalties for failure to meet the participation rate. This data collection will help us determine whether this is in fact a serious problem; to the extent possible, we want to ensure an equitable and level playing field for the States. Over the next several years, we will carefully assess the types of programs and activities States develop and will share the results of our findings. If necessary at some time in the future, we will initiate further regulatory action.

We would also like to remind States about some key research findings from prior welfare-to-work programs. According to the Manpower Demonstration Research Corporation's publication, Work First, the most successful work first programs have shared some characteristics: a mixed strategy including job search, education and training, and other activities and services; an emphasis on employment in all activities; a strong, consistent message; a commitment of adequate resources to serve the full mandatory population; enforcement of participation requirements; and a cost-conscious management style.

While the most successful programs consistently and strongly emphasize work, the actual program designs recognize and address the critical role education plays in preparing adults for work. As more and more recipients engage in work, State caseloads may reflect higher proportions of the educationally disadvantaged. In combination with other work activities, education may become more important in improving basic communication, analytical, and work-readiness skills of recipients. Thus, States may need to integrate adult basic skills, secondary education, and language training with high-quality, vocational education programs. Such program designs encourage recipients to continue acquiring educational skills necessary for higher-skill, higher-wage jobs.

We encourage States to adopt program designs that take advantage of existing educational opportunities. States may use the statutory flexibility to design programs that promote educational principles by:

- Actively encouraging adults and children to finish high school or its equivalent;
- Expecting family members to attain basic levels of literacy and to supplement their education in order to enhance employment opportunities;
- Encouraging family literacy; and
- Promoting community-based work-related vocational education classes, created in collaboration with employers.

States could also make it easier for individuals to combine school and work. For example, they could develop on-campus community work experience program positions, where child care is also available. They could also encourage schools to use work-study funds for students on welfare and then count the hours worked in those programs toward work requirements.

While we have not regulated the definition of work activities, we want to ensure that recipients and children both experience positive outcomes. This is a particularly significant issue when child care is the work activity. For this to happen, child care arrangements should be well developed, implemented and supported.

Research has found that quality child care is critical to the healthy development of children and that providers who choose to care for children create more nurturing environments than those who feel they have no choice and are providing care only out of necessity. Thus, States should assess whether recipients have an interest in providing child care before assigning them to this activity.

In addition, States should provide training, supervision and other supports to enhance caregiving skills if they wish recipients to attain self-sufficiency. Such supports, including training in health and safety (e.g., first aid and CPR), nutrition, and child development, would assist the development of both the caregivers and the children in care.

Finally, the stability of child care arrangements affects outcomes for both parents and the children in care. When parents feel comfortable with their child care arrangements, their own participation in the work force becomes more stable. This stability, in turn, fosters emotional security for children. Thus, States should take stability into account when assigning participants to child care as a work activity.

The majority of those who commented on this section of the proposed regulations supported our decision not to define work activities beyond the statutory list. We discuss other comments below.

Comment: Several commenters made suggestions about the content of work activities. Some urged us generally to ensure the quality of work activities by establishing minimum standards for the activity and for the provider. Others made suggestions about specific activities, urging us to give guidance or make requirements concerning particular elements of an activity. For example, one commenter thought that vocational educational training should conform to the definition of vocational education in the Carl D. Perkins Vocational Education Act; another suggested discontinuing on-the-job contracts with employers that do not provide long-term employment. In essence, these commenters wanted us to define certain of the activities or ensure that certain activities would be counted as work.

Response: We appreciate and share the commenters' concerns that work activities be designed to meet the needs of recipients and be effective in helping them become self-sufficient. However, we think that the goals and objectives of the legislation will be better served by having each State define the work activities. We believe States will use the flexibility of the statute to formulate a variety of reasonable interpretations leading to greater innovation,

experimentation, and success in helping families become self-sufficient quickly. It is true that States could conceivably include a range of activities that may not enhance work skills or might not be considered valid work experience by potential employers. However, in light of the five-year time limit and the criteria for the high performance bonus, we expect that States will work to establish programs that promote a family's long-term success in the workplace.

Comment: One commenter pointed out that we omitted the statute's limitation of the activity of "work experience" to instances where sufficient private-sector employment is not available.

Response: We have amended the regulations to reflect the statute's limitation.

Comment: A couple of commenters urged us to require that work activities comport with Federal employment laws in order to count for participation. One suggested that we require employers to post appropriate nondiscrimination notices. Another stated that Congress failed to include any provision limiting work activities to work at the minimum wage.

Response: We agree fully with the commenters that all TANF work activities should be lawful and should not subject participants to discrimination, unsafe working conditions or other circumstances prohibited by employment law. Nevertheless, we do not think the appropriate way to address the issue is to exclude certain work activities from the participation rate calculation in some States. Adjusting the rates would be administratively cumbersome and not necessarily equitable. As we have discussed earlier in the section of the preamble entitled "Recipient and Workplace Protections," there are other entities, such as the EEOC, DOL and our Office of Civil Rights, that enforce compliance with civil rights and employment laws. Their mechanisms for monitoring and enforcing compliance are not linked to the timing of the participation rate calculation. In other words, a finding of noncompliance that they might issue would not necessarily be available within our timeframes for calculating participation rates. Moreover, even if we did receive timely information about noncompliance with employment requirements, because the participation rates may be based on sample data, it might be very difficult to determine the appropriate adjustments to make to the rates based on such findings.

Given these complications, we have not modified the regulation as the commenters suggest. We think it makes better sense to support the enforcing entities in carrying out their responsibilities. If, over time, we find significant problems that could warrant adjustments within the TANF program, we will consult with States, labor interests, Congress, and other interested parties about the appropriate steps to address these problems.

We have also included a new regulatory section at § 260.35 that addresses employment protections available to TANF recipients. Please refer to the preamble section entitled "Recipient and Workplace Protections" for a discussion of additional comments related to this issue.

We have addressed the Fair Labor Standards Act (FLSA) at § 260.35 of the final rule, in the preamble to § 261.16, and in the preamble discussion entitled "Recipient and Workplace Protections." Please refer to those preamble sections for further discussion of the application of FLSA, including the minimum wage requirement, to TANF work activities.

Comment: We received support from a number of commenters for the discussion of the importance of education to TANF recipients that we included in the preamble to the NPRM. In response, we have repeated much of that discussion in this preamble to the final rule. We also received support for our guidance concerning the provision of child care as a work activity.

A couple of commenters urged us to incorporate that discussion, particularly our program design suggestions, into the text of the regulation itself. They argued that States would not create broader activities that combine work and education unless we specifically regulated in this area. Similarly, one commenter urged us to specify that we would not penalize a State for including a range of educational activities, from literacy programs through post-secondary education, in its definitions of work activities.

One commenter thought the proposed rule did not truly support the integration of work and education because it allowed each State to define the work activities. Instead, the commenter urged us to provide definitions that guide States in integrating work and education.

Response: We have not included our discussion of program designs within the text of the regulation. That discussion is intended to spark creative thinking about State choices in implementing TANF, rather than to prescribe a particular design for all States. It is also intended to underscore the important role we think education can play in TANF.

We have not included the kind of blanket statement the commenter suggests absolving States of any potential penalty liability for including a wide array of educational components in its work definitions. There are statutory limits on counting educational activities in the participation rates; a State that exceeded those limits could be subject to a penalty. Readers should refer to § 261.33 for a discussion of the limits on counting participation in educational activities in the participation rates.

As we indicated above, we have opted not to define the work activities to a greater degree than the statute does. We think that the preamble discussion gives States ample suggestions of ways to integrate education with work activities. We are also available to work with any State and its education community to help them design programs that will meet their particular needs.

Comment: One commenter stated that there is no provision to count participants in a GED program, adult basic education or English as a Second Language (ESL) in the participation rates and urged making them countable work activities. Another commenter urged adding a basic skills "refresher" course for those already holding a GED. A third commenter encouraged us to include student internships as a work activity.

Response: While we have no authority to add to the list of 12 work activities, a State could provide the education programs described in the first two comments under the existing activities. In particular, we point out that GED is explicitly part of the eleventh activity: "satisfactory attendance at secondary school or in a course of study leading to a certificate of general equivalence for a recipient who has not received a high school diploma or a certificate of high school equivalency." Similarly, student internships, depending on their content, may well meet a State's definition of one or another of its work activities. We would be glad to provide technical assistance to a State that has questions about incorporating activities such as these into its program design.

Comment: One commenter urged us to require States to include vocational educational training among their work activities.

Response: We understand the commenter's interest in seeing that recipients have the opportunity to enroll in training programs that will give them the skills to qualify for and keep higher paying jobs; however, we do not have

the authority to require a State to provide any specific work component.

Comment: One commenter expressed support for the development of micro-enterprises and other forms of self-employment, particularly in rural settings. The commenter urged increasing flexibility in this area by counting the period necessary to develop a business as participation.

Response: Again, the State has the flexibility to design and define work activities that meet the needs of its caseload, including creating a micro-enterprise development program. It is unclear from the comment precisely what activities the commenter believes should be considered work that are excluded either by statute or by a State's policies. We agree that any legitimate hours of work in the development of a business could contribute to the participation rate; however, for example, if the recipient is waiting for a loan approval, but not otherwise participating, it hardly seems reasonable to count that time as participation. The fact that something has value or is integral to a countable activity does not necessarily mean it can count as participation. We would be happy to work with States that would like technical assistance in this area.

Comment: One commenter expressed support for the requirement that a State provide us with its work definitions, citing its value for research into effective employment-related services. Another commenter objected to this requirement, maintaining that States must already submit this information as part of the State TANF plans.

Response: We think it is important to know how States are defining the activities because of the implications they have for penalties. We want to ensure that we enforce the requirements of TANF in a way that is as equitable to States as possible. We also agree that the definitions will help with research into effective program designs. We think it is reasonable to collect these definitions as an annual addendum to other data collection. Unfortunately, the TANF State plans do not necessarily include a State's work activity definitions. However, we have revised the reporting requirements at § 265.9(d) to allow a State that included such information in its plan to reference the plan or attach the appropriate plan pages.

Comment: One commenter objected to "such a restricted list of countable work activities" protesting that low-grant States will not be able to make use of several of the components because recipients will have too much income to continue receiving assistance. The commenter also stated that low-grant States will be adversely affected by the minimum wage requirements of the Fair Labor Standards Act (FLSA).

Response: States must weigh carefully their decisions about grant amounts and earnings disregards as they formulate State policy. The commenter is correct that a State's benefit rules may have implications for its participation rates, as well as for a family's time limit and for State budgets. However, these are largely matters of State discretion; the regulations reflect the statutory work activities. Readers should refer to the preamble at § 261.16 for a more detailed discussion of the FLSA and its effect on TANF work activities.

Section 261.31—How Many Hours Must an Individual Participate To Count in the Numerator of the Overall Rate? (§ 271.31 of the NPRM)

Section 407(c) of the Act specifies the minimum hours an individual must participate to count in the State's overall participation rate calculation. There are two related requirements. First, there is a minimum average number of hours per week for which a recipient must be engaged in work activities. The average weekly hours are reflected in the following table:

If the fiscal year is:	Then the minimum average hours per week is:
1997	20
1998	20
1999	25
2000 or thereafter	30

Second, the law requires that at least an average of 20 hours per week of the minimum average must be attributable to certain specific activities. These activities are:

- Unsubsidized employment;
- Subsidized private-sector employment;
- Subsidized public-sector employment;
- Work experience;
- On-the-job training;
- Job search and job readiness assistance for no more than four consecutive weeks and up to six weeks total in a year;
- Community service programs;
- Vocational educational training not to exceed 12 months;
- Provision of child care services to an individual who is participating in a community service program.

(Note: the limitation that at least 20 hours come from certain activities does not apply to teen heads of households; however, there are other limitations related to teen heads of households. Please refer to § 261.33 below.)

After an individual meets the basic level of participation, the following activities may count toward the total work requirement hours of work:

- Job skills training directly related to employment;
- Education directly related to employment for those without a high school diploma or equivalent;
- Satisfactory attendance at a secondary school or GED course for those without a high school diploma or equivalent.

In our consultations prior to drafting the NPRM, several people asked whether a State may average the hours of participation of different recipients to reach the minimum average hours required by the work participation rate, as they could in the JOBS program. PRWORA does not permit combining and averaging the hours of work of different individuals. However, the regulation and the statute permit averaging an individual's weekly work hours over the month to reach the minimum average number of hours per week required for that individual to be engaged in work.

We have reorganized the regulatory text slightly from the way it appeared in the NPRM for the sake of clarity, but this section still paraphrases the statute in simple, understandable terms.

The final regulations do not contain the chart we included in the NPRM depicting which work activities count in the first 20 hours and which count thereafter. We decided the chart no longer added to readers' understanding of the provision since legislative changes simplified the rules and its inclusion disrupted the regulatory text, making the policy more difficult to follow.

Comment: We received several comments expressing support for our clarification in the NPRM that a State may average an individual's weekly hours of work over a month. One commenter supported averaging, but without reference to an individual's hours in a month.

Response: For clarity, we would like to reiterate that the statute does not permit combining and averaging of hours of work of different individuals in the overall participation rate. Rather, it is an individual's hours of work from different weeks within a month that may be averaged.

Comment: Several commenters expressed concern about the effects of the FLSA in restricting the number of hours a State may require an individual to participate in certain work activities,

particularly work experience and community service. They emphasized the importance of these activities to individuals not ready for unsubsidized employment.

Concerned that the FLSA will impede a State's ability to meet the participation rate requirements, some commenters urged us to exempt these activities from the wage and hour requirements of the FLSA.

Response: We have no authority to exempt an activity from the requirements of the FLSA. We have tried to explain the basic effect of the requirements on TANF work activities in the preamble to § 261.16, but we urge interested parties to consult the Department of Labor's guidance entitled "How Workplace Laws Apply to Welfare Recipients (May 1997)" for more information. We would also like to point out that States have the option of increasing the amount of a family's grant and thus permitting an individual to engage in more hours of work in accordance with the FLSA. States should weigh policy decisions in this area very carefully; the interrelated effects on participation rates, a family's remaining months under the Federal time limit, and State spending on the TANF program are crucial aspects of TANF program design.

Comment: A couple of commenters expressed opposition to separating the work activities into those that count for the first 20 hours and those that count thereafter, questioning the regulation's support for educational attainment despite the preamble's discussion of its importance.

Response: The requirement that the three education-based activities can only count for participation after the first 20 hours is a statutory one; thus, we have no authority to alter it. That fact does not change our commitment to education for recipients who need it. We have suggested several possible models for combining education with other activities and stand ready to help States that would like technical assistance in this area.

Comment: A commenter urged us to make GED preparation and English as a Second Language (ESL) "stand alone, countable" activities because substantial portions of some State caseloads need basic education and language skills before they can hold even entry-level jobs.

Response: Clearly, both GED preparation and ESL fit within the list of 12 work activities enumerated in the statute.

We presume that the commenter's real concern is that the State cannot receive full participation credit for such educational activities because of the requirement that the first 20 hours of participation be attributable to the noneducational activities. This is a statutory requirement that we have no authority to change in the regulations. We urge States and localities to consider combining work and educational activities where it is appropriate in order to maximize participation credit. Although some individuals will not be able to engage in multiple activities, this could be a viable solution for many recipients.

Comment: One commenter, in stressing the importance of education to permanent self-sufficiency, urged us to include time spent on homework and fieldwork when calculating an individual's hours of participation.

Response: As we have indicated, it is each State's responsibility to define its work activities in a reasonable manner; thus a State could choose to include homework time as part of an activity. However, we encourage States to consider carefully how Congress intended to treat homework in determining "engaging in work" to ensure that its interpretation is reasonable.

It is unclear to us exactly what the commenter means by "fieldwork"; if this refers to practical, career-based experience within the context of an educational activity, it might meet a State work activity definition. We have spoken to this issue in response to a comment about student internships above in the comments to § 261.30.

Comment: A commenter urged us to give partial credit for placing individuals in countable activities for fewer than the minimum average number of hours. For example, if the required hours are 20 and the individual participates for 10 hours per week, the commenter would have us count the case as 0.5 in the participation rate for that month. Another urged us to develop a means of giving a State credit for an individual's participation over a longer period of time than one month.

Response: The statute does not provide for counting a portion of a case in the participation rate and measures participation on a monthly basis; either the adult is engaged in work and the family counts in the rate or it does not and is not in the rate.

Comment: One commenter urged us to modify this section to include the provisions of § 261.35 or to include a cross-reference to it. That section indicates that we will count a single custodial parent caring for a child under the age of six as engaged in work if the parent participates in work activities for an average of at least 20 hours per week.

Response: The language of this section is consistent with the statute and does not need to incorporate the provisions of § 261.35 to take into account the full range of ways in which a family may meet the participation rate. We have tried to make these regulations easy to read. This means, in part, keeping sections reasonably short and separating different ideas into new sections. In this subpart in particular, we have tried to group all the provisions that relate to counting hours of work; it would be simply impractical to include all these provisions in one section.

We have decided not to reference § 261.35 to avoid multiple references to the other sections in subpart C, which we think readers will readily notice due to their proximity.

Comment: A couple of commenters urged us to give a State credit for an individual's "excused" absences from work, such as holidays or jury duty, as opposed to counting only actual hours of work. They thought that an absence beyond the individual's control should count as participation. Another commenter suggested that we count at least a portion of an individual's commute time when he or she must travel an extended distance to reach the job.

Response: The statute specifies the standard by which we must measure whether an individual is engaged in work. That standard is that a recipient "is participating in work activities for at least the minimum average number of hours per week" specified in the table in this section. Although the JOBS program gave us the discretion to establish a participation standard that considered scheduled hours and actual hours worked, TANF does not provide that flexibility.

However, consistent with ordinary practice for counting work time, a State could base the hours of work it reports on an employer's record of hours for which an employee is paid, thus accounting for paid holidays and jury duty days. Similarly, consistent with the ordinary practice for counting work time, we do not believe that commuting time can reasonably be considered "engaging in work" for any activity and therefore will not count it toward the participation rates.

Section 261.32—How Many Hours Must an Individual Participate To Count in the Numerator of the Two-Parent Rate? (§ 271.32 of the NPRM)

For two-parent families, section 407(c) of the Act specifies that the parents must be participating in work activities for a total of at least 35 hours per week and that a specified number of

hours be attributable to specific work activities. A State may have one parent participate for all 35 hours, or both parents may share in the work activities. If the family receives federally-funded child care assistance and an adult in the family is not disabled or caring for a severely disabled child, then the parents must be participating for a total of at least 55 hours per week. As before, a specified number of hours must be attributable to certain activities (listed below).

In the first situation (where the weekly total must be at least 35 hours), at least 30 hours must be attributable to the same narrow group of activities that applies to the 20-hour standard in the overall rate. In the second situation (where the weekly total must be at least 55 hours), 50 hours must be attributable to this narrow group of activities. Again, these are:

- Unsubsidized employment;
- Subsidized private sector employment;
- Subsidized public sector employment;
- Work experience;
- On-the-job training;
- Job search and job readiness assistance for no more than four consecutive weeks and up to six weeks total in a year;
- Community service programs;
- Vocational educational training (for not more than 12 months);
- Provision of child care services to an individual who is participating in a community service program.

Therefore, no more than five of the relevant minimum hours may be attributable to education related to employment, high school (or equivalent), or job skills training activities.

During our consultations prior to developing the NPRM, many thought it was unclear whether the 35-hour requirement was a minimum for each week or a minimum weekly average, as is the case in the overall rate. For example, if a parent participated 40 hours one week and 30 hours the next, the question arose whether he or she would meet the minimum requirement for both weeks. To provide maximum flexibility for States to meet the program goals, we clarified in the proposed rule and have maintained in the final regulations that, as long as the parents' average total hours equal at least 35 hours per week, the individual meets the participation requirement.

Other than this clarification, we have mirrored the statute. As in § 261.31, we have reorganized the regulatory text slightly from the way it appeared in the NPRM to make it clearer, but this section still paraphrases the statute in simple, understandable terms.

The majority of the comments on this section expressed support for our interpretation that the weekly hours requirement was a weekly average within a month and not a fixed number of hours for each week. Commenters emphasized that this will help States work flexibly with families and respond to emergencies or other family needs that affect hours of work in a particular week.

We also received many of the same comments in this section that we received in connection with the hours of work required for the overall participation rate. In particular, please refer to the preamble for § 261.31 for discussion of the comments and our responses about: the requirements of the FLSA; counting "excused" absences from work toward the participation rate; giving partial participation credit for participating below the hours of work standard; and reporting requirements for a week that spans two months.

Comment: A commenter noted that this section refers to "an individual" counting as engaged in work and urged us to substitute the word "family" instead.

Response: We recognize that both parents may actually be participating and contributing to the total number of hours required to be engaged in work, 35 or 55 hours depending on whether they receive federally-funded child care. We used the word "individual" because the statute, at section 407(c)(1)(B), uses that term. While this is not necessarily strictly accurate, it is no more accurate to describe the "family" as working; a family is counted in the participation rate, but it is one or two individuals who engage in work. We thought that relying on the language of the statute would be less confusing in this case.

Comment: One commenter advised us to modify this section to indicate that a family with a disabled parent should not be considered a two-parent family for the purposes of the participation rate calculations in accordance with the statute.

Response: The commenter is correct that the statute excludes families with a disabled parent from the two-parent participation rate calculation. We included this provision in subpart B where we describe the calculations for the participation rates. Please refer to § 261.24(d).

Section 261.33—What Are the Special Requirements Concerning Educational Activities in Determining Monthly Participation Rates? (§ 271.33 of the NPRM)

Section 407(c)(2)(C) of the Act provides that a teen who is married or the single head-of-household is deemed to be engaged in work for a month if he or she maintains satisfactory attendance at a secondary school or the equivalent or participates in education directly related to employment for an average of at least 20 hours per week. Paragraph (b) of this section paraphrases the language of this statutory provision.

To reinforce the emphasis on work, section 407 of the Act limits educational activities in two ways:

(1) An individual's participation in vocational educational training may count for participation rate purposes for a maximum of 12 months; and

(2) For each participation rate, not more than 30 percent of individuals determined to be engaged in work for a month may count by reason of participation in vocational educational training. In fiscal year 2000 and thereafter, this 30-percent limit also includes the teens deemed to be engaged in work by reason of maintaining satisfactory attendance at secondary school (or the equivalent) or participating in education directly related to employment, whom we described above.

When PRWORA was enacted, there was substantial controversy about precisely how the second limitation would apply. However, Pub. L. 105–33 modified this provision, making the limitation much clearer. The description above and the regulation at § 261.33 reflect the new provision, as amended by Pub. L. 105–33.

Based on some of the comments we received, we have made some minor modifications to the regulatory language as it appeared in the NPRM. The proposed regulatory language inadvertently suggested that only married heads-of-households, as opposed to any married teen, could be deemed to be engaged in work by virtue of this provision. In addition to correcting that error, we have modified the wording of the 30-percent cap to reflect the statute more closely.

We also want to explain the technical details of how we will interpret the provision relating to counting teens in educational activities for the purposes of calculating the participation rates. We are interpreting the deeming of teens as engaged in work based on satisfactory attendance in secondary school (or the equivalent) or 20 hours per week of

education directly related to employment to apply to both participation rates. While the provision might appear at first glance to apply to the overall rate alone, after considering Congressional intent and the legislative history, we think it is appropriate to apply it in the two-parent rate as well.

Because the two-parent rate, as amended by Pub. L. 105–33, permits the hours of the two parents to be combined to achieve the required weekly average, we needed to determine how many, if any, additional hours the parents would need to work in order to count in the two-parent rate when one parent was maintaining satisfactory attendance in high school or the equivalent. It seemed unreasonable and contrary to the spirit of the law to count the family without any additional hours; for example, that would allow a two-parent family to count based solely on the attendance of one parent in a GED class. Such a policy would support neither the educational welfare of the other parent nor the economic self-sufficiency of the family, faced with time-limited benefits.

To address these concerns, our rules incorporate the following policy for two-parent families: (1) we will consider satisfactory attendance at secondary school or the equivalent of a single head-of-household or married recipient under the age of 20 to equate to 20 hours per week of participation; thus, the parents would need a combination of 15 or 35 additional average hours per week (depending on which standard of hours applied to them) to count for the two-parent participation rate; and (2) if both parents in the family are under 20 years of age, we will consider them to be engaged in work if both meet the conditions of § 261.33(b), that is, if both are either satisfactorily attending school or equivalent or participating in education directly related to employment for at least 20 hours per week. Our rationale for equating satisfactory attendance in secondary school with 20 hours of participation is that the statute makes the presumption that such attendance is equivalent to 20 hours in education directly related to employment.

Comment: One commenter, while acknowledging the statutory origin of the 30-percent cap, nevertheless objected to the provision as it relates to teens in secondary education. The commenter stated that a mandated activity cannot have a cap.

Response: The commenter is correct that the 30-percent limitation is required by the statute; however, we would like to address the question of secondary education as a mandated activity. The commenter is referring to section 408(a)(4) of the Act, which prohibits a State from using TANF funds to assist a single parent under the age of 18 who has not completed high school (or equivalent) unless he or she attends high school (or equivalent) or a State-approved alternative education or training program. Both provisions underscore the importance of basic education for teens but are distinct in their effects within TANF. Even if the teen populations and the activities described were identical, which they are not, the central difference between the two provisions is that one mandates what the teens must do and the other restricts what a State receives credit for in the participation rate.

Comment: We received several comments urging us to count post-secondary education toward the participation rate and recommending that the regulations explicitly indicate that it is a TANF work activity.

Response: As we have indicated above, we do not have the authority to create additional work activities beyond the 12 statutory activities. Nevertheless, depending on whether and how the State chose to incorporate it into its TANF structure, post-secondary education could fit within the definition of 1 or more of the 12 activities. The appropriateness of categorizing it as one activity versus another would depend on the nature of the post-secondary program, such as whether it were vocational training.

We would also like to emphasize that States have the flexibility to design programs that allow recipients to combine school and work. We have suggested some possible models for this in the preamble to § 261.30 and are ready to work with States that want help in pursuing such program designs.

Comment: A couple of commenters objected to the limitations on vocational educational training, both an individual's limit to 12 months and the 30-percent cap. They stressed that States should be free to design vocational programs that are effective in moving participants into permanent employment, which may require more than one year of training.

Response: States are free to design and operate vocational programs that take longer than one year to complete; the limitation is strictly about the period of time for which a State could receive credit for a recipient's participation in that program. The limitation, while potentially discouraging States from designing certain long-term programs, is statutory and beyond our authority to modify. Again, we would like to point out that combining vocational training with practical experience that could count as another activity may be a viable approach in many cases. Moreover, States should consider that effective vocational education programs, or other programs that succeed in moving recipients from welfare to work, will contribute to the likelihood that the State will qualify for a high performance bonus or caseload reduction credit. We are awarding the high performance bonuses based on several criteria, including the number of new hires, increases in earnings and job retention. Thus, in spite of the limits on counting vocational educational training as participation, there are other incentives to designing effective vocational education programs.

Comment: A commenter noted that the proposed regulations and preamble did not indicate that a State has discretion to determine how to measure the 12-month limit on counting an individual's participation in vocational educational training.

The commenter also urged us to amend the regulations to indicate that a State that combines education with other activities would necessarily be able to count these activities in the participation rates.

Response: States have limited flexibility in this area. If a family is included in the numerator of a participation rate for a month by virtue of participation in vocational educational training, then that month counts against the 12-month limit for that individual.

If a State reports hours of participation in an activity that meet the requirements of this subpart, then the hours would count in the participation rates, and the month would count as a month or participation in the activity, regardless of whether the individual performed them in combination or separately.

We have stressed the possibility of combining education and work activities in part because of the statutory limits, reflected in these regulations, on how educational activities may count for participation purposes. In addition, we believe that encouraging recipients to acquire new and more advanced skills after they have entered the work world will help them attain and keep higher-paying jobs, leading to more economic security for families.

Section 261.34—Are There Any Limitations in Counting Job Search and Job Readiness Assistance Toward the Participation Rates? (§ 271.34 of the NPRM)

Section 407(c)(2)(A)(i) of the Act limits job search and job readiness assistance in several ways.

First, an individual generally may not count as engaged in work by virtue of participation in job search and job readiness assistance for more than six weeks. No more than four of these weeks may be consecutive. During our consultations prior to drafting the NPRM, we were asked whether these limitations applied for the lifetime of the individual, per spell of assistance, or per fiscal year.

Based on those consultations, after an analysis of the statute, we decided in the NPRM to interpret it as a fiscal-year limit for two policy reasons. First, since the participation rate itself is tied to the fiscal year, it makes sense to apply the limitation to the same timeframe. Second, a different policy could force States to place individuals in other, less appropriate activities just to meet the participation rate. Moreover, research indicates that job search activities are an instrumental component in effective work program designs.

The statutory language supports the fiscal-year interpretation. The job search language at section 407(c)(2)(A)(i) of the Act limiting the weeks of participation states that the limit is "notwithstanding paragraph (1)." Paragraph (1) refers to the determination of whether a recipient is engaged in work for a month "in a fiscal year." Thus the reference to paragraph (1) puts the job search limitation in the context of a calculating whether an individual is engaged in work in the fiscal year. Based on these considerations, we clarified in the proposed rules that the six-week limitation applies to each fiscal year and have not changed that interpretation in the final regulations.

The legislation and our rules allow the 6-week limit on job search and job readiness assistance to extend to 12 weeks if the unemployment rate of a State exceeds the national unemployment rate by at least 50 percent, or if the State could qualify as a needy State for the Contingency Fund.

Finally, our rules paraphrase the statute (at section 407(c)(2)(A)(ii) of the Act) in allowing a State to count three or four days of job search and job readiness assistance during a week as a full week of participation on one occasion for the individual.

Comment: We received many comments in support of our interpretation that the job search and job readiness limit applies on a fiscal-year basis. However, one commenter thought we were too specific and should allow States to interpret the limitation.

Response: We have not modified the regulation as the commenter suggests. We think it is reasonable to apply one standard to all States. Given the overwhelming support for the fiscal-year interpretation and the statutory and policy support we provided for it above, the final regulations maintain that policy. This policy only limits the maximum job search and job readiness that count for participation purposes. States still have flexibility in determining how much an individual should actually participate in such activities, including the flexibility to apply the job search and job readiness limit on a lifetime basis for an individual if they so choose.

Comment: A commenter thought that the way in which we paraphrased the statute's limit on job search and job readiness to not more than four consecutive weeks was confusing and urged us to use the statutory wording.

Response: We have modified this section to follow the statute's language more closely. We have left the provision limiting the number of consecutive weeks separate in paragraph (c) because we think it is easier to follow this way, but have changed the wording within the paragraph in response.

Comment: A few commenters objected to limiting job search and job readiness to four consecutive weeks, arguing that there is no rationale for stopping at that point or that it is simply too short a period of time to ensure that recipients will find jobs. A couple of other commenters objected to the six-week total limitation for essentially the same reasons and urged us to create a longer time period.

Response: There is no limit on the amount of job search and job readiness a State may require of an individual. However, the statute imposes limitations on how much the activity counts toward the participation rate. We have no authority to extend the it counts, other than when a State meets the criteria for counting 12 weeks of job search and job readiness assistance instead of 6.

Comment: Two commenters recommended that we separate job search assistance from job readiness assistance and establish separate limits on each activity.

Response: In determining whether an individual is "engaged in work" for the participation rates, the statute provides for 12 different work activities. One of those activities is "job search and job readiness assistance"; the statute does not recognize them as separate components. As we indicated in the discussion at § 261.30, we do not have the discretion to add to those activities or to separate job search from job readiness. If a State has two different activities as part of its TANF program, it would have to count an individual's participation in either one toward the limits described in this section.

Comment: A commenter suggested that we clarify the regulations to allow a State to apply the extended job search and job readiness provision to a "needy political subdivision" as it would if the State were a "needy State."

Response: The statute is very specific in describing the two conditions under which 12, rather than 6, weeks of job search and job readiness can count toward the participation rates. One of those conditions is when the "State" qualifies as "needy" under the Contingency fund definition. That definition applies to a State as a whole; therefore, there is no mechanism by which to apply it to a political subdivision.

Comment: One commenter recommended that the regulations ensure that a State has advance notice of whether it qualifies to count individuals for the extended 12 weeks of job search and job readiness in a fiscal year. The commenter argued that this would let the State plan which activities to make available to its recipients in order to meet its work participation rate.

Response: As we indicated above, there is no limit on the amount of job search and job readiness a State may require of an individual; the limitation is on how many hours of the activity count toward the participation rates. We hope that a State would not, as the commenter suggests, withhold access to job search and job readiness—or any activity, if it were the most appropriate for a recipient—and require participation in another activity, solely for the purpose of meeting the participation rate. The participation rates represent a requirement on the State, not a requirement on specific individuals, and the State can inherently meet the participation rates even if every individual is not in a countable activity.

Further, we have no ability to make an advance determination that a State qualifies for a 12-week job search limit because the data are not available in advance and the statute authorizes the 12-week limit based on a State's current situation.

Comment: One commenter objected to the provision permitting a State to count three or four days of job search and job readiness assistance as a full week of participation because the data collection system in the commenter's State does not allow it to count hours of participation on that basis.

Response: This provision is not a requirement. Any State that does not wish to count three or four days of this

activity as a full week of participation is not required to do so. The origin of the provision is statutory; we presume the intent was simply to make it easier for States to receive participation credit for this activity.

Section 261.35—Are There Any Special Work Provisions for Single Custodial Parents? (§ 271.35 of the NPRM)

Section 407(c)(2)(B) of the Act provides a special participation rule for single parents or caretakers with young children. A single parent or caretaker with a child under the age of six will be deemed to be engaged in work for a month if he or she participates in work activities for an average of at least 20 hours per week.

This provision has little relevance in FYs 1997 and 1998, when, for the overall rate, the required number of hours for all individuals is 20 hours per week. But, when the required number of hours rises to 25 hours per week in FY 1999 and to 30 hours per week thereafter, this provision allows single parents or caretakers to spend time with younger children. It also may enable those with young children to fulfill their work obligations while their children are in preschool activities.

The regulations paraphrase this statutory provision.

There were no substantive comments on this section.

Section 261.36—Do Welfare Reform Waivers in a State Affect the Calculation of a State's Participation Rates? (§ 271.36 of the NPRM)

This section is simply a cross-reference to subpart C of part 260, which addresses welfare reform demonstration waivers. We thought it would be helpful to include it so that readers would know to refer to this important exception to the work activities and hours specified in subpart C. We have changed the reference from what it was in the NPRM, in light of our consolidation of the regulatory provisions relating to waivers under part 260.

There were no comments on this section.

Subpart D—How Will We Determine Caseload Reduction Credit for Minimum Participation Rates?

Section 261.40—Is There a Way for a State to Reduce the Work Participation Rates? (§ 271.40 of the NPRM)

To ensure that States receive credit for families that have become self-sufficient and left the welfare rolls, Congress created a caseload reduction credit. The credit reduces the required participation rate that a State must meet for a fiscal year. It reflects the reduction in the State's caseload in the prior year compared to its caseload under the title IV–A State plan in effect in FY 1995, excluding reductions due to Federal law or to State changes in eligibility criteria.

This provision enhances the inherent interest of States to help families become independent. As a State reduces its caseload, its risk of incurring a penalty lessens because lower work participation rates are easier to achieve. This provision also increases a State's chance of qualifying for a lower basic MOE requirement, which would reduce its risk of incurring an MOE penalty.

To establish the caseload base for FY 1995, we proposed using the number of AFDC cases and AFDC Unemployed Parents reported on ACF–3637. To avoid artificial reductions in the minimum participation rates, the NPRM included cases in any separate State program used to meet the maintenance-of-effort (MOE) requirement in determining the prior-year caseload. Under the proposed rules, we would not have granted a caseload reduction credit unless the State reported case-record information for its separate State programs.

Comment: Some commenters suggested that allowing States to reduce their work participation rates emphasizes caseload reduction over the goal of self-sufficiency. Others strongly supported the caseload reduction concept.

Response: By including this provision in the statute, Congress sought to recognize State success in moving individuals off assistance. We believe this provision comports closely with both statutory language and intent.

Comment: One commenter asked us to include explicit language to the effect that we would apply the caseload reduction credit to reduce the participation standards before evaluating State performance.

Response: Different groups will evaluate State performance in a variety of ways. For purposes of determining potential penalty liability, we will compare a State's actual participation rates with the rates that apply following any adjustments due to caseload reduction credits.

Comment: A substantial number of comments addressed our proposed method of using reported AFDC data to establish the 1995 caseload baseline. First, several correctly pointed out that the Statistical Report on Recipients Under Public Assistance is ACF–3637, not ACF–3697. In addition, many commenters thought that, to conform to the statute, the base-year calculation should include not only the AFDC population, but also recipients of assistance under the Emergency Assistance program (EA) funded under title IV–A and cases receiving At-Risk and transitional child care benefits.

Other commenters suggested that two-parent families receiving TANF assistance are not comparable to AFDC Unemployed Parent (AFDC–UP) cases because TANF does not restrict two-parent families as AFDC–UP eligibility rules did. They argued that, to be fair, we ought to compare "apples to apples" and "oranges to oranges." Most recommended either not counting two-parent cases at all or allowing States to adjust the base-year caseload reports to include any two-parent cases that were not AFDC–UP cases. They also recommended adjusting the reports to correct inaccuracies.

Response: We agree with these commenters that, to some extent, our proposal compared "apples to oranges." In developing the NPRM, we recognized that the calculation should reflect an unduplicated count of cases receiving "assistance" under either AFDC or EA. However, from the data reported to us, we could not unduplicate the AFDC and EA case counts or determine which, if any, of the EA benefits constituted "assistance." In our consultations, many State staff told us that they would also not now be able to unduplicate AFDC and EA cases for fiscal years 1995 and 1996. Thus, for consistency, we limited the base-year data to AFDC cases reported on the ACF–3637. Based on the comments and further internal discussion, however, we believe it would be fairer to afford States the opportunity to adjust and correct baseline data if they can do so because adjustments would make the base-year and prior-year caseload figures more comparable. For example, it would not be appropriate to include certain EA cases in the base-year caseload because, as recipients of "one-time, short-term" benefits, such cases would not be receiving TANF "assistance" and do not show up in the prior-year TANF caseload. However, if there were EA cases in 1995 that received "assistance" and that did not receive both EA and AFDC benefits, it would be appropriate to include those cases in the base-year caseload.

To allow for more comparable caseload data, we have modified the final rule. We will adjust the base-year case count for any State that can provide accurate adjustment data or unduplicated case counts, for example, through a computer match of each month's 1995 AFDC and EA caseload and subsequent years. This includes reliable information on the actual

number of two-parent cases in its AFDC caseload for applicable years. However, we will only include EA cases to the extent that the assistance provided under EA would meet the TANF definition of assistance.

Comment: Some commenters suggested that some types of cases from FY 1995, such as State General Assistance (GA) cases, are not included in the baseline, but should be. They argued that analogous cases are served in separate State programs and thus will be included in the comparison year.

Response: We appreciate the commenter's point and agree that, in this regard, we are not comparing like cases. However, we cannot include GA or similar cases in the base-year because the statute specifies that we compare cases "that received aid under the State plan approved under part A (as in effect on September 30, 1995) during fiscal year 1995." To the extent that such cases are in the prior-year caseload, but not in the 1995 base because the State has expanded its eligibility criteria since 1995, the net caseload decrease calculation will adjust for this difference. Please refer to § 261.42 for additional discussion.

Section 261.41—How Will We Determine the Caseload Reduction Credit? (§ 271.41 of the NPRM)

In the proposed rule, we explained how difficult it was to develop an appropriate methodology to quantify the different types of caseload reductions. We had considered and rejected two alternatives, i.e., the use of Medicaid records to estimate the effect of eligibility changes (since Medicaid eligibility is based on the July 1996 AFDC eligibility rules) and a computer simulation model. Neither alternative could produce reasonably accurate estimates of the effect of eligibility changes on the caseload size. Nor did our extensive consultations provide a straightforward methodology that could be universally applied.

As a result, the NPRM proposed a caseload reduction methodology based on State-submitted information and estimates. These regulations incorporate the same basic approach. Under the final rules, we determine the appropriate caseload reduction for each State using the following process:

Step 1—We compare 1995 AFDC and Unemployed Parent caseload data to State-reported TANF and SSP-MOE caseload data for the prior-year.

Step 2—The State submits a Caseload Reduction Report that provides: a complete listing and implementation dates of State and Federal eligibility changes since FY 1995; a numerical estimate of the impact on the caseload since 1995 of each eligibility change; an overall estimate of the net cases diverted from assistance as a result of eligibility changes; an estimate of the State's caseload reduction credit; the number and distribution of caseload closures and application denials, by reason; a description of the methodology for the estimate, as well as supporting data to document the information in the report; a certification that it incorporated all net reductions, there was an opportunity for public comment on the content of the report, and it considered such comments; and a summary of all public comments. (We have included the Caseload Reduction Report form and instructions at Appendix H.)

Step 3—We compare and analyze each State's methodology, estimates, and data to determine whether they are plausible. We may request that a State submit additional information within 30 days to support the estimates. In addition, we will conduct periodic on-site visits and examine case records to validate the information we have received.

Because eligibility changes often affect two-parent cases differently from the overall caseload and the two-parent rates are distinct, the NPRM required States to submit separate estimates and information for the overall and two-parent rates to receive a caseload reduction credit.

Comment: Many comments noted how difficult it is to measure the impacts of policy changes and achieve comparability or equity among States. One suggested that the only accurate way to determine the caseload impact of a policy change is to use experimental and control groups. A few commenters suggested using a "quality control" model or system based on sampling, exception criteria, and audits to establish the estimates of policy changes.

A number claimed that we had shifted the statutory burden and responsibility for calculating the caseload reduction credit from us to the States, with mixed views as to whether this was appropriate. One cited the specific statutory language requiring that the regulations "shall place the burden on the Secretary to prove that such families were diverted as a direct result of differences in such eligibility criteria." Some expressed concerns about the standards to which we might hold States seeking caseload reduction credits (i.e., in quantifying the effects of eligibility changes).

Another suggested that the Secretary has an obligation to pay for obtaining such data.

Others, while expressing concern with the proposal, agreed that it would be difficult for us to develop a sounder methodology that could be used in every State. Several commenters noted that the methodology imposed a tremendous burden because States may not have retained or may never have collected the information needed to make estimates. Some urged working with States to find a reasonable or less burdensome method of measuring the caseload reduction. Others suggested that, working in partnership with States, we should provide technical assistance to help States do the required analysis.

Response: We are glad that commenters clearly understood the difficult dilemma posed in developing a caseload reduction methodology, and we are sympathetic to their concerns about the burden our proposed methodology would impose on States. However, we believe that the specific recommendations for methodological alternatives, such as a quality control model, ultimately would impose an even greater information collection burden on States, without a guarantee of more precise estimates. Therefore, in the final rule, we are retaining the same general approach, while adopting some suggested improvements. We have clarified that we will accept State estimates of the impact of eligibility changes and the resultant caseload reduction credit, unless they appear to be implausible, based on the common experience of other States. In these situations, we will ask the State to re-examine its estimate in light of this new or additional information.

At the same time, we have clarified our expectation that States provide aggregate information on the number and distribution of case closures, by reason. At a minimum, States must provide this information for the base year (1995) and prior year. The NPRM asked for a listing of reasons, but did not directly say we were looking for quantitative information that might reveal any significant shifts in the causes of case closures that might be associated with changes in State policies. We also decided to ask for similar data on application denials and added an explicit requirement that States report an overall estimate of the net number of cases diverted due to eligibility changes.

We understand that the caseload closure and application denial information that we are requesting may not directly measure the caseload effects of eligibility changes, especially over time as the effects of changes decay and reporting practices may shift. However, it is useful information for a State to consider in preparing its Report, it will give the public a context for assessing and commenting on the State's methodology and estimates, and it will give us a national set of data that will

enable us to judge the plausibility of individual State determinations.

As suggested, we have consulted—and intend to work in partnership with—States, State groups, and advocates to develop appropriate estimates, complete the caseload reduction analysis, and refine their estimating methodologies.

We thought it would be helpful for States to have all forms related to the rule published together. As a result, we have included, under Appendix H, the Caseload Reduction Report form and instructions for completing it. Although the form itself was not part of the NPRM, we addressed the burden associated with the caseload reduction estimates in our paperwork burden estimate. Anyone wishing to comment on the form or burden should submit comments to the Office of Management and Budget. Please refer to the section of the preamble titled "Paperwork Reduction Act" for further information.

Regarding the suggestion that the Secretary pay for obtaining such data, we would say: (1) Congress did not appropriate funding for this purpose; (2) many States can draw upon analyses done for other purposes to reduce the cost burdens associated with these determinations (For example, in proposing changes to eligibility rules, some States will routinely prepare estimates of caseload and budgetary impacts of those changes as part of the State budgetary and legislative process.); (3) if such estimates are not otherwise available, because of caseload reductions and the strong economy, in general, States have substantial funds available to do research and analysis; and (4) we expect the burden of these reports to diminish over time because State program rules should become less subject to change and States will have developed the methodological framework for producing their estimates.

Comment: Several commenters objected to using case closure information as the basis for estimates, because the reason for closure is often unknown and the coded reason is sometimes incorrect. Others suggested that different eligibility rules affect applicants as well as recipients and thus the reason for an application denial is just as important as case closure information in determining the effect of a policy on the caseload.

Response: While we recognize the deficiencies in both case closure information and application denial information, it is generally the most readily available State information that we can use to help assess the impact of policy decisions. Therefore, we have retained the requirement of submitting case closure information in the final rule. Also, we have added a requirement to submit similar application denial information. In addition, we have clarified that we are looking for quantitative information.

While we are not requiring it, a State may conduct surveys or in-depth reviews to establish more accurate estimates of the effect of policy changes and use this information in place of case closure and application denial data from case files.

Comment: Numerous comments noted that the statute does not address whether there should be separate caseload reduction calculations for the overall and two-parent rates. Some thought that, if the State had achieved an overall caseload reduction, it was unfair to penalize it for an increase in two-parent households (especially when it implemented these policies to help keep families together—a purpose of the statute). Some commenters recommended applying an overall caseload reduction credit to both rates. Others liked our proposed approach of two separate calculations, each based on reductions in the applicable caseload. Many suggested that States should be afforded the option to choose whether to use one or two calculations. One commenter suggested that, if we retained the approach of two separate calculations, we should allow a State to request and submit estimates on only one rate, if a reduction credit were not appropriate for the other.

Response: Resolving this issue is critically important because of its impact on preparing families for work and self-sufficiency, the potential penalty liability of States, and the lack of guidance on Congressional intent. We were persuaded by the comments that providing an option would be an appropriate way to ensure that States that adopt policies to promote two-parent families would not be penalized. In particular, we thought it made sense to allow States credit for success with its total population, since the two-parent caseload is a subset of that total, generally a very small subset. It also allows us to give flexibility to States to accommodate differing circumstances. At the same time, we were concerned that allowing an option could reduce the strong Congressional mandate for two-parent families to prepare for and engage in work, because States that were particularly successful in achieving overall caseload reductions could reduce their target two-parent participation rates to minimal levels.

To help us make this decision, we analyzed caseload data for fiscal years 1995, 1996 and 1997, TANF participation rates for FY 1997, and preliminary participation rates for FY 1998. We determined that providing a State option would not nullify the two-parent participation requirements, as we had feared. In fact, our analysis showed that more States derive a greater caseload reduction credit from calculating two separate credits, i.e., applying the two-parent caseload reduction to the two-parent rate.

Based on this analysis and to accommodate State circumstances better, we have decided to allow States an option regarding the caseload reduction credit for the two-parent participation rate. A State may use the overall reduction credit for its two-parent rate or may opt to submit separate caseload reduction information on its two-parent caseload and base the credit for the two-parent rate on reductions in the two-parent caseload alone. States do not have the option of applying to the overall rate a reduction credit based on reductions in the two-parent caseload.

Comment: A commenter asked that the rules clarify that the State's methodology must account for the ongoing effects of an eligibility change beyond the initial year.

Response: We agree with this comment. The final rule requires estimates of the effects of all eligibility changes since FY 1995.

Comment: Many State commenters noted that it would be better to know their caseload reduction credits earlier in the year, but then noted that two weeks might not be enough time to provide any additional information requested by ACF. Several suggested that States need at least one month to provide supplemental information. Others suggested that we negotiate an appropriate deadline with each State, based on the information needed.

Response: We recognize that States may need more than two weeks to provide additional information. Therefore, we have modified the final rule to allow a State to negotiate the information deadline or submit it within 30 days of the request. We believe that it is important to resolve such matters within a short timeframe so that States will know what participation rates they must meet as soon as possible.

Comment: Several commenters suggested that States and the Department would both benefit from making each State's methodology and plan available for public review and comment. That way, other organizations would be able to provide another perspective on eligibility changes and their impacts on the caseload. For the

purpose of public review and comment as well as sharing methodologies and approaches among States, several commenters suggested that we electronically post each State's estimates and methodology.

Response: We agree that both States and the Department would benefit from public input on the estimates and methodology. Therefore, in the final rule, we have required a State to certify that it has provided the public an appropriate opportunity to comment on the estimates, methodology, and reductions. To allow time for public input, we have extended the due date of the Caseload Reduction Report until December 31 of each year. We also require a summary of the public input. To enable us to learn effective estimating techniques from each other, we intend to post electronically useful illustrative estimates, techniques, and comments on the ACF World Wide Web page at http://www.acf.dhhs.gov.

Comment: Several commenters objected to the requirement that the Governor certify the caseload reduction figures, e.g., "the not-too-subtle implication that States will not be truthful is both offensive and unnecessary." One suggested that surely the Governor's designee should be able to "certify" that the State had taken into consideration all reductions.

Response: We agree with the suggestion and have made the appropriate change in the rule.

Comment: A number of comments suggested that we strike the provision that requires a State to report disaggregated data on families in separate State programs in order to qualify for a caseload reduction. Some maintained that requirements for disaggregated data on separate State program cases exceed our authority. As an alternative, some suggested that aggregated caseload data should suffice.

Response: If a State moves a family receiving TANF assistance to a separate State program where it receives benefits meeting the definition of assistance, this change in the family's status would represent an eligibility change if we did not include separate State program (SSP) cases in the caseload count. Therefore, unless we require and receive the SSP information, it would be impossible to calculate the appropriate caseload reduction credit. However, we point out that, under the final rule, we have significantly reduced the amount of data we are requesting on SSP cases. Most of this cutback is due to a reduction in the number of programs and types of cases for which States must report data. This is one of the effects of changing the definition of assistance. We have also reduced the burden by changing some data elements and changing the amount of data we expect on other individuals in the family (i.e., those not receiving assistance).

Comment: Some comments suggested reducing the data collection burden by actually treating a transfer to a separate State program as a change in eligibility and estimating the impact on the caseload reduction.

Response: We do not agree with this suggestion. Since we are expecting States to report case-record information on separate State programs, we believe actual caseload numbers will be available and there is no reason to develop or accept estimates.

Also, States and other commenters argued that, to the extent possible, the methodology should compare "apples" with "apples," not "oranges." We believe that including the SSP cases in the prior-year caseload best serves that objective. Because SSP cases will be receiving benefits that address their basic needs, we expect that, generally, they will be comparable to AFDC cases.

Section 261.42—Which Reductions Count in Determining the Caseload Reduction Credit? (§ 271.42 of the NPRM)

Congress enacted the caseload reduction provision to give States credit toward participation for families that have achieved self-sufficiency or left the welfare rolls due to work, marriage, child support, or other means of support. The statute does not give caseload reduction credit for Federal or State eligibility changes that deny assistance to vulnerable families.

In the NPRM we gave States full credit for caseload reductions, except when those caseload reductions arose from changes in rules that directly affect a family's eligibility for benefits (e.g., more stringent income and resource limitations, time limits, grant reductions, more restrictive residency, age, demographic or categorical factors). States could take credit for the calculable effects of mechanisms or procedural requirements used to enforce eligibility criteria (such as fingerprinting or other verification techniques) only to the extent that they identify or deter ineligible families under the State's rules.

We also proposed that, in order to qualify for a caseload reduction, a State must report data on families in separate State programs. Based on the type of family served or the nature of benefits provided, we proposed that we would exclude some families in separate State programs from this calculation, if a State demonstrated that the cases would not have been included under AFDC or EA, based on specific data on the family.

Comment: In determining the Federal and State eligibility changes that do not count for the caseload reduction credit, a number of commenters recommended using a concept of net caseload change. They suggested that eligibility changes that result in caseload reductions should be offset by the positive policy choices of States that increase the caseload. To illustrate: if a State-imposed time limit resulted in the termination of 1,000 cases in a year, but the elimination of the "100-hour rule" and the "attachment to the workforce" requirements to encourage two-parent family formation added 300 families, only 700 cases would not count toward the State's caseload reduction credit. These commenters suggest that an alternative reading discourages States from adopting proactive policies that are consistent with the intent of the law, such as making work more attractive and encouraging and supporting the formation of two-parent families.

Response: Like commenters who offered these suggestions, we are very supportive of policies that promote work, enhance family formation and help make work pay. Given our desire to encourage family-supportive policies, we found this proposal to mitigate caseload reduction incentives appealing. We also think that the concept of a net eligibility decrease, taking all eligibility changes into consideration, provides an opportunity to improve the comparability of caseloads, i.e., it would result in comparing "apples to apples" rather than "apples to oranges." Many States have dramatically increased their earned income disregards and resource limits and eliminated various categorical requirements. Thus, many current recipients would not have been eligible under the 1995 AFDC criteria. To avoid penalizing States for such positive changes, we have adopted the recommendation of using the net number of cases diverted from TANF due to eligibility changes in determining the caseload reduction credit.

Two examples illustrate how the concept will actually work. Consider a State in which the caseload was 100,000 in FY 1995 and fell to 75,000 in FY 1997. The State estimates a caseload decrease of 15,000 due to time limits and other restrictive eligibility rules and a caseload increase of 10,000 because of increased earnings disregards and resource standards. In this example, the net caseload reduction due to eligibility changes is 5,000. This means that, of the actual decline of 25,000 cases, 20,000 count toward the caseload reduction

credit. Thus, the State's caseload reduction credit for FY 1998 is 20 percent, (because 20,000 is 20 percent of 100,000).

To demonstrate what happens when caseload increases due to eligibility changes exceed eligibility-related decreases, we simply reverse the example above. The State's caseload fell 25 percent, from 100,000 to 75,000 between FYs 1995 and 1997. In this example, the estimated decline attributable to time limits and other restrictions is 10,000. The estimated increase due to higher earnings disregards and resource limits is 15,000. Because the net effect of eligibility changes is a 5,000 increase in the caseload, there would be no net number of cases diverted from TANF as a result of eligibility changes. Since there is no net reduction, we do not disregard any cases from the actual decline of 25,000. Thus, the State would be entitled to the entire 25-percent caseload reduction credit.

Comment: Several commenters suggested that cases analogous to some cases in separate State programs were not included in the FY 95 baseline and therefore would improperly inflate the comparison year caseload, if included. All these commenters asked that we exclude families in separate State programs from the caseload reduction calculation. Others noted that, while the statute does not directly address this issue, there is a legitimate need to look at cases in separate State programs in the calculation. Otherwise, a State could do something like simply move half of its cases to a separate State program and assert a 50-percent caseload reduction.

Response: Congress did not intend to give States credit for caseload reductions resulting from changes in eligibility. We believe that when a State moves a family receiving TANF assistance to a separate State program, it would represent an eligibility change if we did not include it in the caseload count; therefore, we have not modified the regulation as some of the commenters suggest. However, as noted elsewhere, we have modified the reporting for separate State programs. This change has the effect of reducing the number and type of SSP cases reported by the State.

Comment: Commenters objected that we had inappropriately retained discretion (by using the language, "we will consider excluding cases") to exclude cases in separate State programs that duplicate TANF cases or were made ineligible for Federal benefits by Pub. L. 104–193. Several found that the three categories of exclusions appear to be more ambiguous and discretionary than appropriate. Some commenters thought the third category—cases receiving tax credits, child care or transportation subsidies or other benefits for working families that are not directed at their basic needs—was particularly confusing. Most recommended that we explicitly exclude from the caseload reduction calculation, cases in separate State programs that: (1) duplicate cases in the TANF caseload; (2) provide assistance to immigrants made ineligible for Federal benefits; and (3) provide income support or services to low-income, working families for whom employment provides the primary source of income.

Response: Generally, we agree with the comments and have made appropriate changes in the final rule. If a State provides documentation on cases in separate State programs that meet either of the following conditions, we will exclude them from the caseload count: (1) cases that duplicate TANF cases; or (2) cases made ineligible for Federal benefits by PRWORA and that are receiving only State-funded cash assistance, nutrition assistance, or other benefits. We did not include the third exception suggested by commenters since these cases are no longer reported as SSP cases under the revised definition of assistance.

However, we note that these are the only circumstances under which we will exclude separate State program cases from the caseload reduction calculations. As we have indicated already, we believe that moving a family receiving TANF assistance to a separate State program where they are receiving assistance would represent a change in eligibility criteria if we did not include such programs in the caseload reduction calculation.

Comment: We had wide-ranging and divergent comments on the methodology and supporting data required of States. Several commenters noted that a State policy that denies assistance when an individual does not comply with work requirements, child support cooperation requirements, or other behavioral requirements is the same as any other eligibility requirement—it defines the categories of families that do or do not qualify for assistance. Some commenters suggested that enforcement mechanisms such as fingerprinting also deter eligible families. They recommended that States receive credit only to the extent that the number of families removed exceeds the number wrongly denied, deterred or removed. Several commenters requested that the final rule explicitly consider full-family sanctions, burdensome verification requirements, and requirements that applicants engage in certain activities to be changes in conditions of eligibility. Most recommended that a State should not receive credit for any such changes in its policy. Others suggested just the opposite, that full caseload reduction credit is appropriate for all denials of assistance for failure to comply with a behavioral requirement.

Response: Under the final rules, we consider behavioral requirements that divert families to be eligibility changes, and we exclude them from assistance from the caseload reduction credit. We believe it is appropriate to treat both full-family sanctions and behavioral requirements as eligibility changes. Based on the comments, we have tried to clarify explicitly that no type of Federal or State eligibility change since FY 1995 that directly affects a family's eligibility for assistance will count in a State's caseload reduction credit. These changes include more stringent income and resource limitations, time limits, full-family sanctions, and other new requirements that deny families assistance when an individual does not comply with work requirements (e.g., applicant job search), cooperate with child support, or fulfill other behavioral requirements. A State may count the reductions attributable to enforcement mechanisms or procedural requirements that are used to enforce existing eligibility criteria (e.g., fingerprinting or other verification techniques) to the extent that such mechanisms or requirements identify or deter families otherwise ineligible under existing rules.

Section 261.43—What Is the Definition of a "Case Receiving Assistance" in Calculating the Caseload Reduction Credit? (§ 271.43 of the NPRM)

To determine the caseload reduction credit, we proposed to consider caseloads in both TANF and in any separate State programs that are used to meet the maintenance-of-effort (MOE) requirement. Using the definition of assistance proposed under part 270, we proposed to base the calculation on all cases in the State receiving AFDC in FY 1995 and TANF assistance for all other fiscal years.

Comment: Several commenters asked us not to use the definition of "assistance" to calculate caseloads for periods prior to the State's implementation of TANF. They argued that, since there was no definition of assistance similar to the TANF definition, many States granted assistance based on broader criteria. In particular, they pointed out that EA cases often did receive one-time, short-

term assistance. Since they were legitimate IV–A cases, the commenters maintained that the cases should be included in the number of cases receiving assistance in 1995.

Response: In the NPRM, we specified that the definition of "assistance" should be applied to the caseload count, but our methodology did not actually allow a State to use the definition until it had implemented the TANF program. The caseload information reported by States on ACF–3637, which applied to a State until it implemented the TANF program, reflected the AFDC and EA definitions. Under the final rule, to get caseload data that are comparable to TANF, we adjust the baseline AFDC and EA data, as appropriate, to estimate the unduplicated cases receiving benefits under State programs in those years that would have met the TANF definition of "assistance."

We point out that this final rule does not dictate the determination of caseload reduction credits for fiscal years 1997, 1998, or 1999. Thus, it does not cover the determination of credits for periods when States were still operating AFDC and EA programs. For such earlier periods, it would be appropriate to keep all unduplicated AFDC and EA cases in the calculations because the base-year and prior-year caseload figures would be comparable.

These rules cover caseload reduction credits that apply in FY 2000 and thereafter—after States had converted to TANF. Since the definition of "assistance" determines the prior-year caseload numbers, it is appropriate to adjust the 1995 caseload numbers to mirror the TANF definition of assistance, in order to compare "apples with apples." In some instances, that could mean that EA cases should not be part of the 1995 base.

Comment: One commenter recommended that we clarify this section to ensure that, in calculating the caseload reduction credit, we only include a percentage of the separate State program cases that equals the State's MOE requirement (either 75 or 80 percent). Otherwise, the commenter argued, the policy would discourage States from investing more than the required MOE amount.

Response: We agree with the comment and have revised the final rule accordingly.

Section 261.44—When Must a State Report the Required Data on the Caseload Reduction Credit? (§ 271.44 of the NPRM)

Under the NPRM, we required a State to submit its caseload report and estimates for each fiscal year by November 15. We proposed to approve or reject a State's estimated reduction credit within 90 days, that is, by February 15.

Comment: Commenters expressed mixed feelings about the timeframes. On the one hand, nearly everyone wanted States to receive the caseload reduction credit and net participation requirement as early as possible. On the other hand, most commenters, and especially State commenters, suggested that the timeframes for responding to additional information requests from the Department and for resolving issues were not sufficient.

Response: To give the public an opportunity to comment on State estimates and ensure that States have adequate time to provide additional requested information, we have modified the final rule. The caseload reduction report and estimates are now due from States on December 31. States may negotiate the deadline for additional information or submit it within 30 days. As a result, we will provide States with their caseload reduction credits no later than March 31. Any extensions for submitting additional data that we grant to States must be consistent with this deadline.

Subpart E—What Penalties Apply to States Related to Work Requirements?

While PRWORA embodies State flexibility in program design and decision-making, it also embodies the principle of accountability. Where a State does not live up to the minimum standards of performance, it faces serious financial penalties. One of the principal areas of accountability is the State's provision of work and work-related activities to promote employment and self-sufficiency. The work participation rates are demanding, but designed to ensure that recipients move as quickly as possible into work and toward independence. This is especially important given the time-limited nature of Federal TANF benefits.

In structuring this part of the regulations, we have attempted to balance the imperative of State accountability in the work participation rates with the knowledge that each State enters TANF from a different standpoint and with different ideas about the best way to help its recipients.

Section 261.50—What Happens if a State Fails To Meet the Participation Rates? (§ 271.50 of the NPRM)

In accordance with section 409(a)(3) of the Act, as amended by Pub. L. 105–33, if we determine that a State has not achieved either or both of the minimum participation rates in a fiscal year, we must reduce the SFAG payable for the following fiscal year. The initial penalty is five percent of the adjusted SFAG and increases by two percentage points for each successive year that the State does not achieve the participation rates. We reduce the penalty amount based on the degree of noncompliance, as discussed at § 261.51. The total work participation penalty can never exceed 21 percent of the adjusted SFAG. (See § 262.1(d) for a discussion of the total penalty limit under TANF.)

If a State fails to provide complete and accurate data on work participation, as required under section 411(a) of the Act and § 265.8 of the regulations, we may determine that a State has not achieved its participation rates, and the State will be subject to a penalty under this part. We also have the authority to penalize a State that does not report its work participation data for failure to report (under section 409(a)(2) of the Act). However, in this case, we thought it would be more appropriate to penalize the State for failure to meet its work rate. First, this policy is consistent with the approach we are taking when a State fails to report information related to other penalty determinations. Also, we did not want to create a situation where nonreporting States would face lesser penalties than reporting States, and we did not believe duplicate penalties were warranted.

We received some comments regarding the year in which we will impose a penalty. We have addressed these comments at § 262.1 of this chapter.

Comment: We received quite a few comments concerning our preamble language indicating that we would impose a penalty for failure to meet the work participation rates if a State failed to report complete and accurate data on the work participation rates. Some commenters objected to the policy altogether. Others suggested that we should only impose the work participation penalty where, as a result of incomplete or inaccurate data, we are unable to determine whether the State failed the participation rates. Another commenter suggested that we specify what "complete and accurate" means for the purposes of calculating the participation rates.

Response: Our intent in including this policy in the preamble was only to impose a work participation penalty based on a State's failure to report complete and accurate data if the lack of data impeded our ability to determine whether the State actually achieved the required rates. In fact, at § 262.3 of this chapter, we indicate that this is our

policy, stating that we will impose the participation rate penalty "if we find information in the reports * * * to be insufficient or if we determine that the State has not adequately documented actions verifying that it has met the participation rates." For clarity, we have changed the wording above to indicate that we "may" impose such a penalty, and we will implement the policy as explained in § 262.3.

Comment: One commenter urged us to penalize a State where an entity with jurisdiction or group of people affected finds a systemic violation of any applicable Federal law (e.g., title VI of the Civil Rights Act).

Response: We think it is appropriate to defer to the entity that enforces a given Federal law to penalize a State that violates that law. In general, the laws the commenter alludes to include specific remedies for individuals that are adversely affected. At the same time, we encourage States to make sure recipients are informed of their rights to remedies under Federal, State and local laws.

If, at a later date, we learn of a specific problem in this regard, we will consider further action, but we think it is unnecessary to include such penalties in the regulation at this time.

Section 261.51—Under What Circumstances Will We Reduce the Amount of the Penalty Below the Maximum? (§ 271.51 of the NPRM)

The statute requires us to reduce the amount of the penalty based on the degree to which the State is not in compliance with the required participation rate. The required rate for a State is the rate at § 261.23, adjusted for any applicable caseload reduction credit; however, it specifies neither the measures of noncompliance nor the extent of reduction. The statute also gives us the discretion to reduce the penalty if the State's noncompliance resulted from certain specific causes; we address this latter issue separately, in the section entitled "Discretionary Reductions."

As we indicated earlier, we have not included in the final regulations the NPRM proposals that would have linked a State's decisions about implementing separate State programs to its eligibility for penalty relief. Thus, we have removed from § 261.51 the provision that would have denied penalty reduction to a State that diverted cases to a separate State program for the purpose of avoiding the work participation requirements. Please refer to the section entitled "Separate State Programs" for a discussion of this policy and the comments that we received relating to it.

Required Reduction

We have significantly modified this part of the penalty reduction section after considering the comments we received. In the NPRM, we defined degree of noncompliance first by which of the rates a State missed and second by how far it came from meeting the required rate. Thus, if a State missed only the two-parent participation rate, we proposed imposing a penalty that equaled, as a percentage of the maximum possible penalty, no more than the State's percentage of two-parent cases. Second, if the State missed the overall rate (or both rates), we proposed reducing the penalty only if the State achieved a threshold of 90 percent of the required rate. Above 90 percent, the reduction was to be proportional.

The final regulations use five basic criteria to measure the degree of noncompliance: which participation rate the State failed; the amount by which it failed; how well it succeeded in increasing the number of recipients engaged in work (despite failing the participation rate(s)); the number of consecutive years in which the State failed the rates; and the number of rates that the State failed.

First, as in the NPRM, we will measure noncompliance on the basis of whether the State failed one or both rates for the fiscal year and which participation rate it failed, if only one. We believe that a State that fails the two-parent rate should be subject to a smaller penalty than a State that fails the overall rate or both. In addition, we believe that it is appropriate to consider the size of the two-parent caseload in deciding how much weight to give a failure of only the two-parent rate.

In looking at the data for FY 1996, we noted that the two-parent participation rate, on average, affected a very small percentage of a State's entire caseload—the mean State percentage was about 6.6 percent, but the median was only about 2.4 percent. We think a State that failed with respect to only a small percentage of its cases should not face a huge penalty. At the same time, we want to ensure that States make adequate commitments to achieving the two-parent participation rate and that our policies support State efforts to extend benefits to two-parent families. We have attempted to balance these goals.

Under this rule, the maximum penalty a State could face for failure to meet only the two-parent rate depends directly on how much of the State's total caseload consisted of two-parent families. We have not created a similar proportional reduction for a State that fails only the overall rate because all cases, including two-parent cases, are reflected in the overall rate.

Second, we measure noncompliance on the basis of the severity of a State's failure to achieve the required rate. In drafting the regulation, we wanted to strike the right balance between the importance of work and the requirement to reduce the penalty based on the degree of noncompliance. Although our first inclination was to make reductions in direct proportion to the State's achievement toward the required rate, our experience in the JOBS program led us to consider creating a threshold below which we would grant no reduced penalty. We were concerned that, as in the JOBS Unemployed Parent participation rates, there would be States with negligible levels of achievement, particularly with respect to the two-parent caseload, and thus did not merit a reduced penalty. Given that experience, we thought it was essential to have a threshold.

In the NPRM, we set the participation threshold at 90 percent, in an effort to support the emphasis in the statute on making the work penalty meaningful. In particular, Pub. L. 105–33 amended the work penalty provision so that the amount was fixed, removing the discretion we had under PRWORA to set a lesser penalty amount. We thought (and continue to think) that this shows Congressional intent to provide a work penalty of consequence. To avoid undercutting this intent, our proposed rules required that a State make substantial progress in meeting the target rates before we would consider a reduction. We continue to believe that a threshold is a key part of the penalty structure.

We received extensive comments about the proposed 90-percent threshold. Some commenters accepted our reasoning for creating a threshold, but virtually all found a 90-percent standard to be excessively high. They argued that it bases large fiscal consequences on small and hard-to-measure differences in reported data. While the NPRM maintained that we did not want to give relief to States with negligible levels of achievement, thus leading us to a threshold, commenters asserted that a high threshold treats achievers and nonachievers the same. For example, a State that reaches 2 percent of the required rate and one that reaches 88 percent of that rate are subject to the same penalty. This, they argued, gives States a strong incentive not to serve families with significant barriers. Further, they pointed out that

it would also subject States with similar achievement levels to very different penalties. For example, with a 40-percent participation rate, a State that reaches 35 percent would be subject to a full penalty, but a State that reaches 38 percent would be subject to less than half the penalty. Although most commenters opposed having a threshold at all, believing that any threshold is arbitrary, many suggested that if we found it essential to have one, it should be set significantly lower. Most recommended a threshold of 50 to 75 percent. A few commenters suggested a lower threshold for the two-parent rate than for the overall rate.

After reviewing those comments and analyzing preliminary data, we have set the threshold at 50 percent. We chose this threshold both because it was the most widely recommended alternative level and because we believe it is a logical standard. Requiring States to reach at least half of the target rate draws a clear line between achievers and nonachievers. We think it is reasonable not to grant penalty reduction to States that are closer to a participation rate of zero than they are to achieving the requirement.

Under the final rules, we will reduce the penalty for any qualifying State in direct proportion to the State's level of achievement above a threshold of 50 percent. To achieve this, we will compute a ratio whose numerator is the difference between the participation rate a State actually achieved and the applicable threshold rate and whose denominator is the difference between the applicable required participation rate and the applicable threshold rate.

In the final rule, we have also clarified that the applicable required participation rate and the applicable threshold both reflect any caseload reduction credit that the State receives pursuant to subpart D of part 261. In other words, the standard against which we judge the degree of noncompliance recognizes that Congress wanted States to get credit for the caseload reductions they achieve, as long as they are not due to eligibility changes. If we did not include this clarification, the threshold standard for some States could actually be higher than the target (i.e., full compliance) rate provided under the statute.

For example, assume a State's adjusted target rate (i.e., after applying its caseload reduction credit) equals 30 percent. Further assume the State achieved 18 percent, which exceeds the threshold of 15 percent (one half of 30 percent) by 3 percentage points. The 3 percentage points equal 20 percent of 15 percent, the difference between the required rate and the threshold. Therefore, we would reduce the penalty amount by 20 percent.

Commenters also urged us to consider a wide range of alternative means of measuring noncompliance. On the whole, they urged us to give States credit for their level of effort, rather than looking specifically to a percentage of the participation rate. One commenter offered that, if the purpose of penalties is to give States a strong incentive to take the requirements seriously rather than to punish those that fail, then a broader view of State achievement is in order. In particular, several commenters suggested variations of the following alternative factors for determining penalty reduction:

- An increase in a State's caseload (in either the current year or prior year);
- Improvement in a State's performance over the prior year;
- Increase in the number of participants in countable work activities in a State, or in the number of participants in work activities but below the required number of hours to count for participation; and
- The extent to which a State exceeded the overall rate, even though it missed the two-parent rate.

Some also suggested that we should recognize a combination of alternatives, perhaps without even specifying a comprehensive list in the regulation.

One set of extensive comments on this issue put forward an argument for treating any penalty reduction factors that we adopt in a formulaic way so that a State's penalty liability is clear. Although this can make for a complex provision, we have responded to this concern by adding some detail to the final rule. We believe that this formula will help States foresee the possible fiscal consequences of their policy decisions.

We considered all these alternatives measures from the perspective that our primary interest in the participation rates is to encourage work. As a result, we have modified the regulations to include as our third measure of noncompliance an adjustment factor that reflects a State's success in engaging additional recipients in countable work activities. The factor rewards a State that increases the number of individuals it engages in work by at least 15 percent over the previous fiscal year. If the number of individuals engaged in work decreases, the State would not be eligible for a penalty reduction, beyond the proportional reduction for failing only the two-parent rate. For this calculation, we will use the average monthly participation data, just as we do in calculating the participation rates themselves.

We calculate the adjustment factor by dividing the change in the average number of individuals the State has engaged in work by 15 percent of the number it engaged in work the prior year. For example, if the State engaged an average of 2,000 individuals each month in the prior year, and 2,400 individuals in the current year, we would divide 400 (the change) by 300 (15 percent of 2,000, the prior year's average monthly number engaged in work). This would result in an adjustment factor of 1.33. In other words, in the example, the State's increase in participants exceeded 15 percent of the prior year's level by one third. Thus, under these rules, the State's penalty reduction would increase by one third, compared to the reduction it would have received if it had achieved only a 15-percent increase.

We chose to tie the adjustment factor to a 15-percent increase to approximate the average annual increase in the overall participation rate.

We based the adjustment factor on an increase in the number of participants in work instead of on an increase in the percentage of participants in work for two reasons. First, the proportional reduction above the threshold already takes a percentage of participants into account through the increase in the participation rate. Second, commenters made a persuasive argument that measuring individuals would reward States that actually showed greater success with work, where participation percentages would be affected by caseload changes that might have nothing to do with work or the State's efforts to engage individuals in work.

Readers will note that, in addition to the threshold, the adjustment factor also serves as a trigger for penalty reduction; the State must have an adjustment factor above zero to qualify for penalty reduction beyond the proportional reduction for failing only the two-parent rate. We needed to cut off the adjustment factor at zero because a negative number would actually increase the penalty above the amount described in § 261.50, which we have no authority to do. We then linked the presence of an adjustment factor to further penalty reduction because we did not want to reward a State with a decrease in the number of working recipients more than a State with a small increase (under 15 percent) in the number engaged in work.

Finally, we adjust the penalty reduction on the basis of whether the State failed both participation rates in

the current year and how many consecutive years it failed them. If the State met both participation rates in the previous year and only failed one rate in the penalty year, we will apply the full reduction to the penalty. If it failed both rates, but failed none the previous year, we will decrease the penalty reduction by one half.

For the second consecutive year of penalty liability, we will prorate the penalty reduction by 50 percent if the State failed just one rate; if it failed both rates, it is entitled to a 25 percent reduction.

If the State fails to meet the participation rates for three or more years in a row, we will not reduce the penalty at all. We think that this is a fair and reasonable approach to avoid rewarding a State that has not successfully addressed a persistent problem and that repeated failures is an appropriate indicator of the degree of noncompliance. A State with successive failures could still claim a discretionary work penalty reduction (as discussed below), claim a reasonable cause exception, or enter the corrective compliance process.

We have also added a paragraph indicating that we will adjust the calculations in this section to exclude cases for which a State has granted federally recognized good cause domestic violence waivers. Based on the comments we received in this area, and given our reasonable cause exception policy with respect to cases with federally recognized good cause domestic violence waivers, we thought these waivers should play a similar part in penalty reduction. For comments about domestic violence waivers, please refer to the preamble section entitled "Treatment of Domestic Violence Victims."

To summarize the entire penalty adjustment process, we begin with the proportional reduction based on the amount by which the State exceeded the 50-percent threshold. Second, we calculate the adjustment factor for increasing the number of individuals working and multiply the reduction by the adjustment factor if it is positive, arriving at an adjusted reduction. If the adjustment factor is zero or negative, there is no adjusted reduction. Then we multiply the adjusted reduction by the applicable penalty percentage, derived from whether the State failed just the two-parent rate. Finally, we adjust the penalty based on whether the State failed both rates and on the number of consecutive years of failure.

As we stated earlier, if a State does not qualify for an adjusted reduction, it still may be eligible for the proportional penalty reduction for failing only the two-parent rate.

In spite of our desire to make this regulation as simple as possible, we realize that this process is more complex than the approach we adopted in the NPRM. We have taken very seriously the commenters criticism that the proposed penalty reduction provision did not look broadly enough at State success in work. We think the new provision treats States more fairly and will be more effective at encouraging work. Factoring in multiple ways of looking at such success naturally makes the new methodology more complicated. In fact, we considered several of the other alternatives that commenters suggested, but ultimately decided that additional factors would make the calculation too convoluted, without adding to the balance or the work focus.

Comment: We received a great many comments about linking the size of the penalty for missing only the two-parent participation rate to the proportion that two-parent cases make up of the State's total caseload. Nearly all agreed with our approach; however, commenters put forward two additional ideas. First, one commenter suggested linking the size of the two-parent penalty to the national two-parent proportion, rather than varying the penalty based on each State's two-parent caseload. The second idea was to provide penalty relief for States that have made policy choices that have expanded the 2-parent caseload.

Response: We have not adopted either of these recommendations. While using a national caseload proportion would remove a possible inadvertent incentive for a State to reduce the size of its two-parent caseload, or a disincentive to expand eligibility, two-parent cases are not distributed evenly across the States. Moreover, we think the difference in penalty amounts would not be enough of an incentive to drive State policy regarding two-parent cases.

Regarding the issue of policies that increase the two-parent caseload, we think that our policy of adjusting the penalty base to reflect the two-parent caseload is the appropriate mechanism for helping States with the two-parent participation rate. (We also considered this issue in the context of the caseload reduction factor, as addressed above. Please refer to subpart D of this part for further discussion.)

Comment: As we indicated above, we received many comments suggesting alternative measures to use in penalty reduction. We listed above the ones that were most persuasive or appeared most frequently. The comments included others that we have not listed.

Response: We think the new penalty reduction methodology we have adopted gives States credit fairly for making substantive progress in reaching the participation rates and supports State efforts to engage recipients in work. It should be viewed as a whole because its various components are designed to work in combination to achieve a balanced result. While there are other factors that might also have worked well, we believe that we have selected elements that would achieve these goals and are easily calculable.

Comment: A few commenters urged us to require a State to have a system for monitoring and enforcing compliance with Federal employment laws within its TANF program in order to qualify for a penalty reduction.

Response: As we have indicated earlier, we fully expect States to conduct programs that are lawful and to uphold employment laws that apply to working welfare recipients. We have chosen not to adopt this suggestion out of deference to the enforcement mechanisms already available under Federal law. However, we have created a new regulatory section at § 260.35 to reference existing employment and recipient protections. Please refer to the section entitled "Recipient and Workplace Protections" for a more detailed discussion of this issue.

Discretionary Reductions

The final regulations reflect the discretion that we have to reduce the amount of the penalty if the State could qualify as a needy State for the Contingency Fund. The definition of "needy State" at § 260.30 is based on especially high unemployment or large numbers of Food Stamp recipients in the State. (See subpart B of part 264 for more discussion of how a State qualifies for the Contingency Fund.)

Pub. L. 105–33 gave us the added discretion to reduce the penalty if the State failed to meet the participation rate due to extraordinary circumstances such as a natural disaster or regional recession. We have modified this provision from the NPRM to include substantial caseload increases among the examples of extraordinary circumstances. Although this criterion is not given as an example in the statute, based on the comments we received, we believe such a condition could constitute an extraordinary circumstance and think it is appropriate to include it.

To ensure that we take any such circumstances into consideration, States should submit information describing

the extraordinary circumstances and their effects on the ability of the State to meet the participation rates. We must provide a written report to Congress to justify any penalty reductions that we grant under this provision.

One criterion for discretionary reductions is similar to the criterion at § 262.5(a)(1) for granting a reasonable cause exception to a penalty due to a natural disaster. We will evaluate any information a State submits concerning the effects of a natural disaster on its ability to achieve the participation rates. If the material does not support granting a reasonable cause exception, we will consider whether it is sufficient for penalty reduction purposes. For example, if the disaster caused a failure in only one small area of the State, but the State missed the required participation rate by a significant amount, we would not grant a reasonable cause exception, but we might reduce the penalty in proportion to the TANF caseload in that area. We intend to use a similar approach to evaluating the effects of a regional recession.

Comment: Some commenters urged us to add other factors to the examples of discretionary reductions. Some suggested an open-ended example such as "other circumstances beyond the State's control" while others gave specific suggestions, including: caseload increase; sub-state recessions; widespread economic disruption from the closing of a plant or significant numbers of lay-offs; chronic unemployment; bad weather; and mismatch between available jobs and skills of recipients.

Response: As we indicated above, we have added substantial caseload increases to the list of examples of extraordinary circumstances; however, it is simply a list of examples. We believe the provision leaves the flexibility for a State to make a claim of "extraordinary circumstances" based on other factors. The final regulation indicates, as did the NPRM, that we will consider the objective evidence of extraordinary circumstances that a State submits. We have not specified the basis on which we will evaluate that evidence or apply a reduction. We believe this responds to the recommendation of commenters that we should have flexibility under our rules to address situations that we could not foresee at this writing. Since the extraordinary circumstances are likely to be different in each case, we think it is most appropriate to use the discretion available to us to evaluate the materials that a State submits to determine whether its claim warrants a reduction in penalty amount.

Section 261.52—Is There a Way To Waive the State's Penalty for Failing To Achieve Either of the Participation Rates? (§ 271.52 of the NPRM)

Section 409(b) of the Act creates a reasonable cause exception to the requirement for certain penalties, including failure to meet the minimum participation rates. If we determine that a State has reasonable cause, we cannot impose a penalty.

We have included general reasonable cause criteria at § 262.5. These apply to any of the penalties for which there are reasonable cause exceptions. The preamble to § 262.5 discusses how we arrived at these criteria, as well as our general philosophy about the role of reasonable cause exceptions.

For the work participation rate penalty, two additional, specific reasonable cause exceptions apply. Under the regulation at § 261.52, a State may demonstrate that its failure can be attributed to its granting of federally recognized good cause domestic violence waivers under the Family Violence Option. In this case, the State must show that it would have achieved the required work rates if cases with these waivers were removed from both parts of the calculation (i.e., from the numerators described in §§ 261.22(b)(1) and 261.24(b)(1) and the denominators described in §§ 261.22(b)(2) and 261.24(b)(2)). A State must grant domestic violence waivers in accordance with criteria in subpart B of part 260 to be eligible to qualify as federally recognized good cause domestic violence waivers and to receive a reasonable cause exemption on these grounds. We have explained this policy and responded to comments on this subject in subpart B of part 260.

The regulation also provides that a State may receive a good cause exemption if it demonstrates that its failure to achieve the work participation rates can be attributed to the provision of assistance to refugees in a federally-approved alternative project.

Finally, this section of the regulation indicates that States may dispute our findings that they are subject to a penalty.

Comment: Many commenters urged us to expand the reasonable cause exceptions specifically available for failure to meet the work participation rates. They suggested a variety of additional criteria, such as a high incidence of recipients with severe employment barriers, a significant refugee population, correcting unlawful employment discrimination, conflicts with other Federal requirements (including the FLSA) or litigation, and enforcing the nondisplacement provisions. Some commenters, paralleling the domestic violence exception, suggested that the provision of targeted services to other groups of recipients with significant barriers to employment should entitle a State to a reasonable cause exception. Others recommended many of the same criteria suggested for reducing a participation rate penalty, including caseload increases, economic downturns, and increases in the number of recipients the State engages in work or places in countable activities but below the hours standard. Many also suggested granting a reasonable cause exception for a combination of factors. Also, a number of commenters urged us to leave the reasonable cause criteria in this provision open-ended so that a State could present its arguments for an exception as situations arise and each could be evaluated on its own merits.

Response: Although these comments appear in the context of exceptions to the work participation rate penalty, many commenters made the same arguments regarding the general reasonable cause criteria at § 262.5. We have addressed comments that apply broadly to reasonable cause exceptions in that section.

We continue to believe that the best way to address a State's difficulty in meeting a program requirement is through the corrective compliance process. This holds true for the participation rates as much as, if not more than, any other requirement. Families, States, and the Federal government are better served by solving the problem than by forgiving it, or by imposing a penalty. It is for this reason that we have chosen to limit reasonable cause exceptions, particularly those that relate to a specific provision, as in the case of the participation rates, and have not added the criteria suggested. Nevertheless, under § 262.5, a State may present a case for a reasonable cause exception outside the ones specifically listed. We think that the revised language in this section, together with a State's ability to dispute our finding of a penalty, the corrective compliance process, and the opportunities for work penalty reduction, sufficiently recognize the difficulties States may face in meeting the participation rates.

Section 261.53—May a State Correct the Problem Before Incurring a Penalty? (§ 271.53 of the NPRM)

The process for developing a corrective compliance plan does not differ from one penalty to the next,

although the content of the plan naturally would. Thus, the regulation refers to § 262.6, the general section on submittal of a corrective compliance plan for any penalty.

Readers should note that § 262.6(e) establishes a maximum corrective compliance period for failure to meet the work participation requirements. Since we measure participation annually, we will measure compliance based on performance during the fiscal year that ends at least six months after we receive the State's corrective compliance plan.

In this section, we establish a specific threshold that States must achieve in order to be considered for a reduced work penalty under § 262.6(j) for making significant progress toward achieving compliance. A State must increase its participation rate during the compliance period enough to fill at least half the gap between the participation rate it achieved in the penalty year and the required rate for the compliance period. In other words, we will divide the difference between the rate achieved during the compliance period and the rate achieved during the penalty year by the difference between the required rate for the compliance period and the rate achieved during the penalty year; a result of at least 0.50, qualifies the State for a possible reduction.

You should note that, in this final rule, the required rate for the compliance period reflects any caseload reduction credit that the State receives under subpart D of part 261. We believe that this adjusted rate reflects the performance standard that Congress intended would apply to States.

We also believe that making more progress toward the rate than failure—that is, achieving at least 50 percent—is a reasonable standard for significant progress. Thus, at the point at which a State reaches this threshold, we may reduce its work penalty under the corrective compliance provision.

This approach is similar to the one taken in § 261.51, with respect to potential reductions in work penalties based on degree of noncompliance. In both cases, we expect significant compliance in order to merit a reduced penalty. However, we look at performance over different periods in the two provisions.

Comment: Several commenters thought that the 50-percent standard of achievement measured against the "new" rate was restrictive and arbitrary. Commenters proposed two basic alternatives. Many urged us to set a threshold of achievement based on a particular State's circumstances or to negotiate a State's threshold in the corrective compliance plan process. Some thought that we should consider a State to be in compliance if it achieves the participation rate associated with the year for which it was subject to the penalty. (Presumably, if we were to use a threshold to reduce the penalty in this scenario, it would be applied against the latter rate.) One commenter thought that we should link the threshold to the average increase among States with corrective compliance plans, and another suggested that States should be able to show significant improvement by means other than reaching the threshold. Another commenter remarked that we made no provision for circumstances arising in the year following the penalty year that prevent a State from reaching the threshold.

Response: We note that this provision applies a second reduction to a State's penalty amount, the first (described at § 261.51) having been significantly expanded over the original proposal. This reduction follows a corrective compliance period in which the State should have been applying the steps of its plan to resolve the participation rate problem. Given these circumstances, we think it is appropriate to maintain a fairly rigorous standard for reducing a penalty still further. Moreover, we do not think that a 50-percent threshold is overly demanding—it simply requires a State to be more successful, rather than less successful, in coming into compliance. We measure progress against the "new" rate (i.e., the one that applies for the corrective compliance plan year) because to do otherwise would suggest that the State is not being held to the same standard as all the others for that year. Otherwise, we would effectively give a State an extra year to achieve the minimum participation rate. We expect a corrective compliance plan to allow a State to come into compliance with the applicable rates. Thus, the penalty reduction associated with corrective compliance should use that standard.

If circumstances arise during the corrective compliance plan period that prevent the State from achieving the threshold, it is free to claim a reasonable cause exception or develop a corrective compliance plan for the penalty year, but we do not think it is appropriate to reduce the prior penalty on that basis. In addition, the State might qualify for penalty relief under § 262.6(j)(2), relating to natural disasters or regional recessions during the compliance period.

Section 261.54—Is a State Subject to Any Other Penalty Relating to Its Work Program? (§ 271.54 of the NPRM)

In accordance with section 409(a)(14) of the Act, as amended by Pub. L. 105–33, if we determine that a State has violated 407(e) of the Act in a fiscal year, which relates to when a State must impose penalties on individuals who refuse to engage in required work, we must reduce the SFAG payable for the following fiscal year by between one and five percent of the adjusted SFAG.

Comment: One commenter thought we did not provide adequate guidance concerning the means by which we will judge whether a State has violated the sanctioning requirement. Without such guidance, the commenter thought that States might sanction families more severely than necessary to avoid a potential penalty.

Response: As we indicated at § 262.3, we will use the single audit to assess whether a State is complying with section 407(e) of the Act and thus whether it is liable for a penalty under this provision. We expect that, if there are widespread problems with States' sanctioning practices, our data collection and the audits will help identify them.

While we understand the commenter's concern that States will "over-sanction" to avoid this penalty, it is important to understand that this penalty applies both to a State's failure to sanction when it should have and to its imposition of a sanction when it should not have imposed one. Thus, a State that overreacts by sanctioning too readily could be equally liable for a penalty. If the commenter is concerned that States will impose larger sanctions than they would otherwise, we would point out that States have the explicit authority, independent of this penalty provision, to impose sanctions that are greater than pro rata reductions, up to and including terminating assistance to the case.

Comment: One commenter objected to our intention to collect sanction policy information via § 265.9, stating that such information was available in the TANF State plans.

Response: While some States may have included sanctioning policies in their TANF plans, the statute does not require it. Thus, we cannot count on obtaining this information through the plans. Also, at best, the plan information would only tell us about State policy, not State practice (e.g., the nature and scope of sanctions imposed).

Section 261.55—Under What Circumstances Will We Reduce the Amount of the Penalty for Not Properly Imposing Penalties on Individuals? (§ 271.55 of the NPRM)

The statute requires us to reduce the amount of the penalty based on the degree to which the State is not in compliance with the section 407(e) of the Act.

In determining the size of any reduction, we will consider two factors. First, we will examine whether the State has established a control mechanism to ensure that the grants of individuals are reduced for refusing to engage in required work. Second, we will consider the percentage of grants that the State has failed to reduce in accordance with the statute.

As we indicated in the preamble to § 261.14, States have the discretion to define the term pro rata reduction. Under § 265.9, as part of the annual report we require each State to provide us with a description of how it will carry out a pro rata reduction. This information will help us determine whether States are taking sanctions appropriately. Also, these definitions will help us determine whether States face an equitable and level playing field under this penalty provision.

Some commenters noted that the proposed rules incorrectly specified that reasonable cause and corrective compliance did not apply to this penalty. We have deleted the provision that included this inadvertent error.

Comment: One commenter urged us to clarify what we mean by control mechanisms.

Response: We did not want to limit a State's range of possible control mechanisms by creating a single definition. However, one example of a possible control mechanism would be a system that identifies cases in which an individual refused to participate, then cross-checks those cases against information on sanction actions, and corrects any errors in sanctioning.

Although we did not define a control mechanism in the regulation, there are some additional elements that we expect a State to include in a control mechanism to ensure appropriate sanctioning of recipients. Section 402(a)(1)(B)(iii) of the Act provides that a State must set forth objective criteria for fair and equitable treatment of recipients, including an explanation of how the State will provide an opportunity for recipients who have been adversely affected to be heard in a State administrative or appeal process. We think that any State mechanism that controls whether sanctions have been imposed properly should ensure that recipients are informed of their rights to fair hearings and advised of the process for invoking that right. In addition, we encourage States to consider adding procedures to advise recipients of their rights to pursue other remedies that might be available under State and local laws.

Comment: A commenter, citing the fact that States have a right under the regulations at § 262.7 to appeal a finding that it is subject to a penalty, urged us to ensure that individuals are accorded a similar right.

Response: As we explained in the previous comment, section 402(a)(1)(B)(iii) of the Act accords recipients the right to appeal adverse actions. While we are not regulating this provision itself, we do expect that States will address this requirement as part of their sanctioning control mechanisms, and we will take it into consideration in determining any reduction to the amount of this penalty.

Comment: A commenter expressed concern that examining only sanctioning data, without data from cases not sanctioned, as the basis for the penalty would lead to unnecessarily harsh sanctions. The commenter recommended basing the penalty determination solely on whether the State has established control mechanisms.

Response: As we indicated in the previous section, this penalty applies to all violations of the sanctioning requirement, whether failing to sanction inappropriately or imposing sanctions inappropriately. For example, we anticipate sampling sanctioned cases to determine whether a State has imposed sanctions without evidence of a recipient's refusal to participate. Thus, a State has just as much incentive to exercise restraint in sanctioning as to impose sanctions too readily. At the same time, States may impose sanctions that are greater than pro rata reductions without violating section 407(e) of the Act.

Comment: A commenter urged us to base the penalty amount on the amount of the sanctions that should have been imposed, as a percentage of the total amount of grants the State awards, or as a percentage of the total grants that should have been reduced but were not.

Response: This approach seems overly complex to us. We see no advantage to basing the reduction on dollar amounts instead of case percentages.

Comment: A commenter recommended that we allow a tolerance for errors before imposing a penalty under this provision.

Response: We have built a tolerance for errors into the reasonable cause exceptions at § 262.5. In addition, States have the right to dispute our determination that it is subject to a penalty, in accordance with the provision at § 262.4.

Comment: A commenter urged us to deem 80-percent compliance as full compliance with the requirement because the penalty amount must be between 1 and 5 percent.

Response: We have not established a specific formula for determining and reducing the amount of the penalty. We will factor in objective evidence of whether the State has established a control mechanism, as discussed above, and of how many cases have been improperly sanctioned.

Section 261.56—What Happens if a Parent Cannot Obtain Needed Child Care? (§ 271.15 of the NPRM)

Readers will note that we have moved the substance of this section from § 271.15 of the NPRM to § 261.56 of the final rule. The proposed rules contained two sections dealing with the question of sanctions for parents of young children who refuse to work because they cannot find needed child care. The first section specifically addressed the statutory protections from sanctioning available to such individuals who could not obtain child care; the second dealt with the penalties that a State would face if it sanctioned individuals in violation of the exception. Because of the close interrelationship between these two provisions and the number of comments we received on them, we thought that putting the regulatory sections adjacent to one another would make the provisions easier to follow. We have retained § 261.15 to ensure that subpart A, which relates to the responsibilities of individuals under TANF, continues to discuss the child care exception.

To support the intent of the statute to move people to work, section 407(e) of the Act requires that States reduce or terminate assistance to individuals who refuse to engage in work required by section 407 of the Act. However, as we discussed in the preamble to § 261.15, a State may not reduce or terminate assistance to a single custodial parent caring for a child under age six for refusing to engage in required work, if the parent demonstrates an inability (as determined by the State) to obtain needed child care. This exception applies to penalties the State imposes for refusal to engage in work in accordance with either section 407 or section 402(a)(1)(A)(ii) of the Act. The

parent's demonstrated inability must be for one or more of the following reasons:

- Appropriate child care within a reasonable distance from the individual's home or work site is unavailable;
- Informal child care by a relative or under other arrangements is unavailable or unsuitable; or
- Appropriate and affordable formal child care arrangements are unavailable.

Refusal to work when the State determines an acceptable form of child care is available is not protected from sanctioning.

Because each State has the authority to determine whether the individual has adequately demonstrated an inability to obtain needed child care, we expect the State to define the terms "appropriate child care," "reasonable distance," "unsuitability of informal care," and "affordable child care arrangements." The State must also provide families with the criteria (including the definitions) that it applies in implementing the exception and the means by which a parent can demonstrate an inability to obtain needed child care.

To keep families moving toward self-sufficiency and to promote State compliance with this penalty exception, our rules provide that States must have processes or procedures in place that: (1) enable a family to demonstrate its inability to obtain needed child care; (2) inform parents that the family's benefits cannot be reduced or terminated when they demonstrate that they are unable to work due to the lack of needed child care for a child under the age of six; and (3) advise parents that the time during which they are excepted from the penalty will still count toward the time limit on Federal benefits at section 408(a)(7) of the Act; if applicable.

In response to numerous comments, as discussed below, the language in §§ 261.56 and 261.57 reflects these expectations. In this section, which focuses on the responsibilities of the State to inform parents, we also require that the information States provide must include the definitions or criteria that the State uses in its determination process.

The regulations for the Child Care and Development Fund (CCDF) reinforce the importance of providing this vital information to parents by also requiring the child care lead agency, as part of its consumer education efforts, to inform TANF parents seeking child care in the CCDF system of the existence of the child care exception and how to demonstrate an inability to obtain needed child care.

The CCDF rule requires the lead agency for child care to coordinate with the TANF agency in order to understand how the TANF agency defines and applies the terms of the statute regarding the penalty exception and to include the definitions of the terms or criteria in the CCDF plan.

We took this child care rule into consideration in drafting our proposed rule. Under § 271.15, we required that the definitions and criteria be submitted, but did not specifically require that the TANF agency submit them. Our goal was to ensure that this information was available for audit and penalty purposes and that it be part of the public record, not to create an unnecessary burden for States. We have not altered this policy in these final regulations.

We received many comments on the provisions in this section and made changes as discussed below.

Comment: Most commenters objected to having the responsibility for informing families about the child care exemption in the hands of the child care lead agency and urged that we give the responsibility to the TANF agency.

Response: In the NPRM, we did not specifically require the TANF agency to inform clients about the exception to sanctioning because the CCDF NPRM (now the CCDF final rule) already required it. In the NPRM preamble, we stated our expectation that States would inform clients, but did not name the entity responsible. Our intent was to avoid imposing an additional Federal burden on the States where the CCDF requirement addressed the situation adequately. However, advocates and States alike made a compelling argument that not all TANF clients covered by this protection would necessarily be referred to the child care lead agency. Therefore, we have revised the regulatory language at § 261.56. In the final rule, the TANF agency must inform clients of the existence of the child care exception to sanctions and how to demonstrate an inability to obtain needed child care. This requirement is in addition to the requirement, in the CCDF rules, that the CCDF agency inform TANF parents about the exception.

Comment: Many States objected to our requiring criteria and definitions, arguing that we had shifted the burden of proof from the individual to the State. We also received a few general comments to the effect that our rules did not adequately protect individuals from harsh State policies.

Response: We do not believe that requiring States to inform parents of their rights, including the definition of key terms in those rights, shifts the burden of proof to States. The individual needs to know how the State defines key terms to determine whether the exception applies to his or her case.

Regarding the concern over harsh State policies, States have considerable latitude in implementing the child care protections. We think the final regulations protect families as much as possible, given the regulatory restraints of section 417.

Comment: A few commenters urged us to require States to inform recipients about available child care subsidies and to assist them in obtaining appropriate and affordable child care.

Response: While we agree that assisting recipients locate child care is a reasonable expectation, the statute at section 417 limits our ability to regulate in this area. Given that child care is widely recognized as a fundamental supportive service, necessary for recipients to obtain and maintain employment, we are confident that States will adopt practices that inform recipients about available child care providers. States understand the importance of employment retention and career advancement for recipients. In fact, the publication "Working Out of Poverty" by the NGA Center for Best Practices, recognizes the need to inform recipients of the availability of transitional supports such as child care and transportation assistance early, for example, during eligibility determinations and assessments, and as part of job search and job readiness programs.

Comment: Some commenters were concerned that the NPRM left room for a parent who wishes to use a particular type of child care that is not available to refuse appropriate available child care arrangements, without risk of a penalty. For example, they feared that a parent who wants only informal relative care, but has no relative available to provide care, could refuse affordable, suitable center-based care. States argue that this result would be contrary to Congressional intent and the goals of the Act. They urged us to make clear that refusing work under such circumstances is not protected under the child care exception to a sanction.

Response: This issue stems from an interpretation of the wording of the statute, which uses the phrase "one or more" in describing the reasons for a parent's demonstrated inability to obtain needed child care. However, we agree with the commenters that such a result would be contrary to Congressional intent, which was to protect individuals from sanction when there was no appropriate child care, not

to give families a loophole to avoid work requirements. Further, such an interpretation would be contrary to the best interest of the family, because the TANF clock continues to run during such a period. Therefore, we have revised the regulatory language at § 261.56 to clarify that refusing to work when an acceptable form of child care is available is not protected from sanctioning.

Comment: One commenter was concerned that the NPRM, as written, might create a larger problem of inadequate child care due to informal, uncertified or unlicensed child care providers. The commenter was concerned that this would result in caregivers with inadequate training in child development or basic life-saving skills, poor or no curriculum, or no health or dental care referrals.

Response: The statute, as reflected in the NPRM, intended to give parents some choice in child care arrangements. Informal care is only one possible type of child care arrangement that families could use. If the State uses CCDF funds to provide child care, the regulations governing the CCDF program require States to have standards for informal providers, as well as those providers who are licensed. Under TANF, we do not have the authority to regulate child care providers. Accordingly, we have not amended the rules in response to the comment.

Section 261.57—What Happens if a State Sanctions a Single Parent of a Child Under Six Who Cannot Obtain Needed Child Care? (§ 274.20 of the NPRM)

As we discussed in the prior section, the statute at section 407(e)(2) protects single custodial parents of children under age six from sanction for refusing to work when they cannot obtain needed child care. They must demonstrate that they could not obtain child care for one or more of the following three reasons: (1) Appropriate child care was not available within a reasonable distance from the parent's home or work site; (2) informal child care, by a relative or under other arrangements, was unavailable or unsuitable; and (3) appropriate and affordable formal child care arrangements were unavailable. However, refusal to work when an acceptable form of child care is available is not protected from sanctioning.

Section 409(a)(11)(A) of the Act directs the Secretary to reduce by no more than five percent of the adjusted SFAG, the SFAG payable to a State that violates this sanctioning protection. To determine that a State is liable for a penalty, we must find that the State reduced or terminated assistance to a parent who qualified for a sanctioning exception under the definitions or criteria that the State developed regarding a parent's "demonstrated inability" to obtain needed child care.

We will consider the following factors in determining whether a State has violated the exception to the sanctioning requirement at section 407(e)(2) of the Act:

- Whether the State informs families about the exception to the penalty for refusing to work, including the fact that the exception does not extend the time limit on benefits;
- Whether the State informs families about the process or procedures by which they can demonstrate an inability to obtain needed child care;
- Whether the State has defined "appropriate child care," "reasonable distance," "unsuitability of informal care," and "affordable child care arrangements," and informed parents of these definitions;
- Whether the State notifies the parent of its decision to accept or reject the parent's demonstration in a timely manner;
- Whether the State has developed alternative strategies to minimize the amount of time parents are excepted from work requirements due to their inability to obtain needed child care. For example, a State that uses the services of a child care resource and referral office might grant "good cause" based on a statement from that office attesting to the unavailability of appropriate or affordable child care. However, it could implement a system for automatically rechecking the availability of care every few weeks. If the inability to work were due to difficulty in arranging transportation, the State could use bus and rail rates and schedules to help the recipient find appropriate child care within a reasonable distance.

We are not specifying the process or procedures that States should develop or the documents, if any, States should require. However, we suggest that, if States plan to require documents, they select ones that are readily available to families. We recommend that the process or procedures be simple and straight-forward. In addition, we recommend frequent contact with parents, since the penalty exception does not stay the time limit and there may be fluctuations in the availability of child care services.

We will impose the maximum penalty if a State does not have a process or procedure in place that enables families to whom this provision applies to demonstrate that they have met the guidelines provided by the State. Additionally, we will impose the maximum penalty if there is a pattern of substantiated complaints from parents or organizations verifying that a State has reduced or terminated assistance in violation of the requirement at section 409(a)(11) of the Act. We may impose a reduced penalty if the State demonstrates that the incidents were isolated or that a minimal number of families were affected.

States faced with a penalty under this provision may claim reasonable cause and/or submit a corrective compliance plan as described in part 262.

We expect that, because of the interrelationship between TANF and CCDF, TANF staff will work in close coordination with the lead agency for child care. Our expectation is that TANF staff will provide families with information about the penalty exception and the process and procedures developed by the State to demonstrate an inability to obtain needed child care. Under the CCDF rule, ACF requires that the lead agency for the CCDF program provide the same information to TANF parents who are seeking child care in the CCDF system. In addition, ACF requires the lead agency for child care to include in the CCDF plan the TANF agency's definitions for "appropriate child care," "reasonable distance," "unsuitability of informal care," "affordable," and "child care arrangements." Thus, we expect the State TANF agency to share its definitions of these terms with the child care agency. Both agencies will then be able to share them with families whom they may be assisting with child care arrangements.

We received few comments on this section. They are discussed below. We also made one minor editorial change to § 261.57(c); the word "will" was changed to "may" in recognition of the variables that we need to consider in a decision to impose a reduced penalty.

Comment: One commenter suggested that we should review a sample of cases of sanctioned individuals to ensure that they were actually informed of their rights and that the State did not disregard a demonstration of the lack of availability of care.

Response: We agree. Since the primary vehicle for monitoring the requirement will be the single State audit, we are developing procedures that include the review of a sample of cases in which benefits have been reduced or terminated due to a parent's failure to comply with the work requirements.

Comment: One commenter disagreed with the proposed regulation because States are threatened with penalties based on isolated instances when they do not follow the procedures they have reported to us. The commenter argued that imposing a penalty for isolated noncompliance would have a chilling effect on enforcing work-related sanctions.

Response: We disagree with the comment. In the proposed rule, we stated that we would impose the maximum penalty of five percent if: (1) The State did not have a statewide process in place that enables families to demonstrate their inability to obtain child care (although the State's process does not need to be uniform statewide, there simply needs to be a process in all areas of the State); and (2) there were a pattern of substantiated complaints that verifies that a State had terminated assistance in violation of the requirement. A "pattern of substantiated complaints" does not include isolated cases that affect few families and occur in relatively few jurisdictions. This means that we will not impose a maximum penalty based on a few aberrant situations when it is clear that the State established a statewide procedure. Accordingly, we have not modified the final rules in this regard.

Subpart F—How Do Welfare Reform Waivers Affect State Penalties?

Section 261.60—How Do Existing Welfare Reform Waivers Affect a State's Penalty Liability Under This Part? (§ 271.60 of the NPRM)

Based on our changes to the regulatory provisions relating to waivers, we have modified this section. Under the NPRM, this section described how welfare waivers affected the participation rates. In the final rule, it merely cross-references subpart C of part 260, which addresses welfare reform demonstration waivers comprehensively.

We have responded to all comments relating to waivers in the preamble section entitled "Waivers."

Subpart G—What Nondisplacement Rules Apply in TANF?

Section 261.70—What Safeguards Are There To Ensure That Participants in Work Activities Do Not Displace Other Workers? (§ 271.70 of the NPRM)

The regulations incorporate the statutory prohibition against allowing an individual participating in TANF work activities from displacing another employee. A participant in a work activity may not fill a vacancy that exists because another individual is on layoff from the same or equivalent job. Also, a participant may not fill a vacancy created by an involuntary reduction in workforce or by the termination of another employee for the purpose of filling a vacancy with a participant.

The statute and the final rule also require States to establish and maintain grievance procedures for resolving complaints of alleged violations of the restrictions on displacing workers. Readers should note that we have added a new reporting requirement at § 265.9(b)(7), under which each State must provide us with a description of its grievance procedures for resolving complaints of displacement as part of its annual report if it has not included a description in its State TANF plan.

We encourage States to take aggressive steps to ensure that the current work force is not harmed or their employment jeopardized in any way by a State's efforts to place welfare recipients in employment or work-related positions. Our ultimate goal, and that of States, is to increase the ranks of the employed, not to substitute one group of job-seekers for another. Displacing current workers is counter-productive and damages the overall stability of the labor force. We are confident that States will develop procedures for working with employers to protect against displacing other employees.

Comment: A few commenters urged us to establish minimum standards for State grievance procedures and to require that a State notify workers of those procedures and of the remedies available to displaced workers. Similarly, another commenter urged us to create standards for other aspects of this provision. At least one commenter recommended that, if we thought we did not have the authority to impose such requirements, then instead we should deny penalty reduction to States that do not establish effective grievance procedures or ensure widespread notice of their procedures.

Some commenters urged us to reference the WtW interim rules, which included more extensive nondisplacement provisions, and to recommend that States use one set of grievance procedures for both programs.

Response: Section 417 of the Act limits the authority of the Secretary to regulate the conduct of States or enforce TANF provisions, except where specifically provided for in the statute. Thus, it is not consistent with the principle of State flexibility embodied in PRWORA for us to regulate a State's administrative procedures. In particular, in this provision, there is an explicit expectation of deference to State and local laws, which we have reflected in paragraph (c) of this section. Moreover, we do not have penalty authority with respect to the enforcement of the nondisplacement provision and would be reluctant to create a structure that duplicates or conflicts with existing enforcement mechanisms that have a clear foundation under law. For these reasons, we have not modified the regulation to establish minimum standards for grievance procedures or to deny access to penalty reduction.

Using one set of grievance procedures for both programs should prove easier for States, employers, and workers alike. We urge States to consider adopting this approach. However, we note that not all States have established WtW programs, and there may be reasons that a unified grievance procedure would not be appropriate.

Comment: One commenter urged us to add several provisions to the nondisplacement section in order to prevent displacement more broadly. The suggested additions included prohibiting filling a position that: would otherwise be a promotional opportunity for a current employee; did not comply with applicable personnel procedures; was caused by a strike or other labor dispute; or was an established unfilled public agency position, unless unfunded in the budget.

Response: The nondisplacement provisions in the statute are very explicit. Under PRWORA, we do not have the authority through regulations to expand the definition of nondisplacement, even if we support the commenter's suggestions. However, expanded definitions may be available under State law or policy.

Comment: One commenter asked us to explain how we would educate State welfare administrators regarding compliance with the nondisplacement provisions.

Response: The section entitled "Recipient and Workplace Protections" describes initiatives by various agencies within our Department and elsewhere in the Federal government to inform State agencies about the requirements of Federal employment laws. Please refer to that section for further information on these efforts.

VII. Part 262—Accountability Provisions—General (Part 272 of the NPRM)

As we noted earlier in the preamble under our discussion of waivers, we moved the waiver provisions of § 272.8 of the NPRM to subpart C of part 260. You will find the comments that we received on § 272.8 there.

Section 262.0—What Definitions Apply to This Part? (§ 272.0 of the NPRM)

This section cross-references the general TANF regulatory definitions established under part 260.

We received no comments on this section.

Section 262.1—What Penalties Apply to States? (§ 272.1 of the NPRM)

Section 409 includes 15 penalties that may be imposed on States. This rule covers 14 of the 15. This rule does not include the specific penalty dealing with substantial noncompliance with requirements under title IV–D (section 409(a)(8)). Our Office of Child Support Enforcement is addressing this penalty in a separate rulemaking. However, since the penalty is one of the TANF penalty provisions, the general procedures and the appeal process in this rulemaking will apply.

The penalties that we are regulating are:

(1) A penalty for using the grant in violation of title IV–A of the Act, as determined by findings from a single State audit and equal to the amount of the misused funds;

(2) An additional penalty of five percent of the adjusted SFAG, based on our determination that such misuse was intentional;

(3) A penalty of four percent of the adjusted SFAG for the failure to submit an accurate, complete and timely required report;

(4) A penalty of up to 21 percent of the adjusted SFAG for the failure to satisfy the minimum participation rates;

(5) A penalty of no more than two percent of the adjusted SFAG for the failure to participate in the Income and Eligibility Verification System (IEVS);

(6) A penalty of no more than five percent of the adjusted SFAG for the failure to enforce penalties on recipients who are not cooperating with the State Child Support Enforcement agency;

(7) A penalty equal to the outstanding loan amount plus interest for the failure to repay a Federal loan provided for under section 406;

(8) A penalty equal to the amount by which qualified State expenditures fail to meet the appropriate level of historic effort in the operation of the TANF program;

(9) A penalty of five percent of the adjusted SFAG for the failure to comply with the five-year limit on Federal funding of assistance;

(10) A penalty equal to the amount of contingency funds that were received for a fiscal year, but were not remitted by a State, if the State failed to maintain 100 percent of historic effort in the operation of its TANF program in that year;

(11) A penalty of no more than five percent of the adjusted SFAG for the failure to maintain assistance to an adult single custodial parent who cannot obtain child care for a child under age six;

(12) A penalty of no more than two percent of the adjusted SFAG, plus the amount a State has failed to expend of its own funds, to replace the reduction to its SFAG due to the assessment of penalties under § 262.1 in the fiscal year that immediately succeeds the year in which the reduction was made;

(13) A penalty equal to the amount of the State's Welfare-to-Work formula grant for failure to maintain the required historic effort during a year in which a State receives this formula grant; and

(14) A penalty of not less than one percent and not more than five percent of the adjusted SFAG for failure to impose penalties properly against individuals who refuse to engage in required work in accordance with section 407 of the Act.

If applicable, in calculating the amount of the penalty, we will use the adjusted SFAG as defined in § 260.30. Except for the penalty at § 262.1(a)(12), all penalties are either a percentage of the adjusted SFAG or a fixed amount. In calculating the amount of these penalties, we will add all applicable penalty percentages together, and we will apply the total percentage reduction to the amount of the adjusted SFAG that would have been payable if we had assessed no penalties against the State. As a final step, we will subtract other (fixed) penalty amounts.

The penalty at § 262.1(a)(12) requires that we reduce a State's adjusted SFAG if, in the fiscal year immediately following the fiscal year when we have taken a penalty under this section, a State does not expend its own funds on the State's TANF program in the amount of the penalty (i.e., the amount by which we reduced the adjusted SFAG). Unlike the other penalties, this penalty represents both a percentage of the adjusted SFAG (up to two percent) and a fixed amount (the amount of the reduction a State has failed to expend replace with its own funds). We believe it is appropriate to calculate the amount of this penalty by including the amount of the penalty based on a percentage with other applicable penalty percentages. We will then subtract the fixed amount of this penalty with the other fixed-amount penalties. Finally, we will add the amount based on the percentage for this penalty and the fixed amount for this penalty to determine the total amount of this penalty.

We will not reduce a State's quarterly grant by more than 25 percent. If the 25-percent cap prevents us from recovering the full penalty imposed on a State all at once, we will apply the remaining amount to the SFAG payable for the immediately succeeding quarters until we have finally taken the penalty in full.

In preparing this final document, we noticed a few places where we should revise the regulatory text to be clearer.

- In both the preamble discussion and the regulations of the NPRM, we may not have described the Contingency Fund MOE penalty and the penalty for failure to replace penalty amounts clearly enough. Accordingly, we have clarified the regulation at § 262.1(a)(10) to say that we may penalize a State for failure to remit contingency funds if it does not incur State TANF expenditures (i.e., State expenditures within its TANF program) equal to at least 100 percent of its historical State expenditures. In determining Contingency Fund MOE requirements, historical State expenditures do not include expenditures under the IV–A child care programs.
- At § 262.1(a)(12), we have clarified that States must replace penalty amounts in the year after we actually take the penalties.
- At § 262.1(a)(2), we have clarified that the penalty for intentional misuse is in addition to the penalty for misuse.

We received some comments on the provisions in this section and have made a few changes to the regulations, as noted in our responses to the comments below.

Comment: Some commenters expressed the view that the regulations placed too much emphasis on penalties and included too many penalties. Another commenter mentioned that these provisions will lead to an adversarial relationship reminiscent of the one that previously surrounded quality control penalties under AFDC.

Response: The statute mandates all of the penalties included in these regulations. As we mentioned in the NPRM, it is clear that Congress intended for State flexibility to be balanced with State accountability. To assure that States fulfilled their new responsibilities under the TANF program, Congress established a number of penalties and requirements under section 409(a). The penalties indicate the areas of State performance that Congress found most significant and for which it gave us clear enforcement authority. While we want to maintain supportive partnerships with States, we cannot avoid our responsibilities under the statute. Although the regulation may seem unduly slanted toward penalties,

this is because we have limited authority to regulate outside the penalty provisions. Most of program policy and design is up to the States and is not the subject of regulations.

Comment: One commenter asserted that only one penalty, the one that will be imposed if a State fails to maintain assistance to an adult single custodial parent who cannot obtain child care for a child under age six, focuses on protecting and serving families and children.

Response: We do not agree with this observation. All of the penalties have been enacted to assure that States operate programs that promote the goals of the legislation. Many are designed to ensure that States use Federal and State funds appropriately to provide assistance to needy families and end dependence by promoting work and self-sufficiency. Even the penalty for failure to submit an accurate, complete and timely report supports program goals in that it requires States to submit information about what is happening to needy families and whether specific requirements are being met. Also, as we have said elsewhere in this preamble, the penalty system is part of a much broader structure that helps to protect families and promotes positive State responses to the opportunities under TANF.

Comment: A few commenters pointed out that some of the penalties are interrelated and can have an escalating impact on States, i.e., if a State fails one provision, it is likely to fail one or two others. A commenter suggested that instead of imposing penalties and requiring States to replace funds lost due to penalties, we should require States to reduce claims for disallowed costs. Another argued that States should reinvest penalty amounts since withholding funds may have the effect of making it more difficult for the States to achieve the goals of the program.

Response: In establishing this new block grant program, Congress wanted to give States flexibility to design programs that would best serve their families. It enacted the penalty provisions in order to assure that States use funds to achieve TANF program goals. The law requires States to replace penalty amounts with their own funds so that they will continue to serve needy families and meet the requirements of the Act. Congress also enacted a maximum on the total penalty amount that can be taken in any year in order to protect the interests of needy families and children in the State.

Comment: A commenter suggested that we should not design a system that perpetuates failure based upon failure, but, instead, we should design a system that rewards States for excellence.

Response: Although it felt the penalties were necessary to focus State performance, Congress did not rely solely on penalties to ensure that States work towards achieving program goals. As we previously discussed, it also enacted provisions to reward States for excellence when it established bonuses for high performance and for decreases in out-of-wedlock births.

Comment: One commenter noted that the statute specifies that the penalty for failure to meet the basic MOE requirement applies for fiscal years 1998 through 2003 and suggested that we include this limit in our regulations.

Response: Since the TANF program is currently funded only through fiscal year 2002, we did not think it was necessary to include this limitation in our regulations. When Congress reauthorizes TANF, it could well extend this provision in the statute. As the rules are written, we would not need to reissue regulations to keep them current. If the provision were not extended, the penalty would no longer be in effect, and we would consider making conforming changes to the rules.

Comment: A commenter asked if there is a penalty that applies when a State fails to screen applicants and recipients and thus fails to deny assistance to fleeing felons, or parole or probation violators.

Response: The statute, at section 408(a)(9), prohibits States from using their Federal TANF funds to provide assistance to fugitive felons and probation and parole violators. While there is no specific penalty covering this prohibition, the penalty for misuse (or intentional misuse) of funds will apply if States provide TANF assistance to such individuals.

Comment: In the NPRM, we based penalties on the amount of the SFAG minus any reductions due to the implementation of a Tribal TANF program, without consideration of any transfers of funds to the Discretionary Fund of the Child Care and Development Fund (CCDF) and/or the Social Services Block Grant (SSBG). While one commenter expressed appreciation for the fact that we assessed penalties against the adjusted SFAG, other commenters asked that, for the sake of consistency and fairness (since we subtracted transferred amounts before applying the administrative cost cap), we should consider transfers of funds to the CCDF and/or the SSBG in determining the adjusted SFAG.

Response: As we discuss elsewhere, we have revised the definition of the adjusted SFAG to remove any funds transferred to the Discretionary Fund of the CCDF and/or the SSBG. The adjusted SFAG will be the same as the SFAG for States without Tribal grantees and with no transfers of funds to the Discretionary Fund of the CCDF or the SSBG. You can find additional discussion of this issue in the preamble discussions for §§ 260.30 and 263.0.

Comment: We received some comments about our interpretation of the statutory language that requires penalties to be imposed "for the immediately succeeding fiscal year" or the "immediately succeeding fiscal quarter." Commenters pointed out that we did not follow the statute precisely, but did not express opposition to our interpretation.

Response: We are applying penalties for the fiscal year (or quarter) immediately following our final decision in order to establish a practical method for implementing the statute. This method allows us to give States the opportunity to plead reasonable cause and to correct violations under corrective compliance plans before we actually take a penalty. Consequently, as one commenter noted, it is possible that a State might incur a violation in FY 1998, be determined to be subject to a penalty in FY 1999, and actually have its funding reduced in FY 2000.

Comment: A commenter pointed out that, rather than limiting penalty reductions to a State's grant to 25 percent during a fiscal year, the statute prohibits us from reducing any quarterly payment by more than 25 percent. Another commenter asked us to clarify this provision.

Response: The commenter is correct that the statute does not permit us to reduce any quarterly payment by more than 25 percent. While on an annual basis, capping each quarter's reduction at 25 percent would be the same as capping the annual reduction at 25 percent, there could be a difference when penalty reductions begin mid-year, as provided under § 262.1(c)(1). We have modified the language at § 262.1(d) slightly to clarify that we will not withhold more than 25 percent of a State's quarterly grant.

Comment: A commenter asked that we assess the penalties in four equal quarterly installments during the year.

Response: The statute requires us to take some penalties by reducing the SFAG payable for the quarter that immediately follows our final decision. In these cases, if the amount exceeds 25 percent of the SFAG payable for that quarter, we will take the remaining amount from the next quarter's SFAG.

The statute requires us to take the majority of penalties by reducing the SFAG payable for the fiscal year that immediately follows our decision. In these cases, if taking the penalty in a single quarter would have an adverse impact on the State's ability to administer the TANF program, the State may ask that we take the penalty in two, three, or four quarterly installments in the fiscal year. However, we must take the full amount during that fiscal year unless we are prevented from doing so by the 25-percent cap. Also, we would take a minimum of the pro-rata share of the penalty amount from each quarter's grant; in other words, we would not allow States to defer a disproportionate share of the penalty amount to the latter part of the fiscal year.

Comment: A couple of commenters noted that, in paragraphs 272.1(c)(1) and (c)(2), we incorrectly categorized when we would take two of the penalties.

Response: The commenters are correct. We made errors in listing when we would take the penalties for failure to repay a Federal loan or to enforce child support penalties. We have corrected paragraphs § 262.1(c)(1) and (c)(2) of the regulations to indicate that we will take penalties for failure to repay a Federal loan by reducing the SFAG payable for the quarter that immediately follows our final decision and penalties for failure to enforce child support penalties by reducing the SFAG payable for the fiscal year that immediately follows our final decision.

Comment: Another commenter argued that, if we take penalties in the quarter following our final decision, it will be difficult for States to fill in with their own funds.

Response: The statute requires us to take any penalties for misuse of funds and failure to repay a Federal loan by reducing the SFAG payable for the quarter that immediately follows our decision. Generally, however, States will have an early indication that these penalties are likely to occur and will be able to plan accordingly.

Section 262.2—When Do the TANF Penalty Provisions Apply? (§ 272.2 of the NPRM)

Congress recognized that, in certain circumstances, States should face the consequences for failing to meet the requirements of the penalty provisions from the first day the State operates the TANF program. It also recognized, however, that States needed some lead time in implementing other TANF requirements.

Section 116(a)(2) of PRWORA delayed the effective date of some of the penalty provisions in title IV–A. For those provisions where it did not delay the effective date, we believe that Congress intended that a State could be subject to a penalty from the first day it began to operate TANF.

During the interim period between publication of the NPRM and the effective date of final rules, we required States to implement the TANF provisions in accordance with their own reasonable interpretations of the statute. In the NPRM we stated that we would not impose a penalty if we were to find that a State's actions were inconsistent with the final regulations, but consistent with a reasonable interpretation of the statute. However, if we were to find that a State operated its TANF program in a manner that was not based on a reasonable interpretation of the statute, we would penalize the State.

We received a few comments in support of these provisions and a couple of other comments as discussed below. We made no changes to this section of the regulations.

Comment: In addition to the supportive comments, one commenter expressed the view that the penalties should not apply until the final regulations are adopted and the States have a reasonable period of time to adjust to the new provisions. Another commenter asked that we give States a hold-harmless period and not subject them to penalties while they implement the regulations.

Response: We have followed the statutory requirements for determining when penalties apply. We do not have the authority to delay the penalties. However, as we discussed in the preamble to § 260.40, prior to the effective date of these final regulations, we will not penalize States if they operated their TANF programs in a manner that is consistent with a reasonable interpretation of the statute. Also, we decided to delay the effective date of these rules so that States have a reasonable period of time to implement the new regulatory provisions. Please refer to § 260.40 for additional discussion of issues related to the effective date.

Section 262.3—How Will We Determine if a State Is Subject to a Penalty? (§ 272.3 of the NPRM)

We have concluded that no one method can be used for monitoring State performance. The following discussion explains the three methods—the single audit, data collection and reporting, and financial reporting—that we will use to determine State noncompliance with requirements that may lead to penalties.

Single Audit

Under the requirements of the Single Audit Act, as of July 1, 1996, States operating Federal grant programs meeting a monetary threshold of $300,000 must conduct an audit under the Act. Most States must audit annually; a few may audit biennially. Because of the substantial funding under TANF, all TANF States meet the audit threshold.

The single audit is an organization-wide audit that reviews State performance in many program areas. We will implement the Single Audit Act through use of Office of Management and Budget (OMB) Circular A–133, "Audits of States, Local Governments, and Non-Profit Organizations." Because of amendments to the Act in 1996, OMB recently revised the Circular, merging former Circulars A–128 and A–133. It published the new Circular in the **Federal Register** on June 30, 1997, at 62 FR 35277.

In conducting their audits, auditors use a variety of tools, including the statute and regulations for each program and a compliance supplement issued by OMB. This supplement focuses on certain areas of primary concern to that program. We prepared, and OMB has issued, a TANF program compliance supplement for those penalties for which the single audit will be our primary or secondary compliance instrument. We will update the compliance supplement based on these final regulations.

The Single Audit Act does not preclude us or other Federal offices or agencies, such as the Office of the Inspector General (OIG), from conducting additional audits or reviews. In fact, there is specific statutory authority to conduct such additional audits or reviews. In particular, 31 U.S.C. 7503(b) states:

> Notwithstanding subsection (a), a Federal agency may conduct, or arrange for additional audits that are necessary to carry out its responsibilities under Federal law or regulation. The provisions of this chapter do not authorize any non-Federal entity (or sub-recipient thereof) to constrain, in any manner, such agency from carrying out or arranging for such additional audits, except that the Federal agency shall plan such audits to not be duplicative of audits of Federal awards.

Additionally, we will conduct quality control reviews of selected State audits to determine whether States conducted their audits in accordance with the Single Audit Act, OMB Circular A–133, and the compliance supplement. Pursuant to OMB Circular A–133, sections ____.400(a)(3) and (5), we will

take appropriate action when we find any audits to be deficient.

We will use the single audit, in conjunction with other reviews, audits, and data sources, as appropriate, to identify noncompliance for which the State may be liable. We will rely heavily on Single Audit Act activities for determining a State's liability for some penalties and will use the single audit to gather and verify information for other penalties. For example, we will use the single audit, supplemented by other reviews, audits, and activities under the Single Audit Act, to identify situations where a State used funds under section 403 in violation of the Act. (See § 263.10 on Misuse of Funds.) The misuse-of-funds penalty is the only penalty for which the statute identifies a specific method (i.e., the Single Audit Act) for determining penalty liability.

We will supplement information from the single audit with our own audits and reviews, and reviews and audits conducted by OIG and its contractors. We may identify a need to conduct such audits as the result of complaints from individuals and organizations, requests by the Congress to review particular areas of interest, information collected by our reporting systems, or other indications of problems in State compliance with TANF program requirements.

When we determine that a State is subject to a penalty for the misuse of funds, we may apply a second penalty if we determine that the State intentionally misused Federal TANF funds. (You will find the criteria for determining "intentional misuse" at § 263.12.) The single audit will be the primary vehicle for this penalty because of its link to the determination of misuse of funds.

The single audit will also help us identify noncompliance that could result in imposition of the following four penalties: (1) Failure to participate in the Income and Eligibility Verification System (see § 264.11); (2) Failure to comply with paternity establishment and child support enforcement requirements under title IV–D of the Act (see § 264.31); (3) failure to maintain assistance to an adult single custodial parent who cannot obtain child care for a child under age six (see § 261.57); and (4) failure to sanction recipients who refuse to work (see § 261.54). For these process-focused penalties, we determined that we can make appropriate use of the single audit, supplemented by other reviews and audits, to monitor State compliance.

The audit compliance supplement includes guidance to auditors on how to audit these areas. As in the case of the misuse-of-funds penalty, we may conduct other reviews and audits, if necessary. For example, we anticipate that we may receive complaints from individuals and organizations concerning the penalty for a State's failure to maintain assistance to an adult single custodial parent who cannot obtain child care. A number of substantiated complaints might indicate that we need to conduct an additional review.

The single audit might identify a lack of State compliance in other penalty areas, e.g., the five-year limit on Federal assistance. If it does, we will not ignore those findings. Therefore, we will also impose a penalty based on single audit findings in other penalty areas.

For most programs, other than TANF, the Single Audit Act procedures provide for disallowance in cases of substantiated monetary findings. However, in accordance with section 409(a), under TANF, we will be taking penalties, rather than disallowances. When the single audit determines a specific violation, the penalty amount that we will apply is the penalty amount associated with the specific penalty provision or provisions, for example, misuse of funds and failure to end Federal assistance after 60 months of receipt. Likewise, where we, or OIG, conduct an audit or review, the penalty amount that will apply is the penalty amount associated with the specific penalty or penalties specified under section 409 and these rules.

Data Collection and Reporting

We will monitor State compliance with the penalties for failure to satisfy minimum participation rates (see § 261.21) and failure to comply with the five-year limit on Federal assistance (see § 264.1) primarily through the information required to be reported by section 411(a) (i.e., State reporting of disaggregated case-record information). (See part 265 and the Appendices for data collection and reporting requirements.)

We believe that Congress intended that the data elements in section 411(a) be used to gather information for these two penalty areas. Thus, we concluded that the section 411(a) data collection tools would be our primary means for determining these penalties. We may also need to conduct reviews in the future to verify the data submitted by States, particularly in these two areas where a fiscal penalty is applicable. States should maintain records to adequately support any report in accordance with 45 CFR 92.42.

Accurate data are essential if we are to apply penalties fairly. If the State submits insufficient data to verify its compliance with the requirements, or if we determine that a State cannot adequately document the data that it has submitted to show that it has met its participation rates or the five-year time limit, we will enforce the participation rate penalty or five-year time-limit penalty.

In the consultations we held during the development of the NPRM, some participants recommended that we use the single audit as the means for determining all the penalties. However, since States must otherwise report the data that directly speak to their compliance in these two areas, and timely determination of State compliance is necessary, we did not accept that recommendation. Instead, we will rely on the quarterly reports required under part 265 of these regulations.

Financial Reporting

All States are subject to the basic MOE penalty for failure to maintain a certain level (i.e., 80 or 75 percent) of historic effort. Those States that choose to receive contingency funds under section 403(b) are subject to a separate maintenance-of-effort penalty for failure to maintain 100 percent of historic effort. Also, in a year that they receive WtW formula grants, States are subject to an additional penalty for failure to meet the basic MOE requirement.

We have developed a TANF Financial Report (see Appendix D of part 265). We designed this report to gather information required under sections 403(b)(4), 405(c)(1), 409(a)(1), 409(a)(7), 409(a)(10), 409(a)(12), 409(a)(13), 411(a)(2), 411(a)(3), 411(a)(5), including data on administrative costs and types of State expenditures. It will also gather financial information to enable us to award grant funds, close out accounts, and manage other financial aspects of the TANF program. In addition, we will use this report to monitor State compliance with the basic MOE and Contingency Fund requirements and to aid us in determining if Federal TANF funds have been used properly.

Consistent with section 5506(a) of Pub. L. 105–33, the TANF Financial Report is due 45 days after the end of each quarter. Upon receipt of the report for the fourth quarter, i.e., by November 14, we should have State-reported information indicating whether or not the State met its MOE requirements for the prior fiscal year.

On the TANF Financial Report, States will inform us of the amount of expenditures they have made for basic and Contingency Fund MOE purposes. For the basic MOE, States must inform

us of the amount of expenditures made in the State TANF program and in separate State programs. (See part 264, subpart B, for more information on the Contingency Fund MOE requirement.)

In addition, to collect the necessary information on all MOE programs—both those operated within the TANF program and separate State programs—we require supplemental information in an annual report. The annual report, which may be provided as a separate report or as an addendum to the fourth quarter TANF Data Report, requires that States submit for each program for which the State claims MOE expenditures, the total annual State expenditures and the total annual State expenditures claimed as MOE. (See § 265.9(c) for more information on the contents of the annual report.)

If we reduce a State's SFAG as the result of a penalty, the State must expend an equal amount of its own funds in the immediately succeeding fiscal year. If the State fails to replace the funds as required, the State is subject to the penalty at § 262.1(a)(12). The penalty amount is up to two percent of the adjusted SFAG plus the amount not expended to replace the reduction to the SFAG due to the penalty.

We will use the TANF Financial Report (or Territorial Financial Report) to determine if a State has complied with these replacement provisions. Instructions to the TANF Financial Report (see Appendix D) require States to include amounts that they are required to contribute as a result of any penalties taken against the State. (We will include a similar requirement in the Territorial Financial Report.)

As in the case of the penalties for failure to meet the participation rates or comply with the five-year limit on assistance, our program management responsibilities may require us to verify the data submitted by States on the TANF Financial Report and annual report, particularly data on MOE expenditures and "replacement funds." States should maintain records in accordance with 45 CFR 92.42. We will also use the annual report to help us to determine whether a State met its MOE requirements.

If the State submits insufficient MOE data to verify its compliance or if we determine that the State cannot adequately document data that it has submitted showing that it has met its MOE requirements, we will apply the penalties for failure to meet the basic MOE requirements (including the penalty related to WtW funding) and the Contingency Fund MOE requirements. For the basic MOE, we may have to estimate the actual level of qualifying MOE expenditures. We would then base the amount of the penalty on the degree to which the State has not adequately demonstrated that it has met the applicable MOE requirement.

We will penalize States for failing to repay a loan provided under section 406 (see § 264.40). A specific vehicle for determining a State's compliance with these requirements is unnecessary. In our loan agreements with States, we will specify due dates for the repayment of the loans, and we will know if States are not making the required payments.

We will penalize States for failing to submit a report required under section 411(a) by the established due dates (see §§ 265.4 and 265.7). As noted before, we are requiring that the reports must not only be timely, but they must also be complete and accurate. Thus, we may take actions to review the accuracy of data reporting if appropriate. If we determine that the data required under section 411(a) are incomplete or inaccurate, we may apply the penalty for failing to submit a report. As discussed above, if the data that are inaccurate or incomplete pertain to other penalties (i.e., the participation rate, the five-year time limit on assistance, the basic MOE, the WtW MOE penalty, or the Contingency Fund MOE requirements) and their unavailability impedes our ability to determine a State's penalty liability, we will apply the penalties associated with these requirements in lieu of a reporting penalty.

Regardless of how we determine that a State is subject to a penalty, the determination of whether a State has access to a possible reasonable cause exception or corrective compliance depends on the specific penalty provision. States cannot avoid all penalties through the reasonable cause exception or a corrective compliance plan (see § 262.4).

We received a few comments on this section and made some changes to the regulations in response. A discussion of the comments and responses follows.

Also, in preparing the final rules, we noticed that we did not discuss how we will determine that a State is subject to a Welfare-to-Work formula grant penalty. We have added this discussion to the final rule.

Comment: Commenters suggested that we should permit the use of the single audit for uncovering noncompliance with additional requirements beyond those we identified in the NPRM.

Response: Although we discussed the direct and indirect uses of the single audit in determining compliance with a number of requirements, we wrote the regulation itself more narrowly. We agree with these comments and have revised the regulation at § 262.3(a) to indicate that, in addition to using the single audit as the primary method to determine if a State is subject to certain penalties, we will use the single audit, as appropriate, as a secondary method of determining if a State is subject to other penalties.

Comment: A commenter noted that, in paragraph (c), our reference to § 275.6 of the NPRM was incorrect.

Response: We agree and have corrected § 262.3(c) to refer to verification of data in accordance with the provisions of § 265.7 of this chapter.

Comment: Commenters suggested that our standards for determining penalties are vague. Other commenters asked what we mean when we say that information in the data or financial reports is "insufficient."

Response: In some cases, our standards are specific, such as for determining work participation rates and compliance with time limits. However, we find that, given that this is a new program, it is impossible to draw sharp lines that fully define all situations, and it is appropriate to leave room for discretion in a block grant environment. Moreover, since States can dispute our determinations and have appeal rights, they have protection from arbitrary decisions.

Obviously, we want strong, clear standards for "complete and accurate" because the information reported by States in their data and financial reports is critical in determining States' compliance with TANF requirements and their potential penalty liability. However, our standards have to be fair at the same time.

In the preamble to part 265, you will find a broader discussion of the importance of accurate, complete and timely reporting of information.

Section 262.4—What Happens if We Determine That a State Is Subject to a Penalty? (§ 272.4 of the NPRM)

If we determine that a State is subject to a penalty, we will send the State agency a notice that it has failed to meet a requirement under section 409(a). This notice will: (1) Specify the penalty provision at issue, including the applicable penalty amount; (2) specify our source of information and the reasons for our decision; (3) invite the State to present its arguments if it believes that the information or method we used were in error or were insufficient, or that its actions, in the absence of Federal regulations, were based on a reasonable interpretation of the statute; and (4) explain if, how, and

when the State may submit a reasonable cause justification under 409(b) and/or corrective compliance plan under 409(c). States must postmark their responses to our notice within 60 days of their receipt of our notice.

For penalties where the reasonable cause and the corrective compliance plan provisions both apply, we encourage States to submit to us both their justification for reasonable cause and a corrective compliance plan within 60 days of receipt of our notice of failure to comply with a requirement. Our objective is to expedite the resolution of a State's failure to meet a requirement.

A State may choose to submit a reasonable cause justification without a corrective compliance plan. In this case, we will notify the State if we do not accept the State's justification of reasonable cause. Our notice will also inform the State that it has an opportunity to submit a corrective compliance plan. The State will then have 60 days from the date it receives this notice to submit a corrective compliance plan. (Under this scenario, we will send the State two notices—the first will inform the State that it may be subject to a penalty, and the second will inform the State that we determined that it did not have reasonable cause.) We have added a provision to the regulations to clarify this process. A State may also choose to submit only a corrective compliance plan if it believes that the reasonable cause factors do not apply in a particular case.

The reasonable cause and corrective compliance provisions in the statute do not apply to five penalties: (1) failure to repay a Federal loan on a timely basis; (2) failure to maintain the applicable percentage of historic State expenditures for the basic MOE requirement; (3) failure to maintain 100 percent of historic State expenditures for States receiving contingency funds; (4) failure to expend additional State funds to replace grant reductions due to the imposition of one or more penalties listed in § 262.1; and (5) failure to maintain 80, or 75, percent, as appropriate, of historic State expenditures during a year in which the State receives a Welfare-to-Work grant.

If, upon review of the State's submittal, we request additional information in order to determine reasonable cause, the State must provide this information within 30 days of the date of our request. We have established this deadline to make sure the process is not delayed. However, under unusual circumstances we may give the State an extension of the time to respond to our request for additional information.

We received some comments on this section. One expressed the view that our notification provisions were reasonable; others raised issues about the proposed rule. Below, we address the comments and resulting changes we made to the regulations. In addition to these changes, we reversed the order of sub-paragraphs (e) and (f) so that they follow the logical sequence of actions in the penalty process.

Comment: A commenter recommended that we send our notice that a State is subject to a penalty to the State agency director.

Response: In the NPRM we said we would notify the State. By State, we meant the State agency. We assume the commenter thought we would notify the Governor. We have modified the regulation to say that we will notify the State agency and added a definition of State agency to § 260.30.

Comment: One commenter suggested that we list in the regulation the four components of the initial penalty notice to the State that we included in the preamble to the NPRM.

Response: We agree with this suggestion and have amended the regulation at § 262.4(a) accordingly.

Comment: Another commenter asked that we include, in our penalty notice to a State, a description of the data and method we used to determine that the State is subject to a penalty.

Response: We thought that we covered this in the NPRM when we said we would specify which penalty we would impose and the reasons for the penalty. However, in the final rule at § 262.4(a), we have revised the language to list the source of information as one of the four specific components that we will include in our notice to the State.

Comment: A commenter asserted that States should be able to raise any relevant issue in response to a penalty notice and not be limited to responding on the three grounds of incorrect penalty determination, reasonable cause, or corrective compliance.

Response: Unfortunately, the commenter did not include any examples of issues that would not fit in these three categories. We think that a State will be able to include all relevant considerations under one of these three categories.

Comment: A few commenters noted that the regulation proposed at § 272.4(d) conflicted with § 271.55(c), which said that reasonable cause and corrective compliance were not available when a State was being penalized for failing to impose penalties on individuals.

Response: The proposed regulation at § 272.4(d) was correct. Reasonable cause and corrective compliance are available when a State is being penalized for failing to impose penalties on individuals. The final rules at §§ 262.4(d) and 261.55 reflect this policy.

Comment: A commenter asked that we make reasonable cause and corrective compliance available to States that are being penalized for failing to expend additional State funds to replace penalty amounts.

Response: We do not have the authority to make this change, since the statute specifies that the reasonable cause exception and corrective compliance plan do not apply to this penalty.

Comment: Several commenters asked that we establish a time frame for when we will respond to a State's reply to our penalty notice.

Response: We have added a provision to the regulations at § 262.4(f) to say that, generally, we will respond within 60 days to the State's reasonable cause submittal, and that we will either accept or reject the State's corrective compliance plan within 60 days of our receipt of the plan.

Comment: A commenter asked whether a State may request reconsideration or submit additional information based on our decision, or whether its only recourse at that point is to file a formal appeal.

Response: Although there are no further formal steps available to the State short of a formal appeal, it is our hope that State and Federal staff will engage in an ongoing dialogue in an effort to address any penalty-related issue. This dialogue may begin as soon as the State is working to develop new policies or begins to have trouble meeting a requirement, and well before we notify the State that we intend to penalize it. It may continue until the issue is resolved, but will not extend the time frames States have for responding to our notices. Therefore, we advise States to make their complete and best arguments during the time allotted.

Comment: A number of commenters asserted that two weeks is not long enough for States to respond to our request for further information.

Response: We agree that under some circumstances two weeks may not be long enough, so we are increasing the time States have to respond to 30 days. Also, under unusual circumstances, we may give States an extension of the time that they have to respond to our request for information. We have amended the regulation at § 262.4(e) accordingly.

Comment: Commenters suggested that notices and requests be sent by certified mail so that there is evidence of receipt.

Response: A State may choose to send its responses by certified mail, but we are not convinced that we need to include this as a regulatory requirement.

Comment: A commenter asked that we specify in the regulations that we would not assess any penalties pending the resolution of a State's claim of reasonable cause.

Response: If a State claims reasonable cause and we find against the State, the State may then submit a corrective compliance plan or file an appeal to the HHS Departmental Appeals Board (DAB), as discussed in § 262.7. If the State does not take either action, we will assess the penalty in the quarter or fiscal year that immediately follows our final decision, as appropriate. However, if the State submits a corrective compliance plan, we will not assess a penalty until the corrective compliance process is completed. If the State appeals to the DAB, we will not assess the penalty until the appeals process is completed. If the DAB upholds our decision, we will take the penalty and charge interest back to the date of our final response that formally notifies the Governor of the State of an adverse action.

Section 262.5—Under What General Circumstances Will We Determine That a State Has Reasonable Cause? (§ 272.5 of the NPRM)

Under the provisions of section 409, we will not impose certain of the penalties if a State demonstrates that it had reasonable cause. Also, we will reduce or excuse certain penalties if a State corrects or discontinues the violations under an accepted corrective compliance plan.

After reviewing these statutory provisions, we decided that we should not consider the reasonable cause exception of the statute in isolation. Rather, we would view it in conjunction with the provision for developing corrective compliance plans. In this context, we acknowledge the new Federal and State roles under TANF and commit to working with States to minimize adversarial Federal-State issues. Our primary task is to help each State operate the most effective program it can to meet the needs of its caseload and the goals and provisions of the law. Through these rules, we hope to focus States on positive steps that they should take to correct situations that resulted in a determination that they are subject to a penalty, rather than to let them simply avoid the penalty. As such, we consider it appropriate to emphasize the use of the corrective compliance plan process over the reasonable cause exception. Consequently, we have decided to limit the list of reasonable cause criteria.

In the discussion that follows, we describe: (1) the factors that we will consider in deciding whether or not to excuse a penalty based on a State's claim of reasonable cause; (2) the contents of an acceptable corrective compliance plan; and (3) the process for applying these provisions. Our goal is to treat the reasonable cause and corrective compliance plan provisions as part of an integrated process.

We have included factors that would be applicable to all penalties for which the reasonable cause provision applies. We will find that a State has reasonable cause under the following situations: (1) Natural disasters and other calamities (e.g., hurricanes, tornadoes, earthquakes, fires, floods, etc.) whose disruptive impact was so significant as to cause the State's failure to meet a requirement; (2) formally issued Federal guidance that provided incorrect information resulting in the State's failure; and (3) isolated problems of minimal impact that are not indicative of a systemic problem (e.g., although a State's policies and procedures require that Federal TANF assistance be time-limited to five years and include computer safeguards to protect against violations, ten families somehow slip through and receive assistance for longer than five years).

We also have included two separate factors that would apply in cases when the State fails to satisfy the minimum participation rates, and one specific factor that would apply to cases when the State fails to meet the five-year limit. We discuss these specific factors in our preamble discussion of domestic violence and §§ 261.52 and 264.3.

As discussed elsewhere in this preamble, we have also added a factor that will apply if States fail to meet either of the first two deadlines for FY 2000 for submitting complete and accurate reports under the new reporting requirements. We added this factor in response to comments and out of our own concern about the possible concurrent demands of Y2K and TANF reporting requirements. States must be in a position to commit the systems resources necessary to become Y2K compliant in order to ensure that there is no disruption in the benefits to their neediest citizens.

We did not have the latitude under the law merely to extend the reporting deadlines (because they are set in statute). Also, we were unwilling to extend the "emergency reporting" into FY 2000 and provide a later effective date for the new reporting provisions because important TANF provisions (e.g., the work participation rates) depend upon consistent data and policies throughout the entire fiscal year. Thus, we have addressed the concern as a reasonable cause issue.

Under the new provision, States that miss the deadlines for submitting complete and accurate data for the first two quarters of FY 2000 will receive reasonable cause if: (1) they can clearly demonstrate that their failure was attributable to Y2K compliance activities; and (2) they submit the required data by July 1, 2000.

In determining reasonable cause under all of these regulatory criteria, we will consider the efforts the State made to meet the requirement. We will also take into consideration the duration and severity of the circumstances that led to the State's failure to achieve the requirement. The burden of proof rests with the State to explain fully the circumstances, events, or occurrences that constitute reasonable cause for its failure to meet a particular requirement. The State must provide us with sufficient relevant information and documentation to substantiate its claim of reasonable cause. We have added a provision to the regulations to clarify the factors that we will consider and the State's burden of proof. If we find that the State has reasonable cause, we will not impose the penalty.

We received quite a number of comments on this section. We discuss the comments and the changes we made to the regulations below.

Comment: Virtually all commenters with comments on this section argued that our proposed list of reasonable cause factors was too narrow and that we needed to give ourselves more discretion. Commenters gave a number of examples of factors that we should consider, including good faith effort, circumstances beyond the State's control, inadequate Federal guidance, increases in a State's caseload, characteristics of the caseload, high unemployment rates or other labor market characteristics, changing economic conditions, and other adverse economic factors.

Response: As we noted in the NPRM, PRWORA did not specify any definition of reasonable cause or indicate what factors we should use in deciding whether to grant a reasonable cause exception for a penalty. In our deliberations on reasonable cause factors, we considered the diverse opinions expressed during our consultation process and our NPRM comment period, as well as the need to support the commitment of Congress, the Administration, and States to the work and other objectives of the TANF program. In keeping with these objectives, we are providing reasonable

cause factors for a limited number of circumstances that are beyond a State's control and placing a greater emphasis on corrective solutions for those circumstances a State can control. We strongly believe that States must correct problems that detract from moving families from welfare to self-sufficiency.

At the same time, we agree with the commenters that it would be difficult to foresee all possible circumstances under which we would want to grant reasonable cause. Accordingly, while we have included the same general factors that we included in the NPRM, we no longer limit ourselves to considering only these factors. While we do not anticipate routinely determining that a State had reasonable cause based on other factors, we do not want to preclude a State from presenting other circumstances. Also, we decided that we were more restrictive than we intended when we limited the third reasonable cause factor to isolated, nonrecurring problems. We have amended the regulations to say that we may grant a State reasonable cause when it has encountered isolated problems of minimal impact that are not indicative of a systemic problem.

Comment: A number of commenters were opposed to our provisions precluding reasonable cause if a State diverted families to a separate State program that achieved the effect of avoiding the work participation rates or diverted the Federal share of child support collections.

Response: As we previously discussed in the section of the preamble entitled "Separate State Programs," we have eliminated the proposed connection between a State's decisions on separate State programs and its eligibility for reasonable cause. Therefore, we have deleted the provisions that were at paragraphs § 272.5(c) and (d) of the proposed rule.

Comment: A commenter suggested that the regulations should provide that, as part of the process of determining when we would impose penalties and penalty amounts, we should give consideration to factors such as whether the State has administered its TANF program fairly, whether it has provided services and supports to families to enable them to comply with program requirements, and whether State-imposed requirements on families are reasonable.

Response: The TANF legislation assumed that States are in the best position to determine which families will be served and what assistance they will receive. As we previously discussed, our authority to regulate and judge State policies and actions are limited, and we have decided not to stretch our regulatory authority by incorporating such factors into all our penalty determinations. There are other provisions in the statute (such as the bonus and ranking provisions, the annual reports to Congress, and annual reports on State child poverty rates) that provide an opportunity to look at whether at-risk families are being helped or hurt by State TANF programs. At the same time, there are a couple of penalty provisions (e.g., those dealing with the imposition of sanctions) where the issues of fairness and adequate recipient protections are more germane and we specifically address some of these issues. You should look to the preamble discussion entitled "Worker and Recipient Protections" and the preamble for part 261 for other ways we are addressing this concern.

Section 262.6—What Happens if a State Does Not Demonstrate Reasonable Cause? (§ 272.6 of the NPRM)

Section 409(c), as amended by section 5506 of Pub. L. 105–33, provides that, prior to imposing a penalty against a State, we will notify the State of the violation and allow the State the opportunity to enter into a corrective compliance plan. If a State does not claim reasonable cause or if it claims reasonable cause simultaneously with submitting a corrective compliance plan, it will have 60 days from the date it receives our notice of a violation to submit its corrective compliance plan. If, in response to our notice of a violation, the State initially submits only a claim of reasonable cause, and if we deny this claim, the State has 60 days from the date it receives our second notice (i.e., denying its reasonable cause claim) to submit its corrective compliance plan. If a State does not submit an acceptable corrective compliance plan on time, we will immediately send the State a formal notice of adverse action and assess the penalty. Outside of the notice(s), we will not remind the State that the corrective compliance plan is due.

The corrective compliance plan must provide a complete analysis of the situation and factors that prevented the State from meeting the requirement. It also must identify the time period in which the State will correct or discontinue the violation, and the milestones, including interim process and outcome goals, the State will achieve to assure that it will fully correct or discontinue the violation within the specified time period. In order to highlight the importance of corrective compliance, the plan must include a certification by the Governor that the State is committed to correcting or discontinuing the violation in accordance with the plan.

We recognize that each plan must be specific to the violation (or penalty) since each State operates its TANF program in a unique manner. Thus, we will review each plan on a case-by-case basis. In determining whether or not to accept a plan, we will consider the extent to which the State's plan indicates that it will completely correct or discontinue, as appropriate, the situation leading to the penalty.

The steps that a State takes to correct or discontinue a violation may vary. For example, where we penalize a State for misusing Federal TANF funds, we would expect it to remove this expenditure from its TANF accounting records (charging it to State funds, as allowable) and provide steps to assure that such a problem does not recur. Where a State has reduced or denied assistance improperly to a single custodial parent who could not find child care for a child under six, correcting the violation might require that the State reimburse parents retroactively for the assistance that it improperly denied them. The State's corrective compliance plan also would have to describe the steps to be taken to prevent such problems in the future.

Section 409(c)(3) requires that a violation be corrected or discontinued, as appropriate, "in a timely manner." A State's timely correction of a problem is critical to assuring that the State is not subject to a subsequent penalty. At the same time, we recognize that the causes of violations will vary, and we cannot expect States to rectify all violations in the same time frame. Thus, we do not want to unduly restrict the duration of corrective compliance plans. At the same time, we do not want to allow States to prolong the corrective compliance process indefinitely and leave problems unresolved into future fiscal years. Accordingly, in our NPRM, we proposed that the period covered by a corrective compliance plan end no later than six months after the date we accept a State's corrective compliance plan. We have amended this provision, as discussed below.

We will consult the State on any modifications to the corrective compliance plan that we believe are necessary and seek mutual agreement on a final plan. Such consultation will occur only during the 60-day period for acceptance specified in the law. Any modifications to the State's corrective compliance plan resulting from such consultations will constitute the State's final corrective compliance plan and will obligate the State to take the actions

and meet the time frames specified in the plan.

We will either accept or reject the State's corrective compliance plan, in writing, within the 60-day period that begins on the date that we receive the plan. If a State does not agree to modify its plan as we recommend, we may reject the plan. If we reject the plan, we will immediately send a formal notice to the State of the adverse action. The State may appeal our decision to impose the penalty in accordance with the provisions of section 410 of the Act and the regulations at § 262.7.

If we have not rejected a plan in writing by the end of the 60-day period, the plan is deemed to be accepted, as required by the statute at section 409(c)(1)(D).

If a State corrects or discontinues the violation in accordance with its corrective compliance plan, we will not impose the penalty.

The statute permits us to collect some or all of the penalty if the State has failed to correct or discontinue the violation. Therefore, we may reduce the amount of the penalty if a State has not fully rectified the violation in one or more of the following limited situations: (1) The State made significant progress in correcting or discontinuing the violation; or (2) a natural disaster or regional recession prevented the State from coming into full compliance.

We received a number of comments on these provisions that led us to make some changes to the regulations. Also, we made some minor edits to ensure consistency within the parts of this regulation. We discuss the comments and changes below.

Comment: In the NPRM, we asked for comments from States and other interested parties on our proposal to restrict the time period for a corrective compliance plan. Commenters supported the general concept of a corrective compliance plan, and one commenter thought the six-month period was reasonable for most cases. However, most commenters replied that the period we had proposed was unreasonably short, especially since the statute does not require a short time frame. Many suggested that we extend the time period to 9, 12, or 24 months. Others suggested that the State should determine the time frame, or that it be part of the negotiation of the plan by the State and ACF and be determined on a case-by-case basis. Another commenter suggested that the period extend until 90 days after the close of the State's next legislative session. Commenters argued the need for more time based on the possible need to adjust contracts, re-design programs, change policies and procedures, notify recipients, make data system changes, train staff, and get the State legislature to take necessary action.

Response: In responding to these comments, we want to reinforce the importance of achieving compliance with the statute quickly, but we also recognize that we need to consider a State's ability to make the changes necessary to achieve compliance within a fixed time frame. We are not interested in setting a time frame that States cannot meet, but we also do not want to give States more time than they absolutely need. In addition, in the case of the work participation rate and time-limit penalties, where we measure performance over the course of a fiscal year, we thought it was important that corrective compliance also be measured over the course of a fiscal year. Based on this thinking, we have revised the regulations. In general, the final rules provide more flexibility in establishing time frames for corrective compliance plans. For the work participation rate and time-limit penalties, they incorporate a modified six-month corrective compliance period. More specifically, they provide that the State achieve compliance for the first fiscal year that ends at least six months after our receipt of the corrective compliance plan. For example, if a State failed its work participation rate in a prior fiscal year and we received its corrective compliance plan on February 1, the State would have to achieve the participation rates in effect for the current fiscal year. If we received the plan after April 1, the State would have to achieve the participation rates in effect for the following fiscal year.

We made this adjustment to the rules in large part because we calculate liability for work participation and time-limit penalties based on fiscal year data. We also realized that there could be significant delays in the submittal of corrective compliance plans (because participation rate and time-limit information is not available immediately, and we need time both to resolve disputes about the penalty findings and to decide State claims for reasonable cause). Thus, we could not necessarily expect a State to achieve compliance during the first year following a failure.

Nevertheless, we would hope that a State could achieve compliance during that time frame. We would not want to see a State's failure extend into a third fiscal year. If it did, there could be negative consequences for the State. States especially need to work towards increasing their work participation rates as quickly as possible because: (1) the rates increase over time; (2) the base penalty amount increases when a State incurs consecutive penalties; and (3) a State is eligible for a smaller reduction based on degree of noncompliance if it fails to meet the rates in successive fiscal years.

For both the work participation and time-limit penalties, a State will normally have indication that a problem exists during the year for which it is penalty-liable, and it should begin to address the problems well before it submits its corrective compliance plan. For example, by July of a fiscal year, a State should have a good idea of whether it is on track to meet its work participation requirements. If it is not, and does not begin to make changes soon, not only will it fail to meet the requirements for the current fiscal year, but it is unlikely that it will be able to increase its performance enough to meet the required rates for the next fiscal year. Our notice to a State that it is subject to a penalty should serve as confirmation of information the State already has. A corrective compliance plan period does not necessarily have to be lengthy in order to provide the State sufficient time for correcting or discontinuing a violation.

For the remaining penalties that are eligible for corrective compliance, we would permit a State to propose a time frame in its corrective compliance plan. We would expect the State to achieve compliance expeditiously, often in less than six months. States should correct some failures, for example, for failing to comply with IEVS requirements or submitting a data report late, within a month or two.

We expect each State to justify its time frame for each penalty. We will assess the time frame proposed by the State based on the nature of the violation, any unusual circumstances, and other factors that affect the speed with which the State can respond, such as whether it would need to make systems changes or take legislative action.

Comment: A commenter asked that we notify States of our acceptance of a corrective compliance plan and asked us to clarify when the corrective compliance period begins.

Response: We did not address these factors in the NPRM, but have revised the regulations to specify that we will accept or reject the plan in writing and that the time period for the corrective compliance plan begins on the date that the State receives our written acceptance of the plan. If we fail to respond, the time period for the corrective compliance plan begins on

the date that is 60 days after the date we received the State's plan.

Comment: Several commenters stated that 60 days is insufficient for a State to prepare a corrective compliance plan and recommended that we give States 90 days.

Response: We are prevented from making this change by the statute, which specifies that a State has 60 days from the date that it receives our notification to submit a corrective compliance plan.

Comment: A couple of commenters noted that the proposed rules at § 272.6 contained an incorrect citation.

Response: While the commenters were correct that the citation in the NPRM was erroneous, we have made changes to the paragraphs in that section that corrected that problem.

Comment: Some commenters expressed the view that the contents we specified for the corrective compliance plan are reasonable. Other commenters objected to our requiring certification of the plan by the Governor, and one commenter suggested that the certification be made by the director of the State agency.

Response: The Governor is responsible for submitting the State TANF plan and for committing State funds to the program. On this basis, we believe it is also important for the Governor to demonstrate awareness of and support for the corrective compliance plan.

Comment: A commenter asked that we consider a State's good faith effort in determining the amount of a penalty when a State fails to completely correct or discontinue the violation pursuant to its corrective compliance plan. Other commenters asked that we broaden the circumstances under which a penalty is reduced, with some recommending that we consider other factors such as natural disasters, economic circumstances, or other unanticipated or extreme events.

Response: We have said that we will reduce the penalty if the State can demonstrate that it made significant progress toward correcting or discontinuing the violation or that its failure was due to a natural disaster or regional recession. We believe this gives us sufficient latitude to consider mitigating circumstances and the good-faith effort a State has made. For a discussion of the specific standards we will use in deciding to reduce work participation rate penalties, please see the preamble for § 261.51.

Comment: A number of commenters opposed our provisions denying a penalty reduction if a State diverted families to a separate State program that achieved the effect of avoiding the work participation rates or diverted the Federal share of child support collections.

Response: As we previously discussed, we have eliminated the connection between a State's decisions regarding its separate State programs and penalty reductions and have removed the provisions that appeared in § 272.6(i)(2) of the NPRM.

Section 262.7—How Can a State Appeal our Decision To Take a Penalty? (§ 272.7 of the NPRM)

Once we make a final decision to impose a full or partial penalty, we will formally notify the State that we will reduce the State's SFAG payable for the quarter or the fiscal year and inform the State of its right to appeal to the Departmental Appeals Board (the Board).

Section 410, which covers any adverse actions with respect to the State TANF plan or the imposition of a penalty under section 409, provides that the Secretary will notify the Governor of the State of the adverse action within five days. To facilitate the appeal, we will also send a copy of the notice to the State agency.

Within 60 days after the date a State receives this notice, the State may file an appeal of the action, in whole or in part, with the Board. We indicated in the NPRM that the statute allowed only 60 days for the Board to reach a decision after the appeal is filed. A number of commenters believed that the 60 days in the statute indicated a minimum time before a decision could be issued, not a maximum time. The NPRM interpretation was based on the conference report which indicated a Board decision was required "within 60 days" (H.R. Rep. No. 725, 104th Cong., 2d sess., p. 302). However, in light of the comments, we have re-examined the language of the statute itself, which states that a decision will be made in "not less than 60 days" after the appeal is filed. "Not less than" is usually interpreted as a minimum requirement, as the commenters indicated. Therefore, we have revised the regulation to allow a minimum time of 60 days before a decision is made. Nevertheless, we believe that penalties procedures should be handled as expeditiously as possible. We also believe that this is possible in the TANF penalty situation because the opportunity for reasonable cause and corrective compliance before most TANF penalties should have clarified the issues before the penalty decision.

We are requiring that the State submit its brief and the supporting documentation for its case when it files its appeal. To further facilitate this process, we have added a provision to the regulation at § 262.7(a)(1) that ACF's notice must include sufficient factual and legal information on the basis for imposition of the penalty to allow the State to respond in an appeal. In addition, we have allowed the State the opportunity to respond to ACF's reply brief and to submit any additional documentation it considers necessary. A State should send a copy of any appeal documents to the Office of the General Counsel, Children, Families and Aging Division, Room 411–D, 200 Independence Avenue, S.W., Washington, D.C. 20201.

In the final rule, we have slightly increased the time for us to submit our reply brief and supporting documentation— to 45 days after our receipt of the State's submission. This 45 days, plus the 21 days allowed for the State's reply brief, will ensure that the DAB makes no determination prior to 60 days after a State has filed its appeal. Further, briefing and argument will be at the discretion of the Board, but could include an evidentiary hearing. A State's appeal to the Board will also be subject to the following regulations at part 16 of title 45: §§ 16.2, 16.9, 16.10, and 16.13–16.22, to the extent they are consistent with this section.

Section 410(b)(2) provides that the Board will consider an appeal on the basis of the documentation the State submits, along with any additional information required by the Board to support a final decision. In deciding whether to uphold an adverse action or any portion of such action, the Board will conduct a thorough review of the issues.

Finally, a State may obtain judicial review of a final decision by the Board by filing an action within 90 days after the date of the final decision. States may file either with the district court of the United States in the judicial district where the State agency is located or in the United States District Court for the District of Columbia. The district courts will review the final decision of the Board on the record established in the administrative proceeding, to determine if it is arbitrary, capricious, an abuse of discretion or otherwise not in accordance with law, or unsupported by substantial evidence. The court's review will be on the basis of the documents and supporting data submitted to the Board.

We discuss below the comments on this section and our responses.

Comment: A number of commenters believed the time period for the appeal process was too constrained to allow

adequate consideration of the issues. These commenters noted that the statute could be interpreted to require a minimum of 60 days before a determination could be made, rather than the maximum the NPRM proposed.

Response: For the reasons previously discussed, we agree with the commenters and have revised the regulation accordingly.

Comment: One State indicated that the notice should include details on the reasons for the penalty.

Response: We agree with the commenter that the notice should contain sufficient detail on the factual and legal basis for the penalty to allow the State to respond and have revised the regulation. However, we believe the agency should have the opportunity to raise new issues in response to the State's brief and therefore have not specified that reasons not raised in the notice are waived. Since the State now has an opportunity to respond to the ACF brief and to submit additional documentation, we do not believe this policy will disadvantage the State.

Comment: One State noted that the practice of notifying the Governor differed from past practice of notifying the agency and suggested that we also notify the TANF agency.

Response: Although the statute requires notice to the Governor, we agree with the commenter that it would facilitate the process if we also give the TANF agency a copy of the notice and have amended the regulation accordingly.

Comment: A number of commenters suggested the State should be able to submit a reply brief as a matter of right. They also suggested the Board's authority to develop the record be clarified.

Response: The NPRM limited the State's right to submit a reply brief as a matter of right because of the limited time availability under the proposed 60-day maximum. Since we have eliminated this 60-day time issue in the final regulation, we agree with the commenters that the State should be able to submit an appeal as a matter of right and have amended the regulation.

We have also clarified that the Board's discretion to develop the record included the discretion to hold an evidentiary hearing. We would note that §§ 16.9 and 16.10 of this title, which are made applicable by § 262.7(e), contain additional detail on the Board's discretion to develop the record.

Comment: One State expressed concerns about using the Departmental Appeal Board as the forum for hearing appeals.

Response: The statute specifies the Departmental Appeals Board as the entity to hear appeals.

Comment: One commenter believed that we should include all sections of 45 C.F.R. part 16 as part of the appeal process. This commenter also believed that we should not treat failure to file a copy of an appeal with the Office of the General Counsel as a jurisdictional defect.

Response: We selected the provisions of part 16 that fill in the gaps in the TANF statutory framework. We have not added additional sections because we do not think they are necessary.

The failure to file the appeal with the Office of the General Counsel is not a jurisdictional defect. However, we would toll the time period for filing of our reply brief until OGC receives the brief.

Comment: One State noted that the specific provision on when the State's appeal is considered filed, at § 272.7(f)(1) of the NPRM, varied from the time contained in 45 C.F.R. 16.20, which we adopted in the NPRM.

Response: As part of the changes in the timing of an appeal in the final rule, we have deleted this NPRM provision and thus eliminated the conflict. However, we have also added a provision to § 262.7(e) to clarify that the named provisions of part 16 are adopted only to the extent that they are consistent with the specific provisions of this section.

VIII. Part 263—Expenditures of State and Federal TANF Funds (Part 273 of the NPRM)

Section 263.0—What Definitions Apply to This Part? (§ 273.0 of the NPRM)

Administrative Costs

(a) Background

Under the TANF statute, States may not spend more than 15 percent of either their Federal TANF funds or their State MOE dollars on administrative costs. At section 404(b), the statute excludes expenditures for "information technology and computerization needed for tracking or monitoring" from the administrative cost cap that applies to Federal TANF funds (i.e., the Federal cap).

The proposed rule addressed the subject of administrative costs in five separate places: (1) the definition of qualified expenditures at § 270.30 provided that, for MOE purposes, administrative costs were subject to a 15-percent cap (i.e., the MOE cap); (2) § 273.0 provided a definition of administrative costs; (3) § 273.2(a)(5) discussed the 15-percent limit on the amount of MOE expenditures that could be spent on administrative costs and reflected our decision to exclude the same information technology and computerization costs from the MOE cap as the Federal cap; (4) the preamble for § 273.11 explained that we would consider expenditures of more than 15 percent of a State's Federal TANF funds on administrative funds to be a misuse of Federal TANF funds; and (5) the preamble and regulation at § 273.13 provided that, in determining the Federal cap, we would use the definition of administrative costs at § 273.0(b) and not count information technology and computerization for tracking and monitoring as administrative costs. The preamble for § 273.13 also explained that we would look to see whether a State's cumulative expenditures on administrative costs from its grant for any fiscal year exceeded 15 percent of the grant amount and that we would consider expenditures above the limit to be a misuse of funds.

The proposed definition at § 273.0(b) provided that: "Administrative costs means costs necessary for the proper administration of the TANF program or separate State programs. It includes the costs for general administration and coordination of these programs, including indirect (or overhead) costs." It also provided examples of eleven types of activities that would be classified as "administrative costs," such as salaries and benefits not associated with providing program services, plan and budget preparation, procurement, accounting, and payroll.

In the preamble, we stated our belief that the proposed definition would not create a significant new administrative burden on States. We hoped that it was flexible enough to facilitate effective case management, accommodate evolving TANF program designs, and support innovation and diversity among State TANF programs. We also said that it had the significant advantage of being closely related to the definition in effect under the Job Training Partnership Act (JTPA). Thus, it should facilitate the coordination of Welfare-to-Work and TANF activities and support the transition of hard-to-employ TANF recipients into the work force.

More importantly to commenters, the preamble also indicated that we would consider eligibility determinations to be administrative costs, but allow case management to be treated as a program cost. It also required that portions of a worker's time be allocated based on this distinction. Specifically, the NPRM preamble said:

You will note that the definition we have proposed does not directly address case management or eligibility determination. We understand that, in many instances, the same individuals may be performing both activities. In such cases, to the extent that a worker's activities are essentially administrative in nature (e.g., traditional eligibility determinations or verifications), the portion of the worker's time spent on such activities will be treated as administrative costs, along with any associated indirect (or overhead) costs. However, to the extent that a worker's time is essentially spent on case-management functions or delivering services to clients, that portion of the worker's time can be charged as program costs, along with associated indirect (or overhead) costs.

In the preamble, we also indicated that we expected administrative costs incurred by subgrantees, contractors, community service providers, and third parties to be part of the administrative cost cap and that we would determine such costs in the same way as agency costs. Specifically, we said:

We have not included specific language in the proposed rule about treatment of costs incurred by subgrantees, contractors, community service providers, and other third parties. Neither the statute nor the proposed regulations make any provision for special treatment of such costs. Thus, the expectation is that administrative costs incurred by these entities would be part of the total administrative cost cap. In other words, it is irrelevant whether costs are incurred by the TANF agency directly or by other parties.

We realize this policy may create additional administrative burdens for the TANF agency and do not want to unnecessarily divert resources to administrative activities. At the same time, we do not want to distort agency incentives to contract for administrative or program services. In seeking possible solutions for this problem, we looked at the JTPA approach (which allows expenditures on services that are available "off-the-shelf" to be treated entirely as program costs), but did not think that it provided an adequate solution. We thought that too few of the service contracts under TANF would qualify for simplified treatment on that basis.

We welcomed comments on how to deal with this latter dilemma, as well as comments on our overall approach. We had discussed this issue thoroughly during our pre-NPRM consultations, but thought this was a policy area where no single, clear solution existed.

(b) Overview of Comments

About one-third of all respondents to the NPRM submitted comments on our administrative cost provisions. A substantial majority of these comments came from representatives of State or local governments, but we also received comments from unions, community organizations, advocacy groups, national associations, business groups, and Congress. We received comments from a significant majority of the States.

Commenters generally opposed both the breadth of the proposed "administrative cost" definition and the scope of its application. To some extent, unions, community organizations, legal aid and advocacy groups were an exception to this general rule. Comments from these groups tended to be more supportive of the proposed rule. However, they expressed concern about the impact of these policies on the amount of resources that would be available for direct benefits to needy families and the potential impacts of the proposed rules on a State's decisions about program administration, staffing, and contracting. One argued for more specific exclusions from the definition (including costs associated with the delivery of program services and overhead) out of concern about the effect of a tight cap on case manager pay.

To deal with the number and complexity of responses on this issue, we have decided to cluster the comments into the following five general categories: (1) the actual definition (including issues about the appropriateness of a Federal definition, adopting definitions from other programs, the treatment of eligibility determination and case management costs, and the treatment of automated data processing costs); (2) the treatment of costs incurred on contracted services; (3) general questions about the calculation of the two caps; (4) specific issues related to how we determine whether a State has exceeded the MOE cap on expenditures of State MOE funds; and (5) specific issues related to how we determine whether a State has exceeded the Federal cap (including whether the appropriate base for computing the Federal cap is the pre-transfer or post-transfer grant amount).

As you will notice from the discussion that follows, regardless of where they appear in the rule, the administrative cost issues are closely connected to each other. For example, if we have a prescriptive definition of administrative cost, this policy would exacerbate concerns about the negative effects of requirements for subcontractors to track such costs in the same way as TANF agencies.

Although few commenters directly addressed the combined effects of the proposed policies, we considered the combined effect of all these provisions in drafting our responses.

The subject area that received the most attention from commenters was the proposed definition. Commenters disagreed about whether there should be a Federal definition, suggested alternative definitions that we could adopt, argued for exclusion of case management and eligibility determination costs, raised some issues about the treatment of automated data processing costs, and posed a few miscellaneous questions.

(c) Federal Definition

Comment: A relatively small number of commenters spoke directly to the question of whether there should be a Federal definition of administrative costs. The commenters' views were mixed, although more argued against a Federal definition than for one.

Among the arguments put forth in support of a definition were: the value of having comparable approaches among TANF jurisdictions; the importance of protecting benefits for needy families especially in light of the elimination of constraints that had existed under the former AFDC program; and the importance of having a meaningful and real Federal limitation on administrative costs.

Those opposed to a Federal definition argued that: (1) it should be the State's prerogative to define administrative costs; (2) we had no authority to define "administrative costs"; or (3) we could defer to State definitions and choose to regulate at some subsequent date if we found that States were not adhering to the statutory limits.

Response: While we do believe in granting States broad flexibility to design their programs and have left key definitions up to the discretion of the States, we also believe that there is a need for Federal guidance on the definition of "administrative costs." The approach in this rule is a compromise between a Federal and State definition. It sets a Federal framework that specifies some items that must be considered "administrative costs," but does not attempt to fully define the term.

We believe this framework is important. First, as the comments we received demonstrate, there is no common view of the meaning of this term. If we left this matter entirely to State discretion, we could expect a diversity of approaches, and States might be subject to widely different penalty standards. Also, the fear of a penalty might lead some States to define the term so narrowly as to substantially undermine the intent of the administrative cost cap provisions.

We disagree with the comment that we lack the authority to define "administrative costs." We have

responsibility for four penalty provisions—two on use of Federal funds and two on MOE requirements—where the level of State expenditures on administrative costs is a key issue. On many occasions, we have heard statements about the importance of having clear Federal standards for any penalty decisions that we make. In that context, we have both the authority and the responsibility to provide standards in this area.

As we indicated in the preamble to the proposed rule, we considered not proposing a Federal definition. While that option had some appeal, we were not disposed to deferring totally to State definitions. The philosophy underlying the administrative cost caps is very important; in order to protect needy families and children, it is critical that the substantial majority of Federal TANF funds and State MOE funds go towards helping needy families.

We also indicated that we thought that, by providing a general framework to States, we could avoid numerous disputes with individual States about whether their definitions represented a "reasonable interpretation of the statute."

(d) Applying Other Federal Definitions

Comment: A substantial number of commenters suggested that the TANF program adopt the definition proposed for the Child Care and Development Fund. A much smaller number suggested that we adopt the definition in effect under the Job Training and Partnership Act (JTPA) program. Commenters argued that adoption of these other definitions would improve program consistency and simplify program operations at the local level. They also endorsed CCDF's exclusion of "eligibility determination" as an administrative cost. One argued that the different definition could put local agencies in the untenable position of not being able to hire staff.

Response: In terms of program coordination, we do not believe that there is a strong advantage to selecting the CCDF definition over JTPA's. Where TANF programs work extensively with local providers of employment and training services, compatibility with JTPA may be more important; where TANF and child care programs are administered by a single agency or use a common set of service providers, compatibility with child care providers may be more important.

In the NPRM, we noted that our proposed definition was closely related to the JTPA definition and thus should facilitate the coordination of WtW and TANF activities and support the transition of hard-to-employ TANF recipients into the workforce. As caseloads decline and the proportion of hard-to-serve clients rises, coordination between these two programs may become even more critical.

While adopting the CCDF definition might facilitate TANF and CCDF coordination, we do not believe that this coordination depends upon a uniform definition. Also, given the differences in the caps of the two programs (15 percent versus 5 percent) and the different legislative histories, there is little reason to believe that Congress intended a uniform definition.

(e) Treatment of Eligibility Determinations

Comment: Many of those commenting on this issue objected to our proposed inclusion of eligibility determination within the administrative costs definition. Some argued that eligibility determination was not an administrative activity and was not easily or logically separable from case management. Still others commented on the burden associated with our proposal, the general need for State flexibility in this area, and the potential negative effects on a State's ability to fund critical staff who work directly with clients.

One State agency indicated that the distinction in our proposal was not burdensome and would require only a slight change in its Random Moment Study.

Many commenters took strong exception to our characterization of any portion of the eligibility determination process as administrative. Among other things, they were concerned that: (1) It was inconsistent with existing State practice; (2) the nature of work with families is undergoing significant change, and application of the traditional AFDC approach is no longer appropriate; (3) because eligibility determination is part of the case management function, it should be categorized as a program or service function than administration; (4) the administrative responsibilities of staff performing functions such as screening and assessment are integral to providing services; (5) front-line eligibility determination is arguably a direct service, under the first statutory goal of the TANF program; and (6) as workers assume new roles, differentiating between eligibility and service delivery is becoming increasingly difficult and less useful.

A couple of commenters indicated that our regulations needed to draw a clearer line between administrative and program costs. One commenter provided several specific examples of situations where the line between administrative and program costs that we drew in the proposed rule was unclear, such as in diversion and sanction activities and in determining hardship exceptions and compliance with behavioral requirements.

A significant number of commenters spoke to the burden of the proposed requirement on TANF agencies. They argued that State and local systems are not geared towards allocating expenses this way. They do not want to divert resources to this activity.

Commenters also made a general plea for flexibility, saying that States need flexibility in order "for the role of front line staff to continue to evolve to best meet the goals of welfare reform" and to enable States to build partnerships with local service providers.

Finally, several commenters noted that we presented this policy only in the preamble, not in the regulation itself.

Response: While we do not want our rules to distort State choices about how to deliver services or to divert State resources to cost accounting activities unnecessarily, we have a responsibility to uphold the intent of the statutory administrative cost cap provisions by ensuring that States are not spending large amounts of money on eligibility determinations rather than program benefits or services.

Also, we do not agree that States must incur a significant administrative burden in order to identify the costs associated with eligibility determination activities. We recognize that the nature of staff responsibilities is changing and the line between case management and eligibility determination is blurring. Thus, it may be more difficult to develop rules for allocating the time of workers between administrative and program activities. However, once a State develops its allocation rules, the process of allocating staff time is straightforward and no more difficult than the current cost allocation process.

We also recognize that the TANF program offers the possibility for States to administer programs in new ways. We understand that States are moving towards blended functions, and we support such efforts. These final rules do not in any sense require States to have separate administrative and program staff. They merely require that States provide a reasonable method for determining and allocating administrative and program costs.

Welfare agencies have a long history of identifying the costs of eligibility determinations and allocating these costs as administrative activities. A variety of other significant, related programs—such as Medicaid, the Child

Health Insurance Program (CHIP), and Food Stamps—continue to follow this practice. Thus, this kind of cost allocation has been standard operating procedure in a number of programs and has been accepted as a normal part of doing business.

We also believe that a clear policy on eligibility determinations might produce more consistent penalty determinations and reduce audit disputes, appeals, and litigation regarding application of the misuse of funds and MOE penalties.

Based on these considerations, we have decided to add eligibility determinations to the list of administrative activities at § 263.0(b)(2). More specifically, this rule reflects the basic definition that was in the proposed regulation at § 273.0(b) (with the same basic examples of administrative cost activities), but adds the NPRM preamble policy that required eligibility determination to be treated as an administrative cost. We recognize that this is a significant policy decision that merits inclusion directly in the regulatory text; we agree with commenters that it should not be relegated to the preamble.

Under the final rule, States may develop their own definitions of administrative costs and cost allocation plans, consistent with this regulatory framework.

Also, as we discuss later, we provide States some flexibility in the methods they use to determine the administrative costs associated with contracts. However, we want to reiterate a point we made in the preamble for § 273.13 of the proposed rule: States must properly allocate costs. They must attribute administrative, program, and systems costs to benefiting programs and appropriate cost categories, in accordance with an approved cost allocation plan and the cost principles in part 92.

(f) Other Miscellaneous Suggestions for Inclusions and Exclusions

Comment: A couple of commenters suggested that our definition make a distinction between general overhead or indirect costs (which would be considered administrative costs) and overhead and indirect costs related to the provision of program services (which would be excluded). A couple of commenters made the broader suggestion that our definition should indicate that administrative costs do not include items such as diversion activities, assessments, development of employability plans, work activities, post-employment services and supports, and case management.

Response: The comments identified an area where the language in the proposed rule was unclear. To address this problem, we have revised the regulatory text. The revised language at § 263.0(b)(1) excludes costs of providing services and the associated *direct* administrative costs from the definition of administrative costs. The revised language at § 263.0(b)(2) clearly treats indirect (or overhead) costs as administrative costs. We included these costs as administrative costs in the final rule because we believe this approach is most consistent with the intent of the administrative cost caps and is the simplest and most straightforward approach for States to implement.

Comment: One commenter suggested that we specify that diversion assessments are program costs and not administrative costs.

Response: We believe the changes that we have made to § 263.0(b), and just discussed, adequately address this concern. The rule at § 263.0(b) now indicates that diversion and assessment activities are both program service costs and not considered administrative costs. (Note: Here, we would make a distinction between assessment activities designed to identify needs and develop appropriate service strategies versus assessing income, resources, and documentation for eligibility determination purposes; the latter are administrative costs.)

Comment: One commenter said we should specifically define case management.

Response: We do not believe there is a need for a Federal definition of this term.

Comment: One commenter asked that we clarify that "public relations" activities would not include State expenditures on providing information to clients.

Response: While we believe that the common meaning of "public relations" would not include providing client information, at the new § 263.0(b)(1), we have added "providing program information to clients" as one example of providing program service. Thus, this activity would not be classified as an administrative cost under our rules.

Comment: One commenter asked that we clarify that domestic violence and substance abuse services are not considered administrative costs.

Response: We believe the new language at § 263.0(b)(1) adequately addresses this concern. It more directly states that costs of providing services are outside the definition of administrative costs, and it explicitly provides that screening and assessments are examples of program services.

(g) Computer-Related Costs

Comment: Several commenters had concerns that the definition of the exclusion for computer-related costs was not sufficiently clear in the NPRM. Their reasons were mixed. A couple of commenters wanted to make sure that States did not have "unfettered discretion" in this area; they saw this provision as a major loophole and did not want to see money diverted from meeting the needs of poor families. Other commenters felt that the regulations did not adequately address the information technology exclusion.

Response: We received a variety of comments on the exclusions of information technology and computerization costs from the 15-percent caps. Based on these comments, we have made some clarifying changes to the regulatory language (which appear in §§ 263.2(a)(5) and 263.13) and are providing some guidance in the preamble. However, we do not believe it is necessary or appropriate to develop detailed Federal regulations on this issue. While the new regulatory language makes the regulation more consistent with the statutory language and makes the language for the Federal and MOE caps more consistent, it also reflects our willingness to defer to State policies, as long as those policies reflect a reasonable interpretation of the statutory language.

We believe that the revised regulatory language represents the best reading of the statutory language at section 404(b). The statute provides for exclusion of certain systems costs in determining whether a State has exceeded the Federal cap on administrative expenditures. It does not exclude such systems costs from the definition of administrative costs. Thus, in this rule, you will note that the systems exclusion is not part of the definition of administrative costs at § 263.0(b). Rather, it appears in the sections where we explain how we determine if a State has excess expenditures on administrative costs.

Comment: We received several comments asking us to clarify that personnel costs necessary to comply with reporting requirements and for tracking and monitoring computer systems are covered by the exclusion. Likewise, we received a few comments asking us to clarify that the following items would be excluded: (1) data collection and reporting activities (such as hardware, personnel and supply costs they incur in meeting the TANF disaggregated data reporting requirements); (2) activities such as rental and purchase of computer

equipment and systems procurement; and (3) preparation of reports required under the Act.

Response: Under the final rules, we exclude from the 15-percent cap all costs associated with the portions of information technology and computer systems that are used for tracking or monitoring required by or under part IV-A of the Act. The excludable costs are the full range of costs directly associated with the development, maintenance, and support of the relevant systems or the relevant portions of larger systems. Nonsystems costs related to monitoring and tracking (e.g., for the salaries and benefits of data entry clerks, evaluation staffs, statisticians, and report writers) are not covered by this exclusion.

Based on the comments, we have made some modest changes to the definition of administrative cost at § 263.0(b) and the descriptions of the administrative cost caps at §§ 263.2(a)(5) and 263.13. Under the language in the proposed rule, we had not generally recognized that some activities that would otherwise be "administrative" in nature could be part of the systems exclusion. The one exception we mentioned was "management information systems," proposed at § 273.0(b)(10).

To provide the clarification commenters requested, we have revised the language at §§ 263.2(a)(5) and 263.13 to specify that the systems exclusion covers items that "would fall within the definition of administrative costs at § 263.0(b)." In other words, items that would normally be administrative costs, but are systems-related and needed for monitoring or tracking purposes under TANF, fall under the systems exclusion. Thus, we would not consider them in determining whether a State has exceeded either of the 15-percent caps.

We also added language at §§ 263.2(a)(5) and 263.13 to specify that the systems exclusion covers the salaries and benefits costs of personnel who develop, maintain, support, or operate information technology or computer systems used for tracking and monitoring. Under the revised language, it is clearer that States may exclude personnel and other costs associated with the automation activities needed for TANF monitoring and tracking purposes. For example, they may exclude expenditures related to computerization of both the fiscal and program data collection and reporting requirements in part 265 and computer charges related to generating required data and reports. However, they do not exclude nonsystems costs related to monitoring and tracking (such as personnel costs for data entry clerks, statisticians, and report writers).

Also, we made a minor change to the last example in our list of examples of administrative costs. The revised language refers generically to "preparing reports and other documents" rather than "reports and documents related to program requirements." We revised the language to avoid confusion; the NPRM language was too similar to the statutory exclusion at section 404(b).

Comment: One commenter said the regulation should address the permissibility, within the exclusion, of electronic benefit transfer (EBT), Fingerprint Imaging Projects, or other automated fraud prevention activities.

Response: While all these activities might be commendable, the statutory exclusion is only for expenditures "needed for tracking or monitoring required by or under this part." EBT would not fit within the exclusion because it is neither a tracking nor a monitoring activity; as the statute at section 404(g) indicates, EBT systems are "for providing assistance."

Fingerprint imaging and other anti-fraud activities might fall under the systems exclusion. For example, expenditures to develop a computerized fingerprint imaging system to identify fugitive felons or individuals who have fraudulently misrepresented their residence would clearly qualify as monitoring under the exclusion.

Since we are not regulating the definition of this exclusion, we are not attempting to draw fine lines between what systems costs should be included versus excluded. We expect States to implement policies that are consistent with a reasonable interpretation of the statute and these regulations.

(h) Costs Incurred by Contractors

Comment: Another area receiving a significant number of comments was our proposal to apply the definition of administrative costs to contractors and other agencies. The vast majority of commenters opposed this proposal.

One State indirectly argued that the policy was unnecessary, pointing to the State's own cost consciousness and cognizance of the need to limit administrative expenditures in contracts.

A few commenters noted that we had included this policy proposal only in the preamble, but not in the proposed regulatory text. At least one asked that we add the preamble language to the regulation.

One TANF agency requested that we provide more guidance on how States should segregate the administrative costs associated with subcontracted services.

We organized most of the comments on this issue into four broad categories: (1) suggestions that the 15-percent administrative cost cap apply solely to costs incurred by the TANF agency; (2) the potential effects of applying the administrative cost cap limitation to contractor agencies; (3) the possible negation of existing performance-based contracts; and (4) functionality considerations.

A few commenters recommended that the administrative cost cap apply solely to the expenditures of the TANF agency or that we should treat State and local agencies alike, but not contractors.

A much larger number of commenters expressed general concerns about requiring the tracking of administrative costs to contractors. They objected to: (1) the increased administrative burden on the TANF agency and difficulties associated with tracking administrative costs of contractors; (2) diversion of resources away from needy families to tracking; and (3) inconsistencies between our policy and the policies of other programs (e.g., JOBS and JTPA). Commenters also claimed that our proposed policy would increase the administrative costs of the program, hamper State and local efforts to improve program administration and services, discourage collaborations with community-based organizations and other service providers, violate Congressional intent in limiting our regulatory authority, and impede State procurement activities. For example, contractors might choose not to compete because they would be reluctant to provide detailed itemizations of their expenses, and States might refrain from contracting for fear that unknown contractor costs might cause them to exceed the cap on administrative expenditures. Several commenters expressed concerns that our proposed policy would discourage the development of performance-based contracts and similar funding arrangements.

A subset of commenters said we should base the treatment of subcontractor costs on functionality considerations, looking at the function performed by the contractor or subcontractor, not whether contractors incur administrative costs. A few argued that direct program services provided by contractors were not administrative in nature. Commenters did not want the treatment of contract costs to be based on "an extremely difficult differentiation between administrative and programmatic costs."

Response: We have decided that States should be able to determine the administrative costs associated with contracts and subcontracts based on the function or nature of the contract. For example, if a State contracts for case management or job placement services, which meet our definition of program services, the cost of the contracts would be treated as program costs, not as administrative costs. Further, as we discuss later, the entire costs of a contract for payroll services would be treated as an administrative cost subject to the 15-percent cap. If the State had a contract that included a mix of administrative and programmatic activities, it would need to develop a method for attributing an appropriate share of the contract costs to administrative costs. We have revised the regulatory language to reflect that decision.

The approach in the proposed rule reflected some genuine concerns about weakening the administrative cost caps and distorting State decisions about whether to contract. Some commenters expressed similar concerns. However, after reflecting on the totality of comments received, we are convinced that the costs of our proposed approach would have outweighed the benefits. The approach also might have significantly undermined one of our regulatory objectives, i.e., to give States the flexibility they need to serve low-income families.

In administering and operating its TANF Program, each State should make a determination of the most cost-effective and efficient method of performing each of the necessary administrative and programmatic functions. It may use in-house staff and resources, engage other State or local government agencies, or solicit services from outside contractors. Presumably, with each State's procurement procedures requiring free and open competition, and oversight by auditors and State legislative and regulatory bodies, the result of any solicitation will be a high-quality service delivered at a reasonable and acceptable cost.

We believe that, once a particular function is determined to be either administrative or programmatic, that characterization does not vary based on the nature or identity of the service provider. Therefore, if a contract is for a singular administrative or programmatic service, the final rules would treat the entire contract price as an administrative or programmatic cost, respectively. A State would not need to further itemize the contract costs or consider the individual cost components used to support the contract price.

For example, payroll services is a traditional administrative function. If a State opts to contract out the payroll responsibilities for its TANF program, a State would treat the entire cost of that contract as an administrative cost within the 15-percent cap. It would be unnecessary to further define the contractor's own administrative costs.

On the other hand, if the State contracted with a third party to perform a variety of functions that included a mix of administrative and programmatic activities, the State would need to develop a method for attributing an appropriate share of the contract costs for administrative activities as administrative costs. Likewise, if another agency (State, local, or private) were administering a piece of the TANF program, the State would need to have a method for attributing an appropriate share of the other agency's costs to administrative activities.

Presumably, in developing its individual cost proposals, each contractor includes an allocated portion of their own administrative costs or overhead. However, the matter of interest here is the extent to which Federal and State expenditures are going to administrative activities, not the individual cost components of contracted services.

Our approach is consistent with the regulations at 45 CFR part 92 and should maintain the integrity of the 15-percent administrative cap provisions.

We do not believe this policy will necessarily bias State decisions about how to deliver TANF services, e.g., towards contracting out, or privatization, of program operations. First, the initial expenditure reports we have received from States suggest that their administrative costs are running well within the 15-percent caps; thus, they do not appear to have a strong incentive to change any of their administrative practices. Second, many other very important considerations go into State contracting decisions—including the State agency's internal capacity and expertise and larger political and budgetary considerations. Third, we would expect the State agency, State legislature, and other interested parties to consider the impact on public employees as part of their deliberations. Lastly, because there is a limited difference in the treatment of administrative costs incurred by TANF agencies and third parties, the potential incentive effects of this policy (towards privatization) are limited.

(i) Consolidated Caps

Comment: A couple of commenters suggested that we should have a single administrative cost cap that covers both Federal and MOE expenditures.

Response: The statute clearly requires a separate cap for each. Also, it would not be feasible to apply the 15-percent limitation across the total Federal TANF and State MOE dollars. The MOE cap applies to the total amount of qualified State expenditures for the fiscal year, i.e., per fiscal year. The Federal cap applies to the adjusted SFAG. If a State reserves amounts from its fiscal year grant, then the Federal cap could reflect expenditures over a number of fiscal years.

(j) Compliance Periods

Comment: One commenter questioned the requirement for quarterly compliance with both the Federal and MOE caps. The commenter suggested annual evaluation as an alternative.

Response: We assume this comment reflects a reaction both to the information required on the quarterly TANF Financial Report and some unclear regulatory language in the proposed rule. First, while we do require quarterly reporting of Federal and State administrative and systems costs, we never intended to make quarterly determinations whether the expenditure of State funds violated the MOE cap. The statute at section 409(a)(7) clearly provides that this would be an annual determination. Also, in reflecting on this comment we realized that our regulatory text did not clearly state that compliance with the MOE cap would be determined on an annual basis. Therefore, we have added the phrase "for the fiscal year" to § 263.2(a)(5)(i) to clarify that this is an annual determination.

The Federal administrative cost cap works somewhat differently. For the purpose of the Federal cap, we would look at the total cumulative amount spent on administrative activities from each annual Federal TANF grant. Unless and until the total amount expended as administrative expenditures (exclusive of appropriate systems costs) exceeded 15 percent of the Federal TANF grants (except WtW grants) for any fiscal year, we would not identify a violation of the Federal administrative cost cap. The Department of Labor administers the WtW administrative cost limit. This policy is consistent with the discussion in the preamble to the proposed rule for § 273.13.

(k) Base for Computing the Cap

Comment: A significant number of commenters (particularly those

representing States or State interests) argued that we should calculate the 15-percent administrative cost cap based on the SFAG amount before any State transfers to title XX or CCDBG (i.e., the adjusted SFAG).

Several of these commenters maintained that, in defining the Federal cap, section 404(b)(1) refers specifically to 15 percent of the "grant." They interpret this language to mean that total SFAG amount would be the appropriate number to use in determining the maximum amount for administrative costs. A few made the additional comment that we did not have the authority to reduce the amount of 15-percent administrative funds available to the State under the statute by applying the 15-percent limitation to a smaller base amount than the adjusted SFAG.

Commenters also expressed concerns that our proposed policy would result in disincentives to the States to transfer funds to CCDBG or title XX.

Finally, a few commenters noted that our proposed rules used a different base amount for computing the administrative cost cap and for computing penalties. More specifically, we proposed to determine penalties based on the adjusted SFAG (i.e., the SFAG amount minus Tribal adjustments, but prior to any transfer), but we computed the administrative cap for TANF based on the adjusted SFAG minus transfers. This inconsistency seemed unjustified.

Response: As we noted briefly in the discussion for § 260.30, we made a change to the definition of "adjusted SFAG" that addresses the consistency concerns of commenters. The revised definition, which is used for determining both the Federal administrative cost cap and penalty amounts, excludes monies transferred to either the SSBG or CCDBG programs. Like the proposed definition, it also excludes funds removed from the State's grant because Tribes in the State elected to operate their own TANF programs.

Although the language of the administrative cost limit refers to "the grant," we do not believe what is "the grant" is clear in this context. We did not base the Federal administrative cap on the pre-transfer amount because we believe that proposal would produce a peculiar and undesirable policy result. In effect, it would allow States to double-dip on their administrative expenditures. The transferred funds would be part of the base that we would use to determine how much Federal TANF money was available for administrative costs within the TANF program. It would also be part of the base for determining how much money was available in CCDBG or SSBG for capped administrative expenditures within these programs, since the statute provides that transferred funds are subject to the requirements of these programs.

We understand the concern that our policy in this area might create modest disincentives for States to transfer Federal TANF funds to CCDF and SSBG. However, we would point out a few factors that should mitigate those concerns: (1) the initial TANF expenditure reports suggest that administrative costs are generally running substantially below the 15-percent caps; thus, States that transfer funds should be able to live within the post-transfer cap amount; (2) this policy affects the Federal cap only, not the MOE cap; (3) States that elect to transfer funds might enjoy some reductions in their administrative costs because they can operate more streamlined child care and social services programs; (4) some of the costs associated with the new TANF data rules are excludable from the cost caps under the information technology and computerization exclusion; and (5) in several places, these final rules reduce the data reporting and administrative burdens to which States would have been subject under the proposed rules.

You will find the discussion of the issues related specifically to the MOE cap in the preamble for § 263.2 and the discussion of issues related specifically to the Federal cap in the preamble for § 263.13.

Subpart A—What Rules Apply to a State's Maintenance of Effort?

Section 263.1—How Much State Money Must a State Expend Annually to Meet the Basic MOE Requirement? (§ 273.1 of the NPRM)

Overview

To ensure that States would continue to contribute their own money towards meeting the needs of low-income families, section 409(a)(7) requires States to maintain a certain level of spending on programs on behalf of eligible families. If a State does not meet the "basic MOE" requirements in any fiscal year, then it faces a penalty for the following fiscal year. The penalty consists of a dollar-for-dollar reduction in a State's adjusted SFAG.

In the NPRM and in the discussion that follows, we address each of the terms used in the basic MOE requirement.

(a) Historic State Expenditures

Each State's basic MOE requirement reflects its historic spending on welfare programs. We calculated the historic State expenditures based on the State's FY 1994 share of expenditures for the AFDC, EA, AFDC-related child care, transitional child care, At-Risk Child Care and JOBS programs (including expenditures for administration and systems operations).

(b) Adjusting a State's Basic MOE Level

The statute authorizes an adjustment to a State's basic MOE level when a Tribe or a consortium of Tribes residing in the State submits a plan to operate its own TANF program, and we approve this plan. We will reduce the State's basic MOE requirement beginning with the effective date of the approved Tribal plan.

Section 409(a)(7)(B)(iii) excludes from the basic MOE calculation any IV–A expenditures made by the State for FY 1994 on behalf of individuals covered by an approved Tribal TANF plan. Because TANF funding for Tribes may also reflect a State's IV–F (JOBS) expenditures, we also concluded that it was appropriate to reduce a State's basic MOE levels for IV–A and IV–F expenditures. In summary, we proposed to determine the percentage reduction in the SFAG due to Tribal programs and apply the same percentage reduction to the State's basic MOE requirement. The State's revised basic MOE level would apply for each fiscal year covered by the approved Tribal TANF plan(s).

For example, if the amount of the Tribal Family Assistance Grant represents ten percent of the State's SFAG, then we would reduce the State's basic MOE requirement by ten percent. This approach provides a consistent method for determining both the reduction in the State's SFAG and its required basic MOE level.

(c) Applicable Percentage

Under section 409(a)(7)(B)(ii), if any State fails to meet the minimum work program participation rate requirements in the fiscal year, then it must spend at least 80 percent of its FY 1994 spending level. If a State meets the minimum work participation rate requirements, then the "applicable percentage" is 75 percent of its FY 1994 spending level for the year. We refer to the dollar amount representing 75 percent or 80 percent of the FY 1994 State expenditures as the basic MOE level.

We calculated each State's total FY 1994 expenditures and basic MOE levels by using data on the State share of expenditures for AFDC benefits and

administration, EA, FAMIS, AFDC/JOBS Child Care, and Transitional and At-Risk Child Care programs reported by States on form ACF–231 as of April 28, 1995, as well as the State share of JOBS expenditures reported by each State on form ACF–331 as of April 28, 1995.

We transmitted tables showing FY 1994 spending amounts and basic MOE levels to the States via Program Instruction Number TANF–ACF–PI–96–2, dated December 6, 1996. On October 31, 1997, we issued TANF Program Instruction Number TANF–ACF–PI–97–9 informing States of revised basic MOE levels. The revised basic MOE levels reflected a correction in the calculation of the State share of FY 1994 At-Risk Child Care (ARCC) expenditures. Although the data sources remained the same for all States, some of the reported ARCC expenditure amounts used were revised after the original calculation. As a result, the basic MOE levels for some States increased. As TANF–ACF–PI–97–9 was issued so close to the NPRM publication date, we were not able to include information on it in the NPRM.

We also determined FY 1994 spending and basic MOE levels for each of the Territories. For IV–A expenditures for Puerto Rico, we used the Financial Report Form ACF–231 as of April 28, 1995. For Guam and the Virgin Islands, we used the share of expenditures that corresponded to the amount on the Federal grant awards for FY 1994, i.e., the Territories' share of AFDC benefit payments (25 percent), EA (50 percent), administration (50 percent), and Child Care (25 percent). For JOBS, the Territories' basic MOE levels reflect expenditures reported on the ACF–331 as of April 28, 1995.

In addition, for both IV–A (AFDC, EA, and child care) and JOBS, Guam and the Virgin Islands (but not Puerto Rico) benefit from Pub. L. 96–205, as amended (48 U.S.C. 1469a). This law permits waiver of the first $200,000 of the Territories' share of expenditures. Therefore, for Guam and the Virgin Islands, we reduced the share that they were required to contribute, and thus their basic MOE amount, by $200,000.

(d) FY 1997 Basic MOE Level

Under the proposed rules, we indicated that the State could prorate its basic MOE level for FY 1997 by taking the total FY 1994 State expenditures provided to the State in Program Instruction Number TANF–ACF–PI–96–2, multiplying that number by the number of days during FY 1997 that the State operated a TANF program and dividing by 365. The State's TANF implementation date is the date given in the Department's completion letter to the State. The State had to meet 80 (or 75) percent of the resulting amount.

Comments and Responses

We received a few comments on this section. Two commenters commended our proposal to reduce a State's basic MOE proportionately when the State's TANF grant is reduced once a Tribe or a consortium of Tribes residing in a State has received approval to operate its own TANF program. Most of the other comments focused on the applicable basic MOE level relative to a State's work participation rates. We have made no substantive changes to the provisions in this section as a result of the comments we received. However, as the result of some of the comments we received, we have clarified the regulation. A discussion of the comments follows.

(a) Applicable Percentage

Comment: A few commenters requested that we amend the regulations to provide that a State's failure to meet the two-parent minimum work participation rate for a year does not automatically require the State to meet 80 percent of its historic State expenditures. Instead, the commenters recommended that, where the State fails only the two-parent rate, the State must increase its spending level between 75 percent and 80 percent based on the ratio of the State's two-parent caseload to the State's entire caseload. Associations representing States pointed out that such an adjustment would be consistent with the proposed regulation under § 271.51 to reduce the maximum penalty amount for failure to meet the work participation rate if the State fails only the two-parent rate.

Response: We recognize that the size of a State's two-parent caseload may be small in comparison to the State's total caseload. However, we do not have any discretion under the statute to adjust a State's basic MOE in this way. Section 409(a)(7)(B)(ii) explicitly provides that a State must meet 80 percent of its FY 1994 spending level unless it meets the "requirements" of section 407(a) of the Act for the fiscal year. Section 407(a) includes the minimum participation rate requirements for both all families and two-parent families.

In contrast, section 409(a)(3) requiring a penalty for failing to satisfy minimum participation rates expressly provides for a reduction in the penalty with respect to a fiscal year based on the degree of noncompliance.

Comment: Two commenters thought we should modify the final rule to provide that the 75-percent spending level applies for every fiscal year in which a State meets only the all-family participation rate. They contended that the two-parent participation rate should not affect the required spending level, particularly for a State that has a very low two-parent caseload relative to its total caseload. One of the commenters also believed that the 75-percent spending level should apply immediately unless it can be shown after the fact that a State has not met the work participation rate requirements.

Response: We found no statutory basis for excluding the two-parent rate from a State's applicable spending requirement. The 75-percent spending standard, in the parenthetical at section 409(a)(7)(B)(ii), requires that States meet both rates.

We also disagree with the commenter's assertion that the 75-percent spending level should apply immediately. To the contrary, the statute requires that all States maintain an 80-percent spending level for each fiscal year. The reduction is a parenthetical addition if the State meets both participation rates for the fiscal year. Thus, a State would need to demonstrate that it actually meets both rates for the fiscal year for the 75-percent spending level to apply. This language suggests that, to avoid the chance of penalty, it would be most prudent for a State to plan to spend at the 80-percent level every year.

Comment: One commenter indicated that we must be clear in the regulations that a State qualifies for the 75-percent MOE standard if it meets the Federal requirement for the year following application of the caseload reduction credit.

Response: We have revised the final rule to clarify that a State's basic MOE will be reduced to 75 percent of FY 1994 expenditures if it meets both the all-family and the two-parent participation rate that applies following application of the caseload reduction credit.

Comment: Two commenters suggested that we clarify the basic MOE requirement for FY 1997. The commenters noted that the work participation rate requirements apply no earlier than the fourth quarter of FY 1997 for any State. As a result, the basic MOE requirement for FY 1997 should only be based on whether a State met the work participation rate requirements for the fourth quarter of FY 1997. If a State achieves the required work participation rate for the July–September 1997 quarter, the State's basic MOE requirement should be 75 percent of its historic expenditures.

Response: We agree that the earliest period States must report information

necessary to calculate participation rates under section 407 is the fourth quarter of FY 1997. The penalty for failure to submit a required quarterly report in a timely manner is one of several penalties that has a delayed effective date. Section 116(a)(2) of PRWORA provides that certain penalty provisions do not take effect until July 1, 1997, or six months after we receive the State's complete TANF plan. We consider the State's TANF implementation date to be the date that we received its complete plan. Most States had to submit a report for all or part of the fourth quarter of FY 1997.

However, there is no delay in the penalty for failure to meet the basic MOE requirement. This is one of several penalty provisions that apply immediately, i.e., from the date a State implements its TANF program. Thus, each State must maintain 80 percent of its historic expenditures for FY 1997 unless it meets the work participation rate requirements both for all families and two-parent families. (The penalty for failure to satisfy the minimum participation rates requirement also has a delayed effective date; however, that penalty is separate from the basic MOE requirement.)

The participation rates for a fiscal year are an average monthly rate. For the States that had to submit a report for all or part of the last quarter of FY 1997, we will calculate the average monthly rate for all families and for two-parent families based on the number of months that must be covered in the required quarterly report.

The remaining States must meet 80 percent of their historic spending levels unless they choose to submit data demonstrating that they actually met both participation rates either for the period during which they were operating their TANF program or for the last quarter of FY 1997, whichever they choose. We decided to give these remaining States this option because we did not think it would be fair to judge their performance over a longer period of time than States that implemented TANF at an earlier date. Also, we have more flexibility with respect to these States since the statute does not specify a precise time frame for measuring their performance.

Comment: One commenter wrote that a State should not have to meet the 80-percent level of effort if we waive the State's penalty for failing to achieve either of the required work participation rates due to reasonable cause. Another commenter requested clarification in this area.

Response: Under section 409(a)(7)(B)(ii) of the Act, the 75-percent standard only applies if a State meets the minimum work participation rates, not when a State has reasonable cause for failing to satisfy the rates. Granting reasonable cause does not mean that the State met the rates. States that fail to satisfy the minimum work participation rates, but receive partial or full penalty relief, must still meet the 80-percent MOE requirement.

(b) FY 1997 Basic MOE Level

Comment: One commenter asked that the final rule clarify how we will calculate the FY 1997 basic MOE level.

Response: We calculated the prorated basic MOE levels by first determining the number of days in FY 1997 that a State operated the TANF program. We then multiplied the resulting number of days by the State's basic MOE level for the year, then divided by 365 (the number of days in FY 1997).

We originally published the States' basic MOE levels in Program Instruction Number TANF–ACF–PI–96–2, dated December 6, 1996. We also sent letters dated January 7, 1997, to TANF program directors explaining that we would prorate basic MOE levels for FY 1997 only. As explained earlier, we have since recalculated basic MOE levels for States to correct for the revised State ARCC expenditure figures for FY 1994. As a result, the basic MOE levels for some States increased. We transmitted the revised basic MOE levels for States via TANF Program Instruction Number TANF–ACF–PI–97–9 dated October 31, 1997. This instruction also included each State's prorated FY 1997 basic MOE levels.

However, for States whose revised basic MOE level increased, we did not apply the revised rate retroactively. Rather, we are determining State compliance with the FY 1997 basic MOE level requirements based on the original numbers published in TANF–ACF–PI–96–2, prorated as applicable. All revised State basic MOE levels published in TANF–ACF–PI–97–9 apply beginning FY 1998.

Section 263.2—What Kinds of State Expenditures Count Toward Meeting a State's Basic MOE Expenditure Requirement? (§ 273.2 of the NPRM)

Overview

(a) Qualified State Expenditures

Section 409(a)(7)(B)(i) establishes the criteria for the expenditure of State funds to count toward a State's basic MOE level. Congress wanted States to be active partners in the welfare reform process. Thus, States must spend a substantial amount of their own money on aid to needy families. While Congress gave States significant flexibility in this area, it did establish a number of important statutory restrictions on which State expenditures qualify towards the basic MOE requirements.

Section 409(a)(7)(B)(i) defines "qualified State expenditures" to include certain expenditures by the State under all State programs. We interpret "all State programs" to mean the State's family assistance (TANF) program plus any other separate State program that assists "eligible families" and provides appropriate services or benefits. Thus, States could expend State funds for MOE purposes in three ways.

In addition to expending State funds in separate State programs, States may expend funds within the TANF program in two different ways. They may commingle their State funds with Federal grant funds, or they may use State funds that have been segregated from their Federal grant funds.

We remind States that there are specific statutory requirements that affect the use of State funds under a State's TANF program. States need to be mindful of the TANF requirements to help avert penalties under section 409 of the Act. The specific TANF requirements that apply depend upon which of various programmatic terms is used in the language describing the requirement.

States may also expend State funds in a State program separate from TANF to provide the benefits and services listed under section 409(a)(7)(B)(i)(I) of the Act, e.g., cash assistance, child care assistance, and education activities. None of the TANF program requirements directly apply to eligible families served in separate State programs.

Requirements in the statute that use the terms "under the program," "under the program funded under this part," and "under the State program funded under this part" apply to the State's TANF program, regardless of the funding source. That is, they apply to segregated Federal programs, commingled State/Federal programs, and segregated State programs. Thus, all families receiving TANF assistance (whether funded with State or Federal TANF funds) must meet work participation and child support requirements.

Conversely, some Federal requirements derive from the provisions in the statute that use the term "grant," or "amounts attributable to funds provided by the Federal government." These terms refer to the Federal TANF funds provided to the State under

section 403. Therefore, they only affect the use of Federal TANF funds, unless the State commingles its money with Federal TANF funds. If a State commingles its funds, the Federal and State funds become subject to the same rules. Thus, commingling of State and Federal TANF funds can reduce the total amount of flexibility available to the State in its use of Federal and State funds.

Requirements pertaining solely to the use of Federal TANF funds do not apply to families assisted under TANF with State-only funds. Consequently, if a State segregates its TANF State funds from its Federal TANF funds, State expenditures on assistance must comply only with all of the rules that generally pertain to the TANF program, e.g., work and child support requirements. They are not subject to requirements that pertain only to the use of Federal TANF funds.

A State might choose to operate a "segregated" TANF program because certain limitations, e.g., time limitations and certain alien restrictions, apply to the program funded with Federal TANF funds that would not apply to a TANF program funded wholly with State funds.

Whether the expenditure of State funds is within the TANF program or separate from the TANF program, to count toward meeting the State's basic MOE, all expenditures must: (1) be made to or on behalf of an eligible family; (2) provide "assistance" to eligible families in one or more of the forms listed in the statute under section 409(a)(7)(B)(i)(I); and (3) comply with all other requirements and limitations set forth in this part of the regulations, including those set forth in §§ 263.5 and 263.6.

(b) Eligible Families

Section 409(a)(7)(B)(i)(I) provides that State funds under all State programs must be spent with respect to eligible families to count toward the State's basic MOE. Section 409(a)(7)(B)(i)(IV) further clarifies that an eligible family means a family eligible for assistance "under the State program funded under this part." The "State program funded under this part" is the State's TANF program.

Thus, we proposed that, in order to be considered an "eligible family" for MOE purposes, a family must have a child living with a custodial parent or other adult caretaker relative (or consist of a pregnant individual) and be financially needy under the TANF income and resource standards established by the State under its TANF plan. This definition includes two categories of families. It includes all families funded with MOE funds under TANF, including certain alien families or time-limited families who cannot be served with Federal TANF funds, but who are being served in a segregated State TANF program. (We discuss this alien limitation in detail further on in this section.) It also includes a family that meets these criteria, but is not receiving TANF, and instead is receiving benefits and services from a separate State program. The expenditures to provide these benefits and services under all State programs may count toward the MOE requirement, provided the expenditures also meet all other requirements and limitations set forth in part 263.

A State is free to define who is a member of the family for Federal TANF purposes and may use this same definition for MOE purposes. For example, it could choose to assist other family members, such as noncustodial parents, who might significantly enhance the family's ability to achieve economic self-support and self-sufficiency. By including such individuals within its definition of family, a State could provide them with services through TANF or a separate State program. Noncustodial parents could then engage in State-funded activities such as work or educational activities, counseling, or parenting and money management classes.

The NPRM stated that we expect States to define "child" consistent either with the "minor child" definition given in section 419 or some other definition applicable under State law. The State must be able to articulate a rational basis for the age they choose.

The definition of "eligible family" expressly includes families that "would be eligible for such assistance but for the application of section 408(a)(7) of this Act."

Under section 408(a)(7), States may not use Federal TANF funds to provide TANF assistance to a family that includes an adult who has received federally funded assistance for a total of 60 months. Therefore, if a family becomes ineligible for Federal assistance under the TANF program due to this time limit, but still meets the definition of eligible family, then this family may be considered an eligible family for MOE purposes. (Note: In the NPRM, in § 273.2(c), we did not accurately cite the applicable criteria. The final rule at § 263.2(c) corrects this error; in referencing paragraph (b) of this section, it captures all three criteria for "eligible families.")

Section 5506(d) of Pub. L. 105–33 (the Balanced Budget Act of 1997) clarified that the definition of an eligible family also includes lawfully present aliens who would be eligible for TANF assistance, but for the application of title IV of PRWORA.

Thus, the definition of eligible family allows States to claim MOE expenditures with respect to three types of family members: (1) those who are eligible for TANF assistance; (2) those who would be eligible for TANF assistance, but for the time-limit on the receipt of federally funded assistance; and (3) those lawfully present who would be eligible, but for the application of title IV of PRWORA. An alien family who meets any one of these three criteria may be considered an eligible family provided they also meet the family composition requirement (i.e., have a child living with a custodial parent or other caretaker relative or be a pregnant individual) and financial eligibility criteria established by the State. These last two requirements are based on the statutory language stating that eligible families "means families eligible for assistance under the State program funded under this part (TANF) * * * and that would be eligible for such assistance."

While this three-part definition of eligible families may appear to allow States to claim qualified expenditures with respect to all lawfully present alien eligible family members, i.e., both qualified and nonqualified aliens, as discussed further below, this is not necessarily the case. Nor is it the case that the amendment to the definition under the Balanced Budget Act precludes States from claiming MOE for illegal aliens under certain circumstances.

While we mentioned the 1997 amendment in the NPRM, at that time, we had not fully analyzed the significance of the statutory language defining "eligible families" for MOE claiming purposes, relative to the extant eligibility provisions in title IV of PRWORA. Title IV of PRWORA sets forth the aliens who are eligible for Federal public benefits and for State and local public benefits; whereas, the definition of eligible families limits the expenditures that may be claimed for MOE. While there is obvious overlap between these two concepts, they are distinct and must be analyzed separately.

To understand eligibility for Federal TANF benefits, readers must be familiar with the definition of qualified alien, Federal public benefit, and Federal means-tested public benefits. Section 401 in title IV of PRWORA provides that, in general, only qualified aliens, as defined in section 431 of PRWORA, are

eligible for Federal public benefits. (At the end of this discussion, we explain two very limited circumstances under which it may be possible for a State to provide certain benefits to all aliens.) The definition of "qualified aliens" at § 260.30 refers to section 431 of PRWORA, as amended (e.g., by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (Pub. L. 104–208) and the Balanced Budget Act of 1997 (Pub. L. 105–33)). The revised definition of "qualified aliens" includes: legal permanent residents; asylees; refugees; aliens paroled into the U.S. for at least one year; aliens whose deportations are being withheld; aliens granted conditional entry; battered alien spouses, battered alien children, the alien parents of battered children, and alien children of battered parents who fit certain criteria; and Cuban/Haitian entrants.

The Department has interpreted the term "Federal public benefit" (see TANF–ACF–IM–98–5, dated August 24, 1998, transmitting the notice with comment period interpreting "Federal public benefit," published in the **Federal Register** dated August 4, 1998, vol. 63, No. 14, and available on line at http://www.acf.dhhs.gov/programs/ofa/im98–5.htm). It has determined that the TANF program (when using Federal TANF funds) generally provides a Federal public benefit. The Department also issued an interpretation of the term "Federal means-tested public benefit" and designated the TANF program as a Federal means-tested public benefit. (See the **Federal Register** for August 26, 1997, 62 FR 45256.)

Even qualified aliens may be ineligible for means-tested Federal public benefits. Section 403 of PRWORA prohibits qualified aliens, with exceptions, who arrive on or after August 22, 1996, i.e., newly arrived aliens, from receiving Federal means-tested public benefits for five years.

Exceptions to the five-year bar include qualified aliens who are refugees, asylees, or aliens whose deportation is being withheld, Amerasians, and Cuban/Haitian entrants, as well as veterans, members of the military on active duty, and their spouses and unmarried dependent children.

However, as discussed below, States may elect to help any newly arrived aliens who are eligible family members by providing either State or local public benefits or benefits that are not a State or local benefit. If the State uses segregated State funds in TANF or funds in separate State programs to provide such benefits, the expenditures may qualify as MOE.

Further, in regard to whether qualified aliens may be eligible for Federal TANF benefits, section 402 of PRWORA provides that States have the authority in TANF to decide whether to help qualified aliens who arrived in this country prior to August 22, 1996, and qualified aliens who arrived on or after August 22, 1996, but for whom the five-year bar had expired. In other words, States are authorized to decide whether qualified aliens are eligible for the State's TANF program. However, a State may not deny certain qualified aliens eligibility even if it decides that as a general matter qualified aliens are not eligible to receive Federal TANF benefits. States may not deny eligibility to refugees and asylees, aliens whose deportation has been withheld, Amerasians, and Cuban/Haitian entrants. These groups are eligible for Federal TANF benefits for five years after the date of their entry into the country or the date asylum or withholding of deportation was granted. Also, States may never deny eligibility to legal permanent residents who have worked forty qualifying quarters or to aliens who are veterans, members of the military on active duty, and their spouses and unmarried dependent children.

As with other parts of the TANF program, the way the State structures the delivery of TANF and MOE benefits determines which eligibility requirements apply. If a State commingles Federal TANF funds with State funds, then the benefits provided must follow the rules at section 401(c) for Federal public benefits. A State providing Federal public benefits to aliens and using commingled TANF funds to help aliens may claim, for MOE purposes, only the expenditures that it makes with respect to eligible qualified alien family members. Eligible qualified aliens include those who are eligible for TANF assistance; would be eligible for TANF assistance, but for the time limit on receiving federally funded TANF assistance; or are lawfully present in this country and would be eligible for TANF assistance, but for the application of title IV of PRWORA. If the State decides to restrict the eligibility of noncitizens to receive TANF benefits and commingles its MOE funds, then it will only be able to claim toward MOE the expenditures that it must make on behalf of the excepted qualified aliens mentioned above.

If a State does not commingle Federal and State funds, but instead uses segregated State funds in its TANF program or separate State program funds to provide benefits that meet the definition of a State or local public benefit, then it must follow the rules of section 411 of PRWORA. State or local public benefits have the meaning prescribed under section 411(c) of PRWORA. It is generally up to the State to determine if the benefits it offers are State or local public benefits within the meaning of the Act. However, because we interpreted that the TANF program, using Federal TANF or State commingled funds, generally provides a Federal public benefit, we also would interpret that the TANF program, using State TANF funds that have been segregated from Federal TANF funds, generally provides a State or local public benefit (subject to the limited circumstances explained at the end of this discussion). We make this interpretation because the statutory language in section 401(c) is identical to the language in 411(c). Within the meaning prescribed under section 411(c), States would also determine whether various separate State or local programs or activities are State or local public benefits.

Section 411(a) of PRWORA provides that only qualified aliens and certain nonqualified aliens are eligible for State or local public benefits. The nonqualified aliens consist of nonimmigrants under the Immigration and Nationality Act or aliens paroled into this country under section 212(d)(5) of such Act for less than one year. There are a handful of legal nonqualified aliens, e.g., temporary residents under the Immigration Reform and Control Act (IRCA), aliens with protected status, and aliens in deferred action status who are prohibited from receiving State or local public benefits under this provision. (At the end of this discussion, we explain two very limited circumstances under which it may be possible to provide certain benefits to all aliens.)

Section 411(d) of PRWORA permits States to expand alien eligibility by providing State or local public benefits to illegal aliens. But this may occur only if the State enacts a law after August 22, 1996, that affirmatively provides that illegal aliens are eligible to receive (all or particular) State or local public benefits.

Section 412 of PRWORA also allows States, at their option, to further limit alien eligibility for State public benefits. There are time-limited exceptions for refugees, asylees, or aliens whose deportation has been withheld. Like Federal TANF benefits, these groups are eligible to receive State public benefits under TANF during their first five years following entry, the grant of asylum, or the withholding of deportation. The

other excepted qualified aliens consist of veterans, members of the military on active duty, and their spouses and unmarried dependent children, as well as permanent residents who have earned forty qualifying quarters. Like Federal TANF benefits, these groups are eligible to receive State public benefits under TANF without the time limit described above.

In light of sections 411 and 412 of PRWORA, we have concluded that, if a State uses segregated State TANF funds or separate State program funds to provide State or local public benefits, it may only claim for MOE purposes the qualified expenditures made with respect to eligible family members who are qualified aliens, nonimmigrants under the Immigration and Nationality Act, aliens paroled into this country under section 212(d)(5) of such Act for less than one year, and illegal aliens if the State enacted a law after August 22, 1996, that affirmatively provides for eligibility to receive specifically authorized State or local public benefits.

A State may claim the expenditures for illegal aliens for MOE purposes only if the law in question is broad enough to encompass TANF eligibility. The only avenue for claiming expenditures for illegal aliens in the definition of eligible families in section 409(a)(7)(B)(i)(IV) is under the criteria of families eligible for assistance under TANF. Once a State affirms that illegal aliens are eligible for TANF assistance, then the State may provide a State or local public benefit as part of TANF or a separate State program. For example, if the State's law only authorizes for child care to be provided to illegal aliens through a non-TANF program (e.g., CCDF), it could not claim any such expenditures as MOE. However, if its law authorizes child care provided through TANF for illegal immigrants, it may claim such expenditures as MOE. Or, if it provides such a service to illegal aliens through a separate State program and not the TANF program, but the illegal aliens are eligible for both, it may claim those expenditures as MOE.

A State may claim qualified expenditures for the individuals described in the prior two paragraphs for MOE purposes because these are the aliens who are either eligible for TANF benefits or lawfully present in this country and eligible for TANF assistance, but for the application of title IV of PRWORA. If a State decides to restrict alien eligibility for State public benefits, then it may only claim MOE for qualified segregated TANF expenditures or qualified separate State program expenditures made with respect to the excepted qualified aliens mentioned in section 412.

Two limited circumstances exist in which it may be possible for a State to help all aliens. These circumstances apply regardless of funding source, i.e., whether a State uses Federal TANF, State TANF, or separate State program funds. These circumstances derive from section 401(b) and (c) and section 411(b) and (c) of PRWORA, which describe alien eligibility for Federal public benefits and State or local public benefits, respectively.

First, both sections 401(b) and 411(b) of PRWORA affirm that States may provide certain noncash Federal or State and local public benefits to any alien. Such benefits are those necessary for the protection of life or safety and include those specified by the Attorney General in a notice dated August 23, 1996 (AG Order No. 2049–96, 61 FR 45985 available on line at http://www.acf.dhhs.gov/news/welfare/wr/830fdreg.htm). In the notice, the Attorney General specified the kinds of noncash government-funded community programs, services, or assistance that are necessary for protection of life or safety and for which all aliens continue to be eligible. However, for all aliens to be eligible, sections 401(b)(1)(D) and 411(b)(4) both state that neither the government-funded programs, services, or assistance provided, nor the cost of such assistance, may be conditioned on the individual recipient's income or resources. While such service may meet one of the purposes of TANF and may be provided as part of TANF or a separate State program, a State may claim toward MOE only qualified expenditures with respect to eligible (needy) families. Therefore, to claim any expenditures that meet the Attorney General's specifications for life and safety, a State must have a sound methodology that enables it to identify and claim only the portion of total qualified expenditures for benefits that it has provided to eligible families.

Second, section 401(c) defines a Federal public benefit and section 411(c) defines a State or local public benefit. Both sections use the same definition. The August 4, 1998, **Federal Register** notice that identified TANF as a Federal public benefit expressly states that not "all benefits or services provided by these programs are 'Federal public benefits' and require verification." Because sections 401(c) and 411(c) use the same wording to define a public benefit, we believe this statement may also apply to benefits provided with segregated State TANF funds and separate State program funds. When a benefit is not a Federal or State or local public benefit, a State is not statutorily bound to restrict eligibility to certain aliens and can provide that benefit to all aliens.

The August 4, 1998 **Federal Register** "Notice with Comment Period" includes some general discussion about discerning whether a benefit should or should not be considered a Federal public benefit. We suggest this same discussion may be valuable to States in interpreting, per section 411(c), the specific services that a State would or would not consider a State or local public benefit under TANF or through a separate State or local program. If a particular benefit or service under the State's TANF program or separate State or local program is not a public benefit, then the State may claim qualified expenditures with respect to any alien family member who is "eligible for TANF assistance."

In addition we proposed that States may be able to count as MOE expenditures, funds transferred to Tribal grantees to assist families eligible under an approved Tribal TANF plan. However, if the eligibility criteria under the Tribal TANF program are broader than under the State's TANF plan, then all expenditures of State funds within the Tribal TANF program might not count as MOE. Only expenditures used to assist an "eligible family" under the State program count. States must ensure that State funds are expended on behalf of families eligible under the State's income and resource standards.

(c) Types of Activities

Section 409(a)(7)(B)(i)(I)(aa)–(ee) specifies that State expenditures on eligible families for the following types of assistance are "qualified expenditures" for basic MOE purposes:

- Cash assistance (see subsequent discussion on this);
- Child care assistance (see the discussion at § 263.3);
- Education activities designed to increase self-sufficiency, job training, and work (note the specific exception at § 263.4);
- Any other use of funds allowable under section 404(a)(1) (see subsequent discussion on this); and
- Associated administrative costs (subject to a 15-percent cap, as discussed in § 263.0 and subsequently).

It is important to remember that the activities mentioned above count toward a State's basic MOE requirement if they are reasonably calculated to accomplish a purpose of the program. This restriction follows from the language at section 409(a)(7)(B)(I)(ee) of the Act authorizing as MOE, "any other

use of funds allowable under section 404(a)(1)." Section 404(a)(1) of the Act refers to activities that are reasonably calculated to meet a purpose of the TANF program. The use of the word "other" infers that the activities listed above (ee), i.e., (aa)–(dd) must also be reasonably calculated to accomplish a purpose of the program. Hence, not only must expenditures of funds pursuant to (ee) be reasonably calculated to accomplish a TANF purpose, so must State expenditures pursuant to (aa)–(dd): cash assistance, child care assistance, educational activities, and administrative costs (discussed in detail further on).

We mentioned in the NPRM that expenditures for "assistance" for MOE purposes may take the form of cash, certificates, vouchers, or other forms of disbursement, as determined by the State. MOE expenditures may also be for ongoing, short-term, or nonrecurrent benefits. The definition of assistance at § 260.31 (§ 270.30 of the NPRM) does not limit the nature of State-funded aid provided to eligible families under TANF or separate State programs that can count as MOE. The authorization as MOE of "any other use of funds allowable under section 404(a)(1)" indicates that Congress intended all types of benefits provided to families under TANF under section 404(a)(1) of the Act should count as MOE. These can include "nonassistance" benefits such as nonrecurrent, short-term benefits.

Thus, State expenditures with respect to eligible families for activities such as pre-pregnancy family planning services, teen parenting programs, youth and family counseling or support services, job training or employment services, or forms of crisis assistance that meet the purposes of the program under section 404(a)(1) may also count toward meeting a State's MOE requirement. However, such expenditures are subject to other limitations and restrictions under §§ 263.5 and 263.6 (§§ 273.5 and 273.6 of the NPRM).

In the NPRM, we also addressed additional limitations and restrictions. We included some specific case situations that came to our attention and invited comment on these and other examples of aid for eligible families that States believed could qualify.

(1) Cash Assistance

This category includes cash payments, including electronic benefit transfers, to meet basic needs; assistance with work-related transportation costs; clothing allowances; and any child support collected on behalf of an eligible child that the State passes through to the eligible family.

The preamble in the proposed rule pointed out that section 5506(b) of Pub. L. 105–33 amended section 409(a)(7)(B)(i)(I)(aa) of the Act to specifically allow assigned child support collected by the State and distributed to the family to count toward a State's basic MOE so long as the amount is disregarded in determining the family's eligibility for and amount of TANF assistance. However, we neglected to point out that section 5506(b) also provided that the assigned child support distributed to the family must come from the State's share of the amount collected. The law specifically refers to the amount collected and distributed to the family under section 457(a)(1)(B). Section 457(a)(1)(B) provides that the State may retain or distribute to the family its share of the support amount so collected. Thus, more accurately, section 409(a)(7)(B)(i)(I)(aa) expressly allows the State's share of assigned child support amount collected on behalf of the family and distributed to the family to count toward a State's basic MOE, provided that the State disregards the amount sent to the family in determining the family's eligibility and amount of TANF assistance. We have clarified this point in the final rule.

Cash assistance also includes State expenditures on behalf of eligible families as part of a State's refundable Earned Income Tax Credit (EITC) program. Under a State EITC program, we determined that only expenditures, i.e., the refundable portion of EITC payments actually paid to eligible families, may count as MOE. Also, if the State had an EITC program in FY 1995, it may count the total amount of the refundable portion of the EITC actually paid to eligible families only to the extent that this amount exceeds the total amount of the refundable portion of the EITC actually paid in FY 1995 (see § 263.5).

(2) Any Other Use of Funds Allowable Under Section 404(a)(1)

Section 404(a)(1) provides that TANF funds may be used "in any manner that is reasonably calculated to accomplish the purpose of the TANF program, including to provide low income households with assistance in meeting home heating and cooling costs." In § 260.20 (§ 270.20 of the NPRM), we list the statutory purposes of the TANF program.

(3) Medical and Substance Abuse Services

The statute does not prohibit the expenditure of State MOE funds on medical expenditures. Therefore, States may count expenditures of their own funds to provide treatment services to individuals seeking to overcome drug and/or alcohol abuse when these services assist in accomplishing the purposes of the program. This policy would also comport with both the Administration's support for drug rehabilitation services and the congressional call for State flexibility in the operation of welfare programs.

We reminded States that such expenditures must be consistent with the purposes of the program and made to, or on behalf of, eligible families. We also reminded States that section 408(a)(6) bars the use of Federal TANF funds for medical services. Therefore, States using MOE funds to provide medical treatment services may not commingle State and Federal TANF funds. In addition, any State expenditures on medical services that are used to obtain Federal matching funds under the Medicaid program would not count as MOE. (Refer to the discussion under § 263.6.) Finally, State expenditures on medical and substance abuse services may only count as MOE subject to the "new spending" limitations set forth in § 263.5.

(4) Juvenile Justice

State funds used to pay the costs of benefits or services provided to children in the juvenile justice system and previously matched under the EA program do not count toward MOE. More specifically, as juvenile justice services do not meet any of the purposes of the TANF program, they are not an allowable use of funds under section 404(a)(1).

While some States may expend their Federal TANF funds for this purpose, under section 404(a)(2), the definition of "qualified State expenditures," for MOE purposes, does not include the reference to section 404(a)(2). Therefore, we have concluded that Congress did not intend to automatically qualify all previously authorized IV–A expenditures as MOE. States that expend Federal TANF funds for this purpose, under section 404(a)(2), must not commingle State funds with Federal TANF funds if they wish the State funds to count as MOE.

(5) State "Rainy Day" Funds

Some States inquired whether State funds allocated or set aside during a fiscal year as a "rainy day" fund, to act as a hedge against any economic downturn, could count as MOE. While we understand State intent, these allocations or set-asides are not expenditures. States must actually expend funds on behalf of eligible

families during the fiscal year for the money to count toward the State's MOE for that fiscal year. (However, under section 404(e), States may reserve Federal TANF funds from any fiscal year for use in any other fiscal year.)

(6) Administrative Costs

Administrative expenditures may count toward a State's MOE, but only to the extent that they do not exceed 15 percent of the total amount of qualified State expenditures for the fiscal year. This limitation is the same as the limit for Federal TANF administrative expenditures. Therefore, we proposed that the State apply the same definition of administrative costs for MOE purposes as for Federal TANF funds.

Section 404(b)(2) states that expenditures of Federal TANF funds with respect to information technology and computerization needed for tracking or monitoring activities are not subject to the 15-percent TANF limit. We are providing the same flexibility with respect to the administrative cost cap on MOE expenditures. Thus, the rules do not include information technology and computerization expenditures under the administrative cost cap; they allow such expenditures to count toward meeting a State's MOE requirement, without being limited by the 15-percent cap on administrative expenditures.

Comments and Responses

Summary

We received numerous comments on § 273.2 of the proposed rule. Many of the comments focused on the definition of eligible family. One commenter praised our broad interpretation of the term "eligible family." Others indicated that it may not be broad enough. Numerous commenters requested clarification of the definition.

We also received comments regarding some of the examples of qualified expenditures mentioned in the proposed rule as well as a few comments on other examples of aid for eligible families that commenters believe could qualify. Although we received only a few specific comments regarding the 15-percent cap on administrative MOE expenditures, we received a substantial number of comments on various aspects of the proposed definition of administrative costs. Since this definition applies to the State as well as the Federal cap on administrative expenditures, we refer you to the beginning of this subpart, at § 263.0, for a fuller discussion of the various issues raised and conclusions reached regarding the final definition of administrative costs.

Finally, a couple of the comments concerned the cash management principles governing the draw-down of Federal TANF funds because the draw-down of Federal TANF funds is tied to MOE expenditures.

After carefully considering the comments, we made some clarifications and a few changes to the final rule. We will address the comments following the order of the NPRM preamble.

(a) Qualified State Expenditures

Comment: One commenter noted that States have raised a number of questions regarding application of the Cash Management Improvement Act (CMIA) to the TANF program and MOE funds. The commenter recommended incorporating the guidance currently being developed jointly by the Financial Management Service (FMS) of the U.S. Department of Treasury and ACF in the final rule, as appropriate.

Another commenter recommended clarifying the final rule to specify that States may draw down Federal TANF funds without being required to show that they met their MOE requirement by the end of the year. The commenter wrote that our rules impose a de facto match requirement that is burdensome on States and could cause cash flow problems.

Response: The guidance the commenter is referring to has not yet been completed. We intend to release it as a separate issuance once it is completed. In the meantime, CMIA Policy Statement Number 19, dated June 1, 1997, and issued by FMS provides general cash management guidelines for States in drawing down their Federal TANF funds.

Federal TANF funds are subject to the Cash Management Improvement Act and the grant regulations at 45 CFR 92.20(b)(7). These rules restrict the draw-down of Federal funds. The CMIA Policy Statement Number 19 requires that States must expend a proportionate share of MOE funds for any period the State draws down Federal TANF funds. Thus, we have not made the recommended clarification.

The MOE requirement is not a de facto match requirement. However, it is similar to a matching requirement in one respect. It is a cost-sharing requirement, as Congress recognized that State financial participation is essential for the success of welfare reform.

To allow a State to expend Federal TANF funds first, then later spend State funds to fulfill the basic MOE requirement, would convey to the State a benefit (interest income) that was not authorized by the legislation establishing TANF. PRWORA did not provide for the TANF block grant allocations plus interest. The recommended action would also be in violation of 31 U.S.C. 6503(c)(1), which governs intergovernmental financing and the U.S. Treasury-State (cash management) Agreements signed by each State and Territory.

Although States must meet their basic MOE level for a fiscal year by the end of that fiscal year, the guidance in CMIA Policy Statement Number 19 does not restrict a State's ability to draw down its full TANF grant. Once a State meets its basic MOE requirement, the State may draw down its remaining TANF funds without contributing additional MOE funds. However, the draw-down of Federal TANF funds must be for immediate cash needs. Under no circumstances may a State draw down funds that are not needed for a specific program expenditure.

(b) Eligible Families

In addition to comments as discussed below, we corrected an incomplete citation in § 273.2(c) of the NPRM. This paragraph addressed the circumstances under which expenditures on families that had exceeded the Federal time limit would count as MOE. It should have cited paragraphs (b)(1), (b)(2), and (b)(3)—thus indicating that the families receiving assistance had eligible alien status, included a child living with an adult relative, and were needy under the financial criteria in the TANF plan. However, it failed to include the reference for this third provision. In the final rule, we corrected this language.

Comment: A few commenters argued that we should leave the definition of "eligible family" to each State. One commenter said that the proposed definition attempts to usurp the State's authority to define eligible family; another indicated that Congress was silent on this topic.

Response: We do not agree that Congress was silent on the topic of "eligible families." In fact, this issue is addressed in the Conference Report (H.R. Rep. No. 725. 104th Cong., 2d sess., at 56, p. 296). In pertinent part, the conferees agreed that "qualified expenditures that count toward the * * * spending requirement are all State-funded expenditures under all State programs that provide any of the following assistance to families eligible for family assistance benefits (TANF). * * *" More importantly, section 409(a)(7)(B)(i)(I) of Act provides that qualified expenditures count if made with respect to eligible families. Section

409(a)(7)(B)(iv) defines eligible families in pertinent part as "families eligible for assistance under the State program funded under this part," i.e., under TANF.

Because we must enforce a penalty if a State fails to meet the basic MOE requirement, we must specify the standards for that penalty. The term "eligible families" is a critical part of those standards. In this way, States may know which expenditures may count and avert a penalty.

Comment: Several commenters expressed concern that the proposed rule does not allow expenditures to be counted toward the basic MOE requirement if made for lawfully residing aliens who are not included in the definition of "qualified alien," such as certain persons residing under color of law (PRUCOL). The commenters pointed out that section 5506(d) of the Balanced Budget Act of 1997 (Pub. L. 105–33) amended the welfare reform law to allow States to count towards MOE funds spent on "families of aliens lawfully present in the United States that would be eligible for such assistance but for the application of title IV."

Response: We agree that the Balanced Budget Act made this change and mentioned it in the preamble to the NPRM. Also, the proposed regulation recognized that MOE expenditures could be used to help certain eligible nonqualified alien family members (nonimmigrants under the Immigration and Nationality Act and aliens paroled into the U.S. for less than one year). However, as previously mentioned, we did not accurately analyze the significance of this statutory language (defining "eligible families" for MOE claiming purposes relative to the extant provisions of title IV of PRWORA). Refer to the earlier extensive discussion regarding the noncitizens for whom the State may claim MOE expenditures.

Comment: Several commenters questioned the proposed rule at § 273.2(b)(2), which required that a child live with a custodial parent or other adult caretaker relative. One commenter noted that the Balanced Budget Act of 1997 eliminated the relationship requirement under 408(a)(1) of the Act. The commenters believed the statutory definition of eligible families under section 409(a)(7)(B)(i)(IV) and even the proposed rule permitted them to assist children who do not live with a custodial parent or other adult caretaker relative (e.g., children in foster care and juvenile justice situations). For example, expenditures associated with helping a child who lives in an alternative living arrangement had been permissible under the former Emergency Assistance program and therefore should count toward the basic MOE requirement. Another commenter believed the proposed rules were too narrow and recommended modifying the rules to permit qualified State expenditures for such children to count toward the basic MOE requirement.

Response: We do not agree that the Balanced Budget Act did away with the relationship requirement. We do not believe that Congress intended to eliminate the relationship requirement for either State MOE dollars or Federal TANF funds. Section 5505(a) of the Balanced Budget Act of 1997 expressly indicates that section 408(a)(1) was amended to eliminate redundant language. Previously, both sections 408(a)(10) (the home residence requirement) and 408(a)(1) (the minor child requirement) explicitly stated that Federal TANF funds could only be expended on a family that includes a child residing with a parent or other caretaker relative. The Balanced Budget Act removed the redundant phrase from 408(a)(1) and added a cross-reference to 408(a)(10), where the phrase remains intact.

Section 409(a)(7)(B)(i)(IV) defines eligible families, in pertinent part, as "families eligible for assistance under the State program funded under this part." The State program funded under this part is the TANF program, whether funded with the Federal grant and/or State funds. The criteria with respect to TANF assistance include the provisions under section 408, and specifically the provision just discussed under 408(a)(1). Under section 408(a)(1), no family is eligible for TANF assistance unless the family includes a minor child who resides with the parent or other caretaker relative. Therefore, we believe there is a direct correlation between sections 408(a)(1) and 409(a)(7)(B)(i)(IV).

We conclude that the intent of section 409(a)(7)(B)(i)(IV) is that the family include a child residing with a parent or other caretaker relative. A State may still choose to aid the "child-only" cases that exclude the adult(s) from the case. Nevertheless, that child must be residing with a parent or other caretaker relative. Qualified State expenditures under all programs (TANF or separate State programs) may count toward basic MOE if made with respect to eligible families who meet the above criteria and are for one of the categories of activities listed under 409(a)(7)(B)(i)(I). As we indicated in the proposed rule, not all expenditures for services that had been previously authorized under the former AFDC, EA, or JOBS programs qualify for MOE purposes. In particular, there are services (e.g., juvenile justice situations) that do not meet any of the purposes of the TANF program. Rather, such former EA services generally fall under section 404(a)(2), not 404(a)(1). Therefore, the expenditures do not qualify.

Comment: A few commenters requested that we revise the language at § 273.2(b)(2) of the proposed rule to permit the provision of assistance to minors who are temporarily absent from the home, similar to the time periods given in section 408(a)(10)(A).

Response: As we explained above, an "eligible family" is defined, in part, as one in which there is a child residing with a parent or other caretaker relative. Thus, the child's home is that of the parent or other caretaker relative. However, as with TANF, under section 408(a)(10), we expected that States would establish policies that define a reasonable period of temporary absence of the minor from the home for MOE purposes. Otherwise, qualified expenditures to provide services or assistance to the child once he or she left the home would no longer count toward basic MOE.

During the temporary period, the child is considered to be residing with the parent or other caretaker relative. Therefore, State may continue to help the eligible family through expenditures that are reasonably calculated to accomplish a purpose of the program, including some expenditures for the temporarily absent child (except as noted later in this discussion). As we previously mentioned, all qualified expenditures must be reasonably calculated to accomplish a purpose of the program.

For example, family preservation services, such as parenting training or counseling, and some forms of transitional assistance, could help ensure that parents may care for their children in their own home (purpose 1). In contrast, it is unlikely that expenditures on child care services would be reasonably calculated to accomplish that purpose (or any of the other TANF purposes) if the only child in the eligible family is temporarily absent from the home.

Sometimes the child is temporarily absent from the home because he or she has been placed in the care of a correctional facility, juvenile residential facility, group home, protective care, foster care, other facility or other nonrelative care arrangement. Since the child is deemed to be residing with his or her parent or other caretaker relative during the temporary period, expenditures reasonably designed to

accomplish the purpose of the program, including continuation of cash assistance, would count toward MOE. However, expenditures for residential care as well as assessment or rehabilitative services, including services provided to children in the juvenile justice system, do not meet any of the purposes of the TANF program and would not count toward basic MOE. The principal purpose for placement is to protect the child or to protect society because of the child's behavior, not to care for the child in his or her own home (purpose 1). Since the focus is to address the child's needs, expenditures to care for the child in these living situations does not end the dependence of needy parents on government benefits by promoting job preparation, work and marriage (purpose 2). The remaining two purposes do not even remotely relate to this situation.

It is important to note that this interpretation does not preclude a State from providing foster care or other protective care assistance for the child. However, these expenditures do not count toward the State's basic MOE requirement because they are not reasonably calculated to accomplish a purpose of the program.

It would be reasonable for States to use the time frames given under section 408(a)(10) to define "temporary" and to develop a corresponding MOE policy. (Section 408(a)(10) automatically applies when a State uses commingled State funds to provide TANF assistance.) The child must return to the home by the end of the temporary period established by the State. Otherwise, the child no longer resides with the parent or other caretaker relative. If the child is the only eligible minor in the eligible family, then services or assistance for the eligible family would no longer count toward the basic MOE requirement, if the child does not return after the temporary absence.

We do not believe it is reasonable to determine that a child is temporarily absent from the home if the child has been adjudicated or otherwise determined to require placement out of the home for longer than the State's established temporary period. In these situations, the absence is for a significant period, and expenditures for the child do not count as qualified once the child has left the home. Further, the child is not deemed to be residing with his or her parent or other caretaker relative. If the child is the only child in the family, then qualified expenditures to provide services or assistance to the family would no longer count toward basic MOE once the child left the home.

Comment: The NPRM indicated that a State is free to define who is a member of a family for TANF and MOE purposes and can choose to assist other family members such as noncustodial parents. Several commenters requested clarification regarding the effect of including the noncustodial parent or others as a member of the eligible family (e.g., applicability of sanctions). The commenters asked whether "assistance" provided to a noncustodial parent counts against the family for purposes of the time limit; whether a State can provide assistance or services to a noncustodial parent without providing assistance to the rest of the family; and whether a State must include the noncustodial parent as a family member. One advocacy group also asked whether a State could provide assistance to other relatives not living in the home; define a family to include more distant relatives not in the home; or even include nonrelatives not living in the home. A community organization felt that the potential addition of noncustodial parents or others not historically included within the family should not be totally discretionary with the State. The commenter recommended regulatory restrictions such as not providing assistance to a noncustodial parent when the custodial parent is not assisted. Another community organization requested that we spell out the full ramifications of States providing assistance outside the traditional "AFDC household" so that States will be aware of the consequences of their decisions.

Response: A number of commenters appeared to have interpreted our statement that States could include the noncustodial parent as part of the family to mean that any persons outside of the home may be a member of the eligible family. However, we did not intend for other relatives or nonrelatives not living in the home to be included as members of the eligible family. Only if a child is eligible in the home in which such other individuals live may the State choose to include them as part of that eligible family.

At minimum, an eligible family must consist of a minor child who resides with a parent or other caretaker relative (or consist of a pregnant individual). Beyond this minimum configuration, States may add other household members to comprise the eligible family. Thus, we expected that a State would configure a family from the individuals living in the home.

The only exception to this rule is the noncustodial parent. As the child's parent, a State may choose to include the noncustodial parent as a member of the child's eligible family. It also may choose not to. Further, a State may choose the circumstances under which a noncustodial parent would be a member of the child's eligible family. We leave this to State discretion and have included a minimal definition of noncustodial parent at § 260.30.

However, it is important to remember that an adult may receive TANF assistance only as part of a TANF family. This means that an adult, including a noncustodial parent, cannot apply for or receive TANF assistance independent of the child and custodial parent or caretaker relative, if applicable. Once the State determines the family is eligible, it is up to the State to determine the most appropriate assistance and nonassistance benefits to provide to family members.

Similarly, expenditures for adults only count for basic MOE purposes if the adult is part of a TANF or TANF-eligible family (i.e., a family that would be eligible for TANF assistance, but whose family members are not necessarily receiving it). And, as with TANF, the State determines the appropriate benefits to provide the eligible family.

As a member of the child's eligible family, a State could provide a noncustodial parent with benefits or services that could further the family's ability to attain economic self-support and self-sufficiency. Congress clearly supported this notion. For example, in section 101 of PRWORA, Congress stated that promotion of responsible fatherhood and motherhood is integral to the well-being of children. In section 407(h) of the Act, Congress expressed support for requiring noncustodial, nonsupporting parents under the age of 18 to fulfill community work obligations and attend appropriate parenting or money management classes after school. A provision in section 466(a) of the Act permits a State to issue an order, or to request that a court issue an order, requiring an individual owing past-due child support to participate in work activities, as defined in section 407(d) of the Act.

In our NPRM discussion of individual regulatory provisions, we also suggested that States examine the various sections of this rule where the term family is used. We understood that States needed to realize the other effects, in terms of the TANF requirements, of adding other persons to the eligible family. Applicability of any or all the TANF requirements depends on whether a family member is receiving TANF "assistance" as defined in § 260.31.

Applicability of a TANF requirement also depends on the person(s)

mentioned in a particular requirement. The TANF requirements use various terms, such as "adult or minor child head-of-household," "adult," "teen parent," "family member," "individual," "parent or other caretaker relative," or "single custodial parent" when referring to family members. The effect of a requirement may vary depending on the status of the person(s) receiving assistance. Each requirement must be examined to determine the effect of the status of family members on its applicability or on the amount of assistance paid (e.g., in sanction cases).

For example, the calculation of the work participation rates under section 407(b) of the Act consists of the number of families receiving assistance under the State program funded under this part that include an adult or a minor child head-of-household who engaged in work for the month (the numerator), divided by the number of families receiving TANF assistance during the month that include an adult or a minor head-of-household minus the number of families that are subject to a penalty for refusing to work in that month—except if a family has been sanctioned for more three of the last 12 months (the denominator). For this requirement, once a TANF eligible family includes an adult who receives some form of TANF "assistance," the family is included in the calculation of the work participation rate, and the adult may be required to participate in work activities. An "adult" eligible family member receiving TANF assistance could be the custodial parent or other adult caretaker relative, a noncustodial parent, or any other adult household member as determined by the State.

Furthermore, section 407(e) of the Act requires the State to reduce or terminate the family's TANF assistance if an individual in the family refuses to engage in required work. "Individual" eligible family members could include the noncustodial parent or other members of the eligible family. Yet, the child care exception applies only if the individual refusing is a single custodial parent caring for a child under age six.

Applicability of a requirement can also depend on the context of the funding. The term "under the State program funded under this part" used in the above provisions, as well as the terms "under the program" and "under the program funded under this part," all mean the State's TANF program, whether funded with Federal or State funds. Applicability of a TANF provision also depends on whether the State funds under the TANF program to provide assistance to the family member are commingled with, or segregated from, Federal grant funds. We mentioned earlier in this discussion that a State could expend State funds for MOE purposes in different ways. In terms of the TANF program, State expenditures may be commingled with, or segregated from, Federal grant funds. Provisions in the statute that use any of the above-mentioned terms apply to Federal or State-funded (whether commingled or segregated) assistance received under the TANF program, as depicted in the above examples.

In addition, under section 408(a)(3) and title IV–D of the Act, a family may not receive TANF assistance unless an assignment of support rights has been executed on the child's behalf. The assignment would also include the right to spousal support in the case of a custodial parent who receives TANF assistance. However, as discussed in the preamble to § 260.31, if the noncustodial parent also receives TANF assistance as a family member, the assistance provided to the noncustodial parent will not be considered "assistance" for purposes of the collection and distribution of assigned child support under title IV–D of the Act.

Provisions that only use the term "grant" or "amounts attributable to funds provided by the Federal government" (e.g., the five-year time limit, and expenditures for medical services) refer only to assistance provided using Federal TANF funds. They do not apply to State-funded TANF assistance unless the assistance comes from commingled funds. If a family member receives assistance from commingled State funds, then rules that would otherwise only pertain to the use of Federal grant funds apply.

However, as discussed at § 264.1, after further analysis, we have interpreted the five-year limit to only apply when the adult family member is the head-of-household or the spouse of the head-of-household and receiving assistance. Thus, if the noncustodial parent (i.e., the parent living in another household) receives TANF assistance as an eligible family member, that receipt impacts the family's lifetime limit only if he or she is the spouse of the head-of-household. We believe this situation will occur rarely, if ever. The months that any other adult eligible family member who is not the head-of-household or the spouse of the head-of-household receives TANF assistance would not count toward the family's lifetime limit.

A State may also aid eligible family members by providing various services under the TANF program that do not constitute "assistance." If so, the TANF requirements explained above do not apply. Services that are not assistance (e.g., counseling, job readiness, employment placement or post-employment services) may be provided to any eligible family member, e.g., the noncustodial parent.

For basic MOE purposes, expenditures must be with respect to an individual who is a member of an eligible family. An eligible family member may also receive "nonassistance" or "assistance" through a separate State program. The requirements applicable to "assistance" received under the TANF program do not apply to separate State programs or to "nonassistance" provided to members of an eligible family.

Comment: The definition of eligible families prohibits States from counting for MOE purposes expenditures made for pregnancy prevention services to childless individuals.

Response: Such expenditures would count toward meeting the basic MOE requirement only if the childless individual is a member of an eligible family, e.g., an eligible teen family member. Section 409(a)(7)(B)(i)(I) expressly provides that only qualified expenditures made with respect to members of eligible families count. Thus, we have not changed the final rule. However, Federal TANF funds may be used for this purpose to provide "nonassistance" per section 401(a)(3) of the Act.

Comment: Numerous commenters requested clarification of § 273.2(b)(3) of the NPRM which required that an eligible family must be financially eligible according to the TANF income and resource standards established by the State under its TANF plan. The commenters indicated that a uniform or single income/resource standard is inappropriate as it would restrict States' ability to provide families with services such as transitional assistance, e.g., child care, transportation, ongoing case management, education and training, or diversion services for families who need one-time or short-term help to prevent the need for traditional TANF cash assistance. A few commenters noted that a State's child care program may have its own income and resource limits. Another commenter indicated that the lack of flexibility may prevent certain transfers to tribal TANF programs from counting toward basic MOE. Therefore, commenters asked us to clarify the rules to allow for different standards of need for different types of services. They wanted a definition broad enough to cover families such as those who are transitioning off TANF, those who are at risk of receiving TANF, and those served through separate State

programs. Finally, another commenter asked us to de-link MOE and TANF eligibility.

Response: The proposed rule at § 273.2(b)(3) provided that an eligible family must be financially eligible according to the TANF income and resource standards established by the State under its TANF plan. It appears that commenters interpreted our use of the plural term, "standards," to mean that the elements used to determine financial eligibility (income and resources) constituted a single set of criteria for all the services that a State would provide. This was not our intention. We used the term "standards" in the event a State wanted to have multiple financial requirements based on the different services that it wished to provide or the scope of families it wished to aid.

States have the flexibility to decide the particular income and resource requirements that they will use to determine whether a family is financially eligible to receive a service, a package of services, or all of the services provided with State basic MOE funds. Thus, both income and resource requirements may vary, as determined by the State. For example, a State could establish different financial criteria for families no longer receiving TANF cash assistance in order that family members may receive transitional services. Or, a State may want to establish standards for providing short-term or nonrecurrent assistance to families in order to prevent the need for ongoing TANF assistance.

Section 409(a)(7)(B)(IV) of the Act indicates that an eligible family is a family who is or would be eligible (as provided in this section) for assistance under the State program funded under this part. The State's TANF program is the State program funded under this part. Thus, there is a statutory link between MOE and the State's TANF program. However, that link merely requires that an eligible family is or would be eligible for TANF assistance. It does not require that eligible family members must necessarily receive TANF cash assistance or any other benefit or services through the TANF program. Section 407(a)(7)(B)(i)(I) of the Act permits the State to help eligible family members through activities in "all programs," i.e., TANF and separate State programs.

Comment: Some commenters mentioned that States should be able to use basic MOE funds to create programs with definitions of need that may not assess income and assets at all. They argued that section 409(a)(7) allows a State to claim basic MOE spending with respect to eligible families for any use of funds that are reasonably calculated to accomplish the purpose of the TANF program. Providing assistance to needy families is mentioned in only two of the four purposes of the program under section 401(a) of the Act. Thus, the term "eligible families" should include a broader population of families, not just those who are needy families. Two commenters, including one national organization, also noted that the TANF purposes do not require that spending has to be made to, or on behalf of, an eligible family. For example, preventing and reducing the incidence of out-of-wedlock pregnancies and encouraging the formation and maintenance of two-parent families could involve the development of materials, pamphlets, videotapes, and counseling activities directed at teen pregnancy prevention and other pregnancy prevention initiatives. Such expenditures benefit all TANF eligible families but do not necessarily benefit any one family in particular.

Response: As we explained in the above response, the statute defines MOE expenditures as those made "with respect to eligible families." Thus, it clearly links MOE expenditures to eligible families. An eligible family is a family who is or would be eligible for assistance under the State's TANF program. A family may not receive "assistance" under the State's TANF program unless the family is needy. We interpreted the term "needy" for TANF and MOE purposes to mean financial deprivation, i.e., lacking adequate income and resources. We continue to believe this is the most appropriate interpretation and decline to expand the scope of the definition of needy. Hence, for basic MOE purposes, eligible families are those who are financially eligible according to the State's applicable income and resource criteria.

States may establish different income and resource criteria to cover the scope of needy eligible families they wish to serve or the various services or activities they want to provide. States are free to design programs involving MOE activities, including those mentioned by the commenter, to reach as broad a population as they choose. However, only that part of the total expenditures made on behalf of eligible families who meet the State's applicable financial eligibility criteria counts toward a State's basic MOE.

We would like to point out that Federal TANF funds may also be used to pay for "nonassistance" activities (such as those described above) that meet the purposes of the program as given in section 401(a)(1)–(4) of the Act and § 260.20. Federal TANF funds may also be used for activities that benefit non-needy families in some cases, e.g., activities that meet the purpose of either section 401(a)(3) or (a)(4) of the Act. In this respect, there may be more flexibility in the expenditures that are allowable uses of Federal funds than those that are allowable for MOE purposes. This is because federally funded services or benefits do not necessitate a determination of financial eligibility (need) if they do not meet the definition of assistance. Thus, States may use Federal TANF funds (in accordance with section 404 of the Act) to provide "nonassistance" services or benefits to eligible individuals who meet the State's other, nonfinancial, objective criteria for the delivery of such benefits.

Comment: Some commenters asked whether a State must make use of resource standards, noting that there is no statutory requirement to do so. Other commenters noted that the definition of "needy" may or may not include an asset test. For various benefits, a State may just establish income criteria to determine the families who are eligible for the benefit. One national organization also indicated that some States are considering eliminating resource standards.

Response: Title IV–A of the Act setting forth the TANF program does not address income or resource requirements (except under section 408(f) with respect to deeming an alien's sponsor's income and resources). Rather, it uses the term "needy." Although we interpreted "needy" to mean financial deprivation, i.e., lacking adequate income and resources, we also recognize that some State programs may just involve an income test. Therefore, we are not requiring States to have resource requirements. We have clarified this point in the final rule under § 263.2(b)(3) by stating that a family must be financially eligible according to the appropriate TANF income and resource (when applicable) requirements established by the State and contained in its TANF plan. (We discuss eligibility criteria in the TANF plan further in response to other comments in this section.) In this way, States not only decide the scope of families they want to serve, but also the families most in need of particular programs or services.

Comment: One commenter noted that, with respect to resources, a State's standard may address cash assets only. Two commenters indicated concern that an asset limit that does not allow a family to own a serviceable and reliable vehicle to get to work or services is

extremely counterproductive to moving people to work.

Response: It is the State's responsibility to specify income and/or resource limits. States define resources and determine which resources are considered, e.g., whether both liquid and nonliquid resources must be considered and the dollar limit(s) for each type of resource. For example, many States have already eased restrictions that prevented AFDC recipients from owning cars. Some States are increasing the excluded value or discounting entirely the value of a motor vehicle in determining TANF eligibility. We agree that such actions can promote job preparation and work.

Comment: A few commenters, including two advocacy groups, recommended that we establish a ceiling on the income standards used by a State to ensure that basic MOE expenditures are appropriately targeted to help families most in need.

Response: The proposed rules were silent on this issue. However, we do not think it is appropriate for us to establish a ceiling in the final rule. TANF leaves this responsibility to the States. We hope that States will establish reasonable income standards to ensure that expenditures are targeted to families most in need.

While Congress did not explicitly provide for an income cap under TANF, we believe that Congress was very interested in the ways States are targeting their resources to help families most in need find work and move toward self-sufficiency. For example, section 404(d)(3)(B) of the Act requires that TANF funds transferred to title XX programs must be used only for programs and services to children or their families whose income is less than 200 percent of the income official poverty line (as defined by the Office of Management and Budget) applicable to a family of the size involved. Thus, we re-emphasize our hope that States will target their resources in ways that help needy families and support the goals of the program.

In § 265.9(c), we discuss the required information on MOE programs that States must submit annually. For example, States must report the eligibility criteria for the families served under each MOE program/activity. This information will help us to know the scope of families served in the various MOE programs. At some future date, depending on how MOE programs evolve, we may want to look at addressing MOE-related issues through legislative or regulatory proposals.

Comment: Two commenters asked what the applicable standard is for purposes of basic MOE calculations if a State applies different income standards to different forms of assistance.

Response: For purposes of counting MOE expenditures, qualified expenditures under all State or local programs consist of expenditures claimed with respect to eligible families (or eligible family members) who met the financial criteria (income and resource requirements, when applicable) corresponding to the particular activity (i.e., service or assistance provided) as described in the State plan.

It is also important to note that the TANF compliance supplement issued by OMB for auditors will include the basic MOE requirement. In addition, States may be subject to other audits or reviews from time to time. Therefore, States must be able to support their MOE expenditures with adequate documentation.

Comment: One commenter recommended that we replace the term "eligible families" with "TANF-related families" to give States flexibility to help families become self-sufficient. Another commenter recommended that we define "eligible families" to include persons eligible for any benefit that could be made to a family with TANF funds in the State program, i.e., any expenditure that could be made under section 404(a)(1) or (2) of the Act with respect to a family. Thus, a State could use its own funds to pay for benefits that it would otherwise have paid with Federal TANF grant funds.

Response: "Eligible families" is the term used in the statute. Therefore, we believe this is the appropriate term to use in the rules. As we explained earlier, States are free to establish different income and resource (when applicable) criteria to match the scope of families it wishes to serve and type of services it wants to provide. In the TANF program and in separate State programs, States have the flexibility to offer a range of services that they think will help eligible families attain and maintain self-sufficiency. However, for basic MOE purposes, States cannot necessarily use their own funds in the same ways as Federal TANF funds. To count toward basic MOE, expenditures of State funds must be made with respect to eligible families. The expenditures, whether under or separate from the TANF program, must provide the family or family members with services that "qualify," i.e., fit any of the activities listed under section 409(a)(7)(B)(i)(I) of the Act. This provision would not include expenditures under section 404(a)(2) of the Act. (We address expenditures under section 404(a)(2) later in this discussion.)

Comment: A few commenters asked whether States needed to include the income and resource requirements in the State's TANF plan. One of the commenters recommended that State plans clearly define and delineate all their programs so that there is a clear understanding of who is eligible, what services and benefits are available, and the TANF requirements and other provisions that apply to recipients of assistance. In addition, States should notify recipients in TANF programs (funded with either Federal or State funds) regarding their options and responsibilities, and the consequences of their choices. They also believed we should require States to develop MOE plans in advance of making expenditures and that States should file such plans with HHS and publish them in the State.

Response: We agree with the comments that it is appropriate for States to specify in their TANF plans the financial eligibility criteria (income and resources, when applicable) associated with all State or local programs for which MOE expenditures are claimed (including State funds that are commingled, segregated or separated from Federal TANF funds). Section 402(a)(1(A)(i) of the Act requires that the TANF plan outline how the State intends to provide assistance to needy families with (or expecting) children, and provide parents with job preparation, work, and support services to enable them to leave the program and become self-sufficient. Section 402(a)(1)(B)(iii) requires that the TANF plan indicate the objective criteria for delivery of benefits, the determination of eligibility, fair and equitable treatment, and opportunity for appeal of adverse actions. Neither section makes any distinction between Federal or State-funded assistance, service, or benefits. Since States can use either Federal or State funds to provide assistance, services, or benefits, we believe that the State's TANF plan is the appropriate place to indicate this information for both TANF and MOE expenditures.

If there is more than one activity within a program and the financial eligibility criteria differ per activity, the State must also indicate each different set of criteria in the TANF plan. For example, a State uses State funds in its transitional services program that consists of transportation and child care benefits. If the financial eligibility criteria are different for the two benefits, the State must indicate the financial eligibility criteria for each benefit.

In addition, although we do not require it, we believe that the plan is the most appropriate place for States to provide a brief description of each MOE program benefit provided to eligible families or eligible family members, as well as any other particular eligibility criteria tied to receiving the specific benefit (e.g., must be participating in the State's work experience component to receive a particular benefit). In § 265.9(c), we discuss the required information that States must submit annually. One of the required items includes naming each of the State's MOE programs and describing the major activities provided to eligible families under each such MOE program. To the extent this information is in the State's TANF plan, the annual reporting requirement may be met by referencing the plan.

In summary, the following information must be in the State's plan in order for us to deem the plan submission complete: (1) The financial eligibility criteria with respect to eligible families that are associated with the State's TANF program and all State or local MOE programs; and (2) a brief description of the corresponding program benefit provided to eligible families or eligible family members, if the State has used MOE funds (either commingled or segregated) to provide the benefit. It would also be helpful for States to include a brief description of the corresponding program benefit provided through separate State MOE funds. However, the information is not required in order to deem the State's plan submission complete.

We maintain a copy of each State's TANF plan, as well as any updates to the plan. As the Balanced Budget Act clarified, States need to update their plans, as appropriate, to reflect new or revised financial or programmatic requirements as a result of changes in State law or State policies. The plan is an important vehicle for ensuring public awareness of the various ways States are helping eligible families attain and maintain self-sufficiency.

Comment: A few commenters believed we should hold States accountable for complying with their plans for services and benefits under TANF (funded with either Federal or State funds) and penalize them if they fail to do so.

Response: The basic MOE penalty applies if a State fails to meet the basic MOE annual spending requirement with respect to eligible families as provided in this subpart. However, neither that penalty nor any other penalty provides authority for us to penalize a State for failure to carry out any part of its TANF plan.

We believe that States are committed to expending their funds in ways that best assist eligible families attain work and self-sufficiency. States have a very real stake in the success of welfare reform. States also recognize that they are ultimately accountable for their expenditure claims. States are audited annually or biennially and compliance with the basic MOE provisions is part of the audit.

Following publication of the rules, we will update the compliance supplement to give auditors detailed information about how to assess State reports on their MOE expenditures.

As part of their review, we will refer them to the information supplied in the TANF Financial Report and the supplemental information on MOE programs and MOE expenditures provided annually under § 265.9(c). This supplemental material provides information about the scope of eligible families served with MOE funds and the ways in which States expend their MOE funds to help eligible families.

In the compliance supplement, we will suggest auditing procedures that include reviews of all the MOE reports and an examination of issues such as the following: (1) Were all MOE expenditures reported for the fiscal year actually made during that fiscal year; (2) has the State adequately documented that reported MOE expenditures went to eligible families; (3) were the methodologies the State used to estimate the portion of program expenditures going to eligible families sound; (4) were all the reported expenditures consistent with the purposes of TANF; (5) were any expenditures made in violation of the prohibitions in § 263.6; (6) where applicable, did all expenditures meet the "new spending test" (e.g., for every such program, did the State properly identify whether the program existed in 1995 and only count expenditures above the total State expenditures in 1995); (7) were administrative costs within the 15-percent cap; and (8) were the expenditures consistent with the cost principles set forth in OMB Circular A–87.

We will use the results of the audits, together with our own analysis of the TANF Financial Report and the annual report, to identify situations where a State might be liable for an MOE penalty. For example, the fourth quarter TANF Financial Report would identify any State that reported MOE expenditures below the minimum 80-percent (or 75-percent) standard for the year. Either the TANF Financial Report or the annual report might identify types of expenditures that could be inconsistent with one or more of the requirements for "qualified State expenditures." We might also undertake additional State reviews based on complaints that arise or requests from Congress.

Comment: A few commenters expressed concern regarding the eligibility determination process for different types of services or assistance. The commenters contend that the method of determining eligibility could vary depending on the service. For example, the method for determining a family's eligibility for diversion services may be more abbreviated than the process used to determine eligibility for ongoing TANF cash assistance. One commenter recommended that the regulations require an application for all State-funded benefits and verification that the family is actually eligible before any basic MOE expenditures may count.

Response: States decide the method(s) for determining whether the family consists of at least one child living with a parent or other caretaker relative and is financially eligible according to the appropriate income and resource (when applicable) criteria established by the State. As we mentioned in the above response, section 402(a)(1)(B)(ii) requires States to indicate in their plan the objective criteria for the delivery of benefits and the determination of eligibility. Nothing in this provision precludes a State from having different methods of determining eligibility for different types of services. However, we would note that 45 CFR 92.42 requires States to keep records to document claims and that States should, therefore, have and keep adequate records on eligibility.

Nevertheless, we remind States to pay attention to the TANF provisions that apply with respect to State-funded TANF assistance (i.e., to the use of commingled or segregated funds). States risk potential penalties if they violate certain TANF provisions. For example, section 408(a)(4) imposes a penalty on a State if the State's TANF program fails to participate in the Income and Eligibility Verification System (IEVS). The IEVS provision helps to improve the accuracy of eligibility determinations for applicants and recipients of TANF assistance.

States have an inherent interest in ensuring the integrity of their expenditures. Should a State learn of any material deficiency in its method for determining eligibility, we anticipate that the State would rectify it immediately, so that funds for services

are properly benefitting members of eligible families.

(c) Types of Activities

Comment: Several commenters recommended rewording § 273.2(d) of the proposed rule to avoid confusion regarding the applicability of "assistance" as defined under § 260.31 for basic MOE purposes. Commenters noted that States have the flexibility to count expenditures with respect to eligible families whether or not the expenditures meet the definition of assistance.

Response: As we explained earlier in this discussion, we believe that States may help eligible family members through an array of services that fall within the broad categories of activities listed in section 409(a)(7(B)(i)(I), including services that would not fall within the definition of assistance at § 260.31, such as nonrecurrent, short-term assistance. To clarify this point, we have reworded § 263.2(d) of the final rule and included similar language at § 260.31(c)(1).

(1) Cash Assistance

Comment: A few commenters requested clarification of the amount of State Earned Income Tax Credit (EITC) that can count toward the basic MOE requirement. One commenter noted that a State's EITC expenditures should count toward the basic MOE requirement even if none of the credit was "actually sent" to an eligible family member. For example, some States have "nonrefundable" EITC programs. Under a "nonrefundable program," the EITC serves to reduce the family's State income tax bill. However, the State does not pay the family any EITC remaining if the credit amount is larger than a family's State income tax bill. Another commenter asked whether we intended the entire cash payment actually received by the eligible family to count toward basic MOE, even if a portion of the payment consists of a State income tax refund.

Response: We have addressed this issue extensively in the preamble for the new § 260.33. An EITC program can help to relieve the State income tax liability for working poor families by decreasing the family's State income tax liability. The family's tax liability is the amount of taxes owed prior to any adjustment for credits or payments. EITC can also supplement a family's income—if the credit amount exceeds the family's State income tax liability and the State pays the family the remainder (i.e., it refunds the credit amount remaining). Such a refund is equivalent to cash assistance and may count as a qualified expenditure because it is reasonably calculated to meet a purpose of the TANF program.

State income taxes represent revenue to the State. Credits that offset a family's State income tax obligation provide tax relief to the family while reducing the State's revenue. A reduction in taxes, or revenue foregone, is not an expenditure. Therefore, only the EITC amount that exceeds a family's State income tax liability prior to application of the EITC is an expenditure. It may count for basic MOE purposes if the excess amount is actually paid out (refunded) to the eligible individual. Section 409(a)(7) of the Act stipulates that only "expenditures" with respect to eligible families that provide a benefit or service that is reasonably calculated to meet a purpose of the TANF program count toward a State's basic MOE. Thus, if a State does not disburse or pay out any excess EITC remaining, there is no expenditure.

States must determine the amount of any excess EITC paid to a family in a fiscal year by reconciling the family's State income tax obligation for the year against the total EITC amount for which the family qualifies. Any excess EITC amount actually paid to the family may count toward the State's basic MOE. In this regard, any EITC that a worker receives in advance through his or her paycheck may only serve to offset the family's tax liability. Advance EITC would have to be reconciled at the end of the year, in the same manner as the lump-sum EITC credit, to determine the portion, if any, that exceeded the tax liability.

For example, a wage earner qualifies for a $200 earned income tax credit. His or her family has a $75 State income tax liability for the tax year. When reconciling at the end of the year, the first $75 of the credit is used to reduce the eligible family's State income tax liability to zero. This part of the calculation represents revenue foregone to the State and does not constitute an expenditure. If the State also elects to refund (pay out) the remaining $125 in EITC, then the $125 actually sent to the eligible family is a qualified expenditure and counts toward the State's basic MOE.

The same principles apply in the case of a worker who is otherwise due a State income tax refund. For example, suppose the wage earner qualifies for an earned income tax credit of $200. Assume further that the family has a $75 State income tax liability. Yet, through withholding, the wage earner paid a total of $150 in State income taxes throughout the year. After reconciliation at the end of the income tax year, the State owes the worker $150 from withheld State income taxes and $125 in excess EITC. If the State pays out the EITC owed and sends it to the family as part of a refund check in the amount of $275, only the EITC portion, or $125, counts toward the State's basic MOE.

Comment: One commenter asked to what extent other tax credits such as a dependent care credit, credit to purchase a car seat or health insurance, tax forgiveness credit, sales tax credit, and property tax credit count toward a State's basic MOE requirement. The commenter also asked to what extent, if any, other tax relief provisions such as personal or dependent exemptions or the standard or other forms of deductions count toward a State's basic MOE requirement.

Response: Tax provisions that only serve to provide a family with relief from State taxes, such as income taxes, property taxes, or sales taxes, represent a loss of revenue to the State, not expenditures to provide a benefit or service to eligible families. For example, exemptions and deductions are generally subtracted from total taxable income, serving only to reduce the amount of income subject to income tax. Therefore, such exemptions and deductions would not constitute an expenditure for the purposes of section 409(a)(7) of the Act. Similarly, tax credits that rebate, refund, or return to a family a portion of the State's tax revenue (e.g., property, sales, or income taxes paid by families to the State) would not count toward the State's basic MOE requirement. Such credits serve only to offset a particular tax (e.g., a State property tax credit that refunds a portion of property taxes paid). A reduction in tax burden is not an expenditure. There has been no direct outlay of State funds to provide a service or benefit to eligible families.

However, credits that go beyond tax relief and are paid to the eligible family would count toward a State's basic MOE requirement if the expenditure is reasonably calculated to meet a purpose of the TANF program. For example, like the earned income credit, a child care or dependent care credit is subtracted from the family's income tax obligation. The portion of the credit that exceeds the income tax liability and is paid to the family may count toward the State's basic MOE requirement. Should the family qualify for more than one refundable credit (e.g., an earned income credit and a dependent care credit), then the amount by which the total combined value of the allowable credits exceeds the family's State income tax liability may count for basic MOE purposes.

It is important to note that while States may describe elements of their tax provisions, such as exemptions or deductions, as "expenditures," the provision may not actually be an expenditure. Similarly, States may differ in their methods of providing certain credits. For example, a sales tax or property tax credit may be claimed through the State's income tax system or through a separate process. Neither of these factors is material to determining whether some or all of the value of a credit, exemption, or deduction can count for basic MOE purposes. Accordingly, we urge States to carefully examine any tax initiative to determine whether it only serves to provide tax relief. If so, the money does not count for MOE purposes, even if a portion of the tax revenue is refunded or rebated to the eligible family as "cash assistance." However, actual expenditures such as some refundable tax credits may count for MOE purposes if the portion of the credit that exceeds the family's income tax liability is sent to the eligible family and the refund is reasonably calculated to accomplish a purpose of the program. Should a State wish to consult with us on these matters, we are available for technical assistance.

Comment: Several commenters noted that lack of transportation to training, job interviews, jobs, child care, or other services that accomplish the purpose of the program represents one of the most significant barriers to individuals attaining and maintaining employment. There are frequently no public or private transportation services in rural areas, so the traditional approach of tokens or vouchers is inadequate. Transportation is also problematic in urban areas due to the mismatch of job and transit destination sites and traditional commuter services times and routes.

Commenters generally recommended that we give States sufficient flexibility to respond to individual travel needs by allowing a broad range of activities as MOE. Examples of suggested allowable transportation activities included brokerage and coordination pilot programs, initiation of services that increase access for TANF recipients to new development or redevelopment employment sites, subsidization of new transit services either directly or in combination with other Federal or State sources, sharing in the cost of extending existing public transportation services, and developing necessary transportation infrastructure. One commenter added that we should tie transportation development costs for basic MOE to coordination mechanisms among human services agencies, State departments of transportation, and private transportation providers.

One national organization commented that, if public transit providers must use the cost allocation method, our rules would be unduly restrictive and could impede the ability of States to provide cost-effective services. The commenter suggested classifying such services as contracted services for TANF clients to be paid for by TANF agencies, with any non-TANF riders considered incidental. Another commenter recommended adding a section under this subpart to address when transportation-related expenditures count for basic MOE purposes.

Two commenters referred to the WtW program by suggesting that qualified transportation expenditures for basic MOE purposes should include transportation services provided through the State's WtW program and by clarifying that States could use TANF funds to support transportation services consistent with the WtW block grant program.

Response: We agree that transportation is a critical element in helping eligible individuals find and keep jobs. President Clinton recognized the importance of this issue in his 1998 State of the Union address. To help individuals on welfare get to work, he proposed an Access to Jobs initiative in the transportation reauthorization bill. Congress approved this proposal as the Job Access and Reverse Commute grant program in the Transportation Equity Act for the 21st Century (TEA–21), enacted in June 1998.

On May 4, 1998, we issued written guidance jointly with the Departments of Transportation and Labor on some of the ways in which States could use TANF and WtW funds to break down the transportation barriers for eligible individuals (Temporary Assistance for Needy Families Program Policy Announcement TANF–ACF–PA–98–2). Most of the examples could also serve as examples for the use of basic MOE funds. We updated this guidance to incorporate the provisions of TEA–21 in TANF–ACF–PA–98–5, dated December 23, 1998. We anticipate issuing additional guidance on the use of funds shortly after publication.

We do not think that it is necessary to add specific regulations to address transportation expenditures.

Transportation expenditures with respect to eligible families count as basic MOE if they meet all the requirements under section 409(a)(7) of the Act and this subpart. For example, under section 409(a)(7)(B)(i)(I)(aa) of the Act, transportation expenditures count if they are a form of cash assistance that is reasonably calculated to accomplish a purpose of the program (e.g., reimbursement for mileage, gas, public transit fare, auto repairs/insurance, or a basic cash allowance for transportation needs to go to or from work or training). Also, under section 409(a)(7)(B)(i)(I)(ee) of the Act, other types of transportation expenditures count if they reasonably accomplish a purpose of the TANF program, such as promoting job preparation and work. A broad range of transportation activities are possible within this category. We included some examples of such activities in the joint guidance cited above. However, we remind States that applicable TANF rules apply to State-funded transportation assistance (as defined in § 260.31) provided under the TANF program. (We discussed the implications of State-funded assistance in an earlier response.)

We also remind States that only qualified transportation expenditures with respect to eligible families count toward the basic MOE requirement. Congress clearly did not intend to include expenditures for the public at large. Thus, it is improper to claim as basic MOE general expenditures required to carry out other responsibilities of a State or local government and benefitting the public at large. However, a State could contract with a public or private transit agency for transportation services for eligible family members. Under such a contracting arrangement, a transit company could serve noneligible individuals so long as the State does not claim as State MOE the funds used to pay for, or subsidize, use by these noneligible individuals.

A State could also claim as MOE those start-up, program, and administrative costs that are attributable to eligible family members under a State or local transportation initiative (e.g., to broker transportation services) that is consistent with TANF goals, but targeted to a larger low-income population or more broadly to a low-income area.

States must allocate costs when State or local programs or agencies share costs, e.g., the TANF agency shares the use of vans or buses with a senior citizen program or shares in the purchase of transportation services.

We know that many States and locales have already made tremendous strides toward breaking down the transportation barriers faced by eligible family members. However, we also know that Federal TANF and State MOE funds are insufficient to overcome all transportation deficiencies. The recently

passed Job Access and Reverse Commute grant programs will give States additional flexibility in developing and providing transportation services.

The Job Access program provides competitive grants to assist States and localities in developing flexible transportation services to connect welfare recipients and other low-income persons to jobs and other employment-related services. The Reverse Commute grant program is for projects that will provide transportation services to suburban employment centers from urban, rural, and other suburban locations for all populations. The Mass Transit Account of the Highway Trust Fund and the General Fund finance both programs. However, the amount of the Federal grant under either program may not exceed 50 percent of the total project's cost. The balance must be met locally. Thus, a 50/50 Federal/local match is required under both programs.

In this regard, we remind States of the prohibition under section 409(a)(7)(B)(iv)(IV) of the Act and § 263.6(c) of this subpart stipulating that any State funds expended as a condition of receiving Federal funds under other programs do not count toward the State's basic MOE. Thus, any State funds used to meet the cost-sharing requirements of the Job Access and Reverse Commute grants program do not count for basic MOE purposes. However, in this case, Federal TANF funds may be used to satisfy non-Federal match requirements of another program (within specified monetary limits).

In addition, section 409(a)(7)(B)(iv)(III) of the Act and the regulatory text at § 263.6(e) of this subpart expressly provide that State funds expended to meet the WtW matching requirements do not count toward a State's basic MOE. Thus, States may not double-count expenditures to provide transportation services for individuals participating in an allowable WtW employment activity.

The statute is equally clear regarding expenditures for supportive services, such as transportation, to help eligible family members who are WtW participants. Section 403(a)(5)(C)(i)(VI) of the Act provides that a State may use WtW funds to provide supportive services to eligible participants only "if such services are not otherwise available." A State could use basic MOE funds to provide transportation services consistent with the WtW block grant program because the WtW and TANF programs share the same purposes. But, as explained above, the expenditures do not count for basic MOE purposes if the State also used these expenditures toward the required WtW match under section 403(a)(5) of the Act.

(2) Any Other Use of Funds Allowable Under Section 404(a)(1)

Comment: One commenter recommends that we allow States to claim expenditures toward basic MOE that were formerly allowable under a State's AFDC–EA program. Another commenter specifically asked whether services paid under a housing assistance program qualify for basic MOE purposes. The housing assistance component provides payment for rent, security deposit, and utilities to prevent and/or end homelessness or near homelessness. A third commenter asked whether expenditures for micro-entrepreneurship development services qualify for basic MOE purposes. The commenter believes this approach fosters employment opportunities in rural areas through self-employment options.

Response: Section 409(a)(7)(B)(i)(I)(ee) of the Act permits any activity with respect to eligible families that is reasonably calculated to accomplish the purpose of the TANF program to count for basic MOE purposes. For example, one purpose of the program is to provide assistance to needy families so that children may be cared for in their own homes or in the homes of relatives. Thus, some (but not all) emergency assistance and services with respect to eligible families, which had been previously provided by a State under its AFDC–EA program, would meet this purpose and could count for basic MOE purposes. We believe that emergency housing assistance services could meet this purpose as well. However, only the expenditures made with respect to eligible families count for basic MOE purposes. (Refer to § 263.5 for discussion of the "new spending" limitation on certain MOE program expenditures.)

Another purpose of the program is to end the dependence of needy parents on government by promoting job preparation, work, and marriage. Micro-entrepreneurship services promote job preparation and work. In this regard, a State may also deposit State funds into the eligible family member's Individual Development Account (IDA) to help with business capitalization. The funds count once toward the basic MOE requirement—in the fiscal year in which the State deposits the money into the eligible family member's IDA. The State could not use the IDA balance carried forward to the next fiscal year to meet the basic MOE requirement for the next fiscal year.

(3) Medical and Substance Abuse Services

Comment: A number of commenters supported our clarification in the preamble to allow States to use State funds to provide drug and alcohol treatment services to eligible family members when these services assist in accomplishing a purpose of the program. Nearly all the commenters requested that we add the clarification to the final regulation.

One commenter found the need to separate medical from nonmedical substance abuse treatment services problematic and unrealistic as both types of services are lacking in rural areas. The commenter also noted that child care and transportation costs related to these services should also count toward a State's basic MOE. Another commenter suggested that we provide guidance in the preamble to differentiate medical from nonmedical alcohol and drug treatment services.

Two other commenters felt that medical services in connection with gaining and retaining unsubsidized employment (e.g., pre-employment services that include physical examinations) should count toward the basic MOE.

Response: We agree that allowing expenditures with respect to an eligible family member for nonmedical substance abuse treatment is an important clarification and have added it to the final regulation.

We did not intend to imply that substance abuse treatment must be exclusively nonmedical in nature for the nonmedical services to count for basic MOE purposes. We recognize that drug and alcohol abuse treatment services may include medical as well as nonmedical activities. However, if States wish to use commingled State TANF funds for substance abuse treatment services, they have the responsibility to develop policies that distinguish between expenditures for the provision of medical services and nonmedical services. The policies must reflect a reasonable interpretation of the statutory language.

Section 408(a)(6) of the Act expressly excludes the use of Federal TANF funds to provide medical services except for pre-pregnancy family planning activities. The same prohibition applies to any commingled State funds expended to treat an eligible family member for drug and alcohol abuse. Commingled State funds used to provide nonmedical services, such as substance abuse services, to an eligible family member would count toward basic MOE if the service is reasonably

calculated to accomplish a purpose of the program, e.g., help the individual prepare for work, find, or keep a job.

The prohibition on medical expenditures does not apply to segregated State TANF funds or separated State funds. Therefore, States may count medical expenditures with respect to eligible family members toward the basic MOE provided these expenditures are consistent with the purposes of the program and are not matched by the Medicaid program or otherwise prohibited under section 409(a)(7)(B)(iv) of the Act or § 263.6(b) and (c) of this subpart.

We again remind States that the drug and alcohol abuse treatment services with respect to eligible families must be consistent with the purposes of the program to count toward the State's basic MOE requirement. If so, then by extension, expenditures for other supportive services such as transportation and child care that facilitate the eligible family member's ability to access and complete substance abuse treatment may also count for basic MOE purposes, if the MOE requirements are met. (Refer to § 263.3 for discussion of the limitation on certain child care expenditures.)

We agree that pre-employment services is an example of a qualified activity because it accomplishes a purpose of the program. Therefore, by extension, the associated medical expenditures would count toward basic MOE if the State uses segregated or separated funds to pay for the services.

(4) Juvenile Justice

Comment: We received several comments regarding our discussion of juvenile justice expenditures. Most of the commenters opposed our conclusion that juvenile justice expenditures do not count for basic MOE purposes because the expenditures do not meet any of the purposes of the TANF program. However, the commenters did not specifically explain how the purposes are met.

Response: As we explained in detail earlier in our discussion, juvenile justice expenditures do not count for basic MOE purposes. The principal purpose of a child's placement in the juvenile justice system is to protect society because of the child's behavior, not to care for the child in his or her own home (purpose 1). Since the focus is to address the child's needs, expenditures to care for the child in these living situations does not serve to end the dependence of needy parents on government benefits by promoting job preparation, work and marriage (purpose 2). The remaining two purposes do not even remotely relate to this situation. Thus, it is not an allowable use of funds under section 404(a)(1) of the Act.

In some States, Federal TANF funds may support juvenile justice programs pursuant to section 404(a)(2) of the Act. However, the basic MOE requirement under section 409(a)(7) of the Act expressly does not count expenditures for services or activities that only fall under section 404(a)(2). Thus, it does not cover benefits and services for a child removed from his or her home and receiving care in a correctional facility or juvenile residential facility. States that were previously authorized to cover the costs of children in the juvenile justice system under their formerly approved AFDC-Emergency Assistance plans would need to use Federal TANF funds for this purpose.

Clearly, expenditures on eligible families for services that are reasonably calculated to accomplish the purpose of the program do qualify for basic MOE purposes. For example, a State may wish to provide family preservation services so that an eligible child family member may be cared for in his or her own home (purpose 1). Such assistance could include family or individual counseling services or parenting training to improve family functioning, referrals to outside service providers who could help an "at risk" child or family function better, and associated assessment and case management activities.

(5) State "Rainy Day" Funds

Comment: One commenter noted that States have a long history of creating rainy day funds or special reserves to cover contingency needs. States recognize the need to be fiscally prudent in the anticipation of caseload increases, natural disasters, economic declines, and increasing participation rates. But the commenter believed the language in the proposed rule limits State flexibility to use State funds for this purpose.

Response: Section 409(a)(7)(A) and (B) of the Act stipulate that only qualified expenditures made with respect to eligible families count toward a State's basic MOE. Placing funds in a reserve or rainy day fund does not represent an expenditure. While we agree that it may be fiscally prudent to create a rainy day fund or a reserve, the money in the fund does not count for basic MOE purposes until the fiscal year in which the State actually expends funds on behalf of eligible families in ways that meet the requirements of section 409(a)(7) of the Act and this subpart.

(6) Administrative Costs

Comment: Several commenters raised questions about how the administrative cost cap was applied to MOE and separate State programs. A few did not want a cap on the administrative costs of separate State programs, believing that the PRWORA does not authorize us to cap those administrative costs. Three commenters took exception to the application of the 15-percent administrative cost cap to separate State programs. The three commenters believe that such "separate State programs" should be excluded from coverage of the definition.

Response: We believe these comments are a result of confusion about the proposed regulatory language. The MOE administrative cost cap is not a limit on the administrative costs of separate State programs. Rather, it is a limit on the amount of administrative costs that can count as MOE. Section 409(a)(7)(B)(i)(I)(dd) clearly limits the amount of administrative costs that can count as basic MOE. We have revised the regulatory language at § 263.2(a)(5) to clarify the distinction.

We also noted an error in the proposed TANF reporting form and the accompanying instructions that may have added to the confusion. The instructions provided separate columns for reporting of expenditures from MOE funds, one for State TANF expenditures and one for separate State programs. It then indicated how administrative costs would be determined "for each of these columns." This language suggested that there were two separate caps, when that is not the case. We have corrected the instructions for the form.

Comment: Two commenters indicated that administrative spending for the TANF program would probably never involve a specific payment to, or on behalf of, a specific eligible family. Yet this is a qualified expenditure. Therefore, the commenter thought all types of spending should qualify toward the basic MOE.

Response: The different treatment of administrative costs is based on statutory distinctions. According to section 409(a)(7)(B)(i)(I)(dd) of the Act, administrative expenses under all programs means "[A]dministrative costs in connection with the matters described in items (aa), (bb), (cc), and (ee)." Therefore, the statute includes as MOE, administrative expenses if the expenditure relates to carrying out another qualified activity that helps eligible families.

Comment: One commenter observed that the definition of administrative costs under § 273.0(b) of the proposed

regulation applies to State MOE expenditures since the use of State MOE funds have the same administrative cost cap as Federal TANF funds.

Response: The commenter correctly noted that the definition of administrative costs applies whether State funds or Federal TANF funds are used to pay these costs.

Comment: Two commenters supported our proposal to exempt State expenditures used toward information technology and computerization needed for tracking or monitoring as required by title IV–A. One commenter noted that while section 409(a)(7)(B)(i)(I)(dd) of the Act does not clearly state that this exemption applies, nevertheless, States are facing massive systems needs as a result of welfare reform. In addition, the exception for technology and computerization should include costs for contracts to develop new programs; staff needed to install and maintain additional systems; staff collating, inputting and analyzing required tracking and monitoring data; training costs for new hardware and software; and preparing the reports and other documents related to the tracking and monitoring mandates.

Response: We have retained our proposal that the same exception given under section 404(b)(2) with respect to costs related to information technology and computerization needed for tracking and monitoring apply to State-funded administrative costs in connection with qualified expenditures.

We addressed the treatment of computer-related costs in the discussion of the definition of administrative costs at § 263.0. Refer to that section for a full discussion of issues raised regarding information technology and computerization needed for tracking or monitoring. Basically, this discussion affirms that certain systems costs may be excluded in determining whether a State is within or exceeded the 15-percent limitation placed on administrative expenditures. It also provides guidance about the scope of that exclusion.

Comment: One commenter said that the cap on administrative costs does not apply to additional State dollars that a State must expend if assessed a penalty.

Response: The commenter is correct. Section 409(a)(12) of the Act requires a State to expend additional State funds under its TANF program to replace any loss of Federal grant funds due to a penalty. The 15-percent limit under section 404(b) applies only to Federal TANF funds, and, thus, does not apply to the State replacement funds under section 409(a)(12). Further, as the statute precludes the use of replacement funds to meet the MOE requirement, they are not subject to the MOE rules, including the MOE cap on administrative expenditures. However, they must otherwise be allowable expenditures under the State's TANF program.

Section 263.3—When Do Child Care Expenditures Count? (§ 273.3 of the NPRM)

Overview

In the NPRM preamble we explained that there were certain restrictions on the child care expenditures that could count for basic MOE purposes. First, only child care expenditures used to assist eligible families under the State's TANF criteria count toward the State's basic MOE. Under § 263.2 (formerly § 273.2), we indicated that eligible families mean families that have a child living with a parent or other adult caretaker relative (or consisting of a pregnant woman) and are financially needy per the appropriate TANF income and resource standards (when applicable) established by the State under its TANF plan. Thus, not all State expenditures to provide child care services would necessarily qualify for basic MOE purposes, particularly if the eligibility criteria for the child care services are broader than the State's TANF criteria, e.g., under the Child Care Development Fund (CCDF).

Second, section 409(a)(7)(B)(iv) of the Act establishes four general restrictions on State expenditures. (These restrictions are listed in § 263.6.) Two of the restrictions, at subsections 409(a)(7)(B)(iv)(IV) and 409(a)(7)(B)(iv)(I), apply to child care expenditures.

Subsection 409(a)(7)(B)(iv)(IV) generally excludes any State funds expended as a condition of receiving Federal funds under other Federal programs from counting toward a State's basic MOE. Thus, Congress prohibited "double-counting." However, this subsection also provides an exception to this restriction for child care expenditures (i.e., the State's CCDF MOE and the State's share of matching funds). State child care expenditures used to meet the child care MOE requirement or to receive Federal matching funds under the CCDF may also count toward meeting the State's basic MOE requirement if the expenditures are made on behalf of members of an eligible family.

The amount of State child care expenditures that may count for basic MOE purposes is limited to the State's share of expenditures in FY 1994 or FY 1995, whichever is greater, for the former title IV–A child care programs, i.e., the AFDC/JOBS child care, transitional child care, and At-Risk Child Care programs. This capped amount is the same amount as the State's child care MOE amount, for purposes of qualifying for child care matching funds.

If a State has additional State child care expenditures, i.e., expenditures that have not been used toward meeting the child care MOE requirement or to receive Federal matching funds under CCDF, these expenditures may count toward the State's basic MOE, provided the expenditures meet all other requirements and limitations set forth in subpart A of this part. Subsection IV does not limit the amount of such additional child care expenditures that may count for basic MOE purposes.

Subsection 409(a)(7)(B)(iv)(I) excludes any expenditures that come from amounts made available by the Federal government. Therefore, Federal TANF funds transferred from the TANF program to the Child Care and Development Block Grant (also known as the Discretionary Fund of the CCDF) would not count toward MOE. Neither would Federal TANF funds directly received under CCDF (or any other program that allows for child care).

Comments and Responses

We received a number of comments on this section. Some commenters found the information regarding expenditures that could count helpful, especially since States are making significant investments in child care. Others thought that the preamble was confusing because it did not clearly distinguish between child care expenditures that are subject to a dollar limit (and therefore would not count in the entirety toward the basic MOE) and those that can count without limit. A few commenters recommended that the final regulations at § 263.3(a) (formerly § 273.3(a)) clearly explain which child care expenditures count rather than merely cross-referencing the statutory provision.

Several commenters expressed concern that the definition of "eligible family" deters States from counting child care expenditures under the State's child care program for transitional and at-risk families. We address this and other comments in the discussion below.

Comment: Some commenters noted that the wording in this section does not clearly explain which expenditures do and do not count toward the State's basic MOE requirement. The commenters thought that we should add a clarification to the final regulations.

Response: States may receive an allocated amount of Federal matching funds under the matching fund component of the CCDF. To receive its share of these matching funds, the State must meet a maintenance-of-effort (MOE) requirement. The child care MOE requirement is a specific dollar amount that we calculated for each State based on their FY 1994 or FY 1995 State child care expenditures under the title IV–A child programs. Thus, under the CCDF matching fund, States must expend State-only dollars that equal their child care MOE level and may claim Federal matching funds (up to the allocated amount) for State funds expended beyond the child care MOE level to provide CCDF-funded child care services. A State may also count these State-funded child care expenditures toward the State's basic (TANF) MOE as long as the expenditures also meet the requirements under section 409(a)(7) of the Act and this subpart. However, the amount that may be counted for basic MOE purposes is limited to State's child care MOE amount. States should note that while the basic MOE limit for double-counting child care expenditures is the same amount as the child care MOE amount, this does not mean that the State may use only child care MOE expenditures. For example, if a State's annual child care MOE requirement is $5 million, then the State may only count up to $5 million of its CCDF matching fund expenditures toward its annual basic MOE requirement. The State could claim the $5 million in child care expenditures from either expenditures used to meet the State's child care MOE requirement or expenditures used to receive CCDF Federal matching funds.

It is not unusual for a State to expend in excess of the funds needed to draw down CCDF funds to provide child care services. There is no dollar limit on counting toward basic MOE State expenditures to provide child care assistance that have not been used to meet the CCDF matching fund requirements. We have clarified this policy in the regulatory text. At the same time, we remind States of the "new spending" provision at § 263.5 that limits the amount of basic MOE expenditures that may count in certain pre-existing basic MOE programs, including certain child care programs.

For pre-existing child care programs (current State or local programs also operating in FY 1995) that were not AFDC-related programs, States may only claim "new spending" toward the basic MOE requirement—namely, qualified State expenditures in the current year with respect to eligible families that exceed what the State spent on that program in FY 1995. The AFDC-related child care programs included the AFDC, At-Risk, and transitional child care programs. The "new spending" provision does not apply to expenditures for child care services that would have been an allowable expenditure under these former title IV–A child care programs.

Hence, in terms of a child care program subject to the "new spending" provision, three requirements apply for the expenditure to count as basic MOE. First, only the "new" expenditures, those in excess of the FY 1995 program expenditures, potentially count. Second, if the expenditures have been used to meet the child care MOE requirement or to receive CCDF matching funds, the maximum amount of excess expenditures that can be double-counted is limited to the State's child care MOE amount. For those expenditures that have not been used to meet the child care MOE requirement or to receive CCDF matching funds, the excess may count as basic MOE, up to the actual amount of expenditures made outside of the CCDF matching fund requirement. Finally, if none of the expenditures in the child care program have been used to meet the child care MOE requirement or to receive CCDF matching funds, the total amount of the excess can be counted toward basic MOE.

Comment: Several commenters expressed concern that State expenditures to provide child care services to families transitioning off TANF assistance or at risk of becoming dependent on TANF assistance do not count for basic MOE purposes because of the restricted definition of eligible families. One commenter suggested that we amend the regulation to recognize State programs geared to enabling low-income families to maintain their jobs through the provision of child care. The commenters contend that we should consider any family who is financially needy according to the State's child care eligibility criteria an eligible family for basic MOE purposes. Therefore, any State spending on its child care program would count toward a State's basic MOE requirement.

Several other commenters concurred, writing that all of the State's child care expenditures under the now repealed title IV–A child care programs, which included expenditures for working families to transition off the TANF assistance program or at risk of needing TANF assistance, should count toward the basic MOE requirement, up to each State's child care MOE amount. They noted that there is no statutory requirement that an eligible family must actually receive TANF cash assistance for child care expenditures to count for basic MOE purposes.

Response: We refer you to the extensive discussion regarding the definition of eligible family under § 263.2 of this subpart. There, we reaffirm that an eligible family must consist of child living with his or her parent or other caretaker relative (or consist of a pregnant woman). The family must also be financially needy according to the appropriate income and resource (when applicable) criteria established by the State and contained in its TANF plan. However, we also mention that we never intended that States be locked into a single income and resource standard, such as the one a State uses to determine whether a family is financially eligible to receive TANF cash assistance. States are free to establish different income and resource (when applicable) criteria based on the range of families that it wishes to serve or type of services it wants to provide. We also recognize that eligible family members do not necessarily have to receive TANF cash assistance or any other benefit or services through the TANF program.

Thus, the rules would not preclude States from providing child care benefits to help families who are transitioning off of TANF assistance or at risk of needing TANF assistance or other low-income families. Nor would they prevent a State from using the financial eligibility limits for child care services and activities applicable to the use of CCDF funds or the financial eligibility criteria applicable to a State's own separately funded child care program.

Comment: One commenter noted that the NPRM gives the impression that we consider child care important for children up to the age of six, but not for children age six or older. The commenter recommends rulemaking on this issue.

Response: We believe the commenter was referring to the proposed rule at § 271.15, which provided that a State could not reduce or terminate assistance to a single custodial parent caring for a child under age six for refusing to engage in required work, if the parent demonstrates an inability to obtain needed child care. This provision, found in § 261.15 of the final rule, reflects the statutory provision at 407(e)(2), which expressly limits the sanction exception to a single custodial parent caring for a child under age six.

This provision does not represent our perspective regarding the importance of child care for children age six and over. We recognize that child care is a critical

supportive service for families moving from welfare to work. However, our authority to regulate in this area is limited to the State penalty provision associated with this child care exception at § 261.51 of the final rule.

Comment: One commenter indicated that the State agency may not know if it needs to utilize any child care MOE expenditures to satisfy the basic MOE requirement until the final quarter of the fiscal year.

Response: The commenter may be reacting to the requirement to report expenditures quarterly. Although the report is quarterly, the expenditures reported are cumulative. The basic MOE spending requirement is an annual requirement. Thus, the reported expenditures could have occurred in the quarter represented by the report or any prior quarter in the fiscal year.

A State may choose to apply the child care expenditures that it made to meet the CCDF matching fund requirement toward satisfying its basic MOE requirement (up to the dollar limit). It is not a requirement. The State may apply such expenditures toward its basic MOE requirement anytime during the fiscal year.

The commenter may also be pointing out a potential issue for States that depend upon expenditures in other State and local programs for meeting the basic MOE requirement. To the extent such other programs are not under the control of the TANF agency, the TANF agency will need to maintain strong communications with the other agencies operating these programs in order to track and report expenditures, as well as to ensure that the State will be in compliance with the basic MOE requirement at the end of the year.

Section 263.4—When Do Educational Expenditures Count? (§ 273.4 of the NPRM)

Overview

Only expenditures on educational services or activities that a State targets to eligible families to increase self-sufficiency, job training, and work may count toward a State's MOE. The statute excludes educational services or activities that are generally available, including through the public education system. As the conferees explained in H.R. Rep. No. 725, 104th Cong., 2d sess., p. 277, States may not count as MOE "any expenditure for public education in the State other than expenditures for services or assistance to a member of an eligible family that is not generally available to other persons."

Expenditures on special services that are targeted to "eligible families" and are not generally available to other residents of the State may count. These could include contracted educational services or activities that provide special classes or expand the capacity of existing programs, for example, to provide: targeted services for teen parents in high schools or other settings; training in English as a second language for eligible immigrants; remedial education to achieve basic literacy; courses for high school equivalency (GED) certificates; or pre-employment or job-readiness activities.

We also note that expenditures on supportive services, such as transportation, to assist a member of an eligible family in accessing educational activities may also count toward a State's MOE, either as cash assistance or another type of benefit or service consistent with the purposes of the Act. (See §§ 263.5 and 263.6 for other general restrictions on these expenditures.)

Comments and Responses

We did not receive many comments on this section. The comments that we did receive focused on two areas: the requirement that the education activities must not be generally available to other residents of the State, and the use of the term "targeted." We address these concerns and others below.

Comment: Two commenters thought the term "targeted" was misleading and needed clarification. As written, qualified educational expenditures could be "targeted" to eligible families, yet the recipients of the services may be persons who are not members of eligible families.

Response: We agree. The statute clearly stipulates that only services with respect to eligible families count toward the State's basic MOE requirement. We have therefore reworded the regulation to say that the services must be "provided to" eligible families.

Comment: A number of commenters voiced concerns regarding the meaning and operation of the exclusion of expenditures for educational services that are generally available to other residents of the State. One commenter noted there is no specific definition of services that are generally available to the public. Some of the commenters believed that States could be discouraged from using State MOE funds for education. Providing educational services that are generally not available to the public could result in operating segregated classes for eligible families in order to have the expenditures count for basic MOE purposes. In fact, the commenters noted that the examples of educational activities for eligible families given in the NPRM are no different than those provided by the public education system. Thus, the provision essentially eliminates a State's ability to count educational activities or services toward the basic MOE requirement whenever the services are made available to other residents of the State. As one commenter put it, "[W]ho pays for the assistance is irrelevant, as is whether anyone from the general public also has access. The proposed rule limits States' ability to maximize its resources."

One commenter also raised concerns regarding the potential impact that expenditures for educational services for eligible families will have on current public education programs funded by the State. The educational activities for basic MOE purposes may come at the expense of similar education services and activities provided by the traditional public education system.

Another commenter asked whether the restriction applies to post-secondary public institutions.

Response: We modified the regulatory text to provide a little more guidance. The modified language incorporates language from a similar provision under title XX at section 2005(a)(6) of the Act. More specifically, the title XX provision excludes expenditures for the provision of any educational service that the State makes generally available to its residents without cost and without regard to their income. We thought this additional language was helpful and have added it to the regulatory text. Under TANF and title XX, we believe Congress intended to prohibit States from substituting program funds for existing expenditures from general funds on the traditional, free public education system. Thus, general fund expenditures for traditional, free public education do not count toward the State's basic MOE requirement.

Accordingly, we do not think that the exclusion would cover post-secondary educational or vocational programs in the State unless all residents of the State may attend the post-secondary institution without cost and without regard to their income.

We do not think it is appropriate for us to define activities that are not generally available to persons who are not members of an eligible family. We defer to the States to decide appropriate educational activities for MOE purposes, i.e., to increase job training, self-sufficiency, and work.

Basically, a State may use MOE funds to expand existing educational services by contracting for additional services for eligible family members or by funding brand new activities. States do not need to segregate the activities, services, or

classes. They may even use the physical facilities of the public education system. Other residents of the State may participate in the funded activities so long as the State does not count, as MOE, funds used to subsidize or pay for persons who are not members of an eligible family. States may also count, as MOE, funds used to provide a service for eligible families in a part of the State or locale where the service does not exist.

Similarly, States may count as MOE funds used to contract for, or share in, the costs of providing educational activities on job sites (e.g., ESL classes). In this particular situation, other employees at the site who are not members of eligible families could attend the classes. However, as previously mentioned, a State may not count, as MOE, any funds used to subsidize or pay for persons who are not members of an eligible family.

In summary, a State may count, as MOE, funds used to pay costs (e.g., fees or tuition) to enable an eligible family member to attend a class or participate in an educational activity. Nonexcluded educational expenditures with respect to eligible families count for basic MOE purposes if the activities are designed to increase self-sufficiency, job training, and work.

We remind States to allocate costs that are associated with more than one State or local program or agency properly.

Comment: One commenter recommended that the State substantiate its basic MOE expenditures by providing overall budget information on its education services and programs, not just those provided to eligible families. The State should also provide a comprehensive budget picture of support for education activities and services for the entire education agency responsible for TANF-related education services—thus, reflecting any shifts in funds between the traditional, free education programs in public schools and the TANF-related education services.

Response: We do not believe it is necessary for the State to regularly submit such information. However, States are subject to audits annually or biennially pursuant to the Single Audit Act. The audit includes a review of a State's compliance with MOE requirements. Under 45 CFR 92.42, States are responsible to have a process designed to achieve reliability of financial reporting and compliance with applicable laws and regulations, including retention of background documentation that validates such reports. The audit findings include any questioned costs. We are informed of all audit findings.

Other studies, or reviews by OIG or GAO, may be conducted. Such reviews could cover processes, such as a State's budgetary process, that are generally beyond the scope of an audit. Further, if appropriate, for example, audits may also be conducted as a result of requests by Congress or in response to complaints from individuals or organizations.

Finally, we have made changes to the reporting on MOE programs at § 265.9(c) that should provide a clearer picture of educational activities being funded by MOE.

Comment: One commenter indicated that using State funds to enhance access to education for low-income families is an important way of helping families out of poverty. At the same time, States are concerned with the risk for penalties if they use separate State funding to provide financial aid for low-income families. The commenter was concerned that while the State may view education as an effective means of advancing work rather than avoiding the work participation requirement, we might view it as an inappropriate diversion.

Another commenter questioned whether State-funded expenditures to permit a member of an eligible family to obtain no more than the first baccalaureate degree or one vocational education program certificate as part of "job skills training directly related to employment" counts for basic MOE purposes. These educational activities are only available to students who meet other strict criteria established under State law (which include a recent work history; enrollment in an accredited or approved State university, community college, or other vocational school or training program; and maintaining a cumulative grade point average of at least a "C").

Response: The inherent effect of any separate State program is that the TANF requirements do not apply. In the NPRM, we expressed concern that States might use separate programs to avoid the work requirements or to avoid returning a share of their child support collections to the Federal government. As a result, we proposed several measures to counteract this possibility, including denying certain penalty relief to States. In the final rule, we decided to eliminate the proposed link between a State's decision to operate separate State programs and its eligibility for penalty relief. However, we still intend to gather information that will enable us to monitor the nature and scope of such programs. Refer to the preamble, section entitled "Separate State Programs" for a full discussion of this issue.

We have been persuaded that States are using both separate State programs and the TANF program to serve a variety of policy purposes that do not seem to be designed to avoid TANF requirements. For example, States are working to increase the economic viability of families by providing financial aid for post-secondary education and supporting other education and training activities on a selective basis. Unless excluded, educational expenditures with respect to eligible families count for basic MOE purposes if the activities are designed to increase self-sufficiency, job training, and work. These activities may be under the TANF program or apart from the TANF program. In either case, we hope that State and local officials are working with educators, post-secondary institutions, and the business community to design appropriate opportunities for families consistent with the goals of TANF.

As a point of clarification, the list of work activities in section 407 of the Act (and § 261.30 of these rules) determine what is countable for the purpose of the State's work participation rates. However, they do not limit the nature or type of educational or training services the State may provide with Federal TANF or State MOE funds.

Section 263.5—When Do Expenditures in State-Funded Programs Count? (§ 273.5 of the NPRM)

Overview

We explained in the NPRM that section 409(a)(7)(B)(i)(II) establishes limits on the amount of expenditures that may count when the MOE expenditures are for activities under separate State or local programs. The heading for the provisions under this section indicates that "transfers from other State and local programs" cannot count toward a State's MOE. In the months following enactment, we received numerous questions about this language.

We do not believe that the language intended to convey a literal or physical transfer of funds. Instead, we believe that Congress wanted to prevent States from substituting existing expenditures in any pre-existing outside programs for cash welfare and related assistance to needy families and to prevent States from claiming such existing expenditures as expenditures for MOE purposes.

Therefore, section 409(a)(7)(B)(i)(II)(aa) provides that the money spent under State or local

programs may count as MOE only to the extent that the expenditures exceed the amount expended under such programs in the fiscal year most recently ending before the date of enactment (August 22, 1996). Thus, States may count only additional or "new" expenditures, i.e., expenditures above FY 1995 levels. Like some commenters, we call this the "new spending" provision.

Section 409(a)(7)(B)(i)(II)(bb) provides an alternative limitation. We believe that this provision was intended as an exception to the "new spending" provision under (aa). Under provision (bb), State expenditures under any State or local program during a fiscal year may count toward a State's MOE to the extent that the State is entitled to a payment under former section 403 as in effect before the date of enactment with respect to the expenditures. We interpret this to mean that State funds expended under State or local programs that had been previously authorized and allowable under the former AFDC, EA, and JOBS programs in effect as of August 21, 1996, may have all such expenditures count toward the State's MOE. In other words, the limit under (aa) does not apply to what would have formerly been expenditures under the title IV–A program; there is no requirement that these expenditures be additional or new expenditures, above FY 1995 levels.

Comments and Responses

We did not receive many comments on this section. But some of the comments that we did receive raised some important issues regarding the concept of "separate" State or local programs, as well as the meaning of the exception to the "new spending" provision. One commenter also questioned the calculation process for determining any "new spending" for programs in which the "new spending" provision applies. A couple of commenters also felt the proposed rule needed to be clarified. As a result of some of these comments, we have made some clarifications in the final rule, including revisions to reflect the statutory language more directly regarding the treatment of current fiscal year expenditures in any State or local program that also existed in FY 1995.

Comment: One commenter observed that this section indicates that expenditures made under separate State programs that had not previously been authorized under the former AFDC/EA/JOBS programs cannot now count toward maintenance of effort. The commenter objected to this provision. For example, the AFDC–UP program has been repealed. Therefore, families who previously received general assistance because a parent could not meet the criteria under the AFDC–UP program, now become "part of the service equation." Therefore, the commenter suggested that all funds now spent to support these families should count for basic MOE purposes without limitation.

Response: The example given clearly falls under the statutory exception at section 409(a)(7)(B)(i)(II)(aa) of the Act. For programs that were operating in 1995 and were not former AFDC-related programs, States may only claim qualified expenditures with respect to eligible families if their expenditures are in excess of what they spent on that program in 1995. General assistance programs are not AFDC-related programs. AFDC-related programs include the AFDC, EA, and JOBS programs, as well as the IV–A child care programs (AFDC, At-Risk, and transitional child care programs). Qualified expenditures during a fiscal year to provide AFDC-related services (e.g., At-Risk Child Care services) to eligible families may count without limitation.

Comment: One commenter noted that for pre-existing programs (State or local programs operating in FY 1995) that were not AFDC-related programs, the State may only claim qualified State expenditures in the current fiscal year that exceed what the State spent on that program in FY 1995. Thus, State spending for State or local programs that are not AFDC-related must be "new spending." However, in many cases, States will use both State MOE resources and Federal TANF funds to fund a number of different programs. The "new spending" provision could apply for these situations as well.

Response: We agree with this observation. Section 409(a)(7)(B)(II) of the Act excludes expenditures under "any State or local program during a fiscal year" that do not exceed the amount expended under the State or local program in FY 1995. Thus, the statute does not specify that the "new spending" provision on qualified State expenditures only applies to State programs that are currently separate from TANF. Instead, the provision applies to "any" State or local program existing in FY 1995 that did not have allowable expenditures under the former AFDC, EA, JOBS, and IV–A child care programs (AFDC, At-Risk and transitional child care programs). For example, a State or local program that is now included under the TANF program or receiving TANF and MOE resources could have existed separately from the State's former AFDC-related programs in FY 1995. Therefore, we have decided to amend the annual report to require that States report the information proposed under § 273.7(b) for all their State-funded MOE programs. We refer you to § 265.9 for a full discussion of all the comments regarding the proposed annual addendum and the changes we have made in the final rule.

Comment: One commenter noted that State spending in a State At-Risk Child Care program is an example of spending that was previously authorized and allowable under former section 403. Therefore, the "new spending" provision does not apply. Another commenter wondered whether expenditures for which a State could not have received Federal matching payments due to the At-Risk cap would also be exempt from the "new spending" provision. For example, take the case of a State that has run an At-Risk Child Care program for the working poor since FY 1995. The State did not receive matching funds for all of its expenditures for child care services under this program. Are the potentially qualified expenditures above the former cap subject to the "new spending" provision or exempt from this provision?

Response: If the State's child care program for the working poor was authorized and allowable under former section 402(i) under the Act, then we believe the "new spending" provision would not apply to qualified expenditures with respect to eligible families during a fiscal year, for the reasons given below.

Former section 402(i)(5) of the Act specified that amounts expended by the State to provide child care to any at-risk low income family would be matched. However, section 403(n) limited the amount of the matching payments a State could receive. The issue is whether a State can count all of its qualified expenditures with respect to eligible families during a fiscal year, without limitation, because the expenditures in FY 1995 were allowable, notwithstanding the cap.

Section 409(a)(7(B)(II)(bb) of the Act uses the phrase "is entitled to a payment" under former section 403 to indicate when the "new spending" provision does not apply. After considerable deliberation on this issue, we concluded that Congress intended States to be able to claim the State's portion of title IV–A welfare spending toward basic MOE, based on the idea that MOE is a substitute for the former matching arrangement. To carry out this intent, Congress needed to define the former title IV–A welfare spending. They did this by referring to

expenditures for which the State would be entitled to payment under former 403 of the Act. This section authorized Federal matching payments for allowable welfare expenditures. Thus, we believe that Congress was looking for allowable welfare expenditures, not actual payments to the States. This concept would include allowable expenditures that were more than the State could receive in the form of a matched payment. Therefore, we conclude that the new spending provision does not apply to child care expenditures made by a State to augment the Federal and State matching funds available in its At-Risk Child Care program.

However, we remind States of the dollar limitation discussed under § 263.3 of this subpart. Qualified child care expenditures used to meet the requirements of the CCDF matching fund (i.e., as matching and MOE amounts) may also count as basic MOE expenditures only up to the State's child care MOE amount.

Comment: One commenter raised questions about the appropriate calculation for determining the amount of new spending for programs subject to this provision. The commenter noted that it is not clear from the statute if the intent of this provision is for States to only count toward the MOE requirement additional spending that represents an increase over FY 1995 spending levels on eligible families. If this is the statutory intent, then the commenter recommends that we require a State to document whether its spending above FY 1995 levels has served eligible families and to report spending on eligible families in FY 1995. In cases where the State does not know the precise level of FY 1995 spending on eligible families, the regulations should permit States to use a reasonable estimating methodology. If the State is unable to determine or to estimate the amount of spending on eligible families in FY 1995, then it would need to otherwise demonstrate that it has targeted all of the increase in spending (relative to FY 1995 funding levels) toward eligible families.

In addition, the commenter recommends that we require total FY 1995 State expenditures for all State or local programs subject to the new spending provision, not just separate State programs as we proposed. Thus, the commenter believed that we should require this information for State or local programs funded with both TANF, as well as MOE resources. We should also require total State spending in the same State or local program for the current fiscal year. Otherwise, we will be unable to determine whether claimed MOE expenditures meet the new spending provision.

Response: Although the commenter was responding to our proposal under § 273.7(b) to collect supplementary information on separate State programs, we believe that this is the best place to address the commenter's points because they speak to the calculation of additional or new spending claimed for MOE purposes. However, we also refer you to § 265.9 for a fuller discussion of all the comments regarding the proposed annual addendum and the changes we have made in the final rule to the information States must report annually.

We do not agree that it is either necessary or required in the statute for a State to document or to report to us what it spent during FY 1995 on eligible families in programs that are now subject to the "new spending" provision. The "new spending" provision under section 409(a)(7)(B)(II)(aa) of the Act references current fiscal year expenditures under any State or local program to the extent that "the expenditures exceed the amount expended under the State or local program" in FY 1995.

This provision does not refer to eligible families in defining "the amount expended" in FY 1995; rather it refers generally to expenditures. However, it does refer to eligible families in defining qualified expenditures for the current fiscal year. As a result, we conclude that States must calculate "new" or additional spending under each State or local program subject to the "new spending" provision by comparing total qualified State expenditures with respect to eligible families for the current fiscal year with total State expenditures for the program in FY 1995. If total qualified State expenditures with respect to eligible families for the current fiscal year exceed total State expenditures in FY 1995 under the program, the State may claim the excess for basic MOE purposes because the State spent all those funds on eligible families. If total qualified State expenditures with respect to eligible families for the current fiscal year do not exceed total State expenditures in FY 1995 under the program, the State may not claim any current fiscal year qualified expenditures toward its basic MOE requirement.

We agree with the commenter's suggestion that a State should report total FY 1995 expenditures for each State or local MOE programs subject to the "new spending" provision. We are also requiring total current fiscal year expenditures for all State or local MOE programs. This includes State or local MOE programs that are currently separate from the State's TANF program, as well as MOE programs funded under TANF. We are requiring this information because it will help provide context for the reported expenditures on eligible families and give some indication of their plausibility.

Section 263.6—What Kinds of Expenditures Do Not Count? (§ 273.6 of the NPRM)

Overview

As we previously discussed, expenditures under State programs (TANF and separate State programs) do not count as MOE if they are not made on behalf of eligible families.

The statute also provides several general restrictions on MOE expenditures. Pursuant to section 409(a)(7)(B)(iv), the following types of expenditures do not count: (1) expenditures of funds that originated with the Federal government; (2) State funds expended for the Medicaid program under title XIX of the Act; (3) any State funds used to match Federal WtW funds provided under section 403(a)(5) of the Act, as amended by sections 5001(a) (1) and (2) of Pub. L. 105–33; and (4) expenditures that States make as a condition of receiving Federal funds under other programs. See discussion of § 263.3 for additional information.

Section 5506(c) of Pub. L. 105–33 amended section 409(a)(7)(B)(i) by adding another restriction under section 409(a)(7)(B)(i)(III). Pursuant to section 409(a)(12), States must expend State funds equal to the total reduction in the State's SFAG due to any penalties incurred. Section 409(a)(7)(B)(i)(III) provides that such expenditures may not count toward a State's basic MOE. (See § 264.50.)

TANF funds transferred to the Social Service Block Grant Program, under title XX of the Act, or transferred to the Child Care and Development Block Grant program (also known as the Discretionary Fund within the Child Care and Development Fund), do not count toward meeting a State's MOE requirement because of the first restriction under 409(a)(7)(b)(iv), which prohibits funds that originated from the Federal government from being used for MOE purposes.

Finally, it is important to note that only State expenditures made in the fiscal year for which TANF funds are awarded count toward meeting the MOE requirement for that year. For example,

expenditures made in prior fiscal years or, in the case of FY 1997, expenditures made prior to the date the State started its TANF program do not count as basic MOE.

Comments and Responses

We received few comments on this section, including a comment concurring that this section accurately tracks statutory requirements. Although no changes need to be made to the final rule as a result of these comments, we are clarifying § 263.6(b) of the final rule so that the regulatory language aligns more closely with the statutory prohibitions at section 409(a)(7), as amended.

Specifically, the proposed rule at § 273.6(b) provided that State funds used to match Federal funds (or expenditures of State funds that support claims for Federal matching funds), including State expenditures under the Medicaid program, do not count toward a State's basic MOE requirement. We have kept the part of this provision that prohibits State funds expended for the Medicaid program under title XIX from counting toward a State's basic MOE requirement. The rest of this provision is included in § 263.6(c).

If it had remained part of paragraph (b), then it would have been misleading and would have contradicted the exception under § 263.6(c). That exception permits State funds expended to meet the requirements of the CCDF Matching fund to count (up to the State's child care MOE level) toward the State's basic MOE requirement, provided the State has met all other requirements of this subpart. The requirements of the CCDF Matching Fund include an MOE requirement plus additional State expenditures that would be matched with Federal funds, up to the State's allocation. Based on the proposed wording under paragraph (b) of this section, the additional child care expenditures made by the State for purposes of receiving matching funds would not have counted toward the State's basic MOE. Yet, we stated clearly under paragraph (c) of this section and in the proposed § 273.3(a) that such child care expenditures could count (up to the amount of the State's child care MOE level).

We believe that the prohibition under revised § 263.6(c) takes in all requirements that a State must meet to receive Federal TANF funds, whether it is an MOE requirement, expenditures to receive Federal matching funds, or both. In addition, the Balanced Budget Amendments (Pub. L. 105–33) amended section 409(a)(7)(B)(iv) by replacing the prohibition under (III) "any State funds which are used to match Federal funds" with the prohibition related to the receipt of WtW funds—namely, "any State funds which are used to match federal funds provided under section 403(a)(5)." We had not reflected this change in the language at § 273.6(b).

We conclude that the language at section 409(a)(7)(B)(iv)(IV) of the Act also prohibits the counting for basic MOE purposes of any State funds expended to match Federal funds under other programs (or expenditures of State funds that support claims for Federal matching funds). Therefore, this language did not need to appear in § 263.6(b) because the regulatory provision at § 263.6(c) incorporates this prohibition. When we deleted the language from § 263.6(b), we also removed the apparent contradiction between § 263.6 (b) and (c) regarding State child care expenditures used to meet the CCDF matching fund requirements.

Comment: One commenter recommended allowing encumbrances as of September 30th of a fiscal year, but paid in a subsequent period, to count toward the State's basic MOE requirement.

Response: We disagree with this recommendation. By statute, only expenditures count toward a State's basic MOE requirement. An obligation, or encumbrance, is not an expenditure until actually paid. An expenditure counts toward the State's annual basic MOE requirement for the fiscal year in which it is actually paid.

Comment: One commenter believes that any expenditures made to replace reductions in the SFAG as a result of penalties should count toward the State's basic MOE requirement.

Response: The statute at 409(a)(7)(B)(i)(III) expressly excludes these additional State expenditures from counting toward the State's basic MOE requirement.

Comment: One commenter was concerned that States may infer that the prohibition on counting any State funds used as a condition of receiving Federal funds under another Federal program means that States may not purchase bus passes for program participants or otherwise help pay for their public transportation because, then, TANF resources are going to public transit providers who use the money as a match for their own Federal grants.

Response: Section 409(a)(7)(B)(iv)(IV) of the Act and § 263.6(c) of the regulatory text prohibit counting for basic MOE purposes any State funds that are expended as a condition of receiving Federal funds from other programs (unless specifically authorized, e.g., the State child care expenditures under the CCDF matching fund). For example, this prohibition would apply to State funds expended to meet the cost-sharing requirement of the recently passed Jobs Access transportation grants program.

However, the purchase of bus passes, in the context described by the commenter, does not constitute an example of State funds spent in order to receive other Federal funds. Rather, it represents an alternative form of providing a transportation benefit for a TANF-eligible family. As previously discussed, State funds used to purchase bus passes that help an eligible family member go to or from work or training would be an appropriate use of State MOE funds because this activity promotes job preparation and work, a purpose of the TANF program.

Section 273.7 of the NPRM

Note: We moved the provisions that appeared in § 273.7 of the NPRM and have not issued a new § 263.7. The information proposed in § 273.7(a) and the comments on this section appear under § 265.3. The information proposed in § 273.7(b) and the comments on this section appear under § 265.9.

Section 263.8—What Happens If a State Fails To Meet the Basic MOE Requirement? (§ 273.8 of the NPRM)

Overview

Under section 409(a)(7)(A), if a State does not meet the basic MOE requirement, we will reduce the amount of the SFAG payable for the following fiscal year on a dollar-for-dollar basis.

Section 5001(g) of Pub. L. 105–33 added another penalty to section 409(a) for a State that receives a WtW formula grant pursuant to section 403(a)(5)(A) of the Act, but fails to meet the basic MOE requirement for the fiscal year. Under section 409(a)(13) of the Act, we must reduce the amount of the State's SFAG for the following fiscal year by the amount of the WtW formula grant paid to the State if the State fails to meet the basic MOE requirement.

Comments and Responses

We received three comments on this section. One commenter observed that this section tracks the statutory requirement. Two others commented on the severity of the penalty amounts. We have made no changes to this section.

Comment: Two commenters felt that the penalties are too severe. One commenter recommended deleting the provision that requires reducing the State's SFAG by the amount of a State's WtW grant if the State fails to meet its

basic MOE requirement for the fiscal year.

Response: Although we agree that the penalties are very significant, as we mentioned in the above discussion, the statute expressly requires both reductions.

Section 263.9—May a State Avoid a Penalty for Failing To Meet the Basic MOE Requirement Through Reasonable Cause or Corrective Compliance? (§ 273.9 of the NPRM)

Overview

Under section 409(b)(2), a State may not avoid a penalty for failure to meet its basic MOE requirement based on reasonable cause. In addition, section 5506(m) of Pub. L. 105–33 amended section 409(c)(4) to provide that a State may not avoid the penalty through a corrective compliance plan.

Congress' decision not to provide for a reasonable cause exception or corrective compliance in basic MOE penalty cases indicates that Congress considered the MOE requirement crucial to meeting the work and other objectives of the Act.

Comments and Responses

We received three comments on this section. One commenter agreed that this section tracked the statute. The other commenters basically questioned the lack of reasonable cause and corrective compliance. We have made no changes to this section.

Comment: Two commenters thought that reasonable cause and the corrective compliance process should be available to a State that failed to meet its basic MOE requirement. One of the commenters expressed concern that the regulations are silent with respect to an appeal process.

Response: As we mentioned in the above discussion, the statute under sections 409(b)(2) and 409(c)(4) of the Act expressly provides that reasonable cause and corrective compliance do not apply to the basic MOE penalty provision. The State may appeal our decision to impose a reduction on the SFAG payable to the Departmental Appeals Board, in accordance with section 410 of the Act. Hence, the appeal process described in § 262.7 applies even if reasonable cause and corrective compliance do not apply.

Subpart B—What Rules Apply to the Use of Federal TANF Funds?

Section 263.10—What Actions Would We Take Against a State if It Uses Federal TANF Funds in Violation of the Act? (§ 273.10 of the NPRM)

Overview

Section 409(a)(1) contains two penalties related to use of Federal TANF funds (i.e., all Federal TANF funds under section 403) in violation of TANF program requirements. The first is a penalty in the amount of funds that a State uses improperly, as found under the Single Audit Act. We would reduce the SFAG payable to the State for the immediately succeeding fiscal year quarter by the amount misused.

In addition, we would take a second penalty, equal to five percent of the adjusted SFAG, if we find that a State has intentionally misused funds. You can find criteria for "intentional misuse" at § 263.12.

For both of these penalties, States may request that we grant reasonable cause and submit a corrective compliance plan for correcting the violation.

We received no comments on this section. However, we did revise the regulatory text because we noticed that it did not closely track the statutory language. The final rule language is clearer that the five-percent penalty for intentional misuse of funds is in addition to the misuse-of-funds penalty. Also, like the statute (at section 409(a)(1)(B)), the final rule puts the burden of proof regarding intent on the State.

Section 263.11—What Uses of Federal TANF Funds Are Improper? (§ 273.11 of the NPRM)

Overview

The statute contains many prohibitions and restrictions on the use of Federal TANF funds. In determining if funds have been used "in violation of this part," States should particularly note the prohibitions in section 408 of the Act and section 115 of PRWORA. In summary, these sections provide that States must not use Federal TANF funds to provide assistance to:

- A family with an adult who is a head-of-household or a spouse of a head-of-household or with a minor head-of-household who has received assistance funded with Federal TANF funds for more than 60 months (except for a family included in the 20-percent hardship exemption);
- A family without a minor child living with a parent or adult caretaker relative (or a pregnant individual);
- A family not assigning support rights;
- An unmarried parent under 18, without a high school diploma, who does not attend high school or equivalent training;
- An unmarried parent under 18 not living in an adult-supervised setting (unless covered by a statutory exception);
- A fugitive felon and probation and parole violator;
- A minor child absent from the home 45 days (or at State option, 30–180 days);
- For ten years, a person found to have fraudulently misrepresented residence to obtain assistance; and
- An individual convicted of certain drug-related offenses unless the State has enacted a law to exempt such individuals from the prohibition (refer to section 115 of PRWORA).

Also, States must not use Federal TANF funds for medical services, except for pre-pregnancy family planning services. (This prohibition raised a number of concerns among States and advocates that are discussed below.)

Section 404 also limits the use of Federal TANF funds. More specifically, section 404(a)(1) provides that TANF funds may only be used "* * * in any manner that is reasonably calculated to accomplish the purpose of this part, including to provide low income households with assistance in meeting home heating and cooling costs. * * *" Thus, TANF funds cannot be used in a manner not reasonably calculated to serve the purposes of the program.

In determining if an activity may be funded with TANF funds under this provision, you should refer to the purposes described in section 401 of the Act and reiterated at § 260.20. Also, you should be aware that the specific prohibitions or restrictions in the statute (e.g., the prohibitions in section 408) apply even if an activity seems otherwise consistent with the purposes in section 404(a)(1).

In addition, section 404(a)(2), as amended by section 5503 of Pub. L. 105–33, permits Federal TANF funds to be used "in any manner that the State was authorized to use amounts received under part A or F, as such parts were in effect on September 30, 1995 or (at the option of the State) August 21, 1996." We interpret this provision to cover activities that are not permissible under section 404(a)(1), but were included in a State's approved State AFDC plan, JOBS plan, or Supportive Services Plan as of September 30, 1995, or, at State option, August 21, 1996. Examples of such activities are juvenile

justice and foster care activities that were included in many State plans. Under this provision, only those States whose approved AFDC State plans included juvenile justice activities as of September 30, 1995, or, at State option, August 21, 1996, may use Federal TANF funds for those activities.

Because of the detailed and specific legislative history associated with the language at section 404(a)(2), indicating Congress's clear intent to grandfather in juvenile justice costs as an allowable use of Federal TANF funds, we would allow such use, notwithstanding the specific prohibitions in section 408 of the Act (e.g., prohibiting the expenditure of Federal TANF funds on assistance if a child is not living with an adult relative).

States should also note that if they exceed the 15-percent limit on administrative costs under section 404(b), we will consider any amount of funds exceeding that limit to be a misuse of funds. In the final rule, we have modified the language in §§ 263.11 and 263.13 to clarify this position.

Likewise, we would consider unauthorized or inappropriate transfers of TANF funds to be a misuse of funds. We would consider any of the following transfers to be inappropriate or unauthorized: transfers to any program except the Child Care and Development Block Grant (also known as the Discretionary Fund within the Child Care and Development Fund) or the Social Services and Block Grant Program under title XX of the Social Security Act; transfers to those two programs in excess of the 30-percent cap; and transfers to SSBG in excess of the 10-percent cap (or, beginning in FY 2001, in excess of the 4.25-percent cap). TANF expenditures used to match Job Access funds are not considered transfers.

OMB Circulars A–102 and A–87 also include restrictions and prohibitions that limit the use of Federal TANF funds.

The Department previously promulgated A–102 (the common rule) in its regulations at part 92 of title 45, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments." All provisions in part 92 are applicable to the TANF program. TANF is not one of the Block Grant programs exempt from the requirements of part 92, as OMB has not taken action to exempt it. Rather, OMB has determined that TANF should be subject to part 92. Section 417 was not meant to invalidate other general requirements that Congress and Federal agencies, primarily OMB, have put in place to assure that Federal grant funds are properly administered or to inhibit Federal agencies from fulfilling their financial management responsibilities in managing their programs. We believe that Congress understood that TANF, like other Federal grant programs, was subject to existing appropriations, statutory, and regulatory requirements regarding the general administration of grants, notwithstanding section 417.

By reference, part 92 also includes A–87, the "Cost Principles for State, Local and Indian Tribal Governments," the basic guidelines for Federal awards. These guidelines provide, in part, that an allowable cost must be necessary and reasonable for the proper and efficient administration of a Federal grant program, and authorized or not prohibited under State or local laws or regulations.

A–87 also includes some specific prohibitions on the use of Federal funds generally that apply to Federal TANF funds. For example, A–87 prohibits the use of Federal funds for alcoholic beverages, bad debts, and the salaries and expenses of the Office of the Governor.

(a) Clarifications of Use of Federal TANF Funds—Substance Abuse Services

In our pre-NPRM consultations, we received several inquiries regarding the use of Federal TANF funds for substance abuse treatment, i.e., treatment for alcohol and drug abuse. In light of the prohibition on the use of Federal TANF funds for "medical services, except for pre-pregnancy family planning activities," we held discussions with other Federal agencies and learned that in many, but not all instances, the treatment of alcohol and drug abuse involves not just "medical services," but other kinds of social and support services as well.

Allowing States to use Federal TANF funds for substance abuse treatment is programmatically sound and reasonably calculated to achieve TANF goals since it may help clients make successful transitions to work and provide for a stable home environment for TANF children. Accordingly, our rules permit States to use Federal TANF funds for drug and alcohol abuse treatment services to the extent that such services are not medical. States will have to look at the range of services offered and differentiate between those that are medical and those that are not. In short, States may not use Federal TANF funds for services that the State identifies as medical; they may only use Federal TANF funds for services that are nonmedical.

(b) Clarification of the Use of Federal TANF Funds for Construction and Purchase of Facilities

The Comptroller General of the United States has prohibited the use of Federal funds for the construction or purchase of facilities or buildings unless there is explicit statutory authority permitting Federal grant funds to be used for this purpose. Since the statute is silent on this matter, States must not use Federal TANF funds for construction or the purchase of facilities or buildings.

(c) Clarification of the Use of Federal TANF Funds as State Match for Other Federal Grant Programs

States may use Federal TANF funds under section 403(a) to match other Federal grant programs only if authorized under the statute of the grant program. Further, any funds so authorized are still subject to the TANF program requirements and must be used in accordance with the purposes of the TANF program and with these regulations.

(d) Clarification of the Use of Federal TANF Funds To Add to Program Income

We have received a number of inquiries about whether or not TANF funds may be used to generate program income. An example of program income is the income that a State earns if it sells another State a training curricula that it has developed, in whole or mostly, with Federal TANF funds.

States may generate program income to defray costs of the program. Under 45 CFR 92.25, there are several options for how to treat this program income. To give States flexibility in their use of TANF funds, States may add, to their TANF grant, program income that has been earned by the State. States must use such program income for the purposes of the TANF program and for allowable TANF activities. We will not require States to report on the amount of program income earned, but they must keep on file financial records on any program income earned and the purposes for which it is used, in the event of an audit or review.

(e) Clarification of the Use of Federal TANF Funds—Amounts Reserved for Subsequent Years

Section 404(e) of the Act, entitled "Authority to Reserve Certain Amounts for Assistance," allows States to reserve Federal TANF funds that they receive "for any fiscal year for the purpose of providing, without fiscal year limitation, assistance under the State program funded under this part." In the

NPRM preamble, we did not include a specific discussion of this provision. However, we have added a preamble discussion in the final rule because: (1) we have subsequently received questions about its interpretation; (2) the penalty on misuse of Federal funds encompasses this provision; and (3) the definition of assistance at § 260.31 has implications that States need to understand.

After a careful reading of section 404(e), we have determined that the statute limits a State's ability to spend reserved money in a couple of very important ways. First, a State may expend reserved money only on benefits that meet the definition of assistance at § 260.31 or on the administrative costs directly associated with providing such assistance. It may not expend reserved funds on benefits specifically excluded from the definition of assistance or on activities generally directed at serving the goals of the program, but outside the scope of the definition of assistance. Secondly, a State may spend its reserved funds only on assistance provided within its TANF program (i.e., "the State program funded under this part"). This latter limitation precludes the State from transferring reserved funds to either the SSBG or the Discretionary Fund of the CCDF. We believe the effect of these limitations will not be too serious because States are still spending such large portions of their funds on benefits that meet the definition of assistance. However, to ensure themselves the maximum flexibility in the use of their funds, States could spend down their reserved funds on any expenditures on assistance and leave current-year funds available to cover transfers and other activities.

Comments and Responses

We received several comments on this section. A couple of commenters expressed concerns about a State's ability to correct information in their Financial Report, avoid penalties for minor reporting errors, and present a case that they should not be penalized; you can find a discussion of the issues in the preamble for § 265.8. A detailed discussion of the other comments on this section and our responses follows. These comments resulted in a couple of minor changes to the proposed policy.

Comment: Most comments received on this section addressed the prohibitions and restrictions on the use of Federal TANF funds. We received some general support for our proposals and clarifications (e.g., allowing for program income and clarifying that States could expend Federal TANF fund on nonmedical substance abuse services). We also received a number of individual comments seeking additional clarification or more detail in the regulation about the allowability of certain expenditures. Areas of concern to individual commenters were medical costs, substance abuse, transportation, and juvenile justice services.

Response: We think it is very important that we lay out for States our view of what would constitute a misuse of funds so that they will be in the best possible position to avoid this penalty. Basically, section 404(a)(1) provides that Federal TANF funds may be used "* * * in any manner reasonably calculated to accomplish the purpose of this part. * * *" However, section 408 of the Act and section 115 of PRWORA provide that States must not use Federal TANF funds in specified circumstances. In addition, section 404 limits the use of Federal TANF funds. The prohibitions in sections 408 of the Act and 115(a)(1) of PRWORA and the limitations in section 404 of the Act apply, even if an activity seems otherwise consistent with the purpose of this section.

Section 404(a)(2), as amended by section 5503 of Pub. L. 105–33, permits Federal TANF funds to be used "in any manner that the State was authorized to use amounts received under part A or F, as such parts were in effect on September 30, 1995 or (at the option of the State) August 21, 1996."

Activities authorized under this subsection must have been in an approved plan under part A or F to be an allowable expenditure of Federal TANF funds.

In response to commenters' concerns, we have added references to sections 404 and 408 of the Act to the regulatory text. These are the two most significant statutory references for TANF requirements that were not specified in the proposed regulatory text.

In general, we believe it is sufficient for our rules to provide broad references to the statutory, regulatory, and policy provisions that will apply under this penalty. In certain policy areas—including administrative costs, the applicability of general grant administration standards, and the allowability of previously authorized expenditures—we believe that some clarification was needed, and our preamble and regulations reflect that judgment. However, other statutory provisions (e.g., much of section 408 of the Act and section 115(a)(1) of PRWORA) are relatively straightforward, and we are not aware of significant issues of interpretation that necessitate further regulation of these provisions.

In response to some of the specific concerns raised by commenters, we point out the following:

(1) The allowability of juvenile justice services depends upon what was previously authorized under a State's plan. A Federal definition would not be appropriate.

(2) Because of the statutory prohibition on use of Federal TANF funds for medical expenditures (except for pre-pregnancy planning), we could not authorize employment-related medical expenditures or medical services for substance abuse treatment under regulation.

However, we have decided not to provide a definition of medical services (and other key terms) in order to give States the maximum flexibility to provide services needed by recipients—within the constraints of the statute.

(3) To the extent that we have not addressed a provision in this final regulation, States may expend their Federal TANF funds under their own reasonable interpretations of the statutory language, and that is the standard that will apply in determining penalty liability.

(4) In several respects, States have more flexibility in the use of Federal TANF funds than State MOE funds. Two of these are: (1) on benefits that were previously authorized; and (2) in certain circumstances, on benefits that serve the goals of the program, but are not attributable to individual needy (or eligible) families. For example, if the expenditures are reasonably related to the purposes of TANF (at § 260.20) and do not constitute expenditures for "assistance" (and are otherwise allowable), a State could use Federal TANF funds for transportation investments that reduce the dependence and support the employment of needy parents, even if it cannot associate all such expenditures with individual needy families. Likewise, States may use Federal TANF funds for expenditures associated with the third and fourth TANF goals (i.e., related to the formation and maintenance of two-parent families and the prevention of out-of-wedlock pregnancies) without associating such expenditures to individual needy families. Thus, the statute and rules both provide States with some of the spending flexibility that commenters were seeking, with respect to transportation expenses, in particular, and other types of activities.

Comment: We received a few comments concerning our reference to activities carried out under AFDC or JOBS. Commenters objected to our conception that section 404(a)(2) covered only those prior program

expenditures that were included in a State's AFDC or JOBS plans. Also, a couple of commenters wanted broad authority to spend funds on emergency services for children, such as juvenile justice, even when their State plans did not include specific references to such services.

Response: Section 404(a)(2) provides that a State may use its Federal TANF funds "in any manner that the State was authorized to use amounts received under part A or F * * *" Although more than one interpretation of this phrase is possible, we believe our interpretation is the best for a number of legal and policy reasons. First, the reference to "the State" in the statutory language is consistent with looking at each State individually based on what was specifically authorized for that State. Also, under prior law, costs were authorized based on approved State plans. Second, our interpretation is consistent with the view that section 404(a)(2) was designed to "grandfather in" States whose prior programs allowed such expenditures. Third, there were some questionable funding practices by States under prior law, and we believe the best policy is to limit the extent to which they are perpetuated.

Thus, in order for a State to expend Federal TANF funds under the authority of section 404(a)(2), the expenditures at issue must have been specifically authorized under that State's AFDC or JOBS plan. Section 404(a)(2) does not broadly authorize continued expenditures on vaguely defined, or undefined, programs; it merely authorizes the use of the TANF "in a manner" in which the State previously had the authority to expend AFDC and JOBS funds. States only had authority to expend AFDC and JOBS funds consistent with approved plans.

Comment: We received several comments challenging the applicability of 45 CFR part 92 and OMB Circulars A–87 and A–102 to the TANF program and a few comments challenging the reference to section 115 of PRWORA. Commenters cited section 417 of the Act and the reference in section 409(a)(1) to violations "of this part" as the basis for not applying these provisions to the TANF program.

Response: We disagree with these comments. With respect to the OMB requirements, we believe that TANF, like other Federal grant programs, is subject to Departmental grants administration regulations and OMB circulars. The only time Federal grant programs would not be subject to grant administration regulations or OMB circulars is when OMB exempts them. OMB has not exempted the TANF program from these requirements; thus, they apply to the TANF program.

Section 417 does not prevent us from applying the part 92 regulations to TANF because the referenced requirements are not developed to enforce substantive provisions under this part. Thus, our approach to this issue is consistent with the approach taken in § 260.35 and discussed in the preamble section entitled "Recipient and Workplace Protections"; i.e., section 417 of the Act does not limit the applicability of other Federal laws and rules.

With respect to violations of section 115 of PRWORA, first, we are clarifying that our intent is to cover only violations of section 115(a)(1) under the misuse penalty. Thus, we would focus on whether States were expending Federal TANF funds on individuals who are ineligible for such assistance under Federal law. We would not monitor compliance with other provisions under section 115. To make this point clear, we have changed the regulatory reference from "section 115" to "section 115(a)(1)." Secondly, we would point out that section 417 does not limit our ability to hold States accountable for complying with section 115 of PRWORA. While we could, in theory, set up a different enforcement mechanism, such as a disallowance system, to cover violations of this provision, that would seem to be an unnecessary administrative complication; the misuse penalty would have a comparable financial effect and provides States with ample opportunity to appeal.

Comment: One commenter suggested a change in language to conform more closely to what the statute reads. The change would substitute the language of this section from "reasonably related to the purposes of TANF" with "reasonably calculated to accomplish the purposes of TANF."

Response: We agree with the comment and have made the change.

Section 263.12—How Will We Determine if a State Intentionally Misused Federal TANF Funds? (§ 273.12 of the NPRM)

Overview

As we discussed in the proposed rule, in determining if a State has intentionally misused funds, we will apply a "reasonable person" test; i.e., a State must demonstrate to our satisfaction that it spent its TANF funds for purposes that a reasonable person would consider to be within the purposes of the TANF program. We will also consider funds to be intentionally misused if there is documentation, such as Federal guidance or policy instructions, that precludes the use of funds for such purposes, or if the State misuses the funds after receiving notification from us that such use is not allowable.

Comments and Responses

We received a few comments on this section. These comments resulted in a minor change to the proposed rule as discussed below. We also made some minor editorial changes to the regulatory text.

Comment: We received a number of comments about the procedures that applied to this penalty. Some commenters wanted the regulation to mention explicitly that the corrective compliance and appeal processes applied to the intentional misuse penalty. A few of these commenters also stated that we should give States an opportunity to submit a corrected financial report. One commenter further mentioned that States need a reasonable period of time to act upon a notification of misuse.

Response: Under the provisions of §§ 262.4, 262.5, 262.6, and 262.7 of the final rules, States have the opportunity to appeal a penalty based on the misuse or intentional misuse of funds. States have 60 days to submit a written response to our notification that we have determined it is subject to a penalty. We believe that 60 days is a reasonable period for a State to respond to a notification of misuse, as it is the amount of time the statute gives for submitting a corrective compliance plan and, under the audit process, a State should receive advance warning that the notification is coming. During this 60-day period, the State has the opportunity to demonstrate that our determination was incorrect or based on insufficient information. For example, a State could argue that the action at issue occurred prior to the effective date of final rules and was based on a reasonable interpretation of the statute. A State could also submit a corrected TANF Financial Report that helps demonstrate that all of its TANF expenditures were appropriate and allowable. In addition, as § 263.10 indicates, a State could demonstrate that it had reasonable cause for the misuse or intentional misuse of funds or provide us with a corrective compliance plan.

Comment: One commenter said that the misuse penalty should not apply while the State is pursuing legal remedies.

Response: We will not take an adverse action (i.e., reduce the adjusted SFAG)

prior to completion of any administrative review by the Departmental Grant Appeals Board (GAB). However, if the GAB sustains our penalty decision, the State will owe interest from the date of our final notification of an adverse action.

Comment: One commenter objected to the presumption in the NPRM that a State has misused funds until the State proves otherwise. The commenter argued that the proposed rule shifts the burden of proof to the States in proving a negative.

Response: We disagree with the comment. A State will normally receive notification that it has misused funds based on documented findings of audits performed under the Single Audit Act. As States know from prior experience, these audits utilize a variety of tools to evaluate expenditures, including the statute and regulations and a compliance supplement issued by OMB that focuses on certain areas of concern. In addition, the audit findings reflect reliable information taken from various sources, such as samples of case records and operational assessments. We believe that these audits will give us an objective appraisal of whether a misuse of funds has occurred.

Thus, we believe that the initial "burden" of establishing misuse of funds rests with the auditors rather than the State. Then, States will have the opportunity both to review, analyze, and rebut the findings via the standard audit resolution procedures and to seek penalty relief through the reasonable cause and corrective compliance processes.

Comment: A few commenters raised issues pertaining to misuse due to a failure to follow Federal guidance. One commenter mentioned that Federal guidance must be in accordance with the TANF statute before such guidance can be used to substantiate a claim of misuse. A second commenter recognized that legitimate issues may arise over a difference in interpretation of the statute. A third commenter argued that posting Federal guidance to a web page does not constitute notice and that States should be given adequate time to implement any changes necessitated by the guidance.

Response: We agree that Federal guidance must adhere to the statute. Currently, all guidance that we issue is based on a careful review of the statutory language and legislative history. We will continue to follow this practice when preparing future guidance.

We further recognize that a difference in the interpretation of a statutory provision is possible. We do not intend to penalize States pending resolution of such a difference. Under § 262.4, a State has the opportunity to demonstrate that our determination that the State is subject to a penalty was incorrect. In short, a State may present alternative interpretations of a statutory provision during the penalty resolution process. Because we could withdraw a determination of misuse based upon such a State presentation, we have changed § 263.12(b) and (c) to say that we "may" (rather than "will") consider funds to be misused if: (1) there is Federal guidance or policy indicating that TANF funds could not be used for a particular purpose; or (2) if the State continues to use the funds in the same or similarly improper manner after receiving notification of improper use.

Regarding the comment about notice of Federal guidance, we intend to rely on different methods for transmitting guidance to the States and other interested parties. We presently post Federal guidance to our web page and also mail it to all State TANF agencies and other appropriate parties. We plan to continue this dual issuance process so long as some State TANF agencies have limited Internet capabilities. However, in the interest of reducing costs associated with the printing and mailing of guidance materials, we intend to increase our reliance on electronic modes of communication as State capabilities increase. Also, we are sensitive to operational issues and, where possible, will include implementation time frames in our guidance.

Comment: A couple of commenters urged us to hold States accountable for complying with their plans for services and benefits under TANF and penalize States when they fail to do so.

Response: We do not believe that we have the authority under the statute to penalize States in these circumstances. The misuse of funds penalty refers to violations "of this part." It does not reference expenditures made in violation of State plan provisions. Section 417 of the Act limits our ability to enforce TANF. Therefore, we have not included this recommendation in the final rule.

Section 263.13—Is There a Limit on the Amount of Federal TANF Funds a State May Spend on Administrative Costs? (§ 273.13 of the NPRM)

Overview

In the preamble for § 263.0, we discuss most of the comments we received on the administrative cost provisions in the rule. We decided to consolidate the discussion in one place since most of the comments related to both the Federal and the MOE cap. Therefore, we refer you to that section for a discussion of a host of issues related to the Federal cap.

This section of the rule speaks specifically to how the Federal administrative cost cap is determined. However, in reviewing the comments, we realized that the proposed rule had not directly presented the cap provision. To address this deficiency, we changed the title for this section and added a new paragraph (a) to explain the Federal cap provision. Paragraph (b) contains language from the NPRM on the exclusion for systems costs, modified as discussed below.

In paragraph (a), we also have added regulatory language advising States that we would consider a violation of the Federal cap to be a misuse of funds.

In reviewing the comments on the systems exclusion, we noted that proposed regulatory language in this section was not completely consistent with the statutory language (i.e., the proposed regulation said that the specified systems costs "are not administrative costs for this purpose"). In the final rule, we have revised the language to conform more closely to the statute. Under the revised language, we track the statutory language and provide that the Federal administrative cost cap does not apply to "Federal TANF expenditures on information technology and computerization needed for tracking or monitoring required by or under title IV–A of the Act."

The revised regulatory language also provides clarification of one issue that was not directly addressed in the written comments, but which has come up in the context of the WtW regulation and the proposed rule on the bonus for reduction of out-of-wedlock births. By statute, the Federal administrative cap applies to any grant made to the State under section 403. It thus applies to WtW funds, out-of-wedlock bonuses, high performance bonuses, supplemental grants, high performance bonuses, and contingency funds.

The WtW regulations address the cap as it pertains to any WtW funds received by the State under section 403(a)(5). This final rule addresses any other funds provided under section 403.

The new language provides for a consolidated cap for all TANF funds (i.e., funds provided under section 403 other than WtW funds under section 403(a)(5)). Thus, it would limit the total amount of expenditures that a State could spend on administrative costs from all these separate funding provisions. We would not require that

the State meet a 15-percent cap for each of these multiple sources of funds.

While the statutory language would allow an alternative interpretation of separate funding caps, there is no evidence that Congress intended to create all these separate administrative cost caps. Also, we do not think creation of a consolidated cap would undermine the purpose of the provision, of limiting administrative costs, and we do not believe the potential benefit of separate caps would justify the additional administrative burden that States would incur.

Subpart C—What Rules Apply to Individual Development Accounts?

Section 263.20—What Definitions Apply to Individual Development Accounts (IDAs)? (§ 273.20 of the NPRM)

Overview

Individual Development Accounts (IDAs) are similar to savings accounts and enable recipients to save for "big ticket" items, such as a home, or a college education or start a business. Money in an IDA account would not affect a recipient's eligibility for TANF assistance.

States may use IDAs as an incentive for recipients to find jobs and to use their earned income to save for the future.

Recipients can use IDAs as long-term investments, without losing eligibility for TANF assistance in the early stages of becoming self-sufficient.

The NPRM defined an IDA as an account established by, or for, an individual who is eligible for TANF assistance to allow the individual to accumulate funds for specific purposes. It also defined a number of other terms used applicable to IDAs.

Comments and Responses

We received a few comments on the provisions in this section and made some minor changes to the proposed regulations, as discussed below.

Comment: Several commenters said that we should clarify whether individuals eligible for TANF assistance through segregated State funds could be beneficiaries of the IDA program.

Response: Under the definition in the NPRM, individuals who were eligible for TANF assistance could participate in IDAs.

The statute at section 404(h)(2)(A) provides that under a State program, an IDA may be established by or for an "individual eligible for assistance under the State program operated under this part." This latter phrase means that IDAs can cover individuals who are eligible under the TANF program, regardless of the funding source. We have revised the regulatory language at § 263.20 so that it refers to eligibility for the TANF program. Under the definitions at § 260.30, the TANF program includes all activities under the State program, regardless of funding source.

Comment: One commenter stated that Federal regulations ought to expressly state that, under PRWORA, funds in an IDA are to be disregarded for purposes of determining eligibility for, or amount of, assistance under Federal means-tested programs (other than under the Internal Revenue Code).

Response: We agree that the regulations should clarify that States must disregard IDA funds in determining eligibility and amount of assistance for such Federal means-tested programs. Section 404(h)(4) explicitly states that there should be no reduction in benefits. We have revised the regulatory language at § 263.20 to clarify this point.

Comment: One commenter explained how one State defined its IDA programs under its welfare reform waiver more broadly than the NPRM and suggested that we revise the regulation to allow for a broader range of IDA strategies.

Response: The statute is very specific in terms of how IDA funds may be used. Accordingly, we have not changed the position taken in the proposed rule. However, under section 415 of the Act, until a State's welfare reform waivers expire, the State has latitude to continue its waiver policies and operate its program more broadly than the statute permits.

Section 263.21—May a State Use the TANF Grant To Fund IDAs? (§ 273.21 of the NPRM)

Overview

PRWORA gives States the option to fund an Individual Development Account Program. Thus, States have the option to fund IDAs with TANF funds for individuals who are eligible for TANF assistance.

We received one comment on the provisions in this section and made some minor changes to the proposed regulation, as discussed below.

Comment and Response

Comment: One commenter said that the NPRM does not clearly express that IDA is an optional program that the States may choose to implement within limits permitted by Federal law.

Response: We agree that the IDA provision is an optional program, which is subject to State rules within the limits permitted by Federal regulations and statute. We have revised the regulatory language at § 263.2 to clarify this point. Also, consistent with the statutory language at section 403(a)(5)(C)(v), we have specified that WtW funds may also be used to fund these IDAs.

Section 263.22—Are There Any Restrictions on IDA Funds? (§ 273.22 of the NPRM)

Overview

IDAs are similar to savings accounts and enable recipients to save earned income for certain specified, significant items. IDAs contain special restrictions on who can match recipient contributions.

The NPRM required that: (1) a recipient deposit only earned income into an IDA; (2) recipient's contributions to an IDA may be matched by a qualified entity; and (3) recipients may spend IDA funds only to purchase a home, pay for a college education, or start a business.

Comments and Responses

We received a few comments on the provisions in this section and made some minor changes to the proposed regulation, as discussed below.

Comment: Several commenters expressed that the NPRM was more restrictive than the statutory language on the source of matching funds and thereby unduly limited possible matching funds to an IDA account.

Response: The language in the proposed rule was inadvertently narrower than the statutory provision. We have changed the regulation at § 263.22 so it now comports with the statutory language. Under the final rule, "matching funds may be provided by or through a qualified entity."

Comment: One commenter stated that we should allow TANF recipients to withdraw money from IDAs for training expenses, as well as for post-secondary purposes.

Response: The statute is very specific in terms of how IDA funds may be used. Only post-secondary education expenses at an eligible institution are permissible. While expenses for certain vocational education or training activities would be allowable, expenses for job training that is not at the post-secondary level or at an eligible institution would not be. Accordingly, we have not changed the proposed rule.

Section 263.23—How Does a State Prevent a Recipient From Using the IDA Account for Unqualified Purposes? (§ 273.23 of the NPRM)

Overview

Money in an IDA account does not affect a recipient's eligibility for TANF assistance. Withdrawals from the IDA must be paid directly to a college or university, a bank, savings and loan institution, an individual selling a home, or a special account (if the recipient is starting a business).

Section 404(h)(2)(D) authorizes the Secretary to establish regulations to ensure that individuals do not withdraw funds held in an IDA except for one or more of the above qualified purposes.

In our research, we found that several States had established IDAs under their welfare reform demonstration projects and subsequently transferred those provisions to their TANF programs. Each State had designed its own procedures for preventing withdrawals or penalizing recipients who withdrew funds from their IDAs for unauthorized purposes. For example, several States count a withdrawal for a nonqualified purpose as earned income in the month of withdrawal unless the funds were already counted as earned income. Other States count such withdrawals against a family's resource limit. Still another State calculates a period of ineligibility using a complex formula.

With this in mind, we did not feel that it was necessary to be overly prescriptive in mandating how States would ensure that individuals do not make unauthorized withdrawals from IDA accounts. Thus, we give States broad flexibility to establish procedures that ensure that only qualified withdrawals are made.

In addition, section 404(h)(5)(D) gives the Secretary the authority to determine whether or not a business contravenes law or public policy. We have decided that we should base our determination on the business's compliance with State law or policies. Thus, our rules give States maximum flexibility in setting up these programs, while assuring that a business established by a needy family meets State requirements.

Comments and Responses

We received a few comments in support of the provisions in this section, as discussed below. These comments did not result in any change to the proposed policy or rule.

Comment: A few commenters supported the entire section on IDAs, noting that the Secretary exercised her discretion to give States maximum flexibility in designing and administering these programs.

Response: We appreciate the commenters' support for our approach. The intent of the proposed rule was to allow States the latitude that they needed to administer an effective IDA program and develop innovative approaches for moving recipients from dependency to self-sufficiency.

IX. Part 264—Other Accountability Provisions (Part 274 of the NPRM)

Note: We have moved the content of § 274.20 of the NPRM, entitled "What happens if a State sanctions a single parent of a child under six who cannot get needed child care?" to part 261. You can find a discussion of the comments related to this provision at §§ 261.15, 261.56 and 261.57.

Section 264.0—What Definitions Apply to This Part? (§ 274.0 of the NPRM)

This section cross-references the general TANF regulatory definitions established under part 260.

We received no comments on this section. However, we decided to add definitions for "countable State expenditures," "Food Stamp trigger" and "unemployment trigger," which relate to the discussion of the Contingency Fund in subpart B, in order to make subpart B easier to understand. We also added a definition of "FAG," which is used in the discussion of the spending levels of the Territories in subpart C. Finally, we moved this section out of subpart A, as it was in the NPRM, so that it is clear that the definitions apply to this entire part.

Subpart A—What Specific Rules Apply for Other Program Penalties?

Section 264.1—What Restrictions Apply to the Length of Time Federal TANF Assistance May Be Provided? (§ 274.1 of the NPRM)

Under the former AFDC program, families could receive assistance as long as necessary, if they continued to meet program eligibility rules. Under the TANF program, Congress established a maximum length of time for which a family may receive assistance funded by Federal TANF funds.

Section 408(a)(7) stipulates that States may not use Federal TANF funds to provide assistance to a family that includes an adult who has received assistance for more than five years. We will calculate the five-year limit on Federal funding as a cumulative total of 60 months.

The legislative history for PRWORA clarifies the meaning of adult in section 408(a)(7)(A). States are to count only months for which an adult received assistance as the head-of-household or as the spouse of the head-of-household. (H.R. Rep. No. 725, 104th Cong., 2d sess., p. 288.) Generally, when a parent or other adult caretaker relative of a minor child applies for and receives federally funded assistance under the State's TANF program on behalf of himself or herself and his or her family, Federal funding of that assistance may not last longer than five years. States must disregard any months when an adult receives assistance when he or she is not the head-of-household or is not the spouse of the head-of-household.

Any month when a pregnant minor or minor parent received assistance as the head-of-household or married to the head-of-household counts toward the five-year limit. However, section 408(a)(7)(B) clarifies that the State must disregard any month for which assistance has been provided to an individual who is a minor child who is not the head of a household or married to the head of a household.

The five-year limitation on Federal funding also disregards any months that an adult receives assistance while living in Indian country (as defined by section 1151 of title 18, United States Code) or in an Alaska Native Village where at least 50 percent of the adults are not employed (see § 264.1(b)(1)(ii)).

Subsection 408(a)(7)(G) provides for special treatment of assistance provided to a family with Welfare-to-Work grant funds (formula or competitive) under the time-limit provision. First, months for which a family receives cash assistance funded with Welfare-to-Work grant funds (under section 403(a)(5) of the Act) do count towards the five-year limit; however, months for which a family receives only WtW noncash assistance do not count towards the five-year limit.

Second, families may receive assistance (cash or noncash) funded with WtW grant funds even though they are precluded from receiving other TANF assistance because of the five-year limit.

Some families may receive assistance from Federal TANF funds for more than five years based on hardship or if the family includes an individual who has been battered or subjected to extreme cruelty as defined in section 408(a)(7)(C)(iii).

Under section 408(a)(7)(C), the average monthly number of such families may not exceed 20 percent of the State's average monthly caseload during either that fiscal year or the immediately preceding fiscal year, whichever the State elects. We will not make a determination of whether a State has exceeded the cap until any families in the TANF program have received at

least 60 cumulative months of federally funded assistance.

Since the purpose of the provision is to provide an extension to the 60-month limit, it applies after that limit is reached. We believe that this approach is the most straightforward and comports with Congressional intent that TANF assistance be provided on a temporary basis while a family becomes self-sufficient. Thus, Federal support would cease once a head-of-household or spouse of the head-of-household in the family has been assisted for 60 total months with Federal TANF funds unless the State chooses at that time to include the family in its 20-percent exception. However, the State may elect to use State funds to continue paying eligible families.

The five-year time limit applies to Federal funding; it does not set an upper bound on the amount of time a State could provide assistance to an individual family with State funds. Further, States are free to impose shorter time limits on the receipt of assistance under their programs. They are also free to allow receipt for longer periods if the assistance is paid from State funds or if the family meets the criteria the State has chosen for extension and fits with the 20-percent limit.

In the NPRM preamble to this section, we clarified the relationship between domestic violence waivers of the time limit permitted under the Family Violence Option at section 402(a)(7) and the limit on the exceptions to the Federal time limit at section 408(a)(7)(C)(ii). The key issue was whether the 20-percent limit on hardship exceptions included families of domestic violence victims.

Section 402(a)(7)(B) expressly refers to section 408(a)(7)(C)(iii) in applying the meaning of the term "domestic violence" to the Family Violence Option at section 402(a)(7)(A). Section 408(a)(7)(C)(iii) defines "battered" or "subjected to extreme cruelty" for purposes of describing families who may qualify for a hardship exemption at section 408(a)(7)(C)(i), and section 408(a)(7)(C)(ii) specifies a 20-percent limit on the exceptions to the time limit due to hardship. Based on the statutory language, we concluded that the number of families waived from the five-year time limit per section 402(a)(7) fell within the 20-percent ceiling established under section 408(a)(7)(C)(ii). However, we allowed a State to claim "reasonable cause" when its failure to meet the five-year limit could be attributed to its provision of federally recognized good cause domestic violence waivers. In the final rule, we have moved the provisions on domestic violence to a new subpart B of part 260. You can find our preamble discussion of these provisions and the comments on our proposed rules in the earlier discussion entitled "Treatment of Domestic Violence Victims."

As previously discussed, section 408(a)(7)(D) provides an exemption to the time limit on receipt of federally funded TANF assistance for families living in Indian country or in an Alaskan Native village. The months that a family, which includes an adult, lives in Indian country or in an Alaskan Native village, where at least 50 percent of the adults are not employed, do not count when determining whether the adult has received federally funded assistance for 60 cumulative months. In accordance with section 408(a)(7)(D), the percentage of adults who are not employed in a month will be determined by the State using the most reliable data available for the month, or for a period including the month.

In the earlier preamble discussion entitled "Waivers," we discuss the impact of waivers granted under section 1115 of the Act on the five-year time limit. You will find the regulatory provisions in a new subpart C of part 260.

We received a number of comments on this section. We made some revisions to the regulations as noted in our responses to the comments below. We also amended the regulations to reflect the position that only months for which an adult received assistance as the head-of-household or as the spouse of the head-of-household count toward the five-year time limit.

Comment: A couple of commenters expressed their opposition to all time limits, and one commenter stated that the time limits will cause families to suffer.

Response: The time limit is an important aspect of welfare reform. It is meant to ensure that States and recipients place a clear priority on work, responsibility, and self-sufficiency. However, in a time-limited program, States must make sure that they offer adequate services so that families can successfully move from welfare to work.

Comment: A commenter asked whether the State should count towards the time limit any months when the adult is ineligible, but the rest of the family receives assistance.

Response: The only months that count toward the time limit are months when a family member who is the head-of-household or the spouse of the head-of-household receives assistance. Thus, for example, if the family is comprised of a mother and her infant, and the mother is not receiving TANF assistance because she is receiving SSI or because she is an ineligible alien, the months when only her child receives TANF assistance do not count toward the time limit.

Comment: Some commenters asked how the time limit applies when children receive assistance, but the caretaker relative does not.

Response: Assuming that, in this situation, the head-of-household and the spouse of the head-of-household are not receiving TANF assistance, the months when the children receive assistance do not count toward the time limit.

Comment: A few commenters asked whether months count toward the time limit when a family is subject to a full-family sanction.

Response: Any months when the State imposes a full-family sanction, and no one in the family is receiving TANF assistance, do not count towards the Federal time limit. Only months for which an adult or minor head-of-household or spouse of the head-of-household receive assistance count. However, if it wishes to, a State may count such months towards its State time limit.

Comment: Another commenter asked whether months count toward the time limit when one member of a family is sanctioned.

Response: If an adult is sanctioned, and no one who is the head-of-household or the spouse of the head-of-household is receiving TANF assistance, the Federal time limit does not apply. However, if the head-of-household or the spouse of the head-of-household continues to receive assistance while another individual is being sanctioned or the effect of the sanction is to reduce benefits to the family as a whole without denying assistance to any individual member of the family, the Federal time limit does apply.

If the State wishes to count the months when a sanction applies to a family, it may count such months toward its State time limit even if it cannot count them towards the Federal time limit.

Comment: A commenter asked how the time limit applies when a family begins to receive assistance mid-month or if the State provides assistance semi-monthly.

Response: Whenever a family receives any TANF assistance for a month, whether it covers a whole month's worth of assistance or is a partial payment, that month counts toward the Federal time limit unless the exceptions in § 264.1(b) apply.

Comment: Another commenter stated that we should inform a State if its

policies are improper or will lead to a penalty.

Response: When a State submits its TANF State plan, we review it to determine whether the plan is complete. We also identify potential problem areas and share our comments with the State. Thus, the more detail a State submits in its plan, the more feedback the State will receive on its policies and procedures. At the same time, we advise the State that our finding that the TANF plan is complete does not constitute our endorsement of State policies.

Comment: A commenter asked whether receipt of TANF assistance by a noncustodial parent would affect the custodial parent and the children.

Response: In order for an individual to receive TANF assistance as a noncustodial parent, a State must consider that parent to be a member of the family. Only the months for which a parent receives TANF assistance as the head-of-household or the spouse of the head-of-household count toward the time limit. As defined at § 260.30, a noncustodial parent cannot be the head-of-household, since he or she does not live in the same household as the child. Therefore, the months a noncustodial parent receives assistance would not count unless he or she is the spouse of the head of the household.

We note that an individual can have more than one status and the above answer applies only to an individual receiving assistance as a noncustodial parent. An individual who is the noncustodial parent of one TANF child, could also be the custodial parent of another TANF child or the head-of-household for another TANF case; if he or she receives assistance as part of such a second family, it would count towards that second family's time limit.

Comment: A commenter asked us to clarify when receipt of TANF assistance by a pregnant teen or a teen parent would count toward the five-year time limit.

Response: The months count when a pregnant teen or teen parent receives TANF assistance while he or she is the head-of-household or the spouse of the head-of-household.

Comment: Another commenter argued that the statute does not provide the authority for us to impose time limits on a minor head-of-household or minor spouse of a head-of-household who is not pregnant and is not a parent.

Response: The commenter is correct. The months for which a minor head-of-household or minor spouse of a head-of-household who is not pregnant and is not a parent receives TANF assistance do not count toward the time limit.

Comment: Commenters asked us to clarify when assistance provided under the Welfare-to-Work program counts toward the Federal time limit. One commenter expressed the opinion that WtW should not count. Another commenter asked us to define WtW cash and noncash assistance.

Response: Under the statute, noncash assistance provided under WtW never counts toward the Federal 60-month time limit. Months for which WtW cash assistance is received do count if the assistance is received by a member of the TANF family who is the head-of-household or the spouse of the head-of-household. However, individuals who have received 60 months of assistance may continue to receive WtW assistance and other benefits.

Because of the interest in this issue, we have included a definition of WtW cash assistance at a new § 260.31. See the preamble for that section for additional discussion of that definition.

As previously discussed, the policies on counting WtW and TANF assistance apply to noncustodial parents. Receipt of WtW cash assistance or TANF assistance by a noncustodial parent, in his or her status as a noncustodial parent, does not count against the time limit unless he or she is the spouse of the head-of-household. If the noncustodial parent is the spouse of the head-of-household and is included by the State in its definition of a TANF family, such parent's receipt of WtW cash assistance or TANF assistance does count against the time limit. However, if the noncustodial parent is not included in the State's definition of a TANF family (e.g., he is receiving assistance as part of another family), his receipt of WtW cash assistance does not count towards the Federal TANF time limit for the family composed of the custodial parent and their children in common.

Comment: A commenter asked whether months when assistance is received under a Tribal TANF program count toward the Federal five-year time limit.

Response: Months for which a family received assistance under an approved Tribal Family Assistance Plan count toward the five-year time limit under both State and Tribal TANF programs. Under the provisions of section 408(a)(7), the five-year limit applies to TANF assistance provided with Federal TANF funds under part A of title IV of the Act. This includes assistance provided by Tribal TANF programs. However, there is an exception under § 264.1(b)(1)(ii) for months when an adult lived in Indian country or Native Alaskan Village with high unemployment.

Comment: A commenter asked whether the clock stops while an individual is in drug treatment so that she will be job ready.

Response: The clock does not stop. The clock stops only because of the factors listed in § 264.1(b).

Comment: Another commenter asked whether a State can exempt from the time limit a family with old or disabled parents or caretakers.

Response: A family cannot be exempted from the time limit on this basis. Months when a family receives assistance can be disregarded only according to the factors listed in § 264.1(b). However, once the family has received assistance for 60 months, the State can continue to provide assistance on the basis of hardship. The State can also choose to provide assistance with State-only funds.

Comment: A number of commenters were opposed to our provisions that attempted to restrict a State from excluding families from the time limit by including child-only cases in its definition of family and diverting families to separate State programs. The commenters also opposed our proposal to require States to report on the number of families excluded.

Response: We agree that we should not limit a State's ability to determine which families they will serve under TANF and that we should not assume that a State is attempting to circumvent the statute. Accordingly, we have removed these provisions from the final rules. We also removed the requirement for separate reporting of child-only cases. You can find additional discussion on this issue in the earlier preamble discussion entitled "Child-Only Cases."

Comment: While one commenter agreed with our position in the NPRM, a number of commenters argued that States should be able to stop the clock for hardship or domestic violence, or because individuals in the family are unable to participate in work activities before the family has received assistance for 60 months.

Response: We do not believe that the statute envisions stopping the clock for hardship or for any reasons other than those listed in § 264.1(b). Section 408(a)(7)(C) of the Act exempts families from being terminated from TANF assistance once they reach the 60-month limit; it does not exempt them from accruing months toward the limit. The statute permits States to continue to provide assistance to families beyond the 60-month limit based on hardship or because a family member has been

subjected to battery or extreme cruelty. However, as we discussed in the preamble section entitled "Treatment of Domestic Violence Victims," we have revised the final rules to recognize a broader array of good cause domestic violence waivers to extend the time limit in determining whether a State that exceeds the 20-percent limitation will receive penalty relief. Accordingly, States may be able to extend the time limits for additional families, including victims of domestic violence.

Comment: A commenter asked how the 20-percent hardship extension applies when a State has a shorter time limit than 60 months.

Response: A State with a shorter time limit can establish its own policies for extending assistance under its State time limit. The State can extend assistance beyond its (shorter) time limit based on hardship or for other reasons. However, if a State extends its time limit and continues to provide assistance to a family, the additional months count toward the Federal time limit as they ordinarily would.

Comment: Some commenters expressed the view that our provisions for how States' section 1115 waivers affect the time limit are confusing and improper.

Response: We have made some minor adjustments to these provisions. Please refer to subpart C of part 260 and the earlier preamble discussion entitled "Waivers."

Section 264.2—What Happens if a State Does Not Comply with the Five-Year Limit? (§ 274.2 of the NPRM)

Congress created the penalty under section 409(a)(9) to ensure that States comply with the five-year restriction on the receipt of federally funded TANF assistance. If we determine that a State has not complied with the five-year time limit during a fiscal year, then we will reduce the SFAG payable for the immediately succeeding fiscal year by five percent of the adjusted SFAG.

Five years is the maximum period of time permitted under the statute for families to receive federally funded TANF assistance. Therefore, the penalty under this section does not apply if the State exceeds any shorter time limits on the receipt of federally funded assistance that it may choose to impose. It also does not apply to any time limits on receipt of State-funded assistance or the receipt of noncash WtW assistance.

In defining the requirement, section 409(a)(9) refers to section 408(a)(7). This latter section identifies the circumstances under which assistance may be provided for longer than five years. It provides exceptions to the time-limit requirement for minors, hardship, or families living in Indian country or in an Alaskan Native village with adult unemployment above 50 percent. Therefore, we will take into account the exceptions described under paragraphs (B), (C), or (D) of section 408(a)(7) when deciding whether the State complied with the five-year time limitation. We will use the information required to be reported in part 265 to learn whether a State is complying with the five-year time restriction on the receipt of federally funded assistance.

We do not intend to hold States immediately accountable for knowing about and verifying all months of assistance received in other States, since we are aware that, in general, States' data processing systems are not currently capable of accomplishing interstate tracking of the number of months an individual has received TANF assistance.

We received a few comments on this section, as discussed below. We made only one minor editorial change to the regulations. This change clarifies that, if a State failed to comply with the time-limit requirements, in order to avoid a penalty, it must demonstrate to our satisfaction that it had reasonable cause, or it must correct or discontinue the violation under the provisions of an approved corrective compliance plan.

Comment: A couple of commenters asked for guidance on how States should count months when a family received assistance in another State. Other commenters asked us to regulate that States will not be held accountable for knowing about a family's receipt of TANF assistance in another State.

Response: Each State must keep track of the number of months it provides TANF assistance that count towards the Federal time limit. As part of its application process, a State should ask a family whether it has lived in any other States. If the family has, the new State should contact the other State(s) to find out whether the family received assistance that counts toward the Federal time limit. We expect a State to do its best to gather this information, but will not hold the State accountable if its information about what happened in another State is not accurate, as long as the State has made a good faith effort to gather complete and accurate information. We have decided not to include this specific guidance in the regulations because our expectations for State accountability will change over time as technology improves and the State's ability to do interstate tracking of families increases.

Comment: A commenter asked whether a State with a State time limit that is shorter than the Federal time limit would be penalized if it fails to meet the requirements of its State time limit.

Response: The penalty at § 262.1(a)(9) only applies if the State fails to meet the Federal five-year time limit.

Section 264.3—How Can a State Avoid a Penalty for Failure to Comply With the Five-Year Limit? (§ 274.3 of the NPRM)

In § 262.5, we include general circumstances under which we may find reasonable cause to waive potential penalties. We also will consider an additional factor in determining whether there is reasonable cause for failure to meet the five-year limit. The additional factor relates to a State's implementation of the Family Violence Option and its provision of temporary waivers of time limits, when necessary, for victims of domestic violence.

We will grant a State reasonable cause for failing to meet the 60-month time limit, if it adequately demonstrates that it has exceeded the 20-percent limitation on exceptions because it granted individuals federally recognized good cause domestic violence waivers pursuant to subpart B of part 260. To qualify for reasonable cause based on this factor, a State would have to show that, if families with such waivers were disregarded, the number of families that received assistance did not exceed 20 percent. A State must substantiate its case for all claims of reasonable cause.

You can find additional discussion of our domestic violence policies in the preamble section entitled "Treatment of Domestic Violence Victims."

We received a number of comments on this section and made changes to the regulations, as discussed below.

Comment: Several commenters asked us to permit States to claim reasonable cause based on additional factors, such as the State's good faith effort to comply with the time limit, a hard-to-serve population, high unemployment or other adverse economic conditions, and other factors that are beyond the control of the State.

Response: As we discussed in the preamble to § 262.5, we believe it is sounder policy to encourage a State to correct problems and find solutions than to excuse a State's inability to meet the statutory requirements. Accordingly, we are not adding reasonable cause factors that we will consider if a State fails to meet the time-limit requirement of the statute. (However, we have revised the language at § 262.5 to allow more discretion to grant reasonable cause when a State faces special, unforeseen circumstances.)

Comment: A number of commenters also argued that we should not link the reasonable cause factor for federally recognized good cause domestic violence waivers to the victim's ability to work and that other changes should be made to the provision.

Response: We have addressed these comments in subpart B of part 260 and the preamble discussion entitled "Treatment of Domestic Violence Victims."

Section 264.10—Must States Do Computer Matching of Data Records Under IEVS To Verify Recipient Information? (§ 274.10 of the NPRM)

Congress originally established the Income and Eligibility Verification System (IEVS) in 1984 under section 1137 of the Act. PRWORA created a penalty at section 409(a)(4), requiring the reduction of a State's SFAG for the immediately succeeding fiscal year by up to two percent if a State is not participating in IEVS.

The IEVS provision was intended to improve the accuracy of eligibility determinations and grant computations for the public assistance programs (AFDC, Medicaid, Food Stamp and SSI). It achieves this goal by expanding access to, and exchanges of, available computer files to verify client-reported earned and unearned income. Specifically, it makes the following files available to the State public assistance agencies: (1) IRS unearned income; (2) State Wage Information Collection Agencies (SWICA) employer quarterly reports of income and unemployment insurance benefit payments; (3) IRS earned income maintained by the Social Security Administration (SSA); and (4) with the passage of the Immigration Control and Reform Act of 1986, immigration status information maintained by the Immigration and Naturalization Service (INS).

Currently, regulations at §§ 205.51 through 205.62 and the statute at section 1137(d) describe what is meant by "participating * * * in the income and eligibility verification system required by section 1137." The regulation at § 205.60(a) requires each State to maintain statistics on its use of IEVS. In general, "participation" means that a State agency submits electronic requests to IRS, SWICA, SSA and INS for information listed in the preceding paragraph, for all TANF applicants and recipients. IRS, SWICA, SSA and INS provide the State agencies with an electronic response regarding the information requested. The frequency of the request and the timeliness of the response is a function of the data processing systems design of the responding agency. The State agency worker compares the information in the response to determine the accuracy of client reporting of case circumstances.

We received comments from two parties, which did not result in any changes to the regulation. However, we did make a change based on our internal review. INS has stated its view that Federal departments are no longer authorized to grant waivers to States to exempt certain programs from verifying alien eligibility through the SAVE system. (See 63 FR 41662, August 4, 1998.) Therefore, we removed the parenthetical in the proposed rule at paragraph (a)(4) referencing such waivers.

One of the commenters expressed the view that the proposed rule is consistent with the TANF statutory provisions. We discuss the other comments and our responses below.

Comment: A commenter argued that requiring data matches for all TANF applicants and recipients is not cost effective and should not be performed.

Response: The statute at section 1137 and the implementing regulations at §§ 205.51 through 205.62 provide that the State must request data matches for the entire TANF caseload.

Comment: The commenter asked whether we would permit targeting procedures for data matches based on cost effectiveness.

Response: States may use targeting procedures that govern the use of data matches. Paragraph 1137(a)(4)(C) of the Act states, "The use of such information shall be targeted to those uses that are most likely to be productive in identifying and preventing ineligibility and incorrect payments, and no State shall be required to use such information to verify the eligibility for all recipients." The implementing regulation at § 205.56(a)(1) continues to permit States to exclude categories of information from a follow-up review. States perform reviews after the data matches and compare information obtained from the match with the case record to determine if it affects an applicant's or recipient's eligibility or the amount of payment.

Comment: The commenter also expressed disagreement with the definition of participation for "all TANF applicants and recipients" (e.g., naturalized citizens do not require a match with INS).

Response: We recognize that States are not required to perform a data match with the Immigration and Naturalization Service (INS) for naturalized citizens. The data match with INS is only required for alien applicants and recipients.

Section 264.11—How Much Is the Penalty for Not Participating in IEVS? (§ 274.11 of the NPRM)

Since IEVS has been in existence for more than 12 years, we believe that States have had sufficient time to become full participants in IEVS. Therefore, we will impose the maximum two-percent penalty upon all findings that a State is not participating in IEVS.

We will use an audit pursuant to the Single Audit Act as the primary means of monitoring a State's IEVS participation. We will also use statistics maintained by the State, as required by § 205.60(a), as another source of information and may conduct additional Federal reviews or audits as needed.

We received few comments on this section. We discuss the comments and our responses below. We made no changes to the regulations.

Comment: A few commenters expressed concern that we were not clear in the proposed rule about how we will determine a State's nonparticipation in IEVS and the amount of the penalty. Another commenter argued that the amount of the penalty in proposed regulation needs to be amended to comport with the provisions of the Act.

Response: We will determine a State's nonparticipation in IEVS by an audit pursuant to the Single Audit Act. Specific auditing procedures for evaluating participation in IEVS are included in the Compliance Supplement to OMB Circular A–133. Anyone interested in the auditing procedures should review the Compliance Supplement for further information.

Since the statute allows us to regulate a penalty of "not more than 2 percent," we could establish a penalty of less than two percent. However, we feel that a penalty of two percent is appropriate given that IEVS has been in effect for over 12 years and States have had ample time to come into compliance.

Comment: Some commenters suggested that we should impose a reduced penalty of less than two percent if the failure to operate IEVS was inadvertent, isolated, or of a technical nature. A few commenters indicated that the proposed rule is consistent with the TANF statutory requirements.

Response: If a State fails to meet the IEVS requirements, it may claim reasonable cause and/or submit a corrective compliance plan under part 262. Under these provisions, a State might be able to demonstrate that we should forgive or reduce its penalty under the types of situations mentioned by the commenters.

Section 264.30—What Procedures Exist to Ensure Cooperation With Child Support Enforcement Requirements? (§ 274.30 of the NPRM)

One of TANF's purposes is to provide assistance to needy families so that children may be cared for in their own homes or the homes of relatives. Another is to end the dependence of needy parents on government benefits by promoting job preparation, work, marriage, and parental responsibility. A third is to prevent and reduce the incidence of out-of-wedlock pregnancies and to encourage the formation and maintenance of two-parent families. Child support enforcement provides an important means of achieving all of these goals.

The law has long recognized that paternity establishment is an important first step toward self-sufficiency in cases where a child is born out of wedlock. The earlier paternity is established, the sooner the child may have a relationship with the father and access to child support, the father's medical benefits, information on his medical history, and other benefits resulting from paternity establishment. Establishment of paternity may also help establish entitlement to other financial benefits, including Social Security benefits, pension benefits, veterans' benefits, and rights of inheritance. Accordingly, establishing paternity and obtaining child support from the noncustodial parent are critical components of achieving independence.

To ensure that a legal relationship protecting the interests of the children is established quickly and in accordance with State law, the TANF (IV–A) agency must refer all appropriate individuals in the family to the Child Support Enforcement (IV–D) agency for paternity establishment and/or services needed to establish, modify, and enforce a child support order. Referred individuals must cooperate in establishing paternity and in establishing, modifying or enforcing a support order for a child.

The IV–D agency determines whether the individual is cooperating with the State as required. If the IV–D agency determines that an individual has not cooperated, and the individual does not qualify for any good cause or other exception established by the State, the IV–D agency will notify the IV–A agency promptly. The IV–A agency must then take appropriate action.

In cases of noncooperation, the IV–A agency must either deduct from the assistance an amount no less than 25 percent of the amount of the assistance that otherwise would be provided or deny the family assistance under the TANF program.

We received a few comments on the provisions in this section and made some modest changes to the regulations, as discussed below.

Comment: Several commenters suggested that we clarify agency responsibilities for making the good cause determination. They stated that the proposed preamble and regulation did not make it clear that the statute provides States with a choice about whether the TANF (IV–A) or IV–D agency determines good cause. One State recommended that the final regulations allow for IV–D agencies to negotiate with IV–A TANF agencies to determine good cause for noncompliance.

Response: We agree that States have discretion in this area. As provided in section 454(29)(A) of the Act, the title IV–A, IV–D or XIX (Medicaid) agency may determine whether the individual has good cause for not cooperating in establishing paternity or fulfilling any other cooperation requirement. The selection of the responsible agency is at the option of the State IV–D agency. We have revised the regulatory language at § 264.30(b) to clarify this point. We have also revised the language in § 264.30(b) to explicitly recognize that victims of domestic violence could receive waivers of child support cooperation requirements if a State has adopted the Family Violence Option.

Comment: Many commenters expressed concern that the use of the term "appropriate individual," used to indicate who must cooperate, suggests that Federal law requires cooperation by nonparents. They suggested that we modify the provision to clarify that Federal law mandates cooperation only with respect to parents who apply for TANF assistance for their own children.

Response: We agree with the commenters that Federal law does not require cooperation by other individuals. However, the language in the proposed rule recognized that it might be appropriate to require cooperation by other caretakers who have access to information that could be used to establish paternity or obtain child support on behalf of the child. Since we believe States should have some discretion to require cooperation in these cases, we have chosen to leave the term "appropriate individuals" in the regulation. At the same time, we would point out that other individuals would not ordinarily have the same level of information about the absent parent as a parent would. Thus, we would expect States to develop procedures that recognize this difference and apply a different standard in determining cooperation by nonparents.

Comment: One commenter suggested that it was unnecessary to include the language "for whom paternity has not been established" in either the preamble or the regulation since even if paternity was previously established, the IV–D agency must carry out child support enforcement activities, such as enforcing and modifying child support orders for children whose paternity has already been established.

Response: We disagree. Section 409(a)(5) specifically mentions cooperation in establishing paternity. We would note that the language in § 264.30(a) covers the other situations mentioned by the commenter, especially where it says "* * * or for whom a child support order needs to be established, modified or enforced. * * *"

Comment: Several commenters recommended that we mandate a set of notice and procedural requirements for cooperation that States would need to include in their systems. One commenter suggested that we should not allow a State to impose sanctions unless there is verification that the agency has met its duty of notifying recipients. Others felt that: (1) The notices should inform TANF applicants and recipients about the cooperation requirement and the good cause and other exceptions; (2) there should be a mechanism by which an individual who has been referred to the IV–D agency for child support services can make a claim for an exemption from the cooperation requirement if it appears that one is needed; (3) there should be an interface between the IV–A and IV–D agencies when the State has set up a system in which the IV–A agency makes the "good cause" determinations and the IV–D agency makes cooperation decisions; and (4) an individual should be informed about a noncooperation decision and how to appeal such a decision.

Response: The statute does not give us the authority to require specific notice and procedural criteria from States. However, as the cooperation requirement is not new, States already have administrative processes in place that support fair and equitable treatment of individuals, including notices of certain requirements under this section. States are required to submit State plans that describe individual State program operations and requirements. Child Support is one of the plans required.

Section 264.31—What Happens if a State Does Not Comply With the IV–D Sanction Requirement? (§ 274.31 of the NPRM)

In accordance with section 409(a)(5), we will impose a penalty of up to five percent of the adjusted SFAG if the IV–A agency fails to enforce penalties requested by the IV–D agency against individuals who fail to cooperate without good cause. We will monitor State adherence to this requirement primarily through the single audit process.

Although States had been required to establish paternity and enforce other child support provisions for several years, and States already had systems and procedures in place for dealing with these requirements, the division of responsibility between the IV–A and IV–D agencies changed slightly under PRWORA.

We decided to increase the amount of the penalty gradually in order to give States the opportunity to make procedural adjustments before they are subject to the impact of the maximum penalty. We will impose a penalty of one percent for the first violation and two percent for the second. However, since this is not an entirely new requirement, we will apply the maximum penalty of five percent for the State's third, and any subsequent, violation of this provision.

We received two comments specifically addressing the provisions in this section. As a result, we made some minor changes to the regulations, as discussed below.

Comment: One commenter suggested that individuals who receive waivers from the child support cooperation requirements pursuant to the Family Violence Option (FVO) should also be exempt from sanction and should not be considered in determining the need for a penalty under this subsection.

Response: Although a separate section of the Act authorizes waivers under the FVO for victims of domestic violence, the purpose of these waivers and the regular good cause exceptions from child support cooperation are similar, i.e., to protect families that face special risks from inappropriate requirements and sanctions. We encourage States to establish an administratively efficient process to coordinate these two determinations. Coordinating them should help States minimize duplication of effort, avoid confusion and jurisdictional problems, and treat families in similar circumstances consistently. (See § 260.57 for additional discussion of FVO waivers and sanction policies.)

Comment: One commenter suggested we add a further criterion to specify that we will not penalize a State if the violations were de minimus.

Response: We believe that the reasonable cause criterion at § 262.5(a)(3) adequately covers such situations.

Section 264.40—What Happens if a State Does Not Repay a Federal Loan? (§ 274.40 of the NPRM)

Section 406 permits States to borrow funds to operate their TANF programs. In general, States must use these loan funds for the same purposes as other Federal TANF funds. However, the statute also specifically provides that States may use such loans for welfare anti-fraud activities and for the provision of assistance to Indian families that have moved from the service area of an Indian Tribe operating a Tribal TANF program.

States have three years to repay loans and must pay interest on any loans received. Our Office of Administration has issued an Action Transmittal, OFA–TANF–98–2, dated February 3, 1998, notifying States of the application process and the information needed for the application.

Section 409(a)(6) establishes a penalty for States that do not repay loans provided under section 406. If the State fails to repay its loan in accordance with its agreement with ACF, we will reduce the adjusted SFAG for the immediately succeeding fiscal year by the outstanding loan amount, plus any interest owed.

Sections 409(b)(2) and 409(c)(3) provide that States cannot avoid this penalty either through reasonable cause or corrective compliance.

We received no comments on the provisions in this section. Therefore, the final rule incorporates the proposed policy.

Section 264.50—What Happens if, in a Fiscal Year, a State Does Not Expend, With Its Own Funds, an Amount Equal to the Reduction to the Adjusted SFAG Resulting From a Penalty? (§ 274.50 of the NPRM)

Section 409(a)(12) requires States to expend, under the TANF program, an amount equal to the reduction made to its adjusted SFAG as a result of one or more of the TANF penalties. Thus, States must maintain a level of TANF spending that is equivalent to the funding provided through the SFAG, even if we reduced their Federal funding as a result of penalties. If a State fails to expend its own funds to pay for State TANF expenditures in an amount equal to the reduction made to its adjusted SFAG for a penalty under § 262.1, we will reduce the State's SFAG for the next fiscal year by an amount equal to not more than two percent of its adjusted SFAG, plus the amount that the State should have expended (reduced for any portion of the required amount actually expended by the State in the fiscal year).

As discussed in § 262.3, we will monitor closely a State's efforts to replace the reduced SFAG with its own expenditures. A State must not diminish its investment in its TANF program as a result of actions violative of the TANF requirements. Therefore, if a State fails to make any expenditures in the TANF program to compensate for penalty reductions, we will penalize the State in the maximum amount, i.e., two percent of the adjusted SFAG plus the amount it was required to expend. We will reduce the penalty based on the percentage of any expenditures that the State does make.

For example, a State was required to replace an SFAG reduction of $1,000,000, but its increase in expenditures equalled only $400,000. Since it failed to repay $600,000, its penalty would be equal to two percent of the adjusted SFAG times 60 percent (because $600,000 is 60 percent of $1,000,000), plus the $600,000 that it failed to expend as required.

States should note that if they do not expend State-only funds as required, the effect will be that the amounts to be deducted from the SFAG will compound yearly, as the penalty for failure to replace SFAG funds with State expenditures also applies to the penalty at § 262.1(a)(12). We believe that this is appropriate because full resources must be available to ensure that the goals of the TANF program are met.

Pursuant to section 409(a)(12), State expenditures that are used to replace reductions to the SFAG as the result of TANF penalties must be expenditures made under the State TANF program, not under "separate State programs." Further, as noted in § 263.6, regarding the limits on MOE expenditures, State expenditures made to replace reductions to the SFAG as a result of penalties do not count as basic MOE expenditures.

In addition, the statute provides that the reasonable cause and corrective compliance plan provisions do not apply to the penalty for failure to replace SFAG reductions.

We received a few comments on this section. These comments resulted in changes, as discussed below.

Comment: A commenter asked if a State's replacement of funds must occur in the quarter following the imposition

of the penalty or in the next fiscal year. The commenter preferred replacement during the next fiscal year because of differences in State appropriation cycles. Another commenter suggested that the proposed rule did not comport with the language of the statute.

Response: We agree with the comments. We have revised the regulatory language at § 264.50 to reflect the sequence of penalty actions as contained in the statute at section 409(a)(12). When we withhold Federal TANF funds during a fiscal year, the State must replace them with State funds during the subsequent fiscal year. If the State fails to replace the funds during the subsequent year, then we can withhold an additional penalty during the year that follows the subsequent year. The starting point for this sequence of actions is the fiscal year in which we impose a penalty by reducing the adjusted SFAG.

Comment: A commenter recommended that we allow reasonable cause and corrective compliance when a State fails to expend its own funds to replace a reduction in the adjusted SFAG caused by other penalties.

Response: The statute prohibits reasonable cause or corrective compliance when a State fails to replace the reduction to its SFAG due to the imposition of other penalties.

Comment: One commenter suggested that we should allow States to expend the replacement funds on State-only programs that serve the TANF population.

Response: Section 409(a)(12) explicitly refers to "the State programs funded under this part," which means the TANF program established under title IV–A of the Act. Separate State programs, funded exclusively with State funds, are not part of the State TANF program funded under title IV–A of the Act.

Subpart B—What Are the Requirements for the Contingency Fund?

In addition to the TANF funding they receive under section 403(a) of the Act, States may receive funding from the Contingency Fund under section 403(b). This fund was created in response to concerns related to the use of block grant funding for TANF and the end of entitlement and open-ended Federal funding of welfare assistance that existed under the AFDC program. The purpose of the Contingency Fund is to make additional Federal TANF funds available to States, at their request, for periods when unfavorable economic conditions threaten their ability to operate their TANF programs. The Fund was established to create a pool of Federal TANF funds that could be provided to needy States with economic problems.

We received several comments on the Contingency Fund sections of the NPRM. Most of the commenters asked us to make the preamble and regulations more consistent and less confusing, and to provide further clarification of the provisions. As a result, we have revised all of subpart B, restructured the sections, and amended our discussion of the provisions. Also, we have changed many of the section headings to make them clearer and to eliminate duplication. Whenever possible, we reference the sections that we used in the NPRM to make it easier for the reader. We hope that we have succeeded in making improvements and that the Contingency Fund provisions are now easier to understand. However, we have not made substantive changes to the underlying policies or procedures of this subpart because the proposed regulatory provisions closely followed the statute.

In addition to the changes we made in response to comments, we eliminated a discussion on "Meeting FY 1997 MOE Requirements" that was included at the end of the preamble to subpart B of part 274 of the NPRM. We believe that it is no longer necessary to include this specific discussion about the handling of the Contingency Fund in FY 1997.

This final rule also differs from the NPRM in that we added information about the overall adjustment of the Contingency Fund, and the additional remittances of contingency funds that will be due from States, that are required by the Adoption and Safe Families Act of 1997, which was enacted just as the NPRM was about to be published.

Section 264.70—What Makes a State Eligible To Receive a Provisional Payment of Contingency Funds? (New Section)

As noted in the definitions at § 260.30, the term "Contingency Fund" refers to the Federal TANF funds that a State may receive under section 403(b). It does not refer to any required State expenditures.

To receive a provisional payment of contingency funds, a State must qualify as a needy State for one or more months in a fiscal year. A needy State may request contingency funds in accord with the process delineated in program instruction TANF–ACF–PI–97–8, dated October 27, 1997. This program instruction provides guidance to States on the requirements for receiving contingency funds and instructions for applying for these funds.

A State is a "needy State" if it meets either the "unemployment trigger" or the "Food Stamp trigger" for an "eligible month."

To be eligible for contingency funds under the unemployment trigger, the State's average unemployment rate for the most recent three-month period must be at least 6.5 percent and at least equal to 110 percent of the State's unemployment rate for the corresponding three-month period in either of the two preceding calendar years.

To be eligible for contingency funds under the Food Stamp trigger, a State's monthly average of individuals participating in the Food Stamp program (as of the last day of each month) for the most recent three-month period must exceed its monthly average of individuals in the corresponding three-month period in the Food Stamp caseload for FY 1994 or FY 1995 by at least ten percent, assuming that the immigrant provisions under title IV and the Food Stamp provisions under title VIII of PRWORA had been in effect in those years.

The statute defines an eligible month as a month in a two-month period that begins with any month for which the State is determined to be a needy State. Once a State becomes a needy State for any given month (by meeting either the unemployment or Food Stamp triggers) and elects to receive contingency funds, it will receive a provisional payment for a two-month period. Based on the statutory definition of an eligible month, a determination that a State is a needy State for a month makes that State eligible to receive a provisional payment of contingency funds for two consecutive months, at the State's option.

Territories and Tribal TANF grantees are not eligible to participate in the Contingency Fund. Section 403(a)(7) provides that only the 50 States and the District of Columbia are eligible.

Section 264.71—What Determines the Amount of the Provisional Payment of Contingency Funds That Will Be Made to a State? (New Section)

The amount of contingency funds paid to a State is considered to be provisional because the actual amount that the State is eligible to receive is not determined when the payment is made, but, rather, after the fiscal year ends. As we discuss in § 264.73, a State that received contingency funds must complete an annual reconciliation to determine whether it must remit some or all of the contingency funds it received.

For each month of the fiscal year that it meets the eligibility criteria in § 264.70, a State may receive up to 1/12th of 20 percent of its annual SFAG allocation. The actual amount of funds that a State may realize from the Contingency Fund will vary, depending on the level of State expenditures, the number of months that it is eligible, and the total number of States receiving contingency funds. States eligible in one month may automatically receive a payment for the following month.

We will provide contingency funds to each State that requests them, in the order in which we receive the requests, until the available appropriated funds are exhausted.

Section 264.72—What Requirements Are Imposed on a State if It Receives Contingency Funds? (New Section)

In order to be eligible for contingency funds, a State must make expenditures in its TANF program, from State funds, at the required Contingency Fund MOE level. The required Contingency Fund MOE level is 100 percent of the State's historic State expenditures for FY 1994.

To keep any of the contingency funds it received, a State must exceed the Contingency Fund MOE level requirement. A State may keep only the amount of contingency funds that match, at the applicable Federal Medical Assistance Percentage (FMAP) rate, countable State expenditures, as defined in § 264.0, that are in excess of the required Contingency Fund MOE level, reduced by the proportionate remittance required by the Adoption and Safe Families Act of 1997. Because of the reconciliation formula, it is possible that a State may not be able to keep any of the contingency funds it received. Please refer to the discussion of § 264.73 on the annual reconciliation for more information.

You should note that the Contingency Fund MOE requirement is different from the basic MOE requirement. An obvious difference is that the basic MOE requirement is 80 percent (or 75 percent if a State meets its participation rates) of historic State expenditures, while the Contingency Fund MOE requirement is 100 percent of historic State expenditures. Another difference is that, in determining the Contingency Fund MOE level, expenditures for child care must be excluded. Finally, expenditures in separate State programs also must be excluded in determining countable expenditures.

This means that States cannot meet the Contingency Fund MOE requirement merely by increasing State expenditures by.20 (or 25) percent. The calculations for determining compliance with the basic MOE requirements and for determining eligibility for the Contingency Fund are different. For example, Contingency Fund MOE expenditures must be expenditures within TANF. Expenditures made under separate State programs do not count for this purpose. However, most MOE expenditures that a State makes within its TANF program for eligible families may count as both Contingency Fund MOE expenditures and as basic MOE expenditures.

As we discuss in § 264.73, each State that receives contingency funds is required to complete an annual reconciliation to determine what portion of the contingency funds it may retain and what portion it must remit.

The statute provides that a State need not remit contingency funds until one year after it has failed to meet either the Food Stamp trigger or the unemployment trigger for three consecutive months. Thus, a State may retain these funds for at least 14 months after it receives them. (However, the period of time between the annual reconciliation and the remittance date may be shorter.)

For example, if a State fails to meet either trigger for the months of July, August, and September, 1997, it has until September 30, 1998, to remit the funds. The State must include its annual reconciliation for contingency funds received in FY 1997 in its fourth quarter Financial Report for FY 1997, due November 14, 1997.

In general, contingency funds may be used for the same purposes as other Federal TANF funds. However, contingency funds are available only for qualifying expenditures made in the fiscal year in which the State receives the funds. States may not use funds received in a given fiscal year for expenditures made in either the subsequent fiscal year or a prior fiscal year. Unlike TANF funds under section 403(a), contingency funds are not available until expended.

Since contingency funds are Federal TANF funds, they are generally subject to the same requirements as other Federal TANF funds. For example, a State cannot use contingency funds to pay a family if the family has already received Federal assistance for 60 months, unless the family has received an exception under § 264.1. (See the discussion in § 263.21 on "Misuse of Federal TANF Funds" for additional information.)

However, unlike the TANF funds that they receive under section 403(a), States cannot transfer contingency funds (provided under section 403(b)) to the Child Care and Development Block Grant Program (also known as the Discretionary Fund of the Child Care and Development Fund) and/or the Social Services Block Grant Program under title XX of the Act. Section 404(d) of the Act permits the transfer of funds received pursuant to section 403(a) only.

Section 264.73—What Is an Annual Reconciliation? (New Section)

The purpose of the annual reconciliation is to determine the amount of contingency funds that a State is permitted to retain for a fiscal year. The annual reconciliation involves computing the amount by which the State's countable State expenditures exceeds the State's required Contingency Fund MOE level, as contingency funds match only these excess expenditures. If the countable expenditures exceed the required Contingency Fund MOE level, then the State may be entitled to all or a portion of the contingency funds paid to it. However, even if its countable expenditures exceed its required Contingency Fund MOE level, it is possible that the provisions of the Adoption and Safe Families Act of 1997, amending section 403(b)(6), will have a major impact on the amount of contingency funds that a State is permitted to retain. In fact, it may prevent a State from retaining any contingency funds.

Each State that received contingency funds is required to perform certain calculations to accomplish the annual reconciliation. First, it must determine whether it met its required Contingency Fund MOE level. If it did not, it must remit all of the contingency funds it received.

If it met its Contingency Fund MOE requirement, the State must also perform the following steps to determine how much of the contingency funds it is permitted to retain:

(1) Calculate the sum of the amount of the qualifying State expenditures plus the amount of contingency funds that the State expended, minus its required Contingency Fund MOE level.

(2) Multiply the amount arrived at in step (1) by the State's FMAP rate applicable for the fiscal year in which contingency funds were awarded.

(3) Multiply the amount arrived at in step (2) by 1/12 times the number of months during the fiscal year for which the State received contingency funds.

(4) Compare the amount arrived at in step (3) with the amount of contingency funds paid to the State during the fiscal year, and determine the lesser amount.

(5) From the amount arrived at in step (4), subtract the State's proportionate

remittance for the overall adjustment of the Contingency Fund, as required by the Adoption and Safe Families Act of 1997.

The Adoption and Safe Families Act of 1997 reduced the Contingency Fund appropriation over the four-year period from FY 1998 through FY 2001. All States receiving contingency funds in these years must remit additional funds in order to share in the adjustment proportionately. The remittance amounts of all States drawing from the Contingency Fund will be increased by proportional shares totaling $2 million in FY 1998, $9 million in FY 1999, $16 million in FY 2000, and $13 million in FY 2001. Thus, the fewer the number of States receiving contingency funds, the higher each proportionate share of the adjustment will be, and the more each State will have to remit. ACF will determine the amount of each State's proportionate remittance and will provide this information to the State for it to use in its annual reconciliation calculations.

A State should also note that if it was eligible for, and received, contingency funds for fewer than 12 months during the fiscal year, the effective Federal matching rate for contingency funds will be less than its FMAP rate for the fiscal year. The effective rate is lower because the statute creates a reconciliation step that reduces the total Federal matching by 1/12 times the number of eligible months in the year.

Below we provide an example for FY 1998 that requires the remittance of funds. Assume the following information:

A State received a provisional payment of $2.5 million in contingency funds for six months of eligibility in the fiscal year. Its qualifying State expenditures were $102.5 million, its expenditure of contingency funds was $2.5 million, and its child care expenditures were $2 million. The required expenditure of State funds to meet the 100-percent MOE level is $95 million ($100 million minus $5 million for historic child care expenditures). The State's FMAP is 50 percent. This is the only State that received contingency funds in fiscal year 1998.

Based on the information provided, we see that the State met its required Contingency Fund MOE level.

To continue with the annual reconciliation, we use the steps outlined above.

(1) $102.5 million, plus $2.5 million, minus $2 million, minus $95 million, equals $8 million. (The State's qualifying State expenditures, plus its expenditure of contingency funds, minus its child care expenditures, minus its required Contingency Fund MOE level.)

(2) $8 million, times 50 percent, equals $4 million. (The result of step (1) multiplied by the State's FMAP rate.)

(3) $4 million, times 1/12, times 6, equals $2 million. (The result of step (2) multiplied by 1/12 times the number of months the State received funding for the Contingency Fund.)

(4) The lesser amount of $2 million, compared to $2.5 million, is $2 million. (The lesser of the result of step (3) compared to the amount of contingency funds the State received.)

Were it not for the requirements of the Adoption and Safe Families Act of 1997, the State would have been eligible to retain $2 million in contingency funds and would have been required to remit $500,000. However, we are required to increase the amount the State must remit, which we accomplish in step (5).

(5) $2 million, minus $2 million, equals zero. (The overall adjustment required from all States that received contingency funds for FY 1998 is $2 million. Since only one State received contingency funds, its proportionate offset is 100 percent of $2 million. Thus, the State's remittance is increased by $2 million, and the State can retain no contingency funds. Under the assumptions we presented, the State is required to remit its entire $2.5 million provisional payment of contingency funds.)

The example above illustrates a case where the State had to remit the entire amount of the $2.5 million provisional payment of contingency funds it received even though it made expenditures above the required Contingency Fund MOE level. If additional States had drawn contingency funds for the fiscal year, this State's proportional remittance would have been smaller, and the State would have been able to retain some of the contingency funds it received.

We will not consider a State's use of contingency funds, which later must be returned under the reconciliation formula, to be an improper use of funds, and, if the State meets its Contingency Fund MOE requirement, we will not assess that penalty.

Section 264.74—How Will We Determine the Contingency Fund MOE Level for the Annual Reconciliation? (§ 274.71 of the NPRM)

For the Contingency Fund, historic State expenditures for FY 1994, the base MOE level, include the State's share of AFDC benefit payments, administration, FAMIS, EA, and JOBS expenditures. They do not include the State's share of AFDC/JOBS, Transitional and At-Risk child care expenditures. States must meet 100 percent of this MOE level.

We said we would use the same data sources and date, i.e., April 28, 1995, to determine each State's historic State exependitures as we used to determine the basic MOE requirement. However, we would exclude the State share of child care expenditures for FY 1994.

We will reduce the required MOE level for the Contingency Fund if a Tribe within the State receives a Tribal Family Assistance Grant under section 412. The last paragraph of section 409(a)(7)(B)(iii) provides for this reduction. For the basic MOE requirement, we will reduce the State's basic MOE level by the same percentage as we reduce a State's annual SFAG allocation for Tribal Family Assistance Grants in the State for a fiscal year. For example, if a State's SFAG amount is $1,000 and Tribes receive $100 of that amount, we would reduce the State's basic MOE requirement by ten percent. If the same State also receives contingency funds in that fiscal year, we would also reduce the Contingency Fund MOE level by ten percent.

Section 264.75—For the Annual Reconciliation, What Are Qualifying State Expenditures? (§ 274.72 of the NPRM)

Section 403(b)(6)(B)(ii)(I) provides that State expenditures counted toward the Contingency Fund MOE may only include expenditures made under the State program funded under this part. Thus, the State expenditures that the State makes to meet the required Contingency Fund MOE level include the expenditure of State funds within TANF only; they do not include expenditures made under separate State programs. In addition, under this section of the statute a State may not use expenditures for child care to meet the Contingency Fund MOE requirement or to qualify the State to retain any of the contingency funds it received. Thus, we have noted the exception for child care in item 3 below. (This exception appears in paragraph (b) of the regulatory text.)

In the NPRM, we referred to sections of part 273 to define qualifying State expenditures for the Contingency Fund. In these final regulations, we have eliminated references to the basic MOE sections; we believe they were confusing because there were a number of differences in the expenditures that are permitted to be included in calculating the basic MOE and the Contingency Fund MOE.

Nevertheless, we retain some of the proposed policies. More specifically, qualifying State expenditures, for

Contingency Fund MOE purposes, are expenditures, with respect to eligible families, of State funds made in the State TANF program for the following:

(1) Cash assistance, including assigned child support collected by the State, distributed to the family, and disregarded in determining eligibility for, and amount of the TANF assistance payment;

(2) Educational activities designed to increase self-sufficiency, job training, and work, excluding any expenditure for public education in the State except expenditures involving the provision of services or assistance to an eligible family that are not generally available to persons who are not members of an eligible family;

(3) Any other services allowable under section 404(a)(1) of the Act and consistent with the goals at § 260.20 of this chapter (except child care); and

(4) Administrative costs in connection with the provision of the benefits and services listed in paragraphs (a)(1) through (a)(3), but only to the extent consistent with the administrative cost cap for MOE expenditures at § 263.2(a)(5).

Further, in § 260.31(c)(1), we have added a reference to this subpart. This revised language clarifies that, like basic MOE, Contingency Fund MOE may be expended on benefits and services that do not meet the definition of assistance.

In item 4 above, regarding the limits on administrative costs, we have modified the preamble and regulatory language to avoid the creation of a third administrative cost cap. Under the statute and the rules, we already provide for a 15-percent cap on the portion of Federal grant funds and State basic MOE expenditures that go to administrative costs. If we said that Contingency Fund MOE expenditures were subject to a similar administrative cost cap, States and we would then have three administrative cost caps to track.

In general, we believe the basic MOE requirements should apply to Contingency Fund MOE expenditures. However, in our minds, this view did not justify the creation of a third administrative cost cap, especially because of the substantial overlap between the Contingency Fund MOE expenditures and basic MOE expenditures. Rather, under these rules, we require that State expenditures on administrative costs, for Contingency Fund MOE purposes, must be consistent with the basic MOE administrative cost cap. In other words, in making MOE expenditures for Contingency Fund purposes, States must take care not to spend excess amounts on administrative costs. Their expenditures on administrative costs must be at a level that enables their compliance with the existing 15-percent cap in the basic MOE provisions.

Section 264.76—What Action Will We Take if a State Fails To Remit Funds After Failing To Meet Its Required Contingency Fund MOE Level? (§ 274.75 of the NPRM)

PRWORA established a penalty at section 409(a)(10) that provides that, if a State does not meet the Contingency Fund MOE requirement and remit funds as required, we must reduce the State's SFAG payable for the next fiscal year by the amount of funds that the State has not remitted. The statute prohibits us from waiving or reducing this penalty based on reasonable cause or corrective compliance. However, the State may appeal our decision to reduce the State's SFAG pursuant to the regulations at § 262.7.

Section 264.77—How Will We Determine if a State Has Met Its Contingency Fund Expenditure Requirements? (§ 274.76 of the NPRM)

ACF has created a TANF Financial Report, the ACF–196. States will use the ACF–196 to report their use of Federal TANF funds, including contingency funds. We will use this report to verify the State's annual reconciliation after the end of the fiscal year. We will review it to ensure that expenditures reported are consistent with the statute and these rules. Please see the discussion of part 265 for additional information.

Subpart C—What Rules Pertain Specifically to the Spending Levels of the Territories?

In the preamble to the NPRM, we noted that section 103(b) of PRWORA amended section 1108. Section 1108 establishes a funding ceiling for Guam, the Virgin Islands, American Samoa and Puerto Rico. Prior to PRWORA, the following programs authorized in the Act were subject to this ceiling: AFDC and EA under title IV–A; Transitional and At-Risk Child Care programs under title IV–A; the adult assistance programs under titles I, X, XIV, and XVI; and the Foster Care, Adoption Assistance, and Independent Living programs under title IV–E. The ceiling excluded funding for the JOBS program, which also covered AFDC/JOBS child care.

Under the amendments in PRWORA, the funding ceiling at section 1108 applies to the TANF program under title IV–A, the adult programs, and title IV–E programs. Section 1108(b) provides a separate appropriation for a Matching Grant, which is also subject to a ceiling. The Matching Grant is not a new program; rather it is a new funding mechanism that Territories can use for expenditures under the TANF and title IV–E programs.

Prior to PRWORA we had not regulated the provisions of section 1108. However, in light of this new MOE requirement within section 1108, we thought that we needed to regulate to clarify the requirements and the consequences if a Territory failed to meet the new section 1108 requirements. We have authority to issue rules on this provision under section 1102, which permits us to regulate where necessary for the proper and efficient administration of the program, but not inconsistent with the Act. (The limit at section 417 does not apply to this section of the Act.) In addition, we prepared a program instruction for the Territories to provide additional guidance on receiving funds under section 1108.

In February 1997, we provided to the Territories: (1) Their FAG annual allocations; (2) their basic MOE levels under section 409(a)(7); (3) their Matching Grant MOE levels; (4) their section 1108(e) MOE levels (which were created by PRWORA and were subsequently eliminated by Pub. L. 105–33); and (5) a detailed explanation of the methodology and expenditures we used to determine each of these amounts.

Section 264.80—If a Territory Receives a Matching Grant, What Funds Must It Expend? (§ 274.80 of the NPRM)

Section 1108(b) provides that Matching Grant funds are available: (1) To cover 75 percent of a Territory's expenditures for the TANF program and the Foster Care, Adoption Assistance and Independent Living programs under title IV–E of the Act; and (2) for transfer to the Social Services Block Grant program under title XX of the Act or the Child Care and Development Grant (CCDBG) program (also known as the Discretionary Fund of the Child Care and Development Fund) pursuant to section 404(d) of the Act, as amended by PRWORA and Pub. L. 105–33. However, Matching Grant funds used for these purposes must exceed the sum of: (1) The amount of the FAG without regard to the penalties at section 409; and (2) the total amount expended by the Territories during FY 1995 pursuant to parts A and F of title IV (as so in effect), other than for child care.

Under the first requirement, the Territory must spend an amount up to its Family Assistance Grant annual allocation using Federal TANF or Federal title IV–E funds or funds of its own for TANF or title IV–E programs.

The second requirement establishes an MOE requirement at 100 percent of historic expenditures, based on the Territory's FY 1995 expenditures. This second requirement is separate from the basic MOE requirement and is applicable only if a Territory requests and receives a Matching Grant. Historic expenditures include 100 percent of State expenditures made for the AFDC program (including administrative costs and FAMIS), EA, and the JOBS program. Territorial expenditures made to meet this requirement include Territorial, not Federal, expenditures made under the TANF program or title IV–E programs.

Territorial expenditures can only be counted once to meet the FAG amount requirement, the MOE requirement, or the matching requirement. In other words, any given expenditure cannot be counted more than once to meet these three different expenditure requirements. We believe this policy is appropriate because our interpretation of the statute is that Congress intended that the provisions on spending up to the FAG amount, meeting the MOE requirement, and meeting the matching requirement be separate requirements.

Comment: One commenter pointed out that this section of the rule would more closely correspond to section 1108(b)(1)(B)(i) of the Act if we added the phrase "without regard to any penalties applied in accordance with section 409" to the regulation. Another commenter suggested that we needed to clarify what the historic expenditures were for the Territories.

Response: As suggested, we have added the phrase about disregarding penalties to the regulations. We also have added an explanation to the preamble that the historic expenditures for the Territories are the amounts spent above their Federal funding for the AFDC and EA programs up to, but not exceeding, the 25-percent Territorial match, plus the amount of matching funds spent for the JOBS program.

Section 264.81—What Expenditures Qualify for Territories To Meet the Matching Grant MOE Requirement? (§ 274.81 of the NPRM)

As stated in the NPRM, for the basic MOE, section 409(a)(7) includes specific provisions on what States and Territories may count as "qualified State expenditures" (i.e., expenditures that may count towards the basic MOE requirement).

However, the statute provides little guidance on what expenditures a Territory may count toward its Matching Grant MOE for IV–A expenditures. Because the Matching Grant is intended to be used for the TANF program, we decided to apply many of the basic MOE requirements in part 263, subpart A, to the Matching Grant MOE. These sections are: § 263.2 (What kinds of State expenditures count toward meeting a State's annual spending requirement?); § 263.3 (When do child care expenditures count?); § 263.4 (When do educational expenditures count?); and § 263.6 (What kinds of expenditures do not count?). Section 263.5 (When do expenditures in separate State programs count?) does not apply because section 1108(b)(1)(B)(ii) requires that the matching Grant MOE expenditures must be expenditures under the TANF program. Thus, expenditures to meet the Matching Grant MOE requirement may not be expenditures made under separate State programs. (Because Territories do not receive Matching Child Care funds, the limit on child care expenditures in § 263.3 does not apply.)

Also, Territorial expenditures made in accordance with Federal IV–E program requirements may count toward this MOE requirement. These include the State share of IV–E expenditures and expenditures funded with the State's own funds that meet Federal title IV–E program requirements.

The Territories may count expenditures made pursuant to the regulations at 45 CFR parts 1355 and 1356 for the Foster Care and Adoption Assistance programs and section 477 of the Act for the Independent Living program.

Territories may also count toward their Matching Grant MOE requirement expenditures made under the TANF program that meet the basic MOE requirement.

We received no comments on this section and made no changes to the regulation.

Section 264.82—What Expenditures Qualify for Meeting the Matching Grant FAG Amount Requirement? (§ 274.82 of the NPRM)

The statute intends that expenditures made to meet this requirement must be TANF or title IV–E expenditures. For TANF expenditures, the Territories may count allowable expenditures of Federal TANF funds to meet this requirement. They may count amounts that they have transferred from TANF to title XX and the Discretionary Fund in accordance with section 404(d). (See § 263.11, which describes the proper uses of Federal TANF funds.) Also, a Territory may count its own expenditures under the TANF program, for this purpose. Because IV–A expenditures made with the Territories' own funds must be for the TANF program, it is reasonable that we apply the MOE requirements applicable for the Matching Grant to this FAG amount requirement.

For IV–E expenditures, as with the Matching Grant MOE, expenditures made in accordance with Federal IV–E program requirements may count toward this MOE requirement. These include the Federal share and the Territories' share of IV–E expenditures and expenditures funded with the Territories' own funds that meet Federal IV–E program requirements.

We received no comments on this section and made no changes to the regulation.

Section 264.83—How Will We Know if a Territory Failed To Meet the Matching Grant Funding Requirements at § 264.80? (§ 274.83 of the NPRM)

We are developing a separate Territorial Financial Report for the Territories. We will require this report to be filed quarterly and to cover all programs subject to the section 1108 caps. This report will cover basic MOE and Matching Grant MOE requirements. For the Matching Grant, Territories must report expenditures claimed under title IV–E and IV–A and the total expenditures (including Federal) they make to meet the requirement that they spend up to their Family Assistance Grant annual allocations.

We would not require Territories to file the TANF Financial Report; however, they must report comparable information on the Territorial Financial Report. Furthermore, if one of the Territories fails to file the Territorial Financial Report or to include certain information in that report, we would treat it like a State that fails to file its TANF Financial Report and make it subject to the penalty for failure to report at § 262.1(a)(3).

We received no comments on this section and made no changes to the regulation.

Section 264.84—What Will We Do if a Territory Fails To Meet the Matching Grant Funding Requirements at § 264.80? (§ 274.84 of the NPRM)

The statute does not address the consequences for a Territory if it fails to meet the Matching Grant MOE and the FAG amount requirements. The proposed and final rules provide that we would disallow the entire amount of a fiscal year's Matching Grant if the Territory fails to meet either requirement. This is because the statute provides that the Matching Grant funds are only allowable if a Territory meets both requirements. Thus, if a Territory does not meet either one or both of the requirements, it must return the funds

to us. We will get the funds back by taking a disallowance action.

A disallowance represents a debt to the Federal government. Therefore, we will apply our existing regulations at 45 CFR part 30. Once we issue a disallowance notice, we can require a Territory to pay interest on the unpaid amount.

We received no comments on this section and made no changes to the regulation.

Section 264.85—What Rights of Appeal Are Available to the Territories? (§ 274.85 of the NPRM)

The Territory may appeal a disallowance decision in accordance with 45 CFR part 16. As these are not penalties, the reasonable cause and corrective compliance provisions of section 409 do not apply. Section 410, covering the appeals process in TANF, also does not apply.

We received no comments on this section and made no changes to the regulation.

X. Part 265—Data Collection and Reporting Requirements (Part 275 of the NPRM)

A. Background

The TANF block grant legislation reflects a new emphasis on program information, measurement, and performance. This final rule specifies the data collection and reporting requirements that serve as the major mechanism to measure State accomplishment and performance.

We received many comments in response to the NPRM concerning the nature and scope of the data collection and reporting requirements.

In the preamble to the NPRM, we addressed two major purposes of data collection: to determine the success of the TANF program in meeting the purposes of the Act and to assure accountability under the Act. We also emphasized that it was critical to collect data that were comparable across States and over time and that would enable us to calculate participation rates.

We based the proposed reporting requirements primarily on section 411 of the Act (Data Collection and Reporting). We proposed quarterly reporting of both disaggregated and aggregated data on TANF recipients and some others in the household. We proposed similar reports of data on closed cases and on participants in separate State programs. We also proposed a quarterly financial report (with an annual addendum) and an annual program and performance report. Also included in this section of the NPRM were proposed provisions on reporting penalties, due dates, sampling, and electronic filing.

To enable the public to comment with full understanding of the reporting requirements, the NPRM included eleven appendices that contained the specific data elements, instructions for filing the information, sampling specifications, and the statutory reference for each data element. In the preamble, we also called readers' attention to the proposed data elements that were not specified in the statute, including break-outs of statutory requirements.

B. Overall Summary of Comments

While most commenters agreed on the need for data collection and reporting, States (including Governors, State legislators, State executive branch agencies, and national agencies representing State interests) expressed strong views that the proposed TANF data collection requirements were excessive. Other commenters did not generally share this view.

There was broader agreement among all commenters, however, that the proposed reporting requirements on separate State programs were excessive.

Several national, legal, and local advocacy organizations; private individuals; and Federal agencies strongly supported the data collection proposals as appropriate for tracking the effects of welfare reform and made recommendations for additional elements that they believed should be added. Likewise, other national organizations, States, and local public and private entities offered alternative recommendations. These recommendations included additional MOE expenditure data; expanded and more specific case closure data; information on applications approved, denied, and voluntarily withdrawn; and data to track longer term outcomes of recipients.

Many commenters provided detailed analysis and review of the NPRM, including the regulatory text, the preamble language, and the specific content of the Appendices.

The overwhelming majority of States objected to the increase in the number of data elements (in comparison to the number of elements in the Emergency TANF Data Report); claimed that we had underestimated the administrative burden and cost of collecting and reporting these data; and asserted that we lacked statutory authority for these expanded reporting requirements. They particularly objected to reporting on participants in separate State programs, the information on closed cases, and the annual program and performance report. (As discussed later, we believe that the objections to the case closure data were due largely to a misunderstanding of our expectations. In the final rule, we clarify that we are only requiring data for the month of closure, not longer tracking of former recipients.)

Almost all comments on the reporting requirements for the separate State programs found them to be excessively burdensome, contrary to the intent of the legislation, and inappropriate for some types of MOE programs. Commenters believed that such reporting requirements would limit the involvement of community-based organizations in the delivery of program services and have a chilling effect on State flexibility and the development of future innovative programs.

States were also concerned about sample sizes, sampling requirements, and the standards for "complete and accurate" reports that we proposed to apply in relation to the reporting penalty. A very few States reported an inability to report many of the specific data elements proposed in the NPRM based on long-standing problems in developing their information systems (although all States are reporting the data required in the Emergency TANF Data Report). Also, some States reported continuing problems in submitting standardized reports due to the autonomy of local jurisdictions.

C. Summary of Departmental Response

We continue to be committed to gathering information that is critically important in measuring the success of the TANF program and meeting the statutory requirements for program accountability.

We have seriously considered all comments and concerns of commenters in making changes to this rule. We appreciate the partnership approach many commenters demonstrated in developing their comments and the careful analysis evident in the extensive and detailed comments we received. These comments led to numerous refinements in the requirements that should help reduce burden, while maintaining the integrity and value of critical data.

In preparing this final rule, we have worked to ensure that our rules support the creativity and commitment that States and communities have shown in supporting families and moving them to work. As a result, we have accepted many of the recommendations to eliminate or reduce the burden of reporting, and we have made several substantive changes in this part. We

have also modified or expanded a very limited number of data elements.

We address the specific changes in detail in the section-by-section discussion below. Briefly, however, we have:

(1) Provided a phase-in period for the implementation of the data collection and other requirements; in the interim, the Emergency TANF Data Report (ETDR) will remain in effect (§ 260.40);

(2) Reduced the total number of data elements in the TANF Data Report from 178 to 124 and in the SSP–MOE Data Report from 160 to 108.

(3) Retained the definition of "family" for reporting on the TANF and the separate State programs, but made reporting of some data elements optional for certain members of the family (§§ 265.2 and 265.3(e));

(4) In section one of the TANF Data Report, reduced the number of and modified some data elements (disaggregated data on TANF recipients, Appendix A) (§ 265.3(b));

(5) In section two of the TANF Data Report, reduced the number of data elements; to address a misreading of the NPRM, clarified that we do not expect States to track closed cases, but only to report data on the last month of assistance; and modified the data element on reasons for case closure to include additional break-out items (disaggregated data on closed cases, Appendix B) (§ 265.3(b));

(6) In section three of the TANF Data Report, reduced the number of data elements (aggregate data, Appendix C) (§ 265.3(b));

(7) Changed the name of the TANF–MOE Data Report to the SSP–MOE Data Report to reflect the specific focus of the data collection in this report and reduced the number of data elements to be reported (Appendices E through G). Also, as the result of the revised definition of assistance, reduced the types of separate State programs covered by the SSP–MOE Data Report (265.3(d));

(8) In the TANF Financial Report, significantly revised the ACF–196 (the financial reporting form) by adding several categories of expenditures to reflect our new definition of assistance and modified the instructions to clarify reporting on expenditure data.

(9) Dropped the provision that required disaggregated and aggregated reporting on separate State programs as a condition for penalty reduction (§ 265.3(d));

(10) Clarified that States have considerable flexibility in designing their sampling plans (§ 265.5);

(11) Consolidated the annual reporting requirements on program definitions and State MOE program(s), as proposed in the Addendum to the fourth quarter TANF Financial Report, in a new Annual Report and added a number of new reporting requirements on State activities under the Family Violence Option, State diversion programs, and other program characteristics (§ 265.9);

(12) Eliminated, as separate reports, the annual program and performance report, intended to gather additional information for the Secretary's report to Congress and the fourth quarter Addendum to the TANF Financial Report; and

(13) Clarified our policies on issues such as reporting on noncustodial parents and penalty relief for less than perfect ("complete and accurate") reporting (§§ 265.3(f), 265.7, and 265.8).

D. Section-by-Section Summary of and Response to Comments

Cross-Cutting Issues

Before we discuss the comments associated with specific sections of the regulatory text or the Appendices, we want to respond to three cross-cutting issues.

(a) Phase-in/Transition Period

Comment: More than 36 States and other commenters recommended a phase-in period to meet the reporting requirements. Commenters cited the administrative burden and the time needed to carry out the complex processes involved, e.g., making changes to State information systems, training staff, and synthesizing and reporting data with acceptable levels of confidence. States also saw this task made more difficult in the context of the need to make their systems Year 2000 (Y2K) compliant.

Response: We agree with the need for a phase-in period and have made the effective date of these and other requirements October 1, 1999. We believe this date gives States an adequate time period for implementation, in view of the reduced reporting burden and reduced number of data elements in the final rule, our positive experience with States in resolving initial data layout and transmission problems, and the fact that the States have 90 days after the end of the quarter to submit the data without risk of a penalty.

Regarding the Y2K compliance issues, we have taken a number of actions to raise awareness of the problem and respond to questions from human service providers. For example, we have established an Internet e-mail address and phone line and a Y2K web page. We have also distributed information packages to more than 7,000 human service providers and representative organizations, and we have added a reasonable cause criterion related to Y2K compliance. This new criterion provides penalty relief to a State if it can clearly demonstrate that addressing Y2K issues prevented it from meeting the reporting requirements for the first two quarters and it reports the first two quarters of data by June 30, 2000.

In addition, we encourage States to consider the use of sampling as a viable option while resolving such issues. There are advantages and disadvantages to sampling, as detailed in our response to comments later in this discussion.

In the interim, the Emergency TANF Data Report (ETDR) will remain in effect. The last ETDR will be due November 14, 1999. States will begin reporting data under this final rule beginning with the first quarter of FY 2000. The first TANF Data and Financial Reports under these new requirements are due February 14, 2000. See further discussion regarding the effective date of these rules in the preamble section relating to § 260.40.

(b) Extent of Reporting Requirements

As we developed the reporting requirements for the NPRM, we were conscious of the importance of data for program management purposes as well as for meeting statutory requirements. At the same time, we also were conscious of our direct authority to regulate on data collection and of those sections of the Act that provided the legal basis for the NPRM.

Section 417 provides that the Federal government may not "regulate the conduct of the States under this part, or enforce any provision of this part, except to the extent expressly provided in this part." We believed at that time, and still believe, that this language provides authority to regulate what States must report in light of section 411(a)(7) of the Act. This section provides that,

> the Secretary shall prescribe such regulations as may be necessary to define the data elements with respect to which reports are required by this subsection * * *

We believed at that time, and continue to believe, that section 411(a)(7) clearly gives the Department authority to create and define data elements to administer the law.

We were conscious of other responsibilities as well. Not only must we collect the information specified in section 411 of the Act, but the information must be comparable and reliable in order to make decisions implementing other provisions of the

law, e.g., calculating the work participation rates, implementing penalties, ranking States, and reporting to Congress. We cannot perform these functions without adequate information. Unless the reported data meet certain standards, we cannot adequately meet our responsibilities under the law. Since States are the primary repository and only realistic source of this information, we must rely on them to supply the information we need.

Comment: Despite the inclusion in the NPRM of the Statutory Reference Tables, which provided the specific statutory citation or basis for each data element, and our explicit preamble discussion of, and rationale for, the few data elements not in the statute, there were a number of comments alleging that we lacked statutory authority to impose data collection requirements, even for the TANF recipient population. As evidence of their position, commenters pointed to the number of data elements in the ETDR (68) compared to the number of elements in Appendices A-C of the NPRM (178). They variously asserted that:

(1) We had statutory authority to collect only the 16 to 18 data elements in section 411(a)(1)(A);

(2) We had authority to collect only the data elements in the ETDR;

(3) We had no authority to add, define, or further specify or break-out the data elements in section 411(a)(1)(A); and

(4) It was not within our authority to collect data based on sections 409 (penalties), 413 (annual rankings of States), or 411(b) (reports to Congress).

Many commenters urged us to limit our data collection to the elements in the ETDR.

Some commenters did not identify the specific data elements of concern or the basis for their objection. Also, some did not distinguish between those data to which the reporting penalty applied and other data.

Some commenters rejected collection of any data that would be used for research and evaluation purposes and argued that the increased reporting requirements were due to the collection of information the Department thought it would be "interesting to know." As an alternative, a few commenters recommended that we develop all reporting requirements using a collaborative approach that would identify outcome measures and performance indicators from which the data elements would then be derived.

Regarding the proposed annual program and performance report, many commenters stated that we had merely shifted to States the responsibility for preparing reports to Congress. They suggested that we obtain data needed for these reports by means of a national sample or other mechanism.

A number of commenters presented objections to the proposed data collection based on specific administrative and/or programmatic concerns. The data collection that raised the most concerns was the proposed reporting of data on closed cases and on participants in separate State MOE programs. Commenters said that the proposals on MOE reporting illustrated the distrust that States found throughout the NPRM and viewed it as an attempt to control State programs.

Response: We generally disagree with the comments indicating we lack authority to impose the proposed data collection requirements. The statute authorizes the Secretary to define the data elements and to specify the data elements needed to determine work participation rates. It also specifies that these definitions and data elements be established under regulations. Therefore, we were not able to include them in the ETDR. The additional data elements that go beyond the ETDR reflect our explicit rulemaking authority under section 411(a)(7) of the Act and the authority implicit in sections 409, 411(b), and 413 of the Act. We continue to believe that States are the primary source of the data needed for the report to Congress.

The ETDR collects only that information that was clearly specified in the statute. By necessity, it contains a streamlines list of data elements that we can use in the interim period until final regulations are in effect. It is not sufficient as a long-term data collection instrument. For example, it does not provide clear uniform definitions of data elements and does not include some critical elements, e.g., the social security number.

In developing the final rule, we have re-doubled our efforts to reduce unnecessary reporting burdens on the States and have carefully reviewed the justification for, and value of, each data element that we had proposed. Based on that review, and in response to the comments we received, we have eliminated or streamlined many data elements in the Appendices published with this final rule. See the chart below and a further description of the changes we have made in the section-by-section discussion of § 265.3. We believe this reduced set of data represents a reasonable balance between the requirements for data, our statutory authority, and the burden placed on States in providing this information.

TOTAL NUMBER OF DATA ELEMENTS—DATA REPORTS

Type of report	ETDR	NPRM	Final rule
TANF Data Report: Disaggregated data on TANF recipients	55	106	76
TANF Data Report: Disaggregated data on closed cases	6	53	30
TANF Data Report: Aggregated data	7	19	18
Subtotal	68	178	124
SSP–MOE Data Report: Disaggregated data on recipients	.....	96	69
SSP–MOE Data Report: Disaggregated data on closed cases	.....	49	27
SSP–MOE Data Report: Aggregated data	.....	15	12
Subtotal	.....	160	108
Total	68	338	232

Note: States must report on these data elements for all persons receiving assistance. Some data elements are optional for other persons in the family.

(c) Publishing the Appendices As a Part of the Rule

Comment: We received two types of comments on this issue. A few commenters urged us to publish the specific data elements as a part of the final rule and to codify them as a part of the Code of Federal Regulations (CFR). This approach, they believed, would help ensure that States would not only have early access to the requirements but, once they were codified, the requirements would be less subject to change, given the time it takes to revise Federal rules.

Other commenters urged us to publish the data elements in the **Federal Register** at the same time we published the final rule for the purpose of advance notice to the States of the specific data requirements, but they did not recommend that they be a part of the final rule in the CFR.

Response: We agree with the importance of giving States early access to the specific data elements and have published seven appendices, including all data elements and instructions, in today's **Federal Register** along with the final rule.

It was never our intention, however, that these data collection requirements become a part of the rule itself or be codified in the CFR. We believe data collection needs may change over time, in part because the program is a dynamic one and because Congress may modify the reporting requirements. Therefore, we would want to be able to respond to those changes as quickly as possible. Since changes in reporting requirements require Paperwork Reduction Act (PRA) approval, the public is guaranteed an opportunity to comment on any future changes to the TANF Data and Financial Reports as a part of the PRA review process.

Section-by-Section Discussion

Section 265.1—What Does This Part Cover? (§ 275.1 of the NPRM)

This section of the NPRM provided a summary of the contents of this part. We received no substantive comments on this section apart from the general objection to the scope and content of the data collection requirements as a whole.

However, we have made two changes in this section. First, we have deleted paragraph (b)(4) of this section to reflect the elimination of the annual program and performance report. Second, to prevent a misunderstanding that a major purpose of these data collection requirements is research, we have deleted the word "research" in paragraph (a) from the term "section 413 (research and rankings)." We had included it in the NPRM to fully describe the content of section 413 of the Act. However, we believe it is misleading to reference "research" in this context because our research agenda relies, for the most part, on other sources of information.

Section 265.2—What Definitions Apply to This Part? (§ 275.2 of the NPRM)

This section of the NPRM proposed a definition of "TANF family" for reporting purposes only and made the definition applicable to both TANF and MOE programs. Our rationale for proposing a definition for reporting purposes was the critical importance of developing comparable data across States, given the fact that, under the TANF statute, a State may develop and use its own definition of "eligible family" for program purposes.

In the NPRM, we proposed that information be collected and reported on all persons receiving TANF assistance plus, for any minor child receiving assistance, information on any parent(s) or caretaker relative(s) and minor siblings in the household. We also proposed that information be reported on any person whose income and resources would be counted in determining eligibility for, or the amount of, assistance.

In the preamble to the NPRM, we explained the importance of information on these persons in understanding the effects of TANF on families, the variability among State caseloads, the circumstances that exist in no-parent families, and the paths by which families avoid dependence.

Comments: Two national advocacy organizations supported this proposal. One commented that "HHS has appropriately defined "family" for purposes of data collection requirements to ensure that differences in States' definitions of the assistance unit do not make cross-state comparisons difficult." Although commenting on the overall TANF reporting requirements, another national organization found them reasonable and within our authority; it urged that they not be "watered down."

On the other hand, many commenters objected to this definition. Commenters expressed particular objection to our proposal to collect information on persons outside the assistance unit or persons not affected by work participation or time-limit requirements. Some commenters asserted that the definition exceeded our statutory authority; others found it intrusive and in conflict with a State's prerogative to define the TANF family. Some States questioned their own legal authority to collect data on nonrecipients and were concerned about possible ethical considerations. Others objected on the grounds of administrative burden, i.e., that such data were not now being collected on these persons, and it would be both costly and burdensome to set up "a duplicate reporting system" or require a "massive modification" to their present reporting system. One State commented that it appeared this proposal was for evaluation purposes only and claimed that States should not be required to use scarce resources for this purpose.

Some commenters made specific recommendations that conflicted with those of other commenters, as follows:

(1) Allow States to report data based on each State's definition of TANF family;

(2) Limit reporting to persons for whom assistance is provided;

(3) Limit reporting to persons receiving assistance, parents, caretaker relatives and minor siblings, but do not collect data on persons whose income or resources are considered in determining eligibility;

(4) Collect information on persons receiving assistance and persons whose income or resources are counted in determining eligibility, but do not collect information on parents, caretaker relatives, or minor siblings; or

(5) Collect only very limited information on persons not receiving assistance, e.g., information on their relation to the TANF recipient, but no personal data.

Response: We considered these comments carefully in attempting to see how to reduce the reporting burden on States while ensuring that we obtain the necessary and comparable data to meet the requirements of the Act. We have taken the following actions in response to commenter objections:

First, we retain the definition of "family" as proposed in the NPRM. For editorial purposes, we have dropped the word "TANF" from the proposed term "TANF family" in this definition as the term "family" is applicable to both the TANF and the separate State programs. However, we are continuing to use the terms "TANF family" and "State MOE family" in the respective Data Reports, for clarity.

We responded earlier in this section of the preamble to comments that we exceeded our statutory authority in proposing these data collection requirements, including the definition of "family" used for reporting purposes. We do not agree that, in creating this definition, we have interfered with a State's prerogative to define "family" for program purposes. As we explained in

the preamble to the NPRM, the statute uses various terms to define persons receiving benefits and services under the TANF program, e.g., eligible families, families receiving assistance, and recipients. Unlike the AFDC program, there are no persons who must be served under TANF. Therefore, each State will establish its own definition of "eligible family." These definitions will not be comparable across States, however, and comparable data are necessary to carry out the accountability provisions and other objectives of the Act, e.g., calculating work participation rates.

Second, within the definition of family, we retain all the categories of persons for which we proposed to collect information in the NPRM. However, in response to the various recommendations for elimination or reduction in data collection for these categories of individuals, we have reduced the overall number of data elements and made the reporting of some data elements for certain categories of persons optional. (The State must report all data elements on all persons receiving assistance.) In addition, with the change in the definition of assistance, the burden associated with this reporting may be reduced because it will not generally apply to programs that have traditionally fallen outside the welfare reporting system.

Again, as we explained in the preamble to the NPRM, we believe that information on these additional categories of persons is critical to understanding the effects of TANF on families. For example, we need information on the parents and caretaker relatives (i.e., any adult relatives living in the household and caring for minor children, but not themselves receiving assistance) to understand the circumstances that exist in child-only cases. We need information on minor siblings to understand the impact of "family cap" provisions. We also need information on other persons whose income or resources are considered in order to understand the paths by which families avoid dependency. We believe that we have addressed commenters' recommendations for reduced reporting by making many of the data elements optional for these categories of families.

We have added paragraph (e) to § 265.3 to reflect this decision on reporting for other individuals. The Instructions to each Data Report indicate which data elements are optional for which category of person(s).

Comment: In the NPRM, we had proposed that information on the noncustodial parent (NCP) be reported as a part of a family receiving TANF assistance since, under the statute, States may serve NCPs only on that basis. We received a number of comments objecting to, or requesting clarification of, these reporting requirements.

Some States agreed that data should be collected on NCPs; others argued that we lacked statutory authority for this proposal. Some commenters objected to considering NCPs as a part of an assistance unit on the grounds that it complicates both data collection and the State's definition of "eligible family."

They asked for clarification of whether reporting information on the NCP meant that the NCP was a member of the TANF-eligible family and if the reporting requirements meant that the family then became a two-parent family. They also asked for clarification of how reporting on NCPs would affect the family for the purpose of meeting work participation or time-limit requirements.

Some States recommended that information on the NCP be reported separately (not as a part of a TANF family); others recommended that we require only an annual aggregated report, e.g., a report containing the number of NCPs who received assistance and the amount of funds expended annually on their assistance.

Response: We believe some clarification of this proposal is needed.

First, regarding the matter of our legal authority, our interpretation of the statute is that TANF "assistance" may be provided only to "eligible families." Therefore, States may provide assistance to NCPs only when they are a member of an eligible family. In other words, in order to receive assistance or MOE funded services, the NCP must be associated with an eligible family. We also have the authority to define "family" for reporting purposes pursuant to section 411(a)(7) of the Act.

Second, we have added a definition of a NCP in § 260.30. This definition clarifies that the NCP is a parent of a minor child receiving assistance who lives in the State and who does not live in the same household as the child. We adopted this definition based on section 411(a)(4) of the Act, which requires reporting on NCPs "living in the State" and to distinguish the NCP from a parent who is living in the household.

If an NCP is related to children in more than one TANF family, the State may decide for which "eligible family" the NCP data will be reported. A State should not report information on the NCP in relation to more than one family.

Third, we have provided further clarification regarding NCPs by adding a new paragraph (f) in § 265.3 to specify the three circumstances when a State must report information on a NCP:

- If the NCP is receiving assistance as defined in § 260.31;
- If the NCP is participating in work activities as defined in section 407(d) of the Act; or
- If the NCP has been designated by the State as a member of a family receiving TANF assistance.

See § 265.3 for further discussion of this provision.

Finally, we discuss the questions regarding how the NCP is counted for work participation rate and time-limit requirements in §§ 261.24 (work participation) and 264.1 (time limits).

Section 265.3—What Reports Must the State File on a Quarterly Basis? (§ 275.3 of the NPRM)

In the NPRM, we proposed the specific data collection and reporting requirements for the TANF program and, under certain circumstances, the TANF–MOE (separate State MOE) programs. We proposed a quarterly TANF Data Report, a quarterly TANF–MOE Data Report, and a quarterly TANF Financial Report, or, as applicable, a Territorial Financial Report. We also proposed an annual addendum to the fourth quarter TANF Financial Report that would collect information on the TANF program, such as the State's definition of work activities, and descriptive information on the State's MOE program(s) (by cross-reference to § 273.7).

The NPRM included 11 data-related Appendices. Six of the Appendices contained all of the proposed disaggregated and aggregated data elements and the instructions for filing these data. The proposed reporting requirements applied to families receiving State-funded assistance and families no longer receiving such assistance in both TANF and separate State programs. The other Appendices contained the TANF Financial Report and instructions, sampling specifications, and three statutory reference tables.

As noted in the earlier discussion of comments on the extent of the reporting requirements, we received a mixed reaction to the proposed data collection requirements. A number of commenters supported our general approach and recommended the addition of new data elements, including, for example, requiring States to match participant data with Unemployment Insurance (UI) data in order to obtain better information on persons no longer receiving assistance. Many States and commenters representing State interests,

however, objected to a large number of the proposed requirements.

Commenters frequently provided extensive and detailed comments, including charts and tables as attachments to their letters commenting, in a parallel manner, on each of the data elements in the Appendices. We found these comments, particularly those raising programmatic or administrative concerns, very helpful.

Summary of Changes Made in This Section of the Final Rule

We have made several substantive changes in this section of rule and in the data elements in the appropriate Appendices. In making our decisions, we followed the general principles noted earlier, i.e., to collect the information required by statute; to carry out our responsibilities under the statute to assure accountability and measure success; and to obtain data that are comparable across States and over time.

First, we carefully considered each data element in each data collection instrument. Where possible, we have eliminated, reduced the number of, or simplified the data elements or the break-outs within the data elements. In a few instances, we have modified the data collection instrument to expand a data element. (See the revised TANF Data Report and the SSP–MOE Data Report in Appendices A through C and E through G.) We discuss some of the specific changes and deletions below.

Second, we eliminated the requirement for an Addendum to the fourth quarter TANF Financial Report, but moved the content of the proposed Addendum, in paragraph (c)(2) and (c)(3), to § 265.9—the annual reporting requirements.

Third, we accepted commenters' recommendations to revise our approach to and reduce the burden of the TANF–MOE (now the SSP–MOE) Data Report. We have:

- Reduced the types of separate State programs covered by that report (This was an indirect effect of the changes to the definition of assistance, at § 260.31);
- Retained the requirement for reporting both disaggregated and aggregate data on recipients of assistance under separate State programs under certain circumstances, but have reduced the number of data elements that must be reported;
- Deleted the provision that would have denied a State consideration for a reduction in the penalty for failing to meet the work participation requirements unless data on separate State programs was submitted; and
- Reduced the SSP–MOE data a State must file if it wishes to receive a high performance bonus (by eliminating the requirement to submit section two of the SSP–MOE Data Report, on closed cases). See § 265.3(d)(1).

Fourth, based on the general principles above, we have determined that a State has the option to NOT report some data elements for some individuals in the family. We specify these optional data elements in the instructions to the TANF Data Report and the SSP–MOE Data Report. We have added a new paragraph (e) to § 265.3 to reflect this provision.

Fifth, we added new paragraph (f) to specify the three circumstances when a State must report on a NCP. The three circumstances are:

- When the NCP receives assistance as defined in § 260.31;
- When the NCP participates in work activities, as defined in section 407(d) of the Act, that are funded with Federal TANF funds or State MOE funds; this would include work activities that fall under the definition of "assistance" and those that do not; or
- When the State has designated the NCP as a member of a family receiving assistance.

This latter circumstance addresses those States that wish to consider the NCP a member of a family receiving assistance in order to assist the NCP by providing services or other activities that do not meet the definition of assistance in § 260.31 or the definition of work activities in § 261.30. We have included a requirement for reporting on these NCPs in order to obtain data for policy, oversight, and other purposes.

Where a State counts the NCP in calculating the work participation rate, it should reflect its treatment of the family in its coding of three data elements: "Type of Family for Work Participation Rate Purposes, Work Participation Status, and Work Activities." We have added an element in the data instrument to capture such information about NCPs.

Specific Changes Made in the Data Reports

The following changes are subject to review and approval under the Paperwork Reduction Act.

(a) TANF Data Report—Section One—Disaggregated Data on Families Receiving Assistance (Appendix A)

(1) We reduced the number of data elements that must be reported from 106 in the NPRM to 76 in the final rule. Some of the deleted data elements include:

- Four data elements related to child care—Amount of Child Care Disregard, Type of Child Care, Total Monthly Cost of Child Care, and Total Monthly Hours of Child Care Provided During the Reporting Month; and
- Five types of Assistance Provided—Education, Employment Services, Work Subsidies, Other Supportive Services, and Contributions to an Individual Development Account.

Regarding the deleted data elements on child care, in the NPRM, we proposed to collect information required by the Child Care and Development Block Grant Program (CCDBG). Upon further analysis of that statute, we find that the data that must be collected and reported are aggregate data on the number of child care disregards funded by type of child care service provider. Thus, we have made the revised collection of this information a part of the annual report in § 265.9(b)(4).

(2) We further reduced the reporting burden by revising several data elements. For example, in the data element on Sanctions, we deleted the proposed requirement for expenditure data and, in the final rule, ask for a yes/no response. We also collapsed data elements such as the Number of Months Countable Toward Federal Time Limits.

(3) We clarified the definition of "new applicant" and clarified reporting on waivers and noncustodial parents.

(4) We provided flexibility in permitting States to report some data elements based either on the reporting month or on the budget month. However, we require the State to be consistent in reporting these data.

In developing the NPRM, we proposed that all data elements be reported based on the "reporting month."

However, based on a considerable number of comments and a review of the variation in State practice and State data collection and processing systems, we concluded that, in some cases, information on the budget month would be a good proxy for information on the reporting month. Therefore, the final rule provides that States may report information on five data elements based on either the reporting month or the budget month.

We made this change for data elements that are relatively stable, e.g., amount of Food Stamp assistance and that otherwise might not be reflected in the State data systems. We believe that, as long as States report these data consistently over time, this flexibility in reporting will not compromise the usefulness of the information. We are continuing to require that seven data elements (e.g., amount of assistance) be reported based on the reporting month

because States will have these data elements on that basis.

(5) We simplified or modified certain data elements, e.g., Received Subsidized Housing, Received Food Stamps, Received Subsidized Child Care, Reasons for and Amount of Assistance, Highest Level of Education Attained and Highest Degree, and Citizenship/Alienage.

(6) We revised the data element on Race to comport with the OMB standard for coding multiple race and ethnic information.

(7) We added a new data element to identify families converted to "child-only" cases and a new data element to identify a family in which the State provides for the needs of a pregnant woman.

(8) We made technical and editorial changes, e.g., adding coding for some data elements to allow for unknown Social Security Numbers, birth dates, citizenship status, or educational levels; and revised other data elements such as changing the data element on "Teen Parent" to "Parent" in order to more accurately calculate the two-parent work participation rate.

(9) As noted in our discussion of § 265.2, the instructions also give States the option to not report certain data elements for one or more groups of individuals.

(b) TANF Data Report—Section Two—Disaggregated Data on Closed Cases (Appendix B)

(1) We reduced the number of data elements from 53 in the NPRM to 30 in the final rule, in part by combining several data elements.

(2) We made the same clarifications, modifications, and simplifications in the data elements in this Appendix as we made for the corresponding data elements in Appendix A.

(3) We clarified that States are not expected to track closed cases in order to collect information on families after the family is no longer receiving assistance. States should report the case-record information as of the last month of assistance.

(4) We re-configured the data element on Reasons for Case Closure to add a few break-out categories, partly in response to strong recommendations from commenters. We believe the refinement of these codes will provide better data and significantly increase our understanding of the circumstances of recipients who leave assistance, without increasing the data collection burden.

We understand that many States already collect detailed reasons for case closure, although the information varies across States. Some States are also participating in studies of persons leaving TANF (i.e., "leavers'" studies) which will provide information on the circumstances of families after they leave TANF.

In addition, we want to respond more specifically to some commenters' objections to reporting data based on section 411(b) of the Act. (We explained in the NPRM that most of the data elements in Appendix B were based on section 411(b) (annual report to Congress).)

Section 411(b) is specific in requiring information on "* * * the demographic and financial characteristics of families applying for assistance, families receiving assistance, and families that become ineligible to receive assistance * * *."

As we said earlier in the preamble discussion to this section, we believe that we have authority to collect data based on section 411(b), and have designed a data collection procedure for closed cases that places minimal burden on States by drawing on the information they have as of the last month the family received assistance. We believe that we have also responded to commenters' concerns by reviewing each data element and reducing by almost one-half the number of data elements in this section of the TANF Data Report.

(c) TANF Data Report—Section Three—Aggregated Data (Appendix C)

We eliminated one data element in this section of the TANF Data Report: Total Number of Minor Child Head-of-Households.

(d) SSP–MOE Data Report—Sections One, Two, and Three—Disaggregated and Aggregated Data (Appendices E, F, and G)

(1) We reduced the total number of data elements in this report from 160 in the NPRM to 108 in the final rule.

(2) Because the data elements in the SSP–MOE Data Report are similar to the data elements in the TANF Data Report, we incorporated into this Report the same clarifications, simplifications, and modifications that we made in the TANF Data Report.

(3) We deleted the proposed requirement that a State must report SSP data if it wants to be considered for a reduction in the penalty for failure to meet work participation requirements.

(4) The final rule narrows the types of separate State MOE programs on which States must report disaggregated and aggregated data. If the State opts to report data on separate State programs, it must report:

- Only on separate State programs for which MOE expenditures are claimed;
- Only on those persons served by separate State programs whose expenditures are claimed as MOE expenditures; and
- Only on separate State programs that provide assistance. (The narrowed definition of assistance at § 260.31 reduces the types of programs subject to reporting.)

(5) We reduced the reporting burden in § 265.3(d)(1)(i) by specifying that, if a State wishes to receive a high performance bonus, it must file only sections one and three of the SSP–MOE Data Report.

Changes Made in the TANF Financial Report (Appendix D)

In the NPRM, we proposed to collect TANF expenditure data in the ACF–196 TANF Financial Report. This reporting form and instructions were in Appendix D. We also proposed an annual addendum to the fourth quarter TANF Financial Report.

As a result of comments received and to clarify some of our policies, we have made several changes in § 265.3(c) and to the ACF–196. One substantive change that we made in response to comments was to delete the requirement that States submit program information as an annual addendum to the TANF Financial Report. These requirements now appear in the annual report described at § 265.9.

We outline the other changes to the ACF–196 TANF Financial Report below:

(1) We have modified the instructions to reflect our clarification about allowable expenditures of carry-over funds and to note the change in SSBG transfer authority (reducing the maximum transfer of 10 percent to 4.25 percent, beginning in FY 2001). This latter change was made by the Transportation Equity Act for the 21st Century, Pub. L. 105–178.

(2) We have added several categories of expenditures on which States must separately report—including transportation (Job Access and other), refundable earned income tax credits, other refundable State and local credits, activities related to purposes three and four of TANF, IDA's, and assistance authorized only on the basis of section 404(a)(2) of the Act. For Other Expenditures (Lines 5d, 6e, and 7), we have asked States to submit footnotes describing what activities are funded under this category.

Also, we have shifted work subsidies from the assistance section of the report to the nonassistance section to reflect our decision to revise the definition of assistance. We include child care and

other supportive services in both sections, and we provide for separate aggregate reporting on transitional services. We have also revised the instructions substantially so that they more clearly identify how States would report particular types of expenditures and they provide some additional guidance on allowable Federal and MOE expenditures.

In general, the additional reporting is designed to give us better information on where States are focusing their resources. We will use this information as part of our strategy to monitor whether expenditures of Federal and States funds are consistent with the purposes of the program and to help identify any policy areas or States that might need further attention. We will also use the data to tell us more about the nature and scope of both TANF programs and separate State programs. State plans and the annual reporting will provide some characteristics information, but the expenditure data are critical for determining where States are focusing their resources. Thus, the data on State spending patterns provide valuable supplemental information about what is happening under welfare reform, and we intend to include summary information from these reports as part of our discussion of State program characteristics in the annual report to Congress.

(3) For State expenditures reported as Administrative Costs in columns (B) and (C), we have changed the language to clarify that the 15-percent administrative cap applies to the cumulative total of (B) and (C) rather than separately to MOE and Separate State Programs.

(4) We have added a statement that States must determine the administrative costs of contract and subcontracts based on the nature or function of the contract.

(5) We have added language to provide that the systems exclusion for tracking and monitoring purposes applies to MOE expenditures as well as the TANF grant. (See prior discussion regarding MOE in the preamble discussion relating to § 263.2.)

The Territorial Financial Report is under development. We are sharing a preliminary version of this Report with the Territories and will be considering their comments before issuing it in final.

Section 265.4—When Are Quarterly Reports Due? (§ 275.4 of the NPRM)

In the NPRM, the language in paragraph (a) of this section reflected the statutory requirement that quarterly data reports are due 45 days after the end of each quarter.

In paragraph (b) of the NPRM, we proposed to give States two options in the timing of the submittal of their TANF–MOE (now SSP–MOE) Data Report.

Paragraph (c) of the NPRM proposed the due dates for the State's initial TANF reports. (Because these are no longer applicable, we have deleted the content of this paragraph from the final rule.)

Comment: Two commenters found it confusing to have "two due dates for reporting" in the NPRM. The second due date they referred to was in § 275.8(d). There, we had proposed that we would not impose a penalty for late reporting if a State filed its complete and accurate quarterly report by the end of the quarter immediately following the quarter for which the data were due. (This is a statutory provision found in section 409(a)(2)(B) of the Act.)

Response: For clarity, we have revised the language in paragraphs (a) and (b). With the new language, it is clearer that the statutory due date for the penalty is 45 days after the end of the reporting quarter, but States will not actually incur any penalty liability as long as they submit their reports by the end of the quarter following the reporting quarter.

Although States will incur penalties only if they fail to file their data by the end of the succeeding quarter, we strongly encourage States to submit their reports on the due date. This will provide an opportunity to identify and correct any potential problems or omissions that could otherwise result in a State penalty.

We have made two other changes in this section. First, as noted above, we deleted paragraph (c), as the due dates for the State's initial TANF reports are no longer applicable. Second, we made minor editorial changes in paragraph (b) of the NPRM (regarding timing options for States to submit the SSP–MOE Report) and re-designated it as a new paragraph (c).

Section 265.5—May States Use Sampling? (§ 275.5 of the NPRM)

Most of the comments on this section of the NPRM raised questions about the sampling specifications found in Appendix H of the NPRM.

The statute, in section 411(a)(1)(B)(i), gives States the option of using scientifically acceptable sampling methods to comply with the data collection and reporting requirements of section 411(a). Under section 411(a)(1)(B)(ii), the Secretary must provide the States with case-record sampling specifications and data collection procedures necessary to produce statistically valid estimates of the performance of State TANF programs.

The NPRM at § 275.5(a) specified the option that States have to report data based on sampling or to report data on the entire population (universe) of recipients. In paragraph (a), we also stated that States could use samples to report only disaggregated, not aggregated data. In paragraph (b), we proposed a definition of "scientifically acceptable sampling method."

The majority of comments (from more than 25 States and national State-based organizations) urged us to consider greater flexibility in the sampling specifications. In general, they recommended that we:

(1) Eliminate the monthly sample size requirements because they would restrict the State's flexibility provided under the statute;

(2) Allow smaller sample sizes, particularly for smaller States;

(3) Permit States to file some information using sampling and other information using universe reporting; and

(4) Allow States to use alternative sampling methodologies when they can demonstrate that other methods produce equally valid samples.

We disagree with the recommendations to eliminate the monthly sample size requirement but, as discussed below, we have clarified the flexibility States have in designing their sampling plans. We discuss these and other recommendations in the response to comments below.

Comment: Two commenters asked us to confirm that a State can submit universe data if a State does not have enough cases to meet the sample size requirements, e.g., the State does not have 600 two-parent families in its caseload (This was explicitly stated in the instructions to the ETDR, but was not included in the NPRM.)

Response: In the NPRM, we proposed an annual sample size of 600 two-parent families, i.e., an average monthly sample size of 50 two-parent families. We confirm that, if a State has less than 50 two-parent families for a month, the State must report data on all such families.

Comment: In recommending changes to sample sizes, several commenters (i.e., about 10 States) stated that the sample sizes proposed in the NPRM (3,000 annual cases for active cases and 800 annual cases for closed cases for both the TANF and separate State programs) were far in excess of the sample size of 1200 cases that we allowed many States to use under the AFDC-Quality Control (QC) system. The

proposed sample sizes, they believed, would result in a dramatic increase in State data collection workload. For some States, the sample size would equal or exceed the entire caseload.

Commenters also questioned the significance of using the same sample size for large States as for smaller States. Some commenters also objected to the two-parent sample size (600 cases) because two-parent families were a very small percentage of their caseload.

Commenters recommended an overall reduction in sample sizes and/or the use of a finite correction factor that would take into account the size of the caseload in smaller States.

Response: First, in response to the question of the smaller sample size permitted for the AFDC–QC data collection, we believe the differences in these two programs dictate larger sample sizes. The nature of the programs are different and the purpose for which the data are collected is also different.

Under the AFDC program, States had much less flexibility; the major purpose of data collection was focused on determining payment accuracy and charting national trends. Under the TANF program, States have greatly increased flexibility, and data collection is critically important for monitoring and measuring program accountability and program performance.

Second, we agree that a finite population correction factor may be useful, particularly to States with small TANF populations. Thus, we will incorporate this provision in the TANF Sampling Manual.

Third, the recommendations to reduce sample sizes raised more difficult and serious issues. We considered all comments very carefully in evaluating the possible effects of various sample size options. On balance, we are retaining the sample sizes proposed in the NPRM for the reasons discussed below.

In the NPRM (Appendix H, Sampling Specifications), we proposed the following annual minimum required sample sizes:

(1) For families receiving TANF assistance, 3000 families, of which 600 (approximately 25 percent) must be newly approved applicants.

(2) Of the 2400 families that have been receiving TANF assistance, 600 (approximately 25 percent) must be two-parent families.

(3) For families no longer receiving TANF assistance (closed cases), the minimum required sample size is 800 families.

(4) The same sample sizes apply to families receiving assistance and families no longer receiving assistance under separate State programs.

Clearly, reduced sample sizes would increase State flexibility and reduce reporting burden; on the other hand, reduced sample sizes will also reduce the precision of and provide less reliable data for computing State work participation rates.

As we stated in the NPRM, these sample sizes will provide reasonably precise estimates for the overall (i.e., the all-family) and the two-parent work participation rates. The overall rate has a precision of about plus or minus two percentage points at a 95-percent confidence level. The two-parent rate has a precision of about 2.3 percentage points at a 95-percent confidence level. (We could have improved the precision of the two-parent rate to plus or minus two percentage points with an annual sample size of 800 families.) We believe this precision is important to States as the basis for the computation of reliable work participation rates.

In addition, we believe the larger sample sizes are needed to monitor State TANF programs and to enable us to answer key questions of concern to both the Administration and Congress. As we discussed in an earlier section of the preamble, the Secretary is responsible for discerning what is happening at the State level to sub-groups for which we have monitoring responsibility or a major interest, such as child-only cases, sanctioned cases, and immigrants. For example, under a reduced sample size, we would not be able to detect an increase in the percentage of child-only cases until the increase is quite substantial. States could attribute smaller increases to sampling variation.

Furthermore, a smaller sample size hampers our ability to explore the underlying causes of any detected trends. For example, in addition to tracking child-only cases, we might wish to investigate changes in the number of such cases with sanctioned adults in the household. Under the sample sizes proposed in the NPRM, we might be able to study about 150 such families. Using smaller sample sizes, we would be less confident in drawing conclusions based on correspondingly smaller numbers.

We believe that the specific burden and cost of reporting will be different for each State depending on multiple factors. Initial decisions a State must make concern whether to enter the TANF and the SSP–MOE data elements into the State's automated management information system, whether to report these data on a sampling basis, or whether to use a combination of both mechanisms.

For some States, it may be more efficient to automate all data reporting, particularly those States that choose to report universe data. (Currently, 30 States report universe data in their ETDR.) Clearly, as States move to an automated data collection system, the cost and burden of data collection will decline.

For other States, sampling will be the most practicable, efficient, and feasible method. For example, under the sampling specifications in the sampling manual to be issued, the State would select one/twelfth of the minimum annual required sample each month, i.e., approximately 250 cases. (One-twelfth of 3000 is 250.)

Comment: Several commenters also expressed concern that the scope of the proposed data collection was particularly burdensome in light of the changes needed to make State information systems Y2K compliant. They contended that, since States had limited system personnel resources, they could not effectively manage Y2K efforts and major modifications of their systems as a result of final TANF data collection rules at the same time.

Response: Where Y2K problems exist, we suggest that States consider the sampling option in reporting TANF data. (The TANF statute at section 411 provides States with the option of furnishing the disaggregated TANF data via sample. The NPRM provided sampling specifications, and we will be issuing a sampling manual providing States with detailed options.)

With respect to Y2K issues, in general, sampling offers both advantages and disadvantages. On the one hand, the use of samples provides better data (i.e., data that are more readily verified) and uses fewer State and Federal resources. On the other hand, sampled data does not allow States or the Department to track individuals over time. It also does not provide the same precise information on population subgroups within a State, such as child-only cases, or allow matching of TANF recipient data with WtW recipient data. If States use a sample, along with the pc-based software we provide for the creation of their transmission files, they will not need to make major system changes while they work on Y2K problems. In this instance, the use of samples has a number of advantages for a State:

(1) It can devote different personnel resources to conducting samples than to working on the Y2K effort.

(2) It can limit its data collection efforts to the cases or individuals in the sample; it would not have to collect new

information from the entire caseload that it may not find useful or relevant.

(3) Sample information may be more current.

(4) Using a sample, it could extract required information that is already in its computer files and manually collect additional information.

(5) After solving its Y2K problems, a State could reassess whether reporting on a sample basis is still in its best interest.

Even though sampling might make it easier for States to implement the new reporting requirements, we recognize that: (1) the effective date of new reporting requirements comes at a particularly inopportune time for States that have not fully resolved their Y2K issues; and (2) the first responsibility of States is to ensure that their automated systems are capable of maintaining benefits to their neediest citizens. Thus, we have added an additional criterion for reasonable cause at § 262.5(b)(1) related to this issue. Under this new provision, States that miss the deadlines for submitting complete and accurate data for the first two quarters of FY 2000 will receive reasonable cause if: (1) they can clearly demonstrate that their failure was attributable to Y2K compliance activities; and (2) they submit the required data by July 1, 2000.

Comment: Several commenters recommended that States be permitted to report some data based on sampling and other data based on universe data. One State described its TANF program as made up of sub-programs; it wanted the option of reporting sample data on some sub-programs and universe data on others.

However, two States said that we should not allow States to "mix sample and universe reporting." They believed that, in order for data to be meaningful for evaluating policy or performance, States had to use a single method of reporting.

Response: We have decided not to allow a State to submit some disaggregated data based on universe reporting and other data based on sampled information because we do not believe it would be feasible. Not only would it be difficult to analyze such data at the Federal level, it would also be impossible to set up a systematic procedure for estimating totals, proportions, averages, etc., across States. Depending on how fractured the State's reporting is, such mixed reporting might even make within-State estimates impossible. Each data element could have its own weight rather than a weight being associated at the case level.

In addition, States were not in agreement as to what data would be reported on a sample basis and what data would be reported on a 100-percent basis.

Comment: Two States asked us to clarify whether a State could propose the use of an alternate sampling plan as long as it met precision requirements. One State asked for directions on how we will approve the State's sampling methodology.

A few commenters recommended that we allow alternative sampling methodologies when a State could demonstrate that other methods produce equally valid samples. One State, for example, described and recommended approval of a longitudinal sampling design and a rolling-panel design currently in use in its State.

Response: In Appendix H of the NPRM, "Sampling Specifications," we proposed to give States a substantial amount of flexibility in designing sampling plans. In general, we proposed that monthly cross-sectional probability samples be used. Within this broad class of sampling designs, States would have considerable flexibility to formulate their plans. We also suggested that simple random sampling or systematic random sampling design would be easier to implement. However, we did not propose to require that States use one of these designs. We will issue a sampling manual that will incorporate Appendix H, reflect the other decisions in the final rule, and describe, in more detail, the sampling specifications and requirements for States that opt to report based on samples of TANF families and families in separate State programs. Under this TANF Sampling Manual, States will be free to propose other designs for our consideration, as long as their designs reflect cross-sectional monthly probability sampling. We need such samples to calculate monthly work participation rates. We will publish the Sampling Manual in the **Federal Register** and submit it for approval under the Paperwork Reduction Act.

We have added a new paragraph (c) to this section to advise States that they will find the sampling specifications and procedures that they must use in the TANF Sampling Manual.

We reject the specific proposal that we allow longitudinal or rolling-panel designs, primarily because these designs are inappropriate for measuring the work participation rate. These types of study designs predict or reveal the composition of future samples. Thus, a State would know its sample cases for future months and could concentrate on boosting the participation rates of sample cases. In this instance, the sample would no longer be representative of the caseload as a whole and a bias in the resulting estimates would occur. As noted earlier in this discussion, States will be free to propose other sample designs as long as the designs meet cross-sectional monthly probability sampling criteria.

Comment: One commenter recommended that we count sample cases as long as States have sufficient data to satisfy core elements for work participation calculations and make other responses optional.

Response: If a State opts to collect and report data for a sample of families receiving TANF assistance, it must report all section 411(a) data on all families selected into the sample. When samples are used to make estimates about the universe from which the sample was selected, each sample unit has valuable information to contribute to the estimate.

Comment: Two commenters objected to item #4 in the sampling specifications, which proposed that States must submit a monthly list of selected sample cases within 10 days of selection. They stated that this requirement was not in the statute, and it was burdensome on States. They recommended that each State keep a record of the cases pulled and provide a reason for dropping cases, if this occurs.

Response: We need the list of selected cases to ensure that we receive data for all selected cases for each reporting month (i.e., that there are no missing cases). Furthermore, States need such a list for control of their sample. This reporting is not a new requirement; States previously provided such a listing under the AFDC–QC system.

Comment: Two commenters questioned a provision in § 272.3(b)(2) of the NPRM, dealing with "How will we determine if a State is subject to a penalty?" This paragraph proposed to prohibit a State from revising its sampling frames or program designations for cases retroactively.

Response: In constructing the sample frame for the reporting month, States must include all families that received assistance for the reporting month through the end of the month. Once the State constructs its frame and selects its sample cases, it would be improper to allow it to redesignate a TANF case as a SSP–MOE case, for example. However, if a family in a sample did not receive assistance for the reporting month, the State would use code (2)—"Listed in error" under the *Disposition* data element.

Comment: One State commented on sampling and stratification concerns

and recommended that States be allowed different sampling schemes based on local conditions, e.g., different sample sizes for the different monthly strata. It claimed that the proposed sampling specifications effectively created a de facto stratification by month. However, it believed that States gained no advantage by the stratification. Its recommendation, it believed, would be especially helpful for States using monthly samples and would help with work flow and data processing issues.

Response: States have considerable flexibility in designing their sampling plans, including designing strata to accommodate local conditions. Within that flexibility, however, the sampling specifications require that a State select about one-twelfth of the minimum annual sample size each month in the fiscal year. (One-twelfth of 3000 is about 250 families.) This minimum size is important in order to ensure an adequate number of families for calculating a monthly work participation rate, as required by statute.

Comment: One commenter stated that there is no reason, in theory or logic, to assume that systemic random sampling is as good or better than simple random sampling. (The sampling specifications in the NPRM suggested that the former was the preferred approach.)

Response: We had suggested systematic random sampling in the NPRM because most States had used that method in selecting samples for the AFDC–QC program. However, we agree that simple random sampling is an acceptable method for selecting the State's TANF and MOE samples. There are a wide variety of methods that could be used to select monthly samples. These methods include both simple random sampling and stratified random sampling.

Comment: One State suggested that we work with States to develop a more workable approach to sampling. For example, they suggested that it might be useful to permit States to oversample in the first two months of the quarter and undersample in the third month, given the strict requirements for the submission of timely data.

Response: Annual participation rates are based on monthly work participation rate samples. To assure a reliable annual work participation rate, we believe that the samples for each month need to be sufficiently large to calculate a reasonably precise monthly estimate. Therefore, we believe it is reasonable to require States to select 1/12th of its sample each month. Months in which a sample is relatively small (i.e., less than 1/12th the annual required sample size), adversely impact the calculation of the annual work participation rate.

Comment: Two commenters appeared to believe (although we had not specified this in the NPRM) that it was permissible to report aggregate data by sampling, and one commenter recommended that we permit this.

Response: The statute at section 411(a)(1)(B) refers to sampling for disaggregated case-record information. It does not provide specific authority to sample aggregate data. Based on the comments, however, we have determined that it would be appropriate to allow sampling for some aggregate nonexpenditure data elements. (Expenditure data is never reported based on sampling.) We have amended paragraph (a) of this section to reflect this option. We also indicate in the instructions to section three of the TANF Data Report (Appendix C) and section three of the SSP–MOE Data Report (Appendix G) those data elements that may be reported based on sampling.

Section 265.6—Must States File Reports Electronically? (§ 275.6 of the NPRM)

The NPRM proposed to require that States file all quarterly reports electronically, based on format specifications that we would provide.

Comment: We received comments from States and national organizations on this provision.

Several commenters expressed general support for the proposed requirement (e.g., saying "the law does not expressly require electronic reporting, but it will greatly facilitate the analysis of data."), and most States that commented believed that they had the capacity to report electronically.

However, some expressed concern that circumstances might occur that would prevent a State from reporting electronically in a timely manner or would prevent electronic reporting of some, but not all, data. They recommended that the final rule allow alternative reporting methods and give States the flexibility to report data in whatever format is feasible for them, given the varying levels of automation. In addition, a few States commented that they had problems with the current electronic reporting process and software.

Response: As we said in the NPRM, State representatives supported electronic submission of both recipient and financial data in our pre-NPRM external consultation meetings, and we believe all States have electronic reporting capability (as evidenced by their use of electronic reporting under previous programs). We continue to believe that electronic submission of reports will reduce paperwork and administrative costs, be less expensive and time consuming, and be more efficient for both the States and the Federal government.

We would take into account any catastrophic events or one-time-only circumstances that prevented a State from filing its reports electronically, on a timely basis, but we see no reason to change the final rule or give States general authority to submit reports in a variety of formats.

If a State has initial problems in using the reporting processes and software that we will make available, we are committed to working with the State to resolve these problems.

Comment: A few States pointed out that there was no basis in the statute for the electronic reporting requirement. One State recommended that we delete the provision from the rule and issue instructional material separate from the regulations.

Response: We agree that this requirement does not appear in the statute. However, for the reasons stated above, we believe that it will not be an onerous administrative requirement, is programmatically justified, and is within our authority to regulate. Therefore, we have made no change in § 265.6.

Comment: One commenter asked what efforts are underway to ensure compatibility of the proposed software with the many different systems States are using.

Response: As a part of the ETDR, we provided States with a data reporting system, including file layout and transmission specifications. States with a variety of systems and file structures were able to provide the specified data in the format required. We plan to modify this system to capture the data required in the final rule. States will be able to enter data and create transmission files using our pc-based software. It incorporates a free-form capability to help prevent any future system incompatibility problems.

Section 265.7—How Will We Determine If the State Is Meeting the Quarterly Reporting Requirements? (§ 275.7 of the NPRM)

and

Section 265.8—Under What Circumstances Will We Take Action To Impose a Reporting Penalty for Failure To Submit Quarterly and Annual Reports? (§ 275.8 of the NPRM)

We are discussing these two sections together because, as the commenters

pointed out, the proposed penalty provisions in § 275.8 were tied, in part, to the definition of a "complete and accurate report" in § 275.7 of the NPRM.

Section 409(a)(2)(A) of the Act provides that the grant of any State that fails to report data under section 411(a) of the Act within 45 days following the end of the fiscal quarter shall be reduced by four percent. However, in accordance with section 409(a)(2)(B), we would not apply this penalty if the State submits the report by the end of the quarter following the quarter for which the data were due. The statute does not specifically address "complete and accurate." We have used these terms to clarify for States what is required in order for a State to be considered to have filed the report required by section 411(a) of the Act.

How Will We Determine if the State Is Meeting a Reporting Requirement? (§ 275.7 of the NPRM)

In this section of the NPRM, we proposed definitions of what would constitute a "complete and accurate report" for disaggregated data reports, aggregated data reports, and financial reports, i.e., the TANF Data Report, the TANF–MOE Data Report (now known as the SSP–MOE Data Report), and the TANF Financial Report (and, as applicable, the Territorial Financial Report). We also proposed to review State data to determine if the data met these standards and to use audits and reviews to verify the accuracy of the data filed. We reminded States of the need to maintain records to support all reports filed.

The proposed definition of "complete and accurate" was a stringent one. In simple terms, it meant that States must report all elements for all families (or all sample families) with no arithmetical errors or inconsistencies. We proposed to use this definition as a standard against which we would determine if the State was subject to a reporting penalty. For example, we proposed that the data reported to us must accurately reflect the information available to the State; be free from computational errors and internally consistent; be reported for all elements (e.g., no missing data); be provided for all families (universe data) or for all families selected as a part of the sample; and, where estimates are necessary, reflect reasonable methods used by the State to develop its estimates.

We based these proposals on the critical importance of the data and the multiple purposes that the data would serve—the most important of which is meeting the accountability requirements of the statute. We also referred to problems in obtaining complete and accurate data under previous programs and specifically requested additional comments and suggestions on ways to help assure better data, without creating an undue burden on States.

Most of the comments on this issue came from States and national advocacy organizations. Many said that the definition of "complete and accurate" was too restrictive; it would be difficult for States to meet both the "timely" and the "complete and accurate" requirements; 100 percent error-free reporting was unfair (in view of the severe penalty provision) and unrealistic (based on past experience); and the final rule should allow States both a reasonable margin of error and an opportunity to correct or revise their data in appropriate circumstances.

Under What Conditions Will a State Be Subject to a Reporting Penalty for Failure To Submit Quarterly Reports? (§ 275.8 of the NPRM)

In this section of the NPRM, we described the circumstances and conditions under which we would impose a reporting penalty.

We proposed that we would impose the penalty if a State did not file the reports on a timely basis (a statutory requirement) and if the data in the TANF Data Reports and the TANF Financial Reports were not complete and accurate. We specified, however, that the penalty would not apply in several situations:

(1) It would not apply to the TANF–MOE (now the SSP–MOE) Data Report or to the annual program and performance report; and

(2) It would not apply to all data elements.

For example, for disaggregated data on TANF recipients, it would apply only to the data elements in section 411(a) (other than section 411(a)(1)(A)(xii)) and to the nine data elements necessary to carry out a data collection system. For aggregated data, it would apply only to the data elements in section 411(a), the data elements necessary to carry out a data collection system, and those elements necessary to verify and validate the disaggregated data.

We did not specify each step of the penalty process but referred readers to §§ 272.4 through 272.6 of this chapter (now §§ 262.4 through 262.6 of this chapter).

Many commenters appeared to believe that all data elements in all data and financial reports were subject to a penalty and that one missing data element in any one of these reports would trigger an automatic penalty. Others questioned the Secretary's authority to "penalize States for data not required in the statute." Still others appeared to be unaware of the penalty process, e.g., consideration of reasonable cause, submittal of a State's corrective compliance plan, and reduction or recision of the penalty under certain circumstances.

We agree that the language of the NPRM did not provide for flexibility or exceptions. Our intent in proposing these two sections was to define a performance standard for all reports. In addition to the statutory requirement for a timely report, the definition of "complete and accurate" would constitute the standard against which we would review the reports submitted; work with States to resolve problems; and, if necessary, move through the steps of the penalty process.

We envision several steps in an implementation process that would lead to full compliance with the data collection and reporting requirements.

(a) Step one: Initial implementation.

In the final rule, we have reduced the overall reporting requirements, including the number of data elements, and we have delayed the effective date of the rule to give States additional time to adjust to these reporting requirements. Once States begin to transmit the data specified in the final rule, we anticipate a temporary transition period to work out any problems, but we would hold States to the complete and accurate standard. For example, if States report their data within 45 days of the end of the quarter, as the statute requires, we could have the opportunity to resolve any data problems before the end of the quarter. Thus, submittal by the 45-day deadline could reduce the risk of penalty action against the State.

We would continue the same partnership approach with States that is currently in place to resolve problems that have occurred in the transmission of the ETDR data. We are referring here to nonrecurring and nonsystemic problems such as inadvertent errors, missing data elements, occasional technical glitches, and isolated or unintentional errors.

In addition, we would not prohibit a State from re-transmitting corrected elements in their Data or Financial reports, both during or after a reporting period, as long as retransmission does not become a habitual practice.

(b) Step two: On-going operation.

In this step, all States are able to transmit successfully, and most are able to transmit the data generally without errors. We would continue to hold to the complete and accurate standard and

work with States if any problem arises. However, if a State has not filed a complete and accurate TANF Data Report or Financial Report by the end of the quarter, we would give the State an opportunity to dispute our determination that it had failed to file a complete and accurate report and to provide a "reasonable cause" explanation. We would also take into consideration the extent of the incompleteness or unreliability of the data. See § 262.5, "Under what general circumstances will we determine that a State has reasonable cause?".

(c) Step three: Penalty liability.

We would provide notice to the chief executive officer of the State if the State has not met the complete, accurate, and timely reporting requirements without reasonable cause. We would take this action, for example, following a pattern of serious omissions, chronic delays, failure to respond, or disregard of requirements. See § 262.6, "What if a State does not demonstrate reasonable cause?". The State may accept the penalty or enter into a corrective compliance plan.

We do acknowledge, however, that it is inevitable that there will be occasional missing data elements and nonsystemic reporting errors in any stage of a data reporting system, regardless of how long the system has been in operation, whether the State reports universe or sampled data, or how sophisticated or well-operated the system is. We want to emphasize that it is not our intent to penalize a State for these kinds of occasional errors.

Changes Made in the Final Rule

We have made two changes in § 265.7 of the final rule. First, in paragraph (b)(4)(ii), we have deleted the words "* * * selected in a sample that meets the minimum sample size requirements * * *" and inserted the words "* * * meets the specifications and procedures in the TANF Sampling Manual * * *." This language clarifies that a State must meet the sampling requirements as specified in the TANF Sampling Manual as a part of the definition of a "complete and accurate" data report, not just the minimum sample size requirements.

Second, we have deleted the word "its" from the sentences "The reported data accurately reflects information available to the State in its case-records, financial records, and automated data systems" in paragraphs (b)(1), (c)(1), and (d)(1). In deleting this word, we intend to emphasize and clarify that we hold the State accountable for the correctness of the data reported to us, not just the data that may be available at the State-level. Some commenters seemed to believe that States should not be held accountable for data that originated from local jurisdictions or from other agencies. Our purpose in making this change is to convey that, regardless of the source, the State is responsible for reporting complete and accurate data.

We have made several changes in § 265.8 of the final rule. First, we have revised the title to better comport with the content of this section. The new title of § 265.8 is "Under what conditions will we take action to impose a reporting penalty for failing to submit quarterly and annual reports?"

Second, in response to commenters' concerns, we have specified in paragraph (a) of this section the data that are subject to the penalty.

Third, in paragraph (a)(1), in response to requests for greater clarity and specificity, we have deleted the words "on a timely basis" and inserted the words of the statute "within 45 days of the end of the quarter." This responds to commenters who were confused by what they described as "two due dates" for these reports.

Finally, we have made editorial changes in paragraph (a)(3) for clarity; in paragraph (a)(5) to delete references to the annual program and performance report (which we have eliminated from part 265) and to reflect the changes made in the annual report under § 265.9; in paragraph (d) to clarify that we will not impose the reporting penalty if the State files the quarterly reports or the annual report by the end of the quarter that immediately succeeds the fiscal quarter for which the reports were required; and in paragraph (f) to add a conditional phrase in relation to the application of the penalty.

We did not agree with commenters who recommended that we:

(1) Delete the definition of "complete and accurate" in its entirety;

(2) Delete the proposed definition of "complete and accurate" and enter into discussions with States to develop standards for complete and accurate reports;

(3) Apply penalties only for the data elements pertaining to the work participation rates;

(4) Accept the State's best effort to meet reporting requirements on a temporary basis and apply no penalty;

(5) Automatically assume all reporting errors are in good faith and forgive them; and

(6) Waive the penalties when a State is in "substantial compliance" even though not all data elements are reported. (It was not clear what the commenter meant by "substantial compliance." However, if the missing data elements met the limited conditions for reasonable cause, as specified in § 262.5, the State may provide a "reasonable cause" explanation.)

It is important to reiterate that, as we discussed in the preamble for §§ 260.40, 262.5, and 265.5, we have added a reasonable cause criterion at § 262.5(b)(1) that will provide some penalty relief to States that cannot report their first two quarters of TANF data on time due to Y2K compliance activities.

Comment: Several commenters asked for clarification of the penalty provision. They stated it was unclear in the NPRM whether the penalty was four percent per year or four percent per quarter.

Response: Our interpretation of section 409(a)(2) is that the Secretary is to reduce the grant payable to a State by four percent for each quarter that the State does not submit quarterly reports within 45 days of the end of the quarter. The Secretary is to rescind the penalty if a State submits the data by the end of the quarter.

However, there are other provisions of law that also are applicable and that must be applied. Under section 409(c) of the Act, the Secretary may not impose a penalty until after the State has had an opportunity to correct its noncompliance. If a State submits a corrective compliance plan, carries it out, and achieves compliance, the State is not subject to the penalty. If it submits a corrective compliance plan and fails to carry it out or fails to achieve compliance, the Secretary shall assess some or all of the penalty. Therefore, the State has the opportunity to correct its reporting problems, and the Secretary has the flexibility to reduce the potential impact of a penalty, based on progress achieved.

If, for example, a State failed to correct its quarterly reporting noncompliance for a particular quarter, the Secretary could take into account the State's reporting compliance in other quarters and make an appropriate reduction of the penalty. On the other hand, if the State did not make good faith efforts to comply, the Secretary could impose the full four percent penalty. We have revised paragraph (f) to reflect this process.

Secton 265.9—What Information Must the State File Annually? (§ 275.9 of the NPRM)

This section of the NPRM proposed two annual reports: one annual report as an addendum to the fourth quarter TANF Financial Report (or Territorial Financial Report) and one annual program and performance report.

Paragraphs (a) and (b) of the NPRM proposed the information that States must submit in the annual addendum. Paragraph (a) proposed four items of information on the TANF program. Paragraph (b) proposed eight items of information on separate State programs by cross-reference to § 273.7. Appendix D of the NPRM also contained the proposed content of the annual addendum.

Paragraph (c) proposed that States submit an annual program and performance report containing information on the characteristics and achievements of each State's TANF program, including unique features and innovations, for the Secretary's report to Congress.

Summary of Comments on This Section

A number of States and national organizations provided a variety of both general and specific comments and recommendations on the proposed annual addendum and the annual program and performance report. Generally, commenters objected to reporting these data, because, as some believed, we could find most of the TANF program information in the State TANF plan, and this constituted a duplicate reporting burden. Others believed there was no statutory basis for requiring these data, particularly the data on separate State programs. One national organization representing State interests supported reporting the information on separate State programs in paragraph (b) as a substitute for reporting the disaggregated and aggregated data on separate State programs in the SSP–MOE Data Report. In addition, one State suggested that we should gather information on separate State programs not from States but from other sources, as there "is a wealth of information on separate State programs from private and academic studies."

We have made several changes in this section of the final rule, primarily in response to comments. We have eliminated the proposed annual program and performance report in paragraph (c) of the NPRM. (See the detailed discussion of this provision following our discussion of the annual reporting requirements as they appear in the final rule.) We summarize the major changes related to the Annual Report and discuss these and other recommendations in greater detail below.

(1) We no longer require the annual report to be submitted as an addendum to the TANF Financial Report, and we dropped the term "addendum" to refer to the annual report.

(2) For clarity, we consolidated the annual reporting requirements in this section. This section now includes all but one of the items of information on the TANF program proposed in paragraph (a) of the NPRM and the items of information on the State's MOE program(s) proposed in paragraph (b) of the NPRM by cross-reference to § 273.7.

(3) We deleted one TANF reporting requirement related to child-only cases in paragraph (a)(1) of the NPRM.

(4) We moved the proposed requirement for information on TANF child care disregards from the quarterly TANF Data Report to the Annual Report. (See comments and responses below for further discussion.)

(5) As discussed elsewhere in the preamble, we added new requirements in paragraphs (b)(5) and (b)(6) for reporting on State strategies and procedures for serving victims of domestic violence and on the nature of nonrecurrent, short term benefits provided under the State's TANF program.

(6) We added an annual reporting requirement for information on State displacement procedures in paragraph (b)(7); on State programs and activities directed at the third and fourth purposes of the TANF program in paragraph (b)(8); and, if available, "the number of individuals who participated in subsidized employment under § 261.30(b) or (c)" in paragraph (b) (9).

(7) We revised paragraph (c) to clarify that the annual MOE reporting requirements apply to all State programs for which MOE expenditures are claimed, i.e., both those in TANF and in separate State programs.

(8) We added one data element in paragraph (c)(4) to obtain information on State expenditures claimed as MOE under these programs. (See comments and responses below for further discussion.)

(9) We added a new paragraph (d) to specify the two circumstances when we would not require the re-submission of data in the annual report.

(10) We added a new paragraph (e) to provide that, if a State makes a substantive change in certain data elements in paragraphs (b) and (c), it must file a copy of the changed information with the next quarterly data report or as an amendment to its State Plan. The State must also indicate the effective date of the change.

(11) We made editorial changes for clarity.

Comment: Several commenters urged that we not require States to submit the annual addendum as a part of the fourth quarter Financial Report. They stated that this provision made the State Comptroller accountable for program data that were outside his or her financial expertise. They were also concerned that a program addendum might interfere with a timely filing of the Financial Report, and thus subject the State to a penalty.

As an alternative, almost all commenters on this section recommended that the information in the annual report be included in the TANF State Plan (if it was not already there) or be submitted as a free-standing report. They based this recommendation on the programmatic nature of the information, its similarity to other State Plan information, and the fact that most of the information was relatively stable over time. They also recommended that, because it was relatively stable, we should require that States submit this information on a one-time only basis and allow States to amend it only if the information changed, rather than requiring its re-submittal every year.

Response: We agree with these recommendations. First, we defer to State concerns about the role and responsibility of the State's Comptroller or Chief Financial Officer and have specified in paragraph (a) that a State may submit the annual report either as a free-standing report or as an addendum to the fourth quarter TANF Data Report.

Second, we have specified in paragraph (d) that if the State has submitted the information required in paragraphs (b) and (c) in the State Plan, it may meet the annual reporting requirements by reference in lieu of re-submission.

Third, in paragraph (d), we further provide that if the information has not changed since the previous annual report, the State may reference this information in lieu of re-submission.

We would point out, however, that not all information in the annual report is relatively stable. At a minimum, for example, States will need to develop annual information on child care disregards required under paragraph (b)(4), on the annual total number of families served for which MOE expenditures are claimed in paragraph (c)(5), and on State and MOE expenditures in each TANF–MOE and SSP–MOE program in paragraph (c)(4). The annual report is due at the same time as the fourth quarter TANF Data Report, i.e., November 15 of each year.

Comment: Several commenters urged that we assure that the information in the annual report is current. They were concerned that changes could occur in State definitions of services or program eligibility—information that was important to them for monitoring

purposes—that would not be known until the following annual report, perhaps as much as eleven months later.

Response: We agree and have added new paragraph (e) to this section to require that, if a State makes a substantive change in certain information required as a part of its annual report, it must file a copy of the change with the next quarterly Data Report or as an amendment to its State Plan. The State must also indicate the effective date of the change. This requirement is applicable only to the information in paragraphs (b)(1), (b)(2), (b)(3), (c)(1), (c)(2), (c)(3), (c)(6), (c)(7), and (c)(8).

Comment: As we discussed in the earlier preamble section entitled, "Child-only Cases," a number of commenters objected to reporting the information on certain families excluded from the State's definition of families receiving assistance as proposed in § 275.9(a)(1), i.e., the number of cases excluded from the calculations of the overall participation rate, the two-parent work participation rate, and the time-limit calculations. They believed we had created a time-consuming, costly reporting burden "to prevent something that HHS has no indication that is actually occurring." They also cited a number of legitimate reasons for child-only cases.

Response: We have deleted this provision. However, we will be collecting case-record information on families receiving assistance that will help inform us about the number and nature of child-only cases, as well as new conversions to child-only cases.

Comment: Commenters strongly objected to four items of disaggregated data in the NPRM on child care services.

Response: Our explanation in the NPRM was that this was a requirement of the Child Care and Development Block Grant (CCDBG) statute and that TANF reporting provided the most cost-effective way to collect these data.

However, we reviewed the CCDBG statute and determined that this was not a disaggregated data collection requirement, but an annual aggregate reporting requirement. Therefore, we have removed these data elements from the TANF Data Report and have added this reporting requirement in paragraph (b)(4), to more closely follow the specific provisions of the CCDBG statute. The information in paragraph (b)(4) that States will report parallels the annual information that the State Child Care agency will report in ACF–800, State-level Data Standards, CCIS Technical Bulletin #1, revised January 23, 1998.

Comment: We received many comments on § 273.7 of the NPRM, "How will we determine State expenditures?" Because we have moved the annual reporting requirements on State MOE program(s), proposed in § 273.7 to § 265.9(c) of the final rule, we are addressing these comments here.

Some commenters generally supported the collection of these data. Other commenters strongly urged that we require additional data, particularly on expenditures. Others objected to the proposed data collection on the grounds that MOE expenditures are a financial commitment on the part of a State, not a program commitment. They alleged that the program information we proposed to collect went beyond the requirements in the statute. Alternatively, they recommended that only financial information on MOE programs be collected. Still other commenters objected to the reporting burden of specific provisions in § 273.7.

Response: In § 273.7 of the NPRM, we proposed that the State must submit eight items of information on its separate State MOE program(s). This information included descriptive program information, a definition of work activities under separate State programs, eligibility criteria, certain expenditure information, and a certification that families served under separate State programs met the State's criteria for "eligible families."

The preamble to the NPRM explained that these data, in addition to the data in the TANF Financial Report, were necessary to our ability to monitor whether State expenditures met the definition of "qualified expenditures." In addition, Congress recognized that State contributions would play an important role in making welfare reform a success. The NPRM and this final rule reflect widespread public interest in learning about the ways in which States help move families toward economic self-support and self-sufficiency. Given this interest, we intend to publish information on our web site regarding State MOE programs.

We disagree that the MOE requirements represent only a financial commitment. We continue to believe that minimal program and expenditure information on State MOE programs is necessary for assessment and monitoring purposes.

Comment: Several commenters requested that we clarify whether the annual reporting requirements on MOE programs apply to only those under the TANF program, to separate State programs, or to both.

Response: We have revised the language in paragraph (c) to clarify that the annual reporting requirements in paragraph (c) apply to any MOE program for which the State claims MOE expenditures.

We also want to clarify that the State must report the information in paragraph (c) only to the extent that the information is applicable to expenditures claimed as MOE. For example, the State need not report on the total number of persons served under an MOE program; only on the number of persons served for whom MOE expenditures are claimed. We believe we have made this clear throughout paragraph (c).

Comment: Two commenters provided detailed analysis and recommendations for additional MOE expenditure data. They believed that, unless the Department obtained these data, we would not be able to determine whether States met MOE requirements, including whether State expenditures claimed for MOE purposes met the "new spending" requirement in section 409(a)(7)(B)(II) of the Act. (These provisions limit countable expenditures for certain State or local programs to spending above FY 1995 levels.)

They recommended that States be required to report:

(1) Expenditure data on MOE programs under both the TANF program and separate State programs;

(2) Total State expenditures and total expenditures claimed as MOE under each program for the current year;

(3) Total 1995 expenditures for all programs in which State spending is claimed toward the MOE requirement;

(4) 1995 State spending on eligible families; and

(5) 1995 State expenditures used to draw down Federal AFDC-related matching funds.

Response: We reviewed these recommendations, and we have accepted two of the recommendations as follows:

(1) As noted above, we have revised paragraph (c) to clarify that the annual report requirements apply to both MOE programs under TANF and separate State programs.

(2) We have added a new paragraph (c)(4) to require, for each MOE program, both the total annual State expenditures and total annual State expenditures claimed as MOE.

We agree, in part, with the third recommendation. The NPRM proposed to collect FY 1995 expenditures for each program/activity not authorized and allowable (under title IV–A) as of August 21, 1996. We have retained this provision in paragraph (c)(8). We intend that this provision collect expenditure data on all MOE programs not

previously authorized and allowable under section 403 of prior law and have added that language to paragraph (c)(8).

We disagree, however, with the recommendation to collect FY 1995 expenditure data on all FY 1995 programs. FY 1995 data on programs funded under section 403 are only needed to the extent that the expenditures in the program are claimed for MOE and the "new spending" requirements apply.

We also did not accept recommendations four and five. For a full discussion of the issues raised by these recommendations, please refer to the preamble discussion related to § 263.5.

While not accepting all of these recommendations, we have significantly strengthened the reporting on MOE programs under this final rule. The MOE requirements in TANF are central to the success of welfare reform. Under the final rule, we believe that we will be in a good position to ensure that States maintain the investments in needy families that Congress intended.

Comment: One commenter recommended that we allow States to report either the average monthly number or the total number of persons served under State MOE program(s), given the variation in how States collect such information.

Response: We agree and have amended paragraph (c)(5) to reflect this option. The commenter was also concerned that the numbers reported would not be an unduplicated count of persons served. We believe that a requirement for an unduplicated count of persons served for purposes of this report would be unduly burdensome on States and have chosen not to require it.

Comment: Several commenters questioned the need for the certification proposed in § 273.7(b)(8) on the grounds that it was either unnecessary or inappropriate. The NPRM required a certification that the families served under MOE programs met the State's criteria for eligible families.

Response: We disagree that a certification is unnecessary. Under many Federal programs, it is standard procedure to require such a certification, particularly for critical program information needed for accountability and for expenditure data.

We agree, however, that the certification as proposed in paragraph (b)(8) was not intended to apply to all families served under MOE programs but only to those families for which the State is claiming MOE expenditures. We have made this change in paragraph (c)(9) of this section.

We have also accepted the following suggestions for editorial clarity recommended by commenters:

- The description of work activities in paragraph (c)(3) must be reported only if applicable to a State's MOE programs. (Some commenters appeared to believe that this reporting requirement meant that the State must offer work activities as a part of their MOE programs.)

Please note that paragraph (c)(3) is the only requirement in § 265.9(c) that applies only to separate State MOE programs. That is because we ask for a description of the work activities under the MOE program(s) in TANF in paragraph (b)(1).

- We deleted paragraph (a) as it appeared in § 273.7 of the NPRM. Paragraph (a) duplicated the requirement that States submit a quarterly TANF Financial Report in § 265.3(c).

Specific Comments on the Proposed Annual Program and Performance Report

Under section 411(b) of the Act, the Secretary is required to submit an annual report to Congress six months after the end of fiscal year 1997 and every year thereafter. The report is to describe whether the States are meeting the work participation rates; the objectives of increasing employment and earnings of needy families as increasing child support collections and decreasing out-of-wedlock pregnancies and child poverty; the demographic and financial characteristics of families applying for assistance, families receiving assistance, and families that became ineligible to receive assistance; the characteristics of each State program funded under this part; and the trends in employment and earnings of needy families with minor children living at home.

In the NPRM, we proposed that States supplement the information that we would obtain through the TANF Data Reports and TANF Financial Reports by providing information in an annual program and performance report. We would include that information in the Department's annual report to Congress on the TANF program.

We proposed that States would describe the characteristics and achievements of each State program; the design and operation of the program; the services, benefits, and assistance provided; and the extent to which the State has met its goals and objectives for the program. We also proposed that States could include additional materials on unique features of their programs, accomplishments and innovations they wished to highlight, or other information appropriate to the report to Congress.

Comment: Without exception, all who commented on this section strongly objected to this requirement. They alleged that we lacked statutory authority for the proposed report and inappropriately shifted the burden of the Secretary's report to States. States also believed that they were also providing much of this information in State plans or that we could obtain it by more efficient and less costly means, e.g., we could conduct national sampling studies in cooperation with the States.

Response: In preparing the NPRM, we were cognizant of the data that we would obtain from the TANF Data and Financial Reports, as well as other sources. We found that State plans varied in the amount of information they contained, and we did not believe we could rely on them as a source of information for the annual report to Congress. We believed that other State and national research and evaluation studies might provide some, but not all, of the information specified in the statute.

We have accepted the recommendation to delete this provision. We will also continue to consider and evaluate multiple sources of data in preparing the report to Congress; for example, we expect to compile information on program characteristics from State plans. If we identify substantive weaknesses in the data we have available through this approach, we will assess our options. We appreciate the offer from States to work together to collect this information in the most efficient way possible.

Additional Reporting Requirements

The discussion above relates to the information now included in the annual report based on the provisions of the NPRM. Following our review of comments and consideration of policy issues that arose in the development of the final rule, we have added five new reporting requirements in § 265.9. While we dropped our proposal for a separate annual program and performance report, we still need information on key aspects of State programs in order to prepare the annual report to Congress. To the maximum extent possible, we will draw upon data available through the State plans and other reports submitted by States.

(1) Family Violence Option

If a State has adopted the Family Violence Option and wants Federal recognition of its good cause domestic

violence waivers under subpart B of part 260 of this chapter, the State must provide: (1) A description of the strategies and procedures in place to ensure that victims of domestic violence receive appropriate alternative services, and (2) an aggregate figure for the total number of good cause waivers granted.

This new reporting requirement in paragraph (b)(5) of this section will tell us and other interested parties about the activities States are carrying out to ensure that individuals granted waivers receive appropriate attention from TANF staff, access to services, and appropriate consideration of their safety issues. In addition, at §§ 260.54, 260.58, and 260.59, we have specified that a State may receive special penalty consideration under these regulatory provisions if it submits this information.

(2) Nature of Nonrecurrent, Short-Term Benefits

In paragraph (b)(6) of this section, we are asking States to provide a description of the nonrecurrent, short-term benefits they are providing, including:

- The eligibility criteria for these benefits (together with any restrictions on the amount, duration, or frequency of payments);
- Any policies they have instituted that limit such payments to families eligible for assistance or that have the effect of delaying or suspending eligibility for assistance; and
- Any procedures or activities developed under the TANF program to ensure that individuals diverted from TANF assistance receive appropriate information about, referrals to, and access to Medicaid, food stamps, and other programs that provide benefits that could help them successfully transition to work.

To the extent that a State provides the required information, either in the State plan or in the annual report, it would not have to duplicate this information.

As discussed earlier in the preamble, we strongly believe that effective procedures to ensure that diverted individuals access Medicaid, food stamps, or other programs are critical to the success of TANF programs in achieving lasting employment for the families they serve. In addition, such procedures might help States avoid compliance and legal problems in other programs. Given the importance of this issue, the additional information on State practices that we are requiring in the annual report will be extremely helpful in assuring the role TANF agencies are playing with individuals receiving diversion benefits.

For more detailed information, see our discussion on "Nonrecurrent, short-term benefits" at § 260.31.

(3) Displacement Procedures

We have added a new reporting requirement in paragraph (b)(7) of this section. Under this provision, each State must include a description of the grievance procedures that are in place in the State to resolve complaints that it receives about displacement.

Each State must create displacement procedures under section 407(f) of the Act. This provision and the related provision at section 403(a)(5)(J) of the Act (which applies to the WtW program) reflects longstanding concern among unions, labor groups, and others about the possibility that welfare recipients being placed at work sites could displace other workers from their jobs. States are also concerned about displacement because of its potential negative effect on their labor force and the long-term success of their TANF programs. Given these multiple concerns, we believe it is important that we monitor State activity in this area. For further discussion, see the preamble discussion on "Recipient and Workplace Protections."

(4) Activities Directed at Other Purposes of the Act

It is clear from the statement of findings in section 101 of PRWORA, the stated TANF goals at § 260.20, the preamble discussions on allowable uses of Federal and MOE funds, and activities underway outside the scope of these rules that the TANF legislation recognizes out-of-wedlock pregnancy prevention and family formation as critical components of welfare reform; and, subject to some general restrictions, State may spend Federal TANF and State MOE dollars on such efforts.

Because of the significance of this issue, in paragraph (b)(8), we are asking States to include a description of the activities that they provide under their TANF program to address both these purposes. (We are also asking States annually to provide a break-out of their expenditures on these activities in the TANF Financial Report.)

(5) Number of Individuals in Subsidized Employment

Given our more narrow definition of assistance, we will not be collecting disaggregated information from States on the number of individuals who have participated in subsidized employment under § 261.30(b) or (c). In paragraph (b)(9), we are asking States to estimate this information as an annual aggregate number. We believe this information is highly relevant to understanding the efforts State are making to move individuals, particularly hard-to-place individuals, into employment and accomplishing the second goal of the TANF program.

Section 265.10—When Are Annual Reports Due? (§ 275.10 of the NPRM)

This section of the NPRM proposed due dates for the annual addendum and the annual program and performance report. We received no substantive comments on this section.

In light of the decision to delete the annual program and performance report in § 265,9, we have deleted paragraph (b) of this section as it appeared in the NPRM. We have revised the language of this section to specify that the annual report is due at the same time as the fourth quarter TANF Data Report, i e., November 15 of each year.

XI. Regulatory Impact Analyses

A. Executive Order 12866

Executive Order 12866 requires that regulations be drafted to ensure that they are consistent with the priorities and principles set forth in the Executive Order. The Department has determined that this rule is consistent with these priorities and principles. This rulemaking implements statutory authority based on broad consultation and coordination. It reflects our response to comments received both on the burden estimates for the proposed data collection and on the NPRM that we issued on November 20, 1997.

The Executive Order encourages agencies, as appropriate, to provide the public with meaningful participation in the regulatory process. As described elsewhere in the preamble, ACF consulted with State and local officials and their representative organizations as well as a broad range of advocacy groups, researchers and others to obtain their views prior to the publication of the NPRM.

We also considered comments received in response to the NPRM and had a small number of meetings with major national organizations that asked for the opportunity to present their comments in person. We respond to the comments that we received in the **SUPPLEMENTARY INFORMATION** section of the preamble and in the discussions of individual regulatory provisions.

To a considerable degree, these rules reflect the comments that we received in response to the NPRM. They also reflect the intent of PRWORA to achieve a balance between granting States the flexibility they need to develop and operate effective and responsive

programs and ensuring that they meet the objectives of the statute. Under the new law, State flexibility is achieved by converting the welfare program into a block grant and limiting Federal rules; ensuring that program goals are accomplished is achieved through a number of penalty and bonus provisions and detailed data collection. The limited scope of this regulation is also consistent with Administration policy, as articulated in Executive Order 12866 and its Regulatory Reinvention initiatives. At the same time, we have created a sufficient regulatory structure to enable enforcement of key statutory requirements.

We support State flexibility in numerous ways—such as by exercising regulatory restraint; giving States the ability to define key program terms; and clarifying that States have the ability to continue their welfare reform demonstrations, serve victims of domestic violence and noncustodial parents, use State funds to provide assistance to certain nonqualified immigrants, provide supports to working families, and operate separate State programs that are not subject to all the TANF requirements.

We support the achievement of program goals by ensuring that we capture key information on what is happening under the State TANF programs and maintaining the integrity of the work and other penalty provisions. We take care, in provisions such as the MOE penalty provisions, sanction penalty provisions, and caseload reduction factor approval process, to protect against negative impacts on needy families.

One of our key goals in developing the penalty rules was to ensure State performance in all key areas provided under statute, including work participation, time limits, State maintenance-of-effort, proper use of Federal TANF funds, and data reporting. The law specified that we should enforce State actions in these areas and also specified the penalty for each failure. Through the "reasonable cause" and "corrective compliance" provisions in the rules we give some consideration to special circumstances within a State to help ensure that neither the State nor needy families within the State will be unfairly penalized for circumstances beyond their control.

In the work and penalty areas, this rulemaking provides information to the States that will help them understand our specific expectations and take the steps necessary to avoid penalties. These rules may ultimately affect the number and size of penalties that are imposed on States, but the basic expectations on States are statutory.

The financial impacts of these rules should be minimal because of the fixed level of funding provided through the block grant. A State's Federal grant could be affected by the penalty decisions made under the law and these rules, and State expenditures on needy families could be affected indirectly by the rules on caseload reduction. (That is, as the result of caseload reduction, a State might meet the required participation rates and expend State funds at the 75-percent MOE level rather than the 80-percent level.) Otherwise, we do not believe that the rulemaking will affect the overall level of funding or expenditures. However, it could have minor impacts on the nature and distribution of such expenditures.

In the area of data collection, the statutory requirements are specific—especially with respect to case-record or disaggregated data. These rules also include data reporting with respect to program expenditures and characteristics and, under certain circumstances, disaggregated and aggregated case-record information on SSP cases. These data collection requirements help ensure that States continue to contribute meaningful amounts of State dollars to programs that assist needy families, monies go for the intended purposes, and the financial integrity of the program is maintained.

We have retained SSP–MOE data collection in order to assess the overall impact of the program and enable us to determine whether the creation of separate State programs could undermine the objectives of the Act. However, consistent with some of the programmatic changes we have made, we have reduced the amount of case-record data we include in this SSP–MOE data collection and (in changing the definition of assistance) have narrowed the types of separate State programs for which States must provide case-record reporting.

The impacts of these rules on needy individuals and families will depend on the choices that a State makes in implementing the new law. Our data collection should enable tracking of these effects over time and across States. Overall, our assessment of these rules indicates that they represent the least burdensome approach consistent with the regulatory objectives.

Based on the comments that we received both on the data collection burden and the NPRM, we reassessed some of our proposed policies. We have identified an approach to certain issues that is less burdensome than we initially proposed, but that is still consistent with our regulatory objectives.

This is a significant regulatory action under section (3)(f)(1) of Executive Order 12866 and, therefore, these final rules have been reviewed by the Office of Management and Budget in accordance with that Order. This rule also has been determined to be a major rule under the Small Business Regulatory Enforcement Fairness Act of 1996.

We have estimated the annualized Paperwork Reduction Act costs to be approximately $30 million, as indicated in section D below, and the penalty costs to be approximately $50 million, beginning in FY 2001, as reflected in the Administration's budget.

These final rules implement the new welfare reform block grant program, the Temporary Assistance for Needy Families program. The legislation and these rules reflect new Federal, State, and Tribal relationships in the administration of welfare programs; a new focus on moving recipients into work; and a new emphasis on program information, measurement, and performance. These rules also strengthen State efforts to develop creative and diverse responses to help recipients become self-sufficient; provide recipients with child care, transportation, and other supportive services they need as they move from welfare to work; and address the many factors that contribute to poverty and dependency.

We believe these objectives are reflected in these final rules and that the benefits to families and children, as well as to States, far outweigh the costs, as reflected in the preamble sections that address the substantive provisions of this rule.

In assessing the potential costs and benefits—both quantitative and qualitative—of these final regulations, the Secretary has determined that the benefits of these regulations justify the costs. The Secretary has also determined that this regulatory action does not unduly interfere with State, local, and Tribal governments in the exercise of their governmental functions.

B. Regulatory Flexibility Analysis

The Regulatory Flexibility Act (5 U.S.C. Ch. 6) requires the Federal government to anticipate and reduce the impact of rules and paperwork requirements on small businesses and other small entities. Small entities are defined in the Act to include small businesses, small nonprofit organizations, and small governmental entities. This rule will affect primarily the 50 States, the District of Columbia,

and certain Territories. Therefore, the Secretary certifies that this rule will not have a significant impact on small entities.

C. Assessment of the Impact on Family Well-Being

We certify that we have made an assessment of this rule's impact on the well-being of families, as required under section 654 of The Treasury and General Government Appropriations Act of 1999. The purpose of the TANF program is to strengthen the economic and social stability of families, in part by supporting the formation and maintenance of two-parent families and reducing out-of-wedlock child-bearing. As required by statute, this rule gives flexibility to States to design programs that can best serve this purpose.

D. Paperwork Reduction Act

This rule contains information collection requirements that have been submitted to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA). Under this Act, no persons are required to respond to a collection of information unless it displays a valid OMB control number. If you have any comments on these information collection requirements, please submit them to OMB within 30 days. The address is: Office of Management and Budget, Paperwork Reduction Project, 725 17th Street N.W., Washington, D.C. 20503, Attn: ACF/DHHS Desk Officer. The public will have an opportunity to provide comments before OMB makes a final decision.

This final rule incorporates our response to comments regarding the reporting burden that we received in response to the NPRM and the Paperwork Notice we published November 27, 1997. It requires States to submit three quarterly reports and one annual report. In addition, States must provide documentation in support of or related to caseload reduction credit, the reasonable cause/corrective compliance process, the Governor's certification on State waiver programs, and the domestic violence good cause waiver redetermination process.

We are publishing in this issue of the **Federal Register** the quarterly data reports and instructions (including the specific data elements); the quarterly financial report and instructions; and two reporting forms: the Annual Report on State Maintenance-of-Effort Programs and instructions (a part of the annual report information specified in § 265.9(c)) and the Caseload Reduction Report and instructions. We discussed the burden of the content of the latter two reporting forms in the NPRM, but we are publishing the report forms themselves to facilitate compliance.

Quarterly Data and Financial Reports

The three quarterly reports required are the TANF Data Report (Appendices A through C), the SSP–MOE Data Report (Appendices E through G), and the TANF Financial Report (Appendix D) (or, as applicable, the Territorial Financial Report). The TANF Data Report and SSP–MOE Data Report consist of three sections each. Two of the three sections of each Data Report contain disaggregated data elements, and one section of each Data Report contains aggregated data elements.

We need this information collection to meet the requirements of section 411(a) and to implement other sections of the Act, including sections 407 (work participation requirements), 409 (penalties), and 413 (annual rankings).

In the final rule, we have significantly reduced the burden on States of collecting case-record information on current recipients and closed cases. As discussed in the preamble section regarding part 265, we accepted many of the commenters' recommendations to reduce or eliminate burden. For example, we reduced the number of data elements in each Data Report; clarified that States are not required to track closed cases but report only data from the month of closure; and reduced the type of SSP–MOE programs subject to case-record reporting under the revised definition of assistance. At the same time, we also modified, revised, or expanded a very few data elements for clarity or specificity, e.g., adding break-out items on case closure. In deciding which changes to make, we focused on the statutory requirements and the importance of the data in informing us about what was happening to needy families under TANF.

States are required to report MOE expenditure data on the TANF Financial Report; case-record reporting in the SSP–MOE Data Report is optional. However, if a State claims MOE expenditures under a separate State program and wishes to receive a high performance bonus or qualify for caseload reduction credit, it must file disaggregated and aggregated information on a separate State program(s) that is similar to the data reported for the TANF program.

In response to comments and as a consequence of our more narrow definition of "assistance," we have reduced the number of data elements in the SSP–MOE Data Report and the number of TANF and separate State programs that are covered by the SSP–MOE Data Report. (See Appendices E through G for the data elements.)

The TANF Financial Report consists of one form. (See Appendix D.) We need this report to meet the requirements of sections 405(c)(2), 411(a)(2), 411(a)(3), and 411(a)(5) and to carry out our other financial management and oversight responsibilities. These responsibilities include providing information that could be used in determining whether States are subject to penalties under section 409(a)(1), 409(a)(3), 409(a)(7), 409(a)(9), or 409(a)(14); tracking expenditures under our definition of "assistance"; learning the extent to which recipients of benefits and services are covered by program requirements, and helping to validate the disaggregated data we receive on TANF and SSP cases.

Annual Report

Based on comments, we eliminated the proposed Annual Program and Performance Report (§ 275.9(c) of the NPRM) and the Addendum to the Fourth Quarter Financial Report (§ 275.9(a) and (b) of the NPRM). However, the content of the proposed Addendum is now contained in and required to be reported as a part of the Annual Report in § 265.9. In addition, § 265.9 requires States to report more detailed information on the State's MOE program(s), strategies to implement the Family Violence Option, State diversion programs, and other program characteristics. (We have developed a form for reporting the information on State MOE programs; see Appendix I.)

Other Information Collection Requirements

There are four other circumstances in this rulemaking that will create a reporting burden. The first circumstance concerns instances in which a State wants to qualify for caseload reduction credit. The second addresses a situation in which a State is subject to a penalty under section 409 and wishes to avoid the penalty or receive a reduced penalty. The third is the Governor's certification with respect to waivers, and the fourth is the domestic violence good cause waiver redetermination process.

- If a State elects to request a pro-rata reduction in the minimum participation rates, based on caseload reduction, § 261.41 requires that it must file certain data. We have developed a form for States to report these data at Appendix H.
- If a State wishes to dispute a penalty determination or wants to be considered for a waiver of a penalty based on "reasonable cause" or

corrective compliance, § 262.4 requires that the State provide us with certain information. A State must use a similar process if it is seeking a reduced penalty for failure to meet the work participation rates, as discussed at § 261.51.

- If a State is claiming a waiver inconsistency for work requirements or time limits, the Governor must provide a certification (and documentation) to the Secretary on the nature and scope of the waiver and the inconsistency. See § 260.75.
- If a State wants recognition of good cause domestic violence waivers it issues under the Family Violence Option (subpart B of § 260), it must conduct a redetermination of the need for any waivers extending beyond six months. (We estimate that 45 States will conduct between 500 and 600 redeterminations annually. Only a portion of cases receiving waivers will need redeterminations. We estimate that each determination and redetermination will take approximately one hour.)

Changes in the Estimate of Burden

In the NPRM, the respondents for the TANF Financial Report were listed as the 50 States of the United States and the District of Columbia. (We proposed that the Territories would report expenditure data on the Territorial Financial Report.) The respondents for the remaining reporting requirements, i.e., the TANF Data Report, the SSP–MOE Data Report, the annual program and performance report, the Caseload Reduction Credit documentation process, and the Reasonable Cause/Corrective Compliance documentation process, were listed as the 50 States of the United States, the District of Columbia, Guam, Puerto Rico, and the United States Virgin Islands. (American Samoa is eligible for the TANF program and could use funds that it receives under section 1108 to operate the TANF program. However, it did not elect to operate a TANF program, and we did not include this jurisdiction in our calculation of State burden.)

In the final rule, we have generally assumed the same number of respondents for most of the quarterly Data Reports, the quarterly Financial Report, and the new Annual Report. However, because we reduced the scope of the SSP–MOE reporting, we also reduced the number of respondents to the SSP–MOE Data Report from 54 to 17. This is the current number of States that we believe will have programs that meet the definition of "assistance."

In addition, we have estimated 32 States as possible respondents to the Governor's certification on waivers because there are 32 States that currently operate programs under approved waivers.

We have estimated that 45 States will be respondents under the domestic violence good cause waiver redetermination process because the majority of States have implemented the Family Violence Option, and many others are taking the legislative or administrative steps necessary to implement this provision.

While the statute requires Tribal organizations with TANF programs to submit some of the same data as States, we have not calculated the burden for the Tribal organizations in this rule. The reporting burden of Tribal organizations is addressed in the Tribal Work and TANF NPRM published July 22, 1998 (63 FR 39366).

Burden Estimates

In estimating the reporting burden in the NPRM, we pointed out that some of the reporting burden that used to exist in the AFDC program had disappeared. We also pointed out that most of the data elements required under the TANF Data Report were similar to previous data elements required in the AFDC or JOBS program and built upon the data elements in the Emergency TANF Data Report. However, States alleged that our assumptions in this area were not totally valid.

In addition, we assumed that most States would collect the data by means of a review sample. In the NPRM, we used as a starting point the OMB-inventoried QC burden hours as a standard for estimating the TANF burden. We also assumed that when a State provided us the information for their entire caseload, there would be a one-time burden and cost of developing or modifying its automated system.

These assumptions were based on a belief that the proposed information was currently being collected and could be extracted from State automated data systems. State commenters challenged both of these assumptions and the burden estimates we derived from them. They asserted that a significant amount of the proposed information was not available and would require manual collection from TANF recipients. (We note that 30 States are currently reporting data on their entire caseload in the quarterly Emergency TANF Data Report.)

We considered these comments and recalculated what the burden estimate would have been assuming that we had the same number of data elements and respondents as originally proposed in the NPRM. Based on these assumptions, the overall burden estimate would have increased from 241,128 hours (the total burden estimate in the NPRM) to 1,153,944 hours. However, this increase has been offset significantly by the changes we have made in the final rule, e.g., the decrease in the total number of data elements and the substantial reduction in the number of SSP–MOE respondents. These reductions were in large part the result of our response to comments on the NPRM. The estimated total annual burden hours have been reduced to 583,912.

The annual burden estimates include any time involved pulling records from files, abstracting information, returning records to files, assembling any other material necessary to provide the requested information, and transmitting the information.

Table A contains our burden estimates for the final rule and revised estimates for the NPRM. The columns entitled "Final" incorporate the estimates of the burden associated with the requirements in the final rule. These estimates reflect both the revised assumptions and the overall reductions in burden. The columns entitled "NPRM As Revised" provide revised estimates of the burden associated with the requirements in the NPRM, i.e., assuming we retained all the data elements proposed in the NPRM. All numbers have been rounded where indicated.

A. Recalculated Burden Estimates for the Final Rule

Instrument or requirement	Number of respondents		Yearly submittals	Average burden hours per response		Total burden hours	
	NPRM as revised [1]	Final		NPRM as revised [1]	Final	NPRM as revised [1]	Final
TANF Data Report—§ 265.3(b)	[2] 54	[2] 54	4	3,185	2,183	687,960	471,528
SSP—MOE Data Report—§ 265.3(d)	[3] 54	[3] 17	4	2,041	664	440,856	45,152
TANF Financial Report—§ 265.3(c)	[4] 51	[4] 51	4	12	30	2,448	6,120

Instrument or requirement	Number of respondents		Yearly submittals	Average burden hours per response		Total burden hours	
	NPRM as revised [1]	Final		NPRM as revised [1]	Final	NPRM as revised [1]	Final
Annual Report—§ 265.9(b)–(c)6	[5] NA	[2] 54	1	[5] NA	128	[5] NA	6,912
Caseload Reduction Documentation Process—§ 261.41 & § 261.44	[2] 54	[2] 54	1	100	160	5,400	8,640
Reasonable Cause/Corrective Compliance Documentation Process—§§ 262.4, 262.6, & 262.7; § 261.51	[1] 54	[1] 54	2	160	160	17,280	17,280
Governor's Waiver Certification Process—§ 260.75	[5] NA	32	1	[5] NA	40	[5] NA	1,280
Domestic Violence Good Cause Waiver Redetermination Process—§ 260.55	[5] NA	45	600	[5] NA	1	[5] NA	27,000
Estimated Total Annual Burden Hours: [7]						1,153,944	583,912

[1] This column reflects what the burden estimate would have been assuming we retained all data elements proposed in the NPRM.
[2] The 50 States, the District of Columbia, Guam, Puerto Rico, and the United States Virgin Islands will be respondents.
[3] We estimate that 17 States will be respondents based on the number of States that currently have SSP–MOE programs.
[4] The 50 States and the District of Columbia will be respondents.
[5] Not applicable. These reporting requirements did not appear in the NPRM.
[6] In the NPRM, the annual report referred to the Annual Program and Performance Report, now eliminated.
[7] The total burden estimate for the NPRM (using the original assumptions) was 241,128.

Therefore, while the burden estimate would have increased by approximately 140 percent (based on the provisions in the NPRM), the actual burden decreased by approximately 50 percent.

We did not consider the burden for the Territorial Financial Report because it has fewer than ten respondents and, therefore, is not covered by the PRA. Also, we no longer require an annual addendum to the fourth quarter TANF Financial Report (the burden for the addendum was estimated in the NPRM as a part of the financial report). We now include the content and burden of the Addendum as a part of the Annual Report requirement.

Finally, in the NPRM, we proposed a caseload reduction process requiring 40 annual burden hours per respondent. In response to comments on the caseload reduction process and the revisions we have made, we increased the estimated annual burden to 160 hours per respondent and developed a form for reporting this information. (See Appendix H.)

Cost Estimates

Many commenters expressed the opinion that we had greatly underestimated the costs associated with significant systems overhaul and redesign that would require substantial investment in staff and resources, as well as the costly ongoing operations and reporting efforts.

We have reconsidered the costs in light of these comments and have revised our estimates accordingly. Specifically, we have increased the estimate of the annualized cost of the hour burden from $3,520,469 to $17,050,230. This figure is based on an estimated average hourly wage of $29.20 (including fringe benefits, overhead, and general and administrative costs) for the State staff performing the work multiplied by 583,912 burden hours. (If we had not reduced the actual burden by approximately 50 percent, the estimated cost of the hour burden would have been $33,695,164 ($29.20 times 1,153,944 burden hours).)

We had originally estimated average annualized capital/start-up and operational and maintenance costs (CSO&M) to be $2,700,000 across all States, or $50,000 per respondent. Many States expressed the opinion that the data collection will require costly systems overhaul and redesign and that the overall burden should be anywhere from 5 to 20 times our original estimate.

As indicated above, we have made a substantial upward adjustment in the annualized cost of the hour burden. In addition, we have calculated a substantial increase of 500 percent in the annualized CSO&M based on the assertions of the States. Therefore, we have estimated annualized CSO&M cost to be $13,500,000. When added to the $17,050,230 estimate of the annualized cost of the hour burden, it yields a total estimated annualized cost of $30,550,230, or an average of $565,745 per respondent. Without the actual reduction in burden, the cost would have been $47,195,164, or an average of $873,985 per respondent.

We considered comments by the public on these collections of information in:

- Evaluating whether the collections are necessary for the proper performance of our functions, including whether the information will have practical utility;
- Evaluating the accuracy of our estimate of the burden of the collections of information, including the validity of the methodology and assumptions used, and the frequency of collection;
- Enhancing the quality, usefulness, and clarity of the information to be collected; and
- Minimizing the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technology, e.g., the electronic submission of responses.

E. Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995 (Unfunded Mandates Act) requires that a covered agency prepare a budgetary impact statement before promulgating a rule that includes any Federal mandate that may result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year.

If a covered agency must prepare a budgetary impact statement, section 205 further requires that it select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with the statutory requirements. In addition, section 203 requires a plan for informing and advising any small government that may be significantly or uniquely impacted by the rule.

We have determined that the rules will not result in the expenditure by State, local, and Tribal governments, in

the aggregate, or by the private sector, of more than $100 million in any one year. Accordingly, we have not prepared a budgetary impact statement, specifically addressed the regulatory alternatives considered, or prepared a plan for informing and advising any significantly or uniquely impacted small government.

List of Subjects in 45 CFR Parts 260 Through 265

Administrative practice and procedure, Day care, Employment, Grant programs—social programs, Loan programs—social programs, Manpower training programs, Penalties, Public assistance programs, Reporting and recordkeeping requirements, Vocational education.

(Catalogue of Federal Domestic Assistance Programs: 93.558 TANF programs—State Family Assistance Grants, Assistance grants to Territories, Matching grants to Territories, Supplemental Grants for Population Increases and Contingency Fund; 93.559—Loan Fund; 93.595—Welfare Reform Research, Evaluations and National Studies)

Dated: March 26, 1999.

Olivia A. Golden,

Assistant Secretary for Children and Families.

Approved: March 29, 1999.

Donna E. Shalala,

Secretary, Department of Health and Human Services.

For the reasons set forth in the preamble, we are amending 45 CFR chapter II by adding parts 260 through 265 to read as follows:

PART 260—GENERAL TEMPORARY ASSISTANCE FOR NEEDY FAMILIES (TANF) PROVISIONS

Subpart A—What Provisions Generally Apply to the TANF Program?

Sec.
260.10 What does this part cover?
260.20 What is the purpose of the TANF program?
260.30 What definitions apply under the TANF regulations?
260.31 What does the term "assistance" mean?
260.32 What does the term "WtW cash assistance" mean?
260.33 When are expenditures on State or local tax credits allowable expenditures for TANF-related purposes?
260.35 What other Federal laws apply to TANF?
260.40 When are these provisions in effect?

Subpart B—What Special Provisions Apply to Victims of Domestic Violence?

260.50 What is the purpose of this subpart?
260.51 What definitions apply to this subpart?
260.52 What are the basic provisions of the Family Violence Option (FVO)?
260.54 Do States have flexibility to grant good cause domestic violence waivers?
260.55 What are the additional requirements for Federal recognition of good cause domestic violence waivers?
260.58 What penalty relief is available to a State whose failure to meet the work participation rates is attributable to providing federally recognized good cause domestic violence waivers?
260.59 What penalty relief is available to a State that failed to comply with the five-year limit on Federal assistance because it provided federally recognized good cause domestic violence waivers?

Subpart C—What Special Provisions Apply to States That Were Operating Programs Under Approved Waivers?

260.70 What is the purpose of this subpart?
260.71 What definitions apply to this subpart?
260.72 What basic requirements must State demonstration components meet for the purpose of determining if inconsistencies exist with respect to work requirements or time limits?
260.73 How do existing welfare reform waivers affect the participation rates and work rules?
260.74 How do existing welfare reform waivers affect the application of the Federal time-limit provisions?
260.75 If a State is claiming a waiver inconsistency for work requirements or time limits, what must the Governor certify?
260.76 What special rules apply to States that are continuing evaluations of their waiver demonstrations?

Authority: 42 U.S.C. 601, 601 note, 603, 604, 606, 607, 608, 609, 610, 611, 619, and 1308.

Subpart A—What Rules Generally Apply to the TANF Program?

§ 260.10 What does this part cover?

This part includes regulatory provisions that generally apply to the Temporary Assistance for Needy Families (TANF) program.

§ 260.20 What is the purpose of the TANF program?

The TANF program has the following four purposes:

(a) Provide assistance to needy families so that children may be cared for in their own homes or in the homes of relatives;

(b) End the dependence of needy parents on government benefits by promoting job preparation, work, and marriage;

(c) Prevent and reduce the incidence of out-of-wedlock pregnancies and establish annual numerical goals for preventing and reducing the incidence of these pregnancies; and

(d) Encourage the formation and maintenance of two-parent families.

§ 260.30 What definitions apply under the TANF regulations?

The following definitions apply under parts 260 through 265 of this chapter:

ACF means the Administration for Children and Families.

Act means Social Security Act, unless otherwise specified.

Adjusted State Family Assistance Grant, or adjusted SFAG, means the SFAG amount, minus any reductions for Tribal Family Assistance Grants paid to Tribal grantees on behalf of Indian families residing in the State and any transfers to the Social Services Block Grant or the Child Care and Development Block Grant.

Administrative costs has the meaning specified at § 263.0(b) of this chapter.

Adult means an individual who is not a "minor child," as defined elsewhere in this section.

AFDC means Aid to Families with Dependent Children.

Aid to Families with Dependent Children means the welfare program in effect under title IV–A of prior law.

Assistance has the meaning specified at § 260.31.

Basic MOE means the expenditure of State funds that must be made in order to meet the MOE requirement at section 409(a)(7) of the Act.

Cash assistance, when provided to participants in the Welfare-to-Work program (WtW), has the meaning specified at § 260.32.

CCDBG means the Child Care and Development Block Grant Act of 1990, as amended, 42 U.S.C. 9858 *et seq.*

CCDF means the Child Care and Development Fund, or those child care programs and services funded either under section 418(a) of the Act or CCDBG.

Commingled State TANF expenditures means expenditures of State funds that are made within the TANF program and commingled with Federal TANF funds.

Contingency fund means Federal TANF funds available under section 403(b) of the Act, and contingency funds means the Federal monies made available to States under that section. Neither term includes any State funds expended pursuant to section 403(b).

Contingency fund MOE means the MOE expenditures that a State must make in order to meet the MOE requirements at sections 403(b)(6) and 409(a)(10) of the Act and subpart B of part 264 of this chapter and retain contingency funds made available to the State. The only expenditures that qualify for Contingency Fund MOE are State TANF expenditures.

Control group is a term relevant to continuation of a "waiver" and has the meaning specified at § 260.71.

Countable State expenditures has the meaning specified at § 264.0 of this chapter.

Discretionary fund of the CCDF refers to child care funds appropriated under the CCDBG.

EA means Emergency Assistance.

Eligible State means a State that, during the 27-month period ending with the close of the first quarter of the fiscal year, has submitted a TANF plan that we have determined is complete.

Emergency assistance means the program option available to States under sections 403(a)(5) and 406(e) of prior law to provide short-term assistance to needy families with children.

Expenditure means any amount of Federal TANF or State MOE funds that a State expends, spends, pays out, or disburses consistent with the requirements of parts 260 through 265 of this chapter. It may include expenditures on the refundable portions of State or local tax credits, if they are consistent with the provisions at § 260.33. It does not include any amounts that merely represent avoided costs or foregone revenue. Avoided costs include such items as contractor penalty payments for poor performance and purchase price discounts, rebates, and credits that a State receives. Foregone revenue includes State tax provisions—such as waivers, deductions, exemptions, or nonrefundable tax credits—that reduce a State's tax revenue.

Experimental group is a term relevant to continuation of a "waiver" and has the meaning specified at § 260.71.

FAG has the meaning specified at § 264.0(b) of this chapter.

Family Violence Option (or FVO) has the meaning specified at § 260.51.

FAMIS means the automated statewide management information system under sections 402(a)(30), 402(e), and 403 of prior law.

Federal expenditures means expenditures by a State of Federal TANF funds.

Federal TANF funds means all funds provided to the State under section 403 of the Act except WtW funds awarded under section 403(a)(5), including the SFAG, any bonuses, supplemental grants, or contingency funds.

Federally recognized good cause domestic violence waiver has the meaning specified at § 260.51.

Fiscal year means the 12-month period beginning on October 1 of the preceding calendar year and ending on September 30.

FY means fiscal year.

Good cause domestic violence waiver has the meaning specified at § 260.51.

Governor means the Chief Executive Officer of the State. It thus includes the Governor of each of the 50 States and the Territories and the Mayor of the District of Columbia.

IEVS means the Income and Eligibility Verification System operated pursuant to the provisions in section 1137 of the Act.

Inconsistent is a term relevant to continuation of a "waiver" and has the meaning specified at § 260.71.

Indian, Indian Tribe and Tribal Organization have the meaning given such terms by section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b), except that the term "Indian tribe" means, with respect to the State of Alaska, only the Metlakatla Indian Community of the Annette Islands Reserve and the following Alaska Native regional nonprofit corporations:

(1) Arctic Slope Native Association;
(2) Kawerak, Inc.;
(3) Maniilaq Association;
(4) Association of Village Council Presidents;
(5) Tanana Chiefs Council;
(6) Cook Inlet Tribal Council;
(7) Bristol Bay Native Association;
(8) Aleutian and Pribilof Island Association;
(9) Chugachmuit;
(10) Tlingit Haida Central Council;
(11) Kodiak Area Native Association; and
(12) Copper River Native Association.

Individual Development Account, or IDA, has the meaning specified at § 263.20 of this chapter.

Job Opportunities and Basic Skills Training Program means the program under title IV–F of prior law to provide education, training and employment services to welfare recipients.

JOBS means the Job Opportunities and Basic Skills Training Program.

Minor child means an individual who:

(1) Has not attained 18 years of age; or

(2) Has not attained 19 years of age and is a full-time student in a secondary school (or in the equivalent level of vocational or technical training).

MOE means maintenance-of-effort.

Needy State is a term that pertains to the provisions on the Contingency Fund and the penalty for failure to meet participation rates. It means, for a month, a State where:

(1)(i) The average rate of total unemployment (seasonally adjusted) for the most recent 3-month period for which data are published for all States equals or exceeds 6.5 percent; and

(ii) The average rate of total unemployment (seasonally adjusted) for such 3-month period equals or exceeds 110 percent of the average rate for either (or both) of the corresponding 3-month periods in the two preceding calendar years; or

(2) The Secretary of Agriculture has determined that the average number of individuals participating in the Food Stamp program in the State has grown at least 10 percent in the most recent 3-month period for which data are available.

Noncustodial parent means a parent of a minor child receiving assistance who:

(1) Lives in the State; and

(2) Does not live in the same household as the child.

Prior law means the provisions of title IV–A and IV–F of the Act in effect as of August 21, 1996. They include provisions related to Aid to Families with Dependent Children (or AFDC), Emergency Assistance (or EA), Job Opportunities and Basic Skills Training (or JOBS), and FAMIS.

PRWORA means the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, or Pub. L. 104–193, 42 U.S.C. 1305 note.

Qualified Aliens has the meaning prescribed under section 431 of PRWORA, as amended, 8 U.S.C. 1641.

Qualified State Expenditures means the total amount of State funds expended during the fiscal year that count for basic MOE purposes. It includes expenditures, under any State program, for any of the following with respect to eligible families:

(1) Cash assistance;

(2) Child care assistance;

(3) Educational activities designed to increase self-sufficiency, job training, and work, excluding any expenditure for public education in the State except expenditures involving the provision of services or assistance of an eligible family that is not generally available to persons who are not members of an eligible family;

(4) Any other use of funds allowable under subpart A of part 263 of this chapter; and

(5) Administrative costs in connection with the matters described in paragraphs (1), (2), (3) and (4) of this definition, but only to the extent that such costs do not exceed 15 percent of the total amount of qualified State expenditures for the fiscal year.

Secretary means Secretary of the Department of Health and Human Services or any other Department official duly authorized to act on the Secretary's behalf.

Segregated State TANF expenditures means expenditures of State funds within the TANF program that are not commingled with Federal TANF funds.

Separate State program, or SSP, means a program operated outside of

TANF in which the expenditures of State funds may count for basic MOE purposes.

SFAG means State family assistance grant, as defined in this section.

SFAG payable means the SFAG amount, reduced, as appropriate, for any Tribal Family Assistance Grants made on behalf of Indian families residing in the State and any penalties imposed on a State under this chapter.

Single audit means an audit or supplementary review conducted under the authority of the Single Audit Act at 31 U.S.C. chapter 75.

Social Services Block Grant means the social services program operated under title XX of the Act, pursuant to 42 U.S.C. 1397.

SSBG means the Social Services Block Grant.

State means the 50 States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, and American Samoa, unless otherwise specified.

State agency means the agency that the Governor certifies as the administering and supervising agency for the TANF program, pursuant to section 402(a)(4) of the Act.

State family assistance grant means the amount of the basic block grant allocated to each eligible State under the formula at section 403(a)(1) of the Act.

State MOE expenditures means the expenditure of State funds that may count for purposes of the basic MOE requirements at section 409(a)(7) of the Act and the Contingency Fund MOE requirements at sections 403(b)(4) and 409(a)(10) of the Act.

State TANF expenditures means the expenditure of State funds within the TANF program.

TANF means The Temporary Assistance for Needy Families Program.

TANF program means a State program of family assistance operated by an eligible State under its State TANF plan.

Territories means the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, and American Samoa.

Title IV–A refers to the title and part of the Act that now includes TANF, but previously included AFDC and EA. For the purpose of the TANF program regulations, this term does not include child care programs authorized and funded under section 418 of the Act, or their predecessors, unless we specify otherwise.

Tribal family assistance grant means a grant paid to a Tribe that has an approved Tribal family assistance plan under section 412(a)(1) of the Act.

Tribal grantee means a Tribe that receives Federal TANF funds to operate a Tribal TANF program under section 412(a) of the Act.

Tribal TANF program means a TANF program developed by an eligible Tribe, Tribal organization, or consortium and approved by us under section 412 of the Act.

Tribe means Indian Tribe or Tribal organization, as defined elsewhere in this section. The definition may include Tribal consortia (i.e., groups of federally recognized Tribes or Alaska Native entities that have banded together in a formal arrangement to develop and administer a Tribal TANF program).

Victim of domestic violence has the meaning specified at § 260.51.

Waiver, when used in subpart C of this part, has the meaning specified at § 260.71.

We (and any other first person plural pronouns) means the Secretary of Health and Human Services or any of the following individuals or organizations acting in an official capacity on the Secretary's behalf: the Assistant Secretary for Children and Families, the Regional Administrators for Children and Families, the Department of Health and Human Services, and the Administration for Children and Families.

Welfare-to-Work means the new program for funding work activities at section 403(a)(5) of the Act.

WtW means Welfare-to-Work.

WtW cash assistance has the meaning specified at § 260.32.

§ 260.31 What does the term "assistance" mean?

(a)(1) The term "assistance" includes cash, payments, vouchers, and other forms of benefits designed to meet a family's ongoing basic needs (i.e., for food, clothing, shelter, utilities, household goods, personal care items, and general incidental expenses).

(2) It includes such benefits even when they are:

(i) Provided in the form of payments by a TANF agency, or other agency on its behalf, to individual recipients; and

(ii) Conditioned on participation in work experience or community service (or any other work activity under § 261.30 of this chapter).

(3) Except where excluded under paragraph (b) of this section, it also includes supportive services such as transportation and child care provided to families who are not employed.

(b) It excludes:

(1) Nonrecurrent, short-term benefits that:

(i) Are designed to deal with a specific crisis situation or episode of need;

(ii) Are not intended to meet recurrent or ongoing needs; and

(iii) Will not extend beyond four months.

(2) Work subsidies (i.e., payments to employers or third parties to help cover the costs of employee wages, benefits, supervision, and training);

(3) Supportive services such as child care and transportation provided to families who are employed;

(4) Refundable earned income tax credits;

(5) Contributions to, and distributions from, Individual Development Accounts;

(6) Services such as counseling, case management, peer support, child care information and referral, transitional services, job retention, job advancement, and other employment-related services that do not provide basic income support; and

(7) Transportation benefits provided under a Job Access or Reverse Commute project, pursuant to section 404(k) of the Act, to an individual who is not otherwise receiving assistance.

(c) The definition of the term assistance specified in paragraphs (a) and (b) of this section:

(1) Does not apply to the use of the term assistance at part 263, subpart A, or at part 264, subpart B, of this chapter; and

(2) Does not preclude a State from providing other types of benefits and services in support of the TANF goal at § 260.20(a).

§ 260.32 What does the term "WtW cash assistance" mean?

(a) For the purpose of § 264.1(b)(1)(iii) of this chapter, WtW cash assistance only includes benefits that:

(1) Meet the definition of assistance at § 260.31; and

(2) Are directed at basic needs.

(b) Thus, it includes benefits described in paragraphs (a)(1) and (a)(2) of § 260.31, but excludes benefits described in paragraph (a)(3) of § 260.31.

(c) It only includes benefits identified in paragraphs (a) and (b) of this section when they are provided in the form of cash payments, checks, reimbursements, electronic funds transfers, or any other form that can legally be converted to currency.

§ 260.33 When are expenditures on State or local tax credits allowable expenditures for TANF-related purposes?

(a) To be an allowable expenditure for TANF-related purposes, any tax credit program must be reasonably calculated to accomplish one of the purposes of the TANF program, as specified at § 260.20.

(b)(1) In addition, pursuant to the definition of expenditure at § 260.30, we

would only consider the refundable portion of a State or local tax credit to be an allowable expenditure.

(2) Under a State Earned Income Tax Credit (EITC) program, the refundable portion that may count as an expenditure is the amount that exceeds a family's State income tax liability prior to application of the EITC. (The family's tax liability is the amount owed prior to any adjustments for credits or payments.) In other words, we would count only the portion of a State EITC that the State refunds to a family and that is above the amount of EITC used as credit towards the family's State income tax liability.

(3) For other refundable (and allowable) State and local tax credits, such as refundable dependent care credits, the refundable portion that would count as an expenditure is the amount of the credit that exceeds the taxpayer's tax liability prior to the application of the credit. (The taxpayer's liability is the amount owed prior to any adjustments for credits or payments.) In other words, we would count only the portion of the credit that the State refunds to the taxpayer and that is above the amount of the credit applied against the taxpayer's tax bill.

§ 260.35 What other Federal laws apply to TANF?

(a) Under section 408(d) of the Act, the following provisions of law apply to any program or activity funded with Federal TANF funds:

(1) The Age Discrimination Act of 1975;

(2) Section 504 of the Rehabilitation Act of 1973;

(3) The Americans with Disabilities Act of 1990; and

(4) Title VI of the Civil Rights Act of 1964.

(b) The limitation on Federal regulatory and enforcement authority at section 417 of the Act does not limit the effect of other Federal laws, including Federal employment laws (such as the Fair Labor Standards Act (FLSA), the Occupational Safety and Health Act (OSHA) and unemployment insurance (UI)) and nondiscrimination laws. These laws apply to TANF beneficiaries in the same manner as they apply to other workers.

§ 260.40 When are these provisions in effect?

(a) In determining whether a State is subject to a penalty under parts 261 through 265 of this chapter, we will not apply the regulatory provisions in parts 260 through 265 of this chapter retroactively. We will judge State actions that occurred prior to the effective date of these rules and expenditures of funds received prior to the effective date only against a reasonable interpretation of the statutory provisions in title IV–A of the Act.

(b) The effective date of these rules is October 1, 1999.

Subpart B—What Special Provisions Apply to Victims of Domestic Violence?

§ 260.50 What is the purpose of this subpart?

Under section 402(a)(7) of the Act, under its TANF plan, a State may elect to implement a special program to serve victims of domestic violence and to waive program requirements for such individuals. This subpart explains how adoption of these provisions affects the penalty determinations applicable if a State fails to meet its work participation rate or comply with the five-year limit on Federal assistance.

§ 260.51 What definitions apply to this subpart?

Family Violence Option (or FVO) means the provision at section 402(a)(7) of the Act under which a State certifies in its State plan if it has elected the option to implement comprehensive strategies for identifying and serving victims of domestic violence.

Federally recognized good cause domestic violence waiver means a good cause domestic violence waiver that meets the requirements at §§ 260.52(c) and 260.55.

Good cause domestic violence waiver means a waiver of one or more program requirements granted by a State to a victim of domestic violence under the FVO, as described at § 260.52(c).

Victim of domestic violence means an individual who is battered or subject to extreme cruelty under the definition at section 408(a)(7)(C)(iii) of the Act.

§ 260.52 What are the basic provisions of the Family Violence Option (FVO)?

Section 402(a)(7) of the Act provides that States electing the FVO certify that they have established and are enforcing standards and procedures to:

(a) Screen and identify individuals receiving TANF and MOE assistance with a history of domestic violence, while maintaining the confidentiality of such individuals;

(b) Refer such individuals to counseling and supportive services; and

(c) Provide waivers, pursuant to a determination of good cause, of normal program requirements to such individuals for so long as necessary in cases where compliance would make it more difficult for such individuals to escape domestic violence or unfairly penalize those who are or have been victimized by such violence or who are at risk of further domestic violence.

§ 260.54 Do States have flexibility to grant good cause domestic violence waivers?

(a) Yes; States have broad flexibility to grant these waivers to victims of domestic violence. For example, they may determine which program requirements to waive and decide how long each waiver might be necessary.

(b) However, if a State wants us to take the waivers that it grants into account in deciding if it has reasonable cause for failing to meet its work participation rates or comply with the five-year limit on Federal assistance, has achieved compliance or made significant progress towards achieving compliance with such requirements during a corrective compliance period, or qualifies for a reduction in its work penalty under § 261.51 of this chapter, the waivers must be federally recognized good cause domestic violence waivers, within the meaning of §§ 260.52(c) and 260.55, and the State must submit the information specified at § 265.9(b)(5) of this chapter on its strategies and procedures for serving victims of domestic violence and the number of waivers granted.

§ 260.55 What are the additional requirements for Federal recognition of good cause domestic violence waivers?

To be federally recognized, good cause domestic violence waivers must:

(a) Identify the specific program requirements that are being waived;

(b) Be granted appropriately based on need, as determined by an individualized assessment by a person trained in domestic violence and redeterminations no less often than every six months;

(c) Be accompanied by an appropriate services plan that:

(1) Is developed by a person trained in domestic violence;

(2) Reflects the individualized assessment and any revisions indicated by the redetermination; and

(3) To the extent consistent with § 260.52(c), is designed to lead to work.

§ 260.58 What penalty relief is available to a State whose failure to meet the work participation rates is attributable to providing federally recognized good cause domestic violence waivers?

(a)(1) We will determine that a State has reasonable cause if its failure to meet the work participation rates was attributable to federally recognized good cause domestic violence waivers granted to victims of domestic violence.

(2) To receive reasonable cause under the provisions of § 262.5(b) of this chapter, the State must provide evidence that it achieved the applicable rates, except with respect to any individuals who received a federally recognized good cause domestic violence waiver of work participation requirements. In other words, it must demonstrate that it met the applicable rates when such waiver cases are removed from the calculations at §§ 261.22(b) and 261.24(b) of this chapter.

(b)(1) We will reduce a State's penalty based on the degree of noncompliance to the extent that its failure to meet the work participation rates was attributable to federally recognized good cause domestic violence waivers.

(2) To receive a reduction based on degree of noncompliance under the provisions of § 261.51 of this chapter, a State granting federally recognized good cause domestic violence waivers of work participation requirements must demonstrate that it achieved participation rates above the threshold at § 261.51(b)(3) of this chapter, when such waiver cases are removed from the calculations at §§ 261.22(b) and 261.24(b) of this chapter.

(c) We may take federally recognized good cause domestic violence waivers of work requirements into consideration in deciding whether a State has achieved compliance or made significant progress towards achieving compliance in meeting the work participation rates during a corrective compliance period.

(d) To receive the penalty relief specified in paragraphs (a), (b), and (c) of this section, the State must submit the information specified at § 265.9(b)(5) of this chapter.

Section 260.59—What Penalty Relief is Available to a State That Failed To Comply With the Five-Year Limit on Federal Assistance Because It Provided Federally Recognized Good Cause Domestic Violence Waivers?

(a)(1) We will determine that a State has reasonable cause if it failed to comply with the five-year limit on Federal assistance because of federally recognized good cause domestic violence waivers granted to victims of domestic violence.

(2) More specifically, to receive reasonable cause under the provisions at § 264.3(b) of this chapter, a State must demonstrate that:

(i) It granted federally recognized good cause domestic violence waivers to extend time limits based on the need for continued assistance due to current or past domestic violence or the risk of further domestic violence; and

(ii) When individuals and their families are excluded from the calculation, the percentage of families receiving federally funded assistance for more than 60 months did not exceed 20 percent of the total.

(b) We may take federally recognized good cause domestic violence waivers to extend time limits into consideration in deciding whether a State has achieved compliance or made significant progress towards achieving compliance in meeting the five-year limit on Federal assistance during a corrective compliance period.

(c) To receive the penalty relief specified in paragraphs (a) and (b) of this section, the State must submit the information specified at § 265.9(b)(5) of this chapter.

Subpart C—What Special Provisions Apply to States that Were Operating Programs Under Approved Waivers?

§ 260.70 What is the purpose of this subpart?

(a) Under section 415 of the Act, if a State was granted a waiver under section 1115 of the Act and that waiver was in effect on August 22, 1996, the amendments made by PRWORA do not apply for the period of the waiver, to the extent that they are inconsistent with the waiver and the State elects to continue its waiver.

(b) Identification of waiver inconsistencies is relevant for the determination of penalties in three areas:

(1) Under § 261.50 of this chapter for failing to meet the work participation rates at part 261 of this chapter;

(2) Under § 264.2 of this chapter for failing to comply with the five-year limit on Federal assistance at subpart A of part 264 of this chapter; and

(3) Under § 261.54 of this chapter for failing to impose sanctions on individuals who fail to work.

(c) This subpart explains how we will determine waiver inconsistencies and apply them in the penalty determination process for these penalties.

§ 260.71 What definitions apply to this subpart?

(a) *Inconsistent* means that complying with the TANF work participation or sanction requirements at section 407 of the Act or the time-limit requirement at section 408(a)(7) of the Act would necessitate that a State change a policy reflected in an approved waiver.

(b) *Waiver* consists of the work participation or time-limit component of the State's demonstration project under section 1115 of the Act. The component includes the revised AFDC requirements indicated in the State's waiver list, as approved by the Secretary under the authority of section 1115, and the associated AFDC provisions that did not need to be waived.

(c) *Control group* and *experimental group* have the meanings specified in the terms and conditions of the State's demonstration.

§ 260.72 What basic requirements must State demonstration components meet for the purpose of determining if inconsistencies exist with respect to work requirements or time limits?

(a) The policies must be consistent with the requirements of section 415 of the Act and the requirements of this subpart.

(b) The policies must be within the scope of the approved waivers both in terms of geographical coverage and the coverage of the types of cases specified in the waiver approval package.

(c) The State must have applied its waiver policies on a continuous basis from the date that it implemented its TANF program, except that it may have adopted modifications that have the effect of making its policies more consistent with the provisions of PRWORA.

(d) An inconsistency may not apply beyond the earlier of the following dates:

(1) The expiration of waiver authority as determined in accordance with the demonstration terms and conditions; or

(2) For any specific inconsistency, the date upon which the State discontinued the applicable waiver policy.

(e) The State must submit the Governor's certification specified in § 260.75.

(f) In general, the policies in this subpart do not have the effect of delaying the date when a State might be subject to the work or time-limit penalties at §§ 261.50, 261.54, and 264.1 of this chapter or the data collection requirements at part 265 of this chapter.

§ 260.73 How do existing welfare reform waivers affect the participation rates and work rules?

(a) If a State is implementing a work participation component under a waiver, in accordance with this subpart, the provisions of section 407 of the Act will not apply in determining if a penalty should be imposed, to the extent that the provision is inconsistent with the waiver.

(b) For the purpose of determining if the State's demonstration has a work participation component, the waiver list for the demonstration must include one or more specific provisions that directly correspond to the work policies in section 407 of the Act (i.e., change

allowable JOBS activities, exemptions from JOBS participation, hours of required JOBS participation, or sanctions for noncompliance with JOBS participation).

(c) Corresponding to the inconsistencies certified by the Governor under § 260.75:

(1) We will calculate the State's work participation rates, by:

(i) Excluding cases exempted from participation under the demonstration component and, if applicable, experimental and control cases not otherwise exempted, in calculating the rate;

(ii) Defining work activities as defined in the demonstration component in determining the numerator; and

(iii) Including cases meeting the required number of hours of participation in work activities in accordance with demonstration component policy, in determining the numerator.

(2) We will determine whether a State is taking appropriate sanctions when an individual refuses to work based on the State's certified waiver policies.

(d) We will use the data submitted by States pursuant to § 265.3 of this chapter to calculate and make public a State's work participation rates under both the TANF requirements and the State's alternative waiver requirements.

§ 260.74 How do existing welfare reform waivers affect the application of the Federal time-limit provisions?

(a)(1) If a State is implementing a time-limit component under a waiver, in accordance with this subpart, the provisions of section 408(a)(7) of the Act will not apply in determining if a penalty should be imposed, to the extent that they are inconsistent with the waiver.

(2) For the purpose of determining if the State's demonstration has a time-limit component, the waiver list for the demonstration must include provisions that directly correspond to the time-limit policies enumerated in section 408(a)(7) of the Act (i.e., address which individuals or families are subject to, or exempt from, terminations of assistance based solely on the passage of time or who qualifies for extensions to the time limit).

(b)(1) Generally, under an approved waiver, except as provided in paragraph (b)(3) of this section, a State will count, toward the Federal five-year limit, all months for which the head-of-household or spouse of the head-of-household subject to the State time limit receives assistance with Federal TANF funds, just as it would if it did not have an approved waiver.

(2) The State need not count, toward the Federal five-year limit, any months for which a head-of-household or spouse of the head-of-household receives assistance with Federal TANF funds while that individual is exempt from the State's time limit under the State's approved waiver.

(3) Where a State has continued a time limit under waivers that only terminates assistance for adults, the State need not count, toward the Federal five-year limit, any months for which an adult subject to the State time limit receives assistance with Federal TANF funds.

(4) The State may continue to provide assistance with Federal TANF funds for more than 60 months, without a numerical limit, to families provided extensions to the State time limit, under the provisions of the terms and conditions of the approved waiver.

(c) Corresponding to the inconsistencies certified by the Governor under § 260.75, we will calculate the State's time-limit exceptions by:

(1) Excluding, from the determination of the number of months of Federal assistance received by a family:

(i) Any month in which the adult(s) were exempt from the State's time limit under the terms of an approved waiver or any months in which the children received assistance under a waiver that only terminated assistance to adults; and

(ii) If applicable, experimental and control group cases not otherwise exempted; and

(2) Applying the State's waiver policies with respect to the availability of extensions to the time limit.

§ 260.75 If a State is claiming a waiver inconsistency for work requirements or time limits, what must the Governor certify?

(a) The Governor of the State must certify in writing to the Secretary that:

(1) The applicable policies have been continually applied in operating the TANF program, as described in § 260.72(c);

(2) The inconsistencies claimed by the State are within the scope of the approved waivers, as described in § 260.72(b);

(b) The certification must identify the specific inconsistencies that the State chooses to continue with respect to work and time limits.

(1) If the waiver inconsistency claim includes work provisions, the certification must specify the standards that will apply, in lieu of the provisions in subparts B and C of part 261 of this chapter, to determine:

(i) The number of two-parent and all-parent cases that are exempt from participation, if any, for the purpose of determining the denominator of the work participation rate;

(ii) The number of nonexempt two-parent and all-parent cases that are participating in work activities for the purpose of determining the numerator of the work participation rate, including standards applicable to;

(A) Countable work activities; and

(B) Required hours of work for participation for individual participants; and

(iii) The penalty against an individual or family when an individual refuses to work.

(2) If the waiver inconsistency claim includes time-limit provisions, the certification must include the standards that will apply, in lieu of the provisions in § 264.1 of this chapter, in determining:

(i) Which families are counted toward the Federal time limit; and

(ii) Whether a family is eligible for an extension of its time limit on federally funded assistance.

(3) If the State is continuing policies for evaluation purposes in accordance with § 260.76:

(i) The certification must specify any special work or time-limit standards that apply to the control group and experimental group cases; and

(ii) The State may choose to exclude cases assigned to the experimental and control groups, which are not otherwise exempt, for the purpose of calculating the work participation rate or determining State compliance related to limiting assistance to families including adults who have received 60 months of Federal TANF assistance. In doing so, the State may effectively exclude all experimental group cases and/or control group cases, not otherwise exempt, but may not exclude individual cases on a selective basis.

(c) The certification may include a claim of inconsistency with respect to hours of required participation in work activities only if the State has written evidence that, when implemented, the waiver policies established specific requirements related to hours of work for nonexempt individuals.

(d)(1) The Governor's certification must be provided no later than October 1, 1999.

(2) If a State modifies its waiver policies in a way that has a substantive effect on the determination of its work sanctions, or the calculation of its work participation rates or its time-limit exceptions, it must submit an amended certification no later than the end of the fiscal quarter in which the modifications take effect.

§ 260.76 What special rules apply to States that are continuing evaluations of their waiver demonstrations?

If a State is continuing research that employs an experimental design in order to complete an impact evaluation of a waiver demonstration, the experimental and control groups may continue to be subject to prior AFDC law, except as modified by the waiver.

PART 261—ENSURING THAT RECIPIENTS WORK

Sec.

261.1 What does this part cover?
261.2 What definitions apply to this part?

Subpart A—What Are the Provisions Addressing Individual Responsibility?

261.10 What work requirements must an individual meet?
261.11 Which recipients must have an assessment under TANF?
261.12 What is an individual responsibility plan?
261.13 May an individual be penalized for not following an individual responsibility plan?
261.14 What is the penalty if an individual refuses to engage in work?
261.15 Can a family be penalized if a parent refuses to work because he or she cannot find child care?
261.16 Does the imposition of a penalty affect an individual's work requirement?

Subpart B—What Are the Provisions Addressing State Accountability?

261.20 How will we hold a State accountable for achieving the work objectives of TANF?
261.21 What overall work rate must a State meet?
261.22 How will we determine a State's overall work rate?
261.23 What two-parent work rate must a State meet?
261.24 How will we determine a State's two-parent work rate?
261.25 Does a State include Tribal families in calculating these rates?

Subpart C—What Are the Work Activities and How Do They Count?

261.30 What are the work activities?
261.31 How many hours must an individual participate to count in the numerator of the overall rate?
261.32 How many hours must an individual participate to count in the numerator of the two-parent rate?
261.33 What are the special requirements concerning educational activities in determining monthly participation rates?
261.34 Are there any limitations in counting job search and job readiness assistance toward the participation rates?
261.35 Are there any special work provisions for single custodial parents?
261.36 Do welfare reform waivers affect the calculation of a State's participation rates?

Subpart D—How Will We Determine Caseload Reduction Credit for Minimum Participation Rates?

261.40 Is there a way for a State to reduce the work participation rates?
261.41 How will we determine the caseload reduction credit?
261.42 Which reductions count in determining the caseload reduction credit?
261.43 What is the definition of a "case receiving assistance" in calculating the caseload reduction credit?
261.44 When must a State report the required data on the caseload reduction credit?

Subpart E—What Penalties Apply to States Related to Work Requirements?

261.50 What happens if a State fails to meet the participation rates?
261.51 Under what circumstances will we reduce the amount of the penalty below the maximum?
261.52 Is there a way to waive the State's penalty for failing to achieve either of the participation rates?
261.53 May a State correct the problem before incurring a penalty?
261.54 Is a State subject to any other penalty relating to its work program?
261.55 Under what circumstances will we reduce the amount of the penalty for not properly imposing penalties on individuals?
261.56 What happens if a parent cannot obtain needed child care?
261.57 What happens if the State sanctions a single parent of a child under six who cannot get needed child care?

Subpart F—How Do Welfare Reform Waivers Affect State Penalties?

261.60 How do existing welfare reform waivers affect a State's penalty liability under this part?

Subpart G—What Nondisplacement Rules Apply in TANF?

261.70 What safeguards are there to ensure that participants in work activities do not displace other workers?

Authority: 42 U.S.C. 601, 602, 607, and 609.

§ 261.1 What does this part cover?

This part includes the regulatory provisions relating to the mandatory work requirements of TANF.

§ 261.2 What definitions apply to this part?

The general TANF definitions at §§ 260.30 through 260.33 of this chapter apply to this part.

Subpart A—What Are the Provisions Addressing Individual Responsibility?

§ 261.10 What work requirements must an individual meet?

(a)(1) A parent or caretaker receiving assistance must engage in work activities when the State has determined that the individual is ready to engage in work or when he or she has received assistance for a total of 24 months, whichever is earlier, consistent with section 407(e)(2) of the Act.

(2) The State must define what it means to engage in work for this requirement; its definition may include participation in work activities in accordance with section 407 of the Act.

(b) If a parent or caretaker has received assistance for two months, he or she must participate in community service employment, consistent with section 407(e)(2) of the Act, unless the State has exempted the individual from work requirements or he or she is already engaged in work activities as described at § 261.30. The State will determine the minimum hours per week and the tasks the individual must perform as part of the community service employment.

§ 261.11 Which recipients must have an assessment under TANF?

(a) The State must make an initial assessment of the skills, prior work experience, and employability of each recipient who is at least age 18 or who has not completed high school (or equivalent) and is not attending secondary school.

(b) The State may make any required assessments within 30 days (90 days, at State option) of the date an individual becomes eligible for assistance.

§ 261.12 What is an individual responsibility plan?

An individual responsibility plan is a plan developed at State option, in consultation with the individual, on the basis of the assessment made under § 261.11. The plan:

(a) Should set an employment goal and a plan for moving immediately into private-sector employment;

(b) Should describe the obligations of the individual. These could include going to school, maintaining certain grades, keeping school-aged children in school, immunizing children, going to classes, or doing other things that will help the individual become or remain employed in the private sector;

(c) Should be designed to move the individual into whatever private-sector employment he or she is capable of handling as quickly as possible and to increase over time the responsibility and the amount of work the individual handles;

(d) Should describe the services the State will provide the individual to enable the individual to obtain and keep private sector employment, including job counseling services; and

(e) May require the individual to undergo appropriate substance abuse treatment.

§ 261.13 May an individual be penalized for not following an individual responsibility plan?

Yes. If an individual fails without good cause to comply with an individual responsibility plan that he or she has signed, the State may reduce the amount of assistance otherwise payable to the family, by whatever amount it considers appropriate. This penalty is in addition to any other penalties under the State's TANF program.

§ 261.14 What is the penalty if an individual refuses to engage in work?

(a) If an individual refuses to engage in work required under section 407 of the Act, the State must reduce or terminate the amount of assistance payable to the family, subject to any good cause or other exceptions the State may establish. Such a reduction is governed by the provisions of § 261.16.

(b)(1) The State must, at a minimum, reduce the amount of assistance otherwise payable to the family pro rata with respect to any period during the month in which the individual refuses to work.

(2) The State may impose a greater reduction, including terminating assistance.

(c) A State that fails to impose penalties on individuals in accordance with the provisions of section 407(e) of the Act may be subject to the State penalty specified at § 261.54.

§ 261.15 Can a family be penalized if a parent refuses to work because he or she cannot find child care?

(a) No, the State may not reduce or terminate assistance based on an individual's refusal to engage in required work if the individual is a single custodial parent caring for a child under age six who has a demonstrated inability to obtain needed child care, as specified at § 261.56.

(b) A State that fails to comply with the penalty exception at section 407(e)(2) of the Act and the requirements at § 261.56 may be subject to the State penalty specified at § 261.57.

§ 261.16 Does the imposition of a penalty affect an individual's work requirement?

A penalty imposed by a State against the family of an individual by reason of the failure of the individual to comply with a requirement under TANF shall not be construed to be a reduction in any wage paid to the individual.

Subpart B—What Are the Provisions Addressing State Accountability?

§ 261.20 How will we hold a State accountable for achieving the work objectives of TANF?

(a) Each State must meet two separate work participation rates, one—the two-parent rate—based on how well it succeeds in helping adults in two-parent families find work activities described at § 261.30, the other—the overall rate—based on how well it succeeds in finding those activities for adults in all the families that it serves.

(b) Each State must submit data that allows us to measure its success in requiring adults to participate in work activities, as specified at § 265.3 of this chapter.

(c) If the data show that a State met both participation rates in a fiscal year, then the percentage of historic State expenditures that it must expend under TANF, pursuant to § 263.1 of this chapter, decreases from 80 percent to 75 percent for that fiscal year. This is also known as the State's TANF "maintenance-of-effort" requirement.

(d) If the data show that a State did not meet either minimum work participation rate for a fiscal year, a State could be subject to a financial penalty.

(e) Before we impose a penalty, a State will have the opportunity to claim reasonable cause or enter into a corrective compliance plan, pursuant to §§ 262.5 and 262.6 of this chapter.

§ 261.21 What overall work rate must a State meet?

Each State must achieve the following minimum overall participation rate:

If the fiscal year is:	Then the minimum participation rate is:
1997	25
1998	30
1999	35
2000	40
2001	45
2002 and thereafter	50

§ 261.22 How will we determine a State's overall work rate?

(a) The overall participation rate for a fiscal year is the average of the State's overall participation rates for each month in the fiscal year.

(b) We determine a State's overall participation rate for a month as follows:

(1) The number of families receiving TANF assistance that include an adult or a minor head-of-household who is engaged in work for the month (i.e., the numerator), divided by,

(2) The number of families receiving TANF assistance during the month that include an adult or a minor head-of-household, minus the number of families that are subject to a penalty for refusing to work in that month (i.e., the denominator). However, if a family has been sanctioned for more than three of the last 12 months, we will not exclude it from the participation rate calculation.

(3) The State may direct us, through its reported participation data, to include in the participation calculation families that have been sanctioned for no more than three of the last 12 months.

(c)(1) A State has the option of not requiring a single custodial parent caring for a child under age one to engage in work.

(2) At State option, we will disregard a family with such a parent from the participation rate calculation for a maximum of 12 months.

(d)(1) If a family receives assistance for only part of a month, we will count it as a month of participation if an adult in the family is engaged in work for the minimum average number of hours in each full week that the family receives assistance in that month.

(2) If a State pays benefits retroactively (i.e., for the period between application and approval of benefits), it has the option to consider the family to be receiving assistance during the period of retroactivity.

§ 261.23 What two-parent work rate must a State meet?

A State receiving a TANF grant for a fiscal year must achieve the following minimum two-parent participation rate:

If the fiscal year is:	Then the minimum participation rate is:
1997	75
1998	75
1999 and thereafter	90

§ 261.24 How will we determine a State's two-parent work rate?

(a) The two-parent participation rate for a fiscal year is the average of the State's two-parent participation rates for each month in the fiscal year.

(b) We determine a State's two-parent participation rate for a month as follows:

(1) The number of two-parent families receiving TANF assistance that include an adult or minor child head-of-household and other parent who meet the requirements set forth in § 261.32 for the month (i.e., the numerator), divided by,

(2) The number of two-parent families receiving TANF assistance during the month, minus the number of two-parent families that are subject to a penalty for refusing to work in that month (i.e., the denominator). However, if a family has been sanctioned for more than three of the last 12 months, we will not exclude it from the participation rate calculation.

(3) The State may direct us, through its reported participation data, to include in the participation calculation families that have been sanctioned for no more than three of the last 12 months.

(c) For purposes of the calculation in paragraph (b) of this section, a two-parent family includes, at a minimum, all families with two natural or adoptive parents (of the same minor child) receiving assistance and living in the home, unless both are minors and neither is a head-of-household.

(d)(1) If a family receives assistance for only part of a month, we will count it as a month of participation if an adult in the family (or both adults, if they are both required to work) is engaged in work for the minimum average number of hours in each full week that the family receives assistance in that month.

(2) If a State pays benefits retroactively (i.e., for the period between application and approval of benefits), it has the option to consider the family to be receiving assistance during the period of retroactivity.

(e) If a family includes a disabled parent, we will not consider the family to be a two-parent family under paragraph (b) of this section; i.e., we will not include such a family in either the numerator or denominator of the two-parent rate.

§ 261.25 Does a State include Tribal families in calculating these rates?

At State option, we will include families that are receiving assistance under an approved Tribal family assistance plan or under a Tribal work program in calculating the State's participation rates under §§ 261.22 and 261.24.

Subpart C—What Are the Work Activities and How Do They Count?

§ 261.30 What are the work activities?

The work activities are:

(a) Unsubsidized employment;

(b) Subsidized private-sector employment;

(c) Subsidized public-sector employment;

(d) Work experience if sufficient private-sector employment is not available;

(e) On-the-job training (OJT);

(f) Job search and job readiness assistance;

(g) Community service programs;

(h) Vocational educational training;

(i) Job skills training directly related to employment;

(j) Education directly related to employment, in the case of a recipient who has not received a high school diploma or a certificate of high school equivalency;

(k) Satisfactory attendance at secondary school or in a course of study leading to a certificate of general equivalence, if a recipient has not completed secondary school or received such a certificate; and

(l) Providing child care services to an individual who is participating in a community service program.

§ 261.31 How many hours must an individual participate to count in the numerator of the overall rate?

(a) An individual counts as engaged in work for a month for the overall rate if:

(1) He or she participates in work activities during the month for at least the minimum average number of hours per week listed in the following table:

If the fiscal year is:	Then the minimum average hours per week is:
1997	20
1998	20
1999	25
2000 or thereafter	30

and

(2) At least 20 of the above hours per week come from participation in the activities listed in paragraph (b) of this section.

(b) The following nine activities count toward the first 20 hours of participation: unsubsidized employment; subsidized private-sector employment; subsidized public-sector employment; work experience; on-the-job training; job search and job readiness assistance; community service programs; vocational educational training; and providing child care services to an individual who is participating in a community service program.

(c) Above 20 hours per week, the following three activities may also count as participation: job skills training directly related to employment; education directly related to employment; and satisfactory attendance at secondary school or in a course of study leading to a certificate of general equivalence.

§ 261.32 How many hours must an individual participate to count in the numerator of the two-parent rate?

(a) Subject to paragraph (d) of this section, an individual counts as engaged in work for the month for the two-parent rate if:

(1) If an individual and the other parent in the family are participating in work activities for an average of at least 35 hours per week during the month, and

(2) At least 30 of the 35 hours per week come from participation in the activities listed in paragraph (b) of this section.

(b) The following nine activities count for the first 30 hours of participation: unsubsidized employment; subsidized private-sector employment; subsidized public-sector employment; work experience; on-the-job training; job search and job readiness assistance; community service programs; vocational educational training; and providing child care services to an individual who is participating in a community service program.

(c) Above 30 hours per week, the following three activities may also count for participation: job skills training directly related to employment; education directly related to employment; and satisfactory attendance at secondary school or in a course of study leading to a certificate of general equivalence.

(d)(1) If the family receives federally funded child care assistance and an adult in the family is not disabled or caring for a severely disabled child, then the individual and the other parent must be participating in work activities for an average of at least 55 hours per week for the individual to count as a two-parent family engaged in work for the month.

(2) At least 50 of the 55 hours per week must come from participation in the activities listed in paragraph (b) of this section.

(3) Above 50 hours per week, the three activities listed in paragraph (c) of this section may also count as participation.

§ 261.33 What are the special requirements concerning educational activities in determining monthly participation rates?

(a) Vocational educational training may only count for a total of 12 months for any individual.

(b)(1) A recipient who is married or a single head-of-household under 20 years old counts as engaged in work in a month if he or she:

(i) Maintains satisfactory attendance at a secondary school or the equivalent during the month; or

(ii) Participates in education directly related to employment for an average of at least 20 hours per week during the month.

(2)(i) For a married recipient, such participation counts as the greater of 20 hours or the actual hours of participation.

(ii) If both parents in the family are under 20 years old, the requirements at § 261.32(d) are met if both meet the conditions of paragraphs (b)(1)(i) or (b)(1)(ii) of this section.

(c) In counting individuals for each participation rate, not more than 30 percent of individuals engaged in work in a month may be included in the numerator because they are:

(1) Participating in vocational educational training; and

(2) In fiscal year 2000 or thereafter, individuals deemed to be engaged in work by participating in educational activities described in paragraph (b) of this section.

§ 261.34 Are there any limitations in counting job search and job readiness assistance toward the participation rates?

Yes. There are four limitations concerning job search and job readiness.

(a) Except as provided in paragraph (b) of this section, an individual's participation in job search and job readiness assistance counts for a maximum of six weeks in any fiscal year.

(b) If the State's total unemployment rate is at least 50 percent greater than the United States' total unemployment rate or if the State meets the definition of a needy State, specified at § 260.30 of this chapter, then an individual's participation in job search and job readiness assistance counts for a maximum of 12 weeks in that fiscal year.

(c) An individual's participation in job search and job readiness assistance does not count for a week that immediately follows four consecutive weeks of such participation in a fiscal year.

(d) Not more than once for any individual in a fiscal year, a State may count three or four days of job search and job readiness assistance during a week as a full week of participation.

§ 261.35 Are there any special work provisions for single custodial parents?

Yes. A single custodial parent or caretaker relative with a child under age six will count as engaged in work if he or she participates for at least an average of 20 hours per week.

§ 261.36 Do welfare reform waivers affect the calculation of a State's participation rates?

A welfare reform waiver could affect the calculation of a State's participation rate, pursuant to subpart C of part 260 and section 415 of the Act.

Subpart D—How Will We Determine Caseload Reduction Credit for Minimum Participation Rates?

§ 261.40 Is there a way for a State to reduce the work participation rates?

(a)(1) If the average monthly number of cases receiving assistance, including assistance under a separate State program (as provided at § 261.42(b)), in a State in the preceding fiscal year was lower than the average monthly number of cases that received assistance in FY 1995, the minimum overall participation rate the State must meet for the fiscal year (as provided at § 261.21) decreases by the number of percentage points the prior-year caseload fell in comparison to the FY 1995 caseload.

(2) The minimum two-parent participation rate the State must meet for the fiscal year (as provided at § 261.23) decreases, at State option, by either:

(i) The number of percentage points the prior-year two-parent caseload, including two-parent cases receiving assistance under a separate State program (as provided at § 261.42(b)), fell in comparison to the FY 1995 two-parent caseload or;

(ii) The number of percentage points the prior-year overall caseload, including assistance under a separate State program (as provided at § 261.42(b)), fell in comparison to the FY 1995 overall caseload.

(b) The calculations in paragraph (a) of this section must disregard the net caseload reduction (i.e., caseload decreases offset by increases) due either to requirements of Federal law or to changes that a State has made in its eligibility criteria in comparison to its criteria in effect in FY 1995.

(c)(1)(i) To establish the caseload base for fiscal year 1995, we will use the number of AFDC cases and Unemployed Parent cases reported on ACF–3637, Statistical Report on Recipients under Public Assistance.

(ii) We will automatically adjust the Unemployed Parent caseload proportionally upward, based on the percentage of cases with two parents in the household, as shown in Quality Control data for the period prior to the State's reporting two-parent data under TANF.

(2) To determine the prior-year caseload for subsequent years, we will use caseload information from the TANF Data Report and the SSP-MOE Data Report.

(3) To qualify for a caseload reduction, a State must have reported monthly caseload information, including cases in separate State programs, for the preceding fiscal year for cases receiving assistance as defined at § 261.43.

(d)(1) A State may correct erroneous data or submit accurate data to adjust IV-A program data or to include unduplicated cases. For example, a State may submit accurate data for Emergency Assistance cases and two-parent cases outside the Unemployed Parent program.

(2) A State may submit data to adjust the caseload for FY 1999 and thereafter to include two-parent or other State program cases covered by Federal TANF or State MOE expenditures, but not otherwise reported.

(3) We will adjust both the FY 1995 baseline and the caseload information for subsequent years, as appropriate, based on these State submissions.

(e) We refer to the number of percentage points by which a caseload falls, disregarding the cases described in paragraph (b), as a caseload reduction credit.

§ 261.41 How will we determine the caseload reduction credit?

(a)(1) We will determine the total and two-parent caseload reduction credits that apply to each State based on the information and estimates reported to us by the State on eligibility policy changes, application denials, and case closures.

(2) We will accept the information and estimates provided by a State, unless they are implausible based on the criteria listed in paragraph (d) of this section.

(3) We may conduct on-site reviews and inspect administrative records on applications and terminations to validate the accuracy of the State estimates.

(b) In order to receive a caseload reduction credit, a State must submit a Caseload Reduction Report to us containing the following information:

(1) A listing of, and implementation dates for, all State and Federal eligibility changes, as defined at § 261.42, made by the State since the beginning of FY 1995;

(2) A numerical estimate of the positive or negative impact on the applicable caseload of each eligibility change (based, as appropriate, on application denials, case closures or other analyses);

(3) An overall estimate of the total net positive or negative impact on the

applicable caseload as a result of all such eligibility changes;

(4) An estimate of the State's caseload reduction credit;

(5) The number of application denials and case closures for fiscal year 1995 and the prior fiscal year;

(6) The distribution of such denials and case closures, by reason, for fiscal year 1995 and the prior fiscal year;

(7) A description of the methodology and the supporting data that it used to calculate its caseload reduction estimates;

(8) A certification that it has provided the public an appropriate opportunity to comment on the estimates and methodology, considered their comments, and incorporated all net reductions resulting from Federal and State eligibility changes; and

(9) A summary of all public comments.

(c) A State requesting a caseload reduction credit for both rates must provide separate estimates and information for the two-parent credit if it wishes to base the caseload reduction credit for the two-parent rate on reductions in the two-parent caseload.

(1) The State must base its estimates of the impact of eligibility changes for the overall participation rate on decreases in its overall caseload compared to the FY 1995 overall caseload baseline established in accordance with § 261.40(d).

(2) The State must base its estimates of the impact of eligibility changes for two-parent cases on decreases in its two-parent caseload compared to the FY 1995 two-parent caseload baseline established in accordance with § 261.40(d).

(d)(1) For each State, we will assess the adequacy of information and estimates using the following criteria: its methodology; its estimates of impact compared to other States; the quality of its data; and the completeness and adequacy of its documentation.

(2) If we request additional information to develop or validate estimates, the State may negotiate an appropriate deadline or provide the information within 30 days of the date of our request.

(3) The State must provide sufficient data to document the information submitted under paragraph (b) of this section.

(e) We will not calculate a caseload reduction credit unless the State reports case-record data on individuals and families served by any separate State program, as required under § 265.3(d) of this chapter.

(f) A State may only apply to its participation rate a caseload reduction credit that we have calculated. If a State disagrees with the caseload reduction credit, it may appeal the decision as an adverse action in accordance with § 262.7 of this chapter.

§ 261.42 Which reductions count in determining the caseload reduction credit?

(a)(1) A State's caseload reduction estimate must not include net caseload decreases (i.e., caseload decreases offset by increases) due to Federal requirements or State changes in eligibility rules since FY 1995 that directly affect a family's eligibility for assistance. These include more stringent income and resource limitations, time limits, full family sanctions, and other new requirements that deny families assistance when an individual does not comply with work requirements, cooperate with child support, or fulfill other behavioral requirements.

(2) A State may count the reductions attributable to enforcement mechanisms or procedural requirements that are used to enforce existing eligibility criteria (e.g., fingerprinting or other verification techniques) to the extent that such mechanisms or requirements identify or deter families otherwise ineligible under existing rules.

(b) A State must include cases receiving assistance in separate State programs as part of its prior-year caseload. However, if a State provides documentation that separate State program cases meet the following conditions, we will exclude them from the caseload count:

(1) The cases overlap with, or duplicate, cases in the TANF caseload; or

(2) They are cases made ineligible for Federal benefits by Pub. L. 104–193 that are receiving only State-funded cash assistance, nutrition assistance, or other benefits.

§ 261.43 What is the definition of a "case receiving assistance" in calculating the caseload reduction credit?

(a)(1) The caseload reduction credit is based on decreases in caseloads receiving assistance (other than those excluded pursuant to § 261.42) both in a State's TANF program and in separate State programs that address basic needs and are used to meet the maintenance-of-effort requirement.

(2) A State that is investing State MOE funds in eligible families in excess of the required 80 percent or 75 percent basic MOE amount need only include the pro rata share of caseloads receiving assistance that are required to meet basic MOE requirements.

(b)(1) Depending on a State's TANF implementation date, for fiscal years 1995, 1996 and 1997, we will use adjusted baseline caseload data as established in accordance with § 261.40(d).

(2) For subsequent fiscal years, we will determine the caseload based on all cases in a State receiving assistance (according to the definition of assistance at § 260.31 of this chapter).

§ 261.44 When must a State report the required data on the caseload reduction credit?

(a) A State must report the necessary documentation on caseload reductions for the preceding fiscal year by December 31.

(b) We will notify the State of its caseload reduction credit no later than March 31.

Subpart E—What Penalties Apply to States Related to Work Requirements?

§ 261.50 What happens if a State fails to meet the participation rates?

(a) If we determine that a State did not achieve one of the required minimum work participation rates, we must reduce the SFAG payable to the State.

(b)(1) If there was no penalty for the preceding fiscal year, the base penalty for the current fiscal year is five percent of the adjusted SFAG.

(2) For each consecutive year that the State is subject to a penalty under this part, we will increase the amount of the base penalty by two percentage points over the previous year's penalty. However, the penalty can never exceed 21 percent of the State's adjusted SFAG.

(c) We impose a penalty by reducing the SFAG payable for the fiscal year that immediately follows our final determination that a State is subject to a penalty and our final determination of the penalty amount.

(d) In accordance with the procedures specified at § 262.4 of this chapter, a State may dispute our determination that it is subject to a penalty.

§ 261.51 Under what circumstances will we reduce the amount of the penalty below the maximum?

(a) We will reduce the amount of the penalty based on the degree of the State's noncompliance.

(1) If the State fails only the two-parent participation rate specified at § 261.23, reduced by any applicable caseload reduction credit, its maximum penalty will be a percentage of the penalty specified at § 261.50. This percentage will equal the percentage of two-parent cases in the State's total caseload.

(2) If the State fails the overall participation rate specified at § 261.21, reduced by any applicable caseload

reduction credit, or both rates, its maximum penalty will be the penalty specified at § 261.50.

(b)(1) In order to receive a reduction of the penalty amounts determined under paragraphs (a)(1) or (a)(2) of this section:

(i) The State must achieve participation rates equal to a threshold level defined as 50 percent of the applicable minimum participation rate at § 261.21 or § 261.23, minus any caseload reduction credit determined pursuant to subpart D of this part; and

(ii) The adjustment factor for changes in the number of individuals engaged in work, described in paragraph (b)(4) of this section, must be greater than zero.

(2) If the State meets the requirements of paragraph (b)(1) of this section, we will base its reduction on the severity of the failure. For this purpose, we will calculate the severity of the State's failure based on:

(i) The degree to which it missed the target rate;

(ii) An adjustment factor that accounts for changes in the number of individuals who are engaged in work in the State since the prior year; and

(iii) The number of consecutive years in which the State failed to meet the participation rates and the number of rates missed.

(3) We will determine the degree to which the State missed the target rate using the ratio of the following two factors:

(i) The difference between the participation rate achieved by the State and the 50-percent threshold level (adjusted for any caseload reduction credit determined pursuant to subpart D of this part); and

(ii) The difference between the minimum applicable participation rate and the threshold level (both adjusted for any caseload reduction credit determined pursuant to subpart D of this part).

(4) We will calculate the adjustment factor for changes in the number of individuals engaged in work using the following formula:

(i) The average monthly number of individuals engaged in work in the penalty year minus the average monthly number of individuals engaged in work in the prior year, divided by,

(ii) The product of 0.15 and the average monthly number of individuals engaged in work in the prior year.

(5) Subject to paragraph (c) of this section, if the State fails only the two-parent participation rate specified at § 261.23, and qualifies for a penalty reduction under paragraph (b)(1) of this section, its penalty reduction will be the product of:

(i) The amount determined in paragraph (a)(1) of this section;

(ii) The ratio described in paragraph (b)(3) of this section computed with respect to two-parent families; and

(iii) The adjustment factor described in paragraph (b)(4) of this section computed with respect to two-parent families.

(6) Subject to paragraph (c) of this section, if the State fails the overall participation rate specified at § 261.21, or both rates, and qualifies for a penalty reduction under paragraph (b)(1) of this section, its penalty reduction will be the product of:

(i) The amount determined in paragraph (a)(2) of this section;

(ii) The ratio described in paragraph (b)(3) of this section computed with respect to all families; and

(iii) The adjustment factor described in paragraph (b)(4) of this section.

(7) Pursuant to § 260.58 of this chapter, we will adjust the calculations in this section to exclude cases for which a State has granted federally recognized good cause domestic violence waivers.

(c)(1) If the State was not subject to a penalty the prior year, the State will receive:

(i) The full applicable penalty reduction described in paragraph (b)(5) or (b)(6) of this section if it failed only one participation rate; or

(ii) 50 percent of the penalty reduction described in paragraph (b)(6) of this section if it failed both participation rates.

(2) If the penalty year is the second successive year in which the State is subject to a penalty, the State will receive:

(i) 50 percent of the applicable penalty reduction described in paragraph (b)(5) or (b)(6) of this section if it failed only one participation rate; or

(ii) 25 percent of the penalty reduction described in paragraph (b)(6) of this section if it failed both participation rates.

(3) If the penalty year is the third or greater successive year in which the State is subject to a penalty, the State will not receive a penalty reduction described in paragraph (b)(5) or (b)(6) of this section.

(d)(1) We may reduce the penalty if the State failed to achieve a participation rate because:

(i) It meets the definition of a needy State, specified at § 260.30 of this chapter; or,

(ii) Noncompliance is due to extraordinary circumstances such as a natural disaster, regional recession, or substantial caseload increase.

(2) In determining noncompliance under paragraph (d)(1)(ii) of this section, we will consider such objective evidence of extraordinary circumstances as the State chooses to submit.

§ 261.52 Is there a way to waive the State's penalty for failing to achieve either of the participation rates?

(a) We will not impose a penalty under this part if we determine that the State has reasonable cause for its failure.

(b) In addition to the general reasonable cause criteria specified at § 262.5 of this chapter, a State may also submit a request for a reasonable cause exemption from the requirement to meet the minimum participation rate in two specific case situations.

(1) We will determine that a State has reasonable cause if it demonstrates that failure to meet the work participation rates is attributable to its provision of federally recognized good cause domestic violence waivers (i.e., it provides evidence that it achieved the applicable work rates when individuals receiving federally recognized good cause domestic violence waivers of work requirements, in accordance with the provisions at §§ 260.54(b) and 260.55 of this chapter, are removed from the calculations in §§ 261.22(b) and 261.24(b)).

(2) We will determine that a State has reasonable cause if it demonstrates that its failure to meet the work participation rates is attributable to its provision of assistance to refugees in federally approved alternative projects under section 412(e)(7) of the Immigration and Nationality Act (8 U.S.C. 1522(e)(7)).

(c) In accordance with the procedures specified at § 262.4 of this chapter, a State may dispute our determination that it is subject to a penalty.

§ 261.53 May a State correct the problem before incurring a penalty?

(a) Yes. A State may enter into a corrective compliance plan to remedy a problem that caused its failure to meet a participation rate, as specified at § 262.6 of this chapter.

(b) To qualify for a penalty reduction under § 262.6(j)(1) of this chapter, based on significant progress towards correcting a violation, a State must reduce the difference between the participation rate it achieved in the year for which it is subject to a penalty and the rate applicable during the penalty year (adjusted for any caseload reduction credit determined pursuant to subpart D of this part) by at least 50 percent.

§ 261.54 Is a State subject to any other penalty relating to its work program?

(a) If we determine that, during a fiscal year, a State has violated section 407(e) of the Act, relating to imposing

penalties against individuals, we must reduce the SFAG payable to the State.

(b) The penalty amount for a fiscal year will equal between one and five percent of the adjusted SFAG.

(c) We impose a penalty by reducing the SFAG payable for the fiscal year that immediately follows our final determination that a State is subject to a penalty and our final determination of the penalty amount.

§ 261.55 Under what circumstances will we reduce the amount of the penalty for not properly imposing penalties on individuals?

(a) We will reduce the amount of the penalty based on the degree of the State's noncompliance.

(b) In determining the size of any reduction, we will consider objective evidence of:

(1) Whether the State has established a control mechanism to ensure that the grants of individuals are appropriately reduced for refusing to engage in required work; and

(2) The percentage of cases for which the grants have not been appropriately reduced.

§ 261.56 What happens if a parent cannot obtain needed child care?

(a)(1) If the individual is a single custodial parent caring for a child under age six, the State may not reduce or terminate assistance based on the parent's refusal to engage in required work if he or she demonstrates an inability to obtain needed child care for one or more of the following reasons:

(i) Appropriate child care within a reasonable distance from the home or work site is unavailable;

(ii) Informal child care by a relative or under other arrangements is unavailable or unsuitable; or

(iii) Appropriate and affordable formal child care arrangements are unavailable.

(2) Refusal to work when an acceptable form of child care is available is not protected from sanctioning.

(b)(1) The State will determine when the individual has demonstrated that he or she cannot find child care, in accordance with criteria established by the State.

(2) These criteria must:

(i) Address the procedures that the State uses to determine if the parent has a demonstrated inability to obtain needed child care;

(ii) Include definitions of the terms "appropriate child care," reasonable distance," "unsuitability of informal care," and "affordable child care arrangements"; and

(iii) Be submitted to us.

(c) The TANF agency must inform parents about:

(1) The penalty exception to the TANF work requirement, including the criteria and applicable definitions for determining whether an individual has demonstrated an inability to obtain needed child care;

(2) The State's process or procedures (including definitions) for determining a family's inability to obtain needed child care, and any other requirements or procedures, such as fair hearings, associated with this provision; and

(3) The fact that the exception does not extend the time limit for receiving Federal assistance.

§ 261.57 What happens if a State sanctions a single parent of a child under six who cannot get needed child care?

(a) If we determine that a State has not complied with the requirements of § 261.56, we will reduce the SFAG payable to the State by no more than five percent for the immediately succeeding fiscal year unless the State demonstrates to our satisfaction that it had reasonable cause or it achieves compliance under a corrective compliance plan pursuant to §§ 262.5 and 262.6 of this chapter.

(b) We will impose the maximum penalty if:

(1) The State does not have a statewide process in place to inform parents about the exception to the work requirement and enable them to demonstrate that they have been unable to obtain child care; or

(2) There is a pattern of substantiated complaints from parents or organizations verifying that a State has reduced or terminated assistance in violation of this requirement.

(c) We may impose a reduced penalty if the State demonstrates that the violations were isolated or that they affected a minimal number of families.

Subpart F—How Do Welfare Reform Waivers Affect State Penalties?

§ 261.60 How do existing welfare reform waivers affect a State's penalty liability under this part?

A welfare reform waiver could affect a State's penalty liability under this part, subject to subpart C of part 260 of this chapter and section 415 of the Act.

Subpart G—What Nondisplacement Rules Apply in TANF?

§ 261.70 What safeguards are there to ensure that participants in work activities do not displace other workers?

(a) An adult taking part in a work activity outlined in § 261.30 may not fill a vacant employment position if:

(1) Another individual is on layoff from the same or any substantially equivalent job; or

(2) The employer has terminated the employment of any regular employee or caused an involuntary reduction in its work force in order to fill the vacancy with an adult taking part in a work activity.

(b) A State must establish and maintain a grievance procedure to resolve complaints of alleged violations of the displacement rule in this section.

(c) This section does not preempt or supersede State or local laws providing greater protection for employees from displacement.

PART 262—ACCOUNTABILITY PROVISIONS—GENERAL

Sec.

262.0 What definitions apply to this part?
262.1 What penalties apply to States?
262.2 When do the TANF penalty provisions apply?
262.3 How will we determine if a State is subject to a penalty?
262.4 What happens if we determine that a State is subject to a penalty?
262.5 Under what general circumstances will we determine that a State has reasonable cause?
262.6 What happens if a State does not demonstrate reasonable cause?
262.7 How can a State appeal our decision to take a penalty?

Authority: 31 U.S.C. 7501 *et seq.*; 42 U.S.C. 606, 609, and 610.

§ 262.0 What definitions apply to this part?

The general TANF definitions at §§ 260.30 through 260.33 of this chapter apply to this part.

§ 262.1 What penalties apply to States?

(a) We will assess fiscal penalties against States under circumstances defined in parts 261 through 265 of this chapter. The penalties are:

(1) A penalty of the amount by which a State misused its TANF funds;

(2) An additional penalty of five percent of the adjusted SFAG if such misuse was intentional;

(3) A penalty of four percent of the adjusted SFAG for each quarter a State fails to submit an accurate, complete and timely required report;

(4) A penalty of up to 21 percent of the adjusted SFAG for failure to satisfy the minimum participation rates;

(5) A penalty of no more than two percent of the adjusted SFAG for failure to participate in IEVS;

(6) A penalty of no more than five percent of the adjusted SFAG for failure to enforce penalties on recipients who are not cooperating with the State Child Support Enforcement (IV–D) agency;

(7) A penalty equal to the outstanding loan amount, plus interest, for failure to repay a Federal loan;

(8) A penalty equal to the amount by which a State fails to meet its basic MOE requirement;

(9) A penalty of five percent of the adjusted SFAG for failure to comply with the five-year limit on Federal assistance;

(10) A penalty equal to the amount of contingency funds that were received but were not remitted for a fiscal year, if the State fails to maintain 100 percent of historic State expenditures in that fiscal year;

(11) A penalty of no more than five percent of the adjusted SFAG for the failure to maintain assistance to an adult single custodial parent who cannot obtain child care for a child under age six;

(12) A penalty of no more than two percent of the adjusted SFAG plus the amount a State has failed to expend of its own funds to replace the reduction to its SFAG due to the assessment of penalties in this section in the immediately succeeding fiscal year;

(13) A penalty equal to the amount of the State's Welfare-to-Work formula grant for failure to meet its basic MOE requirement during a year in which it receives the formula grant; and

(14) A penalty of not less than one percent and not more than five percent of the adjusted SFAG for failure to impose penalties properly against individuals who refuse to engage in required work in accordance with section 407 of the Act.

(b) In the event of multiple penalties for a fiscal year, we will add all applicable penalty percentages together. We will then assess the penalty amount against the adjusted SFAG that would have been payable to the State if we had assessed no penalties. As a final step, we will subtract other (fixed) penalty amounts from the adjusted SFAG.

(c)(1) We will take the penalties specified in paragraphs (a)(1), (a)(2) and (a)(7) of this section by reducing the SFAG payable for the quarter that immediately follows our final decision.

(2) We will take the penalties specified in paragraphs (a)(3), (a)(4), (a)(5), (a)(6), (a)(8), (a)(9), (a)(10), (a)(11), (a)(12), (a)(13), and (a)(14) of this section by reducing the SFAG payable for the fiscal year that immediately follows our final decision.

(d) When imposing the penalties in paragraph (a) of this section, the total reduction in an affected State's quarterly SFAG amount must not exceed 25 percent. If this 25-percent limit prevents the recovery of the full penalty amount imposed on a State during a quarter or a fiscal year, as appropriate, we will apply the remaining amount of the penalty to the SFAG payable for the immediately succeeding quarter until we recover the full penalty amount.

(e)(1) In the immediately succeeding fiscal year, a State must expend additional State funds to replace any reduction in the SFAG resulting from penalties.

(2) The State must document compliance with this replacement provision on its TANF Financial Report (or Territorial Financial Report).

§ 262.2 When do the TANF penalty provisions apply?

(a) A State will be subject to the penalties specified in § 262.1(a)(1), (2), (7), (8), (9), (10), (11), (12), (13), and (14) for conduct occurring on and after the first day the State operates the TANF program.

(b) A State will be subject to the penalties specified in § 262.1(a)(3), (4), (5), and (6) for conduct occurring on and after July 1, 1997, or the date that is six months after the first day the State operates the TANF program, whichever is later.

(c) For the time period prior to October 1, 1999, we will assess State conduct as specified in § 260.40(b) of this chapter.

§ 262.3 How will we determine if a State is subject to a penalty?

(a)(1) We will use the single audit under OMB Circular A–133, in conjunction with other reviews, audits, and data sources, as appropriate, to determine if a State is subject to a penalty for misusing Federal TANF funds (§ 263.10 of this chapter), intentionally misusing Federal TANF funds (§ 263.12 of this chapter), failing to participate in IEVS (§ 264.10 of this chapter), failing to comply with paternity establishment and child support requirements (§ 264.31 of this chapter), failing to maintain assistance to an adult single custodial parent who cannot obtain child care for child under six (§ 261.57 of this chapter), and failing to reduce assistance to a recipient who refuses without good cause to work (§ 261.54 of this chapter).

(2) We will also use the single audit as a secondary method of determining if a State is subject to other penalties if an audit detects lack of compliance in other penalty areas.

(b)(1) We will use the TANF Data Report required under part 265 of this chapter to determine if a State failed to meet participation rates (§§ 261.21 and 261.23 of this chapter) or failed to comply with the five-year limit on Federal assistance (§ 264.1 of this chapter).

(2) Data in these reports are subject to our verification in accordance with § 265.7 of this chapter.

(c)(1) We will use the TANF Financial Report (or, as applicable, the Territorial Financial Report) as the primary method for determining if a State has failed to meet the basic MOE requirement (§ 263.8 of this chapter), meet the Contingency Fund MOE requirement (§ 264.76 of this chapter), or replace SFAG reductions with State-only funds (§ 264.50 of this chapter).

(2) Data in these reports are subject to our verification in accordance with § 265.7 of this chapter.

(d) We will determine that a State is subject to the specific penalties for failure to perform if we find information in the reports under paragraphs (b) and (c) of this section to be insufficient to show compliance or if we determine that the State has not adequately documented actions verifying that it has met the participation rates or the time limits.

(e) To determine if a State has met its MOE requirements, we will also use the supplemental information in the annual report required in accordance with § 265.9(c) of this chapter.

(f) States must maintain records in accordance with § 92.42 of this title.

§ 262.4 What happens if we determine that a State is subject to a penalty?

(a) If we determine that a State is subject to a penalty, we will notify the State agency in writing, specifying which penalty we will impose and the reasons for the penalty. This notice will:

(1) Specify the penalty provision at issue, including the penalty amount;

(2) Specify the source of information and the reasons for our decision;

(3) Invite the State to present its arguments if it believes that the information or method that we used were in error or were insufficient or that its actions, in the absence of Federal regulations, were based on a reasonable interpretation of the statute; and

(4) Explain how and when the State may submit a reasonable cause justification under § 262.5 and/or corrective compliance plan under § 262.6.

(b) Within 60 days of when it receives our notification, the State may submit a written response that:

(1) Demonstrates that our determination is incorrect because our information or the method that we used in determining the violation or the amount of the penalty was in error or was insufficient, or that the State acted, in the absence of Federal rules, on a reasonable interpretation of the statute;

(2) Demonstrates that the State had reasonable cause for failing to meet the requirement(s); and/or

(3) Provides a corrective compliance plan, pursuant to § 262.6.

(c) If we find that we determined the penalty erroneously, or that the State has adequately demonstrated that it had reasonable cause for failing to meet one or more requirements, we will not impose the penalty.

(d) Reasonable cause and corrective compliance plans are not available for failing to repay a Federal loan; meet the basic MOE requirement; meet the Contingency Fund MOE requirement; expend additional State funds to replace adjusted SFAG reductions due to the imposition of one or more penalties listed in § 262.1; or maintain 80 percent, or 75 percent, as appropriate, basic MOE during a year in which the State receives a Welfare-to-Work grant.

(e)(1) If we request additional information from a State that we need to determine reasonable cause, the State must ordinarily provide such information within 30 days.

(2) Under unusual circumstances, we may give the State an extension of the time to respond to our request.

(f)(1)(i) We will notify the State in writing of our findings with respect to reasonable cause generally within 60 days of the date when we receive its response to our penalty notice (in accordance with paragraph (b) of this section).

(ii) If the finding is negative and the State has not yet submitted a corrective compliance plan, it may do so in response to this notice in accordance with § 262.6.

(2) We will notify the State of our decision regarding its corrective compliance plan in accordance with the provisions of § 262.6(g).

(g) We will impose a penalty in accord with the provisions in § 262.1(c) after we make our final decision and the appellate process is completed, if applicable. If there is an appellate decision upholding the penalty, we will take the penalty and charge interest back to the date that we formally notified the Governor of the adverse action pursuant to § 262.7(a)(1).

§ 262.5 Under what general circumstances will we determine that a State has reasonable cause?

(a) We will not impose a penalty against a State if we determine that the State had reasonable cause for its failure. The general factors a State may use to claim reasonable cause include:

(1) Natural disasters and other calamities (e.g., hurricanes, earthquakes, fire) whose disruptive impact was so significant as to cause the State's failure;

(2) Formally issued Federal guidance that provided incorrect information resulting in the State's failure; or

(3) Isolated problems of minimal impact that are not indicative of a systemic problem.

(b)(1) We will grant reasonable cause to a State that:

(i) Clearly demonstrates that its failure to submit complete, accurate, and timely data, as required at § 265.8 of this chapter, for one or both of the first two quarters of FY 2000, is attributable, in significant part, to its need to divert critical system resources to Year 2000 compliance activities; and

(ii) Submits complete and accurate data for the first two quarters of FY 2000 by June 30, 2000.

(2) A State may also use the additional factors for claiming reasonable cause for failure to comply with the five-year limit on Federal assistance or the minimum participation rates, as specified at §§ 261.52 and 264.3 and subpart B of part 260 of this chapter.

(c) In determining reasonable cause, we will consider the efforts the State made to meet the requirement, as well as the duration and severity of the circumstances that led to the State's failure to achieve the requirement.

(d)(1) The burden of proof rests with the State to fully explain the circumstances and events that constitute reasonable cause for its failure to meet a requirement.

(2) The State must provide us with sufficient relevant information and documentation to substantiate its claim of reasonable cause.

§ 262.6 What happens if a State does not demonstrate reasonable cause?

(a) A State may accept the penalty or enter into a corrective compliance plan that will correct or discontinue the violation in order to avoid the penalty if:

(1) A State does not claim reasonable cause; or

(2) We find that the State does not have reasonable cause.

(b) A State that does not claim reasonable cause will have 60 days from receipt of our notice described in § 262.4(a) to submit its corrective compliance plan.

(c) A State that unsuccessfully claimed reasonable cause will have 60 days from the date that it received our second notice, described in § 262.4(f), to submit its corrective compliance plan.

(d) The corrective compliance plan must include:

(1) A complete analysis of why the State did not meet the requirements;

(2) A detailed description of how the State will correct or discontinue, as appropriate, the violation in a timely manner;

(3) The time period in which the violation will be corrected or discontinued;

(4) The milestones, including interim process and outcome goals, that the State will achieve to assure it comes into compliance within the specified time period; and

(5) A certification by the Governor that the State is committed to correcting or discontinuing the violation, in accordance with the plan.

(e) The corrective compliance plan must correct or discontinue the violation within the following time frames:

(1) For a penalty under § 262.1(a)(4) or (a)(9), by the end of the first fiscal year ending at least six months after our receipt of the corrective compliance plan; and

(2) For the remaining penalties, by a date the State proposes that reflects the minimum period necessary to achieve compliance.

(f) During the 60-day period following our receipt of the State's corrective compliance plan, we may request additional information and consult with the State on modifications to the plan.

(g) We will accept or reject the State's corrective compliance plan, in writing, within 60 days of our receipt of the plan, although a corrective compliance plan is deemed to be accepted if we take no action during the 60-day period following our receipt of the plan.

(h) If a State does not submit an acceptable corrective compliance plan on time, we will assess the penalty immediately.

(i) We will not impose a penalty against a State with respect to any violation covered by a corrective compliance plan that we accept if the State completely corrects or discontinues, as appropriate, the violation within the period covered by the plan.

(j) Under limited circumstances, we may reduce the penalty if the State fails to completely correct or discontinue the violation pursuant to its corrective compliance plan and in a timely manner. To receive a reduced penalty, the State must demonstrate that it met one or both of the following conditions:

(1) Although it did not achieve full compliance, the State made significant progress towards correcting or discontinuing the violation; or

(2) The State's failure to comply fully was attributable to either a natural disaster or regional recession.

§ 262.7 How can a State appeal our decision to take a penalty?

(a)(1) We will formally notify the Governor and the State agency of an adverse action (i.e., the reduction in the SFAG) within five days after we determine that a State is subject to a penalty under parts 261 through 265 of this chapter.

(2) Such notice will include the factual and legal basis for taking the penalty in sufficient detail for the State to be able to respond in an appeal.

(b)(1) The State may file an appeal of the action, in whole or in part, with the HHS Departmental Appeals Board (the Board) within 60 days after the date it receives notice of the adverse action. The State must submit its brief and supporting documents when it files its appeal.

(2) The State must send a copy of the appeal, and any supplemental filings, to the Office of the General Counsel, Children, Families and Aging Division, Room 411–D, 200 Independence Avenue, S.W., Washington, D.C. 20201.

(c) We will submit our reply brief and supporting documentation within 45 days of the receipt of the State's submission under paragraph (b) of this section.

(d) The State may submit a reply and any supporting documentation within 21 days of its receipt of our reply under paragraph (c) of this section.

(e) The appeal to the Board must follow the provisions of the rules under this section and those at §§ 16.2, 16.9, 16.10, and 16.13–16.22 of this title, to the extent that they are consistent with this section.

(f) The Board will consider an appeal filed by a State on the basis of the documentation and briefs submitted, along with any additional information the Board may require to support a final decision. Such information may include a hearing if the Board determines that it is necessary. In deciding whether to uphold an adverse action or any portion of such action, the Board will conduct a thorough review of the issues.

(g)(1) A State may obtain judicial review of a final decision by the Board by filing an action within 90 days after the date of such decision. It should file this action with the district court of the United States in the judicial district where the State agency is located or in the United States District Court for the District of Columbia.

(2) The district court will review the final decision of the Board on the record established in the administrative proceeding, in accordance with the standards of review prescribed by 5 U.S.C. 706(2). The court will base its review on the documents and supporting data submitted to the Board.

PART 263—EXPENDITURES OF STATE AND FEDERAL TANF FUNDS

Sec.

263.0 What definitions apply to this part?

Subpart A—What Rules Apply to a State's Maintenance of Effort?

263.1 How much State money must a State expend annually to meet the basic MOE requirement?
263.2 What kinds of State expenditures count toward meeting a State's basic MOE expenditure requirement?
263.3 When do child care expenditures count?
263.4 When do educational expenditures count?
263.5 When do expenditures in State-funded programs count?
263.6 What kinds of expenditures do not count?
263.8 What happens if a State fails to meet the basic MOE requirement?
263.9 May a State avoid a penalty for failing the basic MOE requirement through reasonable cause or through corrective compliance?

Subpart B—What Rules Apply to the Use of Federal TANF Funds?

263.10 What actions would we take against a State if it uses Federal TANF funds in violation of the Act?
263.11 What uses of Federal TANF funds are improper?
263.12 How will we determine if a State intentionally misused Federal TANF funds?
263.13 Is there a limit on the amount of Federal TANF funds that a State may spend on administrative costs?

Subpart C—What Rules Apply to Individual Development Accounts?

263.20 What definitions apply to Individual Development Accounts (IDAs)?
263.21 May a State use the TANF grant to fund IDAs?
263.22 Are there any restrictions on IDA funds?
263.23 How does a State prevent a recipient from using the IDA account for unqualified purposes?

Authority: 42 U.S.C. 604, 607, 609, and 862a.

§ 263.0 What definitions apply to this part?

(a) Except as noted in § 263.2(d), the general TANF definitions at § 260.30 through § 260.33 of this chapter apply to this part.

(b) The term "administrative costs" means costs necessary for the proper administration of the TANF program or separate State programs.

(1) It excludes direct costs of providing program services.

(i) For example, it excludes costs of providing diversion benefits and services, providing program information to clients, screening and assessments, development of employability plans, work activities, post-employment services, work supports, and case management. It also excludes costs for contracts devoted entirely to such activities.

(ii) It excludes the salaries and benefits costs for staff providing program services and the direct administrative costs associated with providing the services, such as the costs for supplies, equipment, travel, postage, utilities, rental of office space and maintenance of office space.

(2) It includes costs for general administration and coordination of these programs, including contract costs and all indirect (or overhead) costs. Examples of administrative costs include:

(i) Salaries and benefits of staff performing administrative and coordination functions;

(ii) Activities related to eligibility determinations;

(iii) Preparation of program plans, budgets, and schedules;

(iv) Monitoring of programs and projects;

(v) Fraud and abuse units;

(vi) Procurement activities;

(vii) Public relations;

(viii) Services related to accounting, litigation, audits, management of property, payroll, and personnel;

(ix) Costs for the goods and services required for administration of the program such as the costs for supplies, equipment, travel, postage, utilities, and rental of office space and maintenance of office space, provided that such costs are not excluded as a direct administrative cost for providing program services under paragraph (b)(1) of this section;

(x) Travel costs incurred for official business and not excluded as a direct administrative cost for providing program services under paragraph (b)(1) of this section;

(xi) Management information systems not related to the tracking and monitoring of TANF requirements (e.g., for a personnel and payroll system for State staff); and

(xii) Preparing reports and other documents.

Subpart A—What Rules Applies to a State's Maintenance of Effort?

§ 263.1 How much State money must a State expend annually to meet the basic MOE requirement?

(a)(1) The minimum basic MOE for a fiscal year is 80 percent of a State's historic State expenditures.

(2) However, if a State meets the minimum work participation rate

requirements in a fiscal year, as required under §§ 261.21 and 261.23 of this chapter, after adjustment for any caseload reduction credit under § 261.41 of this chapter, then the minimum basic MOE for that fiscal year is 75 percent of the State's historic State expenditures.

(3) A State that does not meet the minimum participation rate requirements in a fiscal year, as required under §§ 261.21 and 261.23 of this chapter (after adjustment for any caseload reduction credit under § 261.41 of this chapter), but which is granted full or partial penalty relief for that fiscal year, must still meet the minimum basic MOE specified under paragraph (a)(1) of this section.

(b) The basic MOE level also depends on whether a Tribe or consortium of Tribes residing in a State has received approval to operate its own TANF program. The State's basic MOE level for a fiscal year will be reduced by the same percentage as we reduced the SFAG as the result of any Tribal Family Assistance Grants awarded to Tribal grantees in the State for that year.

§ 263.2 What kinds of State expenditures count toward meeting a State's basic MOE expenditure requirement?

(a) Expenditures of State funds in TANF or separate State programs may count if they are made for the following types of benefits or services:

(1) Cash assistance, including the State's share of the assigned child support collection that is distributed to the family, and disregarded in determining eligibility for, and amount of the TANF assistance payment;

(2) Child care assistance (see § 263.3);

(3) Education activities designed to increase self-sufficiency, job training, and work (see § 263.4);

(4) Any other use of funds allowable under section 404(a)(1) of the Act (such as nonmedical treatment services for alcohol and drug abuse and some medical treatment services, provided that the State has not commingled its MOE funds with Federal TANF funds to pay for the services), if consistent with the goals at § 260.20 of this chapter; and

(5)(i) Administrative costs for activities listed in paragraphs (a)(1) through (a)(4) of this section, not to exceed 15 percent of the total amount of countable expenditures for the fiscal year.

(ii) Costs for information technology and computerization needed for tracking or monitoring required by or under part IV–A of the Act do not count towards the limit in paragraph (5)(i) of this section, even if they fall within the definition of "administrative costs."

(A) This exclusion covers the costs for salaries and benefits of staff who develop, maintain, support or operate the portions of information technology or computer systems used for tracking and monitoring.

(B) It also covers the costs of contracts for development, maintenance, support, or operation of those portions of information technology or computer systems used for tracking or monitoring.

(b) The benefits or services listed under paragraph (a) of this section count only if they have been provided to or on behalf of eligible families. An "eligible family," as defined by the State, must:

(1) Be comprised of citizens or aliens who:

(i) Are eligible for TANF assistance;

(ii) Would be eligible for TANF assistance, but for the time limit on the receipt of federally funded assistance; or

(iii) Would be eligible for TANF assistance, but for the application of title IV of PRWORA;

(2) Include a child living with a custodial parent or other adult caretaker relative (or consist of a pregnant individual); and

(3) Be financially eligible according to the appropriate income and resource (when applicable) standards established by the State and contained in its TANF plan.

(c) Benefits or services listed under paragraph (a) of this section provided to a family that meets the criteria under paragraphs (b)(1) through (b)(3) of this section, but who became ineligible solely due to the time limitation given under § 264.1 of this chapter, may also count.

(d) Expenditures for the benefits or services listed under paragraph (a) of this section count whether or not the benefit or service meets the definition of assistance under § 260.31 of this chapter.

(e)(1) The expenditures for benefits or services in State-funded programs listed under paragraph (a) of this section count only if they also meet the requirements of § 263.5.

(2) Expenditures that fall within the prohibitions in § 263.6 do not count.

§ 263.3 When do child care expenditures count?

(a) State funds expended to meet the requirements of the CCDF Matching Fund (i.e., as match or MOE amounts) may also count as basic MOE expenditures up to the State's child care MOE amount that must be expended to qualify for CCDF matching funds.

(b) Child care expenditures that have not been used to meet the requirements of the CCDF Matching Fund (i.e., as match or MOE amounts), or any other Federal child care program, may also count as basic MOE expenditures. The limit described in paragraph (a) of this section does not apply.

(c) The child care expenditures described in paragraphs (a) and (b) of this section must be made to, or on behalf of, eligible families, as defined in § 263.2(b).

§ 263.4 When do educational expenditures count?

(a) Expenditures for educational activities or services count if:

(1) They are provided to eligible families (as defined in § 263.2(b)) to increase self-sufficiency, job training, and work; and

(2) They are not generally available to other residents of the State without cost and without regard to their income.

(b) Expenditures on behalf of eligible families for educational services or activities provided through the public education system do not count unless they meet the requirements under paragraph (a) of this section.

§ 263.5 When do expenditures in State-funded programs count?

(a) If a current State or local program also operated in FY 1995, and expenditures in this program would have been previously authorized and allowable under the former AFDC, JOBS, Emergency Assistance, Child Care for AFDC recipients, At-Risk Child Care, or Transitional Child Care programs, then current fiscal year expenditures in this program count in their entirety, provided that the State has met all requirements under § 263.2.

(b) If a current State or local program also operated in FY 1995, and expenditures in this program would not have been previously authorized and allowable under the former AFDC, JOBS, Emergency Assistance, Child Care for AFDC recipients, At-Risk Child Care, or Transitional Child Care programs, then countable expenditures are limited to the amount by which total current fiscal year expenditures that meet the requirements under § 263.2 exceed total State expenditures in the program during FY 1995.

§ 263.6 What kinds of expenditures do not count?

The following kinds of expenditures do not count:

(a) Expenditures of funds that originated with the Federal government;

(b) State expenditures under the Medicaid program under title XIX of the Act;

(c) Expenditures that a State makes as a condition of receiving Federal funds under another program, except as provided under § 263.3;

(d) Expenditures that a State made in a prior fiscal year;

(e) Expenditures that a State uses to match Federal Welfare-to-Work funds provided under section 403(a)(5) of the Act; and

(f) Expenditures that a State makes in the TANF program to replace the reductions in the SFAG as a result of penalties, pursuant to § 264.50 of this chapter.

§ 263.8 What happens if a State fails to meet the basic MOE requirement?

(a) If any State fails to meet its basic MOE requirement for any fiscal year, then we will reduce dollar-for-dollar the amount of the SFAG payable to the State for the following fiscal year.

(b) If a State fails to meet its basic MOE requirement for any fiscal year, and the State received a WtW formula grant under section 403(a)(5)(A) of the Act for the same fiscal year, we will also reduce the amount of the SFAG payable to the State for the following fiscal year by the amount of the WtW formula grant paid to the State.

§ 263.9 May a State avoid a penalty for failing to meet the basic MOE requirement through reasonable cause or corrective compliance?

No. The reasonable cause and corrective compliance provisions at §§ 262.4, 262.5, and 262.6 of this chapter do not apply to the penalties in § 263.8.

Subpart B—What Rules Apply to the Use of Federal TANF Funds?

§ 263.10 What actions would we take against a State if it uses Federal TANF funds in violation of the Act?

(a) If a State misuses its Federal TANF funds, we will reduce the SFAG payable for the immediately succeeding fiscal year quarter by the amount misused.

(b) If the State fails to demonstrate that the misuse was not intentional, we will further reduce the SFAG payable for the immediately succeeding fiscal year quarter in an amount equal to five percent of the adjusted SFAG.

(c) The reasonable cause and corrective compliance provisions of §§ 262.4 through 262.6 of this chapter apply to the penalties specified in paragraphs (a) and (b) of this section.

§ 263.11 What uses of Federal TANF funds are improper?

(a) States may use Federal TANF funds for expenditures:

(1) That are reasonably calculated to accomplish the purposes of TANF, as specified at § 260.20 of this chapter; or

(2) For which the State was authorized to use IV–A or IV–F funds under prior law, as in effect on September 30, 1995 (or, at the option of the State, August 21, 1996).

(b) We will consider use of funds in violation of paragraph (a) of this section, sections 404 and 408 and other provisions of the Act, section 115(a)(1) of PRWORA, the provisions of part 92 of this title, or OMB Circular A–87 to be misuse of funds.

§ 263.12 How will we determine if a State intentionally misused Federal TANF funds?

(a) The State must show, to our satisfaction, that it used these funds for purposes that a reasonable person would consider to be within the purposes of the TANF program (as specified at § 260.20 of this chapter) and consistent with the provisions listed in § 263.11.

(b) We may determine that a State misused funds intentionally if there is supporting documentation, such as Federal guidance or policy instructions, precluding the use of Federal TANF funds for such purpose.

(c) We may also determine that a State intentionally misused funds if the State continues to use the funds in the same or similarly improper manner after receiving notification that we had determined such use to be improper.

§ 263.13 Is there a limit on the amount of Federal TANF funds that a State may spend on administrative costs?

(a)(i) Yes, a State may not spend more than 15 percent of the amount that it receives as its adjusted SFAG, or under other provisions of section 403 of the Act, on "administrative costs," as defined at § 263.0(b).

(ii) Any violation of the limitation in paragraph (a)(i) of this section will constitute a misuse of funds under § 263.11(b).

(b) Expenditures on the information technology and computerization needed for tracking and monitoring required by or under part IV–A of the Act do not count towards the limit specified in paragraph (a) of this section.

(1) This exclusion covers the costs for salaries and benefits of staff who develop, maintain, support or operate the portions of information technology or computer systems used for tracking and monitoring.

(2) It also covers the costs of contracts for development, maintenance, support, or operation of those portions of information technology or computer systems used for tracking or monitoring.

Subpart C—What Rules Apply to Individual Development Accounts?

§ 263.20 What definitions apply to Individual Development Accounts (IDAs)?

The following definitions apply with respect to IDAs:

Date of acquisition means the date on which a binding contract to obtain, construct, or reconstruct the new principal residence is entered into.

Eligible educational institution means an institution described in section 481(a)(1) or section 1201(a) of the Higher Education Act of 1965 (20 U.S.C. 1088(a)(1) or 1141(a)), as such sections were in effect on August 21, 1996. Also, an area vocational education school (as defined in subparagraph (C) or (D) of section 521(4) of the Carl D. Perkins Vocational and Applied Technology Education Act (20 U.S.C. 2471(4)) that is in any State (as defined in section 521(33) of such Act), as such sections were in effect on August 21, 1996.

Individual Development Account (IDA) means an account established by, or for, an individual who is eligible for assistance under the TANF program, to allow the individual to accumulate funds for specific purposes. Notwithstanding any other provision of law (other than the Internal Revenue Code of 1986), the funds in an IDA account must be disregarded in determining eligibility for, or the amount of, assistance in any Federal means-tested programs.

Post-secondary educational expenses means a student's tuition and fees required for the enrollment or attendance at an eligible educational institution, and required course fees, books, supplies, and equipment required at an eligible educational institution.

Qualified acquisition costs means the cost of obtaining, constructing, or reconstructing a residence. The term includes any usual or reasonable settlement, financing, or other closing costs.

Qualified business means any business that does not contravene State law or public policy.

Qualified business capitalization expenses means business expenses pursuant to a qualified plan.

Qualified entity means a nonprofit, tax-exempt organization, or a State or local government agency that works cooperatively with a nonprofit, tax-exempt organization.

Qualified expenditures means expenses entailed in a qualified plan, including capital, plant equipment, working capital, and inventory expenses.

Qualified first-time home buyer means a taxpayer (and, if married, the taxpayer's spouse) who has not owned a principal residence during the three-year period ending on the date of acquisition of the new principal residence.

Qualified plan means a business plan that is approved by a financial institution, or by a nonprofit loan fund having demonstrated fiduciary integrity. It includes a description of services or goods to be sold, a marketing plan, and projected financial statements, and it may require the eligible recipient to obtain the assistance of an experienced entrepreneurial advisor.

Qualified principal residence means the place a qualified first-time home buyer will reside in accordance with the meaning of section 1034 of the Internal Revenue Code of 1986 (26 U.S.C. 1034). The qualified acquisition cost of the residence cannot exceed the average purchase price of similar residences in the area.

§ 263.21 May a State use the TANF grant to fund IDAs?

If the State elects to operate an IDA program, then the States may use Federal TANF funds or WtW funds to fund IDAs for individuals who are eligible for TANF assistance and exercise flexibility within the limits of Federal regulations and the statute.

§ 263.22 Are there any restrictions on IDA funds?

The following restrictions apply to IDA funds:

(a) A recipient may deposit only earned income into an IDA.

(b) A recipient's contributions to an IDA may be matched by, or through, a qualified entity.

(c) A recipient may withdraw funds only for the following reasons:

(1) To cover post-secondary education expenses, if the amount is paid directly to an eligible educational institution;

(2) For the recipient to purchase a first home, if the amount is paid directly to the person to whom the amounts are due and it is a qualified acquisition cost for a qualified principal residence by a qualified first-time home buyer; or

(3) For business capitalization, if the amounts are paid directly to a business capitalization account in a federally insured financial institution and used for a qualified business capitalization expense.

§ 263.23 How does a State prevent a recipient from using the IDA account for unqualified purposes?

To prevent recipients from using the IDA account improperly, States may do the following:

(a) Count withdrawals as earned income in the month of withdrawal (unless already counted as income);

(b) Count withdrawals as resources in determining eligibility; or

(c) Take such other steps as the State has established in its State plan or written State policies to deter inappropriate use.

PART 264—OTHER ACCOUNTABILITY PROVISIONS

Sec.

264.0 What definitions apply to this part?

Subpart A—What Specific Rules Apply for Other Program Penalties?

264.1 What restrictions apply to the length of time Federal TANF assistance may be provided?
264.2 What happens if a State does not comply with the five-year limit?
264.3 How can a State avoid a penalty for failure to comply with the five-year limit?
264.10 Must States do computer matching of data records under IEVS to verify recipient information?
264.11 How much is the penalty for not participating in IEVS?
264.30 What procedures exist to ensure cooperation with the child support enforcement requirements?
264.31 What happens if a State does not comply with the IV–D sanction requirement?
264.40 What happens if a State does not repay a Federal loan?
264.50 What happens if, in a fiscal year, a State does not expend, with its own funds, an amount equal to the reduction to the adjusted SFAG resulting from a penalty?

Subpart B—What are the Requirements for the Contingency Fund?

264.70 What makes a State eligible to receive a provisional payment of contingency funds?
264.71 What determines the amount of the provisional payment of contingency funds that will be made to a State?
264.72 What requirements are imposed on a State if it receives contingency funds?
264.73 What is an annual reconciliation?
264.74 How will we determine the Contingency Fund MOE level for the annual reconciliation?
264.75 For the annual reconciliation, what are qualifying State expenditures?
264.76 What action will we take if a State fails to remit funds after failing to meet its required Contingency Fund MOE level?
264.77 How will we determine if a State met its Contingency Fund expenditure requirements?

Subpart C—What Rules Pertain Specifically to the Spending Levels of the Territories?

264.80 If a Territory receives Matching Grant funds, what funds must it expend?
264.81 What expenditures qualify for Territories to meet the Matching Grant MOE requirement?
264.82 What expenditures qualify for meeting the Matching Grant FAG amount requirement?
264.83 How will we know if a Territory failed to meet the Matching Grant funding requirements at § 264.80?
264.84 What will we do if a Territory fails to meet the Matching Grant funding requirements at § 264.80?
264.85 What rights of appeal are available to the Territories?

Authority: 31 U.S.C. 7501 *et seq.*; 42 U.S.C. 609, 654, 1302, 1308, and 1337.

§ 264.0 What definitions apply to this part?

(a) The general TANF definitions at §§ 260.30 through 260.33 of this chapter apply to this part.

(b) The following definitions also apply to this part:

Countable State Expenditures means the amount of qualifying State expenditures, as defined in § 264.75, plus the amount of contingency funds expended by the State in the fiscal year.

FAG means the Family Assistance Grant granted to a Territory pursuant to section 403(a)(1) of the Act. It is thus the Territorial equivalent of the SFAG, as defined at § 260.30 of this chapter.

Food Stamp Trigger means a State's monthly average of individuals participating in the Food Stamp program (as of the last day of the month) for the most recent three-month period that exceeds its monthly average of individuals in the corresponding three-month period in the Food Stamp caseload for FY 1994 or FY 1995, whichever is less, by at least ten percent, assuming that the immigrant provisions of title IV and the Food Stamp provisions under title VII of PRWORA had been in effect in those years.

Unemployment Trigger means a State's average unemployment rate for the most recent three-month period of at least 6.5 percent and equal to at least 110 percent of the State's unemployment rate for the corresponding three-month period in either of the two preceding calendar years.

Subpart A—What Specific Rules Apply for Other Program Penalties?

§ 264.1 What restrictions apply to the length of time Federal TANF assistance may be provided?

(a)(1) Subject to the exceptions in this section, no State may use any of its Federal TANF funds to provide assistance (as defined in § 260.31 of this chapter) to a family that includes an adult head-of-household or a spouse of the head-of-household who has received Federal assistance for a total of five years (i.e., 60 cumulative months, whether or not consecutive).

(2) The provision in paragraph (a)(1) of this section also applies to a family that includes a pregnant minor head-of-household, minor parent head-of-household, or spouse of such a head-of-household who has received Federal assistance for a total of five years.

(3) Notwithstanding the provisions of paragraphs (a)(1) and (a)(2) of this section, a State may provide assistance under WtW, pursuant to section 403(a)(5) of the Act, to a family that is ineligible for TANF solely because it has reached the five-year time limit.

(b)(1) States must not count toward the five-year limit:

(i) Any month of receipt of assistance by an individual who is not the head-of-household or married to the head-of-household;

(ii) Any month of receipt of assistance by an adult while living in Indian country (as defined in section 1151 of title 18, United States Code) or a Native Alaskan Village where at least 50 percent of the adults were not employed; and

(iii) Any month for which an individual receives only noncash assistance provided under WtW, pursuant to section 403(a)(5) of the Act.

(2) Only months of assistance that are paid for with Federal TANF funds (in whole or in part) count towards the five-year time limit.

(c) States have the option to extend assistance paid for by Federal TANF funds beyond the five-year limit for up to 20 percent of the average monthly number of families receiving assistance during the fiscal year or the immediately preceding fiscal year, whichever the State elects. States are permitted to extend assistance to families only on the basis of:

(1) Hardship, as defined by the State; or

(2) The fact that the family includes someone who has been battered, or subject to extreme cruelty based on the fact that the individual has been subjected to:

(i) Physical acts that resulted in, or threatened to result in, physical injury to the individual;

(ii) Sexual abuse;

(iii) Sexual activity involving a dependent child;

(iv) Being forced as the caretaker relative of a dependent child to engage in nonconsensual sexual acts or activities;

(v) Threats of, or attempts at, physical or sexual abuse;

(vi) Mental abuse; or

(vii) Neglect or deprivation of medical care.

(d) If a State opts to extend assistance to part of its caseload as permitted under paragraph (c) of this section, it would grant such an extension to a specific family once a head-of-household or spouse of a head-of-household in the family has received 60 cumulative months of assistance.

(e) To determine whether a State has failed to comply with the five-year limit on Federal assistance established in paragraph (c) of this section for a fiscal year, we would divide the average monthly number of families with a head-of-household or a spouse of a head-of-household who has received assistance for more than 60 cumulative months by the average monthly number of all families that received assistance during that fiscal year or during the immediately preceding fiscal year.

(f) If the five-year limit is inconsistent with a State's waiver granted under section 1115 of the Act, we will determine State compliance with the Federal time limit in accordance with the provisions of subpart C of part 260.

§ 264.2 What happens if a State does not comply with the five-year limit?

If we determine that a State has not complied with the requirements of § 264.1, we will reduce the SFAG payable to the State for the immediately succeeding fiscal year by five percent of the adjusted SFAG unless the State demonstrates to our satisfaction that it had reasonable cause, or it corrects or discontinues the violation under an approved corrective compliance plan.

§ 264.3 How can a State avoid a penalty for failure to comply with the five-year limit?

(a) We will not impose the penalty if the State demonstrates to our satisfaction that it had reasonable cause for failing to comply with the five-year limit on Federal assistance or it achieves compliance under a corrective compliance plan, pursuant to §§ 262.5 and 262.6 of this chapter.

(b) In addition, we will determine a State has reasonable cause if it demonstrates that it failed to comply with the five-year limit on Federal assistance of federally recognized good cause domestic violence waivers provided to victims of domestic violence in accordance with the provisions of subpart B of part 260.

§ 264.10 Must States do computer matching of data records under IEVS to verify recipient information?

(a) Pursuant to section 1137 of the Act and subject to paragraph (a)(2) of that section, States must meet the requirements of IEVS and request the following information from the Internal Revenue Service (IRS), the State Wage Information Collections Agency (SWICA), the Social Security Administration (SSA), and the Immigration and Naturalization Service (INS):

(1) IRS unearned income;

(2) SWICA employer quarterly reports of income and unemployment insurance benefit payments;

(3) IRS earned income maintained by SSA; and

(4) Immigration status information maintained by the INS.

(b) The requirements at §§ 205.51 through 205.62 of this chapter also apply to the TANF IEVS requirement.

§ 264.11 How much is the penalty for not participating in IEVS?

If we determine that the State has not complied with the requirements of § 264.10, we will reduce the SFAG payable for the immediately succeeding fiscal year by two percent of the adjusted SFAG unless the State demonstrates to our satisfaction that it had reasonable cause or achieved compliance under a corrective compliance plan pursuant to §§ 262.5 and 262.6 of this chapter.

§ 264.30 What procedures exist to ensure cooperation with the child support enforcement requirements?

(a)(1) The State agency must refer all appropriate individuals in the family of a child, for whom paternity has not been established or for whom a child support order needs to be established, modified or enforced, to the child support enforcement agency (i.e., the IV–D agency).

(2) Referred individuals must cooperate in establishing paternity and in establishing, modifying, or enforcing a support order with respect to the child.

(b) If the IV–D agency determines that an individual is not cooperating, and the individual does not qualify for a good cause or other exception established by the State agency responsible for making good cause determinations in accordance with section 454(29) of the Act or for a good cause domestic violence waiver granted in accordance with § 260.52 of this chapter, then the IV–D agency must notify the IV–A agency promptly.

(c) The IV–A agency must then take appropriate action by:

(1) Deducting from the assistance that would otherwise be provided to the family of the individual an amount equal to not less than 25 percent of the amount of such assistance; or

(2) Denying the family any assistance under the program.

§ 264.31 What happens if a State does not comply with the IV–D sanction requirement?

(a)(1) If we find that, for a fiscal year, the State IV–A agency did not enforce the penalties against recipients required under § 264.30(c), we will reduce the SFAG payable for the next fiscal year by one percent of the adjusted SFAG.

(2) Upon a finding for a second fiscal year, we will reduce the SFAG by two percent of the adjusted SFAG for the following year.

(3) A third or subsequent finding will result in the maximum penalty of five percent.

(b) We will not impose a penalty if:

(1) The State demonstrates to our satisfaction that it had reasonable cause pursuant to § 262.5 of this chapter; or

(2) The State achieves compliance under a corrective compliance plan pursuant to § 262.6 of this chapter.

§ 264.40 What happens if a State does not repay a Federal loan?

(a) If a State fails to repay the amount of principal and interest due at any point under a loan agreement developed pursuant to section 406 of the Act:

(1) The entire outstanding loan balance, plus all accumulated interest, becomes due and payable immediately; and

(2) We will reduce the SFAG payable for the immediately succeeding fiscal year quarter by the outstanding loan amount plus interest.

(b) Neither the reasonable cause provisions at § 262.5 of this chapter nor the corrective compliance plan provisions at § 262.6 of this chapter apply when a State fails to repay a Federal loan.

§ 264.50 What happens if, in a fiscal year, a State does not expend, with its own funds, an amount equal to the reduction to the adjusted SFAG resulting from a penalty?

(a)(1) When we withhold Federal TANF funds from a State during a fiscal year because of other penalty actions listed at § 262.1 of this chapter, the State must replace these Federal TANF funds with State funds during the subsequent fiscal year.

(2) If the State fails to replace funds during the subsequent year, then we will assess an additional penalty of no more than two percent of the adjusted SFAG during the year that follows the subsequent year.

(b) A State must expend such replacement funds under its TANF program, not under "separate State programs."

(c) We will assess a penalty of no more than two percent of the adjusted SFAG plus the amount equal to the difference between the amount the State was required to expend and the amount it actually expended in the fiscal year.

(1) We will assess the maximum penalty amount if the State made no additional expenditures to compensate for the reductions to its adjusted SFAG resulting from penalties.

(2) We will reduce the percentage portion of the penalty if the State has expended some of the amount required. In such case, we will calculate the applicable percentage portion of the penalty by multiplying the percentage of the required expenditures that the State failed to make in the fiscal year by two percent.

(d) The reasonable cause and corrective compliance plan provisions at §§ 262.5 and 262.6 of this chapter do not apply to this penalty.

Subpart B—What Are the Requirements for the Contingency Fund?

§ 264.70 What makes a State eligible to receive a provisional payment of contingency funds?

(a) In order to receive a provisional payment of contingency funds, a State must:

(1) Be a needy State, as defined in § 260.30 of this chapter; and

(2) Submit to ACF a request for contingency funds for an eligible month (i.e., a month in which a State is a needy State).

(b) A determination that a State is a needy State for a month makes that State eligible to receive a provisional payment of contingency funds for two consecutive months.

(c) Only the 50 States and the District of Columbia may receive contingency funds. Territories and Tribal TANF grantees are not eligible.

§ 264.71 What determines the amount of the provisional payment of contingency funds that will be made to a State?

We will make a provisional payment to a State that meets the requirements of § 264.70, within the following limits:

(a) The amount that we will pay to a State in a fiscal year will not exceed an amount equal to 1/12 times 20 percent of that State's SFAG for that fiscal year, multiplied by the number of eligible months for which the State has requested contingency funds;

(b) The total amount that we will pay to all States during a fiscal year will not exceed the amount appropriated for this purpose; and

(c) We will pay contingency funds to States in the order in which we receive requests for such payments.

§ 264.72 What requirements are imposed on a State if it receives contingency funds?

(a)(1) A State must meet a Contingency Fund MOE level of 100 percent of historic State expenditures for FY 1994.

(2) A State must exceed the Contingency Fund MOE level to keep any of the contingency funds that it received. It may be able to retain a portion of the amount of contingency funds that match countable State expenditures, as defined in § 264.0, that are in excess of the State's Contingency Fund MOE level, after the overall adjustment required by section 403(b)(6)(C) of the Act.

(b) A State must complete an annual reconciliation, in accordance with § 264.73, in order to determine how much, if any, of the contingency funds that it received in a fiscal year it may retain.

(c) If required to remit funds under the annual reconciliation, a State must remit all (or a portion) of the funds paid to it for a fiscal year within one year after it has failed to meet either the Food Stamp trigger or the Unemployment trigger, as defined in § 264.0, for three consecutive months.

(d) A State must expend contingency funds in the fiscal year in which they are awarded.

(e) A State may not transfer contingency funds to the Discretionary Fund of the CCDF or the SSBG.

(f) A State must follow the restrictions and prohibitions in effect for Federal TANF funds, including the provisions of § 263.11 of this chapter, in its use of contingency funds.

§ 264.73 What is an annual reconciliation?

(a) The annual reconciliation involves the calculation, for a fiscal year, of:

(1) The amount of a State's qualifying expenditures;

(2) The amount by which a State's countable State expenditures, as defined in § 264.0, exceed the State's required Contingency Fund MOE level; and

(3) The amount of contingency funds that the State may retain or must remit.

(b) If a State exceeded its required Contingency Fund MOE level, it may be able to retain some or all of the contingency funds that it received.

(c) A State determines the amount of contingency funds that it may retain by performing the following calculations:

(1) From the lesser of the following two amounts:

(i) The amount of contingency funds paid to it during the fiscal year; or

(ii) Its countable State expenditures, as defined in § 264.0, minus its required Contingency Fund MOE level, multiplied by:

(A) The State's Federal Medical Assistance Percentage (FMAP) applicable for the fiscal year for which funds were awarded; and

(B) 1/12 times the number of months during the fiscal year for which the State received contingency funds.

(2) Subtract the State's proportionate remittance (as reported to the State by ACF) for the overall adjustment of the Contingency Fund for that fiscal year required by section 403(b)(6)(C) of the Act.

§ 264.74 How will we determine the Contingency Fund MOE level for the annual reconciliation?

(a)(1) The Contingency Fund MOE level includes the State's share of expenditures for AFDC benefit payments, administration, and FAMIS; EA; and the JOBS program for FY 1994.

(2) We will use the same data sources and date, i.e., April 28, 1995, that we used to determine the basic MOE levels for FY 1994. We will exclude the State's share of expenditures from the former IV–A child care programs (AFDC/JOBS, Transitional and At-Risk child care) in the calculation.

(b) We will reduce a State's Contingency Fund MOE level by the same percentage that we reduce the basic MOE level for any fiscal year in which we reduce the State's annual SFAG allocation to provide funding to Tribal grantees operating a Tribal TANF program.

§ 264.75 For the annual reconciliation, what are qualifying State expenditures?

(a) Qualifying State expenditures are expenditures of State funds made in the State TANF program, with respect to eligible families, for the following:

(1) Cash assistance, including assigned child support collected by the State, distributed to the family, and disregarded in determining eligibility for, and amount of the TANF assistance payment;

(2) Educational activities designed to increase self-sufficiency, job training, and work, excluding any expenditure for public education in the State except expenditures involving the provision of services or assistance to an eligible family that are not generally available to persons who are not members of an eligible family;

(3) Any other services allowable under section 404(a)(1) of the Act and consistent with the goals at § 260.20 of this chapter; and

(4) Administrative costs in connection with the provision of the benefits and services listed in paragraphs (a)(1) through (a)(3) of this section, but only to the extent that such costs are consistent with the 15-percent limitation at § 263.2(a)(5) of this chapter.

(b) Qualifying State expenditures do not include:

(1) Child care expenditures; and

(2) Expenditures made under separate State programs.

§ 264.76 What action will we take if a State fails to remit funds after failing to meet its required Contingency Fund MOE level?

(a) If, for a fiscal year in which it receives contingency funds, a State fails to meet its required Contingency Fund MOE level, we will penalize the State by reducing the SFAG payable for the next fiscal year by the amount of contingency funds not remitted.

(b) A State may appeal this decision, as provided in § 262.7 of this chapter.

(c) The reasonable cause exceptions and corrective compliance regulations at §§ 262.5 and 262.6 of this chapter do not apply to this penalty.

§ 264.77 How will we determine if a State met its Contingency Fund expenditure requirements?

(a) States receiving contingency funds for a fiscal year must complete the quarterly TANF Financial Report. As part of the fourth quarter's report, a State must complete its annual reconciliation.

(b) The TANF Financial Report and State reporting on expenditures are subject to our review.

Subpart C—What Rules Pertain Specifically to the Spending Levels of the Territories?

§ 264.80 If a Territory receives Matching Grant funds, what funds must it expend?

(a) If a Territory receives Matching Grant funds under section 1108(b) of the Act, it must:

(1) Contribute 25 percent of the expenditures funded under the Matching Grant for title IV–A or title IV–E expenditures;

(2) Expend 100 percent of the amount of historic expenditures for FY 1995 for the AFDC program (including administrative costs and FAMIS), the EA program, and the JOBS program; and

(3) Expend 100 percent of the amount of the Family Assistance Grant annual allocation using Federal TANF, title IV–E funds and/or Territory-only funds, without regard to any penalties applied in accordance with section 409 of the Act.

(b) Territories may not use the same Territorial expenditures to satisfy the requirements of paragraphs (a)(1), (a)(2) and (a)(3) of this section.

§ 264.81 What expenditures qualify for Territories to meet the Matching Grant MOE requirement?

To meet the Matching Grant MOE requirements, Territories may count:

(a) Territorial expenditures made in accordance with §§ 263.2, 263.3, 263.4, and 263.6 of this chapter that are commingled with Federal TANF funds or made under a segregated TANF program; and

(b) Territorial expenditures made pursuant to the regulations at 45 CFR parts 1355 and 1356 for the Foster Care and Adoption Assistance programs and section 477 of the Act for the Independent Living program.

§ 264.82 What expenditures qualify for meeting the Matching Grant FAG amount requirement?

To meet the Matching Grant FAG amount requirement, Territories may count:

(a) Expenditures made with Federal TANF funds pursuant to § 263.11 of this chapter;

(b) Expenditures made in accordance with §§ 263.2, 263.3, 263.4, and 263.6 of this chapter that are commingled with Federal TANF funds or made under a segregated TANF program;

(c) Amounts transferred from TANF funds pursuant to section 404(d) of the Act; and

(d) The Federal and Territorial shares of expenditures made pursuant to the regulations at 45 CFR parts 1355 and 1356 for the Foster Care and Adoption Assistance programs and section 477 of the Act for the Independent Living program.

§ 264.83 How will we know if a Territory failed to meet the Matching Grant funding requirements at § 264.80?

We will require the Territories to report the expenditures required by § 264.80(a)(2) and (a)(3) on the quarterly Territorial Financial Report.

§ 264.84 What will we do if a Territory fails to meet the Matching Grant funding requirements at § 264.80?

If a Territory does not meet the requirements at either or both of § 264.80(a)(2) and (a)(3), we will disallow all Matching Grant funds received for the fiscal year.

§ 264.85 What rights of appeal are available to the Territories?

The Territories may appeal our decisions to the Departmental Appeals Board in accordance with our regulations at part 16 of this title if we decide to take disallowances under section 1108(b) of the Act.

PART 265—DATA COLLECTION AND REPORTING REQUIREMENTS

Sec.

265.1 What does this part cover?
265.2 What definitions apply to this part?
265.3 What reports must the State file on a quarterly basis?
265.4 When are quarterly reports due?
265.5 May States use sampling?
265.6 Must States file reports electronically?
265.7 How will we determine if the State is meeting the quarterly reporting requirements?
265.8 Under what circumstances will we take action to impose a reporting penalty for failure to submit quarterly and annual reports?
265.9 What information must the State file annually?
265.10 When is the annual report due?

Authority: 42 U.S.C. 603, 605, 607, 609, 611, and 613.

§ 265.1 What does this part cover?

(a) This part explains how we will collect the information required by section 411(a) of the Act (data collection and reporting); the information required to implement section 407 of the Act (work participation requirements), as authorized by section 411(a)(1)(A)(xii); the information required to implement section 409 (penalties), section 403 (grants to States), section 405 (administrative provisions), section 411(b) (report to Congress), and section 413 (annual rankings of State TANF programs); and the data necessary to carry out our financial management and oversight responsibilities.

(b) This part describes the information in the quarterly and annual reports that each State must file, as follows: [1]

(1) The case record information (disaggregated and aggregated) on individuals and families in the quarterly TANF Data Report;

(2) The expenditure data in the quarterly TANF Financial Report (or, as applicable, the Territorial Financial Report); and

(3) The definitions and other information on the State's TANF and MOE programs that must be filed annually.

(c) If a State claims MOE expenditures under a separate State program(s), this part specifies the circumstances under which the State must collect and report case-record information on individuals and families served by the separate State program(s).

(d) This part describes when reports are due, how we will determine if reporting requirements have been met, and how we will apply the statutory penalty for failure to file a timely report. It also specifies electronic filing and sampling requirements.

§ 265.2 What definitions apply to this part?

(a) Except as provided in paragraph (b) of this section, the general TANF definitions at §§ 260.30 through 260.33 of this chapter apply to this part.

(b) For data collection and reporting purposes only, *family* means:

(1) All individuals receiving assistance as part of a family under the State's TANF or separate State program (including noncustodial parents, where required under § 265.3(f)); and

(2) The following additional persons living in the household, if not included under paragraph (b)(1) of this section:

(i) Parent(s) or caretaker relative(s) of any minor child receiving assistance;

(ii) Minor siblings of any child receiving assistance; and

(iii) Any person whose income or resources would be counted in determining the family's eligibility for or amount of assistance.

§ 265.3 What reports must the State file on a quarterly basis?

(a) *Quarterly reports.* (1) Each State must collect on a monthly basis, and file on a quarterly basis, the data specified in the TANF Data Report and the TANF Financial Report (or, as applicable, the Territorial Financial Report).

(2) Under the circumstances described in paragraph (d)(1) of this section, the State must collect and file the data specified in the SSP–MOE (Separate State Program-Maintenance-of-Effort) Data Report.

(b) *TANF Data Report.* The TANF Data Report consists of three sections. Two sections contain disaggregated data elements and one section contains aggregated data elements.

(1) *Disaggregated Data on Families Receiving TANF Assistance—Section one.* Each State must file disaggregated information on families receiving TANF assistance.[2] This section specifies identifying and demographic data such as the individual's Social Security Number; and information such as the type and amount of assistance received, educational level, employment status, work participation activities, citizenship status, and earned and unearned income. The data apply to adults and children.

(2) *Disaggregated Data on Families No Longer Receiving TANF Assistance—Section two.* Each State must file disaggregated information on families no longer receiving TANF assistance.[3] This section specifies the reasons for case closure and data similar to the data in section one.

(3) *Aggregated Data—Section three.* Each State must file aggregated information on families receiving, applying for, and no longer receiving TANF assistance.[4] This section of the Report requires aggregate figures in such areas as: The number of applications and their disposition; the number of recipient families, adult recipients, and child recipients; the number of births and out-of-wedlock births for families receiving TANF assistance; the number of noncustodial parents participating in work activities; and the number of closed cases.

(c) *The TANF Financial Report (or Territorial Financial Report).*

(1) Each State must file quarterly expenditure data on the State's use of Federal TANF funds, State TANF expenditures, and State expenditures of MOE funds in separate State programs.[5]

(2) If a State is expending Federal TANF funds received in prior fiscal years, it must file a separate quarterly TANF Financial Report (or, as applicable, Territorial Financial Report) for each fiscal year that provides information on the expenditures of that year's TANF funds.

(3) Territories must report their expenditure and other fiscal data on the Territorial Financial Report, as provided at § 264.85 of this chapter, in lieu of the TANF Financial Report.

(d) *SSP–MOE Data Report.* (1) Subject to paragraph (d)(2) of this section, if a State claims MOE expenditures under a separate State program(s), it must collect and file disaggregated and aggregated information on families receiving assistance and families no longer receiving assistance under the separate State program(s) as follows:

(i) If a State wishes to receive a high performance bonus, it must file the information in sections one and three of the SSP–MOE Data Report; and

(ii) If a State wishes to qualify for caseload reduction credit under subpart D of part 261 of this chapter, it must file the information in sections one, two, and three of the SSP–MOE Data Report.

(2) The State must file the SSP–MOE Data Report only on separate State programs that provide benefits that meet

[1] The Appendices contain the specific data elements in the quarterly Data Report, the quarterly Financial Report, and the Annual Report on State MOE Programs, as well as the instructions for filing these reports. They also include the form and instructions for the Caseload Reduction Report described at § 261.41(b) of this chapter.

[2] See Appendix A for the specific data elements and instructions.

[3] See Appendix B for the specific data elements and instructions.

[4] See Appendix C for the specific data elements and instructions.

[5] See Appendix D for the TANF Financial Report and filing instructions.

the definition of assistance at § 260.31 of this chapter.

(3) The SSP–MOE Data Report consists of three sections. Section one contains disaggregated information on families receiving assistance under separate State programs; section two contains disaggregated information on families no longer receiving assistance under separate State programs; and section three contains aggregated data on families receiving and families no longer receiving assistance under separate State programs.[6]

(e) *Optional data elements.* A State has the option not to report on some data elements for some individuals in the TANF Data Report and the SSP–MOE Data Report, as specified in the instructions to these reports.

(f) *Noncustodial parents.* A State must report information on a noncustodial parent (as defined in § 260.30 of this chapter) if the noncustodial parent:

(1) Is receiving assistance as defined in § 260.31 of this chapter;

(2) Is participating in work activities as defined in section 407(d) of the Act; or

(3) Has been designated by the State as a member of a family receiving assistance.

§ 265.4 When are quarterly reports due?

(a) Each State must file the TANF Data Report and the TANF Financial Report (or, as applicable, the Territorial Financial Report) within 45 days following the end of the quarter or be subject to a penalty.

(b) A State that fails to submit the reports within 45 days will be subject to a penalty unless the State files complete and accurate reports before the end of the fiscal quarter that immediately succeeds the quarter for which the reports were required to be submitted.

(c) Each State may file its quarterly SSP–MOE Data Report:

(1) At the same time as it submits its quarterly TANF Data Report; or

(2) At the time it seeks to be considered for a high performance bonus or a caseload reduction credit as long as it submits the required data for the full period for which these determinations will be made.

§ 265.5 May States use sampling?

(a) Each State may report the disaggregated data in the TANF Data Report and the SSP–MOE Data Report on all recipient families or on a sample of families selected through the use of a scientifically acceptable sampling method that we have approved. States may use sampling to generate certain aggregated data elements as identified in the instructions to the reports. States may not use sampling to report expenditure data.

(b) "Scientifically acceptable sampling method" means:

(1) A probability sampling method in which every sampling unit in the population has a known, non-zero chance to be included in the sample; and

(2) Our sample size requirements are met.

(c) In reporting data based on sampling, the State must follow the specifications and procedures in the TANF Sampling Manual.

§ 265.6 Must States file reports electronically?

Each State must file all quarterly reports (i.e., the TANF Data Report, the TANF Financial Report (or, as applicable, the Territorial Financial Report), and the SSP–MOE Data Report) electronically, based on format specifications that we will provide.

§ 265.7 How will we determine if the State is meeting the quarterly reporting requirements?

(a) Each State's quarterly reports (the TANF Data Report, the TANF Financial Report (or Territorial Financial Report), and the SSP–MOE Data Report) must be complete and accurate and filed by the due date.

(b) For a disaggregated data report, "a complete and accurate report" means that:

(1) The reported data accurately reflect information available to the State in case records, financial records, and automated data systems;

(2) The data are free from computational errors and are internally consistent (e.g., items that should add to totals do so);

(3) The State reports data for all required elements (i.e., no data are missing);

(4)(i) The State provides data on all families; or

(ii) If the State opts to use sampling, the State reports data on all families selected in a sample that meets the specification and procedures in the TANF Sampling Manual (except for families listed in error); and

(5) Where estimates are necessary (e.g., some types of assistance may require cost estimates), the State uses reasonable methods to develop these estimates.

(c) For an aggregated data report, "a complete and accurate report" means that:

(1) The reported data accurately reflect information available to the State in case records, financial records, and automated data systems;

(2) The data are free from computational errors and are internally consistent (e.g., items that should add to totals do so);

(3) The State reports data on all applicable elements; and

(4) Monthly totals are unduplicated counts for all families (e.g., the number of families and the number of out-of-wedlock births are unduplicated counts).

(d) For the TANF Financial Report (or, as applicable, the Territorial Financial Report), "a complete and accurate report" means that:

(1) The reported data accurately reflect information available to the State in case records, financial records, and automated data systems;

(2) The data are free from computational errors and are internally consistent (e.g., items that should add to totals do so);

(3) The State reports data on all applicable elements; and

(4) All expenditures have been made in accordance with § 92.20(a) of this title.

(e) We will review the data filed in the quarterly reports to determine if they meet these standards. In addition, we will use audits and reviews to verify the accuracy of the data filed by the States.

(f) States must maintain records to adequately support any report, in accordance with § 92.42 of this title.

§ 265.8 Under what circumstances will we take action to impose a reporting penalty for failure to submit quarterly and annual reports?

(a) We will take action to impose a reporting penalty under § 262.1(a)(3) of this chapter if:

(1) A State fails to file the quarterly TANF Data Report or the quarterly TANF Financial Report (or, as applicable, the Territorial Financial Report) within 45 days of the end of the quarter;

(2) The disaggregated data in the TANF Data Report is not accurate or does not include all the data required by section 411(a) of the Act (other than section 411(a)(1)(A)(xii) of the Act) or the nine additional elements necessary to carry out the data collection system requirements, including the social security number;

(3) The aggregated data elements in the TANF Data Report required by section 411(a) of the Act are not accurate and the report does not include the data elements necessary to carry out the data collection system requirements and to verify and validate the disaggregated data;

[6] See Appendices E, F, and G for the specific data elements and instructions.

(4) The TANF Financial Report (or, as applicable, the Territorial Financial Report) does not contain complete and accurate information on total expenditures and expenditures on administrative costs and transitional services; or

(5) The annual report under § 265.9 does not contain the definition of work activities and the description of transitional services provided by a State to families no longer receiving assistance due to employment.

(b) We will not apply the reporting penalty to the SSP–MOE Data Report.

(c) If we determine that a State meets one or more of the conditions set forth in paragraph (a) of this section, we will notify the State that we intend to reduce the SFAG payable for the immediately succeeding fiscal year.

(d) We will not impose the penalty at § 262.1(a)(3) of this chapter if the State files the complete and accurate quarterly report or the annual report before the end of the fiscal quarter that immediately succeeds the fiscal quarter for which the reports were required.

(e) If the State does not file all reports as provided under paragraph (a) of this section by the end of the immediately succeeding fiscal quarter, the penalty provisions of §§ 262.4 through 262.6 of this chapter will apply.

(f) Subject to paragraphs (a) through (d) of this section and §§ 262.4 through 262.6 of this chapter, for each quarter for which a State fails to meet the reporting requirements, we will reduce the SFAG payable by an amount equal to four percent of the adjusted SFAG (or a lesser amount if the State achieves substantial compliance under a corrective compliance plan).

§ 265.9 What information must the State file annually?

(a) Each State must file an annual report containing information on the TANF program and the State's MOE program(s) for that year. The report may be filed as:

(1) An addendum to the fourth quarter TANF Data Report; or

(2) A separate annual report.

(b) Each State must provide the following information on the TANF program:

(1) The State's definition of each work activity;

(2) A description of the transitional services provided to families no longer receiving assistance due to employment;

(3) A description of how a State will reduce the amount of assistance payable to a family when an individual refuses to engage in work without good cause pursuant to § 261.14 of this chapter;

(4) The average monthly number of payments for child care services made by the State through the use of disregards, by the following types of child care providers:

(i) Licensed/regulated in-home child care;

(ii) Licensed/regulated family child care;

(iii) Licensed/regulated group home child care;

(iv) Licensed/regulated center-based child care;

(v) Legally operating (i.e., no license category available in State or locality) in-home child care provided by a nonrelative;

(vi) Legally operating (i.e., no license category available in State or locality) in-home child care provided by a relative;

(vii) Legally operating (i.e., no license category available in State or locality) family child care provided by a nonrelative;

(viii) Legally operating (i.e., no license category available in State or locality) family child care provided by a relative;

(ix) Legally operating (i.e., no license category available in State or locality) group child care provided by a nonrelative;

(x) Legally operating (i.e., no license category available in State or locality) group child care provided by a relative; and

(xi) Legally operated (i.e., no license category available in State or locality) center-based child care;

(5) If the State has adopted the Family Violence Option and wants Federal recognition of its good cause domestic violence waivers under subpart B of part 260 of this chapter, a description of the strategies and procedures in place to ensure that victims of domestic violence receive appropriate alternative services and an aggregate figure for the total number of good cause domestic waivers granted;

(6) A description of any nonrecurrent, short-term benefits provided, including:

(i) The eligibility criteria associated with such benefits, including any restrictions on the amount, duration, or frequency of payments;

(ii) Any policies that limit such payments to families that are eligible for TANF assistance or that have the effect of delaying or suspending a family's eligibility for assistance; and

(iii) Any procedures or activities developed under the TANF program to ensure that individuals diverted from assistance receive information about, referrals to, or access to other program benefits (such as Medicaid and food stamps) that might help them make the transition from welfare to work;

(7) A description of the procedures the State has established and is maintaining to resolve displacement complaints, pursuant to section 407(f)(3) of the Act. This description must include the name of the State agency with the lead responsibility for administering this provision and explanations of how the State has notified the public about these procedures and how an individual can register a complaint;

(8) A summary of State programs and activities directed at the third and fourth statutory purposes of TANF (as specified at § 260.20(c) and (d) of this chapter); and

(9) An estimate of the total number of individuals who have participated in subsidized employment under § 261.30(b) or (c) of this chapter.

(c) Each State must provide the following information on the State's program(s) for which the State claims MOE expenditures:

(1) The name of each program and a description of the major activities provided to eligible families under each such program;

(2) Each program's statement of purpose;

(3) If applicable, a description of the work activities in each separate State MOE program in which eligible families are participating;

(4) For each program, both the total annual State expenditures and the total annual State expenditures claimed as MOE;

(5) For each program, the average monthly total number or the total number of eligible families served for which the State claims MOE expenditures as of the end of the fiscal year;

(6) The eligibility criteria for the families served under each program/activity;

(7) A statement whether the program/activity had been previously authorized and allowable as of August 21, 1996, under section 403 of prior law;

(8) The FY 1995 State expenditures for each program/activity not authorized and allowable as of August 21, 1996, under section 403 of prior law (see § 263.5(b) of this chapter); and

(9) A certification that those families for which the State is claiming MOE expenditures met the State's criteria for "eligible families."[7]

(d) If the State has submitted the information required in paragraphs (b) and (c) of this section in the State Plan, it may meet the annual reporting requirements by reference in lieu of re-submission. If the information in the

[7] See Appendix I for the reporting form for the Annual Report on State Maintenance-of-Effort Programs.

annual report has not changed since the previous annual report, the State may reference this information in lieu of re-submission.

(e) If a State makes a substantive change in certain data elements in paragraphs (b) and (c) of this section, it must file a copy of the change with the next quarterly data report or as an amendment to its State Plan. The State must also indicate the effective date of the change. This requirement is applicable to the following data elements:

(1) Paragraphs (b)(1), (b)(2), and (b)(3) of this section; and

(2) Paragraphs (c)(1), (c)(2), (c)(3), (c)(6), (c)(7), and (c)(8) of this section.

§ 265.10 When is the annual report due?

The annual report required by § 265.9 is due at the same time as the fourth quarter TANF Data Report.

Note: The following appendices will not appear in the Code of Federal Regulations.

Appendices

Appendix A—TANF Data Report—Section One (Disaggregated Data Collection for Families Receiving Assistance under the TANF Program)
Appendix B—TANF Data Report—Section Two (Disaggregated Data Collection for Families No Longer Receiving Assistance under the TANF Program)
Appendix C—TANF Data Report—Section Three (Aggregated Data Collection for Families Applying for, Receiving, and No Longer Receiving Assistance under the TANF Program)
Appendix D—TANF Financial Report
Appendix E—SSP–MOE Data Report—Section One (Disaggregated Data Collection for Families Receiving Assistance under the Separate State Programs)
Appendix F—SSP–MOE Data Report—Section Two (Disaggregated Data Collection for Families No Longer Receiving Assistance under the Separate State Programs)
Appendix G—SSP–MOE Data Report—Section Three (Aggregated Data Collection for Families Receiving Assistance under the Separate State Programs)
Appendix H—Caseload Reduction Report
Appendix I—Annual Report on State Maintenance-of-Effort Programs

Appendix A—TANF Data Report—Section One Disaggregated Data Collection for Families Receiving Assistance under the TANF Program

Instructions and Definitions

General Instruction: The State agency or Tribal grantee should collect and report data for each data element. The data must be complete (unless explicitly instructed to leave the field blank) and accurate (i.e, correct).

An "Unknown" code may appear only on four sets of data elements ([#32 and #67] Date of Birth, [#33 and #68] Social Security Number, [#41 and #74] Educational Level, and [#42 and #75] Citizenship/Alienage). For these data elements, unknown is not an acceptable code for individuals who are members of the eligible family (i.e., family affiliation code "1").

There are five data elements for which States have the option to report based on either the budget month or the reporting month. These are: #16 Amount of Food Stamps Assistance; #19 Amount of Child Support; #20 Amount of Families Cash Resources; #64 Amount of Earned Income; and [#35 and #76] Amount of Unearned Income. Whichever choice the State selects must be used for all families reported each month and must be used for all months in the fiscal year.

1. *State FIPS Code:* Enter your two-digit State code from the following listing. These codes are the standard codes used by the National Institute of Standards and Technology. Tribal grantees should leave this field blank.

State	Code
Alabama	01
Alaska	02
American Samoa	60
Arizona	04
Arkansas	05
California	06
Colorado	08
Connecticut	09
Delaware	10
District of Columbia	11
Florida	12
Georgia	13
Guam	66
Hawaii	15
Idaho	16
Illinois	17
Indiana	18
Iowa	19
Kansas	20
Kentucky	21
Louisiana	22
Maine	23
Maryland	24
Massachusetts	25
Michigan	26
Minnesota	27
Mississippi	28
Missouri	29
Montana	30
Nebraska	31
Nevada	32
New Hampshire	33
New Jersey	34
New Mexico	35
New York	36
North Carolina	37
North Dakota	38
Ohio	39
Oklahoma	40
Oregon	41
Pennsylvania	42
Puerto Rico	72
Rhode Island	44
South Carolina	45
South Dakota	46
Tennessee	47
Texas	48
Utah	49
Vermont	50
Virgin Islands	78
Virginia	51
Washington	53
West Virginia	54
Wisconsin	55
Wyoming	56

2. *County FIPS Code:* Enter the three-digit code established by the National Institute of Standards and Technology for classification of counties and county equivalents. Codes were devised by listing counties alphabetically and assigning sequentially odd integers; e.g., 01, 03, 05. A complete list of codes is available in Appendix F of the TANF Sampling and Statistical Methods Manual. Tribal grantees should leave this field blank.

3. *Tribal Code:* For Tribal grantees, enter the three-digit Tribal code that represents your Tribe (See Appendix E of the TANF Sampling and Statistical Methods Manual for a complete listing of Tribal Codes.) State agencies should leave this field blank.

4. *Reporting Month:* Enter the four-digit year and two-digit month codes that identify the year and month for which the data are being reported.

5. Stratum:

Guidance: All TANF families selected in the sample from the same stratum must be assigned the same stratum code. Valid stratum codes may range from "00" to "99." States and Tribes with stratified samples should provide the ACF Regional Office with a listing of the numeric codes utilized to identify any stratification. If a State or Tribe opts to provide data for its entire caseload, enter the same stratum code (any two-digit number) for each TANF family.

Instruction: Enter the two-digit stratum code.

Family-Level Data

Definition: For reporting purposes, the TANF family means (a) all individuals receiving assistance as part of a family under the State's TANF Program; and (b) the following additional persons living in the household, if not included under (a) above:

(1) Parent(s) or caretaker relative(s) of any minor child receiving assistance;

(2) Minor siblings of any child receiving assistance; and

(3) Any person whose income or resources would be counted in determining the family's eligibility for or amount of assistance.

6. *Case Number—TANF:*

Guidance: If the case number is less than the allowable eleven characters, a State should use lead zeros to fill in the number.

Instruction: Enter the number assigned by the State agency or Tribal grantee to uniquely identify the case.

7. *ZIP Code:* Enter the five-digit ZIP code for the TANF family's place of residence for the reporting month.

8. *Funding Stream:*

Guidance: The TANF Data Report collects information on families receiving assistance as defined in § 260.31. We do not collect information on families receiving benefits and services that do not meet the definition of assistance. A family that receives TANF

assistance funded, entirely or in part, with Federal funds is subject to the Federal time limits. A family that receives assistance under a segregated State TANF program funded solely with State funds is not subject to the Federal time limits.We will collect information on families who receive assistance under a separate State program in the SSP–MOE Data Report.

Instructions: For States that bifurcate their caseloads, enter the appropriate code for the funding stream used to provide assistance to this TANF family. If the State (Tribe) does not bifurcate its caseload, enter code "1."

1=Funded, in whole or in part, with Federal TANF block grant funds.

2=Funded entirely from State-only funds. (segregated State TANF program) which are subject to most, but not all, TANF rules.

9. *Disposition:*

Guidance: A family that did not receive any assistance for the reporting month but was listed on the monthly sample frame for the reporting month is "listed in error." States must collect and report complete data for all sampled cases that are not listed in error.

Instruction: Enter one of the following codes for each TANF sampled case.

1=Data collection completed.

2=Not subject to data collection/listed in error.

10. *New Applicant:*

Guidance: A newly-approved applicant means the current reporting month is the first month in which the TANF family receives TANF assistance (and thus has had a chance to be selected into the TANF sample). This may be either the first month that the TANF family has ever received assistance or the first month of a new spell on assistance. A TANF family that is reinstated from a suspension is not a newly, approved applicant.

Instruction: Enter the one-digit code that indicates whether or not the TANF family is a newly-approved applicant.

1=Yes, a newly-approved application

2=No.

11. *Number of Family Members:* Enter two digits that represent the number of members in the family receiving assistance under the State's (Tribe's) TANF Program during the reporting month. Include in the number of family members, the noncustodial parent who the State (Tribe) has opted to include as part of the eligible family, who is receiving assistance as defined in § 260.31, or who is participating in work activities as defined in section 407(d) of the Act.

12. *Type of Family for Work Participation:*

Guidance: This data element identifies whether the family will be used to calculate both the overall and two-parent work participation rates, will be used to calculate only the overall work participation rate, or will not be used to calculate either work participation rate.

A family with an adult or minor child head-of-household is included in the overall work participation rate unless explicitly disregarded. See data element #48 "Work Participation Status" for reasons for disregarding a family.

For the purpose of calculating the two-parent work participation rate, the two-parent families include any family with two or more natural or adoptive parents (of the same minor child) receiving assistance and living in the home, unless both are minors and neither is a head-of-household. All two-parent families must be included in the two-parent work participation rate unless the family is explicitly disregarded. See the "Work Participation Status" data element for reasons for disregarding a family. A two-parent family that includes a disabled parent will not be included in the two-parent work participation rate.

A family with a minor child head-of-household should be coded as either a single-parent family or two-parent family, whichever is appropriate.

A noncustodial parent is defined in § 260.30 as a parent who lives in the State and does not live with his/her child(ren). The State must report information on the noncustodial parent if the noncustodial parent: (1) is receiving assistance as defined in § 260.31; (2) is participating in work activities as defined in section 407(d) of the Act; or (3) has been designated by the State as a member of a family receiving assistance.

However, the State may choose whether a two-parent family with a noncustodial parent as one of the two parents is a two-parent family for the purposes of calculating the two-parent work participation rate. If a State chooses to exclude a two-parent family with a noncustodial parent as one of the parents from the two-parent work participation rate, the State must code the data element "Type of Family for Work Participation" with a "1" and code the data element "Work Participation Status" for the noncustodial parent with a "99".

Instruction: Enter the one-digit code that represents the type of family for purposes of calculating the work participation rates.

1=Family included only in overall work participation rate.

2=Two-Parent Family included in both the overall and two-parent work participation rates.

3=Family excluded from both the overall and two-parent work participation rates.

13. *Receives Subsidized Housing:*

Guidance: Subsidized housing refers to housing for which money was paid by the Federal, State, or local government or through a private social service agency to the family or to the owner of the housing to assist the family in paying rent. Two families sharing living expenses does not constitute subsidized housing.

Instruction: Enter the one-digit code that indicates whether or not the TANF family received subsidized housing for the reporting month.

1=Public housing.

2=Rent subsidy.

3=No housing subsidy.

14. *Receives Medical Assistance:* Enter "1" if, for the reporting month, any TANF family member is enrolled in Medicaid and thus eligible to receive medical assistance under the State plan approved under Title XIX or "2" if no TANF family member is enrolled in Medicaid.

1=Yes, enrolled in Medicaid.

2=No.

15. *Receives Food Stamps:* Enter the one-digit code that indicates whether or not the TANF family is receiving food stamp assistance.

1=Yes, receives food stamp assistance.

2=No.

16. *Amount of Food Stamp Assistance:*

Guidance: For situations in which the food stamp household differs from the TANF family, code this element in a manner that most accurately reflects the resources available to the TANF family. One acceptable method for calculating the amount of food stamp assistance available to the TANF family is to prorate the amount of food stamps equally among each food stamp recipient then add together the amounts belonging to the TANF recipients to get the total amount for the TANF family.

Instruction: Enter the TANF family's authorized dollar amount of food stamp assistance for the reporting month or for the month used to budget for the reporting month.

17. *Receives Subsidized Child Care:*

Instruction: If the TANF family receives subsidized child care for the reporting month, enter code "1" or "2," whichever is appropriate. Otherwise, enter code "3."

1=Yes, receives child care funded entirely or in part with Federal funds (e.g., receives TANF, CCDF, SSBG, or other federally funded child care).

2=Yes, receives child care funded entirely under a State, Tribal, and/or local program (i.e., no Federal funds used).

3=No subsidized child care received.

18. *Amount of Subsidized Child Care:*

Guidance: Subsidized child care means a grant by the Federal, State or local government to or on behalf of a parent (or caretaker relative) to support, in part or whole, the cost of child care services provided by an eligible provider to an eligible child. The grant may be paid directly to the parent (or caretaker relative) or to a child care provider on behalf of the parent (or caretaker relative).

Instruction: Enter the total dollar amount of subsidized child care from all sources (e.g., CCDF, TANF, SSBG, State, local, etc.) that the TANF family has received for services in the reporting month. If the TANF family did not receive any subsidized child care for services in the reporting month, enter "0."

19. *Amount of Child Support:* Enter the total dollar value of child support received on behalf of the TANF family in the reporting month or for the month used to budget for the reporting month. This includes current payments, arrearages, recoupment, and pass-through amounts whether paid to the State or the family.

20. *Amount of the Family's Cash Resources:* Enter the total dollar amount of the TANF family's cash resources as the State defines them for determining eligibility and/or computing benefits for the reporting month or for the month used to budget for the reporting month.

Amount of Assistance Received and the Number of Months That the Family has Received Each Type of Assistance Under the State (Tribal) TANF Program

Guidance: The term "assistance" includes cash, payments, vouchers, and other forms of benefits designed to meet a family's ongoing

basic needs (i.e., for food, clothing, shelter, utilities, household goods, personal care items, and general incidental expenses). It includes such benefits even when they are provided in the form of payments by a TANF agency, or other agency on its behalf, to individual recipients and conditioned on their participation in work experience, community service, or other work activities (i.e., under the CFR § 261.30).

Except where excluded as indicated in the following paragraph, it also includes supportive services such as transportation and child care provided to families who are not employed.

The term "assistance" excludes:

(1) Nonrecurrent, short-term benefits (such as payments for rent deposits or appliance repairs) that:

(i) Are designed to deal with a specific crisis situation or episode of need;

(ii) Are not intended to meet recurrent or ongoing needs; and

(iii) Will not extend beyond four months.

(2) Work subsidies (i.e., payments to employers or third parties to help cover the costs of employee wages, benefits, supervision, and training);

(3) Supportive services such as child care and transportation provided to families who are employed;

(4) Refundable earned income tax credits;

(5) Contributions to, and distributions from, Individual Development Accounts;

(6) Services such as counseling, case management, peer support, child care information and referral, transitional services, job retention, job advancement, and other employment-related services that do not provide basic income support; and

(7) Transportation benefits provided under an Access to Jobs or Reverse Commute project, pursuant to section 404(k) of the Act, to an individual who is not otherwise receiving assistance.

The exclusion of nonrecurrent, short-term benefits under (1) of this paragraph also covers supportive services for recently employed families, for temporary periods of unemployment, in order to enable continuity in their service arrangements.

Instruction: For each type of assistance provided under the State's (Tribal) TANF Program, enter the dollar amount of assistance that the TANF family received or that was paid on behalf of the TANF family for the reporting month and the number of months that the TANF family has received assistance under the State's (Tribe's) TANF program. For TANF Child Care also enter the number of children covered by the dollar amount of child care. If, for a "type of assistance," no dollar amount of assistance was provided during the reporting month, enter "0" as the amount. If, for a "type of assistance," no assistance has been received (since the State began its TANF Program) by the TANF eligible family, enter "0" as the number of months of assistance.

21. *Cash and Cash Equivalents:*

A. *Amount*

B. *Number of Months*

22. *TANF Child Care:*

Guidance: For TANF Child Care, enter the dollar amount, the number of children covered by the dollar amount of child care, and the total number of months that the family has received TANF child care assistance for families not employed. For example, a TANF family may receive a total of $500.00 in TANF child care assistance for two children for the reporting month. Furthermore, the family may have received TANF child care for one or more child(ren) for a total of six months under the State (Tribal) TANF Program. In this example, the State (Tribe) would code 500, 2, and 6 for the amount, number of children and number of months respectively. Include only the child care funded directly by the State (Tribal) TANF Program. Do not include child care funded under the Child Care and Development Fund, even though some of the funds were transferred to the CCDF from the TANF program.

Number of:

A. *Amount*

B. *Children Covered*

C. *Number of Months*

23. *Transportation:*

A. *Amount*

B. *Number of Months*

24. *Transitional Services:*

A. *Amount*

B. *Number of Months*

25. *Other:*

A. *Amount*

B. *Number of Months*

26. *Reason for and Amount of Reductions in Assistance:*

Instruction: The amount of assistance received by a TANF family may have been reduced for one or more of the following reasons. For each reason listed below, indicate whether the TANF family received a reduction in assistance. Enter the total dollar value of the reduction(s) for each group of reasons for the reporting month. If for any reason there was no reduction in assistance, enter "0."

a. *Sanctions:*

i. *Total Dollar Amount of Reductions due to Sanctions:* Enter the total dollar value of reduction in assistance due to sanctions.

ii. *Work Requirements Sanction:*

1=Yes.

2=No.

iii. *Family Sanction for an Adult with No High School Diploma or Equivalent:*

1=Yes.

2=No.

iv. *Sanction for Teen Parent not Attending School:*

1=Yes.

2=No.

v. *Non-Cooperation with Child Support:*

1=Yes.

2=No.

vi. *Failure to Comply with an Individual Responsibility Plan:*

1=Yes.

2=No.

vii. *Other Sanction:*

1=Yes.

2=No.

b. *Recoupment of Prior Overpayment:*

Enter the total dollar value of reduction in assistance due to recoupment of a prior overpayment.

c. *Other:*

i. *Total Dollar Amount of Reductions due to Other Reasons (exclude amounts for sanctions and recoupment):* Enter the total dollar value of reduction in assistance due to reasons other than sanctions and recoupment.

ii. *Family Cap:*

1=Yes.

2=No.

iii. *Reduction Based on Family Moving into State From Another State:*

1=Yes.

2=No.

iv. *Reduction Based on Length of Receipt of Assistance:*

1=Yes.

2=No.

v. *Other, Non-sanction:*

1=Yes.

2=No.

27. *Waiver Evaluation Experimental and Control Groups:*

Guidance: If this data element is not applicable to your State (Tribe), either code this element "9" or leave this data element blank. In connection with waivers that are approved to allow States to implement Welfare Reform Demonstrations, a State assigned a portion of its cases to control groups (subject to the provisions of the regular, statutory AFDC program as defined by prior law) and experimental groups (subject to the provisions of the regular, statutory AFDC program as defined by prior law as modified by waivers). A State may choose, for the purpose of completing impact analyses, to maintain applicable control snd experimental group treatment policies as they were implemented under their welfare reform demonstration (including prior law policies not modified by waivers), even if such policies are inconsistent with TANF. However, cases not assigned to an experimental or control group, but subject to waiver policies in accordance with terms and conditions of the waiver approval, may not apply prior law policies inconsistent with TANF unless such policies are specifically linked to approved waivers. When a State continues waivers, but does not maintain experimental and control groups for impact evaluation purposes, all cases in the demonstration site will be treated as cases subject to waiver policies in accordance with the terms and conditions regardless of their original assignment as control group cases (i.e., prior law policies may only apply to the extent they are specially linked to approved waivers and former control group cases will now be subject to waiver policies.)

Instruction: Enter the one-digit code that indicates the family's waiver evaluation case status.

1=Control group case (for impact analysis purposes).

2=Experimental group case.

3=Other cases subject to waiver policies.

9=Not applicable (no waivers apply to this case).

28. *Is the TANF Family Exempt from the Federal Time-Limit Provisions:*

Guidance: Under TANF rules, an eligible family that does not include a recipient who is an adult head-of-household, a spouse of the head-of-household, or a minor child head-of-household who has received federally-funded assistance for 60 countable months may continue to receive assistance. A

countable month is a month of assistance for which the adult head-of-household, the spouse of the head-of-household, or the minor child head-of-household is not exempt from the Federal time-limit provisions. TANF rules provide for two categories of exceptions. Certain families are exempt from the accrual of months of assistance (i.e., the clock is not ticking). Certain families with an adult head-of-household, a spouse of a head-of-house, or minor child head-of-household who has received 60 countable months of assistance may be exempt from termination of assistance. Exemptions from termination of assistance include a hardship exemption that allows up to 20% of the families to receive assistance beyond the 60-month time limit. In lieu of the 20% hardship exemptions, States with prior-approved welfare reform waivers may choose to employ extension policies prescribed under their waivers.

Instruction: If the TANF family has no exemption from the Federal five-year time limit, enter code "01." If the TANF family does not include an adult head-of-household, a spouse of the head-of-household, or a minor child head-of-household who has received federally-funded assistance for 60 countable months or is otherwise exempt from accrual of months of assistance or termination of assistance under the Federal five-year time limit for the reporting month, enter "02." If the TANF family includes an adult head-of-household, a spouse of the head-of-household, or minor child head-of-household who has not received federally-funded assistance for 60 countable months and the family is exempt from the accrual of months of assistance, enter "03," "04," or "05," whichever is appropriate. If the TANF family includes an adult head-of-household, a spouse of the head-of-household, or minor child head-of-household who has received assistance for 60 countable months and the family is exempt from termination of assistance, enter code "06" "07," "08," "09," "10," or "11," whichever is appropriate.

01=Family is not exempt from Federal time limit.

Family does not include an adult head-of-household, a spouse of the head-of-household, or minor child head-of-household who has received federally-funded assistance for 60 countable months:

02=Yes, family is exempt from accrual of months and termination of assistance under the Federal five-year time limit for the reporting month because no adult head-of-household, a spouse of the head-of-household, or minor child head-of-household in the eligible family is receiving assistance.

Family includes an adult head-of-household, a spouse of the head-of-household, or minor child head-of-household, but has accrued less than 60 months of assistance:

03=Yes, family is exempt from accrual of months under the Federal five-year time limit for the reporting month because assistance to family is funded entirely from State-only funds.

04=Yes, family is exempt from accrual of months under the Federal five-year time limit for the reporting month because the family is living in Indian country or an Alaskan native village, where at least 50 percent of the adults living in the Indian country or Alaskan native village are not employed.

05=Yes, family is exempt from accrual of months under the Federal five-year time limit for the reporting month based on an approved welfare reform waiver policy.

Family includes an adult head-of-household, a spouse of the head-of-household, or minor child head-of-household who has received federally-funded assistance for 60 countable months:

06=Yes, family is exempt from termination of assistance under the Federal five-year time limit for the reporting month because assistance to the family is funded entirely from State-only funds.

07=Yes, family is exempt from termination of assistance under the Federal five-year time limit for the reporting month due to a hardship exemption, battery, or extreme cruelty.

08=Yes, family is exempt from termination of assistance under State policy for the reporting month based on a federally recognized good cause domestic violence waiver of time limits.

09=Yes, family is exempt from termination of assistance under the Federal five-year time limit for the reporting month because the adult head-of-household, the spouse of the head-of-household, or minor child head-of-household is living in Indian country or an Alaskan native village, where at least 50 percent of whose adults are not employed.

10=Yes, family (including adults) is exempt from termination of assistance under the Federal five-year time limit for the reporting month in accordance with extension policies prescribed under approved welfare reform waivers.

11=Yes, the children in the family are receiving assistance beyond the 60 countable months and the family is exempt from termination of assistance under the Federal five-year time limit for the reporting month in accordance with extension policies prescribed under approved welfare reform waivers (i.e., under an adult-only time limit).

29. *Is the TANF Family A New Child-Only Family?:*

Guidance: A child-only family is a TANF family that does not include an adult or a minor child head-of-household who is receiving TANF assistance. For purposes of this data element, a new child-only family is a TANF family that: (a) has received TANF assistance for at least two months (i.e., the reporting month and the month prior to the reporting month); (b) received benefits in the prior month, but not as a child-only case; and (c) is a child-only family for the reporting month. All other families—including those that are not a child-only case during the reporting month—get coded as "not a new-child-only family," i.e., as code 2.

Instructions: If the TANF family is a new child-only family, enter code "1." Otherwise, enter code "2."

1=Yes, a new child-only family.

2=No, not a new child-only family.

Person-Level Data

Person-level data has two sections: (1) The adult and minor child head-of-household characteristic section and (2) the child characteristics section. Section 419 of the Act defines adult and minor child. An adult is an individual that is not a minor child. A minor child is an individual who (a) has not attained 18 years of age or (b) has not attained 19 years of age and is a full-time student in a secondary school (or in the equivalent level of vocational or technical training).

Detailed data elements must be reported on all individuals unless, for a specific data element, the instructions explicitly give States (Tribes) an option to not report for a specific group of individuals.

Adult and Minor Child Head-of-Household Characteristics

This section allows for coding up to six adults (or a minor child who is either a head-of-household or married to the head-of-household and up to five adults) in the TANF family. A minor child who is either a head-of-household or married to the head-of-household should be coded as an adult and will hereafter be referred to as a "minor child head-of-household." For each adult (or minor child head-of-household) in the TANF family, complete the adult characteristics section. A noncustodial parent is defined in section 260.30 as a parent who lives in the State and does not live with his/her child(ren). The State must report information on the noncustodial parent if the noncustodial parent: (1) Is receiving assistance as defined in § 260.31; (2) is participating in work activities as defined in section 407(d) of the Act; or (3) has been designated by the State as a member of a family receiving assistance.

The State has the option to count a family with a noncustodial parent receiving assistance as a two-parent family for work participation rate purposes. As indicated below, reporting for certain specified data elements in this section is optional for certain individuals (whose family affiliation code is a 2, 3, or 5).

If there are more than six adults (or a minor child head-of-household and five adults) in the TANF family, use the following order to identify the persons to be coded: (1) The head-of-household; (2) parents in the eligible family receiving assistance; (3) other adults in the eligible family receiving assistance; (4) parents not in the eligible family receiving assistance; (5) caretaker relatives not in the eligible family receiving assistance; and (6) other persons whose income or resources count in determining eligibility for or amount of assistance of the eligible family receiving assistance, in descending order from the person with the most income to the person with least income.

30. *Family Affiliation:*

Guidance: This data element is used both for (1) The adult and minor child head-of-household section and (2) the minor child section. The same coding schemes are used in both sections. Some of these codes may not be applicable for adults.

Instruction: Enter the one-digit code that shows the adult's (or minor child head-of-household's) relation to the eligible family receiving assistance.

1=Member of the eligible family receiving assistance.

Not in eligible family receiving assistance, but in the household:

2=Parent of minor child in the eligible family receiving assistance.

3=Caretaker relative of minor child in the eligible family receiving assistance.

4=Minor sibling of child in the eligible family receiving assistance.

5=Person whose income or resources are considered in determining eligibility for or amount of assistance for the eligible family receiving assistance.

31. *Noncustodial Parent Indicator:*

Guidance: A noncustodial parent is defined in section 260.30 as a parent who lives in the State and does not live with his/her child(ren). The State must report information on the noncustodial parent if the noncustodial parent: (1) Is receiving assistance as defined in § 260.31; (2) is participating in work activities as defined in section 407(d) of the Act; or (3) has been designated by the State as a member of a family receiving assistance.

Instruction: Enter the one-digit code that indicates the adult's (or minor child head-of-household's) noncustodial parent status.

1=Yes, a noncustodial parent.

2=No.

32. *Date of Birth:* Enter the eight-digit code for date of birth for the adult (or minor child head-of-household) under the State (Tribal) TANF Program in the format YYYYMMDD. If the adult's (or minor child head-of-household's) date of birth is unknown and the family affiliation code is not "1," enter the code "99999999".

33. *Social Security Number:* Enter the nine-digit Social Security Number for the adult (or minor child head-of-household) in the format nnnnnnnnn. If the social security number is unknown and the family affiliation code is not "1," enter "999999999".

34. *Race/Ethnicity:*

Instruction: To allow for the multiplicity of race/ethnicity, please enter the one-digit code for each category of race and ethnicity of the TANF adult (or minor child head-of-household). Reporting of this data element is optional for individuals whose family affiliation code is 5.

Ethnicity:

a. Hispanic or Latino:

1=Yes, Hispanic or Latino.

2=No.

Race:

b. American Indian or Alaska Native:

1=Yes, American Indian or Alaska Native.

2=No.

c. Asian:

1=Yes, Asian.

2=No.

d. Black or African American:

1=Yes, Black or African American.

2=No.

e. Native Hawaiian or Other Pacific Islander:

1=Yes, Native Hawaiian or Pacific Islander.

2=No.

f. White:

1=Yes, White.

2=No.

35. *Gender:* Enter the one-digit code that indicates the adult's (or minor child head-of-household's) gender:

1=Male.

2=Female.

36. *Receives Disability Benefits:* The Act specifies five types of disability benefits. For each type of disability benefits, enter the one-digit code that indicates whether or not the adult (or minor child head-of-household) received the benefit.

a. *Receives Federal Disability Insurance Benefits Under the Social Security OASDI Program (Title II of the Social Security Act):*

1=Yes, received Federal disability insurance.

2=No.

b. *Receives Benefits Based on Federal Disability Status Under Non-Social Security Act Programs:* These programs include Veteran's disability benefits, Worker's disability compensation, and Black Lung Disease disability benefits.

1=Yes, received benefits based on Federal disability status.

2=No.

c. *Receives Aid to the Permanently and Totally Disabled Under Title XIV–APDT of the Social Security Act:*

1=Yes, received aid under Title XIV–APDT.

2=No.

d. *Receives Aid to the Aged, Blind, and Disabled Under Title XVI–AABD of the Social Security Act:*

1=Yes, received aid under Title XVI–AABD.

2=No.

e. *Receives Supplemental Security Income Under Title XVI–SSI of the Social Security Act:*

1=Yes, received aid under Title XVI–SSI.

2=No.

37. *Marital Status:* Enter the one-digit code for the adult's (or minor child head-of-household's) marital status for the reporting month. Reporting of this data element is optional for individuals whose family affiliation code is 5.

1=Single, never married.

2=Married, living together.

3=Married, but separated.

4=Widowed.

5=Divorced.

38. *Relationship to Head-of-Household:*

Guidance: This data element is used both for (1) the adult or minor child head-of-household section and (2) the minor child section. The same coding schemes are used in both sections. Some of these codes may not be applicable for adults.

Instruction: Enter the two-digit code that shows the adult's relationship (including by marriage) to the head of the household, as defined by the Food Stamp Program or as determined by the State (Tribe) (i.e., the relationship to the principal person of each person living in the household). If minor child head-of-household, enter code "01."

01=Head-of-household.

02=Spouse.

03=Parent.

04=Daughter or son.

05=Stepdaughter or stepson.

06=Grandchild or great grandchild.

07=Other related person (brother, niece, cousin).

08=Foster child.

09=Unrelated child.

10=Unrelated adult.

39. *Parent With Minor Child in the Family:*

Guidance: A parent with a minor child in the family may be a natural parent, adoptive parent, or step-parent of a minor child in the family. Reporting of this data element is optional for individuals whose family affiliation code is 3 or 5.

Instruction: Enter the one-digit code that indicates the adult's (or minor child head-of-household's) parental status.

1=Yes, a parent with a minor child in the family and used in two-parent participation rate.

2=Yes, a parent with a minor child in the family, but not used in two-parent participation rate.

3=No.

40. *Needs of a Pregnant Woman:* Some States (Tribes) consider the needs of a pregnant woman in determining the amount of assistance that the TANF family receives. If the adult (or minor child head-of-household) is pregnant and the needs associated with this pregnancy are considered in determining the amount of assistance for the reporting month, enter a "1" for this data element. Otherwise enter a "2" for this data element. This data element is applicable only for individuals whose family affiliation code is 1.

1=Yes, additional needs associated with pregnancy are considered in determining the amount of assistance.

2=No.

41. *Educational Level:* Enter the two-digit code to indicate the highest level of education attained by the adult (or minor child head-of-household). Unknown is not an acceptable code for individuals whose family affiliation code is "1". Reporting of this data element is optional for individuals whose family affiliation code is 5.

01–11=Grade level completed in primary/secondary school including secondary level vocational school or adult high school.

12=High school diploma, GED, or National External Diploma Program.

13=Awarded Associate's Degree.

14=Awarded Bachelor's Degree.

15=Awarded graduate degree (Master's or higher).

16=Other credentials (degree, certificate, diploma, etc.).

98=No formal education.

99=Unknown.

42. *Citizenship/Alienage:*

Instruction: Enter the one-digit code that indicates the adult's (or minor child head-of-household's) citizenship/alienage. Unknown is not an acceptable code for individuals whose family affiliation code is "1". Reporting of this data element is optional for individuals whose family affiliation code is 5.

1=U.S. citizen, including naturalized citizens.

2=Qualified alien.

9=Unknown.

43. *Cooperation with Child Support:* Enter the one-digit code that indicates if the adult (or minor child head-of-household) has cooperated with child support. Reporting of this data element is optional for individuals whose family affiliation code is 5.

1=Yes, adult (or minor child head-of-household) has cooperated with child support.

2=No.

9=Not applicable.

44. *Number of Months Countable toward Federal Time Limit:* Enter the number of months countable toward the adult's (or minor child head-of-household's) Federal five-year time limit based on the cumulative amount of time the individual has received Federal TANF assistance received from both the State (Tribe) and other States or Tribes. Reporting of this data element is optional for individuals whose family affiliation code is 2, 3, or 5.

45. *Number of Countable Months Remaining Under State's (Tribe's) Time Limit:* Enter the number of months that remain countable toward the adult's (or minor child head-of-household's) State (Tribal) time limit. Reporting of this data element is optional for individuals whose family affiliation code is 2, 3, or 5.

46. *Is Current Month Exempt from the State's (Tribe's) Time Limit:* Enter the one-digit code that indicates the adult's (or minor child head-of-household's) current exempt status from State's (Tribe's) time limit. Reporting of this data element is optional for individuals whose family affiliation code is 2, 3, or 5.

1=Yes, adult (or minor child head-of-household) is exempt from the State's (Tribe's) time limit for the reporting month.

2=No.

47. *Employment Status:* Enter the one-digit code that indicates the adult's (or minor child head-of-household's) employment status. Reporting of this data element is optional for individuals whose family affiliation code is 5.

1=Employed.

2=Unemployed, looking for work.

3=Not in labor force (i.e, unemployed, not looking for work, includes discouraged workers).

48. *Work Participation Status:*

Guidance: This item is used in calculating the work participation rates. The following two definitions are used in reporting this item and in determining which families are included in and excluded from the calculations.

"Disregarded" from the participation rate means the TANF family is not included in the calculation of the work participation rate.

"Exempt" means that the individual will not be penalized for failure to engage in work (i.e., good cause exception); however, the TANF family is included in the calculation of the work participation rate.

A State is not required to disregard all families that could be disregarded. For example, a family with a single custodial parent with child under 12 months (and the parent has not been disregarded for 12 months) may be disregarded. However, if the single custodial parent is meeting the work requirements, the State may want to include the family in its work participation rate. In this situation, the State should use work participation status code "19" rather than code "01".

Instruction: Enter the two-digit code that indicates the adult's (or minor child head-of-household's) work participation status. If the State chooses to include the noncustodial parent in the two-parent work participation rate, the State must code the data element "Type of Family for Work Participation Rate" with a "2" and enter the applicable code for this data element. If a State chooses to exclude the noncustodial parent from the two-parent work participation rate, the State must code the data element "Type of Family for Work Participation" with a "1" and code the data element "Work Participation Status" for the noncustodial parent with a "99". This data element is not applicable for individuals whose family affiliation code is 2, 3, 4, or 5 (i.e., use code "99" or leave blank).

01=Disregarded from participation rate, single custodial parent with child under 12 months.

02=Disregarded from participation rate because all of the following apply: required to participate, but not participating; and sanctioned for the reporting month, but not sanctioned for more than 3 months within the preceding 12-month period (Note, this code should be used only in a month for which the family is disregarded from the participation rate. While one or more adults may be sanctioned in more than 3 months within the preceding 12-month period, the family may not be disregarded from the participation rate for more than 3 months within the preceding 12-month period).

03=Disregarded, family is part of an ongoing research evaluation (as a member of a control group or experimental group) approved under Section 1115 of the Social Security Act.

04=Disregarded from the work participation rate based on an inconsistency under an approved welfare reform waiver that exempts the family from participation.

05=Disregarded from participation rate, based on participation in a Tribal Work Program, and State has opted to exclude all Tribal Work Program participants from its work participation rate.

06=Exempt, single custodial parent with child under age 6 and child care unavailable.

07=Exempt, disabled (not using an extended definition under a State waiver).

08=Exempt, caring for a severely disabled child (not using an extended definition under a State waiver).

09=Exempt, under a federally recognized good cause domestic violence waiver.

10=Exempt, State waiver.

11=Exempt, other.

12=Required to participate, but not participating; sanctioned for the reporting month; and sanctioned for more than 3 months within the preceding 12-month period.

13=Required to participate, but not participating; and sanctioned for the reporting month, but not sanctioned for more than 3 months within the preceding 12-month period.

14=Required to participate, but not participating; and not sanctioned for the reporting month.

15=Deemed engaged in work—single teen head-of-household or married teen who maintains satisfactory school attendance.

16=Deemed engaged in work—single teen head-of-household or married teen who participates in education directly related to employment for an average of at least 20 hours per week during the reporting month.

17=Deemed engaged in work—parent or relative (who is the only parent or caretaker relative in the family) with child under age 6 and parent engaged in work activities for at least 20 hours per week.

18=Required to participate and participating, but not meeting minimum participation requirements.

19=Required to participate and meeting minimum participation requirements.

99=Not applicable (e.g., person living in household and whose income or resources are counted in determining eligibility for or amount of assistance of the family receiving assistance, but not in eligible family receiving assistance or noncustodial parent that the State opted to exclude in determining participation rate).

Adult Work Participation Activities

Guidance: To calculate the average number of hours per week of participation in a work activity, add the number of hours of participation across all weeks in the month and divide by the number of weeks in the month. Round to the nearest whole number.

Some weeks have days in more than one month. Include such a week in the calculation for the month that contains the most days of the week (e.g., the week of July 27–August 2, 1997 would be included in the July calculation). Acceptable alternatives to this approach must account for all weeks in the fiscal year. One acceptable alternative is to include the week in the calculation for whichever month the Friday falls (i.e., the JOBS approach.) A second acceptable alternative is to count each month as having 4.33 weeks.

During the first or last month of any spell of assistance, a family may happen to receive assistance for only part of the month. If a family receives assistance for only part of a month, the State (Tribe) may count it as a month of participation if an adult (or minor child head-of-household) in the family (both adults, if they are both required to work) is engaged in work for the minimum average number of hours for any full week(s) that the family receives assistance in that month.

Special Rules: Each adult (or minor child head-of-household) has a life-time limit for vocational educational training. Vocational educational training may only count as a work activity for a total of 12 months. For any adult (or minor child head-of-household) that has exceeded this limit, enter "0" as the average number of hours per week of participation in vocational education training, even if (s)he is engaged in vocational education training. The additional participation in vocational education training may be coded under "Other."

The exception to the above 12-month rule may be a State that received a waiver that is inconsistent with the provision limiting vocational education training. In this case the State would adhere to the terms and conditions of the waiver.

Limitations: The four limitations concerning job search and job readiness are: (1) Job search and job readiness assistance only count for 6 weeks in any fiscal year; (2) An individual's participation in job search and job readiness assistance counts for no more than 4 consecutive weeks; (3) If the

State's (Tribe's) total unemployment rate for a fiscal year is at least 50 percent greater than the United States' total unemployment rate for that fiscal year or the State is a needy State (within the meaning of section 403 (b)(6)), then an individual's participation in job search or job readiness assistance counts for up to 12 weeks in that fiscal year; and (4) A State may count 3 or 4 days of job search and job readiness assistance during a week as a full week of participation, but only once for any individual.

For each week in which an adult (or minor child head-of-household) exceeds any of these limitations, use "0" as the number of hours in calculating the average number of hours per week of job search and job readiness, even if (s)he may be engaged in job search or job readiness activities.

If a State is operating its TANF Program under a waiver that permits broader rules for participation in job search and job readiness training, the TANF rules apply. Any additional participation in job search and job readiness training permitted under the waiver rules should be coded under data element #61 "Additional Work Activities Permitted Under Waiver Demonstration."

Instruction: For each work activity in which the adult (or minor child head-of-household) participated during the reporting month, enter the average number of hours per week of participation, except as noted above. For each work activity in which the adult (or minor child head-of-household) did not participate, enter zero as the average number of hours per week of participation. These work activity data elements are applicable only for individuals whose family affiliation code is 1.

49. *Unsubsidized Employment.*

50. *Subsidized Private-Sector Employment.*

51. *Subsidized Public-Sector Employment.*

52. *Work Experience.*

53. *On-the-job Training.*

54. *Job Search and Job Readiness Assistance.*

Instruction: As noted above, the statute limits participation in job search and job readiness training in four ways. Enter, in this data element, the average number of hours per week of participation in job search and job readiness training that are within the statutory limitations.

Some State waivers permit participation in job search and job readiness training beyond the statutory limits. Do not count hours of participation in job search and job readiness training beyond the TANF limit where allowed by waivers in this item. Instead, count the hours of participation beyond the TANF limit in the item "Additional Work Activities Permitted Under Waiver Demonstration." Otherwise, count the additional hours of work participation under the work activity "Other Work Activities."

55. *Community Service Programs.*

56. *Vocational Educational Training:*

Instruction: As noted above, the statute contains special rules limiting an adult's (or minor child head-of-household's) participation in vocational educational training to twelve months. Enter, in this data element, the average number of hours per week of participation in vocational educational training that are within the statutory limits.

Some State waivers permit participation in vocational educational training beyond the statutory limits. Do not count hours of participation in vocational educational training beyond the TANF 12 month life-time limit where allowed by waivers in this item. Instead, count the hours of participation beyond the TANF limit in the item "Additional Work Activities Permitted Under Waiver Demonstration." Otherwise, count the additional hours of work participation under the work activity "Other Work Activities."

57. *Job Skills Training Directly Related to Employment.*

58. *Education Directly Related to Employment for Individuals with no High School Diploma or Certificate of High School Equivalency.*

59. *Satisfactory School Attendance for Individuals with No High School Diploma or Certificate of High School Equivalency.*

60. *Providing Child Care Services to an Individual Who Is Participating in a Community Service Program.*

61. *Additional Work Activities Permitted Under Waiver Demonstration:*

Instruction: Some States' waivers permit participation in work activities that are not permitted under the statute. Enter the adult's (or minor child head-of-household's) average number of hours per week of participation in such work activities in this data element. For example, some State waivers permit participation in vocational educational training and job search beyond the TANF statutory limits. Count hours of participation in these activities beyond the TANF limits where allowed by the State waivers in this item. Otherwise, count the additional hours of work participation in the activity "Other Work Activities."

62. *Other Work Activities:*

Guidance: This data element collects information on work activities provided that are not permitted under a State waiver and are beyond the requirements of the statute. Reporting on this data element is optional. States may want to demonstrate their additional efforts at helping individuals become self-sufficient even though these activities are not considered in the calculation of the work participation rates.

63. *Required Hours of Work Under Waiver Demonstration:*

Guidance: In approving waivers, ACF specified hours of participation in several instances. One type of hour change in the welfare reform demonstrations was the recognition, as part of a change in work activities and/or exemptions, that the hours individuals worked should be consistent with their abilities and in compliance with an employability or personal responsibility plan or other criteria in accordance with the waiver terms and conditions. If the hour requirement in this case was part of a specific work component waiver, the State could show inconsistency and could use the waiver hours instead of the hours in section 407.

Instruction: If applicable, enter the two-digit number that represents the average number of hours per week of work participation required of the individual under a work component waiver. Otherwise, leave blank or enter "0." This data element is not applicable for individuals whose family affiliation code is 2, 3, 4, or 5.

64. *Amount of Earned Income:* Enter the dollar amount of the adult's (or minor child head-of-household's) earned income for the reporting month or for the month used to budget for the reporting month. Include wages, salaries, and other earned income in this item.

65. *Amount of Unearned Income:* Unearned income has five categories. For each category of unearned income, enter the dollar amount of the adult's (or minor child head-of-household's) unearned income for the reporting month or for the month used to budget for the reporting month.

a. *Earned Income Tax Credit (EITC):*

Guidance: Earned Income Tax Credit is a refundable Federal, State, or local tax credit for families and dependent children. EITC payments are received monthly (as advance payment through the employer), annually (as a refund from IRS), or both.

Instruction: Enter the total dollar amount of the Earned Income Tax Credit actually received, whether received as an advance payment or a single payment (e.g., tax refund), by the adult (or minor child head-of-household) during the reporting month or the month used to budget for the reporting month. If the State counts the EITC as a resource, report it here as unearned income in the month received (i.e., reporting month or budget month, whichever the State is using). If the State assumes an advance payment is applied for and obtained, only report what is actually received for this item.

b. *Social Security:* Enter the dollar amount of Social Security benefits that the adult in the State (Tribal) TANF family has received for the reporting month or for the month used to budget for the reporting month.

c. *SSI:* Enter the dollar amount of SSI that the adult in the State (Tribal) TANF family has received for the reporting month or for the month used to budget for the reporting month.

d. *Worker's Compensation:* Enter the dollar amount of Worker's Compensation that the adult in the State (Tribal) TANF family has received for the reporting month or for the month used to budget for the reporting month.

e. *Other Unearned Income:*

Guidance: Other unearned income includes (but is not limited to) RSDI benefits, Veterans benefits, Unemployment Compensation, other government benefits, a housing subsidy, a contribution or income-in-kind, deemed income, Public Assistance or General Assistance, educational grants/scholarships/loans, and other. Do not include EITC, Social Security, SSI, Worker's Compensation, value of food stamp assistance, the amount of a Child Care subsidy, or the amount of Child Support.

Instruction: Enter the dollar amount of other unearned income that the adult in the State TANF family has received for the reporting month or for the month used to budget for the reporting month.

Child Characteristics

This section allows for coding the child characteristics for up to ten children in the TANF family. A minor child head-of-

household should be coded as an adult, not as a child. The youngest child should be coded as the first child in the family, the second youngest child as the second child, and so on.

If there are more than ten children in the TANF family, use the following order to identify the persons to be coded: (1) children in the eligible family receiving assistance in order from youngest to oldest; (2) minor siblings of child in the eligible family receiving assistance from youngest to oldest; and (3) any other children.

66. *Family Affiliation:*

Guidance: This data element is used both for (1) the adult or minor child head-of-household section and (2) the minor child section. The same coding schemes are used in both sections. Some of these codes may not be applicable for children.

Instruction: Enter the one-digit code that shows the child's relation to the eligible family receiving assistance.

1=Member of the eligible family receiving assistance.

Not in eligible family receiving assistance, but in the household

2=Parent of minor child in the eligible family receiving assistance.

3=Caretaker relative of minor child in the eligible family receiving assistance.

4=Minor sibling of child in the eligible family receiving assistance.

5=Person whose income or resources are considered in determining eligibility for or amount of assistance for the eligible family receiving assistance.

67. *Date of Birth:* Enter the eight-digit code for date of birth for this child under the State (Tribal) TANF Program in the format YYYYMMDD. If the child's date of birth is unknown and the family affiliation code is not "1," enter the code "99999999".

68. *Social Security Number:* Enter the nine-digit Social Security Number for the child in the format nnnnnnnnn. Reporting of this data element is optional for individuals whose family affiliation code is 4. If the Social Security number is unknown and the family affiliation code is not "1," enter "999999999".

69. *Race/Ethnicity*

Instruction: To allow for the multiplicity of race/ethnicity, please enter the one-digit code for each category of race and ethnicity of the TANF child. Reporting of this data element is optional for individuals whose family affiliation code is 4 or 5.

Ethnicity:

a. Hispanic or Latino:

1=Yes, Hispanic or Latino.

2=No.

Race:

b. American Indian or Alaska Native:

1=Yes, American Indian or Alaska Native.

2=No.

c. Asian:

1=Yes, Asian.

2=No.

d. Black or African American:

1=Yes, Black or African American.

2=No.

e. Native Hawaiian or Other Pacific Islander:

1=Yes, Native Hawaiian or Pacific Islander.

2=No.

f. White:

1=Yes, White.

2=No.

70. *Gender:* Enter the one-digit code that indicates the child's gender.

1=Male.

2=Female.

71. *Receives Disability Benefits:* The Act specifies five types of disability benefits. Two of these types of disability benefits are applicable to children. For each type of disability benefits, enter the one-digit code that indicates whether or not the child received the benefit.

a. *Receives Benefits Based on Federal Disability Status Under Non-Social Security Act Programs:* These programs include Veteran's disability benefits, Worker's disability compensation, and Black Lung Disease disability benefits.

1=Yes, received benefits based on Federal disability status.

2=No.

b. *Receives Supplemental Security Income Under Title XVI–SSI of the Social Security Act:*

1=Yes, received aid under Title XVI–SSI.

2=No.

72. *Relationship to Head-of-Household:*

Guidance: This data element is used both for (1) the adult or minor child head-of-household section and (2) the minor child section. The same coding schemes are used in both sections. Some of these codes may not be applicable for children.

Instruction: Enter the two-digit code that shows the child's relationship (including by marriage) to the head of the household, as defined by the Food Stamp Program or as determined by the State (Tribe), (i.e., the relationship to the principal person of each person living in the household.)

01=Head-of-household.

02=Spouse.

03=Parent.

04=Daughter or son.

05=Stepdaughter or stepson.

06=Grandchild or great grandchild.

07=Other related person (brother, niece, cousin).

08=Foster child.

09=Unrelated child.

10=Unrelated adult.

73. *Parent With Minor Child In the Family:*

Guidance: This data element is used both for (1) the adult or minor child head-of-household section and (2) the minor child section. The same coding schemes are used in both sections. Code "1" is not applicable for children. A parent with a minor child in the family may be a natural parent, adoptive parent, or step-parent of a minor child in the family. Reporting of this data element is optional for individuals whose family affiliation code is 4 or 5.

Instruction: Enter the one-digit code that indicates the child's parental status.

1=Yes, a parent with a minor child in the family and used in two-parent participation rate.

2=Yes, a parent with a minor child in the family, but not used in two-parent participation rate.

3=No.

74. *Educational Level:* Enter the two-digit code to indicate the highest level of education attained by the child. Unknown is not an acceptable code for individuals whose family affiliation code is "1". Reporting of this data element is optional for individuals whose family affiliation code is 4.

01–11=Grade level completed in primary/secondary school including secondary level vocational school or adult high school.

12=High school diploma, GED, or National External Diploma Program.

13=Awarded Associate's Degree.

14=Awarded Bachelor's Degree.

15=Awarded graduate degree (Master's or higher).

16=Other credentials (degree, certificate, diploma, etc.).

98=No formal education.

99=Unknown.

75. *Citizenship/Alienage:*

Instruction: Enter the one-digit code that indicates the child's citizenship/alienage. Unknown is not an acceptable code for an individual whose family affiliation code is "1". Reporting of this data element is optional for individuals whose family affiliation code is 4.

1=U.S. citizen, including naturalized citizens.

2=Qualified alien.

9=Unknown.

76. *Amount of Unearned Income:* Unearned income has two categories. For each category of unearned income, enter the dollar amount of the child's unearned income.

a. *SSI:* Enter the dollar amount of SSI that the child in the State (Tribal) TANF family has received for the reporting month or for the month used to budget for the reporting month.

b. *Other Unearned Income:* Enter the dollar amount of other unearned income that the child in the State (Tribal) TANF family has received for the reporting month or for the month used to budget for the reporting month.

Appendix B—TANF Data Report—Section Two Disaggregated Data Collection for Families No Longer Receiving Assistance under the TANF Program

Instructions and Definitions

General Instruction: The State agency or Tribal grantee should collect and report data for each data element. The data must be complete (unless explicitly instructed to leave the field blank) and accurate (i.e., correct).

An "Unknown" code may appear only on four data elements (#15 Date of Birth, #16 Social Security Number, #24 Educational Level, and #25 Citizenship/Alienage). For these data elements, unknown is not an acceptable code for individuals who are members of the eligible family (i.e., family affiliation code "1"). States are not expected to track closed cases in order to collect information on families for months after the family has left the rolls. Rather, States are to report based on the last month of assistance.

1. *State FIPS Code:* Enter your two-digit State code from the following listing. These codes are the standard codes used by the National Institute of Standards and Technology. Tribal grantees should leave this field blank.

State	Code
Alabama	01
Alaska	02
American Samoa	60
Arizona	04
Arkansas	05
California	06
Colorado	08
Connecticut	09
Delaware	10
Dist. of Columbia	11
Florida	12
Georgia	13
Guam	66
Hawaii	15
Idaho	16
Illinois	17
Indiana	18
Iowa	19
Kansas	20
Kentucky	21
Louisiana	22
Maine	23
Maryland	24
Massachusetts	25
Michigan	26
Minnesota	27
Mississippi	28
Missouri	29
Montana	30
Nebraska	31
Nevada	32
New Hampshire	33
New Jersey	34
New Mexico	35
New York	36
North Carolina	37
North Dakota	38
Ohio	39
Oklahoma	40
Oregon	41
Pennsylvania	42
Puerto Rico	72
Rhode Island	44
South Carolina	45
South Dakota	46
Tennessee	47
Texas	48
Utah	49
Vermont	50
Virgin Islands	78
Virginia	51
Washington	53
West Virginia	54
Wisconsin	55
Wyoming	56

2. *County FIPS Code:* Enter the three-digit code established by the National Institute of Standards and Technology for classification of counties and county equivalents. Codes were devised by listing counties alphabetically and assigning sequentially odd integers; e.g., 001, 003, 005. A complete list of codes is available in Appendix F of the TANF Sampling and Statistical Methods Manual. Tribal grantees should leave this field blank.

3. *Tribal Code:* For Tribal grantees, enter the three-digit Tribal code that represents your Tribe (See Appendix E of the TANF Sampling and Statistical Methods Manual for a complete listing of Tribal Codes). State agencies should leave this field blank.

4. *Reporting Month:* Enter the four-digit year and two-digit month code that identifies the year and month for which the data are being reported.

5. Stratum:

Guidance: All families selected in the sample from the same stratum must be assigned the same stratum code. Valid stratum codes may range from "00" to "99." States and Tribes with stratified samples should provide the ACF Regional Office with a listing of the numeric codes utilized to identify any stratification. If a State or Tribe uses a non-stratified sample design or opts to provide data for its entire caseload, enter the same stratum code any two-digit number) for each family.

Instruction: Enter the two-digit stratum code.

Family-Level Data

Definition: For reporting purposes, the TANF family means (a) all individuals receiving assistance as part of a family under the State's TANF Program; and (b) the following additional persons living in the household, if not included under (a) above:

(1) Parent(s) or caretaker relative(s) of any minor child receiving assistance;

(2) Minor siblings (including unborn children) of any child receiving assistance; and

(3) Any person whose income or resources would be counted in determining the family's eligibility for or amount of assistance.

6. *Case Number—TANF:*

Guidance: If the case number is less than the allowable eleven characters, a State may use lead zeros to fill in the number.

Instruction: Enter the number that was assigned by the State agency or Tribal grantee to uniquely identify the TANF family.

7. *ZIP Code:* Enter the five-digit ZIP code for the family's place of residence for the reporting month.

8. *Disposition:* Enter one of the following codes for each TANF family.

1=Data collection completed.

2=Not subject to data collection/listed in error.

9. *Reason for Closure:*

Guidance: A closed case is a family whose assistance was terminated for the reporting month, but received assistance under the State's TANF Program in the prior month. A temporarily suspended case is not a closed case. If there is more than one applicable reason for closure, determine the principal (i.e., most relevant) reason. If two or more reasons are equally relevant, use the reason with the lowest numeric code. For example, when an adult marries, the income and resources of the new spouse are considered in determining eligibility. If, at the time of the marriage, the family becomes ineligible because of the addition of the spouse's income and/or resources, the case closure should be coded using code "2". If the family did not became ineligible based on the income and resources at the time of the marriage, but rather due to an increase in earnings subsequent to the marriage, then the case closure should be coded using code "1".

Instruction: Enter the two-digit code that indicates the reason for the TANF family no longer receiving assistance.

01=Employment and/or excess earnings.

02=Marriage.

03=Federal five-year time limit.

Sanctions:

04=Work-related sanction.

05=Child support sanction.

06=Teen parent failing to meet school attendance requirement.

07=Teen parent failing to live in an adult setting.

08=Failure to finalize an individual responsibility plan (e.g., did not sign plan).

09=Failure to meet individual responsibility plan provision or other behavioral requirements (e.g., immunize a minor child, attend parenting classes).

State (Tribal) Policies:

10=State (Tribal) time limit, if different than Federal.

11=Child support collected.

12=Excess unearned income (exclusive of child support collected).

13=Excess resources.

14=Youngest child too old to qualify for assistance.

15=Minor child absent from the home for a significant time period.

16=Failure to appear at eligibility/redetermination appointment, submit required verification materials, and/or cooperate with eligibility requirements.

17=Transfer to separate State MOE program.

Other.

18=Family voluntarily closes the case.

99=Other.

10. *Received Subsidized Housing:*

Guidance: Subsidized housing refers to housing for which money was paid by the Federal, State, or local government or through a private social service agency to the family or to the owner of the housing to assist the family in paying rent. Two families sharing living expenses does not constitute subsidized housing.

Instruction: Enter the one-digit code that indicates whether or not the TANF family received subsidized housing for the reporting month (or for the last month of TANF assistance).

1=Public housing.

2=Rent subsidy.

3=No housing subsidy.

11. *Received Medical Assistance:* Enter "1" if, for the reporting month (or for the last month of TANF assistance), any TANF family member was enrolled in Medicaid and, thus eligible to receive medical assistance under the State plan approved under Title XIX or "2" if no TANF family member was enrolled in Medicaid.

1=Yes, enrolled in Medicaid.

2=No.

12. *Received Food Stamps:* Enter the one-digit code that indicates whether or not the TANF family received food stamp assistance for the reporting month (or for the last month of TANF assistance).

1=Yes, received food stamp assistance.

2=No.

13. *Received Subsidized Child Care:*

Instruction: If the TANF family received subsidized child care for services in the reporting month (or for the last month of TANF assistance), enter code "1" or "2," whichever is appropriate. Otherwise, enter code "3."

1=Yes, received federally funded (entirely or in part) child care (e.g., receives either TANF, CCDF, SSBG, or other federally funded child care).

2=Yes, received child care funded entirely under a State, Tribal, and/or local program (i.e., no Federal funds used).

3=No.

Person-Level Data

This section allows for coding up to sixteen persons in the TANF family. If there are more than sixteen persons in the TANF family, use the following order to identify the persons to be coded: (1) the head-of-household; (2) parents in the eligible family receiving assistance; (3) children in the eligible family receiving assistance; (4) other adults in the eligible family receiving assistance; (5) parents not in the eligible family receiving assistance; (6) caretaker relatives not in the eligible family receiving assistance; (7) minor siblings of a child in the eligible family; and (8) other persons, whose income or resources count in determining eligibility for or amount of assistance of the eligible family receiving assistance, in descending order from the person with the most income to the person with the least income. As indicated below, reporting for certain specified data elements in this section is optional for certain individuals (whose family affiliation code is a 2, 3, 4, or 5).

14. *Family Affiliation:*

Instruction: Enter the one-digit code that shows the individual's relation to the eligible family receiving assistance.

1=Member of the eligible family receiving assistance.

Not in eligible family receiving assistance, but in the household:

2=Parent of minor child in the eligible family receiving assistance.

3=Caretaker relative of minor child in the eligible family receiving assistance.

4=Minor sibling of child in the eligible family receiving assistance.

5=Person whose income or resources are considered in determining eligibility for or amount of assistance for the eligible family receiving assistance.

15. *Date of Birth:* Enter the eight-digit code for date of birth for this individual under TANF in the format YYYYMMDD. If the individual's date of birth is unknown and the individual's family affiliation code is not "1," enter the code "99999999".

16. *Social Security Number:* Enter the nine-digit Social Security Number for the individual in the format nnnnnnnnn. If the social security number is unknown and the individual's family affiliation code is not "1," enter "999999999".

17. *Race/Ethnicity:* Instructions: To allow for the multiplicity of race/ethnicity, please enter the one-digit code for each category of race and ethnicity of the TANF individual. Reporting of this data element is optional for individuals whose family affiliation code is 4 or 5.

Ethnicity:

a. Hispanic or Latino:

1=Yes, Hispanic or Latino.

2=No.

b. Race:

c. American Indian or Alaska Native:

1=Yes, American Indian or Alaska Native.

2=No.

d. Asian:

1=Yes, Asian.

2=No.

e. Black or African American:

1=Yes, Black or African American.

2=No.

f. Native Hawaiian or Other Pacific Islander:

1=Yes, Native Hawaiian or Pacific Islander.

2=No.

g. White:

1=Yes, White.

2=No.

18. *Gender:* Enter the one-digit code that indicates the individual's gender.

1=Male.

2=Female.

19. *Received Disability Benefits:*

Instructions: The Act specifies five types of disability benefits. For each type of disability benefits, enter the one-digit code that indicates whether or not the individual received the benefit.

a. *Received Federal Disability Insurance Benefits Under the Social Security OASDI Program (Title II of the Social Security Act):* Enter the one-digit code that indicates the adult received Federal disability insurance benefits for the reporting month (or the last month of TANF assistance). This item is not required to be coded for a child.

1=Yes, received Federal disability insurance.

2=No.

b. *Receives Benefits Based on Federal Disability Status Under Non-Social Security Act Programs:* These programs include Veteran's disability benefits, Worker's disability compensation, and Black Lung Disease disability benefits. Enter the one-digit code that indicates the individual received benefits based on Federal disability status for the reporting month (or the last month of TANF assistance). This data element should be coded for each adult and child with family affiliation code "1".

1=Yes, received benefits based on Federal disability status.

2=No.

c. *Received Aid to the Permanently and Totally Disabled Under Title XIV–APDT of the Social Security Act:* Enter the one-digit code that indicates the adult received aid under a State plan approved under Title XIV for the reporting month (or the last month of TANF assistance). This item is not required to be coded for a child.

1=Yes, received aid under Title XIV–APDT.

2=No.

d. Received Aid to the Aged, Blind, and Disabled Under Title XVI–AABD of the Social Security Act: Enter the one-digit code that indicates the adult received aid under a State plan approved under Title XVI–AABD for the reporting month (or the last month of TANF assistance). This item is not required to be coded for a child.

1=Yes, received aid under Title XVI–AABD.

2=No.

e. *Received Supplemental Security Income Under Title XVI–SSI of the Social Security Act:* Enter the one-digit code that indicates the individual received aid under a State plan approved under Title XVI–SSI for the reporting month (or the last month of TANF assistance). This data element should be coded for each adult and child with family affiliation code "1".

1=Yes, received aid under Title XVI–SSI.

2=No.

20. *Marital Status:* Enter the one-digit code for the marital status of the adult recipient. Reporting of this data element is optional for individuals whose family affiliation code is 4 or 5.

1=Single, never married.

2=Married, living together.

3=Married, but separated.

4=Widowed.

5=Divorced.

21. *Relationship to Head-of-Household:*

Instruction: Enter the two-digit code that shows the individual's relationship (including by marriage) to the head of the household, as defined by the Food Stamp Program or as determined by the State (Tribe), (i.e., the relationship to the principal person of each person living in the household.) If a minor child head-of-household, enter code "01."

01=Head-of-household.

02=Spouse.

03=Parent.

04=Daughter or son.

05=Stepdaughter or stepson.

06=Grandchild or great grandchild.

07=Other related person (brother, niece, cousin).

08=Foster child.

09=Unrelated child.

10=Unrelated adult.

22. *Parent With Minor Child In the Family:*

Guidance: A parent with a minor child in the family may be a natural parent, adoptive parent, or step-parent of a minor child in the family. Reporting of this data element is optional for individuals whose family affiliation code is 3, 4, or 5.

Instruction: Enter the one-digit code that indicates the individual's parental status.

1=Yes, a parent with a minor child in the family.

2=No.

23. *Needs of a Pregnant Woman:* Some States (Tribes) consider the needs of a pregnant woman in determining the amount of assistance that the TANF family receives. If the individual was pregnant and the needs associated with this pregnancy were considered in determining the amount of assistance for the last month of TANF assistance, enter a "1" for this data element. Otherwise enter a "2" for this data element. This data element is applicable only for individuals whose family affiliation code is 1.

1=Yes, additional needs associated with pregnancy were considered in determining the amount of assistance.

2=No.

24. *Educational Level:* Enter the two-digit code to indicate the highest level of education attained by the individual. Unknown is not an acceptable code for individuals whose family affiliation code is "1". Reporting of this data element is optional for individuals whose family affiliation code is 4 or 5.

01–11=Grade level completed in primary/secondary school including secondary level vocational school or adult high school.

12=High school diploma, GED, or National External Diploma Program.

13=Awarded Associate's Degree.

14=Awarded Bachelor's Degree.

15=Awarded graduate degree (Master's or higher).

16=Other credentials (degree, certificate, diploma, etc.).

98=No formal education.

99=Unknown.

25. *Citizenship/Alienage:*

Instruction: Enter the one-digit code that indicates the adult's (or minor child head-of-household's) citizenship/alienage. Unknown is not an acceptable code for an individual whose family affiliation code is "1". Reporting of this data element is optional for individuals whose family affiliation code is 4 or 5.

1=U.S. citizen, including naturalized citizens.

2=Qualified alien.

9=Unknown.

26. *Number of Months Countable toward Federal Time Limit:* Enter the number of months countable toward the adult's (or minor child head-of-household's) Federal five-year time limit based on assistance received from (1) the State (Tribe) and (2) other States or Tribes. Reporting of this data element is optional for individuals whose family affiliation code is 2, 3, 4, or 5.

27. *Number of Countable Months Remaining Under State's (Tribe's) Time Limit:* Enter the number of months that remain countable toward the adult's (or minor child head-of-household's) State (Tribal) time limit. Reporting of this data element is optional for individuals whose family affiliation code is 2, 3, 4, or 5.

28. *Employment Status:* Enter the one-digit code that indicates the adult's (or minor child head-of-household's) employment status. Leave this field blank for other minor children. Reporting of this data element is optional for individuals whose family affiliation code is 4 or 5.

1=Employed.

2=Unemployed, looking for work.

3=Not in labor force (i.e, unemployed, not looking for work, includes discouraged workers).

29. *Amount of Earned Income:* Enter the amount of the adult's (or minor child head-of-household's) earned income for the last month on assistance or for the month used to budget for the last month on assistance.

30. *Amount of Unearned Income:* Enter the dollar amount of the individual's unearned income for the last month on assistance or for the month used to budget for the last month on assistance.

Appendix C—TANF Data Report—Section Three—Aggregated Data Collection for Families Applying for, Receiving, and No Longer Receiving Assistance Under the TANF Program

Instructions and Definitions

General Instruction: The State agency or Tribal grantee are to collect and report data for each data element, unless explicitly instructed to leave the field blank. Monthly caseload counts (e.g., number of families, number of two-parent families, and number of closed cases) and number of recipients must be unduplicated monthly totals. States and Tribal grantees may use samples to estimate the monthly totals only for data elements #4, #5, #6, #15, #16, and #17.

1. *State FIPS Code:* Enter your two-digit State code. Tribal grantees should leave this field blank.

2. *Tribal Code:* For Tribal grantees only, enter the three-digit Tribal code that represents your Tribe (See Appendix E of the TANF Sampling and Statistical Methods Manual for a complete listing of Tribal Codes). State agencies should leave this field blank.

3. *Calendar Quarter:* The four calendar quarters are as follows:

First quarter—January–March.

Second quarter—April–June.

Third quarter—July–September.

Fourth quarter—October–December.

Enter the four-digit year and one-digit quarter code (in the format YYYYQ) that identifies the calendar year and quarter for which the data are being reported (e.g., first quarter of 1997 is entered as "19971").

Applications

Guidance: The term "application" means the action by which an individual indicates in writing to the agency administering the State (or Tribal) TANF Program his/her desire to receive assistance.

Instruction: All counts of applications should be unduplicated monthly totals.

4. *Total Number of Applications:* Enter the total number of approved and denied applications received for each month of the quarter. For each month in the quarter, the total in this item should equal the sum of the number of approved applications (in item #5) and the number of denied applications (in item #6). The monthly totals for this element may be estimated from samples.

A. *First Month:*

B. *Second Month:*

C. *Third Month:*

5. *Total Number of Approved Applications:* Enter the number of applications approved during each month of the quarter. The monthly totals for this element may be estimated from samples.

A. *First Month:*

B. *Second Month:*

C. *Third Month:*

6. *Total Number of Denied Applications:* Enter the number of applications denied (or otherwise disposed of) during each month of the quarter. The monthly totals for this element may be estimated from samples.

A. *First Month:*

B. *Second Month:*

C. *Third Month:*

Active Cases

For purposes of completing this report, include all TANF eligible cases receiving assistance (i.e., cases funded under the TANF block grant and State MOE funded TANF cases) as cases receiving assistance under the State (Tribal) TANF Program. All counts of families and recipients should be unduplicated monthly totals.

7. *Total Amount of Assistance:* Enter the dollar value of all assistance (cash and non-cash) provided to TANF families under the State (Tribal) TANF Program for each month of the quarter. Round the amount of assistance to the nearest dollar.

A. *First Month:*

B. *Second Month:*

C. *Third Month:*

8. *Total Number of Families:* Enter the number of families receiving assistance under the State (Tribal) TANF Program for each month of the quarter. The total in this item should equal the sum of the number of two-parent families (in item #9), the number of one-parent families (in item #10) and the number of no-parent families (in item #11).

A. *First Month:*

B. *Second Month:*

C. *Third Month:*

9. *Total Number of Two-parent Families:* Enter the total number of 2-parent families receiving assistance under the State (Tribal) TANF Program for each month of the quarter.

A. *First Month:*

B. *Second Month:*

C. *Third Month:*

10. *Total Number of One-Parent Families:* Enter the total number of one-parent families receiving assistance under the State (Tribal) TANF Program for each month of the quarter.

A. *First Month:*

B. *Second Month:*

C. *Third Month:*

11. *Total Number of No-Parent Families:* Enter the total number of no-parent families receiving assistance under the State (Tribal) TANF Program for each month of the quarter.

A. *First Month:*

B. *Second Month:*

C. *Third Month:*

12. *Total Number of Recipients:* Enter the total number of recipients receiving assistance under the State (Tribal) TANF Program for each month of the quarter. The total in this item should equal the sum of the number of adult recipients (in item #13) and the number of child recipients (in item #14).

A. *First Month:*

B. *Second Month:*

C. *Third Month:*

13. *Total Number of Adult Recipients:* Enter the total number of adult recipients receiving assistance under the State (Tribal) TANF Program for each month of the quarter.

A. *First Month:*

B. *Second Month:*

C. *Third Month:*

14. *Total Number of Child Recipients:* Enter the total number of child recipients receiving assistance under the State (Tribal) TANF Program for each month of the quarter.

A. *First Month:*

B. *Second Month:*

C. *Third Month:*

15. *Total Number of Non-Custodial Parents Participating in Work Activities:* Enter the total number of noncustodial parents participating in work activities (even if not receiving assistance) under the State (Tribal) TANF Program for each month of the quarter. The monthly totals for this element may be estimated from samples.

A. *First Month:*

B. *Second Month:*

C. *Third Month:*

16. *Total Number of Births:* Enter the total number of births in families receiving

assistance under the State (Tribal) TANF Program for each month of the quarter. The monthly totals for this element may be estimated from samples.

A. *First Month:*

B. *Second Month:*

C. *Third Month:*

17. *Total Number of Out-of-Wedlock Births:* Enter the total number of out-of-wedlock births in families receiving assistance under the State (Tribal) TANF Program for each month of the quarter. The monthly totals for this element may be estimated from samples.

A. *First Month:*

B. *Second Month:*

C. *Third Month:*

Closed Cases

18. *Total Number of Closed Cases:* Enter the total number of closed cases for each month of the quarter.

A. *First Month:*

B. *Second Month:*

C. *Third Month:*

BILLING CODE 4184–01–M

APPENDIX D

Department of Health and Human Services
Administration for Children and Families

Temporary Assistance for Needy Families (TANF) ACF - 196 Financial Report

STATE	FISCAL YEAR	CURRENT QTR. ENDED	NEXT QTR. ENDING	ANNUAL RECONCILIATION [ ] YES [ ] NO
	FEDERAL FUNDS	STATE FUNDS		CONTINGENCY FUND FEDERAL SHARE AT FMAP RATE OF _____%
	(A) FEDERAL AWARDS & TRANSFERS	(B)	(C)	(D) FEDERAL AWARDS
1. AWARDED	$			$
2. TRANSFERRED TO CCDF DISCRETIONARY	$			
3. TRANSFERRED TO SSBG	$			
4. ADJUSTED SFAG	$			
EXPENDITURE CATEGORIES	FEDERAL TANF EXPENDITURES	STATE MOE EXPENDITURES IN TANF	MOE EXPENDITURES IN SEPARATE STATE PROGRAMS	FEDERAL EXPENDITURES
5. EXPENDITURES ON ASSISTANCE				
a. BASIC ASSISTANCE	$	$	$	$
b. CHILD CARE	$	$	$	$
c. OTHER SUPPORTIVE SERVICES	$	$	$	$
d. ASSISTANCE AUTHORIZED SOLELY UNDER PRIOR LAW	$			$
6. EXPENDITURES ON NON-ASSISTANCE				
a. WORK RELATED ACTIVITIES/EXPENSES	$	$	$	$
1. WORK SUBSIDIES	$	$	$	$
2. EDUCATION	$	$	$	$
3. OTHER WORK ACTIVITIES/EXPENSES	$	$	$	$
b. CHILD CARE	$	$	$	$
c. TRANSPORTATION	$	$	$	$
1. JOB ACCESS	$	$	$	$
2. OTHER	$	$	$	$
d. INDIVIDUAL DEVELOPMENT ACCOUNTS	$	$	$	$
e. REFUNDABLE EARNED INCOME TAX CREDITS	$	$	$	$
f. OTHER REFUNDABLE TAX CREDITS	$	$	$	$
g. DIVERSION PAYMENTS	$	$	$	$
h. PREVENTION OF OUT-OF-WEDLOCK PREGNANCIES	$	$	$	$
i. 2-PARENT FAMILY FORMATION AND MAINTENANCE	$	$	$	$
j. ADMINISTRATION	$	$	$	$
k. SYSTEMS	$	$	$	$
l. OTHER	$	$	$	$
7. TOTAL EXPENDITURES	$	$	$	$
8. TRANSITIONAL SERVICES FOR EMPLOYED	$	$	$	$
9. FEDERAL UNLIQUIDATED OBLIGATIONS	$			$
10. UNOBLIGATED BALANCE	$			$
11. STATE REPLACEMENT FUNDS		$		
QUARTERLY ESTIMATE	TANF FEDERAL FUNDS			
12. ESTIMATE FOR NEXT QTR. ENDED	$			

THIS IS TO CERTIFY THAT THE INFORMATION REPORTED ON ALL PARTS OF THIS FORM IS ACCURATE AND TRUE TO THE BEST OF MY KNOWLEDGE AND BELIEF.

SIGNATURE: AUTHORIZED STATE OFFICIAL	TYPED NAME, TITLE, AGENCY NAME
DATE SUBMITTED:	SUBMITTAL: [ ] NEW [ ] REVISED
PAGE 1 OF 1 APPROVED OMB NO. [illegible] FORM ACF-196 (04/98)	

BILLING CODE 4184-01-C

Appendix D—Section 2—Instruction For Completion of Form ACF–196—Financial Reporting Form for the Temporary Assistance for Needy Families (TANF) Program

All States must complete and submit this report in accordance with these instructions on behalf of the State agency administering the TANF Program.

Due Dates: This form must be submitted quarterly by February 14, May 15, August 14 and November 14.

States must submit separate quarterly reports regarding the use of each fiscal year's funds. For example, States must submit a report regarding the expenditure of FY 98 funds in FY 99 separately from the report on the use of FY 99 funds in FY 99. Until the State reports that all of the Federal funds awarded for a given fiscal year have been transferred or expended, States must continue to submit quarterly reports on the use of funds from that fiscal year.

Distribution: The original copy (with an original signature) should be submitted to: Administration for Children and Families, Office of Financial Services, Division of Formula, Entitlement and Block Grants, Aerospace Building, 6th Floor, 370 L'Enfant Promenade, S.W., Washington, D.C. 20447. An additional copy should be submitted to the ACF Regional Administrator.

General Instructions:

—Round all entries to the nearest dollar. Omit cents.
—Include costs of contracts and subcontracts in the appropriate reporting category based on their nature or function.
—Enter State Name.
—Enter the Fiscal Year for which this report is being submitted. Funding for each fiscal year is available until expended. Therefore, for each fiscal year, a State may be submitting reports simultaneously to cover two or more fiscal years. It is important to indicate the year for which information is being reported.

The State must note that prior fiscal year unobligated balances may only be expended on assistance or on the related administrative costs of providing assistance. Expenditure of prior year unobligated balances must be reported on the Expenditures on Assistance categories (lines 5(a) through 5(d)) and any related administrative costs reported on line 6(j).

—Transfers of TANF funds to the CCDF or SSBG must be made in the current fiscal year with current fiscal year TANF funds. Transfers of unobligated balances are not allowed after the end of the Federal fiscal year in which the funds were awarded.
—Enter the ending dates for the current quarter (the quarter just ended for which this constitutes the report of actual expenditures and obligations) and the ending date of the next quarter (the upcoming quarter which estimates are being requested on line 12).

Example: the State is reporting for the 1st quarter of the Federal fiscal year (10/1 through 12/31), the report is due February 14, the current quarter ending date is 12/31, the next quarter ending date for which estimates are requested is 6/30. The estimate submitted by the State will be for the quarter of 4/1 through 6/30. Estimates are not required on quarterly reports submitted for prior fiscal years.

—Enter whether this report is being used for annual reconciliation of the Contingency Fund.
—Enter the Federal Medical Assistance Percentage Rate used by the State for the fiscal year for which contingency funds were received.
—Indicate whether this is a new report or a revision of a report previously submitted for the same period.
—Entries are not required or are not applicable to blocks that are shaded.

Columns: All amounts reported in columns (A) through (D) must be actual expenditures or obligations made in accordance with all applicable statutes and regulations. Amounts reported in the estimates section are estimates of Federal expenditures to be made during the quarter indicated based on the best information available to the State.

Explanation of Columns:

Column (A) lines 1 through 4 refer to the Federal State Family Assistance Grant (SFAG) awards plus any Supplemental Grant or Bonus Funds, amounts transferred to the Child Care and Development Fund (CCDF) (Discretionary Fund) and the Social Services Block Grant (SSBG) program, and the amount Available for TANF.

Column: (A) lines 5 through 9 refer to the Federal TANF funds that the State expended and obligated under its TANF program.

Column: (A) line 10 refers to the unobligated balance, which is calculated by subtracting the amounts on lines 7 and 9 from the amount on line 4.

Column: (A) line 12 is the SFAG grant award amount or the percentage of the SFAG that the State estimates it will need for the next quarter ending on the date indicated at the top of the form. (See page 6 of Line Item Instructions)

Column: (B) lines 5 through 7 refer to State TANF expenditures that the State is making to meet its basic Maintenance-of-Effort (MOE) requirement. Include State funds that are commingled with Federal funds and segregated State funds expended under the State TANF program.

Note: States receiving contingency funds under section 403(b) for the fiscal year must also use this column to report State TANF expenditures made to meet the Contingency Fund (CF) MOE requirement and matching expenditures made above the 100-percent MOE level. Expenditures made to meet the CF MOE requirement and expenditures made above the MOE level (for matching purposes) must be expenditures made under the State TANF program only; they cannot include expenditures made under "separate State programs." In addition, child care expenditures cannot be included as CF MOE expenditures or expenditures that are matched with contingency funds.

Column(B) line 11 refers to State replacement funds that the State must expend in the TANF program due to the assessment of a penalty and a reduction in its TANF grant awards.

Column (C) lines 5 through 7 refer to State expenditures that the State is making in Separate State Programs, outside the State TANF program, to meet its basic MOE requirement.

Note: For the basic MOE requirement, the cumulative total expenditures (i.e., the sum of 7(B) + 7(C)) reported at the end of the Federal fiscal year must add up to 80% of fiscal year 1994 historic State expenditures if the State did not meet the TANF work participation requirements, or 75% of fiscal year 1994 historic State expenditures if the State met the TANF work participation requirements. Basic MOE requirements and tables were published in Program Instruction No. TANF–ACF–PI–97–9, dated October 31, 1997.

For States that received contingency funds, line 7(B) minus line 5(B)(b)(assistance—child care) minus line 6(B)(b)(non—assistance child care) must exceed 100 percent of the CF MOE requirement.

Column (D) line 1 refers to the Federal Contingency Fund grant awards.

Column (D) lines 5 through 7 refer to the Federal share of expenditures for which Federal funding is available at the FMAP rate for the fiscal year for which contingency funds were received. Contingency funds are available for match for State expenditures in excess of 100% of CF MOE requirements as explained in the "Note" above.

Example: The State received contingency funds of $100,000 for 6 months of the fiscal year; the FMAP rate is 60% Federal and 40% State; the CF 100% MOE requirement is $1,000,000; the State reported expenditures under Columns (B) and (D) of $1,200,000. To determine how much of the contingency funds the State can keep, the expenditures of $1,000,000 (CF MOE requirement) must be subtracted from the total State expenditures of $1,200,000. That difference ($200,000) is to be multiplied by 60 percent, i.e., $200,000 × 60% = $120,000. The $120,000 must then be multiplied by 1/12 times the number of months a State received contingency funds, i.e., $120,000 × 1/12 × 6 = $60,000. The State may keep no more than $60,000 of the $100,000 ACF awarded it for the Contingency Fund. (This $60,000 may be further reduced as the result of the amendments to section 403(b)(6) under the Adoption and Safe Families Act.)

Determining how much, if any, a State may keep of the contingency funds awarded to it for a fiscal year, is possible only after annual reconciliation of the Contingency Fund account is completed. This form will serve as the annual reconciliation report when submitted for the fourth quarter of the fiscal year. Based on the example above, the amount claimed in line 7 of Column D (Total Expenditures − Contingency Fund) may be no more than $60,000.

It is possible that a State will have received contingency funds after the end of the fiscal year that apply to expenditures made in the prior fiscal year. For a State receiving contingency funds for a fiscal year after it has ended, the State will be required to submit a revised fourth quarter report within 45 days of receipt of the additional contingency funds. There is no carryover of such funds from one fiscal year to the next.

Unobligated Balances Reported on a State Fourth Quarter Financial Report for the Immediately Preceding Fiscal Year

Pursuant to section 404(e) of PRWORA of 1996, a State may reserve amounts awarded to the State under section 403 (excluding contingency funds), without fiscal year limitation, to provide assistance under the State TANF program. Federal Unobligated Balances carried forward from previous fiscal years may only be expended on assistance and related administrative costs associated with providing such assistance. The related Administrative Costs to provide the assistance will be reported against the 15 percent administrative cost cap for the fiscal year for which the Federal funds were originally awarded.

Current Fiscal Year Federal Expenditures on Non-Assistance

The State must obligate by September 30 of the current fiscal year any funds for Expenditures on Non-Assistance. Non-Assistance expenditures are reported on Line 6 categories of this report. The State must liquidate these obligations by September 30 of the immediately succeeding Federal fiscal year for which the funds were awarded. If the final liquidation amounts are lower than the original amount obligated, these funds must be included in the Unobligated Balance Line Item for the year in which they were awarded. As mentioned in the previous paragraph, unobligated balances from previous fiscal years may only be expended on assistance and the administrative costs related to providing the assistance.

Transfers

The State may transfer Federal funds to the CCDF Discretionary Fund and/or the SSBG programs only during the current fiscal year for which the funds were awarded. The State cannot transfer unobligated balances from a previous fiscal year to the CCDF and/or the SSBG programs. Limitations on transfers to these programs are explained in the Line Item instructions.

State Replacement of Grant Reductions Resulting From Penalties

If a State's State Family Assistance Grant is reduced because of the imposition of a penalty under section 409, section 409(a)(12) provides that the State must replace the funds lost due to the penalty with State funds in an amount that is no less than the amount withheld. The State replacement funds must be included in Line 11 Column (B). These funds must be in addition to funds reported under line 7(B).

Line Item Instructions—Cumulative Fiscal Year Expenditures and Obligations

Line 1. Awarded. Enter in column (A) the cumulative total of Federal TANF funds awarded to the State (after any Tribal adjustments) from October 1 of the Federal fiscal year for which the report is being submitted through the current quarter being reported. Enter in column (D) the cumulative total of contingency funds awarded to the State from October 1 of the Federal fiscal year for which the report is being submitted through the current quarter being reported.

Note: The State must include all Federal TANF funds awarded for the current fiscal year on Line 1(A), except contingency funds. This includes SFAG funds, Supplemental Funds or any Bonus Funds. It does not include Welfare-to-Work funds awarded under section 403(a)(5).

Line 2. Transferred to Child Care and Development Fund (CCDF). Enter in column (A) the cumulative total of funds that the State transferred to the Discretionary Fund of the Child Care and Development Fund from October 1 of the Federal fiscal year for which the report is being submitted through the current quarter being reported. Section 404(d)(1) of the Act governs the transfer of TANF funds to the Discretionary Fund. In compliance with section 404(d)(1), a State may not transfer more than 30% of its total annual TANF funds. A State may transfer this entire amount to the Discretionary Fund of the CCDF program. All funds transferred to the Discretionary Fund of the CCDF program take on the rules and regulations of that recipient Fund in place for the current fiscal year at the time when the transfer occurs. A State can transfer current-year Federal TANF funds only. The State may not transfer prior year unobligated balances to the CCDF.

Line 3. Transferred to SSBG. Enter in column (A) the cumulative total of funds the State transferred to the Social Services Block Grant (SSBG) program from October 1 of the Federal fiscal year for which the report is being submitted through the current quarter being reported. Section 404(d)(2) of the Act governs the transfer of TANF funds to the SSBG program; it limits the amount that a State may transfer to no more than 10% of its total annual TANF grant to SSBG. (Also, the combined amount transferred to SSBG and the Discretionary Fund may not exceed 30% of the annual TANF grant. In other words, for all financial reports applicable to grant funds for one fiscal year, the sum of the total cumulative amount reported on line 3 and the total cumulative amount reported on line 2 cannot exceed 30% of the annual TANF grant.) All funds transferred to the SSBG program are subject to the statute and regulations of the recipient SSBG program in place for the current fiscal year at the time when the transfer occurs. A State may transfer current-year Federal TANF funds only. The State may not transfer prior-year unobligated balances to SSBG.

Note: Beginning in FY 2001 the maximum amount of SFAG funds a State may transfer to the SSBG program is 4.25% of its annual TANF grant.

Also, the total amount transferred to SSBG and CCDBG affects the amount available for Job Access activities that may be used as the non-Federal match under that program, See instructions for line 6c1.

Line 4. Adjusted SFAG. Enter in column (A) the cumulative total of funds available for TANF after subtracting the amounts transferred to the CCDF program (Discretionary Fund) (line 2(A)) and/or the SSBG program (line 3(A)) from October 1 of the Federal fiscal year for which the report is being submitted through the current quarter being reported.

Line 5. Expenditures on Assistance. Blocks are shaded. Expenditures in this category must be included in Lines 5a through 5d from October 1 of the Federal fiscal year for which the report is being submitted through the current quarter being reported.

Line 5a. Basic Assistance. Enter in columns (A), (B), (C), and (D) the cumulative total expenditures for basic assistance from October 1 of the Federal fiscal year for which the report is being submitted through the current quarter being reported. Include benefits not reported on line 5d provided in the form of cash, payments, vouchers, or other forms designed to meet on going, basic needs. Include such benefits, even when provided in the form of payments by a TANF agency, or other agency on its behalf, to individuals and conditioned on their participation in work experience or community service (or any other work activity under section 261.30).

Line 5b. Child Care. Enter in columns (A), (B), (C), and (D) the cumulative total expenditures for child care that meet the definition of assistance from October 1 of the Federal fiscal year for which the report is being submitted through the current quarter being reported. The amounts reported in this category do not include funds transferred to the CCDF (Discretionary Fund—reported on the ACF–696) or SSBG programs. Include child care expenditures for families that are not employed, but need child care to participate in other work activities such as job search, community service, education, or training, or for respite purposes. Do not include child care provided as a nonrecurrent, short-term benefit (for example, during applicant job search or to recently employed families who need child care extended during a temporary period of unemployment in order to maintain continuity of care). Do not include expenditures on pre-K activities or other programs designed to provide early childhood development or educational services (e.g., following the Head Start model); such activities should be reported as "other" and identified as such in a footnote to that category in the 4th Quarter Financial Report.

LIne 5c. Other Supportive Services. Enter in columns (A), (B), (C), and (D) the cumulative total expenditures for transportation and other supportive services that meet the definition of assistance from October 1 of the Federal fiscal year for which the report is being submitted through the current quarter being reported. Include expenditures for families that are not employed but need supportive services to participate in other work activities such as job search, community service, education, or training, or for respite purposes. Do not include transportation or other supports provided as a nonrecurrent, short-term benefit (for example, during applicant job search).

Line 5d. Assistance Authorized Solely Under Prior Law. Enter in columns (A) and (D) any expenditures of Federal funds on assistance that are authorized solely under section 404(a)(2) of the Act from October 1 of the Federal fiscal year for which the report is being submitted through the current quarter being reported.

These are expenditures that are not otherwise consistent with the purposes of

TANF and/or with the prohibitions in section 408. States including expenditures on this line must include a footnote explaining the nature of these benefits (e.g., previously authorized juvenile justice or State foster care payments) and reference the State plan provision under which they were authorized.

Note: States may not report MOE expenditures in this category; all State MOE expenditures must be consistent with the purposes of TANF.

Line 6. Expenditures on Non-Assistance. Blocks are shaded. Expenditures in this category must be included in Lines 6a through 6l.

Line 6a. Work-Related Activities and Expenses. Enter in columns (A), (B), (C), and (D) the cumulative total expenditures (sum of 6(a)1 + 6(a)2 + 6(a)3 for each column) for work-related activities and expenses, as described in the instructions for those 3 lines, from October 1 of the Federal fiscal year for which the report is being submitted through the current quarter being reported.

Line 6a1. Work Subsidies. Enter in columns (A), (B), (C), and (D) the cumulative total expenditures for work subsidies from October 1 of the Federal fiscal year for which the report is being submitted through the current quarter being reported. Work subsidies include payments to employers or third parties to help cover the costs of employee wages, benefits, supervision, or training. Do not include expenditures related to payments to participants in community service and work experience activities that are within the definition of assistance.

Line 6a2. Education. Enter in columns (A), (B), (C), and (D) costs related to educational activities from October 1 of the Federal fiscal year for which the report is being submitted through the current quarter being reported. These are expenditures on educational activities that are consistent with the recognized work activities at § 261.30 or as a supplement to such activities. Thus, include secondary education (including alternative programs); adult education, GED, and ESL classes; education directly related to employment; education provided as vocational educational training; and post-secondary education. Do not include costs of early childhood education or after-school or summer enrichment programs for children in elementary or junior high school; such activities should be reported as "other" and identified as such in a footnote to that category in the 4th Quarter Financial Report.

Line 6a3. Other Work Activities/Expenses. Enter in columns (A), (B), (C), and (D) expenditures on other work activities from October 1 of the Federal fiscal year for which the report is being submitted through the current quarter being reported. These are expenditures on: (a) work activities that have not been reported as education or work subsidies (including staff costs related to providing work experience and community service activities, on-the-job training, job search and job readiness, job skills training, and training provided as vocational educational training); (b) related services (such as employment counseling, coaching, job development, information and referral, and outreach to business and non profit community groups); and (c) other work-related expenses (such as costs for work clothes and equipment). Include such costs when provided as part of a diversion program or as transitional services to individuals who ceased to receive assistance due to employment.

Line 6b. Child Care. Enter in columns (A), (B), (C), and (D) the cumulative total expenditures for child care that does not meet the definition of assistance from October 1 of the Federal fiscal year for which the report is being submitted through the current quarter being reported. Include child care provided to employed families (related either to their work or related job retention and advancement activities) and child care provided as a nonrecurrent, short-term benefit (e.g., during applicant job search or to a recently employed family during a temporary period of unemployment). Do not include amounts of funds transferred to the CCDF (Discretionary Fund—reported on the ACF–696) or SSBG programs. Also, do not include expenditures on pre-K activities or other programs designed to provide early childhood development or educational services (e.g., following the Head Start model); such activities should be reported as "other" and identified as such in a footnote to that category in the 4th Quarter Financial Report).

Line 6c. Transportation. Enter in columns (A), (B), (C), and (D) the cumulative total expenditures (sum of 6(d)1 + 6(d)2 for each column) for transportation activities that do not meet the definition of assistance from October 1 of the Federal fiscal year for which the report is being submitted through the current quarter being reported. Include the value of transportation benefits (such as allowances, bus tokens, car payments, auto insurance reimbursement, and van services) provided to employed families (related either to their work or related job retention and advancement activities) and provided as a nonrecurrent, short-term benefit (e.g., during applicant job search).

Line 6c1. Job Access. Enter in Columns (A), (B), (C), and (D) the cumulative total expenditures for the Department of Transportation Job Access program from October 1 of the Federal fiscal year for which the report is being submitted through the current quarter being reported.

Note: The amount of TANF funds expended on Job Access programs that may be used as non-Federal matching under the Job Access program is limited to the difference between 30 percent of TANF funds (amount reported on line 1(A)) and the total amount transferred to SSBG and the Discretionary Fund of CCDF (sum of amounts reported on lines 2(B) and 2(C)).

Line 6c2. Other Transportation. Enter in Columns (A), (B), (C), and (D) the cumulative total expenditures for other types of transportation activities that do not meet the definition of assistance from October 1 of the Federal fiscal year for which the report is being submitted through the current quarter being reported.

Line 6d. Individual Development Accounts. Enter in columns (A), (B), (C), and (D) expenditures on contributions to Individual Development Accounts and any other expenditures related to the operation of an IDA program that fall outside the definition of administrative costs from October 1 of the Federal fiscal year for which the report is being submitted through the current quarter being reported.

Line 6e. Refundable Earned Income Tax Credits. Enter in columns (A), (B), (C), and (D) expenditures on refundable earned income tax credits paid to families and otherwise consistent with the requirements of parts 260 and 263 of the TANF regulations from October 1 of the Federal fiscal year for which the report is being submitted through the current quarter being reported. Include State and local tax credits that represent a specific portion of the Federal Earned Income Credit and expenditures on similar State programs designed to defray the costs of employment for low-income families.

Line 6f. Other Refundable Tax Credits. Enter in columns (A), (B), (C), and (D) expenditures on any other refundable tax credits provided under State or local law that are consistent with the purposes of TANF and the requirements of parts 260 and 263 of the TANF regulations from October 1 of the Federal fiscal year for which the report is being submitted through the current quarter being reported.

Line 6g. Diversion Payments. Enter in columns (A), (B), (C), and (D) any expenditures on nonrecurrent, short-term benefits to families in the form of cash payments, vouchers, or similar form of payment to deal with a specific crisis situation or episode of need and excluded from the definition of assistance on that basis. Do not include expenditures on support services such as child care or transportation (including car repairs) or work activities and expenses (such as applicant job search) provided under a diversion program; these items should have been reported in prior reporting categories.

Line 6h. Prevention of Out-of-Wedlock Pregnancies. Enter in columns (A), (B), (C), and (D) the cumulative total program expenditures for prevention of out-of-wedlock pregnancies activities that have not otherwise been reported from October 1 of the Federal fiscal year for which the report is being submitted through the current quarter being reported.

Line 6i. Two-Parent Family Formation and Maintenance. Enter in columns (A), (B), (C), and (D) the cumulative total program expenditures for two-parent family formation and maintenance activities that have not otherwise been reported from October 1 of the Federal fiscal year for which the report is being submitted through the current quarter being reported.

Line 6j. Administration. Enter in columns (A), (B), (C), and (D) the cumulative total expenditures for administrative costs (as defined at § 263.0) from October 1 of the Federal fiscal year for which the report is being submitted through the current quarter being reported.

For Federal TANF funds, the 15% administrative cost cap applies to the amount Available for TANF reported on line 4(A) of this form. For State expenditures reported in columns (B) and (C), the 15% administrative cost cap applies to the cumulative amount of Total Expenditures (i.e., the sum of line 7(B) + 7(C)) reported for these columns.

Based on the nature or function of the contract, States must include appropriate administrative costs associated with contracts and subcontracts that count towards the 15% administrative cost caps.

Line 6k. Systems. Enter in columns (A), (B), (C), and (D) the cumulative total expenditures for systems costs related to monitoring and tracking under the program from October 1 of the Federal fiscal year for which the report is being submitted through the current quarter being reported.

Note: Section 404(b)(1) of the Act limits States to which a grant is made under section 403 to expend no more than 15% of the grant for administrative costs. In addition, section 404(b)(2) of the Act states that the 15% administrative cost cap shall not apply to the use of a grant for information technology and computerization needed for tracking or monitoring required by or under part IV–A of the Act. The systems exclusion applies to items that might normally be administrative costs, but are systems-related and needed for monitoring or tracking purposes under TANF. Under our final rules the same information technology exclusion applies to MOE expenditures. The TANF rules at §§ 263.2 and 263.13 provide guidance about what is excluded under this provision.

Line 6l. Other. Enter in columns (A), (B), (C), and (D) the cumulative total expenditures for other expenditures considered "expenditures on non-assistance" that were not included on Lines 6a through 6j from October 1 of the Federal fiscal year for which the report is being submitted through the current quarter being reported. For example, include as "other" costs on general family preservation activities and parenting training. Include costs on activities such as substance abuse treatment, domestic violence services, and case management to the extent that such costs are not directed at the second goal of TANF and included as work-related costs above.

Note: In the 4th quarter annual report the State must describe in a footnote the activities for which "other expenditures" under this line item applies.

Line 7. Total Expenditures. Enter in columns (A), (B), (C), and (D) the cumulative total expenditures (i.e., the sum of Line 5a through Line 6l) from October 1 of the Federal fiscal year for which the report is being submitted through the current quarter being reported.

Line 8. Transitional Services for Employed. Enter in columns (A), (B), (C), and (D) the cumulative total expenditures to provide transitional services to families that cease to receive assistance under the TANF program because of employment from October 1 of the Federal fiscal year for which the report is being submitted through the current quarter being reported. Expenditures reported on this line must also be included in the expenditure categories reported on lines 5 through 7.

Note: The expenditures reported on this line will duplicate expenditures reported elsewhere in this report. Section 411(a)(5) requires separate quarterly reporting of expenditures on transitional services for families that have ceased to receive assistance because of employment.

Line 9. Federal Unliquidated Obligations. Enter in columns (A) and (D) the cumulative total Federal unliquidated obligations from October 1 of the Federal fiscal year for which the report is being submitted through the current quarter being reported. Obligations reported on this line must meet the definition of obligations contained in 45 CFR 92.3. For the Contingency Fund, this line should indicate $0 for the report submitted for the fourth quarter.

Line 10. Unobligated Balance. Enter in columns (A) and (D) the cumulative total Federal unobligated balances from October 1 of the Federal fiscal year for which the report is being submitted through the current quarter being reported. After the end of the Federal fiscal year any amount reported in column (D), as an unobligated balance, will be de-obligated by ACF.

Note: The State must report any Federal funds reserved for "rainy day" purposes as an unobligated balance on this line. Unobligated balances expended in any future Federal fiscal year must be expended only on assistance (reported on Line 5 categories of this report) or administrative costs related to providing assistance (reported on line 6(j)).

Line 11. State Replacement Funds. Enter in column (B) the cumulative total State Replacement Funds expended as a result of the imposition of a TANF penalty from October 1 of the Federal fiscal year for which the report is being submitted through the current quarter being reported.

Line 12. Estimate for Next Quarter Ended. Enter in column (A) the estimate of SFAG grant award funds requested for the next quarter ending, whose ending date was entered at the top of this report.

Note: Section 405(c)(1) of the Act states that ACF shall estimate the amount to be paid to each eligible State for each quarter, such estimate is to be based on a report filed by the State of the total sum to be expended by the State in the quarter under the State program funded under section 403.

Appendix E—SSP MOE Data Report—Section One—Disaggregated Data Collection for Families Receiving Assistance Under the Separate State Program(s)

Instructions and Definitions

General Instruction: If a State claims MOE expenditures for separate State programs (SSPs) and for persons served by those programs, it must collect and report this information on the SSP–MOE Data Report on SSP–MOE families receiving assistance only as follows: (1) If the State wishes to receive a high performance bonus, it must file the information in sections one and three of the SSP–MOE Data Report; and (2) if the State wishes to quality for caseload reduction credit, it must file the information in all three sections of the SSP–MOE Data Report.

The State agency should collect and report data for each data element. The data must be complete (unless explicitly instructed to leave the field blank) and accurate (i.e, correct).

An "Unknown" code may appear only on four sets of data elements ([#28 and #60] Date of Birth, [#29 and #61] Social Security Number, [#37 and #67] Educational Level, and [#38 and #68] Citizenship/Alienage). For these data elements, unknown is not an acceptable code for individuals who are members of the eligible family (i.e., family affiliation code "1").

There are six data elements for which States have the option to report based on either the budget month or the reporting month. These are: #14 Amount of Food Stamps Assistance; #17 Amount of Child Support; #18 Amount of Families Cash Resources; #57 Amount of Earned Income; and [#58 and #69] Amount of Unearned Income. Whichever choice the State selects must be used for all families reported each month and must be used for all months in the fiscal year.

The data elements in the SSP–MOE Data Report are similar to those in the TANF Data Report for the TANF Program. This will give us comparable information on the SSP programs. It will allow us, for example, to calculate a SSP–MOE work participation rate. Because a State's definitions and eligibility requirements for its SSPs may be different from those in its TANF Program, the data required in its SSP–MOE Data Report may not precisely correspond to the information collected by the State in its SSP–MOE Data Report. We encourage States to provide the best possible information.

1. *State FIPS Code:* Enter your two-digit State code from the following listing. These codes are the standard codes used by the National Institute of Standards and Technology.

State	Code
Alabama	01
Alaska	02
American Samoa	60
Arizona	04
Arkansas	05
California	06
Colorado	08
Connecticut	09
Delaware	10
Dist. of Columbia	11
Florida	12
Georgia	13
Guam	66
Hawaii	15
Idaho	16
Illinois	17
Indiana	18
Iowa	19
Kansas	20
Kentucky	21
Louisiana	22
Maine	23
Maryland	24
Massachusetts	25
Michigan	26
Minnesota	27
Mississippi	28
Missouri	29
Montana	30
Nebraska	31
Nevada	32
New Hampshire	33
New Jersey	34
New Mexico	35
New York	36
North Carolina	37
North Dakota	38

State	Code
Ohio	39
Oklahoma	40
Oregon	41
Pennsylvania	42
Puerto Rico	72
Rhode Island	44
South Carolina	45
South Dakota	46
Tennessee	47
Texas	48
Utah	49
Vermont	50
Virgin Islands	78
Virginia	51
Washington	53
West Virginia	54
Wisconsin	55
Wyoming	56

2. *County FIPS Code:* Enter the three-digit code established by the National Institute of Standards and Technology for classification of counties and county equivalents. Codes were devised by listing counties alphabetically and assigning sequentially odd integers; e.g., 001, 003, 005. A complete list of codes is available in Appendix F of the TANF Sampling and Statistical Methods Manual.

3. *Reporting Month:* Enter the four-digit year and two-digit month codes that identify the year and month for which the data are being reported.

4. *Stratum:*

Guidance: All families that receive assistance under separate State Programs (i.e, SSP–MOE families) and are selected in the sample from the same stratum must be assigned the same stratum code. Valid stratum codes may range from "00" to "99." States with stratified samples should provide the ACF Regional Office with a listing of the numeric codes utilized to identify any stratification. If a State opts to provide data for its entire caseload, enter the same stratum code (any two-digit number) for each SSP–MOE family.

Instruction: Enter the two-digit stratum code.

Family-Level Data

Definition: For reporting purposes, the SSP–MOE family means (a) all individuals receiving assistance as part of a family under the separate State program(s); and (b) the following additional persons living in the household, if not included under (a) above:

(1) Parent(s) or caretaker relative(s) of any minor child receiving assistance;

(2) Minor siblings of any child receiving assistance; and

(3) Any person whose income or resources would be counted in determining the family's eligibility for or amount of assistance.

5. *Case Number—Separate State MOE:*

Guidance: If the case number is less than the allowable eleven characters, a State may use lead zeros to fill in the number.

Instruction: Enter the number assigned by the State agency to uniquely identify the case.

6. *ZIP Code:* Enter the five-digit ZIP code for the SSP–MOE family's place of residence for the reporting month.

7. *Disposition:*

Guidance: A family that did not receive any assistance for the reporting month but was listed on the monthly sample frame for the reporting month is "listed in error." States are to complete data collection for all sampled cases that are not listed in error.

Instruction: Enter one of the following codes for each SSP–MOE sampled case.

1=Data collection completed.

2=Not subject to data collection/listed in error.

8. *Number of Family Members:* Enter two digits that represent the number of members in the family receiving assistance under the separate State program(s). Include in the number of family members, the noncustodial parent whom the State has opted to include as part of the eligible family, who is receiving assistance as defined in § 260.31, or who is participating in work activities as defined in section 407(d) of the Act.

9. *Type of Family for Work Participation:*

Guidance: This data element identifies whether the family would be used in the calculations for both the overall and two-parent work participation rates, would be used in only the overall work participation rate, or would not be used in either work participation rate.

A family with an adult or minor child head-of-household will be included in the overall work participation rate unless explicitly disregarded. See data element #41 "Work Participation Status" for reasons for disregarding a family.

For the purpose of calculating the two-parent work participation rate, the two-parent families include any family with two or more natural or adoptive parents (of the same minor child) receiving assistance and living in the home, unless both are minor and neither is a head-of-household. All two-parent families are included in the two-parent work participation rate unless the family is explicitly disregarded. See data element #41 "Work Participation Status" for reasons for disregarding a family. A two-parent family that includes a disabled parent is not included in the two-parent work participation rate.

A family with a minor child head-of-household should be coded as either a single-parent family or two-parent family, whichever is appropriate.

A noncustodial parent is defined in § 260.30 as a parent who lives in the State and does not live with his/her child(ren). The State must report information on the noncustodial parent if the noncustodial parent: (1) Is receiving assistance as defined in § 260.31; (2) is participating in work activities as defined in section 407(d) of the Act; or (3) has been designated by the State as a member of a family receiving assistance.

Instruction: Enter the one-digit code that represents the type of family for purposes of calculating the work participation rates.

1=Family included only in overall work participation rate.

2=Two-Parent Family included in both the overall and two-parent work participation rates.

3=Family excluded from both the overall and two-parent work participation rates.

10. *Has the Family Received Assistance Under a State (Tribal) TANF Program Within the Past Six Months:* If the SSP–MOE family has received assistance under a State (Tribal) TANF Program within the past six months, enter code "1." Otherwise, enter "2."

1=Yes, family has received assistance under a State (Tribal) TANF program within the past six months.

2=No.

11. *Receives Subsidized Housing:*

Guidance: Subsidized housing refers to housing for which money was paid by the Federal, State, or local government or through a private social service agency to the family or to the owner of the housing to assist the family in paying rent. Two families sharing living expenses does not constitute subsidized housing.

Instruction: Enter the one-digit code that indicates whether or not the SSP–MOE family received subsidized housing for the reporting month.

1=Public housing.

2=Rent subsidy.

3=No housing subsidy.

12. *Receives Medical Assistance:* Enter "1" if, for the reporting month, any SSP–MOE family member is enrolled in Medicaid and thus eligible to receive medical assistance under the State plan approved under Title XIX or "2" if no SSP–MOE family member is enrolled in Medicaid.

1=Yes, enrolled in Medicaid.

2=No.

13. *Receives Food Stamps:* Enter the one-digit code that indicates whether or not the SSP–MOE family is receiving food stamp assistance.

1=Yes, receives food stamp assistance.

2=No.

14. *Amount of Food Stamp Assistance:*

Guidance: For situations in which the food stamp household differs from the SSP–MOE family, code this element in a manner that most accurately reflects the resources available to the SSP–MOE family. One acceptable method for calculating the amount of food stamp assistance available to the SSP–MOE family is to prorate the amount of food stamps equally between each food stamp recipient then add together the amounts belonging to the SSP–MOE recipients.

Instruction: Enter the SSP–MOE eligible family's authorized dollar amount of food stamp assistance for the reporting month or for the month used to budget for the reporting month. If the SSP–MOE family did not receive any food stamps for the reporting month, enter "0."

15. *Receives Subsidized Child Care:*

Instruction: If the SSP–MOE family receives subsidized child care for the reporting month, enter code "1" or "2," whichever is appropriate. Otherwise, enter code "3."

1=Yes, receives child care funded entirely or in part with Federal funds (e.g., receives either TANF, CCDF, SSBG, or other federally funded child care).

2=Yes, receives child care funded entirely under a State, Tribal, and/or local program.

3=No subsidized child care received.

16. *Amount of Subsidized Child Care:*

Guidance: Subsidized child care means a grant by the Federal, State or local government to or on behalf of a parent (or

caretaker relative) to support, in part or whole, the cost of child care services provided by an eligible provider to an eligible child. The grant may be paid directly to the parent (or caretaker relative) or to a child care provider on behalf of the parent (or caretaker relative).

Instruction: Enter the dollar amount of subsidized child care that the SSP–MOE family has received from all sources (e.g., CCDF, TANF, SSBG, State, local, etc.) for services in the reporting month. If SSP–MOE family did not receive any subsidized child care for services in the reporting month, enter "0" as the amount.

17. *Amount of Child Support:* Enter the total dollar value of child support received on behalf of the SSP–MOE family in the reporting month or for the month used to budget for the reporting month. This includes current payments, arrearages, recoupment, and pass-through amounts whether paid to the State or the family.

18. *Amount of the Family's Cash Resources* Enter the total dollar amount of the SSP–MOE family's cash resources as the State defines them for determining eligibility and/or computing benefits for the reporting month or for the month used to budget for the reporting month.

Amount of Assistance Received and the Number of Months That the Family Has Received Each Type of Assistance Under the Separate State Program

Guidance: The term "assistance" includes cash, payments, vouchers, and other forms of benefits designed to meet a family's ongoing basic needs (i.e., for food, clothing, shelter, utilities, household goods, personal care items, and general incidental expenses). It includes such benefits even when they are provided in the form of payments by a TANF agency, or other agency on its behalf, to individual recipients and conditioned on their participation in work experience, community service, or other work activities (i.e., under the CFR § 261.30).

Except where excluded as indicated in the following paragraph, it also includes supportive services such as transportation and child care provided to families who are not employed.

The term "assistance" excludes:

(1) Nonrecurrent, short-term benefits (such as payments for rent deposits or appliance repairs) that:

(i) Are designed to deal with a specific crisis situation or episode of need;

(ii) Are not intended to meet recurrent or ongoing needs; and

(iii) Will not extend beyond four months.

(2) Work subsidies (i.e., payments to employers or third parties to help cover the costs of employee wages, benefits, supervision, and training);

(3) Supportive services such as child care and transportation provided to families who are employed;

(4) Refundable earned income tax credits;

(5) Contributions to, and distributions from, Individual Development Accounts;

(6) Services such as counseling, case management, peer support, child care information and referral, transitional services, job retention, job advancement, and other employment-related services that do not provide basic income support; and

(7) Transportation benefits provided under an Access to Jobs or Reverse Commute project, pursuant to section 404(k) of the Act, to an individual who is not otherwise receiving assistance.

The exclusion of nonrecurrent, short-term benefits under (1) of this paragraph also covers supportive services for recently employed families, for temporary periods of unemployment, in order to enable continuity in their service arrangements.

Instruction: For each type of assistance provided under the separate State program, enter the dollar amount of assistance that the SSP–MOE family received or that was paid on behalf of the SSP–MOE family for the reporting month and the number of months that the SSP–MOE family has received assistance under the State's Separate MOE programs. Also, for SSP–MOE Child Care, enter the number of children covered by the child care. If, for a "type of assistance," no dollar amount of assistance was provided during the reporting month, enter "0" as the amount. If, for a "type of assistance," no assistance has ever been received by the eligible family, enter "0" as the number of months of assistance.

19. *Cash and Cash Equivalents:*

A. *Amount*

B. *Number of Months*

20. *Child Care:*

Guidance: Include only the child care funded directly by these Separate State programs. Do not include child care funded under the TANF Program or the Child Care and Development Fund.

Number of:

A. Amount

B. Children Covered

C. Number of Months

21. Transportation:

A. Amount

B. Number of Months

22. Transitional Services:

A. Amount

B. Number of Months

23. Other:

A. Amount

B. Number of Months

24. *Reason for and Amount of Reduction in Assistance:*

Instruction: The amount of assistance received by a SSP–MOE family may be reduced for one or more reasons. For each reason listed below, indicate whether the SSP–MOE family received a reduction in assistance. Enter the total dollar value of the reduction(s) for each group of reasons for reductions in assistance for the reporting month. If for any reason there was no reduction in assistance, enter "0."

a. *Sanctions:*

i. *Total Dollar Amount of Reductions due to Sanctions:* Enter the total dollar value of reduction in assistance due to sanctions.

ii. *Work Requirements Sanction:*

1=Yes.

2=No.

iii. *Family Sanction for an Adult with No High School Diploma or Equivalent:*

1=Yes.

2=No.

iv. *Sanction for Teen Parent not Attending School:*

1=Yes.

2=No.

v. *Non-Cooperation with Child Support:*

1=Yes.

2=No.

vi. *Failure to Comply with an Individual Responsibility Plan:*

1=Yes.

2=No.

vii. *Other Sanctions:*

1=Yes.

2=No.

b. *Recoupment of Prior Overpayment:* Enter the total dollar value of reduction in assistance due to recoupment of a prior overpayment.

c. *Other:*

i. *Total Dollar Amount of Reductions due to Other Reasons (exclude the amounts for sanction and recoupment):* Enter the total dollar value of reduction in assistance due to reasons other than sanctions and recoupment.

ii. *Family Cap:*

1=Yes.

2=No.

iii. *Reduction Based on Family Moving into State From Another State:*

1=Yes.

2=No.

iv. *Reduction Based on Length of Receipt of Assistance:*

1=Yes.

2=No.

v. *Other, Non-sanction:*

1=Yes.

2=No.

25. *Waiver Evaluation Experimental and Control Groups:*

Guidance: If this data element is not applicable to your State (Tribe), either code this element "9" or leave this data element blank. In connection with waivers that are approved to allow States to implement Welfare Reform Demonstrations, a State assigned a portion of its cases to control groups (subject to the provisions of the regular, statutory AFDC program as defined by prior law) and experimental groups (subject to the provisions of the regular, statutory AFDC program as defined by prior law as modified by waivers). A State may choose, for the purpose of completing impact analyses, to maintain applicable control and experimental group treatment policies as they were implemented under their welfare reform demonstration (including prior law policies not modified by waivers), even if such policies are inconsistent with TANF. However, cases not assigned to an experimental or control group but subject to waiver policies in accordance with the terms and conditions of the waiver approval, may not apply prior law policies inconsistent with TANF unless such policies are specifically linked to approved waivers. When a State continues waivers, but does not maintain experimental and control groups for impact evaluation purposes, all cases in the demonstration site will be treated as cases subject to waiver policies in accordance with terms and conditions regardless of their original assignment as control group cases (i.e., prior law policies may only apply to the extent they are specially linked to approved waivers and former control group cases will now be subject to waiver policies.)

Instruction: Enter the one-digit code that indicates the family's waiver evaluation case status.

1=Control group case (for impact analysis purposes).

2=Experimental group case.

3=Other cases subject to waiver policies.

9=Not applicable (no waivers apply to this case).

Person-Level Data

Person-level data has two sections: (1) The adult and minor child head-of-household characteristic section and (2) the child characteristics section. An adult is an individual that is not a minor child. A minor child is an individual who (a) has not attained 18 years of age or (b) has not attained 19 years of age and is a full-time student in a secondary school (or in the equivalent level of vocational or technical training.)

Detailed data elements must be reported on all individuals unless, for a specific data element, the instructions explicitly give States an option to not report for a specific group of individuals.

Adult and Minor Child Head-of-Household Characteristics

This section allows for coding up to six adults (or a minor child who is either a head-of-household or married to the head-of-household and up to five adults) in the SSP–MOE family. A minor child who is either a head-of-household or married to the head-of-household should be coded as an adult and will hereafter be referred to as a "minor child head-of-household." For each adult (or minor child head-of-household) in the SSP–MOE family, complete the adult characteristics section. As indicated below, reporting for certain specified data elements in this section is optional for certain individuals (whose family affiliation code is a 2, 3, or 5).

If there are more than six adults (or a minor child head-of-household and five adults) in the SSP–MOE family, use the following order to identify the persons to be coded: (1) The head-of-household; (2) parents in the eligible family receiving assistance; (3) other adults in the eligible family receiving assistance; (4) Parents not in the eligible family receiving assistance; (5) caretaker relatives not in the eligible family receiving assistance; and (6) other persons, whose income or resources count in determining eligibility for or amount of assistance of the eligible family receiving assistance, in descending order the person with the most income to the person with least income.

26. *Family Affiliation:*

Guidance: This data element is used both for (1) the adult or minor child head-of-household section and (2) the minor child section. The same coding schemes are used in both sections. Some of these codes may not be applicable for adults.

Instruction: Enter the one-digit code that shows the adult's (or minor child head-of-household's) relation to the eligible family receiving assistance.

1=Member of the eligible family receiving assistance.

Not in eligible family receiving assistance, but in the household:

2=Parent of minor child in the eligible family receiving assistance.

3=Caretaker relative of minor child in the eligible family receiving assistance.

4=Minor sibling of child in the eligible family receiving assistance.

5=Person whose income or resources are considered in determining eligibility for or amount of assistance for the eligible family receiving assistance.

27. *Noncustodial Parent Indicator:*

Guidance: A noncustodial parent is defined in § 260.30 as a parent who lives in the State and does not live with his/her child(ren). The State must report information on the noncustodial parent if the noncustodial parent: (1) Is receiving assistance as defined in § 260.31; (2) is participating in work activities as defined in section 407(d) of the Act; or (3) has been designated by the State as a member of a family receiving assistance.

Instruction: Enter the one-digit code that indicates the adult's (or minor child head-of-household's) noncustodial parent status.

1=Yes, a noncustodial parent.

2=No, not a noncustodial parent.

28. *Date of Birth:* Enter the eight-digit code for date of birth for the adult (or minor child head-of-household) under the separate State program in the format YYYYMMDD. If the adult's (or minor child head-of-household's) date of birth is unknown and the family affiliation code is not "1," enter the code "99999999".

29. *Social Security Number:* Enter the nine-digit Social Security Number for the adult (or minor child head-of-household) in the format nnnnnnnnn. If the social security number is unknown and the family affiliation code is not "1," enter "999999999".

30. *Race/Ethnicity:*

Instruction: To allow for the multiplicity of race/ethnicity, please enter the one-digit code for each category of race and ethnicity of the adult (or minor child head-of-household). Reporting of this data element is optional for individuals whose family affiliation code is 5.

Ethnicity:

a. Hispanic or Latino:

1=Yes, Hispanic or Latino.

2=No.

Race:

b. American Indian or Alaska Native:

1=Yes, American Indian or Alaska Native.

2=No.

c. Asian:

1=Yes, Asian.

2= No.

d. Black or African American:

1=Yes, Black or African American.

2=No.

e. Native Hawaiian or Other Pacific Islander:

1=Yes, Native Hawaiian or Pacific Islander.

2=No.

f. White:

1=Yes, White.

2=No.

31. *Gender:* Enter the one-digit code that indicates the adult's (or minor child head-of-household's) gender.

1=Male.

2=Female.

32. *Receives Disability Benefits:* The Act specifies five types of disability benefits. For each type of disability benefits, enter the one-digit code that indicates whether or not the adult (or minor child head-of-household) received the benefit.

a. *Receives Federal Disability Insurance Benefits Under the Social Security OASDI Program (Title II of the Social Security Act):*

1=Yes, received Federal disability insurance.

2=No.

b. *Receives Benefits Based on Federal Disability Status Under Non-Social Security Act Programs:* These programs include Veteran's disability benefits, Worker's disability compensation, and Black Lung Disease disability benefits.

1=Yes, received benefits based on Federal disability status.

2=No.

c. *Receives Aid to the Permanently and Totally Disabled Under Title XIV–APDT of the Social Security Act:*

1=Yes, received aid under Title XIV–APDT.

2=No.

d. *Receives Aid to the Aged, Blind, and Disabled Under Title XVI–AABD of the Social Security Act:*

1=Yes, received aid under Title XVI–AABD.

2=No.

e. *Receives Supplemental Security Income Under Title XVI–SSI of the Social Security Act:*

1=Yes, received aid under Title XVI–SSI.

2=No.

33. *Marital Status:* Enter the one-digit code for the adult's (or minor child head-of-household's) marital status for the reporting month. Reporting of this data element is optional for individuals whose family affiliation code is 5.

1=Single, never married.

2=Married, living together.

3=Married, but separated.

4=Widowed.

5=Divorced.

34. *Relationship to Head-of-Household:*

Guidance: This data element is used both for (1) the adult or minor child head-of-household section and (2) the minor child section. The same coding schemes are used in both sections. Some of these codes may not be applicable for adults.

Instruction: Enter the two-digit code that shows the adult's (or minor child head-of-household's) relationship (including by marriage) to the head of the household, as defined by the Food Stamp Program or as determined by the State, (i.e., the relationship to the principal person of each person living in the household.) If a minor child head-of-household, enter code "01."

01=Head-of-household.

02=Spouse.

03=Parent.

04=Daughter or son (Natural or adoptive).

05=Stepdaughter or stepson.

06=Grandchild or great grandchild

07=Other related person (brother, niece, cousin).

08=Foster child.

09=Unrelated child.

10=Unrelated adult.

35. *Parent With Minor Child In the Family:*

Guidance: A parent with a minor child in the family may be a natural parent, adoptive

parent, or step-parent of a minor child in the family. Reporting of this data element is optional for individuals whose family affiliation code is 3 or 5.

Instruction: Enter the one-digit code that indicates the adult's (or minor child head-of-household's) parental status.

1=Yes, a parent with a minor child in the family and used in two-parent participation rate.

2=Yes, a parent with a minor child in the family, but not used in two-parent participation rate.

3=No.

36. *Needs of a Pregnant Woman:* Some States (Tribes) consider the needs of a pregnant woman in determining the amount of assistance that the SSP–MOE family receives. If the adult (or minor child head-of-household) is pregnant and the needs associated with this pregnancy are considered in determining the amount of assistance for the reporting month, enter a "1" for this data element. Otherwise enter a "2" for this data element. This data element is applicable only for individuals whose family affiliation code is 1.

1=Yes, additional needs associated with pregnancy are considered in determining the amount of assistance.

2=No.

37. *Educational Level:* Enter the two-digit code to indicate the highest level of education attained by the adult (or minor child head-of-household). Unknown is not an acceptable code for an individual whose family affiliation code is "1". Reporting of this data element is optional for individuals whose family affiliation code is 5.

01–11=Grade level completed in primary/secondary school including secondary level vocational school or adult high school.

12=High school diploma, GED, or National External Diploma Program.

13=Awarded Associate's Degree.

14=Awarded Bachelor's Degree.

15=Awarded graduate degree (Master's or higher).

16=Other credentials (degree, certificate, diploma, etc.).

98=No formal education.

99=Unknown.

38. Citizenship/Alienage:

Instruction: Enter the one-digit code that indicates the adult's (or minor child head-of-household's) citizenship/alienage. Unknown is not an acceptable code for an individual whose family affiliation code is "1". Reporting of this data element is optional for individuals whose family affiliation code is 5.

1=U.S. citizen, including naturalized citizens.

2=Qualified alien.

3=Non qualified alien.

9=Unknown.

39. *Cooperation with Child Support:* Enter the one-digit code that indicates whether this adult (or minor child head-of-household) has cooperated with child support. Reporting of this data element is optional for individuals whose family affiliation code is 5.

1=Yes, adult (or minor child head-of-household) cooperated with child support.

2=No.

3=Not applicable.

40. *Employment Status:* Enter the one-digit code that indicates the adult's (or minor child head-of-household's) employment status. Reporting of this data element is optional for individuals whose family affiliation code is 5.

1=Employed.

2=Unemployed, looking for work.

3=Not in labor force (i.e, unemployed, not looking for work, includes discouraged workers)

41. *Work Participation Status:*

Guidance: This item could be used in calculating an SSP work participation rate and includes information comparable to TANF. The following two definitions are used in reporting this item and in determining which families might be included in and excluded from the calculations.

"Disregarded" from the participation rate means the SSP–MOE family is not included in the calculation of the work participation rate.

"Exempt" means that the individual will not be penalized for failure to engage in work (i.e., good cause exception); however, the SSP–MOE family is included in the calculation of the work participation rate.

A State is not required to disregard all families that could be disregarded. For example, a family with a single custodial parent with child under 12 months (and the parent has not been disregarded for 12 months) may be disregarded. However, if the single custodial parent is meeting the work requirements, the State may want to include the family in its work participation rate. In this situation, the State should used work participation status code "19" rather than code "01".

Instruction: Enter the two-digit code that indicates a work participation status for the adult or minor child head-of-household. This data element is not applicable for individuals whose family affiliation code is 2, 3, 4, or 5.

01=Disregarded from participation rate, single custodial parent with child under 12 months.

02=Disregarded from participation rate because all of the following apply: required to participate; but not participating; sanctioned for the reporting month; but not sanctioned for more than 3 months within the preceding 12-month period.

Note: this code should be used only in a month for which the family is disregarded from the participation rate. While one or more adults may be sanctioned in more than 3 months within the preceding 12-month period, the family may not be disregarded from the participation rate for more than 3 months within the preceding 12=month period.

03=Disregarded, family is part of an ongoing research evaluation (as a member of a control group or experimental group) approved under section 1115 of the Social Security Act.

04=Disregarded from the work participation rate based on an inconsistency under an approved welfare reform waiver that exempts the family from participation.

05=Disregarded from participation rate, based on participation in a Tribal Work Program, and State has opted to exclude all Tribal Work Program participants from its work participation rate.

06=Exempt, single custodial parent with child under age 6 and child care available.

07=Exempt, disabled (not using an extended definition under a State waiver).

08=Exempt, caring for a severely disabled child (not using an extended definition under a State waiver).

09=Exempt, under a federally recognized good cause domestic violence waiver.

10=Exempt, State waiver.

11=Exempt, other.

12=Required to participate, but not participating; sanctioned for the reporting month and sanctioned for more than 3 months within the preceding 12-month period.

13=Required to participate, but not participating; sanctioned for the reporting month, but not sanctioned for more than 3 months within the preceding 12-month period.

14=Required to participate, but not participating; and not sanctioned for the reporting month.

15=Deemed engaged in work—single teen head-of-household or married teen who maintains satisfactory school attendance.

16=Deemed engaged in work—single teen head-of-household or married teen who participates in education directly related to employment for an average of at least 20 hours per week during the reporting month.

17=Deemed engaged in work—parent or relative (who is the only parent or caretaker relative in the family) with child under age 6 and parent engaged in work activities for at least 20 hours per week.

18=Required to participate and participating, but not meeting minimum participation requirements.

19=Required to participate and meeting minimum participation requirements.

99=Not applicable (e.g., person living in household and whose income or resources are counted in determining eligibility for or amount of assistance of the family receiving assistance, but not in eligible family receiving assistance or noncustodial parent that the State opted to exclude in determining participation rate).

Adult Work Participation Activities

Guidance: To calculate the average number of hours per week of participation in a work activity, add the number of hours of participation across all weeks in the month and divide by the number of weeks in the month. Round to the nearest whole number.

Some weeks have days in more than one month. Include such a week in the calculation for the month that contains the most days of the week (e.g., the week of July 27—August 2, 1997 would be included in the July calculation). Acceptable alternatives to this approach must account for all weeks in the fiscal year. One acceptable alternative is to include the week in the calculation for the month in which the Friday falls (i.e., the JOBS approach). A second acceptable alternative is to count each month as having 4.33 weeks.

During the first or last month of any spell of assistance, a family may happen to receive assistance for only part of the month. If a family receives assistance for only part of a

month, the State (Tribe) may count it as a month of participation if an adult (or minor child head-of-household) in the family (both adults, if they are both required to work) is engaged in work for the minimum average number of hours for the full week(s) that the family receives assistance in that month.

Instruction: For each work activity in which the adult (or minor child head-of-household) participated during the reporting month, enter the average number of hours per week of participation. For each work activity in which the adult (or minor child head-of-household) did not participate, enter zero as the average number of hours per week of participation. These work activity data elements are applicable only for individuals whose family affiliation code is 1.

42. *Unsubsidized Employment.*

43. *Subsidized Private-Sector Employment.*

44. *Subsidized Public-Sector Employment*

45. *Work Experience*

46. *On-the-job Training*

47. *Job Search and Job Readiness Assistance:*

Instruction: Do not count hours of participation in job search and job readiness training beyond the TANF limit where allowed by waivers in this item. Instead, count the hours of participation beyond the TANF limit in data element #54 "Additional Work Activities Permitted Under Waiver Demonstration." Otherwise, count the additional hours of work participation under data element #55 "Other Work Activities."

48. *Community Service Programs.*

49. *Vocational Educational Training:*

Instruction: Do not count hours of participation in vocational educational training beyond the TANF 12 month life-time limit where allowed by waivers in this item. Instead, count the hours of participation beyond the TANF limit in data element #54 "Additional Work Activities Permitted Under Waiver Demonstration." Otherwise, count the additional hours of work participation under data element #55 "Other Work Activities."

50. *Job Skills Training Directly Related to Employment.*

51. *Education Directly Related to Employment for Individuals with no High School Diploma or Certificate of High School Equivalency.*

52. *Satisfactory School Attendance for Individuals with No High School Diploma or Certificate of High School Equivalency.*

53. *Providing Child Care Services to an Individual who is Participating in a Community Service Program.*

54. *Additional Work Activities Permitted Under Waiver Demonstration:*

Instruction: Some States' waivers permit participation in work activities that are not permitted under the statute. Enter the adult's (or minor child head-of-household's) average number of hours per week of participation in such work activities in this data element. For example, some State waivers permit participation in vocational educational training and job search beyond the TANF statutory limits. Count hours of participation in these activities beyond the TANF limits where allowed by the State waivers in this item. Otherwise, count the addditional hours of participation in the activity "Other Work Activities."

55. *Other Work Activities.* This data element collects information on work activities provided that are not permitted under a State waiver and are beyond the requirements of the statute.

56. *Required Hours of Work Under Waiver Demonstration:*

Guidance: In approving waivers, ACF specified hours of participation in several instances. One type of hour change in the welfare reform demonstrations was the recognition, as part of a change in work activities and/or exemptions, that the hours individuals worked should be consistent with their abilities and in compliance with an employability or personal responsibility plan or other criteria in accordance to waiver terms and conditions. If the hour requirement in this case was part of a specific work component waiver, the State could show inconsistency and could use the waiver hours instead of the hours in section 407.

Instruction: If applicable, enter the two-digit number that represents the average number of hours per week of work participation required of the individual under a work component waiver. Otherwise, leave blank or enter "0." This data element is not applicable for individuals whose family affiliation code is 2, 3, 4, or 5.

57. *Amount of Earned Income:* Enter the dollar amount of the adult's (or minor child head-of-household's) earned income for the reporting month or for the month used to budget for the reporting month.

58. *Amount of Unearned Income:* Unearned income has five categories. For each category of unearned income, enter the dollar amount of the adult's (or minor child head-of-household's) unearned income.

a. *Earned Income Tax Credit (EITC):*

Guidance: Earned Income Tax Credit is a refundable tax credit for families and dependent children. EITC payments are received monthly (as advance payment through the employer), annually (as a refund from IRS), or both.

Instruction: Enter the total dollar amount of the Earned Income Tax Credit actually received, whether received as an advance payment or a single payment (e.g., tax refund), by the adult (or minor child head-of-household) during the reporting month or the month used to budget for the reporting month. If the State counts the EITC as a resource, report it here as unearned income in the month received (i.e., the reporting month or budget month). If the State assumes an advance payment is applied for and obtained, only report what is actually received for this item.

b. *Social Security:* Enter the dollar amount of Social Security benefits that the adult in the SSP–MOE family has received for the reporting month or for the month used to budget for the reporting month.

c. *SSI:* Enter the dollar amount of SSI benefits that the adult in the SSP–MOE family has received for the reporting month or for the month used to budget for the reporting month.

d. *Worker's Compensation:* Enter the dollar amount of Worker's Compensation that the adult in the SSP–MOE family has received for the reporting month or for the month used to budget for the reporting month.

e. *Other Unearned Income:*

Guidance: Other unearned income includes RSDI benefits, Veterans benefits, Unemployment Compensation, other government benefits, housing subsidy, contribution/income-in-kind, deemed income, Public Assistance or General Assistance, educational grants/scholarships/loans, other. Do not include EITC, Social Security, SSI, Worker's Compensation, value of food stamp assistance, the amount of the Child Care subsidy, and the amount of Child Support.

Instruction: Enter the dollar amount of other unearned income that the adult in the SSP–MOE family has received for the reporting month or for the month used to budget for the reporting month.

Child Characteristics

This section allows for coding the child characteristics for up to ten children in the SSP–MOE family. A minor child head-of-household should be coded as an adult, not as a child. The youngest child should be coded as the first child in the family, the second youngest child as the second child, and so on.

If there are more than ten children in the SSP–MOE family, use the following order to identify the persons to be coded: (1) Children in the eligible family receiving assistance in order from youngest to oldest; (2) minor siblings of child in the eligible family receiving assistance from youngest to oldest; and (3) any other children.

59. *Family Affiliation:*

Guidance: This data element is used both for (1) the adult or minor child head-of-household section and (2) the minor child section. The same coding schemes are used in both sections. Some of these codes may not be applicable for children.

Instruction: Enter the one-digit code that shows the child's relation to the eligible family receiving assistance.

1=Member of the eligible family receiving assistance.

Not in eligible family receiving assistance, but in the household:

2=Parent of minor child in the eligible family receiving assistance.

3=Caretaker relative of minor child in the eligible family receiving assistance.

4=Minor sibling of child in the eligible family receiving assistance.

5=Person whose income is considered in determining eligibility for and amount of assistance for the eligible family receiving assistance.

60. *Date of Birth:* Enter the eight-digit code for date of birth for this child under the separate State programs in the format YYYYMMDD. If the child's date of birth is unknown and the family affiliation code is not "1," enter the code "99999999".

61. *Social Security Number:* Enter the nine-digit Social Security Number for the child in the format nnnnnnnnn. If the child's social security number is unknown and the family affiliation code is not "1," enter the 9-digit code "999999999". Reporting of this data element is optional for individuals whose family affiliation code is 4.

62. *Race/Ethnicity:*

Instruction: To allow for the multiplicity of race/ethnicity, please enter the one-digit code

for each category of race and ethnicity of the child. Reporting of this data element is optional for individuals whose family affiliation code is 4.

Ethnicity:

a. Hispanic or Latino:

1=Yes, Hispanic or Latino.

2=No.

Race:

b. American Indian or Alaska Native:

1=Yes, American Indian or Alaska Native.

2=No.

c. Asian:

1=Yes, Asian.

2=No.

d. Black or African American:

1=Yes, Black or African American.

2=No.

e. Native Hawaiian or Other Pacific Islander:

1=Yes, Native Hawaiian or Pacific Islander.

2=No.

f. White:

1=Yes, White.

2=No.

63. *Gender:* Enter the one-digit code that indicates the child's gender.

1=Male.

2=Female.

64. *Receives Disability Benefits:* The Act specifies five types of disability benefits. Two of these types of disability benefits are applicable to children. For each type of disability benefits, enter the one-digit code that indicates whether or not the child received the benefit.

a. *Receives Benefits Based on Federal Disability Status Under Non-Social Security Act Programs:* These programs include Veteran's disability benefits, Worker's disability compensation, and Black Lung Disease disability benefits.

1=Yes, received benefits based on Federal disability status.

2=No.

b. *Receives Supplemental Security Income Under Title XVI–SSI of the Social Security Act:*

1=Yes, received aid under Title XVI–SSI.

2=No.

65. *Relationship to Head-of-Household:*

Guidance: This data element is used both for (1) the adult or minor child head-of-household section and (2) the minor child section. The same coding schemes are used in both sections. Some of these codes may not be applicable for children.

Instruction: Enter the two-digit code that shows the child's relationship (including by marriage) to the head of the household, as defined by the Food Stamp Program or, principal person of each person living in the household.

01=Head-of-household.

02=Spouse.

03=Parent.

04=Daughter or son (Natural or adoptive).

05=Stepdaughter or stepson.

06=Grandchild or great grandchild.

07=Other related person (brother, niece, cousin).

08=Foster child.

09=Unrelated child.

10=Unrelated adult.

66. *Parent With Minor Child In the Family:*

Guidance: This data element is used both for (1) the adult or minor child head-of-household section and (2) the minor child section. The same coding schemes are used in both sections. Code "1" is not applicable for children. A parent with a minor child in the family may be a natural parent, adoptive parent, or step-parent of a minor child in the family. Reporting of this data element is optional for individuals whose family affiliation code is 4 or 5.

Instruction: Enter the one-digit code that indicates the child's parental status.

1=Yes, a parent with a minor child in the family and used in two-parent participation rate.

2=Yes, a parent with a minor child in the family, but not used in two-parent participation rate.

3=No.

67. *Educational Level:* Enter the two-digit code to indicate the highest level of education attained by the child. Unknown is not an acceptable code for an individual whose family affiliation code is "1". Reporting of this data element is optional for individuals whose family affiliation code is 4.

01–11=Grade level completed in primary/secondary school including secondary level vocational school or adult high school.

12=High school diploma, GED, or National External Diploma Program.

13=Awarded Associate's Degree.

14=Awarded Bachelor's Degree.

15=Awarded graduate degree (Master's or higher).

16=Other credentials (degree, certificate, diploma, etc.).

98=No formal education.

99=Unknown.

68. *Citizenship/Alienage:*

Instruction: Enter the one-digit code that indicates the child citizenship/alienage. Unknown is not an acceptable code for an individual whose family affiliation code is "1". Reporting of this data element is optional for individuals whose family affiliation code is 4.

1=U.S. citizen, including naturalized citizens.

2=Qualified alien.

3=Non qualified alien.

9=Unknown.

69. *Amount of Unearned Income:* Unearned income has two categories. For each category of unearned income, enter the dollar amount of the child's unearned income for the reporting month or for the month used to budget for the reporting month.

a. *SSI:* Enter the dollar amount of SSI that the child in the SSP–MOE family has received for the reporting month or for the month used to budget for the reporting month.

b. *Other Unearned Income:* Enter the dollar amount of other unearned income that the child in the SSP–MOE family has received for the reporting month or for the month used to budget for the reporting month.

Appendix F—SSP MOE Data Report—Section Two—Disaggregated Data Collection for Families No Longer Receiving Assistance Under the Separate State Program(s)

Instructions and Definitions

General Instruction: The State agency should collect and report data for each data element. The data must be complete (unless explicitly instructed to leave the field blank) and accurate (i.e, correct).

An "Unknown" code may appear only on four data elements (#14 Date of Birth, #15 Social Security Number, #23 Educational Level, and #24 Citizenship/Alienage). For these data elements, unknown is not an acceptable code for individuals who are members of the eligible family (i.e., family affiliation code "1"). States are not expected to track closed cases in order to collect information on families for months after the family has left the rolls. Rather it is acceptable to report based on the last month of assistance.

1. *State FIPS Code:* Enter your two-digit State code from the following listing. These codes are the standard codes used by the National Institute of Standards and Technology.

State	Code
Alabama	01
Alaska	02
American Samoa	60
Arizona	04
Arkansas	05
California	06
Colorado	08
Connecticut	09
Delaware	10
Dist. of Columbia	11
Florida	12
Georgia	13
Guam	66
Hawaii	15
Idaho	16
Illinois	17
Indiana	18
Iowa	19
Kansas	20
Kentucky	21
Louisiana	22
Maine	23
Maryland	24
Massachusetts	25
Michigan	26
Minnesota	27
Mississippi	28
Missouri	29
Montana	30
Nebraska	31
Nevada	32
New Hampshire	33
New Jersey	34
New Mexico	35
New York	36
North Carolina	37
North Dakota	38
Ohio	39
Oklahoma	40
Oregon	41
Pennsylvania	42
Puerto Rico	72
Rhode Island	44
South Carolina	45

State	Code
South Dakota	46
Tennessee	47
Texas	48
Utah	49
Vermont	50
Virgin Islands	78
Virginia	51
Washington	53
West Virginia	54
Wisconsin	55
Wyoming	56

2. *County FIPS Code:* Enter the three-digit code established by the National Institute of Standards and Technology for classification of counties and county equivalents. Codes were devised by listing counties alphabetically and assigning sequentially odd integers; e.g., 001, 003, 005. A complete list of codes is available in Appendix F of the TANF Sampling and Statistical Methods Manual.

3. *Reporting Month:* Enter the four-digit year and two-digit month code that identifies the year and month for which the data are being reported.

4. *Stratum:*

Guidance: All families that receive assistance under separate State Programs (i.e, SSP–MOE families) and are selected in the sample from the same stratum must be assigned the same stratum code. Valid stratum codes may range from "00" to "99." States with stratified samples should provide the ACF Regional Office with a listing of the numeric codes utilized to identify any stratification. If a State opts to provide data for its entire caseload, enter the same stratum code (any two-digit number) for each SSP–MOE family.

Instruction: Enter the two-digit stratum code.

Family-Level Data

Definition: For reporting purposes, the SSP–MOE family means (a) all individuals receiving assistance as part of a family under the separate State program; and (b) the following additional persons living in the household, if not included under (a) above:

(1) Parent(s) or caretaker relative(s) of any minor child receiving assistance;

(2) Minor siblings (including unborn children) of any child receiving assistance; and

(3) Any person whose income or resources would be counted in determining the family's eligibility for or amount of assistance.

5. *Case Number:*

Guidance: If the case number is less than the allowable eleven characters, a State may use lead zeros to fill in the number.

Instruction: Enter the number that was assigned by the State agency to uniquely identify the SSP–MOE family.

6. *ZIP Code:* Enter the five-digit ZIP code for the family's place of residence for the reporting month.

7. *Disposition:* Enter one of the following codes for each SSP–MOE family.

1=Data collection completed.

2=Not subject to data collection/listed in error.

8. *Reason for Closure:*

Guidance: A closed case is a family whose assistance was terminated for the reporting month, but received assistance under the State's MOE Program in the prior month. A temporarily suspended case is not a closed case. If there is more than one applicable reason for closure, determine the principal (i.e., most relevant) reason. If two or more reasons are equally relevant, use the reason with the lowest numeric code. For example, when an adult marries, the income and resources of the new spouse are considered in determining eligibility. If, at the time of the marriage, the family becomes ineligible because of the addition of the spouse's income and/or resources, the case closure should be coded using code "2". If the family did not became ineligible based on the income and resources at the time of the marriage, but rather due to an increase in earnings subsequent to the marriage, then the case closure should be coded using code "1".

Instruction: Enter the two-digit code that indicates the reason for the SSP–MOE family no longer receiving assistance.

01=Employment and/or excess earnings.

02=Marriage.

03=Five-year time limit.

Sanctions:

04=Work related sanction.

05=Child support sanction.

06=Teen parent failing to meet school attendance requirement.

07=Teen parent failing to live in an adult setting.

08=Failure to meet individual responsibility plan provision or other behavioral requirements (e.g., immunize a minor child, attend parenting classes).

09=Failure to complete individual responsibility plan (e.g., did not sign plan).

State Policies:

10=State time limit, if different than five-year limit.

11=Child support collected.

12=Excess unearned income (exclusive of child support collected).

13=Excess resources.

14=Youngest child too old to qualify for assistance.

15=Minor child absent from the home for a significant time period.

16=Failure to appear at eligibility/redetermination appointment, submit required verification materials, and/or cooperate with eligibility requirements.

17=Transfer to State's TANF program.

Other:

18=Family voluntarily closes the case.

99=Other.

9. *Received Subsidized Housing:*

Guidance: Subsidized housing refers to housing for which money was paid by the Federal, State, or local government or through a private social service agency to the family or to the owner of the housing to assist the family in paying rent. Two families sharing living expenses does not constitute subsidized housing.

Instruction: Enter the one-digit code that indicates whether or not the SSP–MOE family received subsidized housing for the reporting month.

1=Public housing.

2=Rent subsidy.

3=No housing subsidy.

10. *Received Medical Assistance:* Enter "1" if, for the reporting month, any SSP–MOE family member was enrolled in Medicaid and, thus eligible to receive medical assistance under the State plan approved under Title XIX or "2" if no SSP–MOE family member was enrolled in Medicaid.

1=Yes, enrolled in Medicaid.

2=No.

11. *Received Food Stamps:* Enter the one-digit code that indicates whether or not the SSP–MOE family has received food stamp assistance.

1=Yes, received food stamp assistance.

2=No.

12. *Received Subsidized Child Care:*

Instruction: If the SSP–MOE family received subsidized child care for the reporting month (or for the last month of SSP–MOE assistance), enter code "1" or "2," whichever is appropriate. Otherwise, enter code "3."

1=Yes, receives child care funded (entirely or in part) with Federal funds (e.g., receives either TANF, CCDF, SSBG, or other federally funded child care).

2=Yes, received child care funded entirely under a State, Tribal, and/or local program (i.e., no Federal funds used).

3=No.

Person-Level Data

This section allows for coding up to sixteen persons in the SSP–MOE family. If there are more than sixteen persons in the SSP–MOE family, use the following order to identify the persons to be coded: (1) The head-of-household; (2) parents in the eligible family receiving assistance; (3) children in the eligible family receiving assistance; (4) other adults in the eligible family receiving assistance; (5) Parents not in the eligible family receiving assistance; (6) caretaker relatives not in the eligible family receiving assistance; (7) minor siblings of a child in the eligible family; and (8) other persons, whose income or resources count in determining eligibility for or amount of assistance of the eligible family receiving assistance, in descending order the person with the most income to the person with least income. As indicated below, reporting for certain specified data elements in this section is optional for certain individuals (whose family affiliation code is a 2, 3, 4 or 5).

13. *Family Affiliation:*

Instruction: Enter the one-digit code that shows the individual's relation to the eligible family receiving assistance.

1=Member of the eligible family receiving assistance.

Not in eligible family receiving assistance, but in the household:

2=Parent of minor child in the eligible family receiving assistance.

3=Caretaker relative of minor child in the eligible family receiving assistance.

4=Minor sibling of child in the eligible family receiving assistance.

5=Person whose income or resources are considered in determining eligibility for or amount of assistance for the eligible family receiving assistance.

14. *Date of Birth:* Enter the eight-digit code for date of birth for this individual under separate State programs in the format

YYYYMMDD. If the individual's date of birth is unknown and the family affiliation code is not "1," enter the code "99999999".

15. *Social Security Number:* Enter the nine-digit Social Security Number for the individual in the format nnnnnnnnn. If the social security number is unknown and the family affiliation code is not "1," enter "999999999".

16. Race/Ethnicity:

Instructions: To allow for the multiplicity of race/ethnicity, please enter the one-digit code for each category of race and ethnicity of the SSP–MOE individual. Reporting of this data element is optional for individuals whose family affiliation code is 4 or 5.

Ethnicity:

a. Hispanic or Latino:

1=Yes, Hispanic or Latino.

2=No.

Race:

b. American Indian or Alaska Native:

1=Yes, American Indian or Alaska Native.

2=No.

c. Asian:

1=Yes, Asian.

2=No.

d. Black or African American:

1=Yes, Black or African American.

2=No.

e. Native Hawaiian or Other Pacific Islander:

1=Yes, Native Hawaiian or Pacific Islander.

2=No.

f. White:

1=Yes, White.

2=No.

17. *Gender:* Enter the one-digit code that indicates the individual's gender.

1=Male.

2=Female.

18. *Received Disability Benefits:* The Act specifies five types of disability benefits. For each type of disability benefits, enter the one-digit code that indicates whether or not the individual received the benefit.

a. *Received Federal Disability Insurance Benefits Under the Social Security OASDI Program (Title II of the Social Security Act):* Enter the one-digit code that indicates the adult (or minor child head-of-household) received Federal disability insurance benefits for the reporting month (or the last month of TANF assistance). This item is not required to be coded for a child.

1=Yes, received Federal disability insurance.

2=No.

b. *Received Benefits Based on Federal Disability Status Under Non-Social Security Act Programs:* These programs include Veteran's disability benefits, Worker's disability compensation, and Black Lung Disease disability benefits. Enter the one-digit code that indicates the individual received benefits based on Federal disability status for the reporting month (or the last month of SSP–MOE assistance). This data element should be coded for each adult and child with family affiliation code "1".

1=Yes, received benefits based on Federal disability status.

2=No.

c. *Received Aid to the Permanently and Totally Disabled Under Title XIV–APDT of the Social Security Act:* Enter the one-digit code that indicates the individual received aid under a State plan approved under Title XIV for the reporting month (or the last month of SSP–MOE assistance). This item is not required to be coded for a child.

1=Yes, received aid under Title XIV–APDT.

2=No.

d. *Received Aid to the Aged, Blind, and Disabled Under Title XVI–AABD of the Social Security Act:* Enter the one-digit code that indicates the individual received aid under a State plan approved under Title XVI–AABD for the reporting month (or the last month of SSP–MOE assistance). This item is not required to be coded for a child.

1=Yes, received aid under Title XVI–AABD.

2=No.

e. *Received Supplemental Security Income Under Title XVI–SSI of the Social Security Act:* Enter the one-digit code that indicates the individual received aid under a State plan approved under Title XVI–SSI for the reporting month (or the last month of SSP–MOE assistance). This data element should be coded for each adult and child with family affiliation code "1".

1=Yes, received aid under Title XVI–SSI.

2=No.

19. *Marital Status:* Enter the one-digit code for the marital status of the adult (or minor child head-of-household). Leave this field blank for other minor children. Reporting of this data element is optional for individuals whose family affiliation code is 4 or 5.

1=Single, never married.

2=Married, living together.

3=Married, but separated.

4=Widowed.

5=Divorced.

20. *Relationship to Head-of-Household:*

Instruction: Enter the two-digit code that shows the individual's relationship (including by marriage) to the head of the household, as defined by the Food Stamp Program or, principal person of each person living in the household. If a minor child head-of-household, enter code "01."

01=Head-of-household.

02=Spouse.

03=Parent.

04=Daughter or son.

05=Stepdaughter or stepson.

06=Grandchild or great grandchild.

07=Other related person (brother, niece, cousin).

08=Foster child.

09=Unrelated child.

10=Unrelated adult.

21. *Parent With Minor Child In the Family:*

Guidance: A parent with a minor child in the family may be a natural parent, adoptive parent, or step-parent of a minor child in the family. Reporting of this data element is optional for individuals whose family affiliation code is 3, 4, or 5.

Instruction: Enter the one-digit code that indicates the individual's parental status.

1=Yes, a parent with a minor child in the family.

2=No.

22. *Needs of a Pregnant Woman:* Some States consider the needs of a pregnant woman in determining the amount of assistance that the SSP–MOE family receives. If the individual was pregnant and the needs associated with this pregnancy were considered in determining the amount of assistance for the last month of assistance, enter a "1" for this data element. Otherwise enter a "2" for this data element. This data element is applicable only for individuals whose family affiliation code is 1.

1=Yes, additional needs associated with pregnancy were considered in determining the amount of assistance.

2=No.

23. *Educational level:* Enter the two-digit code to indicate the educational level attained by the individual. Unknown is not an acceptable code for an individual whose family affiliation code is "1". Reporting of this data element is optional for individuals whose family affiliation code is 4 or 5.

01–11=Grade level completed in primary/secondary school including secondary level vocational school or adult high school.

12=High school diploma, GED, or National External Diploma Program.

13=Awarded Associate's Degree.

14=Awarded Bachelor's Degree.

15=Awarded graduate degree (Master's or higher).

16=Other credentials (degree, certificate, diploma, etc.).

98=No formal education.

99=Unknown.

24. *Citizenship/Alienage:*

Instruction: Enter the one-digit code that indicates the individual's citizenship/alienage. Unknown is not an acceptable code for an individual whose family affiliation code is "1". Reporting of this data element is optional for individuals whose family is optional for individuals whose family affiliation code is 4 or 5.

1=U.S. citizen, including naturalized citizens.

2=Qualified alien.

3=Non qualified alien.

9=Unknown.

25. *Employment Status:* Enter the one-digit code that indicates the adult's (or minor child head-of-household's) employment status. Leave this field blank for other minor children. Reporting of this data element is optional for individuals whose family affiliation code is 2, 3, 4, or 5.

1=Employed.

2=Unemployed, looking for work.

3=Not in labor force (i.e, unemployed, not looking for work, includes discouraged workers).

26. *Amount of Earned Income:* Enter the amount of the adult's (or minor child head-of-household's) earned income for the last month on SSP–MOE assistance or for the month used to budget for the last month on assistance. Leave these fields blank for other minor children (i.e., children whose family affiliation code is 4).

27. *Amount of Unearned Income:* Enter the amount of the individual's unearned income for the last month on SSP–MOE assistance or for the month used to budget for the last month on assistance. Leave these fields blank for other minor children (i.e., children whose family affiliation code is 4).

Appendix G—SSP–MOE Data Report—Section Three—Aggregated Data Collection for Families Receiving Assistance Under the Separate State Program(s)

Instructions and Definitions

General Instruction: The State agency must collect and report data for each data element, unless explicitly instructed to leave the field blank. Monthly caseload counts (e.g., number of families, number of two-parent families, and number of closed cases) and number of recipients must be unduplicated monthly totals. States may use samples to estimate the monthly totals if explicitly stated in the instruction for the data element.

1. *State FIPS Code:* Enter your two-digit State code.

2. *Calendar Quarter:* The four calendar quarters are as follows:

First quarter—January–March.
Second quarter—April–June.
Third quarter—July–September.
Fourth quarter—October–December.

Enter the four-digit year and one-digit quarter code (in the format YYYYQ) that identifies the calendar year and quarter for which the data are being reported (e.g., first quarter of 1997 is entered as "19971").

Active Cases

For purposes of completing this report, include all eligible families receiving assistance under the separate State programs, i.e., SSP–MOE families. All counts of families and recipients should be unduplicated monthly totals.

3. *Total Number of SSP–MOE Families:* Enter the number of families receiving assistance under the separate State programs for each month of the quarter. The total in this item should equal the sum of the number of two-parent families (in item #4), the number of one-parent families (in item #5) and the number of no-parent families (in item #6).

A. *First Month:*
B. *Second Month:*
C. *Third Month:*

4. *Total Number of Two-parent Families:* Enter the total number of two-parent families receiving assistance under the separate State programs for each month of the quarter.

A. *First Month:*
B. *Second Month:*
C. *Third Month:*

5. *Total Number of One-Parent Families:* Enter the total number of one-parent families receiving assistance under the separate State programs for each month of the quarter.

A. *First Month:*
B. *Second Month:*
C. *Third Month:*

6. *Total Number of No-Parent Families:* Enter the total number of no-parent families receiving assistance under the separate State programs for each month of the quarter.

A. *First Month:*
B. *Second Month:*
C. *Third Month:*

7. *Total Number of Recipients:* Enter the total number of recipients receiving assistance under the separate State programs for each month of the quarter. The total in this item should equal the sum of the number of adult recipients (in item #8) and the number of child recipients (in item #9).

A. *First Month:*
B. *Second Month:*
C. *Third Month:*

8. *Total Number of Adult Recipients:* Enter the total number of adult recipients receiving assistance under the separate State programs for each month of the quarter.

A. *First Month:*
B. *Second Month:*
C. *Third Month:*

9. *Total Number of Child Recipients:* Enter the total number of child recipients receiving assistance under the separate State programs for each month of the quarter.

A. *First Month:*
B. *Second Month:*
C. *Third Month:*

10. *Total Number of Non-Custodial Parents Participating in Work Activities:* Enter the total number of non-custodial parents participating in work activities under the separate State programs for each month of the quarter. The monthly totals for this element may be estimated from samples.

A. *First Month:*
B. *Second Month:*
C. *Third Month:*

11. *Total Amount of Assistance:* Enter the dollar value of all SSP–MOE assistance (cash and non-cash) provided to families under the separate State programs for each month of the quarter. Round the amount of assistance to the nearest dollar.

A. *First Month:*
B. *Second Month:*
C. *Third Month:*

Closed Cases

12. *Total Number of Closed Cases:* Enter the total number of closed cases for each month of the quarter.

A. *First Month:*
B. *Second Month:*
C. *Third Month:*

Appendix H.—Caseload Reduction Report

[State_____ Fiscal Year _____]

Part I—Implementation of All Eligibility Changes Made by the State Since FY 1995

#	Eligibility change	Implementation date	Estimated impact on caseload since change (positive or negative)
Changes Required by Federal Law			
State-Implemented Changes			
Changes Related to Income and Resources:			
Changes Related to Categorical or Demographic Eligibility Factors:			
Changes Related to Behavioral Requirements			

APPENDIX H.—CASELOAD REDUCTION REPORT—Continued

[State_____ Fiscal Year _____]

Part I—Implementation of All Eligibility Changes Made by the State Since FY 1995

#	Eligibility change	Implementation date	Estimated impact on caseload since change (positive or negative)
Changes Due to Full-Family Sanctions:			
Other Eligibility Changes:			
Estimated Total Net Impact on the Caseload of All Eligibility Changes			
Total Prior-Year Caseload			
Estimated Caseload Reduction Credit			

Part II—Application Denials and Case Closures, by Reason

	Fiscal year 1995		Fiscal year ____	
	Number	Percentage	Number	Percentage
Reason for Application Denials:				
Total Application Denials				
Reason for Case Closures:				
Total Case Closures				

APPENDIX H.—CASELOAD REDUCTION REPORT

State _____ Fiscal Year_____

Part III—description of the methodology used to calculate the caseload reduction estimates (attach any supporting data to this form)

Appendix H—Caseload Reduction Report

State _____ Fiscal Year _____

Part IV—Certification

I certify that we have provided the public an appropriate opportunity to comment on the estimates and methodology used to complete this report and considered those comments in completing it. Further, I certify that this report incorporates all reductions in the caseload resulting from State eligibility changes and changes in Federal requirements since Fiscal Year 1995.

(signature)

(name)

(title)

Instructions for Completing Form ACF–202, Caseload Reduction Report

All States wishing to receive a caseload reduction credit must complete and submit this report on behalf of the State agency administering the TANF program in accordance with these instructions.

Due Date

This report must be submitted by December 31 of each year.

Submission

Submit the original to the ACF Regional Administrator. Submit a copy to: Administration for Children and Families, Office of Family Assistance, 5th Floor East, 370 L'Enfant Promenade, SW, Washington, DC 20447.

General Instructions

Form ACF–202 consists of a series of tables, a narrative description, and a certification page. If you are completing this report electronically, you may need to add rows to some of the tables to accommodate all the information you need to enter. If a section of a table is not applicable, specify "none" or "not applicable," as appropriate in the first line.

Appendix H—Caseload Reduction Report

We have designed Form ACF–202 so that you can complete it electronically or manually, but we do not currently have the capacity to accept electronic submissions of the report.

Each State must submit a summary of all public comments on the State's estimates and methodology as part of its Caseload Reduction Report. Please be advised that there is nothing on form ACF–202 for the State to complete for this requirement, but the instructions for "Attachments" direct the State to include the summary of comments.

Please remember that the caseload reduction credit is based on changes both in the State's TANF caseload and in any separate State program caseloads; therefore you should be sure that the figures in this report reflect separate State program information as well as TANF information.

If you have opted to use separate reduction credits for your State's overall and two-parent participation rates, you must submit separate reports for the overall and two-parent caseloads. Please indicate at the top of each page and each attachment to which caseload the report pertains.

• Enter the name of the State and the current fiscal year in the space provided at the top of each page. If you are completing the report electronically, you will only need to enter this information once for each table and the once for the certification page.

Instructions for Completing Part I

• Enter each eligibility change the State has made since FY 1995 in the appropriate category (e.g., "Changes related to Income and Resources"), numbering each change for easy reference. For convenience, we have separated Federal changes from State-implemented ones and listed some common State eligibility changes; however, you should be sure to include *each* change, whether Federal or State in origin, on a separate line. If you are completing this report electronically, you may need to add one or more rows to the table in order to list all of your State's eligibility changes in the various categories. If you are completing it manually, you may need to attach additional pages instead.

Please note that you need not list any changes the State has implemented since October 1 of the current fiscal year, since this report applies to caseload reductions in the prior fiscal year.

You should not consider the creation of a separate State program as an eligibility change, since separate State program caseloads must be included in calculating the caseload reduction credit, as we indicated above.

• For each eligibility change, enter the implementation date and your estimate of the impact the change has had on the caseload since its implementation. For example, if a particular eligibility change had the effect of reducing the caseload by 5,000 cases, you should enter, "–5,000." It is important that your estimate account for the cumulative impact of each change on the caseload since 1995, not simply the impact in the year that the State implemented the change.

Please note that an eligibility change may have a positive or negative effect on the caseload. If the effect was negative, include a minus sign in front of the number. If the effect was positive, include a plus sign in front of the number.

• Enter the total estimated impact of all the eligibility changes you listed. In making this estimate, you should be sure that you have not counted case impacts more than once, even if they could be included under more than one eligibility change. Thus, the total impact may not equal the sum of all the individual impacts because of interaction among eligibility changes. In such cases, Part III of the report (the methodology section) should address any discrepancies.

• Enter the total caseload for the prior year, including separate State program cases. You may use the combined total number of families reported in the TANF Data Report and the SSP–MOE Data Report (in section three of each report) for the prior year. If the total prior-year caseload reflects adjustments you have made in accordance with § 261.40 to improve the comparability of FY 1995 and prior-year caseloads, please attach an explanation of your adjustments.

• Enter the State's estimated caseload reduction credit. In arriving at this number, you should subtract your estimated net reduction in caseload due to eligibility changes from the total caseload decline between FY 1995 and the prior year and divide the resulting number by the total prior-year caseload. For example, if the net result of the eligibility changes is that the State's caseload in the prior year decreased by 2,000 from the FY 1995 level, then you should subtract 2,000 from the total caseload decline between FY 1995 and the prior fiscal year. If there is a net increase in caseload due to eligibility changes, you should not subtract anything from the caseload decline between FY 1995 and the prior year.

Instructions for Completing Part II

• Enter the prior fiscal year in the heading of the column that follows "Fiscal Year 1995." For example, if this is the State's FY 2000 report (due by December 31, 1999), then the column heading should read "Fiscal Year 1999."

• Enter each reason for application denial, the number of denials for each such reason for the applicable fiscal year, and the percentage that the number represents of total denials for the fiscal year.

• Enter the total number of application denials for the applicable fiscal year. The total percentages for each year should equal 100.

• Enter the same information for each case closure reason, i.e., the reason for case closures, the number of closures for that reason, and the percentage that the number represents of total case closures.

• Enter the total number of case closures for the applicable fiscal year. The total percentages for each year should equal 100.

Instructions for Completing Part III

• Describe in detail how you arrived at the estimated impacts on the caseload of the various eligibility changes and how you arrived at the estimated caseload reduction credit.

• If there were changes in the number or distribution of application denials or case closures since FY 1995 that do not appear to be consistent with the information listed in Part II of the report, include a discussion explaining the inconsistencies.

• Attach any information that documents the State's estimates.

Instructions for Completing Part IV

• Enter the name and title of the individual making the certification on behalf of the State.

• Sign the certification. Although you may complete the form electronically, you must submit this page with the original signature to the ACF Regional Administrator and a copy to the Office of Family Assistance, as indicated above.

Attachments

• Attach a summary of all public comments on the State's estimates and methodology.

• Be sure that all attachments include the name of the State and the current fiscal year and indicate that they are attachments to Form ACF–202.

Appendix I

Annual Report on State Maintenance-of-Effort Programs: ACF–204

State _____Fiscal Year ____Date Submitted _____

Complete this form for each program for which the State claims MOE expenditures.

1. Program Name:

2. Description of Major Program Activities:
3. Program Purpose(s):
4. Program Type. Program is: under the TANF program __ is a separate State/local program __
5. Description of Work Activities (Complete only if this is a separate State/local program):
6. Total State Expenditures for Program: _____
7. Total State MOE Expenditures: _____
8. Number of Families Served with MOE Funds: _____
This figure represents: the average monthly total ____ total for the year ____
9. Eligibility Criteria:
10. Prior Program Authorization:
Was this program authorized and allowable under prior law? Yes____ No ____
11. Total Program Expenditures in FY 1995. _____
This certifies that all families for which the State claims MOE expenditures for the fiscal year meet the State's criteria for "eligible families."

Signature: _____

Name: _____

Title: _____

Approved OMB No. xxxx-xxxx Form ACF–204

Instruction for Completion of Form ACF–204 Annual Report on State Maintenance-of-Effort Programs

All States must complete and submit this report in accordance with these instructions and the requirements at 45 CFR 265.9(c) on behalf of the State agency administering the TANF Program.

Due Dates: This form must be submitted by November 14.

States must submit this report for each fiscal year. Also, each State must complete a form for each program for which the State has claimed MOE expenditures for the fiscal year.

Distribution: The original copy (with original signatures) should be submitted to: Administration for Children and Families, Office of Family Assistance, Aerospace Building, 5th Floor, 370 L'Enfant Promenade, S.W., Washington, D.C. 20447. An additional copy should be submitted to the ACF Regional Administrator.

General Instructions

—Round all dollar amounts to the nearest dollar. Omit cents.
—Enter State Name.
—Enter the Fiscal Year for which this report is being submitted. Enter the date that the report is being submitted.

Line Item Instructions

Line 1. Program name. Enter the name of the program.

Line 2. Description of major activities. Describe the major activities and major types of benefits and services provided under the program.

Line 3. Program purpose. Provide the purpose(s) of the program and relate this purpose to the statutory and regulatory TANF purposes (at 45 CFR 260.20).

Line 4. Program type. Put an "X" on the appropriate line (indicating whether the MOE expenditures are being made under the TANF program or under a separate State program.

Line 5. Work program description. If the program is a separate State program, describe the work activities (if any) provided for eligible families and the extent to which eligible families are subject to work requirements. If the work activities are the same as the TANF activities, or a subset of the TANF activities, you may include a list of the activities and a cross-reference to the definitions provide in the annual report rather than representing them. (It is not necessary to describe work activities provided under TANF because that information is provided elsewhere.) Also include information explaining whether individuals served by the program must participate in work activities and describing the extent to which such requirements apply (e.g., to which categories of recipients).

Line 6. Total amount of State expenditures. Enter the total dollar amount of State expenditures in the program during the Federal fiscal year.

Line 7. Total State MOE expenditures. Enter the total dollar amount of expenditures reported in item 6 that are reported as State MOE expenditures.

Line 8. Number of families served with MOE funds. Enter the number of eligible families that are receiving assistance and other forms of services and supports under the program. Also, put an "X" on the appropriate line to indicate whether the number being provided is a report on the average monthly number of families being served or on the total number served over the course of the fiscal year.

Line 9. Eligibility criteria. Provide the eligibility criteria for families served under this program. If the eligibility criteria differ for different kinds of program benefits or activities, specify the eligibility criteria for all the major benefits and activities.

Line 10. Prior authorization. Put an "X" on the appropriate line to indicate whether the program was authorized and allowable under prior law. Programs that were previously authorized and allowable under prior law (i.e., under an approved State IV–A plan in effect either on Sept. 30, 1995, or August 21, 1996, at State option) are not subject to the "new spending" test.

Line 11. Total program expenditures in 1995. If the program was not previously authorized and allowable (i.e., if the answer on item #10 is "No"), enter the total expenditures for the program in 1995. Only qualified State expenditures above this level may count towards the State MOE total.

Certification. The certification must be signed by an authorized official. Under the signature line, type the title of the authorized official, together with the agency name.

[FR Doc. 99–8000 Filed 4–9–99; 8:45 am]

BILLING CODE 4184–01–P

UMI

VOL
64

ISS
69

AP
12

1999

UMI

federal register

Monday
April 12, 1999

Part III

Department of Transportation

Federal Aviation Administration

14 CFR Part 71

Establishment of the Cincinnati/Northern Kentucky International Airport Class B Airspace Area, and Revocation of the Cincinnati/Northern Kentucky International Airport Class C Airspace Area; KY; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 93–AWA–5]

RIN 2120–AE97

Establishment of the Cincinnati/Northern Kentucky International Airport Class B Airspace Area, and Revocation of the Cincinnati/Northern Kentucky International Airport Class C Airspace Area; KY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; confirmation of effective date.

SUMMARY: On December 14, 1998, the FAA issued a rule that delayed the effective date of a rule establishing the Cincinnati/Northern Kentucky International Airport Class B airspace area, and revoking the Cincinnati/Northern Kentucky International Airport Class C airspace area. The establishment and revocation of these airspace areas was originally scheduled for implementation on December 31, 1998. However, the FAA delayed the effective date of the airspace action, to conduct an administrative airspace review of the Cincinnati/Northern Kentucky International Airport terminal area. The FAA completed the administrative review and this action confirms the effective date for establishment and revocation of these airspace areas.

EFFECTIVE DATES: The final rule published in the **Federal Register** on November 30, 1998 (63 FR 65972), and delayed on December 14, 1998 (63 FR 68675), is effective 0901 UTC, July 15, 1999.

FOR FURTHER INFORMATION CONTACT: Sheri Edgett Baron, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Regulatory History

Pre-Notice of Proposed Rulemaking. Public Input

In 1992 the FAA began the public process of briefing those affected by proposed airspace changes for the Cincinnati/Northern Kentucky International Airport. As announced in the **Federal Register** (57 FR 32835; July 23, 1992) informal airspace meetings were held on September 3 and 4, 1992, in the Ohio and Kentucky area. Owners and managers of the local general aviation airports, members of the aviation industry, fixed-base operators, and concerned airspace users provided input. An Ad Hoc User Group Advisory Committee, established by the FAA and composed of local aviation users, submitted seven recommendations and a Class B airspace design proposal. All comments received during the informal airspace meetings and the subsequent comment period were considered and/or incorporated in the notice of proposed rulemaking.

Notice of Proposed Rulemaking (NPRM)

On February 10, 1998, the FAA published a NPRM in the **Federal Register** (63 FR 6818) proposing to establish a Class B airspace area and revoke the existing Class C airspace area at CVG. The 60-day comment period for this proposed rulemaking action closed on April 13, 1998. However, the FAA received two petitions to extend the comment period and reopened the comment period on May 15, 1998, for an additional 60 days (63 FR 27160). The supplemental comment period closed on July 14, 1998. The FAA received 36 comments in response to this NPRM and they were addressed in the final rule.

Final Rule

On November 30, 1998, the FAA published a final rule in the **Federal Register** (63 FR 65972) establishing a Class B airspace area and revoking the Class C airspace area for CVG. The CVG Class B airspace area consists of an area encompassing a 25-mile radius of CVG from the surface or higher up to and including 8,000 feet above mean sea level. The FAA took this action to enhance safety, reduce the potential for midair collisions, and to improve the management of air traffic operations in the Cincinnati/Northern Kentucky area. The effective date of the rule was December 31, 1998.

Delay of Final Rule Implementation Date

On December 14, 1998, the FAA issued a rule (63 FR 68675) that delayed the effective date of the rule establishing the CVG Class B airspace area, and revoking the Class C airspace area.

After issuance of the final, but prior to the December 31, 1998, effective date, the FAA delayed the implementation date to evaluate whether this airspace action continued to be necessary to enhance the safety of air navigation, and whether there was new information that should have been considered prior to promulgating the final rule. The rule delaying the effective date was effective immediately to allow the FAA sufficient time to conduct an administrative airspace review.

Administrative Airspace Review

The FAA conducted a review of the rule that established the Cincinnati/Northern Kentucky International Airport Class B Airspace Area, and revoked the Cincinnati/Northern Kentucky International Airport Class C Airspace Area; KY. The FAA revalidated the data and analysis used in formulating the airspace action. The FAA also reviewed the need for and configuration of the CVG Class B airspace area; the simulation modeling of the airspace area and analysis of air traffic in the Cincinnati terminal airspace area; and the analysis of comments received after the final rule establishing the Class B airspace area had been issued. It also considered whether there were any new issues not previously addressed in the NPRM or final rule.

The results of the administrative airspace review confirm the FAA findings in the final rule. Many of the post final rule comments repeated those previously received in response to the NPRM, and addressed by the FAA in the final rule.

Those commenting did not provide the FAA with any new information that would cause the FAA to change its determination concerning the need for the CVG Class B airspace area and its published configuration. The review also indicated that the level of current aircraft operations in the terminal area support establishment of the Cincinnati/Northern Kentucky International Airport Class B airspace area, and revocation of the Class C airspace area as published. The review found that the published design is the minimum airspace required to protect enplaned passengers and manage aircraft operations into, out of, and through the Cincinnati terminal airspace area.

A copy of the Administrative Airspace Review has been placed in the official docket for this airspace effort. The official docket may be examined in the Office of the Chief Counsel, Room 915G, weekdays, between 8:30 a.m. and 5:00 p.m., except on Federal holidays.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation (1) is not a significant regulatory action under Executive Order 12866; (2) is not a "significant rule" under DOT

Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Effective Date

The effective date of Airspace Docket 93–AWA–5, as published in the **Federal Register** on November 30, 1998 (63 FR 65972), is 0901 UTC, July 15, 1999. This effective date coincides with the scheduled publication date for the appropriate aeronautical chart for this area. Except for the change in the effective date, the preamble and final rule establishing the CVG Class B airspace area, and revoking the CVG Class C airspace area, as published in the **Federal Register** on November 30, 1998 (63 FR 65972), remains the same.

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

* * * * *

Issued in Washington, DC, on April 7, 1999.

Nancy B. Kalinowski,

Acting Program Director for Air Traffic Airspace Management.

[FR Doc. 99–9019 Filed 4-7-99; 12:53 pm]

BILLING CODE 4910–13–P

VOL
64
ISS
69
AP
12
1999
UMI

federal register

Monday
April 12, 1999

Part IV

The President

Proclamation 7180—National D.A.R.E. Day, 1999

VOL
64
ISS
69
AP
12
1999
UMI

Federal
Vol. 64
Monday

Title

The

Federal Register
Vol. 64, No. 69
Monday, April 12, 1999

Presidential Documents

Title 3—

The President

Proclamation 7180 of April 8, 1999

National D.A.R.E. Day, 1999

By the President of the United States of America

A Proclamation

The Drug Abuse Resistance Education (D.A.R.E.) program, founded in 1983 by the Los Angeles Police Department and the Los Angeles Unified School District, helps children across our Nation develop into the bright, talented, and healthy individuals they have the potential to become. The D.A.R.E. curriculum is designed to give children in kindergarten through 12th grade the skills they need to avoid involvement in drugs, gangs, and violence. Taught by community police officers who have the special training and experience necessary to address the difficult issues facing young people, the D.A.R.E. program reaches more than 26 million students each day in nearly 75 percent of our Nation's school districts, encouraging young Americans to resist peer pressure and to lead lives free from the shadows of drugs and violence.

D.A.R.E.'s mission is a crucial one. Drug abuse costs our Nation more than 14,000 lives and billions of dollars each year. A recent study by the Department of Justice confirms that drug use continues to be a factor in crimes such as burglary, auto theft, assault, and murder, and that one in six offenders commits a crime just to get money for drugs. Because of alarming statistics like these, we must focus our efforts not just on those already addicted to drugs, but on all our young people, so that we can reach them before they are exposed to these illegal substances. Working in partnership with parents, teachers, and communities, the D.A.R.E. program conveys to children at an impressionable age a strong message about the dangers of substance abuse and strives to give them the tools and motivation they need to avoid those dangers.

Expanding on grassroots efforts like D.A.R.E., my Administration's 1999 National Drug Control Strategy provides a comprehensive approach to move us closer to a drug-free America. An important part of this long-term plan is our emphasis on educating children. We know that when children understand the dangers of drugs, their rates of drug use decline. Our National Youth Anti-Drug Media Campaign and the Safe and Drug-Free Schools program focus on helping young Americans reject illegal drugs and violence. In addition, in recent years, we have protected and increased the funding of the Safe and Drug-Free Schools program. Coupled with programs like D.A.R.E., these efforts offer us real hope for freeing America's communities from the tragedy of substance abuse and the crime and violence they spawn. By doing so, we will give our children the safe and healthy future they deserve.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim April 8, 1999, as National D.A.R.E. Day. I call upon our youth, parents, educators, and all the people of the United States to observe this day with appropriate programs and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this eighth day of April, in the year of our Lord nineteen hundred and ninety-nine, and of the Independence of the United States of America the two hundred and twenty-third.

William J. Clinton

[FR Doc. 99-9292
Filed 4-9-99; 11:38 am]
Billing code 3195-01-P

Reader Aids

Federal Register

Vol. 64, No. 69

Monday, April 12, 1999

CUSTOMER SERVICE AND INFORMATION

Federal Register/Code of Federal Regulations	
General Information, indexes and other finding aids	202–523–5227
Laws	523–5227
Presidential Documents	
Executive orders and proclamations	523–5227
The United States Government Manual	523–5227
Other Services	
Electronic and on-line services (voice)	523–4534
Privacy Act Compilation	523–3187
Public Laws Update Service (numbers, dates, etc.)	523–6641
TTY for the deaf-and-hard-of-hearing	523–5229

ELECTRONIC RESEARCH

World Wide Web

Full text of the daily Federal Register, CFR and other publications:

http://www.access.gpo.gov/nara

Federal Register information and research tools, including Public Inspection List, indexes, and links to GPO Access:

http://www.nara.gov/fedreg

E-mail

PENS (Public Law Electronic Notification Service) is an E-mail service that delivers information about recently enacted Public Laws. To subscribe, send E-mail to

listproc@lucky.fed.gov

with the text message:

subscribe publaws-l <firstname> <lastname>

Use listproc@lucky.fed.gov only to subscribe or unsubscribe to PENS. We cannot respond to specific inquiries at that address.

Reference questions. Send questions and comments about the Federal Register system to:

info@fedreg.nara.gov

The Federal Register staff cannot interpret specific documents or regulations.

FEDERAL REGISTER PAGES AND DATES, APRIL

15633–15914	1
15915–16332	2
16333–16600	5
16601–16796	6
16797–17078	7
17079–17270	8
17271–17500	9
17501–17940	12

CFR PARTS AFFECTED DURING APRIL

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
7177 17075
7178 17077
7179 17499
7180 17939

Executive Orders:
11223 (Amended by EO 13118) 16595
11269 (Amended by EO 13118) 16595
11958 (Amended by EO 13118) 16595
12163 (Amended by EO 13118) 16595
12188 (Amended by EO 13118) 16595
12260 (Amended by EO 13118) 16595
12293 (Amended by EO 13118) 16595
12301 (Amended by EO 13118) 16595
12599 (Amended by EO 13118) 16595
12703 (Amended by EO 13118) 16595
12884 (Amended by EO 13118) 16595
12981 (Amended by EO 13117) 16391
13116 16333
13117 16591
13118 16595

Administrative Orders:

Presidential Determinations:
No. 99-18 of March 25, 1999 16337
No. 99-19 of March 31, 1999 17079
No. 99-20 of March 31, 1999 17081

Memorandums:
March 23, 1999 (Amended by EO 13118) 16595
March 31, 1999 17083

5 CFR

351 16797
532 15915
870 16601
890 15633
1200 15916

7 CFR

6 17501
254 17085
301 15916
1437 17271
1728 17219
1753 16602

Proposed Rules:
28 15937
340 16364
905 15634
944 15634
1000 16026
1001 16026
1002 16026
1004 16026
1005 16026
1006 16026
1007 16026
1012 16026
1013 16026
1030 16026
1032 16026
1033 16026
1036 16026
1040 16026
1044 16026
1046 16026
1049 16026
1050 16026
1064 16026
1065 16026
1068 16026
1076 16026
1079 16026
1106 16026
1124 16026
1126 16026
1131 16026
1134 16026
1135 16026
1137 16026
1138 16026
1139 16026

8 CFR

Proposed Rules:
2 17128

9 CFR

1 15918
3 15918

Proposed Rules:
72 17573
93 16655
201 15938

10 CFR

2 ..... 15636, 15920
10 15636
11 15636
25 15636
40 17506
72 17510
95 15636

Proposed Rules:
170 15876
171 15876

12 CFR

213 16612

226.....16614
330.....15653
611.....16617
620.....16617
790.....17085
935.....16618, 16788

Proposed Rules:
933.....16792
934.....16792
935.....16792

13 CFR

Proposed Rules:
120.....15942
121.....15708

14 CFR

39.....15657, 15659, 15661, 15669, 15920, 16339, 16621, 16624, 16625, 16801, 16803, 16805, 16808, 16810, 17086, 17512, 17514, 17522, 17524
71.....15673, 15674, 15675, 15676, 15678, 15679, 16024, 16340, 16341, 16342, 16343, 16344, 17219, 17934
91.....15912
93.....17439
97.....17277, 17526, 17528

Proposed Rules:
39.....16364, 16366, 16656, 17130
71.....15708, 16024, 16368, 16369, 16370, 16371, 17133, 17717
91.....17293
119.....16298
121.....16298
129.....16298
135.....16298, 17293
183.....16298

17 CFR

275.....15680
279.....15680

Proposed Rules:
1.....17439

18 CFR

1b.....17087
284.....17276
343.....17087
385.....17087

19 CFR

10.....16345
12.....17529
18.....16345
113.....16345
178.....16635, 16345
192.....16635

Proposed Rules:
19.....16865
146.....15873

20 CFR

404.....17100

21 CFR

26.....16347
510.....15683
520.....15683, 15684
522.....15683, 15685
558.....15683

Proposed Rules:
1.....15944
101.....15948, 17295
1308.....17298, 17299

22 CFR

Ch. II.....15685
Ch. VI.....15686
121.....17531
123.....17531
124.....17531
126.....17531
201.....17535

23 CFR

Proposed Rules:
777.....16870

24 CFR

100.....16324

Proposed Rules:
990.....17301

25 CFR

291.....17535

Proposed Rules:
151.....17574

26 CFR

1.....15686, 15687
7.....15687
31.....15687
301.....16640, 17279
602.....15687, 15688, 15873, 17279

Proposed Rules:
1.....16372

27 CFR

178.....17291

Proposed Rules:
4.....17588
5.....17588
7.....17588

28 CFR

504.....17270

Proposed Rules:
65.....17128

29 CFR

Proposed Rules:
1.....17442
5.....17442

30 CFR

Proposed Rules:
206.....15949

31 CFR

210.....17472

32 CFR

812.....17101
863.....17545

33 CFR

100.....16348, 16812, 16813
117.....16350, 16641, 17101
165.....16348, 16641, 16642, 17439

Proposed Rules:
117.....17134
154.....17222
175.....15709
177.....15709
179.....15709
181.....15709
183.....15709

36 CFR

Proposed Rules:
1.....17293
2.....17293
3.....17293
4.....17293
5.....17293
6.....17293
7.....17293

39 CFR

111.....16814, 17102

40 CFR

52.....15688, 15922, 17102, 17545, 17548, 17551
62.....17219
63.....17460, 17555
81.....17551
90.....16526
180.....16840, 16843, 16850, 16856, 17565
261.....16643
300.....15926, 16351

Proposed Rules:
52.....15711, 15949, 16659, 17136, 17589, 17592, 17593
63.....17465
70.....16659
81.....17593
82.....16373
112.....17227
180.....16874
185.....16874
186.....16874
300.....17593

41 CFR

Ch. 301.....16352
60-250.....15690
60-999.....15690
302-11.....17105

43 CFR

Proposed Rules:
3100.....17598
3106.....17598
3130.....17598
3160.....17598

44 CFR

65.....17567, 17569
67.....17571

Proposed Rules:
67.....17598

45 CFR

260.....17720
261.....17720
262.....17720
263.....17720
264.....17720
265.....17720
1611.....17108

Proposed Rules:
1635.....16383
2522.....17302
2525.....17302
2526.....17302
2527.....17302
2528.....17302
2529.....17302

46 CFR

Proposed Rules:
10.....15709
15.....15709
24.....15709
25.....15709
26.....15709
28.....15709
70.....15709
169.....15709
175.....15709

47 CFR

69.....16353
73.....17108

Proposed Rules:
0.....16388
1.....16661
2.....16687
25.....16880, 16687
69.....16389
73.....15712, 15713, 15714, 15715, 16388, 16396, 17137, 17138, 17139, 17140, 17141, 17142, 17143
76.....16388

48 CFR

701.....16647
703.....16647
715.....16647
731.....16647
752.....16647
909.....16649
970.....16649
1333.....16651
1533.....17109
1552.....17109

Proposed Rules:
1833.....17603

49 CFR

195.....15926
533.....16860
571.....16358
581.....16359

Proposed Rules:
171.....16882
177.....16882
178.....16882
180.....16882
192.....16882, 16885
195.....16882, 16885
578.....16690
611.....17062

50 CFR

17.....15691, 17110
229.....17292
600.....16862
648.....15704, 16361, 16362
660.....16862, 17125
679.....16361, 16362, 16654, 17126

Proposed Rules:
17.....16397, 16890
20.....17308
223.....16396, 16397
224.....16397
226.....16397
600.....16414
648.....16417, 16891

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT APRIL 12, 1999

AGRICULTURE DEPARTMENT

Import quotas and fees:
- Dairy tariff-rate quota licensing; published 4-12-99

ENERGY DEPARTMENT

Acquisition regulations:
- Management and operating contracts and other designated contracts; published 3-11-99

ENVIRONMENTAL PROTECTION AGENCY

Air programs:
- Pulp, paper, and paperboard industries; effluent limitations guidelines, pretreatment standards, and new source performance standards
  - Interpretation and technical amendments; published 4-12-99

Air programs; approval and promulgation; State plans for designated facilities and pollutants:
- New York; published 2-9-99

Air quality implementation plans; approval and promulgation; various States:
- California; published 2-9-99
- California; correction; published 3-12-99
- Colorado; published 2-9-99

Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
- Clopyralid; published 4-12-99

SMALL BUSINESS ADMINISTRATION

Business loans:
- Unguaranteed portions of loans, finanncing and securitization; retainage, etc.; published 2-10-99

STATE DEPARTMENT

Licenses for the export of defense articles; published 4-12-99

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:
- Boeing; published 3-26-99
- Eurocopter France; published 3-26-99
- International Aero Engines; published 2-11-99
- Porsche; published 3-26-99
- Pratt & Whitney; published 2-11-99

TRANSPORTATION DEPARTMENT

National Highway Traffic Safety Administration

Fuel economy standards:
- Passenger autombiles; low volume manufacturer exemptions; published 3-11-99

TREASURY DEPARTMENT

Customs Service

Merchandise; special classes:
- Byzantine ecclesiastical and ritual ethnological material from Cyprus; import restrictions; published 4-12-99

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT

Animal and Plant Health Inspection Service

Exportation and importation of animals and animal products:
- Rinderpest and foot-and-mouth disease, etc.; disease status change—
  - South Africa; comments due by 4-19-99; published 2-17-99

AGRICULTURE DEPARTMENT

Cooperative State Research, Education, and Extension Service

Grants:
- Special Research Program; comments due by 4-23-99; published 3-24-99

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Endangered and threatened species:
- Marine and anadromous species—
  - West coast chinook salmon; comments due by 4-23-99; published 3-24-99

Fishery conservation and management:
- Alaska; fisheries of Exclusive Economic Zone—
  - Pacific cod; comments due by 4-20-99; published 4-5-99
- Caribbean, Gulf, and South Atlantic fisheries—
  - Gulf of Mexico reef fish; comments due by 4-19-99; published 3-5-99
  - South Atlantic Region; Sustainable Fisheries Act provisions; compliance; comments due by 4-19-99; published 2-18-99
- West Coast states and Western Pacific fisheries—
  - West Coast salmon; comments due by 4-22-99; published 4-8-99
- West Coast States and Western Pacific fisheries—
  - Pacific Coast groundfish; comments due by 4-22-99; published 4-7-99

COMMODITY FUTURES TRADING COMMISSION

Foreign futures and options transactions:
- Access to electronic boards of trade; automated trading systems use; comments due by 4-23-99; published 3-24-99
- Access to electronic boards of trade; automated trading systems use; correction; comments due by 4-23-99; published 4-9-99

DEFENSE DEPARTMENT

Federal Acquisition Regulation (FAR):
- Contractor liability for loss of and/or damages to household goods; comments due by 4-19-99; published 2-16-99

ENERGY DEPARTMENT

Acquisition regulations:
- Costs associated with whistleblower actions; comments due by 4-23-99; published 3-24-99

ENERGY DEPARTMENT

Federal Energy Regulatory Commission

Natural Gas Policy Act:
- Interstate natural gas pipelines—
  - Transportation services regulation; comments due by 4-22-99; published 12-30-98

ENVIRONMENTAL PROTECTION AGENCY

Air programs:
- Stratospheric ozone protection—
  - Ozone-depleting substances; substitutes list; comments due by 4-19-99; published 2-18-99
  - Ozone-depleting substances; substitutes list; comments due by 4-19-99; published 2-18-99

Air programs; approval and promulgation; State plans for designated facilities and pollutants:
- Oklahoma; comments due by 4-19-99; published 3-19-99

Air quality implementation plans; approval and promulgation; various States:
- California; comments due by 4-19-99; published 3-18-99
- California and Arizona; comments due by 4-19-99; published 3-18-99
- Delaware; comments due by 4-21-99; published 3-22-99
- Illinois; comments due by 4-19-99; published 3-18-99
- Iowa; comments due by 4-19-99; published 3-18-99

Air quality planning purposes; designation of areas:
- California; comments due by 4-19-99; published 3-18-99
- Missouri and Illinois; comments due by 4-19-99; published 3-18-99

Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
- Cinnamaldehyde; comments due by 4-19-99; published 2-17-99
- Fenbuconazole; comments due by 4-19-99; published 2-17-99
- Formic acid; comments due by 4-23-99; published 2-22-99

Superfund program:
- National oil and hazardous substances contingency plan—
  - National priorities list update; comments due by 4-19-99; published 2-16-99

FEDERAL COMMUNICATIONS COMMISSION

Practice and procedure:
- Regulatory fees (1999 FY); assessment and collection; comments due by 4-19-99; published 4-6-99

FEDERAL EMERGENCY MANAGEMENT AGENCY

Regulatory streamlining and updating; 20 CFR parts,

proposed removal; comments due by 4-19-99; published 2-18-99
Correction; comments due by 4-19-99; published 3-2-99

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD
Thrift savings plan:
Eligibility; expansion and continuation; comments due by 4-22-99; published 3-23-99

GENERAL SERVICES ADMINISTRATION
Federal Acquisition Regulation (FAR):
Contractor liability for loss of and/or damages to household goods; comments due by 4-19-99; published 2-16-99

HEALTH AND HUMAN SERVICES DEPARTMENT
Food and Drug Administration
Food additives:
Adjuvants, production aids, and sanitizers—
Phosphorous acid, cyclic neopentanetetrayl bis(2,6-di-tert-butyl-4-methylphenyl)ester; comments due by 4-19-99; published 3-19-99
Medical devices:
Menstrual tampons labeling; absorbency ranges; comments due by 4-21-99; published 1-21-99

HOUSING AND URBAN DEVELOPMENT DEPARTMENT
Public and Indian housing:
Capital Fund Negotiated Rulemaking Advisory Committee; intent to establish and meeting; comments due by 4-19-99; published 3-19-99
Public housing agency plans; comments due by 4-19-99; published 2-18-99
Public and Indian Housing:
Section 8 Housing Certificate Fund Rule Negotiated Rulemaking Committee; intent to establish and meeting; comments due by 4-19-99; published 3-19-99

INTERIOR DEPARTMENT
Fish and Wildlife Service
Endangered and threatened species:
Mountain plover; comments due by 4-19-99; published 2-16-99
Tinian monarch; withdrawn; comments due by 4-23-99; published 2-22-99

INTERIOR DEPARTMENT
Minerals Management Service
Outer Continental Shelf; oil, gas, and sulphur operations:
Coastal zone consistency review of exploration plans and development and production plans; comments due by 4-19-99; published 2-17-99
Royalty management:
Federal marginal properties; accounting and auditing relief; comments due by 4-21-99; published 3-22-99

INTERIOR DEPARTMENT
Surface Mining Reclamation and Enforcement Office
Federal and Indian lands programs:
Indian lands; definition clarification; comments due by 4-20-99; published 2-19-99

JUSTICE DEPARTMENT
Immigration and Naturalization Service
Nonimmigrant classes:
Visa exemption for British Virgin Islands nationals entering U.S. through St. Thomas, U.S. Virgin Islands; comments due by 4-19-99; published 2-18-99
United Nations Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment; implementation:
Protection from torture; claim procedures; comments due by 4-20-99; published 2-19-99

JUSTICE DEPARTMENT
Pam Lychner Sexual Offender Tracking and Identification Act of 1996; implementation:
National Sex Offender Registry; operation and notification requirements; comments due by 4-19-99; published 2-16-99

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION
Federal Acquisition Regulation (FAR):
Contractor liability for loss of and/or damages to household goods; comments due by 4-19-99; published 2-16-99

NORTHEAST DAIRY COMPACT COMMISSION
Over-order price regulations:
Compact over-order price regulations—
Fluid milk distributions in six New England States during 1998-1999 contract year; exemption; hearing; comments due by 4-21-99; published 3-15-99

TRANSPORTATION DEPARTMENT
Coast Guard
Ports and waterways safety:
Santa Barbara Channel, CA; safety zone; comments due by 4-19-99; published 2-18-99
Regulatory Flexibility Act:
Small entities; economic impact; comments due by 4-19-99; published 1-19-99

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airworthiness directives:
Agusta, S.p.A.; comments due by 4-19-99; published 2-16-99
Bell Helicopter Textron, Inc.; comments due by 4-19-99; published 2-17-99
Boeing; comments due by 4-19-99; published 2-17-99
Empresa Brasileira de Aeronautica S.A.; comments due by 4-22-99; published 3-23-99
Pilatus Aircraft Ltd.; comments due by 4-23-99; published 3-23-99
Pratt & Whitney; comments due by 4-22-99; published 3-23-99
Sikorsky; comments due by 4-19-99; published 2-16-99
Class D and Class E airspace; comments due by 4-20-99; published 3-3-99
Class D and Class E airspace; correction; comments due by 4-20-99; published 3-9-99
Class E airspace; comments due by 4-19-99; published 3-5-99
Class E airspace; correction; comments due by 4-20-99; published 3-9-99
VOR Federal airways; comments due by 4-22-99; published 3-8-99

TRANSPORTATION DEPARTMENT
Federal Highway Administration
Motor carrier safety standards:
Inspection, repair, and maintenance—
Intermodal container chassis and trailers; comments due by 4-19-99; published 2-17-99

TRANSPORTATION DEPARTMENT
Federal Transit Administration
Buy America requirements; certification procedures:
Corrections to inadvertent errors in certifications after bid opening; comments due by 4-19-99; published 2-18-99

TRANSPORTATION DEPARTMENT
National Highway Traffic Safety Administration
Anthropomorphic test devices:
Occupant crash protection—
12-month-old infant crash test dummy; comments due by 4-22-99; published 3-8-99
Motor Vehicle Safety Standards:
Child restraint systems—
Standardized child restraint anchorage systems independent of seat belts; comments due by 4-19-99; published 3-5-99

TRANSPORTATION DEPARTMENT
Research and Special Programs Administration
Hazardous materials:
Hazardous liquid transportation—
Liquefied compressed gases; transportation and unloading; comments due by 4-21-99; published 3-22-99

TRANSPORTATION DEPARTMENT
Transportation Statistics Bureau
ICC Termination Act; implementation:
Motor carriers of property and household goods; reporting requirements; comments due by 4-22-99; published 3-23-99

TREASURY DEPARTMENT
Internal Revenue Service
Income taxes:
Capital gains; installment sales of depreciable real property; unrecaptured section 1250 gain; comments due by 4-22-99; published 1-22-99
Qualified education loans, interest deduction;

comments due by 4-21-99; published 1-21-99
Procedure and administration:
Filing of notice of lien; notice and opportunity for hearing; cross reference; comments due by 4-22-99; published 1-22-99
Levy; notice and opportunity for hearing; cross reference; comments due by 4-22-99; published 1-22-99

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–523–6641. This list is also available online at http://www.nara.gov/fedreg.

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at http://www.access.gpo.gov/nara/index.html. Some laws may not yet be available.

H.R. 171/P.L. 106–18
To authorize appropriations for the Coastal Heritage Trail Route in New Jersey, and for other purposes. (Apr. 8, 1999; 113 Stat. 28)

H.R. 705/P.L. 106–19
To make technical corrections with respect to the monthly reports submitted by the Postmaster General on official mail of the House of Representatives. (Apr. 8, 1999; 113 Stat. 29)

Last List April 8, 1999.

Public Laws Electronic Notification Service (PENS)

PENS is a free electronic mail notification service of newly enacted public laws. To subscribe, send E-mail to **listproc@lucky.fed.gov** with the text message:

subscribe PUBLAWS-L Your Name.

Note: This service is strictly for E-mail notification of new public laws. The text of laws is not available through this service. **PENS** cannot respond to specific inquiries sent to this address.

CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, stock numbers, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

A checklist of current CFR volumes comprising a complete CFR set, also appears in the latest issue of the LSA (List of CFR Sections Affected), which is revised monthly.

The CFR is available free on-line through the Government Printing Office's GPO Access Service at http://www.access.gpo.gov/nara/cfr/index.html. For information about GPO Access call the GPO User Support Team at 1-888-293-6498 (toll free) or 202-512-1530.

The annual rate for subscription to all revised paper volumes is $951.00 domestic, $237.75 additional for foreign mailing.

Mail orders to the Superintendent of Documents, Attn: New Orders, P.O. Box 371954, Pittsburgh, PA 15250–7954. All orders must be accompanied by remittance (check, money order, GPO Deposit Account, VISA, Master Card, or Discover). Charge orders may be telephoned to the GPO Order Desk, Monday through Friday, at **(202) 512–1800** from 8:00 a.m. to 4:00 p.m. eastern time, or FAX your charge orders to **(202) 512-2250**.

Title	Stock Number	Price	Revision Date
1, 2 (2 Reserved)	(869–034–00001–1)	5.00	[5] Jan. 1, 1998
3 (1997 Compilation and Parts 100 and 101)	(869–034–00002–9)	19.00	[1] Jan. 1, 1998
4	(869–034–00003–7)	7.00	[5] Jan. 1, 1998
5 Parts:			
1–699	(869–038–00004–1)	37.00	Jan. 1, 1999
700–1199	(869–034–00005–3)	26.00	Jan. 1, 1998
1200–End, 6 (6 Reserved)	(869–034–00006–1)	39.00	Jan. 1, 1998
7 Parts:			
1–26	(869–038–00007–5)	25.00	Jan. 1, 1999
27–52	(869–038–00008–3)	32.00	Jan. 1, 1999
53–209	(869–038–00009–1)	20.00	Jan. 1, 1999
210–299	(869–034–00010–0)	44.00	Jan. 1, 1998
300–399	(869–038–00011–3)	25.00	Jan. 1, 1999
400–699	(869–038–00012–1)	37.00	Jan. 1, 1999
*700–899	(869–038–00013–0)	32.00	Jan. 1, 1999
*900–999	(869–038–00014–8)	41.00	Jan. 1, 1999
1000–1199	(869–034–00015–1)	44.00	Jan. 1, 1998
*1200–1599	(869–038–00016–4)	34.00	Jan. 1, 1999
1600–1899	(869–034–00017–7)	58.00	Jan. 1, 1998
*1900–1939	(869–038–00018–1)	19.00	Jan. 1, 1999
*1940–1949	(869–038–00019–9)	34.00	Jan. 1, 1999
*1950–1999	(869–038–00020–2)	41.00	Jan. 1, 1999
2000–End	(869–034–00021–5)	24.00	Jan. 1, 1998
8	(869–034–00022–3)	33.00	Jan. 1, 1998
9 Parts:			
*1–199	(869–038–00023–7)	42.00	Jan. 1, 1999
200–End	(869–034–00024–0)	33.00	Jan. 1, 1998
10 Parts:			
0–50	(869–034–00025–8)	39.00	Jan. 1, 1998
51–199	(869–034–00026–6)	32.00	Jan. 1, 1998
*200–499	(869–038–00027–0)	33.00	Jan. 1, 1999
*500–End	(869–038–00028–8)	43.00	Jan. 1, 1999
11	(869–038–0002–6)	20.00	Jan. 1, 1999
12 Parts:			
1–199	(869–038–00030–0)	17.00	Jan. 1, 1999
200–219	(869–038–00031–8)	20.00	Jan. 1, 1999
220–299	(869–038–00032–6)	40.00	Jan. 1, 1999
*300–499	(869–038–00033–4)	25.00	Jan. 1, 1999
500–599	(869–038–00034–2)	24.00	Jan. 1, 1999
600–End	(869–034–00035–5)	44.00	Jan. 1, 1998
13	(869–038–00036–9)	25.00	Jan. 1, 1999
14 Parts:			
1–59	(869–034–00037–1)	47.00	Jan. 1, 1998
60–139	(869–034–00038–0)	40.00	Jan. 1, 1998
*140–199	(869–038–00039–3)	17.00	Jan. 1, 1999
200–1199	(869–034–00040–1)	29.00	Jan. 1, 1998
1200–End	(869–038–00041–5)	24.00	Jan. 1, 1999
15 Parts:			
0–299	(869–034–00042–8)	22.00	Jan. 1, 1998
300–799	(869–034–00043–6)	33.00	Jan. 1, 1998
*800–End	(869–038–00044–0)	24.00	Jan. 1, 1999
16 Parts:			
0–999	(869–038–00045–8)	32.00	Jan. 1, 1999
1000–End	(869–034–00046–1)	33.00	Jan. 1, 1998
17 Parts:			
1–199	(869–034–00048–7)	27.00	Apr. 1, 1998
200–239	(869–034–00049–5)	32.00	Apr. 1, 1998
240–End	(869–034–00050–9)	40.00	Apr. 1, 1998
18 Parts:			
1–399	(869–034–00051–7)	45.00	Apr. 1, 1998
400–End	(869–034–00052–5)	13.00	Apr. 1, 1998
19 Parts:			
1–140	(869–034–00053–3)	34.00	Apr. 1, 1998
141–199	(869–034–00054–1)	33.00	Apr. 1, 1998
200–End	(869–034–00055–0)	15.00	Apr. 1, 1998
20 Parts:			
1–399	(869–034–00056–8)	29.00	Apr. 1, 1998
400–499	(869–034–00057–6)	28.00	Apr. 1, 1998
500–End	(869–034–00058–4)	44.00	Apr. 1, 1998
21 Parts:			
1–99	(869–034–00059–2)	21.00	Apr. 1, 1998
100–169	(869–034–00060–6)	27.00	Apr. 1, 1998
170–199	(869–034–00061–4)	28.00	Apr. 1, 1998
200–299	(869–034–00062–2)	9.00	Apr. 1, 1998
300–499	(869–034–00063–1)	50.00	Apr. 1, 1998
500–599	(869–034–00064–9)	28.00	Apr. 1, 1998
600–799	(869–034–00065–7)	9.00	Apr. 1, 1998
800–1299	(869–034–00066–5)	32.00	Apr. 1, 1998
1300–End	(869–034–00067–3)	12.00	Apr. 1, 1998
22 Parts:			
1–299	(869–034–00068–1)	41.00	Apr. 1, 1998
300–End	(869–034–00069–0)	31.00	Apr. 1, 1998
23	(869–034–00070–3)	25.00	Apr. 1, 1998
24 Parts:			
0–199	(869–034–00071–1)	32.00	Apr. 1, 1998
200–499	(869–034–00072–0)	28.00	Apr. 1, 1998
500–699	(869–034–00073–8)	17.00	Apr. 1, 1998
700–1699	(869–034–00074–6)	45.00	Apr. 1, 1998
1700–End	(869–034–00075–4)	17.00	Apr. 1, 1998
25	(869–034–00076–2)	42.00	Apr. 1, 1998
26 Parts:			
§§ 1.0-1–1.60	(869–034–00077–1)	26.00	Apr. 1, 1998
§§ 1.61–1.169	(869–034–00078–9)	48.00	Apr. 1, 1998
§§ 1.170–1.300	(869–034–00079–7)	31.00	Apr. 1, 1998
§§ 1.301–1.400	(869–034–00080–1)	23.00	Apr. 1, 1998
§§ 1.401–1.440	(869–034–00081–9)	39.00	Apr. 1, 1998
§§ 1.441-1.500	(869-034-00082-7)	29.00	Apr. 1, 1998
§§ 1.501–1.640	(869–034–00083–5)	27.00	Apr. 1, 1998
§§ 1.641–1.850	(869–034–00084–3)	32.00	Apr. 1, 1998
§§ 1.851–1.907	(869–034–00085–1)	36.00	Apr. 1, 1998
§§ 1.908–1.1000	(869–034–00086–0)	35.00	Apr. 1, 1998
§§ 1.1001–1.1400	(869–034–00087–8)	38.00	Apr. 1, 1998
§§ 1.1401–End	(869–034–00088–6)	51.00	Apr. 1, 1998
2–29	(869–034–00089–4)	36.00	Apr. 1, 1998
30–39	(869–034–00090–8)	25.00	Apr. 1, 1998
40–49	(869–034–00091–6)	16.00	Apr. 1, 1998
50–299	(869–034–00092–4)	19.00	Apr. 1, 1998
300–499	(869–034–00093–2)	34.00	Apr. 1, 1998
500–599	(869–034–00094–1)	10.00	Apr. 1, 1998
600–End	(869–034–00095–9)	9.00	Apr. 1, 1998
27 Parts:			
1–199	(869–034–00096–7)	49.00	Apr. 1, 1998

Title	Stock Number	Price	Revision Date
200-End	(869-034-00097-5)	17.00	[6] Apr. 1, 1998
28 Parts:			
0-42	(869-034-00098-3)	36.00	July 1, 1998
43-end	(869-034-00099-1)	30.00	July 1, 1998
29 Parts:			
0-99	(869-034-00100-9)	26.00	July 1, 1998
100-499	(869-034-00101-7)	12.00	July 1, 1998
500-899	(869-034-00102-5)	40.00	July 1, 1998
900-1899	(869-034-00103-3)	20.00	July 1, 1998
1900-1910 (§§ 1900 to 1910.999)	(869-034-00104-1)	44.00	July 1, 1998
1910 (§§ 1910.1000 to end)	(869-034-00105-0)	27.00	July 1, 1998
1911-1925	(869-034-00106-8)	17.00	July 1, 1998
1926	(869-034-00107-6)	30.00	July 1, 1998
1927-End	(869-034-00108-4)	41.00	July 1, 1998
30 Parts:			
1-199	(869-034-00109-2)	33.00	July 1, 1998
200-699	(869-034-00110-6)	29.00	July 1, 1998
700-End	(869-034-00111-4)	33.00	July 1, 1998
31 Parts:			
0-199	(869-034-00112-2)	20.00	July 1, 1998
200-End	(869-034-00113-1)	46.00	July 1, 1998
32 Parts:			
1-39, Vol. I		15.00	[2] July 1, 1984
1-39, Vol. II		19.00	[2] July 1, 1984
1-39, Vol. III		18.00	[2] July 1, 1984
1-190	(869-034-00114-9)	47.00	July 1, 1998
191-399	(869-034-00115-7)	51.00	July 1, 1998
400-629	(869-034-00116-5)	33.00	July 1, 1998
630-699	(869-034-00117-3)	22.00	[4] July 1, 1998
700-799	(869-034-00118-1)	26.00	July 1, 1998
800-End	(869-034-00119-0)	27.00	July 1, 1998
33 Parts:			
1-124	(869-034-00120-3)	29.00	July 1, 1998
125-199	(869-034-00121-1)	38.00	July 1, 1998
200-End	(869-034-00122-0)	30.00	July 1, 1998
34 Parts:			
1-299	(869-034-00123-8)	27.00	July 1, 1998
300-399	(869-034-00124-6)	25.00	July 1, 1998
400-End	(869-034-00125-4)	44.00	July 1, 1998
35	(869-034-00126-2)	14.00	July 1, 1998
36 Parts			
1-199	(869-034-00127-1)	20.00	July 1, 1998
200-299	(869-034-00128-9)	21.00	July 1, 1998
300-End	(869-034-00129-7)	35.00	July 1, 1998
37	(869-034-00130-1)	27.00	July 1, 1998
38 Parts:			
0-17	(869-034-00131-9)	34.00	July 1, 1998
18-End	(869-034-00132-7)	39.00	July 1, 1998
39	(869-034-00133-5)	23.00	July 1, 1998
40 Parts:			
1-49	(869-034-00134-3)	31.00	July 1, 1998
50-51	(869-034-00135-1)	24.00	July 1, 1998
52 (52.01-52.1018)	(869-034-00136-0)	28.00	July 1, 1998
52 (52.1019-End)	(869-034-00137-8)	33.00	July 1, 1998
53-59	(869-034-00138-6)	17.00	July 1, 1998
60	(869-034-00139-4)	53.00	July 1, 1998
61-62	(869-034-00140-8)	18.00	July 1, 1998
63	(869-034-00141-6)	57.00	July 1, 1998
64-71	(869-034-00142-4)	11.00	July 1, 1998
72-80	(869-034-00143-2)	36.00	July 1, 1998
81-85	(869-034-00144-1)	31.00	July 1, 1998
86	(869-034-00144-9)	53.00	July 1, 1998
87-135	(869-034-00146-7)	47.00	July 1, 1998
136-149	(869-034-00147-5)	37.00	July 1, 1998
150-189	(869-034-00148-3)	34.00	July 1, 1998
190-259	(869-034-00149-1)	23.00	July 1, 1998
260-265	(869-034-00150-9)	29.00	July 1, 1998
266-299	(869-034-00151-3)	33.00	July 1, 1998
300-399	(869-034-00152-1)	26.00	July 1, 1998
400-424	(869-034-00153-0)	33.00	July 1, 1998
425-699	(869-034-00154-8)	42.00	July 1, 1998
700-789	(869-034-00155-6)	41.00	July 1, 1998
790-End	(869-034-00156-4)	22.00	July 1, 1998
41 Chapters:			
1, 1-1 to 1-10		13.00	[3] July 1, 1984
1, 1-11 to Appendix, 2 (2 Reserved)		13.00	[3] July 1, 1984
3-6		14.00	[3] July 1, 1984
7		6.00	[3] July 1, 1984
8		4.50	[3] July 1, 1984
9		13.00	[3] July 1, 1984
10-17		9.50	[3] July 1, 1984
18, Vol. I, Parts 1-5		13.00	[3] July 1, 1984
18, Vol. II, Parts 6-19		13.00	[3] July 1, 1984
18, Vol. III, Parts 20-52		13.00	[3] July 1, 1984
19-100		13.00	[3] July 1, 1984
1-100	(869-034-00157-2)	13.00	July 1, 1998
101	(869-034-00158-1)	37.00	July 1, 1998
102-200	(869-034-00158-9)	15.00	July 1, 1998
201-End	(869-034-00160-2)	13.00	July 1, 1998
42 Parts:			
1-399	(869-034-00161-1)	34.00	Oct. 1, 1998
400-429	(869-034-00162-9)	41.00	Oct. 1, 1998
430-End	(869-034-00163-7)	51.00	Oct. 1, 1998
43 Parts:			
1-999	(869-034-00164-5)	30.00	Oct. 1, 1998
1000-end	(869-034-00165-3)	48.00	Oct. 1, 1998
44	(869-034-00166-1)	48.00	Oct. 1, 1998
45 Parts:			
1-199	(869-034-00167-0)	30.00	Oct. 1, 1998
200-499	(869-034-00168-8)	18.00	Oct. 1, 1998
500-1199	(869-034-00169-6)	29.00	Oct. 1, 1998
1200-End	(869-034-00170-0)	39.00	Oct. 1, 1998
46 Parts:			
1-40	(869-034-00171-8)	26.00	Oct. 1, 1998
41-69	(869-034-00172-6)	21.00	Oct. 1, 1998
70-89	(869-034-00173-4)	8.00	Oct. 1, 1998
90-139	(869-034-00174-2)	26.00	Oct. 1, 1998
140-155	(869-034-00175-1)	14.00	Oct. 1, 1998
156-165	(869-034-00176-9)	19.00	Oct. 1, 1998
166-199	(869-034-00177-7)	25.00	Oct. 1, 1998
200-499	(869-034-00178-5)	22.00	Oct. 1, 1998
500-End	(869-034-00179-3)	16.00	Oct. 1, 1998
47 Parts:			
0-19	(869-034-00180-7)	36.00	Oct. 1, 1998
20-39	(869-034-00181-5)	27.00	Oct. 1, 1998
40-69	(869-034-00182-3)	24.00	Oct. 1, 1998
70-79	(869-034-00183-1)	37.00	Oct. 1, 1998
80-End	(869-034-00184-0)	40.00	Oct. 1, 1998
48 Chapters:			
1 (Parts 1-51)	(869-034-00185-8)	51.00	Oct. 1, 1998
1 (Parts 52-99)	(869-034-00186-6)	29.00	Oct. 1, 1998
2 (Parts 201-299)	(869-034-00187-4)	34.00	Oct. 1, 1998
3-6	(869-034-00188-2)	29.00	Oct. 1, 1998
7-14	(869-034-00189-1)	32.00	Oct. 1, 1998
15-28	(869-034-00190-4)	33.00	Oct. 1, 1998
29-End	(869-034-00191-2)	24.00	Oct. 1, 1998
49 Parts:			
1-99	(869-034-00192-1)	31.00	Oct. 1, 1998
100-185	(869-034-00193-9)	50.00	Oct. 1, 1998
186-199	(869-034-00194-7)	11.00	Oct. 1, 1998
200-399	(869-034-00195-5)	46.00	Oct. 1, 1998
400-999	(869-034-00196-3)	54.00	Oct. 1 1998
1000-1199	(869-034-00197-1)	17.00	Oct. 1, 1998
1200-End	(869-034-00198-0)	13.00	Oct. 1, 1998
50 Parts:			
1-199	(869-034-00199-8)	42.00	Oct. 1, 1998
200-599	(869-034-00200-5)	22.00	Oct. 1, 1998
600-End	(869-034-00201-3)	33.00	Oct. 1, 1998

Title	Stock Number	Price	Revision Date
CFR Index and Findings Aids	(869-034-00049-6)	46.00	Jan. 1, 1998
Complete 1998 CFR set		951.00	1998
Microfiche CFR Edition:			
Subscription (mailed as issued)		247.00	1998
Individual copies		1.00	1998
Complete set (one-time mailing)		247.00	1997
Complete set (one-time mailing)		264.00	1996

[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period July 1, 1997 to June 30, 1998. The volume issued July 1, 1997, should be retained.

[5] No amendments to this volume were promulgated during the period January 1, 1997 through December 31, 1997. The CFR volume issued as of January 1, 1997 should be retained.

[6] No amendments to this volume were promulgated during the period April 1, 1997, through April 1, 1998. The CFR volume issued as of April 1, 1997, should be retained.

VOL 64 ISS 69 AP 12 1999 UMI

VOL
64
ISS
69
AP
12
1999
UMI

Printed on recycled paper

VOL
64
ISS
70
AP
13
1999
UMI

4–13–99
Vol. 64

United Sta
Governme
Printing O
SUPERINTENDE
OF DOCUMENT
Washington, DC

OFFICIAL BUSI
Penalty for priva

UMI

THE PAPER AND INK USED IN THE ORIGINAL PUBLICATION MAY AFFECT THE QUALITY OF THE MICROFORM EDITION.

4–13–99
Vol. 64 No. 70

federal register

Tuesday
April 13, 1999

United States
Government
Printing Office
SUPERINTENDENT
OF DOCUMENTS
Washington, DC 20402

OFFICIAL BUSINESS
Penalty for private use, $300

PERIODICALS

Postage and Fees Paid
U.S. Government Printing Office
(ISSN 0097–6326)

**********3-DIGIT 481
A FR UMI 346U DEC 99 R
UMI
PERIODICALS CHECK IN
PO BOX 1346
ANN ARBOR MI 48106

UMI

VOL
64
ISS
70
AP
13
1999
UMI

4-13-6
Vol. 64
Pages

4–13–99
Vol. 64 No. 70
Pages 17941–18322

Federal Register

Tuesday
April 13, 1999

Briefings on how to use the Federal Register
For information on briefings in Washington, DC, see announcement on the inside cover of this issue.

The **FEDERAL REGISTER** is published daily, Monday through Friday, except official holidays, by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). The Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 is the exclusive distributor of the official edition.

The **Federal Register** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders, Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress, and other Federal agency documents of public interest.

Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless the issuing agency requests earlier filing. For a list of documents currently on file for public inspection, see http://www.nara.gov/fedreg.

The seal of the National Archives and Records Administration authenticates the Federal Register as the official serial publication established under the Federal Register Act. Under 44 U.S.C. 1507, the contents of the **Federal Register** shall be judicially noticed.

The **Federal Register** is published in paper and on 24x microfiche. It is also available online at no charge as one of the databases on GPO Access, a service of the U.S. Government Printing Office.

The online edition of the **Federal Register** is issued under the authority of the Administrative Committee of the Federal Register as the official legal equivalent of the paper and microfiche editions (44 U.S.C. 4101 and 1 CFR 5.10). It is updated by 6 a.m. each day the **Federal Register** is published and it includes both text and graphics from Volume 59, Number 1 (January 2, 1994) forward.

GPO Access users can choose to retrieve online **Federal Register** documents as TEXT (ASCII text, graphics omitted), PDF (Adobe Portable Document Format, including full text and all graphics), or SUMMARY (abbreviated text) files. Users should carefully check retrieved material to ensure that documents were properly downloaded.

On the World Wide Web, connect to the **Federal Register** at http://www.access.gpo.gov/nara. Those without World Wide Web access can also connect with a local WAIS client, by Telnet to swais.access.gpo.gov, or by dialing (202) 512-1661 with a computer and modem. When using Telnet or modem, type swais, then log in as guest with no password.

For more information about GPO Access, contact the GPO Access User Support Team by E-mail at gpoaccess@gpo.gov; by fax at (202) 512–1262; or call (202) 512–1530 or 1–888–293–6498 (toll free) between 7 a.m. and 5 p.m. Eastern time, Monday–Friday, except Federal holidays.

The annual subscription price for the **Federal Register** paper edition is $555, or $607 for a combined **Federal Register**, Federal Register Index and List of CFR Sections Affected (LSA) subscription; the microfiche edition of the **Federal Register** including the Federal Register Index and LSA is $220. Six month subscriptions are available for one-half the annual rate. The charge for individual copies in paper form is $8.00 for each issue, or $8.00 for each group of pages as actually bound; or $1.50 for each issue in microfiche form. All prices include regular domestic postage and handling. International customers please add 25% for foreign handling. Remit check or money order, made payable to the Superintendent of Documents, or charge to your GPO Deposit Account, VISA, MasterCard or Discover. Mail to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954.

There are no restrictions on the republication of material appearing in the **Federal Register**.

How To Cite This Publication: Use the volume number and the page number. Example: 64 FR 12345.

Printed on recycled paper containing 100% post consumer waste

SUBSCRIPTIONS AND COPIES

PUBLIC
Subscriptions:
Paper or fiche 202–512–1800
Assistance with public subscriptions 512–1806
General online information 202–512–1530; 1–888–293–6498
Single copies/back copies:
Paper or fiche 512–1800
Assistance with public single copies 512–1803
FEDERAL AGENCIES
Subscriptions:
Paper or fiche 523–5243
Assistance with Federal agency subscriptions 523–5243

FEDERAL REGISTER WORKSHOP

THE FEDERAL REGISTER: WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: Sponsored by the Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WASHINGTON, DC

WHEN: April 20, 1999 at 9:00 am.

WHERE: Office of the Federal Register
Conference Room
800 North Capitol Street, NW.
Washington, DC
(3 blocks north of Union Station Metro)

RESERVATIONS: 202–523–4538

Contents

Federal Register
Vol. 64, No. 70
Tuesday, April 13, 1999

Agriculture Department
See Cooperative State Research, Education, and Extension Service
See Farm Service Agency
See Foreign Agricultural Service
See Forest Service
See Grain Inspection, Packers and Stockyards Administration
See Natural Resources Conservation Service

Alcohol, Tobacco and Firearms Bureau
NOTICES
Agency information collection activities:
Proposed collection; comment request, 18068–18070

Centers for Disease Control and Prevention
NOTICES
Grants and cooperative agreements; availability, etc.:
Health communication research, 18033–18034

Children and Families Administration
NOTICES
Grants and cooperative agreements; availability, etc.:
Head Start—
University-head start partnerships and headstart research scholars, 18035

Commerce Department
See Export Administration Bureau
See International Trade Administration
See National Oceanic and Atmospheric Administration
See National Telecommunications and Information Administration

Cooperative State Research, Education, and Extension Service
NOTICES
Meetings:
Strategic Planning Task Force on Research Facilities, 17993

Corporation for National and Community Service
NOTICES
AmeriCorps funds; match requirements waiver:
Virgin Islands, Guam, American Samoa, and Northern Mariana Islands, 18004–18005

Defense Department
NOTICES
Travel per diem rates, civilian personnel; changes; correction, 18075–18080

Drug Enforcement Administration
NOTICES
Applications, hearings, determinations, etc.:
Church of the Living Tree, 18056
Ethical Nutritionals, LLC, 18056–18057
High Standard Products, 18057

Education Department
NOTICES
Grants and cooperative agreements; availability, etc.:
Bilingual education and minority languages affairs—
Bilingual training for all teachers; correction, 18005

Energy Department
See Federal Energy Regulatory Commission
NOTICES
Electric energy; export and import authorizations, permits, etc.:
Sumas Energy 2, Inc., 18005
Grants and cooperative agreements; availability, etc.:
On-line temperature measurement instrumentation for gasification process control, 18005–18006
Meetings:
Environmental Management Advisory Board; correction, 18006
Reports and guidance documents; availability, etc.:
Foreign research reactor spent fuel fee policy, 18006–18007

Environmental Protection Agency
RULES
Air quality implementation plans; approval and promulgation; various States:
District of Columbia, 17982
PROPOSED RULES
Air quality implementation plans; approval and promulgation; various States:
Idaho; correction, 17990–17991
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 18015–18016
Meetings:
State FIFRA Issues Research and Evaluation Group, 18016
Superfund; response and remedial actions, proposed settlements, etc.:
Evergreen Manor Groundwater Contamination Site, IL, 18016–18017
Metal Bank Superfund Site, PA, 18017
Toxic and hazardous substances control:
Lead-based paint activities in target housing and child-occupied facilities; State and Indian Tribe authorization applications—
Colorado, 18017–18020

Executive Office of the President
See Presidential Documents

Export Administration Bureau
RULES
Export licensing:
Organization of American States (OAS); model regulations for control of international movement of firearms, parts, components, and ammunition, 17968–17975

Farm Service Agency
RULES
Special programs:
Dairy indemnity payment program, 17942–17943

Federal Aviation Administration
RULES
Airworthiness directives:
CFM International, 17962–17964
General Electric Co., 17951–17954, 17958–17962
International Aero Engines, 17956–17958
Pratt & Whitney, 17947–17956
Robinson Helicopter Co., 17964–17968
PROPOSED RULES
Air traffic operating and flight rules, etc.:
Parachute operations, 18301–18314
Class E airspace, 17983–17985
NOTICES
Environmental statements; availability, etc.:
Toledo Express Airport, OH; noise compatibility plan, 18065
Environmental statements; notice of intent:
T.F. Green Airport, Warick, RI; noise compatibility program, 18065
Passenger facility charges; applications, etc.:
John F. Kennedy International Airport, NY, et al., 18065–18066
Metropolitan Oakland International Airport, CA, 18066–18067

Federal Communications Commission
NOTICES
Agency information collection activities:
Proposed collection; comment request, 18020–18021
Submission for OMB review; comment request, 18021–18023
Meetings; Sunshine Act, 18023–18024

Federal Deposit Insurance Corporation
NOTICES
Meetings; Sunshine Act, 18024

Federal Energy Regulatory Commission
NOTICES
Electric rate and corporate regulation filings:
Electrade Corp. et al., 18012–18014
Hydroelectric applications, 18014–18015
Applications, hearings, determinations, etc.:
ANR Pipeline Co., 18007–18008
CNG Transmission Corp., 18008
Columbia Gas Transmission Corp., 18008
El Paso Natural Gas Co., 18008–18009
Iroquois Gas Transmission System, L.P., 18009
Kern River Gas Transmission Co., 18009
Mississippi River Transmission Corp., 18009–18010
Reliant Energy Gas Transmission Co., 18010
Transcontinental Gas Pipe Line Corp., 18010–18012
Williams Gas Pipelines Central, Inc., 18012

Federal Housing Enterprise Oversight Office
PROPOSED RULES
Risk-based capital:
Stress tests; house price index (HPI) use and benchmark loss experience establishment, 18083–18300

Federal Maritime Commission
NOTICES
Freight forwarder licenses:
Air-Mar Shipping, Inc., et al., 18024–18025
Irwin Brown Co., 18025

Federal Reserve System
NOTICES
Banks and bank holding companies:
Formations, acquisitions, and mergers, 18025
Meetings; Sunshine Act, 18025

Federal Trade Commission
PROPOSED RULES
Industry guides:
Dog and cat food industry; correction, 18081
Law book industry; correction, 18081
NOTICES
Premerger notification waiting periods; early terminations, 18025–18032

Fish and Wildlife Service
PROPOSED RULES
National wildlife refuge system:
Lead Free Fishing Areas; fishing sinkers and jigs made with lead; prohibited use, 17992

Food and Drug Administration
PROPOSED RULES
Human drugs:
Progestational drug products; labeling directed to patient, 17985–17988
NOTICES
Human drugs:
Progestational drug products; warnings and contraindications on physician and patient labeling, 18035–18036

Foreign Agricultural Service
NOTICES
Committees; establishment, renewal, termination, etc.:
Agricultural Policy Advisory Committee for Trade, et al., 17993–17994

Forest Service
NOTICES
Environmental statements; notice of intent:
Delta and Gunnison Counties, CO; coal lease and exploration, 18044–18046
Meetings:
Oregon Coast Provincial Advisory Committee, 17994

General Accounting Office
NOTICES
Meetings:
Federal Accounting Standards Advisory Board, 18032

Grain Inspection, Packers and Stockyards Administration
NOTICES
Meetings:
Grain Inspection Advisory Committee, 17994

Health and Human Services Department
See Centers for Disease Control and Prevention
See Children and Families Administration
See Food and Drug Administration
See National Institutes of Health
See Public Health Service

Housing and Urban Development Department
See Federal Housing Enterprise Oversight Office
NOTICES
Agency information collection activities:
Proposed collection; comment request, 18040
Grants and cooperative agreements awards:
Public and Indian housing—
Economic Development and Supportive Services and Tenant Opportunities Programs, 18040–18044

Immigration and Naturalization Service
RULES
Immigration:
Commercial delivery service as a form of personal service for the delivery of Notices of Intention to Fine, 17943–17944

Interior Department
See Fish and Wildlife Service
See Land Management Bureau
See Minerals Management Service
See National Park Service
See Surface Mining Reclamation and Enforcement Office

Internal Revenue Service
NOTICES
Agency information collection activities:
Proposed collection; comment request, 18070–18073
Meetings:
Citizen Advocacy Panel, 18073–18074

International Trade Administration
NOTICES
Antidumping:
Steel wire rope from—
Korea, 17995–17998
Welded carbon steel pipes and tubes from—
Thailand, 17998–18001
Countervailing duties:
Cut-to-length carbon steel plate from—
Belgium, 18001–18003

Justice Department
See Drug Enforcement Administration
See Immigration and Naturalization Service
RULES
Privacy Act:
Systems of records, 17977–17978
NOTICES
Pollution control; consent judgments:
Gallatin Steel Co., 18049–18050
Prairie Sand & Gravel, Inc., 18050
Ribi Immunochem Research, Inc., et al., 18050–18051
Riehl, Ralph, Jr., et al., 18051
Yellowstone Pipe Line Co. et al., 18051
Privacy Act:
Systems of records, 18051–18056

Land Management Bureau
NOTICES
Closure of public lands:
Nevada, 18044
Environmental statements; notice of intent:
Delta and Gunnison Counties, CO; coal lease and exploration, 18044–18046
Meetings:
Resource advisory councils—
Southeast Oregon, 18047
Southwest, 18046
Survey plat filings:
Nevada, 18047
Wisconsin, 18047–18048
Withdrawal and reservation of lands:
Idaho; correction, 18048

Minerals Management Service
PROPOSED RULES
Royalty management:
Oil value for royalty due on Federal leases; comment extension, 17990

National Institutes of Health
NOTICES
Meetings:
National Cancer Institute, 18036
National Heart, Lung, and Blood Institute, 18036–18037
National Institute of Allergy and Infectious Diseases, 18037–18038
National Institute of Diabetes and Digestive and Kidney Diseases, 18037–18038
Scientific Review Center, 18038–18039

National Oceanic and Atmospheric Administration
NOTICES
Meetings:
Western Pacific Fishery Management Council, 18003–18004

National Park Service
NOTICES
Boundary establishement, descriptions, etc.:
Point Reyes National Seashore, CA, 18048
Meetings:
Kaloko-Honokohau National Historical Park Advisory Commission, 18048
National Register of Historic Places:
Pending nominations, 18048–18049
Official insignia:
Bicentennial Anniversary of the Lewis and Clark Expedition, 20003-20006; designation, 18049

National Telecommunications and Information Administration
NOTICES
Grants and cooperative agreements; availability, etc.:
Public telecommunications facilities program, 18004

National Transportation Safety Board
NOTICES
Meetings; Sunshine Act, 18057

Natural Resources Conservation Service
NOTICES
Field office technical guides; changes:
Indiana, 17994
Louisiana, 17995

Nuclear Regulatory Commission
RULES
Production and utilization facilities; domestic licensing:
Nuclear power plants—
IEEE national consensus standard; safety systems; power, instrumentation and control portions; incorporation by reference, 17944–17946

Nuclear power reactors—
Emergency preparedness programs, safeguards contingency plans, and security programs; licensees' independent reviews and audits; correction, 17947
NOTICES
Agency information collection activities:
Proposed collection; comment request, 18057–18058
Submission for OMB review; comment request, 18058
Environmental statements; availability, etc.:
Niagara Mohawk Power Corp., 18059–18062
Applications, hearings, determinations, etc.:
Baltimore Gas & Electric Co., 18058–18059

Office of Federal Housing Enterprise Oversight
See Federal Housing Enterprise Oversight Office

Personnel Management Office
RULES
Prevailing rate systems, 17941–17941

Presidential Documents
PROCLAMATIONS
Special observances:
Former Prisoner of War Recognition Day, National (Proc. 7182), 18319–18322
Pan American Day and Pan American Week (Proc. 7181), 18315–18318

Public Health Service
See Centers for Disease Control and Prevention
See Food and Drug Administration
See National Institutes of Health
NOTICES
Meetings:
National Toxicology Program—
Special Emphasis Panel, 18040

Securities and Exchange Commission
NOTICES
Applications, hearings, determinations, etc.:
Goldman Sachs Group, Inc., et al., 18062–18063

Small Business Administration
NOTICES
Intergovernmental review of agency programs and activities, 18064–18065

Surface Mining Reclamation and Enforcement Office
RULES
Permanent program and abandoned mine land reclamation plan submissions:
Maryland, 17978–17980
Ohio, 17980–17982

Surface Transportation Board
NOTICES
Railroad operation, acquisition, construction, etc.:
CSX Transportation, Inc., 18067

Transportation Department
See Federal Aviation Administration
See Surface Transportation Board

Treasury Department
See Alcohol, Tobacco and Firearms Bureau
See Internal Revenue Service
NOTICES
Meetings:
Debt Management Advisory Committee, 18067–18068

United States Information Agency
RULES
Exchange visitor program:
Short-term scholars; participation in seminars, workshops, etc., 17975–17976
Summer travel/work programs, 17976–17977
PROPOSED RULES
Exchange visitor program:
Au pair programs; oversight and general accountability, 17988–17990
NOTICES
Art objects; importation for exhibition:
Portraits by Ingres: Image of an Epoch, 18074

Separate Parts In This Issue

Part II
Federal Housing Enterprise Oversight Office, 18083–18300

Part III
Department of Transportation, Federal Aviation Administration, 18301–18314

Part IV
The President, 18315–18318

Part V
The President, 18319–18322

Reader Aids
Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

3 CFR
Proclamations:
7181.....18317
7182.....18321

5 CFR
532 (2 documents).....17941

7 CFR
760.....17942

8 CFR
103.....17943

10 CFR
50 (2 documents).....17944, 17947
73.....17947

12 CFR
Proposed Rules:
1750.....18084

14 CFR
39 (10 documents).....17947, 17949, 17951, 17954, 17956, 17950, 17961, 17962, 17964, 17966

Proposed Rules:
65.....18302
71 (2 documents).....17983, 17984
91.....18302
105.....18302
119.....18302

15 CFR
738.....17968
740.....17968
742.....17968
748.....17968
762.....17968
774.....17968

16 CFR
Proposed Rules:
241.....18081
256.....18081

21 CFR
Proposed Rules:
310.....17985

22 CFR
514 (2 documents).....17975, 17976

Proposed Rules:
514.....17988

28 CFR
16.....17977

30 CFR
920.....17978
935.....17980

Proposed Rules:
206.....17990

40 CFR
52.....17982

Proposed Rules:
52.....17990

50 CFR
Proposed Rules:
32.....17992

UMI

VOL
64

ISS
70

AP
13

1999

UMI

Rul

This sec
contains
applicab
are keye
Federal
50 titles

The Co
the Sup
new boo
REGIST

OFFIC
MANA

5 CFR

RIN 320

Preva
of the
Wage

AGENC
Manag

ACTION

SUMMA
Manag
abolish
approp
wage a
becaus
wage a
Orlan
closur
Orlan
Defens
wage a
local w

DATES:
on Ma

FOR FU
Jennif
FAX: (
jdhopk

SUPPL
Octob
Manag
interim
the rec
survey
Florid
Wage
Orlan
Osceo
Count
Prevai
(FPRA
manag
advisi
the pa
recom

Rules and Regulations

Federal Register
Vol. 64, No. 70
Tuesday, April 13, 1999

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 532

RIN 3206–AI04

Prevailing Rate Systems; Abolishment of the Orlando, FL, Appropriated Fund Wage Area

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management is issuing a final rule to abolish the Orlando, Florida, appropriated fund Federal Wage System wage area. This change is being made because of the closure of the Orlando wage area's host installation, the Orlando Naval Training Station. This closure left the lead agency for the Orlando wage area, the Department of Defense, without an installation in the wage area capable of hosting annual local wage surveys.

DATES: This final regulation is effective on May 13, 1999.

FOR FURTHER INFORMATION CONTACT: Jennifer Hopkins at (202) 606–2848, FAX: (202) 606–0824, or email to jdhopkin@opm.gov.

SUPPLEMENTARY INFORMATION: On October 3, 1997, the Office of Personnel Management (OPM) published an interim rule (62 FR 51759) to remove the requirement that a full-scale wage survey be conducted in the Orlando, Florida, appropriated fund Federal Wage System (FWS) wage area. The Orlando wage area consisted of Orange, Osceola, Seminole, and Volusia Counties in Florida. The Federal Prevailing Rate Advisory Committee (FPRAC), the national labor-management committee responsible for advising OPM on matters concerning the pay of FWS employees, recommended by consensus that we abolish the Orlando wage area. A full-scale wage survey was scheduled to begin in the wage area in September 1997. However, at that time, the Orlando wage area's host installation, the Orlando Naval Training Station, was preparing to close. The Department of Defense (DOD), the lead agency for the Orlando wage area, was left without an installation in the wage area capable of hosting annual local wage surveys. Without a host installation, DOD was unable to conduct the scheduled 1997 full-scale wage survey.

The interim rule provided a 30-day public comment period, during which OPM did not receive any comments. Based on FPRAC's previous consensus recommendation, the interim rule is being adopted as a final rule with no changes.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they will affect only Federal agencies and employees.

List of Subjects in 5 CFR Part 532

Administrative practice and procedure, Freedom of information, Government employees, Reporting and recordkeeping requirements, Wages.

Accordingly, under the authority of 5 U.S.C. 5343, the interim rule (62 FR 51759) amending 5 CFR part 532 published on October 3, 1997, is being adopted as final with no changes.

Office of Personnel Management.

Janice R. Lachance,

Director.

[FR Doc. 99–9159 Filed 4–12–99; 8:45 am]

BILLING CODE 6325–01–P

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 532

RIN 3206–AI13

Prevailing Rate Systems; Redefinition of the Orlando, FL, Appropriated Fund Wage Area

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management is issuing a final rule to redefine Orange, Osceola, Seminole, and Volusia Counties, Florida, from the Orlando, FL, appropriated fund Federal Wage System (FWS) wage area to the Jacksonville, FL, FWS wage area. This change is being made because the closure of the Orlando wage area's host installation, the Orlando Naval Training Station, left the Department of Defense without an installation in the Orlando wage area capable of hosting local wage surveys.

DATES: This final rule is effective on May 13, 1999.

FOR FURTHER INFORMATION CONTACT: Jennifer Hopkins, (202) 606–2848, FAX: (202) 606–0824, or email to jdhopkin@opm.gov.

SUPPLEMENTARY INFORMATION: On February 9, 1998, the Office of Personnel Management (OPM) published an interim rule (63 FR 6471) to redefine the Orlando, Florida, Federal Wage System (FWS) wage area. The Federal Prevailing Rate Advisory Committee (FPRAC), the national labor-management committee responsible for advising OPM on matters concerning the pay of FWS employees, recommended by consensus that we redefine Orange, Osceola, Seminole, and Volusia Counties, FL, from the Orlando wage area to the Jacksonville, FL, FWS wage area. In September 1997, a full-scale wage survey was scheduled to begin in the Orlando wage area; however, the Orlando wage area's host installation, the Orlando Naval Training Station, was preparing to close. The lead agency for the Orlando wage area, the Department of Defense (DOD), was left without an activity in the wage area capable of hosting local wage surveys. Because DOD was unable to conduct the survey, OPM abolished the Orlando wage area (62 FR 51759) and removed the requirement that a local wage survey be conducted in the Orlando wage area.

Employees being paid rates from the Orlando wage schedule were converted to the Jacksonville wage schedule on the first day of the first applicable pay period beginning on or after March 11, 1998. OPM did not receive any comments on the interim rule during its 30-day public comment period. Based on the previous consensus recommendation of FPRAC, the interim rule is being adopted as a final rule without any changes.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they will affect only Federal agencies and employees.

List of Subjects in 5 CFR Part 532

Administrative practice and procedure, Freedom of information, Government employees, Reporting and recordkeeping requirements, Wages.

Accordingly, under the authority of 5 U.S.C. 5343, the interim rule (63 FR 6471) amending 5 CFR part 532 published on February 9, 1998, is being adopted as final with no changes.

Office of Personnel Management.

Janice R. Lachance,

Director.

[FR Doc. 99–9158 Filed 4–12–99; 8:45 am]

BILLING CODE 6325–01–P

DEPARTMENT OF AGRICULTURE

Farm Service Agency

7 CFR Part 760

RIN 0560–AF66

Dairy Indemnity Payment Program

AGENCY: Farm Service Agency, USDA.

ACTION: Final rule.

SUMMARY: This final rule amends the authority citation for the Dairy Indemnity Payment Program (DIPP) regulations to cover the expenditure of additional funds that were recently appropriated. The DIPP indemnifies dairy farmers for milk and manufacturers of dairy products who have been directed to remove their milk or dairy products from commercial markets because of the presence of certain specified forms of contamination.

EFFECTIVE DATE: April 13, 1999.

FOR FURTHER INFORMATION CONTACT: Raellen Erickson, Agricultural Program Specialist, Price Support Division, FSA, USDA, STOP 0512, 1400 Independence Avenue, SW, Washington, DC 20250–0512; telephone (202) 720–7320; e-mail address is raellen_erickson@wdc.fsa.usda.gov.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule has been determined to be not significant for purposes of Executive Order 12866 and therefore has not been reviewed by the Office of Management and Budget (OMB).

Federal Assistance Program

The title and number of the Federal Assistance Program, as found in the Catalog of Federal Domestic Assistance, to which this rule applies are Dairy Indemnity Payments, Number 10.053.

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable to this final rule because the Farm Service Agency is not required by 5 U.S.C. 533 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of these determinations.

Environmental Evaluation

It has been determined by an environmental evaluation that this action will have no significant impact on the quality of the human environment. Therefore, neither an environmental assessment nor an Environmental Impact Statement is needed.

Executive Order 12372

This program is not subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

Executive Order 12988

This rule has been reviewed pursuant to Executive Order 12988. To the extent State and local laws are in conflict with these regulatory provisions, it is the intent of CCC that the terms of the regulations prevail. The provisions of this rule are not retroactive. Prior to any judicial action in a court of competent jurisdiction, administrative review under 7 CFR part 780 must be exhausted.

Paperwork Reduction Act

The amendment to 7 CFR part 760 set forth in this final rule does not contain additional information collections that require clearance by the Office of Management and Budget under the provisions of 44 U.S.C. chapter 35. Existing information collections were approved by OMB and assigned OMB Control Number 0560–0116.

Background

The DIPP was originally authorized by section 331 of the Economic Opportunity Act of 1964, Pub. L. 88–452. The statutory authority for the program has been amended and extended several times. Funds were appropriated for DIPP by the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Act, 1998 ("the 1998 Act"), Pub. L. 105–86, 111 Stat. 2079, which authorizes the program until the $550,000 in funds appropriated under that act are expended. More recently, funds were appropriated for this program by the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 1999 ("the 1999 Act"), Pub. L. 105–277, 112 Stat. 2681, which authorizes the program to be carried out until the $450,000 in funds appropriated under the 1999 Act are expended. Not all the funds appropriated under the 1998 Act have been expended and the remaining funds are still available in addition to the funds appropriated under the 1999 Act.

The objective of DIPP is to indemnify dairy farmers for milk and manufacturers of dairy products who have been directed to remove their milk or dairy products from commercial markets because such milk or dairy products contain certain harmful chemical residues. In addition, the DIPP also indemnifies dairy farmers who have been directed to remove milk from commercial markets due to residues of certain other chemicals or toxic substances, or contamination by nuclear radiation or fallout.

The regulations governing the program are set forth at 7 CFR part 760. This final rule makes no changes in the substantive provisions of the regulations. Because the only purpose of this final rule is to revise the authority citation to include the reference to the 1999 Act, it has been determined that no further public rulemaking is required. In addition, section 1133 of the 1999 Act provides statutory authority to issue final regulations without a notice and comment period. Therefore, this final rule shall become effective upon the date of publication in the **Federal Register**.

List of Subjects in 7 CFR Part 760

Dairy products, Indemnity payments, Pesticides and pests.

Accordingly, 7 CFR part 760 is amended as follows:

PART 760—INDEMNITY PAYMENT PROGRAMS

Subpart—Dairy Indemnity Payment Program

The authority citation for Subpart—Dairy Indemnity Payment Program is revised to read as follows:

Authority: Dairy Indemnity Program, Pub. L. 105–86, 111 Stat. 2079 and Pub. L. 105–277, 112 Stat. 2681.

Signed in Washington, DC, on March 30, 1999.

Parks Shackelford,

Acting Administrator, Farm Service Agency.

[FR Doc. 99–9129 Filed 4–12–99; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 103

[INS No. 1952–98]

The Addition of Commercial Delivery Service as a Form of Personal Service

RIN 1115–AF30

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This rule amends the Immigration and Naturalization Service (Service) regulations by adding the use of commercial delivery service as a form of personal service for the delivery of Notices of Intention to Fine (NIFs), Form I–79, by the Service. A commercial delivery service allows for the registered signature of the addressee or other responsible party to be on record, allows Service personnel to be able to track the mailing status of the copy on a computer information system, and allows the addressee to receive the copy in a timely and efficient manner. The change is intended to facilitate and improve the personal service of NIFs.

DATES: This final rule is effective April 13, 1999.

FOR FURTHER INFORMATION CONTACT: Marylena S. Kruszka, Immigration Fines Officer, National Fines Office, Immigration and Naturalization Service, 1400 Wilson Blvd., Suite 210, Arlington, VA 22209, telephone (202) 305–7018.

SUPPLEMENTARY INFORMATION: Currently, § 103.5a(a)(2) permits the Service to personally serve notices, decisions, or orders by: (1) Personally delivering the paperwork to the person in question; (2) delivering the paperwork to the person's residence; (3) delivering the paperwork to the person's attorney; or by (4) mailing a copy by certified or registered mail with a return receipt. This rule adds commercial overnight delivery service as a form of personal service for NIFs.

Why Is the Service Making This Change?

Currently, the National Fines Office (NFO) mails out approximately 7,000 NIFs per year via certified mail. By permitting commercial delivery, Service personnel can use a commercial computer information system to complete the mail delivery forms, instantly track the status of the package, and retrieve the registered signature of the addressee. Commercial delivery services generally guarantee delivery within one or two business days. The NFO currently pays $2.32 per NIF sent via certified mail, and $3.50 via commercial delivery service. Even though commercial delivery is more expensive per NIF sent, multiple NIFs can be included and tracked in one overnight package; this is not the case with certified mail. There is also a cost involved in preparing the certified mail envelopes and filing the return receipts. The NFO has developed a method to record the overnight delivery tracking number for each NIF sent via commercial delivery service so there is no need to file a receipt. Moreover, since the commercial delivery system is automated, preparing the packages for mailing is less time consuming. Overall, there is a cost savings that will flow from the time and effort saved by using a commercial delivery service. Notice of Intention to Fine require timely responses by the recipient; therefore, guaranteed, verifiable delivery is beneficial to both the Service and the public. Accordingly, the Service is amending § 103.5a(a) to include commercial delivery service as a form of personal service for NIFs.

Good Cause Exception

This final rule is effective upon publication in the **Federal Register**. Compliance with 5 U.S.C. 553 with regard to proposed rulemaking and delayed effective date is unnecessary in this instance and would serve no useful purpose because the amendment relates to agency procedure and practice.

Regulatory Flexibility Act

The Commissioner of the Immigration and Naturalization Service, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and, by approving it, certifies that this rule does not have a significant economic impact on a substantial number of small entities. This rule is intended to increase Service efficiency and reduce costs to the Government.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any 1 year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Act of 1996. This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects or competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Executive Order 12866

This rule is not considered by the Department of Justice, Immigration and Naturalization Service, to be a "significant regulatory action" under Executive Order 12866, section 3(f), Regulatory Planning and Review, and the Office of Management and Budget has waived its review process under section 6(a)(3)(A).

Executive Order 12612

The regulation adopted herein will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Executive Order 12988 Civil Justice Reform

This final rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of E.O. 12988.

List of Subjects in 8 CFR Part 103

Administrative practice and procedure, Authority delegations (Government agencies), Freedom of information, Privacy, Reporting and recordkeeping requirements, Surety bonds.

Accordingly, part 103 of chapter I of title 8 of the Code of Federal Regulations is amended as follows:

PART 103—POWERS AND DUTIES OF SERVICE OFFICERS; AVAILABILITY OF SERVICE RECORDS

1. The authority citation for part 103 continues to read as follows:

Authority: 5 U.S.C. 552, 552(a); 8 U.S.C. 1101, 1103, 1201, 1252 note, 1252b, 1304, 1356; 31 U.S.C. 9701; E.O. 12356; 47 FR 14874, 15557; 3 CFR, 1982 Comp., p 166; 8 CFR part 2.

2. Section 103.5a is amended by adding a new paragraph (a)(3) to read as follows:

§ 103.5a Service of notification, decisions, and other papers by the Service.

* * * * *

(a) * * *

(3) *Personal service involving notices of intention to fine.* In addition to any of the methods of personal service listed in paragraph (a)(2) of this section, personal service of Form I–79, Notice of Intention to Fine, may also consist of delivery of the Form I–79 by a commercial delivery service at the carrier's address on file with the National Fines Office, the address listed on the Form I–849, Record for Notice of Intent to Fine, or to the office of the attorney or agent representing the carrier, provided that such a commercial delivery service requires the addressee or other responsible party accepting the package to sign for the package upon receipt.

* * * * *

Dated: March 12, 1999.

Doris Meissner,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 99–9162 Filed 4–12–99; 8:45 am]

BILLING CODE 4410–10–M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

RIN 3150–AF96

Codes and Standards: IEEE National Consensus Standard

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission is amending its regulations to incorporate by reference IEEE Std. 603–1991, a national consensus standard for power, instrumentation, and control portions of safety systems in nuclear power plants. Use of IEEE Std. 603–1991 is mandatory for new nuclear power plants and design approvals or certifications and is voluntary for existing nuclear power plants and design approvals. This action is necessary to endorse the latest version of this national consensus standard in NRC's regulations because IEEE has withdrawn IEEE Std. 279–1971.

EFFECTIVE DATE: The final rule is effective on May 13, 1999. The incorporation by reference of IEEE Std. 603–1991 is approved by the Director of the Federal Register as of May 13, 1999.

FOR FURTHER INFORMATION CONTACT: Satish K. Aggarwal, Senior Program Manager, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Telephone: 301–415–6005, Fax: 301–415–5074, E-mail: SKA@NRC.GOV.

SUPPLEMENTARY INFORMATION: 10 CFR part 50, "Domestic Licensing of Production and Utilization Facilities," § 50.55a(h) requires that the protection systems in nuclear power plants meet the requirements stated in IEEE Std. 279–1971, "Criteria for Protection Systems for Nuclear Power Generating Stations," in effect on the formal docket date of the application. However, IEEE has withdrawn IEEE Std. 279–1971 and has superseded it with IEEE Std. 603–1991, "Criteria for Safety Systems for Nuclear Power Generating Stations." On April 23, 1998 (63 FR 20136), the NRC published a proposed rule in the **Federal Register** that would amend its regulations to incorporate IEEE Std. 603–1991 for power, instrumentation, and control portions of safety systems. This action is consistent with the provisions of the National Technology Transfer and Advancement Act of 1995, Pub. L. 104–113, which encourages Federal regulatory agencies to consider adopting industry consensus standards as an alternative to de novo agency development of standards affecting an industry. This action is also consistent with the NRC policy of evaluating the latest versions of national consensus standards in terms of their suitability for endorsement by regulations or regulatory guides.

Currently, 10 CFR 50.55a(h) specifies that "protection systems" for plants with construction permits issued after January 1, 1971, must meet the requirements in IEEE Std. 279–1971 in effect on the formal docket date of the application for a construction permit. IEEE Std. 279–1971 states that a "protection system" encompasses all electric and mechanical devices and circuitry (from sensors to actuation device input terminals) involved in generating those signals associated with the protective function. These signals include those that actuate reactor trip and that, in the event of a serious reactor accident, actuate engineered safety features (ESFs), such as containment isolation, core spray, safety injection, pressure reduction, and air cleaning. "Protective function" is defined in IEEE Std. 279–1971 as "the sensing of one or more variables associated with a particular generating station condition, signal processing, and the initiation and completion of the protective action at values of the variables established in the design bases."

IEEE Std. 603–1991 uses the term "safety systems" rather than "protection systems" to define its scope. A "safety system" is defined in IEEE Std. 603–1991 as "a system that is relied upon to remain functional during and following design basis events to ensure: (i) The integrity of the reactor coolant pressure boundary, (ii) the capability to shut down the reactor and maintain it in a safe shutdown condition, or (iii) the capability to prevent or mitigate the consequences of accidents that could result in potential offsite exposures comparable to the 10 CFR Part 100 guidelines." A "safety function" is defined in IEEE Std. 603–1991 as "one of the processes or conditions (for example, emergency negative reactivity insertion, post-accident heat removal, emergency core cooling, post-accident radioactivity removal, and containment isolation) essential to maintain plant parameters within acceptable limits established for a design basis event."

The NRC recognizes that "protection systems" are a subset of "safety systems." Safety system is a broad-based and all-encompassing term, embracing the protection system in addition to other electrical systems. Thus, the term "protection system" is not synonymous with the term "safety system." The final rule is not intended to change the scope of the systems covered in the final safety analysis report (FSAR) for currently operating nuclear power plants.

This final rule sets forth the standards for the design of safety systems for future power plants. The final rule mandates the use of IEEE Std. 603–1991 (including the correction sheet dated January 30, 1995) for applications for design approvals pursuant to 10 CFR Part 52, Appendix O and design certifications pursuant to 10 CFR Part 52, Subpart B which are filed after the effective date of this rule. Although the Westinghouse AP–600 design certification was filed prior to the effective date of this rule, it has been reviewed to IEEE Std. 603–1991. In addition, the final rule mandates the use of IEEE Std. 603–1991 (including the correction sheet dated January 30, 1995) for all applications for a construction permit, operating license or combined license filed on or after the effective date of the rule that do not reference a certified design. Any application for a construction permit, operating license or combined license that references a certified design is required to comply

with the IEEE standards approved in the referenced design certification rule. Current holders of operating licenses may continue to meet the requirements for protection systems in their licensing basis, or may voluntarily comply with IEEE Std. 603–1991 (including the correction sheet dated January 30, 1995).

Significant Comments on the Proposed Rule

The NRC received 16 public comment letters. Copies of these letters are available for public inspection, and copying for a fee, at the NRC's Public Document Room. The major issues raised by the commenters and the NRC staff responses to these issues are as follows.

(1) Ambiguity in the Definition of "System-Level Replacements"

Issue: The term "system-level replacement" is not clearly defined. The rule would create a dual licensing basis for plant protection systems.

Response: "System-level replacement" for a protection system must involve complete replacement from the process sensors to the actuation signals used for the initiation of execute features (e.g., reactor trip system trip breaker, scram solenoid-operated valves, and ESF motive equipment operation). A licensee's current licensing basis applies when defining protection system boundaries. A licensee's protection systems are typically defined and discussed in Final Safety Analysis Report Sections 7.1, 7.2, and 7.3. The decision to establish and manage a dual licensing basis is voluntary, not mandatory. Reference to system-level replacements has been removed in this final rule because the compliance with the requirements of IEEE Std. 603–1991 is voluntary for changes to protection systems.

(2) Referenced Standards

Issue: The NRC staff states that the other IEEE standards referenced in IEEE Std. 603–1991 will not by themselves become mandatory. However, this position was not restated in the rule itself.

Response: As a matter of law, the other IEEE standards referenced in IEEE Std. 603–1991 are not rulemaking requirements, inasmuch as (i) Section 50.55a does not contain lanquage explicitly requiring the use of the other IEEE standards referenced in IEEE Std. 603–1991, and (ii) the other IEEE standards referenced in IEEE Std. 603–1991 have not been approved for incorporation by reference by the Office of Federal Register.

(3) Backfit Analysis

Issue: Incorporating the additional requirements of IEEE Std. 603–1991 as a binding regulation would impose a change to the current licensing basis and constitutes a backfit.

Response: The NRC has revised the rule to make compliance with the requirements of IEEE Std. 603–1991 voluntary. Current licensees may continue to satisfy NRC regulations by meeting the requirements stated in the edition or revision of IEEE Std. 279 in effect on the formal date of their application for a construction permit. Therefore, any further discussion of backfit is unnecessary.

Consensus Standards

The National Technology Transfer Act of 1995, Pub. L. 104–113, requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless the use of these standards is inconsistent with applicable law or otherwise impractical. In this final rule, the NRC is using the following voluntary consensus standards, IEEE Std. 603–1991, including the correction sheet dated January 30, 1995. No alternative voluntary consensus standard(s) were identified for use in this final rule.

Finding of No Environmental Impact: Availability of Environmental Assessment

The NRC has determined under the National Environmental Policy Act of 1969, as amended, and the NRC's regulations in subpart A of 10 CFR Part 51, that because this final rule would not be a major Federal action significantly affecting the quality of the human environment, an environmental impact statement is not required. The NRC has prepared an environmental assessment supporting this finding of no significant environmental impact.

The NRC had sent a copy of the environmental assessment and a copy of the **Federal Register** notice to every State liaison officer and requested their comments on the environmental assessment. No comments were received. The environmental assessment is available for inspection, and copying for a fee, at the NRC Public Document Room, 2120 L Street, NW., Washington, D.C. Also, the NRC has committed itself to complying in all its actions with Presidential Executive Order 12898, "Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations" (February 11, 1994). Therefore, the NRC also has determined that there are no disproportionate, high, and adverse impacts on minority and low-income populations. The NRC uses the following working definition of environmental justice: Environmental justice means the fair treatment and meaningful involvement of all people—regardless of race, ethnicity, culture, income, or educational level—with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.

Paperwork Reduction Act Statement

This final rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, *et seq.*). Existing requirements were approved by the Office of Management and Budget, Approval No. 3150–0011.

Public Protection Notification

If an information collection does not display a currently valid OMB control number, the NRC may not conduct or sponsor, and a person is not required to respond to, the information collection.

Regulatory Analysis

The NRC has prepared a regulatory analysis that shows this amendment does not impose any new requirements or costs on current licensees because compliance with the requirements of IEEE Std. 603–1991 is voluntary. The regulatory analysis is available for inspection, and copying for a fee, in the NRC Public Document Room, 2120 L Street NW., Washington, DC.

Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the NRC certifies that this rule does not have a significant economic impact on small entities. This rule affects only the operation of nuclear power plants. The companies that own these plants do not fall within the scope of the definition of "small entities" stated in the Regulatory Flexibility Act or the small business size standards adopted by the NRC (10 CFR 2.810). Because these companies are dominant in their service areas, this rule does not fall within the purview of the act.

Backfit Analysis

The final rule requires applicants for new design approvals and new design certifications to comply with IEEE Std. 603–1991 (including the correction sheet dated January 30, 1995). The final rule also requires applicants for new construction permits, new operating licenses, and combined licenses that do not reference a certified design to

comply with IEEE Std. 603–1991 (including the correction sheet dated January 30, 1995). Current holders of operating licenses may continue to meet the requirements for protection systems in their licensing basis, or may voluntarily comply with IEEE Std. 603–1991 (including the correction sheet dated January 30, 1995).

The backfit rule was not intended to apply to regulatory actions that change expectations of prospective applicants and, therefore, the backfit rule does not apply to the portion of the rule applicable to new construction permits, new operating licenses, new design approvals, new design certifications, and combined licenses that do not reference a certified design. Because the IEEE Std. 603–1991 is voluntary for licensees of currently operating plants, this rule does not constitute a backfit with respect to those plants.

The NRC staff believes that newer consensus standards reflect progress and the current "state of the practice" of the technology. Specifically, IEEE Std. 603–1991 is a major improvement over IEEE Std. 279–1971. IEEE Std. 279–1971 provides basic criteria for protection systems, which remain unchanged in IEEE Std. 603–1991. If a licensee proposes to replace an existing analog protection system with a digital system, IEEE Std. 279–1971 provides no specific guidance. Therefore, licensees are likely to consider the guidance in IEEE Std. 603–1991 and other standards that address digital system design. The NRC staff encourages the use of digital technology and encourages the use of new standards such as IEEE Std. 603–1991. Thus, the final rule provides an option for complying with the new standard for changes to existing power and instrumentation and control portions of protection systems. This is not considered a backfit because the adoption of IEEE Std. 603–1991 would be voluntary.

In summary, the NRC has determined that the backfit rule, 10 CFR 50.109, does not apply to this rule because it does not impose any backfits as defined in 10 CFR 50.109(a)(1). Therefore, a backfit analysis has not been prepared for this final rule.

Small Business Regulatory Enforcement Fairness Act

In accordance with the Small Business Regulatory Enforcement Fairness Act of 1996 the NRC has determined that this action is not a major rule and has verified this determination with the Office of Information and Regulatory Affairs of OMB.

List of Subjects in 10 CFR Part 50

Antitrust, Classified information, Criminal penalties, Fire protection, Incorporation by reference, Intergovernmental relations, Nuclear power plants and reactors, Radiation protection, Reactor siting criteria, and Reporting and recordkeeping requirements.

For the reasons stated in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 552 and 553, the NRC is adopting the following amendment to 10 CFR part 50.

PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

1. The authority citation for Part 50 continues to read as follows:

Authority: Secs. 102, 103, 104, 105, 161, 182, 183, 186, 189, 68 Stat. 936, 937, 938, 948, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 1244, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2201, 2232, 2233, 2236, 2239, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

Section 50.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 50.10 also issued under secs. 101, 185, 68 Stat. 955 as amended (42 U.S.C. 2131, 2235), sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.13, and 50.54(dd), and 50.103 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138), Sections 50.23, 50.35, 50.55, and 50.56 also issued under sec. 185, 68 Stat. 955 (42 U.S.C. 2235), Sections 50.33a, 50.55a and Appendix Q also issued under sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.34 and 50.54 also issued under sec. 204, 88 Stat. 1245 (42 U.S.C. 5844). Sections 50.58, 50.91, and 50.92 also issued under Pub. L. 97–415, 96 Stat. 2073 (42 U.S.C. 2239). Section 50.78 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Sections 50.80–50.81 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Appendix F also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

2. In § 50.55a, footnotes 7 and 8 are removed and reserved, and paragraph (h) is revised to read as follows:

§ 50.55a Codes and standards.

* * * * *

(h) Protection and safety systems. (1) IEEE Std. 603–1991, including the correction sheet dated January 30, 1995, which is referenced in paragraphs (h)(2) and (h)(3) of this section, is approved for incorporation by reference by the Director of the Office of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies of IEEE Std. 603–1991 may be purchased from the Institute of Electrical and Electronics Engineers Service Center, 445 Hoes Lane, Piscataway, NJ 08855. The standard is also available for inspection at the NRC Library, 11545 Rockville Pike, Rockville, Md; and at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, D.C. IEEE Std. 279–1971, which is referenced in paragraph (h)(2) of this section, was approved for incorporation by reference by the Director of the Office of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies of IEEE Std. 279–1971 are also available as indicated for IEEE Std. 603–1991.

(2) Protection systems. For nuclear power plants with construction permits issued after January 1, 1971, but before May 13, 1999, protection systems must meet the requirements stated in either IEEE Std. 279–1971, "Criteria for Protection Systems for Nuclear Power Generating Stations," or in IEEE Std. 603–1991, "Criteria for Safety Systems for Nuclear Power Generating Stations," and the correction sheet dated January 30, 1995. For nuclear power plants with construction permits issued before January 1, 1971, protection systems must be consistent with their licensing basis or may meet the requirements of IEEE Std. 603–1991 and the correction sheet dated January 30, 1995.

(3) Safety systems. Applications filed on or after May 13, 1999 for preliminary and final design approvals (10 CFR Part 52, Appendix O), design certifications, and construction permits, operating licenses and combined licenses that do not reference a final design approval or design certification, must meet the requirements for safety systems in IEEE Std. 603–1991 and the correction sheet dated January 30, 1995.

* * * * *

Dated at Rockville, Maryland, this 6th day of April, 1999.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

[FR Doc. 99–9038 Filed 4–12–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 50 and 73

RIN 3150–AF63

Frequency of Reviews and Audits for Emergency Preparedness Programs, Safeguards Contingency Plans, and Security Programs for Nuclear Power Reactors; Correction

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule; correction.

SUMMARY: This document corrects a rule appearing in the **Federal Register** on March 29, 1999 (64 FR 14814), that allows nuclear power reactor licensees the option to change the frequency of licensees' independent reviews and audits of their emergency preparedness programs, safeguards contingency plans, and security programs. This action is necessary to correct erroneous citations.

EFFECTIVE DATE: April 28, 1999.

FOR FURTHER INFORMATION CONTACT: David L. Meyer, Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, telephone (301) 415–7162.

SUPPLEMENTARY INFORMATION: On page 14818, in the first column, in the codified text of § 73.55(g), paragraph "(g)(4)(1)" is corrected to read "(g)(4)(i)", paragraph "(g)(4)(i)" is corrected to read "(g)(4)(A)", paragraph "(g)(4)(ii)" is corrected to read "(g)(4)(B)", and paragraph "(g)(4)(2)" is corrected to read "(g)(4)(ii)."

Dated at Rockville, Maryland, this 7th day of April 1999.

For the Nuclear Regulatory Commission.

David L. Meyer,

Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration.

[FR Doc. 99–9171 Filed 4–12–99; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–ANE–66–AD; Amendment 39–11121; AD 99–08–15]

RIN 2120–AA64

Airworthiness Directives; Pratt & Whitney PW4000 Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), that requires revisions to the Time Limits Section (TLS) of the manufacturer's Engine Manuals (EMs) for Pratt & Whitney (PW) PW4000 series turbofan engines to include required enhanced inspection of selected critical life-limited parts at each piece-part exposure. This amendment will also require an air carrier's approved continuous airworthiness maintenance program to incorporate these inspection procedures. This amendment is prompted by a Federal Aviation Administration (FAA) study of in-service events involving uncontained failures of critical rotating engine parts that indicated the need for improved inspections. The improved inspections are needed to identify those critical rotating parts with conditions that if allowed to continue in service, could result in uncontained failures. The actions specified by this AD are intended to prevent critical life-limited rotating engine part failure, which could result in an uncontained engine failure and damage to the airplane.

DATES: Effective May 13, 1999.

ADDRESSES: The information contained in this AD may be examined at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Peter White, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7128, fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to Pratt & Whitney (PW) PW4000 series turbofan engines was published in the **Federal Register** on November 5, 1998 (63 FR 5943). That action proposed to require within the next 30 days after the effective date of this AD, revisions to the Time Limits Section (TLS) of the Engine Manuals, and, for air carriers, the approved continuous airworthiness maintenance program. Pratt & Whitney, the manufacturer of PW4000 series turbofan engines has provided the FAA with a detailed proposal that identifies and prioritizes the critical life-limited rotating engine parts with the highest potential to hazard the airplane in the event of failure, along with instructions for enhanced, focused inspection methods. These enhanced inspections will be conducted at piece-part opportunity, as defined below in the compliance section, rather than specific inspection intervals.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received. One commenter suggests three changes to the final rule:

(a) The commenter states that paragraph (a)(2)(ii) is confusing as to inspection requirements for damaged parts. The FAA disagrees. Standardized language to define the piece-part condition, and thus trigger focused inspection, is required for uniform application of these new requirements for all operators. The language contained in this NPRM was developed by a broad group of FAA and industry members. Therefore, the piece-part definition will remain as written.

(b) The commenter also recommends that to clearly specify the level to which the fan hub must be disassembled prior to FPI, each manual section referenced for the required inspections should also clearly state whether miscellaneous parts are to be removed. The FAA agrees. There are two areas on the PW4000 disks that are not typically disassembled, and after review, are not required to be disassembled to meet the intent of the proposed inspection. One of these areas is the tie-rod bolt holes, which may in some cases have repair bushings installed. The removal of these bushings would likely introduce more problems than they would solve, and a crack/failure in this region (at the disk OD) would not result in uncontainment. The other area is the spinner flange flared nuts. These are captive nuts and must be drilled/machined to be removed. Again, their removal/replacement would likely introduce more problems than would be solved, and crack/failure in this region would also not result in uncontainment. The final rule will be modified to clarify the required level of disassembly. This level of assembly is P/N 1A9021—3 the piece-part level is 1A9001. Inspection at either level will satisfy the requirements of this AD.

(c) The commenter also states that the FAA should urge the OEMs to agree upon universal pre-cleaning and fluorescent penetrant inspection procedures and to call them out in their service documents. The FAA partially agrees. The agency recognizes the need for, and is currently engaged in, several other initiatives that will provide standardized guidance on FPI precleaning, and several other procedural aspects of FPI inspection. The FAA will take future action once

standardized procedures are developed and industry consensus is reached. Therefore, no changes will be made to this AD at this time.

Another commenter recommends four changes to this AD:

(a) The commenter believes that critical compliance data is contained in the Discussion section of this AD, in the statement "For engines or engines modules that are approved for return to service. * * *" The FAA does not agree. The AD mandates changes to the OEM's manual and Operators Continuous Airworthiness Program. The information referenced by the commenter is background information, not critical compliance data.

(b) The commenter also believes that paragraph (e) of the proposed rule is unclear, and recommends that it be revised by eliminating the word "or" from the first sentence, and beginning a second sentence with "In lieu of the record.* * *" The FAA concurs in part. Generally, record keeping requirements are addressed in other regulations and this AD does not change those requirements. The FAA has revised paragraph (e) of this AD with new language to clarify the record keeping aspects of the new mandatory inspections.

(c) The commenter also suggests that disks be referred to by utilizing the term "All" instead of identifying them by specific P/N. The FAA partially agrees. Utilizing the reference ALL instead of specific P/N's is preferable in some aspects; it eliminates the possibility of underspecifying (omitting parts) that exists whenever using specific P/N's. However, because P & W has initiated the proposed manual changes and they are accurate, they will not be changed at this time. In addition, future parts will be addressed via Intro into Service documentation, rather than with further AD's. These inspections will be built into the maintenance plan/documentation for new parts from the beginning. AD's were meant to deal only with parts already in service—new parts will incorporate these inspections from the beginning in the manufacturers' documentation.

(d) The commenter also points out that "Inspection 06" referred to in the NPRM does not exist in the present manual. "Inspection 06" is not included in the present manual edition. P & W has submitted this change to their Tech Services group and it will appear in the next manual revision.

No comments were received on the economic analysis contained in the proposed rules. Based on that analysis, the FAA has determined that the annual per engine cost of $156 does not create a significant economic impact on small entities.

Additional editorial comments—Engine model PW2168A was omitted from the proposed rule and has been added to the Applicability section of this AD.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes described previously. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air Transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

99–08–15 Pratt & Whitney: Amendment 39–11121. Docket 98–ANE–66–AD.

Applicability: Pratt & Whitney PW4050, PW4052, PW4056, PW4060, PW4060A, PW4062, PW4060C, PW4152, PW4156, PW4156A, PW4158, PW4160, PW4168, PW4168A, PW4460, PW4462, PW4164, PW4074, PW4074D, PW4077, PW4077D, PW4084, PW4084D, and PW4090 series turbofan engines, installed on but not limited to Airbus A300, A310, and A330 series, Boeing 747, 767, 777 series, and McDonnell Douglas MD–11 series airplanes.

Note 1: This airworthiness directive (AD) applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph . The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously. To prevent critical life-limited rotating engine part failure, which could result in an uncontained engine failure and damage to the airplane, accomplish the following:

(a) Within the next 30 days after the effective date of this AD, revise the manufacturer's Time Limits section of the manufacturer's Engine Manual, Part Numbers (P/Ns) 50A605, 50A443, 51A342, 50A822, 51A751, and 51A345, as applicable, for Pratt & Whitney PW4050, PW4052, PW4056, PW4060, PW4060A, PW4062, PW4060C, PW4152, PW4156, PW4156A, PW4158, PW4160, PW4460, PW4462, PW4164, PW4168, PW4074, PW4074D, PW4077, PW4077D, PW4084, PW4084D, and PW4090 series turbofan engines, and for air carrier operations revise the approved continuous airworthiness maintenance program, by adding the following:

"MANDATORY INSPECTIONS

(1) Perform inspections of the following parts at each piece-part opportunity in accordance with the instructions provided in the PW4000 series Engine Cleaning, Inspection, and Repair (CIR) Manuals:

Part Nomenclature	P/N	Manual Section	Inspection	CIR Manual
Hub, LPC Assembly	50B221 (50B201 Detail)	72–31–07	02	51A357
Hub, LPC Assembly	50B321 (50B301 Detail)	72–31–07	02	51A357
Hub, LPC Assembly	51B321 (51B301 Detail)	72–31–07	02	51A357
Hub, LPC Assembly	52B021 (52B001 Detail)	72–31–07	02	51A357
Hub, LPC Assembly	51B631 (50B601 Detail)	72–31–07	02	51A750
Hub, LPC Assembly	51B821 (51B801 Detail)	72–31–07	02	51A750
Hub, LPC Assembly	52B521 (52B501 Detail)	72–31–07	02	51A750

(2) For the purposes of these mandatory inspections, piece-part opportunity means:

(i) The part is considered completely disassembled when accomplished in accordance with the disassembly instructions in the engine manufacturer's Engine Manual; and

(ii) The part has accumulated more than 100 cycles in service since the last piece-part opportunity inspection, provided that the part was not damaged or related to the cause for its removal from the engine."

(b) Except as provided in paragraph (c) of this AD, and notwithstanding contrary provisions in section 43.16 of the Federal Aviation Regulations (14 CFR 43.16), these mandatory inspections shall be performed only in accordance with the Time Limits section of the applicable PW4000 series Engine Manuals.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Engine Certification Office. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector (PMI), who may add comments and then send it to the Engine Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Engine Certification Office.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) FAA-certificated air carriers that have an approved continuous airworthiness maintenance program in accordance with the record keeping requirement of § 121.369 (c) of the Federal Aviation Regulations [14 CFR 121.369(c)] of this chapter must maintain records of the mandatory inspections that result from revising the Time Limits section of the Instructions for Continuous Airworthiness (ICA) and the air carrier's continuous airworthiness program. Alternately, certificated air carriers may establish an approved system of record retention that provides a method for preservation and retrieval of the maintenance records that include the inspections resulting from this AD, and include the policy and procedures for implementing this alternate method in the air carrier's maintenance manual required by § 121.369(c) of the Federal Aviation Regulations [14 CFR 121.369(c)]; however, the alternate system must be accepted by the appropriate PMI and require the maintenance records be maintained either indefinitely or until the work is repeated. Records of the piece-part inspections are not required under § 121.380(a)(2)(vi) of the Federal Aviation Regulations [14 CFR 121.380(a)(2)(vi)]. All other Operators must maintain the records of mandatory inspections required by the applicable regulations governing their operations.

Note 3: The requirements of this AD have been met when the engine manual changes are made and air carriers have modified their continuous airworthiness maintenance plans to reflect the requirements in the engine manuals.

(f) This amendment becomes effective on May 13, 1999.

Issued in Burlington, Massachusetts, on April 2, 1999.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 99–8865 Filed 4–12–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–ANE–61–AD; Amendment 39–11120; AD 99–08–14]

RIN 2120–AA64

Airworthiness Directives; Pratt & Whitney PW2000 Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to Pratt & Whitney (PW) PW2000 series turbofan engines, that requires revisions to the engine manufacturers time limits section (TLS) to include enhanced inspection of selected critical life-limited parts at each piece-part exposure. This amendment will also require an air carrier's approved continuous airworthiness maintenance program to incorporate these inspection procedures. This amendment is prompted by a Federal Aviation Administration (FAA) study of in-service events involving uncontained failures of critical rotating engine parts that indicated the need for improved inspections. The improved inspections are needed to identify those critical rotating parts with conditions that if allowed to continue in service, could result in uncontained failures. The actions specified by this AD are intended to prevent critical life-limited rotating engine part failure, which could result in an uncontained engine failure and damage to the airplane.

DATES: Effective May 13, 1999.

ADDRESSES: The information contained in this AD may be examined at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Peter White, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7128, fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to PW PW2000 series turbofan engines was published in the **Federal Register** on August 31, 1998 (63 FR 46202). That action proposed to require within the next 30 days after the effective date of this AD, revisions to the Time Limits Section (TLS) of the Engine Manuals, and, for air carriers, the approved continuous airworthiness maintenance program. The manufacturer of PW2000 series turbofan engines has provided the FAA with a detailed proposal that identifies and prioritizes the critical life-limited rotating engine parts with the highest potential to hazard the airplane in the event of failure, along with instructions for enhanced, focused inspection methods. The enhanced inspections resulting from this AD will be conducted at piece-part opportunity, as defined in this AD, rather than specific inspection intervals.

Interested persons have been afforded an opportunity to participate in the

making of this amendment. Due consideration has been given to the comments received.

One commenter supports the measures outlined in the proposed rule.

One commenter states that the manual references are not specific enough and requests that the manual references include the specific task or subtask that is to be performed. The FAA partially concurs. The reference method in this ad will not be changed. The FAA agrees that there is a benefit to using the tasks and subtasks. However, in the case of this AD, the FAA believes that the manner of referencing is arbitrary since either the reference method employed within this AD, or the task and subtask codes method will direct the reader to the desired inspection in the engine manual.

One commenter states that paragraph (a)(2)(ii) is confusing as to inspection requirements for damaged parts and wants the piece part language used to trigger inspections modified. The FAA does not concur. Standardized language to define the piece-part condition and trigger focused inspection is required for uniform application of these new requirements across all operators. The language contained in the proposed rule has been developed by and agreed to by a broad group of FAA and Industry members. Therefore, the piece-part definition will not be changed.

One commenter asks that each referenced manual section for the required inspections should also clearly state whether miscellaneous parts are to be removed or left in place. The FAA concurs. This AD has been reviewed relative to this suggestion. There are two areas on the PW2000 disks that are not typically disassembled, and after review, are not required to be disassembled to meet the intent of the proposed inspection. One of these areas is the tie-rod bolthole that, in some cases, has a repair bushing installed. The removal of these bushings would likely introduce more problems than they would solve, and a crack or failure in this region, at the disk outside diameter (OD), would not result in an uncontained failure. The other area is the spinner flange flared nuts. These are captive nuts and must be drilled or machined to be removed. Again, their removal or replacement would likely introduce more problems than would be solved, and cracking or failure in this region would also not result in an uncontained failure.

One commenter believes that the FAA should urge the original equipment manufacturers (OEM's) to agree on universal precleaning and fluorescent penetrant inspection (FPI) procedures and to call them out in their service documents. The commenter believes that there is a lack of uniform cleaning procedures that are employed by the industry before conducting FPI inspections. The FAA partially concurs. The FAA recognizes the need for, and is currently engaged in, several other initiatives that will provide standardized guidance on precleaning and several other procedural aspects of FPI. The FAA will take action on standardized procedures when standardized procedures are developed and consensus is reached in the industry. No changes will be made to this AD.

Several commenters ask that the FAA clarify the record keeping aspects of the mandatory inspections resulting from the required changes to the Original Equipment Manufacturer's manual and operator's continuous airworthiness maintenance program. One commenter believes that paragraph (e) of the proposed rule is unclear and suggests that it be revised by eliminating the word "or" from the first sentence and beginning a second sentence with "In lieu of the record * * *." Two commenters state that the AD should be revised to clearly specify which types of maintenance records must be retained (i.e., inspection results, defect reporting requirements, date of performed maintenance, signature of the person performing the maintenance). These commenters believe that these revisions are necessary in order to avoid potential differences in interpretation between the air carriers and the FAA. And, one commenter states that the AD should clarify that there is no need for a special form to comply with the AD record keeping requirements. The FAA concurs in part. Generally, record keeping requirements are addressed in other regulations and this AD does not change those requirements. In order to allow flexibility from operator to operator, the FAA does not concur that the AD itself specify the precise nature of the records that will result from the required changes to the manufacturer's manual and operator's maintenance program. The FAA has, however, revised Paragraph (e) of this AD to clarify record keeping aspects of the new mandatory inspections.

Two commenters point out that inspection 06 referred to in the NPRM does not exist in the present manual. Inspection 06 is the inspection that is being mandated by this proposed AD. The FAA concurs. PW will include inspection 06 in the next manual revision.

Several commenters ask that the disks be identified by using the term "all" instead of identifying the disks by specific part numbers. The commenters believe that using the term "all" to identify the disks will eliminate the need for issuing a future AD every time a new P/N is added. The FAA partially concurs. Using the reference "all" instead of specific P/N's is preferable in some aspects. Using "all" eliminates the possibility of omitting parts that exists whenever using specific P/N's. However, P&W has initiated the manual changes, they are accurate, and will not be changed at this time. Future parts will be addressed by introduction into the service documentation instead of future AD's. These inspections will be incorporated into the maintenance plan and documentation for new parts from the beginning. This AD deals only with parts that are already in service. This proposed AD will not be changed to use "all."

No comments were received on the economic analysis contained in the proposed rules. Based on that analysis, the FAA has determined that the annual per engine cost of $223 does not create a significant economic impact on small entities.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes described previously. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air Transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

99–08–14 Pratt & Whitney: Amendment 39–11120. Docket 98–ANE–61–AD.

Applicability: Pratt & Whitney (PW) PW2037, PW2040, PW2037M, PW2240, PW2337, PW2043, PW2643, and PW2143, series turbofan engines, installed on but not limited to Boeing 757 series and Ilyushin IL–96T series airplanes.

Note 1: This airworthiness directive (AD) applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously. To prevent critical life-limited rotating engine part failure, which could result in an uncontained engine failure and damage to the airplane, accomplish the following:

(a) Within the next 30 days after the effective date of this AD, revise the manufacturer's Time Limits section (TLS) of the manufacturer's engine manual, Part Numbers (P/N's) 1A6231 and 1B2412, as appropriate for the PW PW2037, PW2040, PW2037M, PW2240, PW2337, PW2043, PW2643, and PW2143 series turbofan engines, and for air carriers revise the approved continuous airworthiness maintenance program, by adding the following:

"MANDATORY INSPECTIONS

(1) Perform inspections of the following parts at each piece-part opportunity in accordance with the instructions provided in the PW2000 series Engine Manuals:

Part nomenclature	Part No. (P/N)	Manual section	Inspection
Hub, 1st Stg Comp	1A9001 (Assy P/N 1A9021)	72–31–04	Inspection—06.

(2) For the purposes of these mandatory inspections, piece-part opportunity means:

(i) The part is considered completely disassembled when done in accordance with the disassembly instructions in the manufacturer's engine manual to either part number level listed in the table above, and

(ii) The part has accumulated more than 100 cycles in service since the last piece-part opportunity inspection, provided that the part was not damaged or related to the cause for its removal from the engine."

(b) Except as provided in paragraph (c) of this AD, and notwithstanding contrary provisions in § 43.16 of Federal Aviation Regulations (14 CFR 43.16), these enhanced inspections shall be performed only in accordance with the TLS of the appropriate PW2000 series engine manuals.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector (PMI), who may add comments and then send it to the Manager, Engine Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Engine Certification Office.

(d) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the aircraft to a location where the requirements of this AD can be accomplished.

(e) FAA-certificated air carriers that have an approved continuous airworthiness maintenance program in accordance with the record keeping requirement of § 121.369(c) of the Federal Aviation Regulations [14 CFR 121.369(c)] of this chapter must maintain records of the mandatory inspections that result from revising the Time Limits section of the Instructions for Continuous Airworthiness (ICA) and the air carrier's continuous airworthiness program. Alternately, certificated air carriers may establish an approved system of record retention that provides a method for preservation and retrieval of the maintenance records that include the inspections resulting from this AD, and include the policy and procedures for implementing this alternate method in the air carrier's maintenance manual required by § 121.369(c) of the Federal Aviation Regulations [14 CFR 121.369(c)]; however, the alternate system must be accepted by the appropriate PMI and require the maintenance records be maintained either indefinitely or until the work is repeated. Records of the piece-part inspections are not required under § 121.380(a)(2)(vi) of the Federal Aviation Regulations [14 CFR 121.380(a)((2)(vi)]. All other Operators must maintain the records of mandatory inspections required by the applicable regulations governing their operations.

Note 3: The requirements of this AD have been met when the engine manual changes are made and air carriers have modified their continuous airworthiness maintenance plans to reflect the requirements in the engine manuals.

(f) This amendment becomes effective on May 13, 1999.

Issued in Burlington, Massachusetts, on April 2, 1999.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 99–8864 Filed 4–12–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–ANE–49–AD; Amendment 39–11119; AD 99–08–13]

RIN 2120–AA64

Airworthiness Directives; General Electric Company CF6–80A, CF6–80C2, and CF6–80E1 Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), that requires revisions to the Life Limits Section of the manufacturer's Instructions for Continued Airworthiness (ICA) for General Electric Company (GE) CF6–80A, CF6–80C2 and CF6–80E1 series turbofan engines to

include required enhanced inspection of selected critical life-limited parts at each piece-part exposure. This AD also requires that an air carrier's approved continuous airworthiness maintenance program incorporate these inspection procedures. This amendment is prompted by a Federal Aviation Administration (FAA) study of in-service events involving uncontained failures of critical rotating engine parts that indicated the need for improved inspections. The improved inspections are needed to identify those critical rotating parts with conditions, which if allowed to continue in service, could result in uncontained failures. The actions specified by this AD are intended to prevent critical life-limited rotating engine part failure, which could result in an uncontained engine failure and damage to the airplane.

DATES: Effective May 13, 1999.

ADDRESSES: The information contained in this AD may be examined at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Karen Curtis, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7192, fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to GE CF6-80A, CF6–80C2 and CF6–80E1 series turbofan engines was published in the **Federal Register** on July 28, 1998 (63 FR 40223). That action proposed to require within the next 30 days after the effective date of this AD, revisions to the Life Limits section of the Engine Manuals, and, for air carriers, their approved continuous airworthiness maintenance program. The manufacturer of CF6–80A, CF6–80C, and CF6–80E1 series turbofan engines, has provided the FAA with a detailed proposal that identifies and prioritizes the critical life-limited rotating engine parts with the highest potential to hazard the airplane in the event of failure, along with instructions for enhanced, focused inspection methods. These enhanced inspections will be conducted at piece-part opportunity, as defined in this AD, rather than at specific inspection intervals.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Four commenters note that some of the tasks and subtasks that are referenced in the Notice for Proposed Rule Making (NPRM) require visual and dimensional inspections in addition to the nondestructive inspections identified as part of the enhanced inspection initiative. The commenters recommend that the final rule be revised to reflect only those tasks or subtasks that are intended to be mandated by the AD. The FAA concurs. The requested changes are consistent with the enhanced inspection initiative. The compliance section of this final rule has been changed to reference only the tasks and subtasks of the mandated inspections.

One commenter notes that the chapter referenced for the CF6–80A high pressure turbine (HPT) stage 1 disk inspection in the table in paragraph (a) of the NPRM is in error. The commenter recommends changing the final rule to reference the correct chapter (72–53–02 instead of 72–53–03). The FAA concurs. The chapter reference for the CF6–80A HPT stage 1 disk in the table in paragraph (a) of the compliance section of this AD has been changed to reference chapter 72–53–02.

One commenter notes that the work hours that are stated in the preamble for the HPT rotor stage 1 and stage 2 disk inspections are less than the commenter's estimate. The commenter recommends that the final rule be revised to note 18 hours instead of 8 hours for the mandated inspections. The FAA does not concur. The FAA has reviewed the work hour estimate that includes 3 hours for eddy current inspection and 5 hours for fluorescent-penetrant inspection (FPI) for each HPT rotor disk for a total of 16 hours for the two HPT rotor disks. The FAA believes that 8 hours is a conservative estimate for a part of average cleanliness that's being inspected under typical shop conditions.

No other comments were received on the economic analysis contained in the NPRM. Based on that analysis, the FAA has determined that the annual per engine cost of $308 does not create a significant economic impact on small entities.

One commenter requests that the FAA link the conduct of mandatory inspections on whether the subject part was removed from an engine while the engine was installed on the airplane or while the engine was removed and in an overhaul shop. The commenter wishes to exempt those parts that are removed from installed engines from the focused inspections. The FAA does not concur. The mandatory inspections are based on a single trigger. The trigger is a part being completely disassembled using the engine manual instructions (piece-part opportunity), and is not dependent on whether an engine is installed on the airplane. This final rule mandates that the definition of piece-part opportunity appears in the mandatory section of each affected engine manual. This final rule further mandates that an operator's continuous airworthiness maintenance program be modified to capture those engine manual changes.

Several commenters ask that the FAA clarify the record keeping aspects of the mandatory inspections resulting from the required changes to the Original Equipment Manufacturer's manual and operator's continuous airworthiness maintenance program. One commenter believes that paragraph (e) of the proposed AD is unclear and suggests that it be revised by eliminating the word "or" from the first sentence and beginning a second sentence with "In lieu of the record. * * *" Two commenters state that the AD should be revised to clearly specify which types of maintenance records must be retained (i.e., inspection results, defect reporting requirements, date of performed maintenance, signature of the person performing the maintenance). These commenters believe that these revisions are necessary in order to avoid potential differences in interpretation between the air carriers and the FAA. And, one commenter states that the AD should clarify that there is no need for a special form to comply with the AD record keeping requirements. The FAA concurs in part. Generally, record keeping requirements are addressed in other regulations and this AD does not change those requirements. In order to allow flexibility from operator to operator, the FAA does not agree that the AD itself specify the precise nature of the records that will result from the required changes to the manufacturer's manual and operator's maintenance program. The FAA has, however, revised Paragraph (e) of this AD to clarify record keeping aspects of the new mandatory inspections.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes described previously. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and

responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air Transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

99–08–13 General Electric Company: Amendment 39–11119. Docket 98–ANE–49–AD.

Applicability: General Electric Company CF6–80A, CF6–80C2 and CF6–80E1 series turbofan engines, installed on but not limited to Airbus A300, A310, and A330 series, Boeing 747 and 767 series, and McDonnell Douglas MD–11 series airplanes.

Note 1: This airworthiness directive (AD) applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously. To prevent critical life-limited rotating engine part failure, which could result in an uncontained engine failure and damage to the airplane, accomplish the following:

(a) Within the next 30 days after the effective date of this AD, revise the manufacturer's Life Limits Section of the Instructions for Continued Airworthiness (ICA), and for air carrier operations revise the approved continuous airworthiness maintenance program, by adding the following:

"MANDATORY INSPECTIONS

(1) Perform inspections of the following parts at each piece-part opportunity in accordance with the instructions provided in the applicable manual provisions:

Part Nomenclature	Part number (P/N)	Inspect per engine manual chapter
For CF6–80A Engines:		
Fan Rotor Disk Stage 1	All	72–21–03, paragraph 3, Fluorescent-Penetrant Inspect; and 72–21–03, paragraph 4, Eddy Current Inspect.
High Pressure Turbine Rotor Stage 1 Disk/Shaft.	All	72–53–02, paragraph 3, Fluorescent-Penetrant Inspect Disk/Shaft per 70–32–02; and 72–53–02, paragraph 6, Eddy Current Inspection.
High Pressure Turbine Rotor Stage 2 Disk.	All	72–53–06, paragraph 3, Fluorescent-Penetrant Inspection; and 72–53–06, paragraph 6, Eddy Current Inspection of Rim Boltholes for Cracks.
For CF6–80C2 Engines:		
Fan Rotor Disk Stage 1	All	Task 72–21–03–200–000–004, Fluorescent-Penetrant Inspection; and Task 72–21–03–200–000–008, Eddy Current Inspect Fan Rotor Disk Stage 1 Bore, Forward and Aft Hub Faces, and Bore Radii.
High Pressure Turbine (HPT) Rotor Stage 1 Disk/Shaft.	All	Task 72–53–02–200–000–001, Fluorescent-Penetrant Inspect the HPT Rotor Stage 1 Disk/Shaft; and Task 72–53–02–200–000–005, Eddy Current Inspection.
High Pressure Turbine (HPT) Rotor Stage 2 Disk.	All	Task 72–53–06–200–000–002, Fluorescent-Penetrant Inspect the Stage 2 Disk; and Task 72–53–06–200–000–006, Eddy Current Inspection of the HPTR Stage 2 Rim Boltholes.
For CF6–80E1 Engines:		
Stage 1 Disk, Fan Rotor	All	Task 72–21–03–230–051, Fluorescent-Penetrant Inspection; and Task 72–21–03–250–051 or 72–21–03–250–052, Eddy Current Inspection.
High Pressure Turbine (HPT) Rotor Stage 1 Disk/Shaft.	All	Task 72–53–02–230–051, Fluorescent-Penetrant Inspection; and Task 72–53–02–200–001–005, Eddy Current Inspection.
High Pressure Turbine (HPT) Rotor Stage 2 Disk.	All	Task 72–53–06–230–051, Fluorescent-Penetrant Inspection; and Task 72–53–06–200–001–006, Eddy Current Inspection of the HPTR Stage 2 Rim Boltholes.

(2) For the purposes of these mandatory inspections, piece-part opportunity means:

(i) The part is considered completely disassembled when done in accordance with the disassembly instructions in the manufacturer's engine manual; and

(ii) The part has accumulated more than 100 cycles in service since the last piece-part opportunity inspection, provided that the part was not damaged or related to the cause for its removal from the engine."

(b) Except as provided in paragraph (c) of this AD, and notwithstanding contrary provisions in § 43.16 of the Federal Aviation Regulations (14 CFR 43.16), these mandatory inspections shall be performed only in accordance with the Life Limits Section of the manufacturer's ICA.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector (PMI), who may add comments and then send it to the Manager, Engine Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Engine Certification Office.

(d) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the aircraft to a location where the requirements of this AD can be accomplished.

(e) FAA-certificated air carriers that have an approved continuous airworthiness maintenance program in accordance with the recordkeeping requirement of § 121.369 (c) of the Federal Aviation Regulations [14 CFR 121.369 (c)] of this chapter must maintain records of the mandatory inspections that result from revising the Life Limits section of the ICA and the air carrier's continuous airworthiness program. Alternately, certificated air carriers may establish an approved system of record retention that provides a method for preservation and retrieval of the maintenance records that include the inspections resulting from this AD, and include the policy and procedures for implementing this alternate method in the air carrier's maintenance manual required by § 121.369 (c) of the Federal Aviation Regulations [14 CFR 121.369 (c)]; however, the alternate system must be accepted by the appropriate PMI and require the maintenance records be maintained either indefinitely or until the work is repeated. Records of the piece-part inspections are not required under § 121.380(a)(2)(vi) of the Federal Aviation Regulations [14 CFR 121.380(a)(2)(vi)]. All other Operators must maintain the records of mandatory inspections required by the applicable regulations governing their operations.

Note 3: The requirements of this AD have been met when the engine manual changes are made and operators have modified their continuous airworthiness maintenance plans to reflect the requirements in the engine manuals.

(f) This amendment becomes effective on May 13, 1999.

Issued in Burlington, Massachusetts, on April 2, 1999.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 99–8863 Filed 4–12–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–ANE–47–AD; Amendment 39–11118; AD 99–08–12]

RIN 2120–AA64

Airworthiness Directives; Pratt & Whitney JT9D Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), that requires revisions to the Engine Time Limits section in the Engine Manual (EM) for Pratt & Whitney (PW) JT9D series turbofan engines to include required enhanced inspection of selected critical life-limited parts at each piece-part exposure. This amendment will also require an air carrier's approved continuous airworthiness maintenance program to incorporate these inspection procedures. This amendment is prompted by a Federal Aviation Administration (FAA) study of in-service events involving uncontained failures of critical rotating engine parts which indicated the need for improved inspections. The improved inspections are needed to identify those critical rotating parts with conditions, that if allowed to continue in service, could result in uncontained failures. The actions specified by this proposed AD are intended to prevent critical life-limited rotating engine part failure, which could result in an uncontained engine failure and damage to the airplane.

DATES: Effective May 13, 1999.

ADDRESSES: The information referenced in this AD may be examined at the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Tara Goodman, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7130, fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to Pratt & Whitney JT9D series turbofan engines was published in the **Federal Register** on July 28, 1998 (63 FR 40220). That action proposed to require revisions to the Engine Time Limits section in the Engine Manual (EM) for Pratt & Whitney JT9D series turbofan engines to include required enhanced inspection of selected critical life-limited parts at each piece-part exposure. That action also proposed to require an air carrier's approved continuous airworthiness maintenance program to incorporate these inspection procedures.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

One commenter notes that the JT9D manual used by the operator [part number (P/N) 770407] to maintain JT9D–7A and –7J engines is not included in paragraph (a), which lists the JT9D manuals which require revisions to the Engine Time Limits Section by P/N. The FAA concurs. Several engine manuals applicable to certain JT9D–7 models are customized for operators. Part numbers for these engine manuals were inadvertently omitted from the proposed rule. Corrections for the engine manual referenced by the commentor and for other engine manuals have been included in this AD.

Several commenters suggested that the tables used to specify those parts requiring mandatory inspections be given standardized formats and that the parts be identified by "all" rather than by specific part number. The FAA does not concur. FAA intentionally allowed each manufacturer to choose a format that fits their products manual. Identification of parts requiring mandatory inspections has been accomplished by either part number identification or use of the word "all". Part number identification was chosen by some manufacturers since the processes and procedures needed to conduct new inspections were not yet developed for all parts of a certain type, i.e., fan disks/hubs. FAA wants the manufacturers to have flexibility in managing how their manuals are structured within Air Transport Association code requirement and does not consider mandating matters of format appropriate.

Several commenters ask that the FAA clarify the record keeping aspects of the mandatory inspections resulting from the required changes to the Original Equipment Manufacturer's manual and operator's continuous airworthiness maintenance program. One commenter believes that paragraph (e) of the NPRM is unclear and suggests that it be revised by eliminating the word "or" from the first sentence and beginning a second sentence with "In lieu of the record. * * *" Two commenters state that the AD should be revised to clearly specify which types of maintenance records must be retained (i.e., inspection results, defect reporting requirements, date of performed maintenance, signature of the person performing the maintenance). These commenters believe that these revisions are necessary in order to avoid potential differences in interpretation between the air carriers and the FAA. And, one commenter states that the AD should clarify that there is no need for a special form to comply with the AD record keeping requirements. The FAA concurs in part. Generally, record keeping requirements are addressed in other regulations and this AD does not

change those requirements. In order to allow flexibility from operator to operator, the FAA does not concur that the AD itself specify the precise nature of the records that will result from the required changes to the manufacturer's manual and operator's maintenance program. The FAA has, however, revised Paragraph (e) of the final rule to clarify record keeping aspects of the new mandatory inspections.

One commenter requested that the FAA link the conduct of mandatory inspections with the subject part's removal from an engine either on-wing or in an overhaul shop. The FAA does not concur. Mandatory inspections are based on a single trigger, which is a part being completely disassembled per the engine manual instructions (piece-part opportunity), and are not dependent on an engine's state of installation. This AD mandates that the definition of piece-part opportunity appear in the mandatory section of each affected engine manual. This AD further mandates that an operator's continuous airworthiness maintenance program be modified to capture those engine manual changes.

Several commenters suggest that the 100 cycle inservice inspection waiver provided in the piece-part opportunity definition was too low and could not be justified from a crack growth standpoint or that language be added to the requirements adding a minimum cycles in service threshold after which mandatory inspections would be applicable. The FAA does not concur. The 100 cycle waiver is intended to allow short term alleviation from mandatory inspections for a part recently inspected in accordance with the engine manual requirements. It was specifically aimed at disassembled parts removed from an engine following a test cell reject or some other occurrence that caused the parts removal shortly after successful completion of mandatory inspections. Waiver of mandatory inspections in this instance also requires that the part was not damaged or related to the cause for its removal from the engine. Mandatory inspections are also required on fully disassembled parts regardless of time-since-new (TSN). FAA is aware that cracks can be missed during part inspections and that each time a part is processed through an inspection line, the probability of detecting a crack is increased. Commonly used on-condition maintenance plans make it likely that a given part could be returned to service for thousands of cycles without the need for additional focused inspection. Recognizing two opposing aspects of part removal and inspection, i.e., a need for a brief exemption period following conduct of mandatory inspections and the benefits of increased frequency of inspection, FAA established the 100 cycle threshold. No consideration for crack growth time was given in the choice of this number nor was TSN considered as a possible reason for exempting parts from focused inspection. It is based strictly on keeping the frequency of mandatory inspection as high as practical and therefore increasing the probability of crack detection while providing a brief window of exemption from mandatory inspection if certain conditions are met. Therefore, the 100 cycle limit will remain in the compliance section of the AD and no exemption will be allowed for low TSN parts.

One commenter states that the mandatory manual chapters were modified to require new inspection requirements prior to issuance of the final rule AD and that FAA should provide written notification to Flight Standards Offices that the inspections proposed in the proposed rule are not mandatory until the establishment of an effectivity date in a published final rule AD. Some confusion between Operators, Manufacturers and Principal Maintenance Inspectors was created when the mandatory manual sections were modified prior to the release of a final rule AD. The FAA concurs in part. The manuals were modified prior to issuance of the final rule to minimize implementation delays from lengthy original equipment manufacturer EM revision cycles. FAA will attempt a higher level of coordination of timing the manual revisions so that the revisions follow final rule AD's in the future. However, to avoid additional confusion with the currently proposed changes, FAA will not issue written notice to the Flight Standards Offices.

No comments were received on the economic analysis contained in the proposed rules. Based on that analysis, the FAA has determined that the annual per engine cost of $284 does not create a significant economic impact on small entities.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air Transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

99–08–12 Pratt & Whitney: Amendment 39–11118. Docket 98–ANE–47–AD.

Applicability: Applicability: Pratt & Whitney (PW) JT9D–3A, –7, –7H, –7A, –7AH, –7F, –7J, –20J, –59A, –70A, –7Q, –7Q3, –7R4D, –7R4D1, –7R4E, –7R4E1, –7R4G2, –7R4H1, and 7R4E4 series turbofan engines, installed on but not limited to Boeing 747 and 767 series, McDonnell Douglas DC–10 series, and Airbus A300 and A310 series airplanes.

Note 1: This airworthiness directive (AD) applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe

condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent critical life-limited rotating engine part failure, which could result in an uncontained engine failure and damage to the airplane, accomplish the following:

(a) Within the next 30 days after the effective date of this AD, revise the Engine Time Limits Section (TLS) of the manufacturer's Engine Manual (EM), JT9D Part Numbers 646028, 754459, 770407, 770408, 777210, 785059, 785058, 789328, as appropriate, and for air carrier operations revise the approved continuous airworthiness maintenance program, by adding the following:

"MANDATORY INSPECTIONS

(1) Perform inspections of the following parts at each piece-part opportunity in accordance with the instructions provided in the applicable manual provisions:

Part Nomenclature	Part No. (P/N)	Inspect per manual section	Inspection
Fan hub (Assy. P/N 648621)	648501	72–31–04	Inspection–02.
Fan hub (Assy. P/N 665321)	648501	72–31–04	Inspection–02.
Fan hub (Assy. P/N 665321, 719127, 778621)	666101	72–31–04	Inspection–02.
Fan hub (Assy. P/N 678541, 726641, 778631)	690501	72–31–04	Inspection–02.
Fan hub (Assy. P/N 726941)	734901	72–31–04	Inspection–02.
Fan hub (Assy. P/N–732721)	745401	72–31–00	Heavy Maintenance–Check.
Fan hub (Assy. P/N 804221)	745401	72–31–00	Heavy Maintenance–Check.
Fan hub (Assy. P/N 5001331–01)	5001701–01	72–31–00	Inspection–03.

(2) For the purposes of these mandatory inspections, piece-part opportunity means:

(i) The part is considered completely disassembled when accomplished in accordance with the disassembly instructions in the manufacturers engine manual to either part number listed in the table above; and

(ii) The part has accumulated more than 100 cycles in service since the last piece-part opportunity inspection, provided that the part was not damaged or related to the cause for its removal from the engine."

(b) Except as provided in paragraph (c) of this AD, and notwithstanding contrary provisions in § 43.16 of the Federal Aviation Regulations (14 CFR 43.16), these mandatory inspections shall be performed only in accordance with the Engine TLS of the PW JT9D EM.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Engine Certification Office. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector (PMI), who may add comments and then send it to the Engine Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Engine Certification Office.

(d) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) FAA-certificated air carriers that have an approved continuous airworthiness maintenance program in accordance with the record keeping requirement of § 121.369(c) of the Federal Aviation Regulations [14 CFR 121.369(c)] of this chapter must maintain records of the mandatory inspections that result from revising the Engine Time Limits section of the Instructions for Continuous Airworthiness (ICA) and the air carrier's continuous airworthiness program. Alternately, certificated air carriers may establish an approved system of record retention that provides a method for preservation and retrieval of the maintenance records that include the inspections resulting from this AD, and include the policy and procedures for implementing this alternate method in the air carrier's maintenance manual required by § 121.369(c) of the Federal Aviation Regulations [14 CFR 121.369(c)]; however, the alternate system must be accepted by the appropriate PMI and require the maintenance records be maintained either indefinitely or until the work is repeated. Records of the piece-part inspections are not required under § 121.380(a)(2)(vi) of the Federal Aviation Regulations [14 CFR 121.380(a)(2)(vi)]. All other Operators must maintain the records of mandatory inspections required by the applicable regulations governing their operations.

Note 3: The requirements of this AD have been met when the engine manual changes are made and air carriers have modified their continuous airworthiness maintenance plans to reflect the requirements in the engine manuals.

(f) This amendment becomes effective on May 13, 1999.

Issued in Burlington, Massachusetts, on April 2, 1999.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 99–8862 Filed 4–12–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–ANE–45–AD; Amendment 39–11117; AD 99–08–11]

RIN 2120–AA64

Airworthiness Directives; International Aero Engines AG (IAE) V2500–A1/–A5/–D5 Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), that requires revisions to the Airworthiness Limitations Section (ALS) and Maintenance Scheduling Section (MSS) of the Instructions for Continued Airworthiness (ICA) in the Time Limits Manual (Chapter 05–10–00) of the Engine Manuals for International Aero Engines AG (IAE) V2500–A1/–A5/–D5 series turbofan engines to include required enhanced inspection of selected critical life-limited parts at each piece-part exposure. This AD will also require an air carrier's approved continuous airworthiness maintenance program to incorporate these inspection procedures. This amendment is prompted by a Federal Aviation Administration (FAA) study of in-service events involving uncontained failures of critical rotating engine parts which indicated the need for improved inspections. The improved inspections are needed to identify those critical rotating parts with conditions, that if allowed to continue in service, could result in uncontained failures. The actions specified by this AD are intended to prevent critical life-limited

rotating engine part failure, which could result in an uncontained engine failure and damage to the airplane.

DATES: Effective May 13, 1999.

ADDRESSES: The information referenced in this AD may be examined at the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Diane Cook, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7133, fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to IAE V2500–A1/–A5/–D5 series turbofan engines was published in the **Federal Register** on July 28, 1998 (63 FR 40218). That action proposed to require revisions to the ALS and MSS of the ICA in the Time Limits Manual (Chapter 05–10–00) of the Engine Manuals for IAE V2500–A1/–A5/–D5 series turbofan engines to include required enhanced inspection of selected critical life-limited parts at each piece-part exposure and the incorporation of these procedures into the air carriers' approved continuous airworthiness maintenance program.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

One commenter proposes to remove the current publication dates of the engine manuals specified in paragraphs (a) (1), (2), and (3) of the compliance section of this AD to avoid AD applicability issues in the event of a manual revision prior to the effectivity of the Final Rule AD. The FAA concurs. The purpose of paragraphs (a) (1), (2), and (3) is to identify the engine manuals and the specific areas in the manuals that will be revised by this AD. The publication dates are not necessary to identify these engine manuals since the part number of each manual is specified. Therefore, the dates will be deleted from these subject paragraphs in the AD. Additionally, page numbers have been removed from paragraphs (a) (1), (2), and (3).

One commenter indicates that there is a typographical error in the part number (P/N) of the A1/–A5 Engine Manual. The correct P/N is E–V2500–1IA not M–V2500–1IA. The FAA concurs. The typographical error will be corrected in paragraph (a)(2) of the compliance section of this AD.

Several commenters ask that the FAA clarify the record keeping aspects of the mandatory inspections resulting from the required changes to the Original Equipment Manufacturer's manual and operator's continuous airworthiness maintenance program. One commenter believes that paragraph (e) of the proposed rule is unclear and suggests that it be revised by eliminating the word "or" from the first sentence and beginning a second sentence with "In lieu of the record. * * *" Two commenters state that the AD should be revised to clearly specify which types of maintenance records must be retained (i.e., inspection results, defect reporting requirements, date of performed maintenance, signature of the person performing the maintenance). These commenters believe that these revisions are necessary in order to avoid potential differences in interpretation between the air carriers and the FAA. And, one commenter states that the AD should clarify that there is no need for a special form to comply with the AD record keeping requirements. The FAA concurs in part. Generally, record keeping requirements are addressed in other regulations and this AD does not change those requirements. In order to allow flexibility from operator to operator, the FAA does not agree that the AD itself specify the precise nature of the records that will result from the required changes to the manufacturer's manual and operator's maintenance program. The FAA has, however, revised Paragraph (e) of this AD to clarify record keeping aspects of the new mandatory inspections.

One commenter supported the rule as proposed.

No comments were received on the economic analysis contained in the proposed rules. Based on that analysis, the FAA has determined that the annual per engine cost of $61 does not create a significant economic impact on small entities.

Additional editorial changes:

The engine manuals' Airworthiness Limitations sections contain a paragraph that refers to paragraph 2, "Maintenance Scheduling," which meets the intent of this AD. Therefore, the exact wording from the manual will be used in this AD. Paragraph (a)(i) of the compliance section will read: "Refer to Paragraph 2—Maintenance Scheduling for information that sets forth the operators' maintenance requirements for the V2500 On-Condition engine."

In addition, for clarity, Paragraph (a)(ii) of the compliance section will read: "Whenever a Group A part identified in this paragraph, (see 2.1 for definition of Group A), satisfies both * * * conditions."

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

The regulations adopted herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

99–06–11 International Aero Engines AG (IAE): Amendment 39–11117. Docket 98–ANE–45–AD.

Applicability: International Aero Engines AG (IAE) V2500–A1/–A5/–D5 series turbofan engines, installed on but not limited to Airbus A319, A320, A321, and McDonnell Douglas MD–90 series airplanes.

Note 1: This airworthiness directive (AD) applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent critical life-limited rotating engine part failure, which could result in an uncontained engine failure and damage to the airplane, accomplish the following:

(a) Within the next 30 days after the effective date of this AD, revise the Airworthiness Limitations Section (ALS) and Maintenance Scheduling Section (MSS) of the Instructions for Continued Airworthiness (ICA) in the Time Limits Manuals of the Engine Manuals, part number (P/N) E–V2500–1IA and P/N E–V2500–3IA, and for air carrier operations revise the approved continuous airworthiness maintenance program, by adding the following:

(1) For Engine Manual, P/N E–V2500–1IA, Time Limits Manual, Chapter 5–10–00, Configuration –1, (Effectivity: V2500–A1); and

(2) For Engine Manual, P/N E–V2500–1IA, Time Limits Manual, Chapter 5–10–00, Configuration –2, (Effectivity: V2500–A5), and;

(3) For Engine Manual, P/N E–V2500–3IA, Time Limits Manual, Chapter 5–10–00, (Effectivity: V2500–D5):

(i) Add the following to paragraph 1, entitled "Airworthiness Limitations:" "Refer to paragraph 2—Maintenance Scheduling for information that sets forth the operators maintenance requirements for the V2500 On-Condition engine."

(ii) Add the following to paragraph 2, entitled "Maintenance Scheduling:"

"Whenever a Group A part identified in this paragraph (see 2.1 for definition of group A) satisfies both of the following conditions:

(A) The part is considered completely disassembled when accomplished in accordance with the disassembly instructions in the engine manufacturer's engine manual; and

(B) The part has accumulated more than 100 cycles in service since the last piece-part opportunity inspection, provided that the part was not damaged or related to the cause for its removal from the engine; then that part is considered to be at the piece-part level and it is mandatory to perform the inspections for that part as specified in the following:

Part nomenclature	Part No. (P/N)	Inspect per engine manual
Fan Disk	All	Chapter 72–31–12, Subtask 72–31–12–230–054"

(b) Except as provided in paragraph (c) of this AD, and notwithstanding contrary provisions in § 43.16 of the Federal Aviation Regulations (14 CFR 43.16), these mandatory inspections shall be performed only in accordance with the ALS and MSS in the applicable Engine Manual.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector (PMI), who may add comments and then send it to the Manager, Engine Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Engine Certification Office.

(d) Special flight permits may be issued in accordance with § § 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) FAA-certificated air carriers that have an approved continuous airworthiness maintenance program in accordance with the record keeping requirement of § 121.369(c) of the Federal Aviation Regulations [14 CFR 121.369 (c)] of this chapter must maintain records of the mandatory inspections that result from revising the Time Limits section of the Instructions for Continuous Airworthiness (ICA) and the air carrier's continuous airworthiness program. Alternately, certificated air carriers may establish an approved system of record retention that provides a method for preservation and retrieval of the maintenance records that include the inspections resulting from this AD, and include the policy and procedures for implementing this alternate method in the air carrier's maintenance manual required by § 121.369(c) of the Federal Aviation Regulations [14 CFR 121.369(c)]; however, the alternate system must be accepted by the appropriate PMI and require the maintenance records be maintained either indefinitely or until the work is repeated. Records of the piece-part inspections are not required under § 121.380(a)(2)(vi) of the Federal Aviation Regulations [14 CFR 121.380(a)(2)(vi)]. All other Operators must maintain the records of mandatory inspections required by the applicable regulations governing their operations.

Note 3: The requirements of this AD have been met when the engine manual changes are made and air carriers have modified their continuous airworthiness maintenance plans to reflect the requirements in the engine manuals.

(f) This amendment becomes effective on May 13, 1999.

Issued in Burlington, Massachusetts, on April 2, 1999.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 99–8861 Filed 4–12–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–ANE–41–AD; Amendment 39–11124; AD 99–08–18]

RIN 2120–AA64

Airworthiness Directives; General Electric Company CF6–6, CF6–45, and CF6–50 Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), that requires revisions to the Time Limits Section of the manufacturer's Instructions for Continued Airworthiness (ICA) for General Electric Company (GE) CF6–6, CF6–45, and CF6–50 series turbofan engines to include required enhanced inspection of selected critical life-limited parts at each piece-part exposure. This amendment also requires an air carrier's approved continuous airworthiness maintenance program to incorporate these inspection procedures. This amendment is prompted by a Federal Aviation Administration (FAA) study of in-service events involving uncontained failures of critical rotating engine parts which indicated the need for improved inspections. The improved inspections are needed to identify those critical rotating parts with conditions, that if allowed to continue in service, could

result in uncontained failures. The actions specified by this proposed AD are intended to prevent critical life-limited rotating engine part failure, which could result in an uncontained engine failure and damage to the airplane.

DATES: Effective May 13, 1999.

ADDRESSES: The information referenced in this AD may be examined at the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Karen Curtis, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7192, fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to GE CF6–6, CF6–45, and CF6–50 series turbofan engines was published in the **Federal Register** on July 28, 1998 (63 FR 40213). That action proposed to require revisions to the Time Limits Section of the manufacturer's ICA for GE CF6–6, CF6–45, and CF6–50 series turbofan engines to include required enhanced inspection of selected critical life-limited parts at each piece-part exposure. That action also proposed to require an air carrier's approved continuous airworthiness maintenance program to incorporate these inspection procedures.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Five commenters note that some of the tasks/sub-tasks referenced in the proposed rule call out inspections beyond those identified as part of the enhanced inspection initiative (i.e. visual and dimensional inspection in addition to the intended inspections). The commenters recommend that the final rule be revised to reflect only those tasks or sub-tasks that contain the inspections that are intended to be mandated by the AD. The FAA concurs. The requested change is consistent with the enhanced inspection initiative. The manual temporary revisions have been revised to reflect only those tasks or sub tasks where the inspections to be mandated are located and the AD will reflect these changes.

One commenter notes that the work hours stated in the preamble for the HPTR stage 1 and 2 disk inspections are less than their estimates and recommends that the final rule be revised to note 18 hours for the mandated inspections instead of 8 hours. The FAA does not agree. The work hour estimate that includes 3 hours for eddy current inspection and 5 hours for FPI for each HPTR disk, for a total of 16 hours for the 2 HPTR disks, is believed to be accurate for a disk of average cleanliness, being inspected under typical shop conditions.

No other comments were received on the economic analysis contained in the proposed rule. Based on that analysis, the FAA has determined that the annual per engine cost of $438 does not create a significant economic impact on small entities.

Several commenters ask that the FAA clarify the record keeping aspects of the mandatory inspections resulting from the required changes to the Original Equipment Manufacturer's manual and operator's continuous airworthiness maintenance program. One commenter believes that paragraph (e) of the proposed AD is unclear and suggests that it be revised by eliminating the word "or" from the first sentence and beginning a second sentence with "In lieu of the record. * * *" Two commenters state that the AD should be revised to clearly specify which types of maintenance records must be retained (i.e., inspection results, defect reporting requirements, date of performed maintenance, signature of the person performing the maintenance). These commenters believe that these revisions are necessary in order to avoid potential differences in interpretation between the air carriers and the FAA. And, one commenter states that the AD should clarify that there is no need for a special form to comply with the AD record keeping requirements. The FAA concurs in part. Generally, record keeping requirements are addressed in other regulations and this AD does not change those requirements. In order to allow flexibility from operator to operator, the FAA does not agree that the AD itself specify the precise nature of the records that will result from the required changes to the manufacturer's manual and operator's maintenance program. The FAA has, however, revised Paragraph (e) of this AD to clarify record keeping aspects of the new mandatory inspections.

One commenter requested that the FAA link the conduct of mandatory inspections with the subject part's removal from an engine either on-wing or removed and in an overhaul shop. The FAA does not concur. Mandatory inspections are based on a single trigger, which is a part being completely disassembled using the engine shop manual instructions (piece-part opportunity), and are not dependent on an engine's state of installation. This AD mandates that the definition of piece-part opportunity appear in the mandatory section of each affected engine shop manual. This AD further mandates that an operator's continuous airworthiness maintenance program be modified to capture those engine shop manual changes.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air Transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

99–08–18 General Electric Company: Amendment 39–11124. Docket 98–ANE–41–AD.

Applicability: General Electric Company (GE) CF6–6, CF6–45, and CF6–50 series turbofan engines, installed on but not limited to Airbus A300 series, Boeing 747 series, and McDonnell Douglas DC–10 series airplanes.

Note 1: This airworthiness directive (AD) applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent critical life-limited rotating engine part failure, which could result in an uncontained engine failure and damage to the airplane, accomplish the following:

(a) Within the next 30 days after the effective date of this AD, revise the manufacturer's Time Limits Section of the Instructions for Continued Airworthiness (ICA), and for air carrier operations revise the approved continuous airworthiness maintenance program, by adding the following:

"MANDATORY INSPECTIONS

(1) Perform inspections of the following parts at each piece-part opportunity in accordance with the instructions provided in the applicable manual provisions:

Part nomenclature	Part No. (P/N)	Inspect per engine shop manual chapter
For CF6–6 Engines:		
Fan Rotor Disk, Stage 1	All	72–21–03 Paragraph 2.F. or Paragraph 2.A.B. Fluorescent-Penetrant Inspect, and 72–21–03 Paragraph 3 or 3.A. Eddy Current Inspection.
High Pressure Turbine Rotor, Stage 1 Disk.	All	72–53–03 Paragraph 1. Fluorescent-Penetrant Inspect, and 72–53–03 Paragraph 4. Eddy Current Inspection of the HPTR Disk Rim Boltholes.
High Pressure Turbine Rotor, Stage 2 Disk.	All	72–53–04 Paragraph 1. Fluorescent-Penetrant Inspect, and Paragraph 4. Eddy Current Inspection of the Stage 2 HPTR Disk Rim Boltholes and 72–53–04 Paragraph 5. Eddy Current Inspection of the Stage 2 Disk Inner Boltholes.
For CF6–45, CF6–50 Engines:		
Fan Rotor Disk, Stage 1	All	Task 72–21–03–230–051 Fluorescent-Penetrant Inspection, and Task 72–21–03–250–002–052 Manual Eddy Current Inspection or 72–21–03–250–003–053 Automated Eddy Current Inspection.
High Pressure Turbine Rotor, Stage 1 Disk.	All	Task 72–53–03–230–001–059 Fluorescent-Penetrant Inspect Disk, and Task 72–53–03–250–052 Eddy Current Inspection of the HPTR Stage 1 Rim Boltholes.
High Pressure Turbine Rotor, Stage 2 Disk.	All	Task 72–53–04–230–001–057 Fluorescent-Penetrant Inspect Disk, and Task 72–53–04–250–053 Eddy Current Inspection of the HPTR Stage 2 Rim and/or Inner Boltholes.

(2) For the purposes of these mandatory inspections, piece-part opportunity means:

(i) The part is considered completely disassembled when accomplished in accordance with the disassembly instructions in the engine manufacturer's Engine Shop Manual; and

(ii) The part has accumulated more than 100 cycles in service since the last piece-part opportunity inspection, provided that the part was not damaged or related to the cause for its removal from the engine.

(b) Except as provided in paragraph (c) of this AD, and notwithstanding contrary provisions in § 43.16 of the Federal Aviation Regulations (14 CFR 43.16), these mandatory inspections shall be performed only in accordance with the Time Limits Section of the manufacturer's ICA.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector (PMI), who may add comments and then send it to the Manager, Engine Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Engine Certification Office.

(d) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) FAA-certificated air carriers that have an approved continuous airworthiness maintenance program in accordance with the record keeping requirement of § 121.369(c) of the Federal Aviation Regulations [14 CFR 121.369(c)] of this chapter must maintain records of the mandatory inspections that result from revising the Time Limits section of the ICA and the air carrier's continuous airworthiness program. Alternately, certificated air carriers may establish an alternate system of record retention that provides a method for preservation and retrieval of the maintenance records that include the inspections resulting from this AD, and include the policy and procedures for implementing this alternate method in the air carrier's maintenance manual required by § 121.369(c) of the Federal Aviation Regulations [14 CFR 121.369(c)]; however, the alternate system must be accepted by the appropriate PMI and require the maintenance records be maintained either indefinitely or until the work is repeated. Records of the piece-part inspections are not required under § 121.380(a)(2)(vi) of the Federal Aviation Regulations [14 CFR 121.380(a)(2)(vi)]. All other Operators must maintain the records of mandatory inspections required by the applicable regulations governing their operations.

Note 3: The requirements of this AD have been met when the engine shop manual changes are made and air carriers have modified their continuous airworthiness maintenance plans to reflect the requirements in the engine shop manuals.

(f) This amendment becomes effective on May 13, 1999.

Issued in Burlington, Massachusetts, on April 2, 1999.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 99–8860 Filed 4–12–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–ANE–39–AD; Amendment 39–11123; AD 99–08–17]

RIN 2120–AA64

Airworthiness Directives; General Electric Company GE90 Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), that requires revisions to the manufacturer's Life Limits Section of the Instructions for Continued Airworthiness (ICA) for General Electric Company (GE) GE90 series turbofan engines to include required enhanced inspection of selected critical life-limited parts at each piece-part exposure. This amendment will also require an air carrier's approved continuous airworthiness maintenance program to incorporate these inspection procedures. This amendment is prompted by a Federal Aviation Administration (FAA) study of in-service events involving uncontained failures of critical rotating engine parts which indicated the need for improved inspections. The improved inspections are needed to identify those critical rotating parts with conditions, that if allowed to continue in service, could result in uncontained failures. The actions specified by this AD are intended to prevent critical life-limited rotating engine part failure, which could result in an uncontained engine failure and damage to the airplane.

DATES: Effective May 13, 1999.

ADDRESSES: The information contained in this AD may be examined at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Karen Curtis, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7192, fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to General Electric Company (GE) GE90 series turbofan engines was published in the **Federal Register** on July, 28, 1998 (63 FR 40210). That action proposed to require, within the next 30 days after the effective date of this AD, revisions to Life Limits section of the manufacturer's Instructions for Continued Airworthiness (ICA) for GE GE90 series turbofan engines, and, for air carriers, the approved continuous airworthiness maintenance program. The manufacturer of GE90 series turbofan engines has provided the FAA with a detailed proposal that identifies critical life-limited rotating engine parts with the potential to hazard the airplane in the event of failure, along with instructions for enhanced, focused inspection methods. These enhanced inspections will be conducted at piece-part opportunity, as defined in this AD, rather than specific inspection intervals.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Two commenters ask that the FAA clarify the record keeping aspects of the mandatory inspections resulting from the required changes to the Original Equipment Manufacturer's manual and operator's continuous airworthiness maintenance program. These commenters state that the AD should be revised to clearly specify which types of maintenance records must be retained (i.e., inspection results, defect reporting requirements, date of performed maintenance, signature of the person performing the maintenance). These commenters believe that these revisions are necessary in order to avoid potential differences in interpretation between the air carriers and the FAA. The FAA concurs in part. Generally, record keeping requirements are addressed in other regulations and this AD does not change those requirements. In order to allow flexibility from operator to operator, the FAA does not agree that the AD itself specify the precise nature of the records that will result from the required changes to the manufacturer's manual and operator's maintenance program. The FAA has, however, revised Paragraph (e) of this AD to clarify record keeping aspects of the new mandatory inspections.

Since the engines affected by this AD are operated only by major air carriers, and there are no US operators, this AD will not create any significant economic impact on small entities.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes described previously. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air Transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

99–08–17 General Electric Company: Amendment 39–11123. Docket 98–ANE–39–AD.

Applicability: General Electric Company (GE) GE90–76B/–77B/–85B/–90B/–92B series turbofan engines, installed on but not limited to Boeing 777 airplanes.

Note 1: This airworthiness directive (AD) applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so

that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously. To prevent critical life-limited rotating engine part failure, which could result in an uncontained engine failure and damage to the airplane, accomplish the following:

(a) Within the next 30 days after the effective date of this AD, revise the manufacturer's Life Limits Section of the Instructions for Continued Airworthiness (ICA), and for air carrier operations revise the approved continuous airworthiness maintenance program, by adding the following:

"MANDATORY INSPECTIONS

(1) Perform inspections of the following parts at each piece-part opportunity in accordance with the instructions provided in the applicable manual provisions:

Part nomenclature	Part No (P/N)	Inspect per engine manual chapter
HPCR Stage 7 Disk	All	72–31–07–200–001–001, Fluorescent-Penetrant Inspection (subtask 72–31–07–230–051) and 72–31–07–200–001–001, Eddy Current Inspection (subtask 72–31–07–250–051, or 72–31–07–250–052, or 72–31–07–250–053).
HPT Rotor Interstage Seal	All	72–53–03–200–001–001 Fluorescent Penetrant Inspection (subtask 72–53–03–230–053).

(2) For the purposes of these mandatory inspections, piece-part opportunity means:

(i) The part is considered completely disassembled when done in accordance with the disassembly instructions in the engine manufacturer's maintenance manual; and

(ii) The part has accumulated more than 100 cycles in service since the last piece-part opportunity inspection, provided that the part was not damaged or related to the cause for its removal from the engine."

(b) Except as provided in paragraph (c) of this AD, and notwithstanding contrary provisions in § 43.16 of the Federal Aviation Regulations (14 CFR 43.16), these mandatory inspections shall be performed only in accordance with Life Limits Section of the manufacturer's ICA.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector (PMI), who may add comments and then send it to the Manager, Engine Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Certification Office.

(d) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the aircraft to a location where the requirements of this AD can be accomplished.

(e) FAA-certificated air carriers that have an approved continuous airworthiness maintenance program in accordance with the record keeping requirement of § 121.369(c) of the Federal Aviation Regulations [14 CFR 121.369(c)] of this chapter must maintain records of the mandatory inspections that result from revising the Life Limits section of the ICA and the air carrier's continuous airworthiness program. Alternately, certificated air carriers may establish an approved system of record retention that provides a method for preservation and retrieval of the maintenance records that include the inspections resulting from this AD, and include the policy and procedures for implementing this alternate method in the air carrier's maintenance manual required by § 121.369(c) of the Federal Aviation Regulations [14 CFR 121.369(c)]; however, the alternate system must be accepted by the appropriate PMI and require the maintenance records be maintained either indefinitely or until the work is repeated. Records of the piece-part inspections are not required under § 121.380(a)(2)(vi) of the Federal Aviation Regulations [14 CFR 121.380(a)(2)(vi)]. All other Operators must maintain the records of mandatory inspections required by the applicable regulations governing their operations.

Note 3: The requirements of this AD have been met when the engine manual changes are made and air carriers have modified their continuous airworthiness maintenance plans to reflect the requirements in the engine manuals.

(f) This amendment becomes effective on May 13, 1999.

Issued in Burlington, Massachusetts, on April 2, 1999.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 99–8859 Filed 4–12–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–ANE–38–AD; Amendment 39–11122; AD 99–08–16]

RIN 2120–AA64

Airworthiness Directives; CFM International (CFMI) CFM56–2, –2A, –2B, –3, –3B, and –3C Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), that requires revisions to the Engine Time Limits section in the Engine Shop Manual (ESM) for CFM International (CFMI) CFM56–2, –2A, –2B, –3, –3B, and –3C series turbofan engines to include required enhanced inspection of selected critical life-limited parts at each piece-part exposure. This amendment will also require an air carrier's approved continuous airworthiness maintenance program to incorporate these inspection procedures. This amendment is prompted by a Federal Aviation Administration (FAA) study of in-service events involving uncontained failures of critical rotating engine parts which indicated the need for improved inspections. The improved inspections are needed to identify those critical rotating parts with conditions, that if allowed to continue in service, could result in uncontained failures. The actions specified by this AD are intended to prevent critical life-limited rotating engine part failure, which could result in an uncontained engine failure and damage to the airplane.

DATES: Effective May 13, 1999.

ADDRESSES: The information referenced in this AD may be examined at the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Robert Ganley, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7138, fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD)

that is applicable to CFM International (CFMI) CFM56–2, –2A, –2B, –3, –3B, and –3C series turbofan engines was published in the **Federal Register** on July 28, 1998 (63 FR 40208). That action proposed to require revisions to the Engine Time Limits section in the Engine Shop Manual (ESM) for CFMI CFM56–2, –2A, –2B, –3, –3B, and –3C series turbofan engines to include required enhanced inspection of selected critical life-limited parts at each piece-part exposure. That action also proposed to require an air carrier's approved continuous airworthiness maintenance program to incorporate these inspection procedures.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Several commenters ask that the FAA clarify the record keeping aspects of the mandatory inspections resulting from the required changes to the Original Equipment Manufacturer's manual and operator's continuous airworthiness maintenance program. One commenter believes that paragraph (e) of the proposed AD is unclear and suggests that it be revised by eliminating the word "or" from the first sentence and beginning a second sentence with "In lieu of the record. * * *" Two commenters state that the AD should be revised to clearly specify which types of maintenance records must be retained (i.e., inspection results, defect reporting requirements, date of performed maintenance, signature of the person performing the maintenance). These commenters believe that these revisions are necessary in order to avoid potential differences in interpretation between the air carriers and the FAA. And, one commenter states that the AD should clarify that there is no need for a special form to comply with the AD record keeping requirements. The FAA concurs in part. Generally, record keeping requirements are addressed in other regulations and this AD does not change those requirements. In order to allow flexibility from operator to operator, the FAA does not agree that the AD itself specify the precise nature of the records that will result from the required changes to the manufacturer's manual and operator's maintenance program. The FAA has, however, revised Paragraph (e) of this AD to clarify record keeping aspects of the new mandatory inspections.

One commenter believes that the table in paragraph (a)(1) is unclear and suggests it be revised to read "Mandatory Inspection/s" and that both the inspection and the appropriate manual reference (72–xx–xx) be included in this column. The FAA concurs in part. The table format in paragraph (a)(1) of the final rule has been revised to be consistent with the ESM.

Two commenters support the AD as proposed.

No comments were received on the economic analysis contained in the proposed rule. Based on that analysis, the FAA has determined that the annual per engine cost of $860 does not create a significant economic impact on small entities.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air Transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

98–08–16 CFM International: Amendment 39–11122. Docket 98–ANE–38–AD.

Applicability: CFM International (CFMI) CFM56–2, –2A, –2B, –3, –3B, and –3C series turbofan engines, installed on but not limited to McDonnell Douglas DC–8 series, Boeing 737 series, as well as Boeing E–3, E–6, and KC–135 (military) series airplanes.

Note 1: This airworthiness directive (AD) applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent critical life-limited rotating engine part failure, which could result in an uncontained engine failure and damage to the airplane, accomplish the following:

(a) Within the next 30 days after the effective date of this AD, revise the Time Limits section (chapter 05–11–00) of Engine Shop Manual (ESM) CFMI–TP.SM.4, for CFM56–2 series engines, ESM CFMI–TP.SM.6, for CFM56–2A/–2B series engines, and ESM CFMI–TP.SM.5, for CFM56–3/–3B/–3C series engines, and for air carrier operations, revise the approved continuous airworthiness maintenance program, by adding the following:

"MANDATORY INSPECTIONS

(1) Perform inspections of the following parts at each piece-part opportunity in accordance with the Inspection/Check section instructions provided in the applicable manual sections listed below:

Part name	Engine manual section	Inspection
Fan Disk (All Part Numbers (P/N's))	72–21–03	Disk Fluorescent-Penetrant Inspection (FPI) and Disk Bore and Dovetail Eddy Current Inspection (ECI).
HPT Disk (All P/N's)	72–52–02	Disk FPI and Disk Bolt Holes ECI.

(2) For the purposes of these mandatory inspections, piece-part opportunity means:

(i) The part is considered completely disassembled when accomplished in accordance with the disassembly instructions in the engine manufacturer's ESM; and

(ii) The part has accumulated more than 100 cycles in service since the last piece-part opportunity inspection, provided that the part was not damaged or related to the cause for its removal from the engine."

(b) Except as provided in paragraph (c) of this AD, and notwithstanding contrary provisions in § 43.16 of the Federal Aviation Regulations (14 CFR 43.16), these mandatory inspections shall be performed only in accordance with the Time Limits section in the manufacturer's ESM.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector (PMI), who may add comments and then send it to the Manager, Engine Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Engine Certification Office.

(d) Special flight permits may be issued in accordance with § § 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) FAA-certificated air carriers that have an approved continuous airworthiness maintenance program in accordance with the record keeping requirement of § 121.369(c) of the Federal Aviation Regulations [14 CFR 121.369(c)] of this chapter must maintain records of the mandatory inspections that result from revising the Time Limits section of the ESM and the air carrier's continuous airworthiness program. Alternately, certificated air carriers may establish an approved system of record retention that provides a method for preservation and retrieval of the maintenance records that include the inspections resulting from this AD, and include the policy and procedures for implementing this alternate method in the air carrier's maintenance manual required by § 121.369(c) of the Federal Aviation Regulations [14 CFR 121.369(c)]; however, the alternate system must be accepted by the appropriate PMI and require the maintenance records be maintained either indefinitely or until the work is repeated. Records of the piece-part inspections are not required under § 121.380(a)(2)(vi) of the Federal Aviation Regulations [14 CFR 121.380(a)(2)(vi)]. All other Operators must maintain the records of mandatory inspections required by the applicable regulations governing their operations.

Note 3: The requirements of this AD have been met when the engine manual changes are made and air carriers have modified their continuous airworthiness maintenance plans to reflect the requirements in the engine manuals.

(f) This amendment becomes effective on May 13, 1999.

Issued in Burlington, Massachusetts, on April 2, 1999.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 99–8858 Filed 4–12–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–SW–25–AD; Amendment 39–11127; AD 99–07–18]

RIN 2120–AA64

Airworthiness Directives; Robinson Helicopter Company Model R44 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This document publishes in the **Federal Register** an amendment adopting Airworthiness Directive (AD) 99–07–18 which was sent previously to all known U.S. owners and operators of Robinson Helicopter Company (RHC) Model R44 helicopters by individual letters. This AD requires, before further flight, inserting a Special Pilot Caution into the Normal Procedures section of the Rotorcraft Flight Manual (RFM). This amendment is prompted by several reports of sprag clutch assemblies with cracked or fractured sprag ends. The sprag clutch failures, determined to be due to a change in the manufacturing process, could result in loss of main rotor revolutions-per-minute (RPM) during autorotations. The intent of this AD is to alert pilots of the potential for the sprag clutch failing to overrun during autorotation, loss of main rotor RPM, and subsequent loss of control of the helicopter.

DATES: Effective April 28, 1999, to all persons except those persons to whom it was made immediately effective by Priority Letter AD 99–07–18, issued on March 26, 1999, which contained the requirements of this amendment.

Comments for inclusion in the Rules Docket must be received on or before June 14, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 99–SW–25–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

FOR FURTHER INFORMATION CONTACT: Elizabeth Bumann, Aerospace Engineer, FAA, Los Angeles Aircraft Certification Office, Propulsion Branch, 3960 Paramount Blvd., Lakewood, California 90712, telephone (562) 627–5265, fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: On March 26, 1999, the FAA issued Priority Letter AD 99–07–18, applicable to RHC Model R44 helicopters, which requires, before further flight, inserting a Special Pilot Caution into the Normal Procedures section of the RFM. That action was prompted by several reports of sprag clutch assemblies, including one from wreckage of an accident that occurred within the past year, with cracked or fractured sprag ends. The sprag clutch failures, determined to be due to a change in the manufacturing process, could result in loss of main rotor RPM during autorotations. The intent of that priority letter AD is to alert pilots of the potential for the sprag clutch failing to overrun during autorotation, loss of main rotor RPM, and subsequent loss of control of the helicopter.

The FAA has reviewed Robinson Helicopter Company R44 Service Bulletin SB–32, dated March 22, 1999, which describes procedures for checking whether sprag clutches with certain serial numbers are installed and replacing certain serial numbered sprag clutches, and inserting a Special Pilot Caution in the Normal Procedures section of the RFM.

Since the unsafe condition described is likely to exist or develop on other RHC Model R44 helicopters of the same

type design, the FAA issued Priority Letter AD 99–07–18 to alert pilots of the potential for the sprag clutch failing to overrun during autorotation due to the failure of the sprags within the sprag clutch assembly and loss of main rotor RPM. The AD requires, before further flight, inserting a Special Pilot Caution into the Normal Procedures section of the RFM which primarily addresses autorotation maneuvers and a before every flight sprag clutch (split tach needles) check for proper function of the sprag clutch. Inserting the Special Pilot Caution is an interim action. The FAA will issue an AD to supersede this AD and require replacing the clutch assembly when parts become available from the manufacturer. The short compliance time involved is required because the previously described critical unsafe condition can adversely affect the structural integrity of the helicopter. Therefore, inserting a Special Pilot Caution into the Normal Procedures section of the RFM is required before further flight, and this AD must be issued immediately.

Since it was found that immediate corrective action was required, notice and opportunity for prior public comment thereon were impracticable and contrary to the public interest, and good cause existed to make the AD effective immediately by individual letters issued on March 26, 1999, to all known U.S. owners and operators of RHC Model R44 helicopters. These conditions still exist, and the AD is hereby published in the **Federal Register** as an amendment to section 39.13 of the Federal Aviation Regulations (14 CFR 39.13) to make it effective to all persons.

The FAA estimates that 200 helicopters of U.S. registry will be affected by this AD, that it will take approximately 0.5 work hour per helicopter to insert the caution into the RFM, and that the average labor rate is $60 per work hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $6,000.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 99–SW–25–AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

AD 99–07–18 Robinson Helicopter Company: Amendment 39–11127. Docket No. 99–SW–25–AD.

Applicability: Model R44 helicopters, serial numbers (S/N) 0001 through 0541, 0543, 0556, and 0565, with sprag clutch, part number (P/N) C188–3, S/N's 0003 through 0452, installed, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required before further flight, unless accomplished previously.

To alert pilots of the potential for the sprag clutch failing to overrun during autorotation due to failure of the sprags within the sprag clutch assembly, and loss of main rotor revolutions-per-minute, accomplish the following:

(a) Insert either the Special Pilot Caution, revised March 22, 1999, which is contained in Robinson Helicopter Company R44 Service Bulletin SB–32, dated March 22, 1999, or the following Special Pilot Caution paragraphs, into the Normal Procedures section of the Rotorcraft Flight Manual, between pages P.4–8 and P.4–9:

SPECIAL PILOT CAUTION

Some sprags in overrunning clutches have been found cracked in service. A broken sprag could conceivably prevent the clutch from overrunning when entering autorotation. Until the clutch in this aircraft has been replaced, *do not* enter practice autorotations by rapidly closing or "chopping" the throttle. "Chopping" the throttle could result in a sudden loss of rotor RPM if the clutch failed to disengage.

Enter autorotation by first lowering collective and then rolling off just enough throttle to produce a small visible split between the rotor and engine tachometer needles. If the clutch fails to disengage, immediately complete a power recovery. Perform hovering autos only after checking the function of the overrunning sprag clutch prior to lift-off, then smoothly rolling off the throttle from a low hover with the skids no more than two feet above the ground.

Be sure to perform the sprag clutch check (split tach needles) before every flight, not just the first flight of the day.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office, FAA. Operators shall submit their requests through a FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Los Angeles Aircraft Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles Aircraft Certification Office.

(c) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the helicopter to a location where the requirements of this AD can be accomplished.

(d) This amendment becomes effective on April 28, 1999 to all persons except those persons to whom it was made immediately effective by Priority Letter AD 99–07–18, issued March 26, 1999, which contained the requirements of this amendment.

Issued in Fort Worth, Texas, on April 5, 1999.

Eric Bries,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 99–9132 Filed 4–12–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–SW–24–AD; Amendment 39–11126; AD 99–07–17]

RIN 2120–AA64

Airworthiness Directives; Robinson Helicopter Company Model R22 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This document publishes in the **Federal Register** an amendment adopting Airworthiness Directive (AD) 99–07–17 which was sent previously to all known U.S. owners and operators of Robinson Helicopter Company (RHC) Model R22 helicopters by individual letters. This AD requires, before further flight, inserting a Special Pilot Caution into the Normal Procedures section of the Rotorcraft Flight Manual (RFM). This amendment is prompted by several reports of sprag clutch assemblies with cracked or fractured sprag ends. The sprag clutch failures, determined to be due to a change in the manufacturing process, could result in loss of main rotor revolutions-per-minute (RPM) during autorotations. The intent of this AD is to alert pilots of the potential for the sprag clutch failing to overrun during autorotation, loss of main rotor RPM, and subsequent loss of control of the helicopter.

DATES: Effective April 28, 1999, to all persons except those persons to whom it was made immediately effective by Priority Letter AD 99–07–17, issued on March 26, 1999, which contained the requirements of this amendment.

Comments for inclusion in the Rules Docket must be received on or before June 14, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 99–SW–24–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

FOR FURTHER INFORMATION CONTACT: Elizabeth Bumann, Aerospace Engineer, FAA, Los Angeles Aircraft Certification Office, Propulsion Branch, 3960 Paramount Blvd., Lakewood, California 90712, telephone (562) 627–5265, fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: On March 26, 1999, the FAA issued Priority Letter AD 99–07–17, applicable to RHC Model R22 helicopters, which requires, before further flight, inserting a Special Pilot Caution into the Normal Procedures section of the RFM. That action was prompted by several reports of sprag clutch assemblies, including one from wreckage of an accident that occurred within the past year, with cracked or fractured sprag ends. The sprag clutch failures, determined to be due to a change in the manufacturing process, could result in loss of main rotor RPM during autorotations. The intent of that priority letter AD is to alert pilots of the potential for the sprag clutch failing to overrun during autorotation, loss of main rotor RPM, and subsequent loss of control of the helicopter.

The FAA has reviewed Robinson Helicopter Company R22 Service Bulletin SB–85, dated March 22, 1999, which describes procedures for checking whether sprag clutches with certain serial numbers are installed and replacing certain serial numbered sprag clutches, and inserting a Special Pilot Caution in the Normal Procedures section of the RFM.

Since the unsafe condition described is likely to exist or develop on other RHC Model R22 helicopters of the same type design, the FAA issued Priority Letter AD 99–07–17 to alert pilots of the potential for the sprag clutch failing to overrun during autorotation due to the failure of the sprags within the sprag clutch assembly, and loss of main rotor RPM. The AD requires, before further flight, inserting a Special Pilot Caution into the Normal Procedures section of the RFM which primarily addresses autorotation maneuvers and a before every flight sprag clutch (split tach needles) check for proper function of the sprag clutch. Inserting the Special Pilot caution is an interim action. The FAA will issue an AD to supersede this AD and require replacing the clutch assembly when parts become available from the manufacturer. The short compliance time involved is required because the previously described critical unsafe condition can adversely affect the structural integrity of the helicopter. Therefore, inserting a Special Pilot Caution into the Normal Procedures section of the RFM is required before further flight, and this AD must be issued immediately.

Since it was found that immediate corrective action was required, notice and opportunity for prior public comment thereon were impracticable and contrary to the public interest, and good cause existed to make the AD effective immediately by individual letters issued on March 26, 1999, to all

known U.S. owners and operators of RHC Model R22 helicopters. These conditions still exist, and the AD is hereby published in the **Federal Register** as an amendment to section 39.13 of the Federal Aviation Regulations (14 CFR 39.13) to make it effective to all persons.

The FAA estimates that 880 helicopters of U.S. registry will be affected by this AD, that it will take approximately 0.5 work hour per helicopter to insert the caution into the RFM, and that the average labor rate is $60 per work hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $26,400.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 99–SW–24–AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

AD 99–07–17 Robinson Helicopter Company: Amendment 39–11126. Docket No. 99–SW–24–AD.

Applicability: Model R22 helicopters, serial numbers (S/N) 0002 through 2862, with sprag clutch, part number (P/N) A188–2, S/N's 3708 through 3757, 3808 through 3893, and 3908 through 4207, installed, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required before further flight, unless accomplished previously.

To alert pilots of the potential for the sprag clutch failing to overrun during autorotation due to failure of the sprags within the sprag clutch assembly, and loss of main rotor revolutions-per-minute, accomplish the following:

(a) Insert either the Special Pilot Caution, revised March 22, 1999, which is contained in Robinson Helicopter Company R22 Service Bulletin SB–85, dated March 22, 1999, or the following Special Pilot Caution paragraphs, into the Normal Procedures section of the Rotorcraft Flight Manual, between pages P.4–8 and P.4–9:

SPECIAL PILOT CAUTION

Some sprags in overrunning clutches have been found cracked in service. A broken sprag could conceivably prevent the clutch from overrunning when entering autorotation. Until the clutch in this aircraft has been replaced, *do not* enter practice autorotations by rapidly closing or "chopping" the throttle. "Chopping" the throttle could result in a sudden loss of rotor RPM if the clutch failed to disengage.

Enter autorotation by first lowering collective and then rolling off just enough throttle to produce a small visible split between the rotor and engine tachometer needles. If the clutch fails to disengage, immediately complete a power recovery. Perform hovering autos only after checking the function of the overrunning sprag clutch prior to lift-off, then smoothly rolling off the throttle from a low hover with the skids no more than two feet above the ground.

Be sure to perform the sprag clutch check (split tach needles) before every flight, not just the first flight of the day.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Los Angeles Aircraft Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles Aircraft Certification Office.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the helicopter to a location where the requirements of this AD can be accomplished.

(d) This amendment becomes effective on April 28, 1999 to all persons except those persons to whom it was made immediately effective by Priority Letter AD 99–07–17, issued March 26, 1999, which contained the requirements of this amendment.

Issued in Fort Worth, Texas, on April 5, 1999.

Eric Bries,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 99–9131 Filed 4–12–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Parts 738, 740, 742, 748, 762, and 774

[Docket No. 981222316–8316–01]

RIN 0694–AB68

Exports of Firearms

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Interim rule with request for comments.

SUMMARY: On April 18, 1998, President Clinton announced at the Santiago Summit in Chile that the United States would promulgate regulations based on the Organization of American States (OAS) Model Regulations for the Control of the International Movement of Firearms, their Parts and Components and Ammunition (referred to as the "OAS Model Regulations"). The Bureau of Export Administration (BXA) is revising the Export Administration Regulations (EAR) to implement export control measures agreed to by members of the OAS and set forth in the OAS Model Regulations. The OAS Model Regulations were developed to assist OAS member countries in implementing the Inter-American Convention Against the Illicit Manufacturing of and Trafficking in Firearms, Ammunition, Explosives, and Other Related Materials (Firearms Convention). OAS member countries agreed to impose an import and export license requirement to effectively combat the illicit manufacturing of and trafficking in firearms, ammunition, explosives, and other related materials. Though the Firearms Convention has yet to enter into force, most OAS member countries, including the United States, are taking actions in advance of the Convention's entry into force based on the OAS agreed Model Regulations to control the flow of firearms items because of their links to such activities as drug trafficking, terrorism, transnational organized crime, and mercenary and other criminal activities.

DATES: *Effective Date:* This rule is effective April 13, 1999.

Grace Period: A 90-day grace period will apply to the requirement to obtain the Firearms Import Certificate or equivalent official document. During the grace period, applications will be accepted whether or not supported by the Firearms Import Certificate.

COMMENTS: Comments on this rule must be received on or before May 28, 1999.

ADDRESSES: Written comments on this rule should be sent to Patricia Muldonian, Regulatory Policy Division, Bureau of Export Administration, Department of Commerce, P.O. Box 273, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Joan Roberts, Director, Foreign Policy Division, Bureau of Export Administration, Telephone: (202) 482–0171.

SUPPLEMENTARY INFORMATION:

Background

On November 14, 1997, twenty-nine members of the Organization of American States (OAS), including the United States, signed the Inter-American Convention Against the Illicit Manufacturing of and Trafficking in Firearms, Ammunition, Explosives, and Other Related Materials (Firearms Convention). Subsequently, the Bahamas and Trinidad and Tobago signed the Treaty bringing the number of signatories to thirty-one. The Firearms Convention requires all OAS Member States to establish a program to issue authorizations for the import and export of firearms. The Firearms Convention will enter into force after the deposit of instruments of ratification by two Signatory States. To date, only one Convention Signatory, Belize, has ratified the Treaty.

The Firearms Convention constitutes the first multilateral treaty of its kind in the world, and it is expected to enhance multilateral cooperation among the governments of the Americas in the battle against the illicit manufacturing of and trafficking in firearms, ammunition, explosives, and other related materials. The problem of illicit transnational trade in firearms is of particular concern to the governments of North and South America due to the violence it breeds and the links it often has with organized criminal activity, such as drug trafficking and terrorism.

The OAS member countries include: Antigua and Barbuda, Argentina, the Bahamas, Barbados, Belize, Bolivia, Brazil, Canada, Chile, Colombia, Costa Rica, Dominica, Dominican Republic, Ecuador, El Salvador, Grenada, Guatemala, Guyana, Haiti, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Suriname, Trinidad and Tobago, the United States, Uruguay, and Venezuela.

OAS members also approved, in November 1997, the Model Regulations for the Control of the International Movement of Firearms, Their Parts and Components and Ammunition (OAS Model Regulations) to promote harmonized procedures for import and export controls over the legal international movement of firearms. The OAS Model Regulations do not address explosives and related materials.

On April 18, 1998, at the Santiago Summit held in Chile, President Clinton announced that the United States would issue regulations based on the OAS Model Regulations and that the Firearms Convention would be sent to the Senate for its advice and consent for ratification. President Clinton stated that these measures will further multilateral cooperation to prevent and combat illicit transnational traffic in firearms and ammunition, while establishing and strengthening systems to enhance the tracing of firearms used in criminal activities.

The OAS Model Regulations affect most firearms items on the Commerce Control List (CCL) classified under the following Export Control Classification Numbers (ECCNs): (1) 0A984, Shotguns with a barrel length 18 inches or over and related parts, and buckshot shotgun shells; (2) 0A986, Shotgun shells, and related parts; and (3) 0A987, Optical sighting devices. Following the President's directive, BXA is imposing a new license requirement for exports to Canada of all items controlled by ECCN 0A984, 0A986, or 0A987. A license is already required for crime control

reasons albeit subject to different licensing policies for the export of most firearms items to other OAS member countries.

The OAS Model Regulations also set forth requirements for the government of OAS importing countries to issue an Import Certificate to the importer of firearms, which is to include the total quantity of firearms and a detailed description of the item(s). Accordingly, BXA is imposing a new Import Certificate requirement for export of items classified as ECCNs 0A984, 0A986, or 0A987 to all OAS member countries, including Canada. The Import Certificate or an equivalent official document must be sent by the importer to the exporter as support documentation for a license application. The exporter must obtain the Import Certificate or equivalent official document prior to applying for a license. While the exporter may submit the application on receipt of a facsimile copy of the Import Certificate or equivalent official document, he must have the original in his possession before export. The exporter must retain the Import Certificate or equivalent official document in his files and produce it if requested to do so by BXA, in accordance with the recordkeeping requirements of the EAR.

In addition, for clarity and consistency, this rule transfers optical sighting devices from ECCN 0A985 to a newly created ECCN 0A987.

Although the Export Administration Act (EAA) expired on August 20, 1994, the President invoked the International Emergency Economic Powers Act and continued in effect the Export Administration Regulations and, to the extent permitted by law, the provisions of the EAA in Executive Order 12924 of August 19, 1994, as extended by the President's notices of August 15, 1995 (60 FR 42767), August 14, 1996 (61 FR 42527), August 13, 1997 (62 FR 43629) and August 13, 1998 (63 FR 44121).

Under a policy of conforming actions under the Executive Order to those under the EAA, insofar as appropriate, the Department of Commerce notified the Congress of this imposition of foreign policy controls on December 28, 1998.

Rulemaking Requirements

1. This interim rule has been determined to be significant for purposes of E.O. 12866.

2. Notwithstanding any other provision of law, no person is required to, nor shall any person be subject to a penalty for failure to comply with a collection of information, subject to the Paperwork Reduction Act (PRA), unless that collection of information displays a currently valid OMB Control Number. This rule also contains a new collection-of-information requirement subject to the PRA that has received emergency approval under OMB control number 0694–0114. The new information requirement and estimated public burden hours include: import certificates and associated activities (5 minutes to one hour each) and licenses to Canada (42.5 minutes each). This rule also involves a collection of information approved by the Office of Management and Budget under control number 0694–0088, "Multi-Purpose Application," which carries a burden hour estimate of 42.5 minutes per submission. These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collections of information. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Comments regarding these burden estimates or any other aspect of the collection of information, including suggestions for reducing the burdens, should be forwarded to Patricia Muldonian, Regulatory Policy Division, Office of Exporter Services, Bureau of Export Administration, Department of Commerce, P.O. Box 273, Washington, DC 20044, and David Rostker, Office of Management and Budget, OMB/OIRA, 725 17th Street, NW., NEOB Rm. 10202, Washington, DC 20503.

3. This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

4. The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a military and foreign affairs function of the United States (Sec. 5 U.S.C. 553(a)(1)). Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this interim rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under 5 U.S.C. 553 or by any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable.

However, because of the importance of the issues raised by these regulations, this rule is being issued in interim form and BXA will consider comments in the development of the final regulations.

Accordingly, the Department encourages interested persons who wish to comment to do it at the earliest possible time to permit the fullest consideration of their views.

The period for submission of comments will close May 28, 1999. The Department will consider all comments received before the close of the comment period in developing final regulations. Comments received after the end of the comment period will be considered if possible, but their consideration cannot be assured. The Department will not accept public comments accompanied by a request that a part or all of the material be treated confidentially because of its business proprietary nature or for any other reason. The Department will return such comments and materials to the persons submitting the comments and will not consider them in the development of final regulations. All public comments on these regulations will be a matter of public record and will be available for public inspection and copying. In the interest of accuracy and completeness, the Department requires comments in written form.

Oral comments must be followed by written memoranda, which will also be a matter of public record and will be available for public review and copying.

The public record concerning these regulations will be maintained in the Bureau of Export Administration Freedom of Information Records Inspection Facility, Room 6881, Department of Commerce, 14th Street and Pennsylvania Avenue, N.W., Washington, D.C. 20230. Records in this facility, including written public comments and memoranda summarizing the substance of oral communications, may be inspected and copied in accordance with regulations published in part 4 of Title 15 of the Code of Federal Regulations. Information about the inspection and copying of records at the facility may be obtained from Henry Gaston, Bureau of Export Administration Freedom of Information Officer, at the above address or by calling (202) 482–5653.

List of Subjects

15 CFR Parts 738, 742 and 774

Exports, Foreign Trade.

15 CFR Parts 740 and 748

Administrative practice and procedure, Exports, Foreign Trade, Reporting and recordkeeping requirements.

15 CFR Part 762

Administrative practice and procedures, Business and industry, Confidential business information, Exports, Foreign Trade, Reporting and recordkeeping requirements.

Accordingly, parts 738, 740, 742, 748, 762, and 774 of the Export Administration Regulations (15 CFR parts 730–799) are amended to read as follows:

1. The authority citation for parts 738 and 774 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*, 1701 *et seq.*, app. 5; 10 U.S.C. 7420, 7430(e); 18 U.S.C. 2510 *et seq.*; 22 U.S.C. 287c, 3201 *et seq.*, 6004; Sec. 201, Pub. L. 104–58, 109 Stat. 557 (30 U.S.C. 185(s), 185(u)); 42 U.S.C. 2139a, 6212; 43 U.S.C. 1354; 46 U.S.C. app. 466c; E.O. 12924, 3 CFR, 1994 Comp., p. 917; E.O. 13026, 3 CFR, 1996 Comp., p. 228; and Notice of August 13, 1998 (63 FR 44121, August 17, 1998).

2. The authority citation for parts 740, 748, and 762 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*, 1701 *et seq.*; E.O. 12924, 3 CFR, 1994 Comp., p. 917; E.O. 13026, 3 CFR, 1996 Comp., p. 228 (1997); Notice of August 13, 1998 (63 FR 44121, August 17, 1998); and Pub. L. 105–85, 111 Stat. 1629.

3. The authority citation for part 742 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*, 1701 *et seq.*; 18 U.S.C. 2510 *et seq.*; 22 U.S.C. 3201 *et seq.*; 42 U.S.C. 2139a; E.O. 12058, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 3 CFR 1993 Comp., p. 608; E.O. 12924, 3 CFR, 1994 Comp., p. 917; E.O. 12938, 3 CFR, 1994 Comp., p. 950; E.O. 13026, 3 CFR, 1996 Comp., p. 228 (1997); Notice of August 13, 1998 (63 FR 44121, August 17, 1998); and Pub. L. 105–85, 111 Stat. 1629.

PART 738—[AMENDED]

§ 738.2 [Amended]

4. Section 738.2 is amended by adding "FC Firearms Convention" in alphabetical order to the list of Reasons for Control in paragraph (d)(2)(i)(A).

5. Supplement No. 1 to part 738, the Commerce Country Chart, is amended by adding "FC Column 1". For the convenience of the reader, the chart is revised to read as follows:

Supplement No. 1 to Part 738—[Amended]

SUPPLEMENT NO. 1 TO PART 738—COMMERCE COUNTRY CHART

[Reason for control]

Countries	Chemical and biological weapons			Nuclear non-proliferation		National security		Missile tech	Regional stability		Firearms convention	Crime control			Anti-terrorism	
	CB 1	CB 2	CB 3	NP 1	NP 2	NS 1	NS 2	MT 1	RS 1	RS 2	FC 1	CC 1	CC 2	CC 3	AT 1	AT 2
Afghanistan	X	X	X	X		X	X	X	X	X		X		X		
Albania	X	X		X		X	X	X	X	X		X	X			
Algeria	X	X		X		X	X	X	X	X		X		X		
Andorra	X	X		X		X	X	X	X	X		X		X		
Angola [1]	X	X		X		X	X	X	X	X		X		X		
Antigua and Barbuda	X	X		X		X	X	X	X	X	X	X		X		
Argentina	X					X	X	X	X	X	X	X		X		
Armenia	X	X	X	X		X	X	X	X	X		X	X			
Australia	X					X		X	X							
Austria	X					X		X	X	X		X		X		
Azerbaijan	X	X	X	X		X	X	X	X	X		X	X			
Bahamas, The	X	X		X		X	X	X	X	X	X	X		X		
Bahrain	X	X	X	X		X	X	X	X	X		X		X		
Bangladesh	X	X		X		X	X	X	X	X		X		X		
Barbados	X	X		X		X	X	X	X	X	X	X		X		
Belarus	X	X	X	X		X	X	X	X	X		X	X			
Belgium	X					X		X								
Belize	X	X		X		X	X	X	X	X	X	X		X		
Benin	X	X		X		X	X	X	X	X		X		X		
Bhutan	X	X		X		X	X	X	X	X		X		X		
Bolivia	X	X		X		X	X	X	X	X	X	X		X		
Bosnia and Herzegovina	X	X		X		X	X	X	X	X		X		X		
Botswana	X	X		X		X	X	X	X	X		X		X		
Brazil	X	X				X	X	X	X	X	X	X		X		
Brunei	X	X		X		X	X	X	X	X		X		X		
Bulgaria	X	X	X			X	X	X	X	X		X	X			
Burkina Faso	X	X		X		X	X	X	X	X		X		X		
Burma	X	X	X	X		X	X	X	X	X		X		X		
Burundi	X	X		X		X	X	X	X	X		X		X		
Cambodia	X	X		X		X	X	X	X	X		X	X			
Cameroon	X	X		X		X	X	X	X	X		X		X		
Canada											X					
Cape Verde	X	X		X		X	X	X	X	X		X		X		
Central African Republic	X	X		X		X	X	X	X	X		X		X		
Chad	X	X		X		X	X	X	X	X		X		X		
Chile	X	X		X		X	X	X	X	X	X	X		X		
China	X	X	X	X		X	X	X	X	X		X		X		
Colombia	X	X		X		X	X	X	X	X	X	X		X		
Comoros	X	X		X		X	X	X	X	X		X		X		
Congo	X	X		X		X	X	X	X	X		X		X		
Costa Rica	X	X		X		X	X	X	X	X	X	X		X		
Cote d'Ivoire	X	X		X		X	X	X	X	X		X		X		
Croatia	X	X		X		X	X	X	X	X		X		X		
Cuba	See part 746 of the EAR to determine whether a license is required in order to export or reexport to this destination.															
Cyprus	X	X		X		X	X	X	X	X		X		X		
Czech Republic	X					X	X	X	X	X		X		X		

SUPPLEMENT NO. 1 TO PART 738—COMMERCE COUNTRY CHART—Continued

[Reason for control]

Countries	Chemical and biological weapons			Nuclear non-proliferation		National security		Missile tech	Regional stability		Fire-arms con-vention	Crime control			Anti-terrorism	
	CB 1	CB 2	CB 3	NP 1	NP 2	NS 1	NS 2	MT 1	RS 1	RS 2	FC 1	CC 1	CC 2	CC 3	AT 1	AT 2
Denmark	X					X		X	X							
Djibouti	X	X		X		X	X	X	X	X		X		X		
Dominica	X	X		X		X	X	X	X	X	X	X		X		
Dominican Republic	X	X		X		X	X	X	X	X	X	X		X		
Ecuador	X	X		X		X	X	X	X	X	X	X		X		
Egypt	X	X	X	X		X	X	X	X	X		X		X		
El Salvador	X	X		X		X	X	X	X	X	X	X		X		
Equatorial Guinea	X	X		X		X	X	X	X	X		X		X		
Eritrea	X	X		X		X	X	X	X	X		X		X		
Estonia	X	X		X		X	X	X	X	X		X	X			
Ethiopia	X	X		X		X	X	X	X	X		X		X		
Fiji	X	X		X		X	X	X	X	X		X	X	X		
Finland	X					X		X	X	X		X		X		
France	X					X		X	X							
Gabon	X	X		X		X	X	X	X	X		X		X		
Gambia, The	X	X		X		X	X	X	X	X		X		X		
Georgia	X	X	X	X		X	X	X	X	X		X	X			
Germany	X					X		X	X							
Ghana	X	X		X		X	X	X	X	X		X		X		
Greece	X					X		X	X							
Grenada	X	X		X		X	X	X	X	X	X	X		X		
Guatemala	X	X		X		X	X	X	X	X	X	X		X		
Guinea	X	X		X		X	X	X	X	X		X		X		
Guinea-Bissau	X	X		X		X	X	X	X	X		X		X		
Guyana	X	X		X		X	X	X	X	X	X	X		X		
Haiti	X	X		X		X	X	X	X	X	X	X		X		
Honduras	X	X		X		X	X	X	X	X	X	X		X		
Hong Kong	X	X		X		X	X[2]	X	X	X		X		X		
Hungary	X					X	X	X	X	X		X		X		
Iceland	X			X		X	X	X	X							
India	X	X	X	X	X	X	X	X	X	X		X		X		
Indonesia	X	X		X		X	X	X	X	X		X		X		
Iran	See part 746 of the EAR to determine whether a license is required in order to export or reexport to this destination.															
Iraq [1]	See part 746 of the EAR to determine whether a license is required in order to export or reexport to this destination.															
Ireland	X					X		X	X	X		X		X		
Israel	X	X	X	X	X	X	X	X	X	X		X		X		
Italy	X					X		X	X							
Jamaica	X	X		X		X	X	X	X	X	X	X		X		
Japan	X					X		X	X							
Jordan	X	X	X	X		X	X	X	X	X		X		X		
Kazakhstan	X	X	X	X		X	X	X	X	X		X	X			
Kenya	X	X		X		X	X	X	X	X		X		X		
Kiribati	X	X		X		X	X	X	X	X		X		X		
Korea, North	See part 746 of the EAR to determine whether a license is required in order to export or reexport to this destination.															
Korea, South	X					X	X[2]	X	X	X		X		X		
Kuwait	X	X	X	X		X	X	X	X	X		X		X		
Kyrgyzstan	X	X	X	X		X	X	X	X	X		X	X			
Laos	X	X		X		X	X	X	X	X		X	X			
Latvia	X	X		X		X	X	X	X	X		X				
Lebanon	X	X	X	X		X	X	X	X	X		X		X		
Lesotho	X	X		X		X	X	X	X	X		X		X		
Liberia	X	X		X		X	X	X	X	X		X		X		
Libya	See part 746 of the EAR to determine whether a license is required in order to export or reexport to this destination.															
Liechtenstein	X	X		X		X	X	X	X	X		X		X		
Lithuania	X	X		X		X	X	X	X	X		X	X			
Luxembourg	X					X		X	X							
FYROM (Macedonia)	X	X		X		X	X	X	X	X		X		X		
Madagascar	X	X		X		X	X	X	X	X		X		X		
Malawi	X	X		X		X	X	X	X	X		X		X		
Malaysia	X	X		X		X	X	X	X	X		X		X		
Maldives	X	X		X		X	X	X	X	X		X		X		
Mali	X	X		X		X	X	X	X	X		X		X		
Malta	X	X		X		X	X	X	X	X		X		X		
Marshall Islands	X	X		X		X	X	X	X	X		X		X		
Mauritania	X	X		X		X	X	X	X	X		X		X		
Mauritius	X	X		X		X	X	X	X	X		X		X		
Mexico	X	X		X		X	X	X	X	X	X	X		X		
Micronesia	X	X		X		X	X	X	X	X		X		X		
Moldova	X	X	X	X		X	X	X	X	X		X	X			
Monaco	X	X		X		X	X	X	X	X		X		X		
Mongolia	X	X	X	X		X	X	X	X	X		X	X			
Morocco	X	X		X		X	X	X	X	X		X		X		
Mozambique	X	X		X		X	X	X	X	X		X		X		
Namibia	X	X		X		X	X	X	X	X		X		X		
Nauru	X	X		X		X	X	X	X	X		X		X		
Nepal	X	X		X		X	X	X	X	X		X		X		

SUPPLEMENT NO. 1 TO PART 738—COMMERCE COUNTRY CHART—Continued

[Reason for control]

Countries	Chemical and biological weapons			Nuclear non-proliferation		National security		Missile tech	Regional stability		Fire-arms con-vention	Crime control			Anti-terrorism	
	CB 1	CB 2	CB 3	NP 1	NP 2	NS 1	NS 2	MT 1 [1]	RS 1	RS 2	FC 1	CC 1	CC 2	CC 3	AT 1	AT 2
Netherlands	X					X		X	X							
New Zealand	X					X		X	X							
Nicaragua	X	X		X		X	X	X	X	X	X	X		X		
Niger	X	X		X		X	X	X	X	X		X		X		
Nigeria	X	X		X		X	X	X	X	X		X		X		
Norway	X					X		X	X							
Oman	X	X	X	X		X	X	X	X	X		X		X		
Pakistan	X	X	X	X	X	X	X	X	X	X		X		X		
Palau	X	X		X		X	X	X	X	X		X		X		
Panama	X	X		X		X	X	X	X	X	X	X		X		
Papua New Guinea	X	X		X		X	X	X	X	X		X		X		
Paraguay	X	X		X		X	X	X	X	X	X	X		X		
Peru	X	X		X		X	X	X	X	X	X	X		X		
Philippines	X	X		X		X	X	X	X	X		X		X		
Poland	X					X	X	X	X	X		X		X		
Portugal	X					X		X	X							
Qatar	X	X	X	X		X	X	X	X	X		X		X		
Romania	X					X	X	X	X	X		X	X			
Russia	X	X	X			X	X	X	X	X		X	X			
Rwanda [1]	X	X		X		X	X	X	X	X		X	X	X		
St. Kitts and Nevis	X	X	X	X		X	X	X	X	X	X	X		X		
St. Lucia	X	X		X		X	X	X	X	X	X	X		X		
St. Vincent and Grenadines	X	X		X		X	X	X	X	X	X	X		X		
San Marino	X	X		X		X	X	X	X	X		X		X		
Sao Tome and Principe	X	X		X		X	X	X	X	X		X		X		
Saudi Arabia	X	X	X	X		X	X	X	X	X		X		X		
Senegal	X	X		X		X	X	X	X	X		X		X		
Serbia and Montenegro	X	X		X		X	X	X	X	X		X		X		
Seycheles	X	X		X		X	X	X	X	X		X		X		
Sierra Leone	X	X		X		X	X	X	X	X		X		X		
Singapore	X	X		X		X	X	X	X	X		X		X		
Slovakia	X					X	X	X	X	X		X		X		
Slovenia	X	X		X		X	X	X	X	X		X		X		
Solomon Islands	X	X		X		X	X	X	X	X		X		X		
Somalia	X	X		X		X	X	X	X	X		X		X		
South Africa	X	X				X	X	X	X	X		X		X		
Spain	X					X		X	X							
Sri Lanka	X	X		X		X	X	X	X	X		X		X		
Sudan	X	X		X		X	X	X	X	X		X		X	X	X
Suriname	X	X		X		X	X	X	X	X	X	X		X		
Swaziland	X	X		X		X	X	X	X	X		X		X		
Sweden	X					X		X	X	X		X		X		
Switzerland	X					X		X	X	X		X		X		
Syria	X	X	X	X		X	X	X	X	X		X		X	X	
Taiwan	X	X	X	X		X	X	X	X	X		X		X		
Tajikistan	X	X	X	X		X	X	X	X	X		X	X			
Tanzania	X	X		X		X	X	X	X	X		X		X		
Thailand	X	X		X		X	X	X	X	X		X		X		
Togo	X	X		X		X	X	X	X	X		X		X		
Tonga	X	X		X		X	X	X	X	X		X		X		
Trinidad and Tobago	X	X		X		X	X	X	X	X	X	X		X		
Tunisia	X	X		X		X	X	X	X	X		X		X		
Turkey	X	X		X		X		X	X							
Turkmenistan	X	X	X	X		X	X	X	X	X		X	X			
Tuvalu	X	X		X		X	X	X	X	X		X		X		
Uganda	X	X		X		X	X	X	X	X		X		X		
Ukraine	X	X	X			X	X	X	X	X		X	X			
United Arab Emirates	X	X	X	X		X	X	X	X	X		X		X		
United Kingdom	X					X		X	X							
Uruguay	X	X		X		X	X	X	X	X	X	X		X		
Uzbekistan	X	X	X	X		X	X	X	X	X		X	X			
Vanuatu	X	X		X		X	X	X	X	X		X		X		
Vatican City	X	X		X		X	X	X	X	X		X		X		
Venezuela	X	X		X		X	X	X	X	X	X	X		X		
Vietnam	X	X	X	X		X	X	X	X	X		X	X			
Western Sahara	X	X		X		X	X	X	X	X		X		X		
Western Samoa	X	X		X		X	X	X	X	X		X		X		
Yemen	X	X	X	X		X	X	X	X	X		X		X		
Zaire	X	X		X		X	X	X	X	X		X		X		
Zambia	X	X		X		X	X	X	X	X		X		X		
Zimbabwe	X	X		X		X	X	X	X	X		X		X		

[1] This country is subject to United Nations Sanctions. See part 746 of the EAR for additional OFAC licensing requirements that may apply to your proposed transaction.

[2] A license is required only for computers controlled by 4A001, 4A002, & 4A003 if the CTP is greater than 10,000 Mtops. A license is NOT required for any other items subject to NS Column 2.

PART 740—[AMENDED]

6. Section 740.14 is amended by adding a sentence to the end of paragraph (e)(1)(iii) to read as follows:

§ 740.14 Baggage (BAG).

* * * * *

(e) * * *

(1) * * *

(iii) * * * Note that since certain countries may require an Import Certificate or a U.S. export license before allowing the import of a shotgun, you should determine the import requirements of your country of destination in advance.

* * * * *

PART 742—[AMENDED]

7. Part 742 is amended by adding a new § 742.17 to read as follows:

§ 742.17 Exports of firearms to OAS member countries.

(a) *License requirements.* BXA maintains a licensing system for the export of shotguns and related items to all OAS member countries. This action is based on the Organization of American States (OAS) Model Regulations for the Control of the International Movement of Firearms, their Parts and Components and Munitions (OAS Model Regulations) which were developed to assist OAS member countries to implement the Inter-American Convention Against the Illicit Manufacturing of and Trafficking in Firearms, Ammunition, Explosives, and Other Related Materials (Firearms Convention).[1] Items subject to these controls are identified by "FC Column 1" in the "License Requirements" section of their Export Control Classification Number (ECCN) on the Commerce Control List (CCL). If "FC Column 1" of the Commerce Country Chart (Supplement No. 1 to part 738 of the EAR) is indicated for a particular country, a license is required for export to that destination. Licenses will generally be issued on an Import Certificate or equivalent official document, satisfactory to BXA, issued by the government of the importing country is also required for the export of such items to OAS member countries.

(b) *Licensing policy.* Applications supported by an Import Certificate or equivalent official document issued by the government of the importing country for such items will generally be approved, except there is a policy of denial for applications to export items linked to such activities as drug trafficking, terrorism, and transnational organized crime.

(c) *Contract sanctity.* Contract sanctity provisions are not available for license applications under this § 742.17.

(d) *OAS Model Regulations.* The OAS Model Regulations on which regulations are based are designed by OAS member countries to combat illicit manufacturing of and trafficking in firearms, ammunition, explosives, and other related materials in North and South America because of their links to such activities as drug trafficking, terrorism, and transnational organized crime.

(e) *OAS member countries to which firearms controls under this section apply.* The OAS member countries include: Antigua and Barbuda, Argentina, the Bahamas, Barbados, Belize, Bolivia, Brazil, Canada, Chile, Colombia, Costa Rica, Dominica, Dominican Republic, Ecuador, El Salvador, Grenada, Guatemala, Guyana, Haiti, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, St. Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Suriname, Trinidad and Tobago, the United States, Uruguay, and Venezuela.

(f) *Items/Commodities.* Items requiring a license under this section are ECCNs 0A984 (shotguns with a barrel length 18 inches or over and related parts, and buckshot shotgun shells), 0A986 (shotgun shells, and related parts) and 0A987 (optical sighting devices). (See Supplement No. 1 to Part 774 of the EAR.)

(g) *Validity period for licenses.* Although licenses generally will be valid for a period of two years, your ability to ship items that require an Import Certificate or equivalent official document under this section may be affected by the validity of the Import Certificate or equivalent official document (see § 748.14(f) of the EAR).

PART 748—[AMENDED]

8. Section 748.9 is amended by revising the introductory text of paragraph (a) to read as follows:

§ 748.9 Support documents for license applications.

(a) *Exemptions.* If you plan to submit a license application involving one of the following situations and your item is not a firearms item destined for an OAS member country, no support documentation is required. Simply submit the license application. If your item is a firearms item (Reason for Control identified as "FC" on the Commerce Control List, Supplement No. 1 to part 774 of the EAR) destined for an OAS member country, proceed to § 748.14 of this part.

* * * * *

9. Part 748 is amended by adding a new Section 748.14 to read as follows:

§ 748.14 Import Certificate for firearms destined for Organization of American States member countries.

(a) *Scope.* Consistent with the OAS Model Regulations, BXA requires from all OAS member countries an Import Certificate issued by the government of the importing country for items classified as ECCNs 0A984, 0A986, or 0A987. For those OAS member countries that have not yet established or implemented an Import Certificate procedure, BXA will accept an equivalent official document (e.g., import license or letter of authorization) issued by the government of the importing country as supporting documentation for the export of firearms. This section describes the requirements for Import Certificates or official equivalents in support of license applications submitted to BXA for firearms items that are identified by "FC Column 1" in the "License Requirements" section of the Commerce Control List.

(b) *Import Certificate Procedure.* An Import Certificate or equivalent official document must be obtained from the government of the importing OAS member country for firearms items classified as ECCNs 0A984, 0A986, or 0A987. Except as provided by § 748.9(a) of the EAR, the applicant must obtain and retain on file either the original or certified copy of the Import Certificate, or an original or certified copy of equivalent official document issued by the government of the importing country in support of any license application for export of firearms items classified as 0A984, 0A986, or 0A987. All the recordkeeping provisions of § 762.2 of the EAR apply to this requirement. The applicant must clearly note the number and date of the Import Certificate or equivalent official document on all export license applications (BXA Form 748P, Multipurpose Application Form, Block 13) supported by that Certificate or equivalent official document. The applicant must also indicate in Block 7 of the application that the Certificate or equivalent official document has been received and will be retained on file. However, the applicant may submit an application before obtaining the original or certified copy of the Import Certificate, or the official original or certified copy of the equivalent document, provided that:

[1] Status of Convention as of April 13, 1999 had not entered into force.

(1) The applicant has received a facsimile of the Import Certificate or equivalent official document at the time the license application is filed; and

(2) The applicant states on the application that a facsimile of the Import Certificate or equivalent official document has been received and that no shipment will be made against the license prior to obtaining the original or certified copy of the Import Certificate or the original or certified copy of the equivalent official document issued by the importing country and retaining it on file. Generally, BXA will not consider any license application for the export of firearms items if the application is not supported by an Import Certificate or its official equivalent. If the government of the importing country will not issue an Import Certificate or its official equivalent, the applicant must supply the information described in paragraphs (g)(2)(i) and (g)(2)(vi) through (viii) of this section on company letterhead.

(c) *Countries to which firearms controls apply.* The firearms controls apply to all OAS member countries: Antigua and Barbuda, Argentina, the Bahamas, Barbados, Belize, Bolivia, Brazil, Canada, Chile, Colombia, Costa Rica, Dominica, Dominican Republic, Ecuador, El Salvador, Grenada, Guatemala, Guyana, Haiti, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, St. Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Suriname, Trinidad and Tobago, the United States, Uruguay, and Venezuela.

(d) *Items/Commodities.* An Import Certificate or equivalent official document is required for items controlled under Export Control Classification Numbers (ECCNs) 0A984, 0A986, or 0A987.

(e) *Use of the Import Certificate.* An Import Certificate or equivalent official document can only be used to support one BXA Form–748P, Multipurpose Application. The BXA Form–748P, Multipurpose Application, must include the same items as those listed on the Import Certificate or the equivalent official document,

(f) *Validity period.* Import Certificates or equivalent official documents issued by an OAS member country will be valid for a period of one year or less. Although licenses generally are valid for two years, your ability to ship may be affected by the validity of the Import Certificate or equivalent official document.

(g) *How to obtain an Import Certificate for firearms items destined to OAS member countries.* (1) Applicants must request that the importer (e.g., ultimate consignee or purchaser) obtain the Import Certificate or an equivalent official document from the government of the importing country, and that it be issued covering the quantities and types of items that the applicant intends to export. Upon receipt of the Import Certificate or its official equivalent, the importer must provide the original or a certified copy of the Import Certificate or the original or a certified copy of the equivalent official document to the applicant. The applicant shall obtain the required documents prior to submitting a license application, except as provided in paragraphs (b)(1) and (b)(2) of this section.

(2) The Import Certificate or its official equivalent must contain the following information:

(i) Applicant's name and address. The applicant may be either the exporter, supplier, or order party.

(ii) Import Certificate Identifier/ Number.

(iii) Name of the country issuing the certificate or unique country code.

(iv) Date the Import Certificate was issued, in international date format (e.g., 24/12/98 (24 December 1998), or 3/1/99 (3 January 1999)).

(v) Name of the agency issuing the certificate, address, telephone and facsimile numbers, signing officer name, and signature.

(vi) Name of the importer, address, telephone and facsimile numbers, country of residence, representative's name if commercial or government body, citizenship, and signature.

(vii) Name of the end-user(s), if known and different from the importer, address, telephone and facsimile numbers, country of residence, representative's name if commercial (authorized distributor or reseller) or government body, citizenship, and signature. Note that BXA does not require the identification of each end-user when the firearms items will be resold by a distributor or reseller if unknown at the time of export.

(viii) Description of the items approved for import including a technical description and total quantity of firearms, parts and components, ammunition and parts.

Note to paragraph (g)(2)(viii): You must furnish the consignee with a detailed technical description of each item to be given to the government for its use in issuing the Import Certificate. For example, for shotguns, provide the type, barrel length, overall length, number of shots, the manufacturer's name, the country of manufacture, and the serial number for each shotgun. For ammunition, provide the caliber, velocity and force, type of bullet, manufacturer's name and country of manufacture.

(ix) Expiration date of the Import Certificate in international date format (e.g., 24/12/98) or the date the items must be imported, whichever is earlier.

(x) Name of the country of export (i.e., United States).

(xi) *Additional information.* Certain countries may require the tariff classification number, by class, under the Brussels Convention (Harmonized Tariff Code) or the specific technical description of an item. For example, shotguns may need to be described in barrel length, overall length, number of shots, manufacturer's name and country of manufacture. The technical description is not the Export Control Classification Number (ECCN).

(h) *Where to obtain Import Certificates.* See Supplement No. 6 to this part for a list of the OAS member countries' authorities administering the Import Certificate System.

(i) *Alterations.* After an Import Certificate or official equivalent document is used to support the issuance of a license, no corrections, additions, or alterations may be made on the Certificate by any person. If you desire to explain any information contained on the Import Certificate or official equivalent document, you may attach a signed statement to the Import Certificate or official equivalent.

(j) *Request for return of Import Certificates.* A U.S. exporter may be requested by a foreign importer to return an unused Import Certificate. Refer to § 748.9(j) of this part for procedures and recordkeeping requirements for returning an Import Certificate retained by the applicant.

10. Part 748 is amended by adding a new Supplement No. 6 to read as follows:

Supplement No. 6. To part 748—Authorities Issuing Import Certificates Under the Firearms Convention

[Reserved]

[Status of Convention as of April 13, 1999 had not entered into force.]

PART 762—[AMENDED]

11. Section 762.2 is amended by revising paragraph (b)(36) and adding (b)(37) and paragraph (b)(38) to read as follows:

§ 762.2 Records to be retained.

* * * * *

(b) * * *

(36) § 766.10, Subpoenas;

(37) § 743.1, Wassenaar reports; and

(38) § 748.14, Exports of firearms.

PART 774—[AMENDED]

12. In Supplement No. 1 to part 774 (the Commerce Control List), Category

0—Nuclear Materials, Facilities, and Equipment [and Miscellaneous Items], the following Export Control Classification Numbers (ECCNs) are amended:

a. By revising the License Requirements section for ECCNs 0A984 and 0A986;

b. By revising the entry heading for ECCN 0A985; and

c. By adding a new ECCN 0A987, to read as follows:

0A984 Shotguns, barrel length 18 inches (45.72 cm) inches or over; buckshot shotgun shells; except equipment used exclusively to treat or tranquilize animals, and except arms designed solely for signal, flare, or saluting use; and parts, n.e.s.

License Requirements

Reason for Control: CC, FC, UN

Control(s)	*Country Chart*
FC applies to entire entry	FC Column 1
CC applies to shotguns with a barrel length over 18 in. (45.72 cm) but less than 24 in. (60.96 cm) or buckshot shotgun shells controlled by this entry, regardless of end-user.	CC Column 1
CC applies to shotguns with a barrel length greater than or equal to 24 in. (60.96 cm), regardless of end-user.	CC Column 2
CC applies to shotguns with a barrel length greater than or equal to 24 in. (60.96 cm) if for sale or resale to police or law enforcement.	CC Column 3
UN applies to entire entry	Rwanda; Federal Republic of Yugoslavia (Serbia and Montenegro)

* * * * *

0A985 Discharge type arms (for example, stun guns, shock batons, electric cattle prods, immobilization guns and projectiles, etc.) except equipment used exclusively to treat or tranquilize animals, and except arms designed solely for signal, flare, or saluting use; and parts, n.e.s.

* * * * *

0A986 Shotgun shells, except buckshot shotgun shells, and parts.

License Requirements

Reason for Control: FC, UN

Control(s)	*Country Chart*
FC applies to entire entry	FC Column 1
UN applies to entire entry	Rwanda; Federal Republic of Yugoslavia (Serbia and Montenegro)

* * * * *

0A987 Optical sighting devices for firearms (including shotguns controlled by 0A984); and parts, n.e.s.

License Requirements

Reason for Control: FC, CC, UN

Control(s)	*Country Chart*
FC applies to optical sights for firearms, including shotguns described in ECCN 0A984, and related parts.	FC Column 1
CC applies to entire entry	CC Column 1
UN applies to entire entry	Rwanda; Federal Republic of Yugoslavia (Serbia and Montenegro)

* * * * *

Dated: April 6, 1999.

R. Roger Majak,

Assistant Secretary for Export Administration.

[FR Doc. 99–9160 Filed 4–12–99; 8:45 am]

BILLING CODE 3510–33–P

UNITED STATES INFORMATION AGENCY

22 CFR Part 514

Exchange Visitor Program

ACTION: Final rule.

SUMMARY: To enhance the programmatic utility of the Short-Term Scholar category of exchange participation, the Agency is amending existing regulations to permit short-term scholar participants to lecture and consult at institutions not listed on their Form IAP–66.

EFFECTIVE DATE: This rule is effective April 13, 1999.

FOR FURTHER INFORMATION CONTACT: Sally J. Lawrence, Chief, Program Designation Branch, United States Information Agency, 301 4th Street, S.W., Washington, D.C. 20547; Telephone, (202) 401–9823.

SUPPLEMENTARY INFORMATION: The Short-Term Scholar category allows foreign scholars to enter the United States for a period of up to six months to lecture, observe, consult, and participate in seminars, workshops, conferences, study tours, professional meetings, and other similar educational and professional activities. This category of exchange participation facilitates international collaboration between foreign scholars and their American colleagues and promotes professional relationships and institutional linkages.

Designated sponsors that utilize this category of exchange participation have suggested to the Agency that the overall effectiveness and utility of these exchanges would be enhanced if the participants were able to accept invitations to lecture and consult at institutions not listed on the participant's Form IAP–66. The Agency has reviewed this suggestion and agrees that the ability to accept such invitations, if they can be fulfilled without delaying or extending the duration of the participant's program, is a desirable program enhancement. Accordingly, the Agency is amending 22 CFR 514.21(f) to permit the program sponsor's responsible officer to authorize the participant's acceptance of such invitations.

In accordance with 5 U.S.C. 605(b), the Agency certifies that this rule does not have a significant adverse economic impact on a substantial number of small entities. This rule is not considered to be a major rule within the meaning of Section 1(b) of E.O. 12291, nor does it have federal implications warranting the preparation of a Federalism Assessment in accordance with E.O. 12612.

List of Subjects in 22 CFR Part 514

Cultural exchange programs.

Dated: April 7, 1999.

Les Jin,

General Counsel.

Accordingly, 22 CFR part 514 is amended as follows:

PART 514—EXCHANGE VISITOR PROGRAM

1. The authority citation for part 514 continues to read as follows:

Authority: 8. U.S.C. 1101(a)(15(j), 1182, 1258; 22 U.S.C. 1431–1442, 2451–2460; Reorganization Plan No. 2 of 1977, 42 FR 62461, 3 CFR, 1977 Comp. p. 200; E.O. 12048, 43 FR 13361, 3 CFR, 1978 Comp. p. 168; USIA Delegation Order No. 85–5 (50 FR 27393).

2. Section 514.21 paragraph (f) is revised to read as follows:

§ 514.21 Short-term scholars.

* * * * *

(f) *Location of exchange.* The short-term scholar shall participate in the Exchange Visitor Program at the conferences, workshops, seminars, or other events or activities stated on his or her Form IAP–66. A participant may also lecture or consult at institutions not listed on the Form IAP–66 if his or her Responsible Officer issues a written authorization of such activity. Such written authorization must be attached to the participant's Form IAP–66.

* * * * *

[FR Doc. 99–9164 Filed 4–12–99; 8:45 am]
BILLING CODE 8230–01–M

UNITED STATES INFORMATION AGENCY

22 CFR Part 514

Exchange Visitor Program

AGENCY: United States Information Agency.

ACTION: Interim final rule.

SUMMARY: The Agency is adopting specific regulations governing participation in summer work travel programs conducted by Agency-designated sponsors pursuant to Public Law 105–277. These regulations are adopted to assist designated Summer Work Travel sponsors with their administration of program placements for the upcoming summer program season.

EFFECTIVE DATE: These regulations are effective April 13, 1999.

FOR FURTHER INFORMATION CONTACT: Stanley S. Colvin, Assistant General Counsel, United States Information Agency, 301 4th Street, SW., Washington, DC 20547, Telephone, (202) 619–4979.

SUPPLEMENTARY INFORMATION: Since publication of the General Accounting Office report entitled "Inappropriate Uses of the Exchange Visitor Visa" in 1990, the status of Summer Work Travel programs administered by the Agency has been under a cloud of uncertainty. This uncertainty was due to the GAO report suggestion that the Agency was without adequate statutory authority to administer and oversee Summer Work Travel program activities. In light of this GAO determination, the Agency has pursued several approaches to bring the Summer Work Travel programs under the umbrella of authority to conduct international exchange activities provided by the Fulbright-Hayes Act. Sponsors of these programs have also sought to resolve the question of Agency authority. After years of uncertainty, the Congress, in passage of Public Law 105–277, vested the Director of USIA with clear statutory authority to administer and oversee Summer Work Travel programs. This legislation also granted discretionary authority to the director to conduct these programs without regard to a requirement that participants have an offer of employment in place prior to their departure from their home country.

Accordingly, the Agency is adopting the following regulations on an interim final basis in order to assist designated Summer Work Travel sponsors with their administration of program placements for the upcoming summer program season. These regulations supersede program guidelines promulgated by the Agency and published at 61 FR 13760 (March 28, 1996) and existing regulations set forth at Subpart G of 22 CFR part 514. These regulations permit program sponsors to facilitate the entry into the United States of program participants for whom prior employment positions have not been arranged. However, a limitation on the number of participants that may enter the United States without a prearranged employment position is imposed. Sponsors must arrange prior employment positions for at least fifty percent of their program participants.

Public Comment

The Agency invites comments regarding this interim final rule notwithstanding the fact that it is under no legal requirement to do so. The oversight and administration of the Exchange Visitor Program are deemed to be foreign affairs functions of the United States Government. The Administrative Procedures Act, 5 U.S.C. 553 (a)(1), (1989), specifically exempts foreign affairs functions from the rulemaking requirements of the Act.

In accordance with 5 U.S.C. 605(b), the Agency certifies that this rule does not have a significant adverse economic impact on a substantial number of small entities. This rule is not considered to be a major rule within the meaning of section 1(b) of E.O. 12291, nor does it have federal implications warranting the preparation of a Federalism Assessment in accordance with E.O. 12612.

List of Subjects in 22 CFR Part 514

Cultural exchange programs.

Dated March 24, 1999.

Les Jin,

General Counsel.

Accordingly, 22 CFR part 514 is amended as follows:

PART 514—EXCHANGE VISITOR PROGRAM

1. The authority citation for part 514 continues to read as follows:

Authority: 8 U.S.C. 1101(a)(15)(J), 1182, 1258; 22 U.S.C. 1431–1442, 2451–2460; Reorganization Plan No. 2 of 1997, 42 FR 62461, 3 CFR, 1977 Comp. p. 200; E.O. 12048 43 FR 13361, 3 CFR, 1978 Comp. p. 168; USIA Delegation Order No. 85–5 (50 FR 27393).

Subpart G—[Removed]

2. Subpart G is removed and reserved, and subpart B is amended by adding a new § 514.32 to read as follows:

§ 514.32 Summer work travel.

(a) *Introduction.* These regulations govern program participation in summer work travel programs conducted by Agency-designated sponsors pursuant to the authority granted the Agency by Public Law 105–277. These programs provide foreign post-secondary students the opportunity to work and travel in the United States for a four month period during their summer vacations. Extensions of program participation are not permitted.

(b) *Participant selection and screening.* In addition to satisfying the requirements set forth at § 514.10(a), sponsors shall adequately screen all program participants and at a minimum shall:

(1) Conduct an in-person interview;

(2) Ensure that the participant is a bona fide post-secondary school student in his or her home country; and

(3) Ensure that not more than ten percent of selected program participants have previously participated in a summer work travel program.

(c) *Participant orientation.* Sponsors shall provide program participants, prior to their departure from the home country, information regarding:

(1) The name and location of their employer, if prior employment has been arranged; and

(2) Any contractual obligations related to their acceptance of paid employment in the United States, if prior employment has been arranged.

(d) *Participant placement.* Sponsors shall ensure that not less than 50 percent of their program participants have pre-arranged employment with a U.S. employer. For all program participants for whom pre-arranged employment has not been secured sponsors shall:

(1) Ensure that the participant has sufficient financial resources to support him or herself during his or her search for employment;

(2) Provide the participant with pre-departure information that explains how

to seek employment and how to secure lodging in the United States;

(3) Prepare and provide to program participants a roster of bona fide job listings equal to or greater than the number of participants for whom pre-arranged employment has not been secured; and,

(4) Undertake reasonable efforts to secure suitable employment for any participant who has not found suitable employment within one week of commencing his or her job search.

(e) *Participant compensation.* Sponsors shall advise program participants regarding Federal Minimum Wage requirements and shall ensure that participants receive pay and benefits commensurate with those offered to their American counterparts.

(f) *Monitoring.* Sponsors shall provide:

(1) All participants with a telephone number which allows 24-hour immediate contact with the sponsor; and

(2) Appropriate assistance to program participants on an as-needed emergency basis.

(g) *Use of third parties.* Program sponsors are responsible for full compliance with all Exchange Visitor Program regulations. If a program sponsor elects to utilize a third-party to provide U.S. hosting, orientation, placement, or other support services to participants for whom they have facilitated entry into the United States, such sponsor shall closely oversee the provision of these services by the third-party and ensure that the provision of these services satisfies all regulatory obligations.

(h) *Placement report.* In lieu of listing the name and address of the participant's pre-arranged employer on the form IAP–66, sponsors shall submit to the Agency a report of all participant placements. Sponsors shall report the name, place of employment, and the number of times each participant has participated in a summer work travel program. In addition, for participants for whom employment was not pre-arranged, the sponsor shall also list the length of time it took for such participant to find employment. Such report shall be submitted semi-annually on January 30th and July 31st of each year and shall reflect placements made in the preceding six month period.

(i) *Unauthorized activities.* Program participants may not be employed as domestic employees in United States households or in positions that require the participant to invest his or her own monies to provide themselves with inventory for the purpose of door-to-door sales.

[FR Doc. 99–9163 Filed 4–12–99; 8:45 am]
BILLING CODE 8230–01–M

DEPARTMENT OF JUSTICE

28 CFR Part 16

[AAG/A Order No. 159–99]

Exemption of Records System Under the Privacy Act

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: The Department of Justice is exempting a Privacy Act system of records from subsection (d) of the Privacy Act, 5 U.S.C. 552a. This system of records is the "Freedom of Information/Privacy Acts (FOI/PA) Records, (JUSTICE/OPR–002)." Records in this system may contain information which relates to official Federal investigations and matters of law enforcement of the Office of Professional Responsibility (OPR). Accordingly, where applicable, the exemptions are necessary to avoid interference with the law enforcement functions of OPR. Specifically, the exemptions are necessary to prevent subjects of investigations from frustrating the investigatory process; preclude the disclosure of investigative techniques; protect the identities and physical safety of confidential sources and of law enforcement personnel; ensure OPR's ability to obtain information from information sources; protect the privacy of third parties; and safeguard classified information as required by Executive Order 12958.

DATES: This rule will be effective April 13, 1999.

FOR FURTHER INFORMATION CONTACT: Mary Cahill, (202) 307–1823.

SUPPLEMENTARY INFORMATION: A proposed rule with invitation to comment was published in the **Federal Register** on December 10, 1998. No comments were received.

This Order relates to individuals rather than small business entities. Nevertheless, pursuant to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601–612, it is hereby stated that the order will not have "a significant economic impact on a substantial number of small entities."

List of Subjects in Part 16

Administrative Practice and Procedures, Courts, Freedom of Information Act, Privacy Act, and Government in Sunshine Act.

Pursuant to the authority vested in the Attorney General by 5 U.S.C. 552a and delegated to me by Attorney General Order No. 793–78, it is proposed to amend 28 CFR 16.80 by adding paragraphs (c) and (d) as set forth below.

Dated: March 26, 1999.

Stephen R. Colgate,

Assistant Attorney General for Administration.

PART 16—[AMENDED]

1. The authority for Part 16 continues to read as follows:

Authority: 5 U.S.C. 301, 552, 552a, 552b(g), 553, 18 U.S.C. 4203(a)(1); 28 U.S.C. 509, 510, 534; 31 U.S.C. 3717, 9701.

2. 28 CFR 16.80 is amended by adding paragraphs (c) and (d) to read as follows:

§ 16.80 Exemption of Office of Professional Responsibility (OPR) System—limited access.

* * * * *

(c) The following system of records is exempted from 5 U.S.C. 552a(d).

(1) Freedom of Information/Privacy Act (FOI/PA) Records (JUSTICE/OPR–002).

This exemption applies only to the extent that information in this system is subject to exemption pursuant to 5 U.S.C. 552a(j)(2), (k)(1), and (k)(2). To the extent that information in a record pertaining to an individual does not relate to national defense or foreign policy, official Federal investigations and/or law enforcement matters, the exemption does not apply. In addition, where compliance would not appear to interfere with or adversely affect the overall law enforcement process, the applicable exemption may be waived by OPR.

(d) Exemption from subsection (d) is justified for the following reasons:

(1) From the access and amendment provisions of subsection (d) because access to the records contained in this system of records could inform the subject of an investigation of an actual or potential criminal, civil, or regulatory violation of the existence of that investigation; of the nature and scope of the information and evidence obtained as to his activities; of the identity of confidential sources, witnesses, and law enforcement personnel; and of information that may enable the subject to avoid detection or apprehension. These factors would present a serious impediment to effective law enforcement where they prevent the successful completion of the investigation, endanger the physical safety of confidential sources, witnesses, and law enforcement personnel, and/or lead to the improper influencing of

witnesses, the destruction of evidence, or the fabrication of testimony. In addition, granting access to such information could disclose security-sensitive or confidential business information or information that would constitute an unwarranted invasion of the personal privacy of third parties. Finally, access to the records could result in the release of properly classified information which would compromise the national defense or disrupt foreign policy. Amendment of the records would interfere with ongoing investigations and law enforcement activities and impose an enormous administrative burden by requiring investigations to be continuously reinvestigated.

[FR Doc. 99–9139 Filed 4–12–99; 8:45 am]
BILLING CODE 4410–CH–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 920

[MD–045–FOR]

Maryland Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is approving a proposed amendment to the Maryland regulatory program (hereinafter referred to as the "Maryland program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Maryland proposed revisions to its regulations regarding the right to administrative review of final decisions and award of costs decisions. The amendment is intended to revise the Maryland program to be consistent with the corresponding Federal regulations and SMCRA.

EFFECTIVE DATE: April 13, 1999.

FOR FURTHER INFORMATION CONTACT: George Rieger, Program Manager, OSM, Appalachian Regional Coordinating Center, 3 Parkway Center, Pittsburgh, PA 15220. Telephone: (412) 937–2153.

SUPPLEMENTARY INFORMATION:

I. Background on the Maryland Program.
II. Submission of the Proposed Amendment.
III. Director's Findings.
IV. Summary and Disposition of Comments.
V. Director's Decision.
VI. Procedural Determinations.

I. Background on the Maryland Program

On December 1, 1980, the Secretary of the Interior conditionally approved the Maryland program. Background information on the Maryland program, including the Secretary's findings, the disposition of comments, and the conditions of approval can be found in the December 1, 1980, **Federal Register** (45 FR 79449). Subsequent actions concerning conditions of approval and program amendments can be found at 30 CFR 920.12, 920.15, and 920.16.

II. Submission of the Proposed Amendment

By letter dated August 25, 1998, (Administrative Record No. MD–580–00), Maryland submitted a proposed amendment to its program pursuant to SMCRA in response to required amendments at 30 CFR 920.16(a). Maryland is revising the Code of Maryland Regulations (COMAR) at section COMAR 26.20.34.06G (titled Procedure after Testimony is Concluded), COMAR 26.20.34.09G (titled Award of Costs). Additionally Maryland is proposing to delete COMAR 26.20.06.02 (titled Administrative Appeal). Specifically, the proposed changes delete the right to appeal to the Board of Review a final decision of the Water Management Director or an award of costs decision. Now, these decisions are subject to judicial review in accordance with the State Government Article, § 10–222 of the Annotated Code of Maryland. In Maryland's initial request for this program amendment, the State Government Article was incorrectly cited as § 10–215 of the Annotated Code of Maryland. The proposed rule also cited this section. On February 5, 1999, Maryland submitted revised copies of the proposed amendment that contain the correct citation to § 10–222, Annotated Code of Maryland (Administrative Record No. MD–580–03). Maryland is also deleting COMAR 26.20.06.02, which allowed an appeal to the Board of Review for permit decisions.

OSM announced receipt of the proposed amendment in the September 21, 1998, **Federal Register** (63 FR 50176), and in the same document opened the public comment period and provided an opportunity for a public hearing on the adequacy of the proposed amendment. The public comment period closed on October 21, 1998.

Maryland originally proposed these changes and deletions in 1990. OSM approved these changes and deletions on April 28, 1991 (56 FR 19280, 19282). However, Maryland had incorrect citations to the Annotated Code of Maryland. OSM required Maryland to amend its regulations to correct the citation. This requirement was codified at 30 CFR 920.16(a). Maryland submitted another amendment on May 7, 1991, to satisfy the requirements of 30 CFR 920.16(a). The 1991 proposed amendment resulted in a final rule published in the **Federal Register** on January 10, 1992, (57 FR 1104) approving the revisions. The final rule indicated that 30 CFR 920.16(a) was removed and reserved because the Director found that the proposed amendment was not inconsistent with the Federal hearing and appeals regulations at 43 CFR part 4. However, Maryland did not promulgate the revisions nor the deletion which were previously approved by OSM and 30 CFR 920.16(a) was not removed. Since January 10, 1992, the Bureau of Mines has been transferred from the Department of Natural Resources to the Department of the Environment and COMAR has been recodified, resulting in different numbering from those in the 1990 amendment. These events required the submission of the current amendment to satisfy the requirements of 30 CFR 920.16(a).

Since the Board of Review was abolished in 1990, appeals of final decisions of the Director of Water Management and the award of costs decisions are now subject to judicial review instead of administrative review by the Board of Review. Judicial review is authorized by § 10–222 of the State Government Article. As a result, Maryland proposed, in the letter of August 25, 1998, to amend COMAR 26.20.34.06G, titled Procedure after Testimony is Concluded and COMAR 26.20.34.09G, titled Award of Costs to reflect the change. The letter also proposed to delete COMAR 26.20.06.02, titled Administrative Appeal to reflect the abolishment of the Board of Review.

III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are the Director's findings concerning the proposed amendment.

1. *COMAR 26.20.34.06 Procedure after Testimony is Concluded.* In Section G. Maryland proposed to delete the phrase, "may appeal the decision to the Board of Review pursuant to COMAR 08.16.01," and replace it with the phrase, "is entitled to judicial review in accordance with State Government Article, § 10–222, Annotated Code of Maryland."

The Director finds the abolition of the Board of Review makes this change necessary. As stated in the April 26, 1991 findings (56 FR 19281), which are incorporated and adopted herein by reference, the Director finds the change in accordance with 525 of SMCRA and that the change satisfies the requirement of 30 CFR 920.16(a).

2. *COMAR 26.20.34.09 Award of Costs.* In Section G. Maryland proposed to delete the phrase, "may appeal to the Board of Review pursuant to COMAR 08.16.01," and replace it with the phrase, "is entitled to judicial review in accordance with State Government Article, § 10–222, Annotated Code of Maryland." As with item 1. above, the Director finds the abolition of the Board of Review makes this change necessary. As stated above, the Director adopts and incorporates by reference the April 26, 1991 findings (56 FR 19281). Accordingly, the Director finds the change in accordance with 525 of SMCRA and that the change satisfies the requirement of 30 CFR 920.16(a).

3. COMAR 26.20.06.02 Administrative Appeal. This section was proposed to be deleted. The Director finds the above changes to COMAR 26.20.34.06, Procedure after Testimony is Concluded and COMAR 26.20.34.09, Award of Costs render this section unnecessary. The Director adopts and incorporates by reference the April 26, 1991 findings (56 FR 19281) and finds that the deletion of the section will not render the Maryland program less stringent than section 525 of SMCRA or less effective that the federal regulations.

IV. Summary and Disposition of Comments

Public Comments

The Director solicited public comments and provided an opportunity for a public hearing on the proposed amendment. No comments were received and because no one requested an opportunity to speak at a public hearing, no hearing was held.

Federal Agency Comments

Pursuant to 30 CFR 732.17(h)(11)(I), the Director solicited comments on the proposed amendment from various Federal agencies with an actual or potential interest in the Maryland program. The U.S. Department of the Army, Army Corps of Engineers, concurred without comment.

Environmental Protection Agency (EPA)

Pursuant to 30 CFR 732.17(h)(11)(ii), OSM is required to obtain the written concurrence of the EPA with respect to those provisions of the proposed program amendment that relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). None of the revisions that Maryland proposed to make in this amendment pertains to air or water quality standards. Therefore, OSM did not request EPA's concurrence.

V. Director's Decision

Based on the above findings, the Director approves Maryland's proposed amendment as submitted on August 25, 1998, and revised on February 5, 1999. As discussed in the Director's Findings 1 and 2, the Director is removing the required amendment at 30 CFR 920.16(a).

The Federal regulations at 30 CFR Part 920, codifying decisions concerning the Maryland program, are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to bring their programs into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

VI. Procedural Determinations

Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12988

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM.

Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*)

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon corresponding Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a submittal number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the corresponding Federal regulations.

Unfunded Mandates

This rule will not impose a cost of $ 100 million of more in any given year on any governmental entity or the private sector.

List of Subjects in 30 CFR Part 920

Intergovernmental relations, Surface mining, Underground mining.

Dated: March 31, 1999.

Allen D. Klein,

Regional Director, Appalachian Regional Coordinating Center.

For the reasons set out in the preamble, Title 30, Chapter VII, Subchapter T of the Code of Federal Regulations is amended as set forth below:

PART 920—MARYLAND

1. The authority citation for Part 920 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 920.15 is amended in the table by adding a new entry in chronological order by "Date of Final Publication" to read as follows:

§ 920.15 Approval of Maryland regulatory program amendments.

* * * * *

Original amendment submission date	Date of final publication	Citation/description
*	*	*
August 25, 1998	April 13, 1999	COMAR 26.20.34.06G, 26.20.34.09G, deletion of 26.20.06.02.

§ 920.16 [Amended]

3. Section 920.16 is amended by removing and reserving paragraph (a).

[FR Doc. 99–9197 Filed 4–12–99; 8:45 am]
BILLING CODE 4310–05–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 935

[OH–244–FOR]

Ohio Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is approving a proposed amendment to the Ohio regulatory program (Ohio program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Ohio is proposing revisions to section 1513–3–21 of the Ohio Administrative Code (OAC) as it relates to awards of costs and expenses, including attorney's fees, arising in connection with appeals heard by the Reclamation Commission. The amendment is intended to revise the Ohio program to be consistent with its statute at Ohio Revised Code (ORC) Section 1513.13(E) as well as the corresponding Federal regulations.

EFFECTIVE DATE: April 13, 1999.

FOR FURTHER INFORMATION CONTACT: George Rieger, Field Branch Chief, Appalachian Regional Coordinating Center, Office of Surface Mining Reclamation and Enforcement, 3 Parkway Center, Pittsburgh PA 15220. Telephone: (412) 937–2153. Internet: grieger@osmre.gov.

SUPPLEMENTARY INFORMATION:

I. Background on the Ohio Program
II. Submission of the Proposed Amendment
III. Director's Findings
IV. Summary and Disposition of Comments
V. Director's Decision
VI. Procedural Determinations

I. Background on the Ohio Program

On August 16, 1982, the Secretary of the Interior conditionally approved the Ohio program. You can find background information on the Ohio program, including the Secretary's findings, the disposition of comments, and the conditions of approval in the August 10, 1982, **Federal Register** (47 FR 34688). You can find later actions on conditions of approval and program amendments at 30 CFR 935.11, 935.15, and 935.16.

II. Submission of the Proposed Amendment

By letter dated January 21, 1999 (Administrative Record No. OH–2177–00) Ohio submitted proposed amendments to its program concerning award of costs and fees in connection with appeals heard by the Reclamation Commission. We announced receipt of the proposed amendment in the February 8, 1999, **Federal Register** (64 FR 6005), invited public comment, and provided an opportunity for a public hearing on the adequacy of the proposed amendment. The public comment period closed on March 10, 1999.

III. Director's Findings

Following, according to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are our findings concerning the proposed amendment.

Any revisions that we do not specifically discuss below concern nonsubstantive wording changes or revised cross-references and paragraph notations to reflect organizational changes that result from this amendment.

OAC 1513–3–21 Award of Costs and Expenses

(a) Paragraphs (A) and (B) are amended by changing the reference from the "board of review" to the "Reclamation Commission", by changing the scope of the paragraph from proceedings "under Chapter 1513 of the Revised Code" to "proceedings before the Reclamation Commission," and specifically requiring that a petition for costs and expenses including attorney's fees be submitted in accordance with Section 1513.13(E) and (E)(1)(c) of the ORC.

(b) New paragraph (C) is added to specify that a decision by the Chief of the Division of Mines and Reclamation granting or denying in whole or in part a request for an award of costs and expenses including attorney's fees made under Section 1513.13(E)(1)(a) or 1513.13(E)(1)(b) of the ORC shall be appealable to the commission under Section 1513.13(A) of the ORC.

(c) Existing Paragraph (C) pertaining to the contents of a petition is re-numbered as (D) and further amended by including the specific references to the ORC included in (a) and (b) above.

(d) Existing Paragraphs (D), (E) and (F) are re-numbered as (E), (F), and (G). New paragraphs (F) and (G) are further amended by changing the scope of the paragraphs from proceedings "under Chapter 1513 of the Revised Code" to proceedings "before the Reclamation Commission."

The changes described above revise the OAC to correspond with provisions previously approved in the ORC at Section 1513.13 entitled, Appeal of Violation, Order or Decision to Reclamation Commission. The Director finds that the proposed revisions to the OAC included in this amendment render these provisions consistent with ORC Section 1513.13(E) pertaining to costs and expenses, including attorneys fees, arising from proceedings before the Chief of the Ohio Division of Mines and Reclamation and before the Reclamation Commission. In addition, the revisions do not render OAC Section 1513–3–21 inconsistent with section 525(e) of SMCRA or with the Federal regulations at 43 CFR 4.1294.

IV. Summary and Disposition of Comments

Public Comments

The Director solicited public comments and provided an opportunity

for a public hearing on the proposed amendment. Because no one requested an opportunity to speak at a public hearing, no hearing was held. No comments were received.

Federal Agency Comments

Pursuant to 30 CFR 732.17(h)(11)(i), the Director solicited comments on the proposed amendment from various Federal agencies with an actual or potential interest in the Ohio program. The Department of the Army, Army Corps of Engineers, concurred without comment (Administrative Record No. OH–2177–02). No other comments were received.

Environmental Protection Agency (EPA)

Pursuant to 30 CFR 732.17(h)(11)(ii), OSM is required to obtain the written concurrence of the EPA with respect to those provisions of the proposed program amendment that relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*).

None of the revisions Ohio proposed to make in its amendment pertains to air or water quality standards. Nevertheless, OSM requested EPA's comments on the proposed amendment. EPA did not respond to OSM's request.

V. Director's Decision

Based on the above findings, the Director approves the proposed amendment as submitted by Ohio on January 21, 1999.

VI. Procedural Determinations

Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12988

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Unfunded Mandates

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), this rule will not produce a Federal mandate of $100 million or greater in any year, i.e., it is not a "significant regulatory action" under the Unfunded Mandates Reform Act.

List of Subjects in 30 CFR 935

Intergovernmental relations, Surface mining, Underground mining.

Dated: March 31, 1999.

Allen D. Klein,

Regional Director, Appalachian Regional Coordinating Center.

For the reasons set out in the preamble, Title 30, Chapter VII, Subchapter T of the Code of Federal Regulations is amended as set forth below:

PART 935—OHIO

1. The authority citation for Part 935 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 935.15 is amended in the table by adding a new entry in chronological order by "Date of Final Publication" to read as follows:

§ 935.15 Approval of Ohio regulatory program amendments.

* * * * *

Original amendment submission date	Date of final publication	Citation/description
* * * *	* *	*
January 21, 1999	April 13, 1999	OAC 1513–3–21.

[FR Doc. 99–9198 Filed 4–12–99; 8:45 am]
BILLING CODE 4310–05–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[DC017–2013a; FRL–6323–5]

Approval and Promulgation of Air Quality Implementation Plans; District of Columbia; Withdrawal of Final Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Withdrawal of notice of final rulemaking.

SUMMARY: Because EPA received adverse comments, EPA is withdrawing the direct final rule for the conditional approval of revisions to the District of Columbia state implementation plan (SIP). EPA published the direct final rule on February 25, 1999 (64 FR 9272), conditionally approving the District of Columbia's requirements for reasonably available control technology (RACT) on major sources of nitrogen oxides. EPA stated in the direct final rule that if EPA received adverse comments by March 29, 1999, EPA would publish a timely notice of withdrawal in the **Federal Register**. EPA subsequently received adverse comments on that direct final rule. EPA will address the comments received in a subsequent final action and issue a final rule based on the parallel proposal also published on February 25, 1999 (64 FR 9289). As stated in the parallel proposal, EPA will not institute a second comment period on this action.

DATES: This withdrawl is made on April 13, 1999.

FOR FURTHER INFORMATION CONTACT: Kristeen Gaffney (215) 814–2092, or by e-mail at gaffney.kristeen@epamail.epa.gov.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Nitrogen oxides, Ozone, Reporting and recordkeeping requirements.

Dated: April 5, 1999.

Thomas C. Voltaggio,

Acting Regional Administrator, Region III.

[FR Doc. 99–9203 Filed 4–12–99; 8:45 am]
BILLING CODE 6560–50–P

Proposed Rules

Federal Register
Vol. 64, No. 70
Tuesday, April 13, 1999

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–AWP–33]

Proposed Establishment of Class E Airspace; Imperial County, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish Class E airspace at Imperial County Airport, CA. Additional controlled airspace is required for departure procedures at Imperial County Airport. A review of airspace classification and air traffic procedures has made this action necessary.

DATES: Comments must be received on or before May 28, 1999.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Attn: Manager, Airspace Branch, AWP–520, Docket No. 98–AWP–33, Air Traffic Division, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009.

The official docket may be examined in the Office of the Assistant Chief Counsel, Western Pacific Region, Federal Aviation Administration, Room 6007, 15000 Aviation Boulevard, Lawndale, California 90261.

An informal docket may also be examined during normal business hours at the Office of the Manager, Airspace Branch, Air Traffic Division at the above address.

FOR FURTHER INFORMATION CONTACT: Debra Trindle, Airspace Specialist, Airspace Branch, AWP–520.10, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261, telephone (310) 725–6613.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with the comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 98–AWP–33." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Airspace Branch, Air Traffic Division, at 15000 Aviation Boulevard, Lawndale, California 90261, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Airspace Branch, 15000 Aviation Boulevard, Lawndale, California 90261. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedures.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E airspace at Imperial County Airport, CA. This action establishes additional controlled airspace required for departure procedures at Imperial County Airport. A review of airspace classification and air traffic procedures has made this action necessary. Class E airspace is published in Paragraph 6005 FAA Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, through September 15, 1999, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in this Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AWP CA E5 Imperial County Airport, CA [NEW]

Imperial County, CA
(Lat. 32°50'03"N, long. 115°34'43"W)
El Centro NAF, CA
(Lat. 32°49'45"N long. 115°40'18"W)
Brawley Municipal Airport, CA
(Lat. 32°59'35"W long. 115°31'01"W)

That airspace extending upward from 700 feet above the surface within a 6-mile radius of Imperial County Airport; excluding that portion within the El Centro NAF, CA, Class D airspace area and excluding that airspace within the Brawly Municipal Airport, CA Class E airspace area.

* * * * *

Issued in Los Angeles, California, on March 31, 1999.

Dawna J. Vicars,

Assistant Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 99–9135 Filed 4–12–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–AWP–2]

Proposed Establishment of Class E Airspace; Taylor, AZ

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish a Class E airspace area at Taylor, AZ. The establishment of a Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to Runway (RWY) 21 at Taylor Municipal Airport has made this proposal necessary. Additional controlled airspace extending upward from 700 feet or more above the surface of the earth is needed to contain aircraft executing the GPS RWY 21 SIAP to Taylor Municipal Airport. The intended effect of this proposal is to provide adequate controlled airspace for Instrument Flight Rules (IFR) operations at Taylor Municipal Airport, Taylor, AZ.

DATES: Comments must be received on or before May 31, 1999.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Attn: Manager, Airspace Branch, AWP–520, Docket No. 97–AWP–2, Air Traffic Division, 15000 Aviation Boulevard, Lawndale, California, 90261.

The official docket may be examined in the Office of the Regional Counsel, Western Pacific Region, Federal Aviation Administration, Room 6007, 15000 Aviation Boulevard, Lawndale, California, 90261.

An informal docket may also be examined during normal business hours at the Office of the Manager, Airspace Branch, Air Traffic Division at the above address.

FOR FURTHER INFORMATION CONTACT: Larry Tonish, Air Traffic Airspace Specialist, Airspace Branch, AWP–520, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California, 90261, telephone (310) 725–6539.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with the comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 97–AWP–2." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Airspace Branch, Air Traffic Division, 15000 Aviation Boulevard, Lawndale, California 90261, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Airspace Branch, 15000 Aviation Boulevard, Lawndale, California 90261. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedures.

The Proposal

The FAA is considering an amendment to 14 CFR part 71 by establishing a Class E airspace area at Taylor, AZ. The establishment of a GPS RWY 21 SIAP at Taylor Municipal Airport has made this proposal necessary. Additional controlled airspace extending upward from 700 feet above the surface is needed to contain aircraft executing the new approach procedure at Taylor Municipal Airport. The intended effect of this proposal is to provide adequate controlled airspace for aircraft executing the GPS RWY 21 SIAP at Taylor Municipal Airport, Taylor, AZ. Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9F dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in this Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AWP AZ E5 Taylor, AZ [NEW]

Taylor Municipal Airport, AZ
(Lat. 34°27'17"N, long. 110°06'89"W)
Show Low Municipal Airport, AZ
(Lat. 34°15'56"N, long. 110°00'17"W)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of the Taylor Municipal Airport, excluding the portion within the Show Low, AZ, Class E airspace area. That airspace extending upward from 1,200 feet above the surface within 5 miles southeast and 8 miles northwest of the 041° bearing from the Taylor Municipal Airport, extending from the Taylor Municipal Airport to the southern boundary of V–264.

* * * * *

Issued in Los Angeles, California, on March 31, 1999.

Leonard A. Mobley,

Acting Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 99–9134 Filed 4–12–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 310

[Docket No. 99N–0188]

Progestational Drug Products for Human Use; Requirements for Labeling Directed to the Patient

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to revoke its regulation requiring patient labeling for progestational drug products. This patient labeling is required to inform patients of an increased risk of birth defects reported to be associated with the use of these drugs during the first 4 months of pregnancy. FDA has concluded that, based on a review of the scientific data, such labeling for all progestogens is not warranted. In addition, the diversity of drugs that can be described as progestational, and the diversity of conditions these drugs may be used to treat, make it inappropriate to consider these drugs a single class for labeling purposes. This action is intended to provide consumers with more appropriate labeling for certain drug products.

DATES: Written comments by July 12, 1999. See section VI of this document for the proposed effective date of a final rule based on this document.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Diane V. Moore, Center for Drug Evaluation and Research (HFD–580), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4260.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of July 22, 1977 (42 FR 37646), FDA published a notice setting forth professional labeling for progestational drug products, other than progestogen-containing products for contraception, and included a box warning recommending against use during the first 4 months of pregnancy. The category "progestational drug products" includes natural progesterone and all synthetic progestins. The basis for the warning, as stated in the notice, was:

Reports during the past several years have indicated that the use of sex hormones during early pregnancy may seriously damage the offspring. Several reports suggest an association between intrauterine exposure to sex hormone treatment and congenital anomalies, including congenital heart defects and limb reduction defects.

Based on these reports, FDA also published in the **Federal Register** of July 22, 1977 (42 FR 37643), a proposed rule to require patient labeling for progestational drug products. The final regulation was published in the **Federal Register** of October 13, 1978 (43 FR 47178), and it is codified at § 310.516 (21 CFR 310.516). It requires that progestational drug products be dispensed with a patient package insert containing a "brief discussion of the nature of the risks of birth defects resulting from the use of these drugs during the first 4 months of pregnancy" (§ 310.516(b)(4)). The regulation applies to any drug product that contains a progestogen, with the exceptions of contraceptives and oral dosage forms labeled solely for the treatment of advanced cancer[1] (§ 310.516(e)(4)). Texts for patient and professional labeling were published at the same time and contained essentially the same warning concerning heart and limb defects (see 42 FR 37646 at 37647 and 37648, July 22, 1977).

In the late 1980's, FDA evaluated the scientific literature concerning the possible teratogenicity of progestational drugs and concluded that the labeling for progestational drug products should be revised. Available evidence indicated the warning about congenital heart defects and limb reduction defects should be deleted. At that time, several reports suggested an association between exposure to progestational drugs during pregnancy and an increased risk of hypospadias in male fetuses and mild virilization of the external genitalia in female fetuses.

Because FDA continued to believe that there was some risk of birth defects associated with progestogens, the patient labeling and box warning statements were revised. In the **Federal Register** of January 12, 1989 (54 FR 1243), FDA published revised guideline texts for patient and professional labeling for progestational drug products that deleted the warning about possible congenital heart defects and limb reduction defects and added a warning about an increased risk of certain genital abnormalities. The

[1] The original regulation exempted contraceptives, which were required to comply with the labeling requirements of 21 CFR 310.501. In 1981 the regulation was amended to exempt advanced cancer drugs (46 FR 53656, October 30, 1981).

revised patient labeling, which is still in use, is as follows:

Progesterone or progesterone-like drugs have been used to prevent miscarriage in the first few months of pregnancy. No adequate evidence is available to show that they are effective for this purpose. Furthermore, most cases of early miscarriage are due to causes which could not be helped by these drugs.

There is an increased risk of minor birth defects in children whose mothers take this drug during the first 4 months of pregnancy. Several reports suggest an association between mothers who take these drugs in the first trimester of pregnancy and genital abnormalities in male and female babies. The risk to the male baby is the possibility of being born with a condition in which the opening of the penis is on the underside rather than the tip of the penis (hypospadias). Hypospadias occurs in about 5 to 8 per 1,000 male births and is about doubled with exposure to these drugs. There is not enough information to quantify the risk to exposed female fetuses, but enlargement of the clitoris and fusion of the labia may occur, although rarely.

Therefore, since drugs of this type may induce mild masculinization of the external genitalia of the female fetus, as well as hypospadias in the male fetus, it is wise to avoid using the drug during the first trimester of pregnancy.

These drugs have been used as a test for pregnancy but such use is no longer considered safe because of possible damage to a developing baby. Also, more rapid methods for testing for pregnancy are now available.

If you take (name of drug) and later find you were pregnant when you took it, be sure to discuss this with your doctor as soon as possible.

At the time patient labeling was first required for progestational drugs, there was concern that all sex hormones might be teratogenic. This concern was based on a diverse collection of literature reports, including reports on androgens, estrogens, and progestogens, often in combination. It was frequently unclear what drug or combination of drugs the women had taken. In 1976, FDA published the text of patient labeling for estrogens that included a warning about congenital heart defects and limb reduction defects (see 41 FR 43117, September 29, 1976). In the **Federal Register** notice of July 22, 1977 (42 FR 37646 at 37647), setting forth professional labeling for progestational drug products, FDA described the category of "progestational drug products" and noted the need for appropriate warnings for these drugs in the belief that all sex hormones, including all progestogens, had teratogenic potential. The notice listed the following drugs, and their salts and esters, as examples of progestational drugs: Dimethisterone, dydrogesterone, ethinylestrenol, ethynodiol, hydroxyprogesterone, medroxyprogesterone, megestrol, norethindrone, norethynodrel, norgestrel, and progesterone. The notice made clear that this list was nonexhaustive and that the warning would apply to all progestational agents, including drugs later approved. In 1989, when the guideline texts for patient and professional labeling were revised to warn about hypospadias and virilization of the female genitalia, the warning continued to apply to progestogens as a class.

FDA has recently reviewed the evidence suggesting that progestogen use during pregnancy is associated with an increased risk of genital abnormalities. The notion that progestogens are associated with an increased risk of hypospadias comes from compiling cases from heterogeneous sources, largely case reports. Hypospadias has been reported to be associated with seven progestational agents, although for several of these progestogens, only one case has been reported. The data include cases where women were exposed to other hormones or drugs in addition to progestogens. The reasons for progestogen exposure varied, including: Hormonal pregnancy tests, treatment of threatened or habitual abortion, luteal phase deficiency, and contraception; yet studies often failed to control for the condition being treated. One study included infants who were genetically predisposed to hypospadias (Refs. 1 through 3).

As discussed previously, the warning concerning an association between progestogens and hypospadias was based on heterogeneous sources. Since the early reports suggesting teratogenicity, several progestational agents have been thoroughly investigated. The reliable evidence, particularly from controlled studies, shows no increase in congenital anomalies, including genital abnormalities in male or female infants, from exposure during pregnancy to progesterone (Refs. 4 through 7) or hydroxyprogesterone (Refs. 4 through 7, 9 and 10).

Analysis of the literature associating progestogen use during pregnancy with virilization of the genitalia in female infants indicates that most cases involved high doses of androgen-derived progestins, particularly ethisterone and norethindrone (Refs. 2, 11, and 12). Norethindrone in doses ranging from 10 to 40 milligrams per day (mg/d), and sometimes as much as 120 mg/d, was used in the 1950's and 1960's as a treatment for threatened abortion (Ref. 13). The other drugs that account for most of the recorded cases of female masculinization are methyltestosterone, methandriol, and danazol (Ref. 2).

Thus, there are significant differences among progestational drugs. Accordingly, FDA concludes that, based on a review of the scientific data, a warning of an increased risk of birth defects on all progestogen labeling is not warranted. Class labeling for progestogens is also inappropriate because it applies without regard to the indication for which the drug is prescribed.

At the time patient labeling was first required for progestational drugs, progestogens had been commonly used as hormonal pregnancy tests, as a treatment for habitual or threatened abortion, and for the treatment of secondary amenorrhea and abnormal uterine bleeding. Since that time, some of these uses have been abandoned and new uses have emerged. Hormonal pregnancy tests are no longer available in the United States. Progestational drugs have been labeled as ineffective for the prevention of spontaneous abortion for 20 years.

Medroxyprogesterone in combination with estrogen is now widely prescribed to postmenopausal women for hormone replacement therapy. By definition, postmenopausal women cannot become pregnant, yet the current regulation requires that they receive a warning about use in pregnancy.

The use of progesterone for luteal phase support with in vitro fertilization has become routine. FDA recently approved a progesterone gel for progesterone supplementation or replacement as part of an Assisted Reproductive Technology program for infertile women. The American College of Obstetricians and Gynecologists has objected to the progestational patient labeling requirement as applied to progesterone because "there are no data to indicate that the use of progesterone causes any teratologic effects, and the FDA warning is disturbing to infertility patients taking progesterone."[2]

Because of the diversity of the drugs that can be described as progestational, the lack of reliable scientific evidence linking most of these drugs to an increased risk of birth defects, and the diversity of the conditions these drugs may be used to treat, FDA believes it is inappropriate to require that progestational drug products be dispensed with patient labeling that warns of an increased risk of birth defects. Therefore, FDA is proposing to remove this requirement.

[2] Letter from Stanley Zinberg, dated December 31, 1996.

For the reasons discussed previously, FDA believes that it is no longer appropriate for professional labeling to contain a box warning recommending against the use of progestational drug products during the first 4 months of pregnancy. There is also no need to contraindicate progestogens as a diagnostic test for pregnancy because hormonal pregnancy tests are no longer available in the United States. In a notice published elsewhere in this issue of the **Federal Register**, FDA is announcing its intent to revoke its previously issued guidance texts for physician and patient labeling for progestational drug products. When this proposed rule concerning patient labeling becomes final, holders of approved applications for progestational drug products will be required to revise the labeling of such products by removing the text for patient labeling. In addition, at that time, holders of approved applications should revise the professional labeling to remove the box warning and the contraindication as a diagnostic test for pregnancy. These labeling revisions will not require a supplemental application, but may be reported in the next annual report, as provided for in 21 CFR 314.70(a) and (d).

II. References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Raman-Wilms, L. et al., "Fetal Genital Effects of First-Trimester Sex Hormone Exposure: A Meta-Analysis," *Obstetrics and Gynecology*, 85:141–149, 1995.
2. Schardein, J. L., "Chemically Induced Birth Defects," Marcel Dekker, Inc., New York, 1993.
3. Scialli, A. R., The REPROTOX System, Reproductive Toxicology Center, Washington, DC.
4. Check, J. H. et al., "The Risk of Fetal Anomalies as a Result of Progesterone Therapy During Pregnancy," *Fertility and Sterility*, 45:575–577, 1986.
5. Heinonen, O. P., D. Slone, and S. Shapiro, "Birth Defects and Drugs in Pregnancy," Publishing Sciences Group, Littleton, MA, 1977.
6. Michaelis, J. et al., "Prospective Study of Suspected Associations Between Certain Drugs Administered During Early Pregnancy and Congenital Malformations," *Teratology*, 27:57–64, 1983.
7. Resseguie, L. J. et al., "Congenital Malformations Among Offspring Exposed In Utero to Progestins, Olmsted County, MN," *Fertility and Sterility*, 43:514–519 1985.
8. Rock, J. A. et al., "Fetal Malformations Following Progesterone Therapy During Pregnancy: A Preliminary Report," *Fertility and Sterility*, 44:17–19, 1985.
9. Katz, Z. et al., "Teratogenicity of Progestogens Given During the First Trimester of Pregnancy," *Obstetrics and Gynecology*, 65:775–780, 1985.
10. Varma, T. R., and J. Morsman, "Evaluation of the Use of Proluton-Depot (Hydroxyprogesterone Hexanoate) in Early Pregnancy," *International Journal of Gynaecology and Obstetrics*, 20:13–17, 1982.
11. Wilkins, L., "Masculinization of Female Fetus Due to Use of Orally Given Progestins," *Journal of the American Medical Association*, 172:1028–1032, 1960.
12. Wilson, J. G., and R. L. Brent, "Are Female Sex Hormones Teratogenic?" *American Journal of Obstetrics and Gynecology*, 141:567–580, 1981.
13. Jacobson, B. D., "Hazards of Norethindrone Therapy During Pregnancy," *American Journal of Obstetrics and Gynecology*, 84:962–968, 1962.

III. Environmental Impact

The agency has determined under 21 CFR 25.30(h) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

IV. Analysis of Impacts

FDA has examined the impacts of the proposed rule under Executive Order 12866, the Regulatory Flexibility Act (5 U.S.C. 601–612) and the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). Under the Regulatory Flexibility Act, unless an agency certifies that a rule will not have a significant impact on small entities, the agency must analyze regulatory options that would minimize the impact of the rule on small entities.

The Unfunded Mandates Reform Act of 1995 (in section 202) requires that agencies prepare an assessment of anticipated costs and benefits before proposing any rule that may result in an expenditure in any 1 year by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation).

The agency has reviewed this proposed rule and has determined that it is consistent with the regulatory philosophy and principles identified in Executive Order 12866, and these two statutes. With respect to the Regulatory Flexibility Act, the agency certifies that the rule will not have a significant effect on a substantial number of small entities. Because the proposed rule does not impose any mandates on State, local, or tribal governments, or the private sector that will result in a 1-year expenditure of $100 million or more, FDA is not required to perform a cost-benefit analysis under the Unfunded Mandates Reform Act of 1995.

The proposed rule would remove certain information from the professional labeling of affected drug products. The revised labeling may be filed in the next annual report. The agency has identified 13 sponsors and 16 distinct professional labeling inserts that would need to be changed to comply with this rule. Using a pharmaceutical labeling cost model developed for the agency, the average cost for this labeling change is $1,317 per insert, assuming a compliance period of 1 year. Applying this cost to the 16 professional labeling inserts results in a one-time cost of compliance of $21,000. There will also be an additional minor cost of lost inventory. Of the 13 sponsors affected, fewer than 5 would meet the Small Business Administration definition of small. No additional burdens are imposed upon manufacturers.

V. Paperwork Reduction Act of 1995

FDA tentatively concludes that this proposed rule contains no collections of information. The proposal would remove certain information from the labeling of affected drug products. The revised labeling may be filed in the next annual report, which is already required under FDA's regulations and is already approved by the Office of Management and Budget (OMB) as a collection of information, OMB control no. 0910–0001. Therefore, clearance by OMB under the Paperwork Reduction Act of 1995 is not required.

VI. Proposed Effective Date

FDA proposes that any final rule based on this proposal be effective 1 year after its date of publication in the **Federal Register**.

VII. Request for Comments

Interested persons may, on or before July 12, 1999, submit to the Dockets Management Branch (address above) written comments on this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 310

Administrative practice and procedure, Drugs, Labeling, Medical devices, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 310 be amended as follows:

PART 310—NEW DRUGS

1. The authority citation for 21 CFR part 310 is revised to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 355, 360b–360f, 360j, 360hh–360ss, 361(a), 371, 374, 375, 379e; 42 U.S.C. 216, 241, 242(a), 262, 263b–263n.

§ 310.516 [Removed]

2. Section 310.516 *Progestational drug products; labeling directed to the patient* is removed.

Dated: March 25, 1999.

William K. Hubbard,

Acting Deputy Commissioner for Policy.

[FR Doc. 99–9146 Filed 4–12–99; 8:45 am]

BILLING CODE 4160–01–F

UNITED STATES INFORMATION AGENCY

22 CFR Part 514

Exchange Visitor Program

AGENCY: United States Information Agency.

ACTION: Proposed rule.

SUMMARY: The regulations govern Agency-designated au pair programs under which foreign nationals are afforded the opportunity to live with an American host family and participate directly in the home life of the host family while providing child care services and attending a U.S. post-secondary educational institution. The Agency's goal in proposing amendment of these existing regulations is to strengthen the oversight and general accountability of the au pair program and to identify and reduce potential risk of injury to program participants. These amendments will provide greater specificity regarding the selection and orientation of both host family and au pair participants thereby enhancing the prospect for more informed participation by both parties. Further proposed program enhancements would require disclosure of prior experience for au pair participants providing child care for special needs children. An amendment to provide for uniform program audits is also proposed.

DATES: Written comments regarding this proposed rule will be accepted until May 13, 1999.

ADDRESSES: Comments regarding this proposed rule must be presented in duplicate and addressed as follows: United States Information Agency, Office of General Counsel, Rulemaking Clerk, 301 4th Street, S.W., Washington, D.C. 20547.

FOR FURTHER INFORMATION CONTACT: Sally Lawrence, Exchange Visitor Program Services, Program Designation Branch, United States Information Agency, 301 4th Street, S.W., Washington, D.C. 20547; Telephone (202) 401–9810.

SUPPLEMENTARY INFORMATION: The Agency has conducted a review of the consumer aspects of the au pair program and determines that certain regulatory amendments to existing regulations should improve the quality of the program, enhance child safety, promote transparency, and generally further the public understanding of this program. Specifically, the Agency has identified a systemic program arising from the advertising and promotion of the program. Often, this advertising promotes au pair participation as an opportunity to travel and experience life in the United States without a full explanation of the significant child care requirements that underlie the program. Conversely, the advertising directed towards American host families often promotes only the child care aspects of the program and fails to stress the educational and cultural benefits that the program should provide to the au pair participant.

Accordingly, to promote a better understanding of the program the Agency is proposing to amend the existing regulations set forth at §§ 514.31(f)(2) and 514.31(i) to require that all designated au pair program sponsors provide host families and potential au pairs with a brochure written by the Agency. This brochure explains fully the program obligations for both the au pair and host family participants and will enhance the overall integrity of the au pair program by providing written notice of these obligations.

The question of how best to provide for the inclusion of American families with self-identified special needs children has been raised. Au pairs are not personal attendants or nurses and will not have specialized training in nursing. Accordingly, au pairs will not provide child care services relating to the care and protection of infants or children which are performed by trained personnel such as registered, vocational, or practical nurses. Mindful that the au pair program should be available to families with special needs children, the Agency is of the opinion that host family participation may be limited by the number of available au pair participants willing to accept such family placements. Further, it appears that au pair participants placed with families having special needs children should be better prepared for the demands that may arise from such placements. With these considerations in mind, the Agency proposes amendment of § 514.31(e) to ensure that both the au pair participant and host family are fully apprised of the unique responsibilities that may arise from this type of placement. To this end, the au pair will self-identify, and the sponsor will take rasonable steps to verify, his or her prior experience, skills, and training regarding the care of special needs children and the host family will be required to review and specifically acknowledge their acceptance of such experience, skills, and training. The Agency proposes this requirement to ensure that an au pair participant placed with a special needs child has accurately described any prior experience and that the au pair and host family are thus fully informed regarding duties and experience.

As a related au pair placement matter, the Agency also proposes amendment of § 514.31(e) to require that sponsors not place an au pair with a host family until the host family has interviewed the au pair by telephone. The Agency is of the opinion that most host families do in fact interview the potential au pair by telephone. To provide additional assurances to the host family regarding the au pair's English speaking ability, the Agency believes that this general practice of conducting a telephone interview should be made mandatory.

The Agency is also proposing an amendment to § 514.31 (m) to require that designated sponsors utilize a standard management audit format supplied by the Agency. This management auditing requirement was first adopted in 1995 and is designed to ensure that designated sponsors are in full compliance with Agency regulations. The Agency has now reviewed three years of management audits submitted in response to this regulation. The audits vary substantially in quality and content. Because this management audit is crucial to the Agency's oversight of the au pair program the public has a vested interest in ensuring that the quality, content, and integrity of the audit process is uniform and useful as a management oversight tool. Accordingly, the Agency

is of the opinion that it should have a standard audit format prepared and distributed to each au pair organization who will in turn have a certified public accountant of its choice conduct the audit in conformance with the standard audit format. The filing date for submission of this annual audit would be advanced from the current filing date of March 30th to June 30th. This change will benefit both sponsors and auditors by delaying the filing requirement until after the tax season.

Public Comment

The Agency invites comments regarding this proposed rule notwithstanding the fact that it is under no legal obligation to do so. The oversight and administration of the Exchange Visitor Program are deemed to be foreign affairs functions of the United States Government. The Administrative Procedures Act, 5 U.S.C. 553(a)(1) (1989), specifically exempts foreign affairs functions from the rulemaking requirements of the Act.

The Agency will accept comments for 30 days following publication of this proposed rule. A final rule will be adopted following Agency consideration of all comments received.

In accordance with 5 U.S.C. 605(b), the Agency certifies this rule does not have a significant adverse economic impact on a substantial number of small entities. This rule is not considered to be a major rule within the meaning of Section 1(b) of E.O. 12291, nor does it have federal implications warranting the preparation of a Federalism Assessment in accordance with E.O. 12612.

List of Subjects in 22 CFR Part 514

Cultural exchange programs.

Dated: April 7, 1999.

Lee Jin,

General Counsel.

Accordingly, 22 CFR part 514 is proposed to be amended as follows:

PART 514—EXCHANGE VISITOR PROGRAM

1. The authority citation for part 514 continues to read as follows:

Authority: 8 U.S.C. 1101(a)(15)(j), 1182, 1258; 22 U.S.C. 1431–1442, 2451–2460; Reorganization Plan No. 2 of 1977, 42 FR 62461, 3 CFR, 1977 Comp. p. 200; E.O. 12048, 43 FR 13361, 3 CFR, 1978 Comp. p. 168; USIA Delegation Order No. 85–5 (50 FR 27393).

2. Section 514.31 paragraph (e), (f), (h), (i), and (m) are revised to read as follows:

§ 514.31 Au pairs.

* * * * *

(e) *Au pair placement.* Sponsors shall secure, prior to the au pair's departure from the home country, a host family placement for each participant. Sponsors shall not:

(1) Place an au pair with a family unless the family has specifically agreed that a parent or other responsible adult will remain in the home for the first three days following the au pair's arrival;

(2) Place an au pair with a family having a child aged less than three months unless a parent or other responsible adult is present in the home;

(3) Place an au pair with a host family having children under the age of two, unless the au pair has at least 200 hours of documented infant child care experience;

(4) Place an au pair with a host family having a special needs child, as so identified by the host family, unless the au pair has specifically identified, and the sponsor has taken reasonable steps to verify, his or her prior experience, skills, or training in the care of special needs children and the host family has reviewed and acknowledged in writing the au pair's prior experience, skills, or training so identified and so verified;

(5) Place an au pair with a family unless a written agreement between the au pair and host family outlining the au pair's obligation to provide not more than 45 hours of child care services per week has been signed by both;

(6) Place the au pair with a family who cannot provide the au pair with a suitable private bedroom; and

(7) Place an au pair with a host family unless the host family has interviewed the au pair by telephone prior to the au pair's departure from his or her home country.

(f) *Au pair orientation.* In addition to the orientation requirements set forth herein at § 514.10, all sponsors shall provide au pairs, prior to their departure from the home country, with the following information:

(1) A copy of all operating procedures, rules, and regulations, including a grievance process, which govern the au pair's participation in the exchange program;

(2) A detailed profile of the family and community in which the au pair will be placed;

(3) A detailed profile of the educational institutions in the community where the au pair will be placed, including the financial cost of attendance at these institutions;

(4) A detailed summary of travel arrangements; and

(5) A copy of the Agency's written statement and brochure regarding the au pair program.

* * * * *

(h) *Host family selection.* Sponsors shall adequately screen all potential host families and at a minimum shall:

(1) Require that the host parents are U.S. citizens or legal permanent residents;

(2) Require that host parents are fluent in spoken English;

(3) Require that all adult family members resident in the home have been personally interviewed by an organizational representative;

(4) Require that host parents and other adults living full-time in the household have successfully passed a background investigation including employment and personal character references;

(5) Require that the host family have adequate financial resources to undertake all hosting obligations;

(6) Provide a written detailed summary of the exchange program and the parameters of their and the au pair's duties, participation, and obligations; and

(7) Provide the host family with the prospective au pair participant's complete application, including all references.

(i) *Host family orientation.* In addition to the requirements set forth at § 514.10 sponsors shall:

(1) Inform all host families of the philosophy, rules, and regulations governing the sponsor's exchange program and provide all families with a copy of the Agency's written statement and brochure regarding the au pair program;

(2) Provide all selected host families with a complete copy of Agency-promulgated Exchange Visitor Program regulations, including the supplemental information thereto;

(3) Advise all selected host families of their obligation to attend at least one family day conference to be sponsored by the au pair organization during the course of the placement year. Host family attendance at such a gathering is a condition of program participation and failure to attend will be grounds for possible termination of their continued or future program participation; and

(4) Require that the organization's local counselor responsible for the au pair placement contacts the host family and au pair within forty eight hours of the au pair's arrival and meets, in person, with the host family and au pair within two weeks of the au pair's arrival at the host family home.

* * * * *

(m) *Reporting requirements.* Along with the annual report required by

regulations set forth at § 514.17, sponsors shall file with the Agency the following information:

(1) A summation of the results of an annual survey of all host family and au pair participants regarding satisfaction with the program, its strengths and weaknesses;

(2) A summation of all complaints regarding host family or au pair participation in the program, specifying the nature of the complaint, its resolution, and whether any unresolved complaints are outstanding.

(3) A summation of all situations which resulted in the placement of an au pair participant with more than one host family;

(4) A management audit report by a certified public accountant, conducted pursuant to a format designated by the Agency, attesting to the sponsor's compliance with the procedures and reporting requirements set forth in this subpart;

(5) A report detailing the name of the au pair, his or her host family placement, location, and the names of the local and regional organizational representatives; and

(6) A complete set of all promotional materials, brochures, or pamphlet distributed to either host family or au pair participants.

* * * * *

[FR Doc. 99–9165 Filed 4–12–99; 8:45 am]

BILLING CODE 8230–01–M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 206

RIN 1010–AC09

Establishing Oil Value for Royalty Due on Federal Leases

AGENCY: Minerals Management Service, Interior.

ACTION: Supplementary Proposed rule; notice of extension of public comment period.

SUMMARY: The Minerals Management Service hereby gives notice that it is extending the public comment period on a supplementary proposed rule, which was published in the **Federal Register** on July 16, 1998, (63 FR 38355). The proposed rule amends the royalty valuation regulations for crude oil produced from Federal leases. In response to requests for additional time and to provide commenters adequate time to submit comments after the completion of the public workshops on April 7, 1999, MMS will extend the comment period 15 days.

DATES: Comments must be submitted on or before April 27, 1999.

ADDRESSES: Mail comments, suggestions, or objections about this supplementary proposed rule to: Minerals Management Service, Royalty Management Program, Rules and Publications Staff, P.O. Box 25165, MS 3021, Denver, Colorado 80225–0165. Courier address is Building 85, Denver Federal Center, Denver, Colorado 80225. E-mail address is RMP.comments@mms.gov.

FOR FURTHER INFORMATION CONTACT: David S. Guzy, Chief, Rules and Publications Staff, telephone number (303) 231–3432, fax number (303) 231–3385, e-mail RMP.comments@mms.gov.

SUPPLEMENTARY INFORMATION: MMS received requests from industry representatives to extend the comment period of this supplementary proposed rule. This time extension is in response to those requests in order to provide commenters with adequate time to provide detailed comments that MMS can use to proceed in the rulemaking.

Dated: April 8, 1999.

Lucy Querques Denett,

Associate Director for Royalty Management.

[FR Doc. 99–9174 Filed 4–12–99; 8:45 am]

BILLING CODE 4310–MR–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[Docket 24–7004; FRL–6323–9]

Federal Rulemaking for the FMC Facility in the Fort Hall PM–10 Nonattainment Area; Notice of Correction of Proposed Rules

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; correction.

SUMMARY: On February 12, 1999, EPA published a proposed Federal Implementation Plan to control particulate matter air pollution emitted from an elemental phosphorous facility owned and operated by FMC Corporation (FMC). The facility is located within the exterior boundaries of the Fort Hall Indian Reservation in southeastern Idaho (FMC facility). The purpose of this document is to correct inadvertent minor typographical errors in the proposed rule language that could cause unnecessary confusion.

DATES: Written comments, identified by the docket control number ID 24–7004, must be received by EPA on or before May 13, 1999.

ADDRESSES: Comments should be submitted (in duplicate if possible) to: Montel Livingston, SIP Manager, Environmental Protection Agency, Office of Air Quality (OAQ–107), 1200 Sixth Avenue, Seattle Washington 98101.

FOR FURTHER INFORMATION CONTACT: Steven K. Body, Office of Air Quality (OAQ–107), Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington 98101, (206) 553–0782.

SUPPLEMENTARY INFORMATION:

I. General Information

A. How Can I Get Additional Information or Copies of Support Documents?

1. Electronically. You may obtain electronic copies of this document and the February 12, 1999, proposed rule from the internet at the following address: http://www.epa.gov/r10earth/ Once there, click on "Events." You can also go directly to the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/.*

2. In person or by phone. If you have any questions or need additional information about this action, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. In addition, the official record for this document, which is called the "docket," has been established under docket control number ID 24–7004. The docket is available for public inspection and copying from 8:00 a.m. to 5:30 p.m. Eastern Standard Time, Monday through Friday, at EPA's Central Docket Section, Office of Air and Radiation, Room 1500 (M–6102), 401 M Street, SW., Washington, D.C. 20460, and between 8:30 a.m. and 3:30 p.m. Pacific Standard Time, at EPA Region 10, Office of Air Quality, 10th Floor, 1200 Sixth Avenue, Seattle, Washington 98101. A copy of the docket is also available for review at the Shoshone-Bannock Tribes, Office of Air Quality Program, Land Use Commission, Fort Hall Government Center, Agency and Bannock Roads, Fort Hall, Idaho 83203; the Shoshone-Bannock Library, Pima and Bannock, Fort Hall, Idaho, 83203; and the Idaho State University Library, Government Documents Dept., 850 South 9th Avenue, Pocatello, Idaho. A reasonable fee may be charged for copies.

B. How and to Whom do I Submit Comments?

You may submit comments through the mail or in person. Be sure to identify the appropriate docket control number

(i.e., "ID–24–7004") in your correspondence.

1. By mail. Submit written comments to: Montel Livingston, SIP Manager, Environmental Protection Agency, Office of Air quality (OAQ–107), 1200 Sixth Avenue, Seattle, Washington 98101.

2. In person or by courier. Deliver written comments to: Montel Livingston, SIP Manager, Environmental Protection Agency, Office of Air quality (OAQ–107), 1200 Sixth Avenue, Seattle, Washington 98101.

II. What Are the Corrections?

On February 12, 1999, EPA published a proposed *Federal Rulemaking for the FMC Facility in the Fort Hall PM–10 Nonattainment Area. See* 64 FR 7308 (February 12, 1999). This proposed rulemaking is known as a Federal Implementation Plan or "FIP." In summary, the FIP proposes air pollution control requirements for particulate matter emitted from FMC that would require FMC to install and operate reasonably available control technology in their production of phosphorus. In addition, the FIP proposes comprehensive requirements for compliance monitoring, recordkeeping, and reporting.

In the preamble to the proposal, EPA asked for comment on two alternatives for dealing with exceedences of emission limits due to scheduled events, such as startup, shutdown, or scheduled maintenance, as well as unscheduled events, such as equipment failure, power loss, furnace upsets, or accidents (known as upset, breakdown, or emergency conditions). 64 FR 7328. These alternatives are briefly summarized as follows:

Alternative One: Exceedences of emission limits caused by scheduled events or upset/breakdown conditions would not be excused under any circumstance. However, EPA could exercise its discretion in deciding whether to penalize FMC for violations caused by scheduled events or upset/breakdown/emergency.

Alternative Two: Exceedences of emission limits would be excused from penalty under two circumstances:

(A) Excess emissions caused by pre-scheduled startup, shutdown, or scheduled maintenance would be excused, provided FMC gives EPA prior notice, takes measures to reduce excess emissions, and meets other stringent requirements; and

(B) Excess emissions caused by unforeseen "emergency" upset/breakdown situations would be excused, provided FMC gives EPA prompt notice, takes measures to reduce excess emissions, and meets other stringent requirements.

A heading in the proposed rule language contains an error which may could cause unnecessary confusion. At 64 FR 7346, proposed § 52.676(c)(8) is labeled "Alternative One" and proposed § 52.676(c)(9) is labeled "Alternative Two." Although the language in the proposed rule is itself correct, the labels are in error.

As shown above and as discussed in more detail in the preamble to the proposal, Alternative One is providing no excuse from penalty for startup, shutdown, scheduled maintenance, upset, breakdown, or emergency. *See* 64 FR 7328 (column one). Thus, neither proposed paragraph 52.676(c)(8) nor paragraph 52.676(c)(9) would be included in the final rule if EPA adopts Alternative One. Alternative Two provides an excuse from penalty under two different circumstances. *See* 64 FR 7328 (bottom of column one and column two). The first circumstance (scheduled events) is contained in proposed paragraph 52.676(c)(8). The second circumstance (upset/breakdown/emergency) is contained in proposed paragraph 52.676(9). Therefore, if EPA adopts Alternative Two, both paragraphs 52.676(c)(8) and 52.676(c)(9) would be included in the final rule.

Language regarding excess emissions in another section of the proposed rule also contains a minor typographical error. At 64 FR 7352, proposed paragraph 52.676(g)(5) currently contains three subparts. Proposed paragraph 52.676(g)(5)(ii) states "If alternative one or two for paragraph (c)(8) is adopted". That language should read "If paragraphs 52.676(c)(8) and (c)(9) are adopted as part of the final rule," and that language is not intended to be part of the rule. Rather, it is explanatory. Proposed paragraph 52.676(g)(5)(iii), if included in the final rule, would be renumbered to 52.676(g)(5)(ii).

The proposed rule also contains two other minor typographical errors in cross-referencing other portions of the proposed rule. The cross reference at 64 FR 7346 in proposed paragraph 52.676(c)(5)(ii)(B)(2) to "paragraph (c)(4)(ii)(B)" should be to "paragraph (c)(5)(ii)(B)(1)." The cross reference at 64 FR 7348 in proposed paragraph 52.676(e)(2) to "Column II of Table A" should be to "Column II of Table 1."

III. Do Any of the Regulatory Assessment Requirements Apply to this Action?

No. This action merely provides minor typographical corrections to the proposed rule. This action does not impose any new requirements. As such, this action does not require review by the Office of Management and Budget (OMB) under Executive Order 12866, entitled Regulatory Planning and Review (58 FR 51735, October 4, 1993), the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997). This action does not impose any enforceable duty, contain any unfunded mandate, or impose any significant or unique impact on small governments as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). Nor does it require prior consultation with State, local, and tribal government officials as specified by Executive Order 12875, entitled Enhancing Intergovernmental Partnerships (58 FR 58093, October 28, 1993) and Executive Order 13084, entitled Consultation and Coordination with Indian Tribal Governments (63 FR 27655, May 19, 1998). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). In addition, since this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*). EPA's compliance with these statutes and Executive Orders for the underlying proposed rule, is discussed in the preamble to the proposed rule (see 64 FR 7308, February 12, 1999).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

Dated: April 1, 1999.

Chuck Clarke,

Regional Administrator, Region 10.

[FR Doc. 99–9205 Filed 4–12–99; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 32

Establishing "Lead Free Fishing Areas" and the Prohibition of the Use of Certain Fishing Sinkers and Jigs Made With Lead on Specific Units of the National Wildlife Refuge System

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of intent to file a proposed change in specific refuge regulations.

SUMMARY: We intend to promulgate regulations that would prohibit the use of fishing sinkers and jigs that are made of lead or lead alloys on units of the National Wildlife Refuge System where mortality of common loons from lead sinker ingestion has occurred or where concerns exist because habitat use by loons and significant fishing activities overlap. When refuges meet this criteria, we intend to establish "Lead Free Fishing Areas" and promulgate regulations on the use of lead sinkers and jigs. Each refuge we select will have specific regulations promulgated which will phase in over a two-year period, prohibit the use of lead sinkers and jigs, and establish a "Lead Free Fishing Area" in all refuge waters. This action will not close any refuge unit to sport fishing, but only prohibit the use of lead fishing sinkers and jigs.

DATES: Please provide your comments by May 13, 1999.

ADDRESSES: U.S. Fish and Wildlife Service, Division of Refuges,1849 C Street, NW, MS–70 ARLSQ, Washington, DC 20240, Attention: Jon D. Kauffeld, e-mail Jon__Kauffeld@fws.gov.

FOR FURTHER INFORMATION CONTACT: Jon D. Kauffeld, 703–358–2383, FAX: 703–358–1826.

SUPPLEMENTARY INFORMATION: The mission of the National Wildlife Refuge System (System) is to administer a national network of lands and waters for the conservation, management and, where appropriate, restoration of the fish, wildlife, and plant resources and their habitats within the United States for the benefit of present and future generations of Americans. We encourage recreational fishing that is compatible with this mission and with the purposes for which each individual refuge is established. Currently 307 of the 516 National Wildlife Refuges are open to fishing.

It is well documented that lead is toxic to both humans and wildlife. In areas where recreational angling and loon populations co-occur, lead poisoning from swallowing lead sinkers and jigs accounts for 10–50% of recorded loon mortality. In the New England states, the mortality from ingesting lead sinkers and jigs is the most significant, single factor for mortality in over 50% of adult breeding loons. Michigan's Rose Lake Wildlife Research Center collected similar evidence where 40% of loon carcasses examined had died from lead poisoning. The Minnesota Pollution Control Agency documented 17% of adult loons died from lead poisoning. A review of 15 years of bird data in Ontario has shown that 27% of the adult loons had fishing tackle in their gizzards and high lead levels in their blood.

The National Wildlife Refuge System Administration Act, which was recently amended by the National Wildlife Refuge System Improvement Act of 1997, provides us with broad authority to offer and regulate recreational opportunities throughout the System, including the authority to regulate the use of lead fishing tackle. We intend to phase-in "Lead-Free Fishing Areas" on refuges where common loons are at risk of lead poisoning from swallowing lost or discarded fishing sinkers and jigs. During the first year of the phase-in, we will educate anglers about the benefits of non-toxic tackle for wildlife. During the first and second year of the phase-in, anglers will be able to trade-in their lead sinkers and jigs for non-toxic substitutes. After the two year phase-in, we will require anglers to fish with lead-free sinkers and jigs in all refuges designated "Lead Free Fishing Areas."

We will identify the affected refuges as part of our annual, June 1999, proposed rule which outlines refuge-specific public use regulations. The final rule, to be published in 50 CFR part 32, will be effective in the fall of 1999. This action will not close any refuge unit to sport fishing, but only prohibit the use of certain fishing sinkers and jig heads. In those areas where we do not have jurisdiction over navigable waters that flow through or border our lands, we will seek the cooperation of the affected State to reduce the risk of lead poisoning to common loons.

Dated: March 18, 1999.

Jamie Rappaport Clark,

Director.

[FR Doc. 99–8982 Filed 4–12–99; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register
Vol. 64, No. 70
Tuesday, April 13, 1999

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Research, Education, and Economics; Notice of Strategic Planning Task Force Meeting

AGENCY: Research, Education, and Economics, USDA.

ACTION: Notice of meeting.

SUMMARY: The United States Department of Agriculture announces a meeting of the Strategic Planning Task Force on Research Facilities.

SUPPLEMENTARY INFORMATION: The Strategic Planning Task Force on Research Facilities, currently consisting of 14 members, is scheduled to meet for the eighth of eight planned meetings. The meeting is scheduled to be held at the Hilton Washington Dulles Airport beginning at 1:00 p.m. on May 10, 1999, and concluding May 11, 1999. The meeting will be a review of the data collected by the Task Force and will continue discussion of the draft report.

Times and Dates: May 10, 1999, beginning at 1:00 p.m., and May 11, 1999, beginning at 8:00 a.m.

Place: Hilton Washington Dulles Airport, 13869 Park Center Road, Herndon, Virginia 20171.

Type of Meeting: Open to the public.

Comments: The public may file written comments before or after the meeting with the contact person listed below.

FOR FURTHER INFORMATION CONTACT: Mitch Geasler, Project Director, Strategic Planning Task Force on Research Facilities, Room 344–A Jamie L. Whitten Building, USDA, 1400 Independence Avenue, SW., Washington, DC 20250–0113. Telephone 202–720–3803.

Done at Washington, DC, this 7th day of April, 1999.

Eileen Kennedy,

Deputy Under Secretary, Research, Education, and Economics.

[FR Doc. 99–9127 Filed 4–12–99; 8:45 am]

BILLING CODE 3410–22–P

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

Agricultural Advisory Committees for Trade

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Rechartering of the Agricultural Advisory Committees for Trade.

SUMMARY: Notice is hereby given that the Secretary of Agriculture, after consultation with the United States Trade Representative, has rechartered the following advisory committees:

—Agricultural Policy Advisory Committee for Trade
—Agricultural Technical Advisory Committee for Trade in Animals and Animal Products
—Agricultural Technical Advisory Committee for Trade in Fruits and Vegetables
—Agricultural Technical Advisory Committee for Trade in Grains, Feed, and Oilseeds
—Agricultural Technical Advisory Committee for Trade in Sweeteners and Sweetener Products
—Agricultural Technical Advisory Committee for Trade in Tobacco, Cotton, and Peanuts

The purpose of these committees is to provide advice to the Secretary of Agriculture and the U.S. Trade Representative with respect to the trade policy of the United States pursuant to Section 135(c) of the Trade Act of 1974 (Pub. L. 93–618) as amended. Meetings of these committees will be open to the public, unless the U.S. Trade Representative determines that the committees will be discussing issues the disclosure of which justify closing such meetings or portions thereof in accordance with Section 552(c) of Title 5 of the United States Code. The renewal of such committees is in the public interest in connection with the duties of the U.S. Department of Agriculture (USDA) imposed by the Trade Act of 1974, as amended.

FOR FURTHER INFORMATION CONTACT: Comments regarding the reestablishment of these committees should be addressed to Paula Scott or Denise Bell, Foreign Agricultural Service (FAS), USDA, Room 5065–S, Washington, DC 20250–1000.

SUPPLEMENTARY INFORMATION: Pursuant to the Federal Advisory Committee Act (FACA) (5 U.S.C. Appendix), notice is hereby given that the Secretary of Agriculture and the U.S. Trade Representative are reestablishing the Agricultural Policy Advisory Committee for Trade (APAC) and the Agricultural Technical Advisory Committees for Trade (ATACs). In 1974, Congress established a private sector advisory committee system to ensure that U.S. trade policy and trade negotiation objectives adequately reflect U.S. commercial and economic interests. Congress expanded and enhanced the role of this system in three subsequent trade acts. The private sector advisory system now consists of almost 40 committees, arranged in three tiers; The President's Advisory Committee on Trade and Policy Negotiations (ACTPN); seven policy advisory committees, including the APAC; and more than 30 technical advisory committees including the ATACs. The duties of the APAC are to provide the Secretary of Agriculture and the U.S. Trade Representative with advice concerning negotiating objectives and bargaining positions before entering into a trade agreement, the operation of an agreement once entered into, and other matters arising in connection with the administration of the trade policy of the United States. The duties of the ATACs are to provide advice and information regarding trade issues which affect both domestic and foreign production and trade concerning the respective agricultural commodities, drawing upon the technical competence and experience of its members. Each committee is required to meet at the conclusion of negotiations for each trade agreement entered into under the Act to provide a report on such agreement to the President, to Congress, and to the U.S. Trade Representative. The APAC is comprised of approximately 50 members. The members elect a chairperson from the membership of the committee. The Assistant to the Administrator, FAS, and the Assistant U.S. Trade Representative,

Intergovernmental Affairs and Public Liaison, Office of the U.S. Trade Representative, are the Committee's Joint Executive Secretaries. Each of the ATACs is comprised of approximately 25 members. The members of each committee elect a chairperson from the membership of the committee. A full-time federal officer or employee of FAS shall serve as the Executive Secretary of each Technical Advisory Committee. Each committee is chartered for a period of 2 years, at which time all appointments expire. Reappointments are made at the discretion of the Secretary of Agriculture and the U.S. Trade Representative.

Issued at Washington, DC, this 31st day of March, 1999.

Dated: March 31, 1999.

Sally Thompson,

Acting Assistant Secretary for Administration.

[FR Doc. 99–9183 Filed 4–12–99; 8:45 am]

BILLING CODE 3410–10–M

DEPARTMENT OF AGRICULTURE

Forest Service

Oregon Coast Provincial Advisory Committee Meeting

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Oregon Coast Provincial Advisory Committee (PAC) will meet on April 29, 1999, at the Hatfield Marine Science Center (Meeting Room 9/ Fireside Room), 2030 S. Marine Science Drive, Newport, OR. The meeting will begin at 9:00 a.m. and continue until 3:30 p.m. Agenda items to be covered include: (1) Introduction activity for old and new PAC members; (2) Northwest Forest Plan original goals and changes, Committee of Scientists Report; (3) PAC accomplishment report; (4) PAC subcommittees (summary/formation/ organization). Committee meetings are open to the public. One 30-minute open public forum is scheduled for 12:30 p.m. Interested citizens are encouraged to attend. The committee welcomes the public's written comments on committee business at any time.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to Jose Linares, Strategic Planning Staff Officer, Siuslaw National Forest (541–750–7018), or write to the Forest Supervisor, Siuslaw National Forest, P.O. Box 1148, Corvallis, Oregon 97339.

Dated: April 6, 1999.

James R. Furnish,

Forest Supervisor.

[FR Doc. 99–9092 Filed 4–12–99; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

Advisory Committee Meeting

Pursuant to the provisions of section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given of the following committee meeting:

Name: Grain Inspection Advisory Committee.

Date: May 11–12, 1999.

Place: Hilton Kansas City Airport, 8801 NW 112th Street, Kansas City, Missouri.

Time: 8:00 am–5:00 pm on May 11; and 8:00 am–11:30 am on May 12, 1999.

Purpose: To provide advice to the Administrator of the Grain Inspection, Packers and Stockyards Administration (GIPSA) with respect to the implementation of the U.S. Grain Standards Act (7 U.S.C. 71 et seq.).

The agenda includes a tour of the Agency's Technical Center and a review and discussion of GIPSA's financial status, moisture meter implementation plan, grain elevator safety, future inspection service needs, wheat cleanliness, and other related issues concerning the delivery of grain inspection and weighing services to American agriculture.

Public participation will be limited to written statements, unless permission is received from the Committee Chairman to orally address the Committee. Persons, other than members, who wish to address the Committee or submit written statements before or after the meeting, should contact the Administrator, GIPSA, U.S. Department of Agriculture, 1400 Independence Avenue, SW, STOP 3601, Washington, D.C. 20250–3601, telephone (202) 720–0219 or FAX (202) 205–9237.

The meeting will be open to the public. Persons with disabilities who require alternative means of communication of program information or related accommodation should contact GIPSA. Information contact is Marianne Plaus, telephone (202) 690–3460 or FAX (202) 205–9237.

Dated: April 7, 1999.

James R. Baker,

Administrator.

[FR Doc. 99–9184 Filed 4–12–99; 8:45 am]

BILLING CODE 3410–EN–P

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Notice of Proposed Changes to Section IV of the Field Office Technical Guide (FOTG) of the Natural Resources Conservation Service in Indiana

AGENCY: Natural Resources Conservation Service (NRCS).

ACTION: Notice of availability of proposed changes in Section IV of the FOTG of the NRCS in Indiana for review and comment.

SUMMARY: It is the intention of NRCS in Indiana to issue new and revised conservation practice standards Section IV of the FOTG. The revised standards are Firebreak (Code 394) and Tree/ Shrub Establishment (Code 612). These practices may be used in conservation systems that treat highly erodible land.

DATES: Comments will be received for a 30-day period commencing with this date of publication.

ADDRESSES: Address all requests and comments to Robert L. Eddleman, State Conservationist, Natural Resources Conservation Service (NRCS), 6013 Lakeside Blvd., Indianapolis, Indiana 46278. Copies of these standards will be made available upon written request. You may submit electronic requests and comments to joe.gasperi@in.usda.gov

FOR FURTHER INFORMATION CONTACT: Robert L. Eddleman, 317–290–3200.

SUPPLEMENTARY INFORMATION: Section 343 of the Federal Agriculture Improvement and Reform Act of 1996 states that revisions made after enactment of the law, to NRCS state technical guides used to carry out highly erodible land and wetland provisions of the law, shall be made available for public review and comment. For the next 30 days, the NRCS in Indiana will receive comments relative to the proposed changes. Following that period, a determination will be made by the NRCS in Indiana regarding disposition of those comments and a final determination of changes will be made.

Dated: March 24, 1999.

Robert L. Eddleman,

State Conservationist, Indianapolis, Indiana.

[FR Doc. 99–9128 Filed 4–12–99; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Notice of Proposed Change to Section IV of the Field Office Technical Guide (FOTG) of the Natural Resources Conservation Service in Louisiana

AGENCY: Natural Resources Conservation Service (NRCS), U.S. Department of Agriculture.

ACTION: Notice of availability of proposed changes in Section IV of the FOTG of the NRCS in Louisiana for review and comment.

SUMMARY: It is the intention of the NRCS in Louisiana to issue new and revised conservation practice standards in Section IV of the FOTG for the following practices: Upland Wildlife Habitat Management (code 645), Wildlife Watering Facility (code 648), Pasture and Hay Planting (code 512), and Range Planting (code 550) are revised practice standards and Shallow Water Management for Wildlife (code 646) is a new practice standard.

DATES: Comments will be received for a 30-day period commencing with this date of publication.

FOR FURTHER INFORMATION CONTACT: Inquire in writing to Donald W. Gohmert, State Conservationist, Natural Resources Conservation Service (NRCS), 3737 Government Street, Alexandria, Louisiana 71302. Copies of the practice standards will be made available upon written request.

SUPPLEMENTARY INFORMATION: Section 343 of the Federal Agriculture Improvement and Reform Act of 1996 states that revisions made after enactment of the law to NRCS State Technical Guides used to carry out highly erodible land wetland provisions of the law shall be made available for public review and comment. For the next 30 days the NRCS in Louisiana will receive comments relative to the proposed changes. Following that period a determination will be made by the NRCS in Louisiana regarding disposition of those comments and a final determination of change will be made.

Dated: March 29, 1999

Billy R. Moore,

Acting State Conservationist, Alexandria, Louisiana 71302.

[FR Doc. 99–9137 Filed 4–12–99; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–811]

Steel Wire Rope From the Republic of Korea; Final Results of Antidumping Duty Administrative Review and Partial Rescission of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Final Results of Antidumping Duty Administrative Review and Partial Rescission of Antidumping Duty Administrative Review.

SUMMARY: On December 8, 1998, the Department of Commerce published the preliminary results and partial rescission of its 1997–98 administrative review of the antidumping duty order on steel wire rope from the Republic of Korea (63 FR 67662). The review covers 16 manufacturers/exporters for the period March 1, 1997, through February 28, 1998. Based on our analysis of the comments received, no changes in the calculated margin for Kumho Wire Rope Mfg. Co., Ltd. are required. We have, however, changed the adverse facts available margin.

EFFECTIVE DATE: April 13, 1999.

FOR FURTHER INFORMATION CONTACT: John Brinkmann at (202) 482–5288 or Dennis McClure at (202) 482–3530, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department's) regulations are to the regulations codified at 19 CFR Part 351 (1998).

Background

On December 8, 1997, the Department published in the **Federal Register** the preliminary results and partial rescission of its 1997–98 administrative review of the antidumping duty order on steel wire rope from the Republic of Korea. We gave interested parties an opportunity to comment on our preliminary results. The petitioner, the Committee of Domestic Steel Wire Rope and Specialty Cable Manufacturers, filed a case brief. There was no request for a hearing. We have conducted this administrative review in accordance with section 751 of the Act.

Scope of Review

The product covered by this review is steel wire rope. Steel wire rope encompasses ropes, cables, and cordage of iron or carbon steel, other than stranded wire, not fitted with fittings or made up into articles, and not made up of brass-plated wire. Imports of these products are currently classifiable under the following Harmonized Tariff Schedule of the United States (HTSUS) subheadings: 7312.10.9030, 7312.10.9060, and 7312.10.9090. Excluded from this order is stainless steel wire rope, *i.e.*, ropes, cables and cordage other than stranded wire, of stainless steel, not fitted with fittings or made up into articles, which is classifiable under HTSUS subheading 7312.10.6000. Although HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this order is dispositive.

Partial Rescission

As noted in the *Preliminary Results*, between April and August 1998, Dae Heung Industrial (Dae Heung), Dae Kyung Metal (Dae Kyung), Korea Sangsa, Myung Jin, and TSK Korea informed the Department that they had no shipments of the subject merchandise to the United States during the period of review (POR), *i.e.*, March 1, 1997, through February 28, 1998. In addition, information on the record shows that Boo Kook, Hanboo Wire Rope (Hanboo), Seo Hae Industrial (Seo Hae), and Seo Jin were no longer in operation and that, with the exception of Seo Hae, they did not receive our questionnaire. Using information from the Customs Service, we have confirmed that none of these companies had shipments of subject merchandise to the United States during the POR. Therefore, in accordance with section 351.213(d)(3) of the Department's regulations and consistent with Departmental practice, we are rescinding our review of Boo Kook, Dae Heung, Dae Kyung, Hanboo, Korea Sangsa, Myung Jin, Seo Hae, Seo Jin and TSK Korea for this POR. *See, e.g., Certain Welded Carbon Steel Pipe and Tube from Turkey: Final Results and Partial Rescission of Antidumping Administrative Review*, 63 FR 35191 (June 29, 1998) and *Certain Fresh Cut Flowers From Colombia; Final Results and Partial Rescission of Antidumping*

Duty Administrative Review, 62 FR 53287, 53288 (October 14, 1997).

Use of Facts Available

In the preliminary results of this review, we determined, in accordance with section 776(a) of the Act, that the use of facts available is appropriate for Dong-Il Steel (Dong Il), Dong Young, Jinyang Wire Rope (Jinyang), Kwangshin Rope, Yeonsin Metal (Yeonsin), and Sungsan Special Steel Processing (Sungsan), since they did not respond to our antidumping questionnaire. None of these parties commented on the preliminary results, nor have any arguments been presented which would cause us to reconsider the appropriateness of assigning margins based on facts available in the final results.

Over the course of this proceeding, the Department has faced a pattern of continuous non-compliance on the part of a number of uncooperative respondents [1] that received facts available. In this review, we continue to face a pattern of non-compliance by a number of non-responding companies. Therefore, we have concluded that the magnitude of the rate in place for the three prior reviews, as well as the rate applied for the preliminary results in this review, does not offer the adequate incentive to induce the respondents to cooperate in the proceeding. Moreover, if and when an interested party requests a review of Korean steel wire rope companies not previously reviewed, the Department needs to have in place a potential facts available rate that is sufficiently adverse to induce the cooperation of these companies.

The *Statement of Administrative Action (SAA)* recognizes the importance of facts available as an investigative tool in antidumping duty proceedings. The Department's potential use of facts available provides the only incentive to foreign exporters and producers to respond to the Department's questionnaires. *See SAA* at 868. Section 776(b) of the Act states that the Department may draw an adverse inference where the party has not acted to the best of its ability to comply with the requests for necessary information. The Department applies adverse inferences to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully. One factor the Department considers in applying facts available is the extent to which a party may benefit from its own lack of participation. *See SAA* at 870.

In the 1996/1997 review, we invited interested parties to supply specific data that the Department could consider in the event that we chose to establish a facts available rate that would be more appropriate to that segment of the proceeding. In response to this request for information, the petitioner, in its case brief, requested that we use the simple average of the dumping margins from the petition as adverse facts available (yielding a margin of 136.72 percent). The respondents did not comment on this issue.

As we did in the 1996/1997 administrative review, in order to fully consider this issue, we placed a copy of the original petition and the amendment to the petition from the investigation on the record of this administrative review (1997/1998 administrative review). After further analysis of the petition, and in light of the non-compliance by five companies, we again re-examined the bases for the initial dumping allegation. Based on this re-examination, we continue to find that the price-to-price sales used in the petition calculation are appropriate for use as adverse facts available in this review and have increased the adverse facts available rate from 13.79 percent to 136.72 percent as described in *Comment 1.*

Section 776(c) of the Act provides that the Department shall in using facts available, to the extent practicable, corroborate secondary information from independent sources reasonably at its disposal. The *SAA* provides that "corroborate" means that the Department will satisfy itself that the secondary information to be used has probative value. *See* H.R. Doc. 316, Vol. 1, 103d Cong., 2d sess. 870 (1994). To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information to be used. However, where corroboration is not practicable, the Department may use uncorroborated information. *See Notice of Final Results and Partial Rescission of Antidumping Duty Administrative Review: Certain Pasta from Turkey,* 63 FR 68429 (December 11, 1998).

To corroborate the export prices in the petition, we looked at the Customs Service import statistics from 1991 for the HTSUS subheadings 7312.10.9030, 7312.10.9060, and 7312.10.9090. However, we concluded that the Customs Service data was not comparable to the prices in the petition, because the Customs Service data encompasses a wide range of steel wire rope products, while the sales in the petition consist of a small number of specific product types. With regard to the normal values used in the petition's margin calculation, we were provided with no useful information by interested parties, and are aware of no other independent sources of information which would assist us in this aspect of the corroboration process.

Notwithstanding the difficulties encountered in our attempts to corroborate the information from the petition, the Department has no evidence that suggests that the margins in the petition do not have probative value. Accordingly, we determine that the information from the petition is still the most appropriate basis for facts available. We note that the *SAA* specifically states that "the fact that corroboration may not be practicable in a given circumstance will not prevent the agencies from applying an adverse inference under subsection (b)." See *SAA* at 870. Moreover, the *SAA* emphasizes that the Department need not prove that the facts available are the best alternative information. *See SAA* at 869.

In this instance, as discussed below in *Comment 1,* we have no reason to believe that the application of the average petition margin for Korean steel wire rope as the adverse facts available rate is inappropriate. Therefore, for the final results, we are assigning Dong-Il, Dong Young, Jinyang, Sungsan, and Yeonsin the rate of 136.72 percent as adverse facts available. In addition, as discussed in *Comment 2,* we are continuing to assign Kwangshin Rope a rate of 1.51 percent based on the all others rate as a non-adverse facts available rate. *See also* the Department's April 7, 1999, Memorandum from John Brinkmann to Richard W. Moreland regarding application of facts available.

Comparisons

To determine whether sales of steel wire rope to the United States were made at less than normal value for Kumho, we compared the export price to the normal value. We made no changes in the margin calculation from the preliminary results of this review.

Analysis of Comments Received

Comment 1: Application of Adverse Facts Available to Non-responding Companies

The petitioner argues that the adverse facts available rate of 13.79 percent established in the final results of the 1996/1997 review (*see Steel Wire Rope from the Republic of Korea; Final Results of Antidumping Duty*

[1] We have applied facts available to seven companies in the 1992/1994 review, five companies in the 1994/1995 review, three companies in the 1995/1996 review, four companies in the 1996/1997 review, and six companies in this review (1997/1998).

Administrative Review and Revocation in Part of Antidumping Duty Order, 63 FR 17986, 17987 (April 13, 1998)) and applied to uncooperative respondents in the preliminary results of this review should be adjusted to fully reflect the dumping margins calculated in the antidumping petition (*see Preliminary Results*). The petitioner explains that when the Department calculated the current adverse facts available rate for the final results of the 1996/1997 review, the Department used an average of the rates in the petition, after excluding certain rates that pertained to wire rope manufactured to Military Specification (Mil Spec.). The petitioner argues that a respondent "should not find itself in a better position as a result of its noncompliance than it would have had it provided the Department with complete, accurate and timely information," citing *Silicon Metal From Argentina: Final Results of Antidumping Duty Administrative Review*, 58 FR 65336, 65338 (December 14, 1993) and *Olympic Adhesives, Inc. v. United States*, 899 F.2d 1565, 1571–72 (Fed. Cir. 1990), (explaining that parties should not be allowed to control the magnitude of the dumping margin by selectively providing the Department with information).

The petitioner asserts that the Department should include all the rates in the petition for the adverse facts available calculation for the current review. According to the petitioner, some of the sales excluded by the Department were not labeled as wire rope manufactured to Mil Spec. Additionally, the petitioner argues that the Department should include the sales labeled as Mil Spec., because these sales were not necessarily "certified" as Mil Spec. The petitioner asserts that, regardless of whether the manufacturers were certified to sell Mil Spec. wire rope in the United States, Kumho in this review, and two other companies in prior reviews, sold products manufactured to Mil Spec.

DOC Position

We agree with the petitioner that we should base the calculation of the adverse facts available margin on the average of all rates provided in the petition. The highest rate ever calculated for this case was 1.51 percent. Thus during the investigation and until the 1996/1997 review, the adverse facts available margin was 1.51 percent. Based upon a history of non-compliance by respondents in prior reviews, we determined in the 1996/1997 review that the rate was not sufficiently adverse to encourage compliance. *See Steel Wire Rope from the Republic of Korea; Final Results of Antidumping Duty Administrative Review and Revocation in Part of Antidumping Duty Order*, 63 FR 17986 (April 13, 1998), *Hot-Rolled Flat-Rolled Carbon Quality Steel Products from Japan*, 64 FR 8291 (February 19, 1999) and *Hot-Rolled Flat-Rolled Carbon Quality Steel Products from Brazil*, 64 FR 8299 (February 19, 1999). Therefore, we looked to the petition for information to support an adverse facts available rate that would encourage respondents to participate in future reviews.

When reviewing the petition prices and the evidence in the record for the 1996/97 review, we determined that Korean producers manufacture steel wire rope which differs significantly from steel wire rope built to the more demanding Mil Spec. Since information in the petition indicated that some of the price-to-price comparisons involved Mil Spec. sales, we excluded those sales from our calculation. This determination was consistent with Department's practice of excluding from the calculation of the adverse facts available rate a rate which is unrepresentative of the industry sales (*see Fresh Cut Flowers from Mexico; Final Results of Antidumping Duty Administrative Review*, 61 FR 40604, 40606 (August 5, 1996)).

As explained in the *Use of Facts Available* section above, application of adverse facts available in this administrative review is appropriate for Dong-Il, Dong Young, Jinyang, Yeonsin, and Sungsan, since they received and did not respond to our antidumping questionnaire. Furthermore, the record indicates that these companies are still operating. Therefore, based upon the information currently in the record and the continued non-compliance of respondents in this proceeding, it appears that the rate applied in the 1996/1997 review is no longer the appropriate rate for the facts available margin. First, evidence in the current review indicates that, regardless of whether Korean steel wire rope manufacturers were certified to sell Mil Spec. steel wire rope in the United States, at least one company did in fact export to the United States merchandise produced to Mil Spec. in significant quantities during the POR. Thus, there is no indication that Mil Spec. products are unrepresentative of industry sales from Korea. Second, based upon the continued non-compliance of respondents in this proceeding, we find that the margin of 13.79 percent is not sufficiently adverse to encourage compliance.

As we have determined that the petition provides an appropriate basis for adverse facts available data, and that we have no further indication that any of the price-to-price comparisons in the petition are unrepresentative, we find that it is proper to rely on all 52 transactions set forth in the petition as the basis for adverse facts available. We have determined, based upon the evidence on the record of this current review, that a simple average of all 52 rates in the petition would be sufficiently adverse to encourage compliance by exporters, and not unrepresentative of industry sales. The revised rate used as adverse facts available for the final results is 136.72 percent.

Comment 2: Application of Facts Available to a Closed Company

The petitioner argues that Kwangshin Rope failed to cooperate and should be subject to an adverse facts available rate to the same extent as the other uncooperative respondents (*see Comment 1*). Even though Kwangshin Rope was closed, the petitioner asserts that some or all of the required information for a response to the Department's questionnaire is still in possession of a successor, receiver or holding company. Thus, the petitioner states that Kwangshin Rope did not act to the best of its ability to comply with the Department's request for information (*citing Antidumping Duties; Countervailing Duties, Final Rule*, 62 FR 27296, 27340 (May 19, 1997)).

The petitioner further asserts that it is not clear whether there was an absence of bad faith on the part of Kwangshin Rope and that the Department has clear authority to make an adverse inference. The petitioner argues that there is clear and compelling logic in support of an adverse inferences since the deposit and payment of antidumping duties are the responsibility of the U.S. importer. In addition, the petitioner states that Kwangshin Rope was an uncooperative respondent in the 1992/1994 and 1994/1995 administrative reviews.

DOC Position

We disagree that Kwangshin Rope failed to cooperate and should be given an adverse facts available rate. Section 776(b) of the Act states that an adverse inference is applied only when "an interested party has failed to cooperate by not acting to the best of its ability." Thus, we do not generally apply adverse facts available where the record indicates that the respondent did not receive our questionnaire. *See, e.g., Notice of Preliminary Determination of Sales at Less Than Fair Value: Static*

Random Access Memory Semiconductors from Taiwan (SRAMS from Taiwan) 62 FR 51442, (Oct. 1, 1997), decision confirmed in *Final Determination of SRAMS from Taiwan*, and *Queen's Flowers de Columbia* v. *United States*, Slip Op. 97–120 (CIT Aug. 25, 1997) (the use of adverse "best information available" was unwarranted where the respondent did not receive a questionnaire the Department sent to an incorrect address). In this review, Kwangshin Rope's questionnaire was returned because the company was closed. Therefore, in accordance with our practice, it would be inappropriate to assign an adverse facts available rate to a company which is not capable of rebutting an inference of adverse facts available. For the final results, we have continued to apply the all others rate as facts available for Kwangshin Rope.

Final Results of Review

We determine the following margins exist for the period March 1, 1997, through February 28, 1998:

Manufacturer/exporter	Margin (percent)
Dong–Il Steel Manufacturing Co., Ltd.	*136.72
Dong Young	*136.72
Jinyang Wire Rope, Inc.	*136.72
Kumho Wire Rope Mfg. Co., Ltd.	0.25
Kwangshin Rope	**1.51
Sungsan Special Steel Processing	*136.72
Yeonsin Metal	*136.72

*Adverse facts available rate based on information provided in petition

**Non-adverse facts available rate based on the all others rate.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212 (b)(1), we have calculated importer-specific assessment rates by dividing the dumping margin found on the subject merchandise examined by the entered value of such merchandise. We will direct the Customs Service to assess antidumping duties by applying the assessment rate to the entered value of the merchandise entered during the POR, except where the assessment rate is de minimis (*see* 19 CFR 351.106(c)(2)). The Department will issue appraisement instructions on each exporter directly to the Customs Service.

Furthermore, the following deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Act: (1) The cash deposit rates for the other reviewed companies will be those rates established above (except that, if the rate for a firm is *de minimis, i.e.*, less than 0.5 percent, a cash deposit of zero will be required for that firm); (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous review or the LTFV investigation, the cash deposit rate will be 1.51 percent, the "all others" rate established in the LTFV investigation (58 FR 11029).

These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a final reminder to importers of their responsibility to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective orders (APOs) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d)(1). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation. This determination is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: April 7, 1999.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–9195 Filed 4–12–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–549–502]

Certain Welded Carbon Steel Pipes and Tubes From Thailand: Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Preliminary Results of Antidumping Duty Administrative Review: Certain Welded Carbon Steel Pipes and Tubes From Thailand.

SUMMARY: In response to requests by two importers, Ferro Union Inc. ("Ferro Union"), and ASOMA Corp. ("ASOMA"), and four domestic producers, Allied Tube and Conduit Corporation, Sawhill Tubular Division—Armco, Inc., Wheatland Tube Company, and Laclede Steel Company (collectively, the "domestic producers" or "petitioners"), the Department of Commerce ("the Department") is conducting an administrative review of the antidumping duty order on certain welded carbon steel pipes and tubes from Thailand. This review covers Saha Thai Steel Pipe Co., Ltd. ("Saha Thai"), a Thai manufacturer and its affiliated exporter of the subject merchandise to the United States. The period of review (POR) is March 1, 1997 through February 28, 1998.

We have preliminarily determined that the respondent sold subject merchandise at less than normal value ("NV") during the POR. If these preliminary results are adopted in our final results, we will instruct U.S. Customs to assess antidumping duties based on the differences between the export price and NV.

Interested parties are invited to comment on these preliminary results. Parties who submit argument in this proceeding should also submit with the argument (1) a statement of the issue, and (2) a brief summary of the argument.

EFFECTIVE DATE: April 13, 1999.

FOR FURTHER INFORMATION CONTACT: John Totaro, AD/CVD Enforcement Group III, Office VII, Room 7866, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–1374.

Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995,

the effective date of the amendments made to the Tariff Act of 1930 ("the Act") by the Uruguay Round Agreements Act ("URAA"). In addition, unless otherwise indicated, all citations to the Department's regulations are to those codified at 19 CFR Part 351 (1998).

SUPPLEMENTARY INFORMATION:

Background

On March 11, 1986, the Department published in the **Federal Register** an antidumping duty order on welded carbon steel pipes and tubes from Thailand (51 FR 8341). On March 11, 1998, the Department published a notice of opportunity to request an administrative review of this order covering the period March 1, 1997 through February 28, 1998 (63 FR 11868).

Timely requests for an administrative review of the antidumping order with respect to sales by Saha Thai during the POR were filed by Ferro Union and ASOMA, and by domestic producers. The Department published a notice of initiation of this antidumping duty administrative review on April 24, 1998 (63 FR 20378).

Because the Department determined that it was not practicable to complete this review within statutory time limits, on November 27, 1998, we published in the **Federal Register** our notice of extension of time limits for this review (63 FR 65573). As a result, we extended the deadline for these preliminary results. The deadline for the final results will continue to be 120 days after publication of these preliminary results.

Scope of the Review

The products covered by this administrative review are certain welded carbon steel pipes and tubes from Thailand. The subject merchandise has an outside diameter of 0.375 inches or more, but not exceeding 16 inches. These products, which are commonly referred to in the industry as "standard pipe" or "structural tubing," are hereinafter designated as "pipe and tube." The merchandise is classifiable under the Harmonized Tariff Schedule (HTS) item numbers 7306.30.1000, 7306.30.5025, 7306.30.5032, 7306.30.5040, 7306.30.5055, 7306.30.5085 and 7306.30.5090. Although the HTS subheadings are provided for convenience and Customs purposes, our written description of the scope of the order is dispositive. This review covers sales by Saha Thai during the period March 1, 1997 through February 28, 1998.

Verification

As provided in section 782(i) of the Act, we verified sales information provided by the respondent Saha Thai from January 25 through January 29, 1999, using standard verification procedures, including examination of relevant financial records and analysis of original documentation used by Saha Thai to prepare responses to requests for information from the Department. Our verification results are outlined in the public version of the verification report (Memorandum to the File from Steve Bezirganian and Marlene Hewitt, February 24, 1999) ("Saha Thai Verification Report").

Tolling Operations

Saha Thai claimed that, during the POR, it converted coil into pipe pursuant to a tolling arrangement with a home market trading company. However, sales of the alleged tolled merchandise are not subject to this review because entries did not occur during the POR. *See* Memorandum to the File from John Totaro, March 31, 1999.

Date of Sale

As in previous segments of this proceeding, Saha Thai reported invoice date as the date of sale. We examined whether invoice date was the appropriate date of sale, i.e., whether the material terms of sale were established on an earlier date. During verification, Saha Thai officials reported that in fact price and quantity were established at the date of the purchase order. We examined the record evidence and found that Saha Thai's statement at verification is not entirely supported by the record. Given the inconclusive record evidence and the potential problems associated with changing date of sale at this juncture in the proceeding, we find that invoice date is the appropriate date of sale. *See* Preamble to the Final Regulations, 62 FR 27296, 27348–50 (May 19, 1997).

Affiliation and Collapsing Determinations

In the 1996–1997 administrative review, we found Saha Thai affiliated under section 771(33)(F) of the Act with Thai Tube Co., Ltd. ("Thai Tube"), Thai Hong Steel Pipe Import Export Co., Ltd ("Thai Hong") and the Siam Steel Group, a member of which, Siam Matsushita Steel Co., Ltd., is a producer of PVC lined and coated steel pipes. We examined whether it was appropriate to collapse each of these affiliated producers with Saha Thai for margin calculation purposes, in accordance with 19 CFR 351.401(f). We found insufficient evidence to collapse Saha Thai with any of these affiliated producers. No new factual information has been presented to warrant changing these previous findings for the instant review. Saha Thai did present certain new factual information regarding Thai Tube and Thai Hong, but it had no impact on our findings. *See* Memorandum to the File from John Totaro, (March 31, 1999) ("Thai Tube/ Thai Hong Memorandum").

Also in the previous administrative review, the Department found that Saha Thai was affiliated under section 771(33)(F) of the Act with three resellers of the foreign like product. The facts on the record in the instant review relating to this affiliation determination are unchanged from those on the record of the previous review, and support our finding of affiliation under section 771(33)(F) of the Act between Saha Thai and these three resellers. However, because Saha Thai's sales to these resellers accounted for less than five percent of Saha Thai's total home market sales, the Department did not require Saha Thai to report the downstream sales by these resellers. *See* Memorandum to the File, March 31, 1999 ("Downstream Sales Memorandum").

Fair Value Comparisons

To determine whether sales of steel pipes and tubes from Thailand to the United States were made at less than normal value (NV), we compared the export price (EP) to the NV for Saha Thai as specified in the "Export Price" and "Normal Value" sections of this notice. In accordance with section 777A(d)(2), we calculated monthly weighted-average prices for NV and compared these to individual U.S. transactions.

Export Price

We classified all Saha Thai sales to United States customers as EP sales because Saha Thai is not affiliated with its U.S. distributors, which are the first purchasers in the United States. *Certain Welded Carbon Steel Pipes and Tubes From Thailand: Final Results of Antidumping Duty Administrative Review*, 61 FR 56515, 56517 (November 1, 1996). In this review, the record evidence presents no factual circumstances warranting a change from this prior analysis. Accordingly, we calculated the EP based on the price from Saha Thai to the first unaffiliated purchaser in the United States in accordance with section 772(a) of the Act. Where appropriate, in accordance with section 772(c)(2) of the Act, we made deductions from the starting price

for ocean freight to the U.S. port, foreign inland freight, foreign brokerage and handling, foreign inland insurance, and bill of lading charge. We denied Saha Thai's request for a duty drawback adjustment because we were unable to verify that the claimed adjustment accurately reflects the actual amount of duty drawback received.

Normal Value

In order to determine whether there is a sufficient volume of sales in the home market to serve as a viable basis for calculating NV, we compared the volume of Saha Thai's home market sales of the foreign like product to the volume of U.S. sales of subject merchandise, in accordance with section 773(a)(1) of the Act. Based on this comparison, we determined that the aggregate volume of Saha Thai's home market sales of the foreign like product is greater than five percent of the aggregate volume of Saha Thai's U.S. sales. Thus, we determined that Saha Thai had a viable home market during the POR. Consequently, we based NV on home market sales.

As discussed above, we found Saha Thai and its three home market resellers affiliated under section 771(33)(F) of the Act. Based on this finding, we applied the standard arm's length test to Saha Thai's sales to these affiliated resellers. However, as stated above, we did not require Saha Thai to report the resellers' downstream sales. Therefore, where Saha Thai's sales to these resellers were not made at arm's length prices, we excluded these sales from our home market normal value calculation. See Memorandum to File from Marlene Hewitt, March 31, 1999 ("Downstream Sales Memorandum").

Pursuant to section 773(b)(2)(A)(ii) of the Act, there were reasonable grounds to believe or suspect that Saha Thai had made home market sales at prices below its cost of production ("COP") in this review because the Department had disregarded sales below the COP in the 1996–1997 administrative review (i.e., the most recently completed review at the time we issued our antidumping questionnaire). As a result, the Department initiated an investigation to determine whether Saha Thai made home market sales during the POR at prices below its COP. We calculated the COP based on the sum of respondent's cost of materials and fabrication for the foreign like product, plus amounts for SG&A and packing costs, in accordance with section 773(b)(3) of the Act.

We used respondent's reported COP amounts with certain adjustments to compute weighted-average COPs during the POR. Specifically, we did not allow Saha Thai's request to amortize certain portions of its POR exchange rate losses over five years because these losses were incurred on short-term foreign currency debt for terms shorter than five years and Saha Thai booked the entire amount of these losses on its financial statements. To incorporate this change we recalculated Saha Thai's net interest expense rate, general and administrative expenses rate, and materials cost calculation. In addition, we recalculated Saha Thai's hot-rolled coil cost calculation to correct an error identified at verification.

We compared the COP figures to home market sales of the foreign like product as required under section 773(b) of the Act, in order to determine whether these sales had been made at prices below the COP. On a product-specific basis, we compared the COP to home market prices, less any applicable movement charges, discounts and credit notes.

In determining whether to disregard home market sales made at prices below the COP, we examined (1) whether, within an extended period of time, such sales were made in substantial quantities, and (2) whether such sales were made at prices which permitted the recovery of all costs within a reasonable period of time in the normal course of trade.

Pursuant to section 773(b)(2)(C) of the Act, where less than 20 percent of the respondent's sales of a given product were at prices less than the COP, we did not disregard any below-cost sales of that product because we determined that the below-cost sales were not made in "substantial quantities." Where 20 percent or more of the respondent's sales of a given product during the POR were at prices less than the COP, we determined such sales to have been made in substantial quantities within an extended period of time in accordance with section 773(b)(1)(A) of the Act. In such cases, we also determined that such sales were not made at prices which would permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(1)(B) of the Act. Therefore, we disregarded the below-cost sales.

Where appropriate, we adjusted Saha Thai's home market sales for discounts, credit expenses, inland freight, inland insurance, and warehousing. We also adjusted the home market sales made by reseller Company B for credit notes. In addition, in accordance with section 773(a)(6), we deducted home market packing costs and added U.S. packing costs.

In accordance with section 773(e) of the Act, we calculated CV based on the sum of Saha Thai's cost of materials, fabrication, SG&A, profit, and U.S. packing costs. We made certain adjustments to CV which are detailed in the COP section, above. In accordance with section 773(e)(2)(A) of the Act, we based SG&A expenses and profit on the amounts incurred and realized by Saha Thai in connection with the production and sale of the foreign like product in the ordinary course of trade, for consumption in the foreign country. For selling expenses, we used the average of the selling expenses reported for home market sales that passed the cost test, weighted by the total quantity of those sales. For actual profit, we first calculated the difference between the home market sales value and home market COP, and divided the difference by the home market COP. We then multiplied this percentage by the COP for each U.S. model to derive an actual profit.

Level of Trade

As set forth in section 773(a)(1)(B)(i) of the Act and in the SAA, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade as the EP or the CEP. The NV level of trade is that of the starting-price sales in the comparison market or, when NV is based on CV, that of the sales from which we derive selling, general and administrative expenses and profit. For EP, the U.S. level of trade is the level of the starting-price sale, which is usually from exporter to importer.

To determine whether NV sales are at a different level of trade than EP or CEP, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison-market sales are at a different level of trade, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison-market sales at the level of trade of the export transaction, we make a level of trade adjustment under section 773(a)(7)(A) of the Act. *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa*, 62 FR 61731 (November 19, 1997).

For the U.S. market, Saha Thai reported only one level of trade for its EP sales. This single level of trade represents large volume sales to unaffiliated trading companies/distributors in the U.S. In the home market as well, Saha Thai claimed that it made sales at one level of trade. These sales were made to unaffiliated trading

companies and distributors (made at the same level of trade as U.S. sales). There are no differences in the selling functions Saha Thai performs for these customers in the home market or in the U.S. Therefore, we conclude that EP and NV sales are made at the same LOT and no adjustment is warranted.

Currency Conversion

We made currency conversions into U.S. dollars in accordance with section 773A of the Act, based on exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank. Section 773A(a) of the Act directs the Department to use a daily exchange rate in order to convert foreign currencies into U.S. dollars unless the daily rate involves a fluctuation. It is the Department's practice to find that a fluctuation exists when the daily exchange rate differs from the benchmark rate by 2.25 percent. The benchmark is defined as the moving average of rates for the past 40 business days. When we determine a fluctuation to have existed, we substitute the benchmark rate for the daily rate, in accordance with established practice. *See* Change in Policy Regarding Currency Conversions, 61 FR 9434 (March 8, 1996).

Our preliminary analysis of Federal Reserve dollar-baht exchange rate data shows that the value of the Thai baht in relation to the U.S. dollar fell on July 2, 1997 by more than 18 percent from the previous day and did not rebound significantly in a short time. This decline was many times more severe than any single-day decline during several years prior to that date. Had the baht rebounded quickly enough to recover all or almost all of the loss, the Department might have been inclined to view this decline as nothing more than a momentary drop, despite the magnitude of that drop. However, there was no significant rebound. Therefore, we have preliminarily determined that the decline in the baht from July 1, 1997 to July 2, 1997, was of such a magnitude that the dollar-baht exchange rate cannot reasonably be viewed as having simply fluctuated at this time, i.e., as having experienced only a momentary drop in value, relative to the normal benchmark. Therefore, for exchange rates between July 2 and August 27, 1997, the Department relied on the standard exchange rate model, but used as the benchmark rate a (stationary) average of the daily rates over this period. In this manner we used a post-precipitous drop benchmark, but at the same time avoided undue daily fluctuations in exchange rates. For the period after August 27, 1997, we used the standard (rolling 40-day average) benchmark.

Preliminary Results of the Review

We preliminarily determine that the following weighted-average dumping margins exist:

Manufacturer/exporter	Period	Margin (percent)
Saha Thai	3/1/97–2/28/98	12.83

Parties to the proceeding may request disclosure within five days of the date of publication of this notice. Any interested party may request a hearing within 30 days of publication. Any hearing, if requested, will be held 37 days after the date of publication or the first business day thereafter. Case briefs and/or other written comments from interested parties may be submitted not later than 30 days after the date of publication. Rebuttal briefs and rebuttals to written comments, limited to issues raised in those comments, may be filed not later than 35 days after the date of publication of this notice. The Department will publish the final results of this administrative review, which will include the results of its analysis of issues raised in any such comments, within 120 days from the date of publication of these preliminary results.

The Department shall determine, and the U.S. Customs Service shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b), we calculated importer-specific ad valorem duty assessment rates for the class or kind of merchandise based on the ratio of the total amount of antidumping duties calculated for the examined sales made during the POR to the total customs value of the sales used to calculate those duties. This rate will be assessed uniformly on all entries that particular importer made during the POR. Upon completion of this review, the Department will issue appraisement instructions directly to the Customs Service.

Furthermore, the following deposit rates will be effective upon the publication of the final results of these administrative reviews for all shipments of circular welded carbon steel pipes and tubes from Thailand entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by Section 751(a)(2)(c) of the Act: (1) the cash deposit rate for the reviewed company will be that established in the final results of this review; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; (4) the cash deposit rate for all other manufacturers or exporters will continue to be 15.67 percent, the "All Others" rate made effective by the LTFV investigation. These requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

These preliminary results of review are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: March 31, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99–9193 Filed 4–12–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–423–806]

Cut-to-Length Carbon Steel Plate From Belgium; Amended Final Results of Countervailing Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Amended Final Results of Countervailing Duty Administrative Review.

FOR FURTHER INFORMATION CONTACT: Gayle Longest or Eva Temkin, Group II, Office of CVD/AD Enforcement VI, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–2786.

SUMMARY: On March 16, 1999, the Department of Commerce (the Department) published in the **Federal Register** its final results of administrative review of the countervailing duty order on cut-to-length carbon steel plate from Belgium for the period January 1, 1996 through December 31, 1996 (64 FR 12982) (*Final Results*). Subsequent to the publication of the *Final Results*, we received comments from the petitioners alleging various ministerial errors. After analyzing the comments submitted, we are amending our final results to correct certain ministerial errors. Based on the correction of these ministerial errors, we have changed the net subsidy for Fabriqure de Fer de Charleroi, S.A. (Fafer). We will instruct the U.S. Customs Service to assess countervailing duties as detailed in the *Final Results of Review* section of this notice.

EFFECTIVE DATE: April 13, 1999.

SUPPLEMENTARY INFORMATION:

Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act (URAA) effective January 1, 1995 (the Act). In addition, all citations to the Department's regulations reference 19 CFR Part 351 (1998).

Background

On March 16, 1999, the Department published the final results of its administrative review of the countervailing duty order on cut-to-length carbon steel plate from Belgium for the period January 1, 1996 through December 31, 1996 (64 FR 12982). After publication of our *Final Results*, we received timely allegations from petitioners that we had made ministerial errors in calculating the final results. We also received timely rebuttal comments from the respondent.

A summary of the allegation and rebuttal comments along with the Department's response is included below. We corrected our calculations, where we agree that we made ministerial errors, in accordance with section 751(h) of the Act.

Clerical Error Allegation

Allegation: Petitioners allege that we inadvertently allocated the two grants received by Fafer's affiliate, Parachevement et Finitions de Metaux (PFM), over the average useful life (AUL) of Fafer's assets rather than properly expensing them in the year of receipt. Petitioners cite the *General Issues Appendix* appended to *Final Affirmative Countervailing Duty Determination: Certain Steel Products From Austria* (*GIA*), 58 FR 37217, 37226 (July 9, 1993) (proposed 19 C.F.R. section 355.49(a)(3)(i)(A)) and state that under the Department's standard grant methodology, the sum of grants provided under a particular domestic subsidy program in a given year are expensed in the year in which the grant was provided when this sum is less than 0.50 percent of the firm's total sales. Petitioners further cite the Department's comments on the *Notice of Proposed Rulemaking and Request for Public Comments* (*1989 Proposed Regulations*), 54 FR 37217, which state that the "purpose of this rule is to avoid any anomalies caused by the interaction of the Department's allocation formula and the *de minimis* rule" * * * *See* 54 FR 23376 (May 31, 1989).

Petitioners assert that PFM received two grants under the 1970 Law in 1996 and that these benefits are 0.425 percent of Fafer's domestic sales in 1996. Therefore, petitioners contend that these grants should be expensed in the year of receipt.

In rebuttal, the respondent, Fabrique de Fer de Charleroi (Fafer), argues that the issues raised by petitioners in its allegation are not a ministerial matter, but rather a methodological approach to calculations by the Department. The respondent cites the Department's regulations at 19 C.F.R. 351.224, which define a ministerial error as, "an error in addition, subtraction, or other arithmetic function, clerical error resulting from inaccurate copying, duplication, or the like, and any other similar type of unintentional error which the Secretary considers ministerial." The respondent asserts that the Department used its discretion in the final results and correctly calculated the benefit by expensing a portion of the benefits in this case rather than expensing the entire benefit during the period of review. Fafer contends that the Department chose this calculation methodology to avoid significant substantive anomalies that would result from expensing the entire benefit during the 1996 review period, a distortively high countervailing duty rate.

The respondent cites *Final Rule; Countervailing Duties*, 63 FR 65358 (November 25, 1998) (*Final Rule*) which states that the Department will normally expense grant amounts for a program in the year that they were given, if those amounts are less than 0.5 percent of the total value of sales for that year. The respondent maintains that the 0.5 test is an exception to the general rule of allocating non-recurring grants which is applied to reduce the administrative burden in cases where the impact is minuscule. The respondent asserts that the Department has the discretion to apply the 0.5 test on a case by case basis and in this case has chosen to use its general practice of allocating non-recurring grants over the AUL instead. The respondent argues that there is no administrative burden in this case because the calculations have been completed. Moreover, to change the allocation methodology would have a significant impact on Fafer's countervailing duty rate which would no longer be *de minimis* and would result in a duty being assessed for the POR.

In response to petitioners' assertion that the purpose of using the 0.5 percent test is to avoid anomalies between the allocation formula and the *de minimis* rule, the respondent argues that the only anomaly created would be from expensing these grants in a given year which would result in an affirmative countervailing duty rate rather than a *de minimis* one. The respondent argues that this is not the correct application of the 0.5 percent test exception for the allocation of grants. The respondent contends that the Department chose the calculation methodology which had no distortive effects.

Furthermore, the respondent argues that PFM's benefits should not be expensed in total during the review period, because, notwithstanding petitioners' claim that PFM's grants benefitted the subject merchandise, PFM did not in any way affect merchandise attributed to Fafer that was imported into the United States. Therefore, if PFM's benefits are attributed to Fafer, respondent argues that they should be calculated on the same basis as the calculations applied to Fafer.

Department's Position: We agree with petitioners that the Department made a ministerial error and should have expensed PFM's grants in the 1996 review period. We have changed the net subsidy rate accordingly. In the *Final Results*, the Department stated that it "employed the standard grant allocation methodology" as explained in the *GIA*, with respect to the grants received by S.A. Charleroi Deroulage (CD) and PFM. *See* 64 FR at 12984, *citing GIA*. However, inconsistent with the *GIA* and our application of the standard grant methodology throughout this proceeding, we inadvertently failed to apply the 0.50 percent test to the CD and PFM grants, and, consequently, allocated these grants over Fafer's AUL. Therefore, to correct this ministerial error, we applied this test and found

that the 1993 and 1996 grants were less than 0.50 percent of total domestic sales in the year that they were given. As a result, we have expensed the sum of PFM's grants provided in 1996 and included the total benefit of 0.42 percent *ad valorem* in the net subsidy rate for the 1996 review period. Moreover, we have determined that the grant provided in 1993 to Fafer's other affiliate, CD, would have been expensed in the 1993 review period and have not included CD's 1993 benefit in the net subsidy rate for the 1996 POR.

Amended Final Results of Review

As a result of the amended net subsidy calculations, we determine the net subsidy for Fafer to be 0.69 percent *ad valorem* for the period January 1, 1996 through December 31, 1996.

We will instruct the U.S. Customs Service (Customs) to assess countervailing duties of 0.69 percent *ad valorem* on shipments of the subject merchandise from Fafer exported on or after January 1, 1996, and on or before December 31, 1996. The Department will also instruct Customs to collect cash deposits of estimated countervailing duties of 0.69 percent of the f.o.b. invoice price on all shipments of the subject merchandise from Fafer as amended by this determination. The amended deposit requirements are effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice and shall remain in effect until publication of the final results of the next administrative review.

Because the URAA replaced the general rule in favor of a country-wide rate with a general rule in favor of individual rates for investigated and reviewed companies, the procedures for establishing countervailing duty rates, including those for non-reviewed companies, are now essentially the same as those in antidumping cases, except as provided for in section 777A(e)(2)(B) of the Act. The requested review will normally cover only those companies specifically named. *See* 19 CFR 351.213(b). Pursuant to 19 CFR section 351.212(c), for all companies for which a review was not requested, duties must be assessed at the cash deposit rate, and cash deposits must continue to be collected at the rate previously ordered. As such, the countervailing duty cash deposit rate applicable to a company can no longer change, except pursuant to a request for a review of that company. *See Federal-Mogul Corporation and The Torrington Company* v. *United States*, 822 F.Supp. 782 (CIT 1993) and *Floral Trade Council* v. *United States*, 822 F.Supp. 766 (CIT 1993). Therefore, the cash deposit rates for all companies except those covered by this review will be unchanged by the results of this amended final results of administrative review.

We will instruct Customs to continue to collect cash deposits for non-reviewed companies at the most recent company-specific or country-wide rate applicable to the company. Accordingly, the cash deposit rates that will be applied to non-reviewed companies covered by this order will be the rate for that company established in the most recently completed administrative proceeding conducted under the URAA. If such a review has not been conducted, the rate established in the most recently completed administrative proceeding pursuant to the statutory provisions that were in effect prior to the URAA amendments is applicable. *See Final Affirmative Countervailing Duty Determination: Certain Steel Products From Belgium* 58 FR 37273. These rates shall apply to all non-reviewed companies until a review of a company assigned these rates is requested. In addition, for the period January 1, 1996 through December 31, 1996, the assessment rates applicable to all non-reviewed companies covered by this order are the cash deposit rates in effect at the time of entry.

This notice serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR section 355.34(d). Timely written notification of return/ destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

We are issuing and publishing this determination in accordance with sections 751(a)(1) and 777(i)(1) of the Act (19 U.S.C. 1675(a)(1) and 19 U.S.C. 1677f(i)(7)).

Dated: April 6, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99–9194 Filed 4–12–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 040699B]

Western Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Western Pacific Fishery Management Council (Council) will hold a meeting of its Precious Corals Plan Team and Advisory Panel.

DATES: The meeting will be held on May 3, 1999, from 2:00 p.m. to 4:30 p.m.

ADDRESSES: The meeting will be held at NMFS Honolulu Laboratory, 2570 Dole St., Rm. 112, Honolulu, HI 96822–2396, telephone: 808–983–5300.

Council address: Western Pacific Fishery Management Council, 1164 Bishop St., Suite 1400, Honolulu, HI 96813.

FOR FURTHER INFORMATION CONTACT: Kitty M. Simonds, Executive Director; telephone: 808–522–8220.

SUPPLEMENTARY INFORMATION: Members of the Precious Corals Plan Team and Advisory Panel will discuss possible adjustments to established management measures in the Council's precious corals fishery management plan. These adjustments include suspending the harvest quota for live gold coral at the Makapu'u Bed; redefining the term "live coral"; prohibiting the harvest of black coral unless it has attained a minimum height of 48 inches or a stem diameter of 1 inch; applying size limits to harvested live coral only; prohibiting the use of non-selective gear; prohibiting the harvest of pink coral from any established or conditional bed unless it has attained a minimum height of 10 inches; revising the boundaries of Brooks Bank; increasing the annual harvest quota for live pink coral at Brooks Bank; suspending the harvest quota for live gold coral at Brooks Bank; classifying the FFS-Gold Pinnacles Bed as a conditional bed; setting the annual harvest quota for all types of live precious coral at the FFS-Gold Pinnacles at zero; and revising reporting and record keeping requirements.

Although other issues not contained in this agenda may come before these groups for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kitty M. Simonds, 808–522–8220 (voice) or 808–522–8226 (fax), at least 5 days prior to meeting date.

Dated: April 7, 1999.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–9196 Filed 4–12–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

[Docket Number: 990302059–9059–02]

RIN: 0660–ZA07

Public Telecommunications Facilities Program—Closing Date; Revision

AGENCY: National Telecommunications and Information Administration, Commerce.

ACTION: Notice of Availability of Funds; Revision.

SUMMARY: The National Telecommunications and Information Administration (NTIA) published a notice in the **Federal Register** March 16, 1999 announcing the Availability of Funds and a Closing Date for receipt of applications for applications for the Pan-Pacific Education and Communications Experiments by Satellite (PEACESAT) Program. This notice contains revised language.

FOR FURTHER INFORMATION CONTACT: William Cooperman, Acting Director, Public Telecommunications Facilities Program, telephone: (202) 482–5802; fax: (202) 482–2156.

Revision

1. In the **Federal Register** of March 16, 1999, in FR Doc. 99–6390, on page 13060, first column, under the Date paragraph, revise the first sentence to read:

Date: Applications for the PEACESAT Program grant must be received on or before 5 p.m. on April 22, 1999.

2. In the **Federal Register** of March 16, 1999, in FR Doc. 99–6390 on page 13060, second column, under Supplementary Information, second paragraph, revise the last sentence to read:

NTIA anticipates making a single grant of not more than $600,000 for the PEACESAT Program in FY 1999.

Bernadette McGuire-Rivera,

Associate Administrator, Office of Telecommunications and Information Applications.

[FR Doc. 99–9178 Filed 4–12–99; 8:45 am]

BILLING CODE 3510–60–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Waiver of Match Requirements and an Increase in Allowable Cost Per Full-Time Equivalent (FTE) for the Virgin Islands, Guam, American Samoa, and the Northern Mariana Islands

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (Corporation) announces a waiver of the Corporation's match requirements for the Virgin Islands, Guam, American Samoa, and the Northern Mariana Islands applying for FY 1999 AmeriCorps funds. In addition, the Corporation announces an increase in the allowable cost per FTE for organizations in the Virgin Islands, Guam, American Samoa, and the Northern Mariana Islands applying for FY 1999 AmeriCorps funds; the Corporation will consider applications with a cost per FTE of up to $14,500, provided that the necessity for the increase is clearly documented in the proposal. Applications for FY 1999 AmeriCorps funds are due April 30, 1999.

FOR FURTHER INFORMATION CONTACT: Gayle Hilleke, (202) 606–5000, ext. 431. TDD (202) 565–2799. For individuals with disabilities, information will be made available in alternative formats upon request.

SUPPLEMENTARY INFORMATION: The National and Community Service Act of 1990, as amended (NCSA) (42 U.S.C. 12501 *et seq.*), authorizes the Corporation for National and Community Service (Corporation) to make grants to support national service programs including AmeriCorps.

1. Waiver of Match Requirements

The NCSA and the Corporation's grant provisions require applicants for AmeriCorps funds to provide match for funds they receive from the Corporation. However, in light of 48 U.S.C. 1469a, which requires that departments and agencies waive "any requirement for local matching funds under $200,000 (including in-kind contributions) required by law" for American Samoa, Guam, the Virgin Islands, and the Northern Mariana Islands, the Corporation waives the AmeriCorps matching requirements for those territories.

For example, if a state commission or alternative administrative entity from one of the territories listed above applies for administrative funds under 42 U.S.C. 12576, that state commission or alternative administrative entity will not have to contribute the initial 15% and eventual 50% match.

Please note that this waiver is available only to state commissions or alternative administrative entities of the Territories listed above—programs or organizations in the Territories applying directly to the Corporation for funds will still be required to meet the match requirements in the NCSA and their grant provisions.

2. Increase in Allowable Cost Per FTE

Additionally, the Corporation has sent out application packets announcing the availability of 1999 formula funds for Territories. According to the application instructions, no grant may exceed the total number of FTE AmeriCorps members multiplied by $11,250. This notice is to inform applicants from American Samoa, Guam, the Virgin Islands, and the Northern Mariana Islands, that the Corporation will consider applications with a cost per FTE of up to $14,500, provided that the necessity for the increase is clearly documented in the proposal.

For example, if you wish to apply for a program supporting 20 full-time AmeriCorps members, the maximum grant award you may receive is 20×$14,500, or $290,000. If you apply for 15 full-time members and 10 part-time members, the maximum grant award would also be 20×$14,500, or $290,000.

Applicants should keep in mind that proposals requesting a lower cost per member might be deemed more competitive, as this is a factor in our evaluation criteria. Further, whether the Corporation may approve a budget of $14,500 per member will depend upon whether the average cost per FTE requested for all program applicants, including those submitted pursuant to this notice, meets the $11,250 cost per FTE target.

Dated: April 7, 1999.

Thomas L. Bryant,

Acting General Counsel.

[FR Doc. 99–9154 Filed 4–12–99; 8:45 am]

BILLING CODE 6560–28–U

DEPARTMENT OF EDUCATION

[CFDA NO.: 84.195B]

Bilingual Education: Training for all Teachers

AGENCY: Office of Bilingual Education and Minority Languages Affairs, Department of Education.

ACTION: Correction of Notice Inviting Applications for New Awards for Fiscal Year (FY) 1999.

SUMMARY: On March 29, 1999, the Department of Education published in the **Federal Register** (64 FR 15094) a notice inviting applications for new awards for fiscal year (FY) 1999 under the Bilingual Education: Training for All Teachers program. The purpose of this notice is to correct the deadline dates for transmittal of applications and intergovernmental review.

FOR FURTHER INFORMATION CONTACT: Cynthia Ryan (202) 205–8842 or Petraine Johnson (202) 205–8766 at U.S. Department of Education, 400 Maryland Avenue, S.W., Room 5090, Switzer Building, Washington, D.C. 20202–6510. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

Correction

In the **Federal Register** of March 29, 1999, in FR Doc. 99–7577, on page 150494, first column, correct the "Deadline for Transmittal of Applications" to read "April 29, 1999" and correct the "Deadline for Intergovernmental Review" to read "June 28, 1999."

Electronic Access to This Document

Anyone may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or portable document format (pdf) on the World Wide Web at either of the following sites:

http://ocfo.ed.gov/fedreg.htm

http://www.ed.gov/news.html

To use the pdf you must have the Adobe Acrobat Reader Program with Search, which is available free at either of the previous sites. If you have questions about using the pdf, call the U.S. Government Printing Office toll free at 1–888–293–6498.

Note: The official version of a document is the document published in the **Federal Register.**

Program Authority: 20 U.S.C. 7472.

Dated: April 7, 1999.

Delia Pompa,

Director, Office of Bilingual Education and minority Languages Affairs.

[FR Doc. 99–9199 Filed 4–12–99; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

[Docket No. EA–204]

Application to Export Electric Energy; Sumas Energy 2, Inc.

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of Application.

SUMMARY: Sumas Energy 2, Inc. (SE2) has applied for authority to transmit electric energy from the United States to Canada pursuant to section 202(e) of the Federal Power Act.

DATES: Comments, protests or requests to intervene must be submitted on or before May 13,1999.

ADDRESSES: Comments, protests or requests to intervene should be addressed as follows: Office of Coal & Power Im/Ex (FE–27), Office of Fossil Energy, U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585–0350 (FAX 202–287–5736).

FOR FURTHER INFORMATION CONTACT: Ellen Russell (Program Office) 202–586–9624 or Michael Skinker (Program Attorney) 202–586–6667.

SUPPLEMENTARY INFORMATION: Exports of electricity from the United States to a foreign country are regulated and require authorization under section 202(e) of the Federal Power Act (FPA) (16 U.S.C. 824a(e)).

On April 1, 1999, the Office of Fossil Energy (FE) of the Department of Energy (DOE) received an application from SE2, an independent power producer in the State of Washington, to transmit electric energy from the United States to Canada. In related FE Docket PP–204 (64 FR 9324, February 25, 1999), SE2 filed an application with FE for a Presidential permit to construct a double-circuit 230,000-volt transmission line across the U.S. border with Canada. The proposed transmission facilities would extend approximately one half mile from a 710-megawatt (MW) gas-fired, electric powerplant SE2 proposes to construct in Sumas, Washington. In this instant application, SE2 requests authority to export the entire electrical output of the proposed powerplant to Canada using the transmission facilities proposed in the PP–204 Docket.

Procedural Matters

Any person desiring to become a party to this proceeding or to be heard by filing comments or protests to this application should file a petition to intervene, comment or protest at the address provided above in accordance with §§ 385.211 or 385.214 of the FERC's Rules of Practice and Procedures (18 CFR 385.211, 385.214). Fifteen copies of each petition and protest should be filed with the DOE on or before the date listed above.

Additional copies of such petitions to intervene or protests also should be filed directly with: Matthew M. Schreck, Corbett & Schreck, P.C., 820 Gessner, Suite 1390, Houston, TX 77024.

A final decision will be made on this application after the environmental impacts have been evaluated pursuant to the National Environmental Policy Act of 1969 (NEPA), and a determination is made by the DOE that the proposed action will not adversely impact on the reliability of the U.S. electric power supply system.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above or by accessing the Fossil Energy Home Page at http://www.fe.doe.gov. Upon reaching the Fossil Energy Home page, select "Regulatory Programs," then "Electricity Regulation," and then "Pending Proceedings" from the options menus.

Issued in Washington, DC, on April 7, 1999.

Anthony J. Como,

Manager, Electric Power Regulation, Office of Coal & Power Im/Ex, Office of Coal & Power Systems, Office of Fossil Energy.

[FR Doc. 99–9180 Filed 4–12–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Notice Inviting Financial Assistance Applications

AGENCY: U.S. Department of Energy (DOE), Federal Energy Technology Center (FETC).

ACTION: Notice Inviting Financial Assistance Applications.

SUMMARY: The Department of Energy announces that it intends to conduct a competitive Program Solicitation and award financial assistance (cooperative agreements) for the program entitled "A Development of On-Line Temperature Measurement Instrumentation for Gasification Process Control". Through this solicitation, FETC seeks to support applications addressing the development and testing of temperature measurement instrumentation capable of functioning in a sustained and reliable manner in the high temperature section of slagging gasification systems operating at elevated pressures. Applications will be subjected to a review by a DOE technical panel, and awards will be made to a limited number of applicants based on a scientific and engineering evaluation of the responses received to determine the relative merit of the approach taken in response to this offering by the DOE, and funding availability.

FOR FURTHER SOLICITATION INFORMATION CONTACT: Martin Byrnes, U.S. Department of Energy, Federal Energy Technology Center, Acquisition and Assistance Division, P.O. Box 10940, MS 921–143, Pittsburgh, PA 15236–0940, Telephone: (412) 892–4486, FAX: (412) 892–6216, E-mail: byrnes@fetc.doe.gov. The solicitation (available in both WordPerfect 6.1 and Portable Document Format (PDF)) will be released on DOE's FETC World Wide Web Server Internet System (http://www.fetc.doe.gov/business/solicit) on or about April 16, 1999.

SUPPLEMENTARY INFORMATION:

Title of Solicitation

A Development of On-Line Temperature Measurement Instrumentation for Gasification Process Control.

Objectives

Through Program Solicitation No. DE–PS26–99FT40565, the Department of Energy seeks applications for innovative technical approaches to develop an accurate, reliable, robust and cost-effective real-time temperature monitoring system capable of measuring temperatures in the high temperature (typ. ranging from 2000–2600F) section of pressurized, coal-fired slagging gasifiers.

Eligibility

Eligibility for participation in this Program Solicitation is considered to be full and open. All interested parties may apply. The solicitation will contain a complete description of the technical evaluation factors and relative importance of each factor. While national laboratories may not participate as a prime they may participate as a sub-contractor.

Areas of Interest

The Department of Energy is interested in obtaining applications offering thirty month projects for the bench-scale development of real-time temperature measurement instrumentation for high temperature, high pressure coal-fired slagging gasification systems. A variety of approaches, including the use of thermocouple- or optically-based techniques, are acceptable as long as they offer the clear potential to meet the aforementioned objectives. Furthermore, all proposed temperature measurement instrumentation must be suitable for use on large-scale slagging gasification systems and applications must address issues such as laboratory scale-up, potential placement and method of mounting on actual operating systems.

Awards

DOE anticipates issuing financial assistance (cooperative agreements) for each project selected. DOE reserves the right to support or not support, with or without discussions, any or all applications received in whole or in part, and to determine how many awards may be made through the solicitation subject to funds available. Approximately $1 million of DOE funding is planned for this solicitation. The estimated funding by the DOE is planned to be approximately $0.33 million per award. Cost sharing by the applicant is required, and details of the cost sharing requirement are contained in the solicitation.

Solicitation Release Date

The Program Solicitation is expected to be ready for release on or about April 16, 1999. Applications must be prepared and submitted in accordance with the instructions and forms contained in the Program Solicitation

Dale A. Siciliano,

Contracting Officer, Acquisition and Assistance Division.

[FR Doc. 99–8999 Filed 4–12–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Advisory Board; Notice of Open Meeting Correction

On March 26, 1999, the Department of Energy published a notice of open meeting announcing a meeting of the Environmental Management Advisory Board (64 FR 14714). In that notice, the meeting was scheduled for April 22–23, 1999. Today's notice is announcing that the meeting will only take place on April 22, 1999, at 8:30am to 3:00pm.

Issued in Washington, D.C. on April 8, 1999.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 99–9182 Filed 4–12–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Environmental Management

Foreign Research Reactor Spent Nuclear Fuel Fee Policy

AGENCY: Department of Energy (DOE).

ACTION: Clarification of the Fee Policy for Acceptance of Foreign Research Reactor Spent Nuclear Fuel.

SUMMARY: On May 13, 1996, DOE, in consultation with the Department of State, issued a Record of Decision (ROD) on a Nuclear Weapons Nonproliferation Policy Concerning Foreign Research Reactor Spent Nuclear Fuel (61 FR 25092), which established the foreign research reactor spent nuclear fuel acceptance program. Under this program, DOE will accept until 2009 foreign research reactor spent nuclear fuel and target material containing uranium enriched in the United States. The ROD stated that DOE would announce the fee policy that would apply to the spent fuel acceptance program in a separate **Federal Register** notice, so that the fee policy could be changed as necessary to reflect changes in cost or new information relevant to the policy.

The ROD acknowledged that, if the United States were to charge all foreign research reactors a full-cost recovery fee for the acceptance of eligible spent fuel, some reactor operators would not have the financial resources to participate in the program. This, in turn, could reduce the amount of spent fuel brought to the United States for management, thereby increasing the risk of diversion of highly enriched uranium (HEU) into a foreign nuclear weapons program. Accordingly, DOE and the Department of State decided that the fee charged for participation in the acceptance program should be based in part on whether the country from which the spent fuel is transported to the United States is categorized as one having a "high-income economy" or one having an "other-than-high-income economy." For countries with other-than-high-income

economies, the United States will subsidize receipt of the spent fuel to maximize participation in the acceptance program.

The fee policy announced in 1996 (61 FR 26507) did not address explicitly how, during the course of the acceptance program, a change in the economic status of the country from which spent fuel is shipped would affect the fee charged for participation in the program. DOE will initially determine whether a foreign research reactor operator is located in a country with a "high-income economy" or "other-than-high-income economy" based on the most current edition of The World Bank Development Report (The Report) at the time the contract between the foreign research reactor operator and DOE is signed. This notice clarifies that, during the term of the contract, if the most current edition of The Report, which is published annually in October, reflects a change in the status of the economy of the country from which the spent fuel is to be shipped from other-than-high-income to high-income, a fee will be charged to the reactor operator for any shipment arriving in the United States in the next fiscal year (starting October 1) following the fiscal year in which such change is published. The fee charged for any shipment arriving in the United States in the same fiscal year in which such change in economic status is published in The Report will be based on the country's status prior to such publication. In the event that the most current edition of The Report reflects a change in the status of the economy of the country from which the spent fuel is to be shipped from high-income to other-than-high-income, DOE's subsidy of shipments would apply to any shipments initiated after publication in The Report of such a change.

FOR FURTHER INFORMATION CONTACT: Kenneth Chacey, Director, Office of Spent Fuel Management (EM–67), U.S. Department of Energy, 1000 Independence Ave., S.W. Washington, D.C. 20585, telephone (202) 586–0671.

SUPPLEMENTARY INFORMATION: On May 13, 1996, DOE issued a ROD on a Nuclear Weapons Nonproliferation Policy Concerning Foreign Research Reactor Spent Nuclear Fuel (61 FR 25092). The ROD announced that over a 13-year period (1996–2009) the United States will accept for management approximately 19.2 metric tonnes of heavy metal (MTHM) foreign research reactor spent fuel and approximately 0.6 MTHM of target material containing uranium enriched in the United States. Because HEU can be used directly in the production of nuclear weapons, the goal of the acceptance program is to reduce the availability of HEU in civil commerce worldwide.

The ROD specifies that, to encourage foreign research reactor operators in countries with other-than-high-income-economies to participate in the acceptance program, the United States will subsidize receipt of their spent fuel. DOE and the Department of State jointly determined in the ROD that many, if not all, countries with other-than-high-income-economies would not have the financial resources to participate in the acceptance program if the United States were to charge a fee for the acceptance of spent fuel from such countries. Limited participation by such countries would reduce the amount of spent fuel accepted in the United States, thereby increasing the risk of diversion of HEU into a foreign nuclear weapons program.

Whether a country has a high-income economy or other-than-high-income economy is initially determined when a contract between a foreign research reactor operator and DOE is signed. The determination is based on the most current edition of The Report, which is published annually during October. If, during the term of the contract, The Report reflects a change in the status of the economy of the country which the spent fuel is to be shipped from other-than-high-income to high-income, a fee will be charged to the reactor operator for any shipment arriving in the United States in the next fiscal year (starting October 1) following the fiscal year in which such change is published. This period of approximately one year has been established to allow time for reactor operators in countries with changed economic status to renegotiate their contracts with DOE and, as applicable, identify funding to transport the spent fuel to the United States and to pay the associated fee.

Although this fee policy clarification is designed to ensure that reactor operators who are able to bear costs do so, DOE recognizes that fiscal arrangements to support shipments must be made in advance. Countries with newly changed economic status from other-than-high-income economy to high-income economy will not necessarily be in a position to bear these costs in the year of their changed status. Thus, no fee will be charged for any shipment arriving in the United States in the same fiscal year in which the change in economic status from other-than-high-income to high-income is published. DOE will not subsidize any shipment arriving in the United States in the next fiscal year following the fiscal year in which the changed status is published in The Report. Further, DOE would not subsidize shipments in subsequent years unless the economy of the country in question were again reclassified as having an other-than-high-income economy by a new edition of The Report.

For those countries whose economic status changes from high-income economy to other-than-high-income economy, as published in The Report, DOE's subsidy of shipments would apply to any shipment initiated after publication in The Report of such a change.

This clarification will be effective on October 1, 1999. This notice is being published well in advance of the effective date to provide ample time for potentially affected foreign research reactor operators to plan for any financial arrangements that may become necessary. For those reactor operators planning with DOE for a shipment scheduled to arrive in the United States prior to October 1, 1999, any applicable fee will be based upon the respective country's economic status as reported in the ROD that was issued in May 1996.

Issued in Washington, DC, on April 6, 1999.

David G. Huizenga,

Acting Deputy Assistant Secretary for Nuclear Material and Facility Stabilization, Office of Environmental Management.

[FR Doc. 99–9181 Filed 4–12–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–273–000]

ANR Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

April 7, 1999.

Take notice that on March 31, 1999, ANR Pipeline Company (ANR) tendered for filing as part of its FERC Gas Tariff, the following tariff sheet to become effective May 1, 1999:

Twenty-Fifth Revised Sheet No. 17

ANR states that the above-referenced tariff sheets are being filed to eliminate the Upstream Pipeline Surcharge filed in Docket No. RP98–177–000 due to the expiration of the amortization period for the recovery amount.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections

385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–9117 Filed 4–12–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–277–000]

CNG Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

April 7, 1999.

Take notice that on April 1, 1999, CNG Transmission Corporation (CNG), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheet, with an effective date of May 1, 1999:

Forty-Seventh Revised Sheet No. 32

CNG states that the purpose of this filing is to submit CNG's quarterly revision of the Section 18.2.B Surcharge, effective for the three-month period commencing May 1, 1999. The charge for the quarter ending April 30, 1999 has been $0.0211 per Dt, as authorized by Commission order dated January 26, 1999 in Docket No. RP99–198–000. CNG's proposed Section 18.2.B surcharge for the next quarterly period is $0.0194 per Dt. The revised surcharge is designed to recover $124,591 in Stranded Account No. 858 Costs, which CNG incurred for the period of December, 1998 through February, 1999.

CNG states that copies of this letter of transmittal and enclosures are being mailed to CNG's customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–9119 Filed 4–12–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–269–000]

Columbia Gas Transmission Corporation; Notice of Request Under Blanket Authorization

April 7, 1999.

Take notice that on March 22, 1999, as supplemented April 6, 1999, Columbia Gas Transmission Corporation (Columbia), 12801 Fair Lakes Parkway, Fairfax, Virginia 22030–0146, filed a prior notice request with the Commission in Docket No. CP99–269–000 pursuant to Sections 157.205, 157.208(a), 157.212(a), and 157.216 of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to modify an existing delivery point in Scioto County, Ohio, under Columbia's blanket certificate issued in Docket No. CP83–76–000 pursuant to Section 7 of the NGA, all as more fully set forth in the request which is open to the public for inspection. The application may be viewed on the web at www.ferc.fed.us. Call (202) 208–2222 for assistance.

Columbia proposes to modify an existing delivery point used to serve Columbia Gas of Ohio's (COH) customer, Aristech Chemical Corporation (Aristech) in Scioto County. Columbia proposes to modify the existing metering station by installing and owning electronic measuring equipment, and replacing approximately 1.7 miles of 6-inch diameter pipe with 1.7 miles of 10-inch diameter pipe. Columbia states that it would increase deliveries at the Aristech delivery point from 15,000 dekatherms equivalent of natural gas per day at the modified delivery point. Columbia, however, further states that COH has not requested an increase in its firm entitlements. COH states that it would cover the increased deliveries at the Aristech delivery point by shifting volumes at other delivery volumes at other delivery points. Thus, the proposed increased in delivery volumes at the Aristech delivery point would have no impact on Columbia's design day or annual obligations to its other customers. Columbia states that COH would reimburse Columbia approximately $952,600 for the modification cost of the Aristech delivery point.

Any person or the Commission's staff may, within 45 days after the Commission has issued this notice, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the NGA (18 CFR 157.205) a protest to the request. If no protest is filed within the allowed time, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the NGA.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–9110 Filed 4–12–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–287–031]

El Paso Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

April 7, 1999.

Take notice that on April 1, 1999, El Paso Natural Gas Company (EL Paso) tendered for filing to become part of its FERC Gas Tariff, Second Revised Volume No. 1–A, the following tariff sheets to become effective April 1, 1999:

Twenty-Third Revised Sheet No. 30
Fourteenth Revised Sheet No. 31

El Paso states that the above tariff sheets are being filed to implement three negotiated rate contracts pursuant to the Commission's Statement of Policy on Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines and Regulation of Negotiated Transportation Services of Natural Gas Pipelines issued January 31, 1996 at Docket Nos. RM95–6–000 and RM96–7–000.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission,

888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–9116 Filed 4–12–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–126–012]

Iroquois Gas Transmission Systems, L.P.; Notice of Proposed Changes in FERC Gas Tariff

April 7, 1999.

Take notice that on March 31, 1999, Iroquois Gas Transmission System, L.P. (Iroquois) tendered for filing to become part of its FERC Gas Tariff, First Revised Volume No. 1, the following revised tariff sheets. The proposed effective dates of these revised tariff sheets are as noted.

Effective November 1, 1998

Second Substitute Twenty-first Revised Sheets No. 4.
Second Substitute Twenty-second Revised Sheets No. 4.

Effective January 1, 1999

Second Substitute Twenty-third Revised Sheets No. 4.

Iroquois states that these sheets were submitted in compliance with the Commission's order on rehearing issued March 11, 1999 and replaces three of the tariff sheets that were submitted on March 26, 1999 in Docket No. RP97–126–008. The tariff sheets included herewith reflect previously approved language which was inadvertently omitted from Iroquois March 26th filing.

Iroquois states that copies of its filing were served on all jurisdictional customers and interested state commissions.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–9115 Filed 4–12–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–274–000]

Kern River Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

April 7, 1999.

Take notice that on March 31, 1999, Kern River Gas Transmission Company (Kern River) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets, to be effective May 1, 1999.

Fourteenth Revised Sheet No. 5
Twelfth Revised Sheet No. 6
Second Revised Sheet No. 16
Original Sheet No. 16–A
Sixth Revised Sheet No. 70
Second Revised Sheet No. 117
Original Sheet No. 117–A
Second Revised Sheet No. 125
Original Sheet No. 125–A
Second Revised Sheet No. 126
Seventh Revised Sheet No. 500–A
First Revised Sheet No. 507
Seventh Revised Sheet No. 600–A
First Revised Sheet No. 610
Seventh Revised Sheet No. 700–A
Third Revised Sheet No. 712
Third Revised Sheet No. 802
Second Revised Sheet No. 831
Original Sheet No. 831–A
First Revised Sheet No. 889
First Revised Sheet No. 890
Fifth Revised Sheet No. 891

Kern River states that the purpose of this filing is to implement the terms of a Stipulation and Agreement of Settlement dated March 31, 1999 (Settlement). Key features of the Settlement, which resulted from extensive negotiations and a collaborative effort between Kern River and its customers, include: (1) an overall reduction in Kern River's base tariff rate; (2) a modification to Kern River's SFV rate design methodology; (3) a rate increase moratorium and a rate case filing requirement; (4) a requirement to reduce rates in the event of a rolled-in rate system expansion; and (5) an opportunity for Kern River's customers to share in potential savings resulting from the refinancing of debt and to share in revenues above a pre-determined annual threshold level Kern River states that it is submitting with this tariff filing an Offer of Settlement, an Explanatory Statement, and the Stipulation and Agreement of Settlement referenced above.

Kern River also is including a Motion for Shortened Comment Period with respect to the Settlement, seeking Initial Comments on the Settlement by April 12, 1999 and Reply Comments by April 19, 1999.

Kern River states that a copy of this filing has been served upon Kern River's customers and interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–9118 Filed 4–12–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–133–002]

Mississippi River Transmission Corporation; Notice of Filing

April 7, 1999.

Take notice that on April 1, 1999, Mississippi River Transmission

Corporation (MRT) tendered for filing a supplement to its January 16, 1999 Refund and Repayment Plan, which provided for refunds of MRT's overrecovery of Gas Supply Realignment Costs (GSRC).

MRT states that the supplemental filing is necessary to remove a contract from its refund calculation that should have been excluded from its refund report in its January 16th filing.

MRT states that a copy of this filing is being mailed to each of MRT's customers, parties to this proceeding and to the state commissions of Arkansas, Illinois and Missouri.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's rules and Regulations. All such protests must be filed on or before April 14, 1999. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.

Acting Secretary.

[FR Doc. 99–9113 Filed 4–12–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–276–000]

Reliant Energy Gas Transmission Company; Notice of Filing

April 7, 1999.

Take notice that on April 1, 1999, Reliant Energy Gas Transmission Company (REGT) submitted its annual revenue crediting filing pursuant to its FERC Gas Tariff, Fourth Revised Volume No. 1, Section 5.7(c)(ii)(2)B (Imbalance Cash Out), Section 23.2(b)(iv) (IT and SBC Revenue Crediting) and Section 23.7 (IT Revenue Credit).

REGT states that its filing addresses the period from February 1, 1998 through January 31, 1999. The IT and FT Cash Balancing Revenue Credits and the IT Revenue Credit for the period reflected in this filing are zero. Since REGT's current tariff sheets already reflect zero Cash Balancing and IT Revenue Credits, no tariff revisions are necessary.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before April 14, 1999. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–9114 Filed 4–12–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM99–3–31–000]

Reliant Energy Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

April 7, 1999.

Take notice that on April 1, 1999, Reliant Energy Gas Transmission Company (REGT) tendered for filing to become part of its FERC Gas Tariff, Fourth Revised Volume No. 1, to be effective May 1, 1999:

Seventeenth Revised Sheet No. 5
Sixteenth Revised Sheet No. 6

REGT states that the revised tariff sheets are being filed in accordance with the methodologies set forth in Sections 27 and 28 of REGT's General Terms and Conditions, which require REGT to adjust its fuel percentages and Electric Power Costs (REPCT) Tracker each October 1 and April 1 based on actual data for the twelve month period ending June 30 and December 31 respectively. This filing constitutes REGT's fuel percentages and EPC Tracker adjustments which will be effective May 1, 1999. The worksheets attached hereto as Appendix B provide supporting calculations used in deriving the proposed fuel percentages. The worksheets attached hereto as Appendix C provide supporting calculations used in deriving the EPC Tracker. Due to the lack of a full year of electric compressor utilization, estimated EPC Tracker costs are still utilized in the calculations, but have been adjusted to reflect actual data for the period that the electric compressor was in operating during the twelve months ended December 31, 1998.

REGT respectfully requests that the Commission grant REGT any waivers to the Commission's regulations which may be necessary to make this filing effective as of May 1, 1999, and to the extent necessary, moves pursuant to 18 CFR 154.7(a)(9) for the referenced tariff sheets to go into effect on said date.

REGT states that this filing has been mailed to each of REGT's customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–9121 Filed 4–12–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP95–197–036]

Transcontinental Gas Pipe Line Corporation; Notice of Refund Report

April 7, 1999.

Take notice that on March 31, 1999, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing a refund report showing that on March 1, 1999, Transco submitted refunds/surcharges, including interest, amounting to $93,704,019.69 to all

affected shippers in Docket No. RP95–197–000, et al.

Transco states that on December 1, 1998, the Commission issued its Opinion and Order on Rehearing (Opinion No. 414–B) (Order) where the Commission determined the return to be used in developing rates for the Docket No. RP95–197 rate period of September 1, 1995 through April 30, 1997. The date for refunds under Opinion 414–B and Article IV of the June 19, 1996 Stipulation and Agreement in Docket Nos. RP95–197, et al. (the Agreement) was established as January 30, 1999. On January 28, 1999, however, the Commission granted Transco's motion for an extension of time within which to refile its recalculated rates and to make refunds until March 31, 1999.

On February 25, 1999, Transco filed the recalculated rates in compliance with Ordering Paragraph (B) of Opinion 414–B (February 25 Filing).

Based on the February 25 Filing, storage and transportation refunds have been calculated for the period September 1, 1995 (the beginning of the Docket No. 95–197 rate period) through July 31, 1996 based on the difference between the amounts refunded on May 30, 1997 pursuant to Article IV of the Agreement and amounts calculated utilizing Transco's allowed rate of return as set forth in the February 25 Filing. For the period August 1, 1996 through April 30, 1997 (the end of the Docket No. 95–197 rate period), storage and transportation refunds have been calculated based on the difference between the billed rates pursuant to the Agreement and the amounts calculated utilizing the rates set forth in the February 25 Filing.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before April 14, 1999. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–9111 Filed 4–12–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–272–000]

Transcontinental Gas Pipe Line Corporation; Notice of Tariff Filing

April 7, 1999

Take notice that on March 31, 1999, Transcontinental Gas Pipe Line Corporation tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, Second Revised Sheet No. 374F.01, to become effective May 1, 1999.

Transco states that the purpose of the filing is to revise Section 42.10(a) of the General Terms and Conditions of Transco's tariff to permit a Replacement Shipper that desires to re-release capacity to specify Recall Rights for that re-released capacity even though Recall Rights were specified by a prior Releasing Shipper. Section 42.10(a) currently provides, in part, that "[r]ecall conditions cannot be expanded or in any way modified by subsequent Releasing Shippers." Although that prohibition on subsequent Recall Rights was approved by the Commission as part of Transco's Order No. 636 compliance filing, Transco proposes to delete that prohibition so as to provide a Replacement Shipper with increased flexibility in structuring a re-release of capacity, including specifying Recall Rights for that re-released capacity. Transco submits that granting shippers this additional flexibility in managing their capacity release transactions furthers the Commission's goal in Order No. 636 of fostering a robust secondary market in capacity.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–9112 Filed 4–12–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–278–000]

Transcontinental Gas Pipe Line Corporation; Notice of Proposed Changes in FERC Gas Tariff

April 7, 1999

Take notice that on April 1, 1999, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, Fifth Revised Sheet No. 250A and Fourth Revised Sheet No. 374I. The proposed effective date of the attached tariff sheets is May 1, 1999.

Transco states that the purpose of the instant filing is to incorporate language into Section 44 of the General Terms and Conditions of Transco's tariff that clarifies Transco's and its customers right to extend Part 284 service agreements. The tariff provision specifies that the length of the contract term extensions will be mutually agreed to, on a case-by-case basis.

Transco states that it is serving copies of the instant filing to its affected customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/

rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–9120 Filed 4–12–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP99–271–000 and RP89–183–092]

Williams Gas Pipelines Central, Inc.; Notice of Proposed Changes in FERC Gas Tariff

April 7, 1999.

Take notice that on March 31, 1999, Williams Gas Pipelines Central, Inc. (Williams), tendered for filing to become part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheets, with the proposed effective date of May 1, 1999:

Seventh Revised Sheet No 6
Tenth Revised Sheet No 6A

Williams states that this filing is being made pursuant to Article 14 of the General Terms and Conditions of its FERC Gas Tariff, Original Volume No. 1. Williams hereby submits its second quarter, 1999, report of GSR costs.

Williams states that a copy of its filing was served on all participants listed on the service lists maintained by the Commission in the dockets referenced above and on all of Williams' jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call (202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–9123 Filed 4–12–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER94–1478–015, et al.]

Electrade Corporation. et al.; Electric Rate and Corporate Regulation Filings

April 6, 1999.

Take notice that the following filings have been made with the Commission:

1. Electrade Corporation

[Docket No. ER94–1478–015]

Take notice that on April 1, 1999, the above-mentioned power marketer filed a quarterly report with the Commission in the above-mentioned proceeding for information only. This filing is available for public inspection and copying in the Public Reference Room or on the internet at www.ferc.fed.us/online/rims.htm for viewing and downloading (call 202–208–2222 for assistance).

2. Duke Energy Corporation

[Docket No. ER97–2398–004]

Take notice that on April 1, 1999, Duke Energy Corporation tendered for filing its compliance filing in the above-reference docket.

Comment date: April 21, 1999, in accordance with Standard Paragraph E at the end of this notice.

3. Entergy Services, Inc.

[Docket No. ER99–871–000]

Take notice that on March 12, 1999, Entergy Services, Inc. (Entergy Services), on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc. (collectively, the Entergy Operating Companies), tendered for filing an amendment to its filing of five Interchange Agreements. The Interchange Agreements are between Entergy Services, Inc., the Entergy Operating Companies and the following entities: Jacksonville Electric Authority, Commonwealth Edison Company, Wisconsin Electric Power Company, Virginia Electric and Power Company and Paragould City Light & Water.

Comment date: April 21, 1999, in accordance with Standard Paragraph E at the end of this notice.

4. Lakewood Cogeneration Limited Partnership

[Docket No. ER99–1213–001]

Take notice that on March 29, 1999, Lakewood Cogeneration Limited Partnership (Lakewood) submitted for filing a second amended Code of Conduct Regarding the Relationship between Lakewood Cogeneration Limited Partnership and Consumers Energy Company (Code of Conduct) in compliance with Ordering Paragraph A of the Commission's February 26, 1999 Order Conditionally Accepted for Filing Proposed Market-Based Rates.

Comment date: April 19, 1999, in accordance with Standard Paragraph E at the end of this notice.

5. Monmouth Energy, Inc.

[Docket No. ER99–1293–001]

Take notice that on April 1, 1999, Monmouth Energy, Inc., tendered for filing its refund report in accordance with the Commission's Order of March 12, 1999 in Docket No. ER99–1293–000.

Comment date: April 21, 1999, in accordance with Standard Paragraph E at the end of this notice.

6. Cinergy Services, Inc.

[Docket No. ER99–1662–000]

Take notice that on April 1, 1999, Cinergy Services, Inc., acting as agent for and on behalf of The Cincinnati Gas & Electric Company and PSI Energy, Inc., tendered for filing an amended Service Agreement for firm point-to-point transmission service entered into between Cinergy and itself under Cinergy's Open Access Transmission Tariff.

Pursuant to the Commission's letter order dated March 2, 1999 in this proceeding, Cinergy's filing was amended to include specific points of receipt and specify capacity reservations for each receipt/delivery point combination.

Cinergy states that it has served copies of its filing upon all parties of record in this proceeding.

Comment date: April 21, 1999, in accordance with Standard Paragraph E at the end of this notice.

7. Ohio Edison Company, Pennsylvania Power Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company

[Docket No. ER99–1700–000]

Take notice that on April 1, 1999, Ohio Edison Company, Pennsylvania Power Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company (collectively the FirstEnergy Operating Companies) tendered for filing an amendment to its

Service Agreement filed February 3, 1999, under which FirstEnergy Operating Companies will take Network Integration Transmission Service under their Open Access Transmission Tariff (Tariff), in compliance with a March 8, 1999, letter from the Director of the Commission's Division of Rate Applications in Docket No. ER99–1700–000.

The FirstEnergy Operating Companies request that these agreements, as amended by the April 1, 1999 filing, be made effective as of the date the Commission issues an order approving the FirstEnergy Operating Companies' September 25, 1998 Offer of Settlement in Docket Nos. ER97–412–000, ER97–413–000 and ER98–1932–000, which has been certified to the Commission by the presiding administrative law judge in those proceedings and awaits Commission approval. The FirstEnergy Operating Companies also filed a revised Index of Customers to be incorporated into the Tariff.

The FirstEnergy Operating Companies state that a copy of their filing has been served on the Public Utilities Commission of Ohio and the Pennsylvania Public Utility Commission.

Comment date: April 21, 1999, in accordance with Standard Paragraph E at the end of this notice.

8. Consumers Energy Company

[Docket No. ER99–2107–000]

Take notice that on March 30, 1999, Consumers Energy Company (Consumers) tendered for filing a request for an April 12, 1999 effective date for two Facilities Agreements Between Consumers Energy Company and CMS Generation Michigan Power, L.L.C. which were filed earlier in this docket.

Copies of the filing were served upon CMS Generation Michigan Power, L.L.C., those on the official service list in this docket and upon the Michigan Public Service Commission.

Comment date: April 19, 1999, in accordance with Standard Paragraph E at the end of this notice.

9. ECONnergy PA, Inc.

[Docket No. ER99–2183–001]

Take notice that on March 29, 1999, ECONnergy PA, Inc. filed a withdrawal of its Petition for Acceptance of Initial Rate Schedule, Waivers and Blanket Authority.

Comment date: April 19, 1999, in accordance with Standard Paragraph E at the end of this notice.

10. Hardee Power Partners Limited

[Docket No. ER99–2341–000]

Take notice that on March 31, 1999, Hardee Power Partners Limited (HPP) tendered for filing a Sales Tariff under which HPP would be authorized to sell electric capacity and/or energy at market-based rates.

HPP proposes that the Sales Tariff be made effective on April 1, 1999, and therefore requests waiver of the Commission's notice requirement.

HPP states that a copy of the filing has been served on the Florida Public Service Commission.

Comment date: April 20, 1999, in accordance with Standard Paragraph E at the end of this notice.

11. Tampa Electric Company

[Docket No. ER99–2342–000]

Take notice that on March 31, 1999, Tampa Electric Company (Tampa Electric) tendered for filing a Sales Tariff under which Tampa Electric would be authorized to sell electric capacity and/or energy at market-based rates. Tampa Electric also tendered for filing a Reassignment Tariff under which Tampa Electric would be authorized to reassign transmission capacity reserved or acquired for its own use.

Tampa Electric proposes that the Sales Tariff and Reassignment Tariff be made effective on April 1, 1999, and therefore requests waiver of the Commission's notice requirement.

Tampa Electric states that a copy of the filing has been served on the Florida Public Service Commission.

Comment date: April 20, 1999, in accordance with Standard Paragraph E at the end of this notice.

12. Avista Corporation

[Docket No. ER99–2349–000]

Take notice that on April 1, 1999, Avista Corporation (Avista) petitioned the Commission for acceptance of a new code of conduct as a supplement to its market-based rate schedule, FERC Electric Tariff, Original Volume No. 9. Avista asserts that the proposed code of conduct complies with all of the Commission's current requirements for codes of conduct of franchised public utilities that have affiliates with market-based rates.

Comment date: April 21, 1999, in accordance with Standard Paragraph E at the end of this notice.

13. PacifiCorp

[Docket No. ER99–2352–000]

Take notice that on March 31, 1999, PacifiCorp tendered for filing in accordance with 18 CFR Part 35 of the Commission's Rules and Regulations, the Letter Agreement with Western Power Administration under PacifiCorp's Rate Schedule FERC No. 328.

Copies of this filing were supplied to the Washington Utilities and Transportation Commission and the Public Utility Commission of Oregon.

Comment date: April 20, 1999, in accordance with Standard Paragraph E at the end of this notice.

14. Southwest Power Pool

[Docket No. ER99–2353–000]

Take notice that on March 31, 1999, Southwest Power Pool (SPP) tendered for filing seven executed service agreements and three unexecuted service agreements for loss compensation service under the SPP Tariff.

SPP requests an effective date of March 1, 1999 for each of these agreements.

Copies of this filing were served upon all parties to the service agreements.

Comment date: April 20, 1999, in accordance with Standard Paragraph E at the end of this notice.

15. The Dayton Power and Light Company

[Docket No. ER99–2354–000]

Take notice that on March 31, 1999 The Dayton Power and Light Company (Dayton) submitted service agreements establishing DukeSolutions, Inc. and PP&L EnergyPlus as a customer under the terms of Dayton's Market-Based Sales Tariff.

Dayton requests an effective date of one day subsequent to this filing for the service agreements. Accordingly, Dayton requests waiver of the Commission's notice requirements.

Copies of this filing were served upon DukeSolutions, Inc. and PP&L EnergyPlus, and the Public Utilities Commission of Ohio.

Comment date: April 20, 1999, in accordance with Standard Paragraph E at the end of this notice.

16. Northeast Utilities Service Company

[Docket No. ER99–2355–000]

Take notice that on March 31, 1999, Northeast Utilities Service Company (NUSCO), on behalf of The Connecticut Light and Power Company, Western Massachusetts Electric Company, Holyoke Water Power Company (including Holyoke Power and Electric Company) and Public Service Company of New Hampshire, tendered for filing pursuant to Section 205 of the Federal Power Act and Section 35.13 of the Commission's Regulations, a rate

schedule change for sales of electric energy to Sterling Municipal Light Department.

NUSCO requests that the rate schedule change become effective on April 1, 1999.

NUSCO states that a copy of this filing has been mailed to Sterling Municipal Light Department and the Massachusetts Department of Telecommunications and Energy.

Comment date: April 20, 1999, in accordance with Standard Paragraph E at the end of this notice.

17. Public Service Company of Colorado

[Docket No. ER99–2356–000]

Take notice that on March 31, 1999, Public Service Company of Colorado submitted for filing a power purchase agreement with Yampa Valley Electric Association, Inc.

Comment date: April 20, 1999, in accordance with Standard Paragraph E at the end of this notice.

18. Carolina Power & Light Company

[Docket No. ER99–2357–000]

Take notice that on March 31, 1999, Carolina Power & Light Company (CP&L) tendered for filing an executed Service Agreement with Minnesota Power, Inc. under the provisions of CP&L's Market-Based Rates Tariff, FERC Electric Tariff No. 4. This Service Agreement supersedes the un-executed Agreement originally filed in Docket No. ER98–3385–000 and approved effective May 18, 1998.

Copies of the filing were served upon the North Carolina Utilities Commission and the South Carolina Public Service Commission.

Comment date: April 20, 1999, in accordance with Standard Paragraph E at the end of this notice.

19. Soyland Power Cooperative, Inc.

[Docket No. ER99–2358–000]

Take notice that on April 1, 1999, Soyland Power Cooperative, Inc. (Soyland), tendered for filing with the Federal Energy Regulatory Commission (the Commission) a notice of cancellation of its all-requirements service contract with Corn Belt Electric Cooperative, Inc., (Corn Belt). Soyland states that Corn Belt has mutually agreed to cancel the agreement and Soyland will no longer provide all-requirements electric service to Corn Belt.

Soyland requests an effective date of April 1, 1999, for the notice of cancellation. Accordingly, Soyland request waiver of the Commission's Regulations.

Soyland states that a copy of the filing has been served on Corn Belt.

Comment date: April 21, 1999, in accordance with Standard Paragraph E at the end of this notice.

20. PP&L, Inc.

[Docket No. ER99–2359–000]

Take notice that on April 1, 1999, PP&L, Inc. (PP&L), tendered for filing a Service Agreement dated February 4, 1999 with FPL Energy Power Marketing, Inc. (FPL), under PP&L's Market-Based Rate and Resale of Transmission Rights Tariff, FERC Electric Tariff, Original Revised Volume No. 5. The Service Agreement adds FPL as an eligible customer under the Tariff.

PP&L requests an effective date of April 1, 1999, for the Service Agreement.

PP&L states that copies of this filing have been supplied to FPL and to the Pennsylvania Public Utility Commission.

Comment date: April 21, 1999, in accordance with Standard Paragraph E at the end of this notice.

21. United States Department of Energy Bonneville Power Administration

[Docket Nos. NJ97–3–006 and EL99–49–000]

Take notice that on March 30, 1999, United States Department of Energy filed a request for withdrawal of Bonneville's petition for Expedited Declaratory Order Approving an Amendment to Bonneville's Open Access Transmission Tariff and for Exemption in Lieu of Filing Fee filed with the Commission on March 23, 1999.

Comment date: April 19, 1999, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/ online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–9109 Filed 4–12–99; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

April 7, 1999.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Amendment to License.

b. *Project No:* 10805–022.

c. *Date Filed:* February 24, 1999.

d. *Applicant:* Midwest Hydraulic Company.

e. *Name of Project:* Hatfield Hydroelectric Project.

f. *Location:* The Hatfield Project is located on the Black River, in Hatfield Township, in Jackson and Clark Counties, Wisconsin. The project does not utilize federal or tribal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Gregg Blanche, Midwest Hydraulic Company, 13561 West Bay Shore, Suite 3000, Traverse City, MI 49684, (616) 941–0718.

i. *FERC Contact:* Any questions on this notice should be addressed to Mrs. Doan Pham at (202) 219–2851, or E-mail address: doan.pham@ferc.fed.us.

j. *Deadline for filing comments and or motions:* May 17, 1999.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, Mail Code: DLC, HL–11.1, 888 First Street, N.E., Washington, DC 20426.

Please include the project number (10805–022) on any comments or motions filed.

k. *Description of Proposal:* The licensee is proposing to install two 400-kW turbine-generators to discharge minimum flows at the dam, rather than the one 430-kW minimum flow unit authorized in the project license. The proposed units could provide additional flows to the bypass reach beyond what is authorized. The filing also included updated exhibit drawings and comment letters from the Wisconsin DNR.

l. *Locations of the application:* A copy of the application is available for

inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, D.C. 20426, or by calling (202) 208–1371. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–9122 Filed 4–12–99; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6323–3]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; Acid Rain Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Acid Rain Program, OMB Control Number: 2060–0258, Expiration date: May 31, 1999. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before May 13, 1999.

FOR FURTHER INFORMATION CONTACT: Contact Sandy Farmer at EPA by phone at (202) 260–2740, by email at farmer.sandy@epamail.epa.gov, or download a copy of the ICR off the Internet at http://www.epa.gov/icr and refer to EPA ICR No. 1633.12.

SUPPLEMENTARY INFORMATION:

Title: Acid Rain Program (OMB Control No. 2060–0258; EPA ICR No. 1633.12) expiring 5/31/1999. This is a request for extension of a currently approved collection.

Abstract: The Acid Rain Program was established under Title IV of the 1990 Clean Air Act Amendments. The program calls for major reductions of the pollutants that cause acid rain while establishing a new approach to environmental management. This information collection is necessary to implement the Acid Rain Program. It includes burden hours associated with developing and modifying permits, transferring allowances, obtaining allowances from the conservation and renewable energy reserve and small diesel refinery program, monitoring emissions, participating in the annual auctions, completing annual compliance certifications, participating in the Opt-in program, and complying with NO_x permitting requirements. Most of this information collection is mandatory under 40 CFR parts 72–78. Some parts of it are voluntary or to obtain a benefit, such as participation in the annual auctions under 40 CFR part 73, subpart E. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. The **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on 5/5/1998 (FRL–6009–6); No comments were received.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 132 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: 850.

Estimated Number of Respondents: 850.

Frequency of Response: Varies by task.

Estimated Total Annual Hour Burden: 1,330,327 hours.

Estimated Total Annualized Cost Burden: $135,632,000.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to EPA ICR No 1633.12 and OMB Control No. 2060–0258 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, OPPE Regulatory Information Division (2137), 401 M Street, SW, Washington, DC 20460;

and

Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW, Washington, DC 20503.

Dated: April 7, 1999.

Joseph Retzer,

Director, Regulatory Information Division.

[FR Doc. 99–9206 Filed 4–12–99; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[OPP–00596; FRL–6076–8]

State FIFRA Issues Research and Evaluation Group (SFIREG) Pesticide Operations and Management Working Committee; Open Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The State FIFRA Issues Research and Evaluation Group (SFIREG) Pesticide Operations and Management Working Committee will hold a 2–day meeting, April 19 and 20, 1999. The meetings are open to the public.

DATES: The SFIREG Working Committee on Pesticide Operations and Management will meet on Monday, April 19, 1999, from 8:30 to 1:00 p.m. and Tuesday, April 20, 1999, from 8:30 to 4:00 p.m.

ADDRESSES: The meeting will be held at: The Hampton Inn, 226 Carondelet, New Orleans, LA, 70130.

FOR FURTHER INFORMATION CONTACT: By mail: Elaine Y. Lyon, Field and External Affairs Division, Office of Pesticide Programs (7506C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: 1921 Jefferson Davis Highway, Arlington, VA 22202, CM #2; (703) 305–5306; e-mail: lyon.elaine@.epa.gov.

SUPPLEMENTARY INFORMATION: The tentative agenda of the Working Committee on Pesticide Operations and Management includes the following.

1. Status of Chlorine Gas Reregistration Eligibility Decision.
2. State participation in the Office of Pesticide Programs review processes.
3. Status of Pesticide Containers and Containment Standards.
4. Indoor use product issues.
5. Update of Rodenticide Stakeholders activities.
6. Update on Certification and Training Assessment Group (CTAG).
7. State Lead Agency's issues with EPA's policy on Conditional Product Registration.
8. Update on Consumer Labeling Initiative.
9. Advisory vs. Mandatory label language issues.
10. Update on modification of worker protection standard posting requirements.
11. Update on disclaimers and limitations of liability.
12. Internet distributions of EPA registered and non registered pesticides.
13. Use of Inspector Credentials.
14. Keep Out of Reach of Children (KOORC) issues.
15. Worker Protection Standard implementation and enforcement response.
16. Custom blend policy changes.
17. Status of Pesticide Inspector Residence Training (PIRT).
18. Distribution of EPA enforcement alerts to State Lead Agencies.
19. Outcome of the Pesticide Field Data Plan workshop.
20. Office of Pesticide Program Update.
21. Office of Enforcement and Compliance Assistance Update.
22. Other topics as appropriate.

List of Subjects

Environmental protection.

Dated: April 7, 1999.

Jay Ellenberger,

Director, Field and External Affairs Division, Office of Pesticide Programs.

[FR Doc. 99–9179 Filed 4–8–99; 2:41 pm]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6323–4]

Notice of Proposed CERCLA Administrative Cashout Settlement; Evergreen Manor Groundwater Contamination Site, Winnebago County, Illinois

AGENCY: Environmental Protection Agency.

ACTION: Notice; request for public comment.

SUMMARY: In accordance with section 122(I) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. 9622(I), the United States Environmental Protection Agency ("Agency") hereby gives notice that it proposes to issue an administrative order on consent (AOC) concerning the Evergreen Manor Groundwater Contamination Site ("the Site").

The United States Department of Justice approved this AOC on April 1, 1999, subject to review by the public pursuant to this Notice. The AOC requires Ecolab Inc., Regal Beloit Corporation, Waste Management of Illinois, Inc., and Waste Management of Wisconsin, Inc. (collectively referred to as the "Settling Parties") to pay a total of $2,100,850 to the Hazardous Substance Superfund to partially fund a removal action to be performed by the Agency. The removal action will consist of construction of a water main extension to bring potable water from the North Park Public Water District to individual residences which are threatened by contaminated water ("removal project").

The AOC also includes a covenant by the Agency not to sue the Settling Parties under sections 106 or 107 of CERCLA, 42 U.S.C. 9606 or 9607(a), for any of the following: (1) to require them to perform the removal project; (2) to recover the Agency's past costs related to this Site (which currently total approximately $104,000); or (3) to recover costs to be incurred by the Agency in connection with implementation of the removal project. In the AOC, the Agency specifically reserves all other rights against Settling Parties, including the right to sue them for the Agency's future costs incurred in performance of a remedial investigation/feasibility study ("RI/FS") in connection with the Site, and the right to require the Settling Parties to either perform or pay for any future response actions at the Site, other than this removal project. The AOC also requires the Settling Parties to pay $100,000 to the State of Illinois to partially reimburse the State for its past costs incurred in connection with this Site. Under the AOC the State covenants not to sue the Settling Parties for the balance of its past costs or for future oversight costs incurred in connection with this removal project.

The Agency will accept written comments relating to the settlement for thirty days after publication of this notice. The Agency will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate. The Agency's response to any comments received will be available for public inspection at the North Suburban District Public Library, 5562 Clayton Circle, Roscoe, Illinois and at the U.S. EPA Records Center, Superfund Division 7-J, Metcalfe Federal Building, 77 West Jackson Boulevard, Chicago, Illinois 60604.

DATES: Comments must be submitted on or before May 13, 1999.

ADDRESSES: The proposed AOC and the administrative record related to this Site

are available for public inspection at the North Suburban District Public Library, 5540 Elevator Road, Roscoe, Illinois and at the U.S. EPA Records Center, Superfund Division 7–J, Metcalfe Federal Building, 77 West Jackson Boulevard, Chicago, Illinois 60604. You should address your comments to Janice S. Loughlin, Associate Regional Counsel, U.S. Environmental Protection Agency, Region 5, Mail Code C–29A, 77 West Jackson Boulevard, Chicago, Illinois 60604–3590, and should refer to the Evergreen Manor Groundwater Contamination Site, Winnebago County, Illinois.

FOR FURTHER INFORMATION CONTACT: Mike Ribordy, Remedial Project Manager, Superfund Division, U.S. Environmental Protection Agency (Mail Code SR–6J), or Janice S. Loughlin, Associate Regional Counsel, U.S. Environmental Protection Agency (Mail Code C–14J), 77 W. Jackson Blvd., Chicago, Illinois 60604. Mr. Ribordy can be reached at (312) 886–4592 and Ms. Loughlin can be reached at (312) 886–7158.

Authority: The Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. 9601–9675.

Wendy L. Carney,

Acting Director, Superfund Division.

[FR Doc. 99–9202 Filed 4–12–99; 8:45 am]

BILLING CODE 6560–60–U

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6323–8]

Proposed Administrative Settlement Under the Comprehensive Environmental Response, Compensation, and Liability Act

AGENCY: Environmental Protection Agency.

ACTION: Notice; request for public comment.

SUMMARY: The U.S. Environmental Protection Agency is proposing to enter into a *de minimis* settlement pursuant to section 122(g)(4) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (CERCLA), 42 U.S.C. 9622(g)(4). This proposed settlement is intended to resolve the liabilities under CERCLA of four *de minimis* parties for response costs incurred and to be incurred at the Metal Bank Superfund Site, Philadelphia, Pennsylvania.

DATES: Comments must be provided on or before May 13, 1999.

ADDRESSES: Comments should be addressed to the Docket Clerk, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, PA 19103, and should refer to: *In Re: Metal Bank Superfund Site,* Philadelphia, Pennsylvania, U.S. EPA Docket No. III–98–086–DC.

FOR FURTHER INFORMATION CONTACT: Helen Keplinger (Mail Code–2272A) (202) 564–4221, U.S. Environmental Protection Agency, Office of Site Remediation Enforcement, 401 "M" Street. S.W., Washington, D.C. 20460.

SUPPLEMENTARY INFORMATION: Notice of *De Minimis* Settlement: In accordance with section 122(i)(1) of CERCLA, notice is hereby given of a proposed administrative settlement concerning the Metal Bank Superfund Site, in Philadelphia, Pa. The agreement was proposed by EPA Region III on April 3, 1996. Subject to review by the public pursuant to this Notice, the agreement is subject to the approval of the Attorney General or her designee, United States Department of Justice. Below are listed the parties who have executed binding certifications of their consent to participate in this settlement:

1. Cabot Corporation
2. Delmarva Power & Light Company
3. General Electric Company
4. Gould Electronics, Inc.

These four parties collectively have agreed to pay $174,865.16 subject to the contingency that EPA may elect not to complete the settlement if comments received from the public during this comment period disclose facts or considerations which indicate the proposed settlement is inappropriate, improper, or inadequate. Money collected from *de minimis* parties will be used for past response costs incurred at or in connection with the Site, projected future response costs to be incurred at or in connection with the Site, and includes a premium to cover the risk that unknown conditions are discovered or information previously unknown to EPA is received.

EPA is entering into this agreement under the authority of sections 122(g) and 107 of CERCLA. Section 122(g) authorizes early settlements with *de minimis* parties to allow them to resolve their liabilities at Superfund Sites without incurring substantial transaction costs. Under this authority, EPA proposes to settle with a number of potentially responsible parties at the Metal Bank Superfund Site, each of whom is responsible for less than one percent of the volume of hazardous substance disposed of at the Site. EPA issued a draft settlement proposal on June 28, 1996, invited comments and challenges to the volumetric ranking. On August 5, 1998, EPA issued a final settlement proposal embodied in the Administrative Order on Consent which included several modifications made in response to comments by *de minimis* parties in letters to EPA and during negotiations with the Agency. The proposed settlement reflects and was agreed upon based on conditions known to parties on August 28, 1998. *De minimis* settling parties will be required to pay their volumetric share of the Government's past response costs and the estimated future response costs at the Metal Bank Site excluding any federal claims for natural resource damages or any Commonwealth of Pennsylvania claims.

The Environmental Protection Agency will receive written comments relating to this Agreement for thirty (30) days from the date of publication of this document. A copy of the proposed Administrative Order on Consent may be obtained from Harry R. Steinmetz (3HS11) in EPA's Region III Office, 1650 Arch Street, Philadelphia, PA 19103, (telephone: 215/814–3161).

Thomas Voltaggio,

Acting Regional Administrator, Region III.

[FR Doc. 99–9204 Filed 4–12–99; 8:45 am]

BILLING CODE 6560–60–P

ENVIRONMENTAL PROTECTION AGENCY

[PB–402404–CO; FRL–6060–6]

Lead-Based Paint Activities in Target Housing and Child-Occupied Facilities; State of Colorado's Authorization Application

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; request for comments and opportunity for public hearing.

SUMMARY: On December 21, 1998, the State of Colorado submitted an application for EPA approval to administer and enforce training and certification requirements, training program accreditation requirements, and work practice standards for lead-based paint activities in target housing and child-occupied facilities under section 402 of the Toxic Substances Control Act (TSCA). This notice announces EPA's receipt of Colorado's application, a 45–day public comment period, and an opportunity to request a public hearing on the application. Colorado has provided a certification stating that its program meets the requirements for approval of a State program under section 404 of TSCA. Therefore, pursuant to section 404 of

TSCA, the program is deemed authorized as of the date of submission. If EPA finds that the program does not meet the requirements for approval of a State program, EPA will disapprove the program, at which time a notice will be issued in the **Federal Register** and a Federal program will be established to cover Colorado.

DATES: Comments on the authorization application must be received on or before May 28, 1999.

ADDRESSES: Submit all written comments and/or requests for a public hearing identified by docket number PB–402404–CO (in duplicate) to: Bruce Cooper, Environmental Protection Agency, Region VIII, 8P-P3-T, 999 18th St., Suite 500, Denver, CO 80202–2466.

Comments, data, and requests for a public hearing may also be submitted electronically to: cooper.bruce@epa.gov. Follow the instructions under Unit V. of this document. No information claimed to be Confidential Business Information (CBI) should be submitted through e-mail.

FOR FURTHER INFORMATION CONTACT: Dave Combs, Regional Toxics Team Leader, Environmental Protection Agency, Region VIII, 8P-P3-T, 999 18th St., Suite 500, Denver, CO 80202–2466. Telephone: 303–312–6021; e-mail address: combs.dave@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On October 28, 1992, the Housing and Community Development Act of 1992, Pub. L. 102-550, became law. Title X of that statute was the Residential Lead-Based Paint Hazard Reduction Act of 1992. That Act amended TSCA, 15 U.S.C. 2601 *et seq.*, by adding Subchapter IV, 15 U.S.C. 2681-92, entitled Lead Exposure Reduction.

Section 402 of TSCA, authorizes and directs EPA to promulgate final regulations governing lead-based paint activities in target housing, public and commercial buildings, bridges and other structures. These regulations are to ensure that individuals engaged in such activities are properly trained (under accredited programs) and certified and that they follow documented work practice standards. Under section 404 of TSCA, a State may seek authorization from EPA to administer and enforce its own lead-based paint activities program.

On August 29, 1996, EPA promulgated final TSCA section 402/404 regulations governing lead-based paint activities in target housing and child-occupied facilities (a subset of public buildings) (61 FR 45777) (FRL–5389–9). Those regulations are codified at 40 CFR part 745 and allow both States and Indian Tribes to apply for program authorization. Pursuant to section 404(h) of TSCA, EPA is to establish a Federal program in any State or Tribal Nation without its own authorized program in place by August 31, 1998.

Any State or Tribe choosing to apply for program authorization must submit a complete application to the appropriate Regional EPA Office for review. To receive EPA approval, a State or Tribe must demonstrate that its program is at least as protective of human health and the environment as the Federal program and that it provides for adequate enforcement (see section 404(b) of TSCA). EPA's regulations at 40 CFR part 745, subpart Q, provide the detailed requirements a State or Tribal program must meet in order to obtain EPA authorization.

A State may choose to certify that its lead-based paint activities program meets the requirements for EPA authorization by submitting a letter signed by the Governor or Attorney General and stating that the State's program meets the requirements of section 404(b) of TSCA. Upon submission of such certification letter, the program is deemed authorized until such time as EPA disapproves the program application or withdraws the program authorization. A program is not, however, deemed authorized to the extent that the State may assert jurisdiction over Indian Country, including non-member fee lands within an Indian reservation (see 40 CFR 745.324(d)(2)).

Colorado has provided a self-certification letter stating that its program meets the requirements for authorization of a State program under section 404 of TSCA and has requested interim approval of the compliance and enforcement program portion of the Colorado Lead Program. Therefore, pursuant to section 404, the program is deemed authorized as of the date of submission (i.e., December 21, 1998). If EPA finds that the program does not meet the requirements for authorization of a State program, EPA will disapprove the program application, issue a notice in the **Federal Register**, and establish a Federal program in Colorado.

Section 404(b) of TSCA provides that EPA may approve a program application only after providing notice and an opportunity for a public hearing on the application. Therefore, by this notice EPA is soliciting public comment on whether Colorado's application meets the requirements for EPA approval. This notice also provides an opportunity to request a public hearing on the application.

II. State Program Description Summary

The following is a summary of Colorado's Lead-Based Paint Abatement Regulation Number 19, based on statements in Colorado's December 21, 1998 application.

The State agency responsible for administering and enforcing the program is the Air Pollution Control Division (the "Division"), which is part of the Colorado Department of Public Health and Environment. The Division official designated as the point contact with EPA is Mr. Steven Fine, Supervisor of the CFC, Indoor Air, Asbestos, and Lead-Based Paint Abatement Unit, Air Pollution Control Division. Mr. Fine can be reached by telephone at (303) 692–3164 or by mail at APCD-SS-B1, 4300 Cherry Creek Drive South, Denver, CO 80246–1530.

The Division is the only Colorado State agency responsible for administering and enforcing the Lead-Based Paint Abatement program. However, pursuant to section 25-7-1104(1)(b)(2), C.R.S., the Division may delegate the "implementation or enforcement" of standards to local health or building departments, as appropriate, if requested by such a local department. Such standards regarding such delegations are part of Regulation No. 19, which is included in Colorado's application. If the Division approves such a delegation to a local health or building department, the Division shall remain the primary agency responsible for overseeing and coordinating administration and enforcement of the program and Mr. Steven D. Fine shall remain as the primary contact with EPA.

At this time, there is no delegation to a local health or building department; therefore, the Division has not developed a description of the functions to be performed by each agency. If the Division ever makes such a delegation, it will submit to EPA the required information as detailed in 40 CFR 745.324(b)(1)(iii).

A. Program Elements

Regulation Number 19 is intended to protect children from exposure to lead as a result of lead-based paint abatement in "target housing" and "child-occupied facilities" and to achieve uniformity in the regulation of lead abatement practices and in the qualifications for and certification of persons who perform such abatement.

Regulation Number 19 includes procedures for training and certifing persons and companies involved in lead-based paint inspection, risk assessment, planning, project design, supervision, or abatement. Regulation

Number 19 has a training and certification program that is nearly identical to EPA's program. Training is to be provided by private contractors. To facilitate the Division's course audit schedules, Regulation Number 19 includes an additional requirement that training course providers must receive the Division's approval or acknowledgment of each course prior to offering the course.

Regulation Number 19 includes work practice standards and practices for lead-based paint abatement. These standards include EPA's work practice standards and work practice measures that an abatement contractor must include in an occupant protection plan and comply with before, during, and after abatement. The program also includes a requirement, similar to HUD's requirement, that a contractor must sample the soil to ensure that the soil is not contaminated. The sampling would be required unless the contractor is removing or permanently covering the contaminated soil. Colorado's program requires a certified supervisor to be onsite during all work site preparation, abatement, and during post-abatement cleanup of the work areas.

Regulation Number 19 includes procedures for the approval of persons or companies who provide training or accreditation of workers, supervisors, inspectors, risk assessors, or project designers performing lead-based paint activities in "target housing" or "child-occupied facilities."

Also included in Regulation Number 19 are procedures for the Division notifying appropriate persons regarding lead-based paint projects in "target housing" or "child-occupied facilities." Colorado's program requires a contractor to notify the Division 10 working days prior to the commencement of lead-based paint abatement activities if the amount of lead-based paint, lead contaminated soil, or lead contaminated dust is greater than 2 square feet on interior surfaces or 10 square feet on exterior surfaces. This time period for a notification is necessary because of document review and inspection planning. The regulation includes *de minimis* levels that trigger the notification requirement based upon proposed EPA-identified triggers for risk assessment requirements and HUD's trigger levels for on-site preparation requirements.

Colorado's program includes requirements for fees for certification of persons conducting lead abatement services, for monitoring to ensure compliance with Regulation No. 19, and for approval of persons or companies involved in the training or accreditation of workers.

Colorado has indicated that the Division has legal authority and ability to implement the standards and requirements of Regulation No. 19 immediately and that the Division has authority to commence an enforcement action immediately for any violation of lead-based paint activities and requirements, including accreditation requirements for training programs, certification requirements for individuals, standards for conducting lead-based paint abatement activities, and pre-renovation notification requirements.

Colorado has further stated that the Division has authority to enter premises or facilities where lead-based activities violations may occur for purposes of conducting inspections, through consent, warrant, or other authority. Colorado's application indicates that the Division has authority to enter premises or facilities where those engaged in training for lead-based paint activities conduct business, to enter a renovator's place of business for the purposes of enforcing a pre-renovation program, and to take samples and review records as part of the lead-based paint activities inspection process.

Finally, Colorado has stated that the Division has available to it a diverse and flexible array of enforcement remedies that apply to the State's lead-based paint abatement program, including requests for information, warning letters, and notices of violation; administrative and civil actions, including authority to suspend, revoke, or modify accreditation or certification; and criminal sanctions.

B. Performance Elements

Colorado has also indicated that its lead-based paint abatement program includes the necessary performance elements as required pursuant to 40 CFR 745.327(c). The Division will implement a process for training enforcement and inspection personnel to ensure that such personnel are well trained. The Division already has in place a training program to teach inspectors procedures for developing cases, properly maintaining case files, discovering violations, obtaining consent to inspections, and gathering and preserving evidence. The Division requires that its inspectors attend continuing education courses.

The Division has in place an enforcement tracking data base that allows inspectors to process and react to tips and complaints and track enforcement cases. The Division can target inspections to ensure compliance with Regulation No. 19 and can obtain and use notifications of abatement activities.

The Division has more than 12 years of experience in implementing a compliance monitoring and enforcement program in asbestos. Elements of the asbestos program will allow for a smooth transition to lead-based paint abatement compliance monitoring and enforcement that will result in correction of violations found during either routine inspections or those conducted in response to tips, complaints and emergencies.

C. Statement of Resources

The Division currently employs five persons who have been involved, in varying degrees over the past few years, in developing the lead-based paint abatement program. The Division is hiring two FTEs to work full time in the lead-based paint abatement program. They will be involved in activities such as conducting lead-based paint abatement inspections, processing notifications, certifying individuals and firms, and conducting course audits.

While the Colorado Legislature did grant the Division authority to assess fees for certain aspects of the Lead Program, the level of abatement activity and numbers of individuals and firms seeking certification is unknown and may not generate sufficient revenues in the first 2 to 3 years of the program to fund the program fully. In consideration of this, the Division will be submitting a grant application request to EPA for supplemental funding until the program can operate solely on revenues collected.

D. Summary on Progress and Performance

The Division agrees to submit to EPA a Summary on Progress and Performance of lead-based paint abatement compliance and enforcement activities.

III. Issues Upon Which EPA Requests Public Comment

EPA requests comment on whether Colorado's application meets all statutory and regulatory requirements for EPA approval. EPA especially solicits comments on whether and how Colorado's environmental audit privilege and penalty immunity statute, sometimes known as S.B. 94-139, affects Colorado's ability to meet the pertinent requirements. S.B. 94-139 has been codified at sections 13-25-126.5, 13-90-107(1)(j), and 25-1-114.5, C.R.S.

IV. Federal Overfiling

TSCA section 404(b), makes it unlawful for any person to violate, or

fail or refuse to comply with, any requirement of an approved State or Tribal program. Therefore, EPA reserves the right to exercise its enforcement authority under TSCA against a violation of, or a failure or refusal to comply with, any requirement of an authorized State or Tribal program.

V. Public Record and Electronic Submissions

The official record for this action, as well as the public version, has been established under docket control number PB–402404–CO. Copies of this notice, the State of Colorado's authorization application, and all comments received on the application are available for inspection in the Region VIII office, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket is located at EPA, Region VIII, 8P-P3T, 999 18th St., Suite 500, Denver, CO.

Commenters are encouraged to structure their comments so as not to contain information for which CBI claims would be made. However, any information claimed as CBI must be marked "confidential," "CBI," or with some other appropriate designation, and a commenter submitting such information must also prepare a nonconfidential version (in duplicate) that can be placed in the public record. Any information so marked will be handled in accordance with the procedures contained in 40 CFR part 2. Comments and information not claimed as CBI at the time of submission will be placed in the public record.

Electronic comments can be sent directly to EPA at: cooper.bruce@epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect 5.1/6.1 or ASCII file format. All comments and data in electronic form must be identified by the docket control number PB–402404–CO. Electronic comments on this document may be filed online at many Federal Depository Libraries. Information claimed as CBI should not be submitted electronically.

VI. Regulatory Assessment Requirements

A. Certain Acts and Executive Orders

EPA's actions on State or Tribal lead-based paint activities program applications are informal adjudications, not rules. Therefore, the requirements of the Regulatory Flexibility Act (RFA, 5 U.S.C. 601 *et seq.*), the Congressional Review Act (5 U.S.C. 801 *et seq.*), Executive Order 12866 ("Regulatory Planning and Review," 58 FR 51735, October 4, 1993), and Executive Order 13045 ("Protection of Children from Environmental Health Risks and Safety Risks," 62 FR 1985, April 23, 1997), do not apply to this action. This action does not contain any Federal mandates, and therefore is not subject to the requirements of the Unfunded Mandates Reform Act (2 U.S.C. 1531-1538). In addition, this action does not contain any information collection requirements and therefore does not require review or approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

B. Executive Order 12875

Under Executive Order 12875, entitled "Enhancing Intergovernmental Partnerships" (58 FR 58093, October 28, 1993), EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local, or Tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to OMB a description of the extent of EPA's prior consultation with representatives of affected State, local, and Tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local, and Tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates." Today's action does not create an unfunded Federal mandate on State, local, or Tribal governments. This action does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this action.

C. Executive Order 13084

Under Executive Order 13084, entitled "Consultation and Coordination with Indian Tribal Governments" (63 FR 27655, May 19, 1998), EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the Tribal governments. If the mandate is unfunded, EPA must provide OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected Tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities." Today's action does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this action.

Authority: 15 U.S.C. 2682, 2684.

List of Subjects

Environmental protection, Hazardous substances, Lead, Reporting and recordkeeping requirements.

Dated: March 30, 1999.

William Yellowtail,

Regional Administrator, Region VIII.

[FR Doc. 99–9207 Filed 4–12–99; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collections being Reviewed by the Federal Communications Commission

April 6, 1999.

SUMMARY: The Federal Communications Commissions, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper

performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before June 14, 1999. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commission, 445 12th Street, SW, Room 1-A804, Washington, DC 20554 or via the Internet to lesmith@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Approval Number: 3060–0079.

Title: Application for An Amateur Club, RACES, or Military Recreation Station License.

Form Number: FCC 610B.

Type of Review: Extension of a currently approved collection.

Respondents: Not-for-profit institutions.

Number of Respondents: 600.

Estimated Time Per Response: 5 minutes.

Total Annual Burden: 50 hours.

Total Annual Cost: None.

Needs and Uses: FCC Rules require applicants to file FCC Form 610B for new, modified, or renewed Amateur Club, Radio Amateur Civil Emergency Service (RACES), or Military Recreation Station Licenses. The data are used by Call Sign Administrators and Commission staff to determine if the applicant is eligible for Amateur Club, RACES, or Military Recreation Station License. The information is used in issuing authorizations of service and is vital to maintain an acceptable database.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–9075 Filed 4–12–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collections Being Reviewed by the Federal Communications Commission

March 31, 1999.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before June 14, 1999. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commission, 445 12th Street, S.W., Room 1–A–804, Washington, DC 20554 or via the Internet to lesmith@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Approval Number: 3060–0096.

Title: Application for Ship Radio Station License.

Form Numbers: FCC 506/FCC 506A.

Type of Review: Revision of a currently approved collection.

Respondents: Individuals or households; Businesses or other for-profit entities; State, Local or Tribal Government; Non-profit institutions.

Number of Respondents: 8,200.

Estimated Time Per Response: 22 minutes.

Total Annual Burden: 2,952 hours.

Total Annual Costs: $623,676 (filing fees).

Needs and Uses: FCC rules require that applicants file the FCC 506 to apply for a new or modified ship radio station license. The form can also be used to renew a ship radio station license when the applicant does not receive the renewal application FCC Form 405B automatically generated by the Commission. The FCC 506A is used by the applicant to self certify to a temporary operating authority while the ship application is being processed by the FCC. This form is being revised to delete the fee payment and Taxpayer Identification Number blocks. Any payment to the FCC requires an FCC Form 159 (Fee Remittance Advice), and this information is duplicated on that form. The instructions have been revised and renumbered to accommodate these changes.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–9157 Filed 4–12–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collections Submitted to OMB for Review and Approval

March 26, 1999.

SUMMARY: The Federal Communications Commissions, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to

minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before May 13, 1999. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commissions, Room 1–A804, 445 Twelfth Street., S.W., Washington, DC 20554 or via the Internet to lesmith@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at 202–418–0217 or via the Internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0687.

Title: Access to Telecommunications Equipment and Services by Persons with Disabilities, CC Docket No. 87–124.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Businesses or other for profit entities.

Number of Respondents: 806,100.

Estimated Time Per Response: 1.2 to 11.4 hours.

Frequency of Response: On occasion reporting requirements; Third party disclosure.

Total Annual Burden: 991,000 hours.

Total Annual Costs: $638,500.

Needs and Uses: The Commission requires that telephones with electro-magnetic coil hearing aid compatibility be stamped with the letters HAC. Section 68.112(b)(3)(E) requires that employees with fifteen or more employees provide emergency telephones for use by employees with hearing disabilities and that the employers "designate" such telephones for emergency use. Section 68.224(a) requires a notice to be contained on the surface of the packaging of a non-hearing aid compatible telephone that the telephone is not hearing aid compatible. The requirements were implemented to assist the Commission in carrying out its responsibilities.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–9072 Filed 4–12–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Submitted to OMB for Review and Approval.

April 5, 1999.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before May 13, 1999. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commissions, 445 12th Street, S.W., Room 1–A804, Washington, DC 20554 or via the Internet to lesmith@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0674.

Title: Section 76.931, Notification of Basic Tier Availability, and Section 76.932, Notification of Proposed Rate Increase.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Businesses or other for-profit entities.

Number of Respondents: 11,365.

Estimated Time per Response: 2.25 hours.

Frequency of Response: On occasion reporting requirements; Third party disclosure.

Total Annual Burden: 25,572 hours.

Total Annual Costs: None.

Needs and Uses: Section 76.931 states that a cable operator shall provide written notification to subscribers of the availability of basic tier service by November 20, 1993, or three billing cycles from September 1, 1993, and to new subscribers at the time of installation. This notification is to include the following information: (a) that basic tier service is available; (b) the cost per month for basic tier service; and (c) a list of all services included in the basic service tier. Section 76.932 states that a cable operator shall provide written notice to subscribers of any increase in the price to be charged for the basic service tier or associated equipment at least 30 days before any proposed increase is effective. These notice requirements ensure that subscribers are made aware of the price and availability of basic cable service and ensure that subscribers are given due notice of rate increases with basic cable service.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–9073 Filed 4–12–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collections Submitted to OMB for Review and Approval.

April 5, 1999.

SUMMARY: The Federal Communications Commissions, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the

Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before May 13, 1999. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, S.W., Washington, DC 20554 or via the Internet to lesmith@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0862.

Title: Handling Confidential Information, GC Docket No. 96–55.

Form Number: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Businesses or other for-profit entities; Not-for-profit institutions; Federal Government; and State, Local or Tribal Governments.

Number of Respondents: 600.

Estimated Time Per Response: 1 to 3 hours.

Frequency of Response: Recordkeeping; On occasion reporting requirement.

Total Annual Burden: 800 hours.

Total Annual Costs: None.

Needs and Uses: The FCC seeks approval for (a) the requirement that parties entering into a protective order keep a log of those who have access to the confidential materials and make that log available to the submitter of the confidential materials, and (b) for the showing necessary to support a request for confidentiality.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–9074 Filed 4–12–99; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection Submitted to OMB for Review

March 30, 1999.

SUMMARY: The Federal Communications Commission, as part of its continuing efforts to reduce paperwork burdens invites the general public and other Federal agencies to take this oppportunity to comment on the following information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before May 13, 1999. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commissions, Room 1–A804, 445 12th Street, SW, Washington, DC 20554 or via the Internet to lesmith@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at 202–418–0217 or via the Internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0475.

Title: Section 90–713, Entry Criteria.

Form Number: N/A.

Type of Review: Extension to a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 33.

Estimated Time per Response: 25.5 hours (avg.).

Frequency of Response: One-time reporting requirement.

Total Annual Burden: 842 hours.

Total Annual Costs: $0.

Needs and Uses: Section 90.713 of the Commission's rules requires applicants for nationwide systems in the 220–222 MHz bands to certify that they have an actual presence necessitating internal communications capacity in the 70 or more markets identified in the application. The data will be used to determine the eligibility of the applicant to hold a radio station authorization. Commission licensing personnel will use the data for rulemaking proceedings and field engineers will use the data for enforcement purposes.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–9077 Filed 4–12–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Sunshine Act Meeting; Open Commission Meeting Thursday, April 15, 1999

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Thursday, April 15, 1999, which is scheduled to commence at 9:30 a.m. in Room TW-C305, at 445 12th Street, S. W., Washington, D.C.

Item No.	Bureau	Subject
1	Common Carrier	Title: Truth-in-Billing and Billing Format (CC Docket No. 98–170). Summary: The Commission will consider a Report & Order and Further Notice of Proposed Rulemaking concerning truth-in-billing and billing format for telephone bills to ensure that consumers get clear and accurate information.
2	International	Title: 1998 Biennial Regulatory Review Reform of the International Settlements Policy and Associated Filing Requirements (IB Docket No. 98–148); Regulation of International Accounting Rates (CC Docket No. 90–337); and Market Entry and Regulation of Foreign-Affiliated Entities (IB Docket No. 95–22).

Item No.	Bureau	Subject
3	Mass Media and Office of General Counsel.	Summary: The Commission will consider a Report and Order and Order on Reconsideration reforming the international settlements policy and associated filing requirements in an effort to promote more competition in international long distance. Title: Implementation of Section 309(j) of the Communications Act—Competitive Bidding for Commercial Broadcast and Instructional Television Fixed Service Licenses (MM Docket No. 97–234); Reexamination of the Policy Statement on Comparative Broadcast Hearings (GC Docket No. 92–52); and Proposals to Reform the Commission's Comparative Hearing Process to Expedite the Resolution of Cases (GEN Docket No. 90–264). Summary: The Commission will consider a Memorandum Opinion & Order that addresses petitions for reconsideration of the Report & Order adopting rules for competitive bidding procedures to award commercial broadcast, secondary broadcast, and Instructional Television Fixed Service licenses.

Additional information concerning this meeting may be obtained from Maureen Peratino or David Fiske, Office of Public Affairs, telephone number (202) 418–0500; TTY (202) 418–2555.

Copies of materials adopted at this meeting can be purchased from the FCC's duplicating contractor, International Services, Inc. (ITS, Inc.) at (202) 857–3800; fax (202) 857–3805 and 857–3184; or TTY (202) 293–8810. These copies are available in paper format and alternative media, including large print/type; digital disk; and audio tape. ITS may be reached by e-mail: its—inc@ix.netcom.com. Their Internet address is htt://www.itsi.com.

This meeting can be viewed over George Mason University's Capitol Connection. The Capitol Connection also will carry the meeting live via the Internet. For information on these services call (703) 993–3100. The audio portion of the meeting will be broadcast live on the Internet via the FCC's Internet audio broadcast page at <http://www.fec.gov/realaudio/>. The meeting can also be heard via telephone, for a fee, from National Narrowcast Network, telephone (202) 966–2211 or fax (202) 966–1770. Audio and video tapes of this meeting can be purchased from Infocus, 341 Victory Drive, Herndon, VA 20170, telephone (703) 834–0100; fax number (703) 834–0111.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

[FR Doc. 99–9287 Filed 4–9–99; 11:05 am]

BILLING CODE 6712–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 10:03 a.m. on Thursday, April 8, 1999, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider (1) matters relating to the Corporation's supervisory activities, and (2) reports from the Office of Inspector General.

In calling the meeting, the Board determined, on motion of Director Ellen S. Seidman (Director, Office of Thrift Supervision), seconded by Vice Chairman Andrew C. Hove, Jr., concurred in by Julie L. Williams, acting in the place and stead of Director John D. Hawke, Jr. (Comptroller of the Currency), and Chairman Donna Tanoue, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no notice of the meeting earlier than April 7, 1999, was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(4), (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2), (c)(4), (c)(6), (c)(8), and (c)(9)(A)(ii)).

The meeting was held in the Board Room of the FDIC Building located at 550 17th Street, N.W., Washington, D.C.

Dated: April 8, 1999.

Federal Deposit Insurance Corporation.

James D. LaPierre,

Deputy Executive Secretary.

[FR Doc. 99–9270 Filed 4–8–99; 5:11 p.m.]

BILLING CODE 6714–01–M

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License Revocations

The Federal Maritime Commission hereby gives notice that the following freight forwarder licenses have been revoked pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of ocean freight forwarders, effective on the corresponding revocation dates shown below:

License Number: 1616
Name: Air-Mar Shipping, Inc.
Address: State Road #24, KM 1.6, Buchanan, PR 00968
Date Revoked: March 10, 1999.
Reason: Failed to maintain a valid surety bond.

License Number: 4484
Name: All Destinations Shipping Company
Address: 2624 N.W. 112th Ave., Miami, FL 33172–1818
Date Revoked: March 12, 1999.
Reason: Failed to maintain a valid surety bond.

License Number: 3705
Name: Auto Driveway Co.
Address: 310 South Michigan Ave., Chicago, IL 60604
Date Revoked: March 22, 1999.
Reason: Surrendered license voluntarily.

License Number: 4400
Name: D & L International Freight Forwarding Company
Address: 8244 Virgo Street, Jacksonville, FL 32216
Date Revoked: March 14, 1999.
Reason: Failed to maintain a valid surety bond.

License Number: 3766
Name: Due International, Inc.
Address: 19300 S. Hamilton Ave., Suite 220, Gardena, CA 90248
Date Revoked: May 1, 1999.
Reason: Surrendered license voluntarily.

License Number: 1429
Name: G. F. International Inc.
Address: c/o Big Apple Customs Brokers, Inc., 151–02 132nd Ave., Jamaica, NY 11434
Date Revoked: March 17, 1999.
Reason: Failed to maintain a valid surety bond.

License Number: 4450
Name: Non-Stop Cargo, Inc.
Address: 8232 N.W. 56th Street, Miami, FL 33166

Date Revoked: March 10, 1999.
Reason: Failed to maintain a valid surety bond.

T. A. Zook,
Deputy Director, Bureau of Tariffs, Certification and Licensing.
[FR Doc. 99–9155 Filed 4–12–99; 8:45 am]
BILLING CODE 6730–01–M

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License; Reissuance of License

Notice is hereby given that the following ocean freight forwarder license has been reissued by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of ocean freight forwarders, 46 CFR part 510.

License No. 1197
Name/Address: The Irwin Brown Company 212 Chartres Street P.O. Box 2426 New Orleans, La 70176–2426
Date Reissued: February 28, 1999

T. A. Zook,
Deputy Director, Bureau of Tariffs, Certification and Licensing.
[FR Doc. 99–9156 Filed 4–12–99; 8:45 am]
BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 7, 1999.

A. Federal Reserve Bank of Philadelphia (Michael E. Collins, Senior Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105-1521:

1. BT Financial Corporation, Johnstown, Pennsylvania; to acquire 100 percent of the voting shares of First Philson Financial Corporation, Berlin, Pennsylvania, and thereby indirectly acquire First Philson Bank, NA, Berlin, Pennsylvania.

B. Federal Reserve Bank of Richmond (A. Linwood Gill III, Assistant Vice President) 701 East Byrd Street, Richmond, Virginia 23261-4528:

1. BB&T Corporation, Winston-Salem, North Carolina; to merge with First Citizens Corporation, Newnan, Georgia, and thereby indirectly acquire First Citizens Bank of Georgia, Fayetteville, Georgia.

In connection with this application, Applicant also has applied to acquire First Citizens Bank, Newnan, Georgia, and thereby engage in operating and savings association, pursuant to § 225.28(b)(4)(ii) of Regulation Y, and Newnan Financial Services, Inc., Newnan, Georgia, and thereby engage in providing real estate appraisal services to both affiliates and third parties, pursuant to § 225.28(b)(2)(i) of Regulation Y.

In connection with this proposal, BB&T Corporation has requested permission to exercise an option that would enable BB&T Corporation to acquire up to 19.9 percent of the voting securities of First Citizens Corporation under certain circumstances.

Board of Governors of the Federal Reserve System, April 8, 1999.

Robert deV. Frierson,
Associate Secretary of the Board.
[FR Doc. 99–9186 Filed 4–12–99; 8:45 am]
BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.
TIME AND DATE: 11:00 a.m., Monday, April 19, 1999.
PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, N.W., Washington, D.C. 20551.
STATUS: Closed.
MATTERS TO BE CONSIDERED:

1. Proposed revisions to the Code of Conduct for the Federal Reserve Banks.
2. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
3. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Lynn S. Fox, Assistant to the Board; 202–452–3204.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at http://www.federalreserve.gov for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: April 9, 1999.

Robert deV. Frierson,
Associate Secretary of the Board.
[FR Doc. 99–9340 Filed 4–9–99; 3:53 pm]
BILLING CODE 6210–01–P

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General Advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register**.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

TRANSACTION GRANTED EARLY TERMINATION

ET date	Trans No.	ET req status	Party name
15-MAR-99	19991617	G	American Home Products Corporation.
		G	Aviron.
		G	Aviron.
	19991621	G	John J. Rigas.
		G	John J. Rigas.
		G	AVR of Tennessee, L.P.
	19991637	G	Coherent, Inc..
		G	Palomar Medical Technologies, Inc.
		G	Star Medical Technologies, Inc.
	19991692	G	Pioneer International Ltd.
		G	Morrison Knudsen Corporation.
		G	Blue Diamond Materials, Inc.
	19991726	G	Microsemi Corporation.
		G	SymmetriCom, Inc.
		G	Linfinity Microelectronics Inc.
	19991728	G	AnswerThink Consulting Group, Inc.
		G	Parmjit Parmar.
		G	Pegasus Consulting Group, Inc.
	19991729	G	Parmjit Parmar.
		G	AnswerThink Consulting Group, Inc.
		G	AnswerThink Consulting Group, Inc.
	19991746	G	Associates First Capital Corporation.
		G	Exxon Corporation.
		G	Exxon Travel Club, Inc.
	19991750	G	Caterpillar Inc.
		G	Emerson Electric Co.
		G	F.G. Wilson L.L.C. a Delaware Limited Liability Company.
	19991752	G	Willis Stein & Partners II, L.P..
		G	Torstar Corporation.
		G	Troll Communications L.L.C.
	19991761	G	J.W. Childs Equity Partners II, L.P..
		G	American Safety Razor Company.
		G	American Safety Razor Company.
	19991763	G	University of Rochester.
		G	Visiting Nurse Foundation, Inc.
		G	Visiting Nurse Foundation, Inc.
	19991764	G	Brown-Forman Corporation.
		G	Sonoma-Cutrer Vineyards, Inc.
		G	Sonoma-Cutrer Vineyards, Inc.
	19991765	G	Ameritech Corporation.
		G	Anixter International, Inc.
		G	Anixter Inc.
	19991766	G	American International Group, Inc.
		G	Mr. Joseph DeLago.
		G	The Peterson Group, Inc.
	19991768	G	PepsiCo, Inc.
		G	Leader Beverage Corporation.
		G	Leader Beverage Corporation.
	19991774	G	Amador S. Bustos.
		G	Ronald A. Unkefer.
		G	First Broadcasting Company, L.P.
	19991777	G	Mannesmann A.G.
		G	Sumitomo Heavy Industries Inc.
		G	Link-Belt Construction Equipment Company, Inc.
	19991778	G	Guidant Mutual Insurance Company.
		G	James E. Murphy.
		G	United Premier Corporation.
		G	J.E. Murphy Premium Finance Company.
		G	J.E. Murphy Company, Inc. of Arizona.
	19991781	G	Kawasho Corporation.
		G	Nozaki & Co., Ltd.
		G	Nozaki & Co., Ltd.
	19991782	G	ConAgra, Inc.
		G	Kruse Investment Company, Inc.
		G	Capitol Milling Company, Inc.
	19991783	G	Walt Disney Company (The).
		G	Autry Qualified Interest Trust.
		G	Autry Qualified Interest Trust.
	19991787	G	TI Group plc.
		G	General Electric Company.
		G	Tri-Industries, Inc.
	19991789	G	Cooperatieve Centrale Raiffeisen Boerenleenbank B.

TRANSACTION GRANTED EARLY TERMINATION—Continued

ET date	Trans No.	ET req status	Party name
		G	The Tokai Bank, Limited.
		G	Tokai Financial Services, Inc.
	19991792	G	Metamor Worldwide, Inc.
		G	SPR, Inc.
		G	SPR, Inc.
	19991795	G	Vickers plc.
		G	Ulstein Holding ASA.
		G	Ulstein Holding ASA.
	19991798	G	Eagle Pacific Industries, Inc.
		G	The Lamson & Sessions Co.
		G	The Lamson & Sessions Co.
	19991801	G	Conrad Plimpton.
		G	Allied Signal, Inc.
		G	AlliedSignal Technologies, Inc.; AlliedSignal Deutschl.
	19991804	G	McCown De Leeuw & Co. IV, L.P.
		G	The Loewen Group Inc.
		G	Monte Cristo, Inc.
		G	Camposanto PR, Inc.
		G	Jibe Services Corporation.
		G	Los Rosales Memorial Park, Inc.
		G	Los Jardines Memorial Park, Inc.
		G	Camposanto-Aguadilla, Inc.
	19991805	G	Stichting Administratiekantoor.
		G	Mr. Arthur P. Poor, Jr.
		G	Sunburst Fruit Juices, Inc.
		G	Twin Mountain Real Estate Trust.
		G	Twin Mountain Spring Water Company, Inc.
		G	Sunburst Realty Trust.
	19991806	G	CML Holdings, LLC.
		G	HMH Broadcasting, Inc.
		G	HMH Broadcasting, Inc.
	19991811	G	MotivePower Industries, Inc.
		G	Gayle L. Ortyl.
		G	Metro East Industries, Inc.
	19991825	G	Fox Paine Capital Fund, L.P.
		G	United American Energy Corp.
		G	United American Energy Corp.
16-MAR-99	19991565	G	Rockwell International Corporation.
		G	K Systems, Inc.
		G	Kaiser Flight Dynamics, Inc.
	19991625	G	The SKM Equity Fund II, L.P.
		G	Nationwide Precision Products Corp.
		G	Nationwide Precision Products Corp.
	19991711	G	Republic Industries, Inc.
		G	J. Albert Burnett.
		G	Contemporary Cars, Inc.
	19991740	G	Akron General Health System.
		G	The Health Group.
		G	The Health Group.
		G	Massillon Community Hospital.
		G	HomeTown HHP Services Corporation.
	19991743	G	Bacou, S.A.
		G	Joseph P. Hoerner.
		G	Perfect Fit Glove Co., Inc.; SCHAS Circular Industries, Inc.
	19991767	G	El Paso Energy Corporation.
		G	EnCap Investments L.C.
		G	EnCap Investments L.C.
	19991769	G	Robert Bosch Industrietreuhand KG.
		G	ZEXEL Corporation.
		G	ZEXEL Corporation.
	19991813	G	Warburg, Pincus Ventures, L.P.
		G	One-On-One Sports, Inc.
		G	One-On-One Sports of Illinois, L.L.C.
		G	One-On-One Sports Radio of Illinois, L.L.C.
	19991814	G	Deutsche Lufthansa AG.
		G	Hudson General Corporation.
		G	Hudson General Corporation.
	19991815	G	Swifty Serve, LLC.
		G	Country Cupboard Food Stores, Inc.
		G	Country Cupboard Food Stores, Inc.
	19991816	G	Aurora Equity Partners II L.P.
		G	AlliedSignal Inc.

TRANSACTION GRANTED EARLY TERMINATION—Continued

ET date	Trans No.	ET req status	Party name
		G	AlliedSignal Inc.
	19991818	G	Supreme International Corporation.
	19991818	G	Salant Corporation.
		G	Frost Bros. Enterprise, Inc.
		G	Maquiladora Sur, S.A. de C.V.
	19991820	G	Nationwide Mutual Insurance Company.
		G	Zenith National Insurance Corp.
		G	CalFarm Insurance Company.
	19991822	G	Ranson W. Webster.
		G	Intuit Inc.
		G	Intuit Inc.
	19991823	G	Intuit Inc.
		G	Ranson W. Webster.
		G	Computing Resources, Inc.
	19991571	G	Legato Systems, Inc.
		G	George Wilson.
		G	Intelliguard Software, Inc.
		G	ORP USA, Inc.
	19991578	G	TWFanch-two Co.
		G	LF Capital Partners, LLC.
		G	DF Cablevision Limited Partnership.
	19991605	G	Bioglan Pharma plc.
		G	Medicis Pharmaceutical Corporation.
		G	Medicis Pharmaceutical Corporation.
	19991708	G	Lafarge S.A.
		G	Larry W. Corn.
		G	Corn Construction Company.
	19991716	G	Don E. Bond.
		G	Powertel, Inc.
		G	InterCel, Inc.
		G	InterCel Licenses, Inc.
	19991770	G	Liberty Mutual Insurance Company.
		G	Guardian Royal Exchange plc.
		G	Guardian Royal Exchange Holdings, Inc.
	19991773	G	Providence Equity Partners III, L.P.
		G	AT&T Corp.
		G	AT&T Corp.
	19991791	G	Cobham plc.
		G	North American Fund II, L.P.
		G	ACR Electronics, Inc.
	19991831	G	Sterling Software, Inc.
		G	Nathan C. Thompson.
		G	Spectra Logic Corporation.
	19991832	G	Merrill Lynch & Co., Inc.
		G	David E. Shaw.
		G	D.E. Shaw Financial Technology, L.P.
	19991834	G	Sidney B. DeBoer.
		G	W. Douglas Moreland.
		G	Cherry Creek Dodge, Inc., Colorado Springs.
		G	Jeep/Eagle, Inc.
		G	Foothills Automotive Plaza, Inc.
	19991835	G	W. Douglas Moreland.
	19991835	G	Sidney B. DeBoer.
		G	Lithia Motors, Inc.
	19991836	G	ACE Limited.
		G	CIGNA Corporation.
		G	INA Corporation.
	19991839	G	Cooper Industries, Inc.
		G	Leon Cohen.
		G	Neo-Ray Products Incorporated.
	19991842	G	Wind Point Partners III, L.P.
		G	Thomas A. McCaslin, IV.
		G	J. Fegely & Son Hardware, Co., Inc.
	19991847	G	GTCR Fund VI, L.P.
		G	The Beacon Group III—Focus Value Fund, L.P.
		G	Hollywood Theater Holdings, Inc.
	19991851	G	BankAmerica Corporation.
		G	The Boeing Company.
		G	MD Technical Services, L.L.C.
	19991854	G	GTCR Fund, VI, LR.
		G	Scott C. Wallace.
		G	Wallace Theater Corporation II.

TRANSACTION GRANTED EARLY TERMINATION—Continued

ET date	Trans No.	ET req status	Party name
	19991855	G	ABRY Broadcast Partners II, L.P.
		G	Hicks, Muse, Tate, Furst Equity Fund III, L.P.
		G	STC Broadcasting, Inc.
		G	STC Lincense Company.
	19991868	G	Spartan Motors, Inc.
		G	Carpenter Industries, Inc.
		G	Carpenter Industries, Inc.
	19991895	G	Science Applications International Corporation.
		G	Oacis Healthcare Holdings Corp.
		G	Oacis Healthcare Holdings Corp.
18-MAR-99	19990429	G	CMS Energy Corporation.
		G	Duke Energy Corporation.
		G	Panhandle Storage Company.
		G	Trunkline LNG Company.
		G	Panhandle Eastern Pipe Line Company.
19-MAR-99	19991871	G	Eclipsys Corporation.
		G	SunGuard Data System Inc.
		G	Med Data Systems Inc.
		G	Intelus Corporation.
	19991888	G	Triumph Partners III, L.P.
		G	Brian R. Marlowe.
		G	Remco Maintenance Corporation.
22-MAR-99	19991647	G	NIPSCO Industries, Inc.
		G	PacificCorp.
		G	TPC Corporation.
	19991698	G	TriStar Aerospace Co.
		G	John W. Ratiff.
		G	Standard Parts and Equipment Corporation.
	19991734	G	Jeffrey H. Smulyan.
		G	Mark A. Nickel.
		G	Country Sampler, Inc.
	19991794	G	Morton Industrial Group, Inc.
		G	Worthington Industries, Inc.
		G	Worthington Industries, Inc.
	19991802	G	William D. Morton.
		G	James M. Campbell.
		G	Midland Partners, Inc.
	19991812	G	J.T. Walker Industries, Inc.
		G	Caradon, plc.
		G	Caradon Doors and Windows, Inc.
	19991837	G	Pentair, Inc.
		G	WEB Tool & Manufacturing, Inc.
		G	WEB Tool & Manufacturing, Inc.
	19991862	G	CareFirst, Inc.
		G	Blue Cross Blue Shield of Delaware, Inc.
		G	Blue Cross Blue Shield of Delaware, Inc.
	19991863	G	J.W. Childs Equity Partners, L.P.
		G	Applebee's International, Inc.
		G	Rio Bravo International, Inc.
		G	Innovative Restaurant Concepts, Inc., IRC Kansas, I.
	19991878	G	Apollo Investment Fund III, L.P.
		G	Eos Partners, L.P.
		G	Pacer International, Inc.
	19991879	G	Vestar Capital Partners III, L.P.
		G	St. John Knits International, Inc.
		G	St. John Knits International, Inc.
	19991882	G	Scott M. Spangler.
		G	ERLY Industries, Inc. (Debtor-In-Possession).
		G	Chemonics International, Inc.
	19991884	G	Guest Supply, Inc.
		G	Madhukar & Naina Kapadia.
		G	Kapadia Enterprises, Inc. d/b/a Nasco Supply Company.
		G	MacDonald Contract Sales, Inc.
	19991887	G	Forest Lawn Memorial-Park Associaiton.
		G	American Security & Fidelity Corporation.
		G	American Security & Fidelity Corporation.
	19991889	G	David Sherman, Jr.
		G	Diageo plc.
		G	Diageo, Inc.
	19991890	G	Shop at Home, Inc.
		G	Lowell W. Paxson.
		G	Paxson Communications Corporation.

TRANSACTION GRANTED EARLY TERMINATION—Continued

ET date	Trans No.	ET req status	Party name
	19991891	G	Armor Holdings, Inc.
		G	Neale A. Perkins.
		G	Safari Land Ltd., Inc.
	19991893	G	Terry R. Taylor.
		G	Edward J. Morse.
		G	Morese Operations, Inc.
	19991897	G	Churchill ESOP Capital Partners, L.P.
		G	Jones Stephens Corporation.
		G	Jones Stephens Corporation.
	19991899	G	William Goldring.
		G	Diageo plc.
		G	Diageo, Inc.
	19991900	G	Heaven Hill Distilleries, Inc.
		G	Diageo plc.
		G	UDV North America, Inc.
	19991902	G	James E. Sowell.
		G	The Pet Life Foods, Inc. Employee Stock Ownership Plan.
		G	Pet Life Foods, Inc.
	19991903	G	Safeguard Scientifics, Inc.
		G	TRW Inc.
		G	E-Certify Corporation.
	19991909	G	Paul M. Montrone.
		G	H. Thomas Beck.
	19991909	G	Noma Industries Limited.
	19991918	G	Chiquita Brands International, Inc.
		G	Agripac, Inc. (debtor in possession).
		G	Agripac, Inc. (debtor in possession).
	19991924	G	Mason Wells Leveraged Buyout Fund I, Limited Partnership.
		G	A Strum & Sons, Inc.
		G	A Strum & Sons, Inc.
	19991928	G	Spartan Stores, Inc.
		G	Glen A. Catt.
		G	Glen's Markets, Inc.
		G	Catt's Realty Co.
		G	Glen's Pharmacy, Inc.
	19991939	G	Racing Champions Corporation.
		G	U.S. Industries, Inc.
		G	The Ertl Company, Inc.
	19991940	G	Michael Pieper.
		G	Edward J. Kassab Trust.
		G	Stainless, Incorporated.
	19991941	G	Stewart Enterprises, Inc.
		G	Frank Newcomer, III.
		G	D.W. Newcomer's Sons, Inc. and DWN Properties, I.
	19991947	G	Aurora Foods, Inc.
		G	Joseph A. Galando.
		G	Sea Coast Foods, Inc.
23-MAR-99	19990608	G	FLIR Systems, Inc.
		G	Inframetrics, Inc.
		G	Inframetrics, Inc.
	19991666	G	EOTT Energy Partners, LP.
		G	Royal Dutch Petroleum Company.
		G	Texas-New Mexico Pipe Line Company.
	19991684	G	U.S. Industries, Inc.
		G	SPX Corporation.
		G	GS Building Systems Corporation.
		G	Dual-Lite Manufacturing Inc.
	19991762	G	V.F. Corporation.
		G	Horace Small Apparel PLC.
		G	Horace Small Holdings Corporation of Delaware, Inc.
	19991775	G	Cap Gemini, S.A.
		G	BDSI, Inc.
		G	BDSI, Inc.
	19991796	G	AUXILIUM Stiftung.
		G	The Dean Company.
		G	The Dean Company.
	19991799	G	Capital Z Financial Services Fund II, L.P.
		G	WIT Capital Group, Inc.
		G	WIT Capital Group, Inc.
	19991809	G	Brooke Group Ltd.
		G	New Valley Corporation.
		G	New Valley Corporation.

TRANSACTION GRANTED EARLY TERMINATION—Continued

ET date	Trans No.	ET req status	Party name
	19991810	G	Brooke Group Ltd.
		G	RJR Nabisco Holdings Corp.
		G	RJR Nabisco Holdings Corp.
	19991840	G	XL Capital Ltd.
		G	NAC RE Corporation.
		G	NAC RE Corporation.
	19991843	G	Thomas R. Galloway, Sr.
		G	Sinclair Broadcast Group, Inc.
		G	Sinclair Broadcast Group, Inc.
	19991848	G	Dow Jones & Company, Inc.
		G	OptiMark Technologies, Inc.
		G	OptiMark Technologies, Inc.
	19991881	G	The IT Group, Inc.
		G	ICF Kaiser International, Inc.
		G	ICF Kaiser International, Inc.
	19991886	G	Code, Hennessy & Simmons III, L.P.
		G	Carlisle Companies Incorporated.
		G	Motion Control Industries, Inc.
	19991898	G	Silicon Graphics, Inc.
		G	WAM!NET Inc.
		G	WAM!NET Inc.
	19991901	G	MJD Communications, Inc.
		G	William & Marilyn M. Haugen.
		G	Union Telephone Company of Hartford.
		G	Armour Independent Telephone Company.
		G	WMW Cable TV Company.
	19991904	G	The General Electric Company, p.l.c.
		G	CMT Associates, L.P.
		G	RELTEC Corporation.
	19991910	G	Gannett Co., Inc.
		G	A.H. Belo Corporation.
		G	Great Western Broadcasting Corp.
	19991911	G	A.H. Belo Corporation.
		G	Gannett Co., Inc.
		G	KVUE–TV, Inc.
	19991938	G	Quanta Services, Inc.
		G	Seaward Corporation.
		G	Seaward Corporation.
	19991948	G	MBNA Corporation.
		G	First Virginia Banks, Inc.
		G	First Virginia Banks, Inc.
	19991956	G	Carclo Engineering Group, PLC.
		G	Douglas J. & Daniel S. Wood.
		G	Wood Industries, Inc. d/b/a Carrera Corp.
	19991866	G	CIENA Corporation.
		G	Lightera Networks, Inc.
		G	Lightera Networks, Inc.
	19991976	G	Gerald R. Forsythe.
		G	Ogden Corporation.
		G	Pacific Penobscot Power Company.
25–MAR–99	19991941	G	ZENECA Group PLC.
		G	Astra AB (a Swedish company).
		G	Astra AB (a Swedish company).
		G	Astra AB (a Swedish company).
	19991919	G	WCAS Capital Partners III, L.P.
		G	Spectrasite Holdings, Inc.
		G	Spectrasite Holdings, Inc.
	19991920	G	Welsh, Carson, Anderson & Stowe VIII, L.P.
		G	Spectrasite Holdings, Inc.
		G	Spectrasite Holdings, Inc.
	19991921	G	J.H. Whitney III, L.P.
		G	Spectrasite Holdings, Inc.
		G	Spectrasite Holdings, Inc.
	19991922	G	Phillip F. Anschutz.
		G	Atlantic Richfield Company.
		G	Atlantic Richfield Company.
	19991925	G	Welsh, Carson, Anderson & Stowe VIII, L.P.
		G	Nextel Communications, Inc.
		G	Tower Merger Vehicle, Inc.
	19991926	G	Nextel Communications, Inc.
		G	Welsh, Carson, Anderson & Stowe VIII, L.P.
		G	Spectrasite Holdings, Inc.
	19991931	G	Snyder Communications, Inc.

TRANSACTION GRANTED EARLY TERMINATION—Continued

ET date	Trans No.	ET req status	Party name
		G	Glenn Giordano.
		G	Manhattan Response Group, Inc.
		G	Media Syndication Global, Inc., Preferred Customers Guild.
	19991932	G	Snyder Communications, Inc.
		G	Jeffrey Giordano.
		G	Preferred Customers Guild, L.P.
		G	Steven Blake Development Corp., Even Steven Inc.
	19991933	G	Glen Giordano.
		G	Snyder Communications, Inc.
		G	Snyder Communications, Inc.
	19991934	G	Jeffrey Giordano.
		G	Snyder Communications, Inc.
		G	Snyder Communications, Inc.
	19991936	G	Applied Graphics Technologies, Inc.
		G	Wace Group, PLC.
	19991936	G	Wace Group, PLC.
	19991937	G	Canadian Imperial Bank of Commerce.
		G	Spectrasite Holdings, Inc.
		G	Spectrasite Holdings, Inc.
	19991954	G	Citigroup, Inc.
		G	Mellon Bank Corporation.
		G	Mellon Bank Corporation.
	19991963	G	The CIT Group.
		G	First Union Corporation.
		G	Congress Financial Corporation.
	19991975	G	Koninklijke Hoogovens N.V.
		G	TDH III, L.P.
		G	Apollo Metals, Ltd.
	19991985	G	BMC Software, Inc.
		G	New Dimension Software Ltd.
		G	New Dimension Software Ltd.
26-MAR-99	19991869	G	Becton, Dickinson and Company.
		G	Millennium Pharmaceuticals, Inc.
		G	Millennium Predictive Medicine Inc.
	19991892	G	Metallgesellschaft AG.
		G	Dr. Ing. Otto Happel.
		G	GEA AG.
	19991979	G	Laird Norton Company.
		G	Michael H. Guetz.
		G	Home Lumber Acquisition LLC.
		G	GLLC Acquisition LLC.
		G	MHGLLC Acquisition LLC.

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay or Parcellena P. Fielding, Contact Representatives, Federal Trade Commission, Premerger Notification Office, Bureau of Competition, Room 303, Washington, DC 20580, (202) 326–3100.

By Direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 99–9166 Filed 4–12–99; 8:45 am]

BILLING CODE 6750–01–M

GENERAL ACCOUNTING OFFICE

Federal Accounting Standards Advisory Board; Publication of Exposure Draft

AGENCY: General Accounting Office.

ACTION: Publication of Exposure Draft.

SUMMARY: The Chairman of the Federal Accounting Standards Advisory Board (FASAB), David Mosso, has announced that the FASAB has released for public comment an exposure draft of a proposed statement to amend SFFAS No. 2, *Accounting for Direct Loans and Loan Guarantees,* published in August 1993.

The amendments are intended to improve financial reporting by Federal credit agencies for subsidy costs incurred in providing direct loans and loan guarantees to the public.

The exposure draft has been mailed to FASAB's mailing list subscribers. Additionally, it is available on the Internet at FASAB's home page—http://www.financenet.gov/fasab.htm. Also, copies can be obtained by contacting FASAB at (202) 512–7350, or comesw.fasab@gao.gov. In the document the Board has posed specific questions for comment. Respondents are encouraged to address those questions and to comment on any part of the exposure draft. Responses are requested no later than July 2, 1999.

FOR FURTHER INFORMATION CONTACT: Wendy Comes, Executive Director, 441 G St., NW, Room 3B18, Washington, DC 20548, or call (202) 512–7350.

Authority: Federal Advisory Committee Act. Pub. L. No. 92–463, Section 10(a)(2), 86 Stat. 770, 774 (1972) (current version at 5 U.S.C. app. section 10(a)(2) (1988); 41 CFR 101–6.1015 (1990).

Dated: April 7, 1999.

Wendy M. Comes,

Executive Director.

[FR Doc. 99–9125 Filed 4–12–99; 8:45 am]

BILLING CODE 1610–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 99107]

Health Communication Research; Notice of Availability of Funds

A. Purpose

In Cooperation with the Office of Prevention Research (Prevention Research Initiative), the Division of Health Communication within the Office of Communication in the Office of the Director at the Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 1999 funds for a health communication research grant program. This program addresses all of the "Healthy People 2000" priority areas. The purpose of this program is to further the understanding of, and ability to apply, effective health communication strategies and tactics.

B. Eligible Applicants

Applications may be submitted by private nonprofit organizations and by governments and their agencies; that is, universities, colleges, research institutions, hospitals, other public and private nonprofit organizations, State and local governments or their bona fide agents, and federally recognized Indian tribal governments, Indian tribes, or Indian tribal organizations.

Note: Public Law 104–65 states that an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, cooperative agreement, contract, loan or any other form.

C. Availability of Funds

Approximately $500,000 is available in FY 1999 to fund approximately 2 to 4 awards. It is expected that the average award will be $150,000, ranging from $100,000 to $250,000. It is expected that the awards will begin on or about September 30, 1999, and will be made for a 12-month budget period within a project period of up to 3 years. Funding estimates may change.

Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

D. Program Priorities

Applications must address one of the following research priorities identified in CDC's Health Communication Research Agenda:

1. Discover effective strategies to communicate the public health implications of human genetic research.
2. Identify risk communication strategies for effectively communicating public health recommendations and products related to vaccines, human genetics, and environmental health.
3. Determine the conditions under which new communication approaches like entertainment education, internet and web TV, and media literacy are most effective for different audiences.
4. Test communication strategies designed to foster societal support for public health initiatives and systems.
5. Determine the communication strategies and tactics are most effective in promoting the adoption of health enhancing behaviors among members of diverse populations.

CDC's latest draft of the full Health Communication Research Agenda is included as Attachment II in the application packet.

E. Application Content

Use the information in the Other Requirements, and Evaluation Criteria sections to develop the application content. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan.

Specifically, the applications for health communication research grants should include:

1. The project's focus that justifies the research needs and describes the scientific basis for the research, the expected outcome, and the relevance of the findings to improving the practices of health communication within a larger public health context.
2. Specific, measurable, and time-framed objectives.
3. A detailed plan describing the methods by which the objectives will be achieved, including their sequence.
4. A description of the grant's principal investigator's role and responsibilities.
5. A description of all the project staff regardless of their funding source. It should include their title, qualifications, experience, percentage of time each will devote to the project, as well as that portion of their salary to be paid by the grant.
6. A description of those activities related to, but not supported by the grant.
7. A description of the involvement of other entities that will relate to the proposed project, if applicable. It should include commitments of support and a clear statement of their roles.
8. A detailed first year's budget for the grant with future annual projections,
9. A plan for publishing/distributing results.

An applicant organization has the option of having specific salary and fringe benefit amounts for individuals omitted from the copies of the application which are made available to outside reviewing groups. To exercise this option: on the original and five copies of the application, the applicant must use asterisks to indicate those individuals for whom salaries and fringe benefits are not shown; the subtotals must still be shown. In addition, the applicant must submit an additional copy of page four of Form PHS–398, completed in full, with the salary and fringe amounts shown. This budget page will be reserved for internal staff use only.

F. Submission and Deadline

Submit the original and five copies of PHS–398 (OMB Number 0925–0001) adhere to the instructions on the Errata Instruction Sheet for PHS 398). Forms are in the application kit.

On or before June 30, 1999, submit the application to: Sheryl L. Heard, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Announcement 99107, Centers for Disease Control and Prevention, 2920 Brandywine Road, Room 3000, Atlanta, Georgia 30341.

Deadline: Applications shall be considered as meeting the deadline if they are either:

(a) Received on or before the deadline date; or

(b) Sent on or before the deadline date and received in time for Objective Review. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

Late Applications: Applications which do not meet the criteria in (a) or (b) above are considered late applications, will not be considered, and will be returned to the applicant.

G. Evaluation Criteria

Applications that are complete and responsive may be subjected to a preliminary evaluation by a peer review group to determine if the application is of sufficient technical and scientific merit to warrant further review (triage); the CDC will withdraw from further consideration applications judged to be noncompetitive and promptly notify the principal investigator/program director and the official signing for the applicant organization. Those applications judged

to be competitive will be further evaluated by a dual review process.

Each competitive application will be evaluated individually against the following criteria by a Special Emphasis Panel (SEP) appointed by CDC. The SEP will score each proposal based on scientific and technical merit. Factors to be considered by the SEP include:

1. A principal investigator who has conducted research, published the findings in peer-reviewed journals, and has specific authority and responsibility to carry out the proposed project.

2. Demonstrated experience (on the applicant's project team) in conducting, evaluating, and publishing in peer-reviewed journals that publish the health communication research theories and research findings.

3. Effective and well-defined working relationships within the performing organization and with outside entities that will ensure implementation of the proposed activities.

4. The specific aims of the research project, i.e., the broad long-term objectives, the intended accomplishment of the specific research proposal, and the hypothesis to be tested.

5. The background of the proposal, i.e., the basis for the present proposal, regarding how the proposed research will further understanding of, and the ability to apply, effective health communication strategies and tactics.

6. The significance and originality from a scientific or technical standpoint of the specific aims of the proposed research, including the adequacy of the theoretical and conceptual framework for the research.

7. The adequacy of the proposed research design, approaches, and methodology to carry out the research, including quality assurance procedures, plan for data management, and statistical analysis plan.

8. The extent to which the research findings will increase understanding of, and ability to apply, effective health communication strategies and tactics.

9. The degree to which the research is consistent with health communication research priorities as identified under the "Programmatic Priorities" section (section D) of this announcement.

10. The degree to which the evaluation plan will allow the measurement of progress toward the achievement of the stated objectives.

11. The degree to which the qualifications, adequacy, and appropriateness of personnel to accomplish the proposed activities.

12. The degree to which commitment and cooperation of other interested parties (as evidenced by letters detailing the nature and extent of the involvement).

13. The degree to which adequacy of existing and proposed facilities and resources.

14. The degree to which the reasonableness of the proposed budget to the proposed research.

15. If Human Subjects are involved, does the applicant adequately address the requirements of 45 CFR 46 for the protection of human subject?

16. If Human Subjects are involved, has the applicant met the CDC Policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed research. This includes:

a. The proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation.

b. The proposed justification when representation is limited or absent.

c. A statement as to whether the design of the study is adequate to measure differences when warranted.

d. A statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with community(ies) and recognition of mutual benefits.

A second review will be conducted by a panel of Senior Federal Officials. The Senior Federal Officials will review the ranked proposals to assure maximal impact and balance ofthe proposed research. The factors to be considered will include:

a. The results of the peer review.

b. The extent to which the proposed research addresses health communication research needs and priorities.

c. National needs.

d. Budgetary considerations.

H. Other Requirements

Technical Reporting Requirements

Provide CDC with the original plus two copies of:

1. Annual progress reports.

2. Financial status report, no more than 90 days after the end of the budget period.

3. Final financial status report and performance report, no more than 90 days after the end of the project period.

Send all reports to: Sheryl L. Heard, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Announcement 99107, Centers for Disease Control and Prevention, 2920 Brandywine Road, Room 3000, Atlanta, GA 30341.

For descriptions of the following Other Requirements, see Attachment I in the application package:

AR–1 Human Subjects Requirements

AR–2 Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research

AR–9 Paperwork Reduction Act Requirements

AR–10 Smoke-Free Workplace Requirements

AR–11 Healthy People 2000

AR–12 Lobbying Restrictions

I. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under section 1704 of the Public Health Service Act, 42 U.S.C. section 300u–3, as amended. The Catalog of Federal Domestic Assistance number is 93.283.

J. Where to Obtain Additional Information

Please refer to announcement number 99107 when requesting information and submitting applications. To receive additional written information and to request an application kit, call 1–888–GRANTS4 (1–888–472–6874). You will be asked to leave your name and address and will be instructed to identify the Announcement number of interest.

The application kit for 99107 can also be downloaded via the CDC home page on the Internet: http://www.cdc.gov.

If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from: Sheryl L. Heard, Grants Management Specialist, Grants Management Branch Procurement and Grants Office, Announcement 99107, Centers for Disease Control and Prevention, 2920 Brandywine Road, Room 3000, Atlanta, GA 30341. Telephone (770) 488–2723, Email address: slh3@cdc.gov.

For program technical assistance, contact: Galen E. Cole, Ph.D., M.P.H., Division of Health Communication, Office of Communication, Office of the Director, Centers for Disease Control and Prevention, Mail Stop D42, 1600 Clifton Road, Atlanta, GA 30333, Phone: 404–639–7275, Email: gxc9@cdc.gov.

Dated: April 7, 1999.

John L. Williams,

Director, Procurement and Grants Office Centers of Disease Control and Prevention (CDC).

[FR Doc. 99–9152 Filed 4–12–99; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Fiscal year 1999 Discretionary Announcement for University-Head Start Partnerships and Head-Start Research Scholars; Availability of Funds and Request for Proposals

AGENCY: Administration on Children, Youth and Families, ACF, DHHS.

ACTION: Notice.

SUMMARY: The Administration for Children and Families, Administration on Children, Youth and Families, Head Start Bureau announces the availability of funds for two Priority Areas; University-Head Start Partnerships (1.01) and Head Start Research Scholars (1.02). These priority areas will support research activities in the areas of infant and toddler development within the cultural context, the promotion of mental health in Head Start and Early Head Start, family literacy or field-initiated research which will increase our knowledge of low-income children's development for the purpose of improving services or have significant policy implications.

DATES: The closing date for receipt of applications is 5:00 P.M. EDT June 14, 1999.

ADDRESSES: Applications, including all necessary forms can be downloaded from the Head Start web site at *www.acf.dlhhs.gov/programs/hsb.* The web site also contains a listing of all Head Start and Early Start programs.

Hard copies of the application may be obtained by writing or calling the Operations Center or sending an e-mail to *hsr@lcgnet.com.*

FOR FURTHER INFORMATION CONTACT: ACYF Operations Center at: 1815 N. Fort Meyer Drive Suite 300, Arlington, Virginia 22209 or (1–800) 351–2293.

SUPPLEMENTARY INFORMATION:

Priority Areas

Priority Area 1.01 University-Head Start Partnerships

Eligible Applicants: Universities and four-year colleges on behalf of a faculty member who holds a doctorate or equivalent in their respective field.

Project Duration: The announcement for Priority Area 1.01 is soliciting applications for project periods of three years with the first year as a planning grant. However, requests for project periods of four or five years will be considered if the applicant can make a strong justification for the need for a longer project period in order to complete the research. It should be noted that requests for longer project periods will only be granted in only rare instances. Awards, on a competitive basis, will be for the first one-year planning budget period. Applications for continuation funds under these awards beyond the first-year budget period, but within the established project period, will be entertained in subsequent years on a noncompetitive basis, subject to availability of funds, satisfactory progress of the grantee, and a determination that continued funding would be in the best interests of the Government.

Federal Share of Project Costs: The maximum Federal share is $75,000 for the first-year budget period. The Federal share for the subsequent years is approximately $150,000 for each year of the project period. The Federal Share in inclusive of indirect costs.

Anticipated Number of Projects to be Funded: It is anticipated that 4–6 projects will funded.

Priority Area 1.02 Head Start Research Scholars

Eligible Applicants: Institutions of higher education on behalf of graduate students who have been accepted into a doctoral program in the field of the proposed study and have completed their Master's degree or equivalent in that field prior to applying for this grant or by the time grants are awarded and have sent formal notification of having been granted the degree to ACYF. To be eligible to administer the grant on behalf of the student, the institution must be fully accredited by one of the regional accrediting commissions recognized by the Department of Education and the Council on Post-Secondary Accreditation. In addition, the specific graduate student on whose behalf the application is made must be identified and any resultant grant award if not transferable to another student.

Project Duration: The announcement for Priority Area 1.02 is soliciting applications for project periods up to two years. Awards, on a competitive basis, will be for a one-year budget period, although project periods may be for two years. It should be noted, that if the graduate student, on whose behalf the university is applying, expects to receive a doctorate by the end of the first year budget period, the applicant should request a one-year project period only. A second year budget period will not be granted if the student has graduated by the end of the first year. Applications for continuation grants will be entertained in the subsequent year on a non-competitive basis, subject to availability of funds, satisfactory progress of the grantee and a determination that continued funding would be in the best interest of the Government

Federal Share of Project Costs: The maximum Federal share is not to exceed $15,000 for the first-year budget period or a maximum of $30,000 for a two-year project period.

Anticipated Number of Projects to be Funded: It is anticipated that 10 projects will be funded. No university will be funded for more than one candidate, unless there are no other approved applications.

Statutory Authority: The Head Start Act, as amended 42 U.S.C. 9801 *et seq.*

Dated: April 8, 1999.

James A. Harrell,

Deputy Commissioner, Administration on Children, Youth and Families.

[FR Doc. 99–9187 Filed 4–12–99; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99N–0486]

Physician Labeling and Patient Labeling for Progestational Drug Products; Warnings and Contraindications

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that it intends to revoke previously issued guidance texts for physician labeling and patient labeling for progestational drug products that were published in the **Federal Register** of January 12, 1989 (54 FR 1243). The reasons for revoking the guidance texts are discussed in a notice of proposed rulemaking on progestational drug products that appears elsewhere in this issue of the **Federal Register**.

DATES: Written comments by July 12, 1999.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Diane V. Moore, Center for Drug Evaluation and Research (HFD–580), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4260.

Dated: March 25, 1999.

William K. Hubbard,

Acting Deputy Commissioner for Policy.

[FR Doc. 99–9147 Filed 4–12–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, University of Texas SPORE in Lung Cancer.

Date: April 26, 1999.

Time: 2:00 PM to 5:00 PM.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, National Cancer Institute, 6130 Executive Boulevard, 6th Floor, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Maureen Johnson, Grants Review Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6130 Executive Blvd., Bethesda, MD 20892–7408, 301–496–2378.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: April 6, 1999.

LaVerne Y, Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–9104 Filed 4–12–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 1), notice is hereby given of the meeting of the National Cancer Institute Director's Consumer Liaison Group.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

A portion of the meeting will be closed to the public in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended because the premature disclosure of discussions would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Director's Consumer Liaison Group.

Date: April 19–20, 1999.

Open: April 19, 1999, 9:00 a.m., to 5:00 p.m.

Agenda: Director's Report; DCLG–NCI Communications Initiative; Consumer Involvement in Peer Review.

Place: National Institutes of Health, Natcher Conference Center, 45 Center Drive, Bethesda, MD 20892.

Contact Person: Eleanor Nealon, Executive Secretary, Office of Liaison Activities, National Institutes of Health, National Cancer Institute, Building 31, Room 10A06, Bethesda, MD 20892–2580, (301) 594–3194.

Name of Committee: National Cancer Institute Director's Consumer Liaison Group.

Open: April 20, 1999, 9:00 a.m. to 4:15 p.m.

Agenda: Communications Initiatives; Mechanisms for Ongoing Feedback from the Advocacy Community; Future Plans for DCLG.

Place: National Institutes of Health, Natcher Conference Center, 45 Center Drive, Bethesda, MD 20892.

Contact Person: Eleanor Nealon, Executive Secretary, Office of Liaison Activities, National Institutes of Health, National Cancer Institute, Building 31, Room 10A06, Bethesda, MD 20892–2580, (301) 594–3194.

Name of Committee: National Cancer Institute Director's Consumer Liaison Group.

Closed: April 20, 1999, 4:15 p.m. to 5:00 p.m.

Agenda: Personnel Issues Related to Committee Membership.

Place: National Institutes of Health, Natcher Conference Center, 45 Center Drive, Bethesda, MD 20892.

Contact Person: Eleanor Nealon, Executive Secretary, Office of Liaison Activities, National Institutes of Health, National Cancer Institute, Building 31, Room 10A06, Bethesda, MD 20892–2580, (301) 594–3194.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: April 1, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–9108 Filed 4–12–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Heart, Lung, and Blood Advisory Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable materials, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Advisory Council.

Date: May 20–21, 1999.

Open: May 20, 1999, 8:30 a.m. to 2:00 p.m.

Agenda: For discussion of program policies and issues.

Place: National Institutes of Health, Building 31, C wing, Conference Room 10, 9000 Rockville Pike, Bethesda, MD 20892.

Closed: May 20, 1999, 2:00 p.m. to adjournment.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 31, C Wing, Conference Room 10, 9000 Rockville Pike, Bethesda, MD 20892.

Contact Person: Robert Carlsen, Acting Director, Division of Extramural Affairs, Nat. Heart, Lung, and Blood Institute, NIH, Two Rockledge Center, Room 7100, 6701 Rockledge Drive, Bethesda, MD 20892, 301/435–0260.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: April 5, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–9107 Filed 4–12–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Board of Scientific Counselors, NIAID.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Institute of Allergy and Infectious Diseases, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, NIAID.

Date: June 7–8, 1999.

Time: June 7, 1999, 8:00 AM to adjournment.

Agenda: To review and evaluate the staff and programs of the Laboratory of Immunoregulation.

Place: Building 10, Sheldon M. Wolff Memorial Conference Room 11S235, 10 Center Drive, National Institutes of Health, Bethesda, MD 20892.

Contact Person: Thomas J. Kindt, Director, Division of Intramural Research, National Inst. of Allergy & Infectious Diseases, Building 10, Room 4A31, Bethesda, MD 20892, 301–496–3006, tk9c@nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: April 6, 1999.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy, NIH.

[FR Doc. 99–9100 Filed 4–12–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 109(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel Adult Therapeutic Clinical Trials Program for AIDS—Statistical & Data Management Center.

Date: May 11–14, 1999.

Time: May 11, 1999, 7:00 PM to recess.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Georgetown, Kaleidoscope Room, 2101 Wisconsin Avenue, Washington, DC 20007.

Time: May 12, 1999, 9:00 AM to adjournment.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Georgetown, Kaleidoscope Room, 2101 Wisconsin Avenue, Washington, DC 20007.

Contact Person: Peter R. Jackson, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID, NIH, Solar Building, Room 4C10, 6003 Executive Boulevard MSC 7610, Bethesda, MD 20892–7610, 301–496–8426.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: April 6, 1999.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy, NIH.

[FR Doc. 99–9101 Filed 4–12–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, ZDK1, GRB–1 M1(P).

Date: April 8–9, 1999.

Time: April 8, 1999, 7:30 p.m. to adjournment.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Carolyn Miles, Scientific Research Administrator, Review Branch, DEA, NIDDK, Natcher Building, Room 6AS–37, National Institutes of Health, Bethesda, MD 20892, (301) 594–7791.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, ZDK1 GRB B M1.

Date: April 29–30, 1999.

Time: April 29, 1999, 8:30 a.m. to adjournment.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Ned Feder, Scientific Review Administrator, Review Branch, DEA, NIDDK, Natcher Building Room 6AS25s, National Institutes of Health, Bethesda, MD 20892, (301) 594–8890.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, ZDK1 GRB 4 M5.

Date: May 13–14, 1999.

Time: May 13, 1999, 7:30 p.m. to adjournment.

Agenda: To review and evaluate grant applications.

Place: Doubletree Guest Suites, 1300 Concourse Drive, Linthicum, MD 21090.

Contact Person: William E. Elzinga, Scientific Review Administrator, Review Branch, DEA NIDDK, Natcher Building, Room 6AS–37, National Institutes of Health, Bethesda, MD 20892–6600, (301) 594–8895.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: April 6, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–9102 Filed 4–12–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, ZDK1 GRB–D (C3).

Date: May 10, 1999.

Time: 9:00 a.m. to Adjournment.

Agenda: To review and evaluate contract proposals.

Place: Hyatt Regency Hotel, One Bethesda Metro Center, Bethesda, MD 20814.

Contact Person: Richard A. Pledger, Scientific Review Administrator, Review Branch, DEA, NIDDK, Natcher Building, Room 6AS37F, National Institutes of Health, Bethesda, MD 20892,.(301) 594–8886.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: April 5, 1999.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 99–9105 Filed 4–12–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, HIV Vaccine Production: Part: B: Safety and Immunogenicity Testing.

Date: April 28, 1999.

Time: 1:00 p.m. to 4 p.m.

Agenda: To review and evaluate contract proposals.

Place: Room 4C07, Solar Building, 6003 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Dianne E. Tingley, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID, NIH, Solar Building, Room 4C07, 6003 Executive Boulevard MSC 7610, Bethesda, MD 20892–7610, 301/496–0818.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: April 5, 1999.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy, NIH.

[FR Doc. 99–9106 Filed 4–12–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings.

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: April 12, 1999.

Time: 2:00 p.m. to 3:00 p.m.

Agenda: to review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Ranga Srinivas, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5108, MSC 7852, Bethesda, MD 20892, (301) 435–1167.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: April 14, 1999.

Time: 2:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Gloria B. Levin, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3166, MSC 7848, Bethesda, MD 20892, (301) 435–0692.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, MDCN–5.

Date: April 15, 1999.

Time: 11:00 a.m. to 1:00 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Syed Husain, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5216, MSC 7850, Bethesda, MD 20892–7850, (301) 435–1224.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: April 15, 1999.

Time: 12:30 p.m. to 1:30 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: James Deatherage, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5140, MSC 7840, Bethesda, MD 20892, (301) 435–1023.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 VISB (02B).

Date: April 16, 1999.

Time: 8:30 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn—Silver Spring, 8777 Georgia Avenue, Silver Spring, MD 20910.

Contact Person: Leonard Jakubczack, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5172, MSC 7844, Bethesda, MD 20892, (301) 435–1247.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG–TMP–2.

Date: April 16, 1999.

Time: 1:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Jean Hickman, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4194, MSC 7808, Bethesda, MD 20892, (301) 435–1146.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: April 19, 1999.

Time: 1:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Martin Slater, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4184, MSC 7808, Bethesda, MD 20892, (301) 435–1149.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: April 19, 1999.

Time: 2:30 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Patricia H. Hand, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4140, MSC 7804, Bethesda, MD 20892, (301) 435–1767.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: April 20, 1999.

Time: 8:30 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Hotel, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: J. Terrell Hoffeld, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4116, MSC 7816, Bethesda, MD 20892, (301) 435–1781.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: April 20, 1999.

Time: 1:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Timothy J. Henry, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4180, MSC 7808, Bethesda, MD 20892, (301) 435–1147.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: April 20, 1999.

Time: 2:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Jay Cinque, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5186, MSC 7846, Bethesda, MD 20892, (301) 435–1252.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: April 20, 1999.

Time: 2:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Patricia H. Hand, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4140, MSC 7804, Bethesda, MD 20892, (301) 435–1767.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: April 20, 1999.

Time: 12:00 p.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Martin L. Padarathsingh, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4146, MSC 7804, Bethesda, MD 20892, (301) 435–1717.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: April 20, 1999.

Time: 12:30 p.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Cheri Wiggs, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5194, MSC 7848, Bethesda, MD 20892, (301) 435–1261.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: April 6, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–9103 Filed 4–12–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

National Toxicology Program Special Emphasis Panel; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), and Public Law 103–43, notice is hereby given of a public meeting (Conference Call) of the National Toxicology Program Special Emphasis Panel (NTPSEP) sponsored by the NIEHS and the National Toxicology Program (NTP), and coordinated by the Interagency NIEHS and the National Toxicology Program (NTP), and coordinated by the Interagency Coordinating Committee on the Validation of Alternative Methods (ICCVAM) and the NTP Interagency Center for the Evaluation of Alternative Toxicological Methods (NICEATM).

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance or reasonable accommodations should notify the Contact Person listed below in advance of the meeting.

Name of Committee: National Toxicology Program Special Emphasis Panel.

Date: April 22, 1999.

Open: 9:00 a.m. to 11:00 a.m.

Agenda: To agree on the final report of the public meeting held on January 21, 1999, where an independent peer review of Corrositex®, a test method for dermal corrosivity was conducted.

Place: National Institute of Environmental Health Sciences, East Campus, 79 Alexander Drive, Room 122, Research Triangle Park, NC 27709.

Contact Person: Loretta Brammell, MD EC–17, P.O. Box 12233, Research Triangle Park, NC 27709, Phone: 919–541–3398, FAX: 919–541–0947, E-mail: NICEATM@niehs.nih.gov.

Dated: April 5, 1999.

Samuel H. Wilson,

Deputy Director, NIEHS.

[FR Doc. 99–9099 Filed 4–12–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4445–N–09]

Notice of Proposed Information Collection: Comment Request

AGENCY: Office of the Assistant Secretary for Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments due date: June 14, 1999.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW, Room 4176, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Helene DeVous, Multifamily Housing, Department of Housing and Urban Development, 451 7th Street, SW, Washington, DC 20410, telephone (202) 708–2866 (this is not a toll free number) for copies of the proposed forms and other available information.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Restrictions on Assistance to Noncitizens—FR–4154.

OMB Control Number, if applicable: 2502–0014.

Description of the Need for the Information and Proposed Use: This Notice informs the public that the Department of Housing and Urban Development is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from the public and affected agencies concerning the proposed collection of information in accordance with Section 214 of the Housing and Community Development Act of 1980, as amended. Section 214 prohibits HUD from making housing assistance under certain covered programs available to persons who are not U.S. citizens, nationals or eligible noncitizens under the categories specified in the statute.

Agency Form Numbers, if applicable: None.

Status of the proposed information collection: Extension of currently approved collection—Reinstatement without change.

Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The estimated number of respondents is 3,030,547, frequency of responses is on occasion, the total annual responses are 10,794,339, and the estimated annual burden hours requested is 405,458.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: April 5, 1999.

William C. Apgar,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 99–9086 Filed 4–12–99; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4363–FA–08]

Super Notice of Funding Availability (SuperNOFA) for FY 1998 Public and Indian Housing Economic Development and Supportive Services and Tenant Opportunities Programs Announcement of Funding Awards

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Announcement of Funding Awards.

SUMMARY: In accordance with Section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this announcement notifies the public of funding decisions made by the Department in a competition for funding under the FY 1998 Super Notice of Funding Availability (SuperNOFA) for the Economic Development and

Empowerment Program. This announcement contains the consolidated names and addresses of those award recipients under the Economic Development and Supportive Services (EDSS) and Tenant Opportunities (TOP) Programs and the amounts of the awards.

FOR FURTHER INFORMATION CONTACT: For questions concerning the EDSS/TOP funding awards, contact the Office of Public and Indian Housing's Grant Management Center Director Michael E. Diggs, Department of Housing and Urban Development, Washington, DC, telephone (202) 358–0221. For questions concerning Native American program awards, please contact Tracy Outlaw, HUD National Office, Native American Programs (ONAP), 1999 Broadway, Suite 3390, Box 90, Denver, Colorado 80202, telephone number (303) 675–1600. For the hearing-or speech-impaired, these numbers may be accessed via TTY (text telephone) by calling the Federal Information Relay Service at 1 (800) 877–8339. (Other than the "800" TTY number, these telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: TOP and EDSS have been combined to highlight HUD's parallel restructuring of these complementary programs. The restructuring represents a major HUD initiative to improve the targeting and management of limited resources for resident self sufficiency. The goal is to most effectively focus these resources on "welfare to work" and on independent living for the elderly and persons with disabilities. HUD believes that it is imperative that housing authorities and residents work together to meet the challenge of welfare reform.

The purpose of the competition for the EDSS program was to provide direct funding on a competitive basis to Public Housing Authorities (PHAs), Tribes or their Tribally Designated Housing Entities (TDHEs), to enable them to establish and implement programs that increase resident self sufficiency and support continued independent living for elderly and disabled residents.

The purpose of the competition for the Tenant Opportunities Program was to provide direct funding on a competitive basis to public housing site-based Resident Organizations, and Intermediary Resident Organizations to provide resident training such as improving resident educational, professional, and economic levels by providing skills to make them more employable in the local community, organizational capacity-building for the newly created resident associations, and training residents to resolve disputes in public housing. The primary focus of TOP is to move a substantial number of welfare dependent families to work.

The 1998 awards announced in this Notice were selected for funding in a competition announced in a **Federal Register** Notice published on April 30, 1998 (63 FR 23907). Applications were scored and selected for funding based on the selection criteria in that Notice. Under the Top's Organizational Development category, awards were made to all eligible applicants.

A total of $7,000,932 was awarded to 77 TOP grantees and $9,104,679 awarded to 46 EDSS grantees who have submitted comprehensive implementation plans with specific measurable goals to promote self sufficiency of public and Native American housing residents. In accordance with Section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (103 Stat. 1987, 42 U.S.C. 3545), the Department is publishing the names, addresses, and amounts of those awards provided in Appendix A to this document.

The Catalog of Federal Domestic Assistance number for these programs are 14.853 and 14.864.

Dated: April 5, 1999.

Harold Lucas,

Assistant Secretary for Public and Indian Housing.

APPENDIX A.—NOTICE OF FUNDING AVAILABILITY FOR THE FY 1998 PUBLIC AND INDIAN HOUSING TENANT OPPORTUNITIES PROGRAM AND ECONOMIC DEVELOPMENT AND SUPPORTIVE SERVICES

	Amount awarded
Top—Grantees	
Resident Council of South Scattered Sites, Mr. Claude Pickens, President, 1928 El Segundo Blvd. Apt. 16, Los Angeles, CA 91755	$100,000
Dana Strand Village Resident Advisory Council, Ms. Laura R Contreras, President, 1006 E. Court, Wilmington, CA 90744–5058	100,000
Hacienda Village Resident Management Corporation, Mr. Richard Linzy, President, 10516 Antwerp Street, Los Angeles, CA 90002	5,000
Rancho San Pedro Resident Advisory Council, Mr. Ernie Pierre, President, 201 W. 2nd Street #179, San Pedro, CA 90731	100,000
Barstow Resident Management Group, Inc., Ms. Dyane Harrison, President, 921 Bighorn Drive, Barstow, CA 92311	100,000
Midway Village Resident Association, Ms. Estella Cirilo, President, 24 Cypress Lane, Daly City, CA 94014	100,000
Berkeley Heights Tenants Council, Inc., Ms. Diane Nealy, President, 9 Barris Circle, Apt 1E, Waterbury, CT 06704	70,000
Mount Pleasant Resident Council, Ms. Kay B Davis, President, 603 Myrtle Street, New Britain, CT 06053	96,568
Oval Grove Resident Council, Ms. Bettye Henry, President, 96 Malikowski Circle, New Britain, CT 06053	96,568
National Assoc of Resident Management Corporations, Ms. Debra Crawford, 4524 Douglas Street NE, Washington, DC 20019	250,000
Acorn Tenant Union Training and Organizing Project, Ms. Melanie Marcus, 739 8th Street SE, Washington, DC 20003	99,900
Northeast Resident Council, Mr. Troy Davis, President, 2401 Thatcher Street, Wilmington, DE 19801	100,000
Carver Estates Resident Council, Ms. Verona Gillion, President, 770 SW 12th Terrace, Delray Beach, FL 33444–1367	40,000
Ft Pierce Housing Authority Resident Council, Inc., Mr. Paul Roth, President, 1009 South 17th Street, Fort Pierce, FL 34950–4911	9,515
Ivey Lane Resident Association, Ms. Doris Lane Stallworth, President, 24 Fantair Avenue, Orlando, FL 32811–3836	40,000
Omega Resident Association, Ms. Sandra Roman, President, 2811 Gamma Drive, Orlando, FL 32810–3755	40,000
Winter Haven Housing Authority Tenant Association, Mr. Anthony Bobo, 2670 Avenue "C" S.W., Winter Haven, FL 33880	93,000
Rome Housing Authority Resident Council, Inc., Mr. William Kent, President, 1322 Carver Avenue, Rome, GA 30161	99,290
BTRMC, INC, Ms. Linda D Curtis, 3015 B Baltimore, Indianapolis, IN 46218	97,000
Edgewood Resident Council, Ms. Shari A Banks, President, 1600 Haskell Avenue #169, Lawrence, KS 66044–4329	40,000
Concerned Tenant Organization of Hopkinsville Inc., Ms. Angela Griffie, President, 400 N. Elm Street (PO Box 437) Hopkinsville, KY 42241–0437	40,000
Lafitte Resident Council, Ms. Leah Green, President, 709 North Galvez Street, New Orleans, LA 70119–5013	99,950

APPENDIX A.—NOTICE OF FUNDING AVAILABILITY FOR THE FY 1998 PUBLIC AND INDIAN HOUSING TENANT OPPORTUNITIES PROGRAM AND ECONOMIC DEVELOPMENT AND SUPPORTIVE SERVICES—Continued

	Amount awarded
Guste Homes Resident Management Corporation, Ms. Cynthia Wiggins, President, 2300 Erato Street Apt. D, New Orleans, LA 70113	60,000
St. Bernard Resident Council, Ms. Laura French, President, 1500 Milton Apt. A, New Orleans, LA 70114	100,000
Fischer Resident Council, Ms. Constance Haynes, President, 2030 Wagner Court Apt. 1–D, New Orleans, LA 70114	100,000
Christopher Park Homebuyers Association, Ms. Karen Johnson, 2000 Murl, New Orleans, LA 70114	40,000
Mystic View Tenants Association, Mr. Roger J Desrochers, Jr., Vice President 15 River Road, Apt. 1503, Somerville, MA 02145	100,000
Mary Ellen McCormack Tenant Task Force, Mr. Keegan Crick, Executive Director, 345 Old Colony Avenue, South Boston, MA 02127	100,000
Roosevelt Towers Tenant Council, Ms. Nancy L Tierney, Tenant Liaison, 675 Massachusetts Avenue, Cambridge, MA 02139	50,000
Massachusetts Union of Public Housing Tenants Inc., Mr. John A Cooper, 784 Washington Street #504, Dorchester, MA 02124–4434	250,000
Franklin Field Task Force, Inc., Ms. MaryAnn Veale, Chairperson, 93 Ames Street, Dorchester, MA 02124–3001	100,000
Massachusetts Union of Public Housing Tenants Inc., Mr. John A Cooper, 784 Washington Street, #504, Dorchester, MA 02124–4434	100,000
Putnam Gardens Tenant Council, Ms. Nancy L Tierney, Tenant Liaison, 675 Massachusetts Avenue, Cambridge, MA 02139	50,000
Presidents Council of PHA Hi-Rises of Saint Paul, Ms. Phoebe McNeill, Secretary, 261 E. University Avenue, St. Paul, MN 55101–2240	100,000
Jefferson-Haven Tenant Organization, Ms. Beverly Johnson, President, 425 East 32nd Street, Hibbing, MN 55746	42,500
Hamilton House Club, Ms. Jacqueline Webb, Secretary/Treasurer, 2400 Nevada Avenue South Apt. 223, St. Louis Park, MN 55426–2623	77,400
Sam Estess Estates Resident Council, Mr. Floyd Taylor, President, 101 King Ranch Circle, Canton, MS 39046–5300	95,000
Belle Ville Resident Council, Ms. Margaret A Sevilla, President, 202 Ladnier Road—Apt 5E, Gautier, MS 39553	100,000
Troy Housing Resident Council, Ms. Ina Ledbetter, President, 201 Stanley Street, Troy, NC 27371	100,000
Hillcrest Resident Organization, Ms. Rosa Webb, President, 1402 Meares Street, Wilmington, NC 28402	88,400
Alexander Hamilton Dev. Resident Management, Inc., Ms. Kathy Chitty, President, 202 Alabama Avenue, Paterson, NJ 07505	100,000
Parkside Tenants Association, Ms. Charline Foendoe, President, 1 Parkside Street, Somerset, NJ 08873	40,000
New Jersey Association of Public Housing Residents, Ms. Glenda Wright, 303–309 Washington Street Suite 300, Newark, NJ 07102–2718	250,000
New Jersey Association of Public Housing Residents, Ms. Glenda Wright, 303–309 Washington Street Suite 300, Newark, NJ 07102–2718	100,000
Marzitelli Court Resident Association, Inc., Ms. Colleen Day, President, 15 Grand Street, Garfield, NJ 07026	100,000
Chelton Terrace Management Corporation, Ms. Kathryn Blackshear, President, 609–A Chelton Avenue, Camden, NJ 08104	100,000
Ravenswood Resident Association, Inc., Ms. Carol Wilkins, President, 35–35 21st Street, Long Island City, NY 11106	100,000
Fairview Gardens Tenant Organization, Ms. Tammy Williams, President, 2919 Duke Street S.E., Warren, OH 44484	40,000
CMHA Resident Council, Ms. Dale W Hartle, 401½ Main Street, Coshocton, OH 43812	100,000
Renaissance Council Resident Council, Ms. Colette Checkal, President, 5650 S. Prospect Street #108, Ravenna, OH 44266–3628	40,000
Resident Initiatives Network of Oklahoma, Inc., Ms. Michelle Foster, President, 700 North Berry Road, Norman, OK 73069	248,500
Morgan Resident Council, Ms. Joyce Creighton, President, 500 Morgan Drive, Apt 1F, Morgan, PA 15064–9733	40,000
Allequippa Terrace Resident Council, Mr. Delfonte Ellis, Vice President, 415 Burrows Street, Wadsworth Hall, Pittsburgh, PA 15219	40,000
St. Clair Citizens Council, Ms. Karen Cellars, President, 930 Cresswell Street, Pittsburgh, PA 15210–3026	100,000
Crest Manor Resident Council, Ms. Renee Williams, 244 West Queen Street, Philadelphia, PA 19144	100,000
Resident Council of Venice Ashby, Inc., Ms. Joyce Graves, President, 5401 Beaver Dam Road, Bristol, PA 19007	15,775
Pennsylvania Association of Resident Councils, Mr. Charles B Gennaro, President, 320 West Mine Street, Hazleton, PA 18201	250,000
Jardines de Judelly Resident Council, Inc., Mr. Juan Ramon Ortiz, Presidente, Jardines de Judelly Campo Rico Avenue, Las Piedras, PR 00936	100,000
San Martin Resident Council, Inc., Ms. Zoraida Romero Dones, President, San Martin Housing Proj. Campo Rico Avenue, Rio Piedras, PR 00936	100,000
El Prado Resident Council, Inc., Ms. Myrna Medina, President, El Prado Housing Project Campo Rico Avenue, Rio Piedras, PR 00936	100,000
Jardines de Country Club Resident Council, Inc., Mr. Orlando R Escute, President, Jardines de Country Club Campo Rico Avenue, Rio Piedras, PR 00936	100,000
Comité de Iniciativa Reparto Horizonte, Inc., Ms. Maria A Feliciano Rivera, President, Reparto Horizonte Housing, Yabucoa, PR 00767	100,000
Pro Desarrollo Jardines de Sellé, Ms. Rosa M Serrano Tirado, President, Campo Rico Avenue Jardines de Selles, Rio Piedras, PR 00936	100,000
Villa del Caribe Resident Council, Inc., Ms. Ana M Amaro Laboy, President, Calle A Riccies Bo Marney Villa del Caribe Housing, Patillas, PR 00723	100,000
Villa Real Resident Council, Inc., Ms. Violeta Sanchez, President, Edif. 9 Apt. 34 Villa Real Project, Patillas, PR 00723	100,000
Isla Nena en Progreso, Inc., Ms. Nelida Cruz Feliciano, President, Oficina de Admin. Apto 51 Jardines de Vieques, Vieques, PR 00765	100,000
Cons. de Residentes del Dr. Rafael Lopez-Nussa Inc, Ms. Adriana Torres, President, Bldg 17, Apto 181 Dr. Rafael Lopez Nussa Pr, Ponce, PR 00731	100,000
Junta de Residentes Copper View, Inc., Ms. Evelyn Soler, President, 375 Calle Vista del Cobre Suite 102, Ponce, PR 00731	100,000
Cons. de Residentes del Res. Canas Housing, Inc., Ms. Candida R Figueroa, President, Canas Housing Street No. 14, Ponce, PR 00731	100,000

APPENDIX A.—NOTICE OF FUNDING AVAILABILITY FOR THE FY 1998 PUBLIC AND INDIAN HOUSING TENANT OPPORTUNITIES PROGRAM AND ECONOMIC DEVELOPMENT AND SUPPORTIVE SERVICES—Continued

	Amount awarded
Wilmington House Apartments Residents Council, Inc, Ms. Mary Oscar-Ford, 4000 Wilmington Street Apt 179, Houston, TX 77051–3300	60,000
Clayton Apartment Homes Resident Council, Inc., Ms. Torsonya Morgan, 1919 Runnels Street #270, Houston, TX 77003–1027	60,000
Forest Green Resident Council, Inc., Ms. Etta Johnson, 8942 Forest Hollow Street, Houston, TX 77078	60,000
Kennedy Place Residents Council, Inc., Ms. Merline Harrison, 500 Meadow Street #107, Houston, TX 77020–5909	60,000
Housing Auth. of the City of Austin Advisory Board, Mr. Max Kennison, President, 1640–B East Second Street, Austin, TX 78702	100,000
Liberty View Tenant Association, Ms. Angela Merritt, President, 317 Grant Street, Danville, VA 24541–2507	100,000
Clark County Resident Council, Ms. Kathleen Ortega, President, 412 Omaha Way, Vancouver, WA 98661	60,000
Springwood Resident Council, Mr. Michael Nadal, President, 27307 130th Ave., S.E. #10, Kent, WA 98031–8439	66,566
National Total—TOP	7,000,932

EDSS—Grantees

James Gurke, Alaska Housing Finance Corporation, 4300 Boniface Parkway, Anchorage, AK 99504	85,500
James Mirando, Elmira Housing Authority, 346 Woodlawn Avenue, Elmira, NY 14901	59,000
John Randazzo, Mississippi Regional Housing Authority, PO Drawer 8746, Jackson, MS 39284	34,000
John Lamb, Greenwood Housing Authority, 315 Foundry Rd., Greenwood, SC 29648	55,750
Sheryl Ford, Petersburg Redevelopment and Housing Authority, PO Box 311, Petersburg, VA 23804–0311	150,000
Howard Turner, Allegheny County Housing Authority, 341 Fourth Ave., Pittsburgh, PA 15222	300,000
Carl DeChellis, Beaver County Housing Authority, 300 State St., Beaver, PA 15009–1798	300,000
George Vogel, Wilkes-Barre Housing Authority, 50 Lincoln Plaza, Wilkes-Barre, PA 18702	152,000
Philip Spagnolo, Dauphin County Housing Authority, 501 Mohn St., Steelton, PA 17113–0598	130,000
Philip Spagnolo, Dauphin County Housing Authority, 501 Mohn St., Steelton, PA 17113	66,000
Dorothy Jones, McComb Housing Authority, 1002 Sedgewick St., McComb, MS 39648	108,747
Merrill Wallace II, Bremerton Housing Authority, 110 Russell Road, Bremerton, WA 98312	150,000
Floyd Johnson, Starkville Housing Authority, 111 Wood St., Starkville, MS 39759	150,000
Margaret Trejo, Santa Barbara City, 808 Laguna St., Santa Barbara, CA 93101	62,253
Barbara Huppee, Lawrence Housing Authority, 1600 Haskell Ave., Lawrence, KS 66044	92,000
Christine Bohrer, Austin Housing Authority, 1640-B E. Second St., Austin, TX 78702	442,400
Christine Bohrer, Austin Housing Authority, 1640-B E. Second St., Austin, TX 78702	39,600
Frank Wilcox, Monroe Housing Authority, 300 Harrison St., Monroe, LA 71201	315,000
Sandra Heriquez, Boston Housing Authority, 52 Chauncy St., Boston, MA 02111	700,000
Paul Bailey, Springfield Housing Authority, 25 Saab Ct., Springfield, MA 01101	500,000
Anthony Bobo, Winter Haven Housing Authority, 7501 Okeechobee Ct., Temple Terrace, FL 33617	56,000
A. Ambrogio, Ansonia Housing, Ansonia Housing Authority, Ansonia, CT 06401	67,750
Peter Smith, Yonkers Housing Authority, 1511 Central Park Ave., Yonkers, NY 10710	200,000
Kathleen Sims, Chillicothe Metropolitan Housing Authority, 178 W. 4th St., Chillicothe, OH 45601	91,750
J.W. Cadotte, Lac Courte Oreilles, 13416 W Trepania Rd., Hayward, WI 54843	110,000
Doreen Bell, Ft. Belknap, RR 1 Box 66, Harlem, MT 59526	150,000
George Peter, Akiachak, PO Box 70, Akiachak, AK 99551	54,245
Cielo Gibeon, Nez Perce, PO Box 188, Lapwai, ID 83540	72,000
Maurice Lambert, Ft. Peck, PO Box 667, Poplar, MT 59255	300,000
Maurice Lambert, Ft. Peck, PO Box 667, Poplar, MT 59255	54,250
Richard Daugherty, Indian Twsp. Passamaquoddy, PO Box 99, Princeton 04668	47,750.00
Howard Leederman, Northern Ponca, 1405 Rivershide Blvd., Box 2486, Norfolk, NE 68701	149,934
James Marshall, Danville Housing Authority, PO Box 312, Danville, IL 61834–0312	150,000
Alvin Stevenson, Meridian Housing Authority, 2305 D St., Meridian, MS 39302–0870	142,250
Jim Boyd, Zanesville Metropolitan Housing Authority, 407 Pershing Rd., Zanesville, OH 43701	150,000
Russell Sossamon, Choctaw, PO Box G, Hugo, OK 74743	456,250
Fred Zawilinski, Portage Metropolitan Housing Authority, 2832 State Route 59, Ravenna, OH 44266	76,250
DeLois Burney, Cuyahoga Metropolitan Housing Authority, 6001 Woodland Ave., Cleveland, OH 44113	1,000,000
Roland Turpin, Dayton Metropolitan Housing Authority, 400 Wayne St. Dayton, OH 45410–1106	500,000
Pamela Morrison, Indianapolis Housing Authority, 5 Indiana Square, Indianapolis, IN 46204	500,000
Rita Whicker, Martin Housing Authority, PO Box 806, Martin, KY 41649	32,000
Linda Bassett, Murray Housing Authority, 716 Nash Dr., Murray, KY 42971	51,500
Mary Philpot, Paducah Housing Authority, 2330 Ohio St., Paducah, KY 42003	200,000
Ann Webb, Flint Area Consolidated Housing Authority, 137 Richardson St., Montezuma, GA 31063	26,000
Steven Bennett, Rome Housing Authority, 800 N. 5th Ave., Rome, GA 30161	274,500
Elaine Haines, Columbus Metropolitan Housing Authority, 960 E. 5th Ave., Columbus, OH 43201	300,000

[FR Doc. 99–9087 Filed 4–12–99; 8:45 am]
BILLING CODE 4210–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–033–99–1230–00–OHV1]

Temporary Closure of Public Lands: Nevada, Carson City District

AGENCY: Bureau of Land Management, Interior Department.

ACTION: Temporary closure of affected public lands in Lyon, Storey, Churchill, Carson, Douglas, Mineral and Washoe Counties on and adjacent to Off Highway Vehicle race course routes. Races are conducted at various times from May through November, 1999:

1. May 8 & 9, 1999: Virginia City Grand Prix—Permit Number NV–030–99504A.
2. May 30, 1999: Yerington 300 Desert Race—Permit Number NV–030–96510A.
3. June 6, 1999: Hungry Valley ORV Area—Permit Number NV–030–99028.
4. August 7, 1999: Top Gun Desert Race—Permit Number NV–030–96510B.
5. October 1, 1999: Vegas to Reno OHV Race—Permit Number (Pending).
6. October 31, 1999: Wassuks Motorcycle Race—Permit Number (Pending).
7. November 14, 1999: Dead Camels Race—Permit Number NV–030–99504B.
8. November 28, 1999: Prison Hill ORV Area—Permit Number (Pending).

SUMMARY: The Assistant Manager, Non-Renewable Resources announces the temporary closure of selected public lands under her administration. This action is taken to provide for public safety and to protect adjacent resources.

EFFECTIVE DATES: Listed above. Events may be cancelled or rescheduled.

FOR FURTHER INFORMATION CONTACT: Fran Hull, Outdoor Recreation Planner, Carson City District, Bureau of Land Management, 5665 Morgan Mill Road, Carson City, Nevada 89701, Telephone: (775) 885–6161.

SUPPLEMENTARY INFORMATION: Bureau lands to be closed to public use include the width and length of those roads and trails identified as the race route by colorful flagging and directional arrows attached to wooden stakes. A map of each closure area may be obtained at the contact address. The event permittees are required to clearly mark and monitor the event routes during the closure periods. Closure period is from 6:00 a.m. race day until race finish. Spectator and support vehicles may be driven on open roads only and may observe the races from safe locations as directed by event and BLM officials.

Exemptions: Closure restrictions do not apply to race officials, medical/rescue, law enforcement and agency personnel monitoring the event.

Authority: 43 CFR 8364 and 43 CFR 8372.

Penalty: Any person failing to comply with the closure orders may be subject to imprisonment for not more than 12 months, or a fine in accordance with the applicable provisions of 18 USC 3571, or both.

Dated: March 31, 1999.

Margaret L. Jensen,

Assistant Manager, Non-renewable Resources.

[FR Doc. 99–9094 Filed 4–12–99; 8:45 am]
BILLING CODE 4310–HC–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–034–99–5440–00–CO23; COC61945, COC61357, COC61209]

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Intent

AGENCY: Bureau of Land Management, Interior; Forest Service, Agriculture.

Responsible Officials:

Ann Morgan, State Director, Colorado State Office, Bureau of Land Management, 2850 Youngfield, Denver, CO 80215.

Robert L. Storch, Forest Supervisor, Grand Mesa, Uncompahgre and Gunnison National Forests, U.S. Forest Service, 2250 US Hwy 50, Delta, CO 81416.

ACTION: Notice of Intent and Notice of Scoping to prepare an Environmental Impact Statement (EIS) on lease and exploration license applications for Federal coal in Delta and Gunnison Counties, Colorado.

SUMMARY: The Bureau of Land Management (BLM) and the Forest Service (FS) will direct preparation of a third-party Environmental Impact Statement (EIS) to document the analysis and disclose the environmental effects of proposed actions to offer the Iron Point and Elk Creek Coal Lease Tracts for competitive bidding and the Iron Point Coal Exploration license for exploration drilling in accordance with 43 CFR parts 3425 and part 3410. The BLM will be the lead agency for preparation of the EIS and the FS will be a joint lead agency. The Office of Surface Mining Reclamation and Enforcement (OSM) will participate as a cooperating agency.

The original application for coal lease was filed in August 1997 by Bowie Resources Limited (Bowie) requesting the BLM to offer for competitive lease for approximately 3,403.27 acres of federal coal in Delta County, Colorado. It was designated the Iron Point Tract. In December 1997, the BLM received a competitive lease application from Oxbow Mining, Inc. (Oxbow), requesting for competitive lease approximately 3,702.81 acres of federal coal in Delta and Gunnison Counties, Colorado. The Tract delineation by the Uncompahgre Field Office resulted in the addition of 160 acres of federal coal for a total of 3,862.81 acres. This tract was designated the Elk Creek Tract. In addition, Bowie Resources, LTD submitted an application for a coal exploration license on unleased lands adjacent to the above coal lease application areas. The exploration lands contain approximately 6,053.00 acres. Lands affected by these applications are managed by both the BLM and Forest Service.

Separate Environmental Assessments (EA) were completed on the two lease applications, but not on the exploration license. As part of the NEPA public process, the BLM and USFS subsequently determined that the requirements of NEPA would be best served by preparing a single EIS for these coal applications.

DATES: The public has the opportunity to submit written comments on concerns or issues that the Agencies should address in processing these coal applications. The Agencies will accept written comments on the scope of analyses for the application areas at the address given below. Comments should be submitted by May 17, 1999, in order to be considered in the draft EIS. A public scoping meeting will be held April 21, 1999 at the Hotchkiss High School, 3535J 60 Lane, Hotchkiss, CO at 7:00 pm. At this time, it is estimated that a Draft EIS will be available in mid August 1999 and a Final EIS will be available in mid December 1999.

ADDRESSES: Please address questions, comments, or concerns on the EIS to the Bureau of Land Management, Attn: Jerry Jones, 2465 South Townsend Ave., Montrose, CO, 81401, or fax them to 970–240–5368.

FOR FURTHER INFORMATION CONTACT: Jerry Jones at the above address, or phone: 970–240–5338.

SUPPLEMENTARY INFORMATION: In August of 1997, Bowie filed coal lease application COC61209 (Iron Point Tract)

requesting BLM offer federal coal for competitive lease. This application was later amended to reduce the acreage, but the original application was for the following lands:

T. 12 S., R. 91 W., 6th P.M.
Sec. 33, lots 1 to 16, inclusive, S½N½;
Sec. 34, lots 1 to 16, inclusive, S½N½.
T. 13 S., R. 91 W., 6th P.M.
Sec. 2, SW¼NW¼, NW¼SW¼, and E½SW¼;
Sec. 3, lots 1 to 4, inclusive, S½N½, and N½S½;
Sec. 4, lots 1 to 4, inclusive, S½N½, and S½;
Sec. 5, S½SE¼, and SE¼SW¼;
Sec. 8, NE¼;
Sec. 9, NW¼, and N½SW¼;
Sec. 11, NE¼NW¼.

containing 3,403.27 +/−acres, with an estimated 26.3 million tons of recoverable coal. The coal resource within the Iron Point tract is limited to coal recoverable by underground mining methods.

In December of 1997, Oxbow filed coal lease application COC61357, (Elk Creek Tract), requesting the BLM offer for competitive lease federal coal in the lands described as:

T. 12 S., R. 90 W., 6th P.M.
Sec. 31, lots 1 to 14, inclusive, and NE¼;
Sec. 32, lots 3 to 6, inclusive, lots 11 to 14, inclusive, and NW¼.
T. 12 S., R. 91 W., 6th P.M.
Sec. 35, lots 1, 2, and 4 to 8, inclusive, 13 to 16, inclusive, lots 21, 22, and that part of HES No. 134 lying in the NE¼;
Sec. 36, lots 1 to 17, inclusive, NE¼, E½NW¼, SW¼NW¼, and that part of HES No.134 lying in lot 1.
T. 13 S., R. 90 W., 6th P.M.
Sec. 5, lots 7 to 10, inclusive;
Sec. 6, lots 8 to 17, inclusive.
T. 13 S., R. 91 W., 6th P.M.
Sec. 1, lots 1 to 4, inclusive, S½NW¼ and SW¼;
Sec. 2, lot 1, and S½NE¼;
Sec. 12, S½NE¼, and NW¼.

containing 3,862.81+/-acres with approximately 21 million tons of recoverable coal. The coal resource to be offered for lease is limited to coal recoverable by underground mining methods.

In May of 1998, Bowie filed a coal exploration license application, (COC61945), with the BLM. The Iron Point Exploration License contains unleased coal deposits owned by the United States of America in the following described lands in Delta County, Colorado.

T. 12 S., R. 91 W., 6th P.M.
Sec. 14, lots 7,8, S½S½, NE¼SW¼, NW¼SE¼;
Sec. 22, S½;
Sec. 23, lots 1 to 7, inclusive, W½, and that part of HES No. 133 lying in the S½SE¼;
Sec. 26, lots 1 to 5, inclusive, W½, N½SE¼, and that part of HES No. 133 lying in the NE¼;
Sec. 27, all;
Sec. 28, S½;
Sec. 29, SE¼;
Sec. 32, lots 1, 2, 7 to 10, inclusive, lots 15, 16, and NE¼;
Sec. 33, lots 1 to 16, inclusive, and N½;
Sec. 34, lots 1 to 16, inclusive, and N½;
Sec. 35, lots 3, and 7 to 22, inclusive, NE¼NW¼, W½NW¼, that part of HES No. 134 and that part of lots 4 to 6, inclusive, lying in the S½S½NE¼.

The area described contains approximately 6,053.00 +/−acres.

These applications encompass federal coal on BLM and Gunnison National Forest lands. Additions and/or deletions to the delineated tracts may be considered as alternatives to the proposed action. Alternatives will be developed and analyzed based on issues and management needs.

Bowie and Oxbow applied to the BLM for the Iron Point and Elk Creek coal lease tracts respectfully to extend the production life of their existing underground mines. Similarly, Bowie applied to the BLM for an exploration license to further delineate to coal resource in lands adjacent to their ongoing mining. The requested Iron Point tract and the exploration license area are adjacent to the presently approved permit area for the Bowie No. 2 Mine which is operated by Bowie. Likewise, the requested Elk Creek tract is adjacent to the presently approved permit area for the Sanborn Creek Mine which is operated by Oxbow.

If the Iron Point and Elk Creek tracts are leased, the coal would be mined by underground techniques. Both Bowie and Oxbow have existing surface portal facilities which are located on private property controlled by the companies and which would continue to be used for any future extraction of coal from the subject lease tracts. Both companies plan for upgrades to their existing surface facilities. Bowie plans for the installation of a new conveyor system and coal storage area to replace an existing truck haul road. Oxbow would construct a new portal pad and drive new entries to access the Elk Creek tract. This portal pad is on private land and is immediately adjacent to the Oxbow surface facilities.

If another company is a successful bidder for either tract, it is likely that new surface facilities may be required. Regardless of what company obtains the subject lease tracts, underground mining methods would be needed to extract the coal.

The EIS will consider the mining plans as proposed by Bowie and Oxbow, the no-action alternative, the possibility of other companies obtaining and developing operations to extract coal from the subject lease tracts, and other alternatives. The analysis will also consider mitigation developed during the process. The development of alternatives will occur after the completion of project scoping.

The Bureau of Land Management must decide whether or not to approve the coal applications and if so identify special stipulations needed to protect the mineral and non-mineral resources. In accordance with the Coal Leasing Amendments Act of 1976, which amended the Mineral Leasing Act of 1920, the Forest Supervisor for the Grand Mesa, Uncompahgre and Gunnison National Forest, must decide whether or not to consent to leasing by the Bureau of Land Management and if so identify special stipulations needed to protect non-mineral resources on National Forest lands.

OSM will be a cooperating agency in the preparation of the EIS. If the tracts are leased to the applicants, the new leases must be incorporated into the existing mining plans of Oxbow and Bowie and the Secretary of the Interior must approve the revised mining plan before the Federal coal in the tract can be mined. OSM is the Federal agency that would be responsible for recommending approval, approval with conditions, or disapproval of the revised mining plan to the Secretary if the tracts are leased.

A tentative list of permits or licenses that may be required to mine the coal resources is listed below:

Bureau of Land Management
Plan of Operations (mining and exploration)
Special use permits (Right-of-Ways, etc.)
Forest Service
Plan of Operations (mining and exploration)
Special use permits (Right-of-Ways, etc.)
U.S. Army Corps of Engineers
Section 404 Permit
Environmental Protection Agency
Spill Prevention Control and Countermeasure (SPCC) Plan
Review of Section 404 permit
Notification of Hazardous Waste Activity
U.S. Fish and Wildlife Service
Threatened and Endangered Species Consultation
Treasury Department (Dept. of Alcohol, Tobacco and Firearms)
Explosives User Permit
Mines Safety and Health Administration
Mine Identification Number
Legal Identity Report
Miner Training Plan Approval
Ventilation Plan Approval
Ground Control Plan

Office of Surface Mining
  Mining Plan Concurrence
Colorado Department of Minerals and Geology
  Exploration Permit
  Mining and Reclamation Permit
Colorado Department of Public Health & Environment—Air Pollution Control Division
  Permit to Construct
  Permit to Operate
Colorado Department of Public Health & Environment—Water Quality Control Division
  Stormwater Discharge Permit
  National Pollutant Discharge Elimination System (NPDES)
Colorado State Engineer
  Water Rights
  Water Well Permits
  Dam Safety Permits
Colorado State Historic Preservation Office
  Historic and Archaeological Review
Colorado Department of Transportation
  Highway Access
Delta County
  Special Use Permit
  Building Permit
Gunnison County
  Special Use Permit
  Building Permit

There are four underground coal mines (Bowie No. 1 (inactive), Bowie No. 2, Sanborn Creek, and West Elk) located east of Paonia, Colorado, in Delta and Gunnison Counties. Several issues related to these applications were identified during the initial scoping for the EA's in 1998, including the potential impacts to water rights, surface and ground water, agricultural lands, wildlife habitat, noise, train and truck traffic, socio-economics, and access to public lands that may occur if these applications are issued. If you have specific concerns about these issues, or have other concerns or issues that BLM should consider in processing these applications, please address them in writing to the above address. Written comments should be received by May 17, 1999, in order to be fully considered in the draft EIS.

Please note that your comments, name, address, and any other personal information you provide will become part of the public record and will be available for public review. You may request confidentiality by clearly stating your request at the beginning of your comment. The agencies will consider withholding your name, address and any other personal identifying information on a case-by-case basis to the extent allowed by law. Submissions from organizations, businesses, and individuals identifying themselves as representatives or officials of organizations or businesses will be made part of the public record.

The comment period on the Draft EIS will be sixty (60) days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**. (Now anticipated to be in mid August.) At this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions, *Vermont Yankee Nuclear Power Corp.* v. *NRDC, 435 U.S. 519, 553 (1978).* Also, environmental objections that could be raised at the Draft EIS stage but that are not raised until after completion of the Final EIS may be waived or dismissed by the courts, *City of Angoon* v. *Hodel, 803 F.2d 1016, 1022* (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris, 490 F. Supp. 1334, 1338 (e.d. Wis. 1980).* Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the comment period so that substantive comments and objections are made available to the agencies at a time when they can meaningfully consider them and respond to them. To assist the agencies in identifying and considering issues and concerns on the proposed action, comments on the Draft EIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the Draft EIS or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Dated: April 7, 1999.

Jerald L. Jones,

EIS Project Manager, Uncompahgre Field Office.

Thomas Condos,

Forest Engineer, Grand Mesa, Uncompahgre and Gunnison National Forests.

[FR Doc. 99–9151 Filed 4–12–99; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–030–99–1010–00–1784]

Southwest Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice; Resource Advisory Council Meeting.

SUMMARY: Notice is hereby given that the Southwest Resource Advisory Council (Southwest RAC) will meet in Dolores, Colorado.

DATES: The meeting will be held on Thursday, May 13, 1999.

ADDRESSES: For additional information, contact Roger Alexander, Bureau of Land Management (BLM), Southwest Center, 2465 South Townsend Avenue, Montrose, Colorado 81401; telephone 970–240–5335; TDD 970–240–5366; e-mail r2alexan@co.blm.gov.

SUPPLEMENTARY INFORMATION: The May 13, 1999, meeting will begin at 9:00 a.m. at BLM's Anasazi Heritage Center, 27501 Highway 184, Dolores, Colorado. The agenda will focus on proposed statewide recreation guidelines for BLM administered public lands. Public comment is scheduled for 1:00 p.m.

All Resource Advisory Council meetings are open to the public. Interested persons may make oral statements to the Council, or written statements may be submitted for the Council's consideration. If necessary, a per-person time limit may be established by the Southwest Center Manager.

Summary minutes for Council meetings are maintained in the Southwest Center Office and on the World Wide Web at http://www.co.blm.gov/mdo/mdo__sw__rac.htm and are available for public inspection and reproduction within thirty (30) days following each meeting.

Dated: March 25, 1999.

Roger Alexander,

Public Affairs Specialist.

[FR Doc. 99–8171 Filed 4–12–99; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–010–1430–00; GP9–0149]

Notice of Meeting of Fuels/Prescribed Fire/Forest Health Subcommittee of the Southeast Oregon Resource Advisory Council

AGENCY: Lakeview District, Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Fuels/Prescribed Fire/Forest Health Subcommittee of the Southeast Oregon Resource Advisory Council will meet at the Lakeview Interagency Fire Center, 1000 South 9th Street, Lakeview, Oregon on Monday, May 3, 1999, from 8:00 am to 4:30 pm, Pacific Standard Time (PST). The meeting will continue on Tuesday, May 4, 1999, from 8:00 am to 12:00 pm, PST. The Subcommittee will attempt to tour an on-site prescribed burn in progress. While this meeting is open to the public, transportation for the tour will be provided only for the Subcommittee members and Federal employees.

DATED: March 29, 1999.

FOR FURTHER INFORMATION CONTACT: Sonya Hickman, Bureau of Land Management, Lakeview District Office, HC 10 Box 337, Lakeview, OR 97630, (Telephone: 541–947–2177).

Steve Ellis,

Designated Federal Official.

[FR Doc. 99–9096 Filed 4–12–99; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–952–09–1420–00]

Filing of Plats of Survey; Nevada

AGENCY: Bureau of Land Management, DOI.

ACTION: Notice.

SUMMARY: The purpose of this notice is to inform the public and interested State and local government officials of the filing of Plats of Survey in Nevada.

EFFECTIVE DATES: Filing is effective at 10:00 a.m. on the dates indicated below.

FOR FURTHER INFORMATION CONTACT: David J. Clark, Chief, Branch of Geographic Services, Bureau of Land Management (BLM), Nevada State Office, 1340 Financial Blvd., P.O. Box 12000, Reno, Nevada 89520, 702–861–6559.

SUPPLEMENTARY INFORMATION: 1. The Plat of Survey of the following described lands was officially filed at the Nevada State Office, Reno, Nevada on January 21, 1999:

The plat, representing the dependent resurvey of a portion of the subdivisional lines, and a metes-and-bounds survey in sec. 8, T. 19 S., R. 63 E., Mount Diablo Meridian, Nevada, under Group No. 777, was accepted January 19, 1999.

This survey was executed to meet certain administrative needs of Mr. Lou Birbas and the Bureau of Land Management.

2. The Supplemental Plat of the following described lands was officially filed at the Nevada State Office, Reno, Nevada on January 21, 1999:

The supplemental plat, showing amended lottings in sec. 9, T. 19 S., R.63 E., Mount Diablo Meridian, Nevada, was accepted January 19, 1999.

This supplemental plat was prepared to meet certain administrative needs of Mr. Lou Birbas and the Bureau of Land Management.

3. The Supplemental Plat of the following described lands was officially filed at the Nevada State Office, Reno, Nevada on January 21, 1999:

The supplemental plat, showing additional lotting in sec. 26, T. 18 S., R. 63 E., Mount Diablo Meridian, Nevada, was accepted January 19, 1999.

This supplemental plat was prepared to meet certain administrative needs of the Bureau of Land Management.

4. The Supplemental Plat of the following described lands was officially filed at the Nevada State Office, Reno, Nevada on February 3, 1999:

The supplemental plat, showing a subdivision of original lot 3, sec. 4, T. 2 N., R. 43 E., Mount Diablo Meridian, Nevada, was accepted February 3, 1999.

This supplemental plat was prepared to meet certain administrative needs of the Bureau of Land Management.

5. The Plat of Survey of the following described lands was officially filed at the Nevada State Office, Reno, Nevada on February 4, 1999:

The plat, representing the corrective dependent resurvey of a portion of the east boundary of T. 37 N., R. 62 E.; and a portion of the subdivisional lines of T. 37 N., R. 63 E., Mount Diablo Meridian, Nevada, under Group No. 773, was accepted February 2, 1999.

This survey was executed to meet certain administrative needs of the Bureau of Land Management.

6. The Supplemental Plats of the following described lands were officially filed at the Nevada State Office, Reno, Nevada on March 4, 1999:

The supplemental plat, showing amended lottings in sec. 20, T. 31 N., R. 43 E., Mount Diablo Meridian, Nevada, was accepted March 2, 1999.

The supplemental plat, showing amended lottings in sec. 21, T. 31 N., R. 43 E., Mount Diablo Meridian, Nevada, was accepted March 2, 1999.

The supplemental plat, showing amended lottings in sec. 28, T. 31 N., R. 43 E., Mount Diablo Meridian, Nevada, was accepted March 2, 1999.

The supplemental plat, showing amended lottings in sec. 29, T. 31 N., R. 43 E., Mount Diablo Meridian, Nevada, was accepted March 2, 1999.

The supplemental plat, showing new lottings in sec. 33, T. 31 N., R. 43 E., Mount Diablo Meridian, Nevada, was accepted March 2, 1999.

The supplemental plat, showing amended lottings in sec. 34, T. 31 N., R. 43 E., Mount Diablo Meridian, Nevada, was accepted March 2, 1999.

These supplemental plats were prepared to meet certain administrative needs of the Bureau of Land Management.

7. The Supplemental Plat of the following described lands was officially filed at the Nevada State Office, Reno, Nevada on March 25, 1999:

The supplemental plat; showing a subdivision of lot 13, sec. 6, T. 35 N., R. 38 E., Mount Diablo Meridian, Nevada, was accepted March 23, 1999.

This supplemental plat was prepared to meet certain administrative needs of the Bureau of Land Management.

8. The above-listed surveys are now the basic records for describing the lands for all authorized purposes. These surveys have been placed in the open files in the BLM Nevada State Office and are available to the public as a matter of information. Copies of the surveys and related field notes may be furnished to the public upon payment of the appropriate fees.

Dated: March 31, 1999.

David J. Clark,

Chief Cadastral Surveyor, Nevada.

[FR Doc. 99–9095 Filed 4–12–99; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ES–960–1420–00; ES–50265, Group 160, Wisconsin]

Notice of Filing of Plat of Survey; Wisconsin

The plat of the dependent resurvey of a portion of the west boundary, a portion of the subdivisional lines, and the subdivision of sections 7 and 18, in Township 35 North, Range 15 West, of the 4th Principal Meridian, Wisconsin, will be officially filed in Eastern States,

Springfield, Virginia at 7:30 a.m., on May 14, 1999.

The survey was requested by the Bureau of Indians Affairs.

All inquiries or protests concerning the technical aspects of the survey must be sent to the Chief Cadastral Surveyor, Eastern States, Bureau of Land Management, 7450 Boston Boulevard, Springfield, VA 22153, prior to 7:30 a.m., May 14, 1999.

Copies of the plat will be made available upon request and prepayment of the reproduction fee of $2.75 per copy.

Dated: April 5, 1999.

Joseph W. Beaudin,

Chief Cadastral Surveyor.

[FR Doc. 99–9168 Filed 4–12–99; 8:45 am]

BILLING CODE 4310–GJ–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–930–1920–00–4373; IDI–31741]

Legal Description of Juniper Butte Range Withdrawal, Correction; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This notice corrects the total acreage figure and the land description of the public lands withdrawn for the Juniper Butte Range Withdrawal published in 63 FR 251, of December 31, 1998, on page 72326 and correction published in 64 FR 12, of January 20, 1999, on page 3134. In addition to those areas officially noted in the previous **Federal Register** notices the following added land description corrects the descriptions, lines and areas improperly noting a portion of the westerly boundary of the Juniper Butte Range:

Boise Meridian

T. 12S., R. 9E.,
section 35, lot 5, containing 2.73 acres.
T. 13S., R. 9E.,
section 2, lots 13 and 16, containing a total of 5.11 acres.
section 11, lots 9 and 12, containing a total of 5.48 acres.
section 14, lots 10 and 13 containing a total of 5.48 acres.
section 23, lots 9 and 12 containing a total of 5.48 acres.

The acreage figure of 11,796.64 acres is corrected to 11,820.92 the correct acreage figure for the Juniper Butte Range Withdrawal in Owyhee County, Idaho.

EFFECTIVE DATE: April 13, 1999.

FOR FURTHER INFORMATION CONTACT: Jon Foster, BLM Idaho State Office, 1387 S. Vinnell Way, Boise, Idaho 83709, 208–373–3813.

Jimmie Buxton,

Branch Chief, Lands and Minerals.

[FR Doc. 99–9093 Filed 4–12–99; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Boundary Revision, Point Reyes National Seashore

SUMMARY: This notice announces a revision of the boundaries of Point Reyes National Seashore to include within the boundaries one unimproved parcel of land.

FOR FURTHER INFORMATION CONTACT: Sondra S. Humphries, Chief, Pacific Land Resources Program Center at (415) 427–1416.

SUPPLEMENTARY INFORMATION: Notice is hereby provided that the boundaries of Point Reyes National Seashore are revised, effective as of the date of publication of this notice to include all that certain property, situated in the County of Marin, State of California. The privately owned parcel, to be donated to the United States, is immediately adjacent to the park boundary and contains 6.47 acres, more or less. The parcel is identified as Tract P03–101 of Segment Map 03 and Drawing No. 612/03780, dated September, 1998. Detailed information is on file at the National Park Service, Pacific Land Resources Program Center, 600 Harrison Street, Suite 600, San Francisco, California 94107–1372.

Dated: April 5, 1999.

John Reynolds,

Regional Director, Pacific West Region.

[FR Doc. 99–9097 Filed 4–12–99; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

Kaloko-Honokohau National Historical Park Advisory Commission; Notice of Meeting

Notice is given in accordance with the Federal Advisory Committee Act that a meeting of the Na Hoapili o Kaloko Honokohau, Kaloko Honokohau National Historical Park Advisory Commission will be held at 10:00 a.m. to 12:00 noon., April 17, 1999, at the Keauhou Beach Hotel, Kalakaua House, Kailua-Kona, Hawaii.

Superintendent's and Committee Reports will be presented.

This meeting is open to the public. It will be recorded for documentation and transcribed for dissemination. Minutes of the meeting will be available to the public after approval of the full Advisory Commission. A transcript will be available after May 29, 1999. For copies of the minutes, contact the Kaloko-Honokohau National Historical Park Superintendent at (808) 329–6881.

Dated: March 30, 1999.

Gary Barbano,

Acting Superintendent, Pacific Islands Support Office.

[FR Doc. 99–9098 Filed 4–12–99; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before April 3, 1999. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, 1849 C St. NW, NC400, Washington, DC 20240. Written comments should be submitted by April 28, 1999.

Carol D. Shull,

Keeper of the National Register.

CALIFORNIA

Los Angeles County

La Puente Valley Woman's Club, 200 N. First St., La Puente, 99000482

COLORADO

Chaffee County

Maysville School (Rural School Buildings in Colorado MPS), S of US 50, Maysville, 99000484

Larimer County

Plummer School (Rural School Buildings in Colorado MPS), 2524 E. Vine Dr., Fort Collins vicinity, 99000485

Mesa County

Pipe Line School (Rural School Buildings in Colorado MPS), 101 16.5 S Rd., Glade Park, 99000483

INDIANA

Marion County

Crown Hill National Cemetery (Civil War Era National Cemeteries MPS), 700 W. 38th St., Indianapolis, 99000486

IOWA

Cedar County

Green, William, House, 1709 Madison St., Rochester vicinity, 99000488

Keokuk County

Public Square Historic District (Sigourney, Iowa MPS), Roughly around Keokuk County Court House, Sigourney, 99000487

Montgomery County

Chicago, Burlington Northern and Quincy Depot, 305 S. Second St., Red Oak, 99000489

Plymouth County

Le Mars Central High School, 335 1st Ave. SW, Le Mars, 99000492

Polk County

Teachout Building (Architectural Legacy of Proudfoot & Bird in Iowa MPS), 500–502 E. Locust St., Des Moines, 99000491

Taylor County

Lenox Round Barn (Iowa Round Barns: The Sixty Year Experiment TR), 1001 Pollock Blvd., Bedford vicinity, 99000490

KENTUCKY

Jefferson County

Country Estates of River Road (Louisville and Jefferson County MPS), Roughly along River Rd. and Wolf Pen Branch Rd. from Longview Ln. to 500 ft. W of US 42, Glenview, 99000495

Jessamine County

Canewood Farm, 8080 Harrodsburg Rd., Nicholasville vicinity, 99000494

Nelson County

Walnut Groves Farm (Boundary Increase I), 801 Taylorsville Rd., Bloomfield vicinity, 99000521

LOUISIANA

Caddo Parish

South Highlands Historic District, Roughly bounded by Richmond Ave., Trabue St., Line Ave., and Southfield Rd., Shreveport, 99000496

East Baton Rouge Parish

Fuqua Hardware Store Building, 358 Third St., Baton Rouge, 99000497

MASSACHUSETTS

Middlesex County

Watertown Arsenal Historic District, Arsenal St., Watertown, 99000498

MISSISSIPPI

Grenada County

Glenwild Plantation Manager's House, 3557 MS 51 S, Grenada, 99000499

NEW MEXICO

Rio Arriba County

Chimayo Trading Post and Trujillo, E.D., House, 110 Sandia Dr., Espanola, 99000500

NEW YORK

Cayuga County

Wall Street Methodist Episcopal Church, 69 Wall St., Auburn, 99000507

Delaware County

Downsville Covered Bridge, Bridge St., Downsville, 99000503
Fitches Covered Bridge, Fitches Bridge Rd., East Delhi, 99000508
Hamden Covered Bridge, Basin Clove Rd., Hamden, 99000502
Lower Shavertown Covered Bridge, 682 Methol Rd., Methol, 99000504

Franklin County

Smith's, Paul, Hotel Cottages, NY 30, Brighton, 99000501

Montgomery County

Saint Stanislaus Roman Catholic Church Complex, 42, 46, 50 Cornell St. 73 Reid St., Amsterdam, 99000505

Oneida County

Dorrance, W.H., House, 32 Church St., Camden, 99000506

NORTH CAROLINA

Wake County

Hood—Anderson Farm (Wake County MPS), Old Battle Bridge Rd., 0.4 mi. S of jct. with Old Tarboro Rd., Eagle Rock vicinity, 99000509

OHIO

Belmont County

Kinney, James, Farmstead, 44680 Belmont-Centerville Rd., Belmont vicinity, 99000510

Hamilton County

Boulter, Cedric G., and Patricia Neils, House, 1 Rawson Woods Circle, Cincinnati, 99000512
Cary, Freeman Grant, Pleasant Hill Academy, 5651 Hamilton Ave., Cincinnati, 99000511

PENNSYLVANIA

Clearfield County

Coalport Historic District, Along Main St., roughly form Mill to Walnut STs., Coalport, 99000517

Fayette County

Oak Hill Estate, US 40, 0.25 mi. W of US 119, North Union Township, 99000514

Greene County

Thralls, Ernest, House, PA 218 S at TR 353 and TR 522, Spraggs, 99000513

Lehigh County

Rodale Organic Gardening Experimental Farm, 2056 Minesite Rd., Lower Macungie township, 99000515

Westmoreland County

Academy Hill Historic District, Roughly bounded by Baughman St., N. Maple Ave., Kenneth St., Culbertson Ave., Beacon St., and Pennslyvania Ave., Greensburg, 99000516

WISCONSIN

Dane County

Middleton Depot, Chicago, Milwaukee, and St. Paul Railroad, 1811 Parmenter St., Middleton, 99000520
Rowley, Dr. Newman C., House, 7410 Hubbard Ave., Middleton, 99000518

[FR Doc. 99–9150 Filed 4–12–99; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Official Insignia Designation

SUMMARY: This notice establishes the official National Park Service insignia commemorating the Bicentennial Anniversary of the Lewis and Clark Expedition, 2003–2006.

DATES: This action is effective April 13, 1999.

FOR FURTHER INFORMATION CONTACT: Mark Engler, Interim Superintendent, Corps of Discovery II: 200 Years to the Future, Route 3, Box 47, Beatrice, Nebraska 68310, telephone 402–223–3514.

SUPPLEMENTARY INFORMATION: The National Park Service has designated an official insignia of the Lewis and Clark Expedition Bicentennial Anniversary, 2003–2006. You may obtain a copy of the insignia from the address under **FOR FURTHER INFORMATION CONTACT**. Notice is given that whoever manufactures, sells, or possesses this insignia, or any colorable imitation thereof, or photographs, prints or in any other manner makes or executes any engraving photograph or print, or impression in the likeness of this insignia, or any colorable imitation thereof, without authorization from the United States Department of the Interior is subject to the penalty provisions of Section 701, Title 18 of the United States Code.

Dated: March 22, 1999.

David N. Given,

Deputy Regional Director, Midwest Region.

[FR Doc. 99–8130 Filed 4–12–99; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Clean Air Act

In accordance with Departmental policy, 28 CFR § 50.7, notice is hereby given that a proposed consent decree in *United States* v. *Galatin Steel Company,* Civil Action No. 99–30 was lodged on February 25, 1999, with the United

States District Court for the Eastern District of Kentucky. The United States filed this action pursuant to Section 113(b) of the Clean Air Act, 42 U.S.C. 7413(b) for civil penalties and injunctive relief.

Gallatin Steel (Gallatin) was issued a synthetic minor source permit by the Kentucky Division of Air Quality (KDAQ) in 1993. The complaint alleged that Gallatin exceeded its minor source permit limit for nitrogen oxides (NO_x) and carbon monoxide (CO) from its electric arc furnaces (EAFs); violated NO_x emissions limits at its reheat furnace; constructed emissions units of regulated pollutants without a permit; started up the EAFs without operating its emission control equipment in violation of its permit; and circumvented the Clean Air Act's requirements to assure Prevention of Significant Deterioration (PSD) of air quality in violation of Section 165 of the Clean Air Act, 42 U.S.C. 7475, and 401 KAR 51:017, Section 8(1).

The consent decree provides that Galatin will pay a civil penalty of $450,000 and will perform a Supplemental Environmental Projects (SEP) designed to reduce NO_x and CO at the Gallatin facility. The cost to Gallatin for the SEP will be not less than $750,000. The consent decree does not provide for injunctive relief because Gallatin received and is in compliance with a PSD permit issued from KDAQ.

The Department of Justice will receive, for a period of 30 days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to: *United States* v. *Gallatin Steel Company* DOJ Ref. #90–5–2–1–2115.

The proposed consent decree may be examined at the Office of the United States Attorney, Eastern District of Kentucky, 110 West Vine, Lexington, Kentucky 40596 and at the Consent Decree Library, 1120 G Street, N.W., 3rd Floor, Washington, D.C. 20005, (202) 624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 3rd Floor, Washington, D.C. 20005. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $7.00 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Joel Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 99–9145 Filed 4–12–99; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Clean Air Act

Notice is hereby given that on March 31, 1999, the United States lodged a proposed consent decree with the United States District Court for the Western District of Wisconsin, in *United States* v. *Prairie Sand & Gravel, Inc.*, Civil No. 98 C 0586 –S, under section 113(b) of the Clean Air Act, 42 U.S.C. 7413(b). The proposed consent decree resolves certain claims of the United States against Prairie Sand & Gravel, Inc., arising out of its grain transfer facility located at St. Feriole Island in Prairie du Chien, Wisconsin. Under the proposed Consent Decree PS&G will pay the United States a $115,000 penalty as well as perform injunctive relief.

The Department of Justice will receive comments relating to the proposed Consent Decree for 30 days following publication of this Notice. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, United States Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, DC 20044–7611, and should refer to *United States* v. *Prairie Sand & Gravel, Inc.*, Civil No. 98 C 0586 –S, 90–5–2–1–2218. The proposed Consent Decree may be examined at the Office of the United States Attorney for the Western District of Wisconsin, Madison, Wisconsin; the Region V Office of the United States Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604; and at the Consent Decree Library, 1120 G Street, NW, 3rd Floor, Washington, DC 20005, telephone number (202) 624–0892. A copy of the proposed Consent Decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW, 3rd Floor, Washington, DC 20005. In requesting a copy, please enclose a check for reproduction costs (at 25 cents per page) in the amount of $6.50 for the Decree, payable to the Consent Decree Library.

Bruce S. Gelber,

Deputy Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 99–9167 Filed 4–12–99; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980

In accordance with Departmental policy, 28 CFR 50.7, and 42 U.S.C. 9622(d)(2), notice is hereby given that on March 24, 1999, a Consent Decree was lodged in *United States* v. *Ribi Immunochem Research, Inc. et al.*, Civil Action No. 98–55–M–LBE, with the United States District Court for the District of Montana.

The Consent Decree resolves contribution claims brought on behalf of the National Institutes of Health ("NIH") against defendants Charles Mann, Mary Louise Mann, and Bitterroot Valley Sanitary Landfill, Inc under Sections 107 and 113 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. 9607 and 9613, with respect to the Bitterroot Valley Sanitary Landfill and surrounding areas (the "Site"). The Site is located in Hamilton, Montana. Under the proposed consent decree, defendants Charles Mann, Mary Louise Mann, and Bitterroot Valley Sanitary Landfill, Inc will pay $440,000 in contribution for response costs incurred by the National Institutes of Health ("NIH") for response costs incurred in connection with the Site.

The Department of Justice will receive comments relating to the proposed Consent Decree for a period of thirty days from the date of publication of this notice. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *Rivi Immunochem Research, Inc.*, Civil Action No. NO.98–55–M–LBE, DOJ Ref. No. 90–11–3–1713. The proposed Consent Decree may be examined at the office of the United States Attorney, District of Montana, United States Attorney's Office, Russell Smith Courthouse, 201 E. Broadway, Room 210 Missoula, Montana 59802. Copies of the Consent Decree may also be examined and obtained by mail at the Consent Decree Library, 1120 G Street, N.W., 3rd Floor, Washington, D.C. 20005 (202–624–0892). When requesting a copy by mail, please enclose a check in the amount of $3.25 (twenty-five cents per page reproduction

costs) for the Consent Decree, payable to the "Consent Decree Library."

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 99–9144 Filed 4–12–99; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Two Proposed Consent Decrees in Comprehensive Environmental Response, Compensation and Liability Act Cost Recovery Action

In accordance with the Departmental Policy, 28 C.F.R. 50.7, notice is hereby given that two Consent Decrees in *United States* v. *Ralph Riehl Jr. et al.*, Civil Action No. 89–226E were lodged with the United States District Court for the Western District of Pennsylvania on March 29, 1999. These Consent Decrees resolve the United States' claims against Kondu Corporation and Lincoln Metal Processing Company under Sections 106 and 107(a) of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. 9606 and 9607(a), for response costs incurred at the Millcreek Dump Superfund Site in Millcreek Township, PA. The Kondu Consent Decree requires Kondu to pay $230,000 in reimbursement of response costs relating to the Millcreek Dump Superfund Site cleanup. The Lincoln Consent Decree requires Lincoln to pay $90,000 in reimbursement of response costs relating to the Millcreek Dump Superfund Site cleanup, over a three-year period. Kondu and Lincoln have each agreed to pay a $10,000 civil penalty, pursuant to Section 106 of CERCLA, 42 U.S.C. 9606, for failure to comply with a Unilateral Administrative Order issued by the Environmental Protection Agency on March 31, 1992, requiring cleanup at the Site. The Department of Justice will accept written comments on the proposed Consent Decrees for thirty (30) days from the date of publication of this notice. Please address comments to the Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, D.C. 20044 and refer to *United States* v. *Ralph Riehl Jr. et al.*, DOJ No. 90–11–3–519.

Copies of the proposed Consent Decree may be examined at the Office of the United States Attorney, Western District of Pennsylvania, 100 State Street, Suite 302, Erie, PA 16507; EPA Region III, 1650 Arch Street, Philadelphia, PA 19103; and at the Consent Decree Library, 1120 G Street, N.W., 3rd Floor, Washington, D.C. 20005, (202) 624–0892. A copy of the proposed Kondu or Lincoln Consent Decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 3rd Floor, Washington, D.C. 20005. When requesting a copy of the proposed Consent Decrees, please enclose a check to cover the twenty-five cents per page reproduction costs payable to the "Consent Decree Library" in the amount of $5.50 for the Kondu Decree only ($51.25 for the Decree and all attachments) and $6.25 for the Lincoln Decree only ($20.75 for the Decree and all attachments), and please reference *United States* v. *Ralph Riehl, Jr. et al.* DOJ No. 90–11–3–519.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division, Department of Justice.

[FR Doc. 99–9142 Filed 4–12–99; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Clean Water Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States* v. *Yellowstone Pipe Line Company and Conoco Pipe Line Company*, Civil Action No. 96–47–M–CCL, was lodged on March 30, 1999, with the United States District Court for the District of Montana. The proposed consent decree would settle a civil action that the United States brought on behalf of the United States Environmental Protection Agency under Sections 309(d) and 311(b) of the Federal Water Pollution Control Act (also known as the "Clean Water Act"), 33 U.S.C. 1319(d), 1321(b), against Yellowstone Pipe Line Company ("Yellowstone") and Conoco Pipe Line Company ("Conoco") (collectively, "defendants") seeking civil penalties and injunctive relief to redress defendants' alleged violations of Sections 301(a) and 311(b)(3) of the Clean Water Act, 33 U.S.C. 1311(a), 1321(b)(3), in connection with a discharge of a reportable quantity of oil into or upon the navigable waters of the United States and adjoining shorelines. The discharge, from the Yellowstone Pipeline owned by Yellowstone and operated by Conoco, occurred during the winter of 1993–94 into Camas Creek, into the creek sediments, onto adjoining wetlands and into the soil surrounding the pipeline, all within the boundaries of the Flathead Indian Reservation in Sanders County, Montana.

Under the terms of the proposed consent decree, the defendants will be required to (1) pay a civil penalty of $165,000, and (2) perform a supplemental environmental project at a cost of approximately $130,000, consisting of a selective fish passageway to be constructed in the Lower Jocko River. The fish passageway will be designed to enhance the population of a threatened species, the bull trout, while preserving one of the few remaining genetically pure populations of westslope cutthroat trout, in the same ecosystem where the Camas Creek oil spill occurred.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *Yellowstone Pipe Line Company and Conoco Pipe Line Company*, DOJ Ref. No. 90–5–1–1–4205.

The proposed consent decree may be examined at the office of the United States Attorney for the District of Montana, Federal Building, 201 E. Broadway, Suite 210, Missoula, Montana 59807; the Region VIII Office of the Environmental Protection Agency, 999 Eighteenth Street, Suite 500, Denver, Colorado 80202; and at the Consent Decree Library, 1120 G Street, N.W., 3rd Floor, Washington, D.C. 20005, (202) 624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 3rd Floor, Washington, D.C. 20005. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $10.00 (25 cents per page reproduction costs) payable to the Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 99–9143 Filed 4–12–99; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

[AAG/A Order No. 160–99]

Privacy Act of 1974; Privacy Act Systems of Records

Pursuant to the Privacy Act of 1974 (5 U.S.C. 552a) and Office of Management and Budget Circular No. A–130,

Department components have reviewed their Privacy Act systems of records to identify any minor changes that will clarify and/or more accurately describe their systems of records. As a result, the Executive Office for Immigration Review (EOIR); the Immigration and Naturalization Service (INS); and the Justice Management Division (JMD) are reporting "System Location" changes.

The EOIR and INS have revised their appendices of principal office addresses, Justice/EOIR–999 and Justice/INS–999. In addition, the JMD proposes "System Location" changes for the "Department of Justice Payroll System, Justice/JMD–003" Specifically, paragraph c. has been added to the "System Location" of the Department of Justice Payroll System. Paragraph c. indicates that post conversion historical records may also be located on a server at the Justice Data Center in Rockville, Maryland, and may include any post conversion payroll data for which a determination is made that such data no longer requires storage in a current status. Any comments may be addressed to Mary Cahill, Management Planning Staff, Justice Management Division, Department of Justice, Washington, DC 20530 (Suite 1400, National Place Building).

Dated: March 26, 1999.

Stephen R. Colgate,

Assistant Attorney General for Administration.

Justice/EOIR–999

SYSTEM NAME: Appendix to Executive Office for Immigration Review System of Records.

EOIR field offices are located as follows:

Executive Office for Immigration Review, Immigration Court, 901 N. Stuart Street, Suite 1300, Arlington, VA 22203

Executive Office for Immigration Review, Immigration Court, Martin Luther, King Jr. Federal Bldg., 77 Forsyth Street, Room 112, Atlanta, GA 30303

Executive Office for Immigration Review, Immigration Court, US Appraisers Bldg., 103 S. Gay Street, Room 702, Baltimore, MD 21202

Executive Office for Immigration Review, Immigration Court, 7850 Metro Parkway, Suite 320, Bloomington, MN 55425

Executive Office for Immigration Review, Immigration Court, JFK Federal Bldg., 15 New Sudbury Street, Room 320, Boston, MA 02203

Executive Office for Immigration Review, Immigration Court, 515 11th Street W., 3rd Floor, Bradenton, FL 34205

Executive Office for Immigration Review, Immigration Court, 130 Delaware Avenue, Suite 410, Buffalo, NY 14202

Executive Office for Immigration Review, Immigration Court, Federal Bldg., 55 E. Monroe Street, Suite 1900, Chicago, IL 60603

Executive Office for Immigration Review, Immigration Court, 1200 Main Street, Suite 700, Dallas, TX 75202.

Executive Office for Immigration Review, Immigration Court, Byron G. Rogers Federal Bldg., 1961 Stout Street, Room 1403, Denver, CO 80294

Executive Office for Immigration Review, Immigration Court, Brewery Park II, 1155 Brewery Park Blvd., Suite 450, Detroit, MI 48207

Executive Office for Immigration Review, Immigration Court, 625 Evans Street, Room 148A, Elizabeth, NJ 07201

Executive Office for Immigration Review, Immigration Court, 1545 Hawkins Blvd., Suite 205, El Paso, TX 79925

Federal Detention Center, 1705 E. Hanna Road, Suite 366, Eloy, AZ 85232

Executive Office for Immigration Review, Immigration Court, 3260 N. Pinal Parkway Avenue, Florence, AZ 85232

Executive Office for Immigration Review, Immigration Court, GSA Center, 651 Federal Dr., Suite 111–14, Guaynabo, San Juan, PR 00965

Executive Office for Immigration Review, Immigration Court, 201 E. Jackson Street, Harlingen, TX 78550

Executive Office for Immigration Review, Immigration Court, AA Ribicoff Federal Bldg. and Courthouse, 450 Main Street, Room 509, Hartford, CT 06103–3015

Executive Office for Immigration Review, Immigration Court, PJKK Federal Bldg., 300 Ala Moanu Blvd., Room 8–112, Honolulu, HI 96850

Executive Office for Immigration Review, Immigration Court, 2320 La Branch Street, Room 2235, Houston, TX 77004

Executive Office for Immigration Review, Immigration Court, 2409 La Brucherie Road, Imperial, CA 92251

Krome North Processing Center, 18201 SW 12th Street, Miami, FL 33194

Laredo Service Processing Center, PO Box 440110, Laredo, TX 78044–0110

Executive Office for Immigration Review, Immigration Court, Mira Loma Facility, 45100 N. 60th Street West, Lancaster, CA 93536

Executive Office for Immigration Review, Immigration Court, Pacific Enterprise Plaza, 3365 Pepper Lane, Suite 200, Las Vegas, NV 89120

Executive Office for Immigration Review, Immigration Court, 606 S. Olive Street, Suite 1500, Los Angeles, CA 90014

Port Isabel Processing Center, Route 3, Box 341, Bldg. 37, Los Fresnos, TX 78566

Executive Office for Immigration Review, Immigration Court, Clifton B. Davis Federal Bldg., 167 N. Main Street, Room 1026, Memphis, TN 38103

Executive Office for Immigration Review, Immigration Court, 155 S. Miami Avenue, Room 800, Miami, FL 33130

Ulster Correctional Facility, Berme Road, Napanoch, NY 12458

Executive Office for Immigration Review, Immigration Court, 970 Broad Street, Room 1135, Newark, NJ 07102

Executive Office for Immigration Review, Immigration Court, One Canal Place, 365 Canal Street, Suite 2450, New Orleans, LA 70130

Executive Office for Immigration Review, Immigration Court, 26 Federal Plaza, Suite 1000, New York, NY 10278

Executive Office for Immigration Review, Immigration Court, 1900 E. Whatley Road, Oakdale, LA 71463

Executive Office for Immigration Review, Immigration Court, 5449 South Semoran Blvd., Suite 200, Orlando, FL 32803

Executive Office for Immigration Review, Immigration Court, 1600 Callowhill Street, Room 400, Philadelphia, PA 19130

Executive Office for Immigration Review, Immigration Court, Federal Bldg., 200 E Mitchell Dr., Suite 200, Phoenix, AZ 85102

Executive Office for Immigration Review, Immigration Court, U.S. Post Office/ Courthouse Bldg., 615 E. Houston Street, Room 598, San Antonio, TX 78205–2040

Executive Office for Immigration Review, Immigration Court, 401 West A Street, Suite 800, San Diego, CA 92101–7904

Executive Office for Immigration Review, Immigration Court, 550 Kearny Street, Suite 800, San Francisco, CA 94108

INS San Pedro Service Processing Center, 2001 Seaside Avenue, Room 136, San Pedro, CA 90731

Executive Office for Immigration Review, Immigration Court, Key Tower Bldg., 1000 Second Avenue, Suite 3150, Seattle, WA 98104

Executive Office for Immigration Review, Immigration Court, 160 N. Stone Avenue, Suite 300, Tucson, AZ 85701–1502

Executive Office for Immigration Review, Immigration Court, 201 Varick Street, Room 1140, New York, NY 10014

Executive Office for Immigration Review, Immigration Court, 3434 Concord Road, York, PA 17402

JUSTICE/INS–999

SYSTEM NAME:

INS Appendix: List of principal offices of the Immigration and Naturalization Service.

Headquarters: Immigration and Naturalization Service; 425 "I" Street NW, Washington, DC 20536.

Regional Offices: Eastern Regional Office, 70 Kimball Avenue, *South* Burlington, VT 05403–6813.

Centeral Regional Office, *7701 North Stemmons Freeway, Dallas, TX 75247–9998.*

Western Regional Office, PO Box 30080, Laguna Niguel, CA 92607–0080.

Regional Service Centers: Eastern Service Center, 75 Lower Welden Street, St. Albans, VT 05479–001.

Northern Service Center, *PO Box 82521,* Lincoln, NE 68501–*2521.*

Southern Service Center, PO Box *851488, Mesquite,* TX *75185–1488.*

Western Service Center, *24000 Avila Road, 2nd Floor,* Laguna Niguel, CA *92677.*

Administrative Center: Eastern Administrative Center, 70 Kimball Avenue, *South* Burlington, VT 05403–6813.

Southern Administrative Center, 7701 North Stemmons Freeway, Dallas, TX *75247.*

Northern Administrative Center, *Bishop Henry Whipple* Fed. Bldg., Room 480, *One Federal Drive, Fort Snelling,* MN 55111–*4007.*

Western Administrative Center, 24000 Avila Road, Laguna Niguel, CA 92677–8080.

District Office in the United States:

Anchorage District Office, Michaelis Building, Suite 102, 620 East 10th Avenue, Anchorage, AK 99501–3708.

Atlanta District Office, 77 Forsyth Street, SW, Room 284, Atlanta, GA 30303.

Baltimore District Office, Equitable Bank Center, 12th Floor, Tower One, 100 South Charles Street, Baltimore, MD 21201.

Boston District Office, JFK Federal Building, Government Center, Boston, MA 02203.

Buffalo District Office, *130 Delaware Avenue*, Buffalo, NY 14202.

Chicago District Office, 10 West Jackson Boulevard, Second Floor, Chicago, IL 60604.

Cleveland District Office, Anthony J. Celebreze Federal Office Building, 1240 East 9th Street, Room 1917, Cleveland, OH 44199.

Dallas District Office, 8101 North Stemmons Freeway, Dallas, TX 75247.

Denver District Office, 4730 Paris Street, Albrook Center, Denver, CO 80239–2804.

Detroit District Office, Federal Building, 333 Mt. Elliott St., Detroit, MI 48207.

El Paso District Office, 1545 Hawkins Blvd., Suite 170, El Paso, TX 79925.

Harlingen District Office, 2102 Teege Road, Harlingen, TX 78550.

Helena District Office, *2800 Skyway Drive*, Helena, MT 59601.

Honolulu District Office, 595 Ala Moana Boulevard, Honolulu, HI 96813.

Houston District Office, *126 Northpoint*, Houston, TX 77060.

Kansas District Office, 9747 N. Connant Avenue, Kansas City, MO *64153*.

Los Angeles District Office, 300 North Los Angeles Street, Los Angeles, CA 90012.

Miami District Office, 7880 Biscayne Boulevard, Miami, FL 33138.

Newark District Office, Federal Building, 970 Broad Street, Newark, NJ 07102.

New Orleans District Office, Postal Services Bldg., Room T–8005, 701 Loyola Ave., New Orleans, LA 70113.

New York District Office, 26 Federal Plaza, New York, NY 10278.

Omaha District Office, 3736 South 132nd Street, Omaha, NE 68144.

Philadelphia District Office, 1600 Callowhill Street, Philadelphia, PA 19130.

Phoenix District Office, 2035 North Central Avenue, Phoenix, AZ 85004.

Portland Maine District Office, *176 Gannett Drive, South Portland, ME* 04106–*6909*.

Portland Oregon District Office, Federal Office Building, 511 NW., Broadway, Portland, OR 97209.

San Antonio District Office, 8940 Four Winds, San Antonio, TX 78239.

San Diego District Office, 880 Front Street, *Suite 2233*, San Diego, *92101–8834*.

San Francisco District Office, 630 Sansome Street, Appraisers Building, San Francisco, CA 94111.

San Juan District Office, PO Box 365068, San Juan, PR 00936–5068.

Seattle District Office, 815 Airport Way South, Seattle, WA 98134.

St. Paul District Office, 2901 Metro Drive, Suite 100, Bloomington, MN 55425.

Washington, DC District Office, 4420 North Fairfax Drive, Arlington, VA 22203.

Suboffices (Files Control Offices) in the United States:

Agana Office, Pacific News Building, Room 801, 238 Archbishop Flores Street, Agana, GU 96910.

Albany Office, James T. Foley Federal Courthouse, 445 Broadway, Room 220, Albany, NY 12207.

Charlotte Office, 6 Woodlawn Green, Suite 138, Charlotte, NC 28217.

Charlotte Amalie Office, Federal District Court Bldg., PO Box 610, Charlotte Amalie, St. Thomas, VI 00801.

Cincinnati Office, J.W. Peck Federal Building, 550 Main Street, Room 8525, Cincinnati, OH 45202.

El Paso Intelligence Center, SSG Sims Street, Building 11339, EL Paso, TX 79918–5100.

Hartford Office, Ribicoff Building, 450 Main Street, Hartford, CT 06103–3060.

Indianapolis Office, Gateway Plaza, 950 North Meridian, Suite 400, Indianapolis, IN 46204.

Las Vegas Office, 3373 Pepper Lane, Las Vegas, NV 89120–2739.

Memphis Office, *1341 Sycamore View*, Memphis, TN 38134.

Milwaukee Office, Federal Building, Room 186, 517 East Wisconsin Avenue, Milwaukee, WI 53202.

Norfolk Office, *5280 Henneman Drive*, Norfolk, VA 23513.

Oakdale Office, PO Box 5095, Oakdale, LA 71464.

Pittsburgh Office, 314 Federal Building, 1000 Liberty Avenue, Pittsburgh, PA 15222.

Providence Office, Federal Building U.S. Post Office Exchange Terrace, Providence, RI 02903.

Reno Office, 1351 Corporate Blvd., Reno, NV 89502.

St. Albans Office, PO Box 328, St. Albans, VT 05478.

St. Louis Office, R.A. Young Federal Building, 1222 Spruce Street, Room 1.100, St. Louis, MO 63101–2815.

Salt Lake City Office, 230 West 400 South Street, Salt Lake City, UT 84101.

Spokane Office, U.S. Courthouse Building, Room 691, Spokane, WA 99201.

Border Patrol Sector Headquarters:

Blaine Sector Headquarters, 1590 "H" Street, PO Box 3529, Blaine, WA 98231 Blaine, WA 98230.

Buffalo Sector Headquarters, 231 Grand Island Boulevard, Tonawanda, NY 14150.

Del Rio Sector Headquarters, Qualia Drive, PO Box 2020, Del Rio, TX 78841–*2020*.

Detroit Sector Headquarters, *26000 S. Street, Selfridge*, MI 48045.

El Centro Sector Headquarters, 1111 North Imperial Avenue, El Centro, CA 92243.

El Paso Sector Headquarters, *8901 Montana Avenue*, El Paso, TX 79925–*1212*.

Grand Forks Sector Headquarters, 2320 South Washington Street, Grand Forks, ND 58201.

Harve Sector Headquarters, 2605 5th Avenue, SE, Harve, MT 59501.

Houlton Sector Headquarters, PO Box 706, Rt. 1 Calais Rd., Houlton, ME 04730.

Laredo Sector Headquarters, 207 W. Del Mar Boulevard, Laredo, TX 78041.

Livermore Sector Headquarters, 6102 9th St., Dublin, CA 94268.

Marfa Sector Headquarters, PO Box "I", 300 Madrid Street, Marfa, TX 79843.

Mayaguez Sector Headquarters, Box 467, Ramey, PR 00604.

McAllan Sector Headquarters, PO Box 1179, 2301 South Main Street, McAllen, TX 78505.

Miami Sector Headquarters, PO Box 8909, 7201 Pembroke Rd., Pembroke Pines, FL 33023.

New Orleans Sector Headquarters, PO Box 6218, 3819 Patterson Drive, New Orleans, LA 70114.

San Diego Sector Headquarters, 3752 Beyer Blvd, P.O. *Box 439022*, San *Diego* CA 92073.

Spokane Sector Headquarters, North 10710 Newport Highway, *PO Box 18930*, Spokane, WA 99208.

Swanton Sector Headquarters, Grand Avenue, Swanton, VT 05488.

Tucson Sector Headquarters, 1970 West Ajo Way, Tucson, AZ 85713.

Yuma Sector Headquarters, 350 First Street, PO Box 2708 Yuma, AZ *85366–2708*.

Border Patrol Academy:

DOJ/INS (FLETC) Artesia, 1300 West Richey Avenue, Artesia, NM 88210.

Officer Development and Training Facility, Building 64 FLETC Glynco, GA 31524.

District Offices in Foreign Countries:

Bangkok District Office, U.S. Immigration and Naturalization Service, c/o American Embassy, Box 12, *95 Wireless Road, Bangkok, Thailand 10330*.

Mexico District Office, U.S. Immigration and Naturalization Service, c/o American Embassy, Room 118, PO Box 3087, Laredo, TX 78044.

Rome District Office, U.S. Immigration and Naturalization Service, c/o American Embassy, *Rome, Italy, PSC59 Box 100 APO AE 09624*.

Suboffices (Files Control Offices) in Foreign Countries:

Athens Office, U.S. Immigration and Naturalization Service, c/o American Embassy, Athens, Greece, PSC 108 Box 25 APO AE 09842.

Frankfurt Office, U.S. Immigration and Naturalization Service, American Consulate General, Frankfurt, Unit 25401 APO AE 09213.

Guadalajara Office, U.S. Immigration and Naturalization Service, Box 3088, Guadalajara Laredo, TX 70844–3088.

Hong Kong Office, U.S. Immigration and Naturalization Service, c/o American Consulate General, Hong Kong, PSC 464, Box 30, FPO AP 96522–0002.

London Office, U.S. Immigration and Naturalization Service, c/o American Embassy, London, England, PSC 801, Box 06, FPO AE 09498–4006.

Mexico Office, U.S. Immigration and Naturalization Service, c/o American Embassy, Mexico City, Mexico, PO Box 3087, Room 118, Laredo, TX 78044.

Monterrey Office, U.S. Immigration and Naturalization Service, c/o American Consulate, PO Box 3098, Laredo, TX 78044–3098.

Moscow Office, U.S. Immigration and Naturalization Service, c/o American Embassy, Moscow, USSR, PSC 77, APO AE 09721.

Nairobi Office, U.S. Immigration and Naturalization Service, c/o American

Embassy, Nairobi, Kenya Unit 64100, Box 21, APO AE 09831–4100.

New Delhi Office, U.S. Immigration and Naturalization Service, c/o American Embassy, New Delhi, India, Department of State, Washington, DC 20521–9000.

Rome Office, U.S. Immigration and Naturalization Service, c/o American Embassy, Rome, Italy, *PSC 59 APO AE 09624.*

Seoul, Korea Office, U.S. Immigration and Naturalization Service, c/o American Embassy, Seoul, Korea Unit 15550, APO AP 96205–0001.

Shannon Office, U.S. Immigration and Naturalization Service, c/o AER-RIANTA, Attn: Port Director, Shannon Airport, Shannon, Co, Clare, Ireland.

Singapore Office, U.S. Immigration and Naturalization Service, c/o American Embassy, Singapore, FPO AP 96534.

Tijuana Office, U.S. Immigration and Naturalization Service, c/o American Consulate General, Tijuana, PO Box 439039, San Diego, CA 92143–9039.

Vienna Office, U.S. Immigration and Naturalization Service, c/o American Embassy, Vienna, Austria Unit 27937, Box 21, APO AE 9222.

JUSTICE/JMD–003

SYSTEM NAME:

Department of Justice Payroll System, Justice/JMD–003

SYSTEM LOCATION:

Payroll records in electronic or paper format may be found in the following locations:

a. Post Conversion Records: [1] on a computer maintained by the NFC in New Orleans, Louisiana; and at backup facilities in Philadelphia. Relevant data may also be stored on Justice Data Center Computers at the Department of Justice for use in distributing accounting information to the individual Bureaus. Paper and electronic payroll information may be kept at various time and attendance recording and processing stations around the world. Paper records may be located in the Department's Personnel Staff, in servicing personnel offices throughout the Department, and in the offices of employee supervisors and managers.

b. Pre-Conversion Historical Records: on magnetic tape at the Justice Data Center in Rockville, Maryland; on microfiche maintained by the Department's Finance Staff; and in paper format maintained by the Department's Finance and Personnel Staffs, servicing personnel offices, and offices of employee supervisors and managers.

c. Post Conversion Historical Records: On a server at the Justice Data Center in Rockville, Maryland. Information may include any post conversion payroll data for which a determination is made that such data no longer requires storage in a current status. For example, it may be determined that data for a designated period of time no longer requires storage on the NFC data base or on the Justice Data Center computers.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former DOJ employees (excluding the FBI).

CATEGORIES OF RECORDS IN THE SYSTEM:

Any and all records essential to the conduct of payroll-related activities. Included may be:

—Personal Identifying/personnel data
—Time and attendance records
—Leave records
—Allotment or deduction information such as bonds, garnishments, health benefits, life insurance, Thrift Savings Plan and other savings, retirement, and union dues.
—Travel and Relocation information
—Court orders to initiate garnishments
—Check mailing information
—Tax, withholding, and exemption information
—Accouting and organization funding information
—Salary, severance pay, award, and bonus information; active retirement records
—Former employee pay records
—Employee death records
—Returned employee check records
—Indebtedeness records, e.g., overpayment of pay or travel

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Budget and Accounting Act of 1950, as amended, 31 U.S.C. 66, 66a, and 20(a).

PURPOSE(S): This system of records is maintained to enable the Department to administer the payroll and payroll-related functions, and any other related financial matters, in accordance with applicable laws and regulations and the requirements of the General Accounting Office (GAO) and the Office of Personnel Management (OPM). It enables the Department to prepare and document payment to all Department employees entitled to be paid and to effect all authorized deductions from gross pay; to coordinate pay, leave and allowance operations with personnel functions and other related activities; meet internal and external reporting requirements; support investigations of fraud, the collection of debts, and litigation activities.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Pursuant to Subsection (b)(3) of the Privacy Act, the Department of Justice (DOJ) may disclose relevant and necessary data as follows:

In accordance with an interagency agreement (as provided for in Office of Management and Budget (OMB) implementing regulations (40 FR 28948)), the DOJ may disclose to the U.S. Department of Agriculture (USDA), National Finance Center (NFC), in order to effect all financial transactions on behalf of the DOJ related to employee pay.

Specifically, the NFC may effect employee pay or deposit funds on behalf of DOJ employees, and/or it may withhold, collect or offset funds from employee salaries as required by law or as necessary to correct overpayment or amounts due. For example, the NFC will routinely make the necessary disclosures to Treasury for the issuance of checks; to Federal, State, and local authorities and the Social Security Administration for tax withholdings; and, according to employee directions, to the appropriate financial institutions, charitable organizations, unions, health carriers, or other appropriate entities to effect such pay distributions as savings bonds, charitable contributions, allotments, alimony, child support, union dues, and health and life insurance. In addition, the NFC will use the data to perform related administrative activities such as to certify payroll vouchers chargeable to DOJ funds; and either to perform or participate in routine audit/oversight operations of USDA/DOJ management and/or of GAO, OMB, and OPM; and to meet related reporting requirements.

In addition, based on such data as the DOJ has input to the NFC data base for these purposes, the DOJ may subsequently make a paper request, or an electronic request to the NFC data base, for information which will allow the DOJ to disclose relevant information as follows; or, where appropriate or necessary, DOJ may authorize the NFC to make the disclosure:

To Federal, State, or local housing authorities to enable these authorities to determine eligibility for low cost housing.

To heirs, executors and legal representatives of beneficiaries for estate settlement purposes.

To State and local courts of competent jurisdiction for the enforcement of child support, alimony, or both, pursuant to 41 U.S.C. 659.

To individuals, organizations, or agencies to enable such person, organization, or agency to determine the identity or location of a current or former Federal employee to collect debts owed, where collection of such debts are authorized (either by statute, implementing regulation, or order issued pursuant thereto) and the

[1] The Department is under contract with the Department of Agriculture's National Finance Center (NFC) to maintain payroll information and conduct payroll-related activities for its employees. Conversion began in July of 1991 and was incrementally completed as of May of 1993.

individual, organization, or agency, has provided sufficient evidence as will reasonably validate such claims, e.g., where a spouse or creditor seeking to obtain a garnishment of wages for such purposes as alimony and/or child support has provided a court order to substantiate the indebtedness. Information relevant to the request for such garnishment may include informing the individual, organization, or agency of the unavailability of funds where, for example, a currently active garnishment precludes the implementation of a further garnishment.

To the Office of Child Support Enforcement (OCSE), Administration for Children and Families, Department of Health and Human Services, any information specifically required by statute or implementing regulation or otherwise determined to be necessary and proper for OCSE's use (as outlined more specifically in relevant OCSE published systems of records) in locating individuals owing child support obligations, and in establishing and collecting child support obligations from such individuals, including enforcement action. Information disclosed may include: name, address, date of birth, date of hire, duty station, and social security number of the employee; the wages paid to the employee during the previous quarter; and the appropriate address and Federal Employer Identification Number of the Department of Justice.

To the appropriate Federal, State, or local agencies, e.g., to State unemployment agencies and/or the Department of Labor, to assist these agencies in performing their lawful responsibilities in connection with administering unemployment, workers' compensation, or other benefit programs; and similarly, to such agencies to obtain information that may assist the Department of Justice in performing its lawful responsibilities as they relate to such benefit programs.

To labor organizations recognized under 5 U.S.C., Chapter 71, the home addresses or designated mailing addresses of bargaining unit members.

In the event that a record(s), either on its face or in conjunction with other information, indicates a violation or a potential violation of law, whether civil, criminal or regulatory in nature, to the agency charged with enforcing or implementing such law.

To the Internal Revenue Service (IRS) to obtain taxpayer mailing addresses for the purpose of locating such taxpayer to collect or compromise a Federal claim against the taxpayer.

To a person or organization with whom the head of the agency has contracted for collection services to recover indebtedness owed to the United States. Addresses of taxpayers obtained from the IRS will also be disclosed, but only where necessary to locate such taxpayer to collect or compromise a Federal claim.

To a Federal, State, local, or foreign agency or to an individual or organization if there is reason to believe that such agency, individual, or organization possesses information relating to the debt, the identity or location of the debtor, the debtor's ability to pay, or relating to any other matter which is relevant and necessary to the settlement, effective litigation and enforced collection of the debt, or relating to the civil action trial or hearing, and the disclosure is reasonably necessary to elicit such information or to obtain the cooperation of a witness or an agency.

To employers to effect salary or administrative offsets to satisfy a debt owed the United States by that person; or when other collection efforts have failed, to the IRS to effect an offset against an income tax refund otherwise due.

To the news media and the public pursuant to 28 CFR 50.2 unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

To a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of and at the request of the individual who is the subject of the record.

To the National Archives and Records Administration and the General Services Administration for use in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

In a proceeding before a court or adjudicative body before which the Department is authorized to appear when any of the following is a party to litigation or has an interest in litigation and such records are determined by the Department to be arguably relevant to the litigation: The Department, or any of the Department's components or their subdivisions; any Department employee in his/her official capacity, or in his/her individual capacity where the Department of Justice agrees to represent the employee; or the United States where the Department determines that the litigation is likely to affect it or any of the Department's components or their subdivisions.

Consistent with the foregoing routine use provisions, the Department may disclose records from this system of records for use in a computer matching program (as defined in the Privacy Act, 5 U.S.C. 552a(8)). In accordance with the requirements of the Privacy Act, the public will be given advance notice in the **Federal Register** of the Department's participation in any such computer matching program(s).

In addition to the above routine use disclosures under subsection (b)(3) of the Privacy Act, the DOJ may retrieve from the NFC data base information which will enable the DOJ to make relevant and necessary disclosures pursuant to any of the other relevant and appropriate Privacy Act disclosure provisions.

Finally, 31 U.S.C. 3711 requires that the notice required by section 552(e)(4) of title 5 must indicate that information in the system may be disclosed to a consumer reporting agency pursuant to subsection (b)(12). Such notice is provided as follows:

Notice of Disclosure to Consumer Reporting Agencies Under Subsection (b)(12) of the Privacy Act: Records relating to the identity of debtors and the history of claims may be disseminated to consumer reporting agencies to encourage payment of the past-due debt. Such disclosures will be made only when a claim is overdue and only after due process steps have been taken to notify the debtor and give him or her a chance to meet the terms of the debt.

(Any disclosures that may be made for debt collection purposes, whether made pursuant to subsection (b)(3) or (b)(12), would be made only when all the relevant due process or procedural steps established by the relevant statutes and implementing regulations have been taken.)

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored on computer disks, magnetic tapes, microfiche and on paper.

RETRIEVABILITY:

Records are retrieved by name and social security number.

SAFEGUARDS:

Access to premises where records are stored is restricted via building passes and security guards. Access to all records is supervised and restricted to those employees with a need to know. In addition, access to computerized records is protected by encryption, password and appropriate user ID's.

RETENTION AND DISPOSAL:

Records are disposed of in accordance with General Records Schedule No. 2 as promulgated by the General Services Administration.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Personnel Staff, Justice Management Division, Department of Justice, National Place Building, Room 1110, 1331 Pennsylvania Avenue, NW., Washington, DC 20530.

NOTIFICATION PROCEDURE:

The individual may address inquires to the servicing personnel office of the Department component(s) by which he/she is or was employed. Addresses of Department components may be found in Appendix I., to part 16 of the Code of Federal Regulations. The individual may also address his/her request to the system manager named above.

RECORD ACCESS PROCEDURE:

Same as above.

CONTESTING RECORD PROCEDURE:

Same as above.

RECORD SOURCE CATEGORIES:

Individuals covered by the system; personnel offices; time and attendance clerks; supervisors, administrative officers, other officials; financial institutions or employee organizations; previous federal employers; consumer reporting agencies; debt collection agencies; and the courts.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 99–9140 Filed 4–12–99; 8:45 am]

BILLING CODE 4410–CH–M

DEPARTMENT OF JUSTICE

[AAG/A Order No. 161–99]

Privacy Act of 1974; Notice of the Removal of a System of Records

Pursuant to the provisions of the Privacy Act of 1974 (5 U.S.C. 552a), the Immigration and Naturalization Service (INS), Department of Justice, is removing a published Privacy Act system of records entitled, "Automated Data Processing Equipment Inventory Management System (AIMS), JUSTICE/INS–018." JUSTICE/INS–018 was last published in the **Federal Register** on October 10, 1995 (60 FR 52700).

The AIMS no longer exists as a system of records. Both the AMIS functionality and records were incorporated into another system of records entitled, "The Asset Management Information System (AIMS), JUSTICE/INS–004." AMIS was most recently published April 27, 1998 (63 FR 20651). Therefore, the "AIMS," is removed from the Department's compilation of Privacy Act systems.

Dated: March 30, 1999.

Stephen R. Colgate,

Assistnat Attorney General for Administration.

[FR Doc. 99–9141 Filed 4–12–99; 8:45 am]

BILLING CODE 4410–CH–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to Section 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on June 18, 1998, The Church of the Living Tree, 64200 Old Redwood Highway, P.O. 64, Leggett, California 95585, made application, which was received August 14, 1998, to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of marihuana (7360), a basic class of controlled substance listed in Schedule I.

The applicant plans to grow marihauna for human consumption.

Any other such applicant and any person who is presently registered with DEA to manufacture such substance may file comments or objections to the issuance of the proposed registration.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than June 14, 1999.

Dated: April 2, 1999.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 99–9090 Filed 4–12–99; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importation of Controlled Substances; Notice of Application

Pursuant to Section 1008 of the Controlled Substances Import and Export Act (21 U.S.C. 958(i)), the Attorney General shall, prior to issuing a registration under this Section to a bulk manufacturer of a controlled substance in Schedule I or II and prior to issuing a regulation under Section 1002(a) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with Section 1301.34 of Title 21, Code of Federal Regulations (CFR), notice is hereby given that on May 20, 1998, Ethical Nutritionals, LLC, 176 University Parkway, Pomona, California 91768–4300, made application to the Drug Enforcement Administration to be registered as an importer of the basic classes of controlled substances listed below:

Drug	Schedule
Marihuana (7360)	I
Peyote (7415)	I
Coca Leaves (9040)	II
Cocaine (9041)	II
Opium, raw (9600)	II

The firm plans to import the listed controlled substances for the production of homeopathic remedies.

Any manufacturer holding, or applying for, registration as a bulk manufacturer of these basic classes of controlled substances may file written comments on or objections to the application described above and may, at the same time, file a written request for a hearing on such application in accordance with 21 CFR 1301.43 in such form as prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, D.C. 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than May 13, 1999.

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1301.34 (b), (c), (d), (e), and (f). As noted in a previous notice at 40 FR 43745–46 (September 23, 1975), all applicants for registration to import basic classes of any controlled substances in Schedule I or II are and will continue to be required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1301.34 (a), (b), (c), (d), (e), and (f) are satisfied.

Dated: April 2, 1999.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 99–9089 Filed 4–12–99; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated December 2, 1998, and published in the **Federal Register** on December 23, 1998, (63 FR 71156), High Standard Products, 1100 W. Florence Avenue, #B, Inglewood, California 90301, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Methaqualone (2565)	I
Lysergic acid diethylamide (7315)	I
Tetrahydrocannabinols (7370)	I
3,4-Methylenedioxyamphetamine (7400)	I
3,4-Methylenedioxy-N-ethylamphetamine (7404)	I
3,4-Methylenedioxymethamphetamine (7405)	I
4-Methoxyamphetamine (7411)	I
Heroin (9200)	I
3-Methylfentanyl (9813)	I
Amphetamine (1100)	II
Methamphetamine (1105)	II
Secobarbital (2315)	II
Phencyclidine (7471)	II
Cocaine (9041)	II
Codeine (9050)	II
Hydromorphone (9150)	II
Diphenoxylate (9170)	II
Hydrocodone (9193)	II
Methadone (9250)	II
Morphine (9300)	II
Fentanyl (9801)	II

The firms plans to manufacture analytical reference standards.

No comments or objections have been received. DEA has considered the factors in Title 21, United States Code, Section 823(a) and determined that the registration of High Standard Products to manufacture the listed controlled substances is consistent with the public interest at this time. DEA has investigated High Standard Products on a regular basis to ensure that the company's continued registration is consistent with the public interest. These investigations have included inspection and testing of the company's physical security systems, audits of the company's records, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823 and 28 CFR 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: April 2, 1999.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 99–9091 Filed 4–12–99; 8:45 am]

BILLING CODE 4410–09–M

NATIONAL TRANSPORTATION SAFETY BOARD

Sunshine Act Meeting

AGENDA—NATIONAL TRANSPORTATION SAFETY BOARD

TIME AND DATE: 9:30 a.m., Tuesday, April 20, 1999.

PLACE: NTSB Board Room, 5th Floor, 490 L'Enfant Plaza, S.W., Washington, D.C. 20594.

STATUS: Open.

MATTERS TO BE CONSIDERED:

7144—Brief of Accident: Gates Learjet 25B, N627WSx, at Houston, Texas, on January 13, 1998, and Safety Recommendation to the Federal Aviation Administration concerning adherence to standard operating procedures and enhanced ground proximity warning systems.

7141—Accident Summary Report and Recommendation: To the Federal Highway Administration and Dion Oil Company concerning procedures and training for loading and unloading cargo tanks, Key West, Florida on June 29, 1998.

NEWS MEDIA CONTACT: Telephone: (202) 314–6100.

FOR MORE INFORMATION CONTACT: Rhonda Underwood, (202) 314–6065.

Dated: April 9, 1999.

Rhonda Underwood,

Federal Register Liaison Officer.

[FR Doc. 99–9338 Filed 4–9–99; 3:26 pm]

BILLING CODE 7533–01–M

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Proposed Collection; Comment request

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of pending NRC action to submit an information collection request to OMB and solicitation of public comment.

SUMMARY: The NRC is preparing a submittal to OMB for review of continued approval of information collections under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Information pertaining to the requirement to be submitted:

1. The title of the information collection: 10 CFR part 26, "Fitness for Duty Program".

2. Current OMB approval number: 3150–0146.

3. How often the collection is required: On occasion.

4. Who is required or asked to report: All licensees authorized to construct or operate a nuclear power reactor and all licensees authorized to possess, use, or transport unirradiated Category 1 nuclear material.

5. The number of annual respondents: 72.

6. The number of hours needed annually to complete the requirement or request: 59,800 (5,786 hours of reporting burden and 54,074 hours of recordkeeping burden).

7. Abstract: 10 CFR part 26, "Fitness for Duty Program," requires licensees of nuclear power plants and licensees authorized to possess, use, or transport unirradiated Category 1 nuclear material to implement fitness-for-sduty programs to assure that personnel are not under the influence of any substance or mentally or physically impaired, to retain certain records associated with the management of these programs, and to provide reports concerning significant events and program performance. Compliance with these program requirements is mandatory for licensees subject to 10 CFR part 26.

Submit, by June 14, 1999, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden estimate accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized,

including the use of automated collection techniques or other forms of information technology?

A copy of the draft supporting statement may be viewed free of charge at the NRC Public Document Room, 2120 L Street, NW. (lower level), Washington, DC. OMB clearance requests are available at the NRC worldwide web site (http://www.nrc.gov/NRC/PUBLIC/OMB/index.html). The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions about the information collection requirements may be directed to the NRC Clearance Officer, Brenda Jo Shelton, U.S. Nuclear Regulatory Commission, T–6 E6, Washington, DC 20555–0001, by telephone at 301–415–7233, or by Internet electronic mail at BJS1@NRC.GOV.

Dated at Rockville, Maryland, this 7th day of April 1999.

For the Nuclear Regulatory Commission.

Brenda Jo Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 99–9169 Filed 4–12–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

1. Type of submission, new, revision, or extension: Extension.

2. The title of the information collection: 10 CFR Part 20, Standards for Protection Against Radiation.

3. How often the collection is required: Annually for most reports; at license termination for reports dealing with decommissioning.

4. Who will be required or asked to report: NRC licensees, including those requesting license termination.

5. The number of annual respondents: The total annual number of NRC licensees responding to this requirement by either reporting or recordkeeping is 5939.

6. The number of hours needed annually to complete the requirement or request: 165,498 (approximately 28 hours per licensee).

7. An indication of whether Section 3507(d), Pub. L. 104–13 applies: Not applicable.

8. Abstract: 10 CFR Part 20 establishes standards for protection against ionizing radiation resulting from activities conducted under licenses issued by the NRC. These standards require the establishment of radiation protection programs, maintenance of radiation records, recording of radiation received by workers, reporting of incidents which could cause exposure to radiation, submittal of an annual report to NRC of the results of individual monitoring, and submittal of license termination information. These mandatory requirements are needed to protect occupationally exposed individuals from undue risks of excessive exposure to ionizing radiation and to protect the health and safety of the public.

A copy of the final supporting statement may be viewed free of charge at the NRC Public Document Room, 2120 L Street, NW (lower level), Washington, DC. OMB clearance requests are available at the NRC worldwide web site (http://www.nrc.gov) under the FedWorld collection link on the home page tool bar. The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions should be directed to the OMB reviewer by May 13, 1999: Erik Godwin, Office of Information and Regulatory Affairs (3150–0014), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be submitted by telephone at (202) 395–3084.

The NRC Clearance Officer is Brenda Jo. Shelton, 301–415–7233.

Dated at Rockville, Maryland, this 7th day of April 1999.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 99–9173 Filed 4–12–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–317 and 50–318]

In the Matter of Baltimore Gas & Electric Company (Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2); Exemption

I.

The Baltimore Gas and Electric Company (BGE or the licensee) is the holder of Facility Operating Licenses Nos. DPR–53 and DPR–69, which authorize operation of the Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2 (the facilities), respectively. The licenses provide, among other things, that the facilities are subject to all rules, regulations, and orders of the U.S. Nuclear Regulatory Commission (NRC or the Commission) now or hereafter in effect.

The facilities are pressurized-water reactors located at the licensee's site in Calvert County, Maryland.

The licensee, in letters dated October 6, 1997, and July 22, 1998, requested an exemption from the technical requirements of 10 CFR Part 50, Appendix R, Section III.J, Emergency lighting, as follows: (1) To be allowed to use security lighting required by 10 CFR 73.55, powered by the security emergency diesel generator, for exterior lighting in lieu of 8-hour battery powered emergency lighting units, (2) to be able to use portable lights powered by an 8-hour power supply, for actions in high radiation areas, in lieu of 8-hour battery powered emergency lighting units, and (3) to be able to use helmet lanterns inside of switchgear cabinets, again in lieu of 8-hour battery powered emergency lighting units.

II.

Section III.J of Appendix R to 10 CFR Part 50 applies to nuclear power plants that were operating prior to January 1, 1979. Unit 1 of Calvert Cliffs Nuclear Power Plant was licensed to operate July 31, 1974, and Unit 2 was licensed to operate on November 30, 1976.

Section III.J of Appendix R specifies that emergency lighting units with at least an 8-hour battery supply shall be provided in all areas needed for operation of safe shutdown equipment and in access and egress routes thereto. The licensee has not provided 8-hour battery supplied emergency lighting units in plant exterior areas, inside of electrical cabinets, or in high radiation areas that require such units under Section III.J.

The licensee proposed to credit the security lighting system, required by 10

CFR 73.55, which is backed by a security emergency diesel generator, for exterior lighting in lieu of 8-hour battery powered emergency lighting units. The licensee stated that the security lighting system is powered by an independent, uninterruptible power supply. According to the licensee, the generator backing the security lighting system is located in a separate structure from other plant area buildings and would not be affected by a fire requiring safe shutdown. The licensee stated that the generator is maintained with a fuel supply greater than 8 hours. The licensee also stated that the security lighting system, which meets the illumination requirements of 10 CFR 73.55, provides more than adequate illumination for exterior access and egress routes inside of the security protected area.

The licensee also proposed to be able to use portable lights in high radiation areas in lieu of fixed emergency lighting units with at least an 8-hour battery power supply. The exemption to permit this was requested to reduce radiation exposure to levels as low as reasonably achievable (ALARA) by eliminating emergency lighting testing and maintenance in high radiation areas. According to the licensee, the licensee's battery-powered portable lights have a wide base and are designed to be placed on the floor adjacent to the proposed work activity. The position of the lamp head can be adjusted to provide illumination necessary to perform the required work at the activity site. The lights are stored in a controlled cabinet near the activity sites, are dedicated for Appendix R safe shutdown activities, and are periodically tested. The lights have an 8-hour capacity. The licensee stated that fixed emergency lighting units are provided on the access and egress routes to the cabinet which contains the portable lights and to the entrance to the high radiation areas. According to the licensee, activities requiring the use of the portable lights are cold shutdown activities and are not time critical. In addition, the reduction of personnel radiation exposure from maintenance is in accordance with other NRC requirements. The portable lights, according to the licensee, would enable the performance in locked high radiation areas of limited non-time critical safe shutdown activities.

Finally, the licensee proposed to be able to use helmet mounted lights inside switchgear cabinets in lieu of fixed emergency lighting units specified by Section III.J of Appendix R. The licensee stated that due to space limitations and seismic qualification requirements, installation of fixed emergency lighting units is not feasible. Emergency lighting units installed outside of the cabinets may not provide adequate lighting for the activity inside of the cabinet due to shadows cast by the operator. Activities performed inside of the cabinets requiring the use of helmet lights are limited to pulling fuses to isolate the cabinet from fire effects, according to the licensee. The helmet lights are stored inside of the Appendix R safe shutdown locker for each unit. This locker also contains the safe shutdown procedures and the locker is the first stop for the operators upon control room evacuation. The helmet mounted lights consist of a light head attached to a wide rubber band that is placed around a hardhat. A belt with two attached battery packs (each weighing about one pound) and a connector to attach the lamps to the battery completes the assembly. The helmet lights for pulling fuses inside of electrical switchgear, according to the licensee, will provide an adequate method of providing the necessary illumination to accomplish the limited activities.

III.

The underlying purpose of 10 CFR Part 50, Appendix R, Section III.J, is to provide adequate illumination to assure the capability of performing all necessary safe shutdown functions, as well as to assure personnel movement to and from the equipment and components that must be manually operated by plant personnel to effect safe shutdown during emergencies. In addition, the illumination must have a capability to allow sufficient time for normal lighting to be restored. The staff has determined that the security lighting, portable lights, and helmet lights, as described by the licensee and discussed above, satisfy the underlying purpose of 10 CFR Part 50 Appendix R, Section III.J.

IV.

In consideration of the foregoing, the Commission has determined that pursuant to 10 CFR 50.12, the exemption requested is authorized by law, will not present an undue risk to public health and safety, and is consistent with the common defense and security. The Commission further has determined that special circumstances, as provided in 10 CFR 50.12(a)(2)(ii), are present in that application of the regulation in the particular circumstances is not necessary to achieve the underlying purpose of the rule.

Therefore, the licensee's request for an exemption from the requirements of Section III.J of Appendix R to 10 CFR Part 50, to the extent applicable to the areas and locations described by the licensee in its application, is granted, provided the licensee's proposed alternative lighting arrangements are implemented.

Pursuant to 10 CFR 51.32, the Commission has determined that granting the above exemption will have no significant impact on the quality of the human environment (64 FR 14275).

The subject exemption is effective from the date of issuance.

Dated this 7th day of April 1999.

For the Nuclear Regulatory Commission.

John A. Zwolinski,

Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 99–9170 Filed 4–12–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–220]

Niagara Mohawk Power Corporation; Nine Mile Point Nuclear Station, Unit No. 1 Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–63, issued to Niagara Mohawk Power Corporation (the licensee), for operation of the Nine Mile Point Nuclear Station, Unit No. 1 (NMP1), located in the town of Scriba, Oswego County, New York.

Environmental Assessment

Identification of the Proposed Action

The proposed action would increase the number of fuel assemblies that can be stored in the NMP1 spent fuel pool (SFP) from 2776 (i.e., 1066 in the northern half of the pool and 1710 in the southern half of the pool) to 4086. The modification will be achieved by two separate campaigns. For the 1999 refueling outage (RFO15), the licensee will first replace the non-poison racks in the northern half of the pool with high density racks providing 1840 storage cells. Later, as further capacity increase is warranted, the licensee will replace the racks in the southern half of the pool with high density racks providing 2246 storage cells. The design of the new high density spent fuel storage racks incorporates Boral as a neutron absorber in the cell walls to allow for more dense storage of spent fuel.

The proposed action is in accordance with the licensee's application for amendment dated May 15, 1998, as

supplemented September 25, October 13, December 9 (two letters), 1998; January 11 and April 1, 1999.

The Need for the Proposed Action

An increase in spent fuel storage capacity is needed to reestablish full core off-load capability. Loss of that capability will occur as a result of RFO–15, currently scheduled to start April 11, 1999. Thus, after RFO–15, the licensee will replace the eight non-poison rack modules in the northern half of the NMP1 pool (which currently provides 1066 spent fuel storage locations) with new poison rack modules providing 1840 storage locations. Ultimately, additional capacity will be needed to accommodate future refueling outages. Thus, as further capacity increase is warranted by the increasing fuel inventory in the pool, the licensee will increase the capacity of the southern half of the pool (currently limited to 1,710 storage locations) so as to provide a total pool capacity for 4086 spent fuel assemblies. This capacity of 4086 storage locations is sufficient to extend full core off-load capability to at least the expiration date of the plant operating license, August 22, 2009.

Environmental Impacts of the Proposed Action

Radioactive Waste Treatment

NMP1 uses waste treatment systems designed to collect and process gaseous, liquid, and solid waste that might contain radioactive material. These radioactive waste treatment systems were evaluated in the Final Environmental Statement (FES) dated January 1974. The proposed SFP expansion will not involve any change in the waste treatment systems described in the FES.

Gaseous Radioactive Wastes

The storage of additional spent fuel assemblies in the pool is not expected to affect the releases of radioactive gases from the pool. Gaseous fission products such as Krypton-85 and Iodine-131 are produced by the fuel in the core during reactor operation. A small percentage of these fission gases is released to the reactor coolant from the small number of fuel assemblies that are expected to develop leaks during reactor operation. During refueling operations, some of these fission products enter the pool and are subsequently released into the air. Since the frequency of refueling (and therefore the number of freshly offloaded spent fuel assemblies stored in the pool at any one time) will not increase, there will be no increase in the amounts of these types of fission products released into the atmosphere as a result of the increased pool fuel storage capacity.

The increased heat load on the pool from the storage of additional spent fuel assemblies will potentially result in an increase in the pool's evaporation rate. However, this increased evaporation rate is not expected to result in an increase in the amount of gaseous tritium released from the pool. The overall release of radioactive gases from NMP1 will remain a small fraction of the limits of 10 CFR 20.1301.

Solid Radioactive Wastes

Spent resins are generated by the processing of SFP water through the pool's purification system at NMP1. These spent resins are disposed of as solid radioactive waste ("radwaste"). The water turbulence caused by the removal and replacement operations in the pool ("reracking") may result in some resuspension of particulate matter in the pool. This could result in a temporary increase in the replacement frequency of the resin in the SFP purification system during the pool reracking operation. The licensee will use an underwater vacuum to clean the floor of the pool following removal of the old spent fuel rack modules. Vacuuming the SFP floor will remove any extraneous debris and crud and ensure visual clarity in the pool (to facilitate diving operations). Filters from this underwater vacuuming will be a source of solid radwaste. These filters and resins are collected and disposed of in accordance with existing plant radwaste procedures. Additional solid radwaste will consist of the old spent fuel rack modules themselves, as well as any interferences or pool hardware that may have to be removed from the pool to permit installation of the new rack modules. The old rack modules and removed hardware will be decontaminated, placed in shipping containers approved by the U.S. Department of Transportation, and shipped offsite to a licensed processing or disposal facility. Other than the radwaste generated during the actual reracking operation, the NRC staff does not expect that the additional fuel storage provided by the increased SFP storage capacity will result in a significant change in the generation of solid radwaste at NMP1.

Liquid Radioactive Wastes

The release of radioactive liquids will not be affected directly as a result of the SFP modifications. The SFP ion exchanger resins remove soluble radioactive materials from the pool water. When the resins are replaced, the small amount of resin sluice water that is released is processed by the radwaste system. As previously stated, the frequency of resin replacement may increase slightly during the installation of the new racks. However, the amount of radioactive liquid released to the environment as a result of the proposed SFP expansion is expected to be negligible.

Occupational Dose Consideration

Radiation Protection personnel at NMP1 will constantly monitor the doses to the workers during the SFP expansion operation. If it becomes necessary to utilize divers for the reracking operation, the licensee will equip each diver with whole-body and extremity dosimeters having remote, above surface, readouts that will be continuously monitored by Health Physics personnel. The total occupational dose to plant workers as a result of the SFP expansion operation is estimated to be between 6 and 12 person-rem. This dose estimate is comparable to doses for similar SFP modifications performed at other nuclear plants. The upcoming SFP rack installation will follow detailed procedures prepared with full consideration of ALARA (as low as is reasonably achievable) principles.

On the basis of its review of the licensee's proposal, the NRC staff concludes that the NMP1 SFP reracking operation can be performed in a manner that will ensure that doses to workers will be maintained ALARA. The estimated dose of 6 to 12 person-rem to perform the proposed SFP reracking operation is a small fraction of the annual collective dose accrued at NMP1.

Accident Considerations

In its application, the licensee evaluated the possible consequences of a fuel handling accident to determine the thyroid and whole-body doses at the site's Exclusion Area Boundary, Low Population Zone, and in the NMP1 Control Room. The proposed SFP rack installation at NMP1 will not affect any of the assumptions or inputs used in evaluating the dose consequences of a fuel handling accident and, therefore, will not result in an increase in the doses from a postulated fuel handling accident.

The NRC staff reviewed the licensee's analysis of a fuel handling accident and performed confirmatory calculations to check the acceptability of the licensee's doses. The NRC staff's calculations confirmed that the thyroid doses at the Exclusion Area Boundary, Low

Population Zone, and in the Control Room from a fuel handling accident meet the acceptance criteria and that the licensee's calculations are acceptable. The results of the NRC staff's calculations are presented in the Safety Evaluation to be issued with the license amendment.

An accidental cask drop into the pool continues to be unlikely as none of the features preventing such a drop (e.g., design and maintenance of the main hoist, the controlled cask movement path, and the hydraulic guide cylinder cask drop protection system) are affected by the proposed action. The licensee also found that the consequences of a loss of SFP cooling was acceptable in that ample time would be available for the operators to re-establish cooling before the onset of pool boiling. Evaluation of a design basis seismic event indicated the new racks would remain safe and impact-free, the structural capability of the pool would not be exceeded, and the reactor building and crane structure would continue to retain necessary safety margins. Thus, these potential accidents have no environmental consequences.

In summary, the proposed action will not increase the probability or consequences of accidents, no changes are being made to radioactive waste treatment systems or in the types of any radioactive effluents that may be released offsite, and the proposed action will not result in a significant increase in occupational or offsite radiation exposure. Accordingly the Commission concludes that there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action does not affect nonradiological plant effluents and has no other nonradiological environmental impact.

Accordingly, the Commission concludes that there are no significant environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

Shipping Fuel to a Permanent Federal Fuel Storage/Disposal Facility

Shipment of spent fuel to a high-level radioactive storage facility is an alternative to increasing the onsite spent fuel storage capacity. However, the U.S. Department of Energy's (DOE's) high-level radioactive waste repository is not expected to begin receiving spent fuel until approximately 2010, at the earliest. In October 1996, the Administration did commit DOE to begin storing waste at a centralized location by January 31, 1998. However, no location has been identified and an interim federal storage facility has yet to be identified in advance of a decision on a permanent repository. Therefore, shipping spent fuel to the DOE repository is not considered an alternative to increased onsite spent fuel storage capacity at this time.

Shipping Fuel to a Reprocessing Facility

Reprocessing of spent fuel from the Nine Mile Point Nuclear Station is not a viable alternative since there are no operating commercial reprocessing facilities in the United States. Therefore, spent fuel would have to be shipped to an overseas facility for reprocessing. However, this approach has never been used and it would require approval by the Department of State as well as other entities. Additionally, the cost of spent fuel reprocessing is not offset by the salvage value of the residual uranium; reprocessing represents an added cost.

Shipping Fuel to Another Utility or Site or to the NMP2 Spent Fuel Pool for Storage

The shipment of fuel to another utility or transferring NMP1 spent fuel to the NMP2 spent fuel pool for storage would provide short-term relief from the storage problem at NMP1. The Nuclear Waste Policy Act of 1982 and 10 CFR Part 53, however, clearly place the responsibility for the interim storage of spent fuel with each owner or operator of a nuclear plant. The NMP2 spent fuel pool has been designed with capacity to accommodate NMP2 and, therefore, transferring spent fuel from NMP1 to the NMP2 pool would create fuel storage capacity problems for NMP2. The shipment of fuel to another site or transferring it to NMP2 is not an acceptable alternative because of increased fuel handling risks and additional occupational radiation exposure, as well as the fact that no additional storage capacity would be created.

Alternatives Creating Additional Storage Capacity

Alternative technologies that would create additional storage capacity include rod consolidation, dry cask storage, modular vault dry storage, and constructing a new pool. Rod consolidation involves disassembling the spent fuel assemblies and storing the fuel rods from two or more assemblies into a stainless steel canister that can be stored in the spent fuel racks. Industry experience with rod consolidation is currently limited, primarily due to concerns for potential gap activity release due to rod breakage, the potential for increased fuel cladding corrosion due to some of the protective oxide layer being scraped off, and because the prolonged consolidation activity could interfere with ongoing plant operations. Dry cask storage is a method of transferring spent fuel, after storage in the pool for several years, to high capacity casks with passive heat dissipation features. After loading, the casks are stored outdoors on a seismically qualified concrete pad. Concerns for dry cask storage include the potential for fuel or cask handling accidents, potential fuel clad rupture due to high temperatures, the need for special security provisions, and high cost. Vault storage consists of storing spent fuel in shielded stainless steel cylinders in a horizontal configuration in a reinforced concrete vault. The concrete vault provides missile and earthquake protection and radiation shielding. Due to large space requirements, a vault secured area for NMP1 would have to be located outside the secured perimeter of the plant site. Concerns for vault dry storage include security, land consumption, eventual decommission of the new vault, the potential for fuel or clad rupture due to high temperatures, and high cost. The alternative of constructing and licensing a new fuel pool is not practical for NMP1 because such an effort would require about 10 years to complete and would be the most expensive alternative.

The alternative technologies that could create additional storage capacity involve additional fuel handling with an attendant opportunity for a fuel handling accident, involve higher cumulative dose to workers effecting the fuel transfers, require additional security measures, are significantly more expensive, and would not result in a significant improvement in environmental impacts compared to the proposed reracking modifications.

Reduction of Spent Fuel Generation

Generally, improved usage of the fuel and/or operation at a reduced power level would be an alternative that would decrease the amount of fuel being stored in the pool and thus increase the amount of time before full core off-load capacity is lost. With extended burnup of fuel assemblies, the fuel cycle would be extended and fewer offloads would be necessary. This is not an alternative for resolving the loss of full-core offload capability that will occur as a result of the NMP1 refueling outage scheduled to begin about April 11, 1999, because the spent fuel to be transferred to the pool for storage has now almost completed its operating history in the core. For many years now, NMP1 has been

operating on the basis of 24-month refueling cycles, with core designs and fuel management schemes optimized accordingly. Operating the plant at a reduced power level would not make effective use of available resources, and would cause unnecessary economic hardship on the licensee and its customers. Therefore, reducing the amount of spent fuel generated by increasing burnup further or reducing power is not considered a practical alternative.

The No-Action Alternative

The NRC staff also considered denial of the proposed action, (i.e., the "no-action" alternative). Denial of the application would result in no significant change in current environmental impacts. The environmental impacts of the proposed action and the alternative actions are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for the Nine Mile Point Nuclear Station, Unit No. 1.

Agencies and Persons Consulted

In accordance with its stated policy, on April 7, 1999, the NRC staff consulted with the New York State official, Jack Spath of the New York State Research and Development Authority, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

On the basis of the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated May 15, 1998, as supplemented by letters dated September 25, October 13, December 9 (two letters), 1998; January 11 and April 1, 1999. These letters are available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington, D.C., and at the local public document room located at the Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Dated at Rockville, Maryland, this 7th day of April 1999.

For the Nuclear Regulatory Commission.

S. Singh Bajwa,

Chief, Section 1, Project Directorate I, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 99–9172 Filed 4–12–99; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 23772; 812–11540]

The Goldman Sachs Group, Inc., et al.; Notice of Application

April 7, 1999.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of application under section 6(c) of the Investment Company Act of 1940 (the "Act") for an exemption from section 12(d)(3) of the Act.

SUMMARY OF THE APPLICATION: Applicants request an order to amend a prior order ("Prior Order") relating to certain registered investment companies advised by the Goldman Advisers, as defined below, and one or more other investment advisers ("Unaffiliated Advisers").[1] The Prior Order permits the portion of the portfolio of these registered investment companies advised by an Unaffiliated Adviser ("Unaffiliated Portion") to engage in certain principal and brokerage transactions with and to purchase certain securities from Goldman, Sachs & Co. ("Goldman Sachs") or a member of an underwriting syndicate in which Goldman Sachs is a principal underwriter. The requested order would permit the Unaffiliated Portion to purchase equity or debt securities issued by The Goldman Sachs Group, Inc. ("Goldman Sachs, Inc.") or an affiliated person of Goldman Sachs, Inc. ("Goldman Securities"), subject to the limits in rule 12d3–1 under the Act.

APPLICANTS: Goldman Sachs, Inc., Goldman Sachs, Goldman Sachs Asset Management ("GSAM"), Liberty Investment Management ("Liberty"), Goldman Sachs Asset Management International ("GSAMI"), and Goldman Sachs Funds Management, L.P. ("GSFM"); The Diversified Investors Funds Group, Diversified Investors Portfolios, the Managers Funds, the Hirtle Callaghan Trust, EAI Select Managers Equity Fund, and the Seasons Series Trust (collectively, the "Funds").

[1] *Goldman Sachs & Co., et al.*, Investment Company Act Release Nos. 22858 (Oct. 17, 1997) (notice) and 22887 (Nov. 13, 1997) (order).

GSAM, Liberty, GSAMI, GSFM, and any other entities controlling, controlled by, or under common control with Goldman Sachs that serve as investment advisers to the Funds are collectively referred to as the "Goldman Advisers."

FILING DATES: The application was filed on April 6, 1999.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on April 28, 1999, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Applicants, 85 Broad Street, New York, NY 10004.

FOR FURTHER INFORMATION CONTACT: Kathleen L. Knisely, Staff Attorney, at (202) 942–0517, or Nadya B. Roytblat, Assistant Director, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street, NW, Washington, DC 20549–0102 (tel. 202–942–8090).

Applicants' Representations

1. Goldman Sachs, Inc. is a newly created entity that owns The Goldman Sachs Group, L.P. ("Goldman Sachs Group"), the parent holding company of Goldman Sachs. Goldman Sachs is registered as a broker-dealer under the Securities Exchange Act of 1934 and an investment adviser under the Investment Advisers Act of 1940 ("Advisers Act"). GSAMI and GSFM are under common control with Goldman Sachs and are investment advisers registered under the Advisers Act. GSAM is an operating division of Goldman Sachs, and Liberty is an operating division of GSFM.

2. The Funds, open-end management investment companies registered under the Act, are organized as Massachusetts business trusts, or in the case of The Hirtle Callaghan Trust, as a Delaware

business trust.[2] GSAM and Liberty serve as an investment adviser to series of the Funds that have more than one investment adviser ("Multi-Managed Portfolios"). Each Multi-Managed Portfolio is advised by one or more Unaffiliated Advisers registered under the Advisers Act. The Unaffiliated Advisers are not affiliated persons of Goldman Sachs or affiliated persons of affiliated persons of Goldman Sachs or any Goldman Adviser ("Unaffiliated Advisers," together with the Goldman Advisers, the "Subadvisers").[3] Each Subadviser is responsible for managing only the investments of a discrete portion of the Multi-Managed Portfolio's assets.

3. Applicants state that in managing a portion of a Multi-Managed Portfolio, each Subadviser acts as if it were managing a separate investment company. The Subadvisers do not collaborate, and each is responsible for making independent investment and brokerage allocation decisions for its portion of the Multi-Managed Portfolio based on its own research and analysis. The Subadvisers do not receive information about investment or brokerage allocation decisions of another portion of the Multi-Managed Portfolio before they are implemented. Each Subadviser is compensated for advisory services based only on a percentage of the value of the assets of the portion of the Multi-Managed Portfolio allocated to that Subadviser. Applicants state that Goldman Sachs does not and will not control the Multi-Managed Portfolio for which a Goldman Adviser acts as Subadviser or otherwise influence the investment decisions of the Unaffiliated Portion.

4. The Goldman Sachs Group publicly announced on March 8, 1999 that it will sell approximately 12.8% of its equity in an initial public offering scheduled to take place during the Spring of 1999. Applicants request relief to permit the Unaffiliated Portions to purchase Goldman Securities in the initial public offering, in any subsequent offering, or in the secondary market.

Applicants' Legal Analysis

1. Section 12(d)(3) of the Act generally prohibits a registered investment company from acquiring any security issued by any person who is a broker, dealer, investment adviser, or engaged in the business of underwriting (collectively, "securities-related activities"). Applicants state that because the issuer of the Goldman Securities is engaged in securities-related activities, an Unaffiliated Portion would be prohibited by section 12(d)(3) from purchasing the Goldman Securities.

2. Rule 12d3–1 under the Act exempts from the prohibition of section 12(d)(3) purchases of securities of an issuer engaged in securities-related activities if certain conditions are met. One of these conditions, set forth in rule 12d3–1(c), prohibits the acquisition of a security issued by the investment company's investment adviser, promoter, or principal underwriter, or any affiliated person of the investment adviser, promoter, or principal underwriter.

3. Section 2(a)(3) of the Act defines an "affiliated person" of another person to include: (a) any person that directly or indirectly owns, controls, or holds with power to vote 5% or more of the outstanding voting securities of the other person; (b) any person 5% or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote by the other person; (c) any person directly or indirectly controlling, controlled by, or under common control with the other person; and (d) if the other person is an investment company, any investment adviser of that company.

4. Applicants state that the issuer of the Goldman Securities would be an affiliated person of a Goldman Adviser. As an investment adviser to a portion of a Multi-Managed Portfolio, a Goldman Adviser is deemed to be an investment adviser to the entire Multi-Managed Portfolio. Thus, applicants state that a purchase by an Unaffiliated Portion of Goldman Securities would not meet rule 12d3–1(c) and that applicants are therefore unable to rely on the rule.

5. Applicants request an exemption under section 6(c) from section 12(d)(3) to permit the Unaffiliated Portions to purchase Goldman Securities, provided that all of the requirements of rule 12d3–1, except rule 12d3–1(c), are met. Applicants state that their proposal does not raise the conflicts of interest that rule 12d3–1(c) was designed to address because of the nature of the affiliation between a Goldman Adviser and the Unaffiliated Portion. Applicants submit that each Subadviser acts independently of the other Subadvisers in making investment and brokerage allocation decisions for the assets allocated to its portion of the Multi-Managed Portfolio. Applicants state that Goldman Securities will not be purchased by any portion advised by a Goldman Adviser. Applicants assert that prohibiting the Unaffiliated Portions from purchasing Goldman Securities may cause Unaffiliated Advisers to forego investment opportunities that would be in the best interests of the Funds' shareholders.

Applicants' Conditions

Applicants agree that any order granting the requested relief and amending the Prior Order will be subject to the following conditions:

1. Each Multi-Managed Portfolio will be advised by a Goldman Adviser and at least one Unaffiliated Adviser and will be operated consistent with the manner described in the application. No Goldman Adviser will serve as a Primary Adviser to a Multi-Managed Portfolio.

2. No Goldman Adviser or any future investment adviser that is an affiliated person of a Goldman Adviser or an affiliated person of an affiliated person of a Goldman Adviser will purchase for its portion of a Multi-Managed Portfolio any Goldman Securities.

3. Each Multi-Managed Portfolio will abide by the restrictions imposed by rule 12d3–1, except paragraph (c) of that rule with respect to purchases of Goldman Securities by Unaffiliated Portions.

4. No Subadviser will directly or indirectly consult with any other Subadviser concerning any investment management decisions, including those relating to the Goldman Securities. Subadvisers may only consult with a Primary Adviser about Goldman Securities in order to monitor compliance with the limits in rule 12d3–1.

5. No Subadviser will participate in an arrangement whereby the amount of its compensation will be affected by the investment performance of any other Subadviser.

6. Neither a Goldman Adviser (except by virtue of serving as Subadviser) nor Goldman Sachs will be an affiliated person or an affiliated person of an affiliated person of any Unaffiliated Adviser or any officer, trustee or employee of the registered investment company relying on this order.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–9124 Filed 4–12–99; 8:45 am]

BILLING CODE 8010–01–M

---

[1] All registered investment companies that currently intend to rely on the order are named as applicants. Any other existing or future registered investment company that relies on the order will comply with the terms and conditions of the application.

[2] The term "Subadvisers" includes a primary adviser ("Primary Adviser") to the extent the Primary Adviser is responsible for managing a portion of a Multi-Managed Portfolio. No Goldman Adviser will serve as a Primary Adviser to a Multi-Managed Portfolio.

SMALL BUSINESS ADMINISTRATION

Notice of Action Subject to Intergovernmental Review Under Executive Order 12372

AGENCY: U.S. Small Business Administration.

ACTION: Notice of Action Subject to Intergovernmental Review Under Executive Order 12372.

SUMMARY: The Small Business Administration (SBA) is notifying the public that it intends to grant the pending applications of 22 existing Small Business Development Centers (SBDCs) for refunding on October 1, 1999, subject to the availability of funds. Four states do not participate in the EO 12372 process, therefore, their addresses are not included. A short description of the SBDC program follows in the supplementary information below.

The SBA is publishing this notice at least 120 days before the expected refunding date. The SBDCs and their mailing addresses are listed below in the addresses section. A copy of this notice also is being furnished to the respective State single points of contact designated under the Executive Order. Each SBDC application must be consistent with any area-wide small business assistance plan adopted by a State-authorized agency.

DATES: A State single point of contact and other interested State or local entities may submit written comments regarding an SBDC refunding to the applicable SBDC on or before May 13, 1999.

ADDRESSES:

Addresses of Relevant SBDC State Directors

Mr. Robert McKinley, Region Director, Univ. of Texas at San Antonio, 1222 North Main Street, San Antonio, TX 78212, (210) 458–2450

Mr. Dennis Gruell, State Director, University of Connecticut, 2 Bourn Place, U–94, Storrs, CT 06269–5094, (860) 486–4135

Mr. Michael Young, Region Director, University of Houston, 1100 Louisiana, Suite 500, Houston, TX 77002, (713) 752–8444

Ms. Hazel Kroesser Palmer, State Director, West Virginia Development Office, 950 Kanawha Boulevard, East Charleston, WV 25301, (304) 558–2960

Mr. Clinton Tymes, State Director, University of Delaware, Suite 005—Purnell Hall, Newark, DE 19711, (302) 831–2747

Ms. Janet Holloway, State Director, University of Kentucky, 225 Business & Economics Bldg., Lexington, KY 40506–0034, (606) 257–7668

Ms. Liz Klimback, Region Director, Dallas Community College, 1402 Corinth Street, Dallas, TX 75212, (214) 860–5835

Mr. Craig Bean, Region Director, Texas Tech University, 2579 South Loop 289, Suite 114, Lubbock, TX 79423–1637, (806) 745–3973

Mr. Max Summers, State Director, University of Missouri, Suite 300, University Place, Columbia, MO 65211, (573) 882–0344

Mr. James L. King, State Director, State University of New York, SUNY Plaza, S–523, Albany, NY 12246, (518) 443–5398

Ms. Rene Sprow, State Director, Univ. of Maryland/College Park, 7100 Baltimore Avenue, Suite 401, Baltimore, MD 20740, (301) 403–8163

Ms. Diane Wolverton, State Director, University of Wyoming, P.O. Box 3622, Laramie, WY 82701–3622, (307) 766–3505

Mr. Ronald Manning, State Director, Iowa State University, 137 Lynn Avenue, Ames, IA 50010, (515) 292–6351

Ms. Holly Schick, State Director, Ohio Department of Development, 77 South High Street, Columbus, OH 43226–1001, (614) 466–2711

Mr. Donald L. Kelpinski, State Director, Vermont Technical College, P.O. Box 422, Randolph Center, VT 05060, (802) 728–9101

Ms. Carmen Marti, SBDC Director, Inter American University, Ponce de Leon Avenue, #416, Edificio Union Plaza, Suite 7–A, Hato Rey, PR 00918, (787) 763–6811

Mr. Ian Hodge, Acting SBDC Director, University of the Virgin Islands, 8000 Nisky Center, Suite 202, St. Thomas, US V. Islands 00802,(809) 776–3206

FOR FURTHER INFORMATION CONTACT: Johnnie L. Albertson, Associate Administrator for SBDCs, U.S. Small Business Administration, 409 Third Street, S.W., Suite 4600, Washington, D.C. 20416.

SUPPLEMENTARY INFORMATION:

Description of the SBDC Program

A partnership exists between SBA and an SBDC. SBDCs offer training, counseling and other business development assistance to small businesses. Each SBDC provides services under a negotiated Cooperative Agreement with SBA, the general management and oversight of SBA, and a state plan initially approved by the Governor. Non-Federal funds must match Federal funds. An SBDC must operate according to law, the Cooperative Agreement, SBA's regulations, the annual Program Announcement, and program guidance.

Program Objectives

The SBDC program uses Federal funds to leverage the resources of states, academic institutions and the private sector to:

(a) Strengthen the small business community;

(b) Increase economic growth;

(c) Assist more small businesses; and

(d) Broaden the delivery system to more small businesses.

SBDC Program Organization

The lead SBDC operates a statewide or regional network of SBDC subcenters. An SBDC must have a full-time Director. SBDCs must use at least 80 percent of the Federal funds to provide services to small businesses. SBDCs use volunteers and other low cost resources as much as possible.

SBDC Services

An SBDC must have a full range of business development and technical assistance services in its area of operations, depending upon local needs, SBA priorities and SBDC program objectives. Services include training and counseling to existing and prospective small business owners in management, marketing, finance, operations, planning, taxes, and any other general or technical area of assistance that supports small business growth. The SBA district office and the SBDC must agree upon the specific mix of services. They should give particular attention to SBA's priority and special emphasis groups, including veterans, women, exporters, the disabled, and minorities.

SBDC Program Requirements

An SBDC must meet programmatic and financial requirements imposed by statute, regulations or its Cooperative Agreement. The SBDC must:

(a) Locate subcenters so that they are as accessible as possible to small businesses;

(b) Open all subcenters at least 40 hours per week, or during the normal business hours of its state or academic Host Organization, throughout the year;

(c) Develop working relationships with financial institutions, the investment community, professional associations, private consultants and small business groups; and

(d) Maintain lists of private consultants at each subcenter.

Dated: April 6, 1999.

Johnnie L. Albertson,

Associate Administrator for Small Business Development Centers.

[FR Doc. 99–9126 Filed 4–12–99; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

EIS No. 990029, Draft EIS, Toledo Express Airport (TOL), Proposed Noise Compatibility Plan, Air Traffic Actions and Proposed Aviation Related Industrial Development, Airport Layout Plan, Funding

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Extension of comment period.

SUMMARY: The Federal Aviation Administration (FAA) is extending the time allowed for the public to comment on the Toledo EIS until April 30, 1999.

POINT OF CONTACT: Mr. Wally Welter, Environmental specialist, FAA Great Lakes Region, Air Traffic Division, AGL–520.V, 2300 East Devon Avenue, Des Plaines, IL 60018.

Issued in Des Plaines, Illinois on March 24, 1999.

Richard K. Peterson,

Acting Manager, Air Traffic Division.

[FR Doc. 99–9200 Filed 4–12–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Intent To Prepare an Environmental Impact Statement and To Conduct Environmental Scoping for Implementation of Air Traffic Control Procedures and Associated Noise Compatibility Program Mitigation at T.F. Green Airport, Warwick, Rhode Island

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of agency scoping meeting.

SUMMARY: In accordance with Council on Environmental Quality's Regulations and FAA Order 1050.1D, Policies and Procedures for Considering Environmental Impacts, the Federal Aviation Administration (FAA) is issuing notice to advise that an Environmental Impact Statement (EIS) will be prepared for revision and implementation of air traffic control procedures and associated noise compatibility program mitigation measures at the T.F. Green Airport. In order to determine that all significant issues related to the proposed action are identified, an agency scoping meeting will be held.

DATES: The agency scoping meeting will be held on May 11, 1999. The meeting will be held between 2:00 p.m. and 4:00 p.m. for all interested agencies. Comments and suggestions may be mailed to the FAA informational contact listed below by May 11, 1999.

ADDRESSES: The meeting will be held at T.F. Green Airport in the Mary Brennan Board Room, located on the second floor of the Terminal Building, at 2000 Post Road, Warwick, Rhode Island.

FOR FURTHER INFORMATION CONTACT: Ms. Terry Flieger, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts, 01803, (781) 238–7524.

SUPPLEMENTARY INFORMATION: The FAA is preparing an EIS for proposed changes in air traffic procedures for noise abatement, including related noise compatibility program measures at T.F. Green Airport. These will modify existing noise abatement procedures and mitigation measures proposed in the FAR Part 150 Noise Compatibility Program, approved by the FAA in 1986.

Comments and suggestions are invited from federal, state, and local agencies and other interested parties to ensure that the full range of issues related to the proposed action are addressed and all significant issues identified. Copies of a scoping document with additional details can be obtained by contacting the FAA informational contact listed above. Comments and suggestions may be mailed to the same address.

Dated: March 26, 1999.

William C. Yuknewicz,

Assistant Manager, Air Traffic Division, FAA, New England Region.

[FR Doc. 99–9201 Filed 4–12–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on an Application To Impose a Passenger Facility Charge (PFC) at John F. Kennedy International Airport (JFK), LaGuardia Airport (LGA), and Newark International Airport (EWR), and To Use the Revenue from the PFC at JFK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Request for comments, notice of intent to rule on a PFC application.

SUMMARY: This document requests public comment on (1) the supplementary material provided by the applicant, the Port Authority of New York and New Jersey (PANYNJ), in support of its application to the FAA for authority to impose a PFC at JFK, LGA, and EWR and use the PFC revenue at JFK to construct an airport ground access light rail system (LRS), and (2) FAA and Federal Transit Administration memoranda pertaining to the supplemental material, and correspondence from the FAA to the PANYNJ concerning the supplemental material.

The FAA's prior decision, dated February 9, 1998, on the PANYNJ's application was vacated and remanded by the United States Court of Appeals for the District of Columbia Circuit on March 5, 1999. In accordance with the Court's order, the FAA is soliciting public comment on the supplementary material. The FAA will review the comments received and issue a new decision approving or disapproving the application, in whole or in part, within 120 days of the date of this Notice. The new ruling will be issued under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before May 13, 1999.

ADDRESSES: Comments on this supplemental information may be mailed or delivered in triplicate to the FAA at the following address: Mr. Phil Brito, Manager, New York Airports District Office, 600 Old Country Road, Suite 446, Garden City, NY 11530.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Anthony G. Cracchiolo, Director, Priority Capital Projects, Port Authority of New York and New Jersey, One World Trade Center, 63 South, New York, NY 10048.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas Felix, Planning and Development Branch (AEA–610), Fitzgerald Federal Building, JFK International Airport, Jamaica, NY 11430, (718) 553–3335. The supplemental information may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA invites public comment on supplemental material provided by the applicant, the PANYNJ, to the FAA in

support of the PANYNJ's application to impose a PFC at JFK, LGA, and EWR and use the PFC revenue at JFK for the construction of an LRS. The supplemental material includes all correspondence and data provided to the FAA by the PANYNJ after July 21, 1997, which was the date of the PANYNJ's submission of its formal application for the LRS. In addition, the FAA invites comment on FAA and Federal Transit Administration memoranda pertaining to the supplemental material, and correspondence from the FAA to the PANYNJ concerning the supplemental material. The FAA will issue a new decision on the PANYNJ's application under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158). This new decision will replace the FAA's prior decision dated February 9, 1998, which was vacated by the United States Court of Appeals for the District of Columbia on March 5, 1999.

Background

On February 9, 1998, the FAA issued a Record of Decision (ROD) on a PFC application submitted by the PANYNJ. This ROD approved collection of $823,000,000 in PFC revenue and use of $1,148,000,000 (includes previously approved PFC collections) to construct an LRS at JFK. The LRS consists of three segments: a central terminal area (CTA) loop component; a component to connect the CTA loop to the Howard Beach subway station; and a component to connect the CTA loop to the Jamaica Station Long Island Rail Road/Sutphin Boulevard subway station.

As a part of the decision making process for PFC applications, the FAA publishes a notice in the **Federal Register** informing the public of the FAA's intention to rule on the pending application and inviting public comment on that application. The FAA considers all comments during its deliberations on the application and responds to all substantive comments in the ROD. The PFC application for the LRS was submitted to the FAA by the PANYNJ on July 21, 1997. The FAA published the **Federal Register** notice on July 29, 1997. The **Federal Register** public comment period closed on August 28, 1997.

As a part of the FAA's responsibilities with regard to rendering decisions on PFC applications, the FAA must determine that each approved project is adequately justified. After reviewing the application submitted by the PANYNJ, the FAA found that further documentation was required to support a finding of adequate justification. Accordingly, the FAA asked the PANYNJ for information which the agency deemed to be clarifying information. In its March 5, 1999, decision, *Air Transport Authority* v. *Federal Aviation Administration* (No. 98–1109), the United States Court of Appeals for the District of Columbia found that the clarifying information was a material supplement to the PANYNJ's application provided after the close of the Federal Register comment period. The Court vacated and remanded the FAA's ROD on the PANYNJ PFC application ordering that the public be given the opportunity to comment upon the information submitted by the PANYNJ subsequent to the close of the prior Federal Register comment period.

Any person may inspect the application and supplementary information described above in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT**, and at the FAA's New York Airports District Office located at 600 Old Country Road, Suite 446, Garden City, NY, and at the FAA's Passenger Facility Charge Branch office located at FAA Headquarters, 800 Independence Avenue, SW, Washington, DC, in room 619 (call (202) 267–3845 to arrange for access).

In addition, any person may, upon request, inspect the application, notice and supplemental information germane to the application in person at the offices of the PANYNJ.

Issued in Washington, DC, on April 1, 1999.

Paul L. Galis,

Director, Office of Airport Planning and Programming.

[FR Doc. 99–9133 Filed 4–12–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Metropolitan Oakland International Airport, Oakland, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Intent to Rule on Application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Metropolitan Oakland International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before May 13, 1999.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Airports Division, 15000 Aviation Blvd., Lawndale, CA 90261, or San Francisco Airports District Office, 831 Mitten Road, Room 210, Burlingame, CA 94010–1303. In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Steven J. Grossman, Director of Aviation of the Port of Oakland, at the following address: 530 Water Street, Oakland, CA 94604. Air carriers and foreign air carriers may submit copies of written comments previously provided to the Port of Oakland under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Marlys Vandervelde, Airports Program Analyst, San Francisco Airports District Office, 831 Mitten Road, Room 210, Burlingame, CA 94010–1303, Telephone: (650) 876–2806. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Metropolitan Oakland International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158). On February 4, 1999, the FAA determined that the application to impose and use the revenue from a PFC submitted by the Port of Oakland was not substantially completed within the requirements of section 158.25 of Part 158. The following items are required to complete the application: where applicable, all projects included in the application for authority to impose and use a PFC must be shown on the approved Airport Layout Plan, all environmental requirements must be completed, and all the FAA airspace determinations must be completed; the Airport Capital Improvement Plan (ACIP) submitted with the application must be consistent with the information provided in the Attachment B.

On February 18, 1999, the Port of Oakland submitted supplemental information for this application. The FAA will approve or disapprove the application, in whole or in part, no later than June 18, 1999. The following is a brief overview of the impose and use application No. 99–08–C–00–OAK:

Level of proposed PFC: $3.00

Proposed charge effective date: July 1, 1999

Proposed charge expiration date: January 1, 2001

Total estimated PFC revenue: $22,122,844

Brief description of the proposed projects: Year 2000 Compliance Program, Multi-User System Equipment/Common Use Terminal Equipment, Airport Comprehensive Management System, Upgrade Security Access System, Rehabilitate Apron at Building L820 and a Portion of Taxiway "D", Construct Concrete Apron South East of Building L812, Threshold Improvement of Runway 11/29, Overlay Taxiway "R", Airport Facilities Complex and Noise Insulation Program.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Air Taxi/ Commercial Operators filing FAA Form 1800–31 and Commuters or Small Certificated Air Carriers filing DOT Form 298–C T1 or E1.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA Regional Airports Division located at: Federal Aviation Administration, Airports Division, 15000 Aviation Blvd., Lawndale, CA 90261. In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Port of Oakland.

Issued in Hawthorne, California, on March 12, 1999.

Herman C. Bliss,

Manager, Airports Division, Western-Pacific Region.

[FR Doc. 99–9136 Filed 4–12–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33733]

CSX Transportation, Inc.—Trackage Rights Exemption—Consolidated Rail Corporation

Consolidated Rail Corporation (Conrail), has agreed to grant overhead trackage rights to CSX Transportation, Inc. (CSXT), to operate its trains, locomotives, cars and equipment with CSXT's own crews over Conrail's Porter Branch milepost 246.7± at Willow Creek, IN, and milepost 259.5± at Gibson, IN (CP Ivanhoe), a total distance of approximately 12.8 miles.[1]

As noted in CSXT's notice of exemption, this trackage rights arrangement is only temporary. The Conrail trackage that is the subject of the trackage rights is to be allocated to Conrail's subsidiary, New York Central Lines LLC, and operated by CSXT, after what is referred to as the "Split Date," or the date of the division of Conrail's assets, as authorized by the Board in *CSX Corporation and CSX Transportation, Inc., Norfolk Southern Corporation and Norfolk Southern Railway Company—Control and Operating Leases/Agreements—Conrail Inc., and Consolidated Rail Corporation*, STB Finance Docket No. 33388 (STB served July 23, 1998). CSXT states that it expects the Split Date to occur on June 1, 1999. The parties intend for the trackage rights to terminate on the Split Date, but if the Split Date does not occur before June 30, 1999, the parties' agreement provides for termination of the trackage rights on June 30, 1999.

The transaction was scheduled to be consummated on or shortly after April 1, 1999.

The purpose of the trackage rights is to allow CSXT to qualify its crew and engine personnel on the trackage that CSXT will operate following the Split Date of Conrail's rail properties.

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.-Lease and Operate*, 360 I.C.C. 653 (1980).

This notice is filed under 49 CFR 1180.2(d)(7). If it contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33733, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW, Washington, DC 20423–0001. In addition, one copy of each pleading must be served on Charles M. Rosenberger, Senior Counsel, CSX Transportation, Inc., 500 Water Street, J–150, Jacksonville, FL 32202.

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

Decided: April 6, 1999.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 99–9034 Filed 4–12–99; 8:45 am]

BILLING CODE 4915–00–P

[1] On March 25, 1999, CSXT filed a petition for exemption in STB Finance Docket No. 33733 (Sub-No. 1), *CSX Transportation, Inc.—Trackage Rights Exemption—Consolidated Rail Corporation*, wherein CSXT requests that the Board permit the proposed overhead trackage rights arrangement described in the present proceeding to expire on the Split Date (as described in this decision) or June 30, 1999, whichever occurs first. That petition will be addressed by the Board in a separate decision.

DEPARTMENT OF THE TREASURY

Departmental Offices; Debt Management Advisory Committee Meeting

Notice is hereby given, pursuant to 5 U.S.C. App. § 10(a)(2), that a meeting will be held at the U.S. Treasury Department, 15th and Pennsylvania Avenue, NW, Washington, DC, on May 4, 1999, of the following debt management advisory committee:

The Bond Market Association Treasury Borrowing Advisory Committee

The agenda for the meeting provides for a technical background briefing by Treasury staff, followed by a charge by the Secretary of the Treasury or his designate that the committee discuss particular issues, and a working session. Following the working session, the committee will present a written report of its recommendations.

The background briefing by Treasury staff will be held at 9:00 a.m. Eastern time and will be open to the public. The remaining sessions and the committee's reporting session will be closed to the public, pursuant to 5 U.S.C. App. section 10(d).

This notice shall constitute my determination, pursuant to the authority placed in heads of departments by 5 U.S.C. App. § 10(d) and vested in me by Treasury Department Order No. 101–05, that the closed portions of the meeting are concerned with information that is exempt from disclosure under 5 U.S.C. 552b(c)(9)(A). The public interest requires that such meetings be closed to the public because the Treasury Department requires frank and full advice from representatives of the financial community prior to making its final decision on major financing operations. Historically, this advice has been offered by debt management advisory committees established by the

several major segments of the financial community. When so utilized, such a committee is recognized to be an advisory committee under 5 U.S.C. App section 3.

Although the Treasury's final announcement of financing plans may not reflect the recommendations provided in reports of the advisory committee, premature disclosure of the committee's deliberations and reports would be likely to lead to significant financial speculation in the securities market. Thus, these meetings fall within the exemption covered by 5 U.S.C. 552b(c)(9)(A).

The Office of the Assistant Secretary for Financial Markets is responsible for maintaining records of debt management advisory committee meetings and for providing annual reports setting forth a summary of committee activities and such other matters as may be informative to the public consistent with the policy of 5 U.S.C. 552b.

Dated: April 8, 1999.

Gary Gensler,

Assistant Secretary (Financial Markets).

[FR Doc. 99–9161 Filed 4–12–99; 8:45 am]

BILLING CODE 4810–25–M

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Application and Permit to Ship Puerto Rican Spirits to the United States Without Payment of Tax.

DATES: Written comments should be received on or before June 14, 1999 to be assured of consideration.

ADDRESSES: Direct all written comments to Linda Barnes, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW, Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Mary A. Wood, Regulations Division, 650 Massachusetts Avenue, NW, Washington, DC 20226, (202) 927–8185.

SUPPLEMENTARY INFORMATION:

Title: Application and Permit to Ship Puerto Rican Spirits to the United States Without Payment of Tax.

OMB Number: 1512–0200.

Form Number: ATF F 5110.31.

Abstract: ATF F 5110.31 is used to allow a person to ship spirits in bulk into the U.S. The form identifies the person in Puerto Rico from where shipments are to be made, the person in the U.S. receiving the spirits, amounts of spirits to be shipped, and the bond of the U.S. person to cover taxes on such spirits.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 20.

Estimated Time Per Respondent: 45 minutes.

Estimated Total Annual Burden Hours: 450.

Request For Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: April 5, 1999.

William T. Earle,

Assistant Director (Management) CFO.

[FR Doc. 99–9188 Filed 4–12–99; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Excise Tax Return, Alcohol and Tobacco (Puerto Rico).

DATES: Written comments should be received on or before June 14, 1999, to be assured of consideration.

ADDRESSES: Direct all written comments to Linda Barnes, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Joan Kravchak, Revenue Division, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

SUPPLEMENTARY INFORMATION:

Title: Excise Tax Return, Alcohol and Tobacco (Puerto Rico).

OMB Number: 1512–0497.

Form Number: ATF F 5000.25.

Abstract: Businesses in Puerto Rico report their Federal excise tax liability on distilled spirits, wine, beer, tobacco products, cigarette papers and tubes on ATF F 5000.25. ATF uses this form to identify the taxpayer and to determine the amount and type of taxes due and paid.

Current Actions: The form has 1 change. Under the title CALCULATION OF TAX DUE, (b) TAX CLASS is deleted. (c) AMOUNT OF TAX is changed to (b) AMOUNT OF TAX.

Type of Review: Extension

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 30.

Estimated Time Per Respondent: 15 minutes.

Estimated Total Annual Burden Hours: 130.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Date: April 5, 1999.

William T. Earle,

Assistant Director (Management) CFO.

[FR Doc. 99–9189 Filed 4–12–99; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Excise Tax Return, Alcohol and Tobacco.

DATES: Written comments should be received on or before June 14, 1999, to be assured of consideration.

ADDRESSES: Direct all written comments to Linda Barnes, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Joan Kravchak, Revenue Division, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–6993.

SUPPLEMENTARY INFORMATION:

Title: Excise Tax Return, Alcohol and Tobacco.

OMB Number: 1512–0467.

Form Number: ATF F 5000.24.

Abstract: ATF is responsible for the collection of the excise taxes on distilled spirits, wine, beer, cigars, cigarettes, chewing tobacco, snuff, and cigarette papers and tubes imposed by Chapters 51 and 52 of Title 26 of the United States Code. The information requested on the form is necessary to establish the taxpayer's identity, the amount and type of taxes due, and the amount of payments made.

Current Actions: The form has 1 change. Under the title CALCULATION OF TAX DUE, (b) TAX CLASS is deleted. (C) AMOUNT OF TAX is changed to (b) AMOUNT OF TAX.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 2,800.

Estimated Time Per Respondent: 15 minutes.

Estimated Total Annual Burden Hours: 35,280.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information techology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: April 5, 1999.

William T. Earle,

Assistant Director (Management) CFO.

[FR Doc. 99–9190 Filed 4–12–99; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Records and Supporting Data: Daily Summaries, Records of Production, Storage, and Disposition, and Supporting Data By Licensed Explosives Manufacturers and Manufacturers (Limited).

DATES: Written comments should be received on or before June 14, 1999 to be assured of consideration.

ADDRESSES: Direct all written comments to Linda Barnes, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Paul Veto, Chief, Public Safety Branch, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8690.

SUPPLEMENTARY INFORMATION:

Title: Records and Supporting Data: Daily Summaries, Records of Production, Storage, and Disposition, and Supporting Data By Licensed Explosives Manufacturers and Manufacturers (Limited).

OMB Number: 1512–0372.

Recordkeeping Requirement ID Number: ATF REC 5400/2.

Abstract: These records show daily activities in the manufacture, use, storage, and disposition of explosive materials by manufacturers and manufacturers (limited) covered under 18 U.S.C. Chapter 40. The records are used to show where and to whom explosive materials are sent, thereby ensuring that any diversion will be readily apparent and, if lost or stolen, ATF will be immediately notified on discovery of the loss or theft. ATF

requires that records be kept 5 years from date of transaction.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 1,053.

Estimated Time Per Respondent: 15 minutes.

Estimated Total Annual Burden Hours: 68,835.

REQUEST FOR COMMENTS: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: April 5, 1999.

William T. Earle,

Assistant Director (Management) CFO.

[FR Doc. 99–9191 Filed 4–12–99; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Manufacturer of Tobacco Products Monthly Report.

DATES: Written comments should be received on or before June 14, 1999 to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Mary A. Wood, Regulations Division, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8185.

SUPPLEMENTARY INFORMATION:

Title: Manufacturer of Tobacco Products Monthly Report.

OMB Number: 1512–0163.

Form Number: ATF F 3068 (5210.5).

Abstract: ATF F 3068 (5210.5) documents a tobacco products manufacturer's accounting of cigars and cigarettes. The form describes the tobacco products manufactured, articles produced, received, disposed of, and statistical classes of large cigars. ATF examines and verifies entries on these reports so as to identify unusual activities, errors and omissions.

Current Actions: The burden has increased due to a small increase in the number of respondents.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 108.

Estimated Time Per Respondent: 1 hour.

Estimated Total Annual Burden Hours: 1,296.

Request For Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: April 5, 1999.

William T. Earle,

Assistant Director (Management) CFO.

[FR Doc. 99–9192 Filed 4–12–99; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8233

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8233, Exemption From Withholding on Compensation for Independent (and Certain Dependent) Personal Services of a Nonresident Alien Individual.

DATES: Written comments should be received on or before June 14, 1999 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW, Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Faye Bruce, (202) 622–6665, Internal Revenue Service, Room 5577, 1111 Constitution Avenue NW, Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Exemption From Withholding on Compensation for Independent (and Certain Dependent) Personal Services of a Nonresident Alien Individual.

OMB Number: 1545–0795.

Form Number: 8233.

Abstract: Compensation paid to a nonresident alien individual for independent personal services (self-employment) is generally subject to 30% withholding or graduated rates. However, such compensation may be exempt from withholding because of a U.S. tax treaty or the personal exemption amount. Form 8233 is used to request exemption from withholding.

Nonresident alien students, teachers, and researchers performing dependent personal services also use Form 8233 to request exemption from withholding.

Current Actions: There are no changes being made to Form 8233 at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals, business or other for-profit organizations, and not-for-profit institutions.

Estimated Number of Respondents: 480,000.

Estimated Time Per Respondent: 1 hr., 35 min.

Estimated Total Annual Burden Hours: 763,200.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: April 6, 1999.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 99–9078 Filed 4–12–99; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8689

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8689, Allocation of Individual Income Tax to the Virgin Islands.

DATES: Written comments should be received on or before June 14, 1999 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, Room 5571, 1111 Constitution Avenue NW, Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Faye Bruce, (202) 622–6665, Internal Revenue Service, Room 5577, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Allocation of Individual Income Tax to the Virgin Islands.

OMB Number: 1545–1032.

Form Number: 8689.

Abstract: Form 8689 is used by U.S. citizens or residents as an attachment to Form 1040 when they have Virgin Islands source income. The data is used by IRS to verify the amount claimed on Form 1040 for taxes paid to the Virgin Islands.

Current Actions: There are no changes being made to Form 8689 at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 800.

Estimated Time Per Respondent: 2 hr., 13 min.

Estimated Total Annual Burden Hours: 1,768.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: April 6, 1999.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 99–9079 Filed 4–12–99; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8823

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8823, Low-Income Housing Credit

Agencies Report of Noncompliance or Building Disposition.

DATES: Written comments should be received on or before June 14, 1999 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, Room 5571, 1111 Constitution Avenue NW, Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Faye Bruce, (202) 622–6665, Internal Revenue Service, Room 5577, 1111 Constitution Avenue NW, Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Low-Income Housing Credit Agencies Report of Noncompliance or Building Disposition.

OMB Number: 1545–1204.

Form Number: 8823.

Abstract: Under Internal Revenue Code section 42(m)(1)(B)(iii), state housing credit agencies are required to notify the IRS of noncompliance with the low-income housing tax credit provisions. A separate form must be filed for each building that is not in compliance. The IRS uses this information to determine whether the low-income housing credit is being correctly claimed and whether there is any credit recapture.

Current Actions: There are no changes being made to Form 8823 at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: State or local government housing credit agencies.

Estimated Number of Respondents: 20,000.

Estimated Time Per Respondent: 8 hr., 48 min.

Estimated Total Annual Burden Hours: 176,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: April 2, 1999.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 99–9080 Filed 4–12–99; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 4563

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 4563, Exclusion of Income for Bona Fide Residents of American Samoa.

DATES: Written comments should be received on or before June 14, 1999 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Faye Bruce, (202) 622–6665, Internal Revenue Service, Room 5577, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Exclusion of Income for Bona Fide Residents of American Samoa.

OMB Number: 1545–0173.

Form Number: 4563.

Abstract: Form 4563 is used by bona fide residents of American Samoa to exclude income from sources within American Samoa, Guam, and the Commonwealth of the Northern Mariana Islands to the extent specified in Internal Revenue Code section 931. This information is used by the IRS to determine if an individual is eligible to exclude possession source income.

Current Actions: There are no changes being made to Form 4563 at this time.

Type of Review: Extension of a current OMB approval.

Affected Public: Individuals and households.

Estimated Number of Respondents: 100.

Estimated Time Per Respondent: 1 hr., 49 min.

Estimated Total Annual Burden Hours: 182.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: April 2, 1999.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 99–9081 Filed 4–12–99; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[PS–264–82]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, PS–264–82 (TD 8508), Adjustments to Basis of Stock and Indebtedness to Shareholders of S Corporations and Treatment of Distributions by S Corporations to Shareholders. (Regulation §§ 1.1367–1(f), 1.1368–1(f), 1.1368–1(g)).

DATES: Written comments should be received on or before June 14, 1999 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, Room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this regulation should be directed to Faye Bruce, (202) 622–6665, Internal Revenue Service, room 5577, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Adjustments to Basis of Stock and Indebtedness to Shareholders of S Corporations and Treatment of Distributions by S Corporations to Shareholders.

OMB Number: 1545–1139.

Regulation Project Number: PS–264–82.

Abstract: The regulation provides the procedures and the statements to be filed by S corporations for making the election provided under Internal Revenue Code section 1368, and by shareholders who choose to reorder items that decrease their basis. Statements required to be filed will be used to verify that taxpayers are complying with the requirements imposed by Congress.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations and individuals.

Estimated Number of Respondents: 2,000.

Estimated Time Per Respondent: 6 min.

Estimated Total Annual Burden Hours: 200 hours.

The following paragraph applies to all of the collections of information covered by this notice.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 25, 1999.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 99–9082 Filed 4–12–99; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Amendment to Open Meeting of the Citizen Advocacy Panel, Pacific-Northwest District

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: The meeting location scheduled for April 24, 1999 (64 FR 15205, March 30, 1999), has been changed.

FOR FURTHER INFORMATION CONTACT: Deborah A. Diamond at 1–888–912–1227 or 206–220–6099.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an operational meeting of the Citizen Advocacy Panel will be held Saturday, April 24, 1999, 9:00 a.m. to 5:00 p.m. at the Heathman Lodge, Sacajawea Room, 7801 NE Greenwood Drive, Vancouver, WA. Due to limited conference space, notification of intent to attend the meeting must be made with Deborah Diamond.

Ms. Diamond can be reached at 1–888–912–1227 or 206–220–6099. The public is invited to make oral comments from 10:00 am to 11:00 am on Saturday, April 24, 1999. Individual comments will be limited to 5 minutes. If you would like to have the CAP consider a written statement, please call 1–888–912–1227 or 206–220–6099, or write Deborah Diamond, CAP Office, 915 2nd Avenue; M/S W–406, Seattle, WA 98174.

The Agenda will include the following: subcommittee reports and various IRS issues.

Note: Last minute changes to the agenda are possible and could prevent effective advance notice.

Dated: April 5, 1999.

Jack Mannion,

Chief, Special Projects.

[FR Doc. 99–9083 Filed 4–12–99; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of Citizen Advocacy Panel, Brooklyn District

AGENCY: Internal Revenue Service (IRS), Treasury.

SUMMARY: An open meeting of the Brooklyn District Citizen Advocacy

Panel will be held in Brooklyn, New York.

DATES: The meeting will be held Tuesday, April 20, 1999.

FOR FURTHER INFORMATION CONTACT: Kevin McKeon at 1–888–912–1227 or 718–488–3555.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an operational meeting of the Citizen Advocacy Panel will be held Tuesday, April 20, 1999, 6:00 p.m. to 9:00 p.m. at 10 MetroTech Center, 6th Floor, 625 Fulton Street, Brooklyn, N.Y. 11201. Due to limited conference space, notification of intent to attend the meeting must be made with Kevin McKeon. Mr. McKeon can be reached at 1–888–912–1227 or 718–488–3555. The public is invited to make oral comments from 7:00 p.m. to 8:00 p.m. on Tuesday, April 20, 1999. Individual comments will be limited to 5 minutes.

If you would like to have the CAP consider a written statement, please call 1–888–912–1227 or 718–488–3555, or write Kevin McKeon, CAP Office, P.O. Box R, Brooklyn, N.Y., 11202. The Agenda will include the following: initial start up issues and various IRS issues.

Note: Last minute changes to the agenda are possible and could prevent effective advance notice.

Dated: April 5, 1999.

Jack Mannion,

Chief, Special Projects.

[FR Doc. 99–9084 Filed 4–12–99; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of Citizen Advocacy Panel, So. Fla District

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the So. Fla Citizen Advocacy Panel will be held in Sunrise, Florida.

DATES: The meeting will be held Friday, April 23, 1999 and Saturday, April 24, 1999.

FOR FURTHER INFORMATION CONTACT: Nancy Ferree at 1–888–912–1227, or 954–423–7973.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Citizen Advocacy Panel will be held Friday, April 23, 1999 from 6:00pm to 9:00pm and Saturday, April 24, 1999 from 9:00am to 1:00 pm, in Room 225, CAP Office, 7771 W. Oakland Park Blvd., Sunrise, Florida 33351. The public is invited to make oral comments. Individual comments will be limited to 10 minutes. If you would like to have the CAP consider a written statement, please call 1–888–912–1227 or 954–423–7973, or write Nancy Ferree, CAP Office, 7771 W. Oakland Park Blvd. Rm. 225, Sunrise, FL 33351. Due to limited conference space, notification of intent to attend the meeting must be made with Nancy Ferree. Ms. Ferree can be reached at 1–888–912–1227 or 954–423–7973.

The agenda will include the following: various IRS issue updates and reports by the CAP sub-groups.

Note: Last minute changes to the agenda are possible and could prevent effective advance notice.

Dated: April 5, 1999.

Jack Mannion,

Chief, Special Projects.

[FR Doc. 99–9085 Filed 4–12–99; 8:45 am]

BILLING CODE 4830–01–P

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition Determinations: Portraits by Ingres: Image of an "Epoch"

AGENCY: United States Information Agency.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 133359, March 29, 1978), and Delegation Order No. 85–5 of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects to be included in the exhibit "Portraits by Ingres: Image of an Epoch", imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to loan agreements with foreign lenders. I also determine that the exhibition or display of the exhibit objects at The National Gallery of Art, Washington, D.C., from on or about May 23, 1999, until on or about August 22, 1999, The Metropolitan Museum, New York, N.Y., from on or about September 27, 1999, to on or about January 2, 2000 is in the national interest. Public Notice of these determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For a copy of the list of exhibit items or for other information, contact Neila Sheahan, Assistant General Counsel, Office of the General Counsel at 202/619–5030. The address is Room 700, U.S. Information Agency, 301 4th Street, S.W., Washington, D.C. 20547–0001.

Dated: April 7, 1999.

Les Jin,

General Counsel.

[FR Doc 99–9138 Filed 4–12–99; 8:45 am]

BILLING CODE 8230–01–M

Corrections

Federal Register
Vol. 64, No. 70
Tuesday, April 13, 1999

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF DEFENSE

Office of the Secretary

Revised Non-Foreign Overseas Per Diem Rates

Correction

In notice document 99–8359 beginning on page 16712 in the issue of Tuesday, April 6, 1999, make the following correction:

On page 16712, the table for the "revised non-foreign overseas per diem rates" should read as listed below:

Maximum Per Diem Rates for official travel in Alaska, Hawaii, the Commonwealths of Puerto Rico and the Northern Mariana Islands and Possessions of the United States by Federal Government civilian employees.

LOCALITY	MAXIMUM LODGING AMOUNT (A)	+ M&IE RATE (B)	= MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
ALASKA:				
ANCHORAGE [INCL NAV RES]				
05/01 - 09/30	161	63	224	03/01/99
10/01 - 04/30	89	56	145	03/01/99
BARROW	115	73	188	03/01/99
BETHEL	105	60	165	03/01/99
COLD BAY	110	68	178	03/01/99
CORDOVA	85	62	147	03/01/98
CRAIG				
05/01 -- 08/31	95	66	161	05/01/97
09/01 -- 04/30	79	64	143	05/01/97
DEADHORSE	80	67	147	03/01/99
DENALI NATIONAL PARK				
06/01 -- 08/31	115	52	167	03/01/98
09/01 -- 05/31	90	50	140	03/01/98
DILLINGHAM	95	59	154	08/01/98
DUTCH HARBOR-UNALASKA	110	71	181	03/01/99
EARECKSON AIR STATION	80	57	137	03/01/99
EIELSON AFB				
05/15 -- 09/15	118	58	176	03/01/99
09/16 -- 05/14	81	54	135	03/01/99
ELMENDORF AFB				
05/01 - 09/30	161	63	224	03/01/99
10/01 - 04/30	89	56	145	03/01/99
FAIRBANKS				
05/15 -- 09/15	118	58	176	03/01/99
09/16 -- 05/14	81	54	135	03/01/99
FT. RICHARDSON				
05/01 - 09/30	161	63	224	03/01/99
10/01 - 04/30	89	56	145	03/01/99
FT. WAINWRIGHT				
05/15 -- 09/15	118	58	176	03/01/99
09/16 -- 05/14	81	54	135	03/01/99
GLENNALLEN	90	52	142	10/01/98
HEALY				
06/01 -- 08/31	115	52	167	03/01/98
09/01 -- 05/31	90	50	140	03/01/98
HOMER				
05/15 -- 09/15	115	58	173	03/01/99
09/16 -- 05/14	98	57	155	03/01/99
JUNEAU	105	68	173	03/01/99
KAKTOVIK	175	74	249	03/01/99

Maximum Per Diem Rates for official travel in Alaska, Hawaii, the Commonwealths of Puerto Rico and the Northern Mariana Islands and Possessions of the United States by Federal Government civilian employees.

LOCALITY	MAXIMUM LODGING AMOUNT (A)	+	M&IE RATE (B)	=	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
KAVIK CAMP	125		69		194	03/01/99
KENAI-SOLDOTNA						
05/01 -- 09/30	114		63		177	03/01/99
10/01 -- 04/30	76		59		135	03/01/99
KENNICOTT	149		68		217	10/01/98
KETCHIKAN						
05/01 -- 09/30	110		74		184	03/01/99
10/01 -- 04/30	88		73		161	03/01/99
KING SALMON	101		70		171	03/01/99
KLAWOCK						
05/01 -- 08/31	95		66		161	05/01/97
09/01 -- 04/30	79		64		143	05/01/97
KODIAK	99		67		166	03/01/99
KOTZEBUE						
05/01 -- 08/31	137		75		212	03/01/99
09/01 -- 04/30	73		61		134	03/01/99
KULIS AGS						
05/01 - 09/30	161		63		224	03/01/99
10/01 - 04/30	89		56		145	03/01/99
MCCARTHY	149		68		217	10/01/98
METLAKATLA						
05/30 - 10/01	85		52		137	03/01/99
10/02 - 05/29	78		51		129	03/01/99
MURPHY DOME						
05/15 -- 09/15	118		58		176	03/01/99
09/16 -- 05/14	81		54		135	03/01/99
NOME						
03/01 - 03/31	117		58		175	03/01/99
04/01 - 02/29	92		56		148	03/01/99
NUIQSUT	120		69		189	03/01/99
PETERSBURG	87		57		144	03/01/99
POINT HOPE	130		70		200	03/01/99
POINT LAY	105		67		172	03/01/99
PRUDHOE BAY	80		67		147	03/01/99
SEWARD						
05/01 -- 09/30	122		65		187	03/01/99
10/01 -- 04/30	86		61		147	03/01/99
SITKA-MT. EDGECOMBE						
04/01 -- 09/04	101		60		161	03/01/98
09/05 -- 03/31	83		59		142	03/01/98
SKAGWAY						
05/01 -- 09/30	110		74		184	03/01/99
10/01 -- 04/30	88		73		161	03/01/99

Maximum Per Diem Rates for official travel in Alaska, Hawaii, the Commonwealths of Puerto Rico and the Northern Mariana Islands and Possessions of the United States by Federal Government civilian employees.

LOCALITY	MAXIMUM LODGING AMOUNT (A)	+	M&IE RATE (B)	=	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
SPRUCE CAPE	99		67		166	03/01/99
TANANA						
03/01 - 03/31	117		58		175	03/01/99
04/01 - 02/29	92		56		148	03/01/99
UMIAT	107		33		140	03/01/99
VALDEZ						
05/15 -- 10/01	110		63		173	03/01/99
10/02 -- 05/14	84		60		144	03/01/99
WAINWRIGHT	127		82		209	03/01/99
WRANGELL						
05/01 -- 09/30	110		74		184	03/01/99
10/01 -- 04/30	88		73		161	03/01/99
YAKUTAT	110		68		178	03/01/99
[OTHER]	80		57		137	03/01/99
AMERICAN SAMOA:						
AMERICAN SAMOA	73		53		126	03/01/97
GUAM:						
GUAM (INCL ALL MIL INSTAL)	150		79		229	05/01/98
HAWAII:						
CAMP H M SMITH	110		61		171	07/01/97
EASTPAC NAVAL COMP TELE AREA	110		61		171	07/01/97
FT. DERUSSEY	110		61		171	07/01/97
FT. SHAFTER	110		61		171	07/01/97
HICKAM AFB	110		61		171	07/01/97
HONOLULU NAVAL & MC RES CTR	110		61		171	07/01/97
ISLE OF HAWAII: HILO	80		52		132	06/01/98
ISLE OF HAWAII: OTHER	100		54		154	06/01/98
ISLE OF KAUAI						
05/01 -- 11/30	115		62		177	06/01/98
12/01 -- 04/30	136		64		200	06/01/98
ISLE OF KURE	60		41		101	07/01/97
ISLE OF MAUI	112		64		176	06/01/98
ISLE OF OAHU	110		61		171	07/01/97
KANEOHE BAY MC BASE	110		61		171	07/01/97
KEKAHA PACIFIC MISSILE RANGE FAC						
05/01 -- 11/30	115		62		177	06/01/98
12/01 -- 04/30	136		64		200	06/01/98
KILAUEA MILITARY CAMP	80		52		132	06/01/98
LULUALEI NAVAL MAGAZINE	110		61		171	07/01/97
NAS BARBERS POINT	110		61		171	07/01/97
PEARL HARBOR [INCL ALL MILITARY]	110		61		171	07/01/97
SCHOFIELD BARRACKS	110		61		171	07/01/97

Maximum Per Diem Rates for official travel in Alaska, Hawaii, the Commonwealths of Puerto Rico and the Northern Mariana Islands and Possessions of the United States by Federal Government civilian employees.

LOCALITY	MAXIMUM LODGING AMOUNT (A)	+	M&IE RATE (B)	=	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
WHEELER ARMY AIRFIELD	110		61		171	07/01/97
[OTHER]	79		62		141	06/01/93
JOHNSTON ATOLL:						
JOHNSTON ATOLL	13		9		22	07/01/97
MIDWAY ISLANDS:						
MIDWAY ISLANDS [INCL ALL MIL]	60		41		101	07/01/97
NORTHERN MARIANA ISLANDS:						
ROTA	105		71		176	05/01/97
SAIPAN	170		78		248	05/01/97
[OTHER]	61		53		114	05/01/97
PUERTO RICO:						
BAYAMON						
04/16 -- 11/14	117		67		184	09/01/98
11/15 -- 04/15	148		70		218	09/01/98
CAROLINA						
04/16 -- 11/14	117		67		184	09/01/98
11/15 -- 04/15	148		70		218	09/01/98
FAJARDO [INCL CEIBA, LUQUILLO & HUMACAO]	82		60		142	03/01/98
FT. BUCHANAN [INCL GSA SVC CTR, GUAYNABO]						
04/16 -- 11/14	117		67		184	09/01/98
11/15 -- 04/15	148		70		218	09/01/98
LUIS MUNOZ MARIN IAP AGS						
04/16 -- 11/14	117		67		184	09/01/98
11/15 -- 04/15	148		70		218	09/01/98
MAYAGUEZ	94		60		154	06/01/98
PONCE	101		67		168	09/01/98
ROOSEVELT ROADS & NAV STA	82		60		142	03/01/98
SABANA SECA [INCL ALL MILITARY]						
04/16 -- 11/14	117		67		184	09/01/98
11/15 -- 04/15	148		70		218	09/01/98
SAN JUAN & NAV RES STA						
04/16 -- 11/14	150		70		220	04/01/99
11/15 -- 04/15	167		72		239	04/01/99
[OTHER]	66		57		123	09/01/98
VIRGIN ISLANDS (U.S.):						
ST. CROIX						
04/15 -- 12/14	107		75		182	08/01/98
12/15 -- 04/14	131		78		209	08/01/98
ST. JOHN						
04/15 -- 12/14	286		89		375	08/01/98
12/15 -- 04/14	413		102		515	08/01/98

Maximum Per Diem Rates for official travel in Alaska, Hawaii, the Commonwealths of Puerto Rico and the Northern Mariana Islands and Possessions of the United States by Federal Government civilian employees.

LOCALITY	MAXIMUM LODGING AMOUNT (A)	+	M&IE RATE (B)	=	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
ST. THOMAS						
04/15 -- 12/14	171		75		246	08/01/98
12/15 -- 04/14	285		87		372	08/01/98
WAKE ISLAND:						
WAKE ISLAND	60		32		92	09/01/98

Civilian Bulletin No. 206

Page 6

[FR Doc. C9–8359 Filed 4–12–99; 8:45 am]
BILLING CODE 1505–01–D

FEDERAL TRADE COMMISSION

16 CFR Part 241

Request for Comment Concerning Guides for the Dog and Cat Food Industry

Correction

In proposed rule document 99–6597, beginning on page 13368, in the issue of Thursday, March 18, 1999, make the following corrections:

1. On page 13369, in the first column, under the heading **II. Regulatory Review Program**, in the second line from the bottom, "technologies" should read "technological".

2. On the same page, in the same column, under the heading **III. Request for Comment**, in paragraph (2), in the fourth line, "effect" should read "affect".

3. On the same page, in the same column, under the same heading, in paragraph (6), in the last line of the column, "good" should read "food".

[FR Doc. C9–6597 Filed 4–12–99; 8:45 am]

BILLING CODE 1505–01–D

FEDERAL TRADE COMMISSION

16 CFR Part 256

Request for Comment Concerning the Guides for the Law Book Industry

Correction

In proposed rule document 99–6596, beginning on page 13369, in the issue of Thursday, March 18, 1999, make the following corrections:

1. On page 13369, in the third column, in the ninth line, after "seventeen" add "guides".

2. On the same page, in the same column, in the first paragraph, in the seventh line, "property" should read "properly", and in the eighth line "sole" should read "sold".

3. On the same page, in the same column, in the same paragraph, in the 30th line, after "have" add "not".

4. On page 13370, in the first column, in the second line, "solicitation" should read "solicitations".

5. On the same page, in the same column, in the first full paragraph, in the first line, "practice" should read "practices", and in the 10th line, "related" should read "relate".

6. On the same page, in the same column, in the second full paragraph, in the fifth line, "provides" should read "provide".

[FR Doc. C9–6596 Filed 4–12–99; 8:45 am]

BILLING CODE 1505–01–D

UMI

VOL
64

ISS
70

AP
13

1999

UMI

Federal Register

Tuesday
April 13, 1999

Part II

Department of Housing and Urban Development

Office of Federal Housing Enterprise Oversight

12 CFR Part 1750
Risk-Based Capital; Proposed Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Federal Housing Enterprise Oversight

12 CFR Part 1750

RIN 2550–AA02

Risk-Based Capital

AGENCY: Office of Federal Housing Enterprise Oversight, HUD.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Office of Federal Housing Enterprise Oversight (OFHEO) is directed by the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 to develop a risk-based capital regulation for Freddie Mac and Fannie Mae (collectively, the Enterprises). The regulation specifies the risk-based capital stress test that will determine the amount of capital an Enterprise is required to hold to maintain positive capital throughout a ten-year period of economic stress. The results of the risk-based capital stress test will be used to determine each Enterprise's risk-based capital requirements and, along with the minimum capital requirement, to determine each Enterprise's capital classification for purposes of possible supervisory action.

This Notice of Proposed Rulemaking is the second of two notices of proposed rulemaking pertaining to the risk-based capital regulation, both of which respond to comments received on the Advance Notice of Proposed Rulemaking. The first Notice of Proposed Rulemaking describes the methodology and rationale OFHEO used to identify the proposed benchmark loss experience, which is used to determine Enterprise credit losses during the stress test, and proposes the use of OFHEO's House Price Index in the stress test. The second Notice of Proposed Rulemaking specifies the interest rate risk and other components of the stress test, as well as the overall structure of the test.

DATES: Comments regarding this NPR must be received in writing on or before August 11, 1999.

ADDRESSES: Send written comments to Anne E. Dewey, General Counsel, Office of General Counsel, Office of Federal Housing Enterprise Oversight, 1700 G Street, NW., Fourth Floor, Washington, D.C. 20552. Written comments may also be sent by electronic mail at RegComments@OFHEO.gov.

FOR FURTHER INFORMATION CONTACT: Patrick J. Lawler, Director of Policy Analysis and Chief Economist; David J. Pearl, Director, Office of Research, Analysis and Capital Standards; or Gary L. Norton, Deputy General Counsel, Office of General Counsel, Office of Federal Housing Enterprise Oversight, 1700 G Street, NW., Fourth Floor, Washington, D.C. 20552, telephone (202) 414–3800 (not a toll-free number). The telephone number for the Telecommunications Device for the Deaf is (800) 877–8339.

SUPPLEMENTARY INFORMATION: The Supplementary Information is organized according to this table of contents:

I. Introduction
A. Background
B. Statutory Requirements for Risk-Based Capital
C. History of the Development of the Regulation
II. Structure and Operation of the Regulation
A. Summary of the Stress Test
1. Introduction
2. Data
3. Stress Test Conditions
4. Mortgage Performance
5. Other Credit Factors
6. Cash Flows
7. Enterprise Operations & Taxes
8. Financial Reporting
9. Calculation of the Risk-based Capital Requirement
B. Sensitivity of Capital Requirement to Risk
1. MBS Guarantees (Sold Loans)
2. Commitments
3. Assets and Liabilities
4. Administrative Costs
5. External Economic Conditions
C. Implications of the Proposed Rule
1. Capital Requirements Under the Proposed Rule
2. Enterprise Adjustments to Meet the Proposed Standard
3. Guarantee Fees
4. Mortgage Interest Rates
III. Issues, Alternatives Considered
A. Mortgage Performance
1. Statutory Requirements
2. Overview of Mortgage Performance
3. Statistical Models of Mortgage Performance
4. General Methodological Issues
5. Default/Prepayment Issues
6. Loss Severity
7. Relating Losses to the Benchmark Loss Experience
8. Inflation Adjustment
B. Interest Rates
1. Yields on Treasury Securities
2. Yields of Non-Treasury Instruments
C. Mortgage Credit Enhancements
1. Background
2. Modeling Approach
3. Comments and Alternatives Considered
D. Liabilities and Derivatives
1. Modeling Methodology
2. Foreign Currency Linked or Unusual Instruments
3. Call and Cancellation Options
4. Counterparty Risk
E. Non-mortgage Investments
F. Other Housing Assets
1. Mortgage Revenue Bonds
2. Private Label REMICs
3. Interests in Partnerships and Joint Ventures
G. Commitments
1. Definition of the Term "Commitment"
2. Retained vs. Securitized Mortgages
3. Modeling Delivery Percentages
4. Delivery Timing
5. Loan Mix Distribution
6. No New Business Rule
H. New Debt and Investment Rules
1. Rationale for New Debt and New Investment Rules
2. Analysis of ANPR Comments
I. Operating Expenses
J. Dividends and Other Capital Distributions
1. Introduction
2. Statutory Provisions
3. Proposed Approach
4. Analysis of ANPR Comments
K. Other Off-Balance Sheet Guarantees
L. Calculation of the Risk-Based Capital Requirement
1. Proposed Approach to Calculating Capital
2. Justification for Using a Present Value Approach
IV. Technical Supplement
A. Purpose and Scope
B. Single Family Default/Prepayment
1. Introduction
2. Conceptual Framework
3. Data
4. Specification of the Statistical Model
5. Explanatory Variables for Default and Prepayment
6. Empirical Results
7. Application of the Models in the Stress Test
8. Consistency with the Historical Benchmark Experience
9. References
C. Single Family Loss Severity
1. Introduction
2. Conceptual Framework
3. Data
4. Statistical Analysis
5. Consistency with the Benchmark Loss Experience
6. Application to the Stress Test
7. References
D. Multifamily Default/Prepayment
1. Introduction and Conceptual Framework
2. Historical Data
3. Statistical Estimation
4. Explanatory Variables
5. Results of the Statistical Estimation of Default and Prepayment Equations
6. Application to the Stress Test
7. References
E. Multifamily Loss Severity
1. Introduction
2. Conceptual Framework
3. Sources of Data
4. Data Analysis
5. Application to the Stress Test
6. References
F. Property Valuation
1. Introduction
2. Conceptual Framework
3. Data Sources
4. Statistical Analysis
V. Regulatory Impact
A. Executive Order 12612, Federalism
B. Executive Order 12866, Regulatory Planning and Review

C. Executive Order 12988, Civil Justice Reform
D. Regulatory Flexibility Act
E. Paperwork Reduction Act

I. Introduction

A. Background

The Office of Federal Housing Enterprise Oversight (OFHEO) was established by title XIII of the Housing and Community Development Act of 1992, Pub. L. No. 102–550, known as the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (1992 Act). OFHEO is an independent office within the U.S. Department of Housing and Urban Development (HUD) with responsibility for ensuring that the Federal Home Loan Mortgage Corporation (Freddie Mac) and the Federal National Mortgage Association (Fannie Mae) (collectively, the Enterprises) are adequately capitalized and operating in a safe and sound manner. Included among the express statutory authorities of OFHEO's Director (the Director) is the authority to issue regulations establishing minimum and risk-based capital standards.[1]

Fannie Mae and Freddie Mac are Government-sponsored Enterprises with important public purposes.[2] These include providing liquidity to the residential mortgage market and increasing the availability of mortgage credit benefiting low-and moderate-income families and areas that are underserved by lending institutions. The Enterprises engage in two principal businesses: investing in residential mortgages and guaranteeing securities backed by residential mortgages. The securities the Enterprises guarantee and the debt instruments they issue are not backed by the full faith and credit of the United States and nothing in this document should be construed otherwise.[3] Yet financial markets accord the Enterprises' securities preferential treatment relative to securities issued by potentially higher-capitalized, fully private, but otherwise comparable firms. The market prices for Enterprise debt and mortgage-backed securities, and the fact that the market does not require that those securities be rated by a national rating agency, suggest that investors perceive that the government implicitly guarantees those securities. This perception evidently arises from the public purposes of the Enterprises, their Congressional charters, their potential direct access to U.S. Department of Treasury (Treasury) funds, and the statutory exemptions of their debt and mortgage-backed securities (MBS) from otherwise mandatory investor protection provisions.[4]

Congress created OFHEO as the safety and soundness regulator of the Enterprises to reduce their risk of failure. Although each Enterprise at the time had experienced profitability and sustained growth, Congress determined that there was a need for a strong and independent regulator to promote the capital adequacy of the Enterprises. This determination was grounded in the recognition of many factors, including (1) the important public purpose served by the Enterprises in the secondary market for residential mortgages, and (2) the Enterprises' important role in providing access to mortgage credit in central cities, rural regions, and underserved areas.

Another important factor leading to OFHEO's creation was the recognition that the Enterprises are largely insulated from private market discipline relative to fully private firms. This insulation results from the apparent investor perception of an implied guarantee, and is best exemplified by the market's acceptance of Fannie Mae securities in the early 1980s and the Farm Credit System's securities in the mid-1980s when these GSEs were experiencing financial difficulties. The absence of normal market discipline on risk-taking is a strong argument for effective government regulation, including capital regulation.

Congress was also concerned about the serious disruptions to the nation's housing markets that could result from an Enterprise's failure. In introducing legislation in the House of Representatives, then House Banking Committee Chairman Henry Gonzalez noted that—

> The savings and loan crisis and the large losses incurred by the Federal Government to resolve the crisis, raises concerns about the scope of other potential liabilities of the United States, including the liabilities of Fannie Mae, Freddie Mac, and the [Federal Home Loan] banks. These entities are privately owned federally chartered enterprises established to meet certain credit needs. Together they have more than $800 billion in mortgage-related liabilities.[5]

In expressing his view that the legislation did not go far enough to ensure the Enterprises' safety and soundness, then Ranking Minority Member Jim Leach stated that—

> If there is a singular lesson of the 1980's, it is that prudential capital ratios are critical not only for providing a cushion between an institution's liabilities and the taxpayer's pocket book, but they ground institutional decision-making in less risky behavior. Where there is minimal private capital at risk there is always an inordinate incentive to bet the bank on speculative investments or interest rate moves. And perhaps most consequently, capital ratios determine constraints on growth. If institutions are allowed 50 or 100 to 1 leveraging, as occurred so recently in the thrift industry, imprudent or conflict driven decision making can too quickly cause disproportionate growth in certain institutions, industries and parts of the country, with the taxpayer on the line for management stupidity, foul play or bad luck.
>
> Fortunately, both GSEs are well run today. Fannie, in particular has been a major market winner as the cost of funds has declined with more restrained levels of inflation. But Congress must understand that if interest rates had gone up rather than down in the 1980's, Fannie Mae would be the single largest institutional liability the U.S. government would ever have been forced to oversee.[6]

Similarly, the Senate Report[7] stated that—

> Past performance indicates that [the risks of an Enterprise's failure] are not just hypothetical. While both GSEs are currently very prosperous, HUD estimated in a 1986 report to Congress, that Fannie Mae was insolvent on a marked-to-market basis at year-end 1978 and did not return to solvency until 1985. Its negative net worth reached a peak of more than $20 billion in 1981, which was roughly 20 percent of its outstanding liabilities. Its recovery owed partly to improved management, but also, in considerable measure to fortuitous declines in interest rates.[8]

Because of Congress' concerns, OFHEO was established as the safety and soundness regulator of Fannie Mae and Freddie Mac. OFHEO is responsible for conducting examinations to ensure the Enterprises' safety and soundness and establishing and enforcing compliance with two types of capital

---

[1] 1992 Act, section 1313(b)(1) (12 U.S.C. 4513(b)(1)).

[2] 1992 Act, sections 1331–38 (12 U.S.C. 4561–67, 4562 *note*).

[3] *See*, Federal Home Loan Mortgage Corporation Act, section 306(h)(2) (12 U.S.C. 1455(h)(2)); Federal National Mortgage Association Charter Act, section 304(b) (12 U.S.C. 1719(b)); and 1992 Act, section 1302(4) (12 U.S.C. 4501(4)).

[4] *See, e.g.*, 12 U.S.C. 24 (authorizing unlimited investment by national banks in obligations of or issued by the Enterprises); 12 U.S.C. 1455(g), 1719(d), 1723(c) (exempting securities from oversight from Federal regulators); 15 U.S.C. 77r–1(a) (preempting State law that would treat Enterprise securities differently from obligations of the United States for investment purposes); 15 U.S.C. 77r–1(c) (exempting Enterprise securities from State blue sky laws).

[5] Comments by Rep. Gonzalez upon introducing H.R. 2900, 137 Cong. Rec. H5497 (July 16, 1991).

[6] Dissenting views of Rep. Leach, *Government-Sponsored Housing Enterprises Financial Safety and Soundness Act of 1991*, H.R. Rep. No. 102–206 on H.R. 2900, at 114 (1991) (House Report).

[7] *Federal Housing Enterprises Regulatory Reform Act of 1992*, S. Rep. No. 102–282 (1992) (Senate Report).

[8] S. Rep. No. 102–282, at 10 (1992).

standards required by the 1992 Act. The first is the minimum capital standard.[9] Using this standard, which is based on a set of leverage ratios, OFHEO has classified each Enterprise's capital position every quarter since OFHEO's inception. After initially using an interim procedure, OFHEO published a rule regarding minimum capital, which incorporates a more careful evaluation of the credit risks associated with swaps and other off-balance sheet obligations.[10] The resulting standard is comparable in its construction to the risk-based capital standards of other financial institution regulators.

The second capital standard required by the 1992 Act is the risk-based capital standard. This standard requires each Enterprise to hold sufficient capital to survive a ten-year period characterized by adverse credit losses and large movements in interest rates, plus an additional amount to cover management and operations risk.[11] The level of capital [12] required under this standard for an Enterprise will reflect that Enterprise's specific risk profile at the beginning of each quarter for which the stress test will be run.

The risk-based standard is an essential component of the safety and soundness regulation of the Enterprises. Without the risk-based standard, an Enterprise might adopt risk positions of sufficient magnitude to make a capital level that just meets the minimum standard inadequate for maintaining a safe and sound financial condition.

However, the risk-based standard cannot, by itself, ensure sufficient capital to meet all contingencies. While the interest rate and credit stresses that are incorporated in the stress test, as specified by statute, are historically unprecedented, future economic environments may be even more adverse. Additionally, the nature of actual future stresses may differ from the precise stresses incorporated in the model. Furthermore, the model contains factors such as mortgage default and prepayment rates that are based on historical experience and therefore may be less adverse than those actually occurring in future economic environments. Similarly, the consequences of risks other than interest rate and credit risks may also prove more serious than the fixed proportional amount allowed for management and operations risk.

In addition to the risk-based standard, there is a minimum capital standard, which requires that in the absence of large measurable risks, the Enterprise maintain a minimally acceptable level of capital. Complementing the two capital standards are OFHEO's examination and enforcement authorities, which provide the knowledge and authority necessary to require prudent management practices in all environments. All of these regulatory mechanisms operate in tandem to promote the safety and soundness of the Enterprises.

B. Statutory Requirements for Risk-Based Capital

The 1992 Act requires that OFHEO, by regulation, establish a risk-based capital test (known as the stress test) which, when applied to an Enterprise, shall determine that amount of total capital for the Enterprise that is sufficient for the Enterprise to maintain positive capital during the stress period. The 1992 Act also provides that, in order to meet its risk-based capital standard, each Enterprise is required to maintain an additional 30 percent of this amount to protect against management and operations risk.[13]

The 1992 Act requires that the stress test subject each Enterprise to large credit losses on mortgages it owns or guarantees. The frequency and severity of those losses must be reasonably related to the highest rates of default and severity of mortgage losses experienced during a period of at least two consecutive years in contiguous areas of the United States that together contain at least five percent of the total U.S. population.[14] OFHEO is required to identify what it has characterized as the "benchmark loss experience" that resulted in the highest loss rate.[15] In this context, default and severity behavior means the frequency, timing, and severity of losses on mortgage loans, given the specific characteristics of those loans and the economic circumstances affecting those losses.

The 1992 Act also prescribes two interest rate scenarios, one with rates falling and the other with rates rising.[16] The risk-based capital amount is based on whichever scenario would require more capital for the Enterprise. In prescribing the two scenarios, the 1992 Act describes the path of the ten-year constant maturity yield (CMT) for each scenario and directs OFHEO to establish the yields on Treasury instruments of other maturities in a manner reasonably related to historical experience and judged reasonable by the Director.

In the falling or down-rate scenario, the ten-year CMT decreases during the first year of the stress period and then remains constant at the lesser of (a) 600 basis points below the average yield during the nine months preceding the stress period or (b) 60 percent of the average yield during the three years preceding the stress period. However, the 1992 Act limits the decrease in yield to 50 percent of the average yield in the nine months preceding the stress period.[17]

In the rising or up-rate scenario, the ten-year CMT increases during the first year of the stress period and then remains constant at the greater of (a) 600 basis points above the average yield during the nine months preceding the stress period or (b) 160 percent of the average yield during the three years preceding the stress period. However, the 1992 Act limits the increase in yield to 175 percent of the average yield over the nine months preceding the stress period.[18] The 1992 Act recognizes that interest rates can affect credit risk, specifically requiring that credit losses be adjusted for a correspondingly higher rate of general price inflation if

---

[9] 1992 Act, section 1362 (12 U.S.C. 4612).

[10] 12 CFR 1750.4; see Minimum Capital, Final Rule, 61 FR 35607, July 8, 1996.

[11] 1992 Act, section 1361 (12 U.S.C. 4611).

[12] For purposes of the risk-based capital standard, the term "capital" means "total capital" as defined under section 1303(18) of the 1992 Act (12 U.S.C. 4502(18)) to mean the sum of the following:

(A) The core capital of the enterprise;

(B) A general allowance for foreclosure losses, which—

(i) shall include an allowance for portfolio mortgage losses, an allowance for nonreimbursable foreclosure costs on government claims, and an allowance for liabilities reflected on the balance sheet for the enterprise for estimated foreclosure losses on mortgage-backed securities; and

(ii) shall not include any reserves of the enterprise made or held against specific assets.

(C) Any other amounts from sources of funds available to absorb losses incurred by the enterprise, that the Director by regulation determines are appropriate to include in determining total capital.

The term "core capital" is defined under section 1303(4) of the 1992 Act (12 U.S.C. 4502(4)) to mean the sum of the following (as determined in accordance with generally accepted accounting principles):

(A) The par or stated value of outstanding common stock.

(B) The par or stated value of outstanding perpetual, noncumulative preferred stock.

(C) Paid-in capital.

(D) Retained earnings.

The core capital of an enterprise shall not include any amounts that the enterprise could be required to pay, at the option of investors, to retire capital instruments.

[13] 1992 Act, section 1361(c)(2) (12 U.S.C. 4611(c)(2)).

[14] 1992 Act, section 1361(a)(1) (12 U.S.C. 4611(a)(1)).

[15] In this document, the word "benchmark," when used as an adjective or a noun, refers to the benchmark loss experience.

[16] 1992 Act, section 1361(a)(2) (12 U.S.C. 4611(a)(2)).

[17] 1992 Act, section 1361(a)(2)(B) (12 U.S.C. 4611(a)(2)(B)).

[18] 1992 Act, section 1361(a)(2)(C) (12 U.S.C. 4611(a)(2)(C)).

application of the stress test produces an increase of more than 50 percent in the ten-year CMT.[19]

The Act requires that the stress test take into account distinctions among mortgage product types and differences in seasoning. It may also take into account any other factors that the Director deems appropriate. The 1992 Act does not require a specific adjustment for any of these factors, allowing the Director to determine how best to account for them. Likewise, the 1992 Act requires the Director to determine losses and gains on Enterprise activities not specifically addressed, and all other characteristics of the stress test not explicitly defined in the 1992 Act, on the basis of available information, in a manner consistent with the stress test.[20] These stress test characteristics could include, among others, mortgage prepayment rates and Enterprise funding activities, operating expenses, and capital distribution activities.

The 1992 Act requires the stress test to provide initially that each Enterprise will conduct no new business within the stress period, except to fulfill contractual commitments to purchase mortgages or issue securities. Four years after the final risk-based capital regulation is issued, OFHEO is authorized to modify the stress test to incorporate assumptions about additional new business conducted during the stress period.[21] In doing so, OFHEO is required to take into consideration the results of studies conducted by the Congressional Budget Office and the Comptroller General of the United States on the advisability and appropriate forms of new business assumptions. The 1992 Act requires that the studies be completed within the first year after issuance of the final regulation.[22]

In developing this proposal, OFHEO considered whether it would be permissible and appropriate not to propose a detailed risk model, and instead to rely on the risk models developed by the Enterprises themselves.[23] Under such a regulatory approach, OFHEO would specify only the basic interest rate and credit assumptions, rely on the Enterprises' internal modeling of these scenarios and review those models and the results.

OFHEO has thoroughly considered this approach and believes that it would not be consistent with the 1992 Act, which anticipates that a publicly-available, transparent and reproducible test would be applied to the Enterprises. The 1992 Act provides for both Enterprises to be subject to the same stress test;[24] that the full test be subject to notice and comment rulemaking;[25] that the risk-based capital regulation be sufficiently specific to permit anyone to apply the test, given relevant Enterprise data;[26] and that OFHEO must make the stress test model public.[27] Relying on the Enterprises to compute their own capital requirements with their proprietary models would be inconsistent with all of these provisions.

Moreover, a rule that specifies the details of the model will provide a more consistent and effective capital regulation and will not place undue burdens on the Enterprises. The structure of OFHEO's regulatory and enforcement authorities presumes a strong risk-based capital standard. The level of the minimum (leverage) capital standard was established with the assumption that there would be a meaningful risk-based standard that would address actual or potential risk not addressed by simple leverage ratios. In addition, important OFHEO enforcement authorities are tied to the risk-based capital requirement. An Enterprise's failure to meet these requirements triggers two important enforcement authorities: the ability to reduce or eliminate the Enterprise's dividends and the ability to require a capital restoration plan acceptable to OFHEO. Also, the grounds for a cease and desist action vary depending on whether an Enterprise meets the risk-based standard. Thus, a weaker standard would weaken OFHEO's enforcement authorities.

These objectives are best obtained by a clear standard that is presented to the public for comment and then employed consistently to evaluate both Enterprises. Reliance instead on Enterprise models would likely result in a weaker inconsistently-applied standard. Use of Enterprise models would give the Enterprises broad discretion to determine their own risk-based capital requirements because stress test details beyond basic assumptions and modeling techniques can have a substantial cumulative effect on the results. Existing market distortions would give the Enterprises incentives to adjust those details to produce low requirements.

The Enterprises' status as government-sponsored-enterprises attenuates market discipline of Enterprise capital levels. The Enterprises are highly leveraged financial institutions. Fully private firms that depend heavily on debt markets are inhibited from taking on large amounts of risk relative to their equity capital. Interest rates on debt or guaranteed securities are sensitive to the perceived credit quality of the issuers or guarantors. However, because investors treat Enterprise obligations as implicitly guaranteed by the Federal government, the normal linkage between the adequacy of an Enterprise's capital and the interest rates on its obligations is severed. Thus, because of the perceived implicit guarantee, the Enterprises have an incentive to hold less capital, relative to their risk levels, than they would if their debt costs were subject to normal market forces. A strong risk-based capital standard can address this distortion, but the Enterprises have little incentive to assist in producing such a result.

Reliance on different Enterprise internal models would also result in unequal treatment. The nature of business risks and risk management techniques are very similar at the two Enterprises. It is most appropriate and most fair to determine each Enterprise's capital adequacy in the same way. However, capital models developed by the two Enterprises would likely differ significantly. Differences in resulting standards could easily mask significant differences in true capital adequacy between the Enterprises. Furthermore, a lower effective standard at one Enterprise could give that Enterprise important business advantages over the other. The resulting competitive pressures would give the Enterprise with the higher standard an incentive to conform with the lower standard.

A model fully specified in regulation and administered by OFHEO, on the other hand, does not suffer these disadvantages. Such a model is feasible

---

[19] 1992 Act, section 1361(a)(2)(E) (12 U.S.C. 4611(a)(2)(E)).

[20] 1992 Act, sections 1361(b) and (d)(2) (12 U.S.C. 4611(b) and (d)(2)).

[21] 1992 Act, sections 1361(a)(3)(B) and (D) (12 U.S.C. 4611(a)(3)(B) and (D)).

[22] 1992 Act, section 1361(a)(3)(C) (12 U.S.C. 4611(a)(3)(C)).

[23] This approach, which OFHEO considered in detail as it began to develop the risk-based capital regulation, was raised most recently by Fannie Mae during the OMB review process. See the letters from Ms. Jamie S. Gorelick, Vice Chair, Fannie Mae of December 4, 1998 to various OMB officials; and of March 10, 1999, to Dr. Janet Yellen, Chair, Council of Economic Advisers.

[24] *See* 12 U.S.C. 4611(a) ("The Director shall, by regulation, establish a risk-based capital test for the Enterprises. When applied to an Enterprise, *the* risk-based capital test shall determine the amount of total capital for the Enterprise . . ."') (emphasis added). *See also* H.R. Rep. No. 102–206 at 62 (1991). ("Beyond these traditional capital ratios, the bill sets forth guidelines for the creation, in highly specific regulations, of a risk-based capital standard . . . *The* model, or stress test, will generate a number for *each* Enterprise, which will become the risk-based standard for *that* Enterprise.") (emphasis added).

[25] Section 1361(e)(1), 12 U.S.C. 4611(e)(1).

[26] Section 1361(e)(2), 12 U.S.C. 4611(e)(2).

[27] Section 1361(f), 12 U.S.C. 4611(f).

because OFHEO regulates only two institutions, with similar risks and relatively narrow lines of business. The transparency of this approach allows all interested parties to comment meaningfully on the precise method of determining Enterprise capital requirements, and it gives the Enterprises the ability to internalize the model for planning purposes.

In analyzing this issue, OFHEO is aware that some Federal financial institution regulators make limited use of internal models. However, those uses of internal models are made in very different circumstances and by regulators with different authorizing statutes. Many of the institutions in which these regulators rely upon internal models are exposed to substantial market discipline of their capital and risk positions because they rely heavily on uninsured liabilities. Such discipline effectively forces large banks to hold capital well in excess of regulatory requirements.

Even in these circumstances, other regulators depend on internal models only to a small extent as a supplement to other measures of capital adequacy. Bank capital requirements are primarily based on overall or risk-weighted ratios that are substantially higher than those applied to the Enterprises under the minimum capital standard. To supplement those ratios, regulators require banks with significant market risk exposures (those that have large trading accounts) to use their internal value-at-risk models to calculate a market-risk capital component of their overall risk-based capital requirements. However, partly because of the uncertainties surrounding model construction and verification, bank regulators require a multiple of three or more times the amount of capital for market risk exposures that the internal models estimate.[28] This limited use of internal models in very different circumstances does not appear applicable to Enterprise capital regulation.

OFHEO considered whether an internal models approach could permit greater flexibility and innovation by the Enterprises, because they could modify their internal risk models at will. OFHEO believes the issues of flexibility and innovation have been appropriately addressed in the proposed regulation. In general, OFHEO expects that credit and interest rate risk of new Enterprise activities and instruments will be reflected in the stress test by simulating their credit and cash flow characteristics using the approaches described in the regulation. OFHEO will provide the Enterprises with its estimate of the capital treatment of new products, investments or instruments as soon as possible after the Enterprises notify OFHEO of the new activities. In addition, OFHEO will monitor the Enterprises' activities and, when appropriate, propose amendments to this regulation addressing the treatment of new instruments and activities.

For all the reasons described, OFHEO believes that the approach proposed in this Notice implements the requirement of the 1992 Act and provides an appropriate means for ensuring the capital adequacy of the Enterprises. In accordance with the requirements of the Administrative Procedure Act, OFHEO is requesting comments on all of the issues raised in this Notice of Proposed Rulemaking.

C. History of the Development of the Regulation

OFHEO's mission is to ensure that the Enterprises are adequately capitalized and operating in a safe and sound manner. The principal objective of the risk-based capital standard is to reduce the risk of Enterprise insolvency. Another important objective of the risk-based capital standard is to align the incentives reflected in the regulatory capital requirement with the incentives of prudent risk management. The ultimate goal is for the Enterprises to maintain the financial health necessary to fulfill their public purposes. Although the stress test produces a single capital requirement, it effectively creates incremental regulatory capital requirements for each additional dollar of business for every product type an Enterprise guarantees or holds in portfolio. Marginal capital requirements for mortgages held in portfolio will vary depending on the risk inherent in an Enterprise's funding strategy.

OFHEO designed the stress test so that the incentives it creates closely reflect the relative risks inherent in the Enterprises' different activities. To this end, the proposed regulation incorporates, to the extent feasible, consistent relationships between the economic environment of the stress period and the Enterprises' businesses. Doing so required OFHEO to model the Enterprises' assets, liabilities, and off-balance sheet positions at a sufficient level of detail to capture important risk characteristics.

However, as the level of detail of the stress test increased, so did its complexity, along with the time and other resources that were required to develop it. OFHEO also faced certain practical limits to the number of variables that could be modeled due to the limitations of existing data. Therefore, in developing this proposed regulation, OFHEO sought to achieve a level of complexity and realism in the stress test that appropriately balanced the associated benefits and costs.

OFHEO's stress test is comprised of a number of components, some that correspond to subjects specifically cited in the 1992 Act and others that represent the infrastructure that makes the stress test operational. Figure 1 illustrates these components and their interrelationships. The infrastructure components—database, cash flows, and financial reports—are shaded gray. The unshaded components implement the specific requirements of the 1992 Act, as well as the many other aspects of the stress test that the 1992 Act either requires or permits OFHEO to determine.

[28] See, for example, Darryll Hendricks and Beverly Hirtle, "Bank Capital Requirements for Market Risk: The Internal Models Approach," in *Economic Policy Review*, Federal Reserve Bank of New York, December 1997, pp. 3–6.

Figure 1. Risk Based Capital Stress Test

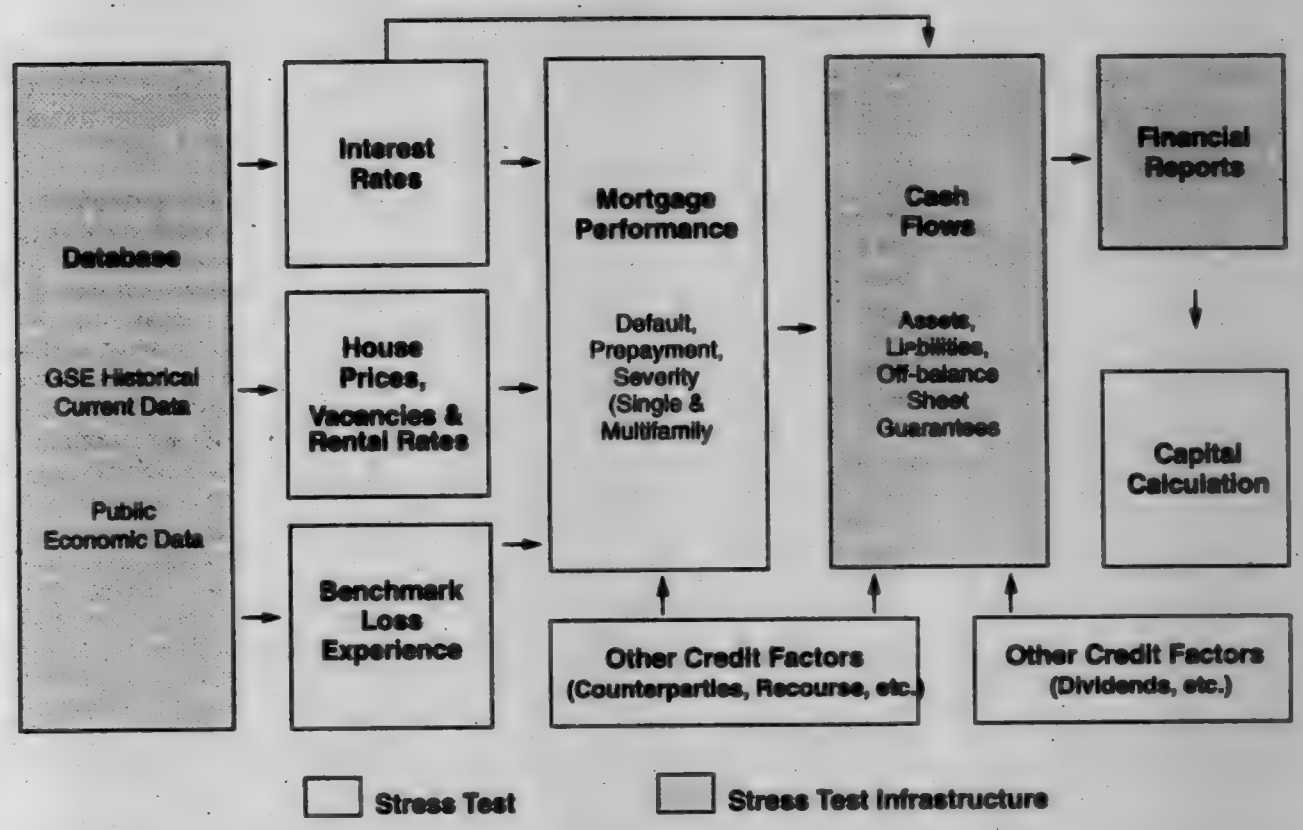

On February 8, 1995, OFHEO published an Advance Notice of Proposed Rulemaking (ANPR)[29] as its first step in developing the risk-based capital regulation. The ANPR announced OFHEO's intention to develop and publish a risk-based capital regulation and solicited public comment on issues relating to that regulation.

The comment period for the ANPR ended on May 9, 1995, and was extended through June 8, 1995.[30] OFHEO received 17 comments on the ANPR from a variety of interested parties. Commenters included two Executive Branch Departments, HUD and Department of Veterans Affairs (VA); one Federal financial institution regulatory agency Office of Thrift Supervision (OTS); one Federal regulatory agency, U.S. Commodity Futures Trading Commission (CFTC); the Enterprises, Fannie Mae and Freddie Mac; four trade groups, Mortgage Bankers Association of America (MBA), America's Community Bankers (ACB), National Association of Realtors (NAR), and Mortgage Insurance Companies of America (MICA); two mortgage banking firms, PNC Mortgage Corporation of America and Norwest Mortgage, Inc.), one rating agency Standard and Poor's Ratings Group (S&P); one thrift institution, World Savings and Loan Association (MS&L); one private mortgage research firm, Mortgage Risk Assessment Corporation (MRAC); and one individual, Professor Anthony Yezer of George Washington University. The responses to the ANPR ranged from a comment on only one or two specific risk-based capital issues to an extensive analysis of every question or issue raised. OFHEO has considered these comments in the development of its risk-based capital regulation.

OFHEO determined that the scope of the regulatory project required the issuance of two separate Notices of Proposed Rulemaking (NPR), each addressing different components of the stress test. On June 11, 1996, OFHEO published a Notice of Proposed Rulemaking (NPR1),[31] which addresses two components. The first component is the methodology for identifying and measuring the benchmark loss experience, which provides the basis for determining credit losses that the Enterprises will experience during the stress period. The second is OFHEO's proposal to use the OFHEO House Price Index (HPI), which is a weighted repeat transactions house price index, rather than the Constant Quality Home Price Index (CQHPI) published by the Secretary of Commerce, to measure differences in seasoning of single family mortgages in the stress test.[32] NPR1 included OFHEO's responses to all of the ANPR comments that related to those two areas. The comment period for NPR1 ended on September 9, 1996, and was extended through October 24, 1996.[33] OFHEO received 11 written comments on NPR1 and will consider and respond to those in the final risk-based capital regulation.

This Notice of Proposed Rulemaking (NPR2) specifies and proposes for public comment all of the remaining aspects of the risk-based capital stress test not covered in NPR1. The notice includes an overview of the stress test, the stress test's sensitivity to risk, the implications of the stress test for the Enterprises, and specific issues related to the stress test. Among the specific issues discussed are mortgage performance (i.e., default, prepayment, and loss severity), interest rates, new debt and new investments, commitments, dividends and other

[29] Risk-Based Capital, ANPR, 60 FR 7468, February 8, 1995.

[30] Risk-Based Capital, Extension of Public Comment Period for ANPR, 60 FR 25174, May 11, 1995.

[31] Risk-Based Capital, NPR1, 61 FR 29592, June 11, 1996.

[32] 61 FR 29616, June 11, 1996.

[33] Risk-Based Capital, Extension of Public Comment Period for NPR, 61 FR 42824, August 19, 1996.

capital distributions, operating expenses, credit enhancements, liabilities and derivatives, non-mortgage investments, and capital calculation. The notice also includes a technical supplement that explains the derivation of equations used in the stress test. Finally the notice contains the regulatory text which includes the regulatory appendix that provides the technical details of the regulation.

OFHEO believes that it is important for this proposal to receive full public review and comment. Accordingly, OFHEO invites all interested parties to comment on the issues raised in this NPR. OFHEO will consider comments received, together with those received on NPR1, in the development of the final risk-based capital regulation.

II. Structure and Operation of the Regulation

A. Summary of the Stress Test

1. Introduction

OFHEO's risk-based capital regulation is part of a larger regulatory framework for the Enterprises that includes a minimum capital requirement and a comprehensive examination program. The purpose of this regulatory framework is to reduce the risk of failure of the Enterprises by ensuring that the Enterprises are adequately capitalized and operating safely, in accordance with the 1992 Act.

OFHEO's risk-based capital requirement differs from the minimum capital requirement by relating the required capital to the risk in an Enterprise's financial activities. In order to determine risk-based capital for the Enterprises, OFHEO has been charged with creating a stress test that simulates the effects of ten years of adverse economic conditions on the existing assets and obligations of the Enterprises. Both the minimum and the risk-based capital requirements work in conjunction with OFHEO's examination program to ensure that the Enterprises are adequately capitalized and operating safely.

In creating the proposed stress test, OFHEO had to ensure that it met all the statutory requirements outlined in the 1992 Act and that it accurately and appropriately captured the risks related to the business of the Enterprises. To accomplish this, OFHEO modeled both sides of the Enterprises' balance sheets, as well as their off-balance sheet obligations, at the level of detail necessary to capture the risk involved. In selecting among alternative approaches, OFHEO sought to minimize the possibility of perverse incentives in the stress test. The regulation was designed to ensure that stresses were appropriate in order to promote safety and soundness and ensure the Enterprises' ability to fulfill their important public missions.

The stress test determines, as of a point in time, how much capital an Enterprise requires to survive the economically stressful conditions outlined by the 1992 Act. At a minimum, the stress test would be run on a quarterly basis. The stress test takes as inputs data on an Enterprise's assets and obligations, operations, interest rates, and the housing market. These data are used in econometric, financial, and accounting models to simulate Enterprise financial performance over a ten year period called the "stress period." The stress test then computes the amount of starting capital that would permit an Enterprise to maintain a positive capital position throughout the stress period. To determine the risk-based capital requirement, the 1992 Act requires that 30 percent of this amount is added to cover management and operations risk.

This summary provides a high level description of the stress test. For a more detailed description, refer to the Regulation Appendix. For explanations of the reasons for the approaches taken, refer to section III., Issues, Alternatives Considered. For detailed information on econometric models and historical property valuation-related indexes used in the stress test, refer to section IV., Technical Supplement. Throughout the summary, it may be helpful to refer to the stress test diagram, in section I., Introduction.

2. Data

The stress test utilizes data characterizing at a point in time an Enterprise's assets, liabilities, and off-balance sheet obligations, as well as data on economic conditions. The Enterprises submit data to OFHEO for mortgages, securities, and derivative contracts at the instrument level, that is, for individual mortgages, securities, and contracts. OFHEO obtains data on economic conditions from public sources. All these data are referred to as "starting position data" for the date for which the stress test is run.

For modeling efficiency, the stress test aggregates loans into groups of loans with common risk and cash flow characteristics ("loan groups"). For instance, 30-year fixed-rate mortgages for single family homes in the same geographic region, originated in the same year, with similar interest rates and LTVs,[34] and held in an Enterprise's portfolio, are grouped together in one loan group. In this way, over 24 million loans are aggregated into the minimum number of loan groups that captures important risk characteristics. These loan groups, instead of individual loans, are then used as inputs by the mortgage performance and cash flow components of the stress test.

In addition to starting position data for existing loans, the stress test creates loan group data for the new mortgages that will be added during the stress test. The 1992 Act requires that the stress test simulate the fulfillment of the Enterprises' contractual commitments, outstanding at the start of the stress period, to purchase and/or securitize mortgages. The new mortgages that the stress test adds consist of four single family loan product types: 30-year fixed-rate, 15-year fixed-rate, adjustable-rate, and balloon. The percentage of each type added is based on the relative proportions of those types of loans securitized by an Enterprise that were originated during the six months preceding the start of the stress period. The mix of LTV, region, guarantee fee, and other characteristics of these new loans also reflects the characteristics of the loans originated during the preceding six months. All new mortgages are securitized. In the down-rate scenario, 100 percent of these loans are added during the first three months of the stress period; in the up-rate scenario, 75 percent of these loans are added during the first six months. These loan groups are then treated like the loan groups created for loans on the Enterprise's books at the start of the stress period.

Because of the smaller number and greater diversity of the Enterprises' non-mortgage financial instruments (investments and debt), the stress test projects these cash flows at the individual instrument level, rather than at a grouped level. Data used for these projections include the instrument characteristics that are used to model securities, both investment and debt, as well as derivative contracts.

3. Stress Test Conditions

a. Benchmark Loss Experience

In NPR1, OFHEO proposed the methodology for identifying the benchmark loss experience, the stressful credit conditions which are the basis for credit losses in the stress test. With this methodology, OFHEO identified the worst cumulative credit losses

[34] LTV is the loan to value ratio, which is the loan balance divided by the value of the property securing the loan.

experienced by loans originated during a period of at least two consecutive years, in contiguous states encompassing at least five percent of the U.S. population. The performance of these loans (i.e., the frequency, timing and severity of their losses) and the related interest rate and housing market environment, comprise the benchmark loss experience.

The benchmark loss experience is based on newly originated, 30-year, fixed-rate, first lien mortgages on owner-occupied, single family properties. The performance of these benchmark loans was a function of their original LTVs and other characteristics, as well as the specific house price and interest rate paths they experienced. The stress test applies the path of house prices from the benchmark loss experience and the interest rate paths required by the 1992 Act. Furthermore, the stress test simulates the performance of an Enterprise's entire mortgage portfolio, including loans of all types, ages, and characteristics. Primarily for these reasons, overall Enterprise mortgage loss rates in the stress test are much lower than the loss rates OFHEO reported in NPR1 for benchmark loans.

When the mortgage performance models are applied to benchmark loans, using the benchmark pattern of interest rates, losses are very close to those identified in NPR1. The remaining difference results from the fact that OFHEO based its mortgage performance models on all Enterprise historical loan data, not just the limited data for benchmark loans, and that the benchmark loss experience was particularly severe. This difference is corrected by calibrating the single family mortgage performance models, resulting in slight upward adjustments of default and loss severity rates, so that they are consistent with the benchmark loss experience.

For multifamily loans, the stress test also incorporates patterns of vacancy rates and rent growth rates that are consistent with the benchmark loss experience. In this manner, the stress test relates the performance of multifamily loans to the benchmark loss experience.

b. Interest Rates

Interest rates are a key component of the adverse economic conditions of the stress test. The 1992 Act specifies two scenarios for the ten-year Constant Maturity Treasury yield (CMT) during the stress period. During the first year of the stress period, the ten-year CMT:

- falls by the lesser of 600 basis points below the average yield during the nine months preceding the stress period, or 60 percent of the average yield during the three years preceding the stress period, but in no case to a yield less than 50 percent of the average yield during the preceding nine months (down-rate scenario); or
- rises by the greater of 600 basis points above the average yield during the nine months preceding the stress period, or 160 percent of the average yield during the three years preceding the stress period, but in no case to a yield greater than 175 percent of the average yield during the preceding nine months (up-rate scenario).

Changes to the ten-year CMT occur in twelve equal monthly increments from the starting point for the ten-year CMT, which is the average of the daily yields for the month preceding the stress period. The ten-year CMT stays at the new level for the remainder of the stress period.

The stress test establishes the Treasury yield curve for the stress period in relation to the prescribed movements in the ten-year CMT. In the down-rate scenario the yield curve is upward sloping during the last nine years of the stress period. In the up-rate scenario the Treasury yield curve is flat for the last nine years of the stress period, that is, yields of other maturities are equal to that of the ten-year CMT.

Because many different interest rates affect the Enterprises' business performance, the ten-year CMT and the Treasury yield curve are not the only interest rates that must be determined. For example, current mortgage rates affect rates of refinancing of existing mortgages; adjustable-rate mortgages periodically adjust according to various indexes; floating rate securities (assets and liabilities) and many rates associated with derivative contracts also adjust; and appropriate yields must be established for new debt and investments. Thus, the stress test requires rates and indexes other than Treasury yields for the entire period of the stress test. Some of the key rates that are estimated are the Federal Funds rate, London Inter-Bank Offered Rate (LIBOR), Federal Home Loan Bank 11th District Cost of Funds Index (COFI), and Enterprise borrowing rates. The stress test establishes these rates and indexes by using Autoregressive Integrated Moving Average (ARIMA) procedures—time-series estimation techniques—to estimate their values based on historical spreads to yields on Treasuries of comparable maturities. The procedures use historical information to estimate values during the stress period. To reflect the market impact of stress test economic conditions on the Enterprises' costs of borrowing, beginning in the second year of the stress period, 50 basis points are added to the computed yields for Enterprise debt securities.

c. Property Values

In determining the performance (rates of default, prepayment, and of loss severity) of an Enterprise's mortgages in the stress test, the 1992 Act requires OFHEO to consider seasoning, which the stress test captures by the use of current LTVs. The stress test calculates the numerator of current LTV, the current loan balance, based on the unpaid principal balance of the loan at the start of the stress period (starting UPB) and the amortization of the loan based on product type. Both the starting UPB and the loan product type are included in starting position data. The stress test uses the OFHEO HPI for the relevant Census division to track changes in property values—the denominator of current LTV—from the time of loan origination through to the start of the stress period. During the stress period, changes in property values are computed by applying the pattern of house price changes from the benchmark loss experience.

The HPI values represent average property value appreciation. In simulating mortgage performance, the stress test also captures variations from average house price movements, called dispersion. For this purpose, the stress test uses the mathematical measures of dispersion that OFHEO publishes along with the HPI.

For multifamily properties, property values are derived from estimates of a property's net operating income and capitalization rate multipliers. The stress test uses loan data together with rent growth rate and vacancy rate indexes to derive estimates of net operating income (NOI) for multifamily loans. Index values from the benchmark loss experience are applied to starting property values to derive current estimates of NOI for each month of the stress period. NOI is multiplied by a capitalization rate multiplier, reflecting current interest rates, to generate a property value. For example, if annual NOI is $200,000 and the capitalization rate multiplier is ten, the property value is $200,000 x 10, or $2,000,000. This value is the denominator for current LTV for multifamily loans.

When the ten-year CMT increases by more than 50 percent over the average yield during the nine months preceding the stress period, the stress test takes general price inflation into consideration. Adjustments are made to the house price and rent growth paths of the benchmark loss experience equal to the percentage change in the ten-year

CMT in excess of 50 percent.[35] For example, if the ten-year CMT increases by 60 percent, house price and rent growth rates increase by ten percent. The stress test phases in this increase in equal monthly increments during the last five years of the stress period.

4. Mortgage Performance

To simulate how mortgages fare during the adverse conditions of the stress period, the stress test uses models of mortgage performance, that project default, prepayment and loss severity rates. These models simulate the interaction of the patterns of house prices, residential rents, and vacancy rates of the benchmark loss experience, as well as stress test interest rates, and mortgage risk factors, in order to determine the performance of Enterprise loans for each month of the stress test. As described below in further detail, the models are based on the historical relationship of economic and mortgage risk factors to mortgage performance, as reflected in the historical experience of the Enterprises.

a. Loan Groups

Rather than simulating the behavior of individual loans, the models simulate the behavior of groups of loans with common risk characteristics. The default and prepayment models calculate the proportion of the outstanding principal balance for each loan group that defaults, prepays, or makes regularly scheduled loan payments in each of the 120 months of the stress period. Single family loans are aggregated into loan groups based on key risk and cash flow characteristics: product type[36] (e.g., 30-year fixed-rate, 15-year fixed-rate, adjustable rate, balloon), original LTV, interest rate, origination year, remittance cycle[37] and Census division. Multifamily loans are similarly aggregated by product type, original LTV, origination year, interest rate, and Census region, as well as by debt coverage ratio (DCR)[38] and program type. Program type distinguishes between loans purchased individually rather than as part of a pool, and loans subject to recourse or repurchase.[39] These distinctions are associated with different risk characteristics.

b. Single Family Default and Prepayment

The single family models are estimated using historical data on the performance of Enterprise loans through 1995. To simulate defaults and prepayments, the stress test uses a 30-year fixed-rate loan model, an adjustable-rate loan (ARM) model, and a third model for other products, such as 15-year loans and balloon loans. Each of the three single family models was separately estimated based on data for the relevant product types. Each includes a calibration adjustment, so that the results properly reflect a relationship to the benchmark loss experience, as described earlier.

All three single family models simulate defaults and prepayments based on values for interest rates and property values, as described above, and variables capturing the risk characteristics of loan groups. The variables described below are the factors used to determine the rates of default and/or prepayment for single family loan groups:

- Mortgage Age—Patterns of mortgage default and prepayment have characteristic age profiles; defaults and prepayments increase during the first years following loan origination, and then peak between the fourth and seventh years.
- Probability of Negative Borrower Equity—Borrowers whose current loan balance is greater than the current value of their mortgaged property (reflecting negative equity) are more likely to default than those with positive equity in their properties. The probability of negative borrower equity within a loan group is a function of (1) house price changes (based on the HPI), and amortization of loan principal, which together establish the average current LTV, and (2) the dispersion of actual house price changes around the HPI value. Thus, even when the average current LTV for a loan group is less than one (positive equity), some percentage of the loans will have LTVs greater than one (negative equity).
- Relative Spread—This variable is an important factor in determining whether a borrower will prepay. It reflects the value to a borrower of the option to prepay and refinance. The stress test uses the relative spread between the interest rate on a loan and the current market rate on loans as a proxy for the mortgage premium value.
- Burnout—The value for this variable reflects whether a borrower has passed up earlier opportunities to refinance at favorable interest rates. Such a borrower is less likely to prepay the current loan and refinance, and more likely to default in the future.
- Yield Curve Slope—This variable reflects the relationship between short and long term interest rates. The shape of the yield curve, which reflects expectations for the future levels of interest rates, influences a borrower's decision to prepay a mortgage. Depending on the slope of the yield curve and the type of loan a borrower may have incentives to refinance to a fixed-rate or an adjustable-rate mortgage.
- Original LTV—The LTV at the time of mortgage origination serves as a proxy for factors relating to the financial status of a borrower, which can affect the borrower's future ability to make loan payments. Higher original LTVs, which generally reflect fewer economic resources and greater willingness to take financial risk, increase the probability of default and lower the probability of prepayment. The reverse is true for lower original LTVs.
- Occupancy Status—The value of this variable reflects the higher probability of default of investor-owners compared to that of occupant-owners. The stress test applies the portfolio-wide ratio of investor-to occupant-owners to each loan group. The single family default and prepayment variables are listed in Table 1.

[35] The stress test computes the difference between the level of the ten-year CMT in the last nine years of the stress period and the level of the ten-year CMT if it had increased 50 percent. The difference in yield is compounded over a nine-year period to determine the cumulative percentage adjustment to house prices at the end of the stress period.

[36] The 1992 Act requires that the stress test take into account appropriate distinctions among mortgage product types, including single or multifamily, fixed or adjustable interest rates and the term of the loans.

[37] For sold loans, the remittance cycle governs the length of time an Enterprise holds payments remitted by the seller/servicer before passing them through to the security investor.

[38] DCR is the ratio of property net income to debt service.

[39] Recourse refers to the sharing of credit risk with a seller/servicer; repurchase refers to the obligation of a seller/servicer to repurchase 90-day delinquent loans.

Table 1. Single Family Default & Prepayment Variables

Variables for All Single Family Models	Single Family Default Variables	Single Family Prepayment Variables
Mortgage Age	X	X
Probability of Negative Equity	X	X
Relative Spread		X
Burnout	X	X
Yield Curve Slope		X
Original LTV	X	X
Occupancy Status	X	X

c. Multifamily Default and Prepayment

The stress test utilizes two multifamily default models and five multifamily prepayment models to capture the behavior of loans purchased under different programs and loans at different stages in their life cycles. The models were estimated using historical data through 1995 on the performance of Enterprise multifamily loans. The stress test applies one default model to loans purchased under cash programs (i.e., loans purchased individually), and another to loans purchased under negotiated programs (i.e., loans purchased as part of a pool), because the programs have different risk profiles. The prepayment models distinguish among product types: fully-amortizing fixed-rate, balloon, and ARM loans; those with yield maintenance provisions (i.e., restrictions and/or penalties for prepaying a loan during a specified period of time); and balloon loans which have reached their stated maturity, because these distinctions affect the probability of prepayment.

As with the models of single family mortgage performance, the multifamily models simulate the probability of default and prepayment based on stress test conditions and loan group risk characteristics. To account for specific risks associated with multifamily loans, these loans are grouped somewhat differently from single family loans. Thus, multifamily loans are also grouped by original DCR and program type. All of the multifamily default and prepayment models include interest rates, rent growth rates, and vacancy rates to characterize stress test conditions.

The following variables are factors in determining default and prepayment rates for multifamily loan groups:

- Mortgage Age—As with single family loans, the risk of default and prepayment on multifamily loans varies over their lives.
- Relative Spread—As with single family loans, this variable reflects the value to the borrower of the option to prepay and refinance.
- Program Restructuring—This variable captures the difference between Enterprises' management of their original multifamily programs and current, restructured programs. That difference affects the probability of default.
- Joint Probability of Negative Equity and Negative Cash Flow—This variable plays a role similar to that of the probability of negative equity for single family loans. However, negative equity is not a sufficient condition for multifamily loan default. Residential rental property owners tend not to default unless a property's net cash flow is negative as well. This variable captures the joint probability of both conditions.
- Balloon Maturity Risk—To reflect the added risk of default at the balloon maturity date, this variable gives extra weight to the joint probability of negative equity and negative cash flow in the year before a balloon mortgage matures.
- Default Type—This variable distinguishes between loans for which the Enterprise is responsible for foreclosure and property disposition and loans for which the seller/servicer is responsible for repurchasing if the loan becomes 90 days delinquent.
- Current LTV—This variable captures the incentive for borrowers to refinance in order to withdraw equity from their rental property.
- Probability of Qualifying for Refinance—This variable captures the effect on prepayments of a borrower who would not qualify for a new loan (one that lacks an LTV of 80 percent or less and a DCR of 120 percent or more).
- Pre-balloon Refinance Incentive—This variable gives extra weight to the relative spread in the two years prior to the balloon maturity. This captures the additional incentive to prepay balloon loans after the date the yield maintenance period ends, but before the balloon maturity date.
- Conventional Market Rate for Mortgages—Similar to the single family yield curve slope variable, this variable reflects the incentives for borrowers with ARMs to refinance into fixed-rate mortgages.
- Value of Depreciation Write-offs—This variable captures the effect on default rates of the value to a new purchaser of the tax benefits associated with multifamily property ownership.
- Years-To-Go in the Yield Maintenance Period—This variable captures the decreasing effect of yield maintenance provisions during the yield maintenance period. As the cost of the provision declines in the later years of the yield maintenance period, the disincentive to prepay declines.

Just like the single family default and prepayment models, the multifamily models produce, for each loan group for each month of the stress period, default and prepayment rates which are used in the cash flow components of the stress test. Tables 2 and 3 list the variables included in the multifamily default and prepayment models.

Table 2. Multifamily Default Model Variables

Variables	Cash Program Loans	Negotiated Program Loans
Mortgage Age	X	X
Program Restructuring	X	
Joint Probability of Negative Equity and Negative Cash Flow	X	X
Balloon Maturity Risk	X	X
Default Type		X
Value of Depreciation Write-offs	X	

Table 3. Multifamily Prepayment Model Variables

Variables	All Fixed-Rate Loans in Yield Maintenance	Fully-Amortizing Fixed-Rate Loans Out of Yield Maintenance	Balloon Loans Out of Yield Maintenance & Before Maturity	Fully-Amortizing ARMs & Balloon ARMs Before Maturity	All Balloon Loans at or After Maturity[1]
Mortgage ge	XA	X	X	X	
Relative Spread	X	X	X	X	
Current TV	IX	X	X	X	
Probability of Qualifying for Refinance					X
Pre-balloon Refinance Incentive			X		
Conventional Market Rate for Mortgages				X	
Years-to-Go in the Yield Maintenance Period	X				

[1] The stress test reflects that the Enterprises may not foreclose on multifamily balloon loans if borrowers can continue to make payments at the then-current market rate of interest.

d. Loss Severity

Credit losses are determined by multiplying default rates by loss severity rates and loan group balances. Loss severity rates are computed as of the date of default, and are expressed as a percentage of unpaid principal balance of the defaulting portion of a loan group.

In general, losses comprise three elements—loss of principal, transactions costs, and funding costs. Loss of principal is the amount of defaulting loan UPB, offset by the net proceeds of the sale (disposition) of the foreclosed property. Transactions costs include

expenses related to foreclosure, property holding and disposition expenses. Funding costs are the costs of funding non-earning assets—first the defaulted loans, and then the foreclosed properties prior to disposition (except in the case of sold loans, for which four months of interest at the passthrough rate replace four months of funding costs).

For single family loans the stress test uses an econometric model to project the net proceeds from the sale of foreclosed properties. The model is based on historical data on defaulted Enterprise loans, and reflects the relationship between LTV at the time of loan default (based on a loan's original LTV, loan amortization, and house price changes and dispersion), and proceeds of property disposition. Just as with models of single family default and prepayment, this model includes a calibration adjustment to make the results consistent with the benchmark loss experience.

For multifamily loans, sale proceeds are a fixed percentage of the defaulting UPB, based on historical experience.

For both single family and multifamily loans, transactions costs are fixed amounts based on historical averages computed from Enterprise data. Funding costs are captured in a discounting process described in the following paragraph.

Foreclosure, disposition and associated costs occur over a period of time. In order to calculate losses associated with a default as of the time of the default, the stress test calculates loss severity rates by discounting the different elements of loss back to the time of default, based on stress period interest rates. The discounting process also captures funding costs at appropriate interest rates. For single family loans, the timing of each element is based on averages for the benchmark loans; for multifamily loans it is based on the historical average for the Enterprises, using data through 1995.

The calculation of loss severity rates for two types of multifamily loans differs from the general approach. In the case of 90-day delinquent loans that are repurchased from Enterprise security pools by seller/servicers, rates are a fixed amount based on Enterprise historical experience representing claims submitted by seller/servicers for reimbursement by the Enterprise. In the case of FHA-insured loans, the stress test reflects no losses.

The loss severity component of the stress test generates loss severity rates for each loan group for each month of the stress period, which are used in the cash flow components of the stress test to calculate credit losses for the Enterprises.

5. Other Credit Factors

a. Mortgage Credit Enhancements

In many cases, at least a portion of Enterprise losses on defaulted loans is offset by some form of credit enhancement. Credit enhancements are contractual arrangements with third parties that reduce Enterprise losses on defaulted loans. By including the effect of mortgage credit enhancements, the stress test more realistically reflects Enterprise risks related to mortgage defaults and credit losses during the stress period.

The stress test captures many types of credit enhancements, with differing depths and methods of coverage, for both single family and multifamily loans. These credit enhancements include private mortgage insurance, recourse to seller/servicers, indemnification, pool insurance, cash accounts, spread accounts, collateral accounts, and specific risk-sharing agreements for certain multifamily loans.

The stress test divides mortgage credit enhancements into two categories. One category is credit enhancements that cover losses on certain loans up to a specified percentage of the loss incurred. This category includes private mortgage insurance, unlimited recourse, unlimited indemnification and, for certain multifamily loans, risk-sharing agreements. The other category includes those credit enhancements that cover all losses on a specified set of loans, up to a specified total amount. This category includes limited recourse, limited indemnification, pool insurance, cash accounts, spread accounts and collateral accounts.

The benefits of the first category of credit enhancements are incorporated in the calculation of monthly loss severity rates. The loss severity rate for a specific loan group is reduced based on the credit enhancements from the first category associated with loans in that group. The benefits of the second category of credit enhancements are taken into account directly in the cash flow calculations. The dollar balance of these credit enhancements is tracked and drawn down to offset the amount of credit losses for the covered loans in a loan group.

b. Counterparty and Other Credit Risk

In addition to mortgage credit quality, the stress test considers the creditworthiness of companies and financial instruments to which the Enterprises are exposed. These include most mortgage credit enhancement counterparties (e.g., private mortgage insurance companies and seller/servicers), privately issued and municipal securities held as assets, derivative counterparties, and securities guaranteed for private issuers.

For credit enhancement counterparties, securities held as assets, and interest rate contract counterparties, the stress test reduces—or applies "haircuts" to—the amounts due from these instruments or counterparties according to their level of risk. The level of risk is determined by public credit ratings which the stress test classifies into four categories: AAA, AA, A and BBB. When no rating is available, the instrument or counterparty is rated BBB. The cash flow components of the stress test phase in the haircuts monthly in equal increments until the total reduction listed in Table 4 is reached in the final month of the stress period.

Table 4. Final "Haircuts" for Other Sources of Credit Risk

Rating Classification	Derivative Counterparties[1]	All Other Counterparties & Instruments
AAA	2%	10%
AA	4%	20%
A	8%	40%
BBB	16%	80%

[1] Haircuts for derivative counterparties are substantially less than those for other counterparties and instruments since derivative counterparties' credit risk is mitigated by agreements to post collateral, including provisions for frequent marks to market.

The stress test also applies haircuts to reflect the impact of impairment of counterparties for derivative contracts hedging foreign currency denominated debt. Since counterparty impairment would reduce the effectiveness of a hedge, the stress test reflects the associated risk by increasing the amounts owed by an Enterprise by the haircut percentage.

c. Other Off-Balance Sheet Guarantees

In addition to guaranteeing mortgage-backed securities they issue as part of their main business, the Enterprises occasionally provide guarantees for other securities. The guarantees provided by the Enterprises enhance the liquidity and appeal of these securities in the marketplace. These securities, notably single family and multifamily whole loan REMIC securities[40] and mortgage tax-exempt multifamily housing bonds, represent a small part of the Enterprises' business and have a significant level of credit enhancement that protects the Enterprises from losses. The performance of these securities is not explicitly modeled in the stress test. As a proxy for the present value of net losses on these guarantees during the stress test, the outstanding balance of these instruments at the beginning of the stress period is multiplied by 45 basis points. The resulting amount is subtracted from the lowest discounted monthly capital balance when calculating the risk-based capital requirement.

[40] Real Estate Mortgage Investment Conduit (REMIC) securities are multiclass mortgage passthrough securities. The classes of a REMIC security can take on a wide variety of attributes with regard to payment of principal and interest, cash flow timing (un)certainty, and maturity, among others.

6. Cash Flows

For each month of the stress period, stress test cash flow components apply projected default, prepayment, and loss severity rates to loan group balances to produce mortgage cash flows. The cash flow components also reduce projected mortgage losses resulting from offsetting credit enhancements that are not accounted for in loss severity calculations. In addition, the cash flow components calculate cash flows for securities that the Enterprises hold as assets, or have issued as liabilities. They generate cash flows for derivative instruments like interest rate swaps, caps, and floors; and they apply the haircuts to cash flows to reflect the credit risk of securities and counterparties other than mortgage borrowers. Projected cash flows are the principal inputs in the creation of monthly financial statements during the stress period, which are, in turn, the basis for the calculation of the risk-based capital requirement.

Cash flows are generated for each single family and multifamily loan group. For retained loans, cash flows consist of scheduled principal, prepaid principal, defaulted principal, default losses, and interest. For sold loans, cash flows consist of credit losses, guarantee fee income, and float income.

Because losses on sold loans are absorbed by the Enterprises and are not passed through to security holders, no credit losses are reflected in cash flows calculated for Enterprise-issued MBS held as investments (including those issued by an Enterprise and later repurchased). The credit risk is borne by the MBS issuer rather than the MBS investor, so the credit risk on MBS has already been taken into account in the credit risk of sold loans. Thus, cash flows for single class Enterprise-issued MBS held as investments consist only of principal and interest payments. Cashflows for private label securities consist of principal and interest payments and credit losses.[41] Principal payments are calculated by applying default and prepayment rates that are appropriate for the loans underlying the MBS (amounts of defaulted principal are assumed to be passed through to investors, as well as normal amortization). Interest is computed by multiplying the security principal balance by the coupon rate.

Multi-class mortgage securities such as REMICs and strips are treated in the same manner as single class MBS. The stress test generates cash flows for the underlying collateral, usually single class MBS, and applies the rules of the particular multi-class security that govern how these cash flows are directed to determine cash flows of the specific securities held by an Enterprise. In generating cash flows for mortgage-linked derivative contracts, where the notional amount of the contract is based on the declining principal balance of specified MBS, the stress test applies the terms of each contract and tracks the appropriate declining balances. The stress test generates cash flows for mortgage revenue bonds by treating the bonds like single class MBS backed by 30-year, fixed-rate single family mortgages maturing on each bond's stated maturity date.

For non-mortgage investments, outstanding debt securities and liability-linked derivative contracts, payments of principal and interest are calculated for each instrument based on its

[41] See section II. A. 5. c., Other Off-Balance Sheet Guarantees for a description of how credit losses for private label securities are calculated.

characteristics by applying the appropriate interest rates and principal payment rules. For asset-backed securities, one of two collateral prepayment speeds is applied, depending on the stress test interest rate scenario. The stress test computes cash flows for debt securities and liability-linked derivatives according to the rules and structure of each instrument.

7. Enterprise Operations & Taxes

The stress test simulates the income taxes, operating expenses, issuance of new debt or purchase of new investments, exercise of options to retire debt early or cancel derivative contracts, and payment of dividends by the Enterprises. The stress test computes Federal income taxes using an effective tax rate of 30 percent. Estimated income tax is paid by the Enterprises quarterly.

An Enterprise's operating expenses decline in proportion to the change in the size of its combined mortgage portfolio of retained and sold loans during the stress period. The baseline level of monthly operating expenses at the start of the stress period is equal to one-third of operating expenses reported by the Enterprise for the quarter preceding the stress period.

When necessary, the stress test simulates the issuance of new debt or purchase of new investments by the Enterprises. New debt is issued in months when there is a shortfall of cash. All debt issued during the stress period is six-month discount notes, at Enterprise borrowing rates projected from the estimated yield curve. Excess cash is invested in one-month securities bearing the six-month Treasury yield.

For each month during the stress period that a security is subject to early redemption (call) or a derivative contract is subject to cancellation, the stress test calculates the effective remaining yield-to-maturity [42] of that instrument and compares it to the yield of a replacement security, given current stress period interest rates. If the yield is more than 50 basis points below the cost of the existing instrument, the call or cancellation option is exercised.

Capital distributions are also made during the stress period. If an Enterprise's capital exceeds the minimum capital requirement in any quarter, dividends on preferred stock are paid, unless payment would reduce the Enterprise's capital to an amount below the minimum requirement. Common stock dividends are paid only in the first four quarters of the stress period (based on an estimate of how long capital would remain above the risk-based requirement), and only if capital remains above the minimum capital requirement before and after the dividends are paid. The amount paid is directly related to the earnings trend of the Enterprise. If the trend is positive, the dividend payout ratio is the same as the average of the four quarters preceding the stress test. Otherwise, dividends are based on the dollar amount per share paid in the last quarter preceding the stress test. The stress test does not provide for any other capital distributions, such as repurchases of common stock.

8. Financial Reporting

To the extent applicable, the stress test makes use of Generally Accepted Accounting Principles (GAAP). The cash flows from the financial instruments on the books of the Enterprises are the principal basis for the creation of pro forma financial statements that capture an Enterprise's performance over the stress period. In addition, the stress test accounts for numerous non-cash items on the Enterprises' balance sheets, such as receivables and unamortized and deferred balances. The balance sheets show the monthly total capital amount for each Enterprise, which is used in the final calculation of risk-based capital.

9. Calculation of the Risk-based Capital Requirement

The stress test determines the amount of capital that an Enterprise must hold at the start date in order to maintain positive capital throughout the ten-year stress period (stress test capital). Once stress test capital has been calculated, an additional 30 percent of that amount is added to protect against management and operations risk. This total is the risk-based capital requirement.

Using the financial statements generated by the stress test, the capital balance for each month is discounted back to the start of the stress period. This is done for both the up-rate and down-rate scenarios. The lowest discounted monthly capital balance is then decreased as described above to account for securities that are guaranteed by the Enterprises which are not explicitly modeled (other off-balance sheet guarantees). This lowest discounted monthly balance, if positive, represents a surplus of initial capital, that is, capital that was not "used" during the stress period. If negative, it represents a deficit of initial capital. The lowest discounted monthly balance is then subtracted from the Enterprise's initial capital. The resulting amount is the smallest amount of starting capital required to maintain positive capital throughout the stress period.

For example, if an Enterprise holds starting capital of $10 billion and the lowest discounted monthly balance is $1 billion (representing a positive capital balance even in the worst month of the stress period), then the amount of starting capital necessary to maintain positive capital throughout the stress period is $9.0 billion. If the lowest discounted monthly balance is −$1 billion (representing a negative capital balance in the worst month), the necessary starting capital is $11.0 billion.

In the final step, necessary starting capital is multiplied by 1.3 to complete the calculation of the risk-based capital requirement required by the 1992 Act.

B. Sensitivity of Capital Requirement to Risk

An Enterprise's risk-based capital requirement under this proposed regulation is sensitive to a wide variety of factors that affect Enterprise risk. The existing minimum capital requirement depends almost entirely on the size of an Enterprise's two principal businesses: MBS guarantees and leveraged investments in mortgages and in MBS. In contrast, the risk-based capital requirement depends not only on the outstanding volumes of an Enterprise's guarantees and assets, but also on the degree of risk taken on by the Enterprise in connection with these businesses. Thus, the risk-based requirement is sensitive to the characteristics of mortgages and mortgage guarantees that affect risk, credit enhancements for those mortgages, the asset/liability risk management strategies of the Enterprise, the value of properties collateralizing the mortgages, and recent interest rate levels.

In designing the stress test on which the risk-based capital requirement is based, OFHEO sought to incorporate all significant sources of credit and interest rate risk. OFHEO further sought to design the stress test so that differences in specific risk factors affect the risk-based capital requirement in amounts commensurate with the difference in risk. To quantify the marginal effects of changes in risk on the capital required for each scenario (required capital), OFHEO conducted a number of sensitivity tests. OFHEO first computed the risk-based capital requirement for each Enterprise in each interest rate

[42] Yields are calculated based on the outstanding principal balances for securities and notional amounts for derivative contracts.

scenario for June 30, 1997.[43] These results serve as a base case. OFHEO then made a series of small adjustments to each Enterprise's risk positions and compared the results for all four Enterprise-scenario combinations with the relevant base case results. The differences in results provide a measure of the incremental changes in required capital (which may be positive or negative) caused by the risk adjustment.

Section II. B.1., MBS Guarantees (Sold Loans), below presents the results of sensitivity tests related to an Enterprise's guarantee business. In each test, OFHEO simulated the effects on required capital of a hypothetical addition to each Enterprise's outstanding MBS guarantees (sold loans). The simulation results show, in both an absolute and relative sense, how different characteristics of sold loans affect required capital. Section II. B. 2., Commitments, illustrates how required capital would be affected if each Enterprise had had a larger volume of outstanding commitments. Section II. B. 3., Assets and Liabilities, discusses the effects of hypothetical additions of retained loans accompanied by additions of debt. Section II. B. 4., Administrative Costs, discusses how risk-based capital would be affected by higher administrative (operating) expenses. Finally, Section II. B. 5., External Economic Conditions, discusses how risk-based capital would be affected had house prices or interest rates behaved differently than they actually did in the period just preceding the starting date of the stress test.

Sensitivity test results differ between the two Enterprises for two reasons. First, the risk adjustments made to the two Enterprises' positions were not precisely the same. For example, in sensitivity tests involving changes in outstanding sold loan volumes, each Enterprise's additional sold loans reflect that Enterprise's typical security remittance cycles, and remittance cycles affect the risk characteristics of sold loans. Second, the incremental effects on required capital of any change in an Enterprises's risk positions are affected by the Enterprise's individual circumstances and policies. Two examples are the Enterprise's projected Federal income tax situation during the stress period and its dividend policies. During portions of the stress period in which an Enterprise is paying taxes or receiving refunds, financial gains and losses are shared with the government because changes in income cause changes in taxes. Conversely, during portions of the stress period in which an Enterprise has exhausted tax carrybacks, the full benefit or cost of a change in income is experienced by the Enterprise. In the base case, both Enterprises exhaust their tax carrybacks mid-way through the stress period in the down-rate scenario. In the up-rate scenarios, Fannie Mae does the same, but Freddie Mac either pays taxes or receives refunds throughout the stress period. An Enterprise's tax situation during the stress period depends primarily on the Enterprise's risk exposures. The longer an Enterprise continues to be profitable in the stress environment, the longer it is affected by taxes.

Differences in recent dividend policies can cause small differences in the incremental capital associated with specific changes in risk because common stock dividends during the first year of the stress period depend on recent dividend payouts. Differences in dividend policies, therefore, can lead to differences in the amount of earnings changes that are shared with stockholders.

Results are shown for both interest rate scenarios, even though only one (the one that results in the highest required capital) can be binding at any specific time. For June 1997, the up-rate scenario resulted in higher required capital for Fannie Mae, while the down-rate scenario was more adverse for Freddie Mac. However, the relative adversity of the two scenarios may change over time for either Enterprise depending on business strategies and market conditions.

In the tables of this section, the phrase "incremental capital" is used to mean the change in the amount of required capital in a particular scenario accompanying a small change in the overall risk profile of an Enterprise. Several considerations affect appropriate interpretation of these numbers. First, the incremental capital percentages shown in the tables are not fixed. As discussed below in section II. B. 5. c., Sensitivity to Risk Characteristics in Different Economic Environments, future business strategies and economic conditions may alter the required capital sensitivities from those of June 1997, which are presented here. Furthermore, bigger or smaller changes in risk may not have a proportional effect on capital. A $20 billion increase in a particular group of loan guarantees may not have exactly twice the effect on required capital as a $10 billion increase in the same group of guarantees.

Second, in anticipating the effect on required capital of a change in any risk factor, an Enterprise likely will be concerned not only with the immediate effect, but also with the longer term effect. For example, in considering the capital implications of making additional mortgage guarantees, the incremental effects on required capital of the guarantees at all future dates that the loans continue to be outstanding are relevant. In this case, an important consideration is that the incremental effects of mortgage guarantees generally diminish over time.

Third, the incremental capital percentages do not determine an amount of capital that must be added in order to accept a specific increase in risk. As discussed below in Section II. C. 2., Enterprise Adjustments to Meet the Proposed Standard, it may often be less costly to increase hedges of other risks than to raise equity funds in response to an increase in risks.

1. MBS Guarantees (Sold Loans)

The Enterprises have two principal lines of business. They function both as guarantors of mortgage-backed securities and as leveraged investors in mortgages and mortgage-backed securities. As guarantors, the Enterprises receive principal and interest payments on home mortgages, which they pass through to security investors, minus a share of the interest payments, which they retain as a guarantee fee. Because of differences in the timing of their receipt of funds and payments to investors, they also earn float income (which may be positive or negative). In return, they bear the risk of loss if a borrower defaults, and they incur additional administrative expenses.

The stress test projects the flows of income and expenses associated with loan guarantees based on the characteristics of the mortgages and the economic circumstances of the stress period. The resulting net cash inflows or outflows are directly reflected in the Enterprise's borrowing or investing volumes during the stress period. The interest paid or received on the new debt issues or investments that are attributable to the guarantees have further effects on income, borrowing, and investing volumes. Income, in turn, affects taxes, dividends, capital, and (ultimately) required capital.

OFHEO examined the implications for required capital of risk factors associated with sold loans as follows. After computing the capital required under this proposed rule for data reflecting the Enterprises' books of business and the accompanying economic circumstances as of June 30, 1997, OFHEO added a quantity ($10 billion) of sold loans that embodied the specific risk characteristics under

[43] The results are discussed in section II. C., Implications of the Proposed Rule.

examination. The capital required for each scenario was then recomputed and compared with the capital required for the same scenario before loans were added. The difference is the incremental capital required for the additional sold loans in that scenario. The results are expressed as a percent of the volume of sold loans added.

Additional sold loans would normally be accompanied by additional administrative expenses. In computing required capital for books-of-business that included additional sold loans, OFHEO estimated the additional costs by increasing administrative expense for each Enterprise in proportion to the increase in that Enterprise's overall (retained plus sold loan) portfolio. Those costs amounted to about six basis points (0.06 percent) per year on the new sold loans for each Enterprise. Different assumptions about administrative costs would affect the results; Section II. B. 4., Administrative Costs, discusses the effects on required capital of differences in administrative costs.

Section II. B. 1. a., Loans with Mixed Characteristics Reflecting Enterprise Portfolios, discusses a simulation incorporating a general increase in sold loans embodying the same mix of characteristics as that found in each Enterprise's sold loan portfolio in June 1997 and describes how the increase affects various types of income and expense over the course of the stress period. Section II. B. 1. b., Loans with Specific Identical Characteristics, discusses a series of simulations, each incorporating an increase in sold loans with specific characteristics.

a. Loans with Mixed Characteristics Reflecting Enterprise Portfolios

The first simulation (Simulation 1) was designed to examine the incremental effects of a general increase in each Enterprise's sold loan portfolio (MBS guarantees). The volume of each loan group (comprising loans with a common set of risk factors) in each Enterprise's sold loan portfolio as of June 1997 was increased proportionally by a factor that resulted in a total of $10 billion of additional sold loans. The results indicate the effects on risk-based capital of a general expansion of an Enterprise's MBS guarantee business. Alternatively, they can be viewed as the average effect on required capital of sold loans, weighted by each Enterprise's mix of outstanding sold loan business in June 1997. The results, expressed as a percent of the increase in sold loans, are summarized in Table 5.

Table 5. Incremental Capital for a General Increase in Sold Loans (as a percent of additional sold loans)

	Up-Rate Scenario		Down-Rate Scenario	
Simulation	Fannie Mae	Freddie Mac	Fannie Mae	Freddie Mac
1	.12%	−.09%	.83%	.89%

In the up-rate scenario, a general increase in sold loans has only a small effect on required capital for either Enterprise. For Freddie Mac, sold loans are, on balance, a small source of strength. That is, income generated over the course of the stress period by sold loans (principally guarantee fees and float) exceeds related expenses (principally loan losses and administrative expense). The reverse is true for Fannie Mae. In the down-rate scenario, the incremental capital required for these sold loan mixes is near 0.85 percent of the increase in guarantees for both Enterprises. On average, the results for the two scenarios are similar to the existing minimum capital ratios for sold loans of 0.45 percent.

Table 6 illustrates the effects on specific income and expense categories of the additional sold loans in Simulation 1, and how these effects translate into changes in capital requirements.

Table 6. Sources and Computation of Incremental Capital for a General Increase in Sold Loans[1] (ten-year cumulative changes as a percent of additional sold loans)

	Up-Rate Scenario		Down-Rate Scenario	
	Fannie Mae	Freddie Mac	Fannie Mae	Freddie Mac
Credit Losses	1.87	1.63	1.39	1.25
Administrative Expense	.40	.40	.15	.15
Tax Paid	−.13	.07	−.08	−.16
Dividends Paid	.00	.01	.00	.00
Less: Guarantee Fees	1.77	1.76	.67	.68
Float Income	.22	.35	.06	−.22
Net Interest Income (excluding float)	−.11	.16	−.11	−.13
Total Change in Capital	.26	−.16	.84	.91
Cumulative Discount Factor	2.71	2.27	1.31	1.33
Discounted Total	.10	−.07	.64	.68
Discounted Total x 1.3	.12	−.09	.83	.89

[1] Computations based on unrounded data.

Guarantee fees and *administrative expense* depend on the volume of loans outstanding. Thus, they are sensitive to the projected liquidation rates (the sum of prepayment, default, and amortization rates) of the additional sold loans. In the down-rate scenario (with a ten-year constant maturity treasury yield of 3.2 percent during the last nine years of the stress period), loans prepay rapidly, while in the up-rate scenario (with all treasury yields at 11.4 percent), loans prepay slowly. As a result, in the up-rate scenario, guarantee fee income and administrative expense are roughly 2⅔ times as great as they are in the down-rate scenario.

Credit losses (charge-offs) depend on the credit risk characteristics of the additional sold loans. They are also larger in the up-rate scenario than in the down-rate scenario because loans remain outstanding longer, and therefore, at risk of default. Loss severity rates also are higher in the up-rate scenario because the interest carrying cost on foreclosed real estate is higher. These differences between the two scenarios are moderated by somewhat more favorable house price behavior and by better average loan quality when interest rates are high. Loan quality is poorer when interest rates are low because the better quality loans are projected to prepay much faster. Because of these offsetting influences, credit losses in the up-rate scenario are only 1⅓ times as great as they are in the down-rate scenario. Freddie Mac's credit losses are about ten percent lower than Fannie Mae's, reflecting a slightly less risky mix of loan characteristics.

Float income depends on security remittance cycles, interest rates, and loan liquidation rates. This source of income on the additional sold loans is higher, for both Enterprises, in the scenario with higher interest rates because of lower liquidation rates and higher earnings ratios on positive float balances. The difference is much more pronounced for Freddie Mac because of differences in security remittance cycles. Freddie Mac holds prepayment funds for a longer period than Fannie Mae, earning a market rate of interest during the extra time, while accruing liabilities to investors at the security coupon rate. When interest rates rise, that provides extra income, but when rates fall, net losses accrue.

Net interest income is affected because net cash inflows and outflows associated with the other income and expense categories lead to changes in borrowing or investing. The effects are small in the up-rate scenario because the net flows caused by other factors are small. The effects also are small in the down-rate scenario, even though the net cash flows are much larger, because the interest rates associated with new borrowing or investing are low.

Taxes reduce the effects of all income changes by 30 percent as long as an Enterprise is paying taxes or receiving tax refunds. Because both Enterprises, in the decreasing interest rate environment, and Fannie Mae, in the increasing rate environment, exhaust their tax carrybacks mid-way through the stress period, the tax effects vary depending on the timing of income flows during the stress period. Freddie Mac, however, performs well in the up-rate scenario, given its June 1997 risk positions, and pays taxes or receives refunds throughout the stress period.

Dividends on common stock can be affected by additional sold loans only through changes in income during the first year of the stress period because the stress test specifies that common stock dividends are paid only during that year. Common stock dividends are little affected in this simulation because income changes during the first year are small and because dividends in the base case simulations for Fannie Mae in both scenarios, and Freddie Mac in the down-rate scenario, are insensitive to income. In those cases, dividends are set at their absolute level in the quarter preceding the stress test because of income declines during the first year. Preferred stock dividends are unaffected in this simulation because the changes in capital are insufficient to affect whether either Enterprise meets its minimum capital requirement during the stress period.

The *total change in capital* is the sum (using the appropriate signs) of the effects measured through all of the above income and expense categories. The sum equals the net decline in capital at the end of the stress period (as a percent of the increase in sold loans). The capital position in the final month of the stress period is the lowest during the stress period for both Enterprises in both scenarios for the June 1997 base case, so it is the basis for the required capital calculations in all of the simulations discussed in this section.

The *cumulative discount factor* is based on after-tax borrowing or investing interest rates. Thus, discount factors are relatively high in the up-rate scenario. Freddie Mac's discount factor is lower than Fannie Mae's in that scenario because taxes reduce Freddie Mac's after-tax interest rates in the second half of the stress period, but do not reduce Fannie Mae's. The *discounted total* shows the effects of the additional sold loans on the amount of capital needed to survive the stress test. This amount, when multiplied by 1.3 to include the additional amount for management and operations risks, shows the effects on required capital of the additional sold loans.

b. Loans with Specific Identical Characteristics

Unlike the first simulation, which showed the combined effects of each Enterprise's existing mix of risk factors, the following simulations focus on the effects of changes in specific risk factors. In each of the following cases, the sold portfolio is increased as before, but all of the additional loans are identical. The results show how much required capital would be affected by additional sold loans with specific risk characteristics and guarantee fees or, alternatively, how much loans with such characteristics and fees contribute to required capital. The assumptions about guarantee fees have a significant effect on the results. Guarantee fees are generally the same in most of these simulations in order to focus the results on the incremental capital effects of specific risk factors. In practice, though, the Enterprises typically vary the guarantee fees charged to a loan seller depending on the mix of loans they receive from that seller. Thus, the Enterprises implicitly charge higher fees for riskier loans. It would be misleading to characterize these simulation results, which are based on constant guarantee fees, as indicating the relative capital implications of loans in different risk groups as typically acquired by the Enterprises, without making an appropriate adjustment for typical differences in effective guarantee fees. Making such an adjustment in the model would be difficult, however, because the Enterprises do not generally make explicit differences in guarantee fees for individual loans with differences in risk. The same guarantee fee typically applies to all loans in a pool of loans and may be affected by the mix of loans in the pool.

Also, Enterprise guarantee fees remain constant over the life of the loan, but the risk of the loan generally declines as the loan seasons. A majority of the simulations in this subsection involve new loans. The comparative results of such simulations provide a measure of the relative effects on required capital of different risk factors, but these results do not, by themselves, indicate the expected effects on required capital of the loans over their lifetimes. Additional simulations show the effects of loan seasoning on required capital.

In these simulations, securities were assumed to have been sold at par with coupons equal to the contract interest rates, less the servicing and guarantee margins. Servicing margins are 30 basis points. For Fannie Mae, the loans were assumed to be securitized under their standard programs with seven days of float on passthrough payments. For Freddie Mac, their "45-day" security rules were assumed in float calculations. These securities have negative three days of float on scheduled principal and interest (payments are made to investors before payments are received from servicers) and an average of 38 days of float on prepayments. (In Simulation 1, both 45-day and 75-day rules were used for Freddie Mac, based on the mix of securities outstanding in June 1997.)

(i) Differences in Guarantee Fees

To illustrate the effect on required capital of guarantee fees, two simulations were performed that were identical except for guarantee fees. In Simulations 2 and 3, shown in Table 7, the additional sold loans were all newly originated, fixed-rate mortgages (FRMs) in the West South Central Census Division (Texas, Oklahoma, Louisiana, and Arkansas); with 30-year terms, 7.5 percent contract interest rates, and 80 percent loan-to-value ratios (LTVs). In Simulation 2, guarantee fees were set at 23 basis points, which is roughly the overall average rate for the two Enterprises, but not necessarily for loans with these characteristics. This simulation is used as a reference for comparison in Tables 8, 11, 12, 16, 17, 19, and 20. The average rate was used in most of the simulations involving additional single family loans for convenience and to isolate the differential effects of other risk factors. In Simulation 3, however, the guarantee fee was reduced to 18 basis points to isolate the effects of different guarantee fees. The differences in the results for Simulations 2 and 3 can be used to roughly estimate how the results of other simulations might have been affected by other guarantee fee assumptions.

Table 7. Incremental Capital for New Sold Loans with Differing Guarantee Fees (as a percent of additional sold loans)

		Up-Rate Scenario		Down-Rate Scenario	
Simulation	Guarantee Fee	Fannie Mae	Freddie Mac	Fannie Mae	Freddie Mac
2	23 b.p.	1.05%	.95%	1.54%	1.91%
3	18 b.p.	1.35%	1.19%	1.72%	2.05%

The incremental capital needed for loans in both of these simulations is substantially higher than that needed for loans with the mix of characteristics in Simulation 1. This result occurs mainly because new 30-year FRMs have nearly double the credit losses in the up-rate scenario and 50 percent more in the down-rate scenario. For Freddie Mac, an additional reason is that securities with the 45-day remittance cycle assumed in Simulations 2 and 3 produce substantially less float income in the up-rate scenario and more negative float income in the down-rate scenario than the average guarantee mix in Simulation 1 did. Freddie Mac's capital need in the up-rate scenario is reduced relative to Fannie Mae's because of tax effects in the second half of the stress period.

The effect of lower guarantee fees is to increase required capital in both scenarios. A five basis-point reduction in guarantee fees raises required capital by 14 to 18 basis points in the down-rate scenario. The difference in incremental capital is twice that amount in the up-rate scenario because the loans survive longer, owing to significantly fewer prepayments, and so the change in the fee rate applies to a larger volume of outstanding loans during the stress period.

(ii) Differences in Loan Age, With Slow and Steady House Price Inflation

Seasoned loans (those not recently originated) have different risk characteristics than new loans because loans have different propensities to default and prepay at different ages and because the houses collateralizing seasoned loans have experienced changes in value. Changes in house value alter the probability of negative borrower equity, a key factor influencing default behavior.

In Table 8, the results of Simulations 4–7, along with Simulation 2, which is repeated here, show the effects of age on risk for loans originated in the West South Central Census Division. Houses in that area of the country generally have experienced price appreciation near the national average in recent years. Average annual appreciation over the eight years ending in the second quarter of 1997 was 3.0 percent. Table 9 shows the cumulative average appreciation for houses collateralizing loans of different ages.

Table 8. Incremental Capital for Loans of Differing Age with Slow and Steady House Price Inflation (as a percent of additional sold loans)

		Up-Rate Scenario		Down-Rate Scenario	
Simulation	Age	Fannie Mae	Freddie Mac	Fannie Mae	Freddie Mac
2	0 years	1.05%	.95%	1.54%	1.91%
4	2 years	.76%	.74%	1.38%	1.53%
5	4 years	.26%	.34%	.83%	1.09%
6	6 years	−.29%	−.07%	.56%	.79%
7	8 years	−.64%	−.37%	.21%	.43%

All of the simulations reported in Table 8 are identical, except for the age of the sold loans underlying the additional guarantees. Given the steady increase in house prices preceding the starting point of the simulations, loans are less likely to default over the course of the stress period the older they are at the beginning of the period. Cumulative credit losses for loans made eight years before the start of the stress period are only about ⅕ as great as for new loans in the up-rate scenario, and about ⅖ as great in the down-rate scenario. In addition, loans made more than four years earlier have lower liquidation rates than new loans, providing a larger stream of guarantee fees. Consequently, guarantees of older loans cause much smaller increases in capital requirements in the down-rate scenario and actually reduce capital required in the up-rate scenario.

Table 9. Cumulative Average House Price Appreciation Since Origination for Loans in the West South Central Division, 1997 Q2

Loan Age	Change in HPI
2 years	6.4%
4 years	13.7%
6 years	21.4%
8 years	26.8%

(iii) Differences in Past House Price Appreciation

The benefits of loan age in reducing risk can be substantially increased or reversed by differences in house price appreciation. Table 10 shows results for simulations on four-and eight-year-old loans from different geographic areas. Simulations 8 and 9 are the same as Simulation 5, except the loans in Simulation 8 were made on properties in the Mountain Census Division, where house values rose sharply after the loans were originated, and loans in Simulation 9 were made in the Pacific Census Division, where house values were stagnant. Similarly, Simulations 10 and 11 are the same as Simulation 7, except for the Census division.

Table 10. Incremental Capital for Seasoned Loans in Differently Performing Housing Markets (as a percent of additional sold loans)

			Up-Rate Scenario		Down-Rate Scenario	
Simulation	Census Division	Cumulative House Price Appreciation Since Origination	Fannie Mae	Freddie Mac	Fannie Mae	Freddie Mac
4-Yr. old loans						
5	W.S.Central	13.7%	.26%	.34%	.83%	1.09%
8	Mountain	34.5%	−.38%	−.21%	.28%	.56%
9	Pacific	4.3%	.85%	.88%	1.65%	1.73%
8-Yr.old loans						
7	W.S. Central	26.8%	−.64%	−.37%	.21%	.43%
10	Mountain	60.6%	−.72%	−.44%	.05%	.30%
11	Pacific	16.0%	−.56%	−.30%	.32%	.53%

For four-year-old loans, differences in credit losses are substantial and account for almost all differences in results. In both scenarios, credit losses are more than 2½ times as great in the Pacific Census Division as they are in the Mountain Census Division. However, the effects of different previous changes in house prices ultimately diminish. For eight-year old loans, charge-offs are only about ⅓ higher in the Pacific Census Division, despite increasing disparity in house price appreciation. Furthermore, that smaller proportional increase in charge-offs is applied to a smaller base because charge-offs are much lower for eight-year old loans than for four-year old loans in all three Census divisions.

(iv) Differences in Loan Age and Loan-to-Value Ratio

The higher the original loan-to-value ratio of a loan, the lower the borrower equity. Thus, the more likely it is to default and less likely it is to prepay. The effects of differences in original LTV, however, generally diminish with age. Table 11 shows the results for different LTV-age combinations for 30-year FRMs in the West South Central Division.

Table 11. Incremental Capital for Loans with Differing Ages and LTVs (as a percent of additional sold loans)

			Up-Rate Scenario		Down-Rate Scenario	
Simulation	Age	LTV	Fannie Mae	Freddie Mac	Fannie Mae	Freddie Mac
12	0 Years	50%	−1.13%	−.85%	−.64%	−.05%
2	0 Years	80%	1.05%	.95%	1.54%	1.91%
13	0 Years	95%	3.17%	2.84%	6.04%	6.02%
14	4 Years	50%	−1.08%	−.78%	−.52%	.02%
5	4 Years	80%	.26%	.34%	.83%	1.09%
15	4 Years	95%	1.33%	1.32%	2.19%	2.20%

In these simulations, the 95 percent LTV loans are assumed to be covered by private mortgage insurance with 30 percent coverage, the current Enterprise standard, provided by a double-A rated firm. Even with the insurance coverage, however, high LTV loans are much riskier than low LTV loans. Not only are high LTV loans more likely to default at any time during the stress period, but they are also less likely to prepay, especially in the down-rate scenario. Thus, they are exposed to default risk over a longer amount of time.

For newly originated loans, the results are particularly striking. In the up-rate scenario, credit losses on 95 percent LTV loans are very much higher than they are for 50 percent LTV loans. In the down-rate scenario, the difference is even greater. These differences in performance between high and low LTV loans are much bigger than would be expected in normal times. But the very poor credit conditions in the stress test environment have a disproportionate effect on the more vulnerable high LTV loans.

For seasoned loans, the effects of LTV are muted. Seasoned loans with 50 percent LTVs reduce required capital less than comparable new loans. Though credit losses are lower than those of newly originated loans, the difference is minor, as credit losses are very low in both cases. More importantly, the older loans amortize faster, reducing guarantee fees significantly. For loans with 95 percent LTVs, the difference in credit losses between seasoned and new loans is substantial. With a 13.7 percent average house price appreciation since origination, these seasoned 95 percent LTV loans perform only a little bit worse than newly originated 80 percent LTV loans.

(v) Differences in Product Type and LTV Ratio

The simulations shown in Table 12 show the relative effects of three different product types (30-year FRMs, 15-year FRMs, and adjustable-rate mortgages) with low, medium, and high LTVs). All are newly originated loans. To isolate the effects of loan type, the 7.5 percent contract loan rate was retained for the 15-year FRMs and is the initial rate on the adjustable-rate mortgages (ARMs). The ARMs adjust annually to 2.75 percentage points above the one-year constant maturity Treasury yield, with a two percentage point annual adjustment cap and a five percentage point lifetime cap.

Table 12. Incremental Capital for Differing Product Types and LTV Ratios (as a percent of additional sold loans)

			Up-Rate Scenario		Down-Rate Scenario	
Simulation	Product Type	LTV	Fannie Mae	Freddie Mac	Fannie Mae	Freddie Mac
12	30 YR. FRM	50%	−1.13%	−.85%	−.64%	−.05%
2	30 YR. FRM	80%	1.05%	.95%	1.54%	1.91%
13	30 YR. FRM	95%	3.17%	2.84%	6.04%	6.02%
16	15 YR. FRM	50%	−1.08%	−.76%	−.68%	−.12%
17	15 YR. FRM	80%	−.84%	−.58%	−.37%	.05%
18	15 YR. FRM	95%	−.57%	−.32%	.00%	.38%
19	ARM	50%	−1.10%	−.69%	−.67%	−.16%
20	ARM	80%	1.96%	1.89%	1.19%	1.44%
21	ARM	95%	8.94%	7.95%	8.23%	7.09%

The intermediate-term (15-year) FRMs have consistently lower credit losses than long-term (30-year) FRMs because the shorter-term loans amortize more quickly, and borrowers choosing those loans tend to have greater financial resources. For 50 percent LTV loans, the difference in credit losses is small, as credit losses are very low for loans of both terms. In the up-rate scenario, the 30-year loans benefit from slower amortization, which results in more guarantee fees. In both the 80 percent and 95 percent LTV categories, the more favorable incremental capital effects of 15-year loans reflect their greater safety. For 95 percent LTV loans, the 15-year loans have sharply lower credit losses, nearly 90 percent below those of 30-year FRMs.

ARM loans are riskier than 30-year FRMs at all LTV levels in the up-rate scenario, with the differences becoming more pronounced as LTV ratios rise. ARM credit losses in the up-rate scenario are only modestly higher than 30-year FRM credit losses for low LTV loans, but rise to more than double those for 30-year FRMs for high LTV loans. Credit losses for high LTV ARMs cumulate over the course of the stress period to 13.5 percent of the initial loan balances. As the loan interest rates adjust to their lifetime caps, some borrowers have difficulty meeting the elevated payments.

When interest rates decline, ARMs perform much better. They prepay much more slowly than FRMs in this environment and, therefore, produce substantially more guarantee fee income. At low and moderate LTVs, ARMs have more favorable capital effects than FRMs. However, the greater sensitivity of defaults on ARMs with high initial LTVs outweighs the benefits of higher fee income generated by such loans. While credit losses for high LTV ARMs are still much lower in the down-rate scenario than in the up-rate scenario, the discounted values of those losses are larger in the down-rate scenario because the discount rates are so much lower in that scenario. The capital effects depend on the discounted values, so they are nearly as large in the down-rate scenario for high LTV ARMs as they are in the up-rate scenario. Because of the high risk associated with high LTV ARMs, the Enterprises generally have not purchased ARMs with LTV ratios above 90 percent under their regular underwriting guidelines.

(vi) Differences in Multifamily Loans

The Enterprises deal in a large variety of multifamily loan products, and the products differ significantly between the Enterprises. The simulations reported in Table 13 show the incremental effects on required capital of multifamily loans with some relatively common characteristics. The additional sold loans in Simulation 22 are newly originated 15-year balloons with 70 percent LTVs, debt coverage ratios (DCR) of 1.3.[44] The Fannie Mae loans are assumed to provide partial recourse to the seller for losses, while the Freddie Mac loans do not. Accordingly, a higher guarantee fee is assumed for Freddie Mac loans, 75 basis points, than for Fannie Mae loans, 50 basis points. Simulations 23, 24, and 25 differ, respectively, by changing the balloon to five years, changing the LTV to 80 percent and the DCR to 1.2, and changing the loan age to five years.

[44] All of the multifamily loans were originated in the West Census Region with 8.5 percent coupons and servicing margins of 50 basis points.

Table 13. Incremental Capital for Multifamily Loans with Differing Characteristics (as a percent of Additional Sold Loans)

				Up-Rate Scenario		Down-Rate Scenario	
Simulation	Product Type	LTV	DCR	Fannie Mae	Freddie Mac	Fannie Mae	Freddie Mac
New Loans							
22	15 YR Balloon	70%	1.3	.23	−.10	−1.49	−1.31
23	15 YR Balloon	80%	1.2	1.91	1.95	−1.38	−1.17
24	5 YR Balloon	70%	1.3	.24	.05	−1.02	−.65
5-YR Old Loans							
25	15 YR Balloon	70%	1.3	2.49	3.15	−.61	.12

Unlike single family loans, multifamily loans with a few years of seasoning have substantially higher credit losses during the stress period. Both types of loans generally have low credit losses in the first years after origination, then rise to a peak before declining. However, the peak loss years for multifamily loans come several years after those for single family loans. Thus, the five-year old loans in Simulation 25 experience more bad loss years than comparable new loans (Simulation 22). Credit losses for high LTV, low DCR loans (Simulation 23) are also higher than comparable lower LTV, higher DCR loans because there is a higher probability that the borrower would have an economic incentive to default during the stress period (no equity and negative cash flow). Five-year balloons have higher losses in the up-rate scenario because some properties would be unable to manage the higher interest rates that would accompany a new loan. In the down-rate scenario, five-year balloons terminate sooner and, thus, provide less guarantee fee income.

Multifamily loan losses are generally less than guarantee fee income in the down-rate scenario. This is especially true for newly originated loans because most of the loans prepay before reaching their peak loss years. Multifamily loans also benefit in the down-rate scenario from lower capitalization rates, which improve their estimated LTVs.

(vii) Differences in Mortgage Insurance on High LTV Loans

By law, conventional loans purchased by the Enterprises with LTVs greater than 80 percent require credit enhancement. Of the three types permitted, private mortgage insurance is by far the most commonly used. As described above, simulations involving additional guarantees for loans with 95 percent LTV ratios assume that the loans carry 30 percent coverage by a AA rated firm. The simulations reported in Table 14 show effects of varying insurance characteristics on single family loans. The guarantee additions in each case are for newly originated, long-term FRMs.

Table 14. Incremental Capital for 95 Percent LTV Loans with Differing Insurance Characteristics (as a percent of additional sold loans)

			Up-Rate Scenario		Down-Rate Scenario	
Simulation	Coverage	Credit Rating	Fannie Mae	Freddie Mac	Fannie Mae	Freddie Mac
13	30%	AA	3.17%	2.84%	6.04%	6.02%
26	25%	AA	3.72%	3.30%	7.07%	7.00%
27	30%	AAA	2.99%	2.69%	5.73%	5.70%
28	30%	A	3.53%	3.12%	6.66%	6.61%

In 1995, both Enterprises raised their coverage requirements on 95 percent LTV loans from 25 percent to 30 percent. Credit losses in Simulation 26, with lower coverage than in Simulation 13 (but with all other characteristics are the same), are 15 percent higher in the down-rate scenario and 12 percent higher in the up-rate scenario than they are in Simulation 13. Because the discounted value of those changes is higher in the down-rate scenario, the

required capital is affected more significantly in that scenario. Reducing the credit quality of the coverage (Simulation 28) has much the same effect as reducing the amount of coverage, while improving the credit quality (Simulation 27) has the opposite effect.

(viii) Differences in Mortgage Interest Rates

Loans with low interest rates amortize more quickly and prepay more slowly. The reverse is true for high interest rate loans. Table 15 shows the results of simulations for newly originated, long-term FRMs with different interest rates. In practice, loans with different interest rates have been originated in different time periods. However, to isolate the effects of different mortgage interest rates, all loans are assumed to be made simultaneously.

Table 15. Incremental Capital for Sold Loans with Differing Mortgage Interest Rates (as a percent of additional sold loans)

		Up-Rate Scenario		Down-Rate Scenario	
Simulation	Mortgage Interest Rate	Fannie Mae	Freddie Mac	Fannie Mae	Freddie Mac
29	5.00%	.57%	.46%	−.12%	.11%
2	7.50%	1.05%	.95%	1.54%	1.91%
30	11.75%	1.58%	1.50%	2.31%	2.93%

Faster amortization improves loan quality, so credit losses are significantly lower for mortgages with low interest rates. Low interest rate loans also prepay significantly more slowly in the down-rate scenario, increasing guarantee fees. For Freddie Mac, these differences between high and low mortgage interest rates are accentuated by differences in float income. Freddie Mac holds prepayments for an extra month before passing them through to investors. During that month, Freddie Mac earns a market rate of return while paying investors at the mortgage security coupon rate. Float earnings are roughly the same for both high and low mortgage interest rates, but interest passthrough payments to investors are much lower on low rate mortgages, increasing net float income.

(ix) Differences Between Loans on Owner-Occupied and Investor-Owned Properties

Loans on owner-occupied properties present less credit risk than loans on investor-owned properties. Simulation 31, presented in Table 16, shows the effects on required capital of adding newly originated, long-term fixed-rate mortgages that are all investor-owned. Required capital for loans on investor-owned properties is substantially higher in all cases because of higher credit losses.

Table 16. Incremental Capital for Sold Loans with Differing Occupancy Status (as a percent of additional sold loans)

		Up-Rate Scenario		Down-Rate Scenario	
Simulation	Tenure	Fannie Mae	Freddie Mac	Fannie Mae	Freddie Mac
2	Owner-occupied[1]	1.05%	.95%	1.50%	1.91%
31	Investor-owned	2.06%	1.79%	2.26%	2.52%

[1] Assumes the average percentage of investor-owned loans in each Enterprise's existing portfolio, about three percent.

2. Commitments

While commitments to purchase mortgages may result in new mortgage guarantees or new retained mortgages, the risk accepted by the Enterprise at the time of commitment is comparable to the risk on new mortgage guarantees. The stress test treats mortgages delivered pursuant to commitments as guarantees of mortgages that are originated in the first few months of the stress test at market interest rates. Hence, no portfolio interest rate risk will be incurred. The mix of other characteristics of the loans reflects the mix of characteristics for existing guaranteed loans of the Enterprise that

were originated during the six months preceding the start of the stress period.

Simulation 32, shown in Table 17, shows the effects on required capital of increasing each Enterprise's commitments outstanding in June 1997 by $10 billion. The results are, essentially, an average of the effects on required capital of a mixture of new loans, in which the proportions of loans with particular characteristics (including guarantee fees) match those present in an Enterprise's recently originated and securitized loans. In the up-rate scenario, the effects are muted relative to those in the down-rate scenario because the model assumes that sellers deliver loans for only 75 percent of the commitment volumes.

Table 17. Incremental Capital for Additional Commitments (as a percent of additional commitments)

	Up-Rate Scenario		Down-Rate Scenario	
Simulation	Fannie Mae	Freddie Mac	Fannie Mae	Freddie Mac
32	.65%	.65%	1.50%	1.86%

3. Assets and Liabilities

The Enterprises' other line of business is purchasing mortgages and mortgage securities for their asset portfolios and funding them with debt. As holders of mortgages, the Enterprises receive interest income, incur administrative expenses, and bear the risk of loss if a borrower defaults. As market interest rates change, the interest rate of a mortgage becomes more or less favorable, and the value of the mortgage will change. The Enterprises hedge this risk by issuing callable long-term debt, which changes in value in a corresponding way. They also enter into interest rate derivative contracts that further reduce the overall sensitivity of their income and net worth to interest rate changes. As a holder of mortgage securities, an Enterprise experiences cash flows, income, and risks similar to those experienced as a holder of whole mortgages except that the credit risk is borne by the security guarantor (usually the Enterprise itself, acting in its other principal role).

The stress test projects the flows of income and expenses associated with these assets in much the same way as it does for mortgage guarantees. However, principal and interest received by an Enterprise on retained mortgages and mortgage securities is not passed on to investors, and no credit losses are charged on asset holdings of mortgage securities guaranteed by either Enterprise or by the Government National Mortgage Association (Ginnie Mae). In addition, the stress test projects interest expenses associated with debt and cash flows associated with derivatives contracts.

a. Assets/Liabilities With Mixed Characteristics Reflecting Enterprise Portfolios

Table 18 shows the additional capital that would be required in both scenarios by a general increase in each Enterprise's assets and liabilities. It is not possible to isolate the average incremental capital effects of a general increase in an Enterprise's mortgage assets in the same way that Simulation 1 measured those effects for guaranteed mortgages. Critical factors in assessing the risk of asset positions are the characteristics of the debt and equity used to fund them. However, specific debt and equity issues cannot be matched with specific assets. It is possible, however, to obtain a measure of the incremental capital effects of a proportional $10 billion increase in all of an Enterprise's assets, including non-mortgage assets, and a simultaneous $10 billion increase in the Enterprise's liabilities and interest rate derivatives.[45]

Table 18. Incremental Capital for an Equal Proportional Increase in All Assets and Liabilities (as a percent of additional assets)

Up-Rate Scenario		Down-Rate Scenario	
Fannie Mae	Freddie Mac	Fannie Mae	Freddie Mac
4.38%	2.81%	2.06%	.55%

These results reflect some differences between the Enterprises in asset composition, but, mostly, differences in debt structure and derivatives use in June 1997. In three of the four cases, the incremental effects are close to or less

[45] The process is indirect, using the results of other simulations. The increase in required capital for an equal percentage increase in all of an Enterprise's positions, such that assets increase by $10 billion, is simply that percentage of the Enterprise's required capital for the base case simulations for June 1997. This increase includes increases in guarantees and commitments. The effect of these increases can be removed by subtracting the incremental effects of the guarantees and commitments as calculated in Simulations 1 and 32, after making adjustments for the differences between a $10 billion change in those factors and a change of the percentage amount used in the first step.

than the 2.50 percent minimum capital ratio for Enterprise assets. For both Enterprises, the incremental required capital effects of sold loans were higher in the down-rate scenario while the effects of asset holdings and liabilities are higher in the up-rate scenario. Thus, the combined risks of both types of activities are more balanced with respect to interest rates than the risks of either type separately.

b. Retained Loans With Specific Identical Risk Characteristics

The simulations discussed below show the effect on required capital of an increase in mortgage assets that is funded by debt. A first group of simulations shows how different characteristics of mortgages affect required capital in each scenario. Five-year, fixed-rate notes were used to fund mortgage assets in each of these simulations. Different funding would not have an appreciable effect on the relative results for mortgages of differing characteristics, as long as the funding was the same for each. In the second group of simulations, mortgage characteristics were held constant, while the funding varied among three alternatives.

The Enterprises have available, and utilize, a much wider range of funding alternatives than those used in these simulations. These alternatives include debt (both callable and non-callable) of different maturities, debt-derivative combinations that create synthetic debt with various maturity and call characteristics, and debt combined with swaptions (options on swaps) or with interest rate caps, floors, or corridors. Other hedging techniques, such as asset swaps, are also used. The proposed risk-based capital requirements are fully sensitive to all of these alternatives.

In the Simulations presented in Table 19, $10 billion of retained unsecuritized loans with specific risk characteristics were added to each Enterprise's asset portfolio. The assets were funded with $10 billion of five-year notes paying 6.5 percent interest, with no call options. The mortgages in Simulation 33 have the same characteristics as those in Simulation 2, except they have not been securitized. They are newly originated 30-year fixed-rate mortgages, with 80 percent LTV ratios and 7.5 percent contract interest rates from the West South Central Census Division. In Simulations 34 through 39, one risk characteristic (mortgage type, LTV, or age) has been changed from Simulation 29 to illustrate the relative effects on required capital of changes in various characteristics.[46]

Table 19. Incremental Capital for Retained Loans with Differing Characteristics, Funded with Five-Year Debt (as a percent of additional loan assets)

		Up-Rate Scenario		Down-Rate Scenario	
Simulation	Distinguishing Characteristic	Fannie Mae	Freddie Mac	Fannie Mae	Freddie Mac
33	[1]	7.95%	7.54%	8.53%	7.97%
34	15 Yr. FRM	1.35%	.40%	6.97%	6.47%
35	ARM	−16.54%	−14.29%	7.90%	6.83%
36	50% LTV	5.35%	4.41%	7.89%	7.55%
37	95% LTV	10.27%	10.36%	8.46%	7.54%
38	4 Yrs. Old	5.57%	4.69%	10.39%	9.39%
39	8 Yrs. Old	5.68%	5.02%	5.88%	4.81%

[1] Newly originated, 30-year FRMs with 80 percent LTV ratios.

As the results make clear, using solely five-year fixed-rate debt to fund mortgages would not be an appropriate funding strategy to guard against the risk of large, sustained changes in interest rates like those incorporated in the stress test. When market interest rates decline, fixed-rate mortgages prepay rapidly, and the five-year debt is outstanding far longer than most of the mortgages it originally funded. When market yields rise, fixed-rate mortgages prepay slowly, and the debt matures long before most of the mortgages are liquidated.

In the up-rate scenario, ARMs with fixed-rate funding reduce required capital because interest income rises with market yields (until lifetime caps are reached), while funding costs remain unchanged during the first five years. Differences in the impact on required capital of fixed-rate mortgages of different types in the up-rate scenario primarily reflect differences in credit losses. However, 15-year loans also benefit from faster amortization, making their loan lives correspond more closely to the maturity of the debt used to fund them.

[46] While these results are for additional retained whole loans, the effects on required capital of additional holdings of mortgage security assets, backed by loans with the same characteristics and funded with the same debt, can be closely approximated by subtracting the effects of additional guarantees of loans with those characteristics. (The comparable loan guarantee simulations are Simulations 2, 17, 20, 12, 13, 5, and 7 respectively.)

In the down-rate scenario, ARMs prepay more slowly than FRMs, but also provide lower interest income. Among fixed-rate types of loans, four-year-old loans prepay more rapidly than new or eight-year-old loans. High-LTV loans, on the other hand, prepay slowly because borrowers lack sufficient equity for refinancing. These differences in prepayment rates greatly affect the interest rate risk characteristics of the loans, so that if they are funded with the same liabilities, four-year old loans with 80 percent LTVs generate higher capital needs in down-rate scenario than new loans with 95 percent LTVs, despite much lower credit losses.

The proposed capital requirements are very sensitive to differences in funding strategies for mortgage assets because of the magnitude of the interest rate changes in the two scenarios. Table 20 shows the results of three alternative funding choices for newly originated long-term FRMs with 80 percent LTVs like those in Simulation 33.

Table 20. Incremental Capital for Fixed-Rate Mortgages with Differing Funding (as a percent of additional loan assets)

		Up-Rate Scenario		Down-Rate Scenario	
Simulation	Funding	Fannie Mae	Freddie Mac	Fannie Mae	Freddie Mac
40	Short-Term	26.86%	29.79%	−9.59%	−7.90%
41	Long-Term	−8.42%	−6.80%	30.27%	31.02%
42	Callable Long-Term	−3.86%	−2.99%	−.68%	−1.27%

Funding long-term FRMs with short-term debt (six-month discount notes) provides very substantial benefits when interest rates fall. The debt matures more rapidly than the mortgages, permitting an Enterprise to continue receiving the original yield on the mortgages, while paying much lower interest rates. Short-term funding, though, is extremely costly when interest rates rise because maturing debt must be replaced at much higher rates. A portfolio of long-term fixed-rate mortgages funded with short-term debt, such as those held by Fannie Mae and most thrifts in the late 1970s, would require a capital/asset ratio of well over 20 percent under the proposed rule.

Funding with long-term debt (ten-year notes with semi-annual interest payments at 6¾ percent) provides large benefits when interest rates rise, but is extremely costly when interest rates fall. Callable long-term debt (ten-year maturity, with a coupon of 7⅜ percent, not callable during the first two years) provides benefits in both scenarios.[47] The results for different funding mixes can be approximated by combining the results shown in Table 20 on a weighted average basis. Thus, for example, in June 1997, the incremental capital effects of new fixed-rate mortgages funded with 65 percent callable long-term debt, 19 percent short-term debt, and 16 percent long-term, non-callable debt would be in a range of 1.2 percent to 2.6 percent for both Enterprises in both interest rate scenarios. Less callable debt would be needed to achieve the same result for seasoned loans.

4. Administrative Costs

During the stress period, administrative costs depend not only on the volume of loans held or guaranteed, but also on the rate of spending in the quarter immediately preceding the start of the stress period. A higher rate of administrative expense before the stress period increases costs and depletes capital during the stress period. In Simulation 43, shown in Table 21, $10 million in annual administrative expense ($2.5 million at a quarterly rate) was added to each Enterprise's reported spending in the year preceding the date of the base case simulations (June 1997).

Table 21. Incremental Capital for Additional Administrative Expenses (per dollar of added annual expense)

	Up-Rate Scenario		Down-Rate Scenario	
Simulation	Fannie Mae	Freddie Mac	Fannie Mae	Freddie Mac
43	$5.92	$4.72	$3.53	$2.76

The results in Table 21 show that if Fannie Mae's annual administrative expense rate had been $1 higher in the year preceding the stress period, its capital requirement would have been $5.92 higher in the up-rate scenario and $3.53 higher in the down-rate scenario. The stress test projects the higher expense rate to continue throughout the

[47] The interest rates of long-term debt used in the simulations roughly reflect what the average cost of such instruments would have been in June 1997.

ten years of the stress period, except that the dollar amount of additional expense declines in line with the outstanding loan volume. Thus, in the up-rate scenario, for example, the initial annual $1 increase in the expense rate leads to an additional $7.65 of administrative expenses during the stress period. Discounting, taxes, and dividends reduce the incremental required capital to $5.92, even after the 30 percent management and operations risk supplement. Required capital increases more in the up-rate scenario than the down-rate scenario because administrative expense is tied in the stress test to outstanding loan volumes, which are larger in the up-rate scenario.

The effect of increased administrative expenses on required capital is lower for Freddie Mac in both interest rate scenarios. This is true partly because Freddie Mac's mortgages have slightly shorter lives in both interest rate scenarios, but more importantly because Fannie Mae has disproportionately larger commitments outstanding at the start of the stress period. As commitments are transformed into loans during the early months of the stress period, Fannie Mae's overall loan balances rise relative to initial balances by more than Freddie Mac's. This effect is less significant in the up-rate scenario because only 75 percent of commitments become loans. However, Freddie Mac's costs in the up-rate scenario are reduced by taxes throughout the stress period, while Fannie Mae's are not. Therefore, Freddie Mac's administrative expense rate has a smaller effect on required capital in both interest rate scenarios.

5. External Economic Conditions

a. House Prices

Stress test results are also greatly affected by changes in external economic conditions. Seasoned mortgages in the base case simulations for June 1997 benefited from modest, but steady average house price appreciation of about three percent per year during the time between origination and the beginning of the stress period. In Simulations 46 and 47, shown in Table 22, the house price index was reduced by one percent and five percent, respectively, in the quarter immediately preceding the stress period (1997 Q2). That is, house price appreciation rates between the first and second quarters of 1997 were assumed to be one percentage point or five percentage points (4 or 20 percentage points at an annual rate) less than they actually were. Subsequent house price appreciation rates are the same as in previous simulations.

Table 22. Incremental Capital Caused By Lower House Prices (dollars in millions)

		Up-Rate Scenario		Down-Rate Scenario	
Simulation	Reduction in House Prices	Fannie Mae	Freddie Mac	Fannie Mae	Freddie Mac
44	1%	$620	$344	$890	$490
45	5%	$3270	$1920	$3303	$2579

When house prices are decreased by one percent, credit losses for each Enterprise increase by four to five percent in the up-rate scenario and by about seven percent in the down-rate scenario. The increases in credit losses when house prices are decreased by five percent are about five times as large as they are for a one percent house price decrease. The increases in incremental capital in both simulations are larger in the down-rate scenario because the decrease in house prices slows prepayment rates in that scenario, owing to higher probabilities of negative equity. Slower prepayment rates increase the volume of mortgages exposed to the risk of default. While loans also prepay more slowly in the up-rate scenario, prepayment rates in the base case simulation for that scenario are already so slow that a similar percentage change has little absolute effect.

The slowing of prepayment rates with lower house prices in the down-rate scenario also produces two benefits that offset much of the increase in loan losses: guarantee fee income and net interest income increase. The key factor causing the effects on required capital to be larger in the down-rate scenario is that discount rates are lower in that scenario, so the present value of similar additional credit losses is greater.

Differences in the changes in required capital between the Enterprises primarily reflect lower additional credit losses for Freddie Mac. Fannie Mae's losses are higher because its owned or guaranteed loan volume was about 45 percent larger than Freddie Mac's in June 1997 and its credit losses per dollar of loans are 11 to 14 percent higher in the simulations, owing to a somewhat riskier mix of loans.

b. Market Interest Rates

The behavior of interest rates in the months before the starting date of the stress test can also have a significant effect on required capital. In the simulations shown in Table 23, all market yields were assumed to be 200 basis points higher (Simulation 46), or lower (Simulation 47) in the month preceding the stress test period (June 1997) than they actually were.[48] The principal means by which this change in market yields affects required capital is through the change it causes in market interest rates during the last nine years of the stress test.[49]

[48] No changes were made to interest rates on asset, liability, or off-balance sheet positions that had been put in place during the month, but they constitute a small share of total positions, and the effects of adjusting interest rates for those positions would have been largely offsetting. Nor were any changes made to Enterprise hedge positions that they might have made had market yields actually changed.

[49] In the circumstances of June 1997 (or any other time since September 1991), the applicable statutory rule for determining the change in the ten-year constant maturity Treasury yield during the stress period is that it increases by 75 percent or decreases by 50 percent from the average over the preceding nine months. If interest rates were 200 basis points higher in June 1997, stress test rates would have risen to a level $200 \div 9 \times 1.75 = 39$ basis points higher for the last nine years in the up-rate scenario. And, in the down-rate scenario, rates

Continued

Table 23. Incremental Capital Caused by Differing Initial Interest Rate Levels (dollars in millions)

		Up-Rate Scenario		Down-Rate Scenario	
Simulation	Change in June 1997 Yields	Fannie Mae	Freddie Mac	Fannie Mae	Freddie Mac
46	+200 b.p.	$1598	$642	−$1132	−$220
47	−200 b.p.	−$2105	−$842	$694	$280

In Simulation 46, the hypothetical increases in June 1997 yields make the stress test more severe in the up-rate scenario and less severe in the down-rate scenario. Simulation 47 does the reverse. The size of the effects is much greater for Fannie Mae because its asset size was roughly double Freddie Mac's at the time, and because Fannie Mae's interest rate risk was less fully hedged then Freddie Mac's. Although changes in net interest income accounted for nearly all of the change in required capital, differences in prepayment rates in the down-rate scenarios of both simulations affected required capital through changes in other income and expense categories. Lower prepayment rates in Simulation 46 increased credit losses, but also increased guarantee fees. Higher prepayment rates in Simulation 47 decreased credit losses and guarantee fees.

c. Sensitivity to Risk Characteristics in Different Economic Environments

The results of the sensitivity analysis discussed above are dependent on the risk structure of the Enterprises and the economic conditions of June 1997. For example, as discussed above, credit losses on seasoned loans vary depending on house price behavior between the time of origination and the start of the stress test. At higher interest rate levels, the consequences of imperfectly matched assets and liabilities would be greater because stress test changes in interest rates would be larger. At lower interest rate levels, the effects would be smaller. Different Enterprise hedging strategies could affect reported sensitivities because they could result in a different pattern of profits and losses during the stress period, which could affect the role of taxes. Changes in common stock dividend payouts could affect the impact of dividends during the first year of the simulations.

C. Implications of the Proposed Rule

The Enterprises perform an important role in the nation's housing finance system. Although the current risk of an Enterprise failure is small, the continued financial health of the Enterprises cannot be taken for granted. Over the past two decades, failures of financial institutions have been commonplace, including more than 2900 banks and thrifts and a number of securities firms. The risks associated with Fannie Mae and Freddie Mac differ in some important ways from those associated with banks, thrifts, and securities firms. However, government sponsored enterprises are not immune to failure. Fannie Mae encountered serious financial difficulty in the early 1980s, recovering in large part because of a fortuitous decline in interest rates, and the Farm Credit System experienced serious problems later in the decade. Because of the Enterprises' key role and important public mission, Congress created OFHEO to ensure their safe and sound operation. The current combined obligations of the Enterprises amount to more than $1.7 trillion, and unlike banks, thrifts, and securities firms, no Enterprise obligations are backed by an insurance fund that could contribute toward meeting creditor claims.

The risk-based capital rule (in conjunction with OFHEO's other regulatory tools) is intended to reduce the risk of financial failure of an Enterprise. The rule can contribute to that goal by requiring the Enterprises to hold more capital or take less risk than they otherwise would in some or most potential circumstances, particularly those circumstances in which the danger of failure is greatest. In circumstances in which some capital or risk adjustment is necessary, the rule gives an Enterprise the flexibility to choose whether more capital, less risk, or a combination of the two best suits its business needs.

OFHEO believes that the proposed rule would effectively serve its intended role. By promoting the Enterprises' safety and soundness, the regulation promotes their ability to continue to carry out their public purposes.[50] These include providing stability in the secondary market for residential mortgages and providing access to mortgage credit in central cities, rural areas, and underserved areas.

Capital reduces the risk and costs of failure by absorbing losses. For most firms, debt markets provide strong capital discipline, penalizing a firm that is excessively leveraged with higher borrowing costs. That discipline is largely lacking for the Enterprises because of their government sponsored enterprise status. The lack of normal market discipline makes capital requirements particularly important for the Enterprises.

The minimum capital regulation, currently in place for the Enterprises, provides important protection against failure. It requires the Enterprises to have a minimally acceptable level of capital in relation to their overall size, regardless of their measurable risk. The establishment of the minimum capital standard was accompanied by considerable increases in capital at both Enterprises. Because, however, it is based on simple leverage ratios, it will not be sufficient if an Enterprise chooses to take risky financial positions or if market conditions move adversely and increase the risk of what had been less risky positions. By contrast, the proposed rule is quite sensitive to risk. It would require an Enterprise to increase capital when risk rises, well before the potential adverse

would have decreased to a level 200 + 9 × 0.50 = 11 basis points higher. Similarly, if interest rates were 200 basis points lower in June 1997, stress test rates would have been 39 basis points lower in the last nine years of the up-rate scenario and would have fallen to a level 11 basis points lower in the last nine years of the down-rate scenario. These differences are incorporated in Simulations 46 and 47.

[50] 1992 Act, section 1302(2) (12 U.S.C. 4501(2)).

consequences of the rise would be reflected in the Enterprise's financial statements. Each of the two capital rules is an essential complement to the other.

1. Capital Requirements Under the Proposed Rule

Consistent with the purpose of reducing the risk of Enterprise failure, the proposed rule can be expected to influence how the Enterprises manage their risk and the amount of capital they hold. Table 24 shows actual total capital (amounts available to meet the risk-based capital requirement) and required total capital under the proposed rule for two dates: September 30, 1996 and June 30, 1997.[51] It also shows actual core capital (amounts available to meet the minimum capital requirement) and required core capital on the same dates. The difference between total capital and core capital is that total capital includes general loss reserves, while core capital does not.

Table 24. Actual Capital and Capital Required Under the Proposed Risk-Based Rule and the Existing Minimum Capital Rule (dollars in billions)

	Fannie Mae		Freddie Mac	
Risk-Based Capital Requirement (Proposed)				
Date	**Actual Total Capital**	**Required Total Capital**	**Actual Total Capital**	**Required Total Capital**
9/30/96	$13.05	$16.55	$7.23	$5.66
6/30/97	$14.05	$17.73	$8.11	$6.83
Minimum Capital Requirement				
Date	**Actual Core Capital**	**Required Core Capital**	**Actual Core Capital**	**Required Core Capital**
9/30/96	$12.27	$11.12	$6.54	$6.28
6/30/97	$13.26	$11.94	$7.43	$6.80

Table 25 shows the surplus or deficit of total capital for both interest rate scenarios. The risk-based capital requirement for an Enterprise is based on the scenario that would result in the greatest deficit or smallest surplus. To meet the requirement, an Enterprise must not have a capital deficit in either scenario. Freddie Mac would have had a risk-based capital surplus of 28 percent on the 1996 date and 19 percent in 1997, while Fannie Mae would have had a deficit on each date of 21 percent. In contrast, both firms met the existing minimum capital standard on both dates, with surpluses ranging from 4 percent to 11 percent. Thus, the risk-based capital requirement would have been much higher than the minimum capital requirement for Fannie Mae, even after taking account of the differences in the definition of capital under the two standards. For Freddie Mac, however, the minimum capital requirement would have been higher than the risk-based capital requirement. Thus, the risk-based standard would not have imposed any additional requirement on Freddie Mac on those dates. The primary reason Fannie Mae's risk-based capital requirement would have exceeded its minimum capital requirement, while Freddie Mac's would not, is that Freddie Mac's asset/liability structure was more fully hedged against interest rate risk than Fannie Mae's.

[51] These results include estimated effects on required total capital for three provisions of the proposed rule that require credit ratings: credit losses on non-mortgage investments; on derivative contracts; and on rated mortgage-related securities, such as mortgage revenue bonds. OFHEO assumed that 50 percent of non-mortgage investments are rated AAA, 35 percent are rated AA, and 15 percent are rated A. The percentages for derivative contracts are 85, 15, and 0, respectively; and those for rated mortgage-related securities are 70, 30, and 0, respectively. The results do not reflect the effects of master netting agreements, nor haircuts on foreign-denominated contracts. Multifamily credit enhancements, other than those for Fannie Mae's DUS product are not modeled explicitly, but are assumed to reduce loss severities by 15.9 percentage points.

Table 25. Surplus or Deficit Total Capital of the Enterprises Using the Proposed Rule for September 30, 1996 and June 30, 1997 (dollars in billions)

	Up-Rate Scenario		Down-Rate Scenario	
Dates	Fannie Mae	Freddie Mac	Fannie Mae	Freddie Mac
9/30/96	−$3.50	$1.61	−$3.25	$1.57
6/30/97	−$3.68	$3.18	−$.95	$1.28

Risk-based capital requirements in the future may vary significantly, depending not only on the Enterprises' assets and obligations, but also on contemporary economic conditions. Declines in house prices in the years preceding the starting date of the stress test can greatly raise capital requirements under the proposed rule, and rapid house price appreciation during these years can greatly reduce them. Unhedged interest rate exposures would require greater capital when interest rates are higher at the start of the stress period because changes in interest rates during the stress period will be greater. The reverse is true when interest rates are lower. Economic environments entailing greater than usual uncertainty about future interest rates or mortgage defaults will be accompanied by higher costs for hedges, such as callable debt or credit enhancements. In the absence of a risk-based capital standard, an Enterprise might choose to maintain capital and hedges that would be sufficient to meet the proposed standard in low risk environments, but might not do so in high risk environments owing to the higher cost of capital and hedges in such environments.

2. Enterprise Adjustments To Meet the Proposed Standard

An Enterprise with capital and risk preferences that are not consistent with the proposed standard could adjust to the standard by either increasing capital or decreasing risk or both. Capital can be increased by reducing share repurchases, adjusting dividends, or issuing new equity shares. Enterprise risk can be reduced by increasing the use of interest rate and credit risk hedges, after risk is taken on, or by reducing the amount of risk taken on.

Financial markets currently provide a wide range of hedges against interest rate risk. These include, among others: callable long-term debt, caps and floors, and swaps and swaptions. Adding interest rate risk hedges may frequently be cheaper than increasing equity. For example, based on the differences in results of Simulations 40, 41, and 42 shown in Table 20, Fannie Mae could have met the proposed standard in June 1997 by issuing $22 billion of callable ten-year notes and using the proceeds to pay off $14 billion of short-term debt and repurchase $8 billion of ten-year notes.[52] Given the market yields at that time, such a change in debt structure would have cost less than $200 million on an annual basis, after taxes. However, because this debt restructuring would have provided substantial benefits in terms of reduced risk, the net cost would have been much lower.

Changes in an Enterprise's asset/liability structure to reduce interest rate risk, such as the one described in the above example, may be much cheaper than raising new equity. If the annual cost of equity capital is assumed to be 15 percent, the net cost of raising sufficient equity would have been roughly $385 million.[53] Other forms of liability restructuring, or changes in the interest rate risk characteristics of the assets, might have resulted in lower costs than those estimated here for hypothetical changes in debt structure. Fannie Mae anticipated the likelihood of such opportunities in its comment on OFHEO's ANPR: "* * * if the [mortgage] portfolio is in a position where its risk-based capital requirement exceeds its actual capital, the practical remedy would be to change the portfolio's asset/liability structure so that this is no longer the case." An alternative way for an Enterprise to reduce its interest rate risk is simply to reduce the size of its asset portfolio. Given the high profitability of those portfolios in recent years, that currently would not be a likely choice.

Increasingly, credit risk can also be hedged in financial markets. Freddie Mac's 1998 MODERNS transaction effectively transferred a portion of the credit risk on its 1996 mortgage purchases to investors in the new securities.[54] Further development of the credit derivatives market may provide additional opportunities for transferring credit risk in the future. An Enterprise can also reduce its credit risk by requiring or acquiring more credit enhancements. As an example, the Enterprises increased requirements for mortgage insurance on 95 percent LTV loans starting in 1995.

Finally, an Enterprise could adjust to a capital shortage by curtailing the size of its mortgage guarantee business. Such a measure is likely to be taken only as a last resort, as that business is the primary means by which an Enterprise fulfills its fundamental public purposes. As long as that business is profitable, an Enterprise is likely to prefer to restructure its asset/liability positions, obtain more credit risk hedges, or, if necessary, raise additional capital. If the Enterprise is financially safe and sound, raising additional equity capital should not be difficult. Because the proposed rule should help ensure the Enterprise's continued healthy financial condition, the rule would make it less, rather than more, likely that the Enterprise will need to restrict its activities.

3. Guarantee Fees

It is unlikely that the proposed rule will have any material effects on the general level of guarantee fees charged by the Enterprises. The stress test results make it particularly unlikely that the rule would have any effects on guarantee fees in economic environments like those of the recent

[52] The interest rates of long-term debt used in the simulations roughly reflect what the average cost of such instruments would have been in June 1997.

[53] In its analysis supporting its affordable housing goal rule, HUD used an estimate for the cost of equity capital of 17 percent, but subsequent increases in price-earnings ratios suggest a smaller number for more recent dates. The cost calculation assumes that the additional equity would have replaced an equal amount of debt.

[54] Investor returns on the securities are dependent on the rate of defaults in a pool of mortgages representing 17.4 percent of Freddie Mac's single family, 30-year FRMs purchased in 1996.

past. Freddie Mac would have met the risk-based standard in 1996 and 1997 by substantial margins, without any changes to its balance sheet or business operations. Thus, the risk-based capital standard would not have given Freddie Mac any cause to raise guarantee fee levels. Fannie Mae would not have been able to, if it wished to maintain its competitive position. In the future, there may be circumstances in which the capital or risk positions of both Enterprises are affected simultaneously by the risk-based standard. The analysis of such cases is more complicated. However, the duopolistic structure of the secondary mortgage market and the generally small impact of the guarantee business on required capital make it unlikely that the standard would affect guarantee fees in those circumstances, either.

Guarantee fees compensate the Enterprises for assuming credit risk on the mortgages they purchase in the secondary market. They may be explicit, as they are for securitized loans, or implicit, as they are for loans purchased for Enterprise portfolios. These fees primarily cover expected credit losses and operating expenses, but include a return to the capital needed to protect against more severe credit losses in adverse environments. The need to provide such a return effectively makes capital a component of cost in the Enterprises' secondary market activities.

In a fully competitive market, a regulation (such as a capital regulation) that raises the marginal costs of all firms in that market would result in higher prices (guarantee fees in this case). However, the secondary mortgage market is not fully competitive.[55] Fannie Mae and Freddie Mac constitute virtually the entire buy side of the secondary market for fixed-rate conforming, conventional mortgages, making that market a duopoly.[56] In a duopoly, the two firms generally exercise market power by charging prices (the guarantee fee) in excess of marginal cost, and thereby recognizing economic profits.

In theory, the guarantee fee charged by Fannie Mae and Freddie Mac may range between the perfectly competitive rate (where the fee equals the firms' marginal cost) and the monopoly rate (where the fee maximizes the two firms' joint profits as if they were operating as a cartel). If the fee at which other firms may enter the market is less than the monopoly fee, then the maximum fee would be that at which entry would take place.

The Enterprises' current guarantee fees reflect the profit-maximizing decisions of both Enterprises. These decisions are affected by the degree of competition between the two firms, the threat of entry by other firms, and activities necessary to maintain or enhance the value of their public charters. The current level of guarantee fees already reflects the maximum guarantee fees that each Enterprise feels it can charge without reducing long-run profits. If this were not the case, Enterprise shareholders likely would object. In such circumstances, a small increase in capital (or any other) cost is unlikely to affect guarantee fees. Only if the cost increase was sufficiently large to raise marginal cost (including an adequate return to attract capital) above the current fee level, would a fee increase reasonably be expected.

The Treasury Department and the Congressional Budget Office estimated in 1996 that the Enterprises collected roughly five basis points (0.05 percent) in fees for their mortgage-backed security guarantees above what they would need to recover costs plus a normal profit margin.[57] After taxes (at an effective rate of 30 percent), that amounts to 3.5 basis points. A risk-based capital standard that raised the capital costs associated with the Enterprises' guarantee business by less than that amount would still allow the Enterprises to earn returns above a normal profit margin.

If a new capital standard required an Enterprise to increase its equity when it increased its guarantee business, its capital cost per dollar of new guarantee business would be the amount of additional capital required times the cost of new equity capital, perhaps 15 percent. The proposed rule, however, provides an alternative to raising equity, which is to reduce some other risk. As shown in the previous section, Fannie Mae could meet an overall higher capital requirement of $3.68 billion at an after-tax cost of less than $200 million in June 1997. The cost per dollar of additional capital requirements was only about 5.4 cents (0.20 ÷ 3.68). An additional dollar of capital requirements associated with new guarantee business could be met in the same way. Based on that cost of capital, if an additional dollar of guarantee business caused required capital under the new standard to be 65 basis points greater than under the existing standard, the additional capital cost would be only as great as the duopoly surplus margin of 3.5 basis points (65 × .054 = 3.5).

In the absence of a risk-based capital standard, regulatory capital costs are based on the existing minimum capital leverage ratio for mortgage-backed security guarantees, which is 0.45 percent (45 basis points). A comparison with the incremental capital required for sold loans under the risk-based capital requirement must take into account that the leverage requirement can be met only with equity (core) capital, while the risk-based requirement can be met with both equity and reserves (total capital). Reserves for losses on mortgage-backed security guarantees average about seven basis points per dollar of guarantees at both Enterprises, so the comparable minimum capital requirement in terms of total capital is 52 basis points. Thus, a risk-based capital standard could potentially raise the incremental amount of total capital required for sold loans to as much as 117 basis points (52 + 65) and still allow the Enterprises to earn sufficient profits to continue to attract capital.

Even greater increases would be unlikely to affect guarantee fees in circumstances when the capital and risk decisions of one or both Enterprises are unaffected by the risk-based standard, as was presumably the case for Freddie Mac on the two recent dates for which risk-based capital calculations have been performed. If the risk-based standard were binding (affected capital or risk decisions) for only one of the Enterprises, then, even if its incremental risk-based requirements for sold loans were very much higher than the minimum capital ratio, it would be difficult for that Enterprise to raise guarantee fees independently. Doing so likely would cause it to lose market share and profits to the other Enterprise.

Even if the risk-based standard were binding on both Enterprises, it appears unlikely that the proposed standard would raise the capital required for the Enterprises' mortgage guarantee business to as much as 117 basis points. The results of a simulated increase in

---

[55] For a fuller discussion of secondary mortgage market structure and behavior, see Benjamin E. Hermalin and Dwight M. Jaffe, "The Privatization of Fannie Mae and Freddie Mac: Implications for Mortgage Industry Structure," in *Studies on Privatizing Fannie Mae and Freddie Mac*, U.S. Department of Housing and Urban Development, May 1996. This paper was jointly commissioned by HUD, the Department of the Treasury, the General Accounting Office, and the Congressional Budget Office.

[56] The "buy side" terminology here is traditional but confusing. The Enterprises are either buying mortgages or selling guarantees. Either way, they are charging implicit or explicit fees for assuming credit risk.

[57] U.S. Department of the Treasury, *The Government Sponsorship of the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation*, July 11, 1996; The Congressional Budget Office, *Assessing the Public Costs and Benefits of Fannie Mae and Freddie Mac*, May, 1996.

overall MBS guarantee volumes, shown in Table 6, indicate that the incremental capital required in 1997 for the up-rate scenario of the risk-based standard was well below the 52 basis points needed to meet the minimum capital standard. In the down-rate scenario, incremental capital of as much as 89 basis points would have been needed, but that is still substantially below the 117 basis points level that potentially would trigger a rise in guarantee fees.

While the results referred to in Table 5 are informative, an Enterprise evaluating the capital costs associated with its mortgage guarantee business would properly focus on its prospective costs at future dates. To do so, it would want to estimate the likelihood of its being bound by the risk-based standard in the future, and if it thought it would be bound, the relative likelihood of being bound by the up-rate and down-rate scenarios. It would also want to make informed guesses about the other Enterprise's estimations on its own behalf. Finally, it would want to estimate the likelihood of significantly higher incremental capital requirements for sold loans under the risk-based standard.

These incremental requirements will be affected by the pace of house price appreciation in the years preceding the date of capital calculation. The figures in Table 5 reflect annual appreciation of about three percent, lower than long-run historical averages. If an Enterprise anticipated stagnant or declining house prices over an extended period of time, and if it believed both itself and the other Enterprise likely would be bound by the risk-based standard, particularly the down-rate scenario, it might have an incentive to raise guarantee fees. In such a circumstance, its expected losses would also rise, and likely by far more than its capital costs. The higher expected losses would, in that case, be the principal cause of higher fees.

A riskier interest rate environment could also affect projected capital costs. If the cost of interest rate risk hedges rose dramatically, so that it became cheaper to meet shortfalls in required capital by raising new equity than by increasing interest rate hedges, any increase in capital required by an Enterprise's sold loans would be more costly and more likely to lead to a small increase in guarantee fees. However, providing adequate protection in unusually risky economic environments, such as those with much higher interest rate hedging costs or persistent weakness of house prices is a fundamental purpose of the risk-based capital standard.

OFHEO has also considered the possibility that the proposed standard, while not affecting the general level of guarantee fees, could affect the fees charged directly or indirectly on loans made to low income borrowers. Such effects are unlikely and would, in any event, be minimal. Consequently, the risk-based capital standard will not significantly affect the Enterprises' ability to purchase affordable housing loans. These conclusions are based on several considerations. First, the capital surpluses that Freddie Mac would have held in 1996 and 1997 under the rule show that no changes in any Enterprise fees or loan-purchase practices would have been justified in recent economic environments.

Second, with respect to potentially more adverse environments, the capital cost of single family loans meeting the Enterprises' affordable housing goals should not be materially different, on average, from the cost of other loans. The stress test makes no specific distinctions among loans to different income groups. However, the stress test does distinguish single family loans according to LTV class and some Enterprise affordable products are high LTV loans. The simulation results in Section II. B., Sensitivity of Capital Requirements to Risk, show that high LTV single family loans are generally riskier and affect risk-based capital requirements more than other loans. However, the overall LTV distribution of single family loans purchased by Fannie Mae and Freddie Mac for low- and moderate-income borrowers (borrowers with less than area median income) is practically the same as the LTV distribution of all their purchased loans. In fact, only a small percentage of the loans to low- and moderate-income borrowers purchased by the Enterprises are high LTV loans (those with LTV ratios above 90 percent).

Third, while high LTV loans have much higher than average risk, the simulation results overstate the capital implications of those loans. The results of Simulations 13 and 15, in Table 12, show incremental capital required under the risk-based standard for new and four-year-old loans, as of June 1997. For a weighted average of Enterprise loans guaranteed at that time, these incremental requirements were about 170 basis points above the comparable minimum capital ratio in the up-rate scenario, and about 325 basis points above in the down-rate scenario. Those differences in capital required, however, overstate the impact of high LTV loans because they assume only an average level of guarantee fees. As discussed earlier, the Enterprises generally charge higher fees implicitly on such loans by adjusting the average fees charged to lenders according to the average risk of the loans they deliver. And as shown by the comparison of Simulations 2 and 3, in Table 8, differences in guarantee fees affect incremental capital requirements. The overstatement may be increased by the assumption that the Enterprises have priced these loans based on the incremental capital needed to meet the minimum standard. Both Enterprises use internal capital models that reflect the higher risk of high LTV loans and already may incorporate higher capital costs into the implicit fees charged for these loans.

Fourth, the capital implications of multifamily loans, which predominately benefit low- and moderate-income households, are mixed and serve, in some circumstances, as hedges for other high-risk loans. Simulations 22 to 25 show a wide variety of incremental capital requirements under the risk-based standard for June 1997. On a weighted average basis, accepting credit risk on multifamily loans lowered risk-based requirements in the down-rate scenario and raised them somewhat more than minimum capital requirements in the up-rate scenario. The results in the down-rate scenario are the reverse of the pattern for high LTV single family loans, so that higher costs on high LTV single family loans are substantially offset by lower costs on multifamily loans. In the up-rate scenario, the potential effects of high LTV loans and multifamily loans are similar, but not large.

Finally, even if the proposed rule did require some additional capital against a portion of the Enterprises affordable housing activities, such a requirement would be consistent with the Enterprises' charters and public mission. The Enterprises' charters specifically state that the return on required lending to low-and moderate-income borrowers may be less than the return earned on other activities.

4. Mortgage Interest Rates

The primary effects of the Enterprises' activities on mortgage interest rates occur through their roles as mortgage security guarantors. Mortgage security yields are determined in capital markets, and the interest rates borrowers pay reflect those yields plus the margins retained by the Enterprises, as guarantee fees, and those retained by lenders and servicers. Because of the dominant role of the Enterprises in the market for conforming, single family mortgages, increases in their guarantee fees would raise lenders' costs and translate fairly directly to changes in borrowers' costs.

However, because the proposed rule likely will have no material effect on guarantee fees, it would not have a significant effect on mortgage rates through the Enterprises' roles as mortgage guarantors.

As investors in mortgages and mortgage securities, the Enterprises may also affect mortgage rates indirectly. They now hold roughly an eighth of all conforming, single family mortgages, and massive changes in their purchase volumes could have some effect, at least temporarily, on prices in that market. However, the Enterprises do not dominate the mortgage investment asset market in the same way that they dominate the market for guarantees on conforming loans. Consequently, the effects on mortgage security yields of even substantial changes in their investment in mortgage securities would be small. Furthermore, the proposed rule is unlikely to have a substantial effect on Enterprises' purchases of mortgage assets. Freddie Mac added roughly $100 billion to its portfolio in the four years preceding the June 1997 simulations and still easily met the requirements of the proposed rule. Thus, it is unlikely that the proposed rule would affect the mortgage interest rates paid by borrowers through the Enterprises' roles as mortgage investors, either.

III. Issues, Alternatives Considered

A. Mortgage Performance

The 1992 Act requires the risk-based capital test to subject the Enterprises to specified adverse credit and interest rate risk conditions to determine the level of capital needed to survive a hypothetical ten-year stress period. The 1992 Act does not specifically refer to mortgage performance, but rather discusses the credit-risk portion of the stress test as including rates of mortgage default and loss severity. As a convenience, OFHEO used the term "mortgage performance" in the ANPR to facilitate discussion of the essential elements of credit risk, mortgage default and loss severity, as well as mortgage prepayment, a key element of interest rate risk. The 1992 Act's requirement to determine a prepayment experience consistent with the stress period is also relevant to credit risk, because loans that are paid off prior to maturity affect default rates by reducing the number of loans that have the potential to default and by increasing the proportion of loans likely to default. Together, default, prepayment, and loss severity define how a portfolio of mortgages will perform in the proposed stress test. That performance is a key element in determining the ability of an Enterprise to withstand the economic shocks imposed by the stress test.

To determine the level of capital needed to survive the stress test, the proposed regulation uses a monthly cash flow model to project the performance of each Enterprise during the stress period. Underlying the simulation of mortgage and mortgage security cash flows are models that project mortgage performance during the stress period.

This section discusses the issues, alternative approaches and related ANPR comments that were considered by OFHEO in developing models to project mortgage performance under economic conditions specified in the 1992 Act. Section III. A. 1., Statutory Requirements describes relevant statutory requirements. Section III. A. 2., Overview of Mortgage Performance, explains how mortgage performance is measured and projected in the stress test. Next, in section III. A. 3., Statistical Models of Mortgage Performance, through section III. A. 7., Relating Losses to the Benchmark Loss Experience, the issues encountered by OFHEO in developing models of mortgage performance, along with relevant comments received in response to the ANPR, are discussed. Section III. A. 3., Statistical Models of Mortgage Performance, discusses OFHEO's decision to employ statistical models to predict default, prepayment, and severity rates. Section III. A. 4., General Methodological Issues, reviews general methodological issues encountered in making product distinctions and developing loan and property value data for use in estimating the statistical models and in applying those models in the stress test. Section III. A. 5., Default/Prepayment Issues, details the construction of the default and prepayment models, including use of conditional rates of default and prepayment, use of joint models of default and prepayment, and choice of the explanatory variables used in the models. Section III. A. 6., Loss Severity, moves from default and prepayment to issues encountered in modeling loss severity rates. Section III. A. 7., Relating Losses to the Benchmark Loss Experience, discusses issues arising from the statutory direction to reasonably relate stress test losses to the benchmark loss experience.

1. Statutory Requirements

The 1992 Act mandates a stress test based on a regional recession involving the highest rates of default and loss severity experienced during a period of at least two years in an area containing at least five percent of the total U.S. population.[58] This mandate required identifying a benchmark loss experience, which is the default and severity behavior of mortgage loans, in a place and time meeting statutory requirements, that resulted in the highest loss rate for any such place and time.[59] In this context, default and severity behavior means the frequency, timing, and magnitude of losses on mortgage loans, given the specific characteristics of those loans and the economic circumstances affecting those losses. The 1992 Act requires that default and severity rates in the stress test be reasonably related to this benchmark loss experience. In contrast, the 1992 Act does not prescribe any particular experience for the third key component of mortgage performance, prepayment. Rather, the Act requires that the Director determine prepayment levels, "on the basis of available information, to be most consistent with the stress period."[60]

The 1992 Act requires the Director to take into account appropriate distinctions among mortgage product types and differences in loan seasoning. It also authorizes the Director to also take into account any other factors that the Director deems appropriate.[61] The statute defines the term "seasoning" as "the change over time in the ratio of the unpaid principal balance of a mortgage to the value of the property by which such mortgage loan is secured."[62] The importance of seasoning is that a decline in a property's value can result in negative equity, the factor most predictive of rates of default.

The 1992 Act defines mortgage product type as a classification of one or more mortgage products having similar characteristics with respect to the property securing the loan, the interest rate, the priority of the lien, the term of the mortgage, the owner of the property (owner-occupant vs. investor), the nature of the amortization schedule, and any other characteristics as the Director may determine. Specifically, the 1992 Act requires OFHEO to take into account distinctions between different mortgage types, such as: (1) properties consisting of 1–4 residential units and those containing more than four units;

---

[58] 1992 Act, section 1361(a)(1) (12 U.S.C. 4611(a)(1)).

[59] *See* 61 FR 29592, June 11, 1996, in which OFHEO proposed procedures for establishing the benchmark loss experience.

[60] 1992 Act, section 1361(b)(2) (12 U.S.C. 4611(b)(2)).

[61] 1992 Act, section 1361(b)(1) (12 U.S.C. 4611(b)(1)).

[62] 1992 Act, section 1361(d)(1) (12 U.S.C. 4611(d)(1)).

(2) fixed and adjustable interest rates; (3) first and second liens; (4) terms of 1–15 years, terms of 16–30 years and terms of more than 30 years; (5) owner occupants and investors; and (6) fully amortizing loans and loans that are not fully amortizing.

The 1992 Act prescribes two interest rate scenarios, one with rates falling and the other with rates rising.[63] In each scenario, the ten-year constant maturity Treasury yield (CMT) experiences a significant change during the first year of the stress test, and then remains at the new level during the remaining nine years of the stress test. The capital requirement for each Enterprise is based on the scenario with the more adverse impact.[64] The 1992 Act recognizes that interest rates are related to credit risk as well as interest rate risk, specifically requiring that credit losses be adjusted for a correspondingly higher rate of general price inflation if applying the stress test results in an increase of more than 50 percent in the ten-year CMT.[65]

2. Overview of Mortgage Performance

The amount of capital needed to survive the stress conditions prescribed by statute is determined by the overall financial performance of the Enterprises' starting books of business, including all assets, liabilities, and off-balance sheet obligations, under the stress conditions. Mortgage performance contributes to the overall financial performance of an Enterprise during the stress period, because various sources of income and expense reflected on an Enterprise's income statement depend directly on mortgage performance. For example, guarantee fee income on securitized loans, net interest income on retained loans and securities, and losses on defaulting loans (offset by the receipt of private mortgage insurance payments and other third-party credit enhancements) all depend on the projected default and prepayment behavior of the underlying mortgage assets.

For purposes of the proposed regulation, mortgage performance is a function of the survival or termination of loans and, ultimately, the associated cash flows. Loan terminations can occur either through default (borrower failure to pay) or through prepayment (early payment in full). Prepayments have a significant impact on credit risk, because they affect the timing and rates of default. Prepayments also affect Enterprise income, because they cut off the income stream from interest payments or guarantee fees. Defaults likewise cut off the income stream, and, in addition, result directly in credit losses.

To understand how the stress test generates and uses mortgage performance information, the test may be viewed as comprised of three elements—models, stress test specifications, and data inputs. In the context of mortgage performance, the models are sets of equations designed to predict the performance of any group of Enterprise mortgages under any given set of economic circumstances. The model equations themselves are "estimated" based upon OFHEO's historical database of mortgage information to predict the most likely default and severity rates for any given group of mortgages under any given pattern of interest rates and house prices. These models are generic tools that could be used in many different stress tests with different specifications. The specifications actually define the "stress" in the stress test. They include adjustments to reflect statutory requirements, such as the requirement that default and severity rates be "reasonably related" to the benchmark experience or that interest rate increases greater than 50 percent reflect a correspondingly higher rate of inflation. The specifications also include the house price and residential rent paths and the interest rates that will apply during the stress period. The data inputs to the models can change each time the stress test is run. The data inputs include data on the characteristics of loans owned or guaranteed by the Enterprises, starting interest rates, and updated house and residential rent price indexes, which are used to calculate current equity in the loan collateral properties.

The general approach of the stress test to mortgage performance involves three main steps: (1) estimation of statistical models of mortgage performance (default, prepayment, and loan loss severity) using Enterprise data covering a wide range of historical experience; (2) adjustments to the statistical models to assure a reasonable relationship to the benchmark loss experience; and (3) application of the adjusted models to starting Enterprise mortgage portfolios in the stress test. To assist the reader in understanding the more detailed discussion of mortgage performance issues that follows, this section provides a brief summary of some key issues concerning of the statutory requirement to "reasonably" relate the performance of mortgages in the stress test to the benchmark experience.

Because the benchmark sample contained only newly-originated, fixed-rate, 30-year, owner-occupied, single family loans, the stress test could not simply apply the rates of default and losses in the benchmark loss experience and still take into account differences in mortgage product types, seasoning of mortgages, and other factors the Director considers appropriate, as required by the 1992 Act.[66] Thus, the first issue considered by OFHEO was how to link mortgage performance in the stress test to the benchmark loss experience. The primary question was whether to use a model-based approach to help link the performance of an Enterprise's current loan portfolio to the benchmark loss experience, or to rely upon a less sophisticated, but less risk-sensitive approach. For reasons discussed under section III. A. 3., Statistical Models of Mortgage Performance, OFHEO concluded that the benefits of using a model-based approach exceed any potential shortcomings.

The next key issue was the choice of variables to include in any statistical equations that would be part of a (statistical) model of mortgage performance. OFHEO's choices in this regard were again governed by the need to meet the multiple statutory objectives described above, while also implementing a credit stress test based on the historical benchmark loss experience. The stress test does not project all differences in loan performance that may have been identified in previous research. Rather, the factors used to project mortgage performance are limited to those necessary to: (1) reflect differences in characteristics of loans in implementing the credit risk stress component of the stress test as required by the 1992 Act; and (2) reflect differences in the interest rate environments experienced by the loans in the stress test.

Other factors that relate to or explain differences in mortgage performance are not, in OFHEO's view, appropriate to the proposed regulation. Specifically, the stress test does not attempt to adjust losses by incorporating factors to reflect changes in Enterprise business practices subsequent to the benchmark loan origination and loss experience.[67]

---

[63] 1992 Act, section 1361(a)(2) (12 U.S.C. 4611(a)(2)).

[64] 1992 Act, section 1361(a)(2) (12 U.S.C. 4611(a)(2)).

[65] 1992 Act, section 1361(a)(2)(E) (12 U.S.C. 4611(a)(2)(E)).

[66] 1992 Act, section 1361 (b)(1) (12 U.S.C. 4611 (b)(1)).

[67] For example, both Enterprises have made changes to their single family underwriting standards and practices since the time the benchmark loans were originated in 1983–84, but no underwriting variable is included. This particular issue is discussed in greater detail below, in the context of comments received in response to OFHEO's ANPR.

OFHEO believes that such adjustments would undermine the purpose and intent of the statutory requirements to implement a credit stress test based on the benchmark loss experience. In addition, although some business practices that contributed to the losses of the past may have been improved over time, a new severe economic environment may expose other unobservable weaknesses. Furthermore, in reasonably relating starting position loan portfolios to the "experience" of the benchmark loans, it is not possible to separate the effects of business practice from other aspects of the benchmark economic environment.

The proposed regulation also does not incorporate economic or demographic variables that are not specifically prescribed for the stress test, such as unemployment or divorce rates. Nor are such variables included in the estimation of the statistical model used in the stress test. If they were to be included, it would be necessary to assume values for these factors in the stress period—values that are consistent with the benchmark experience. Such an approach would substantially increase the number of variables for which assumptions would be required during the stress period, without gaining significant value in predicting credit losses for Enterprise loan portfolios.

3. Statistical Models of Mortgage Performance

A threshold issue for OFHEO was whether to develop statistical models of mortgage performance or to use a simpler approach, such as applying a table of historical default, prepayment, and loss severity rates.

a. ANPR Comments

Most of the comments related to this issue suggested that the direct application of benchmark rates of default, prepayment and loss severity would be problematic. A number of respondents to the ANPR cautioned that direct application of benchmark default rates, which were experienced during a period of declining interest rates, would not be appropriate for the up-rate scenario of the stress test. Freddie Mac suggested that OFHEO adjust benchmark default rates to the interest rate environment or use a proportional downward adjustment to credit losses. Mortgage Risk Assessment Corporation (MRAC) stated that it is important to model the interaction between expected losses and expected prepayments. America's Community Bankers (ACB) recommended joint modeling of prepayments and defaults as the best way to capture adjustments to housing values.

Fannie Mae, on the other hand, favored applying benchmark rates of default and loss severity directly. More specifically, Fannie Mae recommended that OFHEO model total loan terminations (defaults plus prepayments) using a commonly applied method of relating total terminations to interest rate movements (sometimes referred to as a "total terminations model"). Fannie Mae recommended that the default portion of total terminations should be based on observed default rates for mortgages from the benchmark experience, with appropriate distinctions based on different LTV ratios, mortgage product, and risk categories. The level of prepayments would be calculated by subtracting those defaults from total terminations. Fannie Mae stated that a statistical model designed to predict defaults and prepayments simultaneously would be difficult to replicate because it would employ computer simulation methods based upon random numbers, known as Monte Carlo simulations. Fannie Mae also expressed concern that the Enterprises would have difficulty managing capital requirements based on econometrically derived relationships, rather than on the certainty of defined historical loss rates.

b. OFHEO Response

Based on its analysis of available information, including the ANPR comments and relevant academic literature, OFHEO found that statistical modeling has numerous advantages over alternative approaches, such as applying tables of default, prepayment, and loss severity rates from the benchmark experience.

First, statistical models are able to provide valid outcomes when data inputs occur in different combinations from those observed in the available historical data. This capability is important, because the benchmark loss experience does not include large enough sample sizes for all relevant loan products and risk classes to allow direct application of benchmark loss rates to the Enterprises' starting loan portfolios. Statistical models based on large samples of loans can capture differential mortgage performance across a wide variety of products and still allow the performance of each product to be related to the benchmark experience. OFHEO has access to a rich database, consisting of millions of detailed loan records from the Enterprises, which allows for a statistical model of defaults and prepayments that can capture the nuances of product distinctions.

Second, statistical models allow the stress test to extrapolate reasonably to out-of-sample events, such as the sustained adverse interest rate scenarios of the stress test.

Third, applying statistical models of mortgage performance provides the ability to impose multiple statutory requirements in a logically consistent manner. For example, the 1992 Act specifies rates of default and losses in the stress test that are reasonably related to the benchmark loss experience. The 1992 Act also provides that the Director take into account the impact of "mortgage seasoning" and a variety of other factors that delineate various mortgage product types (property type, amortization type, amortization terms, ownership type, etc.). Statistical models allow the stress test to address all these statutory provisions when applying the two adverse stress test interest rate scenarios.

OFHEO also found that using statistically derived models of default, prepayment, and loss severity together with a cash flow approach is the most accurate method to describe the financial performance of the Enterprises on a monthly basis over the ten-year stress period. Moreover, use of statistical models in the stress test is consistent with the 1992 Act[68] and the Congressional expectation expressed in the House Report that the risk-based capital standard "will be an economic model that will test the enterprises' financial position under stressful economic situations."[69] The House Report also noted that:

> [t]he Department of the Treasury, the Congressional Budget Office, the General Accounting Office, the Office of Management and Budget and HUD have all stated that the proper way to ensure that Fannie Mae and Freddie Mac have adequate capital is to use traditional capital ratios in combination with sophisticated financial models, or risk-based capital stress tests.[70]

Fannie Mae's recommendation to estimate a statistical model of total terminations with default rates fixed at benchmark levels would make it more difficult for the stress test to satisfy the

[68] The 1992 Act directs OFHEO to include in the regulation "specific requirements, definitions, methods, variables, and parameters used under the risk-based capital test." This direction suggests that a statistical model was contemplated. The 1992 Act, section 1361(e)(2) (12 U.S.C. 4611(e)(2)). Further, the Director is required to "provide copies of the statistical model or models" to other government agencies. 1992 Act, section 1361(f) (12 U.S.C. 4611(f)).

[69] H.R. Rep. No. 102–206, at 62 (1991). *See also*, S. Rep. No. 102–282, at 24 (1992).

[70] H.R. Rep. No. 102–206, at 62 (1991).

provisions of the 1992 Act that require OFHEO to consider seasoning and the various loan characteristics described above. OFHEO is also concerned that a model that derives prepayment rates as suggested by Fannie Mae would not be consistent with section 1361(b)(2) of the 1992 Act, which directs that "[c]haracteristics of the stress period other than those specifically set forth in subsection (a), such as prepayment experience . . ., will be those determined by the Director, on the basis of available information, to be most consistent with the stress period." The consistency of prepayment experience with the stress period is best achieved by modeling both prepayment and default rates, rather than using a statistical model of terminations with embedded default rates that are not statistically determined.

OFHEO also found that the total terminations models to which Fannie Mae refers are applied widely and usefully only in circumstances where credit losses are not an issue (for example, in pricing mortgage-backed securities for investors, where credit risk can be ignored because of agency guarantees), or when the available data do not allow the analyst to distinguish default terminations from voluntary prepayments (for example, in the pool level data available from commercial sources). This is not the case for the stress test.

OFHEO is sensitive to Fannie Mae's concern that a statistical model of defaults and prepayments would be difficult to replicate. OFHEO does not propose to base any component of the stress test on random number (Monte Carlo) simulations. The model is straightforward and transparent, so that it will be possible for the Enterprises to project default and prepayment patterns in the stress period using their own information about the composition of their business, and recent economic trends.

As for complexity, OFHEO believes that there is no fundamental difference in complexity between computing total termination rates from the models mentioned by Fannie Mae, and computing them from the separate default and prepayment rates generated by the model OFHEO has proposed. Once the statistical model OFHEO proposes has been estimated and calibrated, its application is no more difficult than the application of a table of historical default rates. That is, the model provides a means to "look up" the default or prepayment probabilities for loans with a particular set of characteristics. Further, under the approach proposed by Fannie Mae, the actual level of default rates applied in the stress period would not actually be fixed, but would vary with changes in the composition of an Enterprise's loan portfolio and trends in property values that update borrower equity values. Under either approach, determining the potential impact of market conditions or changes in an Enterprise's portfolio on its capital requirement is straightforward.

4. General Methodological Issues

A number of general issues arose in the context of using statistical models to project mortgage performance in the stress test. These issues required decisions about how to account for product differences, what sources of historical data to use in estimating the statistical models, and what level of data aggregation to use to estimate and project mortgage performance. In addition, OFHEO received a number of comments in response to ANPR questions on property valuation issues. These were also considered in developing and applying statistical models of mortgage performance. Each of these areas is considered in the following sections.

a. Product Differences

The 1992 Act requires the stress test to capture both the unique risk characteristics of various loan product and property types and adjust for changing economics (house prices and interest rates) over time. In deciding its approach to modeling default and prepayment rates, OFHEO found it necessary to treat single family and multifamily products separately because of the significant differences in collateral property types and loan terms explained below.

The nature of the collateral property differs substantially between single family and multifamily loans. Nearly all single family property mortgages held by the Enterprises are owner-occupied.[71] In contrast, multifamily collateral produces income from rentals. Multifamily mortgages are commercial loans on housing projects that compete for market share among a very mobile population with short-term rental contracts and relatively low moving costs. The household demographics of apartment renters vary greatly from those of single family homeowners and renters. The dynamics of construction cycles that accentuate market booms and busts are also different for single family and multifamily residences.

Single family and multifamily mortgages generally have different loan terms. In particular, to balance the desire of borrowers for flexibility with the needs of investors for stability, multifamily mortgages typically have ten- to fifteen-year balloon terms and initial yield-maintenance periods of seven to ten years. During the yield-maintenance period, borrowers may prepay, but they are subject to a prepayment penalty until the maintenance period expires. Such prepayment disincentives are not used in single family lending. Also, in contrast to single family mortgages, multifamily mortgages tend to be non-recourse, which means that multifamily lenders and guarantors, have recourse only to the collateral, and not to the borrower's other assets and income.

Because of these differences, OFHEO developed separate mortgage termination models for single family and multifamily mortgages, with all other property and product type differences handled as subsets of these two primary classifications. This approach is consistent with comments from HUD, Freddie Mac, ACB, and Mortgage Bankers Association of America (MBA). However, there are many issues common to both the multifamily and single family models, and the general modeling approach to both models is similar in many respects.

In the ANPR, OFHEO solicited public comment on modeling approaches generally and, more specifically, on how to relate the credit risk of other loan product types to the 30-year fixed-rate mortgages used to identify the benchmark experience. These comments are addressed below in section III. A. 7., Relating Losses to the Benchmark Loss Experience.

b. Historical Analysis Data

Another modeling issue faced by OFHEO was whether to use only Enterprise data to estimate statistical models, or to use data from a wider array of sources. A similar issue arose in the context of identifying the benchmark loss experience. After considering ANPR comments, OFHEO found that Enterprise data sets were the most relevant sources currently available for determining a benchmark loss experience, because Enterprise data is the most representative of the experience of loans owned or guaranteed by the Enterprises. Further, using Enterprise data is consistent with the general practice of banking and thrift industry regulators and credit rating agencies, which is to use data on the loss experience of comparable assets

[71] Even those that are rentals rely upon the performance of one, or at most four, households.

for the relevant industry to determine credit quality and/or capital adequacy.

For the same reasons, OFHEO also used Enterprise data to estimate the statistical models for default and prepayment in the proposed stress test. Using Enterprise data for this purpose provides consistency between the estimates of the benchmark loss experience, the estimation of the statistical models for default and prepayment, and the aggregation of loan level data to create starting position data for the stress test. It will also permit OFHEO to update the statistical models over time, as needed, to capture new performance dynamics and/or new products.

c. Aggregation

Another threshold issue for OFHEO was how to aggregate loan level data to reduce the number of data records that must be stored and processed, while preserving sufficient detail to capture differences in loan performance among important risk classes in the stress test.

(i) ANPR Comments

MRAC stated that a loan level model would be most appropriate if data were available, but a model that aggregates on the basis of the origination year, loan term, coupon rate and current loan-to-value ratio (CLTV) would be acceptable. Freddie Mac recommended that, if OFHEO were to use a joint default/prepayment model, OFHEO should construct a pool for each origination year, aggregated by mortgage product, property type, occupancy status, and CLTV. Both MRAC and Freddie Mac recommended that OFHEO not only aggregate data according to CLTV, but also use CLTV as an explanatory variable in statistical models of default and prepayment rates.

(ii) OFHEO Response

OFHEO proposes to aggregate single family loan level data into loan groups based on the following characteristics: Enterprise, portfolio type (securitized vs. retained), product type, origination year, original LTV, original coupon, and region (Census division). Multifamily loans are aggregated using the same categorical variables as for single family loans, with an additional aggregation class for original debt-coverage-ratio values. Single family loans purchased during the stress period under existing contractual commitments are grouped using all of the characteristics of existing loans plus month of origination (representing the timing of delivery during the stress period). All loan group records include additional fields for measured characteristics, such as the total unpaid balance (UPB) for loans held in portfolio, UPB-weighted average values for guarantee fees for securitized loans, and original term-to-maturity.

OFHEO chose not to propose CLTV as a criterion for data aggregation. Attempting to aggregate data by CLTV would be problematic because CLTV value changes throughout the stress period. However, CLTV is used to compute important explanatory variables used to predict default, prepayment, and severity rates. These variables rely upon CLTV to incorporate a loan seasoning process that updates property values at the start of the stress test and then throughout the stress period.

d. Property Valuation

The 1992 Act requires that OFHEO take into account the impact of the "seasoning" of mortgages on mortgage performance. As that term is used in the statute, it requires accounting for changes in LTV due to changes in housing values and the repayment of loan principal. Accounting for changes in LTVs requires some method of updating property values, in addition to computing scheduled amortization. The first NPR proposed using the House Price Index (HPI), developed by OFHEO, as the basis for updating single family housing values to meet the statutory requirement for loan seasoning, in lieu of the Constant Quality House Price Index published by the Secretary of Commerce.[72] The HPI, which is published quarterly, provides average house price appreciation rates for the nation, the 50 States and the District of Columbia, and the nine Census divisions. It uses repeated observations of housing values on individual single family residential properties. These repeat observations arise where at least two primary mortgages on the same property were purchased by either Freddie Mac or Fannie Mae since January 1975.[73] Index values are published starting with 1980.

In this NPR, OFHEO proposes the method by which loan seasoning will be used to predict credit losses in the stress test, both for single family and multifamily mortgages. For single family mortgages, the OFHEO HPI is supplemented with various measures of the distribution of individual house price growth paths around the average values measured by the index. Three terms—dispersion, volatility, and diffusion—are important concepts for understanding these measures and how the stress test fulfills the statutory requirement that mortgage loans be seasoned. "Dispersion," refers to the distribution, at any point in time, of the (cumulative) growth rates for values of each house in a group, around the average growth rate for that group. Dispersion results from "volatility" or variability of growth rate paths on individual properties from the average growth rate path for all properties. Volatility, like dispersion, can be measured through statistical relationships. The underlying process by which a model generates individual house price growth paths to yield various levels of volatility and dispersion over time is called "diffusion."

Similar procedures are used to season multifamily loans, except that there is no underlying property value index. Rather, property value is estimated using indexes that first update property cash flows. Still, the concepts of dispersion, volatility, and diffusion apply to multifamily property values, and to the principal measures of borrower equity in models of multifamily mortgage performance.

The ANPR posed several questions related to measurement of house price dispersion and to the statistical validity of the HPI as a price index. Issues raised by these questions will be discussed below.[74] They are: the appropriate level of geographic aggregation for the HPI in the stress test, how to account for the dispersion of house prices around the mean in the loan seasoning process, and whether and how to adjust for statistical biases and revision volatility inherent in the HPI data and estimation methodology.[75]

(i) Geographic Aggregation

OFHEO's HPI is estimated at the level of individual States and the nine Census divisions. A national index is also produced as a population-weighted average of the nine Census division indexes. Decisions regarding the level of geographic aggregation at which to estimate and apply house price indexes

[72] 61 FR 29616, June 11, 1996.

[73] The procedures underlying the estimation of the HPI assume that individual house price growth rates will be distributed around the average growth rate through a log normal diffusion process.

[74] The first NPR proposed the HPI as the index OFHEO would use to season loans in the stress test, but did not address how OFHEO would use that index in the stress test. Comments regarding the first NPR will be addressed, together with comments on this NPR, when OFHEO publishes a final Risk-Based Capital regulation.

[75] "Revision volatility" refers to changes in previously estimated index values that occur as a result of the addition to the data of new repeat transaction pairs associated with current transactions. Current transactions can change index values for prior quarters, because every repeat sale of a property provides additional information about house price changes during the time since the prior transaction on that property.

typically involve a tradeoff between the need to identify relatively homogeneous market areas and the need for large enough samples of repeat transactions to assure the accuracy of the indexes. This is, simply put, a trade-off between the advantages and disadvantages of creating indexes for smaller versus larger geographic areas.

At lower levels of geographic aggregation, both property types and the local factors influencing house prices are more likely to be similar, and therefore the average appreciation rate is likely to be more representative of the trend in individual property values. However, lower levels of geographic aggregation result in relatively fewer observations for estimation, resulting in increased sampling error in the estimated house price index.[76] At larger levels of geographic aggregation, the greater number of observations may yield estimates of average price growth with smaller sampling errors, but at the risk of not projecting accurately the appreciation rates of the various submarkets.[77]

(a) ANPR Comments

A number of comments were received on the issue of geographic aggregation of house price indexes. All commenters implicitly recognized the tradeoff involved in choosing the level of geographic aggregation. The National Association of Realtors (NAR) recommended using the lowest level of market aggregation possible, while at the same time minimizing the variance of individual house prices in a market area, and urged that the optimum level of aggregation be determined by computational considerations. MRAC recommended that the choice of aggregation level be driven by objective, external criteria, such as minimizing estimation errors, and described its practice of using the lowest level of geographic aggregation in constructing its indexes, while using higher levels of aggregation for computing the variances. Freddie Mac recommended that OFHEO use house price indexes computed at the Census division level to avoid the need to rely on what it called "highly uncertain individual house-price volatility processes" that would be associated with the use of a national index together with corresponding volatility measures. In addition, when compared to State or local level house price indexes, Census division level indexes would have lower standard errors and thus more reliable predictions.

(b) OFHEO's Response

The choice of aggregation level of the HPI for the stress test is, ultimately, a selection of the level that is most appropriate for the seasoning of mortgages when estimating and projecting mortgage performance. Because the stress test cannot determine the value of each house securing every loan, some type of aggregation is needed. The proposed stress test, therefore, combines estimates of average trends in house prices with estimates of the dispersion of individual appreciation rates around the average growth rate within a given geographic area. This approach provides the maximum relevant information about the equity position of borrowers.

After considering the alternatives and the comments, OFHEO believes that using HPI indexes computed at the Census division level combined with estimates of dispersion of individual appreciation rates around the divisional indexes would be appropriate. OFHEO found that available data is not sufficient to generate statistically valid State-level indexes for some of the less populous States. OFHEO has not proposed to use indexes below the State level (at the metropolitan statistical area (MSA) level, for example), because there are too few areas in which statistically valid indexes can be estimated.

OFHEO agrees with Freddie Mac's comment that Census division indexes without volatility measures reflect regional dispersion better than using a national index with such measures. While OFHEO does publish State-level HPI series, these series are not statistically valid for some of the less populated States. Using Census division indexes, in combination with estimates of individual house price volatility and the resulting dispersion in each division, provides a more complete characterization of housing value dynamics both within and across regions.

MRAC's practice of using a larger level of geographic aggregation for volatility estimates than is used for the price index itself is appropriate when price indexes are based on very small aggregation levels, for example, at the MSA level. Using a larger area to measure volatility helps to diminish the small sample problems of generating price indexes for very localized markets. However, the same is not true when estimating price indexes at the Census division level, because there are no small-sample problems at that level of aggregation. Furthermore, applying national level volatility to division-level price indexes would defeat the purpose of using the division-level indexes. National volatility measures of individual house price growth could be so large that divisional variations in average house price growth become meaningless.

(ii) Volatility and Diffusion

Choosing to use Census division level price indexes with dispersion measures opens additional issues. In particular, capturing the dispersion of house price growth rates around an index value requires both a measure of volatility and a particular diffusion process to translate volatility into actual dispersion. Several ANPR commenters addressed these issues in the context of their discussions of geographic aggregation.

(a) ANPR Comments

Comments received in response to the ANPR differed on whether and how to estimate the dispersion of individual house-price-appreciation rates around the average rates implied by a house price index. Both MRAC and the Department of Veterans Affairs (VA) recommended that OFHEO use a stochastic (random) diffusion process to allow volatility measures to generate a normal (bell-shaped) distribution of individual house prices around the mean prices implied by index values. MRAC noted that failure to do so would underestimate dispersion, even if a highly disaggregated index were used. MRAC observed that underestimation of dispersion could cause underestimation of default and severity rates. MRAC also stated that the tradeoff between the accuracy of the larger sample size and the greater geographic specificity of a smaller sample is even more important in estimating the variance (volatility) than in constructing the index.

Both Fannie Mae and Freddie Mac, on the other hand, recommended against using a stochastic process to estimate dispersion of house values. Freddie Mac argued that one cannot directly observe the volatility of house-price growth rates, and that attempts to estimate it have thus far failed to achieve adequate consistency. Nor is it necessary to estimate volatility, Freddie Mac argued, because the variation in house price indexes across Census divisions

[76] That is, if only a small number of repeat transactions are available to calculate a price index, there is a greater chance that the resulting index is not representative of price changes in the particular housing market as a whole.

[77] This situation could occur, for example, if two adjacent smaller areas with different rates of appreciation are combined and assigned the same average rate of appreciation through a common price index. Whether this type of aggregation is ultimately a problem depends on how the house price index is to be applied, and whether it is to be applied to individual properties or to loan aggregates.

captures a significant amount of the house price dispersion around a national house price index, as well as the basic shape of the house price distribution for Enterprise loans.

Freddie Mac also questioned OFHEO's assertion in the ANPR that dispersion increases over time. It suggested that models that impose increasing dispersion on house price changes, such as "random walk" models, are inappropriate because long-run market forces keep the appreciation of individual houses moving roughly with the national average, and because the data do not support such models. Freddie Mac asserted that such models systematically overstate dispersion for longer holding periods and could significantly and artificially inflate the capital requirement.

(b) OFHEO's Response

OFHEO understands the reason for Freddie Mac's concerns about volatility, but notes that Freddie Mac's comments preceded OFHEO's first publication of the HPI. Based on its experience in estimating the HPI, OFHEO now finds it possible to estimate house-price volatility with adequate reliability, particularly for indexes estimated at the Census division level. Volatility measures are produced as part of the statistical process used to generate the OFHEO HPI. These measures are used to summarize the underlying diffusion process and characteristic dispersion of house price growth paths as a function of time. The volatility measures (parameters) are published in the OFHEO HPI Report. They model dispersion as a function of mortgage age. OFHEO preferred such a stable process to one that relies on stochastic processes that yield different results every time they are used. Because the OFHEO HPI volatility parameters are produced with the HPI itself, they provide results consistent with the HPI, and they are, therefore, OFHEO's choice for capturing house price dispersion in the proposed stress test. However, OFHEO agrees with Freddie Mac's concern that estimates of dispersion for longer holding periods may be unreliable, and has adopted an approach in which estimated dispersion is held at fixed levels after mortgages reach a certain age.[78]

[78] This age varies by Census division, but is approximately 15 years from mortgage origination. The formula for computing the maximum allowable age for each Census division can be found in section 3.5.2.3.2.3., Probability of Negative Equity ($PNEQ_0$), of the Regulation Appendix.

(iii) Revision Volatility

Revision volatility primarily affects growth rate estimates for the most recent quarters included in the index. This is due to the fact that relatively more additional data is added affecting these quarters than earlier quarters.

(a) ANPR Comments

OFHEO received a number of comments in response to the ANPR on whether changes in the index resulting from revision volatility should be reflected in the stress test and, if so, with what frequency. NAR suggested that revisions should be made at the same time OFHEO is required to re-estimate the capital standards. In contrast, MRAC suggested using a "chaining method" [79] that precludes the need for revision to index values for historical periods. The chaining method eliminates revision volatility because it does not revise data of earlier periods as new data become available. Freddie Mac suggested that OFHEO calculate the revisions so as to exploit the greatest possible set of information, but moderate the resulting volatility of the capital requirement by placing limits on the size of the quarterly or annual revisions to the indexes. ACB argued for a reasonable advance notice to the Enterprises prior to any changes in the capital requirement resulting from changes in the indexes to enable them to engage in reasonable business planning.

(b) OFHEO's Response

The proposed stress test does not include an adjustment for revision volatility. Since the time the issue of revision volatility was raised in the ANPR, OFHEO has determined that revision volatility is not likely to have a significant impact on risk-based capital. Revision volatility primarily affects growth rate estimates of the most recent quarters, which will be those immediately preceding the start of the stress test. For loans that have been outstanding for several years at the start of the stress test, changes in appreciation rates in the most recent quarters will represent a small proportion of the total change in housing values since origination. For loans that have been outstanding only a short time at the start of the stress test, projected changes in house prices and in LTV will be minimal in any case, due to the fact that little time has elapsed since origination, and quarter-by-quarter appreciation rates are generally small. Consequently, OFHEO does not expect revision volatility to affect risk-based capital requirements. OFHEO also proposes not to revise the house price index used to determine the appreciation rates applied in the stress period. Rather, HPI values, as published in the 1996, third quarter, HPI Report, will be the basis for relating stress test economic conditions to the benchmark experience.

OFHEO chose not to propose the chaining method suggested by MRAC because it fails to use all of the available data in estimation. In particular, the chaining method uses information on recent property and mortgage transactions only for calculating appreciation rates in the most recent period, ignoring the information provided by these transactions on appreciation rates in earlier periods.

(iv) Statistical Biases

In the ANPR, OFHEO requested comment on whether the HPI should include adjustments for identifiable sources of statistical bias, on how sample selection bias should be addressed,[80] on whether a statistical adjustment should be made to address appraisal bias,[81] and on what additional sources of statistical bias exist and how they might be addressed. In NPR1, OFHEO stated that it would make no

[79] The chaining method involves the following steps: (1) estimation of a historical reference index using all repeat transactions data available as of a specified date, after which no revisions in previously estimated index numbers will occur; (2) acquisition of new data providing information on the most recent time period, and including additional repeat transactions that pair with transactions in previous periods; (3) application of the most recently updated index series to inflate the first property value for a repeat transaction pair to update this value to the penultimate (next-to-last) time period; and (4) estimation of the index number for the last time period using the pseudo-repeat transactions data created in steps (1)–(3).

[80] Sample selection bias refers to the possibility that using repeat transactions as the selection criteria, rather than random selection, could result in an index that is biased. Selection bias results when the probability that a property does or does not repeat is correlated with the change in value. For example, bias can result when the period between transactions is correlated with the change in house prices. Because more rapidly appreciating properties turn over within shorter time intervals, they are more likely to appear in the sample used for estimation. In addition, properties that are sold or refinanced are likely to be the ones that have had higher than average appreciation.

[81] Appraisal bias can result from the perceived tendency of appraisers, as agents of primary mortgage lenders, to impart an upward bias to a home value to insure that a home sale is made. Appraisal bias also occurs when the use of appraisals to value property at refinancing may smooth the fluctuations in housing values because appraisals are derived from comparisons with properties that have either been sold or listed for sale within the past several months and may fail to indicate more recent changes in housing value. In fact, listings are only used in case circumstances where actual sales are few and far between, most often in rural areas.

adjustments to the HPI itself, but would discuss in the second NPR whether such adjustments were to be made in the stress test.

(a) ANPR Comments

As a general comment, Freddie Mac cautioned that research on potential sources of bias is relatively new and that attempting to "un-bias" future price index values estimates introduces a high degree of complexity. Consequently, Freddie Mac recommended keeping the house price index simple until research on potential bias is more conclusive. Freddie Mac also suggested that the reliance of the weighted repeat sales technique on the ordinary least squares (OLS) method [82] may result in bias because that methodology does not generally provide robust estimates of central tendencies in the presence of outlier observations, where appreciation is especially large or small. Freddie Mac suggested eliminating outliers or "down-weighting" them, for example, by using a median regression.

(b) OFHEO's Response

OFHEO agrees with Freddie Mac that attempts to adjust the HPI would be premature and should await more conclusive research. OFHEO also agrees with Freddie Mac's general observation on the sensitivity of OLS estimates to outliers, but has concluded that adopting another estimation methodology is unwarranted. It should be noted that the weighted-repeat sales (WRS) methodology [83] applied to estimate the OFHEO HPI uses information obtained from a first-stage OLS estimation to develop weights that have the effect of discounting the impact of transactions that occur far apart in time. Because these are the transactions that are presumed under the WRS method to have the largest sampling variability, and therefore those most likely to contribute outliers, the WRS method automatically accounts for the potential impact of outliers. In addition, OFHEO reports median rather than mean appreciation rates, which diminishes any potential impact of outlier data.[84]

(v) Sample Selection Bias

Repeat-sales and repeat-transaction price indexes do not include property value information from all mortgage transactions. Issues of potential bias in the measured house price appreciation rates arise because the sample of properties on which repeated transactions are available may not be fully representative of all properties in a given market area.

(a) ANPR Comments

A number of comments were received on sample selection bias in generating a house price index. Freddie Mac noted that sample selection bias results from using only properties that have been sold or refinanced. The selection of these properties is not random and is correlated positively with price appreciation. That is, properties with lower rates of appreciation will have fewer sales and refinancings, and thus provide relatively fewer observations for calculation of the HPI. Although Freddie Mac recommended that this issue be addressed by using a WRS index, which provides retrospective information by pairing two transactions on the same property at different time periods, it noted that some sample selection bias is present in the near term.

NAR suggested that sample selection bias results from the movement of an individual property from government mortgage insurance programs (Federal Housing Administration (FHA) VA) into the conforming conventional market, and vice versa, because the lower property values captured in the government insurance and guaranty programs might not be matched in the WRS series. If price appreciation in a market area is distributed unevenly with respect to selling price (i.e., lower priced homes appreciate slower or faster than do higher priced homes), the absence of a match at the lower end may introduce a bias in the level of price appreciation for the market under evaluation. NAR suggested that using FHA data, to the extent it is available, to construct the weighted repeat sales transactions, would adjust for the low-end sample selection bias. NAR also suggested that OFHEO investigate using different criteria with respect to time between repeat transactions entering the Enterprise loan history file to determine if the end of sample bias is significant, and to possibly suggest ways of correcting for it. NAR suggested that one way of correcting for any such bias would be to restrict the repeat sales in the sample to three-, five-, and seven-year matches and to evaluate the level of bias that results.

ACB suggested that the effect of sample selection bias resulting from the tendency to have greater turnover in that part of the housing stock in which price appreciation has been stronger could be determined by a separate analysis of the relationship between a foreclosure property index and the overall price index. MRAC suggested that some bias might result from properties leaving the sample because they have appreciated enough that the size of subsequent mortgages on those properties is above the conforming loan limit. MRAC then suggested that indexes built on Enterprise data be compared to other more broadly constructed indexes, such as those estimated by MRAC, that include all properties that initially meet the conforming limit. MRAC also suggested that the incidence of default and expected losses would be underestimated if the impact of junior liens were not taken into account.

(b) OFHEO's Response

OFHEO believes that no adjustments are necessary to correct for potential sample selection bias. Low-end sample selection bias due to the exclusion of FHA loans should not have a significant impact on the HPI. FHA loans do not represent the entire lower end of housing markets. There is ample representation of lower valued loans and properties in the data used to estimate the HPI, in part because the Enterprises promote affordable lending and are subject to HUD affordable lending regulations. Furthermore, although FHA eligibility requirements have historically been less restrictive than conventional lending requirements, current trends in conventional lending are toward more flexible standards, including lower down-payment requirements.

Although OFHEO agrees with MRAC that the conforming loan limit may itself produce some bias in repeat transactions index values, this bias is not significant in the HPI. Bias resulting from the conforming loan limit would occur in high-cost housing markets where there are significant numbers of homes with values near the conforming loan limit, and where appreciation rates are greater than the national average. As home values and loan amounts increase in these areas, new loans may no longer be eligible for purchase by the Enterprises, and the property appreciation cannot be captured in the HPI. However, such bias would occur only in very isolated instances. First, the conforming loan limit is substantially

[82] Ordinary least squares is the most commonly used statistical technique for simultaneously analyzing the relationship of many explanatory variables to one special variable of interest (called the "dependent" variable).

[83] This methodology, which is explained in the first NPR, uses pairs of transactions (i.e., repeat sales) involving the same homes to estimate home price appreciation.

[84] The WRS methodology used to generate the OFHEO HPI actually computes median growth rates, directly. These rates need to be adjusted to compute mean growth rates. In NPR1, these were referred to as geometric and arithmetic means, respectively.

above the average home price in nearly all areas of the country. The loan limit would only create a significant issue for the stress test if OFHEO were to use State, rather than Census division, indexes. The potential in particular States with high-cost metropolitan areas for sample selection bias resulting from the conforming loan limit becomes less relevant when the HPI is estimated at the Census division level. Second, the loan limit is updated annually by a factor representing national house price appreciation.[85] Third, borrowers may obtain two mortgages on a property in order to take advantage of the interest rate advantages of having a first mortgage under the conforming limit. In that situation, repeat transactions are captured by the HPI even if the total amount of mortgages on a property exceeds the conforming loan limit. All of these factors suggest that the conforming loan limit is not a significant source of bias in the OFHEO HPI.

(vi) Appraisal Bias

Because interest rates have generally fallen since the early 1980's, most of the mortgage transactions used in estimating the HPI are refinancings, rather than loans for home purchase. This fact raises the question of the consistency between actual prices recorded on purchase-money mortgages and appraisals used for refinance mortgages.

(a) ANPR Comments

Several comments on appraisal bias were received. Freddie Mac recommended against using a statistical adjustment to the HPI to address the impact of appraisal bias, asserting that it is far from clear whether indexes based solely on purchase prices, versus those based on a combination of purchase prices and appraisal values, better represent true house-price appreciation rates. Freddie Mac asserted that the common notion that purchase price is the "true" price is a misconception, since the purchase price is but one of a distribution of potential prices for any given house at any time. In light of the current uncertainty over the extent of the bias, Freddie Mac believes that it would be premature for OFHEO to attempt to develop a model to correct for it.

MRAC suggested that eliminating transactions in which an appraised value is used for either "sale amount" in the matched pairs would be desirable, but may not be practical. MRAC cited its own research to suggest that appraisal bias causes the yearly price appreciation measured by transaction-based indexes to be one percentage point too high. ACB suggested that construction of house price indexes with and without refinance transactions would permit an assessment of about whether appraisal bias is a significant phenomenon.

(b) OFHEO's Response

OFHEO agrees with Freddie Mac's recommendation that adjustments in the HPI for potential appraisal bias not be made. Issues of statistical bias merit further research and analysis, but at the present time OFHEO is aware of no better alternative index to use in the stress test. Also, measuring HPI only on actual purchase prices would compromise the statistical reliability of the indexes over time, because the majority of property values used in generating the various HPI indexes come from refinancing transactions, using appraisal values.

In response to MRAC's comment on appraisal bias in appreciation rates, it should be noted that the mere existence of identifiable differences due to use of appraisals does not outweigh the overall benefit of using the HPI in the stress test. Further, it is unlikely that any appraisal bias that may exist in the HPI would have a meaningful effect on risk-based capital because of the way in which the HPI is used in the stress test. The mortgage performance models in the stress test rely upon statistical equations that relate explanatory variables developed using the historical HPI to actual, historical mortgage performance. The same historical HPI series is used to season (update LTVs of) existing loans to the start of the stress period. Using the same HPI series to estimate the statistical model and to run the stress test eliminates the effect of any appraisal bias in the HPI on default and prepayment rates in the stress test.[86]

(vii) Multifamily Loans

For multifamily loans, OFHEO does not propose to use the HPI or any other repeat-sales or repeat-transaction index to update property values. There is not enough data available for OFHEO to develop its own price index, and the only known price indexes blend many commercial property types, have small numbers of observations, and are national in scope. To overcome these data problems, OFHEO proposes to use an earnings-based method for updating property values.

Multifamily loans are commercial loans for which property value depends upon the stream of earnings generated by the property. For these loans, OFHEO proposes to base the property value on earnings multiplied by a price-to-earnings capitalization factor. The capitalization factor summarizes the present value of a stream of expected future earnings for a given property, using current interest rates at each month of the stress test to discount the expected earnings stream. Earnings are a function of net operating income at loan origination, rental inflation, and the change in vacancy rates since loan origination. The proposed stress test updates the price-to-earnings capitalization factors as a function of changes in interest rates, holding property-specific characteristics constant. In this way, the stress test updates property values and seasons multifamily loans in the proposed stress test.

In choosing the actual rent growth and vacancy indexes used to update property earnings over time, OFHEO used government data where available. Government data were available for all statistical analysis, and for seasoning loans to the start of the stress test. In particular, the model performs the statistical analysis and the seasoning of existing loans to the start of the stress test using the rental cost component of the Bureau of Labor Statistics Consumer Price Index (CPI) to create a geographic specific rent index. Vacancy rates are not needed for pre-stress period seasoning, but are used in estimating the statistical model. The series used is the rental property vacancy series published by the Bureau of the Census (Census Vacancy Series).[87] Because Enterprise purchases of multifamily loans are heavily concentrated in MSAs, MSA indexes are used, where available, to update property values.

Government data are not available for the entire stress period itself. As explained later in the discussion under section III. A.7., Relating Losses to the Benchmark Loss Experience, the stress

[85] The conforming loan limit is administered by the Federal Housing Finance Board.

[86] Appraisal bias could, theoretically, affect the rates generated by the stress test if the method of computing the HPI were changed in some way to account for appraisal bias or if appraisal bias were found to be significantly different in more recent data than in the historical data used to estimate the models. OFHEO does not believe the change in the amount of appraisal bias in the HPI, if any, is significant.

[87] The CPI and Census Vacancy Series are both based on single and multifamily rental properties. OFHEO believes that the inclusion of single family rental properties in the samples used to calculate vacancy rate and rent growth rate series is not a serious concern for the stress test. These series capture the cyclical dynamics of multifamily rental markets, and are useful for updating property values before and during the stress period.

test links stress period losses to the benchmark experience in part by specifying benchmark rates of property value appreciation. However, CPI rental cost data is not available for the benchmark time and place, and Census Vacancy Series rates are only available for the benchmark experience starting in 1986. To deal with this absence of government data, OFHEO created a rent index consistent with the CPI data, but based upon apartment data available from the Institute for Real Estate Management (IREM). To fill in benchmark experience vacancy rates for 1984–1985, OFHEO also used IREM vacancy data to estimate the Census Vacancy Series. The estimated government series are consistent with the data used to estimate the mortgage performance models and season the loans prior to and during the stress period itself.

Volatility estimates for rental rate inflation and vacancy rates are used to calculate the dispersion of multifamily property values, in much the same way volatility measures for the HPI series are used to measure dispersion of property values for single family loans.

5. Default/Prepayment Issues

a. Use of Conditional Default and Prepayment Rates

A threshold issue for OFHEO was whether to construct statistical models of conditional rates of loan defaults and prepayments or to adopt a less detailed approach, such as calculating only cumulative rates and distributing them in fixed percentages across the ten years of the stress test. A conditional rate of default or prepayment refers to the volume of loans that default or prepay during any period, expressed as a percentage of the total volume of loans surviving at the start of that period. The term "surviving loans" means those from the group that have not previously prepaid or defaulted. A cumulative rate of default or prepayment is the total percentage of a group of loans that default or prepay during the entire period being studied (such as the ten-year stress period). A group of loans studied over a ten-year period would have a single cumulative default rate, but would have ten annual conditional default rates.

(i) ANPR Comments

The ANPR asked whether default rates should be expressed in terms of conditional failure rates, cumulative default rates, or in some other manner. In response, MRAC stated that "[d]efault rates are best measured by cumulative life-of-loan rates with conditional rates for each time period determined by estimating 'seasoning curves' similar to the Standard Default Assumption of the Public Securities Association (PSA)[88]." ACB's comments, which emphasized the importance of modeling the shrinking population of loans exposed to the credit risk in the declining rate scenario, assumed that a conditional rate approach should be used. Similarly, a preference for conditional rates of default and prepayment is also implicit in NAR's assertion that the principal merit of using a joint default/prepayment model is that it is capable of using all available information to determine whether a mortgage survives from one year to the next.

Freddie Mac and Fannie Mae, however, recommended using cumulative default rates to simplify the analysis. Freddie Mac was concerned that conditional prepayment rates would lead to absurdly high default rates in an up-rate stress test. In the up-rate scenario, prepayment rates would be low, more loans would be outstanding, and default rates conditioned on the number of loans outstanding would result in more defaults. Freddie Mac recommended using actual cumulative default rates from the worst region, which, implicitly, would include the same prepayment effect as that which occurred during the benchmark period.

(ii) OFHEO Response

OFHEO proposes to apply statistical models of conditional rates of default and prepayment for both single family and multifamily mortgages in the stress test. The advantages of this approach are numerous. The proposed approach automatically accounts for the impact of defaults on the number of loans remaining active and subject to the risk of prepayment, and vice versa. This feature is essential to develop a reasonable representation of Enterprise mortgage cash flows across the different economic scenarios envisioned by the stress test. It also avoids potential numerical anomalies that might arise when total or annual defaults during the stress test are fixed, such as years in which total defaults would exceed total surviving loans due to high prepayment levels in the declining-rate scenario of the stress test. Also, the periodic nature of mortgage payments, scheduled amortization, and the coupon adjustments on adjustable rate loans, all of which affect mortgage performance, require a model that reflects a discrete time period for each default or prepayment event.

OFHEO believes that a statistical model of conditional defaults and prepayments is more accurate and more sensitive to stress test economic factors, and to the Enterprises' starting books of business, than are simpler methods that might be developed. Each quarter the test is applied, a statistical model can account for changes in economic conditions (such as the level and shape of the Treasury yield curve or recent trends in house prices) and the composition of an Enterprise's business since the last time the test was performed. That is, the rates of default and prepayment applied when the stress test is run are adjusted to reflect current circumstances. Such adjustments are particularly important because mortgage prepayment and default rates are highly time-dependent, characteristically increasing during the first years following origination, peaking sometime between the fourth and seventh years, and declining over the remaining years. However, this time-characteristic pattern is itself affected by economic conditions.

Another advantage of modeling conditional default and prepayment rates is the support this approach provides for the proper treatment of loss severity. Loss severity is affected significantly by factors that affect the timing and amount of defaults in the stress test. Loss of loan principal balance, the single largest cost element in determining loss severity, is dependent upon house price declines, which are dependent upon economic conditions leading up to the date of default. Funding costs are also affected by the changing interest rates in the stress test, as explained in later discussions under section III. A. 6., Loss Severity. For all of these reasons, using conditional default and prepayment rates during each month of the stress period greatly improves the sensitivity of the stress test to risk factors.

The proposed approach is, overall, responsive to concerns raised in the ANPR comments, although OFHEO has proposed models of conditional rates of default and prepayment, rather than accept the recommendation of several commenters to use cumulative rates. NAR and ACB recommended use of

[88] PSA has subsequently changed its name to the Bond Market Association. The PSA Standard Default Assumption is to allow monthly conditional rates to increase from zero to some peak rate over the first 30 months of mortgage life, to hold that peak rate constant for another 30 months, and then to allow monthly rates to decline for an additional 60 months. The final rate reached at the end of 120 months is held constant throughout the remaining life of the loans (Public Securities Association, *Standard Formulas for the Analysis of Mortgage-Backed Securities and Other Related Securities.* New York: Public Securities Association, update No.7, June 29, 1993, at SF–14.).

conditional rates. As ACB recognized, the stress test must account for the shrinking population of loans exposed to credit risk in the declining rate scenario. Only through the application of conditional default and prepayment rates is it possible to account for this shrinking population under the alternative interest rate scenarios of the stress test.

MRAC recommended measuring cumulative life-of-loan rates with conditional rates for each time period determined by estimating "seasoning curves" similar to the Standard Default Assumption of the Public Securities Association to determine conditional rates. OFHEO proposes a model with much the same features suggested by MRAC. This model uses mortgage age in the statistical default equations to provide a baseline default rate time-series analogous to the PSA assumption. (*See* note 41, infra.) That baseline is scaled, or multiplied upward, in the same way that PSA recommends using its baseline curve, when the stress test adjusts or "calibrates" its statistical default equations to relate them to the benchmark experience. (*See* section III. A. 7., Relating Losses to the Benchmark Loss Experience.)

OFHEO's approach is also responsive to the recommendations of Fannie Mae and Freddie Mac to keep the models simple. OFHEO proposes to minimize the number of explanatory variables and to create as much consistency as possible across different mortgage types while still capturing differential credit risk by mortgage type. The models are also "simple" in that the mortgage performance equations used in the stress test can be used by the Enterprises—without any modifications-to replicate the stress test. Further, OFHEO believes that using cumulative default rates would not achieve significant simplification. Freddie Mac's comments recognized that default and prepayment rates are not uniform among loans with different characteristics. To deal with these important differences, Freddie Mac suggested developing a system of multiples and LTV categories that would be applied to historical cumulative default rates. However, this approach requires a matrix of rates that becomes, in practice, more complicated to estimate than a statistical model of conditional default rates. Therefore, developing a statistical model, based upon well-recognized techniques that are widely used in the mortgage industry, was, in OFHEO's view, a preferable approach.

b. Identifying Events for Default and Prepayment

A practical issue for modeling default and prepayment rates is how to identify a default or prepayment event in the historical Enterprise data.

(i) ANPR Comments

A number of ANPR commenters, including MBA and Freddie Mac, suggested defining default events only in terms of foreclosures, because many delinquencies are cured and do not generate significant losses. In contrast, the VA suggested modeling the timing of cash flows associated with all delinquencies, including loans that are reinstated and do not terminate.

Only Freddie Mac addressed the subject of curtailments as a form of prepayment. Curtailments are partial prepayments, made in addition to regularly scheduled mortgage payments. Freddie Mac did not suggest that they be tracked as mortgage events, but only that some consideration of them be given in the calculation of current LTV ratios to account for the resulting improvements in borrower equity positions. Freddie Mac cited a study on Ginnie Mae curtailment speeds,[89] and suggested that Enterprise loan pools might have higher rates of curtailment than found in the study, because of better borrower equity and liquidity positions.

(ii) OFHEO Response

OFHEO agrees with MBA and Freddie Mac that the stress test should not consider all delinquencies to be defaults. Only delinquencies that result in termination of the loan are treated as defaults in the stress test. Historically, these events predominantly have been foreclosures, although today these events also include pre-foreclosure sales, where delinquent borrowers sell their properties before foreclosure and share the losses with the Enterprise and/or mortgage insurer.[90] OFHEO found that the more detailed modeling of delinquencies suggested by the VA would make the model more complex and would not have a significant impact on risk-based capital. The impact would be minimal, because in the time and place of the benchmark loss experience, few, if any, alternatives to foreclosure were utilized by the Enterprises and the benchmark rates would, therefore, not change. Also, even if modest improvements to the stress test were possible by modeling delinquency events, at this time there are insufficient data to support an analysis of delinquency resolutions and costs.

Mortgage default and prepayment events result from a borrower's decision to terminate the mortgage, either by prepaying or defaulting, resulting in an observed last-paid installment, after which no further payments are forthcoming. In the case of (full) mortgage prepayment, the borrower terminates the loan by repaying the remaining principal and any outstanding interest. The models identify prepayment events in the Enterprise data by the existence of a last-paid installment date and a change in the loan status from active to prepay. Loan defaults are identified as any loan that has terminated without an indication that it has been prepaid or paid off at maturity.

In the proposed stress test, curtailments made prior to the beginning of the stress period are accounted for in the starting loan balances reported to OFHEO from the Enterprises. OFHEO does not, however, propose giving further consideration for potential curtailments in the stress period itself. OFHEO has found no evidence that curtailments have a significant impact on current LTVs of Enterprise loans on a portfolio-wide basis.[91]

c. Use of Joint Default/Prepayment Models

A key issue raised in the ANPR was whether to use a joint prepayment and

[89] Peter Chinloy, "Elective Mortgage Prepayment: Termination and Curtailment," *Journal of the American Real Estate and Urban Economics Association* 21 (3, Fall 1993), 313–332.

[90] A less important default termination event is the transfer of the property deed, in lieu of foreclosure. This is a foreclosure-like event in that it results in the Enterprise taking title to the property and having to manage and sell it, just as is the case with foreclosed properties.

[91] The Chinloy study cited by Freddie Mac, which used a limited data set, found that curtailments in the study period (January 1988–May 1989) amounted to a very small rate (0.42 percent per year) on the outstanding loan balances of the Ginnie Mae security pools. Ibid., p. 326. More recent work by Fu, Lacour-Little, and Vandell, on conventional mortgage curtailment rates, also shows that curtailments amount to a small percentage of portfolio balances. Qiang Fu, Michael Lacour-Little, and Kerry Vandell, "Retiring Early: an Empirical Analysis of the Mortgage Curtailment Decision," unpublished manuscript, University of Wisconsin—Madison, December 1997. These authors observed 25,566 mortgages for a 21-month period. These included a mixture of conforming and jumbo loans, and included loans originated from 1967 to 1995. During a 21-month observation period, these authors found that over 86 percent of the loans surveyed made no curtailments, and only 0.64 percent of the loans made curtailments in excess of one percent of the original loan balance. Ibid, Table 3, p. 22. The largest curtailments were made on older loans (close to 20 years old), where loan balances and default rates will be small to begin with. Thus, any effect of these curtailments on credit losses would be insignificant for risk-based capital determination.

default model or some simpler assumptions about default and prepayment rates in the stress test. In the ANPR, OFHEO also asked whether prepayments during the stress test should affect the volume or timing of defaults.

(i) ANPR Comments

Several commenters supported the use of a joint model of defaults and prepayments. MRAC stated that the "absolute merits" of the approach are "obvious." NAR asserted that the principal merit of using a joint model of conditional default and prepayment probabilities is its ability to use all the available information to determine whether a mortgage survives from one year to the next or is lost from the portfolio through prepayment or default. HUD cited the need to model defaults and prepayments together as simultaneous decisions based on the underlying property equity.

The Enterprises opposed a joint default and prepayment model. However, Fannie Mae, although not recommending joint modeling, noted the interrelationship between defaults and prepayments. Fannie Mae favored the use of a statistical model that would determine only total terminations (prepayments plus defaults) in each of the two stress test interest rate scenarios. Fannie Mae suggested that total defaults in both scenarios be set at the levels that occurred in the benchmark loss experience. Prepayments would be calculated by subtracting total defaults from total terminations. Fannie Mae made no specific recommendation about how conditional default rates might be determined or how total defaults and prepayments should be distributed through the stress period. Fannie Mae opined that the methodology it recommended would be consistent with the 1992 Act and would provide a workable framework for capturing the relationship between defaults and prepayments. Fannie Mae also viewed this approach as consistent with industry practice and asserted that it would be easier for the company to manage to a capital standard based upon such an approach than it would be to manage to one based upon a joint statistical model.

By contrast, Freddie Mac, while preferring a simpler approach to default modeling, asserted that a joint statistical model of default and prepayment rates would be preferable to total termination models in the stress test context because: (1) unlike the total terminations models, the joint model ensures that defaults and prepayments "add up" to the total mortgage terminations; (2) total termination models focus on interest rate movements under the assumption that default is a small part of terminations under normal conditions, (an assumption Freddie Mac found unwarranted in a stress test environment); and, (3) standard termination models capture small effects such as seasonal variation, which would unnecessarily complicate the stress test.

Freddie Mac also favored an empirically based statistical model of mortgage performance over a stochastic simulation model like those used in mortgage-backed security pricing. Freddie Mac stated that stochastic models are not typically used by the industry for default and prepayment modeling because borrower housing objectives are too complex and heterogeneous to be described adequately with a single set of rules simple enough to solve analytically.

Although Freddie Mac favored the use of a joint statistical model over these other approaches, Freddie Mac did not recommend that OFHEO use one in the stress test, asserting that OFHEO would have difficulty using the data from the benchmark experience to estimate the model. Freddie Mac also cited the need to model prepayments during the stress period as a function of current coupons and interest rates. Freddie Mac instead recommended estimating a statistical equation for prepayments based on historical data from a distressed region to factor prepayments into the stress test. Freddie Mac asserted that this approach would allow implementation of the two interest-rate scenarios while tying prepayment rates to the benchmark experience. Freddie Mac also recommended using cumulative default rates from the benchmark experience as the stress test default rates.

Freddie Mac raised other issues about joint models, claiming that they are not ideal because: (1) they are complex; (2) they require assumptions about both house price drift (average appreciation) and volatility (variation in individual appreciation rates around the average rate); (3) they require assumptions as to what constitutes negative equity; and (4) they require other factors, such as loss of employment to be modeled.

(ii) OFHEO's Response

OFHEO proposes to use joint statistical models in the stress test for both single family and multifamily loans, agreeing with recommendations of many commenters. Also, OFHEO found that total termination models, such as those recommended by Fannie Mae, were not adequate for the purposes of the proposed regulation. (*See* earlier discussion under section III.A.5.a., Use of Conditional Default and Prepayment Rates.) As explained in the ANPR, prepayments have a major impact on cumulative and conditional rates of default, because every loan that prepays is one less loan that could later default. However, high levels of prepayment, which occur when interest rates decline, can also result in increased conditional default rates in periods that follow. This phenomenon, referred to as "adverse selection" or "burnout," occurs because loans that do not prepay when interest rates decline are often lower quality loans that do not qualify for refinancing. Using a joint default/prepayment model allows the stress test to reflect the impact of prepayments (and, therefore, of interest rate changes) upon defaults.

The joint modeling approach is based on well-known and accepted statistical methods that are widely applied in the mortgage performance research. Researchers have found multivariate statistical models to be necessary for this research, because the borrower's options to default or prepay are interrelated. OFHEO believes that simpler approaches (models or tabulations) that fail to account for this complexity would not provide reasonable and appropriate projections of mortgage performance during the stress period.

OFHEO addressed Freddie Mac's concern about the difficulty of retaining a reasonable relationship to the benchmark loss experience in a joint model by: (1) replicating certain benchmark economic factors—specifically, house prices, rent growth rates and rental vacancy rates—in the stress test; and (2) adjusting the underlying default and severity equations used in the stress test to allow them to replicate exactly the benchmark experience. Modeling the effects of differences in starting coupons and interest rates from the benchmark loss experience was possible, because OFHEO's database allowed the models to be estimated based upon a broad and representative sample of historical mortgage performance data. The statistical equations therefore yield reasonable estimates that can be used to project mortgage prepayment under many different circumstances, including stress test interest rate scenarios.

Regarding the issue of model complexity, in OFHEO's view, the proposed models strike the appropriate balance between accuracy and simplicity. The stress test uses an approach based on well-known and

accepted statistical methods that are applied and accepted widely in academic research and in industry practice. Further, OFHEO has developed specifications for the default and prepayment models that avoid unnecessary complexity. The prepayment model suggested by Freddie Mac—using Freddie Mac projections from a statistical equation with ad hoc adjustments based on mortgage coupon rates—is at least as complex, but far less accurate.

As to house price appreciation and volatility, any model of mortgage performance includes, explicitly or implicitly, assumptions about these factors. OFHEO believes that the proposed stress test includes a reasonable and appropriate methodology for updating house prices throughout the stress period. (*See* section III.A.4.d., Property Valuation.)

OFHEO does not agree with Freddie Mac that the need to use assumptions about negative equity to estimate a joint model is a reason not to use a joint model. Any statistical model of mortgage default requires certain assumptions about how to measure negative equity in order to predict defaults. Although expected equity values cannot be assigned to individual borrowers to determine a precise LTV for each loan, using probabilities of negative equity provides substantial information about the negative equity position of individual borrowers. The probability of negative equity is a function of the current loan balance and the probability that individual house prices are below that balance. It is especially valuable when modeling the default potential from groups of loans, as is the case in the proposed stress test. By applying estimates of house price drift and volatility obtained from independent estimates based on the OFHEO House Price Index, the distributions of individual housing values relative to the value at mortgage origination are determined. This approach eliminates the measurement difficulties associated with calculating individual borrower equity at the loan level.

The concern that developing a statistical model for the stress test would require modeling the effects of unemployment on prepayment rates does not raise an issue, because OFHEO does not propose to use unemployment as an explanatory variable in the stress test. In general, OFHEO has limited the explanatory variables in the stress test to those that define different loan characteristics or product types are required to meet statutory requirements. As explained above in section III.A.2., Overview of Mortgage Performance, OFHEO has avoided variables, such as unemployment, that require assumptions about stress period economic conditions that are not specified in the 1992 Act. (*See* section III.A.5.e., Choice of Explanatory Variables for Default and Prepayment).

d. Choice of a Statistical Method for a Joint Model of Default and Prepayment

(i) ANPR Comments

The ANPR sought comment on the appropriate statistical method to use for a joint model of default and prepayment. None of the ANPR comments provided an express recommendation of a model, but NAR supported a multivariate model and suggested that the proportional hazard model developed by John Quigley and Robert Van Order in 1992 would provide a good starting point. Other commenters, such as Freddie Mac and ACB, emphasized that any joint model must be robust and able to yield reasonable results under many different scenarios.

(ii) OFHEO Response

OFHEO agrees with the NAR comment that proportional hazard models provide a good starting point. These models measure conditional rates of default and prepayment. The stress test utilizes a similar approach, the logit model, which is more appropriate for large data sets. OFHEO also agrees with Freddie Mac and ACB that a joint model should be robust and able to yield reasonable results under many different scenarios. As explained more fully in the Technical Supplement, OFHEO has evaluated its proposed models to ensure that they yield reasonable results under many different scenarios, use widely accepted techniques, and are otherwise appropriate for OFHEO's purposes.

OFHEO is proposing statistical models for single family mortgages that were estimated using multinomial logit specifications for quarterly conditional probabilities of default and prepayment. The multifamily model was estimated similarly, although it is based upon annual, rather than quarterly, conditional probabilities of default and prepayment, as described more fully in the discussion of the multifamily default/prepayment issues, below. There are several advantages to using the multinomial logit specification. First, it guarantees that the estimated and projected probabilities of default and prepayment always lie between 0 and 100 percent. Second, one can estimate weights for the impact of specific explanatory variables on the probabilities of default and prepayment separately. Third, it is possible to specify different lists of explanatory variables for each type of event. Fourth, the model automatically accounts for the impact of differences in the estimated probability of default on prepayment and vice versa. Finally, estimation routines for multinomial logit models are readily available in a large number of commercially available statistical software packages.

e. Choice of Explanatory Variables for Default and Prepayment

In the ANPR, OFHEO requested comment on the appropriate explanatory variables to use in statistical models of default and prepayment. OFHEO asked specifically about how to account for the effects of house prices, interest rates, and other economic factors, and whether to include measures of mortgage age and mortgage value as explanatory variables. OFHEO also asked about empirical and theoretical approaches to estimation of multifamily credit risk, and several respondents addressed the issue of explanatory variables in responding to that question.[92] Because there are some differences between the explanatory variables for single family and multifamily models, the comments on explanatory variables are discussed separately for the two models. Some comments related to specific explanatory variables are discussed below in connection with the discussion of the particular variable.

(i) Comments on Explanatory Variables for Single Family Modeling

Freddie Mac suggested that using mortgage product, property type, occupancy status and current LTV as explanatory variables would explain a significant portion of the differences in default rates without venturing into more complex relationships that might prove unreliable for purposes of the stress test. Freddie Mac recommended caution in the consideration of mortgage age as an explanatory variable, noting that while age may be a valuable proxy for unmeasurable determinants of default, it should not take on such importance that mortgage age patterns dominate the capital requirements. In contrast, Freddie Mac did recommend that OFHEO include a measure of the mortgage premium value (reflected by the difference between the interest rate on a given mortgage and the current market interest rate for a similar loan) in

[92] No commenters provided suggestions on how to actually model multifamily mortgage defaults and prepayments.

its modeling efforts, as an adjunct to borrower equity. Freddie Mac cited its own research showing that borrower default choices do respond to differences between the mortgage coupon rates and current market rates of interest.

World Savings stated that OFHEO should be cautious about including unemployment rates as an explanatory variable in any statistical model of mortgage performance, because the statutory stress test takes a regional experience and uses it to imply a national recession. World Savings reasoned that, in a regional recession, homeowners who lose their jobs might find employment elsewhere but retain their homes. They may rent their homes until such time as house prices again rise enough to permit them to sell their properties without incurring a loss. However, in a national recession, such opportunities would not be available and the dynamics of default could be much different.

MRAC recommended using the following variables: current LTV, length of residence, mortgage term and type, loan purpose, occupancy status, primary home status, relocation loan status, consumer credit information, and mortgage premium value. Recognizing that length of residence is not always available to researchers, MRAC suggested that mortgage age could be used instead. The MBA recommended including measures of borrower equity, mortgage premium value, and product type differences in a statistical model. Standard and Poor's asserted that mortgage age is a very important explanatory factor, noting that 80 percent of all defaults occur by the seventh year of a mortgage pool.

The VA asserted that borrower equity is the most important determinant of default and prepayment rates and recommended that OFHEO think of explanatory variables in two categories: those that indicate the borrower's ability to pay, and those that indicate the borrower's ability to sell the property. The former category could include such things as job loss, divorce, necessary relocation, and hazard loss (e.g., uninsured fire or water damage to the home). The latter category could include the borrower's equity position and ability to complete a property sale quickly. The VA also mentioned that its own statistical model of default and prepayment rates includes regional unemployment, house sale activity measures, and a house-purchase-affordability index.

NAR recommended that OFHEO include a factor for mortgage age, but not for the mortgage premium value. While NAR accepted the theoretical justification for including mortgage value in a statistical model, it did not find its influence on defaults to be statistically significant in its own modeling efforts. NAR also mentioned a factor not discussed by other commenters—the relative size of each loan. NAR commented that the influence of house price appreciation on default depends on whether the loan has a high or low balance, and that OFHEO should carefully analyze this issue in the context of Enterprise experience. In addition to these comments, NAR also provided, without further explanation, a list of all the variables it believes should be included in a statistical model of default and prepayments. Listed were: origination LTV, ratio of the mortgage coupon rate to the current market rate for home mortgages, current LTV, loan size, presence of credit enhancement (e.g., private mortgage insurance), house price dispersion, transaction costs, the burden on household cash flow of servicing the mortgage, origination year of the mortgage, policy year (age) of the mortgage, mortgage premium value (for prepayment only), region of the country, unemployment rate, inflation, regional household mobility rate, mortgage product characteristics, and net borrower equity in the home.

(ii) Comments on Explanatory Variables for Multifamily Modeling

OFHEO received fewer responses to its ANPR questions on approaches to multifamily modeling than it did to questions related to single family mortgage performance modeling. The import of these comments was to direct OFHEO to look at property cash flows as the primary influence on defaults. Freddie Mac emphasized that cash flow after mortgage debt service, as measured by the debt coverage ratio (DCR) is important, as are property equity and balloon terms. It also mentioned the need to measure multifamily market conditions directly, rather than relying upon single family house price appreciation to update explanatory variables over time. Freddie Mac further indicated that OFHEO needs to take into account significant factors that affected multifamily default rates during the 1980s, such as tax law changes, but should not include in the stress test the effect of any speculative political factors, such as potential legislative actions.

Standard and Poor's also suggested that DCR should be the focal point for multifamily mortgage default risk, but added that the quality of the real estate securing mortgages is also considered in the S&P credit analysis. ACB recommended accounting for the changing cash flow position of the mortgaged property (i.e., using the DCR), rather than relying solely on net income, and including factors for tax laws and depreciation allowances. It also commented that, while data is not available to consider these additional variables, the underlying determinants of multifamily defaults are factors that lead to problems in tenant rental payments: unemployment, reduced hours of work, and reduced income. HUD suggested considering the corporate bankruptcy literature when deciding how to model multifamily defaults. This literature emphasizes changes in the cash flow position of multifamily properties. HUD also commented that OFHEO should treat balloon payoffs differently than normal, early prepayments.

(iii) General Approach

Models of mortgage performance are models of borrower behavior—of individual borrowers' decisions whether to continue making monthly mortgage payments, to prepay, or to default. Each month, every borrower must choose among these three options. Because mortgage performance models are an attempt to predict how borrowers will choose to exercise these options, financial options theory provides the most widely accepted conceptual framework to link these borrower choices to differences in the underlying loan characteristics and economic conditions.[93]

In the options theory framework, the most important variables are borrower equity and interest rates. When equity is

[93] This conceptual framework is the basis for nearly all mortgage performance research. It applies to all of the mortgage performance models referenced in the ANPR (*See* 60 FR 7470–7471, Feb. 8, 1995, footnotes 11 and 13). Other references can be found in the Technical Supplement to this regulation. Financial-options theory treats a mortgage like a bond issued by the borrower with embedded financial options to default or prepay, which borrowers will exercise when it is in their financial interest to do. From the lender or mortgage investor's perspective, this conceptual framework is sometimes referred to as "contingent claim analysis." The mortgage investor, as bondholder, has a claim to a cash flow (mortgage payments), the value of which is contingent upon the value of the options to the borrower and the actions of the borrower with respect to the mortgage property (e.g., property maintenance). The choice to pay off (prepay) a mortgage is likened to a "call" option, where the borrower effectively buys back the mortgage from the lender at the book (face) value. The choice to default is seen as a "put" option, where the borrower sells the mortgage back to the lender at the current market value of the collateral property. The choice of an options-based model is consistent with the apparent underlying assumption of the preponderance of ANPR comments, which generally relate to how to account for factors that affect the exercise of these options.

negative, that is, the property value is less than the outstanding mortgage balance, the default (put) option is said to be "in the money." That term is used to mean that, theoretically, the borrower might find it financially advantageous to default in order to eliminate the negative equity position in the mortgage.[94] When equity is negative, maintaining the mortgage through regular monthly payments leaves the borrower paying more for the property than it is worth. Under such conditions, default becomes an economically rational option for many borrowers, particularly those who may be undergoing other financial stresses, such as unemployment, divorce, health problems, etc.

In an options-based model, interest rate changes create positive or negative value in the mortgage itself. This value is referred to in the ANPR as "mortgage value." It is also sometimes referred to as the mortgage premium value. That is, the current mortgage has a "premium" or positive value to the borrower—it is worth holding on to—if the coupon interest rate is below current market rates. That mortgage value is reduced if current market rates are below the coupon rate. If a borrower is in a position of negative property equity due to declines in local house prices, but has a below market rate mortgage, the mortgage premium value reduces incentives to default. On the other hand, an above market rate mortgage could, in theory, increase the incentive to default for the same borrower.

The mortgage premium value is inversely related to the value of the prepayment (call) option. When current market rates are below mortgage coupon, the call option is "in the money," and its value is high. When the mortgage rate is below market, the call option is "out of the money," and its value is low. Borrower equity also plays a part in prepayment determination; generally, it must be a certain positive amount before lenders will offer refinance opportunities. It must also meet a positive threshold before a property can be sold without the borrower incurring out-of-pocket expenses. However, as long as minimum equity thresholds are met, the higher the mortgage coupon rate is above the market rate, the greater is the incentive for a borrower to exercise the prepayment option by paying off the existing mortgage from the lender with the proceeds of a new loan.[95]

Although property equity and interest rates are the predominant variables of relevance in an options approach to mortgage termination modeling, many other factors affect borrower decisions to exercise a default or prepayment option.[96] For single family mortgages, some of these factors are: (1) the potential for lender deficiency judgments, which reduce borrowers' ability to force lenders to absorb the negative property equity through defaulting; (2) borrowers' desire to maintain access to credit at preferential rates, which will also make them more hesitant to default; (3) moving costs, which reduce the value of the default option; (4) forced mobility due to job loss (or relocation) or family disruption, causing default or prepayment when it would not otherwise be financially advantageous to terminate the mortgage; (5) expected future mobility, which reduces tendencies to prepay in the present when that option is otherwise "in the money"; and (6) the up-front expenses involved in prepayment, which require that interest rates fall by a certain amount before it is really advantageous to prepay. For multifamily mortgages, the additional factors that affect the borrower's decision to exercise an option to default or prepay are: (1) property cash flow and the ability to service the mortgage; (2) the value of depreciation write-offs in reducing tax burdens; (3) prepayment penalties, which reduce the value of refinancing in the early years of a loan; and (4) balloon terms, which generally require a loan to be refinanced at maturity. Balloon term considerations are more important for multifamily than for single family mortgages because balloons are the predominant instrument type in the conventional, multifamily mortgage market.

In choosing which variables to include in estimating the statistical models used in the stress test, OFHEO considered financial options theory, ANPR comments, data availability, the need for simplicity in model design, and the need to meet multiple statutory objectives while implementing a credit stress test based on the benchmark loss experience. In selecting explanatory variables to use in running the stress test, OFHEO considered whether they were necessary to reflect the differences in loan characteristics and interest rate environments as required by the 1992 Act. Some variables were used to estimate the statistical models, but they did not meet the criteria for inclusion in the stress test itself.[97] They are represented by simplifying assumptions in the stress test so that their values do not vary across loans or time. All variables used to estimate the models and any other variables suggested by commenters are discussed below. The variables common to both single family and multifamily analysis are discussed first, followed by a discussion of variables unique to each.

(iv) Common Single and Multifamily Variables

(a) Measures of Borrower Equity

The actual variable used in the proposed stress test to capture borrower equity positions is the probability of negative equity—the probability that the value of a mortgage will be larger than the value of the property securing it, so that the default (put) option is "in the money." Calculation of this explanatory variable uses the measures of property value described in section III. A. 4. d., Property Valuation, along with original loan amortization schedules.[98] Measuring the probability of negative equity is appropriate because the actual appreciation rates of individual properties are unknown and because such a measure gives the best representation of the percentage of loans in any given pool or portfolio that are at risk of default. The probability of negative equity is also included in prepayment equations, because negative equity may prevent prepayment by making it difficult to refinance. This variable, therefore, has opposite effects on default and prepayment rates. Increases in the probability of negative equity mean that fewer loans in the pool qualify for refinancing, which decreases prepayment rates. At the same time, borrowers who are forced to relocate or

[94] Negative equity is only one factor that influences the borrower's decision. Borrowers are usually personally liable on the note, which means that default could have numerous negative consequences beyond losing the property in foreclosure. For this reason, the model recognizes that negative equity does not cause a default, but simply makes it more likely.

[95] It is also possible that borrowers exercise the prepayment option with personal equity, liquidating other assets to pay off the mortgage even if property equity is negative. Borrowers may also turn to alternate lenders, who offer loans with LTVs higher than those usually purchased by the Enterprises, for refinancing opportunities when borrowers have little or no positive property equity.

[96] Empirical studies have shown that mortgage borrowers are not "ruthless" in their exercise of these options. First, just being "in the money" at a point in time does not mean that an optimal "strike price" has been reached, where the option value is maximized. Second, there are many other factors that affect both option value and whether borrowers will default or prepay their mortgages.

[97] Any variable that is included as an explanatory variable in the stress test is also used to estimate the model.

[98] In the estimation of single family default and prepayment equations, and in the stress test simulation of default and prepayment rates, balloon loans are amortized over their original rather than amortization terms. In the final rule OFHEO intends to substitute amortization term for original term in the calculations for balloon loans.

who experience a loss of income may have difficulty prepaying, making the default option a more likely borrower strategy.

For multifamily loans, the stress test uses a variable capturing the joint probability of negative equity and negative cash flow to predict default. As highlighted by the ANPR commenters, cash flow may be more important than equity for multifamily default. Although negative equity is a necessary condition for the default option to be "in the money," it is not a sufficient condition for default. Default will maximize wealth only if cash flows are also negative. When the equity is negative, but cash flows are positive, default is not rational because the borrower would give up positive income. Because both negative equity and negative cash flow are required for default to occur, the primary variable proposed to explain multifamily default is the joint probability that a property has both negative equity and negative cash flow.

Additional consideration is given to the equity position of borrowers with balloon loans when those loans mature. At the balloon maturity point, when borrowers must pay off and find new financing, weak property financials can lead to even higher default rates than might occur earlier in the life of the loans. The multifamily model, therefore, gives additional weight to the joint probability variable in the balloon maturity year to reflect the increased risk that a borrower will not qualify for a new mortgage.[99]

Multifamily balloon loan payoff is also a function of the financial characteristics of the underlying property, because loans must meet equity and cash flow standards before new financing can be secured. To capture the impact of equity and cash flow on the ability of a borrower to refinance a multifamily loan at the balloon point, the stress test uses a variable that measures the joint probabilities that both property equity and cash flow are at sufficiently high levels to qualify for refinancing.

(b) Mortgage Premium Value

OFHEO posed a question in the ANPR about use of the mortgage value (mortgage premium value)—the financial value of an above or below market rate mortgage coupon—as an explanatory variable in default equations. The mortgage premium value is a measure of the value of the prepayment option to the borrower, that is, the value of prepayment before accounting the transaction costs of prepayment. It is, therefore, an important variable used by all the models to explain prepayment behavior. At issue is whether this factor should also be used to help explain default behavior.

ANPR commenters had differing views on this issue. Those suggesting that it should be used were Freddie Mac and VA. Two other commenters, NAR and ACB, were supportive in theory, but were not confident that a statistically valid relationship to default rates could be found, at least for single family mortgages. MRAC included the difference between the mortgage coupon rate and current market interest rates (a proxy for mortgage premium value) in its list of explanatory variables for a default/prepayment model. This is a proxy for the mortgage premium value.

As explained earlier, options theory suggests that increases in the value of the prepayment option (resulting from lower interest rates) should increase both prepayment and default rates because the current mortgage becomes expensive compared to alternatives. Prepayments increase because refinancing becomes attractive. Default rates increase for borrowers who already have negative property equity because some such borrowers relieve themselves of both the negative property equity and the expensive mortgage by defaulting and then renting, or by taking out a new mortgage to purchase another property. Conversely, increases in market interest rates increase the value of holding on to an existing mortgage, and thus may decrease default rates as well as prepayments.

While recognizing that there is a theoretical basis to include a mortgage premium value variable in the default equations, OFHEO proposes, nevertheless, to limit its use to prepayment equations. The influence of interest rate changes on mortgage defaults is captured adequately in single family default equations by a "burnout" variable, which measures the instances when borrowers have not taken advantage of previous refinancing opportunities. This variable is explained in a later discussion under section III.A.5.e., Choice of Explanatory Variables for Default and Prepayment. A burnout variable is not included in the multifamily equations, because prepayments are severely limited by prepayment restrictions.

For prepayment equations, the actual variable used to capture the prepayment option value is a relative spread variable: the difference between the current mortgage coupon rate and the current market interest rate, as a percentage of the current mortgage coupon rate. This variable has been shown to provide an approximation of the mortgage premium value.[100]

For multifamily mortgages, this relative spread variable is not included in the default equations, because the interest rate effect on default rates is reflected adequately in the joint probability variable. Declines in interest rates increase the present value of after-debt income stream generated by the property, and thus its market value, all else equal. Consequently, multifamily property values generally rise when interest rates fall.[101] Thus, a relative spread variable is not included for multifamily defaults.

(c) Mortgage Age

OFHEO proposes to include mortgage age as an explanatory variable in its single family and multifamily models, as recommended in the ANPR comments. OFHEO found that conditional probabilities of default and prepayment of Enterprise loans exhibit characteristic age profiles that increase during the first years following origination, peak sometime between the fourth and seventh years, and decline thereafter.

Because the benchmark loss experience was based entirely upon newly originated loans, an adjustment is necessary to account for the fact that at any point in time Enterprise single family portfolios consist of loans with varying ages. Adding mortgage age as an explanatory variable provides such an adjustment by allowing conditional default and prepayment probabilities to vary during the stress period in ways that historical profiles indicate are appropriate for loans of each age. Although Freddie Mac raised a concern that mortgage age might have too large an effect in the stress test, OFHEO research indicates that this is not the case. Although mortgage age is an important variable in the models, it does not diminish the impact of other, more

[99] OFHEO does not propose a similar treatment of single family balloon mortgages at this time, because they are not substantial portions of single family loan portfolios of the Enterprises, their balloon point refinance qualification standards are not as stringent as those for multifamily loans, and the Enterprises readily help single family borrowers to refinance balloon mortgages.

[100] This approximation of the mortgage premium value was introduced by Y. Deng, J. M. Quigley, and R. Van Order, (1996) "Mortgage Default And Low Downpayment Loans: The Costs Of Public Subsidy," *Journal of Regional Science and Urban Economics* 26(3–4), 263–285.

[101] While market interest rates do have some effect on prices of single family homes, the effect is not as direct as it is for multifamily and other investment properties.

direct risk factors included in the stress test.[102]

(v) Additional Explanatory Variables Used in the Single Family Model

The following discussion addresses additional explanatory variables that are used only in the single family model. A list of additional explanatory variables for the multifamily model is provided after this discussion of single family variables. The variables discussed below help to complete or modify the basic option valuation for single family mortgages. The original LTV ratio helps to account for differences in default and prepayment rates due to borrower financial status. Occupancy status accounts for differences between single family owner-occupiers and investor-owners. Product-type factors adjust for differences that might be due to the unique risk characteristics of those products and the borrowers who use them. The yield curve slope accounts for different incentives to refinance between fixed-and adjustable-rate products. Some of the variables discussed below are used in statistical estimation of the models, but are represented by simplifying assumptions in the stress test.

(a) Original LTV Ratio

Original LTV ratio is used in the stress test as a proxy for a number of factors related to the financial status of single family borrowers that are recognized widely as influencing the propensity of borrowers to default. Among these factors, which were mentioned by ANPR comments, are borrower income, net worth, and debt burdens. Information about these factors is not available for most of the loans in OFHEO's database. A variable that is available as a proxy for relative financial status of borrowers is the original LTV ratio.[103] Both Freddie Mac and NAR recommended use of this variable. By making low down payments, high LTV borrowers signal that they are more likely to have few economic resources to finance the transaction costs of prepayment, or to endure spells of unemployment or other "trigger" events that might cause them to exercise their option to default. Also, high LTV borrowers demonstrate a willingness to "leverage" the financing of the home purchase, which may mean that they are more likely to exercise their default option when it is in the money. For these reasons, OFHEO found that original LTV is an important risk characteristic of mortgages, which OFHEO proposes to use both in estimating the single family model and in running the stress test.

(b) Occupancy Status

Historically, single family loans to owners who live in the collateral property have exhibited different performance than similar loans made to investors who rent the property. Difference in occupancy status is one of the loan characteristics that the 1992 Act specifically requires that OFHEO take into account in the stress test. It is also a distinction often made by the mortgage industry, because of a clear difference in the risks of borrower default or prepayment. Owner occupants are less likely than investors to exercise the default option because of the direct benefits occupants receive from the consumption of housing services. Also, owner occupants are more likely to prepay for non-financial reasons, such as residential mobility, than are investors.

The statistical equations used in the stress test were estimated with an investor loan indicator variable that captures the differential default and prepayment risk of these mortgages. However, to capture the differential risk of investor loans in the proposed stress test, OFHEO makes a simplifying assumption that investor loans are spread equally across all loan groups, according to their percentage in the overall Enterprise book of business, rather than creating separate loan groups for investor mortgages. For example, if investor loans are four percent of all loans for a particular Enterprise in a particular starting quarter for the stress test, then four percent of the loans in each aggregated loan group are presumed to be investor loans for purposes of running the stress test. The statistically derived investor-loan weighting factor (statistical coefficient) in each default and prepayment equation is then applied to the four percent figure to arrive at the differential investor loan risk for every loan group. Because investor loans are a small percentage of Enterprise single family portfolios and are heavily concentrated in the 70 to 80 percent LTV category, OFHEO's simplifying approach has no significant impact on loss rates.[104] The exact algorithms used in the proposed stress test to capture investor loan risk are detailed in section 3.5.2.3.2.5., Occupancy Status (OS), of the Regulation Appendix.

(c) Product Type

The 1992 Act expressly requires OFHEO to take differences in mortgage product type into account. In addition, because the benchmark loss experience was identified using the 30-year fixed-rate mortgage, it is necessary to reasonably relate the default experience of other types of mortgage products to the benchmark. Most commenters suggested some type of multiplier approach for other single family mortgage types that would measure the risk of these products in proportion to the risk of the benchmark loan type. OFHEO's proposed approach is broadly consistent with the thrust of these comments. Because comments received by OFHEO focused particularly on relating various mortgage product types to the benchmark experience, these comments are discussed later under section III.A.7.b., Relating Other Single Family Products to the Benchmark. This section discusses the way in which mortgage product type differences are handled in the single family mortgage performance model.

The stress test uses two primary sets of statistically estimated single family default/prepayment equations, one for fixed-rate and one for adjustable-rate mortgages. A third set of equations, which may be thought of as modified fixed-rate equations, is used to project the performance of less prevalent single family mortgage types relative to the performance of 30-year FRMs. This final set of equations includes as explanatory variables unique product-type indicators for 15-year fixed-rate mortgages, 20-year fixed-rate mortgages, balloon mortgages, FHA/VA-insured mortgages, and second liens. Description of these specific product-type variables and their derivations are included in section 3.5.2.3.2.8., Product Type Adjustment Factors of the Regulation Appendix and section IV.B.5.j., Product Type Indicators, of the Technical Supplement. Product type indicators allow estimation of multiplier-like effects using all available historical data, and they assure that measured differences in product-type

---

[102] Mortgage age combines with the constant term in the statistical default and prepayment equations to create what can be called "baseline" rates of default and prepayment: the time series of rates that would occur if all other influences were absent. Once variables representing those other influences are added to the equations, the actual patterns of default and prepayment rates can vary greatly from the baseline paths.

[103] Although credit scores could be a good indicator of the financial status of borrowers, as discussed below under section III. A. 5. e. vi. f., Credit Scores, their usefulness for developing and implementing a default/prepayment model in the stress test is limited because credit scoring is a fairly recent development in the mortgage industry.

[104] Loans on owner-occupied properties in the Enterprise portfolios also have a central LTV range of 70–80 percent. Thus, attributing some investor loans to higher LTV categories and some to lower categories, by assuming they have the same overall LTV distribution as do owner-occupied loans, has offsetting effects on predicted credit risk.

risk are consistent with the stress test environment. All products with variable payments over time are included as adjustable-rate mortgages. Other non-standard mortgage types, such as reverse mortgages and bi-weekly mortgages, are included with their fixed-rate counterparts with similar mortgage contract terms (length of mortgage in years).

As explained in section III.A.7.b., Relating Other Single Family Products to the Benchmark, some commenters were justifiably concerned that applying several product type multiples to a single loan would have an inappropriate compounding effect on default rates. OFHEO addressed these concerns in two ways. First, the multipliers were estimated in a multivariate statistical analysis within the default and prepayment probability equations, rather than applying fixed multipliers to estimated default rates for 30-year fixed-rate loans. This approach provides adjustment factors that are most consistent with broad historical experience and with the other risk factors in the model. By controlling for other explanatory variables, only the residual effects of the differences in product type are captured by these product-type adjustment-factor multipliers, which limits the size of their effects. Second, the models include all other explanatory variables as categorical variables (indicators of value-range categories), instead of as continuous measures of variable values. Using categorical variables helps control for unreasonable compounding risks, by preventing the combination of low house-price growth and sustained adverse interest-rate movements in the stress test to cause default rates to rise to unrealistic levels. For example, the stress test gives the same default weight to all probability of negative equity values above 35 percent, which effectively caps the influence of this variable in the stress test.[105]

(d) Yield Curve Slope

The slope of the Treasury yield curve is included as an explanatory variable in the prepayment equations. Both the choice between ARM and FRM loans and the timing of refinancing are influenced by expectations about future interest rates and differences in short-term and long-term borrowing rates associated with the slope of the Treasury yield curve. The slope of the Treasury yield curve is measured in the proposed stress test by the ratio of the ten-year CMT to the one-year CMT. A high value for the slope of the yield curve indicates that short-term rates are low relative to long-term rates. A high value, therefore, reduces the likelihood that ARM borrowers will refinance into fixed-rate mortgages, and increases the likelihood that fixed-rate borrowers will refinance into ARMs to take advantage of the more attractive interest rates.

(e) Burnout

For single family mortgages, the proposed stress test uses the variable burnout to capture the effect of the inability of borrowers to refinance their mortgages due to equity or other credit constraints. Burnout is the adverse selection that occurs when borrowers retain their mortgages during periods when there are clear financial benefits to refinancing. In this context, adverse selection is reflected in the lower average credit quality of mortgages remaining in a pool after a significant refinancing opportunity, compared to the overall quality of the mortgages in the original, larger pool. Adverse selection occurs because borrowers and properties with higher credit quality refinance in higher proportions than do those with lower credit quality. The remaining mortgages, therefore, will experience higher conditional default rates. Accounting for this change in the underlying quality of a mortgage pool is preferable to using only a prepayment-option-value variable in predicting defaults, principally because its effect continues unchanged over time. The burnout variable in the stress test indicates whether, over the previous eight quarters of mortgage life, there have been at least two quarters with significant refinance opportunities, as defined by a two percentage point difference between the mortgage coupon rate and the market interest rate on fixed-rate mortgages.

For similar reasons, burnout is also included as an explanatory variable in single family prepayment equations, although its effect is in the opposite direction to that in the default equations. As discussed in the ANPR, burnout suggests that prepayment rates will be less responsive to interest rate changes after a pool of mortgages has already undergone a significant period of refinance opportunities.

(vi) Single Family Variables Not Used in Running the Stress Test

Addressed below are several variables suggested by ANPR commenters that either are not used in the single family default/prepayment model, or were included in the statistical estimations but are represented by fixed or constant values when the stress test is run. In general, to estimate the model, OFHEO used variables that had significant independent effects on default and prepayment rates. However, OFHEO does not propose to use all of these variables in running the stress test. Some variables are not used in the stress test because they would diminish the role of the benchmark loss experience in determining stress test credit risk. Others were not needed to reflect statutory requirements to distinguish among loan types and characteristics, or between the effects of the up-rate and down-rate scenarios. Allowing such variables to vary in value in running the stress test would create credit-risk dimensions that are unnecessary and not contemplated by the statute.

(a) Relative Loan Size

Relative loan size[106] is the ratio of the original loan amount to the average-sized loan purchased by the Enterprises in the same State and in the same origination year. This variable was included when estimating the statistical model to isolate differences in the performance of loans of above and below average size, but is not used in the stress test.

As suggested by NAR, OFHEO explored the different default propensities of loans with high and low balances using Enterprise data. OFHEO's use of a relative loan size variable in the statistical estimations of the single family model demonstrated that relatively larger loans tend to have higher prepayment speeds, but differences in default rates by loan size were small and inconsistent. OFHEO interprets the faster prepayment speeds of relatively large loans as reflective of the higher dollar value of the prepayment option on these loans. Households with relatively large loans may also have higher overall debt burdens and be more responsive to opportunities to refinance debt so as to lower payment burdens.

The stress test does not use relative loan size as a variable, because it is not needed to reflect statutorily required distinctions, and including it as a variable would have necessitated a sevenfold increase in the number of loan group records in the stress test. OFHEO believed that the benefit

[105] The number of loans in the historic sample used to estimate the statistical model of default and prepayment rates gets very small as the value of the probability of negative equity rises much above 35 percent. OFHEO therefore does not believe that there is valid information on default risk that could be gained by allowing for categories of probability of negative equity above, for example, 50 percent.

[106] Relative loan size should be distinguished from the actual original and current dollar balances of the loans, which are included elsewhere in the stress test.

derived did not justify the additional complication of the stress test that would result. As a result, all loans are put into the "average" size category for this variable when running the stress test.[107]

(b) Season of the Year

The season (quarter) of the calendar year was included when estimating the statistical model to account for the potential impact of weather, school schedules, and seasonal employment patterns on residential mobility and default and prepayment. In order to avoid seasonal variation in the quarterly risk-based capital requirements when the model is applied in the proposed stress test, an average of the season of the year effects is used. Because of the actual statistical technique used to estimate the equations, this average effect is obtained by excluding the season-of-year variable from the stress test default and prepayment equation.[108]

Use of seasonal variation was mentioned by Freddie Mac as a weakness of the termination models used by investment banks to value mortgage backed security pools. OFHEO agrees with Freddie Mac that such seasonal variation would complicate the stress test, by creating quarterly volatility in loss rates, with no particular safety and soundness benefit.

(c) Origination Year

Freddie Mac and NAR recommended including origination year as a variable. This approach would capture differences in the performance of specific mortgage origination cohorts due to excluded factors such as regional income growth and unemployment, or changes in mortgage underwriting standards over time. OFHEO considered using this variable but found that origination year is not an inherent risk factor, is not needed to reflect the types of distinction required by the 1992 Act, and is incompatible with the requirement to relate stress test losses to the benchmark loss experience. The last point is most important. The benchmark loss experience captures loans with the worst origination year and the worst credit risk profile. Assigning to loans originated in a given year a unique underlying credit profile, which may be different from the benchmark credit profile, would remove an important element of the link between stress test losses and the benchmark loss experience. In addition, varying inherent credit risk by loan origination year would require speculative assumptions about loan quality for more recent origination years for which no credit-risk track record has yet been established.

By not including origination year as an explanatory variable, the statistical equations capture average origination-year profiles of default and prepayment. As discussed later under in section III.A.7., Relating Losses to the Benchmark Loss Experience, these profiles are adjusted further to reasonably relate starting loan portfolios to the benchmark loss experience. If the stress test were to allow for origination year differences when estimating the statistical equations, it would be necessary to assign the benchmark origination year effect to all loans in the stress test to preserve a reasonable relation to the benchmark loss experience. This approach would complicate the stress test without changing the results that are obtained using the proposed approach.

(d) Unemployment

Unemployment rates were listed by some commenters as a possible explanatory variable. For numerous reasons, OFHEO does not propose to include unemployment as a variable either in running the stress test or in estimating the statistical model. OFHEO does not propose to include unemployment rates as an explanatory variable in the stress test, primarily because it is not a loan characteristic, but a macro-economic variable, and it is not one of the economic variables specified in the 1992 Act. In any event, the effect of economic-condition variables not specified in the statute, such as unemployment, are captured in the stress test by relating the stress test to the actual benchmark loss experience, because the appropriate values are inherent in that experience. Thus, reasonably relating the stress test to the benchmark loss experience, as described in the next section, captures the strenuous economic conditions required by the 1992 Act without adding more economic variables. Minimizing the number of variables used to define economic conditions is responsive to the comments of both Fannie Mae and Freddie Mac, who argued against unnecessary complexity.

(e) Purchase vs. Refinance Loans

MRAC suggested that OFHEO take loan purpose into account. OFHEO considered whether this distinction should be included as a variable, but has proposed a stress test that does not distinguish between loans made for the purpose of purchasing and loans made for the purpose of refinancing property. OFHEO has found insufficient basis to distinguish between the risks of loans for purchases and loans for refinancing. Furthermore, OFHEO prefers not to create capital incentives based on loan purpose, except as required by statute (e.g., the occupancy status distinction).

(f) Credit Scores

OFHEO does not propose to follow the recommendation of MRAC to use mortgage borrower credit quality considerations as explanatory variables. OFHEO is aware that the mortgage industry is moving toward risk-based loan pricing based, in part, on mortgage credit scores that rely heavily on borrower credit ratings.[109] OFHEO is studying the use of credit scores by the Enterprises, and the potential for impact on stress test credit losses, but does not believe that it is appropriate to consider these in the stress test or to use them to estimate the models. First, it would be difficult, if not impossible, to reasonably relate credit risk differences based upon credit scores to the benchmark loss experience, because credit-scoring data are not available for benchmark era loans.[110] Second, the proposed stress test is designed to reasonably relate starting the performance of mortgage portfolios to the benchmark loss experience based upon loan characteristic differences referenced in the 1992 Act, which do not include measures of borrower creditworthiness.[111]

---

[107] This value is part of the fixed-factor terms reported in section 3.5.2.3.3., Combining Explanatory Variables and Weights of the Regulation Appendix for each default and prepayment equation. Relative loan size is discussed in section B.5.i., Relative Loan Size of the Technical Supplement.

[108] Seasonal variation is discussed in section B.5.g., Season of the Year, of the Technical Supplement.

[109] The most widely used measure of borrower creditworthiness is a composite score developed by Fair Isaac Corporation, commonly referred to as a "FICO score."

[110] Archives at the credit repositories only go back to the late 1980s, and, even there, records are not complete.

[111] The fact that OFHEO does not consider differences of credit risk by credit scores in the proposed stress test does not limit the ability of the Enterprises to to make use of credit scores. The Enterprises may further stratify the risk classifications used by OFHEO in the proposed stress test, for purposes of internal capital allocation and guarantee pricing. For example, after determining the required regulatory capital for a particular product class the Enterprises may, if they choose, allocate the required capital among purchases of that product according to borrower credit scores, for internal purposes. Thus, the dimensions on which the Enterprises choose to develop risk-based guarantee pricing are not limited by stress test risk classifications.

(vii) Additional Multifamily Explanatory Variables

Understanding the choice of explanatory variables for the multifamily default/prepayment model requires understanding the way in which default and prepayment equations are organized. The stress test uses two default equations, to distinguish between different multifamily lending programs, and five prepayment equations, to distinguish between different product types. The multifamily model allows these various default and prepayment equations to interact with each other to provide appropriate default and prepayment rate projections for all multifamily loans, throughout the stress period.

One of the two default equations is for purchases of newly originated loans (cash purchases),[112] and the other is for negotiated swaps of seasoned loan pools for mortgaged-backed securities (negotiated purchases). This separation allows the stress test to account for differences in loan quality across the two programs. The Enterprises may take lower quality loans and properties in their negotiated purchase programs than in the cash purchase programs, but require significant credit enhancements from the seller/servicers to compensate.

The five prepayment equations used to accommodate product-type and product life-cycle differences allow the proposed stress test to account for the effects of loan characteristics, such as yield-maintenance provisions,[113] adjustable interest rates, and balloon terms. It is more important to capture the unique features of balloon mortgages in the multifamily business than it is in the single family business because balloons make up the majority of multifamily portfolios. The five prepayment equations are for: (1) All fixed-rate loans in the yield-maintenance period; (2) fully-amortizing fixed-rate loans after yield maintenance requirements; (3) fixed-rate balloon loans after the expiration of yield-maintenance requirements (but prior to maturity); (4) all ARM loans (prior to maturity for balloon ARMs); and (5) all balloon loans (with fixed or adjustable interest rates) at and after the maturity year.

To see how these prepayment equations work together, note, for example, that fixed-rate balloon loans have three relevant time periods: first is "in-yield maintenance," the time when the yield maintenance terms apply; second is "post yield maintenance," the period after the yield maintenance term expires and prior to loan maturity; and third is "post-balloon," the period starting when the loan is due in full.[114] For loans that extend to and beyond the balloon point,[115] OFHEO proposes a separate prepayment equation, which is referred to as a "payoff" equation because it is no longer possible to "prepay" loans on or after the balloon date.

(a) Explanatory Variables in the Two Multifamily Default Equations

The two multifamily default equations are similar except in two respects. First, the equation for cash purchases makes adjustments for loans purchased in original multifamily programs to distinguish them from more recent programs. Second, the negotiated purchase loan equation has an adjustment factor for loan programs that obligate the seller to repurchase loans when they are delinquent for 90 days. These distinctions will be discussed in the context of each explanatory variable.

(1) Joint Probability of Negative Equity and Negative Cash Flow

As with single family loans, one of the most important factors affecting multifamily loan default is borrower equity. When the value of the property is less than the value of the mortgage, the borrower, by defaulting, can effectively "sell" or "put" a mortgage back to a lender at the value of the underlying property. However, as recognized by the ANPR commenters, there is a second consideration for commercial properties (including multifamily properties)—cash flow from the property. Even though equity is zero or negative, the borrower does not have an economic incentive to default as long as cash flows are positive.

The stress test includes a default option valuation variable that allows for consideration of the cash flow position of the property, while also considering the borrower's equity position. A value for this variable, referred to as the joint probability of negative equity and negative cash flow, is calculated for each loan in each observation period. It measures the potential value of "putting" the mortgage to the lender and investor through default, given that both equity and cash flow are important.[116]

As shown in section D. 4. a. i., Joint Probability of Negative Equity and Negative Cash Flow, of the Technical Supplement, the joint probability of negative equity and negative cash flow for a project is the probability of having both LTV greater than 1.00 and DCR less than 1.00. The proposed stress test uses loan amortization schedules, rental inflation, vacancy rates, and interest rates to update LTV and DCR, which are then used to update the joint probability variable values.

(2) Original Versus Current Loan-Purchase Programs

OFHEO faced the issue of what, if any, adjustment should be made in the model to distinguish between loans purchased under original cash-purchase programs (purchased pre-1988 for Fannie Mae and pre-1992 for Freddie Mac) and current programs. As noted by Freddie Mac, the Enterprises computed both DCR and LTV differently for loans purchased under original programs than they compute those ratios today for current purchase programs. OFHEO recognizes that in the 1980s it was a common appraisal practice to adjust actual rents (and therefore net operating income) upward by an estimate of annual inflation and to use optimistic vacancy rate assumptions. This practice resulted in an overstatement of actual DCR and LTV values at the time of loan origination. Current practice does not allow for such inflation adjustments of projected rents, and factors minimum levels of anticipated vacancies into property valuation, even if the property is fully rented at the time of loan origination.

In addition to the overstatement of net income, original multifamily cash-purchase programs at the Enterprises had other significant weaknesses perhaps because the Enterprises only began purchasing conventional multifamily loans in 1983 and did not have experience with the differences from single family lending. Even controlling for the overstatement of rents and for changes in tax laws in 1986 that depressed real estate values, these weaknesses led to extraordinarily high loss rates. OFHEO views these large losses, to a large extent, as nonrecurring startup costs attributable

[112] Cash-purchase programs may involve delivery of loans for cash or for mortgaged backed securities. They are called "cash" programs because they involve the purchase of individual loans under published underwriting guidelines and pricing.

[113] A yield maintenance provision permits prepayment, but requires the borrower to pay penalties to compensate the lender or investor for lost interest until the yield maintenance period expires.

[114] Balloon loans with adjustable interest rates (rather than fixed coupon rates) do not have yield maintenance terms, so they only have two relevant periods—pre- and post-balloon.

[115] After the balloon maturity date, the Enterprises may permit loan extension.

[116] The equity and cash flow positions of a property are positively correlated. The joint probability of negative equity and negative cash flow variable used in the proposed stress test captures this relationship.

to inefficiencies involved in learning a new business. For these reasons, OFHEO believes that the Enterprises' multifamily lending programs in the early and mid-1980s are so different from the current programs that it would be inappropriate to consider those early loans to be the same type of mortgage product as the multifamily loans that are made today.

The stress test accounts for the difference in the older loan programs and the newer programs in two ways. First, the stress test adjusts the origination DCRs and LTVs of original cash purchase loans to remove the estimated annual inflation factors and restate those ratios as they would be calculated by the Enterprises in their current program purchases.[117] Second, the stress test includes a variable in the default equation that distinguishes between original and current cash purchase programs. This variable results in higher levels of default on original cash purchase loans than on newer loans.

A significant consideration in OFHEO's proposal to distinguish the original cash purchase loans from loans purchased under current programs was that failing to make that distinction would create a relatively more severe (and far less) loss experience for multifamily loans than the benchmark loss experience creates for single family loans.[118] In OFHEO's view, imposition of such extreme levels of default upon the Enterprises' multifamily loans would be contrary to the intent of the 1992 Act that rates of default and severity be "reasonably related" to the benchmark loss experience. It is also possible that basing stress test losses on average default rates of original cash-purchase loans would result in an implied marginal capital requirement so high as to create an inappropriate disincentive to engage in new multifamily lending.

(3) Depreciation Write-offs and Tax Law Changes

In the absence of a price index for multifamily properties, the stress test captures most of the changes in property value by updating DCR and LTV according to changes in rents, vacancies, and interest rates. However, changes in DCR and LTV that are due to other factors are not captured in these procedures. The most important missing factor is the tax benefit afforded to owners of investment real estate through depreciation write-offs. ACB commented that depreciation allowances have important effects on property cash flows. OFHEO recognizes this fact and that the allowances also have important effects on capital gains at the time of property sale. The tax value of depreciation write-offs significantly influences the return from multifamily property investments and, consequently, the default risk of multifamily mortgages.

OFHEO agrees with Freddie Mac that tax law changes affecting multifamily default rates during the 1980's should be taken into account, but that OFHEO should not speculate on the effect of potential legislative or other governmental actions during the stress period. The proposed stress test incorporates an index that measures the value of depreciation write-offs for a new investor. It measures changes in quality due to changes in write-offs and allows OFHEO to reflect the effects of such changes on mortgage defaults historically. The actual index value used in the stress test is an approximation of expected values throughout the stress period.[119] It is calculated based on depreciation rules and tax rates as they existed in 1997, with no adjustments for movements in interest rates since that time, or for the interest-rate shocks that will occur in the stress test. The tax rules governing depreciation allowances have the largest impact on the value of this variable. These rules changed significantly in 1986, but have not changed significantly since. Because the historical database included many loans originated before the tax rule change, OFHEO allowed the value of this explanatory variable to vary for purposes of estimating the statistical equations for multifamily mortgage default. However, due to the subsequent stability in those rules, OFHEO proposes to hold the value of this variable constant throughout the stress test. If the applicable tax rules change in the future, or if OFHEO believes that there are other reasons for either changing the specified value for the stress test or allowing its value to change throughout the stress test, OFHEO will initiate a new rule making process. However, as recommended by Freddie Mac in its ANPR comments, OFHEO will not speculate about tax law changes that might occur during the stress period. Due to data restrictions, the depreciation-allowance is only included in the cash-purchase default equation.[120]

(4) Loan Programs with Seller/Servicer Repurchase Features

Some Enterprise multifamily loan programs require seller/servicer repurchases of loans that become 90-days delinquent. For these programs a 90-day delinquency event is effectively a default, while for all other loans, default means a property loss event (short sale, note sale, third-party sale or foreclosure). To account for this difference when estimating the statistical model, OFHEO applied, as an explanatory variable, the ratio of 90-day delinquencies to full defaults. This treatment is important because the rate of 90-day delinquency events is always higher than the default rate for property loss events, and the loss severity for 90-day delinquencies is lower. By including this ratio, and thus including loans with the 90-day delinquency terminations, OFHEO was able to estimate a negotiated-purchase default equation based on a much larger data set than would have been possible otherwise.

(5) Balloon and ARM Payment Shock Risk

Following HUD's suggestion, OFHEO analyzed defaults of Enterprise balloon loans at the balloon point. As a result, OFHEO proposes to give additional weight to the joint probability of negative equity and negative cash flow variable for balloon loans that survive to the year of balloon maturity. This extra weighting takes into account the increased risk that mortgages with weak financials will default as the balloon point approaches. Also, interest rate movements may create payment shock (change in the periodic mortgage payment) in the post-balloon period, which affects the probability of default. The stress test accounts for the effect of

[117] OFHEO found that loans acquired in negotiated swap arrangements in the early and mid 1980s were highly seasoned and had low default rates. They therefore did not appear to include the inflation factor evident in cash purchases. Therefore, OFHEO does not adjust DCRs and LTVs for loans in negotiated purchase pools.

[118] The relationship of multifamily default rates to the benchmark experience is discussed later in section III. A. 7. c., Relating Multifamily Mortgage Performance to the Benchmark.

[119] The stress test does not capture actual depreciation allowances for borrowers. Enterprise databases do not include the year of property purchase. Therefore, the exact depreciation rules affecting cash flows and investment value to existing owners are unknown. Even on newly constructed projects, the Enterprises generally do not purchase the mortgage until target occupancy rates are met, which may be some time after origination. For these reasons, it would be extremely difficult to determine the actual value of depreciation write-offs to current owners. Although the value to current owners affects the owner's cash flow, the value to potential purchasers (which would be based upon current appreciation rules) affects property value and the owner's equity in the property. Therefore, this explanatory variable for depreciation write-offs helps to reflect more accurately the true LTV of the mortgage.

[120] See section D. 4. a. ii., Construction of the JPt Variable of the Technical Supplement for details.

this shock directly through adjustments to effective DCR in the post-balloon period. These adjustments then affect the joint probability of negative equity and negative cash flow, reflecting the fact that the decision to default or payoff is no longer a function of the original mortgage coupon rate, but of the prevailing market rates at the time of balloon expiration. In sum, the stress test reflects that the value of the default ("put") option, as measured through the joint probability variable, becomes more significant for default rates in the post-balloon period because there is increased pressure on the borrower to either default or refinance the property.

ARMs also experience payment shock because of changes in market interest rates. ARM payment shock occurs periodically during the term of the loan, and ARMs continue to amortize after the payment shock, according to the original contract term. The ARM prepayment equation in the stress test accounts for these periodic changes in interest rates. In contrast, the payment shock for a fixed-rate balloon loan does not occur until the balloon point. Some loans in Enterprise portfolios are ARMs with a balloon maturity. These loans have payment shock every year and also at maturity. The proposed stress test models the annual changes in their DCRs resulting from changes in mortgage coupon rates and then adds an additional balloon shock through the additional weight given to the joint probability variable in the post-balloon period.

(6) Loan Size

The stress test does not include a variable for loan size. S&P explained that it bifurcates commercial loan pools into two parts to calculate credit loss potential—the largest loan, and all other loans in the pool. S&P assumes 100 percent risk of default on the largest loan and average risk of default on the other loans. This approach is designed to recognize the uneven dollar credit loss risk inherent in pools that contain loans that are large relative to the total size of the pool. Credit risk for the pool is then estimated by S&P to be the sum of estimated credit risk on each part. S&P did not specifically recommend that OFHEO adopt this approach in the stress test.

OFHEO agrees that S&P's methodology is appropriate for analyzing differential impact of large and small loans on potential credit losses in mortgage security pools. However, no one multifamily loan default could have a significant impact on total losses or capital for either Enterprise. For that reason, OFHEO decided not to propose any measure of loan size as an explanatory variable in the multifamily default/prepayment model.

(b) Explanatory Variables in the Five Multifamily Prepayment Equations

As explained above, the multifamily model uses five loan prepayment equations to identify unique product type and life-cycle characteristics. This approach is consistent with Freddie Mac's and MRAC's comments on accounting for mortgage product types and terms in the default and prepayment models. There are some differences in explanatory variables across these five equations, which are discussed below.

(1) Prepayment Option Value

As discussed earlier, OFHEO proposes to use the relative interest rate spread to measure the prepayment option value (mortgage premium value) for prepayments. The relative spread is the ratio of the difference between the coupon rate and the current market interest rate to the coupon rate. To account for the asymmetry of effects from increases and decreases in interest rates, the spread is split into two variables.[121] One is active if current market interest rates are above the mortgage coupon rate, and the other is active if current market rates are below the mortgage coupon rate. Decreased interest rates increase refinancing speeds. Increased interest rates decrease both normal refinancings and cash-out refinancings. Cash-out refinancings are refinancings in excess of the outstanding indebtedness. They are used to achieve a desired debt-to-equity ratio in the property as explained below in the discussion of current LTV. Relative spread variables appear in all prepayment equations except for the balloon and post-balloon payoff equations. At balloon maturity, all spreads become irrelevant, because borrowers are contractually obligated to pay off or refinance the property.

For the ARM prepayment equation, the relative spread variable is calculated by comparing the coupon rate to the current market rate on fixed-rate loans, rather than to the market rate for ARMs. This approach accounts for any incentive to refinance into a fixed-rate loan. Because there are no yield-maintenance terms or special incentives to refinance ARM loans when interest rates fall, the stress test includes one spread variable that captures both increases and decreases in interest rates. In addition, the stress test does not distinguish between life-cycle periods for ARMs; just one prepayment equation is estimated.

(2) Current LTV

Another important issue in modeling multifamily loans is the propensity of investors in multifamily properties to refinance mortgages over time to increase their debt (leverage) ratios, and thus increase returns on invested equity.[122] To capture the borrowers' ability to qualify for a new loan and the incentive to adjust debt-to-equity ratio, the proposed stress test includes current LTV as an additional explanatory variable. If the current LTV falls, investors have more incentive to prepay and are more likely to find a lender willing to refinance the property.

(3) Prepayment Option Value in the Yield-Maintenance Period

During the yield-maintenance period, borrowers may prepay, but they must continue to provide the contractual yield until the yield-maintenance period expires. Thus, a prepayment in the yield-maintenance period can be expensive, particularly in the early years of a mortgage. The more years to go in the yield-maintenance period, the greater the fee.[123] To capture the declining financial cost of prepayment throughout the yield-maintenance period, OFHEO proposes a variable measuring years remaining until the end of the yield-maintenance period. This variable appears in the prepayment equation for fixed-rate loans in the yield-maintenance period.[124]

(4) Prepayment Option Value in the Pre-Balloon Period

During the pre-balloon period, borrowers are uncertain about the level of market interest rates at the future balloon point. Hence, borrowers may be willing to pay in order to lock into a favorable interest rate, rather than take

[121] Such explicit bifurcation is not required for the single family prepayment equations because the categorical nature of the spread variable used there allows for asymmetric effects.

[122] *See* Jesse M. Abraham and H. Scott Theobald, "Commercial Mortgage Prepayments," in Frank Fabozzi and David Jacob, *The Handbook of Commercial Mortgage-Backed Securities*, New Hope, PA: Frank J. Fabozzi Associates, 55–74 (1997).

[123] Because this effect runs counter to the effect of the call option value, OFHEO researched the possibility of a joint effect of the years-to-go and the rate drop variables. The fixed effects of the years-to-go variable proved to be a better predictor of actual, historical prepayments during yield maintenance periods.

[124] For loans with true prepayment prohibitions, or "lock-outs," the variable is set equal to the maximum number of lockout years throughout the lockout period. *See* section 3.5.4.3, Procedures, of the proposed Appendix to 12 CFR part 1750, subpart B for details.

their chances with possible adverse interest rate movements. This risk aversity with respect to interest rate movements prior to the time of balloon maturity gives rise to an additional financial value from early prepayment. OFHEO proposes two explanatory variables to capture the effect of risk aversity on prepayment rates in the pre-balloon period. They measure the additional effects of the primary prepayment option variable-relative spread-when it is in the money (market interest rates are lower than the mortgage coupon rate).

The first variable provides an additional effect for interest rate drops in the year immediately prior to the balloon year, and the second provides for a separate, additional effect for interest rate drops in the second year prior to the balloon year. These two variables allow for increased incentives to refinance if the prepayment option is in the money in the period leading up to balloon expiration. They capture the risk aversity of borrowers with respect to future interest rate changes as balloon maturity approaches.

(5) Balloon and Post-Balloon Payoffs

HUD commented that OFHEO should model the value of the refinancing option at the balloon point on balloon mortgages because the lender often has a contractual obligation to refinance at the borrower's option. OFHEO agrees that payoffs at the balloon point are different from prepayments before the maturity date, but has found that the lender generally does not have an unconditional contractual obligation to provide new funding if the borrower requests it. Payoff of the balloon loan (generally by new borrowing to refinance the property) is contractually required at term. If the borrower is successful at finding new financing at that point, the event that appears in Enterprise records is a payoff of the original loan and not a prepayment. Despite the contractual requirement of balloon payoff, not all loans terminate at the balloon point.[125] Generally, balloon loans are extended beyond the maturity date because, although the property has weak financials, lenders are unwilling to initiate foreclosure on loans that have been making payments at the original coupon rate. To capture the ability of multifamily borrowers to obtain new loans at balloon expiration, and, therefore, to pay off the original mortgage, the model includes a variable similar to the joint probability variable used in the default equations—the joint probability that current DCR and LTV values are sufficient to qualify for a new mortgage. This is the only variable used in the pay-off equation for balloon mortgages, and it is based on minimum qualification criteria for multifamily mortgages, LTV ≤ 0.80 and DCR ≥ 1.20.

(6) Effect of Fixed-Rate Loan Interest Rates on ARM Prepayments

A final variable included in the ARM prepayment equation is the market rate on fixed-rate loans. This variable accounts for incentives to refinance ARM loans into fixed-rate loans to avoid future uncertainty regarding interest rate movements. If the FRM rate is high, borrowers expect interest rates to drop in the future and are likely to delay prepayment of ARMs. Likewise, when interest rates are low—regardless of the spread between FRM and ARM rates—there is an incentive to refinance into a fixed-rate product to avoid potential increases in future interest rates.

6. Loss Severity

Loss severity is the net cost to an Enterprise of a loan default. The three major cost categories are loss of loan principal transaction costs at both foreclosure and disposition, and asset funding costs throughout the process. The net cost is determined by crediting against these costs the revenues associated with the defaulted loan. The major revenues are proceeds from the property sale and from mortgage insurance or other forms of credit enhancement.

In determining how to model loss severity in the stress test, OFHEO considered the following issues:

1. what general approach to take in modeling loss severity,
2. whether the stress test should model individual cost and revenue elements of loss severity or model severity as one single measure,
3. what explanatory variables should be included explicitly in modeling loss severity, and
4. an appropriate house price index for real estate owned (REO) properties.[126]

a. General Approach to Modeling Loss Severity

In the ANPR, OFHEO discussed four general approaches to estimating the separate effects of explanatory variables on loss severity. One approach is to use a multivariate statistical model to estimate the separate effects of explanatory variables on total loss severity rates. A second approach is to use statistical models relating the individual elements of loss severity to explanatory variables. A third approach would set fixed parameters for the elements of loss severity (foreclosure costs, carrying costs, and sales prices), while allowing final loss severity rates to vary based on other factors such as the presence of private mortgage insurance. A fourth, relatively simple approach would be to assume that all defaulted loans face a fixed and equal level of loss severity.

(i) ANPR Comments

ACB and MRAC encouraged OFHEO to use a multivariate statistical model of loss severity. ACB, apparently assuming the stress test would include a statistical model of defaults, stated that "[i]t is not a rational allocation of resources to develop a sophisticated model of mortgage defaults and then to apply a rule-of-thumb percentage to the unpaid principal balances." S&P described its use of data from the Great Depression as the basis for stress tests it uses to rate single-family mortgage pools. Freddie Mac recommended that OFHEO use average loss severity rates from the benchmark loss experience, adjust them to account for the stress test interest rate environment, and apply additional adjustments for various property types.

(ii) OFHEO's Response

OFHEO believes that a statistical model is the best approach to take into account loan seasoning and the dynamic nature of economic changes in the stress period. OFHEO agrees with ACB that it would be inappropriate to develop a sophisticated default model and then to apply a rule-of-thumb percentage to the UPB to determine loss severity. At the same time, OFHEO recognizes that developing statistical models of each loss element is unnecessarily complex. Based on its analysis of the available information, OFHEO proposes a two-part model for single family loss severity: a statistical equation for loss of loan principal and fixed parameters for the other cost elements. Specifically, the statistical model developed by OFHEO estimates loss of loan principal as a function of loan seasoning-updating the original LTV using HPI growth rates and loan amortization. For multifamily loss severity, OFHEO proposes to use only fixed cost element values. The rationale for this is explained below under section III. A.7., Relating Losses to the Benchmark Loss Experience.

[125] *See* Elmer and Haidorfer, "Prepayments of Multifamily Mortgage-Backed Securities," *The Journal of Fixed Income*, March 1997, 50–63 (pointing out that not all loans terminate at balloon point); Abraham and Theobald, op. cit. (referring to this phenomenon as extension risk). OFHEO confirms the existence of post-balloon loans in Enterprise portfolios.

[126] REO properties are properties acquired as a result of foreclosure or similar action.

The approach outlined by S&P would not be appropriate for OFHEO's stress test because it does not adjust for loan seasoning or provide for a reasonable relationship to the benchmark as required by the 1992 Act. However, consistent with the S&P approach, the stress test does provide for a greater than average drop in house prices for foreclosed properties. As discussed below, under section III. A.6. b., Elements of Loss Severity Modeled, the stress test uses a statistical equation to model the expected decline in values on foreclosed properties, which will be greater than the decline in property value associated with HPI assumptions used in the stress test. In addition, as discussed later under section III. A.7., Relating Losses to the Benchmark Loss Experience, the stress test adds an extra loss factor to relate stress test property value loss to the actual experience of the four-State benchmark.

OFHEO agrees that Freddie Mac's recommended approach is simpler than using a statistical model. However, an empirically based statistical model is more versatile and flexible, allowing the stress test to reflect loss severity rates appropriate for each Enterprise's mix of loans and the stress test interest rate environment. OFHEO proposes a hybrid approach that retains the simplicity of fixed cost factors for most severity elements, while developing a more sensitive measure of property value, the element most affected by pre-stress test loan seasoning.

OFHEO does not propose at this time to take property type differences into account in stress test loss severity rates, as suggested by Freddie Mac. Although OFHEO finds higher loss severity rates for investor-owned properties, accounting for this effect would increase significantly the number of loan group records used for starting books of business in the stress test. Given the small percentage of Enterprise portfolios that investor-owned loans comprise, OFHEO felt that the added complexity was not justified by the benefits of calculating severity rates for owner-occupied and investor-owned single family loans separately. Therefore, OFHEO does not propose to apply risk multiples for investor-owned properties in determining loss severities. Rather, the single set of cost elements used in the stress test are determined by Enterprise experience with all single family property types combined.

b. Elements of Loss Severity Modeled

In addition to asking whether OFHEO should use a statistical model of loss severity, the ANPR asked whether the stress test should model loss severity as a single value or model the various cost and revenue elements of severity separately.

All ANPR commenters favored, at varying levels, an element-by-element analysis. The VA recommended that the stress test model the amount and timing of both the cost and the revenue elements of loss severity to provide more accurate estimates of Enterprise cash flows. HUD recommended that the loss severity model include certain individual cost elements, all of which would be valued separately by the proposed severity module. NAR stated that "the modeling of loan loss severity should only include those factors that are independent of incidence of default" and emphasized the importance of modeling time in default separately. In contrast, Freddie Mac stated that defaults and severity are products of the same underlying characteristics and economic factors. Freddie Mac suggested that stress test severity calculations differentiate loans by original LTV and coupon class and by product type distinctions. In addition, Freddie Mac favored using the rate of loss of principal balance from the benchmark loss experience.

ACB supported using a sophisticated model of loss severity, which would, presumably, require breaking down severity into its constituent parts for analysis and modeling. MRAC suggested separate analysis of the elements of loss severity, including the estimated sale proceeds, holding time, monthly holding costs, and costs of sale.

OFHEO agrees with the commenters that the stress test should model individual cost and revenue elements separately, rather than model them together as a single cost category. Such an approach allows the stress test to model the interrelationship of those elements that significantly effect loss severity. Accordingly, OFHEO proposes to model elements in three principal groupings: (1) loss of loan principal balance, (2) transaction costs (e.g., expenses related to foreclosure, and property holding and disposition expenses), and (3) funding costs on non-earning assets. OFHEO believes that measuring elements in these groupings is necessary to accommodate differences in the timing of various elements of loss severity and differences in the pre-stress test seasoning of loans. Each cost or revenue factor is applied at one of the following three points in time (each in terms of months from date-of-default): time of loan repurchase (for loans in security pools) or bad-debt write off (for retained loans); time of foreclosure completion; and time of foreclosed property disposition.

In addition, consistent with Freddie Mac's comment, OFHEO's proposed loss severity calculations differentiate by LTV and coupon class. They also include product distinctions where those distinctions involve FHA/VA insurance, interest rates and amortization terms. The amount of the loss of loan principal balance is sensitive to loan amortization. Because 15-year mortgages amortize relatively early and more quickly, their predicted losses are much less than those on otherwise comparable 30-year mortgages.

(i) Loss of Principal Balance

A critical element of loss severity is loss of loan principal balance, i.e., the difference between the outstanding principal balance on the loan at the time of default and the sale price of the foreclosed property. This loss occurs because of general declines in local housing values, the depreciation of the individual property, and/or discounts required to sell properties with "foreclosure" labels. To calculate this loss, the stress test uses a statistical model of the historical relationship between actual loss of principal balance on loans that have defaulted and the loss of principal balance predicted solely by calculating amortization on the loan and updating the property values with the HPI. Sale proceeds are then calculated as UPB minus the estimated loss of principal balance. Proceeds vary with differences in house-price appreciation and loan terms.

(ii) Transaction Costs

The stress test includes two transaction cost elements in loss severity calculations: foreclosure/legal expenses, and property holding and disposition costs.[127] Property holding and disposition costs are combined in the proposed stress test because they are both expensed at the time of property disposition. OFHEO proposes to use averages of these cost elements—in percent of outstanding principal balance—from all Enterprise experience with foreclosure and REO properties.

OFHEO did not follow Freddie Mac's recommendation to use all cost elements directly from the benchmark loss experience for transaction costs, because the stress test is national in scope. Therefore, it is appropriate to have a national blend of institutional factors such as foreclosure costs, property management fees, and sales

[127] Legal expenses are dominated by foreclosure costs, but they also include costs associated with gaining releases from borrower bankruptcy stays and property evictions.

expenses, rather than the four-State blend from the benchmark experience.

(iii) Funding Costs

Funding costs are considered an element of loss severity because the Enterprises must fund non-earning assets: first the defaulted loans, and then the REO properties. In its ANPR comments, Freddie Mac suggested that funding costs should be measured at the mortgage interest rate for the period from date of default to foreclosure completion. OFHEO agrees that the stress test should model funding costs. However, Freddie Mac's recommended approach ignores funding costs during the REO time period and would provide inaccurate measures of funding costs during the delinquency/default period. In the down-rate scenario of the stress test, using the mortgage coupon rate for funding costs would overstate funding costs, while in the up-rate scenario it would understate funding costs.

With one exception, the stress test measures asset funding costs through present-value discounting techniques, rather than computing explicit interest charges. Therefore, all severity elements are discounted by a cost-of-funds rate to produce the present value of each element in the month of default, regardless of when it may occur after that date. Cash flow discounting provides a consistent method of accounting for all timing issues involving cash flows from mortgage default to property disposition.

The one exception to the rule of calculating funding costs through present-value discounting techniques is the explicit cost of covering interest passed through to investors in securitized loans (mortgage-backed securities). These passthroughs occur for the first four months of loan delinquency, during which time the stress test uses the passthrough rate (the interest rate paid to holders of the securities) to calculate the asset funding cost. After the fourth month, when the loans have been repurchased from security pools and placed in Enterprise retained portfolios, the stress test treats these defaults identically to defaults in retained portfolios.

(iv) Factors Not Modeled

ANPR commenters suggested several explanatory factors that are not included in the proposed single family loss severity model. These include distinctions based on State foreclosure laws, household liquidity, and the presence of private mortgage insurance.[128]

(a) State Foreclosure Law Differences

Freddie Mac suggested that OFHEO not make State-level distinctions in loss severity calculations, explaining that attributing "differences in loss rates by states would approach undue intrusion and inappropriate micromanagement of the Enterprises." In contrast, NAR recommended that OFHEO make State distinctions.

Although foreclosure time-frames and costs may vary based on State law and practice, OFHEO agrees with Freddie Mac that it would be inappropriate to model State-level differences. First, these differences do not represent loan characteristics, and, therefore, under OFHEO's approach to selecting variables to apply in the stress test, they are not appropriate. Second, if OFHEO were to allow for State-level differences in credit costs, the stress test would, essentially, be establishing State-specific capital requirements based upon nuances of State law. OFHEO would need to monitor developments in the many different State laws over time to adjust the parameters of the stress test. Third, the fact that the stress test uses loan data aggregated at the Census division level means that much of the variability in foreclosure costs observed at the State level disappears.

(b) Independence of Loss Severity Rates From Default Rates

Freddie Mac commented that default and loss severity are products of the same underlying factors, most particularly original LTV and property value appreciation over the life of the mortgage. NAR recommended that the loss severity model "only include those factors that are independent of the incidence of default." OFHEO agrees with Freddie Mac on this point, because OFHEO's research indicates that loan seasoning has an important impact upon severity rates that is independent of its impact on defaults. The use of loan seasoning in the stress test reflects differences in loss severity across loans. This approach is also consistent with NAR's comment, because estimating the impact of seasoning on loss severity independently from its impact on defaults avoids duplicating seasoning's effect on credit losses.

(c) Household Liquidity

NAR stated that liquidity of the household under stress is an important factor in the loss severity equation. OFHEO notes that for the single family loss severity analysis, the stress test considers housing-related liquidity of a household through loan seasoning. That is, updating the LTV provides some indication of the ability of borrowers to sell or borrow against their properties in order to provide liquidity. However, the stress test does not account directly for non-housing wealth or liquidity of borrowers. It is unclear how these factors could be measured or estimated accurately.

(d) Private Mortgage Insurance

NAR also commented that the presence of private mortgage insurance is a variable that can influence the time to foreclosure and therefore, presumably, holding costs. OFHEO, however, has found insufficient evidence that the presence of mortgage insurance has any meaningful impact on foreclosure time. Both Enterprises submit their own foreclosure time guidelines to seller/servicers, which are independent of the presence of mortgage insurance. Accordingly, the presence of private mortgage insurance is not included as a variable in the loss severity equations.

This issue is distinct from the question of how OFHEO should account for private mortgage insurance proceeds in the loss severity calculations. Several commenters noted that the loss severity calculation should deduct mortgage insurance proceeds from losses on loans covered by such insurance. OFHEO agrees that the loss severity calculation should account for mortgage insurance proceeds. This issue is discussed extensively in section III.C., Mortgage Credit Enhancements.

c. REO House Price Index

In the ANPR, OFHEO asked what price index would be appropriate for REO properties. The question arose because defaulted loans generally have lower house-price appreciation rates than the market average, which is captured by HPI growth over time. After considering the ANPR comments and OFHEO's own research, OFHEO proposes an equation to relate actual declines in value for REO properties to changes in the HPI. This approach, which is described in section 3.5.3.3.3.1, Calculate Proceeds from Property Sale, of the Regulation Appendix, provides the information needed to predict accurately the loss of loan principal balance in loss severity calculations, but avoids the added complexity of creating a separate index.

All five commenters that addressed this issue recognized that, without

[128] Although private mortgage insurance is not an explanatory variable, proceeds from such insurance are accounted for in the severity calculation.

adjustment, the HPI would not provide an adequate measure of REO price changes. However, none recommended creation of a separate REO index. Four commenters (MRAC, ACB, VA, and Freddie Mac) recommended modifying the general price index. MRAC suggested that a general HPI be used in conjunction with analysis of variances of prices to determine whether foreclosure prices have experienced slower appreciation or greater depreciation than the market average. ACB suggested that, rather than developing an REO price index, OFHEO study the "left tail" of the distribution of house prices in general. The term "left tail" refers to those houses with the smallest appreciation rates. S&P provided to OFHEO the rates of property value loss for foreclosures during the Great Depression.

The proposed approach incorporates a statistical model based upon an analysis like that suggested by MRAC and ACB. The model predicts how far into the left tail each REO property value can be expected to be, relative to the outstanding mortgage balance, throughout the stress period. OFHEO's proposed approach essentially follows the specific recommendations of MRAC and ACB for modification of the HPI.

The VA suggested using a general house price index, re-weighted to capture the regional distribution of REO properties. OFHEO agrees that regional differences in REO appreciation rates should be captured. The proposed regulation therefore incorporates Census division differences in historical HPI values and historical measures of the dispersion of house values around levels suggested by the HPI. *See* section III.A.4.d., Property Valuation.

NAR did not recommend a specific approach, but cautioned that an REO price index might not be meaningful for Enterprise loans, because the Enterprises tend to sell REO properties quickly, thus limiting exposure to undue loss of value. For that reason, NAR recommended that any analysis of REO property values be based solely on Enterprise data. OFHEO also concurs with NAR that an REO price index built on non-Enterprise data might be of limited usefulness for Enterprise loans. Given the richness and volume of the Enterprise data, and consistent with all other parts of the stress test, OFHEO has based the model of REO property values on Enterprise data. However, rather than developing a separate price index for REO properties, the proposed stress test models REO property value as a function of the path of the HPI. In addition, OFHEO proposes to adjust the resulting rate of loss of principal balance rate to reflect the fact that REO property values in the benchmark loss experience were lower in relation to the HPI than the REO property values in other Enterprise experience.

d. Multifamily Loss Severity

With respect to loss severity, the stress test uses the same cost elements for multifamily loans as for single family loans. However, there is no loan seasoning, nor is statistical analysis used to determine loss of loan principal balance. All cost and revenue elements of multifamily loss severity rates are averages from Enterprise experience.

7. Relating Losses to the Benchmark Loss Experience

The 1992 Act specifies that the stress test should apply rates of default and loss severity that are "reasonably related" to the highest rates experienced by the Enterprises for a period of at least two years in any contiguous areas having at least five percent of the nation's population (the benchmark loss experience).[129] The stress test satisfies this reasonable relationship requirement in the context of two severe interest rate environments that are quite different from the interest rate environment of the benchmark loss experience. At the same time, the stress test also accounts for appropriate distinctions in credit risk across loan types and characteristics. OFHEO believes that the multivariate mortgage performance models developed by OFHEO are the best means of specifying loss rates for the wide variety of loans held by the Enterprises under the different interest rate scenarios specified in the statute. However, for reasons explained below, the models are adjusted to produce loss rates that are reasonably related to the losses experienced on the 30-year fixed-rate, single family mortgages in the benchmark time and place.

Both Fannie Mae and Freddie Mac provided comments on how to implement a statistical model of mortgage performance that would be reasonably related to the benchmark loss experience. As discussed earlier, neither Fannie Mae nor Freddie Mac recommended a joint, multivariate statistical model of conditional default and prepayment rates. However, both discussed how other models could be used in the stress test and commented that a reasonable relation to the benchmark loss experience could be achieved by estimating those models solely on data from the benchmark loss experience.[130] They noted that the advantage of limiting the statistical sample in that way is to allow the resulting equations to capture benchmark economic conditions without having explicit explanatory variables for economic conditions in the stress test.

The suggestion from Fannie Mae and Freddie Mac that the mortgage performance models be estimated solely with data from the benchmark loss experience, although appealing conceptually, turned out to be impractical. The benchmark loans comprise too small and homogeneous a set of loans to estimate models for all the Enterprises' current loans. Using a much larger sample of historical loan performance experience was important when estimating the statistical models, because it provided a wide variety of economic circumstances and mortgage experience upon which to base estimation of the model parameters. Like current Enterprise loan portfolios, the samples used to estimate the statistical equations include mortgages originated over many years and geographic locations, and having distributions across other factors of mortgage performance—such as age, coupon type or amortization terms—that differ from those of the benchmark loans.

The "reasonable relationship" requirement of the 1992 Act means that the adverse credit stress of the benchmark loss experience should be reflected in the stress test mortgage losses. However, when the mortgage performance models are applied unadjusted to a pool of loans with the same characteristics as the benchmark loans, using interest rate and house-price appreciation paths equivalent to those of the benchmark time and place, the resulting default and severity rates are slightly lower than the actual rates for the benchmark loss experience. This result should be expected, because the mortgage performance models are estimated from data on a broad range of historical experience, rather than just data from the benchmark loss experience. The benchmark loss experience was from the time and place with the worst mortgage losses for the Enterprises. Therefore it is reasonable to expect it to have default and severity rates somewhat higher than would be predicted based solely upon the explanatory variables used in the stress test. For this reason, the stress test

[129] 1992 Act, section 1361(a)(1) (12 U.S.C. 4611(a)(1)).

[130] Fannie Mae recommended estimation of a statistical model of total terminations and Freddie Mac recommended estimation of a statistical model of prepayments only.

includes adjustments to the models to reflect more fully the additional stress of the benchmark experience.

OFHEO proposes to relate losses projected by the statistical equations to the benchmark loss experience in two ways. First, benchmark house-price growth rates and multifamily (rental) market economic conditions that coincide with the time and place of the benchmark loss experience are applied to loans in the starting portfolio during the stress test period. Second, the default and severity rates predicted by statistical equations are increased, or "calibrated," to the benchmark loss experience rates, so that if newly originated loans with similar characteristics to those comprising the benchmark sample were subjected to the same economic circumstances as occurred in the benchmark loss experience, the statistical model of mortgage performance would project ten-year cumulative default and average severity rates equal to the rates actually observed for the benchmark sample.[131] Under this approach, default and loss severity rates differ from the benchmark rates only to the extent interest rates, property values, and loan characteristics are different from the benchmark sample, or to the extent adjustments are necessary to account for other statutory requirements.[132] Because of the addition of this benchmark "calibration" factor to default and loss severity equations, loss rates for all loans are slightly higher than would otherwise be projected.

Although the principles for reasonably relating stress test losses to the benchmark loss experience are the same for single family and multifamily loans, the methods of reasonably relating losses to the benchmark differ and are discussed separately below.

a. Single Family Calibration

For single family loans, calibration constants are added to default and loss severity rates.[133] These constants are set forth in sections 3.5.2.3.2.9 and 3.5.3.3.3 of the Regulation Appendix. Their development is described in section IV.B.8., Consistency with the Historical Benchmark Experience, of the Technical Supplement.

The calibration constants were computed in three steps. First, all benchmark loans were assigned the same historical house-price experience—the ten-year sequence of appreciation rates from the OFHEO HPI for the West South Central Census Division, commencing in 1984, first quarter.[134] Second, using the statistical equations estimated on a broader historical loan sample, OFHEO projected the ten-year experience of loans comprising the benchmark sample, computing the ten-year cumulative default rate and ten-year average loss severity rate. These rates were measured in the same manner for the benchmark in NPR1.[135] Third, these cumulative rates were compared to the actual cumulative default and prepayment rates computed for the benchmark in NPR1, and adjustment constants were calculated that, when applied in the models, would yield the equivalent default and loss severity rates.

The adjustment constant for loss severity rates is not applied to the entire loss severity rate, but rather to the loss of loan principal balance element of the loss severity rate. The constant is computed by subtracting the loss of loan principal balance that was predicted by the single family loss severity model from the loss of loan principal balance that occurred on defaulted loans in the benchmark loss experience. The second element of severity cost, transaction costs, was not adjusted to reflect benchmark conditions. OFHEO found it more appropriate in a national stress test to use a national blend of the institutional factors such as foreclosure costs, property management fees, and property sales expenses that comprise this element. The third element of loss severity cost, asset funding costs, enters the stress test as an imputed interest cost. As described in more detail in section 3.5.3 of the Regulation Appendix, this element is related to the benchmark loss experience through the use of foreclosure and property disposition event timing from the benchmark loss experience. The timing of these events determines the periods over which funding costs are calculated.

b. Relating Other Single Family Products to the Benchmark

In the ANPR, OFHEO asked how to relate other types of mortgages to the benchmark, which was developed based on single family, 30-year, fixed-rate mortgages. The commenters' consensus was that some type of multiplier approach to alternative single family mortgages should be used, except for ARMs. These comments are discussed below.

(i) ANPR Comments

NAR suggested that OFHEO develop statistical models of default for fixed- and adjustable-rate mortgages and relate the performance of other mortgage types to them. NAR also pointed out, however, that this type of relationship might be difficult to establish for new mortgage types for which there is insufficient historical experience. NAR suggested applying the benchmark default experience to these loans rather than measuring the difference in risk from the benchmark experience. VA addressed the same concern, suggesting that multipliers should be based on historical periods in which the other mortgage types had significant shares of the market. Specifically, VA suggested that measures of performance from those periods of other single family mortgage types relative to the 30-year, fixed-rate product could be used to impute the necessary performance differences from the benchmark loss experience to use in the stress test. Freddie Mac stated that any default-rate multipliers should be based on a broader range of Enterprise historical experience than the benchmark time and place.

Freddie Mac, although recommending that OFHEO use simple multipliers, also raised a concern that loans receiving multiple multiplier factors could end up with unreasonably high stress test default rates. It cited, as an example, a balloon loan on an investor-owned condominium. If the stress test were to apply default-rate multipliers for each of these three mortgage type categories

---

[131] Loans comprising the benchmark sample were 30-year fixed-rate loans.

[132] Differences in interest rates, property values, and loan characteristics can have very significant effects, however. The average mortgage credit loss rate for the two Enterprises in the benchmark sample was 9.4 percent. In the up-rate scenario of the stress test for June 1997, the average loss rate was 1.8 percent, while in the down-rate scenario it was 1.4 percent. The loss rate for the benchmark sample does not take account of mortgage insurance and other credit enhancements. Losses on benchmark loans after accounting for these receipts would have been seven percent.

[133] The calibration constant used in the single family default rate equations is in addition to the particular product-type multiplier factors discussed earlier. The product-type multipliers relate other products to the benchmark 30-year fixed-rate loans, while the calibration constant relates all loans to the severe benchmark loss experience.

[134] The West South Central Census Division does not exactly match the four-State benchmark region, but its use here to represent benchmark economics is consistent with OFHEO's proposal to aggregate data based on Census divisions and to apply historical Census division-level house price growth rates to season loans at the beginning of the stress test. What is most important is that the price series used to calibrate the statistical equations is the same series that will be used in the stress test itself. The actual ten-year house-price experience of the West South Central Division and the four-State benchmark area, 1984–1993, are very similar.

[135] The ten-year cumulative default rate was computed as the sum of original UPBs for defaulted loans, divided by the sum of original UPBs for all loans in the sample. The average severity rate was calculated in similar fashion. Following the method used to identify the benchmark experience, the calibration procedure computes ten-year default and severity rates for each Enterprise separately, and then the two Enterprise-specific rates are averaged.

(condominium, investor-owned, and balloon), the combined risk factor premium could be unreasonably high. To remedy this problem, Freddie Mac recommended that the stress test incorporate limits on the interaction of risk factors.

MRAC suggested that, if sufficient data were available, OFHEO might either create historical tables of default rates by various loan characteristics, in order to establish product-type multipliers, or use some type of regression analysis to discern performance differences among mortgage types. The MBA suggested that multipliers are the best approach because they are currently used by the Enterprises and therefore would provide a simple way for them to implement the risk-based capital standards.

OTS cautioned that multipliers might not be appropriate for ARMs or for multifamily loans, because the credit loss experience of these loans may not correlate well with that of fixed-rate, single family loans. OTS recommended that OFHEO consider using separate benchmarks for different types of loans. ACB, however, commented that there is no statutory requirement to incorporate the worst experience for each mortgage type into the stress test, and that a multiplier analysis for single family loan types would be sufficient.

Consistent with its recommendation that OFHEO not develop a statistical model of conditional default rates, Fannie Mae suggested that multipliers be applied to (cumulative) loss rates, rather than to conditional default rates.

(ii) OFHEO's Response

The stress test approach of adding product type adjustment factors as explanatory variables in a single family default equation is consistent with the multiplier approach recommended by commenters. However, the stress test approach does not have the shortcomings about which some commenters cautioned. It relies upon a broader historical experience than the benchmark sample alone to gauge the relative risk of other mortgage types, and it controls for the multiple multipliers problem outlined by Freddie Mac. The multiple multipliers problem is avoided because product type adjustment factors are estimated as part of the statistical default equation. The equation computes the marginal impact of each product type after controlling for all other explanatory variables. Using simple multipliers with limits on the amount of adjustment, as recommended by Freddie Mac, would either be too imprecise to reflect the relative risk of the loans that fall into multiple product type categories, or else would become as complex as a statistical model in order to account for all of the conceivable combinations of product types.

OFHEO agrees with the OTS comment that a multiplier approach is not appropriate for ARMs. Equations for single family default and prepayment rates in the stress test are, therefore, estimated separately for ARMs. This is appropriate because the adjustable payment features of these loans create unique incentives to either default or prepay that are not found in other mortgage types. The ARM default equation does, however, receive the same benchmark calibration constant used in the other two single family default equations. The use of this constant reasonably relates ARMs to the added stress of the benchmark loss experience in a manner consistent with how other single family product types are related to the benchmark loss experience.

c. Relating Multifamily Mortgage Performance to the Benchmark

In the ANPR, OFHEO requested comment on how the stress test multifamily mortgage performance should be related to the single family benchmark. Respondents to the ANPR mentioned the need to capture the different underwriting variables and economic factors that would influence multifamily performance directly. They warned against applying multipliers to single family losses to generate multifamily losses. These concerns were raised by OTS, MBA, Fannie Mae, and Freddie Mac. In addition, OTS and Fannie Mae suggested that OFHEO may need to explore options other than relating stress test credit losses on multifamily loans to the single family benchmark.

OFHEO agrees with the commenters' concerns about using a simple multiplier approach for multifamily loans, and proposes instead a separate statistical model of multifamily mortgage performance based on multifamily market conditions, property financial characteristics (DCR and LTV), and loan terms—whether fully amortizing or balloon, or having fixed or adjustable interest rates. The statistical model allows the application of OFHEO's first principle, outlined above in section III. A. 5. e., Choice of Explanatory Variables for Default and Prepayment, for relating stress test losses to the benchmark: using economic conditions of the benchmark experience in the stress test. OFHEO believes that multifamily rent and vacancy indexes from the benchmark time and place provide the best means to relate starting multifamily loan portfolios to the benchmark loss experience. These indexes account for the economic decline that occurred in the benchmark region in the economic factors that affect multifamily mortgage credit risk. Therefore, the stress test creates a reasonable relationship to the benchmark loss experience by using vacancy rates from and percent changes in rents from the benchmark loss experience to update property financials (DCR and LTV) throughout the stress period.

Because of the small number (13) of multifamily loans purchased by the Enterprises in the benchmark region during 1983 and 1984, it is not possible to compute calibration adjustments like those in the single family default and severity equations. Instead, OFHEO proposes to treat all defaults as full foreclosure events and apply loss severity rates without consideration of loan seasoning. The effect of this approach is to create higher credit losses than if the stress test were to account for multifamily defaults that are resolved without foreclosure and adjust severity rates to account for the age of loans.

Methodologically, treating all multifamily defaults as foreclosure events is consistent with OFHEO's proposed approach to single family credit loss generation in the stress test. However, OFHEO is aware that use of various default resolution strategies other than foreclosure (loss mitigation) played an important role in controlling multifamily default losses in the severe environment of the late 1980s and early 1990s. Therefore, accounting for loss mitigation in the stress test would tend to decrease losses for any given economic conditions. Treating all defaults as foreclosures for calibration purposes, rather than allowing for loss mitigation efforts, results in an increase in loss severity—before application of any credit enhancements—of 6.5 percent per defaulting loan.[136]

There is an exception to the rule of treating all defaults as foreclosure events for Enterprise loan programs that require the seller/servicer to repurchase loans that become 90-days delinquent. For loans in these programs, the recorded "default" event at the Enterprises is the point at which a loan becomes 90 days delinquent, rather than a foreclosure-like event where the Enterprise obtains title to the collateral property.

[136] The 6.5 percent figure is arrived at by multiplying the 13 percent of defaults resolved with alternatives to foreclosure by a 50 percent loss rate reduction factor.

The stress test loss severity rate for these loans is 39 percent.[137] The 39 percent loss severity rate reflects experience of the Enterprises during the stressful conditions of the early 1990s, including approximately 50 percent cures (or modifications) and 50 percent foreclosures on 90-day delinquencies. OFHEO research indicates that this is a reasonable approximation for the stress test.

8. Inflation Adjustment

The 1992 Act specifies that, to the extent that the ten-year CMT increases by more than 50 percent over its average for the nine months preceding the starting date of the stress test, credit losses must be adjusted "to reflect a correspondingly higher rate of general price inflation."[138] In the stress test, mortgage credit losses are not related to rates of general price inflation, but most are related to rates of house price inflation.[139] Implementing this provision of the statute requires consideration of the relationship between interest rates, general inflation rates, and house price inflation rates.

These relationships are complex. Over recent decades, changes in broad inflation measures generally have preceded changes in interest rates in the same direction. And changes in interest rates have been accompanied by changes in house price inflation rates in the opposite direction. Thus, over short and intermediate periods of time, interest rates and house price inflation rates have often moved divergently. For example, consider the three five-year periods beginning in 1975. From the beginning of 1975 to the end of 1979, the ten-year CMT averaged about 8 percent, while house prices rose at an 11 percent annual rate. In the following five-year period, from 1980 to 1984, interest rates were 50 percent higher (12 percent), while house price inflation fell to 4 percent. Then in the third five-year period, 1985 to 1989, interest rates declined to 9 percent, while house price gains accelerated to 7 percent.[140] Over longer periods of time, however, these changes have tended to reverse themselves. For periods of ten years or more, higher (lower) than average interest rate levels have generally been associated with higher (lower) than average rates of general inflation and house price inflation.

In unusual environments, such as those represented by the economic conditions of the stress test, average past relationships between interest rates, general inflation rates, and house price inflation rates may not prevail. The nature or cause of the projected mortgage credit stresses in the stress test are not specified in the statute. They could involve problems particular to housing markets, such that house price behavior deviates persistently from general inflation patterns. Or they could be focused on non-house-price factors, such as unemployment, relocation, or divorce rates.

Except to the extent that the ten-year CMT rises in the up-rate scenario by more than 50 percent, the stress test does not project any differences in house price changes or other sources of credit stress in the two interest rate scenarios. And, aside from the inflation adjustment, the specific pattern of house price changes used in both scenarios is not designed to be consistent with any particular pattern of interest rates. It was chosen to replicate (and encapsulate in one variable) the overall level of credit stress in the benchmark loss experience.

In order to implement the statutory requirement, the stress test projects that cumulative increases in house prices, a component of general inflation, are higher in the up-rate scenario by an amount that reflects, percentage point for percentage point, any positive difference between the ten-year CMT and the level corresponding to a 50 percent increase. Thus, for example, if the ten-year CMT starts at 6 percent and increases by 75 percent to 10.5 percent, the increase in excess of 50 percent is 1.5 percentage points. The cumulative change in house prices during the up-rate scenario would equal the cumulative change during the down-rate scenario plus an upward adjustment. The adjustment is the amount needed to reflect what the cumulative increase would be if the house price inflation rate were 1.5 percent higher, on average, throughout the part of the stress period in which the ten-year CMT exceeds 9 percent.[141]

In recognition of the likely short- and intermediate-term divergence between interest rates and house price behavior, the stress test concentrates all of the adjustment in the final five years of the stress period. Thus, house prices are identical in the two stress test interest rate scenarios during the first five years, but increase much more rapidly in the last five years of the up-rate scenario than they do in the down-rate scenario.

Several respondents to OFHEO's ANPR commented on this issue. VA opposed any adjustment, arguing that while the long-term behavior of house price inflation and general inflation is consistent, the short-term relationship is weak, and the relationship between interest rates and house prices "is even more tenuous." VA further agrees that specific economic conditions can disrupt any general relationships, and that an adjustment would be inconsistent with the approach of private rating agencies. OFHEO believes, however, that some adjustment is required by the statutory language.

HUD argued that adjusting the rate of increase in house prices throughout the stress period on a one-to-one basis with general price inflation would deny the role of changes in real interest rates over time. HUD suggested that OFHEO consider current trends and long-run relationships between real interest rates and house prices. NAR suggested that a one-to-one relationship is appropriate for long-term assumptions, and ACB commented similarly. OFHEO believes that its approach, which uses a one-to-one relationship for the cumulative change but concentrates the change in the last five years of the stress period, is not inconsistent with any of these recommendations.

Freddie Mac recommended that house price inflation should vary with interest rates in a one-to-one relationship, not only with respect to increases in the ten-year CMT exceeding 50 percent, but also with respect to all interest rate changes. House price inflation rates would be based on rates current at the start of the stress period and rise or fall by amounts equal to the change in the ten-year CMT in both scenarios. Such an approach could result in more severe credit losses in the down-rate scenario and very few credit losses in the up-rate scenario. OFHEO believes that the stress test should reflect the possibility that substantial credit losses would occur in either scenario. The recommended

---

[137] This rate is discounted by 12 months to reflect the average time from the default date (30 days after last paid installment date) to final resolution.

[138] 1992 Act, section 1361(a)(2)(E) (12 U.S.C. 4611(a)(2)(E)).

[139] Multifamily credit losses are related to rent growth rates. The same adjustment described here for house price inflation rates is also made to rent inflation rates.

[140] General inflation rates (based on the CPI) followed a still different pattern. They averaged 8 percent per year during the first five-year period, 7 percent in the second, and 3 percent in the third five-year period.

[141] The stress test would calculate the cumulative adjustment factor in this case to be $1.015^{9\frac{1}{6}}$ so final house price levels in the up-rate scenario would be 14.6 percent higher than they would be in the down-rate scenario. In this formula, $9\frac{1}{6}$ represents the number of years the ten-year CMT exceeds 9 percent by the full 1.5 percentage points plus two months to reflect the period in which the ten-year CMT exceeds 9 percent by a smaller amount. If the ten-year CMT increases 75 percent over the base month, a 50 percent increase will be achieved by month eight. The full increase will be achieved by month 12. For the purposes of this calculation, the result is the same as it would be if the extra 25 percent lasted for nine years and two months.

approach also would not have any obvious relationship to the benchmark loss experience. Applying the approach at the time the benchmark loans were originated would result in much stronger house price growth than actually occurred in the benchmark area.

Freddie Mac further argued that a stress test that incorporated a ten-year CMT that exceeded the rate of house price appreciation by more than 6.5 percentage points over a ten-year period would be inconsistent with national historical experience and, therefore, inappropriate. However, national historical experience is not an appropriate criterion for the stress test's key source of mortgage credit stress. Credit losses in the stress test are required to exceed national historical experience. They are based on the worst regional, not national, experience.[142] More importantly, as discussed above, house price projections in the stress test are not designed to correspond to any particular interest rate level. Rather, they are simply a means of incorporating an overall credit stress level that is comparable to the benchmark loss experience and which may reflect stresses from a variety of non-house price sources not explicitly included in the mortgage performance model.

B. Interest Rates

The 1992 Act specifies the level of the constant maturity Treasury yield (CMT) for ten-year securities during the last nine years of the stress period.[143] However, only general guidance is provided for the levels of yields on Treasury securities with different maturities. Also, yields on other financial instruments are not explicitly mentioned. The behavior of yields on financial instruments other than ten-year Treasury securities will have potentially substantial and pervasive effects on the Enterprises during the stress period. Those yields will determine the cost of new debt issued and earnings on new investments, as well as the interest rates paid or earned on assets, liabilities, or derivatives contracts that are tied to market yield indexes. They will also have a significant effect on the volumes of mortgage prepayments and defaults. The magnitude of the effects on an Enterprise during the stress period will depend greatly on the Enterprise's funding strategies at the start of the stress period.

1. Yields on Treasury Securities

a. Statutory Requirements

The 1992 Act describes two interest rate scenarios (one rising and one falling) based on movements in the ten-year CMT. In the rising or up-rate scenario, the ten-year CMT increases during the first year of the stress test period and then remains constant at the greater of: (1) 600 basis points above the average yield during the preceding nine months; or (2) 160 percent of the average yield during the preceding three years. However, in no case may the yield increase to more than 175 percent of the average yield over the preceding nine months. In the falling or down-rate scenario, the ten-year CMT decreases during the first year of the stress period and then remains constant at the lesser of: (1) 600 basis points below the average yield during the preceding nine months; or (2) 60 percent of the average yield during the preceding three years. However, in no case may the yield decrease to less than 50 percent of the average yield over the preceding nine months.

The 1992 Act does not specify the shape of the yield curve during the stress period. Rather, it simply requires that the levels of other Treasury yields "change relative to the 10-year Constant Maturity Treasury (CMT) yield in patterns and for durations that are reasonably related to historical experience and are judged reasonable by the Director."[144] The statute also does not specify the manner in which the ten-year CMT moves during the first year of the stress period to reach the level required for the remainder of the period.

In its comments to OFHEO's ANPR, ACB suggested that OFHEO consider using stochastic projections of all interest rates, if OFHEO determined that stochastic projections were consistent with statutory requirements. ACB noted that the process could be constrained to insure that the ten-year CMT reached its required level during the final nine years of the stress period on an average basis. OFHEO has determined that such an approach would not be compatible with the 1992 Act. That statute clearly specifies that the ten-year CMT will be constant during the final nine years of the stress period. Furthermore, as Fannie Mae commented, using a stochastic model for determining interest rates would create unnecessary uncertainty about what amount of capital would actually be required for a given set of risk positions. A stochastic model also would add unnecessary complexity to the regulation. Accordingly, OFHEO proposes that all interest rates during the stress period be fully determined by past data on interest rates.

b. Yields of Other Treasury Maturities During the Final Nine Years

(i) Constant or Varying Yields

OFHEO considered whether the Treasury yield curve should be constant over the final nine years of the stress period or whether it should change in some specific manner. OFHEO proposes to use a constant yield curve. While yields are extremely unlikely to remain constant or even roughly so over a period as long as nine years, there are no serious disadvantages to using such an approach in the stress test, and there are compelling advantages.

A constant yield curve is a straightforward approach that is consistent with the statutory specification of a constant ten-year CMT. The purpose of the interest rate component of the stress test is to assess an Enterprise's ability to withstand a prolonged shift to a much higher or much lower interest rate environment. No specific pattern of yield changes can fully capture the range of possible future adverse changes. Based on historical experience, one would expect all interest rates to fluctuate over a broad range during a period as long as nine years. Different underlying macroeconomic circumstances would be associated with different evolutions of the entire yield curve, including the ten-year CMT. Tying the stress test to one specific set of macroeconomic circumstances would tend to limit its general usefulness. The real-life danger the Enterprises face of much higher or much lower interest rates during the next decade is not focused on any particular portion of that ten-year period. Designing a stress test with any specific pattern of interest rate changes after the first year of the stress period would imply a belief that Enterprise risk exposures in some future years would be a matter of greater public concern than in other years. While an argument could be made that near-term risk exposures would create losses with a higher present value, that concern should be balanced by a recognition that the risk of a very different interest rate environment is greater for distant years than for the near-term.

A stress test with interest rates that are especially high or low in particular

---

[142] The average ten-year CMT exceeded average house price growth in the West South Central Division during the 1980s by 9.5 percentage points. For the benchmark loss experience, the difference was 8.5 percentage points.

[143] 1992 Act, section 1361(a)(2) (12 U.S.C 4611(a)(2)).

[144] 1992 Act, section 1361(a)(2)(D) (12 U.S.C. 4611(a)(2)(D)).

future years would encourage Enterprise hedging strategies to focus on those specific years. Risks in other years, when stress test projections were more moderate, might receive relative neglect. The Enterprise would thus be providing more protection against more adverse, but less likely, interest rates in some years at the expense of less protection against less adverse, but more likely, interest rates in other years. Such an incentive would provide less general protection and thereby increase the risk of failure.

In their ANPR comments, Fannie Mae and VA suggested specific fixed yield curves, consistent with OFHEO's proposal in this regard. Freddie Mac recommended a considerably more complex approach that would generally result in relatively more adverse short-term interest rates in the early part of the final nine years of the stress period and less adverse short-term interest rates later. OFHEO believes its proposal is much simpler and will provide better general protection against Enterprise failure for the reasons discussed above.

Freddie Mac argued that a fixed yield curve would be unreasonable for two reasons. First, Freddie Mac stated that a fixed curve would be inconsistent with the statutory requirements that changes in yields on Treasury securities with maturities other than ten-years "will change relative to the 10-year constant maturity Treasury yield in patterns and for durations that are reasonably related to historical experience." It is clear from the legislative history that Congress did not intend to prohibit constant yield curves, per se, but rather wanted to prohibit unusual yield curves lasting for a longer time than could be reasonably related to historical experience. The language of the statute follows the original Senate-passed bill, except that "reasonably related to" in the quoted phrase was substituted for "within the range of," and a specific restriction on unusual yield curves was removed. The Senate Committee, in explaining its understanding of the yield curve provision, actually recommended that the yield curve be fixed during at least the final five years of the stress period.[145]

Second, Freddie Mac argued that a constant yield curve "would be of little value in measuring the ability of an Enterprise to absorb losses in relation to its risks" because interest rate volatility would disappear and the prices of options would approach zero. Market estimates of interest rate volatility, however, play no important role in the stress test OFHEO is proposing. The Enterprises are not projected to buy or sell any options, as this is a "no new business" stress test. While option value does affect decisions about option exercise, and those decisions are an important element of the stress test, the interest rate movements in the stress test are quite large. In such circumstances, Enterprise decisions about option exercise will generally be relatively insensitive to precise measures of option value. Homeowners' decisions to exercise their options to prepay their mortgages are also based on past homeowner responses to large changes in interest rates and not on specific measures of volatility. Stress test projections relating to the exercise of options implicitly assume that expectations about volatility are within normal ranges, despite the lack of change in interest rates. The proposed approach is an efficient simplification that does not distort Enterprise risks in any meaningful way.

[145] S. Rep. No. 102–282, at 22 (1992).

(ii) Choice of Fixed Yield Curve Shapes

OFHEO proposes that all Treasury yields for key maturities (three-and six-month; one-, three-, five-, and 20-year) in the final nine years of the up-rate scenario be equal to the ten-year CMT. In the final nine years of the down-rate scenario, OFHEO proposes that all key Treasury yields have the same ratio to the ten-year CMT that they had, on average, during the nine-year period from May 1986 through April 1995. The proposed yield curves for both interest rate scenarios correspond to historical experience.

OFHEO based its selection of yield curves on an examination of historical data on Treasury yields. Data are available starting in December 1958. OFHEO focused on the relationship between a short-term (six-month) yield and the ten-year yield.[146] From 1959 through 1996, the average yield curve slope, measured by the ratio of the six-month CMT to the ten-year CMT, was 0.88, a moderate upward slope. However, when calculated on a monthly basis, this slope has varied considerably through time (*See* Table 26, Frequency Distribution of Yield Curve Slopes, 1959—1996). Monthly slopes have been as low as 0.48 (September and October 1992) and as high as 1.29 (March 1980). In more than half of the months, yield curves were roughly flat or downward sloping (slopes above 0.95) or were steeply upward sloping (slopes below 0.75).

[146] In the following discussion, yields of six-month Treasury bills are expressed on a bond-equivalent basis. The six-month maturity has the advantage that the timing of its payments are consistent with the interest rate payment cycle of Treasury notes and bonds, ensuring comparability of yields across maturities.

Table 26. Frequency Distribution of Yield Curve Slopes, 1959 - 1996

Ratio of 6-Month CMT to Ten-Year CMT	Number of Months
1.25 - 1.35	2
1.15 - 1.25	21
1.05 - 1.15	41
0.95 - 1.05	77
0.85 - 0.95	89
0.75 - 0.85	111
0.65 - 0.75	80
0.55 - 0.65	21
0.45 - 0.55	14

Of particular relevance are the average slopes over periods of 108 months (nine years) and their relationship to previous increases or decreases in yields. Ratios of the average six-month Treasury CMT to the average ten-year CMT for periods of 108 months ranged from 0.77 (for periods ending from January 1994 through April 1996) to 0.99 (for periods ending from September 1981 through June 1982). OFHEO must project yields curves for a nine-year period in which the ten-year CMT has increased by 75 percent, and decreased by 50 percent, from its average in the nine months ending one year before the beginning of the nine-year period.[147] Accordingly, OFHEO sought to determine whether historical data suggest any relationship between changes in average ten-year CMT and yield curve slopes for relevant time periods.

At no time during the past 40 years have ten-year CMTs changed as greatly as required in the stress test. The largest comparable increase was 56.3 percent from the nine-month average of 6.04 percent during November 1971 to July 1972 to the nine-year average of 9.44 percent during August 1973 to July 1982. The ratio of six-month to ten-year yields during the later period was 0.98. The largest comparable decrease was 38.9 percent from the nine-month average of 12.74 percent during February to October 1984 to the nine-year average of 7.78 percent during November 1985 to October 1994. That change was associated with a slope of 0.77 during the nine-year period.

The pattern of relatively flat yield curve slopes after interest rate increases and steep yield curve slopes after interest rate decreases is consistent with the data. In all nine-year periods in which the average ten-year CMT was above its average during the relevant earlier nine-month period, the yield curve slope was greater than 0.87. In all nine-year periods in which the average ten-year CMT was below its average during the relevant earlier nine-month period, the yield curve slope was less than 0.87. Furthermore, the greater the increase in the ten-year CMT, the flatter the yield curve slope tended to be, and the greater the decrease in the ten-year CMT, the steeper the yield curve slope tended to be. Results of an ordinary least squares regression imply that a sustained 75 percent increase in the ten-year CMT would likely result in a CMT yield curve slope of 1.00, while a sustained 50 percent decline provides an expected slope of 0.77.[148]

If the macroeconomic circumstances associated with a future shift in yields were to differ from those that engendered interest rate changes in recent decades, different results might easily occur. Nevertheless, the historical experience of the past four decades, as indicated both by the actual yield curve slopes in the episodes when the ten-year CMT changed most greatly and by the more general results, suggests an essentially flat yield curve in the up-rate scenario, and a curve with a relatively steep upward slope in the down-rate scenario.

Although the highest yield curve slope was 0.99, OFHEO chose a more straightforward yield curve slope of 1.00 for the up-rate scenario. The largest historical interest rate increase resulted in an almost flat yield curve, and that increase was still well below the increase of the up-rate scenario of the stress test. In addition to the six-month yields, OFHEO also proposes that all other key Treasury yields be equal to the ten-year CMT in the up-rate scenario. When the six-month CMT equals the ten-year CMT, setting all the other key

[147] In high yield environments, the changes in interest rates would be somewhat smaller, but past and recent data suggest that the changes will generally be of this magnitude.

[148] An ordinary least squares regression describes the results quantitatively. The dependent variable (Y_t) is the ratio of the average six-month CMT to the average ten-year CMT during the nine years ending in month t. The independent variable (X_t) is defined as the ratio of the average ten-year CMT in the nine years ending in month t to the nine-month average of the ten-year CMT from month t-128 to month t-120. The regression results are: $Y_t = 0.86 + 0.19\ X_t$.

Although this regression is based on monthly data over a 38-year period, it is a small data set for investigating this issue. The yield data start in December 1958, but each observation needs 128 months prior data, so the first observation used in the regression is August 1969. That leaves 326 observations through September 1996, but because of the lags, each observation is very similar to the one preceding it. There are really only four fully separate dependent variable observations. In these circumstances, the coefficient estimates are unbiased, but the usual regression statistics are not meaningful. In an alternative regression, the data were reorganized as follows. The 326 observations were rank-ordered by the independent variable and divided into quartiles. Using average values of the two variables from each quartile, the regression was rerun with the resulting four observations. The results are: $Y_t = 0.86 + 0.20\ X_t$.

Differences in parameter estimates from the full sample regression were small, less than 0.01, and the standard error of the coefficient of Xt was 0.022. Even though the observations for these regressions were limited, to the extent the data do exist, they support OFHEO's yield curve proposal.

Treasury yields equal to the same levels is straightforward and appropriate. In the down-rate scenario, however, setting the six-month and the ten-year yields does not directly suggest appropriate rates for instruments with other maturities. OFHEO proposes in this scenario that slopes of key CMTs to the ten-year CMT be based on a specific historical experience in a straightforward way that incorporates long-term relationships between yields of instruments with different maturities. The slope of the average six-month CMT to the average ten-year CMT during the nine-year period ending in April 1995 closely approximates the yield curve slope suggested by the regression equation.

Several commenters responded to a question in OFHEO's ANPR about the Treasury yield curve. Consistent with OFHEO's proposal, Fannie Mae recommended that OFHEO focus its approach to projecting yield curves on the ratio of the six-month Treasury yield to the ten-year Treasury yield. However, Fannie Mae recommended that the ratio of the six-month CMT to the ten-year CMT be set at a long-run historical average in both interest rate scenarios. Such an approach would not be consistent with actual experience that large sustained interest rate increases are accompanied by relatively flat yield curves and that large, sustained interest rate decreases are accompanied by relatively steep yield curves.

The Department of Veterans Affairs recommended a yield curve formula that would depend heavily on the shape of the yield curve at the start of the stress test. OFHEO considered such an approach, but found no evidence in historical data that the yield curve shape at the start of a ten-year period is related to the average shape over the final nine years of that period.

Freddie Mac suggested an approach based on an assumption that the statutory changes in interest rates represent a "regime shift." As market participants adjust to the new regime, Freddie Mac argued, average yield curve relationships should return. OFHEO believes it is more appropriate to base projections of yield curve relationships on what has actually occurred in the past with the most similar changes in ten-year CMT levels.

NAR recommended that OFHEO take into account Treasury refunding behavior during the stress period. In order to keep the stress test as general as possible, OFHEO chose not to make any specific projections about Treasury debt issuance during the stress period.

c. Yields of Treasury Securities During the First Year

OFHEO proposes that during the first year of the stress period, the yields on Treasury securities of all maturities adjust linearly from their levels in the month proceeding the stress period to their levels during the final nine years of the stress period. In comments to OFHEO's ANPR, Fannie Mae stated that movements of the six-month and ten-year CMTs should be consistent during an adjustment period of one to two years. OFHEO agrees and believes its proposal will result in sufficiently consistent movement.

Freddie Mac suggested an approach under which, before the end of the first year, the yield curve might invert in the up-rate scenario and become very steeply upward sloping in the down-rate scenario. As previously discussed, OFHEO believes this approach is unnecessarily complex.

2. Yields of Non-Treasury Instruments

a. In General

Payments during the stress period associated with many Enterprise assets, liabilities, and derivatives contracts and the performance of mortgages, especially prepayment behavior, are dependent on future levels of yields on non-Treasury instruments and levels of non-Treasury interest rate indexes. OFHEO proposes to project these yield levels using econometric models relating non-Treasury interest rate series to yields on Treasury securities of comparable maturity.

The econometric specifications were based on two primary criteria. First, whenever possible, the non-Treasury interest rate series were modeled using the relative (rather than absolute) spread over comparable CMTs. Second, the specifications balanced the desire for simplicity with the need to account for the time-series properties inherent in the data.

Autoregressive integrated moving average (ARIMA) models were used to model the behavior of the non-Treasury interest rate series.[149] The models capture the average historical relationships between specific CMTs and non-Treasury interest rates. OFHEO believes this approach is consistent with recommendations of all commenters to a question on this issue in OFHEO's ANPR.

b. Yields on Enterprise Debt

OFHEO proposes that yields on Enterprise debt be projected in the same manner as yields on other non-Treasury instruments, except that a 50 basis point premium is added after the first year of the stress period. After one year of stress test conditions, the Enterprises might appear strong based on accounting measures of earnings and net worth. However, market values of the Enterprises' assets, liabilities, and derivatives contracts would fully reflect the effects of the interest rate shock and some of the credit quality deterioration of the stress test. Investors would be aware of these changes in market value and adjust their evaluations of the Enterprises' financial health accordingly. Because the Enterprises' ability to withstand further interest rate and credit shocks likely would be low, the Enterprises in the final nine years of the stress period would likely not meet their risk-based capital requirement and would, therefore, be subject to dividend restrictions. Such events might strengthen investor concerns about the Enterprises' financial health.

As government sponsored enterprises, the Enterprises likely would suffer much smaller debt market penalties than fully private firms in the same circumstances. However, the historical experiences of Fannie Mae and the Farm Credit System during periods of financial stress strongly suggest that borrowing costs would include some risk premium during economic conditions such as those in the stress test. As illustrated by data reported in the General Accounting Office's 1990 report on government sponsored enterprises, Fannie Mae's short-term

[149] An ARIMA (p,d,q) model implies p autoregressive terms, d differences of the original series, and q moving average terms. Generally speaking, differencing is undertaken to render a series "mean-stationary," which is a requirement for statistical analysis of autoregressive models. For example, observations from a random walk include the cumulative effect of all past shocks (random disturbances) and/or trends. Differencing can net out the effect of persistent movements and make a series stationary. Autoregressive terms also represent the persistence of past shocks, but where the effect of the shock diminished over time. Moving average terms represent the effects of shocks that disappear completely after some finite number of periods.

In some situations the original series may also exhibit non-stationarity in the variance, requiring other normalizing transformations (e.g., taking logarithms). Also, visual examination of the data series and residual analysis based on appropriate statistical criteria (e.g., Ljung-Box Q-statistics) were used to guide the model selection process.

In some cases, a constant term has been included. This has the effect of preserving the historical average relative spread between the index and the corresponding Treasury rate when projecting future values. This is only done when there is some evidence that this historical difference is statistically significant. While differencing is necessary in many models to achieve stationarity in the mean, the use of relative spreads over Treasury rates of comparable maturities generally appears to make the original relative rate series variance stationary.

borrowing costs during 1980 through 1982 were generally about 80 basis points in excess of yields on comparable maturity Treasury debt, rising at one point to 200 basis points above Treasury yields. Spreads receded after sharp declines in interest rates greatly improved Fannie Mae's condition to a more normal range centered roughly at 20 basis points. Spreads were high again in the late 1980s for both Fannie Mae and the Farm Credit System, ranging from 40 to 100 basis points over a two-year period during the Farm Credit System's time of greatest financial difficulty.[150]

In stress test simulations based on the quarter ending in June 1997, the Enterprises' borrowing costs, including the 50 basis point premium, are 78 basis points above comparable Treasury yields in the up-rate scenario and 56 basis points above in the down-rate scenario after the first year of the stress period. Such spreads are appropriate because it is essential that the Enterprise be adequately prepared for widening debt yield spreads in periods of financial stress.

In its comments to OFHEO's ANPR, ACB pointed to Fannie Mae's difficulties in 1980 to 1982 as a possible basis for assessing likely borrowing spreads in the stress period. ACB also suggested that OFHEO might consider projecting the Treasury Department's use of its statutory authority to lend money to the Enterprises in stressful circumstances. OFHEO believes the stress test should assess the Enterprises' abilities to withstand the stress test without borrowing from the Treasury Department.

Freddie Mac commented that OFHEO should assume that the market's perception of an implicit government guarantee on Enterprise debt protects the Enterprises against any increased risk premium in borrowing spreads. OFHEO disagrees and believes the historical evidence is inconsistent with that view. OFHEO does agree that financial weakness of the Enterprises during the stress period should not be expected to have the same effect on borrowing costs that it would for firms that are not government sponsored enterprises. Nonetheless, some increase in risk premiums is appropriate. As the Enterprises' offering prospectuses clearly state, Enterprise obligations are not backed by the full faith and credit of the Federal government. OFHEO also agrees that attempting to calculate appropriate borrowing spreads at different times during the stress test, based on specific measures of Enterprise stress, would unnecessarily complicate the test. Accordingly, OFHEO proposes a constant risk premium during the final nine years of the stress period.

[150] U.S. General Accounting Office (1990), *Government Sponsored Enterprises: The Government's Exposure to Risk*, Washington, DC: U.S. General Accounting Office, (GAO/GGD–90–97) 87–88.

C. Mortgage Credit Enhancements

1. Background

The Enterprises use mortgage credit enhancements to reduce their credit risk exposure. For single family loans with LTV ratios in excess of 80 percent, the Enterprises must use certain statutorily enumerated credit enhancements. The Charter Acts prohibit the purchase of conventional single family mortgages with LTV ratios in excess of 80 percent unless: (1) the seller retains a participation interest of 10 percent or more; (2) the seller agrees to repurchase or replace the mortgage upon default (seller recourse); or (3) the amount of the mortgage in excess of 80 percent is insured or guaranteed.[151] Multifamily mortgages are not subject to such a requirement, but may also be credit enhanced.

The Enterprises currently use several different types of credit enhancements: (1) Private mortgage insurance on individual loans, which usually covers a percentage of the gross loss, or "claim amount," [152] (2) seller recourse agreements, which require the seller/servicer to repurchase loans in the event of default, either for all loan defaults (unlimited recourse) or for all defaults up to a specified amount (limited recourse); (3) indemnification, which requires the seller/servicer to reimburse the Enterprises for losses (either unlimited or limited) on defaulted loans after final resolution by the Enterprise; (4) pool insurance, which covers losses on a pool of loans up to a specified percentage of the aggregate unpaid principal balance (UPB), usually after private mortgage insurance has been applied; (5) spread accounts maintained by the Enterprise or a custodian to offset losses, funded by part of the spread between the interest rate on the loans in a pool and the coupon passed through to the investor; (6) collateral pledge agreements under which the Enterprise obtains a perfected interest in securities held in an account (usually Treasury securities or mortgage-backed securities), to offset losses on a pool of loans when a seller/servicer hits certain financial triggers or when the loans are high risk; and (7) cash accounts funded by the seller/servicer that are available to offset losses.

[151] *See* sections 305(a)(2) and (4)(C) of the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1454(a)(2) and (4)(C)) and sections 302(b) and (5)(C) of the Federal National Mortgage Association Charter Act (12 U.S.C. 1717(b)(2) and (4)(C)).

[152] The claim amount includes the defaulted principal balance, unpaid interest, and associated expenses. It does not reflect subsequent proceeds from the sale of REO.

2. Modeling Approach

The stress test calculates the loss coverage provided by credit enhancements in one of two ways, depending on the credit enhancement type. Private mortgage insurance, unlimited recourse, unlimited indemnification, and risk-sharing agreements provide coverage for a percentage of the loss incurred. The dollar value of these credit enhancements is not known at the beginning of the stress period because it depends on the size of the loss that occurs in the future. What is known is the percentage of the loss that will be covered. Therefore, these credit enhancement types are referred to herein as "percent-denominated" enhancements. The other credit enhancement types are referred to as "dollar-denominated" enhancements, because the total coverage provided can be expressed in dollar amounts without knowing the size of the losses in advance.

The stress test applies the loss coverage provided by credit enhancements to the loan groups into which individual loans have been aggregated for modeling efficiency. (*See* section II. A., Summary of the Stress Test, for a description of the characteristics that are the basis for aggregation.) The loss coverage is a weighted average of the credit enhancements applicable to any loans in the group. In situations where a loan group is covered by both percent-denominated enhancements and dollar-denominated enhancements, the two different types of credit enhancements are applied sequentially. First, the loss severity of a loan group is reduced by an amount that is determined by the percentage coverage of the applicable percent-denominated credit enhancements. Then, the dollar coverage available from dollar-denominated credit enhancements is applied to the remaining losses on the loan group until all of the available dollar coverage for that loan group is used up. This approach permits percent-denominated credit enhancements (such as private mortgage insurance) to be applied before dollar-denominated credit enhancements (such as pool insurance) are applied, capturing the benefits of multi-layered credit enhancements.

Some dollar-denominated enhancements provide coverage in a dollar amount that is fixed and known at the time the agreement is executed. These include pool insurance, limited recourse, limited indemnification, and cash accounts. Other dollar-denominated enhancements provide coverage in a dollar amount that is subject to variation during the term of the agreement. These include spread accounts and collateral pledge agreements. Changes in these balances due to reasons other than loss coverage are not modeled. Rather, balances are treated as cash [153] and drawn upon after dollar losses are determined, until the total amount is exhausted.

Some credit enhancements, namely private mortgage insurance, recourse, pool insurance, and indemnification, are subject to the institutional credit risk of the provider, i.e. the risk that the counterparty providing the credit enhancement will default on its obligation. Where institutional credit risk is present, the stress test applies a discount factor, or "haircut," based on the credit rating of the counterparty.

The haircuts that have been adopted by OFHEO are set forth by rating category in Table 27:

Table 27. Rating and Cumulative Haircut

Month	AAA	AA	A	<= BBB
12	1%	2%	4%	8%
24	2%	4%	8%	16%
36	3%	6%	12%	24%
48	4%	8%	16%	32%
60	5%	10%	20%	40%
72	6%	12%	24%	48%
84	7%	14%	28%	56%
96	8%	16%	32%	64%
108	9%	18%	36%	72%
120	10%	20%	40%	80%

The haircuts reflect the probability that some counterparties will be unable to meet their obligations during the stress period. Haircuts become progressively larger as the counterparty rating decreases, with parties rated BBB or lower and unrated parties receiving the most severe haircut. The haircut for each rating category is cumulative rather than additive. It increases for each month of the stress period, beginning in the first month of the stress test and increasing by equal amounts (i.e., linearly), until the full amount of the discount is reached in the 120th month. Table 27 reflects the size of the haircut at the end of each 12-month period during the stress period. Rating downgrades are not modeled. Instead, deterioration in the financial condition of counterparties due to the stressful environment is reflected in the linear increase of the haircuts.

3. Comments and Alternatives Considered

In the ANPR, OFHEO requested comments on how to calculate the loss coverage provided by credit enhancements and on what assumptions to make about the scope of coverage and the failure of counterparties during the stress period. These and other issues, relevant comments received, and OFHEO's rationales for the selected approaches are discussed below.

a. Modeling Approach

ANPR commenters suggested a variety of modeling approaches. MICA stated that the capital requirements for the Enterprises should be consistent with capital requirements for banks and thrifts and reflect the underlying product risk associated with each class of mortgage-related assets. MICA recommended that OFHEO assign relative "capital relief" values to "the three allowable credit enhancements" [154] based on the quantity and quality of the credit enhancement. MICA further recommended that OFHEO consider mortgage insurance provided by a company with at least a AA claims-paying rating and providing at least the minimum coverage required by the Enterprises' charters as the "benchmark credit enhancement." The benchmark credit enhancement should receive the "maximum amount of capital relief," and other forms of credit enhancement should receive values relative to this benchmark, based on the quality and quantity (i.e. the amount of the loss it covers) of the enhancement. (*See* section III.C.3.c., Discounting for Counterparty Risk for a discussion of MICA's comments related to the quality of the credit enhancement.) MICA views this approach as consistent with risk-based requirements for banks and thrifts, which require uninsured high-LTV

[153] Although dollar balances for these types may in reality vary during the stress period, the stress test uses the balance stated at the beginning of the stress period.

[154] OFHEO interprets "three allowable credit enhancements" as a reference to the three types of credit enhancement mentioned in the Charter Act exception to the prohibition on purchasing loans with LTVs in excess of 80 percent.

loans held in portfolio to have twice as much capital as high-LTV loans that are privately insured.

Freddie Mac suggested a two-step process similar to the process it uses in its internal models for pricing transactions. Freddie Mac first estimates the value of the credit enhancement by estimating the proportion of default losses that would be covered, and then discounts the estimated value to reflect the institutional credit risk of the provider, if any. Although Freddie Mac's credit enhancement valuation process occurs at the transaction level for pools of mortgages, Freddie Mac suggested that such a transaction-level approach might not be well suited for OFHEO's stress test. Rather, it recommended aggregating credit enhancements into categories before applying the two-step process. Freddie Mac further recommended that private mortgage insurance be modeled in connection with the modeling of loss severities. Other types of credit enhancements, Freddie Mac suggested, could be converted to "collateral-equivalent" amounts and, after discounting for applicable institutional credit risk, aggregated into a large collateral-equivalent pool and used to offset stress test losses dollar for dollar. Freddie Mac made specific recommendations for collateral-equivalent conversions: collateral pledge agreements and spread accounts should be included on a dollar-for-dollar basis and future inflows to spread accounts should be estimated based on the weighted average life (WAL) of the pool;[155] pool insurance should be included to the policy limit, i.e. the percentage limitation multiplied by the original UPB; and recourse and indemnification agreements should be treated as if 100 percent of the losses from mortgage defaults in the applicable pools were covered until such time as the seller/servicer failed.

The approach adopted by OFHEO is similar in many respects to the approach suggested by Freddie Mac. Like Freddie Mac's approach, it estimates the probable coverage of credit enhancements and discounts for counterparty risk where it is present. The value of private mortgage insurance and other forms of credit enhancements that cover a percentage of loss is estimated in connection with loss severities, as suggested by Freddie Mac. The approach adopted by OFHEO differs from the approach suggested by Freddie Mac in some of the details of how credit enhancement coverage is estimated and how discounts for counterparty risk are calculated. These differences are discussed further below.

b. Aggregation

A threshold issue for OFHEO was whether to track and model each credit enhancement with the loan or pool to which it relates or to use some level of aggregation for credit enhancements to increase modeling efficiency. Tracking and modeling each individual credit enhancement agreement with the particular loan or pool to which it is related would yield the most precise estimate of the value and behavior of credit enhancements, but would make the model very complex. Aggregating credit enhancements for efficiency in modeling, on the other hand, gives rise to "cross support," which overestimates the amount of credit enhancements that would actually be used to offset losses. "Cross support" means that credit enhancements provided on a particular loan or pool are available to offset losses on another loan or pool, when in practice they would be available only to offset losses on the particular loan or pool for which they were provided and would be partially unused if losses were lower than the amount of the coverage. However, in a model that aggregates credit enhancements and applies them to loan groups, the unused portion of a credit enhancement is available to cover losses in the same loan group. The greater the aggregation of credit enhancements in the stress test, the more cross support occurs, and the more the estimated value of the credit enhancements is overstated. Aggregation up to a very high level can introduce an unacceptable level of cross support.

OFHEO considered converting each credit enhancement type to a dollar-equivalent amount, aggregating these amounts across all credit enhancement types into a single pool of collateral-equivalent dollars, and applying them dollar for dollar against stress test losses. While this approach is simpler and would have required less intensive tracking, it would permit an unacceptable level of cross-support by credit enhancements of different types and for different loan groups. Just as importantly, this approach would not have produced accurate results for the coverage associated with percent-denominated credit enhancements, such as private mortgage insurance. The dollar amount of coverage of these credit enhancements cannot be calculated until losses are determined. These losses can only be calculated during the course of the stress period; they are not known at the beginning of the stress period.

The approach adopted by OFHEO strikes a balance between the benefits of simplicity and efficiency and the benefits of precision while imposing minimal regulatory burden. By estimating the coverage provided by each type of credit enhancement on the basis of loan groups, tracking credit enhancements for each loan group can be accomplished efficiently. The large number of loan groups used by the stress test minimizes cross support between different types of credit enhancements, loans, and time periods.

c. Discounting for Counterparty Risk

Another issue faced by OFHEO was whether and how to take into account the risk that the counterparty's ability to perform on the credit enhancement agreement would be affected by the conditions of the stress test.

OFHEO received a number of suggestions on the treatment of counterparty risk in response to the ANPR. Freddie Mac, MICA, and ACB recommended incorporating an assumption that some of the counterparties would fail during the stress period and suggested that OFHEO look to private rating agencies for guidance. ACB suggested that the OFHEO analysis of the actual coverage provided by mortgage insurance during the stress period could be "piggybacked" on S&P's analysis. ACB further stated that OFHEO could make reasonable adjustments to align the worst-case scenario in S&P's stress test with that in the OFHEO analysis, and that it would not be necessary to extend the analysis beyond private mortgage insurers.

As noted earlier, MICA recommended a matrix for determining "capital relief" for credit enhancements relative to a benchmark credit enhancement. One dimension of the recommended matrix is the credit rating of the counterparty, reflecting an assumption that the values assigned to various credit enhancements should reflect a differentiation on the basis of the provider's claims-paying rating. However, MICA's recommendation that OFHEO give "maximum capital relief" (at least 50 percent of the normal capital charge) to a AA-rated insurer providing at least the minimum coverage required by the Enterprises' charters appears to be equivalent to a recommendation that AA-rated counterparties not be discounted at all.[156] MICA asserted that

[155] This could be done by multiplying the WAL by the average yearly spread going into the spread account and then by the UPB.

[156] The risk-based capital requirements for banks and thrifts are not determined by a statutorily prescribed stress test but by establishing a standard

this recommendation is supported by the historical default experience for corporate bonds in the 1970–89 period, particularly the 0.9 percent default rate for AA-rated bonds.[157] From this MICA concluded that 99.1 percent of mortgage insurance would be available to the Enterprises during the stress period.

Freddie Mac recommended that evaluation of counterparty risk be based on the probable length of time an institution would continue meeting its loss-paying obligations in the stress period, which would be determined by the institution's rating at the beginning of the stress period. This method, Freddie Mac asserted, is similar to one used by Moody's. Specifically, AAA-rated companies would be assumed to cover all obligations for the entire ten-year stress period. AA-rated companies would be assumed to cover all obligations for seven years and none thereafter, A-rated companies for five years, and companies rated BBB and lower, only three years. Freddie Mac also recommended that institutions that are required to post collateral under a collateral pledge agreement be ranked with AAA-rated institutions. For recourse and indemnification agreements, Freddie Mac suggested that OFHEO could assume the agreement would last until the institution failed, a time determined by the institution's rating. It noted, however, that a similar effect could be achieved by adjusting the loss severities based on institution ratings, where the adjustment to loss severity would be lower for a higher institutional rating. However, Freddie Mac cautioned that if this approach were used, the difference between the present-value cost of losses occurring at the end of the stress period and losses occurring at the beginning of the stress period would have to be taken into account. That is, an institution that honors its recourse agreement for the first five years of the ten-year stress period would pay out much more than half of the present value of the losses.

Only one commenter suggested that credit enhancements having counterparty credit risk not be discounted for the risk. The MBA expressed concern about the burden it would place on the Enterprises to determine the financial strength of third parties and suggested that credit enhancements need not and should not be discounted for credit risk of the counterparty. The reasons cited were three. First, the Enterprises generally accept credit enhancements only from well-capitalized companies. Moreover, the Enterprises are in a good position to evaluate the counterparty's financial strength,[158] and the seller/servicer agreement often provides added protection from default on repurchase or indemnification obligations. Second, an assessment of counterparty credit risk is reflected in guarantee fees, which can be adjusted with each commitment. And third, mortgage insurers are nationally rated by recognized organizations that routinely adjust ratings based on changes in financial status. As a result, trends in their financial health can be monitored easily. The MBA urged OFHEO to ground its assumptions and conclusions in historical experience and "real world" conditions, which, in its view, argue for not discounting credit enhancements for counterparty risk.

OFHEO believes that some counterparty failure would be likely under the stressful conditions imposed by the stress test and that discounting for counterparty credit risk is necessary to avoid overstating the effect of credit enhancements in covering losses. The statutorily required benchmark stress period is considerably more severe than the national historical experience of corporate bonds cited by MICA. Also, as noted by Anthony Yezer, Professor of Economics at George Washington University, the failure of private mortgage insurers was important in the collapse of the thrifts in the 1930s.

Although the stress test reflects assumptions about the claims-paying abilities of counterparties during the stress period that are similar to Freddie Mac's, OFHEO did not adopt Freddie Mac's assumption that counterparties would pay 100 percent of their obligations as long as they paid at all. In OFHEO's judgment, this assumption is inconsistent with the pattern of counterparty defaults on obligations that one would expect during a stressful period and inconsistent with the pattern of defaults observed in the past. For example, Moody's study of corporate bond defaults [159] showed that cumulative defaults in each of the various ratings categories increased gradually over time. Also, it is likely that the primary market and credit enhancement counterparties would be affected by the stress test conditions relatively early in the stress period. Freddie Mac's approach would not capture this early impact. If mortgage losses were to occur during the first half of the stress period, the importance of reductions in credit enhancements due to counterparty risk would be understated because, as noted by Freddie Mac, mortgage losses occurring during the first half of the stress period constitute much more than half of the present value of total losses. Therefore, credit enhancements offsetting those losses would be more valuable. A more realistic assumption is that the rate of counterparty defaults would increase gradually during the stress period.

OFHEO did not adopt Freddie Mac's recommendation to treat seller/servicers who are required to post collateral when certain financial triggers are met [160] the same as AAA-rated institutions. Freddie Mac contends that the existence of these agreements would provide coverage equivalent to a AAA-rated credit enhancement. However, whether collateral would actually be posted when required is an additional source of counterparty risk and whether that collateral would provide coverage equivalent to a AAA-rated credit enhancement is difficult to evaluate in a regulatory context. Such an evaluation would require OFHEO either to develop the capacity to rate each seller/servicer with a collateral pledge agreement and the impact of the agreement on the seller/servicer's rating, or to require the Enterprises to obtain public ratings for such seller/servicers that take these agreements into account. In light of the small impact that this degree of precision is likely to have on the capital requirement, OFHEO believes that developing such a rating capacity is not an appropriate use of regulatory resources, and that requiring the Enterprises to obtain public ratings would impose an undue regulatory burden. Consequently, the proposed stress test does not model the value of collateral pledge agreements. Instead, it only models coverage provided by collateral that is already available in an Enterprise or third-party account.

This treatment is consistent with the treatment of such agreements under OFHEO's minimum capital regulation. Collateral is not recognized for purposes

---

capital charge for all assets that is expressed as a fixed percentage of the face amount of the asset. Capital relief for particular assets is achieved by risk weighting them at less than 100 percent of the face amount. Risk-based capital regulations for banks and thrifts risk-weight mortgage loans at 50 percent of the UPB. In a stress test regulation, the most favorable capital treatment is achieved by giving full credit for the credit enhancement without any discount.

[157] "Approach to Rating Residential Mortgage Securities," Moody's Investor Service, April 1990.

[158] This results, MBA noted, from close relationships between the Enterprises and seller/servicers based on frequent marketing contacts, Enterprise auditing activities, and lender reporting obligations.

[159] "Historical Default Rates of Corporate Bond Issuers, 1920–1997," Moody's Investors Service, February 1998.

[160] Seller/servicer agreements may include such a requirement when there is a decline in the institution's rating or a decline in its capital levels below a specified amount.

of satisfying the minimum capital standard unless it is actually held and legally available to absorb losses. Also, to be consistent with the minimum capital restrictions on the forms of collateral that are acceptable, the proposed stress test will give credit for the coverage provided by collateral only if it is among the following types: cash on deposit; securities issued or guaranteed by the central governments of the OECD-based group of countries,[161] United States Government agencies, or United States Government-sponsored agencies, and securities issued by multilateral lending institutions or regional developments banks.

In determining the size and timing of the discounts (haircuts) to the value of the credit enhancements, OFHEO considered Moody's study of corporate bond default rates and methodologies used by S&P and Duff & Phelps (D&P). Moody's analysis of corporate bond issuers from 1920 to 1997 [162] showed cumulative default rates over various time horizons for each rating category. The average ten-year cumulative default rate over the entire period was 1.17 percent for Aaa issuers, 3.32 percent for Aa issuers, 3.87 percent for A issuers, 8.08 percent for Baa issuers. These data suggest that the ten-year cumulative default rate roughly doubles for each one-level drop in rating category. Defaults for Aa issuers were higher relative to those for Aaa and A issuers than this doubling relationship would suggest. However, Aa issuers from the mid-1970s forward had ten-year cumulative default rates that were much lower relative to issuers in other rating categories.

The Moody's approach and the approach recommended by Freddie Mac is a survival approach in which it is assumed that an institution meets 100 percent of its obligations for as long as it survives, and relative risk is expressed as the number of years an institution survives. The approach used by S&P and D&P [163] is a haircut approach in which it is assumed that institutions will meet some, but not all, of their obligations, and the haircut is the percent of obligations they will fail to meet. Specifically, S&P discounts the claims-paying ability of mortgage insurers in a AA stress level environment by 20 percent for AA-minus-rated mortgage insurers, 50 percent for A-rated mortgage insurers, and 60 percent for A-minus-rated mortgage insurers. D&P discounts mortgage insurers in a AAA stress level environment by 35 percent for AA-rated reinsurers, 70 percent for A-rated reinsurers, and 100 percent for BBB-rated reinsurers. For S&P, the haircuts apply in full from the second year of the stress period. Also, the haircut is related to the stress level of the environment, and an insurer with a rating equal to or greater than the stress level is not discounted.

Moody's corporate bond study shows that the cumulative default curves for companies with ratings of BBB and above were essentially linear.

Figure 2. Cumulative Default for Corporate Bonds by Rating Category

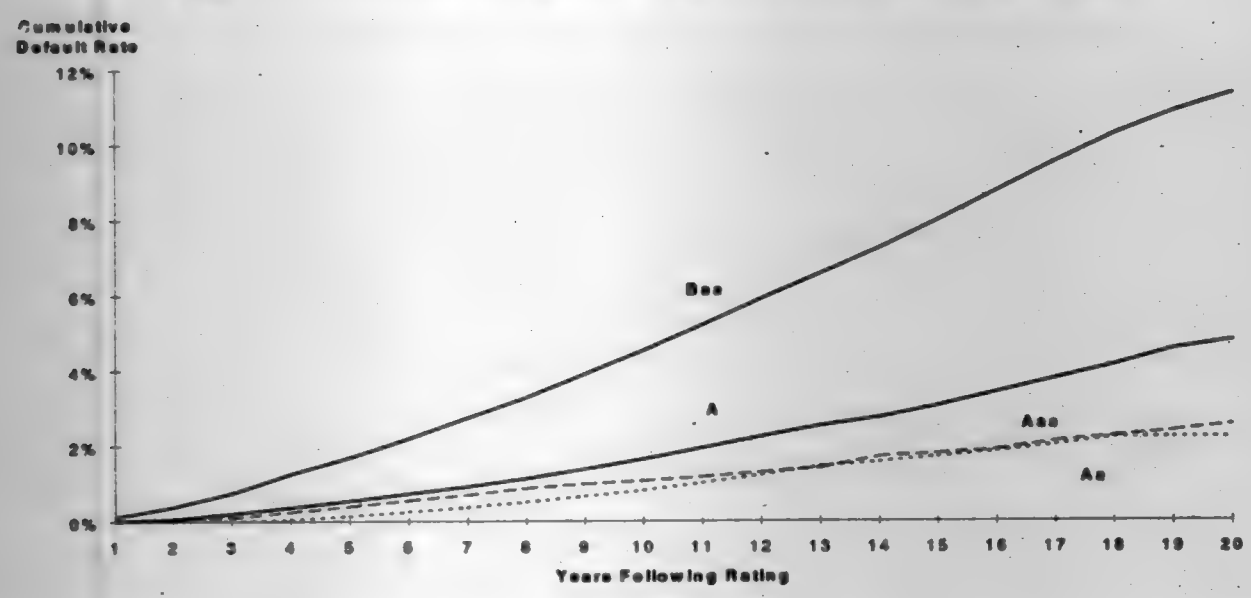

OFHEO's approach to applying haircuts is similar to S&P's and D&P's, but differs in three ways. First, the stress test does not apply the full amount of the haircut immediately but applies a haircut that increases each month until reaching the full amount in the 120th month. This reflects the general industry view that defaults increase gradually in a stress scenario. Further, as illustrated by the graph in Figure 2, the linear growth specification of the stress test is a reasonable one in light of actual historical patterns of default. Second, the stress test haircuts are in no case as low as zero and in no case as high as 100 percent. This reflects historical default patterns, which suggest that counterparties or issuers in each rating category would pay at least some claims, and no rating category would be immune from any claims-paying defaults. With respect to the absence of a rating category with zero defaults, Moody's data show that, in a difficult but far from severe environment, 3.2 percent of issuers

[161] The OECD-based group of countries comprises all full members of the Organization for Economic Cooperation and Development and countries that have concluded special lending arrangements with the International Monetary Fund (IMF) associated with the IMF's General Arrangements to Borrow, but excludes any country that has rescheduled its external sovereign debt within the previous five years.

[162] "Historical Default Rates of Corporate Bond Issuers, 1920–1997," Moody's Investors Service, February 1998.

[163] "S&P's Structured Finance Criteria," Standard & Poor's Corporation, 1998; "Evaluation of Mortgage Insurance Companies," Duff & Phelps, November, 1994.

rated Aaa at the beginning of 1983 defaulted within 10 years. Third, the stress test haircuts are not tied to the stress level. While OFHEO's NPR 1 showed credit stress at roughly a AA+ level, the stress test as a whole does not translate to any particular level because OFHEO's methodology as required by the 1992 Act differs in several key respects from that used by rating agencies.

Although OFHEO considered developing a probabilistic survival function for counterparties that would provide an estimate of failure in each year of the stress period, such a methodology would be difficult to specify, implement, and replicate, especially if recovery rates on bankrupt counterparties were modeled. OFHEO concluded that, short of a probabilistic function, imposing a linearly increasing haircut on all counterparty credit enhancement proceeds through the entire stress period would be the most representative of all the other options of how the rate of counterparty defaults would increase during the ten-year stress period.

The size of the haircuts proposed for the stress test, ten percent for AAA-rated companies, 20 percent for AA-rated companies, 40 percent for A-rated companies, and 80 percent for BBB-rated companies, are far more severe than recent default experience but less severe than Depression-era experience. They are about six to ten times the severity of average ten-year cumulative defaults during 1920–1997 in the Moody's analysis. The haircuts double for each drop in rating category, consistent with the Moody's bond default analysis. Some default occurs among AAA-rated companies, while BBB-rated company defaults are not 100 percent.

OFHEO's approach is transparent, easily replicated, and consistent with industry practice. It draws on the best aspects of S&P's approach to modeling mortgage insurer performance, and Moody's corporate bond study in applying company defaults over time. It also recognizes that, while the impact of the stress test environment on Enterprise losses might not be large in the first two years of the stress period, the primary mortgage market (i.e., the seller/servicer counterparties) likely would feel the impact of a stressful environment almost immediately.

d. Unrated Seller/Servicers

OFHEO considered whether unrated seller/servicers should be treated the same as other unrated counterparties or whether they should be treated differently because of their close relationships with the Enterprises.

Both Freddie Mac and MBA argued that even though seller/servicers are typically unrated, the close relationship between the Enterprise and its seller/servicers enables the Enterprise to monitor their financial strength. Freddie Mac stated that the seller/servicer agreement provides added protection against default on recourse and indemnification obligations because it gives Freddie Mac the right to the servicing of all Freddie Mac loans then serviced by the institution in the event of default on these obligations. Freddie Mac asserted that the value of the servicing is likely to cover a substantial portion of the defaults covered by a seller/servicer recourse agreement.[164] For these reasons, Freddie Mac considers all sellers/servicers to be at least BBB for purposes of evaluating institutional credit risk and urged OFHEO to consider the added layers of protection provided by the servicing rights.

The stress test treats unrated seller/servicers, like other unrated counterparties, the same as it treats BBB counterparties, which is consistent with the thrust of Freddie Mac's ANPR comments. Although OFHEO does not explicitly price the added layer of protection provided by mortgage servicing rights in its stress test, this added layer of protection was considered as a factor in deciding that unrated counterparties should be treated as BBB. OFHEO believes that any imprecision resulting from assigning unrated seller/servicers to the BBB or lower rating group would have a small impact on the resulting capital requirement. Seller/servicer recourse represents a small percentage of the credit enhancements used by the Enterprises. In addition, the Enterprises' largest customers tend to have public ratings.

Although the Enterprises assign internal ratings to seller/servicers, OFHEO did not use these ratings for three reasons. First, these ratings and the methodology for developing the rating are proprietary information and not publicly available. Therefore, they cannot be included in the regulation or used by third parties to evaluate the risk-based capital requirement. Second, each of the Enterprises has developed its own unique rating system. These rating systems may result in different ratings of the same parties. One of the underlying requirements of this regulation is the development of a capital requirement that is applied uniformly to both Enterprises. This requirement cannot be met if different rating systems are applied to each Enterprise. Finally, using such ratings without independent validation by OFHEO would compromise the independence of the regulatory process.

e. Fluctuations in Value

The dollar value of some credit enhancements, such as spread accounts and securities deposited in an account under collateral pledge agreements, fluctuate over time, for reasons other than withdrawals to cover losses. Spread accounts are funded by a portion of each loan payment and hence increase in value as loan payments are made. Securities deposited in an account under collateral pledge agreements,[165] which are marked to market periodically, fluctuate in value due to movements in interest rates during periods that fall in between the marks to market. In addition, posting requirements of collateral pledge agreements can cause additional collateral to be deposited to the account.

The stress test does not model these fluctuations. Rather, it uses the dollar value of spread accounts, cash accounts, and collateral posted under collateral pledge agreements on the first day of the stress period and draws on this dollar amount throughout the stress period to cover losses. Modeling fluctuations in the value of collateral posted under collateral pledge agreements would have added a level of complexity that is not justified by the incremental precision that would be gained. Similarly, the stress test does not model the accumulation of interest in the spread account according to the terms of the spread account agreement because this would have introduced a level of complexity that is not justified by the probable impact on the ultimate capital requirement.

Freddie Mac suggested that OFHEO estimate future inflows by multiplying the weighted average life (WAL) of the mortgage pools by the average yearly spread going into the spread account and then by the UPB. However, such an approach would also have made the stress test excessively complex. Loans covered by a spread account agreement may be in different loan groups in the stress test, and determining the WAL of

[164] Freddie Mac estimates that these servicing rights are normally worth about 25 basis points of income per year, and can be sold to another servicer for 100 to 150 basis points.

[165] As stated earlier, the stress test recognized the coverage provided by collateral pledge agreements only if collateral has actually been posted and resides in an account as of the beginning of the stress period. Otherwise, collateral pledge agreements are not modeled in the stress test.

all the loans covered by each spread account would require tracking each spread account loan and processing spread account characteristics at the transaction level.

OFHEO will continue to monitor the relative volume of spread accounts and collateral pledge agreements and consider whether an amendment to the regulation is needed if it should appear that the impact on the capital requirement might be significant.

f. Credit Enhancement on High LTV Loans

Certain credit enhancement types used by the Enterprises are not mentioned in the Charter Acts' exceptions to the prohibition on purchasing single family loans with LTVs in excess of 80 percent, namely spread accounts, collateral pledge agreements, cash accounts, pool insurance, and indemnification. This fact raised the issue of whether the stress test should take them into account when they are intended to satisfy the statutory requirement for credit enhancement on loans with LTVs in excess of 80 percent. In its comment letter, Freddie Mac argued that an expansion of the list of recognized credit enhancements to include collateral pledge agreements, spread accounts, and indemnification would be consistent with the intent of Congress in giving the OFHEO Director discretion to make reasonable assumptions about factors that would affect the severities of loss on mortgage defaults, including "the value of mortgage insurance [and] the value of various forms of credit enhancements such as recourse agreements, collateral, and spread accounts." [166] MICA, on the other hand, argued that only the three types mentioned in the statutory exceptions should be considered.

Although OFHEO recognizes that some types of credit enhancements not expressly referenced in the Charter Acts may provide equal or superior loss protection, OFHEO does not believe that they satisfy the statutory requirement for credit enhancements for single family loans with LTVs in excess of 80 percent. OFHEO does not concur with Freddie Mac that the legislative history of the 1992 Act gives OFHEO the latitude to expand the list of statutorily authorized credit enhancements for single family loans with LTVs in excess of 80 percent. OFHEO believes that taking into account credit enhancements not expressly referenced in the Charter Acts when they are used to satisfy the statutory credit enhancement requirement for single family loans with LTVs in excess of 80 percent would undermine OFHEO's efforts to ensure that the Enterprises operate within the Charter Acts.

[166] H.R. Rep. No.102–206, at 67 (1991).

g. Scope of Coverage

The ANPR asked for comments on how the regulation should address the scope of coverage provided by credit enhancements. Freddie Mac, the only commenter on this question, stated that all credit enhancements except private mortgage insurance can be assumed to cover all loss elements, including loss of property value, lost interest, real estate commissions, attorney fees, taxes, and preservation costs, where as private mortgage insurance sometimes excludes certain expenses after the property becomes REO.

Based on an analysis of available information, OFHEO proposes to make credit enhancements coverage available for all types of losses associated with stress test defaults. The benchmark data reveal that loss severities before credit enhancements were applied for single family loans in the benchmark time and place were consistently in the 50 percent to 60 percent range. At the same time, private mortgage insurance coverage typically ranged from 12 percent to 30 percent coverage of the gross claim amount. Since the severities far exceed the coverage of private mortgage insurance, the stress test assumes that the private mortgage insurance would be used up covering expenses that the mortgage insurance typically covers, and that the REO-related expenses would be reflected in the uncovered losses.

h. Termination of Private Mortgage Insurance

Modeling private mortgage insurance required a determination of how to treat the potential for termination of mortgage insurance while the loan is outstanding. Termination occurs either because the borrower exercises an option to cancel the insurance when the equity in the loan reaches a predetermined threshold, or because cancellation is automatic under the provisions of the recently enacted Homeowners Protection Act of 1998.[167] For loans originated before the July 1999 effective date of the Homeowners Protection Act, termination resulting from the borrower's exercise of the right to cancel the insurance when sufficient equity in the loan is attained presents a difficult issue, because data on this phenomenon are scarce, and there is an insufficient basis on which to draw firm conclusions. OFHEO considered three options: (1) assume that borrowers do not exercise this right when they are eligible; (2) assume all borrowers exercise this option when they become eligible; or (3) assume some percentage of borrowers, less than 100 percent, exercise this option when they become eligible.

After considering these options, OFHEO concluded that the first option was the preferred option because it is the option likely to produce the least distortion. The second option would understate the amount of credit enhancement available and the third would require an assumption based on very sparse data. Although assuming that insurance is not terminated may be a source of some imprecision, the impact of such imprecision is not likely to be significant in determining capital needed under the stress test. The loans most likely to default are those loans with high current LTV ratios, which will not be eligible for termination of private mortgage insurance because of the high LTVs. Conversely, those loans with low enough current LTV ratios to be eligible for termination are much less likely to need the coverage, and whether it is unused or is assumed to be terminated will make little difference. The largest potential for error is with loans with high original LTV ratios that have aged prior to the stress test just to a point where coverage can be terminated. OFHEO will monitor this issue and consider proposing an amendment to the regulation if another option appears to be more appropriate.

The Homeowners Protection Act provides that mortgage insurance will terminate automatically when the loan balance is scheduled to reach 78 percent of the original value of the property securing the loan, provided payments on the loans are current. For loans that do not meet the LTV test and for high-risk loans with original principal balances that do not exceed the conforming loan limit, mortgage insurance will terminate when the loans reach the mid-point of their amortization periods if payments are current. The Enterprises will publish guidelines to describe high-risk loans. OFHEO proposes to apply the provisions of the Act by eliminating mortgage insurance coverage in calculating loss severities for loans that reach 78 percent of their original value during the stress period or at the midpoint of their amortization periods for "high risk" loans, as defined by the Enterprises.

[167] Pub. L. No.105–216, 112 Stat. 897–910 (12 U.S.C. 4901–4910).

D. Liabilities and Derivatives

The Enterprises issue a variety of debt instruments that comprise their liability portfolios. To understand the types of liabilities issued by the Enterprises it is useful to group the liabilities into categories based on similar characteristics related to the instrument's coupon type, optionality, or other structuring features. The liabilities issued by the Enterprises are primarily one of three coupon types: fixed-rate, floating-rate, or zero-coupon. The Enterprises use these different types of coupons to manage both their exposure to interest rate risk and their cost of funding. The optionality of a financial instrument refers to whether that instrument contains an embedded option—in the case of the Enterprises liabilities, generally a call option. The embedded call option gives the Enterprises the opportunity to pay off (call) the debt, at a time prior to its contractual maturity. The Enterprises issue a mix of callable and non-callable (bullet) debt in order to manage their exposure to the prepayment risk inherent in their retained mortgage and mortgage security portfolios.

The Enterprises also issue liabilities that have unique structuring features, such as complex principal, coupon, or optionality characteristics. An example of a complex liability is a Euro discount note. To the extent that these notes are issued in foreign currencies, the Enterprises are exposed to foreign exchange risk, which is offset with hedging transactions at the time the discount notes are issued. An example of a liability with complex coupon characteristics is an inverse floater. For example, this instrument may pay a fixed rate of interest for a given period of time and then revert to an interest payment based on the formula 12 percent less six month LIBOR. In this case, the Enterprises incur higher interest costs as LIBOR decreases. In most situations, the complex risk characteristics of these liabilities are hedged at the time of issuance, leaving the Enterprise with synthetic "plain vanilla" liabilities, which have the coupon and option features of a more typical Enterprise liability. These liabilities generally are used by the Enterprises to obtain funds at a lower net cost than could be obtained by issuing simpler forms of debt.

In addition to the types of liabilities discussed above, the Enterprises also provide investment vehicles, termed Guaranteed Investment Contracts (GICs), to various institutions that have specific cash flow requirements or need flexibility in making cash withdrawals. They comprise a very small percentage of the Enterprises' liabilities. GICs can pay or accrue interest. Their principal balances can increase, decrease or remain the same.

The Enterprises, like most large financial institutions, use derivatives to help manage the interest rate risk of their assets and liabilities. The term "derivatives" covers a broad range of instruments, the value of which is based on or linked to (i.e., "derived" from) another instrument or a financial market such as stocks, interest rates or currencies. A common derivative is an interest rate swap, which derives its value from the changes in value of interest rates paid on various types of debt instruments. Derivatives can be used to hedge the unusual or complex risk characteristics of individual debt instruments, such as the complex structured liabilities described above. They also can be used to rebalance the interest rate risk of an entire portfolio. In short, derivatives, like most financial instruments, can either add or reduce various types of risk. The risk-based capital regulation, therefore, must account for derivatives in order to reflect accurately the risk profile of the Enterprises.

In developing an approach for modeling the cash flows of the Enterprises' liabilities and derivatives, OFHEO had to address four issues discussed below: (1) should liabilities and derivatives be modeled at the instrument level or should they be aggregated in some manner; (2) how should instruments linked to foreign currencies or unusual risk factors be modeled; (3) how should callable debt and cancellable derivatives be modeled; and (4) how should the stress test account for the risk of derivative counterparty defaults?

1. Modeling Methodology

The first issue for OFHEO was whether to model liability and derivative cash flows at the instrument level or to aggregate individual instruments with similar terms and risk characteristics and model the aggregated cash flows based upon average maturities, coupons, options, and other features. In response to an ANPR question about how OFHEO should simulate gains and losses on derivative activities, Freddie Mac suggested that the underlying instruments should be modeled. Likewise, Freddie Mac's discussion of liabilities in its comments assumes that most liability instruments will be modeled individually. The only other comment was ACB's suggestion regarding accounting for the risk of counterparty default. ACB's recommendation that the stress test "haircut" (meaning reduce by a percentage) derivative positions when they were "in the money" (meaning the derivatives have a net positive value to the Enterprises) would require modeling cash flows of derivatives individually.

The issue of modeling liabilities and derivatives on an aggregated versus instrument level usually requires a trade-off between accuracy, model complexity, and information system resources. In most cases, the model for generating cash flows uses the same types of information for an individual instrument as it would for a group of similar instruments. For this reason, OFHEO's information system resources are capable of processing the large number of individual liabilities and derivatives in a reasonable amount of time. Therefore, OFHEO proposes to model the cash flows of all existing types of liabilities and derivatives individually, except certain instruments that have terms or risk characteristics based on a foreign currency, which are discussed below as a separate issue.

As with most other liabilities, the stress test will model GICs individually. However, given the variety of their terms and purposes, it was necessary to simplify the cash flow model for these instruments. The stress test models each GIC as if it pays out its specified interest on the starting balance amount over the entire stress period, unless the GIC includes an explicit maturity date. In the latter case, the stress test pays interest only until the maturity date, at which point it pays out the total principal.

2. Foreign Currency Linked or Unusual Instruments

The second liabilities-related issue arises because, from time to time, the Enterprises issue foreign currency-denominated debt and structured notes that are linked to a foreign currency. As discussed above, the Enterprises currently hedge all foreign currency-linked securities with derivatives or other financial instruments, resulting in synthetic securities denominated in U.S. dollars. Freddie Mac, the only ANPR commenter to address this issue, recommends modeling foreign currency-linked transactions differently from other instruments, explaining that "hedge cash flows or the netted cash flows need to be calculated * * *."

OFHEO agrees that currency-linked securities and the associated hedging instruments are different from other types of liabilities and derivatives of the Enterprises in that the cash flows of the individual instruments are linked to changes in currency values. OFHEO also

recognizes that, in current practice, the Enterprises issue a limited volume of currency-linked instruments and transfer all currency risk to third parties by hedging instruments. Further, with the exception of debt linked to foreign currency, the Enterprises have not issued liability instruments that were linked to indices or values (such as commodities or stock prices) that are not projected in the stress test.[168]

OFHEO concurs with Freddie Mac's comments that where all the currency risk is hedged, by swapping the foreign currency payments into dollars, the stress test could calculate the cash flows by creating a single synthetic liability, denominated in dollars and paying the net amount due under the related transactions. The stress test, therefore, applies that approach to instruments that are fully hedged. However, in the event that OFHEO finds that the foreign currency risk on any liability or derivative instrument has not been transferred fully to a third party, the stress test models the cash flow on such instruments as follows.

The stress test creates significant losses in unhedged currency positions in both the up-rate and down-rate scenarios. In the up-rate scenario, the stress test applies an exchange rate that increases the value of the foreign currency against the dollar by the same percentage that interest rates increase. For example, if the ten-year CMT shifts up by 50 percent, then the foreign currency value is shifted up by 50 percent against the dollar for the up-rate scenario.[169] The effect in this example would be that the Enterprise would be paying 50 percent more dollars due to the unhedged exchange rate shift.

A different adjustment is applied in the down-rate scenario. In that case, the stress test decreases the exchange rate of the dollar proportionately with the decline in the ten-year CMT, creating a decrease in the value of the dollar similar to that in the up-rate scenario. Thus, a downward shift in the ten-year CMT of 50 percent would be associated with a shift down of 50 percent in the exchange rate of the dollar. The effect in this example is that the Enterprise would be paying twice as many dollars due to the unhedged exchange rate shift.

This approach is simple, conservative and reasonable. The stress test recognizes that there can be substantial risk associated with unhedged positions in foreign currencies or other indexes or values to which instruments can be linked, but that it would be impractical for OFHEO to develop indexes for foreign currencies and all other values to which liabilities or derivatives could be linked. The exchange rate in the up-rate scenario is not based upon a model or an economic prediction, but does reflect a recognition that there have been occasions in the past where the dollar has declined in value as CMT rates have been increasing. Likewise, the dollar has also declined at times when CMT rates have decreased. Therefore, it is appropriate in a stress test to assume that the dollar moves in an unfavorable direction in both scenarios, to avoid creating a windfall to the Enterprises and to ensure significant financial stress in both scenarios. Moreover, OFHEO does not anticipate at this time that the Enterprises will be issuing foreign currency or unusual debt derivatives without using appropriate and complete hedges. If the Enterprises do alter their current businesses to enter into such debt, OFHEO will consider at that time whether a different treatment for the instruments involved is appropriate.

3. Call and Cancellation Options

An Enterprise will retire an outstanding issue of callable debt in order to issue new debt at favorable rates. For similar reasons an Enterprise may cancel a swap. For example, an Enterprise can cancel a pay-fixed/receive-floating swap—which, together with discount notes, creates a synthetic fixed-rate liability—in order to enter into a new swap that lowers the effective cost of the synthetic liability. OFHEO recognizes that, in general, an Enterprise will exercise its option when the net interest cost savings on a replacement security or contract, exceeds some threshold.

OFHEO received several comments to the ANPR that emphasized the importance of modeling the exercise of the call option. OFHEO concurs with these comments and, accordingly, treats callable debt in a manner that takes into consideration the exercise of the call option. OFHEO considered developing a financial model to value call and cancellation options and determine when they would be exercised in the stress test. However, the added precision of such a valuation model, as opposed to a simpler approach, would not have a significant effect on the capital requirement because the severe nature of the interest rate shocks included in the stress test result in either all eligible debt being called in a short period of time or no debt being called over the entire period. In addition, a valuation model would add a considerable amount of complexity to the cash flow model. Therefore, OFHEO sought to develop an alternative approach for decisions to exercise call and cancellation options that would provide a reasonable approximation of the Enterprises' procedures for exercising such options without increasing the complexity of the model.

OFHEO proposes to use, as a proxy for this threshold option value, the spread between the coupon rate of an outstanding actual or synthetic debt security and the Enterprise cost of funds for a new replacement security (the call-spread). Thus, in the stress test, the call option is exercised and the debt retired when the cost of the new debt plus the call-spread is less than the cost of the existing debt instrument. This methodology is often used as a simplified approach in modeling applications and was suggested by Freddie Mac in its comments to the ANPR. No other commenter suggested a specific approach.

To calculate an appropriate call spread, OFHEO received data from the Enterprises on the threshold value of call options on debt, in terms of a call-spread, over a range of reasonable times to maturity and valuation model parameter settings. After reviewing this information, OFHEO proposes to use a call-spread in the stress test of 50 basis points over the cost of issuing new bullet debt with the same time to maturity as the callable debt. This call-spread provides a reasonable debt call rule, without adding a considerable amount of complexity to the model.

4. Counterparty Risk

The ANPR sought comment about how, if at all, OFHEO should incorporate the effect of derivative counterparty defaults into the stress test. The Enterprises frequently enter into derivative contracts that, combined with various types of debt instruments (including structured notes), create synthetic liabilities at lower cost then actual debt with the same characteristics. Other derivative contracts are used as macro hedges against portfolio level risks. However, all swaps expose an Enterprise to counterparty credit risk, which is the risk that the counterparty may default on its contractual obligation at a time when the derivative contract has a positive market value to the Enterprise.

[168] However, wherever the terms "foreign currency" or "currency" are used, they should be read to include any unit or value, except those interest rate indices that are included in the stress test, in which debt or derivatives may be denominated or to which such instruments may be linked.

[169] Shifting the value of the other currency up 50 percent has effect of decreasing the value of the dollar against that currency by ⅓. In other words, one could buy the same amount of dollars with only ⅔ the amount of other currency.

Currently, the Enterprises limit their exposure to counterparties by entering into swap transactions only with counterparties rated investment grade and by requiring all counterparties to execute collateral pledge agreements. These pledge agreements require any counterparty currently rated or subsequently downgraded to a less than a AAA credit rating to post collateral to the extent that net losses on its contracts [170] with an Enterprise exceed threshold levels. The threshold levels vary based on the counterparty's rating. The Enterprises do not require AAA-rated counterparties to post collateral, but if any counterparty is downgraded, the collateral pledge agreements subjects it to the more stringent collateral requirements of its new lower rating. Freddie Mac, in its comments, describes additional measures it uses to mitigate counterparty risk, which include using contracts with close-out and netting arrangements that allow Freddie Mac to offset losses on one contract with a particular party against gains on another contract. Freddie Mac also described its practice of requiring guarantees from well-capitalized parent companies and of periodically marking each contract to market at full replacement value.

In commenting on the ANPR, Freddie Mac stated that its management of credit risk on derivatives is such that the stress test should specify no losses due to counterparty default. Freddie Mac suggested that any losses would be covered adequately by the 30 percent add-on that the 1992 Act requires for management and operations risk and by the minimum capital standard. ACB, commenting generally on the subject of counterparty risk, stated that where collateral is provided, the risk of counterparty failure is remote. ACB suggested that, at most, a straightforward "haircut" on "in the money" derivative positions should be applied.

After consideration of these comments, OFHEO determined that reducing the haircuts for derivative counterparty risk by 80 percent from haircuts on other types of third party credit risk would provide appropriate recognition for Enterprise collateral agreements. However, OFHEO did not agree with Freddie Mac that the stress test should apply no haircuts. There always remains the possibility that counterparties could default on their obligations due to a sudden calamity that could prevent collateral from being posted. Also, collateral values can decline over time or collateral may be subject to competing claims. Sudden business bankruptcies and decline or impairment of collateral value would be even more likely than usual under the harsh economic circumstances of the stress test. Accordingly, and for the same reasons that similar haircuts are applied to mortgage credit enhancements and non-mortgage investments, OFHEO proposes to specify losses in the stress test due to failure of derivative counterparties.

OFHEO proposes to take into account the amount of loss due to derivative counterparty default as follows. As illustrated in Table 29, the stress test applies haircuts that increase linearly (by equal amounts) each month to the net payments from derivatives with a given counterparty over the term of the contracts with that counterparty. That is, if the Enterprise's net swap position across all contracts with a particular counterparty imply cash payment to the Enterprise during a given month, that cash payment is reduced ("haircut") by an amount determined by the public credit rating of the counterparty and period in which the payment is owed. The calculation is performed for each counterparty and for each month in which a counterparty has swap agreements with the Enterprise. The cash flows for all derivatives with each counterparty are netted, except swaps that exchange into U.S. dollars any currency in which Enterprise debt may be denominated. Haircuts are applied separately to these derivatives, as explained below.

Table 28. Haircuts To Income From Derivatives

Month	AAA	AA	A	BBB
12	.2%	.4%	.8%	1.6%
24	.4%	.8%	1.6%	3.2%
36	.6%	1.2%	2.4%	4.8%
48	.8%	1.6%	3.2%	6.4%
60	1.0%	2.0%	4.0%	8.0%
72	1.2%	2.4%	4.8%	9.6%
84	1.4%	2.8%	5.6%	11.2%
96	1.6%	3.2%	6.4%	12.8%
108	1.8%	3.6%	7.2%	14.4%
120	2.0%	4.0%	8.0%	16.0%

[170] These losses are calculated on a mark-to-market basis, because most derivatives involve features, such as payment streams and options, the values of which fluctuate with changes in the yield curve.

The haircuts reflect the probability that some counterparties will be unable to meet their obligations during the stress period. Haircuts become progressively larger as the counterparty rating decreases, with parties rated BBB or lower and unrated parties receiving the most severe haircut. The haircut for each rating category is cumulative rather than additive. It increases linearly for each month of the stress period, beginning in the first month of the stress test until the full amount of the discount is reached in the 120th month. Table 29 reflects the size of the haircut at the end of each 12 month period during the stress test. Rating downgrades are not modeled. Instead, deterioration in the financial condition of counterparties due to the stressful environment is reflected in the linear increase of the haircuts.

The proposed approach recognizes that both Enterprises utilize netting and close out arrangements such as those described by Freddie Mac in its comments. If OFHEO determines that not all derivatives with a particular counterparty are covered by a single arrangement, the derivatives' cash flows will not all be netted together. Instead, the stress test will group the derivatives by netting agreement and apply haircuts separately to the net cash flow for the derivatives covered by each agreement. For derivatives covered by no netting agreement, the haircut would be applied on an instrument by instrument basis to any derivatives that are "in the money." In the event that any derivatives contracts do not include standard Enterprise collateral agreements, the haircut percentages imposed will be those in Table 27 in section III.C., Mortgage Credit Enhancements.

As mentioned above, the stress test will apply haircuts separately to swap agreements that exchange into U.S. dollars any other currency in which Enterprise debt may be denominated. Because these agreements entail the Enterprise receiving payment denominated in other currencies, which the stress test does not model, the stress test cannot net them against more usual interest rate swaps. Neither can the stress test net these agreements against each other, since they use variety of currencies. Therefore, the stress test applies haircuts to each individual contract. Because the collateral agreements and investment ratings do not differ for the counterparties to these agreements, the stress test applies the same counterparty haircut percentages to them as it does for interest rate swaps. However, the haircut is applied to the 'pay' side of these contracts rather than to the 'receive' side. The effect will be a loss on each swap transaction equal to the haircut amount. This approach recognizes that the Enterprises use these swap agreements only to match a debt position for which the swap agreement is a hedge.

E. Non-Mortgage Investments

In addition to mortgage investments, the Enterprises hold non-mortgage investments [171] that include Treasury securities, federal funds, time deposits, Eurodollar deposits, asset-backed securities [172] (ABS), corporate securities, and state and municipal bonds.[173] As of December 31, 1997, non-mortgage investments at Fannie Mae constituted about $66.8 billion (17 percent of on-balance sheet assets) and $13.8 billion (7.0 percent) at Freddie Mac.

OFHEO considered several issues related to how the stress test should model the cash flows associated with the Enterprises' non-mortgage investments. The first issue concerns whether the stress test should model cash flows from such investments at the instrument level or at an aggregated level. Such aggregation entails grouping individual instruments with similar terms and risk characteristics and modeling the group as a single instrument. The proposed stress test models the cash flows of all non-mortgage investments on an instrument-by-instrument basis. Evaluating whether to model non-mortgage investments on an instrument versus an aggregated level represents a trade-off between accuracy, model complexity, and information system resources. Instrument level modeling provides greater accuracy than modeling aggregated investments because aggregating instruments may result in losing information. On the other hand, instrument level modeling may result in added complexity and require additional information system resources. Neither of these concerns poses a significant constraint in the case of modeling the Enterprises non-mortgage investments. Accordingly, OFHEO believes that modeling cash flows from non-mortgage investments is practicable and appropriate. With respect to complexity, the model for generating cash flows uses the same types of information for an individual instrument as it would for a synthetic instrument representing a group of actual instruments. With respect to information resources, OFHEO systems are capable of processing the large number of individual investments in a reasonable amount of time.

The second issue concerns whether there should be any simplifying assumptions in modeling the cash flows associated with non-mortgage investments. OFHEO has decided to include the following three simplifying assumptions which will facilitate this modeling, without having a significant effect on the risk-based capital requirement. First, for investments with common characteristics, the stress test specifies one payment frequency for those instruments. Second, the stress test standardizes prepayment speeds for ABS, i.e., how fast principal (both scheduled principal and prepayments) is returned. Third, the stress test will not apply different ABS prepayment speeds in different interest rate environments, because ABS typically pay off quickly and therefore are not significantly affected by interest rates. In addition, the effect of specifying different prepayment speeds on the risk-based capital requirement would not be significant, and would add unreasonable additional complexity to the stress test.

OFHEO next considered whether the proposed stress test should, with respect to non-mortgage investments, model their credit risk, i.e., the risk that there will be a default on an instrument. OFHEO has determined that it is appropriate to model such credit risk because some issuers would be unable to meet their obligations during the stress period. The proposed stress test ties the credit quality of non-mortgage investments to the credit rating specified by one or more nationally recognized public rating organizations, such as S&P or Moody's. While public offerings usually have a single rating, they occasionally have split ratings. In the case of split ratings, the stress test will use the lowest rating.

The stress test first generates cash flows for a given instrument and then reduces those cash flows by a specified percentage (i.e., "haircut") based on the public rating organization. The percentage haircut increases as the

---

[171] Both OFHEO and HUD are authorized to regulate the Enterprises' non-mortgage investment activities. OFHEO has specific authority to ensure that the Enterprises are adequately capitalized and operating safely (1992 Act, section 1313 (12 U.S.C. 4513)), and HUD has general regulatory authority over the Enterprises to ensure that the purposes of the 1992 Act are accomplished (1992 Act, section 1321 (12 U.S.C. 4541)). While HUD's current regulations do not contain specific provisions about the Enterprises' non-mortgage investments, HUD issued an advance notice of proposed rulemaking (ANPR) seeking comment about the need for it to regulate such investments. (62 FR 68060, December 30, 1997)

[172] ABS are similar to MBS but are backed by nonmortgage assets, such as receivables on car loans and credit cards.

[173] Although they are generally tax-exempt, for purposes of the stress test, mortgage revenue bonds (MRBs) are not included in the category State and municipal bonds. MRBs are discussed in the section titled "other housing assets."

rating decreases so that a highly-rated instrument will have a lower haircut than a lower rated instrument. In the absence of a rating, the stress test would apply the lowest rating category. The haircuts increase linearly (i.e., in equal increments) during each month of the stress period. Table 29 illustrates the ending haircuts in the 120th month for each rating category. Refer to section III. C., Mortgage Credit Enhancements for the discussion of the proposed haircuts.

Table 29. Rating and Stress Period Ending Haircuts

Rating Category	AAA	AA	A	BBB
All counterparties and securities except derivative counterparties	10%	20%	40%	80%

An instrument that is unrated or has a rating that is below investment grade will receive the most severe haircut. This reflects OFHEO's determination that it is appropriate for the stress test to reflect high credit losses for non-mortgage investments that are more risky than the instruments that are now included in the Enterprises' current holdings. The Enterprises' non-mortgage investments are currently of high quality,[174] but the Enterprises are not statutorily or otherwise legally required to invest solely in high quality instruments. It is possible that an Enterprise might change its investment practices to include non-mortgage investments with lower credit quality.

F. Other Housing Assets

Other housing assets are a small category of Enterprise assets that need to be modeled differently than retained whole loans and mortgage-backed securities are modeled. They are primarily mortgage revenue bonds (MRBs). They also include certain Real Estate Mortgage Investment Conduits (REMIC) securities issued by private entities and some interests in partnerships and joint ventures. These assets have cash flow characteristics that vary from investment to investment, and the data required to model cash flows precisely is not readily available. The impact of how these assets are modeled on the stress test results will be modest.

1. Mortgage Revenue Bonds

Mortgage revenue bonds are issued by state and local housing authorities to raise funds for single family and multifamily mortgage lending programs. Both single and multifamily mortgage revenue bonds are secured by mortgage loans, reserve funds, and other credit enhancements. Government subsidies to some multifamily projects also provide implicit credit support. Most MRBs are tax exempt. The Enterprises are permitted to hold up to two percent of their assets in tax exempt securities.

OFHEO considered whether to model MRB cash flows on individually or on an aggregated basis. The stress test models MRB cash flows bond-by-bond. Although one modeling approach is to group securities and use weighted average interest rates and terms to calculate future cash flows, OFHEO determined that calculating cash flows individually is simpler. Available computer hardware and software allow the calculation of cash flows on many individual securities in almost the same amount of time it takes to calculate a single cash flow using average rates and maturities for a group. In addition, any decrease in precision that might be introduced through pooling is avoided.

OFHEO next considered whether to calculate interest and principal payments for the MRBs based on each security's actual structure or to use a proxy for calculating bond payments. Interest on MRBs is paid at the bond rate on the principal amount of the bond, but MRBs have different schedules for principal repayment. In some MRBs, the issuer may use principal repayments from mortgages associated with one MRB transaction to retire bonds from another transaction. In many transactions, issuers have substantial discretion to retire bonds early. There is no single source of information on MRB structures, nor is the information readily available from multiple sources.

OFHEO determined that the modeling approach used to calculate cash flows on Ginnie Mae securities would provide a reasonable proxy for cash flows on mortgage revenue bonds. Specifically, the bonds are modeled as passthrough securities, with the underlying mortgage collateral bearing a coupon 75 basis points higher than the bond coupon. Although MRB payments are not passthroughs of mortgage loan payments, the MRB payments are related to the mortgage payments. MRB payments and Ginnie Mae security payments would be affected similarly by loan terminations and by economic conditions. Further, borrowers benefiting from MRB programs are similar to borrowers for the FHA and VA loans that collateralize Ginnie Mae securities, and the loan characteristics are similar. Therefore, the stress test calculates cash flows for MRBs essentially the same way that it calculates cash flows for Ginnie Mae securities. It amortizes the bond principal using loan termination rates for FHA and VA loans that have the maturity of the MRB and coupons equal to the MRB coupon plus a spread.

OFHEO considered whether to design a modeling approach specifically for multifamily MRBs or to model cash flows for single family and multifamily MRBs the same way. The stress test models cash flows for multifamily MRBs as though they were single family Ginnie Mae securities, just as it does for single family MRBs.

Modeling multifamily MRB cash flows according to the structures of the securities is hampered by the same data problems that affect modeling single family MRB cash flows. Therefore, the stress test needs to use a proxy. The choice of proxy is limited. Information on Government-insured multifamily loans is not readily available. Enterprise multifamily MBSs are not an acceptable proxy for multifamily MRBs, because the Enterprises' multifamily loans differ from the loans that collateralize multifamily MRBs, and multifamily MBSs pay differently from multifamily MRBs. Because multifamily MRBs are a very small percentage of each Enterprise's assets and their impact on risk-based capital is minimal, OFHEO determined that single family Ginnie Mae securities would be used as a proxy for multifamily MRBs.

The stress test addresses the credit risk associated with MRBs by applying the haircuts that are tied to the public

[174] For instance, in response to HUD's ANPR, Fannie Mae commented that "Nearly two-thirds of the [liquid investment] portfolio is rated AAA (or the equivalent), and nearly all (98 percent) of the portfolio is rated at least A (or the equivalent).

credit ratings of the bonds. The haircuts will be in the same amount and will be applied in the same way as haircuts for credit enhancements and non-mortgage investments. Currently, a sizeable majority of the MRBs held by the Enterprises are rated AA and above.

2. Private Label REMICs

The Enterprises own a small amount of REMIC securities that are issued by private sector entities. For most of these securities, the information that would be necessary to calculate cash flows for the REMIC collateral and thus for the REMIC securities is not readily available.

As with mortgage revenue bonds, OFHEO considered whether to model the cash flows of the REMIC securities or to model cash flows using a proxy. The stress test uses a proxy. The stress test models cash flows for private REMIC securities using the same modeling approach as it uses for MRBs. The stress test amortizes the principal of the REMIC securities using the appropriate termination rates for the coupons and maturities.

Data that is needed to project precise cash flows is not readily available. The costs of developing the data and reverse engineering the REMIC securities are not warranted by any incremental refinement that might result. Most of the REMIC securities held by the Enterprises are rated AAA. The credit risk of the private issue REMICs will be taken into account by applying the same haircuts as those used for MRBs.

3. Interests in Partnerships and Joint Ventures

OFHEO decided not to model gains or losses on interests in partnerships or joint ventures, a category that totals less than $200 million, or less than 0.03 percent of Enterprise assets. These assets carry little credit risk but generate tax losses that benefit the Enterprises. OFHEO has determined that projecting cash flows and tax benefits of these assets would create significant additional complexity in the stress test, without having any material impact upon the risk-based capital requirements. Accordingly, the stress test treats these assets as though they remain on the balance sheet with no run-off and no associated income. In the future, if these investments become a larger proportion of either Enterprise's book of business, OFHEO will reconsider how they are modeled in the stress test.

G. Commitments

The 1992 Act specifies that during the stress period the Enterprises will purchase no additional mortgages nor issue any MBS, except that—

> [a]ny contractual commitments of the enterprise to purchase mortgages or issue securities will be fulfilled. The characteristics of resulting mortgage purchases, securities issued, and other financing will be consistent with the contractual terms of such commitments, recent experience, and the economic characteristics of the stress period.[175]

The term "contractual commitments" generally refers to binding agreements that the Enterprises enter into with seller/servicers to purchase mortgages or to swap mortgages for MBS. The term also refers to agreements to sell such securities to investors. The total of outstanding purchase or swap commitments at both Enterprises at any point in time is generally in the tens of billions of dollars. The following discussion describes the issues faced by OFHEO in determining the appropriate volume and characteristics of mortgages delivered under commitments.

1. Definition of the Term "Commitment"

The proposed risk-based capital regulation incorporates, by reference, the definition of "commitment" from OFHEO's minimum capital regulation. OFHEO defines "commitment" in the minimum capital regulation as follows:

> Commitment means any contractual, legally binding agreement that obligates an Enterprise to purchase or to securitize mortgages.[176]

This definition includes "mandatory" and "optional" commitments. Mandatory commitments bind the seller to deliver, and the Enterprise to accept, a certain volume of mortgages. Optional commitments are delivery contracts that commit the Enterprises to purchase or swap a specified volume of loans, but do not commit the seller to deliver any loans. The definition includes commitments that do not specify fixed prices or volume, but otherwise legally bind an Enterprise.

Freddie Mac, the only ANPR commenter to address the definition of commitments, recommended that contractual commitments be defined to include only agreements that legally bind the Enterprises to purchase mortgages. According to Freddie Mac, "[u]nder fundamental contract law, an agreement is only binding if all of its key terms are included and agreed upon." Freddie Mac further stated that price and volume are two key terms and that only commitments containing this information are legally binding contracts for the Enterprises. This comment suggests that OFHEO should not model commitment contracts that do not contain price and volume information (e.g., master commitments for cash purchases).

OFHEO has found no reason to adopt a different definition for purposes of computing risk-based capital from that used for computing minimum capital. In both cases, the term should mean any legally binding agreement that obligates an Enterprise to purchase or securitize mortgages. OFHEO does not believe it necessary or appropriate to restrict the definition of the term "commitment" by reference to price, volume, and fees, because agreements may be legally binding even when they lack specificity on all terms.[177] It would add unnecessary complexity to attempt to reflect the myriad details of diverse State contract laws in the regulatory definition. Moreover, to do so would be inadvisable in light of Congress' specific concerns regarding the need for capital to support commitments and other off-balance-sheet obligations. For example, in discussing the need for the capital requirements of the 1992 Act, Congress expressed the concern that the risk in off-balance-sheet obligations had not been captured under prior capital standards:

> The capital provisions of the GSEs' charter Acts limit their debt to 15 times their capital unless HUD sets a higher ratio * * * This is unsatisfactory because no capital need be held against the GSEs' $750 billion of off balance sheet guarantees * * *[178]

Recognizing this concern, it would be inappropriate for OFHEO to promulgate a narrow definition that could exempt certain legally binding commitments from the risk-based capital requirement.

Freddie Mac also recommended a definition of commitments that excludes all optional commitments, including those containing price and volume

---

[175] 1992 Act, section 1361(a)(3)(A) (12 U.S.C. 4611(a)(3)(A)). The 1992 Act does provide for later amendment of the rule to address new business during the stress period, but not until after this regulation is final. The 1992 Act requires that, within one year after this regulation is issued, the Director of the Congressional Budget Office and the Comptroller General of the United States shall each submit to the Congress a study of the advisability and appropriate form of any new business assumptions to be incorporated in the stress test. Section 1361(a)(3)(C) (12 U.S.C. 4611(a)(3)(C)). Subparagraph 1361(a)(3)(B) (12 U.S.C. 4611(a)(3)(B) authorizes the Director to consider these studies and make certain new business assumptions. However, that subparagraph does not become effective until four years after this regulation is issued.

[176] 12 CFR 1750.2; *See* 61 FR 35610, July 8, 1996 (explanation of definition).

[177] *See* Restatement (Second) of Contracts § 204 (1981).

[178] S. Rep. No. 102–282, at 11 (1992) (referring to the existing capital standard, which the 1992 Act repealed).

information. Specifically, Freddie Mac suggested the following definition:

> Contractual commitment means an obligation of an Enterprise that legally binds the Enterprise to issue securities or purchase mortgages and *legally binds a third party* to purchase securities or deliver mortgages, and that sets forth all terms of the transactions including price, volume, and fees.

(emphasis added).

The phrase "legally binds a third party" would define a commitment to include only an agreement that binds the counterparty to deliver mortgages or to purchase securities, thus excluding optional commitment contracts.

OFHEO disagrees with this comment and includes optional commitments in the stress test definition. The 1992 Act is clear on this issue, because it refers to "commitments of the *enterprise* to purchase * * * or issue" (emphasis added) but includes no requirement that the commitment bind others to deliver mortgages. Optional commitments obligate the Enterprise to purchase and are optional only for the seller. Therefore, optional commitments fall squarely within the statutory definition.

2. Retained vs. Securitized Mortgages

The proposed regulation specifies that all loans delivered under commitments are packaged into securities (securitized) and sold. This specification avoids requiring OFHEO to predict business decisions by the Enterprises that are highly judgmental and impossible to predict accurately. OFHEO recognizes that in practice the Enterprises make day-to-day decisions to sell or retain loans. However, the simple rule proposed by OFHEO avoids the complexity of attempting to model such business decisions.

ACB commented that "[a]ny loans not presold by the GSEs should be assumed to be retained in portfolio and carry both the credit and IRR [interest rate risk] exposure." OFHEO disagrees with ACB's suggestion, because it would add undue complexity to the stress test. At no time are the Enterprises obligated by the terms of a commitment to retain mortgages in portfolio. Furthermore, retaining these mortgages in portfolio in the stress test would require OFHEO to predict how the Enterprises would finance and hedge the interest rate risk associated with the purchases. These predictions would increase greatly the complexity of the stress test and introduce assumptions about future Enterprise management, which OFHEO, as a general rule, has found inappropriate in a "no new business" stress test.

For these reasons, OFHEO determined that proposing that all loans delivered under commitments will be securitized and sold is a reasonable, straightforward approach.

3. Modeling Delivery Percentages

The stress test will provide that, in the down-rate scenario, 100 percent of all loans that the Enterprises are obligated to accept will be delivered and, in the up-rate scenario, 75 percent of those loans will be delivered. As explained below, OFHEO considered the relevant comments on this issue and found the proposed rule to be a reasonable and practical method of estimating the volume of new mortgages that will be delivered in the stress test.

In determining the appropriate percentage, OFHEO looked first to the 1992 Act, which provides that commitments will be "fulfilled." In contractual parlance this term means that the parties will fulfill their contractual obligations under these instruments. Therefore, OFHEO decided to propose a simple rule, based upon estimates of the delivery volumes that would be likely to occur if both parties fulfill those obligations.

Not all mortgages that the Enterprises are obligated to accept under commitments are actually delivered. Optional commitments obligate the Enterprise to purchase up to a specified dollar amount of mortgages, but do not obligate sellers to deliver any mortgages. They can be fulfilled by both parties even though fewer than all the loans specified in the commitment are delivered. Under a mandatory commitment, the Enterprise is also obligated to purchase a specified dollar value of loans, but the seller fulfills the contract either by delivering the specified volume of loans or by paying a "pair-off" fee specified in the commitment agreement. These fees are a form of liquidated damages that, under the terms of mandatory commitments, are payable by sellers who fail to deliver the full amount of mortgages specified in the commitments. Therefore, under either type of commitment, less than all the stated mortgage volume may be delivered.

As mentioned above, the proposed regulation specifies that, in the down-rate scenario of the stress test, 100 percent of loans the Enterprises are obligated to buy or securitize will be delivered under all types of commitments. In the up-rate scenario, 75 percent of those loans will be delivered. This specification reflects the fact that when interest rates decline significantly, the volume of new purchase mortgages and mortgage refinancings generally increases. Therefore, in the down-rate scenario, lenders should have plenty of mortgage volume to meet or fill all commitments. In contrast, when interest rates rise significantly, the demand for mortgages tends to fall. Therefore, in the up-rate scenario, sellers would find it difficult to generate enough mortgages to meet outstanding commitments. Because the proposed regulation provides that all loan deliveries will be made in the first three to six months of the stress period (see section III.G.4., Delivery Timing below), those deliveries are particularly sensitive to short-term changes in interest rates. Thus, the steeply rising rates in the first few months of the up-rate scenario have a significant impact upon delivery percentages. It would be inappropriate, however, to assume that loan deliveries would decline more than 25 percent, given that many of the commitments are mandatory and that existing home purchase contracts will require financing. Lenders will also have a certain volume of outstanding loan commitments with locked rates, most of which would close.

Figure 3 below shows that, during the most recent increase in rates of any significance (the first half of 1994), a three month increase in interest rates of 150 basis points led to a drop in market origination volume of roughly 30 percent. Also, during the 12-year period shown, market volumes never decreased over any three-month period by more than 25 to 30 percent. Because the stress test will include rate changes of 150 basis points or less in the first quarter, the data led OFHEO to conclude that a 75 percent delivery rate would be a reasonable specification for the up-rate scenario of the stress test.

The proposed regulation does not credit the Enterprises with income from "pair-off fees" in the up-rate environment for two reasons. First, there is no usable data on the payment of these fees or on the percentage of deliveries under commitments. Therefore, attempting to model these fees would require estimating, with no supporting data, the percentages of loans to be delivered under mandatory, as opposed to optional, commitments. Second, the fees are not always charged by the Enterprises. Therefore, including the fees would require OFHEO to speculate how frequently or under what circumstances the Enterprises would impose them.

Figure 3. Change in Rates vs. Change in Volumes (over 3 months)

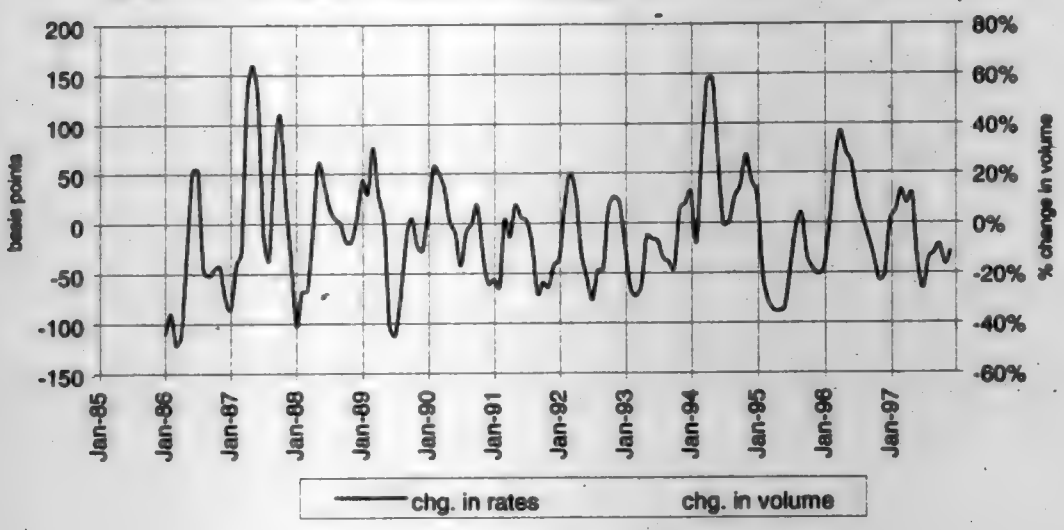

In its ANPR comments regarding delivery percentages, Freddie Mac recommended that OFHEO develop an econometric model of delivery percentages for commitments. This model would be based on recent prepayment experience of each Enterprise and the prepayment rates produced by OFHEO's default/prepayment model. The model that Freddie Mac recommended would compute commitment delivery percentages as follows:

1. OFHEO would determine a means of estimating the extent to which sellers would fulfill mortgage purchase commitments by (a) delivering mortgages or (b) paying a pair-off fee without delivering the mortgages.

2. Then, OFHEO would determine a stress period delivery percentage under all commitments to reflect the effect of stress period conditions. Specifically, Freddie Mac suggested that a good approximation of this effect would be the ratio of the sum of the prepayment rate and the purchase-growth rate (rate of increase or decrease in the volume of loans purchased by the Enterprises) during the relevant portion of the stress period to the sum of the prepayment rate and the purchase growth rate during a recent period immediately prior to the stress period. This ratio would be multiplied by a "baseline" delivery percentage, which is the normal delivery percentage during times of little interest rate fluctuation. Under this approach, the stress test delivery percentage would be expressed as follows:

$$\text{Delivery \%} = \frac{(\text{ppmt. rates during stress pd.}) + \text{growth rate during stress pd.} \times \text{base-line delivery \%}}{\text{recent ppmt. rates} + \text{recent growth rate}}$$

The stress period growth rate would be zero until such time as OFHEO included new business assumptions in the stress test, and the stress period delivery percentage would not be allowed to exceed 100 percent.

Freddie Mac bases its approach on two assumptions. First, the volume of outstanding commitments at the beginning of the stress period (i.e., the then current volume of outstanding commitments) is assumed to be related to the volume of mortgage purchases that the Enterprises and sellers anticipated at the time they entered into the commitments. Second, the sellers' actual rate of deliveries during the stress period under outstanding commitments is assumed to be closely related to actual mortgage purchase activity during the relevant portion of the stress period.

OFHEO agrees with these assumptions and used them to determine appropriate stress test delivery percentages. OFHEO also agrees that an econometric approach such as that proposed by Freddie Mac might provide a relatively sophisticated representation of what would actually occur under stress test conditions. However, there are insufficient data to construct such a model of commitments at this time. Historical data available to OFHEO do not reveal what percentages of commitments have been delivered. The Enterprises have provided descriptions of commitment types and made statements about their general business practices and the length of and delivery patterns of commitments. However, OFHEO has found available data are inadequate to associate actual mortgage purchases with commitments. Therefore, neither of the two steps in the Freddie Mac proposal currently is possible. There is no source of data to determine a reasonable estimate of pair-off fee payments or to determine a historical baseline delivery percentage.

ACB's ANPR comments suggested that a historically based dropout factor be applied to account for failure to "make/take delivery by counterparties." The lack of historical data regarding actual delivery percentages under commitments limits the accuracy with which such a factor or factors can be calculated. However, OFHEO proposes an approach consistent with the ACB comment. The stress test specifies fixed delivery percentages for commitments in the down-rate and the up-rate scenarios. These percentages are based on historical information, displayed in Figure 3, about mortgage volume in the entire mortgage market during periods when rates have risen and fallen sharply. This information demonstrates that declining interest rates are generally accompanied by or followed shortly by increases in the volume of

mortgage originations. Conversely, increasing interest rates tend to slow originations.

4. Delivery Timing

Table 30 displays the timing of mortgage deliveries incorporated in the stress test for both interest rate scenarios. The specified delivery timing is consistent with the contractual terms of commitments, the experience of the mortgage market, and the interest rates that the 1992 Act specifies for the stress period.

Table 30. Mortgage Deliveries By Month of the Stress Test as a Percentage of Total Commitments

Months	Up-Rate Scenario	Down-Rate Scenario
1	18.75%	62.50%
2	18.75%	25.00%
3	12.5%	12.50%
4	12.5%	0.00%
5	6.25%	0.00%
6	6.25%	0.00%
Total	75%	100%

This front-loaded delivery profile in both interest rate scenarios is consistent with the contractual terms of commitments, which usually specify that deliveries will occur within 60 days and in most other cases require delivery within 6 months. Also, at any point in time, most outstanding commitments (other than those made that day) will have only a part of the specified delivery period remaining. For these reasons, OFHEO believes it is appropriate to project that deliveries under commitments would drop to zero over the first three to six months of the stress period, with half or more of those deliveries likely to occur in the first two months.

For the same reasons that delivery percentages are higher in the down-rate than in the up-rate environment, OFHEO believes it is appropriate to provide for faster deliveries when interest rates are falling than when they are rising. Mortgage origination experience demonstrates that decreasing interest rates tend to cause significant increases in mortgage originations. Therefore, it is reasonable to specify that deliveries occur sooner when interest rates in the stress test rapidly decline than when they rise.

ACB commented about delivery timing, stating that OFHEO should assume scenarios that would be least advantageous to the Enterprises, whether they were buying loans or selling securities. Because there are no historical data on deliveries under commitments, the stress test specifies delivery timing consistent with observed historical patterns of mortgage originations. The delivery timing in the stress test is intended to be a reasonable approximation of what would occur under the stress test conditions specified in the 1992 Act, not necessarily what would be least advantageous to the Enterprises.

Freddie Mac suggested two delivery timing options in its comments on the ANPR. Freddie Mac recommended that OFHEO assume that purchases occur uniformly over the weighted average maturity of outstanding commitments. Alternatively, Freddie Mac suggested a formula that was derived by assuming that commitments expire uniformly and that purchases are uniform during the term of each commitment. Freddie Mac described the latter approach as unnecessarily complex and unlikely to affect the overall capital requirement associated with commitments, but indicated it was nevertheless an acceptable means to estimate delivery timing. OFHEO was concerned about a lack of empirical support for either of Freddie Mac's alternative recommendations, however, and has, therefore, chosen to propose the relatively simple delivery timing described above.

5. Loan Mix Distribution

The type, term, LTV ratio, coupon, and geographic mix of loans ("loan mix") that are delivered under commitments can have a significant impact upon associated credit losses in the stress test.

The proposed regulation provides that, with the exception of coupon interest rates, the loan mix delivered under commitments at each Enterprise is the same as the mix of loans securitized by each Enterprise that were originated during the immediately preceding six-month period. This approach reflects the view that a reasonable indicator of the mix of loans that might be delivered in the near future is the mix of loans delivered in the recent past. To the extent that an Enterprise has been buying a larger or smaller percentage of loans with a particular characteristic over the past six months, the stress test effectively continues that mix. OFHEO's proposed approach does not differentiate the loan mix of deliveries in the up-rate and down-rate scenarios.

To reflect movements in stress test mortgage interest rates, the stress test uses two different "conventional mortgage rate" series, a 30-year rate and a 15-year rate, described earlier in section III. B., Interest Rates, to determine mortgage rates on newly delivered fixed-rate mortgages.[179] It uses

[179] The stress test assumes that mortgage interest rates on seven-year balloon mortgages are 50 basis points less than 30-year conventional mortgage rates in the down-rate environment, and equal to the 30-year rate in the up-rate environment.

the one-year CMT, along with the average margin for ARM loans originated within the past six months, to determine mortgage rates on newly delivered ARMs.

In its ANPR comments, Freddie Mac recommended two methods of modeling loan mix. Freddie Mac recommended that the loan mix of mortgages delivered under commitments could be the same as the loan mix of the Enterprises' outstanding portfolios. Alternatively, Freddie Mac suggested that OFHEO look to historical experience and base the stress period mix on the mix during past up-rate and down-rate environments. Freddie Mac further commented that the mix of mortgages delivered under outstanding commitments should not be modeled based on recent mortgage deliveries. Its rationale was that the capital requirement associated with commitments could vary dramatically because of one-time special purpose transactions. Freddie Mac cited, as an example, the distorting effects created by an Enterprise purchase of a large Cost Of Funds Index (COFI) ARM portfolio representing 30 percent of a quarter's purchases.

OFHEO did not adopt Freddie Mac's first suggestion because OFHEO believed that the mix of loans in an Enterprise's overall portfolio has only a limited relationship to the loans that will be delivered under current commitments. An Enterprise's portfolio at any given time contains loans obtained over many years during periods when economic conditions may have been quite different from the conditions that will exist at the start of the stress test. Current commitments, by contrast, are more likely to reflect Enterprise management's efforts to adjust the mix in its portfolio than they are to reflect the current mix in the portfolio. For these reasons, OFHEO found the current mix of loans at the Enterprises to be an unsatisfactory proxy for the mix of loans to be delivered under current commitments.

Using a two-quarter (versus a one-quarter) period to compute the loan mix addresses Freddie Mac's concern over distortions created by occasional special purpose purchases. However, if large special purpose purchases of unusual mortgages occur frequently, it is appropriate that the stress test reflect some higher-than-usual risk by projecting continuing purchases of such mortgages.

OFHEO also examined Freddie Mac's suggested alternative methodology—basing the loan mix on the "mix that prevailed" during prior up-rate and down-rate scenarios. Given the lack of historical data regarding deliveries under commitments, there is no direct evidence of what the experience of those deliveries has been. At best, information might be inferred from data regarding total deliveries, either at the Enterprises or in the market as a whole. However, OFHEO's research has found that, although long term increases in interest rates produce more ARMs and long term decreases produce more FRMs, short term changes in interest rates have little discernable affect on the ratio of ARMs to FRMs that are delivered to the Enterprises.

For these reasons, OFHEO concluded that a more detailed and complex model based upon historical patterns of loan deliveries would be unlikely to improve the stress test's accuracy or sensitivity to risk or yield a significantly different result. OFHEO is confident that the proposed approach reflects a reasonable delivery mix for the stress test and that any fine-tuning that might result from a more complex model would have only an incremental effect. Also, because the proposed regulation specifies that these new loans will not be held in portfolio, they create little interest rate risk for the Enterprises. For all these reasons, OFHEO does not propose the type of detailed model of loan mix contemplated in Freddie Mac's comments.

ACB also commented on loan mix, explaining that the mix of commitments should be "as of the actual reporting date, subject to adjustment for any demonstrable 'window dressing' practices by the GSEs." ACB assumed that data were available to determine what loan mix was specified under outstanding commitments at any point in time. As explained above, those data are not available. OFHEO interpreted "window dressing," to mean attempts that an Enterprise might make to alter temporarily the loan mix in its commitments just prior to the beginning of a particular quarter. OFHEO believes that the proposed approach, which looks to the mix of loans actually delivered over the last two quarters, addresses ACB's concern that an Enterprise might engage in "window dressing."

6. "No New Business" Rule

World Savings commented in response to the ANPR that the stress test model should reflect ongoing business, not a wind down scenario. The comment stated that the assumption of no new business except for fulfillment of contractual commitments is "fundamentally flawed," because it assumes the Enterprises will be prescient about the magnitude of the financial stress. World Savings commented that this assumption causes the test to underestimate the Enterprises' need for capital, because it causes their portfolios to shrink unrealistically. By contrast, a comment by Professor Yezer of George Washington University advocated placing limits on the size of the Enterprises' portfolios in the stress test. He concluded that "one needs a model of [Enterprise] response to stress that makes sense in terms of modern financial theory of investment, not passive reaction to adverse changes as contemplated in the proposed rule."

Both of these comments suggest an alternative approach to new business that cannot be addressed at this time because the approach in the regulation is mandated by section 1361(a)(3) of the 1992 Act.[180] That section requires that the initial risk-based capital regulation assume that the Enterprises take on no new business other than deliveries under existing commitments. After the issuance of the regulation, the 1992 Act requires studies by the Congressional Budget Office and the Comptroller General of the United States of the advisability and appropriate form of any new business assumptions to be incorporated in the regulation. Only after completion of those studies and their submission to the Congress may the Director, after considering them, propose amendments to the regulation that would incorporate new business assumptions during the stress period.[181]

H. New Debt and Investment Rules

During the stress period, an Enterprise invests and borrows, as needed, based on net cash flows. The stress test projects cash inflows and outflows for each month of the stress period. To the extent cash inflows exceed cash outflows in any month, the stress test must specify how an Enterprise employs the excess funds. Conversely, to the extent that cash outflows exceed cash inflows in any month, the stress test must specify how an Enterprise obtains the funds to cover the cash deficit.

The 1992 Act provides no specific guidance for new debt issuance or new investments during the stress test. OFHEO sought new debt and new investment rules that would alter as little as possible the credit and interest rate exposures of an Enterprise generated by its initial asset, liability, and derivative positions.

The proposed approach provides that all new debts and investments are short-

[180] 1992 Act, section 1361(a)(3) (12 U.S.C. 4611(a)(3)).

[181] 1992 Act, section 1361(a)(3)(B)–(D) (12 U.S.C. 4611(a)(3)(B)–(D)).

term instruments. More specifically, OFHEO proposes that the Enterprises fund all monthly net cash outflows during the stress test by issuing six-month discount notes. OFHEO also proposes that excess funds will be invested at the six-month Treasury bill rate in instruments that mature one month later.

1. Rationale for New Debt and New Investment Rules

The purpose of a "no new business" stress test is to subject an Enterprise's business at the beginning of the stress period to adverse conditions, without introducing during the stress period any business responses to deteriorating business conditions that would tend to increase or decrease risk. Consistent with this purpose, the proposed new debt and investment rules are designed to project the effects during the stress period of specific stressful circumstances on the Enterprises, given the risks embodied in their business positions at the start of the stress test, while minimizing the introduction of any new risks.

Accordingly, the stress test uses simple rules for the issuance of debt or the investment of liquidity. OFHEO intentionally does not propose to predict what asset-liability management decisions an Enterprise might make, predictions that would be difficult in any event.[182]

The hazards of predicting the response of financial institutions to stressful conditions are well illustrated by the behavior of the thrifts during their financial crisis in the 1980s. While some institutions sought to limit or reduce their risks in that difficult environment, others made choices that greatly increased risk, in effect gambling that a fortunate turn of events would be their best chance of financial salvation. These choices largely determined the fate of the institutions. Similarly, incorporating activities that project the Enterprises's responses to the duration or severity of economic conditions during the early part of the stress period, while these conditions are deteriorating rapidly, could profoundly affect the Enterprises' financial performance in the stress period.

For these reasons, the stress test makes no provision for an Enterprise to rebalance its portfolio as its asset and liability positions evolve during the stress test. The Enterprises are exposed to interest rate risk principally because changes in interest rates cause changes in the market (and economic) values of their long-term, fixed-rate assets and liabilities, and of their derivative contracts. These changes in value are reflected in subsequent accounting statements of earnings and net worth.

If an Enterprise's asset, liability, and derivatives positions are well matched, the effects will be minimal. But if, for example, an Enterprise were to fund long-term, fixed-rate mortgages with short-term debt, then an increase in market yields would cause the value of the mortgages to fall, but the value of the short-term debt would be little changed. In subsequent periods, interest income on the mortgages would be unaffected, but interest expenses would be higher because new debt would need to be issued at the new higher interest rate. Earnings and equity would suffer. Conversely, a fall in market yields would increase the value of the mortgages, and that higher value would be reflected in subsequent earnings and equity gains. If an Enterprise were to fund short-term assets with long-term, fixed-rate debt, its debt would change in value, but its assets would not, producing the opposite effect.

If changes in interest rates continue over a period of time, then a decision to issue long-term debt or purchase long-term assets in the middle of the stress period would create a new source of changes in value over the remainder of the period. The effects of the change in interest rates on future earnings and equity would then reflect the changes in value of both the original positions and the new long-term debt or assets.

In the proposed stress test, interest rates change substantially and continuously during the first year of the stress period and then are constant in the last nine years. If an Enterprise were projected to issue long-term debt or purchase long-term assets during the first year, the new investments would change in value during the remainder of the year and affect subsequent earnings and equity. Such an approach would distort the stress test's evaluation of starting risk positions.

The proposed rule avoids these problems by making all new debt and investment short-term instruments. Investments are made in Treasury bills to avoid introducing credit risk; new debts are in the form of discount notes. Maturities of six-months were chosen as a representative short term.[183]

2. Analysis of ANPR Comments

In the ANPR, OFHEO posed several questions related to new debt and investments during the stress period. HUD and ACB recommended in their comments that OFHEO develop an econometric model of Enterprise funding decisions. OFHEO believes, however, that it would be inappropriate to build such a model. The factors that would have to be incorporated into such a model would require OFHEO to make complex judgments about the decisions an Enterprise's management might make in response to future economic conditions. HUD's comment that "OFHEO may be able to base modeling of GSE liability management * * * on presumptions concerning how GSEs would formulate and exercise broad financial management objectives during a winddown" would require similar judgments. ACB also commented that "excess cash balances should be assumed to be deployed to minimize remaining interest rate risk exposure since the costs of such a hedging strategy are zero." OFHEO determined that this approach could change the risk profile of an Enterprise during the course of stress period and is, therefore, inappropriate for the stress test.

Freddie Mac also addressed the question of new debt in the stress test. Freddie Mac proposed that OFHEO assume the Enterprises would generally adhere to their respective asset and liability management principles in a stress test environment. More specifically, the Enterprises would rebalance their portfolios of assets and liabilities during the stress period, in an attempt to maintain a specific relationship between the net effective maturity and net callability of assets and liabilities. Freddie Mac further suggested that OFHEO should use a simple rule that includes this concept for the issuance of new debt in the stress test. As a possible rule, Freddie Mac offered the following example: 30 percent short-term and 70 percent long-term debt in the up-rate scenario and 70 percent short-term and 30 percent long-term debt in the down-rate scenario. The intent of the stress test is, however, to test the ability of an Enterprise's initial asset and liability mix to survive stressful conditions. Therefore, OFHEO preferred an approach that did not

[182] In a stress test that incorporates new business, the context would be different. Should OFHEO choose to incorporate new business in a later regulation, a different approach to asset-liability management during the stress period could be appropriate. See 1992 Act, section 1361(a)(3)(C) (12 U.S.C. 4611(a)(3)(C)).

[183] Recurring patterns in cash flows can cause an Enterprise to hold substantial volumes of new six-month investments at the same time that it has substantial volumes of new six-month debt outstanding. This creates an unnecessary balance sheet expansion. A more realistic solution would be to assume that maturities of new debts and investments were spread across a variety of terms less than one year. OFHEO proposes to approximate that result by assuming that any outstanding new six-month investments are redeemed at par at the end of each month.

actively alter the consequences of the interest rate risk exposure inherent in the Enterprises' business at the beginning of the stress period.

At HUD's suggestion in its comments on the ANPR, OFHEO reviewed the role of new debt in the wind down scenarios described in HUD's *1987 Report to Congress on FNMA*, issued on September 27, 1989. Although OFHEO agrees with HUD that there is a close connection between investing cash, hedging activities, and liabilities, OFHEO believes that the purpose of the "no new business" stress test is to project the results of existing risk positions in stressful environments. This approach differs significantly from HUD's 1987 wind down scenarios, which were designed to project Fannie Mae's performance during an intentional wind down of Fannie Mae's mortgage portfolio in preparation for a hypothetical privatization of that Enterprise.

I. Operating Expenses

Operating expenses include non-interest costs, such as those related to an Enterprise's salaries and benefits, professional services, property, and equipment. The operating expenses of each Enterprise comprise a relatively small portion of their overall expenses. For instance, in 1997, Freddie Mac's interest-related expenses were $10.6 billion, while its operating expenses were $495 million. Similarly, Fannie Mae's interest-related expenses were $22.4 billion, while its operating expenses were $636 million that year.

The 1992 Act is silent on how operating expenses should be treated in the stress test. Nevertheless, the legislative history states that the Director should exercise discretion about variables such as the Enterprises' operating expenses, provided that they are "reasonable and to the extent possible based on historical data."[104] In addition, the stress test's treatment of operating expenses is guided by the 1992 Act's "no new business" requirement.[105] That provision requires OFHEO to project the income and expenses associated with the existing business positions of the Enterprises over a ten-year period. The purpose of the "no new business" requirement is for the stress test to capture the risks of an Enterprise's existing assets, liabilities, and off-balance sheet obligations as of the beginning of the stress period. It is not intended to represent any combination of events that might occur in the actual course of an Enterprise's business activities.

In the proposed regulation, operating expenses decline during the stress period in direct proportion to the decline in the volume of each Enterprise's total mortgage portfolio (i.e., the sum of the outstanding principal balance of its retained and sold mortgage portfolios). The stress test first projects how an Enterprise's mortgage portfolio decreases during the stress period on a monthly basis. After determining the percent of these assets that remain at the end of any month during the ten-year stress period, OFHEO simulates the reduced operating expenses in each month by multiplying this percent by one-third of the amount of the Enterprise's operating expenses in the quarter immediately preceding the start of the stress test. This computation is used to determine the Enterprises' operating expenses for each month of the stress period. As described in more detail in this section below, under this approach, the expense reduction pattern for the up-rate scenario will differ from the down-rate scenario, and the pattern within each scenario will vary depending on changes in the characteristics of an Enterprise's total mortgage portfolio.

In the ANPR, OFHEO raised several questions about how the stress test should model operating expenses. These issues are considered below.

OFHEO first considered whether there should be any reduction in operating expenses during the stress period. The stress test should include such a reduction because many of the Enterprises' operating expenses are tied to the size of their mortgage portfolios. Both commenters on this issue, Freddie Mac and ACB, supported this view.

OFHEO next considered whether there should be a variable or straightline reduction in operating expenses. OFHEO determined that a variable reduction pattern would be more appropriate. The underlying characteristics of mortgages held or guaranteed by an Enterprise or the interest rate conditions of the stress period would substantially affect the rate of reduction in outstanding mortgage balances. Because a large portion of expenses are directly tied to outstanding loan balances, a variable reduction based on those balance patterns will better correspond with the cost reductions that would occur under the stress test scenarios.

Notwithstanding this general approach, OFHEO notes that expenses in some categories are not closely tied to current loan balances. These expenses might be expected to change at different rates from loan balances in a stressful no-new-business environment. As Freddie Mac commented in response to the ANPR, a large portion of its operating expenses are associated with either new business or long-term research and development, including product and systems development, and so might be reduced more dramatically under a no-new-business assumption. Conversely, Freddie Mac stated that some other operating costs that are associated with ongoing costs of managing the mortgage portfolio are relatively fixed, i.e., they are independent of the size of the portfolio. On balance, tying expenses to loan balances will produce a reasonable approximation of an Enterprise's costs in the stress test scenarios.

The proposed approach to modeling operating expenses differs from the recommendations made by ACB and Freddie Mac. Rather than a variable approach, these commenters favored a model applying a straightline reduction in operating expenses. Freddie Mac commented that a straightline approximation is sufficient, because the resulting capital requirement should depend primarily on the present value of the operating expenses and not on the exact timing of those expenses. However, OFHEO believes it is appropriate to adopt an approach that more precisely takes timing into consideration, because the timing of expenses affects an Enterprise's performance during the stress test and the resulting risk-based capital requirement. Furthermore, a straightline approach still requires a basis on which to determine the rate of expense reduction. The proposed approach simultaneously takes timing into account and determines the overall rate of reduction.

The next issue concerned whether the model should reflect decisions that might be made by an Enterprise if it was intentionally winding down its business. On that issue, HUD recommended two alternative approaches: either that OFHEO model the behavior of an Enterprise on issues such as liability management, dividend policy, and operational management as if it were aware that a wind down is in effect, or that OFHEO proceed in a "more formalistic fashion," i.e., without regard to whether they did or did not know. OFHEO analyzed this issue, not only within the context of operating expenses, but also as it relates to the underlying concepts of the stress test and many of its components. OFHEO determined that it would be inconsistent with the 1992 Act and the overall purposes of the stress test for the

[104] H.R. Rep. No. 102–206, at 65 (1991).

[105] 1992 Act, section 1361(a)(3)(A) (12 U.S.C. 4611(a)(3)(A)).

model to attempt to reflect decisions that would be made by an Enterprise that was intentionally winding down its operations. Instead, the stress test applies the alternative approach discussed by HUD in which an Enterprise would not know that a wind down was in effect. As discussed earlier, this approach is appropriate because the stress test is intended to capture the actual risks of an Enterprise's existing business as of the beginning of the stress period rather than events that might occur during the actual course of its business.

OFHEO next considered whether it is appropriate to treat categories of operating expenses differently. OFHEO has determined that disaggregating the operating expenses into several categories would add needless complexity without providing any significant corresponding benefit to ensuring an Enterprise's capital adequacy. While some expense categories might reasonably be assumed to decline faster than the mortgage portfolio, some others might decline more slowly, and some might be expected to increase. OFHEO agrees with ACB and Freddie Mac that since operating expenses constitute a relatively small portion of an Enterprise's overall costs, they should not be subject to complicated modeling. Accordingly, OFHEO proposes to consider operating expenses in a single category rather than disaggregating them into distinct categories.

Finally, OFHEO considered whether the operating expenses of each Enterprise should be modeled in the same manner. Freddie Mac recommended that instead of distinguishing between the Enterprises, the stress test should reduce operating expenses of each Enterprise in the same manner. Freddie Mac stated that any attempt to make fine distinctions between how each Enterprise might actually manage its operating expenses during the stress period could lead to extensive analysis that ought to have little affect on the overall capital requirement but, could increase the danger of different capital treatment for each Enterprise based on differences in accounting treatment of expenses.

OFHEO agrees with Freddie Mac's recommendation not to distinguish between the Enterprises with respect to modeling operating expenses. A fundamental concept of the risk-based capital requirement is that the stress test establish a single set of rules that apply equally to both Enterprises. It would be inappropriate to establish a different stress test for each Enterprise. As a result, differences in operating expenses during the stress test between the Enterprises will reflect only differences in initial expense levels and mortgage portfolio composition, not any projected behavioral differences.

J. Dividends and Other Capital Distributions

1. Introduction

The definition of a "capital distribution" in the 1992 Act includes the payment of common stock dividends, preferred stock dividends, and the repurchase or retirement of shares of stock.[186] In recent years, both Enterprises have consistently paid significant amounts of dividends and have repurchased significant amounts of common stock.

The 1992 Act directs OFHEO to consider dividends in the stress test. When an Enterprise makes a capital distribution and the amount of that distribution, however, are not specified in the 1992 Act. The only requirement is that dividends should be consistent with the stress test environment.[187] Because capital distributions decrease equity, the more distributions an Enterprise makes during the stress test period (or during a real-life stressful environment), the more likely that an Enterprise will fail to meet its risk-based capital requirement.

2. Statutory Provisions

The 1992 Act and the Charter Acts determine the authority of the Enterprises to make capital distributions.[188] Under these statutes, an Enterprise may make a capital distribution without restriction when the Enterprise would remain adequately capitalized following the distribution.[189] In all other circumstances, a capital distribution is prohibited outright or requires the approval from the Director of OFHEO.

Prior approval by the Director is required when an Enterprise is undercapitalized or if a capital distribution would cause the Enterprise to be undercapitalized.[190] The legislative history of this requirement makes clear that, while approval in these circumstances can be granted, such approval "should be the exception and not the rule."[191] The Director's prior approval also is required when an Enterprise is significantly undercapitalized; however, the 1992 Act places conditions on the granting of such approval. In those circumstances, the Director may only approve a distribution if the Director determines that it will: (1) Enhance the Enterprise's ability to meet its capital requirements, (2) contribute to the Enterprise's long term safety and soundness, or (3) is otherwise in the public interest.[192] No approval may be granted for a distribution that would cause the Enterprise to be significantly undercapitalized or critically undercapitalized.[193]

This statutory structure draws a clear distinction between an Enterprise that fails to meet its risk-based requirement and one that fails to meet its minimum capital requirement. When an Enterprise fails to meet the risk-based capital requirement, the Director has full discretion to grant or deny approval for a capital distribution. However, when an Enterprise fails to meet the minimum capital requirement, the Director's discretion is limited. Moreover, the Director is prohibited from approving a distribution that would cause the Enterprise to fail to meet the minimum capital requirement.

3. Proposed Approach

The proposed regulation provides that during the stress period:

- When paid, dividends are paid at rates consistent with historical experience;
- Dividends are paid on common stock when the Enterprise meets the risk-based capital requirement and the minimum capital requirement;
- Dividends are paid on preferred stock when the Enterprise meets the minimum capital requirement; and
- No dividends are paid when the Enterprise does not meet or would not

[186] 1992 Act, section 1303(2)(A) (12 U.S.C. 4502)(A)). The notable exception is the repurchase of shares for employee stock ownership programs under section 401 of the Internal Revenue Service Code of 1986.

[187] 1992 Act, section 1361(b)(2) (12 U.S.C. 4611(b)(2)). "Characteristics of the stress period other than those specifically set forth in subsection (a), such as prepayment experience and dividend policies, will be those determined by the Director, on the basis of available information, to be most consistent with the stress period."

[188] Fannie Mae's Charter Act and Freddie Mac's Corporation Act collectively are referred to as the "Charter Acts."

[189] In general, an Enterprise is considered "adequately capitalized" when it meets both the risk-based and minimum capital levels. It is "undercapitalized" when it does not meet the risk-based capital level, but does meet the minimum capital level. It is "significantly undercapitalized" when it does not meet either the risk-based capital level or the minimum capital level, but does meet the critical capital level. *See* section 1364 of the 1992 Act (12 U.S.C. 4614), and section 303(c)(1) of the Charter Act and section 303(b)(1) of the Corporation Act.

[190] Section 303(c)(2) of the Charter Act and section 303(b)(2) of the Corporation Act.

[191] S. Rep. No. 102–282, at 24 (1992).

[192] 1992 Act, section 1366(a)(2) (12 U.S.C. 4616(a)(2)).

[193] 1992 Act, sections 1365(a)(2); 1366(a)(2)(A) (12 U.S.C. 4615(a)(2); 4616(a)(2)(A)).

after payment of the dividend meet the minimum capital requirement.

In making this proposal, OFHEO emphasizes that there are significant differences between establishing a dividend payment policy for the risk-based capital requirement and acting on a dividend approval request from an Enterprise that is no longer adequately capitalized. Accordingly, provisions of the stress test which provide for the payment of dividends by an undercapitalized Enterprise in some circumstances and not others should not be interpreted as an indication of how OFHEO will act on any specific dividend approval request. In practice, OFHEO will evaluate any request for approval of a dividend payment on the basis of a case-by-case analysis of all the relevant facts and circumstances.

a. Preferred Stock

Under the proposed regulation, dividends are paid on preferred stock during the stress period when the Enterprise meets its estimated minimum capital requirement. Preferred stock dividends are based on the coupon rates of the issues outstanding. The coupon rates for any issue of variable rate preferred stock is calculated using projections of the appropriate index rate.

To determine whether the Enterprise meets the minimum capital requirement, the stress test computes the minimum capital level each month by applying the appropriate leverage ratios to all assets (2.50 percent) and off-balance sheet obligations (0.45 percent). OFHEO notes that interest rate and other off-balance sheet contracts also affect the minimum capital number.[194] However, incorporating these features in the calculation would require OFHEO to compute the credit equivalent amount of interest rate and foreign exchange contracts, which would add unnecessary complexity but provide little corresponding benefit. Accordingly, for purposes of determining dividend payouts in the stress test, OFHEO believes that the approach described above provides a reasonable approximation of the minimum capital calculation.

As noted above, preferred stock dividends are paid in some circumstances in which common stock dividends are not paid. The stress test includes this distinction based on the recognition that when a corporation issues preferred stock, it is making a higher level of commitment to those investors than when it issues common stock. Preferred stockholders have a first claim on distributions. Therefore, failure to pay dividends on both classes of stock likely would have greater repercussions on an Enterprise's funding costs and ability to attract new equity capital than would a failure to pay common stock dividends while preferred stock dividends were maintained. Accordingly, when an Enterprise is classified as undercapitalized, the stress test pays preferred stock dividends, but not common stock dividends.

b. Common Stock

Under the proposed regulation, dividends are paid on common stock during the first four quarters of the stress period. The stress test specifies that common stock dividends cease after that, reflecting the strong likelihood that an Enterprise would not meet the risk-based capital requirement during the final nine years of the stress period. The rate at which dividends are paid is based on the trend in the Enterprise's earnings. If earnings are positive and increasing, dividends are paid based at the same dividend payout ratio as the average payout ratio of the four quarters preceding the stress test. Otherwise, dividends are paid based at the preceding quarter's dollar amount of dividends per share. Dividends would be cut off before the end of the first year if an Enterprise failed to meet its estimated minimum capital requirement.

OFHEO believes this rule is based on a reasonable representation of when an Enterprise will no longer be adequately capitalized. The conditions of the stress test are sufficiently stressful to assure that the Enterprise would be undercapitalized by the end of the first year of the stress period. By that time, an Enterprise's portfolio would have been subjected to very large interest rate increases or decreases. If, at that point, it was subjected to those same large increases, i.e., a total of up to 1200 basis points over two years, it is reasonable to assume that the Enterprise would be undercapitalized. The Enterprise would have to withstand more severe credit losses because the hypothetical stress tests would also compound declines in house prices associated with the actual stress test. Estimating with greater accuracy whether an Enterprise would meet its risk-based capital requirement at any time during the stress period is inherently difficult. This would require simulating a series of hypothetical ten-year stress tests, the last of which would involve generating cash flows extending ten years beyond the end of the actual stress period. This would add great technical complexity to the stress test without providing any meaningful benefit.

c. Other Types of Capital Distributions

The proposed regulation does not provide for any other types of capital distributions, such as repurchases of common stock, or redemption of preferred stock. Although the Enterprises have both repurchased a significant number of shares of their own common stock in the past several years, the stock buybacks were irregular events based on the current share price, expected return on potential investments, and the profitability of each Enterprise. The Enterprises have made no firm commitment to investors to continue share repurchases. Furthermore, OFHEO believes that the stress test environment would not be conducive to share repurchases.

4. Analysis of ANPR Comments

In response to questions in the ANPR, Freddie Mac emphasized that any assumptions that OFHEO makes regarding dividend payments must be consistent with the 1992 Act, particularly the provisions related to how capital classifications affect dividend payments. With regard to preferred stock dividends, Freddie Mac recommended that OFHEO assume that an Enterprise pays dividends on such stock so long as it satisfies its minimum capital requirement and discontinues preferred dividends thereafter. With regard to common stock dividends, Freddie Mac recommended that OFHEO assume that an Enterprise pays a constant dividend payout ratio on common stock until earnings become negative, at which time common stock dividends would be discontinued.

The proposed regulation, which ties dividend payouts to capital classifications, is consistent with the 1992 Act and is generally consistent with Freddie Mac's recommendations. More specifically, OFHEO agrees with Freddie Mac's recommended approach for paying preferred stock dividends until an Enterprise's capital falls below the minimum level. OFHEO believes this treatment of preferred stock dividends properly reflects the high level of commitment of the Enterprises to investors in their preferred stock.

In addition, eliminating common stock dividends after an Enterprise becomes undercapitalized is roughly equivalent to Freddie Mac's recommendation to cut off common stock dividends when an Enterprise's earnings turn negative. However, while Freddie Mac would reduce dividends proportionately if earnings decline, the proposed regulation provides for the

[194] 12 CFR 1750.4.

payment of a constant dollar amount. OFHEO believes the payout rule in the stress test appropriately reflects the current dividend payout history of the Enterprises. Both Enterprises have made fairly strong commitments to investors regarding dividend payouts, and have been slow to lower their dividend payments in the face of declines in earnings.

ACB recommended that dividends be suspended immediately in the stress test, since the Enterprises are assumed to be in a wind down and shareholders would be strictly residual claimants. ACB's recommendation to suspend all dividends immediately is not consistent with the apparent intent of the 1992 Act, which specifically mentions dividend policies and directs OFHEO to consider dividend policies that would be "most consistent with the stress period."[195] As discussed above, OFHEO believes that the proposed capital distribution rule is consistent with the stress test period. Furthermore, the stress test would fail to incorporate a likely source of capital depletion that would affect an Enterprise in a real-life stressful environment if all capital distributions were eliminated during the entire stress test period.

ACB's comment that shareholders would be strictly residual claimants, which implies that the stress test is a liquidation situation, is not consistent with the concepts underlying the stress test. A wind down or "no new business" stress test is not the equivalent of a liquidation. Rather, it is a test of how much capital an Enterprise would need to survive.

K. Other Off-Balance Sheet Guarantees

In addition to guaranteeing mortgage-backed securities they issue as part of their mainline business, the Enterprises occasionally guarantee other securities. Such guarantees are referred to as "other off-balance sheet (OBS) guarantees." Examples of other OBS guarantees include guarantees of tax-exempt multifamily housing bonds issued by state and local government agencies, Enterprise-issued whole loan REMIC securities to security, and private label (non-GSE-or GNMA-issued) REMIC securities. In general, an Enterprise's guarantee is protected by other credit enhancements, including reserve funds, insurance arrangements, and/or subordinated security tranches.

For the following reasons it is not now feasible to simulate the detailed financial impact on an Enterprise of other OBS guarantees over the 120 months of the stress period. First, the mortgage collateral for such securities is often dissimilar from the Enterprise's mortgages on which the stress test's mortgage performance models are based. Second, current data on the status of the underlying collateral is difficult to obtain. Third, the structures of the securities and the nature of credit enhancements vary, requiring the individual modeling of each guaranteed security, which would, at this time, require an inordinate amount of resources.

The stress test utilizes a proxy for the detailed modeling of the impact of other OBS guarantees on the amount of starting capital that an Enterprise would need to just maintain positive capital during the stress period. The proxy treatment consists of multiplying the outstanding balance of all other guarantees at the beginning of the stress period by .0045, and adding the result to the amount of starting capital calculated for all other aspects of an Enterprise's operations. The multiple .0045 corresponds to the minimum capital requirement associated with these other OBS guarantees.

L. Calculation of the Risk-Based Capital Requirement

1. Proposed Approach to Calculating Capital

The 1992 Act requires an Enterprise to meet the risk-based capital requirement. To determine this requirement, the statute establishes a two-step process. The first step is to determine the amount of capital that an Enterprise needs to just maintain positive capital during a ten-year period of economic stress. The second step is to increase that amount of capital by another 30 percent to capture management and operations risk.

OFHEO proposes to use a present value approach to calculate the capital that an Enterprise needs to just maintain positive capital during the stress test. Once the stress test has projected the capital of an Enterprise at the end of every month in the stress period, the capital calculation process discounts the monthly capital balances back to the start date of the stress period. The Enterprise's starting capital is then adjusted by subtracting the lowest of the discounted capital balances to account for the smallest capital excess or largest deficit (subtracting a negative number in the case of a deficit). The discount factor used to discount a monthly capital balance is based on after-tax borrowing or investing yields (as appropriate) for that month and all previous months during the stress period.

After the stress test ascertains the amount of capital necessary to just maintain positive capital during the stress test, it then multiplies that amount by 1.3 to arrive at the risk-based capital requirement.

2. Justification for Using a Present Value Approach

The 1992 Act requires OFHEO to determine the amount of capital that is sufficient for an Enterprise to just maintain positive capital during the ten-year stress period. However, when an Enterprise has more (or less) capital than it needs to just maintain positive capital, the law does not specify the procedure for calculating how much capital it would need to just maintain positive capital.

In analyzing the best method to calculate capital during the ten-year stress period, OFHEO considered two approaches: (a) the present value approach, described above, and (b) an "iterative approach" in which the stress test would be run multiple times with hypothetical adjustments made to each Enterprise's balance sheet prior to each run. The present value approach more efficiently produces results comparable to the iterative approach. Both approaches recognize that a dollar today is worth significantly more than a dollar ten years from now, because the dollar can be invested so as to return more in a later year.

Under the iterative approach, the capital calculation process begins by running the stress test on the basis of an Enterprise's actual assets, liabilities, net worth, and off-balance sheet items as of a given date. The first stress test run would be used to identify the lowest capital balance that the Enterprise has during the stress period. Then, based on that result, adjustments would be made to the starting capital and the assets and/or liabilities on the Enterprise's balance sheet. The goal of these adjustments is to construct a starting position book of business that, when subject to the stress test, will result in the Enterprise just maintaining positive capital during the stress test. If a run results in the Enterprise's capital reaching a minimum point greater than zero, OFHEO would reduce the starting capital in order to move the minimum point down toward zero in the next run. If a run resulted in the Enterprise's capital reaching a minimum point less than zero, then OFHEO would increase the starting capital in order to move the minimum point up toward zero in the next run. If the second run did not achieve the desired result, successive runs would be made following further

[195] 1992 Act, section 1361(b)(2) (12 U.S.C. 4611(b)(2)).

adjustments to the starting position balances.

OFHEO is proposing the present value approach rather than the iterative one based on the following considerations. The present value approach is comparatively simple and easy. It will not require explicit changes to an Enterprise's actual assets, liabilities, net worth, and off-balance sheet items as they exist at the start of the stress test, and it achieves results comparable to the iterative approach. It achieves these results because the discount factors used in the present value calculations, which calculate the surplus or deficit of starting capital, are consistent with the effects during the stress period of the balance sheet adjustments required by the iterative approach. The discount factors reflect the yields on additional debt or investments offsetting necessary changes in starting capital. For example, consider a scenario in which an Enterprise holds more starting capital than necessary to maintain positive capital throughout the stress period. Balance sheet adjustments made for the final iteration would likely involve substituting for the surplus starting capital an equal amount of debt. Discounting the appropriate monthly capital balance during the stress period, using stress period yields, results in a comparable amount.

Based on these considerations, the present value approach would be a more appropriate methodology for carrying out the purposes of the statute. The iterative approach would add needless complexity and require OFHEO to make changes to the balance sheets of the Enterprises. Each iterative run, would be based on hypothetical representations of the Enterprise's position. The present value approach eliminates the need for these artificial adjustments and the unwarranted complexity that the iterative approach's adjustment process would entail.

Under the present value approach, it is necessary to determine the appropriate monthly discount rates. In determining the monthly rates, OFHEO sought a set of discount rates that would reflect the time value of money to an Enterprise during the stress period. Accordingly, the discount rates applied in the stress test are computed as an after-tax rate. Such an after-tax rate reflects the fact that any borrowing necessary to fund an Enterprise's business activities would be deductible for income tax purposes. Conversely, any additional earnings would be subject to income taxes.

These discount rates are intended to reflect the fact that interest rates will differ dramatically between the rising and falling rate scenarios and at given times in each scenario. When an Enterprise is borrowing new funds during the stress period, the marginal effect that a change in its cash position in one month will have on its equity in a subsequent month will be reflected by its after-tax cost of borrowing during the intervening period. Alternatively, if the Enterprise is a net investor in a given month, the marginal effect is reflected by its after-tax earnings on new investments in Treasury bills.

This discounting procedure will reasonably relate changes in capital to changes in an Enterprise's risk position. For example, if an Enterprise were to take an incremental risk position that resulted in an incremental loss during the first month of the stress period, that loss would compound during the stress period at the Enterprise's after-tax borrowing or investment rate. If an Enterprise is borrowing, this one month's incremental additional loss would require additional borrowings during the balance of the stress period. These additional borrowings would create additional interest payments for which further borrowing would be required. If the Enterprise is investing, the loss would leave smaller amounts to be invested, which would earn less interest. After applying the discount factors, the change in each future month's capital would equal the initial loss. Thus, the change in the estimated amount of the first month's incremental capital needed to just maintain positive capital during the stress test would also equal that initial loss. More generally, if a new asset were to generate a stream of losses over the course of the stress period, the amount of starting capital needed would rise by the present value of this stream of losses.

IV. Technical Supplement

A. Purpose and Scope

This technical supplement provides detail on the specification and estimation of statistical (econometric) models for mortgage performance, and how those statistical models are applied in the proposed risk-based-capital stress test. The supplement focus is on technical aspects of the statistical modeling. This focus includes: theoretical considerations, sources and uses of historical data, functional forms for statistical models, development of explanatory variables for the statistical analyses, results of statistical model estimations, and application of the resulting statistical equations to predict mortgage performance in the stress test. Each of the following parts of this supplement covers these elements for its respective part of mortgage performance. The topic areas covered here are:

- Single Family Default/Prepayment,
- Single Family Loss Severity,
- Multifamily Default/Prepayment,
- Multifamily Loss Severity, and
- Property Valuation.

An additional, and important component of this Supplement is the description of how the statistical models of mortgage performance are reasonably related to the benchmark loss experience (BLE) identified in NPR1. The first way in which OFHEO reasonably relates the mortgage performance component of the stress test to the BLE is through application of housing market conditions that represent the conditions of that experience. Those conditions include house price growth rates, rent growth rates, and rental vacancy rates. The next part of this supplement, Property Valuation, details how OFHEO developed these variables for use in the stress test. How these variables are actually used in the stress test is covered in the section 3.5, Mortgage Performance, of the Regulation Appendix, although some general information is provided here.

The second way in which mortgage performance in general, and credit losses in particular, are related to the BLE is through calibration mechanisms that adjust statistically derived equations to match the actual loss rates of the BLE. These adjustments are required because the statistical equations are estimated over a wide range of data, of which the benchmark experience is only a small part. To reasonably relate mortgage losses to the BLE, the stress test imposes housing market conditions from the time and place of the BLE. In addition, the stress test adjusts defaults and severities by factors that cause the test to replicate critical aspects of the BLE when the statistical models are applied to benchmark loans. The methods of deriving these calibration adjustment factors are described in the Single Family Default/Prepayment and Single Family Loss Severity parts of this Supplement.

B. Single Family Default/Prepayment

1. Introduction

To develop the stress test model of single family default and prepayment rates, OFHEO analyzed the historical experience of Enterprise single family loans from 1979 through 1995. This experience is defined by an econometric model in which probabilities of default and prepayment in each time period are

determined jointly using a multinomial logit specification. The theoretical foundation used for choosing variables to use in the model is financial options theory. This is the predominant theory used in mortgage performance research. It suggests that borrowers make choices regarding maintaining or terminating mortgages based upon the relative financial value of those choices. In this context, each borrower has the choice, in each time period, to make the payment and maintain the mortgage, pay off the mortgage in full (a prepayment), or stop making payments and default.

Owing to the large amount of data available to estimate this model, OFHEO chose techniques that captured the essence of individual borrower choice, consistent with efficient use of computer resources. These techniques start with estimating separate sets of default and prepayment equations for fixed-rate mortgages (FRMs) and for adjustable-rate mortgages (ARMs).[196] A third set of equations was estimated to project the performance of less-prevalent single family loan types relative to the dominant 30-year fixed-rate mortgages. The second method of capturing borrower choice characteristics while limiting computer resources was to use random samples of fixed-rate loan products, rather than attempting to estimate the model on all loans ever purchased by the Enterprises. The third method was to use quarters rather than months as the observation time period. This time period is important because each loan enters the analysis in the form of an event history: every time period for which the loan was active provides an observation for the statistical analysis. Using quarters reduces the number of observations used in the statistical analysis without losing any essential detail regarding borrower choices. The last method of maintaining the quality of individual loan analysis while limiting computer resources was to use a weighted regression scheme, so that all loans do not need to enter the analysis individually. All loans with the same characteristics are treated as one loan, with the actual number of loans with those characteristics used as a weighting factor.

The equations that result from the statistical analysis were adjusted or calibrated to the BLE before use in the stress test. The calibration procedure adjusts the default equations so that if the actual benchmark loans (as defined in NPR1) were input into the equations, with benchmark house price growth rates and interest rates, the resulting 10-year cumulative default rate would identically match that of the BLE (14.9 percent).

The remainder of this supplementary material is organized as follows: Section 2 provides a summary of the conceptual framework underlying the estimation of the statistical model of single family mortgage default and prepayment. Section 3 describes the loan level data used in the empirical analysis. Section 4 outlines the general approach to the statistical analysis of default and prepayment events, based on the application of the multinomial logit model. Section 5 defines the explanatory variables used in that analysis. The empirical results are presented in section 6, which is followed in section 7 by a discussion of the application of the estimated default and prepayment equations in the stress test. Section 8 ends this supplementary material by describing how the estimated model is used in the stress test to produce results consistent with the BLE.

2. Conceptual Framework

Financial options theory is the most widely accepted theoretical framework for the analysis of residential mortgage default and prepayment. This framework hypothesizes that mortgage borrowers will exercise embedded call (prepayment) or put (default) options when either of these alternatives becomes financially optimal. The financial options theory assumes that an individual mortgage borrower can increase his lifetime wealth by defaulting on a mortgage when the market value of the mortgage exceeds the market value of the house, implying a direct empirical link between changes in housing values, borrower equity, and the decision to default. Likewise, the option to refinance the mortgage when market rates fall below the current rate on the mortgage provides a means for borrowers to increase their wealth by prepaying, and links observed prepayment behavior to changes in interest rates.[197]

Previous empirical studies on mortgage terminations have provided empirical support for the options theory, as various approximations to the financial values of the options have been found to be strongly associated with observed default and prepayment outcomes.[198] However, some of the same studies also indicate that borrowers do not behave in the "ruthless" manner suggested by the pure options theory. These empirical studies vary in the degree to which the full implications of the theory are incorporated, mainly due to limitations on the available data and the ability to measure or impute options values to individual borrowers.

The measurement of borrower equity has been addressed in essentially two ways in the academic literature. One approach employs stochastic simulations to impute aggregate distributions of properties with positive or negative equity, while simultaneously accounting for the impact of default and prepayment events on these distributions. This is the approach used by Foster and Van Order (1984, 1985). Another approach, adopted in recent work by Deng, Quigley, and Van Order (1996) and Deng (1997), has been to combine mathematical assumptions about the diffusion of housing values with loan-level data to assign "ex ante" probabilities of negative equity to individual properties.[199] Both approaches are generally consistent with the assumptions of the option theory, and they differ mainly in their application to aggregate versus loan-level data.

In recent years, a consensus seems to have emerged among practitioners that the option values, to the degree that they can be measured, remain important for predicting default and prepayment,

---

[196] In this model, ARMs include all mortgages that have variable payment features.

[197] There may also be secondary effects of borrower equity on prepayment, and of interest rates on default. For example, attempts by borrowers to prepay their mortgages may be frustrated due to declining house prices and failure to qualify for refinancing. On the other hand, borrowers in a negative equity position may be reluctant to default if they have current mortgage coupon rates that are less than the prevailing market rate of interest. In this second case, the asset value of the low interest rate mortgage would be foregone if the put option is exercised and the borrower defaults. However, the empirical significance of mortgage value for default is questionable given the inability of borrowers to trade on this asset, other than by selling the property and taking back a mortgage at a rate between the original note rate and the current market rate. This option is precluded by the "due-on-sale" provisions of most residential mortgage contracts. The extent to which this option is used informally is unknown.

[198] Examples of empirical models based on the options framework include: Dunn and McConnell (1981), Foster and Van Order (1984, 1985), Buser and Hendershott (1984), Brennan and Schwartz (1985), Kau, Keenan, Muller, and Epperson (1985, 1990), and Hendershott and Van Order (1987).

[199] Probabilities assigned in this way are "ex ante" because they depend only on information about individual mortgages available at origination and subsequent changes in the mean (drift) and variance (volatility) of house price appreciation rates. No information on the incidence of default or prepayment among other loans is used to adjust the projected distribution of housing values used to assign probabilities of negative or positive equity to loans that remain active.

but provide only necessary, rather than sufficient, conditions. For example, in the case of mortgage default, negative equity alone may not be sufficient to induce a borrower to default, but given some other "trigger event," such as job loss or marital disruption, the decision to default would then depend on whether equity was positive or negative. In the case of prepayment, borrowers who would otherwise appear to have a financial incentive to refinance (prepay) to obtain a lower interest rate, may not wish to incur the associated transactions costs given their expected time horizons for occupying the home.

While the option theory succeeds as a general framework, empirical models of mortgage default and prepayment must be flexible enough to account for variation in mortgage performance that may not appear to be fully consistent with optimal behavior, such as borrowers defaulting when house prices are increasing or prepaying when interest rates are increasing. The empirical model must account for limitations on the information available to compute the exact values of embedded options for individual borrowers. In addition, a wide variety of loan characteristics must also be accounted for, which has led to the widespread application of what are generally referred to as "options-based" empirical models, such as those cited above. The models applied in the stress test are typical of those that use the options-based approach.

3. Data

OFHEO obtained loan-level information on previous Enterprise single family mortgage originations and used these data to estimate models of mortgage performance. The data included information on the origination characteristics of mortgages, information on last-paid installment dates, and loan status outcomes from the Enterprise loan-tracking systems. This information allowed OFHEO to reconstruct "event histories" of the period-by-period performance of individual loans, from the date of origination to either the point where the loan terminated or the end of the sample period. OFHEO combined loan-level information from both Enterprises to develop its own data files for statistical analysis. Standardized or "normalized" data files were constructed to assure similar content and structure across Enterprises.[200]

[200] The process of data normalization involved confirming the consistency of mortgage product types and loan characteristics and defining standardized data fields.

The options theory views mortgage default and prepayment events in terms of decisions by individual borrowers to terminate their loans. This view has implications for the way mortgage outcomes and their associated probabilities are specified in the statistical analysis. Default and prepayment are specified to occur in the month following the date of the last-paid-installment. After mortgage prepayment, the Enterprises are likely to update the loan status almost immediately. By contrast, due to the varying length of the mortgage foreclosure process, the Enterprises may not classify defaulting loans as defaults until some months after the last-paid-installment date. However, in the model, the default event is nevertheless considered to have occurred at the point the borrower ceases payment on the loan.[201] The event history used for that loan ends at that point in time. The data used in the statistical analysis included mortgage originations for the period from January 1979 to December 1993, with mortgage performance measured through December 1995. Therefore, these data provided a minimum of two years of loan experience for the most recent origination cohorts.[202]

Ideally, models would be estimated using contemporaneous values of factors predictive of default and prepayment during each period a loan is outstanding. Although this type of "panel" data does not exist for historical Enterprise loan records, it was possible to reconstruct historical data on key determinants of default and prepayment, such as house prices and interest rates, and add this information to the individual loan event histories. Using these histories, OFHEO was able to estimate dynamic models for default and prepayment. The models are "dynamic" in the sense that OFHEO can estimate and simulate mortgage performance in response to actual or hypothetical (e.g., stress test) changes in economic circumstances over time.

[201] At the time that data bases were constructed for this analysis, information was not available from Freddie Mac on last-paid-installment dates. Therefore, OFHEO used the "closing date" for Freddie Mac's defaulted loans. This is the date of disposition of a foreclosed property. The last-paid-installment date was used for Fannie Mae defaults.

[202] Note that for some loans the last-paid-installment will occur prior to the end of the sample, with no corresponding change in loan status from active to defaulted. These "censored" events were treated in the same manner as loans that remained active through the end of the sample period. That is, they are viewed as active up to and including the last quarter in the sample period. Note that these censored default events do not occur in sufficient numbers to have a material impact on the statistical estimates. One reason is that during those time periods and places in which the incidence of default was greatest, such as, for example, in the historical benchmark experience, foreclosure and changes in loan status occurred within several months of the last payment by the borrower. In addition, relatively complete loan histories are available for those loan origination cohorts among which the majority of default events occurred on Enterprise loans. While more recent cohorts with shorter event histories have greater potential for censoring of default events, the impact of censoring on the statistical estimates is negligible because default rates have been so low in recent years.

4. Specification of the Statistical Model

The proposed regulation employs a monthly cash flow model of Enterprise performance over a ten-year stress period. The simulation of mortgage cash flows requires conditional rates of default and prepayment to be applied to outstanding mortgage balances during each month of the stress test. The purpose of the models described in this technical supplement is to provide a means of generating the required termination rates in a manner that is reasonable for Enterprise loans under the circumstances of the stress period.

Conditional rates of default and prepayment vary depending on a variety of factors, both random and systematic, some of which are fixed at origination and others that vary over time. Characteristics of loans and borrowers at origination can affect the level and timing of mortgage default and prepayment throughout the life of the loan. For example, conditional default and prepayment rates exhibit characteristic age-profiles that increase during the first years following origination, peak sometime between the fourth and seventh years, and decline gradually over the remaining years.[203] Default and prepayment rates also vary systematically in response to economic circumstances and other factors over time, such as changes in house prices and interest rates that affect the value to the borrower of embedded options.

Like other time-or age-dependent processes, mortgage terminations are highly amenable to analysis using statistical survival-time models specified in terms of conditional probabilities of prepayment and default. Default and prepayment are "competing risks," which means that the occurrence of one type of event precludes the chance to observe when the other event might have occurred, and vice versa. In such a case it is necessary to account for the joint mathematical and statistical dependence of the conditional probabilities of default and prepayment on each other. Failure to account for the competing-risks nature of the events can lead to projections of total termination

[203] *See* discussion in Schwartz and Torous, at 379 (1989).

rates (default plus prepayment) that are mathematically inconsistent and that would preclude their application in the type of actuarial calculations of cash flows required for the stress test.

As outlined above, mortgage default and prepayment result in an observed last-paid-installment, after which no further payments are forthcoming. Thus, for loans outstanding at the beginning of each time period, three mutually exclusive outcomes are possible in the model: (1) the borrower defaults; (2) the borrower prepays the loan in full; or (3) the borrower makes the scheduled loan payment, and the loan remains active and part of the event history sample for the next time period. For the purposes of the statistical analysis, each of these outcomes is interpreted as an "event." This approach implies that each loan contributes potentially many observations to the event history sample, depending on how long it remains active before experiencing one of the terminal events or reaching the end of the sample period.

a. Multinomial Logit Models

OFHEO has estimated multinomial logit models for quarterly conditional probabilities of default and prepayment.[204] Several empirical studies have applied some form of the logit or similar qualitative response models to analyze mortgage prepayment and default behavior.[205] The corresponding mathematical expressions for the conditional probabilities of default ($\pi_D(t)$), prepayment ($\pi_P(t)$), or remaining active ($\pi_A(t)$) over the time interval from t to $t + 1$ are given by:

$$\pi_D(t) = \frac{e^{\alpha_D + X_D(t)\beta_D}}{1 + e^{\alpha_D + X_D(t)\beta_D} + e^{\alpha_P + X_P(t)\beta_P}} \qquad (Eq.\ 1)$$

$$\pi_P(t) = \frac{e^{\alpha_P + X_P(t)\beta_P}}{1 + e^{\alpha_D + X_D(t)\beta_D} + e^{\alpha_P + X_P(t)\beta_P}} \qquad (Eq.\ 2)$$

$$\pi_A(t) = \frac{1}{1 + e^{\alpha_D + X_D(t)\beta_D} + e^{\alpha_P + X_P(t)\beta_P}} \qquad (Eq.\ 3)$$

Constant terms α_D and α_P, and coefficient vectors β_D and β_P, are the unknown parameters that must be estimated. $X_D(t)$ is a vector of mostly time dependent explanatory variables that are assumed to influence directly the conditional probability of defaulting (versus remaining active), and $X_P(t)$ is a vector of mostly time dependent explanatory variables assumed to influence directly the conditional probability of prepaying (versus remaining active).[206] The probability of remaining active ($\pi_A(t)$) is equal to 1 minus the other two probabilities, so that the three probabilities sum to 1.

The probabilities and coefficient vectors have a convenient interpretation when expressed in terms of odds ratios:

$$\ln\left[\frac{\pi_D(t)}{\pi_A(t)}\right] = \alpha_D + X_D(t)\beta_D \qquad (Eq.\ 4)$$

$$\ln\left[\frac{\pi_P(t)}{\pi_A(t)}\right] = \alpha_P + X_P(t)\beta_P \qquad (Eq.\ 5)$$

These expressions imply that the percentage impact of a one-unit change in an element of $X_D(t)$ on the relative probability or odds of defaulting versus remaining active is given by the corresponding element of the coefficient vector, β_D. A similar result holds for prepayment. Note also, that while changes in variables that affect the probability of prepayment affect the absolute level of the probability of default, and vice versa, such changes affect the probability of remaining active in a symmetric manner, so that the "odds" of defaulting versus remaining active are not affected.[207]

[204] The decision to model default and prepayment as quarterly events was consistent with the application of quarterly house price indexes in computing the underlying distributions of borrower equity. The resulting quarterly default and prepayment probabilities were converted to monthly factors for input to the monthly cash flow calculations required for application in the stress test.

[205] Examples of previous applications of the logit model are Campbell and Dietrich (1983), Zorn and Lea (1989), and Cunningham and Capone (1990).

[206] Some elements of $X_D(t)$ and $X_P(t)$ are constant over the life of the loan and are not functions of t.

[207] The multinomial logit model is widely applied in the analysis of consumer choice among discrete alternatives, where this feature has been called the

Continued

b. Estimation of Multinomial Logit Coefficients

The multinomial logit specification given by equations (1)–(3) is a purely mathematical representation of the underlying probabilities. How the unknown parameter coefficients of the logit model are estimated statistically depends on whether the model is applied to individual or aggregate data. Under some circumstances, the two approaches are mathematically equivalent. However, in some situations, the use of aggregate data may entail considerable loss of information.[208]

If only aggregate data were used, the proportions of loans defaulting, prepaying, and remaining active would be used to estimate the unknown coefficients α_D, α_p, β_D, and β_p directly by replacing the probabilities in equations (4) and (5) with the corresponding observed sample proportions and applying ordinary least squares. In this case the explanatory variables $X_D(t)$ and $X_p(t)$ correspond to the characteristics of the groups or classes of loans used in tabulating the observed sample proportions.

When loan-level data are available, it is possible to use equations (1)–(3) as an exact mathematical representation of the probabilities of individual loan events. In this case, estimation of unknown coefficients is achieved by the method of maximum likelihood. This approach chooses the values of α_D, β_D, α_p, and β_p that maximize the joint likelihood or probability of the entire event-history sample having actually occurred. For example, the joint sample likelihood is the product of the probabilities of each of the independent loan event observations:

$$\textit{Sample Likelihood (Joint Probability)} = \prod_{i=1}^{N} P_i \qquad \textit{(Eq. 6)}$$

where for each observation $i = 1,2\ldots, N$, P_i is the estimated probability that the event that is actually observed would have occurred. These probabilities are obtained by substituting the appropriate expression from equations (1)–(3) for P_i in equation (6). The solution is found by varying the values of the elements of α_D, β_D, α_p, and β_p until the joint probability reaches its maximum value. The final values of α_D, β_D, α_p, and β_p are the maximum likelihood estimates. Numerous statistical software packages exist for this purpose.

The approach adopted by OFHEO is based on loan-level data, which has the significant advantage of preserving as much detail as possible on individual loan circumstances. This approach results in a flexible description of loan behavior, which can be used to project mortgage performance under the abnormal scenarios of the proposed regulation.

5. Explanatory Variables for Default and Prepayment

OFHEO estimated three separate sets of multinomial logit probability equations. The primary default and prepayment equations are for single family, 30-year FRMs. These loans comprise about 80 percent of all single family loans in the historical data obtained from the Enterprises. A second set of equations was estimated solely on data for ARMs. All loan types with any potential payment adjustments throughout the life of the loan were included as ARMs for purposes of the statistical estimation. A third set of default and prepayment equations was estimated to project the performance of less-prevalent single family loan types relative to 30-year fixed-rate mortgages. This estimation was performed using data on 30-year FRMs and all other fixed-rate loan types (including balloons). These loan types were grouped as: 20-year FRM, 15-year FRM, balloon, FHA/VA, and second liens. Data on 30-year FRMs are included in the estimation sample because the number of observations on other, less popular fixed-rate mortgage types was insufficient for estimating product-specific default and prepayment equations. However, the resulting default and prepayment equations are only used to project performance of the alternative product types, and not 30-year FRMs.

All three statistical estimations use the same conceptual underpinnings and empirical specifications, and only vary based on the data samples used in estimation. Thus, the basic definitions of the variables are the same across all three sets of equations, although the way some of the interest rate variable values change over time will differ, for example, for FRM loans and ARM loans, because of differences in their contractual terms.

For convenience, we refer to the three separate data sets and statistical estimations as model 1 (30-year FRMs), model 2 (ARMs), and model 3 (all fixed-rate products). In addition to the basic set of explanatory variables included in all three models, model 3 includes product-specific adjustment constants. The adjustment constants act like multipliers to the baseline default (hazard) rates of 30-year FRMs. The impacts of all other explanatory variables are presumed constant across product type, so there are no product-type adjustments to their coefficients. Because ARMs are believed to perform differently than FRMs, due to changing payments over time, they are treated in a separate estimation (model 2) so that variable coefficients can be uniquely identified for ARM versus FRM loans.

The explanatory variables $X_D(t)$ and $X_p(t)$ used to estimate the unknown coefficients of the multinomial logit models are listed in Table 31. All of the variables except mortgage age (*AGE*) were coded as categorical variables. Categorical variables are advantageous for several reasons. For instance, assigning the various explanatory variable outcomes to categories allows one to estimate effects that may be non-linear without having to experiment with many different functional forms. Because each categorical explanatory variable has minimum and maximum categories (determined through observation of the historical data), the

"independence of irrelevant alternatives." In the context of consumer choice theory this independence can result in apparent anomalies when close substitutes to existing choices are introduced. See, for example, McFadden (1976). This issue does not arise in the present context.

[208] For example, if the data are aggregated by taking average values of the explanatory variables within broad product groupings, then particular combinations of explanatory variables that exist for individual loans and which are associated with significant differences in probabilities of default and prepayment, will not be represented in the data. While this may not matter under "normal" circumstances, it could limit the usefulness of the model in projecting rates of default and prepayment within high risk categories under circumstances different than those embodied in the original aggregation scheme, such as those of the stress test.

impact of particular variables on rates of default or prepayment projected from the model is constrained to be within previous historical experience.[209] This helps to avoid unreasonable extrapolations when projecting mortgage performance under stress test conditions. Another advantage of using categorical outcomes for the explanatory variables is that it anticipates the need to apply the models to aggregated loan groups in the stress test.[210] The benefit of starting with loan-level data is that it allowed OFHEO to develop both the explanatory variables and stress test loan groups in a consistent manner, thus minimizing the loss of information due to data aggregation.

The summary of explanatory variables starts with descriptions of the two key options-related predictors of mortgage default and prepayment-respectively, the probability of negative borrower equity and the mortgage premium value. A review of additional interest rate variables and loan characteristics that are used as explanatory variables follows.

a. Probability of Negative Equity

The put option has value to the borrower when the property is worth less than the outstanding balance on the mortgage. In that case, the borrower is in a negative equity position. Thus, the equity position of the borrower is determined by the difference between the market value of the property securing the loan, $P(t)$, and the unpaid mortgage balance, $UPB(t)$:

$$EQ(t) = P(t) - UPB(t) \quad (Eq.\ 7)$$

Ideally, periodic observations on the values of individual properties would be used to update individual house values and borrower equity at the same frequency (monthly) at which the decision to prepay or default can be exercised. However, because individual housing values are not updated continuously it is not possible to compute updated values of $EQ(t)$ for individual borrowers with sufficient accuracy for this measure to be used directly at the loan level.[211]

It remains possible, however, to characterize the equity positions of individual borrowers in terms of ex ante probabilities of negative equity.[212] The probability of negative equity is a function of the scheduled current loan balance and the likelihood of individual house price outcomes that lie below this value. Projected distributions of individual housing values relative to the value at mortgage origination were calculated by applying estimates of house price drift and volatility obtained from independent estimates based on the OFHEO House Price Index (HPI).[213]

The required estimates of house price drift and volatility are direct by-products of the estimation of the OFHEO HPI. The OFHEO HPI is based on a modified version of the weighted-repeat-sales (WRS) methodology (Case and Shiller, 1987, 1989), and is consistent with the assumption that housing values are generated by a log-normal diffusion process. This means that over time individual housing values will appreciate at different rates, distributed randomly around the average rate of appreciation. Over time, the cumulative rates of appreciation for individual homes will become more and more dispersed or diffused, hence the reference to diffusion processes. Mathematically, individual house prices are assumed to obey a non-stationary log-normal diffusion process in which individual house price appreciation since mortgage origination is normally distributed with variance $\sigma^2(A)$ around the expected rate of appreciation from the HPI, $\beta(t)$, computed as:

$$\beta(t) = ln\left(\frac{HPI(t)}{HPI(0)}\right) \quad (Eq.\ 8)$$

Where A is loan age (in quarters), and HPI(0) is the value of the HPI at time of loan origination.[214] For the individual borrower with original house price $P(0)$ at time 0, the probability of negative equity at time t, PNEQ(t) is given by:

---

[209] This constraint applies specifically to the marginal contribution of particular explanatory variable outcomes, not to the overall level of the default and prepayment probabilities projected by the model. For example, if several explanatory variables simultaneously take on values that have not been previously observed in combination, then it is possible that the projected probabilities of default or prepayment would exceed those observed in the historical data. This type of outcome is anticipated by the 1992 Act, which requires regional adverse credit conditions to apply nationally to all loans at the same time.

[210] The loan groups used in the stress test were developed in conjunction with the classification of explanatory variable outcomes in the statistical analysis of mortgage default and prepayment. Aggregation of mortgage assets in the stress test recognizes the need to classify assets within broad product categories for financial accounting. Within the context of the proposed regulation, the use of aggregate loan groupings also facilitates the assignment of new loan products to existing categories with known risk characteristics. Further explanation of the aggregate loan groups used in the stress test is in section III. A., Mortgage Performance of the preamble.

[211] As discussed above, given the measurement difficulties associated with borrower equity at the loan level, some researchers have used various means of simulating the distribution of borrower equity. For example, Foster and Van Order (1984, 1985) used a Monte Carlo simulation of a synthetic mortgage pool in conjunction with a house price diffusion process and actual default and prepayment rates to reconstruct a time-series for the number of borrowers in a negative equity position. Under additional restrictions on the model (i.e., that only borrowers with negative equity default, and only borrowers with positive equity prepay), the time-series for the number of borrowers with negative equity (various levels) was used in regressions for conditional default and prepayment probabilities.

[212] See the discussion of ex ante probabilities of negative equity in footnote 199.

[213] House price drift is defined here as the average rate of house price appreciation as determined by the appropriate market house price index, while volatility is defined as the variance in individual house price appreciation rates around the market average rate of appreciation.

[214] Estimates of expected appreciation or drift in house prices are obtained directly from the estimated values of the HPI for each of the nine U.S. Census divisions. Estimates of diffusion volatility, $\sigma^2(A)$, are computed using the estimated parameters for the error variance of individual log-differences in housing prices that are obtained from the second-stage of the WRS method for each division. See Calhoun (1996) for additional details. Deng, Quigley, and Van Order (1996) applied a similar approach using WRS indexes for 26 metropolitan areas estimated using Freddie Mac data.

$$PNEQ(t)=Pr\{EQ(t)<0\} \quad (Eq.\ 9)$$

$$= \Phi\left\{\frac{ln(UPB(t))-ln\ (P(0)e^{\beta(t)})}{\sigma(A)}\right\} \quad (Eq.\ 10)$$

where $\Phi(x)$ is the standard normal cumulative distribution function evaluated at x. This expression quantifies the relationship between changes in house prices on average, and the likelihood of negative appreciation on individual properties that places some fraction of borrowers in a negative equity position. The imputed share of borrowers with negative equity implied by equation 10 is used as a proxy for the probability of negative equity for an individual borrower.[215] The computed probabilities of negative equity are assigned to one of eight categorical outcomes, as summarized in Table 31.

b. Relative Spread

The theoretical value of the call (prepayment) option on a mortgage is a function of the difference between the present value of the future stream of mortgage payments discounted at the current market rate of interest, $R(t)$, and the present value of the mortgage evaluated at the current note rate, $C(t)$. The actual value of this call option to the borrower is unknown due to uncertainty over the future time path of mortgage payments associated with uncertain future probabilities of prepayment and default. Therefore, it is common to use other variables to capture the impact of the call option value on prepayment rates. Following recent work by Deng, Quigley and Van Order (1996), OFHEO approximated the call option value using the relative spread variable, RS(t):

$$RS(t) = \left\{\frac{C(t)-R(t)}{C(t)}\right\} \quad (Eq.\ 11)$$

Positive values of the call option exist when the mortgage coupon exceeds the current market interest rate (positive spread), and the borrower can benefit financially by refinancing to obtain a lower interest rate. Outcomes for the relative spread variable are classified into seven categorical outcomes, as summarized in Table 31.

c. Prepayment Burnout

Recent studies of mortgage terminations have emphasized the importance of previous interest rate environments for distinguishing among borrowers more or less likely to exercise the prepayment option when the opportunity arises.[216] The tendency for the most responsive borrowers to prepay first, so that the remaining sample of borrowers are those with lower average conditional probabilities of prepayment, contributes to the observed seasoning or "burnout" of mortgage pools. The indicator variable $B(t)$ is included to measure whether the borrower has missed a previous refinance opportunity.[217] $B(t)$ is defined by whether the market rate of interest was 200 basis points or more below the coupon rate of the mortgage during two or more quarters over the past two years. Those who have missed previous refinance opportunities are predicted to have lower conditional probabilities of prepayment and higher conditional probabilities of default. Failing to refinance under favorable interest rate conditions may indicate the existence of other credit-related problems, such as failure to obtain an adequate property appraisal.[218]

d. Yield Curve Slope

Expectations about future interest rates and differences in short-term and long-term borrowing rates associated with the slope of the Treasury yield curve influence the choice between ARM and FRM loans and the timing of refinancings and prepayments. A high value for the slope of the yield curve indicates relatively favorable short-term rates, increasing the likelihood that a borrower refinances to an ARM to take advantage of the lower initial coupons that can be offered by lenders. The variable $YS(t)$ is included to measure the current slope of the yield curve. This variable is computed as the ratio of the ten-year Constant Maturity Treasury yield (CMT) to the one-year CMT, and assigned to four categorical outcomes.

e. Mortgage Age

The existence of other demographic and economic processes that may "trigger" mortgage default or prepayment, and the inability to measure the diffusion of house prices and the distribution of borrower equity precisely, create a need to account directly for age-specific differences in conditional rates of default and prepayment.[219] The direct dependence of the conditional probabilities on mortgage age recognizes the existence of other borrower processes and unobserved heterogeneity that induce duration dependence in the conditional rates of termination and help to explain the typical age patterns of default and prepayment.[220] For this reason,

[215] Although the market level (regional) values of house price drift and volatility are used, the imputed probability of negative equity is still specific to the individual borrower's circumstances, since the loan-specific values of original LTV and loan amount are used in the calculations.

[216] For example, see the discussions of borrower heterogeneity and path dependence in Bartholomew, Berk, and Roll (1988), and the discussion of burnout in Richard and Roll (1989).

[217] The indicator variable equals one if the spread between the note rate on the mortgage and the quarterly average market rate of interest has been 200 basis points or greater during any two of the past eight quarters.

[218] See footnote 198.

[219] Under a pure options model, the typical age patterns of conditional default and prepayment rates might be attributed entirely to the diffusion of housing values and the introduction of unobserved differences (heterogeneity) in the equity positions of individual borrowers, resulting in differences in the rates of default and prepayment among particular subsets of individual borrowers. As these differences emerge following mortgage origination, the observed average conditional default and prepayment rates will initially increase. Eventually, as "high risk" borrowers depart the sample or mortgage pool, the average conditional rates of default and prepayment will decline.

[220] *See* Lancaster (1990) for a discussion of the impact of unobserved heterogeneity on estimates of

mortgage age (*AGE*) is included as an additional explanatory variable in the empirical model. The model utilizes a quadratic function of mortgage age, where age is defined as the number of quarters since origination. The use of a parametric function of age instead of categorical values is based on two considerations. First, the use of categorical age values for individual quarters would result in a large number of additional coefficients to estimate. Combining loans into broader age groupings to reduce the number of parameters can produce large differences in rates of default and prepayment with small increments in age for loans graduating from one age category to the next. Second, when individual age categories are used, they show that a quadratic age function is a reasonable assumption, at least for the first eight to ten years. At higher values of mortgage age, the samples are much smaller (most loans have terminated by these ages), with the result that the estimates for individual age categories are quite erratic due to sampling error. The use of a simple functional form like the quadratic helps to smooth the estimates of the age effects for the higher age groups.

f. Original LTV

The original LTV ratio, *LTV*(0), serves as an indicator of the income and net worth of the borrower at mortgage origination, and directly determines the initial equity position of the borrower. To the extent that income and wealth are negatively correlated with *LTV*(0), high LTV borrowers will have fewer economic resources to finance the transactions costs of prepayment or endure spells of unemployment or other trigger events that might otherwise cause them to exercise the default option in a sub-optimal manner. Finally, high LTV borrowers have already demonstrated a willingness to "leverage" the financing of the home purchase, which may portend a greater sophistication or "ruthlessness" in the exercise of the default option. Thus, one would expect higher rates of default and lower rates of prepayment as *LTV*(0) increases. The six *LTV*(0) categories used in the default/prepayment models are similar to those used by the Enterprises in their annual reports and information statements.

g. Season of the Year

The variable *SEASON*(*t*) was included to account for the current season (quarter) of the calendar year, in recognition of the potential impact of weather, school schedules, and seasonal employment patterns on residential mobility and default and prepayment probabilities.

h. Occupancy Status

OS is an indicator variable included to distinguish mortgages on owner-occupied units from investor loans. Owner occupants should be less likely than investors to exercise the default option given the direct benefits they receive from the consumption of housing services. Owner occupants should be more likely to prepay than investors for non-financial reasons such as residential mobility.

i. Relative Loan Size

The ability to bear the transactions costs of refinancing, or to weather economic stress and avoid default, will be correlated with the income level of the household. Given the lack of information in the historical data on household income at origination, a measure of relative loan size provided a proxy for the relative income level of the household. *LOANSIZE* was defined as the ratio of the original loan amount relative to the average-sized Enterprise loan originated in the same State during the same origination year.[221]

j. Product Type Indicators

Five product type indicators were created to account for the performance of non-standard loans relative to the standard 30-year FRM loans in model 3: 20-Year FRM, 15-Year FRM, balloon, FHA/VA, and seconds. These indicator variables provide the adjustment constants mentioned earlier.

k. ARM Coupon Rate Dynamics

To estimate the current values of both the probability of negative equity, *PNEQ*(*t*), and the relative spread, *RS*(*t*), variables for ARM loans, it was necessary to trace the path of current coupon rates over the active life of individual mortgages. For standard ARM products, the coupon rate resets periodically to a new level that depends on the underlying index, plus a fixed margin, subject to periodic and lifetime interest rate caps that specify the maximum and minimum amounts by which the coupon can change on any one adjustment and over the life of the loan.[222] ARM coupon rates are updated using the following formula:

$$C(t) = \max\{\min[Index(t-S) + Margin, C(t-1) + A(t) \cdot PeriodUpCap, \quad (Eq.\ 12)$$
$$C(0) + A(t) \cdot LifeUpCap], C(t-1) - A(t) \cdot PeriodDownCap(t),$$
$$C(0) - A(t) \cdot LifeDownCap\}$$

Where *Index* (*t*) is the underlying index value at time *t*, *S* is the "lookback" period, and *Margin* is the amount added to *Index* (*t—S*) to obtain the "fully-indexed" coupon rate. The periodic adjustment caps are given by *PeriodUpCap* and *PeriodDownCap*, and are multiplied by an indicator variable *A*(*t*) which equals zero except during scheduled adjustment periods. The maximum lifetime adjustments are determined by and *LifeUpCap* and *LifeDownCap*.[223]

---

duration dependence in econometric models of transition probabilities. Other borrower processes include residential mobility, employment mobility, involuntary unemployment, and demographic events related to household formation and dissolution, mortality, and fertility. Ideally, given suitable household-level data, these other processes would be modeled jointly with mortgage terminations.

[221] Price Waterhouse (1990) reported significant differences in claim rates for FHA mortgages stratified by loan size. Smaller loans were observed to fail at significantly higher rates than other loans.

[222] Detail on specific ARM contracts was obtained in some cases from loan-level information, and in other cases was obtained using plan-level detail for loans in certain ARM product categories. Any loan product with variable interest rates was classified as an ARM, and modeled according to product terms. This includes so-called two-step mortgages and mortgages with interest-rate buydowns. For simplicity, the margin was set at 2 percent for all ARMS.

[223] The majority of Enterprise ARM loans are indexed to the one-year Treasury rate, with smaller but significant numbers indexed to either the five-year or ten-year Treasury rate, the 11-District Cost of Funds Index (COFI), or the London Inter-Bank Offer Rate (LIBOR). A small percentage of ARM loans are indexed to the six-month or three-year Treasury rates. The majority of ARM loans had lifetime adjustment caps of five or six percent, and have no lifetime rate floors. Most have periodic rate adjustment caps of two percent, while some have periodic rate adjustment caps of one percent. The majority of ARM loans have adjustment frequencies of one year, while a significant minority are adjusted every six months.

6. Empirical Results

The three models were estimated by the method of maximum likelihood using the SAS® CATMOD procedure. The CATMOD procedure employs a design matrix that automatically converts all categorical variables to a series of indicator variables prior to estimation. As discussed above, all explanatory variables except mortgage age were converted to indicator variables. This allows one to reduce the data to a smaller number of loan records, each representing unique combinations of the categorical variables, to which a frequency count is assigned and applied as a sampling weight in subsequent statistical analyses. This approach avoids the need to undertake choice-based sampling (e.g., over-sampling of defaulted loans) in order to assure that sufficient numbers of rare events like mortgage default are obtained.[224] However, given the large number of loan level observations available to OFHEO, simple random samples were used to estimate the 30-Year FRM and Multiple Products models. All available data were used to estimate the ARM model.[225]

Table 32 contains the parameter estimates for the three models.[226] The constant and age parameters are listed first, as they provide a baseline function to which the effects of other variables can be added. There is a high level of consistency in the coefficient estimates across all three models, and all three models provide empirical support for the importance of the options-related variables.

The coefficient estimates for the probability of negative equity variable (*PNEQ*) vary on the same order of magnitude for default as the coefficient estimates for the original LTV variable. *PNEQ* is also important for prepayment, in the opposite direction, consistent with the expectation that those most likely to have negative equity will have the greatest difficulty selling their homes or refinancing their mortgages, and therefore be less likely to prepay their existing mortgages. Original LTV is relatively unimportant for prepayment, although those in the lowest LTV category are more likely to prepay.

The value of the call option measured by the relative spread (*RS*) shows quite large effects on prepayment in the hypothesized direction. The higher the coupon rate on the mortgage relative to the current market rate of interest the higher the likelihood of prepayment. Note the general similarities between the *RS* coefficient estimates for models one and two (30-year FRMs and ARMs). Because ARM coupon rates will adjust with changes in market rates, ARM borrowers are less likely than FRM borrowers to end up with large positive or negative *RS* values. However, the estimates in Table 32 imply that ARM and FRM borrowers behave in a similar manner under comparable values of the call option.

The prepayment burnout variable, *B*, is most important for default rates, and indicates that missed opportunities to prepay are associated with higher credit risk. This result reinforces the results discussed above for *PNEQ*, where higher values of *PNEQ* were associated with lower probabilities of prepayment. This result also reflects the lack of precision in measurements of borrower equity at the loan level.

The slope of the yield curve (*YS*) is important for the probability of prepayment for FRM borrowers, especially for steep positive values of the slope. This result is consistent with the tendency of borrowers to refinance to ARM mortgages when short-term rates are relatively low and lenders can offer very favorable initial coupons ("teaser" rates). It is also consistent with the assumption that the expectation of higher interest rates in the future may cause some borrowers to refinance sooner to lock in lower rates. The yield curve slope variable has similar, but smaller, effects for ARM borrowers.

The *SEASON* variable has modest effects in the anticipated directions. For FRM borrowers, prepayment rates are lower than average in the Winter and higher in the Spring. Default rates are lower in the Winter and higher in the Fall. For ARMs, prepayments are also higher in the Fall, but defaults are lower in that season.

Occupancy status (*OS*) has much larger impacts on default probabilities for ARM borrowers than FRM borrowers. For both product types, investors are more likely to default than owner-occupants, and much more so for ARM borrowers than FRM borrowers. It is reasonable to expect that owner-occupants will be less ruthless in the exercise of the default option given the offsetting value they receive from living in the home. The prepayment effects are more similar across ARM and FRM borrowers.

The variable *LOANSIZE* was included as a proxy for borrower income at origination. The results in Table 32 indicate that relative loan size is not particularly important for default probabilities, at least after controlling for the other explanatory variables. *LOANSIZE* is much more important for prepayment, with smaller loans prepaying at lower rates than relatively large loans. This is consistent with the interpretation of *LOANSIZE* as a proxy for borrower income. Lower income borrowers may lack the resources to bear the transactions costs of refinancing, causing them to prepay at lower rates than higher income borrowers with relatively large loans. Lower income borrowers may also be less mobile than higher income borrowers. The results for prepayment are similar across FRM and ARM borrowers.

The results for the two fixed-rate models, models one and three, are generally quite consistent. The individual product type indicators in model 3 provide estimates of the relative rates of default and prepayment of various fixed-rate products in comparison to 30-Year FRMs, and in comparison to each other. Balloon mortgages have the highest rates of default and prepayment relative to 30-Year FRMs. Intermediate FRM products (15-Year and 20-Year) default at lower rates than 30-Year FRMs. This result is consistent with more rapid loan payoff and accumulation of borrower equity for these borrowers. Rates of prepayment on intermediate FRMs are comparable to those on 30-Year FRMs. FHA and VA loans have higher rates of default and lower rates of prepayment than 30-Year FRM loans. Results for the category of second loans is most similar to the FHA/VA loans.

7. Application of the Models in the Stress Test

The three product-based single family models provide the means to project the conditional default and prepayment probabilities required as inputs to the cash flow model of Enterprise financial

[224] It has been demonstrated for static logit models that choice-based sampling results in biased estimates of the coefficients of the logit constant terms, for which relatively simple corrections are available, based on the population distribution of the explanatory variables across groups defined by dependent variable outcomes (Costlett, 1981). It is not clear that the same form of correction applies to the retrospective event-history sample used in this analysis. Selection on the basis of default outcomes implies selection of an array of preceding "non-events" for each quarter the loan was active, so that the distributions of the explanatory variables for specific age categories depends on the timing of default events for individual loans.

[225] A ten-percent random sample was used for the 30-Year FRM model and the Multiple Products model. All data used for estimation were subject to a variety of data quality screens and available data for all the explanatory variables.

[226] Note that a particular feature of the SAS CATMOD procedure is that when it estimates the coefficients corresponding to a variable with N categories, the program estimates only the first N–1 coefficients. The final-category coefficient for each variable is computed as the additive inverse of the first N–1 category coefficients.

performance. The stress test aggregates single family loan-level data into loan groups based on the following characteristics: Enterprise, portfolio (securitized vs. retained), product type, origination year, original LTV ratio class, original coupon class, starting coupon class, and region (Census division). The information contained in characteristics data for each aggregated loan grouping is sufficient, when combined with data on house price growth rates and interest rates, to compute and update all of the explanatory variables needed for computing conditional default and prepayment probabilities during the stress period.

There are three exceptions to this general statement. The variables *SEASON* and *LOANSIZE* were not used to classify loans for the purpose of the stress test. The *SEASON* variable was excluded when applying the logit models to project default and prepayment probabilities over the stress period.[227] The *LOANSIZE* variable was retained, but all loans were categorized as being of average size. These two changes reduced by a factor of nine the number of loan groups that had to be processed when running the stress test. Accounting for seasonal effects and differences in default and prepayment rates by loan size was not considered essential for projecting mortgage performance in the stress test.[228] In addition, the variable *OCCUPANCY*, used to distinguish mortgages on owner-occupied units from investor loans, is replaced by the portfolio average percentages for each occupancy status. Thus, instead of creating separate loan groups for owner-occupied and investor loans, these loans are combined into a single group, and a weighted average of the logit coefficients for owners and investors is used when projecting default and prepayment probabilities. This procedure reduces the number of records that must be processed by a factor of 2, but still allows OFHEO to account for changes over time in the percentage of Enterprise mortgages that are investor loans.

The detail contained in the starting position loan group records is sufficient to treat each loan group as if it performs like a single loan, with the projected probability of default or prepayment from the model corresponding to the share of the loan group balance that will default or prepay in any given period (i.e., by the "law-of-large-numbers"). Group-specific average values of original LTV and mortgage coupon are used in place of exact loan-specific values in computing explanatory variables requiring these as inputs (e.g., *PNEQ* and *RS*). Categorical values such as original LTV and region (Census division) are classified in the same way for both the loan-level data used for estimation and the loan groupings used in the stress test.

Another nuance of stress test implementation is that, for purposes of projecting default and prepayment rates, OFHEO treats all mortgages with variable payments as if they were standard one-year Treasury ARMs, with identical payment caps and interest rate margins. In contrast, in the statistical analysis, specific payment changes for each loan type were reflected in the creation of explanatory variables.

In the development of explanatory variables for both the statistical analysis and stress test implementation, a shortcut is used to amortize ARMs. At each payment adjustment date, the new mortgage payments are computed using updated interest rates but with the original UPB and loan term, rather than current UPB and remaining term. This is seen in the formula used for PMT_q, which is the same for both fixed- and adjustable-rate mortgages. (*See* section 3.5.2.3, Procedures of the Appendix.) This approach provides an approximation for actual payment changes on adjustable rate mortgages. It expedites calculations by reducing the code necessary to update payments and UPB in each quarter. The approximation here should have little effect on default rate results because of the use of categorical, rather than continuous explanatory variables. Differences in loan amortization arising from using this payment-calculation approximation only affect default or prepayment rates when those differences move the probability of negative equity variable from one (value) category to another. Loan amortization in the Cash Flow component of the stress test does not use this shortcut.

In the development of variables for both the statistical analysis and stress test implementation, the incorrect term is used to amortize balloon loans. Mortgage origination term (T_O), rather than mortgage amortization term (T_A), is used to amortize these loans. This is seen in the formula used for PMT_q, which does not distinguish between balloon loans and other loan products. See section 3.5.2.3, Procedures of the Appendix. Amortization of balloon loan products in the Cash Flow component of the stress test uses the mortgage amortization term.

8. Consistency With the Historical Benchmark Experience

Certain adjustments and assumptions to the models were made to assure consistency of the rates of default projected in the stress test with the BLE. Loan-level data from the benchmark was aggregated in the same way current Enterprise loan groups are formed in the stress test, and the 30-year FRM model was applied to these data to project conditional and cumulative default and prepayment rates for the ten years following origination.[229] A single set of house price appreciation rates from the OFHEO HPI, the ten-year sequence of appreciation rates from the West South Central Census division for the period from 1984 Q1 to 1993 Q4, was applied to every benchmark loan group.[230] Actual historical interest rates were used. The projected average ten-year cumulative default rate was compared to that observed for the BLE, and adjustments were made to the constant term α_D of the default function until the projected and observed default rates were equal.[231]

---

[227] The parameter estimates generated by the SAS CATMOD procedure are defined so that they sum to zero across all categories of a given explanatory variable. This implies that dropping them from the model is equivalent to assuming that the logit probabilities for default and prepayment include the average effect across all the possible categories of the excluded variable.

[228] Including the *SEASON* variable in estimation can be justified because it helps to isolate the statistical impact of changes in house prices on borrower equity from purely seasonal fluctuations in default and prepayment rates. Likewise, *LOANSIZE* and original LTV are both likely to be related to borrower income and wealth at mortgage origination. However, because *LOANSIZE* is defined relative to the average sized loan within a state in the year of origination it provides a somewhat different measure of relative income or wealth.

[229] Note that all loans of the BLE are newly originated loans.

[230] The West South Central Census Division does not exactly match the 4-State benchmark region, but its use here to represent benchmark economics is consistent with OFHEO's proposal to aggregate data based on Census divisions, and to apply historical Census division-level house price growth rates to season loans at the beginning of the stress test. What is most important is that the price series used to calibrate the statistical equations is the same series that will be used in the stress test itself. The actual ten-year house-price experience of the West South Central Division and the 4-State benchmark area, 1984–1993, are very similar.

[231] When computing the cumulative default rate projected by the model for comparison with that observed for the benchmark experience, the same calculations were used. The model was used to project the total defaulting UPB for benchmark loans over the ten-year period following origination for each monthly origination cohort. The total defaulting UPB for each Enterprise was obtained by summing up the total defaulting UPB for each origination cohort, which was divided by the total original UPB for that Enterprise to compute the ten-year cumulative default rate. The two Enterprise cumulative default rates were then averaged. As discussed in NPR1, because of missing data on defaulting loans, OFHEO used the original UPBs on default loans in place of UPB at the time of default.

Continued

The adjusted (calibrated) model is then applied in the stress test, along with the sequence of house price appreciation rates used in the calibration procedure.[232] Therefore, if newly originated loans with characteristics similar to those comprising the benchmark sample were subjected to the same economic circumstances as occurred in the benchmark experience, then the statistical model of mortgage performance would project ten-year cumulative default rates equal to those of the benchmark sample. Conversely, to the extent interest rates, property values, and loan characteristics are different from the benchmark sample, and to the extent adjustments are necessary to account for other statutory requirements (e.g., increased general inflation under large increases in the ten-year CMT), the stress test rates differ from the benchmark level.

The adjustment of the model is appropriate for use in the stress test because the statistical equations in the model were estimated using Enterprise data on loans from a broad range of times and places, in addition to those loans included in the benchmark sample. Because, by definition, the BLE reflects the highest rates of loss observed from among these other periods and places, the model would not be likely to replicate benchmark results on benchmark loans exactly without some type of adjustment.

The calibration procedure does not add an adjustment factor to match projected prepayment rates directly to the benchmark prepayment experience. Nevertheless, the stress test model is fully calibrated to the credit loss experience of the benchmark loans because the calibrated default equation, and the uncalibrated prepayment equation that was used to help calibrate the default equation, are used together to determine mortgage performance. Because the time paths of Treasury yields and mortgage rates used in the calibration were those corresponding to the individual benchmark origination cohorts, the conditions leading to prepayments in the calibration exercise are entirely consistent with the benchmark default experience.

This has little effect on the resulting historical loss rates, because the same values for defaulting UPBs were used when computing severity rates. In the calibration of default rates, the UPBs at the time of default projected from the model (which take into account normal amortization) were adjusted back to their origination values for consistency with the benchmark methodology.

[232] In the calibration, all loans of the BLE are assigned an HPI volatility parameter estimate based on the West South Central Census division. In the stress test, loans from each region retain their respective regional volatility values.

Table 31. Explanatory Variables for Default and Prepayment Models

Variable Name	Description	Categorical Ranges
	Options-Related Variables	
RS(t)	Relative spread between the note rate and the current average market rate. Entered as a (7x1)—vector of indicator variables for value categories. See text for explanation.	$RS \leq -0.20$ $-0.20 < RS \leq -0.10$ $-0.10 < RS \leq 0.0$ $0.20 < RS \leq 0.10$ $0.10 < RS \leq 0.20$ $0.20 < RS \leq 0.30$ $RS > 0.30$
PNEQ(t)	Probability of negative equity. Entered as an (8x1)—vector of indicator variables for probability of negative equity categories. See text for explanation.	$0.0 < PNEQ \leq 0.05$ $0.05 < PNEQ \leq 0.10$ $0.10 < PNEQ \leq 0.15$ $0.15 < PNEQ \leq 0.20$ $0.20 < PNEQ \leq 0.25$ $0.25 < PNEQ \leq 0.30$ $0.30 < PNEQ \leq 0.35$ $PNEQ > 0.35$
	Other Interest Rate Variables	
B(t)	Burnout factor. Defined as missed opportunity to refinance. This occurs if coupon on the mortgage was greater than 200 basis points above market rate during any two quarters over the past two years. Entered as an indicator variable for burnout effect.	No Chance to Refi Missed Chance to Refi
YS(t)	Yield curve slope. Entered as a (4x1)—vector of indicator variables for yield curve slope categories. Yield curve slope is defined as ratio of 10-year CMT to 1-year CMT.	$YS < 1.0$ $1.0 \leq YS < 1.2$ $1.2 \leq YS < 1.5$ $YS \geq 1.5$
	Variables for Other Loan Characteristics	
AGE(t)	Mortgage age function. This variable is computed as a quadratic function of the number of quarters since origination. When combined with the constant term, this determines the baseline hazard function.	
LTV(0)	Original LTV. Entered as a (6x1)—vector of indicator variables for original LTV categories	$LTV \leq 60$ $60 < LTV \leq 70$ $70 < LTV \leq 75$ $75 < LTV \leq 80$ $80 < LTV \leq 90$ $90 < LTV \leq 100$

Table 31. Explanatory Variables for Default and Prepayment Models (Continued)

Variable Name	Description	Categorical Ranges
SEASON(t)	Season of the year. Entered as a (4x1)— vector of indicator variables for seasonal categories.	Winter Spring Summer Fall
OS	Occupancy status. Indicator variable for owner-occupancy status.	Investor Owner-Occupant
LOANSIZE	Relative loan size. Entered as a (6x1)— vector of indicator variables for original loan size relative to the state average loan size in the same year.	*LOAN SIZE* ≤ 0.40 0.40 < *LOAN SIZE* ≤ 0.60 0.60 < *LOAN SIZE* ≤ 0.75 0.75 < *LOAN SIZE* ≤ 1.00 1.00 < *LOAN SIZE* ≤ 1.25 *LOAN SIZE* > 1.50
Loan Product-Type Indicators		
BALLOON	Balloon Mortgages	Balloon / Non-Balloon
15-Year FRM	15-Year Fixed-Rate Mortgages	15 YR / Non-15 YR
20-Year FRM	20-Year Fixed-Rate Mortgages	20 YR / Non-20 YR
30-Year FRM	30-Year Fixed-Rate Mortgages	30 YR / Non-30 YR
GOVERNMENT	FHA/VA Mortgages	Government / Non-Government
SECONDS	Second Liens	Second liens/ first liens

Table 32. Comparison of Multinomial Logit Parameter Estimates for Quarterly Conditional Prepayment and Default Probabilities[1]

Explanatory Variables	30-Year FRM		ARM		Other Fixed-Rate Products	
	Prepay	Default	Prepay	Default	Prepay	Default
CONSTANT	−4.514 (0.000)	−6.985 (0.000)	−4.630 (0.000)	−5.218 (0.000)	−4.511 (0.000)	−7.045 (0.000)
AGE	0.072 (0.000)	0.118 (0.000)	0.061 (0.000)	0.057 (0.000)	0.078 (0.000)	0.139 (0.000)
*AGE * AGE*	−0.002 (0.000)	−0.002 (0.000)	−0.001 (0.000)	−0.002 (0.000)	−0.002 (0.000)	−0.002 (0.000)
LTV(0) *LTV* ≤ 60	0.169 (0.000)	-1.465 (0.000)	0.097 (0.000)	−1.424 (0.000)	0.117 (0.000)	−1.491 (0.000)
60 < *LTV* ≤ 70	0.069 (0.000)	−0.219 (0.000)	−0.008* (0.134)	−0.348 (0.000)	0.041 (0.000)	−0.219 (0.000)
70 < *LTV* ≤ 75	−0.024 (0.000)	0.426 (0.000)	−0.080 (0.000)	0.121 (0.000)	−0.027 (0.000)	0.374 (0.000)
75 < *LTV* ≤ 80	0.013 (0.000)	0.272 (0.000)	−0.071 (0.000)	0.191 (0.000)	−0.004* (0.106)	0.220 (0.000)
80 < *LTV* ≤ 90	−0.070 (0.000)	0.399 (0.000)	0.081 (0.000)	0.322 (0.000)	−0.049 (0.000)	0.412 (0.000)
90 < *LTV* ≤ 100	−0.157	0.587	−0.019	1.138	−0.078	0.704
PNEQ(t) *PNEQ* ≤ 0.05	0.234 (0.000)	−1.269 (0.000)	0.603 (0.000)	−1.206 (0.000)	0.328 (0.000)	−1.198 (0.000)
0.05 < *PNEQ* ≤ 0.10	0.199 (0.000)	−0.559 (0.000)	0.239 (0.000)	−0.413 (0.000)	0.174 (0.000)	−0.344 (0.000)
0.10 < *PNEQ* ≤ 0.15	0.196 (0.000)	−0.263 (0.000)	0.060 (0.000)	−0.292 (0.000)	0.132 (0.000)	−0.062* (0.055)
0.15 < *PNEQ* ≤ 0.20	0.169 (0.000)	−0.135 (0.000)	0.027 (0.037)	−0.043* (0.109)	0.074 (0.000)	−0.080 (0.040)
0.20 < *PNEQ* ≤ 0.25	0.015 (0.002)	0.254 (0.000)	−0.005* (0.736)	0.177 (0.000)	−0.042 (0.001)	0.164 (0.000)
0.25 < *PNEQ* ≤ 0.30	−0.207 (0.000)	0.563 (0.000)	−0.155 (0.000)	0.398 (0.000)	−0.125 (0.000)	0.404 (0.000)
0.30 < *PNEQ* ≤ 0.35	−0.249 (0.000)	0.647 (0.000)	−0.242 (0.000)	0.607 (0.000)	−0.169 (0.000)	0.421 (0.000)

Table 32. Comparison of Multinomial Logit Parameter Estimates for Quarterly Conditional Prepayment and Default Probabilities[1] (Continued)

Explanatory Variables	30-Year FRM		ARM		Other Fixed-Rate Products	
	Prepay	Default	Prepay	Default	Prepay	Default
0.35 > *PNEQ*	−0.357	0.762	−0.527	0.772	−0.372	0.695
RS(t) *RS* ≤ −0.20	−1.160 (0.000)		−1.473 (0.000)		−1.027 (0.000)	
−0.20 < *RS* ≤ −0.10	−0.822 (0.000)		−0.524 (0.000)		−0.810 (0.000)	
−0.10 < *RS* ≤ 0.0	−0.680 (0.000)		−0.328 (0.000)		−0.710 (0.000)	
0.0 < *RS* ≤ 0.10	−0.432 (0.000)		−0.162 (0.000)		−0.343 (0.000)	
0.10 < *RS* ≤ 0.20	0.633 (0.000)		0.414 (0.000)		0.628 (0.000)	
0.20 < *RS* ≤ 0.30	1.182 (0.000)		1.066 (0.000)		1.098 (0.000)	
0.30 > *RS*	1.279		1.007		1.164	
BURNOUT (*B(t)*) (No Chance to Refi)	0.106 (0.000)	−0.619 (0.000)	0.027 (0.000)	−0.468 (0.000)	0.087 (0.000)	−0.566 (0.000)
(Missed Chance to Refi)	−0.106	0.619	−0.027	0.468	−0.087	0.566
YS(t) *YS* < 1.0	−0.215 (0.000)		0.042 (0.000)		−0.214 (0.000)	
1.0 ≤ *YS* < 1.2	−0.228 (0.000)		−0.156 (0.000)		−0.211 (0.000)	
1.2 ≤ *YS* < 1.5	0.022 (0.000)		−0.101 (0.000)		−0.004* (0.197)	
1.5 ≤ *YS*	0.421		0.215		0.429	
SEASON(t) Winter	−0.154 (0.000)	−0.145 (0.000)	−0.151 (0.000)	−0.031 (0.020)	−0.158 (0.000)	−0.126 (0.000)
Spring	0.161 (0.000)	0.025 (0.000)	0.065 0.044 (0.000)	0.037 (0.004)	0.148 (0.000)	−0.010* (0.575)
Summer	−0.010 (0.000)	−0.052 (0.000)	0.009 (0.012)	0.010* (0.440)	−0.002* (0.421)	−0.050 (0.004)

Table 32. Comparison of Multinomial Logit Parameter Estimates for Quarterly Conditional Prepayment and Default Probabilities[1] (Continued)

Explanatory Variables	30-Year FRM		ARM		Other Fixed-Rate Products	
	Prepay	Default	Prepay	Default	Prepay	Default
Fall	0.003	0.172	0.077	−0.016	0.012	0.186
OCCUPANCY (OS) Investor	−0.140 (0.000)	0.244 (0.000)	−0.228 (0.000)	0.891 (0.000)	−0.142 (0.000)	0.269 (0.000)
Owner-Occupant	0.140	−0.244	0.228	−0.891	0.142	−0.269
LOANSIZE *LOANSIZE* ≤ 0.40	−0.531 (0.000)	−0.029* (0.084)	−0.399 (0.000)	−0.215 (0.008)	−0.506 (0.000)	−0.073* (0.082)
0.40 < *LOANSIZE* ≤ 0.60	−0.337 (0.000)	−0.043 (0.000)	−0.288 (0.000)	0.111 (0.000)	−0.321 (0.000)	−0.008* (0.779)
0.60 < *LOANSIZE* ≤ 0.75	−0.130 (0.000)	−0.039 (0.000)	−0.126 (0.000)	0.119 (0.000)	−0.131 (0.000)	−0.045* (0.092)
0.75 < *LOANSIZE* ≤ 1.00	0.051 (0.000)	−0.040 (0.000)	0.014 (0.005)	0.055 (0.004)	0.038 (0.000)	−0.040* (0.054)
1.00 < *LOANSIZE* ≤ 1.25	0.200 (0.000)	0.010* (0.174)	0.169 (0.000)	0.012* (0.528)	0.188 (0.000)	−0.009* (0.684)
1.25 < *LOANSIZE* ≤ 1.50	0.313 (0.000)	0.059 (0.000)	0.276 (0.000)	−0.036* (0.108)	0.300 (0.000)	0.089 (0.000)
1.50 < *LOANSIZE*	0.434	0.082	0.354	−0.046	0.432	0.086
PRODUCT TYPE Balloon					0.522 (0.000)	1.175 (0.000)
15-Year FRM					−0.046 (0.000)	−1.328 (0.000)
20-Year FRM					−0.059 (0.000)	−0.407 (0.000)
30-Year FRM					−0.042 (0.000)	−0.264 (0.000)
FHA/VA					−0.226 (0.000)	0.429 (0.000)
Second Liens					−0.149	0.395

[1] Note: All models were estimated by the method of maximum likelihood using the SAS CATMOD procedure. Empirical p-values are shown in parentheses. P-values are not shown for the imputed coeffieints (last category for each variable). An asterisk indicates that the coefficient is not statistically significant from zero at the five percent level for an asymptotic-normal hypothesis test. The coefficients burnout, occupancy status, product types, and the constants were modified for use in the regulation to reflect differently structure dummy variables.

9. References

Bartholomew, L., J. Berk, and R. Roll (1988). "Adjustable Rate Mortgages: Prepayment Behavior," *Housing Finance Review*, 7:31–46.

Brennan, M. J., and E. S. Schwartz (1985). "Determinants Of GNMA Mortgage Prices," *AREUEA Journal*, 13:209–228.

Buser, S. A., and P. H. Hendershott (1984). "Pricing Default Free

Mortgages," *Housing Finance Review*, 3:405–429.
Calhoun, C.A. (1996). "OFHEO House Price Indexes: Technical Description," Washington, D.C., Office of Federal Housing Enterprise Oversight, April 1996.
Campbell, T.S. and J.K. Dietrich (1983). "The Determinants of Default on Insured Conventional Residential Mortgage Loans," *Journal of Finance*, 38:1569–1581.
Case, K.E. and Shiller, R.J. (1987). "Prices of Single Family Real Estate Prices," *New England Economic Review*. 45–56.
Case, K.E. and Shiller, R.J. (1989). "The Efficiency of the Market for Single-Family Homes," *The American Economic Review*, 79, 125–137.
Costlett, S. (1981). "Efficient Estimation of Discrete-Choice Models," pp. 51–111 in C.F. Manski and D. McFadden (eds.), *Structural Analysis of Discrete Data with Econometric Applications*, Cambridge, Massachusetts: MIT Press, 1981.
Cunningham, D., and C. Capone (1990). "The Relative Termination Experience Of Adjustable To Fixed-Rate Mortgages," *The Journal of Finance*, 45(5):1687–1703.
Deng, Y. (1997). "Mortgage Termination: An Empirical Hazard Model With Stochastic Term Structure," *The Journal of Real Estate Finance and Economics*, 14(3), forthcoming.
Deng, Y., J.M. Quigley and R. Van Order (1996). "Mortgage Default And Low Downpayment Loans: The Costs Of Public Subsidy," *Journal of Regional Science and Urban Economics*, 26(3–4):263–285.
Dunn, K.B. And J.J. McConnell (1981). "Valuation Of Mortgage-Backed Securities," *The Journal of Finance*, 36:599–617.
Foster, C., and R. Van Order (1984). "An Option-Based Model of Mortgage Default," *Housing Finance Review*, 3(4):351–372.
Foster, C. and R. Van Order (1985). "FHA Terminations: A Prelude to Rational Mortgage Pricing," *AREUEA Journal*, 13(3):273–291.
Hendershott, P. H. And R. Van Order (1987). "Pricing Mortgages: An Interpretation Of The Models And Results," *Journal of Financial Services Research*, 1:77–111.
Kau, J.B., D.C. Keenan, W. J. Muller, and J. F. Epperson (1985). "Rational Pricing Of Adjustable Rate Mortgages," *AREUEA Journal*, 13(2):117–128.
Kau, J.B., D.C. Keenan, W. J. Muller, and J. F. Epperson (1990). "The Valuation And Analysis Of Adjustable Rate Mortgages," *Management Science*, 36(12):1417–1431.
Lancaster, T., *The Econometric Analysis of Transition Data*, New York: Cambridge University Press, 1990.
Manski, C.F. and D. McFadden (1981), "Alternative Estimators and Sample Designs for Discrete Choice Analysis," pp. 2–50 in C.F. Manski and D. McFadden (eds.), *Structural Analysis of Discrete Data with Econometric Applications*, MIT Press, 1981.
McFadden, D. (1976), "Quantal Choice Analysis: A Survey," *Annals of Economic and Social Measurement*, 5:363–390, 1976.
Price Waterhouse. *An Actuarial Review of the Federal Housing Administration's Mutual Mortgage Insurance Fund*, Washington, DC: Price Waterhouse, 1990.
Richard, S.F. and R. Roll (1989). "Prepayments on Fixed Rate Mortgage Backed Securities," *Journal of Portfolio Management*, 15(3):73–82.
Schwartz, E.S. And W.N. Torous (1989). "Prepayment And The Valuation Of Mortgage-Backed Securities," *The Journal of Finance*, 44(2):375–392.
Vandell, K.D. "Handing Over the Keys: A Perspective on Mortgage Default Research," *AREUEA Journal*, 21(3):211–246.
Zorn, P., and M. Lea (1986). "Adjustable Rate Mortgage, Fluctuations In The Economic Environment And Lender Portfolio Change," *AREUEA Journal*, 14:432–447.

C. Single Family Loss Severity

1. Introduction

This supplementary material provides information on the estimation and application of statistical models for the single family loss severity component of the proposed risk-based capital stress test and regulation. With one exception, all cost and revenue elements of loss severity are calculated as averages of historical Enterprise experience with foreclosed mortgages. The one exception is that a statistical regression model was developed to project the sale proceeds on foreclosed (real estate owned, or REO) properties. This regression model uses the same property valuation process that was used to create a probability of negative equity variable in the default/prepayment analysis. However, in projecting REO sales proceeds, the process is used to create a variable that measures the average equity of performing loans that have the same characteristics (other than equity) as defaulting loans. The regression then describes the relationship between average equity of performing loans and average (negative) equity of defaulting loans. One minus the projected negative equity on defaulting loans gives the projected REO sale proceeds. This regression analysis allows stress test loss severity rates to reflect economic conditions and provides an opportunity to reasonably relate loss severities on current Enterprise portfolios to the benchmark experience.

With the exception of government insured loans, OFHEO's loss severity analysis does not make explicit distinctions by loan product type. Differences by loan products are captured in the basic loan terms—coupon rate, LTV, and amortization term-that factor into loss severity equations.

The Enterprises rely upon various counterparties to provide credit enhancements that offset gross severity rates. An explanation of how credit enhancements are modeled in the stress test can be found in the appendix to the regulation.

The remainder of this supplementary material is organized as follows: section 2 provides the conceptual framework for single family loss severity analysis; section 3 describes the data used in the analysis; section 4 discusses the statistical analysis; section 5 examines adjustments made to the severity equations to reasonably relate the results to the historical benchmark experience identified in the first NPR; and section 6 explains how the results of the statistical analysis are applied in the stress test.

2. Conceptual Framework

In determining the approach to use in modeling loss severity rates, OFHEO reviewed four research studies. None of these attempted to analyze the various components of loss severity, but rather used simple regressions of some measure of a gross severity rate on original loan-to-value and loan age. These studies provide little guidance, as they do not provide frequency distributions of observed severity rates, nor do they provide averages y loan types.[233]

OFHEO chose to analyze defaulted loan severity rates in three parts: loss of loan principal, transaction costs, and

[233] These studies are: Clauretie (1990), Lekkas, Quigley, and Van Order (1993), Crawford and Rosenblatt (1995), and Berkovec, *et al.* (1997). The Berkovec, *et al.* study is not focused on loss severities, but rather analyzes them as part of a broader study of potential lending discrimination. These four studies are reviewed by Capone and Deng (1998), who themselves are interested in variations in loss severity rates across defaulted loans that can be explained by the tenets of option pricing theory. *See also* Kau and Keenan (1997) for the one example of severity analysis in a theoretical mortgage pricing model.

funding cost. This decomposition was used for three reasons. First, the loss of unpaid principal loan balance (UPB) is a function of the loss of property value before and during the default period, which can be statistically modeled as a function of economic conditions. The second reason for a decomposition analysis is to accommodate the timing of various cash flows during the period between initial default (month of first missed payment) and final property disposition. In the stress test, all default losses are accounted for in the month of default. The loss severity rate accounts for the timing of income and expenses after the default month. The timing of post-default cash flows is captured using present value discounting techniques. This method also captures funding costs of the nonearning assets-first the mortgage, and then the REO. Finally, the stress test calibrates the severity component related to loss of principal balance to the economic conditions of the BLE, as will be discussed in section 5. The stress test also uses BLE data for the elapsed time between default and foreclosure completion, and between foreclosure completion and property disposition.

Loss severity is most frequently expressed as a rate rather than a dollar amount. The most accurate representation of the magnitude of losses is to express loss severity as a percentage of the UPB at the time of default. Therefore, OFHEO has chosen to calculate all costs and revenues associated with loss severity as a percentage of the UPB. This will result in the computation of loss severity rates rather than dollar amounts, but they become dollar amounts when the stress test multiplies both default and loss severity rates against loan balances.

3. Data

Loan level data on Enterprise single family REO properties were used to analyze the components of single family loss severity rates. The data contain all defaulted mortgages on single family (1–4 unit) properties that were both originated and had a last-paid-installment date between January 1980 and December 1995. After removing incomplete records, over 116,500 valid records remained in the analysis database. These records consist of loan terms, event dates (default, foreclosure, disposition), and various expense and revenue fields.

A second analysis database was created consisting of only those loans in the historical REO analysis database that met benchmark criteria. Those criteria singled out conventional, 30-year fixed-rate loans on single family properties (single unit, owner-occupied, detached properties) that originated in 1983 and 1984 in the States of Arkansas, Louisiana, Mississippi, and Oklahoma, and defaulted within ten years of origination. This benchmark database (789 loans) was used to create an adjustment factor that provides consistency between the loss severity rates projected in the stress test and the benchmark loss rates. This process is discussed in section 5, Consistency with the Benchmark Loss Experience, below.

Other data used in the analysis of loss severity rates includes historical Census division level HPI indices and their associated volatility parameters, which come from the *OFHEO HPI Report*, 1996:3.

4. Statistical Analysis

The primary statistical analysis performed for single family loss severity rates measured the impact of market conditions on REO sale proceeds. This is the one dynamic element of loss severity in stress test application. It relies upon original LTV, loan amortization, and Census division level house price growth. OFHEO performed a statistical regression analysis to model negative equity for defaulted loans as a function of the average equity of similar, but performing, loans. All other statistical analyses involved calculating average historical experience by loss severity element. The two elements with values computed as historical averages are foreclosure expenses and a combination of REO expenses, revenues (other than disposition proceeds), and property selling expenses. In addition, average times to foreclosure and time in REO were computed for use in calculating the net present value of revenues and expenses in the month of default.

When averages were computed for loss elements, a two-step procedure was used. First, the average experience of each firm was calculated using UPB as a weighting factor. This weighted average provides a good measure of portfolio-wide performance, although the analysis is based on individual loans. The second step was to give equal weight to the experience of each firm by taking a simple average of the experience of the two Enterprises. This procedure is also consistent with the procedure used to find the benchmark loss severity rate reported in NPR1.[234]

The averages of the foreclosure and the REO expense/revenue elements are based on the entire national, historical sample of Enterprise experience. Benchmark experience was not used by itself because it was evident from an analysis of the data that there were significant numbers of records with missing expense components. The magnitudes of these expense items should not vary between the benchmark region and other areas of the country for two reasons. First, the benchmark region has a variety of foreclosure laws, by State, so that the average foreclosure expense rate for the benchmark region is similar to averages from other regions of the country, and to the average for the nation as a whole. Second, OFHEO computed these loss components as percentages of the outstanding loan balance, rather than as actual dollar amounts. Thus, the fact that the benchmark region may have had lower property values than the national average, and therefore lower dollar losses per loan, will not be material. Average loss rate components from other regions of the country should be comparable to what would be found in the benchmark loan data, if those records were complete.

OFHEO does, however, base time frames on benchmark experience. Because the benchmark region does have a variety of foreclosure laws, these time frames are actually very close to those of the entire national experience of the Enterprises.

a. Predicting REO Sale Proceeds

The REO sale proceeds, as a percentage of the defaulting UPB, measures the impact of erosion of property value over time, both prior to and after default. To begin the analysis of REO sale proceeds, OFHEO computed negative property equity, the difference between the defaulting UPB and the gross property sale proceeds, as a percentage of the UPB.[235] This amount was regressed against average equity for similar, but non-defaulting loans. The resulting regression coefficient provides the relationship between average equity of performing loans and average (negative) equity of defaulting loans. The nuance here is that average equity of performing loans is first transformed into a standardized normal distance, or what is commonly called a z-score, before being used in the regression. This is a widely used statistical technique for

[234] See 61 FR 29592, 29597, June 11, 1996. Procedures here differ from those of the first NPR by calculating loss severity as a percentage of the outstanding loan balance at time of default, rather than a percentage of the original loan balance.

[235] The one expense that OFHEO does not from sale proceeds here is property repairs undertaken by the Enterprises during the REO period. Because these expenses reflect part of the loss of property value that occurred prior to foreclosure completion, it is appropriate that they be included in the estimation of the loss of UPB due to property value deterioration.

creating a standard unit of measure for comparisons across many different variables and/or value levels.

To measure average (performing loan) equity, the property value underlying each defaulting mortgage was adjusted using the change in the (Census division) OFHEO HPI from origination to the last-paid-installment date, and using loan amortization schedules.[236] This adjustment provides average expected equity for each loan, if it were performing. But these loans are not performing, and rather than having average house price growth, they will generally have lower-than-average house price growth. In fact, defaulting loans come from the lower tail of the equity distribution, so the statistical analysis must capture just how far into the tail defaulting loan properties will be, on average. OFHEO analyzed several measures of the house price distribution to find which gave the best prediction of the difference between average performing loan equity and average non-performing loan equity. The best predictor was the z-score, identifying the distance between the expected (performing loan) house price and the (actual defaulting) loan balance. The z-score transforms the actual difference between (expected) house price and (actual) loan balance into the number of standard deviations there are between the two values, where the standard deviation is of house prices in the Census division. The z-score tells how far below the average property value growth in the Census division must the growth of any individual property value be, before all borrower equity is eliminated. The difference of actual growth of defaulting loans from average growth for performing loans will be larger than this, on average, because the z-score distance gives the minimal difference needed to eliminate borrower equity. The z-score equation is:

$$z = \frac{ln(HPI_{d,q,t}) - ln(B)}{\sigma_{d,t}} \quad (Eq.\ 13)$$

where:

z = standardized distance of the loan balance from the average house price at the time of default

$HPI_{d,q,t}$ = House Price Index value for properties in Census division d, whose loans originated in quarter q and defaulted at age t (in quarters). This is created by dividing the HPI value for the calendar quarter of the last-paid-installment date by the HPI value in the calendar quarter of loan origination.

B = the ratio of outstanding loan balance at default to the original house price. This captures the equity generated from both the original downpayment and loan amortization over time.

$\sigma_{d,t}$ = standard deviation of HPI growth rates for properties in Census division d, after t quarters. This is the square root of $(\alpha t + \beta t^2)$, where α and β are the two volatility parameters for each HPI series (published in the *OFHEO HPI Report*).

In their continuous rate forms, the cumulative growth rate factors are found by taking the logarithm of the HPI, as is done here. The log of *HPI* gives average price appreciation, and the difference between that and the log of the loan balance, *B*, gives the expected loan equity due to price appreciation, downpayment, and amortization.[237]

These standardized distances, or z-scores, are the key values used to compute the expected negative property equity (as a percent of the outstanding loan balance) when a foreclosed property is sold. Larger z-scores reflect some combination of large downpayments, loan amortization, and high levels of (average) house price growth since loan origination. In these circumstances, loans that do default should have relatively good rates of property sale proceeds as a percent of the mortgage UPB (small rates of negative equity). In other environments, where z-scores are small, there are low rates of appreciation in the market, and/or low downpayments and a lack of significant amortization. The small z-score indicates that there is a wide range of property values in the market area that are below the loan balance. Therefore, REO sale proceeds will be low and the negative property equity will be high.

The statistical equation used to predict negative property equity (L) was estimated using ordinary least squares (OLS) regression of actual rates of UPB loss on the z-scores computed for each loan. The regression dataset was limited to historical REO observations where $(-0.50 \leq z_i \leq 4.0)$, because sample sizes outside this range were very thin.[238] Log-transformed values of negative property equity ($\ln(L) + 1$)) were used in the regression to account for a change in the relationship between negative equity and z-scores as those values change. The estimated regression equation is:

[236] The last-paid-installment (LPI) month is the month directly prior to the month of default, when the first payment is missed. Loan amortization ends at LPI, and because the HPI index is updated quarterly rather than monthly, the choice of LPI month or default month for loan seasoning is immaterial.

[237] Taking the logarithm of B transforms owner-invested equity (downpayment plus amortization) into an implied HPI growth rate factor. It is the cumulative (negative) growth of HPI necessary to eliminate all positive equity in the property. By transforming B into its continuous rate counterpart in this fashion, the z-score variable can measure the amount by which the growth of property value on loan properties must be less than the average growth rate of performing loans before default is a real possibility (the point of zero equity). The regression then measures the relationship between actual below-normal growth on REO properties and the minimumly required below-normal house price growth needed to trigger default.

[238] In stress test application, outliers are given predicted equity loss values measured at the boundary points of the z-score range employed in the regression.

$$ln(L+1) = 0.241325 - 0.076959 \cdot z \quad (Eq.\ 14)$$

where:

t-statistic for z coefficient = -102

R^2 = 0.09

One-half the regression variance (0.029104) is added to the regression equation to provide the median-to-mean adjustment factor for log-normal models.[230] The result is:

$$\ln(L+1) = 0.27043 - 0.076959 \cdot z \quad (Eq.\ 15)$$

so that:

$$L = \exp(0.27043 - 0.076959 \cdot z) - 1 \quad (Eq.\ 16)$$

The low R-squared value for the regression indicates a wide variance of actual loss rates around the average, predicted rates. OFHEO has analyzed this variance and believes that using the simple regression equation that captures average loss rates at each z-score value is more appropriate for the stress test than is a more complex model that would capture deviations around that average loss rate. Average rates provide an appropriate simplification because loss severity rates will be applied to groups of loans.

The boundary values of L are computed at the boundary points of z used in the regression sample, 4.0 and -0.5. When $z = 4.0$, $L = -0.04$. This suggests that, on average, REO sales prices are 4 percent higher than the mortgage UPB in areas with significant house price appreciation and/or for loans that have substantial amortization. That is, the average default (and there will be relatively few) will actually have a small amount of positive equity, though generally not enough to pay the costs of selling the property. At the other extreme, where $z = -0.5$, the predicted value of $L = 0.36$. This is a situation where average property values on performing loans are 36 percent below their associated mortgage balances. This extreme was reached in several areas of the country at various times during the study period. Such a loss of loan principal can cause the total loss severity to exceed 60 percent of UPB.

b. Foreclosure Expenses

Foreclosure expenses vary principally by property State and by the rate of bankruptcy filings among defaulted borrowers.[240] The average expense rate in the historical observation period is five percent of UPB. Unlike other loss components, this component is based solely on Fannie Mae experience because Freddie Mac did not break out foreclosure expenses from REO expenses in its data systems.

c. REO Holding and Disposition Expenses

Property (REO) holding costs include such items as property maintenance, utilities, property taxes, and hazard insurance. OFHEO calculated the average total REO holding expenses, plus selling costs (principally, realtor fees), less miscellaneous revenues to produce a final REO expense loss severity factor of 13.7 percent.[241]

d. Time Frames

There are two time frames of interest: time from default to foreclosure completion, and time from foreclosure completion to property disposition. A mean expected value for each of the time periods of interest was calculated from BLE data. The mean benchmark foreclosure time (period from default to foreclosure) was 13 months. The mean benchmark REO/property sale time was seven months. These time frames are used in the stress test to discount the various default-related cash flows to the month of default.

5. Consistency With the Benchmark Loss Experience

The equation for negative equity of defaulted loans (equation 14) was estimated on all historical REO experience of the Enterprises. Using this broad range of data assured that the equation would be appropriate for loans entering the stress test with a wide range of loan amortization and cumulative HPI experience. The equation used in the stress test includes an adjustment that calibrates the results to the BLE.

The procedure for calibrating equation 16 to the benchmark experience parallels the procedure used by OFHEO to calibrate the single family default equations to the BLE. A database of defaulted loans meeting benchmark criteria was input into the negative equity equation to compute the projected negative equity, by loan. The z-score variable values were computed by assuming that all loans originated in the first quarter of 1984, using the West South Central HPI series, for purposes of assigning house price appreciation rates. These predicted rates of negative equity were then averaged by Enterprise, using UPB as a weighting factor. Finally, a simple average of these Enterprise averages was computed to arrive at a mean expected value for the benchmark REO database.

[230] The logarithmic equation used in the regression implies a lognormal distribution of potential negative equity values around predicted values. The point estimates from the regression, therefore, produce median rather than mean value estimates of loss of principal balance. The adjustment to arrive at the mean is the additive constant (0.029104), one-half the variance of the regression residuals.

[240] To process foreclosures when defaulting borrowers file for Bankruptcy Court protection requires further legal expenses to gain release from the bankruptcy "stay" on debt collection actions.

[241] As noted earlier, the Freddie Mac foreclosure expense rate is imputed from the Fannie Mae experience (five percent). Therefore, the REO holding costs used to create the average rate shown here use total expense for Freddie Mac less imputed foreclosure expense for Fannie Mae.

This final mean rate of negative equity on defaulted loans was then compared with the actual, historical mean rate across the two firms' benchmark experience. The average projected rate of negative equity using equation 16 and this averaging method was 21.30 percent. The actual historical experience average was 31.64 percent. The difference, 10.34 percent, reflects the nature of the benchmark experience: that defaulting benchmark loans tended to have larger losses, on average, than did loans from other regions of the country that experienced the same housing market conditions. The adjusted negative equity equation is:

$$L = (\exp(0.27043 - 0.076959 \cdot z) - 1) + 0.1034 \qquad \textit{(Eq. 17)}$$

Proceeds from REO sale are then computed as one minus the projected negative property equity for the defaulting loans in each loan group.

6. Application to the Stress Test

Stress test application of loss severities begins with the results of the statistical analysis of severity components discussed here, but then adds components for loss of loan principal, servicer claim payments, mortgage insurance, and seller/servicer recourse. OFHEO's approach is to account for all default related cash flows at one of three points in time: 120 days delinquency, foreclosure, and property disposition. The stress test then calculates the effective loss severity rate as a net present value of all cash flows, in the month of loan default. The month of default is one month after the last paid installment (LPI) date, the month of the first missed payment.

There is a difference in the treatment of sold and retained loans when computing stress test loss severity rates. For retained loans, defaulting UPB is not a cash outlay and, therefore, is not discounted. For sold loans, however, the defaulting UPB represents the current expense of repurchasing a defaulted loan from a security pool. It is, therefore, a cash-flow element that should be discounted.[242] This expense is normally incurred in the fourth month of default. Sold loans in default also involve four months of interest passthroughs to the investors while the loans remain in the security pools. The interest passthroughs are not immediate expenses of the Enterprises because they are initially matched by passthroughs made by the seller/servicers to the Enterprises. However, all post-default interest payments received by the Enterprises are reimbursed to servicers in the post-foreclosure claim filing. Therefore, all interest passthroughs between seller/servicers and Enterprises are ignored. Only the passthrough by the Enterprise to security holders is counted as an expense in the stress test, and it is included with the seller/servicer claim payment at time of foreclosure.

The stress test provides that, at the time of foreclosure, the Enterprises make servicers whole for expenses incurred on the loan and property, including foreclosure costs, and receive proceeds from any available mortgage insurance. When mortgage insurance is present, mortgage insurance payments will generally be larger than the servicer claim payment and provide net inflows of funds to the Enterprises at foreclosure.

Also, any available seller/servicer recourse is applied to reduce the final loss severity rate. There are some smaller sources of credit enhancements that further reduce Enterprise losses, and these are added once dollar losses are computed in the cash flow component of the stress test.[243]

7. References

Berkovec, James A., Glenn B. Canner, Stuart A. Gabriel, and Timothy Hannan. 1998. Discrimination, Competition, and Loan Performance in FHA Mortgage Lending, *Review of Economics and Statistics*, forthcoming.

Capone, Charles A. and Yongheng Deng. 1998. "Loss Severities and Optimal Put Exercise: An Examination of Negative Equity in Mortgage Foreclosure," unpublished manuscript. OFHEO: Washington, DC, January 1988.

Clauretie, Terrence. 1990. "A Note on Mortgage Risk: Default vs. Loss Rates," *AREUEA Journal* 18 (2), 202–206.

Crawford, Gordon and Rosenblatt, Eric. 1995. "Efficient Mortgage Default Option Exercise: Evidence from Loss Severity," *Journal of Real Estate Research* 19 (5), 543–555.

Kau, James B. and Donald C. Keenan. 1993. "Transaction Costs, Suboptimal Termination, and Default Probabilities for Mortgages," *AREUEA Journal* 21(3), 247–63.

Kau, James B. and Donald C. Keenan. 1997. *Patterns of Rational Default*, unpublished working paper, University of Georgia.

Lekkas, Vassilis, John M. Quigley and Robert Van Order. 1993. "Loan Loss Severity and Optimal Mortgage Default," *AREUEA Journal* 21 (4, Winter), 353–372.

D. Multifamily Default/Prepayment

1. Introduction and Conceptual Framework

This section describes how OFHEO developed its model of multifamily default and prepayment rates for use in the risk-based capital stress test. The same theory that underlies the single family default/prepayment models, financial options theory, also underlies OFHEO's modeling of mortgage performance for multifamily loans. However, the single family approach is modified to account for the importance of property cash flows in the default decisions of investors. This theoretical framework treats mortgage terminations as a function of their financial value to the borrower. Both the single family and multifamily default/prepayment models also use a multinomial logistic specification to estimate the impact of explanatory variables on default and prepayment rates. Beyond these similarities in general approach, however, there are significant differences in the specifics of model construction and estimation.

Many of these differences reflect special features of multifamily mortgages. For these loans, the borrowers are all investors, and that affects the determinants of credit risk. Two key financial ratios are used in commercial mortgage underwriting: the DCR and the LTV. DCR is a property's net operating income (NOI) divided by the mortgage payment.[244] DCR indicates how much cash there is available for loan repayment after operating expenses are paid. LTV is the ratio of the UPB to the value of the property; it measures

[242] Such loans become part of the Enterprise retained portfolios once they are bought out of the security pools.

[243] These lesser sources of credit enhancements are items where the amount of recourse available to the Enterprises is not a function of per loan losses, but rather it is available in total dollar amounts for pools of loans.

[244] NOI is a measure of the difference between full potential rent at market prices and operating expenses (including vacancy losses).

borrower equity.[245] Lenders concentrate on these two ratios at loan underwriting, and all major credit rating agencies start their analysis of the credit support levels needed to receive various rating grades with the DCR and LTV values of the loan collateral.

Multifamily mortgage modeling should also recognize the special features that differentiate commercial loans from single family residential loans. Commercial loans have prepayment restrictions, usually in the form of yield maintenance clauses, that severely reduce the value of refinancing during the early years of a mortgage. Commercial loans are also dominated not by fully amortizing 30-year loans, but by balloon mortgages with maturities of up to 15 years. These two product distinctions—yield maintenance and balloon terms—create different borrower incentives and different mortgage performance patterns for multifamily mortgages.

Previous research on multifamily mortgage performance has generally made simplifying assumptions to avoid having to deal with all of these issues in one model. First, research has tended to ignore DCR and only concentrate on LTV. Even then, without readily available property value indexes, researchers have not updated LTV over time to capture local market conditions.[246] Some studies have captured property cash flows, but they omitted LTV and had no mechanism for updating property cash flows for projection purposes.[247] One study that recognized the need for both DCR and LTV for predicting default rates, defined them to be perfectly correlated so that only one financial variable needed to be included in the model.[248] Another shortcoming of past research has been that default and prepayment have not been analyzed together.[249] Either defaults are assumed not to matter because of agency guarantees, or else prepayments are ignored because of yield maintenance terms. Most studies model defaults without prepayments, but prepayment studies are starting to appear, with three in 1997 and one in 1998.[250] In both default and prepayment studies, little work has been done to understand the dynamics of yield maintenance and balloon terms.[251] But even with all of these limitations in current research, the greatest concern is that researchers most often resort to pooling multifamily mortgages with loans on other commercial property types in order to have sufficient sample sizes.[252]

The broad conceptual framework chosen by OFHEO corresponds to the dominant paradigm in mortgage research, financial options theory. Studies that apply financial options theory to commercial mortgage performance have generally emphasized the role of borrower equity (LTV) in default rate estimation, but have not seriously modeled the role of cash flows (DCR).[253] However, because both DCR and LTV are critical credit risk dimensions, an appropriate multifamily mortgage performance model should also treat cash flows and equity as essential elements.[254]

For the default option to be in the money, the property must have both negative equity (LTV>1) and negative cash flow (DCR<1). The two sources of income for an investment property owner are rental (current) income and capital gains. Rental income can be thought of as dividend payouts from the property. Capital gains result when the property is sold. The owner holds the property until the expected annual rate of return from both dividends and capital gains becomes less than the return that could be earned by selling the property and investing the proceeds into another investment. However, if the rental market declines, and property equity becomes negative, then default becomes a viable option. This option will not be exercised as long as the dividend payout is positive. If property owners/borrowers were to default in the presence of positive cash flows, they would give up valuable cash flow streams. Therefore, default is only optimal if both equity and cash flow are negative. This implies that the dual condition, LTV> 1 and DCR<1, is required for default to occur.[255]

Prepayment options are in some ways simpler and in others more complex than default options. The simplicity arises because the financial value of prepaying a mortgage is directly measured by the mortgage premium value, the difference between the present value of future mortgage payments discounted at the current note rate, and present value of those same payments discounted at the current market rate. When interest rates fall, there is negative value to holding onto the existing mortgage, measured by a negative mortgage premium value. However, measuring the premium value itself is complex because of yield maintenance and balloon terms. When a

---

[245] Commercial loan underwriting also includes examinations of borrower credit, servicing capability, site and engineering reviews, and cost certifications for new construction. Market condition reports are part of the appraisal process used to estimate LTV at loan origination.

[246] Vandell (1992) and Vandell, et al. (1993) develop models of commercial mortgage default that update LTV over time using a national property-value index, along with the property-value diffusion process introduced by Foster and Van Order (1984) for single family mortgages.

[247] *See* ICF (1991) and Pedone (1991). These studies adapt the work of Edward Altman (1981, 1983) to predict corporate bankruptcy to model multifamily defaults. Capone (1991) discusses the application of bankruptcy models to multifamily mortgages, and provides a review of this literature. A related line of literature discusses the relationship between lender and borrower in the default/bankruptcy process. Kahn (1991) and Mahue (1991) study the impact of foreclosure laws on the balance of borrower and lender bargaining strength at these crucial junctures. Riddiough and Wyatt (1994a, 1994b) explore the power of lender signals of intent to pursue debt collections on distressed-loan foreclosure.

[248] Abraham (1993b).

[249] The first known attempt outside of OFHEO to model default and prepayment rates simultaneously was by Boyer, Follain, Ondrich, and Piccirillo (1997), who studied FHA insured mortgages.

[250] Abraham and Theobald (1997), Elmer and Haidorfer (1997), Follain, *et al.* (1997), and Capone and Goldberg (1998).

[251] In a theoretical pricing model, Kau, *et al.* (1990) do attempt to show how prepayment restrictions impact both default and prepayment options with balloon mortgages.

[252] The lack of historical data has often been cited as a major obstacle to research on multifamily and commercial loan credit risk (DiPasquale & Cummings, 1992; Standard & Poors, 1993; and Vandell, *et al.*, 1993). Studies that combine multifamily with other commercial mortgage types include Vandell (1992), Vandell, *et al.* (1993), Barnes and Gilberto (1994). Studies that use only multifamily data tend to model FHA-insured loans (Goldberg, 1994; ICF, 1991; Follain, *et al.*, 1997). Exceptions to this include Abraham (1993a, 1993b), who used multifamily loan data from Freddie Mac to study defaults, and Abraham and Theobald (1997), who use Freddie Mac data to model multifamily prepayment rates. Elmer and Haidorfer (1997) use Resolution Trust Corporation data to study multifamily prepayment rates. Researchers at OFHEO have published a default study based on Enterprise data (Goldberg and Capone, 1998).

[253] Even theoretical "pricing" models that simulate default rates on a pool of newly originated mortgages make simple assumptions that cash flow to the property owner is a fixed percentage of property value (Titman and Torous, 1989; Kau, Keenan, Epperson, and Muller, 1987 and 1990). They also treat cash flow as something negative (detracts from potential future property value) rather than something positive to the investor/owner/borrower.

[254] Abraham (1993b), Goldberg (1994), and Quercia (1995) have all questioned the sufficiency of net equity as a default trigger.

[255] The wealth-maximizing borrower should default if the property expects to have negative equity and negative cash flow from this point on. If there are negative cash flows, delaying default would lower wealth. If negative equity and negative cash flow were expected to be only temporary conditions, default would not be optimal. In principle one should incorporate expectations regarding rental markets and interest rates, simulate wealth over time, and have the borrower default only if it maximizes wealth over some long-run investment horizon. This was viewed as an overly complex, expensive, and therefore unfeasible approach. Theory notwithstanding, researchers typically construct the default option value variable using just current year information. This is also the approach taken by OFHEO. For relevant theoretical studies, *See* Kau *et al.* (1987, 1990), Brennan and Schwartz (1985), Dyl and Long (1969), Joy (1976), and Robichek and VanHorne (1967).

fixed-rate loan is under yield maintenance, it may refinance, but it will not accrue any value from the transaction until the yield maintenance period expires.[256] With balloon loans, there is the added uncertainty surrounding the contractual requirement to find new funding at loan maturity. Risk averse borrowers, therefore, may desire to refinance in the pre-balloon period even if the call option is not in the money.

An additional consideration for modeling prepayment speeds is that investors desire to leverage their investments to maximize return on equity. Interest rate spreads do not, therefore, provide the only incentive for refinancing a mortgage. To maximize leverage requires maximizing LTV ratios, within bounds set by lenders. Over time, investors will engage in cash-out refinancings in order to rebalance the ratio of debt to equity in the property. This second prepayment incentive can be captured by the LTV of the mortgage.

In modeling multifamily mortgage default rates, OFHEO distinguishes among the various programs of the Enterprises. Conventional multifamily loan purchases by the Enterprises began in 1983, and include "cash" and "negotiated" programs. Under the cash programs, the Enterprises purchased newly originated individual loans underwritten according to their own guidelines. Historically, most of these loans were retained in the portfolios of the Enterprises. Some "cash" loans were swapped for MBS, and this type of transaction is becoming more common. In a negotiated transaction, an Enterprise swaps pools of seasoned (i.e., aged and performing) loans for securities. These loans need not meet the underwriting guidelines of cash programs, and they are priced according to the risk of the loans in the pool. In negotiated transactions, unlike cash purchases, an Enterprise often requires credit enhancement from the seller/servicer to cover expected credit losses.

The initial cash programs exposed the Enterprises to significant credit risk in the late 1980s and into the 1990s. This exposure was due to generous appraisal practices used in the 1980s and to other significant weaknesses in those programs that do not exist today. Fannie Mae changed its cash program in 1988. Freddie Mac continued to build a portfolio of less-than-investment-grade mortgages through 1990. The poor performance of this portfolio led to a three-year moratorium on Freddie Mac's new purchases of multifamily loans, and a complete overhaul of the multifamily operations of the Enterprise.

Prepayment rates were modeled by loan characteristics product type rather than program type. This breakdown captures the differences in financial incentives to prepay that exist when yield maintenance penalties are or are not in effect, and the impact on defaults of balloon mortgage maturity. Balloon maturity is a significant multifamily modeling issue for the stress test because, in an up-rate interest rate environment, balloon loan borrowers are often required to pay off the existing mortgage and refinance, at much higher interest rates than property financials are currently supporting. In order to refinance at the balloon point in the up-rate scenario, property income must be higher than the minimum necessary to qualify for a new loan under the original interest rates. Therefore, it is important to model both the expected default and payoff rates of loans at balloon maturity for the stress test.

Section 2 of this supplementary material on multifamily default/prepayment provides a review of the historical data used to estimate the statistical models, and section 3 reviews the statistical procedures employed. Section 4 completes the description of the statistical model with explanations of the development of the explanatory variables. Section 5 presents and reviews the results of statistical estimations, and section 6 concludes with a discussion of how the estimated statistical equations are applied in the stress test.

2. Historical Data

a. Enterprise Loan Records

OFHEO used the combined historical experience of the Enterprises, 1983–1995, to estimate the statistical model of default and prepayment rates. This experience provided a large and rich data base that encompasses three different programs: the initial cash purchase programs that had high default rates; negotiated purchase (or transactions) programs where securities were swapped for pools of seasoned and performing mortgages; and new cash purchase programs that corrected flaws in the original programs and have experienced low default rates.

The historical data includes 35,759 conventional multifamily loans.[257] After eliminating missing or erroneous records, the sample includes observations on 21,994 loans: 12,845 from Freddie Mac and 9,149 from Fannie Mae. Of these, 61 percent are cash purchases and 39 percent are negotiated purchases. The final cash purchase sample is more complete than the negotiated purchase sample because, in negotiated programs, the Enterprises have relied more on buying seasoned portfolios with (limited) credit risk recourse to the seller/servicer, rather than on gathering enough property financial characteristics to re-underwrite the loans.[258]

The database was expanded by creating annual observations from loan acquisition to the termination year, or to 1995 if no termination occurred. The loan-year file includes 89,577 loan-year observations for cash purchases, and 59,415 observations for negotiated purchases. Cash purchases appear in the database with origination years from 1983 to 1995. The negotiated loans, however, have origination years as early as 1970 because they were often highly seasoned at time of acquisition. Annual observations are used, rather than monthly or quarterly observations, because of the relatively small number of multifamily termination events. If quarterly or monthly event histories were used, there would be significant numbers of time periods in which there were no terminations.

To avoid any possible statistical bias resulting from not having records of loan terminations prior to 1983, negotiated purchase loans enter the database starting in the acquisition year, rather than the origination year. But they enter at their proper age and are not treated as new originations at the time of acquisition. The same issue of potential "left censoring" bias also appears for certain cash purchase programs, where the Enterprises did not begin to maintain systematic records of loan terminations until 1991. For such programs, the loans do not enter the statistical estimation sample until 1991.[259]

---

[256] ARM loans have minimal penalties, and they have prepaid much more often in the early years after loan origination.

[257] Fannie Mae has maintained a portfolio of FHA-insured multifamily mortgages over time. OFHEO chose not to model performance of these loans, but rather to assign default and prepayment rates according to conventional loans with similar features. Because FHA pays for nearly 100 percent of default losses, the stress test imposes no credit losses on FHA-insured mortgages on the stress test.

[258] Ninety percent of cash purchases are retained in the final sample, while only 41 percent of negotiated purchases had enough loan characteristics data to be kept in the sample. For the 41 percent of negotiated purchase loans in the sample, DCR values at time of acquisition were estimated by OFHEO by first estimating net operating income (NOI) as NOI=value at origination divided by an estimate of the average CAP rate multiplier for the year, divided by the mortgage payment amount.

[259] The left-censoring bias would result if the statistical model used complete loan-history records

For cash loans, the default outcome of record is a foreclosure or foreclosure alternative that still provides for the property to be liquidated.[260] For most Fannie Mae negotiated purchase loans, however, the default event of record is a 90-day delinquency. This is because, for Fannie Mae negotiated transactions, the loan is repurchased by the seller/servicer if it becomes 90-days delinquent. The seller/servicer then bills Fannie Mae for resolution costs, and these are deducted from a limited recourse pool originally established with funds from the seller/servicer at time of acquisition. OFHEO recognizes that 90-day delinquencies cannot be treated as full default events, and makes adjustments in the statistical model.

b. Rents and Vacancies

OFHEO uses a unique approach to property valuation that uses local market indexes of rent growth rates and vacancy rates to update net operating income, and through that, update DCR and LTV over time. Rent growth rates came from the residential rent component of the CPI for each of the four Census regions, and for the 29 MSAs covered by Bureau of Labor Statistics (BLS) surveys. Most MSA level CPI series produced by BLS start in 1970, but some do not begin until the 1980s. The regional CPI series are available beginning in 1978, so percent changes for these can only be computed starting in 1979. To capture rent growth rates for each year, partial MSA series were completed with regional series starting in 1979 and national series before that. The regional series themselves were also filled in for the pre-1979 period with percent changes in the national CPI residential rent series.

Vacancy rates were obtained from the Bureau of the Census H–111 series. These are available for the same MSAs as is the CPI residential rent series (back to 1970), and for Census regions, and, beginning in 1986, for the 50 States plus the District of Columbia.[261] As with rent growth rates, the most disaggregated index available was used for each loan, in each calendar year.

c. Tax RatesOFHEO required tax rate data for calculating the present value of depreciation writeoffs (see discussion of the explanatory variable, *DW*, below). In order to compute weighted average tax rates, OFHEO used Internal Revenue Service (IRS) data on the income distribution of taxpayers with net capital gains. For 1983–90, data on adjusted gross income for taxpayers with net capital gains were obtained from the IRS publication, *Individual Income Tax Returns* (annuals). For 1991–95, data were obtained from IRS, *Statistics of Income Bulletin* (quarterly). These income-class weights were used to compute weighted average tax rates for both capital gains and ordinary income.

The marginal tax rate on ordinary income used here is for Married Filing Jointly taxpayers (Schedule Y–1). Five percent was added to the Federal tax rate for State income taxes. Schedule Y–1's for 1983–95 were obtained from Internal Revenue Service, *Package X* (annual publications 1983–95). Data on capital gains tax rates were obtained from IRS's *Package X*, for 1983–95. No adjustment was made for State taxes on capital gains.

Data on depreciation schedules is for newly constructed residential rental property, from the IRS publication, *Depreciation 1992*, Publication 534. This publication includes accelerated schedules for years 1983–92. Accelerated depreciation was assumed in years in which it was an option. Because there were no changes in the tax code affecting depreciation after 1992, the schedule for 1992 was used for 1993–95.

3. Statistical Estimation

The statistical estimation involves binomial logistic regressions of subsets of the data. There are two separate regressions for default rates and five separate regressions for prepayment rates. This breakdown accommodates programmatic differences between cash and negotiated purchases in the default equations, and the changing nature of prepayment incentives across various products and loan terms. The results are matched together so that the end result is trinomial logistic probability equations that provide the same result as if defaults and prepayments were estimated simultaneously for each loan program and product.[262]

The logistic model is founded on assumptions that the utility of each borrower payment choice—make payment, prepay, or default—is a function of its contribution to wealth and that, each observation period, borrowers make the choice that maximizes wealth. The regressions compute weights (coefficients) that estimate the influence of each explanatory variable on the net wealth effect of one choice over another. These models estimate the log-odds of choosing a mortgage termination over continuing to make loan payments as a function of the explanatory variables. In particular,

$$ln\left(\frac{\text{probability of default}}{\text{probability of continuing payments}}\right) = X\beta \quad (Eq.\ 18)$$

and

$$ln\left(\frac{\text{probability of prepayment}}{\text{probability of continuing payments}}\right) = Y\Gamma \quad (Eq.\ 19)$$

---

for all loans, when some groups of loans only enter the sample if they survive to a certain point (e.g., time of acquisition by the Enterprise). If the sample were not censored at the acquisition point, the model could severely underestimate the rates of loan termination in the early years of a mortgage.

[260] Foreclosure alternatives include third party sales where a "third party" purchases the property at the foreclosure auction; short sales, where the Enterprise finds a buyer for the property prior to completion of foreclosure; and note sales, where the mortgage itself is sold to another investor.

[261] Census also added more MSAs starting in 1986. These were not used in OFHEO's statistical analysis.

[262] This is the three-choice logit model, though the more generic model is known as the multinomial logit, or MNL.

where:

ln = natural logarithm

X = matrix of explanatory variables (columns) by loan record (rows)

β = (column) vector of coefficients (weights) to be estimated

Y = matrix of explanatory variables (columns) by loan record (rows)

Γ = (column) vector of coefficients (weights) to be estimated

And the resulting equations for calculating probabilities are transformations of these equations:

$$\text{Probability (default } X, Y) = \frac{e^{X\beta}}{1 + e^{X\beta} + e^{Y\Gamma}} \qquad \textit{(Eq. 20)}$$

and

$$\text{Probability (prepayment } X, Y) = \frac{e^{Y\Gamma}}{1 + e^{X\beta} + e^{Y\Gamma}} \qquad \textit{(Eq. 21)}$$

If X and Y are matrices of all event-history records, then the resulting probabilities will be (column) vectors of estimated probabilities for each of these records, for each observed time period. Because of the relatively small number of loan defaults in the data, OFHEO used annual observations to estimate the equations. Economic variables are averages for each calendar year, and the logistic equations estimate probabilities of default and prepayment for all loans surviving to the beginning of the next year.

The probabilities of default and prepayment are interdependent, and normally the equations would be estimated using simultaneous equations methods. However, because there are two default equations and five prepayment equations, doing so would be quite complex. Following Begg and Gray, OFHEO estimated the system using single equation methods in which separate binomial log-odds equations are estimates for default and prepayment.[263]

4. Explanatory Variables

The multifamily mortgage performance model has separate sets of explanatory variables for default and prepayment analysis. They are described separately here.

a. Default Equations

OFHEO estimated two separate logit default equations, one for cash purchases and one for negotiated purchases. This decomposition serves three purposes. First, significant numbers of negotiated purchase loans did not enter the Enterprise portfolios until after the Tax Reform Act of 1986. That statute greatly changed the value of depreciation allowances to new purchasers of investment real estate. OFHEO desired to model the effects of tax law changes on default rates, but could only do this with the cash purchase loans, where there are significant numbers of observations both before and after tax reform. The second reason for separating cash from negotiated purchase loans is that negotiated loans did not undergo the same change of quality as did cash purchases. It is easier to separate the effects of movements by the Enterprises from original to new cash-purchase programs if these are isolated from the negotiated purchases for default analysis. A third reason for separating the two programs into two separate default equations is that the majority of negotiated purchase loans have seller/servicer repurchase provisions, which required use of 90-day delinquency as the default event of record. OFHEO decided that capturing the difference between 90-day delinquencies and full defaults was best achieved through an estimation that involved only negotiated purchases.

Table 33 provides a list of the explanatory variables used in each default equation. Each variable listed in the Table will be described and developed more fully below.

[263] *See* Begg and Gray (1984). To do this, one must be sure to censor competing termination events from the regression samples. That is, for default rate log-odds estimation, all prepayment observations must be censored in the period of the prepayment (and vice versa). This censoring assures that the estimation is of the log-odds of defaulting (or prepaying) versus remaining current on the mortgage. The underlying principle of logistic regression analysis that allows for this approach to modeling the competing risks of default and prepayment is called the independence of irrelevant alternatives. This principle means that logistic analysis assumes that the log-odds of default versus remaining current are not influenced by the log-odds of prepaying versus remaining current.

Table 33. Explanatory Variables in the Multifamily Default Equations

Variable	Description	Cash Purchase Equation	Negotiated Purchase Equation
JP_t	The joint probability of negative equity and negative cash flow (LTV>1.00 and DCR<1.00) in year t.	Yes	Yes
BJP_t	For balloon loans, JP_t times a dummy variable equal to 1 if the loan is in the balloon year, 0 otherwise.	Yes	No
DW_t	Present value of depreciation tax write-offs per $100 of property value. Value to a new owner over 20 years.	Yes	No
DD	Dummy variable equal to 1 if the loan was originated under an original cash purchase program (Fannie Mae, 1983-1987, Freddie Mac, 1983-1991), 0 otherwise.	Yes	No
RA	For ARM loans, dummy variable equal to 1 if the default type is a 90-day delinquency, 0 if it is a property loss event such as a foreclosure.	No	Yes
RF	For fixed-rate loans, dummy variable equal to 1 if the default type is a 90-day delinquency, 0 if it is a property loss event such as a foreclosure.	No	Yes
AY_t	The age of the mortgage in years.	Yes	Yes
AY_t^2	Loan age squared.	Yes	Yes

(i) Joint Probability of Negative Equity and Negative Cash Flow

The key explanatory variable in the default equations is the joint probability of negative equity and negative cash flow, which is defined as:

$$JP = \text{Prob}(LTV > 1 \text{ and } DCR < 1) \quad \textit{(Eq. 22)}$$

A probabilistic measure is used because the exact financial condition of each mortgaged property, over time, is unknown. However, the equity and cash flow positions of the property at time of loan acquisition, and how local rents and vacancy rates changed over time are known. With this information, and reasonable assumptions regarding the dispersion of rent growth rates and vacancy rates across properties, the joint probability, *JP*, can be constructed. This variable is similar to the probability of negative equity variable used in the single family mortgage performance model, only here the variable begins with an index of growth rates of property net operating income (NOI), rather than an index of the growth rates of property value directly. OFHEO developed this approach for multifamily modeling because there are no property value indexes available, and it was not feasible to develop one with Enterprise data.

Ideally, *JP* would capture all of the numerous factors affecting LTV and DCR, including rents, expenses, vacancies, special underwriting provisions (e.g., maintenance reserves), interest rates, and tax laws. OFHEO incorporated three important factors into the *JP* variable: rents, vacancies and interest rates. Because the actual property purchase year for current investors is unknown, the actual tax code affecting depreciation writeoffs is also unknown for each property. Therefore, OFHEO constructed a separate variable that captures changes in the value of tax benefits from property ownership to a new purchaser. Changes in property expenses are incorporated into *JP* by specifying that expenses are a constant ratio of rents.

(a) Creating Time Series for DCR and LTV

The construction of *JP* first involves creating time series variables for *DCR* and *LTV*. Each of these can be shown to be a function of property *NOI* in each time period, *t*:

$$DCR_t = \frac{NOI_t}{PMT_t} \quad \textit{(Eq. 23)}$$

where:

PMT_t = mortgage payment in period t

NOI_t = net operating income in period t

and

$$LTV_t = \frac{UPB_t}{V_t} = \frac{UPB_t}{NOI_t \cdot M_t} \qquad (Eq.\ 24)$$

where:

UPB_t = unpaid principal loan balance in time period t

V_t = property value in time period t

M_t = capitalization (cap) rate multiplier in time period t

For commercial properties, appraisers use capitalization ("cap") rate factors for estimating the present value of a future stream of property NOI.[264] The cap rate multiplier for each loan at origination, M_0, can be derived given three other variables: LTV_0, UPB_0, and NOI_0. Because the cap rate multiplier is a function of interest rates, changes in interest rates over time will affect M_t and, through that, affect V_t and LTV_t also. OFHEO collected data on cap rate multipliers at origination on Enterprise loans and the mortgage coupon rates on those loans.[265] These data were used to estimate the elasticity of the cap rate multiplier with respect to interest rates, so that property values can be updated in response to interest rate changes. The estimated regression equation is:

$$\ln(M_0) = 3.01 - 0.27 \cdot (\ln r_{c,0}) \qquad (Eq.\ 25)$$
$$(t=13.3)$$

where:

$r_{c.0}$ = mortgage coupon rate at time zero (origination)

N = 8535 (sample size)

R^2 = 0.0525

M = 10.7 (mean cap rate multiplier across sample)

By estimating a double-log equation, the coefficient on the interest rate variable, $r_{c,0}$, is the elasticity of the cap rate multiplier with respect to interest rate changes. This elasticity is used to project changes in M_t over time (since loan origination) as follows:

$$\frac{M_t - M_0}{M_0} = -0.27 \cdot \left(\frac{r_t - r_{c,0}}{r_{c,0}} \right) \qquad (Eq.\ 26)$$

where:

r_t = market interest rate for multifamily mortgages in time t (OFHEO generated a time series of rates from Enterprise purchases of fixed-rate loans.)

and the factor used to update LTV^t over time is then,

---

[264] While the cap rate multiplier is used here to project property value from NOI, the cap rate itself is the reciprocal of the multiplier. So if, for example, a cap rate multiplier of 10 is implied from the property value (and the underlying NOI), the actual cap rate is 0.10. The cap rate on each individual property begins, like other appraisal techniques, with cap rates found on recent sales of comparable properties. Appraisers then incorporate an assessment of the duration and risk of the earnings on the particular property into the final cap rate used to project property value; a risky earnings stream will be penalized with a higher cap rate (lower multiplier).

[265] The choice of an interest rate series to use here was one of convenience, and does not materially affect the results.

$$\frac{M_t}{M_0} = 1 - 0.27 \cdot \left(\frac{r_t - r_{c,0}}{r_{c,0}} \right) \quad (Eq.\ 27)$$

Updating the DCR_t and LTV_t series requires a method for updating NOI_t. NOI_t can be expressed as a function of rents, operating expenses, and vacancy rates:

$$NOI_t = RENT_t(1 - k_t - v_t) \quad (Eq.\ 28)$$

where:

$RENT_t$ = Rental income at full occupancy

k_t = operating expenses as a percent of $RENT_t$

v_t = vacancy rates in time period t (equal to the percentage of potential rental income that is uncollected owing to vacancies)

For national data from annual surveys of apartments by the Institute for Real Estate Management (IREM), from 1970 through 1992, the average ratio of operating expenses to gross rents was 47.2 percent. In computing values for NOI_t, kt is held constant at 0.472. All properties must meet minimum occupancy (maximum vacancy) requirements before permanent funding is secured and the loans are purchased by the Enterprises. To estimate the models, the vacancy rate at origination is also held constant, in this case at the long-term average observed in Census vacancy surveys, 1970–1995: 0.0623. Thus, current values of NOI, relative to the value at loan origination, are calculated as:

$$\frac{NOI_t}{NOI_0} = \frac{RENT_t \cdot (1 - 0.472 - v_t)}{RENT_0 \cdot (1 - 0.472 - 0.0623)} \quad (Eq.\ 29)$$

Which reduces to:

$$\frac{NOI_t}{NOI_0} = \left(\frac{RENT_t}{RENT_0} \right) \cdot [1 - 2.15(v_t - 0.0623)] \quad (Eq.\ 30)$$

The ratio of the dollar rents ($RENT_t/RENT_0$) is a rent index from the time of loan origination to time period t. Denoting this ratio as RPI_t,:

$$\frac{NOI_t}{NOI_0} = (RPI_t) \cdot [1 - 2.15(v_t - 0.0623)] \quad (Eq.\ 31)$$

If there has been no change in the vacancy rate since loan origination, so that $v_t = 0.0623$, then the growth of net operating income equals the growth of rents since loan origination.

With these formulas for updating the cap rate multiplier, M_t, and net operating income, NOI_t, time series can be created for DCR_t and LTV_t.

$$DCR_t = DCR_0 \cdot \frac{(RPI_t) \cdot [1 - 2.15(v_t - 0.0623)]}{PMT_t / PMT_0} \quad (Eq.\ 32)$$

and

$$LTV_t = LTV_0 \cdot \frac{UPB_t / UPB_0}{(RPI_t) \cdot [1 - 2.15(v_t - 0.0623)] \cdot \left(1 - 0.27 * \left(\frac{r_t - r_{c,0}}{r_{c,0}} \right) \right)} \quad (Eq.\ 33)$$

For DCR_t, the denominator of the update formula (PMT_t/PMT_0) (equation 32) will always equal 1.0 for fixed-rate mortgages.

(ii) Construction of the JP_t Variable

Both RPI_t and μ_t are market indexes. The values for individual properties—$RPI_{j,t}$ and $\mu_{j,t}$—are not known, but can be assumed to be random variables that follow standard distributional forms, with mean values RPI_t and μ_t. To look at how the distribution of rent growth rates and vacancy rates affects the distribution of property level *DCR* and *LTV* values, it is convenient to use a logarithmic transformation of equation (31):

$$ln(NOI_t/NOI_0) = ln(RPI_t) + ln(Z_t) \quad \textit{(Eq. 34)}$$

where $Z_t = [1 - 2.15\ (\mu_t - 0.0623)]$ and RPI_t is a rent index that equals one plus the growth of rents since loan origination. Z_t can be interpreted as the percentage change in NOI_t due to changes in the vacancy rate since loan origination, and RPI_t is the percentage change in NOI_t due to rent growth. If $ln(Z)$ and $ln(RPI)$ are normally distributed across properties, at any given point in time, then their sum has a bivariate normal distribution. This implies a bivariate normal distribution for $ln(DCR)$ and $ln(LTV)$, which provides the distributional form used to estimate the joint probability that $DCR < 1$ and $LTV_t > 1$ for any given property, JP_t.

Normality for $ln(RPI)$ follows from the standard assumption that growth rates follow a lognormal diffusion process over time. Such a process is also foundational to the OFHEO HPI, which is used for single family mortgage performance analysis. With lognormal diffusion, the distribution of $ln(RPI_{j,t})$, where j is a property index, is:

$$ln(RPI_{j,t}) \sim N(ln(RPI_t), t \cdot \sigma_t^2) \quad \textit{(Eq. 35)}$$

where:

$RPI_{j,t}$ = RPI for individual property, j, in time t

RPI_t = market rent index measuring cumulative growth of rents from time of loan origination through time t

σ_t^2 = variance in individual property rent growth rates (diffusion parameter) within each time period (year), t (assumed constant over time and place)

If all apartment units can be assumed to have the same probability of being vacant, the distribution of vacancy rates across properties, within a geographic area, can be assumed to be binomial, with mean and variance parameters:

$$\nu_{j,t} \sim BN(\nu_t, \nu_t \cdot (1 - \nu_t)) \quad \textit{(Eq. 36)}$$

where:

$\nu_{j,t}$ = vacancy rate for property, j, in time period t

ν_t = market area vacancy rate index in time period t

The binomial distribution for apartment vacancies at the project level is bounded below by zero and skewed to the right, and because it can be approximated by a lognormal distribution with the same parameters. Thus, $Z_{j,t}$, which is a linear transformation of $\nu_{j,t}$, can be modeled with a lognormal distribution:

$$Z_{j,t} \sim LN(Z_t, 2.15^2 \cdot \nu_t \cdot (1 - \nu_t)) \quad \textit{(Eq. 37)}$$

This allows $ln(Z_{j,t})$ to be modeled with a normal distribution. Rewriting the parameters of $Z_{j,t}$ as:

$$Z_{j,t} \sim LN(\mu_{Z_t}, \sigma_{Z_t}^2) \quad \textit{(Eq. 38)}$$

we can write the parameters of the (normal) distribution of $ln(Z_{j,t})$ as:

$$\mu_{lnz} = ln\mu_{Z_t} - 0.50\sigma_{lnz_t}^2 \text{ and}$$
$$\sigma_{lnz}^2 = ln(1 + \sigma_{Z_t}^2/\mu_{Z_t}^2) \quad \textit{(Eq. 39)}$$

where the *t* subscripts for these parameters are dropped here and subsequently for clarity. Because both $ln(DCR_{j,t})$ and $ln(LTV_{j,t})$ are linear functions of the normally distributed random variables, $ln(Z_{j,t})$ and $ln(RPI_{j,t})$, $ln(DCR_{j,t})$ and $ln(LTV_{j,t})$ have a bivariate normal distribution, $BV(\mu_1,\mu_2,\sigma_1,\sigma_2,\rho)$, where,

$$\mu_{1,t} = \ln DCR_t - 0.50 \cdot \sigma^2_{lnZ}$$

$$\mu_{2,t} = \ln LTV_t + 0.50 \cdot \sigma^2_{lnZ}$$

$$\sigma^2_{1,t} = t \cdot \sigma^2_r + \sigma^2_{lnZ} \qquad \textit{(Eq. 40)}$$

$$\sigma^2_{2,t} = t \cdot \sigma^2_r + \sigma^2_{lnZ}$$

$$\rho = \mathrm{corr}(ln(DCR_{j,t}), ln(LTV_{j,t}))$$

The correlation between $ln(LTV_{j,t})$ and $ln(DCR_{j,t})$ in the historical Enterprise data is used as an estimate of π (−0.5975). Unpublished data from the Bureau of Labor Statistics (BLS) suggests a value for σ^2_r of 7.5 percent. Alternative values between 5 and 15 percent were also considered, but the statistical model results (default rate equations) were insensitive to the value used for this variance.[266]

The bivariate normal distribution defined by the parameters in equation 40 can be used to calculate the joint probability of negative equity and negative cash flow, *JP*. The joint probability is the bivariate (standard) normal distribution evaluated at particular boundary (cutoff) values for *ln*(*DCR*) and *ln*(*LTV*). The definition of $JP_{j,t}$ can be restated as:

$$JP_{j,t} = \mathrm{Prob}\,(ln(DCR_{j,t}) < 0 \text{ and } ln(LTV_{j,t}) > 0) \qquad \textit{(Eq. 41)}$$

which can be calculated using the bivarate normal distribution:

$$JP_{j,t} = \frac{1}{2\pi \cdot \sqrt{1-\rho^2}} \int_{-\infty}^{a} \int_{b}^{\infty} exp\left(\frac{x^2 - 2\rho xy + y^2}{2(1-\rho^2)}\right) dy\,dx \qquad \textit{(Eq. 42)}$$

where *x* and *y* are two standard normal random variates, each representing the possible values of the logs of *DCR* and *LTV* values on all apartment properties in a given geographic area, at a given point in time. The *x* and *y* values are standardized, which for *DCR* and *LTV* is accomplished by subtracting from them the log of the expected values for each property, $\mu_{1,t}$ and $\mu_{2,t}$, and then dividing by the respective standard deviations, $\sigma_{1,t}$ and $\sigma_{2,t}$. The two limits of integration, *a* and *b*, are the standardized differences between the expected values for each property and the boundary conditions, which are the log of 1.00 for each. So, from equation 40 they are just:

$$a = \frac{-\mu_{1,t}}{\sigma_{1,t}} \qquad \textit{(Eq. 43)}$$

and

$$b = \frac{-\mu_{2,t}}{\sigma_{1,t}} \qquad \textit{(Eq. 44)}$$

(iii) Updating DCR_t for Balloon and ARM Payment Shocks

The joint probability variable, JP_t, is given additional weight for balloon loans in the maturity year. Weaker loans will be unable to qualify for refinancing in the balloon year, especially if there is an increase in rates, which leads to more defaults at that point, for any given level of DCR_t and LTV_t. This effect should be a function of JP_t. Balloon year

[266] This is because the variance of *lnDCR* and *lnLTV* is much more heavily influenced by the variance of the vacancy rate than the variance of the growth rate of *RPI*.

shock is added using a composite variable BJP_t:

$$BJP_t = BYR_t \cdot JP_t \quad (Eq.\ 45)$$

where BYR_t is a dummy variable equal to 1 if the observation is the balloon year, and 0 otherwise, and JP_t is the joint probability of negative equity and negative cash flow. (The loan specific subscript, j, is dropped here for ease of exposition.) Due to the small number of balloon loans in negotiated purchase portfolios, this variable is only estimated in the default rate equation for cash purchase loans. In stress test application, the estimated coefficient for cash purchases is also used to predict default rates of negotiated purchase balloon loans in the maturity year.

The Enterprises tend to extend balloon loans beyond maturity when properties cannot meet minimum qualification standards for a new loan, provided the borrower continues to make the monthly payment on the original mortgage. This possibility of what is called "extension risk," the risk of loans not leaving the portfolio at the balloon point, has been documented by Elmer and Haidorfer (1997) and by Abraham and Theobald (1997). OFHEO also finds that in the Enterprise database a large percentage of loans are extended beyond balloon maturity. This model imposes payment shock for extended loans by updating the DCR to reflect what the borrower would be paying if the borrower refinanced the property. DCR_t is updated after the balloon point by adjusting PMT_t to reflect a new payment level commensurate with market interest rates for fixed-rate (fully amortizing) loans in the balloon year.

ARMs are treated with similar DCR adjustments, except that the payment adjustment occurs annually.[267] Fannie Mae and Freddie Mac purchased very few ARM loans through their cash programs, however there are significant numbers of negotiated transactions that are ARMs.

(iv) The Present Value of Depreciation Write-offs for Multifamily Properties

The value of depreciation write-offs to a new property owner is calculated with the present value formula used by Goldberg and Capone (1998):[268]

$$DW_t = \sum_{s=t}^{t+19} \left(\frac{\theta_s DEP_s}{(1+r_t)^s} \right) - \varphi_s \left(\frac{\sum_{s=1}^{20} DEP_s}{(1+r_t)^{20}} \right) \quad (Eq.\ 46)$$

DW_t is the present value of depreciation write-offs for each $100 of investment in rental housing, and can be thought of as the percentage of the investment tax basis that is returned to the investor through depreciation write-offs. The tax rate data used to calculate this variable are described above in section IV.D.2., Historical Data.

In addition to tax rates, an estimate of a required rate of return is needed to calculate the present value of depreciation write-offs. For this OFHEO used an estimate of the weighted average cost of capital, with 20 percent equity and 80 percent debt financing. The cost of debt financing is measured with data from the Enterprises on the average coupon rate of multifamily fixed-rate mortgages in each year, 1983–95 ($r_{f,t}$). The cost of equity is calculated with data from the Enterprises and the Bureau of Labor Statistics. In particular, if property NOI is expected to increase annually at the rate g, then the cap rate, *CAP*, can be thought of as equaling the required return on equity (r_e) minus the growth rate, g_t. This implies that the required return on equity equals:

$$r_{e,t} = CAP_{0,t} + g_t \quad (Eq.\ 47)$$

$CAP_{0,t}$ is estimated using cap rate values for all Enterprise loans originated in year, *t*, and the relationships estimated in equation 27. Values for g_t are three-year average growth rates of rents, using the Bureau of Labor Statistics CPI residential rent series, national average (for years *t*–2, *t*–1, and *t*).

The weighted average discount rate for all loans in year, *t*, is then:

[267] Nearly all ARMs in Enterprise portfolios are indexed to the 11th District FHLB Cost of Funds, with monthly rate adjustments, semi-annual payment adjustments, and negative amortization provisions. The payment adjustment calculations here proxy for the full stress of partial payment adjustments and negative amortization by treating ARM loans as 5/1 products where annual payment changes are only limited by the lifetime and annual rate caps (5 and 1 percent, respectively). This allows for larger potential payment shock than would normally be allowed on these loans to compensate for the lack of negative amortization provisions in this model.

[268] The variable in the Goldberg and Capone (1998) article is called *PVTAX*, but it is the same as the *DW* variable shown here. Weights for Θ and Φ are the percent of taxpayers in adjusted gross income groups.

$$r_t = 0.2 \cdot r_{e,t} + 0.8 \cdot r_{f,t} \qquad (Eq.\ 48)$$

Table 34 shows values of DW_t in the study period, 1983–95.

Table 34. Trends in the Present Value of Depreciation Write-offs, 1983-95

Year	DW_t
1983	12.94
1984	12.91
1985	13.52
1986	14.33
1987	9.50
1988	7.87
1989	7.73
1990	8.03
1991	7.06
1992	7.46
1993	8.29
1994	8.57
1995	9.27

(v) Program Restructuring

The original cash purchase programs of the Enterprises were implemented in an overheated lending environment in which appraisal practices allowed for inflation adjustments to rents when calculating property value. Such adjustments resulted in understatements of LTV_0 and overstatements of DCR_0, leading to the purchase of loans with understated credit risk and, eventually, to severe credit losses. In addition to the overstatement of anticipated rents, original multifamily cash-purchase programs at the Enterprises had other significant weaknesses. For these reasons, on loans purchased under original cash programs (Fannie Mae, 1983–1987, Freddie Mac, 1983–1991) the stress test accounts for increased risk in two ways. The first method is to adjust LTV_0 and DCR_0 on original cash program loans to extract the average inflation factors. Internal research at OFHEO has concluded that reasonable adjustment multipliers are 0.85 for DCR_0 and 1.27 for LTV_0.

The second method used to account for increased default risk in original cash programs is to include a dummy variable (*PR*) in the default equation. This measures the behavioral difference of loans purchased prior to program restructuring (1 = original cash purchase loan).

(vi) Default Type

For most loans acquired through negotiated transactions, the loan event used to estimate defaults is a 90-day delinquency, rather than a foreclosure. A different event was chosen for these loans because the seller/servicer typically has a contractual obligation to repurchase delinquent loans from security pools and resolve the default. As a result, the Enterprises' data do not reflect which of these loans were cured or renegotiated and which resulted in property loss events. These loans will have more observed "defaults" because they include cures and loan modifications as well as property loss events. To adjust for this discrepancy, two dummy variables are included in the negotiated purchase default equation: one to flag ARM loans under repurchase contracts (*RA*), and one to flag fixed-rate loans under repurchase contracts (*RF*).

(vii) Loan Age

Default risk is greatest in the years just after loan origination. Apartment projects are then most vulnerable to economic shocks because DCR_t may be low, LTV_t may be high, and it may take several years to create a viable market niche for the property. However, a financially troubled project will not default immediately. First, valuable depreciation write-offs may be available in the early years to counterbalance negative property cash flow. Second, working-capital reserves may forestall default. And third, the owner may "bleed the project" by deferring maintenance and other expenditures prior to delinquency.[269] Age denotes the loan year of an observation. Thus, if a loan was originated in 1985, its age is 1 in 1985, 2 in 1986, and so on.

Other studies of commercial mortgage defaults confirm that defaults tend to rise in the first years after loan origination and then, once the weakest loans exit, the conditional default rate declines.[270] Preliminary analysis of Enterprise data indicated that the peak

[269] This final reason is discussed by Quercia (1995) and by Riddiough and Thompson (1993).

[270] See Snyderman (1994).

default period is about four years after loan origination. To capture this underlying trend, a quadratic age function is included in the default equations.

b. Prepayment Equations

The explanatory variables chosen for the prepayment equations are designed to capture multiple refinancing incentives: exercising the "call" option (normal refinance); rebalancing debt and equity in the property (cash-out refinance); risk aversity with respect to pending balloon expirations (early payoffs); and balloon payoffs. The overall model is separated into five equations in order to best capture the differing prepayment incentives by product and product-life stage. For ease of exposition, these five equations are referred to here as "models."

The first model is for fixed-rate loans in the initial yield maintenance period, when refinancing has no immediate value. Beyond the yield maintenance period, fully amortizing and balloon loans with fixed interest rates are analyzed separately in two additional models. This approach is used because, after yield maintenance ends, balloon loans prepay more quickly than self-amortizing loans, reflecting borrower uncertainty surrounding interest rate movements leading up to the time of loan maturity, when a payoff is required. At maturity, balloon loans are viewed as having payoffs rather than prepayments. The dynamics of required payoffs are much different from those of voluntary prepayments prior to maturity. Therefore, a fourth equation is estimated for balloons during and after the maturity year. This fourth model includes both fixed-and adjustable-rate balloons. The fifth and final model is for adjustable-rate mortgages other than those that may have reached a balloon maturity point. Adjustable rate mortgages do not have yield maintenance terms, and their refinancing incentives are different from those of fixed-rate mortgages.

In prepayment model 4, for balloon payoffs, OFHEO recognizes that while there is a contractual obligation to find new sources of financing at the balloon point, those with weak financials may not qualify for new funding. The Enterprises, like all lenders, however, are often unwilling to initiate foreclosure if loan payments are being made under the current (but now expired) contract. OFHEO's approach to these extended loans is, therefore, to continue to model payoff rates at and beyond the balloon point.

Table 35 sets forth the structure of the explanatory variables used in the five prepayment equation/models, as follows:

Table 35. Explanatory Variables Used in Multifamily Prepayment Equation/Models

Variables	Definitions	Prepayment Equation/Models				
		1[1]	2[2]	3[3]	4[4]	5[5]
RSD_t	Relative interest rate spread if current rates are less than the coupon rate. Zero if current interest rates in year t are higher than the coupon rate.	Yes	Yes	Yes	No	No
RSU_t	Relative interest rate spread if current rates are greater than the coupon rate. Zero if current interest rates in year t are lower than the coupon rate.	Yes	No[6]	Yes	No	No
$RDS1_t$	RSD_t times dummy variable equal to 1 if year t is one year prior to balloon year; 0 otherwise.	No	Yes	No	No	No
$RSD2_t$	RSD_t times dummy variable equal to 1 if year *t* is two years prior to balloon year; 0 otherwise.	No	Yes	No	No	No
RS_t	Relative interest rate spread between ARM and FRM multifamily conventional loans in year *t*.	No	No	No	No	Yes
$r_{f,t}$	Average market interest rate for conventional multifamily fixed-rate loans in year *t*.	No	No	No	No	Yes
AY_t	Loan age in years.	Yes	Yes	Yes	No	Yes
AY_t^2	Loan age squared.	Yes	Yes	Yes	No	Yes
LTV_t	LTV ratio in year *t*.	Yes	Yes	Yes	No	Yes
PQ_t	Probability of qualification for a new loan in year *t* (*LTV*<=0.8 and *DCR*>=1.2).[7]	No	No	No	Yes	No
YTG_t	Years remaining ("to go") in the yield maintenance period.	Yes	No	No	No	No

[1] All fixed-rate loans, under yield maintenance.

[2] Fixed-rate balloon loans in pre-balloon period (post-yield maintenance, pre-balloon).

[3] Fixed-rate, fully amortizing loans, out of yield maintenance.

[4] All balloon loans at and beyond maturity year.

[5] All ARMs, except for balloon-ARMs at and beyond maturity year.

[6] This variable is not included in this equation/model because of lack of variability in the historical data series.

[7] This variable is only included in the balloon maturity equation/model because of collinearity with the *LTV* variable used in other equations.

(i) Relative Spreads in Interest Rates

The relative difference between coupon and market interest rates is the primary call option variable used in the prepayment equations. For fixed-rate loans (prepayment models 1–3), OFHEO includes spread variables when market rates are lower ($RSD_{j,t}$) and when market rates are higher than coupon rates

($RSU_{j,t}$). Asymmetry of effects is allowed for because drops in rates affect refinancings with different motivations than rises in rates do. Rate declines stimulate refinancings designed to lower interest costs, while rate increases discourage cash-out refinancings.

$$RSD_{j,t} = \begin{cases} \dfrac{r_{j,t} - r_{f,t}}{r_{j,t}} & \text{when } r_{j,t} > r_{f,t} \\ 0 & \text{otherwise} \end{cases} \qquad \textit{(Eq. 49)}$$

$$RSU_{j,t} = \begin{cases} \left| \dfrac{r_{j,t} - r_{f,t}}{r_{j,t}} \right| & \text{when } r_{j,t} < r_{f,t} \\ 0 & \text{otherwise} \end{cases} \qquad \textit{(Eq. 50)}$$

where:

$r_{j,t}$ = coupon interest rate on mortgage j in year t

$r_{f,t}$ = market rate, fixed-rate loans, in year t

The down-rate spread variable, $RSD_{j,t}$, is given added weight in the years preceding balloon maturity (model 2) in order to capture the risk aversity of borrowers with respect to interest rate movements leading up the balloon point. This weight is added through two interactive variables. First, $RSD1_{j,t}$, is $RSD_{j,t}$ multiplied by a 0/1 dummy variable that is turned on during the year immediately preceding the balloon year (13–24 months prior to the maturity month). The second, $RSD2_{j,t}$, is $RSD_{j,t}$ multiplied by a 0/1 dummy variable that is turned on during the second year preceding the balloon year (months 25–36 prior to the maturity month).

For adjustable rate mortgages (model 5), the spread variable is not separated into positive and negative components, but is allowed to have one effect for both increases and decreases in interest rates.[271] Because ARM coupon rates change every year, the relative spread variable is used to capture the slope of the yield curve, which indicates whether it is more valuable to retain the ARM or to refinance into a fixed-rate loan.

$$RS_{j,t} = \frac{r_{j,t} - r_{f,t}}{r_{j,t}} \qquad \textit{(Eq. 51)}$$

(ii) Market Interest Rate

An additional interest rate variable is added to the ARM equation (model 5). This is the fixed-rate mortgage rate, $r_{f,t}$, and it captures incentives to refinance into fixed-rate products when the level of rates is low.

(iii) Years-To-Go in the Yield Maintenance Period

Yield maintenance fees are a function of the remaining time until the end of the prepayment restriction period. As the yield maintenance period draws to a close, the prepayment penalties decline and the value of refinancing increases. To capture this change, prepayment model 1 has a variable that measures the years-to-go until the end of the yield maintenance period (YTG_t).[272]

A small number of older Enterprise loans had prepayment lockouts for a period of years, rather than financial prepayment fees. For these loans, we set YTG_t equal to 10 (its maximum value) throughout the restriction period.

(iv) Loan-to-Value Ratio

Investors in multifamily properties will engage in cash-out refinancings to increase returns on invested equity. This refinance motivation as *LTV* falls over time is captured by including LTV_t as an explanatory variable.

(v) Loan Age

The baseline prepayment hazard is a function of the desired holding period of investors. The holding period is heavily influenced by tax laws: accelerated writeoffs and shorter depreciation schedules encourage shorter holding periods. It is also affected by exogenous factors, e.g., investor retirement. Lacking data to measure the expected holding periods of investors, we assume that the distribution of expected holding periods, and their effect on baseline prepayment rates, can be captured through a quadratic function of mortgage age.[273]

[271] Also, a lack of observations on high interest rate environments made it difficult to estimate separate effects for rate rises (*RSU*).

[272] OFHEO experimented with variables that attempted to capture the impact of yield maintenance fees on refinancing incentives, but the fixed effects (years-to-go) proved to be a better predictor of historical mortgage performance.

[273] Follain, *et al.* (1997) attempt a fourth-order function of age to provide a more flexible baseline hazard function, but the third and fourth order terms are not statistically significant. Therefore, OFHEO accepts a second-order age function as sufficient for capturing the distribution of expected investor holding periods.

(vi) Probability of Qualifying To Refinance

An important obstacle to call option exercise is qualifying for a new loan. Because information on property financials after loan origination is not available, it is not known which properties can, at any point in time, meet minimum standards, *DCR*=1.20 and *LTV*=0.80. Instead, the model uses the same approach employed for default analysis, calculating the joint probability that *DCR* and *LTV* will meet minimum qualification standards (PQ_j). PQ_j is measured by evaluating the bivariate normal distribution shown in equation 42 with new integration limits:

$$PQ_{j,t} = \frac{1}{2\pi \cdot \sqrt{1-\rho^2}} \int_{c}^{\infty} \int_{-\infty}^{d} exp\left(\frac{x^2 - 2\rho xy + y^2}{2(1-\rho^2)}\right)(dydx) \quad (Eq.\ 52)$$

where, for any given loan (j) in any given time period (t):

$$c = \frac{ln(1.20) - ln\left(DCR_t \cdot \frac{PMT_0}{RPMT_t}\right) - 0.50 \cdot \sigma^2_{lnZ}}{\sigma^2_{1,t}} \quad (Eq.\ 53)$$

$$d = \frac{ln(0.80) - \mu_{2,t}}{\sigma^2_{2,t}} \quad (Eq.\ 54)$$

where:

$RPMT_t$ = mortgage payment if the loan were refinanced at time t, at current market interest rates

This effectively estimates the probability:

$$PQ_{j,t} = \text{Probability}(lnDCR_{j,t} > ln(1.20) \text{ and } lnLTV_{j,t} < ln(0.80)) \quad (Eq.\ 55)$$

(vii) Summary of Prepayment Models

In summary, the five prepayment models (equations) are organized as follows:

1. Model 1: All Fixed-Rate Mortgages-Fully Amortizing and Balloon-in the Yield Maintenance Period

Includes explanatory variables to capture investor holding horizons (AY_t, AY_t^2), normal refinancings (RSD_j), cash out refinancings (LTV_j), adverse interest rate effects on cash-out refinancings (RSU_j), and effects on normal refinancings due to yield maintenance (YTG_j).

2. Model 2: Balloon Loans After Yield Maintenance, but Prior to the Maturity Year

Includes explanatory variables for normal refinancings (RSD_j), cash-out refinancings (LTV_j), preballoon incentives to refinance and avoid the uncertainty of interest rates at maturity ($RSD1_t$ and $RSD2_t$), and the various investment horizons of borrower/owners (AY^t, AY_{t2}). The variable for adverse interest rate offsets to cash-out refinancings (RSU_j) is not included in this equation because of a lack of positive observations in the historical data series.[274] The coefficient from model 3 is used for this variable in this equation in stress test application.

3. Model 3: Self-Amortizing Fixed-Rate Loans After Yield Maintenance

Includes explanatory variables for investment horizons (AY_t, AY_t^2), normal refinancings (RSD_j), cash-out refinancings (LTV_j), and adverse interest-rate effects on cash-out refinancings (RSU_j).

4. Model 4: Balloon payoff

Includes an explanatory variable for the ability of the property to qualify for new financing (PQ_j). This is the only variable because at the balloon point there are no longer prepayments, only payoffs.

5. Model 5: Prepayments of Adjustable Rate Mortgages

Includes explanatory variables for the expected investment horizons of borrower/owners (AY_t, AY_t^2), cash-out refinance incentives (LTV_j), and incentives to refinance out of ARMs and into fixed-rate products (RS_t and $r_{f,t}$).

5. Results of the Statistical Estimation of Default and Prepayment Equations

Table 36 provides maximum likelihood estimates of coefficients in the two default equations.

[274] Estimating the regression equation with both *RSD* and *RSU* does not significantly change the coefficient on *RSD*. The *RSU* coefficient is negligible and without statistical significance.

Table 36. Binary Logistic Default Equations for Multifamily Loans

	Cash Purchases		Negotiated Purchases	
Variable	Coefficient Estimate	Wald Chi-Square	Coefficient Estimate	Wald Chi-Square
Constant	-10.0191	414.3	-9.6418	1065.4
AY_t	1.2687	229.9	1.0596	213.5
AY_t^2	-0.0790	127.5	-0.0633	144.9
BJP_t	2.6446	10.8	NA	NA
PR	0.6203	17.4	NA	NA
DW_t	-0.0829	4.9	NA	NA
JP_t	7.8230	979.4	12.1660	290.8
RA	NA	NA	0.6751	20.6
RF	NA	NA	0.2627	1.8
Model χ-squared	1693.8	DF=6	787.8	DF=5

All coefficient signs are as expected in both default equations, and all variables have significant effects, both statistically and practically. The age patterns in each equation (including the constant term) are similar, but the joint probability (JP_t) has a larger effect on negotiated purchase default rates than on cash-purchase default rates. This finding may result from the fact that most negotiated loan defaults were 90-day delinquency rather than foreclosures, and delinquencies may be more sensitive to changes in variables, such as vacancy rates, that underlie JP_t.

The dummy variable for program restructuring (*PR*) has a coefficient of 0.6203. That implies that annual default rates on original cash-purchase loans are roughly 1.6 times those of new-cash purchase loans.[275] The value of the depreciation write-off coefficient indicates that the decrease in depreciation allowances that were part of the 1986 tax reform increased default rates roughly 40 percent.[276]

Table 37 provides maximum likelihood estimates of the five prepayment models (equations). All of the coefficient estimates have the expected signs and provide consistent results. While the coefficient of the negative spread variable (RSD_t) is larger during the yield maintenance than it is out of yield maintenance, it actually has a much smaller effect on the probability of prepayment. In this functional form, the coefficient represents (approximately) the percentage change in prepayments per unit change in rates. Because prepayment rates are much greater for loans out of yield maintenance, the larger proportional effect for loans in yield maintenance is still much smaller in absolute terms.

[275] The marginal probability of binary logit coefficients is β=P(1 − P), where β is the coefficient and P is the probability estimated with the coefficient set to zero. So, if P=1 percent, then the increase in probability for original cash program loans is equal to 0.61 percent, and the original-program probability is 1.61 percent. If P=0.5 percent, then the probability for an original-program cash loan is 0.8 percent (marginal probability is 0.30 percent).

[276] This finding is explored in greater depth in Goldberg and Capone (1998).

Table 37. Binary Logistic Prepayment Models for Multifamily Loans

Variable	Coefficients, by Model (Wald Chi-squared statistics in parentheses)				
	Model 1: fixed-rate in yield maintenance	Model 2: balloon out of yield maintenance	Model 3: fixed-rate, non-balloon, out of yield maintenance	Model 4: balloon maturity payoffs	Model 5: adjustable rate mortgages
Constant	−4.7854 (152.7)	−7.3368 (172.0)	0.7129 (1.1)	−1.0021 (2.0)	−0.9037 (1.6)
AY_t	0.4393 (17.6)	1.5412 (121.2)	−0.2091 (8.6)	NA	1.7119 (304.1)
AY_t^2	−0.0263 (8.3)	−0.0952 (119.2)	0.0044 (4.8)	NA	−0.1231 (289.6)
RSD_t	11.0790 (280.6)	5.1700 (321.4)	3.9940 (61.3)	NA	NA
RSU_t	−7.1300 (1.9)	NA	−0.7960 (11.0)	NA	NA
$RSD1_t$	NA	1.9200 (12.0)	NA	NA	NA
$RSD2_t$	NA	1.6200 (15.6)	NA	NA	NA
RS_t	NA	NA	NA	NA	4.8140 (789.1)
$r_{f,t}$	NA	NA	NA	NA	−51.3100 (74.4)
LTV_t	−0.9499 (7.4)	−2.2591 (171.0)	−3.8166 (30.2)	NA	−3.2223 (63.5)
PQ_t	NA	NA	NA	1.8013 (3.4)	NA
YTG_t	−0.2656 (413.5)	NA	NA	NA	NA
Model χ-squared	1655.7 DF=6	1002.4 DF=6	135.7 DF=5	3.4 DF=1	1474.4 DF=5
Sample size (Loan-years)	59,272	26,341	14,269	360	37,728

As expected, balloon loans in the post-yield maintenance period have higher refinance incentives than do fully-amortizing loans, and, therefore, there is a higher coefficient on RSD_t in prepayment (model 2) than in prepayment (model 3), with even greater effects as balloon maturity approaches ($RSD1_t$ and $RSD2_t$).

Cash-out refinancings (LTV_t), are much stronger in the post-yield maintenance period, than during yield maintenance, as expected. ARM loan prepayments (model 5) are sensitive to all of the factors in the model. The balloon payoff (model 4) shows that the probability of qualifying for a refinancing is a valuable predictor of annual payoff rates in the balloon and post-balloon years.

6. Application to the Stress Test

The risk-based-capital stress test matches default and prepayment models for each loan group by loan characteristics and age. Because the stress test uses loan aggregates (groups), the probabilities that result from use of the statistical equations can be thought of as rates of default and prepayment on the outstanding balances in each loan group, in each month of the stress period. But the default and prepayment models generated here produce annual rates of default and prepayment. Monthly rates are derived by first calculating annual equivalent rates in each month, given the explanatory variable values in that month, and then converting the annual rates to their monthly equivalents.

The stress tests selects the appropriate default equation used for each loan group based solely on the value of the Program Type data field in the Enterprises' loan characteristics data. The stress test chooses among prepayment equations based upon Product Type and loan Origination Term fields in the loan characteristics data, and also upon a computed mortgage age variable. Balloon loans use three separate prepayment models throughout loan life: in yield maintenance (model 1), post-yield maintenance (model 2), and payoff period (model 4). Fully amortizing ARMs will use just one equation (model 5), balloon ARMs will use two equations (model 5, and then model 4 at balloon term). Fully amortizing fixed-rate loans will use two prepayment equations, model 1 during yield maintenance and model 3 afterward. The estimated default and prepayment equations are used not in binary logistic equations, but rather in trinomial equations, as shown in equations 20 and 21, above. Use of the trinomial or, more generally, multinomial probability equations assures that prepayments and defaults are treated as competing risks in stress test application.

Use of the statistical equations in the stress test also involves some cross-equation grafting of coefficients. This is because the historical data on post-yield maintenance balloon loans (model 2) do not have sufficient observations where market interest rates are higher than coupon rates to compute a reliable coefficient for *RSU*. Instead, the coefficient for the variable RSU_t in model 3 is added into model 2 so that the effect of the up-rate stress test can be captured. An additional cross-equation grafting is performed for the added balloon-year effect for the joint probability variable in the default equations (*BJP*). There are insufficient loans with balloon maturity in the negotiated purchase data set to estimate a coefficient. Therefore, the coefficient estimate from the cash purchase default equation is used in the negotiated purchase default equation in the stress test.

The cap rate multiplier used to update property value from NOI (equation 27) is updated in the stress test using ten-year constant maturity Treasury yields, rather than mortgage coupon rates. Which interest rate is used to capture percent changes in interest rates is not important, and the ten-year constant maturity Treasury Yield series is the fundamental interest rate series used in the stress test. The stress test also uses a simplifying assumption for the depreciation writeoff variable, DW_{jt}. Rather than predict the value of this variable into the future, OFHEO chose to use the 1995 value (9.27) for the entire stress period, in both up- and down-rate scenarios.

7. References

Abraham, Jesse (1993a). *A Cash Flow Model of Property Performance*, unpublished manuscript, Freddie Mac Corporation, McLean, Virginia, December.

Abraham, Jesse (1993b). *Credit Risk in Commercial Real Estate Lending*, unpublished manuscript, Freddie Mac Corporation, McLean, Virginia, December.

Abraham, Jesse M. and H. Scott Theobald. 1997. "Commercial Mortgage Prepayments," in Frank J. Fabozzi and David P. Jacob, eds., *The Handbook of Commercial Mortgage-Backed Securities*. New Hope, PA: Frank J. Fabozzi Associates, 55–74.

Altman, Edward I. (1983). *Corporate Financial Distress*. New York: John Wiley & Sons, 1983.

Barnes, Walter C. and S. Michael Gilberto (1994). *A Model for Assessing Commercial Mortgage Risk-Based Capital Factors*, mimeo.

Begg, C.B. and R. Gray (1984). "Calculation of Polychotomous Logistic Regression Parameters Using Individualized Regressions," *Biometrica*, 71:11–18.

Boyer, Lawrence G., James R. Follain, Jan Ondrich, and Richard A. Piccirillo, Jr. 1997. *A Hazard Model of Prepayment and Claim Rates for FHA Insured Multifamily Mortgages*, unpublished paper. Arlington, VA: Price Waterhouse, December.

Brennan, M. and E. Schwartz (1985). *Evaluation Natural Resource Investments*, Journal of Business, 135–157.

Capone, Jr., Charles A. (1991). *Bankruptcy, Survival, and the Multifamily Mortgage: A Methodological Primer for HUD Staff*, unpublished manuscript, Washington, DC, U.S. Department of Housing and Urban Development, August.

Childs, Paul D., Steven H. Ott, and Timothy J. Riddiough. 1995. *The Pricing of Multi-Class Commercial Mortgage-Backed Securities*. Unpublished manuscript, MIT Center for Real Estate, February.

Danter, Kenneth F. (1996). "Smart Investments in Multifamily," *Mortgage Banking*, July, 74–79.

DiPasquale, Denise and Jean L. Cummings (1992). "Financing Multifamily Rental Housing: The Changing Role of Lenders and Investors," *Housing Policy Debate* 3 (1), 77–116.

Dyl, E.A. and H.W. Long (1969). *Abandonment Value and Capital Budgeting: Comment*, Journal of Finanace, 88–95.

Elmer, Peter J. and Anton E. Haidorfer. 1997. "Prepayments of Multifamily Mortgage-Backed Securities." *The Journal of Fixed Income* (March), 50–62.

Follain, James R. and Jan Ondrich. 1997. "Ruthless Prepayment? Evidence from Multifamily Mortgages," *Journal of Urban Economics* 41 (January), 78–101.

Follain, James R., Jan Ondrich and Sinha P. Gyan (1990). *A Hazard Model of Multifamily Mortgage Prepayments*. Discussion Paper No. 54, Department of Economics, Syracuse University, December 1990.

Foster, Chet and Robert Van Order (1984). "An Option Based Model of Mortgage Default," *Housing Finance Review* 3 (4), 351–372.

Goldberg, Lawrence (1994). *Claims Forecasting Models for FHA Multifamily Housing Loans*. Reston, Virginia: Economic Research Laboratory, Inc., under contract to the U.S. Department of the Treasury through HCI Inc., Reston, Virginia, August 26.

Goldberg, Lawrence and Charles A. Capone, Jr. 1997. *Motivation and Testing of a Double-Trigger Hypothesis for Multifamily Loan Defaults*. Unpublished manuscript, Office of Federal Housing Enterprise Oversight: Washington DC.

Goldberg, Larry, and Capone, Jr., Charles A. (1998). "Multifamily Mortgage Credit Risk: Lessons from Recent History," *Cityscape* 4 (1), 93–113.

ICF Incorporated (1991). *Predicting Financial Distress In HUD Multifamily Projects*. Fairfax, Virginia: ICF

Incorporated, under contract with the U.S. Department of Housing and Urban Development, April 30.
Joy, O.M. (1976). *Abandonment Values and Abandonment Decisions: A Clarification*, Journal of Finanace, 1225–1228.
Kahn, Charles M. (1991). *The Economic Role of Foreclosure Rules*, ORER Letter, Spring, 8–11.
Kau, James B., D.C. Keenan, W.J. Muller III and J.F. Epperson (1987). *The Valuation and Securitization of Commercial and Multifamily Mortgages*, Journal of Banking and Finance 11, 525–546.
Kau, James B., D.C. Keenan, W.J. Muller III and J.F. Epperson (1990). "Pricing Commercial Mortgages and Their Mortgage-Backed Securities," *Journal of Real Estate Finance and Economics* 3, 333–356.
Mahue, Michelle A. (1991). "The Economic Role of Statutory Redemption," *ORER Letter*, Spring, 12–13.
McFadden, Daniel (1975). "The Revealed Preferences of a Government Bureaucracy: Theory." *Bell Journal* (Autumn), 401–416.
National Task Force on Financing Affordable Housing (1992). *From the Neighborhoods to the Capital Markets*. Washington, DC: Allstate Insurance Company, June.
Pedone, Carla I. (1991). "Estimating Mortgage Prepayments and Defaults in Older Federally Assisted Rental Housing and the Possible Costs of Preventing Them," *Housing Policy Debate* 2 (2), 245–288.
Quercia, Roberto (1995). *On Developing a Model of Mortgage Default for Multifamily Rental Housing*, unpublished manuscript. Washington, DC: the Urban Institute, October.
Riddiough, Timothy J. and H.E. Thompson (1993). "Commercial Mortgage Pricing with Unobservable Borrower Default Costs," *Journal of the American Real Estate and Urban Economics Association* 21 (3), 265–292.
Riddiough, Timothy J. and S.B. Wyatt (1994a). "Strategic Default, Workout and Commercial Mortgage Valuation," *Journal of Real Estate Finance and Economics* 9 (1), 5–22Riddiough, Timothy J. and S.B. Wyatt (1994b). "Wimp or Tough Guy: Sequential Default Risk and Signaling with Mortgages," *Journal of Real Estate Finance and Economics* 9 (3), 299–322.
Robicheck, A. and J.C. Van Horne (1967). *Abandonment Value and Capital Budgeting*, Journal of Finance, 577–590.
Sharkawy, M. Atef and Walter C. Barnes (1992). "Cost, Value, and Hybrid-Based Underwriting Criteria," *The Journal of Real Estate Research* 7 (2, Spring), 169–185.
Snyderman, Mark P. (1994). "Update on CommercialeMortgage Defaults," *The Real Estate Finance Journal*, Summer, 22–32.
Titman, S. and W. Torous (1989). "Valuing Commercial Mortgages: An Empirical Investigation of the Contingent Claims Approach to Pricing Risky Debt," *Journal of Finance* 44, 345–373.
Standard & Poors (1993). *Credit Week*, March 8. (Issue devoted to Commercial Mortgage Securities)Vandell, Kerry (1992). "Predicting Commercial Mortgage Foreclosure Experience," *Journal of the Americal Real Estate and Urban Economics Association* 20 (1), 55–88.
Vandell, Kerry, Walter Barnes, David Hartzell, Dennis Kraft and William Wendt (1993). "Commercial Mortgage Defaults: Proportional Hazards Estimation Using Individual Loan Histories," *Journal of the American Real Estate and Urban Economics Association* 4 (21, Winter), 451–480.

E. Multifamily Loss Severity

1. Introduction

Owing primarily to limited available data, OFHEO's approach to modeling multifamily loss severity rates for stress test application is simpler than approaches chosen for other elements of mortgage performance. The number of multifamily loans in Enterprise portfolios is a fraction of the number of single family loans. Therefore, the number of defaulted multifamily loans is relatively small. Further, only one Enterprise, Freddie Mac, has reliable historical records of multifamily loss severity rates. Until the mid-1990s, Fannie Mae's multifamily default resolutions were handled by the various field offices, and there were no standard protocols for tracking and maintaining data elements on a loan-by-loan basis. The result is that OFHEO analysis of Enterprise experience is exclusively focused on that of Freddie Mac.

Even so, the Freddie Mac program provides sufficient data to understand the various components of loss severity rates. They represent the worst historical experience of the Enterprises, and some of the worst experience on record for industry-wide multifamily mortgage loss severities. The Freddie Mac data are not extensive enough to allow a multivariate statistical analysis. The analysis outlined here is univariate: each element is examined individually, without explanatory variables. The result is that OFHEO chose for its stress test to use simple averages of various components of multifamily loss severity.

Section 2 of this supplementary material on multifamily loss severity gives an outline of the conceptual framework, the plan OFHEO used in approaching multifamily loss severity rates; section 3 provides a discussion of the source data; section 4 is a summary of the data analysis; and section 5 concludes with an examination of how the loss severity components are applied in the stress test.

2. Conceptual Framework

Loss severity is the net cost of resolving a mortgage default. It is most typically measured as a percentage of the unpaid principal balance (UPB) at the time of default.[277] OFHEO measures severity in this way and then applies any available credit enhancements against the loss to arrive at a net loss to the Enterprises. Credit enhancements are not discussed in this supplement. A description of how the stress test applies credit enhancements can be found in the Appendix to this regulation.

OFHEO's general approach is to model only those loss severity rates associated with full foreclosure events. The one exception is for programs where the default event of record is a 90-day delinquency. This exception will be discussed below, under Data Analysis. Foreclosure results in the Enterprise taking title to the property, managing and rehabilitating it, and then marketing and selling the property. OFHEO also models the timing of events and cost elements associated with foreclosure and property management. As with single family loss severity rates, OFHEO recognizes three time frames in capturing costs and revenues associated with mortgage foreclosure: the first four months of delinquency, the time from default to foreclosure completion (which includes the first four months), and time of property inventory (from foreclosure completion to property disposition).

After analyzing Enterprise data, and reviewing available research on multifamily loss severity, OFHEO chose to use simple averages of Enterprise experience, by loss component, and not to perform multivariate statistical analysis. Component analysis permits the use of discounting techniques to create effective loss severity rates at the time of default (one month after last-

[277] All references to UPB in this part of the supplement indicate UPB at time of default.

paid-installment). OFHEO found no basis in the existing literature for multivariate statistical analysis of multifamily loss severities.

OFHEO identified seven studies of loss severity, each of which relies upon data from a broad range of commercial property types, and each of which defines and measures severity rates somewhat differently.[278] These studies primarily provide simple averages of loan-level loss severity rates, though some do attempt some statistical analysis of severity rates. Curry, et al (1990) model loss severities as a function of the type of organization managing the foreclosed property (public or private). Haidorfer (1997) performs a multivariate statistical analysis that looks at the type of property sale process (open auction, sealed-bid auction, or broker sales). He finds that the type of selling process does not influence severity rates. A third study by Ciochetti and Riddiough (1998) models expected property recovery rates as a function of mortgage terms, and a list of property type and region dummies.[279] They find no statistical significance of original LTV, debt coverage ratio (DCR), loan age, or the mortgage interest rate.

3. Sources of Data

OFHEO obtained loss severity data on multifamily loans from both Enterprises, but only Freddie Mac maintained a complete historical data base of all relevant revenue and expense components that was useful for this analysis.[280] The analysis of foreclosure loss severities is then limited to 705 multifamily loans purchased by Freddie Mac, that subsequently defaulted between 1987 and 1995 and ended in foreclosure. Over 83 percent of these loans defaulted between 1990 and 1993, in what is considered the worst period in modern history for the commercial mortgage market. These data are supplemented by Freddie Mac data on other default resolutions. These additional data are used for projecting potential losses on negotiated purchase loans for which seller/servicers must repurchase and resolve all 90-day delinquencies. Once delinquencies are resolved, the seller/servicers bill the Enterprise for the net costs.[281] Fannie Mae has a large portfolio of sold loans with these repurchase provisions and has maintained data on the claims for losses submitted by the seller/servicers. However, many of the claim records are incomplete and OFHEO therefore, relied on information on Freddie Mac default resolutions, and on information from other available studies, to determine a loss rate to charge against 90-day delinquencies. Freddie Mac provided OFHEO with information on the chargeoffs associated with 160 non-foreclosure resolutions that occurred from 1990 to 1995.

These data represent the worst historical experience of the Enterprises, which began purchasing conventional multifamily mortgages in 1983.[282] The Freddie Mac data is among the largest and richest sets of information available to any researchers who have studied multifamily loss severities.

4. Data Analysis

a. Foreclosure Severity Rates

Table 38 provides average values for loss severity components in the Freddie Mac foreclosure database. The cost components are each measured as a percent of the UPB at the time of default. These average rates are also computed using UPB as a weighting factor on each loan. This weighting provides a more accurate measure of portfolio severity rates than would a simple average.[283] The operating loss per month is the difference between monthly property income (rents) and expenses, where expenses include property repairs. It is not surprising that this element is a net cost rather than a net revenue because defaulting properties will have high vacancy rates and significant needs for repairs. The net proceeds of property sale is arrived at by subtracting selling expenses and other prorated expenses (taxes and rents) due at settlement from the actual sales price of each property. The two time dimensions reported here are important for discounting the associated cash flows to arrive at an effective loss severity rate at time of default (one month after last-paid-installment). One cost element not shown in Table 38 is the interest passthroughs to security holders during the initial months of delinquency. In general, loans are repurchased from security pools by the 120th day of delinquency, so that four months of passthrough interest must be added to severity calculations in stress test application.

[278] The seven studies are: Curry, Blalock, and Cole (1990); Snyderman (1994); Fitch Investors Service (1996); Ciochetti (1997); Haidorfer (1997); Barnes, Gilberto and Peyton (1998); and Ciochetti and Riddiough (1998).

[279] The Ciochetti and Riddiough study looks at expected recoveries immediately following foreclosure, where property value is appraised value, and no property management or disposition costs are included in the calculations.

[280] Until the mid 1990s, Fannie Mae's foreclosed property inventory was managed by the individual field offices. There were no standard protocols for recording or retaining expense and revenue components of loss severity on a loan-by-loan basis. Fannie Mae could only provide OFHEO with consistent data on event times (foreclosure and property disposition).

[281] When these loans are purchased by the Enterprises, the seller/servicers must establish resource accounts. These credit enhancements drawn on as first-lost protection before the Enterprises actually incur any costs from loan defaults in these mortgage pools.

[282] Goldberg and Capone (1997) detail the problems that led to high default rates among multifamily mortgages in the late 1980s and early 1990s. These same factors led to high severity rates. In addition to market factors, Freddie Mac attributes its particularly bad performance to fraud by lenders that underwrote loans that were not of investment quality. An analysis of data shown in Investor Analyst Reports shows that in 1991, Freddie Mac's chargeoff for bad multifamily loans was more than its total chargeoff for bad single family loans, even though its multifamily portfolio of $10 billion was only three percent as large as the single family portfolio. This high rate of chargeoffs lasted from 1989 through 1992.

[283] UPB weighting is also used in the OFHEO single family loss severity analysis.

Table 38. Multifamily Loss Severity Components
Freddie Mac Foreclosure Experience, 1987-1995

Component	Average value
Foreclosure costs	9.01%
Operating loss, per month, during property holding period	0.332%
Net proceeds of property sale	58.88%
Time from default to foreclosure	18 months
Time in property inventory	13 months

Adding the cost components here produces a 54 percent loss severity. This sum is comparable to what is reported by Fitch (1996) in its study of commercial mortgage foreclosures. Fitch reports a 56 percent average loss severity rate on foreclosures.[284] The Fitch study had an (undefined) interest passthrough component. If added to the Freddie Mac severity components, a four-month passthrough at eight percent interest would increase their sum from 54 percent to roughly 58 percent.

b. 90-Day Delinquency Severities

Deriving a loss rate to use for 90-day delinquency events involves making inferences on the rate of foreclosure and other costly resolutions versus non-costly resolutions. Snyderman (1994) found that 46 percent of 90-day delinquencies in life insurance company portfolios, 1972–1986, ended in foreclosure. Freddie Mac data are consistent with this finding. Freddie Mac data indicate that foreclosures plus other costly resolutions are 56 percent of total 90-day delinquencies. Using 56 percent as the rate of costly loan resolutions, and applying a 70 percent foreclosure loss severity to them, produces a severity rate on 90-day delinquencies of just over 39 percent.[285]

5. Application to the Stress Test

The loss severity components just described enter the stress test as cash flows at various points in the default time frame. These cash flows are discounted by a cost-of-debt interest rate to produce a net-present-value loss severity rate in the month of default. The use of discounting provides an implicit funding cost. It reduces the value of final proceeds by an amount equal to the cost of funding the non-performing assets (first the loan, and then the property), and it reduces the value of various expenditures to reflect the fact that cash is not actually expended in the month of loan default but could be invested at some rate-of-return for a number of additional months. What discounting does not include is the cost of funding that portion of the loan balance that is not recovered in the sale of the foreclosed property. That portion of funding cost is captured elsewhere in the stress test by ongoing interest expenses on debt that is in excess of what can be retired by the property sale proceeds.[286] The ongoing interest expenses are captured in other parts of the stress test beyond the loss severity calculations.

a. Foreclosure Loss Severity Rate Application

The basic loss severity equation for foreclosure costs has five elements, as shown in this equation:

$$L_t = \frac{1}{\left(1+\frac{r_{d,t}}{2}\right)^{\frac{4}{6}}} + \frac{(r_p/12)\cdot 4}{\left(1+\frac{r_{d,t}}{2}\right)^{\frac{2}{6}}} + \frac{F}{\left(1+\frac{r_{d,t}}{2}\right)^{\frac{t_f}{6}}} + \frac{O\cdot t_i}{\left(1+\frac{r_{d,t}}{2}\right)^{\frac{(t_f+t_i/2)}{6}}} - \frac{P}{\left(1+\frac{r_{d,t}}{2}\right)^{\frac{t_f+t_i}{6}}}$$

[284] It is not clear exactly how many foreclosures there are in the Fitch data set. Fitch reports 547 costly default resolutions of 60-day delinquencies, of which it appears from other data given in the report (loss severity rates on foreclosure and non-foreclosure resolutions) that 147 are foreclosure events.

[285] The 70 percent loss rate on foreclosures comes from the 54 to 58 percent reported earlier, with asset holding costs added.

[286] For retained loans, the debt supporting the mortgage UPB will already be on the Enterprise balance sheets at the time of default. For sold loans, however, asset funding occurs when the Enterprise buys the defaulting loan out of its security pool.

where:

L_t = net loss severity rate (as a fraction of the unpaid loan balance) for loans that default in month t

F = foreclosure costs (0.0901 of the unpaid loan balance)

O = operating loss, per month (0.0033 of the unpaid loan balance)

P = net property sale proceeds (0.5888 of the unpaid loan balance)

t_f = time from default to foreclosure (18 months). This is divided by 6 to accommodate the use of semi-annual discounting.

t_i = property inventory time (13 months), the time between foreclosure and property disposition. This is divided by 6 to accommodate semi-annual discounting.

$r_{d,t}$ = discount rate (6-month agency cost of funds) in month *t*. This is divided by 2 to represent semi-annual discounting.

r_p = passthrough interest rate on the underlying mortgage(s)

The first loss element is the UPB of the defaulted loan. It is set here equal to '1' or 100 percent. For sold loans, it is discounted for four months, which represents the timing of repurchasing the loan from the security pool. For retained loans, the UPB is not discounted because the economic loss occurs at the time of default. The second loss element is the passthrough interest expense for four months. This expense is discounted for two months as an approximation to discounting each month's pass through individually. This element only appears for sold loans.

The third element of loss severity is the expense incurred to obtain a foreclosure judgment on the property. This cost includes all legal expenses for foreclosure and, when necessary, to release a bankruptcy stay, and other charges that may be incurred to obtain clean title to the property (e.g., property taxes due). The fourth element is the cost of operating and maintaining the foreclosured property while it is REO. And the fifth element is the net proceeds at final property disposition.

The formula can be applied very simply. Using the cost elements in Table 38, along with a discount rate, $r_{d,t} = .06$, and a passthrough rate, $r_p = .08$:

$$L_t = \frac{1}{\left(1+\frac{0.06}{2}\right)^{\frac{4}{6}}} + \frac{(0.08/12)\cdot 4}{\left(1+\frac{0.06}{2}\right)^{\frac{2}{6}}} + \frac{0.0901}{\left(1+\frac{0.06}{2}\right)^{\frac{18}{6}}} + \frac{0.0033\cdot 13}{\left(1+\frac{0.06}{2}\right)^{\frac{(25.5)}{6}}} - \frac{0.5888}{\left(1+\frac{0.06}{2}\right)^{\frac{31}{6}}}$$

This reduces to 0.622 for sold loans and 0.615 for retained loans. If we increase the discount rate to 12 percent, the results change to 0.661 for sold loans and 0.673 for retained loans. If the discount rate were reduced to three percent, the net present value severity rates would be 0.598 for sold loans and 0.581 for retained loans.

b. 90-Day Delinquencies

For negotiated purchase loans with seller/servicer repurchase provisions, the stress test discounts to reflect a time lag between the initial delinquency and the claim payment. In the stress test, seller/servicer claims on 90-day delinquencies are settled 12 months after default. Starting with the 39 percent severity rate for foreclosure alternatives reported above, and discounting for one year, yields a rate of around 34 to 37 percent, depending on the actual discount rate.

6. References

Barnes, Walter C., Gilberto, Michael, and Peyton, Martha S. (1997). *Commercial Mortgage Loss Severity: What is it and How Should it be Measured*? unpublished manuscript, Mortgage Analytics, West Hartford, CT.

Ciochetti, Brian A. (1997). *Loss Characteristics of Commercial Mortgage Foreclosures, Real Estate Finance* (Spring), 53–69.

Ciochetti, Brian A. and Riddiough, Timothy J.(1997). *Foreclosure Loss and the Foreclosure Process: An Examination of Commercial Mortgage Performance*, unpublished manuscript, University of North Carolina, Chapel Hill, Department of Finance.

Curry, Timothy, Blalock, Joseph, and Cole, Rebel (1990). *Recoveries on Distressed Real Estate and the Relative Efficiency of Public Versus Private Management, AREUEA Journal* 19 (4), 495–515.

Fitch Investors Service (1996). *Trends in Commercial Mortgage Default Rates and Loss Severity*. New York: Fitch Investors Service, Structured Finance Special Report, November 11.

Goldberg, Larry, and Capone, Jr., Charles A. (1998). *Multifamily Mortgage Credit Risk: Lessons from Recent History, Cityscape* 4 (1), 93–113.

Haidorfer, Anton E. (1997). *Relative Gross Recovery Rates on the Sale of Distressed Real Estate Owned Evidence from the Resolution Trust Corporation (RTC)*, unpublished manuscript, Mortgage Bankers Association of America, May.

Snyderman, Mark P. (1994). *Update on Commercial Mortgage Defaults, The Real Estate Finance Journal*, Summer, 22–32.

F. Property Valuation

1. Introduction

The stress test simulates mortgage performance under housing market

conditions that reflect stresses comparable to those of the time and place of the benchmark loss experience (BLE). This section describes the data used to define and create variables that comprise the housing market conditions of the stress test.

Three housing market condition variables are used in the stress test: house price growth rates, rent growth rates, and rental vacancy rates. House price growth rates are used to project single family mortgage performance, both default/prepayment rates and loss severity rates. Rent growth rates and vacancy rates are used to project multifamily default and prepayment rates.

Section 2 of this part of the Technical Supplement describes the conceptual framework OFHEO used to determine the housing market condition variables in the stress test. Section 3 lists the sources of data used to develop these variables. Section 4 then describes the statistical analysis performed to transform source data into housing market condition variables.

2. Conceptual Framework

The BLE is based upon the performance of 30-year, fixed-rate single family mortgages in four States—Arkansas, Louisiana, Mississippi, and Oklahoma—originated in 1983 and 1984, during the ten years following origination, as defined in the first NPR. The actual BLE covered twelve calendar years because benchmark loans could originate any time between January 1983 and December 1984, and the ten-year experience of the last loans originated during the benchmark time period lasted through December of 1994. For house prices, rent growth rates, and vacancy rates in the stress test, OFHEO defined the BLE as the years 1984 through 1993—the middle ten years of the twelve-year period marking the BLE. OFHEO then identified sources of data that reflect the housing market conditions of the benchmark time and place, and that are compatible with historical data used to estimate statistical (econometric) models of mortgage default, prepayment, and loss severity.

a. Single Family House Price Appreciation Rates

OFHEO sought publicly available data with geographic coverage that reflect stresses similar to those of the BLE. For house price growth rates, the stress test uses OFHEO HPI data from the West South Central (WSC) Census Division. Because the 1984–1993 WSC HPI series was used to calibrate the single family default- and severity-rate equations to the actual four-State benchmark loan performance,[287] the same series also was used to define housing market conditions in the stress test. The WSC Census Division is similar geographically to the actual four-State BLE. The difference is that the WSC includes Texas, but not Mississippi. For the ten-year period, 1984–1993, the cumulative house price appreciation rate for the WSC Census Division is very similar to that of the four-State benchmark region. For the stress test, the OFHEO HPI is converted from index form into quarterly appreciation rates.

b. Vacancy Rates and Rent Growth Rates

Rental market data—vacancy rates and rent growth rates—used in the statistical analysis of historical multifamily default and prepayment rates are also from government sources. Rent growth rates are from the residential rent component of the consumer price index (CPI), produced by the Bureau of Labor Statistics. Vacancy rates are from the rental vacancy rate series (H–111) produced by the Bureau of the Census. However, these data series are not used directly to reflect multifamily housing market conditions during the stress period because the available geographic aggregations and time periods do not closely match the four-State benchmark. The CPI residential rent index is not available for the appropriate geographic areas, and the H–111 state vacancy rate series is not available for 1984 and 1985.[288]

In light of these shortcomings, OFHEO identified a non-government source of data published by the Institute for Real Estate Management (IREM). However, the IREM data do not represent the same properties as the government data. IREM surveys include only apartments, while the government surveys (both rents and vacancies), include apartments and single family rental units. To assure consistency with the government series, statistical regression equations were estimated to use in adjusting the IREM data. The adjusted data can be thought of as answering the question, "What would CPI and H–111 data look like if they were available in the benchmark area?" The statistical regressions (detailed in section 4, Statistical Analysis) use data from all metropolitan statistical areas (MSAs) for which both IREM and CPI or H–111 data are available, to estimate statistically valid relationships. These equations are then applied to IREM data from the four-State area to assure that variables used in the stress test are compatible with the variables used to develop the statistical models.

3. Data Sources

The sources of data used to develop the housing market condition variables for stress test application are as follows:

- *OFHEO HPI Report, 1996:3*, West South Central Census Division Series, 1983:4–1993:4.
- Bureau of Labor Statistics, Consumer Price Index, Residential Rent Component, MSA series, 1970–1995, annual index values.
- Bureau of the Census, H–111 Housing Vacancy Survey, rental unit vacancies, MSA series, 1981–1995, annual average vacancy rates.
- Institute for Real Estate Management. Conventional Apartments. Chicago, IL: IREM. Annual publications, 1981–1995, MSA level (median) dollar rents per square foot, (median) dollar vacancy losses per square foot, and number of apartments in survey.

4. Statistical Analysis

a. House Prices Appreciation Rates

The use of the OFHEO HPI in the stress test requires no statistical analysis. Monthly house price appreciation rates are derived from the OFHEO HPI index in three steps. First, monthly appreciation rate indexes are created for each quarter by dividing that quarter's index value by the index value for the preceding quarter. Second, the logarithm of this new index is used as the growth rate factor for that quarter. Finally, the quarterly rate is divided by three to produce at monthly growth rate factors for each month in the quarter. In this manner, the 120 months of stress test HPI growth rate factors ($g_{q,t}$) are produced from the 41 quarterly HPI values (HPI_q), 1983:4–1993:4:

[287] Benchmark loss experience calibration is discussed in both the Single Family Default/Prepayment and the Single Family Severity sections of this Technical Supplement.

[288] The residential rent series includes MSA level data for New Orleans, beginning in 1986. The New Orleans data alone, however, were insufficient for use in representing the BLE.

$$g_{q,t} = \frac{ln\left(\frac{HPI_q}{HPI_{q-1}}\right)}{3} \qquad (Eq.\ 56)$$

where:

$g_{q,t}$ = house price growth rate factor in month t={1,2,3} in calendar quarter q = {1984:1,...,1993:4}

The $g_{q,t}$ are called growth rate "factors" because they are the continuous growth rate equivalents to actual, discrete growth as measured across each month and quarter.[289] Stress test applications convert these factors to actual appreciation rates. This baseline series of monthly growth rates applies in both the up- and down-rate scenarios, but may be adjusted for inflation in the up-rate scenario.

b. Rent Growth Rates

The statistical analysis underlying the rent growth rate variable used in the stress test uses MSA level data from both IREM and the CPI for the 26 cities for which the CPI residential rent index is available.[290] Annual growth rates for 1970–1995 were computed from both the IREM and CPI rent data, and the following pooled, time series, cross-sectional, weighted least squares regression was estimated:

$$\dot{RR}_{j,y} = 0.027 + 0.295 \cdot \dot{IR}_{j,y} \qquad (Eq.\ 57)$$

where:

$\dot{RR}_{j,y}$ = annual growth rate of the CPI residential rent index in MSA, j, and calendar year y

$\dot{IR}_{j,y}$ = annual growth rate of the IREM rent growth rate series in MSA, j, and calendar year y

The regression was weighted by the number of apartments that IREM surveyed in each MSA. The coefficient for $\dot{IR}_{j,y}$ is significant at the 99 percent confidence level.

IREM data are available for one city in each of the four benchmark States—Jackson, Little Rock, New Orleans, and Oklahoma City. A benchmark region rent growth rate series was computed from equation 57, using a simple average of annual IREM rent growth rates in each of these cities (1984–1993) to populate $\dot{IR}_{j,y}$. Monthly rent growth rates were then computed using the following compounding formula.

$$g_{y,t} = \sqrt[12]{1 + \hat{CR}_y} - 1 \qquad (Eq.\ 58)$$

where:

$\hat{CR}_y$ = the "fitted value" annual government-equivalent rent growth rate from equation 57, for year, y = {1984,...,1993}, using the four-city average IREM rent growth rates in place of $\dot{IR}_{j,y}$

$g_{y,t}$ = monthly rent growth rates for each month t = {1,...,12} in year y

Equation 58 produces final rent growth rates in discrete form, rather than continuous form, because the process used to create the original series was discrete. As with the house price growth rate factors, inflation adjustments may be applied in the up-rate scenario.

c. Vacancy Rates

Because Census vacancy rate data are available at the State level starting in 1986, OFHEO uses the average of rates

[289] Continuous growth rates refer to a process whereby house price appreciation is a continuous process, throughout each month or quarter. The actual house price index that shows total appreciation across a month or quarter is just the exponential of the growth rate factor for that time period.

[290] Statistical analysis was based upon what the Bureau of Labor Statistics calls its "old series." The new series covers 29 MSAs.

in the four benchmark States, from 1986–1993 for the latter eight years of the stress test. For the first two years, OFHEO employs a statistical analysis similar to that for rent growth rates to create government-equivalent vacancy rates for 1984 and 1985, the first two years needed for the stress test. The weighted-least-squares regression matches MSA-level Census vacancy rates to IREM vacancy rates in the same cities. Matching data is available for 51 MSAs; 23 with Census data that begin in 1981, and another 28 for which Census data become available in 1986. The pooled cross-section, time series regression is:

$$\dot{CV}_{j,y} = 0.001 + 0.29 \cdot \dot{IV}_{j,y} \qquad (Eq.\ 59)$$

where:

$\dot{CV}_{j,y}$ = annual change in Census vacancy rate between years (y-1) and y, for MSA j

$\dot{IV}_{j,y}$ = Annual change in IREM vacancy series between years (y-1) and y, for MSA j

The coefficient on $\dot{IV}_{j,y}$ is statistically significant at the 99 percent level, but the constant term is not statistically significant. This lack of significance is not surprising, given that the regression is relating rates of change and not levels of vacancy rates. In application, the constant term is dropped from the equation.

To compute vacancy rates for 1984 and 1985, equation 59 is applied using average IREM vacancy rates for the four benchmark cities to compute rates of change for the four-State average Census vacancy rate. The resulting rate of change from 1986 to 1985 is first applied to the four-State average Census vacancy rate for 1986 to compute a government-equivalent vacancy rate for 1985. The procedure is repeated to compute the vacancy value for 1984. Finally, each annual vacancy rate in the ten-year series is applied to each month in the year to extend the series to cover the 120 months of the stress period.

V. Regulatory Impact

A. Executive Order 12612, Federalism

Executive Order 12612 requires that Executive departments and agencies identify regulatory actions that have significant Federalism implications. "Federalism implications" is defined as regulations or actions that have substantial direct effects on the States, on the relationship or distribution of power between the national government and the States, or on the distribution of power and responsibilities between the Federal and State government. This proposed regulation has no Federalism implications that warrant the preparation of a Federalism Assessment in accordance with Executive Order 12612.

B. Executive Order 12866, Regulatory Planning and Review

This regulation has been reviewed by the Office of Management and Budget (OMB) in accordance with Executive Order 12866. OMB has determined that this is an economically significant rule. Included in the preamble to the proposed rule is an economic analysis of the proposal's impact on the regulated entities, and in particular on mortgage credit, of various alternatives. It contains a technical supplement providing detail on the specifications and estimations of econometric models for mortgage performance, and how those statistical models are applied in the proposed risk-based capital stress test.

The proposed regulation implements the 1992 Act's requirement that OFHEO establish a risk-based capital requirement for the Enterprises. Along with the existing minimum capital leverage ratios and the examination function, the stress test is designed to ensure that the Enterprises have adequate capital and operate in a safe and sound manner.

It is difficult to estimate precisely the particular benefits and costs associated with the risk-based capital requirement. Where possible, section II. C., Implications of the Proposed Rule discusses and quantifies the potential benefits and potential costs in more detail. Otherwise, that section characterizes the benefits and costs qualitatively. The analysis indicates that the anticipated benefits from implementing the risk-based capital regulation outweigh the anticipated costs. It further indicates that the proposed regulation ensures that risk is held at an appropriate level, while imposing the least burden on the Enterprises.

By carrying out Congress' intent to implement the risk-based capital requirement, OFHEO would reduce the potential for Enterprise insolvency by protecting against interest rate, credit, and management and operations risk. By ensuring their safety and soundness, the regulation allows the Enterprises to continue to carry out their public purposes.[291] These include providing stability in the secondary market for residential mortgages and providing access to mortgage credit in central cities, rural areas, and underserved areas. In addition, the regulation will also ensure that the Enterprises will continue to provide benefits to the primary mortgage market such as standardizing business practices.[292]

Other benefits of the risk-based capital requirement are (1) making the Enterprises' capital requirement more sensitive to differences in risk exposures, (2) discouraging the Enterprises from taking excessive risks by making riskier behavior more costly, and (3) ensuring that the Enterprises maintain adequate capital in stressful credit and interest rate environments. Implementing a risk-based capital requirement with credit risk and interest rate risk components will help ensure that the Enterprises' capital requirement is more closely related to the risks that they incur. Adopting the proposed rule will result in a capital requirement that corresponds more closely to capital levels that the marketplace would demand in the absence of the benefits afforded by the government sponsorship of the Enterprises, and will lead to gains in overall economic efficiency.

---

[291] 1992 Act, section 1302(2) (12 U.S.C. 4501(2)).

[292] *Managing Risk in Housing Finance Markets: Perspectives from the Experiences of the United States of America and Mexico*, OFHEO and the Mortgage Bankers Association of America (June 11, 1998).

Moreover, by evaluating risk in a forward-looking, dynamic manner, the stress test identifies potential problems before they become significant.

As detailed in the Implications section, the Proposed Rule may impose some costs on the Enterprises. Nevertheless, any such costs are the necessary and reasonable costs of carrying out Congress' intent that the Enterprises remain financially solvent, which will enable them to out their important public purposes.

Changes to comply with the risk-based capital requirement can be accomplished at relatively low costs. Both Enterprises can employ various practices and procedures to manage credit risk and interest rate risk by adjusting their holdings or operations. For example, one method to reduce credit risk exposure is to increase use of credit enhancements with highly-rated counterparties. One method to reduce interest risk exposure is to purchase derivative contracts.

By complying with an effective risk-based capital requirement, the Proposed rule may in fact reduce Enterprise costs by enhancing investor confidence. This is consistent with a study by Standard & Poor's (S&P) that provided risk-to-the-government credit ratings for the Enterprises.[293] While S&P had rated Fannie Mae A – and Freddie Mac A+ in 1991, the 1997 report upgraded the ratings of both Enterprises to AA-. S&P cited increased governmental oversight by OFHEO as an important factor in these higher ratings. It further noted that "OFHEO's regulatory oversight [of Freddie Mac] also gives comfort that appropriate interest rate risk mitigation steps would be taken as needed."[294]

C. Executive Order 12988, Civil Justice Reform

Executive Order 12988 sets forth guidelines to promote the just and efficient resolution of civil claims and to reduce the risk of litigation to the government. The proposed regulation meets the applicable standards of sections 3(a) and (b) of Executive Order 12988.

D. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires that a proposed regulation that has a significant economic impact on a substantial number of small entities must include an initial regulatory flexibility analysis describing the rule's impact on small entities. Such an analysis need not be undertaken if the agency head certifies that the rule will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605(b).

OFHEO has considered the impacts of the proposed risk-based capital regulation under the Regulatory Flexibility Act. The proposed regulation does not have a significant effect on a substantial number of small entities.

This proposed regulation would not have a significant economic impact on a substantial number of small entities since it is applicable only to the Enterprises, which are not small entities for purposes of the Regulatory Flexibility Act. Therefore, the General Counsel of OFHEO acting under delegated authority has certified that the proposed regulation would not have a significant economic impact on a substantial number of small entities.

E. Paperwork Reduction Act

The Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35 requires that regulations involving the collection of information receive clearance from the Office of Management and Budget (OMB). The risk-based capital proposal contains no such collection of information requiring OMB approval under the Paperwork Reduction Act.

List of Subjects in 12 CFR Part 1750

Capital classification, Mortgages, Risk-based capital.

Accordingly, for reasons set forth in the preamble, the Office of Federal Housing Enterprise Oversight proposes to amend 12 CFR part 1750 as follows:

PART 1750—CAPITAL

1. The authority citation for part 1750 as published at 61 FR 29619, June 11, 1996, continues to read as follows:

Authority: 12 U.S.C. 4513, 4514, 4611, 4612, 4614, 4618.

§ 1750.5 [Removed]

2. Remove § 1750.5.

3. Amend § 1750.12 of part 1750 as published at 61 FR 29620, June 11, 1996, by revising paragraph (a) to read as follows:

§ 1750.12 Procedures and Timing.

(a) Each Enterprise shall file with the Director a risk-based capital report each quarter, or at such other times as the Director requires. The report shall contain information identified by OFHEO in written instructions to each Enterprise.

* * * * *

4. Revise the Appendix to subpart B of part 1750 as published at 61 FR 29621, June 11, 1996, to read as follows:

Appendix to Subpart B of Part 1750—Risk-Based Capital Test Methodology and Specifications

1.0 Identification of the Benchmark Loss Experience
1.1 Definitions
1.2 Data
1.3 Procedures
2.0 Identification of a New Benchmark Loss Experience
3.0 Computation of Risk-Based Capital Level
3.1 Enterprise Data
3.1.1 Overview
3.1.2 Whole Loans
3.1.2.1 Characteristics Used to Create Loan Groups
3.1.2.2 Loan Group Characteristics
3.1.2.3 Individual Loan Data
3.1.2.4 Single Family Mortgage Portfolio-Wide Information
3.1.3 Mortgage-Related Securities
3.1.3.1 Single Class MBS Issued by the Enterprises and Ginnie Mae
3.1.3.2 Derivative Mortgage Securities Issued by the Enterprises and Ginnie Mae
3.1.3.3 Mortgage Revenue Bonds and Miscellaneous Mortgage-Related Securities
3.1.4 Non-Mortgage Financial Instruments
3.1.5 Operations, Taxes, and Accounting
3.1.5.1 Data Required to Calculate Taxes, Operating Expenses, and Dividends
3.1.5.2 Balance Sheet as of the Start of the Stress Test
3.1.6 Other Off-Balance-Sheet Guarantees
3.2 Commitments
3.2.1 Overview
3.2.2 Inputs
3.2.2.1 Loan data
3.2.2.2 Interest Rate Data
3.2.3 Procedures
3.2.4 Output
3.3 Interest Rates
3.3.1 Overview
3.3.2 Inputs
3.3.3 Procedures
3.3.3.1 Identify Starting Values
3.3.3.2 Project the Ten-Year CMT
3.3.3.3 Project the Ten Other CMTs
3.3.3.4 Project Non-Treasury Interest Rates
3.3.3.5 Project Borrowing Rates
3.3.4 Output
3.4 Property Valuation
3.4.1 Overview
3.4.2 Inputs
3.4.3 Procedures
3.4.4 Output
3.5 Mortgage Performance
3.5.1 General
3.5.2 Single Family Default and Prepayment
3.5.2.1 Overview
3.5.2.2 Inputs
3.5.2.3 Procedures
3.5.2.4 Output
3.5.3 Single Family Loss Severity
3.5.3.1 Overview
3.5.3.2 Inputs
3.5.3.3 Procedures
3.5.3.4 Output
3.5.4 Multifamily Default and Prepayment

[293] *Final Report of Standard & Poors to OFHEO*, Contract No. HE09602C (February 3, 1997).

[294] Contract No. HE09602C, p. 10.

3.5.4.1 Overview
3.5.4.2 Inputs
3.5.4.3 Procedures
3.5.4.4 Output
3.5.5 Multifamily Loss Severity
3.5.5.1 Overview
3.5.5.2 Inputs
3.5.5.3 Procedures
3.5.5.4 Output
3.6 Other Credit Factors
3.6.1 Overview
3.6.2 Input
3.6.3 Procedures
3.6.3.1 Identifying Other Credit Factors
3.6.3.2 Classifying Rating Categories in the Stress Test
3.6.3.3 Accounting for Other Credit Factors
3.6.4 Output
3.7 Mortgage Credit Enhancements
3.7.1 Overview
3.7.2 Inputs
3.7.2.1 Enterprise Data on Mortgage Credit Enhancements
3.7.2.2 Public Rating Information
3.7.2.3 Counterparty Coverage Reduction Information
3.7.3 Procedures
3.7.3.1 Classification of Credit Enhancements
3.7.3.2 Calculating Percentage Coverage and Dollar Coverage Amounts:
3.7.3.3 Calculating Percent of UPB Covered by Each Counterparty Rating Category
3.7.3.4 Calculating the Percent of UPB Under Dollar-Denominated Coverage
3.7.3.5 Calculating Coverage Against Credit Losses
3.7.4 Output
3.8 Other Off-Balance Sheet Guarantees
3.8.1 Overview
3.8.2 Input
3.8.3 Procedures
3.8.4 Output
3.9 Cash Flows
3.9.1 Whole Loans
3.9.1.1 Overview
3.9.1.2 Inputs
3.9.1.3 Procedures
3.9.1.4 Output
3.9.2 Mortgage-Related Securities
3.9.2.1 Overview
3.9.2.2 Inputs
3.9.2.3 Procedures
3.9.2.4 Outputs
3.9.3 Debt and Related Cash Flows
3.9.3.1 Overview
3.9.3.2 Inputs
3.9.3.3 Procedures
3.9.3.4 Output
3.9.4 Non-Mortgage Investment and Investment-Linked Derivative Contract Cash Flows
3.9.4.1 Overview
3.9.4.2 Inputs
3.9.4.3 Procedures
3.9.4.4 Output
3.10 Operations, Taxes, and Accounting
3.10.1 Overview
3.10.2 Inputs
3.10.2.1 Enterprise Data
3.10.2.2 Interest Rates
3.10.2.3 Outputs From Cash Flow Components of the Stress Test
3.10.3 Procedures
3.10.3.1 New Debt and Investments
3.10.3.2 Dividends
3.10.3.3 Allowances for Loan Losses and Other Charge-Offs
3.10.3.4 Operating Expenses
3.10.3.5 Taxes
3.10.3.6 Accounting
3.10.4 Output
3.11 Treatment of New Enterprise Activities
3.12 Calculation of the Risk-Based Capital Requirement
3.12.1 Overview
3.12.2 Inputs
3.12.3 Procedures
3.12.4 Output

1.0 Identification of the Benchmark Loss Experience

OFHEO will use the definitions, data, and methodology described below to identify the benchmark loss experience.

1.1 Definitions

The terms defined at § 1750.11 shall apply for this Appendix. In addition, the term *Origination year* means the year in which a loan is originated.

1.2 Data

[a] OFHEO identifies the benchmark loss experience using historical loan-level data required to be submitted by each of the two Enterprises. OFHEO's analysis is based entirely on the most current data available on conventional, 30-year, fixed-rate loans secured by first liens on single-unit, owner-occupied, detached properties. Detached properties are defined as single family properties excluding condominiums, planned urban developments, and cooperatives. The data includes only loans that were purchased by an Enterprise within 12 months after loan origination and loans for which the Enterprise has no recourse to the lender.

[b] OFHEO organizes the data from each Enterprise to create two substantially consistent data sets. OFHEO separately analyzes default and severity data from each Enterprise. Default rates are calculated from loan records meeting the criteria specified above. Severity rates are calculated from the subset of defaulted loans for which loss data are available.

1.3 Procedures

1.3.1 Cumulative 10-year default rates for each combination of states and origination years (state/year combination) that OFHEO examines are calculated for each Enterprise by grouping all of the Enterprise's loans originated in that combination of states and years. For origination years with less than 10 years of loss experience, cumulative-to-date default rates are used. The two Enterprise default rates are averaged, yielding an "average default rate" for that state/year combination.

1.3.2 An "average severity rate" for each state/year combination is determined in the same manner as the average default rate. For each Enterprise, the aggregate severity rate is calculated for all loans in the relevant state/year combination and the two Enterprise severity rates are averaged.

1.3.3 The "loss rate" for any state/year combination examined is calculated by multiplying the average default rate for that state/year combination by the average severity rate for that combination.

1.3.4 The default and severity behavior of loans in the state/year combination containing at least 2 consecutive origination years and contiguous areas with a total population equal to or greater than 5 percent of the population of the United States with the highest loss rate constitutes the benchmark loss experience.

2.0 Identification of a New Benchmark Loss Experience

OFHEO will periodically monitor available data and reevaluate the benchmark loss experience using the methodology set forth in this Appendix. Using this methodology, OFHEO may identify a new benchmark loss experience that has a higher rate of loss than the benchmark experience identified at the time of the issuance of this regulation. In the event such a benchmark is identified, OFHEO may incorporate the resulting higher loss rates in the stress test.

3.0 Computation of Risk-Based Capital Level

3.1 Enterprise Data

3.1.1 Overview

[a] The stress test requires data on all of an Enterprise's assets, liabilities, stockholders equity, and off-balance sheet obligations, as well as the factors that affect them: interest rates, house prices, rent growth rates, and vacancy rates. This section characterizes proprietary data of the Enterprises (as opposed to publicly available data) that are necessary for the stress test, which are primarily data on Enterprise portfolios of financial instruments and guarantees as of the start of the stress test. Data available from public sources that are also necessary for the stress test—e.g., historical interest rates, house price growth rates, and public securities data [1]—are described in the sections of this Appendix that describe the related components of the stress test (e.g., the Interest Rate component). The stress test uses proprietary and public data directly, and also uses values derived from such data. The derivation of these additional values are also explained in sections of this Appendix. All data as of the start of the stress test, proprietary data of the Enterprises and public data, are "starting position data."

[b] Starting position data include, for all the loans owned or guaranteed by an Enterprise, as well as securities and derivative contracts, the dollar balances of these instruments and obligations, as well as all characteristics that bear on their behavior under stress test conditions. Data are required for the following categories of instruments and obligations:

- Mortgages owned by or underlying mortgage-backed securities issued by the Enterprises ("whole loans")
- Mortgage-related securities

[1] Data elements listed below for non-mortgage financial instruments are available from public sources for publicly traded securities, but are proprietary for privately placed instruments, in particular, derivative contracts.

• Non-mortgage-related securities, whether issued by an Enterprise, e.g., debt, or held as investments
• Derivative contracts
• Other off-balance sheet guarantees (e.g., guarantees of private-issue securities)

[c] The stress test also requires starting position data for "non-cash" balance sheet items, such as premiums and discounts, that affect pro forma financial statements through the ten-year stress period.

3.1.2 Whole Loans

[a] Whole loans are individual single family or multifamily mortgage loans. The stress test distinguishes between whole loans that the Enterprises hold in their investment portfolios (retained loans) and those that underlie mortgage-backed securities (sold loans). Data are aggregated for loans with similar portfolio (retained or sold), risk, and product characteristics. The characteristics of these "loan groups" determine mortgage default, prepayment, and loss severity rates, and cash flows.

[b] The characteristics that are the basis for loan groupings are called "classification variables" and reflect categories, e.g., fixed interest rate versus floating interest rate, or identify a value range, e.g., original loan-to-value ratio greater than 80 percent and less than or equal to 90 percent. After the loans are grouped, weighted average values for characteristics of the loan group are calculated, e.g., weighted average loan coupon (WAC) and weighted average remaining maturity (WAM). Loan group characteristics are used as inputs in section 3.5, Mortgage Performance, of this Appendix to determine mortgage performance (default, prepayment, and loss severity) and mortgage cash flows.

3.1.2.1 Characteristics Used to Create Loan Groups

[a] Loan groups are formed based on the values, as of the start of the stress test, of the relevant loan classification variables shown in Table 3–1.

Table 3-1. Classification Variables Determining Loan Groups

Classification Variable	Description	Values
Business Type	Whether the loan finances a single family or multifamily property	Single Family Multifamily
Portfolio	Whether the loan is in the retained or the sold portfolio	Retained Portfolio Sold Portfolio
Program Type[1] (multifamily only)	Whether the loan is purchased individually (cash) or as part of a pool (negotiated), whether seller is responsible for any losses (recourse), and whether seller repurchases 90-day delinquent loans from securitized pools	Cash with recourse Cash without recourse Negotiated with repurchase Negotiated without repurchase FHA-insured
Product Type	Defines loan terms FHA = loans insured by the Federal Housing Administration VA = loans guaranteed by the Veterans Administration "COFI" = Federal Home Loan Bank 11th District Cost of Funds Index "TPM" = Tiered Payment Mortgage "GPM" = Graduated Payment Mortgage	Single Family FHA/VA Long Term FHA/VA Intermediate Term 30-YR Fixed-Rate 20-YR Fixed-Rate 15-YR Fixed-Rate Fixed Other Intermediate Adjustable Rate, Treas < =1 YR Adjustable Rate 1-3 YR Adjustable Rate > 3 YR Adjustable Rate COFI 1 MO Adjustable Rate COFI 2-6 MO Adjustable Rate COFI > 6 MO Adjustable Rate Other Bi-Weekly 30 YR Bi-Weekly 20 YR Bi-Weekly 15 YR Balloons 5 YR Balloons 7 YR Balloons Other Second Lien Long Second Intermediate Steps/TPM/GPM Long Steps/TPM/GPM Intermediate Multifamily: FHA-insured 30-YR Fixed-Rate 20-YR Fixed-Rate 15-YR Fixed-Rate Adjustable Rate Balloons 5 Year Balloons 7 Year Balloons 10 Year Balloons 15 year Balloons, Adjustable Rate, 15 Year All Other Products

Table 3-1. Classification Variables Determining Loan Groups (Continued)

Classification Variable	Description	Values
Origination Year	The year the loan was originated.	
Delivery Month (for loans purchased during the stress period)	The month during the stress test when an Enterprise purchases loans fulfilling commitments	Stress period months 1-6
Original Loan-to-Value Ratio (LTV) Class	Ratio of the original loan amount to the original property value (for multifamily negotiated program loans, this is the LTV at the time of loan acquisition)	0<LTV<=60 60<LTV<=70 70<LTV<=75 75<LTV<=80 80<LTV<=90 90<LTV<=95 95<LTV<=100 100<LTV
Original Coupon Class	Original loan rate	0.0<=RATE<1.0 1.0<=RATE<2.0 2.0<=RATE<3.0 3.0<=RATE<4.0 4.0<=RATE<5.0 5.0<=RATE<6.0 6.0<=RATE<7.0 7.0<=RATE<8.0 8.0<=RATE<9.0 9.0<=RATE<10.0 10.0<=RATE<11.0 11.0<=RATE<12.0 12.0<=RATE<13.0 13.0<=RATE<14.0 14.0<=RATE<15.0 15.0<=RATE<16.0 16.0<=RATE<17.0 17.0<=RATE<18.0 18.0<=RATE<19.0 19.0<=RATE<20.0 20.0<=RATE<21.0 21.0<=RATE<22.0 22.0<=RATE<23.0 23.0<=RATE<24.0 24.0<=RATE

Table 3-1. Classification Variables Determining Loan Groups (Continued)

Classification Variable	Description	Values
Starting Coupon Class	The loan rate at the start of the stress test (original loan rate for loans fulfilling commitments)	0.0<=RATE<1.0 1.0<=RATE<2.0 2.0<=RATE<3.0 3.0<=RATE<4.0 4.0<=RATE<5.0 5.0<=RATE<6.0 6.0<=RATE<7.0 7.0<=RATE<8.0 8.0<=RATE<9.0 9.0<=RATE<10.0 10.0<=RATE<11.0 11.0<=RATE<12.0 12.0<=RATE<13.0 13.0<=RATE<14.0 14.0<=RATE<15.0 15.0<=RATE<16.0 16.0<=RATE<17.0 17.0<=RATE<18.0 18.0<=RATE<19.0 19.0<=RATE<20.0 20.0<=RATE<21.0 21.0<=RATE<22.0 22.0<=RATE<23.0 23.0<=RATE<24.0 24.0<=RATE
Debt Coverage Ratio (DCR) Class (multifamily only)	The ratio of property net income to debt service as of the date of loan acquisition for negotiated program loans; as of the date of loan origination for all cash program loans	1.00 to 1.09 1.10 to 1.19 1.20 to 1.29 1.30 to 1.39 1.40 to 1.49 1.50 to 1.59 1.60 to 1.69 1.70 to 1.79 1.80 to 1.89 1.90 to 1.99 2.00 to 2.49 2.50 to 3.99
Metropolitan Statistical Area (multifamily only)	The 4-digit Metropolitan Statistical Area (MSA) or Consolidated Metropolitan Statistical Area (CMSA) code as defined by the Office of Management and Budget; used to calculate Rental Rate Index	All MSA and CMSA codes outside of MSA

Table 3-1. Classification Variables Determining Loan Groups (Continued)

Classification Variable	Description	Values
Census Region or Division	The Census division (single family) or Region (multifamily) in which the property is located	Divisions (Single Family) East North Central East South Central Middle Atlantic Mountain New England Pacific South Atlantic West North Central West South Central Regions (Multifamily) North Central North East South West
Remittance Cycle	The remittance cycle that applies to a loan and governs when payments are remitted by the servicer to the Enterprise and by the Enterprise to the investor Values reflect average number of days an Enterprise holds scheduled principal and interest payments (see Cash Flows: Whole Loans for further details)	7 days -3 days 57 days

[1] The values shown reflect aggregation of similar Enterprise programs. Individual Enterprise programs (subgroups of the values shown) are distinguished in the creation of loan groups; they are not listed here because most of them are Enterprise-specific.

[b] All loans with the same values for each of the relevant characteristics included in Table 3–1 above comprise a single loan group; for example, one loan group would include all loans with the following characteristics:

- Single family
- Sold portfolio
- 30-year fixed-rate conventional
- Originated in 1997
- LTV greater than 75 percent and less than or equal to 80 percent
- Original coupon greater than or equal to six percent and less than seven percent
- Starting coupon (coupon at the start of the stress period) greater than or equal to six percent and less than seven percent
- Secured by property located in the East North Central Census division
- Subject to a remittance cycle where scheduled principal and interest payments are held for an average of seven days

3.1.2.2 Loan Group Characteristics

In addition to the classification variables used for grouping loans, the stress test requires values for characteristics calculated for the loans within each group. All values are as of the start of the stress test. Except as indicated in the "Description" column, values are averages for the loans comprising a loan group, weighted by their unpaid principal balances (UPB).

Table 3-2. Loan Group Characteristics

Loan Group Characteristic	Description
Original Coupon	Mortgage coupon at loan origination
Starting Coupon	Mortgage coupon at loan origination for loans fulfilling commitments
Margin (ARMs only)	Amount added to an ARM interest rate index value to establish the fully adjusted rate
Servicing Fee	The amount paid to a seller/servicer for servicing a loan, calculated as a percentage of the principal balance, expressed in basis points
Net Yield	The interest rate passed to an Enterprise by the lender (mortgage coupon less servicing fee)
Guarantee Fee (sold loans only)	Interest rate spread (in basis points) retained by Enterprise as payment for guarantee of mortgage-backed security (included in Net Yield)
Passthrough Rate (Sold loans only)	Mortgage coupon less servicing fee and guarantee fee; the rate of interest passed through to mortgage-backed security investors
Starting UPB	The aggregate unpaid principal balance of a loan group
Original LTV	Ratio of the original loan amount to the original property value (for multifamily negotiated program loans, this is the LTV at the time of acquisition)
Original Term	Original term to maturity in months; e.g., 360 months for 30 year fully amortizing loan or 84 months for a seven-year balloon loan
Amortization Term	Original term, in months, used to calculate scheduled payments for balloon loans
Starting Remaining Term	Months remaining until loan maturity date
Starting Mortgage Age	Months since loan origination
Debt coverage ratio (DCR) at Acquisition or Loan Origination (multifamily only)	Ratio of property net operating income to debt service (as of loan origination for cash program loans; as of date of acquisition for negotiated program loans)
Credit Enhancement (C.E.) Coverage Type 1[1] (single family only)	PMI coverage rate, as a percent of the gross claim amount
C.E. Coverage Type 2[1]	Loss coverage provided under unlimited recourse/repurchase agreements, as a percent of the net loss amount
C.E. Coverage Type 3[1]	Loss coverage provided by all other types of credit enhancements, in dollars
Percent of UPB Under Dollar-Denominated Coverage[1]	Percent of loan group starting UPB covered by dollar-denominated credit enhancements

Table 3-2. Loan Group Characteristics (Continued)

Loan Group Characteristic	Description
Percent of UPB under AAA[2] coverage[1]	Percent of loan group starting UPB covered by counterparties rated AAA
Percent of UPB under AA[2] coverage[1]	Percent of loan group starting UPB covered by counterparties rated AA
Percent of UPB under A[2] coverage[1]	Percent of loan group starting UPB covered by counterparties rated A
Percent of UPB under BBB[2] coverage[1]	Percent of loan group starting UPB covered by counterparties rated BBB

[1] Required computations are described in section 3.7, Mortgage Credit Enhancements, of this Appendix.
[2] Rating categories are described in section 3.6, Other Credit Factors, of this Appendix.

3.1.2.3 Individual Loan Data

The stress test requires data for individual loans in an Enterprise's portfolio in order to determine the characteristics of loans that (for purposes of the stress test) fulfill commitments that are outstanding at the start of the stress period, and to compute loss coverage provided by credit enhancements such as private mortgage insurance. These data requirements are listed below.

3.1.2.3.1 Commitments Data

[a] To establish the characteristics of loans that fulfill commitments so that they are consistent with the characteristics of loans securitized by an Enterprise that were recently originated, data are required for loans that meet the following criteria:

- Single family
- Originated within six months of the start date of the stress test
- Securitized
- One of the following product types:

1. 30-year fixed-rate
2. 15-year fixed-rate
3. One-year CMT ARM
4. Seven-year balloon

[b] For these loans, the following data are required:

- Loan balance as of the beginning of the stress period
- Original LTV
- Census division
- Guarantee fee
- Servicing fee
- Margin (for ARM loans)
- Credit enhancement data described in section 3.1.2.3.2, Credit Enhancement Data, below

[c] The dollar amount of commitments outstanding at the start of the stress test is also required.

3.1.2.3.2 Credit Enhancement Data

[a] To facilitate calculation of the reductions in mortgage credit losses due to credit enhancements, the following data are required for all credit-enhanced loans, if any, in a loan group:

1. Type of mortgage credit enhancement:
   a. Private mortgage insurance
   b. Recourse
   - Limited
   - Unlimited

   c. Indemnification
   - Limited
   - Unlimited

   d. Pool insurance
   e. Spread account
   f. Collateral posted under collateral pledge agreement
   g. Cash account
2. Private mortgage insurance coverage percent
3. Loan balance as of the beginning of the stress period
4. Public rating of mortgage insurer
5. Public rating of pool insurer
6. Public rating of seller or servicer

[b] The following additional information is needed for each loan delivery contract involving a spread account, collateral account, cash, limited recourse or indemnification, or pool insurance account (e.g., a particular contract for the delivery of $100 million of loans may specify the establishment of a spread account as credit enhancement):

- Coverage remaining, as of the beginning of the stress period
- Account balance(s) at the start of the stress period
- Coverage expiration date

3.1.2.4 Single Family Mortgage Portfolio-Wide Information

To reflect the differential performance of single family mortgages on investor-owned and owner-occupied properties, the stress test also requires data on the percentage of first lien mortgages in the combined retained and sold portfolios financing investor-owned properties.

3.1.3 Mortgage-Related Securities

[a] The Enterprises hold mortgage-related securities as assets. These securities include single class and derivative mortgage-backed securities (multi-class and strip securities) issued by Fannie Mae; Freddie Mac, and Ginnie Mae; mortgage revenue bonds issued by State and local governments and their instrumentalities; and single class and derivative mortgage-backed securities issued by private entities. Most mortgage-related securities are collateralized by single family mortgages, others by multifamily mortgages, and, for the purposes of the stress test, still others by housing-related assets such as manufactured housing loans.

[b] The stress test models the cash flows of these securities individually. Enterprise data required for this purpose are described below.

3.1.3.1 Single Class MBS Issued by the Enterprises and Ginnie Mae

[a] Table 3–3 provides Enterprise data regarding each MBS held in their portfolios. This information is necessary for simulating cash flows in the stress test.

Table 3-3. MBS Input Variables

Variable	Description
Pool Number	A unique six-digit number assigned by the issuing Enterprise to identify an individual MBS
Original Principal Balance	The pool balance at the time of security issuance multiplied by the Enterprise's percentage ownership
Starting Principal Balance	The pool balance as of the start of the stress test multiplied by the Enterprise's percentage ownership

[b] The Enterprises and Ginnie Mae make available to the public monthly pool data that provide investors with information on principal payments, as well as extensive data characterizing individual MBS and their underlying mortgage pools. These data, which are necessary to simulate MBS cash flows, are listed in section 3.9.2, Mortgage-Related Securities, of this Appendix.

3.1.3.2 Derivative Mortgage Securities Issued by the Enterprises and Ginnie Mae

[a] Table 3–4 provides Enterprise data regarding REMICs and Strips issued by the Enterprises or Ginnie Mae. This information is necessary for determining associated cash flows.

Table 3-4. Derivative Mortgage Securities Input Variables

Variable	Description
Series Identification	Unique identifier assigned by the issuing Enterprise that identifies a mortgage derivative security transaction (e.g., FHR 1980 for a Freddie Mac REMIC)
CUSIP Number	Unique identification number assigned to debt securities assigned by the Committee on Uniform Security Identification Procedures
Original Principal (Notional) Balance	The security principal balance at issuance multiplied by the Enterprise's percentage ownership (may be notional balance for interest-only security)
Starting Principal Balance	The security principal balance at the start of the stress test, multiplied by the Enterprise's percentage ownership (may be notional balance for interest-only security)

[b] The data in Table 3–4 identify individual securities that are held by the Enterprises in their portfolios, as well as the REMIC or Strip transaction associated with individual securities. Public securities disclosure information is the source of data on the collateral underlying the securities (e.g., pool numbers of securities comprising collateral for a series of securities) and the rules governing security cash flows. (*See* section 3.9.2, Mortgage-Related Securities, of this Appendix.)

3.1.3.3 Mortgage Revenue Bonds and Miscellaneous Mortgage-Related Securities

[a] Table 3–5 provides Enterprise data regarding mortgage revenue bonds and private-issue, mortgage-related securities (MRS). This information is necessary for determining associated cash flows.

Table 3-5. Mortgage Revenue Bond and Other MRS Input Variables

Variable	Description
CUSIP Number	Unique identification number assigned to debt securities
Original Principal Balance	The principal balance at the time of purchase by the Enterprise multiplied by the Enterprise's percentage ownership
Starting Principal Balance	The principal balance at the start of the stress test multiplies by the Enterprise's percentage ownership

[b] The data in Table 3–5 are supplemented with public securities disclosure data, as described in section 3.9.2, Mortgage-Related Securities, of this Appendix.

3.1.4 Non-Mortgage Financial Instruments

[a] Non-mortgage financial instruments include debt securities issued to fund assets, debt securities and preferred stock held as assets, derivatives contracts (interest rate swaps, caps, and floors), and preferred stock issued by an Enterprise. Cash flows for non-mortgage financial instruments are simulated based on their characteristics. Although information for publicly traded securities, including most of the Enterprises' debt securities and non-mortgage investments, is available from public securities disclosure documents, information on other derivative contracts and non-publicly traded instruments must be obtained from the Enterprises. Data categories listed here apply to both publicly traded and privately placed instruments. All data are instrument specific; the pay- and receive-sides of swap contracts are treated as separate instruments. Table 3–6 provides basic information about non-mortgage financial instruments input variables, as follows:

Table 3-6. Non-Mortgage Financial Instruments Input Variables

Variable	Description
Issue Date	First settlement date for this instrument
Face/Notional Amount	The face amount of a security or notional amount of a derivative contract
Principal/Notional Factor	Factor representing proportion of original principal or notional amount that is outstanding at start of stress test
Coupon	Current interest rate
Index	Interest rate index to which interest payments are tied
Spread	The amount that is added or subtracted from an interest rate index to calculate the coupon rate for floating rate instruments
Index Multiplier	A constant multiplier used in variable interest rate formula
Payment Frequency	Frequency with which payments are made
Accrual Method	The convention used for calculating interest
Maturity Date	The date on which the instrument matures
Remaining Term	Number of months until an instrument matures
Call (Cancellation)/Put Date	The first date on which the instrument may be called (cancelled) or put
Call/Put Strike Price	The price at which the call or put option may be exercised
Floor Rate	The minimum coupon for a variable rate security
Cap Rate	The maximum allowable coupon rate for a variable rate security
Cap/Floor Strike Price	Used for cap and floor instruments to indicate the interest rate at which this instrument begins paying
Pay/Receipt Code	Code that identifies whether it is a payment or a receipt
Instrument I.D.	Links pay and receive sides of swaps
Swap Reference	Links mortgage-linked derivative to reference security (e.g., when changing principal balance of a specific security is also notional amount of swap)
Original Discount	Discount from par represented by purchase price of security (e.g., price of 99.0 equates to discount of 1.0)
Counterparty Identification	Uniquely identifies the counterparty to a derivative agreement
Public Rating of Counterparty or Security	Credit rating of counterparty or security (if applicable), as issued by a nationally recognized statistical rating agency

[b] Occasionally, instruments have complex or non-standard features, and cash flows cannot be computed using the basic data listed above. In these cases the accurate modeling of cash flows requires additional information, such as amortization schedules, interest rate coupon reset formulas, and the terms of European call options, which is obtained from the Enterprises (and is included in public securities disclosure materials for publicly offered securities).

3.1.5 Operations, Taxes, and Accounting

The stress test determines how much total capital an Enterprise must hold at the start of the stress test so that total capital never falls below zero during the stress period. To accomplish this objective, projected cash flows for Enterprise financial instruments must be supplemented by projected operating expenses, taxes, and capital distributions. All of these must be recorded in pro forma financial statements in order to determine an Enterprise's total capital for each month of the stress period. Thus, complete information on the Enterprise balance sheet as of the start of the stress period is required. The necessary information is listed in section 3.1.5.1, Data Required to Calculate Taxes, Operating Expenses, and Dividends, below.

3.1.5.1 Data Required to Calculate Taxes, Operating Expenses, and Dividends

The following Enterprise data are necessary to calculate taxes, operating expenses, and dividends:

- Operating expenses (e.g., administrative expenses, salaries and benefits, professional services, property costs, equipment costs) for the quarter prior to the beginning of the stress test
- Earnings before income taxes and provision for income taxes for the three years prior to the beginning of the stress period
- Year-to-date income before taxes and provision for income taxes
- Dividend payout ratio for the four quarters prior to the beginning of the stress period
- Minimum capital requirement as of the beginning of the stress period

3.1.5.2 Balance Sheet as of the Start of the Stress Test

The data are necessary to create Enterprise balance sheets as of the start of the stress period are described below.

1. Balances for all instruments for which the stress test calculates cash flows. These are included with data the Enterprises provide for cash flow calculations. Balances are required for:

- Whole loans
- Mortgage-related securities
- Non-mortgage investments and investment-linked derivative contracts
- Debt and related cash flows

2. Additional starting position balances:

- Amounts required to reconcile starting position balances from cash flow components of the stress test with an Enterprise's balance sheet (for example, differences between actual and estimated loan prepayments during the last few days in the month)
- Cash
- Low income housing tax credit investments
- Unamortized balances of premiums, discounts, and fees from the acquisition of retained loans and mortgage-related securities at other than par value
- Allowances for loan losses
- Accrued interest receivable on retained loans, mortgage-backed securities, mortgage-linked derivatives, and non-mortgage investments
- Amounts receivable from Index Sinking Fund Debentures, currency swaps, fees, income taxes, and other accounts receivable
- Real estate owned (REO)
- Fixed assets
- Clearing accounts
- Unamortized premiums, discounts, and fees related to debt securities
- Unamortized balances related to the sold portfolio
- Deferred balances related to liability-linked derivatives
- Accrued interest payable
- Principal and interest payable to mortgage security investors
- Other liabilities, including payables from currency swaps, escrow deposits income taxes
- Dividends payable
- Components of stockholder's equity (i.e., common stock, preferred stock, paid-in capital, retained earnings, treasury stock, and unrealized gains and losses on available-for-sale securities)

3.1.6 Other Off-Balance-Sheet Guarantees

In addition to the MBS they issue, the Enterprises guarantee other securities. The stress test does not simulate the cash flows associated with these guarantees, but it does calculate an incremental capital requirement for them. This calculation requires Enterprise information on the sum of the outstanding balances of all tax-exempt multifamily housing bonds, single-family whole-loan REMICs, multifamily whole-loan REMICs, and similar instruments or obligations as of the beginning of the stress period (excluding all guarantees of securities where 100 percent of collateral is insured by FHA or guaranteed by VA).[2]

3.2 Commitments

3.2.1 Overview

The Enterprises make contractual commitments to their customers to purchase or securitize mortgages. The stress test provides for deliveries of mortgages under the commitments that exist at the start of the stress period. It also determines all of the relevant characteristics of these mortgages by reference to the characteristics of the mortgages securitized by the Enterprise that were originated in the six months preceding the start of the stress period. Based on this information, the Commitments component of the stress test creates loan groups with coupon rates that vary based upon the interest rate scenario. These loan groups are added to the Enterprise's sold portfolio and the stress test projects their performance during the stress period. In the down-rate scenario, the stress test provides that 100 percent of the mortgages specified in the commitments are delivered. In the up-rate scenario, 75 percent are delivered. Loans are delivered over the first three months of the stress period in the down-rate scenario and the first six months in the up-rate scenario.

3.2.2 Inputs

The stress test uses two sources of data to determine the characteristics of the mortgages delivered under commitments. One is information from the Enterprises on commitments outstanding at the start of the stress period and deliveries of loans originated in the six months preceding the start of the stress period (*See* section 3.1.2, Whole Loans, of this Appendix). The other is interest rate series generated by the Interest Rates component of the stress test (*See* section 3.3, Interest Rates, of this Appendix).

3.2.2.1 Loan Data

[a] To determine the total dollar amount of mortgages that will be delivered under commitments during the course of the stress period, the Enterprises are required to provide the total dollar amount of all commitments outstanding to purchase or securitize mortgages at the start of the stress period. In addition, to determine the composition of mortgages delivered to fulfill commitments, the stress test identifies loans that meet all of the following criteria:

- Business type-single family
- Origination date-within six months of the start date of the stress test
- Portfolio type-securitized
- Product type-one of the following:

1. 30-year fixed-rate
2. 15-year fixed-rate
3. One-year CMT ARM
4. Seven-year balloon

[b] For the selected loans, the following loan-level information are required:

- Starting UPB
- Original LTV
- Census division
- Guarantee fee
- Margin (for ARM loans)
- Servicing fee

3.2.2.2 Interest Rate Data

The stress test uses the following interest rate series, generated by the Interest Rates component, (*See* section 3.3, Interest Rates, of this Appendix) for the first 12 months of the stress period:

- One-year CMT rate
- Conventional 30-year fixed-rate mortgage rate
- Conventional 15-year fixed-rate mortgage rate
- Seven-year balloon mortgage rate [3]

[2] These include: (1) Any guarantee, pledge, purchase arrangement, or other obligation or commitment provided or entered into by an Enterprise with respect to multifamily mortgages to provide credit enhancement, liquidity, interest rate support, and other guarantees and enhancements for revenue bonds issued by a state or local government unit (including a housing finance agency) or other bond issuer; and (2) all off-balance-sheet obligations of an Enterprise that are not mortgage-backed securities or substantially equivalent instruments and that are not resecuritized mortgage-backed securities, such as real estate mortgage investment conduits or similar resecuritized instruments. *See* 12 CFR 1750.2.

[3] The stress text assumes that mortgage interest rates on seven-year balloon mortgages are 50 basis

Continued

3.2.3 Procedures

[a] Based on the characteristics of the mortgages securitized by the Enterprise that were originated in the six months preceding the start of the stress period and the interest rate projections in the stress period, the stress test determines all of the relevant characteristics of the loans delivered under the commitments that exist at the start of the stress test. Using this information and the classification variables-business type, portfolio type, product type, original loan-to-value ratio, and Census division, the stress test creates loan groups for commitments in the same manner as loan groups are created for other loans (specified in section 3.1.2, Whole Loans, of this Appendix). One exception is that the stress test uses an additional classification variable—delivery month—to form subgroups within each commitment loan group. This variable is used to create origination dates, which are the same as delivery dates for these loan groups. The procedures to create commitment loan groups are as follows.

1. Establish the values for classification variables—business type, portfolio type, product type, original loan-to-value ratio, and Census division as defined in section 3.1, Enterprise Data, of this Appendix.

2. Aggregate the loan-level information for the mortgages identified above into loan groups by the classification variables.

3. Concurrently with step 2, compute total starting UPB, the UPB weighted average Original LTV, Servicing fee, Guarantee fee, and Margin (for ARM loans) for each loan group.

4. Using loan group information from step 3, calculate the percent of total balance of all commitment loan groups for each loan group as follows:

% of total balance = total starting UPB for the loan group (from step 3 above) ÷ total starting UPB for all commitment loan groups added together

5. For each loan group, set the loan term and amortization period as shown in Table 3–7.

Table 3-7. Loan Term and Amortization Period

Product Type	Loan term	Amortization Period
30 YR Fixed-rate	360 MO	360 MO
15 YR Fixed-rate	180 MO	180 MO
ARM	360 MO	360 MO
7 YR Balloon	84 MO	360 MO

6. For each loan group, set remittance cycle to the shortest available option for the Enterprise.

[b] Procedures for adding subgroup characteristics to each loan group are described below.

1. Establish values for the subgroup classification variable—delivery month using percentages from Table 3–8, and divide each loan group into subgroups, one for each delivery month. Three subgroups are created in the down-rate scenario, and six subgroups are created in the up-rate scenario.

2. The total starting UPB for the subgroup is calculated as follows: subgroup balance = total dollar amount of commitments outstanding × % of total balance of the subgroup (from step 4 above) × Percent delivered in that delivery month (from Table 3–8).

Table 3-8. Monthly Deliveries as a Percentage of Commitments Outstanding

Delivery month	Up-Rate Scenario	Down-Rate Scenario
1	18.75%	62.50%
2	18.75%	25.00%
3	12.5%	12.50%
4	12.5%	0.00%
5	6.25%	0.00%
6	6.25%	0.00%
Total[1]	75%	100%

[1] In the down-rate scenario, 100 percent of outstanding commitments will be delivered. In the up-rate scenario, 75 percent of outstanding commitments will be delivered.

3. Set the original coupon rate and starting coupon rate (as of delivery date) for each subgroup as set forth in Table 3–9.

---

points less than 30-year conventional mortgage rates in the down-rate environment, and equal to the 30-year rate in the up-rate environment.

Table 3-9. Original and Starting Coupon Rates for Commitment Loan Groups

Product Type	Original and Starting Coupon Rate (as of delivery date)
30 YR Fixed-rate	Conventional 30-year mortgage rate
15 YR Fixed-rate	Conventional 15-year mortgage rate
ARM	One-year T-bill rate + weighted average margin for the loan group
7 YR Balloon	Down-rate scenario: Conventional 30-year mortgage rate - 50 basis points; Up-rate scenario; Conventional 30-year mortgage rate

4. Based on the original coupon rate and starting coupon rate set for the subgroup in step 3, assign the subgroup with original coupon rate class value and starting coupon rate class value as defined in section 3.1.2, Whole Loans, of this Appendix.

5. Set the origination year and month of the subgroup by adding the delivery month to the starting date of the stress period.

6. Set the age of the subgroup in the stress period to the number of months elapsed in the stress period minus the delivery month. Set the remaining term of the subgroup to the amortization term minus the age of the subgroup.

7. Set the net yield of the subgroup to the starting coupon rate minus the servicing fee.

8. Set the passthrough rate of the subgroup to the net yield minus the guarantee fee.

3.2.4 Output

[a] The output of the Commitment component of the stress test is data for a set of loan subgroups that are virtually identical to loan groups created for loans on the books of business of the Enterprises at the start of the stress test, except that an additional classification variable, delivery month, is used to supplement origination year for each subgroup of commitment loans. This additional information tells when the mortgages in that particular subgroup are delivered to the Enterprise.

[b] The data for loan subgroups created by the Commitments component of the stress test allows the stress test to project the defaults, losses, prepayments, scheduled amortization, interest payments, guarantee fee income, and float income for loans purchased under commitments for the ten-year stress period.

3.3 Interest Rates

3.3.1 Overview

The 1992 Act specifies changes in the ten-year constant maturity Treasury yield (CMT) for the two interest rate scenarios of the stress test. It further states that yields of Treasury instruments with other maturities will change relative to the ten-year CMT in patterns that are reasonably related to historical experience. The Interest Rates component of the stress test projects these Treasury yields as well as other interest rate indexes that are needed to calculate cash flows, to simulate mortgage performance for mortgages and other financial instruments, and to calculate the risk-based capital requirement. The Interest Rates component produces values for the interest rates and indexes for the starting date of the stress test and for each of the 120 months in the stress period. The process for determining interest rates can be divided into five steps. First, identify values for the necessary interest rates and indexes on the starting date. Second, project the ten-year CMT for each month of the stress period as specified in the 1992 Act. Third, project the one-, two-, three-, and six-month Treasury yields and the one-, two-, three-, five-, 20-and 30-year CMTs.[4] Fourth, project non-Treasury indexes and interest rates. Fifth, project borrowing rates for the Enterprises.

3.3.2 Inputs

Projecting interest rates and indexes in the stress test requires initial values as of the start date of the stress test. Initial values for the stress test are the averages of the values for the month preceding the start of the stress period. Additional months of historical data are input to the stress test in order to project interest rates other than the ten-year CMTs during the stress period. The historical data input for non-Treasury interest rate indexes are listed in Table 3–12. Table 3–10 below contains a list and a description of the interest rates and indexes input to the stress test.

[4] For ease of discussion, all of the Treasury yields are referred to as CMTs.

Table 3-10. Interest Rate and Index Inputs for the Interest Rates Component

Interest Rate Variable	Source	Description
1 MO Treasury Bill	Bank of America, San Francisco	One-Month Treasury bill yield, monthly average of daily rate, secondary market, bond-equivalent yield
2 MO Treasury Bill	Bank of America, San Francisco	Two-Month Treasury bill yield, monthly average of daily rate, secondary market, bond-equivalent yield
3 MO Treasury Bill[1]	Federal Reserve H.15 Release	Three-month Treasury bill yield, monthly average of daily rates, secondary market, bond-equivalent yield
6 MO Treasury Bill[a]	Federal Reserve H.15 Release	Six-month Treasury yield, monthly average of daily rates, secondary market, bond-equivalent yield
1 YR CMT	Federal Reserve H.15 Release	One-year constant maturity Treasury yield, monthly average of daily rates, bond-equivalent yield
2 YR CMT	Federal Reserve H.15 Release	Two-year constant maturity Treasury yield, monthly average of daily rates, bond-equivalent yield
3 YR CMT	Federal Reserve H.15 Release	Three-year constant maturity Treasury yield, monthly average of daily rates, bond-equivalent yield
5 YR CMT	Federal Reserve H.15 Release	Five-year constant maturity Treasury yield, monthly average of daily rates, bond-equivalent yield
10 YR CMT	Federal Reserve H.15 Release	Ten-year constant maturity Treasury yield, monthly average of daily rates, bond-equivalent yield
20 YR CMT	Federal Reserve H.15 Release	Twenty-year constant maturity Treasury yield, monthly average of daily rates, bond-equivalent yield
30 YR CMT	Federal Reserve H.15 Release	Thirty-year constant maturity Treasury yield, monthly average of daily rates, bond-equivalent yield
Overnight Federal Funds	Dow Jones Telerate and Federal Reserve Bank of New York	Overnight effective Federal funds rate, monthly average of daily rates, bond-equivalent yield
7-day Federal Funds	Reuters America	Seven-day Federal funds rate, monthly average of daily rates, bond-equivalent yield
180-day Federal Funds	Reuters America	One hundred and eighty-day Federal funds rate, monthly average of daily rates, bond-equivalent yield
Conventional Mortgage Rate	Federal Reserve H.15	FHLMC (Freddie Mac) contract interest rates on commitments for fixed-rate first mortgages, monthly average of weekly rates
FHLB 11th District Cost of Funds	Federal Home Loan Bank of San Francisco	11th District (San Francisco) weighted average cost of funds for savings and loans, monthly

Table 3-10. Interest Rate and Index Inputs for the Interest Rates Component (Continued)

Interest Rate Variable	Source	Description
15 YR fixed-rate mortgage	Dow Jones Telerate	Fifteen-year, fixed-rate mortgage, commitments for delivering in 0-10 days, monthly average of daily rates
7 YR balloon mortgage	N/A	Seven-year balloon mortgage, equal to the conventional mortgage rate in the up case and the conventional mortgage rate less 50 bp in the down case

[1] The three-month, six-month, and one-year Treasury rates are used to determine the historical relationship between the ten-year CMT and the ten other CMTs and to estimate ARIMAs, both of which are discussed later in this section; however, the referenced source is used to determine historical relationships, while the source used for ARIMA estimations is Bank of America, DRI/McGraw Hill.

3.3.3 Procedures

3.3.3.1 Identify Starting Values

The starting values for all of the interest rates and indexes listed in Table 3–10 are their daily averages during the month preceding the start of the stress test.

3.3.3.2 Project the Ten-Year CMT

The 1992 Act specifies that the stress test be based on increases or decreases in the ten-year CMT, whichever would require more capital. The ten-year CMT increases or decreases during the first year of the stress period and remains at that level for the remainder of the stress period. The 1992 Act further specifies how the increases and decreases in the ten-year CMT are determined.

3.3.3.2.1 Down-Rate Scenario

[a] To determine the ten-year CMT in the down-rate scenario, the stress test first computes the average of the ten-year CMT for the nine months prior to the start of the stress test, and subtracts 600 basis points; and second, computes the average yield of the ten-year CMT for the 36 months prior to the start of the stress test, and multiplies by 60 percent.

[b] The ten-year CMT in the down-rate scenario is decreased to the lesser of these two yields unless that yield is less than 50 percent of the average for the nine months preceding the start date. In that case, the ten-year CMT decreases 50 percent of the nine-month average described above.

[c] Once the ten-year CMT for the down-rate scenario is determined, the stress test decreases the ten-year CMT from the value as of the start of the stress period to this level in equal increments over the first twelve months of the stress period. The ten-year CMT remains at this level for the remaining nine years of the stress period.

3.3.3.2.2 Up-Rate Scenario

[a] To determine the ten-year CMT in the up-rate scenario, the stress test first computes the average for the ten-year CMT the nine months prior to the start of the stress test, and adds 600 basis points; and second, computes the average for the ten-year CMT for the 36 months prior to the start of the stress test, and multiplies by 160 percent.

[b] The ten-year CMT in the up-rate case is equal to the greater of these two rates unless that yield is greater than 175 percent of the average for the nine months preceding the stress period. In that case, the ten-year CMT increases to 175 percent of the nine-month average.

[c] Once the ten-year CMT for the up-rate scenario is determined, the stress test increases the ten-year CMT from the value as of the start of the stress period to this level in equal increments over the first twelve months of the stress period. The ten-year CMT remains at this level for the remaining nine years of the stress period.

3.3.3.3 Project the Ten Other CMTs

In the third step, yields for the one-, two-, three-and six-month and the one-, two, three-, five-, 20-and 30-year CMTs are projected.

3.3.3.3.1 Down-Rate Scenario

[a] In the down-rate scenario, the ten other CMTs are calculated by first computing the long-term averages for the ten-year CMT and each of the ten CMTs, and then computing the ratios of the ten-year CMT long-term average to the ten other CMT long-term averages. The long-term averages are calculated over the period from May, 1986, through April, 1995. These are presented in Table 3–11 below. The stress test multiplies the ten-year CMT for the last nine years of the stress test by the appropriate ratio to create the six other CMTs for the last nine years of the stress test.

Table 3-11. Ratios of the 10-Year CMT to Ten Other CMTs

CMTs	Ratio
1 MO / 10 YR	0.68271
2 MO / 10 YR	0.71825
3 MO / 10 YR	0.73700
6 MO / 10 YR	0.76697
1 YR / 10 YR	0.79995
2 YR / 10 YR	0.86591
3 YR / 10 YR	0.89856
5 YR / 10 YR	0.94646
20 YR / 10 YR	1.06246
30 YR / 10 YR	1.03432

[b] In the first twelve months of the stress period, the ten other CMTs are computed in a manner similar to the calculation of the ten-year CMT for that period. From its value at the start of the stress test, each of the ten other CMTs is decreased in equal steps in each of the first twelve months of the stress period until it reaches the appropriate level for the nine remaining years of the stress test.

3.3.3.3.2 Up-Rate Scenario

In the up-rate scenario, the six other CMTs are equal to the ten-year CMT in the last nine years of the stress test. Each of the six other CMTs is increased in equal increments over the first twelve months of the stress test until it equals the ten-year CMT.

3.3.3.4 Project Non-Treasury Interest Rates

[a] Table 3–12 presents the equations for projecting the non-Treasury interest rates for each month of the stress test. These equations were developed using the percentage spread between the non-Treasury interest rate and the CMT with the same or similar maturity over a historical period [5] and an ARIMA procedure (Autoregressive Integrated Moving Average).[6] The stress test applies these equations to forecast the spreads between each non-Treasury interest rate and the CMT from which it is estimated for the 120 months of the stress period. Finally, the stress test converts the projected values for the proportional spreads into rate and index levels. As used here, the percentage spread for the three-month LIBOR rate, for example, is:

$$\frac{(\text{3-month LIBOR rate} - \text{3-month Treasury Yield})}{\text{3-month Treasury Yield}}$$

[b] In Table 3–12, equations are grouped according to the Treasury maturity against which the spread was calculated. For example, the first group's spread was computed against the one-month Treasury yield. Where the dependent variable was estimated as a first difference, this is indicated in the Description column. "*T*" represents the spread variable.

[5] Various historical data series have missing values.

[6] SAS ETS Users Guide, SAS Institute, 1993.

Table 3-12. Non-Treasury Interest Rate Indexes: ARIMA Forecasting Models (Continued)

Variable Name	Description	Historical Period for Spread Estimation	Equation
Percentage Spread Based on 2-year CMT			
*FA*024	24-month Federal Agency Cost of Funds	Jun 1979-Jun 1997	$0.66928 \times T_FA024_{t-1} + 0.22178 \times T_FA024_{t-6} - 0.08219 \times T_FA024_{t-18} + 0.21423 \times ERROR_{t-5} - 0.12729 \times ERROR_{t-11}$
Percentage Spread Based on 3-year CMT			
*FA*036	36-month Federal Agency Cost of Funds	Jun 1979-Jun 1997	$0.86153 \times T_FA036_{t-1}$
Percentage Spread Based on 5-year CMT			
*FA*060	60-month Federal Agency Cost of Funds	Jun 1979-Jun 1997	$0.88777 \times T_FA060_{t-2}$
Percentage Spread Based on 10-year CMT			
CONVR	Conventional Mortgage Rate	Jun 1979-Jun 1997	$0.20924 + 1.04067 \times T_CONVR_{t-1} - 0.47582 \times T_CONVR_{t-2} + 0.27044 \times T_CONVR_{t-3}$
*FA*120	120-month Federal Agency Cost of Funds	Jun 1979-Jun 1997	$0.70427 \times T_FA120_{t-1} + 0.27343 \times T_FA120_{t-2}$
*FRM*15Y	15-year, fixed-rate mortgage	May 1985-Jun 1997	$0.09307 + 1.021800 \times T_FRM15Y_{t-1} - 0.25518 \times T_FRM15Y_{t-2}$
Percentage Spread Based on 30-year CMT			
*FA*360	360-month Federal Agency Cost of Funds	Jun 1979-Jun 1997	$0.03528 + 0.92765 \times T_FA360_{t-1}$

Table 3-12. Non-Treasury Interest Rate Indexes: ARIMA Forecasting Models

Variable Name	Description	Historical Period for Spread Estimation	Equation
Percentage Spread Based on 1-month Treasury Yield			
ONFFD	Overnight Fed Funds	Jan 1973 - Jun 1997	.11729+.72093xT_ONFFD_{t-1}+ .13259xT_ONFFD_{t-5}
FFD07	7-day Fed Funds (first difference)	Apr 1984 - Jun 1997	.37803x$ERROR_{t-1}$+.15897x$ERROR_{t-2}$+ .16638x$ERROR_{t-4}$
LBR01	1-month LIBOR - Mid-Market Yield (first difference)	Jun 1973-Jun 1997	.35113x$ERROR_{t-1}$+.02264x$ERROR_{t-2}$+ .20959x$ERROR_{t-3}$
Percentage Spread Based on 3-month Treasury Yield			
LBR03	3-month LIBOR - Mid-Market Yield (first difference)	Jun 1973-Jun 1997	0.13277x$ERROR_{t-1}$+0.13495x$ERROR_{t-3}$+ 0.39554x$ERROR_{t-4}$
FA003	3-month Federal Agency Cost of Funds (first difference)	Jun 1979-Jun 1997	0.45841xT_FA003_{t-1} +0.91842x$ERROR_{t-1}$
PRIME	Prime Rate	Dec 1969-Jun 1997	0.14323+1.12090xT_PRIME_{t-1}-0.35995xT_PRIME_{t-2} +0.22184xT_PRIME_{t-3}
Percentage Spread Based on 6-month Treasury Yield			
LBR06	6-month LIBOR - Mid-Market Yield (first difference)	Jun 1973-Jun 1997	-0.31747xT_LBR06_{t-4}-0.11106xT_LBR06_{t-6}+ 0.12368xT_LBR06_{t-7}-24605xT_LBR06_{t-8}+ 0.07568x$ERROR_{t-1}$
FA006	6-month Federal Agency Cost of Funds	Jun 1979-Jun 1997	0.02397+0.74541xT_FA006_{t-1}
FF180	180-day Fed Funds	Dec 1979-Jun 1997	0.96842 × T_FF180_{t-1}
Percentage Spread Based on 1-year CMT			
COF11	FHLB 11th District Cost of Funds	Jul 1981-Jun 1997	1.25858xT_COF11_{t-1}-0.31799xT_COF11_{t-2}
LBR12	12-month LIBOR - Mid-Market Yield (first difference)	Jun 1973-Jun 1997	0.14073x$ERROR_{t-1}$+0.12690x$ERROR_{t-2}$+ 0.10781x$ERROR_{t-3}$+0.22280x$ERROR_{t-4}$
FA012	12-month Federal Agency Cost of Funds	Jun 1979-Jun 1997	0.01806+0.59137xT_FA012_{t-1}

3.3.3.5 Project Borrowing Rates

The stress test adds a 50 basis point credit spread to the federal agency cost of funds index to project Enterprise borrowing costs for the last nine years of the stress period.

3.3.4 Output

The output from the interest rate calculations are 120 monthly interest rate and index values for the projected eleven points on the Treasury yield curve (one-month, two-month, three-month, six-month, one-year, two-year, three-year, five-year, ten-year, 20-year and 30-year) and the 20 non-Treasury yields.

3.4 Property Valuation

3.4.1 Overview

[a] The Property Valuation component provides the monthly single family house price growth rates, rent growth rates, and rental unit vacancy rates that contribute to the determination of property values in the calculation of mortgage performance. The rates are those associated with the benchmark loss experience, the ten-year experience of loans originated in Arkansas, Louisiana, Mississippi, and Oklahoma during 1983 and 1984. The benchmark loss experience spans twelve years from the beginning of 1983, when the first benchmark loans were originated, through the end of 1994, ten years after the last benchmark loans were originated. The rates used in the stress test are those for the middle ten years of this period, 1984 through 1993.

[b] Single family house price growth rates are taken from the HPI series for the West South Central Census Division, which includes all of the benchmark states except Mississippi. House price growth rates are used to project single family mortgage performance. Rent growth rates and vacancy rates are taken from information for the major metropolitan areas in the four benchmark States, published by the Institute for Real Estate Management, and State level vacancy rates published by the Bureau of the Census. These rates are used to project multifamily mortgage performance.

[c] As required by the 1992 Act, in the up-rate scenario, house price rates and rent growth rates may require adjustment for inflation. If the ten-year CMT rises more than 50 percent from the average yield during the nine months preceding the stress period, rates are adjusted upward to take into account the effect of inflation.

[d] This section includes a description of the required inputs and procedures for inflation adjustments, and concludes with outputs. These outputs include tables of benchmark house price and rent growth rates unadjusted for inflation and rental vacancy rates. These rates will not change unless the benchmark loss experience changes.

3.4.2 Inputs

The inputs required for adjusting house price and rent growth rates are:

- The average yield of the ten-year CMT for the nine months preceding the stress period, as computed in section 3.3, Interest Rates, of this Appendix)
- The highest 10-year CMT during the stress period, as computed in section 3.3, Interest Rates, of this Appendix

• Unadjusted house price and rent growth rates during the stress period, as shown in Tables 3–13 and 3–14 below

3.4.3 Procedures

Inflation adjustments are applied over the final five years of the up-rate scenario stress test. The procedures are described below.

1. Determine whether an adjustment is necessary. Multiply the average10-year CMT for the nine months preceding the stress period by 1.50, and subtract the product from the highest value of the10-year CMT during the stress period. The difference is *YD*. If *YD* > 0, follow steps 2–4 to apply an inflation adjustment. Otherwise, use the rates provided in the Tables 3–13 and 3–14.

2. Compute the adjustment. Use the following formula to compute the cumulative adjustment as if *YD* were to apply over 9 years and 2 months:[7]

$$IN = (1 + YD)^{55/6}$$

where:

IN = cumulative inflation adjustment

3. Calculate the monthly inflation adjustment factors to apply to house price and rent rate growth rates. The cumulative adjustment is applied over the last five years of the stress period, and monthly adjustment factors are computed as follows:

a. For house-price growth rates, the monthly adjustment factor is:[8]

$$IH_t = \frac{ln(IN)}{60} \quad , \quad \text{for } t = \{61,...,120\}$$

where:

IH_t = monthly house-price growth adjustment factor

b. For rent growth rates, the monthly adjustment factor is:[9]

$$IR_t = \sqrt[60]{IN} - 1 \quad , \quad \text{for } t = \{61,...,120\}$$

where:

IR_t = monthly rent growth rate adjustment factor

4. Compute final monthly growth rates. Add the monthly inflation adjustment factors IH_t and IR_t to the house and rent growth rates for months 61 through 120. The resulting series will be inflation-adjusted growth rates.

3.4.4 Output

(a) Monthly house price growth rates, rent growth rates, and rental vacancy rates are used by the Mortgage Performance components of the stress test (*see* section 3.5, Mortgage Performance, of this Appendix). If there are no inflation adjustments, the house price and rent growth rates in Tables 3–13 and 3–14 are used. If the inflation adjustment is necessary, then the adjusted growth rates are used.

(b) House price growth rates are inputs to the Single Family Default and Prepayment and the Single Family Loss Severity components of the stress test (See sections 3.5.2 and 3.5.3 of this Appendix). The rent growth rates and vacancy rates are inputs to the Multifamily Default and Prepayment and Multifamily Loss Severity components (See sections 3.5.4 and 3.5.5 of this Appendix).

[7] If the ten-year CMT increases 75 percent over the base month, a 50 percent increase will be achieved by month eight. The full increase will be achieved by month twelve. On average, the difference YD will apply for 9 years and 2 months.

[8] This factor is in continuous rate form (note use of natural logarithm) to be compatible with the house price growth rate series in Table 3–13.

[9] This factor is in discrete rate form to be compatible with the rent growth rate series in Table 3–14.

Table 3-13. Stress Test Single Family House Price Growth Rates (Unadjusted)

Stress Test Months	Historical Months	Value
1-3	Oct - Dec 1983	0.0016826850
4-6	Jan - Mar 1984	0.0003819304
7-9	Apr - Jun 1984	0.0005691805
10-12	Jul - Sep 1984	-0.0026117430
13-15	Oct - Dec 1984	-0.0023250310
16-18	Jan - Mar 1985	0.0013926963
19-21	Apr - Jun 1985	-0.0019789320
22-24	Jul - Sep 1985	-0.0064738920
25-27	Oct - Dec 1985	0.0087437819
28-30	Jan - Mar 1986	0.0076169107
31-33	Apr - Jun 1986	-0.0071341580
34-36	Jul - Sep 1986	-0.0061689600
37-39	Oct - Dec 1986	0.0015192552
40-42	Jan - Mar 1987	-0.0131018780
43-45	Apr - Jun 1987	-0.0081272530
46-48	Jul - Sep 1987	-0.0089202740
49-51	Oct - Dec 1987	-0.0010606320
52-54	Jan - Mar 1988	0.0039512034
55-60	Apr - Sep 1988	-0.0068292010
61-63	Oct - Dec 1988	0.0020974158
64-66	Jan - Mar 1989	0.0035077580
67-69	Apr - Jun 1989	0.0059641985
70-72	Jul - Sep 1989	-0.0016271130
73-75	Oct - Dec 1989	-0.0000758170
76-78	Jan - Mar 1990	0.0029346442
79-81	Apr - Jun 1990	0.0011470552
82-84	Jul - Sep1990	-0.0012589880
85-87	Oct - Dec 1990	0.0033172551
88-90	Jan - Mar 1991	0.0042053432

Table 3-13. Stress Test Single Family House Price Growth Rates (Unadjusted) (Continued)

Stress Test Months	Historical Months	Value
91-93	Apr - Jun 1991	0.0007557299
94-96	Jul - Sep 1991	0.0041740394
97-99	Oct - Dec 1991	0.0044594285
100-102	Jan - Mar 1992	-0.0001728910
103-105	Apr - Jun 1992	0.0053448952
106-108	Jul - Sep 1992	0.0018970089
109-111	Oct - Dec 1992	0.0019075056
112-114	Jan - Mar 17993	0.0035380290
115-117	Apr - Jun 1993	0.0046397580
118-120	Jul - Sep 1993	0.0037558008

Table 3-14. Stress Test Rent Growth Rates (Unadjusted)

Stress Test Months	Historical Months	Value
1-12	Jan - Dec 1984	0.0035706091
13-24	Jan - Dec 1985	0.0020566625
25-36	Jan - Dec 1986	0.0051870916
37-48	Jan - Dec 1987	0.0007700712
49-60	Jan - Dec 1988	0.0010384258
61-72	Jan - Dec 1989	0.0032714078
73-84	Jan - Dec 1990	0.0029505423
85-96	Jan - Dec 1991	0.0037578051
97-108	Jan - Dec 1992	0.0035665268
109-120	Jan - Dec 1993	0.0035279667

Table 3-15. Stress Test Vacancy Rates

Stress Test Months	Historical Months	Value
1-12	Jan - Dec 1984	0.0987886700
13-24	Jan - Dec 1985	0.1095145375
25-36	Jan - Dec 1986	0.1145000000
37-48	Jan - Dec 1987	0.1325000000
49-60	Jan - Dec 1988	0.1192500000
61-72	Jan - Dec 1989	0.1160000000
73-84	Jan - Dec 1990	0.1107500000
85-96	Jan - Dec 1991	0.0885000000
97-108	Jan - Dec 1992	0.0795000000
109-120	Jan - Dec 1993	0.0847500000

3.5 Mortgage Performance

3.5.1 General

[a] The four components of the stress test that simulate various elements of mortgage performance are single family default and prepayment, single family loss severity, multifamily default and prepayment, and multifamily loss severity.

[b] Figure 3–1 is a schematic overview of the basic structure of each mortgage performance component. Each mortgage performance component uses as inputs loan group starting position data, interest rate series from the Interest Rates component (*see* section 3.3, Interest Rates, of this Appendix), historical house-price indexes (HPI) and rental-price indexes (RPI) from government sources, and HPI and RPI growth and rental vacancy rate series for the stress period from section 3.4, Property Valuation, of this Appendix. These inputs are used to calculate the values of explanatory variables that are then used to compute monthly default, prepayment, and loss severity rates. These monthly default, prepayment, and loss severity rates are used to compute cash flows (refer to section 3.9, Cash Flows, of this Appendix).

Figure 3-1. Mortgage Performance Components: Basic Structure

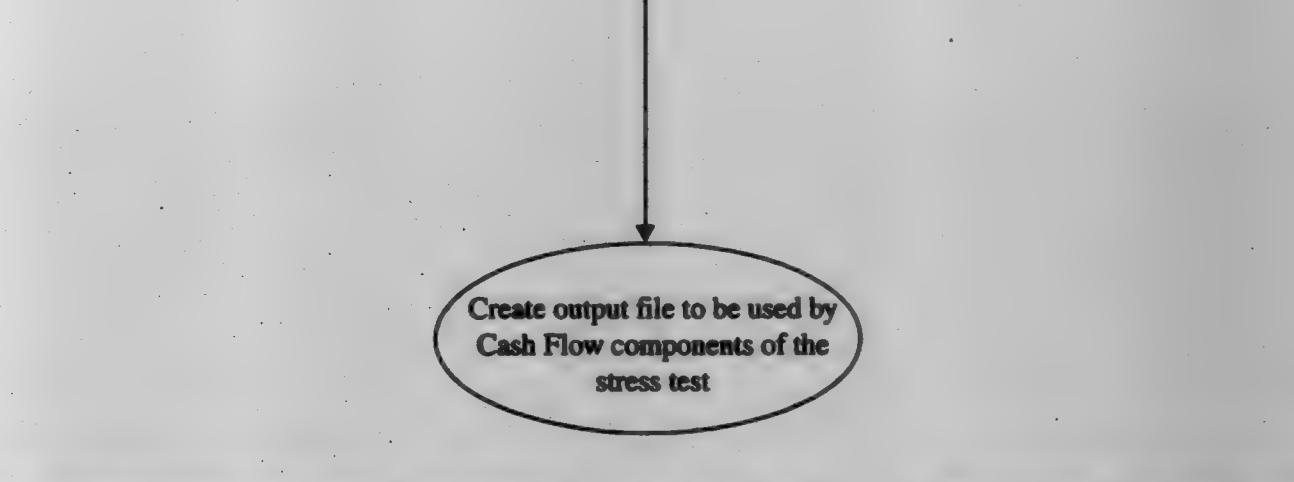

3.5.2 Single Family Default and Prepayment

3.5.2.1 Overview

The stress test calculates conditional default and prepayment rates for single family mortgages for each month of the ten-year stress period. A conditional rate of default or prepayment refers to the percentage of the outstanding balance in a loan group that defaults or prepays during a given period of time. Computing default and prepayment rates requires information on the risk characteristics of a loans, historical and projected rates of interest, and the historical and projected rates of property value appreciation (or depreciation). Some of this information is used directly, while other information is combined together to create new variables for use in the default and prepayment rate calculations. In all, nine explanatory variables are used to determine default and prepayment rates for single family loans: mortgage age, mortgage age squared, original loan-to-value ratio, probability of negative equity, prepayment burnout, the percentage of investment property loans, relative interest rate spread, yield curve slope, and mortgage product-type. A statistical analysis of the relationship between the explanatory variables and historical default and prepayment rates was used to estimate the weights (also known as regression coefficients) associated with each variable. The selected weights are combined as described below to compute quarterly default and prepayment rates throughout the stress test period. The quarterly rates are then converted to monthly conditional default and prepayment rates and used by the cash flow component (*See* section 3.9, Cash Flows, of this Appendix) of the stress test to calculate monthly principal reductions resulting from defaults and prepayments, and to calculate default losses for each month in the ten-year stress period.

3.5.2.2 Inputs

[a] There are three categories of data inputs for single family default and prepayment rate calculations: characteristics of loan groups, interest rates, and house price index values and volatilities.

[b] The loan group characteristics used here are listed below with their

corresponding variable names, where relevant, as they appear in subsequent formulas:

- Product type
- Origination year (Y_0)
- Origination month (required for loans delivered under commitments only)
- Census division (d)
- Origination LTV (LTV_0)
- Origination UPB (UPB_0)
- Original coupon interest rate ($r_{c,0}$)
- Mortgage origination term, in months (T_o)
- Mortgage amortization term, in months (T_a)
- Remaining term, in months (T_r)
- Percentage of investor loans (P) (this refers to the percent of investor property loans in an Enterprise's entire loan portfolio)

[c] The interest rate variables are listed below, along with their reference names as they appear in subsequent formulas:

- Conventional 30-year fixed-rate mortgage coupon rates ($r_{f,q}$)
- One-year (Constant Maturity) Treasury yields ($y12_q$)
- Ten-year (Constant Maturity) Treasury yields ($y120_q$)

[d] All interest rate series are provided by the Interest Rate component in monthly form. They are converted to quarterly series by taking simple averages of monthly values within each calendar quarter. Each interest-rate series represents 30 years of historical values, plus 10 years of stress test values. As described below in section 3.5.2.3, Procedures, of this Appendix, loans with origination years prior to 1979 are treated as having an origination year of 1979. Therefore, no interest rate variable values before that year are used. The conventional 30-year fixed-rate mortgage rate series does not begin until the second half of 1979, so values for the first two quarters of 1979 are equal to the third-quarter value.

[e] House price growth rates are used to adjust the value of collateral properties before and during the stress period. Before the stress test is run, mortgages are seasoned using historical Census Division HPI series from the most recent OFHEO HPI report. House price growth rates for the stress period are determined as discussed in section 3.4, Property Valuation, of this Appendix. The two house price growth rate volatility parameters published in the OFHEO HPI Report, for each Census division, are also used, as described below. The volatility parameters measure the distribution of individual house price growth paths around the measured HPI value, as a function of the age of a mortgage.

3.5.2.3 Procedures

3.5.2.3.1 Overview

Five general steps for generating default and prepayment rates for single family loans are repeated for each loan group throughout the stress period.

1. Obtain the loan group characteristics, the interest rates, and the HPI index and volatility values.

2. Using the loan characteristics and other input data, compute the values for the nine explanatory variables, by loan group, for each quarter of the stress period.

3. Match the time series of explanatory variables for each loan group to associated regression weights (coefficients) for use in calculating default and prepayment rate series. Some of the variables are multiplied by the weights and then used in the default and prepayment rate calculations. These are called "continuous" variables, and they include age (and age squared), investor-property percent. Other variables are categorical and do not get multiplied by the weights. Rather, for these explanatory variables, one of several available weights is assigned based on the value-range or category of the explanatory variable value in each quarter. For categorical variables, the underlying values can change from quarter to quarter, and the weights used will also change, as the variable value moves from one category to another.

4. Sum the results of Step 3—a combined set of weighted continuous variables and categorical variable weights for each quarter—to produce factors that go into default and prepayment rate calculations. The rate calculations use logistic probability formulas. Table 3–17 provides all weights needed to compute the default and prepayment rates for each product type. There is one set of beta (β) and gamma (γ) weights for 30-year fixed-rate mortgages, one set for adjustable rate mortgages, and one set for all other product types.

5. Convert the quarter default and prepayment rates into monthly equivalent rates so that the stress test has monthly series for cash flow projections.

3.5.2.3.2 Explanatory Variables Calculations

The following sections describe how each explanatory variable is calculated and how the weights are combined to compute default and prepayment rates for a group of single family loans of similar risk characteristics.

3.5.2.3.2.1 Mortgage Age (A_q)

[a] The mortgage age in each quarter of the stress period is computed as:

$$A_q = \begin{cases} int((T_0 - T_r)/3) + q, \text{ when } Y_0 \geq 1979 \\ (Y_s - 1979) \cdot 4 + q_s + q, \text{ when } Y_0 < 1979 \end{cases}$$

where:

- A_q = mortgage age in quarters, in each stress period quarter, q, where $q = \{1,...,40\}$
- $int(.)$ = function which returns the integer value (whole number) portion of the expression in brackets
- T_o = mortgage origination term in months
- T_r = remaining term of mortgage in months, at the start of the stress period
- Y_0 = calendar year of loan origination
- Y_s = calendar year of the start of the stress test
- q_s = number of the calendar quarter immediately preceding the stress test, $q_s = \{1,...,4\}$. if calendar quarter number is 4 (i.e., stress test begins in the first quarter of a calendar year) then reset $q_s = 0$

[b] Loans with origination years prior to 1979 are treated as if they were originated in 1979. The age value and the squared value of age are used directly in the default and prepayment formula, along with their weights (coefficients).

3.5.2.3.2.2 Origination LTV (LTV_0)

The value of the original LTV for each loan group does not change throughout the stress test. Once it is matched to an LTV_0 category in Table 3–17, the associated default and

prepayment weights are used throughout the stress test.[10]

3.5.2.3.2.3 Probability of Negative Equity ($PNEQ_q$)

[a] The probability of negative equity variable requires creating a time series of property values and amortizing loans to create updated LTV ratios throughout the stress period. The updated LTV ratios are used along with the standard deviations of house price growth paths to compute probabilities of negative equity. The probability of negative equity measures the percent of loans underlying a loan group that are likely to have negative equity positions, in each quarter of the stress period. The step-by-step process for computing the variable $PNEQ_q$ follows. *See* Figure 3–2 for an overview of the derivation process.

1. Create a time series of property values that extends from loan origination through the stress period as described below.

a. Extend the historical HPI series for each of the nine Census divisions through the stress period by adding the growth rate factors (g_i) that are described in section 3.4, Property Valuation, of this Appendix:

$$HPI_{d,q} = HPI_d \cdot exp\left(\sum_{i=1}^{3 \cdot q} g_i \right)$$

where:

$HPI_{d,q}$ = HPI value for Census Division, d, in quarter, q, of the stress period, q = {1,...,40}

HPI_d = HPI value for Census Division, d, at the start of the stress period

g_i = monthly HPI growth rate factor for month i in the stress period, i = {1,...,120}. These growth rates associated with the benchmark loss experience, they are *not* specific to Census Divisions.

b. Create an index for average house value in each quarter of the stress period (V_q) using HPI values from the loan origination quarter and from each quarter of the stress period, by Census division:

$$V_q = (HPI_{d,q} / HPI_{d,O})$$

where:

$HPI_{d,O}$ = HPI value for Census division, d, in the loan origination quarter, O

O = calendar year and quarter of mortgage origination, found by subtracting mortgage age (in quarters) at the start of the stress test (A_1) from the calendar quarter in which the stress period starts. If, for example, a mortgage is 33 quarters old in the first quarter of the stress test, and the stress test starts in 2001:2, then O = 1993:1.

The published HPI series begins in the first quarter of 1980. Values for the four quarters of 1979 are produced by OFHEO, but are not published. Table 3–16 provides these values, which are assigned to $HPI_{d,O}$ for loans originating in 1979. Loans with origination years prior to 1979 are treated as if they were originated in 1979.

[10] Note that Table 3–1 of this Appendix shows eight categories for original LTV ratio classes. The default and prepayment component of the stress test combines the last three categories into one category.

Table 3-16. HPI Values in 1979, by Census Division, Consistent with Calculations used in the OFHEO HPI Report, 1996:3

Census Division	$HPI_{d,1979:1}$	$HPI_{d,1979:2}$	$HPI_{d,1979:3}$	$HPI_{d,1979:4}$
East North Central	94.31	97.95	99.16	100.20
East South Central	95.93	96.96	98.86	96.74
Mid-Atlantic	91.10	93.49	95.19	98.31
Mountain	90.78	94.34	96.56	98.97
New England	97.43	99.15	100.98	103.88
Pacific	84.95	88.98	93.33	96.66
South Atlantic	89.16	92.14	93.31	96.54
West North Central	95.42	98.56	99.70	99.73
West South Central	91.04	92.92	95.66	98.05

2. Amortize the average loan balance from loan origination through the stress period. This procedure does not use the current mortgage coupon rate at the start of the stress period, but rather creates a history of interest rate paths for the loan group, from origination, as if all adjustable rate mortgages are Constant Maturity Treasury ARMs, with one-year adjustment periods.

a. Create the coupon interest rate series, $r_{c,q}$. For fixed-rate mortgages, set $r_{c,q} = r_{c,0}$, (original coupon) for every quarter. However, for adjustable-rate mortgages, adjustments must be made over time, taking into account period and lifetime interest rate caps as follows:

First, set $r_{c,q} = r_{c,0}$ for $q = \{1,\ldots,4\}$.

where:

$r_{c,0}$ = original coupon rate

Then, for every fourth quarter of loan life, evaluate:

$$r_{c,q} \gtrless (y12_q + 0.0275), \quad \text{for } q = \{4, 8, 12,\ldots, \text{int}((A_1+38)/4) \cdot 4\}$$

where:

$r_{c,q}$ = current mortgage coupon rate in quarter, q, of loan life

$y12_q$ = 12-month constant maturity Treasury yield, in quarter q

0.0275 = index margin used to create fully-adjusted market interest rate

$int(.)$ = the integer value of the term in parentheses. This multiplied by 4 represents the final quarter in the life of the loan—before the last quarter of the stress period—in which the mortgage age is an even multiple of 4.

When $r_{c,q} < (y12_q + 0.0275)$, then set:
$r_{c,q+1\ldots q+4} = \min\{(y12_q + 0.0275), (r_{c,q} + 0.02), (r_{c,0} + 0.05)\}$
When $r_{c,q} > (y12_q + 0.0275)$, then set:
$r_{c,q+1\ldots q+4} = \max\{(y12_q + 0.0275), (r_{c,q} - 0.02), (r_{c,0} - 0.05)\}$
When $r_{c,q} = (y12_q + 0.0275)$, then set:
$r_{c,q+1\ldots q+4} = r_{c,q}$

where:

$r_{c,q+1\ldots q+4}$ = the reset mortgage coupon rate, in effect for loan-life quarters q+1 through q+4

.02 = maximum coupon interest rate change at each time of adjustment

.05 = lifetime maximum change in coupon interest rate

b. Compute the monthly mortgage payment factor (PMT_q) for each quarter of the stress period, $q = \{1,\ldots,40\}$ using the formula:

$$PMT_q = \frac{LTV_0 \cdot \left(\frac{r_{c,q}}{12}\right)}{1 - \left(\frac{1}{1 + r_{c,q}/12}\right)^{T_0}}$$

where:

$r_{c,q}$ = current loan coupon rate in quarter, q, of the stress period (in decimal form). This is always equal to the original coupon rate for fixed-rate mortgages

T_0 = Mortgage origination term, in months[1]

q = Stress period quarters. This will be used to represent time for the remainder of this Appendix

[1] In the case of balloon mortgages, in the calculation of mortgage amortization, the equation applies the mortgage origination term (T_0) instead of the amortization term. This is consistent with procedures used to estimate the related equations.

In this formula, LTV_0 represents the original loan balance. Using LTV_0 allows the UPB time series to be calculated in index form to match V_q. PMT_q will be constant throughout the stress test for fixed-rate loans because $r_{c,q}$ is fixed at $r_{c,0}$.

c. Calculate a remaining loan balance index for the UPB outstanding at the beginning of each quarter of the stress period, UPB_q, based on PMT_q, T_r, and elapsed time in the stress period, q, using the formula:

$$UPB_q = PMT_q \cdot \left(1 - \left(\frac{1}{1 + r_{c,q}/12}\right)^{(T_r - (q-1)\cdot 3)}\right) \Big/ \left(\frac{r_{c,q}}{12}\right)$$

where:

T_r = remaining mortgage term at beginning of stress period

3. Compute updated LTV ratios (LTV_q) for each quarter of the stress period:

$$LTV_q = \frac{UPB_q}{Vq}$$

4. Compute the standard deviation of house price growth paths ($\sigma_{d,q}$) around the $HPI_{d,q}$ value. Limit the value of the age variable to avoid negative "diffusion." Negative diffusion occurs when the variance of house prices declines over time. The quadratic formula used here for the standard deviation of individual house price index values will create negative diffusion unless age is limited. The age limit formula is found by solving the first derivative of the house price volatility variance with respect to age, for zero. This variance is the function under the root sign in the $\sigma_{d,q}$ equation below (but using A_q rather than MA_q). The age limit gives the value of age for which the diffusion of house price growth is maximized. Once this age value is reached, the stress test then holds diffusion at the maximum value for the remainder of the life of the loan:

$$\sigma_{d,q} = \sqrt{\alpha_d \cdot MA_q + \beta_d \cdot (MA_q)^2}$$

where:

α_d = "alpha" volatility parameter for Census Division, *d*, (from OFHEO HPI Report, most recent quarter)

β_d = "beta" volatility parameter for Census Division, *d*, (from OFHEO HPI Report, most recent quarter)

MA_q = $\min\{A_q, \text{age limit}\}$, where age limit = $-\alpha_d/(2 \cdot \beta_d)$

5. Calculate the probability of negative equity in each stress period quarter:

$$PNEQ_q = N\left(\frac{ln(LTV_q)}{\sigma_{d,q}}\right)$$

where:

$N(.)$ = cumulative standard normal distribution function, evaluated at the value of the term in brackets

$ln(.)$ = natural logarithm

Figure 3-2. Derivation of Probability of Negative Equity

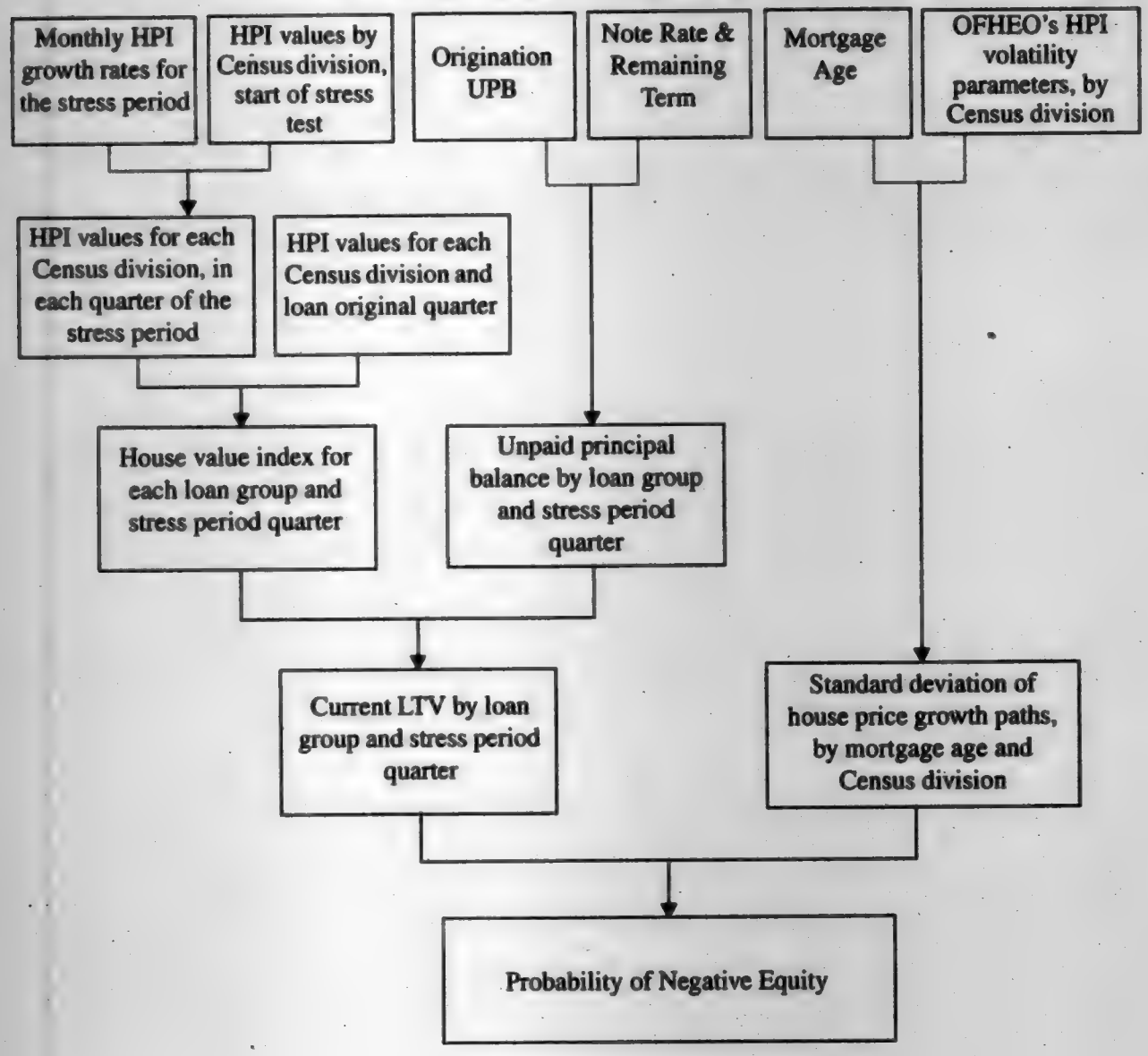

3.5.2.3.2.4 Burnout (B_q)

[a] The prepayment "burnout" variable, B_q, indicates whether there have been at least two quarters of "significant refinance opportunities" among the previous eight quarters of loan life. A mortgage undergoes a significant refinance opportunity when its coupon is at least two percentage points above the then-prevailing rate on 30-year mortgages. The rate on 30-year mortgages is always used as the benchmark for defining refinance opportunities, regardless of the type of mortgages being analyzed. Prepayment burnout is a binary variable—two quarters of significant refinance opportunities either occur or do not occur.

[b] If $A_q \leq 8$, then B_q=0. If $A_q > 8$, then:

$$B_q = \begin{cases} 0, \text{ if } (r_{f,q-s} + 0.02) < r_{c,q} \text{ for less than 2 values of } s,\ s = \{1,\ldots,8\} \\ 1, \text{ if } (r_{f,q-s} + 0.02) < r_{c,q} \text{ for 2 or more values of } s,\ s = \{1,\ldots,8\} \end{cases}$$

where:

$r_{f,q-s}$ = conventional mortgage rate, fixed-rate 30-year loans, s quarters prior to the present quarter, q

$r_{c,q}$ = current coupon rate of mortgage in present quarter, q

3.5.2.3.2.5 Occupancy Status (OS)

The occupancy status variable is the percentage of loans in an Enterprise portfolio that are investor-owned (rental) properties rather than owner-occupied properties. It is a constant value (OS) applied equally to all loan groups and in all stress period quarters, computed as follows:

$$OS = \frac{\Sigma_j UPB_{j,\,q=0}}{\Sigma_j UPB_{j,\,q=0} + \Sigma_k UPB_{k,\,q=0}}$$

where:

j = indicator for investor (rental property) loans (do not include second-liens in this calculation)

k = indicator for owner-occupied, first-lien property loans (do not include second-liens in this calculation)

q=0 = represents the month immediately preceding the first quarter of the stress period (index for the unpaid principal balance at the start of the stress period)

3.5.2.3.2.6 Relative Spread (RS_q)

The relative spread variable (RS_q in the formula below) is the percentage spread between a loan's contract rate and the rate on 30-year fixed-rate mortgages in the current quarter of the stress test. The higher this percentage is, the more likely a loan is to prepay:

$$RS_q = \frac{r_{c,q} - r_{f,q}}{r_{c,q}}$$

3.5.2.3.2.7 Yield Curve Slope (YS_q)

The variable YS_q in the formula below represents the slope of the yield curve. It is included in the prepayment calculations to represent different relationships between short-and long-term interest rates. Different yield curve slopes represent different relationships between short and long term interest rates, and these relationships impact incentives to refinance either into ARMs or into fixed-rate mortgages:

$$YS_q = \frac{y120_q}{y12_q}$$

where:

$y120_q$ = 120-month constant maturity Treasury yield in quarter, q, of the stress period

$y12_q$ = 12-month constant maturity Treasury yield in quarter, q, of the stress period

3.5.2.3.2.8 Product Type Adjustment Factors

Product types other than fixed-rate 30-year mortgages and ARMs receive unique product-specific adjustment factor weights in the stress test. These factors relate the default and prepayment risk of each product type to the fixed-rate 30-year mortgage. ARMs do not need a risk adjustment factor because they use separate default and prepayment equations. All products other than 30-year fixed-rate and adjustable-rate mortgages use the same pair of default and prepayment equations. The product types included in this combination grouping, which receive product-specific risk adjustment factors, are: 20-year fixed-rate, 15-year fixed-rate, balloon, government insured or guaranteed loans, and second mortgages. All loan products with payment changes, such as graduated payment mortgages, two-step mortgages, and buydown mortgages, are treated as ARMs and use the ARMs default and prepayment formulas without a product adjustment factor. Biweekly and reverse mortgages are included with standard monthly mortgages of similar term and do not therefore require separate adjustments. The adjustment factor values are provided in Table 3–17.

3.5.2.3.2.9 Benchmark Calibration Factor

A calibration adjustment of 0.146 is added to each statistical default equation to reasonably relate current loan default rates to the historical benchmark experience. The value 0.146 is a weighting factor, not an explanatory variable.

3.5.2.3.3 Combining Explanatory Variables and Weights

[a] Each explanatory variable outlined above has associated numerical weights that are used in default and prepayment rate calculations. These weights, which are the estimated coefficients from statistical regressions, are referred to here as beta factors, β_j, for default weights, and gamma factors, γ_k, for prepayment weights. As mentioned above, there is also a constant weight for benchmark calibration. In addition, each statistical equation has a different regression constant. These constants appear as separate weights, not tied to any explanatory variables.

[b] The weights are combined to compute two sums: $X\beta_q$ for defaults and $X\gamma_q$ for prepayment as follows:

$$X\beta_q = \beta_A A_q + \beta_{A2} A2_q + \beta_{LTV0} + \beta_{PNEQq} + \beta_{Bq} B_q + \beta_p OS + \beta_T + \beta_C + \beta_0$$

and

$$X\gamma_q = \gamma_A A_q + \gamma_{A2} A2_q + \gamma_{LTV0} + \gamma_{PNEQq} + \gamma_B B_q + \gamma_p OS + \gamma_{RSq} + \gamma_{YSq} + \gamma_T + \gamma_0$$

where:

where:

β_j = default rate weighting factors for explanatory variables

j = $\{A_q, A2_q, LTV_0, PNEQ_q, B_q, P\}$

β_T = product-type adjustment factor

β_C = benchmark calibration factor

β_0 = fixed factor for equation

γ_k = prepayment rate weighting factors for explanatory variables

k = $\{A_q, A2_q, LTV_0, PNEQ_q, B_q, OS, RS_q, YS_q\}$

γ_T = product-type adjustment factor

γ_0 = fixed factor for equation

[c] The only explanatory variables for which both the variable and its weight are included in the formula above are age (A_q), age squared ($A2_q$), occupancy status (OS) and burnout (B_q). For each of these variables, the variable value is multiplied by its weight, which can be found in Table 3–17. For other (categorical) explanatory variables, however, the weights are not accompanied by the actual values of the explanatory variables. For these variables the computed variable value is only used to identify the category to which it belongs so that a representative weight can be selected from the weight table (Table 3–17) of this Appendix. Only the obtained weight is included in the $X\beta_q$ and $X\gamma_q$ formulas for these variables.

Table 3-17. Explanatory Variable Weights[1] for Quarterly Conditional Prepayment and Default Probabilities

Explanatory variables and Categories	Weighting Factors by Product Type and Variable Category					
	30-Year Fixed-Rate		Adjustable Rate		All Other Products	
	Prepayment weights (γ_j)	Default weights (β_j)	Prepayment weights (γ_j)	Default weights (β_j)	Prepayment weights (γ_j)	Default weights (β_j)
Age variables						
A_q	0.072	0.118	0.061	0.057	0.078	0.139
$(A_q)^2$	−0.002	−0.002	−0.001	−0.002	−0.002	−0.002
Original LTV (LTV_0)						
$LTV_0 \leq 60$	0.169	−1.465	0.097	−1.424	0.117	−1.491
$60 < LTV_0 \leq 70$	0.069	−0.219	−0.008	−0.348	0.041	−0.219
$70 < LTV_0 \leq 75$	−0.024	0.426	−0.080	0.121	−0.027	0.374
$75 < LTV_0 \leq 80$	0.013	0.272	−0.071	0.191	−0.004	0.220
$80 < LTV_0 \leq 90$	−0.070	0.399	0.081	0.322	−0.049	0.412
$90 > LTV_0$	−0.157	0.587	−0.019	1.138	−0.078	0.704
Probability of negative equity ($PNEQ_q$)						
$.0 \leq PNEQ_q \leq 0.05$	0.234	−1.269	0.603	−1.206	0.328	−1.198
$.05 < PNEQ_q \leq 0.10$	0.199	−0.559	0.239	−0.413	0.174	−0.344
$.10 < PNEQ_q \leq 0.15$	0.196	−0.263	0.060	−0.292	0.132	−0.062
$.15 < PNEQ_q \leq 0.20$	0.169	−0.135	0.027	−0.043	0.074	−0.080
$.20 < PNEQ_q \leq 0.25$	0.015	0.254	−0.005	0.177	−0.042	0.164
$.25 < PNEQ_q \leq 0.30$	−0.207	0.563	−0.155	0.398	−0.125	0.404
$.30 < PNEQ_q \leq 0.35$	−0.249	0.647	−0.242	0.607	−0.169	0.421
$.35 > PNEQ_q$	−0.357	0.762	−0.527	0.772	−0.372	0.695
Burnout (B_q)	−0.212	1.238	−0.054	0.936	−0.174	1.132
Occupancy status (OS)	−0.280	0.488	−0.456	1.782	−0.284	0.538
Relative Spread (RS_q)						
$RS_q \leq -0.20$	−1.160		−1.473		−1.027	
$-0.20 < RS_q \leq -0.10$	−0.822		−0.524		−0.810	
$-0.10 < RS_q \leq 0$	−0.680		−0.328		−0.710	
$0 < RS_q \leq 0.10$	−0.432		−0.162		−0.343	
$0.10 < RS_q \leq 0.20$	0.633		0.414		0.628	
$0.20 < RS_q \leq 0.30$	1.182		1.066		1.098	
$0.30 < RS_q$	1.279		1.007		1.164	

Table 3-17. Explanatory Variable Weights[1] for Quarterly Conditional Prepayment and Default Probabilities (Continued)

Explanatory variables and Categories	Weighting Factors by Product Type and Variable Category					
	30-Year Fixed-Rate		Adjustable Rate		All Other Products	
	Prepayment weights (γ_j)	Default weights (β_j)	Prepayment weights (γ_j)	Default weights (β_j)	Prepayment weights (γ_j)	Default weights (β_j)
Yield Curve Spread (YS_q)						
$YS_q < 1.00$	−0.215		0.042		−0.214	
$1.00 \leq YS_q < 1.20$	−0.228		−0.156		−0.211	
$1.20 \leq S_q < 1.50$	0.022		−0.101		−0.004	
$1.50 \leq YS_q$	0.421		0.215		0.429	
Product Type Adjustment factors (γ_T, β_T)						
20-year fixed-rate					−0.017	−0.143
15-year fixed-rate					−0.004	−1.064
Balloon					0.564	1.439
Government					−0.184	0.693
Second mortgages					−0.107	0.659
Calibration constant (β_c)		0.146		0.146		0.146
Fixed Effects (γ_0, β_0)	−4.217	−7.888	−4.362	−6.522	−4.286	−8.184

[1] The explanatory variable weights given in this table were estimated based upon equations using mortgage origination term (T_0) to amortize balloon loans, rather than mortgage amortization term (T_a) to amortize balloon loans, as seen in the formula used for PMT_q.

3.5.2.3.4 Calculating Default and Prepayment Rates

The total weighting factors, $X\beta_q$ and $X\gamma_q$, are converted into quarterly default and prepayment probabilities using the following logistic probability equations:

$$Def_q = \frac{exp\{X\beta_q\}}{1 + exp\{X\beta_q\} + exp\{X\gamma_q\}}$$

$$Prep_q = \frac{exp\{X\gamma_q\}}{1 + exp\{X\beta_q\} + exp\{X\gamma_q\}}$$

where:

Def_q = quarterly, conditional default rate in stress period quarter, q

$Prep_q$ = quarterly, conditional prepayment rate in stress period quarter, q

$exp\{.\}$ = exponential function

3.5.2.3.5 Monthly Default and Prepayment Rates

To this point, all calculations involved creating quarterly time series of values throughout the ten-year stress period (40 quarters). In this step, the quarterly conditional default and prepayment rates are converted into monthly rates as follows:

$$Def_{j,q} = 1 - \sqrt[3]{1 - Def_q}$$

$$Prep_{j,q} = 1 - \sqrt[3]{1 - Prep_q}$$

where:

$Def_{j,q}$ = monthly conditional default rate for each month j={1,2,3} in quarter q={1,...,40}

$Prep_{j,q}$ = monthly conditional prepayment rate for each month j={1,2,3} in quarter q={1,...,40}

3.5.2.4 Output

Use the resulting 120 monthly conditional default and prepayment rates for each loan group to calculate monthly principal reductions resulting from defaults and prepayments, and to calculate default losses for each month in the ten-year stress period.

3.5.3 Single Family Loss Severity

3.5.3.1 Overview

[a] The Single Family Loss Severity component of the stress test computes loss severity rates for single family mortgages that default in each month of the stress test. The loss severity rate is the net cost of a loan default expressed as a percentage of the unpaid principal balance (UPB) at the time of default. Based on various cost and revenue elements associated with a loan default, the stress test calculates loss severity rates as the present value (at default date) of the net cash flows that occur following the default date. Most cost and revenue elements are entered as constant rates across loan groups throughout the stress period. Two exceptions are proceeds from property disposition and asset funding costs. Proceeds are derived through a formula that uses both historical and stress period house price appreciation rates, and that accounts for loan amortization from origination through default. Funding cost of the defaulted mortgages and the resulting foreclosed properties is captured by discounting the loss severity elements, using a cost-of-funds interest rate that varies during the stress period. Loss severity rates throughout the stress period will also vary according to the application of percent-denominated credit enhancements (dollar-denominated credit enhancements are directly applied in the Cash Flow component of the stress test) and their associated credit ratings.

[b] The inputs used to compute loss severity rates include several starting position loan group characteristics, counterparty credit risk factors, historical house price index series and stress period house price growth rates, house price appreciation volatility parameters, and stress test interest rate series. The output of loss severity rates for each loan group are used in the Cash Flow component of the stress test (*see* section 3.9, Cash Flows, of this Appendix) to calculate (dollar) default losses.

3.5.3.2 Inputs

[a] The Single Family Loss Severity component of the stress test uses loan group characteristics as of the start of the stress test, including information on certain types of credit enhancements, and credit risk factors associated with counterparty rating categories (*see* section 3.6, Other Credit Factors, of this Appendix). In addition, it uses historical and stress period HPI series, house price appreciation volatility parameters, and one interest rate series (*see* section 3.4, Property Valuation, of this Appendix).

[b] The particular loan group characteristics (refer to section 3.1, Enterprise Data, of this Appendix for the definitions of these loan group characteristics), with associated variable names used in the procedures below, are:

- Product Type
- Portfolio (retained or sold portfolio)
- Origination Year (subscript "y")
- Origination Month (t_m, for commitment loan groups only)
- Census Division (subscript "d")
- Starting Coupon ($r_{c,s}$)
- Original Coupon ($r_{c,o}$, only used for ARMs)
- Passthrough Rate (r_p, for sold loans only)
- Original LTV (LTV_o)
- Mortgage Age (A_s)
- Amortization Term (T_s)
- Credit Enhancement Coverage Type 1 (C_{mi}, PMI coverage rate)
- Credit Enhancement Coverage Type 2 (C_{rc}, seller/servicer recourse coverage rate)
- Percent of UPB under "AAA" coverage in a loan group (C_R)
- Percent of UPB under "AA" coverage in a loan group (C_R)
- Percent of UPB under "A" coverage in a loan group (C_R)
- Percent of UPB under "BBB" coverage in a loan group (C_R)

[c] Credit enhancement coverages, both Type 1 and Type 2, are reduced throughout the stress test according to "haircuts," as defined in section 3.6, Other Credit Factors, of this Appendix. These haircuts represent percentage reductions to credit enhancement coverage due to the inability of a counterparty to meet its obligations under stressful conditions. The final (end-of-stress-period) haircuts, by credit rating class (AAA, AA, A, and BBB), are obtained from section 3.6, Other Credit Factors, of this Appendix.

[d] In addition, historical Census division HPI series and house price appreciation volatility parameters are obtained from the most recently available *OFHEO HPI Report*. The HPI series are used to update collateral property values to the beginning of the stress test. Property values are then updated during the stress period with monthly house price growth rates obtained from section 3.4, Property Valuation, of this Appendix. The historical volatility parameters are used with stress period property values to develop distributions of property values and levels of home equity within loan groups.

[e] The final input used here is the six-month Federal agency cost-of-funds rate, for each month of the stress period (variable "$r_{d,t}$"). This monthly series is generated by the interest rate component of the stress test (*See* section 3.3, Interest Rates, of this Appendix) and is used as the discount rate for computing the present value of the three major elements of the loss severity rate—defaulting UPB, net costs or proceeds associated with foreclosure, and net cash flows from holding and disposition of Real Estate Owned (REO) property.

3.5.3.3 Procedures

[a] The process of deriving loss severity rates involves calculating the present value of three loss elements. The first loss element (*PV1*) is the amount of defaulting UPB. The second loss element (*PV2*) is the expense related to foreclosure, net of any mortgage insurance proceeds. The third loss element (*PV3*) combines post-foreclosure property expenses with proceeds from REO property disposition. Each of these three loss elements is computed as the present value (as of the default date) of the net cash flows occurring at a separate point in time—four months after default for the first loss element, 13 months after default for the second loss element, and 20 months after default for the third loss element. The present values of the three loss elements then are added together to derive an initial loss severity rate (*NPV1*). Finally, available seller/servicer recourse against the (initial) loss is applied to calculate the final loss severity rate (*NPV3*). Figure 3–3 of this Appendix depicts the timing of the three loss elements and how they are combined to produced initial and final loss severity rates.

[b] In the procedures for calculating loss severity rates, loan amortization is performed each month for surviving loans in each loan group; all discounting of cash flows uses semi-annual compounding of interest rates; all calculations add expenses and subtract revenues to calculate loss severity rates; and all loss elements are calculated as percentages of the UPB of the defaulting loans. With the exception of computations for FHA and VA loans, calculations are not specific to any particular loan product types, although loan group characteristics (coupon rate and amortization term) are used in the severity calculations.

[c] The lack of product type distinctions in severity calculation means that adjustable

rate mortgages are treated like fixed-rate mortgages. Their coupon rates are not updated during the stress test, and the original coupon is used to perform loan amortizations used in the statistical equation for property disposition proceeds. This simplification does not affect the actual defaulting UPB used to calculate dollar losses. The cash flow portion of the stress test does update coupon rates for adjustable rate products, and uses the updated rates to amortize loan group UPB. There are also no differences in loss severity rate calculations for investor loans. The stress test does not group loans according to occupancy status (owner-occupant versus investor/rental), although the statistical analysis used to derive the loss severity elements for the stress test used data on both occupancy status types. Thus, the loss severity elements shown here reflect a balance of owner-occupant and investor loans.

[d] The stress test groups FHA and VA loans together. To calculate severity rates, FHA and VA insurance coverage amounts are calculated separately for all FHA/VA loan groups. Loan group credit enhancements are then calculated by summing the coverage amounts, with FHA insurance receiving a 0.67 weight and VA insurance receiving a 0.33 weight. Final loss severity rates for FHA/VA loan groups are then computed based on these weighted average coverage amounts.

3.5.3.3.1 Defaulting UPB

The defaulting UPB is the first loss element included in the loss severity rate calculation. The stress test recognizes defaulting UPB four months after the month of default. At this point, the defaulting UPB is recognized as a loss severity element and a potential cost (pending offsetting revenues from mortgage insurance and property disposition). For sold loans, defaulting mortgages are first purchased from the security pools, requiring a cash outlay equal to the UPB. Because only sold loans involve actual cash outlays, sold and retained loans are treated slightly differently in this loss element calculation.

Figure 3-3. Single Family Loss Severity Event Timing

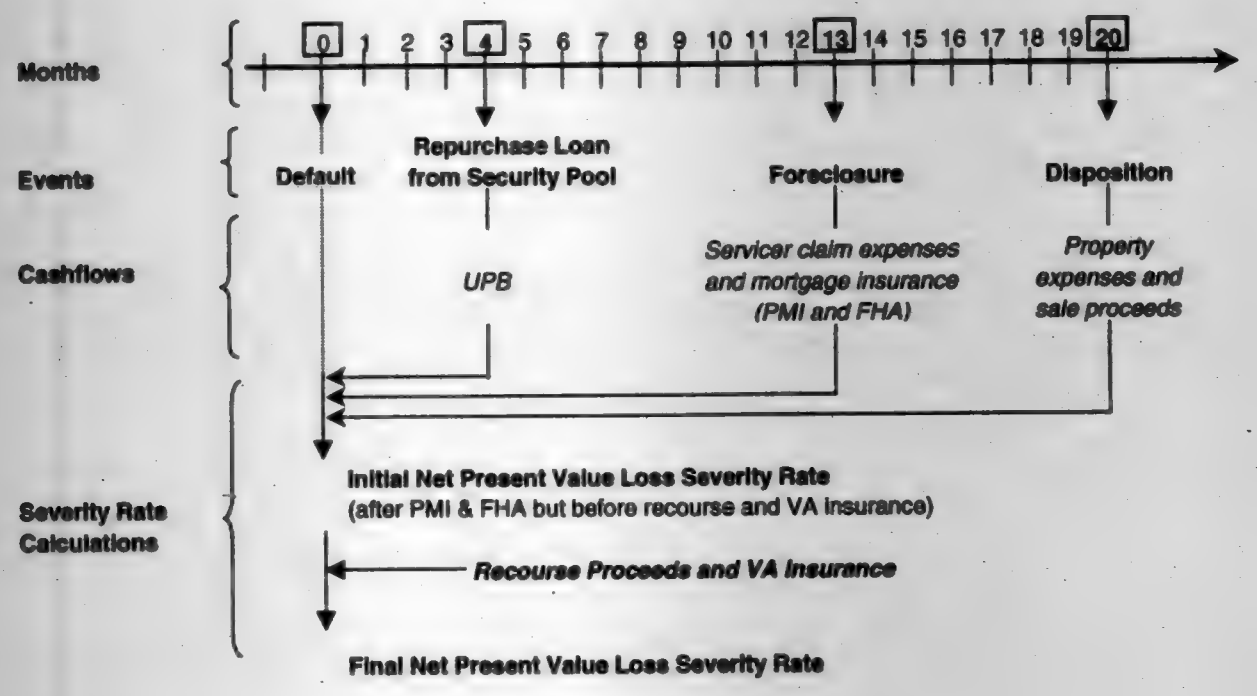

1. For sold loans, recognize the cash outlay by discounting UPB back to the date of default:

$$PVI_t = \frac{1}{\left(1 + \frac{r_{d,t}}{2}\right)^{\frac{4}{6}}}$$

where:

PVI_t = present value of the defaulting UPB

1 = defaulting UPB

$r_{d,t}$ = discount rate (six-month Federal agency cost-of-funds rate) in effect in month of the stress period

2. For retained loans, set $PVI_t = 1$ to represent the full UPB. No discounting is necessary because recognition of the defaulting UPB does not involve an actual cash outlay.

3.5.3.3.2 Net Costs or Proceeds Associated with Foreclosure

The second loss element includes foreclosure related transactions. There are

several cash flows, so that multiple computations are required.

1. Calculate survival factors for each counterparty rating category, for each month of the stress period. The monthly survival factors represent percentages of obligations that counterparties with given credit ratings are expected to meet as the stress period continues. They are derived from the final haircuts defined in section 3.6, Other Credit Factors, of this Appendix. These factors are applied here to private mortgage insurance (PMI) coverage, and later to seller/servicer recourse obligations. Survival factors for each credit rating category are constant across loan groups:

$$SF_{R,t} = 1 - \frac{FH_R}{120} \cdot t$$

where:

$SF_{R,t}$ = survival factor for counterparties rated R in month t of the stress period

R = credit rating categories of counterparties

FH_R = final haircut for counterparties rated, R. This reflects their abilities to meet obligations toward Enterprises in the final month of the stress period. Values are defined in the Other Credit Factors component of the stress test

2. Calculate private mortgage insurance (PMI) proceeds.

a. Calculate the weighted average survival factor for each loan group. For each month, t, of the stress period, multiply the survival factor for each counterparty rating, $SF_{R,t}$, by the percentage of the loan group UPB covered by counterparties with the same rating, C_R. Sum the results across all counterparty ratings, R. Next, divide that sum by the sum of all counterparty coverage percentages. This produces a weighted average survival factor, SF_w,t, by loan group, for each month, t, of the stress period:

$$SF_{w,t} = \frac{\sum_R (SF_{R,t} \cdot C_R)}{\sum_R C_R}$$

where:

$SF_{w,t}$ = weighted average counterparty survival factor in month t of the stress period

C_R = percentage of loan group UPB that has a counterparty rating of R

b. Multiply the weighted average survival factors, $SF_{w,t}$, by the PMI percentage coverage rate, C_{mi}, to derive monthly adjusted percentage coverage rates, $C_{mi,t}$:

$$C_{mi,t} = C_{mi} \cdot SF_{w,t}$$

where:

$C_{mi,t}$ = adjusted PMI percentage coverage rate for month t of the stress period

C_{mi} = loss coverage rate for Credit Enhancement Coverage Type 1, PMI

c. Compute mortgage insurance proceeds (mi_t), by multiplying the adjusted PMI percentage coverage rate, $C_{mi,t}$, by the mortgage insurance claim amount. First, for all conventional loans—loan groups other than FHA/VA:

$$mi_t = \tilde{C}_{mi,t} \cdot \left(1 + F + \left(\frac{r_{c,s}}{12}\right) \cdot t_f\right)$$

For FHA/VA loan groups, calculate the FHA insurance proceeds:

$$mi_t = 1 + (0.67 \cdot F) + \left(0.75 \cdot \left(\frac{r_{c,s}}{12} \cdot t_f\right)\right)$$

where:

mi_t = mortgage insurance proceeds in month t of the stress period

1 = defaulting UPB

F = foreclosure expenses as a percentage of UPB (five percent)

$r_{c,s}$ = starting coupon

t_f = foreclosure time (13 months)

0.67 = FHA reimbursement rate on foreclosure related expenses

0.75 = adjustment to reflect that FHA reimbursement on unpaid interest is at a government debenture rate, and not at the mortgage coupon rate

3. Discount all foreclosure related cash flows by t_f=13 months to compute the post-foreclosure loss element, $PV2_t$.

a. For retained loans:

$$PV2_t = \frac{F - mi_t}{\left(1 + \frac{r_{d,t}}{2}\right)^{\frac{t_f}{6}}}$$

b. For sold loans, add passthrough interest expense to mortgage-backed security holders for 4 months:

$$PV2_t = \frac{\left(\frac{r_p}{3} + F\right) - mi_t}{\left(1 + \frac{r_{d,t}}{2}\right)^{\frac{t_f}{6}}}$$

c. For FHA/VA loans:

$$PV2_t = \frac{\left(F + \left(\frac{r_{c,s}}{12} \cdot t_f\right)\right) - mi_t}{\left(1 + \frac{r_{d,t}}{2}\right)^{\frac{t_f}{6}}}$$

where:

$PV2_t$ = present value of net cost or proceeds associated with foreclosure for loans defaulting in month t of the stress period

r_p = passthrough rate on mortgage-backed securities

F = foreclosure expenses as a percentage of UPB (five percent)

4. Calculate the payment to the loan servicer (PVS_t) net of any interest paid by the seller/servicer to the Enterprise that would be repaid in the post-foreclosure servicer claim. The present value factor generated here is not used in the computation of the foreclosure loss component, but will be used later to account for cases where there is full recourse to the seller/servicer. This is required only where there is Type 2 Credit Enhancement coverage. It is not used for FHA/VA loans. For retained loans:

$$PVS_t = \frac{F}{\left(1 + \frac{r_{d,t}}{2}\right)^{\frac{t_f}{6}}}$$

For sold loans, add the (4 months) interest passed through by the Enterprise to security holders:

$$PVS_t = \frac{\frac{r_p}{3} + F}{\left(1 + \frac{r_{d,t}}{2}\right)^{\frac{t_f}{6}}}$$

where:

PVS_t = present value of the (net) servicer claim payment for loans defaulting in month t of the stress period

3.5.3.3.3 Net Cash Flow from Holding and Disposition of REO Property

The third loss element includes cash flows associated with management and disposition of REO property. Cash flows used in calculating this element are sales proceeds from disposition of foreclosed property and REO property management (maintenance and operating) expenses.

3.5.3.3.3.1 Calculate Proceeds From Property Sale

Sales proceeds is a dynamic loss severity element whose calculation involves updating property values and loan balances over time. Several steps are required. First, property values and UPB are updated from origination to the time of default. This is done with index values, rather than dollar values. Property values are represented by a house price index, and loan balances by a UPB index (ratios of defaulting UPB to the original house price). Second, a statistical measure (z-score) of the distance between the logarithm of house price index and the logarithm of the loan balance index is calculated. Third, an econometric equation uses the z-score to compute the portion of UPB that is not recovered at property disposition. Finally, the unrecovered portion of UPB is converted into proceeds from property sale.

1. Update property values.

a. Calculate a house price index at the start of the stress test, according to origination year and Census division cohort:

$$I_{d,q} = \frac{HPI_{d,-1}}{HPI_{d,q}}$$

where:

$I_{d,q}$ = house price index value at the start of the stress test for loan groups in Census division d, originating in quarter q

$HPI_{d,-1}$ = HPI value for Census Division d, for the quarter immediately preceding the stress test

$HPI_{d,q}$ = HPI value for Census Division d in quarter q

Because HPI values are as of the end of each quarter, $HPI_{d,-1}$ gives the value as of the start of the stress period. The OFHEO HPI is published beginning with the first quarter of 1980. OFHEO has also produced (but not published) values for earlier years. To season loans originating in 1979, assign $HPI_{d,q}$ according to the Census division specific values listed in Table 3–16. Treat all pre-1979 originations as if they were originated in 1979.

b. Calculate house price index values during the stress period by multiplying the $I_{d,q}$ by cumulative house price growth rates in the stress period:

$$HPI_{d,q,t} = I_{d,q} \cdot exp\left(\sum_{s=1}^{t} g_s\right)$$

where:

$HPI_{d,q,t}$ = house price index for loan groups in Census division d, originated in quarter q, and defaulting in month t of the stress period

g_s = house price growth rate in month s of the stress period, $s = \{1,...,t\}$

Do not calculate $I_{d,q}$ for loans that an Enterprise has committed to buy, but not yet purchased at the beginning of the stress period, because pre-stress period house price appreciation is not applicable. The house price index for these loans is the cumulative monthly growth rate from the month after delivery to the month of loss severity calculations (month of default):

$$HPI_{d,q,t} = exp\left(\sum_{s=(t_m+1)}^{t} g_s\right)$$

where:

t_m = loan delivery month in the stress period, for commitment loans

t = month of loan default and loss severity calculation, $t = \{t_{m+1},...,120\}$

2. Calculate the standard deviation of house price growth paths, $\sigma_{d,t}$, around the average growth path implied by the $HPI_{d,q,t}$ value. This first requires limiting the value of the age variable to avoid negative "diffusion." Negative diffusion occurs when the variance of house prices declines over time. While negative diffusion is not expected to happen in practice, the formula for the standard deviation of house price growth paths (which is a quadratic function of time, where the first-order term is positive and the second-order term is negative) will create negative diffusion unless age is limited.

a. Create a variable for mortgage age in the stress test:

$$A_t = A_s + t$$

where:

A_s = mortgage age at the start of the stress test

t = month t in the stress test

b. Create a mortgage age variable (MA_t) that limits the mortgage age to a maximum value:

$$MA_t = min\ \{A_t/3, \text{age limit}\}$$

where:

$A_t/3$ = the age of the loan group in quarters, during month t of the stress period

age limit = $-\alpha_d/(2 \cdot \beta_d)$

α_d = "alpha" volatility parameter for Census division d (from the OFHEO HPI Report, most recent quarter)

β_d = "beta" volatility parameter for Census division d (from the OFHEO HPI Report, most recent quarter)

c. Calculate the standard deviation of house price growth rate path using MAK_t:

$$\sigma_{d,t} = \sqrt{(MA_t \cdot \alpha_d) + (MA_t^2 \cdot \beta_d)}$$

where:

$\sigma_{d,t}$ = standard deviation of cumulative house price growth rates for loans in Census division d, in month t of the stress period

3. Compute a monthly loan payment factor using the original coupon rate and original LTV (LTV_0). Since original property value is specified to be equal to one, LTV_0 represents the original UPB. Use this payment factor to compute the time series of UPB index (see below) to capture amortization of surviving loans in each loan group throughout the stress period:

$$PMT = \frac{LTV_0 \cdot \frac{r_{c,0}}{12}}{1 - \left(1 + \frac{r_{c,0}}{12}\right)^{-T_a}}$$

where:

PMT = monthly mortgage payment factor
LTV_0 = original LTV
$r_{c,o}$ = original coupon rate
T_a = loan amortization term

4. Calculate the time series of UPB index—the ratios of defaulting UPB in each month of the stress period to the original house price:

$$B_t = PMT \cdot \left(\frac{1 - \left(1 + \frac{r_{c,o}}{12}\right)^{-T_a + A_t}}{\frac{r_{c,o}}{12}} \right)$$

where:

B_t = UPB index, the ratio of defaulting UPB in month t of the stress period to original house price

5. Compute the z-score for the "distance" between the logarithm of the house price index and the logarithm of the UPB index. The use of logarithmic values allows each variable to be specified as a percentage difference from the original property value (1.0). This transformation makes the distance between the house price and UPB indexes consistent with the standard deviation of the house price growth rates used to calculate the z-score.[11] The formula for the z-score is:

$$z_t = \frac{ln(HPI_{d,q,t}) - ln(b_t)}{\sigma_{d,t}}$$

where:

z_t = z-score for the distance between the logarithm of the house price index and the logarithm of the UPB index, in month t of the stress test

$\sigma_{d,t}$ = standard deviation of cumulative house price growth rates for loans in Census division, d, in month t of the stress period

$ln(.)$ = natural logarithm

b_t = $max\ (B_t, 0.05)$

The allowable values of z_t are bounded by 4.0 and –0.50. If the computed value z_t is outside either of these bounds, it is reset to its closest boundary value.

6. Compute the percentage of UPB that is not recovered at property disposition based on the statistically derived relationship between the percentage of UPB unrecovered at property disposition and the z-score:

$$L_t = (exp\,(0.2704 - 0.0770 \cdot z_t) - 1) + 0.1034\,, \text{for } -0.50 \le z_t \le 4.0$$

[11] This standard deviation is of cumulative house price growth rates. The log of HPI is the cumulative growth of average house prices in the geographic area, while the log of b gives an HPI-growth-rate-equivalent interpretation to owner invested equity (downpayment plus amortization). The resulting log difference is the amount by which the individual house price growth must be lower than average market growth in order to eliminate any equity in the property and thus lead the borrower to consider default.

where:

L_t = uncovered portion of UPB, for loans in a loan group that default in month t of the stress period

0.1034 = calibration factor to reasonably relate loss severity rate to the benchmark experience

Because log-transformed values of the unrecovered UPB ($ln(L_t) + 1$)) were used in the regression, the "1" in the equation above is a result of using the antilog to derive the formula for L_t. In addition, the formula also includes the calibration factor to reasonably relate loss severity rate to the benchmark experience.

7. Calculate sales proceeds from the disposition of each foreclosed property, P_t, as UPB less the portion that was not recovered at disposition, L_t:

$$P_t = 1 - L_t$$

where:

P_t = sales proceeds from property disposition for loans defaulting in month t of the stress period

3.5.3.3.3.2 Net Cash Flow at Property Disposition

Subtract sales proceeds from expenses related to REO property, then discount the result by (t_f+t_i = 20 months) to obtain the present value of the third loss severity element:

$$PV3_t = \frac{R - P_t}{\left(1 + \frac{r_{d,t}}{2}\right)^{\left(\frac{t_f + t_i}{6}\right)}}, \text{ for all loan groups other than FHA/VA}$$

$$PV3_t = 0, \text{ for FHA/VA loan groups}$$

or

where:

$PV3_t$ = present value of net cash flows associated with holding and disposition of REO property for loans defaulting in month t of the stress period

R = REO expenses as a percentage of UPB (13.7 percent). This includes property management and disposition expenses.

t_i = property inventory time (seven months)

3.5.3.3.4 Final Calculations of Loss Severity Rates

At this point, all cost elements of loss severity are included in *PV1*, *PV2*, and *PV3*. Revenues from private mortgage insurance (Type 1 credit enhancement) or FHA insurance are also included in *PV2*. The sum of *PV1*, *PV2*, and *PV3* then provides an initial net-present-value loss severity rate (*NPV1*). Once this is calculated, potential revenues from seller/servicer recourse (Type 2 credit enhancement) and VA insurance guaranty proceeds are computed. For non-government (conventional loans), the recourse proceeds are subtracted from *NPV1* to arrive at final loss severity rates (*NPV3*) for each loan group, in each month of the stress test. For FHA/VA loan groups, final loss severity rates are calculated using a weighted average of the proceeds from the two forms of government insurance.

1. Calculate the initial loss rates (after mortgage insurance and FHA coverage, but before seller/servicer recourse or VA coverage):

$$NPV1_t = PV1_t + PV2_t + PV3_t$$

where:

$NPV1_t$ = initial loss severity rates for loans defaulting in month t of the stress period (after mortgage insurance or FHA coverage, but before other recourse or VA guaranty)

2. Proceed based upon whether the loan group represents conventional or FHA/VA loans:

a. For conventional loans, check the initial losses in $NPV1_t$ to evaluate whether there is any loss remaining. Loans with losses less than zero, where $NPV1_t \leq 0$, will not receive any additional credit for seller/servicer recourse. For those loans, set $RC_t = 0$, and proceed to Step 6. Otherwise, if $NPV1_t > 0$, go to Step 3.

b. For FHA/VA loans, proceed to Step 5.

3. Re-calculate initial loss severity rates using the full seller/servicer claim amount, PVS_t, rather than the post-insurance foreclosure cash flow, $PV2_t$:

$$NPV2_t = PV1_t + PVS_t + PV3_t$$

where:

$NPV2_t$ = initial loss severity without any credit enhancements

4. Use $NPV2_t$ with appropriate percentage recourse (Type 2) coverage rates and survival factors to calculate seller/servicer recourse coverage amounts, RC_t:

$$\bar{C}_{rc,t} = C_{rc} \cdot SF_{w,t}$$

$$RC_t = NPV2_t \cdot \bar{C}_{rc,t}$$

where:

$\bar{C}_{rc,t}$ = recourse coverage rate in month t of the stress period, adjusted for the potential survival rates of counterparties in the stress test

C_{rc} = contractual seller/servicer recourse coverage (Type 2) percentage

$SF_{w,t}$ = weighted average counterparty survival factor in month t of the stress period

RC_t = seller/servicer recourse coverage amount to be applied in the stress test. This is adjusted for counterparty credit ratings, in month t of the stress period

Go to Step 6.

5. For FHA/VA loan groups, calculate the effective loss rate after recourse coverage amounts provided by VA guarantees:

$$NPVVA_t = \frac{\left[\left(1 + (R - P_t)\right) + \left(F + \frac{r_{c,s}}{12} \cdot t_f\right)\right] - 0.30}{\left(1 + \frac{r_{d,t}}{2}\right)^{\frac{t_f}{6}}}$$

and then:

$$NPVVA_t = max(NPVVA_t, 0)$$

where:

R = REO expenses as a percentage of UPB (13.7 percent). This includes property management and disposition expenses

P_t = sale proceeds from disposition of foreclosed properties (computed above)

F = foreclosure expense as a percentage of UPB (five percent)

0.30 = fixed-rate used for the VA guaranty coverage percentage. (The VA coverage rate is a function of the initial loan size.)

6. Calculate final loss severity rates separately for conventional and FHA/VA loans.

a. For conventional loans, subtract the percent reduction in net losses provided by recourse coverage, RC_t, from the initial loss severity rate, $NPV1_t$:

$$NPV3_t = NPV1_t - RC_t$$

where:

$NPV3_t$ = final loss severity rate for loans defaulting in month t of the stress period

b. For FHA/VA loans, compute a weighted-average loss severity rate, using $NPV1_t$—which includes FHA insurance—and $NPVVA_t$—which includes VA insurance:

$$NPV3_t = (0.67 \cdot NPV1_t) + (0.33 \cdot NPVVA_t)$$

where:

0.67 = weight given to FHA loans in FHA/VA loan groups

0.33 = weight given to VA loans in FHA/VA loan groups

3.5.3.4 Output

The resulting 120 monthly loss severity rates ($NPV3_t$) for each loan group are used as inputs by the Cash Flow component of the stress test to calculate monthly (dollar) default losses (*see* section 3.9, Cash Flows, of this Appendix).

3.5.4 Multifamily Default and Prepayment

3.5.4.1 Overview

The Multifamily Default and Prepayment component of the stress test calculates the monthly rates of default and prepayment for each multifamily loan group throughout the stress period. The process of computing default and prepayment rates requires input data on: one, loan group characteristics in the Enterprise portfolios at the beginning of the stress test; two, historical rent growth rate information to update values of collateral for the loans to the beginning of the stress test; and three the economic conditions of the stress period—interest rates, vacancy rates and rent growth rates. These input data are used to create values for the explanatory variables in the Multifamily Default and Prepayment component. The annual-equivalent default and prepayment rates for each month of the stress period are generated using the values of the explanatory variables and the regression coefficients (or weighting factors). These coefficients are based on statistical analysis of the relationship between default and prepayment rates and the explanatory variables. Finally, the annual-equivalent rates are converted into monthly rates for use in the Cash Flow component of the stress test to simulate loan terminations and associated credit losses.

3.5.4.2 Inputs

Inputs for the Multifamily Default and Prepayment component of the stress test include loan group characteristics, interest rate series, historical rent indexes, and stress period rent growth rates and vacancy rates. Each of these are discussed below.

3.5.4.2.1 Loan Group Characteristics

As described in section 3.1, Enterprise Data, of this Appendix, multifamily loan group characteristics data are generated through aggregation of individual Enterprise loans as of the beginning of the stress test, according to defined aggregation criteria. The characteristics of a loan group include both categorical and continuous variables. The values of categorical variables indicate the range within which a loan group characteristic falls ("value-range"). The values of continuous variables are averages of the values of the characteristics of the underlying loans, where the weights are the unpaid principal balances of each loan in the group, at the start of the stress test. The following are loan group characteristics used in the Multifamily Default and Prepayment component of the stress test (using allowable values for each variable found in section 3.1, Enterprise Data, of this Appendix):

- Origination year
- Census region
- Metropolitan statistical area
- Product type
- Mortgage program
- Original LTV (the variable "LTV_0" in equations below)
- Original coupon (the variable "$r_{c,0}$" in equations below)
- Starting coupon (the variable "$r_{c,s}$" in equations below)
- Starting UPB (the variable "UPB_s" in equations below)
- Debt coverage ratio, at the time of purchase by the Enterprises (the variable "DCR_0" in equations below)
- Amortization term, in months (the variable "T_a" in equations below)
- Mortgage age, in months (at the start of the stress period; the variable "A_s" in equations below)

3.5.4.2.2 Interest Rate Series

Three interest rate series are used in the Multifamily Default and Prepayment component. These series are generated from the Interest Rate component of the stress test, for each month of the stress period (*see* section 3.3, Interest Rates, of this Appendix). Historical values for one of these interest rate series are also required. (See below. Note that all interest rate series are in decimal format.) The particular input series are:

- Federal Home Loan Bank 11th District Cost of Funds Index (COFI) (the variable "$r_{b,t}$" in equations below)
- Conventional mortgage rate (the variable "r_Y" in equations below)
- Ten-year Constant Maturity Treasury Yield (the variable "$y120_t$" in equations below). Historical values of this variable are input starting 30 years prior to the start of the

stress test, and stress test simulation values are used to extend the series throughout the stress period.

3.5.4.2.3 Historical Rent Indexes

Updating property values of collateral for multifamily loans at the beginning of the stress test requires use of rent indexes. The stress test uses the residential rent component of the Consumer Price Index (CPI), which is available from the U.S. Department of Labor, Bureau of Labor Statistics (BLS). The series required for this part of the stress test are those for the U.S., the four Census regions, and the 29 Metropolitan Statistical Areas (MSAs) covered by the BLS surveys.

3.5.4.2.4 Stress Period Vacancy Rates and Rent Growth Rates

Monthly vacancy rate and rent growth rate series for the stress period are generated by the Property Valuation component of the stress test (*see* section 3.4, Property Valuation, of this Appendix). These series are used to update multifamily property values throughout the stress period.

3.5.4.3 Procedures

[a] Separate default equations are used to distinguish between loans acquired through: one, cash purchases and two, negotiated transaction. In a cash purchase, an Enterprise acquires a newly originated loan that meets standard underwriting guidelines; the purchase can include recourse to the seller/servicer. In a negotiated transaction, an Enterprise generally acquires a pool of seasoned, nonconforming loans.

[b] FHA-insured loans are a subset of loans that are purchased through negotiated transactions, but they are included with the cash transaction loans for default calculation purposes.

[c] Fixed-rate multifamily loans have prepayment restrictions, for example, yield maintenance fees and lockouts, that severely limit prepayments for about two-thirds of the loan term. To account for the differences in prepayment speeds that result from these restrictions, five prepayment equations are used for the following types of loans: fixed-rate loans in the restriction period, fixed-rate balloon loans beyond the restriction period, self-amortizing fixed-rate loans beyond the restriction period, balloon loans at the balloon point, and adjustable rate mortgages.

[d] To calculate default and prepayment rates in the stress text, the input data described above are used to compute the values of explanatory variables for the equations for multifamily default and prepayment rates. A total of 16 explanatory variables (shown in Table 3–20) are computed for each loan group, and for each month of the stress period. The following describes calculations of explanatory variables and the resulting default and prepayment rates. Unless otherwise indicated, each variable subscripted with a "t" is computed for the 120 months of the stress period. To illustrate each procedure, formulas are shown for one loan group for each month of the stress test. The same logic applies to all loan groups.

[e] The values of explanatory variables in each month are used in the default and prepayment equations to calculate annual default and prepayment rates. The stress test computes default and prepayment rates that would result if the conditions prevailing in each month were to continue for an entire year. These annual rates are converted to monthly rates for use in section 3.9, Cash Flows, of this Appendix.

3.5.4.3.1 Computation of Explanatory Variables

3.5.4.3.1.1 Mortgage Age (A_t, AY_t)

[a] Mortgage age in each month of the stress period is calculated as:

$$A_t = A_s + (t - 1)$$

where:

A_s = mortgage age at the start of the stress period, in months

t = month of stress period, where $t = \{1,...,120\}$

[b] Since mortgage age enters the default and prepayment equations in years, rather than in months, an age-in-years variable, AY_t, is created:

$$AY_t = A_t/12$$

3.5.4.3.1.2 Program Restructuring (*PR*)

The stress test differentiates between cash programs in effect before 1988 for Fannie Mae and before 1992 for Freddie Mac ("original programs") and later cash programs. This differentiation accounts for the greater credit risk of the earlier cash programs. The variable *PR* is used in two ways to adjust original program loan groups for this greater risk. *PR* is only used for loans in the cash programs (except FHA-insured loans) because OFHEO has identified the program structure deficiencies that caused this greater risk only on these loans. The variable is not used to adjust the risk profile of loans acquired through negotiated programs. The *PR* variable is computed for each loan group according to the following:

$$PR = \begin{cases} 1, \text{ if loan originated/purchased in an original cash program} \\ 0, \text{ otherwise} \end{cases}$$

First, *PR* is used as a categorical variable to distinguish the original cash programs from more recent cash programs of the Enterprises ("current programs"). This usage of *PR* captures the higher default risk of the Enterprises' original programs. Second, *PR* is used as a flag for when to adjust DCR_0 and LTV_0 for overly optimistic appraisal practices inherent in original cash program loans. (*See* sections 3.5.4.3.3.10, Formula for Constructing the DCR Time Series and 3.5.4.3.4.4, Construct the LTV Time Series, of this Appendix.)

3.5.4.3.1.3 Value of Depreciation Write-off (*DW*)

The present value of tax benefits afforded to an investor/owner in a multifamily property is captured in a depreciation write-off variable (*DW*). Based on depreciation rules and OFHEO's estimates of the marginal tax rate for ordinary income, the marginal tax rate for capital gains, and the risk-adjusted return for multifamily projects, a value of 9.27 for this variable (*DW*) is used in the stress test. This value represents a 9.27 percent estimated return for a 20-year holding period on investments in multifamily property resulting from tax benefits associated with ownership and taxes paid on the ultimate sale of the property, based on 1995 data. OFHEO may change the value for this variable if there are significant changes in depreciation rules or tax rates. DW affects defaults and is held constant for

all cash programs throughout the stress period. However, it is not used to project default rates of negotiated programs.

3.5.4.3.1.4 Seller/Servicer Repurchase Flags (*RF*, *RA*)

[a] Mortgage default in the stress test is defined as a loan termination in which the borrower must relinquish title to the property because of an inability to make loan payments. However, there is one exception for multifamily mortgages in certain negotiated programs. In these negotiated programs, when a loan becomes 90 days delinquent, the seller/servicer must buy the loan out of the pool and attempt to resolve the delinquency. For these loans, the stress test defines default as a 90-day delinquency, rather than a full default. The occurrence of 90-day delinquencies is always higher than the occurrence of full defaults, since many 90-day delinquent loans cure or are modified.

[b] To distinguish a "90-day delinquency" type of default from a full default, the stress test includes two categorical variables that flag fixed-rate (*RF*) and adjustable rate (*RA*) negotiated program loans with repurchase requirements:

$$RF = \begin{cases} 1 & \text{, for fixed-rate, negotiated program loans with seller/servicer repurchase} \\ 0 & \text{, otherwise} \end{cases}$$

$$RA = \begin{cases} 1 & \text{, For ARMs in negotiated programs with seller/servicer repurchase} \\ 0 & \text{, otherwise} \end{cases}$$

3.5.4.3.1.5 Joint Probability of Negative Equity and Negative Cash Flow (JP_t)

The joint probability of negative equity and negative cash flow (JP_t) is defined as the probability that any given loan will simultaneously experience a loan-to-value ratio (LTV_t) greater than 1.00 and a debt coverage ratio (DCR_t) less than 1.00. JP_t is the principal variable used in the stress test to measure the value of default to multifamily borrowers. Creating this variable involves updating DCR_t and LTV_t over time using a property net operating income (NOI) growth factor, changes in mortgage payments, loan amortization, and a capitalization rate multiplier. The NOI growth factor is updated over time using vacancy rate changes and rental inflation since loan origination. The capitalization rate multiplier is updated based on changes in interest rates since loan origination.

3.5.4.3.2 Updating Average Property Income

3.5.4.3.2.1 Create Rent Indexes for the Start of the Stress Period

Rent indexes at the start of the stress period are created using time series of annual percent changes in the residential rent component of the CPI for each of the four Census regions and the 29 MSAs covered by BLS surveys. If the stress test begins at a time other than January 1 (first quarter of the year), the residential rent component of the CPI at the end of the quarter just preceding the start of the stress test is used to create the final "year" of the rent index time series. Most MSA level CPI series produced by BLS start in 1970, but some do not begin until the 1980s. The regional CPI series are available beginning in 1978, so percent changes for these can only be computed starting in 1979. Each regional and MSA percent-change series is constructed as follows:

1. Fill-in the pre-1979 regional series with percent changes in the rent index values for the national CPI, going back 30 years from the start of the stress test. If any MSA is missing one or more years of data, fill-in missing values from regional series. This results in 33 time series of annual rent growth rates for 30 years, ending in the year and quarter just preceding the beginning of the stress test.

2. Using these time series, create the rent index value for each loan group at the start of the stress period, as a cumulative index from the loan origination year to the start of the stress test:

$$I_{m,y} = \sqrt{1 + g_{m,y}} \left(\prod_{k=y+1}^{K} (1 + g_{m,k}) \right)$$

where:

$I_{m,y}$ = rent index value for a loan group at the start of the stress period for loans in geographic area, *m*, originated in year, *y*

m = geographic indicator for matching loans to the time series of annual percentage change of the residential rent component of CPI (Use the MSA code for *m* (loan characteristic, classification variable) if loan is in an MSA covered by the residential rent component of the CPI, otherwise use the Census region of the property (loan characteristic, classification variable) for *m*.)

$g_{m,y}$ = rent growth rate for geographic area, *m*, in loan origination year, *y*, as computed from the CPI residential rent index in the previous steps

$g_{m,k}$ = rent growth rate for geographic area, *m*, in calendar year *k*, where k starts in the year after loan origination and extends through the year that the stress test begins

k = year index variable

K = calendar year of the start of the stress test

3. In order to link the rental series to loan group characteristics, first match each loan group by MSA code to the available residential rent series from BLS. If there is a match, then use that MSA series of historical annual growth rates of residential rent, as described above, to generate the value for $I_{m,y}$. If the loan group is not in an MSA covered by the BLS residential rent series, then match the Census region of the property to the appropriate regional residential rent series, and use the regional historical annual growth rates of the residential rent series to generate the value for $I_{m,y}$. Assume that all loans originate in the middle of the year, for purposes of the first-year rent growth rate. To accomplish this, the above formula uses the square root of the growth rate in the year of loan origination.

3.5.4.3.2.2 Update Each Rent Index throughout Stress Period

The rent index at the beginning of the stress test ($I_{m,y}$) is updated, for each loan group, throughout the stress period based on the following equation:

$$I_t = I_{m,y} \cdot \prod_{i=1}^{t} \left(1 + g_i\right)$$

where:

t = number of current months in stress period, $t = \{1,...,120\}$

i = index counter for month number

g_i = monthly rent growth rate in month *i* of the stress period, which is a monthly, rather than annual, rate of growth (See section 3.4, Property Valuation, of this Appendix.)

3.5.4.3.2.3 Create a Property Net Income Multiplier

[a] The rent index series just created is combined with the vacancy rate series (V_t) provided by the Property Valuation component of the stress test to create a formula for updating the average, underlying, NOI in each month of the stress period. The following formula provides a multiplication factor that gives the ratio of current property NOI to NOI at loan origination (for cash programs), or at acquisition (for negotiated programs):

$$N_t = I_t \cdot (1 - 2.15(V_t - 0.0623))$$

where:

N_t = net income update multiplier in month *t* of the stress period (This provides a measure of the ratio, NOI_t/NOI_0, where NOI_0 is NOI at loan origination or acquisition.)

V_t = rental vacancy rate in month *t* of the stress period

2.15 = the percentage decline in NOI due to a one percent increase in the vacancy rate

.0623 = the average vacancy rate observed for multifamily rental properties in 1983-95

[b] There are two constants in the above equation. The first, 2.15, is the percentage decline in NOI due to a one percent increase in the vacancy rate. The second, 0.0623, is the average vacancy rate observed for multifamily rental properties in 1983–95. The average vacancy rate is used to approximate the vacancy rate of each loan at the time of origination (cash programs) or acquisition (negotiated programs). N_t measures how changes in rental inflation and vacancy rates together translate into percentage changes in net operating income since loan origination.

3.5.4.3.3 Create a DCR Time Series

[a] DCR is the ratio of the property NOI to the mortgage payment. DCR at loan origination or acquisition (DCR_0) is a loan characteristic input to the stress test. It is updated over time using the formula for N_t, and by updating the mortgage payment, if and when applicable. The mortgage payment changes regularly for ARMs. The stress test also changes mortgage payments for balloon loans that do not pay off at maturity. For such loans, the coupon interest rate is changed to the prevailing market rate at the time of balloon maturity. DCR_0 for loans purchased under original cash programs (when PR=1) of the Enterprises are adjusted to make them consistent with current cash programs (current measurement practices) by multiplying them by 0.8655.[12] This adjusts for differences in appraisal practices between original and current cash programs.

[b] In addition, because UPB is decremented over time, according to the coupon rate and amortization term for each loan group, updates to UPB are required to update payments on ARM and balloon loans at maturity. Updates to UPB are also used to create current LTVs. Procedures for creating a time series of LTV ratios follows this discussion involving DCR construction. In the following procedures, both UPB and mortgage payments (PMT) are factors based on an original loan balance of one dollar and do not represent actual dollar amounts.

3.5.4.3.3.1 Create the Original Payment Factor for All Loans

The original payment factor is based on original loan terms:

$$PMT_0 = \frac{r_{c,0}/12}{1-\left(1+r_{c,0}/12\right)^{-T_a}}$$

where:

PMT_0 = monthly payment at mortgage origination, per dollar of mortgage

$r_{c,0}$ = mortgage coupon at loan origination

T_a = amortization term of mortgage in months

3.5.4.3.3.2 Create Time Series of UPB Values for Fixed-rate, Fully Amortizing Loans

For all fixed-rate, fully amortizing loans, create the UPB time series in the stress test period according to the following equation:

$$UPB_t = PMT_0\left(\frac{1-(1+r_{c,0}/12)^{(A_s+t-T_a)}}{r_{c,0}/12}\right), \text{ for all } t=\{1,\ldots,120\}$$

3.5.4.3.3.3 Update Mortgage Payment Factors and UPB for ARMs and Balloon ARMs

[a] Updating UPB_t and PMT_t for ARMs requires first creating the coupon interest rate series ($r_{c,t}$) for each ARM loan group. This series will capture the effect of period and lifetime caps on the path of coupon rates.

1. The current coupon rate at the start of the stress period, $r_{c,s}$, is used for the mortgage coupon rates in the first 12 months of the stress period $r_{c,t}$:

$r_{c,t} = r_{c,s}$, for t = {1,...,12}

2. In every twelfth month, compare:

$r_{c,t} \gtrless (r_{b,t} + 0.02375)$, for t = {12, 24, 36,...108}

where:

$r_{b,t}$ = Federal Home Loan Bank 11th District Cost of Funds Index, value in month t of stress period

0.02375 = index margin used to create fully-adjusted coupon rate

3. When, upon evaluation in step 2, $r_{c,t} < (r_{b,t} + 0.02375)$, set:

$r_{c,t+1...t+12} = \min\{(r_{b,t} + 0.02375), (r_{c,t} + 0.01), (r_{c,0} + 0.05)\}$

[12] For Fannie Mae, these are cash loans purchased prior to 1988. For Freddie Mac, these are cash loans purchased prior to 1992.

where:

0.01 = interest-rate change cap per adjustment period (period cap)

0.05 = interest-rate change cap over the life of the loan (life cap)

4. When, upon evaluation in step 2, $r_{c,t} > (r_{b,t} + 0.02375)$, set:

$r_{c,t+1...t+12} = \max\{(r_{b,t} + 0.02375), (r_{c,t} - 0.01), (r_{c,0} - 0.05)\}$

5. When, upon evaluation in step 2, $r_{c,t} = (r_{b,t} + 0.02375)$, set:

$r_{c,t+1...t+12} = r_{c,t}$

[b] The UPB percent at the start of the stress test is calculated using an original loan balance of one dollar, remaining term, and an average of the origination and starting coupons. The resulting UPB percent is used to calculate the payment factor in month one of the stress period:

$$\bar{r} = (r_{c,0} + r_{c,s})/2$$

$$\overline{PMT} = \frac{\bar{r}/12}{1 - \left(1 + \frac{\bar{r}}{12}\right)^{-T_a}}$$

$$UPB_{t=1} = \overline{PMT}\left(\frac{1 - (1 + \bar{r}/12)^{(A_s - T_a - 1)}}{\frac{\bar{r}}{12}}\right)$$

$$PMT_{t=1} = \frac{UPB_{t=1} \cdot (r_{c,s}/12)}{\left(1 - \left(1 + \frac{r_{c,s}}{12}\right)^{(A_s - T_a - 1)}\right)}$$

where:

$\bar{r}$ = average of origination and current (as of the start of the stress test) coupon rates

$\overline{PMT}$ = monthly payment factor, based on $\bar{r}_a$, per dollar of mortgage

$UPB_{t=1}$ = percentage of loan balance outstanding at the beginning of the stress period

A_s = mortgage age at the start of the stress period

$PMT_{t=1}$ = monthly payment factor at the start of the stress period

T_a = mortgage amortization term

[c] The time series of mortgage coupon rates ($r_{c,t}$) from steps 1–5 is used to generate time series of payment factors and UPB percent factors for the remaining months of the stress period. These two series are developed simultaneously. In each month, each series is updated based on what happened in the other series in the previous month:

$$UPB_t = UPB_{t-1} - \left(PMT_{t-1} - UPB_{t-1} \times \frac{(r_{c,t-1})}{12}\right), \text{ for } t = \{2,...,120\}$$

$$PMT_t = UPB_{t-1}\left(\frac{r_{c,t}/12}{1-\left(1+\frac{r_{c,t}}{12}\right)^{\left(A_t - T_a\right)}}\right), \quad \text{for } t = \{2,\ldots,120\}$$

where:

A_t = age of mortgage, in month t of the stress test

3.5.4.3.3.4 Create Payment and UPB Factors for Fixed-Rate Balloons

Payment factors for balloon loans with fixed interest rates are held constant at PMT_0 until the loans reach maturity. At maturity, the payment factor is updated to reflect current market interest rates, the remaining loan balance, and a new amortization term.[13] Payment factors and UPB for balloon ARMs are constructed using the procedures just described for ARM loans, rather than the instructions for fixed-rate balloon loans.

1. Set balloon term in months, T_m, according to product types listed in Table 3–18.

Table 3-18. Balloon Term

Balloon Product	Term, T_m
5 YR fixed-rate	60
7 YR fixed-rate	84
10 YR fixed-rate	120
15 YR fixed-rate (and ARM balloons)	180

2. Create UPB_t and PMT_t throughout the stress period, according to when the balloon matures in the stress period. Loan group UPBs are reduced according to default and prepayment (balloon payoffs) rates (*see* section 3.5.4.3.6, Calculation of Default and Prepayment Rates, of this Appendix) in the balloon year, and for up to five years beyond the month of balloon maturity. Loan groups with balloon maturity prior to the start of the stress test are terminated after three years in the stress period (thirty-seventh month). Loan groups that mature during the stress test are terminated five years after maturity.

a. If balloon term, T_m, is less than or equal to mortgage age at the start of the stress test, A_s, i.e., the loan has passed its balloon date or is just maturing when the stress test begins, then UPB_t and PMT_t are updated as follows:

$$UPB_{t=1} = PMT_0\left(\frac{1-(1+r_{c,s}/12)^{(A_s - T_a)}}{r_{c,s}/12}\right)$$

$$PMT_t = \left(UPB_{t=1}\left(\frac{r_{f,1}/12}{1-\left(1+\frac{r_{f,1}}{12}\right)^{-T_a}}\right)\right), \quad \text{for } t = \{1,\ldots,\tau\}$$

[13] The remaining life of the loan is reset to equal the amortization term of the loan at origination.

$$UPB_t = PMT_t\left(\left(\frac{1-(1+r_{f,1}/12)^{(t-1-T_a)}}{\frac{r_{f,1}}{12}}\right)\right), \quad \text{for t} = \{2,...,t\}$$

where:

τ = 60 when $A_s = T_m$, or 36 when $A_s > T_m$

$r_{f,1}$ = conventional 30-year fixed-rate mortgage rate, in month one of stress period

b. If balloon term, T_m, is greater than mortgage age at start of stress test, A_s, then update UPB_t and PMT_t as follows.

$$PMT_t = PMT_0, \quad for\ t=\{1,...,m\}$$

$$UPB_t = \left(PMT_t\left(\frac{1-(1+r_{c,s}/12)^{(A_t-T_a)}}{r_{c,s}/12}\right)\right), \quad \text{for t} = \{1,...,\text{m}\}$$

$$PMT_t = \left(UPB_m\left(\frac{r_{f,m}/12}{1-\left(1+\frac{r_{f,m}}{12}\right)^{-T_a}}\right)\right), \quad \text{for t} = \{\text{m}+1,..., m+60\}$$

$$UPB_t = \left(PMT_t\left(\frac{1-(1+r_{f,m}/12)^{(t-m-T_a)}}{\frac{r_{f,m}}{12}}\right)\right), \quad \text{for } t = \{m+1,...,m+60\}$$

where:

m = $T_m - A_s$, which is the month of balloon maturity

$r_{f,m}$ = conventional 30-year fixed-rate mortgage rate in month, m

3.5.4.3.3.5 Formula for Constructing the DCR Time Series

The formulas for updating DCR over time in the stress period are described below.

1. For loans originated under current cash programs (where PR=0), and for all negotiated programs:

$$DCR_t = \frac{DCR_0 \cdot N_t}{PMT_t / PMT_0}$$

2. For loans originated under original cash programs, where PR=1:

$$DCR_t = \frac{DCR_0 \cdot N_t \cdot 0.8655}{PMT_t / PMT_0}$$

where:

0.8655 = factor required to make measurement of DCR_0 in original cash programs comparable to measurements used in current cash programs (this adjusts for differences in appraisal practices between original and current programs)

3.5.4.3.4 Create an LTV Time Series

LTV is the ratio of the unpaid principal loan balance (UPB) to the value of the property. The UPB is updated over time as described above. The value of the property is adjusted based on the property net operating income multiplier (N_t) and a capitalization rate multiplier (described below). As with DCR, LTV must be adjusted for loans purchased under original Enterprise cash programs, to make them consistent with current cash programs.

3.5.4.3.4.1 Updating the Capitalization Rate Multiplier

[a] The capitalization rate multiplier is the reciprocal of the capitalization rate and reflects what investors are willing to pay for an annual cash flow stream on a property, given the property and market conditions, as well as the opportunity cost of capital. LTV is updated in the stress test according to changes in the multiplier that result from changes in the opportunity cost of capital, as reflected through changes in market interest rates.

[b] The capitalization rate multiplier is updated in two steps, based on changes in the ten-year CMT yield (a proxy for changes in the opportunity cost of capital).

1. Compute the average monthly ten-year CMT yield for the loan origination-year:

$$y120_0 = \frac{\sum_{i=1}^{12} y120_{0,i}}{12}$$

where:

$y120_0$ = average monthly ten-year CMT yield in loan origination year

i = index variable used to identify individual monthly average rates of the ten-year CMT yield, i = {Jan,...Dec}

2. Compute the time series of ratios of capitalization rate multipliers based on the relative spread between the origination-year ten-year CMT and each of the monthly values of the ten-year CMT throughout the stress period:

$$C_t = 1 + 0.23 \cdot \left(\frac{y120_0 - y120_t}{y120_0} \right)$$

where:

C_t = ratio of the capitalization rate multiplier in month t of the stress period, t={1,...,120}, to that of the capitalization rate multiplier at origination

$y120_t$ = ten-year CMT yield in month t of the stress period

0.23 = regression coefficient from historical estimation

3.5.4.3.4.2 Construct the LTV Time Series

[a] For loans acquired through current cash programs (where PR=0), or through negotiated programs:

$$LTV_t = \frac{LTV_0 \cdot UPB_t}{C_t \cdot N_t}$$

[b] For loans acquired through original cash programs, where PR=1:

$$LTV_t = \frac{LTV_0 \cdot UPB_t \cdot 1.2778}{C_t \cdot N_t}$$

where:

1.2778 = factor required to make measurement of LTV_0 in original loan programs comparable to LTV_0 in current loan programs

[c] For all loans, prevent LTVt from approaching zero by resetting small values to 0.01:

$$LTV_t = max(LTV_t, 0.01)$$

3.5.4.3.5 Compute Joint Probability of Negative Equity and Negative Cash Flow

[a] The values of the joint probability of negative equity and negative cash flow (JP_t) are computed as the area under a bivariate standard normal density function. The form for this function is:

$$BV(a, b, \rho) = \frac{1}{2\pi \cdot \sqrt{1-\rho^2}} \int_{-\infty}^{a} \int_{b}^{\infty} exp\left(\frac{x^2 - 2\rho xy + y^2}{2(1-\rho^2)}\right) dy\,dx$$

where:

π = mathematical value 'pi'

ρ = correlation between the two standard normal random variables, x and y

a = limit of integration for x

b = limit of integration for y

[b] In the calculations of JP_t, the two standard normal random variables (x and y) represent transformations of DCR and LTV values for individual properties. Standard normal random variables have normal (Gaussian) distributions, with a mean of zero and standard deviation of one. Any normally distributed random variable can be "standardized" by subtracting the mean from the variable, and then dividing by the standard deviation. In this application, the "sample" group for which the standard deviations apply could include all multifamily properties in the geographic location of the properties underlying the loan group being studied. Here the normally distributed variables are the true, but unknown *ln* (*DCR*) and *ln* (*LTV*) values for each loan, and their mean values are:

$$\bar{D}_t = ln(DCR_t) - 0.50 \cdot \sigma^2_{lnZ,t} \text{ and}$$

$$\bar{L}_t = ln(LTV_t) + 0.50 \cdot \sigma^2_{lnZ,t}$$

where:

$Z = 1 - 2.15\,(V_t - 0.0623)$

lnZ = natural logarithm of Z

and

$$\sigma^2_{lnZ,t} = \left(ln\ 1 + \left(\frac{2.15^2 \cdot V_t \cdot (1 - V_t)}{\left(1 - 2.15 \cdot (V_t - 0.0623)\right)^2}\right)\right)$$

[c] The limits of integration (a and b) represent the distance between the logs of the at-risk boundaries for underlying properties—DCR=1.00 and LTV=1.00 and—$\bar{D}_t$ and $\bar{L}_t$ respectively. The joint probability variable is then the value of the bivariate density function, evaluated at particular values of the integration limits in each month of the stress period:

$$JP_t = BV(a_t, b_t, \rho)$$

[d] The following steps describe how to calculate the values of a_t and b_t.
1. First, compute the standard deviation of ln(DCR_t) and ln (LTV_t):

$$\sigma_t = \sqrt{0.005625 \cdot A_t + \sigma^2_{lnZ,t}}$$

where:

σ_t = standard deviation of both ln(DCR_t) and of ln(LTV_t) in month t of the stress period
A_t = age of mortgage (in years) in month t of the stress period
V_t = vacancy rate in month t of the stress period
.075 = standard deviation of the rent growth rate
2.15 = percentage decline in net operating income for each percentage point increase in the vacancy rate since origination

2. The limits of integration in each month of the stress test, a_t and b_t, are:

$$a_t = \frac{ln(1.00) - \bar{D}_t}{\sigma_t}$$

$$b_t = \frac{ln(1.00) - \bar{L}_t}{\sigma_t}$$

where:

ln (.) = natural logarithm of value in brackets

These equations reduce to:

$$LTV_t = \frac{LTV_0 \cdot UPB_t \cdot 1.2778}{C_t \cdot N_t}$$

[e] The coefficient of correlation between the logarithms of *DCR* and *LTV* is: $\rho = -0.5975$. It should be noted that standard software packages that compute bivariate normal probabilities do their integrations over the left tails of both (x and y) distributions. To estimate the left tail of the *lnDCR* and the right tail of the *lnLTV* distribution which is required to estimate JP_t, one simply reverses the signs on the *lnLTV* integration limit (from b to −b) and the correlation coefficient (from −0.5975 to 0.5975).

3.5.4.3.5.1 Balloon Maturity Risk (BJP_t)

[a] The balloon year is defined as the 12 months leading up to and including the maturity month. Because of the contractual requirement to pay off a loan at maturity, a balloon loan with weak financials is more likely to default in the balloon year than at any previous time. The stress test captures this additional credit risk for balloon loans by giving extra weight to the JP_t variable in the balloon year. This is accomplished by including a second JP_t term in the default equations, which is only used for balloon loans, in the balloon year:

$$BJP_t = \begin{cases} JP_t, \text{ if the loan is a balloon in month } t = \{(m-11), ..., m\} \\ 0, \text{ otherwise} \end{cases}$$

where:

m = $T_m - A_s$, the stress period month when balloon maturity occurs

[b] Not all loans will pay off or default by balloon maturity. For those that continue beyond balloon maturity, the stress test updates PMT_t after the balloon date with current market interest rates (as described earlier) to simulate any increase (or decrease) in payments upon refinancing the property. This change in loan payments changes the default risk in the post-balloon period.

3.5.4.3.5.2 Relative Spread Variables (RS_t, RSD_t, RSU_t)

The incentive to prepay a mortgage because of the ability to refinance at lower interest rates is proxied by relative interest rate spreads. The difference here is that, for fixed-rate mortgages, the relative spread is split into two variables: one for when market rates are below the coupon rate (RSD_t), and one for when market rates are above the coupon rate (RSU_t). RSD_t captures in-the-money prepayment options, and RSU_t captures any dampening effect on cash-out refinancing when the prepayment option is out-of-the-money. For ARM loans, the relative spread variable (RS_t) compares the current coupon rate to the current market rate on fixed-rate products.

1. For each ARM loan group, compute the relative spread as:

$$RS_t = \frac{r_{c,t} - r_{f,t}}{r_{c,t}}$$

2. For each fixed-rate loan group (including balloons), create the two spread variables:

$$RSD_t = \begin{cases} \dfrac{r_{c,0} - r_{f,t}}{r_{c,0}}, & \text{when } r_{c,0} > r_{f,t} \\ 0\ , & \text{otherwise} \end{cases}$$

$$RSU_t = \begin{cases} \left|\dfrac{r_{c,0} - r_{f,t}}{r_{c,0}}\right|, & \text{when } r_{c,0} < r_{f,t} \\ 0\ , & \text{otherwise} \end{cases}$$

3.5.4.3.5.3 Years-To-Go in the Yield-Maintenance Period (YTG_t)

[a] One feature common to most fixed-rate multifamily mortgages, whether balloon or fully amortizing, is the yield maintenance period (YMP). During a yield maintenance period, prepayment is restricted because borrowers cannot prepay the mortgage without incurring substantial penalties. For fixed-rate fully-amortizing mortgages, the YMP is 120 months. For fixed-rate balloon loans, the YMP averages two-thirds of the loan term, up to a maximum of 120 months. ARM loans do not have yield maintenance periods. Table 3–19, of this Appendix provides the term of the YMP for each loan product as follows:

Table 3-19. Yield Maintenance Period by Product Type

Product Type	Yield Maintenance Period (in Months)
FHA-insured	120
30 YR Fixed-Rate Mortgage	120
20 YR Fixed-Rate Mortgage	120
15 YR Fixed-Rate Mortgage	120
15 YR Balloon	120
10 YR Balloon	84
7 YR Balloon	60
5 YR Balloon	36
Fully-amortizing ARMs	0
Balloon ARMs	0
Other	120

[b] The YMP is used to create the explanatory variable years-to-go (YTG_t), which measures the number of years remaining in the yield maintenance period of the mortgage. This explanatory variable is a proxy for the size of prepayment penalties, which decline throughout the YMP:

$$YTG_t = \begin{cases} (YMP - A_t)/12 \ , & \text{when } YMP \geq A_t \\ 0 \ , & \text{otherwise} \end{cases}$$

[c] YTG_t has its maximum value in the first month of loan life, and declines to zero by the end of the YMP. For loan programs with lockouts, which prohibit prepayment for a stated time period, YTG_t is set to ten for the duration of the lockout period.

$$YTG_t = \begin{cases} 10 \ , & \text{for loans with lock-out provisions, when } YMP \geq A_t \\ 0 \ , & \text{for loans with lock-out provisions, when } YMP < A_t \end{cases}$$

3.5.4.3.5.4 Relative Spread Variables in the Pre-balloon Period (RSD_{1t}, RSD_{2t})

For balloon loans during the post-yield-maintenance and pre-balloon period, borrowers must decide whether to lock in a current interest rate or take their chances regarding what the market rate will be when the loan matures. To capture the additional incentive of borrowers to prepay in the two years prior to the balloon date, to take advantage of favorable interest rates when they exist, the stress test provides extra weight to the RSD_t variable in both the year preceding the balloon year, and the year just prior to that:

$$RSD1_t = \begin{cases} RSD_t \ , & \text{when } t = \{(m-23), \ldots, (m-12)\} \\ 0 \ , & \text{otherwise} \end{cases}$$

$$RSD2_t = \begin{cases} RSD_t \ , & \text{when } t = \{(m-35), \ldots, (m-24)\} \\ 0 \ , & \text{otherwise} \end{cases}$$

where:

m = $T_m - A_s$, which is the month of balloon maturity in the stress period

3.5.4.3.5.5 Market Rate for Fixed-Rate Mortgages ($r_{f,t}$)

The current market interest rate on fixed-rate single family mortgages is used to capture the effect of expectations of ARM borrowers with respect to future interest rate movements. This is in addition to the relative spread variable, RS_t, used in the prepayment equation for ARM loans. While RS_t measures differences between long-term and short-term interest rates, the long-term interest rate itself ($r_{f,t}$) indicates the absolute level of interest rates.

3.5.4.3.5.6 Probability of Qualifying for Refinancing at Balloon Maturity (PQ_t)

[a] When a balloon loan matures, the borrower is contractually required to pay off the outstanding UPB. To do this, the borrower generally obtains a new loan. In practice, payoff rates are dependent on the ability of the borrower and property to qualify for a new loan. For multifamily mortgages, the LTV must generally be less than or equal to 0.80, and the DCR must be greater than or equal to 1.20. The need for the property financials to meet origination underwriting criteria at the balloon date adds to extension risk, i.e., the risk that the loan will not pay off, but remain outstanding.

[b] The stress test captures extension risk at the balloon date by estimating a separate payoff equation for balloon loans at or beyond maturity. The payoff equation includes only one variable, the probability of qualifying for refinancing (PQ_t). This is constructed like the joint probability of negative equity and negative cash flow variable (JP_t), except that the limits of integration now reflect the minimal requirements for loan qualification rather than the boundary points for default. The integration limits are from a_t to $+\infty$ for $lnDCR_t$ (right tail) and from $-\infty$ to b_t for $lnLTV_t$ (left tail), where:

$$a_t = \frac{ln(1.20) - ln\left(DCR_t \cdot \frac{PMT_0}{RPMT_t} - 0.50 \cdot \sigma^2_{V,t}\right)}{\sigma_t}, \quad \text{for } t = \{m, \ldots (m+60)\}$$

$$b_t = \frac{ln(0.80) - ln\left(LTV_t + 0.50 \cdot \sigma^2_{V,t}\right)}{\sigma_t} \quad , \quad \text{for } t = \{m,...(m+60)\}$$

and

$$RPMT_t = UPB_t \cdot \frac{r_{f,t}/12}{1 - \left(1 + r_{f,t}/12\right)^{-T_a}} \quad , \quad \text{for } t = \{m,...(m+60)\}$$

where:

$RPMT_t$ = mortgage payment if the loan were to be refinanced in month t, at current market interest rates, $r_{f,t}$

T_a = mortgage amortization term

m = month of balloon maturity = $(T_m - A_t)$

[c] The range of the integration limits is reversed from that used in calculating the JP_t variable, because PQ_t is calculating the probability of financially strong loans, while JP_t calculates the probability of financially weak loans. Again, in using a standard software package to calculate PQ_t, set the integration limit for $\alpha_t = -\alpha_t$ and $\rho = -\rho$ because the package is set up to integrate left tails only.

3.5.4.3.5.7 Loan-to-Value Ratio (LTV_t)

The current loan-to-value ratio is used to capture the propensity of investors to initiate cash-out refinancing to increase borrowers' returns on equity. The time series of LTV_t is used as an explanatory variable in prepayment equations.

3.5.4.3.5.8 Summary of All Explanatory Variables

Table 3–20 outlines all of the explanatory variables that are used to calculate default and prepayment rates.

Table 3-20. Summary List of Explanatory Variables

Variable	Description
AY_t	Mortgage age, in (fractional) years
PR	This categorical variable for program restructuring adjusts for differences between original and current cash programs. A switch is set to "1" for loans originated under original cash programs at the Enterprises, and "0" for all other programs
DW	A fixed-value that represents the present value of tax benefits afforded to a new property investor
RF	A categorical variable indicating that the seller/servicer must repurchase the loans from security pools at 90-days delinquency. It is set to "1" for fixed-rate, negotiated program loans with recourse to the seller/servicer, "0" otherwise
RA	A categorical variable indicating that the seller/servicer must repurchase the loans from security pools at 90-days delinquency. A switch is set to "1" for adjustable-rate, negotiated program loans with recourse to the seller/servicer, "0" otherwise
JP_t	The joint probability of negative equity and negative cash flow
BJP_t	The joint probability of negative equity and negative cash flow for balloon loans in the 12 months leading up to and including balloon maturity, 0 otherwise
RS_t	The ratio of the difference between the current coupon on ARMs and the current market rate for 30-year fixed-rate single family loans, to the current coupon rate
RSD_t	The ratio of the difference between the original coupon on fixed-rate loans (including fixed-rate balloons) and the current market rate for single family fixed-rate loans, to the original coupon rate. Set to zero when values are negative
RSU_t	The absolute value of the ratio of the difference between the original coupon rate on fixed-rate loans (including fixed-rate balloons), and the current market rate for fixed-rate loans, to the original coupon rate. It is set to zero when the difference between the two rates is positive
$r_{f,t}$	The conventional 30-year fixed-rate mortgage rate for single-family loans
YTG_t	Years remaining in the yield maintenance period
$RSD1_t$	The relative spread, down rates, variable in the period preceding the balloon maturity (months 13-23 prior to maturity), 0 otherwise
$RSD2_t$	The relative spread, down rates, variable (*RSD*) for balloons in months 13-35 prior to the balloon maturity month, 0 otherwise
PQ_t	The joint probability that DCR and LTV are sufficient to qualify for a refinancing of the property with a new mortgage ($DCR \geq 1.20$ and $LTV \leq 0.80$)
LTV_t	The ratio of the outstanding loan balance to expected property value in each month

3.5.4.3.6 Calculation of Default and Prepayment Rates

Conditional default and prepayment rates are calculated for each multifamily loan group based on the explanatory variables described above, and using statistical regression coefficients estimated on historical data. The regression coefficients provide weighting factors for each explanatory variable. The variables are each multiplied by their associated regression-coefficient (weights), and then added together to yield total weighting factors. Default and prepayment total weighting factors are combined in pairs to calculate the annual-equivalent conditional default and prepayment rates for each corresponding loan group in each month of the stress period. These annual-equivalent rates are then converted into monthly rates.

3.5.4.3.6.1 Combining Explanatory Variables into Total Weighting Factors

3.5.4.3.6.1.1 Default Weighting Factors (Δ_t)

The calculation of the total weighting factors for defaults varies by loan program. Two total weighting factors are calculated for loan defaults. One calculation is for mortgages purchased through cash programs, and the other is for mortgages acquired through negotiated programs. For each loan

group, the appropriate formula is used for the entire stress period.

For loan groups in cash programs:

$\Delta_t = -10.0191 + 1.2687\ AY_t - 0.0790\ (AY_t)^2 + 0.6203\ PR - 0.0829\ DW + 7.8230\ JP_t + 2.6446\ BJP_t$

3. For loan groups in negotiated programs:

$\Delta_t = -9.6418 + 1.0596\ AY_t - 0.0633\ (AY_t)^2 + 0.2627\ RF + 0.6751\ RA + 12.1660\ JP_t + 2.6446\ BJP_t$

3.5.4.3.6.1.2 Prepayment Weighting Factors (Π_t)

Prepayment total weighting factors are calculated using equations that differ both by product type and life-cycle stage. For any one loan group, one, two, or three different equations may be used during the stress period. Figure 3–4 illustrates how the prepayment weighting factor equations are used over the life of any particular loan group. Each block represents one of the five different equations for computing the prepayment total weighting factors.

Figure 3-4. Prepayment Weighting Factor Equations

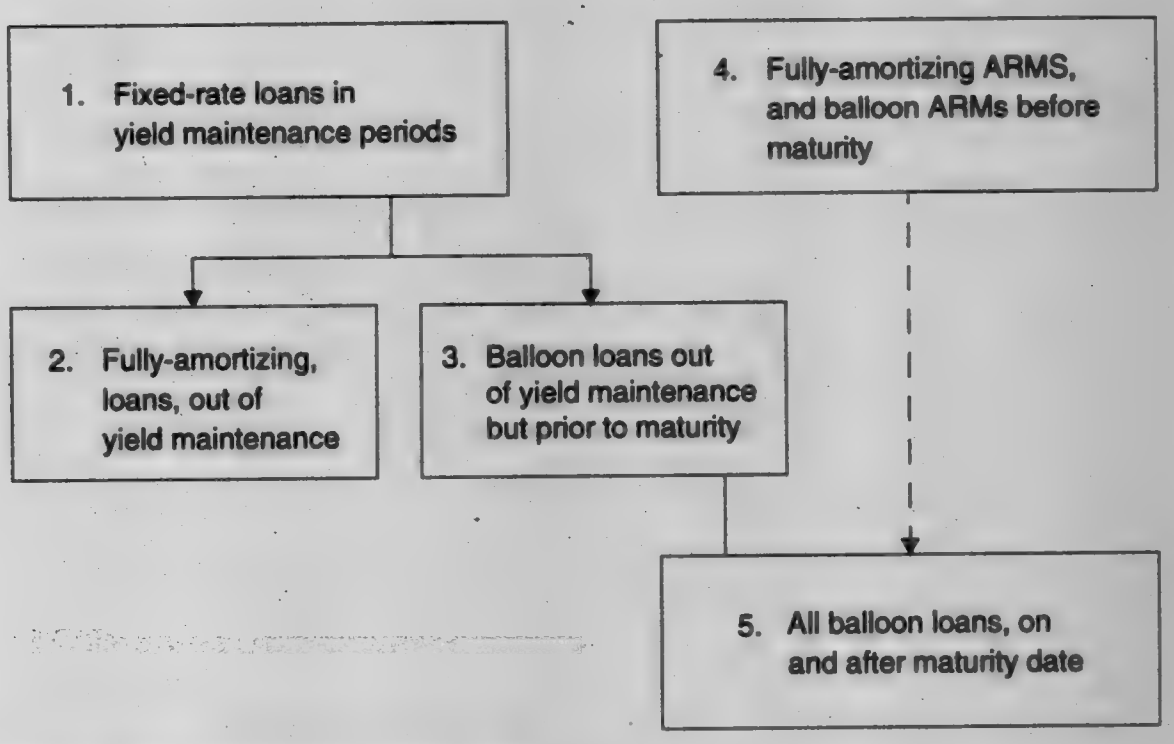

1. Fixed-rate Mortgages (Fully Amortizing and Balloon Loans)

If the loan product is a "fixed-rate" or a non-ARM balloon, and for t where YMP $\geq A_t$,

$$\Pi_t = -4.7854 + 0.4393\ AY_t - 0.0263\ (AY_t)^2 + 11.079\ RSD_t - 7.13\ RSU_t$$

$$- 0.2656\ YTG_t - 0.9499\ LTV_t$$

2. Fully-amortizing loans, out of yield maintenance

If the loan product type is "fixed-rate," and for t where

YMP $< A_t$:

$$\Pi_t = 0.7129 - 0.2091\ AY_t + 0.0044\ (AY_t)^2 + 3.994\ RSD_t - 0.796\ RSU_t$$

$$- 3.8166\ LTV_t$$

3. Balloon loans out of yield maintenance, but prior to maturity.

When the mortgage product is a balloon with a fixed interest rate, and for values of t where YMP $< A_t$ and $t < (m-11)$:

$$\Pi_t = -7.3368 + 1.5412\,AY_t - 0.0952\,(AY_t)^2 + 5.17\,RSD_t - 0.796\,RSU_t$$
$$+ 1.92\,RSD1_t + 1.62\,RSD2_t - 2.2591\,LTV_t$$

where:

m = $T_m - A_s$, which is the month of balloon maturity in the stress period

4. Fully-amortizing ARMs, and balloon ARMs before maturity.
When the mortgage product is a fully-amortizing ARM, or a balloon ARM where $t < (m\text{-}11)$, then:

$$\Pi_t = -0.9037 + 1.7119\,AY_t - 0.1231\,(AY_t)^2 + 4.8137\,RS_t - 51.31\,r_{f,t}$$
$$- 3.2223\,LTV_t$$

where:

m = $T_m - A_s$, which is the month of balloon maturity in the stress period

5. All balloon loans, on and after the maturity date.
When the mortgage product is a balloon (ARM or fixed-rate), then the total weighting factors are calculated as:

$$\Pi_t = -1.0021 + 1.8013\,PQ_t, \begin{cases} \text{for } t = \{(m-11),\ldots,(m+60), \text{ when } (m \geq 0) \\ \text{for } t = \{1,\ldots,36\}, \text{ when } m < 0 \end{cases}$$

where:

m = $T_m - A_s$, which is the month of balloon maturity in the stress period

Balloon loans do not all terminate at the balloon date. The stress test allows them to run-off according to default and prepayment (payoff) rate calculations, in the balloon year, and for up to five years beyond the balloon date. All balloon loans that do not terminate within five years beyond the balloon date are terminated in the sixty-first month. Loan groups with balloon dates prior to the start of the stress test ($m < 0$) are terminated in the thirty-seventh month of the stress period.

3.5.4.3.6.1.3 Calculating Annual Equivalent Default and Prepayment Probabilities

[a] Once the time series of default and prepayment total weighting factors are computed for each loan group, they are combined in multinomial logit equations to calculate the annual-equivalent default and prepayment probabilities. These probabilities represent what would happen over the course of a year, were default and prepayment probabilities for a given month (t) to continue for an entire year.

[b] The annual-equivalent default probability, AD_t, in each month, t, is computed as:

$$AD_t = \frac{exp\{\Delta_t\}}{1 + exp\{\Delta_t\} + exp\{\Pi_t\}}$$

and the annual-equivalent prepayment probability, AP_t, in each month (t) is computed as:

$$AP_t = \frac{exp\{\Pi_t\}}{1 + exp\{\Delta_t\} + exp\{\Pi_t\}}$$

3.5.4.3.6.1.4 Terminating Balloon Loans after Maturity

At the final termination point, annual-equivalent probabilities of default and payoff are calculated as functions of two explanatory-variable probabilities: the joint probability of negative equity and negative cash flow (JP_t), and the probability of qualifying for a refinancing (PQ_t):

$$AD_t = \frac{JP_t}{JP_t + PQ_t}$$

$$AP_t = 1 - AD_t$$

where:

for: t = $m + 61$, when $m \geq 0$ and $(m + 61) \leq 120$

t = 37 when $m < 0$

where: m = $T_m - A_s$, which is the month of balloon maturity in the stress period

3.5.4.3.7 Calculating Monthly Default and Prepayment Rates The monthly conditional default and prepayment rates are derived from the annual-equivalent probabilities for each month using geometric means. For default rates:

$$Def_t = 1 - \left(1 - AD_t\right)^{\frac{1}{12}}$$

and for prepayment rates:

$$Prep_t = 1 - \left(1 - AP_t\right)^{\frac{1}{12}}$$

3.5.4.4 Output

The 120 monthly default and 120 monthly prepayment rates are generated for each loan group and are used by the Cash Flow component of the stress test to compute monthly dollar amounts of loans that prepay and default (*see* section 3.9, Cash Flows, of this Appendix).

3.5.5 Multifamily Loss Severity

3.5.5.1 Overview

Loss severity is the net cost to an Enterprise of a loan default. The loss severity rate is expressed as a percentage of the UPB at time of default. The stress test calculates loss severity rates for each multifamily loan group for each month of the stress period. Loss severity rates are discounted to calculate an effective loss rate in the month of default, adjusting various cost and revenue components of loss severity that occur following the default date. The effective loss severity rate is multiplied by the corresponding mortgage default rate to calculate the loan group loss-rate. The loss-rate is multiplied by the UPB in each month to compute the dollar amount of credit losses for each loan group.

3.5.5.2 Inputs

[a] The following loan group characteristics are used:

- Program type
- Portfolio
- Net yield (the variable "r_y" in equations below) [14]
- Passthrough rate (the variable "r_p" in equations below) [15]

[b] The six-month Federal agency cost of funds (variable "$r_{d,t}$") interest rate series is used for discounting default-related cash flows in loss severity calculations. This series is an output from section 3.3, Interest Rates, of this Appendix.

3.5.5.3 Procedures

The loss severity rates are calculated by program type and portfolio. Cash flows are discounted semi-annually. The impact of credit enhancements on cash programs with recourse and FHA-insured loan programs is calculated below. Credit enhancements for other multifamily program types are applied in section 3.9, Cash Flows, of this Appendix.

3.5.5.3.1 Retained Portfolio: Cash Programs Without Recourse

[a] The basic loss severity equation is for loan groups consisting of retained loans purchased under cash programs without recourse. For these loan groups, loss severity rates are calculated as the UPB at the time of default (represented by the "1" in the following equation), plus the present value of foreclosure costs and property operating expenses, minus the net proceeds from sale of the property:

$$NPV_t = 1 + \frac{F}{\left(1 + \frac{r_{d,t}}{2}\right)^{\frac{t_f}{6}}} + \frac{O \cdot t_i}{\left(1 + \frac{r_{d,t}}{2}\right)^{\frac{t_f + t_i/2}{6}}} - \frac{P}{\left(1 + \frac{r_{d,t}}{2}\right)^{\frac{t_f + t_i}{6}}}$$

[14] Net yield at the start of the stress test is used throughout the stress period for all loan groups, including ARMs.

[15] Passthrough rate at the start of the stress test is used throughout the stress period for all loan groups, including ARMs.

where:

NPV_t = net loss severity rate (as a fraction of the unpaid loan balance) in month t= {1,...,120}

F = foreclosure costs (0.0901 of the unpaid loan balance)

O = operating loss, per month (0.00332 of the unpaid loan balance)

P = net property sale proceeds (0.5888063 of the unpaid loan balance)

t_f = time from default to foreclosure (18 months)

t_i = property inventory time (13 months), the time between foreclosure and property disposition

$r_{d,t}$ = discount rate (six-month Federal agency cost of funds) in month t of the stress period

[b] Each NPV_t value represents the loss severity rate for loans defaulting in month t of the stress period. The timing of events (e.g., time from default to foreclosure, etc.) used in the equation shown above is also used in the loss severity rate equations for all other program types and portfolios. The net operating loss on foreclosed properties for the 13 months that the property would be real estate owned (REO) is expensed in the seventh month of the 13-month holding period.

3.5.5.3.2 Sold Portfolio: Programs Without Recourse or Repurchase

There is a slight change in the basic loss severity equation shown above for sold loans purchased under cash programs without recourse, and for negotiated programs without repurchase. Four months of interest are passed through to investors before the loans are bought out of security pools for default resolution. The passthrough interest expense in the second term of the loss severity equation, below, is discounted for two months. This represents a midpoint of the period of interest expenditures. In addition, the UPB at time of default is a direct cash outlay, occurring four months after default. Therefore, the UPB at time of default is discounted because the stress test accounts for this payment in the month of default. Therefore, the following modified equation is applied to sold loans purchased under cash programs without recourse, and negotiated programs without repurchase:

$$NPV_t = \frac{1}{\left(1+\frac{r_{d,t}}{2}\right)^{\frac{4}{6}}} + \frac{(r_p/12)\cdot 4}{\left(1+\frac{r_{d,t}}{2}\right)^{\frac{2}{6}}} + \frac{F}{\left(1+\frac{r_{d,t}}{2}\right)^{\frac{t_f}{6}}} + \frac{O\cdot t_i}{\left(1+\frac{r_{d,t}}{2}\right)^{\frac{(t_f+t_i/2)}{6}}} - \frac{P}{\left(1+\frac{r_{d,t}}{2}\right)^{\frac{t_f+t_i}{6}}}$$

where:

r_p = the passthrough interest rate

3.5.5.3.3 Retained Portfolio: Cash Programs With Recourse

When loans are purchased under cash programs with recourse, the seller/servicer shares any losses with the Enterprise. The stress test computes the amount of recourse and reduces the gross severity rate as described below.

1. Compute two additional revenue elements: interest income paid by the seller/servicer to the Enterprise (*II*) and (additional) proceeds from the seller/servicer (*SP*) recourse.

a. Calculate mortgage interest income, *II*, paid by the seller/servicer during the time between default and foreclosure:

$$II = (r_y / 12)\cdot t_f$$

where:

r_y = Current net yield (coupon rate less servicing fee)

b. Calculate proceeds from the seller/servicer recourse (*SP*).

• Calculate the seller/servicer share of loss, *S*, as a fraction of the UPB:

$$S = 0.10 + p\cdot(II + F + (1 - P) - 0.25)$$

where:

p = seller/servicer loss share percentage (0.10)

0.25 = deduction for amount of total default cost that is covered by the amount of lender recourse embedded in the first term on the right hand side of the equation (0.10)

• Reduce seller/servicer loss share (*S*) by the interest income it has already paid to the Enterprise (*II*). Thus, the final seller/servicer payment will be:

$$SP = S - II$$

2. Calculate net present value loss severity rates for defaults in each month (*t*) by summing the discounted values of all cost and revenue elements:

$$NPV_t = 1 - \frac{II}{\left(1+\frac{r_{d,t}}{2}\right)^{\frac{t_f/2}{6}}} + \frac{F}{\left(1+\frac{r_{d,t}}{2}\right)^{\frac{t_f}{6}}} - \frac{SP}{\left(1+\frac{r_{d,t}}{2}\right)^{\frac{t_f}{6}}} + \frac{O \cdot t_i}{\left(1+\frac{r_{d,t}}{2}\right)^{\frac{t_f+t_i/2}{6}}} - \frac{P}{\left(1+\frac{r_{d,t}}{2}\right)^{\frac{t_f+t_i}{6}}}$$

In this equation, interest income (*II*) is discounted from the mid-point of the time between default and foreclosure, to reflect that interest payments are made monthly by the seller/servicer throughout this period. The seller/servicer's payment, or share of loss, is discounted from the foreclosure date. This is also a midpoint date, because seller/servicers pay the Enterprise some recourse amounts prior to foreclosure, and the rest of the recourse amount approximately two months after foreclosure.

3.5.5.3.4 Sold Portfolio: Cash Programs with Recourse

The steps for computing loss severity rates for cash programs with recourse for sold loans purchased follow the steps outlined for similar programs for retained loans. The differences are that the UPB at time of default is discounted, and there is an added expense element, the interest passthrough expense (*IE*) of payments made by the Enterprise to security holders. The UPB at time of default is discounted because this amount is disbursed to security holders four months after the time of default. The interest expense is computed for four months and discounted for two months.

1. Calculate four months of passthrough interest expense:

$$IE = (r_p/12) \cdot 4$$

where:

r_p = the passthrough interest rate

2. Calculate the loss severity rate for defaults in each month, *t*, using *IE* and other components as described above:

$$NPV_t = \frac{1}{\left(1+\frac{r_{d,t}}{2}\right)^{\frac{4}{6}}} - \frac{II}{\left(1+\frac{r_{d,t}}{2}\right)^{\frac{t_f/2}{6}}} + \frac{IE}{\left(1+\frac{r_{d,t}}{2}\right)^{\frac{2}{6}}} + \frac{F}{\left(1+\frac{r_{d,t}}{2}\right)^{\frac{t_f}{6}}} - \frac{SP}{\left(1+\frac{r_{d,t}}{2}\right)^{\frac{t_f}{6}}} + \frac{O*t_i}{\left(1+\frac{r_{d,t}}{2}\right)^{\frac{t_f+t_i/2}{6}}} - \frac{P}{\left(1+\frac{r_{d,t}}{2}\right)^{\frac{t_f+t_i}{6}}}$$

3.5.5.3.5 Sold Portfolio: Negotiated Programs with Repurchase

In the case of default on negotiated programs with seller/servicer repurchase provisions, the Enterprises' losses represent a combination of foreclosures and alternative resolutions. These alternatives are loan restructuring, note sales, pre-foreclosure property sales, or acceptance of deeds in-lieu-of foreclosure. Seller/servicers are responsible for all resolution processes, including all post-foreclosure property

management and disposition. The Enterprise pays the seller/servicer claim, *C*, that results from the default-resolution expenses. There is typically a recourse account established for this purpose. Thus:

$$NPV_t = \frac{C}{\left(1 + \frac{r_{d,t}}{2}\right)^{\frac{12}{6}}}$$

where:

C = seller/servicer claim amount, as a fraction of the unpaid principal balance (0.39)

12 = time from default to average claim payment

In this equation, the discount time period for the single cost component is the expected time to foreclosure rather than time to final property sale, to reflect a balance of default-resolution types and associated time intervals before claims are filed with the Enterprise.

3.5.5.3.6 FHA-insured Programs

Loss severities on FHA-insured mortgages are set to three percent to reflect the costs of assigning defaulted loans to HUD.

3.5.5.4 Output

The 120 monthly loss severity rates for each loan group are used by the Cash Flow component of the stress test to calculate monthly amounts of credit losses, net of recourse offsets (*see* section 3.9, Cash Flows, of this Appendix).

3.6 Other Credit Factors

3.6.1 Overview

The Other Credit Factors component of the stress test accounts for sources of credit risk other than the risk of default by mortgage borrowers. These sources of credit risk include the risk of default by credit enhancement and derivative counterparties, as well as the risk of default of corporate securities, municipal securities, and rated mortgage-related securities. The stress test classifies these sources of credit risk into four ratings categories ("AAA", "AA", "A" and "BBB") based on public ratings information, and establishes credit loss factors appropriate to each of these categories that are applied during the stress period.

3.6.2 Input

The stress test uses credit ratings issued by Standard & Poor's, Moody's, Duff & Phelps and Fitch as the basis to assign counterparties (except seller/servicers) and securities into one of the four rating categories. The stress test only uses Standard & Poor's and Moody's ratings for seller/servicers.

3.6.3 Procedures

3.6.3.1 Identifying Other Credit Factors

The stress test first identifies all non-mortgage borrower sources of credit risk and associated financial instruments, and groups them into two major categories-counterparties and securities. Counterparties are mortgage insurers, pool insurers, seller/servicers, and counterparties for derivative contracts. Securities include mortgage-related securities, such as mortgage revenue bonds (MRBs) and private label REMICs, and non-mortgage investments, such as corporate and municipal bonds and asset-backed securities (ABSs).

3.6.3.2 Classifying Rating Categories in the Stress Test

[a] Public ratings of a counterparty or security determine the extent of associated credit losses during the stress period. Based on these ratings, the stress test classifies counterparties and rated securities into one of the four rating categories:

- AAA—all securities/counterparties rated between AAA/Aaa and AAA–/Aaa3
- AA—all securities/counterparties rated AA+/Aa1 and AA–/Aa3
- A—all securities/counterparties rated A+/A1 and A–/A3
- BBB—all securities/counterparties rated BBB+/Baa1 and below (Unrated corporate securities and counterparties are included in the BBB category.)

[b] For loans with more than one layer of mortgage credit enhancement coverage, only the ratings of the counterparty providing the primary layer of coverage are used. If the security or the primary coverage provider has different ratings from different rating agencies, i.e., a "split rating," then the lower rating is used.

3.6.3.3 Accounting for Other Credit Factors

[a] The stress test specifies the final haircuts (i.e., the full amount of discount for other sources of credit risk in the stress period) by rating categories as shown in Table 3–21. The stress test further specifies that haircuts increase by equal amounts in each month until the final haircut is reached during the 120th month of the stress period.

Table 3-21. Stress Test Final Haircuts by Credit Rating Category

Rating Category (R)	AAA	AA	A	BBB
All counterparties and securities except derivative counterparties	10%	20%	40%	80%
Derivative counterparties	2%	4%	8%	16%

[b] Haircuts for each credit rating category in each month of the stress period can be obtained from the following formula:

$$H_{R,t} = \frac{FH_R}{120} \cdot t$$

where:

$H_{R,t}$ = haircut for credit rating category R in month t of the stress period

FH_R = final haircut for credit rating category R in the stress period

t = month t of the stress period

R = credit rating categories (AAA, AA, A, BBB)

[c] The haircut is applied to the cash flows of a rated security or payments due from a counterparty according to the following formula:

$$ACF_{R,t} = (1 - H_{R,t}) \cdot CF_{R,t}$$

where:

$ACF_{R,t}$ = adjusted cash flow of a rated security or payments due from a counterparty with credit rating R in month t of the stress period

$CF_{R,t}$ = unadjusted cash flow of a rated security or payments due from a counterparty with credit rating R in month t of the stress period

$H_{R,t}$ = haircut for credit rating category R in month t of the stress period

3.6.4 Output

The outputs of the Other Credit Factors component are the stress period final haircuts by rating category and by counterparty and security category. These haircuts are inputs to section 3.7, Mortgage Credit Enhancements; section 3.5.3, Single Family Loss Severity; section 3.5.5, Multifamily Loss Severity; and section 3.9, Cash Flows, of this Appendix.

3.7 Mortgage Credit Enhancements

3.7.1 Overview

For each loan group and each month of the stress period, the stress test calculates reductions to mortgage credit losses that reflect the effects of credit enhancements. This component calculates the values of eight loan group characteristics relating to credit enhancements, which are part of the Enterprises' starting position loan group characteristics, as described in Table 3–2 of this Appendix. These characteristics, combined with counterparty "haircuts," are used in section 3.5.3, Single Family Loss Severity and section 3.5.5, Multifamily Loss Severity, of this Appendix to calculate loss severity rates, and in section 3.9, Cash Flows, of this Appendix to calculate dollar reductions to credit losses.

3.7.2 Inputs

This component uses the inputs listed in section 3.7.2.1, 3.7.2.2, and 3.7.2.3 of this Appendix.

3.7.2.1 Enterprise Data on Mortgage Credit Enhancements

[a] Loan-level information on mortgage credit enhancements:

- Type of mortgage credit enhancement
- Starting UPB
- Private mortgage insurance (PMI) percent coverage, if applicable

[b] Contract-level information on mortgage credit enhancements, if applicable:

- Limited recourse coverage remaining
- Limited indemnification coverage remaining
- Starting account balance of spread accounts
- Starting account balance of collateral accounts
- Starting account balance of cash accounts
- Pool insurance coverage remaining
- Coverage expiration date, unless coverage has expired before the beginning of the stress period

3.7.2.2 Public Rating Information

Rating information from four public rating agencies—Standard & Poor's, Moody's, Duff & Phelps and Fitch—is used for mortgage insurers and pool insurers, and Standard & Poor's and Moody's rating information is used for seller/servicers. A "BBB" rating category is attributed to unrated counterparties. For loans with more than one layer of credit enhancement coverage, only the ratings of the counterparty providing the primary layer of coverage are used. If the primary coverage provider has different ratings from different rating agencies, i.e., a "split rating," then the lower rating is used. For each credit-enhanced loan, the following information is required where applicable:

- Public ratings of mortgage insurer
- Public ratings of pool insurer
- Public ratings of the seller/servicer

3.7.2.3 Counterparty Coverage Reduction Information

Counterparty coverage reduction data (haircuts) obtained from section 3.6, Other Credit Factors, of this Appendix, are:

- Haircuts for each month of the stress period for counterparties in the "AAA" credit rating category
- Haircuts for each month of the stress period for counterparties in the "AA" credit rating category
- Haircuts for each month of the stress period for counterparties in the "A" credit rating category
- Haircuts for each month of the stress period for counterparties in the "BBB" credit rating category

3.7.3 Procedures

Using the loan level and contract level information described above, the stress test first classifies the types of credit enhancement coverage within a loan group. Then it calculates values for the eight loan group characteristics relating to credit enhancements described in Table 3–2 of this Appendix. Of the eight characteristics, three are coverage amounts for the loan group for each of three types of credit enhancements, four are percentages of loan group UPB covered by each counterparty rating category, and one is the percentage of loan group UPB covered by dollar-denominated credit enhancements, as defined in section 3.7.3.1, Classification of Credit Enhancements, of this Appendix.

3.7.3.1 Classification of Credit Enhancements

[a] The stress test separates all of the various mortgage credit enhancements into two categories—percent-denominated credit enhancements and dollar-denominated credit enhancements. Percent-denominated credit enhancements cover losses based on the percentage of the loss incurred. This category includes private mortgage insurance (PMI), unlimited recourse, and unlimited indemnification. In addition to the percent-denominated credit enhancements listed here, certain multifamily programs have risk-sharing arrangements between the Enterprise and the seller/servicer. The process in the stress test that simulates the coverage of these programs is described completely in section 3.5.5, Multifamily Loss Severity, of this Appendix.

[b] Depending on the specific credit enhancement type, the loss covered can be based on either the "gross claim amount" (which includes the defaulted principal balance, unpaid interest from default through

foreclosure, and associated expenses, but does not include the subsequent proceeds from the sale of REO), or the net loss incurred (which does include proceeds from the sale of REO). Specifically, private mortgage insurance coverage is based on the gross claim amount, while unlimited recourse and indemnification coverage are based on the net loss incurred. *See* section 3.5.3, Single Family Loss Severity, of this Appendix for details on how the coverage is applied. The stress test further classifies PMI as "Credit Enhancement Coverage Type 1" (Type 1), and unlimited recourse and unlimited indemnification as "Credit Enhancement Coverage Type 2" (Type 2).

[c] Dollar-denominated credit enhancements cover losses on a dollar-for-dollar basis, up to a maximum amount (i.e., there is a "dollar cap" on the coverage). This category includes limited recourse, limited indemnification, pool insurance, spread accounts, collateral posted under collateral pledge agreements, and cash accounts. The stress test classifies all the dollar-denominated coverages as "Credit Enhancement Coverage Type 3" (Type 3).

3.7.3.2 Calculating Percentage Coverage and Dollar Coverage Amounts:

For each loan group, the stress test calculates the coverage for the overall loan group UPB provided by each type of credit enhancement (Types 1, 2, and 3) on the individual loans in the group.

1. Credit Enhancement Coverage Type 1 is calculated as the UPB weighted average percent coverage for all the loans in the loan group with PMI coverage. Loans in the loan group that are not covered by PMI are assumed to have coverage of zero percent, for the purpose of calculating the weighted average. Thus if a loan group UPB is ten million dollars, and one million of that balance has 35 percent Type 1 coverage, the overall loan group Type 1 coverage is 3.5 percent.

2. Credit Enhancement Coverage Type 2 is calculated as the UPB weighted average percent coverage for all the loans with unlimited recourse and unlimited indemnification coverage in the loan group. Because coverage is unlimited for each loan, the percent coverage at the loan level is 100 percent for covered loans. Loans in the loan group that are not covered by Type 2 credit enhancements are assumed to have coverage of zero percent, for the purpose of calculating the weighted average. Thus, if a loan group UPB is ten million dollars, and one million of that balance has 100 percent Type 2 coverage, the overall loan group Type 2 coverage is ten percent.

3. To calculate the Credit Enhancement Coverage Type 3 (i.e., the total coverage of all dollar-denominated credit enhancements), the stress test first assigns each loan under a contract its pro-rata share of the total dollar coverage for that contract (loans covered under a single contract may be assigned to several loan groups). The pro-rata dollar coverage of covered loans in a loan group is totaled to determine total dollar-denominated coverage for the entire group. This total dollar coverage is determined at the beginning of the stress period. Although the balances in spread accounts and collateral accounts at the beginning of the stress period could, in practice, fluctuate over time, the stress test specifies that these account balances are adjusted downward only to cover losses during the stress period, and are otherwise fixed.

3.7.3.3 Calculating Percent of UPB Covered by Each Counterparty Rating Category

The stress test calculates the percent of loan group UPB covered by each of the four counterparty rating categories. The UPBs of loans with counterparties falling into each rating category are divided by the UPB of the loan group. The results are values for the following four loan group characteristics:

- Percent of UPB under AAA coverage
- Percent of UPB under AA coverage
- Percent of UPB under A coverage
- Percent of UPB under BBB coverage

3.7.3.4 Calculating the Percent of UPB Under Dollar-Denominated Coverage

The stress test determines the percent of UPB under dollar-denominated coverage for each loan group. This percentage is calculated by dividing the loan group UPB with Type 3 coverage by the total UPB amount of the loan group.

3.7.3.5 Calculating Coverage Against Credit Losses

Based on loan group credit enhancement characteristics, the stress test simulates the coverage provided during the stress period. Percent-denominated and dollar-denominated mortgage credit enhancement coverages are calculated and applied separately and sequentially in the stress test to generate net credit losses for each loan group. The dollar coverage of percent-denominated credit enhancements for any loan group varies based upon the mortgage losses during the stress period for that group. Therefore, the effects of percent-denominated credit enhancements are determined in connection with the calculation of loss severity rates. By contrast, amounts of dollar-denominated credit enhancements (total dollar coverage amounts) are calculated as of the start of the stress period and factored directly into the calculation of cash flows.

3.7.3.5.1 Calculating Percent-Denominated Credit Enhancements

The percent coverage rates for Type 1 and Type 2 credit enhancements are input into section 3.5.3, Single Family Loss Severity and section 3.5.5, Multifamily Loss Severity, of this Appendix to determine loss severity. The Loss Severity component uses this information, together with counterparty haircuts from section 3.6, Other Credit Factors, of this Appendix, to derive loss severity rates. Thus, the effects of percent-denominated credit enhancements are incorporated into the calculations of loss severity rates. These loss severity rates are then input to section 3.9, Cash Flows, of this Appendix to generate the dollar amounts of credit losses.

3.7.3.5.2 Calculating Dollar-Denominated Credit Enhancements

Reductions in credit losses resulting from dollar-denominated credit enhancements depend on the amount of dollar losses for a loan group and the remaining available dollar-denominated coverage in each month of the stress test. Reductions are applied in section 3.9.1, Whole Loans, of this Appendix. The algorithm implementing these reductions is described below.

1. In each month, use the time-and category-specific haircuts ($H_{R,t}$) from section 3.6, Other Credit Factors, of this Appendix to calculate a weighted average haircut for the loan group (H_t). The weights used are the percentages of UPB that fall into each of the four counterparty rating categories for each loan group. The formula is as following:

$$H_t = \sum_R \delta_R H_{R,t}$$

where:

H_t = weighted average haircut for the loan group in month t of the stress period

δ_R = percent of UPB under rating category R coverage in the loan group

$H_{R,t}$ = haircut for counterparty with credit rating category R in month t of the stress period

2. In each month of the stress test, calculate the loan group dollar losses that are eligible for dollar-denominated coverage:

$$TDL_t = \theta_t \cdot UPB_t \cdot Def_t \cdot NPV3_t$$

where:

TDL_t = total dollar losses eligible for dollar-denominated coverage in a loan group

θ_t = percentage of loan group UPB covered by dollar-denominated credit enhancement in month t of the stress test

t = month *t* of the stress test period (*t=1,...,120*)

UPB_t = unpaid principal balance of the loan group

Def_t = default rate for the loan group

$NPV3_t$ = loss severity rate for the loan group (as defined in section 3.5.3, Single Family Loss Severity, of the Appendix)

3. For each loan group, compare the total dollar losses eligible for dollar-denominated coverage (TDL_t) with the remaining dollar coverage for the loan group in month *t* of the stress period ($C3_t$). If $TDL_t \geq C3_t$, then reduce loan group credit losses by $C3_t \cdot (1 - H_t)$. If $TDL_t < C3_t$, then reduce loan group credit losses by $TDL_t(1 - H_t)$.

4. Update the remaining dollar-denominated coverage for the loan group in the following month ($C3_{t+1}$) as the maximum between zero and the value of the remaining dollar-denominated coverage for the loan group in the current month minus the total dollar losses eligible for dollar-denominated coverage for the loan group in that month. The formula is as follows:

$$C3_{t+1} = max[0, C3_t - TDL_t]$$

where:

$C3_{t+1}$ = remaining dollar coverage of all dollar-denominated credit enhancements (Type 3) in the loan group in month *t+1* of the stress test

$C3_t$ = remaining dollar coverage of all dollar-denominated credit enhancements (Type 3) in the loan group in month *t* of the stress test

TDL_t = total dollar losses eligible for dollar-denominated coverage in a loan group in month *t* of the stress test

5. After generating the remaining balance of the dollar-denominated coverage in month *t+1* of the stress test ($C3_{t+1}$), then go to steps 2–4 again, to derive the reduction to credit losses for month *t+1* of the stress test. This process continues for each month of the stress test until all the dollar-denominated coverage for the loan group is used up or until the stress test reaches its 120th month.

3.7.4 Output

For each loan group for each month of the stress period, the Mortgage Credit Enhancements component of the stress test generates loss coverage rates for percentage-denominated credit enhancements, and dollar loss reductions for dollar-denominated credit enhancements. The percentage coverage rates are used in section 3.5.3, Single Family Loss Severity and section 3.5.5, Multifamily Loss Severity, of this Appendix to calculate loss severity rates. Dollar loss reductions are used in section 3.9.1, Whole Loans, of this Appendix to adjust default losses.

3.8 Other Off-Balance Sheet Guarantees

3.8.1 Overview

In addition to guaranteeing mortgage-backed securities they issue as part of their main business, the Enterprises guarantee other instruments, referred to as "other off-balance-sheet (OBS) guarantees." The stress test does not explicitly project the performance of these other OBS guarantees. Instead, it addresses the capital requirement for other OBS guarantees by adding the product of the total other OBS guarantees principal balance and 45 basis points to the total amount of capital required to maintain positive total capital throughout the ten-year stress period.

3.8.2 Input

[a] The OBS Guarantees component requires the Enterprise's outstanding balances for the following OBS guarantees at the beginning of the stress period:

- Tax-exempt multifamily housing bonds
- Single-family whole-loan REMICs
- Multifamily whole-loan REMICs
- Any other instruments or obligations that fit the definition of "Other Off-Balance Sheet Obligations" in 12 CFR 1750.2

[b] Any instruments or obligations, 100 percent of whose collateral is guaranteed by the Federal Housing Authority (FHA), are excluded from the total dollar amount of other OBS guarantees.

3.8.3 Procedures

The OBS Guarantees component first calculates the total outstanding balance of all other OBS guarantees at the beginning of the stress period by summing the outstanding balances for tax-exempt multifamily housing bonds, single-family whole-loan REMICs, multifamily whole-loan REMICs, and any other instruments or obligations that fit the definition of other OBS guarantees. The dollar amount of capital required for other OBS guarantees is then computed as the total outstanding balance of all other OBS guarantees at the beginning of the stress period times 45 basis points.

3.8.4 Output

The OBS Guarantees component produces one number: the dollar amount of capital required for other OBS guarantees. This number is input to the Calculation of the Risk-Based Capital Requirement component to compute the risk-based capital required for the Enterprises.

3.9 Cash Flows

3.9.1 Whole Loans

3.9.1.1 Overview

[a] Both Enterprises hold single family and multifamily mortgage loans in their retained portfolios and guarantee passthrough mortgage-backed securities (MBS) owned by investors and backed by pools of such mortgage loans. Loans held in portfolio are referred to as "retained loans," and loans backing guaranteed securities are referred to as "sold loans." Together, retained loans and sold loans are referred to as "whole loans."

[b] The Enterprises receive all principal and interest payments on their retained loans, except for a servicing fee—a portion of

the interest payment retained by the servicer as compensation. On sold loans, the Enterprises receive guarantee fees and earn float income. Float income is earned when the Enterprises invest principal and interest payments for sold loans for the period of time between the receipt of the payments and the remittance of the payments, net of guarantee fees, to security holders. The length of time an Enterprise can invest these payments depends on the security payment cycle (the remittance cycle).

[c] The calculation of whole loan cash flows requires loan group information as the basic input data, as well as information on interest rates, mortgage performance and the credit quality of third party credit enhancements. Cash flows are produced for each month of the stress period for each loan group. (The stress test includes the dollar amount of credit losses in cash flows, even though such losses are not literally cash flows.)

3.9.1.2 Inputs

3.9.1.2.1 Loan Group Data

The following data as of the start of the stress test are used for whole loan cash flow computations:

- Product type
- Starting unpaid principal balance
- Starting coupon
- Servicing fee
- Mortgage age
- Remaining term
- Guarantee fee (for sold loans)
- Remittance cycle (for sold loans)
- Passthrough rate (for sold loans)
- Original coupon (for ARMs)
- Margin (for ARMs)
- Amortization term (for balloons)

3.9.1.2.2 Interest Rates

Whole loan cash flow calculations require the following interest rates for each of the 120 months of the stress period:

- One-, three-, and five-year Constant Maturity Treasury yields (CMT)
- 11th District Federal Home Loan Bank Cost of Funds Index (COFI)
- Overnight Federal Funds rate (for calculation of float earnings)

3.9.1.2.3 Mortgage Performance Data

Whole loan cash flow calculations also require the default, prepayment, and loss severity rates, which are computed as described in section 3.5, Mortgage Performance, of this Appendix, for each loan group for each month of the stress period.

3.9.1.3 Procedures

This section describes calculations of prepaid principal, scheduled principal, UPB, interest, and float income for fully amortizing, monthly pay, fixed-rate loan groups. It then describes the adaptation of these calculations for biweekly, adjustable-rate, and balloon loans. Lastly, this section describes calculations of the dollar amount of credit losses.

3.9.1.3.1 Fully Amortizing, Monthly Pay Fixed-Rate Loans

[a] The calculations discussed for fully amortizing, monthly pay, fixed-rate loans apply not only to loan groups made up of 30-year and 15-year loans, but also to loan groups comprised of second lien, step, tiered payment mortgage (TPM), and graduated payment mortgage (GPM) loans.

[b] Scheduled principal and interest payments for fully amortizing monthly pay, fixed-rate loans are computed using standard equations based on three variables: UPB, starting coupon, and remaining term.

[c] The stress test computes the amounts of prepaid principal and defaulted principal in each month by multiplying the loan group's UPB at the end of the previous month by the prepayment and default rates for that loan group for that month. The stress test computes amounts of scheduled principal (the principal that is not defaulted principal nor prepaid principal) in each month by multiplying the scheduled monthly principal (principal computed according to an amortization schedule) by one minus the sum of the monthly prepayment and default rates.

[d] The stress test computes the current loan group UPB for the end of a month by subtracting the amount of scheduled principal, prepaid principal, and defaulted principal in the month from the UPB at the end of the previous month.

[e] To compute monthly interest remitted to an Enterprise for retained loan groups, the stress test multiplies the loan group net yield (current coupon less servicing fee) by the UPB at the end of the previous month less the current month's defaulted principal. To compute monthly guarantee fees for sold loan groups, the stress test multiplies the monthly guarantee fee by the UPB at the end of the previous month less the current month's defaulted principal.

[f] To compute float income earned by an Enterprise on monthly principal and interest payments received from servicers and later remitted to security holders, the stress test multiplies scheduled principal and interest and prepaid principal by the Federal Funds rate for a number of days appropriate to the remittance cycle of the associated MBS. The stress test calculates float for three remittance cycles. Depending on the remittance cycle, prepaid principal may or may not be held for the same number of days as scheduled principal and interest.

1. If an Enterprise holds scheduled principal and interest and prepaid principal for seven days before remittance to the security holder, float is calculated by multiplying the sum of scheduled principal and interest and prepaid principal, by the Federal Funds rate times seven divided by 365. (The Federal Funds rate is an annual rate. Multiplying the rate by this fraction produces the float income for the seven days that the Enterprise has the mortgagor's payment). The Enterprise earns float income on the full scheduled interest payment, because even if a mortgagor prepays a mortgage before the end of a month, remitting less than a full month's interest on the prepaid principal, the servicer must forward the interest for the rest of the month to the Enterprise. The Enterprise remits a full month's interest to the security investor.

2. If an Enterprise remits scheduled principal and interest to the investor three days prior to receiving it from the servicer, but holds prepaid principal 38 days before remittance to the security holder, servicers are not required to forward to the Enterprise any prepayment-related shortfall in monthly interest, so the Enterprise must make up the short fall in interest to the security holder caused by a mortgagor's prepayment. If the prepayment is made in the first part of a month, the Enterprise owes the security holder interest at the security passthrough rate for the balance of the month. If the prepayment is made in the second half of the month, the Enterprise owes the security holder interest at the security passthrough rate for the balance of the current month and all of the following month. This is an average of 30 days of interest at the security passthrough rate on mortgagor prepayments. The float amount for this remittance cycle consists of:

- scheduled monthly principal and interest due the Enterprise multiplied by the Federal Funds rate times minus 3, divided by 365, plus
- prepaid principal multiplied by the Federal Funds rate times 38, divided by 365, minus
- prepaid principal multiplied by the passthrough rate (current coupon less the servicing fee less the guarantee fee) times 30, divided by 360

3. If an Enterprise holds scheduled principal and interest for 57 days prior to remittance to the security holder and holds prepaid principal for 68 days prior to remittance to the security holder, the Enterprise owes the security holder an average of 30 days of interest at the security passthrough rate on mortgagor prepayments. The float amount for this remittance cycle consists of:

- scheduled monthly principal and interest due the Enterprise multiplied by the Federal Funds rate times 57, divided by 365, plus
- prepaid principal multiplied by the Federal Funds rate times 68, divided by 365, minus
- prepaid principal multiplied by the passthrough rate (current coupon less the servicing fee less the guarantee fee) times 30, divided by 360

3.9.1.3.2 Biweekly Loans

While most mortgages require monthly payments, biweekly mortgages require payments every two weeks. The cash flow calculations described above for monthly pay, fully amortizing fixed-rate loans apply, except that the relevant time interval is two weeks rather than one month. In addition, biweekly, rather than monthly default and prepayment rates are applied. The stress test then allocates the biweekly cash flows to the proper month. The first biweekly cash flow occurs 14 days into the stress period. Subsequent biweekly cash flows occur at 14 day intervals. All the cash flows occurring during the same calendar month are added together to arrive at the monthly cash flow.

3.9.1.3.3 Adjustable-Rate Loans

3.9.1.3.3.1 Single Family RMS

(a) The current interest rate for an adjustable-rate mortgage (ARM) is adjusted based on an interest rate index and a margin. ARM loan groups are indexed to either the

one-or three-year CMT, or the COFI, as appropriate to their product types. The product type "ARMs Other" is indexed to the COFI index.

(b) The mortgage age of the loan group is used to determine the initial month of the stress test in which to adjust the current interest rate. The loan group interest rate is adjusted then and every 12 months thereafter, regardless of the index.

(c) The stress test calculates annual and lifetime maximum interest rates (ceilings) and minimum interest rates (floors). Annual maximum and minimum new interest rates for the adjustment period are calculated by adding or subtracting, respectively, two percent to, or two percent from, the current interest rate (current coupon). Lifetime maximum and minimum interest rates are calculated by adding or subtracting, respectively, five percent to, or five percent from, the original interest rate (original coupon). The minimum lifetime interest rate is at least three percent. The maximum lifetime interest rate is no more than 14 percent.

(d) The stress test adds the margin to the appropriate ARM interest rate index value to get a prospective interest rate. If the prospective interest rate is greater than the maximum new interest rate, the stress test sets the interest rate to the maximum new interest rate. If the prospective interest rate is less than the minimum new interest rate, the stress test sets the interest rate to the minimum new interest rate. After these steps, the prospective interest rate (adjusted as appropriate) becomes the current interest rate. The computation continues as described above for fully amortizing monthly pay fixed-rate loans groups.

3.9.1.3.3.2 Multifamily ARMs

(a) The interest rate for a multifamily ARM is indexed to the Federal Home Loan 11th District Costs of Funds (COFI). The computations are as described for single family ARMs except that: one, the rate is reset every month subject to 2 percent cap, 2 percent floor, and 3 percent life rate minimum; and two, the borrower payment is reset every 12 months, subject to a payment cap limiting the payment change to no more than 7.5 percent of the previous period payment.

(b) Resetting the multifamily ARM rate at a frequency different from the frequency by which the payment is reset and restricting increases in the borrower payment may result in a payment that is less than the amount necessary to fully amortize the UPB at the current ARM rate. In such situations, the shortfall is added to the outstanding balance. The maximum amount by which the UPB is allowed to increase (negatively amortize) is limited to 125 percent of the original UPB.

3.9.1.3.4 Balloon Loans

Calculations of cash flows for balloon loans are the same as for fully amortizing monthly pay, fixed-rate loans, except the balloon loan matures before the principal is fully amortized. Upon maturity, all unpaid principal is due. Loans are amortized based on their amortization terms. The stress test computes the number of months remaining until the balloon payment by subtracting the loan group mortgage age from the loan group balloon period and adding one. The loan group balloon period is identified according to the value of the variable, Product Type. If the Product Type is Balloons-Other, the balloon period is ten years.

3.9.1.3.5 Credit Losses

To compute the dollar amount of credit losses, the stress test multiplies the monthly defaulting principal for a loan group by the loss severity rate for that month and loan group. That loss severity rate takes into account percentage-based credit enhancements, as described in section 3.5.3, Single Family Loss Severity and section 3.5.5, Multifamily Loss Severity, of this Appendix. The resulting loss amount is further reduced by amounts of available dollar-based credit enhancements, as described in section 3.7, Mortgage Credit Enhancements, of this Appendix.

3.9.1.4 Output

Whole loan cash flows are inputs to the preparation of pro forma balance sheets and income statements for each month of the stress period. *See* section 3.10, Operations, Taxes, and Accounting, of this Appendix. For loan groups made up of retained loans, cash flows consist of 120 months of scheduled principal, prepaid principal, defaulted principal, credit losses, and interest.

3.9.2 Mortgage-Related Securities

3.9.2.1 Overview

(a) Both Enterprises invest in various types of mortgage-related securities: single class MBS, multi-class derivative mortgage securities (Collateralized Mortgage Obligations, REMICs, and Strips), and mortgage revenue bonds (MRBs). Single class MBS and derivative mortgage securities may be issued by the Enterprises, by Ginnie Mae, or by private issuers. MRBs are issued by State and local governments or their instrumentalities. Certain asset-backed securities with housing-related collateral (manufactured housing loans) that are similar in their cash flow characteristics to mortgage derivatives are treated in the stress test as mortgage derivative securities.

(b) The Enterprises receive principal and interest payments on these securities. Payments on single class MBS represent the passthrough from underlying pools of mortgages of all principal and interest payments, minus servicing and guarantee fees, on the underlying pools of mortgages. Payments on derivative mortgage securities represent some of the cash flows produced by an underlying pool of mortgages and/or mortgage-related securities, determined according to rules set forth in public offering documents for the securities. Unlike MBS and derivative mortgage-related securities, mortgage revenue bonds have specific maturity schedules and call provisions; however, the collateral backing MRBs consists largely of mortgages or mortgage securities, and the pattern of principal payments is closely related to that of their underlying mortgage collateral. The stress test treats them in a manner similar to the treatment of single class MBS. A very small number of mortgage-related securities for which data are insufficient for the generation of precise cash flows (referred to as "miscellaneous MRS") are also treated in this manner. The category miscellaneous MRS includes a very small number of Enterprise and private label REMIC securities that are not modeled by a commercial information service.

(c) In addition to reflecting the defaults of mortgage borrowers during the stress period, the stress test considers the effects of credit stress on securities that are rated by nationally recognized rating services, that is, mortgage revenue bonds and private-issue mortgage-related securities. Enterprise and Ginnie Mae securities are not rated, and the stress test reflects no credit losses on these securities. In the stress test, all rated securities experience increasing credit impairments throughout the stress period, which are reflected by reductions of contractual interest payments and losses of principal.

(d) The calculation of cash flows for mortgage-related securities requires information from the Enterprises identifying their holdings, publicly available information characterizing the securities, interest rate information, mortgage performance information, and credit rating information for rated securities.

(e) Cash flows-monthly amounts of principal payments, defaulted principal, and/or interest-are produced for each month of the stress period for each security (principal- and interest-only securities pay principal or interest). These cash flows are input to the Operations, Taxes, and Accounting component of the stress test.

3.9.2.2 Inputs

3.9.2.2.1 Securities

3.9.2.2.1.1 Single Class MBS Issued by the Enterprises and Ginnie Mae

For the single class MBS issued by the Enterprises and Ginnie Mae and held by an Enterprise at the start of the stress test, the stress test requires information identifying the Enterprise's holdings and information describing the MBS and the underlying mortgage collateral.

1. The following information is provided by the Enterprises:

- Pool number (identifying the security)
- Original principal balance (the original pool balance multiplied by the Enterprise's percentage ownership)
- Starting principal balance (the pool balance at the start of the stress period multiplied by the Enterprise's percentage ownership)

2. Every month, the Enterprises make public through securities data services updated information about the MBS they issue. The stress test uses pool numbers for MBS held by an Enterprise to access the following information from these monthly data releases:

- Pool prefix (designates the product type of the MBS, for example, 30-year single family fixed-rate)
- Issue date
- Maturity date
- Security coupon
- Original pool balance
- Starting pool balance

- Weighted average maturity of the underlying loans at the time the security was issued
- Weighted average remaining maturity of the underlying loans at the start of the stress test
- Weighted average original coupon of the underlying loans at the time the MBS was issued
- Weighted average current coupon of the underlying loans at the start of the stress test
- Interest rate index (ARM MBS only)
- Weighted average interest rate margin for the underlying loans (ARM MBS only)
- Weighted average passthrough rate (the security coupon for some types of ARM MBS)

3.9.2.2.1.2 Derivative Mortgage Securities Issued by the Enterprises and Ginnie Mae

[a] For the derivative mortgage securities issued by the Enterprises and Ginnie Mae that are held by an Enterprise at the start of the stress test, the stress test requires information identifying the Enterprise's holdings and information describing the underlying mortgage collateral. The Enterprises provide the following information:

- CUSIP number (unique security identifier assigned by the Committee on Uniform Security Identification Procedures)
- Original principal balance of the security (notional amount for interest-only securities) at the time of issuance, multiplied by the Enterprise's percentage ownership
- Starting principal balance, or notional amount, at the start of the stress period multiplied by the Enterprise's percentage ownership

[b] The stress test requires information about the multi-class transactions of which these securities are a part, including information describing all component securities, the underlying collateral, and the rules directing cash flows to the component classes. This information is obtained from public sources, including public offering documents and public securities data services.

[c] Obtaining sufficient information to calculate the cash flows of the underlying collateral may require multiple steps. For example, for a derivative mortgage security backed by single class MBS. Step 1, obtain, from public information, the pool numbers and principal balances for the specific underlying MBS. Step 2, consult public sources to obtain additional information as enumerated in section 3.9.2.2.1.1, for each of these MBS.

3.9.2.2.1.3 Mortgage Revenue Bonds and Miscellaneous MRS

[a] The stress test requires two types of information for mortgage revenue bonds and miscellaneous MRS held by an Enterprise at the start of the stress test: one, information identifying the Enterprise's holdings and two, additional information about the securities. The following are obtained from the Enterprises to identify their holdings:

- CUSIP number
- Original principal balance
- Starting principal balance

[b] The following additional information required for the stress test is available from public sources, including public offering documents and public securities data services:

- Issue date
- Maturity date
- Security interest rate
- Credit rating (for rated securities)

3.9.2.2.2 Interest Rates

Interest rates projected through the stress period are necessary to calculate principal amortization and interest payments for ARM MBS and for derivative mortgage securities with indexed coupon rates. The stress test generates interest rates for each month of the stress period, as described in section 3.3, Interest Rates, of this Appendix.

3.9.2.2.3 Mortgage Performance

The rate and pattern of principal payments of mortgage-related securities depend on the prepayments and, to a much smaller extent, the defaults of the underlying mortgage loans. Cash flow calculations require default and prepayment rates that are appropriate to the underlying mortgage collateral for each mortgage-related security. Rates are generated as described in section 3.5.2, Single Family Default and Prepayment, and section 3.5.4, Multifamily Default and Prepayment, of this Appendix.

3.9.2.2.4 Third-Party Credit Exposure

In calculating the principal and interest payments of mortgage-related securities, the stress test treats defaults the same as prepayments. Thus, investors receive amounts of security principal equal to defaulted, prepaid, and scheduled principal on the underlying loans in the pool. For rated securities (e.g., mortgage revenue bonds and private-issue MRS), the risk of security default is reflected by reducing the calculated principal and interest payments for these instruments. These reductions, or haircuts, are described in section 3.6, Other Credit Factors, of this Appendix.

3.9.2.3 Procedures

The sections below describe the calculations for single class MBS issued by the Enterprises and Ginnie Mae, the calculations for derivative mortgage securities, and calculations for MRBs and miscellaneous MRS.

3.9.2.3.1 Single Class MBS Issued by the Enterprises and Ginnie Mae

[a] The calculation of cash flows for single class MBS issued by the Enterprises and Ginnie Mae follows the procedures outlined earlier in section 3.9.1, Whole Loans, of this Appendix. The collateral underlying each MBS is treated as one single family loan group. (For purposes of identifying appropriate default and prepayment rates for the small number of multifamily MBS held by the Enterprises, the stress test treats the underlying loans as 30-year fixed-rate single family mortgages.) Amounts of defaulted mortgage principal (reflecting the security guarantee) are advanced to security holders, and scheduled and prepaid mortgage principal are passed through to security holders. Interest is calculated at the security coupon rate (the weighted average passthrough rate for ARM MBS issued by the Enterprises). Security cash flows are calculated for the month in which mortgagor payments are made.

[b] For each MBS, the stress test applies default and prepayment rates and computes the amortization of principal, based on the characteristics of the underlying loans. The stress test applies amortization and default and prepayment rates for sold loan groups (of the Enterprise that issued the MBS) that have characteristics consistent with the characteristics of the MBS collateral, with the following caveat. The stress test specifies that loans underlying an MBS reflect the national distribution of original LTV and Census divisions for all otherwise similar sold loans. Therefore, default and prepayment rates represent the weighted averages for loans groups in all LTV categories and Census divisions that are otherwise similar to the MBS collateral.

[c] For Ginnie Mae MBS, the mortgage coupon for the underlying loan group equals the Ginnie Mae passthrough rate plus 0.5 percent. For fixed-rate Ginnie Mae MBS, the underlying loans are assumed to have the same distributions of LTVs and Census divisions as the Enterprise's sold portfolio FHA and VA loans with the same coupon and origination year. For loans underlying Ginnie Mae ARM MBS, the stress test uses default and prepayment rates for otherwise similar conventional ARM loans in the sold portfolio.

[d] For ARM MBS, interest rate and monthly payment adjustments for the underlying loans are calculated in the same manner as they are for ARM loan groups, except that for Ginnie Mae ARM MBS, there is a one percent annual rate cap.

[e] For balloon and biweekly MBS, cash flows for the underlying loans are calculated in the same manner as they are for balloon loan groups; product type information, such as the length of the balloon period, is determined by the MBS pool prefix and the MBS maturity date.

[f] For purposes of calculating cash flows, the stress test treats GPMs, TPMs, GEMs, and Step mortgages that back MBS as 30-year fixed-rate mortgages.

3.9.2.3.2 REMICs and Strips

[a] Cash flows for derivative mortgage securities are generated according to standard securities industry procedures, in five steps.

1. Determine the percentage Enterprise ownership of a particular security by dividing the portion of the original principal balance or notional amount held by the Enterprise by the total original principal balance or notional amount of the derivative mortgage security.
2. Identify the characteristics of the underlying collateral of the derivative mortgage security.
3. Calculate the cash flows for the underlying collateral in the manner described for whole loans and MBS above, based on stress test interest, default, and prepayment rates.
4. Calculate all cash flows for the derivative mortgage security classes by applying the rules stated in public offering materials.
5. Determine the cash flows attributable to the specific securities held by an Enterprise, applying the Enterprise's ownership percentage.

[b] The stress test uses a commercial information service for steps 2 through 5. The stress test models mortgages using a limited set of loan product types and ARM indexes. The information service accurately models a larger set of mortgage product types and all ARM indexes supplied by the interest rate component of the stress test (*see* section 3.3, Interest Rates, of this Appendix).

3.9.2.3.3 Mortgage Revenue Bonds and Miscellaneous MRS

[a] Cash flows for mortgage revenue bonds and miscellaneous MRS are computed in the same manner as for single class MBS, using the approach described above. The stress test uses default and prepayment rates for single family, fixed-rate FHA and VA loans with coupons that are 75 basis points higher than the security coupon, and with the LTV and Census division distributions that are similar in all other respects to sold FHA or VA loans of the Enterprise that holds the security. The stress test uses a 30-year original maturity of the underlying loans, and loan age is computed based on the date when the security was issued. Monthly interest is calculated at the bond coupon for the amortizing balance.

[b] Principal and interest payments are then reduced by applying the haircuts specified in section 3.6, Other Credit Factors, of this Appendix.

3.9.2.4 Outputs

Amounts of principal, interest, and, in the case of rated securities, defaulted principal, are produced for each security. These outputs are used as inputs to the Operations, Taxes, and Accounting component, which prepares pro forma financial statements. *See* section 3.10, Operations, Taxes, and Accounting, of this Appendix.

3.9.3 Debt and Related Cash Flows

3.9.3.1 Overview

[a] The Debt and Related Cash Flows component of the stress test produces cash flows for debt, guaranteed investment contracts (GICs), preferred stock, debt-linked derivative contracts, and mortgage-linked derivative contracts.[18] Although mortgage-linked derivative contracts are usually linked to assets rather than liabilities, they are treated similarly to debt-linked derivative contracts and, therefore, are covered in this section of the Appendix. The Enterprises issue debt to fund their asset portfolios. Preferred stock issued by the Enterprises performs two functions: it funds asset portfolios and serves as capital. The Enterprises enter into derivative contracts for three reasons: to reduce the interest rate risk of specific securities (micro hedge); to hedge the overall interest rate risk of their business (macro hedge); or to create a synthetic liability (combination of a security and a derivative contract) with a lower net cost than the equivalent actual security.

[b] The Debt and Related Cash Flows component produces instrument level cash flows for the ten years of the stress test. Debt and preferred stock cash flows include interest (or dividends for preferred stock) and principal payments (or redemptions for preferred stock), while debt-linked and mortgage-linked derivative contract cash flows are composed of interest payments and receipts. (Throughout the remainder of section 3.9.3, references to "interest payments" include interest received, as well as interest paid, on debt-linked and mortgage-linked derivative contracts. "Principal payments" refers to payments of principal on debt and redemptions of preferred stock.) Debt and preferred stock are categorized in one of the three classes listed and described in Table 3–22.

Table 3-22. Debt and Preferred Stock

Debt And Preferred Stock Classes	Description
Fixed-Rate Debt or Preferred Stock	Fixed-rate securities that pay periodic interest or dividends
Floating-Rate Debt or Preferred Stock	Floating-rate securities that pay periodic interest or dividends
Discount Instruments (Debt Only)	Securities that are issued below face value and pay a contractually fixed amount at maturity

[c] Debt-linked derivative contracts consist of interest rate caps, floors, and swaps. The primary difference between debt and debt-linked derivative contracts, in terms of calculating cash flows, is that interest payments on debt are based on principal amounts that are eventually repaid to creditors, whereas on debt-linked derivative contracts interest payments are based on notional amounts that never change hands. Table 3–23 describes the six classes of debt-linked derivative contracts.

[18] The notional balance of a mortgage-linked derivative contract declines based on the declining balance of a reference mortgage pool.

Table 3-23. Debt-Linked Derivative Contracts

Debt-linked Derivative Contract Classes	Description
Fixed-Pay Swaps	A derivative contract in which an Enterprise pays a fixed interest rate and receives a floating interest rate
Floating-Pay Swaps	A derivative contract in which an Enterprise pays a floating interest rate and receives a fixed interest rate
Long Cap	A derivative contract in which an Enterprise receives a floating interest rate when the interest rate to which it is indexed exceeds a specified level (strike price)
Short Cap	A derivative contract in which an Enterprise pays a floating interest rate when the interest rate to which it is indexed exceeds the strike price
Long Floor	A derivative contract in which an Enterprise receives a floating interest rate when the interest rate to which it is indexed falls below the strike price
Short Floor	A derivative contract in which an Enterprise pays a floating interest rate when the interest rate to which it is indexed falls below the strike price

[d] Mortgage-linked swaps are similar to debt-linked swaps except that, for the former, the notional balance amortizes based on the performance of certain MBS pools. The two classes of mortgage-linked derivative contracts are listed and described in Table 3–24.

Table 3-24. Mortgage-Linked Derivative Contracts

Mortgage-Linked Derivative Contract Classes	Description
Fixed-Pay Amortizing Swaps	A derivative contract in which an Enterprise pays a fixed interest rate and receives a floating interest rate, both of which are based on a declining notional balance
Floating-Pay Amortizing Swaps	A derivative contract in which an Enterprise pays a floating interest rate and receives a fixed interest rate, both of which are based on a declining notional balance

3.9.3.2 Inputs

[a] The Debt and Related Cash Flows component of the stress test requires numerous inputs. Many of the instrument classes require simulated interest rates because their interest payments adjust periodically based on rates tied to various indices. These rates are generated as described in section 3.3, Interest Rates, of this Appendix. Instrument level inputs provided by the Enterprises are listed in the Table 3–25.

Table 3-25. Input Variables for Debt and Related Cash Flows

Data Elements	Description
Issue Date	First settlement date for this security
Face/Notional Amount	The face amount of a security or notional amount of a derivative contract
Principal/Notional Factor	Factor representing the percentage of original principal or notional amount that remains outstanding relative to the original principal or notional amount
Coupon/Dividend Factor	An adjustment made to the coupon or dividend based on the day count convention (e.g., actual/360)
Coupon	Current interest rate
Dividend Rate	Annual dividend rate on preferred stock
Index	Interest rate index to which interest payments are tied
Spread	The percentage (expressed as a decimal) that is added or subtracted from the index to calculate the coupon rate for floating rate instruments
Index Multiplier	A constant multiplier used in a variable rate formula
Payment Frequency	Frequency with which payments are made
Unpaid Balance	Unpaid principal balance
Contractual Maturity Date	The date on which an instrument matures
Remaining Term	The number of months until an instrument matures
Floor Rate	The minimum coupon for a variable rate security
Cap Rate	The maximum coupon rate for a variable rate security
Pay/Receipt Code	A code that identifies whether the cash flow is a payment or a receipt
Call/Put Strike Price	The price at which the call or put option may be exercised
Call (Cancellation)/Put Date	The date on which the instrument may be canceled (put or called)
Original Discount	Discount from par represented by purchase price of security (e.g., price of 99.0 equates to discount of 1.0)
Swap Reference	Links mortgage-linked derivative contract to a reference security (e.g., when changing principal balance of a specific security is also notional amount of swap)
Instrument I.D.	Links pay and receive sides of swaps
Amortization Schedule	Schedule of decreasing principal/notional balances for instruments that amortize
Cap/Floor Strike Price	Used for cap and floor instruments to indicate the interest rate at which this instrument begins paying or receiving interest

Table 3-25. Input Variables for Debt and Related Cash Flows (Continued)

Data Elements	Description
Counterparty Identification	Identifies the counterparty to a derivative contract
Public Rating of Counterparty	Credit rating of counterparty by a recognized rating agency

[b] In addition to the above inputs, the mortgage-linked derivative contract cash flows require inputs for the performance of linked mortgage assets, including default and prepayment rates from the single family default and prepayment component of the stress test (*See* section 3.5.2, Single Family Default and Prepayment, of this Appendix) and periodic and lifetime minimum and maximum coupons for ARM MBS. Mortgage-linked derivative contract identification numbers are used to link the derivative contract to pool information on specific MBS. This link allows retrieval of pool information that will be used to determine how the notional balance of the swap amortizes, including the coupon rate, issue date, maturity date, weighted average coupon (WAC), and weighted average maturity (WAM) for each pool.

3.9.3.3 Procedures

[a] The debt and related cash flow component calculates separate cash flow streams for principal and interest payments. The stress test performs the following steps: determines the timing of cash flows; calculates a principal or notional factor; obtains the coupon or dividend factor; projects principal cash flows or changes in the notional amount; and projects interest cash flows.

[b] Projected cash flows for callable or cancelable instruments may be altered by implementing a call decision rule for debt or a cancellation decision rule for swaps. In addition, special cases exist where instruments have complex characteristics, thereby requiring additional processing to compute cash flows. Each of these steps is described below.

1. The first step requires determining the timing of cash flows or the payment dates. The three inputs that are required to accomplish this task are maturity date, payment frequency, and the previous payment date. Payment frequency, defined as the number of payments per year, takes on one of five values depending on how often coupon payments are made. These values are given in Table 3–26.

Table 3-26. Payments Per Year

Type Of Payment	Payment Frequency
Non-Coupon Bearing[1]	0
Annual	1
Semi-Annual	2
Quarterly	4
Monthly and More Frequent	12

[1] Non-coupon bearing instruments do not produce any cash flows until maturity; therefore, payment frequency takes the value of zero for these instruments.

2. Payment dates are based on the last payment date and the payment frequency until the instrument matures. For example, if the stress test is run on an Enterprise's data as of June 30, 1998, then an instrument with a previous payment date of April 15, 1998, that matures on October 15, 1999, and has quarterly payments will require payments on July 15, 1998, October 15, 1998, January 15, 1999, and so forth until maturity or, in the case of preferred stock, throughout the stress test. In the stress test, payments are allocated to specific months, not specific days within the month.

3. The second step requires the calculation of a principal factor. The principal factor is defined as a percentage of original value of the instrument. In most instances, where there is no amortization of principal, the principal factor is one for each payment date until the stated maturity date, when it converts to zero. For debt and debt-linked derivative contracts that amortize, either a principal or a notional amortization schedule is provided by the Enterprises, or the amortization schedule is obtained from the offering materials for public securities. In the case of mortgage-linked derivative contracts, notional balances are amortized in the manner described in section 3.9.2, Mortgage-Related Securities, of this Appendix for principal balances of mortgage-backed securities held by an Enterprise. A GIC is a liability that may amortize; however, an amortization schedule may not be available. When amortization information is unavailable, the issue amount of the GIC is assumed to be paid on the maturity date of the instrument. The remaining term is used to determine maturity dates for GICs.

4. The third step requires the calculation of a coupon or dividend factor. The coupon or dividend factor is an adjustment factor used to calculate the portion of the annual coupon or dividend rate applicable to a given period. It depends on day count conventions used to calculate the accrued interest for the instrument and is determined using one of the three calculations in Table 3–27.

Table 3-27. Day Count Conventions

Convention	Coupon Factor Calculation
30/360	Number of days between two payment dates assuming 30 days per month/360
Actual/360	Number of days between two payment dates/360
Actual/365	Number of days between two payment dates/365

5. The fourth step in the process involves calculating principal cash flow. Principal payments can be classified as either principal payments on zero coupon bonds or principal payments on all other instruments. All principal payments are paid at maturity for zero coupon bonds, and the principal amount is equal to the face amount of the bond. For all non-zero coupon bond instruments, principal outstanding for the current period is determined by multiplying the issue amount by the principal factor for the current period. The principal payment equals the amount of principal outstanding at the end of the current period less the principal outstanding at the end of the previous period, or zero if the instrument has a notional balance.

6. The fifth step involves calculating interest and dividend cashflows. Instruments can be classified into six generic categories based on their interest payment characteristics. These are fixed-rate instruments, zero coupon bonds, discount notes, floating-rate instruments, interest rate caps and floors, and swaps. Interest or dividend cash flows for an instrument in a period are calculated as the product of the principal/notional amount of the instrument for the given period, the coupon or dividend rate, and the coupon or dividend factor.

[c] To determine the interest or dividend payments for fixed-rate instruments, the current period principal amount is multiplied by the product of the coupon or dividend rate and current period coupon or dividend factor. Interest payments for zero coupon bonds and discount notes are equal to zero. For discount notes, if the amounts for original discounts are not provided, they are estimated as the product of unpaid balance, yield, and number of days between issue and maturity dates divided by 360.

[d] Interest payments on floating-rate instruments (except for floating-rate preferred stock, which is discussed later in this section) are calculated as principal balance multiplied by the coupon for the current period. The current period coupon is calculated by adding a spread to the appropriate interest rate index and multiplying by the coupon factor. The coupon for the current period is set to this amount as long as the rate lies between the lifetime maximum and minimum rates, as periodic maximum and minimum rates are not recognized. Otherwise the coupon is set to the maximum or minimum rate.

[e] Caps and floors are derivative instruments that pay or receive interest only if their specified index is above the strike price for caps and below it for floors. Interest payments on caps and floors are determined similarly to those for the debt instruments above; however, payments are based on notional amounts instead of principal amounts. The appropriate projected interest rate index is compared to the instrument's cap or floor rate (strike price). Interest payments are either paid or received depending on whether the Enterprise is in a long or short position in a cap or a floor. If a cap is purchased and the strike price is less than the rate on the cap's interest rate index, then the interest payment on the cap is the index less the cap rate multiplied by the notional amount of the cap. If a floor is purchased and the floor rate is higher than the index, then the interest payment on a floor is equal to the floor rate minus the index rate multiplied by the notional balance of the floor. Otherwise interest payments are zero for caps and floors.

[f] A swap is a derivative contract that requires counterparties to exchange periodic interest payments. Swaps are modeled as two separate instruments, consisting of a pay side and a receive side, with interest payments based on the same notional balance but different interest rates. For debt-linked swaps, interest payments are determined using the criteria of fixed-rate or floating-rate instruments as described above.

[g] For the pay side of mortgage-linked swaps, the component calculates the reduction in the notional balance due to scheduled monthly principal payments (taking into account both lifetime and reset period caps and floors), prepayments, and defaults of the reference MBS pool. The notional balance of the swap for the previous period is reduced by this amount to determine the notional balance for the current period. Interest payments for a given period are calculated as the product of the notional balance of the swap in that period and the coupon rate applicable for that period.

[h] For the receive side of mortgage-linked swaps, the component calculates cash flows in the same manner as debt and debt-linked derivative contracts. The only difference is that the notional balance of the swap is amortized based upon the monthly pay-downs for an underlying MBS pool, as described for the pay side above. For the receive side, interest amounts are cash inflows.

[i] In order to reduce interest costs and/or deepen the market for their securities, the Enterprises may issue debt denominated in, or indexed to, foreign currencies, and eliminate the resulting foreign currency exposure by entering into currency swap agreements. When they hedge their foreign exposure in this manner, the component creates synthetic debt denominated in U.S. dollars and pays interest accordingly.

[j] Some debt and debt-linked derivative contracts have call or cancellation features that allow an Enterprise to terminate them at certain points in time. Whether or not a call or cancellation will be exercised is evaluated for all debt and the debt-linked derivative contracts that require cash outflows. For example, only the pay side is evaluated for swaps. If the pay side is cancelled, then the receive side is cancelled at the same time. Callable instruments are treated in the following manner. First, project cash flows for the callable instrument assuming that the instrument is not callable. Second, for each payment period when the instrument can be called, equate the outstanding balance or notional amount of the security to the sum of the discounted values of the projected cash flows. The discount rate that makes these two amounts equivalent is called the yield-to-maturity.[17] Third, convert the yield-to-maturity to a bond-equivalent yield and compare the bond-equivalent yield to the projected Federal Agency Cost of Funds for debt with a comparable maturity. Because the stress test does not project Federal Agency Cost of Funds indexes for every possible maturity, a linear interpolation is performed between the next higher and lower maturities to estimate the cost of funds for those maturities that are not projected. Finally, if the Federal Agency Cost of Funds is lower than 50 basis points below the bond-equivalent yield of the callable instrument, then the instrument is called. Otherwise, the instrument is not called, and it is evaluated for call at the next payment period.

[k] Some instruments have complex or non-standard features, and cash flows cannot be computed using only the data listed earlier. Characteristics of these types of instruments include complex principal or notional amortization schedules, complex coupon reset formulas for floating-rate instruments, and European call options for callable instruments. In these instances, additional information is obtained to define a set of rules to reflect the complex features of debt and debt-linked derivative contracts, thereby permitting the accurate calculation of cash flows for these instruments.

[l] An example of an instrument with complex features is an indexed amortizing swap. This instrument is not standard because its notional amount declines in a way that is dependent upon the level of interest rates. This type of swap is structured

[17] For instruments with notional balances, the yield-to-maturity is equal to the instrument's coupon or interest rate.

with an amortization table that contains a notional balance reduction factor for a given range of interest rates. To compute cash flows for this instrument, the notional balance at each payment date must be calculated. While raw data provides the notional balance at the beginning of the stress period, the notional balance at each payment date during the stress period must be calculated.

[m] Other instruments that require special treatment are currency linked notes, the redemption value of which is tied to a specific foreign exchange rate. They require special treatment because the stress test does not forecast foreign currency rates. If these instruments are hedged, then they become part of synthetic debt created in conjunction with a swap as discussed previously. If these instruments are not hedged, the following treatment applies. In the up-rate scenario, the U.S. Dollar per unit of foreign currency ratio is increased in proportion to the increase in the ten-year CMT. For example, if the ten-year CMT shifts up by 50 percent, then the U.S. Dollar per unit of foreign currency ratio shifts up by 50 percent. In the down-rate scenario, the foreign currency per U.S. Dollar ratio is decreased in proportion to the decrease in the ten-year CMT. The redemption value of these instruments may also have minimum and maximum principal amounts, which also must be taken into consideration in determining cash flows.

[n] As the final step in the process, the interest cash flows for debt-linked and mortgage-linked derivative contracts are "haircut" (i.e., reduced) by some percentage to account for the risk of counterparty insolvency. The percentage haircut used is based on the public rating of the counterparty, and the year during the stress period in which the cash flow occurs (Refer to section 3.6, Other Credit Factors, of this Appendix for details on how the haircuts are applied.) The cash flows are all added together (pay side and receive side) for all contracts with a given counterparty.[16] The haircut is applied to the net cash owed by the counterparty in a given month. If the Enterprise owes the counterparty money, then no haircut is applied.

[o] Because the stress test does not forecast foreign exchange rates, the counterparty haircut percentages are applied to the pay side of currency swaps, instead of the receive side, to "gross up" the payment. Therefore, when synthetic debt is created, the effect is to increase the cost of the synthetic debt equal to the haircut amount.

3.9.3.4 Output

Output consists of cash flows for debt, preferred stock, and derivative contracts. Cash flows include monthly interest and principal payments for debt, dividends and redemptions for preferred stock, and interest payments for debt-linked and mortgage-linked derivative contracts.

3.9.4 Non-Mortgage Investment and Investment-Linked Derivative Contract Cash Flows

3.9.4.1 Overview

[a] The Enterprises primarily invest in non-mortgage assets as a source of liquidity. They also enter into investment-linked derivative contracts to reduce the interest rate risk of specific securities (micro hedge), hedge the overall interest rate risk of their business (macro hedge), or create a synthetic asset (combination of a security and a derivative contract) with a higher net yield than the equivalent actual security.

[b] The stress test calculates the cash flows for these assets at the instrument level. The cash flows consist of interest payments and receipts and principal payments for the ten years of the stress test. (Throughout the remainder of section 3.9.4, references to interest payments include interest received on investment-linked derivatives products.) Compared to the treatment of debt and related cash flows, the stress test takes a more simplified approach to modeling non-mortgage instruments (including linked derivative contracts) held by the Enterprises. Rather than determining the specific payment frequencies of each instrument, the stress test assumes standardized payment frequencies by types of instruments. For this purpose, the stress test distinguishes among six classes of securities and eight classes of derivative contracts. Table 3–28 lists and defines the six classes of securities.

Table 3-28. Securities

Security Classes	Description
Fixed-Rate Bonds	Fixed-rate securities that pay periodic interest, e.g. corporate and Euro Bonds
Floating-Rate Bonds	Floating-rate securities that pay periodic interest, e.g., Corporate and Euro Bonds
Floating-Rate Municipal Bonds	Floating-rate bonds issued by municipalities
Short-Term Instruments	Fixed-rate securities that pay principal and interest at maturity,[1] e.g., Repurchase Agreements, Federal Funds, Commercial Paper
Fixed-Rate Asset-Backed Securities	Fixed-rate securities collateralized by non-mortgage assets[2]
Floating-Rate Asset-Backed Securities	Floating-rate securities collateralized by non-mortgage assets[2]

[1] For purposes of the stress test, auction rate preferred stock issues are included in this class.

[2] Except for those securities backed by housing-related assets, i.e., manufactured housing loans, which are covered in section 3.9.2, Mortgage-Related Securities, of this Appendix.

[c] Table 3–29 defines the seven classes of derivative contracts and provides a description of what is included in each. (An eighth class, mortgage-related derivatives, is covered in section 3.9.3, Debt and Related Cash Flows, of this Appendix.)

[16] Cash flows are not aggregated together with a given counterparty for currency swaps. Instead, haircuts are applied to each individual currency swap.

Table 3-29. Derivatives

Derivative Contract Classes	Description
Basis Swaps	A derivative contract in which floating-rate interest payments are exchanged based on different interest rate indexes
Fixed-Pay Swaps	A derivative contract in which an Enterprise pays a fixed interest rate and receives a floating interest rate
Floating-Pay Swaps	A derivative contract in which an Enterprise pays a floating interest rate and receives a fixed interest rate
Fixed-Pay Amortizing Swaps	A derivative contract in which an Enterprise pays a fixed interest rate and receives a floating interest rate, both of which are based on a declining notional balance
Floating-Pay Amortizing Swaps	A derivative contract in which an Enterprise pays a floating interest rate and receives a fixed interest rate, both of which are based on a declining notional balance
Long Cap	A derivative contract in which an Enterprise receives a floating interest rate when the interest rate to which it is indexed exceeds a specified level or strike price
Short Cap	A derivative contract in which an Enterprise pays a floating interest rate when the interest rate to which it is indexed exceeds a specified level

[d] Stress test procedures are divided into two distinct steps: one, establishing interest payment dates; and two, calculating the instrument level cash flows based on payment criteria and instrument characteristics.

3.9.4.2 Inputs

[a] The stress test requires instrument and interest rate inputs for the calculation of interest payments and receipts and principal payments. Instrument level inputs provided by the Enterprises are:

- Issue date
- Face/notional amount
- Maturity date
- Coupon rate
- Index
- Spread
- Instrument I.D. to link pay and receive sides of swaps
- Pay/receipt code
- Payment frequency
- Cap rate
- Cap strike price
- Counterparty identification, if applicable
- Public rating(s) of instrument or counterparty

[b] Each instrument class (security or derivative contract) uses only those inputs relevant to that instrument class.

[c] In addition to the inputs provided by the Enterprises, this component requires projections for the stress period for a number of interest rates. The calculation of all of these interest rates is described in section 3.3, Interest Rates, of this Appendix. Ten classes of instruments are linked to various interest rates. These interest rates are required as inputs in order to adjust periodically the interest payments on the respective instruments. The particular interest rate used is based on the instrument's specifications. The available interest rates are listed in Table 3–30.

Table 3-30. Interest Rates and Indexes

Indexes	
Prime Rate	1 MO London Inter-Bank Offered Rate
3 MO Treasury Bill	3 MO London Inter-Bank Offered Rate
6 MO Treasury Bill	6 MO London Inter-Bank Offered Rate
1 YR Constant Maturity Treasury	12 MO London Inter-Bank Offered Rate
3 YR Constant Maturity Treasury	
5 YR Constant Maturity Treasury	
10 YR Constant Maturity Treasury	
20 YR Constant Maturity Treasury	
Overnight Federal Funds	
7-Day Federal Funds	

3.9.4.3 Procedures

[a] One of seven interest payment calculations is assigned to each instrument class. These are a semi-annual fixed rate of interest, quarterly fixed and floating rates of interest, monthly fixed and floating rates of interest, a fixed rate of interest due at maturity based on the number of days an instrument is outstanding, and a monthly floating rate of interest based on the difference between an interest rate index and a strike price. Table 3–31 indicates the type of payment calculation for each of the various instrument classes.

Table 3-31. Interest Rate Payments

Instrument Class	Interest Payment Frequency
Fixed-Rate Bonds	Semi-annual fixed-rate payments
Fixed-Pay Swaps (pay side) Floating-Pay Swaps (receive side)	Quarterly fixed-rate payments
Floating-Rate Bonds Floating-Rate Municipal Bonds Basis Swaps Floating-Pay Swaps (pay side) Fixed-Pay Swaps (receive side)	Quarterly floating-rate payments
Fixed-Rate ABSs Fixed-Pay Amortizing Swaps (pay side) Floating-Pay Amortizing Swaps (receive side)	Monthly fixed-rate payments
Floating-Rate ABSs Floating-Pay Amortizing Swaps (pay side) Fixed-Pay Amortizing Swaps (receive side)	Monthly floating-rate payments
Short-Term Instruments	Fixed-rate with interest payments due at maturity
Long Cap and Short Cap	Monthly floating-rate payments based on the difference between an interest rate index and a strike price

[b] The first step in processing the data is establishing the interest payment dates. Asset-backed securities (ABSs), amortizing swaps, and caps require monthly interest payments. For all other instrument classes, the interest payment dates are determined by working backward from the maturity date, using the payment assumptions for each instrument class. For example, if the maturity date is September 15, 1999, for an instrument that pays interest semi-annually, then interest payment dates are September 15, 1999, March 15, 1999, etc. until the initial payment date within the stress period is determined. Payments made in the stress period are allocated to specific months, not specific days within the month.

[c] The second step is the calculation of instrument level cash flows based on payment criteria and instrument characteristics. Interest payment dates are based on the criteria established above. For the non-derivative instrument classes except for ABS, each interest payment is based on the face amount of the security. ABS interest payments are based on the remaining principal balance of the instrument after adjusting for prepayments. The entire amount of principal is due at maturity, except in the case of ABS, where the face amount is reduced by principal prepayments. Interest and principal payments for securities are, therefore, based on the formulas in Table 3–32.

Table 3-32. Principal and Interest Calculations

Instrument Class	Interest Calculation	Principal Calculation
Fixed-Rate Bonds	$(C \cdot F) \cdot 0.5$	F
Floating-Rate Bonds	$(I + S) \cdot F \cdot 0.25$	F
Short-Term Instruments	$(C \cdot F) \cdot D/360$	F
Floating-Rate Municipals[1]	$(L3 - (L3 \cdot T)) \cdot F \cdot 0.25$	F
Fixed-Rate ABS	$C \cdot P \cdot F \cdot 0.083$	Monthly prepayments $[(P \cdot F) \cdot Q]$ and remaining principal at maturity.
Floating-Rate ABS	$(I + S) \cdot (P \cdot F) \cdot 0.083$	Monthly prepayments $[(P \cdot F) \cdot Q]$ and remaining principal at maturity.

[1] The index on which these securities reset is not modeled by the interest rate component of the stress test; therefore, the stress test approximates a tax-exempt rate by reducing the three-month LIBOR by the assumed marginal tax rate for the Enterprises multiplied by the three-month LIBOR.

where:

C = annual coupon rate

F = face amount of the instrument

S = spread over a given interest rate index

P = principal factor equal to (1-prepayment rate)$^{(\text{sim month} - 1)}$

Q = prepayment rate, assumed to be 3.5% for fixed-rate and 2.0% for floating-rate ABS

T = marginal corporate tax rate, assumed to be 34.0%

D = number of days between settlement and maturity dates

$L3$ = three-month LIBOR

I = interest rate index

[d] For derivative contracts such as swaps and caps, interest payments are calculated using notional amounts instead of principal balances. The stress test treats swaps as two separate instruments, consisting of a pay side and a receive side, using the criteria of fixed-rate or floating-rate instruments as described above. Each interest payment is based on the original notional amount of the derivative contract except for amortizing swaps, which have interest payments based on the remaining notional balance after adjusting for prepayments. Prepayment speeds for amortizing swaps are set equal to the prepayment speeds for floating-rate ABSs.

[e] Caps can be purchased, in which case an Enterprise receives interest, or sold, in which case an Enterprise pays interest. Interest payments on caps are determined in the following manner. If the strike price of the cap is less than or equal to the interest rate index, then interest payments are calculated based on the difference between the index and the strike price. If the strike price of the cap is greater than the interest rate index, then interest payments are zero. The formulas in Table 3–33 are used to calculate interest payments and receipts for investment-linked derivative contracts.

Table 3-33. Interest Payments and Receipts

Instrument Class	Interest Receipts	Interest Payments
Fixed-Pay	$(I + S) \cdot N \cdot 0.25$	$(C + S) \cdot N \cdot 0.25$
Floating-Pay	$(C + S) \cdot N \cdot 0.25$	$(I + S) \cdot N \cdot 0.25$
Basis Swaps	$(I + S) \cdot N \cdot 0.25$	$(I + S) \cdot N \cdot 0.25$
Fixed-Pay Amortizing	$(I + S) \cdot (P \cdot N) \cdot 0.083$	$(C + S) \cdot (P \cdot N) \cdot 0.083$
Floating-Pay Amortizing	$(C + S) \cdot (P \cdot N) \cdot 0.083$	$(I + S) \cdot (P \cdot N) \cdot 0.083$
Long Cap	$(I - K) \cdot N \cdot 0.083$; if $K>I$, then $(I-K)=0$	0
Short Cap	0	$(I - K) \cdot N \cdot 0.083$; if $K>I$, then $(I-K)=0$

[f] Equations for calculating interest on derivative contracts use the same notation as equations for securities. In addition, the following notations are used:

- N = notional amount of the instrument
- K = strike price

[g] Once the cash flows for interest and principal have been calculated for a particular investment or investment-linked derivative contract, the cash flow is "haircut" (i.e., reduced) by a specified percentage determined by the public rating of the investment or derivative counterparty and the year during the stress period in which the cash flow occurs, as described in section 3.6, Other Credit Factors, of this Appendix. The haircuts are applied to all investment cash flows at the instrument level. However, for investment-linked derivative contracts, the cash flows are added together (pay side and receive side) for all contracts with a given counterparty. The haircut is applied to the net cash owed by the counterparty in that month. If the Enterprise owes the counterparty money, then no haircut is applied.

3.9.4.4 Output

Interest and principal payments are produced for each instrument for the 120 months of the stress period. These cash flows are inputs to section 3.10, Operations, Taxes, and Accounting, of this Appendix.

3.10 Operations, Taxes, and Accounting

3.10.1 Overview

This component describes the procedures for creating pro forma balance sheets and income statements, determining short-term debt issuance and short-term investments, calculating operating expenses and taxes, and computing capital distributions. Input data include an Enterprise's balance sheet at the beginning of the stress period, interest rates, and the outputs from cash flow components of the stress test. The outputs of the procedures discussed in this section—120 monthly pro forma balance sheets and income statements—are the basis for the capital calculation described in section 3.12, Calculation of the Risk-Based Capital Requirement, of this Appendix.

3.10.2 Inputs

This component uses the data described in section 3.10.2.1, Enterprise Data, section 3.10.2.2, Interest Rates, and section 3.10.2.3, Outputs From Cash Flow Components of the Stress Test, to produce monthly pro forma balance sheets and income statements for the Enterprises.

3.10.2.1 Enterprise Data

[a] In addition to the starting position data described in the cash flow components, the Enterprises provide the dollar values for the following starting position balances:

- Amounts required to reconcile starting position balances from cash flow components of the stress test with an Enterprise's balance sheet (e.g., differences between actual and estimated loan prepayments during the last few days in the month)
- Cash
- Low income housing tax credit investments
- Unamortized balances of premiums, discounts, and fees from the acquisition of retained whole loans and retained mortgage-related securities at other than par value
- Allowances for loan losses
- Accrued interest receivable on retained whole loans, retained mortgage-backed securities, mortgage-linked derivatives, and nonmortgage investments
- Amounts receivable from index sinking fund debentures, currency swaps, fees, income taxes, and other accounts receivable
- Real estate owned
- Fixed assets
- Clearing accounts
- Unamortized premiums, discounts and fees related to debt securities
- Unamortized balances related to the sold portfolio
- Deferred balances related to liability-linked derivatives
- Accrued interest payable
- Principal and interest payable to mortgage security investors
- Other liabilities (e.g., payables from currency swaps, escrow deposits, and income taxes)
- Dividends payable
- Components of stockholder's equity (i.e., common stock, preferred stock, paid-in capital, retained earnings, treasury stock, and unrealized gains and losses on available-for-sale securities)

(b) Other data provided by the Enterprises include:

- Operating expenses for the quarter prior to the beginning of the stress test
- Earnings before income taxes and provision for income taxes for the three years prior to the beginning of the stress test
- Year-to-date income before taxes and provision for income taxes
- Dividend payout ratio for the four quarters prior to the beginning of the stress test
- Minimum capital requirement at the beginning of the stress test

3.10.2.2 Interest Rates

This component of the stress test requires the following interest rates generated by the Interest Rates component described in section 3.3, Interest Rates, of this Appendix:

- Six-month Federal agency cost of funds
- Six-month constant maturity Treasury yield

3.10.2.3 Outputs From Cash Flow Components of the Stress Test

This component of the stress test also requires monthly cash flows generated as described in section 3.9, Cash Flows, for:

- Whole Loans (section 3.9.1)
- Mortgage-Related Securities (section 3.9.2)
- Non-Mortgage Investment and Investment-Linked Derivative Contract Cash Flows (section 3.9.4)
- Debt and Related Cash Flows (section 3.9.3)

3.10.3 Procedures

The stress test calculates new debt and investments, dividends, allowances for loan losses, operating expenses, and income taxes. These calculations are both determined by and affect the pro forma balance sheets and income statements over the stress period.

3.10.3.1 New Debt and Investments

(a) The availability of cash in each month of the stress period determines whether cash is invested, or whether borrowings are required. The stress test calculates cash received and cash disbursed each month in order to determine the net availability of cash. The following describe the many "sources" and "uses" of cash.

1. Cash sources include:

- Cash at the beginning of the stress test
- Principal and interest payments from retained mortgages and retained mortgage-backed securities
- Principal and interest payments from non-mortgage investments (e.g., Federal funds sold, mortgage securities purchased under agreements to resell, commercial paper, eurodollar time deposits, asset-backed securities, U.S. Treasury securities, municipal obligations, auction-rate preferred stock)
- Amounts received from counterparties on derivative contracts
- Disposition of foreclosed property included in the balance sheet at the beginning of the stress test
- Amounts received from other assets and receivables included in the balance sheet at the beginning of the stress test (e.g., receivables from index sinking fund debentures and currency swaps, Federal income taxes refundable.)
- Guarantee fees
- Float income on principal and interest received on the sold portfolio
- Federal income tax refunds from net operating loss (NOL) carrybacks
- Recoveries on defaulted loans

2. Cash uses include:

- Repayment of principal to investors on debt instruments (as they mature or are called)
- Interest paid to investors on debt instruments
- Amounts paid to counterparties on derivative contracts
- Principal payments to investors (net of recoveries) due to mortgage defaults on loans in the sold portfolio
- Payments of miscellaneous liabilities included in the balance sheet at the beginning of the stress test, e.g., some accounts payable, escrow deposits, principal and interest due to mortgage security investors, and payables from currency swaps (Amounts recorded subsequent to the beginning of the stress period as principal and interest due mortgage securities investors do not affect the cash calculation for new debt and investments.)
- Operating expenses
- Income taxes
- Dividends on preferred and common stock

(b) During the stress period, the net cash position for each of the 120 months is calculated at the end of each month. Timing of sources and uses of cash within each month are ignored.

(c) At the end of any month in which the cash position is calculated to be negative, the stress test issues six month discount notes at the six month Federal Agency Cost of Funds rate, plus a 2.5 basis point issuance cost. When the cash position is positive, the stress test invests the Enterprise's excess cash in one month maturity assets at a rate equivalent to the six month Treasury yield. As a result, the cash position of an Enterprise is zero at the end of each month during the stress test.

3.10.3.2 Dividends

(a) The stress test determines quarterly whether to pay preferred and common dividends and, if so, how much based on the rules that follow.

1. Preferred Stock—An Enterprise will pay dividends on preferred stock as long as that Enterprise meets the estimated minimum capital requirement before and after the payment of these dividends. Preferred stock dividends are based on the coupon rates of the issues outstanding. The coupon rates for any issues of variable rate preferred stock are calculated using projections of the appropriate index rate.

2. Common Stock—In the first year of the stress test, dividends on common stock in all four quarters are based on the trend in earnings at that Enterprise. If earnings are positive and increasing, dividends are paid based on the same percent dividend payout as the average payout of the preceding four quarters. If earnings are not positive and increasing, dividends are paid based on the preceding quarter's dollar amount of dividends per share. Common stock dividends are stopped after four quarters of payouts, except they are cut off earlier if an Enterprise's capital falls below the minimum capital requirement.

3. No other net capital distributions are made, i.e., no repurchases of common stock or redemption of preferred stock occur during the stress test.

(b) The Enterprise's minimum capital requirement is computed by applying leverage ratios to all assets (2.50 percent) and off-balance sheet obligations (0.45 percent), and summing the results.

3.10.3.3 Allowances for Loan Losses and Other Charge-Offs

(a) The stress test calculates a tentative allowance for loan losses monthly by multiplying current month mortgage default losses [19] by twelve, thus annualizing current month mortgage default losses. If the tentative allowance for loan losses for the current period is greater than the balance from the prior month plus charge-offs for the current month, a provision (e.g., expense) is recorded. Otherwise, no provision is made and the allowance for loan losses is equal to the prior period amount less current month charge-offs.

(b) Other charge-offs result from "haircuts" related to mortgage revenue bonds, private-issue MBS, and non-mortgage investments, described in their respective cash flow components. These haircuts result in receipt of less than the amount of principal contractually due. This lost principal is charged-off when due and not received.

[19] Current month mortgage default losses include the sum of what the Enterprises classify as "provision for losses" and "foreclosed property expense." For both the retained and sold portfolios, this includes lost principal (net of recoveries from credit enhancements and disposition of the real estate collateral), and foreclosure, holding, and disposition costs.

3.10.3.4 Operating Expenses

The stress test calculates operating expenses, which include non-interest costs such as those related to an Enterprise's salaries and benefits, professional services, property, equipment and office. Over the stress period, operating expenses decline in proportion to the decline in the size of an Enterprise's mortgage portfolio (i.e., the sum of outstanding principal balances of its retained and sold mortgage portfolios). The stress test calculates the percentage of an Enterprise's mortgage portfolio at the start of the stress test that is remaining at the end of each month of the stress period. It then multiplies the percentage of assets remaining by one-third of the Enterprise's operating expenses in the quarter immediately preceding the start of the stress test. The resulting amount is an Enterprise's operating expense for a given month in the stress period.

3.10.3.5 Taxes

[a] Both Enterprises are subject to Federal income taxes, but neither is subject to state or local income taxes.

[b] The stress test applies an effective Federal income tax rate of 30 percent when calculating the monthly provision for income taxes (e.g., income tax expense). This tax rate is lower than the statutory rate because of tax exempt interest received, deductions for dividends received, and equity investments in affordable housing projects. OFHEO may change the 30 percent income tax rate if there are significant changes in Enterprise experience or changes in the statutory income tax rate.

[c] The stress test sets income tax expense for tax purposes equal to the provision for income taxes. The effects of timing differences between taxable income and generally accepted accounting principles (GAAP) income before income taxes are ignored. Therefore, Net Operating Loss (NOL) occurs only when the net income, before the provision for income taxes, is negative.

[d] Payments for estimated income taxes are made quarterly. At the end of each year, the annual estimated tax amount is compared to the annual actual tax amount. At that time, a payment of remaining taxes is made or a refund for overpayment of income taxes is received.

[e] A NOL for the current month is "carried back" to offset taxes in any or all of the preceding three calendar years. (The Enterprises' tax year is the same as the calendar year.) This offset of the prior years' taxes results in a negative provision for income taxes (e.g., income) for the current month. Use of a carry back reduces available carry backs in subsequent months. Any NOL remaining after carry backs are exhausted becomes a carry forward.

[f] Carry forwards represent NOLs that cannot be carried back to offset previous years' taxes, but can be used to offset taxes in any or all of the subsequent 15 years. Carry forwards accumulate until used, or until they expire 15 years after they are generated.

[g] Under the stress test, the Enterprises will not have a positive net income in future

years to utilize NOL carry forwards. A valuation adjustment is used to decrease the Federal income tax refundable to zero (e.g., the amount likely to be realized).

3.10.3.6 Accounting

[a] The 1992 Act specifies that total capital includes core capital and a general allowance for foreclosure losses. For the Enterprises, this general allowance is represented by general allowances for loan losses on their retained and sold mortgage portfolios. The 1992 Act further defines core capital as the sum of the following components of equity:

- The par or stated value of outstanding common stock
- The par or stated value of outstanding perpetual, noncumulative preferred stock
- Paid-in capital
- Retained earnings

[b] In order to determine the amount of total capital an Enterprise must hold to maintain positive total capital throughout the ten-year stress period, the stress test projects the above four components of equity plus general loss allowances as part of the monthly pro forma balance sheets and income statements.

[c] Details of an Enterprise's actual balance sheet at the beginning of the stress test are recorded from a combination of starting position balances for all instruments for which other components of the stress test calculates cash flows and other starting position balances for assets, liabilities, and equity accounts needed to complete an Enterprise's balance sheet.

[d] After recording an Enterprise's balance sheet at the beginning of the stress period, the stress test creates monthly pro forma balance sheets and income statements by recording output from the cash flow components of the stress test; recording new debt and investments (and related interest), dividends, loss allowances, operating expenses, and taxes; and applying accounting rules pertaining to balance sheets and pro forma income statements.

3.10.3.6.1 Accounting for Positions and Cash Flows From Cash Flow Components

Balances at the beginning of the stress test and subsequent changes to related pro forma balance sheet and income statement accounts are obtained from data generated by cash flow components of the stress test for the following:

1. Retained whole loan mortgage interest cash flows in the first month of the stress period reduce accrued interest receivable at the beginning of the stress test. Subsequent months interest cash flows are recorded as accrued interest receivable and interest income in the month prior to its receipt. When the interest cash flows are received, accrued interest receivable is reduced. Monthly principal cash flows (including prepayments and defaulted principal) are recorded as reductions in the outstanding balance of the loan group. Net losses on defaults are charged off against the allowance for loan losses. Recoveries are cash inflows.

2. Retained mortgage-backed security interest cash flows in the first month of the stress period reduce accrued interest receivable at the beginning of the stress test. Subsequent months interest cash flows are recorded as accrued interest receivable and interest income in the month prior to its receipt. When the interest cash flows are received, accrued interest receivable is reduced. Monthly principal cash flows (including prepayments) are recorded in the month received as a reduction in the outstanding balance of mortgage assets.

3. Mortgage revenue bond monthly interest cash flows in the first month of the stress period reduce accrued interest receivable at the beginning of the stress test. Subsequent months interest cash flows are recorded as accrued interest receivable and interest income in the month prior to its receipt. When the interest cash flows are received, accrued interest receivable is reduced. Monthly principal cash flows are recorded as reductions in the outstanding balance of mortgage assets. Defaulted principal is charged-off when due and not received.

4. Principal repayments from non-mortgage investments (e.g., Federal funds sold; mortgage securities purchased under agreements to resell; commercial paper; eurodollar time deposits; asset-backed securities; U.S. Treasury securities; municipal obligations, other than mortgage revenue bonds; and auction-rate preferred stock) reduce the investment and increase cash. Interest payments received increase cash and reduce accrued interest receivable. Accrued interest receivable includes both amounts at the beginning of the stress period and subsequent monthly accruals (also recorded as interest income).

5. Sold portfolio cash flows include monthly guarantee fees, float, and principal and interest due MBS investors. Guarantee fees are recorded as income in the month received. Principal and interest due mortgage security investors does not affect the balance sheet; however, interest earned on these amounts (float) is recorded as income in the month the underlying principal and interest payments are received. Principal payments received and defaulted loan balances reduce the outstanding balance of the sold portfolio. Losses (net of recoveries) are charged off against the allowance for losses on the sold portfolio (a liability on the pro forma balance sheets) and reduce cash.

6. For each debt instrument in the starting position, interest is accrued monthly. Accrued interest (representing both amounts as of the beginning of the stress period and subsequent monthly accruals) and principal debt due investors are reduced when cash payments are made.

7. Issuance of discount notes increases cash by the amount of the new debt, net of discounts and issuance costs. Interest expense is accrued monthly and paid at maturity when the discount note is retired at par. Discounts and issuance costs are amortized on a straight line basis over the life of the discount note, increasing interest expense.

8. The amortized balance (e.g., the face amount of the debt less the unamortized discount) of zero coupon debt is recorded in the starting position. The unamortized discount is amortized monthly using the level yield method over the debt's term to maturity and recorded as interest expense. At maturity, the face amount of the debt is paid to investors and the balance of debt is reduced.

3.10.3.6.2 Accounting for Other Changes in Starting Position Balances

Cash flows, income, and changes in the pro forma balances for other parts of the Enterprise's balance sheet are recorded as described below.

1. Unrealized gains (losses) on available-for-sale investments included in the balance sheet at the beginning of the stress test are recorded as income during the first month of the stress test. Recognition of unrealized gains increases earnings; recognition of unrealized losses decreases earnings.

2. Unamortized balances of premiums, discounts, and fees from the acquisition of retained loans and retained mortgage-backed securities at other than par value are a component of the balance sheet at the beginning of the stress test. Unamortized balances related to retained whole loans are amortized in proportion to the decline in the size of an Enterprise's retained portfolio. Unamortized balances related to REMICs and strips are amortized over their lives using the level yield method, calculated using cash flows generated from the cash flow component of the stress test. Amortizing deferred balances at the beginning of the stress test reduces the deferred amounts on the balance sheet by simultaneously increasing interest income by amortizing discounts and decreasing interest income by amortizing premiums.

3. Low income housing tax credit investments at the beginning of the stress test remain constant over the stress test. No earnings or expenses are directly recorded.

4. The following receivables at the beginning of the stress test are converted to cash in the first month of the stress test:

- Amounts receivable from index sinking fund debentures and currency swaps
- Other miscellaneous receivables (e.g., fees receivable and accounts receivable)
- Federal income taxes

5. Real estate owned at the beginning of the stress test is converted to cash on a straight-line basis over the first six months of the stress test.

6. Clearing accounts as of the beginning of the stress test are converted to cash on a straight-line basis over the first twelve months of the stress test.

7. Fixed assets at the beginning of the stress test remain constant over the stress test. Depreciation is included in the base on which operating expenses are calculated for each month during the stress period.

8. Unamortized premiums, discounts and fees related to debt securities at the beginning of the stress test are amortized on a level yield basis over the remaining term to contractual maturity of the debt. Specifically, unamortized amounts are grouped by term to maturity and coupon bucket for debentures, zero coupon instruments, and all other debt. Unamortized amounts are amortized on a level yield basis using weighted average maturities and weighted average coupons for each of these groups.

9. Deferred balances relating to liability-linked derivatives at the beginning of the stress test are amortized using the sum of years digits method over three years.

Amortizing deferred balances increases or decreases interest expense, as appropriate.

10. Principal and interest payable to an Enterprise's mortgage security investors at the beginning of the stress test are paid during the first two months of the stress test (one-half in month one and one-half in month two).

11. The following liabilities at the beginning of the stress test are paid in the first month of the stress test, reducing cash:

- Payables from currency swaps
- Escrow deposits

12. Unamortized balances related to the sold portfolio are amortized in proportion to the decline in the size of an Enterprise's sold portfolio.

3.10.3.6.3 Other Accounting Principles

Additional accounting principles that affect the pro forma balance sheets and income statements over the stress period are also applied.

1. All investment securities are treated as held to maturity. As such, they are recorded as assets at amortized cost, not at fair value.

2. Enterprise REIT subsidiaries are consolidated. Specifically, REIT assets are treated as Enterprise assets. Preferred stock of the REIT is reflected as Enterprise debt. Dividends paid on the preferred stock are reported as interest expense.

3. Dividends are declared and paid simultaneously.

4. Treasury stock is reflected as a reduction in retained earnings.

3.10.4 Output

For each month of the stress period, the stress test produces a pro forma balance sheet and income statement. These pro forma financial statements are the inputs for calculating capital.

3.11 Treatment of New Enterprise Activities

[a] Given rapid innovation in the financial services industry, OFHEO anticipates the Enterprises will become involved with new mortgage products, investments, debt and derivative instruments, and business activities that the stress test will have to accommodate. OFHEO will monitor the Enterprises' activities and, when appropriate, propose amendments to this regulation addressing the treatment of new instruments and activities. However, the regulation is sufficiently flexible and complete to address new Enterprise activities as they emerge.

[b] Credit and interest rate risk of new Enterprise activities and instruments will be reflected in the stress test by simulating their credit and cash flow characteristics using approaches described throughout this Appendix. Simulating new activities and instruments will require that the Enterprises provide complete data, and full explanations of their operation. To the extent that approaches described herein are not applicable directly, OFHEO will combine and adapt them in an appropriate manner. For example, the stress test might employ its mortgage performance components and adapt its cash flow components to accurately simulate the loss mitigating effects of credit derivatives. Where there is no reasonable approach using existing combinations or adaptations within the timeframe for computing a quarterly capital calculation, the stress test will employ an appropriately conservative treatment, consistent with OFHEO's role as a safety and soundness regulator. Such treatment will continue until such time as sufficient information is made available to justify an alternative treatment, which may be subsequently incorporated as a specific provision in this Appendix.

[c] Procedurally, the Enterprises are expected to notify OFHEO of proposals related to new products, investments or instruments before they are purchased or sold or as soon thereafter as possible, but in any event no later than in connection with submission of the risk-based capital report provided for in § 1750.12. OFHEO will provide the Enterprise with its estimate of the capital treatment as soon thereafter as possible. The Enterprise will also be notified of the capital treatment in accordance with the notice of proposed capital classification provided for in § 1750.21.

3.12 Calculation of the Risk-Based Capital Requirement

3.12.1 Overview

[a] The stress test determines the minimum amount of total capital that an Enterprise must hold at the start of the stress test in order to maintain positive total capital throughout the ten-year stress period. Once the stress test has determined this amount of starting capital, the final calculation in the regulation is the Calculation of the Risk-Based Capital Requirement.

[b] The first step in calculating the minimum amount of total capital is to compute the discounted present value (as of the start of the stress test) of the projected month-end total capital amounts for each month of the stress period for both interest rate scenarios. The second step is to identify the lowest of the resulting 240 monthly discounted values and subtract from it the capital amount required for "other" off-balance sheet guarantees. If the resulting net amount is positive, the Enterprise has more than enough capital to maintain positive capital during the stress period. If the resulting net amount is negative, the Enterprise's capital at the start of the stress test is not sufficient. The third step is to subtract this net amount from the capital the Enterprise holds at the start of the stress test. This step effectively subtracts the extra capital or adds the shortfall to obtain the minimum amount of capital that the Enterprise needs at the start of the stress test.

[c] The final step in the regulation is the calculation of the Enterprise's risk-based capital requirement. The risk-based capital requirement equals the adjusted capital amount times 1.3 to account for management and operations risk.

3.12.2 Inputs

[a] The above calculations use outputs from three components of the stress test to make the final two capital calculations. These components include section 3.3, Interest Rates; section 3.8, Other Off-Balance Sheet Guarantees; and section 3.10, Operations, Taxes, and Accounting, of this Appendix.

[b] For each month of the stress test, the following inputs are from pro forma financial statements projected by the Operations, Taxes, and Accounting component:

- Total capital (the par or stated value of outstanding common stock, the par or stated value of outstanding perpetual, noncumulative preferred stock, paid-in capital, retained earnings, and allowance for losses on retained and sold mortgages)
- Provision for income taxes (income tax expense)
- Valuation adjustment that reduces benefits recorded from net operating losses when no net operating loss tax carrybacks are available
- Discount notes (amount outstanding)

[c] For present-value calculations, the stress test uses either the six month Federal agency cost of funds or the six month Treasury yield generated by section 3.3, Interest Rates of this Appendix.

[d] The input for the capital amount for other off-balance sheet guarantees is obtained from section 3.8, Other Off-Balance Sheet Guarantees, of this Appendix.

3.12.3 Procedures

The following steps are used for determining the minimum total capital an Enterprise needs to maintain positive capital during the stress test and the risk-based capital requirement for the Enterprise.

1. Determine whether taxes are owed or tax refunds will be received. If the provision for income taxes is positive (reflecting taxes owed) or negative (reflecting tax refunds to be received), then the effective tax rate is 30 percent. If the provision for income taxes is zero (after valuation adjustments, implying that income is negative, but no net operating loss tax carrybacks are available), then the effective tax rate is zero.

2. Determine whether an Enterprise is an investor or a borrower in each month of the stress period. In months where an Enterprise has outstanding six-month discount notes that were issued during the stress test, then the Enterprise is a borrower. Otherwise, the Enterprise is an investor.

3. Determine the appropriate monthly discount factor for each month of the stress period. In months where an Enterprise is an investor, the monthly discount factor is based on the yield of short-term assets:

$$\text{Monthly Discount Factor} = \left[1 + \frac{(1 - \text{Effective Tax Rate}) \times \text{6-month Treasury yield}}{2}\right]^{1/6}$$

In months where an Enterprise is a borrower, the monthly discount factor is based on the cost of the Enterprises' short-term debt:

$$\text{Monthly Discount Factor} = \left[\frac{1+\left[(1-\text{Effective Tax Rate})\times\left(\frac{\text{6-month Federal Agency cost of funds}}{2}\right)\right]}{1-\left[(1-\text{Effective Tax Rate})\times 0.00025\right]}\right]^{1/6}$$

where:

.00025 is the factor that incorporates the issuance and administrative costs for an Enterprise's new discount notes.

4. Compute the cumulative discount factor for the total capital amount for each month in the stress period—The cumulative discount factor for a given month of the stress period is the monthly discount factor for that month multiplied by the cumulative discount factor for the preceding month. (The cumulative discount factor for the first month of the stress period is the monthly discount factor for that month.) Thus, the cumulative discount factor for any month incorporates all of the previous monthly discount factors.

5. Compute discounted total capital for each month of the stress period for both interest rate scenarios. Divide the total capital for a given month by the cumulative discount factor for that month.

6. Compute the amount of capital necessary to maintain positive capital throughout the stress period. Identify the lowest discounted total capital amount from among the 240 monthly discounted total capital amounts. Subtract the capital required for "other" off-balance sheet guarantees as calculated in section 3.8, Other Off-Balance Sheet Guarantees, component of the stress test from the lowest discounted amount. Then subtract the resulting difference from the Enterprise's total capital at the start of the stress period. This subtraction effectively reduces the starting capital amount by any extra capital that remains at the end of the stress period or increases starting capital by any shortfall. The resulting number is the starting capital amount that the Enterprise must hold in order to maintain positive total capital throughout the stress period.

7. Compute the risk-based capital requirement. Multiply the capital amount calculated in Step 6, by 1.3 for management and operations risk.

3.12.4 Output

The output of the above calculations is the risk-based capital requirement for an Enterprise at the start date of the stress test.

5. Add new subpart C to read as follows:

Subpart C—Capital Classification

Sec.
1750.20 Definitions.
1750.21 Notice of capital classification.

Subpart C—Capital Classification

§ 1750.20 Definitions

All of the terms defined at § 1750.2 shall have the same meaning for purposes of this subpart C.

§ 1750.21 Notice of capital classification

(a) Pursuant to section 1364 of the 1992 Act (12 U.S.C. 4614), OFHEO is required to determine the capital classification of each Enterprise on a not less than quarterly basis.

(b) The determination of the capital classification shall be made following a notice to, and opportunity to respond by, the Enterprise.

(1) Not later than 60 calendar days after the date for which the minimum capital report required by § 1750.3 and the risk-based capital report required by § 1750.12 are filed, OFHEO will provide each Enterprise with a notice of proposed capital classification. The notice shall contain the following information:

(i) The proposed capital classification;

(ii) The proposed minimum capital requirement;

(iii) The summary computation of the proposed minimum capital requirement;

(iv) The proposed risk-based capital level; and

(v) The summary computation of the proposed risk-based capital level.

(2) Each Enterprise shall have a period of 30 calendar days following receipt of a notice of proposed capital classification to submit a response regarding the proposed capital classification. The response period may be extended for up to 30 additional calendar days at the sole discretion of the Director. The Director may shorten the response period with the consent of the Enterprise, or without such consent if the Director determines that the condition of the Enterprise requires a shorter period.

(3) The Director shall take into consideration any response to the notice of proposed capital classification received from the Enterprise and shall issue a notice of final capital classification for each Enterprise not later than 30 calendar days following the end of the response period.

(c) From [insert date of publication of the final rule in the **Federal Register**] until [insert date twelve months after date of publication of the final rule in the **Federal Register**], the Director shall determine the capital classification of the Enterprise, based solely on the proposed minimum capital requirement.

Dated: April 5, 1999.

Mark A. Kinsey,

Acting Director, Office of Federal Housing Enterprise Oversight.

[FR Doc. 99–8808 Filed 4–12–99; 8:45 am]

BILLING CODE 4220–01–P

federal register

Tuesday
April 13, 1999

Part III

Department of Transportation

Federal Aviation Administration

14 CFR Parts 65, 91, 105, and 119
Parachute Operations; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 65, 91, 105, 119

[Docket No. FAA–1999–5483; Notice No. 99–03]

RIN 2120–AG52

Parachute Operations

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend the regulations applicable to parachute operations. The FAA proposes to define several new terms, to provide definitions for terms previously not defined, to clarify the current regulations, and to require that parachute operations be coordinated with the air traffic control facility having jurisdiction over the airspace in which the operations will be conducted. This action also proposes regulations to permit tandem parachute operations and allow non-U.S. certificated parachutists visiting from other countries to use equipment manufactured and packed in a foreign country when parachuting in the United States. In addition, the FAA proposes to remove the static-line assist device requirements for ram-air parachutes, and to add an accident reporting requirement. The FAA is proposing this action to enhance the safety of parachute operations in the National Airspace System (NAS).

DATES: Comments must be received on or before July 12, 1999.

ADDRESSES: Comments on this proposed rulemaking should be mailed or delivered, in duplicate, to the U.S. Department of Transportation (DOT) Dockets, Docket No. FAA–99-5483, 400 Seventh Street SW., Room Plaza 401, Washington, DC 20590. Comments also may be sent electronically to the following Internet address: 9–NPRM–CMTS@faa.gov. Comments may be filed and examined in Room Plaza 401 between 10:00 a.m. and 5:00 p.m. weekdays except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Ellen Crum, Airspace and Rules Division, ATA–400, Air Traffic Airspace Management Program, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591, telephone (202) 267–8783; or Randy Montgomery, Flight Standards Service Division, AFS–340, General Aviation and Commercial Branch, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591, telephone (202) 267–3155.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Comments relating to the environmental, energy, federalism, or economic impact that might result from adopting the proposals in this notice also are invited. Substantive comments should be accompanied by cost estimates. Comments must identify the regulatory docket or notice number and be submitted in duplicate to the Rules Docket address specified above.

All comments received, as well as a report summarizing each substantive public contact with FAA personnel on this rulemaking, will be filed in the docket. The docket is available for public inspection before and after the close of the comment period.

All comments received on or before the closing date will be considered by the Administrator before taking action on this proposed rulemaking. Late-filed comments will be considered to the extent practicable. The proposals contained in this notice may be changed in light of the comments received.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must include a pre-addressed, stamped postcard with those comments on which the following statement is made: "Comments to Docket No. FAA–1999–5483." The postcard will be date stamped and mailed to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–9680. Communications must identify the notice number or docket number of this NPRM.

Using a modem and suitable communications software, an electronic copy of this document may be downloaded from the FAA regulations section of the FedWorld electronic bulletin board service (telephone: (703) 321–3339) or the **Federal Register**'s electronic bulletin board service (telephone: (202) 512–1661).

Internet users may reach the FAA's web page at http://www.faa.gov or the **Federal Register**'s web page at http://www.access.gpo.gov/su__docs for access to recently published rulemaking documents.

Persons interested in being placed on the mailing list for future NPRMs should request from the above office a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

Background

In 1991, the FAA reviewed part 105 and determined that revisions are necessary based on changes in the parachute industry and in parachute equipment since the rule was published in 1962. The changes in this proposed rule include: regulations to reflect current airspace reclassification, additional air traffic control communication requirements, improved parachute design, changes in industry practices, and clarification of existing regulations. The FAA believes that implementation of these changes would result in improved safety for parachute operations and other users of the NAS.

Discussion of the Proposal

Terminology

Part 105 currently is titled, "Parachute Jumping," and prescribes rules applicable to "parachute jumps." The FAA proposes to retitle part 105 "Parachute Operations" since this title better describes activities addressed by this part.

The FAA proposes to include a "definitions" section that would be numbered section 105.3. The definitions section would address three categories of terms: those that are used in the current part 105 but not defined, those terms previously defined but in need of further clarification, and those terms new to part 105.

There are several terms used in the current part 105, which are not defined, but are defined in this proposed rule. A definition for "main parachute" is provided to distinguish between it and the "reserve parachute." A definition for the term "pilot chute" is also proposed, which is defined as that part of a parachute system that initiates or accelerates the deployment of a parachute. Another term used in the current regulation but not defined is "drop zone." A "drop zone" would be defined as any predetermined area upon which parachutists or objects land after making an intentional parachute jump or drop.

In addition, part 105 contains terms that are defined but require further clarification. To distinguish between a "parachute jump" and a "parachute drop," the FAA proposes to define

"parachute jump" as a parachute operation that involves a person or persons, and "parachute drop" as a parachute operation that involves an object.

The term "reserve parachute" would replace the term "auxiliary parachute." A "reserve parachute" would be defined as an approved parachute worn for emergency use, activated only upon failure of the main parachute, or in any other emergency where use of the main parachute is impractical or would increase the risk of injury.

The FAA proposes to add new terms to part 105 as a result of changes in the parachute industry. The term "parachutist" would be included in the definition section and defined as a person who boards an aircraft with the intent to use a single-harness dual parachute system to descend to the surface.

The FAA also proposes to define the term "foreign parachutist." A foreign parachutist is a parachutist that is neither a U.S. citizen nor a resident alien.

The term "parachute operation" would be added and defined as any activity involving the use of a parachute for a controlled descent to the surface.

The FAA proposes to permit tandem parachute operations in the revised part 105. Currently, tandem parachute operations are permitted only by exemption and under certain conditions. This proposal includes the definitions of four new terms related to tandem parachutes and tandem parachute operations. These terms are "parachutist in command," "passenger parachutist," "tandem parachute operation," and "tandem parachute system." A "parachutist in command" is the person responsible for the operation and safety of a tandem parachute operation before, during, and after a tandem parachute operation. The term "passenger parachutist" means a person who boards an aircraft, acting as other than the parachutist in command of a tandem parachute operation with the intent of exiting the aircraft while in flight using the forward harness of a dual harness tandem parachute system to descend to the surface. A "tandem parachute operation" is defined as a parachute operation in which more than one person uses the same tandem parachute system while descending to the surface from an aircraft in flight. A "tandem parachute system" is the combination of a main parachute, approved reserve parachute, an approved harness and dual parachute container, and a separate approved forward harness for a passenger parachutist.

To facilitate the proposed accident reporting requirements, the FAA proposes to add the terms "serious injury" and "fatal injury." The FAA proposes to use the same definitions for these two terms as used by the National Transportation Safety Board (NTSB). A "serious injury" means any injury that requires hospitalization for more than 48 hours, commencing within 7 days from the date the injury was received; results in a fracture of any bone (except simple fractures of fingers, toes, or the nose); causes severe hemorrhages, or nerve, muscle, or tendon damage; or involves any internal organ. A "fatal injury" means any parachuting injury that results in death within 30 days from the date of the injury.

The FAA also proposes to add the term "supervision" in describing a certificated parachute rigger's responsibilities when a parachute is packed by a non-certificated person. The scope of supervision of a non-certificated person would be similar to the supervision requirements stated in 14 CFR § 43.3(d), which states that a "supervisor personally observes the work being done to the extent necessary to ensure that it is being done properly and if the supervisor is readily available, in person, for consultation."

The FAA proposes to add and define the term "ram air parachute". When the current part 105 was issued, the parachutes in use were round. Since then, ram air parachutes, which are square or rectangular in shape, have been developed and are commonly used in the parachuting industry. Present regulations, which address round parachutes, do not address the unique operational characteristics of ram air parachutes, such as the steering capability. The addition of a definition for ram air parachutes incorporates the use of ram air parachutes in the current part 105.

The term "approved parachute" is currently used in the regulations and its definition has been included in this proposal.

Radio Communications

Currently, section 105.14(a)(1)(ii) requires that an aircraft used for conducting parachute operations establish radio communications with the nearest FAA air traffic control facility or FAA flight service station at least 5 minutes before the jumping activity is to begin. The FAA proposes to change this communication requirement to require that radio communication be established with the air traffic control facility having jurisdiction over the airspace in which the parachute operation is conducted.

This proposal arises from the results of a FAA review of a selection of Aviation Safety Reporting (ASR) System reports filed with the National Aeronautics and Space Administration (NASA) between February 1992 and November, 1998. The FAA studied numerous ASR reports, in which pilots reported near midair collisions between their aircraft and aircraft involved in parachute operations. In addition, other reports involved aircraft flying in close proximity to parachutists who were descending to the ground near an airport or within controlled airspace.

The ASR reports are submitted voluntarily. According to NASA, the existence of reports concerning a specific topic in the ASRS database cannot, therefore, be used to infer the prevalence of that problem within the National Airspace System. However, these reports are often used by the FAA to provide further background information and insight into safety issues that are already being addressed by the FAA.

The ASR reports relate numerous incidents where aircraft on instrument flight plans were not provided with traffic advisories of parachute operations along their route of flight. In some cases, the air traffic controller was not in communication with the aircraft involved in parachute operations, and in other cases, not even aware the parachute activity was taking place. This proposal will ensure that aircraft involved in parachute operations are in communication with the appropriate ATC facility, thereby facilitating the exchange of traffic advisories, and reducing the risk of midair collisions between aircraft and persons conducting parachute operations.

In addition to enhancing safety, the proposed radio communication requirements would conform to annex 2 of the International Aviation Organization (ICAO), "Rules of the Air," chapter 3.1.6, "Parachute Descents." This annex states, "parachute descents, other than emergency descents, shall not be made except under conditions prescribed by the appropriate authority and as indicated by relevant information, advice and/or clearance from the appropriate air traffic services unit."

Reporting and Notification Requirements

The FAA proposes to amend the reporting and notification requirements for individuals conducting parachute operations. Sections 105.19 and 105.23(a) respectively state that a parachute jump may not be made in certain designated airspace unless an

authorization is obtained from, or notification is given to, the nearest FAA air traffic control facility (ATC) or FAA flight service station (FSS), as appropriate. Section 105.25(b) also requires that these facilities be notified if the parachute jumping activity is canceled or postponed.

Under the proposed rule, the air traffic control facility having jurisdiction over the affected airspace would be notified before conducting the parachute operation; notification to FAA flight service stations would no longer be required. The FAA believes that it is appropriate for facilities that have jurisdiction over the airspace in which the operations are taking place to be notified because flight service stations are not responsible for the separation of aircraft. Under the proposed rule, the facility receiving notification of parachute activity would be responsible for advising the FSS in order to disseminate this information to users of the NAS. The FAA believes that this requirement would encourage a dialogue between those engaged in parachute operations and ATC, particularly at locations where parachute operations could potentially interfere with air traffic operations. The current provision that a pilot obtain prior approval from airport management to conduct parachute operations over or onto that airport remains unchanged.

This NPRM also includes a provision under proposed section 105.15 that each person submitting notification under 105.25(a)(3) specify the radio frequencies appropriate to the facilities to be used during the parachute operation, rather than the radio frequencies available in the aircraft.

Another proposed change to the notification procedures concerns air traffic control towers that are not operated by the U.S. Government (hereafter "non-federal tower"). The current section 105.17 permits parachute operations to be conducted at airports that have an operating, non-federal tower without prior coordination with that facility. The FAA has determined that to improve safety, pilots of aircraft conducting parachute operations should be required to contact the air traffic control tower having jurisdiction over the area where parachute operations will be conducted, regardless of who is responsible for tower operations. Therefore, the FAA proposes to require that pilots of aircraft conducting parachute operations over or onto an airport with an operating air traffic control tower establish and maintain two-way radio communication with, and obtain approval from, the air traffic control tower before conducting parachute operations at that airport.

Parachute Packing

The FAA proposes to amend the regulations governing who is permitted to pack a parachute. Sections 65.111(b) and 105.43(a)(1) state that only a certificated parachute rigger or the person intending to jump using the parachute is authorized to pack a main parachute. Conversely, section 65.125 permits a current certificated senior or master parachute rigger (hereafter referred to as "certificated parachute rigger") to supervise other persons in packing any type of parachute for which that certificated parachute rigger is rated.

As a result of the inconsistency between the above sections of the regulations, the parachute industry has adopted a practice in which a certificated rigger regularly supervises other non-certificated persons packing main parachutes. This practice has become so widespread that an informal distinction between a "paid packer" and "rigger" exists, with the latter referring to a certificated rigger. The FAA has found that permitting a non-certificated person to pack a main parachute while supervised by a certificated rigger does not compromise safety. Therefore, for purposes of consistency, the FAA proposes to include provisions in sections 105.43(a) and 105.45(b)(1) to allow non-certificated persons to pack main parachutes when supervised by a certificated rigger.

The FAA proposes to clarify the meaning of the term "supervision," since there has been some industry confusion as to what constitutes appropriate supervision. Section 65.125 currently permits a certificated parachute rigger to supervise the packing of a parachute. In the proposed regulation, a certificated rigger must personally observe the entire packing process of the main parachute to ensure that it is being done properly by a non-certificated person who is not the holder of a parachute-rigging certificate. The certificated parachute rigger should be available for immediate consultation while the non-certificated parachute rigger is packing the main parachute. The certificated parachute rigger also should inspect the main parachute being packed, as necessary, through, and upon completion of the packing process. The only exception to this proposal would be if the person packing the main parachute is the parachutist in command and is making the next parachute jump with that parachute. These same requirements are proposed to apply to the packing of a tandem main parachute and will be discussed further.

Parachute Operations Between Sunset and Sunrise

The FAA proposes an addition to the current § 105.33 requirement that a parachutist must display a light, visible for 3 statute miles, from the time he or she exits the aircraft. The proposal also would require that a light be displayed that is visible for 3 statute miles in all directions. The FAA also proposes that any object that is part of a parachute drop display a light visible for 3 statute miles in all directions from the time the object leaves the aircraft. This proposed requirement would conform to annex 2 of the ICAO "Rules of the Air," chapter 3.1.6, "Parachute Descents."

Accident Reporting Requirements

Presently, parachutists are not required to notify the FAA when involved in a parachuting accident. The majority of the information that the FAA has on parachute operations accidents is generally obtained as a result of a condition set forth in the grant of an exemption permitting tandem parachute operations. The National Transportation Safety Board (NTSB) has recommended that the FAA begin collecting information on parachute operations accidents. As a result of these recommendations, the FAA has decided to improve its existing accident database, which requires improving the collection process for this data. Once collected, this data would be used to assess the safety of parachute operations and prevent future accidents.

Consequently, the FAA is proposing that the parachutist involved in the accident, the pilot of the aircraft, or the drop zone owner or operator be required to notify the FAA of any serious or fatal injury to a parachutist while conducting a parachute operation.

Tandem Parachute Operations

When part 105 was originally issued, civilian parachute operations were limited to the use of a single-harness, dual-parachute pack. Since then, the parachute industry has developed new dual harness systems that support two people under a single parachute. Because part 105 allows parachute operations with single-harness parachutes only, the use of parachute equipment capable of supporting two people has only been authorized by exemption. For purposes of the exemptions, the FAA and the parachuting industry have adopted the term "tandem" to describe those parachute operations that use a dual-harness, dual-parachute system.

The first exemption authorizing tandem parachute operations in the United States was granted by the FAA in 1984. Since then, more than 2.5 million experimental tandem parachute jumps have been conducted throughout the world, including those operations conducted under exemption authority in the United States. Under the exemptions, various companies conducting tandem parachute operations were required to furnish the FAA with accident statistics on tandem operations, which provided the FAA with the means to evaluate the safety of tandem equipment compared to the safety of equipment and operations currently permitted under part 105.

In July 1997, the United States Parachute Association (USPA) submitted a petition for rulemaking requesting that the FAA amend section 105.43 to permit tandem parachute operations using an FAA-approved, dual-harness dual-parachute system capable of supporting two parachutists under a single canopy. While considering the USPA petition, the FAA reviewed accident statistics from 1991 through 1996. During this time period, approximately 16,990,000 total parachute operations were conducted, 670,707 of which were conducted using tandem parachutes. Of the total parachute operations, 194 resulted in fatalities due to equipment failure, 8 of which involved the use of tandem parachutes. The overall fatality rate for first-time skydivers involved in single-harness operations is 2.7 fatalities per 100,000 jumps. The overall fatality rate for first-time skydivers involved in tandem operations is lower, 1.2 fatalities per 100,000 jumps.

Based on the relatively low rate of fatalities that occurred during tandem operations as compared to those that occurred during single harness operations, the FAA has determined that the companies conducting experimental tandem parachute operations under an exemption from part 105 have demonstrated that tandem operations can be conducted safely. Accordingly, the FAA has concluded that tandem parachute operations should be permitted and it proposes to add section 105.45 to allow tandem parachute operations.

The proposed section 105.45 would permit tandem parachute operations under terms similar to the conditions and limitations previously contained in the exemption issued to experimental tandem parachute operators, which include: (1) Requirements for instructor experience; (2) passenger briefings before boarding the aircraft used in the parachute operation; and (3) equipment inspection and packing. The FAA proposes to use the terms "passenger parachutist" and "parachutist in command" to replace "student" and "instructor," respectively, as used in the exemptions. In addition, the notification requirements for tandem parachute operations would be included in the general notification requirements of proposed section 105.13.

Specifically, the FAA proposes that the parachutist in command of a tandem parachute operation must provide documentation that the parachutist: (1) Has a minimum of three years experience in parachuting; (2) has completed a minimum of 500 freefall parachute jumps, at least 300 of which were completed using a ram-air parachute; (3) holds an expert parachute license issued by an organization recognized by the FAA; (4) has successfully completed a tandem instructor course given by the manufacturer of the tandem equipment used in the parachute operation or a course acceptable to the Administrator; and (5) has been certified by the appropriate parachute manufacturer or tandem course provider as being properly trained on the use of the specific tandem parachute system to be used.

Additionally, the parachutist in command would be required to conduct briefings on tandem parachute operations for passenger parachutists before each flight and use the harness position prescribed by the manufacturer of the tandem parachute equipment.

Lastly, the FAA proposes to require that a certificated rigger supervise individuals packing parachutes to be used in tandem parachute operations, unless the person packing the parachute is the parachutist in command conducting the next parachute jump with that parachute in accordance with the proposed section 105.45.

Static-Line Assist Devices

The USPA submitted a second petition for rulemaking in July 1997 requesting that the FAA amend section 105.43 to permit parachute operations using static-line, direct-deployed, ram-air parachutes without using a static-line assist device.

Skydiving schools and parachute manufacturers have been concerned that a direct deployment assist device could cause canopy damage and malfunctions. Due to this concern, the USPA Safety & Training Committee and the Parachute Industry Association Technical Committee, conducted a series of tests to determine the effect of the required device in 1989. The tests showed that an assist device does not improve the reliability of the static line direct deployment of a ram-air canopy. The tests also show that there are no adverse effects when the device is removed. As a result of these tests, the FAA believes that safety would not be compromised by removing the static-line assist device requirements for ram-air parachutes.

Equipment and Packing Requirements for Foreign Parachutists

The USPA submitted a third petition for rulemaking in July 1997 requesting that the FAA amend section 105.43 to allow foreign parachutists to make parachute jumps in the United States using their own equipment.

Section 105.43(a) currently states that no person may make a parachute jump wearing a single-harness, dual-parachute pack having at least one main parachute and one approved reserve parachute, unless the main parachute is packed by a certificated parachute rigger or by the person making the jump, within 120 days before the date of its use, and that the reserve parachute is packed by a U.S. certificated and appropriately rated parachute rigger. The requirements of section 105.43(a) were adopted to protect parachutists from inadequate equipment at a time when the sport parachute industry was in its infancy. Part 105 does not except foreign parachutists from the requirements imposed by section 105.43(a). Therefore, foreign parachutists making parachute jumps in the United States with their own equipment are still required to have an approved reserve parachute, approved harness and dual-parachute container and have that reserve parachute packed by a U.S. certificated and appropriately rated parachute rigger.

As a result of this requirement, experienced foreign parachutists must have an exemption from section 105.43(a) in order to use their own parachute equipment while conducting parachute operations in the United States. Since 1972, the FAA has issued these exemptions to organizations sponsoring parachuting events attended by foreign parachutists and has found operations conducted under these exemptions have been conducted safely. Additionally, the FAA recognizes that the parachute equipment industry has become more sophisticated and safety conscious, and that foreign manufacturers of parachute equipment often meet U.S. standards. Therefore, the FAA proposes to add a new section 105.49 to address foreign parachutist equipment and parachute operations.

This proposed section incorporates the terms and conditions set forth in the grant of exemptions to allow these

parachute jumps. The FAA proposes to permit foreign parachutists to conduct jumps in the U.S. using their own equipment provided that they use single-harness, dual-parachute systems which contain a non-Technical Standard Order (TSO) reserve parachute or a non-TSO'd harness and container. The parachute system used by the foreign parachutist must also meet the civil aviation authority requirements of the foreign parachutist's country, and must be packed by the foreign parachutist making the next parachute jump with that parachute, or a U.S. certificated parachute rigger. These proposed requirements would conform to annex 2 of the ICAO, "Rules of the Air," chapter 3.1.6, "Parachute Descents."

Changes to Other Parts of 14 CFR

To conform the proposed rule language with the language of other pertinent parts of 14 CFR, the FAA proposes to amend sections of parts 65, 91, and 119 applicable to parachute operations.

Section-by-Section Discussion of the Proposals

The FAA has proposed several organizational changes to part 105. These changes are intended to organize the sections in a manner that first prescribes requirements that apply to most or all parachute operations, followed by sections that prescribe requirements for a specific type of parachute operation. A cross-reference table has been included to illustrate the proposed reorganization of part 105.

Section 65.111 Certificate Required

Currently, section 65.111(a) states that no person may pack, maintain, or alter any personnel-carrying parachute intended for emergency use in connection with civil aircraft of the United States (including the reserve parachute of a dual parachute system to be used for intentional parachute jumping) unless he holds an appropriate current certificate and type rating issued under this subpart and complies with sections 65.127 through 65.133. The FAA proposes to revise paragraph (a) to change the word "auxiliary" to "reserve" and the reference to "he" to "that person."

Currently, section 65.111(b) states that no person may pack any main parachute of a dual-parachute pack unless that person has an appropriate current certificate or is the person making the jump using that parachute.

The FAA proposes to revise paragraph (b) to allow persons to pack a main parachute in accordance with section 105.43(a), under the supervision of a certificated parachute rigger or to allow a parachutist in command to pack a main parachute for tandem parachute operations in accordance with section 105.45(b)(1). The FAA proposes a word change to the provision that a person may pack a main parachute if that person intends to make the next parachute jump using that parachute.

Section 65.125 Certificates: Privileges

The current section 65.125 permits a certificated parachute rigger to supervise other persons in the packing of any type of parachute for which the certificated parachute rigger is rated.

The FAA proposes to revise paragraphs 65.125(a)(2) and 65.125(b)(2) to permit that a certificated parachute rigger supervise other persons packing parachutes in accordance with section 105.43(a) or section 105.45(b)(1).

Section 91.307 Parachutes and Parachuting

The FAA proposes to revise paragraph (b) of this section by replacing "make" with "conduct," and "parachute jump" with "parachute operation." The term parachute operation includes parachute jump and parachute drop.

Section 105.1 Applicability

This proposed section combines the requirements of current sections 105.1 General, Applicability and 105.11, Operating Rules, Applicability. There are no substantive changes in this section. The proposed section 105.1 prescribes rules governing parachute operations in the U.S. This part does not apply to parachute operations conducted during an in flight emergency or to meet an emergency on the surface when conducted at the direction or with the approval of an agency of the U.S., State, Puerto Rico, District of Columbia, possession of the U.S. or an agency or political subdivision thereof. This section retains the provision for excluding parachute operations by a member of an Armed Force from other sections of part 105 when the parachute operation is within a restricted area under the control of the Armed Force or during military operations in uncontrolled airspace.

Section 105.3 Definitions

This proposed section would define the terms "approved parachute," "automatic activation device," " drop zone," "fatal injury," "foreign parachutist," "freefall," "main parachute," "object," "parachute drop," "parachute jump," "parachute operation," "parachutist," "parachutist in command," "passenger parachutist," "pilot chute," "ram-air parachute," "reserve parachute," "serious injury," "single-harness, dual-parachute system," "supervision," "tandem parachute operation," and "tandem parachute system."

Section 105.5 General

This proposed section is based on current section 105.13. The FAA proposes to replace the term "make" with the phrase "to conduct," the term "parachute jump" with the term "parachute operation," the term "made" with the term "conducted," and the term "jump" with the term "operation." There are no substantive changes to this section.

Section 105.7 Use of Alcohol and Drugs

This proposed section is based on current section 105.35. The proposed rule would replace the term "liquor" with the term "alcohol" because alcohol is a more general term that includes liquor. The intent of the rule is to prevent a person under the influence of alcohol from conducting parachute operations.

Section 105.9 Inspections

This proposed section includes requirements currently found in section 105.37 with no substantive changes.

Section 105.13 Radio Equipment and Use Requirements

This section is based on current section 105.14. As previously discussed, the FAA proposes to require radio communications between the pilot of an aircraft involved in parachute operations in controlled airspace and the air traffic control facility having jurisdiction over the affected airspace.

Section 105.15 Information Required and Notice of Cancellation or Postponement of a Parachute Operation

This proposed section is based on the current sections 105.15(c) and 105.25. Proposed paragraph (a)(8) of this section would require that each person requesting authorization under sections 105.21(b) and 105.25(a)(2) and each person submitting notification under section 105.25(a)(3) to specify the radio frequencies appropriate to the facilities to be used during the parachute operation, rather than the radio frequencies available in the aircraft. Proposed paragraph (b) retains the current requirement that each holder of a certificate of authorization issued under sections 105.21(b) and 105.25(b) of this part must present that certificate for inspection upon the request of the Administrator or any Federal, State, or

local official. Proposed paragraph (c) would require the pilot in command of an aircraft involved in parachute operations to promptly notify the air traffic control facility having jurisdiction over the affected airspace if the proposed or scheduled parachute operation is canceled or postponed.

Section 105.17 Flight Visibility and Clearance From Cloud Requirements

This proposed section contains the flight visibility and clearance from cloud requirements currently found in section 105.29. No changes are proposed to the current requirements.

Section 105.19 Parachute Operations Between Sunset and Sunrise

Currently, section 105.33 requires persons making parachute jumps between sunset and sunrise to be equipped with a light that is displayed and visible for 3 miles from the time that person exits the aircraft until that person reaches the surface. Proposed section 105.19 would add to the above provision that the displayed light must be visible for 3 statute miles in all directions.

This proposed section would also allow objects equipped with a light to descend from an aircraft in flight between sunset and sunrise. Each object that is dropped from an aircraft must display a light that is visible for 3 statute miles in all directions from the time the object is dropped from the aircraft until the object reaches the surface.

Section 105.21 Parachute Operations Over or Into a Congested area or an Open Air Assembly of Persons

This proposed section contains provisions currently found in section 105.15 and contains one change. The FAA proposes to remove the 4-day requirement to apply for a certificate of authorization since the administrative time necessary to process such requests has been reduced.

Section 105.23 Parachute Operations Over or Onto Airports

This proposed section is based on the current section 105.17. As previously discussed, for airports with an operating control tower, proposed paragraph (a) of this section would require: (1) prior approval from both the airport management and the control tower to conduct parachute operations over or onto the airport; and (2) pilots of aircraft involved in parachute operations over or onto an airport with an operating airport traffic control tower (hereafter referred to as "control tower") to establish two-way radio communication with the control tower regardless of whether the control tower is operated by the United States or another entity.

For airports without a control tower, the proposed rule would retain the requirement that pilots of aircraft involved in parachute operations obtain prior approval from management of the airport to conduct parachute operations over or onto that airport.

Proposed section 105.23 would retain the provision currently found in section 105.17 which allows a parachutist to drift 2,000 feet above an airport's traffic pattern with a fully deployed and properly functioning parachute.

Section 105.25 Parachute Operations in Designated Airspace

This proposed section contains provisions currently found in sections 105.19, 105.23, and 105.27. Proposed paragraph (a)(1) would retain the provisions currently in section 105.27 for parachute operations in restricted or prohibited airspace. Proposed paragraph (a)(2) of this section addresses parachute operations in Class A, B, C, and D airspace areas, which are found currently in section 105.19. Proposed paragraph (a)(3) of this section is based on current section 105.23 and would use the Class E and G airspace area designations instead of the phrase "other airspace" as currently used in section 105.23. There are no substantive changes to this section.

Section 105.27 Accident Reporting Requirements

This section would require the parachutist, the pilot of the aircraft, or the drop zone owner or operator to notify the FAA within 48 hours of any parachute operation resulting in a serious or fatal injury to the parachutist.

Section 105.41 Applicability

This section has been amended to read, "this subpart prescribes rules governing parachute equipment used in civil parachute operations."

Section 105.43 Use of Single-Harness, Dual-Parachute Systems

This proposed section is based on current section 105.43(a) and proposes one change. This section currently provides that only a certificated parachute rigger, or the person making the parachute jump with that parachute, may pack a main parachute. The FAA proposes that a main parachute also may be packed by a person under the direct supervision of a certificated parachute rigger.

Section 105.45 Use of Tandem Parachute Systems

This proposed section provides for tandem parachute operations, and would incorporate the conditions and limitations, with some modification, set forth in the grants of exemption issued to experimental tandem parachute operators. These conditions and limitations include instructor experience requirements, briefings for passenger parachutists, equipment inspections, and packing requirements. Because the FAA no longer refers to passenger parachutists as students, those persons would be referred to as "passenger parachutists," and tandem instructors would be referred to as "parachutists in command."

In addition, the FAA proposes that a certificated parachute rigger supervise persons packing parachutes who are not certificated under part 65, unless the person packing the parachute is a parachutist in command.

Section 105.47 Use of Static Lines

This proposed section is based on the current section 105.43(b) and contains only one proposed change, which is that the use of assist devices with ram-air parachutes would no longer be required.

Section 105.49 Foreign Parachutists and Equipment

This proposed section addresses equipment and packing requirements for foreign parachutists. Only single-harness, dual-parachute systems which contain a non-Technical Standard Order (TSO) reserve parachute or non-TSO'd harness and container would be allowed to be used in the United States by the owner or agent of that equipment. The parachute system used by the foreign parachutist must also meet the civil aviation authority requirements of the foreign parachutist's country, and must be packed by the foreign parachutist making the next parachute jump with that parachute, or a U.S. certificated parachute rigger.

Section 119.1 Applicability

The FAA proposes to amend paragraph (e)(6) of this section to read, "Nonstop flights conducted within a 25-statute-mile radius of the airport of takeoff carrying persons or objects for the purpose of conducting intentional parachute operations." This change adds the term, "objects" to the current rule.

Paperwork Reduction Act

This NPRM, Parachute Operations, contains information collection requirements. As required by the Paperwork Reduction Act of 1995 (44

U.S.C. 3507(d)), the FAA has submitted a copy of these proposed sections to the Office of Management and Budget (OMB) for its review.

At the present time, there is no requirement to notify the FAA of a parachute accident. Without this requirement, the FAA has been unable to provide adequate oversight of parachute riggers and the packing of parachutes, which have been found to be contributing factors in parachute accidents.

The information collected would be used by the FAA to propose recommendations for equipment changes, operating procedures, and/or training. In addition, the information would be used to assist in the investigation of accidents, and would help determine whether the packing, materials, or competency of the packer was a contributing factor in the accidents.

Since this reporting requirement would be used to account for the total number of parachutists who sustain serious or fatal injuries, the FAA expects this proposed rule would affect approximately 44 drop zone owners, parachutists, or pilots of aircraft used in parachute operations per year. This recordkeeping requirement would be used to improve the FAA's existing accident database. This data would be used to assess the safety of parachute operations and prevent future accidents. Accordingly, it is estimated that the approximate 44 drop zone owners, parachutists, or pilots of aircraft used in parachute operations would spend an average of one hour collecting the data at an hourly rate of $12 per hour (44 reports × 1 hr = 44 hrs × $12 = $528.00).

Individuals and organizations may submit comments on the information collection requirement by June 14, 1999, and should direct them to the address listed in the **ADDRESSES** section of this document.

Persons are not required to respond to a collection of information unless it displays a currently valid OMB control number. The burden associated with this proposal has been submitted to OMB for review. The FAA will publish a notice in the **Federal Register** notifying the public of the approval numbers and expiration date.

International Compatibility

The FAA has reviewed corresponding International Civil Aviation Organization international standards and recommended practices and Joint Aviation Authorities requirements and has identified no differences in these proposed amendments and the foreign regulations.

Regulatory Evaluation Summary

Three principal requirements pertain to the economic impact of changes to the Federal Regulations. First, Executive Order 12866 directs Federal agencies to promulgate new regulations or modify existing regulations only upon reasoned determination that the benefit of the intended regulation justifies its costs. Second, the Regulatory Flexibility Act of 1980 (RFA) requires agencies to analyze the economic impact of regulatory changes on small entities. Finally, the Office of Management and Budget directs agencies to assess the effects of regulatory changes on international trade. In conducting these analyses, the FAA has determined that this rule (1) would generate cost-savings that would exceed any costs; (2) is not "significant" as defined in the Executive Order and DOT policies and procedures; (3) would not have a significant impact on a substantial number of small entities; and (4) would not impose restraints on international trade. These analyses, available in the docket, are summarized below.

The FAA has determined that there would be little or no cost associated with the proposed revision of part 105 as described in this notice. The benefits of such revision would be to reduce the likelihood of midair collision involving aircraft and persons engaged in parachute operations, and reduce the risk of aircraft coming in close proximity to the parachutists who were descending to the ground after exiting the aircraft near an airport or within controlled airspace.

The proposed rule would reorganize and revise the rules applicable to parachute operations. It would clarify some sections and permit certain operations currently allowed under exemptions granted by the FAA. The proposal also would harmonize the three following proposed sections with annex 2 of ICAO: (1) the radio equipment and use requirements in proposed section 105.9; (2) the requirement in proposed section 105.19 that parachutists and objects dropped from aircraft display a light when conducting jumps or drops after sunset; and (3) the requirements listed in section 105.49 pertaining to foreign parachutists and equipment. The proposed changes to part 105 would pose little or no cost to parachutists, sky diving training schools, and certificated parachute riggers. In addition, because the requirements of the proposed sections for tandem parachute operations and parachute jumps by foreign parachutists already are being met under exemptions granted by the FAA, the proposal would not impose additional business expenses on sky diving schools. Costs imposed on the FAA are minimal as well because the agency would not need to provide additional oversight of parachute operations under the revision of part 105.

Initial Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) establishes "as principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statues, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation." To achieve that principal, the Act requires agencies to solicit and consider flexible regulatory proposals and to explain the rational for their actions. The Act covers a wide-range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule would have a significant economic impact on a substantial number of small entities. If the determination is that it will, the agency must prepare a regulatory flexibility analysis (RFA).

However, if an agency determines that a proposed rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the 1980 act provides that the head of the agency may so certify and an RFA is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

The FAA conducted the required review of this proposal and determined that it would not have a significant economic impact on a substantial number of small entities. Accordingly, pursuant to the Regulatory Flexibility Act, 5 U.S.C. 605(b), the FAA certifies that this rule would not have a significant economic impact on a substantial number of small entities for the following reason: the proposed rule would require an additional expense of less than $1,000 per entity (parachute lofts and clubs, sky diving training schools, and certificated riggers) in excess of normal business expenses. Major aspects of this rulemaking such as permitting tandem parachute operations would not impose additional business expenses for compliance on sky diving schools and parachute lofts because these entities currently adhere to the requirements of the proposed rule

through grants of exemptions issued by the FAA under part 105. The FAA solicits comments from affected entities with respect to this finding and determination.

International Trade Impact Analysis

The FAA has determined that the proposed rule would promote parachuting by foreign jumpers in the United States. This determination is based on the FAA's contention that the proposed rule would harmonize U.S. standards for parachute operations with the ICAO standards for parachute operations.

Federalism Implications

The regulations proposed herein will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have significant federalism implications to warrant the preparation of a Federalism Assessment.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (the Act), enacted as Public Law 104–4 on March 22, 1995, requires each Federal agency, to the extent permitted by law, to prepare a written assessment of the effects of any Federal mandate in a proposed or final agency rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any 1 year. Section 204(a) of the Act, 2 U.S.C. 1534(a), requires the Federal agency to develop an effective process to permit timely input by elected officers (or their designees) of State, local, and tribal governments on a proposed "significant intergovernmental mandate." A "significant intergovernmental mandate" under the Act is any provision in a Federal agency regulation that would impose an enforceable duty upon State, local, and tribal governments, in the aggregate, of $100 million (adjusted annually for inflation) in any 1 year. Section 203 of the Act, 2 U.S.C. 1533, which supplements section 204(a), provides that before establishing any regulatory requirements that might significantly or uniquely affect small governments, the agency shall have developed a plan that, among other things, provides for notice to potentially affected small governments, if any, and for a meaningful and timely opportunity to provide input in the development of regulatory proposals.

This rule does not contain a Federal intergovernmental or private sector mandate that exceeds $100 million a year, therefore, the requirements of the act do not apply.

Distribution and Derivation Tables

The following distribution table is provided to illustrate how the current regulation would relate to the revised part 105, and the derivation table identifies how the revised part 105 would relate to the current rule.

DISTRIBUTION TABLE

Old Section	New Section(s)
105.1	105.1
105.11	105.1
105.13	105.5
105.14	105.13
105.15	105.21
105.17	105.23
105.19	105.25
105.23	105.25
105.25	105.15
105.27	105.25
105.33	105.19
105.35	105.7
105.37	105.9
105.41	105.41
105.43	105.43 and 105.47

DERIVATION TABLE

New Section	Old Section(s)
105.1	105.1 and 105.11
105.3	New
105.5	105.13
105.7	105.35
105.9	105.37
105.13	105.14
105.15	105.25
105.17	105.29
105.19	105.33
105.21	105.15
105.23	105.17
105.25	105.19, 105.23, and 105.27
105.27	New
105.41	105.41
105.43	105.43
105.45	New
105.47	105.43
105.49	New

List of Subjects

14 CFR Part 65

Air traffic controllers, Aircraft, Airmen, Airports, Alcohol abuse, Drug abuse, Reporting and recordkeeping requirements.

14 CFR Part 91

Afghanistan, Agriculture, Air traffic control, Aircraft, Airmen, Airports, Aviation safety, Canada, Cuba, Freight, Mexico, Noise control, Political candidates, Reporting and recordkeeping requirements, Yugoslavia.

14 CFR Part 105

Aircraft, Aviation safety, Recreation and recreation areas, Reporting and recordkeeping requirements.

14 CFR Part 119

Administrative practice and procedure, Air carriers, Aircraft, Aviation Safety, Charter flights, Reporting and recordkeeping requirements.

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend parts 65, 91, 105, and 119 of Title 14, Code of Federal Regulations as follows:

PART 65—CERTIFICATION: AIRMEN OTHER THAN FLIGHT CREWMEMBERS

1. The authority citation for part 65 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701–44703, 44707, 44709–44711, 45102–45103, 45301–45302.

2. Section 65.111 is amended by revising paragraphs (a) and (b) to read as follows:

§ 65.111 Certificate required.

(a) No person may pack, maintain, or alter any personnel-carrying parachute intended for emergency use in connection with civil aircraft of the United States (including the reserve parachute of a dual parachute system to be used for intentional parachute jumping) unless that person holds an appropriate current certificate and type rating issued under this subpart and complies with §§ 65.127 through 65.133.

(b) No person may pack, maintain, or alter any main parachute of a dual-parachute system to be used for intentional parachute jumping in connection with civil aircraft of the United States unless that person—

(1) Has an appropriate current certificate issued under this subpart;

(2) Is under the supervision of a current certificated parachute rigger;

(3) Is the person making the next parachute jump with that parachute in accordance with section 105.43(a) of this chapter; or

(4) Is the parachutist in command making the next parachute jump with that parachute in a tandem parachute operation conducted under section 105.45(b)(1) of this chapter.

* * * * *

3. Section 65.125 is amended by revising paragraphs (a)(2) and (b)(2) to read as follows:

§ 65.125 Certificates: Privileges.

(a) * * *

(2) Supervise other persons in packing any type of parachute for which that person is rated in accordance with section 105.43(a) or section 105.45(b)(1) of this chapter.

(b) * * *

(2) Supervise other persons in packing, maintaining, or altering any type of parachute for which the certificated parachute rigger is rated in accordance with section 105.43(a) or section 105.45(b)(1) of this chapter.

* * * * *

PART 91—GENERAL OPERATING AND FLIGHT RULES

4. The authority citation for part 91 continues to read as follows:

Authority: 49 U.S.C. 106(g), 1155, 40103, 40113, 40120, 44101, 44111, 44701, 44709, 44711, 44712, 44715, 44716, 44717, 44722, 46306, 46315, 46316, 46504, 46506–46507, 47122, 47508, 47528–47531, articles 12 and 29 of the Convention on International Civil Aviation (61 stat. 1180).

5. Section 91.307 is amended by revising paragraph (b) to read as follows:

§ 91.307 Parachutes and parachuting.

* * * * *

(b) Except in an emergency, no pilot in command may allow, and no person may conduct, a parachute operation from an aircraft within the United States except in accordance with part 105 of this chapter.

* * * * *

6. Part 105 is revised to read as follows:

PART 105—PARACHUTE OPERATIONS

Subpart A—General

Sec.
105.1 Applicability.
105.3 Definitions.
105.5 General.
105.7 Use of alcohol and drugs.
105.9 Inspections.

Subpart B—Operating Rules

105.13 Radio equipment and use requirements.
105.15 Information required and notice of cancellation or postponement of a parachute operation.
105.17 Flight visibility and clearance from cloud requirements.
105.19 Parachute operations between sunset and sunrise.
105.21 Parachute operations over or into congested areas or an open-air assembly of persons.
105.23 Parachute operations over or onto airports.
105.25 Parachute operations in designated airspace.
105.27 Accident reporting requirements.

Subpart C—Parachute Equipment and Packing

105.41 Applicability.
105.43 Use of single-harness, dual-parachute systems.
105.45 Use of tandem parachute systems.
105.47 Use of static lines.
105.49 Foreign parachutists and equipment.

Authority: 49 U.S.C. 106(g), 40113–40114, 44701–44702, 44721.

Subpart A—General

§ 105.1 Applicability.

(a) Except as provided in paragraphs (b) and (c) of this section, this part prescribes rules governing parachute operations conducted in the United States.

(b) This part does not apply to a parachute operation conducted—

(1) In response to an in-flight emergency, or

(2) To meet an emergency on the surface when it is conducted at the direction or with the approval of an agency of the United States, or of a State, Puerto Rico, the District of Columbia, or a possession of the United States, or an agency or political subdivision thereof.

(c) Sections 105.5, 105.9, 105.13, 105.15, 105.17, 105.19 through 105.23, 105.25(a)(1) and 105.27 of this part do not apply to a parachute operation conducted by a member of an Armed Force—

(1) Over or within a restricted area when that area is under the control of an Armed Force.

(2) During military operations in uncontrolled airspace.

§ 105.3 Definitions.

For the purposes of this part—

Approved parachute means a parachute manufactured under a type certificate or a Technical Standard Order (C–23 series), or a personnel-carrying military parachute (other than a high altitude, high speed, or ejection type) identified by a Navy Air Facility, an Army Air Field, an Air Force-Navy drawing number, an Army Air Field order number, or any other military designation or specification number.

Automatic Activation Device means a self-contained mechanical device attached to a parachute, other than a static line, which automatically initiates parachute deployment at a preset altitude, time, percentage of terminal velocity, or combination thereof if that parachute has not been manually activated.

Drop zone means any pre-determined area upon which parachutists or objects land after making an intentional parachute jump. The center-point target of a drop zone is expressed in nautical miles from the nearest VOR facility when 30 nautical miles or less; or from the nearest airport, town, or city depicted on the appropriate Coast and Geodetic Survey World Aeronautical Chart or Sectional Aeronautical Chart, when the nearest VOR facility is more than 30 nautical miles from the drop zone.

Fatal injury means any parachuting injury that results in death within 30 days from the date of the injury.

Foreign parachutist means a parachutist who is neither a U.S. citizen nor a resident alien.

Freefall means the portion of a parachute jump or drop between aircraft exit and parachute deployment in which the parachute is activated manually by the parachutist at the parachutist's discretion or automatically, or, in the case of an object, is activated automatically.

Main parachute means a parachute worn as the primary parachute used or intended to be used in conjunction with a reserve parachute.

Object means any item other than a person that descends to the surface from an aircraft in flight when a parachute is used or is intended to be used during all or part of the descent.

Parachute drop means a parachute operation that involves the descent of an object to the surface from an aircraft in flight when a parachute is used or intended to be used during all or part of that descent.

Parachute jump means a parachute operation that involves the descent of one or more persons to the surface from an aircraft in flight when a parachute is used or intended to be used during all or part of that descent.

Parachute operation means any activity that includes a parachute jump or a parachute drop. This activity involves, but is not limited to, the following persons: parachutist, tandem parachute operation, drop zone owner or operator, certificated parachute rigger, pilot, or appropriate FAA personnel.

Parachutist means a person who boards an aircraft with the intent to exit the aircraft while in-flight using a single-harness, dual parachute system to descend to the surface.

Parachutist in command means the person responsible for the operation and safety of a tandem parachute operation before, during, and after a tandem parachute operation.

Passenger parachutist means a person who boards an aircraft, acting as other than the parachutist in command of a tandem parachute operation, with the intent of exiting the aircraft while in-flight using the forward harness of a dual harness tandem parachute system to descend to the surface.

Pilot chute means a small parachute used to initiate and/or accelerate deployment of a main or reserve parachute.

Ram-air parachute means a parachute with a canopy consisting of an upper and lower surface that is inflated by ram air entering through specially designed openings in the front of the canopy to form a gliding airfoil.

Reserve parachute means an approved parachute worn for emergency use to be activated only upon failure of the main parachute or in any other emergency where use of the main parachute is impractical or use of the main parachute would increase risk.

Serious injury means any injury that requires hospitalization for more than 48 hours, commencing within 7 days from the date the injury was received; results in a fracture of any bone (except simple fractures of fingers, toes, or the nose); causes severe hemorrhages, or nerve, muscle, or tendon damage; or involves any internal organ.

Single-harness, dual parachute system means the combination of a main parachute, approved reserve parachute, and approved single person harness and dual-parachute container. This parachute system may have an operational automatic activation device installed.

Supervision means that a certificated rigger personally observes a noncertificated person packing a main parachute to the extent necessary to ensure that it is being done properly.

Tandem parachute operation means a parachute operation in which more than one person simultaneously uses the same tandem parachute system while descending to the surface from an aircraft in flight.

Tandem parachute system means the combination of a main parachute, approved reserve parachute, and approved harness and dual parachute container, and a separate approved forward harness for a passenger parachutist. This parachute system must have an operational automatic activation device installed.

§ 105.5 General.

No person may conduct a parachute operation, and no pilot in command of an aircraft may allow a parachute operation to be conducted from an aircraft, if that operation creates a hazard to air traffic or to persons or property on the surface.

§ 105.7 Use of alcohol and drugs.

No person may conduct a parachute operation, and no pilot in command of an aircraft may allow a person to conduct a parachute operation from that aircraft, if that person is or appears to be under the influence of—

(a) Alcohol, or

(b) Any drug that affects that person's faculties in any way contrary to safety.

§ 105.9 Inspections.

The Administrator may inspect, any parachute operation to which this part applies (including inspections at the site where the parachute operation is being conducted) to determine compliance with the regulations of this part.

Subpart B—Operating Rules

§ 105.13 Radio equipment and use requirements.

(a) Except when otherwise authorized by air traffic control—

(1) No person may conduct a parachute operation, and no pilot in command of an aircraft may allow a parachute operation to be conducted from that aircraft, in or into controlled airspace unless, during that flight—

(i) The aircraft is equipped with a functioning two-way radio communications system appropriate to the air traffic control facilities being used; and

(ii) Radio communications have been established between the aircraft and the air traffic control facility having jurisdiction over the affected airspace at least 5 minutes before the parachute operation begins. The pilot in command and the parachutists on that flight must have established radio communications to receive information regarding air traffic activity in the vicinity of the parachute operation.

(2) The pilot in command of an aircraft used for any parachute operation in or into controlled airspace must, during each flight—

(i) Continuously monitor the appropriate frequency of the aircraft's radio communications system from the time radio communications are first established between the aircraft and air traffic control, until the pilot advises air traffic control that the parachute operation has ended for that flight; and

(ii) Advise air traffic control when the last parachutist or object leaves the aircraft.

(b) If, prior to receipt of a required air traffic control authorization, or during any parachute operation in or into controlled airspace the required radio communications system is or becomes inoperative, any parachute operation from the aircraft must be aborted.

§ 105.15 Information required and notice of cancellation or postponement of a parachute operation.

(a) Each person requesting an authorization under sections 105.21(b) and 105.25(a)(2) of this part and each person submitting a notification under section 105.25(a)(3) of this part must include the following information (on an individual or group basis) in that request or notice:

(1) The date and time the parachute operation will begin.

(2) The radius of the drop zone around the target expressed in nautical miles.

(3) The location of the center of the drop zone in relation to—

(i) The nearest VOR facility in terms of the VOR radial on which it is located and its distance in nautical miles from the VOR facility when that facility is 30 nautical miles or less from the drop zone target; or

(ii) The nearest airport, town, or city depicted on the appropriate Coast and Geodetic Survey World Aeronautical Chart or Sectional Aeronautical Chart, when the nearest VOR facility is more than 30 nautical miles from the drop zone target.

(4) Each altitude above mean sea level at which the aircraft will be operated when parachutists or objects exit the aircraft.

(5) The duration of the intended parachute operation.

(6) The name, address, and telephone number of the person who requests the authorization or gives notice of the parachute operation.

(7) The registration number of the aircraft to be used.

(8) The radio frequencies appropriate to the air traffic control facilities to be used, if required.

(b) Each holder of a certificate of authorization issued under sections 105.21(b) and 105.25(b) of this part must present that certificate for inspection upon the request of the Administrator or any Federal, State, or local official.

(c) Each person requesting an authorization under sections 105.21(b) and 105.25(a)(2) of this part and each person submitting a notice under section 105.25(a)(3) of this part must promptly notify the air traffic control facility having jurisdiction over the affected airspace if the proposed or scheduled parachute operation is canceled or postponed.

§ 105.17 Flight visibility and clearance from cloud requirements.

No person may conduct a parachute operation, and no pilot in command of

an aircraft may allow a parachute operation to be conducted from that aircraft—

(a) Into or through a cloud, or

(b) When the flight visibility or the distance from any cloud is less than that prescribed in the following table:

Altitude	Flight visibility (statute miles)	Distance from clouds
1,200 feet or less above the surface regardless of the MSL altitude.	3	500 feet below, 1,000 feet above, 2,000 feet horizontal.
More than 1,200 feet above the surface but less than 10,000 feet MSL.	3	500 feet below, 1,000 feet above, 2,000 feet horizontal.
More than 1,200 feet above the surface and at or above 10,000 feet MSL.	5	1,000 feet below, 1,000 feet above, 1 mile horizontal.

§ 105.19 Parachute operations between sunset and sunrise.

(a) No person may conduct a parachute operation, and no pilot in command of an aircraft may allow a person to conduct a parachute operation from an aircraft between sunset and sunrise, unless the person or object descending from the aircraft displays a light that is visible for at least 3 statute miles in all directions.

(b) Each person conducting a parachute drop between sunset and sunrise must ensure that the light required by paragraph (a) of this section is displayed from the time that the object or parachutist exits the aircraft until the object or parachutist reaches the surface.

§ 105.21 Parachute operations over or into a congested area or an open-air assembly of persons.

(a) No person may conduct a parachute operation, and no pilot in command of an aircraft may allow a parachute operation to be conducted from that aircraft, over or into a congested area of a city, town, or settlement, or an open-air assembly of persons unless a certificate of authorization for that parachute operation has been issued under this section. However, a parachutist may drift over a congested area or an open-air assembly of persons with a fully deployed and properly functioning parachute if that parachutist is at a sufficient altitude to avoid creating a hazard to persons or property on the surface.

(b) An application for a certificate of authorization issued under this section must—

(1) Be made to the local FSDO in a form and in a manner prescribed by the Administrator, and

(2) Contain the information in section 105.15(a) of this part.

§ 105.23 Parachute operations over or onto airports.

No person may conduct a parachute operation, and no pilot in command of an aircraft may allow a parachute operation to be conducted from that aircraft, over or onto any airport unless—

(a) For airports with an operating control tower:

(1) Prior approval has been obtained from the management of the airport to conduct parachute operations over or onto that airport.

(2) Approval has been obtained from the control tower to conduct parachute operations over or onto that airport.

(3) Two-way radio communications are maintained between the pilot of the aircraft involved in the parachute operation and the control tower of the airport over or onto which the parachute operation is being conducted.

(b) For airports without an operating control tower, prior approval has been obtained from the management of the airport to conduct parachute operations over or onto that airport.

(c) A parachutist may drift over that airport with a fully deployed and properly functioning parachute if he is at least 2,000 feet above that airport's traffic pattern, and avoids creating a hazard to air traffic or to persons and property on the ground.

§ 105.25 Parachute operations in designated airspace.

(a) No person may conduct a parachute operation, and no pilot in command of an aircraft may allow a parachute operation to be conducted from that aircraft—

(1) Over or within a restricted area or prohibited area unless the controlling agency of the area concerned has authorized that parachute operation;

(2) Within or into Class A, B, C, or D airspace area without, or in violation of the terms of, an air traffic control authorization issued under this section;

(3) Except as provided in paragraph (c) and (d) of this section, within or into Class E or G airspace area unless the air traffic control facility having jurisdiction over the affected airspace is notified of the parachute operation no earlier than 24 hours before or no later than 1 hour before the parachute operation begins.

(b) Each request for a parachute operation authorization or notification required under this section must be submitted to the air traffic control facility having jurisdiction over the affected airspace and must include the information prescribed by section 105.15(a) of this part.

(c) For the purposes of paragraph (a)(3) of this section, air traffic control may accept a written notification from an organization that conducts parachute operations and lists the scheduled series of parachute operations to be conducted over a stated period of time not longer than 12 calendar months. The notification must contain the information prescribed by section 105.15(a) of this part, identify the responsible persons associated with that parachute operation, and be submitted at least 15 days, but not more than 30 days, before the parachute operation begins. Air traffic control may revoke the acceptance of the notification for any failure of the organization conducting the parachute operations to comply with its terms.

(d) Paragraph (a)(3) of this section does not apply to a parachute operation conducted by a member of an Armed Force within a restricted area that extends upward from the surface when that area is under the control of an Armed Force.

105.27 Accident reporting requirements.

The FAA must be notified within 48 hours of any parachute operation resulting in a serious or fatal injury to a parachutist by—

(a) Each parachutist involved in the accident, or

(b) the pilot of the aircraft, or

(c) The drop zone owner or operator.

Subpart C—Parachute Equipment and Packing

§ 105.41 Applicability.

This subpart prescribes rules governing parachute equipment used in civil parachute operations.

§ 105.43 Use of single-harness, dual-parachute systems.

No person may conduct a parachute operation using a single-harness, dual-parachute system, and no pilot in command of an aircraft may allow any person to conduct a parachute operation from that aircraft using a single-harness, dual-parachute system, unless that system has at least one main parachute, one approved reserve parachute, and one approved single person harness and container that are packed as follows:

(a) The main parachute must have been packed within 120 days before the date of its use by a certificated parachute rigger, the person making the next jump with that parachute, or a non-certificated person under the direct supervision of a certificated parachute rigger.

(b) The reserve parachute must have been packed by a certificated parachute rigger—

(1) Within 120 days before the date of its use, if its canopy, shroud, and harness are composed exclusively of nylon, rayon, or similar synthetic fiber or material that is substantially resistant to damage from mold, mildew, or other fungi, and other rotting agents propagated in a moist environment; or

(2) Within 60 days before the date of its use, if it is composed of any amount of silk, pongee, or other natural fiber, or material not specified in paragraph (b)(1) of this section.

(3) If installed, the automatic activation device must be maintained in accordance with manufacturer instructions for that automatic activation device.

§ 105.45 Use of tandem parachute systems.

(a) No person may conduct a parachute operation using a tandem parachute system, and no pilot in command of an aircraft may allow any person to conduct a parachute operation from that aircraft using a tandem parachute system, unless—

(1) One of the parachutists using the tandem parachute system is the parachutist in command, and meets the following requirements:

(i) Has a minimum of 3 years of experience in parachuting, and must provide documentation that the parachutist

(ii) Has completed a minimum of 500 freefall parachute jumps, at least 300 of which were completed using a ram-air parachute, and

(iii) Holds an expert parachute license issued by an organization recognized by the FAA, and

(iv) Has successfully completed a tandem instructor course given by the manufacturer of the tandem parachute equipment used in the parachute operation or a course acceptable to the Administrator.

(v) Has been certified by the appropriate parachute manufacturer or tandem course provider as being properly trained on the use of the specific tandem parachute system to be used.

(2) The person acting as parachutist in command:

(i) Has briefed the passenger parachutist before boarding the aircraft. The briefing must include the procedures to be used in case of an emergency with the aircraft or after exiting the aircraft, while preparing to exit and exiting the aircraft, freefall, operating the parachute after freefall, landing approach, and landing.

(ii) Uses the harness position prescribed by the manufacturer of the tandem parachute equipment.

(b) No person may make a parachute jump with a tandem parachute system unless—

(1) The main parachute has been packed by a certificated parachute rigger, the parachutist in command making the next jump with that parachute, or a person under the direct supervision of a certificated parachute rigger.

(2) The reserve parachute has been packed by a certificated parachute rigger in accordance with section 105.43(b) of this part.

(3) The tandem parachute system contains an operational automatic activation device for the reserve parachute, approved by the manufacturer of that tandem parachute system.

(i) The automatic activation device must be maintained in accordance with manufacturer instructions for that automatic activation device.

(ii) [Reserved]

(4) The passenger parachutist is provided with a manual main parachute activation device and instructed on the use of that device, if required by the owner/operator.

(5) The main parachute is equipped with a single-point release system.

(6) The reserve parachute meets Technical Standard Order C23 specifications.

§ 105.47 Use of static lines.

(a) Except as provided in paragraph (c) of this section, no person may conduct a parachute operation using a static line attached to the aircraft and the main parachute unless an assist device, described and attached as follows, is used to aid the pilot chute in performing its function, or, if no pilot chute is used, to aid in the direct deployment of the main parachute canopy. The assist device must—

(1) Be long enough to allow the main parachute container to open before a load is placed on the device.

(2) Have a static load strength of—

(i) At least 28 pounds but not more than 160 pounds if it is used to aid the pilot chute in performing its function; or

(ii) At least 56 pounds but not more than 320 pounds if it is used to aid in the direct deployment of the main parachute canopy; and

(3) Be attached as follows:

(i) At one end, to the static line above the static-line pins or, if static-line pins are not used, above the static-line ties to the parachute cone.

(ii) At the other end, to the pilot chute apex, bridle cord, or bridle loop, or, if no pilot chute is used, to the main parachute canopy.

(b) No person may attach an assist device required by paragraph (a) of this section to any main parachute unless that person is a certificated parachute rigger or that person makes the next parachute jump with that parachute.

(c) An assist device is not required for parachute operations using direct-deployed, ram-air parachutes.

§ 105.49 Foreign parachutists and equipment.

(a) No person may conduct a parachute operation, and no pilot in command of an aircraft may allow a parachute operation to be conducted from that aircraft with a non-TSO'd foreign parachute system unless—

(1) The parachute system is worn by a foreign parachutist who is the owner or agent of that system.

(2) The parachute system is of a single harness dual parachute type.

(3) The parachute system meets the civil aviation authority requirements of the foreign parachutists country.

(4) All foreign non-TSO'd parachutes deployed by a foreign parachutist during a parachute operation conducted under this section shall be packed as follows—

(a) The main parachute must be packed by the foreign parachutist making the next parachute jump with that parachute, or a certificated parachute rigger.

(b) The reserve parachute must be packed in accordance with the foreign parachutists civil aviation authority requirements, by a certificated parachute rigger, or any other person acceptable to the administrator.

PART 119—CERTIFICATION: AIR CARRIERS AND COMMERCIAL OPERATORS

7. The authority citation for part 119 continues to read as follows:

Authority: 49 U.S.C. 106(g), 1153, 40101, 40102, 40103, 44105, 44106, 44111, 44701–44717, 44722, 44901, 44903, 44904, 44906, 44912, 44914, 44936, 44938, 46103, 46105.

8. Section 119.1 is amended by revising paragraph (e)(6) to read as follows:

§ 119.1 Applicability.

* * * * *

(e) * * *

(6) Nonstop flights conducted within a 25-statute-mile radius of the airport of takeoff carrying persons or objects for the purpose of conducting intentional parachute operations.

* * * * *

Issued in Washington, DC, on April 2, 1999.

Richard V. Powell,

Acting Program Director, Air Traffic Airspace Management Program.

L. Nicholas Lacey,

Director, Flight Standards Service.

[FR Doc. 99–8753 Filed 4–12–99; 8:45 am]

BILLING CODE 4910–13–U

Federal Register

Tuesday
April 13, 1999

Part IV

The President

Proclamation 7181—Pan American Day and Pan American Week, 1999

UMI

VOL
64
ISS
70
AP
13
1999
UMI

Federal
Vol. 64
Tuesday

Title
The

Federal Register
Vol. 64, No. 70
Tuesday, April 13, 1999

Presidential Documents

Title 3—

The President

Proclamation 7181 of April 9, 1999

Pan American Day and Pan American Week, 1999

By the President of the United States of America

A Proclamation

Inspired by the powerful words of Thomas Jefferson, the courageous military tactics of José de San Martín, and the revolutionary spirit of Simón Bolívar and many other leaders, the peoples of the Americas forged their nations with a profound respect for liberty and justice. Today, a devotion to democratic ideals unifies the countries in our hemisphere. The strengthening of democratic institutions and practices throughout the Americas reflects our enduring commitment to human rights, free and fair elections, and the rule of law. The expansion of open markets illustrates our determination to achieve sustainable economic growth. At the dawn of a new millennium, we must work with a renewed spirit of cooperation to meet the challenges of our future and fulfill the destiny of our region.

In strengthening the ties that bind our nations together, we reaffirm our shared commitment to democracy and to the security of our hemisphere. Last April, the democratically elected leaders of our hemisphere met in Santiago, Chile, for the second Summit of the Americas. Building on the foundation laid at the Miami Summit in 1994, we developed an action plan for the future. Our strategy includes concrete methods to strengthen democracy, protect human rights, increase access to education, expand free and fair trade, and reduce corruption.

Thanks in part to the strong bonds between the nations of the Americas, our region has achieved an unprecedented era of peace and stability. As one of the world's oldest regional alliances, the Organization of American States has served as a guiding institution in that endeavor. Through several vital initiatives, it has worked to foster multilateral cooperation, to bolster hemispheric security, to resolve regional disputes, and to combat corruption, drug trafficking, and international terrorism. Our community of democracies also encouraged the governments of Peru and Ecuador to sign an historic Peace Accord last October that finally put their longstanding border dispute to an end.

As we look to our common future, we must not forget that our vision for the Western Hemisphere also includes Cuba, whose citizens must be allowed the fruits of liberty and the rewards of integration. We must also remember that our commitment to closer cooperation becomes especially important in times of tragedy. As hundreds of thousands of people across the Americas work to rebuild their homes and their lives in the aftermath of Hurricane Mitch and the earthquake in Colombia, we must be there to lend a helping hand and to provide the tools necessary to revitalize the economies of our neighbors and help renew their communities. United by a proud history and a shared interest in deepening political, cultural, and economic ties, the democracies of our hemisphere can serve as a beacon of peace and prosperity for citizens around the world.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim Wednesday, April 14, 1999, as Pan American Day and April 11 through April 17, 1999, as Pan American Week. I urge the Governors of the 50 States, the Governor of

the Commonwealth of Puerto Rico, and the officials of other areas under the flag of the United States to honor these observances with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this ninth day of April, in the year of our Lord nineteen hundred and ninety-nine, and of the Independence of the United States of America the two hundred and twenty-third.

William J. Clinton

[FR Doc. 99-9349
Filed 4-12-99; 8:45 am]
Billing code 3195-01-P

UMI
VOL
64
ISS
70
AP
13
1999
UMI

Federal Register

Tuesday
April 13, 1999

Part V

The President

Proclamation 7182—National Former Prisoner of War Recognition Day, 1999

UMI

VOL
64
ISS
70
AP
13
1999
UMI

Federal
Vol. 64
Tuesday

Title
The

Federal Register
Vol. 64, No. 70
Tuesday, April 13, 1999

Presidential Documents

Title 3—

The President

Proclamation 7182 of April 9, 1999

National Former Prisoner of War Recognition Day, 1999

By the President of the United States of America

A Proclamation

"We are honored to have had the opportunity to serve our country . . . ." With these simple words, Navy Commander Jeremiah Denton, released in 1973 from North Vietnam with his companions after the longest wartime captivity of any group of Americans in our history, summed up the courage, selflessness, and indomitable spirit of generations of American prisoners of war.

For more than two centuries, Americans have risked and lost their own freedom to defend democracy, preserve America's liberty and values, and protect our national interests around the world. In Andersonville or along the Yalu River, confined in Nazi stalags or enduring torture in the Hanoi Hilton, our prisoners of war have set an extraordinary example of valor, patriotism, and devotion to duty in the face of enormous hardship and adversity. The somber black and white POW/MIA flag serves as a reminder of their sacrifice and symbolizes our Nation's deep concern for and steadfast commitment to these brave Americans and their families.

But, however dark and trying the ordeal for our prisoners of war, their sacrifices did indeed serve a grand purpose. Inspired by their bravery in captivity, our Nation has been resolute in its defense of liberty. And, because of their sacrifice, the United States today is strong, free, and prosperous, looking forward to a future of limitless possibility.

Today we pay special tribute to our Nation's former prisoners of war and their families and express our heartfelt gratitude for their many sacrifices. They have embodied the ideals of a strong people and a free Nation. They have represented America at its best, and they have served a grateful Nation with honor, dignity, and distinction. As we honor them, let us also keep foremost in our thoughts and prayers Staff Sergeant Andrew Ramirez, Staff Sergeant Christopher Stone, and Specialist Steven Gonzales of the United States Army as they endure unjust captivity in Yugoslavia and as we work for their safety and swift release.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim April 9, 1999, as National Former Prisoner of War Recognition Day. I call upon all Americans to join me in remembering former American prisoners of war who suffered the hardships of enemy captivity. I also call upon Federal, State, and local government officials and private organizations to observe this day with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this ninth day of April, in the year of our Lord nineteen hundred and ninety-nine, and of

the Independence of the United States of America the two hundred and twenty-third.

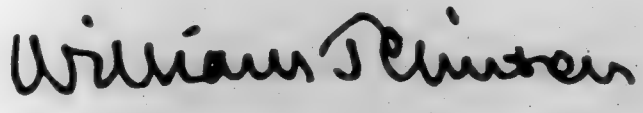

[FR Doc. 99–9395
Filed 4–12–99; 11:46 am]
Billing code 3195–01–P

Reader Aids

Federal Register

Vol. 64, No. 70

Tuesday, April 13, 1999

CUSTOMER SERVICE AND INFORMATION

Federal Register/Code of Federal Regulations	
General Information, indexes and other finding aids	202–523–5227
Laws	523–5227
Presidential Documents	
Executive orders and proclamations	523–5227
The United States Government Manual	523–5227
Other Services	
Electronic and on-line services (voice)	523–4534
Privacy Act Compilation	523–3187
Public Laws Update Service (numbers, dates, etc.)	523–6641
TTY for the deaf-and-hard-of-hearing	523–5229

ELECTRONIC RESEARCH

World Wide Web

Full text of the daily Federal Register, CFR and other publications:

http://www.access.gpo.gov/nara

Federal Register information and research tools, including Public Inspection List, indexes, and links to GPO Access:

http://www.nara.gov/fedreg

E-mail

PENS (Public Law Electronic Notification Service) is an E-mail service that delivers information about recently enacted Public Laws. To subscribe, send E-mail to

listproc@lucky.fed.gov

with the text message:

subscribe publaws-l <firstname> <lastname>

Use listproc@lucky.fed.gov only to subscribe or unsubscribe to PENS. We cannot respond to specific inquiries at that address.

Reference questions. Send questions and comments about the Federal Register system to:

info@fedreg.nara.gov

The Federal Register staff cannot interpret specific documents or regulations.

FEDERAL REGISTER PAGES AND DATES, APRIL

15633–15914..... 1
15915–16332..... 2
16333–16600..... 5
16601–16796..... 6
16797–17078..... 7
17079–17270..... 8
17271–17500..... 9
17501–17940.....12
17941–18322.....13

CFR PARTS AFFECTED DURING APRIL

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
7177.....17075
7178.....17077
7179.....17499
7180.....17939
7181.....18317
7182.....18321

Executive Orders:
11223 (Amended by EO 13118).....16595
11269 (Amended by EO 13118).....16595
11958 (Amended by EO 13118).....16595
12163 (Amended by EO 13118).....16595
12188 (Amended by EO 13118).....16595
12260 (Amended by EO 13118).....16595
12293 (Amended by EO 13118).....16595
12301 (Amended by EO 13118).....16595
12599 (Amended by EO 13118).....16595
12703 (Amended by EO 13118).....16595
12884 (Amended by EO 13118).....16595
12981 (Amended by EO 13117).....16391
13116.....16333
13117.....16591
13118.....16595

Administrative Orders:
Presidential Determinations:
No. 99-18 of March 25, 1999.....16337
No. 99-19 of March 31, 1999.....17079
No. 99-20 of March 31, 1999.....17081

Memorandums:
March 23, 1999 (Amended by EO 13118).....16595
March 31, 1999.....17083

5 CFR

351.....16797
532.....15915, 17941
870.....16601
890.....15633
1200.....15916

7 CFR

6.....17501
760.....17942
254.....17085
301.....15916
1437.....17271
1728.....17219
1753.....16602

Proposed Rules:
28.....15937
340.....16364
905.....15634
944.....15634
1000.....16026
1001.....16026
1002.....16026
1004.....16026
1005.....16026
1006.....16026
1007.....16026
1012.....16026
1013.....16026
1030.....16026
1032.....16026
1033.....16026
1036.....16026
1040.....16026
1044.....16026
1046.....16026
1049.....16026
1050.....16026
1064.....16026
1065.....16026
1068.....16026
1076.....16026
1079.....16026
1106.....16026
1124.....16026
1126.....16026
1131.....16026
1134.....16026
1135.....16026
1137.....16026
1138.....16026
1139.....16026

8 CFR

103.....17943

Proposed Rules:
2.....17128

9 CFR

1.....15918
3.....15918

Proposed Rules:
72.....17573
93.....16655
201.....15938

10 CFR

2.....15636, 15920
10.....15636
11.....15636
25.....15636
40.....17506
50.....17944, 17947
72.....17510
73.....17947

95.....15636
Proposed Rules:
170.....15876
171.....15876

12 CFR

213.....16612
226.....16614
330.....15653
611.....16617
620.....16617
790.....17085
935.....16618, 16788
Proposed Rules:
933.....16792
934.....16792
935.....16792
1750.....18084

13 CFR

Proposed Rules:
120.....15942
121.....15708

14 CFR

39 .....15657, 15659, 15661, 15669, 15920, 16339, 16621, 16624, 16625, 16801, 16803, 16805, 16808, 16810, 17086, 17512, 17514, 17522, 17524, 17947, 17949, 17951, 17954, 17956, 17950, 17961, 17962, 17964, 17966
71 .....15673, 15674, 15675, 15676, 15678, 15679, 16024, 16340, 16341, 16342, 16343, 16344, 17219, 17934
91.....15912
93.....17439
97 .....17277, 17526, 17528
Proposed Rules:
39 .....16364, 16366, 16656, 17130
65.....18302
71 .....15708, 16024, 16368, 16369, 16370, 16371, 17133, 17717, 17983, 17984
91.....17293, 18302
105.....18302
119.....16298, 16302
121.....16298
129.....16298
135.....16298, 17293
183.....16298

15 CFR

738.....17968
740.....17968
742.....17968
748.....17968
762.....17968
774.....17968

16 CFR

Proposed Rules:
241.....18081
256.....18081

17 CFR

275.....15680
279.....15680
Proposed Rules:
1.....17439

18 CFR

1b.....17067
284.....17276
343.....17087
385.....17087

19 CFR

10.....16345
12.....17529
18.....16345
113.....16345
178.....16635, 16345
192.....16635
Proposed Rules:
19.....16865
146.....15873

20 CFR

404.....17100

21 CFR

26.....16347
510.....15683
520.....15683, 15684
522.....15683, 15685
558.....15683
Proposed Rules:
1.....15944
101.....15948, 17295
310.....17985
1308.....17298, 17299

22 CFR

Ch. II.....15685
Ch. VI.....15686
121.....17531
123.....17531
124.....17531
126.....17531
201.....17535
514.....17975, 17976
Proposed Rules:
514.....17988

23 CFR

Proposed Rules:
777.....16870

24 CFR

100.....16324
Proposed Rules:
990.....17301

25 CFR

291.....17535
Proposed Rules:
151.....17574

26 CFR

1.....15686, 15687
7.....15687
31.....15687
301.....16640, 17279
602 .....15687, 15688, 15873, 17279
Proposed Rules:
1.....16372

27 CFR

178.....17291
Proposed Rules:
4.....17588
5.....17588
7.....17588

28 CFR

16.....17977
504.....17270
Proposed Rules:
65.....17128

29 CFR

Proposed Rules:
1.....17442
5.....17442

30 CFR

920.....17978
935.....17980
Proposed Rules:
206.....15949, 17990

31 CFR

210.....17472

32 CFR

812.....17101
863.....17545

33 CFR

100 .....16348, 16812, 16813
117 .....16350, 16641, 17101
165 .....16348, 16641, 16642, 17439
Proposed Rules:
117.....17134
154.....17222
175.....15709
177.....15709
179.....15709
181.....15709
183.....15709

36 CFR

Proposed Rules:
1.....17293
2.....17293
3.....17293
4.....17293
5.....17293
6.....17293
7.....17293

39 CFR

111.....16814, 17102

40 CFR

52 .....15688, 15922, 17102, 17545, 17548, 17551, 17982
62.....17219
63.....17460, 17555
81.....17551
90.....16526
180 .....16840, 16843, 16850, 16856, 17565
261.....16643
300.....15926, 16351
Proposed Rules:
52 .....15711, 15949, 16659, 17136, 17589, 17592, 17593, 17990
63.....17465
70.....16659
81.....17593
82.....16373
112.....17227
180.....16874
185.....16874
186.....16874
300.....17593

41 CFR

Ch. 301 16352
60-250.....15690
60-999.....15690
302-11.....17105

43 CFR

Proposed Rules:
3100.....17598
3106.....17598
3130.....17598
3160.....17598

44 CFR

65.....17567, 17569
67.....17571
Proposed Rules:
67.....17598

45 CFR

260.....17720
261.....17720
262.....17720
263.....17720
264.....17720
265.....17720
1611.....17108
Proposed Rules:
1635.....16383
2522.....17302
2525.....17302
2526.....17302
2527.....17302
2528.....17302
2529.....17302

46 CFR

Proposed Rules:
10.....15709
15.....15709
24.....15709
25.....15709
26.....15709
28.....15709
70.....15709
169.....15709
175.....15709

47 CFR

69.....16353
73.....17108
Proposed Rules:
0.....16388
1.....16661
2.....16687
25.....16880, 16687
69.....16389
73 .....15712, 15713, 15714, 15715, 16388, 16396, 17137, 17138, 17139, 17140, 17141, 17142, 17143
76.....16388

48 CFR

701.....16647
703.....16647
715.....16647
731.....16647
752.....16647
909.....16649
970.....16649
1333.....16651
1533.....17109
1552.....17109
Proposed Rules:
1833.....17603

49 CFR

195.....15926

533.....16860
571.....16358
581.....16359

Proposed Rules:

171.....16882
177.....16882
178.....16882
180.....16882
192.....16882, 16885
195.....16882, 16885
578.....16690
611.....17062

50 CFR

17.....15691, 17110
229.....17292
600.....16862
648.....15704, 16361, 16362
660.....16862, 17125
679.....16361, 16362, 16654, 17126

Proposed Rules:

17.....16397, 16890
20.....17308
32.....17992
223.....16396, 16397
224.....16397
226.....16397
600.....16414
648.....16417, 16891

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT APRIL 13, 1999

AGRICULTURE DEPARTMENT
Farm Service Agency
Special programs:
Dairy indemnity payment program; published 4-13-99
COMMERCE DEPARTMENT
Export Administration Bureau
Export licensing:
Organization of American States (OAS) model regulations for control of international movement of firearms, their parts and components and ammunition; published 4-13-99
ENVIRONMENTAL PROTECTION AGENCY
Air programs:
Reporting and recordkeeping burden reduction; published 2-12-99
INTERIOR DEPARTMENT
Surface Mining Reclamation and Enforcement Office
Permanent program and abandoned mine land reclamation plan submissions:
Maryland; published 4-13-99
Ohio; published 4-13-99
JUSTICE DEPARTMENT
Immigration and Naturalization Service
Immigration:
Personal service involving notices of intention to fine; addition of commercial delivery service; published 4-13-99
JUSTICE DEPARTMENT
Privacy Act:
Systems of records; published 4-13-99
TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airworthiness directives:
Eurocopter France; published 3-9-99
UNITED STATES INFORMATION AGENCY
Exchange visitor program:
Short-term scholars; participation in seminars, workshops, conferences, study tours, and other similar educational and professional activities; published 4-13-99
Summer travel/work programs; published 4-13-99

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT
Animal and Plant Health Inspection Service
Exportation and importation of animals and animal products:
Rinderpest and foot-and-mouth disease, etc.; disease status change—
South Africa; comments due by 4-19-99; published 2-17-99
AGRICULTURE DEPARTMENT
Cooperative State Research, Education, and Extension Service
Grants:
Special Research Program; comments due by 4-23-99; published 3-24-99
COMMERCE DEPARTMENT
National Oceanic and Atmospheric Administration
Endangered and threatened species:
Marine and anadromous species—
West coast chinook salmon; comments due by 4-23-99; published 3-24-99
Fishery conservation and management:
Alaska; fisheries of Exclusive Economic Zone—
Pacific cod; comments due by 4-20-99; published 4-5-99
Caribbean, Gulf, and South Atlantic fisheries—
Gulf of Mexico reef fish; comments due by 4-19-99; published 3-5-99
South Atlantic Region; Sustainable Fisheries Act provisions; compliance; comments due by 4-19-99; published 2-18-99
West Coast states and Western Pacific fisheries—
West Coast salmon; comments due by 4-22-99; published 4-8-99
West Coast States and Western Pacific fisheries—
Pacific Coast groundfish; comments due by 4-22-99; published 4-7-99
COMMODITY FUTURES TRADING COMMISSION
Foreign futures and options transactions:
Access to electronic boards of trade; automated trading systems use; comments due by 4-23-99; published 3-24-99
Access to electronic boards of trade; automated trading systems use; correction; comments due by 4-23-99; published 4-9-99
DEFENSE DEPARTMENT
Federal Acquisition Regulation (FAR):
Contractor liability for loss of and/or damages to household goods; comments due by 4-19-99; published 2-16-99
ENERGY DEPARTMENT
Acquisition regulations:
Costs associated with whistleblower actions; comments due by 4-23-99; published 3-24-99
ENERGY DEPARTMENT
Federal Energy Regulatory Commission
Natural Gas Policy Act:
Interstate natural gas pipelines—
Transportation services regulation; comments due by 4-22-99; published 12-30-98
ENVIRONMENTAL PROTECTION AGENCY
Air programs:
Stratospheric ozone protection—
Ozone-depleting substances; substitutes list; comments due by 4-19-99; published 2-18-99
Ozone-depleting substances; substitutes list; comments due by 4-19-99; published 2-18-99
Air programs; approval and promulgation; State plans for designated facilities and pollutants:
Oklahoma; comments due by 4-19-99; published 3-19-99
Air quality implementation plans; approval and promulgation; various States:
California; comments due by 4-19-99; published 3-18-99
California and Arizona; comments due by 4-19-99; published 3-18-99
Delaware; comments due by 4-21-99; published 3-22-99
Illinois; comments due by 4-19-99; published 3-18-99
Iowa; comments due by 4-19-99; published 3-18-99
Air quality planning purposes; designation of areas:
California; comments due by 4-19-99; published 3-18-99
Missouri and Illinois; comments due by 4-19-99; published 3-18-99
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
Cinnamaldehyde; comments due by 4-19-99; published 2-17-99
Fenbuconazole; comments due by 4-19-99; published 2-17-99
Formic acid; comments due by 4-23-99; published 2-22-99
Superfund program:
National oil and hazardous substances contingency plan—
National priorities list update; comments due by 4-19-99; published 2-16-99
FEDERAL COMMUNICATIONS COMMISSION
Practice and procedure:
Regulatory fees (1999 FY); assessment and collection; comments due by 4-19-99; published 4-6-99
FEDERAL EMERGENCY MANAGEMENT AGENCY
Regulatory streamlining and updating; 20 CFR parts, proposed removal; comments due by 4-19-99; published 2-18-99
Correction; comments due by 4-19-99; published 3-2-99
FEDERAL RETIREMENT THRIFT INVESTMENT BOARD
Thrift savings plan:
Eligibility; expansion and continuation; comments due by 4-22-99; published 3-23-99
GENERAL SERVICES ADMINISTRATION
Federal Acquisition Regulation (FAR):

Contractor liability for loss of and/or damages to household goods; comments due by 4-19-99; published 2-16-99

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration

Food additives:

Adjuvants, production aids, and sanitizers—

Phosphorous acid, cyclic neopentanetetrayl bis(2,6-di-tert-butyl-4-methylphenyl)ester; comments due by 4-19-99; published 3-19-99

Medical devices:

Menstrual tampons labeling; absorbency ranges; comments due by 4-21-99; published 1-21-99

HOUSING AND URBAN DEVELOPMENT DEPARTMENT

Public and Indian housing:

Capital Fund Negotiated Rulemaking Advisory Committee; intent to establish and meeting; comments due by 4-19-99; published 3-19-99

Public housing agency plans; comments due by 4-19-99; published 2-18-99

Public and Indian Housing:

Section 8 Housing Certificate Fund Rule Negotiated Rulemaking Committee; intent to establish and meeting; comments due by 4-19-99; published 3-19-99

INTERIOR DEPARTMENT

Fish and Wildlife Service

Endangered and threatened species:

Mountain plover; comments due by 4-19-99; published 2-16-99

Tinian monarch; withdrawn; comments due by 4-23-99; published 2-22-99

INTERIOR DEPARTMENT

Minerals Management Service

Outer Continental Shelf; oil, gas, and sulphur operations:

Coastal zone consistency review of exploration plans and development and production plans; comments due by 4-19-99; published 2-17-99

Royalty management:

Federal marginal properties; accounting and auditing relief; comments due by 4-21-99; published 3-22-99

INTERIOR DEPARTMENT

Surface Mining Reclamation and Enforcement Office

Federal and Indian lands programs:

Indian lands; definition clarification; comments due by 4-20-99; published 2-19-99

JUSTICE DEPARTMENT

Immigration and Naturalization Service

Nonimmigrant classes:

Visa exemption for British Virgin Islands nationals entering U.S. through St. Thomas, U.S. Virgin Islands; comments due by 4-19-99; published 2-18-99

United Nations Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment; implementation:

Protection from torture; claim procedures; comments due by 4-20-99; published 2-19-99

JUSTICE DEPARTMENT

Pam Lychner Sexual Offender Tracking and Identification Act of 1996; implementation:

National Sex Offender Registry; operation and notification requirements; comments due by 4-19-99; published 2-16-99

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Federal Acquisition Regulation (FAR):

Contractor liability for loss of and/or damages to household goods; comments due by 4-19-99; published 2-16-99

NORTHEAST DAIRY COMPACT COMMISSION

Over-order price regulations:

Compact over-order price regulations—

Fluid milk distributions in six New England States during 1998-1999 contract year; exemption; hearing; comments due by 4-21-99; published 3-15-99

TRANSPORTATION DEPARTMENT

Coast Guard

Ports and waterways safety:

Santa Barbara Channel, CA; safety zone; comments due by 4-19-99; published 2-18-99

Regulatory Flexibility Act:

Small entities; economic impact; comments due by 4-19-99; published 1-19-99

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:

Agusta, S.p.A.; comments due by 4-19-99; published 2-16-99

Bell Helicopter Textron, Inc.; comments due by 4-19-99; published 2-17-99

Boeing; comments due by 4-19-99; published 2-17-99

Empresa Brasileira de Aeronautica S.A.; comments due by 4-22-99; published 3-23-99

Pilatus Aircraft Ltd.; comments due by 4-23-99; published 3-23-99

Pratt & Whitney; comments due by 4-22-99; published 3-23-99

Sikorsky; comments due by 4-19-99; published 2-16-99

Class D and Class E airspace; comments due by 4-20-99; published 3-3-99

Class D and Class E airspace; correction; comments due by 4-20-99; published 3-9-99

Class E airspace; comments due by 4-19-99; published 3-5-99

Class E airspace; correction; comments due by 4-20-99; published 3-9-99

VOR Federal airways; comments due by 4-22-99; published 3-8-99

TRANSPORTATION DEPARTMENT

Federal Highway Administration

Motor carrier safety standards:

Inspection, repair, and maintenance—

Intermodal container chassis and trailers; comments due by 4-19-99; published 2-17-99

TRANSPORTATION DEPARTMENT

Federal Transit Administration

Buy America requirements; certification procedures:

Corrections to inadvertent errors in certifications after bid opening; comments due by 4-19-99; published 2-18-99

TRANSPORTATION DEPARTMENT

National Highway Traffic Safety Administration

Anthropomorphic test devices:

Occupant crash protection—

12-month-old infant crash test dummy; comments due by 4-22-99; published 3-8-99

Motor Vehicle Safety Standards:

Child restraint systems—

Standardized child restraint anchorage systems independent of seat belts; comments due by 4-19-99; published 3-5-99

TRANSPORTATION DEPARTMENT

Research and Special Programs Administration

Hazardous materials:

Hazardous liquid transportation—

Liquefied compressed gases; transportation and unloading; comments due by 4-21-99; published 3-22-99

TRANSPORTATION DEPARTMENT

Transportation Statistics Bureau

ICC Termination Act; implementation:

Motor carriers of property and household goods; reporting requirements; comments due by 4-22-99; published 3-23-99

TREASURY DEPARTMENT

Internal Revenue Service

Income taxes:

Capital gains; installment sales of depreciable real property; unrecaptured section 1250 gain; comments due by 4-22-99; published 1-22-99

Qualified education loans, interest deduction; comments due by 4-21-99; published 1-21-99

Procedure and administration:

Filing of notice of lien; notice and opportunity for hearing; cross reference; comments due by 4-22-99; published 1-22-99

Levy; notice and opportunity for hearing; cross reference; comments due by 4-22-99; published 1-22-99

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current

session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–523–6641. This list is also available online at http://www.nara.gov/fedreg.

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at http://www.access.gpo.gov/nara/index.html. Some laws may not yet be available.

H.R. 171/P.L. 106–18
To authorize appropriations for the Coastal Heritage Trail Route in New Jersey, and for other purposes. (Apr. 8, 1999; 113 Stat. 28)

H.R. 705/P.L. 106–19
To make technical corrections with respect to the monthly reports submitted by the Postmaster General on official mail of the House of Representatives. (Apr. 8, 1999; 113 Stat. 29)

Last List April 8, 1999.

Public Laws Electronic Notification Service (PENS)

PENS is a free electronic mail notification service of newly enacted public laws. To subscribe, send E-mail to **listproc@lucky.fed.gov** with the text message:

subscribe PUBLAWS-L Your Name.

Note: This service is strictly for E-mail notification of new public laws. The text of laws is not available through this service. **PENS** cannot respond to specific inquiries sent to this address.

The authentic text behind the news . . .

The Weekly Compilation of **Presidential Documents**

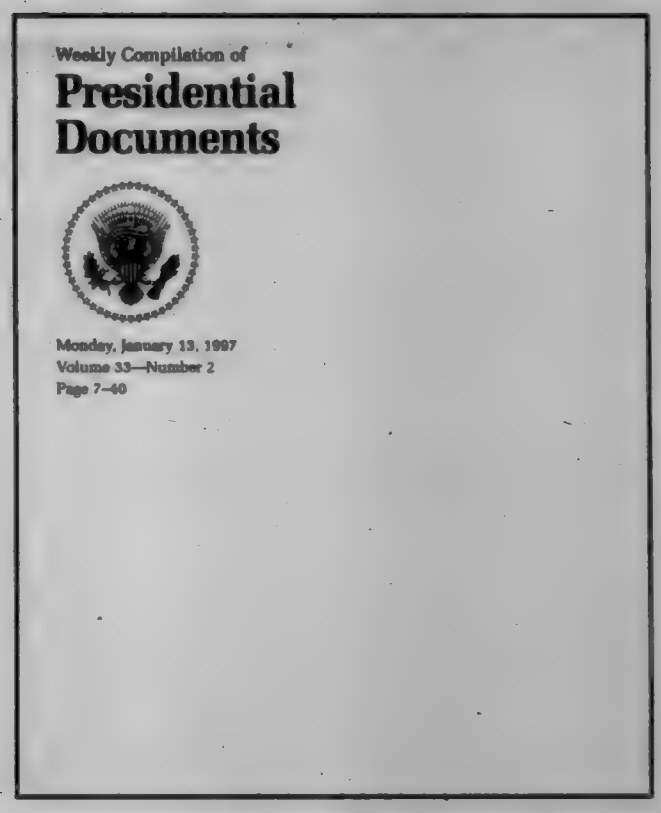

This unique service provides up-to-date information on Presidential policies and announcements. It contains the full text of the President's public speeches, statements, messages to Congress, news conferences, and other Presidential materials released by the White House.

The Weekly Compilation carries a Monday dateline and covers materials released during the preceding week. Each issue includes a Table of Contents, lists of acts approved by the President, nominations submitted to the Senate, a checklist of White House press releases, and a digest of other Presidential activities and White House announcements. Indexes are published quarterly.

Published by the Office of the Federal Register, National Archives and Records Administration.

Superintendent of Documents **Subscription** Order Form

Charge your order. It's Easy! VISA

Order Processing Code:
*** 5420**

To fax your orders (202) 512–2250
Phone your orders (202) 512–1800

☐ **YES**, please enter _____ one year subscriptions for the **Weekly Compilation of Presidential Documents** (PD) so I can keep up to date on Presidential activities.

☐ $137.00 First Class Mail ☐ $80.00 Regular Mail

The total cost of my order is $ _____. **Price includes regular domestic postage and handling** and is subject to change. International customers please add 25%.

Company or personal name (Please type or print)

Additional address/attention line

Street address

City, State, ZIP code

Daytime phone including area code

Purchase order number (optional)

May we make your name/address available to other mailers? YES ☐ NO ☐

Please Choose Method of Payment:

☐ Check Payable to the Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐☐☐ – ☐
☐ VISA ☐ MasterCard Account
☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

☐☐☐☐ (Credit card expiration date)

Thank you for your order!

Authorizing signature 11/3

Mail To: Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250–7954

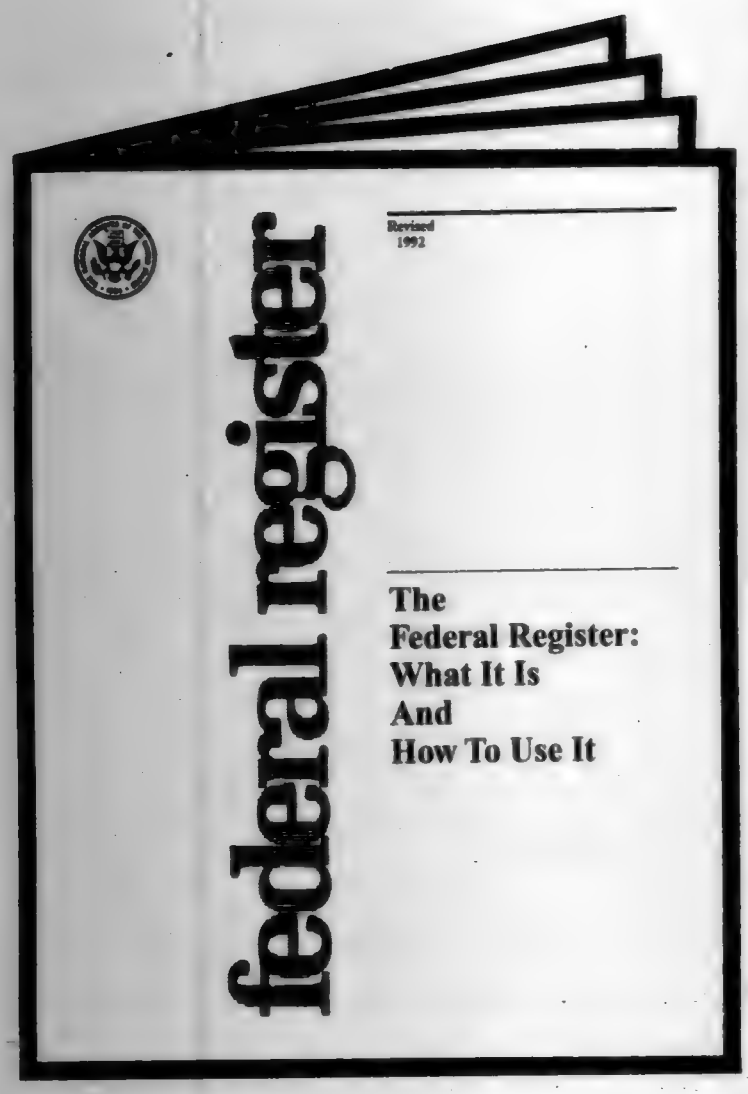

Announcing the Latest Edition

The Federal Register: What It Is and How to Use It

A Guide for the User of the Federal Register—Code of Federal Regulations System

This handbook is used for the educational workshops conducted by the Office of the Federal Register. For those persons unable to attend a workshop, this handbook will provide guidelines for using the *Federal Register* and related publications, as well as an explanation of how to solve a simple research problem.

Price $7.00

Superintendent of Documents **Publications** Order Form

Order Processing Code:
*** 6173**

Charge your order. It's Easy!

To fax your orders (202) 512–2250
Phone your orders (202) 512–1800

☐ **YES**, enter my subscription(s) as follows:

_____ copies of **The Federal Register – What it is and Hot To Use It,** at $7.00 per copy. Stock No. 069–000–00044–4.

The total cost of my order is $ _____. **Price includes regular domestic postage and handling** and is subject to change. International customers please add 25%

Company or personal name (Please type or print)

Additional address/attention line

Street address

City, State, ZIP code

Daytime phone including area code

Purchase order number (optional)

May we make your name/address available to other mailers? YES ☐ NO ☐

Please Choose Method of Payment:

☐ Check Payable to the Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐☐☐ – ☐
☐ VISA ☐ MasterCard Account

☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

☐☐☐☐ (Credit card expiration date)

Thank you for your order!

Authorizing signature (Rev.11/3)

Mail To: Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250–7954

Would you like to know. . .

if any changes have been made to the Code of Federal Regulations or what documents have been published in the Federal Register without reading the Federal Register every day? If so, you may wish to subscribe to the *LSA (List of CFR Sections Affected)*, the *Federal Register Index*, or both.

LSA • List of CFR Sections Affected

The LSA (List of CFR Sections Affected) is designed to lead users of the Code of Federal Regulations to amendatory actions published in the Federal Register. The LSA is issued monthly in cumulative form. Entries indicate the nature of the changes—such as revised, removed, or corrected.
$27 per year.

Federal Register Index

The index, covering the contents of the daily Federal Register, is issued monthly in cumulative form. Entries are carried primarily under the names of the issuing agencies. Significant subjects are carried as cross-references.
$25 per year.

A finding aid is included in each publication which lists Federal Register page numbers with the date of publication in the Federal Register.

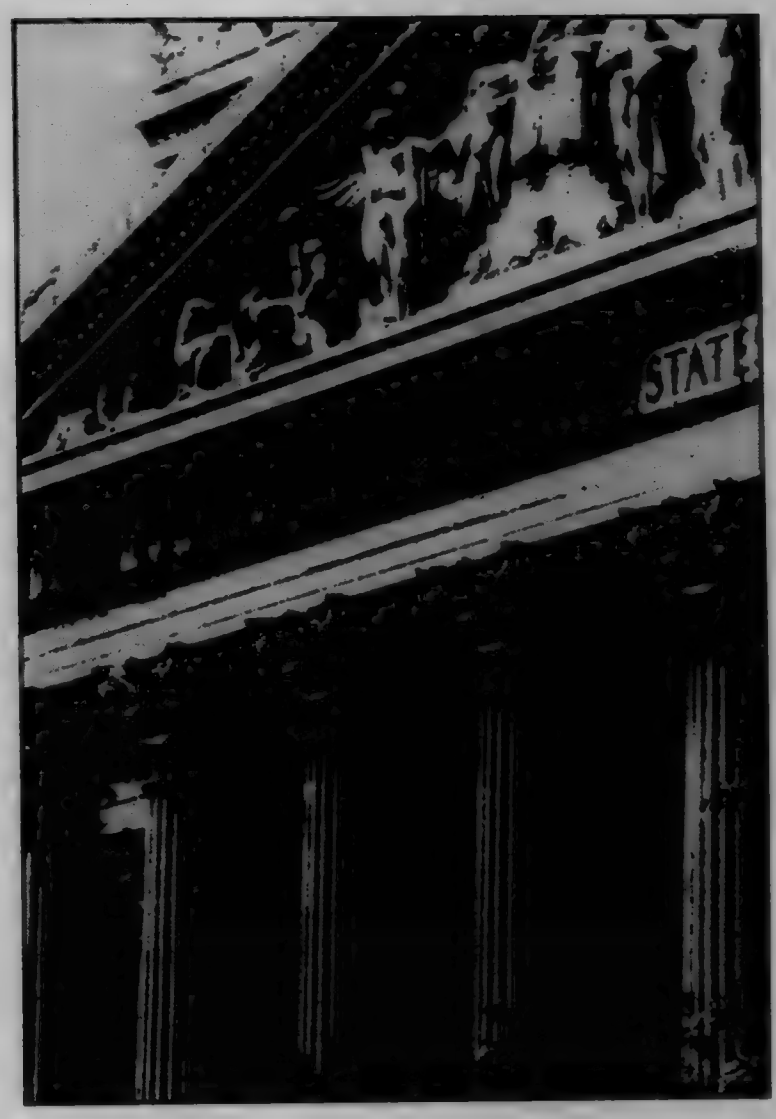

Superintendent of Documents **Subscription** Order Form

Order Processing Code:
*** 5421**

Charge your order. It's Easy!

To fax your orders (202) 512–2250
Phone your orders (202) 512–1800

☐ **YES**, enter the following indicated subscriptions for one year:

_____ **LSA (List of CFR Sections Affected)**, (LCS) for $27 per year.
_____ **Federal Register Index** (FRUS) $25 per year.

The total cost of my order is $ _____. **Price includes regular domestic postage and handling** and is subject to change. International customers please add 25%.

Company or personal name (Please type or print)

Additional address/attention line

Street address

City, State, ZIP code

Daytime phone including area code

Purchase order number (optional)

May we make your name/address available to other mailers? YES ☐ NO ☐

Please Choose Method of Payment:

☐ Check Payable to the Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐☐☐ – ☐
☐ VISA ☐ MasterCard Account
☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

☐☐☐☐ (Credit card expiration date)

Thank you for your order!

Authorizing Signature 1/97

Mail To: Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250–7954

UMI

VOL

64

ISS

70

AP

13

1999

UMI

INFORMATION ABOUT THE SUPERINTENDENT OF DOCUMENTS' SUBSCRIPTION SERVICE

Know when to expect your renewal notice and keep a good thing coming. To keep our subscription prices down, the Government Printing Office mails each subscriber *only one renewal notice*. You can learn when you will get your renewal notice by checking the number that follows month/year code on the top line of your label *as shown in this example:*

A renewal notice will be sent approximately 90 days **before the shown date.**

```
                                        /
                                    DEC97 R 1
AFR SMITH212J
JOHN SMITH
212 MAIN STREET
FORESTVILLE MD 20704
```

A renewal notice will be sent approximately 90 days **before the shown date.**

```
                                        /
                                    DEC97 R 1
AFRDO SMITH212J
JOHN SMITH
212 MAIN STREET
FORESTVILLE MD 20704
```

To be sure that your service continues without interruption, please return your renewal notice promptly. If your subscription service is discontinued, simply send your mailing label from any issue to the Superintendent of Documents, Washington, DC 20402–9372 with the proper remittance. Your service will be reinstated.

To change your address: Please SEND YOUR MAILING LABEL, along with your new address to the Superintendent of Documents, Attn: Chief, Mail List Branch, Mail Stop: SSOM, Washington, DC 20402–9373.

To inquire about your subscription service: Please SEND YOUR MAILING LABEL, along with your correspondence, to the Superintendent of Documents, Attn: Chief, Mail List Branch, Mail Stop: SSOM, Washington, DC 20402–9373.

To order a new subscription: Please use the order form provided below.

Superintendent of Documents **Subscription** Order Form

Order Processing Code:
*** 5468**

Charge your order. It's Easy! MasterCard VISA

To fax your orders (202) 512–2250
Phone your orders (202) 512–1800

☐ **YES**, enter my subscription(s) as follows:

_____ subscriptions to **Federal Register (FR);** *including* the daily Federal Register, monthly Index and List of CFR Sections Affected (LSA), at $607 each per year.

_____ subscriptions to **Federal Register**, *daily only* (FRDO), at $555 each per year.

The total cost of my order is $_____. **Price includes regular domestic postage and handling**, and is subject to change. International customers please add 25%.

Company or personal name (Please type or print)

Additional address/attention line

Street address

City, State, ZIP code

Daytime phone including area code

Purchase order number (optional)

May we make your name/address available to other mailers? YES ☐ NO ☐

Please Choose Method of Payment:

☐ Check Payable to the Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐☐☐–☐
☐ VISA ☐ MasterCard Account
☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐
☐☐☐☐ (Credit card expiration date)

Thank you for your order!

Authorizing signature 11/3

Mail To: Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250–7954

VICE

VISA

12–2250
12–1800

ange.

ments
☐–☐

☐☐☐

you for
r order!

11/3

7954

UMI

VOL

64

ISS

70

AP

13

1999

UMI

Printed on recycled paper

VOL
64
ISS
71
AP
14
1999
UMI

4-14-99
Vol. 64

United S
Governm
Printing
SUPERINTEN
OF DOCUME
Washington, D

OFFICIAL BU
Penalty for priv

UMI

THE PAPER AND INK USED IN THE ORIGINAL PUBLICATION MAY AFFECT THE QUALITY OF THE MICROFORM EDITION.

4–14–99
Vol. 64 No. 71

federal register

Wednesday
April 14, 1999

United States
Government
Printing Office
SUPERINTENDENT
OF DOCUMENTS
Washington, DC 20402

OFFICIAL BUSINESS
Penalty for private use, $300

PERIODICALS
Postage and Fees Paid
U.S. Government Printing Office
(ISSN 0097–6326)

**********3-DIGIT 481
A FR UMI 346U DEC 99 R
UMI
PERIODICALS CHECK IN
PO BOX 1346
ANN ARBOR MI 48106

VOL
64
ISS
71
AP
14
999
UMI

4-14-99
Vol. 64
Pages 183

4–14–99
Vol. 64 No. 71
Pages 18323–18550

federal register

Wednesday
April 14, 1999

Briefings on how to use the Federal Register
For information on briefings in Washington, DC, see announcement on the inside cover of this issue.

The **FEDERAL REGISTER** is published daily, Monday through Friday, except official holidays, by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). The Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 is the exclusive distributor of the official edition.

The **Federal Register** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders, Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress, and other Federal agency documents of public interest.

Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless the issuing agency requests earlier filing. For a list of documents currently on file for public inspection, see http://www.nara.gov/fedreg.

The seal of the National Archives and Records Administration authenticates the Federal Register as the official serial publication established under the Federal Register Act. Under 44 U.S.C. 1507, the contents of the **Federal Register** shall be judicially noticed.

The **Federal Register** is published in paper and on 24x microfiche. It is also available online at no charge as one of the databases on GPO Access, a service of the U.S. Government Printing Office.

The online edition of the **Federal Register** is issued under the authority of the Administrative Committee of the Federal Register as the official legal equivalent of the paper and microfiche editions (44 U.S.C. 4101 and 1 CFR 5.10). It is updated by 6 a.m. each day the **Federal Register** is published and it includes both text and graphics from Volume 59, Number 1 (January 2, 1994) forward.

GPO Access users can choose to retrieve online **Federal Register** documents as TEXT (ASCII text, graphics omitted), PDF (Adobe Portable Document Format, including full text and all graphics), or SUMMARY (abbreviated text) files. Users should carefully check retrieved material to ensure that documents were properly downloaded.

On the World Wide Web, connect to the **Federal Register** at http://www.access.gpo.gov/nara. Those without World Wide Web access can also connect with a local WAIS client, by Telnet to swais.access.gpo.gov, or by dialing (202) 512-1661 with a computer and modem. When using Telnet or modem, type swais, then log in as guest with no password.

For more information about GPO Access, contact the GPO Access User Support Team by E-mail at gpoaccess@gpo.gov; by fax at (202) 512–1262; or call (202) 512–1530 or 1–888–293–6498 (toll free) between 7 a.m. and 5 p.m. Eastern time, Monday–Friday, except Federal holidays.

The annual subscription price for the **Federal Register** paper edition is $555, or $607 for a combined **Federal Register**, Federal Register Index and List of CFR Sections Affected (LSA) subscription; the microfiche edition of the **Federal Register** including the Federal Register Index and LSA is $220. Six month subscriptions are available for one-half the annual rate. The charge for individual copies in paper form is $8.00 for each issue, or $8.00 for each group of pages as actually bound; or $1.50 for each issue in microfiche form. All prices include regular domestic postage and handling. International customers please add 25% for foreign handling. Remit check or money order, made payable to the Superintendent of Documents, or charge to your GPO Deposit Account, VISA, MasterCard or Discover. Mail to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954.

There are no restrictions on the republication of material appearing in the **Federal Register.**

How To Cite This Publication: Use the volume number and the page number. Example: 64 FR 12345.

Printed on recycled paper.

SUBSCRIPTIONS AND COPIES

PUBLIC
Subscriptions:
Paper or fiche — **202–512–1800**
Assistance with public subscriptions — **512–1806**
General online information — **202–512–1530; 1–888–293–6498**
Single copies/back copies:
Paper or fiche — **512–1800**
Assistance with public single copies — **512–1803**
FEDERAL AGENCIES
Subscriptions:
Paper or fiche — **523–5243**
Assistance with Federal agency subscriptions — **523–5243**

FEDERAL REGISTER WORKSHOP

THE FEDERAL REGISTER: WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: Sponsored by the Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WASHINGTON, DC

WHEN: April 20, 1999 at 9:00 am.

WHERE: Office of the Federal Register
Conference Room
800 North Capitol Street, NW.
Washington, DC
(3 blocks north of Union Station Metro)

RESERVATIONS: 202–523–4538

Contents

Federal Register
Vol. 64, No. 71
Wednesday, April 14, 1999

Agency for International Development
See International Development Cooperation Agency

Agricultural Marketing Service
NOTICES
Perishable Agricultural Commodities Act:
Limited liability companies; policy statement, 18397–18398

Agricultural Research Service
NOTICES
Patent licenses; non-exclusive, exclusive, or partially exclusive:
Protein Scientific, Inc., 18398

Agriculture Department
See Agricultural Marketing Service
See Agricultural Research Service
See Cooperative State Research, Education, and Extension Service
See Forest Service

Air Force Department
NOTICES
Privacy Act:
System of records, 18406–18410

Children and Families Administration
RULES
Personal Responsibility and Work Opportunity Reconciliation Act of 1996; implementation:
Temporary assistance for needy families program—
Out-of-wedlock childbearing decreases and abortion reduction; bonus awards to States with largest decreases in illegitimacy, 18483–18495

Commerce Department
See Export Administration Bureau
See National Oceanic and Atmospheric Administration
See Patent and Trademark Office

Cooperative State Research, Education, and Extension Service
PROPOSED RULES
Grants and cooperative agreements; availability, etc.:
Stakeholders; recepients of agricultural research, education, and extension formula funds input requirements, 18533–18536

Corporation for National and Community Service
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 18403–18404
Meetings; Sunshine Act, 18404

Defense Department
See Air Force Department
See Navy Department
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 18404
Meetings:
Defense Intelligence Agency Science and Technology Advisory Board, 18405
Senior Executive Service:
Performance Review Board; membership, 18405

Education Department
NOTICES
Grants and cooperative agreements; availability, etc.:
Elementary and secondary education—
Safe and drug-free schools and communities national programs, 18543–18546
Individuals with disabilities—
Training and information for parents of children wih disabilities, 18547–18549

Energy Department
See Federal Energy Regulatory Commission

Environmental Protection Agency
RULES
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
Cyprodinil, 18346–18351
Cyromazine, 18357–18359
Dimenthomorph, 18367–18369
Fluthiacet-methyl, 18351–18357
Glyphosate, 18360–18367
Imidacloprid
Correction, 18359–18360
Oxyfluorfen, 18369–18372
Pryiproxyfen (2-[1-methyl-2-(4-phenoxyphenoxy)ethoxy]pyridine, 18333–18339
Tebufenozide; benzoic acid, 3,5-dimethyl-1(1,1-dimethylethyl)-2-(4-ethylbenzoyl) hyrazide, 18339–18346
NOTICES
Pesticide registration, cancellation, etc.:
Dexol peemergent weed and grass preventer 2, et al., 18421–18424
SEVIN brand 10% bait carbaryl insecticide, et al., 18424–18426

Executive Office of the President
See Trade Representative, Office of United States

Export Administration Bureau
NOTICES
Agency information collection activities:
Proposed collection; comment request, 18401–18402
Meetings:
Technical Advisory Committee, 18402

Federal Aviation Administration
RULES
Airworthiness directives:
Lockheed, 18324–18327
PROPOSED RULES
Airworthiness directives:
Boeing, 18386–18392
LET Aeronautical Works, 18384–18386
Pilatus Aircraft Ltd., 18382–18384
Federal airways and jet routes, 18392–18393

NOTICES
Meetings:
RTCA, Inc., 18472

Federal Communications Commission
NOTICES
Agency information collection activities:
Proposed collection; comment request, 18426–18427

Federal Election Commission
NOTICES
Meetings; Sunshine Act, 18427

Federal Energy Regulatory Commission
NOTICES
Environmental statements; availability, etc.:
Algonquin LNG, Inc., 18420
Grand River Dam Authority, 18420–18421
Meetings:
Nevada Independent System Administrator, 18421
Applications, hearings, determinations, etc.:
AES Redondo Beach, LLC., et al., 18416
California Power Exchange Corp., 18416
Columbia Gas Transmission, 18416–18417
Great Lakes Gas Transmission L.P., 18417
National Fuel Gas Supply Corp., 18417–18418
Northern Natural Gas Co., 18418
Northwest Pipeline Corp., 18418–18419
PG&E Gas Transmission, Northwest Corp., 18419
Texas Gas Transmission Corp., 18419

Federal Highway Administration
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 18472–18473

Federal Maritime Commission
NOTICES
Agreements filed, etc., 18427–18428

Federal Railroad Administration
NOTICES
Safety advisories, bulletins, and directives:
Richmond-built tank car tanks originally equipped with foam-in-place insulation; inspection requirements, 18473–18476

Federal Reserve System
NOTICES
Banks and bank holding companies:
Change in bank control, 18428
Formations, acquisitions, and mergers, 18428

Federal Transit Administration
NOTICES
Transportation Equity Act for 21st Century; implementation:
Over-the-road bus accessibility; program guidance, 18476

Fish and Wildlife Service
NOTICES
Endangered and threatened species permit applications, 18440–18442
Environmental statements; availability, etc.:
Incidental take permit—
Los Osos, CA; Morro shoulderband snail, 18442–18443

Food and Drug Administration
RULES
Medical devices:
Class III preamendment devices; suction antichoke device, tongs antichoke device, and implanted neuromuscular stimulator device; premarket approval, 18327–18329
Class III preamendments physical medicine devices; premarket approval, 18329–18331
Mammography quality standards, 18331–18333
NOTICES
Food additive petitions:
Ciba Specialty Chemicals Corp., 18429

Forest Service
NOTICES
Agency information collection activities:
Proposed collection; comment request, 18398–18399
Environmental statements; notice of intent:
Umpqua National Forest, OR, 18399–18400
White River National Forest, CO; correction, 18401
Meetings:
Eastern Washington Cascades Provincial Advisory Committee and Yakima Provincial Advisory Committee, 18401
Forestry Research Advisory Council, 18401

General Services Administration
NOTICES
Environmental statements; availability, etc.:
Chattanooga, TN; volunteer army ammunition plant; disposal, 18428–18429

Health and Human Services Department
See Children and Families Administration
See Food and Drug Administration
See Indian Health Service
See National Institutes of Health
See Substance Abuse and Mental Health Services Administration
NOTICES
Organization, functions, and authority delegations:
Health Resources and Services Administration, 18429

Housing and Urban Development Department
RULES
Fair housing:
Complaint processing; plain language revision and reorganization, 18537–18541

Indian Affairs Bureau
NOTICES
Environmental statements; availability, etc.:
Skull Valley Indian Reservation, UT; private fuel storage installation, 18451–18452

Indian Health Service
NOTICES
Grants and cooperative agreements; availability, etc.:
Health professions recruitment program, 18429–18432

Interior Department
See Fish and Wildlife Service
See Indian Affairs Bureau
See Land Management Bureau
See National Park Service
See Reclamation Bureau

NOTICES
Privacy Act:
Systems of records, 18434–18440

International Development Cooperation Agency
RULES
Acquisition regulations:
Miscellaneous amendments; correction, 18481

International Trade Commission
NOTICES
Import investigations:
Lamb meat from—
Canada and Mexico, 18448–18449

Justice Department
See National Institute of Justice

Labor Department
See Mine Safety and Health Administration

Land Management Bureau
NOTICES
Environmental statements; availability, etc.:
Skull Valley Indian Reservation, UT; fuel storage installation, 18451–18452

Legal Services Corporation
RULES
Legal assistance eligibility:
Maximum income levels
Correction, 18372

Maritime Administration
NOTICES
Agency information collection activities:
Reporting and recordkeeping requirements, 18476

Mine Safety and Health Administration
PROPOSED RULES
Education and training:
Shell dredging and mining of sand, gravel, surface stone, surface clay, colloidal phosphate, and surface limestone; hearings, 18498–18531

National Aeronautics and Space Administration
RULES
Acquisition regulations:
Contract financing; electronic funds transfer payment other than central contractor registration, 18372–18373

National Highway Traffic Safety Administration
NOTICES
Motor vehicle safety standards:
Nonconforming vehicles—
Importation eligibility; determinations, 18477–18480

National Institute of Justice
NOTICES
Meetings:
Future of DNA Evidence National Commission, 18449

National Institutes of Health
NOTICES
Meetings:
National Center for Research Resources, 18432–18433
National Institute of Environmental Health Sciences, 18433–18434
National Institute of Neurological Disorders and Stroke, 18433

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
Alaska; fisheries of Exclusive Economic Zone—
Pacific cod, 18373–18374
PROPOSED RULES
Fishery conservation and management:
Caribbean, Gulf, and South Atlantic fisheries—
Gulf of Mexico reef fish, 18395–18396
Magnuson-Stevens Act provisions—
Gulf of Maine separator trawl whiting fishery and proposed supplemental gear, 18394–18395
NOTICES
Meetings:
New England Fishery Management Council, 18402

National Park Service
NOTICES
Meetings:
Trail of Tears National Historic Trail Advisory Council, 18443
National Trails System:
Lewis and Clark National Historic Trail; trail marker insignia, 18444
Native American human remains and associated funerary objects:
California State University, Fresno, CA; inventory completion, 18444–18445
Heard Museum, Phoenix, AZ; repatriation, 18445
Minnesota Indian Affairs Council, Bemidji, MN; inventory completion, 18445–18446
Peabody Museum, MA; inventory completion, 18446–18447
Peabody Museum, MA; repatriation, 18447

National Science Foundation
NOTICES
Meetings:
NSF 50th Anniversary Public Advisory Committee, 18449–18450

Navy Department
NOTICES
Privacy Act:
System of records, 18410–18416

Northeast Dairy Compact Commission
RULES
Rulemaking procedures and producer referendum, 18323–18324

Nuclear Regulatory Commission
NOTICES
Environmental statements; availability, etc.:
Skull Valley Indian Reservation, UT; private fuel storage installation, 18451–18452
Meetings:
Reactor Safeguards Advisory Committee, 18452
Applications, hearings, determinations, etc.:
FirstEnergy Nuclear Operating Co., 18450
Public Service Electric & Gas Co., 18450–18451

Office of United States Trade Representative
See Trade Representative, Office of United States

Patent and Trademark Office
NOTICES
Agency information collection activities:
Proposed collection; comment request, 18402–18403

Public Health Service
See Food and Drug Administration
See Indian Health Service
See National Institutes of Health
See Substance Abuse and Mental Health Services Administration

Reclamation Bureau
NOTICES
Meetings:
Bay-Delta Advisory Council, 18447–18448

Securities and Exchange Commission
PROPOSED RULES
Securities:
Publication or submission of quotations without specified information, 18393–18394
Securities and investment companies:
Canadian tax-deferred retirement savings accounts; offer and sale of securities; correction, 18481
NOTICES
Applications, hearings, determinations, etc.:
American Skandia Trust and American Skandia Investment Services, Inc., 18452–18454
AMR Investment Services Trust, et al., 18454–18457
Equitable Life Assurance Society of the United States, et al., 18457–18461
Merrill Lynch Life Insurance Co., et al., 18461–18464
Prudential Insurance Co. of America, et al., 18464–18467

Small Business Administration
RULES
Surety bond guarantees:
Technical amendments, 18324
PROPOSED RULES
Small business investment companies:
Miscellaneous amendments, 18375–18382
NOTICES
Agency information collection activities:
Proposed collection; comment request, 18467
Interest rates; quarterly determinations, 18468
License surrenders:
Pioneer Ventures L.P., 18468
Applications, hearings, determinations, etc.:
Zero Stage Capital VI, L.P., 18467–18468

Social Security Administration
NOTICES
Social security acquiescence rulings:
Termination of entitlement based on presumed death, 18468–18469

Substance Abuse and Mental Health Services Administration
NOTICES
Agency information collection activities:
Proposed collection; comment request, 18434

Trade Representative, Office of United States
NOTICES
Trade Policy Staff Committee:
World Trade Organization—
Free trade area of the Americas; market access negotiations, etc., 18469–18472

Transportation Department
See Federal Aviation Administration
See Federal Highway Administration
See Federal Railroad Administration
See Federal Transit Administration
See Maritime Administration
See National Highway Traffic Safety Administration

Udall, Morris K., Scholarship and Excellence in National Environmental Policy Foundation
NOTICES
Meetings; Sunshine Act, 18480

Separate Parts In This Issue

Part II
Department of Health and Human Services, Children and Families Administration, 18483–18495

Part III
Department of Labor, Mine Safety and Health Administration, 18497–18531

Part IV
Department of Agriculture, Cooperative State Research, Education, and Extension Service, 18533–18536

Part V
Department of Housing and Urban Development, 18537–18541

Part VI
Department of Education, 18543–18546

Part VII
Department of Education, 18547–18549

Reader Aids
Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

7 CFR
1361.....18323
Proposed Rules:
3418.....18534

13 CFR
115.....18324
Proposed Rules:
107.....18375

14 CFR
39.....18324
Proposed Rules:
39 (3 documents) 18382, 18384, 18386
71 (2 documents) 18392, 18481

17 CFR
Proposed Rules:
230.....18481
240 (2 documents) 18393, 18481
270.....18481

21 CFR
874.....18327
882.....18327
890.....18329
900.....18331

24 CFR
103.....18538

30 CFR
Proposed Rules:
46 (2 documents) 18498, 18528
48.....18498

40 CFR
180 (9 documents) 18333, 18339, 18346, 18351, 18357, 18359, 18360, 13867, 18369

45 CFR
283.....18484
1611.....18372

48 CFR
722.....18481
732.....18481
752.....18481
1832.....18372

50 CFR
679.....18373
Proposed Rules:
600.....18394
622.....18395
648.....18394

UMI

VOL

64

ISS

71

AP

14

1999

UMI

Rule

This sectio
contains re
applicabilit
are keyed
Federal Re
50 titles pu

The Code
the Superi
new books
REGISTER

**NORTHE
COMMISS**

7 CFR Pa

Rulemak

AGENCY: N
Commiss
ACTION: I
comment

SUMMARY:
ex parte c
the Comm
procedur
Commiss
merits of
proceedi
close of t
existing p
communi
members
interested
represent
rulemaki
force with
to the lan

DATES: In
1999. Sw
testimony
be submit
1999.

ADDRESSE
notarized
exhibits t
Commiss
Montpeli

FOR FURT
Kenneth
Northeast
the above
(802) 229
229–2028

SUPPLEME

Backgrou

The No
Commiss
establishe
Northeast

Rules and Regulations

Federal Register
Vol. 64, No. 71
Wednesday, April 14, 1999

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

NORTHEAST DAIRY COMPACT COMMISSION

7 CFR Part 1361

Rulemaking Procedures

AGENCY: Northeast Dairy Compact Commission.

ACTION: Interim rule with request for comments.

SUMMARY: This interim rule amends the ex parte communication provision of the Commission's rulemaking procedures. The amended rule allows Commission members to discuss the merits of a pending rulemaking proceeding with each other after the close of the comment period. The existing prohibition against ex parte communications between Commission members or Commission staff and interested parties or their representatives, at any time during the rulemaking proceeding, remains in full force with some clarifying amendments to the language of the rule.

DATES: Interim rule effective April 14, 1999. Sworn and notarized written testimony, comments and exhibits may be submitted until 5:00 p.m. on May 14, 1999.

ADDRESSES: Mail, or deliver, sworn and notarized testimony, comments and exhibits to: Northeast Dairy Compact Commission, 34 Barre Street, Suite 2, Montpelier, Vermont 05602.

FOR FURTHER INFORMATION CONTACT: Kenneth M. Becker, Executive Director, Northeast Dairy Compact Commission at the above address or by telephone at (802) 229–1941, or by facsimile at (802) 229–2028.

SUPPLEMENTARY INFORMATION:

Background

The Northeast Dairy Compact Commission ("Commission") was established under authority of the Northeast Interstate Dairy Compact ("Compact"). The Compact was enacted into law by each of the six participating New England states as follows: Connecticut—Pub. L. 93–320; Maine—Pub. L. 89–437, as amended, Pub. L. 93–274; Massachusetts—Pub. L. 93–370; New Hampshire—Pub. L. 93–336; Rhode Island—Pub. L. 93–106; Vermont—Pub. L. 93–57. In accordance with Article I, Section 10 of the United States Constitution, Congress consented to the Compact in Pub. L. 104–127 (FAIR Act), Section 147, codified at 7 U.S.C. 7256. Subsequently, the United States Secretary of Agriculture, pursuant to 7 U.S.C. 7256(1), authorized implementation of the Compact.

Pursuant to its rulemaking authority under Article V, Section 11 of the Compact, the Commission concluded an informal rulemaking process and voted to adopt a compact over-order price regulation on May 30, 1997.[1] The Commission subsequently amended and extended the compact over-order price regulation.[2] In 1998, the Commission further amended specific provisions of the over-order price regulation.[3] The current compact over-order price regulation is codified at 7 CFR Chapter XIII.

On July 14, 1998, the Commission published an interim procedural rule to establish regulations governing the administrative rulemaking procedures for the Commission, as authorized by Section 11 of the Compact. That rule was based on rulemaking procedures originally adopted by the Commission on November 21, 1996 and incorporated in the Commission's Bylaws.[4]

The Commission determines that two amendments to the current provision prohibiting ex parte communications are warranted. First, the Commission amends subsections (a) and (b) of § 1361.11 to substitute clarifying language. The Commission deletes reference to a "hearing" and substitutes the phrase "rulemaking proceeding," in both subsections (a) and (b). In only subsection (a), the Commission also deletes the phrase " discuss ex parte" and substitutes the phrase "communicate, either directly or indirectly, in connection with" the merits of the rulemaking proceeding. The prohibition against any ex parte communication between Commission members or Commission staff and interested persons or their representatives, during the course of the rulemaking proceeding, remains in full force.

Secondly, the Commission amends § 1361.11(b) to adjust the time period during which the Commission members are prohibited from discussing the merits of the pending rulemaking proceeding with each other. The current provision only allows Commission members to discuss the merits of the rulemaking during the deliberative meeting conducted pursuant to 7 CFR § 1361.8. The amended rule permits Commission members to discuss the issues following the close of the comment period, after the public record is complete. The prohibition against discussing the merits of the proceeding between the date of publication of the official notice of the rulemaking proceeding and the close of the post-hearing comment period remains in force. This amendment will permit the Commission's Committee on Regulations and Rulemaking, as well as state delegations and individual Commissioners, to prepare for the Commission's deliberative meeting held pursuant to § 1361.8.

Accordingly, the Commission amends the current procedural rule to be effective upon publication. The amended rule will apply only to those rulemaking proceedings initiated by publication of official notice after the effective date of the rule.

Public Participation in Rulemaking Proceedings

The Commission seeks and encourages comments on these amendments to the Commission's rulemaking procedures. The Commission continues to benefit from the valuable insight and active participation of all segments of the affected community, including consumers, processors and producers in the development and administration of the over-order price regulation and welcomes comments from milk handlers and other interested persons.

Request for Written Comments

Any person may participate in the rulemaking proceeding by submitting written comments or exhibits to the Commission. Comments and exhibits

[1] 62 FR 29626 (May 30, 1997)
[2] 62 FR 62810 (Nov. 25, 1997)
[3] 63 FR 10104 (Feb. 27, 1998); 63 FR 46385 (Sept. 1, 1998); and 63 FR 65517 (Nov. 27, 1998).
[4] 63 FR 37755 (July 14, 1998).

may be submitted at any time before 5:00 p.m. on May 14, 1999.

Please note: Comments and exhibits will be made part of the record of the rulemaking proceeding only if they identify the author's name, address and occupation, and if they include a sworn and notarized statement indicating that the comment and/or exhibit is presented based upon the author's personal knowledge and belief. Facsimile copies will be accepted up until the 5:00 p.m. deadline, but the original must then be sent by ordinary mail.

List of Subjects in 7 CFR Part 1361

Administrative practice and procedure, Rulemaking, Milk.

Codification in Code of Federal Regulations

For reasons set forth in the preamble, the Northeast Dairy Compact Commission amends 7 CFR Part 1361 as follows:

PART 1361— RULEMAKIMG PROCEDURES

1. The authority citation for part 1361 continues to read as follows:

Authority: 7 U.S.C. 7256.

2. Section 1361.11 is amended by revising paragraphs (a) and (b) to read as follows:

§ 1361.11 Ex parte communications.

(a) Following notice of a rulemaking proceeding, pursuant to § 1361.3, and prior to the conclusion of a producer referendum, or the final decision of the Commission, whichever is later, no Compact Commission member or Commission staff person shall communicate, either directly or indirectly, in connection with the merits of the rulemaking proceeding with any person having an interest in the proceeding or with any representative of such person.

(b) Following notice of a rulemaking proceeding, pursuant to § 1361.3, and prior to the close of the comment period, pursuant to § 1361.7, Compact Commission members shall not discuss among themselves the merits of the rulemaking proceeding.

* * * * *

Dated: April 8, 1999.

Kenneth M. Becker,

Executive Director.

[FR Doc. 99–9273 Filed 4–13–99; 8:45 am]

BILLING CODE 1650–01–P

SMALL BUSINESS ADMINISTRATION

13 CFR Part 115

Surety Bond Guarantees

AGENCY: Small Business Administration.

ACTION: Final rule.

SUMMARY: This document amends 13 CFR 115.31(a)(2) to conform it to Section 411(c)(3)(B) of the Small Business Investment Act (the "Act"), as amended by Section 604(d) of the Small Business Reauthorization Act of 1997 (the "1997 Reauthorization Act"). The 1997 Reauthorization Act added bonds issued on behalf of qualified HUBZone small business concerns to those receiving a 90 percent guarantee under the Surety Bond Guarantee Program. Since this rule only implements the cited statute, it is published in final form without opportunity to comment.

EFFECTIVE DATE: This rule is effective May 14, 1999.

FOR FURTHER INFORMATION CONTACT: Robert J. Moffitt, Associate Administrator, Office of Surety Guarantees, (202) 205–6540.

SUPPLEMENTARY INFORMATION: This amendment only implements the cited statute to include bonds issued by a Prior Approval Surety on behalf of qualified HUBZone small business concerns among those to be covered by a 90 percent guarantee from SBA. The present regulation already provides a 90 percent guarantee for bonds issued on behalf of small disadvantaged concerns.

This change would affect only qualified HUBZone small business concerns that are already eligible to participate in the Surety Bond Guarantee Program. Publishing a proposed rule for notice and comment is unnecessary because the change to the regulation is minimal and SBA has no discretion.

Compliance With Executive Orders 12612, 12778, and 12866, the Regulatory Flexibility Act (5 U.S.C. 601–612.) and the Paperwork Reduction Act (44 U.S.C. Ch. 35)

SBA certifies that this is not a significant regulatory action under E.O. 12866 and will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601–612.) This rule only affects those HUBZone small business concerns who may want to participate in SBA's Surety Bond Guarantee Program.

For purposes of the Paperwork Reduction Act, 44 U.S.C. Ch. 35, SBA certifies that this rule contains no new reporting or record keeping requirements.

For purposes of E.O. 12612, SBA certifies that this rule would not have any federalism implications warranting the preparation of a Federalism Assessment.

For purposes of E.O. 12778, SBA certifies that this rule is drafted, to the extent practicable, under the standards set forth in Section 2 of that Order.

List of Subjects in 13 CFR Part 115

Surety bond guarantees.

For the reasons stated in the preamble, the Small Business Administration amends 13 CFR part 115 as follows:

PART 115—SURETY BOND GUARANTEES

1. The authority citation for part 115 is revised to read as follows:

Authority: 5 U.S.C. app 3; 15 U.S.C. 687b, 687c, 694a, 694b; Pub. L. 101–574, 104 Stat. 2823 (1990); Pub. L. 105–135.

§ 115.31 [Amended]

2. Amend § 115.31 to revise paragraph (a)(2) to read as follows:

(a) * * *

(2) The bond was issued on behalf of a small business owned and controlled by socially and economically disadvantaged individuals or on behalf of a qualified HUBZone small business concern.

* * * * *

Dated: March 31, 1999.

Aida Alvarez,

Administrator.

[FR Doc. 99–9268 Filed 4–13–99; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–315–AD; Amendment 39–11128; AD 99–08–20]

RIN 2120–AA64

Airworthiness Directives; Lockheed Model L–1011–385 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to all Lockheed Model L–1011–385 series airplanes, that currently requires a one-time inspection to detect cracking of the bulkhead at fuselage

station (FS) 1363 at butt line 42.5, and repair or additional inspections, if necessary. This amendment adds repetitive inspections to detect cracking of the bulkhead web and bulkhead cap (frame cap) at FS 1363, and repair, if necessary. This amendment is prompted by reports that additional, more extensive, fatigue cracking was found in the bulkhead web and cap. The actions specified by this AD are intended to detect and correct cracking of the bulkhead web and cap, which could result in reduced structural integrity of the fuselage.

DATES: Effective May 19, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 19, 1999.

The incorporation by reference of certain other publications, as listed in the regulations, was approved previously by the Director of the Federal Register as of July 3, 1995 (60 FR 31624, June 16, 1995).

ADDRESSES: The service information referenced in this AD may be obtained from Lockheed Martin Aircraft & Logistics Center, 120 Orion Street, Greenville, South Carolina 29605. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Thomas Peters, Aerospace Engineer, Systems and Flight Test Branch, ACE–116A, FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia 30349; telephone (770) 703–6063; fax (770) 703–6097.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 95–12–24, 39–9277 (60 FR 31624, June 16, 1995), applicable to all Lockheed Model L–1011–385 series airplanes, was published in the **Federal Register** on September 11, 1998 (63 FR 48655). The action proposed to continue to require a one-time visual inspection to detect cracking of the bulkhead at fuselage station (FS) 1363 at butt line 42.5, and repair or additional inspections, if necessary. The action also proposed to add repetitive visual and eddy current surface scan inspections to detect cracking of the bulkhead web at FS 1363; repetitive visual, eddy current bolt hole, eddy current surface scan, and X-ray inspections to detect cracking of the bulkhead cap at FS 1363; and repair, if necessary. The inspections would be required to be accomplished in accordance with the service bulletins described previously. The action also proposed to provide for modification of the bulkhead web or bulkhead cap, which, if accomplished, introduces a new threshold of 18,000 flight cycles for the repetitive inspections of the modified area.

In addition, the action also proposed that flight with a crack in the bulkhead web is allowed, provided that (1) the crack does not extend beyond a certain area, (2) the crack does not exceed a certain maximum length, (3) the horizontal stiffeners above and below the web crack have no detectable cracks, and (4) inspections of the bulkhead are repeated on a more frequent basis until repair is accomplished.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Support for the Proposal

Two commenters support the proposed rule.

Request To Add Approval for Previously Approved Alternative Methods of Compliance

One commenter requests that approval be granted to use previously issued alternative methods of compliance (AMOC) that were issued for AD 95–12–24.

The FAA concurs with the commenter's request. The FAA inadvertently omitted reference to the fact that AMOC's issued for AD 95–12–24 are approved for this AD. Accordingly, the final rule has been revised to add new paragraph (i)(2) to specify that AMOC's approved previously in accordance with AD 95–12–24 are approved as AMOC's for this AD.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the change previously described. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

There are approximately 236 Model L–1011 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 118 airplanes of U.S. registry will be affected by this AD.

The actions that are currently required by AD 95–12–24 take approximately 16 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the currently required actions on U.S. operators is estimated to be $113,280, or $960 per airplane.

The new inspections of the bulkhead web that are required by this new AD action will take approximately 16 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the inspections of the bulkhead web required by this AD on U.S. operators is estimated to be $113,280, or $960 per airplane, per inspection cycle.

The new inspections of the bulkhead cap that are required by this AD action will take approximately 40 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the inspections of the bulkhead cap required by this AD on U.S. operators is estimated to be $283,200, or $2,400 per airplane, per inspection cycle.

Should an operator be required to accomplish the repair of cracking in the bulkhead web, it will take between 8 to 32 work hours per airplane (8 work hours for each cracked area) to accomplish the repair, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of any necessary repair of the bulkhead web is estimated to be between $480 to $1,920 per airplane.

Should an operator be required to accomplish the repair of cracking in the bulkhead cap, it will take approximately 200 work hours per airplane to accomplish the repair, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of any necessary repair of the bulkhead cap is estimated to be $12,000 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the current or proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Should an operator elect to accomplish the optional modification of the bulkhead web that will be provided by this AD action, it would take approximately 48 work hours to accomplish, at an average labor rate of

$60 per work hour. Based on these figures, the cost impact of the optional modification of the bulkhead web will be $2,880 per airplane.

Should an operator elect to accomplish the optional modification of the bulkhead cap that will be provided by this AD action, it would take approximately 200 work hours to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the optional modification of the bulkhead cap would be $12,000 per airplane.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–9277 (60 FR 31624, June 16, 1995), and by adding a new airworthiness directive (AD), amendment 39–11128, to read as follows:

99–08–20 Lockheed: Amendment 39–11128. Docket 97-NM–315-AD. Supersedes AD 95–12–24, Amendment 39–9277.

Applicability: All Model L–1011–385 series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (i)(1) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct cracking of the bulkhead web and cap, which could result in reduced structural integrity of the fuselage, accomplish the following:

Restatement of the Requirements of AD 95–12–24, Amendment 39–9277

(a) Prior to the accumulation of 18,000 total landings, or within 30 days after July 3, 1995 (the effective date of AD 95–12–24, amendment 39–9277), whichever occurs later, perform a visual inspection to detect cracking of the bulkhead at fuselage station (FS) 1363 in the area of the stiffeners at left and right butt line (BL) 42.5; in accordance with the procedures specified in paragraphs 2.A. and 2.B. of Part I of the Accomplishment Instructions of Lockheed L–1011 Service Bulletin 093–53–268, dated April 15, 1993; or in accordance with the procedures specified in paragraphs 2.A. and 2.B. of Part II of the Accomplishment Instructions of Lockheed L–1011 Service Bulletin 093–53–268, Revision 1, dated July 2, 1996.

Note 2: This AD does not require that the eddy current inspection referenced in paragraph 2.B. of Part I of the Accomplishment Instructions of Lockheed L–1011 Service Bulletin 093–53–268, dated April 15, 1993; and referenced in paragraph 2.B. of Part II of the Accomplishment Instructions of Lockheed L–1011 Service Bulletin 093–53–268, Revision 1, dated July 2, 1996; be accomplished as a requirement of paragraph (a) of this AD.

(b) Except as provided by paragraph (d) of this AD, if any cracking of the bulkhead is detected below waterline (WL) 117 during any inspection performed in accordance with paragraph (a) of this AD: Prior to further flight, perform the inspections required by paragraphs (b)(1), (b)(2), and (b)(3) of this AD, in accordance with Lockheed Document LCC–7622–373, dated May 9, 1995. Prior to further flight, repair any cracking of the bulkhead cap found during these inspections, in accordance with Lockheed Document LCC–7622–374, dated May 9, 1995.

(1) Perform a bolt hole eddy current inspection to detect cracking of the eight fastener holes at the intersection of the vertical stiffener at BL 42.5 and the bulkhead cap vertical flange; and

(2) Perform a bolt hole eddy current inspection to detect cracking at eight fastener locations in the bulkhead cap lower flange that connect the lower fuselage skin panel to the frame at the BL 42.5 vertical stiffener; and

(3) Perform a visual inspection to detect stress corrosion cracking of the accessible portions of the fillet radius of the bulkhead cap.

(c) Except as provided by paragraph (d) of this AD, if any cracking of the bulkhead is detected at or above WL 117 during any inspection performed in accordance with paragraph (a) of this AD: Prior to further flight, repair the bulkhead cracking in accordance with the procedures specified in Part II of the Accomplishment Instructions of Lockheed L–1011 Service Bulletin 093–53–268, dated April 15, 1993; or in accordance with the procedures specified in Part III of the Accomplishment Instructions of Lockheed L–1011 Service Bulletin 093–53–268, Revision 1, dated July 2, 1996.

(d) Continued flight with cracking of the bulkhead is permitted, provided that the conditions specified in paragraph 1.C. of the Planning Information of Lockheed L–1011 Service Bulletin 093–53–268, dated April 15, 1993; or Revision 1, dated July 2, 1996; are met. For flight with cracking, both the visual and eddy current inspections specified in paragraphs 2.B. and 2.C. of Part I of the Accomplishment Instructions of Lockheed L–1011 Service Bulletin 093–53–268, dated April 15, 1993; or specified in paragraphs 2.B. and 2.C. of Part II of the Accomplishment Instructions of Lockheed L–1011 Service Bulletin 093–53–268, Revision 1, dated July 2, 1996; must be accomplished prior to returning the aircraft to service. These visual and eddy current inspections must be repeated within 900 landings. Prior to the accumulation of 1,800 total landings, these inspections must be terminated by the installation of the repair specified in Part II of the Accomplishment Instructions of Lockheed L–1011 Service Bulletin 093–53–268, dated April 15, 1993; or by installation of the repair specified in Part III of the Accomplishment Instructions of Lockheed L–1011 Service Bulletin 093–53–268, Revision 1, dated July 2, 1996.

New Requirements of This AD

(e) Prior to the accumulation of 18,000 total landings, or within 6 months after the effective date of the AD, whichever occurs later, perform a visual and eddy current surface scan inspection for cracking of the bulkhead web at FS 1363, in accordance with Lockheed L–1011 Service Bulletin 093–53–268, Revision 1, dated July 2, 1996.

(1) If no cracking of the bulkhead web is detected, except as provided by paragraph (f) of this AD, repeat the visual and eddy current surface scan inspections thereafter at intervals not to exceed 2,000 landings.

(2) If cracking of the bulkhead web is detected, and that cracking is within the

limits specified in Part I of the Accomplishment Instructions of the service bulletin: Accomplish the requirements of either paragraph (e)(2)(i) or (e)(2)(ii) of this AD, in accordance with the service bulletin. Except as provided by paragraph (f) of this AD, repeat the inspections thereafter at intervals not to exceed 2,000 landings after repair of the cracking.

(i) Prior to further flight, repair the cracking. Or

(ii) Repeat the inspections specified in Part I of the Accomplishment Instructions of the service bulletin at intervals not to exceed 900 landings, and repair the cracking within 1,800 landings after the cracking was detected.

(3) If cracking of the bulkhead web is detected, and that cracking is outside the limits specified in Part I of the Accomplishment Instructions of the service bulletin: Prior to further flight, repair in accordance with Part III of the Accomplishment Instructions of the service bulletin. Except as provided by paragraph (f) of this AD, repeat the inspections thereafter at intervals not to exceed 2,000 landings.

(f) For airplanes on which modification of the bulkhead web is accomplished in accordance with Part IV of the Accomplishment Instructions of Lockheed L–1011 Service Bulletin 093–53–268, Revision 1, dated July 2, 1996: Repeat the inspections specified in paragraph (e) of this AD within 18,000 landings after accomplishment of the modification, in accordance with the service bulletin.

(g) Prior to the accumulation of 18,000 total landings, or within 6 months after the effective date of this AD, whichever occurs later, perform visual, bolt hole eddy current, eddy current surface scan, and X-ray inspections for cracking of the bulkhead cap at FS 1363, in accordance with Lockheed L–1011 Service Bulletin 093–53–272, dated November 12, 1996.

(1) If no cracking of the bulkhead cap is detected, except as provided by paragraph (h) of this AD, repeat the inspections thereafter at intervals not to exceed 2,000 landings, in accordance with the service bulletin.

(2) If any cracking of the bulkhead cap is detected, accomplish the requirements of either paragraph (g)(2)(i) or (g)(2)(ii) of this AD, in accordance with the service bulletin.

(i) Prior to further flight, repair in accordance with Part I of the Accomplishment Instructions of the service bulletin. Thereafter, repeat the inspections at intervals not to exceed 2,000 landings. Or

(ii) Prior to further flight, replace the bulkhead cap, in accordance with Part II of the Accomplishment Instructions of the service bulletin. Following such replacement, repeat the inspection within 18,000 landings, in accordance with the service bulletin.

(h) For airplanes on which replacement of the bulkhead cap is accomplished in accordance with Part II of the Accomplishment Instructions of Lockheed L–1011 Service Bulletin 093–53–272, dated November 12, 1996: Repeat the inspections specified in paragraph (g) of this AD within 18,000 landings after accomplishment of the replacement, in accordance with the service bulletin.

(i)(1) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Atlanta Aircraft Certification Office (ACO), FAA, Small Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Atlanta ACO.

(i)(2) Alternative methods of compliance approved previously in accordance with AD 95–12–24, amendment 39–9277, are approved as alternative methods of compliance for this AD.

(j) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(k) The actions shall be done in accordance with Lockheed L–1011 Service Bulletin 093–53–268, Revision 1, dated July 2, 1996; Lockheed L–1011 Service Bulletin 093–53–268, dated April 15, 1993; Lockheed Document LCC–7622–373, dated May 9, 1995; Lockheed Document LCC–7622–374, dated May 9, 1995; and Lockheed L–1011 Service Bulletin 093–53–272, dated November 12, 1996; as applicable.

(1) The incorporation by reference of Lockheed L–1011 Service Bulletin 093–53–268, Revision 1, dated July 2, 1996, and Lockheed L–1011 Service Bulletin 093–53–272, dated November 12, 1996, is approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(2) The incorporation by reference of Lockheed L–1011 Service Bulletin 093–53–268, dated April 15, 1993; Lockheed Document LCC–7622–373, dated May 9, 1995; and Lockheed Document LCC–7622–374, dated May 9, 1995, was approved previously by the Director of the Federal Register as of July 3, 1995 (60 FR 31624, June 16, 1995).

(3) Copies may be obtained from Lockheed Martin Aircraft & Logistics Center, 120 Orion Street, Greenville, South Carolina 29605. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(l) This amendment becomes effective on May 19, 1999.

Issued in Renton, Washington, on April 6, 1999.

John J. Hickey,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–9130 Filed 4–13–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 874 and 882

[Docket No. 98N–0405]

Medical Devices; Retention in Class III and Effective Date of Requirement for Premarket Approval for Three Preamendment Class III Devices

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule to retain in class III, three preamendment medical devices and to require the filing of a premarket approval application (PMA) or a notice of completion of product development protocol (PDP) for the suction antichoke device, the tongs antichoke device, and the implanted neuromuscular stimulator. The agency has summarized its findings regarding the degree of risk of illness or injury designed to be eliminated or reduced by requiring the devices to meet the statute's approval requirements and the benefits to the public from the use of the devices. This action is being taken under the Federal Food, Drug, and Cosmetic Act (the act) as amended by the Medical Device Amendments of 1976 (the amendments), the Safe Medical Devices Act of 1990 (the SMDA), and the Food and Drug Administration Modernization Act of 1997 (FDAMA).

EFFECTIVE DATE: April 14, 1999.

FOR FURTHER INFORMATION CONTACT: Janet L. Scudiero, Center for Devices and Radiological Health (HFZ–410), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–1184.

SUPPLEMENTARY INFORMATION:

I. Background

The SMDA (Pub. L. 101–629) added new section 515(i) (21 U.S.C. 360e(i)) to the act. This section requires FDA to review the classification of preamendments class III devices for which no final rule has been issued requiring the submission of PMA's and

to determine whether each device should be reclassified into class I or class II or remain in class III. For devices remaining in class III, SMDA directed FDA to develop a schedule for issuing regulations to require premarket approval.

In the **Federal Register** of May 6, 1994 (59 FR 23731), FDA issued a notice of availability of a preamendments class III devices strategy document. The strategy document set forth FDA's plans for implementing the provisions of section 515(i) of the act for preamendments class III devices for which FDA had not yet required premarket approval. FDA divided this universe of devices into three groups as referenced in the May 6, 1994, notice.

In the **Federal Register** of July 30, 1998 (63 FR 40673), FDA published a proposed rule (hereinafter referred to as the July 1998 proposed rule), to retain in class III, the suction antichoke device (§ 874.5350 (21 CFR 874.5350)), the tongs antichoke device (§ 874.5370 (21 CFR 874.5370)), and the implanted neuromuscular stimulator device (§ 882.5860 (21 CFR 882.5860)), and to require the filing of a PMA or PDP for these three preamendment class III devices. In accordance with section 515(b)(2)(A) of the act, FDA included in the preamble to the July 1998 proposed rule the agency's findings with respect to the degree of risk of illness or injury designed to be eliminated or reduced by requiring these devices to have an approved PMA or a declared PDP and the benefit to the public from use of the device.

The preamble to the July 1998 proposed rule also provided an opportunity for interested persons to submit comments on the proposed rule and the agency's findings, and under section 515(b)(2)(B) of the act, FDA provided an opportunity for interested persons to request a change in the classification of the device based on new information relevant to its classification. Any petition requesting a change in the classification of the devices was required to be submitted by August 13, 1998. The comment period closed October 28, 1998. The agency did not receive any comments or petitions requesting a change in the classification of these devices.

II. Findings With Respect to Risks and Benefits

Under section 515(b)(3) of the act, FDA is adopting the findings as published in the July 1998 proposed rule. As required by section by section 515(b)(2)(A) of the act, FDA published its findings regarding: (1) The degree of risk of illness or injury designed to be eliminated or reduced by requiring that these devices have an approved PMA or a declared completed PDP; and (2) the benefits to the public from the use of the device.

These findings are based on the reports and recommendations of the advisory committees (the panels) for these devices, the Ear Nose and Throat Devices Panel and the Neurological Devices Panel, for the classification of the devices along with any additional information FDA discovered. Additional information can be found in the proposed and final rules classifying these devices in the **Federal Register** of January 22, 1982 (47 FR 3280) and November 6, 1986 (51 FR 40378) for the ear, nose and throat devices; and of November 28, 1978 (43 FR 55640) and September 4, 1979 (44 FR 51726) for the neurological device, respectively.

III. Final Rule

Under section 515(b)(3) of the act, FDA is adopting the findings as published in the preamble to the July 30, 1998, proposed rule and issuing this final rule to require premarket approval of the generic type of devices by revising §§ 874.5350(c), 874.5370(c), and 882.5860(c).

Under the final rule, a PMA or a notice of completion of a PDP is required to be filed on or before July 13, 1999, for any of these class III preamendment devices that were in commercial distribution before May 28, 1976, or that have been found by FDA to be substantially equivalent to such a device on or before July 13, 1999. An approved PMA or a declared completed PDP is required to be in effect for any such devices on or before 180 days after FDA files the application. Any other class III preamendment device subject to this rule that was not in commercial distribution before May 28, 1976, is required to have an approved PMA or a declared completed PDP in effect before it may be marketed.

If a PMA or a notice of completion of a PDP for any of these class III preamendment devices is not filed on or before the 90th day past the effective date of this regulation, that device will be deemed adulterated under section 501(f)(1)(A) of the act (21 U.S.C. 351(f)(1)(A)), and commercial distribution of the device will be required to cease immediately. The device may, however, be distributed for investigational use, if the requirements of the investigational device exemption (IDE) regulations (part 812 (21 CFR part 812)) are met.

Under § 812.2(d) of the IDE regulations, FDA hereby stipulates that the exemptions from the IDE requirements in § 812.2(c)(1) and (c)(2) will no longer apply to clinical investigations of these class III preamendment devices. Further, FDA concludes that investigational class III preamendment devices are significant risk devices as defined in § 812.3(m) and advises that, as of the effective date of §§ 874.5350(c), 874.5370(c), and 882.5860(c), the requirements of the IDE regulations regarding significant risk devices will apply to any clinical investigation of these class III preamendment devices. For any of these class III preamendment devices that is not subject to a timely filed PMA or PDP, an IDE must be in effect under § 812.20 on or before 90 days after the effective date of this regulation or distribution of the device must cease. FDA advises all persons presently sponsoring a clinical investigation involving any of these class III preamendment devices to submit an IDE application to FDA no later than 60 days after the effective date of this final rule to avoid the interruption of ongoing investigations.

IV. Environmental Impact

The agency has determined under 21 CFR 25.30(h) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

V. Analysis of Impacts

FDA has examined the impacts of the final rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612), as amended by subtitle D of the Small Business Regulatory Fairness Act of 1996 (Pub. L. 104–121) and the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this final rule is consistent with the regulatory philosophy and principles identified in the Executive Order. In addition, the final rule is not a significant regulatory action as defined by the Executive Order and so is not subject to review under the Executive Order.

If a rule has a significant economic impact on a substantial number of small entities, the Regulatory Flexibility Act requires agencies to analyze regulatory

options that would minimize any significant impact of a rule on small entities. Because FDA believes that there is little or no interest in marketing these devices, the agency certifies that the final rule, will not have a significant impact on a substantial number of small entities. Therefore, under the Regulatory Flexibility Act, no further analysis is required.

VI. Paperwork Reduction Act of 1995

FDA concludes that this final rule does not contain information collection provisions. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

List of Subjects in 21 CFR Parts 874 and 882

Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR parts 874 and 882 are amended as follows:

PART 874—EAR, NOSE, AND THROAT DEVICES

1. The authority citation for 21 CFR part 874 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 371.

2. Section 874.5350 is amended by revising paragraph (c) to read as follows:

§ 874.5350 Suction antichoke device.

* * * * *

(c) *Date PMA or notice of completion of PDP is required.* A PMA or a notice of completion of a PDP for a device is required to be filed with the Food and Drug Administration on or before July 13, 1999 for any suction antichoke device that was in commercial distribution before May 28, 1976, or that has, on or before July 13, 1999, been found to be substantially equivalent to a suction antichoke device that was in commercial distribution before May 28, 1976. Any other suction antichoke device shall have an approved PMA or declared completed PDP in effect before being placed in commercial distribution.

3. Section 874.5370 is amended by revising paragraph (c) to read as follows:

§ 874.5370 Tongs antichoke device.

* * * * *

(c) *Date PMA or notice of completion of PDP is required.* A PMA or a notice of completion of a PDP for a device is required to be filed with the Food and Drug Administration on or before July 13, 1999 for any tongs antichoke device that was in commercial distribution before May 28, 1976, or that has, on or before July 13, 1999, been found to be substantially equivalent to a tongs antichoke device that was in commercial distribution before May 28, 1976. Any other tongs antichoke device shall have an approved PMA or declared completed PDP in effect before being placed in commercial distribution.

PART 882—NEUROLOGICAL DEVICES

4. The authority citation for 21 CFR part 882 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 371.

5. Section 882.5860 is amended by revising paragraph (c) to read as follows:

§ 882.5860 Implanted neuromuscular stimulator.

* * * * *

(c) *Date PMA or notice of completion of PDP is required.* A PMA or notice of completion of a PDP for a device described in paragraph (b) of this section is required to be filed with the Food and Drug Administration on or before July 13, 1999 for any implanted neuromuscular stimulator that was in commercial distribution before May 28, 1976, or that has, on or before July 13, 1999, been found to be substantially equivalent to an implanted neuromuscular stimulator that was in commercial distribution before May 28, 1976. Any other implanted neuromuscular stimulator shall have an approved PMA or declared completed PDP in effect before being placed in commercial distribution.

Dated: April 7, 1999.

William K. Hubbard,

Acting Deputy Commissioner for Policy.

[FR Doc. 99–9221 Filed 4–13–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 890

[Docket No. 98N–0467]

Medical Devices; Effective Date of Requirement for Premarket Approval for Three Class III Preamendments Physical Medicine Devices

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule to require the filing of a premarket approval application (PMA) or a notice of completion of product development protocol (PDP) for the following three high priority Group 3 preamendments class III medical devices: The microwave diathermy device for uses other than treatment of select medical conditions, such as relief of pain, muscle spasms, and joint contractures; the ultrasonic diathermy device for uses other than treatment of select medical conditions, such as relief of pain, muscle spasms, and joint contractures; and the ultrasound and muscle stimulator device for uses other than treatment of select medical conditions, such as relief of pain, muscle spasms, and joint contractures. The uses of these three devices do not include use for the treatment of malignancies. The agency has summarized its findings regarding the degree of risk of illness or injury designed to be eliminated or reduced by requiring the devices to meet the statute's approval requirements and the benefits to the public from the use of the devices. This action is being taken under the Federal Food, Drug, and Cosmetic Act (the act) as amended by the Medical Device Amendments of 1976 (the amendments), the Safe Medical Devices Act of 1990 (the SMDA), and the Food and Drug Administration Modernization Act of 1997 (FDAMA).

EFFECTIVE DATE: April 14, 1999.

FOR FURTHER INFORMATION CONTACT: Janet L. Scudiero, Center for Devices and Radiological Health (HFZ–410), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–1184.

SUPPLEMENTARY INFORMATION:

I. Background

The Safe Medical Devices Act of 1990 added new section 515(i) to the act (21 U.S.C. 360e(i)). This section requires FDA to review the classification of preamendments class III devices for which no final rule has been issued requiring the submission of PMA's and to determine whether each device should be reclassified into class I or class II or remain in class III. For devices remaining in class III, SMDA directed FDA to develop a schedule for issuing regulations to require premarket approval.

In the **Federal Register** of May 6, 1994 (59 FR 23731), FDA issued a notice of availability of a preamendments class III devices strategy document. The strategy document set forth FDA's plans for implementing the provisions of section 515(i) of the act for preamendments class III devices for which FDA had not yet required premarket approval. FDA divided this universe of devices into

three groups as referenced in the May 6, 1994, notice.

In the **Federal Register** of July 30, 1998 (63 FR 40677), FDA published a proposed rule (hereinafter referred to as the July 1998 proposed rule) to require the filing of a PMA or a notice of completion of a PDP for the microwave diathermy device (§ 890.5275(b) (21 CFR 890.5275(b))), ultrasonic diathermy device (§ 890.5300(b) (21 CFR 890.5300(b))), and ultrasound and muscle stimulator (§ 890.5860(b) (21 CFR 890.5860(b))), three high priority group 3 physical medicine devices. In accordance with section 515(b)(2)(A) of the act, FDA included in the preamble to the proposal the agency's proposed findings with respect to the degree of risk of illness or injury designed to be eliminated or reduced by requiring the device to meet the premarket approval requirements of the act, and the benefits to the public from use of the device.

The preamble to the July 1998 proposed rule also provided an opportunity for interested persons to submit comments on the proposed rule and the agency's findings, and under section 515(b)(2)(B) of the act, FDA provided an opportunity for interested persons to request a change in the classification of the device based on new information relevant to its classification. Any petition requesting a change in the classification of the devices was required to be submitted by August 13, 1998. The comment period closed October 28, 1998. The agency did not receive any comments or petitions requesting a change in the classification of these devices.

II. Findings with Respect to Risks and Benefits

Under section 515(b)(3) of the act, FDA is adopting the findings as published in the July 1998 proposed rule. As required by section 515(b) of the act, FDA published its findings regarding: (1) The degree of risk of illness or injury designed to be eliminated or reduced by requiring that these devices have an approved PMA or a declared completed PDP, and (2) the benefits to the public from the use of the device.

These findings are based on the reports and recommendations of the Orthopedic and Rehabilitation Devices Panel, an FDA advisory committee, for the classification of the devices along with any additional information FDA discovered. Additional information can be found in the proposed and final rules classifying the devices in the **Federal Register** on August 28, 1979 (44 FR 50458) and November 23, 1983 (49 FR 53032), respectively.

III. Final Rule

Under section 515(b)(3) of the act, FDA is adopting the findings as published in the preamble to the proposed rule and issuing this final rule to require premarket approval of the generic type of devices for class III preamendment devices by revising §§ 890.5275(c), 890.5300(c), and 890.5860(c).

Under the final rule, a PMA or a notice of completion of a PDP is required to be filed on or before July 13, 1999, for any of these class III preamendment devices that were in commercial distribution before May 28, 1976, or that have been found by FDA to be substantially equivalent to such a device on or before July 13, 1999. An approved PMA or a declared completed PDP is required to be in effect for any such devices on or before 180 days after FDA files the application. Any other class III preamendment device subject to this rule that was not in commercial distribution before May 28, 1976, is required to have an approved PMA or a declared completed PDP in effect before it may be marketed.

If a PMA or a notice of completion of a PDP for any of these class III preamendment devices is not filed on or before the 90th day past the effective date of this regulation, that device will be deemed adulterated under section 501(f)(1)(A) of the act (21 U.S.C. 351(f)(1)(A)), and commercial distribution of the device will be required to cease immediately. The device may, however, be distributed for investigational use, if the requirements of the investigational device exemption (IDE) regulations (part 812 (21 CFR part 812)) are met.

Under § 812.2(d) of the IDE regulations, FDA hereby stipulates that the exemptions from the IDE requirements in § 812.2(c)(1) and (c)(2) will no longer apply to clinical investigations of these class III preamendment devices. Further, FDA concludes that investigational class III preamendment devices are significant risk devices as defined in § 812.3(m) and advises that as of the effective date of §§ 890.5275(c), 890.5300(c), and 890.5860(c), the requirements of the IDE regulations regarding significant risk devices will apply to any clinical investigation of these preamendment devices. For any of these class III preamendment devices that is not subject to a timely filed PMA or PDP, an IDE must be in effect under § 812.20 on or before 90 days after the effective date of this regulation or distribution of the device must cease. FDA advises all persons presently sponsoring a clinical investigation involving any of these class III preamendment devices to submit an IDE application to FDA no later than 60 days after the effective date of this final rule to avoid the interruption of ongoing investigations.

IV. Environmental Impact

The agency has determined under 21 CFR 25.30(h) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

V. Analysis of Impacts

FDA has examined the impacts of the final rule under Executive Order 12866 and the Regulatory Flexibility Act (Pub. L. 96–354), as amended by subtitle D of the Small Business Regulatory Fairness Act of 1996 (Pub. L. 104–121) and the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this final rule is consistent with the regulatory philosophy and principles identified in the Executive Order. In addition, the final rule is not a significant regulatory action as defined by the Executive Order and so is not subject to review under the Executive Order.

If a rule has a significant economic impact on a substantial number of small entities, the Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because FDA believes that there is little or no interest in marketing these devices, the agency certifies that the final rule will not have a significant economic impact on a substantial number of small entities. Therefore, under the Regulatory Flexibility Act, no further analysis is required.

VI. Paperwork Reduction Act of 1995

FDA concludes that this final rule does not contain collection of information provisions. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

List of Subjects in 21 CFR Part 890

Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 890 is amended as follows:

PART 890—PHYSICAL MEDICINE DEVICES

1. The authority citation for 21 CFR part 890 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 371.

2. Section 890.5275 is amended by revising paragraph (c) to read as follows:

§ 890.5275 Microwave diathermy.

* * * * *

(c) *Date PMA or notice of completion of PDP is required.* A PMA or a notice of completion of a PDP for a device described in paragraph (b) of this section is required to be filed with the Food and Drug Administration on or before July 13, 1999, for any microwave diathermy described in paragraph (b) of this section that was in commercial distribution before May 28, 1976, or that has, on or before July 13, 1999, been found to be substantially equivalent to a microwave diathermy described in paragraph (b) of this section that was in commercial distribution before May 28, 1976. Any other microwave diathermy described in paragraph (b) of this section shall have an approved PMA or declared completed PDP in effect before being placed in commercial distribution.

3. Section 890.5300 is amended by revising paragraph (c) to read as follows:

§ 890.5300 Ultrasonic diathermy.

* * * * *

(c) *Date PMA or notice of completion of PDP is required.* A PMA or notice of completion of a PDP for a device described in paragraph (b) of this section is required to be filed with the Food and Drug Administration on or before July 13, 1999, for any ultrasonic diathermy described in paragraph (b) of this section that was in commercial distribution before May 28, 1976, or that has, on or before July 13, 1999, been found to be substantially equivalent to an ultrasonic diathermy described in paragraph (b) of this section that was in commercial distribution before May 28, 1976. Any other ultrasonic diathermy described in paragraph (b) of this section shall have an approved PMA or declared completed PDP in effect before being placed in commercial distribution.

4. Section 890.5860 is amended by revising paragraph (c) to read as follows:

§ 890.5860 Ultrasound and muscle stimulator.

* * * * *

(c) *Date PMA or notice of completion of PDP is required.* A PMA or notice of completion of a PDP for a device described in paragraph (b) of this section is required to be filed with the Food and Drug Administration on or before July 13, 1999 for any ultrasound and muscle stimulator described in paragraph (b) of this section that was in commercial distribution before May 28, 1976, or that has, on or before July 13, 1999, been found to be substantially equivalent to an ultrasound and muscle stimulator described in paragraph (b) of this section that was in commercial distribution before May 28, 1976. Any other ultrasound and muscle stimulator described in paragraph (b) of this section shall have an approved PMA or declared completed PDP in effect before being placed in commercial distribution.

Dated: April 7, 1999.

William K. Hubbard,

Acting Deputy Commissioner for Policy.

[FR Doc. 99–9220 Filed 4–13–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 900

[Docket No. 98N–0728]

Quality Mammography Standards

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending its regulations governing mammography. The purpose of these amendments is to eliminate a conflict between the mammography regulations, which must be followed by all facilities performing mammography, and FDA's electronic product radiation control (EPRC) performance standards, which establish radiation safety performance requirements for x-ray units, including mammographic systems.

DATES: This regulation is effective on April 28, 1999.

FOR FURTHER INFORMATION CONTACT: Roger L. Burkhart, Center for Devices and Radiological Health (HFZ–240), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850, 301–594–3332.

SUPPLEMENTARY INFORMATION:

I. Background

The Mammography Quality Standards Act (MQSA) (Pub. L. 102–539) was signed on October 27, 1992, to establish national quality standards for mammography. The MQSA required that to provide mammography services legally after October 1, 1994, all facilities, except facilities of the Department of Veterans Affairs, had to be accredited by an approved accreditation body and certified by the Secretary of Health and Human Services (the Secretary). The authority to approve accreditation bodies and to certify facilities was delegated by the Secretary to FDA.

A specific requirement of MQSA was that quality standards be established for mammographic equipment and practices, including quality assurance and quality control programs. Mammography facilities had to meet these standards to become accredited and certified. The standards were intended to replace the patchwork of Federal, State, and private standards existing in 1992 to ensure that all women nationwide receive uniformly high quality mammography services. Since October 1, 1994, these standards have been provided by interim rules published in the **Federal Register** of December 21, 1993 (58 FR 67558 and 58 FR 67565), and amended in the **Federal Register** of September 30, 1994 (59 FR 49808).

In the **Federal Register** of April 3, 1996 (61 FR 14856, 61 FR 14870, 61 FR 14884, 61 FR 14898, and 61 FR 14908), FDA proposed regulations to replace the interim regulations. Developed with strong congressional encouragement, these proposed regulations reflected FDA's belief that more comprehensive quality standards would further optimize facility performance. After analysis of the extensive public comments received on the proposed regulations, revisions were made and a final rule was published in the **Federal Register** of October 28, 1997 (62 FR 55852). The effective date for most of the final rule is April 28, 1999. A few equipment and equipment quality assurance requirements do not become effective until October 28, 2002.

FDA has subsequently discovered that some mammographic x-ray systems will have difficulty meeting certain of the new requirements because of design features that were used by the manufacturers in order to ensure that their units met the agency's EPRC performance standards for diagnostic x-ray systems. To resolve this conflict, proposed amendments to the MQSA regulations were published in the

Federal Register of November 5, 1998 (63 FR 59750).

II. Need for Amendments

The source of the conflict lies in the requirements for the collimation of the x-ray field and the alignment of that field with the image receptor found in § 900.12(b)(5) and (e)(5)(vii) (21 CFR 900.12(b)(5) and (e)(5)(vii)) of the MQSA final regulations. Two problems exist with these provisions as they appeared in the October 28, 1997, publication.

First, both of these provisions permit the x-ray field "to extend to or beyond the edges of the image receptor." This allowance was made in response to the expressed desire of some mammography facilities to have the capacity to "blacken" the film to the edges, a capacity that is particularly useful when automated viewing devices are used. However, the manufacturers of all diagnostic x-ray systems, including mammography systems, must comply with applicable performance standards established by FDA. These performance standards currently require that mammography systems be manufactured with collimation to ensure that the x-ray field does not extend beyond the nonchest wall edges of the image receptor.

It is possible for a mammography system to meet both of these sets of standards as they were originally written. However, FDA has been informed by several manufacturers that in the past, in order to be sure to meet the EPRC standards, their systems were designed so that the x-ray field does not reach the nonchest wall edges of the image receptor. Such systems would not meet the final MQSA regulations as presently written.

Without an amendment to the MQSA regulations, in order to be in compliance, some facilities would have to choose among three courses of action. The first would be to apply for and receive approval of an alternative requirement for alignment under 21 CFR 900.18 of the MQSA regulations that would allow the facility to continue using its system unchanged. The second would be to purchase a retrofit of their system under a variance to the performance standards that has already been approved by FDA for one manufacturer. The third would be to purchase a new system that meets both sets of existing requirements.

FDA proposed solving this first problem by amending § 900.12(e)(5)(vii) so that the x-ray field will be allowed, but not required as at present, to extend to or beyond the nonchest wall sides of the image receptor. This would permit facilities whose systems are not presently capable of "blackening" the films to these edges to continue to use those systems without the need of either applying for an alternative requirement or purchasing an expensive retrofit or new unit.

The second problem is that the limit on the extension of the x-ray field beyond all edges of the image receptor to "within 2 percent of the SID", discussed on page 62 FR 55852 at 55945 of the preamble of the October 27, 1997, final rule, was erroneously applied in the regulations only to the chest wall side of the image receptor. This omission raises the possibility of an unnecessary radiation hazard to the patient if the x-ray field extends an excessive amount beyond the nonchest wall edges of the image receptor. The agency proposed to remove this radiation hazard concern by amending § 900.12(e)(5)(vii) to apply the 2 percent of the SID extension limit to all edges of the image receptor, in accordance with the intentions expressed in the preamble.

Finally, FDA proposed to simplify the regulations by dropping all mention of alignment from § 900.12(b)(5), thus consolidating all alignment requirements at one location in § 900.12(e)(5)(vii). The portion of § 900.12(b)(5) dealing with the light field remains unchanged.

III. Comments on the Proposed Amendments

FDA invited interested persons to comment on the November 5, 1998, proposed rule by January 4, 1999. FDA received two comments. One comment from a professional organization supported the amendments, noting that they would "eliminate conflict" between the two sets of regulations, "address user concerns," and take into account "cost concerns" of facilities. The second comment, from a State radiation control agency, simply expressed support for the amendments. In view of these responses, the agency has decided to make the amendments final.

IV. Environmental Impact

The agency has determined under 21 CFR 25.34(c) that the action of publication of the MQSA final regulations is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

V. Analysis of Impacts

FDA has examined the impacts of this rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612) (as amended by subtitle D of the Small Business Regulatory Fairness Act of 1996 (Pub. L. 104–121)), and the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this rule is consistent with the regulatory philosophy and principles identified in the Executive Order. In addition, this rule is not a significant regulatory action as defined by the Executive Order and so is not subject to review under the Executive Order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. The agency certifies that this final rule will not have a significant negative economic impact on a substantial number of small entities. This rule also does not trigger the requirement for a written statement under section 202(a) of the Unfunded Mandates Reform Act because it does not impose a mandate that results in an expenditure of $100 million or more by State, local, or tribal governments in the aggregate, or by the private sector, in any one year.

FDA had previously estimated (62 FR 55852 at 55968) that the expected average annual benefits from the final regulations would range between $181.7 million and $262.7 million. Average annual compliance costs were estimated at $38.2 million. The compliance cost estimate did not include the possible added costs related to the alignment requirement discussed previously, as the difficulty noted by the manufacturers was not foreseen during the development of the regulations. These added costs would be minimal if an alternative requirement was applied for and received but would be more significant if retrofitting or purchase of a new unit was carried out to meet the requirement. However, FDA's amending of the regulations will eliminate the requirement leading to the possible extra costs and thus eliminate any possible extra cost.

VI. Paperwork Reduction Act of 1995

The agency has determined that this final rule contains no additional collections of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

List of Subjects in 21 CFR Part 900

Electronic products, Health facilities, Mammography, Medical devices, Radiation protection, Reporting and recordkeeping requirements, X-rays.

Therefore, under the Federal Food, Drug, and Cosmetic Act, and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 900 is amended as follows:

PART 900—MAMMOGRAPHY

1. The authority citation for 21 CFR part 900 continues to read as follows:

Authority: 21 U.S.C. 360i, 360nn, 374(e); 42 U.S.C. 263b.

2. Section 900.12 is amended by revising paragraphs (b)(5) and (e)(5)(vii)(A) to read as follows:

§ 900.12 Quality standards.

* * * * *

(b) * * *

(5) *Light fields.* For any mammography system with a light beam that passes through the x-ray beam-limiting device, the light shall provide an average illumination of not less than 160 lux (15 foot candles) at 100 cm or the maximum source-image receptor distance (SID), whichever is less.

* * * * *

(e) * * *

(5) * * *

(vii) * * *

(A) All systems shall have beam-limiting devices that allow the entire chest wall edge of the x-ray field to extend to the chest wall edge of the image receptor and provide means to assure that the x-ray field does not extend beyond any edge of the image receptor by more than 2 percent of the SID.

* * * * *

Dated: April 7, 1999.

William K. Hubbard,

Acting Deputy Commissioner for Policy.

[FR Doc. 99–9222 Filed 4–13–99; 8:45 am]

BILLING CODE 4160–01–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300830; FRL–6071–3]

RIN 2070–AB78

Pyriproxyfen (2-[1-methyl-2-(4-phenoxyphenoxy)ethoxy]pyridine; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a tolerance for residues of pyriproxyfen in or on pome fruits, walnuts and apple pomace, wet. Valent U.S.A. Corporation requested this tolerance under the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996.

DATES: This regulation is effective April 14, 1999. Objections and requests for hearings must be received by EPA on or before June 14, 1999.

ADDRESSES: Written objections and hearing requests, identified by the docket control number, [OPP–300830], must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk identified by the docket control number, [OPP–300830], must also be submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect 5.1/6.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket control number [OPP–300830]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: By mail: Joseph Tavano, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 222, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 305–6411, tavano.joseph@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of March 27, 1998 (63 FR 14926) (FRL–5579–6), EPA issued a notice pursuant to section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a as amended by the Food Quality Protection Act of 1996 (FQPA) (Pub. L. 104–170) announcing the filing of a pesticide petition (PP 7F4882) for tolerance by Valent U.S.A. Corporation, 1333 N. California Blvd., Walnut Creek, CA 94596 This notice included a summary of the petition prepared by Valent U.S.A. Corporation, the registrant. There were no comments received in response to the notice of filing.

The petition requested that 40 CFR 180.510 be amended by establishing a tolerance for residues of the insecticide, pyriproxyfen, in or on pome fruits, walnuts and apple pomace, wet at 0.2, 0.02 and 0.8 part per million (ppm) respectively.

I. Background and Statutory Findings

Section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue...."

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 and a complete description of the risk assessment process, see the final rule on Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997) (FRL–5754–7).

II. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of pyriproxyfen, 2-[1-methyl-2-(4-phenoxyphenoxy)ethoxy]pyridine and to make a determination on aggregate exposure, consistent with section 408(b)(2), for a tolerance for residues of pyriproxyfen on pome fruits, walnuts and apple pomace, wet at 0.2, 0.02 and 0.8 ppm respectively. EPA's assessment of the dietary exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile.

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by pyriproxyfen, 2-[1-methyl-2-(4-phenoxyphenoxy)ethoxy]pyridine are discussed in this unit.

1. *Acute toxicity.* Acute toxicity studies with technical pyriproxyfen: Oral LD_{50} in the rat is >5,000 milligram/kilogram (mg/kg) for males and females - Toxicity Category IV; dermal LD_{50} in the rabbitat >2,000 mg/kg - Toxicity Category IV; inhalation LC_{50} in the rat is >1.3 mg/L (highest dose attainable) - Toxicity Category III; primary eye irritation in the rabbit (mild irritatant) - Toxicity Category III; primary dermal irritation in the rabbit (not an irritant: non-irritating to the skin under conditions of test))- Toxicity Category IV. Pyriproxyfen is not a sensitizer.

2. *Subchronic toxicity.* In the subchronic feeding study in rats, the no-observed effect level (NOAEL) was 27.68 mg/kg/day. The lowest oberved effect level (LOAEL) was 141.28 mg/kg/day, based upon higher mean total cholesteral and phospholipids, decreased mean RBCs, hematocrit and hemoglobin counts and increased relative liver weight.

In the subchronic feeding study in dogs, the NOAEL was 100 mg/kg/day and the LOAEL was 300 mg/kg/day. The effects were based on increased absolute and relative liver weight in males and hepatocellular hypertrophy in females. These findings were also observed at 1,000 mg/kg/day and may represent adaptive changes at both 300 mg/kg/day and the limit dose of 1,000 mg/kg/day.

In a 21-day dermal study in rats, the NOAEL for systemic effects was >1,000 mg/kg/day (limit dose). The LOAEL for systemic effects was not established in this study. No dermal or systemic toxicity was observed at any dose tested.

3. *Chronic toxicity/carcinogenicity.* In a 1-year chronic feeding study in dogs, the NOAEL was 100 mg/kg/day. The LOAEL was 300 mg/kg/day based on decreased weight gain, increased absolute and relative liver weight, mild anemia, increased cholesterol and triglycerides.

The oncogenicity study in mice the NOAEL and LOAEL for systemic toxicity in males are 600 ppm and 3,000 ppm, respectively, based on an renal lesions in males. The technical grade test material was given to male and female CD-1 mice in diet for 18 months at 0, 120, 600, or 3,000 ppm. No statistically significant increase in tumor incidence relative to controls were observed in either sex at any dose up to 3,000 ppm HDT.

In the chronic feeding/oncogenicity study in rats, the NOAEL (systemic) was 35.1 mg/kg/day and the LOAEL (systemic) was 182.7 mg/kg/day. The technical grade test material was administered to male and female Sprague-Dawley rats in diet for 24 months at 0, 120, 600, or 3,000 ppm. A decrease of 16.9% in body weight gain in females at 3,000 ppm 182.7 mg/kg/day was basis for the systemic LOAEL.

4. *Developmental toxicity.* In the developmental study in rabbits, the maternal NOAEL/LOAEL for maternal toxicity were 100 and 300 mg/kg/day based on premature delivery/abortions, soft stools, emaciation, decreased activity and bradypnea. The developmental NOAEL was determined to be 300 mg/kg/day and developmental LOAEL was determined to be undetermined; no dose related anomalies occurred in the 4 remaining litters studied at 1,000 mg/kg/day.

In the developmental study in rats, a maternal NOAEL/LOAEL were determined to be 100 mg/kg/day and 300 mg/kg/day, respectively. These findings were based on increased incidences in mortality and clinical signs at 1,000 mg/kg/day with decreased in food consumption, body weight, and body weight gain together with increases in water consumption at 300 and 1,000 mg/kg/day. The developmental NOAEL/LOAEL were 100 mg/kg/day and 300 mg/kg/day based on the increase of skeletal variations at 300 mg/kg/day and above.

5. *Reproductive toxicity.* In a 2-generation reproduction study in rats, the systemic NOAEL was 1,000 ppm (87 mg/kg/day). The LOAEL for sytemic toxicity was 5,000 ppm (453 mg/kg/day). Effects were based on decreased body weight, weight gain and food consumption in both sexes and both generations, and increased liver weights in both sexes associated with liver and kidney histopathology in males. The reproductive NOAEL was 5,000 ppm. A reproductive LOAEL was not established.

6. *Mutagenicity— Studies on gene mutation and other genotoxic effects.* In a Gene Mutation Assay (Ames Test)/ Reverse Mutation, finding was determined as negative for induction of gene mutation measured as the reversion to histine protrophy of 5 *S.typhimurium* strains and *E.Coli* WP2 uvra at doses from 10 to 5,000 µg/plate with and without S-9 activation. The highest dose was insoluble. A Gene Mutation assay in Mammalian Cells was found to be negative f or mutagencity in CHO (Chinese hamster ovary) V79 cells with and without metabolic activation yp to cytotoxic doses (300 µg/mL). In a Structural Chromosomal Aberration Assay *in vivo*, findings proved nonclastogenic in CHO cells both with and without S-9 activation up to cytotoxic doses 300 µg/mL. In Other Genotoxicity Assays, an increase in unscheduled DNA synthesis was not induced both with and without activation in HeLa cells exposed up to insoluble doses ranging to 6.4 µg/mL without activation and 51.2 µg/mL with activation.

7. *Metabolism.* The results of the metabolism studies are as follows: Acceptable Rats were orally dosed with ^{14}C-labeled pyriproxyfen at 2 or 1,000 mg/kg and at repeated oral doses 14 daily doses of unlabeled pyriproxyfen at 2 mg/kg followed by administration of a single oral dose of labeled pyriproxyfen at 2 mg/kg. Most radioactivity was excreted in the feces 81-92% and urine 5-12% over a 7 day collection period. Expired air was not detected. Tissue radioactivity levels were very low less than 0.3% except for fat. Examination of urine, feces, liver, kidney, bile and blood metabolites yielded numerous > 20 identified metabolites when compared to synthetic standards. The major biotransformation

reactions of pyriproxyfen include: (1) Oxidation of the 4′ - position of the terminal phenyl group; (2) Oxidation at the 5′ - position of pyridine; (3) Cleavage of the ether linkage and conjugation of the resultant phenols with sulfuric acid.

8. *Neurotoxicity.* Neurotoxicity has not been observed in any of the acute, subchronic, chronic, developmental or reproductive studies performed with pyriproxyfen.

B. Toxicological Endpoints

1. *Acute toxicity.* An acute dietary dose and endpoint was not identified in the database. The Agency concludes that there is a reasonable certainty of no harm from acute dietary exposure.

2. *Short- and intermediate-term toxicity.* Doses and endpoints were not identified for short and intermediate-term dermal and inhalation exposure. The Agency concludes that there are reasonable certainties of no harm from these exposures.

3. *Chronic toxicity.* EPA has established the RfD for pyriproxyfen, 2-[1-methyl-2-(4-phenoxyphenoxy)ethoxy]pyridine at 0.35 mg/kg/day. This Reference Dose (RfD) is based on a NOAEL of 35.1 mg/kg/day and an uncertainty factor (UF) of 100. The NOAEL was established from the combined chronic feeding/oncogenicity study in rats where the the LOAEL was 3,000 ppm, based on a 16.9% decrease in body weight gain in females when compared to controls.

4. *Carcinogenicity.* Pyriproxyfen is classified as Category E: not carcinogenic in two acceptable animal studies.

C. Exposures and Risks

1. *From food and feed uses.* Tolerances have been established (40 CFR 180.510) for the residues of pyriproxyfen, in or on a variety of raw agricultural commodities. In todays action tolerances will be established for the residues of pyriproxyfen, in or on the raw agricultural commodities: pome fruits, walnuts and apple pomace, wet at 0.2, 0.02 and 0.8 ppm respectively. Risk assessments were conducted by EPA to assess dietary exposures from pyriproxyfen as follows:

i. *Acute exposure and risk.* Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1-day or single exposure. No acute dietary endpoint and dose was identified in the toxicology data base for pyriproxyfen, therefore the Agency concludes that there is a reasonable certainty of no harm from acute dietary exposure.

ii. *Chronic exposure and risk.* The chronic dietary exposure analysis from food sources was conducted using the RfD of 0.35 mg/kg/day. The RfD is based on the NOAEL of 35.1 mg/kg/day in male and female rats from the Chronic Feeding/Oncogenicity study in rats and an uncertainty factor of 100 applicable to all population subgroups.

In conducting this chronic dietary risk assessment, EPA has made very conservative assumptions: 100% of pome fruits and walnuts having pyriproxyfen tolerances will contain pyriproxyfen residues and those residues will be at the level of the established tolerance. This results in an overestimate of human dietary exposure. Thus, in making a safety determination for this tolerance, EPA is taking into account this conservative exposure assessment.

The existing pyriproxyfen tolerances (published and pending) result in a Theoretical Maximum Residue Contribution (TMRC) that is equivalent to the following percentages of the RfD: US. Population (48 states) 0.8%; Hispanics 1.0%; Non-hispanic blacks 0.9%; Non-hispanic other than black or white 1.2%; All infants (< 1 year) 1.1%; Nursing Infants (< 1 year old) 0.8%; Non-Nursing Infants (< 1 year old) 1.2%; Children (1-6 years old) 2.2%; Children (7-12 years old) 1.3%; Females (13+/nursing) 1.0%.

The subgroups listed above are: (1) the U.S. population (48 states); (2) those for infants and children; and (3) the other subgroups for which the percentage of the RfD occupied is greater than that occupied by the subgroup U.S. population (48 states).

2. *From drinking water*— i. *Acute exposure and risk.* As previously stated, no acute dietary endpoint was identified for assessment of acute dietary risk. Thus the Agency concludes that there is a reasonable certainty of no harm from acute dietary exposure.

ii. *Chronic exposure and risk.* Following OPP's Interim Approach for Addressing Drinking Water Exposure in Tolerance Decision making issued on 17-NOV-1997, the Generic Expected Environmental Concentration (GENEEC) model and the Screening Conccentration In Ground Water) (SCI-GROW) model were run to produce estimates of pyriproxyfen concentrations in surface and ground water respectively. The primary use of these models is to provide a coarse screen for sorting out pesticides for which OPP has a high degree of confidence that the true levels of the pesticide in drinking water will be less than the human health drinking water levels of comparison (DWLOCs). A human health DWLOC is the concentration of a pesticide in drinking water which would result in unacceptable aggregate risk, after having already factored in all food exposures and other non-occupational exposures for which OPP has reliable data.

For chronic (non-cancer) exposure to pyriproxyfen in surface and ground water, the drinking water levels of concern are 12,000 µg/L for U.S. Population and 3,400 µg/L for children (1-6 yrs). To calculate the DWLOC for chronic (non-cancer) exposure relative to a chronic toxicity endpoint, the chronic dietary food exposure (from DEEM) was subtracted from the RfD to obtain the acceptable chronic (non-cancer) exposure to pyriproxyfen in drinking water. DWLOCs were then calculated using default body weights and drinking consumption figures.

Estimated average concentrations of pyriproxyfen in surface and ground water are 0.14 parts per billion (ppb) and 0.006 ppb, respectively. The estimated average concentrations of pyriproxyfen in surface and ground water are less than OPP's level of concern for pyriproxyfen in drinking water as a contribution to chronic aggregate exposure. Therefore, taking into account present uses and uses proposed in this action, OPP concludes with reasonable certainty that residues of pyriproxyfen in drinking water (when considered along with other sources of exposure for which OPP has reliable data) would not result in unacceptable levels of aggregate human health risk at this time.

3. *From non-dietary exposure.* Pyriproxyfen is the active ingredient in many registered residential (indoor, non-food) products for flea and tick control. Formulations include foggers, aerosol sprays, emulsifiable concentrates, and impregnated materials (pet collars).

i. *Acute exposure and risk.* An acute dietary dose and endpoint was not identified. Thus the risk from aggregate exposure is considered to be negligible.

ii. *Chronic exposure and risk.* With the exception of the pet collar uses, consumer use of pyriproxyfen typically results in short-term, intermittent exposures. Hence, chronic residential post-application exposure and risk assessments were conducted to estimate the potential risks from pet collar uses.

The risk assessment was conducted using the following assumptions: application rate of 0.58 mg ai/day (product label), average body weight for a 1 to 6 year old child of 10 kg, the active ingredient dissipates uniformly through 365 days (the label instruct to change collar once a year), 1% of the

active ingredient is available for dermal and inhalation exposure per day. The assessment also assumes an absorption rate of 100%. This is a conservative assumption since the dermal absorption was estimated to be 10%.

The estimated chronic term MOE was 61,000 for children, and 430,000 for adults. An adequate MOE is 100. The risk estimates indicate that potential risks from pet collar uses do not exceed the Agency's level of concern.

iii. *Short- and intermediate-term exposure and risk.* The Agency concludes that there is reasonable certainty of no harm from short term and intermediate-term dermal and inhalation occupational and residential exposure due to the lack of significant toxicological effects observed.

4. *Cumulative exposure to substances with common mechanism of toxicity.* Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity."

EPA does not have, at this time, available data to determine whether pyriproxyfen has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, pyriproxyfen does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that pyriproxyfen has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the final rule for Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997).

D. Aggregate Risks and Determination of Safety for U.S. Population

1. *Acute risk.* An acute dietary dose and endpoint was not identified. Thus the risk from acute aggregate exposure is considered to be negligible.

2. *Chronic risk.* Using the conservative exposure assumptions described above, EPA has calculated that the percentage of the RfD that will be utilized by dietary (food) exposure to residues of pyriproxyfen is 0.8 percent for the U.S. Population. The major identifiable subgroup with the highest aggregate exposure is children (1-6 years old). See discussion below. Chronic residential exposure to pyriproxyfen from pet collars is estimated to increase total pyriproxyfen exposure only marginally. Despite the potential for exposure to pyriproxyfen in drinking water, EPA does not expect the aggregate exposure to exceed 100% of the RfD.

This determination is based on a comparison of estimated concentrations of pyriproxyfen in surface and ground water to levels of concern for pyriproxyfen in drinking water. The estimates of pyriproxyfen in surface and ground water are derived from water quality models that use conservative assumptions regarding the pesticide transport from the point of application to surface and ground water. Because EPA considers the aggregate risk resulting from multiple exposure pathways associated with the pesticide's uses, levels of concern in drinking water may vary as those uses change. If new uses are added in the future, EPA will reassess the potential impact of pyriproxyfen in food and drinking water as part of the aggregate chronic risk assessment process.

3. *Short- and intermediate-term risk.* No significant toxicological effects were observed in the animal studies that could be attributed to short- or intermediate-term exposure. Thus, the risk from short- and intermediate-term exposure is negligible.

4. *Aggregate cancer risk for U.S. population.* Pyriproxyfen is classified as Category E: not carcinogenic in two acceptable animal studies.

5. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result from aggregate exposure to pyriproxyfen residues.

E. Aggregate Risks and Determination of Safety for Infants and Children

1. *Safety factor for infants and children*— i. In assessing the potential for additional sensitivity of infants and children to residues of pyriproxyfen, EPA considered data from developmental toxicity studies in the rat and rabbit and a 2-generation reproduction study in the rat. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from maternal pesticide exposure gestation. Reproduction studies provide information relating to effects from exposure to the pesticide on the reproductive capability of mating animals and data on systemic toxicity.

FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for pre-and post-natal toxicity and the completeness of the database unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a margin of exposure (MOE) analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans. EPA believes that reliable data support using the standard uncertainty factor (usually 100 for combined inter- and intra-species variability) and not the additional tenfold MOE/uncertainty factor when EPA has a complete data base under existing guidelines and when the severity of the effect in infants or children or the potency or unusual toxic properties of a compound do not raise concerns regarding the adequacy of the standard MOE/safety factor.

ii. *Developmental toxicity studies.* In the rat developmental study, the developmental NOAEL was 100 mg/kg/day and the maternal NOAEL was 100 mg/kg/day. Therefore, there was no prenatal developmental toxicity in the presence of maternal toxicity. Similarly in rabbits, the prenatal developmental NOAEL was 300 mg/kg/day and the maternal NOAEL was 300 mg/kg/day. Therefore, prenatally exposed fetuses were not more sensitive to the effects of pyriproxyfen than maternal animals.

iii. *Reproductive toxicity study.* In the rat reproduction study, the parental NOAEL of 1,000 ppm was identical to the pup NOAEL of 1,000 ppm and decreased body weight was seen in both pup and parental animals. This finding demonstrates that there are no extra sensitivities with respect to pre- and post-natal toxicity between adult and infant animals.

iv. *Pre- and post-natal sensitivity.* The oral perinatal and prenatal data demonstrated no indication of increased sensitivity of rats or rabbits to in utero and postnatal exposure to pyriproxyfen.

v. *Conclusion.* The 10X factor for infants and children (as required by FQPA) was removed, since there was no special sensitivity for infants and children and the data base is complete. For chronic dietary risk assessment, a UF of 100 is adequate for protection from exposure to pyriproxyfen.

2. *Acute risk.* An acute dietary dose and endpoint was not identified. Thus the risk from acute aggregate exposure is considered to be negligible.

3. *Chronic risk.* Using the exposure assumptions described in this unit, EPA has concluded that aggregate exposure to pyriproxyfen from food will utilize 2.2% of the RfD for infants and

children. EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Despite the potential for exposure to pyriproxyfen in drinking water and from non-dietary, non-occupational exposure, EPA does not expect the aggregate exposure to exceed 100% of the RfD.

4. *Short- or intermediate-term risk.* Short-term and intermediate-term dermal and inhalation risks are judged to be negligible due to the lack of significant toxicological effects observed.

5. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to pyriproxyfen residues.

III. Other Considerations

A. Metabolism In Plants and Animals

The nature of the residue in plants is understood. Acceptable metabolism studies using ^{14}C-labeled pyriproxyfen (phenyl and pyridyl rings) have been performed in apple RACs and cotton RACs. Metabolism of pyriproxyfen in apples proceeds through hydroxylation and cleavage of the phenoxy ether linkage. Primary metabolites formed are further metabolized to more polar products by oxidation or conjugation reactions. Similar metabolic pathways were observed for the metabolism of pyriproxyfen in cotton, goats, and hens.

The HED Metabolism Assessment Review Committee (MARC) has determined that there are no pyriproxyfen metabolites of toxicological or regulatory concern in plants thus, tolerances based on the parent only are appropriate.

There are no poultry feed items associated with pome fruits and walnuts. Therefore, no secondary residues are expected to occur in poultry eggs, fat, meat, and meat byproducts as a result of the proposed uses on pome fruits and walnuts.

Valent submitted data from studies investigating the metabolism of Ph-^{14}C uniformly ring labeled and Py-^{14}C in pyridine ring 2 and 6 positions pyriproxyfen in lactating goats. Two goats were fed 10 ppm of the Ph-^{14}C pyriproxyfen daily for 5 days, while two other goats were fed 10 ppm of the Py-^{14}C pyriproxyfen daily for 5 days, with 1 control goat. Urine, feces and milk samples were obtained twice daily. After sacrifice at 6 hours after last dose, samples of blood, heart, kidneys, liver, loin muscle, rear leg muscle, omental and perirenal fat, gastrointestinal tract and contents were collected for ^{14}C analysis.

The majority (62-76%) of the ^{14}C-pyriproxyfen ingested by goats was excreted in urine and feces, with residue levels in feces being higher than in urine. Approximately 25 to 32% of the administered ^{14}C-pyriproxyfen was found in goat tissues, with the large majority located in the gastrointestinal tract. These studies show that metabolism of phenyl-^{14}C pyriproxyfen in goats proceeds through hydroxylation of the phenoxyphenyl and pyridyl rings, sulfation of the 4′-OH phenoxyphenyl moiety, and cleavage of the ether linkage. Metabolism of pyridyl-^{14}C pyriproxyfen in goats proceeds through hydroxylation of the phenoxyphenyl and pyridyl rings, sulfation of the 4′-OH phenoxyphenyl moiety, cleavage of the ether linkage and oxidation of the side chain. Therefore the nature of the residue in ruminants is adequately understood.

Should future crop uses increase the maximum dietary burden in animals to the point that tolerances are needed in animal commodities, the residue of concern will be pyriproxyfen and the free and sulfate forms of 4′-OH-PYR.

B. Analytical Enforcement Methodology

The proposed enforcement methods for residues of pyriproxyfen on plant commodities has not been subjected to a complete Agency method validation at this time. The EPA validation laboratory at Beltsville is currently being relocated, and consequently, the laboratory is not operational at this time. The method trial requests have been received and a validation is scheduled. In the interim, EPA has conducted a preliminary review of the apple and walnut methods that indicates that they appears to be suitable for enforcement purposes pending the outcome of the actual method validation. Given that the registrant has provided concurrent fortification data to demonstrate that the methods are adequate for data collection purposes and has provided the Agency with a successful Independent Laboratory Validation, coupled with EPA's preliminary review, EPA concludes that the methods are suitable as enforcement methods to support tolerances associated with a conditional registration only. As a condition of the registration, the Agency will require successful method validations and the registrant will be required to make any necessary modifications to the methods resulting from the laboratory validation.

C. Magnitude of Residues

Adequate residue data were provided to support tolerances of 0.2 ppm forpome fruits and 0.02 ppm for walnuts.

Processing data provided for apples indicated concentration of residues in wet apple pomace. Based on the available field trial data the highest average field trial (HAFT) for apples is 0.16 ppm for residues of pyriproxyfen. The maximum pyriproxyfen residues in apple pomace based on the HAFT and the average concentration factor 4.9x would be 0.78 ppm. Therefore, the proposed tolerance of 0.8 ppm for pyriproxyfen residues in/on wet apple pomace is adequate.

There are no processed commodities associated with pears and walnuts andtherefore no tolerances for processed commodities are required.

A feeding study on lactating dairy cows was submitted. Using proposed tolerances for animal feed items, the calculated maximum theoretical dietary burdens for beef and dairy cattle are 1.69 and 1.29 ppm, respectively. Based on the dietary burdens, the dosing levels of 3, 9, and 30 ppm in the study represent 2x, 5x, and 18x the maximum theoretical dietary burden to beef cattle, and 2x, 7x, and 23x the maximum theoretical dietary burden to dairy cattle. Typically, tolerances are required on all animal commodities having detectable residue levels at a 10x dosing rate or below. For the computed MTDB of 1.69 ppm in beef cattle, this would include the 3 and 9 ppm dosing levels. The only commodity having detectable pyriproxyfen residues at these levels was fat: 0.01 - 0.03 ppm. Since the MTDB calculation is based on a nutritionally unbalanced diet and includes contributions from some animal feed items that are used only regionally, the Agency will not require the establishment of pyriproxyfen tolerances in fat at this time. However, should future new uses include additional animal feed items, tolerances on animal commodities will be needed.

D. International Residue Limits

There are no CODEX, Canadian, or Mexican tolerances for pyriproxyfen residues in/on pome fruits or walnuts. Therefore, international harmonization is not an issue at this time.

E. Rotational Crop Restrictions

The Agency has determined that rotational crop studies are not required for uses of pesticides on pome fruits or walnuts

IV. Conclusion

Therefore, the tolerances are established for residues of pyriproxyfen in pome fruits, walnuts and apple pomace, wet at 0.2 , 0.02, and 0.8 ppm, respectively.

V. Objections and Hearing Requests

The new FFDCA section 408(g) provides essentially the same process for persons to "object" to a tolerance regulation as was provided in the old section 408 and in section 409. However, the period for filing objections is 60 days, rather than 30 days. EPA currently has procedural regulations which govern the submission of objections and hearing requests. These regulations will require some modification to reflect the new law. However, until those modifications can be made, EPA will continue to use those procedural regulations with appropriate adjustments to reflect the new law.

Any person may, by June 14, 1999, file written objections to any aspect of this regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given under the "ADDRESSES" section (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this regulation. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). EPA is authorized to waive any fee requirement "when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection." For additional information regarding tolerance objection fee waivers, contact James Tompkins, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 239, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 305–5697, tompkins.jim@epa.gov. Requests for waiver of tolerance objection fees should be sent to James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

If a hearing is requested, the objections must include a statement of the factual issues on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the requestor (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

VI. Public Record and Electronic Submissions

EPA has established a record for this regulation under docket control number [OPP–300830] (including any comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 119 of the Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA.

Objections and hearing requests may be sent by e-mail directly to EPA at:
opp-docket@epa.gov.

E-mailed objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this regulation, as well as the public version, as described in this unit will be kept in paper form. Accordingly, EPA will transfer any copies of objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the Virginia address in "ADDRESSES" at the beginning of this document.

VII. Regulatory Assessment Requirements

A. Certain Acts and Executive Orders

This final rule establishes a tolerance under section 408(d) of the FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). Nor does it require any prior consultation as specficed by Executive Order 12875, entitled *Enhancing the Intergovernmental Partnership* (58 FR 58093, October 28, 1993), or special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994), or require OMB review in accordance with Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997).

In addition, since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerance/exemption in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. Nevertheless, the Agency previously assessed whether establishing tolerances, exemptions from tolerances, raising tolerance levels or expanding exemptions might adversely impact small entities and concluded, as a generic matter, that there is no adverse economic impact. The factual basis for the Agency's generic certification for tolerance actions published on May 4, 1981 (46 FR 24950), and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

B. Executive Order 12875

Under Executive Order 12875, entitled *Enhancing the Intergovernmental Partnership* (58 FR 58093, October 28, 1993), EPA may not issue a regulation that is not required by

statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to OMB a description of the extent of EPA's prior consultation with representatives of affected State, local, and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's rule does not create an unfunded Federal mandate on State, local, or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

C. Executive Order 13084

Under Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998), EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation.

In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

VIII. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the Agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: March 30, 1999.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180–[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a, and 371.

2. In § 180.510, paragraph (a), by alphabetically adding the following commodities to the table to read as follows:

§ 180.510 Pyriproxyfen; tolerances for residues.

(a) * * *

Commodity	Parts per million
Apple, pomace, wet	0.8
* * * * *	* *
Pome fruits	0.2
Walnuts	0.02

* * * * *

[FR Doc. 99–9061 Filed 4-13-99; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300839; FRL–6073–9]

RIN 2070–AB78

Tebufenozide; Benzoic Acid, 3,5-dimethyl-1-(1,1-dimethylethyl)-2-(4-ethylbenzoyl) hyrazide; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a tolerance for residues of tebufenozide in or on Leafy and Brassica(cole) Vegetables and Fruiting Vegetables. Rohm and Haas Company requested these tolerance under the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996.

DATES: This regulation is effective April 14, 1999. Objections and requests for hearings must be received by EPA on or before June 14, 1999.

ADDRESSES: Written objections and hearing requests, identified by the docket control number, [OPP–300839], must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed withthe Hearing Clerk identified by the docket control number, [OPP–300839], must also be submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect 5.1/6.1 file format or ASCII file format. All copies of objections and hearing requests in

electronic form must be identified by the docket control number [OPP–300839]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: By mail: Joseph Tavano, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 222, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 305-6411, tavano.joseph@epa.gov.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of February 18, 1999 (64 FR 8090) (FRL–6059–9), EPA issued a notice pursuant to section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a as amended by the Food Quality Protection Act of 1996 (FQPA) (Pub. L. 104–170) announcing the filing of a pesticide petition (PP 7F4824) for tolerances by Rohm and Haas Company, 100 Independence Mall West, Philadelphia, PA 19106-2399. This notice included a summary of the petition prepared by Rohm and Haas Company, the registrant. There were no comments received in response to the notice of filing.

The petitions requested that 40 CFR 180.482 be amended by establishing tolerances for residues of the insecticide tebufenozide, in or on leafy greens crop subgroup, leaf petioles crop subgroup, head and stem Brassica crop subgroup, leafy Brassica Greens crop subgroup and fruiting vegetables(except cucurbits) at 10.0, 2.0, 5.0, 10.0, and 1.0 part per million (ppm) respectively.

I. Background and Statutory Findings

Section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliablo information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue...."

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 and a complete description of the risk assessment process, see the final rule on Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997) (FRL–5754–7).

II. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of tebufenozide, benzoic acid, 3,5-dimethyl-1-(1,1-dimethylethyl)-2-(4-ethylbenzoyl) hydride and to make a determination on aggregate exposure, consistent with section 408(b)(2), for a tolerance for residues of tebufenozide on leafy greens crop subgroup, leaf petioles crop subgroup, head and stem Brassica crop subgroup, leafy Brassica Greens crop subgroup and fruiting vegetables (except) cucurbits) at 10.0, 2.0, 5.0, 10.0. and 1.0 ppm. EPA's assessment of the dietary exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by tebufenozide, benzoic acid, 3,5-dimethyl-1-(1,1-dimethylethyl)-2-(4-dimethylbenzoyl) hyrazide are discussed in this unit.

1. *Acute toxicity studies with technical grade.* Oral LD_{50} in the rat is > 5 grams for males and females - Toxicity Category IV; dermal LD_{50} in the rat is = 5,000 milligram/kilogram (mg/kg) for males and females - Toxicity Category III; inhalation LC_{50} in the rat is >4.5 mg/l - Toxicity Category III; primary eye irritation study in the rabbit is a non-irritant; primary skin irritation in the rabbit >5mg - Toxicity Category IV. Tebufenozide is not a sentizer.

2. *In a 21-day dermal toxicity study, Crl.* CD rats (6/sex/dose) received repeated dermal administration of either the technical 96.1% product RH-75,992 at 1,000 mg/kg/day Limit-Dose or the formulation 23.1% a.i. product RH-755,992 2F at 0, 62.5, 250, or 1,000 mg/kg/day, 6 hours/day, 5 days/week for 21 days. Under conditions of this study, RH-75,992 Technical or RH-75,992 2F demonstrated no systemic toxicity or dermal irritation at the highest dose tested (HTD) 1,000 mg/kg/ during the 21 day study. Based on these results, the no-observed effect level (NOAEL) for systemic toxicity and dermal irritation in both sexes is 1,000 mg/kg/day HDT. A lowest-observable-effect level (LOAEL) for systemic toxicity and dermal irritation was not established.

A 1-year dog feeding study with a LOAEL of 250 ppm (9 mg/kg/day for male and female dogs) based on decreases in RBC, HCT, and HGB, increases in Heinz bodies, methemoglobin, MCV, MCH, reticulocytes, platelets, plasma total bilirubin, spleen weight, and spleen/body weight ratio, and liver/body weight ratio. Hematopoiesis and sinusoidal engorgement occurred in the spleen, and hyperplasia occurred in the marrow of the femur and sternum. The liver showed an increased pigment in the Kupffer cells. The NOAEL for systemic toxicity in both sexes is 50 ppm (1.9 mg/kg/day).

An 18-month mouse carcinogenicity study with no carcinogenicity observed at dosage levels up to and including 1,000 ppm.

A 2-year rat carcinogenicity with no carcinogenicity observed at dosage levels up to and including 2,000 ppm (97 mg/kg/day and 125 mg/kg/day for males and females, respectively).

In a prenatal developmental toxicity study in Sprague-Dawley rats (25/group) Tebufenozide was administered on gestation days 6-15 by gavage in aqueous methyl cellulose at dose levels of 50, 250, or 1,000 milligrams/kilogram/day (mg/kg/day) and a dose volume of 10 ml/kg. There was no evidence of maternal or developmental toxicity; the maternal and developmental toxicity NOAEL was 1,000 mg/kg/day.

In a prenatal developmental toxicity study conducted in New Zealand white rabbits (20/group) Tebufenozide was administered in 5 ml/kg of aqueous methyl cellulose at gavage doses of 50, 250, or 1,000 mg/kg/day on gestation days 7-19. No evidence of maternal or developmental toxicity was observed; the maternal and developmental toxicity NOAEL was 1,000 mg/kg/day.

In a 1993 2-generation reproduction study in Sprague-Dawley rats tebufenozide was administered at dietary concentrations of 0, 10, 150, or 1,000 ppm (0, 0.8, 11.5, or 154.8 mg/kg/

day for males and 0, 0.9, 12.8, or 171.1 mg/kg/day for females). The parental systemic NOAEL was 10 ppm (0.8/0.9 mg/kg/day for males and females, respectively) and the LOAEL was 150 ppm (11.5/12.8 mg/kg/day for males and females, respectively) based on decreased body weight, body weight gain, and food consumption in males, and increased incidence and/or severity of splenic pigmentation. In addition, there was an increased incidence and severity of extramedullary hematopoiesis at 2,000 ppm. The reproductive NOAEL was 150 ppm. (11.5/12.8 mg/kg/day for males and females, respectively) and the LOAEL was 2,000 ppm (154.8/171.1 mg/kg/day for males and females, respectively) based on an increase in the number of pregnant females with increased gestation duration and dystocia. Effects in the offspring consisted of decreased number of pups per litter on postnatal days 0 and/or 4 at 2,000 ppm (154.8/171.1 mg/kg/day for males and females, respectively) with a NOAEL of 150 ppm (11.5/12.8 mg/kg/day for males and females, respectively).

In a 1995 2-generation reproduction study in rats Tebufenozide was administered at dietary concentrations of 0, 25, 200, or 2,000 ppm (0, 1.6, 12.6, or 126.0 mg/kg/day for males and 0, 1.8, 14.6, or 143.2 mg/kg/day for females). For parental systemic toxicity, the NOAEL was 25 ppm (1.6/1.8 mg/kg/day in males and females, respectively), and the LOAEL was 200 ppm (12.6/14.6 mg/kg/day in males and females), based on histopathological findings (congestion and extramedullary hematopoiesis) in the spleen. Additionally, at 2,000 ppm (126.0/143.2 mg/kg/day in M/F), treatment-related findings included reduced parental body weight gain and increased incidence of hemosiderin-laden cells in the spleen. Columnar changes in the vaginal squamous epithelium and reduced uterine and ovarian weights were also observed at 2,000 ppm, but the toxicological significance was unknown. For offspring, the systemic NOAEL was 200 ppm, (12.6/14.6 mg/kg/day in males and females), and the LOAEL was 2,000 ppm (126.0/143.2 mg/kg/day in M/F) based on decreased body weight on postnatal days 14 and 21.

Several mutagenicity tests which were all negative. These include an Ames assay with and without metabolic activation, an *in vivo* cytogenetic assay in rat bone marrow cells, and *in vitro* chromosome aberration assay in CHO cells, a CHO/HGPRT assay, a reverse mutation assay with *E. Coli*, and an unscheduled DNA synthesis assay (UDS) in rat hepatocytes.

The pharmacokinetics and metabolism of tebufenozide were studied in female Sprague-Dawley rats (3-6/sex/group) receiving a single oral dose of 3 or 250 mg/kg of RH-5992, ^{14}C labeled in one of three positions (A-ring, B-ring or *N*-butylcarbon). The extent of absorption was not established. The majority of the radiolabeled material was eliminated or excreted in the feces within 48 hours within 48 hours; small amounts (1 to 7% of the administered dose) were excreted in the urine and only traces were excreted in expired air or remained in the tissues. There was no tendency for bioacculmulation. Absorption and excretion were rapid.

A total of 11 metabolites, in addition to the parent compound, were identified in the feces; the parent compound accounted for 96 to 99% of the administered radioactivity in the high dose group and 35 to 43% in the low dose group. No parent compound was found in the urine; urinary metabolites were not characterized. The identity of several fecal metabolites was confirmed by mass spectral analysis and other fecal metabolites were tentatively identified by cochromatography with synthetic standards. A pathway of metabolism was proposed based on these data. Metabolism proceeded primarily by oxidation of the three benzyl carbons, two methyl groups on the Bring and an ethyl group on the A ring to alcohols, aldehydes or acids. The type of metabolite produced varies depending on the position oxidized and extent of oxidation. The butyl group on the quaternary nitrogen also can be leaved (minor), but there was no fragmentation of the molecule between the benzyl rings.

No qualitative differences in metabolism were observed between sexes, when high or low dose groups were compared or when different labeled versions of the molecule were compared.

The absorption and metabolism of tebufenozide were studied in a group of male and female bile-duct cannulated rats. Over a 72 hour period, biliary excretion accounted for 30% female to 34% male of the administered dose while urinary excretion accounted for ≈ 5% of the administered dose and the carcass accounted for <0.5% of the administered dose for both male and female. Thus systemic absorption (percent of dose recovered in the bile, urine and carcass was 35% female to 39% male. The majority of the radioactivity in the bile (20% female to 24% male of the administered dose) was excreted within the first 6 hours postdosing indicating rapid absorption. Furthermore, urinary excretion of the metabolites was essentially complete within 24 hours postdosing. A large amount 67% (male) to 70% (female) of the administered dose was unabsorbed and excreted in the feces by 72 hours. Total recovery of radioactivity was 105% of the administered dose.

A total of 13 metabolites were identified in the bile; the parent compound was not identified i.e. - unabsorbed compound nor were the primary oxidation products seen in the feces in the pharmacokinetics study. The proposed metabolic pathway proceeded primary by oxidation of the benzylic carbons to alcohols, aldehydes or acids. Bile contained most of the other highly oxidized products found in the feces. The most significant individual bile metabolites accounted for 5% to 18% of the total radioactivity (male and/or female). Bile also contained the previously undetected (in the pharmacokinetics study) "A" Ring ketone and the "B" Ring diol. The other major components were characterized as high molecular weight conjugates. No individual bile metabolite accounted for >5% of the total administered dose. Total bile radioactivity accounted for ≈ 17% of the total administered dose.

No major qualitative differences in biliary metabolites were observed between sexes. The metabolic profile in the bile was similar to the metabolic profile in the feces and urine.

B. Toxicological Endpoints

1. *Acute toxicity.* Toxicity observed in oral toxicity studies were not attributable to a single dose (exposure). No neuro or systemic toxicity was observed in rats given a single oral administration of Tebufenozide at 0, 500, 1,000, or 2,000 mg/kg. No maternal or developmental toxicity was observed following oral administration of tebufenozide at 1,000 mg/kg/day (Limit-Dose) during gestation to pregnant rats or rabbits. Thus the risk from acute exposure is considered negligible.

2. *Short- and intermediate-term toxicity.* No dermal or systemic toxicity was seen in rats receiving 15 repeated dermal applications of the technical (97.2%) product at 1,000 mg/kg/day (Limit- Dose) as well as a formulated (23% a.i) product at 0, 62.5, 250, or 1,000 mg/kg/day over a 21 day period (MRID 42991507). The HIARC noted that in spite of the hematological effects seen in the dog study, similar effects were not seen in the rats receiving the compound via the dermal route indicating poor dermal absorption. Also, no developmental endpoints of concern were evident due to the lack of developmental toxicity in either rat or

rabbit studies. This risk is considered to be negligible.

3. *Chronic toxicity.* EPA has established the Reference Dose (RfD) for tebufenozide, benzoic acid, 3,5-dimethyl-1-(1,1-dimethylethyl)-2-(4-ethylbenzoyl) hydrazide at 0.018 mg/kg/day. This RfD is based on a NOAEL of 1.8 mg/kg/day and an uncertainty factor (UF) of 100. The NOAEL was established from the chronic toxicity study in dogs where the NOAEL was 1.8 mg/kg/day based on growth retardation, alterations in hematology parameters, changes in organ weights, and histopathological lesions in the bone, spleen and liver at 8.7 mg/kg/day. EPA determined that the 10 x factor to protect children and infants (as required by FQPA) should be removed. Therefore, the RfD remains the same at: 0.018 mg/kg/day. An UF of 100 is supported by the following factors.

i. Developmental toxicity studies showed no increased sensitivity in fetuses when compared to maternal animals following in utero exposures in rats and rabbits.

ii. Multi-generation reproduction toxicity studies in rats showed no increased sensitivity in pups as compared to adults and offspring.

iii. There are no data gaps.

4. *Carcinogenicity.* Tebufenozide has been classified as a Group E, "no evidence of carcinogenicity for humans," chemical by EPA.

C. Exposures and Risks

1. *From food and feed uses.* Tolerances have been established (40 CFR 180.482) for the residues of tebufenozide, in or on a variety of raw agricultural commodities. In today's action tolerances will be established for the residues of tebufenozide in or on the raw agricultural commodities: leafy greens crop subgroup, leaf petioles crop subgroup, head and stem Brassica crop subgroup, leafy Brassica greens crop subgroup and fruiting vegetables(except cucurbits) at 10.0, 2.0, 5.0, 10.0 and 1.0 ppm respectively. Risk assessments were conducted by EPA to assess dietary exposures from tebufenozide as follows:

Section 408(b)(2)(F) states that the Agency may use data on the actual percent of food treated (PCT) for assessing chronic dietary risk only if the Agency can make the following findings: That the data used are reliable and provide a valid basis to show what percentage of the food derived from such crop is likely to contain such pesticide residue; that the exposure estimate does not underestimate exposure for any significant subpopulation group; and if data are available on pesticide use and food consumption in a particular area, the exposure estimate does not understate exposure for the population in such area. In addition, the Agency must provide for periodic evaluation of any estimates used. To provide for the periodic evaluation of the estimate of percent of crop treated as required by the section 408(b)(2)(F), EPA may require registrants to submit data on PCT.

The Agency used PCT information as follows:

Estimates of percent crop treated were used for the following crops. In all cases the maximum estimate was used.

Almonds: Average <1% Maximum <1%

Apples: Average 1% Maximum 2%

Beans/Peas, Dry Average 0% Maximum 1%

Cotton Average 1% Maximum 4%

Sugarcane Average 3% Maximum . 5%

Walnuts Average 10% Maximum 16%

The Agency believes that the three conditions, discussed in section 408 (b)(2)(F) in this unit concerning the Agency's responsibilities in assessing chronic dietary risk findings, have been met. The PCT estimates are derived from Federal and private market survey data, which are reliable and have a valid basis. Typically, a range of estimates are supplied and the upper end of this range is assumed for the exposure assessment. By using this upper end estimate of the PCT, the Agency is reasonably certain that that the percentage of the food treated is not likely to be underestimated. The regional consumption information and consumption information for significant subpopulations is taken into account through EPA's computer-based model for evaluating the exposure of significant subpopulations including several regional groups. Use of this consumption information in EPA's risk assessment process ensures that EPA's exposure estimate does not understate exposure for any significant subpopulation group and allows the Agency to be reasonably certain that no regional population is exposed to residue levels higher than those estimated by the Agency. Other than the data available through national food consumption surveys, EPA does not have available information on the regional consumption of food to which tebufenozide may be applied in a particular area.

i. *Acute exposure and risk.* Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1-day or single exposure. Toxicity observed in oral toxicity studies were not attributable to a single dose (exposure). No Neuro or systemic toxicity was observed in rats given a single oral administration of Tebufenozide at 0, 500, 1,000 or 2,000 mg/kg. No maternal or developmental toxicity was observed following oral administration of Tebufenozide at 1,000 mg/kg/day (Limit-Dose) during gestation to pregnant rats or rabbits. This risk is considered to be negligible.

ii. *Chronic exposure and risk.* The RfD used for the chronic dietary analysis is 0.018 mg/kg/day. In conducting this exposure assessment, HED has made very conservative assumptions -- 100% of Brassica (cole) and leafy vegetables and fruiting vegetables and all other commodities having tebufenozide tolerances will contain tebufenozide residues and those residues would be at the level of the tolerance, and some percent crop treated (%CT) data for selected commodities -- which result in an overestimate of human dietary exposure. Previous chronic tebufenozide analyses conducted for Section 18 actions included %CT data on spinach and cole crops. These values were reset to 100% CT as a result of this petition for permanent tolerances. Thus, in making a safety determination for this tolerance, HED is taking into account this conservative exposure assessment.

With Brassica (cole) and leafy vegetables and fruiting vegetables as new tolerances, the existing tebufenozide tolerances (published and including the necessary Section 18 tolerances) result in a Anticipated Residue Contribution (ARC) that is equivalent to the following percentages of the RfD:

Population Subgroup	%RfD
U.S. Population - 48 States	30
All Infants (<1 year)	29
Nursing Infants (<1 year)	20
Non-Nursing Infants (<1 year)	33
Children (1-6 years)	44
Children (7-12 years)	35
U.S. Population - Spring Season	30
U.S. Population - Winter Season	30
Northeast Region	31
Weastern Region	33
Pacific Region	34
Non-Hispanic Blacks	32
Non-Hispanic Other Than Black or White	36
Females (13+/ nursing)	32
Males (20+ years)	26

The subgroups listed above are: (1) the U.S. population (48 States); (2) those for infants and children; (3) the other

subgroups for which the percentage of the RfD occupied is greater than that occupied by the subgroup U.S. population (48 States); and, (4) other population subgroups of particular regulatory interest.

2. *From drinking water*— i. *Acute exposure and risk.* Because no acute dietary endpoint was determined, the Agency concludes that there is a reasonable certainty of no harm from acute exposure from drinking water.

ii. *Chronic exposure and risk.* Submitted environmental fate studies suggest that tebufenozide is moderately persistent to persistent and mobile; thus, tebufenozide could potentially leach to ground water and runoff to surface water under certain environmental conditions There is no established Maximum Contaminant Level (MCL) for residues of tebufenozide in drinking water. No drinking water Health Advisories have been issued for tebufenozide. Therefore, potential residue levels for drinking water exposure were calculated using Generic Expected Environmental Concentration (GENEEC) (surface water) and Screening Concentration In Ground Water (SCI-GROW) (ground water) for the human health risk assessment. Due to the wide range of aerobic soil half-life ($t_{1/2}$) values, GENEEC and SCI-GROW were run based on aerobic half-lives of 66 (California Loam) and 729 (worst case soil with low microbial activity) days. Because of the wide range of half-life values a range of potential exposure values were calculated. In each case the worst case upper bound exposure limits were then compared to appropriate chronic water levels of concern (DWLOC). In each case the calculated exposures based on model data were below the DWLOC.

3. *From non-dietary exposure.* Tebufenozide is not currently registered for use on any residential non-food sites. Therefore there is no chronic, short- or intermediate-term exposure scenario.

4. *Cumulative exposure to substances with common mechanism of toxicity.* Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity."

EPA does not have, at this time, available data to determine whether tebufenozide has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, tebufenozide does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that tebufenozide has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the final rule for Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997).

D. Aggregate Risks and Determination of Safety for U.S. Population

1. *Acute risk.* Since no acute toxicological endpoints were established, no acute aggregate risk exists.

2. *Chronic risk.* Using the ARC exposure assumptions described in this unit, EPA has concluded that aggregate exposure to tebufenozide from food will utilize 30% of the RfD for the U.S. population. The major identifiable subgroup with the highest aggregate exposure is children (1-6 years old) at 44 percent of the RfD and is discussed below. Submitted environmental fate studies suggest that tebufenozide is moderately persistent to persistent and mobile; thus, tebufenozide could potentially leach to ground water and runoff to surface water under certain environmental conditions. The modeling data for tebufenozide indicate levels less than OPP's DWLOC. EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. There are no registered residential uses of tebufenozide. Since there is no potential for exposure to tebufenozide from residential uses, EPA does not expect the aggregate exposure to exceed 100% of the RfD.

3. *Short- and intermediate-term risk.* Short- and intermediate-term aggregate exposure takes into account chronic dietary food and water (considered to be a background exposure level) plus indoor and outdoor residential exposure. Since there are currently no registered indoor or outdoor residential non-dietary uses of tebufenozide and no short- or intermediate-term toxic endpoints, short- or intermediate-term aggregate risks do not exist.

4. *Aggregate cancer risk for U.S. population.* Since, tebufenozide has been classified as a Group E, "no evidence of carcinogenicity for humans," this risk does not exist.

5. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result from aggregate exposure to tebufenozide residues.

E. Aggregate Risks and Determination of Safety for Infants and Children

1. *Safety factor for infants and children*— i. *In general.* In assessing the potential for additional sensitivity of infants and children to residues of tebufenozide, EPA considered data from developmental toxicity studies in the rat and rabbit and a 2-generation reproduction study in the rat. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from maternal pesticide exposure gestation. Reproduction studies provide information relating to effects from exposure to the pesticide on the reproductive capability of mating animals and data on systemic toxicity.

FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for pre-and post-natal toxicity and the completeness of the database unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a margin of exposure (MOE) analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans. EPA believes that reliable data support using the standard uncertainty factor (usually 100 for combined inter- and intra-species variability) and not the additional tenfold MOE/uncertainty factor when EPA has a complete data base under existing guidelines and when the severity of the effect in infants or children or the potency or unusual toxic properties of a compound do not raise concerns regarding the adequacy of the standard MOE/safety factor.

ii. *Developmental toxicity studies.* Developmental toxicity studies showed no increased sensitivity in fetuses as compared to maternal animals following *in utero* exposures in rats and rabbits.

iii. *Reproductive toxicity study.* Multi-generation reproduction toxicity studies in rats showed no increased sensitivity in pups as compared to adults and offsprings.

iv. *Pre- and post-natal sensitivity.* The toxicology data base for tebufenozide included acceptable developmental toxicity studies in both rats and rabbits as well as a 2-generation reproductive toxicity study in rats. The data provided no indication of increased sensitivity of

rats or rabbits to in utero and/or postnatal exposure to tebufenozide. No maternal or developmental findings were observed in the prenatal developmental toxicity studies at doses up to 1,000 mg/kg/day in rats and rabbits. In the 2-generation reproduction studies in rats, effects occurred at the same or lower treatment levels in the adults as in the offspring.

v. *Conclusion.* There is a complete toxicity database for tebufenozide and exposure data is complete and reasonably accounts for potential exposures.

2. *Acute risk.* Since no acute toxicological endpoints were established, no acute aggregate risk exists.

3. *Chronic risk.* Using the exposure assumptions described in this unit, EPA has concluded that aggregate exposure to tebufenozide from food will utilize 44% of the RfD for infants and children. EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Despite the potential for exposure to tebufenozide in drinking water and from non-dietary, non-occupational exposure, EPA does not expect the aggregate exposure to exceed 100% of the RfD.

4. *Short- or intermediate-term risk.* Short and intermediate term risks are judged to be negligible due to the lack of significant toxicological effects observed.

5. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to tebufenozide residues.

III. Other Considerations

A. Metabolism In Plants and Animals

The nature of the residues of tebufenozide in/on plants is adequately understood. The residue of concern for both regulatory (tolerance expression) and risk assessment purposes is the parent compound, tebufenozide *per se.* Since there are no animal feed items associated with leafy and Brassica (cole) leafy vegetables and fruiting vegetables, a discussion of the qualitative nature of the residue in animals is not germane to this action.

B. Analytical Enforcement Methodology

The HPLC/UV (designated as TR 34-95-66, TR 34-93-119 and TR-34-94-41 all virtually identical) method used for determining residues of tebufenozide in/on leafy and Brassica (cole) leafy vegetables and fruiting vegetables (except cucurbits) is adequate for collection of residue data. Adequate method validation and concurrent method recovery data have been submitted for this method. The validated limit of quantitation (LOQ) and limit of detection (LOD) are 0.02 ppm and 0.006 ppm, respectively, for residues of tebufenozide in/on tomatoes, tomato processed commodities, and peppers. The LOQ is 0.01 ppm for residues of tebufenozide in/on lettuce, spinach, cabbage, and mustard greens, and the LOQ for celery is 0.05 ppm. The LOD is 0.003 ppm for all leafy vegetable matrices tested.

The method may be requested from: Calvin Furlow, PRRIB, IRSD (7502C),Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm 101FF, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 305–5229.

C. Magnitude of Residues

Adequate residue data were provided to support the tolerances for leafy greens crop subgroup at 10.0 ppm, leaf petioles crop subgroup at 2.0 ppm, head and stem Brassica crop subgroup at 5.0 ppm, leafy Brassica greens crop subgroup at 10.0 ppm and fruiting vegetables (except cucurbits) at 1.0 ppm. There are no currently regulated processed food or feed items derived from Brassica (cole) and leafy vegetables and fruiting vegetables. Since there are no animal feed items associated with Brassica (cole) and leafy vegetables and fruiting vegetables, no secondary residues in animals are expected. There are no food handling uses for tebufenozide.

D. International Residue Limits

There are currently no CODEX listings for tebufenozide residues in or on the commodities subject to todays action, therefore there are no harmonization issues for these crops.

E. Rotational Crop Restrictions

Crops which the label allows to be treated directly can be planted at any time. The following crops can be planted 30 days after application: root/tuber/bulb vegetables and cucurbits. All other crops can not be planted within 12 months of application. The latter would include legume vegetables, cereal grains, grasses and non-grass animal feeds.

IV. Conclusion

Therefore, the tolerance is established for residues of tebufenozide in leafy greens crop subgroup, leaf petioles crop subgroup, head and stem Brassica crop subgroup, leafy Brassica greens crop subgroup and fruiting vegetables (Except cucurbits) at 10.0, 2.0, 5.0, 10.0 and 1.0 ppm.

V. Objections and Hearing Requests

The new FFDCA section 408(g) provides essentially the same process for persons to "object" to a tolerance regulation as was provided in the old section 408 and in section 409. However, the period for filing objections is 60 days, rather than 30 days. EPA currently has procedural regulations which govern the submission of objections and hearing requests. These regulations will require some modification to reflect the new law. However, until those modifications can be made, EPA will continue to use those procedural regulations with appropriate adjustments to reflect the new law.

Any person may, by June 14, 1999, file written objections to any aspect of this regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given under the "ADDRESSES" section (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this regulation. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). EPA is authorized to waive any fee requirement "when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection." For additional information regarding tolerance objection fee waivers, contact James Tompkins, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 239, Crystal Mall #2, 1921Jefferson Davis Hwy., Arlington, VA, (703) 305-5697, tompkins.jim@epa.gov. Requests for waiver of tolerance objection fees should be sent to James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

If a hearing is requested, the objections must include a statement of the factual issues on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the requestor

(40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

VI. Public Record and Electronic Submissions

EPA has established a record for this regulation under docket control number [OPP–300839] (including any comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 119 of the Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA.

Objections and hearing requests may be sent by e-mail directly to EPA at: opp-docket@epa.gov.

E-mailed objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this regulation, as well as the public version, as described in this unit will be kept in paper form. Accordingly, EPA will transfer any copies of objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the Virginia address in "ADDRESSES" at the beginning of this document.

VII. Regulatory Assessment Requirements

A. Certain Acts and Executive Orders

This final rule establishes a tolerance under section 408(d) of the FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). Nor does it require any prior consultation as specficed by Executive Order 12875, entitled *Enhancing the Intergovernmental Partnership* (58 FR 58093, October 28, 1993), or special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994), or require OMB review in accordance with Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997).

In addition, since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerance/exemption in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. Nevertheless, the Agency previously assessed whether establishing tolerances, exemptions from tolerances, raising tolerance levels or expanding exemptions might adversely impact small entities and concluded, as a generic matter, that there is no adverse economic impact. The factual basis for the Agency's generic certification for tolerance actions published on May 4, 1981 (46 FR 24950), and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

B. Executive Order 12875

Under Executive Order 12875, entitled *Enhancing the Intergovernmental Partnership* (58 FR 58093, October 28, 1993), EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to OMB a description of the extent of EPA's prior consultation with representatives of affected State, local, and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's rule does not create an unfunded Federal mandate on State, local, or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

C. Executive Order 13084

Under Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998), EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian tribes. Accordingly, the requirements of

section 3(b) of Executive Order 13084 do not apply to this rule.

VIII. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the Agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: March 30, 1999.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180–[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a, and 371.

2. In § 180.482, in paragraph (a), by alphabetically adding the following commodities to the table:

§ 180.482 Tebufenozide; tolerances for residues.

(a) * * *

Commodity	Parts per million
* * * *	* * *
Fruiting Vegetables (Except cucurbits).	1.0
Head and stem Brassica crop subgroup.	5.0
Leafy Brassica greens crop subgroup.	10.0
Leafy greens crop subgroup	10.0
Leaf petioles crop subgroup	2.0
* * * *	* * *

* * * * *

[FR Doc. 99–9060 Filed 4–13–99; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300833; FRL–6073–3]

RIN 2070–AB78

Cyprodinil; Pesticide Tolerance for Emergency Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a time-limited tolerance for residues of cyprodinil in or on strawberries. This action is in response to EPA's granting of an emergency exemption under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act authorizing use of the pesticide on strawberries This regulation establishes a maximum permissible level for residues of cyprodinil in this food commodity pursuant to section 408(l)(6) of the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996. The tolerance will expire and is revoked on May 31, 2000.

DATES: This regulation is effective April 14, 1999. Objections and requests for hearings must be received by EPA on or before June 14, 1999.

ADDRESSES: Written objections and hearing requests, identified by the docket control number [OPP–300833], must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk identified by the docket control number, [OPP-300833], must also be submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epa.gov. Copies of electronic objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect 5.1/6.1 or ASCII file format. All copies of electronic objections and hearing requests must be identified by the docket control number [OPP-300833]. No Confidential Business Information (CBI) should be submitted through e-mail. Copies of electronic objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: By mail: Stephen Schaible, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 271, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, 703–308–9362; schaible.stephen@epa.gov.

SUPPLEMENTARY INFORMATION: EPA, on its own initiative, pursuant to sections 408 and (l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a and (l)(6), is establishing a tolerance for residues of the fungicide cyprodinil, in or on strawberries at 5.0 part per million (ppm). This tolerance will expire and is revoked on May 31, 2000. EPA will publish a document in the **Federal Register** to remove the revoked tolerance from the Code of Federal Regulations.

I. Background and Statutory Findings

The Food Quality Protection Act of 1996 (FQPA) (Pub. L. 104–170) was signed into law August 3, 1996. FQPA amends both the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 301 *et seq.*, and the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136 *et seq.* The FQPA amendments went into effect immediately. Among other things, FQPA amends FFDCA to bring all EPA pesticide tolerance-setting activities under a new section 408 with a new safety standard and new procedures. These activities are described in this preeamble and discussed in greater detail in the final rule establishing the time-limited tolerance associated with the emergency exemption for use of propiconazole on sorghum (61 FR 58135, November 13, 1996) (FRL–5572–9).

New section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. "

Section 18 of FIFRA authorizes EPA to exempt any Federal or State agency from any provision of FIFRA, if EPA determines that "emergency conditions exist which require such exemption." This provision was not amended by FQPA. EPA has established regulations governing such emergency exemptions in 40 CFR part 166.

Section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA. Such tolerances can be established without providing notice or period for public comment.

Because decisions on section 18-related tolerances must proceed before EPA reaches closure on several policy issues relating to interpretation and implementation of the FQPA, EPA does not intend for its actions on such tolerances to set binding precedents for the application of section 408 and the new safety standard to other tolerances and exemptions.

II. Emergency Exemption for Cyprodinil on Strawberries and FFDCA Tolerances

According to the Applicant, gray mold caused by *Botrytis cinerea* is one of the most severe problems limiting strawberry production in Florida. Gray mold affects both flowers and fruit, resulting in marketable yield losses. Historically, gray mold has been controlled with bloom sprays of Rovral (iprodione) then weekly applications of captan until harvest. This schedule has provided good control of gray mold, especially for relatively resistant varieties, such as Oso Grande.

However, a shift toward the usage of certain varieties of strawberries which have specific desirable attributes (i.e., production, pest resistance or tolerance, etc.) but are more susceptible to gray mold, the development of gray mold strains with resistance to iprodione, and limitation of iprodione use on strawberries recently instituted as part of the iprodione reregistration has resulted in a situation where growers expect heavy losses without the requested product, Switch (which contains the active ingredients cyprodinil and fludioxonil). EPA has authorized under FIFRA section 18 the use of cyprodinil on strawberries for control of gray mold in Florida. After having reviewed the submission, EPA concurs that emergency conditions exist for this state.

As part of its assessment of this emergency exemption, EPA assessed the potential risks presented by residues of cyprodinil in or on strawberries. In doing so, EPA considered the safety standard in FFDCA section 408(b)(2), and EPA decided that the necessary tolerance under FFDCA section 408(l)(6) would be consistent with the safety standard and with FIFRA section 18. Consistent with the need to move quickly on the emergency exemption in order to address an urgent non-routine situation and to ensure that the resulting food is safe and lawful, EPA is issuing this tolerance without notice and opportunity for public comment under section 408(e), as provided in section 408(l)(6). Although this tolerance will expire and is revoked on May 31, 2000, under FFDCA section 408(l)(5), residues of the pesticide not in excess of the amounts specified in the tolerance remaining in or on strawberries after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA, and the residues do not exceed a level that was authorized by this tolerance at the time of that application. EPA will take action to revoke this tolerance earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

Because this tolerance is being approved under emergency conditions EPA has not made any decisions about whether cyprodinil meets EPA's registration requirements for use on strawberries or whether a permanent tolerance for this use would be appropriate. Under these circumstances, EPA does not believe that this tolerance serves as a basis for registration of cyprodinil by a State for special local needs under FIFRA section 24(c). Nor does this tolerance serve as the basis for any State other than Florida to use this pesticide on this crop under section 18 of FIFRA without following all provisions of EPA's regulations implementing section 18 as identified in 40 CFR part 166. For additional information regarding the emergency exemption for cyprodinil, contact the Agency's Registration Division at the address provided under the "ADDRESSES" section.

III. Aggregate Risk Assessment and Determination of Safety

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 and a complete description of the risk assessment process, see the final rule on Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997) (FRL–5754–7) .

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of cyprodinil and to make a determination on aggregate exposure, consistent with section 408(b)(2), for a time-limited tolerance for residues of cyprodinil on strawberries at 5.0 ppm. EPA's assessment of the dietary exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by cyprodinil are discussed in this unit.

B. Toxicological Endpoint

1. *Acute toxicity*. No effects that could be attributed to a single exposure (dose) were observed in oral toxicity studies including the developmental toxicity studies in rats and rabbits. Therefore, a dose and endpoint were not identified for acute dietary risk assessment.

2. *Short-and intermediate-term toxicity*. A no observed adverse effect level (NOAEL) of 25 milligrams/kilogram/day (mg/kg/day) was selected from the 21-day dermal rat study. The effect observed at the lowest adverse effect level (LOAEL) of 125 mg/kg/day

in this study was hunched posture in females.

3. *Chronic toxicity.* EPA has established the Reference Dose (RfD) for cyprodinil at 0.03 mg/kg/day. This RfD is based on a NOAEL of 2.7 mg/kg/day and an uncertainty factor of 100. The NOAEL was taken from the chronic rat study; at the LOAEL of 35.6 mg/kg/day, effects observed were histopathological alterations in the liver *spongiosis hepatis* in males.

4. *Carcinogenicity.* Cyprodinil is classified as a "not likely" human carcinogen, based on the lack of evidence of carcinogenicity in mice and rats at doses that were judged to be adequate to assess the carcinogenic potential.

C. Exposures and Risks

1. *From food and feed uses.* Tolerances have been established (40 CFR 180.532) for the residues of cyprodinil, in or on a variety of raw agricultural commodities. Mention any tolerances of special relevance and meat, milk, poultry and egg tolerances, if applicable. Risk assessments were conducted by EPA to assess dietary exposures and risks from cyprodinil as follows:

i. *Acute exposure and risk.* Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1-day or single exposure. In this case, an acute risk assessment was not conducted. No effects that could be attributed to a single exposure (dose) were observed in oral toxicity studies including the developmental toxicity studies in rats and rabbits. Therefore, a dose and endpoint were not identified for acute dietary risk assessment.

ii. *Chronic exposure and risk.* Tolerance level residues and 100% crop treated were assumed to calculate dietary exposure for the U.S. population and population subgroups from residues on published and proposed uses. Chronic exposure from food uses of cyprodinil represents 6% of the RfD for the U.S. population and 21% of the RfD for nursing infants (< 1 yr), the subgroup most highly exposed.

2. *From drinking water.* Cyprodinil is considered to be persistent in water and mobile in most soils; under most conditions though, cyprodinil will have a low potential for movement into groundwater at high concentrations. There is potential for cyprodinil to contaminate surface water as runoff and as a sorbed species through erosion of soil particles. There is no established Maximum Contaminant Level (MCL) for residues of cyprodinil in drinking water. No health advisory levels for cyprodinil in drinking water have been established.

The Agency has calculated drinking water levels of comparison (DWLOCs) for chronic exposure to cyprodinil in surface and groundwater. A DWLOC is a theoretical upper limit on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food, drinking water, and through residential uses. Toxicity endpoints, default body weight (70 kg for males, 60 kg for females, and 10 kg for nursing infants < 1 year old) and default drinking water consumption estimates (2 L/day for adults, 1 L/day for nursing infants) are used to calculate the actual DWLOCs. The DWLOC represents the concentration level in surface water or groundwater at which aggregate exposure to the chemical is not of concern.

Using the SCI-GROW screening model, the Agency calculated an Estimated Environmental Concentration (EEC) of cyprodinil in groundwater for use in human health risk assessments. This value represents an upper bound estimate of the concentration of cyprodinil that might be found in groundwater assuming the maximum application rate allowed on the label of the highest use pattern.

The Agency used the PRZM-EXAMS model to estimate EECs for cyprodinil in surface water. PRZM-EXAMS is a more refined Tier II assessment. The EECs from these models are compared to the DWLOCs to make the safety determination.

i. *Acute exposure and risk.* This risk assessment was not conducted. No effects that could be attributed to a single exposure (dose) were observed in oral toxicity studies including the developmental toxicity studies in rats and rabbits. Therefore, a dose and endpoint were not identified for acute dietary risk assessment.

ii. *Chronic exposure and risk.* Using the SCI-GROW model, the maximum long-term estimated concentration in groundwater is not expected to exceed 0.04 parts per billion (ppb). The chronic estimated concentration in surface water, using the PRZM-EXAMS model, is 51 ppb. The DWLOC for the U.S. population was calculated to be 995 ppb; the DWLOC for the most sensitive subgroup, nursing infants < 1 yr. old, was 236 ppb. As concentrations of cyprodinil in groundwater and surface water do not exceed the calculated DWLOCs, the Agency concludes with reasonable certainty that chronic exposure to cyprodinil in drinking water is not of concern.

3. *From non-dietary exposure.* Cyprodinil is currently not registered for use on any sites that would result in non-occupational, non-dietary exposure; therefore, such exposure is not expected and not incorporated into EPA's aggregate risk assessment.

4. *Cumulative exposure to substances with common mechanism of toxicity.* Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity."

EPA does not have, at this time, available data to determine whether cyprodinil has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, cyprodinil does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that cyprodinil has a common mechanism of toxicity with other substances. For more information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the final rule for Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997).

D. Aggregate Risks and Determination of Safety for U.S. Population

1. *Acute risk.* This risk assessment was not conducted. No effects that could be attributed to a single exposure (dose) were observed in oral toxicity studies including the developmental toxicity studies in rats and rabbits. Therefore, a dose and endpoint were not identified for acute dietary risk assessment.

2. *Chronic risk.* Using the TMRC exposure assumptions described in this unit, EPA has concluded that aggregate exposure to cyprodinil from food will utilize 6% of the RfD for the U.S. population. The major identifiable subgroup with the highest aggregate exposure is nursing infants less than 1 year of age (discussed below). EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Estimated chronic environmental concentrations of cyprodinil in surface water and groundwater do not exceed chronic DWLOCs calculated by the Agency;

therefore, EPA does not expect the aggregate exposure to exceed 100% of the RfD.

3. *Short- and intermediate-term risk.* Short- and intermediate-term aggregate exposure takes into account chronic dietary food and water (considered to be a background exposure level) plus indoor and outdoor residential exposure.

There are no registered uses of this chemical that would result in non-dietary, non-occupational exposure. This risk assessment was not conducted.

4. *Aggregate cancer risk for U.S. population.* Cyprodinil is classified as a "not likely" human carcinogen, based on the lack of evidence of carcinogenicity in mice and rats at doses that were judged to be adequate to assess the carcinogenic potential. This risk assessment is not required.

5. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result from aggregate exposure to cyprodinil residues.

E. Aggregate Risks and Determination of Safety for Infants and Children

1. *Safety factor for infants and children*— i. *In general.* In assessing the potential for additional sensitivity of infants and children to residues of cyprodinil, EPA considered data from developmental toxicity studies in the rat and rabbit and a 2-generation reproduction study in the rat. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from maternal pesticide exposure during gestation. Reproduction studies provide information relating to effects from exposure to the pesticide on the reproductive capability of mating animals and data on systemic toxicity.

FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for pre-and post-natal toxicity and the completeness of the database unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a margin of exposure (MOE) analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans. EPA believes that reliable data support using the standard MOE and uncertainty factor (usually 100 for combined inter- and intra-species variability) and not the additional tenfold MOE/uncertainty factor when EPA has a complete data base under existing guidelines and when the severity of the effect in infants or children or the potency or unusual toxic properties of a compound do not raise concerns regarding the adequacy of the standard MOE/safety factor.

ii. *Developmental toxicity studies.* In the rat developmental study, the maternal NOAEL was 200 mg/kg/day, based on decreased body weight, body weight gain, and food consumption at the LOAEL of 1,000 mg/kg/day. The developmental NOAEL was 200 mg/kg/day, based on increased incidence of skeletal variations (primarily absent or reduced ossification of the metacarpal) and on decreased mean fetal weight at the LOAEL of 1,000 mg/kg/day. In the rabbit developmental toxicity study, the maternal NOAEL was 150 mg/kg/day, based on decreased body weight gain at the LOAEL of 400 mg/kg/day. The developmental NOAEL was 150 mg/kg/day and the LOAEL was 400 mg/kg/day, based on increased incidence of 13th rib.

iii. *Reproductive toxicity study.* In the 2-generation reproductive toxicity study in rats, the parental NOAEL was 81 mg/kg/day, based on decreased parental female premating body weight gain at the LOAEL of 326 mg/kg/day. The Agency considers significant increases in kidney and liver weight at the 326 mg/kg/day dose as supportive evidence of toxicity. The reproductive/developmental NOAEL was 81 mg/kg/day and the LOAEL was 326 mg/kg/day, based on decreased F1 and F2 pup weight during lactation and continuing into adulthood for F1 rats.

iv. *Pre- and post-natal sensitivity.* The toxicological data base for evaluating pre- and post-natal toxicity for cyprodinil is complete with respect to current data requirements. There are no pre- or post-natal toxicity concerns for infants and children, based on the results of the rat and rabbit developmental toxicity studies and the 2-generation rat reproductive toxicity study.

v. *Conclusion.* There is a complete toxicity database for cyprodinil and exposure data is complete or is estimated based on data that reasonably accounts for potential exposures. The Agency determined that for cyprodinil, the 10x factor to account for enhanced sensitivity of infants and children should be removed.

2. *Acute risk.* This risk assessment was not conducted. No effects that could be attributed to a single exposure (dose) were observed in oral toxicity studies including the developmental toxicity studies in rats and rabbits. Therefore, a dose and endpoint were not identified for acute dietary risk assessment.

3. *Chronic risk.* Using the exposure assumptions described in this unit, EPA has concluded that aggregate exposure to cyprodinil from food will utilize 21% of the RfD for nursing infants less than one year old, the infant and children subgroup most highly exposed. EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Because the chronic DWLOCs are not exceeded by estimated chronic environmental concentrations in groundwater or surface water, EPA does not expect the aggregate exposure to exceed 100% of the RfD.

4. *Short- or intermediate-term risk.* There are no residential uses for this chemical; this risk assessment is not required.

5. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to cyprodinil residues.

IV. Other Considerations

A. Metabolism In Plants and Animals

The nature of the residue in plants is understood based on metabolism studies in stone fruit, pome fruit, wheat, tomatoes and potatoes. The residue of concern is parent cyprodinil only. There are no animal feed items associated with the strawberry use; data on the nature of the residue in animals are not required for the section 18 action or the establishment of this tolerance.

B. Analytical Enforcement Methodology

Adequate enforcement methodology (HPLC) is available to enforce the tolerance expression; OPP concludes that the method will be suitable for enforcement purposes once revisions recommended by the Analytical Chemistry Laboratory (ACL) are incorporated. The method may be requested from: Calvin Furlow, PRRIB, IRSD (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm 101FF, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 305–5229.

C. Magnitude of Residues

Residues of cyprodinil are not expected to exceed 5.0 ppm in strawberries as a result of the proposed section 18 use.

D. International Residue Limits

There are no Codex, Canadian, or Mexican residue limits established for

cyprodinil on strawberries. Therefore, no compatibility problems exist for the proposed tolerance.

E. Rotational Crop Restrictions

No rotational crop study was submitted with the petition for use of cyprodinil on strawberries. As strawberries are considered to be a rotated crop, treated crop acreage shall be rotated to strawberries only.

V. Conclusion

Therefore, the tolerance is established for residues of cyprodinil in strawberries at 5.0 ppm.

VI. Objections and Hearing Requests

The new FFDCA section 408(g) provides essentially the same process for persons to "object" to a tolerance regulation as was provided in the old section 408 and in section 409. However, the period for filing objections is 60 days, rather than 30 days. EPA currently has procedural regulations which govern the submission of objections and hearing requests. These regulations will require some modification to reflect the new law. However, until those modifications can be made, EPA will continue to use those procedural regulations with appropriate adjustments to reflect the new law.

Any person may, by June 14, 1999, file written objections to any aspect of this regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given under the "ADDRESSES" section (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). EPA is authorized to waive any fee requirement "when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection." For additional information regarding tolerance objection fee waivers, contact James Tompkins, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 239, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 305–5697, tompkins.jim@epa.gov. Requests for waiver of tolerance objection fees should be sent to James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

If a hearing is requested, the objections must include a statement of the factual issues on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the requestor (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

VII. Public Record and Electronic Submissions

EPA has established a record for this regulation under docket control number [OPP–300833] (including any comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 119 of the Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA.

Objections and hearing requests may be sent by e-mail directly to EPA at:

opp-docket@epa.gov.

E-mailed objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this regulation, as well as the public version, as described in this unit will be kept in paper form. Accordingly, EPA will transfer any copies of objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the Virginia address in "ADDRESSES" at the beginning of this document.

VIII. Regulatory Assessment Requirements

A. Certain Acts and Executive Orders

This final rule establishes a tolerance under section 408 of the FFDCA. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). Nor does it require any prior consultation as specficed by Executive Order 12875, entitled *Enhancing the Intergovernmental Partnership* (58 FR 58093, October 28, 1993), or special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994), or require OMB review in accordance with Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997).

In addition, since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(l)(6), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. Nevertheless, the Agency previously assessed whether establishing tolerances, exemptions from tolerances, raising tolerance levels or expanding exemptions might adversely impact small entities and concluded, as a generic matter, that there is no adverse economic impact. The factual basis for the Agency's generic certification for tolerance actions published on May 4, 1981 (46 FR 24950), and was provided

to the Chief Counsel for Advocacy of the Small Business Administration.

B. Executive Order 12875

Under Executive Order 12875, entitled *Enhancing the Intergovernmental Partnership* (58 FR 58093, October 28, 1993), EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to OMB a description of the extent of EPA's prior consultation with representatives of affected State, local, and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's rule does not create an unfunded Federal mandate on State, local, or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

C. Executive Order 13084

Under Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998), EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

IX. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the Agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: April 2, 1999.

Donald Stubbs,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a, and 371.

2. In §180.532, by revising paragraph (b) to read as follows:

§180.532 Cyprodinil; tolerances for residues.

* * * * *

(b) *Section 18 emergency exemptions.* Time-limited tolerances are established for residues of the fungicide cyprodinil (4-cyclopropyl-6-methyl-*N*-phenyl-2-pyrimidinamine) in connection with use of the pesticide under section 18 emergency exemptions granted by EPA. The tolerances will expire and are revoked on the dates specified in the following table:

Commodity	Parts per million	Expiration/ revocation date
Strawberries	5.0	5/31/00

* * * * *

[FR Doc. 99–9059 Filed 4-13-99; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300829; FRL 6072–2]

RIN 2070–AB78

Fluthiacet-methyl; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a tolerance for residues of fluthiacet-methyl in or on soybean seed. Novartis Crop Protection, Inc. requested this tolerance under the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996.

DATES: This regulation is effective April 14, 1999. Objections and requests for hearings must be received by EPA on or before June 14, 1999.

ADDRESSES: Written objections and hearing requests, identified by the docket control number, [OPP–300829], must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk identified by the docket control number, [OPP–300829], must also be submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may be submitted electronically by sending electronic mail (e-mail) to: opp-

docket@epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect 5.1/6.1 or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket control number [OPP–300829]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: By mail: James A. Tompkins, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 239, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, 703–305–5697; tompkins.jim@epa.gov.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of March 26, 1997 (62 FR 14426) (FRL–5595–6), EPA issued a notice pursuant to section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a as amended by the Food Quality Protection Act of 1996 (FQPA) (Pub. L. 104–170) announcing the filing of a pesticide petition (PP) 6F4614, for tolerance by Novartis Crop Protection, Inc., P.O. Box 18300, Greensboro, NC 27419. This notice included a summary of the petition prepared by Novartis Crop Protection, Inc., the registrant. There were no comments received in response to the notice of filing.

The petition requested that 40 CFR part 180 be amended by establishing a tolerance for residues of the herbicide, fluthiacet-methyl, acetic acid [[2-chloro-4-fluoro-5-[(tetrahydro-3-oxo-1*H*,3*H*-[1,3,4]thiadiazolo[3,4-α]pyridazin-1-ylidene)amino]phenyl]thio]-methyl ester, in or on soybeans at 0.01 part per million (ppm).

I. Background and Statutory Findings

Section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue."

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 and a complete description of the risk assessment process, see the final rule on Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997) (FRL–5754–7).

II. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of fluthiacet-methyl and to make a determination on aggregate exposure, consistent with section 408(b)(2), for a tolerance for residues of fluthiacet-methyl on soybean seed at 0.01 ppm. EPA's assessment of the dietary exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by fluthiacet-methyl are discussed in this unit.

1. A rat acute oral study with a LD_{50} greater than (>) 5,000 milligrams (mg)/kilogram (kg) for males and females.

2. A 90-day rat feeding study with a no observed adverse effect level (NOAEL) of 100 ppm 6.19 mg/kg/day for males and 6.80 mg/kg/day for females and a lowest observed adverse effect level (LOAEL) of 3,500 ppm 216 mg/kg/day for males and 249 mg/kg/day for females based on decreased body weight gains as well as effects on hematology, clinical chemistry, urinalysis parameters, liver weights and microscopic pathology.

3. A 90-day mouse feeding study with a NOAEL of 10 ppm (1.3 mg/kg/day for males and 1.6 mg/kg/day for females) and a LOAEL of 500 ppm (66 mg/kg/day for males and 83 mg/kg/day for females) based on effects on the erythropoietic system and the liver.

4. A 6-week dog dietary study with a NOAEL of 236 mg/kg/day for males and 77.7 mg/kg/day for females and a LOAEL of 709 mg/kg/day for males and 232 mg/kg/day for females based on decreased body weight gain.

5. A 28-day rat dermal study with a NOAEL of 1,000 mg/kg/day, the highest dose tested (HDT).

6. A 1-year dog chronic feeding study with a NOAEL of 57.6 mg/kg/day in males and 30.3 mg/kg/day for females and a LOAEL of 582 mg/kg/day for males and 145 mg/kg/day for females based on effects observed in the erythropoietic system and the liver.

7. A rat chronic feeding/carcinogenicity study with a NOAEL for systemic toxicity of 50 ppm (2.1 mg/kg/day in males and 2.5 mg/kg/day in females) and a LOAEL for systemic toxicity of 3,000 ppm (130 mg/kg/day in males and 154 mg/kg/day in females) based on decreased body weights, liver toxicity, pancreatic toxicity and microcytic anemia in males; and liver toxicity, uterine toxicity and slight microcytic anemia in females. In males only at 3,000 and 5,000 ppm (130 and 219 mg/kg/day, respectively) there was an increase in the trend toward pancreatic exocrine adenomas and pancreatic islet cell adenomas.

8. A mouse carcinogenicity study with a NOAEL for systemic toxicity of 1 ppm (0.1 mg/kg/day in males and females) and a LOAEL for systemic toxicity of 10 ppm (1.0 mg/kg/day in males and 1.2 mg/kg/day in females) based on non-neoplastic liver findings. In males (and possibly females) at 100 (10 mg/kg/day for males and 12 mg/kg/day for females) and 300 ppm (32 mg/kg/day for males and 37 mg /kg/day for females) there was an increase in the number of mice with hepatocellular adenomas, carcinomas and/or adenomas/carcinomas.

9. A 2-generation rat reproduction study with a parental systemic NOAEL of 25 ppm (1.59 mg/kg/day for males and 1.73 mg/kg/day for females) and a systemic LOAEL of 500 ppm (31.8 mg/kg/day for males and 35.2 mg/kg/day for females) based on reduction in male body weights/gains and hepatic pathology; and the reproductive NOAEL of 500 ppm (31.8 mg/kg/day for males and 37.1 mg/kg/day for females) and the reproductive LOAEL of 5,000 ppm (313 mg/kg/day for males and 388 mg/kg/day for females) based on decreases in mean litter body weights.

10. A rat developmental study with a maternal NOAEL and reproductive NOAEL equal to or greater than 1,000 mg/kg/day HDT.

11. A rabbit developmental study with a maternal and developmental NOAEL of 1,000 mg/kg/day HDT and with a developmental NOAEL of 300 mg/kg/day and with a developmental LOAEL of 1,000 mg/kg/day based on slight non-significant increased incidence of irregularly shaped sternebrae attributed to a delay in fetal development.

12. An acute rat neurotoxicity study with a NOAEL of 2,000 mg/kg HDT.

13. A rat subchronic neurotoxicity study with a systemic NOAEL of 10 ppm (0.576 mg/kg/day) in males and 20,000 ppm (1,354 mg/kg/day), HDT in females and a systemic LOAEL of 10,000 (556 mg/kg/day) in males based on decreased body weight and food consumption and with a neurotoxicity NOAEL of 20,000 ppm (1,128 mg/kg/day for males and 1,354 mg/kg/day for females), HDT.

14. Fluthiacet-methyl was negative for mutagenic/genotoxic effects in bacterial or cultured mammalian cells and did not cause DNA damage in bacterial or primary rat hepatocytes. *In vitro* cytogenetic assays performed with two different mammalian cell lines demonstrated that fluthiacet-methyl is clastogenic both in the presence and absence of S9 activation. Although the test substance is negative for micronuclei induction in mouse bone marrow, a significant increase in micronuclei is seen in stimulated rat liver cells following *in vivo* exposure.

15. Based on the results of the rat metabolism studies, fluthiacet-methyl was absorbed rapidly at both the low and high dose for both male and female rats. Repeated oral dosing had no effect on extent of absorption. Tissue levels of ^{14}C-fluthiacet-methyl derived radioactivity in the single and repeated low dose groups did not exceed 0.018 ppm for any tissue. At the single high dose, female rats showed higher levels of ^{14}C-fluthiacet-methyl derived radioactivity in tissues than males except for muscle, brain, fat and plasma. Excretion in males was predominantly in feces for all dose groups, with between 67–87% of administered radioactivity excreted by this route. In females, the percentage of administered radioactivity in urine across all dose groups 40–48% was approximately equivalent to the percent excreted in feces 39–52%. The greater fecal excretion in males was based on a greater percentage excretion in bile for males 37% vs. females 19%.

B. Toxicological Endpoints

1. *Acute toxicity.* EPA could not identify any toxicological effects that could be attributable to a single oral exposure (dose) in any of the available toxicological studies.

2. *Short- and intermediate-term toxicity.* EPA could not identify any toxicological effects that could be attributable to short- or intermediate-term dietary exposure .

3. *Chronic toxicity.* EPA has established the RfD for fluthiacet-methyl at 0.001 mg/kg/day. This Reference Dose (RfD) is based on the NOAEL of 0.1 mg/kg/day in the mouse carcinogenicity study and using an uncertainty factor of 100 (10x for inter-species extrapolation, 10x for intra-species variability). The LOAEL in this study, 1.0 and 1.2 mg/kg/day for males and females, respectively, was based on non-neoplastic liver findings (centrilobular necrosis, centrilobular cell degeneration, histiocytic pigmentation and karyomegaly).

4. *Carcinogenicity.* The Health Effects Division Cancer Assessment Review Committee has classified fluthiacet-methyl in accordance with the Agency's *Proposed Guidelines for Carcinogen Risk Assessment* (April 10, 1996) as "likely to be a human carcinogen." Evidence for carcinogenicity was demonstrated by the presence of pancreatic tumors (exocrine adenomas, islet cell adenomas and combined islet cell adenomas + carcinomas) in male rats and liver tumors (adenomas and combined adenomas + carcinomas) in male and female mice. The Committee recommended a linear low-dose approach (Q_1*) for human characterization and determined that extrapolation should be based on the combined hepatocellular tumors (adenomas and carcinomas) in male mice.

C. Exposures and Risks

1. *From food and feed uses.* The proposed tolerance in or on the raw agricultural commodity: soybean seed at 0.01 ppm is the first to be established for residues of the herbicide, fluthiacet-methyl, acetic acid, [[2-chloro-4-fluoro-5-[(tetrahydro-3-oxo-1*H*,3*H*-[1,3,4]thiadiazolo[3,4-α]pyridazin-1-ylidene)amino]phenyl]thio]-methyl ester. There is no reasonable expectation of residues of fluthiacet-methyl occurring in meat, milk, poultry, or eggs from its use on soybeans. Risk assessments were conducted by EPA to assess dietary exposures from fluthiacet-methyl as follows:

Section 408(b)(2)(F) states that the Agency may use data on the actual percent of food treated (PCT) for assessing chronic dietary risk only if the Agency can make the following findings: That the data used are reliable and provide a valid basis to show what percentage of the food derived from such crop is likely to contain such pesticide residue; that the exposure estimate does not underestimate exposure for any significant subpopulation group; and if data are available on pesticide use and food consumption in a particular area, the exposure estimate does not understate exposure for the population in such area. In addition, the Agency must provide for periodic evaluation of any estimates used. To provide for the periodic evaluation of the estimate of percent of crop treated as required by the section 408(b)(2)(F), EPA may require registrants to submit data on PCT.

The Agency used PCT information as follows:

A chronic exposure analysis for soybeans was conducted assuming 25% of the soybean crop is treated. EPA estimates that 25% of the total soybeans crop acres will not be exceeded by this new broadleaf herbicide within the next 5 years.

The Agency believes that the three conditions, discussed in section 408 (b)(2)(F) in this unit concerning the Agency's responsibilities in assessing chronic dietary risk findings, have been met. EPA finds that the PCT information is reliable and has a valid basis. Before the petitioner can increase production of product for treatment of greater than 25% of total soybean acres, permission from the Agency must be obtained. The regional consumption information and consumption information for significant subpopulations is taken into account through EPA's computer-based model for evaluating the exposure of significant subpopulations including several regional groups. Use of this consumption information in EPA's risk assessment process ensures that EPA's exposure estimate does not understate exposure for any significant subpopulation group and allows the Agency to be reasonably certain that no regional population is exposed to residue levels higher than those estimated by the Agency. Other than the data available through national food consumption surveys, EPA does not have available information on the consumption of food bearing fluthiacet-methyl in a particular area.

i. *Acute exposure and risk.* EPA could not identify any toxicological effects that could be attributable to a single oral exposure (dose) in any of the available

toxicological studies. This risk assessment is not needed.

ii. *Chronic exposure and risk.* The Reference Dose (RfD) for fluthiacet-methyl is 0.001 mg/kg/day. This value is based on the systemic NOAEL of 0.1 mg/kg/day in the mouse carcinogenicity study with a 100-fold safety factor to account for interspecies extrapolation (10x) and intraspecies variability (10x).

A Dietary Exposure Evaluation Model (DEEM) chronic exposure analysis was conducted using tolerance levels for soybeans assuming that 25% of the crop is treated to estimate dietary exposure for the general population and 22 subgroups. The chronic analysis showed that exposures from the tolerance level residues in or on soybeans for non-nursing infants less than 1 years old (the subgroup with the highest exposure) would be 0.6% of the RfD. The exposure for the general U.S. population would be 0.1% of the RfD.

A lifetime dietary carcinogenicity exposure analysis was conducted for fluthiacet-methyl using the proposed tolerances along with the assumption of 25 percent of the crop treated and a Q* of 2.07×10^{-1} $(mg/kg/day)^{-1}$. A lifetime risk exposure analysis was also conducted using the DEEM computer analysis. The estimated cancer risk (2.06×10^{-7}) is less than the level that the Agency usually considers negligible for cancer risk estimates.

2. *From drinking water.* Drinking water estimated concentrations (DWECs) for surface water were calculated by generic expected environmental concentration (GENEEC) computer models to be an average of 0.3 parts per billion (ppb). The DWECs for ground water based on the computer model screening concentration in ground water (SCI-GROW) were calculated to be an average of 0.002 ppb.

3. *From non-dietary exposure.* There are no non-food uses of fluthiacet-methyl currently registered under the Federal Insecticide, Fungicide and Rodenticide Act, as amended. No non-dietary exposures are expected for the general population.

4. *Cumulative exposure to substances with common mechanism of toxicity.* Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity."

EPA does not have, at this time, available data to determine whether fluthiacet-methyl has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, fluthiacet-methyl does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that fluthiacet-methyl has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the final rule for Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997).

D. Aggregate Risks and Determination of Safety for U.S. Population

1. *Acute risk.* EPA could not identify any toxicological effects that could be attributable to a single oral exposure (dose) in any of the available toxicological studies.

2. *Chronic risk.* Using the DEEM chronic exposure assumptions described in this unit, EPA has concluded that aggregate exposure to fluthiacet-methyl from food will utilize 0.1% of the RfD for the U.S. population. The major identifiable subgroup with the highest aggregate exposure, non-nursing infants less than 1 year old, utilize 0.6% of the RfD. EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate exposure over a lifetime will not pose appreciable risks to human health. The drinking water level of comparisons (DWLOCs) for chronic exposure to fluthiacet-methyl in drinking water calculated for the U.S. population was 35 ppb and for non-nursing infants less than 1 year old the DWLOC was 10 ppb. The estimated average concentration in surface water for fluthiacet-methyl is 0.3 ppb and for ground water is 0.002 ppb. EPA's chronic drinking water levels of comparison are well above the estimated exposures for fluthiacet-methyl in water for the U.S. population and the subgroup of concern. Conservative model estimates (GENEEC and SCI-GROW) of the concentrations of fluthiacet-methyl in surface and ground water indicate that exposure will be minimal.

3. *Short- and intermediate-term risk.* EPA could not identify any toxicological effects that could be attributable to short or intermediate-term dermal or inhalation exposure. No systemic effects were observed in available dermal studies. In addition, no endpoints for short or intermediate-term exposure could be identified from available oral studies. A short- and intermediate-term risk assessment is not needed.

4. *Aggregate cancer risk for U.S. population—combined food and water.* A lifetime dietary carcinogenicity exposure analysis for fluthiacet-methyl estimated the cancer risk to be 2.06×10^{-7}, a level that the Agency usually considers negligible for cancer risk estimates. A DWLOC for cancer was calculated as 0.133 ppb. The estimated concentration in surface water and groundwater for fluthiacet-methyl for chronic exposure are 0.1 ppb (0.3 ppb (the 56-day concentration)/3) and 0.002 ppb, respectively. The model exposure estimates are less than the cancer DWLOC.

5. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result from aggregate exposure to fluthiacet-methyl residues.

E. Aggregate Risks and Determination of Safety for Infants and Children

1. *Safety factor for infants and children—In general.* In assessing the potential for additional sensitivity of infants and children to residues of fluthiacet-methyl, EPA considered data from developmental toxicity studies in the rat and rabbit and a 2-generation reproduction study in the rat. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from maternal pesticide exposure gestation. Reproduction studies provide information relating to effects from exposure to the pesticide on the reproductive capability of mating animals and data on systemic toxicity.

FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for pre- and post-natal toxicity and the completeness of the database unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a margin of exposure (MOE) analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans. EPA believes that reliable data support using the standard uncertainty factor (usually 100 for combined inter- and intra-species variability) and not the additional tenfold MOE/uncertainty factor when EPA has a complete data base under existing guidelines and when the severity of the effect in infants or children or the potency or unusual

toxic properties of a compound do not raise concerns regarding the adequacy of the standard MOE/safety factor.

In the prenatal developmental study with rabbits, *in utero* exposure did not result in maternal toxicity at 1,000 mg/kg/day. Developmental toxicity, however, was seen at this dose as a non-statistical increase in irregular sternebrae (an effect attributed to a delay in fetal development, a variation which is reversible). The occurrence of developmental toxicity at a dose at which no maternal toxicity was noted indicates an apparent susceptibility. EPA; however, determined that the apparent susceptibility is not convincing for the following reasons:

a. The increased incidence of irregular sternebrae was not statistically significant when compared to concurrent controls.

b. The increase occurred primarily at the limit-dose (1,000 mg/kg/day).

c. It was the only anomaly observed in the study (i.e., a single variation).

d. The dose response was not strong since there was only a small increase in the litter incidences between the low-dose (5 mg/kg/day) and the high-dose (1,000 mg/kg/day), with the mid- and high-dose groups having 8 litters with this variation.

e. This endpoint is considered appropriate to establish a LOAEL, but not appropriate for risk assessments.

Based on these factors, the Agency concluded that there is no increased susceptibility in the rabbit study.

The Agency concluded that an extra safety factor to protect infants and children is not needed based on the following considerations:

The available hazard assessment studies indicated no increased susceptibility of rats or rabbits to *in utero* and/or postnatal exposure to fluthiacet-methyl, and exposure assessments do not indicate a concern for potential risk to infants and children, based upon the very low application rates and quick dissipation of fluthiacet-methyl; the dietary exposure estimates using field study data result in an overestimate of dietary exposure; modeling data are used for ground and surface source drinking water exposure assessments resulting in estimates considered to be upper-bound concentrations; and there are currently no registered residential uses for fluthiacet-methyl.

2. *Conclusion.* There is a complete toxicity database for fluthiacet-methyl and exposure data is complete or is estimated based on data that reasonably accounts for potential exposures.

III. Other Considerations

A. Metabolism In Plants and Animals

The nature of the residue in soybeans, rotational crops, and livestock is adequately understood. The residues of concern for the tolerance expression are parent per se. Based on the results of animal metabolism studies it is unlikely that secondary residues would occur in animal commodities from the use of fluthiacet-methyl on soybeans.

B. Analytical Enforcement Methodology

Adequate enforcement methodology (gas-liquid chromatography) is available to enforce the tolerance expression. The method may be requested from: Calvin Furlow, PIRIB, IRSD (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm 101FF, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 305–5229.

C. Magnitude of Residues

Based on the results of animal metabolism studies it is unlikely that significant residues would occur in secondary animal commodities from the use of fluthiacet-methyl on soybeans. Residues of fluthiacet-methyl in all treated and untreated samples of soybeans, hulls, meal, crude oil, refined oil and aspirated grain fractions were less than the method level of quantification (LOQ). The nature of the residue in plants is adequately understood for the purposes of these tolerances

D. International Residue Limits

There are no Codex Alimentarius Commission (Codex), Canadian, or Mexican Maximum Residue Levels (MRLs) for fluthiacet-methyl at this time.

E. Rotational Crop Restrictions

No tolerances for inadvertent residues of fluthiacet-methyl are required in rotational crops.

IV. Conclusion

Therefore, the tolerance is established for residues of fluthiacet-methyl in soybeans seeds at 0.01 ppm.

V. Objections and Hearing Requests

The new FFDCA section 408(g) provides essentially the same process for persons to "object" to a tolerance regulation as was provided in the old section 408 and in section 409. However, the period for filing objections is 60 days, rather than 30 days. EPA currently has procedural regulations which govern the submission of objections and hearing requests. These regulations will require some modification to reflect the new law. However, until those modifications can be made, EPA will continue to use those procedural regulations with appropriate adjustments to reflect the new law.

Any person may, by June 14, 1999, file written objections to any aspect of this regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given under the "ADDRESSES" section (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this regulation. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). EPA is authorized to waive any fee requirement "when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection." For additional information regarding tolerance objection fee waivers, contact James Tompkins, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 239, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 305–5697, tompkins.jim@epa.gov. Requests for waiver of tolerance objection fees should be sent to James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

If a hearing is requested, the objections must include a statement of the factual issues on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the requestor (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection

with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

VI. Public Record and Electronic Submissions

EPA has established a record for this regulation under docket control number [OPP–300829] (including any comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 119 of the Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA.

Objections and hearing requests may be sent by e-mail directly to EPA at: opp-docket@epa.gov.

E-mailed objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this regulation, as well as the public version, as described in this unit will be kept in paper form. Accordingly, EPA will transfer any copies of objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the Virginia address in "ADDRESSES" at the beginning of this document.

VII. Regulatory Assessment Requirements

A. Certain Acts and Executive Orders

This final rule establishes a tolerance under section 408(d) of the FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). Nor does it require any prior consultation as specified by Executive Order 12875, entitled *Enhancing the Intergovernmental Partnership* (58 FR 58093, October 28, 1993), or special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994), or require OMB review in accordance with Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997).

In addition, since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerance/exemption in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. Nevertheless, the Agency previously assessed whether establishing tolerances, exemptions from tolerances, raising tolerance levels or expanding exemptions might adversely impact small entities and concluded, as a generic matter, that there is no adverse economic impact. The factual basis for the Agency's generic certification for tolerance actions published on May 4, 1981 (46 FR 24950), and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

B. Executive Order 12875

Under Executive Order 12875, entitled *Enhancing the Intergovernmental Partnership* (58 FR 58093, October 28, 1993), EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to OMB a description of the extent of EPA's prior consultation with representatives of affected State, local, and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's rule does not create an unfunded Federal mandate on State, local, or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

C. Executive Order 13084

Under Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998), EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

VIII. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the Agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and the Comptroller General of the United States. EPA will submit a report containing this rule and other

required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: March 31, 1999.

Susan B. Hazen,

Acting Director, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a, and 371.

2. Section 180.551 is added to read as follows.

§180.551 Fluthiacet-methyl; tolerances for residues.

(a) *General.* A tolerance is established for residues of the herbicide, fluthiacet-methyl, acetic acid [[2-chloro-4-fluoro-5-[(tetrahydro-3-oxo-1*H*,3*H*-[1,3,4]thiadiazolo[3,4-α]pyridazin-1-ylidene)amino]phenyl]thio]-methyl ester, in or on the food commodity:

Commodity	Parts per million
Soybean seed	0.01

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

[FR Doc. 99–9057 Filed 4–13–99; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300831; FRL–6072–3]

RIN 2070–AB78

Cyromazine; Extension of Tolerance for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation extends a time-limited tolerance for combined residues of the insecticide cyromazine and its metabolites in or on lima beans at 5.0 part per million (ppm) for an additional 2–year period.This tolerance will expire and is revoked on December 31, 2001. This action is in response to EPA's granting of an emergency exemption under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) authorizing use of the pesticide on lima beans. Section 408(l)(6) of the Federal Food, Drug, and Cosmetic Act requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under FIFRA section 18.

DATES: This regulation becomes effective April 14, 1999. Objections and requests for hearings must be received by EPA, on or before June 14, 1999.

ADDRESSES: Written objections and hearing requests, identified by the docket control number [OPP–300831], must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk identified by the docket control number, [OPP–300831], must also be submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epa.gov. Copies of electronic objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect 5.1/6.1 or ASCII file format. All copies of electronic objections and hearing requests must be identified by the docket control number [OPP-300831]. No Confidential Business Information (CBI) should be submitted through e-mail. Copies of electronic objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: By mail: Andrew Ertman, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 280, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 308–9367; ertman.andrew@epa.gov.

SUPPLEMENTARY INFORMATION: EPA issued a final rule, published in the **Federal Register** of December 10, 1997 (62 FR 65030) (FRL–5758–2), which announced that on its own initiative under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(e) and (l)(6), as amended by the Food Quality Protection Act of 1996 (FQPA) (Pub. L. 104–170) it established a time-limited tolerance for the combined residues of cyromazine and its metabolites in or on lima beans at 5.0 ppm, with an expiration date of December 31, 1998. EPA established the tolerance because section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under FIFRA section 18. Such tolerances can be established without providing notice or period for public comment.

EPA received a request to extend the use of cyromazine on lima beans for this years growing season due to the continuing emergency situation in California. Insect pressure from the leafminer has increased over the past several years due to the rapid increase in the insect's resistance to currently registered insecticides and the resulting increase in insect populations. With the end of the California drought, overwintering has occurred in leafminer populations and mild weather has added to the resistance population with outbreaks increasing in the summer and carrying through the end of the harvest season.

The damage caused by the leafminer in lima beans begins in the leaf tissue of the plant. The adult leafminers lay eggs in the leaf tissue, and then the eggs hatch and the larvae eat the leaf tissue underneath the epidermis and cuticle, leaving tracks or mines. These mines damage or kill the plant leaf, which in

turn reduces photosynthesis, and greatly diminishes yield or kills the plant outright.

There are few registered alternatives for control of leafminer in lima beans. In general, the registered alternatives (including Dimethoate, Lannate, Orthene, and Saf T Soaps) provide such a low level of control due to resistance and poor fit (programmatically) that they often have a negative impact on leafminer populations. This is primarily because these insecticides kill beneficials that control leafminers. After having reviewed the submission, EPA concurs that emergency conditions exist. EPA has authorized under FIFRA section 18 the use of cyromazine on lima beans for control of leafminers in California.

EPA assessed the potential risks presented by residues of cyromazine in or on lima beans. In doing so, EPA considered the safety standard in FFDCA section 408(b)(2), and decided that the necessary tolerance under FFDCA section 408(l)(6) would be consistent with the safety standard and with FIFRA section 18. The data and other relevant material have been evaluated and discussed in the final rule of December 10, 1997 (62 FR 65030) (FRL–5758–2). Based on that data and information considered, the Agency reaffirms that extension of the time-limited tolerance will continue to meet the requirements of section 408(l)(6). Therefore, the time-limited tolerance is extended for an additional 2–year period. EPA will publish a document in the **Federal Register** to remove the revoked tolerance from the Code of Federal Regulations (CFR). Although this tolerance will expire and is revoked on December 31, 2001, under FFDCA section 408(l)(5), residues of the pesticide not in excess of the amounts specified in the tolerance remaining in or on lima beans after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA and the application occurred prior to the revocation of the tolerance. EPA will take action to revoke this tolerance earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

I. Objections and Hearing Requests

The new FFDCA section 408(g) provides essentially the same process for persons to "object" to a tolerance regulation issued by EPA under new section 408(e) and (l)(6) as was provided in the old section 408 and in section 409. However, the period for filing objections is 60 days, rather than 30 days. EPA currently has procedural regulations which govern the submission of objections and hearing requests. These regulations will require some modification to reflect the new law. However, until those modifications can be made, EPA will continue to use those procedural regulations with appropriate adjustments to reflect the new law.

Any person may, by June 14, 1999, file written objections to any aspect of this regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given under the "ADDRESSES" section (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). EPA is authorized to waive any fee requirement "when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection." For additional information regarding tolerance objection fee waivers, contact James Tompkins, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 239, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 305–5697, tompkins.jim@epa.gov. Requests for waiver of tolerance objection fees should be sent to James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

If a hearing is requested, the objections must include a statement of the factual issues on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the requestor (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

II. Public Record and Electronic Submissions

EPA has established a record for this regulation under docket control number [OPP-300831] (including any comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 119 of the Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA.

Objections and hearing requests may be sent by e-mail directly to EPA at:

opp-docket@epa.gov.

E-mailed objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this regulation, as well as the public version, as described in this unit will be kept in paper form. Accordingly, EPA will transfer any copies of objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the Virginia address in "ADDRESSES" at the beginning of this document.

III. Regulatory Assessment Requirements

A. Certain Acts and Executive Orders

This final rule establishes a tolerance under section 408 of the FFDCA. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory*

Planning and Review (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 et seq., or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). Nor does it require any prior consultation as specficed by Executive Order 12875, entitled *Enhancing the Intergovernmental Partnership* (58 FR 58093, October 28, 1993), or special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994), or require OMB review in accordance with Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997).

In addition, since tolerances and exemptions that are established under section 408(l)(6) of FFDCA, such as the exemption in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 et seq.) do not apply. Nevertheless, the Agency previously assessed whether establishing tolerances, exemptions from tolerances, raising tolerance levels or expanding exemptions might adversely impact small entities and concluded, as a generic matter, that there is no adverse economic impact. The factual basis for the Agency's generic certification for tolerance actions published on May 4, 1981 (46 FR 24950), and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

B. Executive Order 12875

Under Executive Order 12875, entitled *Enhancing the Intergovernmental Partnership* (58 FR 58093, October 28, 1993), EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to OMB a description of the extent of EPA's prior consultation with representatives of affected State, local, and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's rule does not create an unfunded Federal mandate on State, local, or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

C. Executive Order 13084

Under Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998), EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

IV. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the Agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: March 30, 1999.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a, and 371.

§180.414 [Amended]

2. In §180.414, by amending the table in paragraph (b) by revising the date for Beans, lima from "12/31/98" to read "12/31/01".

[FR Doc. 99–9058 Filed 4-13-99; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300771A; FRL–6071–6]

RIN 2070–AB78

Imidacloprid; Pesticide Tolerances for Emergency Exemptions; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correction.

SUMMARY: EPA published in the **Federal Register** of January 20, 1999, a document establishing time-limited tolerances for residues of imidacloprid in/on legume vegetables (Crop Group 6) and strawberries, in connection with issuance of emergency exemptions for these uses. The levels given for tolerances were listed correctly throughout most of the document, but were inadvertently transposed in the last table. This document corrects this error by listing the tolerances levels correctly.

DATES: This correction becomes effective January 20, 1999.

FOR FURTHER INFORMATION CONTACT: By mail: Andrea Beard, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 308–9356; e-mail: beard.andrea@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA published a document on January 20, 1999 (64 FR 3037) (FRL–6051–6), establishing time-limited tolerances for residues of imidacloprid in/on legume vegetables (Crop Group 6, 40 CFR 180.41(c)(6)) and strawberries. This action was in response to EPA's granting of emergency exemptions under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act authorizing use of the pesticide on legumes and strawberries. This regulation established maximum permissible levels for residues of imidacloprid in/on these food commodities pursuant to section 408(l)(6) of the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996. The tolerances will expire and are revoked on June 30, 2000. In publishing these tolerances, the tolerance levels for these commodities were listed correctly throughout the document, but were inadvertently transposed in the final table. The correct tolerance levels are 0.1 ppm in/on strawberries, and 1.0 ppm in/on legume vegetables. This document will correct the tolerance levels.

I. Regulatory Assessment Requirements

This final rule does not impose any new requirements. It only implements a technical correction to the Code of Federal Regulations (CFR). As such, this action does not require review by the Office of Management and Budget (OMB) under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993), the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not impose any enforceable duty, contain any unfunded mandate, or impose any significant or unique impact on small governments as described in the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). Nor does it require prior consultation with State, local, and tribal government officials as specified by Executive Order 12875, entitled *Enhancing the Intergovernmental Partnership* (58 FR 58093, October 28, 1993) and Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998), or special consideration of environmental justice related issues under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Pub. L. 104–113, section 12(d) (15 U.S.C. 272 note). In addition, since this action is not subject to notice-and-comment requirements under the Administrative Procedure Act (APA) or any other statute, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*).

II. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the Agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this rule in the **Federal Register**. This is a technical corection to the **Federal Register** and is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: March 30, 1999.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

In FR Doc. 99–1253, published on January 20, 1999 (64 FR 3037), make the following correction:

§ 180.472 [Corrected]

On page 3044, in the third column, in § 180.472, in paragraph (b), the table is corrected to read as follows:

§ 180.472 Imidacloprid; tolerances for residues.

* * * * *

(b) * * *

Commodity	Parts per million	Expiration/ revocation date
* *	* *	*
Legume vegetables	1.0	6/30/00
Strawberry	0.1	6/30/00
* *	* *	*

* * * * *

[FR Doc. 99–9225 Filed 4–13–99; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300835; FRL–6073–5]

RIN 2070–AB78

Glyphosate; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a tolerance for residues of (*N*-(phosphonomethyl)glycine) resulting from the use of the isopropylamine salt of glyphosate or the monoammonium salt of glyphosate in or on barley, grain; barley, bran; beets, sugar, dried pulp; beets, sugar, roots; beets, sugar, tops; canola, meal; canola, seed; grain crops (except wheat, corn, oats, grain sorghum, and barley); and legume vegetables (succulent and dried) crop group (except soybeans). The residues from treatment of sugar beets and canola include residues in or on sugarbeet and canola varieties which have been genetically altered to be tolerant of glyphosate. Entries for grain crops and sugar beets will replace current entries. Monsanto Company requested this tolerance under the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996.

DATES: This regulation is effective April 14, 1999. Objections and requests for hearings must be received by EPA on or before June 14, 1999.

ADDRESSES: Written objections and hearing requests, identified by the docket control number, [OPP–300835], must be submitted to: Hearing Clerk (1900), Environmental Protection

Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk identified by the docket control number, [OPP–300835], must also be submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect 5.1/6.1 or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket control number [OPP–300835]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: By mail: Jim Tompkins, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 237, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, 703–305–5697; tompkins.jim@epa.gov.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of February 20, 1998 (63 FR 8635) (FR–5768–9), EPA issued a notice pursuant to section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a as amended by the Food Quality Protection Act of 1996 (FQPA) (Pub. L. 104–170) announcing the filing of pesticide petitions (PP) 2E4118 and 7F4886 for tolerance by Monsanto Company, 700 14th Street, Suite 1100, Washington, DC 20005 address. This notice included a summary of the petition prepared by Monsanto Company, the registrant. There were no comments received in response to the notice of filing.

The petition requested that 40 CFR 180.364 be amended by establishing tolerances for residues of the herbicide (*N*-(phosphonomethyl)glycine), in or on the imported raw agricultural commodities barley; grain at 20 parts per million (ppm); barley bran and pearled barley at 60 ppm; cereal grains group (except wheat, corn, oats, grain sorghum, and barley) at 0.1 ppm; canola, seed at 10 ppm; canola, meal at 25 ppm; legume vegetables (succulent or dried) group (except soybeans) at 5 ppm (PP 2E4118) and in or on the commodies beets, sugar, tops (leaves) at 10 ppm; beets, sugar, roots at 10 ppm; and beets, sugar, pulp, dried at 25 ppm (PP 7F4886).

The correct tolerance expression for glyphosate is (*N*-(phosphonomethyl)glycine) resulting from the application of the isopropylamine salt of glyphosate and/or the monoammonium salt of glyphosate. The correct terminology for cereal grains; beets, sugar, tops (leaves); and beets, sugar, pulp, dried ; is grain crops; beet, sugar, tops; and beets, sugar, dried pulp, respectively. The Agency is correcting the terminology with this rule. During the course of the review the Agency determined that available data support tolerances of 20 ppm for barley bran, 15 ppm for canola, meal and that a tolerance for barley, pearled is not necessary. Concentration in barley, pearled is not expected.

The Agency is amending the proposal to read that 40 CFR 180.364 be amended by establishing tolerances for residues of the herbicide glyphosate (*N*-(phosphonomethyl)glycine) resulting from the application of the isopropylamine salt of glyphosate and/or the monoammonium salt of glyphosate in or the raw agricultural commodities barley, grain at 20 ppm; barley, bran at 30 ppm; grain crops (except wheat, corn, oats, grain sorghum, and barley) at 0.1 ppm; canola, seed at 10 ppm; canola, meal at 15 ppm; beets, sugar, tops at 10 ppm; beets, sugar, roots at 10 ppm; and beets, sugar, dried pulp at 25 ppm; and legume vegetables (succulent and dried) group (except soybeans) at 5.0 ppm.

I. Background and Statutory Findings

Section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue."

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 and a complete description of the risk assessment process, see the final rule on Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997) (FRL–5754–7).

II. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of glyphosate and to make a determination on aggregate exposure, consistent with section 408(b)(2), for a tolerance for residues of (*N*-(phosphonomethyl)glycine) resulting from the application of the isopropylamine salt of glyphosate and/or the monoammonium salt of glyphosate on barley, bran at 20 ppm; barley, grain at 30 ppm; beets sugar, dried pulp at 25 ppm; beets, sugar, roots at 10 ppm; beets, sugar, tops at 10 ppm; canola, meal at 15 ppm; canola, seed at 10 ppm; grain crops (except wheat, corn, oats, grain sorghum, and barley) at 0.1 ppm; and legume vegetables (succulent and dried) group (except soybeans) at 5 ppm. EPA's assessment of the dietary exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by glyphosate are discussed in this unit.

1. Several acute toxicology studies placing technical-grade glyphosate in Toxicity Category III and Toxicity Category IV. Technical glyphosate is not a dermal sensitizer.

2. A 21-day dermal toxicity study rabbits were exposed to glyphosate at levels of 0, 10, 1,000, or 5,000 milligrams/kilogram/day (mg/kg/day). The systemic no observed adverse effect level (NOAEL) was 1,000 mg/kg/day and the lowest observed adverse effect level (LOAEL) was 5,000 mg/kg/day based on decreased food consumption in males. Although serum lactate dehydrogenase was decreased in both sexes at the high dose, this finding was not considered to be toxicologically significant.

3. A 1-year feeding study with dogs fed dosage levels of 0, 20, 100, and 500 milligrams/kilogram/day (mg/kg/day) with a (NOAEL) of 500 mg/kg/day.

4. A 2-year carcinogenicity study in mice fed dosage levels of 0, 150, 750, and 4,500 mg/kg/day with no carcinogenic effect at the highest dose tested (HDT) of 4,500 mg/kg/day.

5. A chronic feeding/carcinogenicity study in male and female rats fed dosage levels of 0, 3, 10, and 31 mg/kg/day (males) and 0, 3, 11, or 34 mg/kg/day (females) with no carcinogenic effects observed under the conditions of the study at dose levels up to and including 31 mg/kg/day (HDT) (males) and 34 mg/kg/day (HDT) (females) and a systemic NOAEL of 31 mg/kg/day (HDT)(males) and 34 mg/kg/day (HDT) (females). Because a maximum tolerated dose (MTD) was not reached, this study was classified as supplemental for carcinogenicity.

6. A chronic feeding/carcinogenicity study in male and female rats fed dosage levels of 0, 89, 362, and 940 mg/kg/day (males) and 1, 113, 457, and 1,183 mg/kg/day (females) with no carcinogenic effects noted under the conditions of the study at dose levels up to and including 940/1,183 mg/kg/day (males/females) (HDT) and a systemic NOAEL of 362 mg/kg/day (males) based on an increased incidence of cataracts and lens abnormalities, decreased urinary pH, increased liver weight and increased liver weight/brain ratio (relative liver weight) at 940 mg/kg/day (males) (HDT) and 457 mg/kg/day (females) based on decreased body weight gain 1,183 mg/kg/day (females) (HDT).

7. A developmental toxicity study in rats given doses of 0, 300, 1,000, and 3,500 mg/kg/day with a developmental (fetal) NOAEL of 1,000 mg/kg/day based on an increase in number of litters and fetuses with unossified sternebrae, and decrease in fetal body weight at 3,500 mg/kg/day, and a maternal NOAEL of 1,000 mg/kg/day based on decrease in body weight gain, diarrhea, soft stools, breathing rattles, inactivity, red matter in the region of nose, mouth, forelimbs, or dorsal head, and deaths at 3,500 mg/kg/day (HDT).

8. A developmental toxicity study in rabbits given doses of 0, 75, 175, and 350 mg/kg/day with a developmental NOAEL of 175 mg/kg/day (insufficient litters were available at 350 mg/kg/day to assess developmental toxicity); a maternal NOAEL of 175 mg/kg/day based on increased incidence of soft stool, diarrhea, nasal discharge, and deaths at 350 mg/kg/day (HDT).

9. A multi-generation reproduction study with rats fed dosage levels of 0, 3, 10, and 30 mg/kg/day with the parental NOAEL/LOAEL 30 mg/kg/day (HDT). The only effect observed was an increased incidence of focal tubular dilation of the kidney (both unilateral and bilateral combined) in the high-dose male F3b pups. Since the focal tubular dilation of the kidneys was not observed at the 1,500 mg/kg/day level (HDT) in the rat reproduction study discussed below, but was observed at the 30 mg/kg/day level (HDT) in the 3-generation rat reproduction study the latter was a spurious rather than glyphosate-related effect. Therefore, the parental and reproductive (pup) NOAELs are 30 mg/kg/day.

10. A 2-generation reproduction study with rats fed dosage levels of 0, 100, 500, and 1,500 mg/kg/day with a systemic NOEL of 500 mg/kg/day based on soft stools in Fo and F1 males and females at 1,500 mg/kg/day (HDT) and a reproductive NOEL 1,500 mg/kg/day (HDT).

11. Mutagenicity data included chromosomal aberration *in vitro* (no aberrations in Chinese hamster ovary cells were caused with and without S9 activation); DNA repair in rat hepatocyte; *in vivo* bone marrow cytogenic test in rats; rec-assay with *B. subtilis*; reverse mutation test with *S. typhimurium*; Ames test with *S. typhimurium*; and dominant-lethal mutagenicity test in mice (all negative).

B. Toxicological Endpoints

1. *Acute toxicity.* No toxicological endpoint attributable to a single dose was identified in oral studies including the rat and rabbit developmental studies. There are no data requirements for acute or subacute neurotoxicity studies since there was no evidence of neurotoxicity in any of the toxicology studies at very high doses and glyglyphosate lacks a leaving group.

2. *Short- and intermediate-term toxicity.* No short or intermediate dermal or inhalation endpoints were identified. In a 21-day dermal toxicity study with rabbits, no systemic or dermal toxicity was seen following repeated applications of glyphosate at 0, 100, 1,000, or 5,000 mg/kg/day. The NOAEL was 1,000 mg/kg/day and the LOAEL was 5,000 mg/kg/day based decreased food consumption in males. In addition, the use of 3% dermal absorption rate (estimated) in conjunction with the oral NOAEL of 175 mg/kg/day established in the rabbit development study yields a dermal equivalent dose of greater than 5,000 mg/kg/day.

Based on the low toxicity of the formulation product (Toxicity Category III and IV) and the physical characteristics of the technical product there is minimal concern for potential inhalation exposure or risk. The acute inhalation study was waived for technical glyphosate. Some glyphosate end-use products are in Toxicity Category I or II for eye or dermal irritation. The Reregistation Eligibility Decision Document for Glyphosate (Sept, 1993) indicates that the Agency is not adding any additional personal protective equipment (PPE) requirements to labels of end-use products, but that it continues to recommend the PPE and precautionary statements required for end-use products in Toxicity Categories I and II.

3. *Chronic toxicity.* EPA has established the Reference Dose (RfD) for glyphosate at 2.0 mg/kg/day. This RfD is based on the maternal NOAEL of 175 mg/kg/day from a rabbit developmental study and a 100-fold safety factor.

4. *Carcinogenicity.* Glyphosate has been classified as a Group E chemical-no evidence of carcinogenicity in two acceptable animal species.

C. Exposures and Risks

1. *From food and feed uses.* Tolerances have been established (40 CFR 180.364) for the residues of (*N*-(phosphonomethyl)glycine and its metabolite aminomethylphosphonic acid resulting from the application of the Isopropylamine salt of glyphosate and/or the monoammonium salt of glyphosate, in or on a variety of raw agricultural commodities. Tolerances are established on kidney of cattle, goats, hogs, horses, and sheep at 4.0 ppm; liver of cattle, goats, hogs, horses, and sheep at 0.5 ppm; and liver and kidney of poultry at 0.5 ppm. Risk assessments were conducted by EPA to assess dietary exposures from glyphosate as follows:

i. *Acute exposure and risk.* Acute dietary risk assessments are performed for a food-use pesticide if a toxicological

study has indicated the possibility of an effect of concern occurring as a result of a 1-day or single exposure. An acute dietary risk assessment was not performed because no endpoints attributable to single dose were identified in the oral studies including rat and rabbit developmental studies. There are no data requirements for acute and subchronic neurotoxicity studies and no evidence of neurotoxicity in any of the toxicity studies at very high doses. The Agency concludes with reasonable certainty that glyphosate dose not elicit an acute toxicological response. An acute dietary risk assessment is not needed.

ii. *Chronic exposure and risk.* The chronic dietary exposure analysis was conduced using the (RfD) of 2.0 mg/kg/day based on the maternal NOAEL of 175 mg/kg/day from a developmental study and an uncertainty factor of 100 (applicable to all population groups) the Dietary Exposure Evaluation Model (DEEM) analysis assumed tolerance levels residues and 100% of the crop treated. These assumptions resulted in the following theoretical maximum residue contributions and % RfDs for certain population subgroups. The TMRC for the US population (48 states) was 0.029960 or 1.5% of the RfD, 0.026051 or 1.3% of the RfD for nursing infants (less than on 1 year old), 0.065430 or 3.3% of the RfD for non-nursing infants less than 1 year old; 0.064388 or 3.2% of the RfD for children (1-6 years old); 0.043017 or 2.2% of the RfD for children (7-12 years old); 0.030928 or 1.5% of the RfD for females (13+/nursing); 0.030241 or 1.5% of the RfD for non-Hispanic whites; and 0.030206 or 1.5% of the RfD for non-Hispanic blacks.

iii. *Chronic risk-carcinogenic.* Glyphosate has been classified as a group E chemical no evidence of carcinogenicity in two acceptable animal species.

2. *From drinking water.* Generic expected environmental concentration (GENEEC) and Screening concentration and ground water (SCI-GROW) models were run to produce estimates of glyphosate concentrations in surface and ground water, respectively. The drinking water exposure for glyphosate from the ground water screening model, SCI-GROW, yields a peak and chronic Estimated Environmental Concentration (EEC) of 0.0011 ppb in ground water. The GENEEC values represent upper-bound estimates of the concentrations that might be found in surface water due to glyphosate use. Thus, the GENEEC model predicts that glyphosate surface water concentrations range from a peak of 1.64 ppb to a 56 day average of 0.19 ppb. The model estimates are compared to drinking water level of comparison (DWLOC (chronic). The DWLOC (chronic) is the theoretical concentration of glyphosate in drinking water so that the aggregate chronic exposure (food+water+ residential) will occupy no more than 100% of the RfD. Glyphosate is registered for residential products, however, a residential exposure assessment is not required since there are no endpoints selected for either dermal or inhalation exposure. The Agency's default body weights and consumption values used to calculate DWLOCs are as follows: 70 kg/2L (adult male), 60 kg/2L (adult female), and 10 kg/1L (child).

i. *Acute exposure and risk.* An acute dietary endpoint and dose was not identified in the toxicology data base. Adequate rat and rabbit developmental studies did not provide a dose or endpoint that could be used for acute dietary risk purposes. Additionally, there were no data requirements for acute or subchronic rat neurotoxicity studies since there was no evidence of neurotoxicity in any of the toxicology studies at very high doses.

ii. *Chronic exposure and risk.* The DWLOC (chronic) (non-cancer) risk is calculated by multiplying the chronic water exposure (mg/kg/day) x (body weight) divided by the consumption (L) x 10^{-3} mg/ug. The DWLOCS are 69,000 µg/L for the U.S. population in 48 states, males (13+), non-Hispanic whites, and non-Hispanic blacks; and 19,000 for non-nursing infants (less than 1 year old) and children (1-6 years). The GENEEC and SCI-GROW estimated that average concentrations of glyphosate in the surface and ground water are less than the DWLOC (chronic). Therefore, taking into account present uses and uses proposed in this action, the Agency concludes with reasonable certainty that no harm will result from chronic aggregate exposure to glyphosate.

3. *From non-dietary exposure.* Glyphosate is currently registered for use on the following residential non-food sites: Around ornamentals, shade trees, shrubs, walk, driveways, flower beds and home lawns. Based on the registered uses of glyphosate, the potential for residential exposures exists. However, based on the low acute toxicity and lack of other toxicological concerns, glyphosate does not meet the Agency's criteria for residential data requirements. Exposures from residential uses are not expected to pose undue risks or harm to public health.

i. *Acute exposure and risk.* There are no acute toxicological concerns for glyphosate. Glyphosate has been the subject of numerous incident reports, primarily for eye and skin irritation injuries, in California. Some glyphosate end-use products are in Toxicity Categories I and II for eye and dermal irritation. The Reregistation Eligibility Decision Document for Glyphosate (SEP-1993) indicates the Agency is not adding additional personal protective equipment (PPE) requirements to labels of end-use products, but that it continues to recommend the PPE and precautionary statements required for end-use products in Toxicity Categories I and II.

ii. *Chronic exposure and risk.* Although there are registered residential uses for glyphosate, glyphosate does not meet the Agency's criteria for residential data requirements, due to the lack of toxicological concerns. Incidental acute and/or chronic dietary exposures from residential uses of glyphosate are not expected to pose undue risks to the general population, including infants and children.

iii. *Short- and intermediate-term exposure and risk.* EPA identified no toxicological concerns for short-intermediate- and long-term dermal or inhalation routes of exposures. The Agency concludes that exposures from residential uses of glyphosate are not expected to pose undue risks.

4. *Cumulative exposure to substances with common mechanism of toxicity.* Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity."

EPA does not have, at this time, available data to determine whether glyphosate has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, glyphosate does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that glyphosate has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the final rule for Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997).

D. Aggregate Risks and Determination of Safety for U.S. Population

1. *Acute risk.* There was no acute dietary endpoint identified, therefore there are no acute toxicological concerns for glyphosate.

2. *Chronic risk.* Using the TMRC exposure assumptions described in this unit, EPA has concluded that aggregate exposure to glyphosate from food will utilize 1.5% of the RfD for the U.S. population. The major identifiable subgroup with the highest aggregate exposure is non-nursing infants (less than 1 year) and children (1-6) as discussed below. EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Despite the potential for exposure to glyphosate in drinking water and from non-dietary, non-occupational exposure, EPA does not expect the aggregate exposure to exceed 100% of the RfD. EPA concludes that there is a reasonable certainty that no harm will result from aggregate exposure to glyphosate residues.

3. *Short- and intermediate-term risk.* Short-and intermediate-term dermal and inhalation risk is not a concern due to the lack of significant toxicological effects observed with glyphosate under these exposure scenarios.

Short- and intermediate-term aggregate exposure takes into account chronic dietary food and water (considered to be a background exposure level) plus indoor and outdoor residential exposure.

4. *Aggregate cancer risk for U.S. population.* Glyphosate has been classified as a Group E chemical, with no evidence of carcinogenicity for humans in two acceptable animal studies.

5. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result from aggregate exposure to glyphosate residues.

E. Aggregate Risks and Determination of Safety for Infants and Children

1. *Safety factor for infants and children*—i. *In general.* In assessing the potential for additional sensitivity of infants and children to residues of glyphosate, EPA considered data from developmental toxicity studies in the rat and rabbit and a 2-generation reproduction study in the rat. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from maternal pesticide exposure gestation. Reproduction studies provide information relating to effects from exposure to the pesticide on the reproductive capability of mating animals and data on systemic toxicity.

FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for pre-and post-natal toxicity and the completeness of the database unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a margin of exposure (MOE) analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans. EPA believes that reliable data support using the standard uncertainty factor (usually 100 for combined inter- and intra-species variability) and not the additional tenfold MOE/uncertainty factor when EPA has a complete data base under existing guidelines and when the severity of the effect in infants or children or the potency or unusual toxic properties of a compound do not raise concerns regarding the adequacy of the standard MOE/safety factor.

ii. *Pre- and post-natal sensitivity.* The oral perinatal and prenatal data demonstrated no indication of increased sensitivity of rats or rabbits to *in utero* and postnatal exposure to glyphosate.

iii. *Conclusion.* There is a complete toxicity database for glyphosate and exposure data is complete or is estimated based on data that reasonably accounts for potential exposures. Based on these data, there is no indication that the developing fetus or neonate is more sensitive than adult animals. No developmental neurotoxicity studies are being required at this time. A developmental neurotoxicity data requirement is an upper tier study and required only if effects observed in the acute and 90-day neurotoxicity studies indicate concerns for frank neuropathy or alterations seen in fetal nervous system in the developmental or reproductive toxicology studies. The Agency believes that reliable data support the use of the standard 100-fold uncertainty factor, and that a tenfold (10x) uncertainty factor is not needed to protect the safety of infants and children.

2. *Acute risk.* There are no acute toxicological endpoints for glyphosate. The Agency concludes that establishment of the proposed tolerances would not pose an unacceptable aggregate risk.

3. *Chronic risk.* Using the exposure assumptions described in this unit, EPA has concluded that aggregate exposure to glyphosate from food will utilize 3.0.% of the RfD for infants and children. EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Despite the potential for exposure to glyphosate in drinking water and from non-dietary, non-occupational exposure, EPA does not expect the aggregate exposure to exceed 100% of the RfD.

4. *Short- or intermediate-term risk.* Short-term and intermediate-term dermal and inhalation risk is not a concern due to the lack of significant toxicological effects observed with glyphosate under these exposure scenarios.

5. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to glyphosate residues.

III. Other Considerations

A. Metabolism In Plants and Animals

The qualitative nature of the residue in plants is adequately understood. Studies with a variety of plants including corn, cotton, soybeans, and wheat indicate that the uptake of glyphosate or its metabolite, aminomethylphosphonic acid (AMPA), from soil is limited. The material which is taken up is readily translocated. Foliarly applied glyphosate is readily absorbed and translocated throughout the trees or vines to the fruit of apples, coffee, dwarf citrus (calamondin), pears and grapes. Metabolism via *N*-methylation yields *N*-methylated glycines and phosphonic acids. For the most part, the ratio of glyphosate to AMPA is 9 to 1 but can approach 1 to 1 in a few cases (e.g., soybeans and carrots). Much of the residue data for crops reflects a detectable residue of parent (0.05 - 0.15 ppm) along with residues below the level of detection (<0.05 ppm) of AMPA. The terminal residue to be regulated in plants is glyphosate *per se.*

The qualitative nature of the residue in animals is adequately understood. Studies with lactating goats and laying hens fed a mixture of glyphosate and AMPA indicate that the primary route of elimination was by excretion (urine and feces). These results are consistent with metabolism studies in rats, rabbits, and cows. The terminal residues in eggs, milk, and animal tissues are glyphosate and its metabolite AMPA; there was no evidence of further metabolism. The

terminal residue to be regulated in livestock is glyphosate *per se*.

B. Analytical Enforcement Methodology

Adequate enforcement methods are available for analysis of residues of glyphosate in or on plant commodities. These methods include GLC (Method I in *Pesticides Analytical Manual (PAM) II*; the limit of detection is 0.05 ppm) and High performance liquid chromotography (HPLC) with fluorometric detection. Use of the GLC method is discouraged due to the lengthiness of the experimental procedure. The HPLC procedure has undergone successful Agency validation and was recommended for inclusion in PAM II. A GC/MS method for glyphosate in crops has also been validated by EPA's Analytical Chemistry Laboratory (ACL).

Adequate analytical methods are available for residue data collection and enforcement of the proposed tolerances of glyphosate in or on barley, bran, barley, grain; cereal grains (except wheat, corn, oats, grain sorghum, and barley); canola seed, canola meal, and legume vegetables group.

C. Magnitude of Residues

The available crop field trial residue data support the establishment of tolerances in barley, bran at 30 ppm; barley, grain at 20 ppm; beets, sugar, dried pulp at 25 ppm; beets, sugar, roots at 10 ppm; beets, sugar, tops at 10 ppm; canola, meal at 15 ppm; canola, seed at 10 ppm; and legume vegetable (succulent and dried) group (except soybeans) at 5 ppm. These entries for sugar beets will replace the current entry for beets, sugar at 0.2 ppm.

The available data support deleting the current entry for grain crops (except wheat, corn, oats, and grain sorghum) at 0.01 ppm and replacing it with grain crops (except wheat, corn, oats, grain sorghum and barley) at 0.1 ppm.

D. International Residue Limits

Codex Maximum residue levels (MRLs) exist for barley, dry peas, dry beans, and canola seed at 20, 5, 2, and 10 ppm respectively. Canadian MRLs exist for barley, barley milling fractions, pes, beans, and lentils at 10, 15, 5, 2 and 4 ppm respectively. Mexican MRLs exist for barley, peas, and beans at 0.1, 0.2, and 0.2 ppm, respectively. The Mexican and Canadian MRLs are lower than needed to cover residues form the proposed use pattens in the U.S. The tolerances to be established for group (excluding soybeans), barley, grain, and canola seed agree with Codex MRLs in place. The legume vegetable group tolerance includes tolerances for peas, beans, and lentils. The crop group tolerance on legume vegetables is necessary to cover use patterns in the Unitied States.

No Codex, Canadian or Mexican MRLs exist for sugar beets or canola meal, therefore harmonization is not an issue.

E. Rotational Crop Restrictions

Glyphosate labels currently bear is a 30-day minimum plant back interval for crops on which the use of glyphosate is not registered.

IV. Conclusion

Therefore, the tolerance is established for residues of (*N*-(phosphonomethyl)glycine) resulting from the application of the isopropylamine salt of glyphosate and/or the monoammonium salt of glyphosate in or on the raw agricultural commodities barley, grain to 20 ppm; barley bran at 30 ppm; beets, sugar, dried pulp at 25 ppm; beets, sugar, roots at 10 ppm; beet, sugar, tops at 10 ppm; canola, meal at 15 ppm; canola, seed at 10 ppm; grain crops (except wheat, corn, oats, grain sorghum, and barley) at 0.1 ppm; and legume vegetables (succulent and dried) group (except soybeans) at 5 ppm. The entries for grain crops and beets, sugar replace current entries for these commodities.

V. Objections and Hearing Requests

The new FFDCA section 408(g) provides essentially the same process for persons to "object" to a tolerance regulation as was provided in the old section 408 and in section 409. However, the period for filing objections is 60 days, rather than 30 days. EPA currently has procedural regulations which govern the submission of objections and hearing requests. These regulations will require some modification to reflect the new law. However, until those modifications can be made, EPA will continue to use those procedural regulations with appropriate adjustments to reflect the new law.

Any person may, by June 14, 1999, file written objections to any aspect of this regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given under the "ADDRESSES" section (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this regulation. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). EPA is authorized to waive any fee requirement "when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection." For additional information regarding tolerance objection fee waivers, contact James Tompkins, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 239, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 305–5697; tompkins.jim@epa.gov. Requests for waiver of tolerance objection fees should be sent to James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

If a hearing is requested, the objections must include a statement of the factual issues on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the requestor (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

VI. Public Record and Electronic Submissions

EPA has established a record for this regulation under docket control number [OPP–300835] (including any comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available

for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 119 of the Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA.

Objections and hearing requests may be sent by e-mail directly to EPA at:
opp-docket@epa.gov.

E-mailed objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this regulation, as well as the public version, as described in this unit will be kept in paper form. Accordingly, EPA will transfer any copies of objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the Virginia address in "ADDRESSES" at the beginning of this document.

VII. Regulatory Assessment Requirements

A. Certain Acts and Executive Orders

This final rule establishes a tolerance under section 408(d) of the FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). Nor does it require any prior consultation as specified by Executive Order 12875, entitled *Enhancing the Intergovernmental Partnership* (58 FR 58093, October 28, 1993), or special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994), or require OMB review in accordance with Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997).

In addition, since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. Nevertheless, the Agency previously assessed whether establishing tolerances, exemptions from tolerances, raising tolerance levels or expanding exemptions might adversely impact small entities and concluded, as a generic matter, that there is no adverse economic impact. The factual basis for the Agency's generic certification for tolerance actions published on May 4, 1981 (46 FR 24950), and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

B. Executive Order 12875

Under Executive Order 12875, entitled *Enhancing the Intergovernmental Partnership* (58 FR 58093, October 28, 1993), EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to OMB a description of the extent of EPA's prior consultation with representatives of affected State, local, and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's rule does not create an unfunded Federal mandate on State, local, or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

C. Executive Order 13084

Under Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998), EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

VIII. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the Agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: March 30, 1999.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180-[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a, and 371.

2. Section 180.364 is amended, by removing from the table in paragraph (a)(1), the commodities "beets, sugar" and "grain crops (except wheat, corn, oats, and grain sorghum)" and by alphabetically adding new paragraph (a)(3) to read as follows:

§180.364 Glyphosate; tolerances for residues.

(a) * * *

(3) Tolerances are established for residues of glyphosate, (*N*-(phosphonomethyl)glycine) resulting from the applicaiton of the isopropylamine salt of glyphosate and/or the monoammium salt of glyphosate in or on the following food commodities.

Commodity	Parts per million
Barley, bran	30
Barley, grain	20
Beets, sugar, dried pulp	25
Beets, sugar, roots	10
Beets, sugar, tops	10
Canola, meal	15
Canola, seed	10
Grain crops (except wheat, oats, grain sorghum and barley).	0.1
Legume vegetables (succculent and dried) group (except soybeans).	5

* * * * *

[FR Doc. 99–9317 Filed 4–13–99; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300842; FRL–6075–2]

RIN 2070–AB78

Dimethomorph; Extension of Tolerance for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation extends a time-limited tolerance for residues of the fungicide dimethomorph in or on squash, cantaloupe, watermelon, and cucumber at 1 part per million (ppm) for an additional 1½–year period.This tolerance will expire and is revoked on September 30, 2001. This action is in response to EPA's granting of an emergency exemption under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) authorizing use of the pesticide on squash, cantaloupe, watermelon, and cucumber. Section 408(l)(6) of the Federal Food, Drug, and Cosmetic Act requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under FIFRA section 18.

DATES: This regulation becomes effective April 14, 1999. Objections and requests for hearings must be received by EPA, on or before June 14, 1999.

ADDRESSES: Written objections and hearing requests, identified by the docket control number [OPP–300842], must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk identified by the docket control number, [OPP–300842], must also be submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 119, Crystal Mall 2 (CM #2), 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epa.gov. Copies of electronic objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect 5.1/6.1 or ASCII file format. All copies of electronic objections and hearing requests must be identified by the docket control number [OPP–300842]. No Confidential Business Information (CBI) should be submitted through e-mail. Copies of electronic objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: By mail: Libby Pemberton, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 280, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA, 703 308–9364, pemberton.libby@epa.gov.

SUPPLEMENTARY INFORMATION: EPA issued a final rule, published in the **Federal Register** of February 18, 1998 (63 FR 8134) (FRL–5767–8), which announced that on its own initiative under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a and (l)(6), as amended by the Food Quality Protection Act of 1996 (FQPA) (Pub. L. 104–170) it established a time-limited tolerance for the residues of dimethomorph in or on squash, cantaloupe, watermelon, and cucumber at 1.0 ppm, with an expiration date of March 31, 2000. EPA established the tolerance because section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under FIFRA section 18. Such tolerances can be established without providing notice or period for public comment.

EPA received a request to extend the use of dimetomorph on squash, cantaloupe, watermelon, and cucumber for this years growing season due to the continued need for control of crown rot (*Phytophthora capsici*) in Georgia. After having reviewed the submission, EPA concurs that emergency conditions exist. EPA has authorized under FIFRA section 18 the use of dimethomorph on squash, cantaloupe, watermelon, and cucumber for control of crown rot in Georgia.

EPA assessed the potential risks presented by residues of dimethomorph in or on squash, cantaloupe, watermelon, and cucumber. In doing so, EPA considered the safety standard in FFDCA section 408(b)(2), and decided that the necessary tolerance under FFDCA section 408(l)(6) would be consistent with the safety standard and with FIFRA section 18. The data and other relevant material have been evaluated and discussed in the final rule of February 18, 1998 (63 FR 8134) (FRL–5767–8). Based on that data and information considered, the Agency

reaffirms that extension of the time-limited tolerance will continue to meet the requirements of section 408(l)(6). Therefore, the time-limited tolerance is extended for an additional 1½–year period. EPA will publish a document in the **Federal Register** to remove the revoked tolerance from the Code of Federal Regulations (CFR). Although this tolerance will expire and is revoked on September 30, 2001, under FFDCA section 408(l)(5), residues of the pesticide not in excess of the amounts specified in the tolerance remaining in or on squash, cantaloupe, watermelon, and cucumber after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA and the application occurred prior to the revocation of the tolerance. EPA will take action to revoke this tolerance earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

I. Objections and Hearing Requests

The new FFDCA section 408(g) provides essentially the same process for persons to "object" to a tolerance regulation as was provided in the old section 408 and in section 409. However, the period for filing objections is 60 days, rather than 30 days. EPA currently has procedural regulations which govern the submission of objections and hearing requests. These regulations will require some modification to reflect the new law. However, until those modifications can be made, EPA will continue to use those procedural regulations with appropriate adjustments to reflect the new law.

Any person may, by June 14, 1999, file written objections to any aspect of this regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given under the "ADDRESSES" section (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). EPA is authorized to waive any fee requirement "when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection." For additional information regarding tolerance objection fee waivers, contact James Tompkins, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 239, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 305–5697, tompkins.jim@epa.gov. Requests for waiver of tolerance objection fees should be sent to James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

If a hearing is requested, the objections must include a statement of the factual issues on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the requestor (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

II. Public Record and Electronic Submissions

EPA has established a record for this regulation under docket control number [OPP–300842] (including any comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Rm. 119 of the Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

Objections and hearing requests may be sent by e-mail directly to EPA at:

opp-docket@epa.gov.

E-mailed objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this regulation, as well as the public version, as described in this unit will be kept in paper form. Accordingly, EPA will transfer any copies of objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the Virginia address in "ADDRESSES" at the beginning of this document.

III. Regulatory Assessment Requirements

A. Certain Acts and Executive Orders

This final rule establishes a tolerance under section 408 of the FFDCA. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). Nor does it require any special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994), or require OMB review in accordance with Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997).

In addition, since tolerances and exemptions that are established under section 408(l)(6) of FFDCA, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. Nevertheless, the Agency previously assessed whether establishing tolerances, exemptions from tolerances, raising tolerance levels or expanding exemptions might adversely impact small entities and concluded, as a generic matter, that there is no adverse economic impact.

The factual basis for the Agency's generic certification for tolerance actions published on May 4, 1981 (46 FR 24950), and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

B. Executive Order 12875

Under Executive Order 12875, entitled *Enhancing the Intergovernmental Partnership* (58 FR 58093, October 28, 1993), EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to OMB a description of the extent of EPA's prior consultation with representatives of affected State, local, and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's rule does not create an unfunded Federal mandate on State, local, or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

C. Executive Order 13084

Under Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998), EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

IV. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the Agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: April 2, 1999.

Donald Stubbs,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346(a), and 371.

§ 180.493 [Amended]

2. In § 180.493, by amending paragraph (b) by revising the date for the commodities cantaloupe, cucumber, squash, and watermelon "3/31/00" to read "9/30/01".

[FR Doc. 99–9318 Filed 4–13–99; 8:45 am]
BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300834; FRL–6073–4]

RIN 2070–AB78

Oxyfluorfen; Extension of Tolerance for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation extends a time-limited tolerance for residues of the herbicide oxyfluorfen [2-chloro-1-(3-ethoxy-4-nitrophenoxy)-4-(trifluoromethyl)benzene] in or on strawberries at 0.05 part per million (ppm) for an additional 2-year period. This tolerance will expire and is revoked on April 15, 2001. This action is in response to EPA's granting of an emergency exemption under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) authorizing use of the pesticide on strawberries. Section 408(l)(6) of the Federal Food, Drug, and Cosmetic Act requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under FIFRA section 18.

DATES: This regulation becomes effective April 14, 1999. Objections and requests for hearings must be received by EPA, on or before June 14,1999.

ADDRESSES: Written objections and hearing requests, identified by the docket control number [OPP–300834], must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk identified by the docket control number, [OPP–300834], must also be submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epa.gov. Copies of electronic objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect 5.1/6.1 or ASCII file format. All copies of electronic objections and hearing requests must be identified by the docket control number [OPP–300834]. No Confidential Business Information (CBI) should be submitted through e-mail. Copies of electronic objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: By mail: Barbara Madden, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location , telephone number, and e-mail address: Rm.284, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 305–6463; madden.barbara@epa.gov.

SUPPLEMENTARY INFORMATION: EPA issued a final rule, published in the **Federal Register** of April 25, 1997 (62 FR 20111) (FRL–5713–1), which announced that on its own initiative under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a and (l)(6), as amended by the Food Quality Protection Act of 1996 (FQPA) (Pub. L. 104–170) it established a time-limited tolerance for the residues of oxyfluorfen in or on strawberries at 0.05 ppm, with an expiration date of April 15, 1998. EPA established the tolerance because section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under FIFRA section 18. Such tolerances can be established without providing notice or period for public comment.

EPA received requests from Ohio, Oregon and Washington to extend the use of oxyfluorfen on strawberries for the 1999 growing season as a result of changes in herbicide registrations during the last 10 years. Growers have lost use of the herbicides chloroxuron and diphenamid. More recently, the registered application rate of terbacil was reduced to half of its previous rate as a result terbacil no longer provides effective control of broadleaf weeds. The States predict that without the use of oxyfluorfen, yield losses will increase each year during the planting cycle. The planting cycle typically lasts 5 years. The crop is planted in year one and harvest takes place in each of years two through five. The States claim that yields will decrease incrementally each year and the normal 5 year rotation will have to be reduced to a 4 year rotation since by the fifth year the crop will be overrun with weeds and harvest will not be feasible. Mechanical cultivation can be used to control weeds between the rows however it is not effective for weeds in the rows. Weeds in the rows can significantly reduce yields and/or result in strawberry fields that must be abandoned prematurely. Hand weeding is effective yet is cost prohibitive for most growers. After having reviewed the submission, EPA concurs that emergency conditions exist. EPA has authorized under FIFRA section 18 the use of oxyfluorfen on strawberries for control of broadleaf weeds in strawberries.

EPA assessed the potential risks presented by residues of oxyfluorfen in or on strawberries. In doing so, EPA considered the safety standard in FFDCA section 408(b)(2), and decided that the necessary tolerance under FFDCA section 408(l)(6) would be consistent with the safety standard and with FIFRA section 18. The data and other relevant material have been evaluated and discussed in the final rule of April 25, 1997 (62 FR 20111) (FRL–5713–1). Based on that data and information considered, the Agency reaffirms that extension of the time-limited tolerance will continue to meet the requirements of section 408(l)(6). Therefore, the time-limited tolerance is extended for an additional 2-year period. EPA will publish a document in the **Federal Register** to remove the revoked tolerance from the Code of Federal Regulations (CFR). Although this tolerance will expire and is revoked on April 15, 2001, under FFDCA section 408(l)(5), residues of the pesticide not in excess of the amounts specified in the tolerance remaining in or on strawberries after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA and the application occurred prior to the revocation of the tolerance. EPA will take action to revoke this tolerance earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

I. Objections and Hearing Requests

The new FFDCA section 408(g) provides essentially the same process for persons to "object" to a tolerance regulation as was provided in the old section 408 and in section 409. However, the period for filing objections is 60 days, rather than 30 days. EPA currently has procedural regulations which govern the submission of objections and hearing requests. These regulations will require some modification to reflect the new law. However, until those modifications can be made, EPA will continue to use those procedural regulations with appropriate adjustments to reflect the new law.

Any person may, by June 14, 1999, file written objections to any aspect of this regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given under the "ADDRESSES" section (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). EPA is authorized to waive any fee requirement "when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection." For additional information regarding tolerance objection fee waivers, contact James Tompkins, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 239, Crystal Mall i2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 305-5697, tompkins.jim@epa.gov. Requests for waiver of tolerance objection fees should be sent to James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

If a hearing is requested, the objections must include a statement of the factual issues on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the requestor (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the

requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

II. Public Record and Electronic Submissions

EPA has established a record for this regulation under docket control number [OPP–300834] (including any comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 119 of the Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA.

Objections and hearing requests may be sent by e-mail directly to EPA at:
opp-docket@epa.gov.

E-mailed objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this regulation, as well as the public version, as described in this unit will be kept in paper form. Accordingly, EPA will transfer any copies of objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the Virginia address in "ADDRESSES" at the beginning of this document.

III. Regulatory Assessment Requirements

A. Certain Acts and Executive Orders

This final rule establishes a tolerance under section 408 of the FFDCA. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). Nor does it require any prior consultation as specficed by Executive Order 12875, entitled *Enhancing the Intergovernmental Partnership* (58 FR 58093, October 28, 1993), or special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994), or require OMB review in accordance with Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997).

In addition, since tolerances and exemptions that are established under section 408(l)(6) of FFDCA, such as the exemption in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. Nevertheless, the Agency previously assessed whether establishing tolerances, exemptions from tolerances, raising tolerance levels or expanding exemptions might adversely impact small entities and concluded, as a generic matter, that there is no adverse economic impact. The factual basis for the Agency's generic certification for tolerance actions published on May 4, 1981 (46 FR 24950), and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

B. Executive Order 12875

Under Executive Order 12875, entitled *Enhancing the Intergovernmental Partnership* (58 FR 58093, October 28, 1993), EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to OMB a description of the extent of EPA's prior consultation with representatives of affected State, local, and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's rule does not create an unfunded Federal mandate on State, local, or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

C. Executive Order 13084

Under Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998), EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

IV. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the Agency promulgating the rule must

submit a rule report, which includes a copy of the rule, to each House of the Congress and the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: April 2, 1999.

Donald Stubbs,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a, and 371.

§180.381 [Amended]

2. In §180.381, by amending paragraph (b) by revising the date for Strawberries to read "4/15/01."

[FR Doc. 99–9319 Filed 4–13–99; 8:45 am]

BILLING CODE 6560–50–F

LEGAL SERVICES CORPORATION

45 CFR Part 1611

Eligibility: Income Level for Individuals Eligible for Assistance

AGENCY: Legal Services Corporation.

ACTION: Final rule: correction.

SUMMARY: On April 8, 1999, the Legal Services Corporation ("Corporation") published an amended appendix to its rule on financial eligibility setting out the maximum income levels for individuals eligible for legal assistance. This document corrects the year in the Appendix title.

EFFECTIVE DATE: April 14, 1999.

FOR FURTHER INFORMATION CONTACT: Suzanne B. Glasow, Office of General Counsel, Legal Services Corporation, 750 First Street NE., Washington, DC 20002–4250; 202–336–8817.

SUPPLEMENTARY INFORMATION: Section 1007(a)(2) of the Legal Services Corporation Act ("Act"), 42 U.S.C. 2996f(a)(2), requires the Corporation to establish maximum income levels for individuals eligible for legal assistance, and the Act provides that other specified factors shall be taken into account along with income. On April 8, 1999 (64 FR 17108), the Legal Services Corporation ("Corporation") published an amended appendix to its rule on financial eligibility setting out the maximum income levels for individuals eligible for legal assistance. The year in the Appendix heading was incorrectly listed as "1998." It should be "1999." This document corrects the year in the Appendix heading so that it reads "Legal Services Corporation 1999 Poverty Guidelines."

List of Subjects in 45 CFR Part 1611

Legal services.

For reasons set out in the preamble, 45 CFR part 1611 is amended as follows:

PART 1611—ELIGIBILITY

1. The authority citation for Part 1611 continues to read as follows:

Authority: Secs. 1006(b)(1), 1007(a)(1) Legal Services Corporation Act of 1974, 42 U.S.C. 2996e(b)(1), 2996f(a)(1), 2996f(a)(2).

Appendix A—[Corrected]

2. The heading of Appendix A of Part 1611 is corrected to read as follows:

APPENDIX A OF PART 1611—LEGAL SERVICES CORPORATION 1999 POVERTY GUIDELINES [1]

[1] The figures in this table represent 125% of the poverty guidelines by family size as determined by the Department of Health and Human Services.

Dated: April 8, 1999.

Victor M. Fortuno,

General Counsel.

[FR Doc. 99–9246 Filed 4–13–99; 8:45 am]

BILLING CODE 7050–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 1832

Electronic Funds Transfer (EFT)

AGENCY: Office of Procurement, Contract Management Division, National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: This rule amends the NASA Federal Acquisition Regulation Supplement (NFS) to specify that the clause at FAR 52.232–34, Payment by Electronic Funds Transfer—Other than Central Contractor Registration, is to be used for NASA contracts instead of the clause at FAR 52.232–33, Payment by Electronic Funds Transfer—Central Contractor Registration. This rule also establishes that the use of a nondomestic EFT mechanism is authorized and provides direction as to the action that is to be taken when such a mechanism is used for a contract. In addition, this rule specifies that the payment office is to be the designated office for the receipt of EFT information for all NASA contracts.

EFFECTIVE DATE: April 14, 1999.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph Le Cren, NASA Headquarters, Code HK, Washington, DC 20546, telephone: (202) 358–0444, email: *joseph.lecren@hq.nasa.gov.*

SUPPLEMENTARY INFORMATION:

Background

The FAR EFT coverage was revised on March 4, 1999 (64 FR 10538–10544). Included were changes to the solicitation provision and contract clauses coverage at FAR 32.1110. FAR 32.1110(a) requires that the clause at either FAR 52.232–33, Payment by Electronic Funds Transfer—Central Contractor Registration, or FAR 52.232–34, Payment by Electronic Funds

Transfer—Other than Central Contractor Registration, be inserted in contracts depending on whether the Central Contractor Registration (CCR) database will be used. NASA has chosen not to use the CCR. The NFS rule states that the clause at FAR 52.232–34 is to be used. Another FAR change occurs at 32.1110(b), which states that the clause at FAR 52.232–33 or 52.232–34 needs to clearly address the use of a nondomestic EFT mechanism if the agency head has authorized their use. The NFS rule establishes that the use of a nondomestic EFT mechanism has been authorized and specifies the action to be taken with the clause at FAR 52.232–34. Furthermore, FAR 32.1110(c) requires the clause at 52.232–35 be inserted in contracts if agency procedures permit the submission of EFT information to other than the payment office. The NFS rule requires that the payment office be the designated office for the receipt of EFT information for all NASA contracts.

Impact

Regulatory Flexibility Act

This rule does not constitute a significant revision within the meaning of FAR 1.501 and Pub. L. 98–577, and publication for public comments is not required. However, comments from small entities concerning the affected NFS subpart will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and should cite 5 U.S.C. 601, *et seq.*

Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the NFS do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 1832

Government procurement.

Tom Luedtke,

Acting Associate Administrator for Procurement.

Accordingly, 48 CFR part 1832 is amended as follows:

PART 1832—CONTRACT FINANCING

1. The authority citation for 48 CFR part 1832 continues to read as follows:

Authority: 42 U.S.C. 2473(c)(1).

Subpart 1832.11—[Added]

2. Subpart 1832.11 is added to read as follows:

Subpart 1832.11—Electronic Funds Transfer

1832.1110 Solicitation provision and contract clauses. (NASA supplements paragraphs (a), (b), and (c)).

(a)(1) NASA does not use the Central Contractor Registration. Use the clause at FAR 52.232–34, Payment by Electronic Funds Transfer—Other than Central Contractor Registration.

(b) In accordance with FAR 32.1106(b), the use of a nondomestic EFT mechanism is authorized. When a nondomestic EFT mechanism is used, the contracting officer shall replace the paragraph at FAR 52.232–34(c) with a description of the EFT mechanism that will be used for the contract.

(c) The payment office shall be the designated office for receipt of contractor EFT information for all NASA contracts.

[FR Doc. 99–9311 Filed 4–13–99; 8:45 am]

BILLING CODE 7510–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 990304063–9063–01; I.D. 040999A]

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Catcher Vessels using Trawl Gear in the Bering Sea and Aleutian Islands

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is closing directed fishing for Pacific cod by catcher vessels using trawl gear in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the portion of the 1999 total allowable catch (TAC) of Pacific cod allocated to catcher vessels using trawl gear in this area.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), April 11, 1999, until 2400 hrs, A.l.t., December 31, 1999.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586-7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The Final 1999 Harvest Specifications of Groundfish for the BSAI (64 FR 12103, March 11, 1999) established the portion of the TAC of Pacific cod allocated to catcher vessels using trawl gear in the BSAI as 38,475 metric tons (mt). See § 679.20(c)(3)(iii) and § 679.20(a)(7)(i)(B).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the portion of the TAC of Pacific cod allocated to catcher vessels using trawl gear in the BSAI will be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 34,475 mt, and is setting aside the remaining 4,000 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance will soon be reached. Consequently, NMFS is closing directed fishing for Pacific cod by catcher vessels using trawl gear in the BSAI.

Maximum retainable bycatch amounts may be found in the regulations at § 679.20(e) and (f).

Classification

This action responds to the best available information recently obtained from the fishery. It must be implemented immediately in order to prevent overharvesting the 1999 TAC of Pacific cod allocated to catcher vessels using trawl gear in the BSAI. A delay in the effective date is impracticable and contrary to the public interest. The Pacific cod directed fishing allowance established for catcher vessels will soon be reached. Further delay would only result in overharvest which would disrupt the FMP's objective of providing sufficient Pacific cod to support bycatch needs in other anticipated groundfish fisheries throughout the year. NMFS finds for good cause that the implementation of this action can not be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

This action is required by § 679.20 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: April 9, 1999.

Gary C. Matlock,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–9306 Filed 4–9–99; 4:15 pm]

BILLING CODE 3510–22–F

Prop

This sectio
contains re
issuance o
purpose of
persons ar
rule making
rules.

SMALL B

13 CFR P

Small Bu

AGENCY: S

ACTION: P

SUMMARY:
Reauthori
number o
Business
amended.
Investmen
the chang
capital re
eligibility
distributi
Participat
rule woul
provision
prohibit p
and woul
governing
by SBICs,
requireme
and in-kin
Participat

DATES: Su
May 14, 1

ADDRESSE
A. Christe
for Invest
Administ
Suite 630

FOR FURTH
Leonard W
at (202) 20

SUPPLEME
proposed
provisions
135 (Dece
Business I
which rela
investmen
rule woul
prohibitin
SBICs and
governing
by SBICs,
requireme
down Leve
distributio

Proposed Rules

Federal Register
Vol. 64, No. 71
Wednesday, April 14, 1999

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

SMALL BUSINESS ADMINISTRATION

13 CFR Part 107

Small Business Investment Companies

AGENCY: Small Business Administration.

ACTION: Proposed rule.

SUMMARY: The Small Business Reauthorization Act of 1997 made a number of changes to the Small Business Investment Act of 1958, as amended. For the Small Business Investment Company (SBIC) Program, the changes include provisions affecting capital requirements, Leverage eligibility, and the timing of tax distributions by SBICs that have issued Participating Securities. This proposed rule would implement these statutory provisions; in addition, it would prohibit political contributions by SBICs and would modify regulations governing the refinancing of real estate by SBICs, portfolio diversification requirements, takedowns of Leverage, and in-kind distributions by Participating Securities issuers.

DATES: Submit comments on or before May 14, 1999.

ADDRESSES: Address comments to Don A. Christensen, Associate Administrator for Investment, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6300, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Leonard W. Fagan, Investment Division, at (202) 205–7583.

SUPPLEMENTARY INFORMATION: This proposed rule would implement the provisions of Subtitle B of Pub. L. 105–135 (December 2, 1997), the Small Business Reauthorization Act of 1997, which relate to small businesses investment companies (SBICs). This rule would also establish regulations prohibiting political contributions by SBICs and would modify regulations governing the refinancing of real estate by SBICs, portfolio diversification requirements, procedures for drawing down Leverage from SBA, and in-kind distributions by SBICs that have issued Leverage in the form of Participating Securities.

Private Capital

Section 213 of Pub. L. 105–135 amended the statutory definition of private capital to include certain funds invested in a Licensee by a federally chartered or Government-sponsored corporation established prior to October 1, 1987. Under the revised definition, private capital may include funds obtained from the business revenues of such entities; appropriated Government funds are specifically excluded. Proposed § 107.230(b)(3) would implement this change by incorporating the statutory language in the regulatory definition of Private Capital. In this context, SBA's view is that "business revenues" means earnings that are generated by a corporation through activities of a commercial nature and that are reflected in the retained earnings of the corporation.

Definition of "Associate"

SBA is proposing a technical correction in the definition of "Associate" in § 107.50. Under paragraph (8)(i) of the current definition, a business concern becomes an Associate of an SBIC if it has one or more officers who have a business or personal relationship with the SBIC of a type listed in subparagraphs (1) through (6) of the definition. This provision does not explicitly encompass business concerns organized as partnerships or limited liability companies, which may be managed by persons who are not designated as officers. To clarify the applicability of paragraph (8)(i) to all concerns, regardless of their form of organization, the proposed rule would replace "officer" with "officer, general partner, or managing member."

Leverageable Capital

An SBIC's Leverageable Capital is a subset of its Private Capital. It is used to determine the maximum amount of SBA Leverage funds which the SBIC may have outstanding. The current definition of Leverageable Capital in § 107.50 excludes "Qualified Non-private Funds [as defined in § 107.230(d)] whose source is Federal funds." SBA has determined that the Act does not require this exclusion and is proposing to remove it.

Internet Access and Electronic Mail

As the SBIC program grows in size and sophistication, SBA is seeking ways to improve administrative efficiency. The Agency is particularly interested in improving its ability to communicate with Licensees electronically. Many SBICs are already using the Internet to obtain updated regulations and software from SBA and to submit financial statements and other required information. To further promote the use of this highly efficient means of communication, proposed § 107.504(a) would require all SBICs to have Internet access and Internet electronic mail no later than June 30, 1999.

To improve the organization of the regulations, the proposed rule also would consolidate three current sections into a single section. Current §§ 107.504, 107.505, and 107.508 would become § 107.504 (a), (b), and (c), respectively. These sections require an SBIC to maintain an office accessible to the public and to have certain office equipment to facilitate communications with SBA. Except for the proposed new requirement for Internet access and electronic mail, there would be no substantive change in these provisions.

Political Contributions

It has come to SBA's attention that a few SBICs have made contributions to organizations formed to promote the election of political candidates or the advancement of a political or legislative agenda. In at least one case, an SBA examiner cited an SBIC's contribution to an organization of this type as an "activity not contemplated by the Act." SBA has upheld this interpretation of the Act and would apply it even where the SBIC has no outstanding Leverage at the time of the contribution.

The Act states that the purpose of the SBIC program is "to stimulate and supplement the flow of private equity capital and long-term loan funds which small-business concerns need for the sound financing of their business operations and for their growth, expansion, and modernization. . . ." 15 U.S.C. 661. Under a longstanding interpretation of this statutory provision, SBA does not permit activities by an SBIC that do not contribute to the growth, expansion, and modernization of a small business. Since SBA is concerned that an SBIC's political contributions can have, at best,

only a remote and speculative connection to the growth, expansion, and modernization of small businesses, SBA is proposing this rule to confirm that such activities are not permissible.

SBA believes that a regulation on political contributions by Licensees is necessary to prevent any confusion on this subject in the future. In proposing this regulation, SBA does not seek to limit impermissibly any form of constitutionally protected speech. However, restrictions on the use of SBIC funds for political contributions appear to be required by the Act.

U.S. taxpayers support SBICs and their investors through the use of Government-guaranteed Leverage and various tax benefits. SBICs and their investors are also the recipients of assorted governmental benefits of a non-tax nature, including exemption from certain provisions of banking and other statutes. SBA believes that it is appropriate to require that, in exchange for these benefits, SBICs use their funds only for the purposes referred to in 15 U.S.C. 661. This also would eliminate any possibility that a particular contribution by an SBIC could be misperceived as having been endorsed by SBA.

Proposed § 107.505 would prohibit contributions by an SBIC to any political campaign, party, or candidate, or to any political action committee. The proposed regulation is written broadly enough to cover all political contributions, including so-called "soft money" contributions, that are used by organizations to support activities other than the influencing of federal elections. Nothing in the proposed rule would affect the right of investors in and managers of SBICs to make political contributions with their own funds, outside of the SBIC.

SBA encourages comment from the SBIC industry and, in particular, from the legal community on this proposed change.

Financing of Smaller Enterprises

Since April 1994, SBICs have been required to direct a certain percentage of their investment activity to businesses that fall significantly below the maximum size permitted for a Small Business. These businesses are referred to as "Smaller Enterprises." This proposed rule includes three changes related to the financing of Smaller Enterprises; one implements a provision of Pub. L. 105–135, the second is a technical correction, and the third is an editorial change.

Section 215(b) of Pub. L. 105–135 increased the maximum amount of SBA Leverage for which an SBIC could be eligible (see the section of this preamble entitled "Maximum Amount of Leverage"). The statute further required that 100 percent of any Leverage over $90 million the previous limit, be invested in Smaller Enterprises. Proposed § 107.710(d) would implement this financing requirement, which is in addition to the Smaller Enterprise financing requirements in § 107.710(b) and (c). For example, an SBIC is required under current § 107.710(b) to make at least 20 percent of its total cumulative investments in Smaller Enterprises. If the SBIC has $100 million of outstanding Leverage at the end of its fiscal year, it must meet the 20 percent standard and have at least $10 million of additional investments in Smaller Enterprises in its portfolio.

Current § 107.710(c), which was effective February 5, 1998, implemented a provision of Pub. L. 104–208 that required certain SBICs to make at least 50 percent of their total investments in Smaller Enterprises. The Licensees to whom the provision applies are those licensed on or before September 30, 1996, that issued Leverage after that date, and whose Regulatory Capital is "less than $10 million if such Leverage was Participating Securities" or "less than $5 million if such Leverage was Debentures." The regulation does not make clear which standard applies to an SBIC that has issued both Participating Securities and Debentures. Proposed § 107.710(c)(1) would clarify that the $10 million threshold applies to a Licensee that has issued any amount of Participating Securities, while the $5 million applies to a Licensee that has issued Debentures only.

Finally, in proposed § 107.710(f), the cross-reference to certain paragraphs in § 107.1120 would be revised to reflect proposed revisions in that section.

Real Estate Refinancing

Current § 107.720(c)(2) permits SBICs to provide financing to a Small Business for the purpose of acquiring or refinancing real estate only under certain conditions. Specifically, the Small Business must either be acquiring real property or building or renovating a building. The regulation does not permit refinancing of real estate currently owned and occupied by the Small Business. SBA believes that Small Businesses should be able to obtain financing from SBICs for this purpose, just as they currently can refinance other debt. Accordingly, proposed § 107.720(c)(2)(iii) would allow proceeds to be used to refinance debt obligations on property that is owned and occupied by a Small Business, provided it uses at least 67 percent of the usable square footage for an eligible business purpose. The occupancy requirement is the same as that applied to a building that is being built or renovated by a Small Business.

Co-Investment With Associates

Section 107.730(d)(3) sets forth circumstances under which an SBIC's co-investment with an Associate is presumed to be on terms that are equitable to the SBIC, so that no specific demonstration of fairness is required. Under current § 107.730(d)(3)(iv), this presumption applies to co-investments by two non-leveraged SBICs, or by a non-leveraged SBIC and its non-SBIC Associate. The proposed rule would modify this provision by removing the term "non-leveraged" and referring instead to Licensees that "have no outstanding Leverage and do not intend to issue Leverage in the future." Thus, the provision would apply only to an SBIC that intends to operate permanently as a non-leveraged company. SBA is proposing this change to protect its interests in all cases where the Agency may have either current or future financial exposure.

Portfolio Diversification Requirement ("Overline" limit)

In a final rule published on February 5, 1998 (63 FR 5859), SBA made certain changes to § 107.740, under which a leveraged SBIC may not have more than 20 percent of its Regulatory Capital invested in or committed to a single Small Business or group of related businesses without SBA's prior written approval (for SSBICs, the limit is 30 percent of Regulatory Capital). The changes addressed the problem faced by an SBIC that reduced its Regulatory Capital in a manner permitted by the regulations, and then found that one or more of its existing investments exceeded its reduced overline limitation. The solution to this problem was to base a Licensee's maximum permitted investment in or commitment to a Small Business on its Regulatory Capital at the time the investment or commitment is made.

When this regulatory change was proposed, SBA received several comments suggesting that SBA should make further changes. The commenters argued that an SBIC, particularly a limited life partnership that expects to return capital to investors as investments are harvested, should be permitted to base its overline limit on its original Regulatory Capital, with no reduction for subsequent returns of capital. The rationale was that an SBIC should not be forced to reduce the intended investment size reflected in its

business plan because of an early distribution. One commenter pointed out that this imposes a penalty that is particularly unjustified in the case of an SBIC which makes a distribution resulting from a profitable realization of a portfolio company investment.

SBA understood these concerns, but the comments were not adopted because SBA believed that the suggested changes were prohibited by section 306(a) of the Act. Since that time, the Agency has reconsidered its position on the proper interpretation of the statutory provision, and has now concluded that the statute permits SBA to determine, by regulation, the point as of which Regulatory Capital is measured for the purpose of establishing an SBIC's overline limit.

Accordingly, under proposed § 107.740(a), an SBIC's overline limit would be computed based on the sum of: (1) Its Regulatory Capital at the time an investment or commitment is made, and (2) any distributions permitted under the regulations that were made within the preceding 5 years and reduced Regulatory Capital. The effect of this change would be greatest for SBICs that issue Participating Securities. Under § 107.1570(b), these Licensees are permitted to make distributions that reduce Regulatory Capital, as long as they also redeem outstanding Participating Securities on a pro rata basis. Such distributions can be substantial; since 1995, when Participating Securities were first issued, 15 SBICs have elected to make distributions that reduced Regulatory Capital by a total of about $39 million. SBA expects the frequency and amount of such distributions to grow as Licensees' portfolios mature.

For SBICs that use other forms of SBA Leverage (Debentures or Preferred Securities), the proposed rule would be less significant, although it could have some effect. Under current § 107.585, such SBICs cannot reduce their Regulatory Capital by more than 2 percent in any fiscal year without SBA's prior written approval. Any distribution that falls within the 2 percent limitation could be added back to Regulatory Capital for overline purposes. SBA would determine whether a distribution exceeding 2 percent of Regulatory Capital could be added back to the Licensee's overline limit. SBA believes that it must have this discretion because of the wide variety of circumstances under which various SBICs may seek to reduce their Regulatory Capital.

SBA is also proposing a clarification of the introductory text in § 107.740(a). The proposed rule states that the provisions of § 107.740 would apply to Licensees that "have outstanding Leverage or intend to issue Leverage in the future." This phrase would replace current language referring to Licensees that "have outstanding Leverage or want to be eligible for Leverage." The purpose of the proposed change is to clarify that the overline limit does apply to "temporarily" non-leveraged SBICs whose business plans indicate that they expect to become leveraged.

Leverage Application Procedures and Eligibility

SBA is proposing a technical correction in § 107.1100(b) to reflect recent changes in Leverage funding procedures, under which a Licensee can issue Leverage only by first obtaining a Leverage commitment from SBA, and then drawing down funds against the commitment.

Proposed § 107.1120(d) would implement a requirement in section 215(b)(1) of Pub. L. 105–135 that applies to Licensees seeking Leverage in excess of $90 million. To be eligible for the Leverage, such Licensees must certify that they will use 100 percent of all proceeds over $90 million to provide financing to Smaller Enterprises. See also the section of this preamble entitled "Financing of Smaller Enterprises."

Maximum Amount of Leverage

Section 215(b) of Pub. L. 105–135 increased the maximum amount of SBA Leverage for which an SBIC could be eligible. The previous limit, for either a single SBIC or a group of SBICs under common control, was $90 million. The statute indexed this amount to the Consumer Price Index (CPI) retroactive to March 1993, with annual adjustments to take place following the initial adjustment.

Proposed § 107.1150(a) and (b)(1) would implement the statutory change. The Leverage eligibility table in § 107.1150(a)(1) reflects increases in the CPI from March 1993, through September 1998, the final month of the Federal Government's 1998 fiscal year. SBA proposes to make subsequent adjustments each year based on the September-to-September increase in the CPI. The proposed rule would result in a new Leverage ceiling of $102.5 million.

Below the overall Leverage ceiling, there are also several Leverageable Capital brackets within which a Licensee is eligible for certain maximum Leverage amounts. These individual brackets would also be indexed to the CPI. For example, the first bracket currently consists of Leverageable Capital of not more than $15 million on which a Licensee may be eligible for maximum Leverage in the ratio of 3:1. Based on increases in the CPI from March 1993 to September 1998, the $15 million cutoff would increase to $17.1 million.

Under proposed § 107.1150(a)(2), SBA would publish an annual notice in the **Federal Register** to update the maximum Leverage amounts. The Bureau of Labor Statistics normally publishes the CPI for September in mid-October, and SBA would expect to publish its **Federal Register** notice shortly thereafter.

Draws Against SBA Leverage Commitments

In May 1998, SBA instituted a new interim Leverage funding mechanism, sometimes described as "just-in-time" funding. Under the new procedures, an SBIC that has obtained a Leverage commitment from SBA may draw funds against the commitment on any business day. All SBICs with Leverage commitments must file quarterly financial statements on SBA Form 468 within 30 days after the end of each fiscal quarter. Under current §§ 107.1220 and 107.1230(d)(1), if an SBIC wishes to draw funds after the end of a quarter, but before the normal quarterly reporting deadline, it must submit quarterly financial statements with its draw request. With the advent of just-in-time funding, these provisions can result in an SBIC having as little as 1 week after the end of a quarter to prepare and submit financial statements to SBA.

SBA believes that most SBICs cannot reasonably comply with such a tight time frame, and that attempts to do so may result in the filing of incomplete or erroneous statements. Furthermore, the Agency believes that it can properly evaluate a draw request based on financial statements from a Licensee's previous fiscal quarter, together with the Licensee's certification that there has been no material adverse change in its financial condition since that time. Therefore, proposed §§ 107.1220 and 107.1230(d)(1) would eliminate the requirement that draw requests submitted within 30 days of the end of a Licensee's fiscal quarter be accompanied by updated quarterly financial statements. In addition, proposed § 107.1230(d)(1) would clarify that every draw request must be accompanied by a statement certifying that there has been no material adverse change in the Licensee's financial condition since its last filing of SBA Form 468.

Finally, proposed § 107.1230(d)(2) would require a Licensee to provide preliminary unaudited year end

financial statements when it submits a draw request more than 30 days following the end of its fiscal year if the Licensee has not yet filed its audited annual financial statements. SBA expects these preliminary financial statements to be as close to final as possible, but understands that they may not be exactly the same as the audited statements submitted later.

Under current § 107.1230(d)(3), which is proposed to be redesignated as § 107.730(d)(4), an SBIC applying for a draw must submit a statement of need showing the names of the Small Businesses that will be financed with the proceeds. SBA recognizes that an SBIC may sometimes wish to draw funds to provide necessary liquidity for its day-to-day operations, and is willing to consider draw requests for this purpose. Accordingly, under proposed § 107.1230(d)(4), the Licensee could apply for a draw based on operating liquidity needs, on specific financings it expects to close, or on a combination of the two.

Tax Distributions

Section 215(c) of Pub. L. 105–135 amended provisions of the Act governing the timing of "tax distributions" that SBICs with outstanding Participating Securities may make to their private investors and SBA. Previously, such distributions could be made once a year, based on the income allocated by a Licensee to its investors for Federal income tax purposes for the fiscal year immediately preceding the distribution. The statutory change now gives a Licensee the option of making a tax distribution at the end of any calendar quarter based on a quarterly estimate of tax liability. However, if the aggregate quarterly distributions made during any fiscal year exceed the amount that the Licensee would have been permitted to make based on a single computation performed for the entire year, future tax distributions must be reduced by the amount of the excess.

Proposed §§ 107.1550 and 107.1575 would implement these changes. The timing of tax distributions is addressed in proposed § 107.1550(d) and § 107.1575(a). SBA believes that the statutory language permitting tax distributions "at the end of any calendar quarter" does not require that such distributions be made only on the last day of a quarter, and wishes to give Licensees the flexibility to make the distributions later if they so choose. The proposed rule would permit interim tax distributions to be made on the last day of a calendar quarter or on any succeeding day through the first Payment Date following the end of the quarter (Payment Dates are February 1, May 1, August 1, and November 1 of each year). As before, Licensees would be able to make annual tax distributions as late as the second Payment Date following the end of their fiscal year. If the distribution is not made on a Payment Date, SBA's prior approval would be required (see the current introductory text of § 107.1575(a), which SBA does not propose to change).

Proposed § 107.1550(e) implements the statutory provision concerning excess tax distributions. The determination of the excess amount and the corresponding reduction of future distributions should be straightforward in most cases. One complexity that may arise is best illustrated by an example. Assume that an SBIC made quarterly tax distributions of $2.5 million in year 1. At the end of the year, it was determined that the permitted tax distribution for the full year would have been only $2 million so the excess tax distribution for the year was $500,000. In year 2, the SBIC computes a first quarter tax distribution of $900,000. It must reduce this distribution by the $500,000 excess from year 1, so its actual distribution is only $400,000. It then makes additional quarterly tax distributions of $1.5 million and $1.1 million during the year, so that its actual aggregate quarterly distributions are $3 million. At the end of year 2, the SBIC determines that its maximum permitted tax distribution for the full year would have been $3 million. Although it appears at first glance that there is no excess tax distribution for year 2, this is not the case. Under proposed § 107.1550(e)(2), the SBIC must recompute its aggregate quarterly distributions, ignoring the $500,000 reduction that was required in the first quarter. Taking this adjustment into account, the aggregate quarterly distributions would be $900,000 + $1,500,000 + $1,100,000 = $3,500,000. Thus, there would be an excess tax distribution of $500,000. SBA believes this formulation yields a result that is consistent with the intent of the Act. The point can best be seen by looking at years 1 and 2 together: Actual tax distributions were $5.5 million while the total that would have been permitted based on full-year computations was only $5 million. Thus, it is appropriate for the SBIC to have a $500,000 excess tax distribution computed as of the end of year 2.

Distributions on Other Than Payment Dates

SBA is proposing a technical correction in § 107.1575 to resolve a potential conflict between two provisions governing the timing of distributions. Current § 107.1575(a)(1) permits Licensees to make annual distributions, as required or permitted under various sections of the regulations, on dates other than one of the four quarterly Payment Dates. Clearly, in order to retain their character as "annual" distributions, such amounts must be computed as of the end of a Licensee's fiscal year, regardless of the date on which payment is actually made. However, under current § 107.1575(b)(2), any distribution made on a date other than a Payment Date must be computed as of the distribution date. To resolve this inconsistency, the proposed rule would modify § 107.1575(b)(2) so that annual distributions would be computed as of a Licensee's fiscal year end but could be paid at a later date other than a Payment Date.

In-Kind Distributions

SBA is proposing two substantive changes in § 107.1580, which governs in-kind distributions by SBICs that have issued Participating Securities. First, under proposed § 107.1580(a)(1), all in-kind distributions would require SBA's prior approval. This change represents a slight expansion of the requirement in current § 107.1570(a) that SBA approve distributions made on dates other than Payment Dates. Because in-kind distributions may subject SBA to significant market risk, the Agency strongly believes that it must have the ability to review and approve all such distributions, regardless of when they are made.

Second, under proposed § 107.1580(a)(2), only "Distributable Securities" could be distributed in kind. This new term, which is defined in proposed § 107.50, would replace the term "Publicly Traded and Marketable" that currently appears in § 107.1580 ("Publicly Traded and Marketable" securities would continue to be used in the Capital Impairment computation under § 107.1840). Although the two terms are technically different, SBA does not expect the change to have a major effect on Licensees' ability to distribute securities.

The first difference between the current and proposed rules involves "Rule 144" stock, i.e., stock that is subject to resale volume restrictions pursuant to Rule 144 under the Securities Act of 1933, as amended. The definition of "Publicly Traded and Marketable" includes securities that are "salable within 12 months pursuant to Rule 144". The proposed definition of "Distributable Securities" would also include Rule 144 stock, but only if SBA

determined that it could immediately sell all of its shares without exceeding the volume restrictions. For purposes of determining whether a security meets this requirement, SBA would assume a "worst-case" scenario in which all the securities of the issuer being distributed by a Licensee were being sold simultaneously by the distributees.

The second difference between the current and proposed rules involves securities that are not traded on a regulated stock exchange or listed in the National Association of Securities Dealers Automated Quotation System (NASDAQ), such as stocks traded on the "pink sheets." The definition of "Publicly Traded and Marketable" includes such securities if they have at least two market makers, while the proposed definition of "Distributable Securities" would exclude them. SBA is proposing this change because it believes that the current regulation may encompass stocks with extremely low trading volume, the disposition of which may be a prolonged and high-risk process. As a practical matter, no Licensee has sought to distribute such securities and SBA believes the change would have no effect on the vast majority of in-kind distributions proposed by Licensees.

SBA is also proposing a non-substantive change in § 107.1580(a)(4), which deals with the disposition of securities distributed to SBA. The current provision requires an SBIC distributing securities to deposit SBA's share with the Central Registration Agent (an agent employed by SBA to handle certain functions related to the pooling of Debentures and Participating Securities) who then selects a disposition agent. Having gained some experience with in-kind distributions, SBA has found it unnecessary to involve the CRA in the process. Accordingly, proposed § 107.1580(a)(4) would direct an SBIC to deposit SBA's share of securities directly with a disposition agent designated by SBA.

Compliance With Executive Orders, 12612, 12778, and 12866, the Regulatory Flexibility Act (5 U.S.C. 601, et seq.), and the Paperwork Reduction Act (44 U.S.C. Ch. 35)

SBA certifies that this proposed rule would not be a significant regulatory action for purposes of Executive Order 12866 because it would not have an annual effect on the economy of more than $100 million, and that it would not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq. The purpose of the proposed rule is to implement provisions of Pub. L. 105–135 which relate to small business investment companies, and to make certain other changes, primarily technical corrections and clarifications, to the regulations governing SBICs. There are 330 SBICs, not all of which are small businesses. In addition, the changes would have little or no effect on small businesses seeking funding from SBICs; rather they would only affect definitions for and activities of the SBICs.

For purposes of the Paperwork Reduction Act, 44 U.S.C. Ch. 35, SBA certifies that this proposed rule, if adopted in final form, would contain no new reporting or recordkeeping requirements.

For purposes of Executive Order 12612, SBA certifies that this rule would not have any federalism implications warranting the preparation of a Federalism Assessment.

For purposes of Executive Order 12778, SBA certifies that this rule is drafted, to the extent practicable, in accordance with the standards set forth in Section 2 of that Order.

List of Subjects in 13 CFR Part 107

Investment companies, Loan programs-business, Reporting and recordkeeping requirements, Small businesses.

For the reasons stated above, the SBA proposes to amend 13 CFR part 107 as follows:

PART 107—SMALL BUSINESS INVESTMENT COMPANIES

1. The authority citation for part 107 continues to read as follows:

Authority: 15 U.S.C. 681 *et seq.*, 683, 687(c), 687b, 687d, 687g and 687m.

2. In § 107.50 revise paragraph (8)(i) of the definition of Associate and the definition of Leverageable Capital, and add in alphabetical order a definition of Distributable Securities to read as follows:

§ 107.50 Definitions of terms.

* * * * *

Associate of a Licensee means any of the following:

* * * * *

(8) * * *

(i) Any person described in paragraphs (1) through (6) of this definition is an officer, general partner, or managing member; or

* * * * *

Distributable securities means equity securities that meet each of the following requirements:

(1) The securities (which may include securities that are salable pursuant to the provisions of Rule 144 (17 CFR 230.144) under the Securities Act of 1933, as amended) are determined by SBA, in its sole discretion, to be salable immediately without restriction under Federal and state securities laws;

(2) The securities are of a class:

(i) Which is listed and registered on a national securities exchange, or

(ii) For which quotation information is disseminated in the National Association of Securities Dealers Automated Quotation System and as to which transaction reports and last sale data are disseminated pursuant to Rule 11Aa3–1 (17 CFR 240.11Aa3–1) under the Securities Exchange Act of 1934, as amended; and

(3) The quantity of such securities to be distributed to SBA can be sold over a reasonable period of time without having an adverse impact upon the price of the security.

* * * * *

Leverageable Capital means Regulatory Capital, excluding unfunded commitments.

* * * * *

3. In § 107.230, revise paragraph (b)(3) to read as follows:

§ 107.230 Permitted sources of Private Capital for Licensees.

* * * * *

(b) *Exclusions from Private Capital.*

* * *

(3) Funds obtained directly or indirectly from any Federal, State, or local government agency or instrumentality, except for:

(i) Funds invested by a public pension fund;

(ii) Funds obtained from the business revenues (excluding any governmental appropriation) of any federally chartered or Government-sponsored corporation established before October 1, 1987, to the extent that such revenues are reflected in the retained earnings of the corporation; and

(iii) "Qualified Non-private Funds" as defined in paragraph (d) of this section.

* * * * *

4. Revise § 107.504 to read as follows:

§ 107.504 Equipment and office requirements.

(a) *Computer capability.* You must have a personal computer with a modem, and be able to use this equipment to prepare reports (using SBA-provided software) and transmit them to SBA. In addition, by June 30, 1999, you must have access to the Internet and the capability to send and receive electronic mail via the Internet.

(b) *Facsimile capability.* You must be able to receive facsimile messages 24 hours per day at your primary office.

(c) *Accessible office.* You must maintain an office that is convenient to the public and is open for business during normal working hours.

5. Revise § 107.505 to read as follows:

§ 107.505 Prohibition against political contributions.

You may not make a contribution to any national, State, or local political party, campaign or candidate, or to any political action committee that makes contributions to one or more political parties, campaigns, or candidates.

6. Remove § 107.508.

§ 107.508 [Removed]

7. In § 107.710 revise paragraphs (c)(1)(i) and (ii), redesignate paragraphs (d) and (e) as paragraphs (e) and (f), revise the last sentence of new paragraph (f), and add a new paragraph (d) to read as follows:

§ 107.710 Requirement to Finance Smaller Enterprises.

* * * * *

(c) Special requirement for certain leveraged Licensees.

(1) * * *

(i) Less than $10,000,000 if such Leverage included Participating Securities; or

(ii) Less than $5,000,000 if such Leverage was Debentures only.

* * * * *

(d) *Special requirement for Leverage over $90,000,000.* In addition to the applicable requirements in paragraphs (b) and (c) of this section, at the close of each of your fiscal years, 100 percent of any outstanding Leverage over $90,000,000 (including aggregate Leverage over $90,000,000 issued by two or more Licensees under Common Control) must have been invested in Smaller Enterprises.

* * * * *

(f) *Non-compliance with this section.* * * * However, you will not be eligible for additional Leverage until you reach the required percentage (see § 107.1120(c) through (e)).

8. In § 107.720 revise paragraph (c)(2) to read as follows:

§ 107.720 Small Businesses that may be ineligible for Financing.

* * * * *

(c) *Real Estate Businesses.* * * *

(2) You are not permitted to finance a business, regardless of SIC classification, if the Financing is to be used to acquire or refinance real property, unless the Small Business:

(i) Is acquiring an existing property and will use at least 51 percent of the usable square footage for an eligible business purpose; or

(ii) Is building or renovating a building and will use at least 67 percent of the usable square footage for an eligible business purpose; or

(iii) Occupies the subject property and uses at least 67 percent of the usable square footage for an eligible business purpose.

* * * * *

9. In § 107.730 revise paragraph (d)(3)(iv) to read as follows:

§ 107.730 Financing which constitute conflicts of interest.

* * * * *

(d) *Financings with Associates.* * * *

(3) *Exceptions to paragraphs (d)(1) and (d)(2) of this section.* * * *

(iv) You have no outstanding Leverage and do not intend to issue Leverage in the future, and your Associate either is not a Licensee or has no outstanding Leverage and does not intend to issue Leverage in the future.

* * * * *

10. In § 107.740 revise paragraph (a) to read as follows:

§ 107.740 Portfolio diversification ("overline" limitation).

(a) *General rule.* This § 107.740 applies if you have outstanding Leverage or intend to issue Leverage in the future. Without SBA's prior written approval, you may provide Financing or a Commitment to a Small Business only if the resulting amount of your aggregate outstanding Financings and Commitments to such Small Business and its Affiliates does not exceed:

(1) For a Section 301(c) Licensee, 20 percent of the sum of:

(i) Your Regulatory Capital as of the date of the Financing or Commitment; plus

(ii) Any Distribution(s) you made under § 107.1570(b), during the 5 years preceding the date of the Financing or Commitment, which reduced your Regulatory Capital; plus

(iii) Any Distribution(s) you made under § 107.585, during the 5 years preceding the date of the Financing or Commitment, which reduced your Regulatory Capital by no more than 2 percent or which SBA approves for inclusion in the sum determined in this paragraph (a)(1).

(2) For a Section 301(d) Licensee, 30 percent of a sum determined in the manner set forth in paragraph (a)(1)(i) through (iii) of this section.

* * * * *

11. In § 107.1100, revise the section heading and paragraph (b) to read as follows:

§ 107.1100 Types of Leverage and application procedures.

* * * * *

(b) *Applying for Leverage.* The Leverage application process has two parts. You must first apply for SBA's conditional commitment to reserve a specific amount of Leverage for your future use. You may then apply to draw down Leverage against the commitment. See §§ 107.1200 through 107.1240.

* * * * *

12. In § 107.1120 redesignate paragraphs (d) through (f) as paragraphs (e) through (g) and add a new paragraph (d) to read as follows:

§ 107.1120 General eligibility requirements for Leverage.

* * * * *

(d) Certify, if applicable, that you will use 100 percent of any Leverage over $90,000,000 (including aggregate Leverage over $90,000,000 issued by two or more Licensees under Common Control) to provide Financing to Smaller Enterprises (see also § 107.710).

* * * * *

13. In § 107.1150 revise paragraph (a) and the first sentence of paragraph (b)(1) to read as follows:

§ 107.1150 Maximum amount of Leverage for a Section 301(c) Licensee.

(a) *Maximum amount of Leverage.*

(1) *Amounts before indexing.* If you are a Section 301(c) Licensee, the following table shows the maximum amount of Leverage you may have outstanding at any time, subject to the indexing adjustment set forth in paragraph (a)(2) of this section:

If your Leverageable Capital is:	Then your maximum Leverage is:
(1) Not over $17,100,000	300 percent of Leverageable Capital
(2) Over $17,100,000 but not over $34,100,000	$51,300,000 + [2 × (Leverageable Capital −$17,100,000)]
(3) Over $34,100,000 but not over $51,300,000	$85,300,000 + (Leverageable Capital − $34,100,000)
(4) Over $51,300,000	$102,500,000

(2) *Indexing of maximum amount of Leverage.* SBA will adjust the amounts in paragraph (a) of this section annually to reflect increases through September in the Consumer Price Index published by the Bureau of Labor Statistics. SBA will publish the indexed maximum Leverage amounts each year in a Notice in the **Federal Register**.

(b) *Exceptions to maximum Leverage provisions*—(1) *Licensees under Common Control.* Two or more Licensees under Common Control may have aggregate outstanding Leverage over $102,500,000 (subject to indexing as set forth in paragraph (a)(2) of this section) only if SBA gives them permission to do so. * * *

* * * * *

14. Revise § 107.1220 to read as follows:

§ 107.1220 Requirement for Licensee to file quarterly financial statements.

As long as any part of SBA's Leverage commitment is outstanding, you must give SBA a Financial Statement on SBA Form 468 (Short Form) as of the close of each quarter of your fiscal year (other than the fourth quarter, which is covered by your annual filing of Form 468 under § 107.630(a)). You must file this form within 30 days after the close of the quarter. You will not be eligible for a draw if you are not in compliance with this § 107.1220.

15. In § 107.1230(d) revise paragraph (d)(1), redesignate paragraphs (d)(2) and (d)(3) as paragraphs (d)(3) and (d)(4), add a new paragraph (d)(2), and revise the first sentence of redesignated paragraph (d)(4) to read as follows:

§ 107.1230 Draw-downs by Licensee under SBA's Leverage commitment.

* * * * *

(d) *Procedures for funding draws.*

* * *

(1) A statement certifying that there has been no material adverse change in your financial condition since your last filing of SBA Form 468 (see also § 107.1220 for SBA Form 468 filing requirements).

(2) If your request is submitted more than 30 days following the end of your fiscal year, but before you have submitted your annual filing of SBA Form 468 (Long Form) in accordance with § 107.630(a), a preliminary unaudited annual financial statement on SBA Form 468 (Short Form).

* * * * *

(4) A statement that the proceeds are needed to fund one or more particular Small Businesses or to provide liquidity for your operations. * * *

* * * * *

16. In § 107.1550 revise the first sentence of the introductory text, paragraph (b)(1) and paragraph (d), and add a new paragraph (e) to read as follows:

§ 107.1550 Distributions by Licensee-permitted "tax Distributions" to private investors and SBA.

If you have outstanding Participating Securities or Earmarked Assets, and you are a limited partnership, "S Corporation", or equivalent pass-through entity for tax purposes, you may make "tax Distributions" to your investors in accordance with this § 107.1550, whether or not they have an actual tax liability. * * *

* * * * *

(b) *How to compute the Maximum Tax Liability.* (1) You may compute your Maximum Tax Liability for a full fiscal year or for any calendar quarter. Use the following formula:

M = (TOI × HRO) + (TCG × HRC)

where:

M = Maximum Tax Liability

TOI = Net ordinary income allocated to your partners or other owners for Federal income tax purposes for the fiscal year or calendar quarter for which the Distribution is being made, excluding Prioritized Payments allocated to SBA.

HRO = The highest combined marginal Federal and State income tax rate for corporations or individuals on ordinary income, determined in accordance with paragraphs (b)(2) through (b)(4) of this section.

TCG = Net capital gains allocated to your partners or other owners for Federal income tax purposes for the fiscal year or calendar quarter for which the Distribution is being made, excluding Prioritized Payments allocated to SBA.

HRC = The highest combined marginal Federal and State income tax rate for corporations or individuals on capital gains, determined in accordance with paragraphs (b)(2) through (b)(4) of this section.

* * * * *

(d) *Paying a tax Distribution.* You may make an annual tax Distribution on the first or second Payment Date following the end of your fiscal year. You may make a quarterly tax Distribution on the first Payment Date following the end of the calendar quarter for which the Distribution is being made. See also § 107.1575(a).

(e) *Excess tax Distributions.* (1) As of the end of your fiscal year, you must determine whether you made any excess tax Distributions for the year in accordance with paragraph (e)(2) of this section. Any tax Distributions that you make for a subsequent period must be reduced by the excess amount distributed.

(2) Determine your excess tax Distributions by adding together all your quarterly tax Distributions for the year (ignoring any required reductions for excess tax Distributions made in prior years), and subtracting the maximum tax Distribution that you would have been permitted to make based upon a single computation performed for the entire fiscal year. The result, if greater than zero, is your excess tax Distribution for the year.

17. In § 107.1575, revise paragraphs (a)(1) and (b)(2) and add a new paragraph (a)(4) to read as follows:

§ 107.1575 Distributions on other than Payment Dates.

(a) *Permitted Distributions on other than Payment Dates.* * * *

(1) Required annual Distributions under § 107.1540(a)(1), annual Distributions under § 107.1550, and any Distributions under § 107.1560 must be made no later than the second Payment Date following the end of your fiscal year.

* * * * *

(4) Quarterly Distributions under § 107.1550 must be made no earlier than the last day of the calendar quarter for which the Distribution is being made and no later than the first Payment Date following the end of such calendar quarter.

(b) *Conditions for making a Distribution.*

* * * * *

(2) The ending date of the period for which you compute your Earmarked Profits, Prioritized Payments, Adjustments, Charges, Profit Participation, Retained Earnings Available for Distribution, liquidity ratio, Capital Impairment, and any other applicable computations required under §§ 107.1500 through 107.1570, must be:

(i) The distribution date, or

(ii) If your Distribution includes annual Distributions under §§ 107.1540(a)(1), 107.1550 and/or 107.1560, your most recent fiscal year end;

* * * * *

18. In § 107.1580, redesignate paragraphs (a)(1) through (a)(4) as paragraphs (a)(2) through (a)(5), add a new paragraph (a)(1) and revise paragraph (b)(2) to read as follows:

§ 107.1580 Special rules for In-Kind Distributions by Licensees.

(a) *In-Kind Distributions while Licensee has outstanding Participating Securities.* * * *

(1) You must obtain SBA's written approval before the distribution date.

(2) You may distribute only Distributable Securities.

* * * * *

(5) You must deposit SBA's share of securities being distributed with a disposition agent designated by SBA. As an alternative, if you agree, SBA may direct you to dispose of its shares. In this case, you must promptly remit the proceeds to SBA.

* * * * *

(b) *In-Kind Distributions after Licensee has redeemed all Participating Securities.* * * *

* * * * *

(2) You must obtain SBA's prior written approval of any In-Kind Distribution of Earmarked Assets that are not Distributable Securities, specifically including approval of the valuation of the assets.

Dated: March 31, 1999.

Aida Alvarez,

Administrator.

[FR Doc. 99–9265 Filed 4–13–99; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–CE–122–AD]

RIN 2120–AA64

Airworthiness Directives; Pilatus Aircraft Ltd. Models PC–12 and PC–12/45 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to supersede Airworthiness Directive (AD) 98–13–08, which currently requires replacing and re-routing the power return cables on the starter generator and the generator 2 on certain Pilatus Aircraft Ltd. (Pilatus) Models PC–12 and PC–12/45 airplanes. AD 98–13–08 also requires inserting a temporary revision to the pilot operating handbook (POH), and installing a placard near the standby magnetic compass. The proposed AD would retain the actions currently required by AD 98–13–08 on all airplanes affected by that AD, and would require replacing the temporary revision to the POH and the placard near the standby magnetic compass with an improved procedural POH revision and placard. The proposed AD would also require the placard and the temporary revision to the POH for additional serial number Models PC–12 and PC–12/45 airplanes; and would require accomplishing improved Standby Magnetic Compass Swing procedures and incorporating a temporary revision to the maintenance manual on all of the affected airplanes. The proposed AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Switzerland. The actions specified by the proposed AD are intended to prevent directional deviation on the standby magnetic compass caused by modifications made to the airplane since manufacture, which could result in flight-path deviation during critical phases of flight.

DATES: Comments must be received on or before May 19, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–CE–122–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted. Service information that applies to the proposed AD may be obtained from Pilatus Aircraft Ltd., Marketing Support Department, CH–6370 Stans, Switzerland; telephone: +41 41–6196 233; facsimile: +41 41–6103 351. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Roman T. Gabrys, Aerospace Engineer, FAA, Small Airplane Directorate, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone: (816) 426–6934; facsimile: (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 98–CE–122–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–CE–122–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

AD 98–13–08, Amendment 39–10596 (63 FR 32975, June 17, 1998), currently requires the following on certain Pilatus Models PC–12 and PC–12/45 airplanes (serial numbers 101 through 147):

—Replacing and re-routing the power return cables on the starter generator and generator 2;

—Inserting a temporary revision to the POH; and

—Installing a placard near the standby magnetic compass, using at least ⅛-inch letters, with the following words:

"*STANDBY COMPASS* FOR CORRECT READING CHECK: WINDSHIELD DE-ICE LH & RH HEAVY & COOLING SYSTEM OFF."

Accomplishment of the actions of 98–13–08 is required in accordance with Pilatus PC XII Service Bulletin No. 24–002, Rev. No. 1, dated September 20, 1996.

Actions Since Issuance of Previous Rule

The Federal Office for Civil Aviation (FOCA), which is the airworthiness authority for Switzerland, recently notified the FAA that an unsafe condition may exist on certain Pilatus Model PC–12 and PC–12/45 airplanes. The FOCA advises that the changes made to the systems during the accomplishment of AD 98–13–08, along with other system modifications incorporated during the service life of the affected aircraft, have made certain revisions to the standby magnetic compass swing procedures necessary.

These changes, if not incorporated in a timely manner, could result in a deviation of the airplane flight path during critical phases of flight.

Relevant Service Information

Pilatus has issued Service Bulletin No. 34–006, dated September 3, 1998, which specifies:

—Accomplishing the compass swing procedures of the standby magnetic compass in accordance with PC–12 Maintenance Manual Temporary Revision No. 34–03, dated July 16, 1998;

—Incorporating PC–12 Pilot's Operating Handbook, Pilatus Report No. 01973–001, Temporary Revision, Standby Compass, dated July 16, 1998; and

—Installing a revised placard near the standby magnetic compass.

The FOCA classified this service information as mandatory and issued Swiss AD HB–98–426, dated November 6, 1998, in order to assure the continued airworthiness of these airplanes in Switzerland.

The FAA's Determination

These airplane models are manufactured in Switzerland and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the FOCA has kept the FAA informed of the situation described above.

The FAA has examined the findings of the FOCA; reviewed all available information, including the service information referenced above; and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of the Provisions of the Proposed AD

Since an unsafe condition has been identified that is likely to exist or develop in other Pilatus Models PC–12 and PC–12/45 airplanes of the same type design registered for operation in the United States, the FAA is proposing AD action to supersede AD 98–13–08. The proposed AD would retain the actions currently required by AD 98–13–08 on all airplanes affected by that AD (manufacturer serial numbers 101 through 147), and would require replacing the temporary revision to the POH and the placard near the standby magnetic compass with an improved procedural POH revision and placard. The proposed AD would also require the placard and the temporary revision to the POH for additional serial number Models PC–12 and PC–12/45 airplanes; and would require accomplishing improved Standby Magnetic Compass Swing procedures and incorporating a temporary revision to the maintenance manual on all of the affected airplanes. The placard will incorporate the following language:

STANDBY COMPASS

FOR CORRECT READING SWITCH:

AVIONICS ON

NAV & INSTRUMENT LIGHTING AS REQUIRED

WINDSHIELD DE-ICE LH & RH OFF

AUXILIARY HEATING SYSTEMS OFF

AUXILIARY COOLING SYSTEM OFF

Accomplishment of the replacement and re-routing of the power return cables would be required in accordance with Pilatus PC XII Service Bulletin No. 24–002, Rev. No. 1, dated September 20, 1996.

The Standby Magnetic Compass Swing procedures would be accomplished in accordance with PC–12 Maintenance Manual Temporary Revision No. 34–03, dated July 16, 1998, as specificd in Pilatus Service Bulletin No. 34–006, dated September 3, 1998.

Cost Impact

The FAA estimates that 70 airplanes in the U.S. registry would be affected by the proposed AD.

Approximately 40 of these airplanes are affected by the proposed power return cable replacement and re-routing requirements that are being retained from AD 98–13–08. The FAA estimates that it would take approximately 12 workhours per airplane to accomplish these proposed actions, and that the average labor rate is approximately $60 an hour. Pilatus will provide parts at no cost to the owners/operators of the affected airplanes. Based on these figures, the cost impact of the proposed replacement and re-routing requirements on U.S. operators is $28,800, or $720 per airplane. The proposed AD imposes no additional replacement and re-routing cost impact upon U.S. operators of the affected airplanes over that currently required by AD 98–13–08.

Accomplishing the improved Standby Magnetic Compass Check Swing procedures would be required for approximately 70 airplanes and would take approximately 3 workhours per airplane to accomplish at an average labor rate of $60 per hour. Based on these figures, the proposed cost impact on U.S. operators to accomplish the improved Standby Magnetic Compass Check Swing procedures would be $12,600, or $180 per airplane.

The proposed POH revision and placard requirements would be required for approximately 70 airplanes. Incorporating the POH revisions and fabricating and installing a placard may be performed by the owner/operator holding at least a private pilot certificate as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7), and must be entered into the aircraft records showing compliance with the proposed AD in accordance with section 43.9 of the Federal Aviation Regulations (14 CFR 43.9). The only cost impact the proposed placard and POH revision requirements impose is the time it would take each owner/operator of the affected airplanes to incorporate this information into the POH and fabricate and install the placard.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Airworthiness Directive (AD) 98–13–08, Amendment 39–10596 (63 FR 32975, June 17, 1998), and by adding a new AD to read as follows:

Pilatus Aircraft Ltd.: Docket No. 98–CE–122–AD; Supersedes AD 98–13–08, Amendment 39–10596.

Applicability: Models PC–12 and PC–12/45 airplanes, serial numbers 101 through 230), certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (g) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated in the body of this AD, unless already accomplished.

To prevent directional deviation on the standby magnetic compass caused by modifications made to the airplane since manufacture, which could result in flight-path deviation during critical phases of flight, accomplish the following:

(a) For airplanes incorporating serial numbers 101 through 147, within the next 100 hours time-in-service (TIS) after July 31, 1998 (the effective date of AD 98–13–08), accomplish the following:

(1) Replace the starter generator cable and the generator 2 power return cables with new cables of improved design and re-route these cables, in accordance with the Accomplishment Instructions section in Pilatus PC XII Service Bulletin (SB) No. 24–002, Rev. No. 1, dated September 20, 1996.

(2) Remove the temporary revision titled "Electrical Cables," dated March 7, 1996, from the Pilot Operating Handbook (POH) and insert a temporary revision titled "Electrical Cables" Rev. 1, dated July 12, 1996. Accomplish this action in accordance with the Accomplishment Instructions section in Pilatus PC XII SB No. 24–002, Rev. No. 1, dated September 20, 1996.

(b) For airplanes incorporating serial numbers 101 through 147, within the next 50 hours TIS after the effective date of this AD, replace the placard installed near the standby magnetic compass that is required by AD 98–13–08, with a new placard that incorporates the following words (using at least 1/8-inch letters):

STANDBY COMPASS

FOR CORRECT READING SWITCH:

AVIONICS ON

NAV & INSTRUMENT LIGHTING AS REQUIRED

WINDSHIELD DE-ICE LH & RH OFF

AUXILIARY HEATING SYSTEMS OFF

AUXILIARY COOLING SYSTEM OFF

This placard is referenced in Pilatus Service Bulletin No. 34–006, dated September 3, 1998.

(c) For airplanes incorporating serial numbers 148 through 230, within the next 50 hours TIS after the effective date of this AD, install a placard with the following words (using at least 1/8-inch letters) near the standby magnetic compass:

STANDBY COMPASS

FOR CORRECT READING SWITCH:

AVIONICS ON

NAV & INSTRUMENT LIGHTING AS REQUIRED

WINDSHIELD DE-ICE LH & RH OFF

AUXILIARY HEATING SYSTEMS OFF

AUXILIARY COOLING SYSTEM OFF

This placard is referenced in Pilatus Service Bulletin No. 34–006, dated September 3, 1998.

(d) For all serial number airplanes, within the next 50 hours TIS after the effective date of this AD, accomplish the following:

(1) Insert Pilatus Report No. 01973–001, Temporary Revision, Standby Compass, dated July 16, 1998, into the Pilot Operating Handbook (POH).

(2) Accomplish the improved Standby Magnetic Compass Check Swing procedures in accordance with Pilatus PC–12 Maintenance Manual Temporary Revision No. 34–03, dated July 16, 1998, as specified in Pilatus Service Bulletin No. 34–006, dated September 3, 1998.

(3) Insert Pilatus PC–12 Maintenance Manual Temporary Revision No. 34–03, dated July 16, 1998, in chapter 34–21–00 facing page 502 of the maintenance manual. Disregard existing pages 502 through 506.

(e) Accomplishment of the POH revision, maintenance manual insertions, and placard fabrication and installation, as required by paragraphs (a)(2), (b), (c), (d)(1), and (d)(3) of this AD, may be performed by the owner/operator holding at least a private pilot certificate as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7), and must be entered into the aircraft records showing compliance with this AD in accordance with section 43.9 of the Federal Aviation Regulations (14 CFR 43.9).

(f) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(g) An alternative method of compliance or adjustment of the compliance times that provides an equivalent level of safety may be approved by the Manager, Small Airplane Directorate, 1201 Walnut, suite 900, Kansas City, Missouri, 64106.

(1) The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

(2) Alternative methods of compliance approved in accordance with AD 98–13–08 are not considered approved as alternative methods of compliance for this AD.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Small Airplane Directorate.

(h) Questions or technical information related to the service information referenced in this AD should be directed to Pilatus Aircraft Ltd., Customer Liaison Manager, CH–6370 Stans, Switzerland; telephone: +41 41 6196 233; facsimile: +41 41 6103 351. This service information may be examined at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

(i) This amendment supersedes AD 98–13–08, Amendment 39–10596.

Note 3: The subject of this AD is addressed in Swiss AD HB–98–426, dated November 6, 1998.

Issued in Kansas City, Missouri, on April 7, 1999.

Carolanne L. Cabrini,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–9249 Filed 4–13–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–CE–120–AD]

RIN 2120–AA64

Airworthiness Directives; LET Aeronautical Works Model L33 SOLO Sailplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to certain LET Aeronautical Works (LET) Model L33 SOLO sailplanes. The proposed AD would require replacing the main wing attachment and wing spar root pins and modifying the corresponding area. The proposed AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for the Czech Republic. The actions specified by the proposed AD are intended to prevent structural failure of the wing attachments caused

by the current design configuration, which could result in the wing separating from the sailplane with consequent loss of control.

DATES: Comments must be received on or before May 19, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–CE–120–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from LET Aeronautical Works, 686 04 Kunovice, Czech Republic; telephone: +420 632 51 11 11; facsimile: +420 632 613 52. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. Mike Kiesov, Aerospace Engineer, FAA, Small Airplane Directorate, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone: (816) 426–6934; facsimile: (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 98–CE–120–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–CE–120–AD, Room 1558, 601 E. 12th Street, KansasCity, Missouri 64106.

Discussion

The Civil Aviation Authority of the Czech Republic (CAA CZ), which is the airworthiness authority for the Czech Republic, notified the FAA that an unsafe condition may exist on certain LET Model L33 SOLO sailplanes. The CAA CZ reports that fatigue damage could occur to the main wing attachment over a certain period of time. LET performed fatigue testing that revealed deterioration and potential failure of these parts around 2,000 hours time-in-service (TIS).

This condition, if not corrected in a timely manner, could result in the wing separating from the sailplane with consequent loss of control.

Relevant Service Information

LET has issued Mandatory Bulletin Number L33/008a, dated January 20, 1998, which specifies procedures for replacing the main wing attachment and wing spar root pins and modifying the corresponding area.

The CAA CZ classified this service bulletin as mandatory and issued Czechoslovakian AD CCA–T–AD–1–024/98, dated March 23, 1998, in order to assure the continued airworthiness of these sailplanes in the Czech Republic.

The FAA's Determination

This sailplane model is manufactured in the Czech Republic and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA CZ has kept the FAA informed of the situation described above.

The FAA has examined the findings of the CAA CZ; reviewed all available information, including the service information referenced above; and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of the Provisions of the Proposed AD

Since an unsafe condition has been identified that is likely to exist or develop in other LET Model L33 sailplanes of the same type design registered in the United States, the FAA is proposing AD action. The proposed AD would require replacing the main wing attachment and wing spar root pins and modifying the corresponding area. Accomplishment of the proposed AD would be required in accordance with the service information referenced previously.

Cost Impact

The FAA estimates that 20 sailplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 35 workhours per sailplane to accomplish the proposed action, and that the average labor rate is approximately $60 an hour. Parts cost approximately $900 per sailplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $60,000, or $3,000 per sailplane.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

LET Aeronautical Works: Docket No. 98–CE–120–AD.

Applicability: The following serial numbers of Model L33 SOLO sailplanes, certificated in any category:

930101 through 930205;
940310 through 940316;
950405 and 950406;
960407 and 960408; and
940206 through 940308;
950318 through 950401;
960402 through 960404;
960410

Note 1: This AD applies to each sailplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For sailplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD.

The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated in the body of this AD, unless already accomplished.

To prevent structural failure of the wing attachments caused by the current design configuration, which could result in the wing separating from the sailplane with consequent loss of control, accomplish the following:

(a) Upon accumulating 1,500 hours time-in-service (TIS) on each wing attachment or within the next 100 hours TIS after the effective date of this AD, whichever occurs later, replace the main wing attachment and wing spar root pins and modify the corresponding area. Accomplish these actions in accordance with the WORK PROCEDURE section of Mandatory Bulletin Number L33/008a, dated January 20, 1998.

Note 2: When shipping the parts required to accomplish the actions of this AD, LET Aeronautical Works will also send a service technician to train or assist mechanics within the geographic locations of the Model L33 SOLO sailplane owners.

(b) As of the effective date of this AD, no person may install, on any of the affected sailplanes, main wing attachments or wing spar root pins without accomplishing the modification specified in paragraph (a) of this AD, in accordance with the WORK PROCEDURE section of Mandatory Bulletin Number L33/008a, dated January 20, 1998.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the sailplane to a location where the requirements of this AD can be accomplished.

(d) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Small Airplane Directorate, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64106. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Small Airplane Directorate.

(e) Questions or technical information related to LET Mandatory Bulletin Number L33/008a, dated January 20, 1998 should be directed LET Aeronautical Works, 686 04 Kunovice, Czech Republic; telephone: +420 632 51 11 11; facsimile: +420 632 613 52. This service information may be examined at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Note 4: The subject of this AD is addressed in Czechoslovakian AD CCA–T–AD–1–024/98, dated March 23, 1998.

Issued in Kansas City, Missouri, on April 7, 1999.

Carolanne L. Cabrini,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–9252 Filed 4–13–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–363–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 767 Series Airplanes Powered by Pratt & Whitney JT9D–7R4 Series Turbofan Engines or General Electric CF6–80A Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 767 series airplanes. This proposal would require modification of the engine thrust control cable installation; repetitive inspections to detect certain discrepancies of the cables, pulleys, pulley brackets, and cable travel; and repair, if necessary. For certain airplanes, this proposal also would require replacement of certain pulleys with new pulleys, and re-rigging of the engine thrust control cable. This proposal is prompted by reports of engine thrust control cable failures. The actions specified by the proposed AD are intended to prevent such failures, which could result in a severe asymmetric thrust condition during landing, and consequent reduced controllability of the airplane.

DATES: Comments must be received by June 1, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–363–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Holly Thorson, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1357; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact

concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 98–NM–363–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–363–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

In December 1985, the FAA received a report indicating that a Boeing Model 747–100 series airplane had experienced a thrust control 'B' cable failure following application of reverse thrust during landing. This failure caused engine number 1 to go full forward thrust with engine numbers 2, 3, and 4 in full reverse thrust. The airplane exited the runway and eventually slid to a stop with consequent hull damage.

In December 1992, a broken thrust control 'B' cable was found on a Boeing Model 767–200 series airplane following an uncommanded acceleration of the number two engine during engine start. The broken cable was located adjacent to the right-hand wing.

In April 1997, during a review of the certification plan for the Boeing Model 757–300 series airplane, Boeing informed the FAA that the thrust control cable installation on Boeing Model 757–200, –200PF, and –200CB series airplanes equipped with Rolls Royce engines, and on Model 767 series airplanes equipped with Pratt & Whitney Model JT9D–7R4 series engines and General Electric CF6–80A series turbofan engines, is similar to the thrust control cable installation on the Boeing Model 747–100 series airplane, and that a similar failure could result in subsequent runway departure.

The FAA has recently received a report of uncommanded advancement of the right thrust lever on a Boeing Model 757–200 series airplane during flight. Subsequently, the engine power began steadily increasing. In order to reduce the engine power, the flight crew set the lever to the idle stop position; however, the engine power continued to increase. The flight crew then used the cut-off lever to stop the engine as it approached the maximum speed. After the airplane landed, a close visual inspection revealed that the thrust control cable had broken due to continuous chafing against the adjacent wire bundle that supplies power to the right window heater.

In addition, failure of a pulley could result in insufficient support or improper positioning of the thrust control cable and may lead to cable chafing on adjacent structure or airplane system components and subsequent failure of the thrust control cable. Such failure of a thrust control cable could result in a severe asymmetric thrust condition during landing, and consequent reduced controllability of the airplane.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Service Bulletin 767–76–0010, Revision 1, dated February 20, 1992, which describes procedures for replacement of the two non-metallic pulleys of the thrust control cable that are located in the leading edge of the wing adjacent to the left and right engine strut with aluminum pulleys. The service bulletin also describes procedures for re-rigging of the thrust control cable after replacement of the pulleys.

Accomplishment of the actions specified in the service bulletin described previously, and the repetitive inspection mandated by this AD, is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require modification of the engine thrust control cable installation and repetitive inspections to detect certain discrepancies of the engine thrust control cables, pulleys, pulley brackets, and cable travel; and repair, if necessary. The actions would be required to be accomplished in accordance with the procedure included in Appendix 1 of this AD.

For certain airplanes, this proposed AD would require replacement of the non-metallic pulleys of the two thrust control cables that are located in the leading edge of the wing adjacent to the left and right engine strut with aluminum pulleys. The proposed AD also would require re-rigging of the thrust control cable after replacement of the pulleys. These actions would be required to be accomplished in accordance with the service bulletin described previously.

Justification of Compliance Time

This proposed AD includes a procedure to inspect the engine thrust control cables, pulleys, pulley brackets, and cable travel, which is similar to the inspection for control cables contained in Chapter 20–20–02 of the Boeing 767 Maintenance Manual. The Boeing Maintenance Planning Document recommends that an inspection of the engine thrust control cables be conducted in accordance with Chapter 20–20–02 at every "2C" check. The FAA has no evidence that indicates that the Model 747, 757, and 767 series airplanes that experienced the thrust control cable failures were not adhering to those recommendations; therefore, the FAA has determined that the repetitive inspections of the thrust control cables, pulleys, pulley brackets, and cable travel must be done at every "C" check, which corresponds with 18 months or 4,500 flight hours, whichever occurs first.

Explanation of Inspection Procedure

The inspection procedure identified for the thrust control cables was derived from the Boeing 747, 757, and 767 Maintenance Manuals. The thrust control cable designs are similar among these airplane models. However, the damage tolerance criteria for replacement of the thrust control cables are more stringent for Model 757 than for the Model 767. Therefore, in recognition that the cable designs are similar and the fact that there is no readily apparent reason for the differences in damage tolerance criteria, the more stringent Model 757 requirements are stated in the thrust control cable procedure described in this proposed rule.

Cost Impact

There are approximately 211 airplanes of the affected design in the worldwide fleet. The FAA estimates that 100 airplanes of U.S. registry would be affected by this proposed AD.

For all airplanes (100 U.S.-registered airplanes), it would take approximately 3 work hours per airplane to accomplish the proposed inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the inspection proposed by this AD on U.S. operators is estimated to be $18,000, or $180 per airplane, per inspection cycle.

For airplanes identified in Boeing Service Bulletin 767–76–0010, Revision 1 (52 U.S -registered airplanes), it would take approximately 9 work hours per airplane to accomplish the proposed

replacement and re-rigging, at an average labor rate of $60 per work hour. Required parts would cost $484 per airplane. Based on these figures, the cost impact of the replacement and re-rigging proposed by this AD on U.S. operators is estimated to be $53,248, or $1,024 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Docket 98–NM–363–AD.

Applicability: Model 767 series airplanes powered by Pratt & Whitney JT9D–7R4 series turbofan engines or General Electric CF6–80A series turbofan engines, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent engine thrust control cable failure, which could result in a severe asymmetric thrust condition during landing, and consequent reduced controllability of the airplane, accomplish the following:

(a) For all airplanes: Within 18 months or 4,500 flight hours after the effective date of this AD, whichever occurs first, accomplish the "Thrust Control Cable Inspection Procedure" specified in Appendix 1 (including figures 1 and 2) of this AD to verify the integrity of the thrust control cables. Prior to further flight, repair any discrepancy found in accordance with the procedures described in the Boeing 767 Maintenance Manual. Repeat the inspection thereafter at intervals not to exceed 18 months or 4,500 flight hours, whichever occurs first.

Appendix 1.—Thrust Control Cable Inspection Procedure

1. General

A. Use these procedures to verify the integrity of the thrust control cables. The procedures must be performed along the entire cable run for each engine.

B. The first task is an inspection of the control cable. The second task is an inspection of the control cable pulley. The third task is an inspection of the control cable pulley bracket. The fourth task is an inspection of control cable travel.

2. Inspection of the Control Cables

A. Clean the cables (if necessary) for the inspection, in accordance with 767 Maintenance Manual 12–21–31.

B. Examine the cables:

(1) To do a check for broken wires, rub a cloth along the length of the cable. The cloth catches broken wires.

(2) To aid in the visual inspection, remove the tension and bend the cable.

Broken wire ends frequently move apart from the cable surface. Use large bend radius to prevent kinks.

Note: Wires break most frequently where cables go through fairleads, seals, or around drums, quadrants, or pulleys. Examine these areas carefully, paying close attention to cable runs outside the pressurized areas. Use a flashlight and mirror to aid inspection in places that are difficult to access.

C. Replace the control cable when you find one of these conditions:

(1) Two or more broken wires.

(2) If one cable strand has worn wires where one wire cross section is decreased by 40 percent or more (see Figure 1).

(3) For cables not in the pressurized area, replace a worn cable where you cannot identify the wire strands on the worn side.

(4) A broken wire in the area that goes over a pulley, through a pressure seal, or through a fairlead.

Note: A cable assembly can have one broken wire if the broken wire is in a straight part of the cable assembly. The broken wire must not go over a pulley or through a pressure seal or fairlead. The cable must comply with the other specifications of this section.

(5) A nick or cut.

(6) Rust or corrosion.

D. Lubricate the cable (if you removed the lubricant), in accordance with 767 Maintenance Manual 12–21–31.

Note: Do not apply grease or corrosion preventative agents on corrosion resistant cables (CRES) because accumulation of grit increases the wear rate on CRES cables. CRES cables should not be lubricated.

3. Inspection of the Control Cable Pulley

A. Visually examine the pulleys for roughness, sharp edges, and unwanted material in the grooves.

B. Visually examine the pulley wear pattern (see Figure 2).

C. Do these steps at the same time to examine the pulley for wobble:

(1) Push on the side of the pulley at the outer edge with a 2-pound force, perpendicular to control cable travel.

(2) Make sure the movement of the outer edge is no more than:

(a) 0.10 inch for 8-inch diameter pulleys

(b) 0.09 inch for 6-inch diameter pulleys

(c) 0.08 inch for 5-inch diameter pulleys

(d) 0.07 inch for 4-inch diameter pulleys

(e) 0.06 inch for 3-inch diameter pulleys

D. Make sure the pulley bearings have lubrication and turn smoothly.

E. Examine the pulley bolts for wear.

F. Replace the pulley when you find one of these conditions:

(1) An unusual pulley wear pattern.

(2) Too much pulley wobble.

(3) The pulley does not turn freely and smoothly.

4. Inspection of the Control Cable Pulley Bracket

A. Examine the brackets and the support structure for cracks or other damage.

B. Replace or repair all brackets or structure that have damage.

5. Inspection of the Cable Travel

A. Make sure the cable guides and fairleads have no worn or broken parts and that the parts are aligned, clean, and attached correctly.

B. Make sure the deflection angle at each fairlead is not more than 3 degrees.

C. Visually examine the cable runs for incorrect routing or twists in the cable.

D. The minimum clearance between the cable and the adjacent structure shall be 0.20 inches. At pulley bracket locations, the minimum clearance is 0.10 inches for a 10 inch distance, beginning at the cable breakpoint and extending along the cable run in both directions.

E. Make sure the cable moves freely through its full travel, and does not contact structure, wire bundles, or tubing.

BILLING CODE 4910–13–P

Figure 1

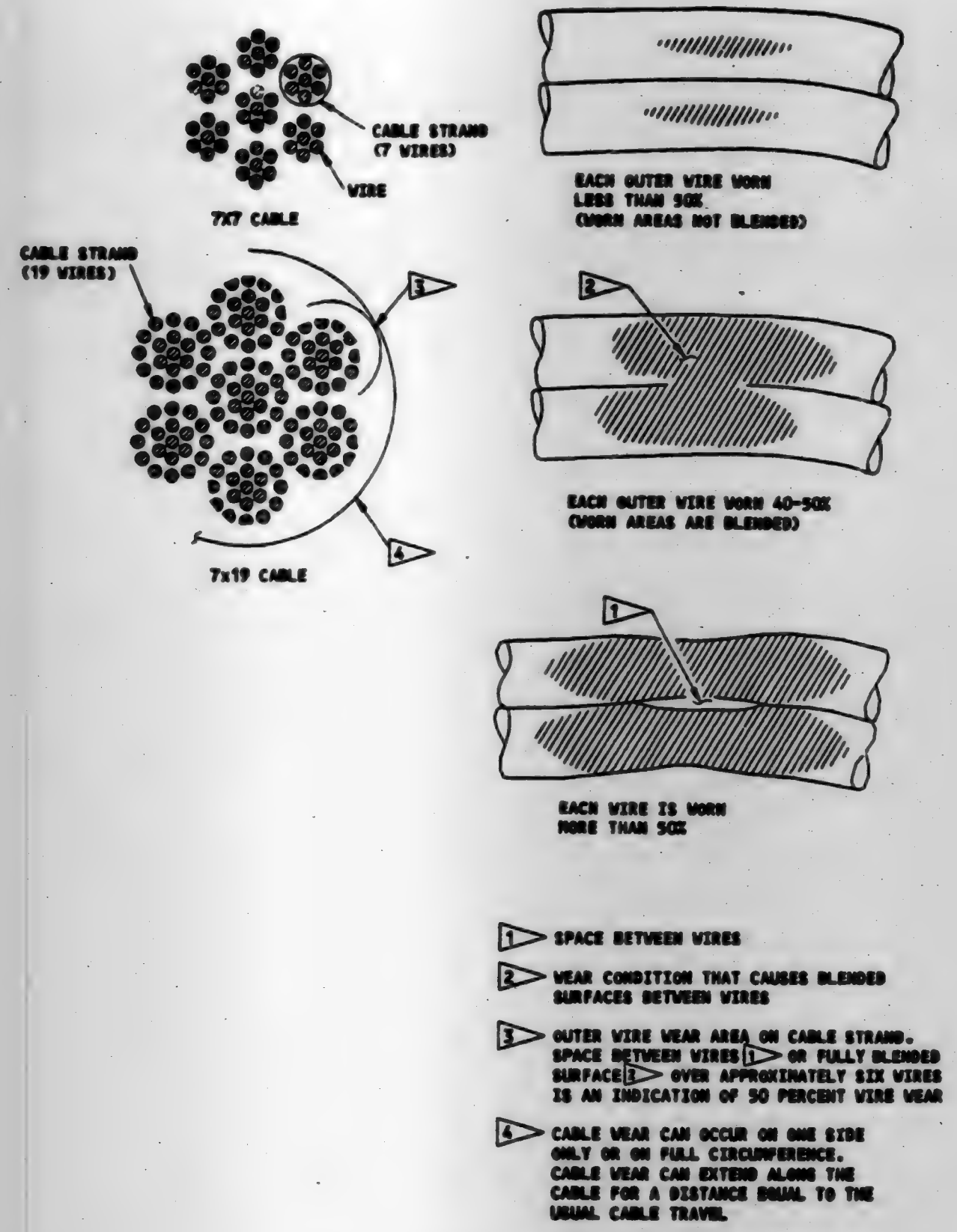

Figure 1

Figure 2

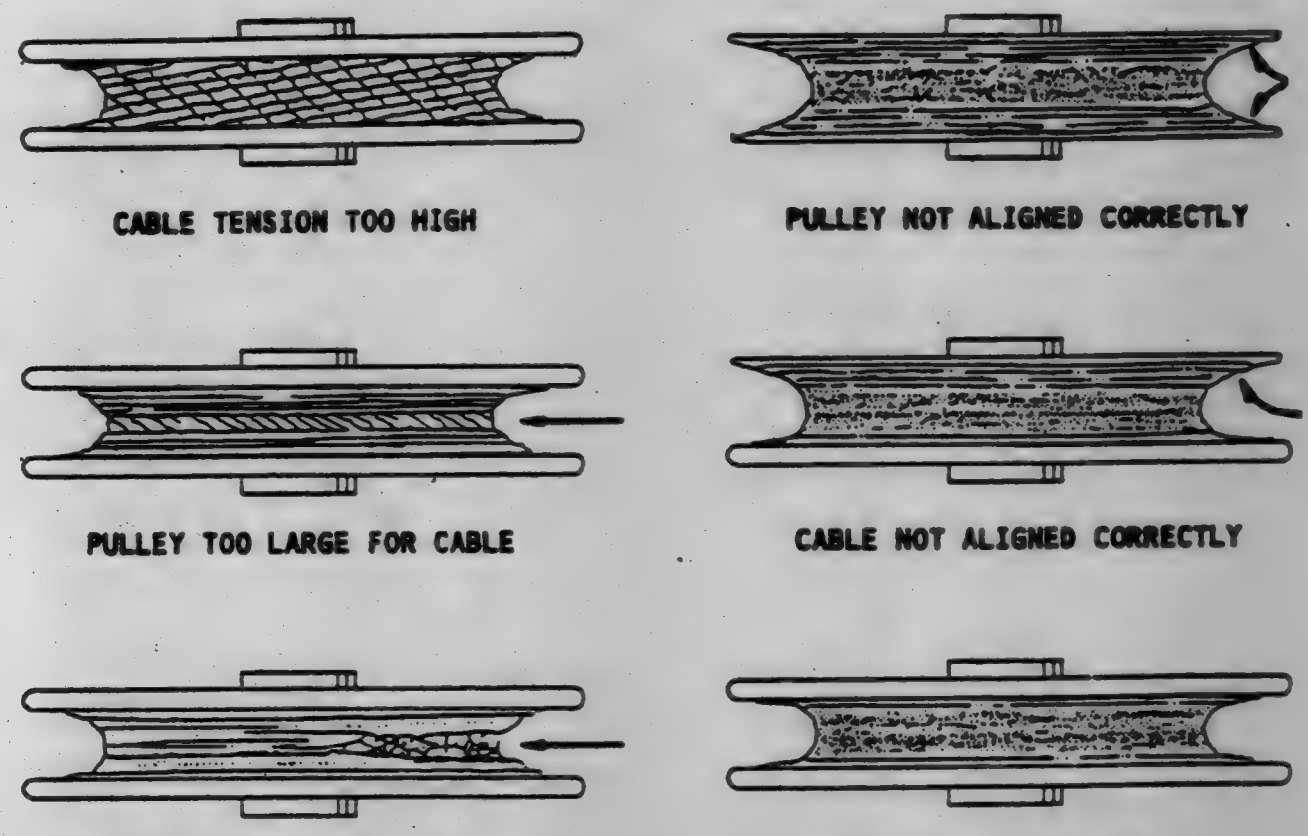

Pulley Wear Patterns

Figure 2

BILLING CODE 4910-13-C

(b) For airplanes identified in Boeing Service Bulletin 767–76–0010, Revision 1, dated February 20, 1992: Within 18 months or 4,500 flight hours after the effective date of this AD, whichever occurs first, replace the two non-metallic pulleys of the thrust control cable that are located in the leading edge of the wing adjacent to the left and right engine strut with aluminum pulleys; and re-rig the thrust control cables; in accordance with the service bulletin.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on April 7, 1999.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–9254 Filed 4–13–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–AAL–26]

RIN 2120–AA66

Proposed Modification and Revocation of Federal Airways; AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to modify five jet routes, three Very High Frequency Omnidirectional Range (VOR) Federal airways, and one colored Federal airway, and to revoke one jet route, located in the State of Alaska (AK). The FAA is proposing this action for the following reasons: to realign the North Pacific (NOPAC) Air Traffic Service (ATS) route structure; to reflect the ADAK Nondirectional Radio Beacon (NDB), AK, decommissioning from the National Airspace System (NAS); and to resolve an aeronautical charting discrepancy. Further, this action would improve the management of air traffic operations in the State of Alaska and enhance safety.

DATES: Comments must be received on or before May 26, 1999.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Air Traffic Division, AAL–500, Docket No. 98–AAL–26, Federal Aviation Administration, 222 West 7th Avenue, #14, Anchorage, AK 99533.

The official docket may be examined in the Rules Docket, Office of the Chief Counsel, Room 915, 800 Independence Avenue, SW., Washington DC, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Joseph C. White, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 98–AAL–26." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–8783. Communications must identify the notice number of the NPRM. Persons interested in being placed on a mailing list for future NPRM's should call the FAA's Office of Rulemaking, (202) 267–9677 for a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

An electronic copy of this document may be downloaded, using a modem and suitable communications software, from the FAA regulations section of the Fedworld electronic bulletin board service (telephone: 703–321–3339) or the **Federal Register**'s electronic bulletin board service (telephone: 202–512–1661).

Internet users may reach the FAA's web page at http://www.faa.gov or the Federal Register's web page at http://www.access.gpo.gov/nara/ index.html for access to recently published rulemaking documents.

The Proposal

The FAA is proposing an amendment to 14 CFR part 71 (part 71) to modify five jet routes, three VOR Federal airways, and one colored Federal airway, and to revoke one jet route.

Specifically, jet routes J–111, J–115, J–127, J–501, J–511, VOR Federal airways V–319, V–453, V–456, and Colored Federal airway Green-8 would be modified, and J–814R would be revoked. The FAA is proposing this action for the following reasons:

Segments of J–111 from Anchorage to Middleton Island to the noncompulsory reporting point SNOUT overlap existing J–804R segments and are not used.

J–115 and Colored Federal airway Green-8 use ADAK NDB which will be decommissioned. The new NDB on ADAK Island will be named Mount Moffett NDB.

J–127, J–501, J–511, and J–814R terminate at AUGIN, MIXER, ENCOR, and PANTT fixes which were once part of the NOPAC ATS route structure and these fixes are no longer required for ATC purposes. As a result, the FAA is proposing to revise J–127, J–501, and J–511 to reflect this change in route structure, and to revoke J–814R as this route is no longer needed for ATC purposes.

V–319, and V–453 are being amended by adding non-part 95 segments which provide continuity and make it easier for the pilot to plan the flight and file the flight plan. The conversion of these non-part 95 segments would change uncharted nonregulatory route segments to VOR Federal Airway segments, thus adding to the instrument flight rules (IFR) airway and route infrastructure in Alaska. Also, pilots would be provided with minimum en route altitudes and minimum obstruction clearance altitudes information along the new route segments, thereby enhancing safety.

V–456 would be amended to correct a discrepancy with the victor airway and how it is depicted on the IFR Enroute L–3/L–4 Low Altitude—Alaska Chart and the Kodiak Aeronautical Sectional Chart. The outbound radial from King Salmon is 032° on the sectional chart and 033° on the enroute chart. The current legal description for V–456 includes an intersection (King Salmon 053° and Kenai 239°) which needs to be removed. This action would make the route segment a straight line and would not affect the fixes STREW, BITOP, or COPPS on V–456.

Jet routes, green Federal airways, and Alaskan VOR Federal airways are published in paragraph 2004, paragraph 6009(a), and paragraph 6010(b), respectively, of FAA Order 7400.9F dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The jet routes, green Federal airway, and Alaskan VOR Federal airways listed in this document would be published subsequently in the Order.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed action: (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

Paragraph 2004—Jet Routes

* * * * *

J–111 [Revised]

From Nome, AK, via Unalakleet, AK; McGrath, AK; Anchorage, AK.

* * * * *

J–115 [Revised]

From Shemya, AK, NDB; Mount Moffett, AK, NDB; Dutch Harbor, AK, NDB; Cold Bay, AK; King Salmon, AK; INT King Salmon 053° and Kenai, AK, 239° radials; Kenai; Anchorage, AK; Fairbanks, AK; Chandalar, AK, NDB; to Deadhorse, AK.

* * * * *

J–127 [Revised]

From King Salmon, AK; to INT King Salmon 042° and Anchorage, AK, 246° radials.

* * * * *

J–501 [Revised]

From San Marcus, CA, via Big Sur, CA; Point Reyes, CA, via Rogue Valley, OR; Hoquiam, WA; INT Hoquiam 354° and Tatoosh, WA, 162° radials; Tatoosh; Cape Scott, BC, Canada, NDB; Sandspit, BC, Canada; Biorka Island, AK; Yakutat, AK; Johnstone Point, AK; Anchorage, AK; Sparrevohn, AK; Bethel, AK; excluding the airspace within Canada.

* * * * *

J–511 [Revised]

From Dillingham, AK; Anchorage, AK; Big Lake, AK; Gulkana, AK; to Burwash Landing, YT, Canada, NDB, excluding the portion which lies over Canadian territory.

* * * * *

J–814R [Revoked]

* * * * *

Paragraph 6009(a)—Green Federal Airways

* * * * *

Green–8 [Revised]

From Shemya, AK, NDB; 20 AGL, Mount Moffet, NDB, AK; 20 AGL, Dutch Harbor, AK, NDB; 20 AGL, INT Dutch Harbor NDB 041° and Elfee, AK, NDB 253° bearings; 20 AGL, Elfee NDB; 20 AGL Saldo, AK, NDB; INT Saldo NDB 054° and Kachemak, AK, NDB 269° bearings; to Kachemak NDB. From Campbell Lake, AK, NDB; Glenallen, AK, NDB; INT Glenallen NDB 052° and Nabesna, AK NDB 252° bearings; Nabesna NDB.

* * * * *

Paragraph 6010(b)—Alaskan VOR Federal Airways

* * * * *

V–319 [Revised]

From Yakutat, AK, via Johnstone Point, AK; INT Johnstone Point 286° and Anchorage, AK, 117° radials; Anchorage; Sparrevohn, AK; Bethel, AK; Hooper Bay, AK; Nanwak, AK, NDB; to Kipnuk, AK.

* * * * *

V–453 [Revised]

From King Salmon, AK; Dillingham, AK; INT Dillingham, AK 308° and Bethel, AK 143° radials; Bethel, AK; to Unalakleet, AK.

* * * * *

V–456 [Revised]

From Cold Bay, AK; King Salmon, AK; Kenai, AK; Anchorage, AK; Big Lake, AK; Gulkana, AK; to Northway, AK.

* * * * *

Issued in Washington, DC, April 6, 1999.

Reginald C. Matthews,

Acting Program Director for Air Traffic Airspace Management.

[FR Doc. 99–9298 Filed 4–13–99; 8:45 am]

BILLING CODE 4910–13–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34–41261; File No. S7–5–99]

RIN 3235–AH40

Publication or Submission of Quotations Without Specified Information

AGENCY: Securities and Exchange Commission.

ACTION: Reproposed rule; extension of comment period.

SUMMARY: The Securities and Exchange Commission is extending the comment period for a release reproposing amendments to Rule 15c2–11 under the Securities Exchange Act of 1934 (Release No. 34-41110) which was published in the **Federal Register** on

March 8, 1999 (64 FR 11124). Rule 15c2–11 governs the publication of quotations for securities in a quotation medium other than a national securities exchange or Nasdaq. The comment period for Release No. 34–41110 is being extended to May 8, 1999.

DATES: Comments must be received on or before May 8, 1999.

ADDRESSES: Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Comments may also be submitted electronically at the following E-mail address: rule-comments@sec.gov. All comment letters should refer to File No. S7–5–99. All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW, Washington, DC 20549. Electronically submitted comment letters will be posted on the Commission's Internet website (http://www.sec.gov).

FOR FURTHER INFORMATION CONTACT: Any of the following attorneys in the Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–1001, at (202) 942–0772: James A. Brigagliano, Florence E. Harmon, Jerome J. Roche, or Thomas D. Eidt.

SUPPLEMENTARY INFORMATION: On February 25, 1999, the Commission issued Release No. 34–41110 soliciting comment on reproposed amendments to Rule 15c2–11. Rule 15c2–11 governs the publication of quotations for securities in a quotation medium other than a national securities exchange or Nasdaq. The Commission originally requested that comments on this reproposal be received by April 7, 1999. The Commission has recently received several requests to extend the comment period and believes that extending the comment period is appropriate in order to give the public additional time to comment on the matters addressed by the release. Therefore, the Commission is extending the comment period to May 8, 1999, for Release No. 34–41110 (Publication or Submission of Quotations Without Specified Information).

Dated: April 8, 1999.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–9242 Filed 4–13–99; 8:45 am]

BILLING CODE 8010–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 600 and 648

[I.D. 040599D]

Magnuson-Stevens Act Provisions; General Provisions for Domestic Fisheries; Applications for Exempted Fishing Permits (EFPs)

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notification of experimental fishery proposals; request for comments.

SUMMARY: NMFS announces that the Regional Administrator, Northeast Region, NMFS (Regional Administrator), is considering approval of the Gulf of Maine Separator Trawl Whiting Fishery (Separator Trawl Fishery) and proposed supplemental gear testing experiment to enable vessels to conduct operations otherwise restricted by regulations governing the Northeastern Multispecies Fishery. The experimental fisheries would allow commercial vessels to fish for, retain, and land silver hake (whiting) with mesh smaller than currently allowed in a portion of the Gulf of Maine/Georges Bank Regulated Mesh Area. These experiments would continue investigations designed to demonstrate the effectiveness of a bycatch reduction device (separator grate) assembled on small-mesh silver hake (whiting) trawls. It is anticipated that participation level would be dictated by two interrelated factors: Market value of whiting at the dock and the availability of the whiting at sea. Approximately 60 vessels were authorized to participate in last year's experiment from July 1 - November 30, 1998, although enrollment periods fluctuated due to the factors identified here. Regulations implementing the Magnuson-Stevens Fishery Conservation and Management Act require publication of this notification to provide interested parties the opportunity to comment on the proposed experimental fisheries.

DATES: Comments on this notice must be received by April 29, 1999.

ADDRESSES: Comments should be sent to Jon Rittgers, Acting Regional Administrator, NMFS, Northeast Regional Office, 1 Blackburn Drive, Gloucester, MA 01930. Mark on the outside of the envelope "Comments on Proposed Experimental Fisheries."

FOR FURTHER INFORMATION CONTACT: Bonnie VanPelt, Fishery Management Specialist, 978–281–9244.

SUPPLEMENTARY INFORMATION: The Maine Department of Marine Resources (MEDMR) submitted an application to continue the experimental whiting separator trawl fishery (Separator Trawl Fishery) in the Small Mesh Northern Shrimp Area, a portion of the Gulf of Maine/Georges Bank Regulated Mesh Area. This will provide an additional opportunity to collect information on the effectiveness of the separator grate in an effort to show that the separator trawl fishery could be a low bycatch fishery. Although this would be the fifth consecutive year of the experiment, data from previous years are sparse and inclusive, due in part to the fact that the whiting failed to school in the experimental fishery areas and market value of whiting declined. As a result, there was limited activity in the experimental fishery in 1998. Therefore, in order to gather sufficient data on the separator grate's ability to reduce bycatch of regulated species consistent with the requirement of an exempted fishery, as well as to determine whether the fishery as a whole can reach its economic potential, a continuation of the experiment is necessary.

Participants in the Separator Trawl Fishery will be required to elect either a food fishery or bait fishery component designation: Food fishery enrollment includes an allowance for landing whiting at the dock only, while bait fishery enrollment allows for at-sea utilization of whiting and transfer of whiting catch at sea under a special authorization. Program participants may designate only one fishery component at a time for a minimum enrollment of 7 days.

A participants list will be compiled by the MEDMR based on a trends analysis of historical enrollment in recent years. Further limitations on participation may be necessary depending on consistency in reporting or logbook compliance issues identified through the NMFS review process.

As part of the same request, the MEDMR also requested a supplemental gear testing experiment to support the objectives of the Separator Trawl Fishery. Proposed modifications of the current gear include two increased bar spacings on the separator grate and two increased codend mesh sizes along with the addition of a raised footrope configuration on the otter trawl. The gear testing experiment may reveal modifications in trawl gear and grate configuration that would be more effective in reducing bycatch and more

selective in catching the appropriate sized whiting in accordance with whiting resource management strategies.

EFPs would be issued to the participating vessels in both experiments in accordance with the conditions stated therein, and will exempt vessels from the mesh size, days-at-sea, and other gear restrictions of the Northeast Multispecies Fishery Management Plan.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: April 8, 1999.

Gary C. Matlock,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–9313 Filed 4–13–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[I.D. 033199C]

RIN 0648–AM15

Fisheries of the Gulf of Mexico; Amendment 16B to the Fishery Management Plan (FMP) for the Reef Fish Resources of the Gulf of Mexico (Amendment 16B)

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability of Amendment 16B to the FMP for the reef fish resources of the Gulf of Mexico; request for comments.

SUMMARY: Amendment 16B would authorize size limits for banded rudderfish, lesser amberjack, cubera snapper, dog snapper, mahogany snapper, mutton snapper, schoolmaster, scamp, gray triggerfish, and hogfish; exclude banded rudderfish, lesser amberjack, dwarf sand perch, sand perch, and hogfish from the 20–fish aggregate (combined) reef fish bag limit; authorize new bag limits for hogfish, speckled hind, warsaw grouper, and for banded rudderfish and lesser amberjack combined; remove queen triggerfish from the Reef Fish FMP and authorize removal from the applicable regulations; and eliminate the distinction between species in the management unit and species in the fishery, but not included in the management unit. The intended effect of Amendment 16B is to conserve and manage the reef fish resources of the Gulf of Mexico.

DATES: Written comments must be received on or before June 14, 1999.

ADDRESSES: Comments must be mailed to the Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702. Requests for copies of the FMP, which includes an Environmental Assessment and a Regulatory Impact Review, should be sent to the Gulf of Mexico Fishery Management Council (Council), The Commons at Rivergate, 3018 U.S. Highway 301 North, Suite 1000, Tampa, FL 33619–2266; Phone: 813–228–2815; fax: 813–225–7015.

FOR FURTHER INFORMATION CONTACT: Dr. Roy E. Crabtree, 727-570-5305, fax 727–570–5583.

SUPPLEMENTARY INFORMATION: The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), as amended by the Sustainable Fisheries Act, requires each Regional Fishery Management Council to submit any FMP or amendment to NMFS for review and approval, disapproval, or partial approval. The Magnuson-Stevens Act also requires that NMFS, upon receiving a FMP or amendment, immediately publish a document in the **Federal Register** stating that the FMP or amendment is available for public review and comment.

Amendment 16B would authorize more conservative bag and size limits for several reef fish species and improve consistency with Florida state regulations, thereby improving enforcement. Fish trap phase-out measures that were the subject of public hearings as part of draft Amendment 16, and approved by the Council, were included in Amendment 16A, which was partially approved by NMFS on March 18, 1999.

Minor Amberjack Measures

A 1996 NMFS stock assessment suggests that the number of young greater amberjack has decreased steadily since 1991. In addition, anecdotal information from anglers along Florida's Gulf coast suggests that greater amberjack have decreased in size and abundance in recent years. In response to this information, the Council developed Amendment 12 to the Reef Fish FMP, which established a 1–fish bag limit for greater amberjack, and Amendment 15 to the FMP, which established a seasonal closure of the commercial fishery. Greater amberjack are also subject to minimum size limits of 28 inches (71.1 cm) fork length for the recreational fishery and 36 inches (91.4 cm) for the commercial fishery.

Juvenile greater amberjack, lesser amberjack, and banded rudderfish are difficult to distinguish and are often confused by the public; consequently, misidentified juvenile greater amberjack may be landed as lesser amberjack or banded rudderfish, species that are currently unregulated. Therefore, the Council believes that additional protection for juvenile greater amberjack is warranted. The intent of Amendment 16B is to reduce the harvest of misidentified juvenile greater amberjack by limiting the harvest of these minor amberjack species. The word "minor" used by the Council in Amendment 16B is not intended to reflect on the significance of these measures; instead it refers to the species banded rudderfish and lesser amberjack.

In Reef Fish Amendment 12 the Council proposed to apply an aggregate bag limit and a minimum size limit of 28 inches (71.1 cm) to greater amberjack, lesser amberjack, and banded rudderfish. These proposed actions would have effectively eliminated the recreational harvest of banded rudderfish and lesser amberjack because these species rarely, if ever, reach 28 inches (71.1 cm). The Council did not present this aspect of the measure as a deliberate, direct allocation; however, the effect of the measure would have been to shift the allocation of these species from principally recreational to entirely commercial. Therefore, this aspect of the measure would have operated as the functional equivalent of a direct allocation, and NMFS considered this allocation unfair and inequitable. Accordingly, NMFS disapproved this portion of Amendment 12 based on national standard 4 of the Magnuson-Stevens Act, which requires that allocations of fishing privilege be fair and equitable to all fishermen.

Amendment 16B would authorize new bag and size limits that should reduce the harvest of banded rudderfish, lesser amberjack, and misidentified greater amberjack while continuing to allow a limited recreational harvest. Amendment 16B would authorize: (1) Establishment of a "slot limit" of 14 inches (35.6 cm) (minimum) to 22 inches (55.9 cm) (maximum) fork length for the commercial and recreational harvest of banded rudderfish and lesser amberjack; and (2) establishment of a 5–fish aggregate bag limit for banded rudderfish and lesser amberjack and exclude both species from the 20–fish aggregate reef fish bag limit.

Species Not Listed in the Management Unit

Since its inception, the FMP has included two lists of reef fishes: One of species in the management unit and another of species in the fishery, but not included in the management unit. The designation of species in the fishery, but not included in the management unit was originally intended for data collection purposes only; however, the existence of two lists has created confusion regarding which species are subject to regulations. Amendment 16B would eliminate the distinction in the FMP between these two lists and create a single list of "species in the reef fish FMP," which identifies the reef fish management unit. There are only four reef fish species that are "species in the fishery but not in the management unit"–sand perch, dwarf sand perch, queen triggerfish, and hogfish. Amendment 16B would include hogfish, dwarf sand perch, and sand perch in the management unit and remove queen triggerfish from the FMP. Amendment 16B would authorize removal of queen triggerfish from the regulations implementing the FMP, and thus allow Florida to regulate vessels registered in the State of Florida and fishing for that species in the exclusive economic zone (EEZ) under that state's more conservative management measures. Although queen triggerfish occur rarely or occasionally throughout the Gulf of Mexico, they are abundant only off Florida and are seldom landed outside Florida.

Florida Compatible Size and Bag Limits

Florida has established bag limits and size limits for several reef fish species for which there are either no corresponding limits in the EEZ, or for which the Federal limits differ from the state limits. In response to a request from the Florida Marine Fisheries Commission (FMFC) that the Council consider implementing size and bag limits consistent with those in Florida state waters, the Council proposes new compatible bag and size limits. In a November 3, 1994, letter the FMFC provided to the Council biological information that formed the basis for Florida's regulations. Although limited, the best scientific information available to the Council, and the precautionary approach to fisheries management, indicate a need for greater protection for these species. The Council concluded that bag and size limits compatible with Florida's would be the most effective means of achieving greater protection, because compatible regulations would facilitate compliance and enforcement. Furthermore, the Council states that with the possible exception of gray triggerfish, Florida accounts for most of the recreational and commercial landings of these species. The proposed minimum size limit for gray triggerfish is based on a 1995 NMFS stock assessment, and, thus, it is an appropriate measure to extend throughout the Gulf EEZ.

Amendment 16B would authorize the establishment of the following minimum size limits: cubera snapper (12 inches (30.5 cm), total length (TL)), dog snapper (12 inches (30.5 cm), TL), mahogany snapper (12 inches (30.5 cm), TL), schoolmaster (12 inches (30.5 cm), TL), mutton snapper (16 inches (40.6 cm), TL), scamp (16 inches (40.6 cm), TL), gray triggerfish (12 inches 30.5 cm), TL), and hogfish (12 inches (30.5 cm), fork length). In addition, Amendment 16B would authorize the establishment of a 5–fish bag limit for hogfish, exclude hogfish from the 20–fish aggregate reef fish bag limit, and clarify that sand perch and dwarf sand perch are excluded from the 20–fish aggregate bag limit. Sand perch and dwarf sand perch are often used as bait, and there is no evidence to suggest their stocks are in need of management.

Speckled Hind and Warsaw Grouper

The NMFS Office of Protected Resources has added speckled hind and warsaw grouper to the list of candidates for possible listing as threatened or endangered under the Endangered Species Act. Candidate status does not afford any specific level of additional protection for a species, but it does reflect a significant level of concern regarding a species' status. Amendment 16B would authorize the establishment of a recreational bag limit of one speckled hind and one warsaw grouper per vessel. These new restrictions would also prohibit the sale of these species by the recreational sector because the FMP and existing regulations prohibit the sale of reef fish subject to bag limits. The commercial harvest of warsaw grouper and speckled hind would continue and be limited by the deep-water grouper quota. The Council believes that because warsaw grouper and speckled hind are usually caught in relatively deep water, the mortality rate of released fish is high; consequently, closure of the fishery would provide little additional protection. Furthermore, the Council states that commercial vessels do not target these species, and since the intent is to eliminate targeting of these species, additional restrictions on the commercial fishery are not needed.

A proposed rule to implement Amendment 16B has been completed. In accordance with the Magnuson-Stevens Act, NMFS is evaluating the proposed rule to determine whether it is consistent with the FMP, the Magnuson-Stevens Act, and other applicable law. If that determination is affirmative, NMFS will publish that finding in the **Federal Register** for public review and comment.

Comments received by June 14, 1999, whether specifically directed to Amendment 16B or the proposed rule, will be considered by NMFS in its decision to approve, disapprove, or partially approve the FMP. Comments received after that date will not be considered by NMFS in this decision. All comments received by NMFS on Amendment 16B or the proposed rule during their respective comment periods will be addressed in the final rule.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: April 8, 1999.

Gary C. Matlock,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–9314 Filed 4–13–99; 8:45 am]

BILLING CODE 3510–22–F

Notices

Federal Register
Vol. 64, No. 71
Wednesday, April 14, 1999

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Docket No. FV99–360]

Information About Recognizing Limited Liability Companies Under the Perishable Agricultural Commodities Act (PACA)

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice.

SUMMARY: This document provides notice to the public that it is USDA policy to recognize a limited liability company (LLC) as a legal entity under the Perishable Agricultural Commodities Act (PACA), and that any member of an LLC, and/or any other person authorized by the members to conduct business on behalf of an LLC, may be considered to be "responsibly connected" with the LLC.

DATES: April 14, 1999.

ADDITIONAL INFORMATION: Contact Charles W. Parrott, Assistant Chief, PACA Branch, Fruit and Vegetable Division, AMS, USDA, Room 2095–So. Bldg., P.O. Box 96456, Washington, DC 20090–6456. Email—charles.parrott@usda.gov. This notice will also be posted on the Internet at www.ams.usda.gov/fv/paca.htm.

SUPPLEMENTARY INFORMATION: The Perishable Agricultural Commodities Act (PACA) establishes a code of fair trade practices covering the marketing of fresh and frozen fruits and vegetables in interstate and foreign commerce. The PACA protects growers, shippers, distributors, and retailers dealing in those commodities by prohibiting unfair and fraudulent practices. In this way, the law fosters an efficient nationwide distribution system for fresh and frozen fruits and vegetables, benefitting the whole marketing chain from farmer to consumer. USDA's Agricultural Marketing Service (AMS) administers and enforces the PACA.

Any person who buys or sells commercial quantities of fruits and vegetables in interstate or foreign commerce must be licensed under the PACA. Under the Act, the term "person" means any individual, partnership, corporation, association, or separate legal entity. 7 U.S.C. 499a(b)(1); 7 CFR 46.2(i). Separate licenses are required for each person. A person is designated as "responsibly connected" with a firm under the PACA if that person is affiliated as an owner, as a partner in a partnership, or as an officer, director or holder of more than 10 percent of the outstanding stock of a corporation or association. 7 U.S.C. 499a(b)(9); 7 CFR 46.2(ff). In the event that a licensee is found to have violated the Act and USDA suspends or revokes the firm's license, then the licensee and its "responsibly connected" principals face PACA licensing and employment restrictions which may include the denial of a license, a prohibition on employment with another PACA licensee, or the requirement that a bond be posted as a prerequisite to licensing or employment in the fruit and vegetable industry. 7 U.S.C. 499h.

Although the PACA and PACA regulations do not specifically list the LLC as a "person," it is USDA policy to recognize an LLC as a separate legal entity, just as LLCs are recognized in most states, subject to licensing under the PACA regulations. This notice provides information about how AMS handles LLCs under the PACA, especially with regard to the licensing of LLCs and the responsibly connected status of LLC members.

An LLC may be described as a cross between a partnership and a corporation. This hybrid business structure is now available to businesses in most states. The personal liability protection afforded by the LLC is similar to that of a corporation. For example, the members are insulated from liability arising solely from being a member but are not insulated from liability for the acts of the LLC which violate any laws or regulations. Liability issues may vary somewhat according to state law and the LLC's organizational agreement.

Although an LLC affords personal liability protection to its owners that is similar to that of a corporation, the ownership characteristics of an LLC more closely resemble those of a partnership. The LLC owners are often referred to as members, and member-managers may be designated. Membership requirements in an LLC can be determined by the members; for example, members may join through financial contributions or through the performance of services.

In general, state LLC statutes require the filing of documentation similar to articles of incorporation, sometimes called articles of organization. In addition, an operating agreement is entered into which usually designates who has the authority to run the LLC company. This operating agreement usually details the process to be followed in choosing the manager(s) and sets forth the manager(s)' authority and the authority retained by the members. The manager(s) is often, but not always, a member of the LLC. Specific requirements vary by state.

Because of the unique composite nature of the LLC, an LLC's members are analogous to partners in a partnership, while managers, who are not always members, may be analogous to corporate officers, depending on the manager's responsibilities as set out by the LLC's operating agreement. Therefore, it is USDA's policy that all LLC members, regardless of the member's financial contribution, are "responsibly connected" persons under the PACA, just as all partners are "responsibly connected" with a partnership. In addition, any person(s), whether or not a member, who is authorized by the LLC to be in charge of the daily business operations, management, and control of the LLC, may be considered responsibly connected to the LLC by USDA, just as officers in a corporation are under the PACA. The determination of whether a person other than a member is "responsibly connected" will depend upon the terms of the LLC's operating agreement. These agreements are similar to a partnership agreement or corporate bylaws which outline who is in charge of the business' daily operations. Those persons whom the LLC authorizes to be in charge of the day-to-day operation, management and control of the LLC's daily business activities may include, but are not limited to, those with the titles of managers, officers, and/or directors.

An LLC members' ownership in the company closely resembles a

partnership. Therefore, all LLC members, including corporations or other entities, must be identified on the firm's PACA license application. If a member is a corporation or other legal entity, more information, such as the names of officers of the corporation or other data, will be required by AMS. PACA license applications submitted by LLCs should include organizational information about the company, including, but not limited to, documentation filed with the state in which the LLC is legally established, such as its articles of organization and its operating agreement. Only one member's signature is required to make a valid PACA application. In addition, just as is required of other legal entities, if the articles of organization or the operating agreements change, the LLC should notify AMS' PACA Branch as soon as possible and the LLC should submit revised documents to the PACA Branch.

The LLC business structure has become widely accepted throughout the United States as a new legal entity. AMS is hereby providing notice to all current and future licensees that certain information is required in order to obtain a license as an LLC under the PACA. In addition, notice is given to all LLC members that they are presumed to be "responsibly connected" persons and to all LLC managers, who are not also members, that they are potentially "responsibly connected" persons. The "responsibly connected" status of LLC managers will be determined on a case-by-case basis, depending upon the terms of the LLC's operating agreement and the ways in which the person's status is analogous to that of an officer, director or shareholder of a corporation. Therefore, both members and managers may be subject to PACA sanctions if the Act is violated by the LLC.

Dated: April 6, 1999

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 99–8975 Filed 4–13–99; 8:45 am]

BILLING CODE 3410–02–U

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

Notice of Intent To Grant Exclusive License

AGENCY: Agricultural Research Service, USDA.

ACTION: Notice of intent.

SUMMARY: Notice is hereby given that the U.S. Department of Agriculture, Agricultural Research Service, intends to grant to Protein Scientific, Inc./The Protein Group, of Portland, Maine, an exclusive license to U.S. Patent No. 5,071,763 issued on December 10, 1991, and the Divisional U.S. Patent No. 5,198,351 issued on March 30, 1993, both entitled "Lactose Hydrolysis by Mutant *Streptococcus thermophilus*." Notice of availability for U.S. Patent No. 5,071,763 was published in the **Federal Register** on January 23, 1992, and notice of availability for U.S. Patent No. 5,198,351 was published in the **Federal Register** on December 17, 1991.

DATES: Comments must be received by June 14, 1999.

ADDRESSES: Send comments to: USDA, ARS, Office of Technology Transfer, 5601 Sunnyside Avenue, Room 4–1158, Beltsville, Maryland 20705–5131.

FOR FURTHER INFORMATION CONTACT: June Blalock of the Office of Technology Transfer at the Beltsville address given above; telephone: 301–504–5989.

SUPPLEMENTARY INFORMATION: The Federal Government's patent rights to this invention are assigned to the United States of America, as represented by the Secretary of Agriculture. It is in the public interest to so license this invention as Protein Scientific, has submitted a complete and sufficient application for a license. The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, by June 14, 1999, the Agricultural Research Service receives written evidence and argument which establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Richard M. Parry, Jr.,

Assistant Administrator.

[FR Doc. 99–9263 Filed 4–13–99; 8:45 am]

BILLING CODE 3410–03–P

DEPARTMENT OF AGRICULTURE

Forest Service

Information Collection; Request for Comments; Public Perceptions of Land Use Change

AGENCY: Forest Service, USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Forest Service announces its intent to establish a new information collection. The new collection will help the Forest Service meet the needs and expectations of the people who live and work along the Interstate-90 (I–90) corridor, within and in proximity to, the Mt. Baker-Snoqualmie and Wenatchee National Forests. Respondents will include wildlife, silviculture, timber, land planning, wildland conservation, business, and development professionals, biologists, and residents along the I–90 corridor.

DATES: Comments must be received in writing on or before June 14, 1999.

ADDRESSES: All comments should be addressed to Linda Kruger, Research Social Scientist, Seattle Forestry Sciences Laboratory, Forest Service, USDA, 4043 Roosevelt Way NE, Seattle, Washington 98105 or email lkruger/r6pnw_seattle@fs.fed.us.

FOR FURTHER INFORMATION CONTACT: Linda Kruger, Seattle Forestry Sciences Laboratory, at (206) 553–7817.

SUPPLEMENTARY INFORMATION:

Background

The Mt. Baker-Snoqualmie and Wenatchee National Forests are in close proximity to the large, rapidly expanding Seattle, Washington, area. Urban residents and businesses are making more demands on nearby National Forest lands. Many urban residents in this metropolitan area are moving to rural communities or forested housing developments in an attempt to enjoy the natural environment of the Pacific Northwest, while maintaining access to a vibrant urban center. Multiple interests, such as recreation, tourism, housing, access to a vibrant urban center. Multiple interests, such as recreation, tourism, housing, private-sector businesses, timber, wildlife, and conservation are competing for use, within and in proximity to, the Mt. Baker-Snoqualmie and Wenatchee National Forests along the Washington State I–90 corridor. This competition and increased demand have already resulted in new ski resorts, recreational facilities, shopping malls, increased resistance to timber harvesting, and heavier traffic and congestion.

Data from this information collection will be considered when revising land and resource management plans and will help the Forest Service meet multiple-use land management needs of the Mt. Baker-Snoqualmie and Wenatchee National Forest lands in close proximity to the Washington State I–90 corridor.

Description of Information Collection

The following describes the new information collection:

Title: Public Perceptions of Land Use Change.

OMB Number: New.
Expiration Date of Approval: New.
Type of Request: The following describes a new information collection requirement and has not received approval by the Office of Management and Budget.

Abstract: The data in this information collection will be used to identify the range of perceptions, concerns, and attitudes the public has toward changes in land use along the Washington State I–90 corridor within and in close proximity to the Mt. Baker-Snoqualmie and Wenatchee National Forests. The data also will be used to identify the characteristics about the I–90 corridor that the respondents value most; to explore the differences in opinion of various groups on how to use National Forest and adjacent land; and to ascertain the perceptions that the diverse group of respondents has regarding the Forest Service's land management practices and policies. Additionally, the data will be used for amendments and revisions of forest plans, as well as in assessing proposed National Forest projects and activities. Respondents include wildlife, silviculture, timber, land planning, wildland conservation, business and development professionals, biologists, and residents along the I–90 corridor.

The Forest Service will provide data from this information collection to other agencies and organizations, such as city and county planning commissions, the Washington Department of Natural Resources, and the Mountains to Sound Greenway Trust (a non-profit Seattle-based organization working to create a greenbelt along the I–90 corridor from Seattle to Ellensburg). The results of the study also will be available to the participants upon request and will be published in community newspapers and organization newsletters.

The Forest Service Pacific Northwest Research Station, People and Natural Resources Program has entered into a cooperative agreement with the University of Washington to facilitate the collection of information. University of Washington staff, in collaboration with Forest Service Pacific Northwest Research Station staff, will write and administer the survey and analyze the survey results.

Respondents will be selected in such a way as to help ensure representation from all interested groups.

University of Washington staff, along with Forest Service staff, will ask respondents to complete a survey assessing their concerns about changes in how to use National Forest and adjacent land along the Washington State I–90 corridor, their familiarity with the issues related to changes in use of these lands, their attitudes toward changes in the use of these lands, their ethnic and economic background, their education level, their name, and their address.

Data gathered in this information collection is not available from other sources.

Estimate of Burden: 30 minutes.
Type of Respondents: Respondents will include wildlife, silviculture, timber, land planning, wildland conservation, business and development professionals, biologists, and residents along the I–90 corridor.
Estimated Number of Respondents: 1000.
Estimated Number of Responses per Respondent: 1.
Estimated Total Annual Burden on Respondents: 500 hours.

Comment Is Invited

The agency invites comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of this agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity or the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Use of Comments

All comments received in response to this notice, including name and address when provided, will be summarized and included in the request for Office of Management and Budget approval. All comments will also become a matter of public record.

Dated: April 5, 1999.
Robert Lewis, Jr.,
Acting Associate Chief.
[FR Doc. 99–9335 Filed 4–13–99; 8:45 am]
BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Lemolo Watershed Projects, Diamond Lake Ranger District, Umpqua National Forest, Douglas County, Oregon

AGENCY: Forest Service, USDA.
ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The USDA, Forest Service, will prepare an environmental impact statement (EIS) for a variety of connected resource projects within the Lemolo watershed planning area of the Diamond Lake Ranger District. These projects were developed according to direction in the Umpqua National Forest Plan, as amended, and in response to recommendations in the Diamond Lake/Lemolo Lake Watershed Analysis. They are intended to restore, to the extent possible, the desired vegetation patterns in the planning area by approximating natural disturbance processes while providing economic benefits to the local economy. The projects being proposed include several timber sales, the construction of temporary and system roads, site preparation, planting, the burning of natural fuels, road decommissioning, and soil restoration. These projects are proposed for implementation in the year 2000 and 2001. The planning area is located approximately 80 miles east of Roseburg, Oregon. The agency gives notice of the full environmental analysis and decision-making process that will occur on the proposal so that interested and affected people may become aware of how they can participate in the process and contribute to the final decision.

DATES: Comments concerning the scope of the analysis should be received in writing by May 21, 1999.

ADDRESSES: Send written comments and suggestions concerning this proposal to J. Dan Schindler, District Ranger, Diamond Lake Ranger District, 2020 Toketee Ranger Station RD, Roseburg, Oregon 97447–9704.

FOR FURTHER INFORMATION CONTACT: Direct questions about the proposed action, or EIS to Pat Williams, ID Team Leader/Timber Sale Planner, Diamond Lake Ranger District, 2020 Toketee Ranger Station RD, Idleyld Park, Oregon 97447–9704, or (541) 498–2531.

SUPPLEMENTARY INFORMATION: The area being analyzed in the Lemolo Watershed Projects EIS encompasses approximately 71,800 acres of National Forest land on the Diamond Lake Ranger District. The planning area include all or portions of sections 24 through 28 and 33 through 36, T25S, R5½E; sections 30, 31 and 32, T25S, R6E; sections 32 through 36, T25½S, R6E; sections 31, 32 and 33, T25½S, R6½E; sections 10 through 15, 22 through 25 and 36, T26S, R5E; sections 1 through 36, T26S, R6E; sections 4 through 9, 15 through 21 and 27 through 35, T26S, R6½E;

sections 1, 12 and 13, T27S, R5E; sections 1 through 28 and 33 through 36, T27S, R6E; sections 3 through 10, 17, 18, 19 and 30, T27S, R6½E; and sections 1, 2, 3, 10, 11 and 12, T28S, R6E, Willamette Meridian, Douglas County, Oregon.

This proposal is based on the need to achieve several objectives for matrix lands within Management Areas 5 and 10 of the planning area. These objectives are described in the 1990 Umpqua National Forest Land and Resource Management Plan (LRMP) and page B–1 of the Record of Decision (ROD) for Amendments to Forest Service and Bureau of Land Management Planning Documents Within the Range of the Northern Spotted Owl. The focus for Management Area 5 is managing the Oregon Cascades Recreation Area (OCRA) consistent with the intent of the Oregon Wilderness Act. Toward this end, the proposed action includes the decommissioning of approximately two miles of roads in the OCRA. The focus of Management Area 10 is the supply of timber to local and regional economies on a cost efficient, sustainable basis. The ROD states that the production of timber and other commodities is an important objective for the Matrix. The ROD states further that one of the objectives of matrix is to provide ecological diversity at the landscape scale in the form of early-successional habitat through commercial timber harvest.

The Diamond Lake/Lemolo Lake Watershed Analysis recommends that harvest prescriptions in the analysis area should create a high level of vegetative diversity in both structure and pattern by replicating natural disturbance processes. Towards this end, the priority in the Lodgepole Pine Type is to conduct regeneration harvests in overstocked lodgepole pine stands older than 70 years to reduce the potential for mountain pine beetle epidemics. There is also an opportunity to reduce stand densities to a more desired condition around Lemolo Lake by commercially thining some of those stands.

From a total planning area of 71,800 acres, the proposed action identifies a need to harvest approximately 1,670 acres under several different silvicultural treatments that include approximately 940 acres of commercial thinning, approximately 490 acres of regeneration harvests, and approximately 240 acres of partial cutting. As proposed, this harvest may be accomplished via three to six timber sales. In conjunction with the sales, implementation of the proposed action will necessitate the construction of 5.4 miles of system roads, the reconstruction of 33.2 miles of existing roads, the construction of 3.5 miles of temporary roads with subsequent obliteration, the decommissioning of 10 miles of road, the construction of two permanent helicopter landings, the expansion of an existing rock pit by two acres, and the burning of natural fuels on approximately 530 acres. Some of the areas prescribed for harvest will require a helicopter yarding system, others will require a skyline yarding system, and others can be harvested with ground-based equipment. The 1,670 acres proposed for harvest are estimated to yield 31.0 million board feet of timber. To put this estimated yield in a perspective that is easier to visualize, the lumber derived from this proposal could build approximately 3,100 low-income family dwellings and provide other wood products, such as chips and fiber, for the regional economy.

As part of the analysis process under the National Environmental Policy Act, the Umpqua National Forest has begun the scoping process for this project. Preliminary issues identified to date include the following:

- Potential effects on the Northern Spotted Owl and it's habitat.
- Potential effects on Wolverine habitat.
- The harvest of timber in a visually sensitive area.
- Potential effects on Lynx habitat.

One of the purposes of this notice of intent is to solicit input from the public. At this very early stage of the analysis process, there are no alternatives to the proposed action other than the No Action Alternative. The scoping is intended to identify issues which may lead to the development of alternatives to the proposed action.

In addition to this notice, the public has been notified of the environmental impact statement through the Umpqua National Forest's April, 1999, Schedule of Proposed Actions (SOPA). Scoping for this project will also include an open house in Roseburg, Oregon, on April 21, 1999. Based on the preliminary issues, the Responsible Official has determined that it is appropriate to proceed with an environmental impact statement.

Public comments are appreciated throughout the analysis process. The draft EIS is expected to be filed with the Environmental Protection Agency (EPA) and be available for public review by October, 1999. The comment period on the draft EIS will be 45 days from the date the EPA publishes the notice of availability in the **Federal Register**. The final EIS is scheduled to be available in December, 1999.

The Forest Service believes it is important to give reviewers notice of this early stage of public participation and of several court rulings related to public participation in the environmental review process. First, reviewers of a draft EIS must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corps.* v. *NRDC,* 435 U.S. 519, 553 (1978). Also, environmental objections that could have been raised at the draft stage may be waived or dismissed by the court if not raised until after completion of the final EIS. *City of Angoon* v. *Hodel,* 803 f.2d 1016, 1022 (9th Cir, 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider and respond to them in the final EIS.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft EIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft EIS or the merits of the alternatives formulated and discussed in the statement. (Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act of 40 CFR 1503.3 in addressing these points.)

In the final EIS, the Forest Service is required to respond to substantive comments and responses received during the comment period that pertain to the environmental consequence discussed in the draft EIS and applicable laws, regulations, and policies considered in making a decision regarding the proposal. The Responsible Official is Don Ostby, Forest Supervisor for the Umpqua National Forest. The Responsible Official will document the decision and rationale for the decision in a Record of Decision. The decision will be subject to appeal under 36 CFR part 215.

Dated: April 5, 1999.

Marty Santiago,

Acting Deputy Forest Supervisor.

[FR Doc. 99–9275 Filed 4–13–99; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Upper Blue Stewardship Project; White River National Forest, Summit County, CO

AGENCY: Forest Service, USDA.
ACTION: Notice; correction.

SUMMARY: The Forest Service published a notice of intent to prepare an environmental impact statement on Monday, April 5, 1999 (64 FR 16419), in conjunction with planning the Upper Blue Stewardship Project. The document contained an incorrect date.
FOR FURTHER INFORMATION CONTACT: Kathleen Phelps or Gwenan Stephens at (970) 468–5400.

Correction

In the **Federal Register** of April 5, 1999, in FR Doc. 99–7977, on page 16420, column three, correct paragraph 1 to read as follows:

"Comments concerning the scope of the analysis should be received in writing by May 5, 1999. In June and July a field trip(s) can be scheduled to look at particular concerns or alternatives in the field (such as non-system trail closures). Please respond if you are interested in attending field trip(s)."

Dated: April 6, 1999.

Gloria Manning,

Acting Deputy Chief, National Forest System.

[FR Doc. 99–9333 Filed 4–13–99; 8:45 am]
BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Eastern Washington Cascades Provincial Advisory Committee and Yakima Provincial Advisory Committee

AGENCY: Forest Service, USDA.
ACTION: Notice of meeting.

SUMMARY: The Eastern Washington Cascades Provincial Advisory Committee and the Yakima Provincial Advisory Committee will meet on Thursday, April 22, 1999, at the Wenatchee National Forest headquarters main conference room, 215 Melody Lane, Wenatchee, Washington. The meeting will begin at 9:00 a.m. and continue until 3:30 p.m. The majority of the meeting will be devoted to presentations on listing of fish species under the Endangered Species Act and a short period of time will be dedicated to the Methow Valley dry forest management proposal. All Eastern Washington Cascades and Yakima Province Advisory Committee meetings are open to the public. Interested citizens are welcome to attend.
FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to Paul Hart, Designated Federal Official, USDA, Wenatchee National Forest, 215 Melody Lane, Wenatchee, Washington, 98801, 509–662–4335.

Dated: April 2, 1999.

Sonny J. O'Neal,

Forest Supervisor, Wenatchee National Forest.

[FR Doc. 99–9321 Filed 4–13–99; 8:45 am]
BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Forestry Research Advisory Council Meeting

AGENCY: Forest Service, USDA.
ACTION: Notice of meeting.

SUMMARY: Pursuant to the requirements of Federal Advisory Committee Act, the Department of Agriculture announces the next meeting of the Forestry Research Advisory Council. The meeting is open to the public. Persons may participate in the meeting if time and space permit. The council agenda includes: a discussion of current issues relating to forestry research; a discussion of science planning related to forestry, natural resources, and laws and regulations that affect research funding and direction; a review of Forest Service Research and Development and the Cooperative Forestry Research (McIntire-Stennis) programs; and other current research issues

The public may file written comments before or after the meeting by sending written comments to Hao C. Tran, Staff Assistant, Deputy Chief for Research and Development, Forest Service, P.O. Box 96090, Washington, DC 20090–6090, (202) 205–1293.
DATES: The meeting will be held May 25–26, 1999, from 8:00 a.m. to 5:00 p.m.
ADDRESSES: The meeting will be held in the Cabinet Room at the Governor's House Hotel, 1615 Rhode Island Avenue, NW, Washington, DC 20036.
FOR FURTHER INFORMATION CONTACT: Hao C. Tran, Office of the Deputy Chief for Research and Development, telephone (202) 205–1293.

Dated: April 8, 1999.

Robert Lewis, Jr.,

Deputy Chief for Research and Development.

[FR Doc. 99–9334 Filed 4–13–99; 8:45 am]
BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Requests for the Appointment of a Technical Advisory Committee

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).
DATES: Written comments must be submitted on or before June 14, 1999.
ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Clearance Officer, Office of the Chief Information Officer, Department of Commerce, Room 5033, 14th and Constitution Avenue, NW, Washington DC 20230.
FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Dawnielle Battle, BXA ICB Officer, Department of Commerce, Room 6881, 14th and Constitution Avenue, NW, Washington, DC, 20230.
SUPPLEMENTARY INFORMATION:

I. Abstract

The Technical Advisory Committees were established to advise and assist the U.S. Government on export control matters. In managing the operations of the TACs, the Department of Commerce is responsible for implementing the policies and procedures prescribed in the Federal Advisory Committee Act. The Bureau of Export Administration provides technical and administrative support for the Committees.

The TACs advise the government on proposed revisions to export control lists, licensing procedures, assessments of the foreign availability of controlled products, and export control regulations. Any producer of items subject to export controls can make application to the Secretary of Commerce requesting that a committee be established. The information provided is used to determine if the creation of a committee is appropriate.

II. Method of Collection

Written request to BXA.

III. Data

OMB Number: 0694–0100.

Form Number: None.

Type of Review: Regular submission for extension of a currently approved collection.

Affected Public: Individuals, businesses or other for-profit and not-for-profit institutions.

Estimated Number of Respondents: 1.

Estimated Time Per Response: 5 hours per response.

Estimated Total Annual Burden Hours: 5.

Estimated Total Annual Cost: No capital expenditures are required.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they will also become a matter of public record.

Dated: April 7, 1999.

Linda Engelmeier,

Departmental Clearance Officer, Office of the Chief Information Officer

[FR Doc. 99–9336 Filed 4–13–99; 8:45 a.m.]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Information Systems Technical Advisory Committee; Notice of Closed Meeting

A meeting of the Information Systems Technical Advisory Committee (ISTAC) will be held May 13, 1999, 9:00 a.m., in the Herbert C. Hoover Building, Room 3884, 14th Street between Pennsylvania Avenue and Constitution Avenue, NW, Washington, DC. The ISTAC advises the Office of the Assistant Secretary for Export Administration with respect to technical questions that affect the level of export controls applicable to information systems equipment and technology.

The Committee will meet only in Executive Session to discuss matters properly classified under Executive Order 12958, dealing with the U.S. export control program and strategic criteria related thereto.

The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on October 3, 1997, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings of the Committee and of any Subcommittees thereof, dealing with the classified materials listed in 5 U.S.C., 552b(c)(1) shall be exempt from the provisions relating to public meetings found in section 10(a)(1) and 10(a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions of meetings of the Committee is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6020, U.S. Department of Commerce, Washington, DC 20230. For further information, contact Lee Ann Carpenter on (202) 482–2583.

Dated: April 8, 1999.

Lee Ann Carpenter,

Director, Technical Advisory Committee Unit.

[FR Doc. 99–9312 Filed 4–13–99; 8:45 am]

BILLING CODE 3510–33–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 031799C]

New England Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings; amendment.

SUMMARY: The New England Fishery Management Council (Council) has modified a meeting of its Groundfish Advisory Panel for April 21, 1999. The meeting will now be a joint meeting with the Groundfish Oversight Committee, and the agenda is unchanged from the initial announcement of the meeting. As announced previously, the Groundfish Committee will also meet on April 22, 1999.

DATES: The meetings will be held on April 21 and 22, 1999.

ADDRESSES: Meetings will be held in Danvers, MA. See the **SUPPLEMENTARY INFORMATION** as previously published in the original notice (64 FR 14215, March 24, 1999) for specific locations.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council (781) 231-0422. Requests for special accommodations should be addressed to the New England Fishery Management Council, 5 Broadway, Saugus, Massachusetts 01906-1097; telephone: (781) 231-0422.

SUPPLEMENTARY INFORMATION: The original notice (64 FR 14215, March 24, 1999) stated that only the Groundfish Advisory Panel would meet on Wednesday, April 21, 1999. The meeting has been rescheduled as a joint meeting between the Groundfish Advisory Panel and Groundfish Committee. All other information, as previously published in the original notice, remains unchanged.

Dated: April 8, 1999.

Valerie L. Chambers,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–9214 Filed 4–8–99; 4:26 pm]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

Patent and Trademark Office

Rules for Patent Maintenance Fees

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce (DOC), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on the continuing and proposed information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before June 14, 1999.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5033, 14th and Constitution Avenue, NW, Washington, DC 20230 or via the Internet (LEngelme@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to the attention of Robert J. Spar, Patent and Trademark Office, Washington, DC 20231, by telephone at (703) 305–9285.

SUPPLEMENTARY INFORMATION:

I. Abstract

Maintenance fees are required to maintain a patent in force under Title 35 of the U.S. Code. Payments of maintenance fees are required at 3½, 7½ and 11½ years after the grant of the patent. The maintenance fee provisions appear in 35 U.S.C. 41(b) and (c). A patent number and serial number of the patent on which maintenance fees are paid are required in order to insure proper crediting of such payments.

There are forms associated with collecting maintenance fees. These forms are Form PTO/SB/45 (Maintenance Fee Transmittal Form), Form PTO/SB/47 ("Fee Address" Indication Form), Form PTO/SB/65 (Petition to Accept Unavoidably Delayed Payment of Maintenance Fee in an Expired Patent (37 CFR 1.378(b)), and Form PTO/SB/66 (Petition to Accept Unintentionally Delayed Payment of Maintenance Fee in an Expired Patent (37 CFR 1.378(c)). The patentee uses Form PTO/SB/45 for payment of the maintenance fee(s) for listed patent(s), and PTO/SB/47 to indicate a "fee address." Form PTO/SB/65 is used by the applicant to petition the PTO to accept unavoidably delayed payment of the maintenance fee for an expired patent, and Form PTO/SB/66 to petition the PTO to accept unintentionally delayed payment of a maintenance fee for an expired patent. Form PTO/SB/46 (Request for Payor Number) was eliminated in favor of Form PTO/SB/125 (already taken into account in 0651–0035) due to the fact that the "payor number" practice was replaced with a more comprehensive "customer number" practice.

II. Method of Collection

By mail, facsimile, and hand carry when the individual desires to participate in the information collection.

III. Data

OMB Number: 0651–0016.

Form Number(s): Forms PTO/SB/45, PTO/SB/47, PTO/SB/65, and PTO/SB/66.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households; businesses or other for-profit; not-for-profit institutions; farms, state, local or tribal governments; and the Federal Government.

Estimated Number of Respondents: 326,101 responses per year.

Estimated Time Per Response: It is estimated to take approximately 48 minutes each to complete the maintenance fee transmittal form and the "fee address" indication form. It is estimated to take 1 hour each to complete the unavoidable and unintentional petitions.

Estimated Total Annual Respondent Burden Hours: 26,965 hours per year.

Estimated Total Annual Respondent Cost Burden: $0 (no capital start-up or maintenance expenditures are required). $947,135 per year is estimated for salary costs associated with respondents.

Title of form	PTO form No.	Estimated time for response	Estimated annual burden hours	Estimated annual responses
Maintenance Fee Transmittal Form	Form PTO/SB/45	48 mins	312,150	10,405
"Fee Address" Indication Form	Form PTO/SB/47	48 mins	468,210	15,607
Petition to Accept Unavoidably Delayed Payment of Maintenance Fee in an Expired Patent (37 CFR 1.378(b)).	Form PTO/SB/65	1 hour	31,325	179
Petition to Except Unintentionally Delayed Payment of Maintenance Fee in an Expired Patent (37 CFR 1.378(c)).	Form PTO/SB/66	1 hour	135,450	774
Totals			947,135	26,965

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, e.g., the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized or included in the request for OMB approval of this information collection; they will also become a matter of public record.

Dated: April 7, 1999.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 99–9337 Filed 4–13–99; 8:45 am]

BILLING CODE 3510–16–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Submission for OMB Review; Comment Request

The Corporation for National and Community Service (hereinafter the "Corporation") , has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, (44 U.S.C. Chapter 35). Copies of these individual ICRs, with applicable supporting documentation, may be obtained by calling the Corporation for National and Community Service, Office of AmeriCorps Recruitment, Susie Zimmerman, 606–5000, Extension 104. Individuals who use a telecommunications device for the deaf (TTY/TDD) may call (202) 606–5256 between the hours of 9:00 a.m. and 4:30 p.m. Eastern time, Monday through Friday.

Comments should be sent to the Office of Information and Regulatory Affairs, Attn: Mr. Danny Werfel, OMB Desk Officer for the Corporation for National and Community Service, Office of Management and Budget, Room 10235, Washington, DC, 20503, (202) 395–7316, within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Corporation, including whether the information will have practical utility;

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Propose to enhance the quality, utility and clarity of the information to be collected; and

• Propose to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

Type of Review: New.

Agency: Corporation for National and Community Service.

Title: AmeriCorps Application for Membership.

OMB Number: None.

Agency Number: None.

Affected Public: Any individual interested in applying to become a member of AmeriCorps*NCCC, AmeriCorps*VISTA, or a state and local AmeriCorps program located throughout the United States.

Total Respondents: Approximately 60,000. (Approximately 40,000 individuals serve each year in AmeriCorps programs; (collection totals are inexact as the bulk of these completed applications are submitted to local programs and not back to the Corporation for National Service).

Frequency: An applicant need only complete the application once. Applicants may make copies of their completed forms, and submit copies (each, however, with an original signature) to several different AmeriCorps programs for consideration.

Average Time Per Response: 45 minutes.

Estimated Total Burden Hours: 45,000 hours (if 60,000 individuals complete the form per year).

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintenance): None.

Description: The Corporation for National Service proposes to utilize a new membership application form entitled "AmeriCorps Application for Membership" which will be used to screen and place applicants into the various AmeriCorps programs, and will replace the previously approved individual applications for the National Civilian Community Corps (NCCC) and Volunteers in Service to America (VISTA). Applicants will be able to use this single, new application to apply to any of the AmeriCorps programs, thereby eliminating the need for multiple applications should the individual wish to be considered for multiple programs, either concurrently or consecutively.

Dated: April 9, 1999.

Thomas L. Bryant,

Acting General Counsel.

[FR Doc. 99–9309 Filed 4–13–99; 8:45 am]

BILLING CODE 6050–28–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Sunshine Act Meeting

Pursuant to the provisions of the Government in the Sunshine Act (5 U.S.C. 552B), notice is hereby given of the following meeting of the Advisory Board of the Civilian Community Corps, a program operated by the Corporation for National and Community Service (Corporation).

TIME AND DATE: Friday, April 23, 1999, 9:00 a.m. to 11:30 and 2:30 to 4:00 p.m.

PLACE: The meeting will be held at Corporation Headquarters, 1201 New York Avenue, NW, Washington, DC.

STATUS: The meeting will be open.

MATTERS TO BE CONSIDERED: .

1. Introductions.
2. Advisory Board Purpose: Goals & Objectives.
3. AmeriCorps*NCCC Program Report.
4. AmeriCorps & Legislative Affairs Report.
5. Issues Concerning the Corporation for National Service.
6. Funding Issues.
7. Public Comment.
8. Future Board Meetings.
9. Adjournment.

CONTACT PERSON FOR MORE INFORMATION: Ms. Merlene Mazyck, 1201 New York Avenue NW, 9th Floor, Washington, DC 20525. Telephone (202) 606–5000, ext. 137 (T.D.D. (202) 565–2799)).

SPECIAL NEEDS: Upon request, meeting notices will be made available in alternative formats to accommodate visual and hearing impairments. Individuals who have a disability and who need an accommodation to attend the meeting may notify Ms. Mazyck.

Dated: April 12, 1999.

Thomas L. Bryant,

Acting General Counsel.

[FR Doc. 99–9444 Filed 4–12–99; 3:11 pm]

BILLING CODE 6050–28–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title and OMB Number: Commissary Evaluation and Utility Surveys—Generic Clearance, OMB Number 0704—[To Be Determined].

Type of Request: New Collection.

Number of Respondents: 50,000.

Responses Per Respondent: 1.

Annual Responses: 50,000.

Average Burden Per Response: 6 minutes.

Annual Burden Hours: 5,000.

Neds and Uses: The Defense Commissary Agency (DeCA) will conduct a variety of surveys to include, but not necessarily limited to customer satisfaction, transaction based comment cards, transaction based telephone interviews, commissary sizing, and patron migration. The information collected will provide customer perceptions, demographics, and will identify agency operations that need quality improvement, provide early detection of process or system problems, and focus attention on areas where customer service and functional training, new construction/ renovations, and changes in existing operations that will improve service delivery..

Affected Public: Individuals or households; Business or other for-profit.

Frequency: On occasion.

Respondent's obligation: Voluntary.

OMB Desk Officer: Mr. Edward C. Springer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. Robert Cushing.

Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: April 7, 1999.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer.

[FR Doc. 99–9213 Filed 4–13–99; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Intelligence Agency, Science and Technology Advisory Board Closed Panel Meeting

AGENCY: Department of Defense, Defense Intelligence Agency.

ACTION: Notice.

SUMMARY: Pursuant to the provision of Subsection (d) of Section 10 of Public Law 92–463, as amended by Section 5 of the Public Law 94–409, notice is hereby given that a closed meeting of the DIA Science and Technology Advisory Board has been scheduled as follows:

DATES: 22 April 1999 (800am to 1600pm).

ADDRESSES: The Defense Intelligence Agency, 3100 Clarendon Blvd, Arlington, VA 22201–5300.

FOR FURTHER INFORMATION CONTACT: Maj. Donald R. Culp, Jr., USAF, Executive Secretary, DIA Science and Technology Advisory Board, Washington, D.C. 20340–1328, (202) 231–4930.

SUPPLEMENTARY INFORMATION: The entire meeting is devoted to the discussion of classified information as defined in Section 552b(c)(1), Title 5 of the U.S. Code, and therefore will be closed to the public. The Board will receive briefings on and discuss several current critical intelligence issues and advise the Director, DIA, on related scientific and technical matters.

Dated: April 8, 1999.

L.M. Bynum,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 99–9210 Filed 4–13–99; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Intelligence Agency, Science and Technology Advisory Board Closed Panel Meeting

AGENCY: Department of Defense, Defense Intelligence Agency.

ACTION: Notice.

SUMMARY: Pursuant to the provisions of subsection (d) of section 10 of Public Law 92–463, as amended by section 5 of Public Law 94–409, notice is hereby given that a closed meeting of the DIA Science and Technology Advisory board has been scheduled as follows:

DATES: 19 April 1999 (12:00 p.m. To 4:00 p.m.).

ADDRESSES: The Defense Intelligence Agency, Bolling AFB, Washington, DC 20340–5100.

FOR FURTHER INFORMATION CONTACT: Maj. Donald R. Culp, Jr., USAF, Executive Secretary, DIA Science and Technology Advisory Board, Washington, DC 20340–1328 (202) 231–4930.

SUPPLEMENTARY INFORMATION: The entire meeting is devoted to the discussion of classified information as defined in Section 552b(c)(1), Title 5 of the U.S. Code, and therefore will be closed to the public. The Board will receive briefings on and discuss several current critical intelligence issues and advise the Director, DIA, on related scientific and technical matters.

Dated: April 8, 1999.

L.M. Bynum,

Alternate OSD, Federal Register Liaison Officer, Department of Defense.

[FR Doc. 99–9211 Filed 4–13–99; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Performance Review Board Membership

AGENCY: Defense Finance and Accounting Service.

ACTION: Notice.

SUMMARY: Notice is given of the names of members of the Performance Review Board for the Defense Finance and Accounting Service.

EFFECTIVE DATE: April 14, 1999.

FOR FURTHER INFORMATION CONTACT: Sandra L. Burrell, Defense Finance and Accounting Service, DFAS–HQ–H, 1931 Jefferson Davis Highway, Arlington, VA 22240–5291.

SUPPLEMENTARY INFORMATION: Section 4314(c)(1) through (5) of Title 5, U.S.C., requires each agency to establish, in accordance with regulations, one or more Senior Executive Service Performance Review Boards. The boards shall review and evaluate the initial appraisal of senior executives' performance by supervisors and make recommendations to the appointing authority or rating official relative to the performance of these executives.

Joanne Arnette, Deputy Director for Information and Technology, Defense Finance and Accounting Service

Gregory Bitz, Director for Finance, Defense Finance and Accounting Service

Bruce Carnes, Director of Resource Management, Defense Finance and Accounting Service

Stephen Freeman, Director for Human Resources, Defense Finance and Accounting Service

Zack Gaddy, Deputy Director for Policy and Systems, Defense Finance and Accounting Services

Edward Grysavage, Deputy Director for Military and Civilian Pay, Defense Fiance and Accounting Service

Jerry Hinton, Deputy Director for Electronic Commerce and Program Management, Defense Finance and Accounting Service

Kathleen Noe, Deputy Director for Systems Development, Defense Finance and Accounting Service

Kenneth Sweitzer, Deputy Director Cleveland Center, Defense Finance and Accounting Service

Michael Dugan, Director, Indianapolis Center, Defense Finance and Accounting Service

Loen Krushinski, Director—Cleveland Center, Defense Finance and Accounting Service

Steve Turner, Director—Denver Center, Defense Finance and Accounting Service

JoAnn Boutelle, Deputy Director—Columbus Center, Defense Finance and Accounting Service

David Harris, Deputy Director—Denver Center, Defense Finance and Accounting Service

David Burman, Deputy Director—Indianapolis Center, Defense Finance and Accounting Service

Lydia Moschkin, Director for Systems Integration, Defense Finance and Accounting Service

C. Vance Kauzlarich, Director for Information and Technology, Defense Finance and Accounting Service

Edward Harris, Deputy Director for Accounting, Defense Finance and Accounting Service

John Barber, Deputy Director for Customer Support and Internal Control, Defense Finance and Accounting Service

Ida Faye Groves, Deputy Director for Customer Support and Internal Control, Defense Finance and Accounting Service

Robert McNamara, Deputy Director for Operations, Defense Finance and Accounting Service

Teresa Walker, Director, Kansas City Center, Defense Finance and Accounting Service

Dated: April 7, 1999.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 99–9212 Filed 4–13–99; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Department of the Air Force

Privacy Act of 1974; System of Records

AGENCY: Department of the Air Force, DoD.

ACTION: Notice to amend system of records.

SUMMARY: The Department of the Air Force proposes to amend a system of records notice in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: The amendment will be effective on May 14, 1999, unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the Air Force Access Programs Manager, Headquarters, Air Force Communications and Information Center/ITC, 1250 Air Force Pentagon, Washington, DC 20330–1250.

FOR FURTHER INFORMATION CONTACT: Mrs. Anne Rollins at (703) 614–7819.

SUPPLEMENTARY INFORMATION: The Department of the Air Force's record system notices for records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed amendments are not within the purview of subsection (r) of the Privacy Act (5 U.S.C. 552a), as amended, which would require the submission of a new or altered system report for each system. The specific changes to the record system being amended are set forth below followed by the notice, as amended, published in its entirety.

Dated: April 8, 1999.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

F036 SAFAA A

SYSTEM NAME:

Civilian Personnel Files *(June 11, 1997, 62 FR 31793).*

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete entry and replace with 'Chief, Civilian Personnel, Administrative Assistant to the Secretary of the Air Force, 1720 Air Force Pentagon, Washington, DC 20330-1720'.

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Administrative Assistant to the Secretary of the Air Force, 1720 Air Force Pentagon, Washington, DC 20330-1720.

* * * * *

F036 SAFAA A

SYSTEM NAME:

Civilian Personnel Files.

SYSTEM LOCATION:

Chief, Civilian Personnel, Administrative Assistant to the Secretary of the Air Force, 1720 Air Force Pentagon, Washington, DC 20330-1720.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former civilians, consultants, and Summer Hires employed in the Office of the Secretary of the Air Force only.

CATEGORIES OF RECORDS IN THE SYSTEM:

Employment applications and records; award recommendations; position descriptions, training; Process sheets.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 8013, Secretary of the Air Force: Powers and duties; delegation by.

PURPOSE(S):

To provide information and services to employees and offices within the Office of the Secretary of the Air Force

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' published at the beginning of the Air Force's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in file folders, note books/ binders and card files.

RETRIEVABILITY:

Retrieved by name.

SAFEGUARDS:

Records are accessed by person(s) responsible for servicing the record system in performance of their official duties. Records are stored in locked cabinets or rooms. Access controlled by Assistant Manager and to Restricted authorized personnel.

RETENTION AND DISPOSAL:

Retained in office files until superseded, obsolete, no longer needed for reference, or on inactivation, then destroyed by tearing into pieces, shredding, pulping, macerating, or burning.

SYSTEM MANAGER(S) AND ADDRESS:

Administrative Assistant to the Secretary of the Air Force, 1720 Air Force Pentagon, Washington, DC 20330-1720.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to or visit the Administrative Assistant to the Secretary of the Air Force, 1720 Air Force Pentagon, Washington, DC 20330-1720.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to or visit Administrative Assistant to the Secretary of the Air Force, 1720 Air Force Pentagon, Washington, DC 20330-1720.

CONTESTING RECORD PROCEDURES:

The Air Force rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Air Force Instruction 37–132; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information from Air Force Civilian Personnel Offices and from financial institutions.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 99–9216 Filed 4–13–99; 8:45 am]

BILLING CODE 5001–10–F

DEPARTMENT OF DEFENSE

Department of the Air Force

Privacy Act of 1974; System of Records

AGENCY: Department of the Air Force, DoD.

ACTION: Notice to amendment systems of records.

SUMMARY: The Department of the Air Force proposes to amend three systems of records notices in its inventory of

record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: The amendments will be effective on May 14, 1999, unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the Air Force Access Programs Manager, Headquarters, Air Force Communications and Information Center/ITC, 1250 Air Force Pentagon, Washington, DC 20330–1250.

FOR FURTHER INFORMATION CONTACT: Mrs. Anne Rollins at (703) 614–7819.

SUPPLEMENTARY INFORMATION: The Department of the Air Force's record system notices for records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed amendments are not within the purview of subsection (r) of the Privacy Act (5 U.S.C. 552a), as amended, which would require the submission of a new or altered system report for each system. The specific changes to the record system being amended are set forth below followed by the notice as amended, published in its entirety.

Dated: April 8, 1999.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

F033 SAFLL A

SYSTEM NAME:

Congressional/Executive Inquiries *(October 16, 1997, 62 FR 53824).*

CHANGES:

* * * * *

RECORD SOURCE CATEGORIES:

Delete 'Personnel Records' from the entry.

* * * * *

F033 SAFLL A

SYSTEM NAME:

Congressional/Executive Inquiries.

SYSTEM LOCATION:

Office of the Secretary of the Air Force, Washington, DC 20330–1160.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Air Force active duty and retired military personnel, present and former civilian employees, Air Force Reserve and Air National Guard personnel, Air Force Academy nominees/applicants and cadets, Senior and Junior Air Force Reserve Officers, dependents of military personnel, and anyone who has written to the President or a Member of Congress regarding an Air Force issue.

CATEGORIES OF RECORDS IN THE SYSTEM:

Copies of applicable Congressional/Executive correspondence and Air Force replies.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 8013, Secretary of the Air Force.

PURPOSE(S):

Information is used as a reference base in the case of similar inquiries from other Members of Congress, in behalf of the same Air Force issue and/or follow-up by the same Member. Information may also be used by appropriate Air Force offices as a basis for corrective action and for statistical purposes.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' published at the beginning of the Air Force's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in computer/imaging system.

RETRIEVABILITY:

Retrieved by name.

SAFEGUARDS:

Records are accessed by custodian of the record system and by person(s) responsible for servicing the record system in performance of their official duties who are properly screened and cleared for need-to-know. Records in computer storage devices are protected by computer system software.

RETENTION AND DISPOSAL:

Current year plus 2 years of records will be retained in the records system, then deleted from the computer database.

SYSTEM MANAGER(S) AND ADDRESS:

Director of Legislative Liaison, Office of the Secretary of the Air Force, Headquarters, U.S. Air Force, Washington, DC 20330–1160.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to or visit the Director of Legislative Liaison, Office of the Secretary of the Air Force, Headquarters, U.S. Air Force, Washington, DC 20330–1160.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to or visit the Director of Legislative Liaison, Office of the Secretary of the Air Force, Headquarters, U.S. Air Force, Washington, DC 20330–1160.

CONTESTING RECORD PROCEDURES:

The Air Force rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Air Force Instruction 37–132; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Congressional and Executive inquiries and information from Air Force offices and organizations.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

F036 AF PC U

SYSTEM NAME:

Education Services Program Records (Individual) *(June 11, 1997, 62 FR 31793).*

Changes:

* * * * *

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Add to end of entry 'and the Tuition Assistance Program.'

* * * * *

PURPOSE(S):

Add to end of entry 'to manage the tuition assistance program and to track enrollments and funding.'

* * * * *

STORAGE:

Add to end of entry 'computers, and on backup tapes.'

RETRIEVABILITY:

Delete entry and replace with 'Retrieved by name, Social Security Number, or tuition assistance document number.'

SAFEGUARDS:

Add to end of entry 'and in computer storage devices and protected by computer system software. Records/information may be transferred outside the local area network (LAN). Records/

information transferred outside the LAN will be encrypted using Entrust Technologies' Cryptographic Kernel V 2.4. This product meets the Federal Information Processing Standard (FIPS) 140-1 requirement.'

RETENTION AND DISPOSAL:

Delete entry and replace with 'Records are retained and disposed of in the following ways:

(1) Given to individual when released from EAD, discharged, or retired. Servicing MPF will destroy in case of death by tearing into pieces, shredding, pulping, macerating, or burning.

(2) For records pertaining to the individual's education level and progress: Give to individual when released from EAD, discharged, or destroy when no longer on active duty. For records pertaining to requests for tuition assistance, records supporting consolidation grade sheets, and cases of non-compliance or failure: Destroy after invoices have been paid and final grades have been recorded in Individual Record Education Services form.

(3) For records pertaining to funding documents, appropriation controls, supporting documents for monitoring obligations: Destroy two years after document's fiscal year appropriation has ended its 'expired year' status and applicable fiscal year appropriation has been cancelled.'

* * * * *

F036 AF PC U

SYSTEM NAME:

Education Services Program Records (Individual).

SYSTEM LOCATION:

Air Force Base Education Services Flights. Official mailing addresses are published as an appendix to the Air Force's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All officers and airmen who participate in the Education Services Program and the Tuition Assistance Program.

CATEGORIES OF RECORDS IN THE SYSTEM:

Pertinent education data maintained in an educational file folder may be Air Force (AF) Form 63, Active Duty Service Commitment; AF Form 118, Notice of Student Withdrawal/ Noncompletion; AF Form 186, Individual Record-Education Services Program; AF Form 204, Permissive Temporary Duty (TDY) Request - Operation Bootstrap; AF Form 1033, Academic Education Data; AF Form 1227, Authority for Tuition Assistance - Education Services Program; DD Form 114, Military Pay Order or Department of Defense (DD) Form 1131, Cash Collection for Voucher; DD Form 295, Application for the Evaluation of Educational Experiences During Military Service; DD Form 139, Pay Adjustment Authorization; Department of Veterans Affairs (VA) Form 22–8821, Application for Educational Assistance; VA Form 22–1990p, Service person's Application for Educational Benefits; Academic evaluations and/or transcripts from schools; Automated Air Force Tuition Assistance Program (AAFTAP); and Educational test results from testing agencies.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 8013, Secretary of the Air Force powers and duties; delegation by; as implemented by Air Force Instruction 36-2306, Operation and Administration of the Air Force Education Services Program and E.O. 9397 (SSN).

PURPOSE(S):

Counseling/Advisement Guide and Educational Registration Record used by Education Services Center staff personnel, Promotion and/or classification boards, and other authorized personnel such as military service schools, civilian schools, and supervisors of military personnel. The principle purpose is to provide a record of education endeavors and progress of Air Force personnel participating in Education Services Programs, to manage the tuition assistance program and to track enrollments and funding.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

Records may be disclosed to civilian schools for the purposes of ensuring correct enrollment and billing information.

The 'Blanket Routine Uses' published at the beginning of the Air Force's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in visible file folders/ cabinet, computers, and on backup tapes.

RETRIEVABILITY:

Retrieved by name, Social Security Number, or tuition assistance document number.

SAFEGUARDS:

Records are accessed by custodian of the record system and by persons responsible for servicing the record system in performance of their official duties who are properly screened and cleared for need-to-know. Records are stored in locked cabinets or rooms, and in computer storage devices and protected by computer system software. Records/information may be transferred outside the local area network (LAN). Records/information transferred outside the LAN will be encrypted using Entrust Technologies' Cryptographic Kernel V 2.4. This product meets the Federal Information Processing Standard (FIPS) 140-1 requirement.

RETENTION AND DISPOSAL:

Records are retained and disposed of in the following ways:

(1) Given to individual when released from EAD, discharged, or retired. Servicing MPF will destroy in case of death by tearing into pieces, shredding, pulping, macerating, or burning.

(2) For records pertaining to the individual's education level and progress: Give to individual when released from EAD, discharged, or destroy when no longer on active duty. For records pertaining to requests for tuition assistance, records supporting consolidation grade sheets, and cases of non-compliance or failure: Destroy after invoices have been paid and final grades have been recorded in Individual Record Education Services form.

(3) For records pertaining to funding documents, appropriation controls, supporting documents for monitoring obligations: Destroy two years after document's fiscal year appropriation has ended its 'expired year' status and applicable fiscal year appropriation has been cancelled.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, Headquarters, Air Force Personnel Center, 550 C Street West, Randolph Air Force Base, TX 78150-4750.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to or visit the agency officials at the respective installation education center. Official mailing addresses are published as an appendix to the Air Force's compilation of systems of records notices.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to or visit the agency officials at the respective installation education center. Official mailing addresses are published as an appendix to the Air Force's compilation of systems of records notices.

CONTESTING RECORD PROCEDURES:

The Air Force rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Air Force Instruction 37–132; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Data gathered from the individual, data gathered from other personnel records, transcripts and/or evaluations from schools and test results from testing agencies.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

F036 USAFA C

SYSTEM NAME:

Prospective Instructor Files *(October 15, 1997, 62 FR 53598).*

CHANGES:

* * * * *

CATEGORIES OF RECORDS IN THE SYSTEM:

Copy of Application for Instructor Duty; college transcripts; past Officer Effectiveness Reports; Officer Uniform Assignment Brief which may contain prior assignment information, aeronautical rating information, general personnel data including security clearance, date of birth, marital status, and promotion dates; correspondence between individual and department; evaluations on individual's suitability, and record of personal interview. Enlisted special duty folders contain enlisted performance reports, special duty applications, AF Form 422, Physical Profile Serial Report, and records review Report on Individual Personnel (RIP).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with 'Military personnel applying for instructor duty (Officer) and Special Duty (Enlisted) at the Air Force Academy.'

* * * * *

PURPOSE(S):

Add to end of entry 'and enlisted personnel at the Academy'

* * * * *

SAFEGUARDS:

Add to end of entry 'and are password protected.'

* * * * *

F036 USAFA C

SYSTEM NAME:

Prospective Instructor Files.

SYSTEM LOCATION:

Deputy Chief of Staff for Personnel, 2304 Cadet Drive, Suite 317, U.S. Air Force Academy, CO 80840–5020;

Dean of Faculty, 2354 Fairchild Drive, Suite 6F26, U.S. Air Force Academy, CO 80840–6200;

Commander, 34th Training Wing, 2354 Fairchild Drive, Suite 5A10, U.S. Air Force Academy, CO 80840–6260.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Military personnel applying for instructor duty (Officer) and Special Duty (Enlisted) at the Air Force Academy.

CATEGORIES OF RECORDS IN THE SYSTEM:

Copy of Application for Instructor Duty; college transcripts; past Officer Effectiveness Reports; Officer Uniform Assignment Brief which may contain prior assignment information, aeronautical rating information, general personnel data including security clearance, date of birth, marital status, and promotion dates; correspondence between individual and department; evaluations on individual's suitability, and record of personal interview. Enlisted special duty folders contain enlisted performance reports, special duty applications, AF Form 422, Physical Profile Serial Report, and records review Report on Individual Personnel (RIP).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 8013, Secretary of the Air Force and 10 U.S.C., Chapter 903, U.S. Air Force Academy.

PURPOSE(S):

Used to determine qualification, availability and location of potential instructors and enlisted personnel at the Academy.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' published at the beginning of the Air Force's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in file folders, in computers data bases, and on computer output products.

RETRIEVABILITY:

Retrieved by name.

SAFEGUARDS:

Records are accessed by person(s) responsible for servicing the record system in performance of their official duties and by authorized personnel who are properly screened and cleared for need-to-know. Records are stored in locked rooms and cabinets. Those in computer storage devices are protected by computer system software and are password protected.

RETENTION AND DISPOSAL:

Retained in office files until superseded, obsolete, or no longer needed for reference. Records are destroyed by tearing into pieces, shredding, pulping, macerating, or burning. Computer records are destroyed by degaussing or overwriting.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Chief of Staff for Personnel, 2304 Cadet Drive, Suite 317, U.S. Air Force Academy, CO 80840–5020;

Dean of Faculty, 2354 Fairchild Drive, Suite 6F26, U.S. Air Force Academy, CO 80840–6200;

Commander, 34th Training Wing, 2354 Fairchild Drive, Suite 5A10, U.S. Air Force Academy, CO 80840–6260.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information on themselves should address written inquiries to or visit the Deputy Chief of Staff for Personnel, 2304 Cadet Drive, Suite 317, U.S. Air Force Academy, CO 80840–5020; or the

Dean of Faculty, 2354 Fairchild Drive, Suite 6F26, U.S. Air Force Academy, CO 80840–6200; or the

Commander, 34th Training Wing, 2354 Fairchild Drive, Suite 5A10, U.S. Air Force Academy, CO 80840–6260.

RECORD ACCESS PROCEDURES:

Individuals seeking to access records about themselves contained in this system should address written requests to or visit the Deputy Chief of Staff for Personnel, 2304 Cadet Drive, Suite 317, U.S. Air Force Academy, CO 80840–5020; or the

Dean of Faculty, 2354 Fairchild Drive, Suite 6F26, U.S. Air Force Academy, CO 80840–6200; or the

Commander, 34th Training Wing, 2354 Fairchild Drive, Suite 5A10, U.S. Air Force Academy, CO 80840–6260.

CONTESTING RECORD PROCEDURES:

The Air Force rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Air Force Instruction 37–132; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information obtained from the individual, previous employers, educational institutions and source documents such as reports.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 99–9218 Filed 4–13–99; 8:45 am]

BILLING CODE 5000–04–F

DEPARTMENT OF DEFENSE

Department of the Navy

Privacy Act of 1974; System of Records

AGENCY: Department of the Navy, DoD.

ACTION: Delete records systems.

SUMMARY: The Department of the Navy proposes to delete six systems of records notices in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: The actions will be effective on May 14, 1999 unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the Department of the Navy, PA/FOIA Policy Branch, Chief of Naval Operations (N09B30), 2000 Navy Pentagon, Washington, DC 20350–2000.

FOR FURTHER INFORMATION CONTACT: Mrs. Doris Lama at (202) 685–6545 or DSN 325–6545.

SUPPLEMENTARY INFORMATION: The Department of the Navy's record system notices for records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The Department of the Navy proposes to delete systems of records notices in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. The deletions are not within the purview of subsection (r) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, which requires the submission of new or altered system report.

Dated: April 8, 1999.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

N01001–3

SYSTEM NAME:

Naval Reserve Intelligence/Personnel File *March 3, 1998, 63 FR 10366).*

Reason: System no longer being used. All files were destroyed several years ago.

N01070–13

SYSTEM NAME:

Nuclear Program Interview and Screening *(September 20, 1993, 58 FR 48852).*

Reason: Information maintained within this system of records duplicates information currently maintained in the following Department of the Navy systems of records: N01070–3, N01080–2, N01131–1, and N12950–5. Therefore, the Navy is deleting this duplicative system of records.

N01070–14

SYSTEM NAME:

Next of Kin Information for Sea Trial Riders *(February 22, 1993, 58 FR 10704).*

Reason: System of records is no longer needed. Records have been destroyed.

N01070–15

SYSTEM NAME:

Nuclear-Trained Naval Officers *(February 22, 1993, 58 FR 10704).*

Reason: Information maintained within this system of records duplicates information currently maintained in the following Department of the Navy systems of records: N01070–3, N01080–2, N01131–1, and N12950–5. Therefore, the Navy is deleting this duplicative system of records.

N01572–1

SYSTEM NAME:

NJAG Reserve Officer Questionnaires *(February 22, 1993, 58 FR 10719).*

Reason: Program was discontinued several years ago. All files have been destroyed.

N04600–1

SYSTEM NAME:

Portable Asset Control Environment (PACE) *(February 22, 1993, 58 FR 10744).*

Reason: System is obsolete and all records have been destroyed.

[FR Doc. 99–9217 Filed 9–13–99; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Department of the Navy

Privacy Act of 1974; System of Records

AGENCY: Department of the Navy, DoD.

ACTION: Amend record systems.

SUMMARY: The Department of the Navy proposes to amend five systems of records notices in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: The actions will be effective on May 14, 1999, unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the Department of the Navy, PA/FOIA Policy Branch, Chief of Naval Operations (N09B30), 2000 Navy Pentagon, Washington, DC 20350–2000.

FOR FURTHER INFORMATION CONTACT: Mrs. Doris Lama at (202) 685–6545 or DSN 325–6545.

SUPPLEMENTARY INFORMATION: The Department of the Navy's record system notices for records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The Department of the Navy proposes to amend systems of records notices in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. The amendments are not within the purview of subsection (r) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, which requires the submission of new or altered system reports.

Dated: April 8, 1999.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

N01000–2

SYSTEM NAME:

Naval Discharge Review Board Proceedings *(March 18, 1997, 62 FR 12806).*

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete entry and replace with 'Naval Discharge Review Board, Washington

Navy Yard, 720 Kennon Street SE, Room 309, Washington, DC 20374-5023.'

* * * * *

SAFEGUARDS:

Delete entry and replace with 'Computerized data base is password protected and access is limited. The office is locked at the close of business. The office is located in a building on a military installation which has 24-hour gate sentries and 24-hour roving patrols.'

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with 'Director, Naval Council of Personnel Boards, Department of the Navy, Washington Navy Yard, 720 Kennon Street SE, Room 309, Washington, DC 20374-5023.'

* * * * *

N01000–2

SYSTEM NAME:

Naval Discharge Review Board Proceedings.

SYSTEM LOCATION:

Naval Discharge Review Board, Washington Navy Yard, 720 Kennon Street SE, Room 309, Washington, DC 20374-5023.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Former Navy and Marine Corps personnel who have submitted applications for review of discharge or dismissal pursuant to 10 U.S.C. 1553, or whose discharge or dismissal has been or is being reviewed by the Naval Discharge Review Board, on its own motion, or pursuant to an application by a deceased former member's next of kin.

CATEGORIES OF RECORDS IN THE SYSTEM:

The file contains the former member's application for review of discharge or dismissal, any supporting documents submitted therewith, copies of correspondence between the former member or his counsel and the Naval Discharge Review Board and other correspondence concerning the case, and a summarized record of proceedings before the Board.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 1553 and E.O. 9397 (SSN).

PURPOSE(S):

Selected information is used to defend the Department of the Navy in civil suits filed against it in the State and/or Federal courts system. This information will permit officials and employees of the Board to consider former member's applications for review of discharge or dismissal and any subsequent application by the member; to answer inquiries on behalf of or from the former member or counsel regarding the action taken in the former member's case. The file is used by members of the Board for Correction of Naval Records when reviewing any subsequent application by the former member for a correction of records relative to the former member's discharge or dismissal.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The file is used by counsel for the former member, and by accredited representatives of veterans' organizations recognized by the Secretary, Department of Veterans Affairs under 38 U.S.C. 3402 and duly designated by the former member as his or her representative before the Naval Discharge Review Board.

Officials of the Department of Justice and the United States Attorneys offices assigned to the particular case.

The 'Blanket Routine Uses' that appear at the beginning of the Navy's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders; microfiche; plastic recording disks; recording cassettes; and computerized data base.

RETRIEVABILITY:

Name, docket number, and/or Social Security Number.

SAFEGUARDS:

Computerized data base is password protected and access is limited. The office is locked at the close of business. The office is located in a building on a military installation which has 24-hour gate sentries and 24-hour roving patrols.

RETENTION AND DISPOSAL:

Files are transferred to the Washington Federal Records Center, 4205 Suitland Road, Suitland, MD 20409 when case is closed and then destroyed after 15 years.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Naval Council of Personnel Boards, Department of the Navy, Washington Navy Yard, 720 Kennon Street SE, Room 309, Washington, DC 20374-5023.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Director, Naval Council of Personnel Boards, Department of the Navy, Washington Navy Yard, 720 Kennon Street SE, Room 309, Washington, DC 20374-5023.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Director, Naval Council of Personnel Boards, Department of the Navy, Washington Navy Yard, 720 Kennon Street SE, Room 309, Washington, DC 20374-5023.

CONTESTING RECORD PROCEDURES:

The Navy's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information contained in the files is obtained from the former member or those acting on the former member's behalf, from military personnel and medical records, and from records of law enforcement investigations.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

N01000–5

SYSTEM NAME:

Naval Clemency and Parole Board Files *(July 22, 1997, 62 FR 39225).*

CHANGES:

* * * * *

SSYSTEM LOCATION:

Delete entry and replace with 'Naval Clemency and Parole Board, Washington Navy Yard, 720 Kennon Street SE, Room 309, Washington, DC 20374-5023.'

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with 'Director, Naval Council of Personnel Boards, Department of the Navy, Washington Navy Yard, 720 Kennon Street SE, Room 309, Washington, DC 20374-5023.'

* * * * *

N01000–5

SYSTEM NAME:

Naval Clemency and Parole Board Files.

SYSTEM LOCATION:

Naval Clemency and Parole Board, Washington Navy Yard, 720 Kennon Street SE, Room 309, Washington, DC 20374-5023.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Members or former members of the Navy, Marine Corps, or Coast Guard whose cases have been or are being considered by the Naval Clemency and Parole Board.

CATEGORIES OF RECORDS IN THE SYSTEM:

The file contains individual applications for clemency and/or parole, reports and recommendations thereon indicating progress in confinement or while awaiting completion of appellate review if not confined, or on parole; correspondence between the individual or his counsel and the Naval Clemency and Parole Board or other Navy offices; other correspondence concerning the case; the court-martial order and staff Judge Advocate's review; records of trial; and a summarized record of the proceedings of the Board.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 874(a), 952–954; SECNAVINST 5815.3H, Department of the Navy Clemency and Parole Systems; and E.O. 9397 (SSN).

PURPOSE(S):

The file is used in conjunction with periodic review of the member's or former member's case to determine whether or not clemency or parole is warranted. The file is referred to in answering inquiries from the member or former member or their counsel. The file is referred to by the Naval Discharge Review Board and the Board for Correction of Naval Records in conjunction with their subsequent review of applications from members or former members. The file is also used by counsel in connection with representation of members or former members before the Naval Clemency and Parole Board.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' that appear at the beginning of the Navy's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records and computerized data base.

RETRIEVABILITY:

Name and Social Security Number.

SAFEGUARDS:

Files are kept within the Naval Clemency and Parole Board administration office. Access during business hours is controlled by Board personnel. The office is locked at the close of business. Computerized data base is password protected.

RETENTION AND DISPOSAL:

Files are transferred to the Washington National Records Center, 4205 Suitland Road, Suitland, MD 20409 one year after discharge of individual from the naval service. Files are destroyed after 25 years after cut-off.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Naval Council of Personnel Boards, Department of the Navy, Washington Navy Yard, 720 Kennon Street SE, Room 309, Washington, DC 20374-5023.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Director, Naval Council of Personnel Boards, Department of the Navy, Washington Navy Yard, 720 Kennon Street SE, Room 309, Washington, DC 20374-5023.

Requests should contain full name and Social Security Number.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Director, Naval Council of Personnel Boards, Department of the Navy, Washington Navy Yard, 720 Kennon Street SE, Room 309, Washington, DC 20374-5023.

Requests should contain full name and Social Security Number.

CONTESTING RECORD PROCEDURES:

The Navy's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information contained in the file is obtained from the member or former member or from those acting in their behalf, from confinement facilities, from military commands and offices, from personnel service records and medical records, and from civilian law enforcement agencies or individuals.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Parts of this system may be exempt pursuant to 5 U.S.C. 552a(j)(2) if the information is compiled and maintained by a component of the agency which performs as its principle function any activity pertaining to the enforcement of criminal laws.

An exemption rule for this system has been promulgated in accordance with requirements of 5 U.S.C. 553(b)(1), (2), and 3, (c) and (e) and published in 32 CFR part 701, subpart G. For additional information contact the system manager.

N01770–3

SYSTEM NAME:

Naval Academy Cemetery and Columbarium Records *(September 9, 1996, 61 FR 47483).*

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete entry and replace with 'Chaplains Center, Mitscher Hall, U.S. Naval Academy, 101 Cooper Road, Annapolis, MD 21402-5027.'

* * * * *

STORAGE:

Add to entry 'and computer generated reports.'

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with 'Memorial Affairs Coordinator, U.S. Naval Academy, Mitscher Hall, 101 Cooper Road, Annapolis, MD 21402-5027.'

* * * * *

N01770–3

SYSTEM NAME:

Naval Academy Cemetery and Columbarium Records.

SYSTEM LOCATION:

Chaplains Center, Mitscher Hall, U.S. Naval Academy, 101 Cooper Road, Annapolis, MD 21402-5027.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Those eligible to reserve a lot for future burial in the Naval Academy Cemetery. Deceased individuals

interred/inured in the Naval Academy Cemetery/Columbarium.

CATEGORIES OF RECORDS IN THE SYSTEM:

State Burial Transit Permit, Application for Reimbursement of Headstone or Marker Expenses (VA Form 21–8834), Application of Standard Government Headstone or Marker for Installation in a Private or Local Cemetery (VA Form 40–1330), Lot Marker (NDW–USNA–DMC–1170/08), Columbarium Niche Cover Inscription (NDW–USNA–DMC–5370/42), U.S. Naval Academy Internment/Inurement Record (NDW–USNA–DMC–5360/43), U.S. Naval Academy Cemetery Record (NDW–USNA–DMC–1170/46), Naval Academy Foundation Order (NDW–USNA–DMC–5360/09), and correspondence to and from individuals. Specifically, information contained on the forms or correspondence may be: Full name, home address, rank, service, Social Security Number, date and place of birth, date and place of death, marital status, name of father and mother, name of next of kin and their address, telephone number, date of birth and date of death (if applicable), date and place of burial, lot number and other information relating to burial arrangements.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; 10 U.S.C. 1481–1488; 44 U.S.C. 3101; and E.O. 9397 (SSN).

PURPOSE(S):

To maintain official records of individuals holding grave site reservations and/or individuals interred/inured in the Naval Academy Cemetery or Columbarium. Records are used to respond to general inquiries from individuals holding grave site reservations, to verify eligibility of spouses of an officer or enlisted person of the Navy or Marine Corps who is interred/inured in the Naval Academy Cemetery or Columbarium.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' that appear at the beginning of the Navy's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders, microfiche, and computer generated reports.

RETRIEVABILITY:

Alphabetically by last name and numerically by lot number.

SAFEGUARDS:

Records are kept in a building not open to general visiting and are maintained in an area accessible only to authorized personnel. Building is under surveillance of security personnel during non-working hours. Microfiche records are kept in the Naval Academy Archives which is not open to general visiting and is locked during non-working hours.

RETENTION AND DISPOSAL:

Records are permanent. They are retained after the individual is deceased.

SYSTEM MANAGER(S) AND ADDRESS:

Memorial Affairs Coordinator, U.S. Naval Academy, Mitscher Hall, 101 Cooper Road, Annapolis, MD 21402-5027.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Memorial Affairs Coordinator, U.S. Naval Academy, Mitscher Hall, 101 Cooper Road, Annapolis, MD 21402-5027.

Requests should contain name, rank, and year of graduation from the U.S. Naval Academy.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Memorial Affairs Coordinator, U.S. Naval Academy, Mitscher Hall, 101 Cooper Road, Annapolis, MD 21402-5027.

Requests should contain name, rank, and year of graduation from the U.S. Naval Academy.

CONTESTING RECORD PROCEDURES:

The Navy's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information in this system comes from the individual to whom it applies, the next of kin, and from the Register of the Alumni.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

N01850–1

SYSTEM NAME:

Origins of Disabilities for Retired Military Members *(February 22, 1993, 58 FR 10727).*

CHANGES:

* * * * *

SYSTEM NAME:

Delete entry and replace with 'Disabilities of Separated/Retired Military Members'.

SYSTEM LOCATION:

Delete entry and replace with 'Office of the Judge Advocate General (Code 13), Department of the Navy, Washington Navy Yard, 1322 Patterson Avenue, SE, Suite 3000, Washington, DC 20374-5066.'

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with 'Retired or former members of the Navy or Marine Corps who have been separated for a disability or placed on the Temporary Disability Retired List or Permanent Disability Retired List who have applied for income tax exclusion and/or applied for Federal civilian employment or retirement.'

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with 'Correspondence from individual originating request; Office of Personnel Management or any federal agencies employing such individuals; Chief, Bureau of Medicine and Surgery historical narratives and opinions concerning the origins of disabilities of individuals on whom determinations have been requested; copies of Judge Advocate General determinations; and related correspondence.'

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with '5 U.S.C. 301, Departmental Regulations; 5 U.S.C. 3501(a), 5532(d), 6303(a), 8332(c), 8411(b); 26 U.S.C. 104(b); 44 U.S.C. 3101; and 50 U.S.C. 403, 2082.'

PURPOSE(S):

Delete entry and replace with 'Information is used for determinations concerning the eligibility of individuals to certain benefits connected with Federal taxation of compensation for

injuries or sickness and/or Federal civilian employment benefits available to those disabled in combat with enemies of the U.S. or having disabilities caused or aggravated by instrumentalities of war or in the case of federal taxation only, an injury or sickness incurred while engaged in extra-hazardous service or under conditions simulating war.'

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Amend second paragraph to read 'Determinations are provided, upon request, to any Federal agency employing members who are retired or separated from the Naval service for disability.'

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with 'Assistant Judge Advocate General (Administrative Law), Office of the Judge Advocate General, Washington Navy Yard, 1322 Patterson Avenue SE, Suite 3000, Washington, DC 20374-5066.'

* * * * *

N01850–1

SYSTEM NAME:

Disabilities of Separated/Retired Military Members.

SYSTEM LOCATION:

Office of the Judge Advocate General (Code 13), Department of the Navy, Washington Navy Yard, 1322 Patterson Avenue, SE, Suite 3000, Washington, DC 20374-5066.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Retired or former members of the Navy or Marine Corps who have been separated for a disability or placed on the Temporary Disability Retired List or Permanent Disability Retired List who have applied for income tax exclusion and/or applied for Federal civilian employment or retirement.

CATEGORIES OF RECORDS IN THE SYSTEM:

Correspondence from individual originating request; Office of Personnel Management or any federal agencies employing such individuals; Chief, Bureau of Medicine and Surgery historical narratives and opinions concerning the origins of disabilities of individuals on whom determinations have been requested; copies of Judge Advocate General determinations; and related correspondence.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; 5 U.S.C. 3501(a), 5532(d), 6303(a), 8332(c), 8411(b); 26 U.S.C. 104(b); 44 U.S.C. 3101; and 50 U.S.C. 403, 2082.

PURPOSE(S):

Information is used for determinations concerning the eligibility of individuals to certain benefits connected with Federal taxation of compensation for injuries or sickness and/or Federal civilian employment benefits available to those disabled in combat with enemies of the U.S. or having disabilities caused or aggravated by instrumentalities of war or in the case of federal taxation only, an injury or sickness incurred while engaged in extra-hazardous service or under conditions simulating war.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

Determinations are provided, upon request, to any Federal agency employing members who are retired or separated from the Naval service for disability.

The 'Blanket Routine Uses' that appear at the beginning of the Navy's compilation of system of record notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in file folders.

RETRIEVABILITY:

By name of individual.

SAFEGUARDS:

Files are maintained in file cabinets under the control of authorized personnel during working hours; the office space in which the file cabinets are located is locked outside official working hours.

RETENTION AND DISPOSAL:

Retire to Washington National Records Center, 4205 Suitland Road, Suitland, MD 20409 for storage when one year old. Destroy when 75 years old.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Judge Advocate General (Administrative Law), Office of the Judge Advocate General, Washington Navy Yard, 1322 Patterson Avenue SE, Suite 3000, Washington, DC 20374-5066.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Assistant Judge Advocate General (Administrative Law), Office of the Judge Advocate General, Washington Navy Yard, 1322 Patterson Avenue SE, Suite 3000, Washington, DC 20374-5066.

The request should contain the full name of the individual concerned and the approximate date on which relief was requested. Written request must be signed by the requesting individual. Visits may be made to the Administrative Law Division (Code 13), Office of the Judge Advocate General, Suite 7000, Presidential Towers, 2611 South Jefferson Davis Highway, Arlington, VA 22209. Armed Forces' identification card or state driver's license is required for identification.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves should address written inquiries to the Assistant Judge Advocate General (Administrative Law), Office of the Judge Advocate General, Washington Navy Yard, 1322 Patterson Avenue SE, Suite 3000, Washington, DC 20374-5066.

The request should contain the full name of the individual concerned and the approximate date on which relief was requested. Written request must be signed by the requesting individual. Visits may be made to the Administrative Law Division (Code 13), Office of the Judge Advocate General, Suite 7000, Presidential Towers, 2611 South Jefferson Davis Highway, Arlington, VA 22209. Armed Forces' identification card or state driver's license is required for identification.

CONTESTING RECORD PROCEDURES:

The Navy's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR Part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Employment information in the system is submitted by the individuals concerned or the federal agencies employing them. Medical information in the system is obtained from the individuals' medical records, physical evaluation board records, and service records.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

N01850–2

SYSTEM NAME:

Physical Disability Evaluation System Proceedings *(March 18, 1997, 62 FR 12806).*

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete entry and replace with 'Physical Evaluation Board, Washington Navy Yard, 720 Kennon Street SE, Room 309, Washington, DC 20374–5023.'

* * * * *

SAFEGUARDS:

Replace last sentence of entry with 'The office is located in a building on a military installation which has 24-hour gate sentries and 24-hour roving patrols.'

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with 'Director, Naval Council of Personnel Boards, Department of the Navy, Washington Navy Yard, 720 Kennon Street SE, Room 309, Washington, DC 20374-5023.'

* * * * *

N01850–2

SYSTEM NAME:

Physical Disability Evaluation System Proceedings.

SYSTEM LOCATION:

Physical Evaluation Board, Washington Navy Yard, 720 Kennon Street SE, Room 309, Washington, DC 20374–5023.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All Navy and Marine Corps personnel who have been considered by a Physical Evaluation Board for separation or retirement by reason of physical disability (including those found fit for duty by such boards).

CATEGORIES OF RECORDS IN THE SYSTEM:

File contains medical board reports; statements of findings of physical evaluation boards; medical reports from Department of Veterans Affairs and civilian medical facilities; copies of military health records; copies of JAG Manual investigations; copies of prior actions/appellate actions/review taken in the case; recordings of physical evaluation board hearings; rebuttals submitted by the member; intra and interagency correspondence concerning the case; correspondence from and to the member, members of Congress, attorneys, and other interested members; and documents concerning the appointment of trustees for mentally incompetent service members.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 1216 and E.O. 9397 (SSN).

PURPOSE(S):

To determine fitness for duty or eligibility for separation or retirement due to physical disability of Navy and Marine Corps personnel, by establishing the existence of disability, the degree of disability, and the circumstances under which the disability was incurred, and to respond to official inquiries concerning the disability evaluation proceedings of particular service personnel.

Used by the Office of the Judge Advocate General relating to legal review of disability evaluation proceedings; response to official inquiries concerning the disability evaluation proceedings of particular service personnel; to obtain information in order to initiate claims against third parties for recovery of medical expenses under the Medical Care Recovery Act (42 U.S.C. 2651–2653); and to obtain information on personnel determined to be mentally incompetent to handle their own financial affairs, in order to appoint trustees to receive their retired pay.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To officials and employees of the Department of Veterans Affairs to verify information of service connected disabilities in order to evaluate applications for veteran's benefits.

The 'Blanket Routine Uses' that appear at the beginning of the Navy's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper and automated records, microfiche, and cassette recordings.

RETRIEVABILITY:

Year of disability proceeding, name, record number, and Social Security Number within that year.

SAFEGUARDS:

Files are maintained in file cabinets or other storage devices under the control of authorized personnel during working hours. Computerized system is password protected. Access during working hours is controlled by Board personnel and the office space in which the file cabinets and storage devices are located is locked after official working hours. The office is located in a building on a military installation which has 24-hour gate sentries and 24-hour roving patrols.

RETENTION AND DISPOSAL:

Records are retained on-site at the Naval Council of Personnel Boards for one year. After that, they are retired to the Washington National Records Center, 4205 Suitland Road, Suitland, MD 20409 for retention. After a total of 75 years, records are destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Naval Council of Personnel Boards, Department of the Navy, Washington Navy Yard, 720 Kennon Street SE, Room 309, Washington, DC 20374-5023.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Director, Naval Council of Personnel Boards, Department of the Navy, Washington Navy Yard, 720 Kennon Street SE, Room 309, Washington, DC 20374-5023.

Written requests for information should contain the full name of the individual, military grade or rate, and date of Disability Evaluation System action. Written requests must be signed by the requesting individual.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Director, Naval Council of Personnel Boards, Department of the Navy, Washington Navy Yard, 720 Kennon Street SE, Room 309, Washington, DC 20374-5023.

Written requests for information should contain the full name of the individual, military grade or rate, and date of Disability Evaluation System action. Written requests must be signed by the requesting individual.

CONTESTING RECORD PROCEDURES:

The Navy's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or

may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Military medical boards and medical facilities; Department of Veterans Affairs and civilian medical facilities; physical evaluation boards and other activities of the disability evaluation system, Naval Council of Personnel Boards, the Bureau of Medicine and Surgery; the Judge Advocate General; Navy and Marine Corps local command activities; other activities of the Department of Defense; and correspondence from private counsel and other interested persons.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 99–9219 Filed 4–13–99; 8:45 am]

BILLING CODE 5001–10–F

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–2843–007; etc.]

AES Redondo Beach, LLC et al.; Notice of Filing

April 8, 1999.

In the matter of: AES Redondo Beach, LLC, Docket No. ER98–2843–007, AES Huntington Beach, LLC, Docket No. ER98–2844–007, AES Alamitos, LLC, Docket No. ER98–2883–007 (Not Consolidated), Long Beach Generation, LLC, Docket No. ER98–2972–008, EL Segundo Power, LLC, Docket No. ER98–2971–007 (Not Consolidated), Ocean Vista Power Generation, LLC, Mountain Vista Power Generation, LLC, Alta Power Generation, LLC, Docket No. ER98–2977–006, Oeste Power Generation, LLC, Ormond Beach Power Generation, LLC, Williams Energy Services Company, Docket No. ER98–3106–004, Duke Energy Oakland, LLC, Docket No. ER98–3416–006, Duke Energy Morro Bay, Docket No. ER98–3417–006, Duke Energy Moss Landing, Docket No. ER98–3418–006 (Not Consolidated), and Southern California Edison Company, Docket No. EL98–62–005.

Take notice that on April 6, 1999, the Market Surveillance Committee (MSC) of the California Independent System Operator Corporation (ISO) filed with the Federal Energy Regulatory Commission its "Report on Redesign of Markets for Ancillary Services and Real-Time Energy" prepared in compliance with the Commission's October 28, 1998 Order and March 22, 1999 letter order in the above-captioned proceedings. The MSC had previously submitted this report to the Commission on March 25, 1999 with a request that certain information contained in the report be given confidential treatment, on a temporary basis, in accordance with Section 388.112 of the Commission's regulations (18 CFR 388.112). Interventions and protests on the report, as previously released on March 25, 1999, should be filed on or before April 12, 1999. The report filed on April 6, 1999 releases this information from a claim of confidentiality. The report filed on April 6, 1999 also contains several attachments which were not included in the March 25, 1999 filing of the report.

The ISO has served copies of the report, including these attachments and the previously confidential information, upon the official service list in the above-captioned proceedings.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practices and Procedures (18 CFR 385.211 and 385.214). All such motions and protests regarding the newly released material should be filed on or before April 19, 1999. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–9295 Filed 4–13–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. EC96–19–049 and ER96–1663–051]

California Power Exchange Corporation; Notice of Filing

April 8, 1999.

Take notice that on March 30, 1999, California Power Exchange Corporation (PX) filed two reports. The first report concerns the relative benefits of a Simultaneous versus Sequential Market for Energy and Ancillary Services. The second report relates to the format of the PX's Auction Process. These reports are being submitted in compliance with the Commission's October 30, 1997 Order in these proceedings.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before April 19, 1999. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–9294 Filed 4–13–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP95–408–028]

Columbia Gas Transmission Corporation; Notice of Filing

April 8, 1999.

Take notice that on April 6, 1999, Columbia Gas Transmission Corporation (Columbia) tendered for filing its report on the sharing with its customers of a portion of the profits from the sale of certain base gas as provided in Columbia's Docket No. RP95–408 rate case settlement.

Columbia states that its approved settlement in Docket No. RP95–408 provides for the sharing with customers a portion of the profits from certain base gas sales. See Stipulation II, Article IV, Sections A through E, in Docket No. RP95–408 approved at Columbia Gas Transmission Corp., 79 FERC 61,044 (1997). Sales of base gas have generated additional profits of $7,645,758 (above a $21.4 million threshold) requiring a sharing of 10 percent of the excess profits with customers in accordance with Stipulation II, Article IV, Section C. Consequently, 10 percent of such profits, totaling $771,906, inclusive of interest, have been allocated to affected customers and credited to their April invoices, which credits remain subject to Commission acceptance of this filing.

Columbia states that copies of its filing have been mailed to all firm customers, interruptible customers, and affected state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with section 385.211 Commission's and Regulations. All such protests must be filed on or before April 25, 1999. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–9240 Filed 4–13–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP96–647–001]

Great Lakes Gas Transmission Limited Partnership; Notice of Application

April 8, 1999.

Take notice that on April 2, 1999, Great Lakes Gas Transmission Limited Partnership (Great Lakes), One Woodward Avenue, Suite 1600, Detroit, Michigan 48226, filed in Docket No. CP96–647–001 an application pursuant to Section 7(c) of the Natural Gas Act to amend the certificate of public convenience and necessity issued on October 21, 1997, in Docket No. CP96–647–000, *Great Lakes Gas Transmission Limited Partnership*, 81 FERC ¶ 61,075, (1997). Specifically, Great Lakes seeks authorization to operate two recently installed compressor units at the manufacturer's updated nameplate horsepower rating, rather than the currently certificated horsepower associated with those units, all as more fully set forth in the application which is on file with the Commission and open to public inspection. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Great Lakes requests a certificate of public convenience and necessity authorizing it to amend the certificate issued in Docket No. CP96–647–000 so as to operate the two Solar Taurus 70 compressor units, each rated at 7,400 hp (NEMA), added as part of the 1998 Expansion Project, at the manufacturer's current nameplate rating of 8,330 hp (NEMA). Great Lakes states that one unit was installed at its St. Vincent Compressor Station (Compressor Station No. 1) located in Kittson County, Minnesota, and the other at its Farwell Compressor Station (Compressor Station No. 12), located in Clare County, Michigan.

Great Lakes declares that no mechanical alterations of the units will be required in order to obtain the increased horsepower, which will be accomplished by changes in control modifications. Consequently, Great Lakes asserts that there will be no construction costs associated with increasing the rates horsepower of the two units.

Great Lakes states that the increased horsepower will only have a minor impact on system capacity. Great Lakes declares that the increase in horsepower will nevertheless be useful for their operational requirements, contributing to system flexibility and efficiency, and will also reduce overall system fuel usage as compared to transporting an equivalent average day volume of natural gas.

Any person desiring to be heard or to make any protest with reference to said Application should on or before April 29, 1999, filed with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 18 CFR 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's rules.

Take further notice that pursuant to the authority contained in and subject to the jurisdiction conferred upon the Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice because the Commission or its designee on this Application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant on the abandonment is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission, on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Linwood A. Watson, Jr,

Acting Secretary.

[FR Doc. 99–9232 Filed 4–13–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–280–000]

National Fuel Gas Supply Corporation; Notice of Application

April 8, 1999.

Take notice that on March 31, 1999, National Fuel Gas Supply Corporation (National Fuel), 10 Lafayette Square, Buffalo, New York 14203, filed an application in Docket No. CP99–280–000 pursuant to Section 7(b) of the Natural Gas Act and Part 157 of the Commission's Regulations, for authority to abandon a storage line, all as more fully set forth in the application on file with the Commission and open to public inspection. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Specifically, National Fuel proposes to abandon a well line, designated Line SW–386, in its East Branch Storage Field located in Mckean County, Pennsylvania. National Fuel proposes to abandon Line SW–386 because the line serves no purpose since the well it is connected to, Well 386–P, was plugged and abandoned pursuant to the Commission's regulations at 18 CFR Part 284, Subpart I. National Fuel states that the abandonment of Line SW–386 will have no significant environmental impact because Line SW–386 is above-ground and no excavation will be required.

Any person desiring to be heard or to make a protest with reference to said application should on or before April 29, 1999, file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, a motion to intervene or protest in accordance with the requirements of the Commissions Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests

filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestant a party to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Commission by Sections 7 and 15 of the Natural Gas Act and the Commissions Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedures herein provide for unless otherwise advised, it will be unnecessary for National Fuel to appear or to be represented at the hearing.

Linwood A. Watson Jr.,

Acting Secretary.

[FR Doc. 99–9234 Filed 4–13–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–286–000]

Northern Natural Gas Company; Notice of Request Under Blanket Authorization

April 8, 1999.

Take notice that on April 5, 1999, Northern Natural Gas Company (Northern), 1111 South 103rd Street, Omaha, Nebraska 68124–1000, filed in Docket No. CP99–286–000 a request pursuant to sections 157.205, 157.212 and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212 and 157.216) for authorization to upgrade an existing Town Border Station (TBS) located in O'Brien County, Iowa, to provide incremental natural gas deliveries to MidAmerican Energy Company (MidAmerican) under Northern's blanket certificate issued in Docket No. CP82–401–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection. The application may be viewed on the web at www.ferc.fed.us. Call (202) 208–2222 for assistance.

Northern states that it requests authority to upgrade the existing TBS at an estimated cost of $85,000 to provide incremental natural gas deliveries to MidAmerican under currently effective throughput service agreements. Estimated incremental volumes to MidAmerican at this TBs will be 275 MMBtu on a peak day and 8,250 MMBtu on an annual basis.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 385.214) a motion to intervene or notice of intervention and pursuant to section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–9235 Filed 4–13–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT99–16–000]

Northwest Pipeline Corporation; Notice of proposed changes in FERC gas tariff and filing of non-conforming service agreements

April 8, 1999.

Take notice that on April 5, 1999, Northwest Pipeline Corporation (Northwest) tendered for filing and acceptance (1) seven non-conforming service agreements, and (2) Third Revised Sheet No. 364 and First Revised Sheet No. 365 of its FERC Gas Tariff, Third Revised Volume No. 1, to be effective May 6, 1999.

Northwest states that six of the non-conforming service agreements contain either contract-specific operational flow order provisions or provisions imposing subordinate primary corridor rights. The seventh service agreement contains a provision that obligates the shipper to reallocate a portion of its receipt point capacity or pay additional facility charges if Northwest initiates an expansion project to reduce required south flow displacement. The tariff sheets are submitted to add such agreements to the list of non-conforming service agreements contained in Northwest's tariff.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www/ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–9237 Filed 4–13–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM99–1–37–001]

Northwest Pipeline Corporation; Notice of Compliance Filing

April 8, 1999.

Take notice that on April 5, 1999, Northwest Pipeline Corporation (Northwest) tendered for filing as part of its FERC Gas Tariff the following tariff sheets, to be effective May 1, 1999:

Third Revised Volume No. 1

Eleventh Revised Sheet No. 14;

Original Volume No. 2

Twenty-Sixth Revised Sheet No. 2.1

Northwest states that the purpose of this filing is to comply with the Commission's letter order dated March 31, 1999 in Docket No. TM99–1–37–000 which directed Northwest to revise its fuel reimbursement factor (Factor) for Northwest's transportation service Rate Schedules TF–1, TF–2, TI–1 and for all transportation service rate schedules

contained in Original Volume No. 2 of Northwest's FERC Gas Tariff.

Northwest states that the revised Factor of 0.84% is calculated using a two-year average of actual lost and unaccounted-for gas as directed by the Commission. Northwest seeks waiver of any necessary regulations so that the proposed tariff sheets may be effective May 1, 1999.

Northwest states that a copy of this filing has been served upon each person designated on the official service list compiled by the Secretary in this proceeding.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–9241 Filed 4–13–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. MT99–9–000]

PG&E Gas Transmission, Northwest Corporation; Notice of Tariff Filing

April 8, 1999.

Take notice that on April 1, 1999, PG&E Transmission, Northwest Corporation (PG&E GT–NW) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1–A, Second Revised Sheet No. 85. PG&E GT–NW requests that the above-referenced tariff sheets become effective May 1, 1999.

PG&E GT–NW asserts that the purpose of this filing is to update its Tariff to reflect the PG&E GT–NW will share certain facilities in Houston Texas, with a marketing affiliate.

PG&E GT–NW also submitted a revised set of Marketing Affiliate Standards to reflect the shared facilities as well as to add new Standard L.

PG&E GT–NW further states that a copy of this filing has been served on PG&E GT–NW's jurisdictional customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make Protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–9238 Filed 4–13–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–288–000]

Texas Gas Transmission Corporation; Notice of Application

April 8, 1999.

Take notice that on April 6, 1999, Texas Gas Transmission Corporation (Texas Gas), 3800 Frederica Street, Owensboro, Kentucky 42301, filed an application with the Commission in Docket No. CP99–288–000 pursuant to Section 7 of the Natural Gas Act (NGA) for permission and approval to abandon an interruptible transportation service performed for Tennessee Gas Pipeline Company (Tennessee) under Texas Gas' FERC Gas Tariff Rate Schedule X–82, all as more fully set forth in the request which is open to the public for inspection. The application may be viewed on the web at www.ferc.fed.us. Call (202) 208–2222 for assistance.

Texas Gas received authority on December 7, 1979, to transport up to 80,000 Mcf of natural gas and associated liquids per day for Tennessee via its capacity in the High Island Offshore System and the Michigan Wisconsin Pipe Line Company from West Cameron Block 167, offshore Louisiana, to an exchange point between Texas Gas and Tennessee at Egan, Acadia Parish, Louisiana.[1] Texas Gas states that Tennessee no longer needs this interruptible transportation service. By mutual agreement, the parties via a letter dated March 8, 1999, terminated the transportation service. No facilities would be abandoned in this proposal.

Any person desiring to be heard or to make any protest with reference to said application should on or before April 29, 1999, file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the NGA and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Texas Gas to appear or be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–9236 Filed 4–13–99; 8:45 am]

BILLING CODE 6717–01–M

---

[1] 9 FERC ¶ 61,307 (1979).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–113–000]

Algonquin LNG, Inc. Notice of Availability of the Environmental assessment for the Proposed ALNG Plant Modifications Project

April 8, 1999.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared this environmental assessment (EA) on the modification of existing facilities proposed by Algonquin LNG, Inc. (ALNG Plant Modifications Project) in the above-referenced docket. The application and other supplemental filings in this docket are available for viewing on the FERC Internet website (www.ferc.fed.us). Click on the "RIMS" link, select "Docket #" from the RIMS' Menu, and follow the instructions.

Similarly, the "CIPS" link on the FERC Internet website provides access to the tests of formal documents issued by the Commission, such as orders, notices, and rulemakings. From the FERC Internet website, click on the "CIPS" link, select "Docket #" from the CIPS menu, and follow the instructions.

The EA was prepared to satisfy the requirements of the National Environmental Policy Act. The staff concludes that approval of the proposed project, with appropriate mitigating measures, would not constitute a major Federal action significantly affecting the quality of the human environment.

The EA assesses the potential environmental effects of the proposed modification, construction, and operation at an existing liquefied natural gas (LNG) storage facility. The proposed modifications would include:

- Abandoning the three existing direct-fired LNG vaporizers, and installing three new horizontal indirect-fired 150 million standard cubic feet per day (MMscfd) LNG vaporizers;
- Increasing the capacity of the existing LNG pumps from 100 MMscfd to 150 MMscfd;
- Installing two new 600 horsepower boiloff gas compressors consisting of flooded screw type compressors driven by fixed speed electric motors.

Installing additional emergency power generation equipment, control systems, and safety systems; and

- Modifying metering facilities for the delivery of vaporized LNG and boiloff gas.

The proposed facilities would allow ALNG to continue to provide LNG storage, LNG truck loading and unloading, and LNG vaporization services on a firm and interruptible non-discriminatory open access basis.

The EA has been placed in the public files of the FERC. A limited number of copies of the EA are available for distribution and public inspection at: Federal Energy Regulatory commission, Public Reference and files Maintenance Branch, 888 First Street, NE, Room 2A, Washington, DC 20426, (202) 208–1371.

Copies of the EA have been mailed to Federal, state and local agencies, public interest groups, interested individuals, newspapers, and parties to this proceeding.

Any person wishing to comment on the EA may do so. To ensure consideration prior to a Commission decision on the proposal, it is important that we receive your comments before the date specified below. Please carefully follow the instructions to ensure that your comments are received in time and properly recorded.

- Send two copies of your comments to: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Room 1A, Washington, DC 20426.
- Label one copy of the comments for the attention of the Environmental Review and Compliance Branch, PR11.1;
- Reference Docket No. CP99–113–000; and
- Mail your comments so that they will be received in Washington, DC on or before May 7, 1999.

Comments will be considered by the Commission but will not serve to make the commentor a party to the proceeding. Any person seeking to become a party to the proceeding must file a motion to intervene pursuant to Rule 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.214).

The date for filing timely motions to intervene in this proceeding has passed. Therefore, parties not seeking to file late interventions must show good cause, as required by section 395.214(b)(3), why this time limitation should be waived. Environmental issues have been viewed as good cause for late intervention. You do not need intervenor status to have your environmental comments considered. Additional information about the proposed project is available from Mr. Paul McKee of the Commission's Office of External Affairs at (202) 208–1088 or on the FERC website (www.ferc.fed.us) using the "RIMS" link to information in this docket number. For assistance with access to RIMS, the RIMS helpline can be reached at (202) 208–2222. Access to the texts of formal documents issued by the Commission with regard to this docket, such as orders and notices, is also available on the FERC website using the "CIPS" link. For assistance with access to CIPS, the CIPS helpline can be reached at (202) 208–2474.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–9233 Filed 4–13–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 1494–160 Oklahoma]

Grand River Dam Authority; Notice of Availability of Draft Environmental Assessment

April 8, 1999.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47910), the Office of Hydropower Licensing (OHL) has reviewed an application for approval of additional marina facilities. Grand River Dam Authority proposes to permit Gene Gregg, d/b/a Tera Miranda Marina, (permittee) to improve and enlarge an existing commercial marina facility located on the east side of Grand Lake's Monkey Island. The existing marina facility includes 20 boat docks with a total of 129 slips. The permittee requests permission to remove from the site an existing jetty and two manmade breakwaters and to install and operate certain additional facilities. The new proposed facilities include five new boat docks with a total of 116 slips, two floating breakwaters, a building containing showers and a restroom facility, and a waste disposal system. The Pensacola Project is on the Grand River, in Craig, Delaware, Mayes, and Ottawa Counties, Oklahoma.

The DEA was written by staff in the Office of Hydropower licensing, Federal Energy Regulatory Commission. Copies of the DEA can be obtained by calling the Commission's Public Reference Room at (202) 208–1371 or may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (please call (202) 208–2222 for assistance). In the DEA, staff concludes that approval of the licensee's proposal would not constitute a major Federal action significantly affecting the quality of the human environment.

lease submit any comments within 30 days from the date of this notice. Comments should be addressed to: Mr. David P. Boergers, Acting Secretary,

Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Please affix Project No. 1494–160 to all comments. For further information, please contact the project manager, Jon Cofrancesco at (202) 219–0079.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–9239 Filed 4–13–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Meeting on Nevada Independent System Administrator

April 9, 1999.

Take notice that, on April 15, 1999, Mr. C.M. Naeve of Skadden, Arps, Slate, Meagher & Flom, other representatives of Nevada utilities, and other stakeholders will meet with members of the Commission's staff and interested members of the public concerning the formation of an independent system administrator for the transmission facilities of Nevada utilities.

The meeting will be held on April 15, 1999, at 4:00 PM, in a Hearing or Conference Room to be determined later, at the Commission's Headquarters, 888 First Street, NE, Washington, DC 20426.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–9296 Filed 4–13–99; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[OPP–66266; FRL 6071–8]

Notice of Receipt of Requests to Voluntarily Cancel Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of requests by registrants to voluntarily cancel certain pesticide registrations.

DATES: Unless a request is withdrawn by October 12, 1999, orders will be issued cancelling all of these registrations.

FOR FURTHER INFORMATION CONTACT: By mail: James A. Hollins, Office of Pesticide Programs (7502C), Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. Office location for commercial courier delivery, telephone number and e-mail address: Rm. 224, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703) 305–5761; e-mail: hollins.james@epamail.epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. Introduction

Section 6(f)(1) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), as amended, provides that a pesticide registrant may, at any time, request that any of its pesticide registrations be cancelled. The Act further provides that EPA must publish a notice of receipt of any such request in the **Federal Register** before acting on the request.

II. Intent to Cancel

This Notice announces receipt by the Agency of requests to cancel some 48 pesticide products registered under section 3 or 24(c) of FIFRA. These registrations are listed in sequence by registration number (or company number and 24(c) number) in the following Table 1.

TABLE 1—REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION

Registration No.	Product Name	Chemical Name
000192–00206	Dexol Preemergent Weed and Grass Preventer 2	Dimethyl tetrachloroterephthalate
000239–02532	Ortho Grass & Weed Preventer	Dimethyl tetrachloroterephthalate
000352 OR–92–0003	Du Pont Sinbar Herbicide	3-tert-Butyl-5-chloro-6-methyluracil
000352 OR–92–0015	Dupont Karmex DF Herbicide	3-(3,4-Dichlorophenyl)-1,1-dimethylurea
000352 OR–93–0020	Dupont Karmex DF Herbicide	3-(3,4-Dichlorophenyl)-1,1-dimethylurea
000352 OR–94–0009	Dupont Karmex DF Herbicide	3-(3,4-Dichlorophenyl)-1,1-dimethylurea
000655–00328	Prentox Carbamate Concentrate Contains 10% Propoxur	*o*-Isopropoxyphenyl methylcarbamate
000769–00836	Miller Dacthal 5G	Dimethyl tetrachloroterephthalate
000769–00837	Miller Turf Food 12–6–6 Plus 3	Dimethyl tetrachloroterephthalate
000769–00911	Science Garden Weeder	Dimethyl tetrachloroterephthalate
001203–00005	Delta Foremost 4820 Del-Kill Insecticide	*o*-Isopropoxyphenyl methylcarbamate
001270–00172	Zep 10–X Insecticide	*o*-Isopropoxyphenyl methylcarbamate
001270–00197	Zep Tox II Pressurized Spray	*o*-Isopropoxyphenyl methylcarbamate
		N-Octyl bicycloheptene dicarboximide
		(Butylcarbityl)(6-propylpiperonyl) ether 80% and related compounds 20%
		Pyrethrins
001270–00199	Zep Stop	*o*-Isopropoxyphenyl methylcarbamate
001685–00069	Formula 296 State Roach & Ant Killer	*o*-Isopropoxyphenyl methylcarbamate
001685–00071	State Formula 298 RAS Residual Roach & Ant Spray	*o*-Isopropoxyphenyl methylcarbamate
002155–00059	R.I.S. 15 Residual Insecticide	*o*-Isopropoxyphenyl methylcarbamate

TABLE 1—REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION—Continued

Registration No.	Product Name	Chemical Name
002596–00114	Hartz Blockade for Cats	*N,N*-Diethyl-meta-toluamide and other isomers
		4-Chloro-alpha-(1-methylethyl)benzeneacetic acid, cyano(3-phenoxyphenyl)methyl
002596–00115	Hartz Blockade for Dogs	*N,N*-Diethyl-meta-toluamide and other isomers
		4-Chloro-alpha-(1-methylethyl)benzeneacetic acid, cyano(3-phenoxyphenyl)methyl
002781–00050	Spot Guard	Cyclopropanecarboxylic acid, 3-(2,2-dichloroethenyl)-2,2-dimethyl-,
002935 OR–85–0042	Dimethogon 267 EC	*O,O*-Dimethyl *S*-((methylcarbamoyl)methyl) phosphorodithioate
002935 OR–85–0043	Dimethogon 267 EC	*O,O*-Dimethyl *S*-((methylcarbamoyl)methyl) phosphorodithioate
002935 OR–85–0045	Dimethogon 267 EC	*O,O*-Dimethyl *S*-((methylcarbamoyl)methyl) phosphorodithioate
002935 OR–85–0046	Dimethogon 267 EC	*O,O*-Dimethyl *S*-((methylcarbamoyl)methyl) phosphorodithioate
002935 OR–94–0024	Mancozeb Potato Seed Protectant Fungicide	Zinc ion and manganese ethylenebisdithiocarbamate, coordination product
003125–00205	Morestan Technical for Use Only In the Manufacture of E	6-Methyl-2,3-quinoxalinedithiol cyclic *S,S*-dithiocarbonate
003125–00381	Morestan 4 Ornamental Miticide	6-Methyl-2,3-quinoxalinedithiol cyclic *S,S*-dithiocarbonate
003125–00437	Morestan 4 Nursery Miticide	6-Methyl-2,3-quinoxalinedithiol cyclic *S,S*-dithiocarbonate
004691–00137	Kennel and Yard Spray Concentrate	2-Chloro-1-(2,4,5-trichlorophenyl)vinyl dimethyl phosphate
		2,2-Dichlorovinyl dimethyl phosphate
005042 OR–85–0003	Orco Patrol	2-((*p*-Chlorophenyl)phenylacetyl)-1,3-indandione
005042 WA–92–0022	Orco Patrol Ground Squirrel Bait	2-((*p*-Chlorophenyl)phenylacetyl)-1,3-indandione
010107–00106	Two Plus Two Bromacil and Diuron	5-Bromo-3-sec-butyl-6-methyluracil
		3-(3,4-Dichlorophenyl)-1,1-dimethylurea
010107–00107	Four Plus Four Bromacil and Diuron	5-Bromo-3-sec-butyl-6-methyluracil
		3-(3,4-Dichlorophenyl)-1,1-dimethylurea
010163–00218	Bran-L-Bait 1.5%	*S*-Methyl *N*-((methylcarbamoyl)oxy)thioacetimidate
010163 ID–97–0010		6,7,8,9,10-Hexachloro-1,5,5α,6,9,9α-hexahydro-6,9-methano-2,4,3-benzodioxathiepin-3-oxide
010163 OR–95–0008	Gowan Cryolite Bait	Cryolite
010163 OR–96–0031	Gowan Cryolite Bait	Cryolite
010806–00001	Contact Roach and Ant Killer	*o*-Isopropoxyphenyl methylcarbamate
		N-Octyl bicycloheptene dicarboximide
		(Butylcarbityl)(6-propylpiperonyl) ether 80% and related compounds 20%
		Pyrethrins
011225 CA–88–0029	Kelthane 35 Agricultural Miticide	1,1-Bis(chlorophenyl)-2,2,2-trichloroethanol
013283–00010	Rainbow Wasp Killer	o-Isopropoxyphenyl methylcarbamate
		(Butylcarbityl)(6-propylpiperonyl) ether 80% and related compounds 20%
		Pyrethrins
032273–00008	#90 Deck & Fencepost Preservative	Copper naphthenate
050534–00011	2 Plus 2 (MCPP + 2,4-D Amine)	Dimethylamine 2,4-dichlorophenoxyacetate
		Dimethylamine 2-(2-methyl-4-chlorophenoxy)propionate
050534–00131	2, 4-D Acid Technical Flake	2,4-Dichlorophenoxyacetic acid
050534–00151	Triban-D	Dimethylamine 3,6-dichloro-o-anisate
		Dimethylamine 2,4-dichlorophenoxyacetate
		Dimethylamine 2-(2-methyl-4-chlorophenoxy)propionate
050534–00153	2,4-D + Dicamba Turf Care Herbicide	Dimethylamine 3,6-dichloro-*o*-anisate
		Dimethylamine 2,4-dichlorophenoxyacetate
050534–00194	DS-33	Dimethylamine 2,4-dichlorophenoxyacetate
		Dimethylamine 2-(2-methyl-4-chlorophenoxy)propionate
050534–00203	Reach	Tetrachloroisophthalonitrile

TABLE 1—REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION—Continued

Registration No.	Product Name	Chemical Name
071714–00001	Roundup Ultra	1-(4-Chlorophenoxy)-3,3-dimethyl-1-(1*H*-1,2,4-triazol-1-yl)-2-butanone Isopropylamine glyphosate (*N*-(phosphonomethyl)glycine)

Unless a request is withdrawn by the registrant within 180 days of publication of this notice, orders will be issued cancelling all of these registrations. Users of these pesticides or anyone else desiring the retention of a registration should contact the applicable registrant directly during this 180–day period. The following Table 2 includes the names and addresses of record for all registrants of the products in Table 1, in sequence by EPA Company Number.

TABLE 2—REGISTRANTS REQUESTING VOLUNTARY CANCELLATION

EPA Company No.	Company Name and Address
000192	Dexol, A Division of Verdant Brands, Inc., Attn: Elizabeth L. Neslund, 9555 James Ave., South, Suite 200, Bloomington, MN 55431.
000239	The Solaris Group of Monsanto Co., Box 5006, San Ramon, CA 94583.
000352	E. I. Du Pont De Nemours & Co., Inc., Barley Mill Plaza, Walker's Mill, Wilmington, DE 19880.
000655	Prentiss Inc., C.B. 2000, Floral Park, NY 11001.
000769	Sureco Inc., An Indirect Subsidiary of Verdant Brands, 9555 James Ave., South, Suite 200, Bloomington, MN 55431.
001203	Delta Foremost Chemical Corp., 3915 Air Park St., Memphis, TN 38118.
001270	ZEP Mfg. Co., Box 2015, Atlanta, GA 30301.
001685	The State Chemical Mfg., Co., 3100 Hamilton Ave, Cleveland, OH 44114.
002155	I. Schneid, 1429 Fairmont Ave., N.W., Atlanta, GA 30318.
002596	Hartz Mountain Corp., 400 Plaza Dr., Secaucus, NJ 07094.
002781	Happy Jack Inc., Box 475, Snow Hill, NC 28580.
002935	Wilbur Ellis Co., 191 W. Shaw Ave, #107, Fresno, CA 93704.
003125	Bayer Corp., Agriculture Division, 8400 Hawthorn Rd., Box 4913, Kansas City, MO 64120.
004691	Boehringer Ingelheim Vetmedica, Inc., 2621 North Belt Highway, St. Joseph, MO 64506.
005042	RCO Co., Inc., Box 446, Junction City, OR 97448.
010107	Van Diest Supply Co., 1434 220th Street, Box 610, Webster City, IA 50595.
010163	Gowan Co., Box 5569, Yuma, AZ 85366.
010806	Contact Industries, Div of Safeguard Chemical Corp., 411 Wales Ave, Bronx, NY 10454.
011225	Tuolumne County Agricultural Commissioner, 2 South Green Street, Sonora, CA 95370.
013283	Regwest Co., Agent For: Rainbow Technology Corp., Box 2220, Greeley, CO 80632.
032273	Behr Process Corp., 1603 W Alton St., Santa Ana, CA 92704.
050534	GB Biosciences Corp., c/o Zeneca Ag Products, 1800 Concord Pike, Box 15458, Wilmington, DE 19850.
071714	Dilbeck Fertilizer, Box 258, Ralston, OK 74650.

III. Procedures for Withdrawal of Request

Registrants who choose to withdraw a request for cancellation must submit such withdrawal in writing to James A. Hollins, at the address given above, postmarked before October 12, 1999. This written withdrawal of the request for cancellation will apply only to the applicable 6(f)(1) request listed in this notice. If the product(s) have been subject to a previous cancellation action, the effective date of cancellation and all other provisions of any earlier cancellation action are controlling. The withdrawal request must also include a commitment to pay any reregistration fees due, and to fulfill any applicable unsatisfied data requirements.

IV. Provisions for Disposition of Existing Stocks

The effective date of cancellation will be the date of the cancellation order. The orders effecting these requested cancellations will generally permit a registrant to sell or distribute existing stocks for 1 year after the date the cancellation request was received. This policy is in accordance with the Agency's statement of policy as prescribed in **Federal Register** (56 FR 29362) June 26, 1991; [FRL 3846–4]. Exceptions to this general rule will be made if a product poses a risk concern, or is in noncompliance with reregistration requirements, or is subject to a data call-in. In all cases, product-specific disposition dates will be given in the cancellation orders.

Existing stocks are those stocks of registered pesticide products which are currently in the United States and which have been packaged, labeled, and released for shipment prior to the effective date of the cancellation action. Unless the provisions of an earlier order apply, existing stocks already in the hands of dealers or users can be distributed, sold or used legally until they are exhausted, provided that such further sale and use comply with the EPA-approved label and labeling of the affected product(s). Exceptions to these general rules will be made in specific

cases when more stringent restrictions on sale, distribution, or use of the products or their ingredients have already been imposed, as in Special Review actions, or where the Agency has identified significant potential risk concerns associated with a particular chemical.

List of Subjects

Environmental protection, Pesticides and pests, Product registrations.

Dated: March 25, 1999.

Richard D. Schmitt,

Acting Director, Information Resources and Services Division, Office of Pesticide Programs.

[FR Doc. 99–8832 Filed 4–13–99; 8:45 am]
BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPP–34161; FRL 6071–7]

Notice of Receipt of Requests for Amendments to Delete Uses in Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of request for amendment by registrants to delete uses in certain pesticide registrations.

DATES: Unless a request is withdrawn, the Agency will approve these use deletions and the deletions will become effective on October 12, 1999.

FOR FURTHER INFORMATION CONTACT: By mail: James A. Hollins, Office of Pesticide Programs (7502C), Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Office location for commercial courier delivery telephone number, and e-mail address: Rm., 224, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703) 305–5761; e-mail: hollins.james@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. Introduction

Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be amended to delete one or more uses. The Act further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**. Thereafter, the Administrator may approve such a request.

II. Intent to Delete Uses

This notice announces receipt by the Agency of applications from registrants to delete uses in the 35 pesticide registrations listed in the following Table 1. These registrations are listed by registration number, product names, active ingredients and the specific uses deleted. Users of these products who desire continued use on crops or sites being deleted should contact the applicable registrant before October 12, 1999 to discuss withdrawal of the applications for amendment. This 180–day period will also permit interested members of the public to intercede with registrants prior to the Agency approval of the deletion. (*Note: Registration number(s) preceded by ** indicate a 30–day comment period.*)

TABLE 1—REGISTRATIONS WITH REQUESTS FOR AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS

EPA Reg No.	Product Name	Active Ingredient	Delete From Label
**000264–00312	SEVIN Brand 10% Bait Carbaryl Insecticide	Carbaryl	Use on cotton
**000264–00314	SEVIN Brand 50W Carbaryl Insecticide	Carbaryl	Use on cotton
**000264–00315	SEVIN Brand 85 Sprayable Carbaryl Insec ticide	Carbaryl	Use on cotton
**000264–00316	SEVIN Brand 80S Carbaryl Insecticide	Carbaryl	Use on cotton
**000264–00320	SEVIN Brand 5% Carbaryl Insecticide	Carbaryl	Use on cotton
**000264–00321	SEVIN Brand Carbaryl Insecticide	Carbaryl	Use on cotton
**000264–00324	SEVIN Brand 99% Technical Carbaryl Insecticide	Carbaryl	Use on cotton
**000264–00325	SEVIN Brand 97.5% Manufacturing Concentrate Carbaryl Insecticide	Carbaryl	Use on cotton
**000264–00328	SEVIN Brand 80% Dust Base Carbaryl Insecticide	Carbaryl	Use on cotton
**000264–00333	SEVIN Brand XLR PLUS Carbaryl Insecticide		Use on cotton
**000264–00335	SEVIN Brand RP4 Carbaryl Insecticide	Carbaryl	Use on cotton
**000264–00349	SEVIN Brand 4F Carbaryl Insecticide	Carbaryl	Use on cotton
**000264–00526	SEVIN Brand 80WSP Carbaryl Insecticide	Carbaryl	Use on cotton
000432–00582	BIORAM 0.15% + 0.25% Insecticide Aqueous Pressurized Spray	*d-trans*-Allethrin; Permethrin	Use on dogs & cats
000432–00585	BIORAM 0.2% + 0.2% Insecticide Aqueous Pressurized Spray	*d-trans*-Allethrin; Permethrin, mixed *cis, trans*	Use on dogs & cats

TABLE 1—REGISTRATIONS WITH REQUESTS FOR AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS—Continued

EPA Reg No.	Product Name	Active Ingredient	Delete From Label
000432–00592	Pramex Insecticide Aqueous Pressurized Spray 0.25% for House & Garden	Permethrin, mixed *cis, trans*	Use on dogs & cats
**003125–00102	Guthion 2L	Azinphos-methyl	Apricot, pasture grasses, tobacco, artichoke, grass mixture, peas, wheat, barley, kiwi, rye, beans (dry), oats, soybeans
**003125–00108	Guthion Technical	Azinphos-methyl	Apricot, pasture grasses, tobacco, artichoke, grass mixture, peas, wheat, barley, kiwi, rye, beans (dry), oats, soybeans
**003125–00310	Guthion Solupak 50%	Azinphos-methyl	Apricot, pasture grasses, tobacco, artichoke, grass mixture, peas, wheat, barley, kiwi, rye, beans (dry), oats, soybeans
**005905–00525	Diazinon 4EC	Diazinon	Use on all agricultural crops
**010163–00078	Gowan Azinphos-M-50-W	Azinphos-methyl	Barley, oats, rye, wheat, soybeans, tobacco, apricots, artichokes, dry beans, blackeyed peas (southern peas, crowder peas) shade trees
**010163–00080	Gowan Azinphos-M 2EC	Azinphos-methyl	Barley, oats, rye, wheat, pasture grasses, soybeans, tobacco, artichokes, dry beans, black eyed peas (southern and crowder peas), shade trees
**010163–00095	Azinphos Methyl Technical	Azinphos-methyl	Alfalfa-grass mixture, artichokes, rye, safflower (seed crop), vetch (seed crop), tobacco
**010163–00138	Gowan Azinphos-M 35WP	Azinphos-methyl	Barley, oats, rye, wheat, soybeans, apricots, dry beans, blackeyed peas (southern & crowder peas), cotton, southern pine seed orchards, pista chios, ornamentals, nursery plants, Christmas trees
**010163–00139	Gowan Azinphos-M 35WSB	Azinphos-methyl	Barley, oats, rye, wheat, soybeans, apricots, artichokes, dry beans, blackeyed peas (southern and crowder peas), cotton, southern pine seed orchards, pista chios, ornamentals, nursery plants, Christmas trees
**010163–00180	Gowan Azinphos 50 PVA	Azinphos-methyl	Barley, oats, rye, wheat, soybeans, tobacco, apricots, dry beans, blackeyed peas (southern peas, crowder peas), shade trees
**034704–00691	Clean Crop Sniper 2-E Azinphos Methyl Insecticide		Apricot, artichoke, barley beans (dry), oats, pasture grasses, peas, rye, soybeans, tobacco, wheat
**051036–00076	Azinphos-Methyl 2EC	Azinphos-methyl	Apricot, artichoke, barley, beans (dry), oats, southern peas, rye, soybeans, tobacco, wheat
**051036–00130	Azinphos-Methyl 35W	Azinphos-methyl	Apricot, artichoke, barley, beans (dry), oats, pasture grasses, rye, southern peas, soy beans, tobacco, wheat
**051036–00164	Azinphos-Methyl 50W	Azinphos-methyl	Apricot, artichoke, barley, beans (dry), oats, rye, southern peas, slash pine, soy beans, tobacco, wheat
**051036–00205	Azinphos-Methyl 50W Soluble	Azinphos-methyl	Artichoke, rye, slash pine
**051036–00207	Azinphos-Methyl 2EC	Azinphos-methyl	Artichoke, apricot, barley, beans (dry), oats, rye, southern peas, soybeans, tobacco, wheat
**066222–00011	Cotnion-Methyl 50W	Azinphos-methyl	Apricot, barley, kiwi, pasture grasses, rye, tobacco, artichoke, beans (dry), grass mixture, oats, peas, soybeans, wheat
**066222–00012	Cotnion-Methyl 2EC	Azinphos methyl	Apricot, barley, kiwi, pasture grasses, rye, tobacco, artichoke, beans (dry), grass mixture, oats, peas, soybeans, wheat

TABLE 1—REGISTRATIONS WITH REQUESTS FOR AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS—Continued

EPA Reg No.	Product Name	Active Ingredient	Delete From Label
**066222–00016	Cotnion-Methyl 2EC	Azinphos methyl	Apricot, barley, kiwi, pasture grasses, rye, tobacco, artichoke, beans (dry), grass mixture, oats, peas, soybeans, wheat

The following Table 2 includes the names and addresses of record for all registrants of the products in Table 1, in sequence by EPA company number.

TABLE 2—REGISTRANTS REQUESTING AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS

Company No.	Company Name and Address
000264	Rhone-Poulenc Ag Company, P.O. Box 12014, 2 T.W. Alexander Drive, Research Triangle Park, NC 27709.
000432	AgrEvo Environmental Health, 95 Chestnut Ridge Road, Montvale, NJ 07645.
003125	Bayer Corporation, Agriculture Division, P.O. Box 4913, 8400 Hawthorn Road, Kansas City, MO 64120.
005905	Helena Chemical Company, 6075 Poplar Ave., Suite 500, Memphis, TN 38119.
010163	Gowan, P.O. Box 5569, Yuma, AZ 85366.
034704	Platte Chemical Co., 419 18th Street, P.O. Box 667, Greeley, CO 80632.
051036	Micro Flo Company, P.O. Box 5948, Lakeland, FL 33807.
066222	Makhteshim-Agan of North America Inc., 551 Fifth Ave., Suite 1100, New York, NY 10176.

III. Existing Stocks Provisions

The Agency has authorized registrants to sell or distribute product under the previously approved labeling for a period of 18 months after approval of the revision, unless other restrictions have been imposed, as in special review actions.

List of Subjects

Environmental protection, Pesticides and pests, Product registrations.

Dated: March 25, 1999.

Richard D. Schmitt,

Acting Director, Information Resources Services Division, Office of Pesticide Programs.

[FR Doc. 99–8833 Filed 4–13–99; 8:45 am]
BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

April 6, 1999.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before June 14, 1999. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, SW, Washington, DC 20554 or via the Internet to lesmith@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0532.

Title: Scanning Receiver Compliance Exhibit (Sections 2.1033(b)(11)).

Form Number: N/A.

Type of Review: Revision of currently approved collection.

Respondents: Individuals or households; Not-for-profit institutions; Business or other for-profit entities; and State, Local, or Tribal Government.

Number of Respondents: 40.

Estimated time per response: 1 hour.

Frequency of Response: On occasion reporting requirements; Third party disclosure.

Total Annual Burden: 40 hours.

Total Annual Cost: None.

Needs and Uses: The Commission has proposed to require manufacturers of scanning receivers to design their equipment so that: it has 38 dB of image rejection for Cellular Service frequencies, tuning and control circuitry are inaccessible, and any attempt modify the scanning receiver to receive Cellular Service transmissions will likely render the scanning receiver inoperable. The Commission has also proposed to require that the manufacturer submit information with any application for certification that: describes the testing method used to determine compliance with the 38 dB image rejection ratio, contains a statement assessing the vulnerability of the scanning receiver to modification, describes the design features that

prevent modification of the scanning receiver to receive Cellular Service transmissions, and describes the design steps taken to make tuning and control circuitry inaccessible.

Federal Communications Commission.
William F. Caton,
Deputy Secretary.
[FR Doc. 99–9285 Filed 4–13–99; 8:45 am]
BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

March 9, 1999.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before June 14, 1999. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, SW, Washington, DC 20554 or via the Internet to lesmith@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0352.

Title: Part 2—Scanning Receiver Compliance Exhibit (Sections 2.975(a)(8), 2.1033(b)(12)).

Form Number: N/A.

Type of Review: Revision of currently approved collection.

Respondents: Individuals or households; Not-for-profit institutions; Business or other for-profit; and State, Local, or Tribal Government.

Number of Respondents: 40.

Estimated time per response: 1 hour.

Total Annual Burden: 40 hours.

Total Annual Cost: None.

Needs and Uses: The collection of information contained in Part 2 are made necessary by revision of section 2.1033(b)(12) of the Commission Rules governing regulations for scanning receivers. The Commission will require manufacturers of scanning receivers to design their equipment so that: it has 38 dB of image rejection for Cellular Service frequencies, tuning, control and filtering circuitry are inaccessible, and any attempt to modify the scanning receiver to receive Cellular Service transmissions will likely render the scanning receiver inoperable. In addition, the Commission will require that the manufacturer submit information with any application for certification that: describes the testing method used to determine compliance with the 38 dB image rejection ratio, contains a statement assessing the vulnerability of the scanning receiver to modification, describes the design features that prevent modification of the scanning receiver to receive Cellular Service transmissions, and describes the design steps taken to make tuning, control and filtering circuitry inaccessible. Moreover, the Commission will require that a label be affixed to the scanning receiver, similar to the following: modification of this device to receive Cellular Service signals is prohibited under FCC Rules and Federal Law. Further, the Commission is modifying the definition of a scanning receiver. Finally, the Commission is modifying its rules to provide that certain portions of the scanning receiver application for certification will remain confidential after the effective date of the grant of the application. This information includes schematic diagrams, technical narratives describing equipment operation, and design details taken to prevent modification of scanning receivers to receive Cellular Service transmissions.

Federal Communications Commission.
William F. Caton,
Deputy Secretary.
[FR Doc. 99–9286 Filed 4–13–99; 8:45 am]
BILLING CODE 6712–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Notice

DATE AND TIME: Tuesday, April 20, 1999 at 10:00 a.m.

PLACE: 999 E Street, NW, Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:
Compliance matters pursuant to 2 U.S.C. 437g.
Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration.
Internal personnel rules and procedures or matters affecting a particular employee.

DATE AND TIME: Wednesday, April 21, 1999 at 10:00 a.m.

PLACE: 999 E Street, NW, Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:
Correction and Approval of Minutes.
Advisory Opinion 1999–6: National Rural Letter Carriers' Association, by Ken Parmelee, Vice President.
Advisory Option 1999–7: Mary Kiffmeyer, Secretary of State, Minnesota.
Status of Regulations.
Administrative Matters.

PERSON TO CONTACT FOR INFORMATION: Mr. Ron Harris, Press Office, Telephone: (202) 694–1220.

Marjorie W. Emmons,
Secretary of the Commission.
[FR Doc. 99–9468 Filed 4–12–99; 3:08 pm]
BILLING CODE 6715–01–M

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984.

Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, NW, Room 962. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission,

Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

Agreement No.: 202–008090–045.
Title: Mediterranean North Pacific Coast Freight Conference.
Parties:
Med-Pacific Express. (a joint service between d'Amico Societa di Navigazione per Azioni and Italia di Navigazione S.P.A.)
Zim Israel Navigation Co., Ltd.
Synopsis: The proposed Amendment restates the Agreement, as well as, revising it to bring it into compliance with the requirements of the Ocean Shipping Reform Act and the requirements of the European Union.

Agreement No.: 202–011353–024.
Title: The Credit Agreement.
Parties:
A.P. Moller-Maersk Line
Consorsio Naviero Occidente, C.A.
Crowley American Transport, Inc.
King Ocean Central America, S.A.
Dole Ocean Liner Express
ALP Co. Pte. Ltd.
NPR, Inc. ("NPR")
Seaboard Marine Ltd.
Sea-Land Service, Inc.
Venezuelan Container Service
Tecmarine Lines, Inc.
Mediterranean Shipping Company, SA
Tropical Shipping and Construction Co., Ltd.
Ivaran Lines, Ltd. ("Ivaran Lines")
Evergreen Marine Corporation (Taiwan) Ltd.
Caribbean General Maritime Ltd.
Transroll Navieras Express ("Transroll")
Synopsis: The proposed amendment would modify the Agreement's Independent Action provisions to conform to the Ocean Shipping Reform Act of 1998. It deletes NPR and Transroll as parties to the Agreement, changes the name of Ivaran Lines to Lykes Line Ltd., and makes a non-substantive administrative change to the Agreement.

Agreement No.: 202–011579–007.
Title: Inland Shipping Service Association.
Parties:
Crowley American Transport, Inc.
King Ocean
Sea-Land Service, Inc.
Seaboard Marine and Seaboard Marine of Florida, Inc.
Synopsis: The proposed modification would expand the geographic scope of the agreement to include any country in the world.

Dated: April 8, 1999.

By Order of the Federal Maritime Commission.

Ronald D. Murphy,
Assistant Secretary.

[FR Doc. 99–9209 Filed 4–13–99; 8:45 am]
BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than April 29, 1999.

A. Federal Reserve Bank of Chicago (Philip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1413:

1. Thomas Joel Kress, Sparta, Wisconsin; to acquire additional voting shares of F&M Bancorp of Tomah, Inc., Tomah, Wisconsin, and thereby indirectly acquire voting shares of Farmers & Merchants Bank, Tomah, Wisconsin.

Board of Governors of the Federal Reserve System, April 9, 1999.

Robert deV. Frierson,
Associate Secretary of the Board.

[FR Doc. 99–9322 Filed 4–13–99; 8:45 am]
BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 10, 1999.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63102-2034:

1. Sharon Bancshares, Inc., Martin, Tennessee; to merge with First Northwest Bancshares, Inc., Kenton, Tennessee, and thereby indirectly acquire First State Bank, Kenton, Tennessee.

B. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. BOK Financial Corporation, and Park Cities Bancshares, Inc., both of Tulsa, Oklahoma; to acquire 100 percent of the voting shares of Swiss Avenue State Bank, Dallas, Texas.

Board of Governors of the Federal Reserve System, April 9, 1999.

Robert deV. Frierson,
Associate Secretary of the Board.

[FR Doc. 99–9323 Filed 4–13–99; 8:45 am]
BILLING CODE 6210–01–F

GENERAL SERVICES ADMINISTRATION

Notice of Availability (NOA) of the Draft Environmental Impact Statement (DEIS) for the Disposal of the Volunteer Army Ammunition Plant (VAAP), Chattanooga, TN

Pursuant to the requirements of the National Environmental Policy Act (NEPA) of 1969, and the President's Council on Environmental Quality Regulations (40 CFR 1500–1508), as implemented by General Services

Administration (GSA), this Notice of Availability (NOA) for DEIS is announced. The proposed action is the disposal of all of real property associated with this government owned facility. The property consists of about 6,500 acres of land including buildings, industrial facilities and equipment, roadways, utilities, specialized facilities, easements, rights of way, and natural undeveloped land.

The DEIS addresses impacts of two alternatives considered; Disposal and No-Action (Continued Federal Ownership). The DEIS examined the short and long-term impacts to both natural environment and impacts to the surrounding community. The Disposal Alternative is further refined into a series of alternative land use scenarios. These were developed with the input from the local community through the scoping process.

GSA will solicit community input at a Public Meeting to be held on Thursday April 29th. This will incorporate community comments into the decision process before GSA issues a Final EIS (FEIS). The 45-day comment period will end June 2, 1999.

After the comment period GSA will issue a Final EIS for 30 days of additional comment. A decision on the Disposal will not be made until 30 days after the release of the FEIS. GSA anticipates this decision will be rendered by August 1999.

GSA solicits comments in writing at the following address: Mr. Phil Youngberg, Regional Environmental Officer (4PT), General Services Administration (GSA), 401 West Peachtree Street, NW, Suite 3010, Atlanta, GA 30365, or FAX: Mr. Phil Youngberg at 404–331–4540. Comments should be submitted in writing.

April 8, 1999.

Phil Youngberg,

Regional Environmental Office (4 PT).

[FR Doc. 99–9227 Filed 4–13–99; 8:45 am]

BILLING CODE 6820–23–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration; Delegation of Authority

Notice is hereby given that I have delegated to the Administrator, Health Resources and Services Administration (HRSA), all authorities vested in the Secretary of Health and Human Services to make grants for the Medicare Rural Hospital Flexibility Program and for Rural Emergency Medical Services under section 1820(g) of the Social Security Act, as amended. This section was added by section 4201 of the Balanced Budget Act of 1997 (105–33). This delegation excludes the authority to submit reports to Congress. This delegation shall be exercised under the Department's delegation of authority and policy on regulation.

In addition, I hereby ratify any actions taken by the Administrator or other HRSA officials which involved the exercise of this authority prior to the effective date of this delegation.

This delegation is effective upon date of signature.

Dated: April 1, 1998.

Donna E. Shalala,

Secretary of Health and Human Services.

[FR Doc. 99–9297 Filed 4–13–99; 8:45 am]

BILLING CODE 4160–15–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98F–0705]

Ciba Specialty Chemicals Corp.; Withdrawal of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the withdrawal, without prejudice to a future filing, of a food additive petition (FAP 8B4618) proposing that the food additive regulations be amended to provide for the expanded safe use of tris(2,4-di-*tert*-butylphenyl)phosphite as a stabilizer in polymers intended for use in contact with food.

FOR FURTHER INFORMATION CONTACT: Vir D. Anand, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3081.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of August 27, 1998 (63 FR 45820), FDA announced that a food additive petition (FAP 8B4618) had been filed by Ciba Specialty Chemicals Corp., c/o Keller and Heckman, 1001 G St. NW., suite 500 West, Washington, DC 20001. (The petitioner is no longer represented by Keller and Heckman. The address of the petitioner is 540 White Plains Rd., P.O. Box 2005, Tarrytown, NY 10591–9005.) The petition proposed to amend the food additive regulations in § 178.2010 *Antioxidants and/or stabilizers for polymers* (21 CFR 178.2010) to provide for the expanded safe use of tris(2,4-di-*tert*-butylphenyl)phosphite as a stabilizer for polymers intended for use in contact with food. Ciba Specialty Chemicals Corp. has now withdrawn the petition without prejudice to a future filing (21 CFR 171.7).

Dated: March 29, 1999.

Alan M. Rulis,

Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 99–9223 Filed 4–13–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

Indian Health Service

Health Professions Recruitment Program for Indians

AGENCY: Indian Health Service.

ACTION: Notice of competitive grant applications for the health professions recruitment program for Indians.

SUMMARY: The Indian Health Service (IHS) announces that competitive grant applications are now being accepted for the Health Professions Recruitment Program for Indians established by sec. 102 of the Indian Health Care Improvement Act of 1976 (25 U.S.C. 1612), as amended by Pub. L. 102–573. There will be only one funding cycle during fiscal year (FY) 1999. This program is described at sec. 93.970 in the Catalog of Federal Domestic Assistance and is governed by regulations at 42 CFR 36.310 et seq. Costs will be determined in accordance with OMB Circulars A–21, A–87, and A–122 (cost principles for different types of applicant organizations); and 45 CFR part 74 or 45 CFR part 92 (as applicable). Executive Order 12372 requiring intergovernmental review is not applicable to this program. This program is not subject to the Public Health System Reporting requirements.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of "Healthy People 2000." "Healthy People 2000," the full report, is currently out of print. You may obtain the objectives from the latest "Healthy People 2000 Review." A copy may be obtained by calling the National Center for Health Statistics, telephone (301) 436–8500.

Smoke Free Workplace: PHS strongly encourages all grant recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. This is consistent with the

PHS mission to protect and advance the physical and mental health of the American people.

DATES: A. Application Receipt Date—An original and two copies of the completed grant application must be submitted with all required documentation to the Grants Management Branch, Division of Acquisition and Grants Management, Twinbrook Building, Suite 100, 12300 Twinbrook Parkway, Rockville, Maryland 20852, by close of business May 28, 1999.

Applications shall be considered as meeting the deadline if they are either: (1) Received on or before the deadline with hand carried applications received by close of business 5 p.m.; or (2) postmarked on or before the deadline and received in time to be reviewed along with all other timely applications. A legibly dated receipt from a commercial carrier on the U.S. Postal Service will be accepted in lieu of a postmark. Private metered postmarks will not be accepted as proof of timely mailing. Late applications not accepted for processing will be returned to the applicant and will *not* be considered for funding.

B. Additional Dates:

1. Application Review: June 15–17, 1999
2. Applicants Notified of Results: on or about July 1, 1999 (approved, recommended for approval but not funded, or disapproved)
3. Anticipated Start Date: August 1, 1999

FOR FURTHER INFORMATION CONTACT: For program information, contact Ms. Patricia Lee-McCoy, Chief, Scholarship Branch, Twinbrook Metro Plaza, 12300 Twinbrook Parkway, Suite 100, Rockville, Maryland 20852, (301) 443–6197. For grants application and business management information, contact Mrs. M. Kay Carpentier, Grants Management Officer, Grants Management Branch, Division of Acquisition and Grants Management, Indian Health Service, Twinbrook Building, Suite 100, 12300 Twinbrook Parkway, Rockville, Maryland 20852 (301) 443–5204. (The telephone numbers are not toll-free numbers).

SUPPLEMENTARY INFORMATION: This announcement provides information on the general program purpose, eligibility and preference, program objectives, required affiliation, fund availability and period of support, type of program activities considered for support, and application procedures for FY 1999.

A. General Program Purpose

The purpose of the Health Professions Recruitment program is to increase the number of American Indians and Alaska Natives entering the health professions and to ensure an adequate supply of health professionals to the IHS, Indian tribes, tribal organizations, and urban Indian organizations involved in the provision of health care to Indian people.

B. Eligibility and Preference

The following organizations are eligible with preference given in the order of priority to:

1. Indian tribes,
2. Indian tribal organizations,
3. urban Indian organizations and other Indian health organizations; and
4. public and other nonprofit private health or educational entities

C. Program Objectives

Each proposal must address the following *four* objectives to be considered for funding:

1. Identifying Indians with a potential for education or training in the health professions (excluding nursing—The Nursing profession is excluded because the IHS Nursing Recruitment Grant Program provides funding to increase the number of nurses who deliver health care services to Indians.) and encouraging and assisting them:

(A) to enroll in courses of study in such health professions; or

(B) if they are not qualified to enroll in any such courses of study, to undertake such postsecondary education or training as may be required to qualify them for enrollment;

2. Publicizing existing sources of financial aid available to Indians enrolled in any courses of study referred to in paragraph (1) of this subsection or who are undertaking training necessary to qualify them to enroll in any such school.

3. Establishing other programs which the Secretary determines will enhance and facilitate the enrollment of Indians in, and the subsequent pursuit and completion by them of courses of study referred to in paragraph (1) of this section. To delivery the necessary student support systems to help to ensure that students who are recruited successfully complete their academic training. Support services may include:

A. Providing career counseling and academic advice;

B. Assisting students to identify academic deficiencies;

C. Assisting students to locate financial aid;

D. Monitoring students to identify possible problems;

E. Assisting with the determination of, need for, and location of tutorial services; and

F. Other related activities which will help to retain students in school.

4. To work in close cooperation with the IHS, tribes, tribal organizations and urban Indian organizations, in locating and identifying non-academic period placement opportunities and practicum experiences, i.e., the IHS Extern Program authorized under section 105 of Pub. L. 94–437, as amended, assisting students with individual development plans in conjunction with identified placement opportunities; monitoring students to identify and evaluate possible problems; and monitoring and evaluating all placement and practicum experiences within the IHS to further develop and modify the program.

D. Required Affiliation

If the applicant is an Indian tribe, tribal organization, urban organization or other Indian health organization, or a public or nonprofit private health organization, the applicant must submit a letter of support from at least one school accredited for the health professions program, (excluding nursing). This letter must document linkage with that educational organization.

When the target population of a proposed project includes a particular Indian tribe or tribes, an official document, i.e., a letter of support or tribal resolution, must be submitted indicating that the tribe or tribes will cooperate with the applicant.

E. Fund Availability and Period of Support

It is anticipated that approximately $250,000 will be available for approximately 3 new grants. The average funding level for projects in FY 1998 was $72,500. The anticipated start date for selected projects will be August 1, 1999. Pursuant to 42 Code of Federal Regulations § 36.313(c), the project period "will usually be for one to two years." However, under this notice, projects will be awarded for a budget term of 12 months, with a maximum project period of up to three (3) years. A maximum project period of three (3) years is required so that key staff, such as project directors, may be recruited, without the financial and career uncertainty of a one or two year budget period and to enable the projects to carry out their recruitment activities without the added activity of applying for a grant every one or two years. Grant funding levels include both direct and indirect costs. Funding of succeeding years will be based on the FY 1999

level, continuing need for the program, satisfactory performance, and the availability of appropriations in those years.

F. Type of Program Activities Considered for Support

Funds are available to develop grant programs to locate and recruit students with potential for health professions degree programs (excluding nursing), and to provide support services to Indian students who are recruited.

G. Application Process

An *IHS Recruitment Grant Application Kit*, including the required PHS 5161–1 (Rev.. 5/96) (OMB Approval No. 0920–0428) and the U.S. Government Standard forms (SF–424, SF–424A and SF–424B), may be obtained from the Grants Management Branch, Division of Acquisition and Grants Management, Indian Health Service, 12300 Twinbrook Parkway, Suite 100, Rockville, Maryland 20852, telephone (301) 443–5204. (This is not a toll free number.)

H. Grant Application Requirements

All applications must be single-spaced, typewritten, and consecutively numbered pages using black type not smaller than 12 characters per one inch, with conventional one inch border margins, on only one side of standard size 8½ × 11 paper that can be photocopied. The application narrative (not including abstract, tribal resolutions or letters of support, standard forms, table of contents or the appendix) must not exceed 20 typed pages as described above. All applications must include the following in the order presented:

—Standard Form 424, Application for Federal Assistance
—Standard Form 424A, Budget Information—Non-Construction Programs, (pages 1 and 2)
—Standard Form 424B, Assurances—Non-Construction Programs (front and back)
—Certifications, PHS 5161–1, (pages 17–19)
—Checklist, PHS 5161–1, (pages 25–26), NOTE: Each standard form and the checklist is contained in the PHS Grant Application, Form PHS 5161–1 (Revised 5/96)
—Project Abstract (one page)
—Table of Contents
—Program Narrative to include:
—Introduction and Potential Effectiveness of Project
—Project Administration
—Accessibility to Target Population
—Relationship of Objectives to Manpower Deficiencies
—Project Budget, including multi-year narratives, and Budget Justifications
—Appendix to include:
—Tribal Resolution(s) or Letters of Support
—Biographical sketches for key personnel or position descriptions if position is vacant
—Organizational chart
—Workplan
—Completed IHS Application Checklist
—Application Receipt Card, PHS 3038–1 Rev. 5–90.

I. Application Instructions

The following instructions for preparing the application narrative also constitute the standards (criteria or basis for evaluation) for reviewing and scoring the application. Weights assigned each section are noted in parenthesis.

Abstract—An abstract may not exceed one typewritten page. The abstract should clearly present the application in summary form, from a "who-what-when-where-how-cost" point of view so that reviewers see how the multiple parts of the application fit together to form a coherent whole.

Table of Conents—Provide a one page typewritten table of contents.

Narrative

1. Introduction and Potential Effectiveness (30 Pts.)

a. Describe your legal status and organization.

b. State specific objectives of the project, which are measurable in terms of being quantified, significant to the needs of Indian people, logical, complete and consistent with the purpose of sec. 102.

c. Describe briefly what the project intends to accomplish. Identify the expected results, benefits, and outcomes or products to be derived from each objective of the project.

d. Provide a project specific work plan (milestone chart) which lists each objective, the task to be conducted in order to reach the objective, and the timeframe needed to accomplish each task. Timeframes should be projected in a realistic manner to assure that the scope of work can be completed within each budget period. (A work plan format is provided.)

e. In the case of proposed projects for identification of Indians with a potential for education or training in the health professions (excluding nursing), include a method for assessing the potential of interested Indians for undertaking necessary education or training in such health professions.

f. State clearly the criteria by which the project's progress will be evaluated and by which the success of the project will be determined.

g. Explain the methodology that will be used to determine if the needs, goals, and objectives identified and discussed in the application are being met and if the results and benefits identified are being achieved.

h. Identify who will perform the evaluation and when.

2. Project Administration (20 Pts.)

a. Provide an organizational chart (include in appendix). Describe the administrative, managerial and organizational arrangements and the facilities and resources to be utilized to conduct the proposed project.

b. Provide the name and qualifications of the project director or other individuals responsible for the conduct of the project; the qualifications of the principal staff carrying out the project; and a description of the manner in which the applicant's staff is or will be organized and supervised to carry out the proposed project. Include biographical sketches of key personnel (or job descriptions if the position is vacant) (include in appendix).

c. Describe any prior experience in administering similar projects.

d. Discuss the commitment of the organization, i.e., although not required, the level of non-Federal support. List the intended financial participation, if any, of the applicant in the proposed project specifying the type of contributions such as cash or services, loans of full or part-time staff, equipment, space, materials or facilities or other contributions.

3. Accessibility to Target Population (20 Pts.)

a. Describe the current and proposed participation of Indians (if any) in your organization.

b. Identify the target Indian population to be served by your proposed project and the relationship of your organization to that population.

c. Describe the methodology to be used to access the target population.

4. Relationship of Objectives to Health Professional Deficiencies (20 Pts.)

a. Provide data and supporting documentation to address the relationship of objectives to health professional deficiencies.

b. Indicate the number of potential Indian students to be contacted and recruited as well as potential cost per student recruited. Those projects that have the potential to serve a greater number of Indians will be given first consideration.

5. Soundness of Fiscal Plan (10 Pts.)

(a) Clearly define the budget. Provide a justification and detailed breakdown of the funding by category for the first year of the project. Information on the project director and project staff should include salaries and percentage of time assigned to the grant. List equipment purchases necessary for the conduct of the project.

b. The available funding level of $250,000 is inclusive of both direct and indirect costs. Pursuant to Public Health Service Grants Policy (DHHS Publication No. (OASH) 94–50,000 (Rev.) April 1, 1994), a 'training grant' includes a grant for "training or other educational purposes", and the Department of Health and Human Services considers this grant activity as having an educational purpose. Because this project has an educational purpose, and therefore, is for a training grant, the Department of Health and Human Services' policy limiting reimbursement of indirect costs or 8 percent of total direct costs (exclusive of tuition and related fees and expenditures for equipment) is applicable. This limitation applied to all institutions of higher education other than agencies of State and local government.

c. Projects requiring additional years must include a program narrative and categorical budget and justification for each additional year of funding requested (this is not considered part of the 20-page narrative).

Appendix—to include:

a. Tribal Resolution(s) or Letter of Support

b. Biographical sketches of key personnel or position descriptions if position is vacant

c. Organizational chart

d. Workplan

e. Completed IHS Application Checklist

f. Application Receipt Card, PHS 3038–1 Rev. 5–90.

J. Reporting

1. Progress Report—Program progress reports shall be required semiannually. These reports will include a brief description of a comparison of actual accomplishments to the goals established for the period, reasons for slippage and other pertinent information as required. A final report is due 90 days after expiration of the budget/project period.

2. Financial Status Report—Semiannually financial status reports will be submitted 30 days after the end of the half year. A final financial status report is due 90 days after expiration of the budget/project period. Standard Form 269 (long form) will be used for financial reporting.

K. Grant Administration Requirements

Grants are administered in accordance with the following documents:

1. 45 CFR part 91, HHS, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments, or 45 CFR part 74, Uniform Administrative Requirements for Awards and Subawards to Institutions of Higher Education, Hospitals, Other Nonprofit Organizations, and Commercial Organization; and Certain Grants and Agreements with States, Local Governments and Indian Tribal Governments.

2. PHS Grants Policy Statement, and

3. Appropriate Cost Principles: OMB Circular A–21, Educational Institutions, OMB Circular A–87, State and Local Governments, and OMB Circular A–122, Non-profit Organizations.

L. Objective Review Process

Applications meeting eligibility requirements that are complete, responsive, and conform to this program announcement will be reviewed by an Objective Review Committee (ORC) in accordance with IHS objective review procedures. The objective review process ensures a nationwide competition for limited funding. The ORC will be comprised of IHS (40% or less) and other federal or non-federal individuals (60% or more) with appropriate expertise. The ORC will review each application against established criteria. Based upon the evaluation criteria, the reviewers will assign a numerical score to each application, which will be used in making the final funding decision. Approved applications scoring less than 60 points will not be considered for funding.

M. Results of the Review

The results of the objective review are forwarded to the Director, Office of Management Support (OMS), for final review and approval. The Director, OMS, will also consider the recommendations from the Acting Director, Division of Health Professions Support, and the Grants Management Branch. Applicants are notified in writing on or about July 1, 1999. A Notice of Grant Award will be issued to successful applicants. Unsuccessful applicants are notified in writing of disapproval. A brief explanation of the reasons the application was not approved is provided along with the name of an IHS official to contact if more information is desired.

Dated: April 4, 1999.

Michael H. Trujillo,

Assistant Surgeon General Director.

[FR Doc. 99–9310 Filed 4–13–99; 8:45 am]

BILLING CODE 4160–16–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Research Resources; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center for Research Resources Initial Review Group, Research Centers in Minority Institutions Review Committee.

Date: June 7–8, 1999.

Open: June 7, 1999, 8:00 am to 9:30 am.

Agenda: To discuss program planning and program accomplishments.

Place: Holiday Inn Bethesda, 8120 Wisconsin Ave, Bethesda, MD 20814.

Closed: June 7, 1999, 9:30 am to Adjournment.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Bethesda, 8120 Wisconsin Ave, Bethesda, MD 20814.

Contact Person: Grace S. Ault, PhD, Scientific Review Administrator, Office of Review, National Center for Research Resources, 6705 Rockledge Drive, MSC 7965, Room 6018, Bethesda, MD 20892–7965, 301–435–0822.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333; 93.371, Biomedical technology; 93.389, Research infrastructure, National Institutes of Health, HHS)

Dated: April 7, 1999.

Laverne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–9256 Filed 4–13–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Research Resources; Notice of Meeting

Pursuant section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center for Research Resources Initial Review Group, General Clinical Research Centers Review Committee.

Date: June 16–17, 1999.

Open: June 16, 1999, 8:00 am to 9:30 am.

Agenda: To discuss program planning and program accomplishments.

Place: DoubleTree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Closed: June 16, 1999, 9:30 am to Adjournment.

Agenda: To review and evaluate grant applications.

Place: DoubleTree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Charles G. Hollingsworth, DPH, Deputy Director, Office of Review, National Center for Research Resources, 6705 Rockledge Drive, MSC 7965, Room 6018, Bethesda, MD 20892–7965, (301) 435–0818.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333; 93.371, Biomedical Technology; 93.389, Research Infrastructure, National Institutes of Health, HHS)

Dated: April 7, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–9255 Filed 4–13–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel.

Date: May 25, 1999.

Time: 8:30 am to 6:00 pm.

Agenda: To review and evaluate grant applications.

Place: One Washington Circle Hotel, Washington, DC 20037.

Contact Person: Lillian M. Pubols, PhD, Chief, Scientific Review Branch, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd; Suite 3208, MSC 9529, Bethesda, MD 20892–9529, 301–496–9223, lp28e@nih.gov

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: April 7, 1999.

LaVerne V. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–9257 Filed 4–13–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel.

Date: April 21, 1999.

Time: 12:00 pm to 2:00 pm.

Agenda: To review and evaluate contract proposals.

Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Phillip F. Wiethorn, Scientific Review Administrator, Scientific Review Branch, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd, Suite 3208, MSC 9529, Bethesda, MD 20892–9529, 301–496–9223.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: April 7, 1999.

LaVerne J. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–9258 Filed 4–13–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as

amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National institute of Environmental Health Sciences Special Emphasis Panel, Midcareer Investigator Award in Patient-Oriented Research.

Date: April 28, 1999.

Time: 1:30 pm to 3:30 pm.

Agenda: To review and evaluate grant applications.

Place: NIEHS, 79 T.W. Alexander Drive, building 4401, Conference Room 3446, Research Triangle Park, NC 27709, (Telephone Conference Call).

Contact Person: Linda K. Bass, PhD, Scientific Review Administrator, NIEHS, PO Box 12233 EC–24, Research Triangle Park, NC 27709, (919) 541–1307

(Catalogue of Federal Domestic Assistance Program Nos. 93.113, biological response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing; 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences, National Institutes of Health, HHS)

Dated: April 7, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–9259 Filed 4–13–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer on (301) 443–7978.

Comments are invited on: (a) Whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: Treatment Outcomes and Performance Pilot Studies (TOPPS)

[OMB No. 0930–0182; extension, no change]

The TOPPS program awarded contracts to 14 States to develop and pilot test performance and outcomes measures for substance abuse treatment services. The pilot studies are collecting data from substance abuse clients, including pregnant women, women with dependent children, adolescents, and managed care clients. Measures of addiction severity and other outcomes are being obtained at admission, discharge and post-discharge. These States were granted OMB clearance on data collection until September 30, 1999. SAMHSA is requesting an extension of OMB approval for two of these States, Utah and North Dakota, to allow them to complete data collection. The estimated burden for this extension is summarized below.

	Number of respondents	Responses/respondent	Average burden/response (hrs.)	Annualized total burden (hrs.)
All States, currently approved (includes North Dakota and Utah)	6,419	2.0	.51	6,551
North Dakota—extension	300	2.0	.75	450
Utah—extension	420	2.9	.20	246
Revised Total	720	.....	.....	696

Send comments to Nancy Pearce, SAMHSA Reports Clearance Officer, Room 16–105, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: April 7, 1999.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 99–9276 Filed 4–13–99; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Privacy Act of 1974; As Amended; Revisions to an Existing System of Records

AGENCY: Office of the Secretary, Department of the Interior.

ACTION: Proposed revisions to an existing system of records.

SUMMARY: In accordance with the Privacy Act of 1974, as amended (5 U.S.C. 552a), the Office of the Secretary is issuing public notice of its intent to modify an existing Privacy Act system of records notice, OS–77, "Unfair Labor Practice Charges/Complaints." The revisions will update the name and number of the system, the authorities, storage, retrievability, safeguards, and retention and disposition statements, and the addresses of the system locations and system managers.

EFFECTIVE DATE: These actions will be effective April 14, 1999.

FOR FURTHER INFORMATION CONTACT: Team Leader, Employee and Labor Relations Group, Office of Personnel Policy, U.S. Department of the Interior, 1849 C Street NW, MS–5221 MIB, Washington, DC 20240.

SUPPLEMENTARY INFORMATION: The Department of the Interior is proposing to amend the system notice for OS–77, "Unfair Labor Practice Charges/Complaints," to update the name and

number of the system to reflect its Department-wide scope, the authority for maintenance of the system, storage, retrievability, safeguards, and retention and disposition statements, and the addresses of the system locations and system managers to reflect changes that have occurred since the notice was last published. Accordingly, the Department of the Interior proposes to amend the "Unfair Labor Practice Charges/ Complaints," OS–77, in its entirety to read as follows:

Sue Ellen Sloca,

Office of the Secretary Privacy Act Officer, National Business Center.

INTERIOR/DOI–77

SYSTEM NAME:

Unfair Labor Practice Charges/ Complaints Files—Interior, DOI–77.

SYSTEM LOCATION:

(1) Employee and Labor Relations Group, Office of Personnel Policy, U.S. Department of the Interior, 1849 C Street NW, MS–5221 MIB, Washington, DC 20240.

(2) Bureau of Indian Affairs, Division of Personnel Management, 1951 Constitution Avenue, NW, Washington, DC 20245.

(3) U.S. Geological Survey, National Center, 12201 Sunrise Valley Drive, Reston, VA 22092.

(4) U.S. Fish and Wildlife Service, Division of Personnel Management and Organization, 1849 C Street NW, Washington, DC 20240.

(5) Bureau of Reclamation, P.O. Box 25001, Denver, CO 80225.

(6) Bureau of Land Management, Division of Personnel (530), 1849 C Street NW, Washington, DC 20240.

(7) National Park Service, Division of Personnel, Branch of Labor Management Relations, 1849 C Street NW, Washington, DC 20240.

(8) Minerals Management Service, Personnel Division, 1110 Herndon Parkway, Herndon, VA 22070.

(9) Office of Surface Mining, Division of Personnel, 1951 Constitution Avenue NW, Washington, DC 20245.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Departmental employees filing unfair labor practice charges/complaints.

CATEGORIES OF RECORDS IN THE SYSTEM:

Formal charges and complaints; name, address, and other personal information about individuals filing charges and complaints; transcripts of hearings (if held); and relevant information about other individuals in complainants' work units.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 7106.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The primary purpose of the system is to adjudicate charges and complaints of unfair labor practices.

Disclosures outside the Department of the Interior may be made :

(1) To the Federal Labor Relations Authority for settlement of the complaint or appeal.

(2) To the U.S. Department of Justice or in a proceeding before a court or adjudicative body with jurisdiction when (a) the United States, the Department of the Interior, a component of the Department, or, when represented by the government, an employee of the Department is a party to litigation or anticipated litigation or has an interest in such litigation, and (b) the Department of the Interior determines that the disclosure is relevant or necessary to the litigation and is compatible with the purpose for which the records were compiled.

(3) To appropriate Federal, State, local or foreign agencies responsible for investigating or prosecuting the violation of or for enforcing or implementing a statute, rule, regulation, order or license, when the disclosing agency becomes aware of a violation or potential violation of a statute, rule, regulation, order or license.

(4) To a congressional office in response to an inquiry an individual has made to the congressional office.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in both manual and electronic format.

RETRIEVABILITY:

Records are retrieved by name of individual filing charge or complaint and Docket or Case Number.

SAFEGUARDS:

Access to records is limited to authorized personnel. Manual records are stored in locked metal file cabinets or in metal file cabinets in secured premises. Electronic records are maintained with access controls meeting the requirements of 43 CFR 2.51.

RETENTION AND DISPOSAL:

Records are retained and disposed of in accordance with General Records Schedule No. 6, Item 29.

SYSTEM MANAGER(S) AND ADDRESS:

(1) Team Leader, Employee and Labor Relations Group, Office of Personnel Policy, U.S. Department of the Interior, 1849 C Street NW, MS–5221 MIB, Washington, DC 20240.

(2) Personnel Officer, Bureau of Indian Affairs, Division of Personnel Management, 1951 Constitution Avenue, NW, Washington, DC 20245.

(3) Personnel Officer, U.S. Geological Survey, National Center, 12201 Sunrise Valley Drive, Reston, VA 22092.

(4) Personnel Officer, U.S. Fish and Wildlife Service, Division of Personnel Management and Organization, 1849 C Street NW, Washington, DC 20240.

(5) Labor Relations Officer, Bureau of Reclamation, P.O. Box 25001, Denver, CO 80225.

(6) Personnel Officer, Bureau of Land Management, Division of Personnel (530), 1849 C Street NW, Washington, DC 20240.

(7) Personnel Officer, National Park Service, Division of Personnel, Branch of Labor Management Relations, 1849 C Street NW, Washington, DC 20240.

(8) Personnel Officer, Minerals Management Service, Personnel Division, 1110 Herndon Parkway, Herndon, VA 22070.

(9) Personnel Officer, Office of Surface Mining, Division of Personnel, 1951 Constitution Avenue NW, Washington, DC 20245. .

NOTIFICATION PROCEDURES:

An individual requesting notification of the existence of records on him or her should address his/her request to the appropriate System Manager. The request must be in writing, signed by the requestor, and comply with the content requirements of 43 CFR 2.60.

RECORD ACCESS PROCEDURES:

An individual requesting access to records maintained on him or her should address his/her request to the appropriate System Manager. The request must be in writing, signed by the requestor, and comply with the requirements of 43 CFR 2.63.

CONTESTING RECORD PROCEDURES:

An individual requesting amendment of a record maintained on him or her should address his/her request to the appropriate System Manager. The request must be in writing, signed by the requestor, and comply with the content requirements of 43 CFR 2.71.

RECORD SOURCE CATEGORIES:

Individuals filing charges and complaints, colleagues and supervisors of complainants, and management officials.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 99–9278 Filed 4–13–99; 8:45 am]
BILLING CODE 4310–RJ–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Privacy Act of 1974; as Amended; Revisions to an Existing System of Records

AGENCY: Office of the Secretary, Department of the Interior.

ACTION: Proposed revisions to an existing system of records.

SUMMARY: In accordance with the Privacy Act of 1974, as amended (5 U.S.C. 552a), the Office of the Secretary is issuing public notice of its intent to modify an existing Privacy Act system of records notice, OS–84, "Delinquent Debtor File." The revisions will update the authorities statement and the address of the system location and system manager.

EFFECTIVE DATE: These actions will be effective April 14, 1999.

FOR FURTHER INFORMATION CONTACT: Director, Office of Financial Management, U.S. Department of the Interior, 1849 C Street NW, MS–5412 MIB, Washington, DC 20240.

SUPPLEMENTARY INFORMATION: The Department of the Interior is proposing to amend the system notice for OS–84, "Delinquent Debtor File," to update the authority for maintenance of the system statement and the address of the system location and system manager to reflect changes that have occurred since the notice was last published. Accordingly, the Department of the Interior proposes to amend the "Delinquent Debtor File," OS–84, in its entirety to read as follows:

Sue Ellen Sloca,

Office of the Secretary Privacy Act Officer, National Business Center.

INTERIOR/OS–84

SYSTEM NAME:

Delinquent Debtor File—Interior, OS–84.

SYSTEM LOCATION:

Office of Financial Management, U.S. Department of the Interior, 1849 C Street NW, MS–5412 MIB, Washington, DC 20240.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees, former employees, and other Federal employees indebted and owing money to the Department of the Interior.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Federal Claims Collection Act of 1965, Pub. L. 89–508, Debt Collection Act of 1982, Pub. L. 97–365, E.O. 9397, and Debt Collection Improvement Act of 1996, Pub. L. 104–134.

ROUTINE USES OF RECORDS MAINTAINED ON THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The primary purpose of the system is to collect debts owed to the Department using salary offset or administrative offset procedures.

Disclosures outside the Department of the Interior may be made:

(1) To the General Accounting Office, Department of Justice, United States Attorney, or other Federal agencies for further collection action on any delinquent account when circumstances warrant.

(2) To a commercial credit reporting agency for the purpose of either adding to a credit history file or obtaining a credit history file for use in the administration of debt collection.

(3) To a debt collection agency for the purpose of collection services to recover indebtedness owed to the Department.

(4) To any Federal agency where the individual debtor is employed or receiving some form of remuneration for the purpose of enabling that agency to collect debts on the Department's behalf by administrative or salary offset procedures under the provisions of the Debt Collection Act of 1982 (Pub. L. 97–365).

(5) To any other Federal agency including, but not limited to, the Internal Revenue Service pursuant to 31 U.S.C. 3702A, for the purpose of effecting an administrative offset against the debtor of a delinquent debt owed to the Department by the debtor.

(6) To the Internal Revenue Service by computer matching to obtain the mailing address of a taxpayer for the purpose of locating such taxpayer to collect or to compromise a Federal claim by the Department against the taxpayer pursuant to 26 U.S.C. 6103(m)(2) and in accordance with 31 U.S.C. 37121, 3716, and 3718. Note: The Department will disclose an individual's mailing address obtained from the IRS pursuant to 26 U.S.C. 6103(m)(2) only for the purpose of debt collection. Disclosures to a debt collection agency will be made only to facilitate the collection or compromise of a Federal claim under the Debt Collection Act of 1982. Disclosures to a consumer reporting agency will be made only for the limited purpose of obtaining a commercial credit report on the individual taxpayer. Address information obtained from the Interior Revenue Service will not be used or shared for any other Departmental purpose or disclosed to another Federal, state, or local agency which seeks to locate the same individuals for its own debt collection purpose.

(7) To any creditor Federal agency seeking assistance for the purpose of that agency implementing administrative or salary offset procedures in the collection of unpaid financial obligations owed the United States Government from an individual.

(8) To the U.S. Department of Justice or to a court or adjudicative body with jurisdiction when (a) the United States, The Department of the Interior, a component of the Department, or, when represented by the government, an employee of the Department is a party to litigation or anticipated litigation or has an interest in such litigation, and (b) the Department of the Interior determines that the disclosure is relevant or necessary to the litigation and is compatible with the purpose for which records were compiled.

(9) To appropriate Federal, State, local, or foreign agencies responsible for investigating or prosecuting the violation of or for enforcing or implementing a statute, rule, regulation, order, or license, when the disclosing agency becomes aware of information indicating a violation or potential of a statute, rule, regulation, rule, order, or license.

(10) To a congressional office in response to an inquiry the individual has made to the congressional office.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosure pursuant to 5 U.S.C. 552a(b)(12). Disclosures may be made from this system to consumer reporting agencies as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3))

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

Records are stored in automated and manual form.

RETRIEVABILITY:

Records are retrieved by the name or Social Security number of the individual debtor.

SAFEGUARDS:

Records are maintained with access controls meeting the requirements of 43 CFR 2.51.

RETENTION AND DISPOSAL:

Records are retained in the Office of Financial Management only for the duration of computer matching programs. Upon conclusion of these programs, records are returned to their respective, originating bureaus/offices, where they are retained and disposed of in accordance with approved agency schedules. Backup copies are retained in the Office of Financial Management for one calendar year, and then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Financial Management, U.S. Department of the Interior, MS–5412–MIB, 1849 C Street NW, Washington, DC 20240.

NOTIFICATION PROCEDURES:

An individual requesting notification of the existence of records on him or her should address his/her request to the System Manager. The request must be in writing, signed by the requestor, and comply with the content requirements of 43 CFR 2.60.

RECORD ACCESS PROCEDURES:

An individual requesting access to records maintained on him or her should address his/her request to the System Manager. The request must be in writing, signed by the requestor, and comply with the requirements of 43 CFR 2.63.

CONTESTING RECORD PROCEDURES:

An individual requesting amendment of a record maintained on him or her should address his/her request to the System Manager. The request must be in writing, signed by the requestor, and comply with the content requirements of 43 CFR 2.71.

RECORD SOURCE CATEGORIES:

Departmental and bureau financial offices.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 99–9279 Filed 4–13–99; 8:45 am]
BILLING CODE 4310–RK–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Privacy Act of 1974; as Amended; Revisions to an Existing System of Records

AGENCY: Office of the Secretary, Department of the Interior.

ACTION: Proposed revision to an existing system of records.

SUMMARY: In accordance with the Privacy Act of 1974, as amended (5 U.S.C. 552a), the Office of the Secretary is issuing public notice of its intent to modify an existing Privacy Act system of records notice, OS–3, "Financial Interest Statements and Ethics Counselor Decisions." The revisions will update the number of the system, the authorities for maintenance of the system, and the addresses of the system location and system managers.

EFFECTIVE DATE: These actions will be effective April 14, 1999.

FOR FURTHER INFORMATION CONTACT: Chief, Departmental Ethics Staff, Office of the Deputy Assistant Secretary for Human Resources, Department of the Interior, 1849 C Street NW, MS–5221 MIB, Washington, DC 20240.

SUPPLEMENTARY INFORMATION: In this notice, the Department of Interior is amending OS–03, "Financial Interest Statements and Ethics Counselor Decisions," to update the number of the system to more accurately reflect the Departmentwide scope of the system, to update the authorities for maintenance of the system to reflect changes that have occurred since the system notice was last published, and to update the addresses of the system locations and system managers. Accordingly, the Department of the Interior proposes to amend the "Financial Interest Statements and Ethics Counselor Decisions," OS–03 system notice in its entirety to read as follows:

Sue Ellen Sloca,

Office of the Secretary, Privacy Act Officer, National Business Center.

INTERIOR/DOI–03

SYSTEM NAME:

Financial Interest Statements and Ethics Counselor Decisions—Interior, DOI–03.

SYSTEM LOCATION:

(1) Office of the Departmental Ethics Staff, Office of the Deputy Assistant Secretary for Human Resources, Department of the Interior, 1849 C Street NW, MS–5221 MIB, Washington, DC 20240.

(2) Bureau and Office Ethics Counselors, Deputy Ethics Counselors, Associate Ethics Counselors, and Assistant Ethics Counselors. (A list of these individuals, by bureau and office, may be obtained from the Office of the Departmental Ethics Staff or from the Department's Internet site: http// www.doi.gov/ethics.)

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Departmental employees required to file financial interests or disclosure statements as required by 5 CFR part 2634 and 5 CFR 3501.101, and Departmental employees subjected to remedial or disciplinary action for conflicts of interest or other ethics violations.

CATEGORIES OF RECORDS IN THE SYSTEM:

Confidential statements of employment and financial interests (OGE–450, SF278 or DI–278) for Departmental employees required to file such statements. Public Financial Disclosure Reports required by the Ethics in Government Act of 1989, as amended, (form SF–278) for individuals in positions which require them to file such statements. Records of conflict of interest decisions and appeals; analysis of financial holdings; employee statements; bureau, office, and supervisor comments on covered employees, as requested by the bureau or office counselors or as needed by the Designated Agency Ethics Official.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

(1) 5 U.S.C. 7301; (2) 16 U.S.C. 1912; (3) 30 U.S.C. 1211; (4) 42 U.S.C. 6392; (5) 43 U.S.C. 1743; (6) 43 U.S.C. 1864; (7) E.O. 12674 as modified by E.O. 12731; and (8) 5 CFR part 2634.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES USERS AND THE PURPOSES OF SUCH USES:

The primary uses of the system are:

(1) To review employee financial interests and determine employee compliance with applicable conflict of interest statutes and regulations, and to effect remedial and disciplinary action where non-compliance is ascertained.

(2) To record the fact that an employee has been made aware of specifically directed legislation or regulations covering his/her organization and that he/she is in compliance with such specific legislation or regulations.

(3) To provide the public with access to, and to adequately control access to, financial disclosure reports (which must, by statute, be made available to the public).

(4) To provide an adequate system of records for Departmental auditors performing compliance audits within the Department. Disclosure outside of the Department may be made:

(1) To the U.S. Department of Justice or in a proceeding before a court or adjudicative body with jurisdiction when (a) the United States, the Department of the Interior, a component

of the Department, or, when represented by the government, an employee of the Department is a party to litigation or anticipated litigation or has an interest in such litigation, and (b) the disclosure is deemed by the Department of the Interior to be relevant or necessary to the litigation, and (c) the Department of the Interior determines that disclosure is compatible with the purpose for which the records were compiled.

(2) To a congressional office in response to an inquiry the individual has made to the congressional office.

(3) To Federal, State, tribal, territorial or local agencies where necessary to obtain information relevant to the hiring or retention of an employee, or the issuance of a security clearance, contract, license, grant or other benefit.

(4) To a Federal agency which has requested information relevant or necessary to the hiring or retention of an employee, or issuance of a security clearance, license, contract, grant or other benefit.

(5) To the Office of Government Ethics to perform oversight reviews.

(6) To the public for only those records covered by specific statutes requiring their public disclosure.

(7) To appropriate Federal, State, tribal, territorial, local or foreign agencies responsible for investigating or prosecuting the violation of, or for enforcing, implementing, or administering a statute, rule, regulation, program, facility, order, lease, license, contract, grant, or other agreement, when the disclosing agency becomes aware of a violation or potential violation of a statute, rule, regulation, facility, order, lease, license, contract, grant or other agreement.

(8) To a Federal, State, tribal, territorial, local or foreign agency, or an organization, or an individual, when reasonably necessary to obtain information or assistance relating to an audit, investigation, trial, hearing, preparation for trial or hearing, or any other authorized activity of the Department.

(9) To an appropriate Federal, State, tribal, territorial, local or foreign court or grand jury in accordance with established constitutional, substantive, or procedural law or practice.

(10) To an actual or potential party or his/her attorney for the purpose of negotiation or discussion on such matters as settlement of a case or matter, plea bargaining, or informal discovery proceedings.

(11) To a foreign government pursuant to an international treaty, convention, or executive agreement entered into by the United States.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

(1) Confidential statements of employment and financial interests forms OGE–450, SF278 and DI–278 are maintained in manual format, in file folders, and in automated format, on computer disks and other appropriate electronic storage media.

(2) Public Disclosure Statements of Known Financial Interest Forms SF–278 and Confidential Supplemental Forms DI–278 are maintained in manual format in file folders.

RETRIEVABILITY:

(1) Confidential statements of employment and financial interests forms OGE–450, SF278 and DI–278 are retrieved by employee name or position for each bureau and office.

(2) Public Disclosure Statements of Known Financial Interest Forms SF–278 and Confidential Supplemental Forms DI–278 are retrieved by employee name and bureau.

SAFEGUARDS:

Records are accessible by authorized personnel only. File folders containing manual records are stored in locked file cabinets in locked rooms. Computer files containing electronic records are protected by passwords and file encryption.

RETENTION AND DISPOSAL:

Records are retained and disposed of in accordance with General Records Schedule No. 1, Item No. 25.

SYSTEM MANAGER(S) AND ADDRESS:

(1) Designated Agency Ethics Official, Deputy Assistant Secretary for Human Resources, U.S. Department of the Interior, 1849 C Street NW, MS–5124 MIB, Washington, DC 20240.

(2) Bureau and Office Ethics Counselors, Deputy Ethics Counselors, Associate Ethics Counselors, and Assistant Ethics Counselors. (A list of these individuals, by bureau and office, may be obtained from the Office of the Departmental Ethics Staff or from the Department's Internet site: http//www.doi.gov/ethics.)

NOTIFICATION PROCEDURES:

An individual requesting notification of the existence of records on him or her should address his/her request to the appropriate System Manager. The request must be in writing, signed by the requestor, and comply with the content requirements of 43 CFR 2.60.

RECORD ACCESS PROCEDURES:

An individual requesting access to records maintained on him or her should address his/her request to the appropriate System Manager. The request must be in writing, signed by the requestor, and comply with the requirements of 43 CFR 2.63.

CONTESTING RECORD PROCEDURES:

An individual requesting amendment of a record maintained on him or her should address his/her request to the appropriate System Manager. The request must be in writing, signed by the requestor, and comply with the content requirements of 43 CFR 2.71.

RECORD SOURCE CATEGORIES:

Employees of the Department who are required to file financial interest statements and bureaus and offices of the Department.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 99–9280 Filed 4–13–99; 8:45 am]
BILLING CODE 4310–RK–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Privacy Act of 1974; as Amended; Revisions to the Existing System of Records

AGENCY: Office of the Secretary, Department of the Interior.

ACTION: Proposed revisions to an existing system of records.

SUMMARY: In accordance with the Privacy Act of 1974, as amended (5 U.S.C. 552a), the Office of the Secretary is issuing public notice of its intent to modify an existing Privacy Act system of records notice, OS–18, "Discrimination Complaints." The revisions will update the number of the system, the addresses of the system locations and system managers, the categories of individuals covered by the system statement, and the storage, retrievability, and safeguards statements.

EFFECTIVE DATE: These actions will be effective April 14, 1999.

FOR FURTHER INFORMATION CONTACT: Director, Office of Equal Opportunity, U.S. Department of the Interior, 1849 C Street NW, MS–5221 MIB, Washington, D.C. 20240.

SUPPLEMENTARY INFORMATION:

In this notice, the Department of the Interior is amending the system notice for OS–18, "Discrimination Complaints," to more accurately

describe the Department-wide scope of the system of records, to add sexual orientation to the list of discrimination factors in the categories of individuals covered by the system statement; to update the storage, retrievability and safeguards statements to reflect changes that have occurred since the system notice was last published; and to update the addresses of the system locations and system managers. Accordingly, the Department of the Interior proposes to amend the "Discrimination Complaints" notice, OS–18 in its entirety to read as follows:

Sue Ellen Sloca,

Office of the Secretary Privacy Act Officer, National Business Center.

INTERIOR/DOI–18

SYSTEM NAME:

Discrimination Complaints—Interior, DOI–18.

SYSTEM LOCATION:

(1) Office of Equal Opportunity, U.S. Department of the Interior, 1849 C Street NW, MS–5221 MIB, Washington, D.C. 20240. Bureau/office equal opportunity offices:

(2) Bureau of Land Management, 1849 C Street NW, MS–302 LS, Washington, D.C. 20240.

(3) Bureau of Reclamation, P.O. Box 25007, Denver, Colorado 80225–0007.

(4) U.S. Geological Survey, MS 602, Reston, Virginia 22092.

(5) National Park Service, 1849 C Street NW, MS–2747 MIB, Washington, D.C. 20240.

(6) U.S. Fish and Wildlife Service, North Fairfax Drive, Room 300 Webb Building, Arlington, Virginia 22203.

(7) Minerals Management Service, 381 Elden Street, MS 2900, Herndon, Virginia 20170.

(8) Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Avenue NW, Room 138–SIB, Washington, D.C. 20240.

(9) Bureau of Indian Affairs, 1849 C Street NW, MS–4554 MIB, Washington, D.C. 20240.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who claim to have been discriminated against on the basis of race, color, sex, religion, national origin, handicap, age and/or sexual orientation in violation of various statutes and regulations including Title VI and Title VII of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000d and 42 U.S.C. 2000e, et seq); Section 501 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 791, et seq) and its implementing regulations; the Age Discrimination in Employment Act of 1967, as amended (29 U.S.C. 794, et seq) and its implementing regulations; the Age Discrimination in Employment Act of 1967, as amended (29 U.S.C. 621, et seq); Title IX of the Education Amendments of 1972 (Pub. L. 92–318); Section 403 of the Trans-Alaska Pipeline Authorization Act (Pub. L. 93–153.87 Stat. 576); and Departmental Manual 373 DM 7, dated December 1, 1998, subject: Equal Opportunity Procedures for Processing Complaints of Discrimination Based on Sexual Orientation.

CATEGORIES OF RECORDS IN THE SYSTEM:

Complaints of discrimination; reports of complaints investigation and supplementary documentary evidence; correspondence, including requests for information from other Federal agencies, and from minority, civil rights, women's and community organizations; documents obtained from recipients of permits, rights-of-way, public land orders, or other Federal authorizations, and their agents, contractors, and subcontractors, under the Trans-Alaska Pipeline Authorization Act (Pub L. 93–153, 87 Stat. 576); and relevant statistical data obtained from various sources.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000d) and its implementing regulations (43 CFR part 17, subpart A); Title VII of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000e, et seq) and its implementing regulations (29 CFR part 1614); section 501 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 791, et seq); section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794, et seq) and its implementing regulations (43 CFR Part 17, subpart B); the Age Discrimination in Employment Act of 1967, as amended (29 U.S.C. 621, et seq); Title IX of the Education Amendments of 1972 (Pub.L. 92–318); and section 403 of the Trans-Alaska Pipeline Authorization Act (Pub. L. 93–153.87 Stat. 576).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The primary purposes of the system are:

(1) To investigate and resolve complaints of discrimination.

(2) To compile statistical information on complaints of discrimination. Disclosures outside the Department of the Interior may be made:

(1) To other Federal agencies charged with the enforcement of equal employment opportunity laws, orders and regulations, on a need-to-know basis to assist these agencies in their enforcement activities.

(2) To the U.S. Department of Justice or in a proceeding before a court or adjudicative body with jurisdiction when (a) the United States, the Department of the Interior, a component of the Department, or when represented by the government, an employee of the Department is a party to litigation or anticipated litigation or has an interest in such litigation, and (b) the disclosure is deemed by the Department of the Interior to be relevant or necessary to the litigation, and (c) the Department of the Interior determines that disclosure is compatible with the purpose for which the records were compiled.

(3) To appropriate Federal, State, local or foreign agencies responsible for investigating or prosecuting the violation of or for enforcing or implementing a statute, rule, regulation, order or license when the disclosing agency becomes aware of information indicating a violation or potential violation of a statute, rule, regulation, order or license.

(4) To a congressional office in connection with an inquiry an individual covered by the system has made to the congressional office.

POLICIES AND PRACTICES FOR STORING RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Within the Departmental office, manual records are stored in file folders in a Aisle Saver System manual storage system. An automated complaints management information system is used to manage and track the processing of complaints.

RETRIEVABILITY:

Records are retrieved by name and employing bureau of individuals filing complaints, docket control number of complaints, and other appropriate data fields.

SAFEGUARDS:

Records are maintained in accordance with safeguards meeting the requirements of the Privacy Act of 1974, as amended (5 U.S.C. 552a) and Departmental regulations (43 CFR part 2, subpart D). Standards for the maintenance of records subject to the Privacy Act are described in Departmental regulations (43 CFR 2.48) and involve the content of the records, data collection practices, and the use, safeguarding, and disposal of personal information in the records. In offices where records are handled, posted warning signs remind employees of

access limitations, standards of conduct for employees handling Privacy Act records, and possible criminal penalties for violation of security regulations. Access to records is limited to authorized personnel on a need-to-know basis.

Within the Departmental office, manual records are stored in a locked Aisle Saver System (file unit) in a room locked with an off-master key. Automated records are maintained in conformance with safeguards based on recommendations of the National Bureau of Standards contained in "Computer Security Guidelines for Implementing the Privacy Act of 1974" (FIPS Pub.41, May 30, 1975). Within bureau offices, records are maintained with appropriate administrative, technical, and physical safeguards to insure their security and confidentiality.

RETENTION AND DISPOSAL:

Records are retained and disposed of in compliance with the National Archives and Records Administration's General Records Schedule No.1, Item No.26.

SYSTEM MANAGER(S) AND ADDRESS:

(1) Director, Office for Equal Opportunity, U.S. Department of the Interior, 1849 C Street NW, MS–5221 MIB, Washington, DC 20240:

For complaints of discrimination arising under Title VI and VII of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000d and 42 U.S.C. 2000e, respectively), Departmental Manual 373 DM 7, dated December 1, 1998, section 501 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 791, et seq); section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794, *et seq.*) and its implementing regulations; the Age Discrimination in Employment Act of 1967, as amended (29 U.S.C. 621, et seq); and Title IX of the Education Amendments of 1972 (Pub. L. 92–318).

(2) Director, Alaska State Office, Bureau of Land Management, 222 West 7th Avenue #13, Anchorage, Alaska 99513:

For complaints arising under section 493 of the Trans-Alaska Pipeline Authorization Act (Pub. L. 93–153, 87 Stat. 576).

(3) Associate Solicitor, Division of General Law, Office of the Solicitor, U.S. Department of the Interior, 1849 C Street NW, MS–6530 MIB, Washington, DC 20240:

For complaints of discrimination arising under Title VII of the Civil Rights of 1964, as amended (42 U.S.C. 2000e) which are filed against the Departmental Office for Equal Opportunity.

NOTIFICATION PROCEDURES:

Inquiries regarding the existence of records shall be addressed to the appropriate System Manager. The request must be in writing, signed by the requester, and meet the content requirements of 43 CFR 2.60.

RECORD ACCESS PROCEDURES:

A request for access to records shall be addressed to the appropriate System Manager. The request must be in writing, signed by the requester, and meet the content requirements of 43 CFR 2.63.

CONTESTING RECORD PROCEDURES:

A request for amendment of records shall be addressed to the appropriate System Manager. The request must be in writing, signed by the requester, and meet the content requirements of 43 CFR 2.71.

RECORD SOURCE CATEGORIES:

Complainants; recipients of permits, rights-of-way, public land orders, or other Federal authorizations, and their agents, contractors, subcontractors, and employees under section 403 of the Trans-Alaska Pipeline Authorization Act (87 Stat. 576); administrators and recipients of Government funds from programs administered by the Department of the Interior; Federal, State, and local government agencies; community, minority, civil rights, and women's organizations; unions; Members of Congress and their staffs; bureaus and offices of the Department of the Interior; and confidential informants, to the extent they possess relevant data otherwise unavailable.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 99–9281 Filed 4–13–99; 8:45 am]
BILLING CODE 4310–RE–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered and Threatened Species Permit Application

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of permit application and availability of Habitat Conservation Plan and Environmental Impact Statement.

SUMMARY: This notice advises the public that the Department of Natural Resources, State of Wisconsin (WDNR) has applied to the Fish and Wildlife Service (Service) for an incidental take permit pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended (Act). This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*).

Permit Number TE 010064

Applicant: Wisconsin Department of Natural Resources, State of Wisconsin, and Twenty-five Partners.

The applicant requests a permit to authorize the incidental take associated with habitat modification (i.e., harm), of the Karner Blue Butterfly (*Lycaeides melissa samuelis*) which is federally listed as endangered. The permit is requested for the State of Wisconsin, in its entirety, for a period of 10 years.

The Service requests comments from the public on the incidental take permit application and the accompanying Wisconsin Statewide Habitat Conservation Plan (Plan). The Plan fully describes the proposed activities and the measures the WDNR and 25 HCP Partners will undertake to conserve the species while conducting otherwise lawful land use activities. These measures and associated impacts are also described in the background and summary information that follow.

We also request comments from the public on our Draft Environmental Impact Statement Number DES 99–9, prepared in accordance with the National Environmental Policy Act, and the Department of the Interior Manual (516 DM 2, Appendix 1 and 516 DM 6, Appendix 1).

DATES: Written comments on the permit application and Plan should be received on or before June 14, 1999.

ADDRESSES: Individuals wishing copies of the permit application, Habitat Conservation Plan, or Draft Environmental Impact Statement, may contact the office and personnel listed below. The Habitat Conservation Plan and Draft Environmental Impact Statement may be accessed through the internet at the U.S. Fish and Wildlife Service's Web Page (*http://www.fws.gov/r3pao*) or the Wisconsin Department of Natural Resources Web Page (http://*www.dnr.state.wi.us/org/land/er/publications/karner/karner.htm*). Documents also will be available for public inspection, by appointment, during normal business hours at the address below.

Document Availability: U.S. Fish and Wildlife Service, 1015 Challenger Court, Green Bay, Wisconsin 54311, (920) 465–7440; FAX (920) 465–7410.

Three public information meetings are scheduled to provide the public an additional forum to learn about the HCP/EIS and proposed activities. Representatives from the U.S. Fish and

Wildlife Service, the WDNR, and others will be available at these meetings. Meetings will begin at 5:00 with question and answer period, followed by presentations and gathering of comments at 6:00pm. Meeting locations are as follows:

Tuesday, May 11, 1999—Siren, Wisconsin, at the Burnett County Government Center, 7410 County Road K, Siren, WI 54872, (Room number to be posted)

Wednesday, May 12, 1999—Black River Falls, at the County Courthouse, 307 Main Street, Black River Falls, WI 54615, (County Board Room)

Thursday, May 13, 1999—Wisconsin Rapids, at the Midstate Technical College, 500 32nd Street, N, Wisconsin Rapids, WI 54494, (L Building Auditorium)

Written comments regarding the permit application, the HCP or Draft EIS should be addressed to the Regional Director, U.S. Fish and Wildlife Service, 1 Federal Drive, Fort Snelling, Minnesota 55111–4056. Comments must be submitted to this address to be considered by the Service in its final decision. Please refer to permit number TE 010064 when submitting comments.

FOR FURTHER INFORMATION CONTACT: Ms. Lisa Mandell, U.S. Fish and Wildlife Service, Fort Snelling, Minnesota, telephone 612–713–5343.

SUPPLEMENTARY INFORMATION: Under Section 9 of the Act and applicable federal regulations, the "taking" of a species listed as endangered or threatened is prohibited. However, the Service, under limited circumstances, may issue permits to "take" listed species, provided such take is incidental to, and not the purpose of, an otherwise lawful activity. Regulations governing permits for endangered species are promulgated in 50 CFR 17.22. Regulations governing permits for threatened species are promulgated in 50 CFR 17.32.

Background

The Karner blue butterfly (*Lycaeides melissa samuelis*) was federally-listed as endangered on December 14, 1992. Historically, the Karner blue butterfly occurred in a narrow band extending from eastern Minnesota, across portions of Wisconsin, Illinois, Indiana, Iowa, Michigan, Ohio, Canada (Ontario), Pennsylvania, New York, Maine, Massachusetts, and New Hampshire. At the time of listing, the butterfly was considered to be extirpated from Illinois, Iowa, Maine, Massachusetts, Ohio, Pennsylvania, and Ontario. To date, recovery efforts have included conservation of existing populations and reintroduction of the Karner blue butterfly into Ohio. At the time of listing, the primary threats to the Karner blue butterfly were habitat loss due to modification and destruction, habitat loss due to the absence of natural disturbances, silviculture and fragmentation of remaining habitat.

The habitat of the Karner blue butterfly is characterized by the presence of wild lupine (*Lupinus perennis*), a member of the pea family. Wild lupine is the only known larval food plant for the species and is, therefore, closely tied to the butterfly's ecology and distribution. In the Midwest, the habitat is dry and sandy, including oak savanna and jack pine areas, and dune/sandplain communities. It is believed that the Karner blue butterfly originally occurred as shifting clusters of populations, or metapopulations, across a vast fire-swept landscape covering thousands of acres. While the fires resulted in localized extirpation, post-fire vegetational succession promoted colonization and rapid population buildups (Schweitzer 1989).

In Wisconsin, Karner blue butterfly populations are concentrated across the central counties and in the northwest. The populations occur primarily on sandy soil areas that support wild lupine, although presence of this habitat alone does not indicate presence of Karner blue butterflies. It appears that other climatic and biological factors also influence suitability of habitat. Currently, abandoned agricultural fields, transportation corridors, rights-of way, managed forests, managed barrens, savannas, and prairies are areas where one might find Karner blue butterflies in Wisconsin.

Following the listing of the butterfly, the Wisconsin Department of Natural Resources recognized the need to address take of the butterfly while conducting otherwise lawful land use activities, including forest management, savanna management, etc. A coalition was formed, and the result of the effort is the Habitat Conservation Plan summarized below, which is currently under consideration for an incidental take permit.

Summary of the Habitat Conservation Plan

The WDNR is interested in administering the Incidental Take Permit for lands throughout the state. Twenty-six partners are included in the application. The WDNR has developed a Species and Habitat Conservation Agreement (SHCA) for state lands and twenty-five partners to the HCP have entered into an SHCA with the WDNR. New partners to the HCP that enter into the process after the proposed permit is issued will be provided with Certificates of Inclusion by the Service once they have signed an SHCA that meets Service and State criteria.

The WDNR and partners have identified a variety of conservation activities that will be undertaken to minimize harm to the butterfly and mitigate unavoidable permanent take during otherwise lawful land use activities. Strategies are included for conservation in forestry management, right-of-way management, barrens management, transportation corridor management, and management of areas to benefit recovery of the species. WDNR proposes to be responsible to ensure compliance and supervise monitoring of take activities.

The WDNR, in the HCP and application, is proposing a statewide Participation Plan that identifies the roles and responsibilities of the current partners and describes: (a) The process for incorporating new partners into the Permit, (b) articulates when and what activities require a separate, individual permit or authorization, and (c) encourages private landowner participation in conservation of the Karner blue butterfly throughout Wisconsin on a voluntary basis. The latter strategy involves encouraging conservation of the Karner blue butterfly through a geographically focused education and outreach program implemented by partners with no regulatory mandate attached to this group of landowners (conservation by this group is optional). This is an extremely innovative approach, but has been proposed based on an extensive, biologically justified analysis of the risk involved in terms of potential to take the butterfly, a rigorous outreach program, and conservation commitments by the WDNR and 25 partners. The WDNR developed the risk assessment associated with implementation of the Participation Plan, which graphically demonstrates (by county) the biological risk and mitigation potential associated with implementation of the Participation Plan. The expectation is that the combination of mitigation by the DNR and Partners, realized through their conservation and recovery commitments and efforts to maximize outreach in the areas most critical to survival and conservation of the species, will provide a net benefit to the species. The Service proposes to condition approval of this Participation Plan on a three year trial period for implementation of this strategy, along with a detailed and extensive reporting requirement

designed to monitor the success of its implementation.

The monitoring program includes three components: (1) An effectiveness monitoring protocol implemented yearly to detect statewide trends of the Karner blue butterfly habitat, presence and relative abundance, (2) self-monitoring to integrate partner survey and management information, and (3) an adaptive management approach. As part of an adaptive management approach, the partners have agreed that modified conservation measures and alternative management regimes will be implemented if monitoring indicates that conservation efforts do not produce the anticipated, desirable result for the butterfly.

The stated biological goal of this HCP is no-net-loss of habitat for the Karner blue butterfly over the life of the plan. A primary objective is to maintain a shifting mosaic of habitat across the Wisconsin landscape over time, which will provide for the ecological needs of the species.

This notice is provided pursuant to section 10(c) of the Act. The Service will evaluate the permit application, HCP, Implementation Agreement, Partners' Species and Habitat Conservation Agreements, and comments submitted relative to the proposed action to determine whether the application meets the requirements of section 10(a) of the Act. If it is determined that the requirements are met, a permit will be issued for the incidental take of Karner blue butterfly.

Reference Cited

Schweitzer, D.F. 1989. Fact sheet for the Karner blue butterfly with special reference to New York. The Nature Conservancy, internal document, 7 pp.

Dated: April 6, 1999.

Marvin E. Moriarty,

Acting Regional Director, Region 3, Fort Snelling, Minnesota.

[FR Doc. 99–9247 Filed 4–13–99; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered and Threatened Species Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of application.

The following applicant has applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*).

PRT–697830

Applicant: Assistant Regional Director, Ecological Services, Region 3, U.S. Fish and Wildlife Service, Fort Snelling, Minnesota.

The applicant requests an amendment to his permit for scientific take activities of listed species in Region 3 to add the Topeka shiner (*Notropis topeka*), a recently listed species, for scientific purposes and the enhancement of propagation or survival of the species in the wild, in accordance with listing, recovery outlines, recovery plans and/or other Service work for the species.

Written data or comments should be submitted to the Regional Director, U.S. Fish and Wildlife Service, Ecological Services Operations, 1 Federal Drive, Fort Snelling, Minnesota 55111–4056, and must be received within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Ecological Services Operations, 1 Federal Drive, Fort Snelling, Minnesota 55111–4056. Telephone: (612/713–5343); FAX: (612/713–5292).

Dated: April 7, 1999.

Charles M. Wooley,

Assistant Regional Director, Ecological Services, Region 3, Fort Snelling, Minnesota.

[FR Doc. 99–9248 Filed 4–13–99; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of an Environmental Assessment and Receipt of Application for an Incidental Take Permit for the Hord Residential Development Project, in Los Osos, San Luis Obispo County, California

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: Joe and Cindy Hord have applied for an incidental take permit from the Fish and Wildlife Service pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended. The Hords are requesting a 10-year permit to allow the incidental take of the federally endangered Morro shoulderband snail (*Helminthoglypta walkeriana*) associated with a proposed 4.2-acre residential development project in the community of Los Osos, San Luis Obispo County, California. The permit application includes a Habitat Conservation Plan and an Implementation Agreement, both of which are available for public review and comment. The Service also announces the availability of an Environmental Assessment for the proposed issuance of the incidental take permit. All comments on the Assessment and permit application will become part of the administrative record and may be released to the public.

DATES: Written comments should be received on or before May 14, 1999.

ADDRESSES: Comments should be addressed to Diane Noda, Field Supervisor, Fish and Wildlife Service, 2493 Portola Road, Suite B, Ventura, California 93003; facsimile (805) 644–3958.

FOR FURTHER INFORMATION CONTACT: Kate Symonds, Fish and Wildlife Biologist, at the above address or telephone (805) 644–1766.

SUPPLEMENTARY INFORMATION:

Document Availability

If you would like copies of the documents for review, please contact the office listed above immediately. Documents also are available for inspection, by appointment, during normal business hours at the above address.

Background

Under Section 9 of the Endangered Species Act and its implementing regulations, taking of threatened and endangered wildlife species is prohibited. Under the Act, the term "take" means to harass, harm, pursue, hunt, shoot, wound, kill, capture or collect listed wildlife, or attempt to engage in such conduct. Harm includes habitat modification that kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering. Under limited circumstances, the Service may issue permits to take threatened or endangered wildlife species if such taking is incidental to, and not the purpose of, otherwise lawful activities. Regulations governing permits for threatened and endangered species are found at 50 CFR 17.22 and 17.32.

The Hords need an incidental take permit because the proposed construction of their residential development project would result in the permanent loss of 1.5 acres of habitat that supports the Morro shoulderband snail within the 4.2-acre project site. The Hord's permit application includes a Habitat Conservation Plan (Plan) that

addresses impacts to the Morro shoulderband snail associated with the proposed project and that provides for implementation of measures to minimize and mitigate adverse impacts to the snail. The Hords propose to dedicate the remaining 2.7 acres of high quality Morro shoulderband snail habitat within the project site that is not proposed for residential development. Snail habitat would be conserved through a perpetual open space conservation easement in favor of the County of San Luis Obispo or another entity approved by the Service. The Hords would ensure that the site is managed in perpetuity in a manner that would be consistent with the Plan's conservation goals for the snail. This action would compensate for the loss of habitat resulting from the project and would benefit the long-term conservation of the snail. The Hord's permit application includes an Implementation Agreement that defines the responsibilities of all of the parties under the Plan.

The Habitat Conservation Plan, Implementation Agreement, and Environmental Assessment are available for public review and comment. The Plan and the Environmental Assessment consider four alternatives to the proposed residential development project: the No Residential Development Alternative, the Alternate Site Alternative, the Alternate Building Location Alternative, and the Reduced Intensity Alternative. The first two alternatives are no action (i.e., no permit) alternatives.

Under the No Residential Development Alternative, housing would not be developed on site. The Service would not issue a section 10(a)(1)(B) permit because there would be no take of the Morro shoulderband snail. This alternative would not adversely affect biological resources occurring on this site; therefore, impacts would be less than those of the proposed project. This alternative assumes the continuation of the site as an undeveloped area. Habitat for the snail would degrade over time without active management. This alternative would not substantially benefit the Morro shoulderband snail because no permanent onsite habitat conservation area would be established, managed, and monitored under this alternative.

The Alternate Site Alternative involves the use of another site for the Hord's residential development project that does not support any listed species. An incidental take permit would not be needed. This alternative would not meet the project purpose and need and was considered economically unfeasible by the Hords. Although this alternative would result in no impact at the proposed construction site, it would not result in establishment of a permanent open space easement that is expected to have long-term benefits for the snail.

Under the Alternate Building Location Alternative, the proposed 4.2-acre parcel would be surveyed for snail presence and the proposed residential buildings and accessory structures would be arranged or sited within the 4.2-acre parcel to avoid and minimize disturbance to areas of the site occupied by the snails. The project might require issuance of an incidental take permit if some acreage of Morro shoulderband snail habitat would be affected. The Hords did not select the Alternate Building Location Alternative because it would not meet the project purpose and need as well as the Proposed Project Alternative and, upon analysis, would not provide greater habitat benefit to the snail.

Under the Reduced Intensity Alternative, the Hords would construct a residential development within the same 4.2-acre parcel but within a reduced construction area, so as to cause less physical disturbance to onsite Morro shoulderband snail habitat. The project could require issuance of an incidental take permit if some acreage of Morro shoulderband snail habitat would be affected. Compared to the Proposed Project Alternative, the Reduced Intensity Alternative would result, at best, in only a minor addition of undeveloped acreage. This contribution to the overall habitat requirements of the Morro shoulderband snail would not be significant.

This notice is provided pursuant to section 10(a) of the Endangered Species Act and Service regulations for implementing the National Environmental Policy Act of 1969 (40 CFR 1506.6). In determining whether the application meets the requirements of law, the Service will evaluate the application, its associated documents, and comments submitted by the public. If the Service determines that the requirements are met, a permit will be issued for the incidental take of the Morro shoulderband snail. A final decision on permit issuance will be made no sooner than 30 days from the date of this notice.

Dated: April 7, 1999.

Elizabeth H. Stevens,

Deputy Manager, California/Nevada Operations Office, Region 1, Sacramento, California.

[FR Doc. 99–9274 Filed 4–13–99; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

National Park Service

Trail of Tears National Historic Trail Advisory Council; Notice of Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act, Public Law 92–463, that a meeting of the Trail of Tears National Historic Trail Advisory Council will be held May 18, 1999, at 8:00 a.m., in Sweetwater, Tennessee, at the Best Western Sweetwater Inn.

The Trail of Tears National Historic Trail Advisory Council was established administratively under authority of section 3 of Public Law 91–383 (16 U.S.C. 1s–2(c)), to consult with the Secretary of the Interior on the implementation of a comprehensive plan and other matters relating to the Trail, including certification of sites and segments, standards for erection and maintenance of markers, preservation of trail resources, American Indian relations, visitor education, historical research, visitor use, cooperative management, and trail administration.

The matters to be discussed include:

—Plan Implementation Status

—Trail Association Status

—Cooperative Agreements Negotiation

—Trail Route

The meeting will be open to the public. However, facilities and space for accommodating members of the public are limited, and persons will be accommodated on a first-come, first-served basis. Any member of the public may file a written statement concerning the matters to be discussed with David Gaines, Superintendent.

Persons wishing further information concerning this meeting, or who wish to submit written statements may contact David Gaines, Superintendent, Long Distance Trails Group Office-Santa Fe, National Park Service, P.O. Box 728, Santa Fe, New Mexico 87504–0728, telephone 505/988–6888. Minutes of the meeting will be available for public inspection at the Office of the Superintendent, located in Room 205, Pinon Building, 1220 South St. Francis Drive, Santa Fe, New Mexico.

Dated: April 7, 1999.

David M. Gaines,

Superintendent.

[FR Doc. 99–9231 Filed 4–13–99; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

Official Trail Marker for the Lewis and Clark National Historic Trail

AGENCY: National Park Service, DOI.

ACTION: Official insignia, designation.

SUMMARY: This notice issues the official trail marker insignia of the Lewis and Clark National Historic Trail. The original graphic image was developed by the Lewis and Clark Trail Commission and became property of the Department of the Interior in 1969. The National Park Service has officially used this insignia—and earlier variations—since completion of planning documents for the Trail in 1982. It has been slightly redesigned since then so that lettering and framing match other National Trail System markers. The earlier designs which are still in use along the Trail are also protected from unauthorized uses by this notice. This publication accomplishes the official designation of the insignia now in use by the National Park Service.

FOR FURTHER INFORMATION CONTACT: Steven Elkinton, Program Leader for National Trails System Programming, NPS, Room 3606, U.S. Department of the Interior, 1849 C Street, NW, Washington, DC 20240, 202–565–1177.

SUPPLEMENTARY INFORMATION: The primary author of this document is Steven Elkinton, Program Leader for National Trails System Programming, National Center for Recreation and Conservation.

The insignia depicted below is prescribed as the official trail marker logo for the Lewis and Clark National Historic Trail, administered by the National Park Service, Midwest Region. Authorization for use of this trail marker is controlled by the administrator of the Trail.

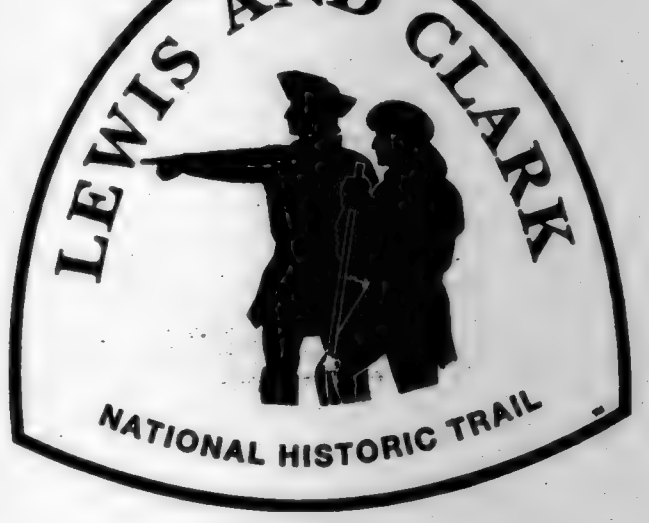

In making this prescription, notice is hereby given that whoever manufactures, sells, or posses this insignia, or any colorable imitation thereof, or photographs or prints or in any other manner makes or executes any engraving, photograph or print, or impression in the likeness of this insignia, or any colorable imitation thereof, without written authorization from the United States Department of the Interior is subject to the penalty provisions of section 701 of Title 18 of the United States Code.

Authority: National Trails System Act, 16 U.S.C. 1241(a) and 1246c and Protection of Official Badges, Insignia, etc. in 18 U.S.C. 701.

Dated: April 30, 1999.

Chris Andress,

Acting Director.

[FR Doc. 99–9230 Filed 4–13–99; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains from Fresno County, CA in the Possession of California State University-Fresno, Fresno, CA

AGENCY: National Park Service.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains from Fresno County, CA in the possession of the University of California-Fresno, Fresno, CA.

A detailed assessment of the human remains was made by University of California-Fresno professional staff in consultation with representatives of the Santa Rosa Indian Community of the Santa Rosa Rancheria.

In 1966 and 1972, human remains representing eight individuals were recovered from the Burrel Barn site (CA-FRE-386), Fresno County, CA during excavations conducted by the Fresno State College Archaeological Field Class under the supervision of Dr. William Beatty. No known individuals were identified. No associated funerary objects were present.

Based on archeological investigations, the Burrel Barn site has been identified as a large village site along the Fresno Slough, about 20 miles southwest of Fresno, CA. Based on cultural material and burial locations withing the village, these human remains have been identified as Native American. Based on the degree of preservation and the cultural material at the Burrel Barn site, the human remains have been determined to date from the late precontact period (post-1500 A.D.). Archeological evidence in this area indicates continuity of material culture and occupation from precontact times into the historic period. Early Yokuts

people are presumed to have occupied the San Joaquin Valley between 1000-500 B.C., with continued occupation into the historic period. Historic documents, ethnographic accounts, and oral history indicate occupation and used of this area Since the late precontact period by Tachi Yokuts peoples, now known as and represented by the Santa Rosa Indian Community of the Santa Rosa Rancheria.

In 1972, human remains representing one individual were recovered from site CA-FRE–495, Fresno County, CA during excavations conducted by Fresno State College Archaeological Field Class under the supervision of Dr. William Beatty. No known individual was identified. No associated funerary objects were present.

Based on archeological investigations, site CA-FRE-495 has been identified as a recently leveled habitation mound along the Fresno Slough, about 19 miles southwest of Fresno, CA. Based on cultural material and burial locations withing the village, these human remains have been identified as Native American. Based on the degree of preservation and the cultural material at site CA-FRE-495, the human remains have been determined to date from the late precontact period (post-1500 A.D.). Archeological evidence in this area indicates continuity of material culture and occupation from precontact times into the historic period. Early Yokuts people are presumed to have occupied the San Joaquin Valley between 1000-500 B.C., with continued occupation into the historic period. Historic documents, ethnographic accounts, and oral history indicate occupation and used of this area Since the late precontact period by Tachi Yokuts peoples, now known as and represented by the Santa Rosa Indian Community of the Santa Rosa Rancheria.

In 1972, human remains representing one individual were recovered from site CA-FRE-528, Fresno County, CA during a field survey by Fresno State College staff. No known individual was identified. No associated funerary objects were present.

Based on archeological investigations, site CA-FRE-528 has been identified as a low mound within a recently plowed agricultural field along Fresno Slough about 16 miles southwest of Fresno, CA. Based on degree of preservation and cultural material recovered at site CA-FRE–528, these human remains have been identified as Native American and have been determined to date from the late precontact period (post-1500 A.D.). Archeological evidence in this area indicates continuity of material culture and occupation from precontact times into the historic period. Early Yokuts people are presumed to have occupied the San Joaquin Valley between 1000-500 B.C., with continued occupation into the historic period. Historic documents, ethnographic accounts, and oral history indicate occupation and used of this area Since the late precontact period by Tachi Yokuts peoples, now known as and represented by the Santa Rosa Indian Community of the Santa Rosa Rancheria.

Based on the above mentioned information, officials of the University of California-Fresno have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of approximately ten individuals of Native American ancestry. Officials of the University of California-Fresno have also determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity which can be reasonably traced between these Native American human remains and the Santa Rosa Indian Community of the Santa Rosa Rancheria.

This notice has been sent to officials of the Santa Rosa Indian Community of the Santa Rosa Rancheria. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains should contact Professor Roger LaJeunesse, Department of Anthropology, California State University-Fresno, 5245 North Backer Avenue, Fresno, CA 93740-0016; telephone: (209) 278-4900, before May 14, 1999. Repatriation of the human remains to the Santa Rosa Indian Community of the Santa Rosa Rancheria may begin after that date if no additional claimants come forward.

Dated: April 8, 1999.

Francis P. McManamon,

Departmental Consulting Archeologist, Manager, Archeology and Ethnography Program.

[FR Doc. 99–9328 Filed 4–13–99; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent to Repatriate a Cultural Item in the Possession of the Heard Museum, Phoenix, AZ

AGENCY: National Park Service.

ACTION: Notice.

Notice is hereby given under the Native American Graves Protection and Repatriation Act, 43 CFR 10.10 (a)(3), of the intent to repatriate a cultural item in the possession of the Heard Museum, Phoenix, AZ which meets the definition of "sacred object" under Section 2 of the Act.

The cultural item consists of a natural stone formation known as *Pokonghoya* (Deity of Protection).

During the early 1900s, this cultural item was collected from an unknown location by Henry Voth. In 1978, this cultural item was donated to the Heard Museum by the Fred Harvey Corporation.

During consultation, representatives of the Hopi Tribe identified this cultural item as central to the continuance of the Soyalang (Winter Solstice) ceremony.

Based on the above-mentioned information, officials of the Heard Museum have determined that, pursuant to 43 CFR 10.2 (d)(3), this cultural item is a specific ceremonial object needed by traditional Native American religious leaders for the practice of traditional Native American religions by their present-day adherents. Officials of the Heard Museum have also determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity which can be reasonably traced between this item and the Hopi Tribe.

This notice has been sent to officials of the Hopi Tribe. Representatives of any other Indian tribe that believes itself to be culturally affiliated with this object should contact Martin Sullivan, Director, Heard Museum, 22 E. Monte Vista Rd., Phoenix, AZ 85004-1480; telephone: (602) 252-8840 before May 14, 1999. Repatriation of this object to the Hopi Tribe may begin after that date if no additional claimants come forward.

Dated: April 5, 1999.

Francis P. McManamon,

Departmental Consulting Archeologist, Manager, Archeology and Ethnography Program.

[FR Doc. 99–9326 Filed 4–13–99; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains, Associated Funerary Object, and Unassociated Funerary Object in the Possession of the Minnesota Indian Affairs Council, Bemidji, MN

AGENCY: National Park Service.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American

Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains and associated funerary objects in the possession of the Minnesota Indian Affairs Council, Bemidji, MN.

A detailed assessment of the human remains was made by professional staff in consultation with representatives of the Leech Lake Band of the Minnesota Chippewa Tribe.

In 1938, human remains representing one individual were removed from Osufen Mound (21-IC-02), MN, a site within the exterior boundaries of the Leech Lake Reservation, by L.A. Wilford of the University of Minnesota. No known individual was identified. The associated funerary object is a metal axe.

Based on the associated funerary object, this burial has been identified as Native American from the historic period. The Osufen Mound site is located within the exterior boundaries of the Leech Lake Indian Reservation.

The cultural item is a ceramic vessel.

In 1944, this ceramic vessel was donated to the University of Minnesota by George Kremer. University of Minnesota indicates this vessel was removed from an eroding burial on Lake Winnibigoshish, MN. Lake Winnibigoshish is located within the exterior boundaries of the Leech Lake Indian Reservation.

Based on the above mentioned information, officials of the Minnesota Indian Affairs Council have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of one individual of Native American ancestry. Officials of the Minnesota Indian Affairs Council have also determined that, pursuant to 43 CFR 10.2 (d)(2), the one object listed above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Officials of the Minnesota Indian Affairs Council have determined that, pursuant to 43 CFR 10.2 (d)(2)(ii), the one cultural item is reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and are believed, by a preponderance of the evidence, to have been removed from a specific burial site of an Native American individual. Lastly, officials of the Minnesota Indian Affairs Council have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity which can be reasonably traced between these Native American human remains, associated funerary object, and the unassociated funerary object and the Leech Lake Band of the Minnesota Chippewa Tribe.

This notice has been sent to officials of the Leech Lake Band of the Minnesota Chippewa Tribe and the Minnesota Chippewa Tribe. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains and associated funerary objects should contact James L. (Jim) Jones, Cultural Resource Specialist, Minnesota Indian Affairs Council, 1819 Bemidji Ave. Bemidji, MN 56601; telephone: (218) 755-3825, before May 14, 1999. Repatriation of the human remains, associated funerary object, and unassociated funerary object to the Leech Lake Band of the Minnesota Chippewa Tribe may begin after that date if no additional claimants come forward.

Dated: April 8, 1999.

Francis P. McManamon,

Departmental Consulting Archeologist, Manager, Archeology and Ethnography Program.

[FR Doc. 99–9327 Filed 4–13–99; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains in the Possession of the Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, MA

AGENCY: National Park Service.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains in the possession of the Peabody Museum of Arhcaeology and Ethnology, Harvard University, Cambridge, MA.

A detailed assessment of the human remains was made by Peabody Museum professional staff in consultation with representatives of the Apache Tribe of Oklahoma, the Comanche Tribe of Oklahoma, the Hopi Tribe, the Jicarilla Apache Tribe, the Kiowa Tribe, the Mescalero Apache Tribe, the Navajo Nation, Pueblo of Cochiti, the Pueblo of Jemez, Pueblo of Santo Domingo, the Pueblo of Zuni, and the Wichita and Affiliated Tribes.

In 1929, human remains representing four individuals were recovered from Pecos Pueblo by William Claflin, Jr. while visiting excavations conducted by Vincent Kidder under the auspices of Phillips Academy, Andover, MA. In 1985, William Claflin, Jr. donated these human remains to the Peabody Museum of Archaeology and Ethnology. No known individuals were identified. No associated funerary objects are present.

Based on the ceramic types recovered from this site, Pecos Pueblo was occupied into the historic period 1300-1838. Historic records document occupation at the site unitl 1838 when the last inhabitants left the Pueblo and went to the Pueblo of Jemez. In 1936, an Act of Congress recognized the Pueblo of Jemez as a "consolidation" and "merger" of the Pueblo of Pecos and the Pueblo of Jemez; this Act further recognizes that all property, rights, titles, interests, and claims of both Pueblos were consolidated under the Pueblo of Jemez.

Further evidence supporting a shared group identity between the Pecos and Jemez pueblos emerges in numerous aspects of present-day Jemez life. The 1992-1993 Pecos Ethnographic Project (unrelated to NAGPRA) states: "[T]he cultural evidence of Pecos living traditions are 1) thet official tribal government position of a Second Lieutenant/Pecos Governor; 2) the possession of the Pecos Pueblo cane of office; 3) the statue and annual feast day of Porcingula (Nuestra Senora de los Angeles) on August 2; 4) the Eagle Watchers' Society; 5) the migration of Pecos people in the early nineteenth century; 6) the knowledge of the Pecos language by a few select elders." (Levine 1994:2-3)

Based on the above mentioned information, officials of the Peabody Museum of Arhcaeology and Ethnology have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of four individuals of Native American ancestry. Officials of the Peabody Museum of Arhcaeology and Ethnology have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity which can be reasonably traced between these Native American human remains and the Pueblo of Jemez.

This notice has been sent to officials of the Apache Tribe of Oklahoma, the Comanche Tribe of Oklahoma, the Hopi Tribe, the Jicarilla Apache Tribe, the Kiowa Tribe, the Mescalero Apache Tribe, the Navajo Nation, Pueblo of Cochiti, the Pueblo of Jemez, Pueblo of Santo Domingo, the Pueblo of Zuni, and the Wichita and Affiliated Tribes. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains

should contact Barbara Issac, Repatriation Coordinator, Peabody Museum of Archaeology and Ethnology, 11 Divinity Ave., Cambridge, MA 022138; telephone (617) 495-2254, before May 14, 1999. Repatriation of the human remains to the Pueblo of Jemez may begin after that date if no additional claimants come forward.

Dated: April 5, 1999.

Francis P. McManamon,

Departmental Consulting Archeologist, Manager, Archeology and Ethnography Program.

[FR Doc. 99–9324 Filed 4–13–99; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent to Repatriate Cultural Items in the Possession of the Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, MA

AGENCY: National Park Service.

ACTION: Notice.

Notice is hereby given under the Native American Graves Protection and Repatriation Act, 43 CFR 10.10 (a)(3), of the intent to repatriate a cultural item in the possession of the Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, MA which meets the definition of "unassociated funerary objects" under Section 2 of the Act.

The eleven cultural items are ceramic vessels and ceramic fragments.

In 1929, nine of these cultural items were recovered from Pecos Pueblo by William Claflin under the auspices of Phillips Academy, Andover, MA. In 1985, William Claflin donated these nine cultural items to the Peabody Museum of Archaeology and Ethnology.

Between 1915-1929, two of these cultural items were recovered from Pecos Pueblo by Alfred Vincent Kidder under the auspices of Phillips Academy, Andover, MA. In 1936, Phillips Academy donated these two cultural items to the Peabody Museum of Archaeology and Ethnology.

Excavations records indicate that the human remains with whom these eleven cultural items were associated were not collected. Based on the ceramic types recovered from this site, Pecos Pueblo was occupied into the historic period (1300-1838). Historic records document occupation at the site until 1838 when the last inhabitants left the Pueblo and went to the Pueblo of Jemez. In 1936, an Act of Congress recognized the Pueblo of Jemez as a "consolidation" and "merger" of the Pueblo of Pecos and the Pueblo of Jemez; this Act further recognizes that all property, rights, titles, interests, and claims of both Pueblos were consolidated under the Pueblo of Jemez.

Further evidence supporting a shared group identity between the Pecos and Jemez pueblos emerges in numerous aspects of present-day Jemez life. The 1992-1993 Pecos Ethnographic Project (unrelated to NAGPRA) states: "[T]he cultural evidence of Pecos living traditions are 1) thet official tribal government position of a Second Lieutenant/Pecos Governor; 2) the possession of the Pecos Pueblo cane of office; 3) the statue and annual feast day of Porcingula (Nuestra Senora de los Angeles) on August 2; 4) the Eagle Watchers' Society; 5) the migration of Pecos people in the early nineteenth century; 6) the knowledge of the Pecos language by a few select elders." (Levine 1994:2-3)

Based on the above mentioned information, officials of the Peabody Museum of Archaeology and Ethnology have determined that, pursuant to 43 CFR 10.2 (d)(2)(ii), these eleven cultural items are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and are believed, by a preponderance of the evidence, to have been removed from a specific burial site of an Native American individual. Officials of the Peabody Museum of Archaeology and Ethnology have also determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity which can be reasonably traced between these items and the Pueblo of Jemez.

This notice has been sent to officials of the Apache Tribe of Oklahoma, the Comanche Tribe of Oklahoma, the Hopi Tribe, the Jicarilla Apache Tribe, the Kiowa Tribe, the Mescalero Apache Tribe, the Navajo Nation, Pueblo of Cochiti, the Pueblo of Jemez, Pueblo of Santo Domingo, the Pueblo of Zuni, and the Wichita and Affiliated Tribes. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains should contact Barbara Issac, Repatriation Coordinator, Peabody Museum of Archaeology and Ethnology, 11 Divinity Ave., Cambridge, MA 022138; telephone (617) 495-2254, before May 14, 1999. Repatriation of these objects to the Pueblo of Jemez may begin after that date if no additional claimants come forward.

Dated: April 8, 1999.

Francis P. McManamon,

Departmental Consulting Archeologist, Manager, Archeology and Ethnography Program.

[FR Doc. 99–9325 Filed 4–13–99; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Bay-Delta Advisory Council's Ecosystem Roundtable Meeting

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of meeting.

SUMMARY: The Bay-Delta Advisory Council's (BDAC) Ecosystem Roundtable will meet on April 22, 1999, to discuss several issues including: an overview of the proposals received under the February 99 proposal solicitation package, a Battle Creek project update, an implementation and tracking system update, and other issues. This meeting is open to the public. Interested persons may make oral statements to the Ecosystem Roundtable or may file written statements for consideration.

DATES: The Bay-Delta Advisory Council's Ecosystem Roundtable meeting will be held from 9:30 a.m. to 12:00 p.m. on Thursday, April 22, 1999.

ADDRESSES: The Ecosystem Roundtable will meet at the Resources Building, Room 1131, 1416 Ninth Street, Sacramento, CA 95814.

FOR FURTHER INFORMATION CONTACT: Wendy Halverson Martin, CALFED Bay-Delta Program, at (916) 657–2666. If reasonable accommodation is needed due to a disability, please contact the Equal Employment Opportunity Office at (916) 653–6752 or TDD (916) 653–6934 at least one week prior to the meeting.

SUPPLEMENTARY INFORMATION: The San Francisco Bay/Sacramento-San Joaquin Delta Estuary (Bay-Delta system) is a critically important part of California's natural environment and economy. In recognition of the serious problems facing the region and complex resource management decisions that must be made, the state of California and the Federal government are working together to stabilize, protect, restore, and enhance the Bay-Delta system. The State and Federal agencies with management and regulatory responsibilities in the Bay-Delta system

are working together as CALFED to provide policy direction and oversight for the process.

One area of Bay-Delta management includes the establishment of a joint State-Federal process to develop long-term solutions to problems in the Bay-Delta system related to fish and wildlife, water supply reliability, natural disasters, and water quality. The intent is to develop a comprehensive and balanced plan which addresses all of the resource problems. This effort, the CALFED Bay-Delta Program (Program), is being carried out under the policy direction of CALFED. The program is exploring and developing a long-term solution for a cooperative planning process that will determine the most appropriate strategy and actions necessary to improve water quality, restore health to the Bay-Delta ecosystem, provide for a variety of beneficial uses, and minimize Bay-Delta system vulnerability. A group of citizen advisors representing California's agricultural, environmental, urban, business, fishing, and other interests who have a stake in finding long-term solutions for the problems affecting the Bay-Delta system has been chartered under the Federal Advisory Committee Act (FACA) as Advisory Council BDAC to advise CALFED on the program mission, problems to be addressed, and objectives for the Program. The BDAC provides a forum to help ensure public participation, and will review reports and other materials prepared by CALFED staff. The BDAC has established a subcommittee called the Ecosystem Roundtable to provide input on annual workplans to implement ecosystem restoration projects and programs.

Minutes of the meeting will be maintained by the Program, Suite 1155, 1416 Ninth Street, Sacramento, CA 95814, and will be available for public inspection during regular business hours, Monday through Friday within 30 days following the meeting.

Dated: April 5, 1999.

Kirk Rodgers,

Acting Regional Director, Mid-Pacific Region.

[FR Doc. 99–9277 Filed 4–13–99 8:45 am]

BILLING CODE 4310–44–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. TA–201–68]

Lamb Meat

Determination

On the basis of the information in the investigation, the Commission unanimously—

(1) Determines, pursuant to section 202(b) of the Trade Act of 1974, that lamb meat [1] is being imported into the United States in such increased quantities as to be a substantial cause of the threat of serious injury to the domestic industry producing an article like or directly competitive with the imported article; and

(2) Makes negative findings, pursuant to section 311(a) of the North American Free-Trade Agreement (NAFTA) Implementation Act (19 U.S.C. 3371(a)), with respect to imports of lamb meat from Canada and Mexico.

Recommendations With Respect to Remedy

The Commission [2] (Chairman Bragg and Commissioners Crawford and Askey) recommends:

(1) That the President impose a tariff-rate quota system, for a 4-year period, on imports of lamb meat that are the subject of this investigation, as follows (all weights are in terms of carcass-weight equivalents):

First year: 20 percent ad valorem on imports over 78 million pounds;

Second year: 17.5 percent ad valorem on imports over 81.5 million pounds;

Third year: 15 percent ad valorem on imports over 81.5 million pounds; and

Fourth year: 10 percent ad valorem on imports over 81.5 million pounds;

(2) That the President implement appropriate adjustment assistance measures, drawing on authorized programs at the U.S. Department of Agriculture and the U.S. Department of Commerce providing specialized direct payments, research, and animal health programs, in such combination as to most effectively "facilitate efforts by the domestic industry to make a positive adjustment to import competition and provide greater economic and social benefits than costs." In this context, we recommend that the President look to the industry's report by PriceWaterhouseCoopers and its recommendations when considering adjustment assistance options;

(3) Having made negative findings with respect to imports of lamb meat from Canada and Mexico under section 311(a) of the NAFTA Implementation Act, that such imports be excluded from the tariff-rate quota; and

(4) That the tariff-rate quota not apply to imports of lamb meat from Israel, or to any imports of lamb meat entered duty-free from beneficiary countries under the Caribbean Basin Economic Recovery Act or the Andean Trade Preference Act.

Vice Chairman Miller and Commissioner Hillman recommend:

(1) That the President increase the rate of duty, for a 4-year period, on imports of lamb meat the subject of this investigation, to the rates of duty as follow: 22 percent ad valorem in the first year of relief, 20 percent ad valorem in the second year, 15 percent ad valorem in the third year, and 10 percent ad valorem in the fourth year;

(2) That the President identify and implement adjustment measures and other action authorized under law that is likely to facilitate positive adjustment to import competition; specifically, that the President make assistance available to the lamb meat industry through Federal programs, primarily those administered by the U.S. Department of Agriculture, and take action to ensure that the National Sheep Industry Improvement Center is fully operational;

(3) Having made negative findings with respect to imports of lamb meat from Canada and Mexico under section 311(a) of the NAFTA Implementation Act, that such imports be excluded from the increased tariffs;

(4) That the increased rates of duty not apply to imports of lamb meat from Israel, or to any imports of lamb meat entered duty-free from beneficiary countries under the Caribbean Basin Economic Recovery Act or the Andean Trade Preference Act.

Commissioner Koplan recommends:

(1) That the President impose a quantitative restriction, for a 4-year period, on imports of lamb meat the subject of this investigation, as follows: 52 million pounds in the first year, 56 million pounds in the second year, 61 million pounds in the third year, and 70 million pounds in the fourth year (all

---

[1] The imported article covered by this investigation is fresh, chilled, or frozen lamb meat. Excluded from the scope of the investigation are imports of live lambs and sheep and meat of mature sheep (mutton). Lamb meat is provided for in subheadings 0204.10.00, 0204.22.20, 0204.23.20, 0204.30.00, 0204.42.20, and 0204.43.20 of the Harmonized Tariff Schedule of the United States (HTS).

[2] The Commission notes that, pursuant to section 330(d)(2) of the Tariff Act of 1930 (19 U.S.C. 1330(d)(2)), the remedy recommendation of Chairman Bragg and Commissioners Crawford and Askey in this investigation is to be treated as the remedy finding of the Commission for purposes of section 203 of the Trade Act.

quantities are carcass-weight-equivalents);

(2) That the President, within the overall quantitative restriction, provide separate allocations for Australia, New Zealand, and "all other" countries in proportion to their average share of imports entered during calendar years 1995–1997;

(3) That the President take all action necessary to ensure that the National Sheep Industry Improvement Center is fully operational as soon as possible, and that the President make available either through the Center or directly to the industry the full measure of Federal assistance programs, including those administered by the U.S. Department of Agriculture.

(4) Having made negative findings with respect to imports of lamb meat from Canada and Mexico under section 311(a) of the NAFTA Implementation Act, that such imports be excluded from the quota; and

(5) That the quota not apply to imports of lamb meat from Israel, or to any imports of lamb meat entered duty-free from beneficiary countries under the Caribbean Basin Economic Recovery Act or the Andean Trade Preference Act.

The Commissioners find that the respective actions that they have recommended will address the threat of serious injury found to exist and be most effective in facilitating the efforts of the domestic industry to make a positive adjustment to import competition.

Background

Following receipt of a petition filed on October 7, 1998, on behalf of the American Sheep Industry Association, Inc., Harper Livestock Company, National Lamb Feeders Association, Winters Ranch Partnership, Godby Sheep Company, Talbott Sheep Company, Iowa Lamb Corporation, Ranchers' Lamb of Texas, Inc., and Chicago Lamb and Veal Company, the Commission, effective October 7, 1998, instituted investigation No. TA–201–68, Lamb Meat, under section 202 of the Trade Act of 1974 to determine whether lamb meat is being imported into the United States in such increased quantities as to be a substantial cause of serious injury, or the threat thereof, to the domestic industry producing an article like or directly competitive with the imported article.

Notice of the institution of the Commission's investigation and of the scheduling of public hearings to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of October 23, 1998 (63 F.R. 56940). The hearing in connection with the injury phase of the investigation was held on January 12, 1999, and the hearing on the question of remedy was held on February 25, 1999. Both hearings were held in Washington, DC; all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the President on April 5, 1999. The views of the Commission are contained in USITC Publication 3176 (April 1999), entitled Lamb Meat: Investigation No. TA–201–68.

Issued: April 7, 1999.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–9329 Filed 4–13–99; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

National Institute of Justice

[OJP (NIJ)–1224]

RIN 1121–ZB57

National Institute of Justice Announcement of the Fifth Meeting of the National Commission on the Future of DNA Evidence

AGENCY: Office of Justice Programs, National Institute of Justice, Justice.

ACTION: Notice of meeting.

SUMMARY: Announcement of the fifth meeting of the National Commission on the Future of DNA Evidence.

SUPPLEMENTARY INFORMATION: The fifth meeting of the National Commission on the Future of DNA Evidence will take place beginning on Thursday, May 6, 1999, 9:00 AM–5:00 PM, Mountain Daylight Time and will continue on Friday, May 7, 1999, 9:00 AM–1:00 PM, Mountain Daylight Time. The meeting will take place at the Hilton of Santa Fe, 100 Sandoval Street, Santa Fe, New Mexico 87501, Phone: 505–988–2811.

The National Commission on the Future of DNA Evidence, established pursuant to section 3(2)A of the Federal Advisory Committee Act (FACA), 5 U.S.C. App. 2, will meet to carry out its advisory functions under Sections 201–202 of the Omnibus Crime Control and Safe Streets Act of 1968, as amended. This meeting will be open to the public.

FOR FURTHER INFORMATION CONTACT: Christopher H. Asplen, AUSA, Executive Director (202) 616–8123.

Authority: This action is authorized under the Omnibus Crime Control and Safe Streets Act of 1968, §§ 201–03, as amended, 42 U.S.C. 3721–23 (1994).

Background

The purpose of the National Commission on the Future of DNA Evidence is to provide the Attorney General with recommendations on the use of current and future DNA methods, applications and technologies in the operation of the criminal justice system, from the Crime scene to the courtroom. Over the course of its Charter, the Commission will review critical policy issues regarding DNA evidence and provide recommended courses of action to improve its use as a tool of investigation and adjudication in criminal cases.

The Commission will address issues in five specific areas: (1) The use of DNA in postconviction relief cases, (2) legal concerns including *Daubert* challenges and the scope of discovery in DNA cases, (3) criteria for training and technical assistance for criminal justice professionals involved in the identification, collection and preservation of DNA evidence at the crime scene, (4) essential laboratory capabilities in the face of emerging technologies, and (5) the impact of future technological developments in the use of DNA in the criminal justice system. Each topic will be the focus of the in-depth analysis by separate working groups comprised of prominent professionals who will report back to the Commission.

Jeremy Travis,

Director, National Institute of Justice.

[FR Doc. 99–9284 Filed 4–13–99; 8:45 am]

BILLING CODE 4410–18–P

NATIONAL SCIENCE FOUNDATION

NSF2000 Steering Committee: Notice of Sunshine Act Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

NAME: NSF 50th Anniversary Public Advisory Committee Meeting (#5213).

DATE AND TIME: May 12, 1999, 10:00 a.m.–4:00 p.m.

PLACE: National Science Foundation, 4201 Wilson Boulevard, Suite 1235, Arlington, VA 22230.

TYPE OF MEETING: Open.

CONTACT PERSONS: William Line, National Science Foundation, 4201 Wilson Boulevard, Suite 1245, Arlington, VA 22230—, (703) 306–1070.

PURPOSE OF MEETING: To provide advice for the National Science Foundation's 50th Anniversary celebration.

Agenda: Wednesday, May 12, 1999

1. Introductory Remarks and Welcome New Committee Members
2. Dr. Rita Colwell, remarks, Q's & A's
3. Report on NSF 50th anniversary
4. Internal Public Advisory Committee business
5. Other business

Dated: April 8, 1999.

Julia A. Moore,

Director, Office of Legislative and Public Affairs, National Science Foundation.

[FR Doc. 99–9215 Filed 4–13–99; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–440]

FirstEnergy Nuclear Operating Company; Notice of Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted a request by the FirstEnergy Nuclear Operating Company (the licensee) to withdraw its April 9, 1997, application for an amendment to Facility Operating License No. NPF–58 for the Perry Nuclear Power Plant, Unit 1, located in Lake County, Ohio. Notice of Consideration of Issuance of this amendment was published in the **Federal Register** on May 21, 1997 (62 FR 27794).

The purpose of the licensee's amendment request was to revise the Technical Specifications to extend the existing surveillance interval for performing the Channel Functional Tests for the refueling equipment interlocks and for the one-rod-out interlock.

Subsequently, by letter dated March 10, 1999, the licensee informed the staff that the amendment was being withdrawn and would be resubmitted in the future based on an approved Standard Technical Specification Change Traveler, Number TSTF–225. Thus, the amendment application is considered to be withdrawn by the licensee.

For further details with respect to this action, see the application for amendment dated April 9, 1997, and the licensee's withdrawal letter dated March 10, 1999. These documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC and at the local public document room located at the Perry Public Library, 3753 Main Street, Perry, OH 44081.

Dated at Rockville, Maryland, this 5th Day of April 1999.

For the Nuclear Regulatory Commission.

Anthony J. Mendiola,

Chief, Section 2, Project Directorate III, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 99–9290 Filed 4–13–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Public Service Electric and Gas Company; Salem Nuclear Generating Station, Unit Nos. 1 and 2; Exemption

[Docket Nos. 50–272 and 50–311]

I

Public Service Electric and Gas Company (the licensee) is the holder of Facility Operating License Nos. DPR–70 and DPR–75 for the Salem Nuclear Generating Station, Unit Nos. 1 and 2, respectively. The license provides, among other things, that the licensee is subject to all rules, regulations, and orders of the Commission now or hereafter in effect.

This facility consists of two pressurized water reactors located in Salem County, New Jersey.

II

Title 10 of the *Code of Federal Regulations* (10 CFR), section 50.71, "Maintenance of records, making of reports," paragraph (e)(4) states, in part, that "Subsequent revisions [to the Updated Final Safety Analysis Report (UFSAR)] must be filed annually or 6 months after each refueling outage provided the interval between successive updates [to the UFSAR] does not exceed 24 months." The two units at the Salem plant share a common UFSAR, therefore, this rule requires the licensee to update the same document annually or within 6 months after each unit's refueling outage (approximately every 9 months).

III

Section 50.12(a) of 10 CFR, "Specific exemptions," states that:

> The Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of the regulations of this part, which are—(1) Authorized by law, will not present an undue risk to the public health and safety, and are consistent with the common defense and security. (2) The Commission will not consider granting an exemption unless special circumstances are present.

Section 50.12(a)(2)(ii) of 10 CFR states that special circumstances are present when "Application of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule. * * *" The licensee has proposed updating the unified Salem UFSAR 6 months after each Unit 1 refueling outage, provided the interval between successive updates does not exceed 24 months. The underlying purpose of the rule was to relieve licensees of the burden of filing annual UFSAR revisions while assuring that such revisions are made at least every 24 months. The Commission reduced the burden, in part, by permitting a licensee to submit its UFSAR revisions 6 months after refueling outages for its facility, but did not provide in the rule for multiple unit facilities sharing a common UFSAR. Rather, the Commission stated that "With respect to * * * multiple facilities sharing a common UFSAR, licensees will have maximum flexibility for scheduling updates on a case-by-case basis" (57 FR 39355 (1992)).

The Salem units are on an 18-month fuel cycle. As noted In the NRC Staff's Safety Evaluation, the licensee's proposed schedule for the Salem UFSAR updates will ensure that the UFSAR will be maintained current for both units within 24 months of the last revision. The proposed schedule satisfies the maximum 24-month interval between UFSAR revisions specified by 10 CFR 50.71(e)(4). The requirement to revise the UFSAR annually or within 6 months after refueling outages for each unit, therefore, is not necessary to achieve the underlying purpose of the rule. Accordingly, the Commission has determined that special circumstances are present as defined in 10 CFR 50.12(a)(2)(ii). The Commission has further determined that, pursuant to 10 CFR 50.12, the exemption is authorized by law, will not present an undue risk to the public health and safety and is consistent with the common defense and security, and is otherwise in the public interest.

The Commission hereby grants the licensee an exemption from the requirement of 10 CFR 50.71(e)(4) to submit updates to the Salem UFSAR annually or within 6 months of each unit's refueling outage. The licensee will be required to submit updates to the Salem UFSAR within 6 months after each Salem Unit 1 refueling outage, not

to exceed 24 months between successive revisions.

Pursuant to 10 CFR 51.32, the Commission has determined that granting of this exemption will have no significant effect on the quality of the human environment (64 FR 16764).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 7th day of April, 1999.

For the Nuclear Regulatory Commission.

Samuel J. Collins,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 99–9291 Filed 4–13–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Bureau of Land Management

[Docket No. 72–22]

Private Fuel Storage, L.L.C., Independent Spent Fuel Storage Installation, Skull Valley Indian Reservation, Tooele County, UT; Notice of Intent to Prepare Environmental Impact Statement and Notice of Public Scoping Meeting

Private Fuel Storage, L.L.C. (PFS or the applicant) proposes to construct and operate an independent spent fuel storage installation (ISFSI) at the Skull Valley Indian Reservation, which is bordered on all sides by Tooele County, Utah. The proposed Private Fuel Storage Facility (PFSF) would be constructed on an 820-acre site that would store spent nuclear fuel (SNF) received from commercial U.S. nuclear power plants. The applicant proposes constructing a rail line on land managed by the U.S. Bureau of Land Management (BLM) as the preferred route for transportation of SNF to its site. To construct and operate the facility, the applicant must obtain a license from the U.S. Nuclear Regulatory Commission (NRC), a right-of-way (ROW) for its proposed rail line over public lands from BLM, and approval from U.S. Bureau of Indian Affairs (BIA) for the proposed lease agreement between the Skull Valley Band of Goshute Indians and PFS.

On June 20, 1997, pursuant to 10 CFR Part 72, PFS submitted an application to NRC for a license to receive, possess, store, and transfer SNF at an ISFSI to be constructed and operated on the Reservation of the Skull Valley Band of Goshute Indians. A notice of consideration of issuance of an NRC materials license for the proposed PFSF and notice of opportunity for hearing were published in the **Federal Register** on July 31, 1997 (62 FR 41099).

The applicant executed a lease agreement with the Skull Valley Band of Goshute Indians to permit construction and operation of its proposed facility on the Skull Valley Band Reservation. On May 23, 1997, BIA conditionally approved the lease agreement, contingent upon the completion of an Environmental Impact Statement (EIS), the inclusion of mitigation measures identified in the Record of Decision, and the issuance of an NRC license to construct, maintain, and operate the PFSF. The lease includes 820 acres of land where the PFSF is proposed to be located, a 202-acre utility and road ROW from the Skull Valley Road to the PFSF facility, and a buffer zone adjacent to the PFSF to the south and east of the facility including five sections of land, on the Skull Valley Indian Reservation.

By letter dated August 28, 1998, the applicant submitted an application for a ROW to BLM, to construct a rail line and related facilities for a distance of approximately 32 miles on the western side of Skull Valley, along the base of the Cedar Mountains from Skunk Ridge, Utah, to the PFSF site. The rail line would traverse land that is included within the BLM Pony Express Resource Management Plan (RMP) and would be utilized for the transportation of SNF to the proposed PFSF site. The current Pony Express RMP does not allow for major ROWs such as a rail line in this area, and the PFSF proposal would, therefore, require an amendment to the RMP prior to granting on the requested ROW. BLM will publish in the **Federal Register** a notice of intent to prepare an RMP amendment. By a separate letter dated August 28, 1998, PFS also submitted a revision to its application for an NRC license to reflect its proposal to construct and utilize a rail line over public lands managed by BLM for the transportation of SNF to its site.

The National Environmental Policy Act of 1969 requires all Federal agencies to consider the environmental impacts of their actions. Because NRC, BIA, and BLM required actions for the construction and operation of the PFSF are related, the Agencies have agreed to cooperate in the preparation of an EIS for these actions. In preparing the EIS, NRC will serve as the lead agency and BLM and BIA will serve as cooperating agencies. The NRC published a notice of intent to prepare an EIS and conduct a scoping process in the **Federal Register** on May 1, 1998 (63 FR 24197). As a part of the scoping process, a public scoping meeting was conducted on June 2, 1998, in Salt Lake City, Utah. The scoping process also provided interested parties with an opportunity to provide written comments. At the conclusion of that initial scoping process, NRC issued a scoping report, dated September 1998.

NRC's initial scoping process was based on the description of the PFSF contained in the applicant's submittal of June 20, 1997, which did not include the proposed rail line on public land administered by BLM. This rail line proposal was submitted to NRC on August 28, 1998, as an amendment to the PFS application. Similarly, BIA's conditional approval of the proposed lease agreement was issued prior to the applicant's proposal of a rail line over BLM lands adjacent to the Skull Valley Reservation.

As a result of the applicant's August 28, 1998, revision of its transportation proposal, NRC, BIA, and BLM have determined that additional scoping meetings should be conducted. Therefore, public scoping meetings will be held on April 29, 1999, from 8 a.m. to 11 a.m. at the Ballroom of the Little America Inn, 500 South Main Street, Salt Lake City, Utah 84101 and April 29, 1999, from 6:30 p.m. to 9:30 p.m. at the Tooele High School, 240 West Buffalo Boulevard, Tooele, UT 80474. The focus of the scoping meetings will be an environmental issues associated with the rail line proposed in the applicant's August 28, 1998, license application amendment, the request for issuance of a ROW over public lands managed by BLM, and any environmental concerns associated with the proposed lease agreement that may not have been addressed in the NRC's initial scoping process. Each meeting will include an NRC briefing on the proposed license and a summary of the comments received at the previous scoping meeting; a BLM briefing on the land use plan amendment and the proposed ROW; and a BIA briefing on the lease agreement. The scoping meetings will afford an opportunity for interested agencies, organizations, and individuals to submit comments or suggestions on environmental issues related to the proposed rail line and the lease agreement. Written comments on these issues will be accepted until May 28, 1999.

Persons may register to present oral comments at the scoping meeting by writing to (1) Scott C. Flanders, Sr. Environmental Project Manager, Licensing and Inspection Directorate, Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555; (2) Leon

Berggren, Resource Advisor, U.S. Department of Interior, Bureau of Land Management, Salt Lake District Office, 2370 South 2300 West, Salt Lake City, Utah 84119; or (3) Dale Hamberg, Land Operation Officer, U.S. Department of Interior, Bureau of Indian Affairs, Unitah and Ouray Agency, P.O. Box 130 Fort Duchesne, Utah 84026; or Amy Heuslein, Environmental Protection Officer, U.S. Department of Interior, Bureau of Indian Affairs, Phoenix Area Office, P.O. Box 10, Phoenix, Arizona 85001. Information concerning the proposed actions, the scoping process, and the EIS may also be obtained from these individuals. A copy of the initial NRC scoping report dated September 1998 can be obtained by writing to Scott Flanders at 11555 Rockville Pike, Rockville, Maryland 20855, of by telephone at (301) 415–1172. Also, the NRC scoping report is available for public inspection at NRC's Public Document Room in the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and the Local Public Document Room at the University of Utah, Marriott Library, Documents Division, 295 S. 1500 East, Salt Lake City, Utah 84112–0860. A limited number of copies of NRC's scoping report will also be available at the scoping meeting on April 29, 1999.

Participation in the scoping process does not entitle participants to become parties to the adjudicatory proceeding associated with the proposed NRC licensing action. Participation in the adjudicatory proceeding is governed by the procedures specified in 10 CFR 2.714 and 2.715 and in the aforementioned **Federal Register** Notice (62 FR 41099).

Dated at Rockville, Maryland, this 31st day of March 1999.

For the Nuclear Regulatory Commission.

E. William Brach,

Director, Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards.

Dated at Salt Lake City, Utah, this 1st day of April 1999.

For the U.S. Bureau of Land Management.

Glenn A. Carpenter,

Field Manager, Salt Lake Field Office.

Dated at Fort Duchesne, Utah, this 6th day of April 1999.

For the U.S. Bureau of Indian Affairs.

David Allison,

Superintendent, Unitah and Ouray Agency.

[FR Doc. 99–9293 Filed 4–13–99; 8:45 am]

BILLING CODE 7590–01–M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards Joint Meeting of the ACRS Subcommittees on Reliability and Probabilistic Risk Assessment and on Materials and Metallurgy; Notice of Meeting

The ACRS Subcommittees on Reliability and Probabilistic Risk Assessment and on Materials and Metallurgy will hold a joint meeting on May 5, 1999, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Wednesday, May 5, 1999—8:30 a.m. until 12:00 Noon

The Subcommittees will review the proposed topical report prepared by the Electric Power Research Institute (EPRI) for risk-informed inservice inspection. The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittees, their consultants, and staff. Persons desiring to make oral statements should notify the cognizant ACRS staff engineer named below five days prior to the meeting, if possible, so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittees, along with any of their consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittees will then hear presentations by and hold discussions with representatives of the NRC staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, and the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by contacting the cognizant ACRS staff engineer, Mr. Michael T. Markley (telephone 301/415–6885) between 7:30 a.m. and 4:15 p.m. (EDT). Persons planning to attend this meeting are urged to contact the above named individual one or two working days prior to the meeting to be advised of any potential changes to the agenda, etc., that may have occurred.

Dated: April 8, 1999.

Richard P. Savio,

Associate Director for Technical Support, ACRS/ACNW.

[FR Doc. 99–9289 Filed 4–13–99; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 23777; 812–11568]

American Skandia Trust and American Skandia Investment Services, Inc.; Notice of Application

April 8, 1999.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of an application under section 6(c) of the Investment Company Act of 1940 (the "Act") for an exemption from section 15(a) of the Act.

SUMMARY: Applicants American Skandia Trust (the "Fund"), on behalf of its series AST Putnam Value Growth & Income Portfolio, AST Putnam International Equity Portfolio and AST Putnam Balanced Portfolio (the "Portfolios"), and American Skandia Investment Services, Inc. (the "Manager") seek an order to permit the implementation, without shareholder approval, of new investment sub-advisory agreements ("Interim Agreements") following the resignation of the investment sub-adviser to the Portfolios. The order would cover a period beginning on the date that the termination of the existing sub-advisory agreement becomes effective (the "Effective Date") and continue for a period of up to 150 days (but in no event later than September 30, 1999) (the "Interim Period"). The order also would permit the payment of fees earned under the Interim Agreements during the Interim Period, following shareholder approval.

FILING DATE: The application was filed on April 8, 1999.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission

by 5:30 p.m. on April 29, 1999, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Applicants, One Corporate Drive, P.O. Box 883, Shelton, Conn. 06484–0883.

FOR FURTHER INFORMATION CONTACT: George J. Zornada, Branch Chief, at (202) 942–0564 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street, NW, Washington, DC 20549–0102 (tel. (202) 942–8090).

Applicants' Representations

1. The Fund, a Massachusetts business trust, is registered under the Act as an open-end management investment company. The Fund is organized as a series company consisting of 29 series, including the Portfolios. The Manager is registered under the Investment Advisers Act of 1940 (the "Advisers Act") and is the investment adviser to each of the Portfolios.

2. The advisory agreements between the Portfolios and the Manager (the "Management Agreements") allow the Manager to engage a sub-adviser for each Portfolio, subject to the approval of the board of trustees of the Fund (the "Board") and the shareholders of the Portfolios. Under this authority, the Manager entered into investment sub-advisory agreements for each Portfolio (the "Existing Agreements") with Putnam Investment Management, Inc. ("Putnam"), an investment adviser registered under the Advisers Act. The Existing Agreements have been approved by the Board and the shareholders of the Portfolios in accordance with section 15 of the Act. On March 4, 1999, Putnam gave written notice of its intent to resign as sub-adviser to each of the Portfolios (the "Resignation"). The Effective Date of the Resignation is scheduled for May 3, 1999. Applicants state that the terms and timing of the Resignation were wholly determined by Putnam without advance discussion with applicants, and were not reasonably foreseeable by the Fund or the Manager.

3. Applicants state that they have conducted preliminary discussions with candidate organizations to serve as investment sub-advisers to the Portfolios ("Successor Sub-advisers") but have not completed the evaluation process and identified the best candidate or negotiated terms and conditions of the new investment sub-advisory agreements for the Portfolios (the "New Agreements"). Any Successor Sub-adviser will be an investment adviser registered or exempt from registration under the Advisers Act. Once applicants have identified an appropriate candidate as Successor Sub-adviser and negotiated terms and conditions of a New Agreement, the Board, including a majority of the trustees who are not interested persons (as defined in section 2(a)(19) of the Act) of the Manager or the proposed Successor Sub-Adviser ("Independent Trustees"), will meet to approve the Interim Agreements and the New Agreements in accordance with section 15(c) of the Act. The Board currently is scheduled to meet on April 21, 1999.

4. Applicants request an exemption (a) to permit the implementation during the Interim Period, without shareholder approval, of the Interim Agreements with the Successor Sub-advisers, and (b) to permit the Successor Sub-advisers to receive from the Manager, upon approval of the New Agreements by the Portfolios' shareholders, all fees earned during the Interim Period. Applicants state that the Interim Agreements will contain substantially the same terms and conditions as the Existing Agreements, except for their effective and termination dates and the name of the Successor Sub-adviser.

5. Applicants propose to enter into an escrow agreement with an unaffiliated financial institution ("Escrow Agent"). The portion of the investment advisory fees payable to the Successor Sub-adviser during the Interim Period under the Interim Agreements would be paid by the Manager into an interest-bearing escrow account maintained by the Escrow Agent. The amounts in the escrow account (including any interest earned on such paid fees) would be paid to the Successor Sub-adviser only upon approval of the New Agreements by each Portfolio's shareholders. In the absence of such approval, the amounts will be paid to the applicable Portfolio. The Board will be notified before any amounts are released from the escrow account.

Applicants' Legal Analysis

1. Section 15(a) of the Act provides, in pertinent part, that it shall be unlawful for any person to serve or act as investment adviser of a registered investment company, except pursuant to a written contract that has been approved by the vote of a majority of the outstanding voting securities of such registered investment company. Rule 15a–4 under the Act provides, in pertinent part, that if an investment advisory contract with a registered investment company is terminated by certain events set forth in section 15(a) of the Act, an adviser may serve for 120 days under a written contract that has not been approved by the company's shareholders, provided that (a) the new contract is approved by that company's board of directors (including a majority of non-interested directors) and (b) the compensation to be paid under the new contract does not exceed the compensation that would have been paid under the contract most recently approved by the company's shareholders. Applicants state that the Resignation is not a termination of an advisory contract by an event set forth in section 15(a) of the Act that is set forth in rule 15a–4 under the Act.

2. Section 6(c) of the Act provides that the Commission may exempt any person, security or transaction from any provision of the Act, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants believe that the requested relief meets this standard.

3. Applicants submit that the terms and timing of the Resignation and subsequent termination of the Existing Agreements were wholly determined by Putnam, without advance discussion with applicants, and were not foreseeable. Applicants state that the Effective Date does not provide the Board with sufficient time to perform adequately its responsibilities in identifying a Successor Sub-adviser, negotiating the New Agreements, soliciting proxies, and securing shareholder approval of the New Agreements. Applicants contend that, under the circumstances, acceleration of the shareholder approval process would not be in the best interests of shareholders.

4. Applicants state that the requested relief will allow for the continued conduct of the Portfolios' investment program, without disruption, during the Interim Period, and facilitate the orderly and reasonable consideration of the

New Agreements by shareholders. Applicants state that the Board, including the Independent Trustees, will undertake the review required by section 15(c) of the Act and that the scope and quality of services provided to the Portfolios by the Successor Sub-adviser during the Interim Period will be at least equivalent to that provided under the Existing Agreements. Applicants also state that such services will be provided at fees unchanged from the fees paid under the Existing Agreements.

Applicants' Conditions

Applicants agree that the requested order will be subject to the following conditions:

1. The Interim Agreement for each Portfolio will have substantially the same terms and conditions as the Existing Agreement for such Portfolio, except for the name of the Successor Sub-adviser, the effective and termination dates and the inclusion of escrow arrangements.

2. The advisory fees payable by the Manager to the Successor Sub-adviser for each Portfolio during the Interim Period will not be greater than the fees payable under the Existing Agreement. The portion of the advisory fees payable by the Manager to the Successor Sub-adviser during the Interim Period will be maintained in an interest-bearing escrow account, and amounts in the escrow account (including interest earned on such amounts) will be paid (a) to the Successor Sub-adviser after the requisite approval of the New Agreement for such Portfolio is obtained, or (b) to the Portfolio in the absence of such approval.

3. Each Portfolio will promptly schedule a meeting of shareholders to vote on approval of its New Agreement to be held on or before the 150th day following the termination of its Existing Agreement (but in no event later than September 30, 1999).

4. The Manager will take, and the Successor Sub-adviser for each Portfolio will be required to take, all appropriate steps so that the scope and quality of sub-advisory services provided to the Portfolio during the Interim Period will be at least equivalent, in the judgment of the Fund's Board, including the Independent Trustees, to the scope and quality of services previously provided under the Existing Agreement for the Portfolio.

5. The Board of the Fund, including a majority of the Independent Trustees, will have approved the Interim Agreement and the New Agreement for each Portfolio in accordance with the requirements of section 15(c) of the Act prior to termination of the Existing Agreement for the Portfolio.

6. The costs of preparing and filing the application and the costs related to the solicitation of shareholder approval of the New Sub-advisory Agreements will be borne by the Portfolios, provided that the Board of Trustees, including a majority of the Independent Trustees, determines that the Manager or a controlling person of the Manager will not directly or indirectly receive money or other benefit, including, but not limited to, an increased portion of the fees under the Management Agreements for the Portfolios or a reduced level of responsibility, in connection with the New Sub-advisory Agreements.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–9315 Filed 4–13–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 23773; 812–11030–02]

AMR Investment Services Trust, et al.; Notice of Application

April 7, 1999.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of an application for an order under sections 6(c) and 17(b) of the Investment Company Act of 1940 ("Act") for an exemption from section 17(a) of the Act, under section 6(c) for an exemption from section 17(e) of the Act and rule 17e–1 under the Act, and under section 10(f) of the Act for an exemption from section 10(f).

SUMMARY OF THE APPLICATION: Applicants request an order to permit certain registered open-end management investment companies advised by several investment advisers to engage in principal and brokerage transactions with a broker-dealer affiliated with one of the investment advisers and to purchase securities in offerings underwritten by a principal underwriter affiliated with one of the investment advisers. The transactions would be between a broker-dealer or principal underwriter and a portion of the investment company's portfolio not advised by the adviser affiliated with the broker-dealer or principal underwriter. Applicants also request relief to permit a portion of the portfolio to purchase securities in offering underwritten by a principal underwriter affiliated with the investment adviser to that portion if the purchase is in accordance with all of the conditions to rule 10f–3 under the Act, except for the provision that would require aggregation of certain purchases.

APPLICANTS: AMR Investment Services Trust ("AMR Trust"), AMR Investment Services, Inc. ("Adviser"), Brandywine Asset Management, Inc. ("Brandywine"), Lazard Freres & Co. LLC ("LF"), Legg Mason Wood Walker, Inc. ("LMWW"), and Howard, Weil, Labouisse, Friedrichs, Inc. ("HWLF").

FILING DATES: The application was filed on February 26, 1998, and amended on March 26, 1999. Applicants have agreed to file an amendment during the notice period, the substance of which is reflected in this notice.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on May 3, 1999, and should be accompanied by proof of service on applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Applicants: AMR Trust and Adviser, 4333 Amon Carter Boulevard, MD 5645, Fort Worth, TX 76155; Brandywine, 201 North Walnut Street, Wilmington, DE 19801; LF, 30 Rockefeller Plaza, 59th Floor, New York 10112; LMWW, 100 Light Street, Baltimore, MD 21202; and HWLF, 1100 Light Street, Baltimore, MD 21202; and HWLF, 1100 Poydras Street, Ste. 3500, New Orleans, LA 70163.

FOR FURTHER INFORMATION CONTACT: Michael W. Mundt, Staff Attorney, at (202) 942–0578, or George J. Zornada, Branch Chief, at (202) 942–0564 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549–0102 (telephone (202) 942–8090).

Applicants' Representations

1. AMR Trust is a New York common law trust registered under the Act as an open-end management investment company with nine series. Interests in AMR Trust are offered to the American AAdvantage Funds and the American AAdvantage Mileage Funds (collectively, the "American Trusts") and other institutions in private offerings exempt from registration under section 4(2) of the Securities Act of 1933. Each series of the American Trusts, with the exception of American AAdvantage S&P 500 Index Fund and the American AAdvantage S&P 500 Index Mileage Fund, invests all of its investable assets in a series of AMR Trust that has the same investment objectives.

2. The Adviser is registered under the Investment Advisers Act of 1940 ("Advisers Act") and is a wholly-owned subsidiary of AMR Corporation. The Adviser provides administrative services to the American Trusts and investment advisory and administrative services to AMR Trust. The assets of certain portfolios of AMR Trust are allocated by the Adviser among two to five subadvisers ("Subadvisers"). Each Subadviser has discretion to purchase and sell securities for a discrete portion of a portfolio's assets in accordance with the portfolio's objectives, policies and restrictions, and the specific strategies provided by the Adviser.[1] Each Subadviser is paid a fee by the Adviser out of the management fee received by the Adviser from AMR Trust. The Adviser also may directly advise a discrete portion of a portfolio.

3. Brandywine, a wholly owned subsidiary of Legg Mason, Inc., is an investment adviser registered under the Advisers Act that serves as Subadviser to three portfolios of AMR Trust LMWW and HWLF are broker-dealers registered under the Securities Exchange Act of 1934 ("Exchange Act") that are also wholly owned subsidiaries of Legg Mason, Inc. LMWW and HWLF are under common control with Brandywine. LF is an investment adviser registered under the Advisers Act and a broker-dealer registered under the Exchange Act. Lazard Asset Management ("LAM") is an operating division of LF that serves as a Subadviser.

4. The requested relief would permit: (a) LF, LMWW, HWLF, or any broker-dealer registered under the Exchange Act that itself serves as Subadviser (either directly or through a separate operating division) or is an affiliated person (an "Affiliated Broker-Dealer") of LAM, Brandywine, or another investment adviser serving as Subadviser (an "Affiliated Subadviser") to one or more series (each a "Portfolio") of a Multi-managed Fund (as defined below) to engage in principal transactions with a portion of the Portfolio that is advised by another Subadviser that is not an affiliated person of the Affiliated Broker-Dealer or the Affiliated Subadviser (an "Unaffiliated Subadviser") (each such portion, an "Unaffiliated Portion"); (b) an Affiliated Broker-Dealer to provide brokerage services to an Unaffiliated Portion, and the Unaffiliated Portion to utilize such brokerage services, without complying with rule 17e–1 (b) and (c) under the Act; (c) an Unaffiliated Portion to purchase securities during the existence of an underwriting syndicate, a principal underwriter of which is an Affiliated Subadviser or an affiliated person of an Affiliated Subadviser (an "Affiliated Underwriter"); and (d) a portion of the Portfolio advised by an Affiliated Subadviser ("Affiliated Portion") to purchase securities during the existence of an underwriting syndicate, a principal underwriter of which is an Affiliated Underwriter, in accordance with the conditions of rule 10f–3 except that paragraph (b)(7) of the rule would not require the aggregation of purchases by the Affiliated Portion with purchases by an Unaffiliated Portion.[2]

5. Applicants request that the exemptive relief apply to AMR Trust or any existing or future registered open-end management investment company (a) advised by the Adviser or any entity controlling, controlled by, or under common control (within the meaning of section 2(a)(9) of the Act) with the Adviser and (b) at least one other investment adviser registered under the Advisers Act or exempt from such registration (AMR Trust and such investment companies, each a "Multi-managed Fund"). The relief also would apply as described in the application to any existing or future entity that serves as an Affiliated Subadviser, Affiliated Broker-Dealer, or Affiliated Underwriter. Any entity that currently intends to rely on the order is named as an applicant. Any other existing or future entity that relies on the order will comply with the terms and conditions of the application.

Applicants' Legal Analysis

A. Principal Transactions Between Unaffiliated Portions and Affiliated Broker-Dealers

1. Section 17(a) of the Act generally prohibits sales or purchases of securities between a registered investment company and an affiliated person of, promoter of, or principal underwriter for such company, or any affiliated person of an affiliated person, promoter, or principal underwriter. Section 2(a)(3)(E) of the Act defines an affiliated person to be any investment adviser of an investment company, and section 2(a)(3)(C) of the Act defines an affiliated person of another person to include any person directly or indirectly controlling, controlled by, or under common control with such person. Applicants state that an Affiliated Subadviser would be an affiliated person of a Portfolio, and an Affiliated Broker-Dealer would be either an Affiliated Subadviser or an affiliated person of the Affiliated Subadviser, and thus an affiliated person of an affiliated person ("second-tier affiliated" of a Portfolio, including the Unaffiliated Portion. Accordingly, applicants state that any transactions to be effected by an Unaffiliated Subadviser on behalf of an Unaffiliated Portion of a Portfolio with an Affiliated Broker-Dealer are subject to the prohibitions of section 17(a).

2. Applicants seek relief under sections 6(c) and 17(b) to exempt principal transactions prohibited by section 17(a) because an Affiliated Broker-Dealer is deemed to be an affiliated person or a second-tier affiliate of an Unaffiliated Portion solely because an Affiliated Subadviser is the Subadviser to another portion of the same Portfolio. The requested relief would not be available if the Affiliated Broker-Dealer (except by virtue of serving as a Subadviser) is an affiliated person or a second-tier affiliate of the Adviser, the Unaffiliated Subadviser making the investment decision or any officer, director or employee of the Multi-managed Fund.

3. Section 17(b) of the Act authorizes the Commission to grant an order permitting a transaction otherwise prohibited by section 17(a) if it finds that the terms of the proposed transaction are fair and reasonable and do not involve overreaching on the part of any person concerned, and the proposed transaction is consistent with

[1] The specific strategies are limited to general guidelines that do not restrict a Subadviser's discretion to purchase or sell particular securities for its segment of a Portfolio's assets.

[2] The terms "Unaffiliated Subadviser," "Subadviser" and "Unaffiliated Portion" include the Adviser and the discrete portion of a Portfolio directly advised by the Adviser, respectively, provided that the Adviser manages its portion of the Portfolio independently of the portions managed by the other Subadvisers to the Portfolio, and the Adviser does not control or influence any other Subadviser's investment decisions as to specific securities for the other Subadviser's portion of the Portfolio.

the policy of each registered investment company and the general purposes of the Act. Section 6(c) of the Act permits the Commission to exempt any person or transaction from any provision of the Act if the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the Act.

4. Applicants contend that section 17(a) is intended to prevent persons who have the power to control an investment company from using that power to the person's own pecuniary advantage. Applicants assert that when the person acting on behalf of an investment company has no direct or indirect pecuniary interest in a party to a principal transaction, the abuses that section 17(a) is designed to prevent are not present. Applicants state that if an Unaffiliated Subadviser purchases securities on behalf of an unaffiliated portion in a principal transaction with an Affiliated Broker-Dealer any benefit that might inure to the Affiliated Broker-Dealer would not be shared by the Unaffiliated Subadviser. In addtion, applicants state that Subadvisers generally are paid on the basis of a percentage of the value of the assets allocated to their management. The execution of a transaction to the disadvantage of the Unaffiliated Portion would disadvantage the Unaffiliated Subadviser to the extent that it diminishes the value of the Unaffiliated Portion. Applicants further submit that Adviser's power to dismiss Subadvisers or to change the portion of a Portfolio allocated to each Subadviser reinforces a Subadviser's incentive to maximize the investment performance of this own portion of the Portfolio.

5. Applicants state that each Subadviser's contract assigns it responsibility to manage a discrete portion of the Portfolio. Each Subadviser is responsible for making independent investment and brokerage allocation decisions based on its own research and credit evaluations. Applicants represent that the Adviser does not dictate brokerage allocation or investment decisions to any Portfolio advised by a Subadviser, or have the contractual right to do so, except with respect to a portion advised directly by the Adviser. Applicants contend that, in managing a discrete portion of a portfolio, each Subadviser acts for all practical purposes as though it is managing a separate investment company.

6. Applicants state that the proposed transactions will be consistent with the policies of the Portfolio, since each Unaffiliated Subadviser is required to manage the Unaffiliated Portion in accordance with the investment objectives and related investment policies of the Portfolio as described in its registration statement. Applicants also assert that permitting the transaction will be consistent with the general purposes of the Act and in the public interest because the ability to engage in the transactions increases the likelihood of a Portfolio achieving best price and execution on its principal transactions, while giving rise to none of the abuses that section 17(a) was designed to prevent.

B. Payment of Brokerage Compensation by Unaffiliated Portions to Affiliated Broker-Dealers.

1. Section 17(e)(2) of the Act prohibits an affiliate or a second-tier affiliate of a registered investment company from receiving compensation for acting as broker in connection with the sale of securities to or by the investment company if the compensation exceeds the limits prescribed by the section unless otherwise permitted by rule 17e–1 under the Act. Rule 17e–1 sets forth the conditions under which an affiliated person or a second-tier affiliate of an investment company may receive a commission which would not exceed the "usual and customary broker's commission" for purposes of section 17(e)(2). Rule 17e–1(b) requires the investment company's board of directors, including a majority of the directors who are not interested persons under section 2(a)(19) of the Act, to adopt certain procedures and to determine at last quarterly that all transactions effected in reliance on the rule complied with the procedures. Rule 17e–1(c) specifies the records that must be maintained by each investment company with respect to any transaction effected pursuant to rule 17e–1.

2. As discussed above, applicants state that an Affiliated Broker-Dealer is either an affiliated person (as Subadviser to another portion of the Portfolio) or a second-tier affiliate of an Unaffiliated Portion and thus subject to section 17(e). Applicants request an exemption under section 6(c) from section 17e–1 to the extent necessary to permit an Unaffiliated Portion to pay brokerage compensation to an Affiliated Broker-Dealer acting as broker in the ordinary course of business in connection with the sale of securities to or by such Unaffiliated Portion, without complying with the requirements of rule 17e–1(b) and (c). The requested exemption would apply only where an Affiliated Broker-Dealer is deemed to be an affiliated person or a second-tier affiliate of an Unaffiliated Portion solely because an Affiliated Subadviser is the Subadviser to another portion of the same Portfolio. The relief would not apply if the Affiliated Broker-Dealer (except by virtue of serving as Subadviser) is an affiliated person or a second-tier affiliate of the Adviser, the Unaffiliated Subadviser to the Unaffiliated Portion of the Portfolio, or any officer, director or employee of the Multi-managed Fund.

3. Applicants believe that the proposed brokerage transactions involve no conflicts of interest of possibility of self-dealing and will meet the standards of section 6(c). Applicants assert that the interests of an Unaffiliated Subadviser are directly aligned with the interests of the Unaffiliated Portion it advises, and an Unaffiliated Subadviser will enter into brokerage transactions with Affiliated Broker-Dealers only if the fees charged are reasonable and fair as required by rule 17e–1(a). Applicants also note that an Unaffiliated Subadviser has a fiduciary duty to obtain best price and execution for the Unaffiliated Portion.

C. Purchases of Securities From Offerings With Affiliated Underwriters

1. Section 10(f) of the Act, in relevant part, prohibits a registered investment company from knowingly purchasing or otherwise acquiring, during the existence of any underwriting or selling syndicate, any security (except a security of which the company is the issuer) a principal underwriter of which is an officer, director, member of an advisory board, investment adviser, or employee of the company, or an affiliated person of any of those persons. Section 10(f) also provides that the Commission may exempt by order any transaction of classes of transactions from any of the provisions of section 10(f), if and to the extent that such exemption is consistent with the protection of investors. Rule 10f–3 under the Act exempts certain transactions from the prohibitions of section 10(f) if specified conditions are met. Paragraph (b)(7) of rule 10f–3 limits the securities purchased by the investment company, or by two or more investment companies having the same investment adviser, to 25% of the principal amount of the offering of the class of securities.

2. Applicants state that each Subadviser, although under contract to manage only a distinct portion of a Portfolio, is considered an investment adviser to the entire Portfolios. As a result, applicants believe that all purchases of securities by an Unaffiliated Portion from an

underwriting syndicate a principal underwriter of which is an Affiliated Underwriter would be subject to section 10(f).

3. Applicants request relief under section 10(f) from that section to permit an Unaffiliated Portion to purchase securities during the existence of an underwriting or selling syndicate, a principal underwriter of which is an Affiliated Underwriter. Applicants request relief from section 10(f) only to the extent those provisions apply solely because an Affiliated Subadviser is an investment adviser to the Portfolio. The requested relief would not be available if the Affiliated Underwriter (except by virtue of serving as Subadviser) is an affiliated person or a second-tier affiliate of the Adviser the Unaffiliated Subadviser making the investment decision with respect to the Unaffiliated Portion of the Portfolio, or any officer, director, or employee of the Multimanaged Fund. Applicants also seek relief from section 10(f) to permit an Affiliated Portion to purchase securities during the existence of an underwriting syndicate, a principal underwriter of which is an Affiliated Underwriter, provided that the purchase will be in accordance with the conditions of rule 10f–3, except that paragraph (b)(7) of the rule will not require the aggregation of purchases by the Affiliated Portion with purchases by an Unaffiliated Portion.

4. Applicants state that section 10(f) was adopted in response to concerns about the "dumping" of otherwise unmarketable securities on investment companies, either by forcing the investment company to purchase unmarketable securities from its underwriting affiliate, or by forcing or encouraging the investment company to purchase the securities from another member of the syndicate. Applicants submit that these abuses are not present in the context of the Portfolios because a decision by an Unaffiliated Subadviser to purchase securities from an underwriting syndicate, a principal underwriter of which is an Affiliated Underwriter, involves no potential for "dumping." In addition, applicants assert that aggregating purchases would serve no purpose because there is no collaboration among Subadvisers, and any common purchases by an Affiliated Subadviser and an Unaffiliated Subadviser would be coincidence.

Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. Each Portfolio relying on the requested order will be advised by an Affiliated Subadviser and at least one Unaffiliated Subadviser and will be operated in the manner described in the application.

2. No Affiliated Subadviser, Affiliated Broker-Dealer, or Affiliated Underwriter (except by virtue of serving as Subadviser to a discrete portion of a Portfolio) will be an affiliated person or a second-tier affiliate of the Adviser, any Unaffiliated Subadviser, or any officer, director, or employee of a Multi-managed Fund.

3. No Affiliated Subadviser will directly or indirectly consult with any Unaffiliated Subadvisers concerning allocation of principal or brokerage transactions.

4. No Affiliated Subadviser will participate in any arrangement whereby the amount of its subadvisory fees will be affected by the investment performance of an Unaffiliated Subadviser.

5. With respect to purchases of securities by an Affiliated Portion during the existence of any underwriting or selling syndicate, a principal underwriter of which is an Affiliated Underwriter, the conditions of rule 10f–3 will be satisfied except that paragraph (b)(7) will not require the aggregation of purchases by the Affiliated Portion with purchases by an Unaffiliated Portion.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–9245 Filed 4–13–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–23774; File No. 812–11388]

The Equitable Life Assurance Society of the United States, et al.

April 7, 1999.

AGENCY: Securities and Exchange Commission (the "Commission" or "SEC").

ACTION: Notice of Application for an order under Section 6(c) of the Investment Company Act of 1940 (the "1940 Act") granting exemptions from the provisions of Sections 2(a)(32), 22(c), and 27(i)(2)(A) of the Act and Rule 22c–1 thereunder to permit the recapture of credits applied to contributions made under certain deferred variable annuity contracts.

SUMMARY OF APPLICATION: Applicants seek an order under Section 6(c) of the Act to the extent necessary to permit, under specified circumstances. the recapture of credits applied to contributions made under deferred variable annuity contracts and certificates (the "Contracts") that Equitable will issue through the Separate Accounts, as well as other contracts that Equitable may issue in the future through Future Accounts that are substantially similar in all material respects to the Contracts (the "Future Contracts"). Applicants also request that the order being sought extend to any other National Association of Securities Dealers, Inc. ("NASD") member broker-dealer controlling or controlled by, or under common control with, Equitable, whether existing or created in the future, that serves as a distributor or principal underwriter for the Contracts or Future Contracts offered through the Separate Accounts or any Future Account ("Equitable Broker-Dealer(s)").

APPLICANTS: The Equitable Life Assurance Society of the United States ("Equitable Life"), The Equitable of Colorado, Inc. ("EOC," and together with Equitable Life, "Equitable"), Separate Account No. 45 of Equitable Life ("SA 45"), Separate Account No. 49 of Equitable Life ("SA 49"), Separate Account VA of EOC ("SA VA," and together with SA 45 and SA49, the "Separate Accounts"), any other separate account established by Equitable in the future to support certain deferred variable annuity contracts and certificates issued by Equitable ("Future Account"), EQ Financial Consultants, Inc. ("EQFC"), and Equitable Distributors, Inc. ("EDI") (collectively, "Applicants").

FILING DATE: The application was filed on October 30, 1998, and amended and restated on March 29, 1999.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicant with a copy of the request, in person or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on April 30, 1999, and should be accompanied by proof of service on the Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Secretary of the SEC.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

Applicants, c/o The Equitable Life Assurance Society of the United States, 1290 Avenue of the Americas, New York, New York 10104, Attn: Mary P. Breen, Esq.

FOR FURTHER INFORMATION CONTACT: Kevin P. McEnery, Senior Counsel, or Susan M. Olson, Branch Chief, Office of Insurance Products, Division of Investment Management, at (202) 942–0670.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee from the SEC's Public Reference Branch, 450 Fifth St., NW, Washington, DC 20549–0102 (tel. (202) 942–8090).

Applicants' Representations

1. Equitable Life is a stock life insurance company organized under the laws of the State of New York. SA 45 and SA 49 were established in August 1994 and June 1996. Equitable Life serves as depositor of SA 45 and SA 49. Equitable Life may in the future establish one or more Future Accounts for which it will serve as depositor.

2. EOC is a stock life insurance company organized under the laws of the State of Colorado. SA VA was established in December 1996, pursuant to authority granted under a resolution of EOC's Board of Directors. EOC serves as depositor of SA VA. EOC may in the future establish one or more Future Accounts for which it will serve as depositor.

3. SA 45 and SA 49 are each a segregated asset account of Equitable Life, and SA VA is a segregated asset account of EOC. Each of the Separate Accounts is registered with the Commission as a unit investment trust series investment company under the Act. SA 45 filed a Form N–8A Notification of Registration under the 1940 Act on September 6, 1994, and SA 49 filed a Form N–8A under the Act on June 7, 1996. SA VA filed a Form N–8A on February 16, 1999. Each of the Separate Accounts will fund the variblabe benefits available under the Contracts funded through it. Units of interest in the Separate Accounts under the Contracts they fund will be registered under the Securities Act of 1933 (the "1933 Act"). In that regard, SA 45 and SA 49 filed Form N–4 Registration Statements on September 30, 1998, under the 1933 Act relating to the Contracts. SA VA filed a Form N–4 Registration Statement on February 16, 1999, under the 1933 Act relating to the Contracts. Equitable may in the future issue Future Contracts through the Separate Accounts or through Future Accounts. That portion of the respective assets of the Separate Accounts that is equal to the reserves and other Contract liabilities with respect to SA 45, SA 49 or SA VA is not chargeable with liabilities arising out of any other business of Equitable Life or EOC, as the case may be. Any income, gains or losses, realized or unrealized, from assets allocated to the Separate Accounts are, in accordance with the respective Separate Accounts' Contracts, credited to or charged against the Separate Accounts, without regard to other income, gains or losses of Equitable Life or EOC, as the case may be.

4. EQFC is an indirect, wholly-owned subsidiary of Equitable Life and will be the principal underwriter of SA 45 and SA VA and distributor of the Contracts funded through SA 45 (the "SA 45 Contracts") and through SA VA (the "SA VA Contracts"). EQFC is registered with the Commission as a broker-dealer under the Securities Exchange Act of 1934 (the "1934 Act") and is a member of the NASD. The SA 45 Contracts and the SA VA Contracts will be offered through registered representatives of EQFC and its affiliate who are registered broker-dealers under the 1934 Act and NASD members. EQFC, or any successor entity, may act as principal underwriter for any Future Account and distributor for any Future Contracts issued by Equitable in the future. A successor entity also may act as principal underwriter for SA 45 and/or SA VA. During May 1999, EQFC will change its name to AXA Advisors, Inc.

5. EDI is an indirect, wholly-owned subsidiary of Equitable Life and will be the principal underwriter of SA 49 and SA VA and distributor of the Contracts funded through SA 49 (the "SA 49 Contracts") and the SA VA Contracts. EDI is registered with the Commission as a broker-dealer under the 1934 Act and is a member of the NASD. The SA 49 and SA VA Contracts will be offered through registered representative of EDI and its affiliates, as well as through unaffiliated broker-dealers who have entered into agreements with EDI. All of such affiliates and unaffiliated broker-dealers will be registered broker-dealers under the 1934 Act and NASD members. EDI, or any successor entity, may act as principal underwriter for any Future Account and distributor for any Future Contracts issued by Equitable in the future. A successor entity also may act as principal underwriter for SA 49 or SA VA.

6. The SA 45 Contracts and the SA 49 Contracts are part of Equitable Life's "Accumulator" line of annuity products and they are substantially similar in all material respects. They differ principally in the mix of mutual funds underlying each of the Separate Accounts and in the distribution channels used in the offering of the Contracts; otherwise, they are essentially identical. The SA VA Contracts are part of EOC's "Accumulator" line of annuity products. They are substantially similar in all material respects of the SA 45 and SA 49 Contracts, except that they: (i) Only offer variable investment options during the accumulation period of the Contracts, (ii) do not offer a "guaranteed period account" feature that involves a market value adjustment; and (iii) do not offer a combined guaranteed minimum income benefit and guaranteed minimum death benefit or "baseBUILDER" feature. EOC may, in the future, add these features to the SA VA Contracts. Contracts may be issued as individual retirement annuities ("IRAs," either "Traditional IRAs" or "Roth IRAs"), or as non-qualified annuitiess ("NQ") for after-tax contributions only. NQ Contracts also my be used for certain types of qualified plans ("QP"). Each of the Contracts consists of (i) a basic form of group annuity contract (the "Group Contract") issued to a bank or trust company whose sole responsibility will be to serve as party to the Group Contract, (ii) a basic form of certificate issued under and reflecting the terms of the Group Contract, and (iii) forms of certificate endorsements to be used for specific forms of benefits under the certificates. In some states, the certificates will be issued in the form of individual contracts, rather than under a Group Contract.

7. An IRA Contract may be purchased by rolling over or transferring a contribution of at least $25,000 or more from one or more individual retirement arrangements. Under a Traditional IRA Contract additional contributions of $1,000 or more may be added at any time subject to certain restrictions. Additional contributions under a Traditional IRA Contract are limited to $2,00 per year, but additional rollover or IRA transfer amounts are unlimited. In certain cases, additional amounts may not be added to a Roth IRA Contract. An NQ or QP Contract can be purchased with a contribution of $25,000 or more. Additional contributions of $1,000 or more can be made at any time, subject to certain restrictions. Certain restrictions also apply to the type of contribution Equitable will accept under QP Contracts. Different minimum contribution amounts may be established for other retirement plan

markets, including IRAs, or particular NQ markets, or for automatic investment programs.

8. The Contracts offered by Equitable Life permit, and in the future the Contracts offered by EOC may permit, contributions to be allocated to guarantee periods ("Guarantee Periods") expiring on specified dates. The Guarantee Periods will be funded through an Equitable Life "non-unitized" separate account (the "Guaranteed Period Account"). The assets in the Guaranteed Period Account will not be subject to claims of Equitable Life's general creditors. Each Guarantee Period will provide a guarantee of the contribution allocated thereto and interest. The guarantee is supported by Equitable Life's general account assets, including those allocated to the Guaranteed Period Account. An upward and downward adjustment, or "market value adjustment" ("MVA"), will be made to the annuity account value in a Guarantee Period upon a withdrawal, surrender or transfer from a Guarantee Period prior to its expiration. Death benefit amounts based on annuity account value in a Guarantee Period will reflect only any upward MVA. Guarantee Period interests are registered under the 1933 Act pursuant to a Form S–3 Registration Statement.

9. SA45 currently is subdivided into 27 sub-accounts, each of which will be available under the SA45 Contracts. SA 49 currently is subdivided into 22 sub-accounts, each of which will be available under the SA 49 Contracts. SA VA currently consists of 22 sub-accounts, each of which will be available under the SA VA Contracts. The respective sub-accounts are referred to as "Investment Funds." Each Investment Fund will invest in shares of a corresponding portfolio ("Portfolio") of The Hudson River Trust ("HRT") or EQ Advisors Trust ("EQAT," and together with HRT, the "Trusts"). The Investment Funds, and in the case of the SA 45 and 49 Contracts the Guarantee Periods, will comprise the initial "Investment Options" under the Contracts. Each Trust is an open-end, diversified series management investment company registered under the Act, whose shares are registered under the 1933 Act. Both Trusts are available under the Separate Accounts.

10. HRT is managed and its Portfolios are advised by Alliance Capital Management L.P. ("Alliance"), a publicly traded limited partnership. Alliance is an indirect, majority-owned subsidiary of Equitable Life. EQFC has overall responsibility for the general management and administration of each EQAT Portfolio. Various entities serve as the investment advisers to one or more of the EQAT Portfolios. Equitable, at a later date, may determine to create an additional Investment Fund or Investment Funds of the Separate Accounts to invest in any additional Portfolio or Portfolios, or other such underlying portfolios or other investments as may now or in the future be available. Similarly, Investment Funds of the Separate Accounts may be combined or eliminated from time to time.

11. The Contracts provide for various withdrawal options, annuity benefits and payout annuity options, as well as transfer privileges among Investment Options, dollar cost averaging, death benefit and other features. The SA 45, SA 49 and SA VA Contracts have identical charges at the separate account level consisting of (i) a withdrawal charge as a percentage of contributions declining from 8% in years one and two to 0% in year ten and thereafter, with a 15% "free corridor" amount, (ii) asset-based charges at the annual rates of 1.10% for mortality and expense risks, 0.25% for administration expenses, and 0.25% for distribution expenses, assessed against the net assets of each Investment Fund, and (iii) currently, for SA 45 and SA 49 Contracts only, an annual 0.30% charge for an optional "baseBUILDER" benefit feature. The underlying Trusts each impose investment management fees, Rule 12b–1 plan fees and charges for other expenses.

12. Each time Equitable receives a contribution from a Contract owner, it will allocate to the owner's annuity account value a credit (the "Credit") equal to 3% of the amount of the contribution. Equitable will allocate Credits among the Investment Options in the same proportion as the corresponding contributions are allocated by the owner. Equitable will fund the Credits from its general account assets. Equitable will recapture Credits from an owner only if: (i) the owner returns the Contract during a 10-day (or longer, if required) "free look" period, or (ii) the owner annuitizes within three years of making a subsequent contribution, in which case Equitable will recover the amount of any Credit applicable to such contribution. Under the terms of the Contracts, Contract owners may not annuitize, i.e., commence annuity payments, earlier than five years from the date of the Contract.

13. Applicants seek exemption pursuant to Section 6(c) from Sections 2(a)(32), 22(c), and 27(i)(2)(A) of the Act and Rule 22c–1 thereunder to the extent necessary to permit Equitable to issue Contracts and Future Contracts that provide for the recapture of an amount equal to any Credits in the following two instances: (i) when an owner returns a Contract to Equitable for a refund during the "free look" period, and (ii) when an owner annuitizes within three years of making a subsequent contribution, in which case Equitable will recover the amount of any Credit applicable to such contribution.

Applicants' Legal Analysis

1. Section 6(c) of the Act authorizes the Commission to exempt any person, security or transaction, or any class or classes of persons, securities or transactions from the provisions of the Act and the rules promulgated thereunder if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants request that the Commission, pursuant to Section 6(c) of the Act, grant the exemptions summarized above with respect to the Contracts and any Future Contracts funded by the Separate Accounts or Future Accounts, that are issued by Equitable and underwritten or distributed by EQFC, EDI or Equitable Broker-Dealers. Applicants state that Future Contracts funded by the Separate Accounts or any Future Account will be substantially similar in all material respects to the Contracts. Applicants believe that the requested exemptions are appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

2. Applicants represent that it is not administratively feasible to track the Credit amount in any of the Separate Accounts after the Credit is applied. Accordingly, the asset based charges applicable to the Separate Accounts will be assessed against the entire amounts held in the respective Separate Accounts, including the Credit amount, during the "free look" period and the three year period prior to annuitization. As a result, during such periods, the aggregate asset based charges assessed against an owner's annuity account value will be higher than those that would be charged if the owner's annuity account value did not include the Credit.

3. Subsection (i) of Section 27 provides that Section 27 does not apply to any registered separate account funding variable insurance contracts, or to the sponsoring insurance company and principle underwriting of such

account, except as provided in paragraph (2) of the subsection. Paragraph (2) provides that it shall be unlawful for any registered separate account funding variable insurance contracts or a sponsoring insurance company of such account to sell a contract funded by the registered separate account unless, among other things, such contract is a redeemable security. Section 2(a)(32) defines "redeemable security" as any security, other than short-term paper, under the terms of which the holder, upon presentation to the issuer, is entitled to receive approximately his proportionate share of the issuer's current net assets, or the cash equivalent thereof.

4. Applicants submit that the Credit recapture provisions of the Contracts would not deprive an owner of his or her proportionate share of the issuer's current net assets. Applicants state that an owner's interest in the amount of the Credit allocated to his or her annuity account value upon receipt of an initial contribution is not vested until the applicable free-look period has expired without return of the Contract. Similarly, Applicants state that an owner's interest in the amount of any Credits allocated upon receipt of subsequent contributions made during the three years before the owner annuitizes also is not vested. Until or unless the amount of any Credit is vested, Applicants submit that Equitable retains the right and interest in the Credit amount, although not in the earnings attributable to that amount. Thus, Applicants argue that when Equitable recaptures any Credit it is simply retrieving its own assets, and because an owner's interest in the Credit is not vested, the owner has not been deprived of a proportionate share of the applicable Separate Account assets, *i.e.*, a share of the applicable Separate Accounts assets proportionate to the owner's annuity account value (including the Credit).

5. In addition, with respect to Credit recapture upon the exercise of the free-look privilege, Applicants state that it would be patently unfair to allow an owner exercising that privilege to retain a Credit amount under a Contract that has been returned for a refund after a period of only a few days. Applicants state that if Equitable could not recapture the Credit, individuals could purchase a Contract with no intention of retaining it, and simply return it for a quick profit.

6. Furthermore, Applicants state that the recapture of Credits relating to subsequent contributions made within three years of annuitization is designed to provide Equitable with a measure of protection against "anti-selection." Applicants state that the risk is that, rather than spreading contributions over a number of years, an owner will make very large contributions shortly before annuitizing, thereby leaving Equitable less time to recover the cost of the Credits applied, to its financial detriment. Again, the amounts recaptured equal the Credits provided by Equitable from its own general account assets, and any gain would remain as part of the Contract's value at annuitization.

7. Applicants represent that the Credit will be attractive to and in the interest of investors because it will permit owners to put 103% of their contributions to work for them in the selected Investment Options. Also, any earnings attributable to the Credit will be retained by the owner, and the principal amount of the Credit will be retained if the contingencies set forth in the application are satisfied.

8. Further, Applicants submit that the recapture of any Credit only applies in relation to the risk of anti-selection against Equitable. Applicants state that Equitable's right to recapture Credits applies to subsequent contributions made within three years of annuitization protects it against the risk that owners will contribute larger amounts as they approach an annuitization date to obtain the Credit, while avoiding Contract charges over the long term. With respect to refunds paid upon the return of Contracts within the "free-look" period, the amount payable by Equitable must be reduced by the allocated Credits. Otherwise, Applicants state that purchasers could apply for Contracts for the sole purpose of exercising the free-look fund provision and making a quick profit.

9. Applicants submit that the provisions for recapture of any applicable Credit under the Contracts do not, and any such Future Contract provisions will not, violate Section 2(a)(32) and 27(i)(2)(A) of the Act. Nevertheless, to avoid any uncertainties, Applicants request an exemption from those Sections, to the extent deemed necessary, to permit the recapture of any Credit under the circumstances described herein with respect to the Contracts and any Future Contracts, without the loss of the relief from Section 27 provided by Section 27(i).

10. Section 22(c) of the 1940 Act authorizes the Commission to make rules and regulations applicable to registered investment companies and to principal underwriters of, and dealers in, the redeemable securities of any registered investment company, whether or not members of any securities association, to the same extent, covering the same subject matter, and for the accomplishment of the same ends as are prescribed in Section 22(a) in respect of the rules which may be made by a registered securities association governing its members. Rule 22c–1 thereunder prohibits a registered investment company issuing any redeemable security, a person designated in such issuer's prospectus as authorized to consummate transactions in any such security, and a principal underwriter of, or dealer in, such security, from selling, redeeming, or repurchasing any such security except at a price based on the current net asset value of such security which is next computed after receipt of a tender of such security of redemption or of an order to purchase or sell such security.

11. Arguably, Equitable's recapture of the Credit might be viewed as resulting in the redemption of redeemable securities for a price other than one based on the current net asset value of the Separate Accounts. Applicants contend, however, that recapture of the Credit is not violative of Section 22(c) and Rule 22c–1. Applicants argue that the recapture does not involve either of the evils that Rule 22c–1 was intended to eliminate or reduce, namely: (i) the dilution of the value of outstanding redeemable securities of registered investment companies though their sale at a price below net asset value or their redemption or repurchase at a price above it, and (ii) other unfair results including speculative trading practices. See Adoption of Rule 22c–1 under the 1940 Act, Investment Company Release No. 5519 (Oct. 16, 1968). To effect a recapture of a Credit, Equitable will redeem interests in an owner's annuity account at a price determined on the basis of current net asset value of the respective Separate Accounts. The amount recaptured will equal the amount of the Credit that Equitable paid out of its general account assets. Although owners will be entitled to retain any investment gain attributable to the Credit, the amount of such gain will be determined on the basis of the current net asset value of the respective Separate Accounts Thus, no dilution will occur upon the recapture of the Credit. Applicants also submit that the second harm that Rule 22c–1 was designed to address, namely, speculative trading practices calculated to take advantage of backward pricing, will not occur as a result of the recapture of the Credit. However, to avoid any uncertainty as to full compliance with the Act, Applicants

request an exemption from the provisions of Section 22(c) and Rule 22c–1 to the extent deemed necessary to permit them to recapture the Credit under the Contracts and Future Contacts.

Conclusion

Applicants submit that their request for an order is appropriate in the public interest. Applicants state that such an order would promote competitiveness in the variable annuity market by eliminating the need to file redundant exemptive applications, thereby reducing administrative expenses and maximizing the efficient use of Applicants' resources. Applicants argue that investors would not receive any benefit or additional protection by requiring Applicants to repeatedly seek exemptive relief that would present no issue under the Act that has not already been addressed in their Application described herein. Applicants submit that having them file additional applications would impair their ability effectively to take advantage of business opportunities as they arise. Further, Applicants state that if they were required repeatedly to seek exemptive relief with respect to the same issues addressed in the Application described herein, investors would not receive any benefit or additional protection thereby.

Applicants submit, based on the grounds summarized above, that their exemptive request meets the standards set out in section 6(c) of the Act, namely, that the exemptions requested are necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act, and that, therefore, the Commission should grant the requested order.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–9244 Filed 4–13–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–23776, 812–11126]

Merrill Lynch Life Insurance Company, et al.

April 8, 1999.

AGENCY: Securities and Exchange Commission ("Commission" or "SEC").

ACTION: Notice of application for an order of approval pursuant to section 26(b) of the Investment Company Act of 1940, as amended (the "1940 Act" or the "Act"), and an order of exemption pursuant to section 17(b) of the 1940 Act from section 17(a) thereof.

APPLICANTS: Merrill Lynch Life Insurance Company ("Merrill Lynch Life"), Merrill Lynch Life Variable Annuity Separate Account A ("Annuity Account A"), ML Life Insurance Company of New York ("ML of New York"), and ML of New York Variable Annuity Separate Account A ("New York Annuity Account A") (collectively, the "Applicants").

SUMMARY OF APPLICATION: Applicants request an order pursuant to section 26(b) of the 1940 Act approving the substitution of units of beneficial interest ("Units") issued by the Select Ten Portfolios (as defined below) of the Equity Investor Fund, Defined Asset Funds (the "Trust") and held by Annuity Account A and New York Annuity Account A (each an "Account"; collectively, the "Accounts"), to support, as applicable, certain variable annuity contracts (collectively, the "Contracts") issued by Merrill Lynch Life or ML of New York (collectively, the "Companies"). Applicants also request an order pursuant to section 17(b) of the Act exempting them from section 17(a) of the 1940 Act to the extent necessary to permit the substitution of Units of the 1999 ML Select Ten V.I. Trust (the "1999 Portfolio") for Units of the 1998 ML Select Ten V.I. Trust (the "1998 Portfolio") initially held by the Accounts by redeeming Units of the terminating 1998 Portfolio for portfolio securities and cash ("redemption proceeds") and using the redemption proceeds, after adjustment by the distribution agent (The Bank of New York or "BONY") acting on behalf of the Accounts, to purchase Units of the 1999 Portfolio.

FILING DATES: The application was filed on April 30, 1998. It was amended and restated on March 25, 1999 and April 7, 1999.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on April 29, 1999, and should be accompanied by proof of service on applicants, in the form of an affidavit, or for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and issues contested. Persons who wish to be notified of a hearing may request notification by writing the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW, Washington, DC 20549–0609. Applicants, c/o Edward W. Diffin, Jr. Esq., Vice President and Senior Counsel, Merrill Lynch Insurance Group, Inc., 800 Scudders Mill Road, Plainsboro, New Jersey 08536.

FOR FURTHER INFORMATION CONTACT: Lorna J. MacLeod, Attorney, at (202) 942–0684, or Susan M. Olson, Branch Chief, at (202) 942–0680, Office of Insurance Products, (Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch, 450 Fifth Street, NW, Washington, DC 29549 ((202) 942–8090).

Applicant's Representations

1. Merrill Lynch Life, a stock life insurance company organized under the laws of the State of Arkansas, is the depositor and sponsor of Annuity Account A. Annuity Account A is registered with the Commission under the Act as a unit investment trust (File No. 811–6459).

2. ML of New York, a stock life insurance company organized under the laws of the State of New York, is the depositor and sponsor of New York Annuity Account A. New York Annuity Account A is registered with the Commission under the Act as a unit investment trust (File No. 811–6466).

3. The Trust is registered with the Commission under the 1940 Act as a unit investment trust (File No. 811–3044). The Trust consists of a number of portfolios (each a "Portfolio"), which includes the 1998 Portfolio, and will include the 1999 Portfolio (each, a "Select Ten Portfolio"; collectively, the "Select Ten Portfolios"). Each Select Ten Portfolio is or will be a series of the Trust created under New York law by a Trust Indenture between Merrill Lynch, Pierce, Fenner & Smith Incorporated ("MLPF&S"), the Sponsor and depositor, and BONY acting as the Trustee. Each Select Ten Portfolio will pursue the strategy of buying approximately equal amounts of the ten highest dividend yielding common stocks of the 30 stocks on the Dow Jones Industrial Average ("DJIA") as of a specified date each year ("Strategy Stocks") and hold them for about one year until the Select Ten Portfolio is terminated.

4. The estimated expenses for the 1998 Portfolio consist of a deferral sales charge (the "Transaction Fee") ($4.70 per 1000 Units), a Trustee's fee ($0.82 per 1000 Units), Portfolio Supervision, Bookkeeping, and Administrative Expenses ($0.45 per 1000 Units), Organizational Expenses ($0.46 per 1000 Units); and Other Operating Expenses ($0.06 per 1000 Units). The Transaction Fee and the fee for Portfolio Supervision, Bookkeeping, and Administrative Expenses are paid to the Sponsor. The Transaction Fee is a sales charge that compensates the Sponsor for creating and maintaining the Trust, and includes a profit element. It is accrued daily and collected by the Sponsor, MLPF&S, on a deferred basis quarterly and any remainder at the time Units are redeemed. The Transaction Fee is not a liability of the Trust, but a liability of Unit purchasers. No unaccrued (contingent) fee amounts will be owed if Units are redeemed before the Trust terminates. Applicants represent that the fee for Portfolio Supervision, Bookkeeping and Administrative Expenses is paid at cost, consistent with Section 26(a)(2)(C) of the 1940 Act and Rule 26a–1 thereunder. Other expenses are paid to independent third parties and depend on the amounts charged by the third parties.

5. The estimated expenses for the 1999 Portfolio will be similar to those of the 1998 Portfolio. The Transaction Fee for the 1999 Portfolio will be equal to 0.47% of the initial offer price of the 1999 Portfolio. The fee for Portfolio Supervision, Bookkeeping and Administrative Expenses will be at cost. The fee for Organizational Expenses, the Trustee's fee and Other Operating Expenses may vary from those of the 1998 Portfolio depending on the amounts charged by independent third parties. These fees, however, will be without profit to the sponsor consistent with Rule 26a–1 under the Act.

6. Applicants specifically represent, as a basis for receiving the relief requested in this application, that: (a) the Transaction Fee for the 1999 Portfolio, including the nature and purpose of the fee, the manner of the imposition of the fee, the amount of the fee, and its imposition in the proposed substitution described in this application, is covered by the exemptive relief received in Inv. Co. Act Rel. No. 11494 (Dec. 26, 1980) (Order) (the "1980 Order"), Inv. Co. Act Rel. No. 13848 (Mar. 27, 1984) (Order) (the "1984 Order), and Inv. Co. Act Rel. No. 14717 (Sept. 12, 1985) (Order) (the "1985 Order"); and (b) as a result, the Transaction Fee for the 1999 Portfolio is exempted by the 1980, 1984, and 1985 Orders from Sections 2(a)(32), 2(a)(35), 11(c), 22(c) and 22(d) of the Act and Rule 22c–1 thereunder, and no relief is being requested from those Sections or that Rule by this application.

7. The Contracts are variable annuity contracts issued by Merrill Lynch Life and ML of New York. Premiums under the Contracts may be allocated to one or more subaccounts of the Accounts. The Contracts generally permit six transfers per contract year between subaccounts without imposition of a transfer charge. Each Contract reserves to Merrill Lynch Life or ML of New York, as appropriate, the right, subject to Commission approval, to substitute Units of the 1999 Portfolio for Units of the 1998 Portfolio held by a subaccount of the relevant Account.

8. Merrill Lynch Life on its own behalf and on behalf of Annuity Account A, and ML of New York on its own behalf and on behalf of New York Annuity Account A, made the 1998 Portfolio available as an investment option under the Contracts through a subaccount of each Account (each a "Select Ten Subaccount"). As described above, each Select Ten Portfolio will hold approximately equal values of the ten stocks in the DJIA having the highest dividend yield as of a specified date each year. In light of the fluctuation in dividend rates and share prices of stocks generally, all of the Strategy Stocks are unlikely to be the same from 1998 to 1999. Consequently, Applicants anticipate that a number of the portfolio securities held by the Select Ten Portfolios will change each year. The organizational structure of the Portfolios dictates that a new Select Ten Portfolio be created that will invest in the Strategy Stocks for that year. Each Select Ten Portfolio terminates after one year, on a contemplated date. As a result, a substitution must occur in order for the Select Ten Subaccount to remain continuously invested in a Select Ten Portfolio.

9. The 1998 Portfolio will terminate on April 30, 1999, and holders of units of that Portfolio will receive Units of the 1999 Portfolio, which will acquire approximately equal values of the ten stocks in the DJIA having the highest dividend yields as of a specified date prior to April 30, 1999, and will hold those stocks for approximately one year. As holders of Units of the 1998 Portfolio, the Accounts will, absent unusual circumstances and subject to obtaining the relief requested in the application, receive units of the 1999 Portfolio on behalf of owners of the Contracts ("Owners") on April 30, 1999. The purpose of this substitution is to provide Owners with a Select Ten Subaccount that utilizes the described investment strategy on a continuous basis under the Contracts.

10. Applicants represent that by prominent disclosure within the prospectuses for the Contracts and the Accounts, they have notified all Owners and prospective Owners of a Contract in advance of the intention of Merrill Lynch Life and ML of New York to substitute Units of the 1999 Portfolio for Units of the 1998 Portfolio. The prospectuses advised Owners and prospective Owners that the 1998 Portfolio will be replaced by the 1999 Portfolio on a specified date (the "Rollover Date"), subject to obtaining the relief requested in the application. The prospectuses inform Owners and prospective Owners that they may continue to allocate premium payments and transfer cash value to the Select Ten Subaccount investing in the 1998 Portfolio after the Rollover Date; however, as of the Rollover Date, the Select Ten Subaccount will invest in the 1999 Portfolio (rather than in the 1998 Portfolio). The prospectuses further inform Owners and prospective Owners that from the Rollover Date to thirty days after the Rollover Date, Owners will be permitted to make one transfer from the Select Ten Subaccount of all of the cash value under a Contract invested in the Select Ten Subaccount to other available subaccounts of the relevant Account, without that transfer counting as one of the limited number of transfers among subaccounts of an Account permitted in a Contract year free of charge. The prospectuses also explain that neither Company will exercise any right reserved by it under the Contracts to impose additional restrictions on transfers until at least thirty days after the proposed substitution.

11. Applicants propose to substitute Units of the 1999 Portfolio for Units of the 1998 Portfolio initially held by the Select Ten Subaccounts by redeeming Units of the terminating 1998 Portfolio and using the redemption proceeds to purchase Units of the 1999 Portfolio.

12. The proposed substitution will be accomplished by the in-kind redemption of Units of the terminating 1998 Portfolio. The Trust's distribution agent, acting on behalf of the relevant Account, will adjust the in-kind proceeds (Strategy Stocks and cash) so that their overall composition matches the investment profile—the Strategy Stocks—of the 1999 Portfolio. The distribution agent contributes the adjusted proceeds to the 1999 Portfolio. Following this contribution, the trustee of the 1999 Portfolio will issue the appropriate number of units in the 1999 Portfolio to the relevant Account. The

adjustment of the redemption proceeds involves brokerage expenses that will be reflected in the amount contributed to the 1999 Portfolio and, thus, will be borne by Owners remaining in the Select Ten Subaccount through the rollover. Applicants state that these brokerage expenses are customary expenses and are analogous to brokerage expenses incurred by management investment companies which sell and buy portfolio securities throughout the course of any given year.

13. As soon as reasonably practicable following the proposed substitution (but in any event, within five days after April 30, 1999), any Owners affected by the substitution will receive an updated prospectus for the Contracts accompanied by a prospectus for the 1999 Portfolio. In addition, Applicants undertake to accompany the updated prospectuses with a letter to affected Owners that highlights the substitution and the investment by the Select Ten Sub-Account in the 1999 Portfolio. The prospectus for the 1999 Portfolio will specify the Strategy Stocks of the 1999 Portfolio. The updated prospectus for the Contracts will reflect information about the 1999 Portfolio and will inform Owners that they may make one transfer of all contract value under a contract invested in a select Ten Subaccount on the date of the prospectus to another subaccount within thirty days of the substitution without that transfer counting as one of a limited number of transfers permitted in a Contract year or as one of a limited number of transfers permitted in a Contract year.free of charge. The Prospectus will also state that the Companies will not exercise any rights reserved by them under any of the Contracts to impose any additional restriction on transfers until at least thirty days after the proposed substitution.

14. Applicants state that the proposed substitution will take place at relative net asset values and, except for the brokerage expenses described above that will be incurred in establishing the 1999 Portfolio, with no other change in the amount of any Owners contract value or death benefit or in the dollar value of his or her investment in any subaccount investing the Select Ten Trust, or in any of the Accounts. No sales load deduction, other than the Transaction Fee, will be made beyond those already provided for in the Contracts. Owners will not incur addition fees or charges as a result of the proposed substitution nor will their rights, or the obligations of Merrill Lynch Life or ML of New York, as applicable, under the Contracts be altered in any way. Applicants represent that all expenses incurred in connection with the proposed substitution, including legal, accounting and other fees and expenses (except for the brokerage expenses described above), will be paid by Merrill Lynch Life or ML of New York. The proposed substitution will not impose any tax liability on Owners, and by itself, will not cause the fees and charges currently being paid by existing Owners to be greater after the proposed substitution than before the proposed substitution. Units of the 1999 Portfolio will be subject to the Transaction Fee, which will be assessed at a rate of 0.4% of the initial offer price. Applicants also represent that the proposed substitution will not be treated as a transfer for the purpose of assessing transfer charges or for determining the number of remaining permissible transfers in a Contract year. The Companies will not exercise any right either may have under the Contracts to impose additional restrictions on transfers or eliminate the transfer privilege under any of the Contracts for a period of at least thirty days following the proposed substitution.

Applicants' Legal Analysis

1. Applicants request that the Commission issue an order pursuant to section 26(b) of the 1940 Act approving the substitution of Units of the 1999 Portfolio for Units of the terminating 1998 Portfolio currently held by the Select Ten Subaccounts by redeeming Units of the 1998 Portfolio and using the redemption proceeds to purchase Units of the 1999 Portfolio.

2. Section 26(b) of the 1940 Act requires the depositor of a registered unit investment trust holding the securities of a single issuer to obtain Commission approval before substituting the securities held by the trust. Specifically, section 26(b) states:

> It shall be unlawful for any depositor or trustee of a registered unit investment trust holding the security of a single issuer to substitute another security for such security unless the Commission shall have approved such substitution. The Commission shall issue an order approving such substitution if the evidence establishes that it is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of this title.

3. Applicants assert that the proposed substitution is substantially consistent with the standards that the Commission and its staff have applied to substitutions that have been approved in the past and are consistent with the protection of investors and the purposes fairly intended by the 1940 Act.

4. Applicants assert that the 1999 Portfolio will be suitable and appropriate investment vehicle for Owners. The 1999 Portfolio will have identical investment objectives and policies to the 1998 Portfolio. Furthermore, Applicants assert that an integral aspect of the long term investment strategy of the Select Ten Portfolios is the annual replacement of any portfolio securities that are no longer among the ten highest dividend yielding stocks in the DJIA. Under the proposed structure, this is accomplished by the creation of the 1999 Portfolio that will hold (for a one year period) approximately equal values as of the date of deposit of ten highest dividend yielding stocks in the DJIA. Applicants assert that the proposed substitution is necessary to permit Owners to pursue the long-term investment strategy for which the Select Ten Portfolios are designed.

5. In addition, Applicants note that the proposed substitution may be only temporary in character because Owners may always exercise their own judgment as to the most appropriate investment vehicle. Owners may, pursuant to the terms of their Contracts, and for 30 days after the proposed substitution without charge, transfer contract value to another subaccount.

6. Applicants request that the Commission issue an order pursuant to Section 17(b) of the 1940 Act exempting them from the provisions of Section 17(a) of the 1940 Act to the extent necessary to permit the substitution of Units of the 1999 Portfolio for Units of the 1998 Portfolio initially held by the Select Ten Subaccounts by redeeming Units of the terminating 1998 Portfolio and using the redemption proceeds to purchase Units of the 1999 Portfolio.

7. The Commission has previously granted an exemption from Section 17(a) of the 1940 Act to the Trust permitting terminating series of the Trust to sell portfolio securities to new series of the Trust. [1] At the time the exemption was obtained, the use of Portfolios of the Trust as a funding vehicle for insurance company separate accounts was not contemplated.

8. Section 17(a)(1) of the 1940 Act, in relevant part, prohibits any affiliated person of a registered investment company, or any affiliated person of such person, acting as principal, from knowingly selling any security or other

[1] Defined Asset Funds—Equity Income Fund, Inv. Co. Act Rel. No. 20517 (Aug. 31, 1994) (Order) (granting relief under Sections 6(c) and 17(b) of the 1940 Act for the Trust, on behalf of its present and future series, to engage in rollover transactions such as those that would occur as a result of the proposed substitution).

property to that company. Section 17(a)(2) of the 1940 Act generally prohibits the persons described above, acting as principals, from knowingly purchasing any security or other property from the registered investment company.

9. Section 2(a)(3)(F) of the 1940 Act defines the term "affiliated person of another person" as "if such other person is an unincorporated investment company not having a board of directors, the depositor thereof." As the Trust is an unincorporated investment company that does not have a board of directors, the depositor thereof, MLPF&S, is an affiliated person of the Trust.

10. Pursuant to Section 2(a)(3)(C) of the 1940 Act, "any person directly or indirectly controlling, controlled by, or under common control with" another person is an "affiliated person" of such other person. MLPF&S is a wholly owned subsidiary of Merrill Lynch & Co., Inc. As a wholly owned subsidiary of Merrill Lynch & Co., Inc., Applicants represent that MLPF&S is "controlled by" Merrill Lynch & Co., Inc. within the meaning of Section 2(a)(9) of the 1940 Act.

11. Applicants further represent that each Company is an indirect wholly owned subsidiary of Merrill Lynch & Co., Inc., and as such may be deemed to be controlled by Merrill Lynch & Co., Inc. Consequently, each of the Companies is an affiliated person of MLPF&S, and, as such, is an affiliated person of an affiliated person of the Trust.

12. To the extent that Strategy Stocks formerly held by the 1998 Portfolio are sold by the Trust's distribution agent to the 1999 Portfolio, Applicants submit that the proposed substitution could entail the indirect purchase of Units of the 1999 Portfolio with portfolio securities of the 1998 Portfolio, and the indirect sale of Units of the 1998 Portfolio for portfolios securities of the 1999 Portfolio by the Companies, acting as principal, from and to the Trust, and therefore would be in contravention of Section 17(a).

13. Section 17(b) of the 1940 Act provides that the Commission may, upon application, grant an order exempting any transaction from the prohibitions of Section 17(a) if the evidence establishes that:

(1) The terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned;

(2) The proposed transaction is consistent with the policy of each registered investment company concerned, as recited in its registration statement and reports filed under the 1940 Act; and

(3) The proposed transaction is consistent with the general purposes of the 1940 Act.

14. Applicants assert that the terms of the proposed substitution, including the consideration to be paid and received are reasonable and fair and do not involve overreaching on the part of any person concerned. Applicants also assert that the proposed substitution is consistent with the policies of the Trust and of the affected Portfolios, as recited in the current registration statements and reports filed by each under the 1940 Act. Finally, Applicants assert that the proposed substitution is consistent with the general purposes of the 1940 Act.

15. Rule 17a–7 under the 1940 Act exempts from the prohibitions of Section 17(a), subject to certain enumerated conditions, a purchase or sale transaction between a registered investment company or a separate series of a registered investment company and a person which is an affiliated person of such registered investment company (or affiliated person of such person) solely by reason of having a common investment adviser or investment advisers which are affiliated persons of each other, common directors, and/or common officers. Applicants assert that although they cannot rely on Rule 17a–7, they will comply with the substance of the rule.

Conclusion

Applicants submit that, for the reasons summarized above, the request relief is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–9316 Filed 4–13–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–23775; File No. 812–10798]

The Prudential Insurance Company of America, et al.; Notice of Application

April 7, 1999.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of application for an order under Section 11 of the Investment Company Act of 1940 (the "1940 Act" or "Act") permitting certain exchange offers between certain unit investment trusts and certain open-end management investment companies.

APPLICANTS: The Prudential Insurance Company of America ("Prudential"), The Prudential Individual Variable Contract Account (the "VIP Nonqualified Account"), The Prudential Qualified Individual Variable Contract Account (the "VIP Qualified Account"), Global Utility Fund, Inc., Nicholas-Applegate Fund, Inc., Prudential Balanced Fund, Prudential Developing Market Fund, Prudential Diversified Bond Fund, Inc., Prudential Emerging Growth Fund, Inc., Prudential Equity Fund, Inc., Prudential Equity Income Fund, Inc., Prudential Europe Growth Fund, Inc., Prudential Global Genesis Fund, Inc., Prudential Global Limited Maturity Fund, Inc., Prudential Government Income Fund, Inc., Prudential Government Securities Trust, Prudential High Yield Fund, Inc., Prudential High Yield Total Return Fund, Inc., Prudential Index Series Fund, Prudential Intermediate Global Income Fund, Inc., Prudential International Bond Fund, Inc., Prudential Mid-Cap Value Fund, Prudential MoneyMart Assets, Inc., Prudential Natural Resources Fund, Inc., Prudential Pacific Growth Fund, Inc., Prudential Real Estate Securities Fund, Prudential Small-Cap Quantum Fund, Inc., Prudential Small Company Value Fund, Inc., Prudential Structured Maturity Fund, Inc., Prudential 20/20 Focus Fund, Prudential Utility Fund, Inc., Prudential World Fund, Inc., The Global Total Return Fund, Inc., The Prudential Investment Portfolios, Inc., Pruco Securities Corporation ("Pruco"), the Prudential Investment Management Services LLC ("PIMS").

SUMMARY OF APPLICATION: Applicants seek an order to permit exchanges from individual variable annuity contracts of the VIP Nonqualified Account and the VIP Qualified Account (collectively, the "VIP Accounts") and similar current and future variable annuity accounts of Prudential or an affiliated insurance company to certain open-end management investment companies.

FILING DATE: The application was filed on September 24, 1997 and amended on March 22, 1999.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Secretary of the Commission and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30

p.m. on April 29, 1999, and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the requester's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the Commission.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW Washington, DC 20549–0609. Applicants, c/o Christopher E. Palmer, Shea & Gardner, 1800 Massachusetts Ave., NW, Washington, DC 20036.

FOR MORE INFORMATION CONTACT: Joyce Merrick Pickholz, Senior Counsel, or Kevin M. Kirchoff, Branch Chief, Office of Insurance Products, Division of Investment Management, at (202) 942–0670.

SUPPLEMENTARY INFORMATION: The following is a summary of the application; the complete application is available for a fee from the Commission's Public Reference Branch, 450 Fifth Street, NW, Washington, DC 20549 (202) 942–8090.

Applicants' Representations

1. Prudential is a mutual life insurance company organized under the laws of New Jersey. Prudential issues the individual Variable Investment Plan variable annuity contracts (the "VIP contracts").

2. The VIP Nonqualified Account and the VIP Qualified Account (collectively, the "VIP Accounts") are separate accounts of Prudential holding assets relating to the VIP contracts. They are registered as unit investment trusts under the 1940 Act. Both VIP Accounts currently have thirteen separate subaccounts, each of which invests in a single corresponding portfolio of The Prudential Series Fund, Inc. (the "Series Fund"), an open-end management investment company. Shares of the Series Fund are currently sold exclusively to separate accounts of Prudential and certain other affiliated insurance companies to fund benefits under variable annuity and variable life contracts. The Series Fund may in the future sell its shares to unaffiliated insurance companies and qualified plans.

3. The following Applicants or series of an Applicant are each individually referred to as a "Prudential Fund" and collectively referred to as the "Prudential Funds"; Global Utility Fund, Inc.; Nicholas-Applegate Growth Equity Fund of the Nicholas-Applegate Fund, Inc.; Prudential Balanced Fund; Prudential Developing Markets Equity Fund and Prudential Latin America Equity Fund of the Prudential Developing Market Fund; Prudential Diversified Bond Fund, Inc.; Prudential Emerging Growth Fund, Inc.; Prudential Equity Fund, Inc.; Equity Income Fund, Inc.; Prudential Europe Growth Fund Inc.; Prudential Global Genesis Fund, Inc.; Limited Maturity Fund of the Prudential Global Limited Maturity Fund, Inc.; Prudential Government Income Fund, Inc.; Money Market Series, U.S. Treasury Money Market Series and Short-Intermediate Term Series of the Prudential Government Securities Trust; Prudential High Yield Fund, Inc.; Prudential High Yield Total Return Fund, Inc.; Prudential Stock Index Fund of the Prudential Index Series Fund; Prudential Intermediate Global Income Fund, Inc.; Prudential International Bond Fund, Inc.; Prudential Mid-Cap Value Fund; Prudential MoneyMart Assets, Inc.; Prudential Natural Resources Fund, Inc.; Prudential Pacific Growth Fund, Inc,; Prudential Real Estate Securities Fund; Prudential Small-Cap Quantum Fund, Inc.; Prudential Small Company Value Fund, Inc.; Income Portfolio of the Prudential Structured Maturity Fund, Inc.; Prudential 20/20 Focus Fund; Prudential Utility Fund, Inc.; Global Series and International Stock Series of the Prudential World Fund, Inc.; The Global Total Return Fund, Inc.; and Prudential Active Balanced Fund, Prudential Jennison Growth Fund and Prudential Growth & Income Fund of The Prudential Investment Portfolios, Inc.

4. With the exception of three money market funds discussed below, each Prudential Fund offers four classes of shares, two of which are relevant here. Class A shares are offered with: (i) up to a 5% front-end sales charge and (ii) a fee pursuant to Rule 12b–1 under the Act ("Rule 12b–1 fee") of up to 0.30%. Class C shares are offered with: (i) a contingent deferred sales charge of 1% on redemptions made within one year of purchase and (ii) a Rule 12b–1 fee of 1%. The three money market funds (the Money Market Series of the Prudential Government Securities Trust, the U.S. Treasury Money Market Series of the Prudential Government Securities Trust, and Prudential MoneyMart Assets, Inc.) have only two classes of shares—A shares and Z shares. Each Prudential Fund currently pays an investment advisory fee and certain other expenses.

5. Pruco is an indirect, wholly-owned subsidiary of Prudential and is a registered broker-dealer under the Securities Exchange Act of 1934 (the "1934 Act"). Pruco distributes the VIP contracts.

6. PIMS is a direct, wholly-owned subsidiary of Prudential and is a registered broker-dealer under the 1934 Act. It distributes the shares of each class of the Prudential Funds.

7. Prudential offers the VIP contracts through the VIP Qualified Account for use in connection with retirement arrangements that qualify for federal tax benefits under sections 401, 403(b), 408, or 457 of the Internal Revenue Code of 1986, as amended (the "Code"). Prudential offers nonqualified VIP contracts through the VIP Nonqualified Account. A contract owner may choose to have purchase payments invested in any of the respective Account's subaccounts. Subject to certain limitations, contract owners may transfer subaccount units at net asset value among the various subaccounts.

8. Applicants request an order to allow VIP contract owners to exchange any or all of their subaccount units for shares of a Prudential Fund under one of the two following exchange offers. Exchange offer "A" would be available only for exchanges of aggregate subaccount units worth $1,000,000 or more. Contract owners would exchange subaccount units for Prudential Fund Class A shares, and any front-end sales charge customarily assessed on purchases of Class A shares would be waived. Any such exchange would be effected at the relative net asset values of the securities exchanged, and would be priced in accordance with Rule 22c–1 under the 1940 Act. No sales load, administrative fee, redemption fee, or other transaction charge would be imposed at the time of the exchange, and Prudential would waive: (1) any recapture of any bonus amount exchanged; and (2) any annual maintenance charge that would otherwise be deducted upon withdrawal of the full value of the contract. Exchange offer "C" would be available only for exchanges of aggregate subaccount units worth less than $1,000,000. Contract owners would exchange subaccount units for Prudential Fund Class C shares. Any such exchange would be effected at the relative net asset values of the securities exchanged and would be priced in accordance with Rule 22c–1 under the Act. No sales load, administrative fee, redemption fee, or other transaction charge would be imposed at the time of the exchange, and Prudential would waive: (1) any recapture of any bonus amount exchanged; and (2) any annual maintenance charge that would otherwise be deducted upon withdrawal of the full value of the contract. Moreover, any contingent deferred sales charge that might otherwise be

applicable to the Class C shares when subsequently sold would be waived.

9. With respect to both exchange offers, Prudential would limit the offer to exchanges in which the following two criteria were met. First, the exchange must involve a group plan. Second, the plan sponsor must agree that, if it terminates its recordkeeping arrangement with Prudential or the affiliate when the VIP contract surrender charge or bonus amount recapture provision would have been applicable had the exchange not occurred (or, for those plans that do not use Prudential or an affiliate for recordkeeping, if the plan withdraws a set portion of its investment in the Prudential Funds during that time period), the plan sponsor will pay Prudential a negotiated amount designed to approximate the VIP surrender charge and/or recapture of bonus amount that would have been applicable. The plan sponsor must agree that any such payment would not be assessed directly or indirectly against plan participants. Applicants represent that the purpose of this second requirement is to prevent plan sponsors from using the exchange offer simply to avoid sales charges that would be applicable if the plan sponsor surrendered the VIP contract for its cash surrender value and ended its business relationship with Prudential.

10. Prudential would, in its sole discretion, determine to whom an exchange offer would be made, the time period which the exchange offer would be in effect, and when to terminate an exchange offer. Also, with respect to both offers, Prudential may establish fixed periods of time for exchanges under a particular contract or group of contracts (a "window") of at least 60 days in length. Any pre-sect window would be at least 60 days in length, and no open-ended exchange offer would be terminated or its terms amended materially without prominent notice to any contract owners subject to that offer of the impending termination or amendment at least 60 days prior to the date of termination or the effective date of the amendment; provided, however, that no such notice would be required if, under extraordinary circumstances, either: (a) there were a suspension in redemption of the exchange security under section 22(e) of the 1940 Act or rules thereunder; or (b) the offering company were temporarily to delay or crease the sale of the security because it was unable to invest amounts effectively in accordance with applicable investment objectives, policies and restrictions.

11. Applicants respensent that at the commencement of the exchange offers, and as long as the offers remain in effect, the prospectus of each VIP Account will: (1) Describe the terms of each offer; (2) disclose that no redemption or administrative fee would be imposed in connection with the exchange program; (3) disclose that each exchange offer is subject to termination and its terms are subject to change; and (4) describe the tax implications of the exchanges including, if appropriate, a description of any adverse tax consequences of an exchange. Applicants anticipate that the exchange offers would be extended only to persons that have been provided a copy of the current VIP Qualified Account or VIP Nonqualified Account prospectus. As long as that were the case and the disclosure about the exchange offers were in the respective prospects, no additional disclosure about the exchange offers would be included in the prospectuses for the Prudential Funds, because the Prudential Funds are offered to a significant number of persons who would not be given the exchanges offers. Applicants represent that if the exchange offers are extended to persons that have not been provided copies of a current VIP Account prospectus, the prospectus(es) for the relevant Prudential Fund(s) will also; (1) describe the terms of each offer; (2) disclose that no redemption or administrative fee would be imposed in connection with the exchange program; (3) disclose that each exchange offer is subject to termination and its terms are subject to change; and (4) describe the tax implications of the exchanges including, if appropriate, a description of any adverse tax consequences of an exchange.

12. With respect to the exchange security, Applicants request that the Commission order extend to all other current and future variable annuity contracts issued by Prudential or an affiliated insurance company, to the separate accounts relating to any such contracts, and to underwriters distributing the contracts ("Future Contracts").

Applicants' Legal Analysis

1. Section 11(a) of the Act provides, in pertinent part, that it shall be unlawful for any registered open-end company or any principal underwriter for such a company to make or cause to be made an offer to the holder of a security of such company, or of any other open-end investment company, to exchange that security for a security in the same or another such company on any basis other than the relative net asset values of the respective securities to be exchanged, unless the terms of the offer have first been submitted to and approved by the Commission. Section 11(c) of the Act provides that, irrespective of the basis of exchange, Commission approval is required for any offer of exchange of any security of a registered unit investment trust for the securities of any other investment company. Accordingly, although Applicants believe that the proposed exchanges are at relative net asset value, Commission approval is required for the proposed exchanges because of the involvement of the VIP Accounts, each of which is a registered unit investment trust. Applicants state that they cannot rely on existing exemptive rules because neither Rule 11a–2 nor Rule 11a–3 permits exchanges between a unit investment trust separate account and an open-end investment company that is not a separate account.

2. The legislative history of Section 11 indicates that its purpose is to provide the Commission with an opportunity to review the terms of certain offers of exchange to ensure that a proposed offer is not being made "solely for the purpose of exacting additional selling charges." H. Rep. No. 2639, 76th Cong., 2d Sess. 8 (1940). One of the practices Congress sought to prevent through Section 11 was the practice of inducing investors to switch securities so that the promoter could charge investors another sales load. Applicants assert that the proposed exchange offers involve no possibility of such abuse because the acquired shares would be subject to neither a front-end nor deferred sales charge. With respect to Exchange offer "A," the acquired Class A shares would have no deferred sales charge and any front-end sales charge would be waived. Similarly, with respect to Exchange offer "C," the acquired Class C shares have no front-end sales charge and the deferred sales charge would be waived.

3. Applicants assert that the Commission, in adopting Rule 11a–3, did not prohibit or restrict exchange offers where the acquired mutual fund shares involve a fee under Rule 12b–1. They further assert that the Commission recognized the possibility that the acquired security might have a 12b–1 fee, by considering that as a factor in calculating the holding period for deferred sales charges in Rule 11a–3(b)(5)(i).

4. Applicants submit that providing class relief with respect to the exchanged security is appropriate. All exchanges that would be permitted under the order would be on the same terms as the exchanges between the VIP Accounts and the Prudential Funds,

including waiving any front-end sales charge or contingent deferred sales charge on the exchanged security and the acquired security. Therefore, there would be no possibility of the switching abuses Congress sought to prevent through Section 11. Without class relief, before Prudential annuity contract owners could be given additional exchange options, Applicants would have to apply for and obtain additional exemptive orders. Applicants believe that these additional applications would present no new issues under the 1940 Act not already addressed in their application.

5. Applicants submit that the proposed offers of exchange meet all the objectives of Section 11, and would provide a benefit to contract owners by providing new investment options, and an attractive way to exchange existing interests in variable contracts for interests in open-end management investment companies.

Conclusion

For the reasons summarized above, Applicants request that the Commission issue an order under sections 11(a) and 11(c) of the Act approving the exchange offers described in the application.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–9243 Filed 4–13–99; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

Data Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Small Business Administration's intentions to request approval on a new, and/or currently approved information collection.

DATES: Comments should be submitted on or before June 14, 1999.

FOR FURTHER INFORMATION CONTACT: Curtis B. Rich, Management Analyst, Small Business Administration, 409 3rd Street, SW, Suite 5000, Washington, DC 20416. Phone Number: 202–205–6629.

SUPPLEMENTARY INFORMATION:

Title: "Prime Contracts Program Quarterly Report, Part A Traditional PCR and Part B Breakout PCR."

Form No's: 843A & 843B.

Description of Respondents: Procurement Center Representatives.

Annual Responses: 4.

Annual Burden: 1,340.

Comments: Send all comments regarding this information collection to Susan Monge, Program Analyst, Office of Government Contracting, Small Business Administration, 409 3rd Street SW, Suite 8800, Washington, DC 20416. Phone No: 202–205–7316.

Send comments regarding whether this information collection is necessary for the proper performance of the function of the agency, accuracy of burden estimate, in addition to ways to minimize this estimate, and ways to enhance the quality.

Title: "Small Business Development Centers Project. Officer's Checklist."

Form No: 59.

Description of Respondents: Small Business Development Centers.

Annual Responses: 456.

Annual Burden: 456.

Comments: Send all comments regarding this information collection to Terry Nelson, Business Development Specialist, Office of Small Business Development, Small Business Administration, 409 3rd Street SW, Suite 8800, Washington, DC 20416. Phone No: 202–205–7304.

Send comments regarding whether this information collection is necessary for the proper performance of the function of the agency, accuracy of burden estimate, in addition to ways to minimize this estimate, and ways to enhance the quality.

Title: "U.S. Small Business Administration's Application Survey."

Form No's: 1843.

Description of Respondents: Individuals seeking employment.

Annual Responses: 7,500.

Annual Burden: 1,275.

Comments: Send all comments regarding this information collection to Carol Cordova, Employment Specialist, Office of Human Resources, Small Business Administration, 409 3rd Street SW, Suite 4200, Washington, DC 20416. Phone No: 202–205–6162.

Send comments regarding whether this information collection is necessary for the proper performance of the function of the agency, accuracy of burden estimate, in addition to ways to minimize this estimate, and ways to enhance the quality.

Title: "SBA Guaranty Lender's Customer Satisfaction Survey."

Form No's: 1984.

Description of Respondents: Guaranty Lenders.

Annual Responses: 1.

Annual Burden: 2,779.

Comments: Send all comments regarding this information collection to George Price, Director Marketing Research, Office of Communications & Public Liaison, Small Business Administration, 409 3rd Street SW, Suite 7450, Washington, DC 20416. Phone No: 202–205–7124.

Send comments regarding whether this information collection is necessary for the proper performance of the function of the agency, accuracy of burden estimate, in addition to ways to minimize this estimate, and ways to enhance the quality.

Title: "Office of Women's Business Ownership Year-End Follow-up Survey."

Form No's: 1976.

Description of Respondents: Women-owned Businesses.

Annual Responses: 6,850.

Annual Burden: 770.

Comments: Send all comments regarding this information collection to Tonya Smith, Program Specialist, Office of Woman Business Ownership, Small Business Administration, 409 3rd Street SW, Suite 4400, Washington, DC 20416. Phone No: 202–205–6676.

Send comments regarding whether this information collection is necessary for the proper performance of the function of the agency, accuracy of burden estimate, in addition to ways to minimize this estimate, and ways to enhance the quality.

Jacqueline K. White,

Chief, Administrative Information Branch.

[FR Doc. 99–9264 Filed 4–13–99; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[License No. 01/71–0372]

Zero Stage Capital VI, L.P. Notice Seeking Exemption Under Section 312 of the Small Business Investment Act, Conflicts of Interest

Notice is hereby given that Zero Stage Capital VI, L.P., 101 Main Street, Cambridge, MA 02142, a Federal Licensee under the Small Business Investment Act of 1958, as amended ("the Art"), in connection with the proposed financing of a small concern is seeking an exemption under section 312 of the Act and section 107.730, Financings which Constitute Conflicts of Interest of the Small Business Administration ("SBA") Rules and Regulations (13 CFR 107.730 (1998)). An exemption may not be granted by SBA until Notices of this transaction have been published. Zero Stage Capital VI, L.P., proposes to provide equity financing to Kinetix Pharmaceuticals, Inc., 200 Boston Avenue, Suite 4700,

Medford, MA 02155. The financing is contemplated for funding growth.

The financing is brought within the purview of section 107.730(a)(1) of the Regulations because Zero Stage Capital V, L.P., as Associate of Zero Stage Capital VI, L.P., owns greater than 10 percent of Kinetix Pharmaceuticals, Inc. and therefore Kinetix Pharmaceuticals, Inc. is considered an Associate of Zero Stage Capital VI, L.P. as defined in Section 107.50 of the Regulations.

Notice is hereby given that any interested person may, not later than April 29, 1999, submit written comments on the proposed transaction to the Associate Administrator for Investment, U.S. Small Business Administration, 409 Third Street, SW, Washington, DC 20416.

A copy of this Notice shall be published, in accordance with section 107.830(g), in the **Federal Register** by SBA.

(Catalog of Federal Domestic Assistance Program No. 59.11, Small Business Investment Companies)

Dated: April 14, 1999.

Don A. Christensen,

Associate Administrator for Investment.

[FR Doc. 99–9269 Filed 4–13–99; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Interest Rates

The Small Business Administration publishes an interest rate called the optional "peg" rate (13 CFR 120.214) on a quarterly basis. This rate is a weighted average cost of money to the government for maturities similar to the average SBA direct loan. This rate may be used as a base rate for guaranteed fluctuating interest rate SBA loans. This rate will be 5 percent for the April–June quarter of FY 99.

Arnold S. Rosenthal,

Acting Deputy Associate Administrator for Financial Assistance.

[FR Doc. 99–9267 Filed 4–13–99; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Pioneer Ventures Limited Partnership (License No. 01/01–0337); Notice of Surrender of License

Notice is hereby given that Pioneer Ventures Limited Partnership, 60 State Street, Boston, Massachusetts 02109, has surrendered its license to operate as a small business investment company under the Small Business Investment Act of 1958, as amended (the Act). Pioneer Ventures Limited Partnership was licensed by the Small Business Administration on November 20, 1986.

Under the authority vested by the Act and pursuant to the Regulations promulgated thereunder, the surrender was accepted on this date, and accordingly, all rights, privileges, and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Programs No. 59.011, Small Business Investment Companies)

Dated: April 7, 1999.

Don A. Christensen,

Associate Administrator for Investment.

[FR Doc. 99–9266 Filed 4–13–99; 8:45 am]

BILLING CODE 8025–01–P

SOCIAL SECURITY ADMINISTRATION

Social Security Ruling, SSR 99–1p. Title II: Termination of Entitlement Based on Presumed Death

AGENCY: Social Security Administration.

ACTION: Notice of Social Security Ruling.

SUMMARY: In accordance with 20 CFR 402.35(b)(1), the Commissioner of Social Security gives notice of Social Security Ruling, SSR 99–1p. This Ruling explains that the Social Security Administration (SSA) will terminate entitlement for those beneficiaries whose benefits have remained in suspension for at least 7 years because the beneficiary's whereabouts are unknown. Presumption of death is widely accepted in State and Federal courts and is codified in SSA's regulations. SSA uses this regulatory presumption to establish the fact of death for entitlement purposes and will use it to determine that entitlement ends. Publication of this Ruling will prevent benefits from remaining in suspension indefinitely, thereby reducing the possibility of fraudulent payment of suspended benefits and assuring the continued integrity of SSA's records.

EFFECTIVE DATE: April 14, 1999.

FOR FURTHER INFORMATION CONTACT: Jeanne O'Connor, Office of Program Benefits, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235–6401, (410) 965–7963.

SUPPLEMENTARY INFORMATION: Although we are not required to do so pursuant to 5 U.S.C. 552(a)(1) and (a)(2), we are publishing this Social Security Ruling in accordance with 20 CFR 402.35(b)(1).

Social Security Rulings make available to the public precedential decisions relating to the Federal old-age, survivors, disability, supplemental security income, and black lung benefits programs. Social Security Rulings may be based on case decisions made at all administrative levels of adjudication, Federal court decisions, Commissioner's decisions, opinions of the Office of the General Counsel, and policy interpretations of the law and regulations.

Although Social Security Rulings do not have the same force and effect as the statute or regulations, they are binding on all components of the Social Security Administration, in accordance with 20 CFR 402.35(b)(1), and are to be relied upon as precedents in adjudicating cases.

If this Social Security Ruling is later superseded, modified, or rescinded, we will publish a notice in the **Federal Register** to that effect.

(Catalog of Federal Domestic Assistance, Programs 96.002 Social Security—Retirement Insurance; 96.003 Social Security—Special Benefits for Persons Aged 72 and Over; 96.004 Social Security—Survivors Insurance.)

Dated: December 1, 1998.

Kenneth S. Apfel,

Commissioner of Social Security.

Policy Interpretation Ruling; Title II: Termination of Entitlement Based on Presumed Death

Purpose

This Policy Interpretation Ruling explains the Social Security Administration's (SSA) planned use of an established policy for presuming a person dead, after the person has been absent from his or her residence and has not been heard from for a period of 7 years, to terminate entitlement for such individuals. The presumption of death, founded on common law, is widely accepted in State and Federal courts to determine entitlement to property and is codified in our regulations. We use this regulatory presumption to establish the fact of death for entitlement purposes, and will also use it to determine that entitlement ends.

Citations (Authority)

Sections 205(a) and 702(a) of the Social Security Act; 20 CFR, sections 404.705 and 404.721.

Pertinent History

Currently, SSA suspends benefits to beneficiaries reported missing when notified by a first party reporter, that is, a relative, representative or another beneficiary on the record who establishes that he/she is an acceptable reporter.

In addition, benefits can be suspended if mail is returned because it

is undeliverable. Suspensions of this type follow prescribed development to locate the individual. In such cases, SSA first makes a reasonable effort to locate the beneficiary and then sends a notice to the beneficiary's last known address advising him or her that benefits will be stopped if he or she does not respond within 15 days. If these efforts fail, and there is no response from the beneficiary, benefits are suspended.

In situations where benefits are suspended for whereabouts unknown, unless the presumption of death after 7 years is used to terminate benefits, the benefits can remain in suspension indefinitely. Studies by the Office of the Inspector General (OIG) indicate that suspensions should be resolved as a deterrent to fraudulent payment to the wrong individuals. In addition, studies by SSA show that suspensions for lack of address are usually resolved within 24 months, and that benefits left in suspense for longer than 24 months, because the continuing eligibility of the beneficiary cannot be determined, are rarely ever resolved. SSA now has the capability to indicate the reason for suspension on its payment records. Where that reason is whereabouts unknown and benefits are in continuous suspense for at least 7 years, SSA will assume that the reason the beneficiary failed to request payment during that 7 year period is death.

Terminating entitlement for presumed death ensures that suspended payments will not be fraudulently issued to someone other than the beneficiary. That is because erroneous terminations for death can be reinstated only after a face-to-face interview with the beneficiary. However, payment of suspended benefits does not involve the same stringent development before release of payment and is more vulnerable to fraud. By applying the presumption of death policy to terminate entitlement, SSA will ensure that a final resolution to suspension occurs for those cases which otherwise would remain in suspension indefinitely.

Following continuous suspension for 7 years based on whereabouts unknown, entitlement will be terminated for presumed death. Absent evidence to the contrary, death will be presumed to have occurred on the date of disappearance, the date ending the 7 year period, or some other date depending upon what the evidence shows is the most likely date of death.

Policy Interpretation

SSA will presume that a beneficiary has died and will terminate entitlement after the individual's payments have been suspended continuously for 7 years or more because the individual's whereabouts are unknown. This policy interpretation will apply to all individuals whose entitlement is not based on disability. The policies for terminating entitlement for disabled beneficiaries whose whereabouts are unknown are addressed in 20 CFR 404.1594. This policy interpretation on presumed death termination, however, will apply to those individuals who have been converted to retirement benefits following an established period of disability. If the benefits are suspended for whereabouts unknown based on a reported disappearance by a first party reporter, that is, a relative, another beneficiary on the record, or a representative of the beneficiary who is an acceptable reporter, the date of presumed death generally will be the date of disappearance, barring some convincing evidence that establishes a more likely date of death.

For cases where suspension for whereabouts unknown originated through undeliverable mail, and benefits have remained in suspension for a period of 7 years or more, the date of presumed death will be the date SSA determined that the individual disappeared, barring some evidence to the contrary.

Effective Date: This Ruling is effective upon publication in the **Federal Register**.

Cross-References

Program Operations Manual System, sections GN 02605.055 and GN 00304.050.

[FR Doc. 99–9226 Filed 4–13–99; 8:45 am]
BILLING CODE 4190–29–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Request for Public Comment Regarding Negotiations on Market Access and Other Issues in the World Trade Organization (WTO) and Under the Free Trade Area of the Americas

AGENCY: Office of the United States Trade Representative (USTR).

ACTION: Request for comments and notice of public hearings.

SUMMARY: The interagency Trade Policy Staff Committee (TPSC) will convene public hearings and seeks additional public comment as part of its efforts to develop proposals and positions concerning the agenda of the third Ministerial Conference of the World Trade Organization (WTO), including articles that may be the subject of market access negotiations. A request was made in March 1999 to the U.S. International Trade Commission (ITC) to consider various scenarios for the modification, reduction and or elimination of duties on all articles in the Harmonized System Tariff Schedule of the United States (HTSUS), in the context of WTO or FTAA negotiations. This is the second invitation by the TPSC seeking public comment with respect to the development of the agenda, scope, content and timetables for negotiations or further work in the WTO, including additional consultations with non-governmental statekholders. The Administration seeks views on the broadest possible range of issues for consideration, including possible subject matter and approaches to any new negotiations or future work in the WTO. The WTO General Council has been instructed to prepare recommendations regarding the launch of further trade negotiations and work in the WTO, which will be considered and approved by WTO Members meeting at their next Ministerial to be held in the United States during the fourth quarter of 1999. The TPSC request for public comments and convocation of public hearings regarding the FTAA negotiations will be issued at a later date.

FOR FURTHER INFORMATION CONTACT: For procedural questions concerning public comments and/or public hearings contact Gloria Blue, Executive Secretary, Trade Policy Staff Committee, Office of the United States Trade Representative at (202) 395–3475. All other questions concerning the WTO negotiations should be addressed to the agency's Office of WTO and Multilateral Affairs at (202) 395–6843; questions concerning the FTAA negotiations should be addressed to the agency's Office of Western Hemisphere Affairs at (202) 395–6135.

SUPPLEMENTARY INFORMATION:

1. Background

A. WTO Negotiations

On May 18–20, 1998, the World Trade Organization (WTO) held its second ministerial conference in Geneva, Switzerland, along with a commemoration of the 50th anniversary of the post-World War II multilateral trading system. President Clinton, and a number of heads of state or government addressed the gathering, and WTO Members accepted the U.S. invitation to host the third ministerial conference in late 1999. That meeting will be held in Seattle on November 30–December 3, 1999.

The general Ministerial Declaration, agreed on May 20, 1998, instructs the WTO's General Council to begin preparations for the launch of negotiations and consideration of the WTO's forward agenda for approval at its 1999 ministerial meeting. A second Declaration, also agreed on May 20, 1998, commits Members to not impose customs duties on electronic transmissions and calls for the establishment by the General Council of a work program in the WTO on the trade-related aspects of electronic commerce. To prepare for U.S. participation in the General Council meetings, the TPSC requested public comment (63 FR 160, August 19, 1998).

The United States has participated actively in the preparations to date with the benefit of substantial comments from, and consultations with, the statutorily mandated advisory committees established pursuant to section 135 of the Trade Act of 1974, as amended. In August 1998, the Trade Policy Staff Committee published a solicitation for public comment regarding the development of the agenda, scope, content and timetables for negotiations or further work in the WTO, including additional consultations with non-governmental stakeholders. The Administration sought views on the broadest possible range of issues for consideration, including possible subject matter and approaches to any new negotiations or future work in the WTO. U.S. Submissions regarding the work of the WTO can be found on the USTR Web site at *www.ustr.gov*. In preparing for the submissions, the Administration requested comments on the following issues, and additional comments on these issues is relevant to the hearings that will now be convened by the TPSC.

Implementation of Existing Agreements and Work Programs

Additional views are requested with respect to experience in implementation, including where WTO Agreements have been successful in addressing U.S. interests, and in areas where changes would facilitate better enforcement and adherence to rules and commitments, or otherwise advance U.S. policy objectives. Particular attention is drawn to the various rules encompassed in the GATT 1994 (all GATT Articles), the Marrakesh Protocol to the General Agreement, the Agreements on Agriculture, Sanitary and Phytosanitary Measures, Textiles and Clothing, Technical Barriers to Trade, Trade-Related Investment Measures (TRIMS), Antidumping Practices, Customs Valuation, Preshipment Inspection, Import Licensing, Subsidies and Countervailing Measures, Safeguards, the General Agreement of Trade in Services (GATS), Trade-Related Aspects of Intellectual Property Rights (TRIPS), the Understanding on the Rules and Procedures Governing the Settlement of Disputes, Trade Policy Review Mechanism and Ministerial Decisions and Declaration, including those undertaken at Marrakesh. Thus far, implementation has been a major issue in the preparatory process.

Mandated Negotiations

Additional comments are requested regarding U.S. priorities for the Agreements concluded as part of the Uruguay Round that contain express agreement to conduct further negotiations. The Agreement on Agriculture contains provisions for further negotiations and identifies issues for consideration, including market access, domestic support and export subsidies. The General Agreement on Trade in Services provides for further negotiations on specific commitments to liberalize trade in services. The Agreement on Trade-Related Intellectual Property Rights (TRIPS) provides for negotiations in certain areas. For all of these mandated negotiations, particular attention should be given to the range of additional issues not mentioned in the Agreements that should be considered, and the modalities for conducting further negotiations. It is noted that the advice from the U.S. International Trade Commission noted above includes all agricultural articles.

Reviews of Existing Agreements and Work Programs

Comments are requested regarding U.S. priorities pursuant to the Agreements from the Uruguay Round that specifically provide for reviews and other work as part of their individual work programs: Agriculture, Antidumping, Customs Valuation, Dispute Settlement Understanding, Import Licensing, Preshipment Inspection, Rules of Origin, Trade and the Environment, Sanitary and Phytosanitary Measures, Safeguards, Subsidies and Countervailing Measures, Technical Barriers to Trade, Textiles and Clothing, Trade Policy Review Mechanism, Trade-Related Aspects of Intellectual Property Rights (TRIPS), Trade-Related Investment Measures (TRIMS), and the General Agreement on Trade in Services (GATS). The Committee on Trade and the Environment has thus far been the focal point for consideration of environment-related issues in the WTO. The Dispute Settlement Understanding (DSU) and the Agreement on Subsidies and Countervailing Measures, for example, contain review provisions as a first step in taking further decisions with respect to the Agreements. Comments received thus far have drawn attention to the improvements necessary to the operation of the various Agreements and Work Programs.

Singapore Ministerial Work Program

Comments are requested on what, if any, next steps should be taken with respect to the issues raised in the context of the work of the working groups established on trade and investment, trade and competition policy, transparency in government procurement and the exploratory work undertaken by the WTO regarding trade facilitation. Particularly relevant are next steps in the above-mentioned areas, including the nature and scope of any future work. In the case of procurement, Ministers at Singapore directed the General Council to identify the elements for a multilateral transparency agreement, which the United States believes could be realized this year. The Working Groups on competition and investment were extended into 1999 and have not yet completed their work.

Integration of Least-Developed Countries

Comments are requested on ways to facilitate the participation of least developed countries in the WTO, taking into account work that has been conducted to integrate the technical assistance provided by various international organizations, including the WTO. The Administration sought views with respect to additional initiatives related to capacity building in least developed countries, market access opportunities, and the possible graduation of countries from preferences.

Electronic Commerce

Consistent with the Declaration issued at the May 1998 WTO Ministerial Conference, additional comments are solicited with respect to the commitment by WTO Members not to impose customs duties on electronic commerce and the agreement to establish a work program for further consideration of the relationship between trade and electronic commerce.

Other Trade Matters of Interest

Consistent with the Ministerial Declaration, comments are also solicited with respect to the range of issues where the United States might choose to seek,

or be asked to join a consensus, to add additional items to the WTO's post-1999 agenda for negotiations or further work. The Administration indicated our strong interest in considering the broadest range of issues as the agenda for the next century is developed. The issues identified thus far include:

(1) *Industrial market access*: comments are requested with respect to conducting further tariff negotiations and possible modalities for such negotiations (e.g., pursuit of additional sectoral initiatives to reduce or harmonize duties, the application of formula or request/offer approaches and related issues). (Further negotiations on market access are already envisioned for products covered by the Agricultural Agreement.) This is relevant to the request made of the ITC.

(2) *Consultations with Non-Governmental Stakeholders:* Additional comments are requested as to possible approaches that the WTO could undertake with respect to non-governmental stakeholders. In his speech to the WTO, President Clinton challenged the WTO to consider improving the opportunities for the public to participate in the development of the WTO's forward agenda, and to develop a more regular mechanism for consultation. The WTO has begun to take steps to broaden the interaction with non-governmental organizations in the regard, including the dissemination of information received from such organizations to the WTO's membership. Similarly, a number of steps have been taken by the United States to promote greater transparency in the operation of the WTO that would be of benefit to stakeholders (e.g., with respect to making WTO documents more available to the public).

(3) *Relationship Between Trade and Labor:* Additional comments are requested regrading various approaches to be considered in developing a consensus for further consideration of this issue on the WTO's forward agenda. WTO Ministers at Singapore renewed their commitment to the observance of internationally recognized core labor standards, noting that economic growth and development fostered by increased trade and further trade liberalization contribute to the promotion of core labor standards. At the same time, they recognized the important role of the International Labor Organization (ILO) in this area and rejected the use of labor standards for protectionist purposes, and agreed that the comparative advantages of countries, particularly low-wage developing countries, must not be put into question. Section 131 of the Uruguay Round Agreements Act, addresses U.S. activity in the WTO in this area.

(4) *Institutional Issues:* Additional comments are requested on the general institutional improvements that the United States should be contemplating for the WTO, particularly as its membership expands to nearly 160 early in the next century. Achieving greater transparency in the WTO's operation has already been identified as a priority issue for the Administration. The United States has consistently sought to expand the range of WTO documents available to the public, and is continuing to promote broader derestriction of documents in a more timely fashion, including in the areas of access to dispute settlement panel reports. Similarly, as the membership expands to include Members with less experience operating as market economies, new challenges arise to the WTO's system of operations and its decision-making process. As a result of the Uruguay Round, the WTO entered into cooperation agreements with the International Monetary Fund (IMF) and the World Bank to ensure greater coherence in international economic policy; further cooperation may be desirable.

B. FTAA Negotiations

On December 11, 1994, President Clinton and the 33 other democratically-elected leaders in the Western Hemisphere met in Miami, Florida for the first Summit of the Americas. They agreed to conclude negotiations on a Free Trade Area of the Americas by the year 2005, and to achieve concrete progress toward that objective by the end of this century. Since that time, the 34 Western Hemisphere ministers responsible for trade have met on several occasions, most recently in March 1998 in San Jose, Costa Rica.

At the San Jose meeting, the trade ministers recommended that the Western Hemisphere leaders initiate the negotiations and provided them recommendations on the structure, objectives, principles, and venues of the negotiations. On April 18–19, 1998, President Clinton and his 33 counterparts initiated the Free Trade Area of the Americas negotiations at the Summit of the Americas meeting in Santiago, Chile. The leaders agreed to the general framework proposed by the 34 trade ministers, which include the establishment initially of nine negotiating groups to be guided by general principles and objectives and specified objectives as agreed by the ministers in March 1998.

The work of the negotiating groups began in September 1998. In anticipation of that activity, the TPSC requested public comment (63 FR 128, July 6, 1998) on what should be the U.S. positions and objectives with respect to each of the negotiating groups. The **Federal Register** notice also stated that USTR would seek additional public comment separately on other issues related to the FTAA, including the economic effects of the removal of duties and nontariff barriers to trade among FTAA participating countries. As noted above, this request for public comment will be issued separately at a later date.

2. Advice From the U.S. International Trade Commission Regarding Market Access

On March 15, 1999 the U.S. Trade Representative, pursuant to Section 332(g) of the Tariff Act of 1930, requested that the U.S. International Trade Commission ("Commission") provide advice to the President, with respect to each item listed in the HTSUS where tariffs remain in effect after full implementation of the results of the Uruguay Round or subsequent WTO agreements, as to the probable economic effect of modification of tariffs on industries producing like or directly competitive articles and on consumers, based on the following parameters and scenarios: (1) the effect resulting from changes in dutiable imports from all U.S. trading partners if all tariffs were reduced by at least 50 percent, with tariffs of 5 percent reduced to zero; (2) the effects resulting from changes in dutiable imports from all U.S. trading partners if tariffs were eliminated; and (3) the effects resulting from tariff elimination on dutiable imports from FTAA trading partners alone.

These scenarios either replicate the tariff proclamation authority provided under the Omnibus Trade and Tariff Act of 1988 and the 1974 Trade Act, or provide information for possible WTO sectoral duty elimination initiatives and FTAA tariff negotiations. At the same time, it should be noted that this request by no means implies that we intend to take action on all of these tariff measures. It merely indicates our interest in obtaining factual advice from the Commission on the probably economic effects of their reduction or elimination.

The USTR requested that the Commission provide its advice no later than November 17, 1999.

3. Public Comments and Testimony

In conformity with section 133 of the 1974 Trade Act, the regulations promulgated under the 1974 Act and the regulations of the Trade Policy Staff

Committee (15 CFR part 2003), the Chairman of the TPSC invites the written comments and/or oral testimony of interested parties in public hearings on the possible market access commitments along with other issues for negotiation or further work in the WTO, as described above. Parties should not resubmit submissions presented in response to the August 1998 FR notice.

4. Requests To Participate in Public Hearings

Hearings will be held on Wednesday, Thursday and Friday, May 19–21, in Washington, D.C.; Monday and Tuesday, June 7 and 8 in Chicago, IL; Thursday and Friday, June 10 and 11 in Atlanta, GA; Monday and Tuesday, June 21 and 22 in Los Angeles, CA; and Thursday and Friday, June 24 and 25 in Dallas, TX. The number of days for each hearing may change depending on the volume of requests to testify. The time and location of the hearings will be announced at a later date.

Parties wishing to testify orally at the hearings must provide written notification or their intention by Wednesday, May 5, 1999 to Gloria Blue, Executive Secretary, Trade Policy Staff Committee, Office of the U.S. Trade Representative, Room 122, 600 Seventeenth Street, NW, Washington, DC 20508. The notification should include: (1) The specific hearing to be attended; (2) name of the person presenting the testimony, their address and telephone number; and (3) a brief summary of their presentation, including the product(s), with HTSUS numbers, and/or other subjects to be discussed.

Those parties presenting oral testimony must also submit a written brief, in 20 copies, by noon, Wednesday, May 12, 1999. Remarks at the hearing should be limited to no more than five minutes to allow for possible questions from the Chairman and the interagency panel. Participants should provide thirty typed copies of their oral statement at the time of the hearings. Any business confidential material must be clearly marked as such on the cover page (or letter) and succeeding pages. Such submissions must be accompanied by a nonconfidential summary thereof.

5. Written Comments

Those persons not wishing to participate in the hearings may submit written comments, in twenty typed copies, no later than noon, Wednesday, May 26, 1999 to Gloria Blue, Executive Secretary, Trade Policy Staff Committee, Office of the U.S. Trade Representatives, Room 122, 600 Seventeenth Street, NW, Washington, DC 20508. Comments should state clearly the position taken and should describe with particularity the evidence supporting that position. Any business confidential material must be clearly marked as such on the cover page (or letter) and succeeding pages. Such submissions must be accompanied by a nonconfidential summary thereof.

Nonconfidential submissions will be available for public inspection at the USTR Reading Room, Room 101, Office of the U.S. Trade Representative, 600 Seventeenth Street, NW, Washington, DC. An appointment to review the file may be made by calling Brenda Webb at (202) 395–6186. The Reading room is open to the public from 10 a.m. to 12 noon and from 1 p.m. to 4 p.m., Monday through Friday.

Frederick L. Montgomery,

Chairman, Trade Policy Staff Committee.

[FR Doc. 99–9288 Filed 4–13–99; 8:45 am]

BILLING CODE 3901–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Special Committee 172; Future Air-Ground Communications in the VHF Aeronautical Data Band (118–137 MHz)

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a Special Committee 172 meeting to be held May 4–7, 1999, starting at 9:00 a.m. The meeting will be held at RTCA, 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC 20036.

The agenda will be as follows: Tuesday, May 4: (1) Plenary Convenes at 9:00 a.m. for 30 minutes: (2) Introductory Remarks; (3) Review and Approval of the Agenda. (9:30 a.m.) (4) Working Group (WG)–2, VHF Data Radio Signal-in-Space Minimum Aviation System Performance Standards, continue work on VDL Mode 3. Wednesday, May 5: (a.m.) (5) WG–2 continues work on VDL Mode 3; (p.m.) (6) WG–3, Review of VHF Digital Radio Minimum Operational Performance Standards Document progress and furtherance of work. Thursday, May 6: Plenary Reconvenes at 9:00 a.m.: (7) Review Summary Minutes of Previous Plenary of SC–172; (8) Reports from WG–2 and WG–3 on Activities; (9) Report on ICAO Aeronautical Mobile Communications Panel 6; (10) EUROCAE WG–47 Report and discuss schedule for further work with WG–3; (10) Review Issues List and Address Future Work; (11) Other Business; (12) Dates and Places of Future Meetings; (p.m.) (13) WG–13 continues. Friday, May 7: (14) WG's Continue as Required.

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC 20036; (202) 833–9339 (phone); (202) 833–9434 (fax); or http://www.rtca.org (web site). Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on April 8, 1999.

Janice L. Peters,

Designated Official.

[FR Doc. 99–9300 Filed 4–13–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Reports, Forms and Recordkeeping Requirements; Agency Information Collection Activity Under OMB Review

AGENCY: Federal Highway Administration, DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected burden. The **Federal Register** notice with a 60-day comment period soliciting comments on the following information collection was published on November 5, 1998 [63 FR 59837].

DATES: Comments must be submitted on or before May 14, 1999.

FOR FURTHER INFORMATION CONTACT: Nelda Bravo, LTAP Program Manager, (202) 366–9633, Federal Highway Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:30 a.m. to 4:30 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Title: Local Technical Assistance Program Extent of Coverage

Type of Request: Approval of a new information collection.

Affected Public: Employees of local and tribal government transportation providers.

Abstract: The Local Technical Assistance Program (LTAP) provides for training, technology transfer and technical assistance to local and tribal government transportation providers. This information collection will be in the form of a survey that will document the extent of coverage of the LTAP and provide a baseline from which to measure the Program's progress in expanding that coverage between now and the year 2002. The LTAP has established a network of 57 technology transfer centers at universities and state departments of transportation for the purpose of improving the skills and knowledge of local and tribal transportation providers through training, technical assistance and technology transfer. The LTAP Strategic Plan, adopted in 1997, calls for increasing usage of the program to 75 percent of local and tribal governments by the year 2002. Information is needed to document the extent to which local and tribal transportation agencies recognize, utilize, and are satisfied with the services provided by their LTAP Centers. The information will establish the baseline from which progress towards the goal of increasing coverage to 75 percent of all local and tribal transportation agencies will be measured.

The information will be collected through a mail survey. Respondents will be asked to complete a brief, standardized questionnaire asking if employees of their agency are aware of the existence of their local or tribal LTAP Center, have read its newsletter, attended training sessions or utilized other technology transfer services provided by the Center within the past year, and their satisfaction with those services. Information will be collected from a simple random sample of 6,500 respondents from local and tribal governments in the U.S.

The results of the survey will be retained by the Federal Highway Administration for comparison with the results of a subsequent collection in the year 2002. The results of the survey will also be presented in a report for dissemination to LTAP partners, including national associations, state departments of transportation, LTAP centers, and local and tribal governments.

Estimated Burden: 20 minutes, per respondent, to read and respond to the mail survey. 367 total estimated annual burden hours.

ADDRESSES: Send comments, within 30 days, to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention: DOT Desk Officer.

Comments are invited on: whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

A comment to OMB is most effective if OMB receives it within 30 days of publication of this Notice.

Issued on: April 9, 1999.

Michael J. Vecchietti,

Director, Office of Information and Management Services.

[FR Doc. 99–9304 Filed 4–13–99; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Notice of Inspection Requirement for Richmond-Built Tank Car Tanks Originally Equipped with "Foam-In-Place" Insulation

AGENCY: Federal Railroad Administration (FRA), DOT.

ACTION: Notice of inspection requirement.

SUMMARY: This document publishes the text of a letter/notice sent by FRA to owners of record of tank cars originally built under a series of Certificates of Construction during the period from January 1, 1972, through December 31, 1982, and originally built with foam-in-place insulation and without a protective tank shell exterior coating, requiring inspections of such cars for listed unsafe conditions. The letter/notice was mailed individually to owners of record of the affected cars and is published in the **Federal Register** to provide notice to current and subsequent owners of the cars in the event that ownership of a car has been transferred, or is subsequently transferred, from the owner of record to another entity.

DATES: Inspections required under the notice must be completed on or before April 16, 2001.

FOR FURTHER INFORMATION CONTACT: Edward W. Pritchard (telephone 202–493–6247), Office of Safety Assurance and Compliance, or Thomas A. Phemister (telephone 202–493–6050), Office of Chief Counsel, Federal Railroad Administration, 1120 Vermont Avenue, NW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION: On September 21, 1995, the Research and Special Programs Administration published a final rule in Dockets HM 175a and 201, Crashworthiness Protection Requirements for Tank Cars; this rule was a comprehensive revision of the requirements for building railroad tank cars and for inspecting and maintaining them in hazardous materials service. The requirements for inspecting and testing specification tank cars are stated at 49 CFR 180.509; that rule states the "Conditions requiring inspection and test of tank cars" are as follows:

> Without regard to any other periodic inspection and test requirement, a tank car must have an appropriate inspection and test according to the type of defect and the type of maintenance or repair performed if:
>
> (1) The tank car shows evidence of abrasion, corrosion, cracks, dents, distortions, defects in welds, or any other condition that makes the tank car unsafe for transportation. * * *
>
> (2) The tank car was in an accident and damaged to an extent that may adversely affect its capability to retain its contents.
>
> (3) The tank bears evidence of damage caused by fire.
>
> (4) The Associate Administrator for Safety, FRA, requires it based on the existence of probable cause that a tank car or a class or design of tank cars may be in an unsafe operating condition. (49 CFR 180.509(b))

Acting on the authority granted in this regulation, on September 9, 1998, FRA's Associate Administrator for Safety issued a requirement for the inspection of the outer shell of certain cars originally built between January 1, 1972, and December 31, 1982, with foam-in-place insulation and without a protective tank shell coating. The letter was mailed directly to each owner of record of every car meeting the defining characteristics, but FRA has learned that clerical errors in addressing the letters may have delayed or misdirected their delivery. Accordingly, the date listed above in this notice, under the heading **DATES,** extends the period within which inspections and tests must be completed. The letter is republished here in the event that ownership of a car has been transferred, or is subsequently transferred, from the owner of record to another entity. The text of the letter follows:

Notice of Inspection Requirement for Richmond-Built Tank Car Tanks Originally Equipped With "Foam-in-Place" Insulation

To: Owners of Record of Tank Cars Originally Built under Certificates of Construction Listed in Attachment A

This notice imposes a requirement, pursuant to 49 CFR 180.509(b)(4) and effective with the date on which it is issued, that owners of Department of Transportation (DOT) specification tank cars, built by Richmond Tank Car Company during the period from January 1, 1972, through December 31, 1982, and originally constructed with foam-in-place insulation and without a protective tank shell exterior coating must inspect all such cars for unsafe conditions on or before two (2) years from the date this notice is issued, as stated in greater detail below. This requirement applies to current and subsequent owners of the cars. This notice is being mailed to each of the entities listed on the certificate of construction as the owner of record of such a car; a similar notice will soon be published in the **Federal Register** in order to provide notice to current and subsequent owners of the cars in the event that ownership of a car has been transferred, or is subsequently transferred, from the owner of record to another entity.

Background

During inspections to detect cracks in the head pads of Richmond-built tank cars, requested in a December 5, 1988 letter from the Association of American Railroads (AAR) to tank car owners, several major owners reported that their inspections also revealed significant incidence of corrosion on the tank shells, both in areas void of foam and in cars built with foam and ceramic fiber applied to uncoated tank shells. On January 11, 1990, AAR wrote tank car owners requesting information on the integrity and condition of their foam-in-place insulated tank cars. Responding to the information furnished by the owners, AAR added to its Manual of Standards and Recommended Practices, Specifications for Tank Cars (M–1002) (the Tank Car Manual) a requirement for a protective coating to the outside of the tank and the inside of the metal tank jacket whenever a tank is insulated.

On March 5, 1996, a tank car loaded with liquefied petroleum gas (propane) catastrophically failed during a switching operation at a Consolidated Rail Corporation classification yard at Selkirk, New York. The car split in two around its circumference. One end remained in place and the other, coupled to several cars, rocketed down the tracks for several hundred feet spewing flames and smoke as fire consumed the entire contents of the car. This was a Richmond-built DOT105J300W tank car, originally constructed as a DOT105A300W with foam-in-place insulation. During the conversion process, the owner had discovered considerable outer-surface tank shell corrosion and had applied weld overlay to restore the contour and thickness of the tank shell. The FRA and National Transportation Safety Board's (NTSB) preliminary investigations discovered that the site of the origin of the tank failure was a point near the termination of one of the courses of weld overlay applied earlier to an area of the tank that had experienced exterior shell corrosion.

On March 12, 1996, the AAR issued an Early Warning Letter requiring the owner of the Selkirk car to capture and inspect other cars (a group of about 80) built under the same or similar Certificates of Construction. All of the cars were inspected, except for two in storage, and several exhibited poor workmanship, weld porosity, lack of weld fusion, and cracking. On May 14, 1996, AAR wrote the tank car owner directly expressing concerns about other Richmond-built tank cars in its fleet and converted from 105A and 105S specifications to 105J cars. The car owner developed an inspection program, including acoustic emission testing, for all Richmond-built cars that had shell repairs made using the weld overlay method. As of June 4, 1998, 708 cars have been inspected, using nondestructive methods. These sister cars were inspected for weld overlay defects and cracking associated with weld overlay defects as well as exterior shell corrosion. No tank weld overlay defects, cracks, or significant corrosion have been detected on this block of more than 700 cars. Final inspections under this program are to be completed by December 31, 1998.

Using information developed by the owner of the Selkirk car and information gathered in response to the January 11, 1990 AAR letter, FRA sent a letter on September 28, 1996, to all known owners of Richmond-built foam-in-place tank cars built without a protective coating on the outer surface of the tank shell. The letter sought details about this fleet, the shell inspections performed on the cars, and, if corrosion was present, the efforts made to repair the cars. Owners who had inspected the cars and elected to retire them were asked whether or not corrosion was a contributing factor in the retirement decision. Many of the tank car owners have responded to FRA. The data they furnished shows that approximately 19 percent of the inspected cars had over 25 square feet of exterior shell corrosion repaired with weld overlay; several other cars were retired due to excess corrosion.

On October 15, 1997, an owner of 11 Richmond-built tank cars voluntarily notified FRA that one of its cars began leaking from a through-wall pit in the tank shell during a liquefied petroleum gas loading operation in Manhattan, Illinois, during July of that year. The car owner investigated the incident and discovered that the car had passed an ultrasonic thickness test (UTT) within 6 months of the tank shell failure. The owner also inspected the remaining tanks for corrosion and pitting. An internal UTT did not disclose any indication of corrosion or pitting following more than 70 individual tests on each car. However, after complete removal of the tank jacket and foam-in-place insulation, the owner found severe exterior shell corrosion and pitting on four of the cars just tested. In several locations the tanks did not meet the minimum shell thickness requirements.

FRA's investigation of the tank car that failed at Manhattan, Illinois, concluded, on December 21, 1997, that

> After observation of and review of the records for the cars discussed in this report, it is believed that the cars in this series do not comply with 49 CFR 179.100–4(a), as there appears to be no protective coating applied to the exterior surface of the carbon steel tank and the inside surface of the carbon steel jacket. If, at the time of manufacture, the foam was thought to provide this protective coating, both the service life of these cars and other anecdotal information show that the application of this urethane foam alone was ineffective in providing the required protective coating.

Although it is fortunate that neither the car failure in Selkirk, New York, nor the one in Manhattan, Illinois, caused fatalities, FRA draws no comfort from that fact. FRA believes that, because the foam-in-place insulation did not adhere completely to the outer shell, so that there are void spaces between the insulation and the shell, the cars did not comply with 49 CFR § 179.100–4 in effect at the time of construction. Because of this, moisture can be retained in the void spaces and can exacerbate widespread corrosion of the exterior tank shell. Upon review of the information obtained from tank car owners and FRA's own investigation, it is FRA's opinion that widespread exterior shell corrosion and pitting may exist on a high number of the

approximately 2,307 cars remaining in service of the original 2,800 cars built by Richmond under the Certificates of Construction listed in Attachment A.

Regulatory Authority

The Hazardous Materials Regulations, at 49 CFR 180.509, state in relevant part:

§ 180.509 Requirements for inspection and test of specification tank cars.

* * * * *

(b) *Conditions requiring inspection and test of tank cars.* Without regard to any other periodic inspection and test requirements, a tank car must have an appropriate inspection and test according to the type of defect and the type of maintenance or repair performed if:

* * * * *

(4) The Associate Administrator for Safety, FRA, requires it based on the existence of probable cause that a tank car or a class or design of tank cars may be in an unsafe operating condition.

FRA's Determination and Basis

FRA has determined that uninspected Richmond-built tank cars originally built with foam-in-place insulation and without a protective tank shell exterior coating constructed under the Certificates of Construction in Attachment A, may be in an unsafe operating condition. As used in this requirement for inspection and test, the word "uninspected" when describing a car means that the car has not had its jacket and foam insulation removed and that the exterior surface of its tank shell, heads, and nozzles have not been inspected for corrosion and pitting. FRA bases its determination on the historical record of these cars as set forth in the "Background" section of this letter, specifically, the following: (1) The significant incidence of shell corrosion discovered during the post-December 5, 1988 inspections to detect head pad cracks in Richmond-built foam-in-place tank cars; (2) the catastrophic failure of a car from this series at Selkirk, New York, on March 5, 1996, and the data developed from inspections requested after that accident by both FRA and AAR, including the presence of exterior shell corrosion requiring weld overlay repairs in excess of 25 square feet on 19 percent of the sample fleet; and (3) the July 1997 discovery in Manhattan, Illinois, of a car from this series with a through-wall corrosion pit and the October 15, 1997, reporting of the subsequent discovery of similar corrosion on 4 of 11 sister cars.

Appropriate Inspection and Test

Based on the foregoing, I order and require the following inspection and test:

1. The "class or design of tank cars" subject to this inspection and test requirement is uninspected DOT specification cars originally built during the period from January 1, 1972, through December 31, 1982, by Richmond Tank Car Company with foam-in-place insulation and without a protective tank shell exterior coating.

2. Each car to be inspected under this order and requirement must have the tank jacket and foam insulation removed prior to inspection. This requirement is based on the Manhattan, Illinois, experience, that voids in the foam insulation and non-adhesion of the foam to the outer tank shell are conditions not reliably detectable by an ultrasonic thickness test (UTT).

3. After the jacket and foam insulation have been removed, the exterior of the tank shell must be inspected for corrosion, pitting, and any other condition that would render the exterior of the tank shell out of compliance with the Federal tank car regulations (49 CFR part 179 and part 180, Subpart F) or the AAR Tank Car Manual.

4. An "appropriate inspection and test" required by 49 CFR 180.509(b) is also subject to the quality assurance program requirements of 49 CFR 180.505 and the reporting requirements of 49 CFR 180.517.

5. In order to ensure tank car safety, FRA finds that the appropriate inspection and test required by this notice must be completed on or before August 14, 2000.

6. A car found not in compliance with the Federal tank car regulations or the AAR Tank Car Manual must be returned to a complying condition before it is loaded and offered for shipment.

Additional Maintenance Suggestion

The owner of the Selkirk car has inspected more than 700 sister cars for weld overlay defects and cracking associated with weld overlay defects, as well as for exterior shell corrosion. Although structural cracks and weld defects have been discovered in the stub sill areas of the tank cars, no tank weld overlay defects or cracks have been detected on this block of cars. In order to maintain this assurance of tank car safety, FRA believes the possible existence of surface and subsurface weld overlay defects warrants inclusion of non-destructive examination, by a qualified individual using a qualified procedure, of any existing weld overlay repair area prior to the application or reapplication of a tank jacket.

If you have questions regarding these inspection requirements, please contact Edward Pritchard (202–493–6247) or Brenda Hattery (202–493–6326) of my staff.

Issued in Washington, DC, on September 9, 1998.

George A. Gavalla,

Acting Associate Administrator for Safety, Federal Railroad Administration.

ATTACHMENT A.—OWNERS OF RECORD OF FOAM-IN-PLACE TANK CARS BUILT UNDER RICHMOND TANK CAR COMPANY'S ORIGINAL CERTIFICATES OF CONSTRUCTION

Certificate of construction	Owner of record of cars originally built under the listed certificate of construction
A734030	PLM International, Inc.
A734030A	PLM International, Inc. U S L Capital Rail Services
A734031	PLM International, Inc.
A734031A	PLM International, Inc.
A744000	E.I. Du Pont De Nemours & Co., Inc. PLM International, Inc.
A754014	General Electric Railcar Services Corporation GLNX Corporation SGA Leasing Company Transportation Equipment, Inc. U S L Capital Rail Services
A754014A	PLM International, Inc.
A754014B	Transportation Equipment, Inc.
A754015	GLNX Corporation On-Track Railcar Services Corporation PLM International, Inc.
A764008	PLM International, Inc.
A774006	GLNX Corporation PLM International, Inc. Transportation Equipment, Inc. Union Tank Car Company
A7740066	Transportation Equipment, Inc.
A774006C	On-Track Railcar Services Corporation PLM International, Inc. Shell Oil Company
A774019	Union Tank Car Company
A774020B	Exxon Chemical Americas
A784002	The Dow Chemical Company
A794001A	The Dow Chemical Company
A794002	General American Transportation Corporation GLNX Corporation Transportation Equipment, Inc. Union Tank Car Company
A7940026	Transportation Equipment, Inc.

ATTACHMENT A.—OWNERS OF RECORD OF FOAM-IN-PLACE TANK CARS BUILT UNDER RICHMOND TANK CAR COMPANY'S ORIGINAL CERTIFICATES OF CONSTRUCTION—Continued

Certificate of construction	Owner of record of cars originally built under the listed certificate of construction
A794017	C. W. Brooks, Inc. General American Transportation Corporation GLNX Corporation Martin Gas Sales, Inc. Union Tank Car Company
A794024	The Dow Chemical Company
A804002	PLM International, Inc. Union Tank Car Company
A804013	Union Carbide Corporation Union Tank Car Company
A804021	Phillips Petroleum Company Union Tank Car Company
A814004	Union Tank Car Company
A814007	Union Tank Car Company
A814007A	PLM International, Inc.
A814014A	Allied Chemical Company (Allied Corporation)
F734037	PLM International, Inc.
F764007	Union Tank Car Company
F774001	Union Tank Car Company
F774012	Aeropress Corporation GLNX Corporation PLM International, Inc. Transportation Equipment, Inc. Union Tank Car Company
F7740126	PLM International, Inc. Transportation Equipment, Inc.
F814001	Exxon Chemical Americas
F814009	PLM International, Inc. Union Tank Car Company
F814012	Union Tank Car Company
F824003	PLM International, Inc.
F824003A	PLM International, Inc.

Issued in Washington, DC, on April 8, 1999 under the authority delegated in 49 CFR 1.49 and under 49 CFR 180.509(b).

George A. Gavalla,

Acting Associate Administrator for Safety.

[FR Doc. 99–9282 Filed 4–13–99; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Over-the-Road Bus Accessibility

AGENCY: Federal Transit Administration, DOT.

ACTION: Program guidance revision, extension of application deadline.

The Federal Transit Administration provided program guidance and application procedures in a **Federal Register** Notice dated February 8, 1999, "Over-the-road Bus Accessibility Program Grants." That notice stated that "applicants should not incur costs prior to grant approval by FTA." Based upon comments from representatives of the over-the-road bus industry, that statement is rescinded and the guidance is hereby revised: the incremental capital cost for adding wheelchair lift equipment to any new vehicles delivered on or after June 9, 1998, the effective date of the Transportation Equity Act for the 21st Century, is eligible for funding under the over-the-road bus accessibility program. In addition, the deadline for submitting grant applications to the FTA regional offices has changed from April 16, 1999 to May 14, 1999. Applicants must comply with all other program guidance provided in the February 8, 1999 **Federal Register** Notice.

Issued on: April 8, 1999.

Gordon J. Linton,

Administrator.

[FR Doc. 99–9305 Filed 4–13–99; 8:45 am]

BILLING CODE 4910–57–U

DEPARTMENT OF TRANSPORTATION

Maritime Administration

Reports, Forms and Recordkeeping Requirements; Agency Information Collection Activity Under OMB Review

AGENCY: Maritime Administration, DOT.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), this notice announces that the Information Collection abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The nature of the information collection is described as well as its expected burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on January 26, 1999, [64 FR 3997].

DATES: Comments must be submitted on or before May 14, 1999.

FOR FURTHER INFORMATION CONTACT: Christopher Krusa, Office of Maritime Labor, Training, and Safety, Maritime Administration, MAR–250, Room 7302, 400 Seventh Street, SW, Washington, DC 20590. Telephone 202–366–2648 or FAX 202–493–2288. Copies of this collection can also be obtained from that office.

SUPPLEMENTARY INFORMATION: Maritime Administration (MARAD).

Title: Supplementary Training Course Application.

OMB Control Number: 2133–0030.

Type of Request: Extension of a currently approved collection.

Affected Public: U.S. Merchant Seamen, both officers and unlicensed personnel, and other U.S. citizens employed in other areas of waterborne commerce.

Forms(s): MA–823.

Abstract: Section 1305 (a) of the Maritime Education and Training Act of 1980 states that the Secretary may provide additional training on maritime subjects and may make such training available to the personnel of the merchant marine of the United States and to individuals preparing for a career in the merchant marine. In addition, the U.S. Coast Guard (USCG) requires a fire-fighting certificate for U.S. merchant marine officers pursuant to 46 CFR 10.205(g) and 10.207(f). This information collection is necessary for eligibility assessment, enrollment, attendance verification and recordation. Without this information, the courses would not be documented for future reference by the program or individual student. This application form is the only document of record and is used to verify that students have attended the course.

Annual Estimated Burden Hours: 100 Hours.

Addressee: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW, Washington, DC 20503, Attention MARAD Desk Officer.

Comments are Invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

Dated: April 8, 1999.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 99–9283 Filed 4–13–99; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–99–5495]

Notice of Receipt of Petition for Decision That Nonconforming 1995–1997 Mercedes-Benz E500 Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 1995–1997 Mercedes-Benz E500 passenger cars are eligible for importation.

SUMMARY: This notice announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that 1995–1997 Mercedes-Benz E500 passenger cars that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because (1) they are substantially similar to vehicles that were originally manufactured for importation into and sale in the United States and that were certified by their manufacturer as complying with the safety standards, and (2) they are capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is May 14, 1999.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW, Washington, DC 20590. [Docket hours are from 9 am to 5 pm].

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

J.K. Motors of Kingsville, Maryland ("J.K.") (Registered Importer 90–006) has petitioned NHTSA to decide whether 1995–1997 Mercedes-Benz E500 passenger cars are eligible for importation into the United States. The vehicles which J.K. believes are substantially similar are 1995–1997 Mercedes-Benz E500 passenger cars that were manufactured for importation into, and sale in, the United States and certified by their manufacturer, Daimler Benz, A.G., as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared non-U.S. certified 1995–1997 Mercedes-Benz E500 passenger cars to their U.S.-certified counterparts, and found the vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

J.K. submitted information with its petition intended to demonstrate that non-U.S. certified 1995–1997 Mercedes-Benz E500 passenger cars, as originally manufactured, conform to many Federal motor vehicle safety standards in the same manner as their U.S. certified counterparts, or are capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that non-U.S. certified 1995–1997 Mercedes-Benz E500 passenger cars are identical to their U.S. certified counterparts with respect to compliance with Standard Nos. 102 *Transmission Shift Lever Sequence * * **.*, 103 *Defrosting and Defogging Systems*, 104 *Windshield Wiping and Washing Systems*, 105 *Hydraulic Brake Systems*, 106 *Brake Hoses*, 109 *New Pneumatic Tires*, 113 *Hood Latch Systems*, 116 *Brake Fluid*, 124 *Accelerator Control Systems*, 201 *Occupant Protection in Interior Impact*, 202 *Head Restraints*, 204 *Steering Control Rearward Displacement*, 205 *Glazing Materials*, 207 *Seating Systems*, 209 *Seat Belt Assemblies*, 210 *Seat Belt Assembly Anchorages*, 212 *Windshield Retention*, 216 *Roof Crush Resistance*, 219 *Windshield Zone Intrusion*, and 302 *Flammability of Interior Materials*.

Additionally, the petitioner states that non-U.S. certified 1995–1997 Mercedes-Benz E500 passenger cars comply with the Bumper Standard found in 49 CFR Part 581.

Petitioner also contends that the vehicles are capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays:* replacement of the entire instrument cluster with a U.S.-model component that includes a speedometer/odometer calibrated in miles per hour and other U.S.-model gauges.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* (a) installation of U.S.-model headlamps and front sidemarker lamps; (b) installation of U.S.-model taillamp assemblies which incorporate rear sidemarker lights; (c) installation of a U.S.-model high mounted stop lamp.

Standard No. 110 *Tire Selection and Rims:* installation of a tire information placard.

Standard No. 111 *Rearview Mirror:* replacement of the passenger side rearview mirror with a U.S.-model component.

Standard No. 114 *Theft Protection:* installation of a warning buzzer and a warning buzzer microswitch in the steering lock assembly.

Standard No. 118 *Power Window Systems:* installation of a relay in the power window system so that the window transport is inoperative when the ignition is switched off.

Standard No. 206 *Door Locks and Door Retention Components:* replacement of the rear door locks and rear door lock buttons with U.S.-model components.

Standard No. 208 *Occupant Crash Protection:* (a) installation of a safety belt warning buzzer, wired to the driver's seat belt latch; (b) replacement of the driver's and passenger's side air bags, control units, sensors, seat belts and knee bolsters with U.S.-model components on vehicles that are not already so equipped. The petitioner states that the vehicles are equipped at the front and rear outboard seating positions with combination lap and shoulder belts that are self tensioning and capable of being released by means of a single red push-button, and with a lap belt in the rear center designated seating position.

Standard No. 214 *Side Impact Protection:* installation of U.S.-model doorbars in vehicles that are not already so equipped.

301 *Fuel System Integrity:* inspection of all vehicles to ensure that they are

equipped with a rollover and check valve that complies with the standard.

Additionally, the petitioner states that all vehicles will be inspected prior to importation to assure compliance with the Theft Prevention Standard found in 49 CFR part 541, and that anti-theft devices that meet the standard will be installed on all vehicles that are not already so equipped.

The petitioner also states that a vehicle identification plate must be affixed to the vehicle near the left windshield post and a reference and certification label must be affixed in the area of the left front door post to meet the requirements of 49 CFR Part 565.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW, Washington, DC 20590. [Docket hours are from 9 am to 5 pm]. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: April 9, 1999.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 99–9330 Filed 4–13–99; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–99–5497]

Notice of Receipt of Petition for Decision That Nonconforming 1994–1999 Cadillac DeVille Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 1995–1999 Cadillac DeVille passenger cars are eligible for importation.

SUMMARY: This document announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that 1995–1999 Cadillac DeVille passenger cars that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because (1) they are substantially similar to vehicles that were originally manufactured for sale in the United States and that were certified by their manufacturer as complying with the safety standards, and (2) they are capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is May 14, 1999.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW, Washington, DC 20590. [Docket hours are from 9 am to 5 pm].

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

Champagne Imports of Lansdale, Pennsylvania ("Champagne") (Registered Importer 90–009) has petitioned NHTSA to decide whether non-U.S. certified 1994–1999 Cadillac DeVille passenger cars are eligible for importation into the United States. The vehicles which Champagne believes are substantially similar are 1994–1999 Cadillac DeVille passenger cars that were manufactured for sale in the United States and certified by their manufacturer, General Motors Corporation, as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared non-U.S. certified 1994–1999 Cadillac DeVille passenger cars to their U.S.-certified counterparts, and found the vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

Champagne submitted information with its petition intended to demonstrate that non-U.S. certified 1994–1999 Cadillac DeVille passenger cars, as originally manufactured, conform to many Federal motor vehicle safety standards in the same manner as their U.S. certified counterparts, or are capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that non-U.S. certified 1994–1999 Cadillac DeVille passenger cars are identical to their U.S.-certified counterparts with respect to compliance with Standard Nos. 102 *Transmission Shift Lever Sequence * * **, 103 *Defrosting and Defogging Systems*, 104 *Windshield Wiping and Washing Systems*, 105 *Hydraulic Brake Systems*, 106 *Brake Hoses*, 109 *New Pneumatic Tires*, 113 *Hood Latch Systems*, 116 *Brake Fluid*, 124 *Accelerator Control Systems*, 201 *Occupant Protection in Interior Impact*, 202 *Head Restraints*, 204 *Steering Control Rearward Displacement*, 205 *Glazing Materials*, 207 *Seating Systems*, 209 *Seat Belt Assemblies*, 206 *Door Locks and Door Retention Components*, 207 *Seating Systems*, 209 *Seat Belt Assemblies*, 210 *Seat Belt Assembly Anchorages*, 212 *Windshield Retention*, 216 *Roof Crush Resistance*, 219 *Windshield Zone Intrusion, and* 302 *Flammability of Interior Materials.*

Additionally, the petitioner states that non-U.S. certified 1994–1999 Cadillac DeVille passenger cars comply with the Bumper Standard found in 49 CFR part 581, and with the Theft Prevention Standard found in 49 CFR part 541.

Petitioner also contends that the vehicles are capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays:* (a) Substitution of a lens marked "Brake" for a lens with a noncomplying symbol on the brake failure indicator lamp; (b) installation of a seat belt warning lamp that displays the appropriate symbol; (c) recalibration

of the speedometer/odometer from kilometers to miles per hour.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* (a) installation of U.S.-model headlamp assemblies that incorporate headlamps with DOT markings; (b) installation of U.S.-model front and rear sidemarker/reflector assemblies; (c) installation of U.S.-model taillamp assemblies; (d) installation of a center high mounted stop lamp if the vehicle is not already so equipped.

Standard No. 110 *Tire Selection and Rims:* installation of a tire information placard.

Standard No. 111 *Rearview Mirror:* replacement of the passenger side rearview mirror with a U.S.-model component.

Standard No. 114 *Theft Protection:* installation of a warning buzzer microswitch in the steering lock assembly and a warning buzzer.

Standard No. 118 *Power Window Systems:* rewiring of the power window system so that the window transport is inoperative when the ignition is switched off.

Standard No. 208 *Occupant Crash Protection:* (a) installation of a U.S.-model seat belt in the driver's position, or a belt webbing-actuated microswitch inside the driver's seat belt retractor; (b) installation of an ignition switch-actuated seat belt warning lamp and buzzer; (c) replacement of the driver's and passenger's side air bags and knee bolsters with U.S.-model components if the vehicle is not already so equipped. The petitioner states that the vehicles are equipped with combination lap and shoulder restraints that adjust by means of an automatic retractor and release by means of a single push button at both front designated seating positions, with combination lap and shoulder restraints that release by means of a single push button at both rear outboard designated seating positions, and with a lap belt at the rear center designated seating position.

Standard No. 214 *Side Impact Protection:* installation of reinforcing beams if the vehicle is not already so equipped.

Standard No. 301 *Fuel System Integrity:* installation of a rollover valve in the fuel tank vent line between the fuel tank and the evaporative emissions collection canister.

The petitioner states that a vehicle identification number plate must be affixed to all non-U.S. certified 1994–1999 Cadillac DeVille passenger cars to meet the requirements of 49 CFR Part 565.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street, SW, Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: April 9, 1999.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 99–9331 Filed 4–13–99; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–99–5496]

Notice of Receipt of Petition for Decision That Nonconforming 1995–1999 Mercedes-Benz S600 Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 1995–1999 Mercedes-Benz S600 passenger cars are eligible for importation.

SUMMARY: This document announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that 1995–1999 Mercedes-Benz S600 passenger cars that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because (1) they are substantially similar to vehicles that were originally manufactured for importation into and sale in the United States and that were certified by their manufacturer as complying with the safety standards, and (2) they are capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is May 14, 1999.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW, Washington, DC 20590. [Docket hours are from 9 am to 5 pm]

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

Champagne Imports of Lansdale, Pennsylvania ("Champagne") (Registered Importer 90–009) has petitioned NHTSA to decide whether non-U.S. certified 1995–1999 Mercedes-Benz S600 passenger cars are eligible for importation into the United States. The vehicles which Champagne believes are substantially similar are 1995–1999 Mercedes-Benz S600m passenger cars that were manufactured for importation into, and sale in, the United States and certified by their manufacturer, Daimler Benz, A.G., as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared non-U.S. certified 1995–1999 Mercedes-Benz S600 passenger cars to their U.S.-certified counterparts, and found the vehicles to be substantially similar with respect to compliance with

most Federal motor vehicle safety standards.

Champagne submitted information with its petition intended to demonstrate that non-U.S. certified 1995–1999 Mercedes-Benz S600 passenger cars, as originally manufactured, conform to many Federal motor vehicle safety standards in the same manner as their U.S. certified counterparts, or are capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that non-U.S. certified 1995–1999 Mercedes-Benz S600 passenger cars are identical to their U.S.-certified counterparts with respect to compliance with Standard Nos. 102 *Transmission Shift Lever Sequence * * **, 103 *Defrosting and Defogging Systems*, 104 *Windshield Wiping and Washing Systems*, 105 *Hydraulic Brake Systems*, 106 *Brake Hoses*, 109 *New Pneumatic Tires*, 113 *Hood Latch Systems*, 116 *Brake Fluid*, 124 *Accelerator Control Systems*, 201 *Occupant Protection in Interior Impact*, 202 *Head Restraints*, 204 *Steering Control Rearward Displacement*, 205 *Glazing Materials*, 207 *Seating Systems*, 209 *Seat Belt Assemblies*, 210 *Seat Belt Assembly Anchorages*, 212 *Windshield Retention*, 216 Roof Crush Resistance, 219 *Windshield Zone Intrusion*, and 302 *Flammability of Interior Materials*.

Additionally, the petitioner states that non-U.S. certified 1995–1999 Mercedes-Benz S600 passenger cars comply with the Bumper Standard found in 49 CFR part 581, and with the Theft Prevention Standard found in 49 CFR part 541.

Petitioner also contends that the vehicles are capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays:* (a) Substitution of a lens marked "Brake" for a lens with a noncomplying symbol on the brake failure indicator lamp; (b) installation of a seat belt warning lamp that displays the appropriate symbol; (c) recalibration of the speedometer/odometer from kilometers to miles per hour.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* (a) Installation of U.S.-model headlamp assemblies that incorporate headlamps with DOT markings; (b) installation of U.S.-model front and rear sidemarker/reflector assemblies; (c) installation of U.S.-model taillamp assemblies; (d) installation of a center high mounted stop lamp if the vehicle is not already so equipped.

Standard No. 110 *Tire Selection and Rims:* installation of a tire information placard.

Standard No. 111 *Rearview Mirror:* replacement of the passenger side rearview mirror with a U.S.-model component.

Standard No. 114 *Theft Protection:* installation of a warning buzzer microswitch in the steering lock assembly and a warning buzzer.

Standard No. 118 *Power Window Systems:* rewiring of the power window system so that the window transport is inoperative when the ignition is switched off.

Standard No. 206 *Door Locks and Door Retention Components:* replacement of the rear door locks and the rear door locking buttons with U.S.-model components.

Standard No. 208 *Occupant Crash Protection:* (a) Installation of a U.S.-model seat belt in the driver's position, or a belt webbing-actuated microswitch inside the driver's seat belt retractor; (b) installation of an ignition switch-actuated seat belt warning lamp and buzzer; (c) replacement of the driver's and passenger's side air bags and knee bolsters with U.S.-model components if the vehicle is not already so equipped. The petitioner states that the vehicles are equipped with combination lap and shoulder restraints that adjust by means of an automatic retractor and release by means of a single push button at both front designated seating positions, with combination lap and shoulder restraints that release by means of a single push button at both rear outboard designated seating positions, and with a lap belt at the rear center designated seating position.

Standard No. 214 *Side Impact Protection:* installation of reinforcing beams if the vehicle is not already so equipped.

Standard No. 301 *Fuel System Integrity:* installation of a rollover valve in the fuel tank vent line between the fuel tank and the evaporative emissions collection canister.

The petitioner states that a vehicle identification number plate must be affixed to all non-U.S. certified 1995–1999 Mercedes-Benz S600 passenger cars to meet the requirements of 49 CFR Part 565.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street, SW, Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: April 9, 1999.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 99–9332 Filed 4–13–99; 8:45 am]

BILLING CODE 4910–59–P

MORRIS K. UDALL SCHOLARSHIP AND EXCELLENCE IN NATIONAL ENVIRONMENTAL POLICY FOUNDATIONS

Sunshine Act Meeting

The Board of Trustees of the Morris K. Udall Scholarship & Excellence in National Environmental Policy Foundation will hold a meeting beginning at 9:00 a.m. on Thursday, April 22, 1999 at the offices of the U.S. Institute for Environmental Conflict Resolution, 110 South Church, Ste. 3350, Tucson, AZ 85701.

The matters to be considered will include (1) A report on the U.S. Institute of Environmental Conflict Resolution, and (2). A report from the Udall Center for Studies and Public Policy and (3) Program Reports. The meeting is open to the public.

Contact Person for More Information: Christopher L. Helms, 110 South Church, Ste. 3350, Tucson, Arizona 85701. Telephone (520) 670–5608.

Dated this 9th day of April, 1999.

Christopher L. Helms,

Director.

[FR Doc. 99–9380 Filed 4–12–99; 12:05 pm]

BILLING CODE 6820–FN–M

Corrections

Federal Register
Vol. 64, No. 71
Wednesday, April 14, 1999

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

U.S. Agency For International Development

48 CFR Parts 722, 732 and 752

[AIDAR Notice 98–3]

RIN 0412–AA39

Miscellaneous Amendments to Acquisition Regulations

Correction

In rule document 99–2032 beginning on page 5005, in the issue of Tuesday, February 2, 1999, make the following corrections:

722.805–70 [Corrected]

1. On page 5007, in the third column, in 722.805–70(e), in the fourth line, "the" should read "that".

732.406–73 [Corrected]

2. On page 5008, in the second column, in 732.406–73(b), in the first line, "offices" should read "officers".

752.7005 [Corrected]

3. On page 5010, in th second column, in 752.7005, in paragraph (b)(2)(iv) of the clause, in the fifth line, "format" should read "Format".

[FR Doc. C9–2032 Filed 4–13–99; 8:45 am]

BILLING CODE 1505–01–D

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 230, 240 and 270

[Release Nos. 33–7656, 34–41189, IC–23745; File No. S7–10–99; International Series Release No. 1188]

RIN 3235–AH32

Offer and Sale of Securities to Canadian Tax-Deferred Retirement Savings Accounts

Correction

In proposed rule document 99–7237, beginning on page 14648, in the issue of Friday, March 26, 1999, make the following correction:

On page 14649, in the second and third columns, the text "The Commission and its staff have interpreted section 7(d) to generally prohibit a foreign fund from making a U.S. private offering if that offering would cause the securities of the fund to be beneficially owned by more than 100 U.S. residents. See Resale of Restricted Securities, Securities Act Release No. 6862 (Apr. 23, 1990) [55 FR 17933 (Apr. 30, 1990)] at text following n.64; Investment Funds Institute of Canada, SEC No-Action Letter (Mar. 4, 1996); Touche Remnant & Co., SEC No.-Action Letter (Aug. 27, 1984). Given the large number of Canadian/U.S. Participants, it is unlikely that a Candadian fund could sell securities to Canadian retirement accounts of Canadian/U.S. Participants without exceeding the limit of 100 U.S. beneficial owners." should be removed and placed above footnote 11.

[FR Doc. C9–7237 Filed 4–13–99; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–AGL–20]

Proposed Establishment of Class E Airspace; De Kalb, IL

Correction

In proposed rule document 99–8246, beginning on page 16370, in the issue of Monday April 5, 1999, make the following correction:

§ 71.1 [Corrected]

On page 16371, in the second column, in § 71.1, under the heading **AGL IL E5 De Kalb IL [New]**, in the second line, "Lat. 41° 42′ 30″W" should read "Lat. 41° 55′ 55″N., Long. 88° 42′ 30″W".

[FR Doc. C9–8246 Filed 4–13–99; 8:45 am]

BILLING CODE 1505–01–D

UMI

VOL
64

ISS
71

AP
14

1999

UMI

Federal Register

Wednesday
April 14, 1999

Part II

Department of Health and Human Services

Administration for Children and Families

45 CFR Part 283

Implementation of Section 403(a)(2) of Social Security Act; Bonus To Reward Decrease in Illegitimacy Ratio; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

45 CFR Part 283

RIN 0970–AB79

Implementation of Section 403(a)(2) of Social Security Act; Bonus To Reward Decrease in Illegitimacy Ratio

AGENCY: Administration for Children and Families, HHS.

ACTION: Final rule

SUMMARY: The Administration for Children and Families is issuing a final rule describing how we will award a bonus to those States that experience the largest decreases in out-of-wedlock childbearing and also reduce their abortion rates. The total amount of the bonus will be up to $100 million in each of fiscal years 1999 through 2002, and the award for each eligible State in a given year will be $25 million or less.

This incentive provision is a part of the welfare reform block grant program enacted in 1996—the Temporary Assistance for Needy Families, or TANF, program.

DATES: This regulation is effective June 14, 1999.

FOR FURTHER INFORMATION CONTACT: Kelleen Kaye, Senior Program Analyst, Office of the Assistant Secretary for Planning and Evaluation, at (202) 401–6634; or Ken Maniha, Senior Program Analyst, Administration for Children and Families, at (202) 401–5372.

Deaf and hearing-impaired individuals may call the Federal Dual Party Relay Service at 1–800–877–8339 between 8:00 a.m. and 7:00 p.m. Eastern time.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. The Personal Responsibility and Work Opportunity Reconciliation Act
II. The Bonus Award
  A. Legislative History
  B. Summary of the Bonus Award Process
III. Development of the Final Rule
  A. Consultations
  B. Regulatory Reform
  C. Notice of Proposed Rulemaking
  D. Section-by-Section Discussion of the Final Rule
  E. Response to Comments that Were Outside the Scope of this Final Rule
IV. Departmental Activities Related to Out-of-Wedlock Births
V. Regulatory Impact Analyses
  A. Executive Order 12866
  B. Regulatory Flexibility Analysis
  C. Paperwork Reduction Act
  D. Unfunded Mandates Reform Act of 1995
  E. Congressional Review

I. The Personal Responsibility and Work Opportunity Reconciliation Act

On August 22, 1996, President Clinton signed "The Personal Responsibility and Work Opportunity Reconciliation Act of 1996"—or PRWORA—into law. The first title of this law (Pub.L. 104–193) established a comprehensive welfare reform program designed to change the nation's welfare system dramatically. The program is called Temporary Assistance for Needy Families, or TANF, in recognition of its focus on moving recipients into work and time-limited assistance.

PRWORA repealed the prior welfare program known as Aid to Families with Dependent Children (AFDC), which provided cash assistance to needy families on an entitlement basis. It also repealed the related programs known as the Job Opportunities and Basic Skills Training program (JOBS) and Emergency Assistance (EA).

The TANF program went into effect on July 1, 1997, except in States that elected to submit a complete plan and implement the program at an earlier date. It challenges Federal, State, Tribal and local governments to foster positive changes in the culture of the welfare system and to take more responsibility for program results and outcomes.

It also gives States the authority to use Federal welfare funds "in any manner that is reasonably calculated to accomplish the purpose" of the new program (see Legislative History below). It provides them broad flexibility to set eligibility rules and decide what benefits are most appropriate, and it offers States an opportunity to try new, far-reaching ideas so they can respond more effectively to the needs of families within their own unique environments.

II. The Bonus Award

A. Legislative History

One of the greatest concerns of Congress in passing the PRWORA was the negative effect of out-of-wedlock births. This concern is reflected in the Congressional findings at section 101 of PRWORA. Here, Congress described the need to address issues relating to marriage, the stability of families, and the promotion of responsible fatherhood and motherhood. The issues cited were: the increasing number of children receiving public assistance; the increasing number of out-of-wedlock births; the negative consequences of an out-of-wedlock birth to the mother, the child, the family, and society; and the negative consequences of raising children in single-parent homes.

Congressional concern is also reflected in the goals of the TANF program and the inclusion of a performance bonus entitled "Bonus to Reward Decrease in Illegitimacy Ratio." One purpose of the TANF program, as stated in section 401(a)(3) of the Social Security Act, is to "prevent and reduce the incidence of out-of-wedlock pregnancies and establish annual numerical goals for preventing and reducing the incidence of these pregnancies." In enacting the bonus provision, Congress intended to provide greater impetus to State efforts in this area and encourage State creativity in developing effective solutions.

B. Summary of the Bonus Award Process

This final rule implements section 403(a)(2) of the Social Security Act (the Act), "Bonus to Reward Decrease in Illegitimacy Ratio." In this final rule, we use the term "bonus" to refer to the bonus in section 403(a)(2) of the Act. We use the term "ratio" to refer to the ratio of out-of-wedlock births to total births.

As specified in section 403(a)(2) of the Act, we will award up to $100 million annually, in each of fiscal years 1999 through 2002. The amount of the bonus for each eligible State in a given year will be $25 million or less. For the purposes of this award, States include the 50 States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the United States Virgin Islands, and American Samoa. While the criteria for determining bonus eligibility for Guam, the Virgin Islands, and American Samoa are the same as for the remaining States, their eligibility is determined separately and the determination of their bonus amount is different, as specified in the statute in sections 403(a)(2)(B)(ii) (Amount of Grant) and 403(a)(2)(C)(i)(I) (definition of eligible State).

Briefly, we will award the bonus as follows:

- We will calculate the ratio of out-of-wedlock births to total births for each State for the most recent two-year period for which data are available and for the prior two-year period. To compute these ratios, we will use the vital statistics data compiled annually by the National Center for Health Statistics and based on records submitted by the States.
- For States other than Guam, the Virgin Islands, and American Samoa, we will identify the five States that had the largest proportionate decrease in

their ratios between the most recent two-year period for which data are available and the prior two-year period. These States are potentially eligible.

• For Guam, the Virgin Islands, and American Samoa, we will identify which jurisdictions had a comparable decrease in their ratios (i.e., a decrease at least as large as the smallest decrease among the other qualifying States or a decrease that ranks among the top five decreases when all States and Territories are ranked together). These additional States will also be potentially eligible.

• We will notify the potentially eligible States that, to be considered for the bonus, they need to submit data and information on the number of abortions performed in their State for the most recent year and for 1995.

• We will determine which of the potentially eligible States also experienced a decrease in their rate of abortions (defined for the purposes of this bonus to be ratio of the abortions to live births) for the most recent calendar year compared to 1995, the base year specified in the Act. These States will receive a bonus award.

III. Development of the Final Rule

A. Consultations

In the spirit of both regulatory reform and PRWORA, we implemented a broad consultation strategy prior to the drafting of all proposed regulations for the TANF program, including this bonus provision. We discussed major issues related to the proposed rulemaking with outside parties at several meetings. We spoke with a number of different audiences including representatives of State and local government, State TANF agencies, national advocacy organizations, and data collection experts. These consultations were helpful to us in identifying key issues and evaluating policy options.

B. Regulatory Reform

In its latest *Document Drafting Handbook*, the Office of the Federal Register supports the efforts of the National Performance Review (now the National Partnership for Reinventing Government) to encourage Federal agencies to produce more reader-friendly regulations and regulations written in plain language. In drafting this final rule, we have paid close attention to this guidance. Individuals who are familiar with prior welfare regulations should notice that this package incorporates a distinctly different, more readable style.

In the spirit of facilitating understanding, we have included some of the preamble discussion from the NPRM as well as additional information related to the final rule to provide further explanation and context for the reader. This information is under the heading "Additional Information Related to This Section." We also have exercised some editorial discretion to make the discussion more succinct or clearer in places. However, where we made significant changes in the preamble material or the regulatory text, the preamble explains these changes.

C. Notice of Proposed Rulemaking

On March 2, 1998, the Administration for Children and Families published a Notice of Proposed Rulemaking (NPRM) to implement section 403(a)(2) of the Act. We provided a 60-day comment period which ended on May 1, 1998 (63 FR 10264).

We offered those interested the opportunity to submit comments either by mail or electronically via our Web site. Several commenters took advantage of the electronic access, but we received most comments by mail.

In addition, we held a briefing on the provisions of the NPRM for interested organizations and entities on March 12, 1998. The purpose of the briefing was to answer questions on the NPRM and provide clarifying information.

We received 17 letters commenting on the NPRM from five States, one local government agency, one State legislator, one national organization representing State interests, seven national nonprofit research and advocacy organizations, and three individuals. (One letter was signed by two national organizations.)

In general, the comments expressed qualified approval for our proposed approach to this highly technical statutory provision. Some commenters recognized that we were constrained by the statute in developing the NPRM, but, within those limitations, commended our approach for "in some instances, minimizing the potential problems posed by the bonus." Other commenters supported specific aspects of the NPRM, such as:

• The proposed use of existing data (no new data collection requirements);

• Not ranking States based on their abortion data;

• Our stated preference for residence data on abortions while proposing to accept either occurrence or residence data;

• Recognizing the differences in the States' methods of collecting data on abortions and providing for State changes in State methodology; and

• Designing a process which would allow all States to compete for the bonus, if they so choose.

Several commenters, however, expressed serious concern about possible unintended effects of the bonus and about the quality of the abortion data on which the bonus award would be based. They urged increased attention to and recommended that we place additional requirements on the collection of abortion data. They also urged greater Departmental involvement to prevent, for example, actions that might restrict access to abortion. Several commenters recommended specific steps the Department might take to help assure that the bonus award was not based on a State's legislation or policies to restrict abortion services. They also recommended ways in which the Department might use this bonus award process to evaluate out-of-wedlock and teen pregnancy prevention programs, improve the quality of the abortion data, and disseminate information on best practices.

We appreciate the thoughtful and policy-focused comments we received and have seriously considered all concerns and recommendations. We have made several changes in the final rule based on the comments. We will discuss all comments below. Briefly, however, we have:

• Revised the definition of "abortion" to exclude spontaneous abortions;

• Specified that if a State changes its methodology for the collection of abortion data, it must describe the nature of the change and submit this explanatory information along with the number of abortions performed after adjusting for these changes;

• For changes in the collection of data on out-of-wedlock births implemented prior to 1998, reduced the period of time States have to submit this information from one year following publication of the final rule to 60 days following publication of the final rule;

• Clarified the time limit on the expenditure of the bonus award funds;

• Clarified the scope of the activities and services that may be funded using bonus award funds and the limitations on the use of these funds;

• Clarified that, for Puerto Rico, Guam, the Virgin Islands, and American Samoa, bonus award funds are not subject to the mandatory funding ceilings established in section 1108(c)(4) of the Act. (Section 1108(c)(4) limits the total amount of TANF block grant funding for these jurisdictions.)

We were not able to accept recommendations that were inconsistent with the statute or our regulatory authority. Examples of these recommendations included:

• That we design a process to ensure that five States (other than Guam, the

Virgin Islands, and American Samoa) would receive bonus awards annually;

- That States that do not collect abortion data be allowed to submit abortion data based on a sub-state population such as Medicaid recipients;
- That we require States to submit information on the policy measures they followed to lower their out-of-wedlock births; and
- That, when determining eligibility, we discount changes in abortion that result from changes in availability of abortion services.

These and other comments and recommendations will be discussed below.

D. Section-By-Section Discussion of the Final Rule

Section 283.1 What Does This Part Cover?

This section of the NPRM provided a summary of the content of part 283 covering how we would determine which States qualify for the bonus award, what data we would use to make this determination, and how we would determine the amount of the award.

We received no specific comments on and have made no changes in this section.

Section 283.2 What Definitions Apply to This Part?

This section of the NPRM proposed definitions of the terms used in part 283. Some of these definitions assigned a one-word term to represent a frequently used phrase. For example, "bonus" is defined to mean the Bonus to Reward Decrease in Illegitimacy Ratio authorized under section 403(a)(2) of the Act. Other definitions add clarity and precision to key technical terms. For example, we defined the "most recent year for which abortion data are available" as the year that is two calendar years prior to the current calendar year.

We received several comments relating to definitions in this part. These comments referred to definitions for "abortion," "most recent period for which birth data are available," most recent year for which abortion data are available," and "number of out-of-wedlock births."

Comment: One commenter recommended that we modify the definition of "abortion" to make clear that spontaneous abortions, i.e., miscarriages, are not included in this definition.

Response: We agree and have revised the definition accordingly.

Comment: One commenter interpreted the definition of "most recent two-year period for which birth data are available" as variable across States. This commenter recommended that we measure potential State eligibility for the bonus based on identical time periods across States.

Response: We agree that the determination of eligibility will be based on birth data for an identical time period across States. We have clarified the definition of "most recent two-year period for which birth data are available" to indicate that this will be the most recent period for which the National Center for Health Statistics (NCHS) has released final birth data by State. Final data released by NCHS covers the same year for all reporting States, as noted in the NPRM.

Comment: One commenter objected to this same definition on different grounds. In the NPRM, we said in the preamble discussion to § 283.4 that in bonus year 1999, we would likely compare births in calendar years 1996 and 1997 to births in years 1994 and 1995. The commenter believed that this would not provide a fair comparison among States, particularly those States that had implemented programs to reduce out-of-wedlock births since enactment of PRWORA. The commenter also believed that it did not make sense to compare years prior to enactment of the TANF program and suggested that we use more recent birth data that would reflect recent State efforts to reduce out-of-wedlock births, delaying the bonus award if necessary.

Response: We recognize the importance of basing the bonus on the most recent data available and incorporating data that reflect State efforts to reduce out-of-wedlock childbearing. The rule clearly states that eligibility will be based on the most recent data released by NCHS. In all but the first bonus year, eligibility will likely be based on data that reflect post-TANF outcomes. For example, in the first bonus year, FY 1999, we will base awards on a data period including 1997; awards in FY 2000 will reflect data for 1998.

However, after carefully considering this matter, we have determined that the Department must obligate the first-year bonus funds in fiscal year 1999, and therefore determination of eligibility in the first year cannot be delayed beyond fiscal year 1999.

Comment: One commenter objected to the definition of "most recent year for which abortion data are available." The NPRM defined this term as "the year that is two calendar years prior to the current calendar year." We provided the example that in calendar year 1999, the most recent year for which abortion data are available would be calendar year 1997. The commenter recommended that we change the definition to read: "the year that is no later than two calendar years prior to the current calendar year." The commenter believed that if more timely data were available, States should be allowed to use these data, particularly if the data would have a positive effect on the State's eligibility for the bonus, since the data would not affect another State's eligibility.

Response: The definition stated in the NPRM bases eligibility on reasonably current abortion data gathered for a consistent time period. While States do not compete directly with respect to their abortion measures, it is important to define this period consistently. If each State were to use their most recent year of abortion data, eligibility could be affected not only by changes in the abortion rate but also by changes in the State's decision regarding when to release the next year of data, which is not the intent of the bonus provision. The final rule was not changed with respect to this comment.

Comment: One commenter objected to the definition of "number of out-of-wedlock births" and "number of total births" because she interpreted the definitions to mean the number of births occurring in the State. The commenter recommended that the number of births be measured according to the state of residence rather than the state of occurrence.

Response: We agree that the number of out-of-wedlock and total births will be measured according to state of residence rather than state of occurrence, and the definitions proposed in the NPRM for out-of-wedlock and total births already reflect this. Therefore, no changes were needed in the final rule. We retained the two pertinent definitions proposed in the NPRM as follows:

"Number of out-of-wedlock births for the State" means the final number of births occurring outside of marriage to residents of the State, as reported in NCHS vital statistics data. "Number of total births for the State" means the final total number of live births to residents of the State, as reported in NCHS vital statistics data.

Section 283.3 What Steps Will We Follow to Award the Bonus?

This section of the NPRM described the process we proposed to follow for identifying which States would be eligible for the bonus and what the amount of the bonus would be. This process was based on the definition of "eligible State" in section 403(a)(2)(C)(i)(I). This definition

indicates that a State must have a qualifying decrease in its ratio (i.e., its ratio of live out-of-wedlock births to total births) and also experience a decrease in its abortion rate (i.e. its ratio of abortions to live births). We proposed to base the bonus award on birth and abortion data for the State population as a whole, not on data for TANF recipients or other sub-state populations.

We received several comments in support of the general process for awarding the bonus. Commenters supported the two-year comparison period for State birth data. They also supported the use of NCHS data on births because it avoids duplicate State data collection and allows the bonus to be awarded based on statistics similar for all States. Commenters also supported the use of the proportionate ratio method in ranking States based on birth data because it allows States to compete on a more level playing field, regardless of population size or previous decreases in out-of-wedlock birth ratios.

We also received several comments expressing concerns related to this section. These included comments regarding the determination of eligibility for Guam, American Samoa and the Virgin Islands, comments regarding the number of potentially eligible States, and comments that the final rule should include an appeals process for those who do not receive the bonus.

Comment: One commenter questioned our preamble discussion on how the bonus for Guam, the Virgin Islands, and American Samoa would be computed and recommended that the process for making awards to these jurisdictions be the same as for other States.

Response: We agree that, for these jurisdictions, the criteria for how bonus eligibility will be determined is the same as for other States, and we have clarified this in paragraph (a)(3). It is only the amount of the award that will be different.

Comment: One commenter recommended that the Department design a process that would ensure that the maximum number of States (five other than Guam, American Samoa and the Virgin Islands) receive a bonus each year. They suggested informing more than just five States (e.g., between 7–10 States) that they were potentially eligible for the bonus based on their birth data. Among this larger group of potentially eligible States, even if some States were not eligible based on their abortion data, DHHS would still be able to identify five eligible States.

Response: Section 403(a)(2)(C)(i)(I) of the Act clearly indicates that an eligible State must meet two criteria; it must be among the top five States with the largest decrease in the ratio of out-of-wedlock to total births and it must have a reduction in its abortion rate. A State that is not among the top five States would not meet the definition of eligibility stated in the Act, and the Act clearly provides for the possibility that fewer than five States will receive the bonus. We did not change the final rule with respect to this comment.

Comment: Another comment that did not directly reference § 283.3 but is related most closely to this section, recommended that the final rule include an appeals process for those States that did not qualify for the bonus.

Response: We recognize the importance of awarding the bonus fairly. To accomplish this, the final rule bases eligibility on widely accepted and standard measures of births and clearly describes the objective criteria we will follow in ranking and identifying those States with the largest decrease in the ratio of out-of-wedlock to total births. The final rule also clearly defines what abortion data the State must submit to be eligible for the bonus and assigns to the States the responsibility of collecting those data and calculating any necessary adjustment. Because eligibility is based on nondiscretionary, objective criteria and data that are largely submitted by the States, we do not believe an appeals process is appropriate.

Therefore, the final rule does not provide for an appeals process and no changes to the final rule were made with respect to this comment. While section 410 of the Act does provide for an appeals process, this section applies only to adverse actions such as the imposition of penalties and does not apply to bonus awards.

Finally, we have made editorial changes for clarity.

Additional Information Related to This Section

This final rule places no mandates on States with respect to data collection. Competition for the bonus is entirely voluntary. Also, where possible, this final rule uses existing data sources or data that are the least burdensome to collect and report.

When calculating decreases in the ratios of out-of-wedlock to total births, we will use the NCHS vital statistics data for total births and out-of-wedlock births, which are based on data submitted by the States. Vital statistics data include information on virtually all births occurring in the United States and are already reported by State Health Departments to NCHS through the Vital Statistics Cooperative Program (VSCP). Hospitals and other facilities report this information to the State health departments on a standard birth certificate, following closely the format and content of the U.S. Standard Certificate of Live Birth. The States process all of their birth records and send their files to NCHS in electronic form in a standard format. The mother of the child or other informant provides the demographic information on the birth certificate.

We chose vital statistics data to measure births because we viewed them as the most reliable and standard data available across States. Also, using vital statistics data from NCHS will allow us to measure the same years for all States and will give States a reasonable and standard time frame in which to submit the data. This is particularly important for birth data because we will rank States on their decreases in the ratio based on these data.

We also determined that obtaining these data directly from NCHS rather than from the individual States will avoid a duplicate information collection activity and will be less burdensome for the States and for us. In most cases, States will not need to provide any new data or information related to births beyond what they already submit to NCHS.

As specified in section 403(a)(2) of the Act, once we have identified the potentially eligible States with the largest decreases in their ratios, we will notify those States that, to be considered for eligibility for the bonus award, they must submit the necessary data on the number of abortions for both 1995 and the most recent year as well as information on any adjustment to these data.

There is no need for all States to submit data on abortions, based on the definition of "eligible State" in section 403(a)(2)(C)(i)(I). A State cannot qualify for the bonus unless it is among the top five with the largest decrease in the ratio of live out-of-wedlock to total births (or it is one of the previously mentioned territories and has a comparable decrease).

Even if some potentially eligible States later become ineligible based on their abortion data, all States that were previously ineligible based on their birth data remain ineligible. Therefore, one State's abortion rate does not affect whether another State qualifies. Thus, while abortion data affects whether an individual State receives the bonus, competition among States for the bonus depends on the birth data.

Section 283.4 If a State Wants To Be Considered for Bonus Eligibility, What Birth Data Must It Submit?

This section of the NPRM described in more detail what birth data a State must have submitted to NCHS for each year in the calculation period as a first step in qualifying for the bonus. This section also described what the State must do if it changed its methodology for collecting or reporting birth data, i.e., the method for determining marital status at the time of birth.

Several commenters agreed with the proposed approach in this section. They were pleased that we proposed to rely on statistics already submitted by States. They also were pleased that we recognized that some States may have changed (or may plan to change) their methodology or classification procedures for collecting out-of-wedlock birth data and agreed with our proposed approach that would allow those States to be eligible to compete for the bonus. However, commenters also expressed several concerns.

Comment: One commenter was concerned that the NPRM included no standards by which NCHS "must fairly evaluate the adjustment methods used by a State which had changed its reporting methodology" for birth data. They suggested that the final rule clarify these standards in order to assure fair and consistent review of the additional information submitted by a State.

Response: We recognize the importance of fairly adjusting for changes in data collection. The NPRM proposed in § 283.4(b) that if a State changed its data collection methodology regarding nonmarital births, it would have to submit additional detailed information regarding this change, in addition to submitting the number of out-of-wedlock and total births. This information included an alternative calculation showing, to the greatest extent possible, what the number of out-of-wedlock births would have been under the prior methodology, documentation of the changes in data collection methodology, and how it determined the alternative number.

In the preamble we stated that NCHS would then calculate an adjustment factor based on this information. NCHS has extensive expertise in working with the State vital statistics data and working with States regarding the collection of these data.

Specifying in greater detail how NCHS will calculate the adjustment is not feasible until more specific information is available regarding the actual changes a State might make in data collection. However, NCHS will examine all information submitted with respect to this requirement to ensure that it is statistically valid.

Comment: Two commenters believed that the final rule should require States seeking the bonus to submit information regarding the policies they undertook to reduce their out-of-wedlock births, and that we should evaluate these efforts and disseminate the findings. The commenters cited sections 413(a) (research) and 413(c) (dissemination) of the Act in support of this suggestion. They believed that without such information, the Federal government might award significant sums of money without learning sufficiently about effective practices to lower out-of-wedlock births. Another commenter expressed the importance of learning from best practices regarding reduction in unintended pregnancies and out-of-wedlock births, but did not recommend that such information be required as part of this final rule.

Response: We recognize the importance of disseminating information on effective practices regarding efforts to reduce out-of-wedlock births and unintended pregnancies, and the Department has made it a priority to continue facilitating the collection, review, and dissemination of this information in the future. We will build on our existing efforts described in section IV of the preamble, "Departmental Activities Related to Out-of-Wedlock Births" and explore further ways to disseminate information on State best practices and winning strategies. The final rule was not changed to reflect our research and dissemination efforts because they are beyond the scope of section 403(a)(2) of the Act, to which this final rule pertains.

Also, the final rule does not require States to submit information on the policies they undertook to reduce out-of-wedlock births because such a requirement would be inconsistent with the eligibility requirements specified in section 403(a)(2) of the Act. The Act specifies that if a State is among the top five States with the largest decrease in its ratio of out-of-wedlock to total births and its abortion rate is lower than the rate in 1995, they are eligible for the bonus. This definition does not provide for making eligibility contingent on supplying information regarding policies aimed at reducing out-of-wedlock births.

Sections 413(a) and 413(c) of the Act direct the Secretary to conduct research on "the benefits, effects and costs of State programs funded under [TANF]" and disseminate information. However, these sections do not give us the authority to require such information from States, or to make bonus eligibility contingent on this information. In addition, efforts initiated by States to reduce out-of-wedlock births may be, but are not necessarily, "programs funded under TANF."

In addition, after reviewing the language of the NPRM, we have made two changes in paragraph § 283.4(b) of the final rule. The first change gives States greater flexibility regarding the information they submit with respect to changes in methodology for collecting birth data. In paragraph (b)(2) of the NPRM, we proposed that, in a year when a State changed its methodology for collecting birth data, the State must generate an alternative number of out-of-wedlock births based on a consistent methodology for the year of the change and the previous year. In the final rule, States for which NCHS agrees it would be technically infeasible to produce the alternative number would have the option of accepting an NCHS estimate of the alternative number. We made this change based on our identification of several complexities regarding the changes in birth data collection that have occurred. This change reflects our efforts to be accommodating of technical difficulties that States might face, while maintaining an award process that is fair and methodologically sound. Because NCHS will evaluate all information submitted by States to ensure it is methodologically valid, we strongly encourage States to work with NCHS as they respond to this eligibility criterion. Paragraphs (b)(2) and (3) reflect this change.

The second change affects when information must be submitted to NCHS on changes in a State's methodology for collecting birth data. Paragraph (b)(4) of the NPRM proposed that States must submit documentation on such changes made prior to 1998 and prior to the publication of the final rule within one year of publication of the final rule.

In the final rule, we have reduced this time period to two months for changes pertaining to 1997 or earlier years. Information pertaining to changes in data for 1998 or later years will not be due until the end of calendar year 1999 or the deadline that normally applies to the State's submission of vital statistics data for that year, whichever is later. This changes reflects a balance between our need to base the 1999 award on timely information and our efforts to allow States as much time as possible to submit the required information. This change is reflected in paragraph (b)(4).

Additional Information Related to This Section

As specified in section 403(a)(2)(C)(i)(I)(aa) of the Act, the calculation period for each bonus year covers four years, i.e., the most recent two calendar years for which NCHS has final data and the prior two calendar years. Consider the hypothetical example where bonus eligibility is being determined in July of 1999 and the most recent year for which NCHS has final data for all reporting States is 1997. In this example, the calculation period would be calendar years 1997, 1996, 1995, and 1994.

If a State did not change its method for determining marital status at any time during the calculation period, it will not need to submit any additional information beyond the information submitted to the NCHS as part of the vital statistics program. States must have submitted these vital statistics files for each year in the calculation period. NCHS will use these data to tabulate the number of total and out-of-wedlock births occurring to residents of each State.

While the determination of marital status at the time of birth is fairly standard across States, there is some variation. Most States use a direct question on marital status, while a few infer marital status based on various pieces of information.

Section 403(a)(2)(C)(i)(II)(aa) of the Act requires us to disregard changes in a State's birth data due to changed reporting methods. Examples of such changes in data collection include replacing an inferential procedure with a direct question on marital status, or changing the data items from which marital status is inferred.

Accordingly, if a State implemented changes that affected its data on out-of-wedlock births for the calculation period, the State must provide additional information to NCHS as specified in § 283.4. This additional information is necessary only if a State chooses to be considered for the bonus. It is not required as part of the Vital Statistics Cooperative Program.

Section 283.5 How Will We Use These Birth Data to Determine Bonus Eligibility?

This section of the NPRM explained how we would identify which States have the largest decrease in their ratios.

The comments we received on this section expressed support for the use of the proportionate ratio calculation and recommended that we design a process to award bonus funds to the maximum number of States each year. These latter comments were addressed in a prior section of the preamble.

We have made only editorial changes in the final rule for clarity.

Section 283.6 If a State Wants To Be Considered for Bonus Eligibility, What Data on Abortions Must It Submit?

This section of the NPRM described the data that a potentially eligible State also must submit on abortions in order to qualify for the bonus. As noted above, only those States that are potentially eligible based on their ratios of out-of-wedlock to total births would need to submit abortion data in each year. Other States cannot be eligible and, therefore, do not need to submit abortion numbers.

We received a number of comments in support of various provisions of this section. Various commenters supported:

- The proposal to review State abortion data only for those States with a decrease in out-of-wedlock births large enough to make them potentially eligible;
- The proposal that States will not be ranked according to their abortion data;
- The 60-day time period to report abortion data after a State is notified that it is potentially eligible;
- The approach in the NPRM which gave States flexibility to change their abortion data collection methodology over time and provide appropriately adjusted data to account for the change;
- The proposal that abortion data based on state of residence is preferred, but that States have flexibility to submit data based on either state of residence or state of occurrence; and
- The proposal that the responsibility for certifying the validity of abortion data lies with the Offices of the Governors and that ACF would not conduct further review or analysis of the data.

We also received several comments recommending changes in this section of the final rule. These include recommendations that state of residence data be required, that abortion data should not be required to cover the entire State population, that States should be allowed to adjust 1995 abortion data, and that there should be more Federal oversight regarding abortion data.

Comment: Several commenters questioned the provision that would allow States to submit data on either the total number of abortions performed within the State, or the total number of abortions performed within the State on in-state residents. Some commenters strongly recommended that the final rule require States to count only abortions to in-state residents. Other commenters recommended that the final rule should require States to count out-of-state abortions obtained by their residents as well. Some commenters believed that these changes were the only method to assure fairness, while other commenters believed these changes would reduce the unintended consequences that the bonus may have regarding the availability of abortion services.

Response: We recognize the value of using abortion data based on state of residence and the final rule continues to emphasize this as the preferred measure. However, the final rule does not require data based on state of residence because numerous States did not have data based on state of residence for the base year of 1995 and, therefore, would have no opportunity to compete for the bonus. In addition, we also did not accept the recommendation that a potentially eligible State obtain data from other States on abortions obtained by its residents in other States. This is because the degree to which neighboring States will have information on state of residence for abortions will vary across States, and because we have no authority to require all States to report this information. The final rule was not changed with respect to these comments.

Comment: One commenter urged that, for a State that does not have mandatory statewide reporting of abortion data and does not collect abortion statistics, the final rule permit such a State to report less than total population data, e.g., abortion data on the title XIX (Medicaid) population.

Response: Section 403(a)(2) of the Act clearly indicates that eligibility shall be based on the number of abortions performed in the State and does not provide for a measure based on other more narrowly defined populations. We did not change the final rule with respect to this comment.

Comment: One commenter observed that NCHS, through its Vital Statistics Cooperative Program, previously supported abortion data collection by grants to 14 States, and that the funding support was discontinued in the commenter's State during 1994. The commenter observed that this cessation in funding caused a reduction in effort to collect 1995 abortion data, and the 1995 abortion rate is a low point for that State. This has implications for that State in terms of the bonus, as 1995 is the base year for comparison purposes.

Response: We recognize that this Federal funding for collection of abortion data in 14 States was eliminated in 1995. To the extent that this elimination of funding led to

differences in data collection or reporting between 1995 and subsequent years in the bonus period, the final rule allows States to adjust their number of abortions to account for these differences. No change in the final rule was necessary in response to this comment.

Comment: Several commenters recommended more specific Federal requirements with respect to the submission of abortion data for the bonus and any adjustments to that data. (The Act states that States must adjust their abortion data if the data reporting methodology changed between 1995 and the evaluation year.) These commenters made the following recommendations:

- That the final rule provide guidelines for how a State should calculate the adjustment;
- That we make clear that States should adjust for changes in reporting among providers (e.g. changes in the proportion or makeup of providers reporting);
- That the final rule require States to report any legislative or policy changes in the State that could impact the collection or reporting of abortion data; and
- That we review the abortion data and information provided by States regarding changes in data collection.

Response: We agree that we should be more specific regarding adjustments for changes in abortion data collection and should require additional information from those States that adjust their abortion data. We have revised paragraph (d) of the final rule to reflect this.

We have stated more specifically in paragraph (d) what changes in data collection or reporting entails, including such things as changes in the response rate of providers in reporting abortion data. We have also stated that to qualify for the bonus, States must indicate whether or not they have adjusted their abortion data and, if so, give the rationale for the adjustment (e.g. describe how legislative, policy or procedural changes impacted data collection and necessitated the adjustment).

The final rule does not give more specific requirements regarding how States should adjust for changes in data collection because it is not feasible at this time to anticipate what these changes might be and how to best adjust for them. In the final rule, the States remain responsible for calculating any adjustment and certifying as to the correctness of the abortion data submitted.

Comment: Another commenter suggested that when submitting data on the number of abortions for the most recent year, the State should demonstrate that any decreases were not the result of restrictions in access to abortion services. The commenter expressed strong concern that without such an adjustment, the bonus provision could encourage States to restrict access to abortion services, given that States must have an abortion rate lower than their 1995 rate in order to qualify for the bonus.

Response: Section 403(a)(2)(C)(i)(I) of the Act specifies that if a State is among the top five States with the largest decrease in its ratio of out-of-wedlock to total births and its abortion rate (i.e., ratio of abortions to live births) is lower than the rate in 1995, it is eligible for the bonus. This definition does not provide for making eligibility contingent on access to abortion services. Therefore, we have not changed the final rule with respect to this comment.

Finally, we have deleted the phrase "by the end of calendar year 1997" in paragraph (c) as no longer applicable, and made other editorial changes for clarity in paragraph (d).

Additional Information Related to This Section

The information the State must submit for 1995 and the most recent year is either the number of all abortions (i.e., both medically and surgically induced abortions) performed within the State, or the number of all abortions performed within the State on in-state residents. We will accept either measure. However, we prefer the second measure because the population of in-state residents is more relevant for the intent of this provision. We assume that State policies to reduce out-of-wedlock childbearing will affect in-state residents most directly.

We received numerous comments during our external consultation, prior to publication of the NPRM, that the measure should be based on in-state residents, if possible. We understand, however, that some States collect data only on total abortions that occurred within the State and do not separately identify abortions provided to in-state or out-of-state residents. While such States could begin to collect the data on a state-resident basis in the future, their 1995 data would not have been collected on this basis. We investigated whether a State could adjust its 1995 data to make it comparable to future data based on in-state residents. After extensive consultation, we concluded this would not be technically feasible. We have retained this policy position in the final rule.

The State must use the same definition to measure abortions in later years as it chooses for 1995. For example, if a State submitted data on abortions performed in the State in 1995, it also must submit data on abortions performed in the State in 1999.

Most States have reporting systems in place for abortion data and these are the preferred data to use for purposes of this bonus. However, States have the flexibility to choose the source of the abortion data they submit, allowing States that do not already have their own reporting system in place to compete for the bonus using data from other sources. Regardless of the data source, the data must cover the entire State population, and not be limited to other more narrowly defined populations such as Medicaid recipients.

The State also has some flexibility to change its abortion reporting over time. However, the State must adjust for effects of these changes. This flexibility allows States to improve their abortion reporting systems without making them ineligible for the bonus. The Governor, or his or her designee, must certify that the State has made the appropriate adjustments.

These abortion reporting restrictions, including the need to adjust for changes in data reporting and the need to define the population consistently over time, apply only to the number of abortions reported to ACF for purposes of this bonus. Therefore, the number of abortions reported for purposes of the bonus might or might not equal the number of abortions reported in public health statistics.

The NPRM did not specify what methodology States must use to adjust for changes in data collection. After extensive consultation, we do not believe it is feasible to design a single methodology that would address all possible changes in data reporting. In addition, we understand that some State privacy laws restrict the types of abortion provider information that can be reported. Some of the more specific reporting requirements we considered as a way of ensuring a more uniform methodology appeared to conflict with these State confidentiality laws.

Our aim in this section of the final rule is to obtain from States the best quality and most standard abortion data possible. We believe this is necessary for the fair and equitable distribution of these bonus awards. We also believe, however, that this rule provides States with important flexibility that would

make it technically feasible for States to submit the necessary data if they choose to compete for the bonus. We believe that this flexibility better incorporates State program knowledge and expertise in measuring abortions.

This flexibility could introduce variation in measurement of abortions across States for purposes of the bonus and could raise concerns about fair competition for the bonus. However, these concerns are greatly mitigated by the fact that States are not competing with each other on their abortion rates. As noted above, a State's abortion rate affects its own qualification only, not the qualification of any other State.

A State cannot be eligible for the bonus unless it submits the necessary abortion data. However, as competition for the bonus is voluntary, this provision places no requirement on States to submit these data.

Section 283.7 How Will We Use These Data on Abortions To Determine Bonus Eligibility?

This section of the NPRM described how we would use the abortion data to identify which States are eligible for the bonus.

Comment: We received one comment specifically on this section. Two organizations recommended an alternative ratio for computing the abortion ratio. The NPRM proposed to calculate the rate of abortions for 1995 and for the most recent year for which abortion data are available. The rate would be equal to the number of abortions divided by the total number of live births in the State. The commenters believed that this ratio might encourage States to manipulate birth rates. They recommended that the ratio be based on abortions per 1,000 women ages 15 to 44. They stated that this is a standard measure, consistent with the statute, and would more directly reflect the number of abortions and would not unnecessarily incorporate birthrate data into the calculation.

Response: We recognize the importance of using standard measures to calculate changes in abortion rates, and in developing the NPRM, we considered using the number of abortions per 1,000 women ages 15 to 44. However, the number of women ages 15 to 44 in each State is difficult to measure precisely between census years. Typically, these measures come from intercensal population estimates. The degree of error in these data varies from year to year and from State to State, and the estimates decline in reliability as the interval since the last census increases. This makes it difficult to separate actual changes in the abortion rate from year to year changes in estimation error. The number of births occurring to residents of the State is highly reliable because it is based on a complete count of all births in the State. In contrast, data on the number of women in the State are based on intercensal population estimates. We made no changes to the final rule with respect to this comment.

Additional Information Related to This Section

We will use the abortion data that States provide to calculate a rate of abortions. This rate would equal the number of abortions in a State for the most recent year, divided by the number of total resident live births for the same year as reported by NCHS. This statistic is also known as the "abortion to live birth ratio." It is a standard statistic used to measure abortions and incorporates the same denominator as the ratio of live out-of-wedlock births to total births.

Section 283.8 What Will be the Amount of the Bonus?

This section of the NPRM explained how we would determine the amount of the bonus for eligible States. These amounts are specified in section 403(a)(2)(B) of the Act.

For Guam, the Virgin Islands, and American Samoa, the award would be 25 percent of their mandatory ceiling amount as defined in section 1108 of the Act. Any bonuses paid to the these States would be subtracted from $100 million (the total annual amount available for the bonus awards), and the remainder would be divided among the other qualifying States up to a maximum award of $25 million per State. If Guam, the Virgin Islands, and American Samoa are not among the qualifying States, the bonus for each State would be $20 million if five States qualified and $25 million if fewer States qualified.

Consider the hypothetical example where American Samoa and four States other than American Samoa, Guam and the Virgin Islands qualify for the bonus. In this case, American Samoa would receive $250,000 (25 percent of their mandatory ceiling amount of $1,000,000) and the remaining eligible States would each receive $24,937,500 ($100,000,000 minus $250,000 all divided by four). If American Samoa and two States other than Guam, American Samoa and the Virgin Islands qualified for the bonus, American Samoa would receive $250,000 and the remaining States would receive $25 million, which is the maximum amount that any State can receive.

We received no comments on and have made no changes in this section of the final rule.

Section 283.9 What Do Eligible States Need To Know To Access and Use the Bonus Funds?

This section of the NPRM specified additional information on how we would pay the bonus and how States may use bonus award funds. In the NPRM, we proposed to pay the award to the Executive Office of the Governor. We also specified that States must use bonus funds to carry out the purposes of the TANF program and that bonus award funds are subject to the limitations in, and the requirements of, sections 404 and 408 of the Act.

We made one change in this section after further internal ACF discussion and made other changes in response to comments. In the final rule, we deleted the proposed provision to pay the bonus to the Executive Office of the Governor. We continue to believe that the Governor, as Chief Executive Officer of the State, is responsible not only for the TANF block grant program but for the well-being of all citizens of the State, including efforts to reduce out-of-wedlock childbearing for the State population as a whole. Therefore, we will award the bonus to the Governor of the winning State(s) and other jurisdiction(s), but, for uniform fiscal reporting and accounting purposes, we will issue the bonus award grant funds to the TANF agency.

Comment: Several commenters asked for a clarification of and more information on how bonus funds may be used and what limitations apply to the use of these funds. One commenter suggested that the final rule direct States to use bonus funds only on specific programs, i.e., public family planning education and contraception services, child health and child day care, and job training for women. Other commenters questioned why the prohibitions and limitations in sections 404 and 408 of the Act applied to bonus award funds given that the funds related to the State's entire population, not just the TANF population.

Response: We agree that clarification is needed regarding the provisions of this section. First, in the context of the flexibility provided to States under the TANF block grant program, we decline to specify how States must use these bonus award funds. We want to make clear that the State has the same flexibility on the use of these funds that it has in the use of the TANF block grant funds. We have added an example in paragraph (a) of the final rule to clarify that States may use bonus award funds

for statewide programs to prevent and reduce the incidence of out-of-wedlock pregnancies, a purpose of the TANF program in section 401 of the Act.

Second, the prohibitions and limitations in sections 404 and 408 are statutory requirements. Grants made to a State under section 403 of the Act—whether TANF block grant funds, bonus award funds, or Welfare-to-Work grants—are subject to these conditions, as applicable. Section 404(a)(1) of the Act provides that the State may use grants made under section 403 (including the bonus award) ". . . in any manner that is reasonably calculated to accomplish the purpose of this part . . ." The purposes of this part (i.e., title IV, Part A, of the Act) are found in section 401 of the Act. The funds may also be used ". . . in any manner that the State was authorized to use the funds . . . under prior programs" (i.e., title IV–A and title IV–F of the Act).

However, sections 404 (b) through (j) and section 408 of the Act specify a number of limitations on the use of TANF funds. For example, if a State uses bonus funds to provide assistance, the prohibitions against providing assistance to certain individuals in section 408 of the Act will apply. If a State uses bonus funds for activities that are not defined as assistance, then these prohibitions are not applicable.

Finally, some of the general requirements in sections 404 and 408 of the Act will apply regardless of how the State chooses to use these funds. For example, the 15 percent limitation on the use of TANF grant funds for administrative purposes (section 404(b)) means that any bonus award funds will be added to the State's total TANF grant funds and the administrative cost percentage will be computed based on the total.

Comment: We received several comments asking us to clarify the expenditure period for bonus award funds. One commenter suggested that the State be allowed three years to expend these funds.

Response: Because there is no expenditure period for TANF funds, and because bonus award funds are a part of the total TANF funds awarded to States under section 403 of the Act, there is no expenditure period for bonus award funds. In using bonus award funds, States must report on the use of these funds as they do other TANF funds.

Comment: One commenter recommended that we state explicitly in the rule that bonus award funds to Puerto Rico, Guam, the Virgin Islands, and American Samoa are not subject to the mandatory funding ceilings for these jurisdictions in section 1108(c)(4) of the Act.

Response: We agree and have added a new paragraph (c) to this section to specify this information. It is important to clarify this provision because section 1108(c)(4) sets a statutory limit on the TANF funds these jurisdictions may receive. We provide explicitly that any bonus funds received by Puerto Rico, the Virgin Islands, Guam or American Samoa will not be counted toward this limitation.

E. Response to Comments That Were Beyond the Scope of the Final Rule

Several comments we received were outside the scope of this rulemaking. These include comments expressing concern that a competitive bonus is not the appropriate way to try to reduce out-of-wedlock childbearing, that efforts to reduce out-of-wedlock births should not place the burden solely on women, and that policies addressing single parent families should not place unreasonable burdens on men. Because these comments focused on general criticisms of the statutory language or criticisms of other policies (which cannot be addressed within this final rule), we made no changes to the final rule with respect to these comments.

IV. Departmental Activities Related to Out-of-Wedlock Births

The Department has various activities underway related to reducing out-of-wedlock births. Given public comments on the Department's role in providing information on this important topic, we summarize some of these activities below, and have made materials regarding these efforts available to the public.

In 1995, the Department produced the *Report to Congress on Out-of-Wedlock Childbearing*, and *Beginning too Soon: Adolescent Sexual Behavior, Pregnancy and Parenthood*, both reports that contained valuable information regarding the occurrence of out-of-wedlock and teen pregnancy as well as strategies for addressing these concerns. Since then, the Department has undertaken many additional initiatives to support programs and research focused on reducing out-of-wedlock childbearing.

In 1997, the Department developed the National Strategy to Prevent Teen Pregnancy, as required in section 905 of PRWORA. The Department has recently released its first annual report to Congress, citing, among other things, that HHS has funded teen pregnancy prevention programs in at least 31 percent of communities across the country. The report also lists more than twenty departmental programs aimed at educating teens and preventing pregnancy, including Girl Neighborhood Power! and demonstration grants to communities in 11 States funded through The Center for Disease Control and Prevention Community Coalition Partnership Programs.

To help disseminate information on efforts to reduce teen pregnancy, the Department is currently working with the National Campaign to Prevent Teen Pregnancy to develop a "Tool Kit" that will provide States and communities with practical advice on how to implement a wide range of teen pregnancy prevention initiatives. The Department will be disseminating additional information to communities regarding programs that specifically target boys and young men.

HHS is also administering the State Abstinence Education Program as authorized by section 912 of the PRWORA. This program authorizes $50 million per year beginning in FY 1998. By July 1997, every State had applied for this money to build on their State efforts to prevent teen pregnancy (although New Hampshire has now declined their funding for FY 1998). As mandated in the Balanced Budget Act of 1997, the Department is conducting an evaluation of these programs, and will include five sites involving random assignment and one involving a rigorous evaluation of comprehensive community approaches.

The Office of the Assistant Secretary for Planning and Evaluation also is providing additional funding to three existing rigorous teen pregnancy prevention evaluations. These three programs each have a unique approach, including differing levels of pregnancy prevention services, a statewide program targeted at siblings of adolescent mothers, and a statewide teen pregnancy prevention program that allows each local community to develop its own intervention.

The Department also is actively supporting expanding pregnancy prevention efforts to include a focus on boys and young men. Through the HHS Regional Offices $2 million in small grants have been awarded to Title X Family Planning Clinics to develop pilot programs designed to prevent premature fatherhood. These projects employ male high school students as interns to provide them with on-the-job training in clinic operations and allied health occupations and provide education about male responsibility, family planning and reproductive health.

In addition to these programmatic initiatives, the Department has supported numerous research and

evaluation projects. The National Study of Adolescent Health, the National Survey of Family Growth, and the National Survey of Adolescent Males have all provided important insight into adolescent risk behaviors including sexual activity and response to pregnancy.

V. Regulatory Impact Analyses

A. Executive Order 12866

Executive Order 12866 requires that regulations be drafted to ensure that they are consistent with the priorities and principles set forth in the Executive Order. The Department has determined that this rule is consistent with these priorities and principles. This rulemaking implements statutory authority based on broad consultation and coordination.

The Executive Order encourages agencies, as appropriate, to provide the public with meaningful participation in the regulatory process. As described elsewhere in the preamble, ACF consulted with State and local officials, their representative organizations, and a broad range of technical and interest group representatives.

To a considerable degree, this final rule reflects the comments we received in response to the NPRM. We appreciate and have seriously considered all of the detailed and thoughtful comments we received.

B. Regulatory Flexibility Analysis

The Regulatory Flexibility Act (5 U.S.C. Ch. 6) requires the Federal government to anticipate and reduce the impact of rules and paperwork requirements on small businesses and other small entities. Small entities are defined in the Act to include small businesses, small non-profit organizations, and small governmental agencies. This rule will affect only States. Therefore, the Secretary certifies that this rule will not have a significant impact on small entities.

C. Paperwork Reduction Act

This rule does not contain information collection activities that are subject to review and approval by the Office of Management and Budget. The birth data on which we will base the computation of the bonus are currently available from the NCHS. Therefore, no new data collection is required to measure out-of-wedlock birth ratios. The abortion data would be solicited only for up to eight States, i.e., five States and three Territories. This does not meet the criteria for OMB review and approval.

D. Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995 requires that a covered agency prepare a budgetary impact statement before promulgating a rule that includes any Federal mandate that may result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year.

We have determined that this rule would not impose a mandate that will result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of more than $100 million in any one year. Accordingly, we have not prepared a budgetary impact statement, specifically addressed the regulatory alternatives considered, or prepared a plan for informing and advising any significantly or uniquely impacted small government.

E. Congressional Review

This final rule is not a major rule as defined in 5 U.S.C., Chapter 8.

List of Subjects in 45 CFR Part 283

Health statistics, Family planning, Maternal and child health, Public assistance programs.

(Catalogue of Federal Domestic Assistance Programs: 17.253 Employment and Training Assistance—Welfare-to-Work Grants to States and Local Entities for Hard-to-Employ Welfare Recipient Programs; 93.558 TANF Programs-State Family Assistance Grants, Assistance Grants to Territories, Matching Grants to Territories, Supplemental Grants for Population Increases and Contingency Fund; 93.559-Loan Fund; and 93.595-Welfare Reform Research, Evaluations and National Studies)

Dated: December 24, 1998.

Olivia A. Golden,

Assistant Secretary for Children and Families.

Approved: January 11, 1999.

Donna E. Shalala,

Secretary, Department of Health and Human Services.

For the reasons set forth in the preamble, we are amending 45 CFR chapter II by adding Part 283 to read as follows:

PART 283—IMPLEMENTATION OF SECTION 403(A)(2) OF THE SOCIAL SECURITY ACT BONUS TO REWARD DECREASE IN ILLEGITIMACY RATIO

Sec.

283.1 What does this part cover?
283.2 What definitions apply to this part?
283.3 What steps will we follow to award the bonus?
283.4 If a State wants to be considered for bonus eligibility, what birth data must it submit?
283.5 How will we use these birth data to determine bonus eligibility?
283.6 If a State wants to be considered for bonus eligibility, what data on abortions must it submit?
283.7 How will we use these data on abortions to determine bonus eligibility?
283.8 What will be the amount of the bonus?
283.9 What do eligible States need to know to access and use the bonus funds?

Authority: 42 U.S.C. 603

§ 283.1 What does this part cover?

This part explains how States may be considered for the "Bonus to Reward Decrease in Illegitimacy Ratio," as authorized by section 403(a)(2) of the Social Security Act. It describes the data on which we will base the bonus, how we will make the award, and how we will determine the amount of the award.

§ 283.2 What definitions apply to this part?

The following definitions apply to this part:

Abortions means induced pregnancy terminations, including both medically and surgically induced pregnancy terminations. This term does not include spontaneous abortions, i.e., miscarriages.

Act means the Social Security Act.

Bonus refers to the Bonus to Reward Decrease in Illegitimacy Ratio, as set forth in section 403(a)(2) of the Act.

Calculation period refers to the four calendar years used for determining the decrease in the out-of-wedlock birth ratios for a bonus year. (The years included in the calculation period change from year to year.)

Most recent two-year period for which birth data are available means the most recent two calendar years for which the National Center for Health Statistics has released final birth data by State.

Most recent year for which abortion data are available means the year that is two calendar years prior to the current calendar year. (For example, for eligibility determinations made during calendar year 1999, the most recent year for which abortion data are available would be calendar year 1997.)

NCHS means the National Center for Health Statistics, of the Centers for Disease Control and Prevention, U.S. Department of Health and Human Services.

Number of out-of-wedlock births for the State means the final number of births occurring outside of marriage to residents of the State, as reported in NCHS vital statistics data.

Number of total births for the State means the final total number of live births to residents of the State, as reported in NCHS vital statistics data.

Rate of abortions means the number of abortions reported by the State in the

most recent year for which abortion data are available divided by the State's total number of resident live births reported in vital statistics for that same year. (This measure is also more traditionally known as the "abortion to live birth ratio.")

Ratio refers to the ratio of live out-of-wedlock births to total live births, as defined in § 283.5(b).

State means the 50 States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, and American Samoa, as provided in section 419(a)(5) of the Act.

Vital statistics data means the data reported by State health departments to NCHS, through the Vital Statistics Cooperative Program (VSCP).

We (and any other first person plural pronouns) means the Secretary of Health and Human Services or any of the following individuals or organizations acting in an official capacity on the Secretary's behalf: the Assistant Secretary for Children and Families, the Regional Administrators for Children and Families, the Department of Health and Human Services, and the Administration for Children and Families.

§ 283.3 What steps will we follow to award the bonus?

(a) For each of the fiscal years 1999 through 2002, we will:

(1) Based on the vital statistics data provided by NCHS as described in § 283.4, calculate the ratios for the most recent two years for which final birth data are available, and for the prior two years, as described in § 283.5;

(2) Calculate the proportionate change between these two ratios, as described in § 283.5.

(3) Identify as potentially eligible a maximum of eight States, i.e., Guam, the Virgin Islands, and American Samoa, and five other States, that have qualifying decreases in their ratios, using the methodology described in § 283.5;

(4) Notify these potentially eligible States that we will consider them for the bonus if they submit data on abortions as stated in § 283.6; and

(5) Identify which of the potentially eligible States that submitted the required data on abortions have experienced decreases in their rates of abortion relative to 1995, as described in § 283.7. These States will receive the bonus.

(b) We will determine the amount of the grant for each eligible State, based on the number of eligible States, and whether Guam, American Samoa, or the Virgin Islands are eligible. No State will receive a bonus award greater than $25 million in any year.

§ 283.4 If a State wants to be considered for bonus eligibility, what birth data must it submit?

(a) To be considered for a bonus, the State must have submitted data on out-of-wedlock births as follows:

(1) The State must have submitted to NCHS the final vital statistics data files for all births occurring in the State. These files must show, among other elements, the total number of live births and the total number of out-of-wedlock live births occurring in the State. These data must conform to the Vital Statistics Cooperative Program contract for all years in the calculation period. This contract specifies, among other things, the guidelines and time-lines for submitting vital statistics data files; and

(2) The State must have submitted these data for the most recent two years for which NCHS reports final data, as well as for the previous two years.

(b) If a State has changed its method of determining marital status for the purposes of these data, the State also must have met the following requirements:

(1) The State has identified all years for which the method of determining marital status is different from that used for the previous year;

(2) For those years identified under paragraph (b)(1) of this section, the State has either:

(i) Replicated as closely as possible a consistent method for determining marital status at the time of birth, and the State has reported to NCHS the resulting alternative number of out-of-wedlock births; or

(ii) If NCHS agrees that such replication is not methodologically feasible, the State may chose to accept an NCHS estimate of what the alternative number would be;

(3) The State has submitted documentation to NCHS on what changes occurred in the determination of marital status for those years and, if appropriate, how it determined the alternative number of out-of-wedlock births for the State; and

(4) For methodological changes that were implemented prior to 1998 and applicable to data collected for the bonus period, the State has submitted the information described in paragraphs (b)(1), (2) and (3) of this section within two months after April 14, 1999. For such changes implemented during or after 1998, the State must submit such information either by the end of calendar year 1999 or according to the same deadline that applies to its vital statistics data for that year, whichever is later.

§ 283.5 How will we use these birth data to determine bonus eligibility?

(a) We will base eligibility determinations on final vital statistics data provided by NCHS showing the number of out-of-wedlock live births and the number of total live births among women living in each State and a factor provided by NCHS to adjust for changes in data reporting for those States that have changed their methodology for collecting data on out-of-wedlock births during the bonus period.

(b) We will use the number of total live births and the number of out-of-wedlock births, adjusted for any changes in data collection or reporting, to calculate the decrease in the ratio of out-of-wedlock to total births for each State as follows:

(1) We will calculate the ratio as the number of out-of-wedlock births for the State during the most recent two-year period for which NCHS has final birth data divided by the number of total births for the State during the same period. We will calculate, to three decimal places, the ratio for each State that submits the necessary data on total and out-of-wedlock births described in § 283.4.

(2) We will calculate the ratio for the previous two-year period using the same methodology.

(3) We will calculate the proportionate change in the ratio as the ratio of out-of-wedlock births to total births for the most recent two-year period minus the ratio of out-of-wedlock births to total births from the prior two-year period, all divided by the ratio of out-of-wedlock births to total births for the prior two-year period. A negative number will indicate a decrease in the ratio and a positive number will indicate an increase in the ratio.

(c) We will identify which States have a decrease in their ratios large enough to make them potentially eligible for the bonus, as follows:

(1) For States other than Guam, American Samoa and the Virgin Islands, we will use this calculated change to rank the States and identify which five States have the largest decrease in their ratios. Only States among the top five will be potentially eligible for the bonus. We will identify fewer than five such States as potentially eligible if fewer than five experience decreases in their ratios. We will not include Guam, American Samoa and the Virgin Islands in this ranking.

(2) If we identify more than five States due to a tie in the decrease, we will

recalculate the ratio and the decrease in the ratio to as many decimal places as necessary to eliminate the tie. We will identify no more than five States.

(3) For Guam, American Samoa and the Virgin Islands, we will use the calculated change in the ratio to identify which of these States experienced a decrease that is either at least as large as the smallest qualifying decrease identified in paragraph (c)(1) of this section, or a decrease that ranks within the top five decreases when all States and Territories are ranked together. These identified States will be potentially eligible for the bonus also.

(4) We will notify the potentially eligible States, as identified under paragraphs (a) through (c) of this section that they must submit the information on abortions specified under § 283.6 if they want to be considered for the bonus.

§ 283.6 If a State wants to be considered for bonus eligibility, what data on abortions must it submit?

(a) To be considered further for bonus eligibility, each potentially eligible State, as identified under § 283.5, must submit to ACF data and information on the number of abortions for calendar year 1995 within two months of this notification. This number must measure either of the following:

(1) For calendar year 1995, the total number of abortions performed by all providers within the State; or

(2) For calendar year 1995, the total number of abortions performed by all providers within the State on the total population of State residents only. This is the preferred measure.

(b) States must have obtained these data on abortions for calendar year 1995 within 60 days of publication of the final rule and must include with their submission of 1995 data an official record documenting when they obtained the abortion data.

(c) Within two months of notification by ACF of potential eligibility, the State must submit:

(1) The number of abortions performed for the most recent year for which abortion data are available (as defined in § 283.2 to mean the year that is two calendar years prior to the current calendar year). In measuring the number of abortions, the State must use the same definition, either under paragraph (a)(1) or paragraph (a)(2) of this section, for both 1995 and the most recent year; or

(2) If applicable, the adjusted number and information specified in paragraph (d) of this section.

(d) If the State's data collection or reporting methodology changed between 1995 and the bonus year in such a way as to reflect an increase or decrease in the number of abortions that is different than what actually occurred during the period, the State must:

(1) When submitting the number of abortions for the most recent year under paragraph (c)(2), adjust the number to exclude increases or decreases in the number due to changes in methodology for collecting or reporting the data. For example, this calculation should include adjustments for increases or decreases in response rates for providers in reporting abortion data;

(2) Provide a rationale for the adjustment, i.e., a description of how the data collection or reporting methodology was changed. This could include a description of how legislative, policy or procedural changes affected the collection or reporting of abortion data, or an indication of changes in the response rate of providers in reporting abortion data; and

(3) Provide a certification by the Governor, or his or her designee, that the number of abortions reported to ACF accurately reflects these adjustments for changes in data collection or reporting methodology.

§ 283.7 How will we use these data on abortions to determine bonus eligibility?

(a) For those States that have met all the requirements under §§ 283.1 through 283.6, we will calculate the rate of abortions for calendar year 1995 and for the most recent year for which abortion data are available as defined in § 283.2. These rates will equal the number of abortions reported by the State to ACF for the applicable year, divided by total live births among women living in the State reported by NCHS for the same year. We will calculate the rates to three decimal places.

(b) If ACF determines that the State's rate of abortions for the most recent year for which abortion data are available is less than the rate for 1995, and, if the State has met all the requirements listed elsewhere under this part, the State will receive the bonus.

§ 283.8 What will be the amount of the bonus?

(a) If, for a bonus year, none of the eligible States is Guam, American Samoa or the Virgin Islands, then the amount of the grant shall be:

(1) $20 million per State if there are five eligible States; or

(2) $25 million per State if there are fewer than five eligible States.

(b) If for a bonus year, Guam, the Virgin Islands, or American Samoa is an eligible State, then the amount of the grant shall be:

(1) In the case of such a State, 25 percent of the mandatory ceiling amount as defined in section 1108 of the Act; and

(2) In the case of any other State, $100 million, minus the total amount of any bonuses paid to Guam, the Virgin Islands, and American Samoa, and divided by the number of eligible States other than Guam, American Samoa and the Virgin Islands, not to exceed $25 million per State.

§ 283.9 What do eligible States need to know to access and use the bonus funds?

(a) States must use the bonus funds to carry out the purposes of the Temporary Assistance for Needy Families Block Grant in section 401 and 404 of the Act. This may include statewide programs to prevent and reduce the incidence of out-of-wedlock pregnancies.

(b) As applicable, these funds are subject to the requirements in, and the limitations of, sections 404 and 408 of the Act.

(c) For Puerto Rico, Guam, the Virgin Islands, and American Samoa, the bonus award funds are not subject to the mandatory ceilings on funding established in section 1108(c)(4) of the Act.

[FR Doc. 99–8866 Filed 4–13–99; 8:45 am]
BILLING CODE 4184–01–P

UMI

VOL
64
ISS
71
AP
14
1999
UMI

federal register

Wednesday
April 14, 1999

Part III

Department of Labor

Mine Safety and Health Administration

30 CFR Parts 46 and 48

Training and Retraining of Miners Engaged in Shell Dredging or Employed at Sand, Gravel, Surface Stone, Surface Clay, Colloidal Phosphate, or Surface Limestone Mines; Proposed Rules

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Parts 46 and 48

RIN 1219–AB17

Training and Retraining of Miners Engaged in Shell Dredging or Employed at Sand, Gravel, Surface Stone, Surface Clay, Colloidal Phosphate, or Surface Limestone Mines

AGENCY: Mine Safety and Health Administration (MSHA), Labor.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend MSHA's existing health and safety training regulations by establishing new training requirements for shell dredging, sand, gravel, surface stone, surface clay, colloidal phosphate, and surface limestone mines. Congress has prohibited MSHA from expending funds to enforce training requirements at these mines since fiscal year 1980. This proposed rule would implement the training requirements of section 115 of the Federal Mine Safety and Health Act of 1977 (Mine Act) and provide for effective miner training at the affected mines once Congress has removed the appropriation's prohibition from MSHA's budget. At the same time, the proposed rule would allow mine operators the flexibility to tailor their training programs to the specific needs of their miners and operations.

DATES: Submit comments on or before June 14, 1999.

ADDRESSES: Send comments on the proposed rule—

(1) By mail to MSHA, Office of Standards, Regulations, and Variances, 4015 Wilson Boulevard, Room 631, Arlington, VA 22203;

(2) By facsimile to MSHA, Office of Standards, Regulations, and Variances, 703–235–5551; or

(3) By electronic mail to comments@msha.gov. If possible, please supplement written comments with computer files on disk; contact the Agency with any format questions.

Submit written comments on the information collection requirements directly to the Office of Information and Regulatory Affairs, OMB, New Executive Office Building, 725 17th Street, NW, Washington, DC 20503, Attn: Desk Officer for MSHA; and to Carol J. Jones, Acting Director, Office of Standards, Regulations, and Variances, MSHA 4015 Wilson Boulevard, Room 631, Arlington, VA 22203; by facsimile to MSHA, at 703–235–5551; or by electronic mail to comments@msha.gov.

FOR FURTHER INFORMATION CONTACT: Carol J. Jones, Acting Director, Office of Standards, Regulations, and Variances, MSHA; 703–235–1910.

SUPPLEMENTARY INFORMATION:

I. Plain Language

We (MSHA) wrote this proposed rule in the more personal style advocated by the President's executive order on "plain language." "Plain language" encourages the use of—

- personal pronouns (we and you);
- sentences in the active voice;
- a greater use of headings, lists, and questions, as well as charts, figures, and tables.

In this proposed rule, "you" refers to production-operators and independent contractors because they have the primary responsibility for compliance with MSHA regulations. In addition, we recognize and appreciate the value of comments, ideas, and suggestions from labor organizations, industry associations, and other parties who have an interest in health and safety training for miners. We would appreciate comments and suggestions from all parties on this proposed rule and on our use of "plain language." How could we improve the clarity of this style?

II. Paperwork Reduction Act

This proposed rule contains collection of information requirements that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA 95). The title, description, and respondent description of the information collection are shown below with an estimate of the annual reporting burden. Included in the estimate is the time for reviewing instructions, gathering and maintaining the data needed, and completing and reviewing the collection of information. We invite comments on—

(1) Whether the proposed collection of information is necessary for proper performance of our functions, including whether the information will have practical utility;

(2) The accuracy of our estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Ways to enhance the quality, utility, and clarity of information to be collected; and

(4) Ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

These estimates are an approximation of the average time expected to be necessary for a collection of information. They are based on such information as is available to us.

Submission

MSHA has submitted a copy of this proposed rule to OMB for its review and approval of these information collections. Interested persons are requested to send comments regarding this information collection, including suggestions for reducing this burden, directly to the Office of Information and Regulatory Affairs, OMB, New Executive Office Building, 725 17th Street, NW, Washington, DC 20503, Attn: Desk Officer for MSHA; and to Carol J. Jones, Office of Standards, Regulations, and Variances, MSHA, 4015 Wilson Boulevard, Room 631, Arlington, VA 22203. Submit written comments on the information collection no later than June 14, 1999.

Description of Respondents

Those required to provide the information are mine operators and individuals who are paid to perform tasks for the mine operator (e.g., instructors).

Description of Information Collection Burden

The proposal contains information collection requirements in §§ 46.3, 46.5, 46.6, 46.7, 46.8, 46.9, and 46.11. The proposed rule imposes first year total burden hours and costs of 239,188 hours and $8,291,569. The first year burden hours and costs are composed by summing the figures in Tables VII–1, VII–2, and VII–3. After the first year, the annual burden hours and costs would be 226,685 hours and $7,865,469, which is shown in Table VII–2

Table VII–1 presents one-time burden hours and costs by provision and mine size.

TABLE VII–1.—MINE OPERATORS' ONE-TIME BURDEN HOURS AND COSTS

Prov.	Mines (1–5)		Mines (6–19)		Mines (≥20)		Totals	
	Hrs.	Costs	Hrs.	Costs	Hrs.	Costs	Hrs.	Costs
46.3	7,509	$256,290	3,277	$111,830	1,207	$42,250	11,993	$410,370

Table VII–2 presents annual burden hours and cost by provision and mine size.

TABLE VII–2.—MINES OPERATORS' ANNUAL BURDEN HOURS AND COSTS

Prov.	Mines (1–5)		Mines (6–19)		Mines (≥20)		Totals	
	Hrs.	Costs	Hrs.	Costs	Hrs.	Costs	Hrs.	Costs
46.5	41,007	$1,676,058	21,458	$1,016,502	4,860	$297,170	67,325	$2,989,730
46.6	7,898	284,341	4,240	152,627	978	35,192	13,116	472,159
46.7	5,599	201,579	7,980	287,297	7,111	256,008	20,691	744,884
46.8	34,551	1,243,839	15,433	555,582	5,461	196,582	55,445	1,996,003
46.9	2,765	73,267	5,876	155,725	5,704	151,164	14,346	380,156
46.11	25,208	579,773	22,005	506,115	8,550	196,650	55,763	1,282,538
Total	117,028	4,058,857	76,992	2,673,847	32,664	1,132,765	226,685	7,865,469

Table VII–3 presents miners and miners' representatives one-time burden hours and costs.

TABLE VII–3.—MINERS AND MINERS' REPRESENTATIVES—ONE-TIME BURDEN HOURS AND COSTS

Prov.	Mines (–5)		Mines (6–19)		Mines (≥20)		Totals	
	Hrs.	Costs	hrs.	Costs	Hrs.	Costs	Hrs.	Costs
46.3	336	$7,728	146	$3,358	28	$644	510	$11,730

Paragraph (a) of § 46.3 requires you to develop and implement a written training plan that contains effective programs for training new miners and experienced miners, training miners for new tasks, annual refresher training, and hazard training. The mines affected by this provision are—

(1) 3,361 mines that employ 5 or fewer workers;

(2) 1,467 mines that employ between 6 and 19 workers; and

(3) 285 mines that employ 20 or more workers.

MSHA estimates that a mine supervisor, earning $36 per hour, would take 2 hours to write a plan in mines that employ fewer than 20 persons, and 4 hours in mines that employ 20 or more persons. The one-time costs are annualized using an annualization factor of 0.07.

Paragraph (b) requires the following information, at a minimum, to be included in a training plan:

(1) The company name, mine name, and MSHA mine identification number;

(2) The name and position of the person designated by you who is responsible for the health and safety training at the mine. This person may be the operator;

(3) A general description of the teaching methods and the course materials that are to be used in providing the training, including the subject areas to be covered and the approximate time to be spent on each subject area;

(4) A list of the persons who will provide the training, and the subject areas in which each person is competent to instruct; and

(5) The evaluation procedures used to determine the effectiveness of training.

Paragraph (c) requires a plan that does not include the minimum information specified in paragraph (b) to be approved by us. For each size category, we estimate that 20 percent of you will choose to write a plan and send it to us for approval. Thus, the mines affected by this provision are—

(1) 672 mines that employ 5 or fewer workers;

(2) 293 mines that employ between 6 and 19 workers; and

(3) 57 mines that employ 20 or more workers.

MSHA estimates that it would take a clerical worker, earning $17 per hour, about 0.1 hours per mine to photocopy and mail the training plan. The one-time costs are annualized using an annualization factor of 0.07.

Paragraph (d) requires you to provide miners' representatives with a copy of the training plan. At mines where no miners' representative has been designated, you must post a copy of the plan at the mine or provide a copy to each miner. The mines affected by this provision are—

(1) 3,361 mines that employ 5 or fewer workers;

(2) 1,467 mines that employ between 6 and 19 workers; and

(3) 285 mines that employ 20 or more workers.

MSHA estimates that a clerical worker, earning $17 per hour, would take 0.1 hours to photocopy the plan and either deliver or post the plan. The one-time costs are annualized using an annualization factor of 0.07.

Paragraph (e) provides that within 2 weeks following receipt or posting of the training plan, miners or their representatives may submit written comments on the plan to you, or to the Regional Manager, as appropriate. The burden hours and costs of this provision are not borne by you, but by miners and their representatives.

MSHA estimates that a miner or miners' representative would submit comments for 5 percent of the affected mines in each size category. The mines affected by this provision are—

(1) 168 mines that employ 5 or fewer workers;

(2) 73 mines that employ between 6 and 19 workers; and

(3) 14 mines that employ 20 or more workers.

MSHA estimates that a miner or miners' representatives, earning $23 per hour, would take 2 hours per affected mine to prepare written comments. The one-time costs are annualized using an annualization factor of 0.07.

Paragraph (g) allows you, miners, and miners' representatives to appeal a decision of the Regional Manager in writing to the Director for Education Policy and Development. The Director would issue a decision on the appeal within 30 days after receipt of the appeal. The mines affected by this provision are—

(1) 13 mines that employ 5 or fewer workers;
(2) 6 mines that employ between 6 and 19 workers; and
(3) 1 mine that employees 20 or more workers.

MSHA estimates that for 90% of you who would appeal a decision, a mine supervisor would write the appeal. MSHA estimates that a mine supervisor, earning $36 per hour, would take 4 hours to write the appeal. The one-time costs are annualized using an annualization factor of 0.07.

MSHA further estimates that for the remaining 10% of you who would appeal a decision, an attorney (a third party) would write the appeal. There are no mine operator burden hours in this case, because you would pay the third party for its services. The attorney fee to handle an appeal process is estimated to be $2,000 per appeal, and this cost is annualized using an annualization factor of 0.07.

Paragraph (h) requires you to make available at the mine site a copy of the current training plan for inspection by MSHA and for examination by miners and their representatives. If the training plan is not maintained at the mine site, you must have the capability to provide the plan upon request by MSHA, miners, or their representatives. The mines affected by this provision are—

(1) 3,361 mines that employ 5 or fewer workers;
(2) 1,467 mines that employ between 6 and 19 workers; and
(3) 285 mines that employ 20 or more workers.

MSHA estimates that a clerical worker, earning $17 per hour, would take 0.1 hours to photocopy and file the training plan. The one-time costs are annualized using an annualization factor of 0.07.

Paragraph (a) of § 46.5 requires you to provide each new miner with no less than 24 hours of training. Miners who have not received the full 24 hours of new miner training must work under the close supervision of an experienced miner. The mines affected by this provision are—

(1) 3,361 mines that employ 5 or fewer workers;
(2) 1,467 mines that employ between 6 and 19 workers; and
(3) 285 mines that employ 20 or more workers.

MSHA estimates that for each mine, a mine supervisor, earning $36 per hour, would take 6 hours annually to prepare for the new miner training. MSHA further estimates that the average number of training sessions the mine supervisor would provide annually are—

(1) 0.46 sessions for mines that employ 5 or fewer workers;
(2) 0.64 sessions for mines that employ between 6 and 19 workers; and
(3) 0.82 sessions for mines that employ 20 or more workers.

On average, each training session is estimated to last 13.48 hours.

Additionally, we estimate that part of new miner training would be provided off-site by a third party. You would pay the third party for providing this part of the new miner training; thus you would incur burden costs but no burden hours. The number of miners receiving off-site training are—

(1) 1,537 miners in mines that employ 5 or fewer workers;
(2) 1,877 miners in mines that employ between 6 and 19 workers; and
(3) 940 miners in mines that employ 20 or more workers.

The annual costs for off-site training are $130 per miner. This consists of the following: a $35 training fee; $30 for transportation to off-site training; $30 per diem for meals; and $35, on average, for overnight lodging (We assume that half of the miners receiving off-site training will require overnight lodging for one night at $70 per night, or 0.5 × $70).

Paragraph (a) of § 46.6 requires you to provide each newly-hired experienced miner with certain training before the miner begins work. The mines affected by this provision are—

(1) 3,361 mines that employ 5 or fewer workers;
(2) 1,467 mines that employ between 6 and 19 workers; and
(3) 285 mines that employ 20 or more workers.

MSHA estimates that it would take a mine supervisor, earning $36 per hour, 1 hour annually to prepare to give the experienced miner training. MSHA further estimates that the average number of training sessions the mine supervisor would provide annually are—

(1) 0.45 sessions for mines that employ 5 or fewer workers;
(2) 0.63 sessions for mines that employ between 6 and 19 workers; and
(3) 0.81 sessions for mines that employ 20 or more workers.

On average, each training session is estimated to last 3 hours.

Paragraph (a) of § 46.7 requires that before a miner performs a task for which he or she has no experience, you must train the miner in the safety and health aspects and safe work procedures specific to that task. If changes have occurred in a miner's regularly assigned task, you must provide the miner with training that addresses the changes. The mines affected by this provision are—

(1) 3,361 mines that employ 5 or fewer workers;
(2) 1,467 mines that employ between 6 and 19 workers; and
(3) 285 mines that employ 20 or more workers.

MSHA estimates that for each mine, a mine supervisor, earning $36 per hour, would take 0.25 hours annually to prepare for the task training. MSHA further estimates that the average number of training sessions the mine supervisor would provide annually are—

(1) 2.36 sessions for mines that employ 5 or fewer workers;
(2) 8.65 sessions for mines that employ between 6 and 19 workers; and
(3) 41.17 sessions for mines that employ 20 or more workers.

On average, each training session is estimated to last 0.6 hours.

Paragraph (a) of § 46.8 requires that at least every 12 months, you must provide each miner with no less than 8 hours of refresher training. The mines affected by this provision in each size category are—

(1) 3,361 mines that employ 5 or fewer workers;
(2) 1,467 mines that employ between 6 and 19 workers; and
(3) 285 mines that employ 20 or more workers.

MSHA estimates that for each mine, a mine supervisor, earning $36 per hour, would take 3 hours to prepare for the task training. MSHA further estimates that the average number of training sessions the mine supervisor would provide annually are—

(1) 0.91 sessions for mines that employ 5 or fewer workers;
(2) 0.94 sessions for mines that employ between 6 and 19 workers; and
(3) 2.02 sessions for mines that employ 20 or more workers.

On average, each training session is estimated to last 8 hours.

Paragraph (a) of § 46.9 requires you, upon completion of each training program, to record and certify on MSHA Form 5000–23, or on a form that contains the required information, that the miner has completed the training. False certification that training was

completed is punishable under § 110(a) and (f) of the Act. For all records required to be kept in §§ 46.5, 46.6, 46.7, and 46.8, MSHA estimates that for each mine, a mine supervisor, earning $36 per hour, would take 0.05 hours to record and certify each miner's training record. In addition, it would take a clerical worker, earning $17 per hour, 0.05 hours to prepare, copy, and distribute the certificate.

The annual number of training records required to be kept under § 46.5 (New miner training) are—

(1) 1,537 in mines that employ 5 or fewer workers;
(2) 1,877 in mines that employ between 6 and 19 workers; and
(3) 940 in mines that employ 20 or more workers.

The annual number of training records required to be kept under § 46.6 (Newly-hired experienced miner training) are—

(1) 1,516 in mines that employ 5 or fewer workers;
(2) 1,856 in mines that employ between 6 and 19 workers; and
(3) 930 in mines that employ 20 or more workers.

The annual number of training records required to be kept under § 46.7 (New task training) are—

(1) 18,446 in mines that employ 5 or fewer workers;
(2) 41,273 in mines that employ between 6 and 19 workers; and
(3) 41,380 in mines that employ 20 or more workers.

The annual number of training records required to be kept under § 46.8 (Annual refresher training) are—

(1) 6,149 in mines that employ 5 or fewer workers;
(2) 13,758 in mines that employ between 6 and 19 workers; and
(3) 13,793 in mines that employ 20 or more workers.

During the public meetings, numerous commenters stated that records should not have to be retained at the mine site. MSHA agrees and the proposed rule provides that records are not required to be maintained at the mine site, and therefore can be electronically filed in a central location, so long as the records are made available to the authorized representative of the Secretary upon request within a reasonable time, in most cases one day.

Although the proposed rule does not require backing up the data, some means are necessary to ensure that electronically stored information is not compromised or lost. MSHA encourages mine operators who store records electronically to provide a mechanism that will allow the continued storage and retrieval of records in the year 2000.

MSHA solicits comment on what actions would be required, if any, to facilitate the maintenance of records in electronic form by those mine operators who desire to do so, while ensuring access in accordance with these requirements.

Paragraph (a) of § 46.11 requires you to provide site-specific hazard training to—

(1) Scientific workers;
(2) Delivery workers and customers;
(3) Occasional, short-term maintenance or service workers, or manufacturers' representatives; and
(4) Outside vendors, visitors, office or staff personnel who do not work at the mine site on a continuing basis.

The annual number of non-miners to be trained are—

(1) 50 non-miners in each of the 3,361 mines that employ 5 or fewer workers;
(2) 100 non-miners in each of the 1,467 mines that employ between 6 and 19 workers; and
(3) 200 non-miners in each of the 285 mines that employ 20 or more workers.

No record is required for this type of training. The burden is for the time the miner takes to provide the training. MSHA estimates that for each mine, a miner, earning $23 per hour, would take 0.15 hours annually, on average, to provide hazard training.

III. Executive Order 12866 and Regulatory Flexibility Act

Executive Order (E.O.) 12866 requires that regulatory agencies assess both the costs and benefits of intended regulations. Based upon the economic analysis, we have determined that this proposed rule is not an economically significant regulatory action pursuant to section 3(f)(1) of E.O. 12866. MSHA does consider the proposed rule to be significant under section 3(f)(4) of the E.O. because of widespread interest in the rule, and has submitted the proposal to OMB for review.

The Regulatory Flexibility Act (RFA) requires regulatory agencies to consider a rule's impact on small entities. Under the RFA, MSHA must use the Small Business Administration's (SBA) definition for a small mine of 500 or fewer employees or, after consultation with the SBA Office of Advocacy, establish an alternative definition for the mining industry by publishing that definition in the **Federal Register** for notice and comment. In this proposed rule, none of the affected mines have 500 or more employees. Therefore for the purposes of the RFA, all of the affected mines are considered small. MSHA has analyzed the impact of the proposed rule on mines with 20 or more employees, mines with 6–19 employees, and mines with 1–5 employees. MSHA has determined that this proposed rule would not impose a substantial cost increase on small mines.

MSHA has prepared a Preliminary Regulatory Economic Analysis (PREA) and Regulatory Flexibility Certification Statement to fulfill the requirements of E.O. 12866 and the Regulatory Flexibility Act. This PREA is available from MSHA upon request and is posted on our Internet Homepage at www.msha.gov.

Regulatory Flexibility Certification Statement

Based on MSHA's analysis of costs and benefits, the Agency certifies that this proposed rule would not impose a significant economic impact on a substantial number of small entities.

Factual Basis for Certification

General approach: The Agency's analysis of impacts on "small entities" begins with a "screening" analysis. The screening compares the estimated compliance costs of the proposed rule for small mine operators in the affected sector to the estimated revenues for that sector. When estimated compliance costs are less than 1 percent of estimated revenues (for the size categories considered) the Agency believes it is generally appropriate to conclude that there is no significant impact on a substantial number of small entities. When estimated compliance costs approach or exceed 1 percent of revenue, it tends to indicate that further analysis may be warranted. The Agency welcomes comment on its approach in this regard.

Derivation of costs and revenues: In the case of this proposed rule, because the compliance costs must be absorbed by the nonmetal mines affected by this rule, the Agency decided to focus its attention exclusively on the relationship between costs and revenues for these mines, rather than looking at the entire metal and nonmetal mining sector as a whole.

In deriving compliance costs there were areas where different assumptions had to be made for small mines in different employment sizes in order to account for the fact that the mining operations of small mines are not the same as those of large mines. For example, different assumptions for mine size categories were used to derive compliance costs concerning: the number of persons trained per mine and the number of training sessions a mine would have annually. In determining revenues for the nonmetal mines

affected by this rulemaking, MSHA multiplied the production data (in tons) by the price per ton of the commodity.

The Agency welcomes comment on sources that can help it more accurately estimate revenues for the final rule or other rules confined to this sector.

Results of screening analysis. As shown in Table V–1 with respect to the nonmetal mines affected by this rule that have 1 through 5 workers, the estimated costs of the rule as a percentage of their revenues are 0.30 percent. For nonmetal mines covered by this rule that have 6 through 19 workers, the estimated costs of the rule as a percentage of their revenues are 0.13 percent. For nonmetal mines covered by this rule that have 20 or more workers, the estimated costs of the rule as a percentage of their revenues are 0.03 percent. Finally, for all nonmetal mines covered by this rule (which are mines that have 500 or less workers), the estimated costs of the rule as a percentage of their revenues are 0.09 percent.

In every case, the impact of the proposed compliance costs is substantially less than 1 percent of revenues, well below the level suggesting that the proposed rule might have a significant impact on a substantial number of small entities. Accordingly, MSHA has certified that there is no such impact for small entities that mine the commodities that are covered by this rule.

As required under the law, MSHA is complying with its obligation to consult with the Chief Counsel for Advocacy on this proposed rule, and on the Agency's certification of no significant economic impact on the mines affected by this rule. Consistent with Agency practice, notes of any meetings with the Chief Counsel's office on this proposed rule, or any written communications, will be placed in the rulemaking record. The Agency will continue to consult with the Chief Counsel's office as the rulemaking process proceeds.

TABLE V–1.—EXEMPT NONMETAL MINES COVERED BY THE PROPOSED RULE[a]

[Dollars in thousands]

Employment size	Estimated costs	Estimated revenues[b]	Costs as percentage of revenues
(1–5)	5,857	1,949,366	0.30
(6–19)	5,883	4,555,543	0.13
(20 or more)	3,154	9,756,081	0.03
All Mines[c]	14,894	16,260,990	0.09

[a] All mines covered by the proposed rule are surface mines.

[b] Data for revenues derived from U.S. Department of the Interior/U.S. Geological Survey. *Mining and Quarrying Trends, 1997 Annual Review.* 1997. Tables 2 and 3.

[c] Every mine affected by rule has 500 or fewer employees.

Compliance Costs

MSHA estimates that the total net cost of the proposed new 30 CFR part 46 training requirements would be approximately $16.2 million annually, of which about $14.9 million would be borne by mine operations in the following surface nonmetal mining sectors: shell dredging, sand, gravel, stone, clay, colloidal phosphate, and limestone. Since fiscal year 1980, Congress has prohibited MSHA from enforcing existing MSHA health and safety training regulations in 30 CFR part 48 at mines ("exempt mines") in these sectors of the surface nonmetal mining industry. The exempt mines that are not currently in compliance with the existing part 48 training requirements would incur costs of approximately $17 million annually to comply with the proposed rule, while those currently in compliance with the existing part 48 training requirements would derive savings of approximately $2.1 million annually.

Over the past 20 years, MSHA has consistently categorized a mine as being small if it employs fewer than 20 workers and as being large if it employs 20 or more workers. For the purposes of this PREA, however, MSHA has identified three mine size categories based on the number of employees, which are relevant to the estimation of the cost of the proposed rule: (1) Mines employing 5 or fewer workers; (2) mines employing between 6 and 19 workers; and (3) mines employing 20 or more workers. These mine categories are important because they are believed to have significantly different compliance rates for existing part 48 training requirements. For this proposed rule, MSHA estimates that the following percentages of exempt mines by size category are currently not in compliance with existing part 48 requirements: 60 percent of mines with 5 or fewer workers; 40 percent of mines with between 6 and 19 workers; and 20 percent of mines with 20 or more workers.

In 1997, there were 10,152 exempt mines covered by the proposed rule. MSHA estimates that the average cost per exempt mine to comply with the proposed rule would be approximately $1,500 annually. For the 5,297 exempt mines with 5 or fewer workers, MSHA estimates that the average cost of the proposed rule per mine would be approximately $1,100 annually. For the 3,498 exempt mines with between 6 and 19 employees, MSHA estimates that the average cost of the proposed rule per mine would be approximately $1,700 annually. For the 1,357 exempt mines with 20 or more employees, MSHA estimates that the average cost of the proposed rule per mine would be approximately $2,300 annually.

These costs per mine may be slightly misleading insofar as the exempt mines currently in compliance with part 48 training requirements would also be substantially in compliance with the proposed rule and would therefore incur no compliance costs. In fact, as noted above, these mines would derive savings of approximately $2.1 million annually as a result of the proposed rule. For the exempt mine operators (including independent contractors that employ miners) not currently in compliance with part 48 training requirements, the annual cost of complying with the proposed rule would, on average, be approximately $1,800 per mine operator with 5 or fewer workers; $4,400 per mine operator with between 6 and 19 workers; and $15,500 per mine operator with 20 or more workers.

Table IV–1 from the PREA summarizes the yearly costs of the proposed rule by mine size and by provision.

TABLE IV–1.—SUMMARY OF YEARLY COMPLIANCE COSTS FOR THE PROPOSED RULE*

Requirement/provision	Mines with 1–5 employees	Mines with 6–19 employees	Mines with 20+ employees	Total cost for all mines	Total cost for other parties	Total cost
§ 46.3	$18,567	$8,102	$3,013	$29,682	$841	$30,523
§ 46.5	2,431,069	1,943,402	762,385	5,136,856		5,136,856
§ 46.6	389,353	281,137	99,589	770,079		770,079
§ 46.7	225,783	450,693	441,197	1,117,672		1,117,672
§ 46.8	2,131,047	2,520,492	1,482,488	6,134,027		6,134,027
§ 46.9	81,563	173,352	168,280	423,195		423,195
§ 46.11	579,807	506,046	196,788	1,282,641	1,282,641	2,565,282
Total	5,857,188	5,883,255	3,153,740	14,894,153	1,283,482	16,177,635

*Source: Table IV–12, Table IV–17, Table IV–19, Table IV–20; Table IV–23, Table IV–25, and Table IV–26.

Benefits

Safety and health professionals from all sectors of industry recognize that training is a critical element of an effective safety and health program. Training informs miners of safety and health hazards inherent in the workplace and enables them to identify and avoid such hazards. Training becomes even more important in light of certain factors that can exist when production demands increase, such as an influx of new and less experienced miners and mine operators; longer work hours to meet production demands; and increased demand for contractors who may be less familiar with the dangers on mine property.

Although there may be some differences in production technology and the production environment between the exempt mining industry and other surface nonexempt mining industries, the data presented in Chapter III of the PREA show that the lack of training in exempt mines contributes significantly to the disproportionate number of fatalities that occur at such mines. From 1993 to 1997, there were 200 fatalities at surface mines, of which 163 occurred at exempt mines. Thus, exempt mines accounted for 82 percent of all fatalities at surface mines. During the same period, however, employees at exempt mines accounted for only 64 percent of the total number of hours worked at surface mines.

One of the major reasons that exempt mines experience a higher fatality rate than the surface mining industry as a whole is that smaller operations, those which employ fewer than 20 workers, make up the vast majority of exempt mines. These small operations have the highest rates of noncompliance with part 48 training and, not surprisingly, the highest fatality rates.

It is plausible to assert that at least some of these fatalities may have been prevented if victims had received appropriate, basic miner safety training. Similarly, MSHA believes that compliance with the requirements of this proposed training rule would, in turn, reduce the number of fatalities at exempt mines. As discussed in greater detail in Chapter III of the PREA, MSHA estimates that compliance with the proposed rule would prevent about 10 fatalities per year. Although not quantified, MSHA further expects that better trained exempt miners would have a positive impact on reducing mining accidents, injuries, and illnesses. MSHA believes that this proposed rule would make training more responsive to the needs of the industry and more effective for individual miners, thereby raising the compliance rate and reducing mine injuries and fatalities.

IV. Executive Order 12875: Enhancing the Intergovernmental Partnership

Executive Order (E.O.) 12875 requires executive agencies and departments to reduce unfunded mandates on State, local, and tribal governments; to consult with these governments prior to promulgation of any unfunded mandate; and to develop a process that permits meaningful and timely input by State, local, and tribal governments in the development of regulatory proposals containing a significant unfunded mandate. E.O. 12875 also requires executive agencies and departments to increase flexibility for State, local, and tribal governments to obtain a waiver from Federal statutory or regulatory requirements.

There are 152 sand and gravel, surface limestone, and stone operations that are run by State, local, or tribal governments for the construction and repair of highways and roads. We believe that all of these state-owned mines are in compliance with the proposed rule's provisions. The Agency specifically solicits comments and any data to either support or refute this assumption.

V. Unfunded Mandates Reform Act of 1995

We have determined that, for purposes of section 202 of the Unfunded Mandates Reform Act of 1995, this proposed rule does not include any federal mandate that may result in increased expenditures by State, local, or tribal governments in the aggregate of more than $100 million, or increased expenditures by the private sector of more than $100 million. Moreover, the Agency has determined that for purposes of section 203 of that Act, this proposed rule does not significantly or uniquely affect these entities.

Background

The Unfunded Mandates Reform Act was enacted in 1995. While much of the Act is designed to assist the Congress in determining whether its actions will impose costly new mandates on State, local, and tribal governments, the Act also includes requirements to assist federal agencies to make this same determination with respect to regulatory actions.

Analysis

Based on the analysis in the Agency's PREA, the net compliance cost of this proposed rule for the surface nonmetal mine operators is about $14.9 million per year. Accordingly, there is no need for further analysis under section 202 of the Unfunded Mandates Reform Act.

MSHA has concluded that small governmental entities are not significantly or uniquely impacted by the proposed regulation. MSHA estimates that approximately 185 sand and gravel, surface limestone, and stone operations are run by State, local, or tribal governments. The Agency believes that all of these state-owned mines are in compliance with the proposed rule's provisions.

When MSHA issues the proposed rule, we will affirmatively seek input of any State, local, and tribal government which may be affected by this

rulemaking. This would include state and local governmental entities that operate sand and gravel, surface limestone, and stone operations in the construction and repair of highways and roads. MSHA will mail a copy of the proposed rule to approximately 185 such entities.

VI. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks

In accordance with E.O. 13045, MSHA has evaluated the environmental health and safety effects of the proposed rule on children. MSHA has determined that the proposed rule would have no effect on children.

VII. Executive Order 13084 (Consultation and Coordination With Indian Tribal Governments)

MSHA certifies that the proposed rule would not impose substantial direct compliance costs on Indian tribal governments.

VIII. Statutory and Rulemaking Background

Until 1977, the metal and nonmetal mining industries and the coal mining industry were covered by separate occupational health and safety statutes. The Federal Coal Mine Health and Safety Act of 1969 (1969 Coal Act) governed the coal mining industry. The Federal Metal and Nonmetallic Mine Safety Act of 1966 (1966 Metal Act) governed the metal and nonmetal mining industries. The 1966 Metal Act was the first federal statute directly regulating non-coal mines. The 1969 Coal Act authorized promulgation of mandatory safety and health standards for coal mines, but the safety and health regulations promulgated under the 1966 Metal Act for metal and nonmetal mines were largely advisory.

Passage of the Federal Mine Safety and Health Act of 1977 (1977 Act), 30 U.S.C. 801 *et seq.*—

(1) placed coal mines and metal and nonmetal mines under a single statute;

(2) substantially increased the health and safety protections afforded all miners, but particularly metal and nonmetal miners; and

(3) applied to all mining and mineral processing operations in the United States, regardless of size, number of employees, or method of extraction.

Thus, the Mine Safety and Health Administration (MSHA), the agency charged with carrying out the mandates of the 1977 Mine Act, regulates and inspects two-person sand and gravel pits, as well as large underground coal mines and processing plants employing hundreds of miners.

Neither the 1969 Coal Act nor the 1966 Metal Act contained comprehensive requirements for health and safety training of miners. However, in the 1977 Mine Act, Congress clearly recognized training as an important tool for preventing accidents and avoiding unsafe and unhealthful working conditions in the nation's mines. Consistent with this determination, section 115 of the 1977 Act directed the Secretary of Labor to promulgate regulations requiring that mine operators subject to the Act establish a safety and health training program for their miners.

MSHA published regulations in 30 CFR part 48 on October 13, 1978 (43 FR 47453), implementing section 115 of the 1977 Mine Act. At that time, certain segments of the mining industry strongly believed that the new training regulations were designed for large and highly technical operations and, therefore, were inappropriate and impractical for smaller surface nonmetal mines. Industry representatives expressed their concern over the difficulties that many small nonmetal operators would have in complying with part 48 and requested relief from its comprehensive specifications.

In 1979, various segments of the metal and nonmetal mining industry raised concerns with Congress regarding the appropriateness of applying the requirements of part 48 to their operations. Congress responded by inserting language in the Department of Labor's appropriations bill that prohibited the expenditure of appropriated funds to enforce training requirements at approximately 10,200 surface nonmetal work sites. Congress has inserted this language into each Department of Labor appropriations bill since fiscal year 1980. This language specifically prohibits the use of appropriated funds to:

* * * carry out § 115 of the Federal Mine Safety and Health Act of 1977 or to carry out that portion of § 104(g)(1) of such Act relating to the enforcement of any training requirements, with respect to shell dredging, or with respect to any sand, gravel, surface stone, surface clay, colloidal phosphate, or surface limestone mine.

This language remains in place under our appropriations contained in the Omnibus Appropriations Act for 1999, P.L. 105–277, signed by the President on October 21, 1998. The 1999 training rider, however, authorizes us to expend funds to propose and promulgate final training regulations by September 30, 1999, for operations affected by the prohibition.

IX. General Discussion

Crushed stone and sand and gravel account for the majority of operations where we cannot enforce training requirements. The United States Geological Survey, United States Department of the Interior (USGS), derives domestic production data for crushed stone and sand and gravel from voluntary surveys of U.S. producers. USGS makes these data available in quarterly Mineral Industry Surveys and in annual Mineral Commodities Summaries. Annual crushed stone tonnage ranks first in the nonfuel minerals industry, with annual sand and gravel tonnage ranking second. USGS data show that domestic production of sand and gravel and crushed stone increased every year between 1991 and 1999, an indication of the continuing strong demand for construction aggregates in the United States.

The number of hours worked at sand and gravel and crushed stone operations has been increasing steadily since 1991. In 1991, the hours worked at crushed stone operations totaled approximately 104 million employee-hours, rising to 117 million employee-hours in 1997. Similarly, the number of employee-hours at sand and gravel operations rose from approximately 65 million in 1991 to 72 million in 1997. Based on hours reported for the first nine months of 1998, the total hours worked for 1998 will exceed the total hours worked in 1997. Although some of the increase in hours worked may result from longer workdays, the data strongly suggest that the aggregates industry workforce is growing.

Crushed stone and sand and gravel are essential and used widely in all major construction activities, including highway, road, and bridge construction and repair projects, as well as residential and nonresidential construction. Although crushed stone is also used as a basic raw material in agricultural, and chemical and metallurgical processes, it is used mostly by the construction industry. The construction industry also is by far the largest consumer of sand and gravel. Consequently, the level of construction activity largely determines the demand for, and resulting production levels of, these aggregate materials.

On June 9, 1998, President Clinton signed the Transportation Equity Act for the 21st Century, commonly known as "TEA–21" (Pub. L. 105–178), which authorizes highway, highway safety, transit, and other surface transportation programs for the fiscal years 1998 to 2003. The demand for materials

produced by the surface nonmetal mining industry is anticipated to increase substantially due to, in significant part, transportation infrastructure construction resulting from the recent enactment of TEA–21. TEA–21 builds on the initiatives established in the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), which was the last major authorizing legislation for surface transportation. As the largest public works legislation in the nation's history, appropriating almost $218 billion for highway and transit programs, TEA–21 provides a 40 percent funding increase over the ISTEA levels for such programs.

In addition to the passage of TEA–21, other factors may also contribute to the continued growth in construction activity and, thus, the demand for aggregate materials. These include a healthy U.S. economy in general, low interest rates, and adverse weather conditions, such as from El Niño and La Niña, which have damaged and destroyed homes, roads, and bridges in various parts of the country.

Since fiscal year 1980, the year in which the congressional appropriations rider took effect, more than 600 miners have been killed in occupationally related incidents at mines where we cannot enforce miner training requirements ("exempt mines"). The rider affects approximately 10,200 surface nonmetal mines and 120,000 miners. Approximately 9,200 of these sites are surface aggregate operations (sand and gravel and crushed stone); the remainder are surface operations mining other commodities such as clay or colloidal phosphate.

Our data indicate that, of the 200 miners involved in fatal accidents at surface metal and nonmetal mines from 1993 to 1997, about 80% (163 miners) worked at exempt mines. During this same period, the annual number of fatal accidents at exempt mines almost doubled (from 24 fatalities in 1993 to 45 fatalities in 1997). In each of the years 1996 and 1997, 90% of fatalities at surface metal and nonmetal mines occurred at operations affected by the appropriations rider.

A large proportion of exempt mines are smaller operations, which experience a higher fatality rate than larger operations. For example, of the 9,200 aggregate mines, approximately 4,900 employ five or fewer miners, and approximately 8,100 employ fewer than 20 miners. Long-term data show that mines with fewer than six employees are three times as likely to experience fatalities as mines with 20 or more workers. Also, mines with between six and 19 employees are more than two times as likely to have fatal accidents as operations with larger workforces.

Several other reasons may contribute to the number of fatal accidents, including—

(1) An influx of new and less experienced miners and mine operators;

(2) Longer work hours to meet production demands; and

(3) Increased demand for contractors who may be less familiar with the dangers on mine property. All of these factors are also more likely to exist when production activity accelerates to meet increases in demand.

We believe that some of these fatalities may have been prevented if victims had received appropriate, basic miner safety training. Our fatal accident investigations show that the majority of miners involved in fatal accidents at mines affected by the rider had not received health and safety training that complied with the requirements of part 48. In 1997, for example, 80% of fatal accident victims at exempt mines had not received health and safety training in accordance with part 48.

Safety and health professionals from all sectors of industry recognize that training is a critical element of an effective safety and health program. Training of new employees, refresher training for experienced miners, and training for new tasks serve to inform workers of safety and health hazards inherent in the workplace and, just as important, to enable workers to identify and avoid those hazards. Congress clearly recognized these principles by specifically including training provisions in the 1977 Mine Act.

The legislative history to the 1999 Appropriations Act reveals congressional concern with our inability to enforce training requirements for the exempt industries. The Senate Report associated with the Senate appropriations bill for fiscal year 1999 states:

> The Committee has continued language carried in the bill since fiscal year 1980 prohibiting the use of funds to carry out the training provisions of the Mine Act with respect to shell dredging, or with respect to any sand, gravel, surface stone, surface clay, colloidal phosphate, or surface limestone mine. The Committee recommends including this language for another year. However, the Committee finds the agency's data regarding the number of untrained workers in these industries who are exposed to the risks and hazards associated with the mining environment disturbing. Therefore, the Committee intends for fiscal year 1999 to be the last year this provision will be contained in the bill.

S. Rep. No. 105–300 for S. 2440, 105th Cong., 2d Sess., (1998).

In the Conference Report to the Omnibus Appropriations Act for 1999, Congress recognizes the high priority that employee safety and health training should have for the mining industry. However, Congress also notes that both we and the industries affected by the rider acknowledge that existing part 48 regulations do not address either the industries' or miners' needs in the most effective manner. In the Report, Congress reaffirms the priority to provide health and safety training for miners and directs us to expeditiously develop appropriate training regulations for miners working in these industries. The Conference Report also specifies that we must submit a progress report on the training regulations before appropriations hearings on our fiscal year 2000 budget and that we work cooperatively with labor and industry representatives to disseminate information on the revised training requirements in the period between the publication of the final rule and its effective date.

The Conference Report language specifically instructs us to:

> * * * work with the affected industries, mine operators, workers, labor organizations, and other affected and interested parties to promulgate final training regulations for the affected industries by September 30, 1999. It is understood that these regulations are to be based on a draft submitted to MSHA by the Coalition [for Effective Miner Training] no later than February 1, 1999.

H.R. Rep. No. 105–825 for H.R. 4328, 105th Cong., 2d Sess. (1998).

The Coalition for Effective Miner Training (Coalition) consists of associations that represent industries currently exempt from miner training requirements. Coalition members include:

American Portland Cement Alliance
China Clay Producers Association
Dry Branch Kaolin Company
Georgia Crushed Stone Association
Georgia Mining Association
Indiana Mineral Aggregates Association
National Aggregates Association
National Industrial Sand Association
National Lime Association
National Stone Association
North Carolina Aggregates Association
Arizona Rock Products Association
Construction Materials Association of California
Sorptive Minerals Institute
United Metro Materials
Virginia Aggregates Association

In 1998, the Coalition initiated a process to outline an alternative regulatory approach to part 48 for miner training in the exempt industries. This process included working with industry and labor organizations during the course of the development of its

proposal. On February 1, 1999, the congressionally established deadline, the Coalition presented us with a final joint industry/labor draft proposed rule.

To facilitate the broadest possible input from the regulated public, we held seven preproposal public meetings throughout the country in December 1998 and January 1999 to solicit comments on development of the miner training rule for exempt mines. We selected meeting locations in California, Colorado, Georgia, Illinois, New York, Oregon, and Texas to provide as many miners, miners' representatives, and mine operators, both large and small, with the opportunity to attend at least one of the meetings and present their views. The public was encouraged to comment on any issue related to miner safety and health training at exempt mines. The **Federal Register** notice announcing the schedule of public meetings (63 FR 59258, November 3, 1998) listed key issues on which we were specifically interested in receiving comments. The issues included:

- Should certain terms, including "new miner" and "experienced miner" be defined?
- Which subjects should be taught before a new miner is assigned work, even if the work is done under close supervision?
- Should training for inexperienced miners be given all at once, or over a period of time, such as several weeks or months?
- Should supervisors be subject to the same training requirements as miners?
- Should task training be required whenever a miner receives a work assignment that involves new and unfamiliar tasks?
- Should specific subject areas be covered during annual refresher training? If so, what subject areas should be included?
- Can the 8 hours of annual refresher training required by the Mine Act be completed in segments of training lasting less than 30 minutes?
- Should the records of training be kept by the mine operator at the mine site, or can they be kept at other locations?
- Should there be minimum qualifications for persons who conduct miner training? If so, what qualifications are appropriate?

More than 220 individuals, including representatives from the Coalition, labor, contractors, mining associations, State agencies, small and large operators, and trainers, attended the meetings. Many of the attendees made oral presentations at the meeting, offering their views on effective miner training. In addition, we have received a number of written comments on how to ensure effective miner safety and health training.

Speakers at the public meetings and other commenters generally emphasized the importance of developing a training rule that provides you with the flexibility to tailor your miner training programs to your particular operations and workforce. Several speakers underscored the need for practical and workable training requirements to meet the needs of the wide variety of mines that will be affected by the new training rule. Others commented on training for employees of independent contractors working on mine property, recordkeeping requirements, and appropriate qualifications for persons who will provide training. In addition, speakers at every meeting commented on the need for consistent implementation of the final training rule and the increased involvement of MSHA and the state grantees in providing training assistance and materials.

X. Discussion of the Proposed Rule

A. Statutory Requirements

Section 115(a) of the 1977 Act authorizes the Secretary of Labor to promulgate miner health and safety training regulations; section 115(a), (b), and (c) also include minimum requirements for miner training programs. The training regulations proposed here for miners working at shell dredging, sand, gravel, surface stone, surface clay, colloidal phosphate, and surface limestone operations are consistent with these minimum requirements, which provide among other things, that:

- Each operator must have a health and safety program approved by the Secretary of Labor;
- Each approved training program for new surface miners must provide for at least 24 hours of training in certain specific courses, including:
- The statutory rights of miners and their representatives under the Act;

Use of self-rescue and respiratory devices, where appropriate;
Hazard recognition;
Emergency procedures;
Electrical hazards;
First aid;
Walkaround training; and
The health and safety aspects of the task to which the miner will be assigned;

- Each approved training program must provide for at least eight hours of refresher training every 12 months for all miners;
- Miners reassigned to new tasks must receive task training prior to performing that task;
- New miner training and new task training must include a period of training as closely related as is practicable to the miner's work assignment;
- Training must be provided during normal working hours;
- During training, miners must be paid at their normal rate of compensation and reimbursed for any additional cost for attending training;
- Upon completion of each training program, each operator must certify, on a form approved by the Secretary, that the miner has received the specified training in each subject area of the approved health and safety training plan;
- A certificate for each miner must be maintained by the operator, and be available for inspection at the mine site;
- A copy of the certificate must be given to each miner at the completion of the training;
- When a miner leaves the operator's employ, the miner is entitled to a copy of his or her health and safety training certificates;
- False certification by an operator that training was given is punishable under section 110(a) and (f) of the 1977 Mine Act; and
- Each health and safety training certificate must indicate on its face, in bold letters, printed in a conspicuous manner, that such false certification is so punishable.

The proposed training rule takes a performance-oriented approach, where possible, to afford currently exempt operations, particularly small operations, the flexibility to tailor miner training to their particular needs and methods of operation. For example, the proposal would give you the latitude to choose many of the topics addressed in training and the amount of time to be spent on each topic. Also it would allow you to keep training records in a format of your choice, as long as the records include the minimum information specified in the rule.

B. Summary of Proposed Rule

We currently anticipate that the part 46 final rule will be consistent with existing part 48 training requirements, so that those of you who have implemented a safety and health training program that complies with part 48 would not have to alter your programs to comply with proposed part 46. However, we request comment on whether the final rule should specifically allow you the option of complying with the requirements of part 48, in lieu of part 46.

The proposed rule would require you to develop and implement a written training plan that includes programs for training new and experienced miners, training miners for new tasks, annual refresher training, and hazard training. Plans that include the minimum information specified in the proposal would be considered approved by us and would not be required to be submitted to us for formal review, unless you, the miners, or miners' representative requests it.

The proposal would require new miners to receive 24 hours of training within 60 days of employment. Instruction in four specific areas must be provided before the miner begins work—

(1) Introduction to the work environment;
(2) Recognition and avoidance of hazards at the mine;
(3) Escape and emergency evacuation plans in effect at the mine, and firewarning signals and firefighting procedures; and
(4) Health and safety aspects of the tasks to be assigned.

The remainder of new miner training would be required to be completed within 60 days, and would address, at a minimum, the subjects specified in section 115 of the Mine Act.

Under the proposal, newly-hired experienced miners would receive instruction, before beginning work, in the same four topics required to be covered for new miners before they begin work. Newly-hired experienced miners would receive annual refresher training within 90 days, including instruction on several specific topics.

Every 12 months, all miners would receive no less than eight hours of refresher training, which at a minimum would address major changes at the mine. Under the proposal, you would have the flexibility to determine the other subject areas to be covered in refresher training.

The proposal would require new task training for every miner before the miner is assigned to a task for which he or she has no previous experience or which has changed. Site-specific hazard training would be required for persons who do not fall within the definition of "miner" and who would therefore not be required to receive comprehensive training (i.e., new miner training or newly-hired experienced miner training, as appropriate). The proposal would also require site-specific hazard training for employees of independent contractors who have received comprehensive training but who need orientation in the hazards of the mine where they will be working.

You would be required to certify that a miner has received required training and retain a copy of each miner's certificate for the duration of the miner's employment and for 12 months after the employment ends. Under the proposal, you could use our existing form for the certification (MSHA Form 5000–23) or maintain the certificate in another format, so long as it contains the minimum information listed in the proposal. You would also be required to maintain a copy of the current training plan in effect at the mine. You would be allowed the flexibility of keeping training records at the mine site or at a different location, but would be required to provide copies of the records to us and to miners and their representatives upon request.

Unlike part 48, we would not approve training instructors under the proposal. Instead, training could be provided by a competent person—someone with sufficient ability, training, knowledge, or experience in a specific area, who would also be able to evaluate the effectiveness of the training provided.

The proposal would adopt the Mine Act requirement that miners be trained during normal work hours and compensated at normal rates of pay. Miners would also be reimbursed for incidental costs, such as mileage, meals, and lodging, if training is given at a location other than the normal place of work.

The proposal would allow you, where appropriate, to substitute equivalent training required by OSHA or other federal or state agencies to satisfy your training obligations under part 46.

Finally, the proposal would address responsibility for training and would vest primary responsibility for site-specific hazard training with the production-operator. Additionally, independent contractors who employ miners required to receive comprehensive training under the proposal would be primarily responsible for ensuring that their employees satisfy these requirements.

C. Section-by-Section Discussion

The following section-by-section portion of the preamble discusses each proposed provision. The text of the proposed rule is included at the end of the document.

Section 46.1 Scope

This section provides that the provisions of part 46 set forth mandatory requirements for the training and retraining of miners at all shell dredging, sand, gravel, surface stone, surface clay, colloidal phosphate, or surface limestone mines.

Corresponding changes for part 48 have been included in this proposal and are intended to make clear to the mining community that part 46 training requirements will apply at those mines which have been subject to the congressional appropriations rider since fiscal year 1980. This section is consistent with a similar provision in the draft proposal of the Coalition for Effective Miner Training.

Commenters should be aware that the language of the rider describes the exempt operations in broad terms. It does not attempt to list each type of operation that is included within the category listed. For example, operations that produce marble, granite, sandstone, slate, shale, traprock, kaolin, cement, feldspar, and lime are also exempt from enforcement under the rider and would be affected by the requirements of this rule.

Several commenters were of the opinion that the new training regulations for mines that are currently exempt from enforcement should be incorporated into part 48. However, to avoid confusion, we have proposed these regulations under a separate part of Title 30 of the Code of Federal Regulations.

Although the requirements of this proposed part would amend the training requirements for surface miners in part 48, part 48 has not been enforced at exempt mines for almost 20 years. The proposed rule takes a more flexible and performance-oriented approach than similar provisions in part 48. For example, the proposed rule would not require our traditional approval of training plans; would give you greater latitude in determining what subjects should be included in your miner training programs and in recordkeeping; and would not mandate a formal instructor approval program.

We are mindful of our statutory obligation not to reduce the protections provided to miners under our existing standards. Under section 101(a)(9) of the 1977 Act, "[n]o mandatory health or safety standard promulgated under this title shall reduce the protection afforded miners by an existing mandatory health or safety standard." Although the proposal would allow greater flexibility to you in training plan content and implementation, protection to miners would not be reduced. Our approach in this proposal is to allow you, with the assistance of miners and their representatives, to tailor your miner training programs to the specific needs of your operations and workforce. In this way, training received by miners would be relevant to their workplace and would be effective in providing them with the information and instruction that will enhance their ability to work in a safe and healthful manner. Several commenters stated that the flexibility to design their training programs to address the most significant safety and health concerns at their mines would enhance the overall benefits of training for their miners.

It should be noted that this proposal does not affect those mines not subject to the rider, which would include all underground metal and nonmetal mines, all surface metal mines, all coal mines, and a few surface nonmetal mines, such as surface boron and talc mines. Operators at those mines will continue to be responsible for complying with the miner training provisions in part 48.

Section 46.2 Definitions

This section includes definitions for terms used in proposed part 46. These definitions are provided to assist the mining community in understanding the requirements of the proposed rule. We are interested in comments on whether the definitions, as proposed, are appropriate and clearly expressed. Commenters should also identify any other terms they believe should be defined in the final rule.

Act. All references to the "Act" in the proposal refer to the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 801 *et seq.*

Competent person. Under the proposal, training would be conducted by a "competent person" designated by you. "Competent person" is defined in the proposal as a person who has the ability, training, knowledge, or experience to provide training to miners on a particular subject. Under this definition, the competent person must be able to evaluate whether the training given to miners is effective.

This definition does not specify the type or extent of ability, training, knowledge, or experience needed for a person to be "competent" and, therefore, allowed to provide training under the rule. This is consistent with the performance-oriented approach taken in the proposal. As addressed in greater detail in the preamble under § 46.4, a number of commenters recommended that persons who provide training receive, at a minimum, some instruction to ensure that they are able to instruct miners effectively. The proposal does not adopt this recommendation. Instead, we leave it to your discretion to determine whether the person is competent to provide training to miners in one or more subjects.

We specifically solicit comments on the definition of "competent person," whether the final rule should establish specific minimum qualifications for training instructors, and whether the final rule should require that training instructors be approved by us, similar to the approach taken in the part 48 regulations.

Experienced miner. A number of commenters addressed the definition of the term "experienced miner." Several commenters suggested that part 46 should adopt the definition of "experienced miner" in the part 48 training regulations. Recent revisions to part 48 (63 FR 53750, October 6, 1998) define "experienced miner" as a person with at least 12 months of experience who has completed new miner training. Other commenters recommended that a miner be considered experienced if he or she either has received new miner training or has accumulated at least 12 months of mining experience or the equivalent. One commenter stated that the definition of experienced miner should allow miners with experience to return to mining after an extended absence or lay-off and still be considered experienced.

A miner would be "experienced" under the proposal if he or she satisfies one of three definitions. First, paragraph (c)(1)(i) provides that an experienced miner is a person employed as a miner on the date of publication of this proposal. Most regularly employed miners would be considered "experienced" under this definition, and therefore not subject to the rule's new miner training requirements. This is similar to the approach taken when part 48 first took effect in 1978, which provided that all persons employed as miners on the rule's effective date were experienced miners, regardless of the length of their mining experience or the extent of their safety and health training. Under the proposed definition, most miners working on the date of the proposed rule will have accrued several months of experience by the publication date of the final rule, and even more experience by the rule's effective date.

Under the proposed definition, however, a miner with many years of experience who happens to be out of work on the date of the proposed rule would not be an "experienced miner". We are uncertain as to whether this would have an adverse impact at some operations, particularly in light of the intermittent and seasonal nature of many operations that will be covered by the final rule. We are therefore interested in whether commenters believe that the rule should address this situation in some fashion and, if so, what specific provisions should be included in the final rule to deal with this issue.

A miner would also be experienced under paragraph (c)(1)(ii) if he or she begins employment at a mine after the date of publication of the proposal but before the effective date of the final rule, and has received new miner training consistent with the requirements proposed under § 46.5 or with existing requirements for surface miners at § 48.25. This would provide flexibility to those of you who are already providing training to your miners under part 48, or who wish to provide training under the more performance-oriented requirements of proposed part 46, before the final rule takes effect. This provision is not intended to require compliance with the proposed rule, but would be a voluntary option for those of you who want to get an early start on developing a training program and in complying with the rule.

Under paragraph (c)(1)(iii) a person who has completed 24 hours of new miner training under either § 46.5 or § 48.25 and who has at least 12 months of surface mining or equivalent experience would be an experienced miner. This definition is more stringent than the approach suggested by a number of commenters or in the Coalition draft, which would define "experienced miner" as a person who either has 12 months of experience or who has received the required 24 hours of new miner training, but not both. The definition in the proposed rule reflects our preliminary determination that an "experienced miner" should have both training and work experience. Additionally, we also recognize that it would be unduly burdensome and impractical to require all miners who are currently working at affected mines to receive new miner training. Many of these miners have extensive experience in the industry and should not be treated as new inexperienced miners. Consistent with this, under paragraphs (c)(1)(i) and (ii), the majority of miners who have been trained or who have relevant work experience would be considered experienced when the final rule goes into effect.

The proposal would allow a miner to accumulate the necessary 12 months of experience in non-consecutive months. This would respond to the concerns of several commenters that the intermittent and seasonal nature of many segments of the industry would make it difficult, if not impossible, for most miners to accrue the necessary experience in one continuous period.

The proposed definition would also allow equivalent experience to be counted towards the 12-month requirement. We intend that equivalent experience would include such things as work at a construction site or other types of jobs where the miner has job duties similar to the duties at the mine where he or she is employed. Commenters stated that similar work experience should be considered if the work performed is equivalent to the tasks that the person will perform at the mine. Commenters stated that many experienced construction workers have learned to work safely at construction sites that pose many of the same types of hazards that they could be exposed to at a mine site. Under the proposal, you would determine whether the miner's experience is equivalent and therefore whether the miner is "experienced." We request comments on the acceptance of

equivalent experience under this paragraph in determining who is an "experienced miner."

Paragraph (c)(2) provides that an experienced miner will retain that status permanently under part 46. This responds to several commenters who indicated that it was not uncommon for miners to be away from the mining industry for extended periods of time, either because the miners took jobs in another industry, such as construction, or because the miners had been laid off. These commenters recommended that the rule make clear that an absence from work in the mining industry would not result in miners losing their status as experienced miners. This paragraph responds to these concerns and is also the approach taken in the recent revisions to part 48. Once a miner attains the status of an "experienced miner," he or she would be considered experienced permanently. However, under proposed § 46.6, miners returning to mine work would be required to receive newly-hired experienced miner training and annual refresher training within 90 days of beginning work.

Extraction or production. The definition of the term "miner" includes persons engaged in "extraction or production." "Extraction or production" is defined in this section as the mining, removal, milling, crushing, screening, or sizing of minerals at a mine. This definition also includes the associated haulage of these materials at the mine. We request comments on whether this definition adequately describes the activities that should be considered part of the extraction and production processes at a mine.

Hazard training. The proposed definition of "hazard training" is intended to provide examples of the type of instruction or information that you might address in providing this training to miners under proposed § 46.11. "Hazard training" is defined as information or instructions on the hazards a person will be exposed to while on mine property, as well as on applicable emergency procedures. These hazards and procedures may include site-specific risks such as unique geologic or environmental conditions, traffic patterns, and restricted areas, as well as warning and evacuation signals, emergency procedures, or other special safety procedures. The purpose of this training is to ensure that those persons who are unfamiliar with the mine and with the hazards of the operation have been provided with enough information to avoid exposure to these hazards.

Independent contractor. The proposal defines "independent contractor" as a person or entity that contracts to perform services at a mine under this part. This is consistent with the language of the Act, which includes independent contractors who perform services or construction at a mine within the definition of the term "operator."

Miner. The proposal would define "miner" for purposes of part 46 training more narrowly than the Mine Act, which defines "miner" in section 3(g) as any individual working at a mine. This allows the proposed rule to make a distinction between those "miners" who would be required to receive comprehensive training (that is, new miner training or newly-hired experienced miner training, as appropriate) and those persons who would be required to receive hazard training.

A person would be considered a "miner" under the proposal if he or she works at a mine under this part and is engaged in mining operations integral to extraction or production. We gave serious consideration to including as "miners" persons who are regularly exposed to mine hazards, or maintenance or service workers who work at the mine for frequent or extended periods, consistent with the definition in part 48. However, we are seeking to include a definition in the final rule that is clearer than the existing part 48 definition.

The definition of "extraction or production" includes the mining, milling, crushing, screening, or sizing of minerals, as well as the haulage of these materials. We intend that this definition include workers whose activities are integral to the extraction or production process, such as persons who are employed by the production-operator and who provide daily maintenance of mining equipment on the mine site. We do not intend to include workers who come onto mine property for short periods of time to perform services that are not integral to extraction or production, such as manufacturers' representatives who may be at the mine site infrequently to perform warranty service on mining equipment; this type of activity is usually conducted by a person whose presence at the mine site and exposure to typical mine hazards are limited. Although both types of workers perform maintenance on equipment, the extent of their exposure to mining operations and mine hazards is different, and the extent and type of training required would also be different under the proposal. We intend that the definition of "miner" include those workers whose activities are related to the day-to-day process of extraction or production. We have concluded that these are the types of workers who should receive comprehensive training.

We believe this is one of the more significant distinctions that should be made in this rule, and we solicit comment on this issue. We are particularly interested in recommendations for final rule language that would help to clarify the scope and application of this definition. Specifically, we would like comments on whether the final rule should include in the definition of "miner" persons whose exposure to mine hazards is frequent or regular, regardless of whether they are engaged in extraction or production, or who are employed by the production-operator, similar to the approach taken in part 48. Another possible approach would be to characterize a person's activities more specifically in terms of how integral or essential they are to extraction or production at the mine.

Under the proposal, mine operators and supervisors would also be considered miners if they are engaged in extraction or production and would be covered by the same training requirements. This is in response to the statements by a number of commenters that there is no reason why supervisors should not be subject to the same training requirements as miners. Several commenters also recommended that training for supervisors be tailored to address their supervisory responsibilities. Although we agree that it would be appropriate for you to develop special training programs for your supervisory personnel, the proposal would not require it.

Commenters should be aware that we intend that the requirements of this rule apply to construction workers who work at mines covered by the rule. Section 115(d) of the Act directs the Secretary of Labor to develop "appropriate" training regulations for construction workers. We have determined that this statutory provision does not prohibit the application of this part 46 standard to construction workers until we promulgate a separate training rule for those workers. Therefore, construction workers whose activities at the mine site are integral to extraction or production would be considered "miners" under this rule and must receive appropriate comprehensive training. For example, construction workers building a new crusher in an active quarry would be considered "miners." All other construction workers at mine sites would be required to receive site-specific hazard training. We solicit comments on whether we should develop separate training standards specifically for construction workers

employed at mine sites, and if so, what type of training would be appropriate.

New miner. The proposal defines a new miner as a person who has been newly hired who does not satisfy the definition of "experienced miner." The definition of experienced miner is discussed in detail earlier in this section.

Normal working hours. Under proposed § 46.10, training would be conducted during "normal working hours," as required by the Act. "Normal working hours" is defined in this section as a period of time during which a miner is otherwise scheduled to work. This definition, adopted from part 48, also provides that the sixth or seventh working day may be used to conduct training, provided that the miner's work schedule has been established for a sufficient period of time to be accepted as a common practice. As discussed under § 46.10 of the preamble, we intend that the schedule must have been in place long enough to provide reasonable assurance that the schedule change was not motivated by the desire to train miners on what had traditionally been a non-work day.

We are interested in comments on whether these proposed provisions adequately address the issue of compensation and the scheduling of training.

Operator. The proposed definition is consistent with the definition of "operator" in section 3(d) of the Act, and would include both production-operators (defined in this section as owners, lessees, or other persons who operate or control a mine) and independent contractors who perform services at a mine. The term "operator" is used throughout the proposed rule to refer to the person or entities responsible for providing health and safety training under part 46. However, separate definitions are provided for "production-operator" and "independent contractor" in proposed § 46.2 to allow a distinction to be made in proposed § 46.12 between the two types of operators and to address production-operators' and independent contractors' responsibilities for training.

Production-operator. Production-operator is defined as any owner, lessee, or other person who operates, controls, or supervises a mine covered by this part. This would mean the person or entity that actually operates the mine as a whole, as opposed to an independent contractor who provides services. As noted earlier, both would be considered "operators" under the proposal.

Task. The proposal defines "task" as a component of a job that is performed on a regular basis and that requires job knowledge. This definition is intended to identify the type of job duties that would be subject to the new task training requirements proposed under § 46.7. Under that section, a miner must be provided with training in a task for which he or she has no previous experience, or which has been modified.

We and *us* refer to the Mine Safety and Health Administration (MSHA). We have written the proposal in the more personal style advocated by the President's executive order on "plain language," which, among other things, encourages the use of personal pronouns.

You refers to production-operators and independent contractors, because they have primary responsibility for compliance with MSHA regulations.

Section 46.3 Training Plans

This section of the proposal requires you to develop and implement a training plan and also addresses our approval of training plans, how and where a copy of the training plan must be maintained, and who has access to the plan.

Section 115 of the Mine Act provides that mine operators shall have a health and safety training program that shall be "approved by the Secretary [of Labor]." A number of commenters and speakers at the public meetings supported flexible guidelines for plan content, emphasizing the wide variety in size and type of mining operations that will be covered by part 46 requirements. These speakers believed that the most effective training plans would be those that can be tailored to the particular operation, focusing, for example, on specific mine processes or hazards, or on the accident and injury experience at the mine. Other commenters stated that it had been their experience that the traditional approval process often did not enhance or ensure the quality of training plans. These commenters felt that resources saved by a less formal plan approval process could be directed elsewhere with greater benefits for miner safety and health.

A number of commenters who believed that traditional approval by us would not improve the development of your training plans advocated some form of "automatic" approval that would eliminate the need for submission of a plan to us, saving time and reducing paperwork for both you and us. These commenters suggested that the rule provide that if a plan meets or exceeds reasonable standards, it would be considered approved. Other commenters supporting this approach stated that emphasis should be placed on assisting you in developing effective training plans, rather than concentrating on unnecessary paperwork. Some commenters stated that they had no problem with submitting plans to us for initial approval, but were concerned about a requirement for submission of plans to us for approval of small, essentially nonsubstantive changes to the plan, such as the identity of the instructors providing the training or the locations where training takes place.

The draft proposal submitted to us by the Coalition would provide that any training plan that complies with the minimum requirements of section 115 of the Mine Act would be considered "approved by the Secretary." Section 115 of the Act requires both that the plan be approved by us and that the plan comply with the minimum requirements in section 115. We have determined that in order for a plan to be considered approved by us, we must prescribe requirements in the proposal and the final rule beyond the minimum required in the Mine Act.

In response to these considerations, the proposal provides that a plan would be considered "approved by MSHA" if it includes the minimum information listed in paragraph (b). This is consistent with the approach recommended by several commenters. Under this approach, plans that include the information listed in this section would be considered "approved" and would not be required to be submitted to us for review. Inspectors and other MSHA personnel who review your plan at the mine site would simply determine—

(1) That you, in fact, have developed a written training plan;

(2) That the written plan contains the minimum information specified in paragraph (b) of proposed § 46.3; and

(3) That the plan is being implemented consistent with the plan specifications.

We have also included in the proposal an alternate process for plan approval, for those cases where a plan you developed does not include the minimum required information, where you may prefer to obtain traditional approval, or where the miners or miners' representative requests such approval.

Paragraph (a) provides that you must develop and implement a written plan, approved by us under either paragraph (b) or (c), that contains effective programs for training new miners and newly-hired experienced miners, training miners for new tasks, annual refresher training, and hazard training. Although the language in section 115 of the Act does not explicitly state that a training plan must be in writing, we believe that it is inherently required by

the Act. We have included the term "effective programs" in the proposed rule to deal with instances where a training plan, as implemented, is inadequate or deficient. In such cases, we intend to determine how and why the training program falls short and assist you in revising your plan to address the deficiencies. We also intend that the plan be updated as needed, to reflect any changes in the mine's training program, such as changes in courses, teaching methods, instructors, methods of training evaluation, etc.

Paragraph (b) provides that a training plan is considered approved by us if it contains the minimum information listed in paragraphs (b)(1) through (b)(5). This information includes—

(1) The company name, mine name, and MSHA mine identification number;

(2) The name and position of the person responsible for training at the mine, which may be the operator;

(3) A general description of the teaching methods and course materials to be used in the training, including the subject areas that will be covered and the approximate time that will be spent on each subject area;

(4) The persons who will provide training, and the subjects in which each person is competent to instruct; and

(5) The evaluation procedures used to determine the effectiveness of the training.

Our intention is that the information required will be sufficient to allow us to make a preliminary determination of your compliance with training requirements, without imposing an unnecessary paperwork or recordkeeping burden. We are interested in comments on whether the proposed approach will facilitate the development of effective training plans.

The approach taken in the proposal for plan approval recognizes that, while our review of your written training plan could provide an initial check on the quality of the program, such review could not ensure that the program is successful in its implementation. Rather than expending our resources on the review and approval of training plans at all of the mines affected by this rule, we would instead direct those resources toward verification of the effectiveness of training plans in their execution, and in assisting you in developing and providing quality training to your employees. Similarly, you and training providers would be able to focus on the development and administration of training plans tailored specifically to your needs rather than on traditional procedures to gain our approval.

Under this approach, you would be free to make revisions to existing training plans without seeking our approval of those changes, so long as the plan continues to include the minimum information required. For example, you could change the identity of instructors, the subjects addressed as part of the training, or the scheduling of training, and you would not be required to submit these changes to us. This would address the statements of many commenters that requiring our approval of subsequent nonsubstantive plan changes was unduly burdensome and unnecessary.

We specifically solicit comments on whether we should require information in addition to that listed in paragraphs (b)(1) through (b)(5) before we consider a plan approved. We are also interested in comments on whether we should require less information than what is proposed. Several commenters stated that the rule should require only that the training plan specify subject matter and the timing of the training, and that other information is unnecessary. We also solicit comments on allowing you to develop plans that are considered approved by us without traditional approval. We are particularly interested in whether commenters believe that a traditional plan approval process, similar to the process in part 48, is necessary to ensure that training plans meet minimum standards of quality, and why this may be true.

Paragraph (c) provides that a plan that does not include the minimum information listed in paragraphs (b)(1) through (b)(5) must be approved by the Educational Field Services Division Regional Manager, or designee, for the region in which the mine is located. The term "Regional Manager" refers to the Regional Manager in the Educational Field Services Division (EFS) of the Directorate of Educational Policy and Development (EPD). We will be moving the responsibility for the approval of new and modified training plans from District Managers in Coal and Metal and Nonmetal Mine Safety and Health to the EFS Regional Managers or their designees. The EFS Division is divided into an Eastern and a Western region.

Under this paragraph, you may also voluntarily submit a plan for Regional Manager approval. We anticipate that the majority of plans developed under this part would satisfy the requirements of paragraph (b) and consequently would not be required to be submitted to us for traditional approval. However, we also recognize that some of you may develop effective training plans that do not fit squarely within the requirements of paragraph (b), and you may therefore need to submit your plans to us for approval. We also anticipate that some of you may prefer to obtain our traditional approval, to ensure that there is no question that your training plan satisfies minimum requirements. In response, the proposal does include a provision that would address these situations.

Paragraph (c) also allows miners and their representatives to request our traditional approval if they choose. We expect that in most cases miners and their representatives will bring any concerns they may have about the training plan to your attention, and resolve it in that manner. However, there may be a few instances where miners or their representatives believe that direct involvement by us may be needed to resolve issues or concerns, and the proposal would address those situations.

Paragraph (d) would require you to furnish the miners' representative, if any, with a copy of the training plan no later than two weeks before the plan is implemented or submitted to the Regional Manager. At mines where no miners' representative has been designated, a copy of the plan must either be posted at the mine or a copy provided to each miner at least two weeks before the plan is implemented or submitted to the Regional Manager for approval. This is intended to ensure that miners and their representatives are notified of the contents of your training plan before it goes into effect or is submitted to us for approval.

We recognize that at many mines, particularly small operations, there may be no mine office and no appropriate place for posting the plan. The proposal therefore would allow a copy of the plan to be provided to each miner in lieu of posting. We are assuming that this requirement would not place a large burden on you, because mines where posting would be difficult or impractical would typically have a very small number of miners. However, we are interested in whether this assumption is correct, and we are also specifically interested in comments on whether this paragraph provides a practical and workable approach to informing miners and their representatives of training plan content.

Although not explicitly stated in the proposal itself, we intend that you must provide miners or their representatives with copies of the training plan, and with the opportunity to submit comments or request approval by us, whenever major revisions are made to the plan. By "major revisions" we mean significant changes in course content or training methods, not minor alterations such as the identity of instructors or the duration of courses in certain subject areas. We request comment on whether the final rule should specifically require

notification of miners of plan revisions, and what type of revisions should require notification.

Under paragraph (e), miners and their representatives have two weeks after the posting or receipt of the training plan to submit comments on the plan to you, or to the Regional Manager if the plan is before the Manager for approval. This is intended to provide miners and their representatives with a means to provide input on the training plan, either to you, if traditional approval is not being sought, or to the Regional Manager who is reviewing and approving the plan.

Under paragraph (f), the Regional Manager must notify you and miners, or their representative in writing of the approval, or the status of the approval, of the training plan within 30 days after the date on which the training plan was submitted to us for approval.

We are interested in comments on this process, specifically on whether the proposal provides sufficient flexibility to you in developing your plans, while at the same time ensuring that miners and their representatives have been allowed meaningful participation in the process.

We considered adopting the traditional approval procedures already contained in part 48. We have instead proposed a more streamlined version of existing part 48 approval procedures. This approach reflects our expectation that the parties will be able to reach a satisfactory resolution of any concerns about the plan without the need for specific procedures. As indicated earlier, we anticipate that most of you will not seek our formal approval of your training plans, and that in most cases concerns of miners or their representatives will be resolved informally. In those limited cases where we become directly involved in plan approval, we intend for the Regional Manager to provide reasonable notice to you and miners or their representatives of the status of plan approval or perceived deficiencies in the plan and also to provide parties with a reasonable opportunity to express their views or offer solutions to the problem, without the need for detailed procedures.

Nonetheless, we solicit comments on whether a detailed plan approval process, such as in § 48.23, should be adopted in the final rule, to apply to those cases where traditional plan approval is sought.

Paragraph (g) provides you, miners, and miners' representatives the right to appeal a Regional Manager's decision on a training plan to the Director for Educational Policy and Development. Consistent with the shifting of plan approval responsibility from Metal and Nonmetal Mine Safety and Health to EFS, a Regional Manager's decision on a plan will be reviewed on appeal by the Director for EPD.

Under this paragraph, an appeal must be submitted in writing within 30 days after notification of the Regional Manager's decision on the training plan. The Director for EPD will issue a decision on the appeal within 30 days after receipt of the appeal. We anticipate that this provision will be rarely used and expect that when a disagreement arises between us, you, and miners and their representatives about plan design or content, it can be resolved without the need for intervention of the Director for EPD. However, in those rare cases where the parties are unable to come to terms on the content of a particular training plan, the proposed rule would provide parties the option of seeking review from the Director for EPD. As indicated, parties have 30 days in which to file a written appeal of the Regional Manager's decision on a plan, and the Director for EPD has 30 days from the date of appeal to reach a decision.

Paragraph (h) would require you to make available at the mine site a copy of the current training plan for inspection by us and for examination by miners and their representatives. If the training plan is not maintained at the mine site, you must have the capability to provide the plan upon request to us, the miners, or their representatives. Under this paragraph, you would have the flexibility to maintain your training plan at a location other than the mine site, provided that you are able to produce a copy of the plan upon request to our inspectors or miners and their representatives. A number of speakers at the public meetings indicated that there was no need for plans or other training records to be kept at the mine site, given that modern communications technology, such as electronic mail and fax machines, allow virtually instantaneous transmission of documents from one location to another. The proposal does not specify a time within which a copy of the plan must be produced after a request is made by us or miners; the expectation is that if you choose to maintain the plan away from the mine site, you should have the capability of producing the plan within a reasonable period of time. If you do not have such capability, you must maintain the plan at the mine site. We have taken this approach in the proposal for several reasons. It has been our experience that we may complete an inspection at a surface mine in less than one day. Although we wish to give you flexibility in recordkeeping, we do not want this to result in an inspector having to delay his or her departure from a mine site waiting for you to obtain a copy of the training plan. Similarly, inspectors should not be put in the position of having to return to a mine site the next day simply to inspect a copy of the training plan that was unavailable during the course of the inspection the day before. Additionally, miners and their representatives should not be required to wait to inspect the training plan in effect at the mine. We are interested in comments on whether this is the most practical approach. One possible alternative would be to require the plan to be produced within a reasonable period of time after the request is made, but in no case longer than one business day.

A number of commenters focused on the type of assistance that we should provide to facilitate compliance with the final rule after it is published. Assistance, particularly for small operators, in developing training plans appropriate for their operations, was the subject of much comment. Several commenters suggested that we or other organizations implement a "cafeteria-type" approach for plan development, where you could choose among various training plan components to tailor a plan to your particular operation. For example, the plan options from which you might choose would include training components on subjects or curriculum that are suitable for a small sand and gravel operation, or for a typical limestone mine, or a shell dredging operation.

We appreciate the commenters who are already giving thought to the types of resources that would provide the greatest benefit to the mining community in complying with the final training rule. We acknowledge that compliance assistance for the mining community will be a key element in the successful implementation of the final rule. We intend to provide extensive compliance assistance to you, not only through our staff in Metal and Nonmetal Mine Safety and Health, but also through our newly formed Educational Field Services Division; we also expect state grantees to play a significant role in assisting you in developing effective training plans and, at the same time, in satisfying the requirements of the final rule.

To this end, we solicit comments on whether we should include examples of model training plans, appropriate for different types and sizes of mining operations, in a nonmandatory appendix to the final rule. We are also considering including such model plans in a compliance guide that we will be developing for the mining community

after publication of the final rule. We anticipate that other organizations, including state grantees and large operators, also may develop generic training plans and make them available to small operators to assist in training plan development. We are interested in commenters' suggestions for other types of compliance assistance that would be useful to the mining community.

Section 46.4 Training Program Instruction

This section of the proposal—(1) would require you to ensure that training given under this part is consistent with the written training plan required under § 46.3; (2) would require training to be presented by a competent person; and (3) would allow you to arrange for training to be provided by outside instructors. This section also responds to comments, including the draft of the Coalition, that the rule should allow the use of innovative training methods and should accept equivalent training, provided to satisfy the requirements of the Occupational Safety and Health Administration (OSHA) or other federal or state agencies, to satisfy part 46 requirements. Finally, this section would permit short safety and health talks and other informal instruction to satisfy training requirements under this part, in response to a number of comments.

Paragraph (a)(1) would clarify that training under part 46 must be conducted in accordance with your written training plan. This is intended to ensure that the training given under this part is consistent with the approach outlined in your plan, and is part of an organized scheme for comprehensive miner training.

Paragraph (a)(2) provides that the training must be presented by a competent person. "Competent person" is defined in proposed § 46.2 as a person designated by you who has the ability, training, knowledge, or experience to provide training to miners on a particular subject. Under this definition, the competent person must also be able to evaluate the effectiveness of the training.

We asked for specific comments during the public meetings on whether the rule should establish minimum qualifications for persons who conduct miner training, and if so, what those qualifications should be. Many commenters offered their views on this issue.

A number of commenters stated that the rule should impose no minimum qualifications for trainers. Some indicated that many supervisors and other employees at mining operations possess the experience and skills necessary to train others effectively, and that you should have broad latitude to use on-site trainers for some, or all, of your training needs. Other commenters believed that it is impossible to regulate the quality of instruction with minimum criteria such as academic training, mining experience, years of training experience, etc., and that an instructor certification program would not guarantee the quality of instruction. One commenter was concerned that restricting all training to a limited pool of certified instructors would deprive you of the flexibility needed to develop training plans responsive to the unique circumstances of each mining operation. Another commenter stated that if training instructors are required to be certified and to complete some type of formal training, you could have great difficulty in finding people who can actually deliver training in the necessary subject areas.

On the other hand, several commenters recommended that the approach taken in part 48, which requires our approval of instructors, be used as a guideline for addressing instructor qualifications under part 46. Under part 48, instructors may be approved in several ways. For example, instructors may take an instructor training course and complete a program of instruction approved by us in the subject to be taught; instructors may also obtain approval to provide training based on written evidence of their qualifications and teaching experience.

In contrast, several commenters stated that the instructor approval process under part 48 has had inconsistent results, at best. Another commenter suggested that instructors should be certified by a recognized professional organization in health and safety. Still others recommended that if we do not require instructors to be approved, the rule should require prospective trainers to go through a training course so that they will know how to present training materials correctly and effectively. Several commenters believed that instructors should also be able to evaluate the effectiveness of the training they are giving.

The proposal adopts the recommendations of many commenters that the rule not require a formal program for the approval or certification of instructors, or establish rigid minimum qualifications for instructors. We are persuaded at this stage that a formal instructor approval program would provide no real guarantee that training will be effective, and that the benefits realized from a formal program would not justify the additional administrative burden. We are also persuaded by commenters who stated that there are many experienced and knowledgeable people currently working in the industry who can provide effective training in a wide variety of subject areas.

Contrary to the recommendations of several commenters, we have not included a proposed requirement that trainers receive instruction in how to provide training before they serve as instructors. Instead, we would expect you to assess how well a person can communicate in determining whether he or she is capable of providing training for your miners. A person with extensive knowledge in a particular subject area may not be a good choice as an instructor if he or she is unable to convey the information to miners clearly and effectively.

The proposal would require that training be conducted by a "competent person" designated by you. The proposal would not establish minimum academic or professional qualifications for these persons. Instead, these persons would be required to have sufficient ability, knowledge, training, or experience to enable them to provide training to miners. They must also be able to evaluate in some fashion whether the training has been effective. The proposal does not specify how such an evaluation must be conducted, and we anticipate that the method of evaluation will depend to a large extent on the type of training being given. For example, a written test might be appropriate in a traditional classroom setting, while a miner receiving new task training may be asked to demonstrate to the trainer that he or she can perform the task safely. The proposed rule would allow a significant amount of discretion in this determination. In addition, we will be available to provide assistance to you in determining the appropriate training for your operation.

We are interested in comments on the approach taken in the proposal for training instructors, particularly on our preliminary decision on the merits of a formal instructor approval or certification program. For example, one commenter recommended that we should focus our attention on the evaluation of instructors who have not taken a course on presentation skills, also known as "train-the-trainer" courses. We are also interested in commenters" views on whether the final rule should require some minimum amount of formal training for instructors, designed to ensure that the instructor has the communication skills needed to provide effective training.

Paragraph (b) provides that you may conduct your own training or may arrange for training to be conducted by federal or state agencies; associations of operators; miners' representatives; other operators; contractors, consultants, or manufacturers' representatives; private associations; educational institutions; or other competent training providers. This provision is similar to language in § 48.24 and in the Coalition draft proposal and would make clear that you may choose from a variety of training providers in satisfying your training responsibilities under part 46. We recognize that a wide variety of effective miner training is available from many types of organizations across the country. Under the proposal, you would be free to arrange with outside training providers in satisfying your training obligations. We expect that many small operators and independent contractors, who may not have the resources for a formal in-house training program, will elect to arrange with outside organizations to provide some part of their training.

Paragraph (c) would allow the acceptance of training required by OSHA or other federal and state agencies to satisfy the training requirements under part 46. Under the proposal, this training must be equivalent to what would be provided under part 46—that is, it must be safety and health training that is relevant to the mining environment.

Acceptance of OSHA training was raised by a number of speakers at the public meetings. Several speakers indicated that many operations regulated by us, such as sand and gravel or crushed stone sites, are also associated with an OSHA-regulated facility, such as a construction site. Employees may be shared across several operations under the same management. One speaker pointed out that in many cases the equipment at these operations is interchangeable, the tasks are interchangeable, and the workers are interchangeable. These employees may perform the same duties at both sites and have been trained to work around the same types of hazards. These speakers strongly urged us to accept the safety and health training provided to comply with OSHA regulations to satisfy training requirements under part 46. Several commenters also recommended that we accept training that is provided to satisfy the requirements of other regulatory agencies, and this recommendation is reflected in the proposal. It should be noted that this training would need to be documented under § 46.9 to be accepted, not only to establish the duration of the training but also the equivalency of the training. We are persuaded at this point that acceptance of this training is appropriate. However, we are interested in comments that both support or take issue with this determination. We are also interested in receiving comments on which federal and state agency training requirements may be used to satisfy the requirements of part 46.

Paragraphs (d) and (e) are intended to provide you with flexibility in satisfying your training obligations. Under paragraph (d), training under part 46 could consist of classroom instruction, instruction at the mine site, other innovative training methods (such as computer-based training), alternative training technologies, or any combination thereof. The recognizes that a combination of different training methods can be extremely effective, and makes clear that we encourage you to be creative in complying with your training responsibilities.

Several commenters recommended that the rule allow for training at the mine site, particularly initial training for new miners. Another commenter believed that training under the rule should not be limited to traditional classroom instruction, but that a mix of different approaches should be permitted. A number of commenters strongly recommended that the rule be sufficiently flexible to accommodate future technology and training advances. The proposal is responsive to these recommendations.

We intend that the proposed rule allow new training technologies developed in the future to be used to comply with part 46. We anticipate that many of you will use a combination of different approaches to provide training, including innovative technologies. On the other hand, the classroom may serve as the most appropriate forum for training on particular subjects.

Paragraph (e) would allow employee safety meetings, including informal safety and health talks and instruction, to be credited toward either new miner training, newly-hired experienced miner training, or annual refresher training requirements, provided that you document the training consistent with proposed § 46.9. We requested comment in the notice of meeting published in the **Federal Register** on whether informal instruction lasting less than 30 minutes should be allowed to satisfy training requirements under the rule. Part 48 currently requires a training session to last at least 30 minutes, and several commenters urged the inclusion in part 46 of this 30-minute restriction. One commenter believed that a 15-minute minimum was appropriate. Other commenters stated that some of the best training occurs in sessions of less than 15 minutes, and that the rule should not impose an arbitrary restriction on the length of training sessions. A number of commenters indicated that short training sessions provided throughout the year can be very effective.

We are persuaded by those commenters who advocate flexibility in the length of training sessions, and this determination is reflected in the proposal. However, we are interested in any rationale or evidence from commenters that would support imposing a minimum duration on training sessions.

Section 46.5 New Miner Training

This section includes minimum requirements for training new miners when they begin work at a mine. This section lists subject areas that training must cover, addresses which of those subjects must be taught before new miners begin their work duties at the mine, and specifies the minimum number of hours of instruction required by the Act for new miner training.

Section 115(a)(2) of the Mine Act requires mine operators to provide at least 24 hours of training to inexperienced surface miners. This training must include instruction on specific topics.

The **Federal Register** notice announcing the public meetings solicited comment on several issues related to new miner training. Specifically, comments were requested on—

(1) The subjects that should be taught before a new miner begins assigned duties;

(2) Whether training should be given all at once or over time, or whether you should make this determination; and

(3) The advantages and disadvantages of spreading training over an extended period.

While section 115 does not expressly require new miners to be trained before they begin work, part 48 currently requires that the full 24 hours of new miner training be given before miners are assigned work at the mine, unless specifically permitted to do otherwise by the District Manager. Even with District Manager approval, however, operators under part 48 must provide a minimum of eight hours of training to new miners before work duties begin.

Many speakers at the public meetings and many of those providing written comments addressed how much of the 24 hours of new miner training should be given before a miner is allowed to begin work. One commenter stated that all of the subjects listed in section 115

of the Mine Act should be taught before a new miner is assigned work, even if the work is done under close supervision. However, the majority of commenters indicated that they believe it would be appropriate to require at least eight hours of training before the miner begins work, which is also the minimum number of hours specified under the Coalition's proposal. Several commenters advocated a six-to eight-hour training minimum before a miner begins work, and one commenter took the approach that initial training could include two hours of instruction on hazard recognition, personal protective equipment, and the company's safety policy, followed by six hours of work closely supervised by an experienced miner. However, a number of commenters, including those who indicated approval of a minimum initial training requirement, also said that setting a minimum number of hours for training may be excessive for many mines. According to many commenters, effective initial training could be completed in less than a mandated minimum depending on the size of and conditions at the mine, tasks to be performed, and experience of the miner. The commenters claimed that the key issue is the quality and relevance of training and not the number of hours spent providing initial training for a new miner.

In response to commenters and the Coalition's proposal, we considered adopting an eight-hour minimum initial training requirement in the proposal and also gave serious consideration to several other approaches. These alternatives included a requirement that all 24 hours of training be completed prior to the miner commencing job duties, or that a minimum period of initial training be completed, such as two or four hours, before the miner begins work. We also considered a two-hour minimum period of initial training, which could be reduced, with our approval, based on the size of the operation, complexity of the mine site, and experience of the new hire. We also considered a requirement that you provide instruction to the miner on specific topics before beginning work, in lieu of a minimum time requirement for initial training.

We have made a preliminary determination that requiring a minimum number of hours to be spent on training before a miner begins work may be unduly burdensome and unnecessary for many mines, particularly small mines with few employees and limited equipment. Commenters indicated that at many small operations, a thorough workplace orientation on the mine and its hazards would not even require two hours. These commenters recommended flexibility be given to you in determining the amount of initial training that should be provided. We believe you are in the best position to determine the amount of training that is needed for new miners, depending on your particular operation.

We have determined that it is appropriate to require that new miners be given instruction on certain subject areas prior to beginning work, rather than to establish a minimum number of hours that must be devoted to this training. The proposal would require training on four specific topics for each new miner before he or she begins work at the mine, with the balance of the 24 hours of training to be provided within 60 days. By not requiring a minimum number of hours of initial training for new miners, the proposal would provide flexibility to you to tailor your training plans to focus on the unique needs of your operations and workforce and to provide the most effective and relevant training for the new miners at your mines. At the same time, by requiring that specific subject areas be covered before new miners begin work, the miners would receive training on relevant topics to ensure that they are familiar with the operations and environment at the mine, their job duties, and the hazards they may encounter at the mine site.

We are interested in whether commenters agree with this approach, or whether the final rule should establish a minimum number of hours of training that new miners must receive before beginning work. One possible approach would be to specify a minimum number of hours of initial training that must be provided to miners based on mine size or complexity of operation. For example, a large operation may be required to provide eight hours of training, while a very small operation would be required to provide one hour of training. We are interested in comments on this alternative, particularly on the criteria that might be used in determining how much initial new miner training must be given, such as employment, type of operation, type and amount of equipment, etc. Commenters who believe that a minimum number of hours of training should be required should also specify what the minimum number of hours should be.

Many speakers and commenters addressed how long the rule should allow the balance of the 24-hour new miner training to be given. The draft Coalition proposal would require that new miner training be completed within 60 working days of the miner reporting to work at the mine site. Most commenters favored a 60-day deadline for completion of new miner training, but did not indicate whether the deadline should be 60 working days or 60 calendar days. One commenter expressed a preference for spreading out the remaining training over a 90-day period.

Some commenters pointed out that new miners can be overwhelmed with too much information when they first come to work at a mine. These commenters were opposed to providing training all at once. A few commenters maintained that providing new miner training over an extended period of time, with practical work experience between training periods, improves and encourages miners' retention of important training material.

Citing the rapid turnover of workers in the industry, other commenters who favored training over an extended period of time were concerned that operators would not recoup the substantial up-front investment incurred for training if it were required to be given all at once. This was offered as one reason to allow training to be given over a longer period, up to 90 days or even six months; additionally, some commenters maintained that it would be less burdensome in the long run since they would not have to provide the balance of training to miners whose employment at the mine lasted less than three months. Another commenter believed that a six-month period would also be less disruptive to the mining process since it would give you more flexibility to schedule training during periods when operations would be slowed or idle.

In contrast, there were a few commenters who pointed out several disadvantages of spreading new miner training over a period of time. The drawbacks mentioned were that the new miner may not receive a timely general overview of all potential safety and health hazards, which could result in a greater risk of injury. These commenters also stated that training over a longer period of time could increase recordkeeping and paperwork burdens and create scheduling problems.

After considering the comments received, we believe that there are advantages to training new miners over an extended period of time, including better retention of information by miners, and flexibility in providing the training. We are sensitive to the economic hardships that many smaller operators may experience due to their inability to hire or spare employees for training purposes. In addition, training

may be more meaningful after a worker accrues some work experience at the mine.

On the other hand, inexperienced or untrained miners should not be permitted to work for long periods without being fully trained. Therefore, we are proposing in paragraph (d) that you must provide the balance of the 24 hours of new miner training within 60 days after the new miner begins work at the mine. Under the proposal, the 60 days would be calendar days, not working days as recommended by the Coalition. We believe that a deadline measured in working days would be impractical, particularly given the intermittent and seasonal work schedules of many operations. It would not only present an administrative burden to you, both for paperwork and for class scheduling, but would also make enforcement extremely difficult. However, we solicit comment on the 60-day deadline for the completion of new miner training and are interested in suggestions for alternate approaches.

Section 115(a)(2) of the Act requires new miner instruction on the following topics:

* * * statutory rights of miners and their representatives under the Act, use of the self-rescue and respiratory devices where appropriate, hazard recognition, emergency procedures, electrical hazards, first aid, walk around training, and the health and safety aspects of the task to which the miner will be assigned.

A number of commenters and speakers at the public meetings addressed the subjects that should be taught to new miners, without indicating whether the courses should be taught before or after a new miner begins work. The comments varied greatly. One commenter advocated the elimination of required training subjects altogether and urged the use of task training in lieu of new miner training. Several commenters approved of providing training on the eight general subject areas listed in section 115(a)(2) of the Act but did not endorse describing the specific contents of courses to be taught, as is presently done in part 48. Other commenters favored new miner training subjects as they are presented in part 48, but believed that first aid training, in particular, needs to be addressed in a different forum, citing the significant amount of instruction needed to adequately cover the topic. One commenter questioned the appropriateness of including training on self-rescue devices for surface miners.

Several commenters recommended that the final rule list as required topics the more general subjects found in section 115, rather than the more detailed approach taken in existing part 48. They maintained that a longer list of subjects with detailed course content would limit your ability to provide meaningful training at the varied operations at mines affected by the rider. Others suggested that criteria or guidelines be provided to you to assist you in selecting new miner training topics and in determining the time that should be devoted to specific subjects. Suggested criteria included the size of the mine, the history of accidents, injuries, and fatalities at the mine, national trends in accidents and fatalities, and the experience and knowledge of individual miners.

A number of commenters addressed the subjects that should be taught before a new miner begins assigned work duties. The majority of commenters and speakers agreed that some general orientation as well as site- and task-specific training must take place before a miner begins work at the mine. At the same time, many commenters maintained that you need flexibility to tailor the training to the specific safety and health needs of your miners and the unique conditions at your mines. The Coalition's draft proposal would require eight hours of instruction in the following subjects before a new miner could begin work: walkaround training; hazard recognition; and the health and safety aspects of tasks to which the new miner will be assigned. Commenters most frequently mentioned the courses listed above. In addition, some commenters recommended that training on escapeway and emergency procedures be included in pre-work training.

In response to these comments, proposed paragraph (b) would require that you train new miners in four areas before they begin work—

(1) An introduction to the work environment, including a visit and tour of the mine, or portions of the mine that are representative of the entire mine. The method of mining or operation utilized must be observed and explained;

(2) Instruction on the recognition and avoidance of hazards, including electrical hazards, at the mine;

(3) A review of the escape and emergency evacuation procedures in effect at the mine and instruction on the firewarning signals and firefighting procedures; and

(4) Instruction on the health and safety aspects of the tasks to be assigned, including the safe work procedures of such tasks, and the mandatory health and safety standards pertinent to such tasks.

Instruction of new miners in these four areas is intended to ensure that miners are sufficiently familiar with the hazards at the mine, that they can avoid exposing themselves and others to unnecessary risks and can perform their job assignments safely, and that they are able to respond to mine emergencies. We are requesting comment on whether the subject areas required are appropriate, especially in light of the fact that the proposal does not establish a minimum number of hours for pre-work training.

Paragraph (c) of the proposal would allow new miners to practice under the close supervision of a competent person to satisfy the requirement for training on the health and safety aspects of an assigned task. This provision is consistent with our current policy under part 48, and is also included in the Coalition's draft proposal. Our existing policy under part 48 allows a miner to perform an actual task assignment at the mine site as long as there is continuous supervision by an approved instructor, and training, not production, is the primary goal. "Close supervision" would mean that the competent person is in the immediate vicinity of the miner and is focusing his or her complete attention on the actions of the miner being trained. A miner would not be considered under "close supervision" if the competent person is occupied with any other task or is not in close proximity to the miner. Although the proposal would not require training instructors to be approved by us, we believe that practice of a task by a new miner under the close, individualized, supervision of a "competent person," as that term is defined in proposed § 46.2, can be an effective training method and can be accomplished safely. We gave consideration to allowing practice to be supervised by an experienced miner rather than a competent person, but have determined that the person supervising new miners and instructing them on the health and safety aspects of their jobs must be qualified in the particular subject matter, possessing the skills to teach that subject and to evaluate whether the recipient of the instruction has understood it. We solicit comments on whether it is reasonable to allow a new miner to practice a task under the supervision of a "competent person" to satisfy this pre-work training requirement.

Similarly, under paragraph (a), until the full 24 hours of new miner training is received, a new miner must work under the close supervision of an experienced miner. This is modeled after a similar provision in § 48.25(a), and is intended to ensure that the health and safety of a new untrained miner are protected until new miner training is completed. We are interested in comments on whether this provision is

realistic, workable, and in the best interests of the miner.

Proposed paragraph (d) lists the remaining subject areas that must be covered in new miner training within 60 days after the miner begins work, and is derived from section 115 of the Mine Act and recommendations from commenters and the Coalition's draft proposal. These subjects include—

(1) Instruction on the statutory rights of miners and their representatives under the Act;

(2) A review and description of the line of authority of supervisors and miners' representatives and the responsibilities of such supervisors and miners' representatives;

(3) An introduction to the mine's rules and procedures for reporting hazards;

(4) Instruction and demonstration on the use, care, and maintenance of self-rescue and respiratory devices, if used at the mine; and

(5) A review of first aid methods.

The proposed rule provides some specification of the content of the training on each subject area, beyond what is included in the Mine Act. This detail is provided in the proposal to assist you and miners in developing training plans. We are interested in comments on whether the courses being proposed are sufficient, whether including specification of the content of subject areas is helpful, or whether it decreases your flexibility in developing training materials that best meet your needs.

We would note that the requirement for first-aid instruction under paragraph (d) would not require you to hire an approved first-aid instructor or obtain first-aid teaching equipment to train new miners. We understand that some miners and designated supervisors will receive first-aid training under the requirements of 30 CFR parts 56, 57, 75, and 77, and that an in-depth first-aid course for new miners may be impracticable in many cases. However, first-aid instruction should include a review of basic first-aid measures, such as contacting emergency medical personnel, application of bandages, or the circumstances where injured persons should not be moved.

A few commenters were concerned that miners who had completed new miner training but did not have sufficient work experience for status as an experienced miner would be required to repeat new miner training. To minimize the likelihood that miners would have to repeat new miner training unnecessarily, proposed paragraphs (e) and (f) would make certain allowances for new miners who have not attained experienced miner status for training purposes but who have completed new miner training under part 46 or part 48. Under paragraph (e), miners who have completed new miner training within the previous 36 months but who do not have the 12 months of experience for experienced miner status would not have to repeat new miner training if they begin work at a new mine. This is similar to a recently revised provision in § 48.25(d). We have determined that it would be illogical and unnecessary to require these miners to repeat 24 hours of new miner training each time they begin work at a new mine covered by part 46, until they have accrued the requisite 12 months of experience. However, miners would be required to receive pre-work training under paragraph (b) on the same four subjects that are required for both new miners and newly-hired experienced miners, to ensure that they are familiar with the mine's operations and practices before starting work.

We also recognize that, although a miner may not have completed new miner training under part 46 or § 48.25, he or she may have completed training in particular subject areas as an underground miner under § 48.5, or as a surface miner under § 48.25. In some cases, the subject areas covered may be relevant to courses required for new miners under part 46. Paragraph (f) would allow this training to be credited toward new miner training. For instance, a miner may have received new miner instruction at an underground mine on the statutory rights of miners and their representatives; the use, care, and maintenance of self-rescuers or respiratory devices; or on first aid methods. In those cases, under proposed paragraph (f), it would be acceptable to give credit for relevant training courses already taken by the miner, provided that the courses were completed within the previous 36-month period.

Although the proposal would allow credit for training in any subject area, we request comment on whether credit for training given at other mines should be limited to training in subject areas listed under proposed paragraph (d), and not be given for subject areas listed under paragraph (b), which have a very mine-specific orientation. For example, it may be inadvisable to allow credit for hazard recognition training or a review of the escape and emergency procedures given at another mine, because this training may have very limited value or application at the mine. On the other hand, a miner returning to the same mine could be given credit for all training completed at that mine within the previous 36-month period.

We encourage commenters to address whether the final rule should allow such crediting and how it should be handled. Our intention in paragraphs (e) and (f) of § 46.5 is to—

(1) Be practical;

(2) Reduce the compliance burden and expense of redundant training for you; and

(3) Still ensure that miners receive effective training.

Section 46.6 Newly-Hired Experienced Miner Training

This section of the proposed rule would address training requirements for newly-hired "experienced miners," as that term is defined in § 46.2. This section lists the subject areas that must be addressed in training newly-hired experienced miners, before they begin work at the mine, and requires that the miners receive annual refresher training within a 90-day period after they begin work. This section also includes separate training requirements for experienced miners who are returning to the same mine after an absence of 12 months or less, and for experienced miners who are employees of independent contractors and who are on mine property for short durations.

Section 115 of the Mine Act does not expressly direct the Secretary to promulgate training requirements for newly-hired experienced miners. However, experienced miners should be thoroughly familiar with the particular environment and hazards present at their mine before they start work. The regulations in part 48 provide separate training requirements for newly-hired experienced miners.

The draft proposal of the Coalition would require newly-hired experienced miners to receive only site-specific hazard recognition training before being assigned work duties, and annual refresher training within 90 days of employment. The Coalition draft provides that if a miner had received refresher training "commensurate with the hazards of the new job from a previous employer within the last year," the miner would be required to receive hazard recognition training.

Only a few commenters addressed newly-hired experienced miner training. One commenter stated that experienced miners need the same level of training as new miners so that poor safety habits can be corrected. One commenter maintained that before work begins, a newly-hired experienced miner should receive a safety orientation that addresses both task- and site-specific subjects. Another commenter maintained that appropriate task training should be provided before the newly-hired experienced miner begins

work, and supported the requirement that refresher training be given to newly-hired experienced miners within 30 days of employment if they are not current with their refresher training. Several commenters addressed situations where an experienced miner returns to mining after an absence. One commenter stated that such a miner must be made aware of improvements in the trade since the miner's absence. Another commenter, referring to training requirements for newly-hired experienced miners in part 48 and to an earlier draft proposal from the Coalition, questioned the appropriateness of requiring only eight hours of training for a person returning to mining work after an absence of five years or more.

Paragraph (a) would require you to train newly-hired experienced miners in four subject areas before they begin work. These required subjects would include—

(1) An introduction to the work environment, including a visit and tour of the mine, or portions of the mine that are representative of the entire mine. The method of mining or operation utilized must be observed and explained;

(2) The recognition and avoidance of hazards, including electrical hazards, at the mine;

(3) The escape and emergency evacuation plans in effect at the mine and instruction on the firewarning signals and firefighting procedures; and

(4) The health and safety aspects of the tasks to be assigned, including the safe work procedures of such tasks, and the mandatory health and safety standards pertinent to such tasks.

The requirements of proposed paragraph (a) are identical to the requirements proposed in § 46.5(b) for training for new miners before they begin work and would include both task- and site-specific instruction. For the same reasons discussed in the preamble for § 46.5, the proposal specifies subjects and course materials that are intended to ensure that a newly-hired miner is familiar with the mine environment, operations, equipment, potential hazards, and emergency procedures. These requirements are also intended to ensure that newly-hired miners have sufficient instruction to perform work assignments safely. We are interested in whether the subject areas that would be required to be addressed for newly-hired experienced miners before they begin work are appropriate or whether different subject areas would be more relevant for experienced miners. Commenters should note that proposed § 46.6 would not specifically provide, as do the requirements for new miner training, that a newly-hired experienced miner could perform actual task assignments as "practice" to fulfill the requirement for training on the health and safety aspects of an assigned task. However, we are interested in whether this issue should be addressed in the final rule.

Paragraph (b) directs you to provide annual refresher training to newly-hired experienced miners within 90 days after their employment. The proposal specifies that, at a minimum, the refresher training must include—

(1) Instruction on the statutory rights of miners and their representatives under the Act;

(2) A review and description of the line of authority of supervisors and miners' representatives and the responsibilities of such supervisors and miners' representatives;

(3) An introduction to your rules and procedures for reporting hazards; and

(4) Instruction and demonstration on the use, care, and maintenance of self-rescue and respiratory devices, if used at the mine.

The requirements of this paragraph are identical to those proposed for new miners under § 46.5(d), except that a review of first aid methods would not be required for experienced miners. The proposal would not require first aid instruction for newly-hired experienced miners because it would be covered in new miner training and may be reviewed during annual refresher training. This would not prevent you from including first aid training for newly-hired experienced miners if you choose. Again, we request comments on the suitability of the listed subjects and whether the detailed description of the subject areas would limit your flexibility in tailoring course materials to meet the needs of newly-hired experienced miners. We are also interested in whether the 90-day deadline to provide annual refresher training on the required subjects is reasonable. We request that commenters explain the reasoning behind their recommendations.

The proposal would not require a minimum number of hours for newly-hired experienced miner training, in recognition of the wide range of experience and skill among experienced miners. The approach taken in the proposal is intended to allow you to determine the amount of training that is appropriate for each newly-hired experienced miner, based on your assessment of the miner's needs. The proposal would require all newly-hired experienced miners to receive at least some training in all of the required subject areas. However, a miner transferring from one mine to another where the operations and equipment in use are very similar may not need as much training in some areas as another experienced miner whose previous experience has been less relevant. We are interested in whether commenters advocate setting a minimum number of hours for newly-hired experienced miner training, or support training of a specified duration based on discrete criteria such as mine size, mining methods, type of operations or equipment, etc.

Paragraph (c) of proposed § 46.6 would address training for a newly-hired experienced miner returning to the same mine after an absence of 12 months or less. This provision has been adopted from recently revised provisions in § 48.26. Under this paragraph, you would not be required to provide such a miner with the training required by paragraphs (a) and (b); instead, you would simply be required to inform the miner, before the miner begins work, of changes at the mine that occurred during the miner's absence that could endanger his or her safety or health. You would also be required to provide the miner with any annual refresher training that the miner may have missed during his or her absence, within 90 days after the miner starts work.

Under paragraph (d), employees of independent contractors who are "miners" under the proposed definition and who work at the mine on a short-term basis would be required to receive either newly-hired experienced miner training under paragraphs (a) or (b) or site-specific hazard training under § 46.11. This is based on a similar provision in the definition of "miner" in existing § 48.22(a)(1). The language of the proposed rule itself reflects our assumption that this provision would be applicable primarily to drillers and blasters who, because of the nature of their work, are at a mine for a short period of time before moving on to another job at another mine. We do not believe that it makes practical sense to require miners who regularly move from one mine to another to be treated the same as newly-hired miners who remain at one mine site. Therefore, the proposal would not require them to receive newly-hired experienced miner training whenever they begin work at a new mine. However, we are interested in comments on whether these are appropriate exceptions from the newly-hired experienced miner training requirements.

Section 46.7 New Task Training

Section 115(a)(4) of the Mine Act provides that:

* * * any miner who is reassigned to a new task in which he has had no previous

work experience shall receive training in accordance with a training plan approved by the Secretary * * * in the safety and health aspects specific to that task prior to performing that task.

This section of the proposed rule would implement this statutory provision by requiring you to provide miners with training for new tasks and for regularly assigned tasks that have changed, before the miners perform the tasks.

Commenters strongly supported a requirement for task training, stating that employees need to be aware of the hazards and the risks associated with the jobs or tasks that they are asked to perform and be familiar with the systems, tools, equipment, and procedures required to control these hazards. The proposed task training requirements are intended to reduce the likelihood of accidents resulting from lack of knowledge about the elements and the hazards of the task. This training should ensure that miners receive necessary information before performing the tasks that they are assigned, so that they can avoid endangering themselves or other miners at the mine site.

Some commenters recommended that new task training requirements be patterned after the requirements for task training in part 48. Under part 48, for example, a program for new task training must include instruction, in an on-the-job environment, in the health and safety aspects and safe operating procedures of the task; supervised practice during nonproduction times is also required.

Paragraph (a) of proposed § 46.7 provides that, before a miner performs a task for which he or she has no previous experience, you must train the miner in the safety and health aspects and safe work procedures specific to that task. Additionally, if changes have occurred in a miner's regularly assigned task, you must provide the miner with training that addresses the changes.

Unlike part 48, the proposal does not include detailed requirements for task training. This is intended to allow you to design task training programs that are suitable for your workforce and your operation. We expect that effective new task training will include, at a minimum, instruction in the elements of the task, including hands-on training, and an explanation of the potential health or safety hazards associated with the task and ways of minimizing or avoiding exposure to these hazards. However, we are interested in comments on whether the final rule should include more detail and guidance for you on the elements of an effective new task training program, and what areas should be addressed. We also solicit comments on whether new task training requirements under the final rule should be modeled after the requirements in part 48, as recommended by some commenters.

Several commenters stated that very effective and safe training in a new task can include the miner practicing the task while under the close supervision of a competent person, who instructs the individual in how to perform the task in a safe manner. We believe that supervised practice can allow the miner to gain experience at the new task and to learn how to avoid the hazards presented by the performance of the task. Consistent with this determination, paragraph (b) specifically provides that practice under the close supervision of a competent person may be used to satisfy new task training requirements. "Close supervision," as discussed in the preamble for new miner training under proposed § 46.5, would mean that the competent person is in the immediate vicinity of the miner and is focusing his or her complete attention on the actions of the miner being trained. A miner would not be considered under "close supervision" if the competent person is occupied with any other task or is not in close proximity to the miner.

We intend that task training would not be required for miners who have performed the task before and who are able to safely perform the task. However, you must first determine that task training is not necessary, typically by having the miner demonstrate that he or she is able to perform the task safely.

Several commenters recommended that the rule allow task training to be credited toward new miner training requirements. We recognize that new task training will be a fundamental and essential part of the training for most new miners, who must be trained in the health and safety aspects of the tasks they will be assigned. Allowing task training to be used to satisfy new miner training requirements would be consistent with this requirement. Paragraph (c) would therefore specifically provide that new task training may be used to satisfy new miner training requirements, as appropriate. Additionally, although speakers at the public meetings did not specifically raise the issue, we are interested in whether commenters support allowing new task training to satisfy some portion of annual refresher training requirements.

Section 46.8 Annual Refresher Training

Section 115(a)(3) of the Act requires all miners to receive at least eight hours of refresher training no less frequently than once every 12 months, but does not require that specific subjects be covered as part of this training. In the **Federal Register** notice announcing the public meetings, we requested comment on whether specific subject areas should be covered during annual refresher training, and if so, what subjects should be included.

Commenters strongly supported the concept of annual refresher training. However, most commenters believed that the subjects covered in refresher training should not be fixed, but instead should be tailored to the safety needs of the miners at the particular operation. Many commenters indicated that training topics should vary from year to year.

Several commenters stated that although general guidelines addressing possible training topics was a good idea, the final rule should allow flexibility in choosing topics. One commenter stated that refresher training should cover subject areas relevant to the biggest safety problems at the mine over the preceding year. Another commenter indicated that his operation took that approach and analyzed accidents that occurred at the mine over the past year, basing its training program on that analysis. One commenter stated that the idea that annual refresher training is just boring, routine, and repetitious of the same topics every year is dangerous, and that lifesaving critical skills that are non- routine need to be refreshed because people forget.

We are persuaded by commenters' recommendations that you have flexibility in selecting topics for refresher training and have made a preliminary determination that refresher training that addresses topics relevant to the mine's methods of operation, equipment, accident and illness history, etc., can be extremely effective. The proposal reflects this determination.

Paragraphs (a) and (b) of proposed § 46.8 provide that you must provide each miner with no less than eight hours of refresher training once every 12 months. The refresher training must include, at a minimum, instruction on changes at the mine that could adversely affect the miner's health or safety. We expect that these changes would include such things as a modification in mine traffic patterns, new or retrofitted equipment, a new blasting schedule, etc.

Paragraph (b) also includes a list of topics that may be covered as part of the refresher training, but none of these topics would be mandatory. The list of topics has been taken from part 48, and includes, among others, transportation controls and communication systems; ground control; water hazards, pits, and spoil banks; illumination and night work; and explosives. We expect that you will carefully select the areas that will be covered in the refresher training at your mine, to ensure that your miners will receive practical and useful instruction designed to effectively address the safety and health conditions at your mine. However, we are interested in comments on whether the final rule should include more detailed requirements or guidance for refresher training programs. We are specifically interested in whether the final rule should require instruction on particular topics, similar to part 48, and if so, which subjects should be included.

Some commenters recommended that the 12-month interval for training should be calculated based on the months that a miner actually works as a miner rather than on 12 calendar months. These commenters reasoned that many miners only work at the mine site two or three months out of the year, and that these miners should not have to receive the same amount of training as miners who are continuously employed at a mine. The proposal does not adopt this suggestion. The rationale for a refresher training requirement is that the passage of time results in the loss of important information. Congress determined that miners should be retrained at a specified interval—no less frequently than every 12 months and there is nothing in the Act's legislative history that suggests that Congress intended that refresher training be given every 12 working months rather than calendar months. In extreme cases, this interpretation might mean that some miners would receive refresher training every two or three years, rather than once every year as provided in the Act.

Section 46.9 Records of Training

This section of the proposal includes requirements for you to record and certify that miners have received health and safety training under this part.

Section 115(c) of the Mine Act provides that, upon completion of each training program, each operator shall certify, on a form approved by the Secretary, that the miner has received the specified training in each subject area of the approved health and safety training plan. The Mine Act also provides that a certificate for each miner shall be maintained by the operator and shall be available for inspection at the mine site; and that a miner is entitled to a copy of his or her training certificate when he or she leaves the operator's employ. Finally, the Mine Act requires that each training certificate indicate on its face in bold letters that false certification by an operator is punishable under section 110(a) and (f) of the Act.

Recordkeeping was one of the issues identified by us in the **Federal Register** notice announcing the public meetings. We specifically asked for comments on whether records of training should be kept at the mine site, or whether you should be allowed to keep these records at other locations.

A number of speakers at the public meetings addressed the issue of recordkeeping. Several speakers at the public meetings supported flexibility in all aspects of record maintenance, stating that you should be able to choose the record storage option that best suits your operation. One commenter stated that paperwork should be kept at a minimum, because if supervisors must spend too much time on paperwork, they will not have enough time to address mine hazards or ensure that miners are working safely. A number of commenters stated that you should have the option of keeping records at a location other than the mine site. These commenters believed that this would allow you to keep records in computer format or at a central location, and pointed out that the prevalence of electronic mail, computer networks, and fax machines would permit those of you with records maintained away from the mine site to provide copies of any record essentially instantaneously, such as to an MSHA inspector during a regular inspection.

One commenter stated that centralized record management was likely to be more reliable and more cost-effective for many of you than a less automated system. Other commenters stated that at many mine sites the only place where records could be kept would be in a pickup truck, because there was nothing that resembled a mine office on the sites. Another commenter indicated that many of you have multiple mine sites, and that often the smaller sites are not well-suited for record maintenance, particularly if the records are computerized. Several commenters, however, believed that training certificates belonged at the mine site, and that such a requirement would not be particularly burdensome.

The draft submitted by the Coalition would require that you certify that required training has been provided, provide certificates of training to miners, and maintain a copy of the training records during employment and for a period of 12 months following termination of employment. The Coalition draft also would provide that a miner who leaves your employ would be entitled, upon request, to a copy of his or her health and safety certificates.

Proposed paragraph (a) would provide that, upon a miner's completion of each training program, you must record and certify that the miner has received the training. Consistent with the Mine Act requirement that certifications be kept on a form approved by the Secretary of Labor, the proposal would allow training certifications to be kept on MSHA Form 5000–23, which is the approved form used by operators under part 48 regulations to certify that training has been completed. However, this paragraph also would provide that you may use any other form that contains the minimum information listed in paragraph (b) in this section, and adopts the Mine Act provision that false certification by an operator that training was given is punishable under section 110(a) and (f) of the Act.

The requirements of this paragraph are intended to allow those of you who may already be using MSHA Form 5000–23 for training certifications to continue to use this form under the new rule. However, in response to commenters requesting flexibility in complying with recordkeeping requirements, the proposal would allow the use of other forms that contain the minimum information specified in proposed paragraph (b). Under this paragraph a form would be considered approved by us if it contains the information listed in paragraphs (b)(1) through (b)(5). Information required would include—

(1) The printed full name of the person who received the training;

(2) The type of training that was received, the duration of the training, the date the training was received, and the name of the person who provided the training; and

(3) The mine name, MSHA mine identification number, and the location where the training was given.

We took this approach in response to comments that supported the elimination of some of the recordkeeping requirements under part 48. This approach is similar to the approach taken for approved training plans in proposed § 46.3—formal approval of your recordkeeping format would not be required so long as the record includes the minimum information listed in the proposal. This is intended to provide you with the flexibility to tailor your method of recordkeeping to the particular

operation. We expect that in many cases the recordkeeping system will be computer-based; others may choose to keep certifications on MSHA Form 5000–23. Still others whose records are not computerized may choose to use another paper-based form.

It should be noted that the information required under the proposal is less inclusive than the information called for on MSHA Form 5000–23. We believe that the information listed in the proposal would be sufficient to allow us to determine compliance with the training requirements. The information should also enable miners and their representatives to determine that necessary training has been provided for every miner, without placing an unnecessary recordkeeping burden on you. However, we specifically invite comment on whether information is needed beyond what is included in paragraph (b) to determine compliance with training requirements, and why that additional information is necessary. Similarly, we are also interested in whether any items of information listed in paragraphs (b)(1) through (b)(5) are unnecessary, and why. We also invite comments on whether the final rule should require the exclusive use of MSHA Form 5000–23 for training certifications or of a similar form that has been formally approved by us, and why commenters believe such an approach is advisable or necessary.

Paragraph (b)(4) incorporates the requirement in section 115(c) of the Mine Act that each health and safety training certificate indicate on its face that false certification that training was conducted is punishable under § 110(a) and (f) of the Mine Act. Section 110(a) of the Act provides that an operator who violates a mandatory standard or any other provision of the Act shall be assessed a civil penalty of up to $50,000. Section 110(f) of the Act provides that a person who makes a false statement, representation, or certification in records or other documents filed or maintained under the Act may be subject to criminal prosecution and fined up to $10,000 and imprisoned for up to 5 years. Paragraph (b)(4) has been included in the proposal to ensure that everyone who will be affected by the final rule or who will be responsible for compliance is aware of the civil and criminal penalties under the Mine Act for false training certification.

Finally, paragraph (b)(5) requires that the training certificate also include a statement signed by the person responsible for training that "I certify that the above training has been completed." The proposal would require the statement to be signed by the person who is identified in the training plan, under proposed § 46.3(b)(2), as responsible for health and safety training at the mine. The proposal would not require miners who have received training to initial or sign the form; the proposal would also not require the signature of the person who actually conducts the training, unless that person is designated in the plan as responsible for health and safety training at the mine.

This approach is taken in response to a number of commenters who supported reduced recordkeeping requirements. The proposal reflects our preliminary determination that a miner's initials or signature do not enhance the likelihood that training requirements will be fulfilled. However, we request comments on whether miners should be required to sign their training certificates. We also request comment on whether other persons besides the person responsible for training at the mine should be allowed to sign the certificates.

Paragraph (c) adopts the requirement of section 115(c) of the Mine Act that operators give miners copies of their training certificates at the completion of each training program. We intend that miners receive copies of their certifications after they have completed the required 24 hours of new miner training, eight hours of annual refresher training, newly-hired experienced miner training, or new task training. This would not prevent you from providing certificates to miners as partial installments of required training are completed, particularly when training is spread out over some period of time. We are interested in whether the requirements of this paragraph will ensure that miners will receive training certificates in a timely manner.

Under paragraph (c), you would also be required to give a miner a copy of his or her training certificates when the miner leaves your employ, upon the miner's request. This adopts the provision in section 115(c) of the Mine Act that miners are "entitled" to a copy of their certificates when they terminate their employment with an operator. The proposal interprets the statutory language to mean that a miner must be provided a copy if he or she requests it, but that you do not have to provide copies to miners who do not make such a request.

We anticipate that miners who are leaving for another job in the mining industry or who intend to return to the mining industry at some point in the future will request copies of their training records. This will enable miners to document their training status under our regulations at other mining operations. However, we also anticipate that some miners will terminate their employment because they are retiring or with no expectation of returning to mining. Because of this, the proposal would not require that you provide these records to the miner automatically. We do not believe that this provision is unduly burdensome for the miner. However, we invite comment on whether you should be required to provide such records automatically upon the miner's termination of employment, or whether you should be required to offer such records to the miner.

Paragraph (d) provides that you must make available at the mine site a copy of each miner's training certificate for inspection by us and for examination by miners and their representatives. This paragraph also states that if training certificates are not maintained at the mine site, you must have the capability to provide the certificates upon request by us, miners, or their representatives. This is the same approach taken for training plans under proposed § 46.3. As explained in the preamble discussion for that section, no time is specified within which a copy of the records must be produced after a request is made by us or by miners. If you elect to keep training certificates away from the mine site, you must be able to produce copies of the training certificates within a reasonable period of time. In most cases, we would expect that the records could be produced in a relatively short period of time, particularly if they are to be faxed or e-mailed to the mine site. In those cases where a mine may not have a formal office, a longer period of time to produce the records may be allowed depending upon the individual circumstances.

Comments are invited on whether the final rule should require that you maintain training certificates at the mine site. We also invite comment on the suggestion that the most recent training certificates be required to be kept at the mine site, allowing you to maintain other certificates at another location. We are also interested in whether commenters believe that the final rule should establish a deadline for you to produce records that are maintained away from the mine site, or whether the language in the proposal is adequate. One possible alternative would be require the records to be produced within a reasonable period of time, but in no case longer than one business day.

Paragraph (e) would require that you maintain copies of training certificates

and training records for each currently employed miner during his or her employment, and for at least 12 months after a miner terminates employment. This provision is adopted from the draft of the Coalition. Under this provision, you would be required to retain a miner's training certificates while the miner continues to be employed by you. At the termination of a miner's employment, you would be required to maintain the miner's certificates for at least 12 months after that employment has ended. This approach would allow us to determine compliance with the training requirements in this part for both current and recently departed miners. However, we request comment on whether a shorter or longer period for record retention is appropriate, and whether different record retention periods make sense for current and former miners. For example, part 48 requires that training certificates of currently employed miners be retained for at least 2 years, or for 60 days after termination of a miner's employment. Some commenters advocated adoption of the part 48 time frames.

Section 46.10 Compensation for Training

This section of the proposal addresses when training under this part must be conducted and the compensation that miners must receive when they are undergoing training. This section adopts the provisions of section 115 of the Mine Act that address compensation for miners who attend required training.

The issue of normal working hours and compensation for training was the subject of only one comment. A speaker at one of the public meetings stated that the rule should include a specific provision that adopted the statutory requirements in this area, to ensure that there was no confusion or uncertainty about the requirements of the Act.

Section 115(b) of the Mine Act provides that health and safety training shall be provided during normal working hours and that miners shall be paid at their normal rate of compensation when they take such training. Section 115(b) also requires that if training is given at a location other than the normal place of work, miners shall be compensated for the additional costs incurred in attending such training.

Paragraph (a) of proposed § 46.10 incorporates this statutory requirement and would provide that health and safety training must be conducted during normal working hours. As discussed earlier in this preamble, the part 48 definition of "normal working hours" has been included in the proposal in § 46.2 and provides that normal working hours means "* * * a period of time during which a miner is otherwise scheduled to work." The definition also indicates that training may be conducted on the sixth or seventh working day provided that such work schedule has been established for a sufficient period of time to be accepted as the common practice. The proposed rule does not define the term "sufficient period of time." However, as discussed under the preamble for § 46.2, we intend that the schedule must have been in place long enough to provide reasonable assurance that the schedule change was not motivated by the desire to train miners on what had traditionally been a non-work day.

Paragraph (a) would also provide that persons attending such training must be paid at a rate of pay that corresponds to the rate of pay they would have received had they been performing their normal work tasks. This provision has been adopted from part 48.

Paragraph (b) would require that if training is given at a location other than the normal place of work, miners must be compensated for the additional costs, such as mileage, meals, and lodging they may incur in attending such training sessions. Although we anticipate that much of the training provided under this part will be given at or near miners' normal workplaces, in those cases where miners must travel to receive required training, they are to be fully compensated for their expenses of travel.

This section has been included in the proposal to ensure that you and miners and their representatives are aware of the statutory requirements concerning compensation. We are interested in comments on whether these proposed provisions adequately address the issue of compensation and the scheduling of training.

Section 46.11 Hazard Training

Under the proposal, persons who are not engaged in mining operations integral to extraction or production, and who therefore do not fall within the definition of "miner" under proposed § 46.2, would not be required to receive comprehensive training. Instead, these persons would be required to receive site-specific hazard training. As discussed earlier, proposed § 46.2 defines "hazard training" as information or instructions on the hazards a person could be exposed to while on mine property, as well as applicable emergency procedures. These may include site-specific risks such as unique geologic or environmental conditions, traffic patterns, and restricted areas; and warning and evacuation signals, emergency procedures, or other special safety procedures.

As a practical matter, "miners" who are employees of a production-operator would receive orientation at the mine site and instruction in site-specific hazards and emergency procedures as part of their comprehensive training. "Miners" who are employees of independent contractors must also receive, in addition to comprehensive training, site-specific hazard training at the mine sites where they work. Under the proposal, hazard training must be given before persons begin their work duties.

As indicated earlier in the discussion of the definition of "miner" in proposed § 46.2, a number of commenters raised the issue of workers whose presence at the mine site is infrequent or whose activities at the mine site do not expose them to significant mining hazards. These commenters strongly recommended that the proposed rule not require these workers to receive comprehensive training. Instead, they suggested that these workers be trained in the hazards that exist at the mine site where they are working. Several commenters stated that a distinction must be made between workers such as independent haulers who come on to the mine site only to pick up a load of material and then leave, and truck drivers who are working within the mine site and who haul from the pit to the crushers.

Some commenters stated that whether or not a worker is employed by a mining company or by an independent contractor should be irrelevant in determining what type of training is appropriate. Several commenters acknowledged that some contractor employees at their operations were directly involved in the extraction or production process, and that it would be appropriate to treat these employees as miners for purposes of training. A number of commenters agreed that contractor employees who are engaged in activities such as milling, extraction, or blasting should be considered miners and should receive comprehensive training, which would include, as appropriate, new miner training or newly-hired experienced miner training.

Other commenters supporting this view stated that persons such as clerical staff who do not go into the plant or quarry do not need extensive safety and health training, and should therefore be excluded from the rule's definition of "miner." Another commenter indicated that the rule must clarify what type of training must be given to service

personnel, delivery people, and occasional mine visitors.

Commenters generally supported a requirement for site-specific hazard training for those workers on mine property who did not receive comprehensive training because their involvement in mining operations and exposure to mine hazards is limited. Commenters also generally supported a requirement for site-specific hazard training for contractor employees who also receive comprehensive training because of the nature of their activities at mine sites, but who move from job to job and mine site to mine site and need initial orientation at every new site before they begin work.

The draft proposal of the Coalition would require site-specific hazard training for specific categories of persons, commensurate with the associated risks, when the individuals are assigned work on mine property. Hazard training would be required for construction workers; individuals who enter mine property to service, maintain, assemble, or disassemble mine extraction or production machinery; delivery, office or scientific workers; customer truck drivers; staff or administrative personnel; or others not engaged in extraction or production activities as related to mining and milling. The Coalition draft would also specifically exempt the listed persons from comprehensive training requirements.

The Coalition draft would not require hazard training for outside vendors, visitors, or office or staff personnel who do not work at the plant location on a continuing basis and do not have access to the mine site, or who are accompanied by someone familiar with hazards specific to the mine site.

Consistent with the Coalition draft and with recommendations from other commenters, the proposal would base training requirements on the worker's activities at the mine. Under paragraph (a), persons who are present at the mine site but who do not fall within the definition of "miner" in proposed § 46.2 would be required to receive only site-specific hazard training.

Paragraphs (a)(1) through (a)(4) list examples of persons who would be required to receive hazard training, including scientific workers; delivery workers and customers; occasional, short-term maintenance or service workers or manufacturers' representatives; and outside vendors, visitors, office or staff personnel who do not work at the mine site on a continuing basis. This list is intended to provide examples of individuals who fall within this category, but is not meant to be all-inclusive. Our intention is that whether a person is a "miner" and required to receive comprehensive training is determined by the person's activities and exposure to mine hazards, not the person's job title. For example, construction workers would be exempt from comprehensive training requirements under the Coalition draft proposal. However, under our proposed rule, whether a construction worker must receive comprehensive training or site-specific hazard training would depend on what activities the worker is engaged in at the mine site. As discussed in greater detail below, hazard training would not be required if a person is accompanied at all times by an experienced miner.

The proposed rule, unlike the Coalition draft, would require hazard training for outside vendors and visitors. We believe that a vendor or visitor who will be in the vicinity of mine hazards, even for a limited period of time, should receive hazard training unless accompanied by a knowledgeable individual while at the mine site. However, commenters should be aware that we do not intend that hazard training be required for individuals who may come onto property owned by the mining operation but who never travel in the vicinity of the mine site. For example, the mine site would include areas where extraction or production take place, such as the pit, quarry, stockpiles, mine haul roads, or areas where customers travel or haul material. A soft drink deliveryman who goes no farther than an office on mine property would not be required to have hazard training. Similarly, we do not intend that hazard training be required for office or staff personnel whose offices are located some distance from the mine site and whose duties never require their presence at the mine site. This is consistent with commenters who stated that you should not be required to train persons who will not be exposed to traditional mine or plant hazards. We solicit comments on whether this approach is appropriate, and also whether the language of the proposed rule adequately addresses this issue.

Paragraph (b) would require that you also provide site-specific hazard training to each person who is an employee of an independent contractor, and who is working at the mine as a "miner" as defined in proposed § 46.2. Although these employees would receive comprehensive training, they should also receive some form of site-specific hazard training, as recommended by a number of commenters. One commenter specifically stated that the rule should require hazard training to familiarize contractors with hazards specific to mining and an overview of company safety rules and the applicable regulations. As a practical matter, we expect that many, if not most, independent contractor employees will be required to receive hazard training under paragraph (a), because they do not meet the definition of "miner" under proposed § 46.2. However, employees of independent contractor employees who do fall within the definition of "miner" also need effective orientation to their new work environment before they begin their job duties. Paragraph (b) would ensure that such training is provided. Paragraph (b) would also provide that if these miners have received newly-hired experienced miner training at the mine, and have therefore been instructed in the hazards and conditions specific to the mine, hazard training under proposed § 46.11 would not be required.

Paragraph (c) would require you to provide hazard training before the affected person is exposed to mine hazards. This is intended to ensure that persons coming onto mine property will be provided with the necessary information about the mine hazards they may encounter at the mine site before they are exposed to them. We believe there is no reason to allow any delay in providing hazard training; allowing persons to be exposed to mine hazards before they receive hazard training would defeat the purpose of the training. We expect that hazard training will not be overly burdensome and can be effectively provided to affected persons before they enter the mine site.

Under paragraph (d), you may provide hazard training through the use of—

(1) Written hazard warnings;
(2) Oral instruction;
(3) Signs and posted warnings;
(4) Walkaround training; or
(5) Other appropriate means.

Commenters had varying opinions on how long hazard training should last and what form it should take. One commenter stated that this hazard training could last about 15 minutes and would cover the conditions and hazards that the person would encounter at the job site. Another commenter stated that it might take one or two hours to alert the persons receiving the training of the site-specific hazards they might encounter at the mine site, such as conditions or equipment in the area that could cause an injury. One commenter from a large facility stated that any contractor that comes onto the mine site receives a one-hour safety rules and awareness orientation to familiarize the

contractor with the company rules and regulations that apply at the property. Finally, several commenters stated that adequately marked roads and effective warning and directional signs may be sufficient hazard training for some types of workers who are not involved with mining or extraction or the milling process, such as truck drivers who come onto the mine site only to pick up a load of material.

We intend that the proposed rule allow you the flexibility to tailor hazard training to the specific operations and conditions at your mines. Depending on the circumstances, you may provide hazard training through informal but informative conversations; in other cases, you may choose to provide some form of walkaround training by guiding the person receiving training around the mine site, pointing out particular hazards or indicating those areas where the person should not go, or some combination of these methods.

We also intend that hazard training be appropriate for the individual who is receiving it, and that the breadth and depth of training may vary depending on the skills, background, and job duties of the recipient. For example, it may be acceptable for you to provide hazard training to customer truck drivers by handing out a card to the drivers alerting them to the mine hazards or directing them away from certain areas of the mine site. In other cases, adequate warning signs on mine property may be sufficient to direct persons away from hazardous areas. However, we expect that in a number of cases site-specific hazard training should be more extensive, such as for contractor employees who fit the definition of "miner," and who have received comprehensive training, but who need orientation to the mine site and information on the mining operations and mine hazards. Additionally, more extensive hazard training would be appropriate where an equipment manufacturer's representative comes onto mine property for a short period of time to service or inspect a piece of mining equipment. Although this individual may not be on mine property for a prolonged period, the person's exposure to mine hazards may warrant training of a longer duration.

We seek specific comment on whether the flexibility that would be allowed under paragraph (d) in providing hazard training is appropriate and whether the language of the proposed rule is sufficiently descriptive. We are also interested in whether there may be other methods of providing hazard training that should be specifically included as examples in the final rule.

Proposed paragraph (e) would provide that hazard training is not required for any person who is accompanied at all times by an experienced miner who is familiar with the hazards specific to the mine site. The experienced miner referred to in paragraph (e) would not be required to be the "competent person" defined in proposed § 46.2 but should be sufficiently familiar with the mine's operations and its hazards to ensure that the person accompanied is protected from danger while at the mine site. This provision is intended to give you the option to forego site-specific hazard training, most likely for one-time visitors, and instead provide the person with a knowledgeable escort. We expect that in many situations it may be easier or more expedient for the person to be accompanied, such as a visitor who is being taken on a mine tour and would already be escorted by knowledgeable mine personnel. However, under the proposal, you may choose to accompany any category of person in lieu of providing hazard training.

Commenters should note that proposed § 46.9 would only require you to certify training for "miners." As a result, the proposal would not require you to make or maintain records of site-specific hazard training for persons who do not fit within the definition of "miner." We believe that a requirement for recordkeeping of this training, particularly given the many operations that accommodate outside customers on a regular basis, would be unnecessarily burdensome. However, we expect that you will be able to demonstrate to inspectors that you are in compliance with site-specific hazard training requirements. For example, you could show the inspector the hazard training materials that are used; copies of the flyers or handouts containing hazard information that you distribute to persons on arrival at the mine site; or visitor log books with a checklist that indicates that hazard training was given to the visitors. Additionally, you could point out the signs on mine property that warn of hazards or direct persons away from dangerous areas. We are interested in comments as to whether this approach is appropriate, or whether the final rule should require some form of recordkeeping for the hazard training received by all persons, not just miners.

Section 46.12 Responsibility for Training

This section of the proposed rule addresses the allocation of responsibility for training between production-operators and the independent contractors employing persons who work at the production-operators' mine sites. The provisions of this section respond to the concerns expressed by a number of speakers at the public meetings on responsibility for ensuring that workers receive required training, and are based in part on language in the draft proposal of the Coalition.

A number of commenters stated that the rule should make clear that primary responsibility for training employees of independent contractors is on the contractor. These commenters felt that the contractor, not the production-operator, would be in the best position to train his or her employees in the health and safety aspects of their particular tasks. One commenter stated that the main reason a production-operator hires an independent contractor is because the production-operator does not have the expertise or equipment to do the job safely, and that production-operators should not be compelled to provide training for independent contractor employees beyond what is necessary to address mine-specific hazards. Commenters were concerned about situations where independent contractor employees should receive comprehensive training, because they are engaged in extraction or production or exposed to significant mine hazards. Commenters stated that contractor employees frequently are not adequately trained, but that it should not be the production-operator's responsibility to provide this training. Commenters recommended that the rule specifically require contractors to ensure that their employees have the necessary training.

Commenters did agree that contractors need to be aware of the site-specific hazards at the mine site and supported a requirement for production-operators to provide site-specific hazard training to contractor employees who come onto mine sites to perform services. This section would address these concerns.

Because the part 46 definition of "operator" includes independent contractors, the term "production-operator" is used in this section and is defined in proposed § 46.2 as "any owner, lessee, or other person who operates, controls, or supervises a mine." This is intended to refer to the person or company who actually operates the mine as a whole, as opposed to the independent contractor who performs services there. Paragraph (a) provides that each production-operator is primarily responsible for providing site-specific hazard training to employees of independent contractors; paragraph (b) provides that independent contractors who employ

"miners" are primarily responsible for providing comprehensive training to their employees. This would not prevent a production-operator from arranging for the independent contractor to provide site-specific training to the contractor's employees; some independent contractors may also choose to arrange for the production-operator to provide comprehensive training for the contractors' employees. However, the primary responsibility for site-specific hazard training would continue to rest on the production-operator, while primary responsibility for comprehensive training of contractor employees would continue to rest on the independent contractor.

Production-operators would also be required under paragraph (a) to inform independent contractors of site-specific hazards associated with the mine site and the obligation of the contractor to comply with our regulations, including part 46. Independent contractors would be responsible under paragraph (b) for informing the production-operator of any hazards of which the contractor is aware that may be created by the performance of the contractor's work at the mine. These provisions are intended to ensure that production-operators and independent contractors share information about hazards at the mine, so that their employees may work safely.

The requirements of this section are consistent with our current policy on independent contractors. Under that policy, independent contractors are responsible for compliance with the Act and regulations with respect to their activities at a particular mine. We also cite independent contractors for violations committed by them and their employees. However, neither this policy nor the provisions in this section change production-operators' basic compliance responsibilities. Production-operators are subject to all provisions of the Act and to all standards and regulations applicable to their mining operations. This overall compliance responsibility includes ensuring compliance by independent contractors with the Act and regulations. One way for production-operators to address this responsibility is to confirm when contracting with independent contractors that the contractors' employees will receive safety and health training, and to include this as a provision in the contract.

We solicit comments on the allocation of training responsibility between production-operators and independent contractors who employ workers at mine sites.

Effective Date and Compliance Deadlines

We questioned a number of speakers at the public meetings on how much time should be allowed for the mining community to come into compliance with the final rule. Several speakers recommended that a year after the date of publication of the final rule would provide a sufficient period of time for affected operations to come into compliance. Several other speakers indicated that six months past the publication date would be adequate.

One possible approach would be phased-in compliance deadlines, where certain of the rule's requirements would go into effect at different stages. For example, the requirement that you develop and implement a training plan might become effective six months after the final rule is published, while the requirements for the various types of miner training would take effect one year after publication.

We are seeking comments on how to approach this issue, specifically on whether phased-in deadlines would be useful in facilitating compliance, and what period of time will be needed for full compliance. We have not yet determined what an appropriate effective date would be. We understand that there will be a very large number of operations coming into compliance simultaneously and wish to allow a reasonable amount of time for the transition.

XI. References

Federal Metal and Nonmetallic Mine Safety Act, September 16, 1966.

Federal Coal Mine Health and Safety Act, December 30, 1969.

Federal Mine Safety and Health Act, November 9, 1977.

H.R. Rep. No. 105–825 for H.R. 4328, 105th Cong., 2d Sess. (1998).

Joint Industry and Labor draft proposed rule for Training and Retraining miners engaged in Shell Dredging or employed at Sand, Gravel, Surface Stone, Surface Clay, Colloidal Phosphate, or Surface Limestone Mines, February 1, 1999.

MSHA, Health and Safety Training and Retraining of Miners, Final Rule, October 13, 1978 [43 FR 47454–47468].

MSHA, Notice of Public Meetings, November 3, 1998 [63 FR 59258].

MSHA, Experienced Miner and Supervisor training, Final Rule, October 6, 1998 [63 FR 53750].

Omnibus Appropriations Act for 1999, Pub. L. 105–277, October 21, 1998.

S. Rep. No. 105–300 for S. 2440, 105th Cong., 2d Sess., (1998).

Transportation Equity Act "TEA–21" (Pub. L. 105–178), June 9, 1998.

U.S. Geological Survey, U.S. Department of the Interior, Mineral Industry Surveys, Crushed Stone and Sand and Gravel in the Third Quarter of 1998, December 1998, pp. 1–5.

U.S. Geological Survey, Mineral Commodity Summaries, Stone (Crushed), Valentin V. Tepordei, January 1996, pp. 1–2.

U.S. Geological Survey, Mineral Commodity Summaries, Stone (Crushed), Valentin V. Tepordei, February 1997, pp. 1–2.

U.S. Geological Survey, Mineral Commodity Summaries, Stone (Crushed), Valentin V. Tepordei, January 1998, pp. 1–2.

U.S. Geological Survey, Mineral Commodity Summaries, Stone (Crushed), Valentin V. Tepordei, January 1999, pp. 1–2.

U.S. Geological Survey, Mineral Commodity Summaries, Sand and Gravel (Construction), Wallace P. Bolen, January 1996, pp. 1–2.

U.S. Geological Survey, Mineral Commodity Summaries, Sand and Gravel (Construction), Wallace P. Bolen, February 1997, pp. 1–2.

U.S. Geological Survey, Mineral Commodity Summaries, Sand and Gravel (Construction), Wallace P. Bolen, January 1998, pp. 1–2.

U.S. Geological Survey, Mineral Commodity Summaries, Sand and Gravel (Construction), Wallace P. Bolen, January 1999, pp. 1–2.

List of Subjects

30 CFR Part 46

Mine safety and health, Reporting and recordkeeping requirements, Surface mining, Training programs.

30 CFR Part 48

Mine safety and health, Reporting and recordkeeping requirements, Training programs.

Dated: April 6, 1999.

J. Davitt McAteer,

Assistant Secretary for Mine Safety and Health.

It is proposed to amend Chapter I of Title 30 of the Code of Federal Regulations as follows:

PART 48—[AMENDED]

1. The authority citation for part 48 continues to read as follows:

Authority: 30 U.S.C. 811, 825.

2. Section 48.21 is amended by adding a new sentence to the end of the section to read as follows:

§ 48.21 Scope.

* * * This part does not apply to training and retraining of miners at shell dredging, sand, gravel, surface stone, surface clay, colloidal phosphate, and surface limestone mines, which are covered under 30 CFR part 46.

3. A new part 46 is added to subchapter H of Title 30 of the Code of Federal Regulations to read as follows:

PART 46—TRAINING AND RETRAINING OF MINERS ENGAGED IN SHELL DREDGING OR EMPLOYED AT SAND, GRAVEL, SURFACE STONE, SURFACE CLAY, COLLOIDAL PHOSPHATE, OR SURFACE LIMESTONE MINES

Sec.
46.1 Scope.
46.2 Definitions.
46.3 Training plans.
46.4 Training program instruction.
46.5 New miner training.
46.6 Newly-hired experienced miner training.
46.7 New task training.
46.8 Annual refresher training.
46.9 Records of training.
46.10 Compensation for training.
46.11 Hazard training.
46.12 Responsibility for training.

Authority: 30 U.S.C. 811, 825.

§ 46.1 Scope.

The provisions of this part set forth the mandatory requirements for training and retraining miners working at shell dredging, sand, gravel, surface stone, surface clay, colloidal phosphate, or surface limestone mines.

§ 46.2 Definitions.

The following definitions apply in this part:

(a) *Act* is the Federal Mine Safety and Health Act of 1977.

(b) *Competent person* is a person designated by the operator who has the ability, training, knowledge, or experience to provide training to miners on a particular subject. The competent person must also be able to evaluate whether the training given to miners is effective.

(c)(1) *Experienced miner* is:

(i) A person who is employed as a miner on April 14, 1999;

(ii) A person who began employment as a miner after April 14, 1999 but before the effective date of the final rule and who has received new miner training under § 48.25 of this title or under proposed requirements published April 14, 1999 which are available from the Office of Standards, Regulations and Variances, MSHA, 4015 Wilson Boulevard, Arlington VA 22203; or

(iii) A miner who has completed 24 hours of new miner training under § 46.5 of this part or under § 48.25 of this title and who has had at least 12 months of surface mining or equivalent experience.

(2) Once a miner is an experienced miner under this section, the miner will retain that status permanently.

(d) *Extraction or production* is the mining, removal, milling, crushing, screening, or sizing of minerals at a mine under this part. Extraction or production also includes the associated haulage of these materials at the mine.

(e) *Hazard training* is information or instructions on the hazards a person could be exposed to while on mine property, as well as applicable emergency procedures. These may include site-specific risks, such as unique geologic or environmental conditions, traffic patterns, and restricted areas; and warning and evacuation signals, emergency procedures, or other special safety procedures.

(f) *Independent contractor* is any person, partnership, corporation, subsidiary of a corporation, firm, association, or other organization that contracts to perform services at a mine under this part.

(g) *Miner* is any person, including operators and supervisors, who works at a mine under this part and who is engaged in mining operations integral to extraction or production.

(h) *New miner* is a newly-hired miner who is not an experienced miner.

(i) *Normal working hours* is a period of time during which a miner is otherwise scheduled to work, including the sixth or seventh working day if such a work schedule has been established for a sufficient period of time to be accepted as the operator's common practice.

(j) *Operator* is:

(1) Any production-operator; or

(2) Any independent contractor whose employees perform services at a mine.

(k) *Production-operator* is any owner, lessee, or other person who operates, controls, or supervises a mine under this part.

(l) *Task* is a component of a job that is performed on a regular basis and that requires job knowledge.

(m) *We* or *us* is the Mine Safety and Health Administration (MSHA).

(n) *You* is production-operators and independent contractors.

§ 46.3 Training plans.

(a) You must develop and implement a written plan, approved by us under either paragraph (b) or (c) of this section, that contains effective programs for training new miners and newly-hired experienced miners, training miners for new tasks, annual refresher training, and hazard training.

(b) A training plan is considered approved by us if it contains, at a minimum, the following information:

(1) The company name, mine name, and MSHA mine identification number;

(2) The name and position of the person designated by you who is responsible for the health and safety training at the mine. This person may be the operator;

(3) A general description of the teaching methods and the course materials that are to be used in providing the training, including the subject areas to be covered and the approximate time to be spent on each subject area;

(4) A list of the persons who will provide the training, and the subject areas in which each person is competent to instruct; and

(5) The evaluation procedures used to determine the effectiveness of training.

(c) A plan that does not include the minimum information specified in paragraphs (b)(1) through (b)(5) of this section must be approved by the Regional Manager, Educational Field Services Division, or designee, for the region where the mine is located. You also may voluntarily submit a plan for Regional Manager approval. Miners and their representatives may also request review and approval of the plan by the Regional Manager.

(d) You must provide the miners' representative, if any, with a copy of the plan at least 2 weeks before the plan is implemented or submitted to the Regional Manager for approval. At mines where no miners' representative has been designated, you must post a copy of the plan at the mine or provide a copy to each of the miners at least 2 weeks before you implement the plan or submit it to the Regional Manager for approval.

(e) Within 2 weeks following the receipt or posting of the training plan, miners or their representatives may submit written comments on the plan to you, or to the Regional Manager, as appropriate.

(f) The Regional Manager must notify you and miners or their representatives in writing of the approval, or status of the approval, of the training plan within 30 days after the date on which you submitted the training plan to us for approval.

(g) If you, miners, or miners' representatives wish to appeal a decision of the Regional Manager, you must send the appeal, in writing, to the Director for Educational Policy and Development, MSHA, 4015 Wilson Boulevard, Arlington, Virginia 22203, within 30 days after notification of the Regional Manager's decision. The Director will issue a decision within 30 days after receipt of the appeal.

(h) You must make available at the mine site a copy of the current training plan for inspection by us and for examination by miners and their representatives. If the training plan is not maintained at the mine site, you

must have the capability to provide the plan upon request by us, miners, or their representatives.

§ 46.4 Training program instruction.

(a) You must ensure that each program, course of instruction, or training session is:

(1) Conducted in accordance with the written training plan; and

(2) Presented by a competent person.

(b) You may conduct your own training programs or may arrange for training to be conducted by: us, state, or other federal agencies; associations of operators; miners' representatives; other operators; contractors, consultants, manufacturers' representatives; private associations; educational institutions; or other training providers.

(c) You may substitute equivalent training required by the Occupational Safety and Health Administration (OSHA), or other federal or state agencies, to meet requirements under this part, where appropriate.

(d) Training may consist of classroom instruction, instruction at the mine site, other innovative training methods, alternative training technologies, or any combination.

(e) Employee safety meetings, including informal safety and health talks and instruction, may be credited under this part toward either new miner training, newly-hired experienced miner training, or annual refresher training requirements, as appropriate, provided that you document each training session in accordance with § 46.9 of this part.

§ 46.5 New miner training.

(a) Except as provided in paragraphs (e) and (f) of this section, you must provide each new miner with no less than 24 hours of training as prescribed by paragraphs (b) and (d) of this section. Miners who have not received the full 24 hours of new miner training must work under the close supervision of an experienced miner.

(b) You must provide each new miner with the following training before the miner begins work:

(1) An introduction to the work environment, including a visit and tour of the mine, or portions of the mine that are representative of the entire mine. The method of mining or operation utilized must be explained;

(2) Instruction on the recognition and avoidance of hazards, including electrical hazards, at the mine;

(3) A review of the escape and emergency evacuation plans in effect at the mine and instruction on the firewarning signals and firefighting procedures; and

(4) Instruction on the health and safety aspects of the tasks to be assigned, including the safe work procedures of such tasks, and the mandatory health and safety standards pertinent to such tasks.

(c) Practice under the close supervision of a competent person may be used to fulfill the requirement for training on the health and safety aspects of an assigned task in paragraph (b)(4) of this section, if hazard recognition training specific to the assigned task is given before the miner performs the task.

(d) Within 60 days after each new miner begins work, you must provide the miner with the balance of the 24 hours of training, including training in the following subjects:

(1) Instruction on the statutory rights of miners and their representatives under the Act;

(2) A review and description of the line of authority of supervisors and miners' representatives and the responsibilities of such supervisors and miners' representatives;

(3) An introduction to your rules and procedures for reporting hazards;

(4) Instruction and demonstration on the use, care, and maintenance of self-rescue and respiratory devices, if used at the mine; and

(5) A review of first aid methods.

(e) A new miner who has less than 12 months of surface mining or equivalent experience and has completed new miner training under this section or under § 48.25 of this title within 36 months before beginning work at the mine does not have to repeat new miner training. However, you must provide the miner with training specified in paragraph (b) of this section before the miner begins work.

(f) New miner training courses completed under § 48.5 or § 48.25 of this title may be used to satisfy the requirements of paragraphs (a), (b), and (d) of this section, if:

(1) The courses were completed by the miner within 36 months before beginning work at the mine; and

(2) The courses are relevant to the subjects specified in paragraphs (b) and (d) of this section.

§ 46.6 Newly-hired experienced miner training.

(a) Except as provided in paragraphs (c) and (d) of this section, you must provide each newly-hired experienced miner with the following training before the miner begins work:

(1) An introduction to the work environment, including a visit and tour of the mine, or portions of the mine that are representative of the entire mine. The method of mining or operation utilized must be explained;

(2) Instruction on the recognition and avoidance of hazards, including electrical hazards, at the mine;

(3) A review of the escape and emergency evacuation plans in effect at the mine and instruction on the firewarning signals and firefighting procedures; and

(4) Instruction on the health and safety aspects of the tasks to be assigned, including the safe work procedures of such tasks, and the mandatory health and safety standards pertinent to such tasks.

(b) Except as provided in paragraphs (c) and (d) of this section, within 90 days after each newly-hired experienced miner begins work, you must provide the miner with annual refresher training under § 46.8 of this part, which must include:

(1) Instruction on the statutory rights of miners and their representatives under the Act;

(2) A review and description of the line of authority of supervisors and miners' representatives and the responsibilities of such supervisors and miners' representatives;

(3) An introduction to your rules and procedures for reporting hazards; and

(4) Instruction and demonstration on the use, care, and maintenance of self-rescue and respiratory devices, if used at the mine.

(c) You must provide an experienced miner who returns to the same mine, following an absence of 12 months or less, with training on any changes at the mine that have occurred during the miner's absence that could adversely affect the miner's health or safety. This training must be given before the miner begins work. If the miner missed any part of annual refresher training under § 46.8 of this part during the absence, you must provide the miner with the missed training within 90 days after the miner begins work.

(d) Miners who are employees of independent contractors and who work at the mine on a short-term basis, such as drillers or blasters, may receive either newly-hired experienced miner training at the mine under paragraphs (b) and (c) of this section, or site-specific hazard training at the mine under § 46.11 of this part.

§ 46.7 New task training.

(a) Before a miner performs a task for which he or she has no previous experience, you must train the miner in the safety and health aspects and safe work procedures specific to that task. If changes have occurred in a miner's regularly assigned task, you must provide the miner with training that addresses the changes.

(b) Practice under the close supervision of a competent person may be used to fulfill the requirement for task training under this section.

(c) Task training provided under this section may be credited toward new miner training, as appropriate.

§ 46.8 Annual refresher training.

(a) At least once every 12 months, you must provide each miner with no less than 8 hours of refresher training.

(b) The refresher training must include instruction on changes at the mine that could adversely affect the miner's health or safety, and may include instruction on such subjects as: applicable health and safety requirements, including mandatory health and safety standards; transportation controls and communication systems; escape and emergency evacuation plans, firewarning and firefighting; ground control; working in areas of highwalls, water hazards, pits, and spoil banks; illumination and night work; first aid; electrical hazards; prevention of accidents; health; explosives; and respiratory devices.

§ 46.9 Records of training.

(a) Upon a miner's completion of each training program, you must record and certify on MSHA Form 5000–23, or on a form that contains the information listed in paragraph (b) of this section, that the miner has completed the training. False certification that training was completed is punishable under section 110(a) and (f) of the Act.

(b) The form must include:

(1) The printed full name of the person trained (first, middle, last names);

(2) The type of training completed, the duration of the training, the date the training was received, and the name of the competent person who provided the training;

(3) The mine name, MSHA mine identification number, and location of training (if an institution, the name and address of the institution).

(4) The statement, "False certification is punishable under section 110(a) and (f) of the Federal Mine Safety and Health Act," printed in bold letters and in a conspicuous manner; and

(5) A statement signed by the person designated as responsible for health and safety training in the MSHA-approved training plan for the mine that states, "I certify that the above training has been completed."

(c) You must provide a copy of the training certificate to each miner at the completion of each training program. When a miner leaves your employ, you must provide each miner with a copy of his or her training certificates upon request.

(d) You must make available at the mine site a copy of each miner's training certificates for inspection by us and for examination by miners and their representatives. If training certificates are not maintained at the mine site, you must have the capability to provide the certificates upon request by us, miners, or their representatives.

(e) You must maintain copies of training certificates and training records for each currently employed miner during his or her employment and for at least 12 months after a miner terminates employment.

§ 46.10 Compensation for training.

(a) Training must be conducted during normal working hours; persons required to receive such training must be paid at a rate of pay that corresponds to the rate of pay they would have received had they been performing their normal work tasks.

(b) If training is given at a location other than the normal place of work, persons required to receive such training must be compensated for the additional costs, including mileage, meals, and lodging, they may incur in attending such training sessions.

§ 46.11 Hazard training.

(a) You must provide site-specific hazard training to any person who is not a miner as defined under § 46.2 of this part but is present at a mine site under this part, including:

(1) Scientific workers;

(2) Delivery workers and customers;

(3) Occasional, short-term maintenance or service workers, or manufacturers' representatives; and

(4) Outside vendors, visitors, office or staff personnel who do not work at the mine site on a continuing basis.

(b) You must provide site-specific hazard training to each person who is an employee of an independent contractor and who is working at the mine as a miner, as defined in § 46.2 of this part, unless the miner receives newly-hired experienced miner training at the mine under § 46.6.

(c) You must provide hazard training under this section before the affected person is exposed to mine hazards.

(d) You may provide hazard training through the use of written hazard warnings, oral instruction, signs and posted warnings, walkaround training, or other appropriate means.

(e) Hazard training under this section is not required for any person who is accompanied at all times by an experienced miner who is familiar with hazards specific to the mine site.

§ 46.12 Responsibility for training.

(a) Each production-operator has primary responsibility for providing site-specific hazard training to employees of independent contractors who are required to receive hazard training under § 46.11 of this part. Further, the production-operator must provide information to each independent contractor who employs a person at the mine on site-specific hazards associated with the mine site and the obligation of the contractor to comply with our regulations, including the requirements of this part.

(b) Each independent contractor who employs a miner, as defined in § 46.2, at the mine has primary responsibility for complying with §§ 46.3 through 46.10 of this part, including providing new miner and newly-hired experienced miner training, new task training, and annual refresher training. Further, the independent contractor must inform the production-operator of any hazards of which the contractor is aware that may be created by the performance of the contractor's work at the mine.

[FR Doc. 99–8894 Filed 4–6–99; 9:52 am]
BILLING CODE 4510–43–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Part 46

RIN 1219–AB17

Training and Retraining of Miners Engaged in Shell Dredging or Employed at Sand, Gravel, Surface Stone, Surface Clay, Colloidal Phosphate, or Surface Limestone Mines

AGENCY: Mine Safety and Health Administration (MSHA), Labor.

ACTION: Proposed rule, notice of public hearings.

SUMMARY: We (MSHA) are announcing public hearings on our proposed rule on the training and retraining of miners engaged in shall dredging or employed at sand, gravel, surface stone, surface clay, colloidal phosphate, or surface limestone mines. The proposed rule appears elsewhere in this issue of the **Federal Register**.

DATES: See **SUPPLEMENTARY INFORMATION** section for hearing dates. The record will remain open after the hearings until June 16, 1999.

ADDRESSES: See **SUPPLEMENTARY INFORMATION** for hearing locations.

Send requests to make oral presentations—

(1) By telephone to MSHA, Office of Standards, Regulations, and Variances at 703–235–1910;

(2) By mail to MSHA, Office of Standards, Regulations, and Variances, 4015 Wilson Boulevard, Room 631, Arlington, VA 22203–1984;

(3) By facsimile to MSHA, Office of Standards, Regulations, and Variances at 703–235–5551; or

(4) By electronic mail to comments@msha.gov.

FOR FURTHER INFORMATION CONTACT: Carol J. Jones, Acting Director, Office of Standards, Regulations, and Variances, MSHA, 4015 Wilson Boulevard, Arlington, VA 22203–1984. She can be reached at cjones@msha.gov (Internet E-mail); 703–235–1910 (Voice); or 703–235–5551 (Fax).

SUPPLEMENTARY INFORMATION: We published a proposed rule elsewhere in this issue of the **Federal Register** addressing training and retraining of miners of mines where Congress has prohibited us from expending funds to enforce training requirements since fiscal year 1980. The proposed rule would implement the training requirements of § 115 of the Federal Mine Safety and Health Act of 1977 (Mine Act) and provide for effective miner training at the affected mines.

I. Hearing Dates and Locations

We will conduct four public hearings to receive comments from interested parties on the proposed rule. All four hearings are scheduled to run from 8:00 a.m. to 5:00 p.m., but will continue into the evening if necessary to accommodate as many participants as is reasonably possible. We will hold the hearings on the following dates at the following locations:

1. May 18, 1999, Holiday Inn & Suites, 5905 Kirkman Road, Orlando, Florida 32819, Tel. No. (407) 351–3333.

2. May 20, 1999, Sacramento Convention Center, 1400 J Street, Sacramento, California 95814, Tel. No. (916) 264–5291.

3. May 25, 1999, Marriott Pittsburgh Airport, 100 Aten Road, Pittsburgh, Pennsylvania 15108, Tel. No. (412) 788–8800.

4. May 27, 1999, Department of Labor, Frances Perkins Building, Auditorium, 200 Constitution Avenue, NW., Washington, DC 20210, Tel. No. (202) 219–7816.

II. Issues

Speakers may raise or address any issues relevant to the rulemaking. However, we are specifically interested in comments on certain issues. A short discussion of these issues follows.

Definition of "Miner"

We are interested in whether the proposed definition of "miner" is appropriate. Workers who fit the definition of "miner" under the proposal would be required to receive comprehensive training, including new miner training or newly-hired experienced miner training, as appropriate. Persons who fall outside this definition would be required to receive site-specific hazard training.

Under the proposal, a person engaged in mining operations integral to extraction or production would be considered a "miner." We intend that the definition of "miner" include those workers whose activities are related to the day-to-day process of extraction or production.

We are particularly interested in recommendations for final rule language that would help to clarify the scope and application of this definition. Specifically, we would like comments on whether the final rule's definition of "miner" should include persons whose exposure to mine hazards is frequent or regular, regardless of whether they are engaged in extraction or production, or who are employed by the production-operator, similar to the approach taken in our training regulations in part 48. Another possible approach would be to characterize a person's activities more specifically in terms of how integral or essential they are to extraction or production at the time.

Plan Approval Process

The proposal would require each operator to develop and implement a written training plan that includes programs for training new miners and newly-hired experienced miners, training miners for new tasks, annual refresher training, and hazard training. Plans that include the minimum information specified in the proposal would be considered approved and would not be required to be submitted to us for formal review, unless the operator, a miner or a miners' representative request it. Miners and their representatives would also be given the opportunity to comment on the plan before it is implemented.

The approach taken in the proposal for plan approval recognizes that,while our review of written training plans could provide an initial check on the quality of the program, such review could not ensure that the program is successful in its implementation. Rather than expending our resources on the review and approval of training plans at all of the mines affected by this rule, we would instead direct those resources toward verification of the effectiveness of training plans in their execution, and in assisting operators in developing and providing quality training to their employees. Similarly, operator sand training providers would be able to focus on the development and administration of training plans rather than on traditional procedures to gain our approval.

We are interested in comments on whether the proposed approach is appropriate, and whether we should require information in addition to what is required in the proposal before we consider a plan approved, or whether we should require less information. We are also interested in whether any commenters believe a traditional plan approval process, similar to the process in part 48, is needed to ensure that training plans meet minimum standards of quality, and why this may be true.

New Miner Training

Under the proposal, no minimum number of hours of training is required for a new miner before he or she begins work under the close supervision of an experienced miner. Instead, the proposal requires instruction in four subject areas before the miner can assume work duties. By not requiring a minimum number of hours of initial training for new miners, the proposal would provide flexibility to tailor training plans to focus on the unique needs of the mine and workforce and to provide the most effective and relevant training for the new miners. At the same time, because specific subject areas would be covered before new miners being work, the miners would receive training on relevant topics to ensure that they are familiar with the operations and environment at the mine,their job duties, and the hazards they may encounter at the mine site.

We are interested in whether commenters agree with this approach, or whether the final rule should establish a minimum number of hours of training that new miners must receive before beginning work. One possible approach would be to specify a minimum number of hours of initial training that must be provided to miners based on mine size or complexity of operation. For example, a large operation may be required to provide eight hours of training, swhile a very small operation would be required to provide one hour of training. We are interested in comments on this alternative, particularly on the criteria that might be used in determining how much initial new miner training must be given, such as employment, type of operation, type and amount of

equipment, etc. Commenters who believe that a minimum number of hours of training should be required should also specify what the minimum number of hours should be.

New Task Training

This proposed rule would require miners to be trained for new tasks and for regularly assignee tasks that have changed. The new task training requirements in the proposal are very performance-oriented, and do not include detailed specifications for this training. However, we are interested in comments on whether the final rule should include more detail and guidance on the elements of an effective new task training program, and what areas should be addressed. We are also interested in comments on whether new task training requirements under the final rule should be modeled after the requirements in part 48, as recommended by some comments at the public meetings.

Training Instructors

The proposal would not require a formal program for the approval or certification of instructors,or establish rigid minimum qualifications for instructors. Instead, training must be provided by a "competent person," which is defined as a person designated by the operator who has the ability, training, knowledge, or experience to provide training to miners on a particular subject. Under this definition, the competent person must also be able to evaluate the effectiveness of the training.

We are interested in comments on the approach taken in the proposal for instructors, particularly on the fact that the proposal would not require a formal instructor approval or certification program. We are also interested in commenters' views on whether the final rule should require some minimum amount of formal training for instructors, designed to ensure that the instructor has the communication skills needed to provide effective training.

Annual Refresher Training

Under the proposal, refresher training must include, at a minimum, instruction on changes at the mine that could adversely affect the miner's health or safety. The proposal includes a list of suggested topics that refresher training could cover, but these topics are not mandatory. We are interested in whether the final rule should include more detailed requirements or guidance for refresher training programs. We are also interested in whether there are any other subjects that commenters believe should be required as part of annual refresher training at all mines, or whether the final rule should remain at performance-oriented as the proposal.

Effective Date and Compliance Deadlines

We are interested in comments on how much time should be allowed for the mining community to come into compliance with the final rule. Several speakers at the public meetings stated that one year after the date of publication of the final rule would provide a sufficient period of time for affected operations to come into compliance. Several other speakers indicated that six months past the publication date would be adequate.

One possible approach would be phased-in compliance deadlines, where some of the rule's requirements would go into effect at different stages. For example, the requirement that you develop and implement a training plan might become effective six months after the final rule is published, while the requirements for the various types of miner training would take effect one year after publication.

We are seeking comments on whether phased-in deadlines would be useful in facilitating compliance, and what period of time will be needed for full compliance. We understand that there will be a very large number of operations coming into compliance simultaneously and wish to allow a reasonable amount of time for the transition.

Costs and Benefits of the Proposed Rule

We are interested in comments on all elements (including methodology, assumptions, and data) of our analysis of the costs and benefits of compliance with the proposed rule.

In terms of compliance costs, we specifically request comments on the following issues: (1) The non-compliance estimates used in our preliminary Regulatory Economic Analysis for the proposed rule and whether partial compliance with existing part 48 training requirements would be a more realistic and useful assumption; (2) whether new mines are predominantly opened by current mine owners (who would presumably be able to adopt an approved training plan) and, more generally, whether the cost assumptions for existing mines to develop a training plan are equally applicable to new mines; (3) the assumptions concerning short safety meetings used to derive the estimate of exempt mine operator savings attributable to the proposed rule; and (4) the cost assumptions concerning hazard training, including, particularly, the number of persons requiring hazard training.

In terms of safety and health benefits, we request comments on (1) our estimates of the number of fatalities likely to be prevented by compliance with the proposed rule; (2) the effect of increased production levels on the number of fatalities and the fatality rate; and (3) what factors, other than training, might make exempt mines more hazardous than nonexempt mines.

We are also interested in comments related to potential economic benefits you might derive from improved miner safety and health resulting from compliance with the rule. For example, during the public meetings, several speakers stated that their companies were able to reduce workers' compensation insurance costs significantly by instituting an effective safety and health training program. We are specifically interested in comments concerning how compliance with proposed part 46 might affect workers' compensation costs at your operations. Other economic benefits from improved miner health and safety we request your comments on include, but are not limited to, an increase in productivity; a reduction in property loss and down time associated with accidents; and a reduction in employee turnover.

III. Hearing Procedures

We will conduct the hearings in an informal manner with a panel of MSHA officials. Although formal rules of evidence or cross examination do not apply, the chair may exercise discretion to ensure the orderly progress of the hearings and may exclude irrelevant or unduly repetitious material and questions.

We will begin each session with an opening statement and will then give members of the public an opportunity to make oral presentations. The hearing panel may ask questions of speakers. Verbatim transcripts of the proceedings will be prepared and made a part of the rulemaking record. Copies of the hearing transcripts will be made available for public review, and will also be posted on our Internet Home Page at http://www.msha.gov.

We will also accept written comments and other appropriate information from any interested party, including those who do not make oral presentations. All comments and information submitted will be considered by us in the development of the final rule and included as part of the rulemaking record. To allow for the submission of posthearing comments, the record will remain open until June 16, 1999.

Dated: April 6, 1999.

Marvin W. Nichols, Jr.,

Deputy Assistant Secretary for Mine Safety and Health.

[FR Doc. 99–8895 Filed 4–8–99; 9:52 am]

BILLING CODE 4510–43–U

UMI

VOL
64

ISS
71

AP
14

7

1999

UMI

Federal Register

Wednesday
April 14, 1999

Part IV

Department of Agriculture

Cooperative State Research, Education, and Extension Service

7 CFR Part 3418

Stakeholder Input Requirements for Recipients of Agricultural Research, Education, and Extension Formula Funds; Proposed Rule

DEPARTMENT OF AGRICULTURE

Cooperative State Research, Education, and Extension Service

7 CFR Part 3418

RIN 0524–AA23

Stakeholder Input Requirements for Recipients of Agricultural Research, Education, and Extension Formula Funds

AGENCY: Cooperative State Research, Education, and Extension Service, USDA.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Cooperative State Research, Education, and Extension Service (CSREES) proposes to add a new part 3418 to Title 7, Subtitle B, Chapter XXXIV of the Code of Federal Regulations, for the purpose of implementing section 102(c) of the Agricultural Research, Extension, and Education Reform Act of 1998 (AREERA) (7 U.S.C. 7612(c)) which requires 1862 land-grant institutions, 1890 land-grant institutions, and 1994 land-grant institutions that receive agricultural research, extension, or education formula funds to establish a process for stakeholder input on the uses of such funds. Failure to comply with these shakeholder input requirements may result in the withholding of a recipient institution's formula funds and redistribution of its share of formula funds to other eligible institutions.

DATES: Written comments are invited from interested individuals and organizations. To be considered in the formulation of the final rule, comments must be received on or before May 14, 1999.

ADDRESSES: Address all comments to CSREES–USDA; Office of Extramural Programs; Policy and Program Liaison Staff; Mail Stop 2299; 1400 Independence Avenue, S.W.; Washington, DC 20250–2299. Comments may be hand-delivered to CSREES–USDA; Office of Extramural Programs; Policy and Program Liaison Staff; Room 302 Aerospace Center; 901 D Street, SW; Washington, DC 20024. Comments may also be mailed electronically to oep@reeusda.gov.

FOR FURTHER INFORMATION CONTACT: Louise Ebaugh; Director, Office of Extramural Programs; Cooperative State Research, Education, and Extension Service; U.S. Department of Agriculture; Washington, DC 20250; at 202–720–9181, 202–401–7752 (fax) or via electronic mail at oep@reeusda.gov.

SUPPLEMENTARY INFORMATION:

Background and Purpose

The Cooperative State Research, Education, and Extension Service (CSREES) proposes a rule to implement section 102(c) of the Agricultural Research, Extension, and Education Reform Act of 1998 (AREERA) (7 U.S.C. 7612(c)) which requires 1862, 1890, and 1994 institutions (specific land-grant colleges and universities as defined by section 2 of AREERA (7 U.S.C. 7601)) receiving agricultural research, extension, or education formula funds from CSREES to establish a process for receiving input from persons who conduct or use agricultural research, extension, or education on the uses of such funds. For purposes of this rule, these persons are referred to as stakeholders. Section 102(c)(2) of AREERA required the Secretary of Agriculture to promulgate regulations specifying what those land-grant institutions had to do to meet this stakeholder input requirement, and what consequences would befall any institution that did not meet such a requirement.

Section 102(c) on its face only applies to land-grant colleges and universities established pursuant to the First Morrill Act, as amended (7 U.S.C. 301, *et seq.*) (1862 institutions), the Second Morrill Act, as amended (7 U.S.C. 321, *et seq.*) (1890 institutions), and the Equity in Educational Land-Grant Status Act of 1994, as amended (7 U.S.C. 301 note) (1994 institutions). CSREES has determined that the formula funds specified in section 102(c) are: agricultural research funds provided to the 1862 institutions and agricultural experiment stations under the Hatch Act of 1887, as amended (7 U.S.C. 361a, *et seq.*); extension funds provided to 1862 institutions under sections 3(b) and 3(c) of the Smith-Lever Act, as amended (7 U.S.C. 343(b) and (c)), and section 208(c) of the District of Columbia Public Postsecondary Education Reorganization Act, Pub. L. 93–471, as amended; agricultural research and extension funds provided to 1890 institutions under sections 1444 and 1445, respectively, of the National Agricultural Research, Extension, and Teaching Policy Act of 1977 (NARETPA), as amended (7 U.S.C. 3221 and 3222); education formula funds provided to 1994 institutions under section 534(a) of the Equity in Educational Land-Grant Status Act of 1994 (7 U.S.C. 301 note); research funds provided for forestry schools under the McIntire-Stennis Act of 1962, as amended (16 U.S.C. 582a, *et seq.*); and animal health and disease research funds provided to veterinary schools and agricultural experiment stations under section 1433 of NARETPA, as amended (7 U.S.C. 3195).

The 1862, 1890, and 1994 institutions are not the sole institutions eligible to receive formula funds under all of these Acts. There is one agricultural experiment station that is not a college or university, and a handful of forestry or veterinary schools that are not land-grant institutions. However, given that the number of such institutions is de minimus, and the impracticality of trying to segregate stakeholder comments with respect to these few institutions, CSREES has determined to apply this proposed rule to any recipient of the aforementioned formula funds.

The proposed rule does not require recipient institutions to adopt any particular format for soliciting stakeholder input. It only requires that recipient institutions report annually to CSREES (1) the actions taken to encourage stakeholder input; and (2) a brief statement of the process used by a recipient institution to identify individuals or groups as stakeholders and to collect input from them.

Failure to comply with the requirements of this rule may result in the withholding of a recipient institution's formula funds and redistribution of its share of formula funds to other eligible institutions, as authorized by law.

In addition to the comments from the recipient institutions directly affected by this rule, CSREES encourages public comments from stakeholders. Interested parties also are invited to review the Guidelines for State Plans of Work to be published in the **Federal Register** for comment by mid April 1999, which will describe related land-grant processes involving stakeholders.

Classification

This rule has been reviewed under Executive Order 12866 and has been determined to be nonsignificant as it will not create a serious inconsistency or otherwise interfere with an action planned by another agency; will not materially alter the budgetary impact of entitlement, grants, user fees, or loan programs, or the rights and obligations of the recipients thereof; and will not raise novel legal or policy issues arising out of legal mandates, the President's priorities, or principles set forth in this executive order. This rule also will not have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment,

public health or safety, or State, local, or tribal governments or communities.

Regulatory Flexibility Act

The Department certifies that this rule will not have a significant impact on a substantial number of small entities as defined in the Regulatory Flexibility Act, Pub. L. No. 96–534 (5 U.S.C. 601 *et seq.*). Accordingly, a regulatory flexibility analysis is not required for this proposed rule.

Catalog of Federal Domestic Assistance

The programs affected by this rule are listed in the Catalog of Federal Domestic Assistance under No. 10.203, Payments to Agricultural Experiment Stations Under the Hatch Act, No. 10.205, Payments to 1890 Land-Grant Colleges and Tuskegee University, No. 10.202, Cooperative Forestry Research, No. 10.207, Animal Health and Disease Research, No. 10.500, Cooperative Extension Service, and No. 10.221, Tribal Colleges Education Equity Grants.

Paperwork Reduction Act

In accordance with the Office of Management and Budget (OMB) regulations (5 CFR part 1320) which implement the Paperwork Reduction Act of 1955 (44 U.S.C. chapter 35), the information collection and recordkeeping requirements that will be imposed in implementation of this proposed rule have been submitted to OMB for approval. These requirements would not become effective prior to OMB approval.

This new collection of information and recordkeeping requirement will enable CSREES to determine whether the recipient institutions have established and implemented stakeholder input processes. Many of the land-grant institutions already have functioning stakeholder input processes and use the results of these processes to develop long range plans, commonly referred to as plans of work, for their agricultural research, education, and extension activities. The proposed 7 CFR 3418 will require that by October 1, 1999, each recipient institution will have established and implemented a stakeholder input process on the uses of their agricultural research, education, and extension formula funds and that the institution submit an annual report on this process to CSREES. Failure to comply may result in the withholding of a recipient institution's formula funds and redistribution of its share of formula funds to other eligible institutions, as authorized by law.

Respondents: First-tier respondents will be the land-grant institutions of the States and tribes; or other specific institutions as defined in the regulation, which will provide information to USDA on the process and actions used by recipient institutions to identify stakeholders and solicit their input. Second-tier respondents to the collection of information will be the stakeholders who conduct or use agricultural research, extension, or education within a State or tribe receiving formula funds.

This collection of information will be mandatory for first-tier respondents while it will be voluntary for the second-tier respondents.

Estimate of the Burden: The burden on the first-tier respondents is estimated at 9.19 hours per response.

Estimated Number of Respondents: 116.

Estimated Annual Number of Responses: 311.

Estimated Total Annual Burden on Respondents: 2,859 hours.

Frequency of Responses: Annually.

Comments: Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to: CSREES–USDA; Office of Extramural Programs; Policy and Program Liaison Staff; Mail Stop 2299; 1400 Independence Avenue, S.W.; Washington, DC 20250–2299 by June 14, 1999 or to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20502. Reference should be made to the volume, page, and date of this **Federal Register** publication.

List of Subjects in 7 CFR 3418

Agricultural education, Agricultural extension, Agricultural research, Colleges and universities.

For reasons stated in the preamble, chapter XXXIV of Title 7 of the Code of Federal Regulations is amended by adding Part 3418 to read as follows:

PART 3418—STAKEHOLDER INPUT REQUIREMENTS FOR RECIPIENTS OF AGRICULTURAL RESEARCH, EDUCATION, AND EXTENSION FORMULA FUNDS

Sec.

3418.1 Definitions.
3418.2 Scope and Purpose.
3418.3 Applicability.
3418.4 Reporting Requirement.
3418.5 Failure to Report.
3418.6 Prohibition.

Authority: 5 U.S.C. 301; 7 U.S.C. 7612(c)(2).

§ 3418.1 Definitions.

As used in this part:

1862 institution means a college or university eligible to receive funds under the Act of July 2, 1862 (7 U.S.C. 301, *et seq.*).

1890 institution means a college or university eligible to receive funds under the Act of August 30, 1890 (7 U.S.C. 321, *et seq.*), including Tuskegee University.

1994 institution means an institution as defined in section 532 of the Equity in Educational Land-Grant Status Act of 1994 (7 U.S.C. 301 note).

Formula funds means agricultural research funds provided to 1862 institutions and agricultural experiment stations under the Hatch Act of 1887 (7 U.S.C. 361a, *et seq.*); extension funds provided to 1862 institutions under sections 3(b) and 3(c) of the Smith-Lever Act (7 U.S.C. 343(b) and (c)) and section 208(c) of the District of Columbia Public Postsecondary Education Reorganization Act, Pub. L. 93–471; agricultural extension and research funds provided to 1890 institutions under sections 1444 and 1445 of the National Agricultural Research, Extension, and Teaching Policy Act of 1977 (NARETPA) (7 U.S.C. 3221 and 3222); education formula funds provided to 1994 institutions under section 534(a) of the Equity in Educational Land-Grant Status Act of 1994 (7 U.S.C. 301 note); research funds provided to forestry schools under the McIntire-Stennis Act of 1962 (16 U.S.C. 582a, *et seq.*); and animal health and disease research funds provided to veterinary schools and agricultural experiment stations under section 1433 of NARETPA (7 U.S.C. 3195).

Recipient institution means any 1862 institution, 1890 institution, 1994 institution, or any other institution that receives formula funds from the Department of Agriculture.

Stakeholder means any person who has the opportunity to use or conduct agricultural research, extension, or education activities of recipient institutions.

§ 3418.2 Scope and purpose.

Section 102(c) of the Agricultural Research, Extension, and Education Reform Act of 1998 (7 U.S.C. 7612(c)) requires land-grant institutions, as a condition of receipt of formula funds, to solicit and consider input and recommendations from stakeholders concerning the use of formula funds. This regulation implements this requirement consistently for all recipient institutions that receive formula funds.

§ 3418.3 Applicability.

To obtain formula funds after September 30, 1999, each recipient institution shall establish and implement a process for obtaining stakeholder input on the uses of formula funds in accordance with this part.

§ 3418.4 Reporting requirement.

Each recipient institution shall report to the Department of Agriculture by October 1 of each fiscal year, the following information related to stakeholder input and recommendations: (1) actions taken to seek stakeholder input that encourages their participation and

(2) a brief statement of the process used by the recipient institution to identify individuals and groups who are stakeholders and to collect input from them.

§ 3418.5 Failure to report.

Formula funds may be withheld and redistributed if a recipient institution fails to either comply with § 3418.3 or report under § 3418.4.

§ 3418.6 Prohibition.

A recipient institution shall not require input from stakeholders as a condition of receiving the benefits of, or participating in, the agricultural research, education, or extension programs of the recipient institution.

Done at Washington, DC, this 7th day of April 1999.

Eileen Kennedy,

Deputy Under Secretary, Research, Education, and Economics.

[FR Doc. 99–9262 Filed 4–13–99; 8:45 am]

BILLING CODE 3410–22–P

federal register

Wednesday
April 14, 1999

Part V

Department of Housing and Urban Development

24 CFR Part 103

Fair Housing Complaint Processing; Plain Language Revision and Reorganization; Interim Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 103

[Docket No. FR–4433–I–01]

RIN 2529–AA86

Fair Housing Complaint Processing; Plain Language Revision and Reorganization

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

ACTION: Interim rule.

SUMMARY: This interim rule revises HUD's regulations that concern the processing of fair housing complaints in two ways. First, the current sections that address the filing of complaints have been rewritten using plain language. Plain language is an approach to writing that promotes responsive, accessible, and understandable written communication. Second, the sections that address the investigation of complaints have been moved to another place in the regulations. We are revising these regulations to make the procedures for filing housing discrimination complaints easier to understand. This rule does not change the substance of the existing fair housing complaint processing regulations.

DATES: Effective Date: May 14, 1999. Comments Due Date: Comments must be submitted by June 14, 1999.

ADDRESSES: Interested persons are invited to submit comments regarding this interim rule to the Rules Docket Clerk, Office of the General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–0500. Comments should refer to the above docket number and title. A copy of each comment submitted will be available for public inspection and copying between 7:30 am and 5:30 pm weekdays at the above address. Facsimile (FAX) comments will not be accepted.

FOR FURTHER INFORMATION CONTACT: Judith Keeler, Acting Director, Office of Enforcement, Office of Fair Housing and Equal Opportunity, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–2000; telephone (202) 708–0836 (this is not a toll-free number). Hearing or speech impaired individuals may access this number via TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION:

Background

Title VIII of the Civil Rights Act of 1968 (Public Law 90–284, 82 Stat. 81, approved April 11, 1968, codified as amended at 42 U.S.C. 3601–3619) (the Fair Housing Act) prohibits discrimination in the sale, rental, or financing of housing based on race, color, religion, national origin, sex, disability, or familial status. To enforce this prohibition, the Fair Housing Act authorizes HUD to receive and investigate housing discrimination complaints.

In 1988, the Fair Housing Amendments Act (Public Law 100–430, 102 Stat. 1619, approved September 13, 1988) (the 1988 Act) expanded HUD's authority to initiate fair housing investigations and to file complaints. We implemented the 1988 Act through final regulations published on January 23, 1989 (54 FR 3232). The January 23, 1989 final rule, among other things, established a new 24 CFR part 103. Part 103 describes the policies and procedures that govern the processing of fair housing complaints.

This rule revises subpart B (entitled "Complaints") of the part 103 regulations in two ways. First, the sections in subpart B that address the filing of complaints have been rewritten using plain language. Second, the sections in subpart B that address the investigation of complaints have been moved to subpart D (entitled "Investigation Procedures"). Subpart D concerns investigation procedures for fair housing complaints.

Plain Language

HUD has revised 24 CFR part 103, subpart B using plain language in response to President Clinton's Memorandum of June 1, 1998, entitled "Plain Language in Government" (63 FR 31885, Wednesday, June 10, 1998). In this memorandum, President Clinton directed Federal agencies to use plain language in all government writing. With respect to rules, President Clinton directed Federal agencies to use plain language in new proposed and final rules beginning January 1, 1999. In the same memorandum, President Clinton also urged Federal agencies to consider rewriting existing regulations in plain language, as resources permit.

Plain language is an approach to writing that promotes responsive, accessible, and understandable written communications. It involves the use of a number of writing tools to create documents that are visually inviting, logically organized, and understandable on the first reading. These writing tools include:

—Using the active voice and strong verbs;
—Using compact sentences;
—Using personal pronouns such as "you" and "we";
—Using common, everyday words;
—Avoiding surplus words and technical or legal jargon;
—Using tables to present information where appropriate; and
—Using a design and layout that increases comprehension.

We selected subpart B of 24 CFR part 103 as the first of our regulations to be rewritten in plain language format, because it is important that regulations addressing housing discrimination be easy to understand.

For more information about plain language, please contact the National Partnership for Reinventing Government using one of the following methods:

If you are using this method...	please use this address:
World Wide Web	http://www.plainlanguage.gov
Email	info@plainlanguage.gov
Postal Address	National Partnership for Reinventing Government 750–17th Street, NW, Suite 200, Washington, DC 20006.
Phone (voice)	Customer Service Desk: (202) 694–0001.

Sections Moved From Subpart B to Subpart D of 24 CFR Part 103

This interim rule moves §§ 103.45, 103.50, and 103.55 from 24 CFR part 103, subpart B to 24 CFR part 103, subpart D. These sections, which relate to the investigation of complaints, are more appropriately located in subpart D. Subpart D addresses the investigation procedures for fair housing complaints. In addition, this rule adds a new § 103.204 to subpart D, entitled "HUD

complaints and compliance reviews." Paragraph (a) of new § 103.210 clarifies that HUD may conduct a fair housing investigation and file a complaint based on information that one or more discriminatory housing practices has occurred, or is about to occur.

Paragraph (b) of § 103.210 repeats the language of current § 103.10(b). This section concerns HUD compliance reviews under other civil rights authorities, such as Executive Order 11063, entitled "Equal Opportunity in Housing" (27 FR 11527, November 20, 1962, reprinted as amended at 42 U.S.C. 1982 note), title VI of the Civil Rights Act of 1964 (Public Law 88–352, 78 Stat. 241, 252, approved July 2, 1964, codified as amended at 42 U.S.C. 2000d et seq.), section 109 of the Housing and Community Development Act of 1974 (Public Law 93–383, 88 Stat. 633, 649, approved August 22, 1974, codified at 42 U.S.C. 5309), section 504 of the Rehabilitation Act of 1973 (Public Law 93–112, 87 Stat. 355, 394, approved September 26, 1973, codified as amended at 29 U.S.C. 794), and the Age Discrimination Act of 1975 (Public Law 94–135, 89 Stat. 728, approved November 28, 1975, codified as amended at 42 U.S.C. 6101–6107). HUD is making these revisions to clarify and simplify the organization of its fair housing complaint processing regulations.

Substance of Complaints Filing Process Unchanged

This interim rule does not change the substance of the existing fair housing complaint processing regulations. We are revising these regulations to make the housing discrimination filing procedures more accessible and understandable to the public. All procedures and requirements for filing housing discrimination complaints remain as they are currently.

List of Fair Housing Offices

The list of HUD's fair housing offices, with mailing addresses and phone numbers, is provided in the table below. These offices have special expertise in handling fair housing claims.

If you are in this area...	please contact this office:
Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, or Vermont.	Fair Housing Enforcement Center, U.S. Dept. of Housing and Urban Development, Thomas P. O'Neill, Jr. Federal Building, 10 Causeway Street, Room 321, Boston, MA 02222–1092, (617) 565–5308; (800) 827–5005; TTY (617) 565–5453.
New Jersey or New York	Fair Housing Enforcement Center, U.S. Dept. of Housing and Urban Development, 26 Federal Plaza, Room 3532, New York, NY 10278–0068, (212) 264–9610; (800) 496–4294; TTY (212) 264–0927.
Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, or West Virginia.	Fair Housing Enforcement Center, U.S. Dept. of Housing and Urban Development, The Wanamaker Building, 100 Penn Square East, Philadelphia, PA 19107–3380, (215) 656–0660; (888) 799–2085; TTY (215) 656–3450.
Alabama, the Caribbean, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, or Tennessee.	Fair Housing Enforcement Center, U.S. Dept. of Housing and Urban Development, Richard B. Russell Federal Building, 75 Spring Street, SW, Room 320, Atlanta, GA 30303–3388, (404)-331–5140; (800) 440–8091; TTY (404) 730–2654.
Illinois, Michigan, Minnesota, Ohio, or Wisconsin.	Fair Housing Enforcement Center, U.S. Dept. of Housing and Urban Development, Ralph H. Metcalfe Federal Building, 77 West Jackson Boulevard, Room 2101, Chicago, IL 60604–3507, (312) 353–7776; (800) 765–9372; TTY (312) 353–7143.
Arkansas, Louisiana, New Mexico, Oklahoma, or Texas.	Fair Housing Enforcement Center, U.S. Dept. of Housing and Urban Development, 1600 Throckmorton, Room 502, Fort Worth, TX 76113–2905, (817) 978–9270; (800) 498–8371; TTY (817) 978–9274.
Iowa, Kansas, Missouri, or Nebraska	Fair Housing Enforcement Center, U.S. Dept. of Housing and Urban Development, Gateway Tower II, 400 State Avenue, Room 200, Kansas City, KS 66101–2406, (913) 551–6958; (800) 743–5323; TTY (913) 551–6972.
Colorado, Montana, North Dakota, South Dakota, Utah, or Wyoming.	Fair Housing Enforcement Center, U.S. Dept. of Housing and Urban Development, 633 17th Street, Denver, CO 80202–3607, (303) 672–5437; (800) 877–7353; TTY (303) 672–5248.
Arizona, California, Hawaii, or Nevada	Fair Housing Enforcement Center, U.S. Dept. of Housing and Urban Development, Phillip Burton Federal Building and U.S. Courthouse, 450 Golden Gate Avenue, San Francisco, CA 94102–3448, (415) 436–8400; (800) 347–3739; TTY (415) 436–6594.
Alaska, Idaho, Oregon, or Washington	Fair Housing Enforcement Center, U.S. Dept. of Housing and Urban Development, Seattle Federal Office Building, 909 First Avenue, Room 205, Seattle, WA 98104–1000, (206) 220–5170; (800) 877–0246; TTY (206) 220–5185.
If after contacting the local office nearest you, you still have questions—you may contact HUD further at:.	U.S. Dept. of Housing and Urban Development, Office of Fair Housing and Equal Opportunity, 451 Seventh Street, SW, Room 5204, Washington, DC 20410–2000, (202) 708–0836; (800) 669–9777; TTY (800) 927–9275.

Findings and Certifications

Justification for Interim Rule

Ordinarily, HUD provides notice and an opportunity for the public to comment on rules before they become effective. If, however, we determine that notice and public comment are impracticable, unnecessary, or contrary to the public interest, we are permitted, under 24 CFR 10.1 (entitled "Policy"), to issue regulations directly through an interim or final rule. In this case, we have determined that initial notice and public comment are unnecessary. The purpose of this rule is to make the housing discrimination filing procedures more accessible and understandable to the public by using plain language. The rule does not make substantive changes to the regulations. All procedures and requirements for filing housing discrimination complaints remain as they are currently.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (Public Law 104–4, 109 Stat. 48, 64, approved March 22, 1995, codified at 2 U.S.C. 1531–1538)(UMRA) requires Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and on the private sector. This interim rule does not impose, within the meaning of the UMRA, any Federal mandates on any State, local, or, tribal governments or on the private sector.

Environmental Impact

This interim rule sets out non-discrimination enforcement procedures. Accordingly, under 24 CFR 50.19(c)(3), this interim rule is categorically

excluded from environmental review under the National Environmental Policy Act of 1969 (Public Law 91–190, 83 Stat. 852, approved January 1, 1970, codified as amended at 42 U.S.C. 4321–4347).

Impact on Small Entities

The Secretary, in accordance with 5 U.S.C. 605(b) (the Regulatory Flexibility Act, Public Law 96–354, 94 Stat. 1164, approved September 19, 1980, codified as amended at 5 U.S.C. 601–612), has reviewed and approved this interim rule and in so doing certifies that it would not have a significant economic impact on a substantial number of small entities.

The interim rule revises, using plain language, the text of HUD's fair housing complaint processing regulations in subpart B of 24 CFR part 103. The rule also moves certain sections from subpart B to subpart D. The rule does not amend the substance of HUD's fair housing complaint processing regulations at 24 CFR part 103. All procedures and requirements for filing housing discrimination complaints remain as they are currently. We are revising these regulations in order to make the housing discrimination filing procedures more accessible and understandable to the public.

While we have determined that this rule would not have a significant economic impact on a substantial number of small entities, we welcome any comments regarding alternatives to this rule that would meet our objectives, as described in this preamble, and would be less burdensome to small entities.

Federalism Impact

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612 (entitled "Federalism"), has determined that the policies contained in this interim rule do not have substantial direct effects on States or their political subdivisions, on the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government.

This interim rule does not alter the substance of HUD's existing fair housing complaint processing regulations. The interim rule revises and reformats the fair housing complaint processing regulations so that HUD's housing discrimination filing procedures more accessible to the public. The interim rule is exclusively concerned with policies and procedures applicable to the processing of fair housing complaints. No programmatic or policy changes result from this rule that affect the Federalism concerns addressed in the Executive Order. As a result, this interim rule is not subject to review under the Order.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance number for this program is 14.400.

List of Subjects in 24 CFR Part 103

Administrative practice and procedure, Aged, Fair housing, Individuals with disabilities, Intergovernmental relations, Investigations, Mortgages, Penalties, Reporting and recordkeeping requirements.

Accordingly, 24 part 103 is amended as follows:

PART 103—FAIR HOUSING—COMPLAINT PROCESSING

1. The authority citation for 24 CFR part 103 continues to read as follows:

Authority: 42 U.S.C. 3535(d), 3600–3619.

2. Revise § 103.10 to read as follows:

§ 103.10 What can I do if I believe someone is discriminating against me in the sale, rental, finance, or advertisement of housing?

You can notify HUD if you believe there has been discrimination against you in any activity related to housing because of race, color, religion, national origin, sex, disability, or the presence of children under the age of 18 in a household.

3. Revise § 103.15 to read as follows:

§ 103.15 Can I file a claim if the discrimination has not yet occurred?

Yes, you may file a claim with HUD if you have knowledge that a discriminatory action is about to occur.

4. Revise § 103.20 to read as follows:

§ 103.20 Can someone help me with filing a claim?

HUD's Office of Fair Housing and Equal Opportunity can help you in filing a claim, if you contact them directly. You, or anyone who acts for you, may also ask any HUD office or an organization, individual, or attorney to help you.

5. Revise § 103.25 to read as follows:

§ 103.25 What information should I provide to HUD?

You should provide us with:

(a) Your name, address, and telephone numbers where you can be reached;

(b) The name and address of the persons, businesses, or organizations you believe discriminated against you;

(c) If there is a specific property involved, you should provide the property's address and physical description, such as apartment, condominium, house, or vacant lot; and

(d) A brief description of how you were discriminated against in an activity related to housing. You should include in this description the date when the discrimination happened and why you believe the discrimination occurred because of race, color, religion, national origin, sex, disability, or the presence of children under the age of 18 in a household.

6. Revise § 103.30 to read as follows:

§ 103.30 How should I bring a claim that I am the victim of discrimination?

(a) You can file a claim by mail or telephone with any of HUD's Offices of Fair Housing and Equal Opportunity or with any State or local agency that HUD has certified to receive complaints.

(b) You can call or go to any other HUD office for help in filing a claim. These offices will send your claim to HUD's Office of Fair Housing and Equal Opportunity, which will contact you about the filing of your complaint.

7. Add § 103.35 to read as follows:

§ 103.35 Is there a time limit on when I can file?

Yes, you must notify us within one year that you are a victim of discrimination. If you indicate that there is more than one act of discrimination, or that the discrimination is continuing, we must receive your information within one year of the last incident of discrimination.

8. Revise § 103.40 to read as follows:

§ 103.40 Can I change my complaint after it is filed?

(a) Yes, you may change your fair housing complaint:

(1) At any time to add or remove people according to the law and the facts; or

(2) To correct other items, such as to add additional information found during the investigation of the complaint.

(b) You must approve any change to your complaint; we will consider the changes made as of the date of your original complaint.

§ 103.42 [Removed]

9. Remove § 103.42.

§§ 103.45, 103.50, 103.55 [Redesignated]

10. Redesignate §§ 103.45, 103.50, and 103.55 as §§ 103.201, 103.202, and 103.203, respectively, and transfer to subpart D.

11. Revise newly redesignated § 103.202(b) to read as follows:

§ 103.202 Notification of respondent; joinder of additional or substitute respondents.

* * * * *

(b) The Assistant Secretary will also serve notice on any person who directs or controls, or who has the right to direct or control, the conduct of another person who is involved in a fair housing complaint.

12. Add § 103.204 to read as follows:

§ 103.204 HUD complaints and compliance reviews.

(a) The Assistant Secretary may conduct an investigation and file a complaint under this subpart based on information that one or more discriminatory housing practices has occurred, or is about to occur.

(b) HUD may also initiate compliance reviews under other appropriate civil rights authorities, such as E.O. 11063 on Equal Opportunity in Housing, title VI of the Civil Rights Act of 1964, section 109 of the Housing and Community Development Act of 1974, section 504 of the Rehabilitation Act of 1973 or the Age Discrimination Act of 1975.

(c) HUD may also make the information you provide available to other Federal, State, or local agencies having an interest in the matter. In making such information available, HUD will take steps to protect the confidentiality of any informant or complainant when desired by the informant or complainant.

Dated: March 2, 1999.

Eva M. Plaza,

Assistant Secretary for Fair Housing and Equal Opportunity.

[FR Doc. 99–9088 Filed 4–13–99; 8:45 am]

BILLING CODE 4210–28–P

UMI

VOL
64

ISS
71

AP
14

1999

UMI

federal register

Wednesday
April 14, 1999

Part VI

Department of Education

Office of Elementary and Secondary Education Programs; Inviting Applications for New Awards for Fiscal Year 1999; Notices

DEPARTMENT OF EDUCATION

Office of Elementary and Secondary Education—Safe and Drug-Free Schools and Communities National Programs; Federal Activities Grant Program—Middle School Drug Prevention and School Safety Program Coordinators

AGENCY: Department of Education.

ACTION: Notice of final priority and selection criteria for Fiscal Year 1999 and subsequent years.

SUMMARY: The Secretary announces the final priority and selection criteria for fiscal year (FY) 1999, and at the discretion of the Secretary for subsequent years, under the Safe and Drug-Free Schools and Communities (SDFSC) National Programs Federal Activities Grants Program for the Middle School Drug Prevention and School Safety Program Coordinators competition. The Secretary takes this action to focus Federal financial assistance on national needs to recruit, hire, and train drug prevention and school safety program coordinators for middle schools with significant drug, discipline and violence problems.

EFFECTIVE DATE: This priority takes effect on April 14, 1999.

FOR FURTHER INFORMATION CONTACT: For further information about this priority under the Safe and Drug-Free Schools and Communities National Programs Federal Activities Grants Program, contact the Safe and Drug-Free Schools Program, U.S. Department of Education, 400 Maryland Avenue, SW., Room 3E324, Washington, DC 20202–6123. Telephone: (202) 260–3954. FAX: (202) 260–7767. Internet: http://www.ed.gov/offices/OESE/SDFS.

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern time, Monday through Friday.

Individuals with disabilities may obtain this document in an alternative format (e.g. Braille, large print, audio tape, or computer diskette) upon request to the contact office listed above. Individuals with disabilities may obtain a copy of the application package in an alternative format, also, by contacting that office. However, the Department is not able to reproduce in an alternate format the standard forms included in the application package.

Note: This notice of final priority does not solicit applications. A notice inviting applications under this competition is published elsewhere in this issue of the **Federal Register**.

SUPPLEMENTARY INFORMATION: This notice contains the final priority and selection criteria for FY 1999, and at the discretion of the Secretary, subsequent years. Under the absolute priority (Middle School Drug Prevention and School Safety Program Coordinators (CFDA 84.184K)), the Secretary may make awards for up to 36 months to local educational agencies.

In making awards under this grant program, the Secretary may take into consideration the geographic distribution and the diversity of proposed activities addressed by the projects, in addition to the rank order of applicants.

Contingent upon the availability of funds, the Secretary may make additional awards in FY 2000 from the rank-ordered list of unfunded applications from this competition.

Definitions

The following definitions apply to this competition:

(a) Middle schools are defined as any school serving students in two or more grades from grades five through nine.

Note: Students in grades lower than five or higher than nine are not eligible to be served under this priority.

(b) Local education agencies (LEAs) with the most significant problems in their middle schools are defined as those that have identified drug use, drug prevention and school safety as serious problems in their most recent needs assessment and have taken one or more of the following actions within the 12 months preceding the date of this announcement:

(1) Suspended, expelled, or transferred to alternative schools or programs at least one middle school student for possession, distribution, or use of alcohol or drugs, including tobacco;

(2) Referred for treatment of substance abuse at least five middle school students;

(3) Suspended, expelled, or transferred to alternative schools or programs at least one middle school student for possession or use of a firearm or other weapon;

(4) Suspended, expelled or transferred to alternative schools or programs at least five middle school students for physical attacks or fights.

Applications for this competition must be received at the address specified in the notice inviting applications for this competition no later than 4:30 p.m. on June 1, 1999. Applications received after that time will not be eligible for funding. Postmarked dates will not be accepted.

Absolute Priority

Under 34 CFR 75.105(c)(3) and the Safe and Drug-Free Schools and Communities Act, the Secretary gives an absolute preference to applications that meet the following priority. The Secretary funds under this competition only applications that meet this absolute priority.

Under the absolute funding priority for this grant competition, LEAs with significant drug, discipline, or school safety problems in their middle schools must propose projects that—

(a) Recruit, hire, and train full-time drug prevention and school safety program coordinator(s) for their middle schools with the most significant drug, discipline, or school safety problems;

(c) Require coordinators hired with funds under this priority to perform at least the following functions in one or more middle schools with significant drug, discipline or school safety problems:

(1) Identify research-based drug and violence prevention strategies and programs;

(2) Assist schools in adopting the most successful strategies, including training of teachers, staff and relevant partners as, as needed;

(3) Develop, conduct, and analyze assessments of school crime and drug problems;

(4) Work with community agencies and organizations to ensure that students' needs are met;

(5) Work with parents and students to obtain information about effective programs and strategies and encourage their participation in program selection and implementation;

(6) Assist in the development and implementation of evaluation strategies;

(7) Identify additional funding sources for drug prevention and school safety program initiatives;

(8) Provide feedback to SEAs on programs and activities that have proven to be successful in reducing drug use and violent behavior; and

(9) Coordinate with student assistance and employee assistance programs.

Local educational agencies may apply for funding under this priority to hire one or more coordinators to serve middle schools in the district. Each coordinator hired with funds from this grant must:

(1) Serve at least one middle school but no more than seven middle schools;

(2) Serve only students in two or more grades from grades five through nine;

Note: Students in grades lower than five or higher than nine are not eligible to be served under this priority.

(3) Have no duties other than coordination of drug prevention or school safety programs;

(4) At a minimum, have a degree from an accredited four-year institution of higher education and an academic background or equivalent work experience in a field related to youth development, such as education, psychology, sociology, social work, or nursing.

LEAs may apply in consortia with one or more adjacent LEAs; however, each participating LEA must ensure that all requirements of the priority for this competition are met.

The Secretary funds under this competition only applications that meet this absolute priority.

Selection Criteria

The following selection criteria will be used to evaluate applications for new grants under this competition. The maximum score for all of these criteria is 100 points.

(1) *Need for the project.* (25 points)

(a) Applicants must:

(i) Describe the drug, violence, or safety problems in middle schools that will be served by coordinators(s) funded by these grants;

(ii) Provide data on the number of students in grades five through nine who were suspended, expelled or transferred to alternative settings for drug use or violent behavior during the 12 months preceding the date of this announcement;

(iii) Explain how the coordinator(s) will make a difference in the drug, violence and safety problems at the middle schools to be served by this initiative; and

(iv) Describe how the position funded by this grant will be coordinated with existing prevention programs and staff.

(b) In determining the need for the proposed project, the following factor is considered:

The extent to which specific gaps or weaknesses in services, infrastructure, or opportunities have been identified and will be addressed by the proposed project, including the nature and magnitude of those gaps or weaknesses.

(2) *Quality of the project design.* (25 points)

(a) Applicants must:

(i) Provide a detailed description of their plan for bringing about change in the type and quality of drug prevention and school safety programs for students in grades five through nine; and

(ii) Describe how the community will be involved in designing and supporting these programs.

(b) The following factors are considered in determining the quality of the project design:

(i) The extent to which the design of the proposed project is appropriate to, and will successfully address, the needs of the target population;

(ii) The extent to which the proposed project is designed to build capacity and yield results that will extend beyond the period of Federal financial assistance;

(iii) The extent to which the proposed project will establish linkages with other appropriate agencies and organizations providing services to the target population, including community coalitions;

(iv) The extent to which the proposed project encourages parental involvement; and

(v) The extent to which performance feedback and continuous improvement are integral to the design of the proposed project.

(3) *Adequacy of Resources* (25 points)

(a) Applicants must:

(i) Describe their plan for supporting and institutionalizing the coordinator position into the district's permanent staffing structure, including how they will ensure its continuation when Federal funding ends;

(ii) Explain how this coordinator position will be integrated into the staffing structure of the district as a whole, including where the coordinator will be housed and to whom the coordinator will report;

(iii) Explain the district's plan to support the authority of the coordinator to design, select and implement prevention initiatives; and

(iv) Explain how information developed by coordinators will be used by LEA policy makers.

(b) Factors considered in determining the adequacy of resources are:

(i) The adequacy of support, including facilities, equipment, supplies, and other resources from the applicant organization or the lead applicant organization;

(ii) The extent to which the costs are reasonable in relation to the number of persons to be served and to the anticipated results and benefits;

(iii) The potential for continued support of the project after Federal funding ends, including, as appropriate, the demonstrated commitment of appropriate entities to such support; and

(iv) The potential for the incorporation of project purposes, activities, or benefits into the ongoing program of the agency or organization at the end of Federal funding.

(4) *Quality of the project evaluation* (25 points)

(a) Applicants must:

(i) Provide a detailed description of their plan to evaluate implementation of the coordinator initiative with particular attention to how prevention strategies have changed as a result of the coordinator's efforts and the effects on student outcomes; and

(ii) Agree to cooperate with the national evaluation of the coordinators' initiative that will be funded by the Department of Education.

(b) In determining the quality of the project evaluation, the following factors are considered:

(i) The extent to which the methods of evaluation are appropriate to the context within which the project operates;

(ii) The extent to which the methods of evaluation provide for examining the effectiveness of project implementation strategies; and

(iii) The extent to which the methods of evaluation will provide performance feedback and permit periodic assessment of progress toward achieving intended outcomes.

Waiver of Proposed Rulemaking

It is the Secretary's practice, in accordance with the Administrative Procedure Act (5 U.S.C. 553), to offer interested parties the opportunity to comment on proposed rules. Section 437 (d)(1) of the General Education Provision Act (GEPA), however, exempts from this requirement rules that apply to the first competition under a new or substantially revised program. Funding was provided for this new initiative in the fiscal year 1999 appropriations act enacted October 21, 1998. The Secretary, in accordance with section 437 (d)(1) of GEPA, has decided to forego public comment in order to ensure timely grant awards.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local government for coordination and review of proposed Federal financial assistance.

In accordance with this order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Electronic Access to This Document

Department of Education documents are published in the **Federal Register**, in text or portable document format (PDF) on the world wide web at either of the following sites:

http://www.ocfo.ed.gov/fedreg.html or http://www.ed.gov/news.html.

To use pdf you must have the Adobe Acrobat Reader Program with Search, which is available free at either of the preceding sites. If you have questions about using the pdf, call the U.S. Government Printing Office toll free at 1–888–293–6498.

Individuals may view these documents in text copy only on an electronic bulletin board of the Department. The documents are located under Option G—Files/Announcement, Bulletins and Press Releases. Telephone: (202) 219–1511 or, toll free, 1–800–222–4922.

Note: The official version of this document is the document published in the **Federal Register**.

Program Authority: 20 U.S.C. 7131.

(Catalogue of Federal Domestic Assistance Number 84.184K, Safe and Drug-Free Schools and Communities Act National Programs—Federal Activities Grants Program)

Judith Johnson,

Acting/Assistant Secretary, Office of Elementary and Secondary Education.

[FR Doc. 99–9341 Filed 4–13–99; 8:45 am]

BILLING CODE 4000–01–U

DEPARTMENT OF EDUCATION

Office of Elementary and Secondary Education—Safe and Drug-Free Schools and Communities National Programs; Federal Activities Grant Program—Middle School Drug Prevention and School Safety Program Coordinators; Notice Inviting Applications for New Awards for Fiscal Year 1999

Purpose of Program: The National Programs portion of the Safe and Drug-Free Schools and Communities Act (SDFSCA) supports the development of programs that (1) provide models or proven effective practices that will assist schools and communities around the Nation to improve their programs funded under the State Grants portion of the SDFSCA; and (2) develop, implement, evaluate, and disseminate new or improved approaches to creating safe and orderly learning environments in schools.

Eligible Applicants: Local educational agencies.

Applications Available: April 14, 1999.

Deadline for Receipt of Applications: June 1, 1999.

Note: All applications must be received on or before the deadline date. Applications received after that time will not be eligible for funding. Postmarked dates will not be accepted. Applications by mail should be sent to U.S. Department of Education, Application Control Center, Attention: CFDA #84.184K, Washington, D.C. 20202–4725.

Deadline for Intergovernmental Review: July 28, 1999.

Available Funds: $31,650,000.

Estimated Range of Awards: $55,000–$275,000.

Estimated Average Size of Awards: $106,000.

Estimated Number of Awards: 300.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

Applicable Regulations

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 98, and 99; and

(b) The notice of final priority and selection criteria for FY 1999 published elsewhere in this issue of the **Federal Register**.

For Applications or Information Contact: Ethel Jackson at the Safe and Drug-Free Schools Program, 400 Maryland Avenue, SW, Room 3E314, Washington, DC 20202–6123. Telephone: (202) 260–3954. By FAX: (202) 260–7767. Internet: http://www.ed.gov/OESE/SDSF.

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Individuals with disabilities may obtain this document in an alternative format (e.g. Braille, large print, audio tape, or computer diskette) upon request to the contact person listed above. Individuals with disabilities may obtain a copy of the application package in an alternative format, also by contacting that person. However, the Department is not able to reproduce in an alternative format the standard forms included in the application package.

Electronic Access to This Document

Anyone may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or portable document format (pdf) on the World Wide Web at either of the following sites:

http://ocfo.ed.gov/fedreg.htm or on the World Wide Web at http://www.ed.gov/news.html

To use the pdf you must have Adobe Acrobat Reader Program with Search, which is available free at either of the previous sites. If you have questions about using the pdf, call the U.S. Government Printing Office at (202) 512–1530 or, toll free at 1–888–293–6498.

Individuals may also view these documents in text copy on the electronic bulletin board of the Department. Telephone: (202) 219–1511, or toll free, 1–800–222–4922. The documents are located under Option G—Files/Announcements, Bulletins, and Press Releases.

Note: The official version of this document is the document published in the **Federal Register**.

Program Authority: 20 U.S.C. 7131.

(Catalogue of Federal Domestic Assistance Number 84.184K, Safe and Drug-Free Schools and Communities Act National Programs—Federal Activities Grants Program)

Judith Johnson,

Acting/Assistant Secretary, Office of Elementary and Secondary Education.

[FR Doc. 99–9342 Filed 4–13–99; 8:45 am]

BILLING CODE 4000–01–U

Federal Register

Wednesday
April 14, 1999

Part VII

Department of Education

Special Education—Training and Information for Parents of Children with Disabilities; Notice Inviting Applications for New Awards for Fiscal Year 1999; Notice

DEPARTMENT OF EDUCATION

Special Education—Training and Information for Parents of Children with Disabilities; Notice Inviting Applications for New Awards for Fiscal Year 1999

AGENCY: Department of Education.

ACTION: Notice inviting applications for new awards for fiscal year 1999.

SUMMARY: This notice provides closing dates and other information regarding the transmittal of applications for fiscal year 1999 competitions under one program authorized by the Individuals with Disabilities Education Act (IDEA), as amended: Special Education—Training and Information for Parents of Children with Disabilities (one priority).

This notice supports the National Education Goals by helping to improve results for children with disabilities.

Waiver of Rulemaking

It is generally the practice of the Secretary to offer interested parties the opportunity to comment on proposed priorities. However, section 661(e)(2) of IDEA makes the Administrative Procedure Act (5 U.S.C. 553) inapplicable to the priority in this notice.

General Requirements

(a) Projects funded under this notice must make positive efforts to employ and advance in employment qualified individuals with disabilities in project activities (see Section 606 of IDEA);

(b) Applicants and grant recipients funded under this notice must involve individuals with disabilities or parents of individuals with disabilities in planning, implementing, and evaluating the projects (see Section 661(f)(1)(A) of IDEA); and

(c) Projects funded under this priority must budget for a two-day Project Directors' meeting in Washington, D.C. during each year of the project.

Information collection resulting from this notice has been submitted to OMB for review under the Paperwork Reduction Act and has been approved under control number 1820–0028, expiration date July 31, 2000.

Purpose of Program: The purpose of this program is to ensure that parents of children with disabilities receive training and information help them to improve results for their children with disabilities.

Eligible Applicants: Local parent organizations must meet the criteria in section 682(g) of the Act, and also must meet one of the following criteria—

(a) Have a board of directors the majority of whom are from the community to be served; or

(b) Have as part of its mission, serving the interests of individuals with disabilities from such community; and have a special governing committee to administer the project, a majority of the members of which are individuals from such community; examples of administrative responsibilities include controlling the use of the project funds, and hiring and managing project personnel.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, and 85; and (b) The selection criteria for this priority are drawn from the EDGAR general selection criteria menu. The specific selection criteria for this priority are included in the funding application packet for this competition.

Priority

Under sections 661(e)(2) and 683 of the Act, and 34 CFR 75.105(c)(3), the Secretary gives an absolute preference to applications that meet the following priority. The Secretary funds under this competition only those applications that meet this absolute priority:

Absolute Priority—Community Parent Resource Centers (84.328C)

The purpose of this statutory priority is to support local parent training and information centers that will help ensure that underserved parents of children with disabilities, including low-income parents, parents of children with limited English proficiency, and parents with disabilities, have the training and information they need to enable them to participate effectively in helping their children with disabilities to—

(a) Meet developmental goals and, to the maximum extent possible, those challenging standards that have been established for all children; and

(b) Be prepared to lead productive independent adult lives, to the maximum extent possible.

Each community parent training and information center supported under this priority must—

(a) Provide training and information that meets the training and information needs of parents of children with disabilities proposed to be served by the project;

(b) Assist parents to understand the availability of, and how to effectively use, procedural safeguards under Section 615 of IDEA, including encouraging the use, and explaining the benefits, of alternative methods of dispute resolution, such as the mediation process described in IDEA;

(c) Serve the parents of infants, toddlers, and children with the full range of disabilities by assisting parents to—

(1) Better understand the nature of their children's disabilities and their educational and developmental needs;

(2) Communicate effectively with personnel responsible for providing special education, early intervention, and related services;

(3) Participate in decision making processes and the development of individualized education programs and individualized family service plans;

(4) Obtain appropriate information about the range of options, programs, services, and resources available to assist children with disabilities and their families;

(5) Understand the provisions of IDEA for the education of, and the provision of early intervention services to, children with disabilities; and

(6) Participate in school reform activities;

(d) Contract with the State education agencies, if the State elects to contract with the community parent resource center, for the purpose of meeting with parents who choose not to use the mediation process, to encourage the use and explain the benefits of mediation, consistent with Sections 615(e)(2)(B) and (D) of IDEA;

(e) In order to serve parents and families of children with the full range of disabilities, network with appropriate clearinghouses, including organizations conducting national dissemination activities under section 685(d) of IDEA, and with other national, State, and local organizations and agencies, such as protection and advocacy agencies;

(f) Establish cooperative partnerships with the parent training and information centers funded under Section 682 of IDEA;

(g) Be designed to meet the specific needs of families who experience significant isolation from available sources of information and support; and

(h) Annually report to the Secretary on—

(1) The number of parents to whom it provided information and training in the most recently concluded fiscal year; and

(2) The effectiveness of strategies used to reach and serve parents, including underserved parents of children with disabilities.

The Secretary intends to fund a maximum of three awards. *Competitive Priorities:* Within this Absolute Priority, the Secretary, under 34 CFR 75.105(c)(2)(i), gives preference to

applications that meet one or both of the following competitive priorities:

The Secretary awards 20 points to an application submitted by a local parent organization that has a board of directors, the majority of whom are parents of children with disabilities, from the community to be served. These points are in addition to any points the application earns under the selection criteria for the program.

The Secretary awards 10 points to an application that provides parent training and information in one or more Empowerment Zones or Enterprise Communities in a manner that meets the competitive priority relating to Empowerment Zones or Enterprise Communities published in the **Federal Register** on November 7, 1994 (59 FR 55534). A list of areas that have been selected as Empowerment Zones or Enterprise Communities is included in the application package. These points are in addition to any points the application earns under the selection criteria for the program.

Project Period: Up to 36 months.

Project Award: Projects will not be funded in excess of $100,000 for any single budget period of 12 months.

For Applications and General Information Contact: Requests for applications and general information should be addressed to the Grants and Contracts Services Team, 400 Maryland Avenue, SW, room 3317, Switzer Building, Washington, DC 20202–2641. The preferred method for requesting information is to FAX your request to: (202) 205–8717. Telephone: (202) 260–9182.

Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number: (202) 205–8953.

Individuals with disabilities may obtain a copy of this notice or the application packages referred to in this notice in an alternate format (e.g. Braille, large print, audiotape, or computer diskette) by contacting the Department as listed above. However, the Department is not able to reproduce in an alternate format the standard forms included in the application package.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for those programs.

INDIVIDUALS WITH DISABILITIES EDUCATION ACT, APPLICATION NOTICE FOR FISCAL YEAR 1999

CFDA No. and name	Application available	Application deadline date	Deadline for intergovernmental review	Maximum award (per year)[1]	Project period	Page limit	Estimated number of awards
84.328C Community Parent Resource Centers.	4/20/99	6/01/99	8/02/99	$100,000	Up to 36 mos.	([2])	3

[1] The Secretary rejects and does not consider an application that proposes a budget exceeding the amount listed for the priority for any single budget period of 12 months.

[2] As noted above, there is no page limit for this priority.

Note: The Department of Education is not bound by any estimates in this notice.

Electronic Access to This Document

Anyone may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or portable document format (pdf) on the World Wide Web at either of the following sites:

http://ocfo.ed.gov/fedreg.htm
http://www.ed.gov/news.html

To use the pdf you must have the Adobe Acrobat Reader Program with Search, which is available free at either of the previous sites. If you have questions about using the pdf, call the U.S. Government Printing Office at (202) 512–1530 or, toll free at 1–888–293–6498.

Anyone may also view these documents in text copy only on an electronic bulletin board of the Department. Telephone: (202) 219–1511 or, toll free, 1–800–222–4922. The documents are located under Option G—Files/Announcements, Bulletins, and Press Releases.

Note: The official version of a document is the document published in the **Federal Register**.

Dated: April 8, 1999.

Curtis L. Richards,

Acting Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 99–9261 Filed 4–13–99; 8:45 am]

BILLING CODE 4000–01–P

UMI

VOL
64

ISS
71

AP
14

1999

UMI

Rea

CUSTO

Federal
General
aids

Laws

Presiden
Executive
The Unit

Other Se
Electroni
Privacy A
Public La
TTY for t

ELECTR

World W

Full text
publicati

Federal R
Inspectio

E-mail

PENS (Pu
service th
Laws. To

with the

Use listpr
PENS. W

Reference
Federal R

The Fede
regulation

FEDERA

15633–15
15915–16
16333–16
16601–16
16797–17
17079–17
17271–17
17501–17
17941–18
18323–18

Reader Aids

Federal Register

Vol. 64, No. 71

Wednesday, April 14, 1999

CUSTOMER SERVICE AND INFORMATION

Federal Register/Code of Federal Regulations	
General Information, indexes and other finding aids	202–523–5227
Laws	523–5227
Presidential Documents	
Executive orders and proclamations	523–5227
The United States Government Manual	523–5227
Other Services	
Electronic and on-line services (voice)	523–4534
Privacy Act Compilation	523–3187
Public Laws Update Service (numbers, dates, etc.)	523–6641
TTY for the deaf-and-hard-of-hearing	523–5229

ELECTRONIC RESEARCH

World Wide Web

Full text of the daily Federal Register, CFR and other publications:

http://www.access.gpo.gov/nara

Federal Register information and research tools, including Public Inspection List, indexes, and links to GPO Access:

http://www.nara.gov/fedreg

E-mail

PENS (Public Law Electronic Notification Service) is an E-mail service that delivers information about recently enacted Public Laws. To subscribe, send E-mail to

listproc@lucky.fed.gov

with the text message:

subscribe publaws-l <firstname> <lastname>

Use listproc@lucky.fed.gov only to subscribe or unsubscribe to PENS. We cannot respond to specific inquiries at that address.

Reference questions. Send questions and comments about the Federal Register system to:

info@fedreg.nara.gov

The Federal Register staff cannot interpret specific documents or regulations.

FEDERAL REGISTER PAGES AND DATES, APRIL

15633–15914	1
15915–16332	2
16333–16600	5
16601–16796	6
16797–17078	7
17079–17270	8
17271–17500	9
17501–17940	12
17941–18322	13
18323–18550	14

CFR PARTS AFFECTED DURING APRIL

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:

7177	17075
7178	17077
7179	17499
7180	17939
7181	18317
7182	18321

Executive Orders:

11223 (Amended by EO 13118)	16595
11269 (Amended by EO 13118)	16595
11958 (Amended by EO 13118)	16595
12163 (Amended by EO 13118)	16595
12188 (Amended by EO 13118)	16595
12260 (Amended by EO 13118)	16595
12293 (Amended by EO 13118)	16595
12301 (Amended by EO 13118)	16595
12599 (Amended by EO 13118)	16595
12703 (Amended by EO 13118)	16595
12884 (Amended by EO 13118)	16595
12981 (Amended by EO 13117)	16391
13116	16333
13117	16591
13118	16595

Administrative Orders:

Presidential Determinations:

No. 99-18 of March 25, 1999	16337
No. 99-19 of March 31, 1999	17081
No. 99-20 of March 31, 1999	17083

Memorandums:

March 23, 1999 (Amended by EO 13118)	16595
March 31, 1999	17079

5 CFR

351	16797
532	15915, 17941
870	16601
890	15633
1200	15916

7 CFR

6	17501
760	17942
254	17085
301	15916
1361	18323
1437	17271
1728	17219
1753	16602

Proposed Rules:

28	15937
340	16364
905	15634
944	15634
1000	16026
1001	16026
1002	16026
1004	16026
1005	16026
1006	16026
1007	16026
1012	16026
1013	16026
1030	16026
1032	16026
1033	16026
1036	16026
1040	16026
1044	16026
1046	16026
1049	16026
1050	16026
1064	16026
1065	16026
1068	16026
1076	16026
1079	16026
1106	16026
1124	16026
1126	16026
1131	16026
1134	16026
1135	16026
1137	16026
1138	16026
1139	16026
3418	18534

8 CFR

103	17943

Proposed Rules:

2	17128

9 CFR

1	15918
3	15918

Proposed Rules:

72	17573
93	16655
201	15938

10 CFR

2	15636, 15920
10	15636
11	15636
25	15636
40	17506
50	17944, 17947

72.....17510
73.....17947
95.....15636
Proposed Rules:
170.....15876
171.....15876

12 CFR

213.....16612
226.....16614
330.....15653
611.....16617
620.....16617
790.....17085
935.....16618, 16788
Proposed Rules:
933.....16792
934.....16792
935.....16792
1750.....18084

13 CFR

115.....18324
Proposed Rules:
107.....18375
120.....15942
121.....15708

14 CFR

39.....15657, 15659, 15661, 15669, 15920, 16339, 16621, 16624, 16625, 16801, 16803, 16805, 16808, 16810, 17086, 17512, 17514, 17522, 17524, 17947, 17949, 17951, 17954, 17956, 17950, 17961, 17962, 17964, 17966, 18324
71.....15673, 15674, 15675, 15676, 15678, 15679, 16024, 16340, 16341, 16342, 16343, 16344, 17219, 17934
91.....15912
93.....17439
97.....17277, 17526, 17528
Proposed Rules:
39.....16364, 16366, 16656, 17130, 18382, 18384, 18386
65.....18302
71.....15708, 16024, 16368, 16369, 16370, 16371, 17133, 17717, 17983, 17984, 18392, 18481
91.....17293, 18302
105.....18302
119.....16298, 18302
121.....16298
129.....16298
135.....16298, 17293
183.....16298

15 CFR

738.....17968
740.....17968
742.....17968
748.....17968
762.....17968
774.....17968

16 CFR

Proposed Rules:
241.....18081
256.....18081

17 CFR

275.....15680
279.....15680
Proposed Rules:
1.....17439
230.....18481
240.....18393, 18481
270.....18481

18 CFR

1b.....17087
284.....17276
343.....17087
385.....17087

19 CFR

10.....16345
12.....17529
18.....16345
113.....16345
178.....16635, 16345
192.....16635
Proposed Rules:
19.....16865
146.....15873

20 CFR

404.....17100

21 CFR

26.....16347
510.....15683
520.....15683, 15684
522.....15683, 15685
558.....15683
874.....18327
882.....18327
890.....18329
900.....18331
Proposed Rules:
1.....15944
101.....15948, 17295
310.....17985
1308.....17298, 17299

22 CFR

Ch. II.....15685
Ch. VI.....15686
121.....17531
123.....17531
124.....17531
126.....17531
201.....17535
514.....17975, 17976
Proposed Rules:
514.....17988

23 CFR

Proposed Rules:
777.....16870

24 CFR

100.....16324
103.....18538
Proposed Rules:
990.....17301

25 CFR

291.....17535
Proposed Rules:
151.....17574

26 CFR

1.....15686, 15687
7.....15687
31.....15687
301.....16640, 17279
602.....15687, 15688, 15873, 17279
Proposed Rules:
1.....16372

27 CFR

178.....17291
Proposed Rules:
4.....17588
5.....17588
7.....17588

28 CFR

16.....17977
504.....17270
Proposed Rules:
65.....17128

29 CFR

Proposed Rules:
1.....17442
5.....17442

30 CFR

920.....17978
935.....17980
Proposed Rules:
46.....18498, 18528
48.....18498
206.....15949, 17990

31 CFR

210.....17472

32 CFR

812.....17101
863.....17545

33 CFR

100.....16348, 16812, 16813
117.....16350, 16641, 17101
165.....16348, 16641, 16642, 17439
Proposed Rules:
117.....17134
154.....17222
175.....15709
177.....15709
179.....15709
181.....15709
183.....15709

36 CFR

Proposed Rules:
1.....17293
2.....17293
3.....17293
4.....17293
5.....17293
6.....17293
7.....17293

39 CFR

111.....16814, 17102

40 CFR

52.....15688, 15922, 17102, 17545, 17548, 17551, 17982
62.....17219
63.....17460, 17555
81.....17551
90.....16526
180.....16840, 16843, 16850, 16856, 17565, 18333, 18339, 18346, 18351, 18357, 18359, 18360, 18367, 18369
261.....16643
300.....15926, 16351
Proposed Rules:
52.....15711, 15949, 16659, 17136, 17589, 17592, 17593, 17990
63.....17465
70.....16659
81.....17593
82.....16373
112.....17227
180.....16874
185.....16874
186.....16874
300.....17593

41 CFR

Ch. 301.....16352
60-250.....15690
60-999.....15690
302-11.....17105

43 CFR

Proposed Rules:
3100.....17598
3106.....17598
3130.....17598
3160.....17598

44 CFR

65.....17567, 17569
67.....17571
Proposed Rules:
67.....17598

45 CFR

260.....17720
261.....17720
262.....17720
263.....17720
264.....17720
265.....17720
283.....18484
1611.....17108, 18372
Proposed Rules:
1635.....16383
2522.....17302
2525.....17302
2526.....17302
2527.....17302
2528.....17302
2529.....17302

46 CFR

Proposed Rules:
10.....15709
15.....15709
24.....15709
25.....15709
26.....15709
28.....15709
70.....15709
169.....15709
175.....15709

47 CFR

69.....16353
73.....17108
Proposed Rules:
0.....16388
1.....16661
2.....16687
25.....16880, 16687

69.....16389
73 .....15712, 15713, 15714, 15715, 16388, 16396, 17137, 17138, 17139, 17140, 17141, 17142, 17143
76.....16388

48 CFR

701.....16647
703.....16647
715.....16647
722.....18481
731.....16647
732.....18481
752.....16647, 18481
909.....16649
970.....16649
1333.....16651
1533.....17109
1552.....17109
1832.....18372

Proposed Rules:

1833.....17603

49 CFR

195.....15926
533.....16860
571.....16358
581.....16359

Proposed Rules:

171.....16882
177.....16882
178.....16882
180.....16882
192.....16882, 16885
195.....16882, 16885
578.....16690
611.....17062

50 CFR

17.....15691, 17110
229.....17292
600.....16862
648 .....15704, 16361, 16362
660.....16862, 17125
679 .....16361, 16362, 16654, 17126, 18373

Proposed Rules:

17.....16397, 16890
20.....17308
32.....17992
223.....16396, 16397
224.....16397
226.....16397
600.....16414, 18394
622.....18395
648 .....16417, 16891, 18394

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT APRIL 14, 1999

ENERGY DEPARTMENT
Contractor employee protection program; criteria and procedures; published 3-15-99

ENVIRONMENTAL PROTECTION AGENCY
Air programs; State authority delegations:
California; published 3-15-99
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
Cyprodinil; published 4-14-99
Cyromazine; published 4-14-99
Dimenthomorph; published 4-14-99
Fluthiacet-methyl; published 4-14-99
Glyphosate; published 4-14-99
Oxyfluorfen; published 4-14-99
Pryiproxyfen (2-[1-methyl-2-(4-phenoxyphenoxy)ethoxy] pyridine; published 4-14-99
Tebufenozide; benzoic acid, 3,5-dimethyl-1(1,1-dimethylethyl)-2-(4-ethylbenzoyl) hyrazide; published 4-14-99

HEALTH AND HUMAN SERVICES DEPARTMENT
Food and Drug Administration
Medical devices:
Class III preamendment devices; suction antichoke device, tongs antichoke device, and implanted neuromuscular stimulator device; premarket approval; published 4-14-99
Class III preamendments physical medicine devices; premarket approval; published 4-14-99

LEGAL SERVICES CORPORATION
Legal assistance eligibility:
Maximum income levels
Correction; published 4-14-99

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION
Acquisition regulations:
Contract financing; electronic funds transfer payment other than central contractor registration; published 4-14-99

NORTHEAST DAIRY COMPACT COMMISSION
Rulemaking procedures and producer referendum; published 4-14-99

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airworthiness directives:
Eurocopter France; published 3-10-99

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT
Animal and Plant Health Inspection Service
Exportation and importation of animals and animal products:
Rinderpest and foot-and-mouth disease, etc.; disease status change—
South Africa; comments due by 4-19-99; published 2-17-99

AGRICULTURE DEPARTMENT
Cooperative State Research, Education, and Extension Service
Grants:
Special Research Program; comments due by 4-23-99; published 3-24-99

COMMERCE DEPARTMENT
National Oceanic and Atmospheric Administration
Endangered and threatened species:
Marine and anadromous species—
West coast chinook salmon; comments due by 4-23-99; published 3-24-99
Fishery conservation and management:
Alaska; fisheries of Exclusive Economic Zone—
Pacific cod; comments due by 4-20-99; published 4-5-99
Caribbean, Gulf, and South Atlantic fisheries—
Gulf of Mexico reef fish; comments due by 4-19-99; published 3-5-99
South Atlantic Region; Sustainable Fisheries Act provisions; compliance; comments due by 4-19-99; published 2-18-99
West Coast states and Western Pacific fisheries—
West Coast salmon; comments due by 4-22-99; published 4-8-99
West Coast States and Western Pacific fisheries—
Pacific Coast groundfish; comments due by 4-22-99; published 4-7-99

COMMODITY FUTURES TRADING COMMISSION
Foreign futures and options transactions:
Access to electronic boards of trade; automated trading systems use; comments due by 4-23-99; published 3-24-99
Access to electronic boards of trade; automated trading systems use; correction; comments due by 4-23-99; published 4-9-99

DEFENSE DEPARTMENT
Federal Acquisition Regulation (FAR):
Contractor liability for loss of and/or damages to household goods; comments due by 4-19-99; published 2-16-99

ENERGY DEPARTMENT
Acquisition regulations:
Costs associated with whistleblower actions; comments due by 4-23-99; published 3-24-99

ENERGY DEPARTMENT
Federal Energy Regulatory Commission
Natural Gas Policy Act:
Interstate natural gas pipelines—
Transportation services regulation; comments due by 4-22-99; published 12-30-98

ENVIRONMENTAL PROTECTION AGENCY
Air programs:
Stratospheric ozone protection—
Ozone-depleting substances; substitutes list; comments due by 4-19-99; published 2-18-99
Ozone-depleting substances; substitutes list; comments due by 4-19-99; published 2-18-99
Air programs; approval and promulgation; State plans for designated facilities and pollutants:
Oklahoma; comments due by 4-19-99; published 3-19-99
Air quality implementation plans; approval and promulgation; various States:
California; comments due by 4-19-99; published 3-18-99
California and Arizona; comments due by 4-19-99; published 3-18-99
Delaware; comments due by 4-21-99; published 3-22-99
Illinois; comments due by 4-19-99; published 3-18-99
Iowa; comments due by 4-19-99; published 3-18-99
Air quality planning purposes; designation of areas:
California; comments due by 4-19-99; published 3-18-99
Missouri and Illinois; comments due by 4-19-99; published 3-18-99
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
Cinnamaldehyde; comments due by 4-19-99; published 2-17-99
Fenbuconazole; comments due by 4-19-99; published 2-17-99
Formic acid; comments due by 4-23-99; published 2-22-99
Superfund program:
National oil and hazardous substances contingency plan—
National priorities list update; comments due by 4-19-99; published 2-16-99

FEDERAL COMMUNICATIONS COMMISSION
Practice and procedure:
Regulatory fees (1999 FY); assessment and collection; comments due by 4-19-99; published 4-6-99

FEDERAL EMERGENCY MANAGEMENT AGENCY
Regulatory streamlining and updating; 20 CFR parts, proposed removal; comments due by 4-19-99; published 2-18-99
Correction; comments due by 4-19-99; published 3-2-99

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD
Thrift savings plan:
Eligibility; expansion and continuation; comments due by 4-22-99; published 3-23-99

GENERAL SERVICES ADMINISTRATION
Federal Acquisition Regulation (FAR):
Contractor liability for loss of and/or damages to household goods; comments due by 4-19-99; published 2-16-99

HEALTH AND HUMAN SERVICES DEPARTMENT
Food and Drug Administration
Food additives:
Adjuvants, production aids, and sanitizers—
Phosphorous acid, cyclic neopentanetetrayl bis(2,6-di-tert-butyl-4-methylphenyl)ester; comments due by 4-19-99; published 3-19-99
Medical devices:
Menstrual tampons labeling; absorbency ranges; comments due by 4-21-99; published 1-21-99

HOUSING AND URBAN DEVELOPMENT DEPARTMENT
Public and Indian housing:
Capital Fund Negotiated Rulemaking Advisory Committee; intent to establish and meeting; comments due by 4-19-99; published 3-19-99
Public housing agency plans; comments due by 4-19-99; published 2-18-99
Public and Indian Housing:
Section 8 Housing Certificate Fund Rule Negotiated Rulemaking Committee; intent to establish and meeting; comments due by 4-19-99; published 3-19-99

INTERIOR DEPARTMENT
Fish and Wildlife Service
Endangered and threatened species:
Mountain plover; comments due by 4-19-99; published 2-16-99
Tinian monarch; withdrawn; comments due by 4-23-99; published 2-22-99

INTERIOR DEPARTMENT
Minerals Management Service
Outer Continental Shelf; oil, gas, and sulphur operations:
Coastal zone consistency review of exploration plans and development and production plans; comments due by 4-19-99; published 2-17-99
Royalty management:
Federal marginal properties; accounting and auditing relief; comments due by 4-21-99; published 3-22-99

INTERIOR DEPARTMENT
Surface Mining Reclamation and Enforcement Office
Federal and Indian lands programs:
Indian lands; definition clarification; comments due by 4-20-99; published 2-19-99

JUSTICE DEPARTMENT
Immigration and Naturalization Service
Nonimmigrant classes:
Visa exemption for British Virgin Islands nationals entering U.S. through St. Thomas, U.S. Virgin Islands; comments due by 4-19-99; published 2-18-99
United Nations Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment; implementation:
Protection from torture; claim procedures; comments due by 4-20-99; published 2-19-99

JUSTICE DEPARTMENT
Pam Lychner Sexual Offender Tracking and Identification Act of 1996; implementation:
National Sex Offender Registry; operation and notification requirements; comments due by 4-19-99; published 2-16-99

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION
Federal Acquisition Regulation (FAR):
Contractor liability for loss of and/or damages to household goods; comments due by 4-19-99; published 2-16-99

NORTHEAST DAIRY COMPACT COMMISSION
Over-order price regulations:
Compact over-order price regulations—
Fluid milk distributions in six New England States during 1998-1999 contract year; exemption; hearing; comments due by 4-21-99; published 3-15-99

TRANSPORTATION DEPARTMENT
Coast Guard
Ports and waterways safety:
Santa Barbara Channel, CA; safety zone; comments due by 4-19-99; published 2-18-99
Regulatory Flexibility Act:
Small entities; economic impact; comments due by 4-19-99; published 1-19-99

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airworthiness directives:
Agusta, S.p.A.; comments due by 4-19-99; published 2-16-99
Bell Helicopter Textron, Inc.; comments due by 4-19-99; published 2-17-99
Boeing; comments due by 4-19-99; published 2-17-99
Empresa Brasileira de Aeronautica S.A.; comments due by 4-22-99; published 3-23-99
Pilatus Aircraft Ltd.; comments due by 4-23-99; published 3-23-99
Pratt & Whitney; comments due by 4-22-99; published 3-23-99
Sikorsky; comments due by 4-19-99; published 2-16-99
Class D and Class E airspace; comments due by 4-20-99; published 3-3-99
Class D and Class E airspace; correction; comments due by 4-20-99; published 3-9-99
Class E airspace; comments due by 4-19-99; published 3-5-99
Class E airspace; correction; comments due by 4-20-99; published 3-9-99
VOR Federal airways; comments due by 4-22-99; published 3-8-99

TRANSPORTATION DEPARTMENT
Federal Highway Administration
Motor carrier safety standards:
Inspection, repair, and maintenance—
Intermodal container chassis and trailers; comments due by 4-19-99; published 2-17-99

TRANSPORTATION DEPARTMENT
Federal Transit Administration
Buy America requirements; certification procedures:
Corrections to inadvertent errors in certifications after bid opening; comments due by 4-19-99; published 2-18-99

TRANSPORTATION DEPARTMENT
National Highway Traffic Safety Administration
Anthropomorphic test devices:
Occupant crash protection—
12-month-old infant crash test dummy; comments due by 4-22-99; published 3-8-99
Motor Vehicle Safety Standards:
Child restraint systems—
Standardized child restraint anchorage systems independent of seat belts; comments due by 4-19-99; published 3-5-99

TRANSPORTATION DEPARTMENT
Research and Special Programs Administration
Hazardous materials:
Hazardous liquid transportation—
Liquefied compressed gases; transportation and unloading; comments due by 4-21-99; published 3-22-99

TRANSPORTATION DEPARTMENT
Transportation Statistics Bureau
ICC Termination Act; implementation:
Motor carriers of property and household goods; reporting requirements; comments due by 4-22-99; published 3-23-99

TREASURY DEPARTMENT
Internal Revenue Service
Income taxes:
Capital gains; installment sales of depreciable real property; unrecaptured section 1250 gain; comments due by 4-22-99; published 1-22-99
Qualified education loans, interest deduction; comments due by 4-21-99; published 1-21-99
Procedure and administration:
Filing of notice of lien; notice and opportunity for hearing; cross reference; comments due by 4-22-99; published 1-22-99
Levy; notice and opportunity for hearing; cross reference; comments due by 4-22-99; published 1-22-99

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–523–6641. This list is also available online at http://www.nara.gov/fedreg.

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at http://www.access.gpo.gov/nara/index.html. Some laws may not yet be available.

H.R. 171/P.L. 106–18
To authorize appropriations for the Coastal Heritage Trail Route in New Jersey, and for other purposes. (Apr. 8, 1999; 113 Stat. 28)

H.R. 705/P.L. 106–19
To make technical corrections with respect to the monthly reports submitted by the Postmaster General on official mail of the House of Representatives. (Apr. 8, 1999; 113 Stat. 29)
Last List April 8, 1999.

Public Laws Electronic Notification Service (PENS)

PENS is a free electronic mail notification service of newly enacted public laws. To subscribe, send E-mail to **listproc@lucky.fed.gov** with the text message:

subscribe PUBLAWS-L Your Name.

Note: This service is strictly for E-mail notification of new public laws. The text of laws is not available through this service. **PENS** cannot respond to specific inquiries sent to this address.

Microfiche Editions Available...

Federal Register

The Federal Register is published daily in 24x microfiche format and mailed to subscribers the following day via first class mail. As part of a microfiche Federal Register subscription, the LSA (List of CFR Sections Affected) and the Cumulative Federal Register Index are mailed monthly.

Code of Federal Regulations

The Code of Federal Regulations, comprising approximately 200 volumes and revised at least once a year on a quarterly basis, is published in 24x microfiche format and the current year's volumes are mailed to subscribers as issued.

Microfiche Subscription Prices:

Federal Register:

One year: $220.00
Six months: $110.00

Code of Federal Regulations:

Current year (as issued): $247.00

Superintendent of Documents **Subscription** Order Form

Order Processing Code:
*** 5419**

Charge your order. It's Easy!

To fax your orders (202) 512–2250
Phone your orders (202) 512–1800

☐ **YES**, enter the following indicated subscription in 24x microfiche format:

_____ **Federal Register** (MFFR) ☐ One year at $220 each ☐ Six months at $110

_____ **Code of Federal Regulations** (CFRM7) ☐ One year at $247 each

The total cost of my order is $_____. **Price includes regular domestic postage and handling** and is subject to change. International customers please add 25%.

Company or personal name (Please type or print)

Additional address/attention line

Street address

City, State, ZIP code

Daytime phone including area code

Purchase order number (optional)

May we make your name/address available to other mailers? YES ☐ NO ☐

Please Choose Method of Payment:

☐ Check Payable to the Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐☐☐–☐
☐ VISA ☐ MasterCard Account
☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐
☐☐☐☐ (Credit card expiration date)

Thank you for your order!

Authorizing signature 11/3

Mail To: Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250–7954

Now Available Online

through

GPO Access

A Service of the U.S. Government Printing Office

Federal Register

Updated Daily by 6 a.m. ET

Easy, Convenient, FREE

Free public connections to the online Federal Register are available through the GPO Access service.

To connect over the World Wide Web, go to the Superintendent of Documents' homepage at http://www. access. gpo.gov/su_docs/

To connect using telnet, open swais.access.gpo.gov and login as guest (no password required).

To dial directly, use communications software and modem to call (202) 512–1661; type swais, then login as guest (no password required).

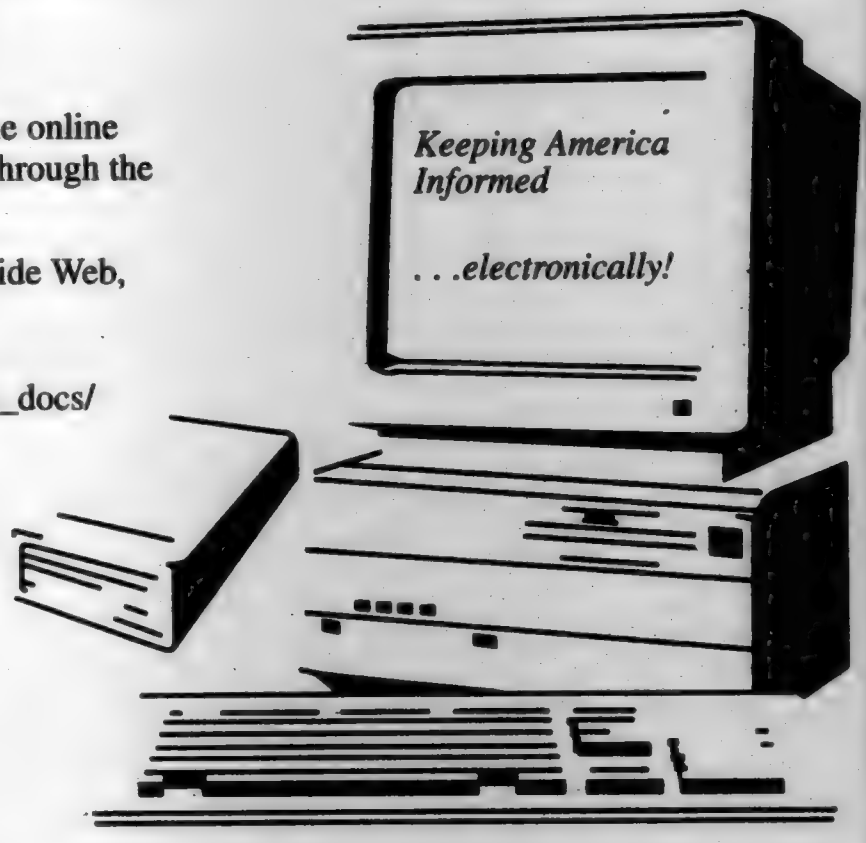

You may also connect using local WAIS client software. For further information, contact the GPO Access User Support Team:

Voice: (202) 512–1530 (7 a.m. to 5 p.m. Eastern time).
Fax: (202) 512–1262 (24 hours a day, 7 days a week).
Internet E-Mail: gpoaccess@gpo.gov

(Rev. 11/3)

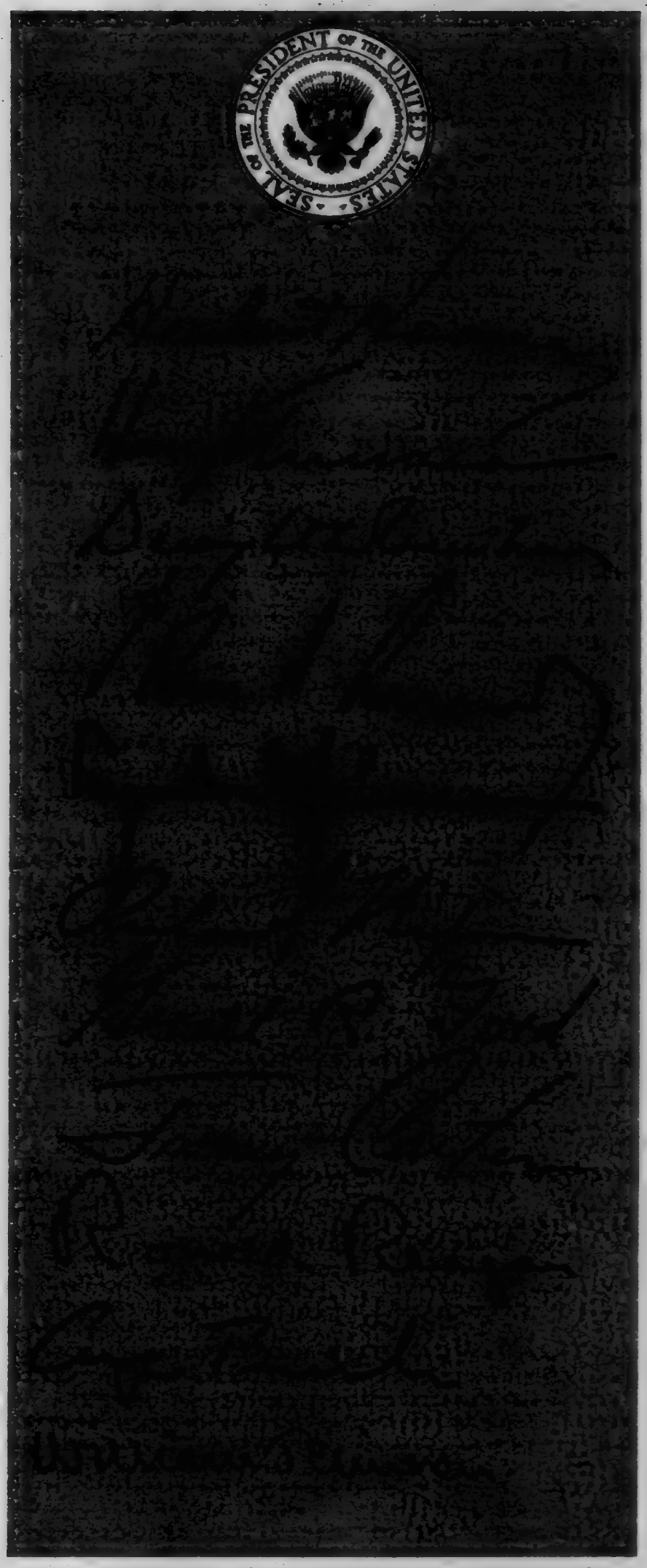

Public Papers of the Presidents of the United States

William J. Clinton

1993
(Book I) $51.00

1993
(Book II) $51.00

1994
(Book I) $56.00

1994
(Book II) $52.00

1995
(Book I) $60.00

1995
(Book II) $65.00

1996
(Book I) $66.00

1996
(Book II) $72.00

1997
(Book I) $69.00

Published by the Office of the Federal Register,
National Archives and Records Administration

Mail order to:
Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250–7954

(Rev. 3/3/99)

The authentic text behind the news . . .

The Weekly Compilation of **Presidential Documents**

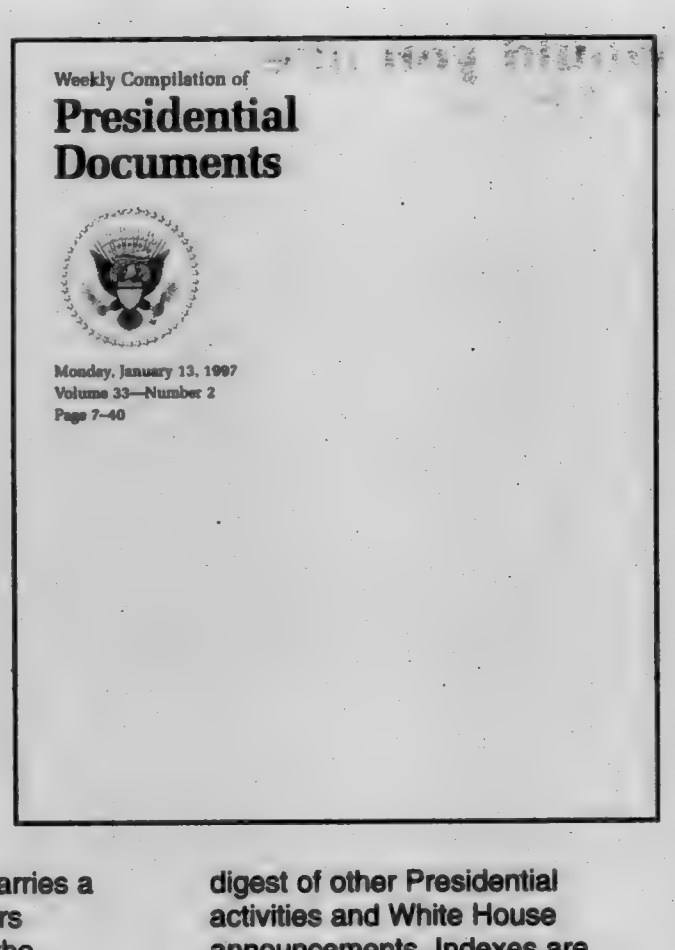

This unique service provides up-to-date information on Presidential policies and announcements. It contains the full text of the President's public speeches, statements, messages to Congress, news conferences, and other Presidential materials released by the White House.

The Weekly Compilation carries a Monday dateline and covers materials released during the preceding week. Each issue includes a Table of Contents, lists of acts approved by the President, nominations submitted to the Senate, a checklist of White House press releases, and a digest of other Presidential activities and White House announcements. Indexes are published quarterly.

Published by the Office of the Federal Register, National Archives and Records Administration.

Superintendent of Documents **Subscription** Order Form

Charge your order. It's Easy! MasterCard VISA

To fax your orders (202) 512–2250
Phone your orders (202) 512–1800

Order Processing Code:
*** 5420**

☐ **YES**, please enter _____ one year subscriptions for the **Weekly Compilation of Presidential Documents** (PD) so I can keep up to date on Presidential activities.

☐ $137.00 First Class Mail ☐ $80.00 Regular Mail

The total cost of my order is $ _____. **Price includes regular domestic postage and handling** and is subject to change. International customers please add 25%.

Company or personal name (Please type or print)

Additional address/attention line

Street address

City, State, ZIP code

Daytime phone including area code

Purchase order number (optional)

May we make your name/address available to other mailers? YES ☐ NO ☐

Please Choose Method of Payment:

☐ Check Payable to the Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐☐☐ – ☐
☐ VISA ☐ MasterCard Account
☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐
☐☐☐☐ (Credit card expiration date)

Thank you for your order!

Authorizing signature 11/3

Mail To: Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250–7954

Would you like to know. . .

if any changes have been made to the Code of Federal Regulations or what documents have been published in the Federal Register without reading the Federal Register every day? If so, you may wish to subscribe to the *LSA (List of CFR Sections Affected)*, the *Federal Register Index*, or both.

LSA • List of CFR Sections Affected

The LSA (List of CFR Sections Affected) is designed to lead users of the Code of Federal Regulations to amendatory actions published in the Federal Register. The LSA is issued monthly in cumulative form. Entries indicate the nature of the changes—such as revised, removed, or corrected.
$27 per year.

Federal Register Index

The index, covering the contents of the daily Federal Register, is issued monthly in cumulative form. Entries are carried primarily under the names of the issuing agencies. Significant subjects are carried as cross-references.
$25 per year.

A finding aid is included in each publication which lists Federal Register page numbers with the date of publication in the Federal Register.

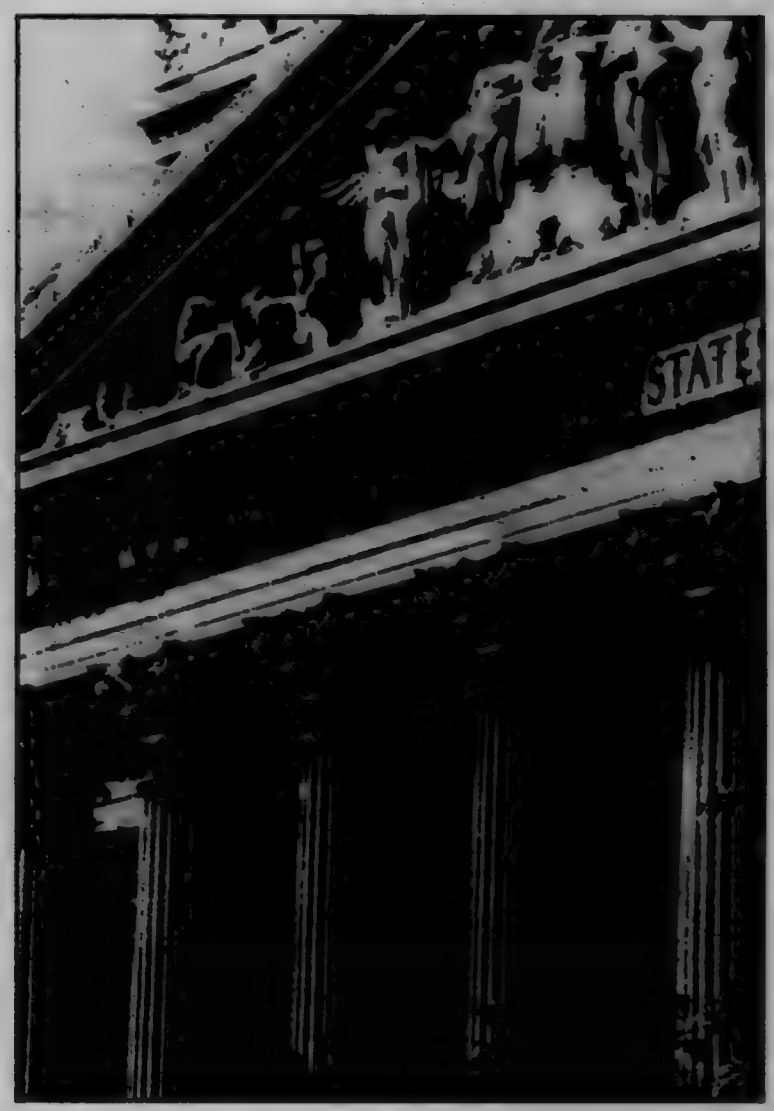

Superintendent of Documents **Subscription** Order Form

Order Processing Code:
*** 5421**

Charge your order. It's Easy!

To fax your orders (202) 512–2250
Phone your orders (202) 512–1800

☐ **YES**, enter the following indicated subscriptions for one year:

____ **LSA (List of CFR Sections Affected)**, (LCS) for $27 per year.
____ **Federal Register Index** (FRUS) $25 per year.

The total cost of my order is $ _____. **Price includes regular domestic postage and handling** and is subject to change. International customers please add 25%.

Company or personal name (Please type or print)

Additional address/attention line

Street address

City, State, ZIP code

Daytime phone including area code

Purchase order number (optional)

May we make your name/address available to other mailers? YES ☐ NO ☐

Please Choose Method of Payment:

☐ Check Payable to the Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐☐ – ☐
☐ VISA ☐ MasterCard Account

☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

☐☐☐☐ (Credit card expiration date)

Thank you for your order!

Authorizing Signature 1/97

Mail To: Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250–7954

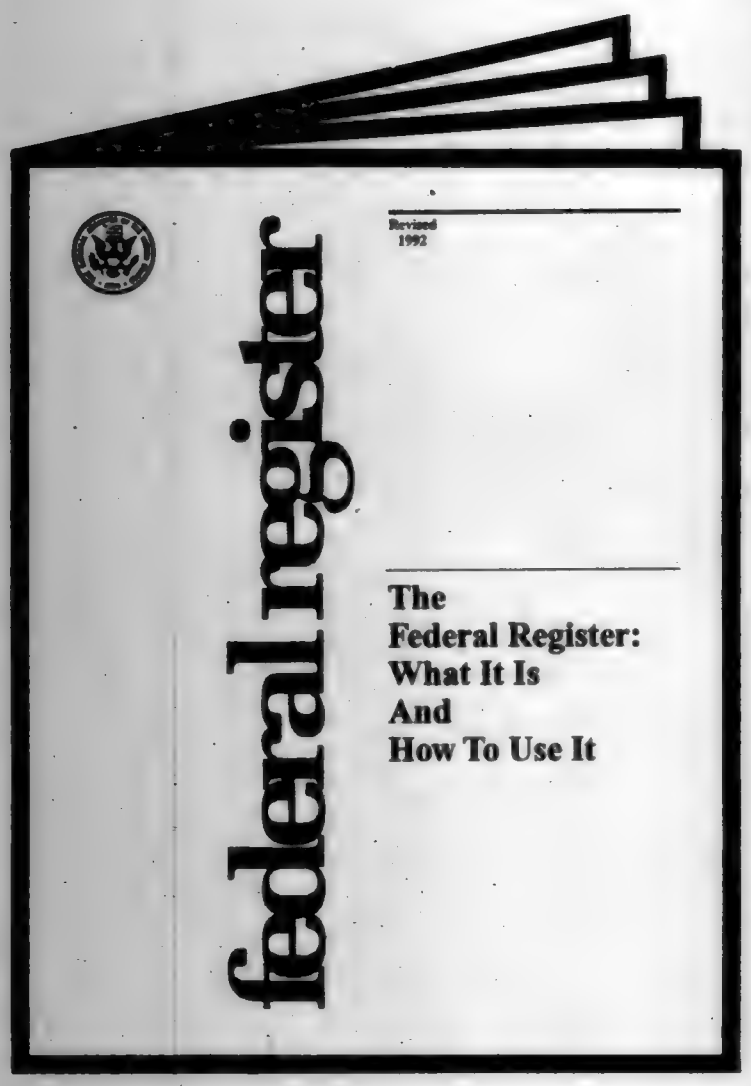

Announcing the Latest Edition

The Federal Register: What It Is and How to Use It

A Guide for the User of the Federal Register—Code of Federal Regulations System

This handbook is used for the educational workshops conducted by the Office of the Federal Register. For those persons unable to attend a workshop, this handbook will provide guidelines for using the *Federal Register* and related publications, as well as an explanation of how to solve a simple research problem.

Price $7.00

Superintendent of Documents **Publications** Order Form

Order Processing Code:
*** 6173**

☐ **YES**, enter my subscription(s) as follows:

Charge your order. It's Easy! MasterCard VISA

To fax your orders (202) 512–2250
Phone your orders (202) 512–1800

_____ copies of **The Federal Register – What it is and Hot To Use It,** at $7.00 per copy. Stock No. 069–000–00044–4.

The total cost of my order is $ _____. **Price includes regular domestic postage and handling** and is subject to change. International customers please add 25%

Company or personal name (Please type or print)

Additional address/attention line

Street address

City, State, ZIP code

Daytime phone including area code

Purchase order number (optional)

May we make your name/address available to other mailers? YES ☐ NO ☐

Please Choose Method of Payment:

☐ Check Payable to the Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐☐☐–☐
☐ VISA ☐ MasterCard Account
☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐
☐☐☐☐ (Credit card expiration date)

Thank you for your order!

Authorizing signature (Rev.11/3)

Mail To: Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250–7954

n

le

n

VISA

512–2250

512–1800

044–4.

hange.

uments

-

k you for
ur order!

(Rev.11/3)

–7954

VOL
64
ISS
71
AP
14
1999
UMI

Printed on recycled paper

VOL
64
ISS
72
AP
15
1999
UMI

4–15–99
Vol. 64

United S
Governm
Printing
SUPERINTEN
OF DOCUME
Washington,

OFFICIAL BU
Penalty for pr

UMI

THE PAPER AND INK USED IN THE ORIGINAL PUBLICATION MAY AFFECT THE QUALITY OF THE MICROFORM EDITION.

4–15–99
Vol. 64 No. 72

federal register

Thursday
April 15, 1999

United States
Government
Printing Office
SUPERINTENDENT
OF DOCUMENTS
Washington, DC 20402

OFFICIAL BUSINESS
Penalty for private use, $300

PERIODICALS
Postage and Fees Paid
U.S. Government Printing Office
(ISSN 0097–6326)

**********3-DIGIT 481
A FR UMI 346U DEC 99 R
UMI
PERIODICALS CHECK IN
PO BOX 1346
ANN ARBOR MI 48106

UMI

VOL
64
ISS
72
AP
15
1999
UMI

4–15–99
Vol. 64
Pages 18

4–15–99
Vol. 64 No. 72
Pages 18551–18796

Federal Register

Thursday
April 15, 1999

Briefings on how to use the Federal Register
For information on briefings in Washington, DC, see announcement on the inside cover of this issue.

The **FEDERAL REGISTER** is published daily, Monday through Friday, except official holidays, by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). The Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 is the exclusive distributor of the official edition.

The **Federal Register** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders, Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress, and other Federal agency documents of public interest.

Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless the issuing agency requests earlier filing. For a list of documents currently on file for public inspection, see http://www.nara.gov/fedreg.

The seal of the National Archives and Records Administration authenticates the Federal Register as the official serial publication established under the Federal Register Act. Under 44 U.S.C. 1507, the contents of the **Federal Register** shall be judicially noticed.

The **Federal Register** is published in paper and on 24x microfiche. It is also available online at no charge as one of the databases on GPO Access, a service of the U.S. Government Printing Office.

The online edition of the **Federal Register** is issued under the authority of the Administrative Committee of the Federal Register as the official legal equivalent of the paper and microfiche editions (44 U.S.C. 4101 and 1 CFR 5.10). It is updated by 6 a.m. each day the **Federal Register** is published and it includes both text and graphics from Volume 59, Number 1 (January 2, 1994) forward.

GPO Access users can choose to retrieve online **Federal Register** documents as TEXT (ASCII text, graphics omitted), PDF (Adobe Portable Document Format, including full text and all graphics), or SUMMARY (abbreviated text) files. Users should carefully check retrieved material to ensure that documents were properly downloaded.

On the World Wide Web, connect to the **Federal Register** at http://www.access.gpo.gov/nara. Those without World Wide Web access can also connect with a local WAIS client, by Telnet to swais.access.gpo.gov, or by dialing (202) 512-1661 with a computer and modem. When using Telnet or modem, type swais, then log in as guest with no password.

For more information about GPO Access, contact the GPO Access User Support Team by E-mail at gpoaccess@gpo.gov; by fax at (202) 512–1262; or call (202) 512–1530 or 1–888–293–6498 (toll free) between 7 a.m. and 5 p.m. Eastern time, Monday–Friday, except Federal holidays.

The annual subscription price for the **Federal Register** paper edition is $555, or $607 for a combined **Federal Register,** Federal Register Index and List of CFR Sections Affected (LSA) subscription; the microfiche edition of the **Federal Register** including the Federal Register Index and LSA is $220. Six month subscriptions are available for one-half the annual rate. The charge for individual copies in paper form is $8.00 for each issue, or $8.00 for each group of pages as actually bound; or $1.50 for each issue in microfiche form. All prices include regular domestic postage and handling. International customers please add 25% for foreign handling. Remit check or money order, made payable to the Superintendent of Documents, or charge to your GPO Deposit Account, VISA, MasterCard or Discover. Mail to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954.

There are no restrictions on the republication of material appearing in the **Federal Register.**

How To Cite This Publication: Use the volume number and the page number. Example: 64 FR 12345.

Printed on recycled paper.

SUBSCRIPTIONS AND COPIES

PUBLIC
Subscriptions:
Paper or fiche — **202–512–1800**
Assistance with public subscriptions — **512–1806**
General online information — **202–512–1530; 1–888–293–6498**
Single copies/back copies:
Paper or fiche — **512–1800**
Assistance with public single copies — **512–1803**
FEDERAL AGENCIES
Subscriptions:
Paper or fiche — **523–5243**
Assistance with Federal agency subscriptions — **523–5243**

FEDERAL REGISTER WORKSHOP

THE FEDERAL REGISTER: WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: Sponsored by the Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WASHINGTON, DC

WHEN: April 20, 1999 at 9:00 am.

WHERE: Office of the Federal Register
Conference Room
800 North Capitol Street, NW.
Washington, DC
(3 blocks north of Union Station Metro)

RESERVATIONS: 202–523–4538

Contents

Federal Register
Vol. 64, No. 72
Thursday, April 15, 1999

Agency for Health Care Policy and Research
NOTICES
Strategic plan; priorities FY 2000, 2001, and 2002, 18619–18622

Agriculture Department
See Commodity Credit Corporation
See Forest Service

Antitrust Division
NOTICES
Agency information collection activities:
Proposed collection; comment request, 18635–18636

Army Department
See Engineers Corps

Centers for Disease Control and Prevention
NOTICES
Grants and cooperative agreements; availability, etc.:
Public health information infrastructure, 18622–18623

Civil Rights Commission
NOTICES
Meetings; State advisory committees:
Michigan, 18599
New Hampshire, 18599
Utah, 18599

Coast Guard
RULES
Drawbridge operations:
Connecticut, 18576
Meetings:
Emergency control measures for tank barges, 18576–18577
Ports and waterways safety:
Kill Van Kull Channel et al., NY and NJ, 18577–18580
PROPOSED RULES
Regattas and marine parades:
First Coast Guard District fireworks display, 18587–18596
NOTICES
Ports and waterways safety:
Strait of Juan de Fuca and adjacent waters, WA; port access routes study, 18651–18652

Commerce Department
See Export Administration Bureau
See International Trade Administration
See National Oceanic and Atmospheric Administration

Committee for the Implementation of Textile Agreements
NOTICES
Cotton, wool, and man-made textiles:
El Salvador, 18603

Commodity Credit Corporation
RULES
Loan and purchase programs:
Single-year and multi-year crop loss disaster assistance program, 18553–18563

Consumer Product Safety Commission
NOTICES
Meetings; Sunshine Act, 18603

Corporation for National and Community Service
NOTICES
Indian tribal governments; working group representatives, 18603–18604

Customs Service
RULES
Air commerce; airport designations and withdrawals:
Akron Fulton Airport, OH, 18566
NOTICES
Agency information collection activities:
Proposed collection; comment request, 18654–18657

Defense Department
See Engineers Corps
See Navy Department
NOTICES
Federal Acquisition Regulation (FAR):
Agency information collection activities—
Proposed collection; comment request, 18604–18605
Submission for OMB review; comment request, 18604–18607

Education Department
NOTICES
Agency information collection activities:
Proposed collection; comment request, 18608

Employment and Training Administration
RULES
Workforce Investment Act; implementation:
Job training system reform, 18661–18764

Energy Department
See Federal Energy Regulatory Commission
NOTICES
Grants and cooperative agreements; availability, etc.:
Energy efficient industrialized housing, 18609
Photovoltaics for schools, 18609–18610
Meetings:
Environmental Management Site-Specific Advisory Board—
Nevada Test Site, 18610

Engineers Corps
RULES
Danger zones and restricted areas:
Point Lookout to Cedar Point, MD; aerial firing range designation, 18580–18581

Executive Office of the President
See Presidential Documents

Export Administration Bureau
NOTICES
Agency information collection activities:
Proposed collection; comment request, 18599–18600

Federal Aviation Administration
RULES
Class E airspace
Correction, 18563
IFR altitudes, 18563–18566
PROPOSED RULES
Air carrier certification and operations:
Service difficulty reports, 18765–18783
Class E airspace, 18584–18585
NOTICES
Advisory circulars; availability, etc.:
Aircraft products and parts—
Aircraft data communications systems; design approval, 18652–18653
Grants and cooperative agreements; availability, etc.:
Airport Improvement Program; deadline for sponsor, 18653
Reports and guidance documents; availability, etc.:
Reusable launch vehicles; interim safety guidance meeting transcript, 18653

Federal Communications Commission
PROPOSED RULES
Radio stations; table of assignments:
Michigan, 18596

Federal Energy Regulatory Commission
NOTICES
Electric rate and corporate regulation filings:
GEN SYS Energy et al., 18612–18617
Hydroelectric applications, 18617–18618
Preliminary permits surrender:
Universal Electric Power Corp., 18618–18619
Applications, hearings, determinations, etc.:
Bonneville Power Administration, 18611
Columbia Gas Tranmission Corp., 18611
Northern Border Pipeline Co., 18611–18612
Transwestern Pipeline Co., 18612

Federal Highway Administration
NOTICES
Environmental statements; notice of intent:
Columbia County, NY, 18653–18654

Federal Reserve System
NOTICES
Banks and bank holding companies:
Formations, acquisitions, and mergers, 18619
Federal Open Market Committee:
Domestic policy directives, 18619

Fish and Wildlife Service
PROPOSED RULES
Endangered and threatened species:
Cactus ferruginous pygmy-owl and Huachuca water umbel, 18596–18597
NOTICES
Environmental statements; availability, etc.:
Incidental take permits—
San Diego County, CA; multiple habitat conservation plan, 18628–18629

Food and Drug Administration
RULES
Animal drugs, feeds, and related products:
Dichlorvos tablets, 18571–18572
Narasin and nicarbazin with methylene disalicylate and roxarsone, 18574–18575
Omeprazole, 18572–18573
Sulfadimrthoxine soluble powder, 18572
Trenbolone acetate and estradiol benzoate, 18573–18574
Human drugs:
Labeling of drug products (OTC)—
Standardized format; correction, 18571
NOTICES
Biological product licenses:
Bestblood, Ltd.; revocation hearing, 18623–18624

Forest Service
NOTICES
Environmental statements; notice of intent:
Boise National Forest, ID, 18598–18599

General Services Administration
RULES
Federal travel:
Relocation income tax allowance tax tables; correction, 18659
Travel and relocation expenses test programs—
Correction, 18581–18582
NOTICES
Federal Acquisition Regulation (FAR):
Agency information collection activities—
Proposed collection; comment request, 18604–18605
Submission for OMB review; comment request, 18604–18607

Health and Human Services Department
See Agency for Health Care Policy and Research
See Centers for Disease Control and Prevention
See Food and Drug Administration
See Health Care Financing Administration
See National Institutes of Health
See Substance Abuse and Mental Health Services Administration

Health Care Financing Administration
NOTICES
Agency information collection activities:
Proposed collection; comment request, 18624–18625

Immigration and Naturalization Service
NOTICES
Agency information collection activities:
Proposed collection; comment request, 18636–18637

Indian Affairs Bureau
PROPOSED RULES
Transportation Equity Act for 21st Century; implementation:
Indian Reservation Roads Negotiated Rulemaking Committee; meetings, 18585

Interior Department
See Fish and Wildlife Service
See Indian Affairs Bureau
See Land Management Bureau
See Surface Mining Reclamation and Enforcement Office

Internal Revenue Service
NOTICES
Agency information collection activities:
Proposed collection; comment request, 18657–18658

International Trade Administration
NOTICES
Antidumping:
Stainless steel bar from—
India, 18601–18602
Antidumping and countervailing duties:
Administrative review requests, 18600–18601
Export trade certificates of review, 18602–18603

Justice Department
See Antitrust Division
See Immigration and Naturalization Service

Labor Department
See Employment and Training Administration

Land Management Bureau
NOTICES
Closure of public lands:
Nevada, 18629–18630
Environmental statements; availability, etc.:
Caribou National Forest phosphate leasing; record of decision, 18630–18631
Diamond Mountian Resource Area, UT, 18631
Meetings:
Resource advisory councils—
Alaska, 18631
Realty actions; sales, leases, etc.:
Nevada, 18631–18632
Recreation management restrictions, etc.:
Blackfoot River Recreation Corridor, MT; camping, motorized vehicle use, etc., 18632–18633
Resource management plans, etc.:
Pony Express Resource Management Plan; Salt Lake, UT, 18633
Survey plat filings:
New Mexico, 18633
Oregon / Washington, 18633–18634

Legal Services Corporation
NOTICES
Meetings; Sunshine Act, 18638

Medicare Payment Advisory Commission
NOTICES
Meetings; correction, 18659

National Aeronautics and Space Administration
NOTICES
Federal Acquisition Regulation (FAR):
Agency information collection activities—
Proposed collection; comment request, 18604–18605
Submission for OMB review; comment request, 18604–18607

National Archives and Records Administration
NOTICES
Agency records schedules; availability, 18638–18639

National Institutes of Health
NOTICES
Meetings:
National Institute of Allergy and Infectious Diseases, 18626–18627
National Institute of General Medical Sciences, 18626
National Institute of Mental Health, 18625–18627
National Institute on Alcohol Abuse and Alcoholism, 18626

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
Northeastern United States fisheries—
Summer flounder, scup, and black sea bass, 18582–18583

National Science Foundation
NOTICES
Agency information collection activities:
Proposed collection; comment request, 18639–18640
Meetings:
Advanced Computational Infrastructure & Research Special Emphasis Panel, 18640
Animal Behavior Advisory Panel, 18640
Electrical and Communications Systems Division Special Emphasis Panel, 18640
Neuroscience Advisory Panel, 18641
Physics Special Emphasis Panel, 18641
Physiology and Ethology Advisory Panel, 18641
Secondary and Informal Education Special Emphasis Panel, 18641–18642
Social Behavioral and Economic Sciences Special Emphasis Panel, 18642

Navy Department
NOTICES
Inventions, Government-owned; availability for licensing, 18607–18608

Nuclear Regulatory Commission
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 18642
Meetings; Sunshine Act, 18643
Applications, hearings, determinations, etc.:
H.B.Robinson Steam Electric Plant, 18642–18643

Pension Benefit Guaranty Corporation
RULES
Single-employer plans:
Allocation of assets—
Interest assumptions for valuing benefits, 18575–18576
NOTICES
Multiemployer and single-employer plans:
Interest rates and assumptions, 18644–18645

Presidential Documents
ADMINISTRATIVE ORDERS
Croatia; military assistance (Presidential Determination No. 99-21 of April 8, 1999), 18551

Public Health Service
See Agency for Health Care Policy and Research
See Centers for Disease Control and Prevention
See Food and Drug Administration
See National Institutes of Health
See Substance Abuse and Mental Health Services Administration

Research and Special Programs Administration
PROPOSED RULES
Hazardous materials transportation:
Registration and fee assessment program, 18785–18795

Securities and Exchange Commission
NOTICES
Self-regulatory organizations; proposed rule changes:
Philadelphia Stock Exchange, Inc., 18648–18651

Applications, hearings, determinations, etc.:
InterCept Group, Inc., 18645
INVESCO Funds Group, Inc., 18645–18646
PaineWebber Inc. and PaineWebber Equity Trust, ABCs Trust Series 1, 18646–18648

Social Security Administration
RULES
Supplemental security income:
Federal old age, survivors, and disability insurance—
Substantial gainful activity amounts; average monthly earnings guideline, 18566–18571

Substance Abuse and Mental Health Services Administration
NOTICES
Meetings:
SAMHSA special emphasis panels, 18627–18628

Surface Mining Reclamation and Enforcement Office
PROPOSED RULES
Federal and Indian lands programs:
Indian lands; definition clarification, 18585–18586
Permanent program and abandoned mine land reclamation plan submissions:
North Dakota, 18586–18587
NOTICES
Grants and cooperative agreements; availability, etc.:
Ridgewater Improvement District water distribution system; Converse County, WY, 18634–18635

Textile Agreements Implementation Committee
See Committee for the Implementation of Textile Agreements

Transportation Department
See Coast Guard
See Federal Aviation Administration
See Federal Highway Administration
See Research and Special Programs Administration

Treasury Department
See Customs Service
See Internal Revenue Service

Separate Parts In This Issue

Part II
Department of Labor, Employment and Training Administration, 18661–18764

Part III
Department of Transportation, Federal Aviation Administration, 18765–18783

Part IV
Department of Transportation, Research and Special Programs Administration, 18785–18795

Reader Aids
Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

3 CFR
Administrative Orders:
Presidential Determinations:
No. 99-21 of April 8, 1999 18551

7 CFR
1477 18553

14 CFR
71 18563
95 18563
Proposed Rules:
71 18584
121 18766
125 18768
135 18766
145 18766

19 CFR
122 18566

20 CFR
404 18566
416 18566
652 18662
660 18662
661 18662
662 18662
663 18662
664 18662
665 18662
666 18662
667 18662
668 18662
669 18662
670 18662
671 18662

21 CFR
201 18571
330 18571
331 18571
341 18571
346 18571
355 18571
358 18571
369 18571
510 18571
520 (3 documents) 18571, 18572
522 18573
556 18573
558 18574
701 18571

25 CFR
Proposed Rules:
Ch. I 18585

29 CFR
4044 18575

30 CFR
Proposed Rules:
700 18585
740 18585
746 18585
750 18585
934 18586

33 CFR
117 18576
155 18576
165 18577
334 18580
Proposed Rules:
100 18587

41 CFR
Ch. 301 18581
302-11 18659

46 CFR
32 18576

47 CFR
Proposed Rules:
73 18596

49 CFR
Proposed Rules:
107 18786

50 CFR
648 18582
Proposed Rules:
17 18596

UMI

VOL
64

ISS
72

AP
15

1999

UMI

Title 3—

The Pr

[FR Doc. 99
Filed 4–14–
Billing code

Federal Register
Vol. 64, No. 72
Thursday, April 15, 1999

Presidential Documents

Title 3—

The President

Presidential Determination No. 99–21 of April 8, 1999

Eligibility of the Republic of Croatia To Be Furnished Defense Articles and Services Under the Foreign Assistance Act and Arms Export Control Act

Memorandum for the Secretary of State

Pursuant to the authority vested in me by section 503(a) of the Foreign Assistance Act of 1961, as amended, and section 3(a)(1) of the Arms Export Control Act, I hereby find that the furnishing of defense articles and services to the Government of the Republic of Croatia will strengthen the security of the United States and promote world peace.

You are authorized and directed to report this finding to the Congress and to publish it in the **Federal Register**.

William J. Clinton

THE WHITE HOUSE,
Washington, April 8, 1999.

[FR Doc. 99–9615
Filed 4–14–99; 8:45 am]
Billing code 4710–10–M

UMI

VOL
64
ISS
72
AP
15
1999

UMI

Rule

This sectio
contains r
applicabilit
are keyed
Federal Re
50 titles pu

The Code
the Superi
new books
REGISTE

DEPART

Commod

7 CFR Pa

RIN 0560-

1998 Sin
Loss Dis

AGENCY:
USDA.

ACTION:

SUMMARY
terms an
Year and
Assistan
purpose
payment
suffered
disaster
3 of the
1998.

DATES: E

FOR FURT
Rebecca

SUPPLEM

Executiv

This fi
conforma
12866 an
economi
has been
Manager

Regulato

It has
Regulato
applicab
Service
Commod
are not r
other pr
notice o
respect t

Environ

It has
environ

Rules and Regulations

Federal Register
Vol. 64, No. 72
Thursday, April 15, 1999

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1477

RIN 0560–AF75

1998 Single-Year and Multi-Year Crop Loss Disaster Assistance Program

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: This final rule sets forth the terms and conditions of the 1998 Single-Year and Multi-Year Crop Loss Disaster Assistance Program (CLDAP). The purpose of the program is to provide payments to eligible producers who suffered losses due to an eligible disaster in crop year 1998, or in at least 3 of the crop years from 1994 through 1998.

DATES: Effective April 15, 1999.

FOR FURTHER INFORMATION CONTACT: Rebecca Davis, (202) 720–9882.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This final rule is issued in conformance with Executive Order 12866 and has been determined to be economically significant and therefore has been reviewed by the Office of Management and Budget (OMB).

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable to this rule because the Farm Service Agency (FSA) and the Commodity Credit Corporation (CCC) are not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rule making with respect to the subject matter of this rule.

Environmental Evaluation

It has been determined by an environmental evaluation that this action will have no significant impact on the quality of the human environment. Therefore, neither an environmental assessment nor an Environmental Impact Statement is needed.

Executive Order 12988

This rule has been reviewed in accordance with Executive Order 12988. The provisions of this rule preempt State laws to the extent such laws are inconsistent with the provisions of this rule. Before any judicial action may be brought concerning provisions of this rule, the administrative remedies must be exhausted.

Executive Order 12372

This program is not subject to the provisions of Executive Order 12372, which require intergovernmental consultation with State and local officials. See the notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

Unfunded Mandates Reform Act of 1995

This rule contains no Federal mandates under the regulatory provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) for State, local, and tribal governments or the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

Paperwork Reduction Act and Small Business Regulatory Enforcement Fairness Act

The provisions contained in this rule are authorized by the Agriculture, Rural Development, Food and Drug Administration and Related Agencies Appropriations Act, 1999 ("1999 Act") (Pub. L. 105–277, 112 Stat.2681). Section 1133 of the 1999 Act provides that such rules shall be issued as soon as practicable and without regard to: (1) the notice and comment provisions of section 553 of title 5, United States Code; (2) the Statement of Policy of the Secretary of Agriculture effective July 24, 1971 (36 FR 13804), relating to notices of proposed rulemaking and public participation in rulemaking; and (3) chapter 35 of title 44, United States Code (commonly known as the "Paperwork Reduction Act"). Accordingly, these regulations are being issued as a final rule without a notice and comment period, and the forms and the collection of information do not require prior OMB approval.

In addition, this rule was determined to be a major rule as defined in the Small Business Regulatory Enforcement Act of 1996 (SBREFA). Section 1133 of the 1999 Act provides that these regulations shall use the authority provided under section 808 of SBREFA that allows an agency to promulgate a rule at such time as it determines necessary, notwithstanding the Congressional review of major regulations provided for in section 801 of SBREFA. It is hereby determined that delaying this rule would be contrary to the public interest because of the need for expeditious implementation of the rule as expressed in the text of the 1999 Act. Accordingly, this rule is effective upon publication.

Executive Order 12612

It has been determined that this rule does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment. The provisions contained in this rule will not have a substantial direct effect on States or their political subdivisions, or on the distribution of power and responsibilities among the various levels of government.

Background

This final rule adds 7 CFR part 1477 setting forth the terms and conditions under which producers who suffered crop losses as a result of natural disaster may apply for benefits to compensate for their losses for the crop year 1998 or for at least 3 of the years from 1994 through 1998 as authorized by the 1999 Act.

Producers who seek benefits under this subpart must file an application for benefits during the sign-up period, February 1, 1999, through April 9, 1999, or other ending date as determined by the Deputy Administrator. False certification carries strict penalties; and the Department will spot-check and validate applications. Because funding for the program is limited, national factors for reducing payments will be determined after the end of sign up, if necessary, to ensure that total outlays do not exceed the amount of funds made available under this program.

The rules set a payment limit on the amount of benefits that can be received and limit the multi-year benefits to "producers" with the qualifying history

for which purposes changes in the farming operation will be considered to involve different producers. This will allow the history determinations to reflect the actual composition of farms during the history period, consistent with the purposes of the 1999 Act. It will at the same time permit the agency to accurately verify losses. Further, as to the multi-year program, the rules build on existing programs which have identified the general Federal policy on when crop losses should be covered. This, as well, will permit the verification of losses. Existing policy has emphasized the importance of crop insurance where such insurance is available and in cases of non-insurable crops (those for which Federal crop insurance is not available) has allowed only for coverage in limited instances in which there is a verified area-wide loss. However, these programs have never provided full relief and this rule will partially alleviate the shortfalls in those Federal programs for farmers who have had long-term losses. The Secretary has been given a wide discretion in the implementation of the 1999 Act and these rules will be consistent with existing Federal policies and with the understanding of the desire of Congress to attempt to alleviate the shortcomings in current programs. These rules will, in addition, allow relief to be made available quickly, and effectively, within the limits of the funding available for this program.

List of Subjects in 7 CFR Part 1477

Disaster assistance, emergency assistance, reporting and recordkeeping requirements.

For the reasons set forth in the preamble, a new 7 CFR part 1477 is added to subchapter B of 7 CFR Chapter XIV to read as follows:

PART 1477—1998 SINGLE-YEAR AND MULTI-YEAR CROP LOSS DISASTER ASSISTANCE PROGRAM

Subpart A—General Provisions

Sec.

1477.101 Applicability.
1477.102 Administration.
1477.103 Definitions.
1477.104 Producer eligibility.
1477.105 Time for filing application.
1477.106 Limitation on payments and other benefits.
1477.107 Crop insurance premium discounts.
1477.108 Requirement to purchase crop insurance.
1477.109 Miscellaneous provisions.
1477.110 Matters of general applicability.

Subpart B—1998 Single-Year Crop Loss Disaster Assistance Program

1477.201 Single-year crop losses.
1477.202 Calculating rates and yields.
1477.203 Production losses, producer responsibility.
1477.204 Determination of production.
1477.205 Calculation of acreage for crop losses other than prevented planted.
1477.206 Calculation of prevented planted acreage.
1477.207 Quality adjustments to production.
1477.208 1999 crop losses.
1477.209 Value loss crops.
1477.210 Other Specialty crops.

Subpart C—Multi-Year Crop Loss Disaster Assistance Program

1477.300 Multi-year crop losses.

Authority: Sec. 1101 and 1102 of Pub. L. 105–277, 112 Stat.2681; 15 U.S.C. 714b and 714c.

Subpart A—General Provisions

§ 1477.101 Applicability.

(a) This part sets forth the terms and conditions applicable to the 1998 Crop Loss Disaster Assistance Program. Under sections 1101 and 1102 of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 1999 ("1999 Act") (Pub. L. 105–277, 112 Stat. 2681), the Secretary of Agriculture will make disaster payments available to certain producers who have incurred losses in quantity or quality of their crops due to disasters. Producers will be able to receive benefits under this part for losses to 1998 crops, or losses occurring in at least 3 years for which payments were received for the period 1994 through 1998, as determined by the Secretary. Accordingly, this part contains three subparts. Subpart A contains general provisions applicable to both the single-year and multi-year aspects of the 1998 Crop Loss Disaster Assistance Program, which are contained in Subparts B and C, respectively.

(b) In accordance with section 1102(g)(2) of the 1999 Act, the Secretary has authorized use of a portion of the funds authorized by the Act to establish crop insurance premium discounts for the 1999 crop year (2000 crop year for citrus fruit, avocados in California, and macadamia nuts in Hawaii). This part establishes provisions and requirements for implementation of those discounts.

§ 1477.102 Administration.

(a) The program will be administered under the general supervision of the Executive Vice President, Commodity Credit Corporation (CCC), and shall be carried out in the field by State and county Farm Service Agency (FSA) committees.

(b) State and county FSA committees and representatives do not have the authority to modify or waive any of the provisions of this part.

(c) The State FSA committee shall take any action required by this part which has not been taken by a county FSA committee. The State FSA committee shall also:

(1) Correct or require a county FSA committee to correct any action taken by such county FSA committee which is not in accordance with this part; and

(2) Require a county FSA committee to withhold taking or reverse any action which is not in accordance with this part.

(d) No delegation herein to a State or county FSA committee shall prevent the Deputy Administrator from determining any question arising under the program or from reversing or modifying any determination made by a State or county FSA committee.

(e) The Deputy Administrator may authorize the State and county committees to waive or modify deadlines or other program requirements in cases where lateness or failure to meet such other requirements does not adversely affect the operation of the program or when, in his discretion, it is determined that an exception should be allowed to provide for a more equitable distribution of benefits consistent with the goals of the program provided for in this part.

§ 1477.103 Definitions.

The definitions in this section shall be applicable for all purposes of administering the 1998 Crop Loss Disaster Assistance Program and all subparts of this part.

Actual production means the total quantity of the crop appraised, harvested or which could have been harvested as determined by the county or State FSA committee in accordance with instructions issued by the Deputy Administrator.

Additional coverage means with respect to insurance plans of crop insurance providing a level of coverage equal to or greater than 65 percent of the approved yield indemnified at 100 percent of the expected market price, or a comparable coverage as established by FCIC.

Appraised production means production determined by FSA, RMA, FCIC, a company reinsured by FCIC, or other appraiser acceptable to CCC, that was unharvested but which was determined to reflect the crop's yield potential at the time of appraisal.

Approved yield means the amount of production per acre, computed in accordance with FCIC's Actual Production History Program (7 CFR part 400, subpart G) or for crops not included under 7 CFR part 400, subpart G, the yield used to determine the guarantee. For crops covered under the Noninsured Crop Disaster Assistance program, the approved yield is established according to part 1437 of this title.

Aquaculture means the reproduction and rearing of aquatic species in controlled or selected environments, including, but not limited to, ocean ranching (except private ocean ranching of Pacific salmon for profit in those States where such ranching is prohibited by law).

Aquaculture facility means any land or structure including, but not limited to, a laboratory, hatchery, rearing pond, raceway, pen, incubator, or other equipment used in aquaculture.

Aquacultural species means aquacultural species as defined in part 1437 of this chapter.

CCC means the Commodity Credit Corporation.

Catastrophic risk protection means the minimum level of coverage offered by FCIC.

Catastrophic Risk Protection Endorsement means the relevant part of the Federal crop insurance policy that contains provisions of insurance that are specific to catastrophic risk protection.

Control county means: for a producer with farming interests in only one county, the county FSA office in which the producer's farm(s) is administratively located; for a producer with farming interests which are administratively located in more than one county FSA office, the county FSA office designated by FSA to control the payments received by the producer.

County committee means the local FSA county committee.

Crop of economic significance means a crop with a value equal to ten percent (10%) or more of the total value of the producer's share of all crops grown in the county for the relevant crop year. However, an amount will not be considered economically significant if the potential liability under the Catastrophic Risk Protection Endorsement is equal to or less than the administrative fee required with respect to such insurance for the crop, or, if applicable, the crop type or variety.

Crop insurance means an insurance policy reinsured by the Federal Crop Insurance Corporation under the provisions of the Federal Crop Insurance Act, as amended.

Cropland means cropland as defined in part 718 of this title.

Crop year means: for insured and uninsured crops, the crop year as defined according to the applicable crop insurance policy; and for noninsurable crops, the year harvest normally begins for the crop, except the crop year for all aquacultural species and nursery crops shall mean the period from October 1 through the following September 30, and the crop year for purposes of calculating honey and tree losses shall be the period running from January 1 through the following December 31.

Deputy Administrator means the Deputy Administrator for Farm Programs, Farm Service Agency (FSA), or a designee.

Disaster means damaging weather, including drought, excessive moisture, hail, earthquake, freeze, tornado, hurricane, typhoon, volcano, excessive wind, excessive heat, or any combination thereof; and shall also include a related condition and all eligible loss conditions, excluding price risk for 1998 single-year losses, as determined by the crop insurance policy, if RMA has made an eligible loss determination.

Double-cropped means a condition in which a subsequent crop of a different commodity is planted on the same acreage as the first crop within the same crop year if the county committee determines both crops were or could have been carried to harvest.

End use means the purpose for which the harvested crop is used, such as fresh, processed or juice.

Entity means any legal organization or joint venture of any kind, including, but not limited to, corporations, trusts and partnerships.

Expected market price (price election) means the price per unit of production (or other basis as determined by FCIC) anticipated during the period the insured crop normally is marketed by producers. This price will be set by FCIC before the sales closing date for the crop. The expected market price may be less than the actual price paid by buyers if such price typically includes remuneration for significant amounts of post-production expenses such as conditioning, culling, sorting, packing, etc.

Expected production means, for an agricultural unit, the historic yield multiplied by the number of planted or prevented acres of the crop for the unit.

FCIC means the Federal Crop Insurance Corporation, a wholly owned Government Corporation within USDA.

Final planting date means the date established by RMA for insured and uninsured crops by which the crop must be initially planted in order to be insured for the full production guarantee or amount of insurance per acre. For noninsurable crops, the final planting date is the end of the planting period for the crop as determined by CCC.

Flood prevention means with respect to aquacultural species, placing the aquacultural facility in an area not prone to flood; in the case of raceways, providing devices or structures designed for the control of water level; and for nursery crops, placing containerized stock in a raised area above expected flood level and providing draining facilities, such as drainage ditches or tile, gravel, cinder or sand base.

FSA means the Farm Service Agency.

Good nursery growing practices means utilizing flood prevention, growing media, fertilization to obtain expected production results, irrigation, insect and disease control, weed, rodent and wildlife control, and over winterization storage facilities.

Growing media means:

(1) For aquacultural species, media that provides nutrients necessary for the production of the aquacultural species and protects the aquacultural species from harmful species or chemicals; and

(2) For nursery crops, media designed to prevent "root rot" and other media-related problems through a well-drained media with a minimum 20 percent air pore space and pH adjustment for the type of plant produced.

Harvested means: For insured and uninsured crops, harvested as defined according to the applicable crop insurance policy; for noninsurable single harvest crops, that a crop has been removed from the field, either by hand or mechanically, or by grazing of livestock; for noninsurable crops with potential multiple harvests in one year or harvested over multiple years, that the producer has, by hand or mechanically, removed at least one mature crop from the field; and for mechanically harvested noninsurable crops, that the crop has been removed from the field and placed in a truck or other conveyance, except hay is considered harvested when in the bale, whether removed from the field or not. Grazed land will not be considered harvested for the purpose of determining an unharvested or prevented planting payment factor.

Historic yield means, for a unit, the higher of the county average yield or the producer's approved yield.

Individual stand means, with respect to trees, an area of eligible trees that are tended by an eligible producer as a single operation, whether or not the trees are planted in the same field or

similar location, as determined by the county committee. Eligible trees not in the same field or similar location may be considered to be separate individual stands if county committee determines that there are significantly differing levels of loss susceptibility.

Insurance is available means when crop information is contained in RMA's county actuarial documents for a particular crop and a policy can be obtained through the RMA system, except if the Group Risk Plan of crop insurance was the only plan of insurance available for the crop in the county in the 1998 crop year, insurance is considered not available for that crop.

Insured crops means those crops covered by crop insurance pursuant to 7 CFR Chapter IV and for which the producer purchased either the catastrophic or buy-up level of crop insurance so available.

Intended crop means an insured crop which the producer timely indicates for RMA insurance purposes as the crop the producer intends to produce.

Limited coverage means plans of crop insurance offering coverage that is equal to or greater than 50 percent of the approved yield indemnified at 100 percent of the expected market price, or a comparable coverage as established by FCIC, but less than 65 percent of the approved yield indemnified at 100 percent of the expected market price, or a comparable coverage as established by FCIC.

Multi-use crop means a crop intended for more than one end use during the calendar year such as grass harvested for seed, hay, and/or grazing.

Multiple planting means the planting for harvest of the same crop in more than one planting period in a crop year on different acreage.

Noninsurable crops means those crops for which crop insurance was not available.

Normal mortality means the percentage of damaged or dead trees in the individual stand or the percentage of dead aquacultural species that would normally occur during the crop year.

Operator means operator as defined in part 718 of this title.

Palmer Drought Severity Index means the meteorological index calculated by the National Weather Service to indicate prolonged and abnormal moisture deficiency or excess.

Pass-through funds means revenue that goes through, but does not remain in, a person's account, such as money collected by an auction house for the sale of livestock which is subsequently paid to the sellers of the livestock, less a commission withheld by the auction house.

Person means person as defined in part 1400 of this chapter, and all rules with respect to the determination of a person found in that part shall be applicable to this part. However, the determinations made in this part in accordance with 7 CFR part 1400, subpart B, Person Determinations, shall also take into account any affiliation with any entity in which an individual or entity has an interest, irrespective of whether or not such entities are considered to be engaged in farming.

Planted acreage means land in which seed, plants, or trees have been placed, appropriate for the crop and planting method, at a correct depth, into a seedbed that has been properly prepared for the planting method and production practice normal to the area as determined by the county committee.

Producer means producer as defined in part 718 of this title.

Related condition means with respect to disaster, a condition related to a disaster that causes deterioration of a crop such as insect infestation, plant disease, or aflatoxin that is accelerated or exacerbated naturally as a result of damaging weather occurring prior to or during harvest as determined in accordance with instructions issued by the Deputy Administrator.

Reliable production records means evidence provided by the producer that is used to substantiate the amount of production reported when verifiable records are not available, including copies of receipts, ledgers of income, income statements of deposit slips, register tapes, invoices for custom harvesting, and records to verify production costs, that are determined acceptable by the county committee.

Repeat crop means with respect to a producer's production, a commodity that is planted or prevented from being planted in more than one planting period on the same acreage in the same crop year.

RMA means the Risk Management Agency.

Salvage value means the dollar amount or equivalent received by the producer for the quantity of the commodity that cannot be marketed or sold in any recognized market for the crop.

Secondary use means the harvesting of a crop for a use other than the intended use, except for crops with intended use of grain, but harvested as silage, ensilage, cobbage, hay, cracked, rolled, or crimped.

Secondary use value means the value determined by multiplying the quantity of secondary use times the CCC-established price for this use.

Secretary means the Secretary of the United States Department of Agriculture.

Substitute crop means an alternative crop whose sales closing date has passed and that is planted on acreage that is prevented from being planted to an intended crop or where an intended crop is planted and fails.

Trees means maple trees for syrup, or orchard trees grown for commercial production of fruits or nuts.

Uninsured crops means those crops for which Federal crop insurance was available, but the producer did not purchase insurance.

Unit means, unless otherwise determined by the Deputy Administrator, basic unit as described in part 457 of this title which, for ornamental nursery production shall include all eligible plant species and sizes.

Unit of measure means:

(1) For all insured and uninsured crops, the FCIC-established unit of measure;

(2) For aquacultural species, a standard unit of measure such as gallons, pounds, inches or pieces, established by the State committee for all aquacultural species or varieties;

(3) For Christmas trees, a plant or tree;

(4) For turfgrass sod, a square yard;

(5) For maple sap, a gallon; and

(6) For all other crops, the smallest unit of measure which lends itself to the greatest level of accuracy with minimal use of fractions, as determined by the State committee.

United States means all 50 States of the United States, the Commonwealth of Puerto Rico, the Virgin Islands and Guam.

USDA means United States Department of Agriculture.

Value loss crop will have the meaning assigned in part 1437 of this chapter.

Verifiable production records means evidence that is used to substantiate the amount of production reported and that can be verified by CCC through an independent source.

§ 1477. 104 Producer eligibility.

(a) Producers in the United States will be eligible to receive disaster benefits under this part only if they have suffered either:

(1) 1998 crop losses as a result of a disaster and as further specified in Subpart B; or

(2) Multi-year crop losses as a result of a disaster and as further specified in Subpart C.

(b) Payments may be made for losses suffered by an eligible producer who is now deceased or is a dissolved entity if a representative who currently has

authority to enter into a contract for the producer signs the application for payment. Proof of authority to sign for the deceased producer or dissolved entity must be provided. If a producer is now a dissolved general partnership or joint venture, all members of the general partnership or joint venture at the time of dissolution or their duly authorized representatives must sign the application for payment.

(c) As a condition to receive benefits under this part, a producer must have been in compliance with the Highly Erodible Land Conservation and Wetland Conservation provisions of part 12 of this title, for the year or years for which benefits are sought.

(d) The provisions of paragraph (c) of this section do not apply to producers receiving benefits under this part for value loss crops.

§ 1477.105 Time for filing application.

(a) Applications for benefits under Subpart B, the 1998 Crop Loss Disaster Assistance Program Single Year 1998 Losses, shall be filed before the close of business on April 9, 1999, in the county FSA office serving the county where the producer's farm is located for administrative purposes.

(b) Applications for benefits under Subpart C, the1998 Crop Loss Disaster Assistance Program Multi-year Losses, shall be filed before the close of business on April 9, 1999, with the county FSA office designated as the producer's control county.

(c) The Deputy Administrator may grant general exceptions to these deadlines for filing applications.

§ 1477.106 Limitations on payments and other benefits.

(a) A producer may receive disaster benefits under either subpart B or C, but not both.

(b) A producer qualifying for disaster benefits under both subparts B or C, may receive whichever amount is greater as calculated according to this part.

(c) Payments will not be made under this subpart for grazing losses. Further, the Deputy Administrator may divide crops based on loss susceptibility, yield, and other factors.

(d) No person shall receive more than a total of $80,000 in disaster benefits under this part. No person shall receive more than $25,000 in disaster benefits under this part for tree losses.

(e) No person shall receive disaster benefits under this part in an amount that exceeds the value of the expected production for the relevant period as determined by CCC.

(f) A person who has a gross revenue in excess of $2.5 million for the 1997 tax year shall not be eligible to receive disaster benefits under this part. If the person does not have a 1997 tax year because the entities were dissolved in a prior year, the last tax year for the person will be used. Gross revenue includes the total income and total gross receipts of the person, before any reductions. Gross revenue shall not be adjusted, amended, discounted, netted or modified for any reason. No deductions for costs, expenses or pass-through funds will be deducted from any calculation of gross revenue. For making this determination, gross revenue means the total gross receipts received from farming or ranching operations if the person receives more than 50 percent of such person's gross income from farming or ranching; or the total gross receipts received from all sources if the person receives 50 percent or less of such person's gross receipts from farming and ranching.

(g) Payment eligibility under this part shall be in addition to whatever eligibility the producer may have to other payments including but not limited to:

(1) Payments under the noninsured crop disaster assistance program established under the Agricultural Market Transition Act (7 U.S.C. 7333);

(2) Crop insurance indemnities provided under the Federal Crop Insurance Act (7 U.S.C. 1501 *et seq.*);

(3) Emergency loans made available under subtitle C of the Consolidated Farm and Rural Development Act (7 U.S.C. 1961 *et seq.*);

(4) Payments received by a person for participation in a Production Flexibility Contract authorized under Title 1 of the Agricultural Market Transition Act (7 U.S.C. 7211 *et seq.*); and

(5) Market Loss Assistance payments made under § 1111 of the 1999 Act.

(h) In the event the total amount of applications for disaster benefits under this part exceeds the available funds, payments shall be reduced by a uniform national percentage. Such reductions shall be applied before any determination of limits on compensation due to multiple USDA benefits and after the imposition of applicable payment limitation and gross revenues caps.

§ 1477.107 Crop insurance premium discounts.

(a) A crop insurance premium discount is available to all producers who have limited or additional coverage crop insurance policies for the 1999 crop year (for the 2000 crop year for citrus fruit, Avocados in California, and Macadamia Nuts in Hawaii) as follows:

(1) Producers of crops that have sales closing dates for the 1999 crop year (2000 crop year for citrus fruit, avocados in California, and macadamia nuts in Hawaii) on or after July 31, 1998, and on or before February 15, 1999, must have by the following dates purchased limited or additional coverage and submitted their acreage and production reports:

States	Application deadline	Production/acreage reporting date
Arizona, Florida, Georgia, Hawaii, Louisiana, Mississippi, and South Carolina.	February 28, 1999	April 15, 1999.
All other States	March 15, 1999	April 30, 1999.

(2) For crops with a final planting date on or after December 31, 1998, but before August 15, 1999, the acreage reporting date will be the later of the date shown in paragraph (a)(1) of this section or the acreage reporting date specified in the producer's crop insurance policy.

(3) For crops that have sales closing dates for the 1999 crop year (2000 crop year for citrus fruit, avocados in California, and macadamia nuts in Hawaii) after February 15, 1999, producers must purchase limited or additional coverage by the sales closing date for the applicable crop.

(b) Producers who are currently insured by the sales closing date for the applicable crop may not:

(1) Lower their insurance coverage or transfer to another insurance provider for crops with extended dates specified in paragraph (a)(1) of this section; or

(2) Cancel their insurance policy if the cancellation date has already passed, unless the producer is changing insurance plans at the same or a higher coverage level.

(c) Producers who are presently ineligible for crop insurance coverage due to a delinquent debt will be allowed to satisfy such debt and obtain coverage during the extended application period specified in paragraph (a)(1) of this section.

(d) The exact percentage for the crop insurance premium discount will be calculated once the total amount of premium for the 1999 crop year (2000 crop year for citrus fruit, avocados in California, and macadamia nuts in Hawaii) at the limited and additional coverage levels has been established.

(e) An additional crop insurance premium discount may be made available for any crops insured for the 1999 crop year by producers who have suffered multiple losses due to scab and/or vomitoxin damage as provided below; this discount is in addition to the premium discount referenced in paragraph (a) of this section and in order to qualify for this discount, a producer must:

(1) Have insured wheat, barley, oats, or rye in at least two crop years during the 1994 through 1998 crop years (A producer must provide evidence of such insurance if the insurance provider has no such record; and

(2) Provide evidence that wheat, barley, oats, or rye produced by the producer was subjected to a discounted price or decrease in yield due to scab or vomitoxin damage in at least two crop years during the 1994 through 1998 crop years.

(f) The two years of insurance specified in paragraph (e)(1) of this section, the two years of discounted prices or yields due to scab and/or vomitoxin specified in paragraph (e)(2) of this section, and the small grain crops affected need not be the same (e.g., a producer could have insured 1995 and 1996 wheat, but had scab and/or vomitoxin damage on 1997 and 1998 barley).

(g) This discount in paragraph (e) of this section can only be applied to the same identical producer that met the qualifications for the discount as required in paragraph (e) of this section.

(h) The total premium discounts allowed under this section to any person cannot exceed $80,000. The $2.5 million gross revenue limitation does not apply to the premium discounts specified in this section.

§ 1477.108 Requirement to purchase crop insurance.

(a) As required in 1102(g)(3) of the Act, any producer who receives crop loss assistance under this part who did not purchase crop insurance for all insurable crops for the 1998 crop year (1999 crop year for citrus fruit, Avocados in California, and Macadamia Nuts in Hawaii) must purchase crop insurance for the 1999 and 2000 crop years (2000 and 2001 crop years for citrus fruit, avocados in California, and macadamia nuts in Hawaii) for all crops of economic significance produced by such producer for which insurance is available.

(b) Any producer who is required to purchase crop insurance in accordance with paragraph (a) of this section who does not purchase either limited or additional coverage by the sales closing date for the applicable crop or the extended application dates specified in section 1477.107(a)(1), may purchase catastrophic risk protection until April 28, 1999. Such producers will have until the following dates to provide their acreage and production reports:

(1) For policies under which the crop was planted on or before December 31, 1998, or the crop is a perennial crop, the producer must submit the acreage and production reports at the time of the Catastrophic Risk Protection application; or

(2) For spring crops, the acreage and production reports must be submitted by the later of May 29, 1999, or the latest spring acreage reporting date specified in the crop insurance policy.

(c) Nothing in this section supersedes the provisions contained in 7 CFR part 400, subpart T, relating to the availability of Catastrophic Risk Protection coverage whenever a producer is unable to plant the intended crop or it is not practical to replant a failed crop before the final planting date, and the producer plants a substitute crop.

(d) If any producer fails to purchase crop insurance as required in paragraph (a) of this section, the producer will be required to pay liquidated damages in an amount and within a reasonable period of time as determined by the Deputy Administrator.

§ 1477.109 Miscellaneous provisions.

(a) Disaster benefits under this part may be withheld in accordance with § 1403.8 of this chapter.

(b) No interest will be paid or accrue on disaster benefits under this part which are delayed or are otherwise not timely issued unless otherwise mandated by law.

(c) A person shall be ineligible to receive disaster assistance under this part if it is determined by the State or county committee or an official of FSA that such person has:

(1) Adopted any scheme or other device which tends to defeat the purpose of a program operated under this part;

(2) Made any fraudulent representation with respect to such program; or

(3) Misrepresented any fact affecting a program determination.

(d) In the event there is a failure to comply with any term, requirement, or condition for payment or assistance arising under this part, and if any refund of a payment to CCC shall otherwise become due in connection with this part, all payments made in regard to such matter shall be refunded to CCC, together with interest as determined in accordance with paragraph (e) of this section and late-payment charges as provided for in part 1403 of this chapter.

(e) Producers shall be required to pay interest on any refund required of the producer receiving assistance or a payment if CCC determines that payments or other assistance were provided to the producer and the producer was not eligible for such assistance. The interest rate shall be one percent greater than the rate of interest which the United States Treasury charges CCC for funds, as of the date of payment. Interest that is determined to be due CCC shall accrue from the date such benefits were made available by CCC to the date repayment is completed. CCC may waive the accrual of interest if CCC determines that the cause of the erroneous determination was not due to any error by the producer.

(f) All persons with a financial interest in the operation receiving benefits under this part shall be jointly and severally liable for any refund, including related charges, which is determined to be due CCC for any reason under this part.

(g) In the event that any request for assistance or payment under this part was established as result of erroneous information or a miscalculation, the assistance or payment shall be recomputed and any excess refunded with applicable interest.

(h) The liability of any person for any penalty under this part or for any refund to CCC or related charge arising in connection therewith shall be in addition to any other liability of such person under any civil or criminal fraud statute or any other provision of law including, but not limited to, 18 U.S.C. 286, 287, 371, 641, 651, 1001 and 1014; 15 U.S.C. 714m; and 31 U.S.C. 3729.

(i) Any person who is dissatisfied with a determination made with respect to this part may make a request for reconsideration or appeal of such determination in accordance with the

regulations set forth at parts 11 and 780 of this title.

(j) Any payment or portion thereof to any person shall be made without regard to questions of title under State law and without regard to any claim or lien again the crop, or proceeds thereof.

(k) Disaster benefits under this part will be made without taking any applicable offsets. The regulations governing offsets found at part 792 of this title and 1403 of this chapter shall not apply to payments made under this part.

(l) Payments which are earned under this part may be assigned in accordance with the provisions of part 1404 of this chapter upon filling out the applicable assignment form.

§ 1477.10 Matters of general applicability.

(a) For calculations of loss made with respect to insured crops, the producer's existing unit structure will be used as the basis for the calculation and may include optional units established according to 7 CFR Part 457 of this Title. For uninsured and noninsurable crops, basic units will be established for these purposes.

(b) Loss payment rates and factors shall be established by the state committee based on procedures provided by the Deputy Administrator.

(c) County average yield for loss calculations will be the simple average of the 1993 through 1997 official county yields established by FSA.

(d) County committees will assign production when the county committee determines:

(1) An acceptable appraisal or record of harvested production does not exist;

(2) The loss is due to an ineligible cause of loss or practices that cause lower yields than those upon which the historic yield is based;

(3) The producer has a contract providing a guaranteed payment for all or a portion of the crop;

(4) The crop is planted beyond the normal planting period for the crop; or

(5) Other cause, as determined by the Deputy Administrator, exists for such case.

(e) The county committee shall establish a maximum loss level based on other losses in the county for the same crop. The maximum loss level for the county shall be expressed as either a percent of loss or yield per acre. The maximum loss level will apply when:

(1) Unharvested acreage has not been appraised by FSA, RMA, FCIC, a company reinsured by FCIC, or other appraiser;

(2) The crop's loss is because of an ineligible disaster condition or circumstances other than a natural disaster; or

(3) Acceptable production records for harvested acres are not available from any source.

(f) Assigned production for practices that result in lower yields than those for which the historic yield is based shall be established by:

(1) Determining the acres planted to the low-yielding type of practice;

(2) Multiplying the State office determined yield reduction factor times the county average yield; and

(3) Multiplying the result of paragraph (f)(2) of this section times the acres in paragraph (f)(1) of this section.

(g) Assigned production for crops planted beyond the normal planting period for the crop shall be calculated according to the lateness of planting the crop. If the crop is planted after the final planting date by:

(1) 1 through 10 calendar days, the assigned production will be based on one percent of the payment yield for each day involved.

(2) 11 through 24 calendar days, the assigned production will be based on 10 percent of the payment yield plus an additional two percent reduction of the payment yield for each days of days 11 through 24 which are involved.

(3) 25 or more calendar days or a date in which the crop would not reasonably be expected to mature by harvest, the assigned production will be based on 50 percent of the payment yield or such greater amount determined by the county committee to be appropriate.

(h) Assigned production for producers with contracts to receive a guaranteed payment for production of an eligible crop will be established by the county committee by:

(1) Determining the total amount of guaranteed payment for the unit;

(2) Converting the guaranteed payment to guaranteed production by dividing the total amount of guaranteed payment by the approved county price for the crop or variety or such other factor deemed appropriate if otherwise the production would appear to be too high; and

(3) Establishing the production for the unit as the greater of the actual net production for the unit or the guaranteed payment.

Subpart B—1998 Single-Year Crop Loss Disaster Assistance Program

§ 1477.201 Single-year crop losses.

(a) To receive disaster benefits under this subpart which covers single-year 1998 crop losses, the county committee must determine that because of a disaster, the producer with respect to the 1998 crop year:

(1) Was prevented from planting a crop;

(2) Sustained a loss in excess of 35 percent of the expected production of a crop;

(3) Sustained a loss in excess of 35 percent of the value for value loss crops; or

(4) Sustained damage in excess of 20 percent of an individual stand of eligible trees, after adjustments for normal mortality.

(b) Calculation of benefits under this subpart shall not include losses:

(1) That are the result of poor management decisions or poor farming practices as determined by the county committee on a case-by-case basis based on instructions issued by the Deputy Administrator;

(2) That are the result of the failure of the producer to reseed or replant to the same crop in the county where it is customary to reseed or replant after a loss;

(3) That are not as a result of a natural disaster;

(4) To crops not intended for harvest in crop year 1998;

(5) To losses of by-products resulting from processing or harvesting a crop, such as cotton seed, peanut shells, wheat or oat straw;

(6) To home gardens; or

(7) As a result of water contained or released by any governmental, public, or private dam or reservoir project if an easement exists on the acreage affected for the containment or release of the water.

(c) Calculation of benefits under this subpart for ornamental nursery stock shall not include losses:

(1) Caused by a failure of power supply or brownouts;

(2) Caused by the inability to market nursery stock as a result of quarantine, boycott, or refusal of a buyer to accept production;

(3) Caused by fire;

(4) Affecting crops where weeds and other forms of undergrowth in the vicinity of the nursery stock have not been controlled; or

(5) Caused by the collapse or failure of buildings or structures.

(d) Calculation of benefits under this subpart for honey where the honey production by colonies or bees was diminished, shall not include losses:

(1) Where the inability to extract was due to the unavailability of equipment; the collapse or failure of equipment or apparatus used in the honey operation;

(2) Resulting from improper storage of honey;

(3) To honey production because of bee feeding;

(4) Caused by the application of chemicals;

(5) Caused by theft, fire, or vandalism;

(6) Caused by the movement of bees by the producer or any other person; or

(7) Due to disease or pest infestation of the colonies.

§ 1477.202 Calculating rates and yields.

(a) Payment rates for 1998 single-year crop losses shall be:

(1) 65 percent of the maximum established RMA price for insured crops;

(2) 65 percent of the State average price for noninsurable crops;

(3) 60 percent of the maximum established RMA price for uninsured crops; and

(4) 65 percent of the established practice rate for damage to eligible trees.

(b) Disaster benefits under this subpart for losses to crops other than trees shall be made in an amount determined by multiplying the loss of production in excess of 35 percent of the expected production by the applicable payment rate established according to paragraph (a) of this section.

(c) Disaster benefits under this subpart for losses of trees shall be made in an amount determined by multiplying the quantity of acres or number of trees in a practice approved by the county committee according to instructions issued by the Deputy Administrator, by the payment rate established according to paragraph (a) of this section.

(d) Separate payment rates and yields for the same crop may be established according to instructions issued by the Deputy Administrator, when there is supporting data from NASS or other sources approved by CCC that show there is a significant difference in yield or value based on a distinct and separate end use of the crop. In spite of differences in yield or values, separate rates or yields shall not be established for crops with different cultural practices, such as organically or hydroponically grown.

(e) Each eligible producer's share of a disaster payment shall be based on the producer's share of the crop or crop proceeds, or, if no crop was produced, the share the producer would have received if the crop had been produced. In cases where crop insurance provides for a landlord/tenant to insure the tenant/landlord's share according to part 457 of this title, disaster payments will be issued on the same basis.

(f) When calculating a payment for a unit loss:

(1) The unharvested payment factor shall be applied to crop acreage planted but not harvested; and

(2) The prevented planting factor shall be applied to any prevented planted acreage eligible for payment.

(g) Production from all end uses of a multi-use crop or all secondary uses for multiple market crops will be calculated separately and summarized together.

§ 1477.203 Production losses, producer responsibility.

(a) Where available, RMA loss records will be used for insured crops.

(b) If RMA loss records are not available, producers are responsible for:

(1) Retaining or providing, when required, the best verifiable or reliable production records available for the crop;

(2) Summarizing all the production evidence;

(3) Accounting for the total amount of unit production for the crop, whether or not records reflect this production; and

(4) Providing the information in a manner that can be easily understood by the county committee.

(c) In determining production under this section the producer must supply acceptable production records to substantiate production to the county committee. If the eligible crop was sold or otherwise disposed of through commercial channels, acceptable production records include: commercial receipts; settlement sheets; warehouse ledger sheets; or load summaries; appraisal information from a loss adjuster acceptable to CCC. If the eligible crop was farm-stored, sold, fed to livestock, or disposed of in means other than commercial channels, acceptable production records include: truck scale tickets; appraisal information from a loss adjuster acceptable to CCC; contemporaneous diaries; or other documentary evidence, such as contemporaneous measurements.

(d) Producers must provide all records for any production of a crop which is grown with an arrangement, agreement, or contract for guaranteed payment. The failure to report the existence of any guaranteed contract or similar arrangement or agreement shall be considered as providing false information to CCC.

§ 1477.204 Determination of production.

(a) Production under this subpart shall include all harvested production, unharvested appraised production and assigned production for the total planted acreage of the crop on the unit.

(b) The harvested production of eligible crop acreage harvested more than once in a crop year shall include the total harvested production from all these harvests.

(c) If a crop is appraised and subsequently harvested, the actual harvested production shall be used to determine benefits.

(d) For all crops eligible for loan deficiency payments or marketing assistance loans with an intended use of grain but harvested as silage, ensilage, cobbage, hay, cracked, rolled, or crimped, production will be adjusted based on a whole grain equivalent according to instructions issued by the Deputy Administrator.

(e) For crops with an established yield and market price for multiple intended uses, a value will be calculated for each use.

(f) For crops sold in a market that is not a recognized market for the crop with no established county average yield and market price, 60 percent, if insured or noninsurable, or 65 percent, if uninsured, of the salvage value received will be deducted from the disaster payment.

(g) If a producer has an arrangement, agreement, or contract for guaranteed payment for production (as opposed to production based on delivery), the production to count shall be the greater of the actual production or the guaranteed payment converted to production according to instructions issued by the Deputy Administrator.

(h) Production that is commingled between units before it was a matter of record and cannot be separated by using records or other means acceptable to CCC shall be prorated to each respective unit according to instructions issued by the Deputy Administrator. Commingled production may be attributed to the applicable unit, if the producer made the unit production of a commodity a matter of record before commingling and does any of the following, as applicable:

(1) Provides copies of verifiable documents showing that production of the commodity was purchased, acquired, or otherwise obtained from beyond the unit;

(2) Had the production measured in a manner acceptable to the county committee; or

(3) Had the current year's production appraised in a manner acceptable to the county committee.

(i) The county committee shall assign production for the unit when the county committee determines that:

(1) The producer has failed to provide adequate and acceptable production records;

(2) The loss to the crop is because of a disaster condition not covered by this subpart, or circumstances other than natural disaster, and there has not otherwise been an accounting of this ineligible cause of loss;

(3) The producer carries out a practice, such as double cropping, that

generally results in lower yields than the established historic yields;

(4) The producer has a contract to receive a guaranteed payment for all or a portion of the crop; or

(5) A crop is late-planted.

(j) For sugarcane, the quantity of sugar produced from such crop shall exclude acreage harvested for seed.

(k) For peanuts, the actual production shall be all peanuts harvested for nuts regardless of their disposition or use as adjusted for low quality.

(l) For tobacco, except flue-cured and burley, the actual production shall be the sum of the tobacco: marketed or available to be marketed; destroyed after harvest; and produced but unharvested, as determined by an appraisal. For flue-cured and burley tobacco, the actual production shall be the sum of the tobacco: marketed, regardless of whether the tobacco was produced in the current crop year or a prior crop year; on hand; destroyed after harvest; and produced but unharvested, as determined by an appraisal.

§ 1477.205 Calculation of acreage for crop losses other than prevented planted.

(a) Subject to paragraph (b) of this section, the acreage of a crop planted in each planting period shall be considered a different crop for the purpose of determining disaster benefits under this subpart.

(b) In cases where there is a repeat crop, double crop or a multiple planting, each of these crops may be considered different crops if the county committee determines that:

(1) Both the initial and subsequent planted crops were planted with an intent to harvest;

(2) The subsequent crop was planted after the time when the initial crop would normally have been harvested;

(3) Both the initial and subsequent planted crops were planted within the normal planting period for that crop; and

(4) Both the initial and subsequent planted crops meet all other eligibility provisions of this part including good farming practices.

(c) In cases where an initial crop is planted and fails due to an eligible disaster condition and it is generally considered too late to replant and a subsequent crop is planted on the same acreage within its normal planting period in the same crop year and also failed because of an eligible disaster condition, both crops are eligible for disaster assistance if they meet all other eligibility provisions of this part.

§ 1477.206 Calculation of prevented planted acreage.

(a) When determining losses under this subpart, prevented-planted acreage will be considered separately from planted acreage of the same crop.

(b) Except as provided in paragraph (c) of this section, for insured crops, disaster payments under this subpart for prevented-planted acreage shall not be made unless RMA documentation indicates that the eligible producer received a prevented planting payment under the RMA-administered program.

(c) For insured crops, disaster payments under this subpart for prevented-planted acreage will be made available for the following crops for which prevented planting coverage was not available and for which the county committee will make an eligibility determination according to paragraph (d) of this section: California safflowers; peanuts; peppers; popcorn; Central/Southern potatoes; sweet corn (fresh market); tomatoes (fresh market); tomatoes (processing).

(d) For uninsured or noninsurable crops, or the insured crops listed in paragraph (c) of this section, the producer must prove, to the satisfaction of the county committee, an intent to plant the crop and that such crop could not be planted because of an eligible disaster. The county committee must be able to determine the producer was prevented from planting the crop by an eligible disaster that both:

(1) Prevented most producers from planting on acreage with similar characteristics in the surrounding area; and

(2) Unless otherwise allowed by the Deputy Administrator, began no earlier than the planting season for the 1998 crop.

(e) Prevented planted disaster benefits under this subpart shall not apply to:

(1) Aquaculture, including ornamental fish; perennial forage crops grown for hay, seed, or grazing; ginseng root and ginseng seed; honey; maple sap; millet; nursery crops; sweet potatoes; tobacco; trees; turfgrass sod; and tree and vine crops;

(2) Any acreage which is double-cropped, even if the producer has a history of double-cropping acreage;

(3) Uninsured crop acreage that is unclassified for insurance purposes;

(4) Acreage that is used for conservation purposes or intended to be left unplanted under any USDA program;

(5) The same acreage from which any benefit is derived under any program administered by the USDA on which a crop is planted and fails during the crop year except as provided in 1477.106(f) of this part;

(6) Any acreage on which a crop other than a cover crop was harvested, hayed, or grazed during the crop year;

(7) Any acreage for which a cash lease payment is received for the use of the acreage the same crop year unless the county committee determines the lease was for haying and grazing rights only and was not a lease for use of the land;

(8) Acreage for which planting history or conservation plans indicate that the acreage would have remained fallow for crop rotation purposes;

(9) Acreage for which the producer or any other person received a prevented planted payment for any crop for the same acreage, excluding share arrangements; and

(10) Acreage for which the producer cannot provide proof to the county committee that inputs such as seed, chemicals, and fertilizer were available to plant and produce a crop with the expectation of at least producing a normal yield.

(f) Disaster benefits under this subpart shall not apply to acreage where the prevented-planted acreage was affected by a disaster that was caused by drought or the failure of the irrigation water supply unless the acreage is in an area classified by the Palmer Drought Severity Index as in a severe or extreme drought during the time period specified by the producer.

(g) For uninsured or noninsurable crops and the insured crops listed in paragraph (c) of this section, for prevented planting purposes:

(1) The maximum prevented-planted acreage for all crops:

(i) Cannot exceed the number of acres of cropland in the unit for the crop year; and

(ii) Will be reduced by the number of acres planted in the unit;

(2) The maximum prevented planted acreage for a crop cannot exceed the number of acres planted by the producer, or which was prevented from planting, to the crop in any 1 of the 1994 through 1997 crop years as determined by the county committee;

(3) For crops grown under a contract specifying the number of acres contracted, the prevented-planted acreage is limited to the result of the number of acres specified in the contract minus planted acreage;

(4) For each crop type or variety for which separate prices or yields are sought for prevented-planted acreage, the producer must provide evidence that the claimed prevented-planted acres were successfully planted in at least 1 of the most recent 4 crop years; and

(5) The prevented planted acreage must be one contiguous block consisting of at least 20 acres or 20 percent of the intended planted acreage in the unit, whichever is less.

§ 1477.207 Quality adjustments to production.

(a) Subject to paragraph (b) of this section, the quantity of production of crops that were damaged due to disaster resulting in diminished quality, shall be adjusted by the county committee in accordance with instructions issued by the Deputy Administrator.

(b) Crops eligible for quality adjustments to production are limited to:

(1) Barley; canola; corn; cotton; flaxseed; grain sorghum; mustard seed; oats; peanuts; rapeseed; rice; safflower; soybeans; sugar beets; sunflower-oil; sunflower-seed; tobacco; wheat; and

(2) Crops with multiple market uses such as fresh, processed or juice, as supported by NASS data or other data determined acceptable in accordance with instructions issued by the Deputy Administrator. RMA loss production figures will not be used to conduct this quality adjustment unless the Deputy Administrator determines otherwise.

(c) The producer must submit documentation for determining the grade and other discount factors that were applied to the crop.

(d) Quality adjustments will be applied after production has been adjusted to standard moisture, when applicable.

(e) Except for cotton, if a quality adjustment has been made for multi-peril crop insurance purposes, an additional adjustment will not be made.

(f) Quality adjustments for crops, other than cotton, peanuts, sugar beets and tobacco, listed in paragraph (b)(1) of this section may be made by applying an adjustment factor based on dividing the Federal marketing assistance loan rate applicable to the crop and producer determined according to part 1421 of this chapter by the unadjusted county marketing assistance loan rate for the crop. For crops that grade sample and are marketed through normal channels, production will be adjusted according to instructions issued by the Deputy Administrator. County committees may, with state committee concurrence, establish county average quality adjustment factors according to procedures issued by the Deputy Administrator.

(g) Quality adjustments for cotton shall be based on the difference between:

(1) The loan rate applicable to the crop and producer determined according to part 1427 of this chapter; and

(2) The adjusted county loan rate. The adjusted county rate is the county loan rate adjusted for the 4-year county average historical quality premium or discount, in accordance with instructions issued by the Deputy Administrator.

(h) Quality adjustments for quota peanuts shall for unused quota be based on the difference between the adjusted sales price and the quota price. The adjusted sales price is the quota price minus discounts for quality, regardless of the actual sales price received. Adjustments for other peanuts may be made as determined appropriate by the Deputy Administrator.

(i) Quality adjustments for sugar beets shall be based on sugar content. The 1998 actual production for the producer shall be adjusted upward or downward to account for sugar content according to instructions issued by the Deputy Administrator.

(j) Quality adjustments for tobacco shall be based on the difference between the sales price and the support price.

(k) Quality adjustments for crops with multiple market uses such as fresh, processed and juice, shall be applied based on the difference between the producer's historical marketing percentage of each market use compared to the actual percentage for 1998, as determined in accordance with instructions issued by the Deputy Administrator.

(l) Quality adjustments for aflatoxin shall be based on the aflatoxin level. The producer must provide the County Office with proof a price reduction because of aflatoxin. The aflatoxin level must be 20 parts per billion or more before a quality adjustment will be made. The quality adjustment factor applied to affected production is .50 if the production is marketable. If the production is unmarketable due to aflatoxin levels of at least 20 parts per billion, production will be adjusted to zero. Any value received will be considered salvage.

(m) Any quantity of the crop determined to be salvage will not be considered production. Salvage values shall be factored by .60 for insured and noninsurable commodities and .65 for uninsured commodities.

(n) Quality adjustments do not apply to value loss crops.

(o) Quality adjustments shall not apply to: hay, honey, maple sap, turfgrass sod, crops marketed for a use other than an intended use for which there is not an established county price or yield.

§ 1477.208 1999 Crop Losses.

(a) Producers have the option to receive benefits on 1999 crop rather than 1998 loss when both the following apply:

(1) The 1999 crop was affected by disaster-related conditions that occurred in calendar year 1998; and

(2) Harvest for the 1999 crop would normally begin in calendar year 1998.

(b) Producers may elect to use the 1999 crop for 1998 single-year CLDAP benefits only.

§ 1477.209 Value loss crops.

(a) Special provisions to assess losses and calculate disaster assistance under this subpart apply to the following crops and such other crops as may be identified in instructions issued by the Deputy Administrator: ornamental nursery; Christmas trees; ginseng root; and aquaculture, including ornamental fish.

(b) Disaster benefits under this subpart are calculated based on the loss of value at the time of disaster, as provided by instructions issued by the Deputy Administrator.

(c) For aquaculture, disaster benefits under this subpart for aquacultural species are limited to those aquacultural species which were placed in the aquacultural facility by the producer. Disaster benefits under this subpart shall not be made available for aquacultural species that are growing naturally in the aquaculture facility. Disaster benefits under this subpart are limited to aquacultural species that were planted or seeded on property owned or leased by the producer where that land has readily identifiable boundaries, and over which the producer has total control of the waterbed and the ground under the waterbed. Producers who only have control over a column of water will not be eligible for disaster benefits under this subpart.

(d) For ornamental nursery crops, disaster benefits under this subpart are limited to ornamental nursery crops that were grown in a container or controlled environment for commercial sale on property owned or leased by the producer, and cared for and managed using good nursery growing practices. Indigenous crops are not eligible for benefits under this subpart.

(e) For Christmas trees, disaster benefits under this subpart are limited to losses which exceed 35 percent of the value of the Christmas trees present at the time of the disaster. Christmas tree producers seeking disaster assistance under this subpart must provide acreage data, dates of plantings and the quantity of trees planted on each date.

§ 1477.210 Other specialty crops.

(a) Other special provisions to assess losses and calculate disaster assistance under this subpart apply to the following crops and such other crops as may be identified in instructions issued by the Deputy Administrator: turfgrass sod, honey and maple sap.

(b) For turfgrass sod, disaster benefits under this subpart are limited to turfgrass sod which would have matured and been harvested during 1998, when a disaster caused in excess of 35 percent of the expected production to die.

(c) For honey, disaster benefits under this subpart are limited to table and nontable honey produced commercially for human consumption. For calculating benefits, all honey is considered a single crop, regardless of type or variety of floral source or intended use.

(d) For maple sap, disaster benefits under this subpart are limited to maple sap produced on private property in a controlled environment by a commercial operator for sale as sap or syrup. The maple sap must be produced from trees that are: located on land the producer controls by ownership or lease; managed for production of maple sap; and are at least 30 years old and 12 inches in diameter.

Subpart C—Multi-Year Crop Loss Disaster Assistance Program

§ 1477.300 Multi-year crop losses.

(a) The disaster benefits under this subpart, the 1998 Crop Loss Disaster Assistance Program Multi-year Losses, will be equal to 25 percent of the producer's previous loss payments for the qualifying losses if the producer received:

(1) Crop insurance indemnity payments for crop losses on insured crops under the RMA-administered program, excluding replanting or raisin reconditioning payments; or

(2) Payments from the Non-insured Crop Disaster Assistance Program for multi-year crop losses, including any 1994 ad hoc disaster payment of a noninsurable crop.

(b) In order to receive benefits under this subpart, the producer must have received (a)(1) or (a)(2) in at least 3 of the 5 crop years running from 1994 through 1998 and only such losses shall be considered qualifying losses for purposes of paragraph (a) of this section.

(c) For multi-year eligibility based on crop insurance indemnity payments, RMA will determine the producers that meet the eligibility requirements along with indemnity amounts and pass the data to FSA.

(d) For NAP multi-year eligibility, FSA will determine eligible producers. Because the multi-year payments are based on payments previously received, area loss provisions apply.

(e) For purposes of paragraph (a) of this section, the "Federal loss payments" shall only be those payments which were received for qualifying losses under the programs identified in paragraphs (a)(1) and (a)(2) of this section. In addition, benefits under this part will be permitted only where the qualifying losses were suffered by the identical producers, as determined under instructions of the Deputy Administrator. Changes in the organization and control of entities or production units will be considered to be changes in producers for crop history purposes. Likewise, in joint ventures, the entity will be considered to be the producer, not the individual members, and representational entities, such as a trust, will be considered different producers than the beneficiaries of the entity, except as otherwise allowed by the Deputy Administrator. The provisions of this subsection shall be used for qualifying purposes only for multi-year benefits and shall not, for qualified recipients, affect other restrictions that limit the maximum payment amount that may be received under this program.

Signed at Washington, DC, on April 9, 1999.

Keith Kelly,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 99–9350 Filed 4–12–99; 12:42 pm]

BILLING CODE 3410–05–P

DEPARTMENT OF TRANSPORTATION

14 CFR Part 71

[Airspace Docket No. 98–AGL–73]

Modification of Class E Airspace; Port Clinton, OH; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This action corrects the legal description of a final rule that was published in the **Federal Register** on Friday, March 26, 1999 (64 FR 14600), Airspace Docket No. 98–AGL–73. The final rule modified Class E Airspace at Port Clinton, OH.

EFFECTIVE DATE: 0901 UTC, May 20, 1999.

FOR FURTHER INFORMATION CONTACT: Michelle M. Behm, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, IL 60018, telephone: (847) 294–7477.

SUPPLEMENTARY INFORMATION:

History

Federal Register Document 99–7450, Airspace Docket No. 98–AGL–73, published on March 26, 1999 (64 FR 14600), modified Class E Airspace at Port Clinton, OH. The wrong legal description for the Class E airspace for Port Clinton, OH, was published. This action corrects that error.

Correction to Final Rule

Accordingly, pursuant to the authority delegated to me, the legal description for the Class E airspace, Port Clinton, OH, as published in the **Federal Register** March 26, 1999 (64 FR 14600), (FR Doc. 99–7450), is corrected as follows:

PART 71—[CORRECTED]

§ 71.1 [Corrected]

On page 146, Column 3, correct the Class E airspace designation for Napoleon, OH, incorporated by reference in § 71.1, to read as follows:

* * * * *

AGL OH E5 Port Clinton, OH [Revised]

Port Clinton, Carl R. Keller Field Airport, OH
(Lat. 41°30′59″ N., long. 82°52′07″ W)

Magruder Memorial Hospital, OH

Point in Space Coordinates
(Lat. 41°29′43″ N., long. 82°55′50″ W)

That airspace extending upward from 700 feet above the surface within a 7.0-mile radius of Carl R. Keller Field Airport, and within a 6.0-mile radius of the Point in Space serving Magruder Memorial Hospital.

* * * * *

Issued in Des Plaines, IL on March 21, 1999.

John A. Clayborn,

Acting Manager, Air Traffic Division,.

[FR Doc. 99–9301 Filed 4–14–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 95

[Docket No. 29528; Amdt. No. 415]

IFR Altitudes; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts miscellaneous amendments to the

required IFR (instrument flight rules) altitudes and changeover points for certain Federal airways, jet routes, or direct routes for which a minimum or maximum en route authorized IFR altitude is prescribed. This regulatory action is needed because of changes occurring in the National Airspace System. These changes are designed to provide for the safe and efficient use of the navigable airspace under instrument conditions in the affected areas.

EFFECTIVE DATE: 0901 UTC, May 20, 1999.

FOR FURTHER INFORMATION CONTACT:

Donald P. Pate, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Program Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd. Oklahoma City, OK. 73169 (Mail Address: P.O. Box 25082 Oklahoma City, OK. 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to part 95 of the Federal Aviation Regulations (14 CFR part 95) amends, suspends, or revokes IFR altitudes governing the operation of all aircraft in flight over a specified route or any portion of that route, as well as the changeover points (COPs) for Federal airways, jet routes, or direct routes as prescribed in part 95.

The Rule

The specified IFR altitudes, when used in conjunction with the prescribed changeover points for those routes, ensure navigation aid coverage that is adequate for safe flight operations and free of frequency interference. The reasons and circumstances that create the need for this amendment involve matters of flight safety and operational efficiency in the National Airspace System, are related to published aeronautical charts that are essential to the user, and provide for the safe and efficient use of the navigable airspace. In addition, those various reasons or circumstances require making this amendment effective before the next scheduled charting and publication date of the flight information to assure its timely availability to the user. The effective date of this amendment reflects those considerations. In view of the close and immediate relationship between these regulatory changes and safety in air commerce, I find that notice and public procedure before adopting this amendment are impracticable and contrary to the public interest and that good cause exists for making the amendment effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 95

Airspace, Navigation (air).

Issued in Washington, DC on April 9, 1999.

L. Nicholas Lacey,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, part 95 of the Federal Aviation Regulations (14 CFR part 95) is amended as follows effective at 0901 UTC,

1. The authority citation for part 95 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44719, 44721.

2. Part 95 is amended to read as follows:

PART 95—[AMENDED]

REVISIONS TO IFR ALTITUDES AND CHANGEOVER POINTS

[Amendment 415; Effective Date May 20, 1999]

From	To	MEA
§ 95.6001 Victor Routes—U.S.		
§ 95.6016 VOR Federal Airway 16 is amended to Read in Part		
Cedar Creek, TX VORTAC	Quitman, TX VOR/DME	2500
§ 95.6018 VOR Federal Airway 18 is amended to Read in Part		
Cedar Creek, TX VORTAC	Quitman, TX VOR/DME	2500
§ 95.6038 VOR Federal Airway 38 is amended to Read in Part		
Cerol, VA FIX	*Miter, VA FIX	6000
*6000—MRA		
Miter, VA FIX	Gordonsville, VA VORTAC	6000
§ 95.6054 VOR Federal Airway 54 is amended to Read in Part		
Cedar Creek, TX VORTAC	Quitman, TX VOR/DME	2500
Caney, AR FIX	Malve, AR FIX	*3500
*1900–MOCA		
§ 95.6099 VOR Federal Airway 99 is amended to Read in Part		
La Guardia, NY VOR/DME	Outte, CT FIX	*4000
*1600—MOCA		
Outte, CT FIX	Sorry, CT FIX	*10000

REVISIONS TO IFR ALTITUDES AND CHANGEOVER POINTS—Continued

[Amendment 415; Effective Date May 20, 1999]

From	To	MEA
*2000—MOCA		
Sorry, CT FIX	Hartford, CT VOR/DME	3000
§ 95.6159 VOR Federal Airway 159 is amended to Read in Part		
Tuskegee, AL VOR/DME	Kentt, AL FIX	*2600
*1800—MOCA		
Kentt, AL FIX	Kylee, AL FIX	3800
§ 95.6184 VOR Federal Airway 184 is amended to Read in Part		
Atlantic City, NJ VORTAC	Panze, NJ FIX	*2000
*1500–MOCA		
Panze, NJ FIX	Falon, NJ FIX	*4500
*1500–MOCA		
Falon, NJ FIX	Ziggi, NJ FIX	*2500
*1500–MOCA		
§ 95.6272 VOR Federal Airway 272 is amended to Read in Part		
Brisc, TX FIX	Sayre, OK VORTAC	4700
§ 95.6319 VOR Federal Airway 319 is amended to Read in Part		
Weeke, AK FIX	Bethel, AK VORTAC	
	E BND	*6000
	W BND	*2000
*2000–MOCA		
§ 95.6440 VOR Federal Airway 440 is amended to Read in Part		
McGrath, AK VORTAC	Ganes, AK FIX	
	E BND	*6000
	W BND	*8000
*5600–MOCA		
§ 95.6509 VOR Federal Airway 509 is amended to Read in Part		
Crowd, FL FIX	Hallr, FL FIX	*6000
*1800–MOCA		
§ 95.6521 VOR Federal Airway 521 is amended to Read in Part		
Lee County, FL VORTAC	Quncy, FL FIX	2500
§ 95.6550 VOR Federal Airway 550 is amended to Read in Part		
San Antonio, TX VORTAC	*Pinch, TX FIX	3300
*3300—MRA		
Pinch, TX FIX	Centex, TX VORTAC	3000

§ 95.7001 JET ROUTES

From is Amended to Read in Part	To	MEA	MAA
§ 95.7042 Jet Route No. 42			
Montebello, VA VOR/DME	Gordonsville, VA VORTAC	18000	41000
Gordonsville, VA VORTAC	Nottingham, MD VORTAC	18000	45000
Nottingham, MD VORTAC	Graco, MD FIX	18000	35000
Graco, MD FIX	Woodstown, NJ VORTAC	18000	45000
Woodstown, NJ VORTAC	Robbinsville, NJ VORTAC	18000	45000
Robbinsville, NJ VORTAC	Hartford, CT VOR/DME	18000	45000
§ 95.7150 Jet Route No. 150 is Amended to Read in part			
Nottingham, MD VORTAC	Graco, MD FIX	18000	35000
Graco, MD FIX	Woodstown, NJ VORTAC	18000	45000

§ 95.8003 VOR FEDERAL AIRWAY CHANGEOVER POINTS

Airway Segment		Changeover Points	
From	To	Distance	From
IV–184 is Amended to Delete Changeover Point			
Cedar Lake, NJ VORTAC	Atlantic City, NJ VORTAC	10	Cedar Lake
V–319 is Amended to Add Changeover Point			
Sparrevohn, AK VOR/DME	Bethel, AK VORTAC	92	Sparrevohn
V–440 is Amended to Add Changeover Point			
Unalakleet, AK VORTAC	Nome, AK VORTAC	80	Unalakleet

[FR Doc. 99–9303 Filed 4–14–99; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Customs Service

[T.D. 99–40]

19 CFR Part 122

Withdrawal of International Airport Designation of Akron Fulton Airport

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations pertaining to the field organization of the Customs Service by withdrawing the international airport designation of Akron Municipal Airport (now functioning as Akron Fulton Airport) and by designating Akron Fulton Airport as a landing rights airport instead. The change is made as part of Customs continuing program to obtain more efficient use of its personnel, facilities and resources, and to provide better service to carriers, importers and the general public.

EFFECTIVE DATE: May 17, 1999.

FOR FURTHER INFORMATION CONTACT: Betsy Passuth, Office of Field Operations, 202–927–0795.

SUPPLEMENTARY INFORMATION:

Background

As part of a continuing program to obtain more efficient use of its personnel, facilities and resources and to provide better service to carriers, importers and the general public, Customs proposed to withdraw the international airport designation of Akron Municipal Airport (now functioning as Akron Fulton Airport) and to designate Akron Fulton Airport as a landing rights airport instead. A Notice of Proposed Rulemaking to this effect was published in the **Federal Register** (63 FR 11383) on March 9, 1998. The designation as an international airport was proposed to be withdrawn because of lack of sufficient international travel through the airport and because of failure of the airport operator to maintain an adequate facility.

Determination

No comments either supporting or opposing the proposal were received. After further consideration of the proposal, Customs has determined to proceed with withdrawing the international airport designation of Akron Fulton Airport and to designate the airport as a landing rights airport instead. The Customs inspectors stationed adjacent to the Akron-Canton Regional Airport will be able to provide Customs services to international aircraft at the Akron Fulton Airport on an as-needed basis.

Regulatory Flexibility Act and Executive Order 12866

Customs establishes, expands, consolidates and makes other changes to Customs ports of entry throughout the United States to accommodate the volume of Customs-related activity in various parts of the country. Although a notice on this subject matter requesting public comment was issued, the subject matter is not subject to the notice and public procedure requirements of 5 U.S.C. 553 because it relates to agency management and organization. Accordingly, this final rule is not subject to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Agency organization matters such as this are exempt from Executive Order 12866.

Drafting Information. The principal author of this document was Janet L. Johnson, Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects in 19 CFR Part 122

Air carriers, Aircraft, Airports, Air transportation, Customs duties and inspection, Freight, Imports, Organization and functions (Government agencies).

Amendment to the Regulations

Accordingly, Part 122 of the Customs Regulations is amended as set forth below.

PART 122—AIR COMMERCE REGULATIONS

1. The authority citation for part 122 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 58b, 66, 1433, 1436, 1448, 1459, 1590, 1594, 1623, 1624, 1644, 1644a.

§ 122.13 [Amended]

2. The list of international airports in § 122.13 is amended by removing the entry "Akron, Ohio—Akron Municipal Airport".

Raymond W. Kelly,
Commissioner of Customs.

Approved: March 12, 1999.

John P. Simpson,
Deputy Assistant Secretary of the Treasury.

[FR Doc. 99–9345 Filed 4–14–99; 8:45 am]
BILLING CODE 4820–02–P

SOCIAL SECURITY ADMINISTRATION

20 CFR Parts 404 and 416

[Regulations No. 4 and 16]

RIN 0960–AE98

Old-Age, Survivors, and Disability Insurance and Supplemental Security Income for the Aged, Blind, and Disabled; Substantial Gainful Activity Amounts

AGENCY: Social Security Administration.

ACTION: Final rules.

SUMMARY: We are revising the rules for determining when earnings demonstrate the ability to engage in substantial gainful activity (SGA). This rule change applies to Social Security disability benefits provided under title II of the Social Security Act (the Act) and Supplemental Security Income (SSI) benefits based on disability under title XVI of the Act. (Eligibility for benefits under titles II and XVI also confers eligibility for related Medicare and Medicaid benefits under titles XVIII and XIX of the Act.) Specifically, we are raising from $500 to $700 the average monthly earnings guidelines used to determine whether work done by persons with impairments other than blindness is SGA. We are raising this level as part of efforts to encourage individuals with disabilities to attempt to work, and to provide an updated indicator of when earnings demonstrate the ability to engage in SGA. This increase reflects our assessment of the amount that roughly corresponds to wage growth since the last increase in 1990.

EFFECTIVE DATE: These rules are effective July 1, 1999.

FOR FURTHER INFORMATION CONTACT: Jack Baumel, Office of Employment Support Programs, Social Security Administration, 6401 Security Boulevard, Baltimore, Maryland 21235–6401, (410) 965–9834 or TTY (410) 966–6210. For information about eligibility or filing for benefits, call our national toll-free number, 1–800–772–1213 or TTY 1–800–325–0778, or visit our Internet web site, SSA Online, www.ssa.gov.

SUPPLEMENTARY INFORMATION:

Background

Under 20 CFR 404.1572 and 416.972, the term "substantial gainful activity" means work activity that involves significant physical or mental effort and that is done for pay or profit. Work activity is gainful if it is the kind of work usually performed for pay or profit, whether or not a profit is realized. Sections 223(d)(4)(A) and 1614(a)(3)(E) of the Act require the Commissioner to prescribe by regulations the criteria for determining when earnings demonstrate ability to engage in SGA for a person with an impairment other than blindness.

The amount of average monthly earnings that ordinarily demonstrates SGA for people with an impairment other than blindness has not been increased since January 1, 1990. We are revising this level now after reassessing the current guidelines as part of our effort to improve incentives to encourage individuals with disabilities to attempt to work. We believe that the increase in the amount of earnings that constitutes SGA provides an updated indicator of when earnings demonstrate the ability to engage in SGA and is a significant improvement to the existing work incentive provisions.

Proposed Rules

We published a notice of proposed rulemaking (NPRM) in the **Federal Register** on February 16, 1999 (64 FR 7559). In the NPRM, we proposed rules to increase the amount in the monthly earnings guidelines used in determining whether the work activities of a person with an impairment other than blindness demonstrate that he or she is able to perform SGA. These guidelines in §§ 404.1574 and 416.974 deal with persons claiming title II or title XVI benefits or receiving title II benefits based on disability. Under our prior rules, if such a person had earnings from work activities as an employee (including as an employee of a sheltered workshop or comparable facility) that averaged more than $500 a month, we would ordinarily consider that the person had engaged in SGA. Under these new rules, the $500 amount is raised to $700 per month.

While these rules make specific increases to the amount of earnings that will ordinarily show that a person has engaged in SGA, we will, at a future point, consider making other changes in the work incentive rules. Therefore, the NPRM invited the public to provide us with general suggestions for changes which might be desirable in related provisions (such as the trial work period services amount, and the earnings level that ordinarily demonstrates that an individual has not engaged in SGA) and the SGA guidelines in the future. We will consider those general suggestions not addressed below regarding possible future changes.

Public Comments

We received over 3000 sets of comments in response to the proposal. Commenters included many advocates for people with disabilities, State and local government entities, attorneys, employees from one SSA field office, one Administrative Law Judge, one member of Congress, and a large number of private citizens. With few exceptions, the comments we received were substantive assessments of the proposal and/or related suggestions. We have summarized these substantive comments, grouped them by subject, and discuss them below.

Comment: All but five of the comments received expressing an opinion about the proposed increase in the SGA guidelines were in favor. One was opposed and four expressed doubt that the increase in the SGA guidelines would achieve improvement. Many of the commenters in favor also believed that we should make further changes.

Response: We appreciate that all but a few commenters agreed with our assessment that an increase in the SGA guidelines is warranted. We have addressed the additional comments below.

Comment: Many of the comments expressing support for an increase also stated the general opinion that the proposed increase to $700 was not enough. Several commenters suggested that geographic differences in the cost-of-living or poverty level be taken into account in setting the SGA amount. Many expressed the view that the $700 amount is below the amount SGA would have attained had its growth kept pace with increases in average wages since its inception. Many also noted that the new $700 amount is significantly lower than a month's full-time earnings at the minimum wage level. Many also criticized us regarding the nine years lapse since the last increase.

Response: The historical relationship between the SGA amount and average wage growth was roughly consistent between 1961 (when the SGA guideline was first issued by regulation) and 1980. Since 1980, however, the SGA level has been kept constant for two long periods of time during which wages were experiencing growth. By 1989, the actual SGA level for the non-blind lagged behind average wage growth since the amount had stayed at $300 for a decade. In 1990, we raised the SGA amount to $500.

The Act does not spell out the definition of SGA for people with impairments other than blindness and the legislative record neither expresses nor implies a connection with average wages or prices. The Act provides that the Commissioner is to prescribe by regulation the criteria for determining when earnings demonstrate the ability to engage in SGA. We designed the SGA guidelines as a way of measuring an individual's ability to work and not as a measure of an individual's need for income. We decided on the amounts being implemented based on our experience with the disability programs and beneficiaries' work efforts and the need to maintain fiscal responsibility. In any event, the increase we are implementing now approximately corresponds to wage growth since 1990.

Comment: Many comments noted that the SGA amount for people who are blind is $1110 for calendar year 1999. These comments expressed dissatisfaction with the discrepancy and generally considered it unjustified discrimination. Most of these commenters recommended that we increase the SGA amount for people with impairments other than blindness in a similar manner or to the same level as for people who are blind.

Response: Before 1977, Section 223(d) of the Act authorized the Commissioner to prescribe the level of earnings that demonstrate SGA for all title II applicants and recipients and all title XVI applicants. In 1977, Congress amended that section of the Act to provide a different criterion for setting the SGA level for people who are blind (i.e., annual adjustment based on the national average wage index). Congress consciously made this distinction between people who are blind and those with impairments other than blindness. The House and Senate conference report accompanying the Social Security Amendments of 1977 clearly stated that a different SGA amount was being established for blind persons, and that the conferees did not intend that the amount be applied to people with impairments other than blindness.

Comment: Many comments suggested either annual review of the SGA amount or that future increases be linked to increases in a generally recognized economic benchmark, e.g., average wage, cost-of-living, poverty level. They contend that annual review or indexing the SGA level would provide a consistent relationship with wages and/or prices, and prevent erosion of the work component of the definition of disability over time as these factors increase.

Response: As stated in a previous response, we designed the SGA guidelines as a way of measuring an individual's ability to work and not as a measure of an individual's need for income. We decided on the amounts we are implementing based on our experience with the disability programs and beneficiaries' work efforts and the need to maintain fiscal responsibility. The increase we are implementing now approximately corresponds to wage growth since 1990. However, we recognize that increasing program factors on a regular and predictable basis allows us to avoid making adjustments on an ad hoc basis. We may consider, in the future, if the SGA amounts should be indexed.

Comment: Several comments suggested that we stop using SGA to evaluate the work component of disability. They recommended that, in its place, we use an earnings offset formula to reduce cash benefits gradually as earnings rise (similar to the earned income exclusion currently under title XVI). One suggested that there should be no earnings limits placed on eligibility for people with disabilities.

Response: These suggested changes require new legislation and we can not implement them by regulation alone. Several legislative proposals to test the earnings offset approach under title II are pending before the current session of Congress.

Comment: Many commenters suggested that we also increase the monthly earnings amount that we consider being services for purposes of the Trial Work Period (TWP). Many of these also suggested that the TWP and SGA amounts should be the same. Many of these also suggested that we index TWP increases to an economic benchmark. One suggested that we apply the TWP earnings amount on an annual basis rather than monthly.

Response: The TWP is a work incentive. During the TWP, a title II beneficiary may test his or her ability to work and still be considered disabled. We will not consider services performed during the TWP as showing that disability has ended until services have been performed in at least 9 months (not necessarily consecutive). Services means any activity, even though it is not SGA, which is done by a person in employment or self-employment for pay or profit, or is the kind normally done for pay or profit. As established in § 404.1592(b), if you are an employee, we currently consider your work to be services if you earn more than $200 a month. As a result of public comments, we will consider whether, in the future, to propose raising the monthly earnings guideline for services under the trial work period and related changes.

Comment: One commenter recommended raising the average monthly earnings amount that will ordinarily show that an employee did *NOT* engage in SGA (currently, earnings of less than $300).

Response: The effect of this provision is to create a range where monthly earnings are neither high enough nor low enough to show whether an employee engaged in SGA. If an employee's earnings fall into this range, we generally consider other information in addition to the employee's earnings to reach a determination. In practice, this provision affects a relatively small number of people. As a result of public comments, we will consider whether, in the future, to propose raising the amount and/or make other modification(s) to this provision.

Comment: Many comments expressed general support for the recognition of the special medical needs and medical insurance needs of people with disabilities. Several comments expressed support for recognition of the special needs of young people with disabilities who are in transition from education to work. Several comments advocated liberalization of other existing work incentive provisions and included suggestions for changes to these provisions.

Response: The issues addressed by these comments are outside the scope of this specific rules change. However, as we stated in the February 16, 1999 NPRM, we will consider these comments regarding possible future changes.

Comment: A few commenters suggested that a January 1, 1999 effective date for the SGA increase would be easier for us to administer and seem less arbitrary to the public.

Response: This rules change increases the number of people eligible for disability benefits under Old-Age, Survivors and Disability Insurance and the SSI program, as well as for related Medicare and Medicaid benefits. We believe it is in the public interest to proceed quickly with its implementation. However, we believe that an effective date of July 1, 1999 represents the earliest date practicable for these final rules to be effective.

Final Regulations

We are revising §§ 404.1574(b)(2) and (4), and 416.974(b)(2) and (4) to increase from $500 to $700 the earnings guidelines that we use to determine whether a non-blind employee is engaging in SGA. (This standard also applies to the self-employed in certain circumstances by cross-references that have been and continue to be present in §§ 404.1575 and 416.975.) We have not raised the SGA earnings amount for approximately nine years. We are raising the SGA level now to $700, which roughly corresponds to wage growth since the last increase in 1990.

In order to comply with the President's June 1, 1998 memorandum directing the use of plain language for all proposed and final rulemaking, we are rewriting the regulatory paragraphs affected by the above rule changes and the intervening paragraph ((b)(3)) into plain language. We intend this rewrite to have no substantive effect other than those substantive changes described in this preamble to these final rules.

Electronic Version

The electronic file of this document is available on the Internet at *www.access.gpo.gov/nara*. This document is also available on our Internet web site, SSA Online, *www.ssa.gov*.

Regulatory Procedures

Paperwork Reduction Act

These regulations impose no new reporting/record-keeping requirements necessitating clearance by the Office of Management and Budget (OMB).

Executive Order 12866

Regulatory Impact Analysis

Introduction—Based on the costs associated with these final rules, the Social Security Administration has determined that they require an assessment of costs and benefits to society per Executive Order 12866 because they meet the definition of a "significant regulatory action." These final rules also meet the definition of a "major rule" under 5 U.S.C. 801ff., and this assessment also fulfills the requirements of those provisions as well. In addition, SSA has determined, as required under the aforementioned statute, that these final rules do not create any unfunded mandates for State or local entities pursuant to sections 202–205 of the Unfunded Mandates Act of 1995. OMB has reviewed these final rules.

Executive Order 12866 includes in its definition of a "significant regulatory action" one which generates a major increase in costs for the Federal government. Accordingly, a discussion follows of the effect of the regulations and general information on estimated costs and benefits to society.

Nature of the Program—Benefits to disabled and blind individuals are provided under title II and title XVI of the Act. Disability is defined under both programs as, "* * * inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment * * *." Related medical benefits to disabled and blind individuals are provided under title XVIII and title XIX of the Act.

We use earnings guidelines to evaluate a person's work activity to determine whether the work activity is SGA and therefore whether that person may be considered disabled under the law. While this is only one of the tests used to determine disability, it is a critical threshold in disability evaluation. We evaluate the work activity of persons claiming or receiving disability benefits under title II of the Act and that of persons claiming benefits because of a disability under title XVI of the Act. These new regulations increase the amounts of those earnings guidelines. We have not raised the SGA earnings amount for approximately nine years. We are raising it now to approximate wage growth during that time.

Intended Effect—We expect that the increase in the amount of earnings that constitute SGA will provide a greater incentive for many people with disabilities to attempt to work or, if already working, to continue to work or increase their work effort. Hundreds of thousands of people with disabilities already work and the new revisions will be of advantage to many. For these individuals, as well as those not now working, the new revisions will enhance their potential to participate in the workforce, and, consequently, improve their economic well being by increasing their income through earnings.

In addition, the increase will permit some individuals with disabilities who have earnings in excess of the prior regulatory limit ($500) but less than the amount in these new rules ($700), to receive benefits. We estimate that by Fiscal Year (FY) 2004, an additional 27,000 individuals will receive benefits because of these changes. This estimate is based on analyses of the earnings distributions of a representative sample of disabled individuals.

The following chart provides the estimated increases in Old-age, Survivors and Disability Insurance payments, Federal SSI payments, Medicare benefits, and Federal share of Medicaid benefits due to the increase in the SGA amount to $700 in 1999, for fiscal years 1999–2004. (Amounts are in millions.).

	Fiscal year						Total 1999–2004
	1999	2000	2001	2002	2003	2004	
OASDI	10	30	55	75	100	120	390
SSI	15	20	25	25	30	30	145
Medicare	10	20	30	50	60	80	250
Medicaid	40	60	70	75	90	100	435
Subtotal, all programs	75	130	180	225	280	330	1220

NOTES:
[1] Totals may not equal sum of rounded components.
[2] Above estimates based on the assumptions underlying the President's FY 2000 Budget, including the SSA Office of the Actuary's normal assumption of an SGA amount increasing with average wages.
[3] Estimates for Medicare and Medicaid provided by the Office of the Actuary in the Health Care Financing Administration (HCFA).

In addition, since States share in the costs of financing Medicaid, States will have some costs associated with the increase in the SGA amount as well. These costs are estimated by HCFA to be (in millions):

Medicaid	Fiscal year						Total 1999–2004
	1999	2000	2001	2002	2003	2004	
State Share	30	45	55	55	70	75	330

Although the costs are significant, we consider these changes as necessary improvements to the work incentives. The costs of these regulations will be paid through programmatic and regulatory changes.

Regulatory Flexibility Act

We certify that these regulations do not have a significant economic impact

on a substantial number of small entities because they primarily affect individuals who are applying for or receiving title II, or applying for title XVI, benefits because of disability, and States which administer the Medicaid program.

(Catalog of Federal Domestic Assistance Program Nos. 96.001, Social Security-Disability Insurance; 96.002, Social Security-Retirement Insurance; 96.004, Social Security-Survivors Insurance; 96.006, Supplemental Security Income)

List of Subjects

20 CFR Part 404

Administrative practice and procedure, Death benefits, Disability benefits, Old-Age, Survivors and Disability Insurance, Reporting and record keeping requirements, Social Security.

20 CFR Part 416

Administrative practice and procedure, Aged, Blind, Disability benefits, Public assistance programs, Reporting and record keeping requirements, Supplemental Security Income (SSI).

Dated: April 7, 1999.

Kenneth S. Apfel,

Commissioner of Social Security.

For the reasons stated in the preamble, the Social Security Administration is amending parts 404 and 416 of chapter III of title 20 of the Code of Federal Regulations as follows:

PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE (1950–)

1. The authority citation for subpart P of part 404 continues to read as follows:

Authority: Secs. 202, 205 (a), (b), and (d)–(h), 216(i), 221 (a) and (i), 222(c), 223, 225, and 702(a)(5) of the Social Security Act (42 U.S.C. 402, 405 (a), (b), and (d)–(h), 416(i), 421 (a) and (i), 422(c), 423, 425, and 902(a)(5)); sec. 211(b), Pub. L. 104–193, 110 Stat. 2105, 2189.

2. Section 404.1574 is amended by revising paragraphs (b)(2), (b)(3), and (b)(4) to read as follows:

§ 404.1574 Evaluation guides if you are an employee.

* * * * *

(b) * * *

(2) *Earnings that will ordinarily show that you have engaged in substantial gainful activity.* We will consider that your earnings from your work activity as an employee show that you have engaged in substantial gainful activity if—

For months	Your monthly earnings averaged more than
In calendar years before 1976	$200
In calendar year 1976	230
In calendar year 1977	240
In calendar year 1978	260
In calendar year 1979	280
In calendar years 1980–1989	300
In January 1990–June 1999	500
After June 1999	700

(3) *Earnings that will ordinarily show that you have not engaged in substantial gainful activity.* We will generally consider that the earnings from your work as an employee will show that you have not engaged in substantial gainful activity if—

For months	Your monthly earnings averaged more than
In calendar years before 1976	$130
In calendar year 1976	150
In calendar year 1977	160
In calendar year 1978	170
In calendar year 1979	180
In calendar years 1980–1989	190
After December 1989	300

(4) *If you work in a sheltered workshop.* If you are working in a sheltered workshop or a comparable facility especially set up for severely impaired persons, your earnings and activities will ordinarily establish that you have not done substantial gainful activity if—

For months	Your average monthly earnings are not greater than
In calendar years before 1976	$200
In calendar year 1976	230
In calendar year 1977	240
In calendar year 1978	260
In calendar year 1979	280
In calendar years 1980–1989	300
In January 1990–June 1999	500
After June 1999	700

* * * * *

PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND AND DISABLED

1. The authority citation for subpart I of part 416 continues to read as follows:

Authority: Secs. 702(a)(5), 1611, 1614, 1619, 1631(a), (c) and (d)(1), and 1633 of the Social Security Act (42 U.S.C. 902(a)(5), 1382, 1382c, 1382h, 1383(a), (c) and (d)(1), and 1383b); secs. 4(c) and 5, 6(c)–(e), 14(a) and 15, Pub. L. 98–460, 98 Stat. 1794, 1801, 1802, and 1808 (42 U.S.C. 421 note, 423 note, 1382h note).

2. Section 416.974 is amended by revising paragraphs (b)(2), (b)(3), and (b)(4) to read as follows:

§ 416.974 Evaluation guides if you are an employee.

* * * * *

(b) * * *

(2) *Earnings that will ordinarily show that you have engaged in substantial gainful activity.* We will consider that your earnings from your work activity as an employee show that you have engaged in substantial gainful activity if—

For months	Your monthly earnings averaged more than
In calendar years before 1976	$200
In calendar year 1976	230
In calendar year 1977	240
In calendar year 1978	260
In calendar year 1979	280
In calendar years 1980—1989	300
In January 1990—June 1999	500
After June 1999	700

(3) *Earnings that will ordinarily show that you have not engaged in substantial gainful activity.* We will generally consider that the earnings from your work as an employee will show that you have not engaged in substantial gainful activity if—

For months	Your monthly earnings averaged less than
In calendar years before 1976	$130
In calendar year 1976	150
In calendar year 1977	160
In calendar year 1978	170
In calendar year 1979	180
In calendar years 1980—1989	190
After December 1989	300

(4) *If you work in a sheltered workshop.* If you are working in a sheltered workshop or a comparable facility especially set up for severely impaired persons, your earnings and activities will ordinarily establish that you have not done substantial gainful activity if—

For months	Your monthly earnings averaged more than
In calendar years before 1976	$200
In calendar year 1976	230
In calendar year 1977	240
In calendar year 1978	260
In calendar year 1979	280
In calendar years 1980–1989	300
In January 1990–June 1999	500
After June 1999	700

* * * * *

[FR Doc. 99–9427 Filed 4–14–99; 8:45 am]
BILLING CODE 4160–28–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 201, 330, 331, 341, 346, 355, 358, 369, and 701

[Docket Nos. 98N–0337, 96N–0420, 95N–0259, and 90P–0201]

RIN 0910–AA79

Over-The-Counter Human Drugs; Labeling Requirements; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a final rule that appeared in the **Federal Register** of March 17, 1999 (64 FR 13254). The final rule established a standardized format and standardized content requirements for the labeling of over-the-counter (OTC) drug products. The document was inadvertently published with an incorrect effective date. This document corrects that error.

DATES: Effective April 15, 1999, the effective date of the final rule published on March 17, 1999 (64 FR 13254) is corrected to May 16, 1999.

FOR FURTHER INFORMATION CONTACT: Debra L. Bowen, Food and Drug Administration, Center for Drug Evaluation and Research (HFD–560), 5600 Fishers Lane, Rockville, MD 20852, 301–827–2222, or email "BOWEND@cder.fda.gov".

SUPPLEMENTARY INFORMATION: In FR Doc. 99–6296, appearing on page 13254 in the **Federal Register** of Wednesday, March 17, 1999, the following correction is made:

1. On page 13254, in the first column, under the "**Dates**" section *"Effective Date*: April 16, 1999." is corrected to read *"Effective Date*: May 16, 1999."

Dated: April 12, 1999.

William K. Hubbard,

Acting Deputy Commissioner for Policy.

[FR Doc. 99–9520 Filed 4–14–99; 8:45 am]
BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 510 and 520

Oral Dosage Form New Animal Drugs; Dichlorvos Tablets

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Boehringer Ingelheim Vetmedica, Inc. The supplemental NADA provides for veterinary prescription use of additional dichlorvos tablet sizes for the treatment of certain worm infections in cats and puppies and for the treatment of dogs and kittens.

EFFECTIVE DATE: April 15, 1999.

FOR FURTHER INFORMATION CONTACT: Dennis M. Bensley, Center for Veterinary Medicine (HFV–143), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–6956.

SUPPLEMENTARY INFORMATION: Boehringer Ingelheim Vetmedica, Inc., 2621 North Belt Hwy., St. Joseph, MO 64506–2002, is the sponsor of NADA 48–271 that provides for veterinary prescription use of Task® (dichlorvos) tablets for cats and puppies for removal and control of certain intestinal roundworms and hookworms. The firm filed a supplemental NADA that provides for the use of 10- and 20-milligram (mg) dichlorvos tablets, in addition to 2- and 5-mg tablets, in cats and puppies, and for the use of dichlorvos tablets in dogs and kittens. The supplemental NADA is approved as of March 4, 1999, and the regulations are amended by revising 21 CFR 520.600(i) to reflect the approval. The basis for approval is discussed in the freedom of information summary.

Also, the list of sponsors of approved applications in 21 CFR 510.600(c) is amended to reflect the sponsor's current zip code.

In accordance with the freedom of information provisions of 21 CFR part 20 and 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.33(d)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects

21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

21 CFR Part 520

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR parts 510 and 520 are amended as follows:

PART 510—NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 510 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 379e.

§ 510.600 [Amended]

2. Section 510.600 *Names, addresses, and drug labeler codes of sponsors of approved applications* is amended in the table in paragraph (c)(1) in the entry for "Boehringer Ingelheim Vetmedica, Inc." and in the table in paragraph (c)(2) in the entry for "000010" by removing "64502" and adding in its place "64506–2002".

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

3. The authority citation for 21 CFR part 520 continues to read as follows:

Authority: 21 U.S.C. 360b.

4. Section 520.600 is amended by revising paragraph (i) to read as follows:

§ 520.600 Dichlorvos.

* * * * *

(i) *Conditions of use in dogs, cats, puppies, and kittens.* (1) Each tablet contains 2, 5, 10, or 20 milligrams of dichlorvos.

(2) It is administered orally at 5 milligrams of dichlorvos per pound of body weight.

(3) Dogs and puppies: Removal and control of intestinal roundworms (*Toxocara canis* and *Toxascaris leonina*) and hookworms (*Ancylostoma caninum* and *Uncinaria stenocephala*).

(4) Cats and kittens: Removal and control of intestinal roundworms

(*Toxocara cati* and *Toxascaris leonina*) and hookworms (*Ancylostoma tubaeforme* and *Uncinaria stenocephala*).

(5) Dichlorvos is a cholinesterase inhibitor. Do not use simultaneously with or within a few days before or after treatment with or exposure to cholinesterase-inhibiting drugs, pesticides, or chemicals.

(6) Do not use in animals under 10 days of age or 1 pound of body weight.

(7) Do not administer to animals showing signs of constipation, mechanical blockage of the intestinal tract, impaired liver function, or recently exposed to or showing signs of infectious disease.

(8) Do not use in dogs or puppies infected with *Dirofilaria immitis*.

(9) Federal law restricts this drug to use by or on the order of a licensed veterinarian.

Dated: April 1, 1999.

Andrew J. Beaulieu,

Deputy Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 99–9459 Filed 4–14–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 520

Oral Dosage Form New Animal Drugs; Sulfadimethoxine Soluble Powder

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of an abbreviated new animal drug application (ANADA) filed by Phoenix Scientific, Inc. The ANADA provides for use of sulfadimethoxine (SDM) soluble powder to make a medicated drinking water for the treatment of chickens and turkeys and to make a drinking water or drench for treatment of dairy calves and heifers and beef cattle.

EFFECTIVE DATE: April 15, 1999.

FOR FURTHER INFORMATION CONTACT: Lonnie W. Luther, Center for Veterinary Medicine (HFV–102), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–0209.

SUPPLEMENTARY INFORMATION: Phoenix Scientific, Inc., 3915 South 48th St. Terrace, P.O. Box 6457, St. Joseph, MO 64506–0457, has filed ANADA 200–258 that provides for use of SDM soluble powder in drinking water for the treatment of disease outbreaks of coccidiosis, fowl cholera, and infectious coryza in broiler and replacement chickens; and coccidiosis and fowl cholera in meat-producing turkeys. The ANADA also provides for use of SDM soluble powder in drinking water or as a drench for the treatment of shipping fever complex and bacterial pneumonia associated with *Pasteurella* spp. sensitive to sulfadimethoxine, and for calf diphtheria and foot rot associated with *Sphaerophorus necrophorus* sensitive to sulfadimethoxine, in dairy calves, dairy heifers, and beef cattle.

ANADA 200–258 is approved as a generic copy of Pfizer's NADA 46–285 Albon® (sulfadimethoxine soluble powder). ANADA 200–258 is approved as of March 4, 1999, and the regulations in 21 CFR 520.2220a(a)(2) are amended to reflect the approval. The basis of approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of 21 CFR part 20 and 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.33(a)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 520

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 520 is amended as follows:

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 520 continues to read as follows:

Authority: 21 U.S.C. 360b.

§ 520.2220a [Amended]

2. Section 520.2220a *Sulfadimethoxine oral solution and soluble powder* is amended in paragraph (a)(2) by removing "and 057561" and adding in its place "057561, and 059130".

Dated: April 1, 1999.

George A. Mitchell,

Acting Deputy Director, Center for Veterinary Medicine.

[FR Doc. 99–9456 Filed 4–14–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 520

Oral Dosage Form New Animal Drugs; Omeprazole

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by Merial Ltd. The NADA provides for oral use of omeprazole for the treatment and prevention of recurrence of gastric ulcers in horses and foals 4 weeks of age and older.

EFFECTIVE DATE: April 15, 1999.

FOR FURTHER INFORMATION CONTACT: Melanie R. Berson, Center for Veterinary Medicine (HFV–110), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–7543.

SUPPLEMENTARY INFORMATION: Merial Ltd., 2100 Ronson Rd., Iselin, NJ 08830–3077, filed NADA 141–123 that provides for oral, veterinary prescription use of GastroGard® (omeprazole) oral paste for horses and foals 4 weeks of age and older for the treatment and prevention of recurrence of gastric ulcers. The NADA is approved as of March 16, 1999, and the regulations are amended by adding 21 CFR 520.1615 to reflect the approval. The basis of approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of 21 CFR part 20 and 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

Under section 512 of the Federal, Food, Drug and Cosmetic Act (the act) (21 U.S.C. 360b(c)(2)(F)(i)), this approval qualifies for 5 years of marketing exclusivity beginning March 16, 1999, because no active ingredient

(including any ester or salt thereof) has been previously approved in any other application filed under section 512(b)(1) of the act.

The agency has determined under 21 CFR 25.33(d)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 520

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 520 is amended as follows:

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 520 continues to read as follows:

Authority: 21 U.S.C. 360b.

2. Section 520.1615 is added to read as follows:

§ 520.1615 Omeprazole.

(a) *Specifications.* Each gram of oral paste contains 0.37 gram of omeprazole.

(b) *Sponsor.* See No. 050604 in § 510.600(c) of this chapter.

(c) [Reserved]

(d) *Conditions of use*—(1) *Amount.* For treatment of gastric ulcers, 1.8 milligrams of omeprazole per pound of body weight (4 milligrams per kilogram) once daily for 4 weeks. For prevention of recurrence of gastric ulcers, 0.9 milligram of omeprazole per pound of body weight (2 milligrams per kilogram) once daily for at least an additional 4 weeks.

(2) *Indications for use.* For treatment and prevention of recurrence of gastric ulcers in horses and foals 4 weeks of age and older.

(3) *Limitations.* Do not use in horses intended for human consumption. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

Dated: April 1, 1999.

George A. Mitchell,

Acting Director, Center for Veterinary Medicine.

[FR Doc. 99–9455 Filed 4–14–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 522 and 556

Implantation or Injectable Dosage Form New Animal Drugs; Trenbolone Acetate and Estradiol Benzoate

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Fort Dodge Animal Health. The supplemental NADA provides for use of a trenbolone acetate-estradiol benzoate implant in steers fed in confinement for slaughter for increased rate of weight gain. At this time, FDA is also amending the regulation for trenbolone tolerances to establish an acceptable daily intake (ADI) for the drug.

EFFECTIVE DATE: April 15, 1999.

FOR FURTHER INFORMATION CONTACT: Jack Caldwell, Center For Veterinary Medicine (HFV–126), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–0217.

SUPPLEMENTARY INFORMATION: Fort Dodge Animal Health, Div. of American Home Products Corp., 800 Fifth St. NW., Fort Dodge, IA 50501, filed supplemental NADA 141–043 that provides for use of Synovex® Plus™ (200 milligrams (mg) trenbolone acetate and 28 mg estradiol benzoate) implanted in the ear of steers fed in confinement for slaughter for increased rate of weight gain in addition to its approved use for improved feed efficiency. The supplemental NADA is approved as of March 16, 1999. The regulations are amended in 21 CFR 522.2478 by redesignating paragraph (c) as (d), adding paragraph (c), and revising newly redesignated paragraph (d)(1)(ii) to reflect the approval. The basis for approval is discussed in the freedom of information summary.

In addition, an ADI for trenbolone has not been previously established. At this time, 21 CFR 556.739 is amended to provide an ADI for trenbolone.

In accordance with the freedom of information provisions of 21 CFR part 20 and 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

Under 21 U.S.C. 360b(c)(2)(F)(iii), this approval for food-producing animals qualifies for 3 years of marketing exclusivity beginning March 16, 1999, because the supplement contains substantial evidence of the effectiveness of the drug involved, studies of animal safety or, in the case of food-producing animals, human food safety studies (other than bioequivalence or residue studies) required for approval and conducted or sponsored by the applicant. Market exclusivity applies only to use of the implant for increased rate of weight gain in confined steers.

FDA has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects

21 CFR Part 522

Animal drugs.

21 CFR Part 556

Animal drugs, Foods.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR parts 522 and 556 are amended as follows:

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 522 continues to read as follows:

Authority: 21 U.S.C. 360b.

2. Section 522.2478 is amended by redesignating paragraph (c) as (d), reserving paragraph (c), and revising paragraph (d)(1)(ii) to read as follows:

§ 522.2478 Trenbolone acetate and estradiol benzoate.

* * * * *

(c) [Reserved]

(d) * * *

(1) * * *

(ii) *Indications for use.* For increased rate of weight gain and improved feed efficiency in steers fed in confinement for slaughter.

* * * * *

PART 556—TOLERANCES FOR RESIDUES OF NEW ANIMAL DRUGS IN FOOD

3. The authority citation for 21 CFR part 556 continues to read as follows:

Authority: 21 U.S.C. 342, 360b, 371.

4. Section 556.739 is revised to read as follows:

§ 556.739 Trenbolone.

(a) *Acceptable daily intake (ADI).* The ADI for total residues of trenbolone is 0.4 microgram per kilogram of body weight per day.

(b) *Tolerances.* A tolerance for total trenbolone residues in uncooked edible tissues of cattle is not needed.

Dated: April 1, 1999.

Andrew J. Beaulieu,

Deputy Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 99–9458 Filed 4–14–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Narasin and Nicarbazin With Bacitracin Methylene Disalicylate and Roxarsone

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by Alpharma Inc. The NADA provides for using approved narasin and nicarbazin, bacitracin methylene disalicylate (BMD), and roxarsone Type A medicated articles to make Type C medicated broiler chicken feeds.

EFFECTIVE DATE: April 15, 1999.

FOR FURTHER INFORMATION CONTACT: Jeffrey M. Gilbert, Center for Veterinary Medicine (HFV–128), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–1600.

SUPPLEMENTARY INFORMATION: Alpharma Inc., One Executive Dr., P.O. Box 1399, Fort Lee, NJ 07024, filed NADA 141–112 that provides for combining approved Maxiban™ (27 grams per pound (g/lb) each of narasin and nicarbazin), BMD® (10, 25, 30, 40, 50, 60, or 75 g/lb BMD), and 3–Nitro® (45.4, 90, or 227 g/lb roxarsone) Type A medicated articles to make Type C medicated broiler chicken feeds. The Type C feed contains 27 to 45 g/ton (t) each of narasin and nicarbazin, 50 g/t BMD, and 22.7 to 45.4 g/t roxarsone. The Type C feed is used for prevention of coccidiosis caused by *Eimeria tenella, E. necatrix, E. acervulina, E. maxima, E. brunetti,* and *E. mivati,* as an aid in the prevention of necrotic enteritis caused or complicated by *Clostridium* spp. or other organisms susceptible to bacitracin, for increased rate of weight gain, improved feed efficiency, and improved pigmentation.

The NADA is approved as of March 4, 1999, and the regulations are amended by adding 21 CFR 558.76(d)(3)(xxi), 558.363(d)(2)(iii), and 558.530(d)(5)(xxv), and by amending 21 CFR 558.366(c) to reflect the approval. The basis for approval is discussed in the freedom of information summary.

This approval is for use of Type A medicated articles to make combination drug Type C medicated feeds. Narasin with nicarbazin and roxarsone are Category II drugs as defined in 21 CFR 558.3(b)(1)(ii). As provided in 21 CFR 558.4(b), an approved form FDA 1900 is required to make a Type C medicated feed from a Category II drug. Under 21 U.S.C. 360b(m), as amended by the Animal Drug Availability Act of 1996 (Pub. L. 104–250), medicated feed applications have been replaced by a requirement for feed mill licenses. Therefore, use of Type A medicated articles to make Type C medicated feeds as provided in NADA 141–112 is limited to manufacture in a licensed feed mill.

In accordance with the freedom of information provisions of 21 CFR part 20 and 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.33(a)(2) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: 21 U.S.C. 360b, 371.

2. Section 558.76 is amended by adding paragraph (d)(3)(xxi) to read as follows:

§ 558.76 Bacitracin methylene disalicylate.

* * * * *

(d) * * *

(3) * * *

(xxi) Narasin with nicarbazin and roxarsone as in § 558.366.

3. Section 558.363 is amended by adding paragraph (d)(2)(iii) to read as follows:

§ 558.363 Narasin.

* * * * *

(d) * * *

(2) * * *

(iii) Bacitracin methylene disalicylate, nicarbazin, and roxarsone as in § 558.366.

4. Section 558.366 is amended in the table in paragraph (c) under entry "27 to 45" by alphabetically adding an entry for "Naracin 27 to 45, bacitracin methylene disalicylate 50, and roxarsone 22.7 to 45.4" to read as follows:

§ 558.366 Nicarbazin.

* * * * *

(c) * * *

Nicarbazin in grams per ton	Combination in grams per ton	Indications for use	Limitations	Sponsor
27 to 45				

Nicarbazin in grams per ton	Combination in grams per ton	Indications for use	Limitations	Sponsor
*	* *	*	* *	*
	Narasin 27 to 45, bacitracin methylene disalicylate 50, and roxarsone 22.7 to 45.4.	Broiler chickens; prevention of coccidiosis caused by *Eimeria tenella, E. necatrix, E. acervulina, E. maxima, E. brunetti,* and *E. mivati,* as an aid in the prevention of necrotic enteritis caused or complicated by *Clostridium* spp. or other organisms susceptible to bacitracin, for increased rate of weight gain, improved feed efficiency, and improved pigmentation.	Feed continuously as sole ration. Withdraw 5 days before slaughter. Do not allow turkeys, horses or other equines access to formulations containing narasin. Ingestion of narasin by these species has been fatal. Do not feed to laying hens. Use as sole source of organic arsenic. Narasin and nicarbazin as provided by 000986, bacitracin methylene disalicylate and roxarsone by 046573.	046573
*	* *	*	* *	*

5. Section 558.530 is amended by adding paragraph (d)(5)(xxv) to read as follows:

§ 558.530 Roxarsone.

* * * * *

(d) * * *

(5) * * *

(xxv) Bacitracin methylene disalicylate, narasin, and nicarbazin as in § 558.366.

Dated: April 1, 1999.

George A. Mitchell,

Acting Director, Center for Veterinary Medicine.

[FR Doc. 99–9454 Filed 4–15–99; 8:45 am]

BILLING CODE 4160–01–F

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 4044

Allocation of Assets in Single-Employer Plans; Interest Assumptions for Valuing Benefits

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: The Pension Benefit Guaranty Corporation's regulation on Allocation of Assets in Single-Employer Plans prescribes interest assumptions for valuing benefits under terminating single-employer plans. This final rule amends the regulation to adopt interest assumptions for plans with valuation dates in May 1999.

EFFECTIVE DATE: May 1, 1999.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005, 202–326–4024. (For TTY/TDD users, call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4024.)

SUPPLEMENTARY INFORMATION: The PBGC's regulation on Allocation of Assets in Single-Employer Plans (29 CFR part 4044) prescribes actuarial assumptions for valuing plan benefits of terminating single-employer plans covered by title IV of the Employee Retirement Income Security Act of 1974.

Among the actuarial assumptions prescribed in part 4044 are interest assumptions. These interest assumptions are intended to reflect current conditions in the financial and annuity markets.

Two sets of interest assumptions are prescribed, one set for the valuation of benefits to be paid as annuities and one set for the valuation of benefits to be paid as lump sums. This amendment adds to appendix B to part 4044 the annuity and lump sum interest assumptions for valuing benefits in plans with valuation dates during May 1999.

For annuity benefits, the interest assumptions will be 5.70 percent for the first 20 years following the valuation date and 5.25 percent thereafter. The annuity interest assumptions represent an increase (from those in effect for April 1999) of 0.10 percent for the first 20 years following the valuation date and are otherwise unchanged. For benefits to be paid as lump sums, the interest assumptions to be used by the PBGC will be 4.25 percent for the period during which a benefit is in pay status and 4.00 percent during any years preceding the benefit's placement in pay status. The lump sum interest assumptions are unchanged from those in effect for April 1999.

The PBGC has determined that notice and public comment on this amendment are impracticable and contrary to the public interest. This finding is based on the need to determine and issue new interest assumptions promptly so that the assumptions can reflect, as accurately as possible, current market conditions.

Because of the need to provide immediate guidance for the valuation of benefits in plans with valuation dates during May 1999, the PBGC finds that good cause exists for making the assumptions set forth in this amendment effective less than 30 days after publication.

The PBGC has determined that this action is not a "significant regulatory action" under the criteria set forth in Executive Order 12866.

Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply. See 5 U.S.C. 601(2).

List of Subjects in 29 CFR Part 4044

Pension insurance, Pensions.

In consideration of the foregoing, 29 CFR part 4044 is amended as follows:

PART 4044—ALLOCATION OF ASSETS IN SINGLE-EMPLOYER PLANS

1. The authority citation for part 4044 continues to read as follows:

Authority: 29 U.S.C. 1301(a), 1302(b)(3), 1341, 1344, 1362.

2. In appendix B, a new entry is added to Table I, and Rate Set 67 is added to Table II, as set forth below. The introductory text of each table is republished for the convenience of the reader and remains unchanged.

Appendix B to Part 4044—Interest Rates Used to Value Annuities and Lump Sums

TABLE I.—ANNUITY VALUATIONS

[This table sets forth, for each indicated calendar month, the interest rates (denoted by i_1, i_2, * * *, and referred to generally as i_t) assumed to be in effect between specified anniversaries of a valuation date that occurs within that calendar month; those anniversaries are specified in the columns adjacent to the rates. The last listed rate is assumed to be in effect after the last listed anniversary date.]

For valuation dates occurring in the month—	The values of i_t are:					
	i_t	for t =	i_t	for t =	i_t	for t =
* * *	*	*	*	*	*	*
May 1999	.0570	1–20	.0525	>20	N/A	N/A

TABLE II.—LUMP SUM VALUATIONS

[In using this table: (1) For benefits for which the participant or beneficiary is entitled to be in pay status on the valuation date, the immediate annuity rate shall apply; (2) For benefits for which the deferral period is y years (where y is an integer and $0 \leq y \leq n_1$), interest rate i_1 shall apply from the valuation date for a period of y years, and thereafter the immediate annuity rate shall apply; (3) For benefits for which the deferral period is y years (where y is an integer and $n_1 \leq y \leq n_1 + n_2$), interest rate i_2 shall apply from the valuation date for a period of $y - n_1$ years, interest rate i_1 shall apply for the following n_1 years, and thereafter the immediate annuity rate shall apply; (4) For benefits for which the deferral period is y years (where y is an integer and $y > n_1 + n_2$), interest rate i_3 shall apply from the valuation date for a period of $y - n_1 - n_2$ years, interest rate i_2 shall apply for the following n_2 years, interest rate i_1 shall apply for the following n_1 years, and thereafter the immediate annuity rate shall apply.]

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2
*	*	*	*	*	*	*	*	*
67	05–1–99	06–1–99	4.25	4.00	4.00	4.00	7	8

Issued in Washington, DC, on this 9th day of April 1999.

David M. Strauss,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 99–9375 Filed 4–14–99; 8:45 am]

BILLING CODE 7708–01–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD01–99–027]

Drawbridge Operation Regulations: Connecticut River, CT

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The District Commander, First Coast Guard District has issued a temporary deviation from the Drawbridge Operation Regulations governing the operation of the Route 82 Swing Bridge, mile 16.8, across the Connecticut River between East Haddam and Haddam, Connecticut. This deviation from the regulations authorizes the bridge owner, the Connecticut Department of Transportation (CONNDOT), to open the swing span, on signal, Monday through Friday at 6:30 a.m., 1;30 p.m. and 8 p.m., and Saturday through Sunday at 9:30 a.m., 1:30 p.m., 4 p.m. and 8 p.m. Commercial vessels are not restricted to the above operating schedule. They may transit through the bridge at all times if at least a two-hour advance notice is given to the bridge tender by telephone at (860) 873–8106. This action is necessary to replace the bridge center bearing and wearing surface. Vessels that can pass under the bridge without a bridge opening may do so at any time.

DATES: This deviation is effective from April 2, 1999, through May 31, 1999.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph Schmied, Bridge Management Specialist, at (212) 668–7195.

SUPPLEMENTARY INFORMATION:

The Route 82 Swing Bridge, mile 16.8, across the Connecticut River has a vertical clearance of 22 feet at mean high water (MHW) and 25 feet at mean low water (MLW) in the closed position.

The CONNDOT requested a temporary deviation from the operating regulations listed at 33 CFR 117.205 for the Route 82 Swing Bridge in order to conduct necessary repairs to the bridge. This work is essential for public safety. The existing bridge center bearing and roadway wearing surface must be replaced as soon as possible to insure continued operation of the bridge.

Commercial vessels may transit through the bridge at all times if at least a two-hour advance notice is given to the tender by telephone at (860) 873–8106. Vessels that can pass under the bridge without an opening may do so at any time.

This deviation from the normal operating regulations is authorized under 33 CFR 117.35.

Dated: March 30, 1999.

R. M. Larrabee,

Rear Admiral, U.S. Coast Guard Commander, First Coast Guard District.

[FR Doc. 99–9432 Filed 4–14–99; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 155

46 CFR Part 32

[USCG–1998–4443]

Emergency Control Measures for Tank Barges

AGENCY: Coast Guard, DOT.

ACTION: Notice of meeting; reopening of comment period.

SUMMARY: The Coast Guard will hold a public meeting to discuss the interim rule on Emergency Control Measures for Tank Barges. The Coast Guard encourages interested parties to attend the meeting and submit comments for discussion during the meeting. In addition, the Coast Guard seeks written comments for any party who is unable

to attend the meeting. The Coast Guard is also reopening the comment period until June 10, 1999, to allow additional time for public comment.

DATES: The Coast Guard will hold the public meeting in Washington, DC, on May 12, 1999, from 9 a.m. to 12 p.m., or until all comments have been heard. This meeting may close early if all business is finished. Written material for discussion during the meeting should reach the Docket Management Facility on or before April 29, 1999. Written comments must reach the Docket Management Facility on or before June 10, 1999.

ADDRESSES: The Coast Guard will hold this public meeting at the U.S. Department of Transportation, room 10234, 400 Seventh Street SW., Washington, DC 20590–0001. You may mail your comments to the Docket Management Facility [USCG–1998–4443], U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001, or deliver them to room PL–401 on the Plaza level of the Nassif Building at the same address between 9 a.m. and 5 p.m., Monday through Friday, except for Federal holidays. The telephone number is 202–366–9329.

The Docket Management Facility maintains the public docket for this notice. Comments, and documents as indicated in this notice, will become part of this docket and will be available for inspection or copying at room PL–401, on the Plaza level of the Nassif Building at the same address between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also access this docket on the Internet at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: For questions on this document, call Mr. Robert Spears, Project Manager, Office of Standards Development (G–MSR), Coast Guard, telephone 202–267–1099. For questions on viewing, or submitting material to the docket, call Dorothy Walker, Chief, Dockets, Department of Transportation, telephone 202–366–9329.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to submit written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this notice [USCG–1998–4443], and give the reason for each comment. Please submit all comments and attachments in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing to the Docket Management Facility at the address under **ADDRESSES**. Persons wanting acknowledgement of receipt of comments should enclose stamped, self-addressed postcards or envelopes.

The Coast Guard will consider all comments received during the comment period.

Information on Service for Individuals with Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact Mr. Robert Spears at the address or phone number under **FOR FURTHER INFORMATION CONTACT** as soon as possible.

Background Information

In the interim rule on Emergency Control Measures for Tank Barges published on December 30, 1998 (63 FR 71754), we indicated that we would hold public meetings. Although none of the comments to the docket received by the end of the comment period (March 30, 1999) requested such meetings, we will hold a meeting, to ensure ample opportunity for the public to comment on this rule.

Public Meeting

This meeting is open to the public. Please note that a meeting may close early if all business is finished. Members of the public may make oral presentations during the meeting. If you would like to make an oral presentation at the meeting, please notify the Coast Guard point of contact listed under **FOR FURTHER INFORMATION CONTACT** no later than, April 29, 1999.

The Coast Guard will begin the public meeting with a brief presentation discussing the interim rule.

Dated: April 9, 1999.

Joseph J. Angelo,

Director of Standards, Marine Safety and Environmental Protection.

[FR Doc. 99–9449 Filed 4–14–99; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD01–98–165]

RIN 2121–AA97

Regulated Navigation Area: Kill Van Kull Channel, Newark Bay Channel, South Elizabeth Channel, Elizabeth Channel, Port Newark Channel, and New Jersey Pierhead Channel, New York and New Jersey

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is revising the Regulated Navigation Area (RNA) in the New York Harbor to include the Kill Van Kull Channel, Newark Bay Channel, South Elizabeth Channel, Elizabeth Channel, Port Newark Channel, and New Jersey Pierhead Channel, New York and New Jersey. This action is necessary because of the extensive channel deepening project being undertaken jointly by the Army Corps of Engineers and the Port Authority of New York and New Jersey. The RNA is needed to ensure the safety of vessels transiting the restricted channel during blasting and dredging operations.

DATES: This final rule is effective April 19, 1999.

ADDRESSES: Documents as indicated in this preamble are available for inspection or copying at Coast Guard Activities New York, 212 Coast Guard Drive, Staten Island, New York 10305, between 8 a.m., and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (718) 354–4191.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander B, Krenzien, Waterways Management Division, Coast Guard Activities New York (718) 354–4191.

SUPPLEMENTARY INFORMATION:

Regulatory History

On December 31, 1998, the Coast Guard published a notice of proposed rulemaking entitled Regulated Navigation Area: Kill Van Kull Channel, Newark Bay Channel, South Elizabeth Channel, Elizabeth Channel, Port Newark Channel, and New Jersey Pierhead Channel, New York and New Jersey in the **Federal Register** (63 FR 72219). The Coast Guard did not receive any letters commenting on the proposed rulemaking. No public hearing was requested, and none was held. Good cause exists for making this regulation

effective less than 30 days after **Federal Register** publication. Any delay encountered in this regulation's effective date would be contrary to public interest since immediate action is needed to reduce the risks of collisions, groundings, and other navigational mishaps associated with this channel deepening project. Additionally, vessels will be allowed to transit work areas where dredges and/or drill barges are located unless blasting is to be conducted. Delays resulting from blasting are expected to last no longer than 15 minutes and occur less than 4 times daily in any one area.

Background and Purpose

The Kill Van Kull Channel, Newark Bay Channel, South Elizabeth Channel, Elizabeth Channel, Port Newark Channel, and New Jersey Pierhead Channel are the areas designated as a RNA. These channels are located in the waters between Bayonne, New Jersey, Staten Island, New York, and Elizabeth/Newark, New Jersey. The RNA enhances vessel safety during the extensive channel deepening project that involves dredging and blasting in these areas. These channels connect the deepwater ports of New York Harbor. Current channel depths restrict the full economy of existing and future generations of deep draft vessels. Tankships arriving in the port with drafts approaching the forty five (45) foot controlling depths of Ambrose and Anchorage Channels must lighter some of their cargo to barges in the deep New York Harbor anchorages in order to safely transit the forty (40) foot channel depths. This results in substantial lightering and delay costs. Container vessels cannot lighter in the anchorages and therefore must load to less than full drafts. This project, which is expected to last approximately six (6) years, will deepen the existing forty (40) foot channel to forty five (45) feet to accommodate the deeper draft vessels. The dredging areas will continue to be available for use by the general public. Restrictions on vessels transits during this project are unchanged from the current regulations in § 165.165(d) except for (d)(1, 5, 7, and 9). Paragraph (d)(1) allows vessels to enter or transit a work area where drill barges and/or dredges are located once granted permission from Vessel Traffic Service New York (VTSNY). Blasting operations being conducted in the work area will normally preclude vessels from receiving permission. One-way traffic will be maintained during this project in work areas where drill barges and/or dredges are located. Paragraph (d)(5) specifies that the prevailing current will be measured from the Battery tide station. This is expected to reduce confusion among mariners because use of the Battery tide station is the port norm. Paragraph (d)(7) refers to the hawser and wire throughout the paragraph. Paragraph (d)(9) defines the phrase "tugs with tows" to include tugs with vessels or barges alongside or being pushed. This rulemaking is needed to reduce the risks of collisions, groundings, and other navigational mishaps associated with this project. These are the same restrictions taken during 1991–92 when dredging was last conducted in this vicinity. They were instituted then due to three groundings that resulted in one oil spill and one channel blockage. Public notifications for specific dredging dates will be made prior to the commencement of dredging via the Local Notice to Mariners, marine information broadcasts, facsimile, and at New York Harbor Operations Committee meetings. The expected starting date is April 19, 1999, in Work Area 2.

Regulatory Evaluation

This final rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. It has not been reviewed by the Office of Management and Budget under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979).

The Coast Guard expects the economic impact of this final rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. The effect of this regulation will not be significant for several reasons: vessels will be allowed to transit work areas where dredges and/or drill barges are located unless blasting is to be conducted, delays resulting from blasting are expected to last no longer than 15 minutes and occur less than 4 times daily in any one area, there are no restrictions on vessel traffic in the RNA in areas where there are no dredges or drill barges, the Port Authorities of New York and New Jersey are working with the U.S. Army Corps of Engineers on this project to ensure future generations of deep draft vessels are able to use the Port of New York/New Jersey, it will reduce substantial costs associated with lightering operations currently required by vessels unable to transit the harbor fully loaded, and advance notifications will be made to the local maritime community by the Local Notice to Mariners, facsimile, marine information broadcasts, and New York Harbor Operations Committee meetings. Additionally, these are the same restrictions taken during 1991–92 when dredging was last conducted in this vicinity and other than minor delays in vessel transit time, no impact was noted.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard considered whether this final rule will have a significant economic impact on a substantial number of small entities. "Small entities" include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

For the reasons stated in the Regulatory Evaluation section above, the Coast Guard certifies under 5 U.S.C. 605(b) that this final rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This final rule does not provide for a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this final rule under the principles and criteria contained in Executive Order 12612 and has determined that this final rule does not have sufficient implications for federalism to warrant the preparation of a Federalism Assessment.

Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) [Pub. L. 104–4, 109 Stat. 48] requires Federal agencies to assess the effects of certain regulatory actions on State, local, and tribal governments, and the private sector. UMRA requires a written statement of economic and regulatory alternatives for rules that contain *Federal mandates*. A Federal mandate is a new or additional enforceable duty imposed on any State, local, or tribal government, or the private sector. If any Federal mandate causes those entities to spend, in the aggregate, $100 million or more in any one year, the UMRA analysis is required. This Final Rule does not impose Federal mandates on any State, local, or tribal governments, or the private sector.

Environment

The Coast Guard considered the environmental impact of this final rule and concluded that under figure 2–1, paragraph 34(g), of Commandant

Instruction M16475.1C, this final rule is categorically excluded from further environmental documentation. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under ADDRESSES.

Other Executive Orders on the Regulatory Process

In addition to the statutes and Executive Orders already addressed in this preamble, the Coast Guard considered the following executive orders in developing this final rule and reached the following conclusions:

E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights. This rule will not effect a taking of private property or otherwise have taking implications under this Order.

E.O. 12875, Enhancing the Intergovernmental Partnership. This rule will not impose, on any State, local, or tribal government, a mandate that is not required by statute and that is not funded by the Federal government.

E.O. 12988, Civil Justice Reform. This rule meets applicable standards in sections 3(a) and 3(b)(2) of this Order to minimize litigation, eliminate ambiguity, and reduce burden.

E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to safety disproportionately affecting children.

List of Subjects in 33 CFR Part 165

Harbors, Marine Safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

Regulation

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—[AMENDED]

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–6, 160.5; 49 CFR 1.46. Section 165.100 is also issued under authority of Sec. 311, Pub. L. 105–383.

2. Revise § 165.165 to read as follows:

§ 165.165 Regulated Navigation Area; Kill Van Kull Channel, Newark Bay Channel, South Elizabeth Channel, Elizabeth Channel, Port Newark Channel and New Jersey Pierhead Channel, New York and New Jersey.

(a) *Regulated Navigation Area (RNA).* All waters of the Kill Van Kull (KVK) Channel east of KVK Light 16A (LLNR 37340) in North of Shooters Island Reach, east of Shooters Island Light 2 (LLNR 37375) in South of Shooters Island Reach, and west of KVK Channel Junction Lighted Bell Buoy 'KV' (LLNR 37265) in Constable Hook Reach; all waters of Newark Bay Channel south of Newark Bay Light 19 (LLNR 37505); all waters of South Elizabeth Channel, Elizabeth Channel, Port Newark Channel, and New Jersey Pierhead Channel south of New Jersey Pierhead South Channel Lighted Buoy 5 (LLNR 37020).

(b) *Description of Work Areas in the RNA.*

(1) Work Area (1): The waters bounded by a line connecting the following points:

Latitude	Longitude
40°38′40.0″N	074°03′45.0″W
40°38′50.4″N	074°04′16.0″W
40°38′57.9″N	074°04′11.8″W
40°39′03.8″N	074°04′43.8″W
40°39′04.5″N	074°05′07.6″W
40°39′01.8″N	074°05′14.8″W
40°39′05.0″N	074°05′17.1″W
40°39′10.3″N	074°05′05.0″W
40°39′09.3″N	074°04′27.8″W
40°39′00.2″N	074°03′45.1″W
40°38′58.0″N	074°03′34.9″W
40°38′40.0″N	074°03′45.0″W

(2) Work Area (2): The waters bounded by a line connecting the following points:

Latitude	Longitude
40°38′50.4″ N	074°04′16.0″ W
40°38′57.5″ N	074°04′37.8″ W
40°38′59.2″ N	074°04′55.4″ W
40°38′57.4″ N	074°05′12.9″ W
40°38′47.5″ N	074°05′33.8″ W
40°38′45.8″ N	074°05′43.6″ W
40°38′49.4″ N	074°05′44.7″ W
40°38′51.0″ N	074°05′35.7″ W
40°39′04.7″ N	074°05′06.6″ W
40°39′03.7″ N	074°04′29.5″ W
40°38′57.9″ N	074°04′11.8″ W
40°38′50.4″ N	074°04′16.0″ W

(3) Work Area (3): The waters bounded by a line connecting the following points:

Latitude	Longitude
40°38′45.8″ N	074°05′43.6″ W
40°38′49.4″ N	074°05′44.7″ W
40°38′51.2″ N	074°05′35.8″ W
40°39′01.8″ N	074°05′14.8″ W
40°39′05.0″ N	074°05′17.1″ W
40°38′57.5″ N	074°05′32.3″ W
40°38′53.8″ N	074°05′44.1″ W
40°38′53.1″ N	074°05′56.8″ W
40°38′55.3″ N	074°06′38.1″ W
40°38′41.5″ N	074°07′18.3″ W
40°38′38.2″ N	074°07′41.4″ W
40°38′38.5″ N	074°07′46.0″ W
40°38′35.2″ N	074°07′49.0″ W
40°38′31.2″ N	074°07′50.0″ W
40°38′30.1″ N	074°07′41.3″ W
40°38′33.9″ N	074°07′15.1″ W
40°38′44.0″ N	074°06′45.7″ W
40°38′46.7″ N	074°06′25.9″ W
40°38′44.8″ N	074°05′49.6″ W
40°38′45.8″ N	074°05′43.6″ W

(4) Work Area (4): The waters bounded by a line connecting the following points:

Latitude	Longitude
40°38′31.2″ N	074°07′50.0″ W
40°38′35.2″ N	074°07′49.0″ W
40°38′36.6″ N	074°08′01.2″ W
40°38′28.2″ N	074°08′51.0″ W
40°38′35.2″ N	074°09′06.2″ W
40°38′30.0″ N	074°09′12.0″ W
40°38′24.8″ N	074°09′02.6″ W
40°38′24.0″ N	074°08′52.0″ W
40°38′31.5″ N	074°08′07.4″ W
40°38′31.8″ N	074°07′54.6″ W
40°38′31.2″ N	074°07′50.0″ W

(5) Work Area (5): The waters bounded by a line connecting the following points:

Latitude	Longitude
40°38′35.2″ N	074°07′49.0″ W
40°38′38.5″ N	074°07′46.0″ W
40°38′40.7″ N	074°08′01.3″ W
40°38′34.0″ N	074°08′41.0″ W
40°38′40.0″ N	074°08′52.0″ W
40°38′50.0″ N	074°08′55.0″ W
40°38′35.2″ N	074°09′06.2″ W
40°38′28.2″ N	074°08′51.0″ W
40°38′36.6″ N	074°08′01.2″ W
40°38′35.2″ N	074°07′49.0″ W

(6) Work Area (6): The waters bounded by a line connecting the following points:

Latitude	Longitude
40°39′17.0″N	074°08′38.0″W
40°40′21.0″N	074°08′00.0″W
40°40′34.3″N	074°07′54.0″W
40°40′35.9″N	074°08′03.9″W
40°40′33.2″N	074°08′12.0″W
40°40′26.6″N	074°08′17.9″W
40°39′34.3″N	074°08′55.8″W
40°39′30.8″N	074°08′58.2″W
40°39′21.6″N	074°08′50.2″W
40°39′17.0″N	074°08′38.0″W

(7) Work Area (7): The waters bounded by a line connecting the following points:

Latitude	Longitude
40°40′26.7″N	074°08′17.9″W
40°41′14.4″N	074°09′35.0″W
40°41′18.9″N	074°09′31.9″W
40°40′46.1″N	074°08′38.9″W
40°40′44.5″N	074°08′30.2″W

Latitude	Longitude
40°40′33.2″N	074°08′12.0″W
40°40′26.7″N	074°08′17.9″W

(8) Work Area (8): The waters bounded by a line connecting the following points:

Latitude	Longitude
40°39′30.8″N	074°08′58.2″W
40°39′40.6″N	074°09′22.5″W
40°39′43.5″N	074°09′25.8″W
40°39′44.8″N	074°09′24.9″W
40°39′32.8″N	074°08′55.2″W
40°39′30.8″N	074°08′58.2″W
AND	
40°39′21.6″N	074°08′50.2″W
40°39′17.0″N	074°03′38.0″W
40°38′50.0″N	074°08′55.0″W
40°38′30.0″N	074°09′12.0″W
40°38′33.3″N	074°09′19.5″W
40°38′46.8″N	074°09′22.8″W
40°39′07.7″N	074°08′58.8″W
40°39′21.6″N	074°08′50.2″W

(9) Work Area (9): The waters bounded by a line connecting the following points:

Latitude	Longitude
40°40′34.3″N	074°07′54.0″W
40°41′08.5″N	074°07′38.5″W
40°41′11.6″N	074°07′50.8″W
40°41′17.6″N	074°07′56.4″W
40°41′20.0″N	074°08′00.3″W
40°41′42.3″N	074°08′21.2″W
40°41′59.4″N	074°09′11.0″W
40°41′55.8″N	074°09′13.1″W
40°41′39.1″N	074°08′24.6″W
40°41′21.0″N	074°08′07.6″W
40°40′46.1″N	074°08′38.9″W
40°40′44.5″N	074°08′30.2″W
40°40′50.4″N	074°08′30.3″W
40°41′13.4″N	074°08′09.7″W
40°41′13.7″N	074°08′05.6″W
40°41′03.2″N	074°07′55.7″W
40°40′54.4″N	074°07′55.7″W
40°40′35.9″N	074°08′03.9″W
40°40′34.3″N	074°07′54.0″W

(e) *Projected dates for each work area.* Dredging is scheduled to commence in Work Area (2) on April 19, 1999. As contracts are let for dredging of each of the remaining work areas, commencement dates will be made available via the Local Notice to Mariners, marine information broadcasts, facsimile, and at New York Harbor Operations Committee meetings.

(d) *Regulations.* (1) No vessel shall enter or transit any work area where drill barges and/or dredges are located without permission of Vessel Traffic Service New York (VTSNY).

(2) Each vessel transiting in the vicinity of the work areas, where drill barges and/or dredges are located, is required to do so at no wake speed.

(3) No vessel shall enter the RNA when they are advised by the drilling barge or VTSNY that a misfire or hangfire has occurred. Vessels already underway in the RNA shall proceed to clear the impacted area immediately.

(4) Vessels, 300 gross tons or greater, and tugs with tows are prohibited from meeting or overtaking other vessels when transiting alongside an active work area.

(5) Vessels, 300 gross tons or greater, and tugs with tows transiting with the prevailing current (as measured from the Battery tide station) are regarded as the stand-on vessel.

(6) Prior to entering the RNA, the master, pilot or operator of each vessel, 300 gross tons or greater and tugs with tows, shall ensure that they have sufficient propulsion and directional control to safely navigate the area under the prevailing conditions, and shall notify VTSNY as to their decision regarding the employment of assist tugs while transiting the RNA.

(7) Hawser or wire length must not exceed 100 feet, measured from the towing bit on the tug to the point where the hawser or wire connects with the towed vessel or barge, for any vessel with another vessel/barge in tow.

(8) Waiver. The Captain of the Port, New York may, upon request, authorize a deviation from any regulation in this section if it is found that the proposed operations can be done safely. An application for deviation must be received not less than 24 hours before the intended operation and must state the need and describe the proposal.

(9) Tugs with tows includes a tug with a vessel or barge in tow, alongside, or being pushed.

Dated: April 8, 1999.

R.M. Larrabee,

Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District.

[FR Doc. 99–9431 Filed 4–14–99; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF DEFENSE

Corps of Engineers, Department of the Army

33 CFR Part 334

Danger Zone, Chesapeake Bay, Point Lookout to Cedar Point, Maryland

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Final rule.

SUMMARY: This rule amends the danger zone regulations by redesignating an aerial firing range as an aerial and surface firing range and increases the use of the firing range and target area in the waters of the Chesapeake Bay. It also increases the use of the firing range from Monday through Saturday, except holidays, to continuous use. The restricted area of the Hannibal Target previously encompassed a water area with a radius of 600 yards. The change increases the radius of the restricted area to 1000 yards, prohibits entry into the areas at all times and prohibits the public from climbing on the targets. These changes are necessary to protect the public from hazardous conditions which may exist as a result of the U.S. Navy's use of the area. Other editorial amendments are made to reflect changes in the Navy's organization.

EFFECTIVE DATE: May 17, 1999.

ADDRESSES: HQUSACE, CECW–OR, Washington, DC 20314–1000.

FOR FURTHER INFORMATION CONTACT: Mr. Frank Torbett, Headquarters Regulatory Branch, at (202) 761–1787, or Mr. Steve Elinsky, Corps Baltimore District, at (410) 962–4503.

SUPPLEMENTARY INFORMATION: Pursuant to its authorities in Section 7 of the Rivers and Harbors Act of 1917 (40 Stat. 266; 33 U.S.C. 1) and Chapter XIX, of the Army Appropriations Act of 1919 (40 Stat. 892 U.S.C. 3) the Corps is amending the danger zone and restricted area regulations in 33 CFR Part 334.200. The Commanding Officer of the U.S. Naval Air Station, Patuxent River, Maryland has requested that the Corps amend the danger zone and restricted area regulations by redesignating the existing "aerial firing range" as an "aerial and surface firing range" and increasing the Navy's use of the range from Monday through Saturday except holidays, to continuous use. The Navy is also enlarging the existing restricted area of the Hannibal Target from a water area with a radius of 600 yards to a radius of 1000 yards and making entry into the area prohibited at all times. The restricted area is presently closed during daylight hours except to vessels authorized entry by the Navy command. We are also adding a prohibition on climbing on the targets. These changes are necessary to protect the public from hazardous conditions which may exist as a result of the Navy's use of this area. Enforcement of these regulations is being changed from the Commander of the Naval Air Test Center to the Commanding Officer of the Naval Air Station.

Procedural Requirements

A. Review Under Executive Order 12866

This rule is issued with respect to a military function of the Defense Department and the provisions of Executive Order 12866 do not apply.

B. Review Under the Regulatory Flexibility Act

These rules have been reviewed under the Regulatory Flexibility Act (Pub. L. 96–354), which requires the preparation of a regulatory flexibility analysis for any regulation that will have a significant economic impact on a substantial number of small entities (i.e., small businesses and small Governments). The Corps expects that the economic impact of the establishment of this restricted area would have practically no impact on the public, no anticipated navigational hazard or interference with existing waterway traffic and accordingly, certifies that this proposal if adopted, will have no significant economic impact on small entities.

C. Review Under the National Environmental Policy Act

An environmental assessment has been prepared for this action. We have concluded, based on the minor nature of the proposed additional restricted area regulations, that this action will not have a significant impact to the human environment, and preparation of an environmental impact statement is not required. The environmental assessment may be reviewed at the District Office listed at the end of **FOR FURTHER INFORMATION CONTACT**, above.

D. Unfunded Mandates Act

This rule does not impose an enforceable duty among the private sector and, therefore, is not a Federal private sector mandate and is not subject to the requirements of Section 202 or 205 of the Unfunded Mandates Act. We have also found under Section 203 of the Act, that small Governments will not be significantly and uniquely affected by this rulemaking.

E. Submission to Congress and the Comptroller General of the General Accounting Office

Pursuant to Section 801(a)(1)(A) of the Administrative Procedure Act as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, the Army has submitted a report containing this rule to the U.S. Senate, House of Representatives, and the Comptroller General of the General Accounting Office. This rule is not a major rule within the meaning of Section 804(2) of the Administrative Procedure Act, as amended.

List of Subjects in 33 CFR Part 334

Danger zones, navigation (water), transportation.

For the reasons set out in the preamble, the Corps amends 33 CFR Title 334, as follows:

PART 334—DANGER ZONE AND RESTRICTED AREA REGULATIONS

1. The authority citation for Part 334 continues to read as follows:

Authority: 40 Stat. 266 (33 U.S.C. 1) and 40 Stat. 892 (33 U.S.C. 3).

2. Section 334.200 is amended by revising the section heading; by revising the last sentence in paragraph (a)(1); and by revising paragraphs (b)(2) and (b)(3) and (c) to read as follows:

§ 334.200 Chesapeake Bay, Point Lookout to Cedar Point; aerial and surface firing range and target area, U.S. Naval Air Station, Patuxent River, Maryland, danger zones.

(a) * * *

(1) * * * Aerial and surface firing and dropping of nonexplosive ordnance will be conducted throughout the year.

* * * * *

(b) * * *

(2) *The area.* A circular area with a radius of 1000 yards having its center at latitude 38 degrees 02 minutes 18 seconds longitude 76 degrees 09 minutes 26 seconds identified as Hannibal Target.

(3) *The regulations.* Nonexplosive projectiles and bombs will be dropped at frequent intervals in the target areas. Hooper and Hannibal target areas shall be closed to navigation at all times, except for vessels engaged in operational and maintenance activities as directed by the Commanding Officer of the U.S. Naval Air Station, Patuxent River, Maryland. No person in the waters, vessel, or other craft shall enter or remain in the closed area or climb on targets except on prior written approval of the Commanding Officer, U.S. Naval Air Station, Patuxent River, Maryland.

(c) *Enforcement.* The regulations in this section shall be enforced by the Commanding Officer of the Naval Air Station, Patuxent River, Maryland and such agencies as he or she may designate.

Dated: February 17, 1999.

Eric R. Potts,

Colonel, Corps of Engineers, Executive Director of Civil Works.

[FR Doc. 99–8609 Filed 4–14–99; 8:45 am]

BILLING CODE 3710–41–P

GENERAL SERVICES ADMINISTRATION

41 CFR Chapter 301

[FTR Amdt. 75—1998 Edition]

RIN 3090–AG86

Federal Travel Regulation; General and Temporary Duty (TDY) Travel Allowances (Maximum Per Diem Rates)

AGENCY: Office of Governmentwide Policy, GSA.

ACTION: Final rule; correction.

SUMMARY: This document corrects entries listed in the prescribed maximum per diem rates for locations within the continental United States (CONUS) contained in a final rule correction appearing in the **Federal Register** of Wednesday, February 10, 1999 (64 FR 6550).

EFFECTIVE DATE: January 1, 1999.

FOR FURTHER INFORMATION CONTACT: Jim Harte, Travel and Transportation Management Policy Division, telephone (202) 501–1538.

SUPPLEMENTARY INFORMATION: In rule document 99–3085 beginning at 64 FR 6550 in the issue of Wednesday, February 10, 1999, make the following corrections:

Appendix A to Chapter 301—[Corrected]

1. On page 6555, under the State of Florida, under the entry Vero Beach, revise the seasonal date of "(May 1–December 31)" to read "(May 1–January 31)".

2. On page 6563, under the State of Virginia, under the entry Virginia Beach*, revise the seasonal dates "(June 1–August 31)" to read "(May 1–September 30)" and "(September 1–May 31)" to read "(October 1–April 30)", respectively.

The corrected text should read as follows:

Appendix A to Chapter 301—Prescribed Maximum per Diem Rates for CONUS

* * * * *

Per diem locality: key city [1]	County and/or other defined location [2 3]	Maximum lodging amount (room rate only—no taxes)	+	M&IE rate	=	Maximum per diem rate [4]
		(a)		(b)		(c)
* * * *	*	*		*		*
FLORIDA						
* * * *	*	*		*		*
Vero Beach	Indian River					
(February 1–April 30)		72		38		110
(May 1–January 31)		50		38		88
* * * *	*	*		*		*
VIRGINIA						
* * * *	*	*		*		*
Virginia Beach *	Virginia Beach (also Norfolk, Portsmouth and Chesapeake) *.					
(May 1–September 30)		97		38		135
(October 1–April 30)		54		38		92
* * * *	*	*		*		*

Dated: April 9, 1999.

William T. Rivers,

Acting Director, Travel and Transportation Management Policy Division.

[FR Doc. 99–9407 Filed 4–14–99; 8:45 am]

BILLING CODE 6820–34–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 981014259–8312–02; I.D. 040599E]

Fisheries of the Northeastern United States; Summer Flounder, Scup, and Black Sea Bass Fisheries; Adjustments to the 1999 Summer Flounder Commercial Quota

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Commercial quota adjustment for 1999.

SUMMARY: This document contains adjustments to the 1999 commercial summer flounder quotas. This action complies with the regulations that implement the Fishery Management Plan for the Summer Flounder, Scup, and Black Sea Bass Fisheries (FMP) that requires landings in excess of a state's individual quota be deducted from a state's respective quota for the following year. The public is advised that preliminary adjustments have been made and is informed of the revised quotas for the affected states.

DATES: Effective April 9, 1999, through December 31, 1999.

FOR FURTHER INFORMATION CONTACT: Paul H. Jones, Fisheries Policy Analyst, (978) 281–9273.

SUPPLEMENTARY INFORMATION:

Background

NMFS published a document in the **Federal Register** on February 3, 1999 (64 FR 5196), announcing preliminary adjustments to the 1999 summer flounder commercial quotas. The document also corrected errors in Rhode Island's commercial summer flounder allocation specified in Table 1.—1999 State Commercial Quotas that was published on December 31, 1998 (63 FR 72203). Portions of the text describing revisions made to Table 1 of the December 31 publication contained errors and some text was omitted. Therefore, NMFS published an additional document in the **Federal Register** on February 24 1999 (64 FR 9088), which corrected only the text portion of the preamble to the February 3, 1999, correction document related to the Rhode Island commercial summer flounder allocation.

Adjustment to the 1999 commercial summer flounder quotas is necessary because NMFS received data late from some state agencies. State data collections are incomplete for Connecticut, Maryland, Virginia, and North Carolina; therefore, further adjustments may be necessary for those states.

The preliminary 1998 landings and resulting overages for all states are given in Table 1. The resulting adjusted 1999 commercial quota for each state is given in Table 2. In Table 3, the adjustment has been made to maintain the incidental component of the commercial quota at 32.7 percent of the total (as recommended in the final specifications).

TABLE 1.—SUMMER FLOUNDER PRELIMINARY 1998 LANDINGS BY STATE

State	1998 quota		Preliminary 1998 landings		1998 overage	
	Lb	Kg [1]	Lb	Kg [1]	Lb	Kg [1]
ME	4,791	2,173	5,626	2,552	835	379
NH	51	23	0	0	0	0
MA	721,899	327,448	709,387	321,778	0	0
RI	1,742,583	790,422	1,715,716	778,249	0	0
CT	250,457	113,605	249,398	113,127	0	0

TABLE 1.—SUMMER FLOUNDER PRELIMINARY 1998 LANDINGS BY STATE—Continued

State	1998 quota		Preliminary 1998 landings		1998 overage	
	Lb	Kg[1]	Lb	Kg[1]	Lb	Kg[1]
NY	763,419	346,281	822,151	372,928	58,732	26,647
NJ	1,858,363	842,939	1,862,800	844,966	4,437	2,027
DE	[2](14,534)	(6,593)	(10,905)	(4,947)	(25,439)	(11,539)
MD	199,876	90,662	209,358	94,965	9,482	4,303
VA	2,362,877	1,071,783	2,543,278	1,153,631	180,401	81,848
NC	3,049,589	1,383,270	2,903,527	1,317,040	0	0
Total[3]	10,939,371	4,962,013	11,010,336	4,994,289	228,448	103,665

[1] Kilograms are as converted from pounds, and may not necessarily add due to rounding.
[2] Parentheses indicate a negative number.
[3] Total quota and total landings do not equal overage because they reflect positive quota balances in several states.

TABLE 2.—SUMMER FLOUNDER PRELIMINARY ADJUSTED 1999 QUOTAS

State	1999 initial quota		1999 adjusted quota	
	Lb	Kg[1]	Lb	Kg[1]
ME	5,285	2,397	4,450	2,018
NH	51	23	51	23
MA	757,842	343,751	757,842	343,751
RI	1,742,583	790,422	1,742,583	790,422
CT	250,791	113,757	250,791	113,757
NY	849,680	385,408	790,948	358,768
NJ	1,858,363	842,939	1,853,926	840,927
DE	1,977	897	[2](25,439)	(11,539)
MD	226,570	102,770	217,088	98,469
VA	2,373,569	1,976,633	2,193,168	994,804
NC	3,044,589	1,381,002	3,044,589	1,381,002
Total	11,111,300	5,039,999	10,829,997	4,912,404

[1] Kilograms are as converted from pounds, and may not necessarily add due to rounding.
[2] Parentheses indicate a negative number.

TABLE 3.—SUMMER FOUNDER 1999 STATE QUOTAS AND INCIDENTAL CATCH ALLOCATIONS

State	Percent share	Directed		Incidental catch		Total	
		Lb	Kg[1]	Lb	Kg	Lb	Kg
ME	0.04756	2,995	1,358	1,455	660	4,450	2,018
NH	0.00046	34	16	17	8	51	23
MA	6.82046	510,028	231,345	247,814	112,407	757,842	343,751
RI	15.68298	1,172,758	531,954	569,825	258,468	1,742,583	790,422
CT	2.25708	168,782	76,558	82,009	37,199	250,791	113,757
NY	7.64699	532,308	241,451	258,640	117,317	790,948	358,768
NJ	16.72499	1,247,692	565,944	606,234	274,983	1,853,926	840,927
DE	0.01779	[2](17,120)	(7,766)	(8,319)	(3,773)	(25,439)	(11,539)
MD	2.03910	146,100	66,270	70,988	32,200	217,088	98,469
VA	21.31676	1,476,002	669,503	717,166	325,301	2,193,168	994,804
NC	27.44584	2,049,008	929,415	995,581	451,588	3,044,589	1,381,002
Total	100.00000	7,288,588	3,306,048	3,541,409	1,606,356	10,829,997	4,912,404

[1] Kilograms are as converted from pounds, and may not necessarily add due to rounding.
[2] Parentheses indicate a negative number.

Classification

This action is required by 50 CFR part 648 and is exempt from review under E.O. 12866.

Authority 16 U.S.C. 1801 *et seq.*

Dated: April 8, 1999.

Gary C. Matlock,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–9339 Filed 4–9–99; 4:15 pm]

BILLING CODE 3510–22–M

Proposed Rules

Federal Register
Vol. 64, No. 72
Thursday, April 15, 1999

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–AGL–23]

Proposed Modification of Class E Airspace; Neillsville, WI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to modify Class E airspace at Neillsville, WI. A Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to Runway (Rwy) 27, and a Nondirectional Beacon (NDB) SIAP to Rwy 27, Amendment (Amdt) 6, have been developed for Neillsville Municipal Airport. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approach. This action proposes to increase the radius of the existing controlled airspace for this airport.

DATES: Comments must be received on or before June 2, 1999.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, AGL–7, Rules Docket No. 99–AGL–23, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be exmained in the Office of the Assistant Chief Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, Airspace Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: Michelle M. Behm, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 99–AGL–23." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Assistant Chief Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, S.W., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to 14 CFR part 71 to modify Class E airspace at Neillsville, WI, to accommodate aircraft executing the proposed GPS Rwy 27 SIAP, and NDB Rwy 27 SIAP, Amdt 6, at Neillsville Municipal Airport by modifying the existing controlled airspace. Controlled airspace extending upward from 700 to 1200 feet AGL is needed to contain aircraft executing the approach. The area would be depicted on appropriate aeronautical charts. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9F dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore this, proposed regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g) 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

* * * * *

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL WI E5 Neillsville, WI [Revised]

Neillsville Municipal Airport, WI
(Lat. 44°33'29" N., long. 90°30'44" W.)
Neillsville NDB
(Lat. 44°33'26" N., long. 90°30'55" W.)

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of the Neillsville Municipal Airport and within 2.5 miles each side of the 091° bearing from the Neillsville NDB extending from the 6.3-mile radius to 7.0 miles east of the airport.

* * * * *

Issued in Des Plaines, Illinois on March 31, 1999.

John A. Clayborn,

Acting Manager, Air Traffic Division.

[FR Doc. 99–9302 Filed 4–14–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Chapter I

Section 1115 Transportation Equity Act for the 21st Century Negotiated Rulemaking Committee Meeting

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Negotiated rulemaking committee meeting.

SUMMARY: The Department of the Interior is giving notice to the public that the Section 1115 Transportation Equity Act for the 21st Century (TEA–21) Negotiated Rulemaking Committee will be meeting to work toward the formulation of Indian Reservation Roads Program regulations and funding formula.

DATES: The public meeting will be held on the following days, April 26–30, 1999, beginning at 8:00 a.m. PDT each day.

ADDRESSES: The meeting will be held at the Portland DoubleTree Hotel, Portland-Lloyd Center, 1000 NE Multnomah, Portland, Oregon 97232, (503) 249–3100.

FOR FURTHER INFORMATION CONTACT: Additional information may be obtained from Mr. Steve Wilkie, Chief, Branch of Program Operations, Division of Transportation, Bureau of Indian Affairs, Department of the Interior, 201 3rd St. NW, Suite 430, Albuquerque, NM 87102, (505) 346–7221, Fax (505) 346–2543,

SUPPLEMENTARY INFORMATION: 23 U.S.C. 202, as amended by TEA–21, required the Secretary of the Interior to issue regulations and a funding formula governing the Indian Reservation Roads Program, pursuant to a negotiated rulemaking. The Section 1115, TEA–21 Negotiated Rulemaking Committee was established to fulfill these objectives.

The agenda for the April meeting will include:

1. Approval of Protocols.
2. Approval of Minutes.
3. Other Business.

This meeting is open to the public. However, the public is given notice that in the event a caucus is called, only federal members or members of Indian tribes (as appropriate) will be permitted to attend the caucus session. Members of the public may present oral or written statements with the approval or recognition of a Committee Co-Chair.

The tentative schedule of meetings for the Committee is as follows:

1. May 25–27, 1999, 8 a.m. to 5 p.m., Washington, DC.
2. June 22–24, 1999, 8 a.m. to 5 p.m., Minneapolis, MN.
3. July 27–29, 1999, 8 a.m. to 5 p.m., Sacramento, CA.
4. August 24–26, 1999, 8 a.m. to 5 p.m., Anchorage, AK.
5. October 5–7, 1999, 8 a.m. to 5 p.m., Bismarck, ND.
6. November 2–4, 1999, 8 a.m. to 5 p.m., Phoenix, AZ.
7. February 15–17, 2000, 8 a.m. to 5 p.m., Washington, DC.

Dated: April 9, 1999.

Kevin Gover,

Assistant Secretary—Indian Affairs.

[FR Doc. 99–9374 Filed 4–14–99; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 700, 740, 746 and 750

RIN 1029–AB83

Indian and Federal Lands

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Proposed rule; public hearing and extension of public comment period.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) has received several requests to hold a public hearing and a request for an extension of the public comment period. By this document, OSM is announcing the scheduling of a public hearing and the extension of the comment period for the proposed rule published on February 19, 1999 (64 FR 8464), clarifying the definition of "Indian lands" and making conforming amendments to the Federal lands program and Indian lands program. The comment period was originally scheduled to close on April 20, 1999, and is now being extended for 60 days. Interested persons are invited to participate in the proceeding and to submit relevant factual information on the matter.

DATES: OSM will hold the public hearing on June 8, 1999, at 10:00 am. OSM will accept written comment on the proposed rule until 5 p.m., Eastern time, on June 21, 1999.

ADDRESSES: The public hearing will be held at the Crowne Plaza Pyramid Hotel, 5151 San Francisco Road, NE, Albuquerque, New Mexico 87109.

You may mail or hand-deliver comments to the Office of Surface Mining Reclamation and Enforcement, Administrative Record, Room 101, 210–SIB, 1951 Constitution Avenue, NW, Washington, D.C. 20240. You may also submit comments to OSM via the Internet at: osmrules@osmre. gov.

FOR FURTHER INFORMATION CONTACT: Ms. Suzanne Hudak, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Avenue, N.W., Washington, DC 20240; Telephone: (202) 208–2661. E-Mail address: shudak@osmre.gov.

SUPPLEMENTARY INFORMATION: In response to requests from members of the public, we are extending the public comment period for the proposed rule published on February 19, 1999 (64 FR 8464). The comment period was originally scheduled to close on April 20, 1999, and is now being extended for

60 days. In the rule, we are proposing to amend our regulations by clarifying the definition of "Indian lands" at 30 CFR 700.5 for purposes of implementing the Surface Mining Control and Reclamation Act of 1977. The proposed clarification is required pursuant to a settlement agreement between the Department of the Interior and the Navajo Nation and Hopi Indian Tribe to settle the tribes' challenges to a 1989 rulemaking governing coal leases and surface coal mining and reclamation operations on Indian lands. OSM is also proposing various changes to the Federal lands program at 30 CFR parts 740 and 746, and the Indian lands program at 30 CFR part 750, in conjunction with the proposed clarification to the definition of Indian lands.

Dated: April 8, 1999.

Mary Josie Blanchard,

Assistant Director, Program Support.

[FR Doc. 99–9411 Filed 4–14–99; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 934

[SPATS No. ND–039–FOR; North Dakota Amendment No. XXVIII]

North Dakota Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

SUMMARY: OSM is announcing receipt of a proposed amendment to the North Dakota regulatory program (hereinafter, the "North Dakota program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment consists of revisions to a North Dakota statute pertaining to who may preside over formal hearings and informal conferences. The amendment is intended to revise a North Dakota statute to be consistent with its counterpart regulation.

DATES: We will accept written comments until 4:00 p.m., m.d.t. on May 17, 1999. If requested, a public hearing on the proposed amendment will be held on May 10, 1999. We will accept requests to present oral testimony at the hearing until 4:00 p.m., m.d.t. on April 30, 1999.

ADDRESSES: You should mail or hand-deliver written comments to Guy Padgett at the address shown below.

Copies of the North Dakota program, the proposed amendment, and all written comments received in response to this document will be available for public review at the addresses shown below during normal business hours, Monday through Friday, excluding holidays. Also, we will send one free copy of the proposed amendment to you if you contact the OSM's Casper Field Office.

Guy Padgett, Director, Casper Field Office, Office of Surface Mining Reclamation and Enforcement, 100 East "B" Street, Federal Building, Room 2128, Casper, Wyoming 82601–1918, Telephone: 307/261–6550, Internet: GPadgett@OSMRE.GOV

James R. Deutsch, Director, Reclamation Division, North Dakota Public Service Commission, 600 E. Boulevard Ave., Dept. 408, Bismarck, North Dakota 58505–0480, Telephone: 701/328–2400.

FOR FURTHER INFORMATION CONTACT: Guy Padgett, Telephone: 307/261–6550. Internet: GPadgett@OSMRE.GOV.

SUPPLEMENTARY INFORMATION:

I. Background of the North Dakota Program To Regulate Surface Coal Mining

On December 15, 1980, the Secretary of the Interior conditionally approved the North Dakota Program. General background information on the North Dakota program, including the Secretary's findings, the disposition of comments, and conditions of approval of the North Dakota program can be found in the December 15, 1980, **Federal Register** (45 FR 82214). Subsequent actions concerning North Dakota's program and program amendments can be found at 30 CFR 934.15 and 934.16.

II. Proposed Amendment

In a letter dated March 31, 1999, North Dakota submitted a proposed amendment to its program to regulate surface coal mining pursuant to SMCRA (North Dakota Amendment number XXVIII), administrative record No. ND–CC–01, 30 U.S.C. 1201 *et seq.*). North Dakota submitted the proposed amendment at its own initiative in order to make the statute, the North Dakota Century Code (NDCC), consistent with its regulation, the North Dakota Administrative Code (NDAC), and also to make it in compliance with SMCRA. The provision of NDCC that North Dakota proposes to revise is: NDCC Chapter 38–14.1–30, Administrative review of commission rulings—Formal hearings. Specifically, North Dakota proposes to revise its statute to state that no person who presides over an informal conference in reference to a permit application may preside at a formal administrative hearing or participate in making the final administrative decision.

III. What To Do if You Want To Comment on the Proposed Statute Change

In accordance with the provisions of 30 CFR 732.17(h), we are seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the North Dakota program to regulate surface coal mining.

1. Written Comments

Your written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **DATES** or at locations other than the Casper Field Office will not necessarily be considered in the final rulemaking or included in the administrative record.

2. Public Hearing

Anyone wishing to testify at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4:00 p.m., m.d.t. on April 30, 1999. Anyone who is physically challenged and who has need for special accommodations to attend a public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT**. The location and time of the hearing will be arranged with those persons requesting the hearing. If no one requests an opportunity to testify at the public hearing, it will not be held.

We request that you file a written statement at the time of the hearing since it would assist the transcriber. Submission of written statements in advance of the hearing will allow us to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until everyone scheduled to testify has been heard. Anyone in the audience who has not been scheduled to testify, and who wishes to do so, will be heard following those who have been scheduled. The hearing will end after everyone scheduled to testify and anyone in the

audience who wishes to testify has been heard.

3. Public Meeting

If only one person requests an opportunity to testify at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with us to discuss the proposed amendment may request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under **ADDRESSES**. A written summary of each meeting will be made a part of the administrative record.

IV. Procedural Determinations

1. Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

2. Executive Order 12988

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

3. National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

4. Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

5. Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal that is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

6. Unfunded Mandates

This rule will not impose a cost of $100 million or more in any given year on any governmental entity or the private sector.

List of Subjects in 30 CFR Part 934

Intergovernmental relations, Surface mining, Underground mining.

Dated: April 7, 1999.

Brent Walquist,

Regional Director, Western Regional Coordinating Center.

[FR Doc. 99–9413 Filed 4–14–99; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD01–99–009]

RIN 2115–AE46

Special Local Regulation: Fireworks Displays Within the First Coast Guard District

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes a revision to the Special Local Regulation (SLR), which governs annual fireworks displays (events) within the First Coast Guard District. This revision will expand the descriptions of the events' dates, times, and locations. A new easier-to-read table format will be introduced, which will list events by month, date, and location. Obsolete events will be removed, and new events will be added. This regulation is necessary to control vessel traffic within the immediate vicinity of the fireworks launch sites and to ensure the safety of life and property during each event.

DATES: Comments must be received on or before June 14, 1999.

ADDRESSES: Comments should be mailed to Commander (osr), First Coast Guard District, Captain John Foster Williams Federal Building, 408 Atlantic Ave., Boston, MA 02110–3350, or may be delivered to Room 734 at the same address, between 8 a.m. and 4 p.m., Monday through Friday, except federal holidays. Comments will become part of this docket and will be available for inspection or copying at the above address.

FOR FURTHER INFORMATION CONTACT: Petty Officer William M. Anderson, Office of Search and Rescue, First Coast Guard District, (617) 223–8460.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Each person submitting comments should include his or her name and address, identify this notice (CGD01–99–009) and the specific section of the proposal to which each comment applies, and give the reason for each comment. Any person requesting acknowledgment of receipt of comments should enclose a stamped, self-addressed postcard or envelope. All comments received during the comment period will be considered by the Coast Guard and may change this proposal.

The Coast Guard has no plans to hold a public hearing. Persons may request a public hearing by writing to Commander (osr), First Coast Guard District, at the address under **ADDRESSES**. The request should include reasons why a hearing would be beneficial. If the Coast Guard determines that oral presentations will aid this rulemaking, it will hold a public hearing at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

Each year, organizations in the First District sponsor fireworks displays in the same general location and time period. The table in 33 CFR 100.114 contains information provided to the Coast Guard by the events' sponsors. The event description provides approximate dates and location which take place annually. Each event uses a barge or on-shore site as the fireworks

launch platform. The special local regulations control vessel movement within a 500-yard radius around the launch platforms to ensure the safety of persons and property. Coast Guard personnel on-scene may allow persons within the 500-yard radius should conditions permit. The Coast Guard may publish notices in the **Federal Register**, if an event sponsor reports a change to the listed event venue or date.

Discussion of Proposed Rule

The Coast Guard proposes to revise the special local regulation in Section 100.114 by adding and deleting several fireworks displays. The revised list of events is based on input received from organizations (event sponsors) throughout the First Coast Guard District. The following events are to be added to 33 CFR 100.114, retitled Fireworks Displays within the First Coast Guard District:

NEW EVENTS

Numbers (new)	Dates	Names
6.2	Last week in June.	Windjammer Days; Fireworks Playland Park
7.6	July 2nd, 3rd and 4th.	
7.10	Friday or Saturday before July 4th.	Hingham 4th-of-July; Fireworks
7.21	July 4th	Beverly Farms; Fireworks
7.30	July 4th	Newport City Fireworks
7.46	July 4th	City of Yonkers
12.7	December 31st.	Newport Fireworks

TABLE LEGEND

This legend shows how individual events appear in the Fireworks Display Table.

State: Event number	Annual Scheduled day	Name: Name. Sponsor: Sponsor. Time: Scheduled start and end times. Location: Fireworks barge or launch.

Regulatory Evaluation

This proposal is not a significant regulatory action under Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be minimal by reason of the late start times of each event, the short duration of each event, the advance notice provided to the marine community, and the location and small size of each regulated area. A full Regulatory Evaluation, under paragraph 10e of the regulatory policies and procedures of DOT, is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard considers whether this proposed rule, if adopted, will have a significant economic impact on a substantial number of small entities. "Small entities" include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

For the reasons stated in the Regulatory Evaluation, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities. If, however, you think that your business or organization qualifies as a small entity and that this proposed rule will have a significant economic impact on your business or organization, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and in what way and to what degree this proposed rule will economically affect it.

Assistance for Small Entities

Under subsection 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 [Pub. L. 104–121], the Coast Guard wants to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If your small business or organization would be affected by this rule and you have questions concerning its provisions or options for compliance, please call Petty Officer William M. Anderson, telephone 617–223–8460.

The Ombudsman of Regulatory Enforcement for Small Business and Agriculture, and 10 Regional Fairness Boards, were established to receive comments from small businesses about enforcement by Federal agencies. The Ombudsman will annually evaluate such enforcement and rate each agency's responsiveness to small business. If you wish to comment on enforcement by the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Unfunded Mandates

Under section 201 of the Unfunded Mandates Reform Act (UMRA) (2 U.S.C. 1531), the Coast Guard assessed the effects of this proposed rule on State, local, and tribal governments, in the aggregate, and on the private sector. The Coast Guard determined that this regulatory action requires no written statement under section 202 of the UMRA (2 U.S.C. 1532) because it will not result in the expenditure of $100,000,000 in any one year by State, local, or tribal governments, in the aggregate, or by the private sector.

Collection of Information

This proposal contains no collection-of-information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this proposal under the principles and criteria contained in Executive Order 12612 and has determined that this proposal does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard has considered the environmental impacts of this proposed rule and concluded that under figure 2–1, paragraph 34(h), of COMDTINST 16475.1C, this rule is categorically excluded from further environmental documentation.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Records and recordkeeping requirements, Waterways.

For reasons set out in the preamble, the Coast Guard proposes to amend 33 CFR Part 100 as follows:

PART 100—[AMENDED]

1. Revise citation of authority for Part 100 to read as follows:

Authority: 33 U.S.C. 1233 through 1236; 33 CFR 100.35; 49 CFR 1.46.

2. Revise § 100.114 and its heading to read as follows:

§ 100.114 Fireworks displays within the First Coast Guard District.

(a) Regulated area. That area of navigable waters within a 500-yard radius of the launch platform for each fireworks display listed in the following table.

FIREWORKS DISPLAY TABLE

May		
New York: 5.1	First and Second Saturdays in May.	Name: Ellis Island Medals of Honor Ceremony. Sponsor: The Forum. Time: 10:00 p.m. to 12:00 a.m. Location: New York Harbor, Upper Bay. A barge approximately 360 yards east of Ellis Island. 40°41′15″N, 074°02′09″W (NAD 1983).
New York: 5.2	Friday before Memorial Day.	Name: Hempstead Harbor. Sponsor: Town of North Hempstead, NY. Time: 8:30 p.m. to 10:30 p.m. Location: Hempstead Harbor. A barge approximately 335 yards north of Bar Beach. 40°49′54″N, 073°39′14″W (NAD 1983).
New York: 5.3	Memorial Day	Name: South Street Seaport Memorial Day. Sponsor: South Street Seaport Marketplace. Time: 8:00 p.m. to 10:00 p.m. Location: East River Manhattan. A barge approximately 475 yards south of the Brooklyn Bridge. 40°42′10″N, 074°00′01″W (NAD 1983).
Massachusetts: 5.4	A night during Memorial Day Weekend.	Name: Hull Memorial Day Festival. Sponsor: Town of Hull. Time: 8:00 p.m. to 10:00 p.m. Location: Barge located 200 yards off Nantasket Beach, Hull, MA.
June		
New York: 6.1	Third and fourth Tuesdays in June.	Name: Staten Island Summer. Sponsor: Borough of Staten Island. Time: 8:30 p.m. to 10:30 p.m. Location: New York Harbor, Lower Bay—approximately 350 yards east of South Beach, Staten Island 40°35′11″N, 074°03′42″W (NAD 1983).
Maine: 6.2	A night during the last week in June.	Name: Windjammer Days Fireworks. Sponsor: Boothbay Harbor Chamber of Commerce. Time: 9:00 p.m. to 11:00 p.m. Location: McFarland Island, Boothbay Harbor, Boothbay, ME. 43°50′48″N, 069°37′36″W (NAD 1983).
Connecticut: 6.3	A night during the last week in June.	Name: Barnum Festival Fireworks. Sponsor: The Barnum Foundation. Time: 8:00 p.m. to 10:00 p.m. Location: Seaside Park—Bridgeport Harbor, Bridgeport, CT.
Connecticut: 6.4	A night during the last week in June (or first week in July).	Name: American Legion, Post 83: Fireworks. Sponsor: Town of Branford, American Legion Post. Time: 9:00 p.m. to 10:00 p.m. Location: Branford Ponit, Branford, CT 41°21′N, 072°05′20″W (NAD 1983).
New York: 6.5	Last Sunday in June	Name: Heritage of Pride. Sponsor: Heritage of Pride Inc. Time: 9:30 p.m. to 11:30 p.m. Location: Hudson River, Manhattan, NY. A barge approximately 400 yards west of Pier 54. 40°44′31″N, 074°01′00″W (NAD 1983).
Massachusetts: 6.6	Thursday before prior to July 4th.	Name: Boston Harborfest Fireworks. Sponsor: Harborfest Committee. Time: 9:30 p.m. to 10:30 p.m. Location: Just Off Coast Guard Base, Boston Harbor, MA 42°22′53″N, 71°02′56″W (NAD 1983).

FIREWORKS DISPLAY TABLE—Continued

	July	
New York: 7.1	Each Tuesday in July ...	Name: Staten Island Summer. Sponsor: Borough of Staten Island. Time: 8:30 p.m. to 10:30 p.m. Location: New York Harbor, Lower Bay—approximately 350 yards east of South Beach, Staten Island 40°35′11″N, 074°03′42″W (NAD 1983).
Massachusetts: 7.2	Thursday before July 4th.	Name: Boston Harborfest Fireworks. Sponsor: Harborfest Committee. Time: 9:30 p.m. to 10:30 p.m. Location: Just Off Coast Guard Base, Boston Harbor, MA 42°22′53″N, 71°02′56″W (NAD 1983).
Connecticut: 7.3	A night during the first week in July (or last week in June).	Name: American Legion, Post 83: Fireworks. Sponsor: Town of Branford, American Legion Post. Time: 9:00 p.m. to 10:00 p.m. Location: Branford Point, Branford, CT 41°21′N, 072°05′20″W (NAD 1983).
New York: 7.4	A night during the first week in July.	Name: Devon Yacht Club Fireworks. Sponsor: Devon Yacht Club, Amagansett, NY. Time: 9:00 p.m. to 10:00 p.m. Location: Devon Yacht Club, Amagansett, NY 40°59′5″N, 072°06′5″W (NAD 1983).
New York: 7.5	July 1st	Name: Wards Island. Sponsor: New York Power Authority. Time: 8:30 p.m. to 10:30 p.m. Location: East River, Wards Island, NY. A land shoot approximately 200 yards northeast of the Triboro Bridge. 40°46′55.5″N, 073°55′33″W (NAD 1983).
New York: 7.6	July 2nd, 3rd and 4th	Name: Playland Park. Sponsor: Playland Park. Time: 9 p.m. to 11 p.m. Location: Western Long Island Sound, a barge anchored in approximate position 40°57′47″N, 073°40′06″W (NAD 1983), approximately 400 yards northeast of Rye Beach Breakwater.
Maine: 7.7	A night during the first two weeks in July.	Name: Schooner Days Fireworks. Sponsor: Town of Rockland Chamber of Commerce. Time: 8:00 p.m. to 10:00 p.m. Location: Rockland Harbor, Rockland, ME.
Connecticut: 7.8	A night during the first two weeks in July.	Name: Stamford Fireworks. Sponsor: City of Stamford. Time: 8:00 p.m. to 10:00 p.m. Location: Westcott Cove, Stamford, CT.
New York: 7.9	A night during the first two weeks in July.	Name: Town of Babylon Fireworks. Sponsor: Town of Babylon, NY. Time: 8:00 p.m. to 10:00 p.m. Location: Nezeras Island, Babylon, NY.
Massachusetts: 7.10	Friday or Saturday before July 4th.	Name: Hingham 4th-of-July Fireworks. Sponsor: Town of Hingham, MA Time: 8:00 p.m. to 10:00 p.m. Location: Hingham Harbor, Hingham, MA 42°15′30″N, 70°53′2″W (NAD 1983).
Massachusetts: 7.11	Friday or Saturday before July 4th.	Name: Weymouth 4th-of-July Fireworks. Sponsor: Town of Weymouth Harbormaster. Time: 8:30 p.m. to 10:45 p.m. Location: Weymouth Fore River, Weymouth, MA 42°15′30″N, 70°56′6″W (NAD 1983).
Vermont: 7.12	July 3rd	Name: Burlington Fireworks Display. Sponsor: City of Burlington, VT. Time: 8:30 p.m. to 11:00 p.m. Location: Lake Champlain, Burlington Bay, VT. A barge beside the Burlington Bay Breakwater. 44°28′30.5″N, 073°13′32″W (NAD 1983).
Massachusetts: 7.13	July 3rd	Name: Gloucester Fireworks. Sponsor: Gloucester Chamber of Commerce. Time: 8:00 p.m. to 10:00 p.m. Location: Gloucester Harbor, Stage Fort Park, Gloucester, MA.

FIREWORKS DISPLAY TABLE—Continued

Connecticut:		
7.14	July 3rd	Name: Summer Music Fireworks. Sponsor: Summer Music, Inc. Time: 8:00 p.m. to 10:00 p.m. Location: Niantic River, Harkness Park, Waterford, CT.
New Jersey:		
7.15	July 3rd	Name: Fireworks on the Navesink. Sponsor: Red Bank Fireworks Committee. Time: 8:30 p.m. to 10:30 p.m. Location: Navesink River, a barge approximately 360 yards northwest of Red Bank Reach, NJ. 40°21′20″N, 074°04′10″W (NAD 1983).
Maine:		
7.16	July 4th (Rain date: July 5th.	Name: Bangor Fireworks. Sponsor: Bangor 4th of July Corporation. Time: 9:30 p.m. to 10 p.m. Location: Bangor/Brewer waterfront, ME 44°47′6″N, 068°11′8″W (NAD 1983).
Maine:		
7.17	July 4th	Name: Bar Harbor Fireworks. Sponsor: Bar Harbor Chamber of Commerce. Time: 8:30 p.m. to 9:30 p.m. Location: Bar Harbor/Bar Island, ME. 44°23′6″N, 068°11′8″W (NAD 1983).
Maine:		
7.18	July 4th	Name: Stewart's 4th-of-July Fireworks Display. Sponsor: W. P. Stewart. Time: 9:00 p.m. to 9:30 p.m. Location: Somes Sound, Northeast Harbor, ME 44°18′3″N, 068°18′2″W (NAD 1983).
Maine:		
7.19	July 4th	Name: Walsh's Fireworks. Sponsor: Mr. Patrick Walsh. Time: 8:30 p.m. to 9:30 p.m. Location: Union River Bay, ME 44°23′5″N, 068°27′2″W (NAD 1983).
Massachusetts:		
7.20	July 4th	Name: Town of Barnstable Fireworks. Sponsor: Town of Barnstable. Time: 8:00 p.m. to 10:00 p.m. Location: Dunbar Point/Kalmus Beach, Barnstable, MA 41°38′30″N, 070°16′W (NAD 1983).
Massachusetts:		
7.21	July 4th	Name: Beverly Farms Fireworks. Sponsor: Farms-Pride 4th-of-July Committee, Inc. Time: 8:00 p.m. to 10:00 p.m. Location: West Beach, Manchester Bay, Beverly Farms, MA. 42°33′51″N, 070°48′29″W (NAD 1983).
Massachusetts:		
7.22	July 4th	Name: Edgartown Fireworks. Sponsor: Edgartown Firefighters Association. Time: 9:00 p.m. to 10:00 p.m. Location: Edgartown Harbor, Edgartown, MA 41°23′25″N, 070°29′45″W (NAD 1983).
Massachusetts:		
7.23	July 4th	Name: Falmouth Fireworks. Sponsor: Falmouth Fireworks Committee. Time: 9:00 p.m. to 10:00 p.m. Location: Falmouth Harbor, 0.25 NM east of buoy #16, Falmouth, MA 41°–23′12″N, 070°29′45″W (NAD 1983).
Massachusetts:		
7.24	July 4th	Name: Marion Fireworks. Sponsor: Town of Marion Harbormaster. Time: 8:00 p.m. to 10:00 p.m. Location: Silver Shell Beach, Marion, MA 41°45′30″N, 070°45′24″W (NAD 1983).
Massachusetts:		
7.25	July 4th	Name: City of New Bedford Fireworks. Sponsor: City of New Bedford. Time: 9:00 p.m. to 10:30 p.m. Location: New Bedford Harbor, New Bedford, MA 41°41′N, 070°40′W (NAD 1983).
Massachusetts:		
7.26	July 4th	Name: Onset Fireworks. Sponsor: Town of Wareham, MA. Time: 9 p.m. to 10 p.m. Location: Onset Harbor, Onset, MA 41°38′N, 071°55′W (NAD 1983).
Massachusetts:		
7.27	July 4th	Name: Plymouth Fireworks Display. Sponsor: July Four Plymouth Inc. Time: 8 p.m. to 10 p.m. Location: Plymouth Harbor, Plymouth, MA 41°57′20″N, 070°38′20″W (NAD 1983).

FIREWORKS DISPLAY TABLE—Continued

Massachusetts: 7.28	July 4th	Name: Lewis Bay Fireworks. Sponsor: Town of Yarmouth, MA. Time: 9:30 p.m. to 10:00 p.m. Location: Great Island, Lewis Bay 41°38′30″N, 071°17′06″W (NAD 1983).
Rhode Island: 7.29	July 4th	Name: Bristol 4th of July Fireworks. Sponsor: Bristol Fourth of July Committee. Time: 9:30 p.m. to 10:00 p.m. Location: Bristol Harbor, Bristol, RI 41°39′54″N, 071°20′18″W (NAD 1983).
Rhode Island: 7.30	July 4th	Name: City of Newport Fireworks. Sponsor: City of Newport. Time: 9:15 p.m. to 10:00 p.m. Location: 41°28′48″N, 071°20′18″W (NAD 1983).
Rhode Island: 7.31	July 4th (Rain date: July 5th).	Name: Oyster Harbor Club Fourth-of-July Festival. Sponsor: Oyster Harbor Club, Inc. Time: 6:00 p.m. to 10:00 p.m. Location: Tim's Cove, North Bay, Osterville, RI. 41°37′30″N, 070°23′21″W (NAD 1983).
Rhode Island: 7.32	July 4th	Name: Slade Farms Fireworks. Sponsor: Slade Farm, Somerset, RI. Time: 9:00 p.m. to 11:00. Location: 41°43′36″N, 071°09′18″W (NAD 1983).
Connecticut: 7.33	July 4th	Name: Fairfield Aerial Fireworks. Sponsor: Fairfield Park Commission. Time: 8:00 p.m. to 10:00 p.m. Location: Jennings Beach, Long Island Sound, Fairfield, CT 41°08′22″N, 073°14′02″W.
Connecticut: 7.34	July 4th	Name: Subfest Fireworks. Sponsor: U.S. Naval Submarine Base. Time: 8:00 p.m. to 10:00 p.m. Location: Thames River, Groton, CT.
Connecticut: 7.35	July 4th	Name: Hartford Riverfest. Sponsor: July 4th Riverfest, Inc. Time: 8:00 p.m. to 10:00 p.m. Location: Connecticut River, Hartford, CT.
Connecticut: 7.36	July 4th	Name: Middletown Fireworks. Sponsor: City of Middletown. Time: 8:00 p.m. to 10:00 p.m Location: Connecticut River, Middletown, CT.
Connecticut: 7.37	July 4th	Name: Norwich American Warf Fireworks. Sponsor: American Warf Marina. Time: 8:00 p.m. to 10:00 p.m. Location: Norwich Harbor, Norwich, CT.
Connecticut: 7.38	July 4th	Name: City of Norwalk Fireworks. Sponsor: Norwalk Recreation and Parks Department. Time: 9:15 p.m. to 10:15 p.m. Location: Calf Pasture Beach, Long Island Sound, Norwalk, CT. 41°04′50″N, 073°23′22″W (NAD 1983).
Connecticut: 7.39	July 4th	Name: Old Lyme Fireworks. Sponsor: Mr. James R. Rice. Time: 8:00 p.m. to 10:00 p.m. Location: Sound View Beach, Long Island sound, Old Lyme, CT.
Connecticut: 7.40	July 4th	Name: Stratford Fireworks. Sponsor: Town of Stratford. Time: 8:00 p.m. to 10:00 p.m. Location: Short Beach, Stratford, CT 41°10′11″N, 073°06′19″W (NAD 1983).
Connecticut: 7.41	July 4th	Name: Westport P.A.L. Fireworks. Sponsor: Westport Police Athletic League. Time: 8:00 p.m. to 10:00 p.m. Location: Compo Beach, Westport, CT.

FIREWORKS DISPLAY TABLE—Continued

New York: 7.42	July 4th	Name: Bayville Crescent Club Fireworks. Sponsor: Bayville Crescent Club, Bayville, NY. Time: 8:00 p.m. to 10:00 p.m. Location: Cooper Bluff, Cove Neck, NY.
New York: 7.43	July 4th	Name: Montuak Independence Day. Sponsor: Montauk Chamber of Commerce. Time: 8:00 p.m. to 10:00 p.m. Location: Montauk Town Beach, Montauk, NY.
New York: 7.44	July 4th	Name: Jones Beach State Park Fireworks. Sponsor: Long Island State Park Administration Headquarters. Time: 9:00 p.m. to 10:15 p.m. Location: Fishing Pier, Jones Beach State Park, Wantagh, NY 40°35′7″N, 073°30′6″W (NAD 1983).
New York: 7.45	July 4th	Name: Dolan Family Fireworks. Sponsor: Mr. Charles F. Dolan. Time: 8:00 p.m. to 10:00 p.m. Location: Cove Point, Oyster Bay, NY.
New York: 7.46	July 4th	Name: City of Yonkers. Sponsor: City of Yonkers, NY. Time: 8:30 p.m. to 10:30 p.m. Location: Hudson River, a barge approximately 335 yards northwest of Yonkers Municipal Pier. 40°56′14″N, 073°54′28″W (NAD 1983).
Massachusetts: 7.47	July 5th	Name: Wellfleet Fireworks. Sponsor: Wellfleet Fireworks Committee. Time: 8:00 p.m. to 11:00 p.m. Location: Indian Neck Jetty, Wellfleet, MA 41°55′24″N, 070°02′06″W (NAD 1983).
Connecticut: 7.48	Weekend following July 4th.	Name: Thames River Fireworks. Sponsor: Town of Groton. Time: 8:00 p.m. to 10:00 p.m. Location: Thames River, off Electric Boat, Groton, CT.
New York: 7.49	A night during the second or third weekend in July.	Name: Boys Harbor Fireworks Extravaganza. Sponsor: Boys Harbor Inc. Time: 9:00 p.m. to 10 p.m. Location: Three Mile Harbor, East Hampton, NY 41°15′N, 070°11′91″W (NAD 1983).
Maine: 7.50	Third Saturday in July ...	Name: Belfast Fireworks. Sponsor: Belfast Bay Festival Committee. Time: 8:00 p.m. to 10:00 p.m. Location: Belfast Bay, ME.
	August	
New York: 8.1	Each Tuesday in August	Name: State Island Summer. Sponsor: Borough of Staten Island. Time: 8:30 p.m. to 10:30 p.m. Location: New York Harbor, Lower Bay—approximately 350 yards east of South Beach, Staten Island 40°35′11″N, 074°03′42″W (NAD 1983).
New York: 8.2	First Tuesday in August	Name: National Nigh Out Against Crime. Sponsor: National Night Out Against Crime. Time: 8:30 p.m. to 10:30 p.m. Location: Atlantic Ocean, a barge approximately 335 yards off Rockaway Beach at 116th Street. 40°34′29″N, 073°50′00″W (NAD 1983).
Connecticut: 8.3	A night during the first week of August.	Name: Summer Music Fireworks. Sponsor: Summer Music Inc. Time: 8:00 p.m. to 10:00 p.m. Location: Niantic River, Harkness Park, Waterford, CT.
Massachusetts: 8.4	A night during the first weekend in August.	Name: Fall River Celebrates America Fireworks. Sponsor: Fall River Chamber of Commerce. Time: 9:15 p.m. to 10:00 p.m. Location: Taunton River, vicinity of buoy #17, Fall River, MA 41°43′4″N, 071°09′48″W (NAD 1983).

FIREWORKS DISPLAY TABLE—Continued

New York: 8.5	First Saturday in August	Name: Peekskill Summerfest. Sponsor: Charles Point Business Association. Time: 8:30 p.m. to 10:30 p.m. Location: Hudson River, Peekskill Bay, a barge approximately 500 yards northeast of Peekskill Bay South Channel Buoy 3 (LLNR 37955). 41°17′16″N, 073°56′18″W (NAD 1983).
New York: 8.6	First and second Saturdays in August.	Name: City of Rensselaer. Sponsor: City of Rensselaer. Time: 9:00 p.m. to 11:00 p.m. Location: Hudson River, a barge approximately 500 yards south of the Dunn Memorial Bridge (river mile 145.4). 42°38′23″N, 073°45′00″W (NAD 1983).
Connecticut: 8.7	A night during the first two weeks in August.	Name: Hartford Riverfront Regatta. Sponsor: Riverfront Recapture Inc. Time: 8:00 p.m. to 10:00 p.m. Location: Connecticut River, Hartford, CT.
Connecticut: 8.8	A night during the third week in August.	Name: Summer Music Fireworks. Sponsor: Summer Music Inc. Time: 8:00 p.m. to 10:00 p.m. Location: Niantic River, Harkness Park, Waterford, CT.
Massachusetts: 8.9	Last weekend in August	Name: Oaks Bluff Fireworks. Sponsor: Oaks Bluff Firemen's Civic Association. Time: 8:00 p.m. to 10:00 p.m. Location: Oaks Bluff Beach, Oaks Bluff, MA.
Connecticut: 8.10	Last Sunday in August ..	Name: Norwich Harbor Day Fireworks. Sponsor: Harbor Day Committee. Time: 8:00 p.m. to 10:00 p.m. Location: Norwich Harbor, off American Wharf Marina, Norwich, CT.
Massachusetts: 8.11	A night during Labor Day weekend.	Name: Gloucester Fireworks. Sponsor: Gloucester Chamber of Commerce. Time: 8:00 p.m. to 10:00 p.m. Location: Gloucester Harbor, Stage Fort Park, Gloucester, MA.
Maine: 8.12	A night during Labor Day weekend.	Name: Camden Fireworks Display. Sponsor: Town of Camden Chamber of Commerce. Time: 8:00 p.m. to 10:00 p.m. Location: Camden Harbor, Camden, ME.
	September	
Massachusetts: 9.1	A night during Labor Day weekend.	Name: Gloucester Fireworks. Sponsor: Gloucester Chamber of Commerce. Time: 8:00 p.m. to 10:00 p.m. Location: Gloucester Harbor, Stage Fort Park, Gloucester, MA.
Maine: 9.2	A night during Labor Day weekend.	Name: Camden Fireworks Display. Sponsor: Town of Camden Chamber of Commerce. Time: 8:00 p.m. to 10:00 p.m. Location: Camden Harbor, Camden, ME.
New York: 9.3	Labor Day	Name: South Street Seaport Labor Day. Sponsor: South Street Seaport Marketplace. Time: 8:30 p.m. to 10:00 p.m. Location: East River, Manhattan, a barge approximately 475 yards south of the Brooklyn Bridge. 40°42′10″N, 074°00′01″W (NAD 1983).
New York: 9.4	First Saturday following Labor Day.	Name: Grand Fiesta Italiana. Sponsor: Sons of Italy, Port Washington, NY. Time: 8:30 p.m. to 11:00 p.m. Location: Hempstead Harbor, a barge approximately 300 yards north of Bar Beach, Port Washington, Long Island. 40°49′52″N, 073°39′10″W (NAD 1983).
Connecticut: 9.5	A night during the weekend following Labor Day.	Name: Taste of Italy. Sponsor: Italian Heritage Committee. Time: 8:00 p.m. to 10:00 p.m. Location: Norwich Harbor, off Norwich Marina, Norwich, CT.

FIREWORKS DISPLAY TABLE—Continued

Rhode Island:		
9.6	A night during the First weekend in September.	Name: Newport Salute to Summer. Sponsor: Naval Education and Training Center. Time: 8:30 p.m. to 10:00 p.m. Location: Narragansett Bay, East Passage, off Coasters Harbor Island, Newport, RI 41°25′N, 071° 20′W (NAD 1983).
Connecticut:		
9.7	First or second Saturday in September.	Name: Norwalk Oyster Festival Fireworks. Sponsor: Norwalk Seaport Association. Time: 8:00 p.m. to 10:00 p.m. Location: Norwalk Harbor, Norwalk. CT.
New York:		
9.8	A night during the last two weekends in September.	Name: Cow Harbor Day Fireworks. Sponsor: Village of Northport Harbor. Time: 8:00 p.m. to 10:00 p.m. Location: Sand Pit, Northport Harbor, Northport, NY.
October		
New York:		
10.1	First Sunday in October	Name: Deepavali Festival. Sponsor: Association of Indians in America Time: 6:45 to 8:45 Location: East River, Manhattan, a barge approximately 200 yards east of Pier 16. 40°42′12.5″N, 074°00′02″W (NAD 1983).
Massachusetts:		
10.2	A night during the second weekend of October.	Name: Yarmouth Seaside Festival Fireworks. Sponsor: Yarmouth Seaside Festival. Time: 8:00 p.m. to 9:00 p.m. Location: Seagull Beach, W. Yarmouth, MA 41°38′06″N, 070°13′13″W (NAD 1983).
December		
Massachusetts:		
12.1	December 31st	Name: First Night Fireworks. Sponsor: First Night Inc. Time: 11:45 p.m. to 12:30 a.m. Location: Center of Boston Inner Harbor, Boston, MA 42°21′42.4″N, 071°02′36.5″W (NAD 1983).
Massachusetts:		
12.2	December 31st	Name: First Night Martha's Vineyard. Sponsor: Town of Martha's Vineyard Chamber of Commerce. Time: 10:00 p.m. to 12:30 a.m. Location: Vineyard Haven Harbor, Martha's Vineyard, MA 41°27′6″N, 070°35′8″W (NAD 1983).
Massachusetts:		
12.3	December 31st	Name: City of New Bedford First Night. Sponsor: City of New Bedford. Time: 11:45 p.m. to 12:30 a.m. Location: New Bedford Harbor, New Bedford, MA 41°38′.2″N, 070°55′0″W (NAD 1983).
Connecticut:		
12.4	December 31st	Name: First Night Mystic. Sponsor: Mystic Community Center. Time: 11:45 p.m. to 12:30 a.m. Location: Mystic River, Mystic, CT.
New York:		
12.5	December 31st	Name: South Street Seaport New Year's Eve. Sponsor: South Street Seaport Marketplace. Time: 11:00 p.m. to 1:00 a.m. Location: East River, Manhattan, a barge approximately 475 yards south of the Brooklyn Bridge. 40°42′10″N, 074°00′01″W (NAD 1983).
New York:		
12.6	December 31st	Name: First Night New York City. Sponsor: Grant Central Partnership. Time: 11:00 p.m. to 1:00 a.m. Location: Hudson River, Manhattan, a barge approximately 450 yards southwest of the entrance to North Cove Yacht Harbor. 40°42′39″N, 074°01′19″W (NAD 1983).
Rhode Island:		
12.7	December 31st	Name: Newport Fireworks. Sponsor: Newport Cultural Commission. Time: 11:00 p.m. to 1:00 a.m. Location: 41°28′48″N, 071°20′18″W (NAD 1983).

(b) Special local regulations. (1) No person or vessel may enter, transit, or remain within the regulated area during the effective period of regulation unless authorized by the Coast Guard patrol commander.

(2) Vessels encountering emergencies that require transit through the regulated area should call the Coast Guard patrol commander on VHF Channel 16. In the event of an emergency, the Coast Guard patrol commander may authorize a vessel to transit through the regulated area with a Coast Guard-designated escort.

(3) All persons and vessels shall comply with the instructions of the Coast Guard on-scene patrol commander. On-scene patrol personnel may be commissioned, warrant, or petty officers of the U.S. Coast Guard. Upon hearing five or more short blasts from a U.S. Coast Guard vessel, the operator of a vessel shall proceed as directed. Members of the Coast Guard Auxiliary may also be present to inform vessel operators of this regulation and other applicable laws.

(c) Effective dates. This section is in effect from one hour before the scheduled start of each event listed in the table until thirty minutes after the scheduled finish of each event listed in the Table. For those events listed without specific times or dates, an annual **Federal Register** document will be published indicating event dates and times.

Dated: March 31, 1999.

R.M. Larrabee,

Real Admiral, U.S. Coast Guard Commander, First Coast Guard District.

[FR Doc. 99–9433 Filed 4–14–99; 8:45 am]

BILLING CODE 4910–15–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99–115, RM–9378]

Radio Broadcasting Services; Clio and Tuscola, Michigan

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed on behalf of Faircom Flint Inc. requesting the reallotment of Channel 268A from Tuscola, Michigan, to Clio, Michigan, and modification of the license for Station WWBN to specify Clio, Michigan, as the community of license. The coordinates for Channel 268A at Clio are 43–15–47 and 83–45–40. Canadian concurrence will be requested for the allotment of Channel 268A at Clio. In accordance with Section 1.420(i) of the Commission's Rules, we shall not accept competing expressions of interest in the use of Channel 268A at Clio.

DATES: Comments must be filed on or before June 1, 1999, and reply comments on or before June 16, 1999.

ADDRESSES: Federal Communications Commission, Washington, DC. 20554.

In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Lee W. Shubert, Haley Bader & Potts P.L.C., 4350 North Fairfax Drive, Suite 900, Arlington, VA 22203–1633.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 99–115, adopted March 31, 1999, and released April 9, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC. 20036, (202) 857–3800, facsimile (202) 857–3805.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–9387 Filed 4–14–99; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AF36, 1018–AF37

Endangered and Threatened Wildlife and Plants; Reopening of Comment Periods and Notice of Availability of Draft Economic Analyses on Proposed Critical Habitat Determinations for the Cactus Ferruginous Pygmy-Owl and the Huachuca Water Umbel, a Plant

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; reopening of comment periods and notice of availability of draft economic analyses.

SUMMARY: The U.S. Fish and Wildlife Service announces the availability of draft economic analyses of the proposed designation of critical habitat for the plant *Lilaeopsis schaffneriana* ssp. *recurva* (Huachuca water umbel) and the cactus ferruginous pygmy-owl (*Glaucidium brasilianum cactorum*). We also provide notice of the reopening of the comment periods for the two proposals to allow all interested parties to submit written comments on the proposals and on the draft economic analyses. We have received some comments on the proposals after the close of the original comment periods. Those comments will be incorporated into the public records as a part of these reopenings and do not need to be resubmitted.

DATES: The original comment periods for both critical habitat proposals closed on March 1, 1999. The comment periods are reopened and we will accept comments until May 15, 1999. Comments must be received by the closing date. Any comments that are received after the closing date may not be considered in the final decisions on these proposals.

ADDRESSES: Copies of the draft economic analyses are available on the Internet at http://ifw2irm2.irm1.r2.fws.gov/ or by writing to the Field Supervisor, U.S. Fish and Wildlife Service, 2321 W. Royal Palm Road, Suite 103, Phoenix, Arizona 85021. Written comments should be sent to the Field Supervisor. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above Service address.

FOR FURTHER INFORMATION CONTACT: Tom Gatz, Endangered Species Coordinator, at the above address (telephone 602–640–2720 ext. 240; facsimile 602–640–2730).

SUPPLEMENTARY INFORMATION:

Background

The cactus ferruginous pygmy-owl is one of four subspecies of the ferruginous pygmy-owl. It occurs from lowland central Arizona south through western Mexico to the States of Colima and Michoacan, and from southern Texas south through the Mexican States of Tamaulipas and Nuevo Leon. Only the Arizona population of the cactus ferruginous pygmy-owl is listed as an endangered species. We proposed designation of approximately 730,565 acres of riverine riparian and upland habitat as critical habitat for the cactus ferruginous pygmy-owl pursuant to the Endangered Species Act of 1973, as amended (Act). Proposed critical habitat is in Pima, Cochise, Pinal, and Maricopa counties, Arizona as described in the proposed rule (63 FR 71820; December 30, 1999).

The Huachuca water umbel is a plant found in cienegas (desert marshes), streams and springs in southern Arizona and northern Sonora, Mexico, typically in mid-elevation wetland communities often surrounded by relatively arid environments. These communities are usually associated with perennial springs and stream headwaters, have permanently or seasonally saturated highly organic soils, and have a low probability of flooding or scouring. We proposed critical habitat including a total of 83.9 km (52.1 mi) of streams or rivers in Cochise and Santa Cruz counties, Arizona (63 FR 71838; December 30, 1999).

Section 4(b)(2) of the Act requires that the Secretary shall designate or revise critical habitat based upon the best scientific data available and after taking into consideration the economic impact of specifying any particular area as critical habitat. Based upon the previously published proposals to designate critical habitat for the Huachuca water umbel and the cactus ferruginous pygmy-owl and comments received during previous comment periods, we have conducted a draft economic analysis of each proposed critical habitat designation. The draft economic analyses are available at the above Internet and mailing addresses. In order to accept the best and most current scientific data regarding the critical habitat proposals and the draft economic analyses of the proposals, we reopen the comment periods at this time.

The Fish and Wildlife Service has previously conducted and recorded three public hearings on these critical habitat designation proposals as required under Section 4(b)(5)(E) of the Act, as amended (16 U.S.C. 1531 *et seq.*). Due to the expeditious treatment of these proposed critical habitat determinations under Federal District Court order as described in the proposed rules, we will not conduct additional hearings and will accept only written comments during these reopened comment periods. Previously submitted oral or written comments on either of these critical habitat proposals need not be resubmitted.

The current comment period on this proposal closes on May 15, 1999. Written comments may be submitted to the Service office in the **ADDRESSES** section.

Author

The primary author of this notice is Jeffrey A. Humphrey (see **ADDRESSES**).

Authority

The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531–1544).

Dated: April 7, 1999.

Charlie Sanchez Jr.,

Acting Regional Director, Region 2, Fish and Wildlife Service.

[FR Doc. 99–9153 Filed 4–14–99; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register
Vol. 64, No. 72
Thursday, April 15, 1999

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Long Prong Project, Boise National Forest, Idaho

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare Environmental Impact Statement

SUMMARY: The Cascade Ranger District of the Boise National Forest will prepare an environmental impact statement (EIS) for an integrated resource management project in the headwaters of Clear Creek, a tributary of the North Fork Payette River below Cascade Reservoir. The project area is located 10 miles east of Cascade, Idaho, and about 100 miles north of Boise, Idaho.

The agency invites written comments and suggestions on the scope of the analysis. The agency also hereby gives notice of the environmental analysis and decision-making process that will occur on the proposal so interested and affected people are aware of how they may participate and contribute to the final decision. At this time, no public meetings to discuss the project are planned.

Proposed Action: Five primary objectives have been identified for the project: (1) Improve timber stand health so that stands are more resilient to damaging forest insects and diseases, and uncharacteristic wildfires; (2) improve long-term stand growth to or near levels indicative of sustainable forest; (3) provide wood products to support local economies and stumpage receipts sufficient to yield a significant positive return to the U.S. Treasury and trust funds; (4) reduce management-induced sediment by closing and/or rehabilitating roads that are not needed for long-term resource management, and: (5) where consistent with other project objectives, pursue opportunities to enhance aspen stands.

The Proposed Action would treat a total of 2,203 acres in the 67,637-acre Gold Fork/Clear Creek Management Area (MA 53). An estimated 13.0 MMBF of timber would be harvested using ground-based (857 acres), skyline (495 acres), and helicopter (851 acres) yarding systems. The Proposed Action would employ a variety of silvicultural prescriptions including clearcut with reserve trees (389 acres), commercial thin/sanitation (833 acres), final removal shelterwood (90 acres), sanitation/improvement (490 acres), seed cut shelterwood (110 acres), and commercial thin/final removal (291 acres). The existing transportation system would be improved to facilitate log haul and reduce sedimentation with individual sections of 2.6 miles of road being reconstructed. An estimated 1.4 miles of specified road and 0.4 mile of temporary road would be constructed to facilitate harvest. In addition, 1.6 miles of road not needed for the long-term management of the area would be decommissioned and 1.5 miles closed year-round to motorized use with the exception of snowmobiles.

Three 30-acre units would be treated to enhance aspen regeneration. All competing coniferous trees less than 20 inches in diameter would be cut down and the areas burned with a helitorch. Mature aspen may also need to be felled to create sufficient fuels to sustain the burn. No construction of fireline would be necessary on these sites.

Prescribed fire would be used on an area roughly 750 acres in size to reduce natural fuels, with a secondary objective of enhancing aspen rejuvenation. No construction of fireline would be necessary on this site.

Preliminary Issues: Preliminary concerns with the proposed action include: (1) potential loss of pileated woodpecker and boreal owl nesting habitat; (2) possible degradation of fisheries habitat, particularly in the East Fork of Clear Creek; (3) adverse impacts on recreational access, and; (4) impacts on the visual quality of the area.

Possible Alternatives to the Proposed Action: Three alternatives to the proposed action have been discussed thus far: (1) a no action alternative; (2) an alternative to mitigate potential impacts on pileated woodpecker and boreal owl nesting habitat, and; (3) an alternative that would mitigate increases in sediment delivery to the East Fork of Clear Creek. Other alternatives may be developed as issues are identified and information received.

Decisions to be Made: The Boise National Forest Supervisor will decide the following: Should roads be built and timber harvested within the Long Prong Project Area at this time, and if so; where within the project area, and how many miles of road should be built; and which stands should be treated and what silvicultural systems should be used? What mitigation/watershed enhancement measures should be applied to the project? Should the decommissioning of portions of roads 405B and 405B2 and/or other existing roads be implemented at this time? Should prescribed fire be used in the project area at this time, and if so; where within the project area? Should aspen rejuvenation treatments be implemented in the project area at this time, and if so; where within the project area?

DATES: Written comments concerning the proposed project and analysis are encouraged and should be postmarked on or before May 17, 1999.

ADDRESSES: Comments should be addressed to Steve Patterson, Cascade Ranger District, P.O. Box 696, Cascade, ID 83611. Comments received in response to this request will be available for public inspection and will be released in their entirety if requested pursuant to the Freedom of Information Act.

FOR FURTHER INFORMATION CONTACT: Further information can be obtained from Steve Patterson at the address mentioned above or by calling 208–382–7430.

Schedule: Draft Environmental Impact Statement (DEIS), June 1999, Final Environmental Impact Statement, August 1999.

SUPPLEMENTARY INFORMATION: A similar proposed action was scoped in November 1998 with the intention of preparing an environmental assessment (EA). In addition to public announcements in the "The Idaho Statesman" (November 21, 1998) and the "The Long Valley Advocate" (November 25, 1998), a scoping package describing the proposed action was mailed to 34 individuals and/or groups. In response to those scoping efforts, written comments were received from 10 interested parties. Comments received from those efforts will be incorporated into this analysis.

The comment period on the DEIS will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of the DEIS must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519,553 (1978). Also, environmental objections that could be raised at the DEIS stage but are not raised until after completion of the FEIS may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F. 2d 1016, 1002 (9th Cir., 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the DEIS 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the FEIS.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the DEIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Responsible Official

David D. Rittenhouse, Forest Supervisor, Boise National Forest, 1249 South Vinnel Way, Boise, ID 83709.

Dated: April 7, 1999.

David D. Rittenhouse,

Forest Supervisor.

[FR Doc. 99–9385 Filed 4–14–99; 8:45 am]

BILLING CODE 3410–11–M

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Michigan Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Michigan Advisory Committee to the Commission will convene at 1:00 p.m. and adjourn at 5:00 p.m. on Thursday, May 6, 1999, at the Marriott Hotel, Renaissance Center, Renaissance Drive off East Jefferson, Detroit, Michigan 48243. The purpose of the meeting is to discuss civil rights issues and plan future activities.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Roland Hwang, 517–373–1476, or Constance M. Davis, Director of the Midwestern Regional Office, 312–353–8311 (TDD 312–353–8362). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, April 5, 1999.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 99–9418 Filed 4–14–99; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the New Hampshire Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the New Hampshire Advisory Committee to the Commission will convene at 9:30 a.m. and adjourn at 4:30 p.m. on May 6, 1999, at the Nashua Senior High School Auditorium, 36 Riverside Drive, Nashua, New Hampshire 03062. The purpose of the meeting is to hold a consultation on civil rights in police/community relations and equal educational opportunities in public schools as part of its project, *A Biennial Report on the Status of Civil Rights in New Hampshire.*

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Acting Chairperson Patricia Taylor, 603–883–5813, or Ki-Taek Chun, Director of the Eastern Regional Office, 202–376–7533 (TDD 202–376–8116). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, April 8, 1999.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 99–9420 Filed 4–14–99; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Utah Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Utah Advisory Committee to the Commission will convene at 6:00 p.m. and adjourn at 8:00 p.m. on Wednesday, May 19, 1999, at the Ogden Park Hotel, 247 24th Street, Ogden, Utah. The purpose of the meeting is to brief members on regional and commission activities, statewide issues, and the Wiesenthal Conference.

Persons desiring additional information, or planning a presentation to the Committee, should contact John Dulles, Director of the Rocky Mountain Regional Office, 303–866–1040 (TDD 303–866–1049). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, April 8, 1999.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 99–9419 Filed 4–14–99; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Miscellaneous Activities

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before June 14, 1999.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Clearance Officer, Office of the Chief Information Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington DC 20230 (or via Internet at LEngelme@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Dawnielle Battle, BXA ICB Liaison, Department of Commerce, Room 6881, 14th and Constitution Avenue, NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

I. Abstract

On September 30, 1993, the Secretary of Commerce submitted to the Congress a report of the Trade Promotion Coordinating Committee, entitled Toward a National Export Strategy. The report included the goal to "Undertake a comprehensive review of the Export Administration Regulations to simplify, clarify, and make the regulations more user-friendly".

To carry out this recommendation, BXA has rewritten the entire EAR. To the extent activities have been added or changed but not deleted, this collection represents the authority to collect, on rare occasions, certain information from the public. This assembly of information collection activities is comprised of two activities. "Registration Of U.S. Agricultural Commodities For Exemption From Short Supply Limitations On Export", and "Petitions For The Imposition Of Monitoring Or Controls On Recyclable Metallic materials; Public Hearings" and though statutory in nature and—have never been applied—must remain a part of BXA's information collection budget authorization.

For the purpose of clarity, this abstract will refer to the two activities as follows:

USAG will refer to Registration Of U.S. Agricultural Commodities For Exemption From Short Supply Limitations On Export activities; and,

Petitions will refer to Petitions For The Imposition Of Monitoring Or Controls On Recyclable Metallic materials; Public Hearings activities.

II. Method of Collection

For USAG, the method is a written application for the exemption from Short Supply Limitations on Export Activities.

For Petitions, the method is a written petition requesting the monitoring of exports or the imposition of export controls, or both, with respect to certain materials.

The same mailing address is used for both submissions: P.O. Box 273, Washington, DC 20230.

III. Data

OMB Number: 0694–0102.

Form Number: None.

Type of Review: Regular submission for extension of a currently approved collection.

Affected Public: Individuals, businesses or other for-profit and not-for-profit institutions.

Estimated Number of Respondents: 2.

Estimated Time Per Response: 5 hours per response.

Estimated Total Annual Burden Hours: 10.

Estimated Total Annual Cost: No capital expenditures are required.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they will also become a matter of public record.

Dated: April 9, 1999.

Linda Engelmeier,

Departmental Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 99–9437 Filed 4–14–99; 8:45 am]

BILLING CODE 3510–DT–P

DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of opportunity to request administrative review of antidumping or countervailing duty order, finding, or suspended investigation.

Background

Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspension of investigation, an interested party, as defined in section 771(9) of the Tariff Act of 1930, as amended, may request, in accordance with § 351.213 of the Department of Commerce (the Department) Regulations (19 CFR 351.213 (1997)), that the Department conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

Opportunity to Request a Review

Not later than the last day of April 1999, interested parties may request an administrative review of the following orders, findings, or suspended investigations, with anniversary dates in April for the following periods:

	Period
Antidumping Duty Proceedings	
Canada: Sugar & Syrup, A–122–085	04/01/98–03/31/99
France: Sorbitol, A–427–001	04/01/98–03/31/99
Greece: Electrolytic Manganese Dioxide, A–484–801	04/01/98–03/31/99
Japan:	
Roller Chain Other Than Bicycle, A–588–028	04/01/98–03/31/99
Calcium Hypochlorite, A–588–401	04/01/98–03/31/99
3.5″ Microdisks And Media Therefor, A–588–802	04/01/98–03/31/99
Electrolytic Manganese Dioxide, A–588–806	04/01/98–03/31/99
Kazakhstan: Ferrosilicon, A–834–804	04/01/98–03/31/99
Kenya: Fresh Cut Flowers, A–779–602	04/01/98–03/31/99

	Period
Mexico: Fresh Cut Flowers, A–201–601	04/01/98–03/31/99
Norway: Fresh & Chilled Atlantic Salmon, A–403–801	04/01/98–03/31/99
People's Republic of China: Brake Rotors, A–570–846	04/01/98–03/31/99
South Korea: Color Television Receivers, A–580–008	04/01/98–03/31/99
Taiwan:	
Color Television Receivers, A–583–009	04/01/98–03/31/99
Static Random Access Memory, A–583–827	10/01/97–03/31/99
Turkey: Certain Steel Concrete Reinforcing Bars, A–489–807	04/01/98–03/31/99
Ukraine: Ferrosilicon, A–823–804	04/01/98–03/31/99
Countervailing Duty Proceedings	
Norway: Fresh & Chilled Atlantic Salmon, C–403–802	04/01/98–03/31/99
Peru: Fresh Cut Flowers, C–333–601	04/01/98–03/31/99
Suspension Agreements	
None.	

In accordance with section 351.213 of the regulations, an interested party as defined by section 771(9) of the Act may request in writing that the Secretary conduct an adminsitrative review. The Department has changed its requirements for requesting reviews for countervailing duty orders. Pursuant to 771(9) of the Act, an interested party must specify the individual producers or exporters covered by the order or suspension agreement for which they are requesting a review (Department of Commerce Regulations, 62 FR 27295, 27494 (May 19, 1997)). Therefore, for both antidumping and countervailing duty reviews, the interested party must specify for which individual producers or exporters covered by an antidumping finding or an antidumping or countervailing duty order it is requesting a review, and the requesting party must state why it desires the Secretary to review those particular producers or exporters. If the interested party intends for the Secretary to review sales of merchandise by an exporter (or a producer if that producer also exports merchandise from other suppliers) which were produced in more than one country of origin and each country of origin is subject to a separate order, then the interested party must state specifically, on an order-by-order basis, which exporter(s) the request is intended to cover.

Seven copies of the request should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, Room 1870, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW., Washington, DC 20230. The Department also asks parties to serve a copy of their requests to the Office of Antidumping/ Countervailing Enforcement, Attention: Shelia Forbes, in room 3065 of the main Commerce Building. Further, in accordance with § 351.303(f)(1)(i) of the regulations, a copy of each request must be served on every party on the Department's service list.

The Department will publish in the **Federal Register** a notice of Initiation of Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation for requests received by the last day of April 1999. If the Department does not receive, by the last day of April 1999, a reuqest for review of entries covered by an order, finding, or suspended investigation listed in this notice and for the period indentified above, the Department will instruct the Customs Service to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of (or bond for) estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

This notice is not required by statute but is published as a service to the international trading community.

Dated: April 9, 1999.

Bernard T. Carreau,

Deputy Assistant Secretary for Group II, AD/ CVD Enforcement.

[FR Doc. 99–9448 Filed 4–14–99; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–810]

Stainless Steel Bar From India; Initiation of Antidumping New Shipper Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Initiation of Antidumping New Shipper Review.

SUMMARY: The Department of Commerce has received a request to conduct a new shipper review of the antidumping duty order on stainless steel bar from India. In accordance with section 751(a)(2)(B) of the Tariff Act and 19 CFR 351.214(d), we are initiating this review.

EFFECTIVE DATE: April 15, 1999.

FOR FURTHER INFORMATION CONTACT: Zak Smith or Stephanie Hoffman, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–0189 or (202) 482–4198, respectively.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended ("the Act"), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, all references to the Department of Commerce's ("the Department's") regulations are to 19 CFR part 351 (April 1998).

SUPPLEMENTARY INFORMATION:

Background

On February 26, 1999, the Department received a request from Meltroll Engineering Pvt., Ltd. ("Meltroll"), pursuant to section 751(a)(2)(B) of the Act, and in accordance with 19 CFR 351.214(b), for a new shipper review of the antidumping duty order on stainless steel bar from India. This order has a February anniversary month. Accordingly, we are initiating a new shipper review for Meltroll as requested and the period of review is February 1, 1998 through January 31, 1999.

Initiation of Review

In accordance with 19 CFR 351.214(b)(2), Meltroll provided certification that it did not export subject merchandise to the United

States during the period of investigation; certification that, since the investigation was initiated, it has never been affiliated with any exporter or producer who exported the subject merchandise to the United States during the period of investigation, including those not individually examined during the investigation; documentation establishing: (i) The date on which its stainless steel bar was first entered, or withdrawn from warehouse, for consumption, or if the exporter or producer could not establish the date of first entry, the date on which it first shipped the subject merchandise for export to the United States; (ii) the volume of that and subsequent shipments; and (iii) the date of the first sale to an unaffiliated customer in the United States. Therefore, in accordance with section 751(a)(2)(B)(ii) of the Act and 19 CFR 351.214(d)(1), we are initiating a new shipper review of the antidumping duty order on stainless steel bar from India. Meltroll agreed to waive the time limits of 19 CFR 351.214(i), in order that the Department may conduct this review concurrent with the administrative review of this order for the period February 1, 1998 through January 31, 1999, as requested pursuant to section 751(a) of the Act and 19 CFR 351.214(j)(3). Therefore, we intend to issue the final results of this review not later than 365 days after the last day of the anniversary month. All other provisions of 19 CFR 351.214 will apply to Meltroll throughout the duration of this new shipper review.

We will instruct the Customs Service to allow, at the option of the importer, the posting of a bond or security in lieu of a cash deposit, until the completion of the review, for each entry of the merchandise exported by the above listed company, in accordance with 19 CFR 351.214(e). Interested parties must submit applications for disclosure under administrative protective orders in accordance with 19 CFR 351.305 and 351.306.

This initiation and this notice are in accordance with section 751(a) of the Act.

Dated: March 31, 1999.

Richard W. Moreland,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 99–9447 Filed 4–14–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Export Trade Certificate of Review

ACTION: Notice of Issuance of an Export Trade Certificate of Review, Application No. 99–00001.

SUMMARY: The Department of Commerce has issued an Export Trade Certificate of Review to Jacques Issac d/b/a C-Shore International ("C-Shore"). This notice summarizes the conduct for which certification has been granted.

FOR FURTHER INFORMATION CONTACT: Morton Schnabel, Director, Office of Export Trading Company Affairs, International Trade Administration, 202–482–5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. The regulations implementing Title III are found at 15 CFR Part 325 (1997). The Office of Export Trading Company Affairs ("OETCA") is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Department of Commerce to publish a summary of a Certificate in the **Federal Register**. Under Section 305 (a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

Description of Certified Conduct

Export Trade

1. Products

All products.

2. Services

All services.

3. Technology Rights

Technology Rights, including, but not limited to, patents, trademarks, copyrights and trade secrets that relate to Products and Services.

4. Export Trade Facilitation Services (as they Relate to the Export of Products, Services and Technology Rights)

Export Trade Facilitation Services, including, but not limited to: professional services in the areas of government relations and assistance with state and federal export programs; foreign trade and business protocol; consulting; market research and analysis; collection of information on trade opportunities; marketing; negotiations; joint ventures; shipping and export management; export licensing; advertising; documentation and services related to compliance with customs requirements; insurance and financing; bonding; warehousing; export trade promotion; trade show exhibitions; organizational development; management and labor strategies; transfer of technology; transportation; and facilitating the formation of shippers' associations.

Export Markets

The Export Markets include all parts of the world except the United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands).

Export Trade Activities and Methods of Operation

C-Shore may:

1. Provide and/or arrange for the provision of Export Trade Facilitation Services;

2. Engage in promotion and marketing activities and collect and distribute information on trade opportunities in the Export Markets;

3. Enter into exclusive and/or non-exclusive agreements with distributors, foreign buyers, and/or sales representatives in Export Markets;

4. Enter into exclusive or non-exclusive sales agreements with Suppliers, Export Intermediaries, or other persons for the sale of Products and Services;

5. Enter into exclusive or non-exclusive licensing agreements with Suppliers, Export Intermediaries, or other persons for licensing Technology Rights in Export Markets;

6. Allocate export orders among suppliers;

7. Allocate the sales, export orders and/or divide Export Markets, among Suppliers, Export Intermediaries, or other persons for the sale of Products and Services;

8. Allocate the licensing of Technology Rights among Suppliers, Export Intermediaries, or other persons;

9. Establish the price of Products and Services for sale in Export Markets;

10. Establish the fee for licensing of Technology Rights in Export Markets; and

11. Negotiate, enter into, and/or manage licensing agreements for the export of Technology Rights.

Terms and Conditions of Certificate

1. In engaging in Export Trade Activities and Methods of Operation, C–Shore will not intentionally disclose, directly or indirectly, to any Supplier any information about any other Supplier's costs, production, capacity, inventories, domestic prices, domestic sales, or U.S. business plans, strategies, or methods that is not already generally available to the trade or public.

2. C–Shore will comply with requests made by the Secretary of Commerce on behalf of the Secretary of Commerce or the Attorney General for information or documents relevant to conduct under the Certificate. The Secretary of Commerce will request such information or documents when either the Attorney General or the Secretary of Commerce believes that the information or documents are required to determine that the Export Trade, Export Trade Activities, and Methods of Operation of a person protected by this Certificate of Review continue to comply with the standards of Section 303(a) of the Act.

Definitions

1. "Export Intermediary" means a person who acts as a distributor, sales representative, sales or marketing agent, or broker, or who performs similar functions, including providing or arranging for the provision of Export Trade Facilitation Services.

2. "Supplier" means a person who produces, provides, or sells a Product and/or Service.

A copy of this certificate will be kept in the International Trade Administration's Freedom of Information Records Inspection Facility Room 4102, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230.

Dated: April 8, 1999.

Morton Schnabel,

Director, Office of Export Trading Company Affairs.

[FR Doc. 99–9436 Filed 4–14–99; 8:45 am]

BILLING CODE 3510–DR–P

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Amendment of Visa and Certification Requirements for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in El Salvador

April 8, 1999.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs amending visa and certification requirements.

EFFECTIVE DATE: April 9, 1999.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The limit for textile products in Categories 342/642, produced or manufactured in El Salvador, expired on March 28, 1999; therefore, textile products in these categories, produced or manufactured in El Salvador and exported on or after March 29, 1999, will no longer require a visa and will no longer qualify for Special Access Program treatment. In the letter published below, the Chairman of CITA directs the Commissioner of Customs to no longer require visas for these products.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 63 FR 71096, published on December 23, 1998). Also see 60 FR 2740, published on January 11, 1995.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

April 8, 1999.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on January 6, 1995, as amended, by the Chairman, Committee for the Implementation of Textile Agreements. That directive directs you to prohibit entry of certain cotton and man-made fiber textile products, produced or manufactured in El Salvador which were not properly visaed by the Government of El Salvador.

Effective on April 9, 1999, you are directed to amend the current visa requirements for textiles and textile products in Categories 342/642, produced or manufactured in El Salvador, to no longer require visas for these products exported on or after March 29, 1999. In addition, products in these categories from El Salvador will no longer qualify for Special Access Program treatment.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 99–9343 Filed 4–14–99; 8:45 am]

BILLING CODE 3510–DR–F

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meeting

AGENCY: U.S. Consumer Product Safety Commission.

TIME AND DATE: 2:00 p.m., Friday, April 23, 1999.

LOCATION: Room 410, East West Towers, 4300 East West Highway, Bethesda, Maryland.

STATUS: Closed to the Public.

Matter to be Considered:

Compliance Status Report: The staff will brief the Commission on the status of various compliance matters.

For a recorded message containing the latest agenda information, call (301) 504–0709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sadye E. Dunn, Office of the Secretary, 4330 East West Highway, Bethesda, MD 20207 (301) 504–0800.

Dated: April 12, 1999.

Sadye E. Dunn,

Secretary.

[FR Doc. 99–9604 Filed 4–13–99; 2:27 pm]

BILLING CODE 6355–01–M

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Invitation to the Public To Participate in a Working Group To Ensure Input From Indian Tribal Governments in Development of Corporation Policies

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (Corporation) invites elected officials and other representatives of Indian tribal governments to participate in a working group to facilitate input in the development of Corporation policies that significantly or uniquely affect Indian tribal governments and their communities.

ADDRESSES: Responses may be mailed to the Corporation at the following address: Corporation for National Service, Attn: Cynthia Johnson, 1201

New York Avenue NW, Washington, DC 20525 or by sending electronic mail to: cljohnso@cns.gov.

FOR FURTHER INFORMATION CONTACT: Cynthia Johnson, (202) 606–5000, ext. 541. TDD (202) 565–2799. For individuals with disabilities, information will be made available in alternative formats upon request.

SUPPLEMENTARY INFORMATION: The Corporation is a government corporation that engages Americans of all ages and backgrounds in community-based service, including through AmeriCorps. This service addresses the nation's education, public safety, human, and environmental needs to achieve direct and demonstrable results. In doing so, the Corporation fosters civic responsibility and strengthens the ties that bind us together as a people.

In light of Executive Order 13084, the Corporation seeks to provide an effective mechanism through which elected officials and other representatives of Indian tribal governments may contribute meaningful and timely input in the development of Corporation policies that significantly or uniquely affect their communities. Individuals interested in participating in a working group for this purpose should contact the Corporation as stated above.

Dated: April 9, 1999.

Thomas L. Bryant,

Acting General Counsel.

[FR Doc. 99–9358 Filed 4–14–99; 8:45 am]

BILLING CODE 6050–28–U

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0054]

Submission for OMB Review; Comment Request Entitled U.S.-Flag Air Carriers Certification

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning U.S.-Flag Air Carriers Certification. A request for public comments was published at 64 FR 6054, February 8, 1999. No comments were received.

DATES: Comments may be submitted on or before May 17, 1999.

ADDRESSES: Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, should be submitted to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (MVRS), 1800 F Street, NW, Room 4035, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Linda Klein, Federal Acquisition Policy Division, GSA (202) 501–3775.

SUPPLEMENTARY INFORMATION:

A. Purpose

Section 5 of the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 1517) (Fly America Act) requires that all Federal agencies and Government contractors and subcontractors use U.S.-flag air carriers for U.S. Government-financed international air transportation of personnel (and their personal effects) or property, to the extent that service by those carriers is available. It requires the Comptroller General of the United States, in the absence of satisfactory proof of the necessity for foreign-flag air transportation, to disallow expenditures from funds, appropriated or otherwise established for the account of the United States, for international air transportation secured aboard a foreign-flag air carrier if a U.S.-flag carrier is available to provide such services. In the event that the contractor selects a carrier other than a U.S.-flag air carrier for international air transportation, the contractor shall include a certification on vouchers involving such transportation. The contracting officer uses the information furnished in the certification to determine whether adequate justification exists for the contractor's use of other than a U.S.-flag air carrier.

B. Annual Reporting Burden

Public reporting burden for this collection of information is estimated to average *15* minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The annual reporting burden is estimated as follows: Respondents, *150;* responses per respondent, *2;* total annual responses, *300;* preparation hours per response, *.25;* and total response burden hours, *75.*

Obtaining Copies of Proposals

Requester may obtain a copy of the justification from the General Services Administration, FAR Secretariat (MVRS), Room 4035, 1800 F Street, NW, Washington, DC 20405, telephone (202) 208–7312. Please cite OMB Control No. 9000–0054, U.S. -Flag Air Carriers Certification, in all correspondence.

Dated: April 12, 1999.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

[FR Doc. 99–9400 Filed 4–14–99; 8:45 am]

BILLING CODE 6820–34–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0053]

Proposed Collection; Comment Request Entitled Permits, Authorities, or Franchises Certification

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Permits, Authorities, or Franchises Certification. The clearnace currently expires on May 31, 1999.

DATES: Comments may be submitted on or before May 17, 1999.

ADDRESSES: Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, should be submitted to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (MVRS), 1800 F Street, NW, Room 4035, Washington, DC

20405. Please cite OMB Control No. 9000–0053, Permits, Authorities, or Franchises Certification, in all correspondence.

FOR FURTHER INFORMATION CONTACT: Linda Klein, Federal Acquisition Policy Division, GSA (202) 501–3775.

SUPPLEMENTARY INFORMATION:

A. Purpose

This certification and copies of authorizations are needed to determine that the offeror has obtained all authorizations, permits, etc., required in connection with transporting the material involved. The contracting officer reviews the certification and any documents requested to ensure that the offeror has complied with all regulatory requirements and has obtained any permits, licenses, etc., that are needed.

B. Annual Reporting Burden

Public reporting burden for this collection of information is estimated to average *15* minutes for the first completion, *1* minute for subsequent completions, or an average of *5.7* minutes per completion, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The annual reporting burden is estimated as follows: Respondents, *1,106*; responses per respondent, *3*; total annual responses, *3,318*; preparation hours per response, *.094*; and total response burden hours, *312*.

Obtaining Copies of Proposals: Requester may obtain a copy of the justification from the General Services Administration, FAR Secretariat (MVRS), Room 4035, 1800 F Street, NW, Washington, DC 20405, telephone (202) 208–7312. Please cite OMB Control No. 9000–0053, Permits, Authorities, or Franchises Certification, in all correspondence.

Dated: April 12, 1999.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

[FR Doc. 99–9401 Filed 4–14–99; 8:45 am]

BILLING CODE 6820–34–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0055]

Submission for OMB Review; Comment Request Entitled Freight Classification Description

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Freight Classification Description. A request for public comments was published at 64 FR 6053, February 8, 1999. No comments were received.

DATES: Comments may be submitted on or before May 17, 1999.

ADDRESSES: Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, should be submitted to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (MVRS), 1800 F Street, NW, Room 4035, Washington, DC 20405. Please cite OMB Control No. 9000–0055, Freight Classification Description, in all correspondence.

FOR FURTHER INFORMATION CONTACT: Linda Klein, Federal Acquisition Policy Division, GSA (202) 501–3775.

SUPPLEMENTARY INFORMATION:

A. Purpose

When the Government purchases supplies that are new to the supply system, nonstandard, or modifications of previously shipped items, and different freight classifications may apply, offerors are requested to indicate the full Uniform Freight Classification or National Motor Freight Classification. The information is used to determine the proper freight rate for the supplies.

B. Annual Reporting Burden

Public reporting burden for this collection of information is estimated to average *10* minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The annual reporting burden is estimated as follows: Respondents, *2,640*; responses per respondent, *3*; total annual responses, *7,920*; preparation hours per response, *.167*; and total response burden hours, *1,323*.

Obtaining Copies of Proposals: Requester may obtain a copy of the justification from the General Services Administration, FAR Secretariat (MVRS), Room 4035, 1800 F Street, NW, Washington, DC 20405, telephone (202) 208–7312. Please cite OMB Control No. 9000–0055, Freight Classification Description, in all correspondence.

Dated: April 12, 1999.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

[FR Doc. 99–9402 Filed 4–14–99; 8:45 am]

BILLING CODE 6820–34–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0057]

Submission for OMB Review; Comment Request Entitled Evaluation of Export Offers

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Evaluation of Export Offers. A request for public comments was published at 64 FR 6053, February 8, 1999. No comments were received.

DATES: Comments may be submitted on or before May 17, 1999.

ADDRESSES: Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden should be submitted to: FAR Desk

Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (MVRS), 1800 F Street, NW, Room 4035, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Linda Klein, Federal Acquisition Policy Division, GSA (202) 501–3775.

SUPPLEMENTARY INFORMATION:

A. Purpose

Offers submitted in response to Government solicitations must be evaluated and awards made on the basis of the lowest laid down cost to the Government at the overseas port of discharge, via methods and ports compatible with required delivery dates and conditions affecting transportation known at the time of evaluation. Offers are evaluated on the basis of shipment through the port resulting in the lowest cost to the Government. This provision collects information regarding the vendor's preference for delivery ports. The information is used to evaluate offers and award a contract based on the lowest cost to the Government.

B. Annual Reporting Burden

Public reporting burden for this collection of information is estimated to average *30* minutes for the first completion, *10* minutes for subsequent completions, or an average of *15* minutes per completion, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The annual reporting burden is estimated as follows: Respondents, *100*; responses per respondent, *4*; total annual responses, *400*; preparation hours per response, *.25*; and total response burden hours, *100*.

Obtaining Copies of Proposals

Requester may obtain a copy of the justification from the General Services Administration, FAR Secretariat (MVRS), Room 4035, 1800 F Street, NW, Washington, DC 20405, telephone (202) 208–7312. Please cite OMB Control No. 9000–0057, Evaluation of Export Offers, in all correspondence.

Dated: April 12, 1999.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

[FR Doc. 99–9403 Filed 4–14–99; 8:45 am]

BILLING CODE 6820–34–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0071]

Submission for OMB Review; Comment Request Entitled Price Redetermination

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for an extension to an existing OMB clearance (9000–0071).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Price Redetermination. A request for public comments was published at 64 FR 6056, February 8, 1999. No comments were received.

DATES: Comments may be submitted on or before May 17, 1999.

ADDRESSES: Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, should be submitted to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (MVRS), 1800 F Street, NW, Room 4035, Washington, DC 20405.

Please cite OMB Control No. 9000–0071, Price Redetermination, in all correspondence.

FOR FURTHER INFORMATION CONTACT: Ralph DeStefano, Federal Acquisition Policy Division, GSA, (202) 501–1758.

SUPPLEMENTARY INFORMATION:

A. Purpose

Fixed-price contracts with prospective price redetermination provide for firm fixed prices for an initial period of the contract with prospective redetermination at stated times during performance. Fixed price contracts with retroactive price redetermination provide for a fixed ceiling price and retroactive price redetermination within the ceiling after completion of the contract. In order for the amounts of price adjustments to be determined, the firms performing under these contracts must provide information to the Government regarding their expenditures and anticipated costs. The information is used to establish fair price adjustments to Federal contracts.

B. Annual Reporting Burden

Public reporting burden for this collection of information is estimated to average *1* hour per completion, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The annual reporting burden is estimated as follows: Respondents, *3,500*; responses per respondent, *2*; total annual responses, *7,000*; preparation hours per response, *1*; and total response burden hours, *7,000*.

Obtaining Copies of Proposals

Requester may obtain a copy of the justification from the General Services Administration, FAR Secretariat (MVRS), Room 4035, 1800 F Street, NW, Washington, DC 20405, telephone (202) 208–7312. Please cite OMB Control No. 9000–0071, Price Redetermination, in all correspondence.

Dated: April 12, 1999.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

[FR Doc. 99–9404 Filed 4–14–99; 8:45 am]

BILLING CODE 6820–34–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0061]

Submission for OMB Review; Comment Request Entitled Transportation Requirements

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement

concerning Transportation Requirements. A request for public comments was published at 64 FR 6054, February 8, 1999. No comments were received.

DATES: Comments may be submitted on or before May 17, 1999.

ADDRESSES: Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, should be submitted to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503 and a copy to the General Services Administration, FAR Secretariat (MVRS), 1800 F Street, NW, Room 4035, Washington, DC 20405. Please cite OMB Control No. 9000–0061, Transportation Requirements, in all correspondence.

FOR FURTHER INFORMATION CONTACT: Linda Klein, Federal Acquisition Policy Division, GSA (202) 501–3775.

SUPPLEMENTARY INFORMATION:

A. Purpose

FAR Part 47 and related clauses contain policies and procedures for applying transportation and traffic management considerations in the acquisition of supplies and acquiring transportation or transportation-related services. Generally, contracts involving transportation require information regarding the nature of the supplies, method of shipment, place and time of shipment, applicable charges, marking of shipments, shipping documents and other related items. This information is required to ensure proper and timely shipment of Government supplies.

B. Annual Reporting Burden

Public reporting burden for this collection of information is estimated to average *.23* hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The annual reporting burden is estimated as follows: Respondents, *65,000*; responses per respondent, *4.36*; total annual responses, *283,400*; preparation hours per response, *.23*; and total response burden hours, *65,182*.

Obtaining copies of proposals

Requester may obtain a copy of the justification from the General Services Administration, FAR Secretariat (MVRS), Room 4035, 1800 F Street, NW, Washington, DC 20405, telephone (202) 208–7312. Please cite OMB Control No. 9000–0061, Transportation Requirements, in all correspondence.

Dated: April 12, 1999.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

[FR Doc. 99–9405 Filed 4–14–99; 8:45 am]

BILLING CODE 6820–34–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0068]

Submission for OMB Review; Comment Request Entitled Economic Price Adjustment

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Economic Price Adjustment. A request for public comments was published at 64 FR 6055, February 8, 1999. No comments were received.

DATES: Comments may be submitted on or before May 17, 1999.

ADDRESSES: Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, should be submitted to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (MVRS), 1800 F Street, NW, Room 4035, Washington, DC 20405.

Please cite OMB Control No. 9000–0068, Economic Price Adjustment, in all correspondence.

FOR FURTHER INFORMATION CONTACT: Ralph DeStefano, Federal Acquisition Policy Division, GSA (202) 501–1758.

SUPPLEMENTARY INFORMATION:

A. Purpose

A fixed-price contract with economic price adjustment provides for upward and downward revision of the stated contract price upon occurrence of specified contingencies. In order for the contracting officer to be aware of price changes, the firm must provide pertinent information to the Government. The information is used to determine the proper amount of price adjustments required under the contract.

B. Annual Reporting Burden

Public reporting burden for this collection of information is estimated to average *15* minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The annual reporting burden is estimated as follows: Respondents, *5,346* responses per respondent, *1*; total annual responses, *5,346* preparation hours per response, *.25*; and total response burden hours, *1,337*.

Obtaining Copies of Proposals

Requester may obtain a copy of the justification from the General Services Administration, FAR Secretariat (MVRS), Room 4035, 1800 F Street, NW, Washington, DC 20405, telephone (202) 208–7312. Please cite OMB Control No. 9000–0068, Economic Price Adjustment, in all correspondence.

Dated: April 12, 1999.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

[FR Doc. 99–9406 Filed 4–14–99; 8:45 am]

BILLING CODE 6820–34–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Availability of Invention for Licensing; Government-Owned Invention

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The invention listed below is assigned to the United States Government as represented by the Secretary of the Navy and is available for licensing by the Department of the Navy.

U.S. Patent Application Serial No. 08/002,031 entitled "Method and Apparatus for Modeling Cosmic Ray Effects on Microelectronics" Navy Case No. 78,824.

Requests for copies of the patent application cited should be directed to the Naval Research Laboratory, Code 3008.2, 4555 Overlook Avenue, S.W., Washington, DC 20375–5320, and must include the Navy Case number.

FOR FURTHER INFORMATION CONTACT: Catherine M. Cotell, Ph.D., Head,

Technology Transfer Office, NRL Code 1004, 4555 Overlook Avenue, S.W., Washington, D.C. 20375–5320, telephone (202) 767–7230.

(**Authority:** 35 U.S.C. 207, 37 CFR Part 404).

Dated: April 7, 1999.

Pamela A. Holden,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 99–9424 Filed 4–14–99; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Availability of Government-Owned Invention for Licensing

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The following invention is assigned to the United States Government as represented by the Secretary of the Navy and is available for licensing by the Department of the Navy. U.S. Patent Number 5,858,801 entitled, "Patterning Antibodies on A Surface"

ADDRESSES: Requests for copies of the patent cited should be directed to Mr. Dick Bloomquist, Director Technology Transfer, Naval Surface Warfare Center Carderock Division, Code 0117, 9500 MacArthur Blvd., West Bethesda, MD 20817–5700.

FOR FURTHER INFORMATION CONTACT: Mr. Dick Bloomquist, Director Technology Transfer, Naval Surface Warfare Center Carderock Division, Code 0117, 9500 MacArthur Blvd., West Bethesda, MD 20817–5700, telephone (301) 227–4299.

Dated: April 7, 1999.

Pamela A. Holden,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 99–9425 Filed 4–14–99; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Acting Leader, Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before June 14, 1999.

ADDRESSES: Written comments and requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 400 Maryland Avenue, S.W., Room 5624, Regional Office Building 3, Washington, D.C. 20202–4651, or should be electronically mailed to the internet address *Pat_—Sherrill@ed.gov*, or should be faxed to 202–708–9346.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Leader, Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

The Department of Education is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: April 9, 1999.

William E. Burrow,

Acting Leader, Information Management Group, Office of the Chief Information Officer.

Office of the Under Secretary

Type of Review: New.

Title: Phase 1 of the National Evaluation of Talent Search and Educational Opportunity Centers.

Frequency: One time.

Affected Public: Not-for-profit institutions.

Reporting and Recordkeeping Hour Burden:

Responses: 445.

Burden Hours: 301.

Abstract: The purpose of this evaluation is to provide updated information on the operation and implementation of Talent Search and Educational Opportunity Centers and to examine the feasibility of conducting a study of Talent Search Outcomes and impact on students. The Talent Search Program has the purpose of increasing the number of youth from disadvantaged backgrounds who graduate from high school and enroll in postsecondary institutions. Educational Opportunity Centers have goals and services similar to Talent Search but with a focus on serving an adult population that has left school prior to completion. Clearance is requested for two data collection efforts: (1) a census-survey of all Talent Search Coordinators/Directors, and (2) a census-survey of all EOC Coordinators/Directors.

Office of Student Financial Assistance Programs

Type of Review: Revision.

Title: Student Aid Report (SAR).

Frequency: Annually.

Affected Public: Individuals or households.

Reporting and Recordkeeping Burden:

Responses: 9,848,645.

Burden Hours: 3,775,753.

Abstract: The Student Aid Report (SAR) is used to notify all applicants of their eligibility to receive Federal student aid for postsecondary education. The form is submitted by the applicant to the institution of their choice.

[FR Doc. 99–9373 Filed 4–14–99; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Golden Field Office; Supplemental Announcement to the Broad Based Solicitation for Financial Assistance Applications Involving Research, Development and Demonstration for the Office of Energy; Efficiency and Renewable Energy; Energy Efficient Industrialized Housing (EEIH)

AGENCY: Golden Field Office, DOE.

ACTION: Notice of Supplemental Announcement 11 to the Broad Based Solicitation for Financial Assistance Applications DE–PS36–99GO10383.

SUMMARY: The U.S. Department of Energy (DOE), pursuant to the DOE Financial Assistance Rules, 10 CFR 600.8, is announcing its intention to solicit applications for Energy Efficient Industrialized Housing. The financial assistance award issued under this Supplemental Announcement will be a cooperative agreement.

DATES: The solicitation will be issued on or about April 15, 1999.

ADDRESSES: Copies of the Solicitation once issued, can be obtained from the Golden Field Office Home page at http://www.eren.doe.gov/golden/solicitations.html.

SUPPLEMENTARY INFORMATION: The Building Technology Program of the Department of Energy (DOE) Office of Energy Efficiency and Renewable Energy (EERE), pursuant to the DOE Financial Assistance Rules, 10 CFR 600.8, is announcing its intention to solicit Financial Assistance Applications seeking DOE cost sharing of projects that will accelerate the nation wide adoption of Energy Efficient Industrialized Housing (EEIH) technologies, materials and methods through direct interaction with the building industry. This solicitation is an integral component of the Administration's Climate Change Action Plan to reduce energy use in single and multifamily residential housing, and to lower greenhouse gas emissions.

Availability of the Solicitation: For information about guidelines and requirements for submitting Applications, see EERE's Broad Based Solicitation for Submission of Financial Assistance Applications Involving Research, Development and Demonstration, DE–PS36–99GO10383, found on the Golden Field Office Home Page at http://www.eren.doe.gov/golden/solicitations.html. It is anticipated that Supplemental Announcement—11, "Energy Efficient Industrialized Housing," will be available for downloading on or after April 15, 1999 from this same Home Page address, with responses due May 28, 1999.

The objective of this solicitation is to accelerate nationwide adoption of advanced housing principles by the building industry through engineering development, monitoring and evaluation, testing, education, and innovative outreach activities targeting large and small builders, building components and product manufacturers, developers, and code bodies. Proposals are sought to carry out engineering development, testing, performance monitoring, or other innovative activities that, taken together, will serve to accelerate the adoption of Energy Efficient Industrialized Housing (EEIH) program technologies and practices. While applicants are not restricted in the type of activities that they propose, the following examples serve to define areas that are of significant interest to the Department:

- Research, development, and testing of advanced technologies, component and systems designs, manufacturing processes, and delivery systems targeted to energy efficient industrialized housing.
- Increasing the use of EEIH technologies and practices within the *Affordable Housing* market. This includes such programs as Habitat for Humanity or similar organizations.
- Incorporating EEIH technologies and practices as a part of innovative building programs being carried out throughout the country including "green" buildings, "health" houses, DOE's "Building America" builder consortia and "Rebuild America" partnerships, and EPA's "ENERGY STAR" buildings program.
- Measuring, evaluating, and reporting on the performance of industrialized housing equipment, components, systems, and complete buildings as a means of establishing the benefits of EEIH building practices in general, as well as improving the performance of specific designs, materials, and manufacturing techniques.
- Establishing design and construction educational programs that will serve as effective EEIH technology transfer mechanisms to homebuilders and developers.
- Promoting the use of innovative building systems that optimize the functional performance of industrialized buildings and their associated HVAC, electrical, lighting, and plumbing systems.
- Evaluating advanced methods of production, process engineering, resource planning, and inventory control applicable to factory-built housing.
- Providing information, training, and technical assistance to building professionals on EEIH technologies and techniques.

The award(s) under this Supplemental Announcement will be in the form of a Cooperative Agreement, with a term of three (3) to five (5) years per award. Subject to the availability of funding, DOE anticipates selecting one or two applications for award, with total fiscal year (FY) 1999 funding not to exceed $800,000. Anticipated total funding for each subsequent year will be $1,000,000. A minimum cost share of 20% of the total project cost is required. Solicitation Number DE–PS36–99GO10383, in conjunction with this Supplemental Announcement-11, will include complete information on the program, including technical aspects, funding, application preparation instructions, application evaluation criteria, and other factors that will be considered when selecting projects for funding. Issuance of the Supplemental Announcement is expected to take place on or about April 15, 1999, with responses due on May 28, 1999. Questions, following issuance of the solicitation, should be submitted in writing to: John R. Golovach, DOE Golden Field Office, 1617 Cole Boulevard, Golden, CO 80401–3393; transmitted via facsimile to John R. Golovach at (303) 275–4788; or electronically to john__golovach@nrel.gov.

FOR FURTHER INFORMATION CONTACT: John R. Golovach, Contract Specialist by e-mail at: john__golovach@nrel.gov, or Jeffrey L. Hahn, Project Officer, at: jeff__hahn@nrel.gov.

Issued in Golden, Colorado, on April 6, 1999.

Beth H. Peterman,

Acting Director, Office of Acquisition and Financial Assistance.

[FR Doc. 99–9435 Filed 4–14–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Golden Field Office; Supplemental Announcement to the Broad Based Solicitation for Financial Assistance Applications Involving Research, Development and Demonstration for the Office of Energy Efficiency and Renewable Energy; Photovoltaics for Schools

AGENCY: Golden Field Office, U.S. Department of Energy.

ACTION: Supplemental Announcement–12 to the Broad Based Solicitation for

Financial Assistance Applications, DE–PS36–99GO10383.

SUMMARY: The U.S. Department of Energy (DOE), pursuant to the DOE Financial Assistance Rules, 10 CFR 600.8, is announcing its intention to solicit applications for Photovoltaics for Schools. The financial assistance awards issued under this Supplemental Announcement will be cooperative agreements.

DATES: The Supplemental Announcement will be issued on or about April 9, 1999.

ADDRESSES: Copies of the Supplemental Announcement once issued, can be obtained from the Golden Field Office Home page at http://www.eren.doe.gov/golden/solicitations.html.

SUPPLEMENTARY INFORMATION: DOE is soliciting applications to develop and demonstrate a model for integrating photovoltaics (PV) into middle and high school buildings and education programs. The model is intended to assist school districts throughout the country to reduce their utility costs through the installation of photovoltaic systems and to broaden their educational programs to include renewable energy. The PV installations are intended to produce electricity for the reduction of utility costs and to serve as teaching aids for the introduction of renewable energy into each school's science program. It is within DOE's mission to assist the general public and specific segments, such as school districts and related communities, to improve both educational programs and facilities through the use of renewable energy technologies such as photovoltaics. The objective of this Supplemental Announcement is to select Applicants who can develop an innovative model for integrating photovoltaics into school buildings, educational programs, and community awareness. Successful applications should demonstrate the viability of integrating photovoltaics into new or existing middle and high school buildings, the feasibility of reducing energy costs, the potential for increased student, teacher, and community awareness of photovoltaic energy systems, and the likelihood of applying the model in other school districts across the nation. Applicants are encouraged, but not required, to form business relationships or collaborative arrangements with schools, School District(s), the U.S. photovoltaic power industry, National Laboratories, the utility industry, academic institutions, and community groups to respond to this Supplemental Announcement for the advancement of photovoltaic technology. The ability of the Participants to develop a model and demonstrate photovoltaic systems in schools along with the capability to develop model educational and informational materials related to the demonstration activities will be factors in selecting projects for award under this Supplemental Announcement. Awards under this Supplemental Announcement will be Cooperative Agreements with a term of up to one year. Subject to funding availability, the total DOE funding available under this Supplemental Announcement will be approximately $100,000. DOE anticipates selecting one to two applications for award under this Supplemental Announcement. A minimum cost share of 50% of total project costs is required in order to be considered for award under this Supplemental Announcement. Solicitation Number DE–PS36–99GO10383, in conjunction with this Supplemental Announcement–12, will include complete information on the program including technical aspects, funding, application preparation instructions, application evaluation criteria, and other factors that will be considered when selecting projects for funding. Responses to the Supplemental Announcement are due on June 10, 1999. Questions should be submitted in writing to: John P. Motz, DOE Golden Field Office, 1617 Cole Boulevard, Golden, CO 80401–3393; transmitted via facsimile to John P. Motz at (303) 275–4788; or electronically to john__motz@nrel.gov.

FOR FURTHER INFORMATION CONTACT: John Motz, Contract Specialist, at 303–275–4737, e-mail john__motz@nrel.gov, or Robert Martin, Project Officer, at 303–275–4763, e-mail robert__martin@nrel.gov.

Issued in Golden, Colorado, on April 7, 1999.

Beth H. Peterman,

Acting Procurement Director, GO.

[FR Doc. 99–9434 Filed 4–14–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Nevada Test Site

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Nevada Test Site. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Wednesday, May 5, 1999: 5:30 p.m.–9:00 p.m.

ADDRESSES: U.S. Department of Energy, Nevada Support Facility, Great Basin Room, 232 Energy Way, North Las Vegas, Nevada.

FOR FURTHER INFORMATION CONTACT: Kevin Rohrer, U.S. Department of Energy, Office of Environmental Management, P.O. Box 98518, Las Vegas, Nevada 89193–8513, phone: 702–295–0197.

SUPPLEMENTARY INFORMATION: *Purpose of the Board:* The purpose of the Advisory Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda:

5:30	p.m.	Call to Order
5:40	p.m.	Presentations
7:00	p.m.	Public Comment/Questions
7:30	p.m.	Break
7:45	p.m.	Review Action Items
8:00	p.m.	Approve Meeting Minutes
8:10	p.m.	Committee Reports
8:45	p.m.	Public Comment
9:00	p.m.	Adjourn

Copies of the final agenda will be available at the meeting.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Kevin Rohrer, at the telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9:00 a.m. and 4 p.m., Monday–Friday, except Federal holidays. Minutes will also be available by writing to Kevin Rohrer at the address listed above.

Issued at Washington, DC on April 8, 1999.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 99–9344 Filed 4–14–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. NJ97–3–006 and EL99–49–000]

United States Department of Energy, Bonneville Power Administration; Notice of Filing

April 9, 1999.

Take notice that on March 30, 1999, with the United States Department of Energy's request for withdrawal of Bonneville's Petition for Expedited Declaratory Order Approving an Amendment to Bonneville's Open Access Transmission Tariff and for Exemption in Lieu of Filing Fee, filed with the Commission on March 23, 1999, noticed separately, Bonneville also filed a Petition for Expedited Declaratory Order that Proposed Amended Open Access Transmission Tariff Maintains Reciprocity Finding and For Exemption in Lieu of Filing Fee.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before April 19, 1999. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–9365 Filed 4–14–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–292–000]

Columbia Gas Transmission Corporation; Notice of Request Under Blanket Authorization

April 9, 1999.

Take notice that on April 7, 1999, Columbia Gas Transmission (Columbia), 12801 Fair Lakes Parkway, Fairfax, Virginia 22030–0146, filed a request with the Commission in Docket No. CP99–292–000, pursuant to Sections 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to construct and operate the facilities necessary to establish two additional points of delivery to an existing customer for firm transportation service authorized in blanket certificate issued in Docket No. CP83–76–000, all as more fully set forth in the request on file with the Commission and open to public inspection. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Columbia proposes to construct and operate the facilities necessary to establish two points of delivery to Mountaineer Gas Company (MGC), in Upshur County, West Virginia which would involve construction of interconnecting facilities located on Columbia's existing right-of way. The estimated cost to construct the new points of delivery would be $300 and would be treated as an O&M Expense.

Any person or the Commission's staff may, within 45 days after the Commission has issued this notice, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the NGA (18 CFR 157.205) a protest to the request. If no protest is filed within the allowed time, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the NGA.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–9366 Filed 4–14–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP93–3–003]

Northern Border Pipeline Company; Notice of Petition to Amend

April 9, 1999.

Take notice that on April 5, 1999, Northern Border Pipeline Company (Northern Border), 1111 South 103rd Street, Omaha, Nebraska 68124–1000, filed a petition to amend the authorization issued on October 30, 1992, as previously amended by the order issued on February 25, 1994, requesting authority to add existing receipt and delivery points on the Northern Border System as secondary receipt and delivery points and to allow the backhaul flow of gas under the U.S. Shippers Service Agreement, as amended, between Northern Border and Pan-Alberta Gas (U.S.) Inc. (PAG–US), all as more fully set forth in the petition on file with the Commission and open to public inspection. This filing may be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Northern Border states that the purpose of its proposal is that it provides PAG–US greater flexibility when conducting business with markets and suppliers.

Any person desiring to be heard or to make any protest with reference to said application should on or before April 30, 1999, file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. The Commission's rules require that protestors provide copies of their protests to the party or parties directly involved. Any person wishing to become a party in any proceeding herein must file a motion to intervene in accordance with the Commission's rules.

A person obtaining intervenor status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents issued by the Commission, filed by the applicant, or filed by other intervenors. An intervenor can file for rehearing of any Commission

order and can petition for a court review of any such order. However, an intervenor must submit copies of comment or any other filing it makes with the Commission to every other intervenor in the proceeding, as well as filing an original and 14 copies with the Commission.

A person does not have to intervene, however, in order to have comments considered. A person, instead, may submit two copies of such comments to the Secretary of the Commission. Commenters will be placed on the Commission's environmental mailing list, will receive copies of environmental documents, and will be able to participate in meetings associated with the Commission's environmental review process. Commenters will not be required to serve copies of filed documents on all other parties. However, Commenters will not receive copies of all documents filed by other parties or issued by the Commission and will not have the right to seek rehearing or appeal the Commission's final order to a Federal court. The Commission will consider all comments and concerns equally, whether filed by Commenters or those requesting intervenor status.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Northern Border to appear or be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–9360 Filed 4–14–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–281–000]

Transwestern Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

April 9, 1999.

Take notice that on April 7, 1999, Transwestern Pipeline Company (Transwestern), tendered for filing to become part of Transwestern's FERC Gas Tariff, Second Revised Volume No. 1 the following tariff sheets, to become effective April 22, 1999:

Original Sheet No. 5B.05
Original Sheet No. 157

Transwestern states that the purpose of this filing is to submit a form of FTS–1 Service Agreement that containing a negotiated rate and material deviations from Transwestern's Rate Schedule FTS–1 form of service agreement. Tariff Sheets Nos. 5B.05 and 157 reference the agreement as a negotiated rate agreement and a non-conforming agreement. Included with this filing is a copy of the form of service agreement.

Transwestern states that copies of the filing were served upon Transwestern's customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with sections 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–9364 Filed 4–14–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC99–61–000, et al.]

GEN-SYS Energy, et al. Electric Rate and Corporate Regulation Filings

April 7, 1999.

Take notice that the following filings have been made with the Commission:

1. GEN-SYS Energy

[Docket No. EC99–61–000]

Take notice that on April 2, 1999, GEN-SYS Energy tendered for filing an application under Section 203 of the Federal Power Act for approval for a change of control of GEN-SYS Energy and to transfer a jurisdictional facility. GEN-SYS Energy has served copies of this filing on the United States Department of Agriculture Rural Utilities Service and the Mid-Continent Area Power Pool.

Comment date: May 3, 1999, in accordance with Standard Paragraph E at the end of this notice.

2. Consolidated Edison Company of New York, Inc. and Keyspan-Ravenswood, Inc.

[Docket Nos. EC99–60–000 and ER99–2376–000]

Take notice that on April 1, 1999, Consolidated Edison Company of New York, Inc. and Keyspan-Ravenswood, Inc. (collectively, the Applicants) tendered for filing an application under Section 203 of the Federal Power Act for approval to transfer certain jurisdictional facilities associated with the sale of the Ravenswood Generation Station. The Applicants also tendered for filing pursuant to Section 205 of the Federal Power Act certain agreements providing for services related to the transfer of facilities.

The Applicants have served a copy of this filing on the New York Public Service Commission.

Comment date: May 3, 1999, in accordance with Standard Paragraph E at the end of this notice.

3. Jersey Central Power & Light Company; Metropolitan Edison Company; Pennsylvania Electric Company; Sithe Energies, Inc.

[Docket Nos. EC99–62–000 and ER99–2388–000]

Take notice that on April 2, 1999, Jersey Central Power & Light Company, Metropolitan Edison Company, Pennsylvania Electric Company (doing business as and collectively referred to as GPU Energy) and Sithe Energies, Inc. (Sithe) submitted for filing certain

applications and rate schedules associated with the sale of substantially all of GPU Energy's non-nuclear generating facilities to certain special purpose wholly-owned indirect subsidiaries of Sithe.

Comment date: May 3, 1999, in accordance with Standard Paragraph E at the end of this notice.

4. Sumas Energy 2, Inc.

[Docket No. EG99–107–000]

Take notice that on April 2, 1999, Sumas Energy 2, Inc. (SE2), a Washington corporation with its principal place of business at 335 Parkplace, Ste. 110, Kirkland, Washington 98033, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

SE2 proposes to construct, own and operate a 720 megawatt nominal electric generation station to be located in Sumas, Washington. The station is scheduled to be in service on or before December, 2001. All capacity and energy from the plant will be sold exclusively at wholesale.

Comment date: April 28, 1999, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

5. Ennis Tractebel Power Company, Inc.

[Docket No. EG99–108–000]

Take notice that on April 2, 1999, Ennis Tractebel Power Company, Inc. (Ennis Tractebel), 1177 West Loop South, Houston, Texas, 77027, filed with the Federal Energy Regulatory Commission an Application for Determination of Exempt Wholesale Generator Status pursuant to Part 365 of the Commission's regulations.

Ennis Tractebel is a Delaware corporation and a wholly owned subsidiary of Tractebel Power, Inc. Ennis Tractebel plans to construct up to a 350 megawatt, natural gas-fired, combined cycle generating facility within the region governed by the Electric Reliability Council of Texas (ERCOT). Electricity generated by the facility will be sold at wholesale to one or more power marketers, utilities, cooperatives, or other wholesalers.

Comment date: April 28, 1999, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comment to those that concern the adequacy or accuracy of the application.

6. Central and South West Services, Inc.

[Docket Nos. EL98–31–000 and EL98–33–000 (not consolidated)]

Take notice that on April 1, 1999, Central and South West Services, Inc. (CSWS) tendered for filing revised tariff and rate schedule sheets for West Texas Utilities Company (WTU).

Comment date: May 6, 1999, in accordance with Standard Paragraph E at the end of this notice.

7. Black Hills Corporation

[Docket No. EL99–53–000]

Take notice that on April 1, 1999, Black Hills Corporation submitted an application requesting the Federal Energy Regulatory Commission to waive the OASIS requirements of Order No. 889.

Comment date: May 3, 1999, in accordance with Standard Paragraph E at the end of this notice.

8. San Francisco Bay Area Rapid Transit District, an Agency of the State of California, Complainant, v. Pacific Gas and Electric Company, a Corporation, Respondent

[Docket No. EL99–54–000]

Take notice that on April 2, 1999, San Francisco Bay Area Rapid Transit District filed a Complaint and Request for Relief.

Comment date: May 3, 1999, in accordance with Standard Paragraph E at the end of this notice. Answers to the Complaint shall also be filed on or before May 3, 1999.

9. Navajo Tribal Utility Authority

[Docket No. EL99–55–000]

Take notice that on April 2, 1999, the Navajo Tribal Utility Authority filed a Petition for Declaratory Order seeking resolution of a dispute as to certain terms involving NTUA's right to request network service under the Arizona Public Service Company's Open Access Transmission Tariff for delivery points physically connected to APS but dynamically scheduled by remote terminal units.

Comment date: April 21, 1999, in accordance with Standard Paragraph E at the end of this notice.

10. Entergy Services, Inc.

[Docket No. EL99–57–000]

Take notice that on April 5, 1999, Entergy Services, Inc. (Entergy) tendered for filing a Petition for Declaratory Order Regarding Compliance of Transco Proposal With Applicable ISO Principles. Entergy's petition asks the Commission to issue an order declaring that the plan to create a "Transco," an independent, regional transmission company that will operate the transmission system of Entergy and other transmission-owning companies is consistent with the relevant ISO principles established by the Commission in Order No. 888, and its progeny, especially those involving independent, governance, and conflicts of interest. Entergy requests that the Commission issue the requested declaratory relief before the end of July 1999.

Comment date: May 5, 1999, in accordance with Standard Paragraph E at the end of this notice.

11. Cambridge Electric Light Company

[Docket Nos. ER94–1409–004 and EL94–88–004]

Take notice that, on April 1, 1999, Cambridge Electric Light Company (Cambridge) filed a Revised Compliance Filing Pursuant to Order Directing Revisions and Conditionally Accepting Compliance Filing, Issued March 2, 1999.

Comment date: May 3, 1999, in accordance with Standard Paragraph E at the end of this notice.

12. Northern Indiana Public Service and Wabash Valley Power Association v. Northern Indiana Public Service Company

[Docket Nos. ER96–399–000 and EL96–35–000]

Take notice that on September 14, 1998, Wabash Valley Power Association filed a refund report.

Comment date: May 7, 1999, in accordance with Standard Paragraph E at the end of this notice.

13. Granger Energy, L.L.C. Williams Energy Marketing & Trading Co.

[Docket Nos. ER97–4240–003 and ER95–305–019]

Take notice that on April 2, 1999 the above-mentioned power marketers filed quarterly reports with the Commission in the above-mentioned proceedings for information only. These filings are available for public inspection and copying in the Public Reference Room or on the internet at www.ferc.fed.us/online/rims.htm for viewing and downloading (call 202–208–2222 for assistance).

14. FirstEnergy Operating Companies

[Docket No. ER99–2042–000]

Take notice that on April 1, 1999, the FirstEnergy Operating Companies (The Cleveland Electric Illuminating Company, Ohio Edison Company, Pennsylvania Power Company, and The Toledo Edison Company) tendered for filing a response to the Commission's December 16, 1998 Order on Petition for

Declaratory Order in Docket No. EL98–52–000.

Comment date: April 22, 1999, in accordance with Standard Paragraph E at the end of this notice.

15. PP&L, Inc.

[Docket No. ER99–2360–000]

Take notice that on April 1, 1999, PP&L, Inc. (PP&L), tendered for filing a Service Agreement dated March 26, 1999 with PECO Energy Company (PECO), under PP&L's Market-Based Rate and Resale of Transmission Rights Tariff, FERC Electric Tariff, Revised Volume No. 5. The Service Agreement adds PECO as an eligible customer under the Tariff.

PP&L requests an effective date of April 1, 1999, for the Service Agreement.

PP&L states that copies of this filing have been supplied to PECO and to the Pennsylvania Public Utility Commission.

Comment date: April 21, 1999, in accordance with Standard Paragraph E at the end of this notice.

16. Avista Energy, Inc.

[Docket No. ER99–2361–000]

Take notice that on April 1, 1999, Avista Energy, Inc. (Avista Energy), tendered for filing an amendment to Supplement No. 1 of Avista Energy's Rate Schedule FERC No. 1. Avista Energy states that the purpose of the filing is to update Avista Energy's Code of Conduct to conform with the standards for affiliate transactions articulated in recent Commission decisions.

Comment date: April 21, 1999, in accordance with Standard Paragraph E at the end of this notice.

17. South Carolina Electric & Gas Company

[Docket No. ER99–2362–000]

Take notice that on April 1, 1999, South Carolina Electric & Gas Company (SCE&G), tendered for filing a service agreement establishing Wabash Valley Power Association, Inc., as a customer under the terms of SCE&G's Negotiated Market Sales Tariff.

SCE&G requests an effective date of one day subsequent to the date of filing. Accordingly, SCE&G requests waiver of the Commission's notice requirements.

Copies of this filing were served upon Wabash Valley Power Association, Inc., and the South Carolina Public Service Commission.

Comment date: April 21, 1999, in accordance with Standard Paragraph E at the end of this notice.

18. Boston Edison Company

[Docket No. ER99–2363–000]

Take notice that on April 1, 1999, Boston Edison Company (Boston Edison), tendered for filing two service agreements between Boston Edison as the transmission provider and DukeSolutions, Inc. (Duke), as the transmission customer. One service agreement provides for non-firm point-to-point transmission service; the other provides for firm point-to-point transmission service. Both services are to be provided under Boston Edison's Open-Access Transmission Tariff, FERC Volume No. 8.

Boston Edison requests an effective date of May 31, 1999.

Boston Edison states that copies of the filing have been served upon the affected customer and the Massachusetts Department of Telecommunications and Energy.

Comment date: April 21, 1999, in accordance with Standard Paragraph E at the end of this notice.

19. Genstar Energy, L.L.C.

[Docket No. ER99–2364–000]

Take notice that on April 1, 1999, Genstar Energy, L.L.C. (Genstar), petitioned the Commission for acceptance of Genstar Rate Schedule FERC No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission regulations.

Genstar intends to engage in wholesale electric power and energy purchases and sales as a marketer. Genstar is not in the business of generating or transmitting electric power.

Comment date: April 21, 1999, in accordance with Standard Paragraph E at the end of this notice.

20. PP&L, Inc.

[Docket No. ER99–2365–000]

Take notice that on April 1, 1999, PP&L, Inc. (PP&L), tendered for filing a Service Agreement for Sale of Capacity Credits, dated February 23, 1999, with West Penn Power d/b/a Allegheny Energy (Allegheny) under PP&L's Market-Based Rate and Resale of Transmission Rights Tariff, FERC Electric Tariff, Revised Volume No. 5. The Service Agreement adds Allegheny as an eligible customer under the Tariff.

PP&L requests an effective date of April 1, 1999, for the Service Agreement.

PP&L states that copies of this filing have been supplied to Allegheny and to the Pennsylvania Public Utility Commission.

Comment date: April 21, 1999, in accordance with Standard Paragraph E at the end of this notice.

21. Indianapolis Power & Light Company

[Docket No. ER99–2366–000]

Take notice that on April 1, 1999, Indianapolis Power & Light Company (IPL), tendered for filing an amendment to the interconnection agreement between IPL and Hoosier Energy Rural Electric Cooperative, Inc.

Copies of this filing were sent to the Indiana Utility Commission and Hoosier Energy.

Comment date: April 21, 1999, in accordance with Standard Paragraph E at the end of this notice.

22. Delmarva Light & Power Company

[Docket No. ER99–2367–000]

Take notice that on April 1, 1999, Delmarva Power & Light Company (Delmarva), tendered for filing a Supplemental Agreement to the Interconnection Agreement between Delmarva and the City of Dover, Delaware (Dover). The Supplemental Agreement makes minimal changes to the Interconnection Agreement which are necessary to implement changes required by the PJM Reliability Assurance Agreement Among Load Serving Entities in the PJM Control Area (RAA).

Delmarva asks that this filing become effective on June 1, 1999, sixty-one days after filing, when the RAA will take effect.

Comment date: April 21, 1999, in accordance with Standard Paragraph E at the end of this notice.

23. Atlantic City Electric Company

[Docket No. ER99–2368–000]

Take notice that on April 1, 1999, Atlantic City Electric Company (ACE), tendered for filing a Supplemental Agreement to the Interconnection Agreement between ACE and Vineland. Subject to the adoption of an approving resolution by the City Council of Vineland, Vineland's representatives have agreed to and support the terms of the Supplemental Agreement. The Supplemental Agreement makes minimal changes to the Interconnection Agreement which are necessary to implement changes required by the PJM Reliability Assurance Agreement Among Load Serving Entities in the PJM Control Area (RAA).

ACE asks that this filing become effective on June 1, 1999, sixty-one days after filing, when the RAA will take effect.

Comment date: April 21, 1999, in accordance with Standard Paragraph E at the end of this notice.

24. Alliance for Cooperative Energy Services Power Marketing LLC

[Docket No. ER99–2369–000]

Take notice that on April 1, 1999, Alliance for Cooperative Energy Services Power Marketing LLC (ACES Power Marketing) petitioned the Commission for acceptance of ACES Power Marketing Rate Schedule FERC No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission Regulations.

ACES Power Marketing intends to engage in wholesale electric power and energy purchases and sales as a marketer. ACES Power Marketing is not in the business of generating or transmitting electric power. ACES Power Marketing is wholly owned by Buckeye Power, Inc., East Kentucky Power Cooperative, Inc., Southern Illinois Power Cooperative, and Wabash Valley Power Association, Inc., which are generation and transmission cooperatives that provide the electric requirements of their member-owner distribution cooperatives.

Comment date: April 21, 1999, in accordance with Standard Paragraph E at the end of this notice.

25. MidAmerican Energy Company

[Docket No. ER99–2371–000]

Take notice that on April 1, 1999, MidAmerican Energy Company (MidAmerican), 666 Grand Avenue, Des Moines, Iowa 50309, tendered for filing a Firm Transmission Service Agreement with Northwest Iowa Power Cooperative (NIPCO) dated March 12, 1999, and entered into pursuant to MidAmerican's Open Access Transmission Tariff.

MidAmerican requests an effective date of April 1, 1999, for the Agreement and accordingly, seeks a waiver of the Commission's notice requirement.

MidAmerican has served a copy of the filing on NIPCO, the Iowa Utilities Board, the Illinois Commerce Commission and the South Dakota Public Utilities Commission.

Comment date: April 21, 1999, in accordance with Standard Paragraph E at the end of this notice.

26. PJM Interconnection, L.L.C.

[Docket No. ER99–2373–000]

Take notice that on April 1, 1999, the PJM Interconnection, L.L.C. (PJM), tendered for filing on behalf of the Members of the LLC, a membership application of Cinergy Capital Trading, Inc.

PJM requests an effective date on the day after this Notice of Filing is received by FERC.

Comment date: April 21, 1999, in accordance with Standard Paragraph E at the end of this notice.

27. Kansas Gas and Electric Company

[Docket No. ER99–2374–000]

Take notice that on April 1, 1999, Kansas Gas and Electric Company (KGE), tendered for filing a change in its Federal Power Commission Electric Service Tariff No. 93. KGE states that the change is to reflect the amount of transmission capacity requirements required by Western Resources, Inc., under Service Schedule M to FPC Rate Schedule No. 93, for the period June 1, 1999 through May 31, 2000.

Copies of this filing were served upon the Kansas Corporation Commission.

Comment date: April 21, 1999, in accordance with Standard Paragraph E at the end of this notice.

28. Cinergy Services, Inc.

[Docket No. ER99–2375–000]

Take notice that on April 1, 1999, Cinergy Services, Inc. (Cinergy Services), on behalf of its Operating Companies (The Cincinnati Gas & Electric Company and PSI Energy, Inc.) tendered for filing unexecuted Notices of Cancellations, dated March 15, 1999, with Narrative Statements to terminate sales of electric energy by the Cinergy Operating Companies under individual negotiated agreements.

Cinergy Services requests an effective date of May 1, 1999. Said date coincides with the effective date of unexecuted Service Agreements under the Cinergy Operating Companies FERC Electric Power Sales Tariffs (Cost and Market) for several of these counter parties.

Copies of the filing were served upon all parties listed in Attachment B of the filing and to the parties to the respective service lists of each individual agreement.

Comment date: April 21, 1999, in accordance with Standard Paragraph E at the end of this notice.

29. New York State Electric & Gas Corporation

[Docket No. ER99–2377–000]

Take notice that on April 2, 1999, New York State Electric & Gas Corporation (NYSEG), tendered for filing Service Agreements between NYSEG and Aquila Energy and Morgan Stanley Capital Group, Inc., (Customer). These Service Agreements specify that the Customer has agreed to the rates, terms and conditions of the NYSEG open access transmission tariff filed July 9, 1997 and effective on November 27, 1997, in Docket No. ER97–2353–000.

NYSEG requests waiver of the Commission's sixty-day notice requirements and an effective date of April 5, 1999, for the Service Agreements.

NYSEG has served copies of the filing on The New York State Public Service Commission and on the Customer.

Comment date: April 22, 1999, in accordance with Standard Paragraph E at the end of this notice.

30. Louisville Gas And Electric Co./ Kentucky Utilities Company

[Docket No. ER99–2378–000]

Take notice that on April 2, 1999, Louisville Gas and Electric Company/ Kentucky Utilities (LG&E/KU), tendered for filing an executed Service Agreement for Firm Point-To-Point Transmission Service between LG&E/ KU and PG&E Energy Trading—Power, L.P., under LG&E/KU's Open Access Transmission Tariff.

Comment date: April 22, 1999, in accordance with Standard Paragraph E at the end of this notice.

31. Northeast Utilities Service Company

[Docket No. ER99–2379–000]

Take notice that on April 2, 1999, Northeast Utilities Service Company (NUSCO), tendered for filing a Service Agreement with Central Vermont Public Service Corporation (CVPS) under the NU System Companies' System Sale For Resale Tariff No. 7.

NUSCO states that a copy of this filing has been mailed to CVPSC.

NUSCO requests that the Service Agreement become effective on April 1, 1999.

Comment date: April 22, 1999, in accordance with Standard Paragraph E at the end of this notice.

32. PJM Interconnection, L.L.C.

[Docket No. ER99–2380–000]

Take notice that on April 2, 1999, PJM Interconnection, L.L.C. (PJM), tendered for filing a notice of cancellation for SCANA Energy Marketing, Inc., South Carolina Electric & Gas Company, New England Power Company, MidCon Power Services, MidCon Gas Services and MC2 to terminate their membership in PJM (collectively withdrawing companies).

PJM states that it served a copy of its filing on all of the members of PJM, including the withdrawing companies, and each of the state electric regulatory commissions within the PJM control area.

Comment date: April 22, 1999, in accordance with Standard Paragraph E at the end of this notice.

33. Louisville Gas And Electric Co./ Kentucky Utilities Company

[Docket No. ER99–2381–000]

Take notice that on April 2, 1999, Louisville Gas and Electric Company/. Kentucky Utilities (LG&E/KU), tendered for filing an executed Service Agreement for Firm Point-To-Point Transmission Service between LG&E/ KU and Delmarva Power & Light Company under LG&E/KU's Open Access Transmission Tariff.

Comment date: April 22, 1999, in accordance with Standard Paragraph E at the end of this notice.

34. Louisville Gas And Electric Co./ Kentucky Utilities Company

[Docket No. ER99–2382–000]

Take notice that on April 2, 1999, Louisville Gas and Electric Company/ Kentucky Utilities (LG&E/KU), tendered for filing an executed Service Agreement for Non-Firm Point-To-Point Transmission Service between LG&E/ KU and Delmarva Power & Light Company under LG&E/KU's Open Access Transmission Tariff.

Comment date: April 22, 1999, in accordance with Standard Paragraph E at the end of this notice.

35. Consolidated Edison Company Of New York, Inc.

[Docket No. ER99–2383–000]

Take notice that on April 2, 1999, Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing a service agreement to provide firm transmission service pursuant to its Open Access Transmission Tariff to Southern Company Energy Marketing, L.P. (Southern).

Con Edison states that a copy of this filing has been served by mail upon Southern.

Comment date: April 22, 1999, in accordance with Standard Paragraph E at the end of this notice.

36. NJR Energy Services Company

[Docket No. ER99–2384–000]

Take notice that on April 2, 1999, NJR Energy Services Company (NJRES), tendered for filing pursuant to Rule 207 of the Commission's Rules of Practice and Procedure, 18 CFR 385.207, an application requesting acceptance of its proposed FERC Electric Rate Schedule No. 1, authorizing market-based rates, granting waivers of certain Commission regulations and granting certain blanket approvals. Consistent with these requests, NJRES seeks authority to engage in electric power marketing and to sell power at market-based rates.

Comment date: April 22, 1999, in accordance with Standard Paragraph E at the end of this notice.

37. Central Illinois Light Company

[Docket No. ER99–2385–000]

Take notice that on April 2, 1999, Central Illinois Light Company (CILCO), 300 Liberty Street, Peoria, Illinois 61202, tendered for filing with the Commission an Index of Customers under its Market Rate Power Sales Tariff and two service agreements with two new customers, Corn Belt Energy, Inc., and DTE Energy Trading.

CILCO requested an effective date of March 26, 1999.

Copies of the filing were served on the affected customer and the Illinois Commerce Commission.

Comment date: April 22, 1999, in accordance with Standard Paragraph E at the end of this notice.

38. Central Illinois Light Company

[Docket No. ER99–2386–000]

Take notice that on April 2, 1999, Central Illinois Light Company (CILCO), 300 Liberty Street, Peoria, Illinois 61202, tendered for filing with the Commission a substitute Index of Customers under its Coordination Sales Tariff and two service agreements with two new customers, Corn Belt Energy, Inc., and DTE Energy Trading and a name change for a customer now known as Aquila Power Corporation.

CILCO requested an effective date of March 26, 1999.

Copies of the filing were served on the affected customer and the Illinois Commerce Commission.

Comment date: April 22, 1999, in accordance with Standard Paragraph E at the end of this notice.

39. KeySpan-Ravenswood, Inc.

[Docket No. ER99–2387–000]

Take notice that on April 2, 1999, KeySpan-Ravenswood, Inc. (KeySpan-Ravenswood), tendered for filing with the Federal Energy Regulatory Commission, pursuant to Rule 205, 18 CFR 385.205, and Section 35.12, 18 CFR 35.12 of the Commission's Regulations, an Application for Approval of Rate Schedules For Future Power Sales at Market-Based Rates and Waivers and Preapprovals of Certain Commission Regulations for KeySpan-Ravenswood's Initial Rate Schedules FERC Nos. 1 and 2.

The proposed Rate Schedules would authorize KeySpan-Ravenswood to engage in the wholesale sales of firm capacity and/or energy and non-firm capacity and/or energy and of ancillary services to eligible customers at market-based rates.

Comment date: April 22, 1999, in accordance with Standard Paragraph E at the end of this notice.

40. Sunflower Electric Power Corporation

[Docket No. NJ99–2–000]

Take notice that on April 2, 1999, Sunflower Electric Power Corporation (Sunflower) submitted a Petition for Declaratory Order determining that its open access transmission tariff satisfies the Commission's comparability standards and is an acceptable reciprocity tariff. Sunflower also seeks waiver of the requirements of Order No. 889, on the ground that it is a small electric utility, and waiver of the filing fee otherwise applicable to a petition for declaratory order.

Comment date: May 7, 1999, in accordance with Standard Paragraph E at the end of this notice.

41. The Montana Power Company

[Docket No. ER99–2370–000]

Take notice that on April 1, 1999, The Montana Power Company (Montana), tendered for filing with the Federal Energy Regulatory Commission pursuant to 18 CFR 35.13 an unexecuted Network Integration Transmission Service Agreements and Network Operating Agreements with Golden Sunlight Mines, Inc. (Golden Sunlight), Cenex Harvest States Cooperatives (Cenex), Illinova Energy Partners, Inc. (Illinova), and Energy West Resources, Inc. (Energy West) under Montana's FERC Electric Tariff, Fourth Revised Volume No. 5 (Open Access Transmission Tariff).

A copy of the filing was served upon Golden Sunlight, Cenex, Illinova, and Energy West.

Comment date: April 21, 1999, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public

inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–9359 Filed 4–14–99; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

April 9, 1999.

Take notice that the following two hydroelectric applications have been filed with the Commission and are available for public inspection:

(a) *Application Type:* Non-Project Use of Project Lands and Waters.

(b) *Project No.:* 1494–172 and 1494–178.

(c) *Date Filed:* December 30, 1998 and March 8, 1999, respectively.

(d) *Applicant:* Grand River Dam Authority.

(e) *Name of Project:* Pensacola.

(f) *Location:* The Pensacola Project is located on the Grand (Neosho) River in Craig, Delaware, Mayes, and Ottawa Counties, Oklahoma. This project does not utilize Federal or Tribal lands.

(g) *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

(h) *Applicant Contact:* Mary E. Von Drehle, Grand River Dam Authority, P.O. Box 409, Vinita, OK 74301, (918) 256–5545.

(i) *FERC Contact:* Any questions on this notice should be addressed to Jon Cofrancesco at Jon.Cofrancesco@ferc.fed.us or telephone 202–219–0079.

(j) *Deadline for filing comments and or motions:* May 15, 1999.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

Please include the project number (1494–172 or 1494–178) on any comments or motions filed.

(k) *Description of Project:* 1494–172 Grand River Dam Authority, licensee for the Pensacola Project, requests Commission authorization to issue a permit to Lewis Perrault, d/b/a Lewieville Development Company, to add one dock (56′ x 570′) containing 30 boat slips to an existing commercial facility, located in Grand Craft Cove.

1494–178 Grand River Dam Authority requests Commission authorization to issue a permit to Bob Oldham, d/b/a Serenity Point, to add two docks containing 3 boat slips, a gas dock and a swim dock to an existing commercial facility containing one dock with 4 boat slips. The swim dock would be designed to accommodate 10 additional boat slips in the future.

(l) *Locations of the application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 208–1371. The application may be viewed on the web at www.ferc.fed.us. Call (202) 208–2222 for assistance. A copy is also available for inspection and reproduction at the address in item h above.

(m) Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

Comments, Protests, or Motions to Intervene

Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents

Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments

Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–9361 Filed 4–14–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Scoping Meetings and Site Visit and Soliciting Scoping Comments

April 9, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* New Major License.

b. *Project No.:* P–2588–004.

c. *Date filed:* July 10, 1998.

d. *Applicant:* City of Kaukauna.

e. *Name of Project:* Little Chute Hydroelectric Project.

f. *Location:* On the Fox River in the Village of Combined Locks, Outagamie County, Wisconsin.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. §§ 791(a)–825(r).

h. *Applicant Contact:* Peter D. Prast, P.E., General Manager, Kaukauna Electric & Water Department, 777 Island Street, P.O. Box 1777, Kaukauna, Wisconsin 54130.

i. *FERC Contact:* Any questions on this notice should be addressed to Steve Kartalia, E-mail address stephen.kartalia@ferc.fed.us, or telephone (202) 219–2942.

j. *Deadline for filing scoping comments:* June 9, 1999.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Status of environmental analysis:* This application is not ready for environmental analysis at this time.

l. *Description of Project:* The project consists of the following existing facilities: (1) an integral intake powerhouse, located at the right abutment of the United States Army Corps of Engineers' Little Chute Dam, containing three units with a total installed capacity of 3,300 kW; (2) connections to three 2.4/12-kV single phase transformers and a 12-kV transmission line 1.25 miles long; and (3) other appurtenances.

m. *Locations of the application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, D.C. 20426, or by calling (202) 208–1371. The application may be viewed on the web at http://www/ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

n. Scoping Process.

The Commission intends to prepare an Environmental Assessment (EA) on the project in accordance with the National Environmental Policy Act. The EA will consider both site-specific and cumulative environmental impacts and reasonable alternatives to the proposed action.

Scoping Meetings

The Commission will hold scoping meetings, one in the daytime and one in the evening, to help us identify the scope of issues to be addressed in the EA.

The daytime scoping meeting will focus on resource agency concerns, while the evening scoping meeting is primarily for public input. All interested individuals, organizations, and agencies are invited to attend one or both of the meetings, and to assist the staff in identifying the scope of the environmental issues that should be analyzed in the EA. The times and locations of these meetings are as follows:

Daytime Meeting

Wednesday, May 26, 1999, 9 a.m., Kaukauna Electric and Water Department Office, 777 Island Street, Kaukauna, Wisconsin 54130

Evening Meeting

Wednesday, May 26, 1999, 7 p.m., Kaukauna Electric and Water Department Office, 777 Island Street, Kaukauna, Wisconsin 54130

To help focus discussions, we will distribute a Scoping Document (SD1) outlining the subject areas to be addressed in the EA to the parties on the Commission's mailing list. Copies of the SD1 also will be available at the scoping meetings.

Site Visit

The applicant and Commission staff will conduct a project site visit on Tuesday, May 25, 1999. We will meet at the recreational parking lot near the project powerhouse at 1 p.m. If you would like to attend, please call Karen Brooks at (920) 766–5721, ext. 13, no later than May 14, 1999.

Objectives

At the scoping meetings, the staff will: (1) Summarize the environmental issues tentatively identified for analysis in the EA; (2) solicit from the meeting participants all available information, especially quantifiable data, on the resource at issue; (3) encourage statements from experts and the public on issues that should be analyzed in the EA, including viewpoints in opposition to, or in support of, the staff's preliminary views; (4) determine the resource issues to be addressed in the EA; and (5) identify those issues that require a detailed analysis, as well as those issues that do not require a detailed analysis.

Procedures

The meetings will be recorded by a stenographer and will become part of the formal record of the Commission proceeding on the project. Individuals presenting statements at the meetings will be asked to sign in before the meeting starts and to clearly identify themselves for the record.

Individuals, organizations, and agencies with environmental expertise and concerns are encouraged to attend the meetings and to assist the staff in defining and clarifying the issues to be addressed in the EA.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–9362 Filed 4–14–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene and Protests

April 9, 1999.

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* P–11694–000.

c. *Date filed:* March 5, 1999.

d. *Applicant:* Universal Electric Power Corp.

e. *Name of Project:* Kentucky L&D #4 Project.

f. *Location:* At the Corps of Engineer's Kentucky L&D #4, on the Kentucky River, near the Town of Frankfort, Franklin County, Kentucky.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. §§ 791 (a)–825(r).

h. *Applicant Contact:* Mr. Ronald Feltenberger, Universal Electric Power Corp., 1145 Highbrook Street, Akron, Ohio 44301, (330) 535–7115.

i. *FERC Contact:* Any questions on this notice should be addressed to Michael Spencer, E-mail address at Spencer.Michael@FERC.fed.us, or telephone (202) 219–2846.

j. *Deadline for filing motions to intervene and protest:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20526.

The Commission's Rules and Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed project would utilize the Corps of Engineer's Kentucky L&D #4 dam and consist of the following: (1) two 72-inch-diameter, 50-foot-long penstocks, constructed in the existing outlet works; (2) a powerhouse containing two generating units with a combined total capacity of 2.5 MW and an estimated average annual generation of 15.0 Gwh; and (3) a 300-foot-long transmission line.

l. *Locations of the application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 888 North Capitol Street, N.E., Room 2A, Washington, DC 20426, or by calling (202) 219–1371. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call (202) 208–2222 for assistance). A copy is also available for inspection and

reproduction at the address in item h above.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–9363 Filed 4–14–99; 8:45 am]

BILLING CODE 6717–01–M

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 10, 1999.

A. Federal Reserve Bank of Chicago (Philip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1413:

1. Ogden BancShares, Inc., Ogden, Iowa; to acquire 100 percent of the voting shares of Community Bank of Boone, Boone, Iowa (in organization).

Board of Governors of the Federal Reserve System, April 12, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–9441 Filed 4–14–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Federal Open Market Committee; Domestic Policy Directive of February 2-3, 1999

In accordance with § 271.5 of its rules regarding availability of information (12 CFR part 271), there is set forth below the domestic policy directive issued by the Federal Open Market Committee at its meeting held on February 2-3, 1999.[1] The directive was issued to the Federal Reserve Bank of New York as follows:

The information reviewed at this meeting suggests that the economy expanded rapidly in the closing months of 1998. Nonfarm payroll employment posted strong gains in November and December, and the civilian unemployment rate fell to 4.3 percent in December. Total industrial production strengthened in the fourth quarter, owing in large measure to a surge in the production of motor vehicles and parts. Total retail sales rose sharply in the fourth quarter, and home sales and housing starts increased appreciably. Available indicators suggest that business capital spending picked up markedly in the fourth quarter after a lull in the third. In November, the nominal deficit on U.S. trade in goods and services was somewhat larger than in October, but the combined October-November deficit was slightly smaller than its third-quarter average. Inflation has remained subdued despite very tight labor markets.

Most short-term interest rates have declined somewhat on balance since the meeting on December 22, while longer-term rates have changed little. Share prices in equity markets have posted further sizable gains on balance over the intermeeting period. In foreign exchange markets, the trade-weighted value of the dollar has depreciated slightly over the period in relation to other major currencies but it has appreciated somewhat in terms of the currencies of a broader group that also includes other important trading partners of the United States.

M2 and M3 continued to record very large increases in late 1998, but available data pointed to some moderation in January. From the fourth quarter of 1997 to the fourth quarter of 1998, both aggregates rose at rates well above the Committee's annual ranges. Total domestic nonfinancial debt expanded at a pace somewhat above the middle of its range in 1998.

The Federal Open Market Committee seeks monetary and financial conditions that will foster price stability and promote sustainable growth in output. In furtherance of these objectives, the Committee at this meeting established ranges for growth of M2 and M3 of 1 to 5 percent and 2 to 6 percent respectively, measured from the fourth quarter of 1998 to the fourth quarter of 1999. The range for growth of total domestic nonfinancial debt was set at 3 to 7 percent for the year. The behavior of the monetary aggregates will continue to be evaluated in the light of progress toward price level stability, movements in their velocities, and developments in the economy and financial markets.

To promote the Committee's long-run objectives of price stability and sustainable economic growth, the Committee in the immediate future seeks conditions in reserve markets consistent with maintaining the federal funds rate at an average of around 4-3/4 percent. In view of the evidence currently available, the Committee believes that prospective developments are equally likely to warrant an increase or a decrease in the federal funds rate operating objective during the intermeeting period.

By order of the Federal Open Market Committee, April 7, 1999.

Donald L. Kohn,

Secretary, Federal Open Market Committee.

[FR Doc. 99–9377 Filed 4–14–99; 8:45 am]

BILLING CODE 6210–01–F

[1] Copies of the Minutes of the Federal Open Market Committee meeting of February 2-3, 1999, which include the domestic policy directive issued at that meeting, are available upon request to the Board of Governors of the Federal Reserve System, Washington, D.C. 20551. The minutes are published in the Federal Reserve Bulletin and in the Board's annual report.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Health Care Policy and Research

Request for Planning Ideas

AGENCY: Agency for Health Care Policy and Research, HHS.

ACTION: Notice.

SUMMARY: The Agency for Health Care Policy and Research (AHCPR) invites recommendations for future initiatives in areas identified as priorities in the Agency's current strategic plan. This plan describes the framework that the Agency will use to guide the development of budget proposals for Fiscal Years 2000, 1001, and 2002 as well as decisions on resource allocations for research, translation (including tool development), dissemination, and evaluation activities that will facilitate the implementation of

research findings at all levels of the health care system.

Nature of Recommendations

AHCPR encourages written suggestions from its customers and stakeholders for future Agency activities. Submissions should provide the following:

- A description of the focus of the activity and its alignment with Agency priorities;
- The gap addressed by the proposal;
- The population addressed by the activity;
- An indication of the health care issues that are of most concern for the proponent (of the activity);
- Background information to help AHCPR assess the urgency of the need for the results of the proposed projects (i.e., realizing that projects undertaken by the Agency will take a year (minimally) to begin, what is the magnitude of the problem addressed, how soon could the results be implemented, and what change would be anticipated);
- An estimate of the budget required to adequately address the proposed activity;
- Potential partners for the Agency; and
- A description of the desired end product(s) (research knowledge; information; tools such as instruments for measurements, databases, informatics, and other applications that can be used to assess and improve care; or systems intervention) and how the product will be used in the health care system.

DATES; Trepsonses to this request will be accepted on an ongoing basis.

ADDRESSES: Submissiosn should be brief (no more than three pages) and may be in the form of a letter, preferably with an electronic file in a standard word processing format on a 3½ floppy disk, or e-mail. Responses to this request should be submitted to: Lisa Simpson, M.B., B.Ch., M.P.H., Deputy Administrator, Agency for Health Care Policy and Research, 2101 E. Jefferson Street, Suite 600, Rockville, Maryland 20852, *lsimpson@ahcpr.gov*.

All responses will be available for public inspection at AHCPR's Immediate Officer of the Administrator, weekdays between 8:30 a.m. and 5 p.m. AHCPR will not respond to individual responses, but will consider all nominations in selecting topics. AHCPR routinely publishes new research interests, policies, and initiatives in the **Federal Register** (see GPO Access web site *http://www.access.gpo.gov/su docs/aces/aces140.html*) and the NIH Guide for Grants and Contracts (see Funding Opportunities through AHCPR's web site *http://www.ahcpr.gov*). The budget priorities for each fiscal year are published in the President's budget for the Department of Health and Human Services (http://www.hhs.gov/progorg/asmb/budget/fy2000.html).

Arrangements for reviewing the submissions may be made by calling (301) 594–0152. Responses may also be accessed two weeks after receipt by the Agency through AHCPR's Electronic FOIA Reading Room also on AHCPR's web site.

FOR FURTHER INFORMATION CONTACT: Additional information about AHCPR can be accessed on the AHCPR web site. In particular the AHCPR strategic plan is available at *http://www.ahcpr.gov/about/stratpln.htm*.

Information about topic nomination can be obtained by contacting: Jane Osborne, Planning Officer, Immediate Office of the Administrator, 2101 E. Jefferson St., Suite 600, Rockville, Maryland 20852; telephone (301) 594–0152; E-mail address: josborne@ahcpr.gov.

In order to facilitate the handling of submissions, please include full information about the person submitting the recommendation: (a) Name, (b) title, (c) organization, (d) mailing address, (e) telephone number, and (f) e-mail address. Please do not use acronyms. Electronic submissions are also encouraged to *lsimpson@ahcpr.gov*.

SUPPLEMENTARY INFORMATION:

Background

The mission of AHCPR is to support, conduct, and disseminate research that improves access to care as well as the outcomes, quality, cost, and utilization of health care services. The Agency sponsors and conducts health care research that helps the American health care system, which includes patients, providers, plans, purchasers and policymakers, provide access to high quality, cost-effective services; be accountable and responsive to consumers and purchasers; and improve health status and quality of life.

Wide variations in practice patterns, quality, and outcomes continue, and a gap persists between what we know and the care that we deliver. It is clear today that AHCPR now has knowledge of what can be improved and can commit to a significant investment in promoting the adoption and use of research findings. This commitment also focuses on being able to demonstrate that the potential benefits demonstrated by the research are actually achieved in daily practice. This must be done while continuing to support new research on priority health issues and the development of new tools, so that in the future this knowledge and the new tools based on research findings can be translated and implemented to produce improved health care.

AHCPR Strategic Goals

The Agency has identified three strategic goals, each of which will contribute to improving the quality of health for all Americans.

1. Support Improvements in Health Outcomes

The field of health outcomes research studies the end results of the structure and processes of health care on the health and well-being of patients and populations.[1] A unique characteristic of this research is the incorporation of the consumer's or patient's perspective in the assessment of effectiveness. Policymakers in the public and private sectors are also concerned with the end results of their investments in health care, whether at the individual, community, or population level.

High priority for AHCPR's outcomes research will be given to research relating to conditions that are common, expensive, and/or for which significant variations in practice or opportunities for improvement have been demonstrated. Also important is research linking types of delivery systems or processes by which care is provided with their effects on outcomes, as well as, research on clinical preventive services that may prevent premature death and disability in the United States.

2. Strengthen Quality Measurement and Improvement

At its most basic level, high quality health care is doing the right thing, at the right time, in the right way, for the right person. The challenge that clinicians and health system managers face every day is knowing what the right thing is, when the right time is, and what the right way is. Patients and their families are also confronted with making choices about treatments and care settings with little information on the relative quality, risks, and benefits of the options available to them. Policy makers, at all levels, also need quality information to support their deliberations.

AHCPR's second research goal will include developing and testing measures of quality, as well as studying the best ways to collect, compare, and communicate these data. The Agency

[1] Institute of Medicine, 1996.

will also focus on research that determines the most effective way to improve health care quality. This includes how to promote the use of information on quality through a variety of strategies such as determining effective ways to disseminate the information and illustrating the impact that the use of quality information can have on the provision and financing of health care.

3. Identify Strategies To Improve Access, Foster Appropriate Use, and Reduce Unnecessary Expenditures

Adequate access to health care services continues to be a challenge for many Americans. This is particularly so for the poor, the uninsured, members of minority groups, rural residents, and other vulnerable populations. In addition, the changing organization and financing of care has raised new questions about access to a range of health services, including emergency and specialty care. At the same time, examples of inappropriate use of care, including overutilization and misuse of services, continue to be documented.

The increasing portion of our Nation's resources devoted to health care expenditures remains a concern, with some indicators suggesting that the rate of increase may accelerate once again. The continued growth in public spending for Medicare and Medicaid, in particular, raises important questions about the care delivered to the elderly, poor, and people with disabilities. Together, these factors require concerted attention to the determinants of access, use, and expenditures as well as effective strategies to improve access, contain costs, and assure appropriate and timely use of effective services.

Priority Populations

In addition to the strategic research goals, certain population groups warrant a special focus from AHCPR and the health services research community: racial and ethnic minorities, women, children, the elderly, low-income populations, people living in rural areas, and people living with chronic illnesses and/or disabilities. These are all groups for whom public policy struggles to find effective solutions to improve health care. Health services research has consistently documented the persistent, and at times great, disparities in health status and access to appropriate health care services for certain groups, notably racial and ethnic minorities and low income families and children. Gender-based differences in access, quality, and outcomes are also widespread; but whether these differences should be eliminated or are appropriate is not well understood. Despite the dramatic changes occurring in the organization and financing of children's health services, the knowledge base for guiding these changes or assessing their impact is less well developed than that for adults. Health care issues that exist for the elderly and for people with chronic illnesses and disabilities also require attention. Health services research should do a better job of bringing science-based information to bear on these disparities so that the health of these groups is enhanced.

Training

AHCPR invests in the training of health services researchers to address the research and analytic needs of the changing health care system. Areas of focus include: (1) Training that is designed to reflect and incorporate evolving innovations in data systems and research tools so that the researchers of the future not only identify and address significant research questions, but also employ cutting edge methodological, analytic, and data handling techniques, including appropriate privacy and confidentiality safeguards; (2) training that allows new investigators to obtain additional, concentrated research experience to facilitate the transition from a trainee or fellow status to that of an independent investigator with an established area of research expertise and demonstrated productivity; (3) training that provides a solid foundation in general health services research methods and concepts within a multidisciplinary environment with special emphasis placed on the unique needs of the identified population groups, i.e., minority populations and children. As part of this initiative, AHCPR is interested in recruiting Historically Black Colleges and Universities and Hispanic Serving Institutions to apply independently or in partnership with other institutions, to develop programs to train minority investigators; and (4) training that focuses on conducting research using personally identifiable health care information without injury or disclosure to individuals. This training will directly address the growing concerns about the privacy of health care information.

Types of ACHPR Activities in Support of the Goals

Producing meaningful contributions to the Nation and to research on health care requires continuous activity focused on iterative improvement in priority setting, on developing research initiatives, and on research products and processes. The following research cycle describes the processes AHCPR uses to conduct its ongoing activities in order to make the most productive use of its resources.

1. Needs Assessment

AHCPR conducts needs assessments through a variety of mechanisms including expert meetings, conferences, and consultations with stakeholders and customers of its research, publishing notices for comment in the **Federal Register**, as well as regular meetings with its National Advisory Council and government leaders. The results of these assessments are used to determine and prioritize information needs.

2. Knowledge Creation

AHCPR supports and conducts research to produce the next generation of knowledge needed to improve the health care system. Building on the last 10 years of investment in outcomes and health care research, AHCPR will focus on national priority areas for which much remains unknown.

3. Translation and Dissemination

Simply producing knowledge is not sufficient; findings must be useful and made widely available to practitioners, patients, and other decisionmakers. In order to accelerate the pace of quality improvement the focus must be on closing the gap between what we know and what we do. The Agency will systematically identify priority areas for improving care through integrating findings into practice and will determine the most effective ways of doing this. Additionally, AHCPR will continue to synthesize and translate knowledge into products and tools based on research findings that support its customers in problem-solving and decision making. It will then actively disseminate the knowledge, products, and tools to appropriate audiences. Effective dissemination involves forming partnerships with other organizations and leveraging resources.

4. Evaluation

Knowledge development is a continuous process. It includes a feedback loop that depends on evaluation of the research's utility to the end user and impact on health care. In order to assess the ultimate outcomes of AHCPR research, the Agency is placing increased emphasis on the evaluation of the impact and usefulness of Agency-supported work in health care settings and policymaking. The evaluation activities will include a variety of projects, from smaller, short-term projects that assess process, outputs,

and interim outcomes to larger, retrospective projects that assess the ultimate outcomes/impact of AHCPR activities on the health care system.

AHCPR Customers

The AHCPR research agenda is designed to be responsive to the needs of its customers/stakeholders and what they value in health care. These include consumers and patients; clinicians and other providers; institutions; plans; purchasers; and policymakers in all sectors (e.g., Federal, State, and local governments; voluntary associations; international organizations; and foundations). All of these customers require evidence-based information to inform health policy decisions. Health policy choices in this context represent three general levels of decisionmaking: (1) Clinical Policy Decisions—Information is used every day by clinicians, consumers, patients, and health care institutions to make choices about what works, for whom, when, and at what cost. (2) Health Care System Policy Decisions—Health plan and system administrators and policymakers are confronted daily by choices on how to improve the health care system's ability to provide access to and deliver high-quality, high-value care. (3) Public Policy Decisions—Information is used by policymakers to expand their capability to monitor and evaluate the impact of system changes on outcomes, quality, access, cost, and use of health care and to devise policies designed to improve the performance of the system. These decisions include those made by Federal, State, and local policymakers and those that affect the entire population or certain segments of the public.

In summary, AHCPR seeks suggestions for agency activities within the framework of priorities set out in the AHCPR strategic plan goals, activities, and customers, as described above.

Dated: March 31, 1999.

John M. Eisenberg,

Administrator.

[FR Doc. 99–9445 Filed 4–14–99; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 99040]

Cooperative Agreement for the Development of a National Public Health Information Infrastructure Notice of Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year FY 1999 funds for a cooperative agreement program for the development of a national public health information infrastructure. This program addresses the "Healthy People 2000" priority area of Educational and Community-Based Programs.

The purpose of this program is to provide State health departments with local and national access to news media for coverage of health emergencies and opportunities to tell the stories of prevention; identify methods to provide health communication to State health departments; and to elicit the coordination and cooperation of other national, public, private, and voluntary agencies in promoting public health information.

B. Eligible Applicant

Assistance may be submitted by public and private nonprofit organizations and by governments and their agencies; that is, universities, colleges, research institutions, hospitals, other public and private nonprofit organizations, State and local governments and their bona fide agents, and federally recognized Indian tribal governments, Indian tribes, or Indian tribal organizations.

Note: Pub. L. 104–65 states that an organization described in section 501 (c)(4) of the Internal Revenue Code of 1986 that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, cooperative agreement, contract, loan or any other form.

C. Availability of Funds

Approximately $200,000 is available in FY 1999 to fund this cooperative agreement. It is expected that the award will begin on or about September 30, 1999, and will be made for a 12-month budget period within a project period of up to 5 years. Funding estimates may vary and are subject to change.

Continuation awards within the project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

D. Cooperative Activities

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities under 1., below, and CDC will be responsible for conducting activities under 2., below:

1. Recipient Activities:

a. Plan, conduct, and evaluate an annual national conference and, as required, regional conferences. The purpose of these conferences is to provide a forum for continuing education opportunities in public health communications.

b. Publish periodic newsletters to keep State Health Departments informed of the programs, initiatives, and activities of interest to the States related to communication intervention programs that enrich and improve public health.

c. Assess electronic communication networking among State health departments and provide recommendations to States on equipment and financial needs to strengthen communication efforts.

d. Evaluate the media training available for public health professionals and provide recommendations for workshops to all State health departments. Provide assistance to those State health departments wishing to implement media training.

e. Network with key national public health groups and schools to evaluate existing public information material relating to public health programs such as, but not limited to, immunization, tobacco control, tuberculosis, violence and bioterrorism. As needs are identified, regional awareness campaigns will be designed through State health departments.

f. Develop National health communication campaigns and disseminate campaign updates and material to State health departments.

2. CDC Activities:

a. Provide technical assistance and consultation in the area of program development, implementation, and health communication campaigns.

b. Provide technical assistance in the development of an annual conference for State, regional and national exchange of public health information.

c. Provide technical assistance in defining the scope of training needs and proposed training materials to address those needs.

E. Application Content

Use the information in the Cooperative Activities, Other Requirements, and Evaluation Criteria sections to develop the application

content. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan. The narrative should be no more than 25 double-spaced pages, printed on one side, with one inch margins, and unreduced font.

F. Application Submission and Deadline

Submit the original and two copies of PHS 5161 (OMB Number 0937–0189). Forms are in the application kit. On or before June 21, 1999, submit the application to: Joanne Wojcik, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Announcement Number 99040, Centers for Disease Control and Prevention, 2920 Brandywine Road, Suite 3000, Atlanta, Georgia 30341–4146.

Deadline: Application shall be considered as meeting the deadline if it is:

1. Received on or before the deadline date; or

2. Sent on or before the deadline date and received in time for orderly processing. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

G. Evaluation Criteria

The application will be evaluated against the following criteria (maximum 100 total points):

1. Background, Need, and Capacity (25 percent): The extent to which the applicant presents data and information documenting the capacity to accomplish the program, positive progress in related past or current activities or programs, and, as appropriate, need for the program. The extent to which current resources demonstrate capability to conduct the program.

2. Goals and Objectives (15 percent): The extent to which the applicant includes goals which are relevant to the purpose of the proposal and feasible to accomplish during the project period, and the extent to which these are specific and measurable. The extent to which the applicant has included objectives which are feasible to accomplish during the budget period and project period, and which address all activities necessary to accomplish the purpose of the proposal.

3. Methods and Staffing (25 percent): The extent to which the applicant provides: (1) A detailed description of proposed activities which are likely to achieve each objective and overall program goals, and which includes designation of responsibility for each action undertaken; (2) a reasonable and complete schedule for implementing all activities; and (3) a description of the roles of each unit, organization, or agency, and evidence of coordination, supervision, and degree of commitment of staff, organizations, and agencies involved in activities.

4. Evaluation (25 percent): The extent to which the proposed evaluation system is detailed, addresses goals and objectives of the program, and will document program process, effectiveness, and impact. The extent to which the applicant demonstrates potential data sources for evaluation purposes and methods to evaluate the data sources, and documents staff availability, expertise, experience, and capacity to perform the evaluation. The extent to which a feasible plan for reporting evaluation results and using evaluation information for programmatic decisions is included.

5. Collaboration (10 percent): The extent to which relationships between the program and other organizations, agencies, and health department units that will relate to the program or conduct related activities are clear, complete and provide for complementary or supplementary interactions. The extent to which coalition membership and roles are clear and appropriate.

6. Budget and Justification (not scored): The extent to which the applicant provides a detailed budget and narrative justification consistent with stated objectives and planned program activities.

H. Other Requirements

Technical Reporting Requirements Provide CDC with the original plus two copies of:

1. Semiannual Progress reports;

2. Financial status report, no more than 90 days after the end of the budget period;

3. Final financial report and performance report, no more than 90 days after the end of the project period.

Send all reports to: Joanne Wojcik, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention 2920 Brandywine Road, Suite 3000, Atlanta, Georgia 30341–4146.

For descriptions of the following Other Requirements, see Attachment I:

AR–5 HIV Program Review Panel Requirements
AR–10 Smoke-Free Workplace Requirements
AR–11 Healthy People 2000
AR–12 Lobbying Restrictions
AR–20 Conference Support

I. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under Section 1704 [42 U.S.C. 300u–3] of the Public Health Service Act, as amended. The Catalog of Federal Domestic Assistance Number is 93.283.

J. Where to Obtain Additional Information

This announcement and other announcements may be downloaded from www.cdc.gov (click on funding)

To receive additional written information and to request an application kit, call 1–888–GRANTS4 (1–888 472–6874). You will be asked to leave you name and address and will be instructed to identify the Announcement number of interest. Please refer to Program Announcement 99040 when you request information. For a complete program description, information on application procedures, an application package and business management technical assistance, contact: Joanne Wojcik, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Announcement 99040, Centers for Disease Control and Prevention (CDC), 2920 Brandywine Road, Suite 3000, Atlanta, GA., 30341–4146, Telephone (404) 488–2717, Email address jcw6@cdc.gov.

For program technical assistance, contact: Linda Leake, Administrative Officer, Office of Communication, Centers for Disease Control and Prevention 1600 Clifton Road, NE, MS D25, Atlanta, Georgia 30333, Telephone: (404) 639–7994, E Mail: ldll@cdc.gov.

Dated: April 9, 1999.

John L. Williams,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 99–9379 Filed 4–14–99; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99N–0671]

Bestblood, Ltd.; Opportunity for Hearing on a Proposal to Revoke U.S. License No. 1116

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an

opportunity for a hearing on a proposal to revoke the establishment license (U.S. License No. 1116) and product licenses issued to Bestblood, Ltd., doing business as Optimum Healthcare, Inc., for the manufacture of Whole Blood, Red Blood Cells, Red Blood Cells Frozen, Whole Blood CPD, Red Blood Cells Deglycerolized, and Whole Blood CPDA–1. The proposed revocation is based on the inability of authorized FDA employees to conduct an inspection of this facility, which is no longer in operation.

DATES: The firm may submit written requests for a hearing by May 17, 1999, and any data and information justifying a hearing by June 14, 1999. Other interested persons may submit written comments on the proposed revocation by June 14, 1999.

ADDRESSES: Submit written requests for a hearing, any data and information justifying a hearing, and any written comments on the proposed revocation to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Astrid L. Szeto, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–6210.

SUPPLEMENTARY INFORMATION: FDA is initiating proceedings to revoke the establishment license (U.S. License No. 1116) and product licenses issued to Bestblood, Ltd., doing business as Optimum Healthcare, Inc., 239 Randall St., San Francisco, CA 94131, for the manufacture of Whole Blood, Red Blood Cells, Red Blood Cells Frozen, Whole Blood CPD, Red Blood Cells Deglycerolized, and Whole Blood CPDA–1. Proceedings to revoke the licenses are being initiated because an attempted inspection of the facility by FDA, as required under § 600.21 (21 CFR 600.21), revealed that the firm was no longer in operation.

In a certified, return-receipt letter dated June 16, 1997, FDA notified the Responsible Head of the firm that its attempt to conduct an inspection at Bestblood, Ltd., 239 Randall St., San Francisco, CA 94131, was unsuccessful because the facility was apparently no longer in operation, and requested that the firm notify FDA in writing of the firm's status. This letter was sent to 239 Randall St., San Francisco, CA 94131, and to P.O. Box 843, Cupertino, CA 95054–0843, and each was returned to the agency as undeliverable.

In a certified, return-receipt letter sent to Bestblood, Ltd., dated March 4, 1998, at both addresses mentioned previously and returned as undeliverable, FDA indicated that an attempt to conduct an inspection at the facility was unsuccessful. The letter advised the Responsible Head that, under 21 CFR 601.5(b)(1) and (b)(2), when FDA finds that authorized employees have been unable to gain access to an establishment for the purpose of carrying out an inspection required under § 600.21, or the manufacturing of products or of a product has been discontinued to an extent that a meaningful inspection cannot be made, proceedings for license revocation may be instituted. In the same letter, FDA indicated that a meaningful inspection could not be made at the establishment and issued the firm notice of FDA's intent to revoke U.S. License No. 1116 and announced its intent to offer an opportunity for a hearing.

Because FDA has made reasonable efforts to notify the firm of the proposed revocation and no response was received from the firm, FDA is proceeding under 21 CFR 12.21(b) and publishing this notice of opportunity for a hearing on a proposal to revoke the licenses of the previously mentioned establishment.

FDA has placed copies of the documents relevant to the proposed revocation on file with the Dockets Management Branch (address above) under the docket number found in brackets in the heading of this notice. These documents include: (1) Summary of Findings, May 28, 1997 (Endorsement Form FDA 481), and (2) FDA letters to the Responsible Head dated June 16, 1997, and March 4, 1998. These documents are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Bestblood, Ltd., may submit a written request for a hearing to the Dockets Management Branch by May 17, 1999, and any data and information justifying a hearing must be submitted by June 14, 1999. Other interested persons may submit written comments on the proposed license revocation to the Dockets Management Branch by June 14, 1999. The failure of the licensee to file a timely written request for a hearing constitutes an election by the licensee not to avail itself of the opportunity for a hearing concerning the proposed license revocation.

FDA's procedures and requirements governing a notice of opportunity for a hearing, notice of appearance and request for a hearing, grant or denial of a hearing, and submission of data to justify a hearing on proposed revocation of a license are contained in 21 CFR parts 12 and 601. A request for a hearing may not rest upon mere allegations or denials but must set forth a genuine and substantial issue of fact that requires a hearing. If it conclusively appears from the face of the data, information, and factual analyses submitted in support of the request for a hearing that there is no genuine and substantial issue of fact for resolution at a hearing, or if a request for a hearing is not made within the required time with the required format or required analyses, the Commissioner of Food and Drugs will deny the hearing request, making findings and conclusions that justify the denial.

Two copies of any submissions are to be provided to FDA, except that individuals may submit one copy. Submissions are to be identified with the docket number found in brackets in the heading of this document. Such submissions, except for data and information prohibited from public disclosure under 21 CFR 10.20(j)(2)(i), 21 U.S.C. 331(j), or 18 U.S.C. 1905, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under section 351 of the Public Health Service Act (42 U.S.C. 262) and sections 201, 501, 502, 505, and 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 351, 352, 355, and 371), and under the authority delegated to Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director of the Center for Biologics Evaluation and Research (21 CFR 5.67).

Dated: April 5, 1999.

Mark Elengold,

Deputy Director, Operations, Center for Biologics Evaluation and Research.

[FR Doc. 99–9457 Filed 4–14–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–R–279]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Health Care Financing Administration, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment.

Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: New Collection;

Title of Information Collection: Study to Develop a Classification System for Patients in Inpatient Rehabilitation Hospitals and Exempt Rehabilitation Units;

Form No.: HCFA–R–279 (OMB# 0938–NEW);

Use: To conduct a study using patient and facility characteristics and resource utilization as determined by staff time measurement to develop a classification and payment system for Medicare beneficiaries. This information will be used to develop a classification system for Medicare patients using rehabilitation services in inpatient rehabilitation hospitals and exempt rehabilitation units. This classification system will be referred to as Rehabilitation Resources Groups, Version 2000 (R2G2).

The purpose of this study is to develop, assess, and test this classification system through a representative sample of inpatient rehabilitation hospitals and exempt units (note that throughout this request, we will refer to rehabilitation facilities; these include both freestanding rehabilitation hospitals and exempt rehabilitation units). The principal goal is to determine the extent to which measurable patient characteristics permit classifying patients into identifiable groups that accurately predict the use of resources in these facilities.

Patient characteristics will be collected using the Minimum Data Set for Post Acute Care (MDS–PAC) (previously approved; OMB No. 0938–0720). This instrument collects demographic and clinical information that will be used to develop the classification system. We are requesting utilization of this instrument, as revised and tested to include specific variables designed to collect information on patients using rehabilitation services. Secondary analysis of existing data has provided information used to develop the sampling plan. Medicare administrative files (including the cost reports, OSCAR files, and the Standard Analytic National Claims History 100 percent file) were used to develop the sampling frame for this study.

We will be using a staff time measurement study to collect information within the sampled rehabilitation facilities to assess the resources utilized by Medicare beneficiaries. While the staff time measurement has been used in other studies to develop both resource utilization and payment methodologies (i.e., staff time measurement was used to develop the prospective payment system for skilled nursing homes), this is the first time that direct, on-site information will be collected regarding resource utilization in rehabilitation facilities.

The methodology is similar to the Resource Utilization Groups (RUG) methodology used by the Health Care Financing Administration (HCFA) to identify patient characteristics related to variance in patients' needs for resources in skilled nursing facilities (SNFs) and to develop the SNF prospective payment system (PPS).

HCFA is requesting clearance of the study, including the sample, sample selection methodology, and data collection plans, including staff time measurement and use of the revised MDS–PAC. This study will enable HCFA to develop, test, and assess a classification system for inpatient rehabilitation hospitals and exempt rehabilitation units:

Frequency: On occasion;

Affected Public: Business or other for-profit, and Not-for-profit institutions;

Number of Respondents: 4,000;

Total Annual Responses: 4,000;

Total Annual Hours: 6,800.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address: HCFA, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards, Attention: Dawn Willinghan, Room N2–14–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: April 8, 1999.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 99–9423 Filed 4–14–99; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Advisory Mental Health Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodation, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Mental Health Council.

Date: May 6–7, 1999.

Closed: May 6, 1999, 10:30 a.m. to recess.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 9000 Rockville Pike, Building 31C, Conference Room 6, Bethesda, MD 20892.

Open: May 7, 1999, 8:00 a.m. to adjournment.

Agenda: Presentation of NIMH Director's Report and discussion of NIMH program and policy issues.

Place: National Institutes of Health, 9000 Rockville Pike, Building 31C, Conference Room 6, Bethesda, MD 20892.

Contact Person: Jane A. Steinberg, PhD, Executive Secretary, Director, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6154, MSC 9609, Bethesda, MD 20892–9609, 301–443–3367.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: April 8, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–9367 Filed 4–14–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel, Trauma and Burn.

Date: April 13, 1999.

Time: 1:00 pm to 3:30 pm.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, NIGMS, Office of Scientific Review, Natcher Building, Room 1AS19K, Bethesda MD 20892 (Telephone Conference Call).

Contact Person: Bruce K. Wetzel, Phd, Scientific Review Administrator, Office of Scientific Review, NIGMS, Natcher Building, Room 1AS–19, Bethesda, MD 20892, (301) 594–3907.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel, Trauma and Burn.

Date: April 14, 1999.

Time: 1:00 pm to 3:30 pm.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, NIGMS, Office of Scientific Review, Natcher Building, Room 1AS19K, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Bruce K. Wetzel, Phd, Scientific Review Administrator, Office of Scientific Review, NIGMS, Natcher Building, Room 1AS–19, Bethesda, MD 20892, (301) 594–3907.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: April 8, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–9368 Filed 4–14–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel.

Date: May 11–12, 1999.

Time: May 11, 1999, 8:00 am to 12:30 pm.

Agenda: To review and evaluate grant applications.

Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Antonio Noronha, PhD, Scientific Review Administrator, Extramural Project Review Branch, National Institute on Alcohol Abuse and Alcoholism, Suite 409, 6000 Executive Boulevard, Bethesda, MD 20892–7003, 301–443–7722, anoronha@willco.niaaa.nih.gov.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel.

Date: May 12–13, 1999.

Time: May 12, 1999, 1:00 pm to 6:00 pm.

Agenda: To review and evaluate grant applications.

Place: Doubletree Hotel, Twinbrook Room, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Antonio Noronha, PhD, Scientific Review Administrator, Extramural Project Review Branch, National Institute on Alcohol Abuse and Alcoholism, Suite 409, 6000 Executive Boulevard, Bethesda, MD 20892–7003, 301–443–7722, anoronha@willco.niaaa.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants, National Institutes of Health, HHS)

Dated: April 8, 1999.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy, NIH.

[FR Doc. 99–9369 Filed 4–14–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, R13 Conference Grant.

Date: May 4, 1999.

Time: 3:00 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Solar Building, Room 1A2, 6003 Executive Blvd., Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Janet T. Terner, Program Analyst, Scientific Review Program, Division of Extramural Activities, NIAID, NIH, Solar Building, Room 4C01, 6003 Executive Boulevard, MSC 7610, Bethesda, MD 20892–7610, 301–402–4598.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: April 8, 1999.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy, NIH.

[FR Doc. 99–9370 Filed 4–14–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: April 14, 1999.

Time: 11:00 a.m. to 12:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: David Chananie, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Rm. 6150, MSC 9608, Bethesda, MD 20892–9608, 301–443–1340.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientific Development Award, Scientific Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: April 8, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–9371 Filed 4–14–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: April 9, 1999.

Time: 2:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Sheila O'Malley, MA, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6138, MSC 9606, Bethesda, MD 20892–9606, 301–443–6470.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National institute of Mental Health Special Emphasis Panel.

Date: April 13, 1999.

Time: 2:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Sheila O'Malley, MA, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6138, MSC 9606, Bethesda, MD 20892–9606, 301–443–6470.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: April 8, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–9372 Filed 4–14–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Notice of Meeting; SAMHSA Special Emphasis Panels

Pursuant to Pub. L. 92–463, notice is hereby given of the following meetings of the SAMHSA Special Emphasis Panels I in May 1999.

A summary of the meeting and a roster of the members may be obtained from: Ms. Coral Sweeney, SAMHSA, Division of Extramural Activities, Policy, and Review, 5600 Fishers Lane, Room 17–89, Rockville, Maryland 20857. Telephone: 301–443–2998.

Substantive program information may be obtained from the individual named as Contact for the meeting listed below.

The meeting will include the review, discussion and evaluation of individual grant applications. These discussions could reveal personal information concerning individuals associated with the applications. Accordingly, this meeting is concerned with matters exempt from mandatory disclosure in Title 5 U.S.C. 552b(c)(6) and 5 U.S.C. App.2, § 10(d).

Committee Name: SAMHSA Special Emphasis Panel I (SEP I).

Meeting Dates: May 3–4, 1999.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, Maryland 20814.

Closed: May 3, 1999, 8:30 a.m. to Adjournment; May 4, 1999, 8:30 a.m. to Adjournment.

Panel: Substance Abuse and Mental Health Services Administration State Reform Grants, SM99–004.

Contact: Ferdinand Hui, Room 17–89, Parklawn Building, Telephone: 301–443–9919 and FAX: 301–443–3437.

Committee Name: SAMHSA Special Emphasis Panel I (SEP I).

Meeting Dates: May 11–13, 1999.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, Maryland 20814.

Closed: May 11–13, 1999, 8:30 a.m.–5:00 p.m. Substance Abuse and Mental Services Administration, Action Grant Program, Phase II.

Contact: Boris Aponte, Room17–89, Parklawn Buiding, Telephone: 301–443–2290 and FAX: 301–443–1587.

Panel: Substance Abuse and Mental Health Services Administration, Action Grant Program, Phase II.

Dated: April 9, 1999.

Sandi Stephens,

Team Leader, Extramural Activities Team, Substance Abuse and Mental Health Services Administration.

[FR Doc. 99–9409 Filed 4–14–99; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Notice of Meeting; SAMHSA Special Emphasis Panels

Pursuant to Pub. L. 92–463, notice is hereby given of the following meeting of the SAMHSA Special Emphasis Panel II in November.

A summary of the meeting may be obtained from: Ms. Coral M. Sweeney, SAMHSA, Division of Extramural Activities Policy and Review, 5600 Fishers Lane, Room 17–89, Rockville, Maryland 20857. Telephone: (301)443–2998.

Substantive program information may be obtained from the individual named as Contact for the meeting listed below.

The meeting will include the review, discussion and evaluation of individual contract proposals. These discussions could reveal personal information concerning individuals associated with the proposals and confidential and financial information about an individual's proposal. The discussion may also reveal information about procurement activities exempt from disclosure by statute and trade secrets and commercial or financial information obtained from a person and privileged and confidential. Accordingly, the meeting is concerned with matters exempt from mandatory disclosure in Title 5 U.S.C. 552b(c)(3),(4), and (6) and 5 U.S.C. App. 2, § 10(d).

Committee Name: SAMHSA Special Emphasis Panel II.

Meeting Date: May 17–18, 1999.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, Maryland 20814.

Committee Name: SAMHSA Special Emphasis Panel II.

Closed: May 17, 1999, 8:30 a.m.–5:00 p.m., May 18, 1999 8:30 a.m.–Adjournment.

Contact: Ferdinand Hui, Room 17–89, Parklawn Building, Telephone: (301) 443–9919 and FAX (301) 443–1587.

Meeting Date: May 6–7, 1999.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, Maryland 20814.

Closed: May 6, 1999, 8:30 a.m.–5:00 p.m., May 7, 1999 8:30 a.m.–Adjournment.

Contact: Michael Koscinski, Room 17–89, Parklawn Building, Telephone: (301)443–6094 and FAX: (301)443–1587.

Dated: April 9, 1999.

Sandi Stephens,

Team Leader, Extramural Activities Team, Substance Abuse and Mental Health Services Administration.

[FR Doc. 99–9410 Filed 4–14–99; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF INTERIOR

Fish and Wildlife Service

Notice of Intent to Prepare an Environmental Impact Statement in Anticipation of Receiving a Permit Application to Incidentally Take Threatened and Endangered Species in Association with a Multiple Habitat Conservation Plan for Northwestern San Diego County, California

AGENCY: Fish and Wildlife Service, DOI.

ACTION: Notice of Intent.

SUMMARY: The U.S. Fish and Wildlife Service (Service) is considering approval of a Multiple Habitat Conservation Plan (Plan) and issuance of an Endangered Species Act Incidental Take Permit. The Plan is being submitted by the San Diego Association of Governments (Association of Governments) and the Plan Advisory Committee representing seven participating cities in northwestern San Diego County, California. The seven participating cities are Carlsbad, San Marcos, Encinitas, Escondido, Oceanside, Solana Beach, and Vista. This long-term plan will accompany a future application to the Service for a permit under section 10(a)(1)(B) of the Endangered Species Act that would authorize incidental take of listed species and unlisted species that may be listed in the future. In response to the Plan, the Service intends to prepare a joint programmatic and project-level Environmental Impact Statement/Environmental Impact Report (Statement/Report) pursuant to the National Environmental Policy Act and the California Environmental Quality Act. The Plan covers an area of approximately 186 square-miles in northwestern San Diego County. The Plan addresses numerous sensitive plant and animal species and their habitats. The Plan creates a process for the issuance of permits and other authorizations under the Federal Endangered Species Act, California Endangered Species Act, and the California Natural Community Conservation Planning Act. This notice describes the proposed action and possible alternatives, notifies the public of a scoping meeting, invites public participation in the scoping process for preparing the joint Statement/Report, solicits written comments, and identifies the Service official to whom questions and comments concerning the proposed action and the joint Statement/Report may be directed.

DATES: A public scoping meeting will be held on May 5, 1999 from 6:00 to 8:00 p.m. at Encinitas City Hall (Poinsettia Room), 505 South Vulcan, Encinitas, California. Oral comments will be received during the scoping meeting. Written comments are encouraged and should be received on or before May 17, 1999.

ADDRESSES: Information, comments, or questions related to preparation of the joint Statement/Report and the National Environmental Policy Act process should be submitted to Sherry Barrett, Assistant Field Supervisor, U.S. Fish and Wildlife Service, 2730 Loker Avenue West, Carlsbad, California 92008. Written comments may also be sent by facsimile to telephone (760) 918–0638.

FOR FURTHER INFORMATION CONTACT: Ms. Julie Vanderwier, Fish and Wildlife Biologist, or Nancy Gilbert, Division Chief, at the above Carlsbad address, telephone (760) 431–9440. Persons wishing to obtain background material should contact Janet Fairbanks at the San Diego Association of Governments, 401 B Street, Suite 800, San Diego, California 92101, telephone (619) 595–5370.

SUPPLEMENTARY INFORMATION:

Availability of Documents

Documents will also be available for public inspection by appointment during normal business hours (8 a.m. to 5 p.m., Monday through Friday) at the Association of Governments office and at local libraries located in the seven participating cities.

Background

Listed wildlife species are protected against "take" pursuant to section 9 of the Act. That is, no one may harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect listed animal species, or attempt to engage in such conduct (16 USC 1538). The Service, however, may issue permits to take listed animal species if such taking is incidental to, and not the purpose of, otherwise lawful activities. Regulations governing permits for endangered species are at 50 CFR 17.22 and 17.32. In anticipation of applying for an incidental take permit, the Association of Governments and participating cities are developing a Plan. The Plan study area comprises seven incorporated cities

in northwestern San Diego County. The northern boundary of the Plan study area is Marine Corps Base Camp Pendleton; the Pacific Ocean forms the western boundary; and unincorporated County of San Diego borders most of the study area on the east and south. Unincorporated portions of the county, including several areas completely surrounded by incorporated cities, are excluded from the study area and will be planned by the county under the North County Subarea of the Multiple Species Conservation Plan.

The 118,852-acre Plan study area is largely developed, with approximately 30 percent consisting of vacant lands that still support natural vegetation communities. The largest blocks of natural vegetation occur in northern Escondido, and in the hilly areas of southeastern Carlsbad and southwestern San Marcos. Other relatively large blocks of habitat occur along the northern boundary of Oceanside, and in scattered areas in eastern and central Carlsbad, northern San Marcos, and southern Escondido. Otherwise, natural habitats in the Plan study area are highly fragmented and occur primarily in small, scattered patches surrounded by development or agriculture.

The goals of the Plan are to:

1. Maintain the range of natural biological communities and species native to the region, and conserve viable populations of endangered, threatened, and key sensitive species and their habitats, thereby preventing local extirpation or species extinction.

2. Create greater certainty for economic and urban development by identifying where new development should and should not occur, and encourage investment by establishing a legal and procedural framework that streamlines the permitting process and provides a reliable basis for economic decision-making.

3. Protect the quality of life for local residents by maintaining the area's scenic beauty, natural biological diversity, and recreation opportunities.

The Plan proposes a new process for wildlife and habitat conservation, and for implementation of the Federal and State of California Endangered Species Acts, which relies on existing local agency land use review and approval authority. The new process places conservation responsibilities on local jurisdictions, based on their ability to implement a segment of the Plan for their jurisdiction. Implementation of the Plan will occur through individual subarea conservation plans prepared for each of the seven participating jurisdictions. In exchange for these coordinated conservation plans, local jurisdictions will receive from the Service permits for the taking of federally-listed species, and unlisted species should they become listed, based on their subarea plans and implementing agreements. A list of covered animal and plant species that would receive take authorization is incorporated in the Plan, including species that are federally or state-listed, proposed for listing, candidates for listing, or sensitive within the region.

The lands identified for open space and habitat preservation are located within the Focused Planning Area. The Focused Planning Area was cooperatively designed by the Association of Governments and the seven participating jurisdictions in the Plan study area, in consultation with the Service, the California Department of Fish and Game, and the Plan Advisory Committee based on biological, ownership, and land use criteria. These participants have spent several months developing "hard line" preserves, indicating lands that will be conserved and managed for biological resources, and "soft line" planning areas, within which preserve areas will ultimately be delineated based on further data and planning.

Several objectives were incorporated into the process of designing the Focused Planning Area: (1) conserve as much of the biologically most important habitat lands remaining in the subregion as possible, in a system that minimizes preserve fragmentation and maximizes conservation of covered species; (2) maximize the inclusion of public lands within the preserve; (3) maximize the inclusion of lands already conserved as open space, where appropriate; and (4) maintain individual property rights and economic viability for the subregion.

Although the Association of Governments will prepare the draft Statement, the Service will be responsible for its content and scope. In addition, the Association of Governments will act as the lead agency for the preparation of the Report.

Environmental documentation will be included in the joint Statement/Report for amendments to a variety of planning documents for the seven participating jurisdictions. The proposed amendments would incorporate the preserve boundaries of the Plan into adopted land use plans as described in the individual subarea plans and implementing agreements. Actions proposed by these seven cities that will be addressed in the joint Statement/Report include, but are not limited to, amendments to general plans, local coastal programs, and zoning ordinances.

The Statement/Report will consider the proposed action (issuance of a Section 10(a)(1)(B) Endangered Species Act permit for the Plan) and a reasonable range of alternatives. Potential alternatives may be derived from preserve design scenarios being considered and include a Minimal Acquisition Scenario, Enhanced Conservation/Acquisition Scenario, Additional Core Gnatcatcher Conservation Scenario, Biological Core and Linkage Area Scenario, and No Project (No Preserve) Scenario.

Environmental review of the Plan will be conducted in accordance with the requirements of the 1969 National Environmental Policy Act, as amended (42 U.S.C. 4321 *et seq.*), National Environmental Policy Act regulations (40 CFR parts 1500–1508), other appropriate regulations, and Service procedures for compliance with those regulations. This notice is being furnished in accordance with Section 1501.7 of the National Environmental Policy Act to obtain suggestions and information from other agencies and the public on the scope of issues to be addressed in the joint Statement/Report.

Comments and participation in the scoping process are solicited. The primary purpose of the scoping process is to identify rather than to debate the significant issues related to the proposed action. Interested persons are encouraged to attend the public scoping meeting to identify and discuss issues and alternatives that should be addressed in the joint Statement/Report. The proposed agenda for this facilitated meeting includes a summary of the proposed action; status of and threats to subject species; and tentative issues, concerns, opportunities, and alternatives. Additional public meetings will be conducted on later dates to provide more opportunities to comment on the draft Statement/Report.

Dated: April 6, 1999.

Elizabeth H. Stevens,

Deputy Manager, California/Nevada Operations Office.

[FR Doc. 99–9381 Filed 4–14–99; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–030–1220–00; Closure Notice No. NV–030–99–002]

Temporary Closure and Restrictions on Public Lands; Silver Saddle Ranch; Carson City, Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: The Manager, Carson City Field Office, announces a temporary closure and restrictions on acquired lands in Carson City, Nevada, known as the Silver Saddle Ranch. This action is taken to protect ranch buildings, facilities and sensitive meadow and riparian resources from vandalism and damage.

SUMMARY: In 1997, the Bureau of Land Management completed a land exchange resulting in the transfer of the Silver Saddle Ranch in Carson City from private to public ownership. The ranch includes residential buildings, barns, fences and sensitive river and meadow lands. In cooperation with the municipality of Carson City, development of a long-term management plan is underway which will provide for adequate on site management and protection of these features. Until this plan can be completed, certain interim restrictions and closures are necessary. Acquired lands on the west side of the Carson River are temporarily closed to public use. Lands on the east side of the Carson River are open to public use with restrictions on vehicle use, shooting and overnight camping.

EFFECTIVE DATES: These restrictions go into effect immediately and will remain in effect until the management plan is completed and implemented, or until the authorized officer determines these restrictions no longer are needed.

FOR FURTHER INFORMATION CONTACT: Chris Miller, Outdoor Recreation Planner, Carson City Field Office, 5665 Morgan Mill Road, Carson City, Nevada 89706. Telephone (775) 885–6148.

SUPPLEMENTARY INFORMATION: The public lands affected by these restrictions are described as follows:

Mt. Diablo Meridian

T. 15 N., R 20 E.,
Sec. 22: SE¼SE¼;
Sec. 26: SW¼NE¼, W½, W½SE¼;
Sec. 27: NE¼, NE¼SE¼;
Sec. 35: NW¼NE¼.

EXCEPTING THEREFROM that portion on the NE¼NE¼NW¼ of section 26 as conveyed to Carson City, and all that portion lying below the natural ordinary High water line of the Carson River.

Lands on the west side of the Carson River are closed to public use and entry. The exceptions to this closure include emergency, utility or law enforcement personnel, Carson City and BLM officials conducting business, participants in tours or events sponsored by the BLM or Carson City, and others authorized in writing by the Authorized Officer of the BLM. The restrictions do not apply to Carson City public roads.

Lands on the east side of the Carson River are open to public recreation uses with the following exceptions: (1) Motorized vehicle use is limited to designated roads and trials; (2) lands are closed to shooting and open to day use only, consistent with previous orders for use on public lands administered by the Carson City Field Office.

The authorities for these restrictions are 43 CFR 8341.2 and 8364.1. Any person failing to comply with the closure or restrictions may be subject to imprisonment for not more than 12 months, or a fine in accordance with the applicable provisions of 18 USC 3571, or both.

Dated: April 8, 1999.

Karl Kipping,

Associate Manager,

Carson City Field Office.

[FR Doc. 99–9415 Filed 4–14–99; 8:45 am]

BILLING CODE 4310–HC–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–933–1330–01; IDI –030–98–035]

Notice of Availability of the Record of Decision for the Caribou National Forest Phosphate Leasing Proposal (FEIS 98–0087; Idaho)

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Availability.

SUMMARY: The Dairy Syncline Tract and Manning Creek Tract are two separate Federal phosphate tracts proposed for competitive leasing. They are located within the Caribou National Forest in Caribou County in southeast Idaho. The Manning Creek Tract is located in Township 9 South, Range 45 East, Boise Meridian, about 10 air miles southwest of Afton, Wyoming. The Dairy Syncline Tract is located in Township 9 and 10, Range 44 East, about 12 air miles southeast of Soda Springs, Idaho. The Bureau of Land Management and the U.S. Forest Service jointly prepared the Draft Environmental Impact Statement and the Final Environmental Impact Statement related to this leasing proposal. The Draft Environmental Impact Statement was released July 18, 1997. The Notice of Availability appeared in the **Federal Register** on August 1, 1997. No new issues or viable alternatives were identified during the review period so revisions to the Draft were not required. The Final Environmental Impact Statement for the proposed leasing of Federal phosphate reserves in the Dairy Syncline and Manning Creel Tracts was released on February 23, 1998. The Final consists if a selenium update, Chapter 10 of the Final Environmental Impact Statement which describes the public comments and responses, and the Draft Environmental Impact Statement which was released in July, 1997. The Notice of Availability of the Final Environmental Impact Statement was published in the **Federal Register** on March 27, 1998. In accordance with 43 CFR 1502.2, a Record of Decision was prepared by the Bureau of Land Management and signed on March 15, 1999. BLM has recommended leasing only portions of each of the two tracts. With this decision, 2,342.27 acres of the 3,259 acre Dairy Syncline Tract and 880 acres of the 1,120 acre Manning Creek Tract will be available for leasing. The reduced Manning Creek Tract provides for a natural, undisturbed corridor for wildlife to move through the area. This decision is consistent with the Caribou National Forest Land and Resource Management Plan and with the Bureau of Land Management Pocatello Resource Management Plan. Mining will not be permitted on these two tracts until NEPA requirements have been met, site-specific Best Management Plans have been developed, and the phosphate lessee can demonstrate that mining can be conducted without releasing harmful quantities of hazardous material into the environment. Proposed Best Management Practices must be acceptable to BLM and the surface managing agencies prior to approval of any mine plan. The "Stipulations for Lands of the National Forest System under Jurisdiction of Department of Agriculture" and the Forest Service "Notice to Phosphate Lessees" shall be part of each lease offered and apply to the lessee or its legal successors. Copies of the Record of Decision have been mailed to interested parties. Public reading copies will be available for review at the BLM Pocatello Resource Area Office, 1111 N. 8th Avenue, Pocatello, ID 83201–5789.

FOR FURTHER INFORMATION CONTACT: Peter Oberlindacher, BLM Idaho State Office, 1387 South Vinnell Way, Boise, Idaho 83709, telephone No. (208) 373–3884.

DATES: The Record of Decision may be appealed to the Interior Board of Land Appeals, Office of the Secretary, in accordance with the regulations contained in 43 CFR Part 4. If an appeal is taken, the notice of appeal must be filed with the Bureau of Land Management. Idaho State Office, 1387 S.

Vinnell Way, Boise Idaho 83709–1657 on or before 30 days from the publication of the Record of Decision in the **Federal Register**.

SUPPLEMENTARY INFORMATION: The modified Dairy Syncline Tract to be made available for leasing as a single and separate parcel consists of the following lands:

Boise Meridian

T. 9 S., R.44 E.
Sec.17: SE¼SE¼;
Sec.18: SW¼NE¼, SE¼NW¼, NE¼SW¼, NW¼SE¼;
Sec.19: NE¼, N½SE¼, SE¼SE¼;
Sec.20: All;
Sec.21: W½NW¼, SE¼NW¼;
Sec.28: SW¼SW¼;
Sec.29: E½, E½NW¼, NW¼NW¼;
Sec.32: NE¼, N½SE¼;
Sec.33: W½NW¼, SW¼.
T.10 S., R.44 E.
Sec.4: Lots 3,4, and 6, SE¼NW¼.
Totaling 2,342.27 acres.

The modified Manning Creek Tract to be made available for leasing as a single and separate parcel consists of the following lands:

Boise Meridian

T. 9 S., R.45. E.
Sec. 13: SE¼W¼, S½SE¼;
Sec. 23: SE¼SE¼;
Sec. 24: N½NE¼, SW¼NE¼, E½NW¼, SW¼NW¼, SW¼, NW¼SE¼;
Sec.25: NW¼NW¼;
Sec.26: NE¼, SE¼NW¼, NW¼SE¼.
Totaling 880 acres.

Dated: April 7, 1999.

Jimmie Buxton,

Branch Chief, Lands and Minerals.

[FR Doc. 99–9384 Filed 4–14–99; 8:45 am]

BILLING CODE 4310–66–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Environmental Statements; Availability, Etc; Diamond Mountain Resource Area

AGENCY: Bureau of Land Management, DOI.

ACTION: Notice of availability of the proposed plan amendment environmental assessment to the Diamond Mountain resource area resource management plan.

SUMMARY: The Bureau of Land Management (BLM), Vernal Field Office has completed an Environmental Assessment (EA) and issued a Finding of No Significant Impact (FONSI) for the Proposed Pelican Lake Plan Amendment to the Diamond Mountain Resource Area Resource Management Plan (DMRA–RMP). The Proposed Plan Amendment would modify the DMRA–RMP's present priority management level classifications within the Pelican Lake planning amendment area through reclassification of about 2,078.20 acres of public land from their present Level 4, Open Management classification to level 3, Active Management classification. The 160 acres of public land classified as Level 1, Most Restrictive Management, the 1,794.66 acres of public land classified as Level 2, Careful Management, and the 865.75 acres of public land classified as level 3, Open Management would not be reclassified. Multiple use of the public land within the planning area would continue in a manner that is compatible, to the extent possible, with the objectives of the Ouray National Wildlife Refuge.

DATES: The 30 day protest period for this proposed plan amendment will commence on April 15, 1999. Protests must be received on or before May 15, 1999.

ADDRESSES: Protests must be addressed to the Director (WO–210) Bureau of Land Management, Attn: Brenda Williams, 1849 C Street, NW, Washington, DC 20240 within 30 days after the date of publication of this Notice of Availability.

FOR FURTHER INFORMATION CONTACT: Peter Kempenich, Natural Resource Specialist, Vernal District Field Office, at 170 South 500 East, Vernal, Utah 84078, (435) 781–4432. Copies of the proposed Plan Amendment EA are available for review at the Vernal Field Office.

SUPPLEMENTARY INFORMATION: This action is announced pursuant to Section 202(a) of the Federal Land Policy and Management Act (1976) and 43 CFR Part 1610. This Proposed Amendment is subject to protests by any party who has participated in the planning process. Protest must be specific and contain the following information:

—The name, mailing address, phone number, and interest of the person filing the protest.
—A statement of the issue(s) being protested.
—A statement of the part(s) of the proposed amendment being protested and citing pages, paragraphs, maps et cetera, of the Proposed Plan Amendment.
—A copy of all documents addressing the issue(s) submitted by the protestor during the planning process or a reference to the date when the protester discussed the issue(s) for the record.
—A concise statement as to why the protester believes the BLM State Director is incorrect.

Dated: March 30, 1999.

G. William Lamb,

State Director, Utah.

[FR Doc. 99–9383 Filed 4–14–99; 8:45 am]

BILLING CODE 4310–DQ–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–910–1410–00]

Alaska Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Alaska Resource Advisory Council Meeting.

SUMMARY: The BLM Alaska Resource Advisory Council will conduct an open meeting Tuesday, May 11, 1999, from 9:30 a.m. until 4:30 p.m. and Wednesday, May 12, 1999, from 9 a.m. until 3 p.m. The council will begin the process of defining standards for management of natural resources on public lands in Alaska. As part of this process, the council will take public comment on resource issues of concern.

The meeting will be held at the BLM Alaska State Office, located on the 4th floor of the Anchorage Federal Office Building at 7th and C Street. The entire meeting is open to the public with public comment taken from 1–2 p.m. Tuesday, May 11. Written comments may be submitted at the meeting or mailed to the address below.

ADDRESS: Inquiries about the meeting should be sent to External Affairs, Bureau of Land Management, 222 W. 7th Avenue, #13, Anchorage, AK 99513–7599.

FOR FURTHER INFORMATION CONTACT: Teresa McPherson, (907) 271–5555.

Dated: April 8, 1999.

Sally Wisely,

Acting State Director.

[FR Doc. 99–9378 Filed 4–14–99; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–930–1430–01; N–61258]

Notice of Realty Action, Direct Sale of Public Land, Pershing County, Nevada

SUMMARY: The following described land has been found suitable for direct sale under Section 203 of the Federal Land

Policy and Management Act of October 21, 1976 (43 U.S.C. 1713). The land is hereby classified for disposal in accordance with Executive Order 6910 and the Act of June 28, 1934, as amended and will be sold at not less than fair market value:

Mount Diablo Meridian, Nevada

T. 32 N., R. 34 E., Sec. 5, S½SE¼SW¼, SW¼SW¼SE¼;
Containing 30.00 acres more or less.

The lands are not required for federal purposes. Disposal is consistent with the Bureau's planning for this area and would be in the public's interest. The land is being offered by direct sale to Howard E. Harris and Terry A. Harris, DBA Murt-Higgins Mine Management Partnership. The mineral estate is vested in a third party and therefore can not be offered in this sale.

The land will not be offered for sale until at least 60 days after publication of this notice in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Ken Detweiler, Realty Specialist, Bureau of Land Management, 5100 E. Winnemucca Blvd., Winnemucca, NV 89445 (775) 623–1500.

SUPPLEMENTAL INFORMATION: The public lands are being offered to Howard and Terry Harris, DBA Murt-Higgins Mine Management Partnership, since they have occupied and developed the site. The Harrises developed the site under the auspices of the general mining law, however, that was determined infeasible since the mineral estate is held by a private third party. The proposed sale would allow the Harrises to keep their property and material on the site. Some of the material on site consists of precious metals refinery slags and powders that contain hazardous substances. Section 120(h) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) requires a notice when hazardous substances have been stored on the property. The following notice describes the material stored on the site in compliance with the CERCLA: Approximately 520 tons, of slag and powder from precious metal refining, have been stored on the site since 1989. Some of the slag and powder show a toxicity characteristic for the metals chromium, selenium, and lead.

Since the property has been developed, the patent would contain a solid waste/hazardous substance(s) statement indemnifying the United States. The above described land is hereby segregated from appropriation under the public land laws, including the mining laws, but not from sale under the above cited statutes, for 270 days from the date of publication of this notice in the **Federal Register**, or until title transfer is completed or the segregation is terminated by publication in the **Federal Register**, whichever occurs first.

A PATENT, WHEN ISSUED, WILL CONTAIN THE FOLLOWING RESERVATION TO THE UNITED STATES;

A right-of-way thereon for ditches or canals constructed by the authority of the United States pursuant to the Act of August 30, 1890 (43 U.S.C. 945).

AND WILL BE SUBJECT TO:

1. Those rights for communication line purposes which have been granted to Bell Telephone Company of Nevada by Right-of-way N–12660, under the Act of March 4, 1911 (43 U.S.C. 961).

2. An easement for a power transmission line granted to Sierra Pacific Power Company from Southern Pacific Land Company by Deed No. 4151–F, recorded in Pershing County, Nevada, Book #14 page 71.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the Field Manager, Winnemucca Field Office, Bureau of Land Management, 5100 E. Winnemucca Blvd., Winnemucca, NV 89445. In the absence of timely objections, this proposal shall become the final determination of the Department of the Interior.

Dated: April 7, 1999.

Les W. Boni,

Acting Winnemucca Field Manager.

[FR Doc. 99–9416 Filed 4–14–99; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–100–99–1040–00]

Notice of Special Recreation Restrictions, Missoula, MT

AGENCY: Department of Interior, Bureau of Land Management.

ACTION: Notice of special recreation restrictions and rules addressing camping, motorized vehicle use, public safety, and resource protection on public lands.

SUMMARY: This notice places restrictions on recreation use on public lands located within 1/4 mile on either side of the Blackfoot River extending from Johnsrud Park upstream for approximately 10 miles. Actions are implemented under the authority of 43 CFR 8364.1 and 8372.0–7.

SUPPLEMENTARY INFORMATION: The restricted public lands are part of the Blackfoot River Recreation Corridor which was established in the 1970s. The Blackfoot River Recreation Corridor is a multi-cooperative partnership consisting of private landowners, the Montana Fish, Wildlife and Parks, and the Bureau of Land Management. This partnership was established to provide protection of the natural resources, private property and to provide public safety along 26 miles of free flowing Blackfoot River.

In 1998, the Bureau of Land Management began acquiring land within the corridor. When this acquisition is completed, the Bureau of Land Management will manage approximately 12,000 acres of land upstream from Johnsrud Park. The Bureau of Land Management has started site specific planning for this area. Plans should be completed within two years. The objective of these emergency restrictions is to have regulations in place during the interim planning phase. The Bureau of Land Management stated in its June 1997 Lower Blackfoot River Assembled Land Exchange Environmental Assessment (MT–074–07–06) that "recreation along the Blackfoot River would continue to be managed under the existing Blackfoot River Recreation Corridor Landowner's Agreement." Implementing the following regulations will establish consistency with the existing Montana Fish, Wildlife and Parks Blackfoot River Recreation Corridor rules. To reduce damage to natural and cultural resources and to provide for public safety, the Bureau of Land Management under 43 CFR 8364.1 prohibits the following on the above described public lands:

1. Camping outside of designated sites or areas.
2. Lighting or maintaining a fire except in designated areas or established government fire rings.
3. Operating a motor vehicle off of a designated trail, road, or route.
4. Collecting firewood for other than on site use.
5. Discharging a firearm or projectile except when and where specifically allowed.
6. Lighting a firework.
7. Violating a posted regulation pertaining to the protection of natural resources or public safety.
8. Occupying or camping at an area longer than seven days during any 30-day period.

Exemptions from these emergency regulations may be authorized by the Bureau of Land Management.

EFFECTIVE DATES: These restrictions will go into effect April 15, 1999. The restrictions shall remain in effect pending approval of a site specific recreation management plan for these public lands. These restrictions can be rescinded or modified by the authorized officer.

PENALTIES: Any person who knowingly and willfully violates the regulations under 43 CFR 8364.1 may be subject to a fine or mandatory court appearance before a U.S. Magistrate.

FOR FURTHER INFORMATION CONTACT: Nancy Anderson, Missoula Field Office, 3255 Fort Missoula Road, Missoula, Montana 59804, (406) 329–3914.

Dated: April 9, 1999.

Nancy T. Anderson,

Field Manager.

[FR Doc. 99–9422 Filed 4–14–99; 8:45 am]

BILLING CODE 4310–DN–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT–020–09–5101–00–J206, U–76985]

Notice of Intent to Prepare a Plan Amendment to the Pony Express Resource Management Plan (RMP)

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Intent to prepare a plan amendment to the Pony Express Resource Management Plan (RMP).

SUMMARY: The Bureau of Land Management (BLM), Salt Lake Field Office, Utah is starting a plan amendment process to the RMP which may allow an exception to the Transportation and Utility Corridor Decision for a railroad and related facilities outside a designated corridor. The railroad would serve the proposed Private Fuel Storage (PFS) nuclear storage site on the Goshute Indian Reservation.

DATES: The comment period for identification of issues for the potential plan amendment will commence on April 15, 1999. Comments must be submitted on or before May 30, 1999. Two scoping meetings focusing on environmental issues associated with the amendment will be held on April 29, 1999: from 8 a.m. to 11 a.m. at the Little America Inn, Grand Ballroom A, 500 South Main Street, Salt Lake City, UT 84101; from 6:30 p.m. to 9:30 p.m. at Tooele High School, Auditorium, 240 West Second Street, Tooele, UT 84074.

ADDRESSES: Comments on the BLM plan amendment should be sent to Bureau of Land Management, Salt Lake Field Office, 2370 South 2300 West, Salt Lake City, UT 84119.

FOR FURTHER INFORMATION CONTACT: For Information on the BLM plan amendment contact Leon Berggren, Resource Advisor, telephone (801) 977–4350. Existing planning documents and information are available at the above address.

SUPPLEMENTARY INFORMATION: The Salt Lake Field Office, BLM, received an application from PFS for a railroad line on the west side of Skull Valley, and is cooperating with the Nuclear Regulatory Commission (NRC) by providing an analysis of the railroad and plan amendment for inclusion into an environmental impact statement to be prepared by NRC. The proposed BLM amendment would consider an exception to the Transportation and Utility Corridor Decision, to allow a right-of-way for a railroad and related facilities to PFS outside a designated corridor. Issues identified for the railroad access include: fire, rangeland health, noxious weeds, cultural resources, wildlife, wild horses, wetlands, historic trails, wilderness study areas, recreation, visual, access, minerals, geology, and threatened and endangered plants. Public participation is being sought at this initial stage in the planning process to ensure the RMP amendment addresses all issues, problems, and concerns from those interested in the management of lands under the jurisdiction of the Salt Lake Field Office.

Mike Pool,

Acting State Director.

[FR Doc. 99–9382 Filed 4–14–99; 8:45 am]

BILLING CODE 4310–00–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–952–09–1420–00]

Notice of Filing of Plat of Survey; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plats of survey described below will be officially filed in the New Mexico State Office, Bureau of Land Management, Santa Fe, New Mexico, on April 30, 1999.

New Mexico Principal Meridian, New Mexico

T. 15 N., R. 12 E., accepted March 24, 1999, for Group 947 NM.

Indian Meridian, Oklahoma

T. 29 N., R. 25 E., accepted January 29, 1999, for Group 77 OK.

T. 23 N., R. 10 E., accepted Janaury 29, 1999, for Group 925 NM; and Protraction Diagam for Townships 11 and 12 North, Ranges 4 and 5 East, NM, have been officially filed as of this date, April 1, 1999.

If a protest against a survey, as shown on any of the above plats is received prior to the date of official filing, the filing will be stayed pending consideration of the protest. A plat will not be officially filed until the day after all protests have been dismissed and become final or appeals from the dismissal affirmed.

A person or party who wishes to protest against any of these surveys must file a written protest with the NM State Director, Bureau of Land Management, stating that they wish to protest.

A statement of reasons for a protest may be filed with the notice of protest to the State Director, of the statement of reasons must be filed with the State Director within thirty (30) days after the protest is filed.

The above-listed plats represent dependent resurveys, surveys, and subdivisions.

These plats will be available for inspection in the New Mexico State Office, Bureau of Land Management, P.O. Box 27115, Santa Fe, New Mexico, 87502–0115. Copies may be obtained from this office upon payment of $1.10 per sheet.

Dated: April 1, 1999.

Stephen W. Beyerlein,

Acting Chief Cadastral, Surveyor For New Mexico.

[FR Doc. 99–9426 Filed 4–14–99; 8:45 am]

BILLING CODE 4310–FB–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–957–00–1420–00: GP–0159]

Filing of Plats of Survey: Oregon/Washington

AGENCY: Bureau of Land Management, DOI.

ACTION: Notice.

SUMMARY: The plats of survey of the following described lands are scheduled to be officially filed in the Oregon State Office, Portland, Oregon, thirty (30) calendar days from the date of this publication.

Willamette Meridian

Oregon

T. 38 S., R. W., accepted January 11, 1999

T. 39 S., R. 4 E., accepted December 18, 1998
T. 18 S., R. 27 E., accepted January 22, 1999
T. 37 S., R. 3 W. accepted January 22, 1999
T. 38 S., R. 3 W., accepted January 15, 1999
T. 39 S., R. 1 W., accepted December 28, 1998
T. 34 S., R. 6 W., accepted January 26, 1999
T. 38 S., R. 2 W., accepted January 22, 1999

Washington

T. 9 N., R. 27 E., accepted December 23, 1998

If protests against a survey, as shown on any of the above plat(s), are received prior to the date of official filing, the filing will be stayed pending consideration of the protest(s). A plat will not be officially filed until the day after all protests have been dismissed and become final or appeals from the dismissal affirmed.

The plat(s) will be placed in the open files of the Oregon State Office, Bureau of Land Management, 1515 S.W. 5th Avenue, Portland, Oregon 97201, and will be available to the public as a matter of information only. Copies of the plat(s) may be obtained from the above office upon required payment. A person or party who wishes to protest against a survey must file with the State Director, Bureau of Land Management, Portland, Oregon, a notice that they wish to protest prior to the proposed official filing date given above. A statement of reasons for a protest may be filed with the notice of protest to the State Director, or the statement of reasons must be filed with the State Director within thirty (30) days after the proposed official filing date.

The above-listed plats represent dependent resurveys, survey, and subdivision.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, (1515 S.W. 5th Avenue) P.O. Box 2965, Portland, Oregon 97208.

Dated: April 1, 1999.

Robert D. DeViney, Jr.

Chief, Branch of Realty and Records Services.

[FR Doc. 99–9417 Filed 4–14–99; 8:45 am]
BILLING CODE 4310–33–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

Proposed Ridgewater Water Distribution System Project in Wyoming

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Notice of application for grant funding; public comment period on request to fund the Ridgewater project.

SUMMARY: OSM is announcing its receipt of a grant application from the Wyoming Department of Environmental Quality, Abandoned Mine Land Division (AMLD). Wyoming's application requests $76,265 from the Abandoned Mine Reclamation Fund to pay approximately 29 percent of the cost of rebuilding the Ridgewater Improvement District water distribution system in Converse County, Wyoming. In its application, the State proposes paying for part of the reconstruction cost as a public facility project that will benefit a community impacted by coal mining activities.

This notice describes when and where the Wyoming abandoned mine land (AML) program and the grant application for funding the Ridgewater project are available for you to read. It also sets the time period during which you may send written comments on the request to us.

DATES: We will accept written comments until 4:00 p.m., m.s.t., May 17, 1999.

ADDRESSES: You should mail or hand-deliver written comments to Guy V. Padgett, Casper Field Office Director, at the address shown below. You may read Wyoming's grant application for this proposed project during normal business hours Monday through Friday (excluding holidays) at the same address. Also, we will send one free copy of the grant application to you if you contact OSM's Casper Field Office.

Guy V. Padgett, Director, Casper Field Office, Office of Surface Mining Reclamation and Enforcement, Federal Building, Rm. 2403, 100 East "B" Street, Casper, Wyoming 82601–1918.

FOR FURTHER INFORMATION CONTACT: Guy V. Padgett, Telephone: (307) 261–6555.

SUPPLEMENTARY INFORMATION:

I. Background on Title IV of SMCRA

Title IV of the Surface Mining Control and Reclamation Act (SMCRA) established an Abandoned Mine Land Reclamation (AMLR) program. The purpose of the AMLR program is to reclaim and restore lands and waters that were adversely affected by past mining. The program is funded by a reclamation fee paid by active coal mining operations. Lands and waters eligible for reclamation under Title IV are primarily those that were mined, or affected by mining, and abandoned or inadequately reclaimed before August 3, 1977, and for which there is no continuing reclamation responsibility under State, Federal, or other laws.

Title IV of SMCRA allows States to submit AMLR plans to us. We, on behalf of the Secretary, review those plans and consider any public comments we receive about them. If we determine that a State has the ability and necessary legislation to operate an AMLR program, the Secretary can approve it. The Secretary's approval gives a State exclusively authority to put its AMLR plan into effect.

Once the Secretary approves a State's AMLR plan, the State may annually apply to us for money to fund specific projects that will achieve the goals of its approved plan. We follow the requirements of the Federal regulations at 30 CFR Parts 874, 875, and 886 when we review and approve such applications.

II. Background on the Wyoming AMLR Plan

The Secretary of the Interior approved Wyoming's AMLR plan on February 14, 1983. You can find background information on the Wyoming AML program, including the Secretary's findings and our responses to comments, in the February 14, 1983, **Federal Register** (48 FR 6536). Wyoming changed its plan a number of times since the Secretary first approved it. In 1984, we accepted the State's certification that it addressed all known coal-related impacts in Wyoming that were eligible for funding under its program. As a result, the State may now reclaim low priority non-coal reclamation projects. You can read about the certification and OSM's acceptance in the May 25, 1984, **Federal Register** (49 FR 22139). At the same time, we also accepted Wyoming proposal that it will ask us for funds to reclaim any additional coal-related problems that occur during the life of the Wyoming AML program as soon as it becomes aware of them. In the April 13, 1992, **Federal Register** (57 FR 12731), we announced our decision to accept other changes in Wyoming's plan that describe how it will rank eligible coal, non-coal, and facility projects for funding. Those changes also authorized the Governor of Wyoming to evaluate the priority of a project based upon the Governor's determination of need and urgency. They also expanded the State's ability to construct public facilities under section 411 of SMCRA. We approved additional changes in Wyoming's plan concerning noncoal lien authority and contractor eligibility that improve the efficiency of the State's AML program. That approval is described in the February 21, 1996, **Federal Register** (61 FR 6537).

Once a State certifies that it will address all remaining abandoned coal mine problems, and the Secretary concurs, then it may request funds to

undertake abandoned noncoal mine reclamation, community impact assistance, and public facilities projects under sections 411(b), (e), and (f), of SMCRA.

State law and regulations that apply to the proposed Ridgewater funding request include Wyoming Statute 35–11–1201 and Wyoming Abandoned Mine Land Regulations, Chapter VII, of the Wyoming Abandoned Mine Program.

III. Wyoming's Request To Fund Part of the Cost of Rebuilding the Ridgewater Distribution System

The Wyoming Department of Environmental Quality submitted to us a grant application dated December 21, 1998. In that application, Wyoming asked for $76,265 that it will use to pay for part of the cost of rebuilding the Ridgewater Improvement District water distribution system in Converse County, Wyoming. This water distribution system is a public facility in a community impacted by coal mining activities. The requested funding is 29 percent of the project's total cost. Money for the balance of the project cost will come from State loan and district water user assessments and reserves.

The Governor of Wyoming certified the need and urgency to fund the Ridgewater Improvement District project before the State's remaining inventory of non-coal reclamation work is finished as allowed by section 411(f) of SMCRA. That certification says the project is in a community impacted by coal mining activities. The Ridgewater Improvement District was developed during the boom period when inadequate regulation resulted in poorly designed water and sewer systems. As a result, current distribution lines are too small to provide for the District's fire suppression services. The District also has wastewater treatment problems. Wastewater potentially can infiltrate drinking water lines due to poor line conditions.

The project will mitigate the impacts of rapid industrial growth by providing safe drinking water and fire suppression capability in the District. The Governor's certification states that the current need for District fire suppression capability and concern for wastewater infiltrating drinking water supplies warrants funding this project before the State reclaims its remaining inventory of non-coal projects.

IV. How We Will Review Wyoming's Grant Application

We will review this grant application with respect to the regulations at 30 CFR 875.15, specifically subsections 875.15(e) (1) through (7). As stated in those regulations, the application must include the following information: (1) The need or urgency for the activity or the construction of the public facility; (2) the expected impact the project will have on Wyoming's coal or minerals industry; (3) the availability of funding from other sources and, if other funding is provided, its percentage of the total costs involved; (4) documentation from other local, State, and Federal agencies with oversight for such utilities or facilities describing what funding they have available and why their agency is not fully funding this specific project; (5) the impact on the State, the public, and the minerals industry if the facility is not funded; (6) the reason why this project should be selected before a priority project relating to the protection of the public health and safety or the environment from the damages caused by past mining activities, and (7) an analysis and review of the procedures Wyoming used to notify and involve the public in this funding request, and a copy of all comments received and their resolution by the State. Wyoming's application for the Ridgewater Improvement District project contains the information described in these seven subsections.

Section 875.15(f) requires us to evaluate all comments we receive and determine whether the funding meets the requirements of sections 875.15(e) (1) through (7) described above. It also requires us to determine if the request is in the best interests of the State's AML program. We will approve Wyoming's request to fund this project if we conclude that it meets all the requirements of 30 CFR 875.15.

V. What To Do if You Want To Comment on the Proposed Project

We are asking for public comments on Wyoming's request for funds to pay for part of the cost of rebuilding the Ridgewater water distribution system. You are welcome to comment on the project. If you do, please give us written comments. Make sure your comments are specific and pertain to Wyoming's funding request in the context of the regulations at 30 CFR 875.15 and the provisions of section 411 of SMCRA. You should explain any recommendations you make. If we receive your comments after the time shown under **DATES** or at locations other than the Casper Field Office, we will not necessarily consider them in our final decision or include them in the administrative record.

Dated: April 7, 1999.

Brent Wahlquist,

Regional Director, Western Regional Coordinating Center.

[FR Doc. 99–9412 Filed 4–14–99; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF JUSTICE

Antitrust Division

Agency Information Collection Activities: Comment Request

ACTION: Request OMB emergency approval; Department of Justice Federal coal lease review information.

The Department of Justice, Antitrust Division, has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the emergency review procedures of the Paperwork Reduction Act of 1995. OMB approval has been requested by April 23, 1999. The proposed information collection is published to obtain comments from the public and affected agencies. If granted, the emergency approval is only valid for 90 days. Comments should be directed to OMB, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer, Washington, DC 20530.

During the first 60 days of this same review period, a regular review of this information collection is also being undertaken.

All comments and suggestions, or questions regarding additional information, to include obtaining a copy of the proposed information collection instrument with instructions, should be directed to Jill A. Ptacek, Transportation, Energy and Agriculture Section, Antitrust Division, Department of Justice, Room 536, 325 7th Street, NW., Washington, DC 20530.

Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information

(1) *Type of information collection:* Extension of a currently approved collection.

(2) *Title of the form/collection:* Department of Justice Federal Coal Lease Review Information.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Forms ATR–139, ATR–140. Antitrust Division, United States Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Business or other for-profit. *Other:* None.

The Department of Justice evaluates the competitive impact of issuances, transfers and exchanges of Federal coal leases. These forms seek information regarding a prospective coal lessee's coal reserves and the reserves subject to the federal lease. The Department uses this information to determine whether the lease transfer is consistent with the Antitrust laws.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 20 responses per year at 2 hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 40 annual burden hours.

If Additional Information Is Required Contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW., Washington, DC 20530.

Dated: April 12, 1999.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 99–9414 Filed 4–14–99; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of information collection under review; Alien address report card.

The Department of Justice, Immigration and Naturalization Service has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for "sixty days" until June 14, 1999.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms or information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Reinstatement without change of previously approved collection.

(2) *Title of the Form/Collection:* Alien Address Report Card.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form I–104. Adjudications Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households. This form is used by aliens to report their current address, upon a ten-day notice, only when required by the Attorney General under section 265 of the Immigration and Nationality Act.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 1 response at 5 minutes (.083) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 1 annual burden hour.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 5307, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW., Washington, DC 20530.

Dated: April 9, 1999.

Richard A. Sloan,

Department Clearance Officer, United States Department of Justice, Immigration and Naturalization Service.

[FR Doc. 99–9346 Filed 4–14–99; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities; Proposed Collection; Comment Request

ACTION: Notice of information collection under review; Certificate of satisfactory pursuit.

The Department of Justice, Immigration and Naturalization Service has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for "sixty days" from June 14, 1999.

Written comments and suggestions from the public and affected agencies

concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Reinstatement without change of a previously approved collection.

(2) *Title of the Form/Collection:* Certificate of Satisfactory Pursuit.

(3) *Agency form number, if any, and the applicable component sponsoring the collection:* Form I–699. Office of Adjudications, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households. The Service will use this form to verify that a certified course provider has supplied the required instructions to temporary resident aliens, in compliance with Public Law 99–603 and Public Law 100–204, section 902.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 100,000 responses at 10 minutes (.166 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 16,600 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 5307, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact Mr. Robert B. Briggs, Clearance Officer, U.S. Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center Building, 1001 G Street, NW., Washington, DC 20530.

Dated: April 9, 1999.

Richard A. Sloan,

Department Clearance Officer, United States Department of Justice, Immigration and Naturalization Service.

[FR Doc. 99–9347 Filed 4–14–99; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities; Proposed Collection; Comment Request

ACTION: Notice of Information Collection Under Review; Inter-Agency Alien Witness and Informant Record.

The Department of Justice, Immigration and Naturalization Service has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for "sixty days" from June 14, 1999.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Reinstatement without change of a previously approved collection.

(2) *Title of the Form/Collection:* Inter-Agency Alien Witness and Informant Record.

(3) *Agency form number, if any, and the applicable component sponsoring the collection:* Form I–854. Office of Adjudications, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households. This form is used by law enforcement agencies (LEA) to bring alien witnesses and informants to the United States in "S" nonimmigrant classification. This form also provides the Department of States and the Immigration and Naturalization Service with information necessary to identify the requesting LEA, the alien witness and/or informant.

(5) *An estimate of the total number of respondent and the amount of time estimated for an average respondent to respond:* 125 responses at 4 hours and 15 minutes (4.25) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 531 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 5307, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestion regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact Mr. Robert B. Briggs, Clearance Officer, U.S. Department of Justice, Information Management and Security Staff, Justice Management Division, Suit 850, Washington Center Building, 1001 G Street, NW., Washington, DC 20530.

Dated: April 9, 1999.

Richard A. Sloan,

Department Clearance Officer, United States Department of Justice, Immigration and Naturalization Service.

[FR Doc. 99–9348 Filed 4–14–99; 8:45 am]

BILLING CODE 4410–10–M

LEGAL SERVICES CORPORATION

Sunshine Act Meeting; Meeting of the Board of Directors Operations and Regulations Committee

"FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: FR Doc. 99–9021 on page 17422.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: The Operations and Regulations Committee of the Legal Services Corporation Board of Directors will meet on April 16, 1999. The meeting will begin at 10:00 p.m. and continue until the Committee concludes its agenda.

CHANGES IN THE MEETING: The meeting will being at 10:00 a.m. and continue until the Committee concludes its agenda.

CONTACT PERSON FOR INFORMATION: Victor M. Fortuno, General Counsel and Secretary of the Corporation, at (202) 336–8810.

Dated: April 13, 1999.

Suzanne B. Glasow.

Senior Assistant General Counsel.

[FR Doc. 99–9627 Filed 4–13–99; 3:20 pm]

BILLING CODE 7050–01–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration, Office of Records Services—Washington, DC.

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Once approved by NARA, records schedules provide mandatory instructions on what happens to records when no longer needed for current Government business. They authorize the preservation of records of continuing value in the National Archives of the United States and the destruction, after a specified period, of records lacking administrative, legal, research, or other value. Notice is published for records schedules in which agencies propose to destroy records not previously authorized for disposal or reduce the retention period of records already authorized for disposal. NARA invites public comments on such records schedules, as required by 44 U.S.C. 3303a(a).

DATES: Requests for copies must be received in writing on or before June 1, 1999. Once the appraisal of the records is completed, NARA will send a copy of the schedule. NARA staff usually prepare appraisal memorandums that contain additional information concerning the records covered by a proposed schedule. These, too, may be requested and will be provided once the appraisal is completed. Requesters will be given 30 days to submit comments.

ADDRESSES: To request a copy of any records schedule identified in this notice, write to the Life Cycle Management Division (NWML), National Archives and Records Administration (NARA), 8601 Adelphi Road, College Park, MD 20740–6001. Requests also may be transmitted by FAX to 301–713–6852 or by e-mail to records.mgt@...arch2.nara.gov. Requesters must cite the control number, which appears in parentheses after the name of the agency which submitted the schedule, and must provide a mailing address. Those who desire appraisal reports should so indicate in their request.

FOR FURTHER INFORMATION CONTACT: Michael L. Miller, Director, Modern Records Programs (NWM), National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001, telephone (301) 713–7110.

SUPPLEMENTARY INFORMATION: Each year Federal agencies create billions of records on paper, film, magnetic tape, and other media. To control this accumulation, agency records managers prepare schedules proposing retention periods for records and submit these schedules for NARA's approval, using the Standard Form (SF) 115, Request for Records Disposition Authority. These schedules provide for the timely transfer into the National Archives of historically valuable records and authorize the disposal of all other records after the agency no longer needs to conduct its business. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. Most schedules, however, cover records of only one office or program or a few series of records. Many of these update previously approved schedules, and some include records proposed as permanent.

No Federal records are authorized for destruction without the approval of the Archivist of the United States. This approval is granted only after a thorough consideration of their administrative use by the agency of origin, the rights of the Government and of private persons directly affected by the Government's activities, and whether or not they have historical or other value.

Besides identifying the Federal agencies and any subdivisions requesting disposition authority, this public notice lists the organizational unit(s) accumulating the records or indicates agency-wide applicability in the case of schedules that cover records that may be accumulated throughout an agency. This notice provides the control number assigned to each schedule, the total number of schedule items, and the number of temporary items (the records proposed for destruction). It also includes a brief description of the temporary records. The records schedule itself contains a full description of the records at the file unit level as well as their disposition. If NARA staff has prepared an appraisal memorandum for the schedule, it too, includes information about the records. Further information about the disposition process is available on request.

Schedules Pending

1. Department of the Air Force, Agency-wide (N1–AFU–97–16, 5 items, 5 temporary items). Files relate to Air Force radio and television service. Included are workload reports, product quality assessments, information concerning broadcast scheduling, and documents relating to the disposition and shipment of library materials.

2. Department of Energy, Agency-wide (N1–434–98–25, 3 items, 1 temporary item). Electronic copies of documents created using electronic mail and word processing relating to trips, meetings, telephone calls, and other daily activities of high officials as well as the staffing, organization, and procedures of the Department's component offices. Recordkeeping copies of these files are proposed for permanent retention.

3. Department of Energy, Agency-wide (N1–434–98–28, 172 items, 158 temporary items). Records relating to administrative and operational activities concerning environmental matters. Included are such records as form letters and requests for information, cooperative agreements with other Federal agencies and contractors, files documenting evaluation, assessment and audit activities, case files relating to the analysis of samples collected in the course of environmental investigations, program management case files, documents pertaining to worker protection, meeting minutes, inspection reports, logs and other files accumulated in connection with geological investigations, manuals, permits, shipment records, files on the

construction of storage tanks and wells, and documents pertaining to the disposal and cleanup of waste materials that reflect compliance with state, local, and Federal environmental regulations. Also included are electronic copies of documents created using electronic mail and word processing. Proposed for permanent retention are recordkeeping copies of such files as archaeological records, environmental safety and site reports, public involvement records, project case files, post-closure plans and procedures, and waste disposal and cleanup.

4. Department of Justice, Environment and Natural Resources Division (N1–60–99–4, 1 item, 1 temporary item). Files of the Office of Litigation Support pertaining to its coordination of a project undertaken in the period 1994–1998 to develop an electronic information system for an International Tribunal acting in regard to civil rights violations in the former Yugoslavia and Rwanda. Included are correspondence, memoranda, proposals, reports, manuals, electronic mail, and staff notes pertaining to the project. Data contained in the electronic system will be scheduled separately.

5. Department of Justice, Immigration and Naturalization Service (N1–85–99–1, 2 items, 2 temporary items). Clinical case files of the Immigration Health Services Division pertaining to the treatment and care of detainees. Included are reports by medical personnel, graphs, charts, x-rays, and documents pertaining to the results of laboratory and diagnostic procedures. Also included are electronic copies of documents created using electronic mail and word processing.

6. Department of Justice, United States Marshals Service (N1–527–99–2, 1 item, 1 temporary item). Witness Case Files of the Witness Security Program. Files include birth certificates, medical records, passports, marriage licenses, military records, school records, professional licenses, insurance policies, awards, personal papers, and memorabilia.

7. Department of the Treasury, Internal Revenue Service (N1–58–99–2, 8 items, 7 temporary items). Files pertaining to the testing of information systems and Year 2000 conversion activities. Included are reports, system test plans, computer operator's handbooks, core record layouts, and expenditure records. Also included are electronic copies of documents created using electronic mail and word processing. The recordkeeping copy of the agency's report to Congress on Year 2000 conversion activities is proposed for permanent retention.

8. Department of Veterans Affairs, Veterans Health Administration (N1–15–99–1, 8 items, 8 temporary items). Paper and electronic records compiled in the implementation of the Department of Veterans Affairs (VA) Government Information Locator Service (GILS) System. Records include system documentation concerning planning, development and improvement to the GILS system, project history files including briefings and issues papers, project plans, charters and approvals, the VA's GILS master datafile, electronic backups of the master datafile, input documents, and hardcopy printouts. Also included are electronic copies of documents created using electronic mail and word processing.

9. Tennessee Valley Authority, Transmission and Power Supply (N1–142–98–7, 2 items, 2 temporary items). Audiotapes of dispatchers' official telephone communications. Records relate to accidents and power system problems as well as to routine business transactions.

10. Tennessee Valley Authority, Human Resources Division (N1–142–98–11, 1 item, 1 temporary item). Agreements between the agency and its managers and executives regarding benefits to be received during employment.

Dated: April 8, 1999.

Michael J. Kurtz,

Assistant Archivist for Record Services—Washington, DC.

[FR Doc. 99–9440 Filed 4–14–99; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL SCIENCE FOUNDATION

Notice of Intent To Seek Approval To Extend Without Revision a Current Information Collection

AGENCY: National Science Foundation.

ACTION: Notice and request for comments.

SUMMARY: The National Science Foundation (NSF) is announcing plans to request renewal of this collection. In accordance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), we are providing opportunity for public comment on this action. After obtaining and considering public comment, NSF will prepare the submission requesting that OMB approve clearance of this collection for no longer than 3 years.

DATES: Written comments on this notice must be received by June 14, 1999 to be assured of consideration. Comments received after that date will be considered to the extent practicable.

FOR ADDITIONAL INFORMATION OR COMMENTS: Contact Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Boulevard, Suite 295, Arlington, Virginia 22230; telephone (703) 306–1125 x 2017; or send email to splimpto@nsf.gov. You also may obtain a copy of the data collection instrument and instructions from Ms. Plimpton.

SUPPLEMENTARY INFORMATION:

Title of Collection: Fellowship Applications and Award Forms.

OMB Approval Number: 3145–0023.

Expiration Date of Approval: September 30, 1999.

Type of Request: Intent to seek approval to extend without revision an information collection for three years.

Abstract: Section 10 of the National Science Foundation Act of 1950 (42 U.S.C. 1861 *et seq.*), as amended, states that "The Foundation is authorized to award, within the limits of funds made available * * * scholarships and graduate fellowships for scientific study or scientific work in the mathematical, physical, medical, biological, engineering, social, and other sciences at appropriate nonprofit American or nonprofit foreign institutions selected by the recipient of such aid, for stated periods of time."

The Foundation Fellowship Programs are designed to meet the following objectives:

- To assure that some of the Nation's most talented students in the sciences obtain the education necessary to become creative and productive scientific researchers.
- To train or upgrade advanced scientific personnel to enhance their abilities as teachers and researchers.
- To promote graduate education in the sciences, mathematics, and engineering at institutions that have traditionally served ethnic minorities.
- To encourage pursuit of advanced science degrees by students who are members of ethnic groups traditionally under-represented in the Nation's advanced science personnel pool.

The list of fellowship award programs sponsored by the Foundation includes, but may not be limited to, the following:

NSF Graduate Research Fellowships

Graduate Fellowships
Minority Graduate Fellowships
Women in Engineering and Computer & Information Science
Earth Sciences Postdoctoral Research Fellowships
Postdoctoral Research Fellowships in Chemistry

Mathematical Sciences Postdoctoral Research Fellowships
NSF-NATO Postdoctoral Fellowships and Supporting Engineering
Minority Postdoctoral Research Fellowships and Supporting Activities
Postdoctoral Research Fellowships in Biosciences Related to the Environment
Postdoctoral Research Fellowships in Molecular Evolution
Ridge Inter-Disciplinary Global Experiments
Advanced Study Institute Travel Awards

International Opportunities for Scientists and Engineers

Japan Research Fellows
North American Research Fellows
International Research Fellows
Ethics and Values Fellowship Awards

Estimate of Burden: These are annual award programs with application deadlines varying according to the fellowship program. Public burden may also vary according to program, however it is estimated that each submission is averaged to be 12 hours per respondent.

Respondents: Individuals.

Estimated Number of Responses: 13,000.

Estimated Total Annual Burden on Respondents: 156,000 hours.

Frequency of Responses: Annually.

Comments: Comments are invited on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information shall have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information on respondents, including through the use of automated collection techniques or other forms of information technology.

Dated: April 9, 1999.

Suzanne H. Plimpton,

Reports Clearance Officer.

[FR Doc. 99–9386 Filed 4–14–99; 8:45 am]

BILLING CODE 7555–01–U

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Advanced Computational Infrastructure and Research; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Advanced Computational Infrastructure and Research. (#1185).

Date and Time: April 19, 1999—6:00 pm–10:00 pm; April 20, 1999—8:00 am–6:00 pm; April 21, 1999—8:00 am–5:00 pm.

Place: University of Utah, Alumni House, Central Campus Drive, Salt Lake City, UT 84112.

Type of Meeting: Closed.

Contact Person: Dr. Charles H. Koelbel, Program Director, Advanced Computation Research Program, Suite 1122, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, (703) 306–1962.

Purpose of Meeting: To provide recommendations and advice concerning support for the Science and Technology Center, University of Utah.

Agenda: To review and evaluate a proposal and provide advance and recommendations as part of the review process for a proposal submitted to the National Science Foundation.

Reason for Closing: The activities being reviewed may include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: April 12, 1999.

Linda Allen-Benton,

Acting Director, Division of Human Resource Management.

[FR Doc. 99–9396 Filed 4–14–99; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Advisory Panel for Animal Behavior; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation (NSF) announces the following meeting.

Name: Advisory Panel for Animal Behavior (#1160).

Date and Time: April 22–24, 1999, 8:30 a.m.–5:00 p.m.

Place: NSF, Room 360, 4201 Wilson Blvd., Arlington, VA.

Type of Meeting: Part-Open.

Contact Persons: Dr. Penny Kukuk, Program Director, Animal Behavior Division of Integrative Biology and Neuroscience, Suite 685, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Telephone: (703) 306–1419, e-mail: pkukuk@nsf.gov.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Minutes: May be obtained from the contact persons listed above.

Agenda: Open Session: April 23, 1999, 2:00 p.m. to 3:00 p.m.—discussion on research trends, opportunities and assessment procedures in Animal Behavior.

Closed Session: April 22, 1999, 8:30 a.m.–5:00 p.m., April 23, 1999, 8:30 a.m. to 2:00 p.m. and 3:00 p.m. to 5:00 p.m., and April 24, 1999, 8:30 a.m.–5:00 p.m. To review and evaluate Animal Behavior proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: April 12, 1999.

Linda Allen-Benton,

Acting Director, Division of Human Resource Management.

[FR Doc. 99–9398 Filed 4–14–99; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Division of Electrical and Communications Systems; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Division of Electrical and Communications Systems (1196).

Date & Time: May 6–7, 1999, 8:00 a.m.–5:00 p.m.

Place: Room 110, National Science Foundation, 4201 Wilson Blvd., Arlington, VA.

Type of Meeting: Closed.

Contact Person: Dr. Rajinder Khosia, Room 675, Division of Electrical and Communications Systems, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Telephone: (703) 306–1339.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate regular proposals.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: April 12, 1999.

Linda Allen-Benton,

Acting Director, Division of Human Resource Management.

[FR Doc. 99–9399 Filed 4–14–99; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Advisory Panel for Neuroscience; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Advisory Panel for Neuroscience (1158).

Date and Time: April 21–23, 1999; 8:00 a.m. to 5:00 p.m.

Place: Room 330, 4201 Wilson Boulevard, Arlington, VA.

Type of Meeting: Part-Open.

Contact Person: Dr. Emmeline Edwards, Program Director, Behavioral Neuroscience; Dr. Roy White, Program Director, Computational Neuroscience; Division of Integrative Biology and Neuroscience, Suite 685, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230 Telephone: (703) 306–1416.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Minutes: May be obtained from the contact person listed above.

Agenda: Open Session: April 23, 1999; 10:00 a.m. to 11:00 a.m., to discuss goals and assessment procedures. *Closed Session:* April 21–22; 8:00 a.m. to 5:00 p.m.; April 23, 9:00 a.m. to 10:00 a.m., and 11:00 a.m. to 5:00 p.m. To review and evaluate Behavioral Neuroscience proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: April 12, 1999.

Linda Allen-Benton,

Acting Director, Division of Human Resource Management.

[FR Doc. 99–9390 Filed 4–14–99; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Advisory Panel for Neuroscience; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Advisory Panel for Neuroscience (1158).

Date & Time: April 22–23, 1999, 9:00 a.m.–5:00 p.m.

Place: Room 310, 4201 Wilson Blvd., Arlington, VA.

Type of Meeting: Part-Open.

Contact Person: Dr. Annabell Segarra, Program Director, Neuroendocrinology, Division of Integrative Biology and Neuroscience, Suite 685, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230 Telephone: (703) 306–1424.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Minutes: May be obtained from the contact person listed above.

Agenda: Open Session: April 23, 1999; 10:00 a.m. to 11:00 a.m., to discuss goals and assessment procedures. *Closed Session:* April 22, 1999: 9:00 a.m. to 5:00 p.m., and April 23, 1999; 9:00 a.m. to 10:00 a.m. and 11:00 a.m. to 5:00 p.m. To review and evaluate Neuroendocrinology proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c)(4) and (6) of the Government in the Sunshine Act.

Dated: April 12, 1999.

Linda Allen-Benton,

Acting Director, Division of Human Resource Management.

[FR Doc. 99–9391 Filed 4–14–99; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Physics; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Physics (1208).

Date & Time: April 27–29, 1999, 8:00 a.m.–5:00 p.m.

Place: LIGO site, Livingston, Louisiana.

Type of Meeting: Closed.

Contact Person: Dr. Victor Cook, Program Manager, Laser Interferometer Gravitational Observatory, Physics Division, Room 1015, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230 Telephone: (703) 306–1892.

Purpose of Meeting: To review the technical aspects and management of the Laser Interferometer Gravitational-Wave Observatory (LIGO) project.

Agenda: An overview of the project. Detailed examination of the technical aspects of the project and the management of the technical systems.

Reason for Closing: The Project plans being reviewed include information of a proprietary or confidential nature, including technical information; information on personnel and proprietary data for present and future subcontracts. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: April 12, 1999.

Linda Allen-Benton,

Acting Director, Division of Human Resource Management.

[FR Doc. 99–9392 Filed 4–14–99; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Advisory Panel for Physiology and Ethology; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation (NSF) announces the following meeting.

Name: Advisory Panel for Physiology and Ethology (1160).

Date and Time: April 26 & 27, 1999, 8:30 a.m.–6:00 p.m.

Place: NSF, Room 390, 4201 Wilson Blvd., Arlington, Virginia.

Type of Meeting: Part-Open.

Contact Person: Dr. Elvira Doman, Program Director, Integrative Animal Biology, Division of Integrative Biology and Neuroscience, Room 685N, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Telephone: (703) 306–1421.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Minutes: May be obtained from the contact person listed above.

Agenda: Open Session: April 26, 1999, 3:00 p.m. to 4:00 p.m.—discussion on research trends, opportunities and assessment procedures in Integrative Animal Biology.

Closed Session: April 26, 1999, 8:30 a.m.–3:00 p.m., 4:00 p.m. to 6:00 p.m. and April 27, 1999, 8:30 a.m. to 6:00 p.m. To review and evaluate Integrative Animal Biology proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: April 12, 1999.

Linda Allen-Benton,

Acting Director, Division of Human Resource Management.

[FR Doc. 99–9393 Filed 4–14–99; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Elementary, Secondary and Informal Education; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended) the National Science

Foundation announces the following meeting:

Name: Special Emphasis panel in Elementary, Secondary and Informal Education (#59)

Date and Time: Monday, April 26, 1999 11:00 AM–3:00 PM.

Place: Room 365, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. Gerhard L. Salinger, Program Director, Division of Elementary, Secondary and Informal Education, Room 885, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. (703) 306–1620.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Advanced Technological Education Program Proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary of confidential nature including technical information, financial data such as salaries, and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: April 12, 1999.

Linda Allen-Benton,

Acting Director, Division of Human Resource Management.

[FR Doc. 99–9397 Filed 4–14–99; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Social Behavioral and Economic Sciences Notice of Meeting

In accordance with the Federal Advisory Committee Act, P.L. 92–463, the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Social Behavioral and Economic Sciences (1766) (Doctorate Data Project)

Date: April 22, 1999 (1:00 PM–5:00 PM; April 23, 1999 (1:00 PM–5:00 PM).

Place: National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Room 1295

type of Meeting: Open

Contact Person: Susan T. Hill, Director, Doctorate Data Project, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230 (703) 306–1774, ext. 6915

Purpose of Meeting: Provide suggestions from the panel concerning the content of the Survey of Earned Docorates and the definition of "research doctorate" used to identify the universe of eligible graduates.

Summarized Agenda: The afternoon of April 22, 1999 will be used to discuss the goals of the panel and the Education items of the questionnaire April 23, 1999 will used to discuss the definition of "research doctorate" and the post graduation plans and demographic sections of the questionnaire.

Dated: April 12, 1999.

Linda Allen-Benton,

Acting Director, Division of Human Resource Management.

[FR Doc. 99–9394 Filed 4–14–99; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

1. *Type of submission, new, revision, or extension:* Revision.

2. *The title of the information collection:* 10 CFR Part 100, "Reactor Site Criteria".

3. *The form number if applicable:* Not applicable.

4. *How often the collection is required:* As necessary in order for NRC to assess the adequacy of proposed seismic design bases and the design bases for other geological hazards for nuclear power and test reactors constructed and licensed in accordance with 10 CFR Parts 50 or 52 and the Atomic Energy Act of 1954, as amended.

5. *Who will be required or asked to report:* Applicants and licensees for nuclear power and test reactors.

6. *An estimate of the number of responses:* 1.

7. *The estimated number of annual respondents:* 1.

8. *An estimate of the total number of hours needed annually to complete the requirement or request:* 5,000.

9. *An indication of whether Section 3507(d), Pub. L. 104–13 applies:* Not applicable.

10. *Abstract:* 10 CFR Part 100, "Reactor Site Criteria," establishes approval requirements for proposed sites for the purpose of constructing and operating stationary power and testing reactors pursuant to the provisions of 10 CFR Parts 50 or 52. These reactors are required to be sited, designed, constructed, and maintained to withstand geologic hazards, such as faulting, seismic hazards, and the maximum credible earthquake, to protect the health and safety of the public and the environment. NRC uses the information required by 10 CFR Part 100 to assess the adequacy of proposed seismic design bases and the design bases for other geological hazards for nuclear power and test reactors.

A copy of the final supporting statement may be viewed free of charge at the NRC Public Document Room, 2120 L Street, NW (lower level), Washington, DC. OMB clearance requests are available at the NRC worldwide web site (http://www.nrc.gov/NRC/PUBLIC/OMB/index.html). The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions should be directed to the OMB reviewer listed below by May 17, 1999. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date. Erik Godwin, Office of Information and Regulatory Affairs (3150–0093), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be submitted at (202) 395–3084.

The NRC Clearance Officer is Brenda Jo. Shelton, 301–415–7233.

Dated at Rockville, Maryland, this 8th day of April 1999.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 99–9388 Filed 4–14–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–261]

Licensee; Notice of Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (Commission) has issued Amendment No. 181 to Facility Operating License No. DPR–23 issued to H. B. Robinson Steam Electric Plant, Unit 2 (HBRSEP), which revised the Updated Final Safety Analysis Report (UFSAR) for operation of HBRSEP located in Darlington County, SC. The

amendment is effective as of the date of issuance.

This amendment consists of a change to the UFSAR in response to the request for amendment dated August 28, 1997, as supplemented by letters dated June 17, 1998, October 29, 1998, and February 11, 1999.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License and Opportunity for a Hearing in connection with this action was published in the **Federal Register** on May 21, 1998 (63 FR 28008). No request for a hearing or petition for leave to intervene was filed following this notice.

The Commission has prepared an Environmental Assessment related to the action and has determined not to prepare an environmental impact statement. Based upon the environmental assessment, the Commission has concluded that the issuance of the amendment will not have a significant effect on the quality of the human environment (64 FR 17019).

For further details with respect to the action see (1) the application for amendment dated August 28, 1997, as supplemented June 17, 1998, October 29, 1998, and February 11, 1999, (2) Amendment No. 181 to License No. DPR–23, (3) the Commission's related Safety Evaluation, and (4) the Commission's Environmental Assessment. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC, and at the local public document room located at Hartsville Memorial Library, 147 West College Avenue, Hartsville, South Carolina 29550.

Dated at Rockville, Maryland, this 7th day of April 1999.

For the Nuclear Regulatory Commission.

Ram Subbaratnam,

Project Manager, Section 2, Project Directorate II, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 99–9389 Filed 4–14–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting

DATE: Weeks of April 12, 19, 26, and May 3, 1999.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of April 12

Wednesday, April 14

9:00 a.m. Briefing on Investigative Matters (Closed—Ex. 5 & 7)

11:00 a.m. Briefing on Remaining Issues Related to Proposed Restart of Millstone Unit 2 (Public Meeting) (Contact: William Dean, 301–415–2240)

Thursday, April 15

3:00 p.m. Affirmative Session (Public Meeting)

a. Private Fuel Storage, LLC (PFS) Review of Board's Decision Granting Late-Filed Intervention Petition of Southern Utah Wilderness Alliance (LBP–99–3) (February 3, 1999) (TENTATIVE)

b. Duke Energy Corporation—Commission Review of LBP 98–33 (TENTATIVE)

Friday, April 16

9:30 a.m. Briefing on Rulemaking For Generally Licensed Devices (Public Meeting) (Contact: Patricia Holahan, 301–415–8125)

Week of April 19—Tentative

There are no meetings scheduled for the Week of April 19.

Week of April 26—Tentative

There are no meetings scheduled for the Week of April 26.

Week of May 3—Tentative

Tuesday, May 4

9:00 a.m. Meeting on NRC Response to Stakeholders' Concerns (Public Meeting) Location: (NRC Auditorium, Two White Flint North)

2:00 p.m. Meeting on Planning, Budgeting and Performance Management Process (PBPM) And Institutionalizing Change (Public Meeting)

Wednesday, May 5

9:30 a.m. Briefing on Safeguards Performance Assessment (Public Meeting)

Thursday, May 6

9:30 a.m. Briefing on Operating Reactors and Fuel Facilities (Public Meeting)

11:30 a.m. Affirmation Session (Public Meeting) (if needed)

*THE SCHEDULE FOR COMMISSION MEETINGS IS SUBJECT TO CHANGE ON SHORT NOTICE. TO VERIFY THE STATUS OF MEETINGS CALL (RECORDING)—(301) 415–1292. CONTACT PERSON FOR MORE INFORMATION: Bill Hill (301) 415–1661.

* * * * *

Additional Information

By a vote of 5–0 on April 6, the Commission determined pursuant to U.S.C. 552b(e) and § 9.107(a) of the Commission's rules that "Affirmation of Hydro Resources, Inc. (HRI)—Endaum's and SRIC's Petition for Interlocutory Review of Presiding Officer's Order Concerning Radioactive Air Emissions (March 18, 1999) (LBP–99–15)" (PUBLIC MEETING) be held on April 6, and on less than one week's notice to the public.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at:

http://www.nrc.gov/SECY/smj/schedule.htm

* * * * *

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to it, please contact the Office of the Secretary, Attn: Operations Branch, Washington, D.C. 20555 (301–415–1661). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to wmh@nrc.gov or *dkw@nrc.gov*.

Dated: April 9, 1999.

William M. Hill, Jr.,

SECY Tracking Officer, Office of the Secretary.

[FR Doc. 99–9524 Filed 4–13–99; 11:15 am]

BILLING CODE 7590–01–M

PENSION BENEFIT GUARANTY CORPORATION

Interest Assumption for Determining Variable-Rate Premium; Interest on Late Premium Payments; Interest on Underpayments and Overpayments of Single-Employer Plan Termination Liability and Multiemployer Withdrawal Liability; Interest Assumptions for Multiemployer Plan Valuations Following Mass Withdrawal

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of interest rates and assumptions.

SUMMARY: This notice informs the public of the interest rates and assumptions to be used under certain Pension Benefit Guaranty Corporation regulations. These rates and assumptions are published elsewhere (or are derivable from rates published elsewhere), but are collected and published in this notice for the convenience of the public. Interest rates are also published on the PBGC's web site (http://www.pbgc.gov).

DATES: The interest rate for determining the variable-rate premium under part 4006 applies to premium payment years beginning in April 1999. The interest assumptions for performing multiemployer plan valuations following mass withdrawal under part 4281 apply to valuation dates occurring in May 1999. The interest rates for late premium payments under part 4007 and for underpayments and overpayments of single-employer plan termination liability under part 4062 and multiemployer withdrawal liability under part 4219 apply to interest accruing during the second quarter (April through June) of 1999.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005, 202–326–4024. (For TTY/TDD users, call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4024.)

SUPPLEMENTARY INFORMATION:

Variable-Rate Premiums

Section 4006(a)(3)(E)(iii)(II) of the Employee Retirement Income Security Act of 1974 (ERISA) and § 4006.4(b)(1) of the PBGC's regulation on Premium Rates (29 CFR part 4006) prescribe use of an assumed interest rate in determining a single-employer plan's variable-rate premium. The rate is the "applicable percentage" (currently 85 percent) of the annual yield on 30-year Treasury securities for the month preceding the beginning of the plan year for which premiums are being paid (the "premium payment year"). The yield figure is reported in Federal Reserve Statistical Releases G.13 and H.15.

The assumed interest rate to be used in determining variable-rate premiums for premium payment years beginning in April 1999 is 4.74 percent (*i.e.*, 85 percent of the 5.58 percent yield figure for March 1999).

The following table lists the assumed interest rates to be used in determining variable-rate premiums for premium payment years beginning between May 1998 and April 1999.

For premium payment years beginning in:	The assumed interest rate is:
May 1998	5.03
June 1998	5.04
July 1998	4.85
August 1998	4.83
September 1998	4.71
October 1998	4.42
November 1998	4.26
December 1998	4.46
January 1999	4.30
February 1999	4.39
March 1999	4.56
April 1999	4.74

Late Premium Payments; Underpayments and Overpayments of Single-Employer Plan Termination Liability

Section 4007(b) of ERISA and § 4007.7(a) of the PBGC's regulation on Payment of Premiums (29 CFR part 4007) require the payment of interest on late premium payments at the rate established under section 6601 of the Internal Revenue Code. Similarly, § 4062.7 of the PBGC's regulation on Liability for Termination of Single-employer Plans (29 CFR part 4062) requires that interest be charged or credited at the section 6601 rate on underpayments and overpayments of employer liability under section 4062 of ERISA. The section 6601 rate is established periodically (currently quarterly) by the Internal Revenue Service. The rate applicable to the second quarter (April through June) of 1999, as announced by the IRS, is 8 percent.

The following table lists the late payment interest rates for premiums and employer liability for the specified time periods:

From	Through	Interest rate (percent)
10/1/92	6/30/94	7
7/1/94	9/30/94	8
10/1/94	3/31/95	9
4/1/95	6/30/95	10
7/1/95	3/31/96	9
4/1/96	6/30/96	8
7/1/96	12/31/96	9
1/1/97	3/31/97	9
4/1/97	6/30/97	9
7/1/97	9/30/97	9
10/1/97	12/31/97	9
1/1/98	3/31/98	9
4/1/98	6/30/98	8
7/1/98	9/30/98	8
10/1/98	12/31/98	8
1/1/99	3/31/99	7
4/1/99	6/30/99	8

Underpayments and Overpayments of Multiemployer Withdrawal Liability

Section 4219.32(b) of the PBGC's regulation on Notice, Collection, and Redetermination of Withdrawal Liability (29 CFR part 4219) specifies the rate at which a multiemployer plan is to charge or credit interest on underpayments and overpayments of withdrawal liability under section 4219 of ERISA unless an applicable plan provision provides otherwise. For interest accruing during any calendar quarter, the specified rate is the average quoted prime rate on short-term commercial loans for the fifteenth day (or the next business day if the fifteenth day is not a business day) of the month preceding the beginning of the quarter, as reported by the Board of Governors of the Federal Reserve System in Statistical Release H.15 ("Selected Interest Rates"). The rate for the second quarter (April through June) of 1999 (*i.e.*, the rate reported for March 15, 1999) is 7.75 percent.

The following table lists the withdrawal liability underpayment and overpayment interest rates for the specified time periods:

From	Through	Rate (percent)
10/1/92	6/30/94	6.00
7/1/94	9/30/94	7.25
10/1/94	12/31/94	7.75
1/1/95	3/31/95	8.50
4/1/95	9/30/95	9.00
10/1/95	3/31/96	8.75
4/1/96	12/31/96	8.25
1/1/97	3/31/97	8.25
4/1/97	6/30/97	8.25
7/1/97	9/30/97	8.50
10/1/97	12/31/97	8.50
1/1/98	3/31/98	8.50
4/1/98	6/30/98	8.50
7/1/98	9/30/98	8.50
10/1/98	12/31/98	8.50
1/1/99	3/31/99	7.75
4/1/99	6/30/99	7.75

Multiemployer Plan Valuations Following Mass Withdrawal

The PBGC's regulation on Duties of Plan Sponsor Following Mass Withdrawal (29 CFR part 4281) prescribes the use of interest assumptions under the PBGC's regulation on Allocation of Assets in Single-employer Plans (29 CFR part 4044). The interest assumptions applicable to valuation dates in May 1999 under part 4044 are contained in an amendment to part 4044 published elsewhere in today's **Federal Register**. Tables showing the assumptions applicable to prior periods are codified in appendix B to 29 CFR part 4044.

Issued in Washington, DC, on this 9th day of April 1999.

David M. Strauss,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 99–9376 Filed 4–14–99; 8:45 am]

BILLING CODE 7708–01–P

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application to Withdraw from Listing and Registration; (The InterCept Group, Inc., Common Stock, No Par Value Per Share) File No. 1–14213

April 9, 1999.

The InterCept Group, Inc. ("Company") has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2–2(d) promulgated thereunder, to withdraw the security specified above ("Security") from listing and registration on the American Stock Exchange LLC ("Amex" or "Exchange").

The Security has been listed for trading on the Amex since the Company's initial public offering ("IPO") on June 9, 1998. On March 22, 1999, the Security was approved for listing on the Nasdaq National Market ("Nasdaq") and subsequently began trading there on March 30, 1999.

The Company, whose primary business relates to technology, has believed since its IPO that the Nasdaq would be the preferred marketplace for its securities and that quotation on the Nasdaq would provide enhanced liquidity for the Company's shareholders. At the time of its IPO, however, the Company did not qualify for listing on the Nasdaq.

Upon meeting the criteria for listing on the Nasdaq, the Company determined that, acting according to what it perceived as the best interests of its shareholders, it would proceed with listing the Security on the Nasdaq and concomitantly make its application to withdraw the Security from listing on the Amex.

The Company has complied with the rules of the Amex by filing with the Exchange a certified copy of the resolutions adopted by the Board of Directors of the Company authorizing the withdrawal of the Security from listing on the Amex and by setting forth in detail to the Exchange the reasons for such proposed withdrawal, and the facts in support thereof.

The Amex has informed the Company of its determination not to interpose any objection to the Company's application to withdraw its Security from listing and registration on the Exchange.

The Company's application relates solely to the withdrawal from listing to the Company's Security on the Amex and shall have no effect upon the continued listing of the Security on the Nasdaq. By reason of Section 12(g) of the Act and the rules and regulations of the Commission thereunder, the Company shall continue to be obligated to file reports under Section 13 of the Act with the Commission.

Any interested person may, on or before May 3, 1999, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 99–9443 Filed 4–14–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–23778; 812–11570]

INVESCO Global Health Sciences Fund et al.; Notice of Application

April 9, 1999.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of application for an order under section 6(c) of the Investment Company Act of 1940 (the "Act") for an exemption from section 19(b) of the Act, and rule 19b–1 under the Act.

SUMMARY OF APPLICATION: Applicants request an order to amend a prior order that permits the INVESCO Global Health Sciences Fund (the "Fund") to make up to four distributions of net long-term capital gains in any one taxable year, so long as the Fund maintains in effect a distribution policy calling for quarterly distributions of a mixed percentage of its net asset value ("NAV") ("Prior Order").[1]

APPLICANTS: The Fund and INVESCO Funds Group, Inc. ("IFG").

FILING DATE: The application was filed on April 8, 1999.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on May 4, 1999, and should be accompanied by proof of service on applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Applicants, 7800 East Union Avenue, Denver, CO 80237.

FOR FURTHER INFORMATION CONTACT: John K. Forst, Attorney Advisor, at (202) 942–0569, or Mary Kay Frech, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the Commission's Public Reference Branch, 450 Fifth Street, NW, Washington, DC 20549–0102 (tel. (202) 942–8090).

Applicants' Representations

1. The Fund is a closed-end diversified management investment company organized as a Massachusetts business trust and registered under the

[1] Invesco Global Health Sciences Fund, Investment Company Act Release Nos. 23061 (March 6, 1998) (notice) and 23099 (April 3, 1998) (order).

Act. The Fund's investment objective is capital appreciation through investment in health sciences related business. sectors. IFG, an investment adviser registered under the Investment Advisers Act of 1940, serves as the Fund's investment adviser.

2. On October 6, 1997, the Fund's board of trustees ("Board") adopted a distribution policy (the "Distribution Policy") that calls for four quarterly distributions of 2.5% of the Fund's NAV at the time of the declaration, for a total of approximately 10% of the NAV per year. Applicants believe that the Distribution Policy will help reduce the discount for NAV at which the Fund's shares typically trade.

3. On April 3, 1998, the Commission issued the Prior Order. The requested order ("Amended Order") would amend the condition in the Prior Order concerning rights offerings by the Fund.[2]

Applicant's Legal Analysis

1. Section 19(b) of the Act provides that a registered investment company may not, in contravention of such rules, regulations, or orders as the Commission may prescribe, distribute long-term capital gains more often than once every twelve months. Rule 19b–1(a) under the Act permits a registered investment company, with respect to any one taxable year, to make one capital gains distribution, as defined in section 852(b)(3)(C) of the Internal Revenue Code of 1986, as amended (the "Code"). Rule 19b–1(a) also permits a supplemental distribution to be made pursuant to section 855 of the Code not exceeding 10% of the total amount distributed for the year. Rule 19b–1(f) permits one additional long-term capital gains distribution to be made to avoid the excise tax under section 4982 of the Code.

2. Applicants state that one of the concerns underlying section 19(b) and rule 19b–1 is that frequent capital gains distributions could facilitate improper sales practices, including, in particular, the practice of urging an investor to purchase fund shares on the basis of an upcoming dividend ("selling the dividend"), when the dividend would result in an immediate corresponding reduction in NAV and would be, in effect, a return of the investor's capital. Applicants submit that this concern does not apply to closed-end investment companies, such as the Fund, that do not continuously distribute shares.

3. Applicants also assert that the requested amended condition would protect against the concern about "selling the dividend" in connection with a rights offering by the Fund. Applicants state also that if the Fund makes a rights offering to its shareholders, the rights offering will be timed so that shares issuable upon exercise of the rights will be issued only in the six week period immediately following the record date for the declaration of a dividend. Thus, the abuse of selling the dividend could not occur as a matter of timing. Applicants further state that any rights offering by the Fund will comply with all Commission and staff guidelines concerning such offering. In determining compliance with these guidelines, the Board may rely on the advice of outside counsel, IFG and other appropriate persons, and will consider, among other things, the brokerage commissions that would be paid in connection with the offering. Any rights offering by the Fund will also comply with any applicable NASD rules regarding the fairness of compensation.

4. Section 6(c) of the Act provides that the Commission may exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provisions of the Act, or any rule thereunder, if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. For the reasons stated above, applicants believe that the requested amendment to the Prior Order meets the standards set forth in section 6(c) of the Act.

Applicant's Condition

Applicants agree that the Amended Order shall terminate upon the effective date of a registration statement under the Securities Act of 1933 for any future public offering by the Fund of its shares other than: (i) a rights offering to shareholders of the Fund, in which: (a) shares are issued only within the six-week period immediately following the record date of a quarterly dividend, (b) the prospectus for such rights offering makes it clear that shareholders exercising the rights will not be entitled to receive such dividend; and (c) the Fund has not engaged in more than one rights offering during any given calendar year; or (ii) an offering in connection with a merger, consolidation, acquisition, or reorganization of the Fund; unless the Fund has received from the staff of the Commission written assurance that the Amended Order will remain in effect.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–9357 Filed 4–14–99; 8:45 am]

BILLING CODE 8010–01–M

[2] Applicants request that the relief extend to any other registered closed-end management investment company in the future advised by IFG or any entity controlling, controlled by, or under common control (within the meaning of section 2(a)(9) of the Act) with IFG ("Future Fund"). Applicants state that any Future Fund that relies on the relief will do so only in accordance with the terms and conditions of the application.

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. IC–23780, 812–11276]

PaineWebber Incorporated and PaineWebber Equity Trust, ABCs Trust Series 1; Notice of Application

April 9, 1999.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for an order under sections 6(c) and 17(b) of the Investment Company Act of 1940 (the "Act") for an exemption from section 17(a) of the Act.

SUMMARY OF APPLICATION: Applicants request an order that would permit certain terminating series of a unit investment trust ("UIT") to sell portfolio securities to certain new series of the UIT.

APPLICANTS: PaineWebber Incorporated ("PaineWebber" or "Sponsor"), PaineWebber Equity Trust ("Trust"), ABCs Trust Series 1 ("Series 1"), and each subsequent series of the Trust sponsored by PaineWebber (together with Series 1, each a "Series").[1]

FILING DATES: The application was filed on August 26, 1998, and amended on March 5, 1999. Applicants have agreed to file an amendment, the substance of which is reflected in this notice, during the notice period.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on May 5, 1999, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature

[1] Any future Series that relies on the requested relief will comply with the terms and conditions of the application.

of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, N.W., Washington, D.C. 20549–0609. Applicants, 1200 Harbor Boulevard, Weehawken, N.J. 07087, Attn: Robert E. Holley.

FOR FURTHER INFORMATION CONTACT: Elaine M. Boggs, Senior Counsel, at (202) 942–0572, or Mary Kay Frech, Branch Chief, at (202) 942–0564 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch, 450 5th Street, N.W., Washington, D.C. 20549–0102 (tel. (202) 942–8090).

Applicants' Representations

1. Each Series will be a series of the Trust and will be a UIT registered under the Act. PaineWebber will be the sponsor of each Series. Each Series will be created under the laws of one of the United States pursuant to a trust indenture, which will contain information specific to that Series, and which will incorporate by reference a master trust indenture between the Sponsor and a financial institution that is a bank within the meaning of section 2(a)(5) of the Act and that satisfies the criteria in section 26(a) of the Act and will be unaffiliated with the Sponsor (the "Trustee").

2. The investment objective of each Series will be to provide for capital appreciation and/or dividend income by investing in equity securities. The Sponsor will deposit with the Trustee portfolio securities which will be chosen according to fixed criteria from securities that appear on the PaineWebber Equity Research Department's Analysts' Best Call List as of the initial date of deposit. Each Series' portfolio may include equity securities that have (a) a minimum market capitalization of U.S. $1 billion and (b) had an average daily trading volume in the preceding 60 trading days of at least 50,000 shares equal in value to at least U.S. $250,000 on an exchange ("Qualified Exchange") which is (i) a national securities exchange which meets the qualifications of section 6 of the Securities Exchange Act of 1934, (ii) the Nasdaq National Market, or (iii) a foreign securities exchange that meets the qualifications set out in the proposed amendments to rule 12d3–1(d)(6) under the Act[2] ("Qualified Rollover Securities").

3. Each Series has at least one rollover date ("Rollover Date") on which unitholders in the Series ("Rollover Series") may redeem their units in the Rollover Series on a specified date ("Special Liquidation Date") and receive units of a subsequent Series of the same type ("New Series"), which will be created on or about the Rollover Date.

4. Each Rollover Series will terminate approximately one year after it is offered for sale. The Sponsor anticipates that there will be some overlap in the Qualified Rollover Securities selected for the portfolios of each Rollover Series and the related New Series. In connection with the rollover, absent the requested relief, each Rollover Series would sell all of its Qualified Rollover Securities and each New Series would acquire its Qualified Rollover Securities on the applicable securities exchange. This would result in the unitholders of both the Rollover Series and the New Series incurring brokerage commissions on the same securities.

Applicants' Legal Analysis

1. Section 17(a) of the Act prohibits an affiliated person of a registered investment company from selling securities to, or purchasing securities from, the company. Section 2(a)(3) of the Act defines an "affiliated person" of another person to include, in pertinent part, any person directly or indirectly controlling, controlled by or under common control with, such other person. Each Series will have a common sponsor. Applicants state that, since the sponsor of a Series may be deemed to control the Series, all of the Series may be deemed to be under common control and, thus affiliated persons of each other.

2. Rule 17a–7 under the Act permits registered investment companies that might be deemed affiliated persons solely by reason of having common investment advisers, directors, and/or officers, to purchase securities from, or sell securities to, one another at an independently determined price, provided certain conditions are met. Applicants represent that they will comply with all of the provisions of rule 17a–7, other than paragraph (e).

3. Paragraph (e) of the rule requires an investment company's board of directors to adopt and monitor certain procedures to assure compliance with the rule. Since a UIT does not have a board of directors, the Series would be unable to comply with this requirement.

4. Section 17(b) of the Act authorizes the SEC to exempt a transaction from section 17(a) if the terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, the proposed transaction is consistent with the policy of each registered investment company concerned, and the proposed transaction is consistent with the general purposes of the Act. Section 6(c) under the Act permits the SEC to exempt any person or transaction from any provision of the Act, if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policies of the Act. Applicants request relief under sections 6(c) and 17(b) to permit a Rollover Series to sell Qualified Rollover Securities to a New Series at the closing sales prices of the Qualified Rollover Securities on a Qualified Exchange on the Special Liquidation Date of the Rollover Series ("Sale Date"), and to permit the New Series to purchase the Qualified Rollover Securities.

5. Applicants state that the terms of the proposed transactions will meet the standards of sections 6(c) and 17(b). Applicants represent that purchases and sales between Series will be consistent with the policy of each Series. Applicants state that permitting the proposed transactions would result in savings on brokerage commissions for the Series.

6. Applicants state that the requirements for Qualified Rollover Securities would help to protect against overreaching. In addition, applicants state that the Sponsor will certify to the Trustee, within five days of each sale of Qualified Rollover Securities from a Rollover Series to a New Series: (a) that the transaction is consistent with the policy of both the Rollover Series and the New Series, as recited in their respective registration statements and reports filed under the Act, (b) the date of the transaction, and (c) the closing sales price on the Qualified Exchange

[2] Investment Company Act Release No. 17096 (Aug. 3, 1989) (proposing amendments to rule 12d3–1). The proposed amended rule defined a "Qualified Foreign Exchange" to mean a stock exchange in a country other than the United States where (a) trading generally occurred at least four days a week; (b) there were limited restrictions on the ability of registered investment companies to trade their holdings on the exchange; (c) the exchange had a trading volume in stocks for the previous year of at least U.S. $7.5 billion; and (d) the exchange had a turnover ratio for the proceeding year of at least 20% of its market capitalization. The version of the amended rule that was adopted did not include the part of the proposed amendment defining the term "Qualified Foreign Exchange."

for the Sale Date of the Qualified Rollover Securities. The Trustee will then countersign the certificate, unless, in the unlikely event that the Trustee disagrees with the closing sales price listed on the certificate, the Trustee immediately informs the Sponsor orally of the disagreement and returns the certificate within five days to the Sponsor with corrections duly noted. Upon the Sponsor's receipt of a corrected certificate, if the Sponsor can verify the corrected price by reference to an independently published list of closing sales prices for the date of the transactions, the Sponsor will ensure that the price of units of the New Series, and distributions to holders of the Rollover Series with regard to redemption of their units or termination of the Rollover Series, accurately reflect the corrected price. To the extent that the Sponsor disagrees with the Trustee's corrected price, the Sponsor and the Trustee will jointly determine the correct sales price by reference to a mutually agreeable, independently published list of closing sales prices for the date of the transaction.

Applicants' Conditions

Applicants agree that the order granting the requested relief will be subject to the following conditions:

1. Each sale of Qualified Rollover Securities by a Rollover Series to a New Series will be effected at the closing price of the Qualified Rollover Securities sold on a Qualified Exchange on the Sale Date, without any brokerage charges or other remuneration except customary transfer fees, if any.

2. The nature and conditions of the transaction will be fully disclosed to investors in the appropriate prospectus of each Rollover Series and New Series.

3. The Trustee of each Rollover Series and New Series will (a) review the procedures relating to the sale of Qualified Rollover Securities from a Rollover Series and the purchase of those Qualified Rollover Securities for deposit in a New Series, and (b) make such changes to the procedures as the Trustee deems necessary that are reasonably designed to comply with paragraphs (a) through (d) of rule 17a–7.

4. A written copy of these procedures and a written record of each transaction pursuant to this order will be maintained as provided in rule 17a–7(f).

For the SEC, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 99–9442 Filed 4–14–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41256; International Series Release No. 1190; File No. SR–PHLX–98–51]

Self-Regulatory Organizations, Notice of Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to Customized Cross-Rates Foreign Currency Option Margin Levels

April 6, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 16, 1998, the Philadelphia Stock Exchange, Inc. ("PHLX" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the PHLX. The PHLX amended the proposal on March 15, 1993.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend PHLX Rule 722, Margin Accounts, to codify its method of calculating customer margin requirements for customized cross-rate foreign currency options ("CCRs").[4] The required margin for CCRs is determined by combining the actual cost of the CCR, or the "premium," plus an extra or "add-on" amount that is raised or lowered according to the volatility of the currencies involved.[5] The proposed method for calculating the margin for all CCRs will be outlined in PHLX Rule 722, Tiers I and II, and Commentary .15, with the exception of the margin for CCRs involving the Mexican peso,[6] which will be calculated in accordance with Commentary .16 and will be placed in Tier III. Tier IV, which currently addresses Mexican peso CCR margin levels, will be deleted. The text of the proposed rule change follows. Proposed new language is *italicized*; proposed deletions are in [brackets].

* * * * *

Margin Accounts

Rule 722.(a)–(c) No change.

(d) 1–2 No change.

3. Short Positions—Listed Options and Currency, Currency Index or Stock Index Warrants. Subject to the exceptions set forth below, the margin on any put or call option listed or traded on a registered national securities exchange or association and issued by a registered clearing corporation or any currency warrant, currency index warrant or stock index warrant which is issued, guaranteed or carried "short" in a customer's account shall be 100% of the current market value of the option or warrant plus the percentage of the current market value of the underlying security, foreign currency or index specified in column II below.

Notwithstanding the margin required below, the minimum margin on any put or call or any warrant issued, guaranteed or carried "short" in a customer's account may be reduced by any "out-of-the-money-amount" (as defined below), but shall not be less than 100% of the current market value of the option or warrant plus the percentage of current market value of the underlying security, foreign currency or index specified in column II below with the exception that the minimum margin required on each such put option contract shall not be less than the current option market value plus the minimum percentage set forth in column III of the option's aggregate exercise price amount.

---

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Letter from Nandita Yagnik, Counsel, PHLX, to Hong-anh Tran, Attorney, Division of Market Regulation ("Division"), Commission, dated March 15, 1999 ("Amendment No. 1").

[4] CCRs are traded pursuant to PHLX Rule 1069. A CCR is an option to purchase or sell an underlying currency that can be any approved currency as defined pursuant to PHLX Rule 1009(c). Moreover, the option's exercise price is denominated in another approved currency (the trading currency), and neither the underlying nor the trading currency is denominated in U.S. dollars.

[5] The margin may also be reduced in "out-of-the money" situations, where the value of the option does not accord with current market conditions. Notwithstanding, the margin cannot be reduced to less than 100% of the current market value of the premium plus .75% of the underlying component value.

[6] The Exchange currently has Commission approval to trade, as CCRs, the Mexican peso only against the Canadian dollar. Thus, CCR options involving the Mexican peso include Canadian dollar/Mexican peso and Mexican peso/Canadian dollar contracts. *See* PHLX Rule 1069(a)(1)(B).

I. Type of option	II. Initial and/or maintenance margin required	III. Minimum margin required	IV. Underlying component value
(1)		No change	
(2)		No change	
(3)		No change	
(4) Foreign Currencies	(*)	3/4%	The product of Units per foreign currency contract and the closing spot price.
(5) Cross-Rate	4%	3/4%	The products Units per cross-rate contract and the closing spot price.
(6) Tier I Customized Cross-rate currency options.	4%	3/4%	The product of Units per cross-rate contract and the closing spot price.
(7) Tier II Customized Cross-rate currency options.	6%	3/4%	The product of Units per cross-rate contract and the closing spot price.
(8) Tier III Customized Cross-rate currency options.	[7%]**	3/4%	The product of Units per cross-rate contract and the closing spot price.
[(9) Tier IV Customized Cross-rate currency options.	17%	3/4%	The product of Units per cross-rate contract and the closing spot price.
[(10)]*9*[7]		No change.	
[(11)]*10*		No change.	
[(12)]*11*		No change.	
[(13)]*12*		No change.	

*The margin requirement for foreign currency options will be determined pursuant to Commentary .16 of this Rule 722.

***The margin requirement for Tier III customized cross-rate foreign currency options will be determined pursuant to Commentary .15 and .16 of this Rule 722.*

Rule 722(d)4–5 No change.
Rule 722(e)–(i) No change.

* * * * *

Commentary

.01–.14 No change.

.15 For purposes of this rule, the Exchange shall designate the tier level of the customized cross-rate currency options. The Exchange shall make such determination for Tier I and Tier II options based upon the correlation between the currency pairs. Currency pairs which exhibit a correlation less than .25 over the preceding two year period shall be placed in Tier II while all other currency pairs shall be placed in Tier I. The correlations between the currency pairs in these two tiers shall be reviewed no less frequently than on a monthly basis. Tier III will include customized cross-rate currency options which involve [either the Italian lira or Spanish peseta. Tier IV will include customized cross-rate currency options which involve] the Mexican peso[.] *and the margin requirement will be determined according to the methodology pursuant to Commentary .16 below.*

.16 The margin requirement for any foreign currency put or call option listed or traded on the Exchange and issued by a registered clearing corporation which is issued, guaranteed or carried "short" in a customer's account, except for cross-rate currency options *other than customized cross-rate currency options based on the Mexican peso*, shall be the amount provided in paragraph (d)(3) of this Rule 722 and shall be calculated as follows:

(a) The Exchange will review five day price movements over the most recent three year period for each foreign currency underlying options traded on the Exchange and will set a margin level which would have covered the price changes over the review period at least 97.5% of the time ("confidence level").

(b) Subsequent reviews of five day price changes over the most recent three year period will be performed quarterly on the 15th of January, April, July and October of each year.

(c) If the results of subsequent reviews show that the confidence level for any currency has fallen below 97%, the Exchange will increase the margin requirement for that currency up to a 98% confidence level. If the results show a confidence level between 97% and 97.5%, the currency will be monitored monthly until the confidence level exceeds 97.5% for two consecutive months. If the results of a monthly review show that the confidence level has fallen below 97%, the margin requirement will be increased to a 98% confidence level. If the results of any review show that the confidence level has exceeded 98.5%, the margin level would be reduced to a level which would provide a 98% confidence level.

(d) The Exchange will also review each currency for large price movements outside the margin level ("extreme outlier test"). If the results of any review show a price movement, either positive or negative, of greater than two times the current margin level, the margin requirement for that currency will be increased to a confidence level of 99%.

(e) Pursuant to paragraph (i)(8) of this Rule 722, the Exchange may also conduct reviews of currency margin levels at any time that market conditions warrant.

* * * * *

II. Self-Regulatory Organization's Statements of the Purpose of and Statutory Basis for the Proposed Rule Change

In its filing with the Commission, the PHLX included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposal. The text of these statements may be examined at the places specified in Item IV below. The PHLX has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Currently, the Exchange offers an array of foreign currency option products ("FCOs"), including among others, standardized and customized (the category into which CCRs fall) currency options which have differing

[7] Pursuant to a telephone conversation between Nandita Yagnik, Counsel, PHLX, and Hong-anh Tran, Attorney, Division, Commission, dated April 6, 1999, the PHLX proposes to renumber items (10) through (13) as items (9) through (12).

margin requirements. The Exchange currently lists standardized foreign currency options [8] that include standardized options on eight foreign currencies ("Standardized FCOs").[9] The Exchange also lists two cross-rate ("Standardized CRs) [10] currency options. The Exchange also presently lists customized foreign currency options ("Customized FCOs") [11] that include customized strikes ("Customized Strikes"),[12] customized inverse FCOs ("Customized Inverses"),[13] and CCRs.

The add-on margin calculation methodology for Standardized FCOs is based on a methodology, outlined in Commentary .16 to PHLX Rule 722.[14] Standardized CRs presently carry an initial and maintenance add-on margin of 4%, which covers greater than 96% of all seven-day price movements over the preceding one-year period.[15] Customized Inverses and Customized Strikes that trade in U.S. dollars are currently margined following the same methodology as the Exchange's Standardized FCOs (*see* Commentary .16 to PHLX Rule 722).

The add-on margin requirements for CCRs,[16] however, developed differently from that of Standardized FCOs, or Standardized CRs. The Exchange developed a method for determining add-on margin levels for currency pairs using a tiered system, believing that it would prove burdensome to determine the margin level for each currency pair due to the numerous combinations of approved currencies.[16] Under the tiered system, margin levels are determined based upon the correlations between all the possible combinations of approved currencies, thus significantly reducing the burden on the Exchange to calculate the margin levels for each individual currency pair.

Changes to the Margin for CCRs Involving Italian Lira and Spanish Peseta

There are four tiers in the system (I–IV), each of which provides an overall margin for short CCR positions, which include an add-on percentage amount for both initial and maintenance margins (*e.g.*, 4% for Tier I) as well as a set minimum add-on margin requirement, which is currently ¾% for each tier. Currently, Tier III applies to CCRs involving the Italian lira and the Spanish peseta, such that any CCRs involving those currencies would have an add-on margin requirement of 7%.[18] The Exchange now proposes to set add-on margins for CCRs involving the Italian lira and the Spanish peseta following the same correlation method used for CCRs other than the Mexican peso.[19] For a pair of approved currencies, this method examines the correlation between the daily price change for one of those currencies with the daily price change for the other currency for the preceding two-year period. If the correlation is greater than or equal to .25, then the add-on margin level is 4% for that currency pair (*i.e.*, Tier I). If the correlation is below .25, then the add-on margin level for the currency pair is 6% (*i.e* Tier II).Commentary .15 to PHLX Rule 722 (as well as the chart within that Rule) will be amended to reflect these changes to the status of CCRs involving the Italian lira and the Spanish peseta.

The PHLX Examinations Department will review the correlation between the currency of pairs monthly. The currency pairs underlying the customized cross-rate options may move between Tiers I and II depending upon their correlation to each other in the preceding period. If the monthly review reveals that any combination of approved currencies should be in a different tier based on the correlation, the Exchange will implement the change immediately, and promptly notify the membership and Commission.

The Exchange also proposes including an additional adjustment for "out-of-the-money amounts" in those CCRs involving the Italian lira or the Spanish peseta. This adjustment is currently applied to the overall initial and maintenance margin for all the currency pairs currently in Tiers I and II, but not to those involving the Italian lira or the Spanish peseta.[20]

Changes to Add-On Margin for CCRs Involving the Mexican Peso

Tier IV presently applies to CCRs involving the Mexican peso.[21] Tier IV

[8] Standardized options carry specific contract terms for features such as contract size, strike price intervals, expiration dates, price quoting and premium settlement.

[9] The eight foreign currencies previously approved for listing were the Australian dollar, British pound, Canadian dollar, German mark, European Currency Unit, French franc, Japanese yen and Swiss franc. *See* PHLX Rule 1009(c). The base currency (which is the currency in which premiums are quoted and paid) for these Standardized FCOs is the U.S. dollar. *See* Securities Exchange Act Release Nos. 19133 (October 14, 1982), 47 FR 46946 (October 21, 1982) (File No. SR–Phlx–81–4) (regarding the listing and trading of standardized options based on the British pound, German mark, Swiss franc, Canadian dollar and Japanese yen); 20822 (April 4, 1984), 49 FR 14611 (April 12, 1984) (File No. SR–Phlx–84–1) (regarding the listing and trading of Standardized FCOs based on the French franc); 22853 (February 3, 1986), 51 FR 5129 (February 11, 1986) (File No. SR–Phlx–85–10) (regarding the listing and trading of Standardized FCOs based on the European Currency Unit); and 23945 (December 30, 1986), 52 FR 633 (January 7, 1987) (File No. SR–Phlx–86–38) (regarding the listing and trading of Standardized FCOs based on the Australian dollar).

[10] The Exchange presently offers two Standardized CRs, the Deutsche mark/Japanese yen and the British pound/Deutsche mark. The Exchange also has approval to trade a third standardized CR, the British pound/Japanese yen, however, it has not yet been made available for trading. *See* Securities Exchange Act Release No. 29919 (November 7, 1991), 56 FR 58109 (November 15, 1991) (File Nos. SR–Phlx–90–12; SR–Phlx–91–03; SR–Phlx–91–23).

[11] Customized options allow users to customize all aspects of a currency option including: choice of exercise price, the expiration dates of up to two years, and premium quotation as either units of currency or percent of underlying value. Presently, the Exchange lists customized, not standardized, currency options involving the Italian lira, the Spanish peseta, and the Mexican peso. *See* PHLX Rules 1009(c) and 1069.

[12] The Exchange offers Customized Strikes on any approved currency presently listed under PHLX Rule 1009(c). Customized Strikes provide FCO traders and their customers with the ability, within certain limits, to trade an FCO with any exercise price it chooses on a specific approved currency even if that price does not correspond to an exercise price of a listed standardized FCO. *See* Securities Exchange Act Release No. 34925 (November 1, 1994), 59 FR 55720 (November 8, 1994) (File No. SR–Phlx–94–18).

[13] A Customized Inverse is a Customized FCO where the underlying currency (the currency in which an FCO settles) is the U.S. dollar. The Exchange presently provides for the trading of Customized Inverses on any of the approved currencies. *See* Securities Exchange Act Release No. 34925 (November 1, 1994), 59 FR 55720 (November 8, 1994) (File No. SR–Phlx–94–18).

[14] *See* Securities Exchange Act Release No. 40208 (July 5, 1998), 63 FR 39388 (July 22, 1998) (File No. SR–Phlx–97–63).

[15] *See* Securities Exchange Act Release No. 29919 (November 7, 1991), 56 FR 58109 (November 15, 1991) (File No. SR–Phlx–90–12); SR–Phlx–91–03; SR–Phlx–91–23).

[16] The add-on margin treatment for Customized Strikes based on CCRs (*i.e.*, a CCR with a customized strike price) follows the same tiered system as CCRs.

[17] *See* Securities Exchange Release No. 34925 (November 1, 1994), 59 FR 55720 (November 8, 1994) (File No. SR–Phlx–94–18).

[18] The Exchange indicates that when the Commission approved CCRs on the Italian lira and the Spanish peseta, the margin level of 7% was determined by the frequency of distributions method reflecting at least 97.5% of all seven day price movements over the preceding three-year period. Specifically, the 7% margin covered 98.84% and 99.10% of all seven day price changes over the three-year review period involving the Italian lira and the Spanish peseta, respectively.

[19] The PHLX represents that the Italian lira and Spanish peseta have become more established currencies in the currency market, and therefore should be margined in accordance with margins for other approved currencies in a customized cross-rate context. Specifically, the risks involved in trading CCRs involving the lira or peseta have now been reduced so that the 7% customer margin add-on percentage for either case, based on at least 97.5% confidence level, is no longer necessary.

[20] *See* Securities Exchange Act Release 34925 (November 1, 1994), 59 FR 55720 (November 8, 1994) (File No. SR–Phlx–94–18); and *See* Securities Exchange Act Release No. 40208 (July 5, 1998), 63 FR 39338 (July 22, 1998) (File No. SR–Phlx–97–63).

[21] The Mexican peso may only be traded as CCRs against the Canadian dollar. See PHLX Rule

requires an initial and/or maintenance add-on margin of 17%, and covers 99% of all five-day price movements over the preceding three-year period. Currently, under Tier III, there is a 7% initial and/or maintenance add-on margin. Under the proposal, the 7% add-on will be eliminated and the margin requirement for Tier III CCRs will be determined pursuant to Commentary .15 and .16 of PHLX Rule 722, as amended.[22] The Exchange now proposes to delete Tier IV and to amend Tier III to apply to margin levels for CCRs involving the Mexican peso. Under the proposed method for calculating the add-on margin for CCRs involving the Mexican peso, the Exchange will still review five-day price movements over the most recent three-year period but the calculation as proposed would cover cover at least 97.5% of all such five-day price movements rather than the current 99%. This determination is the same as that currently applied to Standardized FCOs covered by Commentary .16 to PHLX Rule 722. The PHLX Examinations Department will review margin levels for CCRs involving the Mexican peso quarterly, at the same time such review is conducted for Standardized FCOs. The Exchange indicates that applying the add-on margin methodology outlined in Commentary .16 to Mexican peso CCRs will eliminate the need to state the actual add-on margin levels for Canadian dollar/Mexican peso and Mexican peso/Canadian dollar CCR contracts. Instead, the Exchange proposed to provide notice of the add-on margin levels for Mexican peso CCRs quarterly via circulars to the membership, the other market participants, and the Commission. The notice will follow the schedule outlined for quarterly reviews conducted for Standardized FCOs.

2. Statutory Basis

The proposed rule change is consistent with Section 6 of the Act,[23] and specifically Section 6(b)(5) thereof,[24] in that it is designed (a) to promote just and equitable principles of trade; (b) to foster cooperation and coordination with persons engaged in regulating, clearing, settling, and processing information with respect in CCRs; and (c) to facilitate transactions in securities by establishing a methodology for the calculation of margin levels for CCRs that will remain consistent and ease the burden of determining new margin levels for each currency traded in the customized environment.

B. Self-Regulatory Organization's Statement on Burden on Competition

The PHLX does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying with the Commission's Public Reference Section, 450 Fifth Street, NW, Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange.

All submissions should refer to File No. SR–Phlx–98–51 and should be submitted by May 6, 1999.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[25]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–9356 Filed 4–14–99; 8:45 am]

BILLING CODE 8010–01–M

1069(a)(1)(B); *See* Securities Exchange Act Release No. 34925 (November 1, 1994), 59 FR 55720 (November 8, 1994) (File No. SR–Phlx–94–18).

[21] The Exchange is proposing to amend Commentary .15 to remove the Italian lira and Spanish peseta CCRs from Tier III, to remove a reference to Tier IV, and to move CCRs involving Mexican pesos to Tier III, to note that margin for Mexican peso CCRs is to be calculated pursuant to Commentary .16. The Exchange is proposing to amend Commentary .16 to clarify that CCRs involving the Mexican peso are to be calculated under the formula set out in that commentary.

[23] 15 U.S.C. 78f(b).

[24] 15 U.S.C. 78f(b)(5).

[25] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG–1999–4974]

Port Access Routes Study; Strait of Juan de Fuca and Adjacent Waters

AGENCY: Coast Guard, DOT.

ACTION: Notice of meeting; extension of comment period.

SUMMARY: The Coast Guard is announcing a public meeting to collect data and information for the ongoing study of port-access routes for the Strait of Juan de Fuca and adjacent waters. The meeting will focus on the issues raised and questions listed in the **Federal Register** notice announcing the study. The Coast Guard is also extending the comment period to May 31, 1999 to allow additional time for public comment.

DATES: The meeting will be held on May 12, 1999 from 1 p.m. to 4 p.m. Comments and related material must reach the Docket Management Facility on or before May 31, 1999.

ADDRESSES: The meeting will be held in the auditorium of Building 9, NOAA Western Regional Center, 7600 Sand Point Way NE, Seattle, WA 98115.

You may submit your written comments and related material by only one of the following methods:

(1) By mail to the Docket Management Facility, (USCG–1999–4974), U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington, DC 20590–001.

(2) By hand to room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(3) By fax to the Docket Management Facility at 202–493–2251.

(4) Electronically through the Web Site for the Docket Management System at http://dms.dot.gov.

The Docket Management Facility maintains the public docket for this notice. Comments and documents, as indicated in this notice, will become part of this docket and will be available for inspection or copying at room PL–401 on the Plaza Level of the Nassif Building at the same address between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may electronically access the public docket for this notice on the Internet at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: For information concerning this notice or public meeting, contact Mr. John Mikesell, Chief, Plans and Programs Section, Aids to Navigation and Waterways Management Branch, Thirteenth Coast Guard District, telephone (206) 220–7272, or Ms. Barbara Marx, Office of Vessel Traffic Management, U.S. Coast Guard Headquarters, telephone (202) 267–0574. For questions on viewing, or submitting material to the docket, contact Dorothy Walker, Chief, Documentary Services Division, U.S. Department of Transportation, telephone 202–366–9329.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages you to participate by submitting comments and related material, and by attending the public meeting. If you submit written comments, please include your name and address, identify the docket number for this notice (USCG–1999–4974), indicate the specific section of the **Federal Register** notice announcing the study to which each comment applies, and give the reason for each comment. You may submit your written comments and material by mail, hand, fax, or electronic means to the Docket Management Facility at the address under **ADDRESSES;** but please do not submit the same comment or material by more than one means. If you submit them by mail or hand, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know they were received, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and materials received during the comment period.

Information on Service for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the public meeting, contact Mr. John Mikesell at the address or phone number under **FOR FURTHER INFORMATION CONTACT** as soon as possible.

Background and Purpose

The Coast Guard announced the port access routes study in the **Federal Register** on January 20, 1999 (64 FR 3145). The purpose of the study is to evaluate the continued applicably of and the need for modifications to current vessel routing measures in and around the Strait of Juan de Fuca and adjacent waters including Admiralty Inlet, Rosario Strait, Haro Strait, Boundary Pass, and the Strait of Georgia. The goal of the study is to help reduce the risk of marine casualties and increase vessel traffic management efficiency in the study area. Study recommendations may lead to future rulemaking or appropriate international agreements.

Dated: April 8, 1999.

Joseph J. Angelo,

Acting Assistant Commandant for Marine Safety and Environmental Protection.

[FR Doc. 99–9450 Filed 4–14–99; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Design Approval of Aircraft Data Communications Systems

AGENCY: Federal Aviation Administration, (DOT).

ACTION: Notice of availability for public comment.

SUMMARY: This notice announces the availability of and requests comments on proposed Advisory Circular (AC) 20–DC, Guidelines for Design Approval of Aircraft Data Communication Systems. The proposed AC provides guidelines for design approval of aircraft data communication systems and applications primarily used for Air Traffic Services (ATS). This AC is issued to provide installation guidelines and to outline a method of compliance with airworthiness standards contained in Title 14, Code of Federal Regulations (CFR), Chapter 1, Subchapter C.

DATES: Comments submitted must be received on or before May 24, 1999.

ADDRESSES: Send all comments on the proposed advisory circular to: Federal Aviation Administration (FAA), Aircraft Certification Service, Aircraft Engineering Division, Avionic Systems Branch, AIR–130, 800 Independence Avenue, SW, Washington, DC 20591. Or deliver comments to: Federal Aviation Administration, Room 815,800 Independence Avenue, SW, Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Michelle Swearingen, Federal Aviation Administration (FAA) Aircraft Certification Service, Aircraft Engineering Division, Avionic Systems Branch, AIR–130, 800 Independence Avenue, SW, Washington, DC 20591,. Telephone: (202) 267–3817, FAX: (202) 493–5173.

Comments Invited

Interested person are invited to comment on the proposed advisory circular listed in this notice by submitting such written data, views, or arguments, as they desire, to the specified address. Comments received on the proposed advisory circular may be examined, before and after the comment closing date, in Room 815, FAA Headquarters Building (FOB–10A), 800 Independence Avenue, SW, Washington, DC 20591, weekdays except Federal holidays, between 8:30 a.m. and 4:30 p.m. All communications received on or before the closing date for comments specified above will be considered by the Director of the Aircraft Certification Service before issuing the final AC.

Background

The AC is intended to provide a means of compliance for both safety of flight, and non-safety of flight, data link communications. In addition to discussing the minimum control, display and alerting standards, this AC suggests that the applicant submit a description of the envisioned operational environment and subsequently perform a safety assessment. The resultant safety assessment classifications are then easily mapped into existing hardware and software design methodology for aircraft certification type design approval. A defined operational environment will form the basis for defining the interoperability expectations and allow for assessment of impact to the derived safety and performance assumptions.

The FAA is currently developing operational environment descriptions and safety assessment, interoperability and performance definitions for those services supported by the NAS infrastructure. The guidelines specified in this AC provide a means, but not the only means, of demonstrating compliance to Title 14, CFR, Chapter 1, Subchapter C, for airborne data link equipment installation on any airframe and intended for any data link service.

How To Obtain Copies

A copy of the proposed AC 20–DC may be obtained via Internet (http://www.faa.gov/avr/air/air100/100home.htm) or on request from the office listed under **FOR FURTHER INFORMATION CONTACT.**

Issued in Washington, DC, on April 9, 1999.

Richard E. Jennings,

Acting Manager, Aircraft Engineering Division Aircraft Certification Service.

[FR Doc. 99–9430 Filed 4–14–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Deadline for Submission of Application Under the Airport Improvement Program (AIP) for Fiscal Year 1999 for Sponsor Entitlement and Cargo Funds

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces May 1, 1999, as the deadline for each airport sponsor to have on file with the FAA an acceptable fiscal year 1999 grant application for funds apportioned to it under the AIP.

FOR FURTHER INFORMATION CONTACT: Mr. Stanley Lou, Manager, Programming Branch, Airports Financial Assistance Division, Office of Airport Planning and Programming, APP–520, on (202) 267–8809.

SUPPLEMENTARY INFORMATION: Section 47105(f) of Title 49, United States Code, provides that the sponsor of each airport to which funds are apportioned shall notify the Secretary by such time and in a form as prescribed by the Secretary, of the sponsor's intent to apply for the funds apportioned to it (entitlements). Notification of the sponsor's intent to apply during fiscal year 1999 for any of its available entitlement funds including those unused from prior years, shall be in the form of a project application submitted to the cognizant FAA Airports office no later than May 1, 1999.

This notice is promulgated to expedite and prioritize grants prior to the May 31, 1999, AIP expiration date as established by Public Law 106–6 (the Interim Federal Aviation Administration Authorization Act). Absent an acceptable application by May 1, FAA will defer an airport's entitlement funds until the next fiscal year. Pursuant to the authority and limitations in section 47117(g), FAA will issue discretionary grants in an aggregate amount not to exceed the aggregate amount of deferred entitlement funds.

In prior fiscal years, FAA has had sufficient program flexibility to permit sponsors to provide notice later than the deadline date, or to use entitlement funds later in a fiscal year in spite of filing no notice to that effect. In FY 1999, however, FAA must make all discretionary grant awards prior to June 1, 1999, including discretionary grants of entitlement funds that are available to, but will not be used by, the airport sponsors to which they have been apportioned. Airport sponsors that fail to notify FAA by the deadline date that they intend to use all or a portion of their entitlement funds in FY 1999 may have access to these funds in FY 1999 after May 31, only if legislation is enacted prior to October 1, 1999, to authorize the AIP beyond September 30. This includes prior year entitlement funds that remain available to an airport sponsor only through fiscal year 1999. In all other cases, airport sponsors may request unused entitlements after September 30, 1999.

The FAA views the receipt of this notice from the sponsors of primary commercial service airports as particularly important this fiscal year. The ability to use the contract authority associated with unused entitlement funds on a discretionary basis during the current truncated program will allow FAA to obligate additional critically needed AIP funds by May 31. This abbreviated "year-end conversion" will result in more discretionary dollars for airport development. For these reasons, the FAA will rely heavily upon the extent to which responses to the required notice indicate the availability of unused entitlement funds for discretionary use. Inasmuch as the FAA will be able to obligate these funds after May 31 as entitlements only with the enactment of follow-on authorizing legislation, sponsors are advised to give careful consideration to decisions related to the use of entitlement funds during fiscal year 1999.

Issued in Washington, DC on April 4, 1999.

Stan Lou,

Manager, Programming Branch.

[FR Doc. 99–9428 Filed 4–14–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Transcript of February 11, 1999, Public Meeting Regarding Draft Interim Safety Guidance for Reusable Launch Vehicles

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of availability.

SUMMARY: This notice announces the availability of a transcript from a public meeting held on February 11, 1999, at DOT Headquarters in Washington D.C., regarding draft interim safety guidance for reusable launch vehicles (RLVs). The Associate Administrator for Commercial Space Transportation (AST) developed the draft interim safety guidance for use by an applicant seeking a license to operate an RLV. The FAA held the public meeting for the purpose of gathering information from industry and the public generally concerning the safety objectives presented in the draft interim safety guidance. The transcript is filed under Docket Number 29140, at the FAA Rules Docket, in Room 915G of FAA Headquarters, 800 Independence Avenue, SW., Washington, DC 20591. The docket is available for inspection between 9:30 am and 5:00 pm, Monday through Friday, excluding Federal holidays. The transcript can also be viewed on the AST Website at *http://ast.faa.gov/*.

FOR FURTHER INFORMATION CONTACT: Brian Campbell (AST–200), Office of the Associate Administrator for Commercial Space Transportation (AST), 800 Independence Avenue SW, Room 331, Washington, DC 20591, telephone (202) 267–8464

Issued in Washington, DC on April 9, 1999.

Joseph A. Hawkins,

Deputy Associate Administrator for Commercial Space Transportation.

[FR Doc. 99–9429 Filed 4–14–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Columbia County, New York

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement (EIS) will be prepared for a proposed highway

project in the Towns of Greenport and Stockport in Columbia County, New York.

FOR FURTHER INFORMATION CONTACT: Harold J. Brown, Division Administrator, Federal Highway Administration, New York Division, Leo W. O'Brien Federal Building, 9th Floor, Clinton Avenue and North Pearl Street, Albany, New York 12207, Telephone number (518) 431–4127, FAX—(518) 431–4121; or R.A. Dennison III, Regional Director, New York State Department of Transportation, Region 8, 4 Burnett Boulevard, Poughkeepsie, New York 12603, Telephone number (914) 431–5750, FAX—(914) 431–5703.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the New York State Department of Transportation (NYSDOT), will prepare an Environmental Impact Statement (EIS) on a proposal to improve United States Route 9. The proposed improvement (Project Identification No. 8010.11) will involve the reconstruction of Route 9 from Graham Avenue in the Town of Greenport (near the City of Hudson border) north to Atlantic Avenue (County Route 20) in the Town of Stockport, a distance of 4.3 km (2.7 mi). The project will address existing traffic operation and safety problems, projected future increases in traffic demand and identified needed highway improvements.

Alternatives under consideration include (1) taking no action, (2) widening the existing two-lane highway to three lanes, (3) widening the existing two-lane highway to five lanes, and (4) widening the existing two-lane highway to four lanes with a raised median with turn lanes. Incorporated into and studied with the various build alternatives will be design variations of grade and alignment.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State and local agencies and to private organizations and citizens who have previously expressed interest in this proposal. No formal scoping meeting is planned at this time. A public information meeting will be held after further study. In addition, a public hearing will be held. Public notice will be given of the time and place of the hearing. The draft EIS will be made available for agency and public review and comment prior to the public hearing.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA or NYSDOT at the addresses provided herein.

(Catalog of Federal Domestic Assistance Program Number 20.205; Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program).

Authority: 23 U.S.C. 315:23 U.S.C. 777.123.

Robert E. Arnold,

District Engineer, Federal Highway Administration, Albany, New York.

[FR Doc. 99–9421 Filed 4–14–99; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF THE TREASURY

Customs Service

Proposed Collection: Comment Request; Cargo Declaration and Cargo Declaration (Outward With Commercial Forms)

AGENCY: U.S. Customs, Department of the Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, Customs invites the general public and other Federal agencies to comment on an information collection requirement concerning the Cargo Declaration and Cargo Declaration (Outward With Commercial Forms). This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments should be received on or before June 14, 1999, to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs Service, Information Services Group, Attn.: J. Edgar Nichols, 1300 Pennsylvania Avenue, NW, Room 3.2C, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to U.S. Customs Service, Attn.: J. Edgar Nichols, 1300 Pennsylvania Avenue NW, Room 3.2C, Washington, D.C. 20229, Tel. (202) 927–1426.

SUPPLEMENTARY INFORMATION: Customs invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (1) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized and included in the Customs request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document Customs is soliciting comments concerning the following information collection:

Title: Cargo Declaration.

OMB Number: 1515–0078.

Form Number: CF 1302 and 1302A.

Abstract: This information collection is used by Customs for the control of cargo and pre-selectivity targeting of cargo for enforcement purposes. Customs Forms 1302 and 1302A are used by the master of a vessel to list all inward cargo onboard and for the clearance of all cargo onboard with commercial forms.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Business or other for-profit institutions.

Estimated Number of Respondents: 140,000.

Estimated Time Per Respondent: 5 minutes.

Estimated Total Annual Burden Hours: 11,662.

Estimated Annualized Cost to the Public: $171,000.

Dated: April 5, 1999.

J. Edgar Nichols,

Team Leader, Information Services Group.

[FR Doc. 99–9351 Filed 4–14–99; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Customs Service

Proposed Collection; Comment Request; Line Release Regulations

AGENCY: U.S. Customs, Department of the Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, Customs invites the general public and other Federal agencies to comment on an information collection requirement concerning the Line Release Regulations. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before June 14, 1999, to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs Service, Information Services Group, Attn.: J. Edgar Nichols, 1300 Pennsylvania Avenue, NW, Room 3.2C, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to U.S. Customs Service, Attn.: J. Edgar Nichols, 1300 Pennsylvania Avenue NW, Room 3.2C, Washington, D.C. 20229, Tel. (202) 927–1426.

SUPPLEMENTARY INFORMATION: Customs invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (1) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized and included in the Customs request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document Customs is soliciting comments concerning the following information collection:

Title: Line Release Regulations.

OMB Number: 1515–0181.

Form Number: N/A.

Abstract: Line release was developed to release and track high volume and repetitive shipments using bar code technology and PCS. An application is submitted to Customs by the filer and a common commodity classification code (C4) is assigned to the application.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Business or other for-profit institutions.

Estimated Number of Respondents: 25,700.

Estimated Time Per Respondent: 15 minutes.

Estimated Total Annual Burden Hours: 6,425.

Estimated Total Annualized Cost on the Public: N/A.

Dated: April 5, 1999.

J. Edgar Nichols,

Team Leader, Information Services Group.

[FR Doc. 99–9352 Filed 4–14–99; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Customs Service

Proposed Collection; Comment Request; Request for Temporary Identification Card

AGENCY: U.S. Customs, Department of the Treasury

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, Customs invites the general public and other Federal agencies to comment on an information collection requirement concerning the Request for Temporary Identification Card. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before June 14, 1999, to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs Service, Information Services Group, Attn.: J. Edgar Nichols, 1300 Pennsylvania Avenue, NW, Room 3.2C, Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to U.S. Customs Service, Attn.: J. Edgar Nichols, 1300 Pennsylvania Avenue NW, Room 3.2C, Washington, DC 20229, Tel. (202) 927–1426.

SUPPLEMENTARY INFORMATION: Customs invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (1) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized and included in the Customs request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document Customs is soliciting comments concerning the following information collection:

Title: Request for Temporary Identification Card.

OMB Number: 1515–0128.

Form Number: N/A.

Abstract: Cartmen, Lightermen, and airport employers may request a temporary identification card to be issued to their employees if they can show that a hardship to their business would result pending the issuance of a permanent identification card.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Business or other for-profit institutions.

Estimated Number of Respondents: 150.

Estimated Time Per Respondent: 30 minutes.

Estimated Total Annual Burden Hours: 300.

Estimated Total Annualized Cost on the Public: N/A.

Dated: April 5, 1999.

J. Edgar Nichols,

Team Leader, Information Services Group.

[FR Doc. 99–9353 Filed 4–14–99; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Customs Service

Proposed Collection; Comment Request; Report of Diversion

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, Customs invites the general public and other Federal agencies to comment on an information collection requirement concerning Report of Diversion. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before June 14, 1999, to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs Service, Information Services Group, Attn.: J. Edgar Nichols, 1300 Pennsylvania Avenue, NW, Room 3.2C, Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to U.S. Customs Service, Attn.: J. Edgar Nichols, 1300 Pennsylvania Avenue NW, Room 3.2C, Washington, DC 20229, Tel. (202) 927–1426.

SUPPLEMENTARY INFORMATION: Customs invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (1) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized and included in the Customs request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document Customs is soliciting comments concerning the following information collection:

Title: Report of Diversion.

OMB Number: 1515–0071.

Form Number: Customs Form 25.

Abstract: Customs uses CF 26 to track vessels traveling coastwise from U.S ports to other U.S. ports when a change occurs in scheduled itineraries. This is required for enforcement of the Jones Act (46 U.S.C. App. 883) and for continuity of vessel manifest information and permits to proceed actions.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Businesses, Individuals, Institutions.

Estimated Number of Respondents: 7,500.

Estimated Time Per Respondent: 5 minutes.

Estimated Total Annual Burden Hours: 1,250.

Estimated Total Annualized Cost on the Public: N/A.

Dated: April 5, 1999.

J. Edgar Nichols,

Team Leader, Information Services Group.

[FR Doc. 99–9354 Filed 4–14–99; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Customs Service

Proposed Collection; Comment Request; Entry Summary and Continuation Sheet

AGENCY: U.S. Customs, Department of the Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, Customs invites the general public and other Federal agencies to comment on an information collection requirement concerning the Entry Summary and Continuation Sheet. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments should be received on or before June 14, 1999, to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs Service, Information Services Group, Attn.: J. Edgar Nichols, 1300 Pennsylvania Avenue, NW, Room 3.2C, Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to U.S. Customs Service, Attn.: J. Edgar Nichols, 1300 Pennsylvania Avenue NW, Room 3.2C, Washington, DC 20229, Tel. (202) 927–1426.

SUPPLEMENTARY INFORMATION: Customs invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (1) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized and included in the Customs request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document Customs is soliciting comments concerning the following information collection:

Title: Entry Summary and Continuation Sheet.

OMB Number: 1515–0065.

Form Number: Customs Form 7501, 7501A.

Abstract: Customs Form 7501 is used by Customs as a record of the impact transaction, to collect proper duty, taxes, exactions, certifications and enforcement endorsements, and to provide copies to Census for statistical purposes.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Business or other for-profit institutions.

Estimated Number of Respondent: 14,926,364.

Estimated Time Per Respondent: 20 minutes.

Estimated Total Annual Burden Hours:, 4,970,479.

Estimated Annualized Cost to the Public: $101,890,506.

Dated: April 5, 1999.

J. Edgar Nichols,

Team Leader, Information Services Group.

[FR Doc. 99–9355 Filed 4–14–99; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Customs Service

Proposed Collection; Comment Request; Master's Oath of Vessel in Foreign Trade

AGENCY: U.S. Customs, Department of the Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, Customs invites the general public and other Federal agencies to comment on an information collection requirement concerning the Master's Oath of Vessel in Foreign Trade. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 Pub. L. 104–13; 44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments should be received on or before June 14, 1999.

ADDRESSES: Direct all written comments to U.S. Customs Service, Information Services Group, Attn.: J. Edgar Nichols, 1300 Pennsylvania Avenue, NW, Room 3.2C, Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to U.S. Customs Service, Attn.: J. Edgar Nichols, 1300 Pennsylvania Avenue NW, Room 3.2C, Washington, DC 20229, Tel. (202) 927–1426.

SUPPLEMENTARY INFORMATION: Customs invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 Pub. L. 104–13, 44 U.S.C. 3505(c)(2)). The comments should address: (1) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized and included in the Customs request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document Customs is soliciting comments concerning the following information collection:

Title: Master's Oath of Vessel in Foreign Trade.

OMB Number: 1515–0060.

Form Number: Customs Form 1300.

Abstract: CF–1300 is used by the master of a vessel to attest to the truthfulness of all other forms associated with the manifest. The form also serves to record information on the tonnage tax to prevent overpayment of that tax.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Business or other for-profit institutions.

Estimated Number of Respondents: 12,000.

Estimated Time Per Respondent: 5 minutes.

Estimated Total Annual Burden Hours. 21, 991.

Estimated Annualized Cost to the Public: $285,820.

Dated: April 5, 1999.

J. Edgar Nichols,

Team Leader, Information Services Group.

[FR Doc. 99–9408 Filed 4–14–99; 8:45 am]

BILLING CODE 4820–02–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Revenue Procedure 99–21

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Revenue Procedure 99–21, Disability Suspension.

DATES: Written comments should be received on or before June 14, 1999 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the revenue procedure should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5569, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Disability Suspension.

OMB Number: 1545–1649.

Revenue Procedure Number: Revenue Procedure 99–21.

Abstract: Revenue Procedure 99–21 describes the information that is needed to establish a claim that a taxpayer was financially disabled for purposes of section 6511(h) of the Internal Revenue Code. Under section 6651(h), the statute of limitations on claims for credit or refund is suspended for any period of an individual taxpayer's life during which the taxpayer is unable to manage his or her financial affairs because of a medically determinable mental or physical impairment, if the impairment can be expected to result in death, or has lasted (or can be expected to last) for a continuous period of not less than 12 months. Section 6511(h)(2)(A) requires that proof of the taxpayer's financial disability be furnished to the Internal Revenue Service.

Current Actions: There are no changes being made to the revenue procedure at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 48,200.

Estimated Time Per Respondent: 30 minutes.

Estimated Total Annual Burden Hours: 24,100.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: April 8, 1999.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 99–9451 Filed 4–14–99; 8:45 am]

BILLING CODE 4830–01–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request For Publication 3319

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Publication 3319, Low-Income Taxpayer Clinics—1999 Grant Application Package and Guidelines.

DATES: Written comments should be received on or before June 14, 1999 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of Publication 3319 should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5569, 1111 Constitution Avenue NW., Washington, DC 20224. Copies of the publication can also be downloaded from the IRS Internet site at: http://www.irs.ustreas.gov.

SUPPLEMENTARY INFORMATION:

Title: Low-Income Taxpayer Clinics—1999 Grant Application Package and Guidelines.

OMB Number: 1545–1648.

Publication Number: Publication 3319.

Abstract: Publication 3319 outlines requirements of the IRS Low-Income Taxpayer Clinics (LITC) program and provides instructions on how to apply for a LITC grant award. The IRS will review the information provided by applicants to determine whether to award grants for the Low-Income Taxpayer Clinics.

Current Actions: There are no changes being made to the publication at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Not for-profit institutions.

Estimated Number of Respondents: 825.

Estimated Time For Program Sponsors: 60 hours.

Estimated Time For Student and Program Participants: 2 hours.

Estimated Total Annual Burden Hours: 6,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: April 9, 1999.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 99–9452 Filed 4–14–99; 8:45 am]

BILLING CODE 4830–01–U

Corrections

Federal Register
Vol. 64, No. 72
Thursday, April 15, 1999

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

GENERAL SERVICES ADMINISTRATION

41 CFR Part 302–11

[FTR Amendment 90–1998 Edition]

RIN 3090-AG91

Federal Travel Regulation; Relocation Income Tax (RIT) Allowance Tax Tables

Correction

In rule document 99–8685 beginning on page 17105, in the issue of Thursday, April 8, 1999 make the following corrections:

Appendix B to Part 302–11 [Corrected]

1. On page 17106, in the table, in the second column, in the entry for "Minnesota", "8" should read"6".

2. On the same page, in the table, in the third column, in the entry "If single status[3]" under "Minnesota", "8.5" should read "8".

[FR Doc. C9–8685 Filed 4–14–99; 8:45 am]

BILLING CODE 1505–01–D

MEDICARE PAYMENT ADVISORY COMMISSION

Commission Meeting

Correction

In notice document 99–8996, appearing on page 17688, in the issue of Monday, April 12, 1999, make the following correction:

On page 17688, in the second column, in the fourth line, "(www.MedPCA.gov)." should read "(www.MedPAC.gov)."

[FR Doc. C9–8996 Filed 4-14-99; 8:45 am]

BILLING CODE 1505–01–D

UMI

VOL
64

ISS
72

AP
15

999

UMI

federal register

Thursday
April 15, 1999

Part II

Department of Labor

Employment and Training Administration

20 CFR Part 652, et al.
Workforce Investment Act; Interim Final Rule

DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Part 652 and Parts 660 through 671

RIN 1205–AB20

Workforce Investment Act

AGENCY: Employment and Training Administration (ETA), Labor.

ACTION: Interim Final Rule; request for comments.

SUMMARY: The Department of Labor (DOL) is issuing an Interim Final Rule implementing provisions of titles I, III and V of the Workforce Investment Act. Through these regulations, the Department implements the first major reform of the nation's job training system in more than 15 years. Key components of this reform include streamlining services through a One-Stop service delivery, empowering individuals through information and access to training resources through Individual Training Accounts, providing universal access to core services, increasing accountability for results, ensuring a strong role for Local Boards and the private sector in the workforce investment system, facilitating State and local flexibility, and improving youth programs.

DATES: This Interim Final Rule will become effective on May 17, 1999.

Comment Period: Comments must be submitted by July 14, 1999. The Department cannot guarantee that comments received after this date will be considered. Comments that are less than 10 pages in length may be transmitted via a facsimile at (202) 219–0323 provided that submission of written text follows. Commenters wishing acknowledgment of receipt of their comments must submit them by certified mail, return receipt requested. Also, comments may be sent electronically using the Internet web page at http://usworkforce.org.

ADDRESSES: Submit written comments to the Employment and Training Administration, Workforce Investment Act Implementation Taskforce, 200 Constitution Avenue, NW, Room S5513, Washington, DC 20210, *Attention:* Eric Johnson.

All comments will be available for public inspection and copying during normal business hours at the Employment and Training Administration, Workforce Investment Act Implementation Taskforce, 200 Constitution Avenue, NW, Room S5513, Washington, DC 20210. Copies of the Interim Final Rule are available in alternate formats of large print and electronic file on computer disk, which may be obtained at the above-stated address. The Interim Final Rule is also available on the WIA website at http://usworkforce.org

In compliance with 28 U.S.C. 2112(a), the Employment and Training Administration designates the Associate Solicitor for Employment and Training Services, Office of the Solicitor, U.S. Department of Labor, 200 Constitution Avenue, NW, Room N–2101, Washington, DC 20210, as the recipient of petitions to review this Interim Final Rule.

FOR FURTHER INFORMATION CONTACT: Mr. Eric Johnson, Workforce Investment Act Implementation Taskforce Office, U.S. Department of Labor, 200 Constitution Avenue, NW, Room S5513, Washington, DC 20210, Telephone: (202) 219–0316 (voice) (this is not a toll-free number) or 1–800–326–2577 (TDD).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

Certain sections of this Interim Final Rule, such as §§ 667.300, 667.900, 668.800, and 669.570 contain information collection requirements. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the Department of Labor has submitted a copy of these sections to the Office of Management and Budget for its review. Comments must be submitted by May 17, 1999 to: Desk Officer for the Department of Labor, Employment Training Administration, Office of Management and Budget, 725 17th Street, NW (Rm 10235), Washington DC 20503. Affected parties do not have to comply with the information collection requirements in this document until DOL publishes in the **Federal Register** the control numbers assigned by the Office of Management and Budget (OMB). Publication of the control numbers notifies the public that OMB has approved this information collection requirement under the Paperwork Reduction Act of 1995. An OMB control number (1205–0398) was issued for the WIA state planning guidance authorized under 20 CFR 661.220, and published at 64 FR 9402 (Feb. 25, 1999).

I. Background

A. WIA Principles

On August 7, 1998, President Clinton signed the Workforce Investment Act of 1998 (WIA), comprehensive reform legislation that supersedes the Job Training Partnership Act (JTPA) and amends the Wagner-Peyser Act. The WIA also contains the Adult Education and Family Literacy Act (title II) and the Rehabilitation Act Amendments of 1998 (title IV). Guidance or regulations implementing titles II and IV will be issued by the Department of Education.

The WIA reforms Federal job training programs and creates a new, comprehensive workforce investment system. The reformed system is intended to be customer-focused, to help Americans access the tools they need to manage their careers through information and high quality services, and to help U.S. companies find skilled workers.

This new law embodies seven key principles. They are:

- *Streamlining services* through better integration at the street level in the One-Stop delivery system. Programs and providers will co-locate, coordinate and integrate activities and information, so that the system as a whole is coherent and accessible for individuals and businesses alike.
- *Empowering individuals* in several ways. First, eligible adults are given financial power to use Individual Training Accounts (ITA's) at qualified institutions. These ITA's supplement financial aid already available through other sources, or, if no other financial aid is available, they may pay for all the costs of training. Second, individuals are empowered with greater levels of information and guidance, through a system of consumer reports providing key information on the performance outcomes of training and education providers. Third, individuals are empowered through the advice, guidance, and support available through the One-Stop system, and the activities of One-Stop partners.
- *Universal access.* Any individual will have access to the One-Stop system and to core employment-related services. Information about job vacancies, career options, student financial aid, relevant employment trends, and instruction on how to conduct a job search, write a resume, or interview with an employer is available to any job seeker in the U.S., or anyone who wants to advance his or her career.
- *Increased accountability.* The goal of the Act is to increase employment, retention, and earnings of participants, and in doing so, improve the quality of the workforce to sustain economic growth, enhance productivity and competitiveness, and reduce welfare dependency. Consistent with this goal, the Act identifies core indicators of performance that State and local entities managing the workforce investment system must meet—or suffer sanctions. However, State and local entities

exceeding the performance levels can receive incentive funds. Training providers and their programs also have to demonstrate successful performance to remain eligible to receive funds under the Act. And participants, with their ITA's, have the opportunity to make training choices based on program outcomes. To survive in the market, training providers must make accountability for performance and customer satisfaction a top priority.

• *Strong role for local workforce investment boards and the private sector,* with local, business-led boards acting as "boards of directors," focusing on strategic planning, policy development and oversight of the local workforce investment system. Business and labor have an immediate and direct stake in the quality of the workforce investment system. Their active involvement is critical to the provision of essential data on what skills are in demand, what jobs are available, what career fields are expanding, and the identification and development of programs that best meet local employer needs. Highly successful private industry councils under JTPA exhibit these characteristics now. Under WIA, this will become the norm.

• *State and local flexibility.* States and localities have increased flexibility, with significant authority reserved for the Governor and chief elected officials, to build on existing reforms in order to implement innovative and comprehensive workforce investment systems tailored to meet the particular needs of local and regional labor markets.

• *Improved youth programs* linked more closely to local labor market needs and community youth programs and services, and with strong connections between academic and occupational learning. Youth programs include activities that promote youth development and citizenship, such as leadership development through voluntary community service opportunities; adult mentoring and followup; and targeted opportunities for youth living in high poverty areas.

Many States and local areas have already taken great strides in implementing these principles, supported by grants from the Department of Labor to build One-Stop service delivery systems and school-to-work transition systems. The Act builds on these reforms and ensures that they will be available throughout the country.

The Department wishes to emphasize that it considers the reforms embodied in the Workforce Investment Act to be pivotal, and not "business as usual." This legislation provides unprecedented opportunity for major reforms that can result in a reinvigorated, integrated workforce investment system. States and local communities, together with business, labor, community-based organizations, educational institutions, and other partners, must seize this historic opportunity by thinking expansively as they design a customer-focused, comprehensive delivery system.

The success of the reformed workforce investment system is dependent on the development of true partnerships and honest collaboration at all levels and among all stakeholders. While the Workforce Investment Act and these regulations assign specific roles and responsibilities to specific entities, for the system to realize its potential necessitates moving beyond current categorical configurations and institutional interests. Also, it is imperative that input is received from all stakeholders and the public at each stage of the development of State and local workforce investment systems.

The cornerstone of the new workforce investment system is One-Stop service delivery which unifies numerous training, education and employment programs into a single, customer-friendly system in each community. The underlying notion of One-Stop is the coordination of programs, services and governance structures so that the customer has access to a seamless system of workforce investment services. It is envisioned that a variety of programs could use common intake, case management and job development systems in order to take full advantage of the One-Stops' potential for efficiency and effectiveness. A wide range of services from a variety of training and employment programs will be available to meet the needs of employers and job seekers. The challenge in making One-Stop live up to its potential is to make sure that the State and Local Boards can effectively coordinate and collaborate with the network of other service agencies, including TANF agencies, transportation agencies and providers, metropolitan planning organizations, child care agencies, nonprofit and community partners, and the broad range of partners who work with youth.

B. Early Implementation

Many States have expressed interest in which features of WIA may be phased-in after approval of the State workforce investment plan, and how long they will have before they must be in full compliance.

• The planning guidance (which was published in the **Federal Register** on February 25, 1999) and regulations specify that States may submit a State workforce investment plan to the Department for approval at any time between April 1, 1999 and April 1, 2000. For those States that plan to transition to WIA prior to July 1, 2000, and do not have all policies, procedures and systems fully developed, the State may submit a Transition Plan that outlines when the State expects to have each of the WIA components (for example, the One-Stop system, or the Individual Training Account system) fully operational. All components must be in place by July 1, 2000. Under this option, the Department will conditionally approve the State workforce investment plan. The State workforce investment plan will be fully approved once all of the WIA components are in place. This option provides some flexibility for early implementing States, while ensuring that full implementation is completed for all States by July 1, 2000.

• States and local areas may use the current waiver authority and allowable activities under JTPA, to plan for and implement WIA reforms. Activities that are allowable during this phase include: (1) Strategic planning; (2) establishment of State and local workforce investment boards; (3) consultation with One-Stop partners; (4) establishment of ITA systems; and (5) establishment of consumer report systems.

• Because JTPA title II youth funds are available for obligation on April 1, 1999, the Calendar Year 1999 Summer Youth Employment and Training Program, and JTPA title II–C youth program allocations have been made and are to be allocated by States to local areas under the JTPA rules. The Department will issue transition guidance which will provide further direction and specification.

• A 90 percent hold harmless provision for within-State allocations for the youth and adult funding streams, that is based on allocations in the first two years of WIA operation, becomes effective in the third year a State operates under WIA. Structured to facilitate creation of new local areas by freeing States from allocation formulas established under JTPA, there is no hold harmless provision effective in the first two years of a state's WIA implementation that would cover the transition period from JTPA. The lack of a hold harmless provision during this period could result in some instability during the early stages of WIA implementation. However, Governors do have options available to promote stability. For program year 1999 only, the Governor may elect to utilize the

JTPA hold harmless provision. However, in doing so, the two year hold harmless is delayed for one year. Therefore, if a State elects to use this option, the two year hold harmless would apply for PY 2000 and 2001 unless Congress decides to address this area with a technical amendment. Also, Governors may use some of their 15 percent State reserve funds to assist local areas that are negatively impacted by the WIA funding formulas, or choose to adopt an adult or youth within-State allocation formula that incorporates additional targeting factors, provided for in sections 128 and 133 of WIA.

C. Rule Format

The format, as well as the substance, of the Interim Final Rule, reflects the Administration's commitment to regulatory reform and to writing regulations that are reader-friendly. The Department has attempted to make these regulations clear and easy to understand, as well as to anticipate issues that may arise and to provide appropriate direction. To this end, the regulatory text is presented in a "question and answer" format. The Department has organized the regulations in a way that will help those who must implement the new system to recognize the various steps they must take as they develop the organization and services that make up the workforce investment system. In many cases, the provisions of WIA are not repeated in these regulations. As requested by some interested parties, however, in a number of instances, it was determined that the regulations would provide context and be more reader-friendly if the Act's provisions were included in an answer rather than merely cross-referencing the statute.

Section 506(c)(1) of the Act requires the Secretary of Labor to issue this Interim Final Rule implementing provisions of the WIA under the Department's purview within 180 days of enactment. WIA also requires that final regulations be published by December 31, 1999. Under Secretary of Labor's Order No. 4–75, the Assistant Secretary for Employment and Training has been delegated the responsibility to carry out WIA policies, programs, and activities for the Secretary of Labor.

Given the short time frame imposed, the Department has employed a variety of means to initiate extensive coordination with other Federal agencies that have roles and responsibilities under the Workforce Investment Act. In addition, the Department of Labor, the Department of Education, the Department of Health and Human Services, the Department of Transportation, and the Department of Housing and Urban Development continue to meet on a regular basis to resolve issues surrounding the development of the Interim Final Rule and WIA implementation.

The Department also requested and received input from a broad range of sources regarding guidance on how to comply with a number of WIA statutory provisions. The Department solicited broad input on WIA implementation through a variety of mechanisms: establishing a website to encourage input; publishing a **Federal Register** notice on September 15, 1998, conducting regional and national panel discussions in October 1998; publishing a White Paper announcing goals and principles governing implementation; posting issues on the usworkforce.org website; sharing a discussion draft of regulatory issues with stakeholders; holding town hall meetings across the country in December 1998; conducting several workgroups in December 1998; and issuing draft Planning Guidance in December 1998.

A number of the suggestions received are discussed in the Summary and Explanation of the individual provisions of the Interim Final Rule. However, because of the large volume of suggestions received and the short time allowed for preparation of the regulations, as well as the fact that suggestions continue to be received, it was not possible to address each one. Where input has not been addressed, it will be considered along with comments on the Interim Final Rule before publication of the Final Rule. Also, the Department will ensure that there are other opportunities for public input and dialogue on the important issues surrounding implementation of the Workforce Investment Act prior to the publication of the Final Rule.

The Department has determined that this Interim Final Rule, as promulgated, complies with the WIA statutory mandate and provides effective direction for the implementation of WIA programs. ETA will review all comments received in the development of and response to the Interim Final Rule, as well as the experience of early implementing States, in considering what further action is necessary in promulgating a Final Rule.

II. Summary and Explanation

This section describes and explains the specific provisions of the Interim Final Rule. The explanatory text, in general, adheres closely to the corresponding WIA statutory and regulatory language. A supporting rationale is provided in those instances where the Rule promulgates specific provisions to fulfill the requirements of the WIA statute.

The Department has set regulations only where they are necessary to clarify or to explain how the Department intends to interpret the WIA statute, to provide context for interpretations or to provide a clear statement of the Act's requirements. In several instances—for example, the Indian and Native American Programs, and Migrant and Seasonal Farmworker Programs—the regulations were developed in consultation with advisory councils and are more comprehensive in order to assist those grantees. Consistent with the Act, the Interim Final Rule provides the States and local governments with the primary responsibility to initiate and develop program implementation procedures and policy guidance regarding WIA administration. The Department has not defined what constitutes many of the activities under the Act in order to provide policy-making flexibility to States and local areas. Section 661.120 formalizes this flexibility in the regulations.

Description of Regulatory Provisions

The Rule adds 12 new parts to the Code of Federal Regulations, and a new subpart to the existing Wagner-Peyser Act regulations. Parts 660–672 are organized by subject matter; for example, 661 describes State and local system design, 667 contains administrative requirements applicable to WIA title I funds, and 669 describes requirements particularly applicable to Migrant and Seasonal Farmworker programs. This discussion section follows that organizational structure.

Part 660—Introduction to the Regulations for the Workforce Investment Systems Under Title I of the Workforce Investment Act

Part 660 discusses the purpose of title I of the Workforce Investment Act, explains the format of the regulations governing title I, and provides definitions which are not found in the Act. Sections 101, 142, 166(b), 167(h) 301 and 502 of the Act contain additional definitions. Among the regulatory definitions, the Department has defined the term "register" in order to clarify that programs do not need to register participants until they receive a core service beyond those that are self-service or informational. This point in time also corresponds to the point when the EEO data must be collected, when the eligibility definition begins, and when the participants are counted for performance measurement purposes.

Part 661—Statewide and Local Governance of the Workforce Investment System Under Title I of the Workforce Investment Act

Introduction

This part covers the critical underpinnings of how the workforce investment system is organized under WIA at the State and local levels. Specifically, it consists of four subparts—General Governance, State Governance, Local Governance Provisions and Waiver Provisions. The General Governance subpart broadly describes the WIA system and sets forth the roles of the governmental partners. The State and local subparts cover the State and local workforce investment boards and the designation process, including alternative entities, and the planning requirements. The waiver subpart discusses the processes for obtaining general and work-flex waivers.

Subpart A—General Governance Provisions

1. Subpart A describes the workforce investment system, and sets forth the roles of the government partners in the system: the Federal government, State governments and local governments. The workforce investment system is the method of delivery of workforce investment activities to individuals under title I of WIA, and is composed of State and local workforce investment boards, local workforce investment areas, and the One-Stop system. Through the One-Stop system, the workforce investment system is a gateway to a wide variety of employment, training, educational and other human resource programs. In the Department's view, close cooperation and coordination among the Federal, State and local government partners are essential to the system's success in providing services to those who need them. Sections 661.110 and 661.120, describe, in general terms, the roles of the government partners. The Department sees one of its roles as Federal partner as providing leadership, guidance and support to the system, so that State and local governmental partners can better respond to the needs of customers. To that end, the WIA regulations are intended to provide a framework in which States and local partners may design systems and deliver services in ways that best achieve the goals of WIA based on particular need. Thus, whenever possible, items such as design options and categories of service are not narrowly defined in the regulations. Section 660.120 provides authority to State and local governments to establish their own policies, interpretations, guidelines and definitions relating to program operations under title I, as long as they are not inconsistent with WIA or the regulations, and, in the case of local governments, not inconsistent with State policies. To assist with such interpretations, the Department, with the participation of other Federal agencies, as appropriate, will issue technical assistance guidance to help States and localities interpret WIA and the regulations. Such guidance is not intended to limit State flexibility, but rather is intended to provide helpful models on which States and local governments can rely to ensure that their own interpretations are not inconsistent with the Act and regulations.

Subpart B—State Governance Provisions

1. *State Workforce Investment Board:* Sections 661.200—661.210 describe the membership requirements and responsibilities of the State Workforce Investment Board (State Board) and procedures regarding designation of an alternative entity to perform the functions of the State Board. The role of the State Board is to assist the Governor in the development of the State workforce investment plan (State Plan) and to carry out the additional functions described in WIA section 111(d). Section 661.200 describes the membership requirements of the State Board. This section clarifies that State Boards must contain two or more members from each of the representative categories described in sections 111(b)(1)(C)(iii)–(v) of WIA. These categories are labor organizations, individuals and organizations that have experience with youth activities, and individuals and organizations that have experience and expertise in the delivery of workforce investment activities. The Rule requires that, in appointing representatives with experience in workforce investment activities, special consideration be given to chief executive officers of community colleges and community-based organizations in the State. The Department acknowledges the special expertise that the community college system brings to the workforce investment system. The Department foresees a strong role for community colleges across states and in local areas and encourages states and local areas to appoint presidents and executive officers of the state community college system and local community colleges to the State and Local Workforce Investment Boards. The Department also emphasizes the importance of including the director of the state agency responsible for TANF on the State Board, in order to foster linkages between WIA and TANF, and to facilitate participation of TANF in One-Stop systems in the state.

The Department also received suggestions concerning the representation of the State Vocational Rehabilitation Services program, a required One-Stop partner, on the State Board. Individuals with disabilities represent a large untapped potential workforce, and the workforce needs of this group is of significant importance to the Department and other Federal agencies. To signal the importance of this issue, the Presidential Taskforce on Employment of Adults with Disabilities was formed in 1998. In light of this emphasis on increasing the employment rate for individuals with disabilities as well as the complexity of the organizational requirements applicable to this program, the director of the designated State unit under section 101(a)(2)(B)(ii)(II) of the Rehabilitation Act, if a State has such a unit, should be considered the lead State agency official with responsibility for the State's vocational rehabilitation program and, therefore, should serve on the State Board. In addition, a program operated by a State agency for the blind or by a designated State unit for the blind should be considered a separate program for purposes of appointing members to the State Board under WIA section 111. Among the contributions the unit head(s) would make as a member of the State Board is assisting in the development of the State performance measures. The expertise of the unit head(s) would be particularly useful since the Department, in coordination with the Department of Education, will be working on the development of an additional performance indicator focusing on individuals with disabilities that may be used by States under title I of WIA. The Department of Labor and the Department of Education will work with the States as they develop and implement their State plans to ensure the effective delivery of services under the WIA to individuals with disabilities. The Department will also be conducting a study of WIA implementation that will include a review of the manner and extent to which Vocational Rehabilitation programs are integrated in the workforce investment system, and how effectively the system serves individuals with disabilities.

As discussed below, regarding local workforce investment board (Local Board) membership requirements, the

Department received substantial input expressing concern that the statutory membership requirements relating to the State and local boards will lead to large, unmanageable State and Local Boards. In contrast, others thought larger boards would be better in representing a wider array of interests. The Department recognizes this concern, and, although constrained by the statutory requirements that each category of membership contain more than one representative and a business majority, the Department has avoided adding additional requirements relating to the number of members required. The Department believes that problems associated with large board size can be addressed in a number of ways, such as the use of committees. The Department will be providing technical assistance on creative approaches State and Local Boards may wish to consider in addressing this issue.

2. *Alternative Entities:* The Department believes that changing from existing JTPA boards and councils to State Boards meeting the requirements of WIA section 111(b) is essential to the reforms of WIA. The Department encourages all States to create new, fully functional State Boards as early as possible, and is committed to providing assistance to States to make such changes. In order to accommodate States that have already begun to reform their boards prior to the enactment of WIA, the statute provides an option to use an existing entity to carry out the functions of the State Board. Section 661.210 describes the requirements relating to the appointment of this alternative entity. Because of questions regarding the application of these requirements, paragraph (b) of § 661.210 makes clear that an alternative entity must meet each of the three criteria set forth in WIA section 111(e). The three criteria are that the entity: (1) Was in existence on December 31, 1997; (2)(a) was established pursuant to section 122 or title VII of the Job Training Partnership Act, as in effect on December 31, 1997, or (b) is substantially similar to the State Board as described in subsections (a), (b), and (c) of WIA section 111; and (3) includes representatives of business in the state and representatives of labor organizations in the state. An entity which fails to meet any one of the criteria is not eligible to perform the functions of the State Board. A key requirement for an alternative entity that was not created under JTPA, is that it be substantially similar to the Boards required under WIA. The Department considered various ways to define the term "substantially similar" but, in the end, decided to leave the term undefined. All groups required for membership on Workforce Investment Boards are equally important and the Department sees alternative entities as a transitional phase during which states can operate until a new Board is appointed.

While an alternative entity need not contain the identical membership structure required of State Boards, in the Department's view it is important that each of the groups listed in WIA section 111(b) have a role in the workforce investment system if the system is to be successful. Therefore, the Rule requires that if the Governor identifies an alternative entity, the State Plan must explain how the State will ensure the ongoing participation of any omitted membership groups in the functions of State workforce investment system. While this Rule does not mean that omitted groups must be seated on an alternative entity, it does require that the State Plan describe how these groups will have an opportunity for meaningful input into decisions made by the State Board.

Paragraph (d) of § 661.210 amplifies the requirement that an alternative entity must have been established by and in existence on December 31, 1997. Because of this requirement, modifications to the alternative entity are not allowed; a change to the membership structure after December 31, 1997 will invalidate the entity's eligibility as an alternative entity. The membership structure is not considered to be changed when an existing member leaves the board and a replacement member is appointed. However, the membership structure is considered to be changed when a change is made to the organizational structure of the State Board that requires a change (whether the change is formally made or not) in the State Board's charter or to a similar document that defines the organizational structure of the State Board, such as appointing members of a category not previously represented. In such a case, the entity would no longer be eligible to perform the functions of the State Board and a new entity, meeting all the requirements of section 111 of WIA must be created. This prevents piecemeal modification of alternative entities that would add certain section 111(b) membership categories but not others.

3. *State Workforce Investment Plan Requirements:* Sections 661.220 and 661.230, describe the requirements for submission, approval and modification of the State workforce investment plan. The State Plan must be submitted in accordance with planning guidelines to be issued by the Secretary, and must be developed through an open public comment process. The State Plan must document the timeline and the steps taken to ensure the opportunity for meaningful public comment. The Department intends that the information contained in the State Plan be subject to the broadest possible stakeholder involvement in policy development and the broadest possible range of public comment. The planning guidelines set forth the information needed for the Secretary to make an informed judgment as to whether a State Plan is consistent with WIA. The Rule restates the statutory language regarding the process for State Plan approval. All plans must be approved within 90 days unless the Secretary determines in writing that the State Plan is inconsistent with the provisions of title I of WIA and its implementing regulations or it does not satisfy the State Plan approval requirements of the Wagner-Peyser Act and its implementing regulations. This reflects changes made by the technical corrections added in the Omnibus Appropriations Act for FY 1999, which clarified that the State plan will not be approved if it fails to meet the requirements of either WIA or the Wagner-Peyser Act rather than only when it fails to meet both. Failure to have completed negotiations with the Secretary of Labor on performance measures means the plan is not consistent with title I of WIA. A state's failure to have an effective strategy in place to ensure the development of a fully operational One-Stop delivery system in the state also means the state plan is not consistent with WIA title I. An important part of this strategy is an impasse procedure designed to facilitate collaboration and coordination between One-Stop partners at the local level.

4. *State Plan Modifications:* Section 661.230 provides the approval process for State Plan modifications. It clarifies that modifications may be made at any time during the life of the State Plan, and must be made upon certain conditions. Because the State Plan is a five year strategic plan and designed to be a living document, it is likely that assumptions based upon such things as State or Federal policy, economic conditions, performance goals, State and local organizational structures and/or State and local needs may change during the course of the State Plan. The provision for a five year State Plan was intended to reduce paperwork burdens on the States. Accordingly, only significant changes require a modification. Examples are: changes in performance indicators, changes in the

methodology used to determine local allocation of funds, or changes to the membership structure of the State Board or alternative entity. Modifications triggered by significant changes will be subject to the same review process as the original State Plan. While it is impossible to foresee all such changes that may occur during a five year period, through timely modifications of the State Plan, State strategies can continue to guide Local Board policy development. The Secretary must approve all State Plan modifications unless the disapproval criteria in § 661.220 are met.

5. *Local Workforce Investment Area Designation Requirements:* Sections 661.250 through 661.280 discuss the requirements applicable to the designation of local workforce investment areas. The Rule tracks the statutory language regarding the State Board recommendation and Governor's approval process for designation. It refers to the statutory provisions regarding automatic designation of areas with a population of 500,000 or more (that request designation) at section 116(a)(2) of WIA and temporary and subsequent designation of JTPA service delivery areas meeting certain performance criteria (that request designation) at section 116(a)(3) of WIA. The statute prohibits the Department from further regulating on the standards and criteria for temporary and subsequent designation and requires the Department to provide the States with technical assistance to make the designations. The regulations restate the statutory language regarding the rights of areas to appeal the denial of a request for automatic or temporary and subsequent designation as a local workforce investment area.

6. *Regional Planning Activities:* Section 661.290 describes the circumstances in which the State may require Local Boards to take part in regional planning activities. This provision permits States to undertake methods to improve performance across area boundaries by requiring local areas to engage in a regional planning process to share employment-related information and to coordinate the provision of local services pursuant to that regional planning. The regulation follows the statutory language regarding the requirements for regional planning, and permits regional planning to occur across State boundaries. Section 661.290 clarifies that Local Boards which are part of State-designated regional planning areas must participate in regional planning activities. However, to strike a balance, the regulation also provides that regional planning and performance requirements may not substitute for the local planning and performance requirements unless the affected chief elected officials and the Governor agree to that substitution.

Subpart C—Local Governance Provisions

This Subpart covers the designation of local workforce investment areas and the responsibilities and membership requirements of local boards.

1. *Role of the Local Workforce Investment Board:* Under WIA, the Local Board, in partnership with the chief elected official, is responsible for setting policy and overseeing workforce investment programs for a workforce investment area. Sections 661.300 and 661.305 reiterate the roles and responsibilities of Local Boards. There was some concern expressed that the Local Board activities be carried out in an open manner which encourages public comment and participation. The Department responds to these concerns by restating the WIA section 117(e) "sunshine provision" in § 661.305(d).

2. *Local Boards as Service Providers:* Section 117(f)(1) of WIA places limitations on Local Boards' direct provision of core services, intensive services, or training services. In response to requests for clarification, § 661.310(c) specifies that the prohibition related to providing core, intensive and training services by the Local Board also applies to the staff of the Local Board. This regulation also cites the statutory provision allowing a Local Board to be designated or certified as a One-Stop operator only with the agreement of the chief elected official and the Governor.

3. *Membership Requirements:* Section 661.315 of the regulations addresses the membership requirements for the Local Board that are contained in section 117(b) of WIA. There were suggestions on several issues related to the required membership of the Local Board, particularly as to how the terms "representatives" and "including" would be defined.

Representatives: Some parties expressed the view that the term "representatives," as used in section 117(b)(2)(A) (ii)–(v) of WIA, requires that there be multiple representatives from each of the specified entities. While others wanted a more restrictive definition, the regulations specify that the Local Board must contain two or more members representing the categories described in section 117(b)(2)(A) (ii)–(v) of WIA. These categories cover different types of local educational entities, labor organizations, community-based organizations (including those representing individuals with disabilities and veterans), and economic development agencies.

Including: There also were many questions on the meaning of the term "including" as it is used in WIA section 117(b). Some expressed the view that each of the entities following the word "including" in section 117(b)(2)(A)(ii), (iv), and (v) of WIA must be a required member of the Local Board, while others disagreed with this interpretation. The regulations address this issue by requiring that special consideration be given to including representatives of community colleges in the selection of members representing local educational entities; to including representatives of organizations representing individuals with disabilities and veterans, in selection of members representing community-based organizations; and representatives of private sector economic development entities in selecting representatives of economic development agencies. The regulations do not mandate a membership seat for each such entity.

Board Size: The Department heard many concerns that the statutory membership requirements relating to Local Boards will lead to large, unwieldy, and unmanageable Local Boards. The Department recognizes this concern, and while the Department is constrained by the statutory requirements that each category of membership contain more than one representative and that the board contain a business majority, the Department has not added additional regulatory requirements on the number of members required. The Department believes that problems associated with large board size can be addressed in a number of ways, such as through the use of committees. The Department will provide technical assistance on creative approaches State and Local Boards may wish to consider in addressing this issue.

4. *Alternative Entity:* The Department believes that changing from existing JTPA Private Industry Councils to local workforce investment boards is essential to the reforms of WIA. The Department strongly encourages all eligible areas to create new, fully functional Local Boards as early as possible, and is committed to providing assistance to facilitate such changes. However, the Department recognizes that the statute provides an option to use an existing entity to carry out the functions of the Local Board. Section 661.330 describes the requirements relating to the appointment of such an alternative entity. Because of questions regarding

the application of these requirements, paragraph (a) of § 661.330 makes clear that an alternative entity must meet each of the four criteria set forth in WIA section 117(i), including the requirement that the alternative entity must have been established by December 31, 1997. An entity which fails to meet any one of these criteria is not eligible to perform the functions of the Local Board.

While an alternative entity need not contain the identical membership structure as that required of Local Boards, section 117(i)(1)(c)(ii) does require the alternative entity to be substantially similar to the Local Boards. In the Department's view it is extremely important that each of the groups listed in section 117(b)(2) have an active role in the workforce investment system if the system is to be successful. Therefore, the Rule requires that the alternative entity be identified in the State Plan and the local workforce investment plan, and that these workforce investment plans explain the manner in which the Local Board will ensure the ongoing participation of any omitted membership groups in the local workforce investment area. While this Rule does not require that such groups be seated on the Board, it does require the State and local workforce investment plans to describe the means by which such groups will have periodic regular meaningful opportunities for input into decisions made by the Local Board.

Paragraph (c) of § 661.330 amplifies the requirement that an alternative entity must have been established by and in existence on December 31, 1997. Because of this requirement, modifications of the alternative entity are not allowed; any change to the membership structure will invalidate the entity's eligibility as an alternative entity. The membership structure is not considered to be changed when an existing member leaves the Local Board and a replacement member is appointed. However, it is considered to be changed when a change is made to the organizational structure of the Local Board that requires a change (whether the change is formally made or not) in the Local Board's charter or to a similar document that defines the organizational structure of the Local Board, such as appointing members of a category not previously represented. In that case, the entity is no longer eligible to perform the functions of the Local Board and a new entity, meeting all the requirements of section 117 of WIA must be created. This prevents piecemeal modification of alternative entities that would add certain WIA section 117(b)(2) membership categories, but not others.

5. *Youth Council:* Section 117(h) of WIA establishes youth councils as a subgroup of the Local Boards. Youth councils are an innovative new entity intended to broaden participation in the design and delivery of youth services at the local level. Section 661.335 describes the relationship of the youth council to the Local Board as well as the membership requirements and § 661.340 explains the responsibilities of the youth council, as described in section 117(h) of WIA.

6. *Local Workforce Investment Plan:* Sections 661.345 and 661.350 describe the requirements for the submission of the local workforce investment plan (Local Plan) and the contents of the Local Plan. Section 661.350 enumerates the Local Plan components outlined in WIA section 118(b). The Local Plan also must include information on the process for directing the One-Stop operators to give priority to low-income individuals and recipients of public assistance in the event that adult funds are limited, as required by WIA section 134(d)(4)(E). This priority is discussed in more detail under § 663.600.

Section 118 of WIA indicates that Local Plans cover a five year period. Some parties suggested that modifications to the local plan will likely be needed within the five year span. The Department concurs, and the regulations permit the Governor to require local plan modifications and, at § 661.355, offer a few examples of when such modifications might be required by the Governor. Section 661.355 states that the Governor must establish procedures for Local Plan modifications.

Subpart D—Waivers and Workflex

Subpart D indicates the elements of WIA and the Wagner-Peyser Act that may and may not be waived under either the General Waiver Authority or the Work Flex provision. The purpose of the general statutory and regulatory waiver authority provided by section 189(i)(4) and workforce flexibility waiver authority provided at section 192 is to give flexibility to States and local areas in the design and implementation of consolidated workforce development programs under WIA. The regulations specify that the Secretary does not intend to waive any of the key elements of the reform principles embodied in the Act (listed in the background section of this preamble and in § 661.400), except in extremely unusual circumstances. It also specifies that the provisions that incorporate the reform principles embodied in the Act may not be waived under the Work Flex authority.

Part 662—Description of the One-Stop System Under Title I of the Workforce Investment Act

Introduction

The establishment of a One-Stop delivery system for workforce development services is a cornerstone of the reforms contained in title I of WIA. This delivery system streamlines access to numerous workforce investment and educational and other human resource services, activities and programs. The Act's requirements build on reform efforts that are already underway in all States through the Department's One-Stop grant initiative. Rather than requiring individuals and employers to seek workforce development information and services at several different locations, which is often costly, discouraging and confusing, WIA requires States and communities to integrate multiple workforce development programs and resources for individuals at the "street level" through a user friendly One-Stop delivery system. This system will simplify and expand access to services for job seekers and employers.

The Act specifies nineteen required One-Stop partners and an additional five optional partners to streamline access to a range of employment and training services. WIA requires coordination among all Department of Labor funded programs as well as other workforce investment programs administered by the Departments of Education, Health and Human Services, and Housing and Urban Development. WIA also encourages participation in the One-Stop delivery system by other relevant programs, such as those administered by the Departments of Agriculture, Health and Human Services, and Transportation, as well as the Corporation for National and Community Service. In addition, local areas are authorized to add additional partners as local needs may require. All of these Federal Agencies will continue to work together to ensure effective communication and collaboration at the Federal level in support of One-Stop service delivery.

Subpart A—One-Stop Delivery System

1. *Structure:* Subpart A describes the structure of a One-Stop delivery system. The regulation, at § 662.100, describes the One-Stop system as a seamless system of service delivery that is created through the collaboration of entities responsible for separate workforce development funding streams. The One-Stop system is designed to enhance access to services and improve outcomes for individuals seeking

assistance. The regulation specifically defines the system as consisting of one or more comprehensive, physical One-Stop centers in a local area that provides the core services specified in WIA section 134(d)(2) and that provide access to the other activities and programs provided under WIA and by each One-Stop partner. In locating each comprehensive center, Local Boards should coordinate with the broader community, including transportation agencies, to ensure that the centers are accessible to their customers. In addition to the comprehensive centers, the regulation notes that WIA allows for three other arrangements to supplement the comprehensive center. These supplemental arrangements include: (1) A network of affiliated sites that provide one or more of the programs, services and activities of the partners; (2) a network of One-Stop partners through which the partners provide services linked to an affiliated site and through which all individuals are provided information on the availability of core services in the local area; and (3) specialized centers that address specific needs. In essence, this structure may be described as a "one right door and no wrong door" approach. One-Stop partners have an obligation to ensure that core services that are appropriate for their particular populations are made available at one comprehensive center. If an individual enters the system through one of the network sites rather than the comprehensive One-Stop center, the individual may still obtain certain services at the network site and information about how and where all the other services provided through the One-Stop system may be obtained.

Subpart B—One Stop Partners

1. *Responsibilities:* Subpart B identifies the One-Stop partners and their responsibilities in the One-Stop delivery system. The required partners are entities that carry out the workforce development programs. They are specifically identified in section 121(b)(1) of WIA and § 662.200. The regulation at § 662.200(a)(1)(i through vii) separately specifies the funding streams under title I that are included as required partners. The regulations also identify the other required programs, with some clarification of the particular sections of certain Acts (for example, the Vocational Rehabilitation Act and the Carl D. Perkins Act) that authorize the program that must participate. Section 662.210 identifies additional partners that may be a part of the One-Stop system at local option.

Entities—The regulation at § 662.220 provides a general definition of the "entity" that carries out the specified programs and serves as the partner. In light of the responsibilities of the partners, which are described below and include decisions regarding the use and administration of program resources, the regulation defines the entity as the grant recipient or other entity or organization responsible for administering the program's funds in the local area. The term "entity" does not include service providers that contract with or are subrecipients of the local entity. The regulation notes that for programs that do not have local administrative entities, the responsible State agency may be the One-Stop partner. In addition, the regulation specifies the appropriate entity to serve as partner for the Adult Education and Vocational Rehabilitation programs. Entities that serve as the partner under the Indian and Native American, Migrant and Seasonal Farmworker, Job Corps, and Youth programs are identified in the sections of the regulations applicable to those programs.

Partner Responsibilities—This subpart also describes and elaborates on the statutory responsibilities of the partners. The regulation at § 662.230 identifies the five provisions of the Act that describe these responsibilities. One of the key responsibilities of each partner is to make available at the comprehensive center through the One-Stop system appropriate core services that are applicable to the partner's program. The regulation at § 662.240 lists the core services that are described in section 134(d)(2) of WIA, and defines "applicable" to mean the services from that list that are authorized and provided under the partner programs. The extent to which core services are applicable to a partner program, as well as the manner in which services are provided, are determined by the program's authorizing statute.

Availability of Services—The regulation at § 662.250 describes where and to what extent the One-Stop partners must make available the applicable core services. Since section 134(c) of WIA requires that core services be provided, at a minimum, at one comprehensive physical center, the regulation requires that the applicable core services attributable to the partner's program be made available by each partner at that comprehensive center. To avoid duplication of services traditionally provided under the Wagner-Peyser Act, this requirement is limited to those applicable core services that are in addition to the basic labor exchange services traditionally provided in the local area under the Wagner-Peyser program. While a partner would not, for example, be required to duplicate an assessment provided under the Wagner-Peyser Act, the partner would be expected to be responsible for any needed assessment that includes additional elements specifically tailored to participants under the partner's program. However, the adult and dislocated worker program partners are required to make all of the core services available at the center.

Flexibility—The regulations also provide significant flexibility regarding how the core services are to be made available at the One-Stop center by allowing for services to be provided through appropriate technology at the center, through co-location of personnel, cross-training of staff, or through contractual or other arrangements between the partner and the service providers at the center.

2. *Proportional Responsibility:* The regulation also provides that the responsibility for the provision of and financing for applicable core services is to be proportionate to the use of services at the center by individuals attributable to the partners' programs. The regulation further provides that the individuals attributable to a partners' program may include individuals referred through the center and enrolled in the partner's program after the receipt of core services, individuals enrolled prior to the receipt of core services, individuals who meet the eligibility criteria for the partner's program and who receive an applicable core service, or individuals who meet an alternative definition described in the Memorandum of Understanding (MOU), described in subpart C. This "proportionate responsibility" provision is intended to provide an equitable principle for sharing responsibility among the partners. The regulation provides that the specific method for determining proportionate responsibility (for example, surveys) must be described in the MOU.

Additional Sites—The regulation provides that core services may be provided at sites in addition to the comprehensive center under the MOU. Therefore, it is not required that partners provide applicable core services exclusively at a One-Stop center. If an individual seeks core services at the One-Stop center rather than at the partner's site, they should be made available to him or her without referral to another location, but a partner is not required to route all of its participants through the comprehensive One-Stop center.

Access to Services—The regulation at § 662.260 provides that, in addition to the provision of core services, the One-

Stop partners must use the One-Stop system to provide access to the partners' other activities and programs. This access must be described in the MOU. This requirement is essential to ensuring a seamless, comprehensive workforce development system that identifies the service options available to individuals and takes the critical next step of facilitating access to these services.

3. *Cost Sharing:* The regulation at § 662.270 provides that the particular arrangements for funding the services provided through the One-Stop system and the operating costs of the One-Stop system must be described in the MOU. Each partner must contribute a fair share of the operating costs based on the use of the One-Stop delivery system by individuals attributable to the partner's program. This is an equitable principle and there are a number of methods that may be used for allocating costs among partners that are consistent with this principle and the OMB circulars. To promote efficiency and optimal performance, partner contributions for the administrative costs of the system may be re-evaluated annually through the memorandum of understanding process. The regulation identifies a number of methodologies, including cost pooling, indirect cost allocation, and activity based cost allocation plans, that may be used. The Department, in consultation with other affected Federal agencies, intends to issue guidance or technical assistance relating to cost allocation methods to assist in this area.

Allocation Process—The regulation at § 662.280 clarifies that the requirements of each partner's authorizing legislation continue to apply under the One-Stop system. Therefore, while the overall effect of linking One-Stop partners in the One-Stop system is to create universal access to core services, the resources of each partner may only be used to provide services that are authorized and provided under the partner's program to individuals who are eligible under the program.

As noted above, consistent with this principle, there are a variety of methods for allocating costs among programs. In sum, this regulation is intended to clarify that participation in the One-Stop delivery system is a requirement that is in addition to, rather than in lieu of, the other requirements applicable to the partner program under each authorizing law.

Subpart C—Memorandum of Understanding

Subpart C describes the operation of the local One-Stop system. Section 662.300 addresses the Memorandum of Understanding (MOU) that must be executed between the Local Board and the One-Stop partners. Section 662.310 states that the local areas may develop a single umbrella MOU covering all partners and the Local Board, or separate MOU's between partners and the Local Board. In many areas, the umbrella approach may be the preferred means to facilitate a comprehensive and equitable resolution of the operational issues relating to the One-Stop. The regulation also emphasizes that it is a legal obligation for the partners and the Local Board to engage in good faith negotiation and reach agreement on the MOU. The partners and the Local Boards may seek the assistance of the appropriate State agencies, the Governor, State Board or the appropriate parties in reaching agreement. The State agencies, the State Board, and the Governor may also consult with the appropriate Federal agencies to address impasse situations after exhausting other alternatives. If an impasse has not been resolved, parties that fail to execute an MOU may not be permitted to serve on the Local Board. In addition, if a Local Board has not executed an MOU with all required parties, the local area is not eligible for State incentive grants awarded for local coordination.

Subpart D—One-Stop Operator

This subpart addresses the role and selection of One-Stop operators. The operators are responsible for administering the One-Stop centers and their role may range from simply coordinating service providers in the center to being the primary provider of services at the center. The role is determined by the Local Board. In areas where there is more than one comprehensive One-Stop center, there may be separate operators for each center or one operator for multiple centers. The operator may be selected by the Local Board through a competitive process, or the Local Board may designate a consortium that includes three or more required One-Stop partners as an operator. The Local Board itself may serve as a One-Stop operator only with the consent of the chief elected official and the Governor. This subpart also addresses the "grandfathering" of existing One-Stop operators. The regulations provide some continuity for areas that have already established One-Stop systems while ensuring that fundamental features of the new One-Stop system are incorporated. A local area does not have to comply with the One-Stop operator selection procedures if the One-Stop delivery system, of which the operator is a part, existed before August 7, 1998 (the date of the WIA's enactment); if the One-Stop system includes all of the required One-Stop partners; and if an MOU is executed consistent with the requirements of the Act.

Part 663—Adult and Dislocated Worker Activities Under Title I of the Workforce Investment Act

Introduction

This part of the regulations describes requirements relating to the services that are available for adults and dislocated workers. Along with Wagner-Peyser labor exchange services, the required adult and dislocated worker services, described as core, intensive, and training services, form the backbone of the One-Stop delivery system. The WIA goal of universal access to core services is achieved through close integration of services provided by the Wagner-Peyser, WIA adult and dislocated worker partners and other partners in the One-Stop center and system. Intensive and training services are available to individuals who meet the eligibility requirements for the funding streams and who are determined to need these services to achieve employment, or in the case of employed individuals, to obtain or retain self-sufficient employment. Supportive services, to enable individuals to participate in these other activities, including needs-related payments for individuals in training, may also be provided.

These regulations also introduce the Individual Training Account (ITA), which is a key reform element of the Workforce Investment Act. Individuals are expected to take a proactive role in choosing the training services which meet their needs. They will be provided with quality information on providers of training and, armed with effective case management and an ITA as the payment mechanism, they will have the opportunity to choose the training provider that best meets their needs.

Subpart A—One-Stop System

1. *Role of the Adult and Dislocated Worker Program in the One-Stop System:* The regulation at § 663.100 provides that the One-Stop system is the basic delivery system for services to adults and dislocated workers. The concept of a single system that provides universal access to certain services to all individuals age 18 or older is a key tenet of the Workforce Investment Act. The regulation reflects the emphasis in WIA to consolidate and coordinate services. The grant recipient(s) for the adult and dislocated worker program is a required partner and is subject to § 662.210

regarding required partner responsibilities. Access to services through the One-Stop system ensures that individual needs are identified and, to the extent possible, met. The consolidation of and access to services will result in improved services for both adults and dislocated workers.

2. *Registration and Eligibility:* Sections 663.105 through 663.120 address registration and basic eligibility requirements. In response to concerns regarding the timing of eligibility determination for services in a One-Stop system, the Department has provided general guidance in the regulation at § 663.105 on when adults and dislocated workers must be registered. Sections 663.110 and 663.120 contain the basic eligibility criteria for adults and dislocated workers, respectively.

Individuals who are primarily seeking information and do not seek direct, one-on-one staff assistance, do not need to be registered. However, when an individual seeks more than minimal assistance from staff in taking the next steps toward self-sufficient employment, then eligibility must be determined. Registration is the point at which information that is used in performance measurement begins to be collected. In addition, equal employment opportunity data must be collected on individuals when any assessment or discretionary decision regarding a specific individual is made. Such assessments or decisions include: Decisions regarding service or program eligibility, either positive or negative; and decisions made on the part of any workforce investment system employee which lead to a targeting of services for the individual. The Department will issue further guidance regarding this data collection. Additional information needed to determine eligibility for other assistance available at the One-Stop site may also be determined at the same time. Program operators should determine the information that they need for cost allocation purposes and when they can most efficiently collect it. Electronic records systems allow information to be collected incrementally as higher levels of assistance are provided.

3. *Displaced Homemaker Eligibility:* In response to inquiries regarding assistance to displaced homemakers, the regulation at § 663.120 clarifies that a displaced homemaker who has been dependent on the income of another family member but is no longer supported by that income, is unemployed or underemployed and is experiencing difficulty in obtaining or upgrading employment, may receive assistance with funds available to Local Boards for services to dislocated workers.

4. *Title I Funds:* Section 663.145 clarifies how title I adult and dislocated worker funds are used to contribute to the provision of core services, and to provide intensive and training services through the One-Stop delivery system. All three types of services must be provided, but the Local Boards determine the mix of the three services.

5. *Sequence of Services:* WIA provides for three levels of services: Core, intensive, and training, with service at one level being a prerequisite to moving to the next level. There was a great deal of concern expressed about how this tiered approach would be implemented. Many were particularly concerned that the Department might require a "failed" job search or a minimum time period in one level of service before moving on to the next level. The regulations establish the concept of a tiered approach but allow significant flexibility at the local level. The Department, in response to the comments received, did not establish a minimum number of "failed" job applications or a minimum time period but, instead, allows localities to establish gateway activities that lead from participation in core to intensive and training services. Any core service, such as an initial assessment or job search and placement assistance, could be the gateway activity. In intensive services, the gateway activity could be the development of an individual employment plan, individual counseling and career planning or another intensive service. Key to these gateway activities is the determination, made at the local level, that intensive or training services are required for the participant to achieve the goal of obtaining or retaining self-sufficient employment. The three levels of services are discussed separately in the regulations.

6. *Core Services:* The regulations at §§ 663.150 to 663.165 discuss the core services. All of the core services that are listed in the Act must be made available in each local area through the One-Stop system. Followup services must be available for a minimum of 12 months after employment begins, to registered participants who are placed in unsubsidized employment. Among the core services available is information on targeted assistance available through the One-Stop system for specific groups of workers, such as Migrant and Seasonal Farm Workers, and veterans.

Core services also include assistance in establishing eligibility for the Welfare-to-Work program and programs of financial aid for training and education programs. The specific form of this assistance is determined at the local level based on the participant's needs and in coordination with the other partner programs. This assistance may include: referrals to specific agencies; information relating to, or provision of, required applications or other forms; or specific on-site assistance.

Another core service is the provision of information relating to the availability of supportive services, including child care and transportation, available in the local area, and referral to such services as appropriate. The Department encourages Local Boards to establish strong linkages with a variety of supportive service programs, including Food Stamps, Medicaid programs, and CHIP. Such programs provide key supports for low-income working families and families making the transition from welfare to self-sufficiency.

The Department also encourages Local Boards to establish strong linkages to child support agencies and organizations serving fathers. WIA services can help raise the employment and earnings of non-custodial fathers and fathers living with their children so that they can better support their children. Child support payments help low income single parents stabilize and raise their income. At the same time, it is important for One-Stop programs to be aware of the child support requirements on non-custodial parents who may receive services.

Subpart B—Intensive Services

1. *Intensive Services for Adults and Dislocated Workers:* The regulation at § 663.200 discusses intensive services. The regulation provides that intensive services beyond those listed in the Act may also be provided. Out-of-area job search expenses, relocation expenses, internships, and work experience are specifically mentioned to clarify that they are among the additional intensive services that may be provided. Intensive services are intended to identify obstacles to employment through a comprehensive assessment or individual employment plan in order to determine specific services needed, such as counseling and career planning, referrals to community services, and, if appropriate, referrals to training.

2. *Participation in Intensive Services:* Section 663.220 explains that intensive services are provided to unemployed adults and dislocated workers who are unable to obtain employment through core services and require these services to obtain or retain employment, and employed workers who need services to obtain or retain employment that leads

to self-sufficiency. The regulations at §§ 663.240 through 663.250 specify that an individual must receive at least one intensive service, such as the development of an individual employment plan with a case manager or individual counseling and career planning, before the individual may receive training services and that there is no Federally required minimum time for participation in intensive services. Each person in intensive services should have a case management file, either hard copy, electronic or both. Section 663.240 explains that the case file must contain a determination of need for training services, as identified through the intensive service received.

3. *Self-sufficiency:* This regulation, at § 663.230, discusses how "self-sufficiency" should be determined. WIA requires a determination that employed adults and dislocated workers need intensive or training services to obtain or retain employment that allows for self-sufficiency as a condition for providing those services. Recognizing that there are different local conditions that should be considered in this determination, the regulation provides maximum flexibility, requiring only that self-sufficiency mean employment that pays at least the lower living standard income level. State Boards or Local Boards must set the criteria for determining whether employment leads to self-sufficiency. Such factors as family size and local economic conditions may be included in the criteria. It may often occur that dislocated workers require a wage higher than the lower living standard income level to maintain self-sufficiency. Therefore, the Rule allows self-sufficiency for a dislocated worker to be defined in relation to a percentage of the lay-off wage.

Subpart C—Training Services

1. *Training Services:* Training services are discussed at §§ 663.300 and 663.320. Training services are designed to equip individuals to enter the workforce and retain employment. Under JTPA, a dislocated worker participating in training under title III of JTPA is deemed to be in training with the approval of the State Unemployment Compensation Agency. With such approval, unemployment compensation cannot be denied to the individual solely on the basis that the individual is not available for work because he or she is in training. Although there is no comparable provision in WIA, this JTPA provision will remain in effect during the transition period under the Secretary's authority to guide that transition from JTPA to WIA. The Department will seek an amendment adding similar language to WIA which would deem all adults participating in training under title I of WIA to be in approved training for the purposes of unemployment compensation qualification.

2. *Determining the Need for Training:* The regulations at § 663.310 provide that the One-Stop operator or partner determines the need for training based on an individual (1) meeting the eligibility requirements for intensive services; (2) being unable to obtain or retain employment through such services; and (3) being determined after an interview, evaluation or assessment to be in need of training. Section 663.310 requires that, to receive training, an individual must select a program of services directly linked to occupations in demand in the area, based on information provided by the One-Stop operator or partner. If individuals are willing to relocate, they may receive training in occupations in demand in another area.

3. *Requirements When Other Grant Assistance is Available to Participants.* Section 663.320 implements the requirements of WIA section 134(d)(4)(B), which limits the use of WIA funds for training services to instances when there is no or inadequate grant assistance from other sources available to pay for those costs. The statute specifically requires that funds not be used to pay for the costs of training when Pell Grant funds or grant assistance from other sources are available to pay the costs. This section is intended to give effect to this WIA requirement and still give effect to title IV of the Higher Education Act (HEA) as amended (20 U.S.C. 1087uu), which prohibits taking into account either a Pell Grant or other Federal student financial assistance when determining an individual's eligibility for, or the amount of, any other Federal funding assistance program.

Section 134(d)(4)(B) of WIA requires the coordination of training costs with funds available under other Federal programs. To avoid duplicate payment of costs when an individual is eligible for both WIA and other assistance, including a Pell Grant, § 663.320(b) requires that program operators and training providers coordinate by entering into arrangements with the entities administering the alternate sources of funds, including eligible providers administering Pell Grants. These entities should consider all available sources of funds, excluding loans, in determining an individual's overall need for WIA funds. The exact mix of funds should be determined based on the availability of funding for either training costs or supportive services, with the goal of ensuring that the costs of the training program the participant selects are fully paid and that necessary supportive services are available so that the training can be completed successfully. This determination should focus on the needs of the participant; simply reducing the amount of WIA funds by the amount of Pell Grant funds is not permitted. Participation in a training program funded under WIA may not be conditioned on applying for or using a loan to help finance training costs.

With such coordination and arrangements, the WIA counselor is likely to know the amount of WIA funds available to the WIA participant when calculating the amount of financial assistance needed for the participant to complete the training program successfully. The WIA counselor needs to work with the WIA participant to calculate the total funding resources available as well as to assess the full "education and education related costs" (training and supportive services costs) incurred if the participant is to complete the chosen program. This also ensures both that duplicate payments of training costs are not made and that the amount of WIA funded training is not reduced by the amount of Federal student financial assistance in violation of 20 U.S.C. 1087uu.

It is important to note that the Pell Grant is not school-based; rather, it is a portable grant for which preliminary eligibility can, and should, be determined before the participant enrolls in a particular school or training program. The application for determining eligibility and ultimately the amount of the grant, should be readily available at all One-Stop centers for assistance in the completion of these "gateway" financial aid applications.

Section 663.320(c) implements the requirements of WIA section 134(d)(4)(B)(ii). This section permits a WIA participant to enroll in a training program with WIA funds while an application for Pell Grant funds is pending, but requires that the local workforce investment area be reimbursed for the amount of the Pell Grant used for training if the application is approved. Since Pell Grants are intended to provide for both tuition and other education-related costs, the Rule also clarifies that only the portion provided for tuition is subject to reimbursement.

In the limited cases where contracts are used rather than ITA's, the contracts negotiated by the One-Stop center must prohibit training institutions or

organizations from holding the student liable for outstanding charges. Otherwise, the performance agreements would be undercut because the incentive for the institution or organization to perform would be removed. Also, the practice of withholding Pell Grants from students is prohibited by the U.S. Department of Education.

Subpart D—Individual Training Accounts

1. *Definition of an Individual Training Account:* Information regarding Individual Training Accounts (ITA) is contained in §§ 663.400 through 663.430. A key reform tenet of the Workforce Investment Act is that adults and dislocated workers who have been determined to need training, may access training with an Individual Training Account. The regulation at § 663.410 provides a definition for an ITA that seeks to provide maximum flexibility to State and local program operators in managing ITA's. These regulations do not establish the procedures for making payments, restrictions on the duration or amounts of the ITA, or policies regarding exceptions to the limits, but provide that authority to the State or Local Boards. However, this authority to restrict the duration of ITA's or restrict funding amounts should not be used to establish limits that arbitrarily exclude eligible providers.

2. *Exceptions to ITA's:* The Act at section 134(d)(4)(G)(ii) and § 663.430 of the regulations provide that, under certain limited circumstances, contracts for training rather than ITA's may be used. Specifically, on-the-job training contracts with employers and customized training contracts are authorized. Contracts may also be used when there is an insufficient number of eligible providers in a local area. This exception applies primarily to rural areas. The exceptions to ITA's are to be used infrequently. The Act reforms the local service delivery system by eliminating the current practice of assigning participants to contracted training services and instead establishing a system that maximizes customer choice in the selection of training providers. When the Local Board determines there are an insufficient number of eligible providers in the local area to accomplish the purposes of a system of ITA's, and intends to use contracts for services, there must be at least a 30 day public comment period for interested providers.

Contracts for Special Populations—Contracts for training are also authorized when the Local Board determines that there are special populations that face multiple barriers to employment, as identified in § 663.430(b), and that there is a training services program of demonstrated effectiveness offered by an eligible provider. Section 663.430(a)(3) explains that an eligible provider in this case is a community based organization (CBO) or other private organization. The Department has received many suggestions about this exception and the extent to which it may be used. This exception is intended to meet special needs and should be used infrequently. Those training providers operating under the ITA exceptions still must qualify as eligible providers, as required at § 663.505. The Department believes that effective eligible training providers, including CBO's and other training providers, can and will compete for individual training accounts and, that providers should view the use of ITA's as an opportunity to expand their customer base.

Criteria for "Demonstrated Effectiveness"—The regulation at § 663.430(a)(3) provides that when the exception for special populations is used, the Local Board must apply criteria it develops to determine "demonstrated effectiveness," particularly as it applies to the special participant population it proposes to serve. This determination is in addition to meeting the requirements for qualifying as an eligible training provider. The provisions in the regulation are illustrative and Local Boards should develop specific criteria applicable to their local areas.

Subpart E—Eligible Training Providers

1. Subpart E describes the methods by which organizations qualify as eligible providers of training services under WIA. It also describes the roles and responsibilities of Local Boards and the State in managing this process. Although no single entity has full responsibility for the entire process, the State must play a leadership role in ensuring the success of the eligible provider system. The Governor establishes minimum performance levels for initial determination of non-Higher Education Act/registered apprenticeship providers and for all subsequent eligibility determinations. The Local Board may establish additional local performance levels for subsequent eligibility determinations. The eligible provider process requires a collaborative effort among the State, Local Boards, and other partners. The regulations attempt to amplify and clarify the intent of the Act, by linking statutory language on eligible providers in WIA section 122 with section 134 provisions covering Individual Training Accounts. In § 663.505, the regulations clarify that all training providers, including those operating under the ITA exceptions, must qualify as eligible providers, except for those engaged in on-the-job and customized training (for which the Governor should establish qualifying procedures as discussed in § 663.595). Finally, in order to ensure the strong relationship between the eligible provider process and program performance, the regulation at § 663.530 establishes a maximum eighteen month period for an organization's initial determination as an eligible provider.

The Department heard concern that some traditional providers of training under previous workforce programs, such as community-based organizations, would face difficulties in participating in this system. The regulations clarify that such organizations have the opportunity to deliver training funded under WIA, provided they deliver services that customers value and meet training performance requirements. It is important that States provide access to these organizations in order to maximize customer choice. States should provide access to a broad and diverse set of providers, including CBO's, while maintaining the quality and integrity of training services.

Subpart F—Priority and Special Populations

1. *Priority Under Limited Adult Funding:* This subpart contains requirements related to the statutorily-required priority for the use of adult funds when funds are limited. WIA section 134(d)(4)(E) states that in the event that funds allocated to a local area for adult employment and training activities are limited, priority shall be given to recipients of public assistance and other low-income individuals for intensive services and training services. The appropriate Local Board and the Governor must direct the One-Stop operators in the local area with regard to making determinations related to such priority. The Department assumes that adult funding is generally limited because there are not enough adult funds available to provide services to all of the adults who could benefit from such services. However, the Department also recognizes that conditions are different from one area to another and funds might not be limited in all areas. Because of this, the regulation requires that all Local Boards must consider the availability of funds in their area. In making this determination, the availability of other Federal funding, such as TANF and Welfare-to-Work

funds, should be taken into consideration. Unless the Local Board determines that funds are not limited in the local area, the priority requirement will be in effect. States and Local Boards must work together to establish the criteria that must be used in making this determination. States and Local Boards also may administer their priority for adult recipients of public assistance and other low income adults so as not to preclude providing intensive and training services to other individuals.

A substantial number of parties expressed views on the priority issue. Many believed that the Department should not write any regulations that would, in effect, establish a nationwide priority. Some believed that the Department should not write any regulations at all on this section of the statute. However, the Department believes that the interpretation of this requirement is of such importance that there must be regulations. This section reiterates the statutory language that provides States and Local Boards with the authority to determine the criteria to be applied when making the determination that there are sufficient funds available so that the priority is not in effect. Section 663.610 clarifies that the statutory priority only applies to adult funds for intensive and training services, and not to dislocated worker funds.

2. *Welfare-to-Work and Temporary Assistance to Needy Families as Part of One-Stop:* At § 663.620, the regulation discusses the relationship of the Welfare-to-Work program and the Temporary Assistance to Needy Families (TANF) program to the One-Stop delivery system. Welfare-to-Work is a required partner to which the One-Stop partner regulations apply. The TANF agency is specifically suggested as an additional partner. Both programs can benefit from close cooperation with the One-Stop delivery system because their respective participants will have access to a much broader range of services to promote employment retention and self-sufficiency.

Subpart G—On-the-Job Training and Customized Training

1. Sections 663.700 through 663.720 are the regulatory provisions for conducting on-the-job (OJT) and customized training activities. They include specific information regarding general, contract, and employer payment requirements. The Department received input advocating OJT regulations which do not restrict the duration of OJT and which permit eligible employed workers to also receive this training. Unlike JTPA, OJT is not limited to six months. However, as specified in WIA section 101(31)(C), it is limited in duration as appropriate for the occupation being trained for. Section 663.705 establishes requirements that permit OJT contracts for employed workers.

Some parties called for minimal regulations in this area; however, there were a few who suggested the need for information regarding documentation requirements to avoid audit exceptions. Section 663.710 provides that employers are not required to document the extraordinary costs associated with providing OJT, and no further documentation requirements are established. Instead, program operators should put emphasis on the development and/or selection of OJT assignments that meet the identified needs of the participants.

Subpart H—Supportive Services

1. *Flexibility in the Provision of Supportive Services:* The regulations in subpart H define the scope and purpose of supportive services and the requirements governing their disbursement. A fundamental principle of WIA is to provide local areas with the authority to make policy and administrative decisions as well as the flexibility to tailor the workforce investment system to meet the needs of the local community. To ensure this flexibility, the regulations afford local areas the discretion to provide supportive services as they deem appropriate with limitations only in the areas defined in the Act. Local Boards are required to develop policies and procedures addressing coordination with other entities to ensure non-duplication of resources and services, as well as any limits on the amount and duration of such services. Attention should be given to developing policies and procedures that ensure that the supportive services provided are not available through other agencies and that they are necessary for the individual to participate in title I activities.

2. *Needs-Related Payments:* There were a number of issues regarding the eligibility requirements for dislocated workers to receive needs-related payments that came to our attention, including the concern that training enrollment requirements restrict the numbers of individuals eligible to receive this income support which they need to participate in training. Studies show that early entry into training for dislocated workers who require it is a key factor in reducing the period of unemployment during the adjustment process. Early intervention strategies and policies are best implemented through quality rapid response assistance which includes comprehensive core services, and the provision of other reemployment assistance, including intensive and training services, as soon as the need can be identified, preferably before layoff. The statute authorizes all levels of assistance under title I of WIA to many workers six months (180 days) before layoff, or at least as soon as a layoff notice is received. Providing these workers with access to quality information regarding all adjustment assistance available in the community, including any deadlines that must be met, is critical for workers to make intelligent reemployment choices. Thus, many of the concerns raised can be resolved through the use of early intervention strategies. The Department has decided to issue only limited regulations on needs-related payments eligibility at § 663.815 through § 663.840.

Part 664—Youth Activities Under Title I

Introduction

The youth regulations attempt to reflect the intent of the legislation by moving away from one-time, short-term interventions and moving to a systematic approach that offers youth a broad range of coordinated services. Such offerings include opportunities for assistance in both academic and occupational learning; developing leadership skills; and preparing for further education, additional training, and eventual employment. Rather than supporting separate, categorical programs, the youth regulations are written to facilitate the provision of a menu of varied services that may be provided in combination or alone at different times during a youth's development.

Legislation creating the youth council, the local entity responsible for recommending and coordinating youth policies and programs, intends that the youth council be a catalyst for such broad change. The regulations support that legislative intent.

Flexibility for local program operators in conducting youth programs is key to the legislation and these regulations. The Department encourages local decision making in terms of policy, youth program design within the statutory framework, and determining appropriate program offerings for each individual youth. It is the Department's expectation that these offerings will provide needed guidance for youth that is balanced with appropriate

consideration of each youth's involvement in his or her training and educational plan. Further, the regulations support strong connections between youth program activities and the One-Stop service delivery system, so that youth learn early in their development how to access the services of the One-Stop system and continue to use those services throughout their working lives.

Subpart A—Youth Councils

1. This subpart explains the purpose of youth councils. The youth council is a new feature of the workforce investment system that helps develop youth employment and training policy, brings a youth development perspective to the establishment of such policy, establishes linkages with other local youth services organizations, and takes into account a range of issues that can have an impact on the success of youth in the labor market. Working with the youth council, the Local Board has responsibility for oversight of youth programs. It may be advantageous for Local Boards to delegate responsibility for oversight of youth programs to youth councils which have expertise in youth issues, as is permitted by § 664.110.

Subpart B—Eligibility for Youth Services

1. Definition of Sixth Eligibility Barrier: Under section 101(13)(C)(vi) of the Act, a low income youth is eligible for services if he or she "requires additional assistance to complete an educational program, or to secure and hold employment." The regulation at § 664.210 envisions that Local Boards will define this term, however, if State policy is set regarding this provision, the policy must be described in the State Plan.

2. Registering Youth Participants: Section 664.215 provides that all youth participants be registered by collecting information for supporting eligibility determinations, as well as EEO data. The EEO data must be collected on individuals when any assessment or discretionary decision regarding an individual is made. Such assessments include decisions regarding service or program eligibility, either positive or negative, and decisions made on the part of any workforce investment system employee which lead to a targeting of services for the individual. The Department will issue further guidance regarding this data collection requirement.

3. Non-Income Eligible Youth: Section 129(c)(5) of the Act provides that up to five percent of youth participants served in a local area may be individuals who do not meet income criteria for eligible youth, provided that they meet one or more of the criteria specified in section 129(c)(5) of the Act and the regulations at § 664.220. Local Boards may define the term "serious barriers to employment" and describe it in the Local Plan.

4. Eligibility under the National School Lunch Program: Eligibility for free school lunches is not a substitute for income eligibility under the Act. The Department received suggestions that program operators be allowed to use eligibility for free lunch as a substitute for determining eligibility under the Act, and encouraging the Department to seek a technical amendment that would include such a provision in the legislation. The Department recognizes the importance of this issue, yet lacks statutory authority to change the Act's income eligibility requirements.

5. Eligibility of Youth with Disabilities: Section 664.250 provides that a disabled individual whose family income exceeds maximum income levels under the Act may qualify for services if the individual's own income meets the income criteria established in WIA section 101(25)(F), or the eligibility criteria for cash payments under any Federal, State or Local public assistance program. (WIA section 101(25)(B).)

Subpart C—Out of School Youth

1. Defining Out-of-School Youth: Sections 664.300, 664.310, and 664.320 address issues related to out-of-school youth. Section 101(33) of the Act defines "out-of-school youth" as: eligible youth who are school dropouts or who have received a secondary school diploma or its equivalent, but are basic skills deficient, unemployed, or underemployed. Youth enrolled in alternative schools are not school dropouts. The Department received a number of requests that it seek a technical amendment that would allow youth attending alternative schools to be included in the definition of "dropout," noting that this would permit Local Boards to provide services to more youth in alternative educational environments and to design programs that take advantage of local resources and best meet the needs of local youth. While recognizing the importance of local flexibility and of serving youth in alternative school settings, the Department lacks statutory authority to change definitions established under the Act. Section 664.310 of the regulations clarifies this issue.

2. Funds for Summer Activities for Out-of-School Youth: The Department received a number of inquiries asking if summer activities are exempt from the requirement that 30 percent of youth funds be spent on services for out-of-school youth. Transition guidance will address how the 30% requirement applies to the Program Year 1999 JTPA summer funds. Section 664.320 clarifies that there is no exemption from this requirement for summer activities. There is no separate summer program under the Act. A single allocation of youth funds is available to local areas for year-round and summer activities. Thirty percent of the total youth allocation must be spent on services for out-of-school youth. This 30 percent, like the remaining 70 percent, may or may not be proportional between summer and year-round activities, as determined by the Local Board in consultation with the chief elected official.

Subpart D—Youth Program Design, Elements, and Parameters

1. Program Design: Features of the youth program design are outlined in section 129(c) of the Act. While there are three program design categories and ten program elements are required, there is individual program design flexibility and flexibility in determining the definition, scope, and characteristics of the elements.

Program Design Categories—Under section 129(c)(1), three categories provide the framework for youth program design. They are: (1) An objective assessment of each participant; (2) individual service strategies; and (3) services that prepare youth for postsecondary educational opportunities, link academic and occupational learning, prepare youth for employment, and provide connections to intermediary organizations linked to the job market and employers.

Linkages to Entities—Youth councils and programs are required to establish linkages to entities that will foster the participation of eligible youth. Suggested linkages are included in § 664.400(c).

Information and Referrals—Section 129(c)(3) of the Act requires that Local Boards ensure that eligible youth receive information and referrals, including information on the full array of appropriate services available to them and referrals to appropriate training and educational programs. Youth program providers must ensure that eligible applicants who do not meet the enrollment requirements of their program or who cannot be served by their program are referred for additional assessment and program placement. This language was included in § 664.400(d) of the regulations to emphasize the importance of referrals as

a part of overall youth program design. To further promote the concept of seamless One-Stop service delivery, One-Stop operators are encouraged to send those youth assessments that are completed at the One-Stop center to other training and educational programs to which the youth is referred.

2. Program elements: Section 129(c)(2) of the Act lists 10 program elements that must be generally available to youth through local programs. The Department received requests for clarification that not all of the 10 youth program elements must be provided to every youth participant, and this interpretation is included in § 664.410(b). Local program operators must determine what program elements will be provided to each youth participant based on the participant's objective assessment and service strategy; however, it is envisioned that each youth will participate in more than one of the ten program elements required as part of any local youth program, and all youth must receive follow-up services. For example, even if it is determined appropriate that a youth participate in only summer employment activities, he or she would still receive at least 12 months of followup services. Followup service requirements are fully described in § 664.450. Sections 664.420 through 664.470 further define and discuss five program elements: leadership development, positive social behaviors, supportive services, followup services, and work experiences.

Leadership Development—The Act states that youth programs must provide leadership development opportunities, and gives the following examples of such activities: community service and peer-centered activities encouraging responsibility and other positive social behaviors during non-school hours. Some additional examples of leadership development activities are outlined in § 664.420 which elaborates on the definition of leadership development opportunities. The development of leadership abilities might address team work, decision making, personal responsibility, and citizenship training, as well positive social behavior training in areas such as positive attitudinal development, self esteem building, issues of cultural diversity, and other skills and attributes that would help youth to lead effectively, responsibly, and by example.

Supportive Services—The Act states that youth programs must provide supportive services. Section 101(46) of the Act defines supportive services to include services such as transportation, child care, dependent care, housing, and needs-related payments, that are necessary to participate in activities authorized under the Act. Section 664.440 elaborates on the definition of supportive services as it applies to youth. Such services may include: linkages to community services; referrals to medical services; and assistance with work attire and work-related tool costs, including such items as eye glasses and protective eye gear.

Followup Services—The Act states that followup services will be provided for not less than 12 months after the completion of participation, as appropriate. Section 664.450(b) clarifies that all youth participants must receive some form of followup services. Such services must be for a minimum of 12 months. Followup services for youth who participate in only summer employment activities may, however, be less intensive than for those youth who participate in other types of activities. Program operators are encouraged to consider the intensity of the services provided and the needs of the individual youth in determining the appropriate level of followup services. This section also provides that followup may include leadership development or supportive service activities, as well as other allowable activities, and provides additional examples of permissible followup services.

Evaluation studies such as Abt Associates' Final Report on the National JTPA Study, have shown disappointing results for short-term job training programs for youth. Meanwhile, programs such as STRIVE and the Children's Village have shown much success with longer-term followup strategies. A 1993 study by MDRC showed that the Center for Employment Training, which features close ties to the private sector and a strong job placement component with followup with employers, increased the earnings of enrollees by $3,000 a year over a control group during the last two years of a four-year evaluation.

Work Experiences—Sections 664.460 and 664.470 address work experiences for youth. Work experiences are planned, structured learning experiences that take place in a workplace for a limited period of time. No specific time period is specified. As provided in section 129(c)(2)(D) of the Act, work experiences may be paid or unpaid, as appropriate. Section 664.460 states that work experiences may be in the private for-profit sector, the nonprofit sector, or the public sector, and gives examples of the types of activities that work experiences may include, such as On-the-Job Training (OJT). While OJT is likely not an appropriate activity for most youth under age 18, it may be used as a service strategy for such youth based on the needs identified in an objective assessment of an individual youth participant. Section 664.470 provides that youth funds may be used to pay the wages of youth in work experience. Youth funds may be used to pay the wages of youth in work experiences, including in the private, for-profit sector, under conditions designed to protect youth and incumbent workers when the purpose of the work experiences is to provide youth with opportunities for career exploration and skill development and not to benefit the employer. If an unpaid work experience creates an employer/employee relationship, federal wage standards may apply. This relationship is determined under the Fair Labor Standards Act.

Subpart E—Concurrent Enrollment

1. *Concurrent Enrollment in Youth and Adult Programs:* Under the Act, an eligible youth is an individual 14 through 21 years of age. Adults are defined in the Act as individuals age 18 and older. The Department received suggestions that local program operators be allowed to decide whether youth or adult services are appropriate for individuals aged 18 through 21 based on individual participant assessments and service strategies. The Department encourages local flexibility in serving both youth and adult participants, and thus included this clarification in the regulations. Section 664.500(b) clarifies that eligible youth who are 18 through 21 years old may participate in youth and adult programs concurrently, as appropriate for the individual. Such individuals must meet the eligibility requirements under the applicable youth or adult criteria for the services received. Local program operators must identify and track the funding streams for services provided to individuals who participate in youth and adult programs concurrently, ensuring non-duplication of services.

2. *Individual Training Accounts for Youth:* Section 664.510 states that ITA's are not an authorized use of youth funds. The ITA is the currency of a market-based system that enables adults to select the service providers most suited to their needs based on information about the past performance of such providers. Under the Act, ITA's are not authorized for youth below age 18. Providers of youth services are competitively selected based on predetermined criteria, the judgment of Local Boards, and recommendations of youth councils about the providers' ability to meet the needs of youth

participants. Youth aged 18 through 21 can access ITA's under the adult or dislocated worker program, if appropriate.

Subpart F—Summer Employment Opportunities

1. *Summer Employment Activities:* This subpart provides clarification about summer youth employment. Although all Local Boards must offer summer employment opportunities for eligible youth as one of the ten required program elements listed in WIA section 129(c)(2) and § 664.410, the proportion of youth funds used for summer employment is determined by the Local Board in consultation with the chief elected official. Section 664.600 elaborates on the activities that must be included in all summer employment opportunities, including direct linkages to academic and occupational learning, as well as followup services for at least 12 months. Numerous inquiries were received about whether the Act would allow cities and counties to continue to operate their summer activities. Section 664.610 provides that this practice is still allowed, and clarifies that if summer employment opportunities are provided by entities other than the grant recipient/fiscal agent, the providers must be selected by awarding a grant or contract on a competitive basis based on recommendations of the youth council and on criteria contained in the State plan.

2. *Application of Performance Indicators:* In terms of performance measurement, the Department received requests for clarification on whether all of the core indicators listed in the Act apply to the summer program element as well as to youth activities that are longer in duration. It is important to note that the core indicators specified in section 136 of the Act apply to all youth program activities. This is consistent with the intent of the Act to move from a focus on separate, categorical programs to a more systematic approach to workforce investment and serving the needs of youth. Summer employment opportunities then, are to be viewed as one element among many available to youth as a part of a menu of activities offered by the Local Board. Section 664.620 indicates that summer activities, as part of the overall youth program, are required to meet the same core indicators of performance as the other youth activities.

Subpart G—One-Stop Career Center Services to Youth

1. *The Connection between the Title I Youth Program and the One-Stop Delivery System:* This subpart explains that the chief elected official (as the local grant recipient for the youth program), as a required One-Stop partner, is subject to the One-Stop provisions related to such partners described in part 662 of the regulations and is responsible for connecting the youth program and its activities to the One-Stop system. In addition to the provisions of part 662, connections between the youth program and the One-Stop system may include those that facilitate:

- The coordination of youth activities;
- Connections to the job market and employers;
- Access for eligible youth to information and services; and
- Other activities designed to achieve the purposes of the youth program.

The Department received requests for clarification on connecting youth program activities to the One-Stop delivery system; however, some parties felt that the youth program, as a One-Stop partner, should not be made to conform to the same One-Stop partner requirements as other partners. The Rule attempts to clarify the role of the youth program in the One-Stop center through a cross-reference to the One-Stop regulations found in 20 CFR, part 662.

2. *Universal Access to One-Stop Centers for Youth under 18:* Under section 134(d)(2) of the Act, adults have access to core services in One-Stop centers without regard to eligibility. Adults are defined under the Act as persons aged 18 and above. Section 664.710 of the regulations clarifies that local area youth, including youth under age 18 who are not eligible under the title I youth program, may receive services through the One-Stop centers; however, services for such youth must be funded from sources that do not restrict eligibility for services, such as Wagner-Peyser. The Department believes that the intent of the Act is to introduce youth, particularly out-of-school youth, to the services of the One-Stop system early in their development and to encourage the use of the One-Stop system as an entry point to obtaining education, training, and job search services.

Subpart H—Youth Opportunity Grant Programs

This subpart explains that competitive procedures for awarding Youth Opportunity Grants will be established by the Secretary. It also restates statutory language regarding the eligibility of Local Boards and other entities in high poverty areas to apply for Youth Opportunity Grants. Provisions of the Act regarding eligibility for services under Youth Opportunity Grants and the process for establishing performance measures are clarified at §§ 664.800 to 664.830. The Department views these grants as a distinct opportunity to provide a variety of needed services to youth in high poverty areas, building on the current successful activities and innovations already at work in many communities.

Part 665—Statewide Activities Under Title I of the Workforce Investment Act

Introduction

This part addresses the funds reserved at the State level for workforce investment activities under sections 128(a) and 133(2) of WIA.

Subpart A—General Description

This subpart provides a general description of Statewide activities conducted with up to 15 percent reserved from youth, adult and dislocated worker funding streams ("15 percent funds"), and up to an additional 25 percent of dislocated worker funds reserved for Statewide activities from annual allotments to the State.

1. Section 665.110(b) explains that the 15 percent reserved funds may be pooled and expended on workforce investment activities without regard to the source of the funding. For example, funds reserved from the adult funding stream may be used to carry out Statewide youth activities and vice versa. The Department believes that the use of these funds can provide critical leadership in the development and continuous improvement of a comprehensive workforce investment system for each State and, as a result, create a national system to which job seekers and workers can look for expert assistance, and employers can look for a qualified workforce.

Subpart B—Required and Allowable Statewide Workforce Investment Activities

This subpart discusses required and optional activities conducted with funds reserved from the three title I funding streams (youth, adults, and dislocated workers).

1. *Required Activities:* Section 665.200 identifies the eight activities which each State is required to carry out with its reserved funds from the three funding streams. The Governor must reserve funding for these activities, but has discretion to determine the amount reserved, up to the maximum 15 percent of each funding stream. One use of these funds is administration, subject to the five percent administrative cost

limitation at 20 CFR 667.210(a)(1). This section clarifies that while there is no specific amount for each of the seven of the eight required activities to be carried out with the 15 percent funds, it is expected that the State will expend a sufficient amount to ensure effective implementation of those activities. The eighth required activity, rapid response, is discussed in subpart C.

2. *Optional Activities:* Section 665.210 also identifies activities which each State is allowed to carry out with the 15 percent funds. For the first time, States have the discretion to conduct research and demonstration projects, and incumbent worker projects, including the establishment and implementation of an employer loan program. Section 665.220 makes clear that employed (incumbent) workers served under projects funded with these reserve funds are not required to meet the requirements that training is needed to lead to a self-sufficient wage applicable to employed adult or dislocated workers served with local formula funds.

Subpart C—Rapid Response Activities

This subpart addresses the use of funds that must be reserved (up to 25 percent of dislocated worker funds allotted to States under section 132(b)(2)(B) of WIA) to provide rapid response assistance.

1. Section 665.300 describes what are rapid response activities and who is responsible for providing them. Rapid response assistance commences at the site of dislocation as soon as a State has received a WARN notice, a public announcement or other information that a mass dislocation or plant closure is scheduled to take place. The Department believes that this early intervention feature for dislocated workers, if provided in a comprehensive and systematic manner through collaboration between the State and Local Boards, One-Stop partners and other applicable entities, is critical to enabling workers to minimize the duration of unemployment following layoff. The Department strongly urges States and Local Boards to implement processes that allow for core services to be an integral part of rapid response assistance, preferably on-site, if the size of the dislocation or other factors warrant it. Further, WIA defines a dislocated worker at section 101(9) in a way that permits formula funds to be used for intensive and training services for workers: (1) As soon as they have layoff notices; or (2) six months (180 days) prior to layoff if employed at a facility that has made a general announcement that it will close within 180 days.

The Department believes that this is a critical period for workers, States, Local Boards, One-Stop operators and partners to begin to make important decisions. One important decision is whether there are sufficient formula funds in the State (at the State or local levels) to adequately serve the workers being dislocated, or whether national emergency grant funds must be requested in a timely manner so that all services are available to the workers when they need them.

2. In response to numerous concerns regarding whether rapid response funds may be used beyond those types of required rapid response assistance described in the Act and § 665.310, the Department has elaborated on the authorized rapid response activities in the regulation at § 665.320. These additional activities were recommended by experts consulted on this topic.

3. Section 665.330 addresses the linkage of rapid response assistance and WIA title I assistance to NAFTA-Transitional Adjustment Assistance (NAFTA–TAA). This linkage is an important feature of the One-Stop delivery system, and a requirement under NAFTA–TAA.

Part 666—Performance Accountability Under Title I of the Workforce Investment Act

Introduction

This part presents the performance accountability requirements under title I of the Act. This part of the regulations primarily summarizes the statutory language in the Act and clarifies a few key areas based on input the Department has received. WIA's purpose is to provide workforce investment activities that improve the quality of the workforce. The Department is strongly committed to a systemwide continuous improvement approach, grounded upon proven quality principles and practices. The regulations identify some of the major issues where further guidance will be provided.

Subpart A—State Measures of Performance

1. *Indicators:* Section 666.100 identifies the 15 core indicators of performance and the two customer satisfaction indicators that States are required to address in title I grant applications. The 15 core indicators represent the four core indicators that will be applied separately for the three population categories (adult, dislocated workers and eligible youth age 19 through 21) for a total of 12 indicators and the three youth indicators. There is one customer satisfaction indicator for participants and one for employers. Section 666.110 clarifies that Governors may develop additional performance indicators to be negotiated with Local Boards and that these additional indicators must be included in the State Plan.

2. *Definitions:* Section 666.100(b) also explains that the Departments of Labor and Education will issue more detailed definitions for the title I and title II indicators after further consultation with representatives identified in section 502(b) of WIA. The Departments will consult further on the indicator definitions, including taking into account factors such as the degree of difficulty and expense of collecting data and reporting on the measures.

3. *Negotiations:* As noted at § 666.120(a), the Department will provide further guidance on each of these areas after additional consultation. Section 666.120(b) addresses the requirement that States must submit expected or proposed levels of performance for the core indicators and customer satisfaction indicators for years one through three of the State Plan. The Department may require States to express levels of improvement as a percentage improvement over the previous year's actual performance. The Department recognizes that continuous improvement is more than incremental increases in performance and will develop a comprehensive and rigorous approach to integrate continuous improvement at all levels of the workforce investment system. The Department received input that underscored this need to view continuous improvement as a system building activity, not a compliance activity.

4. *Participants Included in Measures:* The Department was requested to clarify when a customer becomes a participant for the purpose of applying the core indicators of performance. Section 666.140 explains that all individuals, except for those adults and dislocated workers who receive services that are self-service or primarily informational, must be registered and included in the core indicators of performance. The Department will issue guidance to further specify which activities and services require registration and which ones do not. In addition, § 666.140(b) implements the requirement that a standardized record must be completed for registered participants.

5. *Wage Record Data.* Section 136(f)(2) of the Act requires States to use quarterly wage records, consistent with State law, to measure progress on the core indicators of performance. Section

666.150 clarifies that each State must describe its strategy for using quarterly wage record data for performance measurement in the State Plan. The State Plan must also identify the entities that may have access to the wage record data for this purpose. In addition, § 666.150(c) defines "quarterly wage record information" (1) as wages paid to an individual, (2) the individual's social security number (or numbers if more than one), (3) the employer's name, address, State where located, and (4) the Federal employer identification number (when known). As requested, the Department will continue to explore the implications and provide guidance for complying with the confidentiality requirements at section 444 of the General Education Act (20 U.S.C. 1232g (as added by the Family Educational Rights and Privacy Act of 1974). Furthermore, the Department will continue to take into account concerns about possible violations of State unemployment compensation laws, confidentiality and privacy statutes and wage record collection systems. The Department will issue further guidance about the use of quarterly wage records.

Subpart B—Incentives and Sanctions for State Performance

1. *Criteria:* Section 666.200 restates the eligibility criteria for States to apply for an incentive grant. Section 666.210 addresses the use of incentive funds for one or more innovative programs consistent with requirements of title I of WIA, title II of WIA and the Carl D. Perkins Vocational and Applied Technology Education Act.

2. *Timing:* There were suggestions that the Department postpone the incentive program until a State's second year progress report is received. Additional time has also been requested to enable the workforce investment system to have a year of performance information to assist in establishing baseline levels and to learn more about using the unemployment compensation wage records for performance measurement and about the data and reporting systems for title II Adult Education and Literacy programs and Carl D. Perkins programs. The Department recognizes these concerns and is considering available options. The regulations do not address the timing issue.

3. *Awards:* Section 666.230 explains that the Secretary of Labor will consult with the Secretary of Education and issue annual instructions listing the amounts of incentive funds available to each eligible State and giving application instructions. The list will be developed after annual performance reports are received and will be based on the reported performance. It also describes the factors that will be taken into account in determining the amount of Incentive Grant awards.

4. *Sanctions:* Section 666.240 explains that States failing to meet for any program adjusted levels of performance for core indicators and the customer satisfaction indicators for any program, in any year, will receive technical assistance, if requested. If a State fails to meet the required indicators for the same program for a second consecutive year, the State may receive a reduction of as much as five percent of the succeeding year's grant allocation.

Subpart C—Local Measures of Performance

Section 666.300 explains that each local workforce investment area will be subject to the same 15 core performance indicators and two customer satisfaction indicators that States are required to address. Governors may elect to apply additional performance indicators to local areas. Section 666.310 states that local performance levels will be based on the State adjusted levels of performance and negotiated by the Local Board and chief elected official and the Governor to account for variations in local conditions.

Subpart D—Incentives and Sanctions for Local Performance

Section 666.400(a) restates local area eligibility for State incentive grants. Section 666.400(b) states that the amount of funds available for incentive grants and specific criteria to be used are determined by the Governor. Section 666.420 also explains that local areas failing to meet agreed upon levels of performance will receive technical assistance for any program year. Governors must take corrective actions for local areas failing to meet the required indicators for two consecutive years.

Part 667 Administration Provisions

Introduction

This part establishes administrative provisions which apply to WIA programs conducted at the Federal, State and local levels. These regulations are written to clarify what was written in the Act and to assemble all of the administrative requirements from the various parts of the Act and other applicable sources in order to facilitate the administrative management of WIA programs.

Subpart A—Funding

This subpart addresses fund availability. Questions have been raised about to reallotment and reallocation focused on procedures and amounts. The regulation clarifies that the amount reserved for the costs of administration is excluded from the calculation of unobligated balances upon which reallotment/reallocation are to be based. The regulation also emphasizes that any amount to be recaptured and the reallotment/reallocation are to be separately determined for each of the three funding streams. Thus, for example, it is possible that a State may be subject to recapture of youth funds while receiving a reallotment of adult funds. The Department will provide additional guidance on these processes.

Subpart B—Administrative Rules, Costs and Limitations

1. *Fiscal and Administrative Rules:* This subpart specifies the Rules applicable to WIA grants in the areas of fiscal and administrative requirements, audit requirements, allowable cost/cost principles, debarment and suspension, a drug-free workplace, restrictions on lobbying, and nondiscrimination. This subpart also addresses State and Local Board conflict of interest and program income requirements, procurement contracts and fee-for-service use by employers, nepotism, responsibility review for grant applicants, and the Governor's prior approval authority in subtitle B programs. Section 667.170 sets forth the Department's authority to perform a responsibility review of potential grant applicants. The Department may review any information that has come to its attention as part of an assessment of applicant's responsibility to administer Federal funds. The responsibility tests include the items set forth in paragraphs (a)(1) through (a)(14). In this section, the term "include" is used as it is throughout the Interim Final Rule, to indicate an illustrative, but not exhaustive list of examples.

2. *Administrative Costs: Administrative Cost Limits:* Section 667.210 restates the provision of the Act which set a State level administrative cost limit of five percent of total funds allotted to the State by the Department and a local administrative cost limit of 10% of funds allocated by the State to the local area. It also provides that the cost limitation applicable to awards under subtitle D will be specified in the grant agreement. In addition, this regulation includes a provision which excludes from the administrative cost limitation calculation the acquisition

costs of hardware and software used for tracking and monitoring participants, and for collecting, storing and disseminating information required as a core service under the Act.

Definition of Administrative Costs: Section 667.220 provides the Department's definition of Administrative Costs. To comply with the statutory requirement for consultation with the Governors in developing this definition, the Department consulted with representatives of the Governors and included both State and local stakeholders in the discussion. In addition to the input received through the consultation, the Department received suggestions related to the definition of administrative costs in various forums and by direct communications from a number of different sources. The key theme which emerged is that the function and intended purpose of an activity should be used to determine whether the costs associated with it should be charged to the program or administrative cost category.

The Department received input regarding what to include and what to exclude from the definition of administrative costs. There were specific recommendations that costs of information technology and costs associated with continuous improvement activities be excluded from the administrative cost category. These suggestions helped the Department as it framed the regulation which defines administrative costs.

The Department valued this consultation and carefully considered all input and crafted its definition to incorporate this function-based approach. The regulation enumerates those functions of State Boards, Local Boards and boards of chief elected officials which are classified as administrative and indicates that those costs and the costs of like activities/functions performed by One-Stop operators are classified as administrative costs. The regulation also includes additional cost classification guidance to clarify areas where questions have arisen concerning the allocation of costs between the program and administrative categories. The regulation provides the system with the flexibility needed to allocate costs to the program or administrative cost category based on the purpose or nature of the activity or function. As a result, the locus of responsibility and intended purpose of the function, whether direct or indirect, determines the appropriate cost category.

3. *Prohibited Activities:* Sections 667.260 through 270 address a number of prohibited activities that are located in various sections of the Act. The regulation clarifies the Department's interpretation that the Act's prohibition on employment generating activities, economic development and other similar activities does not apply when they are directly related to training of eligible participants. It is not intended that such activities must benefit individually identified participants to be allowable, rather, such approaches as first source hiring agreements that promise to benefit participants as a group would suffice. The Rule includes a list of activities that may be provided as allowable economic development or similar activities. This list is not meant to be exclusive. There may be other activities of a similar nature that are directly related to training for eligible individuals that are permissible under WIA. In this section, the term include is used, as it is throughout the Interim Final Rule, to indicate an illustrative, but not exhaustive, list of examples. With respect to the prohibition of WIA support of inducing relocation of a business, the regulation provides a process for a preaward review to ensure that funds are not spent in violation of the provision. Section 667.269 specifies where the procedures for resolution of violations of these prohibitions, as well as the related sanctions and remedies, can be found.

Sectarian Facilities: Section 667.266 restates the Act's prohibition on the employment of participants in the construction, operation, or maintenance of a facility that is used for sectarian instruction or as a place of religious worship, and describes the Act's limited exception to this prohibition.

4. *Impairment of Collective Bargaining Agreements:* Section 667.270 lists the safeguards that ensure that participants in WIA activities do not displace other employees. These include the prohibition on impairment of existing contracts for services or collective bargaining agreements that is contained in WIA section 181(b)(2). When an employment and training activity described in WIA section 134 would be inconsistent with a collective bargaining agreement, the Rule requires that the appropriate labor organization and employer provide written concurrence before the activity begins.

5. *Labor Protections:* Section 667.272 requires that individuals engaged in on-the-job training or employed in activities under Title I of WIA must be paid at the same rate, including the same periodic wage increases, as other workers who are similarly situated in similar occupations by the same employer and who have similar training, experience and skills. Wage rates must be in accordance with applicable law, and must be at least equal to the rate specified in section 6(a)(1) of the Fair Labor Standards Act of 1938 (FLSA) (29 U.S.C. 206(a)(1)) or the applicable State or local minimum wage law, whichever is higher. The determination of whether an individual is "employed" in a WIA activity for purposes of this provision, including participation in paid or unpaid work experience, must be made in accordance with the requirements of the FLSA. Questions regarding the application of FLSA to participants in WIA activities should be directed to the DOL, Employment Standards Administration, Wage and Hour Division.

Section 677.274 mandates that all Federal and state health and safety standards and state workers' compensation laws applicable to the working conditions of similarly situated workers are equally applicable to the working conditions of participants in programs and activities under Title I of WIA. Paragraph (b)(2) clarifies the application state workers' compensation laws to individuals engaged in work experience. If a State workers' compensation law does not apply to a participant in work experience, insurance coverage must be secured for injuries suffered by the participant in the course of such work experience.

6. *Nondiscrimination:* Section 188 of the Act prohibits discrimination on the basis of race, color, national origin, sex, age, disability, religion, political affiliation or belief, participant status, and against certain noncitizens. It also requires the Secretary to issue regulations "necessary to implement this section not later than one year after the date on enactment" of the Act. The Department anticipates the publication of an Interim Final Rule to implement the nondiscrimination and equal opportunity provisions of the Act prior to July 1, 1999 (63 FR 62003, November 9, 1998). The Rule will be located at 29 CFR part 37.

The provisions of WIA sec.188 are substantially similar to sec. 167 of JTPA, as amended. As a consequence, the Department anticipates little difference between 29 CFR part 37 and the regulation implementing sec. 167.

Section 667.275(a) provides that recipients must comply with the nondiscrimination and equal opportunity provisions of the Act and its implementing regulations. This provision is substantially similar to that found in § 627.210, the companion section of the regulations implementing

the JTPA. A slight modification has been made to the language to eliminate any possible confusion about who is covered by sec. 188. The term recipient, as used in § 671.275, has the same broad meaning as that found in other civil rights regulations (for example, in 29 CFR parts 31, 32, and 34), and that meaning will be carried over to 29 CFR part 37. In the context of § 667.275, a recipient is any entity that receives funds under title I of the Act (except for the ultimate beneficiary) whether the assistance comes directly from the Department, through the Governor, or through another recipient. Some entities may be identified as vendors or subrecipients, or some other term. However, for the purpose of § 667.275, these entities are considered recipients and subject to section 188 and its implementing regulations. Section 667.275 generally follows the language in § 667.210, but provides for the exception found in sec. 188(a)(3). This exception allows for using funds under title I of WIA to employ participants in maintenance of a part of a religious facility that is not primarily or inherently devoted to sectarian instruction or religious worship, in a case in which the organization operating the facility is part of a program or activity providing services to participants.

Subpart C—Reporting Requirements

There were suggestions and questions related to the mechanics of reporting. In response, § 667.300 indicates that the Department will issue instructions and formats for financial, participant and performance reporting. We anticipate that reporting will be done electronically. Section 667.300 also provides that a grantee may impose different reporting requirements on its subrecipients including different forms, shorter due dates, etc. When a State is the grantee and plans to impose different reporting requirements, it must describe them in its State Plan. Section 667.300(e), concerning the Annual Performance Progress Report specifies the situations under which a sanction, including a possible reduction in the subsequent year's grant amount, may be imposed.

Subpart D—Oversight and Monitoring

This subpart includes regulations which provide for both Federal and State oversight responsibilities. For formula grants, the Department's monitoring of the States will be conducted primarily at the State level and may include a sample of subrecipients. The regulation emphasizes the requirement that States funded under this program develop a Statewide monitoring system. States must be able to demonstrate that the monitoring system meets certain regulatory requirements. One way to so demonstrate is to make a monitoring plan available for Federal review. The regulation which specifies the oversight roles and responsibilities of WIA grant recipients and subrecipients reflects the statutory language of sections 183 and 184 of the Act.

Subpart E—Resolution of Findings from Monitoring and Oversight Reviews

1. *Resolution of Findings and Grant Officer Resolution Process:* This subpart addresses the resolution of findings that arise from audits, investigations, monitoring reviews, and the Grant Officer resolution process. The processes are essentially the same as they were under JTPA.

2. *Nondiscrimination:* To avoid confusion about which procedures apply to nondiscrimination findings, the regulation specifies that findings arising from investigations or reviews conducted under nondiscrimination laws are to be resolved in accordance with section 188 of the Act and the applicable Department of Labor nondiscrimination regulations. While 29 CFR part 34 is currently in effect, the Department will issue a new 29 CFR part 37 to specifically implement the provisions of section 188 of WIA. Therefore, States which do not fully or partially implement WIA before July 1, 2000 will be subject to the rules of 29 CFR, part 34 during PY 99. All States that implement early, including those which implement under a transition plan, will be subject to the new rules at 29 CFR, part 37, during PY 99.

Subpart F—Grievance Procedures, Complaints, and State Appeals Processes

There were recommendations for and against the application of grievance procedures to One-Stop partners not funded by the Department. In response, the regulations allow such partners to file a grievance or complaint when they are affected by the WIA system, but do not attempt to address any grievance or complaint that might arise about their own programs. Grievance procedures available in partners' programs are those available under the law authorizing that program. A person who believes that a partner may have violated WIA may use the grievance procedure available under WIA.

1. *Grievance Procedures*: Section 667.600 describes those elements required for local area, State and other direct recipient grievance procedures. It also specifies that complaints of discrimination follow the resolution process at sec. 188 and Department of Labor nondiscrimination regulations. The regulation specifies the two situations in which the Department will investigate and/or review allegations that arise through local, State and other direct recipient grievance procedures. In particular, as part of the State's responsibilities, it must provide an opportunity for a timely review of local level grievance adjudications.

2. *Complaints and Appeals*: Sections 667.630–650 address complaints and reports of criminal activity, and the additional appeal processes which a State must have for its WIA programs for nondesignation of local areas, termination of eligibility or denial of training providers, and testing and sanctions for use of controlled substances.

Subpart G—Sanctions, Corrective Actions, and Waiver of Liability

This subpart addresses sanctions and corrective actions, waiver of liability, advance approval of contemplated corrective actions, as well as the offset and State deduction provision.

Subpart H—Administrative Adjudication and Judicial Review

This subpart specifies those actions which may be appealed to the Department's Office of Administrative Law Judge (OALJ), and the rules of procedure and timing of decisions for OALJ hearings. Section 667.825 sets forth special requirements that apply to reviews of MSFW and INA grant selections. These rules are similar to those currently in effect under JTPA. Section 667.840 also provides for an alternate dispute resolution process. In addition, § 667.850 describes the authority for judicial review of a final order of the Secretary.

Subpart I—Transition

Section 667.900 indicates that a Governor may reserve up to two percent of Program Years 1998 and 1999 JTPA formula funds, of which not less than 50% must be made available to local entities, for expenditure on WIA transition planning activities. It specifies that the source of funds may be any one or more of JTPA's titles or subtitles. It includes a provision that expressly states the Department's position to exclude funds so reserved from any calculation of compliance with JTPA cost limitations. The Governor must decide to make the funds available to one or more local entities. These might include a local JTPA entity, a local entity established for the purpose

of operating WIA programs, or any other local entity. Additional information and guidance on the process of transition will be forthcoming.

Part 668—Indian and Native American Programs

Introduction

This part establishes the operation of employment and training programs for Indians and Native Americans under the authority of section 166 of the Act. This part is broken into subparts dealing with: Purposes and policies; service delivery systems; customer services; youth services; services to communities; grantee accountability; planning and funding; administration; and miscellaneous provisions such as waivers. In crafting the section 166 regulations, the Department attempted to represent the program from the grantees' perspectives, and to provide an organization which is relatively easy to follow and as comprehensive as possible without repeating major sections of the general WIA administrative regulations contained in part 667. Cross-references to that part are provided in the body of these regulations, when appropriate.

Need for Regulations

There are several reasons why these regulations exist separately, and why they contain the areas regulated. The primary reason separate regulations are drafted for the section 166 program is that it is clearly the intent of Congress and the Administration that there be a supplemental employment and training program under WIA solely for Indians and Native Americans, with requirements, policies, and procedures unique to that customer group. The current grantee community stated a desire to have regulations which are as self-contained as possible. Therefore, some material covered under the regulations implementing the State workforce investment system is repeated in these regulations, but usually not in the depth contained in part 667. Cross-references direct the grantee to sections where greater detail is provided.

Subject Areas Covered

The specific subject areas covered by these regulations, and cited above, are being regulated because the language of section 166 does not cover the detailed operation of the program. Statements of policy are made to clearly delineate the Department's position with respect to the section 166 program and the nature of the relationship between the Department and its section 166 grantees. Areas such as those concerning the designation of section 166 grantees must be regulated in order to clarify the statutory provisions, and it is desirable to clearly define these procedures and requirements for ease of compliance by those who are or wish to be part of the system. The subparts in this Interim Final Rule represent a logical sequence, from policies and purposes through miscellaneous provisions, generally representing the reality of program implementation as experienced by the typical grantee. This sequence reflects grantee comments. The primary vehicle for soliciting input on these regulations is the Native American Employment and Training Council. Drafts of areas under consideration for regulation were circulated to the grantee community by the Council, in their statutorily-mandated advisory role. Input received from grantees came either through the Council or directly to ETA's Division of Indian and Native American Programs (DINAP), either in writing (including faxes), orally (over the telephone), or via E-Mail. There were also discussion sessions held at the three multi-regional meetings in Washington, DC, Albuquerque, and Maui, as well as at the Advisory Council meeting in November in Washington, DC. Each of these meetings generated suggestions which were considered in crafting the present regulations. Input was also received through individual members of the Work Group, which is a body composed of Council members and other select grantee program directors, and is an official Council subcommittee. All in all, well over 50 parties submitted views on various aspects of the draft regulations. The most significant input is synopsized below.

Areas Not Covered

Because a Final Rule will be effective for PY 2000, this Rule was designed to address issues that affect grantees who implement in PY 1999. The Department will issue program direction and administrative guidance to assist implementing grantees. These areas are as follows:

1. *Transition to WIA*: Although several sections allude to the transition, no detailed instructions are included in this Rule. Because this event will occur only once for each grantee, the Department decided that the conversion from JTPA to WIA would be more appropriately covered in administrative guidance to be completed and distributed to grantees at a later date. This includes the closeout of JTPA grants.

2. *Public Law 102–477*: A separate subpart was suggested to address the various aspects of the demonstration under Pub. L. 102–477, The Indian Employment, Training and Related Services Demonstration Act of 1992, including procedures for transitioning from a JTPA/WIA grantee to a "477 tribe." Because no separate regulations are authorized for the demonstration, and participation is limited by law to Federally-recognized tribes and Alaska Native entities, it was decided that such a subpart would be inappropriate. However, § 668.930 clearly states that grantees who qualify may participate under Pub. L. 102–477. The Department considers this to be an adequate reference for these regulations.

3. *Supplemental Youth Services*: The Department believes that establishing a separate subpart for youth services adequately covers the provision of youth services for these regulations, but it recognizes that further instruction in the creation and submission of these youth plans will be necessary. In order to provide the flexibility needed to adapt to these changes as they occur, the Department believes it is appropriate at this time to provide policies and procedures for the youth program in program guidance and policy documents.

4. *Performance Measures and Standards*: While performance measures and standards are referenced in § 668.460 and § 668.620, these regulations do not specify which measures may or must be used, or how accompanying performance standards will be derived. The development of revised performance measures and levels for Native American employment and training grantees has been on-going for several years under JTPA, and will continue under WIA. This effort is considered to be on a "separate track" from the development of regulations, whether under JTPA or WIA. When section 166 performance measures and standards are finalized, they will be transmitted to the grantees in a separate administrative issuance, and will not appear in regulations.

Subpart A—Purposes and Policies.

1. *Self-determination*: In § 668.120, the Department clearly commits to the principles of self-determination and sovereignty, and names DINAP as the "single organizational unit" required in the Act to administer section 166 programs. In addition to the language in the Act, which the Department thought it appropriate to repeat by paraphrasing, the Department has added a statement on helping customers achieve personal and economic self-sufficiency. The Department considers this statement to be one of the prime purposes of all

Federal employment and training efforts, and especially appropriate to the Native American population.

2. *Consultation*: The operating principle of "partnership" is embodied in these regulations at § 668.130, which paraphrases section 166 (h)(2) of the Act.

3. *Definitions*: These regulations do not repeat definitions covered in the Act or in the main definitions section at § 660.300. The term "underemployed" is defined in this section of the regulation because it is not defined elsewhere, and the definition of "family income" is specific to Indian and/or Alaska Native circumstances. The Department has made clarifications to the definition of "family income" for section 166 purposes. The regulations include a section from the Alaska Native Claims Settlement Act (ANCSA) (43 U.S.C. 1626(c)) concerning the treatment of income for Alaska Natives which is applicable by law to all Federally-funded programs.

4. *Applicable Regulations*: To create a more "user friendly" document, the Department added § 668.140 to the Rule, which describes what other regulations affect upon section 166 program operation.

Subpart B—Service Delivery Systems

1. *Designation*: The current JTPA designation procedures, eligibility requirements, competition hierarchies, etc., are retained in this Interim Final Rule for PY 1999. WIA section 166 requires that grantees be selected on a competitive basis except where a waiver of competition is granted due to successful performance. The requirements for the selection of grantees through the designation process are set forth in § 668.200—§ 668.280. In order to be selected as an INA grantee, an entity must have legal status as a government or agency of a government, a private non-profit corporation or a consortium containing one of these groups; it must have the ability to administer federal funds as determined under § 668.220; and it must meet certain eligible population requirements. To be consistent with the goal of the Indian Self-Determination and Education Assistance Act and to provide Indians with the opportunity to achieve "self-determination essential to their social and economic well-being," the rule, at § 668.210, gives priority in the competitive designation process to federally-recognized Indian tribes, Alaskan Native entities and consortia of these entities. However, as part of the competitive selection process, no entity may be designated as an INA grantee unless it demonstrates that it has the ability to administer federal funds, as defined in § 668.220. The Department believes that this process is consistent with the mandates of the Indian Self-Determination and Education Assistance Act and with the requirement that grants, contracts, and cooperative agreements be made on a competitive basis.

The Department is establishing a new designation threshold for PY 2000 and beyond in § 668.200(b)(3), with allowances made for smaller grantees wishing to participate in the demonstration under Pub. L. 102–477. Also for PY 2000, the dates for submission of the Notice of Intent and any additional required supporting documentation, contained in §§ 668.240 and 668 .250, are different from those for PY 1999, primarily to allow both applicants and the Department more time to implement the designation process, especially in the event of more than one applicant competing for a given service area. An area of frequent comment involved the current JTPA criteria for designation as a Native American grantee, specifically the issues of size and the competition hierarchy. Most of the suggestions received were from smaller Federally-recognized tribes, either without the currently required 1,000 Indian or Native American population in their service area or without a significant reservation land base from which to claim a Hierarchy 1 preference. There were suggestions that the Department abandon the numbers altogether, and instead assign a dollar threshold which would be a better indication of grantee viability. For the PY 2000 designation and beyond, the Department has chosen $100,000 as the minimum funding threshold. This includes any supplemental youth services funds awarded to the grantee. In response to requests from some smaller grantees, the Department has included in § 668.200(b)(3) a statement "grandfathering in" those current grantees which do not meet the $100,000 threshold for PY 2000 and beyond. Also in response to suggestions received from some smaller, non-JTPA tribes wishing to participate in the demonstration under Pub. L. 102–477, the Department made the $100,000 limit applicable to total resources to be included in the "477 plan." This will enable the smaller Federally-recognized tribes to receive their own WIA funding and participate in the demonstration authorized by P.L. 102–477, if their total employment and training funds to be included in the plan equal or exceed that dollar threshold. There were also suggestions that the Department attempt to accommodate Congressionally mandated service areas, States and counties identified in statute as comprising the service area of a specific tribe into the hierarchy system, which these draft regulations attempt to do. The Department will continue to review this issue as it develops the Final Rule.

2. *Geographic Coverage*: To address problems which have arisen under JTPA, § 668.294 states the Department's position on covering specific geographic areas for which there are no viable entities willing or able to provide services under section 166 of WIA. The Department will make every effort to fund suitable grantees for each area. If a suitable grantee cannot be found, the funds for that service area will be used for technical assistance or distributed among other grantees.

3. *Funding Formula(s)*: As under JTPA, the WIA rule allocates funds for Native American grantees by geographic service area, based upon the funding formula set forth in § 668.300. The Department has chosen to allocate funds by formula rather than base grant amounts upon the levels proposed in grant applications for several reasons. First, other than a requirement that the Department consult with the grantee community on "developing a funding distribution plan," the Act is silent as to how funds are to be distributed among selected grantees. The legislative history does not indicate any Congressional intent to deviate from the Department's traditional method of funding by a geographic allocation formula. The Department believes that experience in funding by formula under JTPA for over 15 years has demonstrated success in ensuring sufficient funds for a high level of service to customers. Once a grantee demonstrates that it meets the minimum threshold for designation, including the ability to administer funds under § 668.220, the funding formula ensures that sufficient funds are available so that selected grantees can operate a viable, successful program. For these reasons, it is the Department's view that the proposed allocation formula of § 668.300 is consistent with the requirement that grants, contracts and cooperative agreements be made on a competitive basis. The current JTPA section 401 funding formula is retained in this Rule, pending further discussions on the subject during the formulation of the Final Rule during 1999. Also included in § 668.296 are the hold-harmless provisions, carry-in limitations, and the 1% set-aside for technical assistance and training (TAT) contained in the current JTPA regulations or policy.

Subpart C—Services to Customers

1. *Services to Customers*: The same basic JTPA section 401 eligibility criteria are being retained for the section 166 program. The allowable services are taken straight from the Act, and listed in this subpart for clarity and to further promote the "user friendly" approach of the regulations. Indian-specific activities, such as support of the Tribal Employment Rights Office (TERO), have been included, as well as the allowability of sequential enrollment or enrollment of participants in more than one WIA program.

2. *Restrictions on Allowable Activities*: Because of the importance of some of these restrictions, such as the prohibition on using WIA funds for economic development in the section 166 program, the Department included § 668.350 in these regulations rather than merely referring to similar sections in the State workforce investment system regulations. Section 668.350 lists these restrictions, primarily from WIA sections 181 and 195.

3. *Interaction with One-Stop Centers*: Section 668.360 recognizes that section 166 grantees are "mandatory partners," in the One-Stop delivery system, and reiterates the statutory requirement for a memorandum of understanding (MOU) between the section 166 grantee and the Local Board. This section outlines the provisions the MOU must contain, and the circumstances under which the Local Board may engage the section 166 grantee in these negotiations. Because of the remote location(s) of some section 166 grantees (their distance from the nearest One-Stop center) and other logistical problems, especially for tribes serving rural areas, the Department recognizes that successfully executing a meaningful MOU with the Local Board may not always be possible. Thus, § 668.910 allows Federally-recognized tribes to request a waiver of section 121 requirements with the agreement of the Local Board. Although financial contribution to the operation of a One-Stop center is a matter of local negotiation, the funding and audit issues involving the restrictions on the uses of section 166 funds must be taken into consideration. The primary argument against having to financially support the One-Stop centers is that the State is already funded to serve Native Americans, at least for core services, and all requests for intensive and training services would probably be referred to the Native American grantee. The INA Rules specify the INA grantee's responsibility as a One-Stop partner. This part does not relieve the One-Stop system of its responsibility to serve Native Americans in the same manner as it serves all other individuals or specialized groups. Some parties also expressed concern that any funds provided to another agency which could not be directly tied to the provision of services to Native Americans could result in a disallowed cost to the INA grantee. In response to suggestions, the Department took a closer look at section 121 of WIA and attempted to write regulations in such a way that interaction with One-Stop systems would adhere to statutory requirements, but not dictate the exact nature of section 166 grantee interaction with the One-Stop system. Additional questions which were raised concerning the limitation on section 166 funds, that they only be used for the benefit of Native Americans. Questions dealt with financial support of a One-Stop center, and how this prohibition would be documented for audit purposes. Section 668.340 clearly states that no expenditures of section 166 funds may be made for individuals not eligible under section 166. Part 662 contains specific language that addresses One-Stop arrangements, including a similar provision providing that a partner's resources may only be used to provide services to individuals eligible under the partner's authorizing statute. This section also requires the grantees to describe the process for negotiating the MOU with their Local Board in their Two Year Plan.

4. *Payments to Participants*: Section 668.370 contains the same requirements about minimum wage coverage, the payment of allowances, the applicability of labor standards, and limitations on participant wages that were in effect under JTPA in 20 CFR part 632. The Department considers it important, for ease of reference by the grantees, to clearly state these requirements in regulations rather than cross-referencing the Act or other statutes. The Department also included a statement in § 668.370 specifically allowing the payment of incentive bonus payments to participants who meet or exceed established goals, to avoid audit questions which have arisen under JTPA section 401 activities.

5. *Grantee Capacity Building*: Section 668.380 reflects the Department's intention to provide section 166 grantees with technical assistance and training as required by section 166(h)(5) of the Act.

Subpart D—Supplemental Youth Services

It is significant that this is a separate subpart. Although this program is only available to certain types of entities, and eligible grantees will cover the provision of supplemental youth services in their Two Year Plan rather than in a separate document, the Department received suggestions for a separate youth subpart for clarity's sake. The Department agrees that supplemental youth services warrants a separate subpart in this Rule. In part 668, the youth requirements are covered in subpart D, with a minimum of definition beyond that provided in the Act, except for the funding formula (§ 668.440) and the provisions making the hold harmless factor, the reallocation provisions, and provisions concerning the use of funds not claimed by grantees applicable to youth funds as well. Section 668.460 covers the applicability of performance measures and standards to the supplemental youth program. A number of suggestions received from "urban" grantees indicated their desire to receive supplemental youth services funding. However, after further review, the Department decided that the language of the statute did indeed limit recipients of these funds to those entities serving Indian/Alaska Native/Native Hawaiian youth residing on or near a reservation. The regulations clarify additional details concerning the provision of supplemental youth services, such as the requirement that most participants be low-income individuals, that the definition of "eligible youth" applies to section 166 programs, that performance measures and standards are applicable to the supplemental youth programs, and that the funding provisions for the adult program (reallocation, carry-in limits, use of funds, etc.) also apply to youth programs.

Subpart E—Services to Communities

Not contained in the current JTPA section 401 regulations, this subpart, addressing services to communities, was included for purposes of clarification, following the recommendations of the Work Group. The regulations discuss the kinds of services that can be provided to communities and employers, such as customized training and child care. Many of these services, especially to communities at large, have been provided under JTPA for some time, but have not been discussed previously in regulations. Some of the provisions found here, however, appear in 20 CFR part 632 in various places, such as the reference to the Indian Financing Act of 1974, contained in § 668.520.

Subpart F—Accountability for Services and Expenditures

1. *Contents of Subpart*: This subpart reflects one of the Act's key reform principles of strengthened accountability, and contains sections on various aspects of grantee "accountability," including the nature of the INA grantee's accountability to the Native American community, to the Department, and to the individual participants. Sections covered here include reporting, performance measures and standards, the prevention of fraud and abuse, grievance systems, and equal access provisions which are similar to the corresponding JTPA section 401 provisions. Several of the regulatory provisions, such as those at § 668.630(c) and (d) (gifts and nepotism), are unique to the Native American grantee program.

2. *Service Preference:* There has always been a controversy in Indian programs, dating back to JTPA and its predecessor, the Comprehensive Employment and Training Act (CETA), concerning the ability of a tribe to grant preference to its own tribal members at the expense of, or to the exclusion of, other Native Americans residing in its service area. These regulations clearly state that these exclusionary practices are prohibited. However, in response to grantee concerns, the regulations state that grantees may still identify target populations to be served (for example, the disabled, Temporary Assistance to Needy Families (TANF) recipients, substance abusers) and have this priority approved in the Two Year Plan.

Subpart G—Planning/Funding Process

This subpart contains details about plan formulation and submission, including the statutory requirement for a Two Year Plan for delivering comprehensive WIA services. Also included here are the Department's procedures for plan review and approval, and the requirements for subsequent plan modification. These procedures are being added to make the regulations more "user friendly," and because there are changes from the procedures used under JTPA, such as the change from a one-year plan to a two-year plan, and the dropping of a requirement for a separate summer plan.

Subpart H—Administrative Requirements

1. *Contents of Subpart:* This subpart describes in detail the systems each grantee must have in place to properly administer a section 166 program under WIA. It also addresses cost allocation and allowability, audit requirements, applicable cost principles, cash management requirements, and the treatment of program income. Much of this subpart consists of cross-references to the appropriate general administrative sections of 20 CFR part 667, or to other Departmental or Federal regulations.

2. *Administrative Cost Limits:* By far the majority of suggestions received involved the issue of the administrative cost limit under WIA. Section 166 of the Act is silent on the level of administrative costs permitted. Many felt that the 10 percent (10%) limit on local workforce investment areas in title I would place a tremendous strain on even the largest programs, while making it impossible for smaller grantees to operate at all (97 out of 183 JTPA section 401 grantees receive less than $100,000 annually). The grantees who submitted suggestions all wanted at least the 20% administrative cost limit currently in place for JTPA, section 401, and the INA Welfare-to-Work (INA WtW) programs. To allay concerns over adjusting to new rates, § 667.210(b) provides that the INA administrative cost ceiling is to be established in the grant agreement. Any adjustments to the 10 percent limit will be addressed in the grant agreement, and will be based on the particular needs of the grantee.

Subpart I—Miscellaneous Program Provisions

Covered in this subpart are the regulatory and statutory waiver provisions under section 166(h)(3) of WIA, which were not available under JTPA. This includes the requirements for documenting a waiver and circumstances under which section 121 requirements may be waived, and provisions which may not be waived. Also covered are the allowability of participation in the demonstration under Pub. L. 102–477, and an elaboration of the role of the Native American Employment and Training Council. The latter section was added to clearly state the role of the Council in the consultative process, and to support its activities.

Part 669—Migrant and Seasonal Farmworker Programs under Section 167

Introduction

This part provides the program and administrative requirements for the operation of the Migrant and Seasonal Farmworker (MSFW) program, including the MSFW Youth program under section 127(b)(1)(A)(iii). Part 669 is organized in five subparts addressing: purpose and definitions; the MSFW program's service delivery system; MSFW customers and available program services; performance accountability, planning and waiver authority; and the MSFW youth program.

The MSFW program is administered nationally in the Department by using a limited competitive process to select applicants for grant awards. The selected grantees operate the grant programs in most States and Puerto Rico. The vehicle for soliciting and receiving comments during the development of the MSFW regulations is the Migrant and Seasonal Farmworker Employment and Training Advisory Committee. At the Committee's first meeting on November 5 and 6, 1998, two workgroups of volunteers from the grantee community were formed to assist the Department in developing the policies underlying these regulations. The members met to develop an initial discussion draft and continued providing comments by e-mail.

Subpart A—Purpose, Definitions, and Federal Administration

This subpart covers the statement of purpose at § 669.100, and provides applicable farmworker-specific definitions and Federal administrative requirements.

1. *Definitions:* The definitions in this subpart are those unique to this program. The major issues requiring definition are "allowances," "capacity enhancement," and "emergency assistance." (Other terms are defined for clarification.)

Allowances—The MSFW program permits payments of allowances to enable individuals to participate in classroom training. The economic condition of most farmworkers does not permit their participation in full-time training without on-going financial assistance. The definition of "allowances" establishes when allowance payments are permitted and the maximum hourly rate. Grantees may use a lower rate.

Capacity Enhancement—Section 167 of WIA authorizes the Department to provide funds for capacity enhancement as part of technical assistance activities. The Rule provides that capacity enhancement includes staff training for grantee staff members. The MSFW program has a history of using discretionary funds to finance some of the costs of grantee staff development activities. The definition authorizes the continuation of such activities.

Emergency Assistance—Some parties expressed a need for reducing the administrative burdens relating to providing emergency assistance to farmworkers. These services are unique

for the MSFW program and address urgent needs of a short duration, such as medical, housing or food support required by MSFWs moving along the migrant stream. When applying for emergency assistance, farmworkers must provide personal and family information to demonstrate eligibility. The general program eligibility requirement of having to produce verifying source documentation such as annual tax returns that one would normally leave at home, frustrates grantees' attempts to respond to urgent needs of farmworkers. To rectify this problem, the regulation provides that when a person applies for emergency services only, an expedited eligibility determination process may be used. The process is expedited by exempting the grantee from requiring documentary evidence to support the farmworker's eligibility except regarding work authorization and compliance with Selective Service registration requirements. The farmworker's eligibility is established by a self-certification. This abbreviation of the application requirement for receipt of emergency assistance is consistent with the low unit cost of these services.

2. *Federal Administration:* Sections 669.120 and 669.130 provide that the Department's administration of the MSFW program will be under its national office, working directly with the operational grantees. Section 669.140 restates the Department's obligation to provide technical assistance. Sections 669.150 and 669.160 ensure consultation with the Secretary's Migrant and Seasonal Farmworker Employment and Training Advisory Committee. The MSFW Advisory Committee was established in 1998 under the Federal Advisory Committee Act (FACA) for this purpose, and it is intended that the Committee will advise the Department on a variety of MSFW program matters. Since WIA does not require the use of an Advisory Committee for the MSFW program, this section establishes by regulation the FACA consultative process for the MSFW program.

Subpart B—MSFW Program's Service Delivery System

This subpart contains provisions on the grantee selection process.

1. *Eligible Entities:* Section 167(b) of the Act requires that organizations seeking to operate MSFW programs demonstrate their familiarity with and an understanding of the target population. This capacity is critical to the entity's ability to effectively provide the services needed by MSFW's.

2. *General Approach to Service Delivery:* Grantees expressed concern that, without regulatory clarification, some Local Boards would refuse to recognize the MSFW grantee as a required partner in the One-Stop delivery system established under title I of the WIA. These regulations and those for the title I Adult and Dislocated Worker programs, clearly state that MSFW grantees are required partners in those local areas where grantee offices are located.

Grantees indicated that the regulations should provide for equitable availability of all WIA services to all farmworkers entering the One-Stop center doors. The primary service providers under Wagner-Peyser and the title I Adult and Dislocated Worker programs have a general responsibility to make their core, intensive and training services available to all eligible farmworkers on a basis that is equitable with other customer groups. The MSFW program has a specific responsibility to supplement the level of those services by offering farmworkers the services available under the MSFW program that are tailored for farmworkers. Although the services available from the MSFW program must include the general core services of the local One-Stop centers, the MSFW program provides services developed especially for addressing the unique needs of MSFW's.

To fulfill the required partner requirement, the MSFW grantee and the One-Stop centers must develop the coordination necessary for the effective delivery of One-Stop core services to farmworkers. This is to be achieved through the agreements negotiated between the MSFW grantee and the Local Boards. The resulting agreements, including appropriate cost sharing arrangements, are to be described in the Memorandum of Understanding. MSFW grantees have stressed the importance of having an operational structure under the regulations to establish good-faith negotiation of the MOU's. Without protections for ensuring the integrity of the MOU negotiations, these grantees believed that their participation at many One-Stop centers would be jeopardized. The specific environment expected is one that ensures the MSFW grantees have a level playing field for negotiating with the Local Boards. Both part 662 and § 669.220 make it clear that Local Boards and MSFW grantees must enter into good faith negotiations to develop an equitable assignment of roles, responsibilities and costs between them.

MSFW grantees have made it clear that they want to be recognized as required One-Stop partners only where it is geographically appropriate to their operations, stressing the importance of limiting the required MOU's within the States to those appropriate to the MSFW grantee's circumstances. This is due to the potential administrative burden in many States because of the large number of Local Boards with which MOU's would have to be negotiated. There is a clear preference for a regulatory provision permitting the negotiation of a single, Statewide MOU or limiting the required MOU's to those Local Boards where it is clearly meaningful, such as with those areas in which the MSFW grantee operates.

The regulations provide an operating structure for MOU negotiations. Section 669.350 states the MSFW grantees' obligations for providing the core services of the local One-Stop center to the farmworkers it serves. A corollary requirement exists for the Local Board under § 662.410(b). Basically, the process for addressing how respective obligations will be fulfilled is the negotiation of the MOU, as required for all local partners in a One-Stop delivery system. The regulation clarifies that the MOU's negotiated by the MSFW grantees shall provide the terms of necessary financial or in-kind compensation for services exchanged between the MSFW grantee and the Local Board. The matter of establishing an appropriate environment for negotiating MOU's is addressed in this section. It provides for ETA to determine when the MSFW grantee is responsible for failed negotiation of MOU's with Local Boards. Under the regulations for the One-Stop delivery system, any failure to execute a MOU with a required partner must be reported by the Local Board to the Governor, and by the Governor to the Secretary of Labor and to any other head of a Federal agency with responsibility for oversight of a partner's program. The regulation limits the required MOU's to those Local Boards located in areas where there is a grantee field office. This limitation establishes that the MSFW grantees are not required to negotiate MOU's with Local Boards serving geographic areas that are inappropriate for the MSFW program, such as areas where the MSFW program will not be operating. The Department encourages MSFW grantees to develop working relationships through electronic or other means for an appropriate purpose such as referral, in areas with large concentrations of MSFWS which are not served by a grantee field office.

3. *Termination:* Section 669.230 provides the grounds for terminating an MSFW grantee. The regulation provides authority for the Grant Officer to initiate

termination when there is a need to protect funds and when there is a substantial or persistent violation of requirements. It also outlines the procedures for emergency termination.

4. *Discretionary Account:* Section 669.240(b) authorizes the continuation of a discretionary account. Historically, the Department has been authorized to reserve up to six percent of the funds appropriated each year for the MSFW program to fund discretionary activities. These activities support those needs of MSFWs that are not met by the basic job training program. Such activities include grants to support housing programs for farmworkers, and ETA-sponsored technical assistance for grantees such as conferences, direct mini-grants for specific grantee needs, and other technical assistance activities. The delivery of technical assistance to grantee staff is consistent with the provision of "capacity enhancement," described above. The funds also support the costs of the Secretary's Migrant and Seasonal Farmworker Advisory Committee. Section 669.240(b) continues this limited discretionary authority to use up to six percent of the funds appropriated under section 167.

Subpart C—MSFW Program Customers and Available Program Services

This subpart describes who is eligible for services provided under section 167 of WIA, the program responsibilities, and the nature and scope of the program activities authorized under the Act.

1. *Eligibility:* Section 669.320 summarizes applicant eligibility terms defined in section 167 (h) of the Act.

2. *Customer Approach:* Customer choice is a primary focus of WIA. The regulations are necessary to ensure that farmworkers have an opportunity to make choices about the services and training available to them. To meet these objectives, it is necessary to provide guidance to the MSFW grantees on serving their farmworker customers. This is achieved by providing services through a case management approach, which may include core, intensive, and training services, and related assistance and supportive services (§ 669.330). As provided in 20 CFR part 663, prior to intensive services, a participant must receive at least one core service, and prior to training services, a participant must receive at least one intensive service. The regulations provide, however, that the delivery of intensive services (§ 669.370) and training services (§ 669.410) may be combined under a single structure or continuum. To meet immediate needs of farmworkers and their families, § 669.360 authorizes grantees to provide emergency assistance—for example, services such as health care and housing assistance. This is an example of features within the MSFW program and these regulations to address the special needs of MSFW's. It illustrates how this MSFW program supplements through its diversity of approaches, the types of services available to farmworkers under the Adult and Dislocated Worker programs.

3. *Intensive Services:* Many farmworkers have special needs and require additional resources that the MSFW grantees are funded to provide. Accordingly, MSFW grantees provide intensive services, which may include individual employment plans, and may be based on objective assessments and periodic reviews of participant employment and training needs. Section 669.370 indicates the kinds of intensive services that are appropriate for MSFW's. This approach may differ from the service delivery design of a local One-Stop center because the MSFW program is intended to offer opportunities for MSFWs to redirect their lives by learning the skills and knowledge required for employment in higher skilled occupations. Usually, when farmworkers seek employment assistance from an MSFW grantee, they are trying to abandon seasonal farmwork (but not necessarily all agricultural employment) with its inherent uncertainty, poverty and other hardships. Helping farmworkers to overcome the barriers they face when seeking to attain better employment may require the concurrent provision of intensive and training services.

4. *Objective Assessment and Individual Employment Plan:* These two case management instruments may be utilized for participants seeking services beyond core services, and provide the means to achieve a sustained customer focus. The description of objective assessment is covered at § 669.380. The description of objective assessment is provided to clarify the range of resources available and to suggest that assessment should be an ongoing process. Customer focus is maintained through the use of an individual employment plan (IEP), a tool to identify the intensive services, training, and support services necessary to lead to economic self-sufficiency. The most important aspects of the IEP are that it is jointly developed between the customer and the service provider and that it should be continuously relied upon to guide the participant's participation to a successful conclusion. The IEP is a record of the participant's employment, training, and supportive services needs, and a mutually developed strategy for reaching the participant's goals. Regulatory guidance is necessary to ensure that the minimum standards expected by ETA and the grantee community, are understood and achieved in developing and maintaining IEP's for MSFW's.

5. *Training Services:* In addition to the training services authorized under section 134(d)(4)(D) and section 167(d) of the Act, experience has shown that additional training services, such as training in housing development assistance or workplace safety, are occasionally required to assist farmworker customers. Section 669.410 authorizes MSFW grantees to provide such services. Section 669.420 also regulates the minimum requirements for OJT contracts under the MSFW program.

Subpart D—Performance Accountability, Planning and Waiver Authority

This subpart addresses program administration, consultation with grantees and awarding of grants.

1. *Performance Standards and Measures:* Section 669.500 provides that the core performance indicators applicable to the formula programs under title I will also apply to the MSFW program. This section also authorizes the MSFW program to develop performance measures that are in addition to the core indicators of performance. The levels of performance for each indicator will take into account the characteristics of the participants to be served and the economic conditions in the area served by the grantee and negotiated as part of the grantee plan approval.

2. *Funding and Planning Documents:* Sections 669.510 through 669.540 describe the grant planning process. To reduce administrative effort at both the Federal and grantee levels, § 668.510 requires that the plans submitted cover a two-year (biennial) period even though funding is available on an annual basis. This represents a change from past requirements for single year plans and affords an opportunity for strategic planning and continuous improvement. Section 669.520 establishes the minimum requirement for the MSFW grant plan. Other requirements may be added by the Solicitation for Grant Application (SGA) for any given biennial period.

3. *Unilateral Modifications:* Section 669.540 authorizes the Department to unilaterally increase or reduce grant funding levels in response to Congressional action. The section also establishes the limitations under which grantees may unilaterally modify grant

plans and provide authority for bilateral modifications.

4. *Cost Classification and Reporting:* Section 669.550 describes cost classification and reporting procedures and addresses compliance with the administrative cost limitations.

5. *Waivers:* The general waiver authority in WIA does not apply to the MSFW program. However, waiver authority may prove beneficial for addressing unforseen circumstances encountered by MSFW program grantees. The regulations at §§ 669.560 and 669.570 provide MSFW program grantees with limited regulatory waiver authority to waive certain provisions of the WIA regulations.

Subpart E—The MSFW Youth Program

This subpart includes 669.600 through 669.680 which provide the introduction to the MSFW youth program by stating its purpose and its relationship to the MSFW program under section 167. Regulations at §§ 669.630 through 669.660 provide the qualifying process for receiving a MSFW youth grant.

1. *Designation of Grantees:* The section 167 MSFW youth program will be administered through grant agreements with eligible entities, selected through a competitive process. Sections 669.630 and 668.640 describe the eligibility criteria for designation and the process by which an entity may apply for designation as a MSFW youth program grantee. To be designated, an organization must submit a youth program plan in response to the Departments's Solicitation for Grant Applications. MSFW grantees expressed concern that a separate competition for youth grants would lead to instances where two different MSFW grantees were operating in the same areas. To respond to this concern, MSFW grantees operating within the same service area will be afforded special consideration in the grant competition.

2. *Allocation of Funds:* Section 669.650 regulates the funding of the MSFW youth program on a competitive basis by providing that the allocation of funds will be based on the merits of the proposal. In addition, the process may utilize allocation methods that promote a geographical distribution of funds that supports a balanced funding of both large and small scale competitive applications. The grantees also expressed concern that a larger jurisdictions would have a competitive advantage. To allay concerns over the potential for irregular distributions among jurisdictions and grantees due to relative differences in size, the regulations provide that the Department will use a means for geographical distribution that promotes acceptance of both large and small scale applications under the competition.

3. *Grant Plans:* Section 669.660 describes the planning documents required in an applicant's response to the Department's SGA and the applicable submission dates, respectively.

4. *Eligibility:* Section 669.670 establishes the eligibility criteria for farmworker youth who wish to participate in the MSFW youth program. They are youth age 14 through 21, who are economically disadvantaged.

5. *Allowable Activities and Services:* Section 669.680 authorizes the MSFW youth program activities. Specific activities are authorized by references to sections of the WIA and by described youth activities.

Part 670—Job Corps

Introduction

This part provides regulations for the Job Corps program, authorized in title I, subtitle C of WIA. The regulations address the scope and purpose of the Job Corps program and provide requirements relating to selection of sites for Job Corps centers; selection and funding of service providers; screening, selection and assignment of eligible youth to Job Corps centers; operation of Job Corps centers; and required services for Job Corps students. This part also provides regulations covering new WIA requirements such as the establishment of a business and community liaison and an industry council for each Job Corps center, and the focus on accountability, including specific performance measures for Job Corps centers and service providers. The Department's intent in these regulations is to incorporate the requirements of title I, subtitle C of the Act, and to describe the programs and services which must be available for Job Corps students, as well as the requirements dictated by the unique residential environment of a Job Corps center (such as provision of meals, transportation, recreational activities and related services).

Subpart A—Scope and Purpose

1. *Purpose:* This subpart indicates that part 670 contains regulatory provisions that apply to the Job Corps program, describes the purpose of the program, and provides definitions. It also specifies that the Job Corps Director is delegated authority to carry out the responsibilities of the Secretary under title I, subtitle C of the Act related to the operation of the Job Corps program, and that references in this part referring to "guidelines" or "procedures issued by the Secretary" mean that the Job Corps Director will issue such guidelines. Procedures guiding day-to-day operations are provided in a Policy and Requirements Handbook (PRH). The PRH includes minimum program requirements and expected outcomes for specific program components, such as education and training, student support, and administration. In addition, general guidance and best practices are provided for in a number of program areas in Job Corps Technical Assistance Guides issued by the Job Corps Director.

2. *Partnership:* The program purpose incorporates the Act's intent that Job Corps will operate as a national, residential program in partnership with States and local communities. The partnership theme is carried throughout various sections of part 670 in requirements for Job Corps centers and service providers to serve on local youth councils, to operate as a One-Stop partner, and to work with employers.

Several parties noted that the regulations provide in this subpart that Job Corps is a national program which operates in partnership with States, communities, Local Boards, youth councils, One-Stop centers and partners, and other youth programs, but argued that the earlier proposed language relating to partnership with One-Stop was not strong enough in other statements indicating services (such as outreach/admissions and placement) would be provided by One-Stop centers or partners to the extent practicable. The intent in using language such as "to the extent practicable" or "to the fullest extent possible" is not to limit or discourage the development of linkages between Job Corps and One-Stop, but to recognize (1) the language in section 145(a)(3) of the Act which requires the Secretary to conduct outreach and screening activities "to the extent practicable" through arrangements with applicable One-Stop centers, community action agencies, business organizations, labor organizations, and entities that have contact with youth; (2) the requirements in section 147 of the Act for selection of Job Corps center operators and other service providers (such as outreach/admissions, placement, and provision of continued services) on a competitive basis in accordance with Federal procurement law and regulations; and (3) the language in section 148(e) and section 149(b) of the Act which requires the Secretary to give priority to "One-Stop partners" in selecting a provider for continued services for graduates and to "utilize One-Stop delivery systems to

the fullest extent possible" for the placement of graduates into jobs. The use of these phrases should not be interpreted as a limitation, but as a statement of intent to enter into partnerships in all situations where it is feasible to do so.

Subpart B—Site Selection and Protection and Maintenance of Facilities

This subpart describes how sites for Job Corps centers are selected, the handling of capital improvements and new construction on Job Corps centers, and responsibilities for facility protection and maintenance. The requirements in this subpart are not significantly different from the corresponding requirements in the JTPA Job Corps regulations.

Subpart C—Funding and Selection of Service Providers

This subpart describes entities which are eligible to receive funds to operate Job Corps centers and to provide operational support services. It also describes how contract center operators and operational support service contractors are selected, emphasizing the requirements for competitive contract awards. New requirements, including consultation with the appropriate Governor, center industry council, and Local Board in development of requests for proposals for center operators, are included in § 670.310(a). In addition, § 670.310(c), describes requirements to be included in center requests for proposals to assess providers' past performance as well as their ability to coordinate Job Corps center activities with State and local activities (including One-Stop centers), and to provide vocational training that reflects employment opportunities in areas where students will seek jobs. These requirements are described in section 147(a)(2)(B) of the Act.

Subpart D—Recruitment, Eligibility, Screening, Selection and Assignment, and Enrollment

1. This subpart describes who is eligible for Job Corps under WIA and provides additional factors which are considered in selecting an eligible applicant for enrollment. This subpart also discusses who will conduct outreach and admissions activities for the Job Corps, and the responsibilities of those organizations. Section 670.450 describes the new requirements of section 145(c) of WIA for an assignment plan for Job Corps centers. Assignment plans will be developed and used to establish a target for each Job Corps center for the percentage of students enrolled who will come from the State or Department of Labor region in which the center is located, and the regions surrounding the center. In addition, this subpart addresses the requirement of section 145(d) of the Act that students must be assigned to centers closest to their homes, with consideration given to the special needs of applicants or their parents or guardians when making assignments.

Subpart E—Program Activities and Center Operations

1. *Program Activities:* This subpart describes the services and types of training each Job Corps center must provide, as well as center responsibilities in the administration of work-based learning. This subpart also describes the residential support services Job Corps centers must provide, and centers' responsibility for student accountability. Required residential support services include providing a safe, secure environment, an ongoing counseling program, food service, access to medical care, recreation, and leadership programs for students. In addition, centers must account for the whereabouts, participation, and status of students while they are enrolled in Job Corps.

2. *Behavior Management and Zero Tolerance for Violence and Drugs:* This subpart establishes requirements for Job Corps centers to have student behavior management systems. Section 670.540 describes Job Corps' zero tolerance policy for violence, drugs, and unauthorized goods. The regulatory language in this section continues current requirements for automatic dismissal of students who commit specific offenses (the one strike and you're out policy) specified in Job Corps' zero tolerance policy. The Secretary will issue procedures which continue this practice. Section 670.540 also addresses the requirements of section 145(a)(2) of the Act for drug testing of all students. This subpart also contains requirements to ensure students are provided due process in disciplinary actions. This process will include center fact-finding and review boards, and appeal procedures.

3. *Experimental, Research, and Demonstration Projects:* This subpart also addresses the authorization, provided in section 156 of the Act, for experimental, research and demonstration projects related to the Job Corps program.

Subpart F—Student Support

This subpart includes authorization of leave for students from center activities, and provisions of cash allowances and bonuses, and clothing for students. In addition to being eligible to receive transportation, students are eligible for other benefits, including basic living allowances to cover personal expenses, such as toiletries, snacks, etc., in accordance with guidance issued by the Secretary. The allowance and bonus system is structured to provide incentives for specific accomplishments of students, such as vocational completion. Students are also provided with a modest clothing allowance to enable them to obtain clothes that are appropriate for class and for the workplace.

Subpart G—Placement and Continued Services

1. *Placement Services:* This subpart discusses placement services for graduates of the Job Corps program in accordance with section 149 of the Act. The regulation focuses on graduates, which is a significant change from previous Job Corps policy and practice, since placement services have traditionally been provided for all students who leave Job Corps, no matter how long they were enrolled or how much of the program they completed. The regulatory language in this subpart is substantially different from what is contained in the JTPA Job Corps regulations to reflect the emphasis in title I, subtitle C on provision of services for graduates. The authority provided in section 149(d) of the Act, to allow for placement of former students (non-graduates), is reflected in § 670.710, but placement services are not required for anyone other than graduates. The ability to provide placement services for former students as well as for graduates will be contingent on having the funding resources to do so. It is, therefore, likely that the level of placement services for graduates and for former enrollees will differ. This subpart also discusses who will provide placement services, and the responsibilities of Job Corps placement agencies in placing graduates in jobs.

2. *Continued Services for Graduates:* This subpart discusses section 148(d) of the Act, which requires provision of 12 months of continued service for graduates. Sections 670.740 and 670.750 discuss this requirement and who may provide those services. Provision of continued services is a new requirement, and a new level of effort for Job Corps service providers, and will likely divert some funding resources which have been used in the past for provision of placement services for all students.

Subpart H—Community Connections

1. This subpart describes new requirements for Job Corps representatives to serve on local youth councils, as provided for in section 117(h) of the Act, for center business and community liaisons, and for center industry councils. Section 670.800(d) describes the role of center industry councils, as prescribed in section 154(b) of the Act, to analyze labor market information and identify job opportunities in areas where students will seek employment and the skills needed for those jobs, and to recommend changes in center vocational training offerings as appropriate. The intent of this subpart is to provide regulatory language to tie Job Corps centers more closely to their local communities and local employers to ensure that the vocational and other training students receive will enable them to obtain meaningful jobs in their home communities when they graduate.

Subpart I—Administrative and Management Provisions

1. *Student Benefits and Protections:* This subpart provides requirements relating to Tort Claims, Federal Employees Compensation Act (FECA) benefits for students, safety and health, and law enforcement jurisdiction on Job Corps center property.

2. *Program Accountability and Performance Indicators:* Subpart I also incorporates specific requirements relating to performance assessment and accountability contained in section 159(c) of the Act, as well as requirements for performance improvement plans, as provided for in section 159(f)(2), for Job Corps center operators or other service providers who fail to meet expected levels of performance. Sections 670.975 and 670.980 describe how performance of the Job Corps program will be assessed and the required indicators of performance. Indicators of performance include placement rates of graduates in jobs, including jobs related to vocational training received, average wage at placement and six and twelve months after job entry, retention in employment six and twelve months after job entry, the number of graduates who achieved job readiness and employment skills, and the number who entered postsecondary or advanced training programs.

3. *Financial and Audit Responsibilities:* This subpart also discusses financial management responsibilities of Job Corps center operators and other Job Corps service providers, as well as Federal audit requirements.

4. *Disclosure of Information and Resolution of Complaints:* This subpart includes requirements relating to student records and disclosure of information about Job Corps students; and procedures for resolution of complaints and disputes of students and other parties by center operators and service providers.

Part 671—National Emergency Grants for Dislocated Workers

Introduction

Section 170 of WIA provides for technical assistance, and section 171 provides for demonstration, pilot, multiservice, research and multistate projects. Although the Department has not regulated on these sections, it is important to note these activities for the general workforce investment system.

Section 170(a) provides that the Secretary will provide, coordinate and support the development of training, technical assistance, staff development and other activities to States and localities, and in particular, to assist States in making transitions from carrying out JTPA to carrying out activities under title I of WIA.

Section 170(b) provides for a portion of the funds reserved by the Secretary under WIA section 132(a)(2) to be used to: (1) Assist States that do not meet the State performance measures for dislocated workers; (2) assist other States, local areas and other entities involved in providing assistance for dislocated workers and to promote continuous improvement to dislocated workers under title I of WIA; or (3) assist staff who provide rapid response services, including training of those staff regarding proven methods of promoting, establishing and assisting labor-management or transition committees to plan for effective adjustment assistance for workers impacted by dislocation events.

Section 171(a), (b), and (c) of WIA describe employment and training projects which may be funded as well as the processes for such funding. Section 171(d) provides for dislocated worker demonstration projects and pilot projects, multiservice and multistate projects. The purpose of dislocated worker demonstration projects is to test innovative approaches that address priorities established by the Secretary, are consistent with the goals described in WIA, and subsequently may prove beneficial in providing adjustment assistance to larger dislocated worker populations. Generally, projects will be funded as a result of competitive solicitations published in the **Federal Register**, however, the Secretary may negotiate and fund projects other than through such solicitations.

Part 671 describes the availability of a portion of the funds reserved by the Secretary under WIA section 132(a)(2)(A) for assistance to dislocated workers.

1. *National Emergency Grants:* Part 671 contains limited regulations regarding dislocated worker funds reserved for national emergency grants. Section 173 of WIA authorizes the Secretary to award discretionary funds to serve dislocated workers in certain situations. These regulations describe circumstances under which funds may be available, including to provide employment and training assistance to workers affected by major economic dislocations (such as plant closures, mass layoffs, closures or realignments of military installations, dislocations due to federal policies, etc.); and to provide assistance to Governors of States when FEMA has determined that a major disaster, as defined in the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5122 (1) and (2)), has occurred in the area.

These regulations emphasize the importance of rapid response assistance for the development of requests for national emergency funds. The Department sets a high priority on the early collection of information regarding workers being laid off, receiving requests for funds when there are insufficient State and local dislocated formula funds available to meet the needs of workers being laid off—to ensure that there are funds available in the local area when the workers first need the assistance. Early intervention to assist workers being dislocated is critical to enable them to find or qualify for new jobs as soon as possible after the dislocation occurs. While these regulations highlight some of the key elements and requirements for applying for national emergency funds, guidelines to apply for national emergency funds will be published separately in the **Federal Register**.

Part 652—Establishment and Functioning of State Employment Services

Introduction

This part implements the amendments to the Wagner-Peyser Act (the Act) made by WIA. The WIA amendments add regulations at 20 CFR part 652, subpart C and make technical changes to subpart A.

Subpart A—Employment Service Planning and Operations

In subpart A, the Department removes references to JTPA, and replaces them with WIA. It also updates definitions and removes and reserves two sections. These WIA amendments to the Act are effective July 1, 1999.

A comprehensive reading of WIA shows that Congress intended to ensure a central role for the Wagner-Peyser Act State agency designated to administer funds authorized under the Act to provide job finding and placement services to job seekers, including unemployment insurance (UI) claimants, veterans, migrant and seasonal farm workers, disabled individuals, and employers in the State One-Stop delivery system. The regulations governing the operation of the basic labor exchange program have been located at 20 CFR part 652, subpart A for many years and they are well known to State agencies administering the Wagner-Peyser Act. The Workforce Investment Act changes the environment in which the existing rules are applied. It does not amend the statutory provisions underlying the rules. The Department determined that it would not be appropriate to add new rules resulting from amendments to the Wagner-Peyser Act to 20 CFR part 652, subpart A, but that it is important the new rules be linked with the existing rules. Therefore, the Department restricted amendments to the Wagner-Peyser Act regulations at 20 CFR part 652, subpart A to only those reference citations required by the Workforce Investment Act. The Department will raise no issue under 20 CFR part 652 with States solely on the basis that they operate under JTPA during PY 1999. The operations rules governing Wagner-Peyser Act services required by WIA are reflected in part 20 CFR 652, subpart C.

Subpart C—Wagner-Peyser Act Services in a One-Stop Delivery System Environment

Section 652, subpart C, §§ 652.200 through 652.216, describe the requirements for the establishment and functioning of State Wagner-Peyser Act services in a One-Stop delivery system environment. The State must maintain Wagner-Peyser Act funds under the authority of the Governor as a separate funding source to ensure a statewide delivery system of public labor exchange services. These regulations specify that the Wagner-Peyser Act agency retains responsibility for, and oversight of, all Wagner-Peyser Act services provided through the One-Stop delivery system, and explain that funds allocated to States under section 7(a) must be used to deliver Wagner-Peyser Act services through the One-Stop delivery system. Each of the three tiers of labor exchange service must be available: self-service, facilitated self-help service, and staff-assisted service. Sections 652.209 and 210 strengthen the relationship between the Wagner-Peyser Act State agency and the UI agency by requiring that reemployment services be provided, commensurate with available resources and in conjunction with other One-Stop partners, to those UI claimants who are required under any Federal or State UI law to receive the services as a condition of receiving unemployment benefits. The regulations reflect the Department's interpretation of the Wagner-Peyser Act, affirmed in *State of Michigan* v. *Alexis M. Herman*, (W.D. MI, Southern Div.) to require that job finding, placement and reemployment services funded under the Act, including services to veterans, be delivered by public merit-staff employees.

The Department is issuing these regulations after carefully considering and reacting to input received from the public. The preponderance of input focused on two themes: the relationship between the Wagner-Peyser Act State Agency and the One-Stop delivery system centers, and the preservation of the merit system for public employees.

A range of suggestions were received regarding the relationship between Wagner-Peyser Act services and the One-Stop delivery system. These regulations emphasize the State Agency's role as a One-Stop partner in delivering services seamlessly to job seekers and employers as a part of the One-Stop delivery system. State agencies have flexibility to deliver labor exchange services appropriate to local needs in accordance with a Memorandum of Understanding entered into with the local workforce investment board.

Some parties responding to merit-staff issues expressed concern that merit-staff employees might potentially come under the direction of an individual who is employed by a different agency or entity. In response to this concern, the Department has written the regulations at § 652.215 and § 652.216 to emphasize the retention of merit system protections for public employees, and limit the One-Stop operator to providing guidance to employees funded under the Wagner-Peyser Act in accordance with an agreed-upon MOU.

III. Regulatory Flexibility and Regulatory Impact Analysis

The Regulatory Flexibility Act of 1980, as amended in 1996 (5 U.S.C. chapter 6), requires the Federal government to anticipate and minimize the impact of rules and paperwork requirements on small entities. "Small entities" are defined as small businesses (those with fewer than 500 employees, except where otherwise provided), small non-profit organizations (those with fewer than 500 employees, except where otherwise provided) and small governmental entities (those in areas with fewer than 50,000 residents). ETA has assessed the potential impact of this Interim Final Rule by consulting with a wide range of small entities, in order to identify and address any areas of concern. Based on that assessment, the Agency certifies that the Interim Final Rule, as promulgated, will not have a significant impact on a substantial number of small entities.

The WIA Interim Final Rule implements major reforms to the nation's job training system. The WIA will provide resources to states, localities, and other entities, including small entities, to assist youth, adults, and dislocated workers in preparing for, obtaining and retaining employment. This Rule sets forth the rights, responsibilities and conditions under which state and local governments may receive grants to operate programs in local workforce investment areas with such funds. Governments in local workforce investment areas are not small governmental entities. These areas generally have a population of at least 500,000 and are intended to replace existing service areas under the Job Training Partnership Act (JTPA) which generally have a population of at least 200,000. Consequently, the Department does not foresee an adverse impact on small governmental entities. Nevertheless, the Department has consulted extensively with state and local officials and their representatives to insure that any potential effect would be minimal. These consultations included two week-long conferences in which state and local governmental participants worked in groups divided by specialized area of interest, and the participation of state and local governmental officials under the Intergovernmental Personnel Act.

The Department also provided a number of opportunities, through a variety of media, for the input of small businesses, non-profits and any other interested parties. These opportunities included 12 town hall meetings spanning the nation in ten locations,

and an interactive web site providing ETA policy and responses to questions from the public. Additionally, in order to solicit comments from the widest possible audience, ETA broadly disseminated its developing policies through the publication of a White Paper, among other documents, which were available on the Internet, published in the **Federal Register** and distributed throughout the employment and training community.

The Interim Final Rule provides significant flexibility to States and Local governments to design programs and to determine policy and spending priorities for the use of WIA grant funds. This policy-making flexibility is embodied in § 661.120. The Rule provides States and Local governments with additional flexibility to design systems that meet the specific needs of each state and local area through the general and work-flex waiver provisions at §§ 661.410 and 661.430. The Department has taken steps to further ameliorate any potential burdens through § 667.210 of the Interim Final Rule, which provides that states and localities may use a portion of their grant funds (up to five percent at the State level and up to ten percent at the local level) for management and administration of the grant, rather than for the direct provision of services to participants. Because the WIA statutory limit on administrative cost is lower than the existing JTPA limit, States and localities were also extensively consulted regarding the regulatory definition of these administrative costs to ensure that this cost category is defined as flexibly as possible. The Rule requires the reporting of costs in only two categories—program and administrative—and excludes certain information technology costs from the administrative cost category.

A portion of WIA funds is available for direct grants from the Department. ETA has consulted with representatives of the migrant and seasonal farm worker community, and Indian and Native American tribal governments to minimize any burdens that provisions of the Rule would have on those communities. The Rule provides limited authority to these grantees to receive waivers of certain provisions of the Rule, to lessen any burden on these communities.

To further ameliorate any burden on WIA direct grantees, the Rule permits direct grantees to use a portion of WIA funds for administrative costs expenditure. Unlike formula funds, the administrative cost limit for direct grantees is not specified in the Rule but will be negotiated in the grant agreement to take into account individual circumstances. Similarly, the period of availability for expenditure of grant funds is established in the grant agreement rather than set by Rule to take into account individual circumstances. Based on provisions such as these, the Department has concluded that the Rule will not place undue burdens on small entities. In addition, under to the Small Business Regulatory Fairness Act (SBREFA) (5 U.S.C. Chapter 8), the Department has determined that this Interim Final Rule is not a "major rule," as defined in 5 U.S.C. 804(2). The Department certifies that this Interim Final Rule has been assessed in accordance with Pub. L. 105–227, 112 Stat. 2681, for its effect on family well-being.

IV. Executive Order 12866

Pursuant to Executive Order 12866, the Department has evaluated this Interim Final Rule and has determined its provisions are consistent with the statement of regulatory philosophy and principles promulgated by the Executive Order. The Department of Labor is required by statute to prescribe regulations for the WIA program within 180 days of enactment. Within this limited time frame, the Department has made every reasonable effort to obtain input in a purposeful manner from a variety of interested parties (State and local government officials, community-based organizations, Intergovernmental Organizations, other stakeholders, and the general public). The WIA grants increase the resources available to the public and private organizations that promote long-term employment and self-sufficiency. The Department has determined the Interim Final Rule will not have an adverse effect in a material way on the nation's economy.

The Department has developed the Interim Final Rule in close consultation with the Department of Education, and with other interested Federal agencies. Based on that consultation, the Department has determined that this Interim Final Rule will not create a serious inconsistency or otherwise interfere with any action taken or planned by another Federal Agency.

This Interim Final Rule implements the Workforce Investment Act, which is the only major reform of the nation's job training and employment system in over 15 years. Consequently, this Interim Final Rule raises novel policy issues. Therefore, the Department finds it to be a significant regulatory action which has been reviewed by the Office of Management and Budget for the purposes of Executive Order 12866.

V. Unfunded Mandates

The Interim Final Rule has been reviewed in accordance with the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1501 *et seq.*) and Executive Order 12875. Section 202 of UMRA requires that a covered agency prepare a budgetary impact statement before promulgating a rule that includes any Federal mandate that may result in the expenditure by state, local and Tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year.

If a covered agency must prepare a budgetary impact statement, section 205 of UMRA further requires that it select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with the statutory requirements. In addition, section 203 of UMRA requires a plan for informing and advising any small government that may be significantly or uniquely impacted.

The Department has determined that the WIA Interim Final Rule will not mandate the expenditure by the State, local, and Tribal governments, in the aggregate, or by the private sector, of more than $100 million in any one year. Accordingly, the Department has not prepared a budgetary impact statement, specifically addressed the regulatory alternatives considered, or prepared a plan for informing and advising any significant or uniquely impacted small government.

VI. Effective Date and Absence of Notice and Comment

The Department has determined, in accordance with 5 U.S.C. 553(b)(3)(B), that the statutory mandate to promulgate regulations within 180 days of the enactment of the statute constitutes good cause for waiving notice and comment proceedings. Furthermore, WIA became effective upon the date of enactment, August 7, 1998. It is critical that the Department quickly issue regulations to assist States which wish to begin operating under WIA as early as possible. Congress also recognized this urgency in sec. 506(c) of the Act, by specifically authorizing the Department to issue an Interim Final Rule. Accordingly, the Department finds that the issuance of a Proposed Rule, rather than an Interim Final Rule, would be contrary to the public interest. This Interim Final Rule will become effective on May 17, 1999. The Department is committed to meeting the statutory deadline to issue a Final Rule by December 31, 1999. This Interim Final Rule sets a comment period to elicit any concerns raised by the rule for

consideration in the development of the Final Rule. The Department has provided a comment period of 90 days to provide a significant period for public input into any revisions to parts 652 and 660 through 671 for the Final Rule.

VII. Catalog of Federal Domestic Assistance Number

The program is listed in the *Catalog of Federal Domestic Assistance* at No. 17.255.

List of Subjects in 20 CFR Parts 652 and 660 through 671

Grant programs, labor, employment, job training programs.

Signed at Washington, DC, this 31st day of March 1999.

Alexis M. Herman,

Secretary of Labor.

Raymond L. Bramucci,

Assistant Secretary of Labor, Employment and Training Administration.

For the reason stated in the preamble, 20 CFR Ch. V is amended as follows:

1. Parts 660 through 671 are added and Part 652 is amended to read as follows:

PART 660—INTRODUCTION TO THE REGULATIONS FOR WORKFORCE INVESTMENT SYSTEMS UNDER TITLE I OF THE WORKFORCE INVESTMENT ACT

Sec.

§ 660.100 What is the purpose of title I of the Workforce Investment Act of 1998?
§ 660.200 What do the regulations for workforce investment systems under title I of the Workforce Investment Act cover?
§ 660.300 What definitions apply to the regulations for workforce investment systems under title 1 of WIA?

Authority: Sec. 506(c), Pub. L. 105–220; 20 USC 9276(c).

§ 660.100 What is the purpose of title I of the Workforce Investment Act of 1998?

The purpose of title I of the Workforce Investment Act of 1998 (hereafter referred to as WIA) is to provide workforce investment activities that increase the employment, retention and earnings of participants, and increase occupational skill attainment by participants, which will improve the quality of the workforce, reduce welfare dependency, and enhance the productivity and competitiveness of the Nation's economy. These goals are achieved through the workforce investment system. (WIA sec. 106.)

§ 660.200 What do the regulations for workforce investment systems under title I of the Workforce Investment Act cover?

The regulations found in 20 CFR parts 660—671 set forth the regulatory requirements that are applicable to programs operated with funds provided under title I of WIA. This part 660 describes the purpose of that Act, explains the format of these regulations and sets forth definitions for terms that apply to each part. Part 661 contains regulations relating to Statewide and local governance of the workforce investment system. Part 662 describes the One-Stop system and the roles of One-Stop partners. Part 663 sets forth requirements applicable to WIA title I programs serving adults and dislocated workers. Part 664 sets forth requirements applicable to WIA title I programs serving youth. Part 665 contains regulations relating to Statewide activities. Part 666 describes the WIA title I performance accountability system. Part 667 sets forth the administrative requirements applicable to programs funded under WIA title I. Parts 668 and 669 contain the particular requirements applicable to programs serving Indians and Native Americans and Migrant and Seasonal Farmworkers, respectively. Parts 670 and 671 describe the particular requirements applicable to the Job Corps and other national programs, respectively.

§ 660.300 What definitions apply to the regulations for workforce investment systems under title I of WIA?

In addition to the definitions set forth at WIA sec. 101, the following definitions apply to the regulations set forth in 20 CFR parts 660—671:

Department or DOL means the U.S. Department of Labor, including its agencies and organizational units.

Designated region means a combination of local areas that are partly or completely in a single labor market area, economic development region, or other appropriate contiguous subarea of a State, that is designated by the State under WIA section 116(c), or a similar interstate region that is designated by two or more States under WIA section 116(c)(4).

Employment and training activity means a workforce investment activity that is carried out for an adult or dislocated worker.

EEO data means data on race and ethnicity, age, sex, and disability required by regulations implementing sec. 188 of WIA governing nondiscrimination.

ETA means the Employment and Training Administration of the U.S. Department of Labor.

Grant means an award of WIA financial assistance by the U.S. Department of Labor to an eligible WIA recipient.

Grantee means the direct recipient of grant funds from the Department of Labor. A grantee may also be referred to as a recipient.

Literacy means an individual's ability to read, write, and speak in English, and to compute, and solve problems, at levels of proficiency necessary to function on the job, in the family of the individual, and in society.

Local Board means a local workforce investment board established under WIA sec. 117, to set policy for the local workforce investment system.

Outlying area means the United States Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau.

Participant means an individual who has registered under 20 CFR 663.105 or 20 CFR 664.215 and has been determined to be eligible to participate in and who is receiving services (except for follow up services) under a program authorized by WIA title I. Participation commences on the first day, following determination of eligibility, on which the individual begins receiving core, intensive, training or other services provided under WIA title I.

Recipient means an entity to which a WIA grant is awarded directly from the Department of Labor to carry out a program under title I of WIA. The State is the recipient of funds awarded under WIA secs. 127(b)(1)(C)(i)(II), 132(b)(1)(B) and 132(b)(2)(B).

Register means the process for collecting information to determine an individual's eligibility for services under WIA title I. Individuals may be registered in a variety ways, as described in 20 CFR 663.105 and 20 CFR 664.215.

Secretary means the Secretary of the U.S. Department of Labor.

Self certification means an individual's signed attestation that the information he/she submits to demonstrate eligibility for a program under title I of WIA is true and accurate.

State Board means a State workforce investment board established under WIA sec. 111.

State means each of the several States of the United States, the District of Columbia and the Commonwealth of Puerto Rico. The term "State" does not include outlying areas.

Subrecipient means an entity to which a subgrant is awarded and which is accountable to the recipient (or higher tier subrecipient) for the use of the funds provided.

Vendor means an entity responsible for providing generally required goods or services to be used in the WIA

program. These goods or services may be for the recipient's or subrecipient's own use or for the use of participants in the program.

Wagner-Peyser Act means the Act of June 6, 1933, as amended, codified at 29 U.S.C. 49 *et seq.*

Workforce investment activities mean the array of activities permitted under title I of WIA, which include employment and training activities for adults and dislocated workers, as described in WIA section 134, and youth activities, as described in WIA section 129.

Youth activity means a workforce investment activity that is carried out for youth.

PART 661—STATEWIDE AND LOCAL GOVERNANCE OF THE WORKFORCE INVESTMENT SYSTEM UNDER TITLE I OF THE WORKFORCE INVESTMENT ACT

Subpart A—General Governance Provisions

§ 661.100 What is the workforce investment system?
§ 661.110 What is the role of the Department of Labor as the Federal governmental partner in the governance of the workforce investment system?
§ 661.120 What are the roles of the local and State governmental partner in the governance of the workforce investment system?

Subpart B—State Governance Provisions

§ 661.200 What is the State Workforce Investment Board?
§ 661.205 What is the role of the State Board?
§ 661.210 Under what circumstances may the Governor select an alternative entity in place of the State Workforce Investment Board?
§ 661.220 What are the requirements for the submission of the State workforce investment plan?
§ 661.230 What are the requirements for modification of the State workforce investment plan?
§ 661.240 How do the unified planning requirements apply to the five-year strategic WIA and Wagner-Peyser plan and to other Department of Labor plans?
§ 661.250 What are the requirements for designation of local workforce investment areas?
§ 661.260 What are the requirements for automatic designation of workforce investment areas relating to units of local government with a population of 500,000 or more?
§ 661.270 What are the requirements for temporary and subsequent designation of workforce investment areas relating to areas that had been designated as service delivery areas under JTPA?
§ 661.280 What right does an entity have to appeal the Governor's decision rejecting a request for designation as a workforce investment area?
§ 661.290 Under what circumstances may States require Local Boards to take part in regional planning activities?

Subpart C—Local Governance Provisions

§ 661.300 What is the Local Workforce Investment Board?
§ 661.305 What is the role of the Local Workforce Investment Board?
§ 661.310 Under what limited conditions may a Local Board directly be a provider of core services, intensive services, or training services, or act as a One-Stop Operator?
§ 661.315 Who are the required members of the Local Workforce Investment Boards?
§ 661.320 Who must chair a Local Board?
§ 661.325 What criteria will be used to establish membership of the Local Board?
§ 661.330 Under what circumstances may the State use an alternative entity as the local workforce investment board?
§ 661.335 What is a youth council, and what is its relationship to the Local Board?
§ 661.340 What are the responsibilities of the youth council?
§ 661.345 What are the requirements for the submission of the local workforce investment plan?
§ 661.350 What are the contents of the local workforce investment plan?
§ 661.355 When must a local plan be modified?

Subpart D—Waivers and Work-Flex

§ 661.400 What is the purpose of the general statutory and regulatory waiver authority provided at section 189(i)(4) of the Workforce Investment Act?
§ 661.410 What provisions of WIA and the Wagner-Peyser Act may be waived, and what provisions may not be waived?
§ 661.420 Under what conditions may a Governor request and the Secretary approve a general waiver under section 189(i)(4)?
§ 661.430 Under what conditions may the Governor submit a workforce flexibility plan?
§ 661.440 What limitations apply to the State's Workforce Flexibility Plan authority under WIA?

Authority: Sec. 506(c), Pub. L. 105–220; 20 U.S.C. 9276(c).

Subpart A—General Governance Provisions

§ 661.100 What is the workforce investment system?

Under title I of WIA, the workforce investment system provides the framework for delivery of workforce investment activities at the State and local levels to individuals who need those services, including job seekers, dislocated workers, youth, incumbent workers, new entrants to the workforce, veterans, persons with disabilities, and employers. Each State's Governor is required, in accordance with the requirements of this Part, to establish a State Board; to designate local workforce investment areas; and to oversee the creation of Local Boards and One-Stop service delivery systems in the State.

§ 661.110 What is the role of the Department of Labor as the Federal governmental partner in the governance of the workforce investment system?

(a) Successful governance of the workforce investment system will be achieved through cooperation and coordination of Federal, State and local governments.

(b) The Department of Labor sees as one of its primary roles providing leadership and guidance to support a system that meets the objectives of title I of WIA, and in which State and local partners have flexibility to design systems and deliver services in a manner designed to best achieve the goals of WIA based on their particular needs. These regulations provide the framework in which State and local officials can exercise such flexibility within the confines of the statutory requirements. Wherever possible, system features such as design options and categories of services are not narrowly defined, and are subject to State and local interpretation.

(c) The Secretary, in consultation with other Federal Agencies, as appropriate, may publish guidance on interpretations of statutory and regulatory provisions. State and local policies, interpretations, guidelines and definitions that are consistent with interpretations contained in such guidance will be considered to be consistent with the Act for purposes of § 661.120 of this subpart.

§ 661.120 What are the roles of the local and State governmental partner in the governance of the workforce investment system?

(a) Local Boards should establish policies, interpretations, guidelines and definitions to implement provisions of title I of WIA to the extent that such policies, interpretations, guidelines and definitions are not inconsistent with the Act or the regulations or with State policies.

(b) State Boards should establish policies, interpretations, guidelines and definitions to implement provisions of title I of WIA to the extent that such policies, interpretations, guidelines and definitions are not inconsistent with the Act and regulations.

Subpart B—State Governance Provisions

§ 661.200 What is the State Workforce Investment Board?

(a) The State Board is a board established by the Governor in accordance with the requirements of WIA section 111 and this section.

(b) The membership of the State Board must meet the requirements of WIA section 111(b). The State Board must contain two or more members representing the categories described in WIA sections 111(b)(1)(C)(iii)–(v), and special consideration must be given to chief executive officers of community colleges and community based organizations in the selection of members representing the entities identified in WIA section 111(b)(1)(C)(v).

(c) The Governor may appoint any other representatives or agency officials, such as agency officials responsible for economic development and juvenile justice programs in the State.

(d) Members who represent organizations, agencies or other entities must be individuals with optimum policy making authority within the entities they represent.

(e) A majority of members of the State Board must be representatives of business. Members who represent business must be individuals who are owners, chief executive officers, chief operating officers, or other individuals with optimum policy making or hiring authority, including members of Local Boards.

(f) The Governor must appoint the business representatives from among individuals who are nominated by State business organizations and business trade associations. The Governor must appoint the labor representatives from among individuals who are nominated by State labor federations.

(g) The Governor must select a chairperson of the State Board from the business representatives on the board.

(h) The Governor may establish terms of appointment or other conditions governing appointment or membership on the State Board.

(i) For the programs and activities carried out by one-stop partners, as described in WIA section 121(b) and 20 CFR 662.210, the State Board must include:

(1) The lead State agency officials with responsibility for such program, or

(2) In any case in which no lead State agency official has responsibility for such a program service, a representative in the State with expertise relating to such program, service or activity.

(j) The State Board must conduct its business in an open manner as required by WIA section 111(g), by making available to the public, on a regular basis through open meetings, information about the activities of the State Board, including information about the State Plan prior to submission of the plan, information about membership, and on request, minutes of formal meetings of the State Board. (WIA section 111)

§ 661.205 What is the role of the State Board?

The State Board must assist the Governor in the:

(a) Development of the State Plan;

(b) Development and continuous improvement of a Statewide system of activities that are funded under subtitle B of title I of WIA, or carried out through the One-Stop delivery system, including—

(1) Development of linkages in order to assure coordination and nonduplication among the programs and activities carried out by One-Stop partners, including, as necessary, addressing any impasse situations in the development of the local memorandum of understanding; and

(2) Review of local plans;

(c) Commenting at least once annually on the measures taken under section 113(b)(14) of the Carl D. Perkins Vocational and Technical Education Act;

(d) Designation of local workforce investment areas,

(e) Development of allocation formulas for the distribution of funds for adult employment and training activities and youth activities to local areas, as permitted under WIA sections 128(b)(3)(B) and 133(b)(3)(B);

(f) Development and continuous improvement of comprehensive State performance measures, including State adjusted levels of performance, to assess the effectiveness of the workforce investment activities in the State, as required under WIA section 136(b);

(g) Preparation of the annual report to the Secretary described in WIA section 136(d);

(h) Development of the Statewide employment statistics system described in section 15(e) of the Wagner-Peyser Act; and

(i) Development of an application for an incentive grant under WIA section 503. (WIA section 111(d).)

§ 661.210 Under what circumstances may the Governor select an alternative entity in place of the State Workforce Investment Board?

(a) The State may use any State entity that meets the requirements of WIA section 111(e) to perform the functions of the State Board.

(b) If the State uses an alternative entity, the State workforce investment plan must demonstrate that the alternative entity meets all three of the requirements of WIA section 111(e). Section 111(e) requires that such entity:

(1) Was in existence on December 31, 1997;

(2)(i) Was established under section 122 (relating to State Job Training Coordinating Councils) or title VII (relating to State Human Resource Investment Councils) of the Job Training Partnership Act (29 U.S.C. 1501 *et seq.*), as in effect on December 31, 1997, or

(ii) Is substantially similar to the State Board described in WIA section 111(a), (b), and (c) and § 661.200; and

(3) Includes, at a minimum, two or more representatives of business in the State and two or more representatives of labor organizations in the State.

(c) If the alternative entity does not provide for representative membership of each of the categories of required State Board membership under WIA section 111(b), the State Plan must explain the manner in which the State will ensure an ongoing role for any such group in the workforce investment system.

(d) If the membership structure of the alternative entity is significantly changed after December 31, 1997, the entity will no longer be eligible to perform the functions of the State Board. In such case, the Governor must establish a new State Board which meets all of the criteria of WIA section 111(b). A significant change in the membership structure does not mean the filling of a vacancy on the alternative entity, but does include any change in the organization of the alternative entity or in the categories of entities represented on the alternative entity which requires a change to the alternative entity's charter or a similar document that defines the formal organization of the alternative entity.

(e) In 20 CFR parts 660 through 671, all references to the State Board also apply to an alternative entity used by a State.

§ 661.220 What are the requirements for the submission of the State Workforce Investment Plan?

(a) The Governor of each State must submit a State Workforce Investment Plan (State Plan) in order to be eligible to receive funding under title I of WIA and the Wagner-Peyser Act. The State Plan must outline the State's five year strategy for the workforce investment system.

(b) The State Plan must be submitted in accordance with planning guidelines issued by the Secretary of Labor. The planning guidelines set forth the information necessary to document the State's vision, goals, strategies, policies and measures for the workforce investment system (that were arrived at through the collaboration of the Governor, chief elected officials, business and other parties), as well as the information required to demonstrate compliance with WIA, and the information detailed by WIA and these regulations and the Wagner-Peyser Act and the Wagner-Peyser regulations at 20 CFR part 652.

(c) The State Plan must contain a description of the State's performance accountability system, and the State performance measures in accordance with the requirements of WIA section 136 and 20 CFR part 666.

(d) The State must provide an opportunity for public comment on and input into the development of the State Plan prior to its submission. The opportunity for public comment must include an opportunity for comment by representatives of business, representatives of labor organizations, and chief elected official(s) and must be consistent with the requirement, at WIA section 111(g), that the State Board makes information regarding the State Plan and other State Board activities available to the public through regular open meetings. The State Plan must describe the State's process and timeline for ensuring a meaningful opportunity for public comment.

(e) The Secretary reviews completed plans and must approve all plans within ninety days of their submission, unless the Secretary determines in writing that:

(1) The plan is inconsistent with the provisions of title I of WIA or these regulations. For example, a finding of inconsistency would be made if the Secretary and the Governor have not reached agreement on the adjusted levels of performance under WIA section 136(b)(3)(A), or there is not an effective strategy in place to ensure development of a fully operational One-Stop delivery system in the State; or

(2) The portion of the plan describing the detailed Wagner-Peyser plan does not satisfy the criteria for approval of such plans as provided in section 8(d) of the Wagner-Peyser Act or the Wagner-Peyser regulations at 20 CFR part 652.

§ 661.230 What are the requirements for modification of the State workforce investment plan?

(a) The State may submit a modification of its workforce investment plan at any time during the five-year life of the plan.

(b) Modifications are required when:

(1) Changes in Federal or State law or policy substantially change the assumptions upon which the plan is based.

(2) There are changes in the Statewide vision, strategies, policies, performance indicators, the methodology used to determine local allocation of funds, reorganizations which change the working relationship with system employees, changes in organizational responsibilities, changes to the membership structure of the State Board or alternative entity and similar substantial changes to the State's workforce investment system.

(3) The State has failed to meet performance goals, and must adjust service strategies.

(c) Modifications are required in accordance with the Wagner-Peyser provisions at 20 CFR 652.210.

(d) Modifications to the State Plan are subject to the same public review and comment requirements that apply to the development of the original State Plan.

(e) State Plan modifications will be approved by the Secretary based on the approval standard applicable to the original State Plan under § 661.220(e).

§ 661.240 How do the unified planning requirements apply to the five-year strategic WIA and Wagner-Peyser plan and to other Department of Labor plans?

(a) A State may submit to the Secretary a unified plan for any of the programs or activities described in WIA section 501(b)(2). This includes the following DOL programs and activities:

(1) The five-year strategic WIA and Wagner-Peyser plan;

(2) Trade adjustment assistance activities and NAFTA—TAA;

(3) Veterans' programs under 38 U.S.C. Chapter 41;

(4) Programs authorized under State unemployment compensation laws;

(5) Welfare-to-Work (WtW) programs; and

(6) Senior Community Service Employment Programs under title V of the Older Americans Act.

(b) For purposes of paragraph (a) of this section, a State may submit, as part of the unified plan, any plan, application form or any other similar document, that is required as a condition for the approval of Federal funding under the applicable program. These plans include such things as the WIA plan, or the WtW plan. They do not include jointly executed funding instruments, such as grant agreements, or Governor/Secretary Agreements or items such as corrective actions plans.

(c) A State which submits a unified plan under paragraph (a) of this section will not be required to submit additional planning materials as a condition for approval to receive Federal funds.

(d) Each portion of a unified plan submitted under paragraph (a) of this section is subject to the particular requirements of Federal law authorizing the program. All grantees are still subject to such things as reporting and record-keeping requirements, corrective action plan requirements and other generally applicable requirements.

(e) A unified plan must contain the information required by WIA section 501(c) and will be approved in accordance with the requirements of WIA section 501(d).

§ 661.250 What are the requirements for designation of local workforce investment areas?

(a) The Governor must designate local workforce investment areas in order for the State to receive funding under title I of WIA.

(b) The Governor must take into consideration the factors described in WIA section 116(a)(1)(B) in making designations of local areas. Such designation must be made in consultation with the State Board, and after consultation with chief elected officials. The Governor must also consider comments received through the public comment process described in the State workforce investment plan under § 661.220(d).

(c) The Governor may approve a request for designation as a workforce investment area from any unit of general local government, including a combination of such units, if the State Board determines that the area meets the requirements of WIA section 116(a)(1)(B) and recommends designation. (WIA section 116.)

§ 661.260 What are the requirements for automatic designation of workforce investment areas relating to units of local government with a population of 500,000 or more?

The requirements for automatic designation relating to units of local government with a population of 500,000 or more and to rural concentrated employment programs are contained in WIA section 116(a)(2).

§ 661.270 What are the requirements for temporary and subsequent designation of workforce investment areas relating to areas that had been designated as service delivery areas under JTPA?

The requirements for temporary and subsequent designation relating to areas that had been designated as service

delivery areas under JTPA are contained in WIA section 116(a)(3).

§ 661.280 What right does an entity have to appeal the Governor's decision rejecting a request for designation as a workforce investment area?

(a) A unit of local government (or combination of units) or a rural concentrated employment program grant recipient (as described at WIA section 116(a)(2)(B), which has requested but has been denied its request for designation as a workforce investment area under §§ 661.260–661.270, may appeal the decision to the State Board, in accordance with appeal procedures established in the State Plan.

(b) If a decision on the appeal is not rendered in a timely manner or if the appeal to the State Board does not result in designation, the entity may request review by the Secretary of Labor, under the procedures set forth at 20 CFR 667.640(a).

(c) The Secretary may require that the area be designated as a workforce investment area, if the Secretary determines that:

(1) The entity was not accorded procedural rights under the State appeals process; or

(2) The area meets the automatic designation requirements at WIA section 116(a)(2) or the temporary and subsequent designation requirements at WIA section 116(a)(3), as appropriate.

§ 661.290 Under what circumstances may States require Local Boards to take part in regional planning activities?

(a) The State may require Local Boards within a designated region (as defined at 20 CFR 660.300) to:

(1) Participate in a regional planning process that results in regional performance measures for workforce investment activities under title I of WIA. Regions that meet or exceed the regional performance measures may receive regional incentive grants;

(2) Share, where feasible, employment and other types of information that will assist in improving the performance of all local areas in the designated region on local performance measures; and

(3) Coordinate the provision of WIA title I services, including supportive services such as transportation, across the boundaries of local areas within the designated region.

(b) Two or more States may designate a labor market area, economic development region, or other appropriate contiguous subarea of the States as an interstate region. In such cases, the States may jointly exercise the State's functions described in this section.

(c) Designation of intrastate regions and interstate regions and their corresponding performance measures must be described in the respective State Plan(s). For interstate regions, the roles of the respective governors, State Boards and Local Boards must be described in the respective State Plans.

(d) Unless agreed to by all affected chief elected officials and the Governor, these regional planning activities may not substitute for or replace the requirements applicable to each local area under other provisions of the WIA. (WIA section 116(a).)

Subpart C—Local Governance Provisions

§ 661.300 What is the Local Workforce Investment Board?

(a) The Local Workforce Investment Board (Local Board) is appointed by the chief elected official in each local area in accordance with State criteria established under WIA section 117(b), and is certified by the Governor every two years, in accordance with WIA section 117(c)(2).

(b) In partnership with the chief elected official(s), the Local Board sets policy for the portion of the Statewide workforce investment system within the local area.

(c) The Local Board and the chief elected official(s) may enter into an agreement that describes the respective roles and responsibilities of the parties.

(d) The Local Board, in partnership with the chief elected official, develops the local workforce investment plan and performs the functions described in WIA section 117(d). (WIA section 117 (d).)

(e) In the case in which a local area includes more than one unit of general local government in accordance with WIA section 117 (c)(1)(B), the chief elected officials of such units may execute an agreement to describe their responsibilities for carrying out the roles and responsibilities. If, after a reasonable effort, the chief elected officials are unable to reach agreement, the Governor may appoint the members of the local board from individuals nominated or recommended as specified in WIA section 117(b).

(f) In the case in which the State Plan indicates that the State will be treated as a local area under WIA title I, the Governor may designate the State Board to carry out any of the roles of the Local Board.

§ 661.305 What is the role of the Local Workforce Investment Board?

(a) WIA section 117(d) specifies that the Local Board is responsible for:

(1) Developing the five-year local workforce investment plan (Local Plan) and conducting oversight of the One-Stop system, youth activities and employment and training activities under title I of WIA, in partnership with the chief elected official;

(2) Selecting One-Stop operators with the agreement of the chief elected official;

(3) Selecting eligible youth service providers based on the recommendations of the youth council, and identifying eligible providers of adult and dislocated worker intensive services and training services, and maintaining a list of eligible providers with performance and cost information, as required in 20 CFR part 663, subpart E;

(4) Developing a budget for the purpose of carrying out the duties of the Local Board, subject to the approval of the chief elected official;

(5) Negotiating and reaching agreement on local performance measures with the chief elected official and the Governor;

(6) Assisting the Governor in developing the Statewide employment statistics system under the Wagner-Peyser Act;.

(7) Coordinating workforce investment activities with economic development strategies and developing employer linkages; and

(8) Promoting private sector involvement in the Statewide workforce investment system through effective connecting, brokering, and coaching activities through intermediaries such as the One-Stop operator in the local area or through other organizations, to assist employers in meeting hiring needs.

(b) The Local Board, in cooperation with the chief elected official, appoints a youth council as a subgroup of the Local Board and coordinates workforce and youth plans and activities with the youth council, in accordance with WIA sec. 117(h) and § 661.335.

(c) Local Boards which are part of a State designated region for regional planning must carry out the regional planning responsibilities required by the State in accordance with WIA section 116(c) and § 661.290.

(d) The Local Board must conduct business in an open manner as required by WIA section 117(e), by making available to the public, on a regular basis through open meetings, information about the activities of the Local Board, including information about the local plan before submission of the plan, and about membership, the designation and certification of One-Stop operators, and the award of grants or contracts to eligible providers of

youth activities, and on request, minutes of formal meetings of the Local Board. (WIA sec. 117.)

§ 661.310 Under what limited conditions may a Local Board directly be a provider of core services, intensive services, or training services, or act as a One-Stop Operator?

(a) A Local Board may not directly provide core services, or intensive services, or be designated or certified as a One-Stop operator, unless agreed to by the chief elected official and the Governor.

(b) A Local Board is prohibited from providing training services, unless the Governor grants a waiver in accordance with the provisions in WIA section 117(f)(1). The waiver shall apply for not more than one year and may be renewed for not more than one additional year.

(c) The restrictions on the provision of core, intensive, and training services by the Local Board, and designation or certification as One-Stop operator, also apply to staff of the Local Board. (WIA sec. 117(f)(1) and (f)(2).)

§ 661.315 Who are the required members of the Local Workforce Investment Boards?

(a) The membership of Local Board must be selected in accordance with criteria established under WIA section 117(b)(1) and must meet the requirements of WIA section 117(b)(2). The Local Board must contain two or more members representing the categories described in WIA section 117(b)(2)(A)(ii)–(v), and special consideration must be given to the entities identified in WIA section 117(b)(2)(A)(ii), (iv) and (v) in the selection of members representing those categories. The Local Board must contain at least one member representing each One-Stop partner.

(b) The membership of Local Boards may include individuals or representatives of other appropriate entities, including entities representing individuals with multiple barriers to employment and other special populations, as determined by the chief elected official.

(c) Members who represent organizations, agencies or other entities must be individuals with optimum policy making authority within the entities they represent.

(d) A majority of the members of the Local Board must be representatives of business in the local area. Members representing business must be individuals who are owners, chief executive officers, chief operating officers, or other individuals with optimum policymaking or hiring authority. Business representatives serving on Local Boards may also serve on the State Board.

(e) Chief elected officials must appoint the business representatives from among individuals who are nominated by local business organizations and business trade associations. Chief elected officials must appoint the labor representatives from among individuals who are nominated by local labor federations (or, for a local area in which no employees are represented by such organizations, other representatives of employees). (WIA sec. 117(b).)

§ 661.320 Who must chair a Local Board?

The Local Board must elect a chairperson from among the business representatives on the board. (WIA sec. 117(b)(5).)

§ 661.325 What criteria will be used to establish membership of the Local Board?

The Local Board is appointed by the chief elected official(s) in the local area in accordance with State criteria established under WIA section 117(b), and is certified by the Governor every two years, in accordance with WIA section 117(c)(2). The criteria for certification must be described in the State Plan. (WIA sec. 117(c).)

§ 661.330 Under what circumstances may the State use an alternative entity as the local workforce investment board?

(a) The State may use any local entity that meets the requirements of WIA section 117(i) to perform the functions of the Local Board. WIA section 117(i) requires that such entity:

(1) Was established to serve the local area (or the service delivery area that most closely corresponds to the local area);

(2) Was in existence on December 31, 1997;

(3)(i) Is a Private Industry Council established under to section 102 of the Job Training Partnership Act, as in effect on December 31, 1997; or

(ii) Is substantially similar to the Local Board described in WIA section 117 (a), (b), and (c) and (h)(1) and (2); and

(4) Includes, at a minimum, two or more representatives of business in the local area and two or more representatives of labor organizations nominated by local labor federations or employees in the local area.

(b)(1) If the Governor certifies an alternative entity to perform the functions of the Local Board; the State workforce investment plan must demonstrate that the alternative entity meets the requirements of WIA section 117(i), set forth in paragraph (a) of this section.

(2) If the alternative entity does not provide for representative membership of each of the categories of required Local Board membership under WIA section 117(b), the local workforce investment plan must explain the manner in which the Local Board will ensure an ongoing role for any such group in the local workforce investment system.

(c) If the membership structure of an alternative entity is significantly changed after December 31, 1997, the entity will no longer be eligible to perform the functions of the Local Board. In such case, the chief elected official(s) must establish a new Local Board which meets all of the criteria of WIA section 117(a), (b), and (c) and (h)(1) and (2). A significant change in the membership structure does not mean the filling of a vacancy on the alternative entity, but does include any change in the organization of the alternative entity or in the categories of entities represented on the alternative entity that requires a change to the alternative entity's charter or a similar document that defines the formal organization of the alternative entity.

(d) In these regulations, all references to the Local Board must be deemed to also apply to an alternative entity used by a local area. (WIA sec. 117(i).)

§ 661.335 What is a youth council, and what is its relationship to the Local Board?

(a) A youth council must be established as a subgroup within each Local Board.

(b) The membership of each youth council must include:

(1) Members of the Local Board, such as educators, employers, and representatives of human service agencies, who have special interest or expertise in youth policy;

(2) Members who represent service agencies, such as juvenile justice and local law enforcement agencies;

(3) Members who represent local public housing authorities;

(4) Parents of eligible youth seeking assistance under subtitle B of title I of WIA;

(5) Individuals, including former participants, and members who represent organizations, that have experience relating to youth activities; and

(6) Members who represent the Job Corps, if a Job Corps Center is located in the local area represented by the council.

(c) Youth councils may include other individuals, who the chair of the Local Board, in cooperation with the chief elected official, determines to be appropriate.

(d) Members of the youth council who are not members of the Local Board must be voting members of the youth council and nonvoting members of the Local Board.

§ 661.340 What are the responsibilities of the youth council?

The youth council is responsible for:

(a) Coordinating youth activities in a local area;

(b) Developing portions of the local plan related to eligible youth, as determined by the chairperson of the Local Board;

(c) Recommending eligible youth service providers in accordance with WIA section 123, subject to the approval of the Local Board;

(d) Conducting oversight with respect to eligible providers of youth activities in the local area, subject to the approval of the Local Board; and

(e) Carrying out other duties, as authorized by the chairperson of the Local Board, such as establishing linkages with educational agencies and other youth entities.

§ 661.345 What are the requirements for the submission of the local workforce investment plan?

(a) WIA section 118 requires that each Local Board, in partnership with the appropriate chief elected officials, develops and submits a comprehensive five-year plan to the Governor which identifies and describes certain policies, procedures and local activities that are carried out in the local area, and that is consistent with the State Plan.

(b) The Local Board must provide an opportunity for public comment on and input into the development of the local workforce investment plan prior to its submission, and the opportunity for public comment on the local plan must:

(1) Make copies of the proposed local plan available to the public (through such means as public hearings and local news media);

(2) Include an opportunity for comment by members of the Local Board and members of the public, including representatives of business and labor organizations;

(3) Provide at least a thirty (30) day period for comment, beginning on the date on which the proposed plan is made available, prior to its submission to the Governor; and

(4) Be consistent with the requirement, in WIA section 117(e), that the Local Board make information about the plan available to the public on a regular basis through open meetings.

(c) The Local Board must submit any comments that express disagreement with the plan to the Governor along with the plan.

§ 661.350 What are the contents of the local workforce investment plan?

(a) The local workforce investment plan must meet the requirements of WIA section 118(b). The plan must include:

(1) An identification of the workforce investment needs of businesses, job-seekers, and workers in the local area;

(2) An identification of current and projected employment opportunities and job skills necessary to obtain such opportunities;

(3) A description of the One-Stop delivery system to be established or designated in the local area, including:

(i) How the Local Board will ensure continuous improvement of eligible providers of services and ensure that such providers meet the employment needs of local employers and participants; and

(ii) A copy of the local memorandum(s) of understanding between the Local Board and each of the One-Stop partners concerning the operation of the local One-Stop delivery system;

(4) A description of the local levels of performance negotiated with the Governor and the chief elected official(s) to be used by the Local Board for measuring the performance of the local fiscal agent (where appropriate), eligible providers, and the local One-Stop delivery system;

(5) A description and assessment of the type and availability of adult and dislocated worker employment and training activities in the local area, including a description of the local ITA system and the procedures for ensuring that exceptions to the use of ITA's, if any, are justified under WIA section 134(d)(4)(G)(ii) and 20 CFR 663.430;

(6) A description of how the Local Board will coordinate local activities with Statewide rapid response activities;

(7) A description and assessment of the type and availability of youth activities in the local area, including an identification of successful providers of such activities;

(8) A description of the process used by the Local Board to provide opportunity for public comment, including comment by representatives of business and labor organizations, and input into the development of the local plan, prior to the submission of the plan;

(9) An identification of the fiscal agent, or entity responsible for the disbursal of grant funds;

(10) A description of the competitive process to be used to award grants and contracts for activities carried out under this subtitle I of WIA, including the process to be used to procure training services that are made as exceptions to the Individual Training Account process (WIA sec. 134(d)(4)(G)),

(11) A description of the criteria to be used by the Governor and the Local Board, under 20 CFR 663.600, to determine whether funds allocated to a local area for adult employment and training activities under WIA sections 133(b)(2)(A) or (3) are limited, and the process by which any priority will be applied by the One-Stop operator;

(12) In cases where an alternate entity functions as the Local Board, the information required at § 661.330(b), and

(13) Such other information as the Governor may require.

(b) The Governor must review completed plans and must approve all such plans within ninety days of their submission, unless the Governor determines in writing that:

(1) There are deficiencies identified in local workforce investment activities carried out under this subtitle that have not been sufficiently addressed; or

(2) The plan does not comply with title I of WIA and these regulations, including the required consultations and public comment provisions.

(c) In cases where the State is a single local area:

(1) The Secretary performs the roles assigned to the Governor as they relate to local planning activities.

(2) The Secretary issues planning guidance for such States.

(3) The requirements found in WIA and in these regulations for consultation with chief elected officials apply to the development of State and local plans and to the development and operation of the One-Stop delivery system.

§ 661.355 When must a local plan be modified?

The Governor must establish procedures governing the modification of local plans. Situations in which modifications may be required by the Governor include significant changes in local economic conditions, changes in the financing available to support WIA title I and partner-provided WIA services, changes to the Local Board structure, or a need to revise strategies to meet performance goals.

Subpart D—Waivers and Work-Flex

§ 661.400 What is the purpose of the General Statutory and Regulatory Waiver Authority provided at section 189(i)(4) of the Workforce Investment Act?

(a) The purpose of the general statutory and regulatory waiver authority is to provide flexibility to States and local areas and enhance their

ability to improve the statewide workforce investment system.

(b) A waiver may be requested to address impediments to the implementation of a strategic plan, including the continuous improvement strategy, consistent with the key reform principles of WIA. These key reform principles include:

(1) Streamlining services and information to participants through a One-Stop delivery system;

(2) Empowering individuals to obtain needed services and information to enhance their employment opportunities;

(3) Ensuring universal access to core employment-related services;

(4) Increasing accountability of States, localities and training providers for performance outcomes;

(5) Establishing a stronger role for Local Boards and the private sector;

(6) Providing increased State and local flexibility to implement innovative and comprehensive workforce investment systems; and

(7) Improving youth programs through services which emphasize academic and occupational learning.

§ 661.410 What provisions of WIA and the Wagner-Peyser Act may be waived, and what provisions may not be waived?

(a) The Secretary may waive any of the statutory or regulatory requirements of subtitles B and E of title I of WIA, except for requirements relating to:

(1) Wage and labor standards;

(2) Non-displacement protections;

(3) Worker rights;

(4) Participation and protection of workers and participants;

(5) Grievance procedures and judicial review;

(6) Nondiscrimination;

(7) Allocation of funds to local areas;

(8) Eligibility of providers or participants;

(9) The establishment and functions of local areas and local boards; and

(10) Procedures for review and approval of State and Local plans; and

(b) The Secretary may waive any of the statutory or regulatory requirements of sections 8 through 10 of the Wagner-Peyser Act (29 U.S.C. 49g—49i) except for requirements relating to:

(1) The provision of services to unemployment insurance claimants and veterans; and

(2) Universal access to the basic labor exchange services without cost to job seekers.

(c) The Secretary does not intend to waive any of the statutory or regulatory provisions essential to the key reform principles embodied in the Workforce Investment Act, described in § 661.400, except in extremely unusual circumstances where the provision can be demonstrated as impeding reform. (WIA sec. 189(i).)

§ 661.420 Under what conditions may a Governor request, and the Secretary approve, a general waiver of statutory or regulatory requirements under section 189(i)(4)?

(a) A Governor may request a general waiver in consultation with appropriate chief elected officials:

(1) By submitting a waiver plan which may accompany the State's WIA 5-year strategic Plan; or

(2) After a State's WIA Plan is approved, by directly submitting a waiver plan.

(b) A Governor's waiver request may seek waivers for the entire State or for one or more local areas.

(c) A Governor requesting a general waiver must submit to the Secretary a plan to improve the Statewide workforce investment system that:

(1) Identifies the statutory or regulatory requirements for which a waiver is requested and the goals that the State or local area, as appropriate, intends to achieve as a result of the waiver and how those goals relate to the Strategic Plan goals;

(2) Describes the actions that the State or local area, as appropriate, has undertaken to remove State or local statutory or regulatory barriers;

(3) Describes the goals of the waiver and the expected programmatic outcomes if the request is granted;

(4) Describes the individuals affected by the waiver; and

(5) Describes the processes used to:

(i) Monitor the progress in implementing the waiver;

(ii) Provide notice to any Local Board affected by the waiver; and

(iii) Provide any Local Board affected by the waiver an opportunity to comment on the request.

(d) The Secretary issues a decision on a waiver request within 90 days after the receipt of the original waiver request.

(e) The Secretary will approve a waiver request if and only to the extent that:

(1) The Secretary determines that the requirements for which a waiver is requested impede the ability of either the State or local area to implement the State's plan to improve the Statewide workforce investment system;

(2) The Secretary determines that the waiver plan meets all of the requirements of WIA section 189(i)(4) and §§ 661.400–661.420 of this subpart; and

(3) The State has executed a memorandum of understanding with the Secretary requiring the State to meet, or ensure that the local area meets, agreed-upon outcomes and to implement other appropriate measures to ensure accountability.

(g) The Secretary will issue guidelines under which the States may request general waivers of WIA and Wagner-Peyser requirements. (WIA sec. 189(i).)

§ 661.430 Under what conditions may the Governor submit a Workforce Flexibility Plan?

(a) A State may submit to the Secretary, and the Secretary may approve, a workforce flexibility (work-flex) plan under which the State is authorized to waive, in accordance with the plan:

(1) Any of the statutory or regulatory requirements under title I of WIA applicable to local areas, if the local area requests the waiver in a waiver application, except for:

(i) Requirements relating to the basic purposes of title I of WIA;

(ii) Wage and labor standards;

(iii) Grievance procedures and judicial review;

(iv) Nondiscrimination;

(v) Eligibility of participants;

(vi) Allocation of funds to local areas;

(vii) Establishment and functions of local areas and local boards;

(viii) Review and approval of local plans;

(ix) Worker rights, participation, and protection; and

(x) Any of the statutory provisions essential to the key reform principles embodied in the Workforce Investment Act, described in § 661.400.

(2) Any of the statutory or regulatory requirements applicable to the State under sec. 8 through 10 of the Wagner-Peyser Act (29 U.S.C. 49g–49i), except for requirements relating to:

(i) The provision of services to unemployment insurance claimants and veterans; and

(ii) Universal access to basic labor exchange services without cost to job seekers; and

(3) Any of the statutory or regulatory requirements under the Older Americans Act of 1965 (OAA) (42 U.S.C. 3001 *et seq.*), applicable to State agencies on aging with respect to activities carried out using funds allotted under OAA section 506(a)(3) (42 U.S.C. 3056d(a)(3)), except for requirements relating to:

(i) The basic purposes of OAA;

(ii) Wage and labor standards;

(iii) Eligibility of participants in the activities; and

(iv) Standards for agreements.

(b) A State's workforce flexibility plan may accompany the State's five-year

Strategic Plan or may be submitted separately. If it is submitted separately, the workforce flexibility plan must identify related provisions in the State's five-year Strategic Plan.

(c) A workforce flexibility plan submitted under paragraph (a) of this section must include descriptions of:

(1) The process by which local areas in the State may submit and obtain State approval of applications for waivers;

(2) The statutory and regulatory requirements of title I of WIA that are likely to be waived by the State under the workforce flexibility plan;

(3) The statutory and regulatory requirements of sections 8 through 10 of the Wagner-Peyser Act that are proposed for waiver, if any;

(4) The statutory and regulatory requirements of the Older Americans Act of 1965 that are proposed for waiver, if any;

(5) The outcomes to be achieved by the waivers described in paragraphs (c)(1) to (4) of this section # including, where appropriate, revisions to adjusted levels of performance included in the State or local plan under title I of WIA; and

(6) The measures to be taken to ensure appropriate accountability for Federal funds in connection with the waivers.

(d) The Secretary may approve a workforce flexibility plan for a period of up to five years.

(e) Before submitting a workforce flexibility plan to the Secretary for approval, the State must provide adequate notice and a reasonable opportunity for comment on the proposed waiver requests under the workforce flexibility plan to all interested parties and to the general public.

(f) The Secretary will issue guidelines under which States may request designation as a work-flex State.

§ 661.440 What limitations apply to the State's Workforce Flexibility Plan authority under WIA?

(a)(1) Under work-flex waiver authority a State must not waive the WIA, Wagner-Peyser or Older Americans Act requirements which are excepted from the work-flex waiver authority and described in § 661.430(a).

(2) Requests to waive statutory and regulatory requirements of title I of WIA applicable at the State level may not be granted under work-flex waiver authority granted to a State. Such requests may only be granted by the Secretary under the general waiver authority described at §§ 661.410–661.420 of this subpart.

(b) As required in § 661.430(c)(5), States must address the outcomes to result from work-flex waivers as part of its workforce flexibility plan. Once approved, a State's work-flex designation is conditioned on the State demonstrating it has met the agreed-upon outcomes contained in its workforce flexibility plan.

PART 662—DESCRIPTION OF THE ONE-STOP SYSTEM UNDER TITLE I OF THE WORKFORCE INVESTMENT ACT

Subpart A—General Description of the One-Stop Delivery System

Sec.

662.100 What is the One-Stop delivery system?

Subpart B—One-Stop Partners and the Responsibilities of Partners

662.200 Who are the required One-Stop partners?
662.210 What other entities may serve as One-Stop partners?
662.220 What entity serves as the One-Stop partner for a particular program in the local area?
662.230 What are the responsibilities of the required One-Stop partners?
662.240 What are a program's applicable core services?
662.250 Where and to what extent must required One-Stop partners make core services available?
662.260 What services, in addition to the applicable core services, are to be provided by One-Stop partners through the One-Stop delivery system?
662.270 How are the costs of providing services through the One-Stop delivery system and the operating costs of the system to be funded?
662.280 Does title I require One-Stop partners to use their funds for individuals who are not eligible for the partner's program or for services that are not authorized under the partner's program?

Subpart C—Memorandum of Understanding for the One-Stop Delivery System

662.300 What is the Memorandum of Understanding?
662.310 Is there a single MOU for the local area or are there to be separate MOU's between the Local Board and each partner?

Subpart D—One-Stop Operators

662.400 Who is the One-Stop operator?
662.410 How is the One-Stop operator selected?
662.420 Under what limited conditions may the Local Board be designated or certified as the One-Stop operator?
662.430 Under what conditions may existing One-Stop delivery systems be certified to act as the One-Stop operator?

Authority: Section 506(c), Pub. L. 105–220; 20 U.S.C. 9276(c).

Subpart A—General Description of One-Stop Delivery System

§ 662.100 What is the One-Stop delivery system?

(a) In general, the One-Stop delivery system is a system under which entities responsible for administering separate workforce investment, educational, and other human resource programs and funding streams (referred to as One-Stop partners) collaborate to create a seamless system of service delivery that will enhance access to the programs' services and improve long-term employment outcomes for individuals receiving assistance.

(b) Title I of WIA assigns responsibilities at the local, State and Federal level to ensure the creation and maintenance of a One-Stop delivery system that enhances the range and quality of workforce development services that are accessible to individuals seeking assistance.

(c) The system must include at least one comprehensive physical center in each local area that must provide the core services specified in WIA section 134(d)(2), and must provide access to other programs and activities carried out by the One-Stop partners.

(d) While each local area must have at least one comprehensive center (and may have additional comprehensive centers), WIA section 134(c) allows for arrangements to supplement the center. These arrangements may include:

(1) A network of affiliated sites that can provide one or more partners' programs, services and activities at each site;

(2) A network of One-Stop partners through which each partner provides services that are linked, physically or technologically, to an affiliated site that assures individuals are provided information on the availability of core services in the local area; and

(3) Specialized centers that address specific needs, such as those of dislocated workers.

(e) The design of the local area's One-Stop delivery system, including the number of comprehensive centers and the supplementary arrangements, must be described in the local plan and be consistent with the memorandum of understanding executed with the One-Stop partners.

Subpart B—One-Stop Partners and the Responsibilities of Partners

§ 662.200 Who are the required One-Stop partners?

(a) WIA section 121(b)(1) identifies the entities that are required partners in the local One-Stop systems.

(b) The required partners are the entities that carry out:

(1) Programs authorized under title I of WIA, serving:

(i) Adults;

(ii) Dislocated workers;

(iii) Youth;

(iv) Job Corps;

(v) Native American programs;

(vi) Migrant and seasonal farmworker programs; and

(vii) Veterans' workforce programs; (WIA sec. 121(b)(1)(B)(i).)

(2) Programs authorized under the Wagner-Peyser Act (29 U.S.C. 49 *et seq.*); (WIA sec. 121(b)(1)(B)(ii).)

(3) Adult education and literacy activities authorized under title II of WIA; (WIA sec. 121(b)(1)(B)(iii).)

(4) Vocational rehabilitation programs authorized under parts A and B of title I of the Rehabilitation Act (29 U.S.C. 720 *et seq.*); (WIA sec. 121(b)(1)(B)(iv).)

(5) Welfare-to-work programs authorized under sec. 403(a)(5) of the Social Security Act (42 U.S.C. 603(a)(5) *et seq.*); (WIA sec. 121(b)(1)(B)(v).)

(6) Senior community service employment activities authorized under title V of the Older Americans Act of 1965 (42 U.S.C. 3056 *et seq.*); (WIA sec. 121(b)(1)(B)(vi).)

(7) Postsecondary vocational education activities under the Carl D. Perkins Vocational and Applied Technology Education Act (20 U.S.C. 2301 *et seq.*); (WIA sec. 121(b)(1)(B)(vii).)

(8) Trade Adjustment Assistance and NAFTA Transitional Adjustment Assistance activities authorized under chapter 2 of title II of the Trade Act of 1974 (19 U.S.C. 2271 *et seq.*); (WIA sec. 121(b)(1)(B)(viii).)

(9) Activities authorized under chapter 41 of title 38, U.S.C. (local veterans' employment representatives and disabled veterans outreach programs); (WIA sec. 121(b)(1)(B)(ix).)

(10) Employment and training activities carried out under the Community Services Block Grant (42 U.S.C. 9901 *et seq.*); (WIA sec. 121(b)(1)(B)(x).)

(11) Employment and training activities carried out by the Department of Housing and Urban Development; (WIA sec. 121(b)(1)(B)(xi).) and

(12) Programs authorized under State unemployment compensation laws (in accordance with applicable Federal law); (WIA sec. 121(b)(1)(B)(xii).)

§ 662.210 What other entities may serve as One-Stop partners?

(a) WIA provides that other entities that carry out a human resource program, including Federal, State, or local programs and programs in the private sector may serve as additional partners in the One-Stop system if the Local Board and chief elected official(s) approve the entity's participation.

(b) Additional partners may include:

(1) TANF programs authorized under part A of title IV of the Social Security Act (42 U.S.C. 601 *et seq.*);

(2) Employment and training programs authorized under section 6(d)(4) of the Food Stamp Act of 1977 (7 U.S.C. 2015(d)(4));

(3) Work programs authorized under section 6(o) of the Food Stamp Act of 1977 (7 U.S.C. 2015(o));

(4) Programs authorized under the National and Community Service Act of 1990 (42 U.S.C. 12501 *et seq.*); and

(5) other appropriate programs, including programs related to transportation and housing. (WIA section 121(b)(2).)

§ 662.220 What entity serves as the One-Stop partner for a particular program in the local area?

(a) The "entity" that carries out the program and activities listed in §§ 662.200 and 662.210 of this subpart, and, therefore, serves as the One-Stop partner is the grant recipient, administrative entity or organization responsible for administering the funds of the specified program in the local area. The term "entity" does not include the service providers that contract with or are subrecipients of the local administrative entity. For programs that do not include local administrative entities, the responsible State Agency should be the partner. Specific entities for specific programs are identified in paragraph (b) of this section.

(b)(1) For title II of WIA, the entity that carries out the program for the purposes of paragraph (a) of this section is the State eligible entity. The State eligible entity may designate an eligible provider as the "entity" for this purpose;

(2) For title I, Part A, of the Rehabilitation Act, the entity that carries out the program for the purposes of paragraph (a) of this section is the designated State agency or designated unit specified under section 101(a)(2) that is primarily concerned with vocational rehabilitation, or vocational and other rehabilitation, of individuals with disabilities; and

(3) Under WIA, the national programs, including Job Corps, the WIA Indian and Native American program, the Migrant and Seasonal Farmworkers program, and the Veterans' Workforce Investment program, are required One-Stop partners. Local Boards must include them in the One-Stop delivery system where they are present in their local area. In local areas where the national programs are not present, States and Local Boards should take steps to ensure that customer groups served by these programs have access to services through the One-Stop delivery system.

§ 662.230 What are the responsibilities of the required One-Stop partners?

All required partners must:

(a) Make available to participants through the One-Stop delivery system the core services that are applicable to the partner's programs; (WIA section 121(b)(1)(A).)

(b) Use a portion of funds made available to the partner's program, to the extent not inconsistent with the Federal law authorizing the partner's program, to:

(1) Create and maintain the One-Stop delivery system; and

(2) Provide core services; (WIA sec. 134(d)(1)(B).)

(c) Enter into a memorandum of understanding (MOU) with the Local Board relating to the operation of the One-Stop system that meets the requirements of § 662.300, including a description of services, how the cost of the identified services and operating costs of the system will be funded, and methods for referrals (WIA sec. 121(c));

(d) Participate in the operation of the One-Stop system consistent with the terms of the MOU and requirements of authorizing laws; (WIA sec. 121(b)(1)(B).) and

(e) Serve as a representative on the local workforce investment board. (WIA sec. 117(b)(2)(A)(vi).)

§ 662.240 What are a program's applicable core services?

(a) The core services applicable to any One-Stop partner program are those services described in paragraph (b) of this section, that are authorized and provided under the partner's program.

(b) The core services identified in section 134(d)(2) of the WIA are:

(1) Determinations of whether the individuals are eligible to receive assistance under subtitle B of title I of WIA;

(2) Outreach, intake (which may include worker profiling), and orientation to the information and other services available through the One-Stop delivery system;

(3) Initial assessment of skill levels, aptitudes, abilities, and supportive service needs;

(4) Job search and placement assistance, and where appropriate, career counseling;

(5) Provision of employment statistics information, including the provision of

accurate information relating to local, regional, and national labor market areas, including—

(i) Job vacancy listings in such labor market areas;

(ii) Information on job skills necessary to obtain the listed jobs; and

(iii) Information relating to local occupations in demand and the earnings and skill requirements for such occupations;

(6) Provision of program performance information and program cost information on:

(i) Eligible providers of training services described in WIA section 122;

(ii) Eligible providers of youth activities described in WIA section 123;

(iii) Providers of adult education described in title II;

(iv) Providers of postsecondary vocational education activities and vocational education activities available to school dropouts under the Carl D. Perkins Vocational and Applied Technology Education Act (20 U.S.C. 2301 *et seq.*); and

(v) Providers of vocational rehabilitation program activities described in title I of the Rehabilitation Act of 1973 (29 U.S.C. 720 *et seq.*);

(7) Provision of information on how the local area is performing on the local performance measures and any additional performance information with respect to the One-Stop delivery system in the local area;

(8) Provision of accurate information relating to the availability of supportive services, including, at a minimum, child care and transportation, available in the local area, and referral to such services, as appropriate;

(9) Provision of information regarding filing claims for unemployment compensation;

(10) Assistance in establishing eligibility for—

(i) Welfare-to-work activities authorized under section 403(a)(5) of the Social Security Act (42 U.S.C. 603(a)(5)) available in the local area; and

(ii) Programs of financial aid assistance for training and education programs that are not funded under this Act and are available in the local area; and

(11) Followup services, including counseling regarding the workplace, for participants in workforce investment activities authorized under subtitle (B) of title I of WIA who are placed in unsubsidized employment, for not less than 12 months after the first day of the employment, as appropriate.

§ 662.250 Where and to what extent must required One-Stop partners make core services available?

(a) At a minimum, the core services that are applicable to the program of the partner under § 662.220, and that are in addition to the basic labor exchange services traditionally provided in the local area under the Wagner-Peyser program, must be made available at the comprehensive One-Stop center. These services must be made available to individuals attributable to the partner's program who seek assistance at the center. The adult and dislocated worker program partners are required to make all of the core services listed in § 662.240 available at the center in accordance with 20 CFR 663.100(b)(1).

(b) The applicable core services may be made available by the provision of appropriate technology at the comprehensive One-Stop center, by co-locating personnel at the center, cross-training of staff, or through a cost reimbursement or other agreement between service providers at the comprehensive One-Stop center and the partner, as described in the MOU.

(c) The responsibility of the partner for the provision of core services must be proportionate to the use of the services at the comprehensive One-Stop center by the individuals attributable to the partner's program. The specific method of determining each partner's proportionate responsibility must be described in the MOU.

(d) For purposes of this part, individuals attributable to the partner's program may include individuals who are referred through the comprehensive One-Stop center and enrolled in the partner's program after the receipt of core services, who have been enrolled in the partner's program prior to receipt of the applicable core services at the center, who meet the eligibility criteria for the partner's program and who receive an applicable core service, or who meet an alternative definition described in the MOU.

(e) Under the MOU, the provision of applicable core services at the Center by the One-Stop partner may be supplemented by the provision of such services through the networks of affiliated sites and networks of One-Stop partners described in WIA section 134(c)(2).

§ 662.260 What services, in addition to the applicable core services, are to be provided by One-Stop partners through the One-Stop delivery system?

In addition to the provision of core services, One-Stop partners must provide access to the other activities and programs carried out under the partner's authorizing laws. The access to these services must be described in the local MOU. 20 CFR part 663 describes the specific requirements relating to the provision of core, intensive, and training services through the One-Stop system that apply to the adult and the dislocated worker programs authorized under title I of WIA. Additional requirements apply to the provision of all labor exchange services under the Wagner-Peyser Act. (WIA sec. 134(c)(1)(D).)

§ 662.270 How are the costs of providing services through the One-Stop delivery system and the operating costs of the system to be funded?

The MOU must describe the particular funding arrangements for services and operating costs of the One-Stop delivery system. Each partner must contribute a fair share of the operating costs of the One-Stop delivery system proportionate to the use of the system by individuals attributable to the partner's program. There are a number of methods, consistent with the requirements of the relevant OMB circulars, that may be used for allocating costs among the partners. Some of these methodologies include allocations based on direct charges, cost pooling, indirect cost rates and activity-based cost allocation plans. Additional guidance relating to cost allocation methods may be issued by the Department in consultation with the other appropriate Federal agencies.

§ 662.280 Does title I require One-Stop partners to use their funds for individuals who are not eligible for the partner's program or for services that are not authorized under the partner's program?

No. The requirements of the partner's program continue to apply. The Act intends to create a seamless service delivery system for individuals seeking workforce development services by linking the One-Stop partners in the One-Stop delivery system. While the overall effect is to provide universal access to core services, the resources of each partner may only be used to provide services that are authorized and provided under the partner's program to individuals who are eligible under such program. (WIA sec. 121(b)(1).)

Subpart C—Memorandum of Understanding of the One-Stop Delivery System

§ 662.300 What is the Memorandum of Understanding?

(a) The Memorandum of Understanding (MOU) is an agreement developed and executed between the Local Board, with the agreement of the

chief elected official, and the One-Stop partners relating to the operation of the One-Stop delivery system in the local area.

(b) The MOU must contain the provisions required by WIA section 121(c)(2). These provisions cover services to be provided through the One-Stop delivery system; the funding of the services and operating costs of the system; and methods for referring individuals between the One-Stop operators and partners. The MOU's provisions also must determine the duration and procedures for amending the MOU, and may contain any other provisions that are consistent with WIA title I and these regulations agreed to by the parties. (WIA sec. 121(c).)

§ 662.310 Is there a single MOU for the local area or are there to be separate MOU's between the Local Board and each partner?

(a) A single "umbrella" MOU may be developed that addresses the issues relating to the local One-Stop delivery system for the Local Board and all partners, or the Local Board and the partners may decide to enter into separate agreements between the Local Board and one or more partners. Under either approach, the requirements described in § 662.310 apply. Since funds are generally appropriated annually, financial agreements may be negotiated with each partner annually to clarify funding of services and operating costs of the system under the MOU.

(b) WIA emphasizes full and effective partnerships between Local Boards and One-Stop partners. Local Boards and partners must enter into good-faith negotiations. Local Boards and partners may request assistance from a State agency responsible for administering the partner program, the Governor, State Board, or other appropriate parties. The State agencies, the State Board, and the Governor may also consult with the appropriate Federal agencies to address impasse situations after exhausting other alternatives. The Local Board and partners must document the negotiations and efforts that have taken place. Any failure to execute an MOU between a Local Board and a required partner must be reported by the Local Board and the required partner to the Governor or State Board, and the State agency responsible for administering the partner's program, and by the Governor or the State Board and the responsible State agency to the Secretary of Labor and to the head of any other Federal agency with responsibility for oversight of a partner's program. (WIA sec. 121(c).)

(c) If an impasse has not been resolved through the alternatives available under this section any partner that fails to execute an MOU may not be permitted to serve on the Local Board. In addition, any local area in which a Local Board has failed to execute an MOU with all of the required partners is not eligible for State incentive grants awarded on the basis of local coordination of activities under 20 CFR 665.200(d)(2).

Subpart D—One-Stop Operators

§ 662.400 Who is the One-Stop operator?

(a) The One-Stop operator is the entity that performs the role described in paragraph (c) of this section. The types of entities that may be selected to be the One-Stop operator include:

(1) A postsecondary educational institution;

(2) An Employment Service agency established under the Wagner-Peyser Act on behalf of the local office of the agency;

(3) A private, nonprofit organization (including a community-based organization);

(4) A private for-profit entity;

(5) A government agency; and

(6) Another interested organization or entity.

(b) One-Stop operators may be a single entity or a consortium of entities and may operate one or more One-Stop centers. In addition, there may be more than one One-Stop operator in a local area.

(c) The agreement between the Local Board and the One-Stop operator shall specify the operator's role. That role may range between simply coordinating service providers within the center to being the primary provider of services within the center. (WIA sec. 121(d).)

§ 662.410 How is the One-Stop operator selected?

(a) The Local Board, with the agreement of the chief elected official, must designate and certify One-Stop operators in each local area.

(b) The One-Stop operator is designated or certified:

(1) Through a competitive process, or

(2) Under an agreement between the Local Board and a consortium of entities that includes at least three or more of the required One-Stop partners identified at § 662.200. (WIA sec. 121(d).)

§ 662.420 Under what limited conditions may the Local Board be designated or certified as the One-Stop operator?

(a) The Local Board may be designated or certified as the One-Stop operator only with the agreement of the chief elected official and the Governor.

(b) The designation or certification must be made publicly, in accordance with the requirements of the "sunshine provision" in WIA section 117(e), and must be reviewed whenever the biennial certification of the Local Board is made under 20 CFR 663.300(a). (WIA sec. 117(f)(2).)

§ 662.430 Under what conditions may existing One-Stop delivery systems be certified to act as the One-Stop operator?

Under WIA section 121(e), the Local Board, the chief elected official and the Governor may agree to certify an entity as a One-Stop operator under the following circumstances:

(a) A One-Stop delivery system, consistent with the scope and meaning of the term in WIA section 134(c), existed in the local area prior to August 7, 1998;

(b) The certification is consistent with the requirements of:

(1) WIA section 121(b) and;

(2) the Memorandum(s) of Understanding; and

(c) The certification must be made publicly, in accordance with the "sunshine provision" at WIA section 117(e). (WIA section 121(e).)

PART 663—ADULT AND DISLOCATED WORKER ACTIVITIES UNDER TITLE I OF THE WORKFORCE INVESTMENT ACT

Subpart A— Delivery of Adult and Dislocated Worker Services Through the One-Stop Delivery System

Sec.

663.100 What is the role of the adult and dislocated worker program in the One-Stop delivery system?
663.105 When must adults and dislocated workers be registered?
663.110 What are the eligibility criteria for adults in the adult and dislocated worker program?
663.115 What are the eligibility criteria for dislocated workers in the Adult and Dislocated worker program?
663.120 Are displaced homemakers eligible for dislocated worker activities under WIA?
663.145 What services are WIA title I adult and dislocated workers formula funds used to provide?
663.150 What core services must be provided to adults and dislocated workers?
663.155 How are core services delivered?
663.160 Are there particular core services an individual must receive before receiving intensive services under WIA section 134(d)(3)?
663.165 How long must an individual be in core services in order to be eligible for intensive services?

Subpart B—Intensive Services

663.200 What are intensive services for adults and dislocated workers?
663.210 How are intensive services delivered?

663.220 Who may receive intensive services?
663.230 What criteria must be used to determine whether an employed worker needs intensive services to obtain or retain employment leading to "self-sufficiency?
663.240 Are there particular intensive services an individual must receive prior to receiving training services under WIA section 134(d)(4)(A)(i)?
663.245 What is the individual employment plan?
663.250 How long must an individual participant be in intensive services to be eligible for training services?

Subpart C—Training Services

663.300 What are training services for adults and dislocated workers ?
663.310 Who may receive training services?
663.320 What are the requirements for coordination of WIA training funds and other grant assistance?

Subpart D—Individual Training Accounts

663.400 How are training services provided?
663.410 What is an Individual Training Account?
663.420 Can the duration and amount of ITA's be limited?
663.430 Under what circumstances may mechanisms other than ITA's be used to provide training services?
663.440 What are the requirements for consumer choice?

Subpart E—Eligible Training Providers

663.500 What is the purpose of this subpart?
663.505 What are eligible providers of training services?
663.508 What is a "program of training services"?
663.510 Who is responsible for managing the eligible provider process?
663.515 What is the process for initial determination of provider eligibility?
663.530 Is there a time limit on the period of initial eligibility for training providers?
663.535 What is the process for determination of the subsequent eligibility of a provider?
663.540 What kind of performance and cost information is required for determinations of subsequent eligibility?
663.550 How is eligible provider information developed and maintained?
663.555 How is the State list disseminated?
663.565 May an eligible training provider lose its eligibility?
663.570 What is the consumer reports system?
663.575 In what ways can a Local Board supplement the information available from the State list?
663.585 May individuals choose training providers located outside of the local area?
663.590 May a community-based organization (CBO) be included on an eligible provider list?
663.595 What requirements apply to providers of OJT and customized training?

Subpart F—Priority and Special Populations

663.600 What priority must be given to low-income adults and public assistance recipients served with adult funds under title I?
663.610 Does the priority for use of adult funds also apply to dislocated worker funds?
663.620 How do the Welfare-to-Work program and the TANF program relate to the One-Stop delivery system?
663.630 How does a displaced homemaker qualify for services under title I?
663.640 May a disabled individual whose family does not meet income eligibility criteria under the Act be eligible for priority as a low income adult?

Subpart G—On-the-Job Training (OJT) and Customized Training

663.700 What are the requirements for on-the-job training (OJT)?
663.705 What are the requirements for OJT contracts for employed workers?
663.710 What conditions govern OJT payments to employers?
663.715 What is customized training?
663.720 What are the requirements for customized training for employed workers?

Subpart H—Supportive Services

663.800 What are supportive services for adults and dislocated workers?
663.805 When may supportive services be provided to participants?
663.810 Are there limits on the amounts or duration of funds for supportive services?
663.815 What are needs-related payments?
663.820 What are the eligibility requirements for adults to receive needs-related payments?
663.825 What are the eligibility requirements for dislocated workers to receive needs-related payments?
663.830 May needs-related payments be paid while a participant is waiting to start training classes?
663.840 How is the level of needs-related payments determined?

Authority: Section 506(c), Pub. L. 105–220; 20 U.S.C. 9276(c).

Subpart A—Delivery of Adult and Dislocated Worker Services through the One-Stop Delivery System

§ 663.100 What is the role of the adult and dislocated worker program in the One-Stop delivery system?

(a) The One-Stop system is the basic delivery system for adult and dislocated worker services. Through this system, adults and dislocated workers can access a continuum of services. The services are organized into three levels: core, intensive, and training.

(b) The chief elected official or his/her designee(s), as the local grant recipient(s) for the adult and dislocated worker programs, is a required One-Stop partner and is subject to the provisions relating to such partners described in 20 CFR part 662. Consistent with those provisions:

(1) Core services for adults and dislocated workers must be made available in at least one comprehensive One-Stop center in each local workforce investment area. Services may also be available elsewhere, either at affiliated sites or at specialized centers. For example, specialized centers may be established to serve workers being dislocated from a particular employer or industry, or to serve residents of public housing.

(2) The One-Stop centers also make intensive services available to adults and dislocated workers, as needed, either by the One-Stop operator directly or through contracts with service providers that are approved by the Local Board.

(3) Through the One-Stop system, adults and dislocated workers needing training are provided Individual Training Accounts (ITA's) and access to lists of eligible providers of training. These lists contain quality consumer information, including cost and performance information for each of the providers, so that participants can make informed choices on where to use their ITA's. (ITA's are more fully discussed in subpart D of this part.)

§ 663.105 When must adults and dislocated workers be registered?

(a) Registration is the process for collecting information for supporting a determination of eligibility. This information may be collected through methods that include electronic data transfer, personal interview, or an individual's application.

(b) Adults and dislocated workers who receive services funded under title I other than self-service or informational activities must be registered and determined eligible.

(c) EEO data must be collected on individuals during the registration process.

§ 663.110 What are the eligibility criteria for adults in the adult and dislocated worker program?

To be an eligible adult in the adult and dislocated worker program, an individual must be 18 years of age or older. To be eligible for the dislocated worker program, an eligible adult must meet the criteria of § 663.115 of this subpart.

§ 663.115 What are the eligibility criteria for dislocated workers in the adult and dislocated worker program?

(a) To be an eligible dislocated worker in the adult and dislocated worker program, an individual must meet the definition of "dislocated worker" at WIA section 101(9).

(b) Governors and Local Boards may establish policies and procedures for One-Stop operators to use in determining an individual's eligibility as a dislocated worker, consistent with the definition at WIA section 101(9). These policies and procedures may address such conditions as:

(1) What constitutes a "general announcement" of plant closing under WIA section 101(9)(B)(ii) or (iii); and (2) What constitutes "unemployed as a result of general economic conditions in the community in which the individual resides or because of natural disasters' for determining the eligibility of self-employed individuals, including family members and farm or ranch hands, under WIA section 101(9)(C).

§ 663.120 Are displaced homemakers eligible for dislocated worker activities under WIA?

(a) Yes. There are two significant differences from the eligibility requirements under the Job Training Partnership Act.

(b) Under the dislocated worker program in JTPA, displaced homemakers are defined as "additional dislocated workers" and are only eligible to receive services if the Governor determines that providing such services would not adversely affect the delivery of services to the other eligible dislocated workers. Under WIA section 101(9), displaced homemakers who meet the definition at WIA section 101(10) are eligible dislocated workers without any additional determination.

(c) The definition of displaced homemaker under JTPA included individuals who had been dependent upon public assistance under Aid for Families with Dependent Children (AFDC) as well as those who had been dependent on the income of another family member. The definition in WIA section 101(10) includes only those individuals who were dependent on a family member's income. Those individuals who have been dependent on public assistance may be served in the adult program.

§ 663.145 What services are WIA title I adult and dislocated workers formula funds used to provide?

(a) WIA title I formula funds allocated to local areas for adults and dislocated workers must be used to provide core, intensive and training services through the One-Stop delivery system. Local Boards determine the most appropriate mix of these services, but all three types must be available for both adults and dislocated workers.

(b) WIA title I funds may also be used to provide the other services described in WIA section 134(e):

(1) Discretionary One-Stop delivery activities, including:

(i) Customized screening and referral of qualified participants in training services to employment; and

(ii) Customized employment-related services to employers on a fee-for-service basis that are in addition to labor exchange services available to employers under the Wagner-Peyser Act.

(2) Supportive services, including needs-related payments, as described in subpart H of this part.

§ 663.150 What core services must be provided to adults and dislocated workers?

(a) At a minimum, all of the core services described in WIA section 134(d)(2) and 20 CFR 662.220 must be provided in each local area through the One-Stop delivery system.

(b) Followup services must be made available, for a minimum of 12 months following the first day of employment, to registered participants who are placed in unsubsidized employment.

§ 663.155 How are core services delivered?

Core services must be provided through the One-Stop delivery system. Core services may be provided directly by the One-Stop operator or through contracts with service providers that are approved by the Local Board. The Local Board may only be a provider of core services when approved by the chief elected official and the Governor in accordance with the requirements of WIA section 117(f)(2) and 20 CFR 661.310.

§ 663.160 Are there particular core services an individual must receive before receiving intensive services under WIA section 134(d)(3)?

(a) Yes. At a minimum, an individual must receive at least one core service, such as an initial assessment or job search and placement assistance, before receiving intensive services. The initial assessment determines the individual's skill levels, aptitudes, and supportive services needs. The job search and placement assistance helps the individual determine whether he or she is unable to obtain employment, and thus requires more intensive services to obtain employment. The decision on which core services to provide, and the timing of their delivery, may be made on a case-by-case basis at the local level depending upon the needs of the participant.

(b) A determination of the need for intensive services under § 663.220, as established by the initial assessment or the individual's inability to obtain employment through the core services provided, must be contained in the participant's case file.

§ 663.165 How long must an individual be in core services in order to be eligible for intensive services?

There is no Federally-required minimum time period for participation in core services before receiving intensive services. [WIA section 134(d)(3).]

Subpart B—Intensive Services

§ 663.200 What are intensive services for adults and dislocated workers?

(a) Intensive services are listed in WIA section 134(d)(3)(C). The list in the Act is not all-inclusive and other intensive services, such as out-of-area job search assistance, literacy activities related to basic workforce readiness, relocation assistance, internships, and work experience may be provided, based on an assessment or individual employment plan.

(b) For the purposes of paragraph (a) of this section, work experience is a planned, structured learning experience that takes place in a workplace for a limited period of time. Work experience may be paid or unpaid, as appropriate. A work experience workplace may be in the private for profit sector, the non-profit sector, or the public sector.

§ 663.210 How are intensive services delivered?

(a) Intensive services must be provided through the One-Stop delivery system. Intensive services may be provided directly by the One-Stop operator or through contracts with service providers that are approved by the Local Board. (WIA secs. 117(d)(2)(D) and 134(d)(3)(B).)

(b) The Local Board may only be a provider of intensive services when approved by the chief elected official and the Governor in accordance with WIA section 117(f)(2) and 20 CFR 661.310.

§ 663.220 Who may receive intensive services?

There are two categories of adults and dislocated workers who may receive intensive services:

(a) Adults and dislocated workers who are unemployed, have received at least one core service and are unable to obtain employment through core

services, and are determined by a One-Stop operator to be in need of more intensive services to obtain employment; and

(b) Adults and dislocated workers who are employed, have received at least one core service, and are determined by a One-Stop operator to be in need of intensive services to obtain or retain employment that leads to self-sufficiency, as described in § 663.230.

§ 663.230 What criteria must be used to determine whether an employed worker needs intensive services to obtain or retain employment leading to "self-sufficiency"?

State Boards or Local Boards must set the criteria for determining whether employment leads to self-sufficiency. At a minimum, such criteria must provide that self-sufficiency means employment that pays at least the lower living standard income level, as defined in WIA section 101(24). Self-sufficiency for a dislocated worker may be defined in relation to a percentage of the layoff wage.

§ 663.240 Are there particular intensive services an individual must receive prior to receiving training services under WIA section 134(d)(4)(A)(i)?

(a) Yes. At a minimum, an individual must receive at least one intensive service, such as development of an individual employment plan with a case manager or individual counseling and career planning, before the individual may receive training services.

(b) The case file must contain a determination of need for training services under § 663.310, as identified in the individual employment plan, comprehensive assessment, or through any other intensive service received.

§ 663.245 What is the individual employment plan?

The individual employment plan is an ongoing strategy jointly developed by the participant and the case manager that identifies the participant's employment goals, the appropriate achievement objectives, and the appropriate combination of services for the participant to achieve the employment goals.

§ 663.250 How long must an individual participant be in intensive services to be eligible for training services?

There is no Federally-required minimum time period for participation in intensive services before receiving training services. (WIA section 134(d)(4)(A)(i).)

Subpart C—Training Services

§ 663.300 What are training services for adults and dislocated workers?

Training services are listed in WIA section 134(d)(4)(D). The list in the Act is not all-inclusive and additional training services may be provided.

§ 663.310 Who may receive training services?

Training services may be made available to employed and unemployed adults and dislocated workers who:

(a) Have met the eligibility requirements for intensive services, have received at least one intensive service under § 663.240, and have been determined to be unable to obtain or retain employment through such services;

(b) After an interview, evaluation, or assessment, and case management, have been determined by a One-Stop operator or One-Stop partner, to be in need of training services and to have the skills and qualifications to successfully complete the selected training program;

(c) Select a program of training services that is directly linked to the employment opportunities either in the local area or in another area to which the individual is willing to relocate;

(d) Are unable to obtain grant assistance from other sources to pay the costs of such training, including Federal Pell Grants established under title IV of the Higher Education Act of 1965, or require WIA assistance in addition to other sources of grant assistance, including Federal Pell Grants (provisions relating to fund coordination are found at § 663.320 and WIA section 134(d)(4)(B)); and

(e) For individuals whose services are provided through the adult funding stream, are determined eligible in accordance with the State and local priority system, if any, in effect for adults under WIA section 134(d)(4)(E) and § 663.600. [WIA section 134(d)(4)(A).]

§ 663.320 What are the requirements for coordination of WIA training funds and other grant assistance?

(a) WIA funding for training is limited to participants who:

(1) Are unable to obtain grant assistance from other sources to pay the costs of their training; or

(2) Require assistance beyond that available under grant assistance from other sources to pay the costs of such training. Program operators and training providers must coordinate funds available to pay for training as described in paragraphs (b) and (c) of this section.

(b) Program operators must coordinate training funds available and make funding arrangements with One-Stop partners and other entities to apply the provisions of paragraph (a) of this section. Training providers must consider the availability of Pell Grants and other sources of grants to pay for training costs, so that WIA funds supplement other sources of training grants.

(c) A WIA participant may enroll in WIA-funded training while his/her application for a Pell Grant is pending as long as the One-Stop operator has made arrangements with the training provider and the WIA participant regarding allocation of the Pell Grant, if it is subsequently awarded. In that case, the training provider must reimburse the One-Stop operator the WIA funds used to underwrite the training for the amount the Pell Grant covers. Reimbursement is not required from the portion of Pell Grant assistance disbursed to the WIA participant for education-related expenses. (WIA section 134(d)(4)(B).)

Subpart D—Individual Training Accounts

§ 663.400 How are training services provided?

Except under the three conditions described in WIA section 134(d)(4)(G)(ii) and § 663.430(a), the Individual Training Account (ITA) is established for eligible individuals to finance training services. Local Boards may only provide training services under § 663.430 if they receive a waiver from the Governor and meet the requirements of 20 CFR 661.310 and WIA section 117(f)(1). (WIA section 134(d)(4)(G).)

§ 663.410 What is an Individual Training Account?

The ITA is established on behalf of a participant. WIA title I adult and dislocated workers purchase training services from eligible providers they select in consultation with the case manager. Payments from ITA's may be made in a variety of ways, including the electronic transfer of funds through financial institutions, vouchers, or other appropriate methods. Payments may also be made incrementally; through payment of a portion of the costs at different points in the training course. (WIA section 134(d)(4)(G).)

§ 663.420 Can the duration and amount of ITA's be limited?

(a) Yes. The State or Local Board may impose limits on ITA's, such as limitations on the dollar amount and/or duration.

(b) Limits to ITA's may be established in different ways:

(1) There may be a limit for an individual participant that is based on the needs identified in the individual employment plan; or

(2) There may be a policy decision by the State Board or Local Board to establish a range of amounts and/or a maximum amount applicable to all ITA's.

(c) Limitations established by State or Local Board policies must be described in the State or Local Plan, respectively, but should not be implemented in a manner that undermines the Act's requirement that training services are provided in a manner that maximizes customer choice in the selection of an eligible training provider.

§ 663.430 Under what circumstances may mechanisms other than ITA's be used to provide training services?

(a) Contracts for services may be used instead of ITA's only when one of the following three exceptions applies:

(1) When the services provided are on-the-job training (OJT) or customized training;

(2) When the Local Board determines that there are an insufficient number of eligible providers in the local area to accomplish the purpose of a system of ITA's. The Local Plan must describe the process to be used in selecting the providers under a contract for services. This process must include a public comment period for interested providers of at least 30 days;

(3) When the Local Board determines that there is a training services program of demonstrated effectiveness offered in the area by a community-based organization (CBO) or another private organization to serve special participant populations that face multiple barriers to employment, as described in paragraph (b) in this section. The Local Board must develop criteria to be used in determining demonstrated effectiveness, particularly as it applies to the special participant population to be served. The criteria may include:

(i) Financial stability of the organization;

(ii) Demonstrated performance in measures appropriate to the program including program completion rate; attainment of the skills, certificates or degrees the program is designed to provide; placement after training in unsubsidized employment; and retention in employment; and

(iii) How the specific program relates to the workforce investment needs identified in the local plan.

(b) Under paragraph (a)(3) of this section, special participant populations that face multiple barriers to employment are populations of low-income individuals that are included in one or more of the following categories:

(1) Individuals with substantial language or cultural barriers;

(2) Offenders;

(3) Homeless individuals; and

(4) Other hard-to-serve populations as defined by the Governor.

§ 663.440 What are the requirements for consumer choice?

(a) Training services, whether under ITA's or under contract, must be provided in a manner that maximizes informed consumer choice in selecting an eligible provider.

(b) Each Local Board, through the One-Stop center, must make available to customers the State list of eligible providers required in WIA section 122(e). The list includes a description of the programs through which the providers may offer the training services, the information identifying eligible providers of on-the-job training and customized training required under WIA section 122(h) (where applicable), and the performance and cost information about eligible providers of training services described in WIA sections 122(e) and (h).

(c) An individual who has been determined eligible for training services under § 663.310 may select a provider described in paragraph (b) of this section after consultation with a case manager. Unless the program has exhausted funds for the program year, the operator must refer the individual to the selected provider, and establish an ITA for the individual to pay for training. For purposes of this paragraph, a referral may be carried out by providing a voucher or certificate to the individual to obtain the training.

(d) The cost of referral of an individual with an ITA to a training provider is paid by the applicable adult or dislocated worker program under title I of WIA.

Subpart E—Eligible Training Providers

§ 663.500 What is the purpose of this subpart?

The workforce investment system established under WIA emphasizes informed customer choice, system performance, and continuous improvement. The eligible provider process is part of the strategy for achieving these goals. Local Boards, in partnership with the State, identify training providers whose performance qualifies them to receive WIA funds to train adults and dislocated workers. After receiving core and intensive services and in consultation with case managers, eligible participants who need training use the list of these eligible providers to make an informed choice. The ability of providers to successfully perform, the procedures State and Local Boards use to establish eligibility, and the degree to which information, including performance information, on those providers is made available to customers eligible for training services, are key factors affecting the successful implementation of the Statewide workforce investment system. This subpart describes the process for determining eligible training providers.

§ 663.505 What are Eligible Providers of Training Services?

(a) Eligible providers of training services are described in WIA section 122. They are those entities eligible to receive WIA title I–B funds to provide training services to eligible adult and dislocated worker customers.

(b) In order to provide training services under WIA title I–B, a provider must meet the requirements of this subpart and WIA section 122.

(1) These requirements apply to the use of WIA title I adult and dislocated worker funds to provide training:

(i) To individuals using ITA's to access training through the eligible provider list; and

(ii) To individuals for training provided through the exceptions to ITA's described at § 663.430(a)(2) and (a)(3).

(2) These requirements apply to all organizations providing training to adult and dislocated workers, including:

(i) Postsecondary educational institutions providing a program described in section 122(a)(2)(A)(ii);

(ii) Entities that carry out programs under the National Apprenticeship Act (29 U.S.C. 50 *et seq.*);

(iii) Other public or private providers of a program of training services described in WIA section 122(a)(2)(C);

(iv) Local Boards, if they meet the conditions of WIA section 117(f)(1), and

(v) Community-based organizations and other private organizations providing training under § 663.430.

(c) Provider eligibility procedures must be established by the Governor, as required by this subpart. Different procedures are described in WIA for determinations of "initial" and "subsequent" eligibility. Because the processes are different, they are discussed separately.

§ 663.508 What is a "program of training services"?

A program of training services is:

(a) One or more courses or classes that, upon successful completion, leads to:

(1) A certificate, an associate degree, or baccalaureate degree, or

(2) A competency or skill recognized by employers, or

(b) A training regimen that provides individuals with additional skills or competencies generally recognized by employers.

§ 663.510 Who is responsible for managing the eligible provider process?

(a) The State and the Local Boards each have responsibilities for managing the eligible provider process.

(b) The Governor must establish eligibility criteria for certain providers to become initially eligible and must set minimum levels of performance for all providers to remain subsequently eligible.

(c) The Governor must designate a State agency (called "designated State agency") to assist in carrying out WIA section 122. The designated State agency is responsible for:

(1) Developing and maintaining the State list of eligible providers, which is comprised of lists submitted by Local Boards;

(2) Verifying the accuracy of the information on the State list, in consultation with the Local Boards, removing providers who do not meet program performance levels, and taking appropriate enforcement actions, against providers in the case of the intentional provision of inaccurate information, as described in WIA section 122(f)(1), and in the case of a substantial violation of the requirements of WIA, as described in WIA section 122(f)(2);

(3) Disseminating the State list, accompanied by performance and cost information relating to each provider, to One-Stop operators throughout the State.

(d) The Local Board must:

(1) Accept applications for initial eligibility from certain postsecondary institutions and entities providing apprenticeship training;

(2) Carry out procedures prescribed by the Governor to assist in determining the initial eligibility of other providers;

(3) Carry out procedures prescribed by the Governor to assist in determining the subsequent eligibility of all providers;

(4) Compile a local list of eligible providers, collect the performance and cost information and any other required information relating to providers;

(5) Submit the local list and information to the designated State agency;

(6) Ensure the dissemination and appropriate use of the State list through the local One-Stop system;

(7) Consult with the designated State agency in cases where termination of an eligible provider is contemplated because inaccurate information has been provided; and

(8) Work with the designated State agency in cases where the termination of an eligible provider is contemplated because of violations of the Act.

(e) The Local Board may:

(1) Make recommendations to the Governor on the procedures to be used in determining initial eligibility of certain providers;

(2) Increase the levels of performance required by the State for local providers to maintain subsequent eligibility;

(3) Require additional verifiable program-specific information from local providers to maintain subsequent eligibility.

§ 663.515 What is the process for initial determination of provider eligibility?

(a) For postsecondary educational institutions that are eligible to receive assistance under title IV of the Higher Education Act, and that provide a program that leads to an associate or baccalaureate degree or certificate, and for entities carrying out apprenticeship programs registered under the National Apprenticeship Act to be initially eligible to receive adult or dislocated worker training funds under title I of WIA, the institution or entity must submit an application to the Local Board(s) for the local area(s) in which the provider desires to provide training services that describes each program of training services, as defined in § 663.508, that leads to such a degree or certificate or is registered under the National Apprenticeship Act.

(b) Local Boards determine the procedures to use in making an application under paragraph (a) of this section. The Local Board procedures must specify the timing, manner, and contents of the required application.

(c) For other providers,

(1) The Governor must develop a procedure for use by Local Boards for determining the eligibility of other providers, after

(i) Soliciting and taking into consideration recommendations from Local Boards and providers of training services within the State; and

(ii) Providing an opportunity for interested members of the public, including representatives of business and labor organizations, to submit comments on the procedure.

(2) The procedure must be described in the State Plan.

(3)(i) The procedure must require that the provider must submit an application to the Local Board at such time and in such manner as may be required, which contains a description of the program of training services;

(ii) If the provider provides a program of training services on the date of application, the procedure must require that the application include an appropriate portion of the performance information and program cost information described in § 663.540 of this subpart, and that the program meet appropriate levels of performance;

(iii) If the provider does not provide a program of training services on that date, the procedure must require that the provider meet appropriate requirements specified in the procedure. (WIA section 122(b)(2)(D).)

(4) Programs of training services provided by postsecondary educational institutions that do not lead to an associate or baccalaureate degree or certificate and apprenticeship programs that are not registered under the National Apprenticeship Act must be determined initially eligible under the provisions of this paragraph (c).

(d) The Local Board must include providers that meet the requirements of paragraphs (a) and (c) of this section on a local list and submit the list to the designated State agency. The State agency has 30 days to verify the information relating to the providers under paragraph (c) of this section. After the agency verifies that the provider meets the criteria for initial eligibility, or 30 days have elapsed, whichever occurs first, the provider is initially eligible as a provider of training services. The providers submitted under paragraph (a) of this section are initially eligible without State agency review. (WIA section 122(e).)

§ 663.530 Is there a time limit on the period of initial eligibility for training providers?

Yes. Under WIA section 122(c)(5), the Governor must require training providers to submit performance information and meet performance levels annually in order to remain eligible providers. States may require that these performance requirements be met one year from the date that initial eligibility was determined, or may require all eligible providers to submit performance information by the same date each year. If the latter approach is adopted, the Governor may exempt eligible providers whose determination of initial eligibility occurs within six months of the date of submissions. The effect of this requirement is that no training provider may have a period of initial eligibility that exceeds eighteen months.

§ 663.535 What is the process for determination of the subsequent eligibility of a provider?

(a) The Governor must develop a procedure for the Local Board to use in determining the subsequent eligibility of all eligible training providers determined initially eligible under § 663.515 (a) and (c), after:

(1) Soliciting and taking into consideration recommendations from Local Boards and providers of training services within the State, and

(2) Providing an opportunity for interested members of the public, including representatives of business and labor organizations, to submit comments on such procedure.

(b) The procedure must be described in the State Plan.

(c) The procedure must require that:

(1) Providers annually submit performance and cost information as described at WIA sections 122(d)(1) and (2), for each program of training services for which the provider has been determined to be eligible, in a time and manner determined by the Local Board;

(2) Providers annually meet minimum performance levels described at WIA section 122(c)(6).

(d) The provider's performance information must meet the minimum acceptable levels established under paragraph (c)(2) of this section to remain eligible;

(e) Local Boards may require higher levels of performance for local providers than the levels specified in the procedures established by the Governor. (WIA sections 122(c)(5) and (c)(6).)

(f) The State procedure must require Local Boards to take into consideration:

(1) The specific economic, geographic and demographic factors in the local areas in which providers seeking eligibility are located, and

(2) The characteristics of the populations served by providers seeking eligibility, including the demonstrated difficulties in serving these populations, where applicable.

(g) The Local Board retains those providers on the local list that meet the required performance levels and other elements of the State procedures and submits the list, accompanied by the performance and cost information, and any additional required information, to the designated State agency. If the designated State agency determines within 30 days from the receipt of the information that the provider does not meet the performance levels established under paragraph (c)(2) of this section, the provider may be removed from the list. A provider retained on the local list and not removed by the designated State agency is considered an eligible provider of training services.

§ 663.540 What kind of performance and cost information is required for determinations of subsequent eligibility?

(a) Eligible providers of training services must submit, at least annually, under procedures established by the Governor under § 663.535(c):

(1) Verifiable program-specific performance information, including:

(i) The information described in WIA section 122(d)(1)(A)(i) for all individuals participating in the programs of training services, including individuals who are not receiving assistance under WIA section 134 and individuals who are receiving such assistance; and

(ii) The information described in WIA section 122(d)(1)(A)(ii) relating only to individuals receiving assistance under the WIA adult and dislocated worker program who are participating in the applicable program of training services; and

(2) Information on program costs (such as tuition and fees) for WIA participants in the program.

(b) Governors may require any additional verifiable performance information (such as the information described at WIA section 122(d)(2)) that the Governor determines to be appropriate to obtain subsequent eligibility, including information regarding all participating individuals as well as individuals receiving assistance under the WIA adult and dislocated worker program.

(c) If the additional information required under paragraph (b) of this section imposes extraordinary costs on providers, or if providers experience extraordinary costs in the collection of information,

(1) The Governor or Local Board must provide access to cost-effective methods for the collection of the information; or

(2) The Governor must provide additional resources to assist providers in the collection of the information from funds for Statewide workforce investment activities reserved under WIA sections 128(a) and 133(a)(1).

(d) The Local Board and the designated State agency may accept program-specific performance information consistent with the requirements for eligibility under title IV of the Higher Education Act of 1965 from a provider for purposes of enabling the provider to fulfill the applicable requirements of this section, if the information is substantially similar to the information otherwise required under this section.

§ 663.550 How is eligible provider information developed and maintained?

(a) The designated State agency must maintain a list of all eligible training providers in the State (the "State list").

(b) The State list is a compilation of the eligible providers identified or retained by local areas and that have not been removed under § 663.535(c) and 663.565.

(c) The State list must be accompanied by the performance and cost information contained in the local lists as required by § 663.535(e). (WIA section 122(e)(4)(A).)

§ 663.555 How is the State list disseminated?

(a) The designated State agency must disseminate the State list and accompanying performance and cost information to the One-Stop delivery systems within the State.

(b) The State list and information must be updated at least annually.

(c) The State list and accompanying information form the primary basis of the One-Stop consumer reports system that provides for informed customer choice. The list and information must be widely available, through the One-Stop delivery system, to customers seeking information on training outcomes, as well as participants in employment and training activities funded under WIA and other programs.

(1) The State list must be made available to individuals who have been determined eligible for training services under § 663.310.

(2) The State list must also be made available to customers whose training is supported by other One-Stop partners.

§ 663.565 May an eligible training provider lose its eligibility?

(a) Yes. A training provider must deliver results and provide accurate information in order to retain its status as an eligible training provider.

(b) If the provider does not meet the established performance levels, it will be removed from the eligible provider list.

(1) A Local Board must determine, during the subsequent eligibility determination process, whether a provider meets performance levels. If the provider fails to meet such levels, the provider must be removed from the local list.

(2) The designated State agency upon receipt of the performance information accompanying the local list, may remove a provider from the State list if the agency determines the provider failed to meet the levels of performance prescribed under § 663.535(c).

(3) Providers determined to have intentionally supplied inaccurate

information or to have subsequently violated any provision of title I of WIA or these regulations may be removed from the list in accordance with the enforcement provisions of WIA section 122(f). A provider whose eligibility is terminated under these conditions is liable to repay all adult and dislocated worker training funds it received during the period of noncompliance.

(4) The Governor must establish appeal procedures for providers of training to appeal a denial of eligibility under this part according to the requirements of 20 CFR 667.640(b).

§ 663.570 What is the consumer reports system?

The consumer reports system, referred to in WIA as performance information, is the vehicle for informing the customers of the One-Stop delivery system about the performance of training providers in the local area. It is built upon the State list of eligible providers developed through the procedures described in WIA section 122 and this subpart. The consumer reports system must contain the information necessary for an adult or dislocated worker customer to fully understand the options available to him or her in choosing a program of training services. Such program-specific factors may include overall performance, performance for significant customer groups (including wage replacement rates for dislocated workers), performance of specific provider sites, current information on employment and wage trends and projections, and duration of training programs.

§ 663.575 In what ways can a Local Board supplement the information available from the State list?

(a) Local Boards may supplement the information available from the State list by providing customers with additional information to assist in supporting informed customer choice and the achievement of local performance measures (as described in WIA section 136).

(b) This additional information may include:

(1) Information on programs of training services that are linked to occupations in demand in the local area;

(2) Performance and cost information, including program-specific performance and cost information, for the local outlet(s) of multi-site eligible providers; and

(3) Other appropriate information related to the objectives of WIA, which may include the information described in § 663.570.

§ 663.585 May individuals choose training providers located outside of the local area?

Yes. Individuals may choose any of the eligible providers on the State list. A State may also establish a reciprocal agreement with another State(s) to permit eligible providers of training services in each State to accept individual training accounts provided in the other State. (WIA sections 122(e)(4) and (e)(5).)

§ 663.590 May a community-based organization (CBO) be included on an eligible provider list?

Yes. CBO's may apply and be determined eligible providers of training services, under WIA section 122 and this subpart. As eligible providers, CBO's provide training through ITA's and may also receive contracts for training special participant populations when the requirements of § 663.430 are met.

§ 663.595 What requirements apply to providers of OJT and customized training?

For OJT and customized training providers, One-Stop operators in a local area must collect such performance information as the Governor may require, determine whether the providers meet such performance criteria as the Governor may require, and disseminate a list of providers that have met such criteria, along with the relevant performance information about them, through the One-Stop delivery system. Providers determined to meet the criteria are considered to be identified as eligible providers of training services. These providers are not subject to the other requirements of WIA section 122 or this subpart.

Subpart F—Priority and Special Populations

§ 663.600 What priority must be given to low-income adults and public assistance recipients served with adult funds under title I?

(a) WIA states, in section 134(d)(4)(E), that in the event that funds allocated to a local area for adult employment and training activities are limited, priority for intensive and training services funded with title I adult funds must be given to recipients of public assistance and other low-income individuals in the local area.

(b) Since funding is generally limited, States and local areas must establish criteria by which local areas can determine the availability of funds and the process by which any priority will be applied under WIA section 134(d)(2)(E). Such criteria may include the availability of other funds for providing employment and training-related services in the local area, the needs of the specific groups within the local area, and other appropriate factors.

(c) States and local areas must give priority for adult intensive and training services to recipients of public assistance and other low-income individuals, unless the local area has determined that funds are not limited under the criteria established under paragraph (b) of this section.

(d) The process for determining whether to apply the priority established under paragraph (b) of this section does not necessarily mean that only the recipients of public assistance and other low income individuals may receive WIA adult funded intensive and training services when funds are determined to be limited in a local area. The Local Board and the Governor may establish a process that gives priority for services to the recipients of public assistance and other low income individuals and that also serves other individuals meeting eligibility requirements.

§ 663.610 Does the statutory priority for use of adult funds also apply to dislocated worker funds?

No. The statutory priority applies to adult funds for intensive and training services only. Funds allocated for dislocated workers are not subject to this requirement.

§ 663.620 How do the Welfare-to-Work program and the TANF program relate to the One-Stop delivery system?

(a) The local Welfare-to-Work (WtW) program operator is a required partner in the One-Stop delivery system. 20 CFR part 662 describes the roles of such partners in the One-Stop delivery system and applies to the Welfare-to-Work program operator. WtW programs serve individuals who may also be served by the WIA programs and, through appropriate linkages and referrals, these customers will have access to a broader range of services through the cooperation of the WtW program in the One-Stop system. WtW participants, who are determined to be WIA eligible, and who need occupational skills training may be referred through the One-Stop system to receive WIA training. WIA participants who are also determined WtW eligible, may be referred to the WtW operator for job placement and other WtW assistance.

(b) The local TANF agency is specifically suggested under WIA as an additional partner in the One-Stop system. TANF recipients will have access to more information about employment opportunities and services

when the TANF agency participates in the One-Stop delivery system. The Governor and Local Board should encourage the TANF agency to become a One-Stop partner to improve the quality of services to the WtW and TANF-eligible populations. In addition, becoming a One-Stop partner will ensure that the TANF agency is represented on the Local Board and participates in developing workforce investment strategies that help cash assistance recipients secure lasting employment.

§ 663.630 How does a displaced homemaker qualify for services under title I?

Displaced homemakers may be eligible to receive assistance under title I in a variety of ways, including:

(a) Core services provided by the One-Stop partners through the One-Stop delivery system;

(b) Intensive or training services for which an individual qualifies as a dislocated worker/displaced homemaker if the requirements of this part are met;

(c) Intensive or training services for which an individual is eligible if the requirements of this part are met;

(d) Statewide employment and training projects conducted with reserve funds for innovative programs for displaced homemakers, as described in 20 CFR 665.210(f) .

§ 663.640 May a disabled individual whose family does not meet income eligibility criteria under the Act be eligible for priority as a low income adult?

Yes. Even if the family of a disabled individual does not meet the income eligibility criteria, the disabled individual is to be considered a low-income individual if the individual's own income:

(a) Meets the income criteria established in WIA section 101(25)(B); or

(b) Meets the income eligibility criteria for cash payments under any Federal, State or local public assistance program. (WIA section 101(25)(F).)

Subpart G—On-the-Job Training (OJT) and Customized Training

§ 663.700 What are the requirements for on-the-job training (OJT)?

(a) On-the-job training (OJT) is defined at WIA section 101(31). OJT is provided by an employer in the public, private non-profit, or private sector. A contract may be developed between the employer and the local program that provides occupational training for the WIA participant in exchange for the reimbursement of up to 50 percent of the wage rate to compensate for the employer's extraordinary costs. (WIA section 101(31)(B).)

(b) The local program must not contract with an employer who has previously exhibited a pattern of failing to provide OJT participants with continued long-term employment with wages, benefits, and working conditions that are equal to those provided to regular employees who have worked a similar length of time and are doing the same type of work. (WIA section 195(4).)

(c) An OJT contract must be limited to the period of time required for a participant to become proficient in the occupation for which the training is being provided. In determining the appropriate length of the contract, consideration should be given to the skill requirements of the occupation, the academic and occupational skill level of the participant, prior work experience, and the participant's individual employment plan. (WIA section 101(31)(C).)

§ 663.705 What are the requirements for OJT contracts for employed workers?

OJT contracts may be written for eligible employed workers when:

(a) The employee is not earning a self-sufficient wage as determined by Local Board policy;

(b) The requirements in § 663.700 are met; and

(c) The OJT relates to the introduction of new technologies, introduction to new production or service procedures, upgrading to new jobs that require additional skills, workplace literacy, or other appropriate purposes identified by the Local Board.

§ 663.710 What conditions govern OJT payments to employers?

(a) On-the-job training payments to employers are deemed to be compensation for the extraordinary costs associated with training participants and the costs associated with the lower productivity of the participants.

(b) Employers may be reimbursed up to 50 percent of the wage rate of an OJT participant for the extraordinary costs of providing the training and additional supervision related to the OJT. (WIA section 101(31)(B).)

(c) Employers are not required to document such extraordinary costs.

§ 663.715 What is customized training?

Customized training is training:

(a) that is designed to meet the special requirements of an employer (including a group of employers);

(b) that is conducted with a commitment by the employer to employ, or in the case of incumbent workers, continue to employ, an individual on successful completion of the training; and

(c) for which the employer pays for not less than 50 percent of the cost of the training. (WIA section 101(8).)

§ 663.720 What are the requirements for customized training for employed workers?

Customized training of an eligible employed individual may be provided for an employer or a group of employers when:

(a) The employee is not earning a self-sufficient wage as determined by Local Board policy;

(b) The requirements in § 663.715 are met; and

(c) The customized training relates to the purposes described in § 663.705(c) or other appropriate purposes identified by the Local Board.

Subpart H—Supportive Services

§ 663.800 What are supportive services for adults and dislocated workers?

Supportive services for adults and dislocated workers are defined at WIA sections 101(46) and 134(e)(2) and (3). They include services such as transportation, child care, dependent care, housing, and needs-related payments, that are necessary to enable an individual to participate in activities authorized under WIA title I. Local Boards, in consultation with the One-Stop partners and other community service providers, must develop a policy on supportive services that ensures resource and service coordination in the local area, such policy should address procedures for referral to such services, including how such services will be funded when they are not otherwise available from other sources. The provision of accurate information about the availability of supportive services in the local area, as well as referral to such activities, is one of the core services that must be available to adults and dislocated workers through the One-Stop delivery system. (WIA section 134(d)(2)(H).)

§ 663.805 When may supportive services be provided to participants?

(a) Supportive services may only be provided to individuals who are:

(1) Participating in core, intensive or training services; and

(2) Unable to obtain supportive services through other programs providing such services. (WIA section 134(e)(2)(A) and (B).)

(b) Supportive services may only be provided when they are necessary to enable individuals to participate in title I activities. (WIA section 101(46).)

§ 663.810 Are there limits on the amounts or duration of funds for supportive services?

(a) Local Boards may establish limits on the provision of supportive services or provide the One-Stop operator with the authority to establish such limits, including a maximum amount of funding and maximum length of time for supportive services to be available to participants.

(b) Procedures may also be established to allow One-Stop operators to grant exceptions to the limits established under paragraph (a) of this section.

§ 663.815 What are needs-related payments?

Needs-related payments provide financial assistance to participants for the purpose of enabling individuals to participate in training and are one of the supportive services authorized by WIA section 134(e)(3).

§ 663.820 What are the eligibility requirements for adults to receive needs-related payments?

Adults must:

(a) Be unemployed,

(b) Not qualify for, or have ceased qualifying for, unemployment compensation; and

(c) Be enrolled in a program of training services under WIA section 134(d)(4).

§ 663.825 What are the eligibility requirements for dislocated workers to receive needs-related payments?

To receive needs related payments, a dislocated worker must:

(a) Be unemployed, and:

(1) Have ceased to qualify for unemployment compensation or trade readjustment assistance under TAA or NAFTA–TAA; and

(2) Be enrolled in a program of training services under WIA section 134(d)(4) by the end of the 13th week after the most recent layoff that resulted in a determination of the worker's eligibility as a dislocated worker, or, if later, by the end of the 8th week after the worker is informed that a short-term layoff will exceed 6 months; or

(b) Be unemployed and did not qualify for unemployment compensation or trade readjustment assistance under TAA or NAFTA–TAA.

§ 663.830 May needs-related payments be paid while a participant is waiting to start training classes?

Yes. Payments may be provided if the participant has been accepted in a training program that will begin within 30 calender days. The Governor may authorize local areas to extend the 30 day period to address appropriate circumstances.

§ 663.840 How is the level of needs-related payments determined?

(a) The payment level for adults must be established by the Local Board.

(b) For dislocated workers, payments must not exceed the greater of either of the following levels:

(1) For participants who were eligible for unemployment compensation as a result of the qualifying dislocation, the payment may not exceed the applicable weekly level of the unemployment compensation benefit; or

(2) For participants who did not qualify for unemployment compensation as a result of the qualifying layoff, the weekly payment may not exceed the poverty level for an equivalent period. The weekly payment level must be adjusted to reflect changes in total family income as determined by Local Board policies. (WIA section 134(e)(3)(C).)

PART 664—YOUTH ACTIVITIES UNDER TITLE I OF THE WORKFORCE INVESTMENT ACT

Subpart A—Youth Councils

Sec.
664.100 What is the youth council?
664.110 Who is responsible for oversight of youth programs in the local area?

Subpart B—Eligibility for Youth Services

664.200 Who is eligible for youth services?
664.205 How is the "deficient in basic literacy skills" criterion in § 664.200(c)(1) defined and documented?
664.210 How is the ". . . requires additional assistance to complete an educational program, or to secure and hold employment" criterion in § 664.200(c)(6) defined and documented?
664.215 Must youth participants be registered to participate in the program?
664.220 Is there an exception to permit youth who are not low-income individuals to receive youth services?
664.230 Are the eligibility barriers for eligible youth the same as the eligibility barriers for the five percent of youth participants who do not have to meet income eligibility requirements?
664.240 May a local program use eligibility for free lunches under the National School Lunch Program as a substitute for the income eligibility criteria under the title I of WIA?
664.250 May a disabled youth whose family does not meet income eligibility criteria under the Act be eligible for youth services?

Subpart C—Out-of-School Youth

664.300 Who is an "out-of-school youth"?
664.310 Is a youth attending an alternative school a "dropout"?
664.320 Does the requirement that at least 30 percent of youth funds be used to provide activities to out-of-school youth apply to all youth funds?

Subpart D—Youth Program Design, Elements, and Parameters

664.400 How must local youth programs be designed?
664.410 Must local programs include each of the ten program elements listed in WIA section 129(c)(2) as options available to youth participants?
664.420 What are leadership development opportunities?
664.430 What are positive social behaviors?
664.440 What are supportive services for youth?
664.450 What are followup services for youth?
664.460 What are work experiences for youth?
664.470 Are paid work experiences allowable activities?

Subpart E—Concurrent Enrollment

664.500 May youth participate in both youth and adult programs concurrently?
664.510 Are Individual Training Accounts allowed for youth participants?

Subpart F—Summer Employment Opportunities

664.600 Are Local Boards required to offer summer employment opportunities in the local youth program?
664.610 How is the summer employment opportunities element administered?
664.620 Do the core indicators described in 20 CFR 666.100(a)(3) apply to participation in summer employment activities?

Subpart G—One-Stop Services to Youth

664.700 What is the connection between the youth program and the One-Stop service delivery system?
664.710 Do Local Boards have the flexibility to offer services to area youth who are not eligible under the youth program through the One-Stop centers?

Subpart H—Youth Opportunity Grants

664.800 How are the recipients of Youth Opportunity Grants selected?
664.810 How does a Local Board or other entity become eligible to receive a Youth Opportunity Grant?
664.820 Who is eligible to receive services under Youth Opportunity Grants?
664.830 How are performance measures for Youth Opportunity Grants determined?

Authority: Sec. 506(c), Pub. L. 105–220; 20 U.S.C. 9276(c)

Subpart A—Youth Councils

§ 664.100 What is the youth council?

(a) The duties and membership requirements of the youth council are described in WIA section 117(h) and 20 CFR 661.335 and 661.340.

(b) The purpose of the youth council is to provide expertise in youth policy and to assist the Local Board in:

(1) Developing and recommending local youth employment and training policy and practice;

(2) Broadening the youth employment and training focus in the community to incorporate a youth development perspective;

(3) Establishing linkages with other organizations serving youth in the local area; and

(4) Taking into account a range issues that can have an impact on the success of youth in the labor market. (WIA sec. 117(h).)

§ 664.110 Who is responsible for oversight of youth programs in the local area?

(a) The Local Board, working with the youth council, is responsible for conducting oversight of local youth programs operated under the Act, to ensure both fiscal and programmatic accountability.

(b) Local program oversight is conducted in consultation with the local area's chief elected official.

(c) The Local Board may delegate its responsibility for oversight of eligible youth providers, as well as other oversight responsibilities, to the youth council, recognizing the advantage of delegating such responsibilities to the youth council whose members have expertise in youth issues. (WIA sec. 117(h)(4).)

Subpart B—Eligibility for Youth Services

§ 664.200 Who is eligible for youth services?

An eligible youth is defined, under WIA section 101(13), as an individual who:

(a) Is age 14 through 21;

(b) Is a low income individual, as defined in the WIA section 101(25); and

(c) Is within one or more of the following categories:

(1) Deficient in basic literacy skills;

(2) School dropout;

(3) Homeless, runaway, or foster child;

(4) Pregnant or parenting;

(5) Offender; or

(6) Is an individual (including a youth with a disability) who requires additional assistance to complete an educational program, or to secure and hold employment. (WIA sec. 101(13).)

§ 664.205 How is the "deficient in basic literacy skills" criterion in § 664.200(c)(1) defined and documented?

(a) Definitions and eligibility documentation requirements regarding the "deficient in basic literacy skills" criterion in § 664.200(c)(1) may be established at the State or local level. These definitions may establish such criteria as are needed to address State or local concerns, but must include a determination that an individual:

(1) Computes or solves problems, reads, writes, or speaks English at or below grade level 8.9; or

(2) Is unable to compute or solve problems, read, write, or speak English at a level necessary to function on the job, in the individual's family or in society.

(b) In cases where the State Board establishes State policy on this criterion, the policy must be included in the State plan. (WIA secs. 101(13)(C)(i), 101(19).)

§ 664.210 How is the ". . . requires additional assistance to complete an educational program, or to secure and hold employment" criterion in § 664.200(c)(6) defined and documented?

Definitions and eligibility documentation requirements regarding the "requires additional assistance to complete an educational program, or to secure and hold employment" criterion of § 664.200(c)(6) may be established at the State or local level. In cases where the State Board establishes State policy on this criterion, the policy must be included in the State Plan. (WIA sec. 101(13)(C)(iv).)

§ 664.215 Must youth participants be registered to participate in the youth program?

(a) Yes. All youth participants must be registered.

(b) Registration is the process of collecting information to support a determination of eligibility.

(c) EEO data must be collected on individuals during the registration process.

§ 664.220 Is there an exception to permit youth who are not low-income individuals to receive youth services?

Yes. Up to five percent of youth participants served by youth programs in a local area may be individuals who do not meet the income criterion for eligible youth, provided that they are within one or more of the following categories:

(a) School dropout;

(b) Basic skills deficient, as defined in WIA section 101(4);

(c) Are one or more grade levels below the grade level appropriate to the individual's age;

(d) Pregnant or parenting;

(e) Possess one or more disabilities, including learning disabilities;

(f) Homeless or runaway;

(g) Offender; or

(h) Face serious barriers to employment as identified by the Local Board. (WIA sec. 129(c)(5).)

§ 664.230 Are the eligibility barriers for eligible youth the same as the eligibility barriers for the five percent of youth participants who do not have to meet income eligibility requirements?

No. The barriers listed in § 664.200 and § 664.220 are not the same. Both lists of eligibility barriers include school dropout, homeless or runaway, pregnant or parenting, and offender, but each list contains barriers not included on the other list.

§ 664.240 May a local program use eligibility for free lunches under the National School Lunch Program as a substitute for the income eligibility criteria under the title I of WIA?

No. The criteria for income eligibility under the National School Lunch Program are not the same as the Act's income eligibility criteria. Therefore, the school lunch list may not be used as a substitute for income eligibility to determine who is eligible for services under the Act.

§ 664.250 May a disabled youth whose family does not meet income eligibility criteria under the Act be eligible for youth services?

Yes. Even if the family of a disabled youth does not meet the income eligibility criteria, the disabled youth is to be considered a low-income individual if the youth's own income:

(a) Meets the income criteria established in WIA section 101(25)(B); or

(b) Meets the income eligibility criteria for cash payments under any Federal, State or local public assistance program. (WIA sec. 101(25)(F).)

Subpart C—Out-of-School Youth

§ 664.300 Who is "out-of-school youth"?

An out-of-school youth is an individual who:

(a) Is an eligible youth who is a school dropout; or

(b) Is an eligible youth who has either graduated from high school or holds a GED, but is basic skills deficient, unemployed, or underemployed. (WIA sec. 101(33).)

§ 664.310 Is youth attending an alternative school a "dropout"?

No. A school dropout is defined as an individual who is no longer attending any school and who has not received a secondary school diploma or its recognized equivalent. A youth attending an alternative school is not a dropout. (WIA sec. 101(39).)

§ 664.320 Does the requirement that at least 30 percent of youth funds be used to provide activities to out-of-school youth apply to all youth funds?

(a) Yes. The 30 percent requirement applies to the total amount of all funds allocated to a local area under section 128(b)(2)(A) or (b)(3) of WIA.

(b) Although it is not necessary to ensure that 30 percent of such funds spent on summer employment opportunities (or any other particular element of the youth program) are spent on out-of-school youth, the funds spent on these activities are included in the total to which the 30 percent requirement applies.

(c) There is a limited exception, at WIA section 129(c)(4)(B), under which certain small States may apply to the Secretary to reduce the minimum amount that must be spent on out-of-school youth. (WIA sec. 129(c)(4).)

Subpart D—Youth Program Design, Elements, and Parameters

§ 664.400 How must local youth programs be designed?

(a) The design framework of local youth programs must:

(1) Provide an objective assessment of each youth participant, that meets the requirements of WIA section 129(c)(1)(A), and includes a review of the academic and occupational skill levels, as well as the service needs, of each youth;

(2) Develop an individual service strategy for each youth participant that meets the requirements of WIA section 129(c)(1)(B), including identifying a career goal and consideration of the assessment results for each youth; and

(3) Provide preparation for postsecondary educational opportunities, provide linkages between academic and occupational learning, provide preparation for employment, and provide effective connections to intermediary organizations that provide strong links to the job market and employers.

(b) The local plan must describe the design framework for youth program design in the local area, and of how the ten program elements required in § 664.410 of this part are provided within that framework.

(c) Local Boards must ensure appropriate links to entities that will foster the participation of eligible local area youth. Such links may include connections to:

(1) Local area justice and law enforcement officials;

(2) Local public housing authorities;

(3) Local education agencies;

(4) Job Corps representatives; and

(5) Representatives of other area youth initiatives, including those that serve homeless youth and other public and private youth initiatives.

(d) Local Boards must ensure that the referral requirements in WIA section 129(c)(3) for youth who meet the income eligibility criteria are met, including:

(1) Providing these youth with information regarding the full array of applicable or appropriate services available through the Local Board, providers found eligible by the board, or One-Stop partners; and

(2) Referring these youth to appropriate training and educational programs that have the capacity to serve them either on a sequential or concurrent basis.

(e) In order to meet the basic skills and training needs of eligible applicants who do not meet the enrollment requirements of a particular program or who cannot be served by the program, each eligible youth provider must ensure that these youth are referred:

(1) For further assessment, as necessary, and

(2) To appropriate programs, in accordance with paragraph (d)(2) of this section.

(f) Local Boards must ensure that parents, youth participants, and other members of the community with experience relating to youth programs are involved in both the design and implementation of its youth programs.

(g) The objective assessment required under paragraph (a)(1) of this section or the individual service strategy required under paragraph (a)(2) of this section is not required if the program provider determines that it is appropriate to use a recent objective assessment or individual service strategy that was developed under another education or training program. (WIA section 129(c)(1).)

§ 664.410 Must local programs include each of the ten program elements listed in WIA section 129(c)(2) as options available to youth participants?

(a) Yes. Local programs must make the following services available to youth participants:

(1) Tutoring, study skills training, and instruction leading to secondary school completion, including dropout prevention strategies;

(2) Alternative secondary school offerings;

(3) Summer employment opportunities directly linked to academic and occupational learning;

(4) Paid and unpaid work experiences, including internships and job shadowing, as provided in §§ 664.460 and 664.470 of this part;

(5) Occupational skill training;

(6) Leadership development opportunities, which may include such activities as positive social behavior and soft skills, decision making, team work, and other activities, as provided in §§ 664.420 and 664.430 of this part;

(7) Supportive services, which may include the services listed in § 664.440;

(8) Adult mentoring for a duration of at least twelve (12) months, that may occur both during and after program participation;

(9) Followup services, as provided in § 664.450; and

(10) Comprehensive guidance and counseling, including drug and alcohol abuse counseling, as well as referrals to counseling, as appropriate to the needs of the individual youth.

(b) Local programs have the discretion to determine what specific program services will be provided to a youth participant, based on each participant's objective assessment and individual service strategy. (WIA sec. 129(c)(2).)

§ 664.420 What are leadership development opportunities?

Leadership development opportunities for youth may include the following:

(a) Exposure to postsecondary educational opportunities;

(b) Community and service learning projects;

(c) Peer-centered activities, including peer mentoring and tutoring;

(d) Organizational and team work training, including team leadership training;

(e) Training in decision-making, including determining priorities;

(f) Citizenship training, including life skills training such as parenting, work behavior training, and budgeting of resources;

(g) Employability; and

(h) Positive social behaviors. (WIA sec. 129(c)(2)(F).)

§ 664.430 What are positive social behaviors?

Positive social behaviors, often referred to as soft skills, are incorporated by many local programs as part of their menu of services which focus on areas that may include, but are not limited to, the following:

(a) Positive attitudinal development;

(b) Self esteem building;

(c) Cultural diversity training; and

(d) Work simulation activities. (WIA sec. 129(c)(2)(F).)

§ 664.440 What are supportive services for youth?

Supportive services for youth, as defined in WIA section 101(46), may include the following:

(a) Linkages to community services;
(b) Assistance with transportation costs;
(c) Assistance with child care and dependent care costs;
(d) Assistance with housing costs;
(e) Referrals to medical services; and
(f) Assistance with uniforms or other appropriate work attire and work-related tool costs, including such items as eye glasses and protective eye gear. (WIA sec. 129(c)(2)(G).)

§ 664.450 What are followup services for youth?

(a) Followup services for youth may include:
(1) The leadership development and supportive service activities listed in §§ 664.420 and 664.440 of this part;
(2) Regular contact with a youth participant's employer, including assistance in addressing work-related problems that arise;
(3) Assistance in securing better paying jobs, career development and further education;
(4) Work-related peer support groups;
(5) Adult mentoring; and
(6) Tracking the progress of youth in employment after training.
(b) All youth participants must receive some form of followup services for a minimum duration of 12 months. Followup services may be provided beyond twelve (12) months at the State or Local Board's discretion. The types of services provided and the duration of services must be determined based on the needs of the individual. The scope of these followup services may be less intensive for youth who have only participated in summer youth employment opportunities. (WIA sec. 129(c)(2)(I).)

§ 664.460 What are work experiences for youth?

(a) Work experiences are planned, structured learning experiences that take place in a workplace for a limited period of time. As stated in § 664.470, work experiences may be paid or unpaid.
(b) Work experience workplaces may be in the private, for-profit sector; the non-profit sector; or the public sector.
(c) Work experiences are designed to enable youth to gain exposure to the working world and its requirements. Work experiences should help youth acquire the personal attributes, knowledge, and skills needed to obtain a job and advance in employment. The purpose is to provide the youth participant with the opportunities for career exploration and skill development and is not to benefit the employer, although the employer may, in fact, benefit from the activities performed by the youth. Work experiences may be subsidized or unsubsidized and may include the following elements:
(1) Instruction in employability skills or generic workplace skills such as those identified by the Secretary's Commission on Achieving Necessary Skills (SCANS);
(2) Exposure to various aspects of an industry;
(3) Progressively more complex tasks;
(4) Internships and job shadowing;
(5) The integration of basic academic skills into work activities;
(6) Supported work, work adjustment, and other transition activities;
(7) Entrepreneurship; and
(8) Other elements designed to achieve the goals of work experience.
(d) In most cases, on-the-job training is not an appropriate work experiences activity for youth participants under age 18. Local program operators may choose, however, to use this service strategy for eligible youth when it is appropriate based on the needs identified by the objective assessment of an individual youth participant. (WIA sec. 129(c)(2)(D).)

§ 664.470 Are paid work experiences allowable activities?

Funds under the Act may be used to pay wages and related benefits for work experiences in the public; private; for-profit; or non-profit sectors where the objective assessment and individual service strategy indicate that work experiences are appropriate. (WIA sec. 129(c)(2)(D).)

Subpart E—Concurrent Enrollment

§ 664.500 May youth participate in both youth and adult programs concurrently?

(a) Under the Act, eligible youth are 14 through 21 years of age. Adults are defined in the Act as individuals age 18 and older. Thus, individuals ages 18 through 21 may be eligible for both adult and youth programs.
(b) Eligible individuals who are 18 through 21 years old may participate in adult and youth programs concurrently. Such individuals must be eligible under the youth or adult eligibility criteria applicable to the services received. Local program operators may determine, for individuals in this age group, the appropriate level and balance of youth and/or adult services.
(c) Local program operators must identify and track the funding streams which pay the costs of services provided to individuals who are participating in youth and adult programs concurrently, and ensure that services are not duplicated.

§ 664.510 Are Individual Training Accounts allowed for youth participants?

No. However, individuals age 18 and above, who are eligible for training services under the adult and dislocated worker program, may receive Individual Training Accounts through that program. Requirements for concurrent participation requirements are set forth in § 664.500 of this part. To the extent possible, in order to enhance youth participant choice, youth participants should be involved in the selection of educational and training activities.

Subpart F—Summer Employment Opportunities

§ 664.600 Are Local Boards required to offer summer employment opportunities in the local youth program?

(a) Yes. Local Boards are required to offer summer youth employment opportunities that link academic and occupational learning as part of the menu of services required in § 664.410(a).
(b) Summer youth employment must provide direct linkages to academic and occupational learning, and may provide other elements and strategies as appropriate to serve the needs and goals of the participants.
(c) Local Boards may determine how much of available youth funds will be used for summer and for year-round youth activities.
(d) The summer youth employment opportunities element is not intended to be a stand-alone program. Local programs should integrate a youth's participation in that element into a comprehensive strategy for addressing the youth's employment and training needs. Youths who participate in summer employment opportunities must be provided with a minimum of twelve months of followup services, as required in § 664.450. (WIA sec. 129(c)(2)(C).)

§ 664.610 How is the summer employment opportunities element administered?

Chief elected officials and Local Boards are responsible for ensuring that the local youth program provides summer employment opportunities to youth. The chief elected officials are the grant recipients for local youth funds, unless another entity is chosen to be grant recipient or fiscal agent under WIA section 117(d)(3)(B). If, in the administration of the summer employment opportunities element of the local youth program, providers other than the grant recipient/fiscal agent are used to provide summer youth employment opportunities, these providers must be selected by awarding a grant or contract on a competitive

basis, based on the recommendation of the youth council and on criteria contained in the State Plan. (WIA sec. 129(c)(2)(C).)

§ 664.620 Do the core indicators described in 20 CFR 666.100(a)(3) apply to participation in summer employment activities?

Yes. The summer employment opportunities element is one of a number of activities authorized by the WIA youth program. The law provides specific core indicators of performance for youth, and requires that all participating youth be included in the determination of whether the local levels of performance are met. Program operators can help ensure positive outcomes for youth participants by providing them with continuity of services.

Subpart G—One-Stop Services to Youth

§ 664.700 What is the connection between the youth program and the One-Stop service delivery system?

(a) The chief elected official (or designee under WIA section 117(d)(3)(B)), as the local grant recipient for the youth program is a required One-Stop partner and is subject to the requirements that apply to such partners, described in 20 CFR part 662.

(b) In addition to the provisions of 20 CFR part 662, connections between the youth program and the One-Stop system may include those that facilitate:

(1) The coordination and provision of youth activities;

(2) Linkages to the job market and employers;

(3) Access for eligible youth to the information and services required in §§ 664.400 and 664.410 of this part; and

(4) Other activities designed to achieve the purposes of the youth program and youth activities as described in WIA section 129(a). (WIA secs. 121(b)(1)(B)(i); 129.)

§ 664.710 Do Local Boards have the flexibility to offer services to area youth who are not eligible under the youth program through the One-Stop centers?

Yes. However, One-Stop services for non-eligible youth must be funded by programs that are authorized to provide services to such youth. For example, basic labor exchange services under the Wagner-Peyser Act may be provided to any youth.

Subpart H—Youth Opportunity Grants

§ 664.800 How are the recipients of Youth Opportunity Grants selected?

(a) Youth Opportunity Grants are awarded through a competitive selection process. The Secretary establishes appropriate application procedures, selection criteria, and an approval process for awarding Youth Opportunity Grants to accomplish the purpose of the Act and use available funds in an effective manner in the Solicitation for Grant Applications announcing the competition.

(b) The Secretary distributes grants equitably among urban and rural areas by taking into consideration such factors as the following:

(1) The poverty rate in urban and rural communities;

(2) The number of people in poverty in urban and rural communities; and

(3) The quality of proposals received. (WIA sec.169(a) and (e).)

§ 664.810 How does a Local Board or other entity become eligible to receive a Youth Opportunity Grant?

(a) A Local Board is eligible to receive a Youth Opportunity Grant if it serves a community that:

(1) Has been designated as an empowerment zone (EZ) or enterprise community (EC) under section 1391 of the Internal Revenue Code of 1986;

(2) Is located in a State that does not have an EZ or an EC and that has been designated by its Governor as a high poverty area; or

(3) Is one of two areas in a State that has been designated by the Governor as an area for which a local board may apply for a Youth Opportunity Grant, and that meets the poverty rate criteria in sections 1392 (a)(4), (b), and (d) of the Internal Revenue Code of 1986.

(b) An entity other than a Local Board is eligible to receive a grant if that entity:

(1) Is a WIA Indian and Native American grant recipient under WIA sec. 166; and

(2) Serves a community that:

(i) Meets the poverty rate criteria in sections 1392(a)(4), (b), and (d) of the Internal Revenue Code of 1986; and

(ii) Is located on an Indian reservation or serves Oklahoma Indians or Alaska Native villages or Native groups, as provided in WIA section 169 (d)(2)(B). (WIA sec. 169(c) and (d).)

§ 664.820 Who is eligible to receive services under Youth Opportunity Grants?

All individuals ages 14 through 21 who reside in the community identified in the grant are eligible to receive services under the grant. (WIA sec. 169(a).)

§ 664.830 How are performance measures for Youth Opportunity Grants determined?

(a) The Secretary negotiates performance measures, including appropriate performance levels for each indicator, with each selected grantee, based on information contained in the application.

(b) Performance indicators for the measures negotiated under Youth Opportunity Grants are the indicators of performance provided in WIA sections. 136 (b)(2)(A) and (B). (WIA sec. 169(f).)

PART 665—STATEWIDE WORKFORCE INVESTMENT ACTIVITIES UNDER TITLE I OF THE WORKFORCE INVESTMENT ACT

Subpart A—General Description

Sec.

665.100 What are the Statewide workforce investment activities under title I of WIA?
665.110 How are Statewide workforce investment activities funded?

Subpart B—Required and Allowable Statewide Workforce Investment Activities

§ 665.200 What are required Statewide workforce investment activities?
665.210 What are allowable Statewide workforce investment activities?
665.220 Who is an "incumbent worker" for purposes of Statewide workforce investment activities?

Subpart C—Rapid Response Activities

665.300 What are rapid response activities and who is responsible for providing them?
665.310 What rapid response activities are required?
665.320 May other activities may be undertaken as part of rapid response?
665.330 Are the NAFTA/TAA requirements for rapid response also required activities?

Authority: Section 506(c), Pub. L. 105–220; 20 USC 9276(c)

Subpart A—General Description

§ 665.100 What are the Statewide workforce investment activities under title I of WIA?

Statewide workforce investment activities include Statewide employment and training activities for adults and dislocated workers, as described in WIA section 134(a), and Statewide youth activities, as described in WIA section 129 (b). They include both required and allowable activities. In accordance with the requirements of this subpart, the State may develop policies and strategies for use of Statewide workforce investment funds. Descriptions of these policies and strategies must be included in the State Plan. (WIA secs. 129(b); 134(a).)

§ 665.110 How are Statewide workforce investment activities funded?

(a) Except for the Statewide rapid response activities described in paragraph (c) of this section, Statewide workforce investment activities are

supported by funds reserved by the Governor under WIA section 128(a).

(b) Funds reserved by the Governor for Statewide workforce investment activities may be combined and used for any of the activities authorized in WIA secstions 129(b), 134(a)(2)(B) or 134(a)(3)(A) (which are described in §§ 665.200 and 665.210), regardless of whether the funds were allotted through the youth, adult, or dislocated worker funding streams.

(c) Funds for Statewide rapid response activities are reserved under WIA sec. 133(a)(2) and may be used to provide the activities authorized at sec. 134(a)(2)(A) (which are described in §§ 665.310 to 665.330 of this part). (WIA secs 129(b); 133(a)(2); 134(a)(2)(B); and 134(a)(3)(A).)

Subpart B—Required and Allowable Statewide Workforce Investment Activities

§ 665.200 What are required Statewide workforce investment activities?

Required Statewide workforce investment activities are:

(a) Required rapid response activities, as described in § 665.310 of this part;

(b) Disseminating:

(1) The State list of eligible providers of training services (including those providing non-traditional training services), for adults and dislocated workers;

(2) Information identifying eligible providers of on-the-job training and customized training;

(3) Performance and program cost information about these providers, as described in 20 CFR 663.540; and

(4) A list of eligible providers of youth activities as described in WIA section 123;

(c) Conducting evaluations, under WIA section 136(e), of workforce investment activities for adults, dislocated workers and youth, in order to establish and promote methods for continuously improving such activities to achieve high-level performance within, and high-level outcomes from, the Statewide workforce investment system. Such evaluations must be conducted in coordination with local boards in the State and, to the maximum extent practicable, in coordination with Federal evaluations carried out under WIA section 172.

(d) Providing incentive grants:

(1) To local areas for regional cooperation among local boards (including local boards for a designated region, as described in 20 CFR 661.290);

(2) For local coordination of activities carried out under WIA; and

(3) For exemplary performance by local areas on the performance measures.

(e) Providing technical assistance to local areas that fail to meet local performance measures.

(f) Assisting in the establishment and operation of One-Stop delivery systems, in accordance with the strategy described in the State workforce investment plan. [WIA sec. 112(b)(14).]

(g) Providing additional assistance to local areas that have high concentrations of eligible youth.

(h) Operating a fiscal and management accountability information system, based on guidelines established by the Secretary after consultation with the Governors, chief elected officials, and One-Stop partners, as required by WIA section 136(f). (WIA secs. 129(b)(2) and 134(a)(2).)

§ 665.210 What are allowable Statewide workforce investment activities?

Allowable Statewide workforce investment activities include:

(a) State administration of the adult, dislocated worker and youth workforce investment activities, consistent with the five percent administrative cost limitation at 20 CFR 667.210(a)(1).

(b) Providing capacity building and technical assistance to local areas, including Local Boards, One-Stop operators, One-Stop partners, and eligible providers, which may include:

(1) Staff development and training; and

(2) The development of exemplary program activities.

(c) Conducting research and demonstrations.

(d) Establishing and implementing innovative incumbent worker training programs, which may include an employer loan program to assist in skills upgrading, and programs targeted to empowerment zones and enterprise communities.

(e) Providing support to local areas for the identification of eligible training providers.

(f) Implementing innovative programs for displaced homemakers, and programs to increase the number of individuals trained for and placed in non-traditional employment.

(g) Carrying out adult and dislocated worker employment and training activities as the State determines are necessary to assist local areas in carrying out local employment and training activities.

(h) Carrying out youth activities Statewide.

(i) Preparation and submission to the Secretary of the annual performance progress report as described in 20 CFR 667.300(e). (WIA secs. 129(b)(3) and 134(a)(3).)

§ 665.220 Who is an "incumbent worker" for purposes of Statewide workforce investment activities?

States may establish policies and definitions to determine which workers are eligible for incumbent worker services under this subpart. An incumbent worker is an individual who is employed, but an incumbent worker does not necessarily have to meet the eligibility requirements for intensive and training services for employed adults and dislocated workers at 20 CRF 663.220(a)(2) and 663.310. (WIA sec. 134(a)(3)(A)(iv)(I).)

Subpart C—Rapid Response Activities

§ 665.300 What are rapid response activities and who is responsible for providing them?

(a) Rapid response activities are described in §§ 665.310 through 665.330 of this part. They encompass the activities necessary to plan and deliver services to enable dislocated workers to transition to new employment as quickly as possible, following either a permanent closure or mass layoff, or a natural or other disaster resulting in a mass job dislocation.

(b) The State is responsible for providing rapid response activities. Rapid response is a required activity carried out in local areas by the State, or an entity designated by the State, in conjunction with the Local Board and chief elected officials. The State must establish methods by which to provide additional assistance to local areas that experience disasters, mass layoffs, plant closings, or other dislocation events when such events substantially increase the number of unemployed individuals.

(c) States must establish a rapid response dislocated worker unit to carry out Statewide rapid response activities. (WIA secs. 101(38), 112(b)(17)(A)(ii) and 134(a)(2)(A).)

§ 665.310 What rapid response activities are required?

Rapid response activities must include:

(a) On-site contact with the employer, representatives of the affected workers, and the local community, which may include an assessment of the:

(1) Layoff plans and schedule of the employer;

(2) Potential for averting the layoff(s) in consultation with State or local economic development agencies, including private sector economic development entities;

(3) Background and probable assistance needs of the affected workers;

(4) Reemployment prospects for workers in the local community; and

(5) Available resources to meet the short and long-term assistance needs of the affected workers;

(b) The provision of information and access to unemployment compensation benefits, comprehensive One-Stop system services, and employment and training activities, including information on the Trade Adjustment Assistance program and the NAFTA–TAA program;

(c) The provision of guidance and/or financial assistance in establishing a labor-management committee voluntarily agreed to by labor and management, or a workforce transition committee comprised of representatives of the employer, the affected workers and the local community. The committee may devise and oversee an implementation strategy that responds to the reemployment needs of the workers. The assistance to this committee may include:

(1) The provision of training and technical assistance to members of the committee;

(2) Funding the operating costs of a committee to enable it to provide advice and assistance in carrying out rapid response activities and in the design and delivery of WIA-authorized services to affected workers. Typically, such support will last no longer than six months; and

(3) Providing a list of potential candidates to serve as a neutral chairperson of the committee.

(d) The provision of emergency assistance adapted to the particular closing, layoff or disaster.

(e) The provision of assistance to the local board and chief elected official(s) to develop a coordinated response to the dislocation event and, as needed, obtain access to State economic development assistance. Such coordinated response may include the development of an application for National Emergency Grant under 20 CFR part 671. (WIA secs. 101(38) and 134(a)(2)(A).)

§ 665.320 May other activities be undertaken as part of rapid response?

Yes. A State or designated entity may provide additional rapid response activities in addition to the activities required to be provided under § 665.310. In order to provide effective rapid response upon notification of a permanent closure or mass layoff, or a natural or other disaster resulting in a mass job dislocation, the State or designated entity may:

(a) In conjunction, with other appropriate Federal, State and Local agencies and officials, employer associations, technical councils or other industry business councils, and labor organizations:

(1) Develop prospective strategies for addressing dislocation events, that ensure rapid access to the broad range of allowable assistance;

(2) Identify strategies for the aversion of layoffs; and

(3) Develop and maintain mechanisms for the regular exchange of information relating to potential dislocations, available adjustment assistance, and the effectiveness of rapid response strategies.

(b) In collaboration with the appropriate State agency(ies), collect and analyze information related to economic dislocations, including potential closings and layoffs, and all available resources in the State for dislocated workers in order to provide an adequate basis for effective program management, review and evaluation of rapid response and layoff aversion efforts in the State.

(c) Participate in capacity building activities, including providing information about innovative and successful strategies for serving dislocated workers, with local areas serving smaller layoffs.

(d) Assist in devising and overseeing strategies for:

(1) Layoff aversion, such as prefeasibility studies of avoiding a plant closure through an option for a company or group, including the workers, to purchase the plant or company and continue it in operation;

(2) Incumbent worker training, including employer loan programs for employee skill upgrading; and

(3) Linkages with economic development activities at the Federal, State and local levels, including Federal Department of Commerce programs and available State and local business retention and recruitment activities.

§ 665.330 Are the NAFTA/TAA requirements for rapid response also required activities?

The Governor must ensure that rapid response activities under WIA are made available to workers who, under the NAFTA Worker Security Act (Pub. L. 103–182), are members of a group of workers (including those in any agricultural firm or subdivision of an agricultural firm) for which the Governor has made a finding that:

(a) The sales or production, or both, of such firm or subdivision have decreased absolutely, and

(b)(1) Imports from Mexico or Canada of articles like or directly competitive with those produced by such firm or subdivision have increased; or

(2) There has been a shift in production by such workers' firm or subdivision to Mexico or Canada of articles which are produced by the firm or subdivision.

PART 666—PERFORMANCE ACCOUNTABILITY UNDER TITLE I OF THE WORKFORCE INVESTMENT ACT

Subpart A—State Measures of Performance

Sec.
666.100 What performance indicators must be included in a State's plan?
666.110 May a Governor require additional indicators of performance?
666.120 What are the procedures for negotiating annual levels of performance?
666.130 Under what conditions may a State or DOL request revisions to the State adjusted levels of performance?
666.140 Which individuals receiving services are included in the core indicators of performance?
666.150 What responsibility do States have to use quarterly wage record information for performance accountability?

Subpart B—Incentives and Sanctions for State Performance

666.200 Under what circumstances is a State eligible for an Incentive Grant?
666.205 What are the time frames under which States submit performance progress reports and apply for incentive grants?
666.210 How may Incentive Grant funds be used?
666.220 What information must be included in State Board's application for an Incentive Grant?
666.230 How will the Department determine the amounts for Incentive Grant awards?
666.240 Under what circumstances may a sanction be applied to a State that fails to achieve adjusted levels of performance for title I?

Subpart C—Local Measures of Performance

666.300 What performance indicators apply to local areas?
666.310 What levels of performance apply to the indicators of performance in local areas?

Subpart D—Incentives and Sanctions for Local Performance

666.400 Under what circumstances are local areas eligible for State Incentive Grants?
666.410 How may local incentive awards be used?
666.420 Under what circumstances may a sanction be applied to local areas for poor performance?

Authority: Sec. 506(c), Pub. L. 105–220; 20 U.S.C. 9276(c).

Subpart A—State Measures of Performance

§ 666.100 What performance indicators must be included in a State's plan?

(a) All States submitting a State Plan under WIA title I, subtitle B must propose expected levels of performance for each of the core indicators of performance for the adult, dislocated worker and youth programs, respectively and the two customer satisfaction indicators.

(1) For the Adult program, these indicators are:

(i) Entry into unsubsidized employment;

(ii) Retention in unsubsidized employment six months after entry into the employment;

(iii) Earnings received in unsubsidized employment six months after entry into the employment; and

(iv) Attainment of a recognized credential related to achievement of educational skills (such as a secondary school diploma or its recognized equivalent), or occupational skills, by participants who enter unsubsidized employment.

(2) For the Dislocated Worker program, these indicators are:

(i) Entry into unsubsidized employment;

(ii) Retention in unsubsidized employment six months after entry into the employment;

(iii) Earnings received in unsubsidized employment six months after entry into the employment; and

(iv) Attainment of a recognized credential related to achievement of educational skills (such as a secondary school diploma or its recognized equivalent), or occupational skills, by participants who enter unsubsidized employment.

(3) For the Youth program, these indicators are:

(i) For eligible youth aged 14 through 18:

(A) Attainment of basic skills, and, as appropriate, work readiness or occupational skills;

(B) Attainment of secondary school diplomas and their recognized equivalents; and

(C) Placement and retention in postsecondary education, advanced training, military service, employment, or qualified apprenticeships.

(ii) For eligible youth aged 19 through 21:

(A) Entry into unsubsidized employment;

(B) Retention in unsubsidized employment six months after entry into the employment;

(C) Earnings received in unsubsidized employment six months after entry into the employment; and

(D) Attainment of a recognized credential related to achievement of educational skills (such as a secondary school diploma or its recognized equivalent), or occupational skills, by participants who enter post-secondary education, advanced training, or unsubsidized employment.

(4) A single customer satisfaction measure for employers and a single customer satisfaction indicator for participants must be used for the WIA title I, subtitle B programs for adults, dislocated workers and youth. (WIA sec. 136(b)(2).)

(b) After consultation with the representatives identified in WIA secs. 136(i) and 502(b), the Departments of Labor and Education will issue definitions for the performance indicators established under title I and title II of WIA. (WIA secs. 136(b), (f) and (i).)

§ 666.110 May a Governor require additional indicators of performance?

Yes. Governors may develop additional indicators of performance for adults, youth and dislocated worker activities. These indicators must be included in the State Plan. (WIA sec. 136(b)(2)(C).)

§ 666.120 What are the procedures for negotiating annual levels of performance?

(a) The Department issues instructions on the specific information that must accompany the State Plan and that is used to review the State's expected levels of performance. The instructions may require that levels of performance for years two and three be expressed as a percentage improvement over the immediately preceding year's actual performance, consistent with the objective of continuous improvement.

(b) States must submit expected levels of performance for the required indicators for each of the first three program years covered by the Plan.

(c) The Secretary and the Governor must reach agreement on levels of performance for each core indicator and the customer satisfaction indicators. In negotiating these levels, the following must be taken into account:

(1) The expected levels of performance identified in the State Plan;

(2) The extent to which the levels of performance for each core indicator assist in achieving high customer satisfaction;

(3) The extent to which the levels of performance promote continuous improvement and ensure optimal return on the investment of Federal funds; and

(4) How the levels compare with those of other States, taking into account factors including differences in economic conditions, participant characteristics, and the proposed service mix and strategies.

(d) The levels of performance agreed to under paragraph (c) of this section will be the State's adjusted levels of performance for the first three years of the State Plan. These levels will used to determine whether sanctions will be applied or incentive grant funds will be awarded.

(e) Before the fourth year of the State Plan, the Secretary and the Governor must reach agreement on levels of performance for each core indicator and the customer satisfaction indicators for the fourth and fifth years covered by the plan. In negotiating these levels, the factors listed in paragraph (c) of this section must be taken into account.

(f) The levels of performance agreed to under paragraph (e) of this section will be the State adjusted levels of performance for the fourth and fifth years of the plan and must be incorporated into the State Plan.

(g) Levels of performance for the additional indicators developed by the Governor are considered to be State adjusted levels of performance, but are not part of the negotiations described in paragraphs (c) and (e) of this section. (WIA sec. 136(b)(3).)

(h) State adjusted levels of performance may be revised in accordance with § 666.130 of this subpart.

§ 666.130 Under what conditions may a State or DOL request revisions to the State adjusted levels of performance?

(a) The DOL guidelines describe when and under what circumstances a Governor may request revisions to negotiated levels. These circumstances include significant changes in economic conditions, in the characteristics of participants entering the program, or in the services to be provided from when the initial plan was submitted and approved. (WIA sec. 136(b)(3)(A)(vi).)

(b) The guidelines will establish the circumstances under which a State will be required to submit revisions under specified circumstances.

§ 666.140 Which individuals receiving services are included in the core indicators of performance?

(a) The core indicators of performance apply to all individuals who are registered under 20 CFR 663.105 and 664.215 for the adult, dislocated worker and youth programs, except for those adults and dislocated workers who participate exclusively in self-service or

informational activities. (WIA sec. 136(b)(2)(A).)

(b) For registered participants, a standardized record that includes appropriate performance information must be maintained in accordance with WIA section 185(a)(3).

§ 666.150 What responsibility do States have to use quarterly wage record information for performance accountability?

(a) States must, consistent with State law, use quarterly wage record information in measuring the progress on State and local performance measures.

(b) The State must include in the State Plan a description of the State's performance accountability system, and a description of the State's strategy for using quarterly wage record information to measure the progress on State and local performance measures. The description must identify the entities that may have access to quarterly wage record information for this purpose.

(c) "Quarterly wage record information" means information regarding wages paid to an individual, the social security account number (or numbers, if more than one) of the individual and the name, address, State, and (when known) the Federal employer identification number of the employer paying the wages to the individual. (WIA sec. 136(f)(2).)

Subpart B—Incentives and Sanctions for State Performance

§ 666.200 Under what circumstances is a State eligible for an Incentive Grant?

A State is eligible to apply for an Incentive Grant if its performance for the immediately preceding year exceeds:

(a) The State's adjusted levels of performance for the required core indicators for the adult, dislocated worker and youth programs under title I of WIA as well as the customer satisfaction indicators for WIA title I programs;

(b) The adjusted levels of performance included in plans submitted to the Department of Education for title II Adult Education and Literacy programs; and

(c) The adjusted levels of performance under title I of the Carl D. Perkins Vocational and Technical Education Act (20 U.S.C. 2301 *et seq.*). (WIA sec. 503.)

§ 666.205 What are the time frames under which States submit performance progress reports and apply for incentive grants?

(a) State performance progress reports must be filed by the due date established in reporting instructions issued by the Department.

(b) Based upon the reports filed under paragraph (a) of this section, the Secretary will determine the amount of funds available, under WIA title I, to each eligible State for incentive grants, in accordance with the criteria of § 666.230. The award amounts for each eligible State will be published by the Secretary, after consultation with the Secretary of Education, within ninety (90) days after the due date for performance progress reports established under paragraph (a) of this section.

(c) Within forty-five (45) days of the publication of award amounts under paragraph (b) of this section, States may apply for incentive grants in accordance with the requirements of § 666.220.

§ 666.210 How may Incentive Grant funds be used?

Incentive grant funds are awarded to States to carry out any one or more innovative programs under titles I or II of WIA or the Carl D. Perkins Vocational and Technical Education Act, regardless of which Act is the source of the incentive funds. (WIA section 503(a).)

§ 666.220 What information must be included in State Board's application for an Incentive Grant?

(a) The Secretary of Labor, after consultation with the Secretary of Education, will issue instructions annually which will include the amount of funds available to be awarded for each State and provide instructions for submitting applications for an Incentive Grant.

(b) Each State desiring an incentive grant must submit to the Secretary an application, developed by the State Board, containing the following assurances:

(1) The State legislature was consulted regarding the development of the application.

(2) The application was approved by the Governor, the eligible agency (as defined in WIA section 203), and the State agency responsible for vocational and technical programs under the Carl D. Perkins Vocational and Technical Education Act.

(3) The State exceeded the State adjusted levels of performance for title I, the adjusted levels of performance under title II and the adjusted levels for vocational and technical programs under the Carl D. Perkins Vocational and Technical Education Act. (WIA section 503(b).)

§ 666.230 How does the Department determine the amounts for Incentive Grant awards?

(a) DOL determines the total amount to be allocated from funds available under WIA section 174(b) for Incentive Grants taking into consideration such factors as:

(1) The availability of funds under section 174(b) for technical assistance, demonstration and pilot projects, evaluations, and Incentive Grants and the needs for these activities;

(2) The number of States that are eligible for Incentive Grants and their relative program formula allocations under title I;

(3) The availability of funds under WIA section 136(g)(2) resulting from funds withheld for poor performance by States; and

(4) The range of awards established in WIA section 503(c).

(b) The award amount for eligible States will be published by the Secretary of Labor, after consultation with the Secretary of Education, within 90 days after the due date established under § 666.205(a) of the latest State performance progress report providing the annual information needed to determine State eligibility.

(c) In determining the amount available to an eligible State, the Secretary, with the Secretary of Education, may consider such factors as:

(1) The relative allocations of the eligible State compared to other States;

(2) The extent to which the adjusted levels of performance were exceeded;

(3) Performance improvement relative to previous years;

(4) Changes in economic conditions, participant characteristics and proposed service design since the adjusted levels of performance were negotiated;

(5) The eligible State's relative performance for each of the indicators compared to other States; and

(6) The performance on those indicators considered most important in terms of accomplishing national goals established by each of the respective Secretaries.

§ 666.240 Under what circumstances may a sanction be applied to a State that fails to achieve adjusted levels of performance for title I?

(a) If a State fails to meet the adjusted levels of performance agreed to under § 666.120 for core indicators of performance or customer satisfaction indicators for the adult, dislocated worker or youth program under title I of WIA, the Secretary must, upon request, provide technical assistance, as authorized under WIA sections 136(g) and 170.

(b) If a State fails to meet the adjusted levels of performance for core indicators of performance or customer satisfaction indicators for the same program in two successive years, the amount of the succeeding year's allocation for the applicable program may be reduced by up to five percent.

(c) The exact amount of any allocation reduction will be based upon the degree of failure to meet the adjusted levels of performance for core indicators. In making a determination of the amount, if any, of such a sanction, the Department may consider factors such as:

(1) The State's performance relative to other States;

(2) Improvement efforts underway;

(3) Incremental improvement on the performance measures;

(4) Technical assistance previously provided;

(5) Changes in economic conditions and program design;

(6) The characteristics of participants served compared to the participant characteristics described in the State Plan; and

(7) Performance on other core indicators of performance and customer satisfaction indicators for that program. (WIA section 136(g).)

(d) In accordance with 20 CFR 667.300(e), a State grant may be reduced for failure to submit an annual performance progress report.

(e) A State may request review of a sanction imposed by the Department in accordance with the provisions of 20 CFR 667.800.

Subpart C—Local Measures of Performance

§ 666.300 What performance indicators apply to local areas?

(a) Each local workforce investment area in a State is subject to the same core indicators of performance and the customer satisfaction indicators that apply to the State under § 666.100(a).

(b) In addition to the indicators described in paragraph (a) of this section, under § 666.110 of this part, the Governor may apply additional indicators of performance to local areas in the State. (WIA sec. 136(c)(1).)

§ 666.310 What levels of performance apply to the indicators of performance in local areas?

(a) The Local Board and the chief elected official must negotiate with the Governor and reach agreement on the local levels of performance for each indicator identified in § 666.300 of this subpart. The levels must be based on the State adjusted levels of performance established under § 666.120 and take into account the factors described in paragraph (b) of this section.

(b) In determining the appropriate local levels of performance, the Governor, Local Board and chief elected official must take into account specific economic, demographic and other characteristics of the populations to be served in the local area.

(c) The performance levels agreed to under paragraph (a) of this section must be incorporated in the local plan. (WIA secs. 118(b)(3) and 136(c).)

Subpart D—Incentives and Sanctions for Local Performance

§ 666.400 Under what circumstances are local areas eligible for State Incentive Grants?

(a) States must use a portion of the funds reserved for Statewide workforce investment activities under WIA sections 128(a) and 133(a)(1) to provide Incentive Grants to local areas for regional cooperation among local boards (including local boards for a designated region as described in WIA section 116(c)), for local coordination of activities carried out under this Act, and for exemplary performance on the local performance measures established under subpart C of this part.

(b) The amount of funds used for Incentive Grants under paragraph (a) of this section and the criteria used for determining exemplary local performance levels to qualify for the incentive grants are determined by the Governor. (WIA sec. 134(a)(2)(B)(iii).)

§ 666.410 How may local incentive awards be used?

The local incentive grant funds may be used for any activities allowed under WIA title I–B.

§ 666.420 Under what circumstances may a sanction be applied to local areas for poor performance?

(a) If a local area fails to meet the levels of performance agreed to under § 666.310 for the core indicators of performance or customer satisfaction indicators for a program in any program year, technical assistance must be provided. The technical assistance must be provided by the Governor with funds reserved for Statewide workforce investment activities under WIA sections 128(a) and 133(a)(1), or, upon the Governor's request, by the Secretary. The technical assistance may include the development of a performance improvement plan, a modified local plan, or other actions designed to assist the local area in improving performance.

(b) If a local area fails to meet the levels of performance agreed to under § 666.310 for the core indicators of performance or customer satisfaction indicators for a program for two consecutive program years, the Governor must take corrective actions. The corrective actions may include the development of a reorganization plan under which the Governor:

(1) Requires the appointment and certification of a new Local Board;

(2) Prohibits the use of particular service providers or One-Stop partners that have been identified as achieving poor levels of performance; or

(3) Requires other appropriate measures designed to improve the performance of the local area.

(c) A local area may appeal to the Governor to rescind or revise a reorganization plan imposed under paragraph (b) of this section not later than thirty (30) days after receiving notice of the plan. The Governor must make a final decision within 30 days after receipt of the appeal. The Governor's final decision may be appealed by the Local Board to the Secretary under 20 CFR 667.650(b) not later than thirty (30) days after the local areas receives the decision. The decision by the Governor to impose a reorganization plan becomes effective at the time it is issued, and remains effective unless the Secretary rescinds or revises the reorganization plan. Upon receipt of the appeal from the local area, the Secretary must make a final decision within thirty (30) days. (WIA sec. 136(h).)

PART 667—ADMINISTRATIVE PROVISIONS UNDER TITLE I OF THE WORKFORCE INVESTMENT ACT

Subpart A—Funding

Sec.

667.100 When do Workforce Investment Act grant funds become available?
667.105 What award document authorizes the expenditure of Workforce Investment Act funds under title I of the Act?
667.107 What is the period of availability for expenditure of WIA funds?
667.110 What is the Governor/Secretary Agreement?
667.120 What planning information must a State submit in order to receive a formula grant?
667.130 How are WIA title I formula funds allocated to local workforce investment areas?
667.140 Does a local board have the authority to transfer funds between programs?
667.150 What reallotment procedures does the Secretary use?
667.160 What reallocation procedures must the Governors use?
667.170 What responsibility review does the Department conduct for awards made under WIA title I, subtitle D?

Subpart B—Administrative Rules, Costs and Limitations

667.200 What general fiscal and administrative rules apply to the use of WIA title I funds?
667.210 What administrative cost limits apply to Workforce Investment Act title I grants?
667.220 What Workforce Investment Act title I functions and activities constitute the costs of administration subject to the administrative cost limit?
667.250 What requirements relate to the enforcement of the Military Selective Service Act?
667.260 May WIA title I funds be spent for construction?
667.262 Are employment generating activities, or similar activities, allowable under WIA title I?
667.264 What other activities are prohibited under title I of WIA?
667.266 What are the limitations related to sectarian activities?
667.268 What prohibitions apply to the use of WIA title I funds to encourage business relocation?
667.269 What procedures and sanctions apply to violations of §§ 667.260 to 667.268?
667.270 What safeguards are there to ensure that participants in Workforce Investment Act employment and training activities do not displace other employees?
667.272 What wage and labor standards apply to participants in activities under title I of WIA?
667.274 What health and safety standards apply to the working conditions of participants in activities under title I of WIA?
667.275 What are a recipient's obligations to ensure nondiscrimination and equal opportunity, as well as nonparticipation in sectarian activities?

Subpart C—Reporting Requirements

667.300 What are the reporting requirements for Workforce Investment Act programs?

Subpart D—Oversight and Monitoring

667.400 Who is responsible for oversight and monitoring of WIA title I grants?
667.410 What are the oversight roles and responsibilities of recipients and subrecipients?

Subpart E—Resolution of Findings From Monitoring and Oversight Reviews

667.500 What procedures apply to the resolution of findings arising from audits, investigations, monitoring and oversight reviews?
667.505 How does the Department resolve investigative and monitoring findings?
667.510 What is the Grant Officer resolution process?

Subpart F—Grievance Procedures, Complaints, and State Appeals Processes

667.600 What local area, State and direct recipient grievance procedures must be established?
667.610 What processes does the Secretary use to review State and local grievances and complaints?
667.630 How are complaints and reports of criminal fraud and abuse addressed under WIA?
667.640 What additional appeal processes or systems must a State have for the WIA program?
667.645 What procedures apply to the appeals of non-designation of local areas?
667.650 What procedures apply to the appeals of the Governor's imposition of sanctions for substantial violations or performance failures by a local areas?

Subpart G—Sanctions, Corrective Actions, and Waiver of Liability

667.700 What procedure does the Department utilize to impose sanctions and corrective actions on recipients and subrecipients of WIA grant funds?
667.705 Who is responsible for funds provided under title I of WIA?
667.710 What actions are required to address the failure of a local area to comply with the applicable uniform administrative provisions?
667.720 How does the Department handle a recipient's request for waiver of liability under WIA section 184(d)(2)?
667.730 What is the procedure to handle a recipient's request for advance approval of contemplated corrective actions?
667.740 What procedure must be used for administering the offset/deduction provisions at WIA section 184(c)?

Subpart H—Administrative Adjudication and Judicial Review

667.800 What actions of the Department may be appealed to the Office of Administrative Law Judges?
667.810 What rules of procedure apply to hearings conducted under this subpart?
667.820 What authority will the Administrative Law Judge have in ordering relief as an outcome of an administrative hearing?
667.825 What special rules apply to reviews of MSFW and WIAINA grant selections?
667.830 When will the Administrative Law Judge issue a decision?
667.840 Is there an alternative dispute resolution process that may be used in place of an OALJ hearing?
667.850 Is there judicial review of a final order of the Secretary issued under WIA section 186?
667.860 Are there other authorities for the pursuit of remedies outside of the Act?

Subpart I—Transition Planning

667.900 What special rules apply during the JTPA/WIA transition?

Authority: Sec. 506(c), Pub. L. 105–220; 20 U.S.C. 9276(c).

Subpart A—Funding

§ 667.100 When do Workforce Investment Act grant funds become available?

(a) *Program year.* Except as provided in paragraph (b) of this section, fiscal year appropriations for programs and activities carried out under title I of WIA are available for obligation on the basis of a program year. A program year begins on July 1 in the fiscal year for which the appropriation is made and ends on June 30 of the following year.

(b) *Youth fund availability.* Fiscal year appropriations for a program year's youth activities, authorized under chapter 4, subtitle B, title I of WIA, may be made available for obligation beginning on April 1 of the fiscal year for which the appropriation is made.

§ 667.105 What award document authorizes the expenditure of Workforce Investment Act funds under title I of the Act?

(a) *Agreement.* All WIA title I funds that are awarded by grant, contract or cooperative agreement are issued under an agreement between the Grant Officer/Contracting Officer and the recipient. The agreement describes the terms and conditions applicable to the award of WIA title I funds.

(b) *Grant funds awarded to States.* Under the Governor/Secretary Agreement described in § 667.110, each program year, the grant agreement described in paragraph (a) of this section will be executed and signed by the Governor or the Governor's designated representative and Secretary or the Grant Officer. The grant agreement and associated Notices of Obligation are the basis for Federal obligation of funds allotted to the States in accordance with WIA sections 127(b) and 132(b) for each program year.

(c) *Indian and Native American Programs.* Awards of grants, contracts or cooperative agreements for the WIA Indian and Native American program will be made to eligible entities on a competitive basis every two program years for a two-year period, in accordance with the provisions of 20 CFR part 668. An award for the succeeding two-year period may be made to the same recipient on a non-competitive basis if the recipient:

(1) Has performed satisfactorily; and

(2) Submits a satisfactory two-year program plan for the succeeding two-year grant, contract or agreement period.

(d) *Migrant and Seasonal Farmworker Programs.* (1) Awards of grants or contracts for the Migrant and Seasonal Farmworker program will be made to eligible entities on a competitive basis every two program years for a two-year

period, in accordance with the provisions of 20 CFR part 669. An award for the succeeding two-year period may be made to the same recipient if the recipient:

(i) Has performed satisfactorily; and (ii) Submits a satisfactory two-year program plan for the succeeding two-year period.

(2) A grant or contract may be renewed under the authority of paragraph (d)(1) of this section no more than once during any four-year period for any single recipient.

(e) *Job Corps.* (1) Awards of contracts will be made on a competitive basis between the Contracting Officer and eligible entities to operate contract centers and provide operational support services.

(2) The Secretary may enter into interagency agreements with Federal agencies for funding, establishment, and operation of Civilian Conservation Centers for Job Corps programs.

(f) *Youth Opportunity Grants.* Awards of grants for Youth Opportunity programs will be made to eligible Local Boards and eligible entities for a one-year period. The grants may be renewed for each of the four succeeding years based on criteria that include successful performance.

(g) *Awards under WIA secs. 171 and 172.* (1) Awards of grants, contracts or cooperative agreements will be made to eligible entities for programs or activities authorized under WIA sections 171 or 172. These funds are for:

(i) Demonstration;
(ii) Pilot;
(iii) Multi-service;
(iv) Research;
(v) Multi-State projects; and
(vi) Evaluations

(2) Grants and contracts under paragraphs (g)(1)(i) and (ii) of this section will be awarded on a competitive basis, except that a noncompetitive award may be made in the case of a project that is funded jointly with other public or private entities that provide a portion of the funding.

(3) Contracts and grants under paragraphs (g)(1)(iii), (iv), and (v) of this section in amounts that exceed $100,000 will be awarded on a competitive basis, except that a noncompetitive award may be made in the case of a project that is funded jointly with other public or private sector entities that provide a substantial portion of the assistance under the grant or contract for the project.

(4) Grants or contracts for carrying out projects in paragraphs (g)(1)(iii), (iv), and (v) of this section may not be awarded to the same organization for more than three consecutive years, unless the project is competitively reevaluated within that period.

(5) Entities with nationally recognized expertise in the methods, techniques and knowledge of workforce investment activities will be provided priority in awarding contracts or grants for the projects under paragraphs (g)(1)(iii), (iv), and (v) of this section.

(6) A peer review process will be used for projects under paragraphs (g)(1)(iii), (iv), and (v) of this section for grants that exceed $500,000, and to designate exemplary and promising programs.

(h) *Termination.* Each grant terminates when the period of fund availability has expired. The grant must be closed in accordance with the closeout provisions at 29 CFR 95.71 or 97.50, as appropriate.

§ 667.107 What is the period of availability for expenditure of WIA funds?

(a) *Grant funds expended by States.* Funds allotted to States under WIA sections 127(b) and 132(b), for any program year are available for expenditure by the State receiving the funds only during that program year and the two succeeding program years.

(b) *Grant funds expended by local areas.* (1) Funds allocated by a State to a local area under WIA section 128(b) and 133(b), for any program year are available for expenditure only during that program year and the succeeding program year.

(2) Funds which are not expended by a local area in the two-year period described in paragraph (b)(1) of this section, must be returned to the State. Funds so returned are available for expenditure by State and local recipients and subrecipients only during the third program year of availability. These funds may:

(i) Be used for Statewide projects, or

(ii) Be distributed to other local areas which had fully expended their allocation of funds for the same program year within the two-year period.

(c) *Job Corps.* Funds obligated for any program year for any Job Corps activity carried out under title I, subtitle C, of WIA, may be expended during that program year and the two succeeding program years.

(d) *Funds awarded under WIA section 171 and 172.* (a) Funds obligated for any program year for a program or activity authorized under section 171 or 172 of WIA remain available until expended.

(e) *Other programs under title I of WIA.* For all other grants, contracts and cooperative agreements issued under title I of WIA the period of availability for expenditure is set in the terms and conditions of the award document.

§ 667.110 What is the Governor/Secretary Agreement?

(a) To establish a continuing relationship under the Act, the Governor and the Secretary will enter into a Governor/Secretary Agreement. The Agreement will consist of a statement assuring that the State will comply with:

(1) The Workforce Investment Act and all applicable rules and regulations, and

(2) The Wagner-Peyser Act and all applicable rules and regulations.

(b) The Governor/Secretary Agreement may be modified, revised or terminated at any time, upon the agreement of both parties.

§ 667.120 What planning information must a State submit in order to receive a formula grant?

Each State seeking financial assistance under WIA sections 127 (youth) or 132 (adults and dislocated workers) or under the Wagner-Peyser Act must submit a single State Plan. The requirements for the plan content and the plan review process are described in WIA section 112, Wagner-Peyser section 8, and 20 CFR § 652.6, 652.7, and 661.220.

§ 667. 130 How are WIA title I formula funds allocated to local workforce investment areas?

(a) *General.* The Governor must allocate WIA formula funds allotted for services to youth, adults and dislocated workers in accordance with WIA sections 128 and 133, and this section.

(1) State Boards must assist Governors in the development of any discretionary within-State allocation formulas. (WIA sec. 111(d)(5).)

(2) Within-State allocations must be made:

(i) In accordance with the allocation formulas contained in WIA section 128(b) and 133(b) and in the State workforce investment plan, and (ii) After consultation with chief elected officials in each of the workforce investment areas.

(b) *State Reserve.* (1) Of the WIA formula funds allotted for services to youth, adults and dislocated workers, the Governor must reserve funds from each of these sources for Statewide workforce investment activities. In making these reservations, the Governor may reserve up to fifteen (15) percent from each of these sources. Funds reserved under this paragraph may be combined and spent on Statewide employment and training activities, for adults and dislocated workers, and Statewide youth activities, as described in 20 CFR 665.200 and 665.210, without regard to the funding source of the reserved funds.

(2) The Governor must reserve a portion of the dislocated worker funds for Statewide rapid response activities, as described in WIA section 134(a)(2)(A) and 20 CFR 665.310 through 665.330. In making this reservation, the Governor may reserve up to twenty-five (25) percent of the dislocated worker funds.

(c) *Youth allocation formula.* (1) Unless the Governor elects to distribute funds in accordance with the discretionary allocation formula described in paragraph (c)(2) of this section, the remainder of youth funds not reserved under paragraph (b)(1) of this section must be allocated:

(i) 33⅓ percent on the basis of the relative number of unemployed individuals in areas of substantial unemployment in each workforce investment area, compared to the total number of unemployed individuals in all areas of substantial unemployment in the State;

(ii) 33⅓ percent on the basis of the relative excess number of unemployed individuals in each workforce investment area, compared to the total excess number of unemployed individuals in the State; and

(iii) 33⅓ percent on the basis of the relative number of disadvantaged youth in each workforce investment area, compared to the total number of disadvantaged youth in the State. [WIA sec. 128(b)(2)(A)(i)]

(2) *Discretionary youth allocation formula.* In lieu of making the formula allocation described in paragraph (c)(1) of this section, the State may allocate youth funds under a discretionary formula. Under that formula, the State must allocate a minimum of 70 percent of youth funds not reserved under paragraph (b)(1) of this section on the basis of the formula in paragraph (c)(1) of this section, and may allocate up to 30 percent on the basis of a formula that:

(i) Incorporates additional factors (other than the factors described in pargraph (c)(1) of this section) relating to:

(A) Excess youth poverty in urban, rural and suburban local areas; and

(B) Excess unemployment above the State average in urban, rural and suburban local areas; and

(ii) Was developed by the State Board and approved by the Secretary of Labor as part of the State workforce investment plan. (WIA sec. 128(b)(3).)

(d) *Adult allocation formula.* (1) Unless the Governor elects to distribute funds in accordance with the discretionary allocation formula described in paragraph (d)(2) of this section, the remainder of adult funds not reserved under paragraph (b)(1) of this section must be allocated:

(i) 33⅓ percent on the basis of the relative number of unemployed individuals in areas of substantial unemployment in each workforce investment area, compared to the total number of unemployed individuals in areas of substantial unemployment in the State;

(ii) 33⅓ percent on the basis of the relative excess number of unemployed individuals in each workforce investment area, compared to the total excess number of unemployed individuals in the State; and

(iii) 33⅓ percent on the basis of the relative number of disadvantaged adults in each workforce investment area, compared to the total number of disadvantaged adults in the State. (WIA sec. 133(b)(2)(A)(i))

(2) *Discretionary adult allocation formula.* In lieu of making the formula allocation described in paragraph (d)(1)of this section, the State may allocate adult funds under an discretionary formula. Under that formula, the State must allocate a minimum of 70 percent of adult funds on the basis of such formula in paragraph (d)(1) of this section, and may allocate up to 30 percent on the basis of a formula that:

(i) Incorporates additional factors (other than the factors described in paragraph (d)(1) of this section) relating to:

(A) Excess poverty in urban, rural and suburban local areas; and

(B) Excess unemployment above the State average in urban, rural and suburban local areas; and

(ii) Was developed by the State Board and approved by the Secretary of Labor as part of the State workforce investment plan. (WIA sec. 133(b)(3).)

(e) *Dislocated worker allocation formula.* (1) The remainder of dislocated worker funds not reserved under paragraph (b)(1) or (b)(2) of this section must be allocated on the basis of a formula prescribed by the Governor that distributes funds in a manner that addresses the State's worker readjustment assistance needs. Funds so distributed must not be less than 60 percent of the State's formula allotment.

(2)(i) The Governor's dislocated worker formula must use the most appropriate information available to the Governor, including information on:

(A) Insured unemployment data,

(B) Unemployment concentrations,

(C) Plant closings and mass layoff data,

(D) Declining industries data,

(E) Farmer-rancher economic hardship data, and

(F) Long-term unemployment data.

(ii) The State Plan must describe the data used for the formula and the weights assigned, and explain the State's decision to use other information or to omit any of the information sources set forth in paragraph (e)(2)(i) of this section.

(3) The Governor may not amend the dislocated worker formula more than once for any program year.

(4)(i) Dislocated worker funds initially reserved by the Governor for Statewide rapid response activities in accordance with paragraph (b)(2) of this section may be:

(A) Distributed to local areas, and (B) Used to operate projects in local areas in accordance with the requirements of WIA section 134(a)(2)(A) and 20 CFR 665.310 through 665.330.

(ii) The State Plan must describe the procedures for any distribution to local areas, including the timing and process for determining whether a distribution will take place.

§ 667.140 Does a Local Board have the authority to transfer funds between programs?

(a) A Local Board may transfer up to 20 percent of a program year allocation for adult employment and training activities, and up to 20 percent of a program year allocation for dislocated worker employment and training activities between the two programs.

(b) Before making any such transfer, a Local Board must obtain the Governor's approval.

(c) Local Boards may not transfer funds to or from the youth program.

§ 667.150 What reallotment procedures does the Secretary use?

(a) The first reallotment of funds among States will occur during PY 2001 based on obligations in PY 2000.

(b) The Secretary determines, during the first quarter of the program year, whether a State has obligated its required level of at least 80 percent of the funds allotted under WIA sections 127 and 132 for programs serving youth, adults, and dislocated workers for the prior year as separately determined for each of the three funding streams. Unobligated balances are determined based on allotments adjusted for any allowable transfer between the adult and dislocated worker funding streams. The amount to be recaptured from each State for reallotment, if any, is based on State obligations of the funds allotted to each State under WIA sections 127 and 132 for programs serving youth, adults, or dislocated workers, less any amount reserved (up to 5 percent at the State level and up to 10 percent at the local

level) for the costs of administration. This amount, if any, is separately determined for each funding stream.

(c) The Secretary reallots youth, adult and dislocated worker funds among eligible States in accordance with the provisions of WIA sections 127(c) and 132(c), respectively. To be eligible to receive a reallotment of youth, adult, or dislocated worker funds under the reallotment procedures, a State must have obligated at least 80 percent of the prior program year allotment, less any amount reserved for the costs of administration of youth, adult, or dislocated worker funds. A State's eligibility to receive a reallotment is separately determined for each funding stream.

§ 667.160 What reallocation procedures must the Governors use?

(a) The Governor may reallocate youth, adult, and dislocated worker funds among local areas within the State in accordance with the provisions of sections 128(c) and 133(c) of the Act. If the Governor chooses to reallocate funds, the provisions in paragraphs (b) and (c) of this section apply.

(b) For the youth, adult and dislocated worker programs, the amount to be recaptured from each local area for purposes of reallocation, if any, must be based on the amount by which the prior year's unobligated balance of allocated funds exceeds 20 percent of that year's allocation for the program, less any amount reserved (up to 10 percent) for the costs of administration. Unobligated balances must be determined based on allocations adjusted for any allowable transfer between funding streams. This amount, if any, must be separately determined for each funding stream.

(c) To be eligible to receive youth, adult or dislocated worker funds under the reallocation procedures, a local area must have obligated at least 80 percent of the prior program year's allocation, less any amount reserved (up to 10 percent) for the costs of administration, for youth, adult, or dislocated worker activities, as separately determined. A local area's eligibility to receive a reallocation must be separately determined for each funding stream.

§ 667.170 What responsibility review does the Department conduct for awards made under WIA title I, subtitle D?

(a) Before final selection as a potential grantee, the Department conducts a review of the available records to assess the organization's overall responsibility to administer Federal funds. As part of this review, the Department may consider any information that has come to its attention and will consider the organization's history with regard to the management of other grants, including DOL grants. The failure to meet any one responsibility test, except for those listed in paragraphs (a)(1) and (a)(2) of this section, does not establish that the organization is not responsible unless the failure is substantial or persistent (for two or more consecutive years). The responsibility tests include:

(1) The organization's efforts to recover debts (for which three demand letters have been sent) established by final agency action have been unsuccessful, or that there has been failure to comply with an approved repayment plan;

(2) Established fraud or criminal activity of a significant nature within the organization.

(3) Serious administrative deficiencies identified by the Department, such as failure to maintain a financial management system as required by Federal regulations;

(4) Willful obstruction of the audit process;

(5) Failure to provide services to applicants as agreed to in a current or recent grant or to meet applicable performance standards;

(6) Failure to correct deficiencies brought to the grantee's attention in writing as a result of monitoring activities, reviews, assessments, or other activities;

(7) Failure to return a grant closeout package or outstanding advances within 90 days of the grant expiration date or receipt of closeout package, whichever is later, unless an extension has been requested and granted; final billings reflecting serious cost category or total budget cost overrun;

(8) Failure to submit required reports;

(9) Failure to properly report and dispose of government property as instructed by DOL;

(10) Failure to have maintained effective cash management or cost controls resulting in excess cash on hand;

(11) Failure to ensure that a subrecipient complies with its OMB Circular A–133 audit requirements specified at § 667.200(b);

(12) Failure to audit a subrecipient within the required period;

(13) Final disallowed costs in excess of five percent of the grant or contract award if, in the judgement of the grant officer, the disallowances are egregious findings and;

(14) Failure to establish a mechanism to resolve a subrecipient's audit in a timely fashion.

(b) This responsibility review is independent of the competitive process. Applicants which are determined to be not responsible will not be selected as potential grantees irrespective of their standing in the competition.

Subpart B—Administrative Rules, Costs and Limitations

§ 667.200 What general fiscal and administrative rules apply to the use of WIA title I funds?

(a) *Uniform fiscal and administrative requirements.* (1) Except as provided in paragraphs (a)(3) through (6) of this section, State, local, and Indian tribal government organizations that receive grants or cooperative agreements under WIA title I must follow the common rule "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments" which is codified at 29 CFR part 97.

(2) Except as provided in paragraphs (a)(3) through (6) of this section, institutions of higher education, hospitals, and other non-profit organizations must the follow the common rule implementing OMB Circular A–110 which is codified at 29 CFR part 95.

(3) In addition to the requirements at 29 CFR 95.48 or 29 CFR 97.36(i) (as appropriate), all procurement contracts and other transactions between Local Boards and units of State or local governments must be conducted only on a cost reimbursement basis. No provision for profit is allowed. (WIA sec. 184(a)(3)(B).)

(4) In addition to the requirements at 29 CFR 95.42 or 29 CFR 97.36(b)(3) (as appropriate), which address codes of conduct and conflict of interest issues related to employees:

(i) A State Board member or a Local Board member or Youth Council member must neither cast a vote on, nor participate in, any decision-making capacity on the provision of services by such member (or any organization which that member directly represents), nor on any matter which would provide any direct financial benefit to that member or a member of his immediate family.

(ii) Neither membership on the State Board, the Local Board or the Youth Council nor the receipt of WIA funds to provide training and related services, by itself, violates these conflict of interest provisions.

(5) The addition method, described at 29 CFR 95.24 or 29 CFR 97.25(g)(2) (as appropriate), must be used for the all program income earned under WIA title I grants. When the cost of generating program income has been charged to the program, the gross amount earned must be added to the WIA program. However,

the cost of generating program income must be subtracted from the amount earned to establish the net amount of program income available for use under the grants when these costs have not been charged to the WIA program.

(6) Any excess of revenue over costs incurred for services provided by a governmental or non-profit entity must be included in program income. (WIA sec. 195(7)(A) and (B).)

(7) On a fee-for-service basis, employers may use local area services, facilities, or equipment funded under title I of WIA to provide employment and training activities to incumbent workers:

(i) When the services, facilities, or equipment are not being used by eligible participants;

(ii) If their use does not affect the ability of eligible particpants to use the services, facilities, or equipment; and

(iii) If the income generated from such fees is used to carry out programs authorized under this title.

(b) *Audit requirements.* (1) All governmental and non-profit organizations must follow the audit requirements of OMB Circular A–133. These requirements are found at 29 CFR 97.26 for governmental organizations and at 29 CFR 95.26 for institutions of higher education, hospitals, and other non-profit organizations.

(2)(i) The Department is responsible for audits of commercial organizations which are direct recipients of Federal financial assistance under WIA title I.

(ii) Commercial organizations which are subrecipients under WIA title I and which expend more than the minimum level specified in OMB Circular A–133 ($300,000 as of April 15, 1999) must have either an organization-wide audit conducted in accordance with A–133 or a program specific financial and compliance audit.

(c) *Allowable costs/cost principles.* All recipients and subrecipients must follow the Federal allowable cost principles that apply to their kind of organizations. The DOL regulations at 29 CFR 95.27 and 29 CFR 97.22 identify the Federal principles for determining allowable costs which each kind of recipient and subrecipient must follow. The applicable Federal principles for each kind of recipient are described in paragraphs (c)(1) through (5) of this section; all recipients must comply with paragraph (c)(6) of this section. For those selected items of cost requiring prior approval, the authority to grant or deny approval is delegated to the Governor for programs funded under sections 127 or 132 of the Act.

(1) Allowable costs for State, local, and Indian tribal government organizations must be determined under OMB Circular A–87, "Cost Principles for State, Local and Indian Tribal Governments."

(2) Allowable costs for non-profit organizations must be determined under OMB Circular A–122, "Cost Principles for Non-Profit Organizations."

(3) Allowable costs for institutions of higher education must be determined under OMB Circular A–21, "Cost Principles for Educational Institutions."

(4) Allowable costs for hospitals must be determined in accordance under appendix E of 45 CFR part 74, "Principles for Determining Costs Applicable to Research and Development Under Grants and Contracts with Hospitals."

(5) Allowable costs for commercial organizations and those non-profit organizations listed in Attachment C to OMB Circular A–122 must be determined under the provisions of the Federal Acquisition Regulation (FAR), at 48 CFR part 31.

(6) In addition to the allowable cost provisions identified above, the cost of information technology—computer hardware and software—will only be allowable under WIA title I grants when such computer technology is "Year 2000 compliant." To meet this requirement, information technology must be able to accurately process date/time (including, but not limited to, calculating, comparing and sequencing) from, into and between the twentieth and twenty-first centuries, and the years 1999 and 2000. The information technology must also be able to make leap year calculations. Furthermore, "Year 2000 compliant" information technology, when used in combination with other information technology, must accurately process date/time data if the other information technology properly exchanges date/time with it.

(d) *Government-wide debarment and suspension, and government-wide drug-free workplace requirements.* All WIA title I grant recipients and subrecipients must comply with the government-wide requirements for debarment and suspension, and the government-wide requirements for a drug-free workplace codified at 29 CFR part 98.

(e) *Restrictions on Lobbying.* All WIA title I grant recipients and subrecipients must comply with the restrictions on lobbying which are codified in the DOL regulations at 29 CFR part 93.

(f) *Nondiscrimination.* All WIA title I recipients, as the term is defined in 29 CFR 31.2(h), must comply with the nondiscrimination and equal opportunity provisions of WIA sec. 188 and its implementing regulations. Information on the handling of discrimination complaints by participants and other interested parties may be found at § 667.600(f) of this part.

(g) *Nepotism.* (1) No individual may be placed in a WIA employment activity if a member of that person's immediate family is directly supervised by or directly supervises that individual.

(2) To the extent that an applicable State or local legal requirement regarding nepotism is more restrictive than this provision, such State or local requirement must be followed.

§ 667.210 What administrative cost limits apply to Workforce Investment Act title I grants?

(a) Formula grants to States:

(1) As part of the 15 percent that a State may reserve for Statewide activities, the State may spend up to five percent (5%) of the amount allotted under sections 127(b)(1), 132(b)(1) and 132(b)(2) of the Act for the administrative costs of Statewide workforce investment activities.

(2) Local area expenditures for administrative purposes under WIA formula grants are limited to no more than ten percent (10%) of the amount allocated to the local area under sections 128(b) and 133(b) of the Act.

(3) Neither the five percent (5%) of the amount allotted that may be reserved for Statewide administrative costs nor the ten percent (10%) of the amount allotted that may be reserved for local administrative costs need to be allocated back to the individual funding streams.

(b) Limits on administrative costs for programs operated under subtitle D of title I will be identified in the grant or contract award document.

(c) Although administrative in nature, costs of information technology—computer hardware and software—needed for tracking and monitoring of WIA program, participant, or performance requirements; or for collecting, storing and disseminating information under the core services provisions at sections 134(d)(2)(E), (F), (G), (H) and (I) of the Act, are excluded from the administrative cost limit calculation.

(d) In a One-Stop environment, administrative costs borne by other sources of funds, such as the Wagner-Peyser Act, are not included in the administrative cost limit calculation. Each program's administrative activities area chargeable to its own grant and subject to its own administrative cost limitations.

§ 667.220 What Workforce Investment Act title I functions and activities constitute the costs of administration subject to the administrative cost limit?

(a) The costs of administration are that allocable portion of necessary and allowable costs that are associated with the overall management and administration of the workforce investment system and which are not related to the direct provision of workforce investment activities. These costs can be both personnel and non-personnel and both direct and indirect.

(b) The costs of administration include the costs associated with performing the responsibilities of the State and Local Workforce Investment Boards and of chief elected officials or boards of chief elected officials required for the local public/private partnership. The specific responsibilities of these boards and officials include, but are not limited to, those identified in the sections of the Act dealing with workforce investment boards and areas and one-stop systems, (WIA secs. 111(d), 116, 117(d), (e) & (h)(4), and 121(a)), such as:

(1) Performing overall general administrative functions and coordination of those functions under WIA title I including:

(i) Preparing program plans, budgets, related schedules, and amendments or modifications thereto;

(ii) Negotiating MOUs and awarding specific subgrants, contracts, and purchase orders through appropriate procurement processes,

(iii) Conducting public relations activities which are not related to program outreach,

(iv) Developing systems and procedures, including information systems for assuring compliance with program requirements, except:

(A) Those needed for tracking and monitoring of WIA program, participant, or performance requirements; or

(B) For collecting, storing and disseminating information under the core services provisions at WIA sections 134(d)(2)(E), (F), (G), (H) and (I) and information necessary to comply with WIA section 188 and its implementing regulations.

(v) Coordinating the resolution of findings arising from audits, reviews, investigations and incident reports, and

(vi) Performing administrative services, including such services as general legal services, financial management and accounting services, audit services; and managing purchasing, property, payroll, and personnel;

(2) Performing oversight responsibilities including monitoring of WIA programs, projects and subrecipients, and related systems and processes for compliance with program requirements,

(3) Costs for goods and services required for administration of the program, including goods and services such as rental or purchase of equipment, utilities, office supplies, postage, and rental and maintenance of office space;

(4) The costs of organization-wide management functions;

(5) Travel costs incurred for official business in carrying out administrative activities or the overall management of the WIA system; and

(6) Costs of information systems not related to the tracking and monitoring of WIA program, participant, or performance requirements; or for collecting, storing and disseminating information under the core services provisions at sections 134(d)(2)(E), (F), (G), (H) and (I) of the Act, (for example, personnel, accounting and payroll systems).

(c)(1) That portion of the costs of One-Stop operators which are associated with the performance of the administrative functions described in paragraph (b) of this section are classified as administrative costs. That portion of the costs of one-stop operators which are associated with the direct provision of workforce investment activities are classified as program costs.

(2) Personnel and related non-personnel costs of the recipient's or subrecipient's staff, including project directors, who perform both administrative and programmatic services or activities may be allocated as administrative or program costs to the benefitting cost objectives/categories based on documented distributions of actual time worked or other equitable cost allocation methods.

(3) Costs of staff who provide program services directly to participants and, where applicable, the first line supervisors and/or team leaders responsible for those staff are classified as a program cost.

(4) Specific costs charged to an overhead or indirect cost pool that can be identified directly as a program cost may be charged as a program cost. Documentation of such charges must be maintained.

(5) The costs of contracts, whether fixed price or cost reimbursement, awarded for the purpose of obtaining specific goods or services may be charged to the administration or program category based on the purpose for which the contract was awarded.

(6) The following information systems and data entry costs are charged to the program category.

(i) Tracking or monitoring of participant and performance information;

(ii) Employment statistics information, including job listing information, job skills information, and demand occupation information;

(iii) Performance and program cost information on eligible providers of training services, youth activities, and appropriate education activities;

(iv) Local area performance information; and

(v) Information relating to supportive services and unemployment insurance claims for program participants;

(7) Continuous improvement activities are charged to administration or program category based on the purpose or nature of the activity to be improved. Documentation of such charges must be maintained.

§ 667.250 What requirements relate to the enforcement of the Military Selective Service Act?

The requirements relating to the enforcement of the Military Selective Service Act are found at WIA section 189(h).

§ 667.260 May WIA title I funds be spent for construction?

WIA title I funds must not be spent on construction or purchase of facilities or buildings except:

(a) To meet a recipient's, as the term is defined in 29 CFR 31.2(h), obligation to provide physical and programmatic accessibility and reasonable accommodation, as required by section 504 of the Rehabilitation Act of 1973, as amended, and the Americans with Disabilities Act of 1990, as amended;

(b) To fund repairs, alterations and capital improvements of:

(1) SESA real property, identified at WIA section 193, using a formula that assesses costs proportionate to space utilized;

(2) JTPA owned property which is transferred to WIA title I programs;

(c) For Job Corps facilities, as authorized by WIA section 160(3)(B); and

(d) To fund disaster relief employment on projects for demolition, cleaning, repair, renovation, and reconstruction of damaged and destroyed structures, facilities, and lands located within a disaster area. (WIA sec. 173(d).)

§ 667.262 Are employment generating activities, or similar activities, allowable under WIA title I?

(a) Under WIA section 181(e), WIA title I funds may not be spent on

employment generating activities, economic development, and other similar activities, unless they are directly related to training for eligible individuals. For purposes of this section, employer outreach and job development activities are directly related to training for eligible individuals.

(b) These employer outreach and job development activities include:

(1) Contacts with potential employers for the purpose of placement of WIA participants;

(2) Participation in business associations (such as chambers of commerce);

(3) WIA staff participation on economic development boards and commissions, and work with economic development agencies, to:

(i) Provide information about WIA programs,

(ii) Assist in making informed decisions about community job training needs, and

(iii) Promote the use of first source hiring agreements and enterprise zone vouchering services,

(4) Active participation in local business resource centers (incubators) to provide technical assistance to small and new business to reduce the rate of business failure;

(5) Subscriptions to relevant publications;

(6) General dissemination of information on WIA programs and activities;

(7) The conduct of labor market surveys;

(8) The development of on-the-job training opportunities; and (9) Other allowable WIA activities in the private sector. (WIA sec. 181(e).)

§ 667.264 What other activities are prohibited under title I of WIA?

(a) WIA title I funds must not be spent on:

(1) The wages of incumbent employees during their participation in economic development activities provided through a Statewide workforce investment system, (WIA sec. 181(b)(1).);

(2) Public service employment, except to provide disaster relief employment, as specifically authorized in section 173(d) of WIA, (WIA sec. 195(10));

(3) Expenses prohibited under any other Federal, State or local law or regulation.

(b) WIA formula funds available to States and local areas under subtitle B, title I of WIA must not be used for foreign travel. (WIA sec. 181(e).)

§ 667.266 What are the limitations related to sectarian activities?

(a) WIA title I funds may not be spent on the employment or training of participants in sectarian activities.

(b) Participants must not be employed under title I of WIA to carry out the construction, operation, or maintenance of any part of any facility that is used or to be used for sectarian instruction or as a place for religious worship. However, WIA funds may be used for the maintenance of a facility that is not primarily or inherently devoted to sectarian instruction or religious worship if the organization operating the facility is part of a program or activity providing services to WIA participants. (WIA sec. 188(a)(3).)

§ 667.268 What prohibitions apply to the use of WIA title I funds to encourage business relocation?

(a) WIA funds may not be used or proposed to be used for:

(1) The encouragement or inducement of a business, or part of a business, to relocate from any location in the United States, if the relocation results in any employee losing his or her job at the original location;

(2) Customized training, skill training, or on-the-job training or company specific assessments of job applicants or employees of a business or a part of a business that has relocated from any location in the United States, until the company has operated at that location for 120 days, if the relocation has resulted in any employee losing his or her jobs at the original location.

(b) Pre-award review. To verify that an establishment which is new or expanding is not, in fact, relocating employment from another area, standardized pre-award review criteria developed by the State must be completed and documented jointly by the local area with the establishment as a prerequisite to WIA assistance. The review must include names under which the establishment does business, including predecessors and successors in interest; the name, title, and address of the company official certifying the information, and whether WIA assistance is sought in connection with past or impending job losses at other facilities, including a review of whether WARN notices relating to the employer have been filed. (WIA sec. 181(d).)

§ 667.269 What procedures and sanctions apply to violations of §§ 667.260 through 667.268?

(a) The Secretary will promptly review and take appropriate action with regard to alleged violations of the provisions relating to:

(1) Employment generating activities (§ 667.262);

(2) Other prohibited activities (§ 667.264);

(3) The limitation related to sectarian activities (§ 667.266);

(4) The use of WIA title I funds to encourage business relocation (§ 667.268).

(b) Procedures for the investigation and resolution of the violations are provided for under the Grant Officer's resolution process at § 667.510 of this subpart. Sanctions and remedies are provided for under WIA section 184(c) for violations of the provisions relating to:

(1) Construction (§ 667.260);

(2) Employment generating activities (§ 667.262);

(3) Other prohibited activities (§ 667.264); and

(4) The limitation related sectarian activities in (§ 667.266(a)).

(c) Sanctions and remedies are provided for under WIA section 181(d)(3) for violations of § 667.268 of this subpart, which addresses business relocation.

(d) Violations of § 667.266(b) will be handled in accordance with the DOL nondiscrimination regulations implementing WIA section 188.

§ 667.270 What safeguards are there to ensure that participants in Workforce Investment Act employment and training activities do not displace other employees?

(a) A participant in a program or activitiy authorized under title I of WIA must not displace (including a partial displacement, such as a reduction in the hours of nonovertime work, wages, or employment benefits) any currently employed employee (as of the date of the participation).

(b) A program or activity authorized under title I of WIA must not impair existing contracts for services or collective bargaining agreements. When a program or activity authorized under title I of WIA would be inconsistent with a collective bargaining agreement, the appropriate labor organization and employer must provide written concurrence before the program or activity begins.

(c) A participant in a program or activity under title I of WIA may not be employed in or assigned to a job if:

(1) Any other individual is on layoff from the same or any substantially equivalent job;

(2) The employer has terminated the employment of any regular, unsubsidized employee or otherwise caused an involuntary reduction in its workforce with the intention of filling the vacancy so created with the WIA participant; or

(3) The job is created in a promotional line that infringes in any way on the promotional opportunities of currently employed workers.

(d) Regular employees and program participants alleging displacement may file a complaint under the applicable grievance procedures found at § 667.600 of this part. (WIA sec. 181.)

§ 667.272 What wage and labor standards apply to participants in activities under title I of WIA?

(a) Individuals in on-the-job training or individuals employed in activities under title I of WIA must be compensated at the same rates, including periodic increases, as trainees or employees who are similarly situated in similar occupations by the same employer and who have similar training, experience and skills. Such rates must be in accordance with applicable law, but may not be less than the higher of the rate specified in section 6(a)(1) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(a)(1)) or the applicable State or local minimum wage law.

(b) Individuals in on-the-job training or individuals employed in programs and activities under Title I of WIA must be provided benefits and working conditions at the same level and to the same extent as other trainees or employees working a similar length of time and doing the same type of work.

(c) Allowances, earnings, and payments to individuals participating in programs under Title I of WIA are not considered as income for purposes of determining eligibility for and the amount of income transfer and in-kind aid furnished under any Federal or Federally assisted program based on need other than as provided under the Social Security Act (42 USC 301 *et seq.*). (WIA sec. 181(a)(2).)

§ 667.274 What health and safety standards apply to the working conditions of participants in activities under title I of WIA?

(a) Health and safety standards established under Federal and State law otherwise applicable to working conditions of employees are equally applicable to working conditions of participants engaged in programs and activities under Title I of WIA.

(b)(1) To the extent that a State workers' compensation law applies, workers' compensation must be provided to participants in programs and activities under Title I of WIA on the same basis as the compensation is provided to other individuals in the State in similar employment.

(2) If a State workers' compensation law applies to a participant in work experience, workers' compensation benefits must be available with respect to injuries suffered by the participant in such work experience. If a State workers' compensation law does not apply to a participant in work experience, insurance coverage must be secured for injuries suffered by the participant in the course of such work experience.

§ 667.275 What are a recipient's obligations to ensure nondiscrimination and equal opportunity, as well as nonparticipation in sectarian activities?

(a)(1) Recipients, including State and local workforce investment boards, One-Stop operators, service providers, vendors and subrecipients, must comply with the nondiscrimination and equal opportunity provisions of WIA section 188 and its implementing regulations.

(2) Nondiscrimination and equal opportunity requirements and procedures, including complaint processing and compliance reviews, are governed by the regulations implementing WIA sec. 188 and are administered and enforced by the DOL Civil Rights Center.

(3) As described in § 667.260(a), funds may be used to meet a recipient's obligation to provide physical and programmatic accessibility and reasonable accommodation in regard to the WIA program, as required by section 504 of the Rehabilitation Act of 1973, as amended, and the Americans with Disabilities Act of 1990, as amended.

(b) Except with respect to the maintenance of a facility that is not primarily or inherently devoted to sectarian instruction or religious worship, in a case in which the organization operating the facility is part of a program or activity providing services to participants, the employment or training of participants in sectarian activities is prohibited.

Subpart C—Reporting Requirements

§ 667.300 What are the reporting requirements for Workforce Investment Act programs?

(a) *General.* All States and other direct grant recipients must report financial, participant, and performance data in accordance with instructions issued by DOL. Required reports must be submitted no more frequently than quarterly within a time period specified in the reporting instructions.

(b) *Subrecipient reporting.* (1) A State or other direct grant recipient may impose different forms or formats, shorter due dates, and more frequent reporting requirements on subrecipients. However, the recipient is required to meet the reporting requirements imposed by DOL.

(2) If a State intends to impose different reporting requirements, it must describe those reporting requirements in its State WIA plan.

(c) *Financial reports.* (1) Each grant recipient must submit financial reports to DOL.

(2) Reports must include any income or profits earned, including such income or profits earned by subrecipients, and any costs incurred (such as stand-in costs) that are otherwise allowable except for funding limitations. (WIA sec. 185(f)(2))

(3) Reported expenditures and program income, including any profits earned, must be on the accrual basis of accounting and cumulative by fiscal year of appropriation. If the recipient's accounting records are not normally kept on the accrual basis of accounting, the recipient must develop accrual information through an analysis of the documentation on hand.

(d) *Due date.* Financial reports and participant data reports are due no later than 45 days after the end of each quarter unless otherwise specified in reporting instructions. A final financial report is required 90 days after the expiration of a funding period or the termination of grant support.

(e) *Annual Performance Progress Report.* An annual performance progress report for each of the three programs under title I, subpart B is required by WIA section 136(d).

(1) A State failing to submit any of these annual performance progress reports within 45 days of the due date may have its grant (for that program or all title I, subpart B programs) for the succeeding year reduced by as much as five percent, as provided by WIA section 136(g)(1)(B).

(2) States submitting annual performance progress reports that cannot be validated or verified as accurately counting and reporting activities in accordance with the reporting instructions, may be treated as failing to submit annual reports, and be subject to sanction. Sanctions related to State performance or failure to submit these reports timely cannot result in a total grant reduction of more than five percent. Any sanction would be in addition to having to repay the amount of any incentive funds granted based on the invalid report.

Subpart D—Oversight and Monitoring

§ 667.400 Who is responsible for oversight and monitoring of WIA title I grants?

(a) The Secretary is authorized to monitor all recipients and subrecipients

of all grants awarded and funds expended under WIA title I to determine compliance with the Act and these regulations, and may investigate any matter deemed necessary to determine such compliance. Federal oversight will be conducted primarily at the recipient level.

(b) In each fiscal year, the Secretary will also conduct in-depth reviews in several States, including financial and performance audits, to assure that funds are spent in accordance with the Act. Priority for such in-depth reviews will be given to States not meeting annual adjusted levels of performance.

(c)(1) Each recipient and subrecipient must continuously monitor grant-supported activities in accordance with the uniform administrative requirements at 29 CFR parts 95 and 97, as applicable, including the applicable cost principles indicated at 29 CFR 97.22(b) or 29 CFR 95.27, for all entities receiving WIA title I funds. For governmental units, the applicable requirements are at 29 CFR part 97. For non-profit organizations, the applicable requirements are at 29 CFR part 95.

(2) In the case of grants under WIA secs. 127 and 132, the Governor must develop a State monitoring system that meets the requirements of § 667.410(b) of this subpart. The Governor must monitor Local Boards annually for compliance with applicable laws and regulations in accordance with the State monitoring system. Monitoring must include an annual review of each local area's compliance with the uniform administrative requirements.

§ 667.410 What are the oversight roles and responsibilities of recipients and subrecipients?

(a) *Roles and responsibilities for all recipients and subrecipients of funds under WIA title I in general.* Each recipient and subrecipient must conduct regular oversight and monitoring of its WIA activities and those of its subrecipients and contractors in order to:

(1) Determine that expenditures have been made against the cost categories and within the cost limitations specified in the Act and these regulations;

(2) Determine whether or not there is compliance with other provisions of the Act and these regulations and other applicable laws and regulations; and

(3) Provide technical assistance as necessary and appropriate.

(b) *State roles and responsibilities for grants under WIA sections 127 and 132.*

(1) The Governor is responsible for the development of the State monitoring system. The Governor must be able to demonstrate to the Department, through a monitoring plan or otherwise, that the State monitoring system meets the requirements of paragraph (b)(2) of this section.

(2) The State monitoring system must:

(i) Provide for annual on-site monitoring reviews of local areas' compliance with DOL uniform administrative requirements, as required by WIA section 184(a)(4);

(ii) Ensure that established policies to achieve program quality and outcomes meet the objectives of the Act and these regulations, including the provision of services by One-Stop Centers, eligible providers of training services, and eligible providers of youth activities;

(iii) Enable the Governor to determine if subrecipients and contractors have demonstrated substantial compliance with WIA requirements; and

(iv) Enable the Governor to determine whether a local plan will be disapproved for failure to make acceptable progress in addressing deficiencies, as required in WIA sec. 118(d)(1).

(3) The State must conduct an annual on-site monitoring review of each local area's compliance with DOL uniform administrative requirements, including the appropriate administrative requirements for subrecipients and the applicable cost principles indicated at § 667.200 for all entities receiving WIA title I funds.

(4) The Governor must require that prompt corrective action be taken if any substantial violation of standards identified in paragraphs (b)(2) or (3) of this section is found. (WIA sec. 184(a)(5).)

(5) The Governor must impose the sanctions provided in WIA sections 184(b) and (c) in the event of a subrecipients's failure to take required corrective action required under paragraph (b)(4) of this section.

(6) The Governor may issue additional requirements and instructions to subrecipients on monitoring activities.

(7) Governor must certify to the Secretary every two years that:

(i) The State has implemented uniform administrative requirements;

(ii) The State has monitored local areas to ensure compliance with uniform administrative requirements; and

(iii) The State has taken appropriate corrective action to secure such compliance. (WIA sec. 184(a)(6)(A), (B), and (C).)

Subpart E—Resolution of Findings From Monitoring and Oversight Reviews

§ 667.500 What procedures apply to the resolution of findings arising from audits, investigations, monitoring and oversight reviews?

(a) *Resolution of subrecipient-level findings.* (1) The Governor is responsible for resolving findings that arise from the State's monitoring reviews, investigations and audits (including OMB Circular A–133 audits) of subrecipients.

(2) A State must utilize the audit resolution, debt collection and appeal procedures that it uses for other Federal grant programs.

(3) If a State does not have such procedures, it must prescribe standards and procedures to be used for this grant program.

(b) *Resolution of State and other direct recipient level findings.* (1) The Secretary is responsible for resolving findings that arise from Federal audits, monitoring reviews, investigations, incident reports, and recipient level OMB Circular A–133 audits.

(2) The Secretary uses the DOL audit resolution process, consistent with the Single Audit Act of 1996 and OMB Circular A–133, and Grant Officer Resolution provisions of § 667.510 of this subpart, as appropriate.

(3) A final determination issued by a Grant Officer under this process may be appealed to the DOL Office of Administrative Law Judges under the procedures at § 667.800 of this part.

(c) *Resolution of nondiscrimination findings.* Findings arising from investigations or reviews conducted under nondiscrimination laws will be resolved in accordance with WIA section 188 and the Department of Labor nondiscrimination regulations implementing WIA section 188.

§ 667.505 How does the Department resolve investigative and monitoring findings?

(a) As a result of an investigation, on-site visit or other monitoring, the Department notifies the recipient of the findings of the investigation and gives the recipient a period of time (not more than 60 days) to comment and to take appropriate corrective actions.

(b) The Grant Officer reviews the complete file of the investigation or monitoring report and the recipient's actions under paragraph (a) of this section. The Grant Officer's review takes into account the sanction provisions of WIA sections 184(b) and (c). If the Grant Officer agrees with the recipient's handling of the situation, the Grant

Officer so notifies the recipient. This notification constitutes final agency action.

(c) If the Grant Officer disagrees with the recipient's handling of the matter, the Grant Officer proceeds under § 667.510 of this subpart.

§ 667.510 What is the Grant Officer resolution process?

(a) *General.* When the Grant Officer is dissatisfied with the State's disposition of an audit or other resolution of violations (including those arising out of incident reports or compliance reviews), or with the recipient's response to findings resulting from investigations or monitoring report, the initial and final determination process, set forth in this section, is used to resolve the matter.

(b) *Initial determination.* The Grant Officer makes an initial determination on the findings for both those matters where there is agreement and those where there is disagreement with the recipient's resolution, including the allowability of questioned costs or activities. This initial determination is based upon the requirements of the Act and regulations, and the terms and conditions of the grants, contracts, or other agreements under the Act.

(c) *Informal resolution.* Except in an emergency situation, when the Secretary invokes the authority described in WIA section 184(e), the Grant Officer may not revoke a recipient's grant in whole or in part, nor institute corrective actions or sanctions, without first providing the recipient with an opportunity to present documentation or arguments to resolve informally those matters in controversy contained in the initial determination. The initial determination must provide for an informal resolution period of at least 60 days from issuance of the initial determination. If the matters are resolved informally, the Grant Officer must issue a final determination under paragraph (d) of this section which notifies the parties in writing of the nature of the resolution and may close the file.

(d) *Grant Officer's final determination.* (1) If the matter is not fully resolved informally, the Grant Officer provides each party with a written final determination by certified mail, return receipt requested. For audits of recipient-level entities and other recipients which receive WIA funds directly from DOL, ordinarily, the final determination is issued not later than 180 days from the date that the Office of Inspector General (OIG) issues the final approved audit report to the Employment and Training Administration. For audits of subrecipients conducted by the OIG, ordinarily the final determination is issued not later than 360 days from the date the OIG issues the final approved audit report to ETA.

(2) A final determination under this paragraph (d) must:

(i) Indicate that efforts to informally resolve matters contained in the initial determination have been unsuccessful;

(ii) List those matters upon which the parties continue to disagree;

(iii) List any modifications to the factual findings and conclusions set forth in the initial determination and the rationale for such modifications;

(iv) Establish a debt, if appropriate;

(v) Require corrective action, when needed;

(vi) Determine liability, method of restitution of funds and sanctions; and

(vii) Offer an opportunity for a hearing in accordance with § 667.800 of this part.

(3) Unless a hearing is requested, a final determination under this paragraph (d) is final agency action and is not subject to further review.

(e) Nothing in this subpart precludes the Grant Officer from issuing an initial determination and/or final determination directly to a subrecipient, in accordance with section 184(d)(3) of the Act. In such a case, the Grant Officer will inform the recipient of this action.

Subpart F—Grievance Procedures, Complaints, and State Appeals Processes

§ 667.600 What local area, State and direct recipient grievance procedures must be established?

(a) Each local area, State and direct recipient of funds under title I of WIA, except for Job Corps, must establish and maintain a procedure for grievances and complaints according to the requirements of this section. The grievance procedure requirements applicable to Job Corps are set forth at 20 CFR 670.990.

(b) Local area procedures must provide:

(1) A process for dealing with grievances and complaints from participants and other interested parties affected by the local Workforce Investment System, including one-stop partners and service providers;

(2) An opportunity for an informal resolution and a hearing to be completed within 60 days of the filing of the grievance or complaint;

(3) A process which allows an individual alleging a labor standards violation to submit the grievance to a binding arbitration procedure, if a collective bargaining agreement covering the parties to the grievance so provides; and

(4) An opportunity for a local level appeal to a State entity when:

(i) No decision is reached within 60 days; or

(ii) Either party is dissatisfied with the local hearing decision.

(c) State procedures must provide:

(1) A process for dealing with grievances and complaints from participants and other interested parties affected by the Statewide Workforce Investment programs;

(2) A process for resolving appeals made under paragraph (b)(4) of this section;

(3) A process for remanding grievances and complaints related to the local Workforce Investment Act programs to the local area grievance process; and

(4) An opportunity for an informal resolution and a hearing to be completed within 60 days of the filing of the grievance or complaint; and

(d) Procedures of direct recipients must provide:

(1) A process for dealing with grievance and complaints from participants and other interested parties affected by the recipient's Workforce Investment Act programs; and

(2) An opportunity for an informal resolution and a hearing to be completed within 60 days of the filing of the grievance or complaint.

(e) The remedies that may be imposed under local, State and direct recipient grievance procedures are enumerated at WIA section 181(c)(3).

(f)(1) Under WIA section 188(a), complaints of discrimination from participants and other interested parties must be handled in accordance with WIA section 188(b), and the Department of Labor nondiscrimination regulations implementing that section.

(2) Questions about or complaints alleging a violation of the nondiscrimination provisions of WIA section 188 may be directed or mailed to the Director, Civil Rights Center, U.S. Department of Labor, Room N4123, 200 Constitution Avenue, NW, Washington, DC 20210, for processing.

(g) Nothing in this subpart precludes a grievant or complainant from pursuing a remedy authorized under another Federal, State or local law.

§ 667.610 What processes does the Secretary use to review State and local grievances and complaints?

(a) The Secretary investigates allegations arising through the grievance procedures described in § 667.600 when:

(1) A decision relating to a grievance or complaint under § 667.600(c) has not been reached within 60 days of receipt

of the grievance or complaint or within 60 days of receipt of the request for appeal of a local level grievance and either party appeals to the Secretary; or

(2) A decision relating to a grievance or complaint under § 667.600(c) has been reached and the party to which such decision is adverse appeals to the Secretary.

(b) The Secretary must make a final decision on an appeal under paragraph (a) of this section no later than 120 days after receiving such appeal.

(c) Appeals made under to paragraph (a)(2) of this section must be filed within 60 days of the receipt of the decision being appealed. Appeals made under to paragraph (a)(1) of this section must be filed within 120 days of the filing of the grievance with the State, or the filing of the appeal of a local grievance with the State. All appeals must be submitted by certified mail, return receipt requested, to the Secretary, U.S. Department of Labor, Washington, DC 20210, Attention: ASET. A copy of the appeal must be simultaneously provided to the appropriate ETA Regional Administrator and the opposing party.

(d) Except for complaints arising under WIA section 184(f), grievances or complaints made directly to the Secretary will be referred to the appropriate State or local area for resolution in accordance with this section, unless the Secretary notifies the parties that the Department will investigate the grievance under the procedures at § 667.505.

§ 667.630 How are complaints and reports of criminal fraud and abuse addressed under WIA?

Information and complaints involving criminal fraud, waste, abuse or other criminal activity must be reported immediately through the Department's Incident Reporting System to the DOL Office of Inspector General, Office of Investigations, Room S5514, 200 Constitution Avenue NW., Washington, DC 20210, or to the corresponding Regional Inspector General for Investigations, with a copy simultaneously provided to the Employment and Training Administration. The Hotline number is 1–800–347–3756. Complaints of a non-criminal nature are handled under the procedures set forth in § 667.505 of this part or through the Department's Incident Reporting System.

§ 667.640 What additional appeal processes or systems must a State have for the WIA program?

(a) *Non-designation of local areas.* (1) The State must establish, and include in its State Plan, due process procedures which provide expeditious appeal to the State Board for a unit or combination of units of general local government or a rural concentrated employment program grant recipient (as described at WIA section 116(a)(2)(B)) that requests, but is not granted, automatic or temporary and subsequent designation as a local workforce investment area under WIA section 116(a)(2) or 116(a)(3).

(2) These procedures must provide an opportunity for a hearing and prescribe appropriate time limits to ensure prompt resolution of the appeal.

(3) If the appeal to the State Board does not result in designation, the appellant may request review by the Secretary under § 667.645.

(4) If the Secretary determines that the appellant was not accorded procedural rights under the appeal process established in paragraph (a)(1) of this section, or that the area meets the requirements for designation at WIA section 116(a)(2) or 116(a)(3), the Secretary may require that the area be designated as a workforce investment area.

(b) *Denial or termination of eligibility as a training provider.* (1) A State must establish procedures which allow providers of training services the opportunity to appeal:

(i) Denial of eligibility by a Local Board or the designated State agency under WIA section 122(b), (c) or (e);

(ii) Termination of eligibility or other action by a Local Board or State agency under section 122(f); or

(iii) Denial of eligibility as a provider of on-the-job training (OJT) or customized training by a One-Stop operator under WIA section 122(h).

(2) Such procedures must provide an opportunity for a hearing and prescribe appropriate time limits to ensure prompt resolution of the appeal.

(3) A decision under this State appeal process may not be appealed to the Secretary.

(c) *Testing and sanctioning for use of controlled substances.* (1) A State must establish due process procedures which provide expeditious appeal for:

(i) WIA participants subject to testing for use of controlled substances, imposed under a State policy established under WIA section 181(f); and

(ii) WIA participants who are sanctioned after testing positive for the use of controlled substances, under the policy described in paragraph (c)(i) of this section.

(2) A decision under this State appeal process may not be appealed to the Secretary.

§ 667.645 What procedures apply to the appeals of non-designation of local areas?

(a) A unit or combination of units of general local government or rural concentrated employment program grant recipient (as described at WIA section 116(a)(2)(B)) whose appeal of the denial of a request for automatic or temporary and subsequent designation as a local workforce investment area to the State Board has not resulted in designation may appeal the denial of local area designation to the Secretary.

(b) Appeals made under to paragraph (a) of this section must be filed no later than 30 days after receipt of written notification of the denial from the State Board, and must be submitted by certified mail, return receipt requested, to the Secretary, U.S. Department of Labor, Washington, DC 20210, Attention: ASET. A copy of the appeal must be simultaneously provided to the State Board.

(c) The appellant must establish that it was not accorded procedural rights under the appeal process set forth in the State Plan, or establish that it meets the requirements for designation in WIA sections 116(a)(2) or (a)(3). The Secretary may consider any comments submitted in response by the State Board.

(d) If the Secretary determines that the appellant has met its burden of establishing that it was not accorded procedural rights under the appeal process set forth in the State Plan, or that it meets the requirements for designation in WIA sections 116(a)(2) or (a)(3), the Secretary may require that the area be designated as a local workforce investment area.

(e) The Secretary must issue a written decision to the Governor and the appellant.

§ 667.650 What procedures apply to the appeals of the Governor's imposition of sanctions for substantial violations or performance failures by a local area?

(a) A local area which has been found in substantial violation of WIA title I, and has received notice from the Governor that either all or part of the local plan will be revoked or that a reorganization will occur, may appeal such sanctions to the Secretary under WIA section 184(b). The actions do not become effective until:

(1) The time for appeal has expired; or

(2) The Secretary has issued a decision.

(b) A local area which has failed to meet local performance measures for two consecutive years, and has received the Governor's notice of intent to impose a reorganization plan, may

appeal such sanctions to the Secretary under WIA section 136(h)(1)(B).

(c) Appeals made under paragraph (a) or (b) of this section must be filed no later than 30 days after receipt of written notification of the revoked plan or imposed reorganization, and must be submitted by certified mail, return receipt requested, to the Secretary, U.S. Department of Labor, Washington, DC 20210, Attention: ASET. A copy of the appeal must be simultaneously provided to the Governor.

(d) The Secretary may consider any comments submitted in response by the Governor.

(e) The Secretary will notify the Governor and the appellant in writing of the Secretary's decision under paragraph (a) of this section within 45 days after receipt of the appeal. The Secretary will notify the Governor and the appellant in writing of the Secretary's decision under paragraph (b) of this section within 30 days after receipt of the appeal.

Subpart G—Sanctions, Corrective Actions, and Waiver of Liability

§ 667.700 What procedure does the Department utilize to impose sanctions and corrective actions on recipients and subrecipients of WIA grant funds?

(a) Except for actions under WIA section 188(a) (relating to nondiscrimination requirements), the Grant Officer uses the initial and final determination procedures outlined in § 667.510 of this part to impose a sanction or corrective action.

(b) To impose a sanction or corrective action regarding a violation of WIA section 188(a), the Department will utilize the procedures of WIA section 188(b) and the Department of Labor nondiscrimination regulations implementing that section.

(c) To impose a sanction or corrective action for noncompliance with the uniform administrative requirements set forth at section 184(a)(3) of WIA, and § 667.200(a) of this part, when the Secretary determines that the Governor has not taken corrective action to remedy the violation required by WIA section 184(a)(5), the Grant Officer, under the authority of WIA section 184(a)(7), may impose any of the corrective actions set forth at WIA section 184(b)(1). In such situations, the Secretary may immediately suspend or terminate financial assistance in accordance with WIA section 184(e).

(d) The Grant Officer may also impose a sanction directly against a subrecipient, as authorized in section 184(d)(3) of the Act. In such a case, the Grant Officer will inform the recipient of the action.

§ 667.705 Who is responsible for funds provided under title I of WIA?

(a) The recipient is responsible for all funds under its grant(s).

(b) The political jurisdiction(s) of the chief elected official(s) in a local workforce investment area is liable for any misuse of the WIA grant funds allocated to the local area under WIA sections 128 and 133, unless the chief elected official(s) reaches an agreement with the Governor to bear such liability.

(c) When a local workforce area is composed of more than one unit of general local government, the joint liability of the individual jurisdictions must be specified in a written agreement between the chief elected officials.

§ 667.710 What actions are required to address the failure of a local area to comply with the applicable uniform administrative provisions?

(a) If, as part of the annual on-site monitoring of local areas, the Governor determines that a local area is not in compliance with the uniform administrative requirements found at 29 CFR part 95 or part 97, as appropriate, the Governor must:

(1) Require corrective action to secure prompt compliance; and

(2) Impose the sanctions provided for at section 184(b) if the Governor finds that the local area has failed to take timely corrective action.

(b) An action by the recipient to impose a sanction against a local area, in accordance with this section, may be appealed to the Secretary in accordance with § 667.650, and will not become effective until:

(1) The time for appeal has expired; or

(2) The Secretary has issued a decision.

(c) If the Secretary finds that the Governor has failed to promptly take the actions required upon a determination under paragraph (a) of this section that a local area is not in compliance with the uniform administrative requirements, the Secretary must take such actions against the State recipient or the local area, as appropriate.

§ 667.720 How does the Department handle a recipient's request for waiver of liability under WIA section 184(d)(2)?

(a) A recipient may request a waiver of liability, as described in WIA section 184(d)(2), and a Grant Officer may approve such a waiver under WIA section 184(d)(3).

(b)(1) When the debt for which a waiver of liability is desired was established in a non-Federal resolution proceeding, the resolution report must accompany the waiver request.

(2) When the waiver request is made during the ETA Grant Officer resolution process, the request must be made during the informal resolution period described in § 667.510(c) of this part.

(c) A waiver of the recipient's liability shall be considered by the Grant Officer only when:

(1) The misexpenditure of WIA funds occurred at a subrecipient's level;

(2) The misexpenditure was not due to willful disregard of the requirements of title I of the Act, gross negligence, failure to observe accepted standards of administration, or did not constitute fraud;

(3) If fraud did exist, it was perpetrated against the recipient/subrecipients; and

(i) The recipient/subrecipients discovered, investigated, reported, and cooperated in any prosecution of the perpetrator of the fraud; and

(ii) After aggressive debt collection action, it has been documented that further attempts at debt collection from the perpetrator of the fraud would be inappropriate or futile;

(4) The recipient has issued a final determination which disallows the misexpenditure, the recipient's appeal process has been exhausted, and a debt has been established; and

(5) The recipient requests such a waiver and provides documentation to demonstrate that it has substantially complied with the requirements of section 184(d)(2) of the Act, and this section.

(d) The recipient will not be released from liability for misspent funds under the determination required by section 184(d) of the Act unless the Grant Officer determines that further collection action, either by the recipient or subrecipients, would be inappropriate or would prove futile.

§ 667.730 What is the procedure to handle a recipient's request for advance approval of contemplated corrective actions?

(a) The recipient may request advance approval from the Grant Officer for contemplated corrective actions, including debt collection actions, which the recipient plans to initiate or to forego. The recipient's request must include a description and an assessment of all actions taken by the subrecipients to collect the misspent funds.

(b) Based on the recipient's request, the Grant Officer may determine that the recipient may forego certain collection actions against a subrecipient when:

(1) The subrecipient meets the criteria set forth in section 184(d)(2) of the Act;

(2) The misexpenditure of funds:

(i) Was not made by that subrecipient but by an entity that received WIA funds from that subrecipient;

(ii) Was not a violation of section 184(d)(1) of the Act, and did not constitute fraud; or

(iii) If fraud did exist,

(A) It was perpetrated against the subrecipient; and:

(B) The subrecipient discovered, investigated, reported, and cooperated in any prosecution of the perpetrator of the fraud; and

(C) After aggressive debt collection action, it has been documented that further attempts at debt collection from the perpetrator of the fraud would be inappropriate or futile;

(3) A final determination which disallows the misexpenditure and establishes a debt has been issued at the appropriate level;

(4) Final action within the recipient's appeal system has been completed; and

(5) Further debt collection action by that subrecipient or the recipient would be either inappropriate or futile.

§ 667.740 What procedure must be used for administering the offset/deduction provisions at WIA section 184(c)?

(a)(1) For recipient level misexpenditures, the Secretary may determine that a debt, or a portion thereof, may be offset against amounts that are allotted to the recipient. Recipients must submit a written request for an offset to the Grant Officer. Generally, the Secretary will apply the offset against amounts that are available at the recipient level for administrative costs.

(2) The Grant Officer may approve an offset request, under paragraph (b)(1) of this section, if the misexpenditures were not due to willful disregard of the requirements of the Act and regulations, gross negligence, failure to observe accepted standards of administration or a pattern of misexpenditure.

(b) For subrecipient level misexpenditures that were not due to willful disregard of the requirements of the Act and regulations, gross negligence, failure to observe accepted standards of administration or a pattern of misexpenditure, if the Secretary has required the State to repay such amount the State may deduct an amount equal to the misexpenditure from its subsequent year's allocations to the local area from funds available for the administrative costs of the local programs involved.

(c) If offset is granted, the debt will not be fully satisfied until the Grant Officer reduces amounts allotted to the State by the amount of the misexpenditure.

(d) A State may not make a deduction under paragraph (b)(2) of this section until the State has taken appropriate corrective action to ensure full compliance within the local area with regard to appropriate expenditure of WIA funds.

Subpart H—Administrative Adjudication and Judicial Review

§ 667.800 What actions of the Department may be appealed to the Office of Administrative Law Judges?

(a) An applicant for financial assistance under title I of WIA which is dissatisfied because the Secretary has issued a determination not to award financial assistance, in whole or in part, to such applicant; or a recipient, subrecipient, or a vendor against which the Grant Officer has directly imposed a sanction or corrective action, including a sanction against a State under 20 CFR part 666, may appeal to the U.S. Department of Labor, Office of Administrative Law Judges (OALJ) within 21 days of receipt of the final determination.

(b) Failure to request a hearing within 21 days of receipt of the final determination will constitute a waiver of the right to a hearing.

(c) A request for a hearing under this subpart must state specifically those issues in the final determination upon which review is requested. Those provisions of the final determination not specified for review, or the entire final determination when no hearing has been requested within the 21 days, are considered resolved and not subject to further review. Only alleged violations of the Act, its regulations, grant or other agreement under the Act fairly raised in the determination, and the request for hearing are subject to review.

(d) A request for a hearing must be transmitted by certified mail, return receipt requested, to the Chief Administrative Law Judge, U.S. Department of Labor, Suite 400, 800 K Street, NW, Washington, DC 20001, with one copy to the Departmental official who issued the determination.

(e) The procedures set forth in this subpart apply in the case of a complainant who has not had a dispute adjudicated under the alternative dispute resolution process set forth in § 667.840 of this part within the 60 days, except that the request for hearing before the OALJ must be filed within 15 days of the conclusion of the 60-day period. In addition to including the final determination upon which review is requested, the complainant must include a copy of any Stipulation of Facts and a brief summary of proceedings.

§ 667.810 What rules of procedure apply to hearings conducted under this subpart?

(a) *Rules of practice and procedure.* The rules of practice and procedure promulgated by the OALJ at subpart A of 29 CFR part 18, govern the conduct of hearings under this subpart. However, a request for hearing under this subpart is not considered a complaint to which the filing of an answer by DOL or a DOL agency or official is required. Technical Rules of evidence will not apply to hearings conducted pursuant to this part. However, Rules or principles designed to assure production of the most credible evidence available and to subject testimony to cross-examination will apply.

(b) *Prehearing procedures.* In all cases, the Administrative Law Judge (ALJ) should encourage the use of prehearing procedures to simplify and clarify facts and issues.

(c) *Subpoenas.* Subpoenas necessary to secure the attendance of witnesses and the production of documents or other items at hearings must be obtained from the ALJ and must be issued under the authority contained in section 183(c) of the Act, incorporating 15 U.S.C. 49.

(d) *Timely submission of evidence.* The ALJ must not permit the introduction at the hearing of any documentation if it has not been made available for review by the other parties to the proceeding either at the time ordered for any prehearing conference, or, in the absence of such an order, at least 3 weeks prior to the hearing date.

(e) *Burden of production.* The Grant Officer has the burden of production to support her or his decision. To this end, the Grant Officer prepares and files an administrative file in support of the decision which must be made part of the record. Thereafter, the party or parties seeking to overturn the Grant Officer's decision has the burden of persuasion.

§ 667.820 What authority will the Administrative Law Judge have in ordering relief as an outcome of an administrative hearing?

In ordering relief, the ALJ has the full authority of the Secretary under the Act.

§ 667.825 What special rules apply to reviews of MSFW and WIA INA grant selections?

(a) An applicant whose application for funding as a WIA INA grantee under 20 CFR part 668 or as an MSFW grantee under 20 CFR part 669 is denied in whole or in part by the Department may request an administrative review under § 667.800(a) with respect to whether there is a basis in the record to support the Department's decision. This appeal

will not in any way interfere with the Department's designation and funding of another organization to serve the area in question during the appeal period. The available remedy in such an appeal is the right to be designated in the future as the WIA INA or MSFW grantee for the remainder of the current grant cycle. Neither retroactive nor immediately effective selection status may be awarded as relief in a non-selection appeal under this section. The appellant may not be awarded a grant nor given any kind of preference beyond the current two year-grant period.

(b) If the ALJ rules that the organization should have been selected and the organization continues to meet the requirements of 20 CFR part 668 or part 669, the Department will select and fund the organization within 90 days of the ALJ's decision unless the end of the 90-day period is within six (6) months of the end of the funding period. An applicant so selected is not entitled to the full grant amount, but will only receive the funds remaining in the grant that have not been expended by the current grantee through its operation of the grant and its subsequent closeout.

(c) Any organization selected and/or funded as a WIA INA or MSFW grantee is subject to being removed as grantee in the event an ALJ decision so orders. The Grant Officer provides instructions on transition and close-out to a grantee which is removed. All parties must agree to the provisions of this paragraph as a condition for WIA INA or MSFW funding.

§ 667.830 When will the Administrative Law Judge issue a decision?

(a) The ALJ should render a written decision not later than 90 days after the closing of the record.

(b) The decision of the Administrative Law Judge (ALJ) constitutes final agency action unless, within 20 days of the decision, a party dissatisfied with the ALJ's decision has filed a petition for review with the Administrative Review Board (ARB) (established under Secretary's Order No. 2–96, specifically identifying the procedure, fact, law or policy to which exception is taken. Any exception not specifically urged is deemed to have been waived. A copy of the petition for review must be sent to the opposing party at that time. Thereafter, the decision of the ALJ constitutes final agency action unless the ARB, within 30 days of the filing of the petition for review, notifies the parties that the case has been accepted for review. Any case accepted by the ARB must be decided within 120 days of acceptance. If not so decided, the decision of the ALJ constitutes final agency action.

§ 667.840 Is there an alternative dispute resolution process that may be used in place of an OALJ hearing?

(a) Parties to a complaint which has been filed according to the requirements of § 667.800 of this part may choose to waive their rights to an administrative hearing before the OALJ. Instead, they may choose to transfer the settlement of their dispute to an individual acceptable to all parties who will conduct an informal review of the stipulated facts and render a decision in accordance with applicable law. A written decision must be issued within 60 days after submission of the matter for informal review.

(b) The waiver of the right to request a hearing before the OALJ will automatically be revoked if a settlement has not been reached or a decision has not been issued within the 60 days provided in paragraph (a) of this section.

(c) The decision rendered under this informal review process will be treated as a final decision of an Administrative Law Judge under section 186(b) of the Act.

§ 667.850 Is there judicial review of a final order of the Secretary issued under WIA sec. 186 of the Act?

(a) Any party to a proceeding which resulted in a final order of the Secretary under section 186 of the Act may obtain a review in the United States Court of Appeals having jurisdiction over the applicant or recipient of funds involved, by filing a review petition within 30 days of the issuance of the Secretary's final order.

(b) The court has jurisdiction to make and enter a decree affirming, modifying, or setting aside the order of the Secretary, in whole or in part.

(c) No objection to the Secretary's order may be considered by the court unless the objection was specifically urged, in a timely manner, before the Secretary. The review is limited to questions of law, and the findings of fact of the Secretary are conclusive if supported by substantial evidence.

(d) The judgment of the court is final, subject to certiorari review by the United States Supreme Court.

§ 667.860 Are there other authorities for the pursuit of remedies outside of the Act?

Nothing contained in this subpart prejudices the separate exercise of other legal rights in pursuit of remedies and sanctions available outside the Act.

Subpart I—Transition

§ 667.900 What special rules apply during the JTPA/WIA transition?

(a)(1) To facilitate planning for the implementation of WIA, a Governor may reserve an amount equal to no more than 2 percent of the total amount of JTPA formula funds allotted to the State for PY's 1998 and 1999 for expenditure on transition planning activities. The funds may be from any one or more of the JTPA titles and subparts, that is, funds do not have to be drawn proportionately from all titles and subparts. The Governor must report the expenditure of these funds for transition planning separately in accordance with instructions issued by the Secretary, but is not required to be allocated to the various titles and subparts;

(2) These reserved transition funds may be excluded from any calculation of compliance with JTPA cost limitations.

(b) Not less than 50 percent of the funds reserved by the Governor in paragraph (a) of this section must be made available to local entities.

(c) The Secretary will issue such other transition guidance as necessary and appropriate.

PART 668—INDIAN AND NATIVE AMERICAN PROGRAMS UNDER TITLE I OF THE WORKFORCE INVESTMENT ACT

Subpart A—Purposes and Policies

Sec.

668.100 What is the purpose of the programs established to serve Native American peoples (INA programs) under section 166 of the Workforce Investment Act (WIA)?
668.120 How must INA programs be administered?
668.130 What obligation does the Department have to consult with the INA grantee community in developing rules, regulations, and standards of accountability for INA programs?
668.140 How do the WIA regulations apply to the INA program?
668.150 What definitions apply to terms used in the regulations in this part?

Subpart B—Service Delivery Systems Applicable to Section 166 Programs

668.200 What are the requirements for designation as an "Indian or Native American (INA) grantee"?
668.210 What priority for designation is given to eligible organizations?
668.220 What is meant by the "ability to administer funds" for designation purposes?
668.230 How will the Department determine an entity's "ability to administer funds?'
668.240 What is the process for applying for designation as an INA grantee?

668.250 What happens if two or more entities apply for the same area?
668.260 How are INA grantees designated?
668.270 What appeal rights are available to entities that are denied designation?
668.280 Are there any other ways in which an entity may be designated as an INA grantee?
668.290 Can an INA grantee's designation be terminated?
668.292 How does a designated entity become an INA grantee?
668.294 Does the Department have to designate an INA grantee for every part of the country?
668.296 How are WIA funds allocated to INA grantees?

Subpart C—Services to Customers

668.300 Who is eligible to receive services under the INA program?
668.340 What are INA grantee allowable activities?
668.350 Are there any restrictions on allowable activities?
668.360 What is the role of INA grantees in the One-Stop system?
668.370 What policies govern payments to participants, including wages, training allowances or stipends, or direct payments for supportive services?
668.380 What will DOL do to strengthen the capacity of INA grantees to deliver effective services?

Subpart D—Supplemental Youth Services

668.400 What is the purpose of the supplemental youth services program?
668.410 What entities are eligible to receive supplemental youth services funding?
668.420 What are the planning requirements for receiving supplemental youth services funding?
668.430 What individuals are eligible to receive supplemental youth services?
668.440 How is funding for supplemental youth services determined?
668.450 How will supplemental youth services to be provided?
668.460 Are there performance measures and standards applicable to the supplemental youth services program?

Subpart E—Services to Communities

668.500 What services may INA grantees provide to or for employers under section 166?
668.510 What services may INA grantees provide to the community at large under section 166?
668.520 Must INA grantees give preference to Indian/Native American entities in the selection of contractors or service providers?
668.530 What rules govern the issuance of contracts and/or subgrants?

Subpart F—Accountability for Services and Expenditures

668.600 To whom is the INA grantee accountable for the provision of services and the expenditure of INA funds?
668.610 How is this accountability documented and fulfilled?
668.620 What performance measures are in place for the INA program?
668.630 What are the requirements for preventing fraud and abuse under section 166?
668.640 What grievance systems must a section 166 program provide?
668.650 Can INA grantees exclude eligible segments of the population?

Subpart G—Section 166 Planning/Funding Process

668.700 What process must an INA grantee use to plan its employment and training services ?
668.710 What planning documents must an INA grantee submit to the Department?
668.720 What information must these planning documents contain?
668.730 When must these plans be submitted?
668.740 How will the Department review and approve such plans?
668.750 Under what circumstances can the Department or the INA grantee modify the terms of the grantee's plan(s)?

Subpart H—Administrative Requirements

668.800 What systems must an INA grantee have in place to administer an INA program?
668.810 What types of costs are allowable expenditures under the INA program?
668.820 What rules apply to administrative costs under the INA program?
668.830 How should INA program grantees classify costs?
668.840 What cost principles apply to INA funds?
668.850 What audit requirements apply to INA grants?
668.860 What cash management procedures apply to INA grant funds?
668.870 What is "program income" and how is it regulated in the INA program?

Subpart I—Miscellaneous Program Provisions

668.900 Does the WIA provide regulatory and/or statutory waiver authority?
668.910 What information is required to document a requested waiver?
668.920 What provisions of law or regulations may not be waived?
668.930 May INA grantees combine or consolidate their employment and training funds?
668.940 What is the role of the Native American Employment and Training Council?

Authority: Secs. 506(c) and 166(h)(2) Pub. L. 105–220; 20 U.S.C. 9276(c); 29 U.S.C. 2911(h)(2)

Subpart A—Purposes and Policies

§ 668.100 What is the purpose of the programs established to serve Native American peoples (INA programs) under sec. 166 of the Workforce Investment Act (WIA)?

(a) The purpose of WIA INA programs is to support comprehensive employment and training activities for Indian, Alaska Native and Native Hawaiian individuals in order to:

(1) Develop more fully their academic, occupational, and literacy skills;

(2) Make them more competitive in the workforce;

(3) Promote the economic and social development of Indian, Alaska Native, and Native Hawaiian communities according to the goals and values of such communities; and

(4) Help them achieve personal and economic self-sufficiency.

(b) The principal means of accomplishing these purposes is to enable tribes and Native American organizations to provide employment and training services to Native American peoples and their communities. Services should be provided in a culturally appropriate manner, consistent with the principles of Indian self-determination. (WIA sec. 166(a)(1).)

§ 668.120 How must INA programs be administered?

(a) The Department will administer INA programs to maximize the Federal commitment to support the growth and development of Native American people and communities as determined by representatives of such communities.

(b) In administering these programs, the Department will observe the Congressional declaration of policy set forth in the Indian Self-Determination and Education Assistance Act, at 25 U.S.C. 450a, as well as the Department of Labor's "American Indian and Alaska Native Policy," dated July 29, 1998.

(c) These regulations are not intended to abrogate the trust responsibilities of the Federal Government to Native American bands, tribes, or groups in any way.

(d) The Department will administer INA programs through a single organizational unit and consistent with the requirements in section 166(h) of the Act. The Department has designated the Division of Indian and Native American Programs (DINAP) within the Employment and Training Administration (ETA) as this single organizational unit required by WIA section 166(h)(1).

(e) The Department will establish and maintain administrative procedures for the selection, administration, monitoring, and evaluation of Native American employment and training programs authorized under this Act. The Department will utilize staff who have a particular competence in this field to administer these programs. (WIA sec. 166(h).)

§ 668.130 What obligation does the Department have to consult with the INA grantee community in developing rules, regulations, and standards of accountability for INA programs?

The Department will consult with the Native American grantee community as a full partner in developing policies for the INA programs. The Department will actively seek and consider the views of all INA grantees, and will discuss options with the grantee community prior to establishing policies and program regulations. The primary consultation vehicle is the Native American Employment and Training Council. (WIA sec. 166(h)(2).)

§ 668.140 How do the WIA regulations apply to the INA program?

(a) The regulations found in this subpart.

(b) The general administrative requirements found in 20 CFR part 667, including the regulations concerning Complaints, Investigations and Hearings found at 20 CFR part 667 subpart E through subpart H.

(c) The Department's regulations codifying the common rules implementing Office of Management and Budget (OMB) Circulars which generally apply to Federal programs carried out by Indian tribal governments and nonprofit organizations, at 29 CFR parts 95, 96, and 97, as applicable.

§ 668.150 What definitions apply to terms used in the regulations in this part?

In addition to the definitions found in WIA sections 101 and 166 and 20 CFR 660.300, the following definitions apply:

DINAP means the Division of Indian and Native American Programs within the Employment and Training Administration of the Department.

Governing Body means a body of representatives who are duly elected, appointed by duly elected officials, or selected according to traditional tribal means. A governing body must have the authority to provide services to and to enter into grants on behalf of the organization that selected or designated it.

Grant Officer means a Department of Labor official authorized to obligate Federal funds.

Indian or Native American (INA) Grantee means an entity which is formally designated under subpart B of this part to operate an INA program and which has a grant agreement pursuant to 20 CFR 668.292.

NEW means the Native Employment Works Program, the tribal work program authorized under section 412(a)(2) of the Social Security Act, as amended by the Personal Responsibility and Work Opportunity Reconciliation Act (Pub. L. 104–193).

Underemployed means an individual who is working part time but desires full time employment, or who is working in employment not commensurate with the individual's demonstrated level of educational attainment.

Subpart B—Service Delivery Systems Applicable to Section 166 Programs

§ 668.200 What are the requirements for designation as an "Indian or Native American (INA) grantee"?

(a) To be designated as an INA grantee for PY 1999, an entity must have:

(1) A legal status as a government or as an agency of a government, as a private non-profit corporation, or a consortium which contains at least one of these entities;

(2) The ability to administer INA program funds, as defined at § 668.220 of this subpart; and

(3) For PY 1999 only, a population within the designated geographic service area of 1,000 or more Native American persons.

(b) For PY 2000 and beyond, an entity must have:

(1) A legal status as a government or as an agency of a government, private non-profit corporation, or a consortium which contains at least one of these entities;

(2) The ability to administer INA program funds, as defined at § 668.220 of this subpart; and

(3) A new (non-incumbent) entity must have a population within the designated geographic service area which would provide funding under the funding formula found at § 668.296(b) in the amount of at least $100,000, including any amounts received for supplemental youth services under the funding formula at § 668.440(a). Incumbent grantees which do not meet this dollar threshold for PY 2000 and beyond will be grandfathered in. We will make an exception for grantees wishing to participate in the demonstration program under Pub. L. 102–477 if all resources to be consolidated under the Pub. L. 102–477 plan total at least $100,000.

(c) To be designated as a Native American grantee, a consortium or its members must meet the requirements of paragraphs (a) and (b) of this section and must:

(1) Be in close proximity to one another, but they may operate in more than one State;

(2) Have an administrative unit legally authorized to run the program and to commit the other members to contracts, grants, and other legally-binding agreements; and

(3) Be jointly and individually responsible for the actions and obligations of the consortium, including debts.

(d) Entities potentially eligible for designation under paragraph (a)(1) or (b)(1) of this section are:

(1) Federally-recognized Indian tribes;

(2) Tribal organizations, as defined in 25 U.S.C. 450b;

(3) Alaska Native-controlled organizations representing regional or village areas, as defined in the Alaska Native Claims Settlement Act;

(4) Native Hawaiian-controlled entities;

(5) State-recognized Indian tribes;

(6) Native American-controlled organizations serving Indians; and

(7) Consortia of eligible entities which meets the legal requirements for a consortium described in paragraph (c) of this section.

§ 668.210 What priority for designation is given to eligible organizations?

(a) Federally-recognized Indian tribes, Alaska Native entities, or consortia that include a tribe or entity will have the highest priority for designation. To be designated, the organizations must meet the requirements in this Subpart. These organizations will be designated for those geographic areas over which they have legal jurisdiction. (WIA section 166(c)(1).)

(b) If the Department decides not to designate Indian tribes or Alaska Native entities to serve their service areas, the Department will enter into arrangements to provide services with entities which the tribes or Alaska Native entities involved approve.

(c) In geographic areas not served by Indian tribes or Alaska Native entities, entities with a Native American-controlled governing body and which are representative of the Native American community or communities involved will have priority for designation.

§ 668.220 What is meant by the "ability to administer funds" for designation purposes?

An organization has the "ability to administer funds" if it:

(a) Is in compliance with Departmental debt management procedures, if applicable;

(b) Has not been found guilty of fraud or criminal activity which would affect the entity's ability to safeguard Federal funds or deliver program services;

(c) Can demonstrate that it has or can acquire the necessary program and financial management personnel to

safeguard Federal funds and effectively deliver program services; and

(d) Can demonstrate that it has successfully carried out, or has the capacity to successfully carry out activities that will strengthen the ability of the individuals served to obtain or retain unsubsidized employment.

§ 668.230 How will the Department determine an entity's "ability to administer funds?"

(a) Before determining which entity to designate for a particular service area, the Department will conduct a review of the entity's ability to administer funds.

(b) The review for an entity that has served as a grantee in either of the two designation periods before the one under consideration, also will consider the extent of compliance with these regulations or the JTPA regulations at 20 CFR part 632. Evidence of the ability to administer funds may be established by a satisfactory Federal audit record. It may also be established by a recent record showing substantial compliance with Federal record keeping, reporting, program performance standards, or similar standards imposed on grantees by this or other public sector supported programs.

(c) For other entities, the review includes the experience of the entity's management in administering funds for services to Native American people. This review also includes an assessment of the relationship between the entity and the Native American community or communities to be served.

§ 668.240 What is the process for applying for designation as an INA grantee?

(a) Every entity seeking designation must submit a Notice of Intent (NOI) which complies with the requirements of the Solicitation for Grant Application (SGA). An SGA will be issued every two years, covering all areas except for those for which competition is waived for the incumbent grantee under WIA section 166(c)(2).

(b) NOI's must be submitted to the Chief of DINAP, bearing a U.S. Postal Service postmark indicating its submission no later than October 1st of the year which precedes the first year of a new designation cycle. For NOI's received after October 1, only a timely official U.S. Postal Service postmark is acceptable as proof of timely submission. Dates indicating submission by private express delivery services or metered mail are unacceptable as proof of the timely submission of designation documents.

(c) NOI's must include the following:

(1) Documentation of the legal status of the entity, as described in § 668.200(a)(1);

(2) A Standard Form (SF) 424—Application for Federal Assistance;

(3) A specific description, by State, county, reservation or similar area, or service population, of the geographic area for which the entity requests designation;

(4) A brief summary of the employment and training or human resource development programs serving Native Americans that the entity currently operates or has operated within the previous two-year period.

(5) A description of the planning process used by the entity, including the involvement of the governing body and local employers.

(6) Evidence to establish an entities ability to administer funds under §§ 668.220–668.230.

§ 668.250 What happens if two or more entities apply for the same area?

(a) Every two years, unless there has been a waiver of competition for the area, the Department issues a Solicitation for Grant Application (SGA) seeking applicants for INA program grants.

(b) If two or more entities apply for grants for the same service area, or for overlapping service areas, and a waiver of competition under WIA section 166(c)(2) is not granted to the incumbent grantee, the following additional procedures apply:

(1) The Grant Officer will follow the regulations for priority designation at § 668.210.

(2) If no applicant is entitled to priority designation, DINAP will inform each entity which submitted a NOI, including the incumbent grantee, in writing, of all the competing Notices of Intent no later than November 15 of the year the NOI's are received.

(3) Each entity will have an opportunity to describe its service plan, and may submit additional information addressing the requirements of § 668.240(c) or such other information as the applicant determines is appropriate. Revised Notices must be received or contain an official U.S. Postal Service postmark, no later than January 5th.

(4) The Grant Officer selects the entity that demonstrates the ability to produce the best outcomes for its customers.

§ 668.260 How are INA grantees designated?

(a) On March 1 of each designation year, the Department designates or conditionally designates Native American grantees for the coming two program years. The Grant Officer informs, in writing, each entity which submitted a Notice of Intent that the entity has been:

(1) Designated;

(2) Conditionally designated;

(3) Designated for only a portion of its requested area or population; or

(4) Denied designation.

(b) Designated Native American entities must ensure and provide evidence to DOL that a system is in place to afford all members of the eligible population within their service area an equitable opportunity to receive employment and training activities and services.

§ 668.270 What appeal rights are available to entities that are denied designation?

Any entity that is denied designation in whole or in part for the area or population that it requested may appeal the denial to the Office of the Administrative Law Judges using the procedures at 20 CFR 667.800 or the alternative dispute resolution procedures at 20 CFR 667.840. The Grant Officer will provide an entity whose request for designation was denied, in whole or in part, with a copy of the appeal procedures.

§ 668.280 Are there any other ways in which an entity may be designated as an INA grantee?

Yes, for an area which would otherwise go unserved. The Grant Officer may designate an entity, which has not submitted an NOI, but which meets the qualifications for designation, to serve the particular geographic area. Under such circumstances, DINAP will seek the views of Native American leaders in the area involved about the decision to designate the entity to serve that community. DINAP will inform the Grant Officer of their views. The Grant Officer will accommodate their views to the extent possible.

§ 668.290 Can an INA grantee's designation be terminated?

(a) Yes. The Grant Officer can terminate a grantee's designation for cause, or the Secretary or another DOL official confirmed by the Senate can terminate a grantee's designation in emergency circumstances where termination is necessary to protect the integrity of Federal funds or ensure the proper operation of the program. (WIA sec. 184(e).)

(b) The Grant Officer may terminate a grantee's designation for cause only if there is a substantial or persistent violation of the requirements in the Act or these regulations. The grantee must be provided with written notice 60 days before termination, stating the specific reasons why termination is proposed. The appeal procedures at 20 CFR 667.800 apply.

(c) The Secretary must give a grantee terminated in emergency circumstances prompt notice of the termination and an opportunity for a hearing within 30 days of the termination.

§ 668.292 How does a designated entity become an INA grantee?

A designated entity becomes a grantee on the effective date of an executed grant agreement, signed by the authorized official of the grantee organization and the Grant Officer. The grant agreement includes a set of certifications and assurances that the grantee will comply with the terms of the Act, these regulations, and other appropriate requirements. Funds are released to the grantee upon Departmental approval of the required planning documents, as described in §§ 668.710 through 668.740.

§ 668.294 Does the Department have to designate an INA grantee for every part of the country?

No. Beginning with the PY 2000 grant awards, if there are no entities meeting the requirements for designation in a particular area, or willing to serve that area, the Department will not allocate funds for that service area. The funds allocated to that area will be distributed to the remaining INA grantees, or used for other program purposes such as technical assistance and training (TAT). Remaining funds used for technical assistance and training are in addition to, and not subject to the limitations on, amounts reserved under § 668.296(e). Areas which are unserved by the INA program may be restored during a subsequent designation cycle, when and if a current grantee or other eligible entity applies for and is designated to serve that area.

§ 668.296 How are WIA funds allocated to INA grantees?

(a) Except for reserved funds described in paragraph (e) of this section, all funds available for WIA section 166(d)(2)(A)(i) comprehensive workforce investment services program at the beginning of a Program Year will be allocated to Native American grantees for their designated geographic service areas.

(b) Each INA grantee will receive the sum of the funds calculated under the following formula:

(1) One-quarter of the funds available will be allocated on the basis of the number of unemployed Native American persons in the grantee's designated INA service area(s) compared to all such persons in all such areas in the United States.

(2) Three-quarters of the funds available will be allocated on the basis of the number of Native American persons in poverty in the grantee's designated INA service area(s) as compared to all such persons in all such areas in the United States.

(3) The data and definitions used to implement these formulas is provided by the U.S. Bureau of the Census.

(c) In years immediately following the use of new data in the formula described in paragraph (b) of this section, the Department, based upon criteria to be described in the SGA, may utilize a hold harmless factor to reduce the disruption in grantee services which would otherwise result from changes in funding levels. This factor will be determined in consultation with the grantee community and the Native American Employment and Training Council.

(d) The Department may reallocate funds from one INA grantee to another if a grantee is unable to serve its area for any reason, such as audit or debt problems, criminal activity, internal (political) strife, or lack of ability or interest. Funds may also be reallocated if a grantee has carry-in excess of 20 percent of the total funds available to it. Carry-in amounts greater than 20 percent but less than 25 percent of total funds available may be allowed under an approved waiver issued by DINAP.

(e) The Department may reserve up to one percent (1 percent) of the funds appropriated under WIA section 166(d)(2)(A)(i) for any Program Year for TAT purposes. Technical assistance will be provided in consultation with the Native American Employment and Training Council.

Subpart C—Services to Customers

§ 668.300 Who is eligible to receive services under the INA program?

(a) A person is eligible to receive services under the INA program if that person is:

(1) An Indian, as determined by a policy of the Native American grantee. The grantee's definition must at least include anyone who is a member of a Federally-recognized tribe; or

(2) An Alaska Native, as defined in section 3(b) of the Alaska Native Claims Settlement Act (ANCSA), 43 U.S.C. 1602(b); or

(3) A Native Hawaiian, as defined in WIA section 166(b)(3).

(b) The person must also be any one of the following:

(1) Unemployed; or

(2) Underemployed, as defined in § 668.150; or

(3) A low-income individual, as defined in WIA section 101(25); or

(4) The recipient of a bona fide lay-off notice which has taken effect in the last six months or will take effect in the following six month period, who is unlikely to return to a previous industry or occupation, and who is in need of retraining for either employment with another employer or for job retention with the current employer; or

(5) An individual who is employed, but is determined by the grantee to be in need of employment and training services to obtain or retain employment that allows for self-sufficiency.

(c) If applicable, male applicants must also register or be registered for the Selective Service.

(d) For purposes of determining whether a person is a low-income individual under paragraph (b)(3) of this section, the Secretary issues guidance for the determination of family income. (WIA sec. 189(h).)

§ 668.340 What are INA grantee allowable activities?

(a) The INA grantee may provide any services consistent with the purposes of this section that are necessary to meet the needs of Native Americans preparing to enter, reenter, or retain unsubsidized employment. (WIA sec. 166(d)(1)(B).) Comprehensive workforce investment activities authorized under WIA section 166(d)(2) include:

(b) Core services, which must be delivered in partnership with the One-Stop delivery system, include:

(1) Outreach;

(2) Intake;

(3) Orientation to services available;

(4) Initial assessment of skill levels, aptitudes, abilities and supportive service needs;

(5) Eligibility certification;

(6) Job Search and placement assistance;

(7) Career counseling;

(8) Provision of employment statistics information and local, regional, and national Labor Market Information;

(9) Provision of information regarding filing of Unemployment Insurance claims;

(10) Assistance in establishing eligibility for Welfare-to-Work programs;

(11) Assistance in establishing eligibility for financial assistance for training;

(12) Provision of information relating to supportive services;

(13) Provision of performance and cost information relating to training providers and training services; and

(14) Follow-up services.

(c) Allowable intensive services which include:

(1) Comprehensive and specialized testing and assessment;

(2) Development of an individual employment plan;

(3) Group counseling;
(4) Individual counseling and career planning;
(5) Case Management for seeking training services;
(6) Short term pre-vocational services;
(7) Work experience in the public or private sector;
(8) Tryout employment;
(9) Dropout prevention activities;
(10) Supportive services; and
(11) Other services identified in the approved Two Year Plan.

(d) Allowable training services which include:
(1) Occupational skill training;
(2) On-the-job training;
(3) Programs that combine workplace training with related instruction, which may include cooperative education programs;
(4) Training programs operated by the private sector;
(5) Skill upgrading and retraining;
(6) Entrepreneurial and small business development technical assistance and training;
(7) Job readiness training;
(8) Adult basic education, GED attainment, literacy training, and English language training, provided in combination with any training services described in paragraphs (d)(1) through (8) of this section;
(9) Customized training conducted with a commitment by an employer or group of employers to employ an individual upon successful completion of training; and
(10) Educational and tuition assistance.

(e) Allowable activities specifically designed for youth are identified in section 129 of the Act and include:
(1) Improving educational and skill competencies;
(2) Adult mentoring;
(3) Training opportunities;
(4) Supportive services as defined in WIA section 101(46);
(5) Incentive programs for recognition and achievement;
(6) Opportunities for leadership, development, decision-making, citizenship and community service;
(7) Preparation for postsecondary education, academic and occupational learning, unsubsidized employment opportunities, and other effective connections to intermediaries with strong links to the job market and local and regional employers;
(8) Tutoring, study skills training, and other drop-out prevention strategies;
(9) Alternative secondary school services;
(10) Summer employment opportunities that are directly linked to academic and occupational learning;
(11) Paid and unpaid work experiences, including internships and job shadowing;
(12) Occupational skill training;
(13) Leadership development opportunities as defined in § 664.420;
(14) Follow-up services as defined in § 664.450;
(15) Comprehensive guidance and counseling, which may include drug and alcohol abuse counseling and referral; and
(16) Information and referral.

(f) In addition, allowable activities include job development and employment outreach, including:
(1) Support of the Tribal Employment Rights Office (TERO) program;
(2) Negotiation with employers to encourage them to train and hire participants;
(3) Establishment of linkages with other service providers to aid program participants;
(4) Establishment of management training programs to support tribal administration or enterprises; and
(5) Establishment of linkages with remedial education, such as Adult Basic Education (ABE), basic literacy training, and English-as-a-second-language (ESL) training programs, as necessary.

(g) Participants may be enrolled in more than one activity at a time and may be sequentially enrolled in multiple activities.

(h) INA grantees may provide any services which may be carried out by fund recipients under any provisions of the Act. (WIA section 166(d).)

(i) In addition, INA grantees must develop programs which contribute to occupational development, upward mobility, development of new careers, and opportunities for nontraditional employment. (WIA section 195(1).)

§ 668.350 Are there any restrictions on allowable activities?

(a) All occupational training must be for occupations for which there are employment opportunities in the local area or another area to which the participant is willing to relocate. (WIA sec. 134(d)(4)(A)(iii).)

(b) INA grantees must provide OJT services consistent with the definition provided in WIA section 101(31) and other limitations in the Act. Individuals in OJT must:
(1) Be compensated at the same rates, including periodic increases, as trainees or employees who are similarly situated in similar occupations by the same employer and who have similar training, experience, and skills; and (WIA sec. 181(a)(1).)
(2) Be provided benefits and working conditions at the same level and to the same extent as other trainees or employees working a similar length of time and doing the same type of work. (WIA sec. 181(b)(5).)

(c) In addition, OJT contracts under this title must not be entered into with employers who have:
(1) Received payments under previous contracts and have exhibited a pattern of failing to provide OJT participants with continued, long-term employment as regular employees with wages and employment benefits and working conditions at the same level and to the same extent as other employees working a similar length of time and doing the same work, or
(2) Who have violated paragraphs (b)(1) and/or (2) of this section. (WIA 195(4).)

(d) INA grantees are prohibited from using funds to encourage the relocation of a business as described in WIA section 181(d) and 20 CFR 667.268.

(e) INA grantees must only use funds for activities which are in addition to those that would otherwise be available to the Native American population in the area in the absence of such funds. (WIA § 195(2).)

(f) INA grantees must not spend funds on activities that displace currently employed individuals, impair existing contracts for services, or in any way affect union organizing. (WIA § 181(b).)

§ 668.360 What is the role of INA grantees in the One-Stop system?

(a) In those local workforce investment areas where there is a INA grantee field office, the INA grantee is a required partner in the local One-Stop delivery system and is subject to the provisions relating to such partners described in 20 CFR part 662. Consistent with those provisions, a Memorandum of Understanding (MOU) between the INA grantee and the Local Board over the operation of the One-Stop Center(s) in the Local Board's workforce investment area must also be executed.

(b) At a minimum, the MOU must contain provisions related to:
(1) The services to be provided through the One-Stop Service System;
(2) The methods for referral of individuals between the One-Stop operator and the INA grantee which take into account the services provided by the INA grantee and the other One-Stop partners;
(3) The exchange of information on the services available and accessible through the One-Stop system and the INA program;
(4) As necessary to provide referrals and case management services, the exchange of information on Native

American participants in the One-Stop system and the INA program;

(5) Arrangements for the funding of services provided by the One-Stop(s), consistent with the requirement that no expenditures may be made with INA program funds for individuals who are not eligible under this part.

(c) The INA grantee's Two Year Plan must describe the efforts the grantee has made to negotiate MOU's consistent with paragraph (b) of this section, for each planning cycle during which Local Boards are operating under the terms of WIA.

§ 668.370 What policies govern payments to participants, including wages, training allowances or stipends, or direct payments for supportive services?

(a) INA grantees may pay training allowances or stipends to participants for their successful participation in and completion of education or training services (except such allowance may not be provided to participants in OJT). Allowances or stipends may not exceed the Federal or State minimum wage, whichever is higher.

(b) INA grantees may not pay a participant in a training activity when the person fails to participate without good cause.

(c) If a participant in a WIA-funded activity is involved in an employer-employee relationship, including participants in OJT, that participant must be paid wages and fringe benefits at the same rates as trainees or employees who have similar training, experience and skills and which are not less than the higher of the applicable Federal, State or local minimum wage. (WIA section 181(a)(1).)

(d) In accordance with the policy described in the two-year plan, INA grantees may pay incentive bonuses to participants who meet or exceed individual employability or training goals established in writing in the individual employment plan.

(e) INA grantees must comply with other restrictions listed in WIA sections 181 through 199 which apply to all programs funded under title I of WIA.

(f) INA grantees must comply with the provisions on labor standards in WIA section 181(b).

§ 668.380 What will DOL do to strengthen the capacity of INA grantees to deliver effective services?

The Department will provide appropriate TAT, as necessary, to INA grantees. This TAT will assist INA grantees to improve program performance and enhance services to the target population(s), as resources permit. (WIA sec. 166(h)(5).)

Subpart D—Supplemental Youth Services

§ 668.400 What is the purpose of the supplemental youth services program?

The purpose of this program is to provide supplemental employment and training and related services to Native American youth on or near Indian reservations, or in Oklahoma, Alaska, and Hawaii. (WIA sec. 166(d)(2)(A)(ii).)

§ 668.410 What entities are eligible to receive supplemental youth services funding?

Eligible recipients for supplemental youth services funding are limited to those tribal, Alaska Native, Native Hawaiian and Oklahoma tribal grantees funded under WIA section 166(d)(2)(A)(i), or other grantees serving those areas and/or populations specified in § 668.400, that received funding under title II–B of the Job Training Partnership Act, or that are designated to serve an eligible area as specified in WIA section 166(d)(2)(A)(ii).

§ 668.420 What are the planning requirements for receiving supplemental youth services funding?

Beginning with PY 2000, eligible INA grantees must describe the supplemental youth services which they intend to provide in their Two Year Plan, (described more fully in §§ 668.710 and 668.720 of this part). This Plan includes the target population the grantee intends to serve, for example, drop-outs, juvenile offenders, and/or college students. It also includes the performance measures/standards to be utilized to measure program progress.

§ 668.430 What individuals are eligible to receive supplemental youth services?

(a) Participants in supplemental youth services activities must be Native Americans, as determined by the INA grantee according to § 668.300(a) and must meet the definition of Eligible Youth, as defined in WIA section 101(13);

(b)Youth participants must be low-income individuals, except that not more than five percent (5%) who do not meet the minimum income criteria, may be considered eligible youth if they meet one or more of the following categories:

(1) School dropouts;

(2) Basic skills deficient as defined in WIA section 101(4);

(3) Have educational attainment that is one or more grade levels below the grade level appropriate to their age group;

(4) Pregnant or parenting;

(5) Have disabilities, including learning disabilities;

(6) Homeless or runaway youth;

(7) Offenders; or

(8) Other eligible youth who face serious barriers to employment as identified by the grantee in its Plan. (WIA section 129(c)(5).)

§ 668.440 How is funding for supplemental youth services determined?

(a) Beginning with PY 2000, supplemental youth funding will be allocated to eligible INA grantees on the basis of the relative number of Native American youth between the ages of 14 and 21, inclusive, in the grantee's designated INA service area as compared to the number of Native American youth in other INA service areas.

(b) The data used to implement this formula is provided by the U.S. Bureau of the Census.

(c) The hold harmless factor described in § 668.296(c) also applies to supplemental youth services funding. This factor also will be determined in consultation with the grantee community and the Native American Employment and Training Council.

(d) The reallocation provisions of § 668.296(d) will also apply to supplemental youth services funding.

(e) Any supplemental youth services funds not allotted to a grantee or refused by a grantee may be used for the purposes outlined in § 668.296(e). Any such funds are in addition to, and not subject to the limitations on, amounts reserved under § 668.296(e).

§ 668.450 How will supplemental youth services to be provided?

(a) INA grantees may offer supplemental services to youth throughout the school year, during the summer vacation, and/or during other breaks during the school year at their discretion;

(b) The Department encourages INA grantees to work with Local Educational Agencies to provide academic credit for youth activities whenever possible;

(c) INA grantees may provide participating youth with the activities listed in 20 CFR 668.340(e).

§ 668.460 Are there performance measures and standards applicable to the supplemental youth services program?

Yes. WIA section 166(e)(5) requires that the program plan contain a description of the performance measures to be used to assess the performance of grantees in carrying out the activities assisted under this section. Specific indicators of performance and levels of performance for supplemental youth services activities will be developed by the Department in partnership with the Native American

Employment and Training Council, and transmitted to INA grantees as an administrative issuance.

Subpart E—Services to Communities

§ 668.500 What services may INA grantees provide to or for employers under section 166?

(a) INA grantees may provide a variety of services to employers in their areas. These services may include:

(1) Workforce planning which involves the recruitment of current or potential program participants, including job restructuring services;

(2) Recruitment and assessment of potential employees, with priority given to potential employees who are or who might become eligible for program services;

(3) Pre-employment training;

(4) Customized training;

(5) On-the-Job training (OJT);

(6) Post-employment services, including training and support services to encourage job retention and upgrading;

(7) Work experience for public or private sector work sites;

(8) Other innovative forms of worksite training.

(b) In addition to the services listed above, other grantee-determined services intended to assist eligible participants to obtain or retain employment may also be provided to or for employers approved in the grantee's Two Year Plan.

§ 668.510 What services may INA grantees provide to the community at large under section 166?

(a) INA grantees may provide services to the Native American communities in their designated service areas by engaging in program development and service delivery activities which:

(1) Strengthen the capacity of Native American-controlled institutions to provide education and work-based learning services to Native American youth and adults, whether directly or through other Native American institutions such as tribal colleges;

(2) Increase the community's capacity to deliver supportive services, such as child care, transportation, housing, health, and similar services needed by clients to obtain and retain employment;

(3) Use program participants engaged in education, training, work experience, or similar activities to further the economic and social development of Native American communities in accordance with the goals and values of those communities; and

(4) Engage in other community-building activities described in the INA grantee's Two Year Plan.

(b) INA grantees should develop their Two Year Plan in conjunction with, and in support of, strategic tribal planning and community development goals.

§ 668.520 Must INA grantees give preference to Indian/Native American entities in the selection of contractors or service providers?

Yes. INA grantees must give as much preference as possible to Indian organizations and to Indian-owned economic enterprises, as defined in section 3 of the Indian Financing Act of 1974 (25 U.S.C. 1452), when awarding any contract or subgrant.

§ 668.530 What rules govern the issuance of contracts and/or subgrants?

In general, INA grantees must follow the rules of OMB Circulars A–102 (for tribes) or A–110 (for private non-profits) when awarding contracts and/or subgrants under WIA section 166. The common rules implementing those circulars are codified for DOL-funded programs at 29 CFR part 97 (A–102) or 29 CFR part 95 (A–110), and covered in the WIA regulations at 20 CFR 667.200. These rules do not apply to OJT contract awards.

Subpart F—Accountability for Services and Expenditures

§ 668.600 To whom is the INA grantee accountable for the provision of services and the expenditure of INA funds?

(a) The INA grantee is responsible to the Native American community to be served by INA funds.

(b) The INA grantee is also responsible to the Department of Labor, which is charged by law with ensuring that all WIA funds are expended:

(1) according to applicable laws and regulations;

(2) for the benefit of the identified Native American client group; and

(3) for the purposes approved in the grantee's plan and signed grant document.

§ 668.610 How is this accountability documented and fulfilled?

(a) Each INA grantee must establish its own internal policies and procedures to ensure accountability to the INA grantee's governing body, as the representative of the Native American community(ies) served by the INA program. At a minimum, these policies and procedures must provide a system for governing body review and oversight of program plans and measures and standards for program performance.

(b) Accountability to the Department is accomplished in part through on-site program reviews (monitoring), which strengthen the INA grantee's capability to deliver effective services and protect the integrity of Federal funds.

(c) In addition to audit information, as described at § 668.850, and program reviews, accountability to the Department is documented and fulfilled by the submission of reports. These report requirements are as follows:

(1) Each INA grantee must submit an annual report on program participants and activities. This report must be received no later than 90 days after the end of the Program Year, and may be combined with the report on program expenditures. The reporting format is developed by DINAP, in consultation with the Native American Advisory Council, and published in the **Federal Register**.

(2) Each INA grantee must submit an annual report on program expenditures. This report must be received no later than 90 days after the end of the Program Year, and may be combined with the report on program participants and activities. For the purposes of report submission, a postmark or date indicating receipt by a private express delivery service is acceptable proof of timely submission.

(3) INA grantees are encouraged, but not required, to submit a descriptive narrative with their annual reports describing the barriers to successful plan implementation they have encountered. This narrative should also discuss program successes and other notable occurrences that effected the INA grantee's overall performance that year.

(4) Each INA grantee may be required to submit interim reports on program participants and activities and/or program expenditures during the Program Year. Interim reports must be received no later than 45 days after the end of the reporting period.

§ 668.620 What performance measures are in place for the INA program?

Indicators of performance measures and levels of performance in use for INA program will be those indicators and standards proposed in individual grantee plans and approved by DOL, in accordance with guidelines developed by the Department in consultation with INA grantees under WIA section 166(h)(2)(A).

§ 668.630 What are the requirements for preventing fraud and abuse under section 166?

(a) Each INA grantee must implement program and financial management procedures to prevent fraud and abuse. Such procedures must include a process which enables the grantee to take action against contractors or subgrantees to

prevent any misuse of funds. (WIA sec. 184.)

(b) Each INA grantee must have rules to prevent conflict of interest by its governing body. These conflict of interest rules must include a rule prohibiting any member of any governing body or council associated with the INA grantee from voting on any matter which would provide a direct financial benefit to that member, or to a member of his or her immediate family, in accordance with 20 CFR 667.200(a)(4) and 29 CFR 97.36(b) or 29 CFR 95.42.

(c) Officers or agents of the INA grantee must not solicit or personally accept gratuities, favors, or anything of monetary value from any actual or potential contractor, subgrantee, vendor or participant. This rule must also apply to officers or agents of the grantee's contractors and/or subgrantees. This prohibition does not apply to:

(1) Any rebate, discount or similar incentive provided by a vendor to its customers as a regular feature of its business;

(2) Items of nominal monetary value distributed consistent with the cultural practices of the Native American community served by the grantee.

(d) No person who selects program participants or authorizes the services provided to them may select or authorize services to any participant who is such a person's husband, wife, father, mother, brother, sister, son, or daughter unless:

(1)(i) The participant involved is a low income individual; or

(ii) The community in which the participant resides has a population of less than 1,000 Native American people; and

(2) The INA grantee has adopted and implemented the policy described in the Two Year Plan to prevent favoritism on behalf of such relatives.

(e) INA grantees are subject to the provisions of 41 U.S.C. 53 relating to kickbacks.

(f) No assistance provided under this Act may involve political activities. (WIA section 195(6).)

(g) INA grantees may not use funds under this Act for lobbying as provided in 29 CFR part 93.

(h) The provisions of 18 U.S.C. 665 and 666 regarding embezzlement apply to programs under WIA.

(i) Sectarian activities involving WIA funding or participants are prohibited.

(j) INA grantees are prohibited from discriminatory practices as outlined at WIA section 188, and the regulations implementing WIA section 188. However, this does not affect the legal requirement that all INA participants be Native American. Also, INA grantees are not obligated to serve populations other than those for which they were designated.

§ 668.640 What grievance systems must a section 166 program provide?

INA grantees must establish grievance procedures consistent with the requirements of WIA section 181(c) and 20 CFR 667.600.

§ 668.650 Can INA grantees exclude eligible segments of the population?

(a) No. INA grantees cannot exclude segments of the eligible population. INA grantees must document in their Two Year Plan that a system is in place to afford all members of the eligible population within the service area for which the grantee was designated an equitable opportunity to receive WIA services and activities.

(b) Nothing in this section restricts the ability of INA grantees to target subgroups of the eligible population (for example, the disabled, substance abusers, TANF recipients, or similar categories), as outlined in an approved Two Year Plan.

Subpart G—Section 166 Planning/Funding Process

§ 668.700 What process must an INA grantee use to plan its employment and training services ?

(a) The INA grantee may utilize the planning procedures it uses to plan other activities and services.

(b) However, in the process of preparing its Two Year Plan for Native American WIA services, the INA grantee must consult with:

(1) Customers or prospective customers of such services;

(2) Prospective employers of program participants or their representatives;

(3) Service providers, including local educational agencies, which can provide services which support or are complementary to the grantee's own services; and

(4) Tribal or other community officials responsible for the development and administration of strategic community development efforts.

§ 668.710 What planning documents must an INA grantee submit to the Department?

Each grantee receiving funds under WIA sec. 166 must submit to DINAP a comprehensive services plan and a projection of participant services and expenditures covering the two-year planning cycle. The Department will, in consultation with the Native American Advisory Council, issue budget and planning instructions which grantees must use when preparing their plan.

§ 668.720 What information must these planning documents contain?

(a) The comprehensive services plan must cover the two Program Years included within a designation cycle. According to planning instructions issued by the Department, the comprehensive services plan must describe in narrative form:

(1) The specific goals of the INA grantee's program for the two Program Years involved;

(2) The method the INA grantee will use to target its services on specific segments of its service population;

(3) The array of services which the INA grantee intends to make available;

(4) The system the INA grantee will use to be accountable for the results of its program services. Such results must be judged in terms of the outcomes for individual participants and/or the benefits the program provides to the Native American community(ies) which the INA grantee serves. Plans must include the performance information required by § 668.620;

(5) The ways in which the INA grantee will seek to integrate or coordinate and ensure nonduplication of its employment and training services with:

(i) The One-Stop delivery system in its local workforce investment area, including a description of any MOU's which affect the grantee's participation;

(ii) Other services provided by local Workforce Investment Boards;

(iii) Other program operators;

(iv) Other services available within the grantee organization; and

(v) Other services which are available to Native Americans in the community, including planned participation in the One-Stop system.

(b) Beginning in PY 2000, eligible INA grantees must include in their plan narratives a description of activities planned under the supplemental youth program, including items described in paragraph (a) (1) through (5) of this section.

(c) INA grantees must include a detailed budget of proposed Administrative Costs, utilizing the definition at 20 CFR 667.220, to use as a basis of negotiation with DINAP.

(d) INA grantees' plans must contain a projection of participant services and expenditures for each Program Year, consistent with guidance issued by the Department.

(e) For PY 1999, INA grantees who are early implementers under WIA must prepare and submit an Annual Plan rather than a Two Year Plan.

§ 668.730 When must these plans be submitted?

(a) The two-year plans are due at a date specified by DINAP in the year in which the two-year designation cycle begins. The Department will announce exact submission dates in the biennial planning instructions.

(b) Plans from INA grantees who are eligible for supplemental youth services funds must include their supplemental youth plans as part of their regular Two Year Plan. For PY 1999, a separate youth plan is required, and INA grantees will be required to submit their plans early, to allow for prompt funding of the youth component.

(c) INA grantees must submit modifications for the second year reflecting exact funding amounts, after the individual allotments have been determined. They will be submitted at a time determined by the Department, but no later than June 1 prior to the beginning of the second year of the designation cycle.

§ 668.740 How will the Department review and approve such plans?

(a) The Department will approve a grantee's planning documents prior to the date on which funds for the program become available unless:

(1) The planning documents do not contain the information specified in these regulations; or

(2) The services which the INA grantee proposes are not permitted under WIA or applicable regulations.

(b) The Department may approve a portion of the plan, and disapprove other portions. The grantee also has the right to appeal the Department's decision to the Office of the Administrative Law Judges under the procedures at 20 CFR 667.800 or 667.840. While the INA grantee exercises its right to appeal, the grantee must implement the approved portions of the plan.

(c) If the Department disapproves all or part of an INA grantee's plan, and that disapproval is sustained in the appeal process, the INA grantee will be given the opportunity to amend its plan so that it can be approved.

(d) If an INA grantee's plan is amended but is still disapproved, the grantee will have the right to appeal the Department's decision to the Offices of the Administrative Law Judges under the procedures at 20 CFR 667.800 or 667.840.

§ 668.750 Under what circumstances can the Department or the INA grantee modify the terms of the grantee's plan(s)?

(a) The Department may unilaterally modify the INA grantee's plan to add funds or, if required by Congressional action, to reduce the amount of funds available for expenditure.

(b) The INA grantee may request Departmental approval to modify its plan to add, expand, delete, or diminish any service allowable under these regulations. The INA grantee may modify its plan without Departmental approval, unless the modification reduces the total number of participants to be served annually under the grantee's program by a number which exceeds 25 percent of the participants previously proposed to be served, or by 25 participants, whichever is larger.

(c) The Department will act upon any modification within thirty (30) calendar days of receipt of the proposed modification. In the event that further clarification or modification is required, the Department may extend the thirty (30) day time frame to conclude appropriate negotiations.

Subpart H—Administrative Requirements

§ 668.800 What systems must an INA grantee have in place to administer an INA program?

(a) Each INA grantee must have a written system describing the procedures the grantee uses with respect to:

(1) The hiring and management of personnel paid with program funds;

(2) The acquisition and management of property purchased with program funds;

(3) Financial management practices;

(4) A participant grievance system which meets the requirements in section 181(c) of WIA and 20 CFR 667.600; and

(5) A participant records system.

(b) Participant records systems must include:

(1) A written or computerized record containing all the information used to determine the person's eligibility to receive program services;

(2) The participant's signature certifying that all the eligibility information he or she provided is true to the best of his/her knowledge; and

(3) The information necessary to comply with all program reporting requirements.

§ 668.810 What types of costs are allowable expenditures under the INA program?

Rules relating to allowable costs under WIA are covered in the consolidated regulations at 20 CFR 667.200 through 667.220.

§ 668.820 What rules apply to administrative costs under the INA program?

The definition and treatment of administrative costs are covered in the consolidated regulations at 20 CFR 667.210 and 667.220.

§ 668.830 How should INA program grantees classify costs?

Cost classification is covered in the WIA regulations at 20 CFR 667.200 through 667.220. For purposes of the INA program, program costs also include costs associated with other activities such as Tribal Employment Rights Office (TERO), and supportive services as defined in WIA sec. 101(46).

§ 668.840 What cost principles apply to INA funds?

The cost principles described in OMB Circulars A–87 (for tribal governments), A–122 (for private non-profits), and A–21 (for educational institutions), and the regulations at 20 CFR 667.200(c), apply to INA grantees, depending on the nature of the grantee organization.

§ 668.850 What audit requirements apply to INA grants?

The audit requirements established under the Department's regulations at 29 CFR part 99, which implement OMB Circular A–133, apply to all Native American WIA grants. These regulations, for all of WIA, are cited at 20 CFR 667.200(b). Audit resolution procedures are covered at 20 CFR 667.500 and 667.510.

§ 668.860 What cash management procedures apply to INA grant funds?

INA grantees must draw down funds only as they actually need them. The U.S. Department of Treasury regulations which implement the Cash Management Improvement Act, found at 31 CFR part 205, apply by law to most recipients of Federal funds. Special rules may apply to those grantees required to keep their funds in interest-bearing accounts, and to grantees participating in the demonstration under Pub. L. 102–477.

§ 668.870 What is "program income" and how is it regulated in the INA program?

(a) Program income is defined and regulated by WIA section 195(7), 20 CFR 667.200(a)(5) and the applicable rules in 29 CFR parts 95 and 97.

(b) For grants made under this part, program income does not include income generated by the work of a work experience participant in an enterprise, including an enterprise owned by an Indian tribe or Alaska Native entity, whether in the public or private sector.

(c) Program income does not include income generated by the work of an OJT

participant in an establishment under paragraph (b) of this section.

Subpart I—Miscellaneous Program Provisions

§ 668.900 Does the WIA provide regulatory and/or statutory waiver authority?

Yes. WIA section 166(h)(3) permits waivers of any statutory or regulatory requirement imposed upon INA grantees (except for the areas cited in § 668.920). Such waivers may include those necessary to facilitate WIA support of long term community development goals.

§ 668.910 What information is required to document a requested waiver?

To request a waiver, an INA grantee must submit a plan indicating how the waiver will improve the grantee's WIA program activities. The Department will provide further guidance on the waiver process, consistent with the provisions of WIA section 166(h)(3).

§ 668.920 What provisions of law or regulations may not be waived?

Requirements relating to:
(a) Wage and labor standards;
(b) Worker rights;
(c) Participation and protection of workers and participants;
(d) Grievance procedures;
(e) Judicial review; and
(f) Non-discrimination may not be waived. (WIA sec 166(h)(3)(A).)

§ 668.930 May INA grantees combine or consolidate their employment and training funds?

Yes. INA grantees may consolidate their employment and training funds under WIA with assistance received from related programs in accordance with the provisions of the Indian Employment, Training and Related Services Demonstration Act of 1992 (Pub. L. 102–477) (25 U.S.C. 3401 *et seq.*). Also, Federally-recognized tribes that administer INA funds and funds provided by more than one State under other sections of WIA title I may enter into an agreement with the Governors to transfer the State funds to the INA program. (WIA sec. 166(f) and (h)(6).)

§ 668.940 What is the role of the Native American Employment and Training Council?

The Native American Employment and Training Council is a body composed of representatives of the grantee community which advises the Secretary on all aspects of Native American employment and training program implementation. WIA section 166(h)(4) continues the Council essentially as it is currently constituted, with the exception that all the Council members no longer have to be Native American. However, the nature of the consultative process remains essentially unchanged. The Department continues to support the Council.

PART 669—MIGRANT AND SEASONAL FARMWORKER PROGRAMS UNDER TITLE I OF THE WORKFORCE INVESTMENT ACT

Subpart A—Purpose and Definitions

Sec.
669.100 What is the purpose of the Migrant and Seasonal Farmworker (MSFW) Program established under WIA section 167?
669.110 What definitions apply to this program?
669.120 How is the MSFW program administered by the Department of Labor?
669.130 What unit within the Department administers the Migrant and Seasonal Farmworker programs funded under WIA section 167?
669.140 How does the DSFP assist the MSFW grantee organizations serve farmworker customers?
669.150 How are regulations established for this program?
669.160 How does the Department consult with MSFW organizations in developing rules, regulations and standards of accountability and other policy guidance for the MSFW Programs?
669.170 What WIA regulations apply to the programs funded under WIA section 167?

Subpart B—MSFW Program's Service Delivery System

669.200 Who is eligible to receive a MSFW grant?
669.210 How does an eligible entity become a MSFW grantee?
669.220 What is the role of the MSFW grantee in the One-Stop delivery system?
669.230 Can a MSFW grantee's designation be terminated?
669.240 How will the Department use funds appropriated under WIA section 167 for MSFW programs?

Subpart C—MSFW Program Customers and Available Program Services

669.300 What are the general responsibilities of the MSFW grantees?
669.310 What are the basic components of a MSFW service delivery strategy?
669.320 Who is eligible to receive services under the MSFW Program?
669.330 How are services delivered to the customer?
669.340 What core services are available to eligible MSFWs?
669.350 How are core services delivered to MSFWs?
669.360 May grantees provide emergency assistance to MSFWs?
669.370 What intensive services may be provided to eligible MSFWs?
669.380 What is the objective assessment that is authorized as an intensive service?
669.400 What are the elements of the IEP that is authorized as an intensive service?
669.410 What training services may be provided to eligible MSFWs?
669.420 What must be included in an on-the-job training contract?

Subpart D—Performance Accountability, Planning and Waiver Provision

669.500 What performance measures and standards apply to the MSFW Program?
669.510 What planning documents must a MSFW grantee submit to the Department?
669.520 What information is required in the MSFW grant plans?
669.530 What are the submission dates for these plans?
669.540 Under what circumstances are the terms of the grantee's plan modified by the grantee or the Department?
669.550 How are costs classified under the MSFW Program?
669.560 Are there regulatory and/or statutory waiver provisions that apply to WIA section 167?
669.570 What information is required to document a requested waiver?

Subpart E—The MSFW Youth Program

669.600 What is the purpose of the WIA section 167 MSFW Youth Program?
669.610 What is the relationship between the MSFW youth program and the MSFW program authorized at WIA section 167?
669.620 How do the MSFW youth program regulations apply to the MSFW program authorized under WIA section 167?
669.630 What are the requirements for designation as a "MSFW youth program grantee"?
669.640 What is the process for applying for designation as a MSFW youth program grantee?
669.650 How are MSFW youth funds allocated to section 167 grantees?
669.660 What planning documents and information are required in the application for MSFW youth grants and when must they be filed?
669.670 Who is eligible to receive services under the section 167 MSFW youth program?
669.680 What activities and services may be provided under the MSFW youth program?

Authority: section 506(c), Pub. L. 105–220; 20 U.S.C. 9276(c)

Subpart A—Purpose and Definitions

§ 669.100 What is the purpose of the Migrant and Seasonal Farmworker (MSFW) program established under WIA section 167?

The purpose of the MSFW Program is to strengthen the ability of eligible migrant and seasonal farmworkers and their families to achieve economic self-sufficiency. This part provides the regulatory requirements applicable to the expenditure of WIA section 167 funds for such program.

§ 669.110 What definitions apply to this program?

In addition to the definitions found in WIA secs. 101 and 167 and in 20 CFR 660.330, the following definitions apply to programs under this subpart:

Allowances means direct payments, which must not exceed the higher of the State or Federal minimum wage, made to MSFW participants during their enrollment to enable them to participate in training services.

Capacity enhancement means the technical assistance afforded to grantees and grantee staff by the Department to improve the quality of the program and the delivery of program services to MSFWs.

Department means the U.S. Department of Labor, including its agencies and organizational units, unless otherwise indicated.

Disadvantaged means a farmworker whose income, for any 12 consecutive months out of the 24 months immediately before the farmworker applies for the program, does not exceed the higher of either the poverty line or 70 percent of the lower living standard income level.

DSFP means the Division of Seasonal Farmworker Programs within the Employment and Training Administration of the Department, or a successor organizational unit.

Eligibility determination period means any consecutive 12-month period within the 24-month period immediately preceding the date of application for the MSFW program by the applicant farmworker.

Emergency Assistance means assistance that addresses immediate needs of farmworkers and their families, provided by MSFW grantees. Except for evidence to support legal working status in the United States and Selective Service registration, where applicable, the applicant's self-attestation is accepted as eligibility for emergency assistance.

Farmwork means those occupations in the agricultural industries identified by the Department for inclusion in its allocation formula for MSFW-funded programs.

MSFW program grantee means an entity which is awarded a WIA grant directly from the Department to carry out the MSFW program in one or more designated States or substate areas.

MSFW means a Migrant or Seasonal Farmworker under WIA section 167.

MOU means Memorandum of Understanding.

Self-certification means a farmworker's signed attestation that the information he/she submits to demonstrate eligibility for the MSFW program is true and accurate.

Service area means the geographical jurisdiction in which a WIA section 167 grantee is designated to operate.

Work experience means a planned, structured learning experience that takes place in a workplace for a limited period of time. Work experience may paid or unpaid, as appropriate.

§ 669.120 How is the MSFW program administered by the Department of Labor?

This program is centrally administered by the Department of Labor in a manner consistent with the requirements of WIA section 167. As described in § 669.210, the Secretary designates grantees using procedures consistent with standard Federal government competitive procedures. The Secretary awards other grants and contracts using similar competitive procedures.

§ 669.130 What unit within the Department administers the Migrant and Seasonal Farmworker programs funded under WIA section 167?

The Department has designated the Division of Seasonal Farmworker Programs (DSFP), or its successor organization, within the Employment and Training Administration, as the organizational unit that administers MSFW programs at the Federal level.

§ 669.140 How does the DSFP assist the MSFW grantee organizations serve farmworker customers?

The Department provides technical assistance and training to MSFW grantees, for the purposes of program implementation and program performance management leading to enhancement of services to and continuous improvement in the employment outcomes of farmworkers.

§ 669.150 How are regulations established for this program?

In developing regulations for WIA section 167, the Secretary consults with the Migrant and Seasonal Farmworker Employment and Training Advisory Committee. The regulations and program guidance consider the economic circumstances and demographics of eligible migrant and seasonal farmworkers.

§ 669.160 How does the Department consult with MSFW organizations in developing rules, regulations and standards of accountability and other policy guidance for the MSFW Programs?

(a) The Department considers the MSFW grantee community as a full partner in the development of policies for the MSFW programs under the Act.

(b) The Department has established and continues to support the MSFW Employment and Training Advisory Committee. Through the Advisory Committee, the Department actively seeks and considers the views of the grantee community prior to establishing policies and/or program regulations, according to the requirements of WIA section 167.

§ 669.170 What WIA regulations apply to the programs funded under WIA section 167?

(a) The regulations found in this subpart;

(b) The general administrative requirements found in 20 CFR part 667, including the regulations concerning Complaints, Investigations and Hearings found at 20 CFR part 667, subpart E through subpart H, which cover programs under WIA section 167;

(c) The Department's regulations codifying the common rules implementing Office of Management and Budget (OMB) Circulars, which generally apply to Federal programs carried out by State and local governments and nonprofit organizations at 29 CFR parts 95, 96, 97, and 99, as applicable.

Subpart B—MSFW Program's Service Delivery System

§ 669.200 Who is eligible to receive a MSFW grant?

(a) To be eligible to receive a grant under this section, an entity must have:

(1) An understanding of the problems of eligible migrant and seasonal farmworkers and their dependents;

(2) A familiarity with the agricultural industry and the labor market needs of the geographic area to be served;

(3) The capacity to effectively administer a diversified program of workforce investment activities and related assistance for eligible migrant and seasonal farmworkers (including farmworker youth) as described in paragraph (b) of this section.

(b) For purposes of paragraph (a)(3) of this section, an entity's "capacity to effectively administer" a program may be demonstrated by:

(1) Organizational experience; or

(2) Significant experience of its key staff in administering similar programs.

§ 669.210 How does an eligible entity become a MSFW grantee?

To become a MSFW grantee and receive a grant under this subpart, the entity must respond to a Solicitation for Grant Applications (SGA). The SGA may contain additional requirements for the grant application or the grantee's two-year plan. Under the SGA, grantees

will be selected using standard Federal Government competitive procedures. The entity's proposal must describe a two-year strategy for meeting the needs of eligible migrant and seasonal farmworkers in the geographic area the entity seeks to serve.

§ 669.220 What is the role of the MSFW grantee in the One-Stop delivery system?

(a) In those local areas where there is a grantee MSFW field office, the grantee is a required partner of the local One-Stop delivery system and is subject to the provisions relating to such partners described in 20 CFR part 662. Consistent with those provisions, the grantee and the Local Board must negotiate an MOU which sets forth their respective responsibilities for making the full range of core services available to farmworkers. In local areas without a grantee MSFW field office but with a large concentration of MSFWs, the grantee should consider the availability of electronic connections and other means to participate in the One-stop system in that area, in order to serve those individuals.

(b) The MOU should reflect appropriate and equitable services to MSFWs, and may include costs of services to MSFWs incurred by the One-Stop that extend beyond Wagner-Peyser funded services and activities.

§ 669.230 Can a MSFW grantee's designation be terminated?

Yes, a grantee's designation may be terminated for cause:

(a) By the Secretary, in emergency circumstances when such action is necessary to protect the integrity of Federal funds or ensure the proper operation of the program. Any grantee so terminated will be provided with written notice and an opportunity for a hearing within 30 days after the termination (WIA sec. 184(e).); or

(b) By the Grant Officer, if there is a substantial or persistent violation of the requirements in the Act or these regulations. In such a case, the Grant Officer must provide the grantee with 60 days prior written notice, stating the reasons why termination is proposed, and the applicable appeal procedures.

§ 669.240 How will the Department use funds appropriated under WIA section 167 for MSFW programs?

(a) At least 94 percent of the funds appropriated each year for WIA section 167 activities must be allocated to State service areas, based on the distribution of the eligible MSFW population determined under a formula which has been published in the **Federal Register**. Grants are awarded under the competitive process for the provision of services to eligible farmworkers within each service area.

(b) The balance, 6 percent of the appropriated funds, will be used for discretionary purposes for such activities as grantee technical assistance and support of farmworker housing activities.

Subpart C—MSFW Program Customers and Available Program Services

§ 669.300 What are the general responsibilities of the MSFW grantees?

Each grantee is responsible for providing needed services in accordance with a service delivery strategy described in its approved grant plan. These services must reflect the needs of the MSFW population in the service area and include the services and training activities that are necessary to achieve each participant's employment goals.

§ 669.310 What are the basic components of a MSFW service delivery strategy?

The MSFW service delivery strategy must include:

(a) A customer-centered case management approach;

(b) The provision of workforce investment activities, which include, core services, intensive services, and training services as described in WIA section 134, as appropriate;

(c) The arrangements under the MOUs with the applicable Local Workforce Investment Boards for the delivery of core services to MSFWs.

§ 669.320 Who is eligible to receive services under the MSFW Program?

Disadvantaged migrant and seasonal farmworkers, as defined in § 669.110, and their dependents are eligible for services funded by the MSFW program.

§ 669.330 How are services delivered to the customer?

To ensure that all services are focused on the customer's needs, services are provided through a case-management approach and may include: Core, intensive and training services; and related assistance, which includes emergency assistance and supportive services. The basic services and delivery of case-management activities are further described at §§ 669.340 through 669.410 of this subpart. Consistent with 20 CFR part 663, prior to intensive services, a participant must receive at least one core service, and, prior to training services, a participant must receive at least one intensive service.

§ 669.340 What core services are available to eligible MSFWs?

The core services identified in WIA section 134(d)(2).

§ 669.350 How are core services delivered to MSFWs?

(a) The full range of core services are available to MSFWs, as well as other individuals, at One-Stop Centers as described in 20 CFR part 662.

(b) Where a MSFW field office is located within the workforce investment area of a One-Stop center, core services must be made available through the One-Stop delivery system, as determined in the required MOU between the Local Board and the MSFW grantee.

§ 669.360 May grantees provide emergency assistance to MSFWs?

(a) Yes. Emergency assistance (as defined in § 669.110 of this part) is a form of the related assistance that is authorized under WIA section 167(d) and may be provided by a grantee as described in the grant plan.

(b) In providing emergency assistance, the MSFW may use an abbreviated eligibility determination process that accepts the applicant's self-attestation as final evidence of eligibility, except that self-attestation may not be used to establish the requirements of legal working status in the United States, and Selective Service registration, where applicable.

§ 669.370 What intensive services may be provided to eligible MSFWs?

(a) Intensive services available to farmworkers include those described in WIA section 134(d)(3)(C).

(b) Intensive services may also include:

(1) Dropout prevention activities;

(2) Allowance payments;

(3) Work experience, which:

(i) Is designed to promote the development of good work habits and basic work skills at the work-site (work experience may be conducted with public and private non-profit and private for-profit sectors); and

(ii) Compensates participants at no less than the applicable State or Federal minimum wage.

(4) Literacy and English-as-a-Second language; and

(5) Other services identified in the approved grant plan.

§ 669.380 What is the objective assessment that is authorized as an intensive service?

(a) An objective assessment is a procedure designed to comprehensively assess the skills, abilities, and interests of each employment and training

participant through the use of diagnostic testing and other assessment tools. The methods used by the grantee in conducting the objective assessment may include:

(1) Structured in-depth interviews;
(2) Skills and aptitude assessments;
(3) Performance assessments (for example, skills or work samples, including those that measure interest and capability to train in nontraditional employment);
(4) Interest or attitude inventories;
(5) Career guidance instruments;
(6) Aptitude tests; and
(7) Basic skills tests.

(b) The objective assessment is an ongoing process that requires the grantee staff to remain in close consultation with each participant to continuously obtain current information about the participant's progress that may be relevant to his/her Individual Employment Plan (IEP).

§ 669.400 What are the elements of the IEP that is authorized as an intensive service?

The elements of the IEP are:

(a) Joint development: The grantee develops the IEP in partnership with the participant;

(b) Customer focus: The combination of services chosen with the participant must be consistent with the results of any objective assessment, responsive to the expressed goals of the participant, and must include periodic evaluation of planned goals and a record of accomplishments in consultation with the participant;

(c) Length/type of service: The type and duration of intensive or training services must be based upon:

(1) The employment/career goal;
(2) Referrals to other programs for specified activities; and
(3) The delivery agents and schedules for intensive services, training and training-related supportive services; and

(d) Privacy: As a customer-centered case management tool, an IEP is a personal record and must receive confidential treatment.

§ 669.410 What training services may be provided to eligible MSFWs?

(a) Training services include those described in WIA sections 134(d)(4)(D) and 167(d), and may be described in the IEP and may include:

(1) On-the-job training activities under a contract between the participating employer and the grantee;
(2) Workplace safety and farmworker pesticide training;
(3) Housing development assistance;
(4) Training-related supportive services; and

(b) Other training activities identified in the approved grant plan.

§ 669.420 What must be included in an on-the-job training contract?

At a minimum, the on-the-job training contract must include:

(a) The occupation(s) for which training is to be provided;
(b) The duration of training;
(c) The wage rate to be paid to the trainee;
(d) The rate of reimbursement;
(e) The maximum amount of reimbursement;
(f) A training outline that reflects the work skills required for the position;
(g) An outline of any other separate classroom training that may be provided by the employer;
(h) Application of the general program requirements of WIA section 195(4) and section 101(31); and
(i) The employer's agreement to maintain and make available time and attendance, payroll and other records to support amounts claimed by the employer for reimbursement under the OJT contract;

Subpart D—Performance Accountability, Planning and Waiver Provision

§ 669.500 What performance measures and standards apply to the MSFW Program?

(a) The MSFW program will use the core indicators of performance common to the adult and youth programs, described in 20 CFR part 666. The levels of performance for the farmworker indicators will be established pursuant to a negotiation between the Department and the grantee. The levels must take into account the characteristics of the population to be served and the economic conditions in the service area. Proposed levels of performance are to be included in the grantee plan submission, and the agreed to levels must be included in the approved plan.

(b) The Department may develop additional performance indicators with appropriate levels of performance for evaluating programs that serve farmworkers and which are reflective of the State service area economy and local demographics of eligible MSFWs. The levels of performance for these additional indicators must be negotiated with the grantee and included in the approved plan.

§ 669.510 What planning documents must a MSFW grantee submit to the Department?

Each grantee receiving WIA section 167 program funds must submit to DSFP a comprehensive service delivery plan and a projection of participant services and expenditures covering the two-year designation cycle.

§ 669.520 What information is required in the MSFW grant plans?

An MSFW grantee's biennial plan must describe:

(a) The employment and education needs of the farmworker population to be served;

(b) The manner in which proposed services to farmworkers and their families will strengthen their ability to obtain or retain employment or stabilize their agricultural employment;

(c) The related assistance and supportive services to be provided and the manner in which such assistance and services are to be coordinated with other available services;

(d) The performance indicators and proposed levels of performance used to assess the performance of such entity, including the specific goals of the grantee's program for the two Program Years involved;

(e) The method the grantee will use to target its services on specific segments of the eligible population, as appropriate;

(f) The array of services which the grantee intends to make available, with costs specified on forms prescribed by the Department. These forms will indicate how many participants the grantee expects to serve, by activity, the results expected under the grantee's plan, and the anticipated expenditures by cost category; and

(g) Its response to any other requirements set forth in the SGA issued under § 669.210 of this part.

§ 669.530 What are the submission dates for these plans?

Plan submission dates will be announced by the Department in the SGA issued under § 669.220 of this part.

§ 669.540 Under what circumstances are the terms of the grantee's plan modified by the grantee or the Department?

(a) Plans must be modified to reflect the funding level for the second year of the designation cycle. Modifications for second year funding must be submitted at a time to be determined by the Department, generally no later than June 1 prior to the beginning of the second year of the designation cycle.

(b) The Department may unilaterally modify the grantee's plan to add funds or, if the total amount of funds available for allotment is reduced by Congress, to reduce each grantee's grant amount.

(c) The grantee may modify its plan to add, delete, expand, or reduce any part of the program plan or allowable activities. Such modifications may be made by the grantee without Departmental approval except where the modification reduces the total number

of participants to be served annually under intensive and/or training services by 15 percent or more, in which case the plan may only be modified with Departmental approval.

(d) If the grantee is approved for a regulatory waiver under §§ 669.560 and 669.570, the grantee must submit a modification of its service delivery plan to reflect the effect of the waiver.

§ 669.550 How are costs classified under the MSFW Program?

Costs are classified as follows:

(a) Administrative costs, as defined in 20 CFR 667.220; and

(b) Program costs, which are all other costs not defined as administrative.

Program costs must be classified and reported in the following categories:

(1) Related assistance including emergency assistance and supportive services, including allocated staff costs; and

(2) All other program services, including allocated staff costs.

§ 669.560 Are there regulatory and/or statutory waiver provisions that apply to WIA section 167?

(a) The statutory waiver provision at WIA section 189(i) does not apply to WIA section 167.

(b) MSFW grantees may request waiver of any regulatory provisions only when such regulatory provisions are:

(1) Not required by WIA;

(2) Not related to wage and labor standards, nondisplacement protection, worker rights, participation and protection of workers and participants, and eligibility of participants, grievance procedures, judicial review, nondiscrimination, allocation of funds, procedures for review and approval of plans; and

(3) Not related to the key reform principles embodied in WIA, described in 20 CFR 661.400.

§ 669.570 What information is required to document a requested waiver?

(a) To request a waiver, a grantee must submit a waiver plan that:

(1) Describes the goals of the waiver, the expected programmatic outcomes, and how the waiver will improve the provision of WIA activities;

(2) Is consistent with guidelines established by the Department and the waiver provisions at 20 CFR 661.400 through 661.420; and

(b) Includes a modified service delivery plan reflecting the effect of requested waiver.

Subpart E—The MSFW Youth Program

§ 669.600 What is the purpose of the WIA section 167 MSFW Youth Program?

The purpose of the MSFW youth program is to provide an effective and comprehensive array of educational opportunities, employment skills, and life enhancement activities to at-risk and out-of-school MSFW youth that lead to success in school, economic stability and development into productive members of society.

§ 669.610 What is the relationship between the MSFW youth program and the MSFW program authorized at WIA section 167?

The MSFW youth program is funded under WIA section 127(b)(1)(A)(iii) to provide farmworker youth activities under the auspices of WIA section 167. These funds are specifically earmarked for MSFW youth. Funds provided for the section 167 program may also be used for youth, but are not limited to this age group.

§ 669.620 How do the MSFW youth program regulations apply to the MSFW program authorized under WIA section 167?

(a) This subpart applies only to the administration of grants for MSFW youth programs funded under WIA section 127(b)(1)(A)(iii).

(b) The regulations for the MSFW program in this part apply to the administration of the MSFW youth program, except as modified in this subpart.

§ 669.630 What are the requirements for designation as a "MSFW youth program grantee"?

Any entity may apply for designation as a "MSFW youth program grantee" consistent with requirements described in the SGA. The Department gives special consideration to an entity in any service area for which the entity has been designated as a WIA section 167 MSFW program grantee.

§ 669.640 What is the process for applying for designation as a MSFW youth program grantee?

(a) To apply for designation as a MSFW youth program grantee, entities must respond to an SGA by submitting a plan that meets the requirements of WIA section 167(c)(2) and describes a two-year strategy for meeting the needs of eligible MSFW youth in the service area the entity seeks to serve.

(b) The designation process is conducted competitively (subject to § 669.210) through a selection process distinct from the one used to select WIA section 167 MSFW program grantees.

§ 669.650 How are MSFW youth funds allocated to section 167 grantees?

The allocation of funds among entities designated as WIA section 167 MSFW Youth Program grantees is based on the comparative merits of the applications, in accordance with criteria set forth in the SGA. However, the Secretary may include criteria in the SGA that promote a geographical distribution of funds and that encourages both large- and small-scale programs.

§ 669.660 What planning documents and information are required in the application for MSFW youth grants and when must they be filed?

The required planning documents and other required information and the submission dates for filing are described in the SGA.

§ 669.670 Who is eligible to receive services under the section 167 MSFW youth program?

Disadvantaged youth, ages 14 through 21, who are individually eligible or are members of eligible families under the WIA sec. 167 MSFW program may receive these services.

§ 669.680 What activities and services may be provided under the MSFW youth program?

(a) Based on an evaluation and assessment of the needs of MSFW youth participants, grantees may provide activities and services to MSFW youth that include:

(1) Intensive services and training services, as described in §§ 669.400 and 669.410 of this part;

(2) Life skills activities which may include self and interpersonal skills development;

(3) Community service projects;

(4) Small business development technical assistance and training in conjunction with entrepreneurial training;

(5) Supportive services; and

(b) Other activities and services that conform to the use of funds for youth activities described in 20 CFR part 664.

PART 670—THE JOB CORPS UNDER TITLE I OF THE WORKFORCE INVESTMENT ACT

Subpart A—Scope and Purpose

Sec.

670.100 What is the scope of this part?
670.110 What is the Job Corps program?
670.120 What definitions apply to this part?
670.130 What is the role of the Job Corps Director?

Subpart B—Site Selection and Protection and Maintenance of Facilities

670.200 Who decides where Job Corps centers will be located?
670.210 How are center facility improvements and new construction handled?
Sec.670.220 Is the Secretary responsible for protection and maintenance of center facilities?

Subpart C—Funding and Selection of Service Providers

670.300 What entities are eligible to receive funds to operate centers and provide training and operational support services?
670.310 How are entities selected to receive funding?
670.320 What are the requirements for award of contracts and payments to Federal agencies?

Subpart D—Recruitment, Eligibility, Screening, Selection and Assignment, and Enrollment

670.400 Who is eligible to participate in the Job Corps program?
670.410 Are there additional factors which are considered in selecting an eligible applicant for enrollment?
670.420 Are there any special requirements for enrollment related to the Military Selective Service Act?
670.430 What entities conduct outreach and admissions activities for the Job Corps program?
670.440 What are the responsibilities of outreach and admissions agencies?
670.450 How are applicants who meet eligibility and selection criteria assigned to centers?
670.460 What restrictions are there on the assignment of eligible applicants for nonresidential enrollment in Job Corps?
670.470 May a person who is determined to be ineligible or an individual who is denied enrollment appeal that decision?
670.480 At what point is an applicant considered to be enrolled in Job Corps?
670.490 How long can a student be enrolled in Job Corps?

Subpart E—Program Activities and Center Operations

670.500 What services must Job Corps centers provide?
670.505 What types of training must Job Corps centers provide?
670.510 Are Job Corps center operators responsible for providing all vocational training?
670.515 What responsibilities does the center operators have in managing work-based learning?
670.520 Are students permitted to hold jobs other than work-based learning opportunities?
670.525 What residential support services must Job Corps center operators provide?
670.530 Are Job Corps centers required to maintain a student accountability system?
670.535 Are Job Corps centers required to establish behavior management systems?
670.540 What is Job Corps' zero tolerance policy?
670.545 How does Job Corps ensure that students receive due process in disciplinary actions?
670.550 What responsibilities do Job Corps centers have in assisting students with child care needs?
670.555 What are the center's responsibilities in ensuring that students' religious rights are respected?
670.560 Is Job Corps authorized to conduct pilot and demonstration projects?

Subpart F—Student Support

670.600 Is government-paid transportation provided to Job Corps students?
670.610 When are students authorized to take leaves of absence from their Job Corps centers?
670.620 Are Job Corps students eligible to receive cash allowances and performance bonuses?
670.630 Are student allowances subject to Federal Payroll Taxes?
670.640 Are students provided with clothing?

Subpart G—Placement and Continued Services

670.700 What are Job Corps centers' responsibilities in preparing students for placement services?
670.710 What placement services will be provided for Job Corps students?
670.720 Who will provide placement services?
670.730 What are the responsibilities of placement agencies?
670.740 Must continued services be provided for graduates?
670.750 Who may provide continued services for graduates?
670.760 How will Job Corps coordinate with other agencies?

Subpart H—Community Connections

670.800 How do Job Corps centers and service providers become involved in their local communities?

Subpart I—Administrative and Management Provisions

670.900 Are damages caused by students eligible for reimbursement under the Tort Claims Act?
670.905 Are damages that occur to private parties at Job Corps Centers eligible for reimbursement under the Tort Claims Act?
670.910 Are students entitled to Federal Employees Compensation Benefits?
670.915 When are residential students considered to be in the performance of duty?
670.920 When are non-resident students considered to be in the performance of duty?
670.925 When are students considered to be not in the performance of duty?
670.930 How are FECA benefits computed?
670.935 How will students be protected from unsafe or unhealthy situations?
670.940 What are the requirements relating to criminal law enforcement jurisdiction on center property?
670.945 Are Job Corps operators and service providers authorized to pay State or local taxes on gross receipts?
670.950 What are the financial management responsibilities of Job Corps center operators and other service providers?
670.955 Are Center Operators and Service Providers Subject to Federal Audits?
670.960 What are the procedures for management of student records?
670.965 What procedures apply to disclosure of information about Job Corps students and program activities?
670.970 What are the reporting requirements for center operators and operational support service providers?
670.975 How will performance of the Job Corps program be assessed?
670.980 What are the indicators of performance for Job Corps?
670.985 What happens if a center operator, screening and admissions contractor or other service provider fails to meet the expected levels of performance?
670.990 What procedures are available to resolve complaints and disputes?
670.991 How does Job Corps ensure that complaints or disputes are resolved in a timely fashion?
670.992 How does Job Corps ensure that centers or other service providers comply with the Act and regulations?
670.993 How does Job Corps ensure that contract disputes will be resolved?
670.994 How does Job Corps resolve disputes between DOL and other Federal Agencies?
670.995 What DOL equal opportunity and nondiscrimination regulations apply to Job Corps?

Authority: Sec. 506(c), Pub. L. 105–220; 20 U.S.C. 9276(c).

Subpart A—Scope and Purpose

§ 670.100 What is the scope of this part?

The regulations in this part are an outline of the requirements that apply to the Job Corps program. More detailed policies and procedures are contained in a Policy and Requirements Handbook issued by the Secretary. Throughout this part, phrases like "according to instructions (procedures) issued by the Secretary" refer to the Policy and Requirements Handbook and other Job Corps directives.

§ 670.110 What is the Job Corps program?

Job Corps is a national program that operates in partnership with States and communities, local Workforce Investment Boards, youth councils, One-Stop Centers and partners, and other youth programs to provide education and training, primarily in a residential setting, for low income young people. The objective of Job Corps is to provide young people with the skills they need to obtain and hold a job, enter the Armed Forces, or enroll in advanced training or further education.

§ 670.120 What definitions apply to this part?

The following definitions apply to this part:

Absent Without Official Leave (AWOL) means an adverse enrollment status to which a student is assigned based on extended, unapproved absence from his/her assigned center or off-center place of duty. Students do not earn Job Corps allowances while in AWOL status.

Applicable local board means a local Workforce Investment Board that:

(1) works with a Job Corps center and provides information on local demand occupations, employment opportunities, and the job skills needed to obtain the opportunities, and

(2) serves communities in which the graduates of the Job Corps seek employment when they leave the program.

Capital improvement means any modification, addition, restoration or other improvement:

(1) Which increases the usefulness, productivity, or serviceable life of an existing site, facility, building, structure, or major item of equipment;

(2) Which is classified for accounting purposes as a "fixed asset;" and

(3) The cost of which increases the recorded value of the existing building, site, facility, structure, or major item of equipment and is subject to depreciation.

Center means a facility and an organizational entity, including all of its parts, providing Job Corps training and designated as a Job Corps center.

Center operator means a Federal, State or local agency, or a contractor that runs a center under an agreement or contract with DOL.

Civilian conservation center (CCC) means a center operated on public land under an agreement between DOL and another Federal agency, which provides, in addition to other training and assistance, programs of work-based learning to conserve, develop, or manage public natural resources or public recreational areas or to develop community projects in the public interest.

Contract center means a Job Corps center operated under a contract with DOL.

Contracting officer means the Regional Director or other official authorized to enter into contracts or agreements on behalf of DOL.

Enrollee means an individual who has voluntarily applied for, been selected for, and enrolled in the Job Corps program, and remains with the program, but has not yet become a graduate. Enrollees are referred to as "students" in this part.

Enrollment means the process by which individual formally becomes a student in the Job Corps program.

Graduate means an enrollee who has:

(1) Completed the requirements of a vocational training program, or received a secondary school diploma or its equivalent as a result of participating in the Job Corps program; and

(2) Achieved job readiness and employment skills as a result of participating in the Job Corps program.

Individual with a disability means an individual with a disability as defined in section 3 of the Americans with Disabilities Act of 1990 (42 U.S.C. 12102).

Interagency agreement means a formal agreement between DOL and another Federal agency administering and operating centers. The agreement establishes procedures for the funding, administration, operation, and review of those centers as well as the resolution of any disputes.

Job Corps means the agency of the Department established by section 143 of the Workforce Investment Act of 1998 (WIA) (20 U.S.C. 9201) to perform those functions of the Secretary of Labor set forth in subtitle C of WIA Title I.

Job Corps Director means the chief official of the Job Corps or a person authorized to act for the Job Corps Director.

Low income individual means an individual who meets the definition in WIA section 101(25).

National Office means the national office of Job Corps.

National training contractor means a labor union, union-affiliated organization, business organization, association or a combination of such organizations, which has a contract with the national office to provide vocational training, placement, or other services.

Operational support services means activities or services required to support the operation of Job Corps, including:

(1) Outreach and admissions services;

(2) Contracted vocational training and off-center training;

(3) Placement services;

(4) Continued services for graduates;

(5) Certain health services; and

(6) Miscellaneous logistical and technical support.

Outreach and admissions agency means an organization that performs outreach, and screens and enrolls youth under a contract or other agreement with Job Corps.

Placement means student employment, entry into the Armed Forces, or enrollment in other training or education programs following separation from Job Corps.

Placement agency means an organization acting under a contract or other agreement with Job Corps to provide placement services for graduates and, the extent possible, for former students.

Regional appeal board means the board designated by the Regional Director to consider student appeals of disciplinary discharges.

Regional Director means the chief Job Corps official of a regional office or a person authorized to act for the Regional Director.

Regional Office means a regional office of Job Corps.

Regional Solicitor means the chief official of a regional office of the DOL Office of the Solicitor, or a person authorized to act for the Regional Solicitor.

Separation means the action by which an individual ceases to be a student in the Job Corps program, either voluntarily or involuntarily.

Student means an individual enrolled in the Job Corps.

Unauthorized goods means:

(1) Firearms and ammunition;

(2) Explosives and incendiaries;

(3) Knives with blades longer than 2 inches;

(4) Homemade weapons;

(5) All other weapons and instruments used primarily to inflict personal injury;

(6) Stolen property;

(7) Drugs, including alcohol, marijuana, depressants, stimulants, hallucinogens, tranquilizers, and drug paraphernalia except for drugs and/or paraphernalia that are prescribed for medical reasons; and

(8) Any other goods prohibited by the center operator in a student handbook.

§ 670.130 What is the role of the Job Corps Director?

The Job Corps Director has been delegated the authority to carry out the responsibilities of the Secretary under Subtitle I–C of the Act. Where the term "Secretary" is used in this part 670 to refer to establishment or issuance of guidelines and standards directly relating to the operation of the Job Corps program, the Job Corps Director has that responsibility.

Subpart B—Site Selection and Protection and Maintenance of Facilities

§ 670.200 Who decides where Job Corps centers will be located?

(a) The Secretary must approve the location and size of all Job Corps centers.

(b) The Secretary establishes procedures for making decisions

concerning the establishment, relocation, expansion, or closing of contract centers.

§ 670.210 How are center facility improvements and new construction handled?

The Secretary issues procedures for requesting, approving, and initiating capital improvements and new construction on Job Corps centers.

§ 670.220 Is the Secretary responsible for protection and maintenance of center facilities?

(a) Yes. The Secretary establishes procedures for the protection and maintenance of contract center facilities owned or leased by the Department of Labor, that are consistent with Federal Property Management Regulations at 41 CFR Chapter 101.

(b) Federal agencies operating civilian conservation centers (CCC's) on public land are responsible for protection and maintenance of CCC facilities.

(c) The Secretary issues procedures for conducting periodic facility surveys of centers to determine their condition and to identify needs such as correction of safety and health deficiencies, rehabilitation, and/or new construction.

Subpart C—Funding and Selection of Service Providers

§ 670.300 What entities are eligible to receive funds to operate centers and provide training and operational support services?

(a) Entities eligible to receive funds under this subpart to operate centers include:

(1) Federal, State, and local agencies;

(2) Private for-profit and non-profit corporations;

(3) Indian tribes and organizations; and

(4) Area vocational education or residential vocational schools. (WIA sec. 147(a)(1)(A) and (d)).

(b) Entities eligible to receive funds to provide outreach and admissions, placement and other operational support services include:

(1) One-Stop Centers and partners;

(2) Community action agencies;

(3) Business organizations;

(4) Labor organizations;

(5) Private for-profit and non-profit corporations; and

(6) Other agencies, and individuals that have experience and contact with youth. (WIA sec. 145(a)(3)).

§ 670.310 How are entities selected to receive funding?

(a) The Secretary selects eligible entities to operate contract centers and operational support service providers on a competitive basis in accordance with the Federal Property and Administrative Services Act of 1949 unless sections 303 (c) and (d) of that Act apply. In selecting an entity, Job Corps issues requests for proposals (RFP) for the operation of all contract centers and for provision of operational support services according to Federal Acquisition Regulation (48 CFR chapter 1, *et seq.*) and DOL Acquisition Regulation (48 CFR chapter 29). Job Corps develops RFP's for center operators in consultation with the Governor, the center industry council (if established), and the Local Board for the workforce investment area in which the center is located.

(b) The RFP for each contract center and each operational support service contract describes uniform specifications and standards, as well as specifications and requirements that are unique to the operation of the specific center or to the specific required operational support services.

(c) The contracting officer selects and funds Job Corps contract center operators on the basis of an evaluation of the proposals received using criteria established by the Secretary, and set forth in the RFP. The criteria include the following:

(1) The offeror's ability to coordinate the activities carried out through the Job Corps center with activities carried out under the appropriate State and local workforce investment plans;

(2) The degree to which the offeror is proposing vocational training that reflects employment opportunities in the local areas in which most of the students intend to seek employment;

(3) The degree to which the offeror is familiar with the surrounding community, including the applicable One-Stop Centers, and the State and region in which the center is located; and

(4) The offeror's past performance.

(d) The contracting officer selects and funds operational support service contractors on the basis of an evaluation of the proposals received using criteria established by the Secretary and set forth in the RFP.

(e) The Secretary enters into interagency agreements with Federal agencies for the funding, establishment, and operation of CCCs which will include provisions to ensure that the Federal agencies comply with the regulations under this part.

§ 670.320 What are the requirements for award of contracts and payments to Federal agencies?

(a) The requirements of the Federal Property and Administrative Services Act of 1949, as amended; the Federal Grant and Cooperative Agreement Act of 1977; the Federal Acquisition Regulation (48 CFR chapter 1); and the DOL Acquisition Regulation (48 CFR chapter 29) apply to the award of contracts and to payments to Federal agencies.

(b) Job Corps funding of Federal agencies that operate CCCs are made by a transfer of obligational authority from DOL to the respective operating agency.

Subpart D—Recruitment, Eligibility, Screening, Selection and Assignment, and Enrollment

§ 670.400 Who is eligible to participate in the Job Corps program?

To be eligible to participate in the Job Corps, an individual must be:

(a) At least 16 and not more than 24 years of age at the time of enrollment, except

(1) There is no upper age limit for an otherwise eligible individual with a disability; and

(2) Not more than 20% of individuals enrolled nationwide may be individuals who are aged 22 to 24 years old;

(b) A low-income individual; and

(c) An individual who is facing one or more of the following barriers to education and employment:

(1) Is basic skills deficient, as defined in WIA section 101(4); or

(2) Is a school dropout; or

(3) Is homeless, or a runaway, or a foster child; or

(4) Is a parent; or

(5) Requires additional education, vocational training, or intensive counseling and related assistance in order to participate successfully in regular schoolwork or to secure and hold meaningful employment.

(d) Meets the requirements of § 670.420, if applicable.

§ 670.410 Are there additional factors which are considered in selecting an eligible applicant for enrollment?

Yes. In accordance with procedures issued by the Secretary, an eligible applicant may be selected for enrollment, only if:

(a) A determination is made, based on information relating to the background, needs and interests of the applicant, that the applicant's educational and vocational needs can best be met through the Job Corps program;

(b) A determination is made that there is a reasonable expectation the applicant can participate successfully in group situations and activities, and is not likely to engage in actions that would potentially:

(1) Prevent other students from receiving the benefit of the program;

(2) Be incompatible with the maintenance of sound discipline; or

(3) Impede satisfactory relationships between the center to which the student is assigned and surrounding local communities;

(c) The applicant is made aware of the center's rules and what the consequences are for failure to observe the rules, as described by procedures issued by the Secretary;

(d) The applicant passes a background check conducted according to procedures established by the Secretary. The background check must find that the applicant is not on probation, parole, under a suspended sentence or under the supervision of any agency as a result of court action or institutionalization, unless the court or appropriate agency certifies in writing that it will approve of the applicant's release from its supervision and that the applicant's release does not violate applicable laws and regulations. No one will be denied enrollment in Job Corps solely on the basis of contact with the criminal justice system. (WIA secs. 145(b)(1)(C) and 145(b)(2).)

(e) Suitable arrangements are made for the care of any dependent children for the proposed period of enrollment.

§ 670.420 Are there any special requirements for enrollment related to the Military Selective Service Act?

(a) Yes. Each male applicant 18 years of age or older must present evidence that he has complied with section 3 of the Military Selective Service Act (50 U.S.C. App. 451 *et seq.*) if required; and

(b) When a male student turns 18 years of age, he must submit evidence to the center that he has complied with the requirements of the Military Selective Service Act (50 U.S.C. App. 451 *et seq.*).

§ 670.430 What entities conduct outreach and admissions activities for the Job Corps program?

The Regional Director makes arrangements with outreach and admissions agencies to perform Job Corps recruitment, screening and admissions functions according to standards and procedures issued by the Secretary. One-Stop Centers or partners, community action organizations, private for-profit and non-profit businesses, labor organizations, or other entities that have contact with youth over substantial periods of time and are able to offer reliable information about the needs of youth, conduct outreach and admissions activities. The Regional Director awards contracts for provision of outreach and screening services on a competitive basis in accordance with the requirements in § 670.310 of this part.

§ 670.440 What are the responsibilities of outreach and admissions agencies?

(a) Outreach and admissions agencies are responsible for:

(1) Developing outreach and referral sources;

(2) Actively seeking out potential applicants;

(3) Conducting personal interviews with all applicants to identify their needs and eligibility status; and

(4) Identifying youth who are interested and likely Job Corps participants.

(b) Outreach and admissions agencies are responsible for completing all Job Corps application forms and determining whether applicants meet the eligibility and selection criteria for participation in Job Corps as provided in §§ 670.400 and 670.410 of this subpart.

(c) The Secretary may decide that determinations with regard to one or more of the eligibility criteria will be made by the Regional Director.

§ 670.450 How are applicants who meet eligibility and selection criteria assigned to centers?

(a) Each applicant who meets the application and selection requirements of § 670.400 and § 670.410 is assigned to a center based on an assignment plan developed by the Secretary. The assignment plan identifies a target for the maximum percentage of students at each center who come from the State or region nearest the center, and the regions surrounding the center. The assignment plan is based on an analysis of:

(1) The number of eligible individuals in the State and region where the center is located and the regions surrounding where the center is located;

(2) The demand for enrollment in Job Corps in the State and region where the center is located and in surrounding regions; and

(3) The size and enrollment level of the center.

(b) Eligible applicants are assigned to centers closest to their homes, unless it is determined, based on the special needs of applicants, including vocational interests and English literacy needs, the unavailability of openings in the closest center, or parent or guardian concerns, that another center is more appropriate.

(c) A student who is under the age of 18 must not be assigned to a center other than the center closest to home if a parent or guardian objects to the assignment.

§ 670.460 What restrictions are there on the assignment of eligible applicants for nonresidential enrollment in Job Corps?

(a) No more than 20 percent of students enrolled in Job Corps nationwide may be nonresidential students.

(b) In enrolling individuals who are to be nonresidential students, priority is given to those eligible individuals who are single parents with dependent children. (WIA sec 147(b)).

§ 670.470 May a person who is determined to be ineligible or an individual who is denied enrollment appeal that decision?

(a) A person who is determined to be ineligible to participate in Job Corps under § 670.400 or a person who is not selected for enrollment under § 670.410 may appeal the determination to the outreach and admissions agency or to the center, within 60 days of the determination. The appeal will be resolved according to the procedures in §§ 670.990 and 670.991 of this part. If the appeal is denied by the outreach/admissions contractor or the center, the person may appeal the decision in writing to the Regional Director within 60 days the date of the denial. The Regional Director will decide within 60 days whether to reverse or approve the appealed decision. The decision by the Regional Director is the Department's final decision.

(b) If an applicant believes that he or she has been determined ineligible or not selected for enrollment based upon a factor prohibited by WIA sec. 188, the individual may proceed under the applicable DOL nondiscrimination regulations implementing WIA sec. 188.

(c) An applicant who is determined to be ineligible or a person who is denied enrollment must be referred to the appropriate One-Stop Center or other local service provider.

§ 670.480 At what point is an applicant considered to be enrolled in Job Corps?

(a) To become enrolled as a Job Corps student, an applicant selected for enrollment must physically arrive at the assigned Job Corps center on the appointed date. However, applicants selected for enrollment who arrive at their assigned centers by government furnished transportation are considered to be enrolled on their dates of departure by such transportation.

(b) Center operators must document the enrollment of new students according to procedures issued by the Secretary.

§ 670.490 How long can a student be enrolled in Job Corps?

(a) Except as provided in paragraph (b) of this section, a student may remain

enrolled in Job Corps for no more than two years.

(b)(1) An extension of a student's enrollment may be authorized in special cases according to procedures issued by the Secretary; and

(2) A student's enrollment in an advanced career training program may be extended in order to complete the program for a period not to exceed one year.

Subpart E—Program Activities and Center Operations

§ 670.500 What services must Job Corps centers provide?

(a) Job Corps centers must provide:

(1) Academic, vocational, employability and social skills training;

(2) Work-based learning; and

(3) Recreation, counseling and other residential support services.

(b) In addition, centers must provide students with access to the core services described in WIA section 134(d)(2) and the intensive services described in WIA section 134(d)(3).

§ 670.505 What types of training must Job Corps centers provide?

(a) Job Corps centers must provide basic education, vocational and social skills training. The Secretary provides curriculum standards and guidelines.

(b) Each center must provide students with competency-based or individualized training in an occupational area that will best contribute to the students' opportunities for permanent long-term employment.

(1) Specific vocational training programs offered by individual centers must be approved by the Regional Director according to policies issued by the Secretary.

(2) Center industry councils described in § 670.800 of this part, must review appropriate labor market information, identify employment opportunities in local areas where students will look for employment, determine the skills and education necessary for those jobs, and as appropriate, recommend changes in the center's vocational training program to the Secretary.

(c) Each center must implement a system to evaluate and track the progress and achievements of each student at regular intervals.

(d) Each center must develop a training plan that must be available for review and approval by the appropriate Regional Director.

§ 670.510 Are Job Corps center operators responsible for providing all vocational training?

No. In order to facilitate students' entry into the workforce, the Secretary may contract with national business, union, or union-affiliated organizations for vocational training programs at specific centers. Contractors providing such vocational training will be selected in accordance with the requirements § 670.310 of this part.

§ 670.515 What responsibilities does the center operators have in managing work-based learning?

(a) The center operator must emphasize and implement work-based learning programs for students through center program activities, including vocational skills training, and through arrangements with employers. Work-based learning must be under actual working conditions and must be designed to enhance the employability, responsibility, and confidence of the students. Work-based learning usually occurs in tandem with students' vocational training.

(b) The center operator must ensure that students are assigned only to workplaces that meet the safety standards described in § 670.935 of this part.

§ 670.520 Are students permitted to hold jobs other than work-based learning opportunities?

Yes. A center operator may authorize a student to participate in gainful leisure time employment, as long as the employment does not interfere with required scheduled activities.

§ 670.525 What residential support services must Job Corps center operators provide?

Job Corps center operators must provide the following services according to procedures issued by the Secretary:

(a) A quality living and learning environment that supports the overall training program and includes a safe, secure, clean and attractive physical and social environment, seven days a week, 24 hours a day;

(b) An ongoing, structured counseling program for students;

(c) Food service, which includes provision of nutritious meals for students;

(d) Medical services, through provision or coordination of a wellness program which includes access to basic medical, dental and mental health services, as described in the Policy and Requirements Handbook, for all students from the date of enrollment until separation from the Job Corps program;

(e) A recreation/avocational program;

(f) A student leadership program and an elected student government; and

(g) A student welfare association for the benefit of all students that is funded by non-appropriated funds which come from sources such as snack bars, vending machines, disciplinary fines, and donations, and is run by an elected student government, with the help of a staff advisor.

§ 670.530 Are Job Corps centers required to maintain a student accountability system?

Yes. Each Job Corps center must establish and operate an effective system to account for and document the whereabouts, participation, and status of students during their Job Corps enrollment. The system must enable center staff to detect and respond to instances of unauthorized or unexplained student absence. Each center must operate its student accountability system according to requirements and procedures issued by the Secretary.

§ 670.535 Are Job Corps centers required to establish behavior management systems?

(a) Yes. Each Job Corps center must establish and maintain its own student incentives system to encourage and reward students' accomplishments.

(b) The Job Corps center must establish and maintain a behavior management system, according to procedures established by the Secretary. The behavior management system must include a zero tolerance policy for violence and drugs policy as described in § 670.540.

§ 670.540 What is Job Corps' zero tolerance policy?

(a) Each Job Corps center must have a zero tolerance policy for:

(1) An act of violence as defined in procedures issued by the Secretary;

(2) Use, sale, or possession of a controlled substance, as defined at 21 U.S.C. 802;

(3) Abuse of alcohol;

(4) Possession of unauthorized goods; or

(5) Other illegal or disruptive activity.

(b) As part of this policy, all students must be tested for drugs as a condition of enrollment. (WIA sec. 145(a)(1) and 152(b)(2).)

(c) According to procedures issued by the Secretary, the policy must specify the offenses that result in the automatic separation of a student from the Job Corps. The center director is responsible for determining when there is a violation of a specified offense.

§ 670.545 How does Job Corps ensure that students receive due process in disciplinary actions?

The center operator must ensure that all students receive due process in

disciplinary proceedings according to procedures developed by the Secretary. These procedures must include, at a minimum, center fact-finding and behavior review boards, the penalty of separation from Job Corps might be imposed, and procedures for students to appeal a center's decision to discharge them involuntarily from Job Corps to a regional appeal board.

§ 670.550 What responsibilities do Job Corps centers have in assisting students with child care needs?

(a) Job Corps centers are responsible for coordinating with outreach and admissions agencies to assist students with making arrangements for child care for their dependent children.

(b) Job Corps centers may operate on center child development programs with the approval of the Secretary.

§ 670.555 What are the center's responsibilities in ensuring that students' religious rights are respected?

(a) Centers must ensure that a student has the right to worship or not worship as he or she chooses.

(b) Religious services may not be held on-center unless the center is so isolated that transportation to and from community religious facilities is impractical.

(c) If religious services are held on-center, no Federal funds may be paid to those who conduct services. Services may not be confined to one religious denomination, and centers may not require students to attend services.

§ 670.560 Is Job Corps authorized to conduct pilot and demonstration projects?

(a) Yes. The Secretary may undertake experimental, research and demonstration projects related to the Job Corps program according to WIA section 156.

(b) The Secretary establishes policies and procedures for conducting such projects.

(c) All studies and evaluations produced or developed with Federal funds become the property of the United States.

Subpart F—Student Support

§ 670.600 Is government-paid transportation provided to Job Corps students?

Yes. Job Corps provides for the transportation of students between their homes and centers as described in policies and procedures issued by the Secretary.

§ 670.610 When are students authorized to take leaves of absence from their Job Corps centers?

Job Corps students are eligible for annual leaves, emergency leaves and other types of leaves of absence from their assigned centers according to criteria and requirements that are issued by the Secretary. Center operators and other service providers must account for student leave according to procedures issued by the Secretary.

§ 670.620 Are Job Corps students eligible to receive cash allowances and performance bonuses?

(a) Yes. According to criteria and rates that are established by the Secretary, Job Corps students receive cash living allowances, performance bonuses, and allotments for care of dependents, and graduates receive post-separation readjustment allowances and placement bonuses. The Secretary may provide former students with post-separation allowances.

(b) In the event of a student's death, any amount due under this section are paid according to provisions of 5 U.S.C. 5582 relating to issues such as designation of beneficiary; order of precedence and related matters.

§ 670.630 Are student allowances subject to Federal Payroll Taxes?

Yes. Job Corps student allowances are subject to Federal payroll tax withholding and social security taxes. Job Corps students are considered to be Federal employees for purposes of Federal payroll taxes. (WIA sec. 157(a)(2).)

§ 670.640 Are students provided with clothing?

Yes. Job Corps students are provided cash clothing allowances and/or articles of clothing, including safety clothing, when needed for their participation in Job Corps and their successful entry into the work force. Center operators and other service providers must issue clothing and clothing assistance to students according to rates, criteria, and procedures that are issued by the Secretary.

Subpart G—Placement and Continued Services

§ 670.700 What are Job Corps centers' responsibilities in preparing students for placement services?

Job Corps centers must test and counsel students to assess their competencies and capabilities and determine their readiness for placement.

§ 670.710 What placement services will be provided for Job Corps students?

(a) Job Corps placement services focus on placing program graduates in:

(1) Full-time jobs that are related to their vocational training and that pay wages that allow for self-sufficiency;

(2) Higher education; or

(3) Advanced training programs, including apprenticeship programs.

(b) Placement service levels for students may vary, depending on whether the student is a graduate or a former student.

(c) Procedures relating to placement service levels are issued by the Secretary.

§ 670.720 Who will provide placement services?

The One-Stop system must be used to the fullest extent possible in placing graduates and former students in jobs. Job Corps placement agencies provide placement services under a contract or other agreement with the Department of Labor.

§ 670.730 What are the responsibilities of placement agencies?

(a) Placement agencies are responsible for:

(1) Contacting graduates;

(2) Assisting them in improving skills in resume preparation, interviewing techniques and job search strategies;

(3) Identifying job leads or educational and training opportunities through coordination with local Workforce Investment Boards, One-Stop operators and partners, employers, unions and industry organizations; and

(4) Placing graduates in jobs, apprenticeship, the Armed Forces, or higher education or training, or referring former students for additional services in their local communities as appropriate. Placement services may be provided for former students according to procedures issued by the Secretary.

(b) Placement agencies must record and submit all Job Corps placement information according to procedures established by the Secretary.

§ 670.740 Must continued services be provided for graduates?

Yes. According to procedures issued by the Secretary, continued services, including transition support and workplace counseling, must be provided to program graduates for 12 months after graduation.

§ 670.750 Who may provide continued services for graduates?

Placement agencies, centers or other agencies, including One-Stop partners, may provide post-program services under a contract or other agreement

with the Regional Director. In selecting a provider for continued services, priority is given to One-Stop partners. (WIA sec. 148(d)).

§ 670.760 How will Job Corps coordinate with other agencies?

(a) The Secretary issues guidelines for the National Office, Regional Offices, Job Corps centers and operational support providers to use in developing and maintaining cooperative relationships with other agencies and institutions, including law enforcement, educational institutions, communities, and other employment and training programs and agencies.

(b) The Secretary develops polices and requirements to ensure linkages with the One-Stop delivery system to the greatest extent practicable, as well as with other Federal, State, and local programs, and youth programs funded under this title. These linkages enhance services to youth who face multiple barriers to employment and must include, where appropriate:

(1) Referrals of applicants and students;

(2) Participant assessment;

(3) Pre-employment and work maturity skills training;

(4) Work-based learning;

(5) Job search, occupational, and basic skills training; and

(6) Provision of continued services for graduates.

Subpart H—Community Connections

§ 670.800 How do Job Corps centers and service providers become involved in their local communities?

(a) Job Corps representatives serve on Youth Councils operating under applicable Local Boards wherever geographically feasible.

(b) Each Job Corps center must have a Business and Community Liaison designated by the director of the center to establish relationships with local and distant employers, applicable One-Stop centers and local boards, and members of the community according to procedures established by the Secretary. (WIA sec. 153(a).)

(c) Each Job Corps center must implement an active community relations program.

(d) Each Job Corps center must establish an industry advisory council, according to procedures established by the Secretary. The industry advisory council must include:

(1) Distant and local employers;

(2) Representatives of labor organizations (where present) and employees; and

(3) Job Corps students and graduates.

(e) A majority of the council members must be local and distant business owners, chief executives or chief operating officers of nongovernmental employers or other private sector employers, who have substantial management, hiring or policy responsibility and who represent businesses with employment opportunities in the local area and the areas to which students will return.

(f) The council must work with Local Boards and must review labor market information to provide recommendations to the Secretary regarding the center's vocational training offerings, including identification of emerging occupations suitable for training. (WIA sec.154(b)(1).)

(g) Job Corps is identified as a required One-Stop partner. Wherever practicable, Job Corps centers and operational support contractors must establish cooperative relationships and partnerships with One-Stop centers and other One-Stop partners, Local Boards, and other programs for youth.

Subpart I—Administrative and Management Provisions

§ 670.900 Are damages caused by students eligible for reimbursement under the Tort Claims Act?

Yes. Students are considered Federal employees for purposes of the Tort Claims Act (28 U.S.C. 2671 (*et seq.*). If a student is alleged to be involved in the damage, loss, or destruction of the property of others, or in causing personal injury to or the death of another individual(s), the injured person(s), or their agent may file a claim with the Center Director. Director must investigate all of the facts, including accident and medical reports, and interview witnesses, and submit the claim for a decision to the Regional Solicitor's Office. All tort claims for $25,000 or more must be sent to the Associate Solicitor for Employee Benefits, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, DC 20210.

§ 670.905 Are damages that occur to private parties at Job Corps Centers eligible for reimbursement under the Tort Claims Act?

(a) Whenever there is loss or damage to persons or property, which is believed to have resulted from operation of a Job Corps center and to be a proper charge against the Federal Government, the owner(s) of the property, the injured person(s), or their agent may submit a claim for the damage to the Regional Solicitor. Claims must be filed no later than two years from the date of loss or damage. The Regional Solicitor will determine if the claim is valid under the Tort Claims Act. If the Regional Solicitor determines a claim is not valid under the Tort Claims Act, the Regional Solicitor must consider the facts and may still settle the claim, in an amount not to exceed $1,500.

(b) The Job Corps may pay students for valid claims under the Tort Claims Act for lost, damaged, or stolen property, up to a maximum amount set by the Secretary, when the loss is not due to the negligence of the student. Students must file claims no later than six months from the date of loss. Students are compensated for losses including those that result from a natural disaster or those that occur when the student's property is in the protective custody of the Job Corps, such as when the student is AWOL. Claims must be filed with Job Corps regional offices. The regional office will promptly notify the student and the center of its determination.

§ 670.910 Are students entitled to Federal Employees Compensation Benefits?

(a) Job Corps students are considered Federal employees for purposes of the Federal Employees Compensation Act (FECA). (WIA sec. 157(a)(3).)

(b) Job Corps students may be entitled to Federal Employees Compensation Benefits as specified in (WIA sec. 157.)

(c) Job Corps students must meet the same eligibility tests for FECA payments that apply to all other Federal employees. One of those tests is that the injury must occur "in the performance of duty." This test is described in § 670.915.

§ 670.915 When are residential students considered to be in the performance of duty?

Residential students will be considered to be in the "performance of duty" at all times while:

(a) They are on center under the supervision and control of Job Corps officials;

(b) They are engaged in any authorized Job Corps activity;

(c) They are in authorized travel status; or

(d) They are engaged in any authorized offsite activity.

§ 670.920 When are non-resident students considered to be in the performance of duty?

Non-resident students are considered "in performance of duty" as Federal employees when they are engaged in any authorized Job Corps activity, from the time they arrive at any scheduled center activity until they leave the activity. The standard rules governing

coverage of Federal employees during travel to and from work apply. These rules are described in guidance issued by the Secretary.

§ 670.925 When are students considered to be not in the performance of duty?

Students are considered to be not in the performance of duty when:

(a) They are AWOL;

(b) They are at home, whether on pass or on leave;

(c) They are engaged in an unauthorized offsite activity; or

(d) They are injured or ill due to their own:

(1) Willful misconduct;

(2) Intent to cause injury or death to oneself or another; or

(3) By intoxication or drugs.

§ 670.930 How are FECA benefits computed?

(a) FECA benefits for disability or death are computed using the entrance salary for a grade GS–2 as the student's monthly pay.

(b) The provisions of 5 U.S.C. 8113 (a) and (b), relating to compensation for work injuries apply to students. Compensation for disability will not begin to accrue until the day following the date on which the injured student completes his or her Job Corps separation.

(c) Whenever a student is injured, develops an occupationally related illness, or dies while in the performance of duty, the procedures in the DOL Employment Standards Administration regulations, at 20 CFR ch. I, must be followed. A thorough investigation of the circumstances and a medical evaluation must be completed and required forms must be timely filed by the center operator with the DOL Office of Workers' Compensation Programs.

§ 670.935 How will students be protected from unsafe or unhealthy situations?

(a) The Secretary establishes procedures to ensure that students are not required or permitted to work, be trained, reside in, or receive services in buildings or surroundings or under conditions that are unsanitary or hazardous. Whenever students are employed or in training for jobs, they must be assigned only to jobs or training which observe applicable Federal, State and local health and safety standards.

(b) The Secretary develops procedures to ensure compliance with applicable DOL Occupational Safety and Health Administration regulations.

§ 670.940 What are the requirements relating to criminal law enforcement jurisdiction on center property?

(a) All Job Corps property which would otherwise be under exclusive Federal legislative jurisdiction is considered under concurrent jurisdiction with the appropriate State and locality with respect to criminal law enforcement. Concurrent jurisdiction extends to all portions of the property, including housing and recreational facilities, in addition to the portions of the property used for education and training activities.

(b) Centers located on property under concurrent Federal-State jurisdiction must establish agreements with Federal, State and local law enforcement agencies to enforce criminal laws.

(c) The Secretary develops procedures to ensure that any searches of a student's person, personal area or belongings for unauthorized goods follow applicable right-to-privacy laws.

§ 670.945 Are Job Corps operators and service providers authorized to pay State or local taxes on gross receipts?

(a) A private for-profit or a nonprofit Job Corps service provider is not liable, directly or indirectly, to any State or subdivision for any gross receipts taxes, business privilege taxes measured by gross receipts, or any similar taxes in connection with any payments made to or by such service provider for operating a center or other Job Corps program or activity. The service provider is not liable to any State or subdivision to collect or pay any sales, excise, use, or similar tax imposed upon the sale to or use by such deliverer of any property, service, or other item in connection with the operation of a center or other Job Corps program or activity. (WIA sec. 158(d).)

(b) If a State or local authority compels a center operator or other service provider to pay such taxes, the center operator or service provider may pay the taxes with Federal funds, but must document and report the State or local requirement according to procedures issued by the Secretary.

§ 670.950 What are the financial management responsibilities of Job Corps center operators and other service providers?

(a) Center operators and other service providers must manage Job Corps funds using financial management information systems that meet the specifications and requirements of the Secretary.

(b) These financial management information systems must:

(1) Provide accurate, complete, and current disclosures of the costs of their Job Corps activities;

(2) Ensure that expenditures of funds are necessary, reasonable, allocable and allowable in accordance with applicable cost principles;

(3) Use account structures specified by the Secretary;

(4) Ensure the ability to comply with cost reporting requirements and procedures issued by the Secretary; and

(5) Maintain sufficient cost data for effective planning, monitoring, and evaluation of program activities and for determining the allowability of reported costs.

§ 670.955 Are Center Operators and Service Providers Subject to Federal Audits?

(a) Yes. Center operators and service providers are subject to Federal audits.

(b) The Secretary arranges for the survey, audit, or evaluation of each Job Corps center and service provider at least once every three years, by Federal auditors or independent public accountants. The Secretary may arrange for more frequent audits. (WIA sec. 159(b)(2).)

(c) Center operators and other service providers are responsible for giving full cooperation and access to books, documents, papers and records to duly appointed Federal auditors and evaluators. (WIA sec. 159(b)(1).)

§ 670.960 What are the procedures for management of student records?

The Secretary issues guidelines for a system of maintaining records for each student during enrollment and for disposition of such records after separation.

§ 670.965 What procedures apply to disclosure of information about Job Corps students and program activities?

(a) The Secretary develops procedures to respond to requests for information or records or other necessary disclosures pertaining to students.

(b) DOL disclosure of Job Corps information must be handled according to the Freedom of Information Act and according to DOL regulations at 29 CFR part 70.

(c) Job Corps contractors are not "agencies" for Freedom of Information Act purposes. Therefore, their records are not subject to disclosure under the Freedom of Information Act or 29 CFR part 70.

(d) The regulations at 29 CFR Part 70a apply to a system of records covered by the Privacy Act of 1974 maintained by DOL or to a similar system maintained by a contractor, such as a screening agency, contract center operator, or placement agency on behalf of the Job Corps.

§ 670.970 What are the reporting requirements for center operators and operational support service providers?

The Secretary establishes procedures to ensure the timely and complete

reporting of necessary financial and program information to maintain accountability. Center operators and operational support service providers are responsible for the accuracy and integrity of all reports and data they provide.

§ 670.975 How will performance of the Job Corps program be assessed?

The performance of the Job Corps program as a whole, and the performance of individual program components, is assessed on an ongoing basis, in accordance with these regulations and procedures and standards, including a national performance measurement system, issued by the Secretary. Annual performance assessments are done for each center operator and other service providers, including screening and admissions and placement agencies.

§ 670.980 What are the indicators of performance for Job Corps?

(a) At a minimum, the performance assessment system established under § 670.975 of this subpart will include expected levels of performance established for each of the indicators of performance contained in WIA section 159(c). These are:

(1) The number of graduates and rate of graduation, analyzed by the type of vocational training received and the training provider;

(2) The job placement rate of graduates into unsubsidized employment, analyzed by the vocational training received, whether or not the job placement is related to the training received, the vocational training provider, and whether the placement is made by a local or national service provider;

(3) The average placement wage of graduates in training-related and non-training related unsubsidized jobs;

(4) The average wage of graduates on the first day of employment and at 6 and 12 months following placement, analyzed by the type of vocational training received;

(5) The number of and retention rate of graduates in unsubsidized employment after 6 and 12 months ;

(6) The number of graduates who entered unsubsidized employment for 32 hours per week or more, for 20 to 32 hours per week, and for less than 20 hours per week.

(7) The number of graduates placed in higher education or advanced training; and

(8) The number of graduates who attained job readiness and employment skills.

(b) The Secretary issues the expected levels of performance for each indicator. To the extent practicable, the levels of performance will be continuous and consistent from year to year.

§ 670.985 What happens if a center operator, screening and admissions contractor or other service provider fails to meet the expected levels of performance?

(a) The Secretary takes appropriate action to address performance issues through a specific performance plan.

(b)The plan may include the following actions:

(1) Providing technical assistance to a Job Corps center operator or support service provider, including a screening and admissions contractor;

(2) Changing the management staff of a center;

(3) Changing the vocational training offered at a center;

(4) Contracting out or recompeting the contract for a center or operational support service provider;

(5) Reducing the capacity of a Job Corps center;

(6) Relocating a Job Corps center; or

(7) Closing a Job Corps center. (WIA sec. 159(f).)

§ 670.990 What procedures are available to resolve complaints and disputes?

(a) Each Job Corps center operator and service provider must establish and maintain a grievance procedure for filing complaints and resolving disputes from applicants, students and/or other interested parties about its programs and activities. A hearing on each complaint or dispute must be conducted within 30 days of the filing of the complaint or dispute. A decision on the complaint must be made by the center operator or service provider, as appropriate, within 60 days after the filing of the complaint, and a copy of the decision must be immediately served, by first-class mail, on the complainant and any other party to the complaint. Except for complaints under § 670.470 of this part or complaints alleging fraud or other criminal activity, complaints may be filed within one year of the occurrence that led to the complaint.

(b) The procedure established under paragraph (a) of this section must include procedures to process complaints alleging violations of WIA section 188, consistent with DOL nondiscrimination regulations implementing WIA section 188 and § 670.995 of this subpart.

§ 670.991 How does Job Corps ensure that complaints or disputes are resolved in a timely fashion?

(a) If a complaint is not resolved by the center operator or service provider in the time frames described in § 670.990 of this subpart, the person making the complaint may request that the Regional Director determine whether reasonable cause exists to believe that the Act or regulations for this part of the Act have been violated. The request must be filed with the Regional Director within 60 days from the date that the center operator or service provider should have issued the decision.

(b) Following the receipt of a request for review under paragraph (a) of this section, the Regional Director must determine within 60 days whether there has been a violation of the Act or these regulations. If the Regional Director determines that there has been a violation of the Act or Regulations, (s)he may direct the operator or service provider to remedy the violation or direct the service provider to issue a decision to resolve the dispute according to the service provider's grievance procedures. If the service provider does not comply with the Regional Director's decision within 30 days, the Regional Director may impose a sanction on the center operator or service provider for violating the Act or regulations, and/or for failing to issue a decision. Decisions imposing sanctions upon a center operator or service provider may be appealed to the DOL Office of Administrative Law Judges under 20 CFR 667.800 or 667.840.

§ 670.992 How does Job Corps ensure that centers or other service providers comply with the Act and regulations?

(a) If DOL receives a complaint or has reason to believe that a center or other service provider is failing to comply with the requirements of the Act or regulations, the Regional Director must investigate the allegation and determine within 90 days after receiving the complaint or otherwise learning of the alleged violation, whether such allegation or complaint is true.

(b) As a result of such a determination, the Regional Director may:

(1) Direct the center operator or service provider to handle a complaint through the grievance procedures established under § 670.990 of this subpart; or

(2) Investigate and determine whether the center operator or service provider is in compliance with the Act and regulations. If the Regional Director determines that the center or service provider is not in compliance with the Act or regulations, the Regional Director may take action to resolve the complaint under § 670.991(b) of this subpart, or will report the incident to the DOL

Office of the Inspector General, as described in 20 CFR 667.630.

§ 670.993 How does Job Corps ensure that contract disputes will be resolved?

A dispute between DOL and a Job Corps contractor will be handled according to the Contract Disputes Act and applicable regulations.

§ 670.994 How does Job Corps resolve disputes between DOL and other Federal Agencies?

Disputes between DOL and a Federal Agency operating a center will he handled according to the interagency agreement with the agency which is operating the center.

§ 670.995 What DOL equal opportunity and nondiscrimination regulations apply to Job Corps?

Nondiscrimination requirements, procedures, complaint processing, and compliance reviews are governed by, as applicable, provisions of the following Department of Labor regulations:

(a) Regulations implementing WIA section 188 for programs receiving Federal financial assistance under WIA.

(b) 29 CFR part 33 for programs conducted by the Department of Labor; and

(c) 41 CFR chapter 60 for entities that have a Federal government contract.

PART 671—NATIONAL EMERGENCY GRANTS FOR DISLOCATED WORKERS

Sec.

671.100 What is the purpose of national emergency grants under WIA section 173?
671.105 What funds are available for national emergency grants?
671.110 What are major economic dislocations or other events which may qualify for a national emergency grant?
671.120 Who is eligible to apply for national emergency grants?
671.125 What are the requirements for submitting applications for national emergency grants?
671.130 When should applications for national emergency grants be submitted to the Department?
671.140 What are the allowable activities and what dislocated workers may be served under national emergency grants?
671.150 How do statutory and workflex waivers apply to national emergency grants?
671.160 What rapid response activities are required before a national emergency grant application is submitted ?
671.170 What are the program and administrative requirements that apply to national emergency grants?

Authority: Sec. 506(c), Pub. L. 105–220; 20 U.S.C. 9276(c).

§ 671.100 What is the purpose of national emergency grants under WIA section 173?

The purpose of national emergency grants is to provide supplemental dislocated worker funds to States, Local Boards and other eligible entities in order to respond to the needs of dislocated workers and communities affected by major economic dislocations and other worker dislocation events which cannot be met with formula allotments.

§ 671.105 What funds are available for national emergency grants?

The Secretary uses funds reserved under WIA section 132(a)(2)(A) to provide financial assistance to eligible applicant for grants under WIA section 173.

§ 671.110 What are major economic dislocations or other events which may qualify for a national emergency grant?

These include:

(a) Plant closures;

(b) Mass layoffs affecting 50 or more workers at a single site of employment;

(c) Closures and realignments of military installations;

(d) Multiple layoffs in a single local community that have significantly increased the total number of unemployed individuals in a community;

(e) Emergencies or natural disasters, as defined in paragraphs (1) and (2) respectively, of section 102 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5122(1) and (2)) which have been declared eligible for public assistance by the Federal Emergency Management Agency (FEMA); and

(f) Other events, as determined by the Secretary.

§ 671.120 Who is eligible to apply for national emergency grants?

(a) *For projects within a State.* A State, a Local Board or another entity determined to be appropriate by the Governor of the State in which the project will be located may apply for a national emergency grant. Also, Indian tribes, tribal organizations, Alaska Native entities, Indian-controlled organizations serving Indians, or Native Hawaiian organizations which are recipients of funds under section 166 of the Act (Indian and Native American Programs) may apply for a national emergency grant.

(b) *For inter-State projects.* Consortia of States and/or Local Boards may apply. Other private entities which can demonstrate, in the application for assistance, that they possess unique capabilities to effectively respond to the circumstances of the major economic dislocation(s) covered in the application may apply.

(c) *Other entities.* The Secretary may consider applications from other entities, to ensure that appropriate assistance is provided in response to major economic dislocations.

§ 671.125 What are the requirements for submitting applications for national emergency grants?

The Department publishes instructions for submitting applications for National Emergency Grants in the **Federal Register**. The instructions specify application procedures, selection criteria and the approval process.

§ 671.130 When should applications for national emergency grants be submitted to the Department?

(a) Applications for national emergency grants to respond to mass layoffs and plant closures may be submitted to the Department as soon as:

(1) The State receives a notification of a mass layoff or a closure as a result of a WARN notice, a general announcement or some other means determined by the Governor to be sufficient to respond;

(2) Rapid response assistance has been initiated; and

(3) A determination has been made, in collaboration with the applicable Local Board(s) and chief elected official(s), that State and local formula dislocated worker funds are inadequate to provide the level of services needed by the workers being laid off.

(b) An eligible entity may apply for a national emergency grant at any time during the year.

(c) Applications for national emergency grants to respond to a declared emergency or natural disaster as described in § 671.110(e) of this subpart, cannot be considered until FEMA has declared that the affected area is eligible for disaster-related public assistance.

§ 671.140 What are the allowable activities and what dislocated workers may be served under national emergency grants?

(a) National emergency grants may provide adjustment assistance for eligible dislocated workers, described at WIA section 173(c)(2) or (d)(2).

(b) Adjustment assistance includes the core, intensive, and training services authorized at WIA sections 134(d) and 173. The scope of services to be provided in a particular project are negotiated between the Department and the grantee, taking into account the needs of the target population covered by the grant. The scope of services may

be changed through grant modifications, if necessary.

(c) National emergency grants may provide for supportive services to help workers who require such assistance to participate in activities provided for in the grant. Needs-related payments, in support of other employment and training assistance, may be available for the purpose of enabling dislocated workers who are eligible for such payments to participate in programs of training services. Generally, the terms of a grant must be consistent with Local Board policies regarding such financial assistance with formula funds (including the payment levels and duration of payments). However, the terms of the grant agreement may diverge from established Local Board policies, for example:

(1) If unemployed dislocated workers served by the project are not able to meet the 13 or 8 weeks enrollment in training requirement at WIA section 134(e)(3)(B) because of the lack of formula or emergency grant funds in the State or local area at the time of dislocation, such individuals may be eligible for needs-related payments if they are enrolled in training by the end of the 6th week following the date of the emergency grant award; and

(2) Trade-impacted workers who are not eligible for trade readjustment assistance under NAFTA–TAA may be eligible for needs-related payments under a national emergency grant if the worker is enrolled in training by the end of the 16th week following layoff.

(d) A national emergency grant to respond to a declared emergency or natural disaster, as defined at § 671.110(e) of this subpart, may provide short-term disaster relief employment for:

(1) Individuals who are temporarily or permanently laid off as a consequence of the disaster;

(2) Dislocated workers; and

(3) Long-term unemployed individuals.

(e) Temporary employment assistance is authorized on disaster projects that provide food, clothing, shelter and other humanitarian assistance for disaster victims; and on projects that perform demolition, cleaning, repair, renovation and reconstruction of damaged and destroyed structures, facilities and lands located within the disaster area. For such temporary jobs, each eligible worker is limited to no more than six months of employment for each single disaster. The amounts, duration and other limitations on wages will be negotiated for each grant.

(f) Additional requirements that apply to national emergency grants, including natural disaster grants, are contained in the application instructions.

§ 671.150 How do statutory and workflex waivers apply to national emergency grants?

(a) Application of existing general statutory or regulatory waivers and workflex waivers to National Emergency Grants may be requested by State and Local Board grantees, and approved by the Department for a National Emergency Grant award. The application for grant funds must describe any statutory waivers which the applicant wishes to apply to the project that the State and Local Board, as applicable, have been granted under its waiver plan, or that the State has approved for implementation in the applicable local area under workflex waivers. The Department considers such requests as part of the overall application review and decision process.

(b) If, during the operation of the project, the grantee wishes to apply a waiver not identified in the application, the grantee must request a modification which includes the provision to be waived, the operational barrier to be removed and the effect upon the outcome of the project.

§ 671.160 What rapid response activities are required before a national emergency grant application is submitted?

(a) Rapid response is a required Statewide activity under WIA section 134(a)(2)(A), to be carried out by the State or its designee in collaboration with the Local Board(s) and chief elected official(s). Pursuant to 20 CFR 665.310, rapid response encompasses, among other activities, an assessment of the general needs of the affected workers and the resources available to them.

(b) In accordance with national emergency grant application guidelines published by the Department, each applicant must demonstrate that:

(1) The rapid response activities described in 20 CFR 665.310 have been initiated and carried out, or are in the process of being carried out;

(2) State and local funds, including those made available under section 132(b)(2)(B) of the Act, have been used to initiate appropriate services to the eligible workers;

(3) There is a need for additional funds to effectively respond to the assistance needs of the workers and, in the case of declared emergencies and natural disasters, the community; and

(4) The application has been developed by or in conjunction with the Local Board(s) and chief elected official(s) of the local area(s) in which the proposed project is to operate.

§ 671.170 What are the program and administrative requirements that apply to national emergency grants?

(a) In general, the program requirements and administrative standards set forth at 20 CFR parts 663 and 667 will apply.

(b) Exceptions include:

(1) Funds provided in response to a natural disaster may be used for temporary job creation in areas declared eligible for public assistance by FEMA, subject to the limitations of WIA section 173(d), this subpart and the application guidelines issued by the Department;

(2) National emergency grant funds may be used to pay an appropriate level of administrative costs based on the design and complexity of the project. Administration costs are negotiated between the applicant and the Department as part of the application review and grant award and modification processes;

(3) The period of availability for expenditure of funds under a national emergency grant is specified in the grant agreement.

(4) The Secretary may establish supplemental reporting, monitoring and oversight requirements for national emergency grants. The requirements will be identified in the grant application instructions or the grant document.

(5) The Secretary may negotiate and fund projects under terms other than those specified in this subpart where it can be clearly demonstrated that such adjustments will achieve a greater positive benefit for the workers and/or communities being assisted.

PART 652—ESTABLISHMENT AND FUNCTIONING OF STATE EMPLOYMENT SERVICES

1. The authority citation for part 652 continues to read as follows:

Authority: 29 U.S.C. 49k.

2. Section 652.1 is amended by revising paragraph (a), and in paragraph (b), by adding the definition of *State Workforce Investment Board (State Board)* and the definition of *WIA*, by revising the definition of *State agency*, and by removing the definition of *Director*, to read as follows:

§ 652.1 Introduction and definitions.

(a) These regulations implement the provisions of the Wagner-Peyser Act, known hereafter as the Act, as amended by the Workforce Investment Act of 1998 (WIA). Congress intended that the States exercise broad authority in implementing provisions of the Act.

(b) * * *

State Agency means the State governmental unit designated under section 4 of the Act to cooperate with the Secretary in the operation of the public employment service system.

State Workforce Investment Board (State Board) means the entity within a State appointed by the Governor under section 111 of the Workforce Investment Act.

WIA means the Workforce Investment Act of 1998 (29 U.S.C. 2801 *et seq.*).

3. Section 652.3 is amended by revising paragraph (d) to read as follows:

§ 652.3 Basic labor exchange system.

* * * * *

(d) To participate in a system for clearing labor between the States, including the use of standardized classification systems issued by the Secretary, under section 15 of the Act; and.

* * * * *

4. Section 652.5 is revised to read as follows:

§ 652.5 Services authorized.

The sums allotted to each State pursuant to section 6 of the Act shall be expended consistent with an approved plan under 20 CFR 660.100–660.104 and §§ 652.222–214 of this part. At a minimum, each State shall provide the basic labor exchange elements at § 652.3 of this part.

§§ 652.6 and 652.7 [Removed and reserved]

5. Sections 652.6 and 652.7 are removed and reserved.

§ 652.8 [Amended]

6. Section 652.8 is amended in paragraph (j)(1) by removing the phrase "29 CFR part 31." and adding "the applicable DOL nondiscrimination regulations." and in paragraph (j)(5) by removing the phrase "the provisions of 29 CFR parts 31 and 32." and adding "the applicable DOL nondiscrimination regulations."

7. Subpart C is added to read as follows:

Subpart C—Wagner-Peyser Act Services in a One-Stop Delivery System Environment

Sec.

652.200 What is the purpose of this subpart?
652.201 What is the role of the State Agency in the One-Stop delivery system?
652.202 May local Employment Service Offices exist outside the One-Stop delivery system?
652.203 Who is responsible for funds authorized under the Act in the workforce investment system?
652.204 Must funds authorized under section 7(b) of the Act (the Governor's reserve) flow through the One-Stop delivery system?
652.205 May funds authorized under the Act be used to supplement funding for labor exchange programs authorized under separate legislation?
652.206 May a State use funds authorized under the Act to provide "core services" and "intensive services" as defined in WIA?
652.207 How does a State meet the requirement for universal access to services provided under the Act?
652.208 How are core services and intensive services related to the methods of service delivery described in § 652.207(b)(2)?
652.209 What are the requirements under the Act for providing reemployment services to referred UI claimants?
652.210 What are the Act's requirements for administration of the work test and assistance to UI claimants?
652.211 What are State planning requirements under the Act?
652.212 When should a State submit modifications to the five-year plan?
652.213 What information must a State include when the plan is modified?
652.214 How often may a State submit modifications to the plan?
652.215 Do any provisions in WIA change the requirement that publicly funded merit-staff employees must deliver services provided under the Act?
652.216 May the One-Stop operator provide guidance to a merit-staffed employee under the Act?

Subpart C—Wagner-Peyser Act in a One-Stop Delivery System Environment

§ 652.200 What is the purpose of this subpart?

(a) This subpart provides guidance to States to implement the services provided under the Act, as amended by WIA, in a One-Stop delivery system environment.

(b) Except as otherwise provided, the definitions contained in this part 652 and section 2 of the Act apply to this subpart.

§ 652.201 What is the role of the State Agency in the One-Stop delivery system?

(a) The role of the State Agency in the One-Stop delivery system is to ensure the delivery of services authorized under section 7(a) of the Act. The State Agency is a required One-Stop partner in each local One-Stop delivery system and is subject to the provisions relating to such partners that are described at 20 CFR part 662.

(b) Consistent with those provisions, the State agency must:

(1) Participate in the One-Stop delivery system in accordance with section 7(e) of the Act;

(2) Be represented on the Workforce Investment Boards that oversee the local and State One-Stop delivery system and be a party to the Memorandum of Understanding described at 20 CFR 662.300 addressing operational issues of the One-Stop delivery system; and

(3) Provide these services as part of the One-Stop delivery system.

§ 652.202 May local Employment Service Offices exist outside the One-Stop delivery system?

(a) No.

(b) However, local Employment Service Offices may operate as affiliated sites, or through electronically or technologically linked access points as part of the One-Stop delivery system, provided the following conditions are met:

(1) All labor exchange services are delivered as a part of the local One-Stop delivery system in accordance with section 7(e) of the Act;

(2) The services described in paragraph (b)(1) of this section are available in at least one physical center from which job seekers and employers can access them; and

(3) The Memorandum of Understanding between the State Agency local One-Stop partner and the Local Workforce Investment Board meets the requirements of § 662.300.

§ 652.203 Who is responsible for funds authorized under the Act in the workforce investment system?

The State Agency retains responsibility for all funds authorized under the Act, including those funds authorized under section 7(a) required for providing the services and activities delivered as part of the One-Stop delivery system.

§ 652.204 Must funds authorized under section 7(b) of the Act (the Governor's reserve) flow through the One-Stop delivery system?

No. These funds are reserved for use by the Governor for the three categories of activities specified in section 7(b) of the Act. However, these funds may flow through the One-Stop delivery system.

§ 652.205 May funds authorized under the Act be used to supplement funding for labor exchange programs authorized under separate legislation?

(a) Section 7(c) of the Act enables States to use funds authorized under section 7(a) or 7(b) of the Act to supplement funding of any workforce activity carried out under WIA.

(b) Funds authorized under the Act may be used under section 7(c) to

provide additional funding to other activities authorized under WIA if:

(1) The activity meets the requirements of the Act, and its own requirements;

(2) The activity serves the same individuals as are served under the Act;

(3) The activity provides services that are coordinated with services under the Act; and

(4) The funds supplement, rather than supplant, funds provided from non-Federal sources.

§ 652.206 May a State use funds authorized under the Act to provide "core services" and "intensive services" as defined in WIA?

Yes. Funds authorized under section 7(a) of the Act must be used to provide core services as defined at 20 CFR 663.150 and may be used to provide intensive services as defined at 20 CFR 663.200. Funds authorized under section 7(b) of the Act may be used to provide core or intensive services. Core and intensive services must be provided consistent with the requirements of the Act.

§ 652.207 How does a State meet the requirement for universal access to services provided under the Act?

(a) A State has discretion in how it meets the requirement for universal access to services provided under the Act. In exercising this discretion, a State must meet the Act's requirements.

(b) These requirements are:

(1) Labor exchange services must be available to all employers and job seekers, including unemployment insurance (UI) claimants, veterans, migrant and seasonal farm workers, and individuals with disabilities;

(2) The State must have the capacity to deliver labor exchange services to employers and job seekers, as described in the Act, on a Statewide basis through:

(i) Self-service,

(ii) Facilitated self-help service; and

(iii) Staff-assisted service;

(3) In each Workforce Investment Area, in at least one physical center, staff funded under the Act must provide core and applicable intensive services including staff-assisted labor exchange services.

(4) Those labor exchange services provided under the Act in a Workforce Investment Area must be described in the Memorandum of Understanding.

§ 652.208 How are core services and intensive services related to the methods of service delivery described in § 652.207(b)(2)?

Core services and intensive services may be delivered through any of the three methods of service delivery described in § 652.207(b)(2). These methods are:

(a) Self-service;

(b) Facilitated self-help services; and

(c) Staff-assisted service.

§ 652.209 What are the requirements under the Act for providing reemployment services to referred UI claimants?

In accordance with section 3(c)(3) of the Act, a State must provide reemployment services to UI claimants for whom such services are required as a condition for receipt of UI benefits. The State Agency, through the One-Stop delivery system, must provide reemployment services to UI claimants. Services must be appropriate to the needs of the UI claimants who are referred to reemployment services under any Federal or State UI law and must be provided to the extent that funds are available.

§ 652.210 What are the Act's requirements for administration of the work test and assistance to UI claimants?

(a) State UI law or rules establish the requirements under which UI claimants must register and search for work in order to fulfill the UI work test requirements.

(b) Staff funded under the Act must assure that:

(1) UI claimants receive the full range of labor exchange services available under the Act that are necessary and appropriate to facilitate their earliest return to work;

(2) UI claimants requiring assistance in seeking work receive the necessary guidance and counseling to ensure they make a meaningful and realistic work search; and

(3) UI program staff receive information about a UI claimant's ability or availability for work, or the suitability of work offered to them.

§ 652.211 What are State planning requirements under the Act?

The State Agency designated to administer funds authorized under the Act must prepare and submit a five-year Statewide plan for the delivery of services provided under the Act in accordance with WIA regulations at 20 CFR 661.220. The State Plan must contain a detailed description of services that will be provided under the Act, which are adequate and reasonably appropriate for carrying out the provisions of the Act, including the requirements of section 8(b) of the Act.

§ 652.212 When should a State submit modifications to the five-year plan?

(a) A State has the authority to submit modifications to the five-year plan as necessary during the five-year period, and to do so in accordance with the same collaboration, notification, and other requirements that apply to the original plan. Modifications are likely to be needed to keep the strategic plan a viable and living document over its five-year life.

(b) That portion of the plan addressing the Act must be updated to reflect any reorganization of the State Agency designated to deliver services under the Act, any change in service delivery strategy, any change in levels of performance, or any change in services delivered by public merit-staff employees.

§ 652.213 What information must a State include when the plan is modified?

A State must follow the instructions for modifying the strategic five-year plan as addressed in 20 CFR 661.230.

§ 652.214 How often may a State submit modifications to the plan?

A State may modify its plan as changes occur in Federal or State law or policies, Statewide vision or strategy, or if changes in economic conditions occur. A State must submit modifications to adjust service strategies if performance goals are not met.

§ 652.215 Do any provisions in WIA change the requirement that publicly funded merit-staff employees must deliver services provided under the Act?

No. The Secretary has the legal authority to set staffing standards and requirements to ensure the effective delivery of services provided under the Act. The Secretary requires that labor exchange services provided under authority of the Act, to include services to veterans, be provided by public merit-staff employees. This interpretation is authorized by and consistent with the provisions in sections 3(a) and 5(b) of the Act and the Intergovernmental Personnel Act.

§ 652.216 May the One-Stop operator provide guidance to a merit-staffed employee under the Act?

Yes. The One-Stop system envisions a partnership in which Wagner-Peyser Act labor exchange services are coordinated with other activities provided by other partners in a One-Stop setting. As part of the local Memorandum of Understanding, One-Stop partners may agree to have staff receive guidance from the One-Stop operator regarding the provision of labor exchange services. Personnel matters, including compensation, personnel actions, terms and conditions of employment, performance appraisals, and accountability of merit-staff employees funded under the Wagner-

Peyser Act, remain under the authority of the State Agency (including such matters that are delegated to any other public agency). Such guidance given to employees must be consistent with the provisions of the Wagner-Peyser Act.

[FR Doc. 99–8398 Filed 4–14–99; 8:45 am]

BILLING CODE 4510–30–P

federal register

Thursday
April 15, 1999

Part III

Department of Transportation

Federal Aviation Administration

14 CFR Parts 121, 125, 135, and 145
Service Difficulty Reports; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 121, 125, 135, and 145

[Docket No. 28293; Notice No. 95–12A]

RIN 2120–AF71

Service Difficulty Reports

AGENCY: Federal Aviation Administration, DOT.

ACTION: Supplemental notice of proposed rulemaking (SNPRM).

SUMMARY: This document modifies a notice of proposed rulemaking (NPRM) published on August 14, 1995, that proposed revising the reporting requirements for air carrier certificate holders and certificated domestic and foreign repair stations concerning failures, malfunctions, and defects of aircraft, aircraft engines, systems, and components. The original proposed action was prompted by an internal Federal Aviation Administration (FAA) review of the effectiveness of the reporting system and by air carrier industry concern over the quality of the data being reported by air carriers. This SNPRM addresses the concerns raised by the commenters on the original proposal. The objective of this SNPRM is to update and improve the reporting system to effectively collect and disseminate clear and concise safety information to the aviation industry.

DATES: Comments must be received on or before June 1, 1999.

ADDRESSES: Comments on this document should be delivered, in triplicate, to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC–200), Docket No. 28293, Room 915G, 800 Independence Avenue SW., Washington, DC 20591. Comments delivered must be marked Docket No. 28293. Comments also may be submitted electronically to the following Internet address: 9–NPRM–CMTS@faa.dot.gov. Comments may be examined in Room 915G weekdays, except Federal holidays, between 8:30 a.m. and 5 p.m.

FOR FURTHER INFORMATION CONTACT: Robert Corcoran, Maintenance Support Branch, AFS–640, Flight Standards Service, Federal Aviation Administration, P.O. Box 25082, Oklahoma City, OK 73125; telephone (405) 954–6508.

SUPPLEMENTARY INFORMATION:

Comments Invited

This document modifies Notice No. 95–12 (60 FR 41992, August 14, 1995). Interested persons are invited to comment on this proposal by submitting such written data, views, or arguments as they may desire. Comments relating to the environmental, energy, federalism, or economic impact that might result from adopting the proposals also are invited. Substantive comments should be accompanied by cost estimates. Comments should identify the regulatory docket or notice number and should be submitted in triplicate to the Rules Docket address specified above. All comments received on or before the specified closing date for comments will be considered by the Administrator before taking further rulemaking action. All comments received will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this document must include a preaddressed, stamped postcard on which the following statement is made: "Comments to Docket No. 28293." The postcard will be date stamped and returned to the commenter.

Availability of NPRM

Any person may obtain a copy of this document by submitting a request to the Federal Aviation Administration, Office of Rulemaking, Attn: ARM–1, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–9680. Communications must identify the notice number of this SNPRM.

Using a modem and suitable communications software, an electronic copy of this document may be downloaded from the FAA regulations section of the FedWorld electronic bulletin board service (telephone: (703) 321–3339) or the *Government Printing Office*'s electronic bulletin board service (telephone: (202) 512–1661) or the FAA Aviation Rulemaking Advisory Committee bulletin board service (telephone: (800) 322–2722 or (202) 267–5948).

Internet users may reach the FAA's web page at http://www.faa.gov/avr/arm/nprm/nprm.htm or the *Government Printing Office*'s web page at http://www.access.gpo.gov/nara for access to recently published rulemaking documents.

Any person may obtain a copy of this SNPRM by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Ave. SW., Washington, DC 20591, or by calling (202) 267–9680. Communications must identify the notice number or docket number of this SNPRM.

Persons interested in being placed on the mailing list for future NPRM's should request from the above office a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

Availability of the Joint Aircraft System Component (JASC) Code

Copies of the JASC Code are available from the FAA's Regulatory Support Division (AFS–600) or on-line from the FAA regulations section of the FedWorld electronic bulletin board service (telephone: (703) 321–3339).

Background

On August 14, 1995, the FAA issued an NPRM titled "Operational and Structural Difficulty Reports," Notice No. 95–12 (60 FR 41992). That document proposed to revise the reporting requirements for air carrier certificate holders and certificated domestic and foreign repair stations concerning failures, malfunctions, and defects of aircraft, aircraft engines, systems, and components.

The reports submitted by certificate holders and certificated repair stations, known as service difficulty reports (SDR's), provide the FAA with airworthiness statistical data necessary for planning, directing, controlling, and evaluating certain assigned safety-related programs. The reporting system provides FAA managers and inspectors with a means for monitoring the effectiveness of self-evaluation techniques being employed by certain segments of the civil aviation industry.

Currently, §§ 121.703 and 135.415 of Title 14, Code of Federal Regulations (14 CFR) require that holders of certificates issued under part 121 or part 135, respectively, submit reports on certain failures, malfunctions, or defects of specific systems and on all other failures, malfunctions, or defects that, in the opinion of the certificate holder, have endangered or may endanger the safe operation of an aircraft. Similarly, 14 CFR § 125.409 requires that part 125 certificate holders report the occurrence or detection of each failure, malfunction, or defect. In addition, 14 CFR §§ 145.63 and 145.79 contain provisions for certificated domestic and foreign repair stations, respectively, to report to the FAA serious defects in, or other recurring unairworthy conditions of, an aircraft, powerplant, propeller, or component. Air carrier certificate

holders and certificated repair stations must submit to the FAA the reports described above. In accordance with the FAA Flight Standards' Service Difficulty Program, set forth in FAA Order No. 8010.2, the information is reviewed and evaluated by the assigned Principal Maintenance Inspector (PMI) and mailed to the FAA's Mike Monroney Aeronautical Center in Oklahoma City, Oklahoma, for input into the Service Difficulty Reporting Subsystem (SDRS). The report data are entered into the SDRS and compiled to generate a weekly summary distributed to aircraft manufacturers, air carriers, repair stations, members of the general aviation community, and various offices of the FAA. Additional review and evaluation of the data are accomplished at the Aeronautical Center to identify trends or significant reports, and the appropriate FAA office is notified if trends or significant safety items are noted.

Sections 121.705 and 135.417 contain provisions for submitting a summary report to the FAA on known or suspected mechanical difficulties or malfunctions that interrupt a flight or cause unscheduled aircraft changes, stops, or diversions en route that are not required to be reported under § 121.703 or § 135.415, respectively. Section 121.705 also requires a summary report containing information on the number of aircraft engines removed prematurely because of a malfunction, failure, or defect and the number of propeller featherings that occur in flight for other than training purposes, demonstrations, or flight checks. Section 135.417 requires summary reports on the number of propeller featherings that occur in flight for purposes other than training, demonstrations, or flight checks.

The comment period for Notice No. 95–12 closed on November 13, 1995. Comments on the proposed rule addressing numerous issues were received from individuals, part 121 and part 135 certificate holders, aviation consulting firms, industry associations, manufacturers, and labor organizations. The FAA has reviewed the comments and the changes recommended by the commenters and has made substantive changes to the proposed rule based on the comments received. Accordingly, the FAA is issuing this supplemental notice to give all interested parties an opportunity to comment on the modified proposed rule.

Discussion of Comments and Modifications to the Proposal

This preamble discussion addresses the comments received in response to Notice No. 95–12 and describes only the modifications to that proposal. However, for the convenience of the public, the text of the proposed rule is reprinted in its entirety.

14 CFR Part 127

The final rule for 14 CFR part 119, "Commuter Operations and General Certification and Operations Requirements," was published on December 20, 1995 (60 FR 65832). That final rule removed part 127, "Certification and Operations of Scheduled Air Carriers with Helicopters." Therefore, the proposed revisions to part 127 are no longer appropriate, and all references to part 127 have been removed from the proposal.

Section Headings

Several commenters state that the name of the proposed section headings should be changed. They state that because "Service difficulty report" is the generally recognized term for the required reports, it should be used for the section headings, instead of "Operational difficulty reports" or "Structural difficulty reports," as previously proposed.

The FAA agrees. Therefore, the headings of proposed §§ 121.703, 125.409, and 135.415 have been changed from "Operational difficulty reports" to "Service difficulty reports (operational)." The headings of proposed §§ 121.704, 125.410, and 135.416 have been changed from "Structural difficulty reports" to "Service difficulty reports (structural)."

Airworthiness Directives and Service Bulletins

The FAA received six comments addressing the continued submission of reports following the issuance of an airworthiness directive (AD) or service bulletin (SB). These commenters express their disappointment that a provision that would have discontinued this practice was removed from the draft NPRM presented to the FAA by the Aviation Rulemaking Advisory Committee.

Several commenters state that AD's or SB's are often issued to address a deficiency identified through the SDR program. These commenters contend that because these AD's or SB's provide a corrective action, subsequent reporting is not necessary. Commenters indicate that the continued reporting of information after the issuance of an AD only fills the SDR data base with unneeded information.

The FAA disagrees. In theory, after the issuance of an AD to address a specific problem, continued service difficulties should not occur if the prescribed correction was developed and implemented properly. If the FAA continues to receive SDR's for a particular problem after an AD has been issued and incorporated, it could indicate that the AD did not correct the original deficiency and that more work is necessary to ensure appropriate corrective action. The FAA then could revise an AD or issue subsequent AD's to address continued service difficulties.

Several other commenters contend that the proposed reporting for certain discrepancies combined with the reporting requirements for certain AD's constitutes dual reporting. These commenters state that certain AD's addressing aging aircraft issues prescribe the use of supplemental inspection documents and corrosion prevention and control programs and currently require reports of certain defects. As a result, requiring similar reports under the SDR program is unnecessary.

The FAA disagrees. The AD reporting requirements, while containing some information common to the SDRS, usually request information that is different from the type of information collected for input into the SDRS. Also, the reported AD information is used for reasons other than the analysis function of the SDRS. The aging aircraft information reported by certificate holders is submitted to the appropriate FAA aircraft certification office to determine the extent of aircraft deterioration because of age and to monitor the effectiveness of the supplemental inspection documents and corrosion prevention and control programs. Information submitted to the SDRS is used for the identification of recurring service problems.

The Proposed SDR and ODR Forms

The FAA received six comments regarding the proposed structural difficulty report and operation difficulty report forms, which were published with Notice No. 95–12 in the **Federal Register**. These forms were examples of the proposed forms that a certificate holder would be permitted to use if it chose to use a method other than electronically submitting the required reports. Unfortunately, commenters were given the impression that the forms would be the only acceptable method of report submission. Additionally, the use of two forms may have left commenters with the impression that two data bases were under development in which data from the forms would be entered. However, this is not the case.

Based on these concerns, the FAA has consolidated the proposed forms into one form titled "Service Difficulty Report." The proposed form would not be the only acceptable method of providing the report information. As stated in the proposed rule, a certificate holder would be permitted to submit the required information in an electronic or other form acceptable to the Administrator. However, as described later in the discussion of the proposed changes to §§ 121.703(e) and 121.704(d), the proposal would require part 121 certificate holders to submit the information electronically beginning one year after the effective date of a final rule. After that date no other format would be acceptable for submission of SDR's under part 121.

One commenter believes that the existing data base would be deleted and replaced by information collected after the effective date of the rule. This is not the case. The existing data base will remain available for research and use by industry, and future information collected, as proposed, would be added to the existing data base.

FAA Form 337

Several commenters state that the discrepancies required to be reported by proposed §§ 121.703(a), 125.409(a), and 135.415(a) would likely result in the accomplishment of a major repair for corrective action. They state that the subsequent submission of FAA Form 337, Major Repair and Alteration (Airframe, Powerplant, Propeller, or Appliance), in addition to an SDR, constitutes a dual reporting requirement.

The FAA disagrees. FAA Form 337 serves two purposes: one is to provide an owner or operator with a record of a major repair or alteration indicating details and approval; the other is to provide the FAA with a copy of the form for inclusion in an aircraft's permanent record maintained by the FAA. In general, if the submitted FAA Form 337 uses previously approved data, it is forwarded by the Flight Standards District Office (FSDO) to the Aircraft Registration Branch in Oklahoma City, Oklahoma. However, if the data used have not been previously approved, the FSDO reviews the data to ensure compliance with applicable regulations and conformity with accepted industry practices. Upon favorable review, data approval is indicated by entering an appropriate statement on the form, and the form is returned to the applicant. This individual then completes the form and provides the completed copies to the owner or operator and the FSDO.

Because the information submitted on an FAA Form 337 and the information provided in an SDR vary considerably, the FAA has determined that these reports do not constitute a duplicate reporting requirement. For example, when submitting an SDR under the proposed rules, the required information would include the stage of flight operation or ground operation during which the discrepancy was discovered; the nature of the failure, malfunction, or defect; aircraft total time and cycles; and other information necessary for a more complete analysis of the cause of the failure, malfunction, or defect, including available information pertaining to type designation of the major component and the time since the last maintenance overhaul, repair, or inspection. None of this information is requested or required on FAA Form 337. Furthermore, the FAA contends that the discrepancies described by proposed §§ 121.703(a), 125.409(a), and 135.415(a) may not always result in the accomplishment of a major repair, and that submission of either an FAA Form 337 or an SDR will not always require the submission of the other form.

Sections 121.703(a)(2), 121.703(a)(4), 125.409(a)(2), 125.409(a)(4), 135.415(a)(2), and 135.415(a)(4)

The FAA received three comments regarding the submission of reports concerning any false fire or smoke warnings that require the use of emergency procedures. One commenter states that the phrase "use of emergency procedures" could be misinterpreted. This commenter states that the phrase could mean anything from reference to the abnormal procedures checklist to the declaration of an emergency to air traffic control. Another commenter contends that all false fire or smoke warnings should be reported, whether or not emergency action is taken. The third commenter questions whether the rule should require the reporting of indications that occurred only during revenue service and not during maintenance checks.

To clarify what information must be reported, the FAA has removed the phrase "that require the use of emergency procedures" from these sections of the proposal. Similar revisions have been made to §§ 121.703(a)(4), 125.409(a)(4), and 135.415(a)(4). The FAA also has revised the remaining language in paragraph (a)(2) of each section to read "any false warning of fire or smoke." In addition, proposed §§ 121.703(e)(5), 125.409(e)(5), and 135.415(e)(5) are revised to clarify the requirement that failures, malfunctions, or defects occurring during flight operations and ground operations must be reported.

Sections 121.703(a)(5), 125.409(a)(5), and 135.415(a)(5)

The FAA received two comments regarding the reporting of an engine flameout or shutdown. Each of these commenters states that an engine flameout during ground operations or taxi should not be a reportable item. One commenter states that an engine flameout should be reportable only if it occurs after the initiation of the takeoff roll.

The FAA disagrees. The FAA contends that an engine flameout or uncommanded engine shutdown is not a normal occurrence regardless of when it occurs. Such incidents could be an indication of a system malfunction or fault. The proposed rule language would require the reporting of an engine flameout or shutdown during ground or flight operations as previously proposed. The FAA notes, however, the proposed rule would require the reporting of an engine flameout or shutdown only if it is the result of a failure, malfunction, or defect. Reports of intentional engine shutdowns such as those that occur during flightcrew training, test flights, or while taxiing to reduce fuel consumption would not be required.

Sections 121.703(a)(7), 125.409(a)(7), and 135.415(a)(7)

One comment was received regarding the dumping of fuel by aircraft in flight. The commenter states that he is familiar with several events during which aircraft dumped significant amounts of fuel in preparation for a landing following an engine malfunction that occurred shortly after takeoff. The commenter states that fuel dumping has received little attention from environmental groups, but reports of fuel dumping should be required by the Federal Aviation Regulations.

While the comment may have merit, reporting of fuel dumping with regard to environmental effects is beyond the scope of this rulemaking action, and therefore is not addressed in this proposal.

During preparation of this document, the FAA determined that any failure, malfunction, or defect concerning a fuel system or fuel dumping system that affects fuel flow or causes hazardous leakage should be reported regardless of whether it occurs during ground or flight operations. Therefore, the FAA has revised the proposed rule by removing the language that limited the

reporting of such service difficulties to those that occur during flight.

Sections 121.703(a)(8), 125.409(a)(8), and 135.415(a)(8)

Two commenters express confusion about the proposed reporting requirements for landing gear failures, malfunctions, or defects. These commenters indicate that the proposed rule language could require a report whether a landing gear defect "resulted" in an extension or retraction, or "became apparent" during a landing gear extension or retraction that was selected by the pilot. The commenters contend that the rule language is not consistent with the explanation in the preamble.

The FAA intends that all failures, malfunctions, or defects associated with landing gear extension or retraction during flight be reported. Therefore, the proposed rule language remains unchanged.

The final rule for part 119 revised current § 121.703(a)(12) to require the reporting of an "unwanted" landing gear extension or retraction, or an "unwanted" opening or closing of landing gear doors during flight. The use of the term "unwanted" is superfluous because this section only requires the reporting of failures, malfunctions, or defects associated with landing gear extension or retraction. Therefore, the FAA proposes to remove the term "unwanted" from § 121.703(a)(8). Similar changes are proposed in §§ 125.409(a)(8) and 135.415(a)(8).

Sections 121.703(a)(9), 125.409(a)(9), and 135.415(a)(9)

The FAA received one comment regarding the reporting of a failure, malfunction, or defect concerning any brake system component that results in any detectable loss of brake actuating force when the aircraft is in motion on the ground. The commenter states that the subsequent statement that excludes defects deferrable according to the Minimum Equipment List (MEL), as provided for in 14 CFR § 91.213, is confusing. The commenter states that the MEL item may have induced the problem and that excluding a report of such a failure would prevent the collection of information that may be beneficial for analysis. Another comment concerning the MEL states that if MEL discrepancies are reported, the adequacy of the MEL can be assessed objectively.

The FAA's intent was to avoid having discrepancies such as hydraulic leaks and inoperative anti-skid systems reported to the SDRS because, under certain circumstances, these discrepancies may not be critical to the continued safe operation of the braking system. However, the FAA has reconsidered this proposal and agrees with the commenters that such information, regardless of deferability in accordance with the MEL, should be reported. Therefore, the FAA has revised the proposal accordingly.

Sections 121.703(a)(10), 125.409(a)(10), and 135.415(a)(10)

The FAA received six comments that address the reporting of failures, malfunctions, or defects that result in rejected takeoffs (RTO's) after initiation of the takeoff roll or emergency actions during flight. Two of these commenters state that the proposed rule language should be amended to include "when that defect or malfunction has endangered or may endanger the safe operation of the aircraft." One commenter recommends only reporting those RTO's that occur above a certain speed and recommends the establishment of a standard V_1 percentage above which RTO's would be reported. Another commenter states that reports of RTO's should be limited to those that involve a "significant" safety problem. One commenter questions the need for reporting when the RTO's occur during maintenance activities, such as test flights.

The FAA has determined that the rule, as proposed, would result in the collection of useful data on all RTO's. The FAA contends that attempting to define terms such as "significant," as suggested, is not feasible because of the subjective nature of the term. Because one commenter states that the use of the term "emergency" is ambiguous, the FAA has added for clarification the phrase "as defined by the Aircraft Flight Manual or Pilot's Operating Handbook" to the proposed rule language. The FAA notes that the collected data would not include RTO's associated with animals or debris on runways because such events would not be the result of an aircraft component or system failure, malfunction, or defect.

Sections 121.703(a)(11), 125.409(a)(11), and 135.415(a)(11)

The FAA received five comments concerning the reporting of failures, malfunctions, or defects associated with emergency evacuation systems or components. These commenters similarly state that reports on the failure of emergency lighting or the degradation of emergency egress lighting batteries should be excluded from the reporting requirements. The commenters state that individual component failures that do not affect the operation of the emergency evacuation system should not be reported.

The FAA disagrees. The current rules pertaining to the reporting of the described failures provide the FAA with an indication of evacuation system reliability, as well as the reliability of components within evacuation systems. The FAA contends that if an evacuation slide has an on-aircraft life of 12 months, for example, the components within that slide should last 12 months. Failure of a slide's emergency egress lighting batteries is an indication of their reliability and may indicate that a change in maintenance procedures or life limits is necessary. The proposed rule language has been revised to require reporting of all failures, malfunctions, or defects of an emergency evacuation system or component including those deferred in accordance with a MEL.

Sections 121.703(a)(12), 125.409(a)(12), and 135.415(a)(12)

In this supplemental notice, the FAA proposes to add a new reporting requirement for failures, malfunctions, or defects that are not reported under the current regulations. Reports would be required for failures, malfunctions, or defects of autothrottle, autoflight, or flight control systems or components found to be defective or that fail to perform their intended function. The reporting requirements would include scenarios in which the primary mode of a system fails, and a secondary system immediately and appropriately assumes operation. Under such a scenario, the failure of the primary mode would be reportable.

There have been two air carrier accidents in the United States that immediately followed unexplained airplane rolls. The FAA is aware of other roll, pitch, or yaw events that have occurred, although reports are not always made to the SDRS. The FAA notes that some of these events have required full deflection of the flight controls to regain control of the aircraft. Other events have occurred involving ice in autopilot actuators, which prevented the actuators from disengaging when the autopilot was disengaged.

Although such events could be reported under current § 121.703(c) or § 135.415(c), the SDR data base does not indicate that such reports are being made. Therefore, the FAA has added a proposed requirement to report failures, malfunctions, or defects of autothrottle, autoflight, or flight control systems or components in proposed

§§ 121.703(a)(12), 125.409(a)(12), and 135.415(a)(12).

Sections 121.703(c), 121.704(b), 125.409(c), 125.410(b), 135.415(c), and 135.416(b)

In this supplemental notice, the FAA proposes to revise the language in §§ 121.703(c), 125.409(c), and 135.415(c). The proposed rule states that each certificate holder shall report any failure, malfunction, or defect in an aircraft system, component, or powerplant that occurs or is detected at any time if that failure, malfunction, or defect has endangered or may endanger the safe operation of an aircraft. The phrase "in its opinion" would no longer be included in the rule language. The proposed provision would provide the FAA with additional information concerning failures, malfunctions, or defects, not otherwise specified in the proposed rule, involving modern, complex aircraft. Similar revisions would be included in proposed §§ 121.704(b), 125.410(b), and 135.416(b).

Sections 121.703(d), 121.704(c), 125.409(d), 125.410(c), 135.415(d), and 135.416(c)

The FAA received six comments that address the provisions of proposed §§ 121.703(d), 125.409(d), and 135.415(d). These comments address the submission of reports directly to a centralized collection point rather than the certificate holder's FSDO, the 72-hour reporting requirement, the availability of reports for examination by the FSDO, and the perception that the proposed rule prescribes dual reporting requirements. One commenter asserts that the requirements for reports to be reviewed by the FSDO before they are entered into the SDR database should be retained.

The FAA disagrees. The current requirement for FSDO review before forwarding the report to Oklahoma City allows the FSDO to review the reports for completion and accuracy and assess certificate holder trends. Because the proposed reporting requirements are more precise than the existing rules, an accuracy review of the report by the FSDO should no longer be required. Current routing requirements create a delay of approximately 4 to 5 weeks from the date of occurrence to the date of data entry. The FAA contends that the continued FSDO review would only delay the timely entry of data into the SDRS.

Because of concerns raised by the commenters about making the reports available for FSDO review, the duration of such availability, and the perception that this constitutes a dual reporting requirement, the FAA has added a statement to the proposed rule that the reports be made available for review for 30 days. The FAA contends that certificate holders usually retain SDR's indefinitely; therefore, a 30-day retention requirement should place minimal burden on the certificate holders. Certificate holders would not be required to submit a copy of the report to their PMI, but would be required to permit the inspector to review any reports submitted within the previous 30 days.

FAA inspectors have expressed concern that their lack of review would "take them out of the loop" and would not permit them to remain aware of difficulties experienced by the certificate holder; however, inspectors have access to the FAA's SDR data base and the reports are currently available for review in the SDR Summary (provided by AFS–600) on computer services such as FedWorld and the Integrated Safety Information System. The FAA will use inspector guidance to emphasize that inspectors should use available computer systems to review SDR data. However, as previously noted, certificate holders would be required to permit inspectors to review any reports submitted within the previous 30 days.

The FAA notes that, with regard to the provision for certificate holders to make reports available to the FSDO for review as proposed in the NPRM, the final rule for part 119 removed the references to "Flight Standards District Office" in § 121.703. Specifically, the FAA revised the report submission requirements of § 121.703(d) by replacing "FAA Flight Standards District Office charged with the overall inspection of the certificate holder" with "certificate-holding district office." In addition, § 119.3 defines the certificate-holding district office as the FSDO that has responsibility for administering the certificate and is charged with the overall inspection of the certificate holder's operations. Therefore, to maintain consistency, proposed §§ 121.703(d), 121.704(c), 125.409(d), 125.410(c), 135.415(d), and 135.416(c) have been revised to reflect this change.

Four commenters mention the 72-hour reporting requirement. Two of these commenters state that the 72-hour reporting requirement is inappropriate, and at times is impossible to meet for aircraft undergoing heavy maintenance. The commenters recommend revising the current rule so that, under such circumstances, reports would be required 72 hours after the aircraft is returned to service. One commenter states that the 72-hour reporting requirement should only be required for those discrepancies that could cause the "sudden loss of an aircraft." Another commenter states that there is no justification for the 72-hour reporting requirement.

The FAA has reviewed the comments and determined that a 96-hour requirement for the submission of reports is more appropriate than the current 72-hour reporting requirement. However, the FAA disagrees with the comment that for aircraft undergoing heavy maintenance, the 96-hour reporting requirement should begin when the aircraft is approved for return to service, because there may be a substantial period of time between discovery of the failure, malfunction, or defect during a heavy maintenance check and the return of the aircraft to service. In addition, the FAA contends that the increase from 72 hours to 96 hours for reporting would allow ample time for certificate holders to gather the necessary information to submit a detailed report and reduce supplemental reporting.

One commenter notes that the text of proposed § 135.415(d) states that reports must be submitted to the "location where the data base is maintained" rather than a centralized collection point, as stated in the similar sections of the proposal. The FAA notes that this was an inadvertent error, and the proposed rule language has been revised to read "to a centralized collection point" for consistency with similar proposed sections.

For the reasons discussed above proposed §§ 121.704(c), 125.410(c), and 135.416(c) also have been revised to increase the reporting requirement to 96 hours and require that SDR's be made available for 30 days for examination by the certificate holding district office.

Sections 121.703(e), 125.409(e), and 135.415(e)

The FAA received two comments concerning the introductory text of §§ 121.703(e), 125.409(e), and 135.415(e). One commenter indicates the perception that the proposed rule language would require both an electronic copy and a paper copy of any reports submitted. That commenter also states that reporting electronically should be optional. In addition, that commenter states that the word "should" is not appropriate language for a rule. The other commenter expresses concern that the rule as proposed would not require the submission of information that is necessary to conduct meaningful analysis because items

contained in previously proposed paragraphs (e)(7) through (e)(9) would be optional information that certificate holders could but would not be required to submit.

The FAA has revised the proposed rule language to clarify that a report must be submitted electronically or in another form acceptable to the Administrator. It was not the FAA's intention to require the submission of reports in both electronic and paper form. However, the FAA proposes revising § 121.703(e) to provide that 1 year after the effective date of the rule, part 121 certificate holders would be required to submit reports in an electronic form. This proposed revision is consistent with Department of Transportation (DOT) requirements, contained in 14 CFR § 234.5 and section 19–1 of 14 CFR part 241, for the electronic submission of certain reports and data, and should impose little additional burden on part 121 certificate holders. Part 125 and part 135 certificate holders would retain the option of submitting the required information in electronic or paper form. Part 145 certificate holders also would retain this option unless the repair facility submits the information on behalf of a part 121 certificate holder in accordance with proposed §§ 121.703(g) and 121.704(f).

The proposed rule also has been reworded to require the submission of all of the information listed in paragraph (e). The increase from 72 hours to 96 hours for the submission of the reports should permit the timely collection of the information previously proposed as optional in paragraphs (e)(7) through (e)(9). The increase in the amount of time allowed for submission of reports should reduce the number of supplemental reports submitted to update the SDR data base, a concern that was expressed by several other commenters.

Sections 121.703(e)(1), 125.409(e)(1), and 135.415(e)(1)

As previously proposed, these sections required that an SDR include the manufacturer, the model, the serial number, and the registration number of the aircraft. When the service difficulty involves an engine or propeller, the manufacturer, the model, and the serial number of those items are necessary for accurate trend analysis. Therefore, these sections have been revised to require the reporting of the manufacturer, the model, and the serial number of the aircraft, engine, or propeller. The requirement to provide the registration number of the aircraft is now contained in proposed §§ 121.703(e)(2), 125.409(e)(2), and 135.415(e)(2).

Sections 121.703(e)(3), 125.409(e)(3), and 135.415(e)(3)

The FAA has revised the proposed rule language in these sections to require that an SDR include the operator designator rather than the name of the operator. Each certificate holder is assigned a certificate number. The operator designator is the first four alphanumeric characters of the certificate number. This revision is necessary to avoid potential confusion when operators have similar names (for example, American Airlines, Inc.; American Trans Air, Inc.; and America West Airlines, Inc.).

Proposed §§ 121.704(d)(2), 125.410(d)(2), and 135.416(d)(2) also would require that an SDR submitted under these sections include an operator designator.

Sections 121.703(e)(4), 125.409(e)(4), and 135.415(e)(4)

Two commenters address the content of previously proposed §§ 121.703(e)(3), 125.409(e)(3), and 135.415(e)(3) and indicate that providing all the information required by those paragraphs may not be possible. One commenter states that his operation does not use flight numbers. The other commenter states that a flight number may not be appropriate if the defect was discovered during maintenance. This commenter also questions what station information would be appropriate if a discrepancy occurred during flight.

After further review, the FAA has determined that the proposed requirement for submission of the flight number and the station where the failure, malfunction, or defect was detected is not necessary. Proposed §§ 121.703(e)(4), 125.409(e)(4), and 135.415(e)(4) would now require only the date on which the failure, malfunction, or defect was discovered. The requirement to report the stage of operation during which the service difficulty occurred (previously included in proposed §§ 121.703(e)(3), 125.409(e)(3), and 135.415(e)(3)) is now contained in §§ 121.703(e)(5), 125.409(e)(5), and 135.415(e)(5) as discussed in the following paragraph.

Sections 121.703(e)(5), 125.409(e)(5), and 135.415(e)(5)

The FAA has clarified the requirement to report the stage of operation during which the service difficulty occurred by revising it to read "the stage of flight or ground operation during which the failure, malfunction, or defect was discovered." These operations may include, for example, ground handling, taxi, takeoff, climb, cruise, descent, approach, landing, or maintenance inspections. The intent of the proposal is to require reports for all of the listed failures, malfunctions, or defects, regardless of when they are detected. This clarification also addresses comments on §§ 121.703(a), 125.409(a), and 135.415(a) about whether reports would be required only for defects detected during flight or if defects occurring during ground operations also would be reportable.

Sections 121.703(e)(7), 121.704(d)(6), 125.409(e)(7), 125.410(d)(6), 135.415(e)(7), and 135.416(d)(6)

The FAA received seven comments concerning the inclusion of the applicable FAA-modified Air Transport Association Specification 100 (ATA Code) in the reporting requirements. The commenters cite various reasons for their lack of support for this requirement. Commenters express concern that the use of the FAA-modified system would become required throughout their operations, resulting in tremendous expense for manual revisions and computer system modifications. They also express concern that required use of the proposed codes would result in additional review requirements and that the modified codes add no value or safety benefit to the current system. Commenters also state that not all manufacturers prepare their manuals in accordance with the ATA Code system and that requiring the use of the codes creates the opportunity for inconsistent compliance.

To address these concerns, the FAA has modified the proposed rule, which would require use of the applicable JASC Code. In May 1991, the FAA introduced the coding scheme used in the JASC Code for the technical classification of SDR's. This code, which was developed by the Safety Data Analysis Section of the FAA's Flight Standards Service with input from Transport Canada, is a modified version of the ATA Code. The JASC Code has been adopted by the Civil Aviation Authority of Australia and by Transport Canada. The current ATA Code system basically is consistent with the JASC Code system; therefore, users of the ATA Code should not need to significantly revise their procedures to adopt the JASC Code. The Safety Data Analysis Section often changes reporters' incorrect codes to the appropriate JASC Code before data are entered in the SDRS to ensure that correct data are captured during queries. This procedure ensures proper subsequent data analysis.

Use of the JASC Code provides standardization between users and nonusers of the ATA Code, just as the ATA Code provides consistency for its users. Copies of the JASC Code are available from the FAA's Regulatory Support Division (AFS–600) or on-line via the FedWorld system (see "Availability of JASC Code").

Sections 121.703(e)(8), 121.703(d)(7), 125.409(e)(8), 125.410(d)(7), 135.415(e)(8), and 135.416(d)(7)

The FAA received four comments concerning the proposed requirement for submitting aircraft total time and total cycles. The commenters state that if the failure, malfunction, or defect involves a component, the aircraft total time and total cycles may not be readily available, especially if an outside vendor is involved in providing the corrective action. In the case of a component defect, the aircraft total time and total cycles may be irrelevant and too time consuming to determine. Two commenters state that total cycles may not be available for certain certificate holders who use aircraft for which cycle recording is not required. These commenters question whether the proposed rule would require those certificate holders to begin tracking aircraft total cycles.

The FAA agrees with these comments and has revised the proposed rule accordingly. Because tracking the accumulation of aircraft cycles may not be a requirement for certain type designs, this information would only be required, if applicable. Proposed §§ 121.703(e)(8), 121.704(d)(7), 125.409(e)(8), 125.410(d)(7), 135.415(e)(8), and 135.416(d)(7) have been modified accordingly. Also, the FAA has made the total time and total cycle information requirement more specific in proposed §§ 121.703(e)(8), 121.409(e)(8), and 135.415(e)(8) so that information on the affected part would be required, rather than only aircraft total time and total cycles.

Sections 121.703(e)(9), 125.409(e)(9), and 135.415(e)(9)

One commenter states that requiring the identification of the engine or component serial number is not justifiable when it is not required to report the engine or component manufacturer and part number.

The FAA agrees and has added the requirement for the submission of the manufacturer, manufacturer part number, and part name of the malfunctioning item to the proposed rule. In addition, the location of the malfunctioning item would be required.

The FAA also has revised these sections to require that the information be provided for the component that failed, malfunctioned, or was defective, if applicable. In some instances, it may be possible to further identify the specific part, within that component, that failed, malfunctioned, or was defective. For example, when a generator fails, during disassembly it may be discovered that the failure was caused by a problem with a bearing. In such cases, the FAA has determined that it also is necessary for accurate trend analysis that an SDR contain the manufacturer, manufacturer part number, part name, serial number, and location of that part (the bearing, in this example). Therefore, proposed §§ 121.703(e)(10), 125.409(e)(10), and 135.415(e)(10) have been added to require the reporting of this information. The FAA notes that in some cases the component causing the service difficulty may not contain any parts (for example, a cracked windscreen). In those cases, no information would be required under proposed §§ 121.703(e)(10), 125.409(e)(10), and 135.415(e)(10).

Sections 121.703(e)(11), 125.409(e)(11), and 135.415(e)(11)

During the review of comments and preparation of this document, the FAA determined that the proposed rule language should be clarified by substituting the phrase "precautionary or emergency action taken" for "emergency procedure effected." This revision is necessary because certain indications may require an aircraft to return to the gate for precautionary reasons (for example, an unusual or abnormal fuel quantity indication while taxiing for takeoff). Such events may not require the use of emergency procedures; therefore, certain certificate holders may not report the information under the existing or previously proposed rules. However, to ensure that all appropriate information is collected, the FAA wants reports of the precautionary or emergency action taken.

Sections 121.703(e)(13), 121.704(d)(9), 125.409(e)(13), 125.410(d)(9), 135.415(e)(13), and 135.416(d)(9)

The FAA has revised the proposed rule language by adding a requirement that an SDR include a unique control number for an occurrence, in a form acceptable to the Administrator. The following describes an acceptable form for the unique control number. The control number would begin with the first four alphanumeric characters of the submitter's certificate number. The next four numbers would be used to designate the calendar year in which the SDR is submitted. The remaining numbers would be generated by the submitter. For example, for the unique control number ABCD199700001, "ABCD" would denote the first four characters of the submitter's certificate number, "1997" would indicate that the SDR was filed in 1997, and "0000001" would indicate that the SDR relates to the first occurrence reported by the submitter for that year. When a supplemental SDR is submitted, the submitter would use the unique control number from the original SDR, add the new or modified information to the original SDR, and submit the supplemental report.

The use of the unique control number will reduce the number of duplicate reports for the same occurrence in the SDR data base and provide a more simplified method for the FAA and industry to reference an SDR. Currently, FAA resources are expended to relate supplemental information to the original report.

Proposed §§ 121.704(d)(9), 125.410(d)(9), and 135.416(d)(9) also would require that an SDR submitted under these sections include a unique control number for the occurrence.

Sections 121.703(f), 125.409(f), and 135.415(f)

Two commenters state that the proposed rule language pertaining to reporting under 14 CFR § 21.3 provides manufacturers with a loophole to avoid SDR reporting, thereby preventing a meaningful comparison to service difficulties.

The FAA disagrees. Sections 121.703(f), 125.409(f), and 135.415(f) apply to the few operators who also happen to be the type certificate holder of the aircraft, aircraft engine, or propeller in which a failure, malfunction, or defect has been discovered. Other certificate holders would make a report as prescribed by the other provisions of the proposed rule. Although reports made under to § 21.3 and proposed §§ 121.703(a), 125.409(a), and 135.415(a) would contain common information, the FAA disagrees with the commenters' contention that the information should be compiled into a single data base for meaningful comparison. Comparison of the information may not result in useful data. Reports submitted under §§ 121.703(a), 125.409(a), and 135.415(a) identify problems on aircraft that are in service. Reports submitted under § 21.3 identify manufacturing deficiencies and are used by the appropriate FAA Aircraft Certification

Office to address such deficiencies and correct them during subsequent manufacturing activity. The FAA contends that the information gathered through these separate reporting requirements should remain separate. The reporting requirements of § 21.3 may be reviewed in a separate rulemaking action in the future; however, such review and potential revision is beyond the scope of this rulemaking activity.

Sections 121.703(g), 125.409(g), and 135.415(g)

Three commenters request clarification of the proposed provision which would permit a part 121, part 125, or part 135 certificate holder to assign the service difficulty reporting task to a certificated repair station. Two of these commenters indicate that without clear lines of responsibility, inconsistent reporting will result. These two commenters also recommend that reporting be the responsibility of the person returning the aircraft or other item to service. Another commenter questions whether the certificate holder would have to grant reporting authority in writing to the repair station and whether certificate holders would be required to maintain lists of repair stations to which they have granted such authority.

The FAA offers the following for clarification: The reporting responsibility ultimately lies with the certificate holder for the aircraft. However, a certificate holder could, in the contractual agreement for the maintenance activity made with a repair station, assign to the repair station the task of submitting the required reports. This assignment would permit the repair station to submit the reports as the repair station discovers discrepancies during maintenance of the operator's equipment without repeatedly contacting the operator. If such an arrangement is made to meet the proposed requirements, the repair station would submit the data required by the proposed SDR requirements, although repair stations are not governed by part 121, part 125, or part 135. The FAA emphasizes that such arrangements are optional and that the details of such arrangements are contractual, not regulatory. The FAA also emphasizes that the responsibility for the submission of the reports would still remain with the certificate holder, and that the certificate holder would still be required to make the reports available for review for 30 days.

Sections 121.703(h) and (i), 121.704(g) and (h), 125.409(h) and (i), 125.410(g) and (h), 135.415(h) and (i), and 135.416(g) and (h)

During preparation of this supplemental notice, the FAA noted that the requirements prescribed by current §§ 121.703(g) and (h) and 135.415(g) and (h) were not retained in Notice No. 95–12. These sections address the withholding of incomplete reports and the submission of supplemental reports. Although the change from 72 hours to 96 hours for the submission of reports is intended to reduce the number of supplemental reports required, the intent was not to eliminate supplemental reporting. Under the proposal, supplemental reports would still be required for the submission of information that was not available at the time the original report was submitted, as is required under the existing rules. Therefore, proposed §§ 121.703(h) and (i), 125.409(h) and (i), and 135.415(h) and (i), which address the submission of supplemental reports, have been added in this proposal. Equivalent requirements are contained in proposed §§ 121.704(g) and (h), 125.410(g) and (h), and 135.416(g) and (h).

In adding the proposed requirement for submission of supplemental reports, the FAA has modified the current language of §§ 121.703(h) and 135.415(h). The FAA intends that all additional information, from whatever source, be submitted in the supplemental reports, including information obtained from the manufacturer, the operator's internal maintenance organization, or a certificated repair station. The FAA has further modified the current language to require the certificate holder to reference the unique control number from the original report. As previously discussed, use of this number will ensure that the supplemental information is traceable to the original report.

Sections 121.704(a), 125.410(a), and 135.416(a)

The FAA received six comments concerning use of the terms "primary structure" (PS) and "principal structural element" (PSE) in the introductory text of proposed §§ 121.704(a), 125.410(a), and 135.416(a). These commenters express concern that not all manufacturers of aircraft operated under parts 121, part 125, and part 135 identify portions of the airframe as a PS or a PSE. The commenters state that although in many cases the identification of a PS or a PSE is possible by evaluation of an item's function, this is not always the case. Two commenters note inconsistencies within paragraph (a) of each section.

The FAA agrees with the concerns of the commenters. Because of these concerns, the FAA has revised proposed §§ 121.704(a), 125.410(a), and 135.416(a). The revised sections would require each certificate holder to report the occurrence or detection of each failure or defect related to corrosion, cracks, or disbonding that requires replacement of the affected part, or that requires rework or blendout because the corrosion, cracks, or disbonding exceeds the manufacturer's established allowable damage limits. The revised sections also would require reports for cracks, fractures, or disbonding in a composite structure that the equipment manufacturer has designated as a PS or a PSE. This clarification would alleviate the requirement for submitting reports about cracked composite radomes, fairings, or lift spoilers, while ensuring that cracks in composite wing structures are reported.

The previously proposed requirement for the submission of information on failures or defects repaired in accordance with data approved by a Designated Engineering Representative (DER) or other approved data not contained in the manufacturer's maintenance manual also has been revised. In addition to reports of other failures or defects, the revised proposal would require the submission of information on any failures or defects repaired in accordance with data not contained in the manufacturer's maintenance manual so that information on aircraft without prescribed allowable damage limits also would be reported.

Sections 121.704(d), 125.410(d), and 135.416(d)

The FAA received six comments regarding proposed §§ 121.704(d), 125.410(d), and 135.416(d). The majority of these comments were similar to comments on §§ 121.703(e), 125.409(e), and 135.415(e), described previously, regarding the reporting of optional information.

One commenter specifically addresses previously proposed paragraph (d)(7) of each section and states that the identification of a structural part should remain optional because many structural parts are several feet in length and the part number alone may not provide an adequate description of the damage location. The commenter notes that a part number may add no value when a detailed description of the damage location (including station, waterline, butt line) is provided.

The FAA agrees. Therefore, the FAA has not included the manufacturer's part number and serial number of the defective item in the list of reportable items. The FAA notes that proposed §§ 121.704(d)(5), 125.410(d)(5), and 135.416(d)(5) would require the certificate holder to report the part name, part condition, and location of the failure or defect. The addition of a reporting requirement for the part name and part condition is necessary for accurate trend analysis.

The FAA also has added a requirement in proposed §§ 121.704(d)(4), 125.410(d)(4), and 135.416(d)(4) that an SDR include the stage of ground operation during which the failure or defect was discovered. Such operations may include scheduled and unscheduled maintenance or servicing of the aircraft. The FAA has deleted the previously proposed requirement to report the "nature of the failure or defect."

In addition, the FAA has revised the proposed rule to require the submission of all of the information listed in §§ 121.704(d), 125.410(d), and 135.416(d). The FAA has determined that this requirement is necessary to ensure that information such as corrosion classification and crack length is reported. The FAA notes that only those certificate holders who have a required corrosion prevention and control program are required to report corrosion classification information. The addition of proposed §§ 121.704(g) and (h), 125.410(g) and (h), and 135.416(g) and (h) would permit the reporting of this information when it becomes available.

Consistent with the proposed revision to § 121.703(e), the FAA has revised § 121.704(d) to provide that 1 year after the effective date of the rule, part 121 certificate holders would be required to submit reports in an electronic form.

Sections 121.705 and 135.417

The FAA received three comments concerning § 135.417. Two of these comments address the proposal that would require reports following each interruption to a flight for any aircraft, rather than for just multiengine aircraft, as required by the existing rule. These commenters state that this change is significant and needs to be addressed.

The FAA agrees. The proposal would require reports for all such interruptions, regardless of whether they occurred in a single- or multiengine aircraft for operations conducted under part 135. The FAA contends that many aircraft use parts or engines that are in common use between part 121, part 125, or part 135 certificate holders (for example, the Cessna Caravan and the Beechcraft 1900, which both use the Pratt & Whitney PT–6 engine). Also, the FAA has added unscheduled engine removals caused by known or suspected mechanical difficulties to the list of items that would be required to be reported. This change will facilitate the continued compilation of data for preparation of the FAA's Air Carrier Aircraft Utilization and Propulsion Reliability Report.

One commenter addresses the proposed change in § 135.417 for the submission of reports from the 10th day of the month following an interruption to the regular and prompt submission of reports, which would have made part 135 consistent with current § 121.705. The commenter contends that the phrase "regularly and promptly" is too vague.

The FAA agrees and has changed the language of proposed §§ 121.705 and 135.417 to require that reports be submitted by the 10th day of the month following the occurrence.

Sections 145.63 and 145.79

For consistency with the proposed requirements of part 121, part 125, and part 135, the FAA has revised these sections to require that reports of serious defects or recurring unairworthy conditions be submitted to a centralized collection point as specified by the Administrator. The FAA has revised the time period for reporting serious defects or unairworthy conditions from 72 hours to 96 hours for the same reason.

Paperwork Reduction Act

This proposal contains information collections that are subject to review by OMB under the Paperwork Reduction Act of 1995 (Pub. L. 104–13). The title, description, and respondent description of the annual burden are shown below.

Title: Service Difficulty Reports.

Description: Under current regulations, certificate holders operating under parts 121, 125, and 135 and part 145 certificated domestic and foreign repair stations are required to report service difficulties to the FAA. The objective of the revised proposed rule is to update and improve the reporting system to effectively collect and disseminate clear and concise safety information to the aviation industry. This would be done through a series of changes that include:

- Permitting part 121, 125, and 135 certificate holders to authorize a repair station to submit an SDR on their behalf;
- Permitting the electronic submission of SDR data (certificate holders operating under part 121 would be required to report electronically 1 year after the effective date of a final rule);
- Eliminating dual reporting from both air carriers and repair stations;
- Reducing the Principal Maintenance Inspector's (PMI's) workload;
- Requiring that each SDR include a unique control number for an occurrence; and
- Adding some additional reporting requirements for part 121, 125, and 135 certificate holders on information that has not been collected before or had been collected through voluntary reporting.

Description of Respondents: Businesses or other for-profit organizations.

This proposal would constitute a recordkeeping burden for certificate holders operating under parts 121, 125, and 135, and part 145 certificated repair stations that currently must report service difficulties. The FAA notes that the current service difficulty reporting requirements were approved under OMB assigned Control Numbers 2120–0008, 2120–0085, 2120–0003, and 2120–0039.

The FAA expects that this proposal would affect 156 part 121 certificated air carriers, 2,940 part 125 and 135 certificated air carriers, and 4,599 part 145 certificated repair stations. The proposed rules, while imposing additional reporting and recordkeeping requirements on those operators, would have the following impacts on these businesses:

- Allowing a repair station to file an SDR on behalf of a certificate holder operating under part 121, 125, or 135 (saving 385 hours annually); and
- Require certificate holders to report certain additional service difficulties and include new information in the SDR (adding 1,725 hours annually for air carriers and 57.5 hours annually for repair stations).

Accordingly, the FAA estimates that these proposed rules increase the reporting and paperwork requirements for industry by 1,398 hours annually. The total annual reporting burden costs sums to $31,464. These cost figures are based on estimates provided in the FAA's "Regulatory Analysis."

In addition, under the proposal, certificate holders operating under part 121 would be required to report SDR's electronically 1 year after the effective date of the rule. The FAA estimates that it would take approximately 1 hour for a certificate holder to program its computers to permit electronic submission of the report. In addition, it may be necessary for some certificate

holders to install additional software to convert to an IBM-compatible system to run the necessary software. Total first year costs are expected to sum to $7,719.

The proposed regulations would decrease paperwork for the Federal Government by reducing the workload for PMI's and SDR data entry employees as follows:

- Allowing a repair station to file an SDR on behalf of a certificate holder operating under part 121, 125, or 135, hence, reducing dual reporting (saving 385 hours annually for data entry personnel);
- Requiring certificate holders to submit these reports directly to Oklahoma City (saving as much as 3,083 hours annually for PMI's);
- Requiring that an SDR include a unique control number for an occurrence (saving as much as 228 hours annually for data entry personnel); and
- Require certificate holders to report certain additional service difficulties and include new information in the SDR (adding 863 hours annually for data entry personnel).

Accordingly, the FAA estimates that these proposed rules decrease the reporting and paperwork requirements for the government by 2,834 hours annually. The total annual reporting burden costs savings sums to $18,164. These cost figures are based on estimates provided in the FAA's "Regulatory Analysis."

The agency solicits public comment on the information collection requirements to (1) evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Individuals and organizations may submit comments on the information collection requirement by June 1, 1999, and should direct them to the address listed in the **ADDRESSES** section of this document.

Persons are not required to respond to a collection of information unless it displays a currently valid OMB control number. The burden associated with this proposal has been submitted to OMB for review. The FAA will publish a notice in the **Federal Register** notifying the public of the approval numbers and expiration date.

International Compatibility

The FAA has reviewed corresponding International Civil Aviation Organization standards and recommended practices and Joint Aviation Authorities requirements and has identified no differences in these proposed amendments and the foreign regulations.

Regulatory Evaluation Summary

Executive Order 12866 (issued October 4, 1993) established the requirement that each agency shall assess both the costs and benefits of every regulation and propose or adjust a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. In response to this requirement, and in accordance with Department of Transportation policies and procedures, the FAA has estimated the anticipated benefits and costs of this rulemaking action. In addition to a summary of the regulatory evaluation, this section also contains a regulatory flexibility determination required by the 1980 Regulatory Flexibility Act, an international trade impact assessment, and an unfunded mandates determination. (A detailed discussion of costs and benefits is contained in the full evaluation in the docket for this rule.)

In conducting these analyses, the FAA has determined that this proposed rule would generate cost-savings that would exceed any costs, and is not "significant" as defined under section 3(f) of Executive Order 12866 and Department of Transportation's (DOT) policies and procedures (44 FR 11034, February 26, 1979). In addition, under the Regulatory Flexibility Determination, the FAA certifies that this proposal would not have a significant impact on a substantial number of small entities. Furthermore, this proposal would not impose restraints on international trade. Finally, the FAA has determined that the proposal would not impose a federal mandate on state, local, or tribal governments, or the private sector of $100 million per year. These analyses, available in the docket, are summarized below.

Cost of Compliance

The FAA has estimated the expected costs and benefits of this regulatory proposal. In this analysis, the FAA estimated costs for a 10-year period, from 1999 through 2008. The present value of this stream was calculated using a discount factor of 7 percent as required by the OMB. All costs in this analysis are in 1996 dollars.

While 17 of the proposed sections would increase costs, the changes in 15 of them would modify existing reporting requirements or add additional reporting requirements for information that has not been collected before or had been collected through voluntary reporting. Accordingly, because there is little or no historical data on the proposed data collection and reporting requirements, the FAA does not know how many extra reports these new requirements would generate. For these proposed sections that lack historical data, the FAA believes that there would be few new reports and that the overall burden would be minimal. However, to provide the public with an estimation of the potential total impact of these sections, the FAA assumed that each of these proposed sections could increase the total number of SDR's processed each year by 1 percent. Over 10 years, these costs sum to $674,300 (net present value, $473,600). The FAA calls for comments on these assumptions, specifically what the extra number of reports and the total impact would be in each of these cases.

Proposed §§ 121.703(e) and 121.704(d) would require 1 year after the effective date of the rule, that part 121 certificate holders submit reports in an electronic form. Electronic reporting would necessitate having a computer and a modem. The software needed to interface with the SDRS runs only on IBM-compatible systems; almost all part 121 certificate holders have such systems.

The costs associated with this section would be for those certificate holders who use non-IBM compatible computers. It would be necessary for them to convert to an IBM-compatible system and for a programmer to install the requisite software. In addition, the software necessary to interface with the SDRS would need to be installed at all locations; the FAA would provide this software at no charge. Total first year costs sum to approximately $7,700 (net present value, $7,200).

Proposed sections §§ 121.703(g), 121.704(f), 125.409(g), 125.410(f), 135.415(g), and 135.416(f) would permit parts 121, 125, and 135 certificate holders to authorize a repair station to submit an SDR on their behalf. Proposed §§ 145.63(e) and 145.79(f) would require that the repair stations provide a copy of the report submitted by the repair

station to the part 121, 125, or 135 certificate holder on whose behalf the report was submitted. These proposed sections would result in increased costs for the repair stations. However, these proposed sections would allow for cost savings by eliminating duplicate reports; repair stations would submit the report for input into the SDRS currently submitted by both repair stations and air carriers.

The elimination of the air carrier operator's duplicate report would not diminish safety. The SDR system is used to spot equipment malfunction trends and to get an overview of airplane mechanical malfunctions by fleet type; they are not intended to give an operational view of what is wrong with an operator's individual airplane. Based on the existing regulations, before an airplane can be put back into service, the air carrier will need to be aware of what was wrong and what corrective actions were taken. Alleviating the air carrier operator of the responsibility of submitting an SDR in this case does not lessen the information the air carrier would have about their aircraft.

There were 2,311 SDR's from repair stations entered into the SDR data base that also were submitted from air carriers in 1996. Each report would need to be sent from the repair station to the air carrier. The FAA assumes in this analysis that all reports are photostated and mailed. Over 10 years, the costs of these reports would be $55,900 (net present value, $39,300).

Total quantifiable costs, over 10 years, sum to $738,000 (net present value, $520,100).

Proposed sections §§ 121.703(d), 125.409(d), and 135.415(d) may reduce the PMI's workload. Currently, all reports go from the certificate holder to the Flight Service District Office (FSDO) where the PMI spends time reviewing the SDR before forwarding it to the SDRS in Oklahoma City. The proposal would require certificate holders and operators to submit these reports directly to Oklahoma City, thus possibly reducing the PMI's workload. The certificate holder or operator would be required to make the SDR data available to the FSDO for examination. Hence, while the PMI could still remain informed, he or she may not have to spend as much time inspecting each report and would not have to forward the material. Over 10 years, this cost savings would be $1.12 million (net present value, $786,000).

Proposed §§ 121.703(e)(13), 121.704(d)(9), 125.409(e)(13), 125.410(d)(9), 135.415(e)(13), and 135.416(d)(9) would add a requirement that an SDR include a unique control number for each occurrence. This proposal would yield cost savings that would come from both the reduction in the number of duplicate reports for the same occurrence in the SDR data base and from the more simplified, methodical method for the FAA and industry to reference an SDR. Traditionally, when a supplemental report was submitted to the SDRS, it was entered as if it were a separate report, thus making it difficult to link to the original report. Using a unique identification number for each occurrence would reduce the total number of reports within the SDRS. The potential cost savings would be based on the reduction in the amount of time spent to find and link these reports within the SDRS. Over 10 years, the cost savings would be $143,800 (net present value, $101,000). The actual cost savings would almost certainly be lower because some certificate holders already are using a control number.

Proposed sections §§ 121.703(g), 125.409(g), and 135.415(g) would reduce dual reporting. When a repair station identifies a failure, malfunction, or defect, this information currently is being reported by both the repair station and the certificate holder or operator. Therefore, information about the same problem may be reported twice to the FAA. The proposed revision is intended to eliminate these duplicate reports. The proposed rule would require that the part 121, 125, or 135 certificate holder or operator receive a copy of the report submitted by the repair station (these costs were covered above).

Cost savings would accrue, for each repair, because one less report would need to be processed. In 1996, 2,311 repair station SDR's were enter into the SDR data base, so this analysis will assume that this number of reports would not have to be processed. Over 10 years, this cost reduction would be $227,300 (net present value, $194,800).

Total cost savings over 10 years sum to $1.54 million (net present value, $1.08 million). Net cost savings would be $802,200 (net present value, $561,600); these savings could be lower (1) if any of the proposed sections the FAA is calling for comment on have higher costs than those assumed; and (2) if the total cost savings from using a unique control number is less (but the FAA does not have the data to determine how much less it may be).

Analysis of Benefits

These proposals would help to eliminate the number of duplicate reports that have been entered into this system. In addition, the increased interval for submitting reports should reduce the number of supplemental reports filed. A more efficient system would preserve and improve the integrity of the data base and allow for better and more complete analyses. Additional specific benefits of these proposals include standardizing reporting procedures among air carriers.

In addition to the above, the proposed regulations would enhance air carrier safety by collecting additional and more timely data that identify mechanical failures, malfunctions, and defects that may be a serious hazard to the operation of an aircraft. The information collected could be used to develop and implement corrective actions to help prevent future occurrences of these failures, malfunctions, and defects.

As noted above, the SDR system is used to identify trends and to provide an overview of product service data. Identifying these trends could help to catch problems early, which could allow AD's to be based on better information. In addition, an SDR will give an operator the ability to use trend information (and knowledge of potential problems) to better plan its maintenance scheduling, a major benefit for airplane operators. In addition, the FAA believes that because of the improved SDR information resulting from these proposed regulations, additional information and equipment malfunction trends could be identified that would lead, over time, to safer airplanes.

Comparison of Costs and Benefits

This proposed rule would result in cost savings. Duplicate reports, as well as duplicate entries in the SDRS, would be reduced. The only costs would include software and hardware costs for the part 121 air carriers and copies of reports from repair stations to certificate holders who would no longer need to file SDR's. These proposed changes are expected to generate net cost savings over 10 years of $802,200 (net present value, $561,600).

In addition to eliminating the number of duplicate reports that have been entered into this system, the proposed regulations would enhance air carrier safety by collecting additional and more timely data that identify mechanical failures, malfunctions, and defects that may be a serious hazard to the operation of an aircraft. This data could be used to identify trends that could help to catch problems early and to better plan its maintenance scheduling. All of this could lead, over time, to safer airplanes.

Based on the proposed rule's cost savings and benefits, the FAA finds this proposed rule to be cost beneficial.

Initial Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 establishes "as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation." To achieve that principle, the Act requires agencies to solicit and consider flexible regulatory proposals and to explain the rational for their actions. The Act covers a wide range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the determination is that it will, the agency must prepare a regulatory flexibility analysis (RFA) as described in the Act.

However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the Act provides that the head of the agency may so certify and an RFA is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

For this proposed rule, the small entity group is considered to be parts 121, 125, and 135 air carriers (Standard Industrial Classification (SIC) Code 4512) and part 145 repair stations (SIC Codes 4581, 7622, 7629, and 7699). The FAA has identified a total of 98 part 121 air carriers, 2,118 part 125 and part 135 air carriers, and 2,790 part 145 repair stations that would be considered small entities.

These proposed regulations would cost all air carriers $396,400 (net present value, $280,200) and repair stations $64,300 (net present value, $45,100) over the next 10 years. On average, it would cost each air carrier $15 per year and each repair station $1 per year.

The FAA conducted the required review of this proposal and determined that it would not have a significant economic impact on a substantial number of small entities. Accordingly, pursuant to the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Federal Aviation Administration certifies that this rule will not have a significant impact on a substantial number of small entities. The FAA specifically requests comments from small entities on this certification.

International Trade Impact Analysis

In accordance with the OMB memorandum dated March 1983, Federal agencies engaged in rulemaking activities are required to assess the effects of regulatory changes on international trade. There would be no impact on international trade for the domestic certificate holders and operators affected by this proposed rule. In addition, the impact on both domestic and foreign repair stations would be the same, so there would be no cost advantage to using either. Accordingly, there would be no impact on international trade.

Federalism Implications

The regulations proposed herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995, enacted as Public Law 104–4 on March 22, 1995, requires each Federal agency, to the extent permitted by law, to prepare a written assessment of the effects of any Federal mandate in a proposed or final agency rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any 1 year.

Section 204(a) of the Act, 2 U.S.C. 1534(a), requires the Federal agency to develop an effective process to permit timely input by elected officers (or their designees) of State, local, and tribal governments on a proposed "significant intergovernmental mandate." A "significant intergovernmental mandate" under the Act is any provision in a Federal agency regulation that will impose an enforceable duty upon State, local, and tribal governments, in the aggregate, of $100 million (adjusted annually for inflation) in any 1 year. Section 203 of the Act, 2 U.S.C. 1533, which supplements section 204(a), provides that before establishing any regulatory requirements that might significantly or uniquely affect small governments, the agency shall have developed a plan that, among other things, provides for notice to potentially affected small governments, if any, and for a meaningful and timely opportunity to provide input in the development of regulatory proposals.

This proposed rule does not contain any Federal intergovernmental mandates or private sector mandates.

List of Subjects

14 CFR Part 121

Air carriers, Aircraft, Aviation safety, Reporting and recordkeeping requirements, Safety, Transportation.

14 CFR Part 125

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

14 CFR Part 135

Air taxis, Aircraft, Aviation safety, Reporting and recordkeeping requirements.

14 CFR Part 145

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR parts 121, 125, 135, and 145 as follows:

PART 121—OPERATING REQUIREMENTS: DOMESTIC, FLAG, AND SUPPLEMENTAL OPERATIONS

1. The authority citation for part 121 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 40119, 44101, 44701–44702, 44705, 44709–44711, 44713, 44716–44717, 44722, 44901, 44903–44904, 44912, 46105.

2. Amend § 121.703 by revising the section heading and paragraphs (a), (c), (d), (e), and (f); redesignating paragraph (g) as paragraph (h); revising paragraph (h) and redesignating it as paragraph (i); and adding a new paragraph (g) to read as follows:

§ 121.703 Service difficulty reports (operational).

(a) Each certificate holder shall report the occurrence or detection of each failure, malfunction, or defect concerning—

(1) Any fire and, when monitored by a related fire-warning system, whether the fire-warning system functioned properly;

(2) Any false warning of fire or smoke;

(3) An engine exhaust system that causes damage to the engine, adjacent structure, equipment, or components;

(4) An aircraft component that causes the accumulation or circulation of smoke, vapor, or toxic or noxious fumes;

(5) Any engine flameout or shutdown during flight or ground operations;

(6) A propeller feathering system or ability of the system to control overspeed;

(7) A fuel or fuel-dumping system that affects fuel flow or causes hazardous leakage;

(8) A landing gear extension or retraction, or the opening or closing of landing gear doors during flight;

(9) Any brake system component that results in any detectable loss of brake actuating force when the aircraft is in motion on the ground;

(10) Any aircraft component or system that results in a rejected takeoff after initiation of the takeoff roll or the taking of emergency actions, as defined by the Aircraft Flight Manual or Pilot's Operating Handbook;

(11) Any emergency evacuation system or component including any exit door, passenger emergency evacuation lighting system, or evacuation equipment found to be defective or that fails to perform the intended function during an actual emergency or during training, testing, maintenance, demonstrations, or inadvertent deployments; and

(12) Autothrottle, autoflight, or flight control systems or components of these systems.

* * * * *

(c) In addition to the reports required by paragraph (a) of this section, each certificate holder shall report any other failure, malfunction, or defect in an aircraft, system, component, or powerplant that occurs or is detected at any time if that failure, malfunction, or defect has endangered or may endanger the safe operation of an aircraft.

(d) Each certificate holder shall submit each report required by this section, covering each 24-hour period beginning at 0900 local time of each day and ending at 0900 local time on the next day, to a centralized collection point as specified by the Administrator. Each report of occurrences during a 24-hour period shall be submitted to the FAA within the next 96 hours. However, a report due on Saturday or Sunday may be submitted on the following Monday, and a report due on a holiday may be submitted on the next work day. Each certificate holder also shall make the report data available for 30 days for examination by the certificate-holding district office in a form and manner acceptable to the Administrator.

(e) The certificate holder shall submit the reports required by this section in an electronic or other form acceptable to the Administrator. After [*1 year from the effective date of the rule*], the certificate holder shall submit the reports required by this section in an electronic form acceptable to the Administrator. The reports shall include the following information:

(1) The manufacturer, model, and serial number of the aircraft, engine, or propeller;

(2) The registration number of the aircraft;

(3) The operator designator;

(4) The date on which the failure, malfunction, or defect was discovered;

(5) The stage of flight or ground operation during which the failure, malfunction, or defect was discovered;

(6) The nature of the failure, malfunction, or defect;

(7) The applicable Joint Aircraft System/Component Code;

(8) The total cycles, if applicable, and total time of the aircraft, aircraft engine, propeller, or component;

(9) The manufacturer, manufacturer part number, part name, serial number, and location of the component that failed, malfunctioned, or was defective, if applicable;

(10) The manufacturer, manufacturer part number, part name, serial number, and location of the part that failed, malfunctioned, or was defective, if applicable;

(11) The precautionary or emergency action taken;

(12) Other information necessary for a more complete analysis of the cause of the failure, malfunction, or defect, including available information pertaining to type designation of the major component and the time since the last maintenance overhaul, repair, or inspection; and

(13) A unique control number for the occurrence, in a form acceptable to the Administrator.

(f) A certificate holder that also is the holder of a Type Certificate (including a Supplemental Type Certificate), a Parts Manufacturer Approval, or a Technical Standard Order authorization, or that is a licensee of a Type Certificate holder, need not report a failure, malfunction, or defect under this section if the failure, malfunction, or defect has been reported by that certificate holder under § 21.3 of this chapter or under the accident reporting provisions of 49 CFR part 830.

(g) A report required by this section may be submitted by a certificated repair station when the reporting task has been assigned to that repair station by a part 121 certificate holder. However, the part 121 certificate holder remains primarily responsible for ensuring compliance with the provisions of this section. The part 121 certificate holder shall receive a copy of each report submitted by the repair station.

(h) No person may withhold a report required by this section although all information required by this section is not available.

(i) When a certificate holder gets additional information concerning a report required by this section, the certificate holder shall expeditiously submit that information as a supplement to the original report and use the unique control number from the original report.

3. Add § 121.704 to read as follows:

§ 121.704 Service difficulty reports (structural).

(a) Each certificate holder shall report the occurrence or detection of each failure or defect related to—

(1) Corrosion, cracks, or disbonding that requires replacement of the affected part;

(2) Corrosion, cracks, or disbonding that requires rework or blendout because the corrosion, cracks, or disbonding exceeds the manufacturer's established allowable damage limits;

(3) Cracks, fractures, or disbonding in a composite structure that the equipment manufacturer has designated as a primary structure or a principal structural element; or

(4) Failures or defects repaired in accordance with approved data not contained in the manufacturer's maintenance manual.

(b) In addition to the reports required by paragraph (a) of this section, each certificate holder shall report any other failure or defect in aircraft structure that occurs or is detected at any time if that failure or defect has endangered or may endanger the safe operation of an aircraft.

(c) Each certificate holder shall submit each report required by this section, covering each 24-hour period beginning at 0900 local time of each day and ending at 0900 local time on the next day, to a centralized collection point as specified by the Administrator. Each report of occurrences during a 24-hour period shall be submitted to the FAA within the next 96 hours. However, a report due on Saturday or Sunday may be submitted on the following Monday, and a report due on a holiday may be submitted on the next work day. Each certificate holder also shall make the report data available for 30 days for examination by the certificate-holding district office in a form and manner acceptable to the Administrator.

(d) The certificate holder shall submit the reports required by this section in an electronic or other form acceptable to the Administrator. After [*1 year from the*

effective date of the rule], the certificate holder shall submit the reports required by this section in an electronic form acceptable to the Administrator. The reports shall include the following information:

(1) The manufacturer, model, serial number, and registration number of the aircraft;

(2) The operator designator;

(3) The date on which the failure or defect was discovered;

(4) The stage of ground operation during which the failure or defect was discovered;

(5) The part name, part condition, and location of the failure or defect;

(6) The applicable Joint Aircraft System/Component Code;

(7) The total cycles, if applicable, and total time of the aircraft;

(8) Other information necessary for a more complete analysis of the cause of the failure or defect, including corrosion classification, if applicable, or crack length and available information pertaining to type designation of the major component and the time since the last maintenance overhaul, repair, or inspection; and

(9) A unique control number for the occurrence, in a form acceptable to the Administrator.

(e) A certificate holder that also is the holder of a Type Certificate (including a Supplemental Type Certificate), a Parts Manufacturer Approval, or a Technical Standard Order authorization, or that is a licensee of a Type Certificate holder, need not report a failure or defect under this section if the failure or defect has been reported by that certificate holder under § 21.3 of this chapter or under the accident reporting provisions of 49 CFR part 830.

(f) A report required by this section may be submitted by a certificated repair station when the reporting task has been assigned to that repair station by the part 121 certificate holder. However, the part 121 certificate holder remains primarily responsible for ensuring compliance with the provisions of this section. The part 121 certificate holder shall receive a copy of each report submitted by the repair station.

(g) No person may withhold a report required by this section although all information required by this section is not available.

(h) When a certificate holder gets additional information concerning a report required by this section, the certificate holder shall expeditiously submit that information as a supplement to the original report and use the unique control number from the original report.

4. Revise § 121.705 to read as follows:

§ 121.705 Mechanical interruption summary report.

Each certificate holder shall submit to the Administrator, before the end of the 10th day of the following month, a summary report for the previous month of each interruption to a flight, unscheduled change of aircraft en route, unscheduled stop or diversion from a route, or unscheduled engine removal caused by known or suspected mechanical difficulties or malfunctions that are not required to be reported under § 121.703 or § 121.704 of this part.

PART 125—CERTIFICATION AND OPERATIONS: AIRPLANES HAVING A SEATING CAPACITY OF 20 OR MORE PASSENGERS OR A MAXIMUM PAYLOAD CAPACITY OF 6,000 POUNDS OR MORE

5. The authority citation for part 125 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701–44702, 44705, 44710–44711, 44713, 44716–44717, 44722.

6. Revise § 125.409 to read as follows:

§ 125.409 Service difficulty reports (operational).

(a) Each certificate holder shall report the occurrence or detection of each failure, malfunction, or defect concerning—

(1) Any fire and, when monitored by a related fire-warning system, whether the fire-warning system functioned properly;

(2) Any false warning of fire or smoke;

(3) An engine exhaust system that causes damage to the engine, adjacent structure, equipment, or components;

(4) An aircraft component that causes the accumulation or circulation of smoke, vapor, or toxic or noxious fumes;

(5) Any engine flameout or shutdown during flight or ground operations;

(6) A propeller feathering system or ability of the system to control overspeed;

(7) A fuel or fuel-dumping system that affects fuel flow or causes hazardous leakage;

(8) A landing gear extension or retraction, or the opening or closing of landing gear doors during flight;

(9) Any brake system component that results in any detectable loss of brake actuating force when the aircraft is in motion on the ground;

(10) Any aircraft component or system that results in a rejected takeoff after initiation of the takeoff roll or the taking of emergency actions, as defined by the Aircraft Flight Manual or Pilot's Operating Handbook;

(11) Any emergency evacuation system or component including any exit door, passenger emergency evacuation lighting system, or evacuation equipment found to be defective or that fails to perform the intended function during an actual emergency or during training, testing, maintenance, demonstrations, or inadvertent deployments; and

(12) Autothrottle, autoflight, or flight control systems or components of these systems.

(b) For the purposes of this section, *during flight* means the period from the moment the aircraft leaves the surface of the earth on takeoff until it touches down on landing.

(c) In addition to the reports required by paragraph (a) of this section, each certificate holder shall report any other failure, malfunction, or defect in an aircraft, system, component, or powerplant that occurs or is detected at any time if that failure, malfunction, or defect has endangered or may endanger the safe operation of an aircraft.

(d) Each certificate holder shall submit each report required by this section, covering each 24-hour period beginning at 0900 local time of each day and ending at 0900 local time on the next day, to a centralized collection point as specified by the Administrator. Each report of occurrences during a 24-hour period shall be submitted to the FAA within the next 96 hours. However, a report due on Saturday or Sunday may be submitted on the following Monday, and a report due on a holiday may be submitted on the next work day. For aircraft operating in areas where mail is not collected, reports may be submitted within 24 hours after the aircraft returns to a point where the mail is collected. Each certificate holder also shall make the report data available for 30 days for examination by the certificate-holding district office in a form and manner acceptable to the Administrator.

(e) The certificate holder shall submit the reports required by this section in an electronic or other form acceptable to the Administrator. The reports shall include the following information:

(1) The manufacturer, model, and serial number of the aircraft, engine, or propeller;

(2) The registration number of the aircraft;

(3) The operator designator;

(4) The date on which the failure, malfunction, or defect was discovered;

(5) The stage of flight or ground operation during which the failure, malfunction, or defect was discovered;

(6) The nature of the failure, malfunction, or defect;

(7) The applicable Joint Aircraft System/Component Code;

(8) The total cycles, if applicable, and total time of the aircraft, aircraft engine, propeller, or component;

(9) The manufacturer, manufacturer part number, part name, serial number, and location of the component that failed, malfunctioned, or was defective, if applicable;

(10) The manufacturer, manufacturer part number, part name, serial number, and location of the part that failed, malfunctioned, or was defective, if applicable;

(11) The precautionary or emergency action taken;

(12) Other information necessary for a more complete analysis of the cause of the failure, malfunction, or defect, including available information pertaining to type designation of the major component and the time since the last maintenance overhaul, repair, or inspection; and

(13) A unique control number for the occurrence, in a form acceptable to the Administrator.

(f) A certificate holder that also is the holder of a Type Certificate (including a Supplemental Type Certificate), a Parts Manufacturer Approval, or a Technical Standard Order authorization, or that is a licensee of a Type Certificate holder, need not report a failure, malfunction, or defect under this section if the failure, malfunction, or defect has been reported by that certificate holder under § 21.3 of this chapter or under the accident reporting provisions of 49 CFR part 830.

(g) A report required by this section may be submitted by a certificated repair station when the reporting task has been assigned to that repair station by a part 125 certificate holder. However, the part 125 certificate holder remains primarily responsible for ensuring compliance with the provisions of this section. The part 125 certificate holder shall receive a copy of each report submitted by the repair station.

(h) No person may withhold a report required by this section although all information required by this section is not available.

(i) When a certificate holder gets additional information concerning a report required by this section, the certificate holder shall expeditiously submit that information as a supplement to the original report and use the unique control number from the original report.

7. Add § 125.410 to read as follows:

§ 125.410 Service difficulty reports (structural).

(a) Each certificate holder shall report the occurrence or detection of each failure or defect related to—

(1) Corrosion, cracks, or disbonding that requires replacement of the affected part;

(2) Corrosion, cracks, or disbonding that requires rework or blendout because the corrosion, cracks, or disbonding exceeds the manufacturer's established allowable damage limits;

(3) Cracks, fractures, or disbonding in a composite structure that the equipment manufacturer has designated as a primary structure or a principal structural element; or

(4) Failures or defects repaired in accordance with approved data not contained in the manufacturer's maintenance manual.

(b) In addition to the reports required by paragraph (a) of this section, each certificate holder shall report any other failure or defect in aircraft structure that occurs or is detected at any time if that failure or defect has endangered or may endanger the safe operation of an aircraft.

(c) Each certificate holder shall submit each report required by this section, covering each 24-hour period beginning at 0900 local time of each day and ending at 0900 local time on the next day, to a centralized collection point as specified by the Administrator. Each report of occurrences during a 24-hour period shall be submitted to the FAA within the next 96 hours. However, a report due on Saturday or Sunday may be submitted on the following Monday, and a report due on a holiday may be submitted on the next work day. For aircraft operating in areas where mail is not collected, reports may be submitted within 24 hours after the aircraft returns to a point where the mail is collected. Each certificate holder also shall make the report data available for 30 days for examination by the certificate-holding district office in a form and manner acceptable to the Administrator.

(d) The certificate holder shall submit the reports required by this section in an electronic or other form acceptable to the Administrator. The reports shall include the following information:

(1) The manufacturer, model, serial number, and registration number of the aircraft;

(2) The operator designator;

(3) The date on which the failure or defect was discovered;

(4) The stage of ground operation during which the failure or defect was discovered;

(5) The part name, part condition, and location of the failure or defect;

(6) The applicable Joint Aircraft System/Component Code;

(7) The total cycles, if applicable, and total time of the aircraft;

(8) Other information necessary for a more complete analysis of the cause of the failure or defect, including corrosion classification, if applicable, or crack length and available information pertaining to type designation of the major component and the time since the last maintenance overhaul, repair, or inspection; and

(9) A unique control number for the occurrence, in a form acceptable to the Administrator.

(e) A certificate holder that also is the holder of a Type Certificate (including a Supplemental Type Certificate), a Parts Manufacturer Approval, or a Technical Standard Order authorization, or that is a licensee of a Type Certificate holder, need not report a failure or defect under this section if the failure or defect has been reported by that certificate holder under § 21.3 of this chapter or under the accident reporting provisions of 49 CFR part 830.

(f) A report required by this section may be submitted by a certificated repair station when the reporting task has been assigned to that repair station by the part 125 certificate holder. However, the part 125 certificate holder remains primarily responsible for ensuring compliance with the provisions of this section. The part 125 certificate holder shall receive a copy of each report submitted by the repair station.

(g) No person may withhold a report required by this section although all information required by this section is not available.

(h) When a certificate holder gets additional information concerning a report required by this section, the certificate holder shall expeditiously submit that information as a supplement to the original report and use the unique control number from the original report.

PART 135—OPERATING REQUIREMENTS: COMMUTER AND ON-DEMAND OPERATIONS

8. The authority citation for part 135 continues to read as follows:

Authority: 49 U.S.C. 106(g), 44113, 44701–44702, 44705, 44709, 44711–44713, 44715–44717, 44722.

9. Amend § 135.415 by revising the section heading and paragraphs (a), (c), (d), (e), and (f); redesignating paragraph (g) as paragraph (h); revising paragraph (h) and redesignating it as paragraph (i); and adding a new paragraph (g) to read as follows:

§ 135.415 Service difficulty reports (operational).

(a) Each certificate holder shall report the occurrence or detection of each

failure, malfunction, or defect concerning—

(1) Any fire and, when monitored by a related fire-warning system, whether the fire-warning system functioned properly;

(2) Any false warning of fire or smoke;

(3) An engine exhaust system that causes damage to the engine, adjacent structure, equipment, or components;

(4) An aircraft component that causes the accumulation or circulation of smoke, vapor, or toxic or noxious fumes;

(5) Any engine flameout or shutdown during flight or ground operations;

(6) A propeller feathering system or ability of the system to control overspeed;

(7) A fuel or fuel-dumping system that affects fuel flow or causes hazardous leakage;

(8) A landing gear extension or retraction, or the opening or closing of landing gear doors during flight;

(9) Any brake system component that results in any detectable loss of brake actuating force when the aircraft is in motion on the ground;

(10) Any aircraft component or system that results in a rejected takeoff after initiation of the takeoff roll or the taking of emergency action, as defined by the Aircraft Flight Manual or Pilot's Operating Handbook;

(11) Any emergency evacuation system or component including any exit door, passenger emergency evacuation lighting system, or evacuation equipment found to be defective, or that fails to perform the intended function during an actual emergency or during training, testing, maintenance, demonstrations, or inadvertent deployments; and

(12) Autothrottle, autoflight, or flight control systems or components of these systems.

* * * * *

(c) In addition to the reports required by paragraph (a) of this section, each certificate holder shall report any other failure, malfunction, or defect in an aircraft, system, component, or powerplant that occurs or is detected at any time if that failure, malfunction, or defect has endangered or may endanger the safe operation of an aircraft.

(d) Each certificate holder shall submit each report required by this section, covering each 24-hour period beginning at 0900 local time of each day and ending at 0900 local time on the next day, to a centralized collection point as specified by the Administrator. Each report of occurrences during a 24-hour period shall be submitted to the FAA within the next 96 hours. However, a report due on Saturday or Sunday may be submitted on the following Monday, and a report due on a holiday may be submitted on the next work day. For aircraft operating in areas where mail is not collected, reports may be submitted within 24 hours after the aircraft returns to a point where the mail is collected. Each certificate holder also shall make the report data available for 30 days for examination by the certificate-holding district office in a form and manner acceptable to the Administrator.

(e) The certificate holder shall submit the reports required by this section in an electronic or other form acceptable to the Administrator. The reports shall include the following information:

(1) The manufacturer, model, and serial number of the aircraft, engine, or propeller;

(2) The registration number of the aircraft;

(3) The operator designator;

(4) The date on which the failure, malfunction, or defect was discovered;

(5) The stage of flight or ground operation during which the failure, malfunction, or defect was discovered;

(6) The nature of the failure, malfunction, or defect;

(7) The applicable Joint Aircraft System/Component Code;

(8) The total cycles, if applicable, and total time of the aircraft, aircraft engine, propeller, or component;

(9) The manufacturer, manufacturer part number, part name, serial number, and location of the component that failed, malfunctioned, or was defective, if applicable;

(10) The manufacturer, manufacturer part number, part name, serial number, and location of the part that failed, malfunctioned, or was defective, if applicable;

(11) The precautionary or emergency action taken;

(12) Other information necessary for more complete analysis of the cause of the failure, malfunction, or defect, including available information pertaining to type designation of the major component and the time since the last maintenance overhaul, repair, or inspection; and

(13) A unique control number for the occurrence, in a form acceptable to the Administrator.

(f) A certificate holder that also is the holder of a Type Certificate (including a Supplemental Type Certificate), a Parts Manufacturer Approval, or a Technical Standard Order authorization, or that is a licensee of a Type Certificate holder, need not report a failure, malfunction, or defect under this section if the failure, malfunction, or defect has been reported by that certificate holder under § 21.3 of this chapter or under the accident reporting provisions of 49 CFR part 830.

(g) A report required by this section may be submitted by a certificated repair station when the reporting task has been assigned to that repair station by a part 135 certificate holder. However, the part 135 certificate holder remains primarily responsible for ensuring compliance with the provisions of this section. The part 135 certificate holder shall receive a copy of each report submitted by the repair station.

(h) No person may withhold a report required by this section although all information required by this section is not available.

(i) When a certificate holder gets additional information concerning a report required by this section, the certificate holder shall expeditiously submit that information as a supplement to the original report and use the unique control number from the original report.

10. Add § 135.416 to read as follows:

§ 135.416 Service difficulty reports (structural).

(a) Each certificate holder shall report the occurrence or detection of each failure or defect related to—

(1) Corrosion, cracks, or disbonding that requires replacement of the affected part;

(2) Corrosion, cracks, or disbonding that requires rework or blendout because the corrosion, cracks, or disbonding exceeds the manufacturer's established allowable damage limits;

(3) Cracks, fractures, or disbonding in a composite structure that the equipment manufacturer has designated as a primary structure or a principal structural element; or

(4) Failures or defects repaired in accordance with approved data not contained in the manufacturer's maintenance manual.

(b) In addition to the reports required by paragraph (a) of this section, each certificate holder shall report any other failure or defect in aircraft structure that occurs or is detected at any time if that failure or defect has endangered or may endanger the safe operation of an aircraft.

(c) Each certificate holder shall submit each report required by this section, covering each 24-hour period beginning at 0900 local time of each day and ending at 0900 local time on the next day, to a centralized collection point as specified by the Administrator. Each report of occurrences during a 24-hour period shall be submitted to the FAA within the next 96 hours. However, a report due on Saturday or

Sunday may be submitted on the following Monday, and a report due on a holiday may be submitted on the next work day. For aircraft operating in areas where mail is not collected, reports may be submitted within 24 hours after the aircraft returns to a point where the mail is collected. Each certificate holder also shall make the report data available for 30 days for examination by the certificate-holding district office in a form and manner acceptable to the Administrator.

(d) The certificate holder shall submit the reports required by this section in an electronic or other form acceptable to the Administrator. The reports shall include the following information:

(1) The manufacturer, model, serial number, and registration number of the aircraft;

(2) The operator designator;

(3) The date on which the failure or defect was discovered;

(4) The stage of ground operation during which the failure or defect was discovered;

(5) The part name, part condition, and location of the failure or defect;

(6) The applicable Joint Aircraft System/Component Code;

(7) The total cycles, if applicable, and total time of the aircraft;

(8) Other information necessary for a more complete analysis of the cause of the failure or defect, including corrosion classification, if applicable, or crack length and available information pertaining to type designation of the major component and the time since the last maintenance overhaul, repair, or inspection; and

(9) A unique control number for the occurrence, in a form acceptable to the Administrator.

(e) A certificate holder that also is the holder of a Type Certificate (including a Supplemental Type Certificate), a Parts Manufacturer Approval, or a Technical Standard Order authorization, or that is a licensee of a Type Certificate holder, need not report a failure or defect under this section if the failure or defect has been reported by that certificate holder under § 21.3 of this chapter or under the accident reporting provisions of 49 CFR part 830.

(f) A report required by this section may be submitted by a certificated repair station when the reporting task has been assigned to that repair station by the part 135 certificate holder. However, the part 135 certificate holder remains primarily responsible for ensuring compliance with the provisions of this section. The part 135 certificate holder shall receive a copy of each report submitted by the repair station.

(g) No person may withhold a report required by this section although all information required by this section is not available.

(h) When a certificate holder gets additional information concerning a report required by this section, the certificate holder shall expeditiously submit that information as a supplement to the original report and use the unique control number from the original report.

11. Revise § 135.417 to read as follows:

§ 135.417 Mechanical interruption summary report.

Each certificate holder shall submit to the Administrator, before the end of the 10th day of the following month, a summary report for the previous month of each interruption to a flight, unscheduled change of aircraft en route, unscheduled stop or diversion from a route, or unscheduled engine removal caused by known or suspected mechanical difficulties or malfunctions that are not required to be reported under § 135.415 or § 135.416 of this part.

PART 145—REPAIR STATIONS

12. The authority citation for part 145 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701–44702, 44707, 44717.

13. Amend § 145.63 by revising paragraphs (a) and (c) and adding paragraphs (d) and (e) to read as follows:

§ 145.63 Reports of defects or unairworthy conditions.

(a) Each certificated domestic repair station shall, within 96 hours after it discovers any serious defect in, or other recurring unairworthy condition of, an aircraft, powerplant, or propeller, or any component of any of them, submit a report to a central collection point as specified by the Administrator. The report shall be made in a form and in a manner acceptable to the Administrator, describing the defect or unairworthy condition completely without withholding any pertinent information.

* * * * *

(c) The holder of a domestic repair station certificate that also is the holder of a part 121, part 125, or part 135 certificate, a Type Certificate (including a Supplemental Type Certificate), a Parts Manufacturer Approval, or a Technical Standard Order Authorization, or that is the licensee of a Type Certificate holder, need not report a failure, malfunction, or defect under this section if the failure, malfunction, or defect has been reported by it under § 21.3, § 121.703, § 121.704, § 125.409, § 125.410, § 135.415, or § 135.416 of this chapter.

(d) A certificated domestic repair station may submit a Service Difficulty Report (operational or structural) for—

(1) A part 121 certificate holder under § 121.703(g) or § 121.704(f) provided that the report meets the requirements of §§ 121.703(d) and 121.703(e), or §§ 121.704(c) and 121.704(d) of this chapter, as appropriate;

(2) A part 125 certificate holder under § 125.409(g) or § 125.410(f) provided that the report meets the requirements of §§ 125.409(d) and 125.409(e), or §§ 125.410(c) and 125.410(d) of this chapter, as appropriate;

(3) A part 135 certificate holder under § 135.415(g) or § 135.416(f) provided that the report meets the requirements of §§ 135.415(d) and 135.415(e), or §§ 135.416(c) and 135.416(d) of this chapter, as appropriate.

(e) A certificated domestic repair station authorized to report a failure, malfunction, or defect under paragraph (d) of this section shall not report the same failure, malfunction, or defect under paragraph (a) of this section. A copy of the report submitted under paragraph (d) of this section shall be forwarded to the certificate holder.

14. Amend § 145.79 by revising paragraphs (c) and (d) and adding paragraphs (e) and (f) to read as follows:

§ 145.79 Records and reports.

* * * * *

(c) Each certificated foreign repair station shall, within 96 hours after it discovers any serious defect in, or other recurring unairworthy condition of, any aircraft, powerplant, propeller, or any component of any of them, submit a report to a central collection point as specified by the Administrator. The report shall be made in a form and in a manner acceptable to the Administrator, describing the defect or unairworthy condition completely without withholding any pertinent information.

(d) The holder of a foreign repair station certificate that also is the holder of a Type Certificate (including a Supplemental Type Certificate), a Parts Manufacturer Approval, or a Technical Standard Order Authorization or that is the licensee of a Type Certificate holder need not report a failure, malfunction, or defect under this section if the failure, malfunction, or defect has been reported by it under § 21.3 of this chapter.

(e) A certificated foreign repair station may submit a Service Difficulty Report (operational or structural) for—

(1) A part 121 certificate holder under § 121.703(g) or § 121.704(f) provided that the report meets the requirements of §§ 121.703(d) and 121.703(e) or §§ 121.704(c) and 121.704(d) of this chapter, as appropriate;

(2) A part 125 certificate holder under § 125.409(g) or § 125.410(f) provided that the report meets the requirements of §§ 125.409(d) and 125.409(e) or §§ 125.410(c) and 125.410(d) of this chapter, as appropriate;

(3) A part 135 certificate holder under § 135.415(g) or § 135.416(f) provided that the report meets the requirements of §§ 135.415(d) and 135.415(e) or §§ 135.416(c) and 135.416(d) of this chapter, as appropriate.

(f) A certificated foreign repair station authorized to report a failure, malfunction, or defect under paragraph (e) of this section shall not report the same failure, malfunction, or defect under paragraph (c) of this section. A copy of the report submitted under paragraph (e) of this section shall be forwarded to the certificate holder.

Issued in Washington, D.C., on April 7, 1999.

Nicholas L. Lacey,

Director, Flight Standards Service.

[FR Doc. 99–9299 Filed 4–14–99; 8:45 am]

BILLING CODE 4910–13–P

UMI

VOL
64

ISS
72

AP
15

1999

UMI

federal register

Thursday
April 15, 1999

Part IV

Department of Transportation

Research and Special Programs Administration

49 CFR Part 107

Hazardous Materials Transportation; Registration and Fee Assessment Program; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 107

[Docket No. RSPA–99–5137 (HM–208C)]

RIN 2137–AD17

Hazardous Materials Transportation; Registration and Fee Assessment Program

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: RSPA is proposing changes to the current registration and fee assessment program for persons who transport or offer for transportation certain categories and quantities of hazardous materials. The proposed changes would increase the number of persons required to register and increase the annual registration fee for shippers and carriers who are not a small business under Small Business Administration criteria. The proposed changes are intended to raise additional funds to enhance support for the national Hazardous Materials Emergency Preparedness Grants Program.

DATES: *Written Comments:* Comments must be received on or before June 14, 1999.

Public Meeting Date: A public meeting will be held on May 25, 1999; from 9:00 a.m. to 4:00 p.m. An additional meeting may be scheduled if there is substantial interest.

ADDRESSES: *Written Comments:* Address comments to the Dockets Unit, U.S. Department of Transportation, Room PL 401, 400 Seventh St., SW, Washington, DC 20590–0001. Comments should identify the docket number RSPA–99–5137 (HM–208C) and should be submitted in two copies. Persons wishing to receive confirmation of receipt of their comments should include a self-addressed stamped postcard. Comments may also be submitted by e-mail to: http://dms.dot.gov, or by fax to (202) 366–3753. The Dockets Unit is located on the Plaza Level of the Nassif Building at the U.S. Department of Transportation at the above address.

Public dockets may be viewed between the hours of 10:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. Internet users may access all comments and related background materials by using the Universal Resource Locator (URL) http://dms.dot.gov. An electronic copy of this document may be downloaded using a modem and suitable communications software from the Government Printing Office Electronic Bulletin Board Service at (202) 512–1661.

Public Meeting: The public meeting will be held in room 3200–3204 at the U.S. Department of Transportation's Nassif building, 400 Seventh Street SW, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Mr. David Donaldson, Office of Hazardous Materials Planning and Analysis, (202) 366–4484, or Ms. Jodi George, Office of Hazardous Materials Standards, (202) 366–8553, RSPA, Department of Transportation, 400 Seventh Street SW, Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION:

I. Background

A. Current Registration Program

In 1990, amendments to Federal hazardous materials transportation law, now codified at 49 U.S.C. 5101 et seq. (the law), required the Secretary of Transportation to establish a registration program. The Secretary delegated this authority to the Administrator, Research and Special Programs Administration (RSPA). 49 CFR 1.53(b)(1). The purpose of the registration program is to gather information about the transportation of hazardous materials and to fund a grants program to support hazardous materials emergency response planning and training activities by State and local governments. Under 49 U.S.C. 5108, each person who transports or causes to be transported in commerce one or more of the categories of hazardous materials listed below must file a registration statement with RSPA and pay an annual registration fee:

(1) A highway-route controlled quantity of Class 7 (radioactive) materials;

(2) More than 25 kilograms (55 pounds) of a Division 1.1, 1.2, or 1.3 (explosive) material in a motor vehicle, rail car, or freight container;

(3) A package containing more than one liter (1.06 quarts) of a hazardous material the Secretary designates as extremely toxic by inhalation, which has been identified as a material meeting a criterion of a Zone A material that is toxic by inhalation;

(4) A hazardous material in a bulk packaging, container, or tank if the packaging, container, or tank has a capacity equal to or greater than 13,248 liters (3,500 gallons) or more than 13.24 cubic meters (468 cubic feet); or

(5) A shipment in other than a bulk packaging of 2,268 kilograms (5,000 pounds) or more of a class of hazardous materials for which placarding of a vehicle, rail car, or freight container is required.

In addition, 49 U.S.C. 5108(a)(2) permits RSPA to require registration by each person who:

(1) Transports or causes to be transported hazardous material in commerce but does not engage in the activities listed above; or

(2) Manufactures, fabricates, marks, maintains, reconditions, repairs, or tests packagings that the person represents, marks, certifies, or sells for use in transporting in commerce hazardous materials.

Section 5108(g) allows RSPA to set the registration fee at an amount between $250 and $5,000, based on one or more of the following factors:

(1) The gross revenues from the transportation of hazardous materials;

(2) The types of hazardous materials transported or caused to be transported;

(3) The quantities of hazardous materials transported or caused to be transported;

(4) The number of shipments of hazardous materials;

(5) The number of activities which a person carries out for which filing a registration statement is required;

(6) The threat to property, individuals, and the environment from an accident or incident involving the hazardous materials transported or caused to be transported;

(7) The percentage of gross revenues which are derived from the transport of hazardous materials;

(8) The amount of funds which are made available to carry out the emergency response planning and training grants program; and

(9) Such other factors RSPA considers appropriate.

Section 5108(i)(2) specifically excepts the following persons from the registration requirements:

(1) A department, agency, or instrumentality of the United States Government;

(2) An authority of a State or political subdivision of a State;

(3) An employee of a department, agency, instrumentality, or authority carrying out official duties; and

(4) An employee of a hazmat employer, which for the purposes of registration includes the owner-operator of a motor vehicle that transports in commerce hazardous materials, if that vehicle at the time of those activities, leased to a registered motor carrier under a 30-day or longer lease as prescribed in 49 CFR part 376 or an equivalent contractual agreement.

Section 5108(a)(4) permits RSPA to waive the registration requirements for

a person not domiciled in the United States that solely offers hazardous materials for transportation in commerce to the United States from a place outside the United States if the country of which such person is a domiciliary does not require persons domiciled in the United States who solely offer hazardous materials for transportation to the foreign country from places in the United States to file registration statements, or to pay fees, for making such an offer. In 1995, this exception for foreign offerors was incorporated into the regulations at 49 CFR 107.606(a)(6).

In establishing the registration program, RSPA chose to require registration by only those persons under a statutory obligation to register and to impose the minimum $250 fee on those persons, plus an additional fee, currently set at $50, to pay for the costs of processing the registration statements, as authorized by 49 U.S.C. 5108(g). All registrants pay the same registration fee, regardless of their size, their income, or the extent to which they engage in hazardous materials transportation activities.

The current regulations, in § 107.608(a), require the annual submission of a registration statement. Section 107.620 requires each registrant to maintain a copy of its registration statement and the certificate of registration issued by RSPA at its principal place of business for three years. In addition, each highway carrier and vessel operator is required to keep a copy of the current registration certificate or another document bearing the registration number on board each vehicle or vessel carrying the types and quantities of hazardous materials that require registration.

In each of the seven years since 1992, when offerors and transporters were first required to register, RSPA has received approximately 27,000 registration statements and an average of $6.9 million to support the HMEP Grants Program.

B. Hazardous Materials Emergency Preparedness (HMEP) Grants Program

1. Purpose and Achievements of the HMEP Grants Program

The HMEP Grants Program, as mandated by the law, establishes a role for the Federal government in providing financial and technical assistance, national direction, and guidance to enhance State, local, and tribal hazardous materials emergency planning and training. The HMEP Grants Program is designed to build upon existing programs and to support the working relationships within the National Response System and the Emergency Planning and Community Right-To-Know Act of 1986 (Title III). 42 U.S.C. 11001 *et seq.* The grants are used to develop, improve, and implement emergency plans, to train public sector hazardous materials emergency response employees to respond to accidents and incidents involving hazardous materials, to determine flow patterns of hazardous materials within a State and between States, and to determine the need within a State for regional hazardous materials emergency response teams.

The grants program was designed to encourage the growth of hazardous materials planning and training programs of State, local and tribal governments. To ensure this growth, Sections 5116(a)(2)(A) and 5116(b)(2)(A) of the law require a State or Native American tribe applying for grants to certify that the amount it expends on hazardous materials planning and training, not counting Federal funds, will at least equal the average amount spent for these purposes during the last two fiscal years. The HMEP grants therefore represent additional funds that supplement the amount already being provided by the State or tribe. To further encourage growth in planning and training funds, Section 5116(e) limits the Federal share of the costs of the additional activity for which the grants are made to 80 percent, thus requiring the State or tribe to provide 20 percent of these additional costs. By accepting an HMEP grant, the State or tribe commits itself not only to maintaining its previous level of support, but increasing that level by an amount representing 20 percent of the funds newly expended on grant-supported activities each year. For example, an HMEP grant of $100,000 requires an additional commitment of $25,000 in State or tribal funds over the average amount expended by the agency during the previous two years. These additional State or tribal funds may be provided in the form of direct fiscal support or through the provision of in-kind resources.

Effective responses to hazardous materials incidents depend on the extent and quality of planning and training. Generally, a State Emergency Response Commission (SERC) coordinates the activities of the Local Emergency Planning Committees (LEPCs). The nation's more than 3,000 LEPCs prepare and, in the case of an emergency, implement emergency plans that delineate how responders coordinate activities at the scene of an incident. Emergency plans include: (1) commodity flow studies to determine the materials most likely to create an emergency; (2) exercise plans to test the effectiveness of emergency response; and (3) training requirements for responders. RSPA awards grants to agencies designated by a State or territorial Governor or tribal leader. These agencies are primarily emergency response and environmental protection agencies and Native American tribal governments. The designated agency distributes funds within the State, territory, or Native American tribe in accordance with HMEP grant rules and required certifications. Each grant is made in two portions. Under 49 U.S.C. 5116(a), the first portion of grant funds is awarded for developing, improving, and implementing emergency plans under Title III; conducting commodity flow studies; and determining the need for regional hazardous materials response teams. In each year, RSPA allocates approximately 40 percent of the grant funds for emergency preparedness planning purposes.

The second portion of the grant is designated for training. RSPA allocates approximately 60 percent of the grant funds for emergency preparedness training purposes. This portion is used to train public sector employees to respond safely and efficiently to accidents and incidents involving hazardous materials. The people trained include paid and volunteer firefighters, police, and emergency medical service providers. The designated agencies distribute the major portion of the grants to local emergency response organizations. This system promotes representation of many interests within a State or territory.

The States are also required by Section 5116(a)(2)(B) to pass at least 75 percent of the planning grant amount to LEPC's to develop emergency plans, and by Section 5116(b)(2)(C) to make available at least 75 percent of the training grant amount for training public sector employees employed or used by a political subdivision of the State. These provisions ensure that funds are provided to the local emergency response teams for planning purposes, and that training is provided to first responders.

Since 1993, all States and territories and 35 Native American tribes have been awarded planning and training grants totaling $38.6 million. These grants, which were supplemented by funds from States, tribes, and local agencies, were used to:

- Train 576,000 hazardous materials responders;
- Conduct 1,825 commodity flow studies;

• Write or update more than 1,000 emergency plans during the first grant period, 1,200 in the second, 4,475 in the third, and 5,775 in the fourth;

• Conduct 2,850 emergency response exercises; and

• Assist 1,200 LEPCs during the first year, 2,225 in the second, 2,150 in the third, and 1,900 in the fourth.

In addition, over the past six years, HMEP Grants Program funds have been used to support the following related activities in the total amounts indicated:

• $2.1 million for development and periodic updating of a national curriculum of courses necessary to train public sector emergency response and preparedness teams. The curriculum guidelines, developed by a committee of Federal, State, and local experts, include criteria for establishing training programs for emergency responders at five progressively more skilled levels: first responder awareness, first responder operations, hazardous materials technician, hazardous materials specialist, and on-scene commander. To date, there have been three major and many minor updates to the curriculum guidelines. The guidelines are used to qualify courses for inclusion in the list. In this way, a national list of courses is generated in full partnership with the States and other interested parties. In addition, RSPA used some of the registration fees to distribute more than 16,000 copies of the HMEP interagency-developed curriculum guidelines to grantees, LEPCs, SERCs, and local fire departments. A small portion of the funds is used for coordination with other Federal agencies through the National Response Team Training/ Curriculum Sub-Committee, chaired by RSPA. The guidelines are available from the Federal Emergency Management Agency (FEMA) via its internet web site at http://www.fema.gov/emi/hmep or by calling FEMA at 301–447–1009.

• $1.7 million to monitor public sector emergency response planning and training for an accident or incident involving hazardous materials, and to provide technical assistance to a State or Native American tribe for carrying out emergency response training and planning for an accident or incident involving hazardous materials.

• $3.3 million for periodic updating and distribution of the North American Emergency Response Guidebook.

• $0.5 million for supplemental grants to the International Association of Fire Fighters (IAFF) to train instructors to conduct hazardous materials response training programs.

• $2.0 million for administrative costs of carrying out the HMEP Grants Program.

The HMEP Grants Program has allowed RSPA to support a wide array of emergency preparedness planning and training activities of States and Native American tribes, thereby enabling them to better respond to numerous hazardous-materials-related emergencies. The experiences of emergency response personnel in actual emergency situations during the last six years demonstrate the effectiveness of the grants program. A few representative examples attest to the benefits of this program:

• On October 25, 1995, a tank car containing nitrogen tetroxide ruptured in Bogalusa, Louisiana, causing evacuation of a large part of the town. The emergency plans of St. Tammany and Washington parishes, written and updated in part with HMEP grants funds, were implemented during this accident. Sergeant Robert Pinero of the Louisiana State Police said, "Twelve State and local agencies involved in the Bogalusa response received training because of the HMEP Grants Program and we were able to effectively respond to this accident."

• On April 21, 1996, an explosion at a chemical plant in Lodi, New Jersey, killed four people. Local emergency plans had recently been updated with HMEP grant funds to include a transportation perspective and updated mutual aid plans. According to Sergeant Lance Oram of the New Jersey State Police, "Mutual aid from surrounding communities, made possible by updated plans, was critical to limiting the effect of the accident, as was hazardous materials emergency training of local responders."

• The Commonwealth of Virginia has implemented a hazardous materials response team organization in part with HMEP funding. Steven Patrick, Hazardous Materials Officer for the Virginia State Department of Emergency Services, stated, "It would have been impossible to implement or maintain the response team organization without the training and planning grants provided by the HMEP Grants Program." Virginia's regional response team approach was used in Lynchburg, Virginia, on March 31, 1998, when a 61-car freight train carrying acetone derailed and an explosion and fire occurred, resulting in the evacuation of a 36-block area, including a school, and $1 million in damages to a nearby storage warehouse. Two regional hazardous materials teams trained to the technician level using HMEP grant funds responded to this accident. The availability of trained teams was instrumental in minimizing the time and expense necessary to respond to the accident according to the Virginia Department of Emergency Services.

2. Increased Funding of the HMEP Grants Program

The HMEP Grants Program has accomplished much in a short period of time, but many needs are not being met. Between 1993 and 1998, the average of $6.4 million available for planning and training grants has been only 50% of the $12.8 million authorized by the law for these purposes ($5 million for planning and $7.8 million for training). The HMEP training grants are essential for providing adequate training of those persons throughout the nation responsible for responding to emergencies involving the release of hazardous materials, both through direct Federal financial assistance for such training and by encouraging the provision of additional state and local funds for this purpose.

In a recent review, RSPA estimated that 800,000 shipments of hazardous materials make their way through the national transportation system each day. These shipments range in size and type from single small parcels of consumer commodities, such as flammable adhesives and corrosive paint strippers, to bulk shipments of gasoline in cargo tank motor vehicles and flammable or toxic gases in railroad tank cars. Such shipments are transported in every State, every day of the year, and it is impossible to predict with any degree of certainty when and where an incident may occur. The potential threat requires the development of emergency plans and training of emergency responders on the broadest possible scale. Yet, RSPA also believes there are over 2 million emergency responders requiring initial training or periodic recertification training, including more than 250,000 paid firefighters, 800,000 volunteer firefighters, 725,000 law enforcement officers, and 500,000 emergency medical services (EMS) providers.

The continuing need for training for emergency response personnel, whether paid or volunteer, is partially the result of a relatively high rate of turnover. Emergency response personnel must be available at any time and at a moment's notice to respond to situations that by their very nature are unpredictable and pose a threat not only to the public in general but to the responder in particular. This turnover means that each year there is a significant number of recently recruited responders who must be trained at the most basic level.

In addition, training at more advanced levels is not simply desirable, it is essential if emergency response personnel capable of effectively and safely responding to serious releases of hazardous materials are to be provided. For this reason, RSPA advocates advanced training at the first responder operations, hazardous materials technician, hazardous materials specialist, and on-scene commander levels in every emergency response team in the country. An increase in the funds available to the HMEP Grants Program will encourage the State, tribal, and local agencies to provide this more advanced, and more expensive, training.

The unmet needs of States and Native American tribes for financial assistance in emergency preparedness planning and training for transportation-related incidents involving hazardous materials are great. RSPA is determined to narrow the current gap between the authorized grant levels and the available Federal funds by its careful targeting of the additional funds collected as a result of this rulemaking. RSPA believes that it is essential to increase the awards for emergency planning and training grants to the full $12.8 million authorized by the law and, at the same time, maintain current funding of the additional activities supported by the HMEP Grants Program described above. We fully expect that the additional funds collected as a result of this rulemaking effort will enable us to achieve that objective. For FY–2000, RSPA is seeking Congressional appropriations of $14.3 million in support of HMEP Grants Program activities to permit funding for:

- Training and planning grants ($12.8 million);
- Grants/support to certain national organizations to train instructors to conduct hazardous materials response training programs ($250,000);
- Revising, publishing, and distributing the North American Emergency Response Guidebook ($600,000 per year average);
- Monitoring and technical assistance ($150,000);
- Continuing development of a national training curriculum ($200,000); and
- Administering the grants program ($300,000).

II. Meeting the Need for Increased Funding

A. Publicity Campaigns to Notify Affected Persons

RSPA has conducted extensive outreach efforts to increase awareness of the registration requirement. Approximately 780,000 informational brochures have been distributed through direct mailing campaigns and during presentations to industry. Those mailing campaigns targeted, among others:

(1) More than 60,000 carriers and shippers identified as carriers or shippers of hazardous materials by the Federal Highway Administration's (FHWA) Office of Motor Carriers (OMC);

(2) 6,000 motor carriers required to maintain financial responsibility in the amount of $1 million or $5 million in insurance;

(3) 700 railroad companies known to the Federal Railroad Administration (FRA);

(4) More than 22,000 generators and 13,000 transporters of hazardous waste identified by the Environmental Protection Agency;

(5) Over 16,500 carriers and shippers identified in RSPA's Hazardous Materials Incident Reporting System;

(6) Approximately 4,000 holders of hazardous materials exemptions issued by RSPA;

(7) Thousands of shippers and carriers who are members of trade associations with interests in the transportation of hazardous materials; and

(8) Thousands of carriers and shippers known to State agencies.

To avoid duplication of mailings when possible, RSPA has cross-checked its registration data base with other lists provided by the various Federal and State agencies and industry sources. Annually, RSPA mails registration brochures and forms to hazardous materials shippers and carriers newly entered into the OMC census of highway carriers and shippers and into the RSPA list of shippers and carriers named on the hazardous materials incident report form. The registration program has been publicized in trade magazines and industry newsletters. Seven notices of the registration requirements have been published in the **Federal Register**.

B. Measures to Enhance Compliance

Many commenters to Docket HM–208B (60 FR 5822, January 30, 1995) questioned whether a significant number of persons required to register failed to do so, and whether an accelerated enforcement program would raise sufficient funds to support the HMEP Grants Program fully. In 1994, to ensure compliance with the registration requirements, RSPA proposed that offerors and transporters verify the registration status of each other before transportation begins (Docket HM–208A, 59 FR 15602, April 1, 1994). Most commenters opposed this proposal. Commenters overwhelmingly believed that Federal and State agencies, and not industry, should be responsible for enforcing the regulations. Commenters opposing this proposal cited logistical problems, administrative burdens, and increased costs as reasons for their opposition. RSPA did not adopt the proposal in the final rule (59 FR 32930, June 27, 1994).

The DOT modal administrations have incorporated verification of registration into their normal compliance inspection routines. Enforcement efforts sponsored by FHWA indicate a relatively high compliance rate by motor carriers. Enforcement of the registration requirements was a key element of ROADCHECK–93, and ROADCHECK–95, nationwide inspection efforts led by FHWA. In ROADCHECK–93, of 2,300 placarded trucks that were checked for proof of registration, 88% were registered and had proof on board. Of the 12% that did not have proof on board, 80% were already registered. In ROADCHECK–95, 1,220 placarded trucks were stopped. Of these, 91% were registered and had proof of registration on board. Of the 9% that did not have proof on board, 60% were registered. This indicates a compliance rate among highway carriers of over 95%.

The safety compliance reviews conducted by FHWA (motor carriers) and RSPA (non-bulk shippers and other offerors) confirm high rates of compliance with the registration rule by industry. The following table contains a summary of compliance statistics.

SUMMARY OF COMPLIANCE REVIEWS—HAZARDOUS MATERIALS REGISTRATION RULE (1995–1997)

Period and agency	Number of inspections	Number of citations for failure to register	Percent of failures to register
FY 95 FHWA	2,338	100	4.3
FY 96 FHWA	3,215	79	2.5
FY 97 FHWA	1,369	44	3.2

SUMMARY OF COMPLIANCE REVIEWS—HAZARDOUS MATERIALS REGISTRATION RULE (1995–1997)—Continued

Period and agency	Number of inspections	Number of citations for failure to register	Percent of failures to register
FY 98 FHWA	2,032	35	1.7
CY 95 RSPA	586	19	3.2
CY 96 RSPA	610	15	2.5
CY 97 RSPA	875	20	2.3
CY 98 RSPA	1,053	26	2.5

FRA publicized the registration program through technical bulletins and informational brochures distributed to its regional offices and all FRA inspectors. FRA checks for registrations during compliance reviews and issues notices of defects for failure to register. FRA, FHWA, and 28 State enforcement agencies have issued more than 700 informal notices of the requirement to register, a form developed for use in ROADCHECK–93, but used beyond that operation. The majority of these notices were issued in 1993, 1994, and 1995.

RSPA's goal remains 100% compliance. Therefore, RSPA once again requests assistance from all interested persons to identify those elements of affected industries, or individual companies, that they suspect are required to file a registration statement and pay a fee, but have not done so. Suspected violations of the registration requirements, as well as other possible violations of the Hazardous Materials Regulations, may be reported by calling RSPA's Hazardous Materials Regulations Information Center at (800) 467–4922.

C. DOT Inspector General Recommendations

In 1996 the DOT Office of Inspector General performed a review of the hazardous materials registration program, concentrating on RSPA's efforts to inform the public of the registration requirements. The OIG issued a "Management Advisory" on April 3, 1998, as a result of this review, which made several recommendations, including one that called on RSPA to establish a graduated registration fee schedule based on the types and quantities of hazardous materials transported in order to increase the grants program funds. That recommendation is addressed in this notice. The other recommendations were related to increasing RSPA's efforts to encourage compliance with the current registration requirements through additional public information efforts.

To implement these recommendations, in May 1998 RSPA sent brochures to 42,300 companies that were identified as carriers or shippers of hazardous materials by the OMC. All of these companies had previously been sent information on the registration program since 1992. In October 1998 RSPA resent brochures to 33,000 of these companies in an effort to ensure that companies likely to be required to register had been informed of the registration program. RSPA also mailed registration information to 6,229 companies in the OMC insurance record database that are insured for $1 million or $5 million. RSPA estimates that approximately 800 companies registered as a result of the May 1998 mailing and approximately 200 in response to the October 1998 mailing. While these new registrations provide an additional $250,000 in annual fees to support the HMEP Grants Program, it is an amount far short of what is necessary to enhance funding for the program at the intended level. The results of this effort are consistent with RSPA's finding that at least 90% of the persons required to file a registration statement and pay a fee are complying with the current rule, and that little additional levels of revenue may be obtained by a more aggressive compliance enforcement effort.

D. RSPA's Past Proposal to Increase Funding the Grants Program

On January 30, 1995, RSPA published a notice of proposed rulemaking under Docket HM–208B (60 FR 5822) proposing a three-tier registration fee schedule. The proposed registration fee schedule was based on various factors related to the extent of a company's involvement in the transportation of hazardous materials. After considering over 300 comments from the public and other interested parties, RSPA concluded that it needed more time to assess the registration and grant programs and to reconsider fee equity based on the risks posed by various types and quantities of hazardous materials. A final rule adopting some minor revisions to the registration program, but maintaining a flat fee of $300, was published on May 23, 1995 (60 FR 27231). In the four years since that proposal, providing funds to support planning and training aspects of the HMEP Grants Program at the levels authorized by Congress has been an important goal for RSPA and the grant recipients.

E. Negotiated Rulemaking Convening Report

RSPA has considered advice, comments, and suggestions from the public and interested industry groups made in previous rulemakings, and at meetings, seminars, workshops, and discussions concerning the reauthorization of the hazardous materials safety program. In the Spring of 1998, in anticipation of this proposed rulemaking, RSPA awarded a contract to assess the feasibility of addressing this issue through a negotiated rulemaking. The convenor contacted approximately 40 representatives of the hazardous materials industry and State regulatory agencies affected by the registration and grants programs to ascertain issues of concern to these parties. The convenor recommended that RSPA should proceed to use the negotiated rulemaking process to develop an NPRM on the registration and fee requirements.

Although RSPA determined not to convene a committee, the convening report has been useful in formulating this current proposal. A copy of the Convening Report has been entered into this docket and is available for review through DOT's Docket Unit and via the Internet at the URL indicated in the addresses section of this document.

III. Proposal to Increase Funding of the HMEP Grants Program

In setting a registration fee, RSPA believes that its proposal should meet the following objectives: (1) Be simple, straightforward, and easily implemented and enforced; (2) employ an equity factor that reflects the differences between the risk imposed on the public by the business activities of large and small businesses; (3) ensure the adequacy of funding for the HMEP Grants Program; and (4) be consistent with the law.

Alternatives considered by RSPA for increasing the funds available for the HMEP Grants Program included: (1) Increasing the flat fee imposed on current registrants; (2) imposing a flat-fee on an expanded base of registrants; (3) imposing a two-tier fee schedule on the current registrants; and (4) imposing a two-tier fee schedule on an expanded base of registrants. RSPA has concluded that imposing a two-tiered fee schedule on an expanded base of registrants is the best approach to meet the objectives listed above. The preliminary regulatory evaluation prepared in support of this notice of proposed rulemaking contains a discussion of each of those alternatives. A copy of the preliminary regulatory evaluation was entered into the docket and is available for review by all interested parties.

A. Impose a Two-Tier Fee Schedule on an Expanded Base of Registrants

RSPA proposes to expand the number of persons required to register and to impose a fee schedule based on the size of the business. The base of registrants would be expanded to all persons offering or transporting a shipment of hazardous materials that requires placarding, with the exception of farmers, as discussed below. A two-tier fee schedule would be created, with the lower fee imposed on registrants meeting the U.S. Small Business Administration (SBA) criteria for a small business, also discussed below. This alternative would distribute fees according to a long-established measurement of business size and ensure the collection of sufficient funds to support the HMEP Grants Program at an enhanced level. Under this proposal, RSPA would achieve its goal of raising $14.3 million annually (exclusive of funds collected for administrative processing), by collecting a fee of $300 (which includes a $25 processing fee) from approximately 43,500 registrants that are small businesses and a fee of $2,000 (which includes a $25 processing fee) from an estimated 1,500 registrants not meeting the criteria for a small business. Should the amount actually collected exceed $14.3 million, the law, at § 5108(g)(2)(B), specifies that the Secretary of Transportation shall adjust the amount being collected to reflect any unexpended balance in the account. However, the Secretary is not required to refund any fee.

This alternative recognizes the risks posed to health and safety or property by the transportation of hazardous materials in significant quantities that require placarding. It would require that shippers, carriers and other persons involved in the shipment of a placarded load of hazardous materials bear a fair share of the financial burden that falls on State and local government agencies to develop emergency plans and to train first-on-the-scene responders.

Expanded Base

RSPA proposes to expand the base of persons required to register to include, with one exception, offerors, carriers, and other persons who transport or cause to be transported hazardous materials in a bulk packaging, freight container, unit load device, transport vehicle, or rail car that must display a hazard warning placard, under the provisions of subpart F of part 172 of the Hazardous Materials Regulations (HMR; 49 CFR parts 171–180).

The one exception is for those activities of a "farmer," as defined in § 171.8 of the HMR, that support the farmers farming operations. Absent this exception, the registration rule would potentially apply to a very large number of the nation's more than two million farms. If the actual number of affected farmers were only one percent of the total number of farms, *i.e.*, 20,600, that segment of the economy would nearly equal the current number of 27,000 registrants drawn from all segments of the economy. However, this is not a blanket exception for all farmers from the registration rule. If a farmer offers for transportation or transports in commerce a hazardous material that is specifically identified in § 5108(a)(1) of the law, that farmer must submit a registration statement and pay the required fee.

RSPA's proposal to expand the base of persons required to register by including all placarded loads is responsive to concerns raised by numerous persons who participated in earlier rulemaking proceedings on this topic and through the convening process discussed earlier in this preamble. This proposed expansion of the base to include all placarded loads incorporates three important elements. First, the classes and quantities of hazardous materials for which placarding is required pose a substantial threat to health and safety or property during transportation. Second, the application of generally well understood hazard communication criteria for placarding greatly simplifies the matter of whether a shipper, carrier or other person is required to register. Simplification of the regulations similarly makes the rule much easier to enforce, thereby further assuring a high rate of compliance. Third, by expanding the scope of the registration rule RSPA expects that it will have the financial resources necessary to increase funding of planning and training grants under the HMEP Grants Program to levels currently authorized by the law.

RSPA estimates that the proposed expansion of the universe of additional persons required to register will result in an additional 15,000 to 18,000 registrations, for a total of 42,000 to 45,000 annually. This is based on RSPA's review of the best available data from a number of sources, including the FHWA's Office of Motor Carriers (OMC) database of motor carriers and their shippers, the 1992 Truck Inventory and Use Survey conducted by the U.S. Census Bureau, and the 1992 Economic Census, also conducted by the U.S. Census Bureau.

While none of these sources discussed above contain the number of persons who offer or transport hazardous materials in shipments that require placarding, RSPA believes its estimate of the total number of registrants is conservative and reasonable. We request information on other sources from which to better estimate the number of persons who would be required to register under the proposed rule. If such new information suggests a number significantly larger than RSPA's current estimate, RSPA would consider adjusting the proposed registration fees to avoid collecting an amount in excess of the $14.3 million needed to enhance funding of the HMEP Grants Program.

In addition, RSPA is interested in public comments on the advisability of expanding the number of persons required to register as proposed above, especially in relation to the economic impact of adopting or not adopting this element of the proposal.

Two-tier Schedule of Fees

RSPA proposes a two-tier fee schedule based on information that: (1) Is readily available to potential registrants; (2) can be verified by inspection and enforcement personnel; and (3) is based on one or more of the fee determinants permitted by law. Although the registration statement is excepted by 49 U.S.C. 5108 from requirements of the Paperwork Reduction Act, RSPA seeks to avoid any approach that entails a large record keeping and accounting burden on industry and the government. For example, basing the annual registration fee on a person's hazardous materials shipments could require significant changes in the way a registrant handles its paperwork tracking and accounting procedures. Further, law enforcement personnel would have to verify this information in order to ensure that a person's annual fee is in fact commensurate with its activities.

RSPA believes that its goals are best met by establishing a two-tier fee schedule under which a company not meeting the small-business criterion established for it by the SBA at 13 CFR 121.201 pays a larger fee than that required for a small business. Upon careful review of census data concerning establishments identified by SIC codes corresponding to operations involving the likely manufacture, distribution, or sale (wholesale and retail) of hazardous materials, RSPA estimates that of the 27,000 current registrants, approximately 1,000 registrants do not qualify as a SBA small business. If the base of registrants is expanded to include all persons who offer or transport placarded shipments, RSPA estimates that 1,500 shippers, carriers, and offerors of hazardous materials would not qualify as a SBA small business, while an estimated 43,500 registrants would meet the criterion established by SBA appropriate to their commercial activity.

RSPA believes this regulatory approach provides fee levels that reflect a key factor contained in 49 U.S.C. 5108(g)(2)(A), specifically, the relative size of a business. In addition, this proposal addresses the different levels of risk posed by smaller companies that are engaged in fewer and smaller shipments of hazardous materials as compared to larger companies that annually manufacture, offer, and transport thousands of tons of hazardous materials. RSPA maintains that five of the specific factors permitted by 49 U.S.C. 5108(g)(2)(A) as fee determinants were intended to be indications of the level of risk imposed by the registrant, and that two were intended to be indications of the size of the business (see the list of fee determinants above). Use of the SBA standards for differentiating small businesses offers a simple and direct factor that is commonly used and established by Federal regulation. The use of alternative size criteria, even though they could be defined to reflect, for instance, the relative percentage of specific hazardous materials related businesses, would impose additional and possibly significant record-keeping requirements on the registrants.

RSPA believes that the use of the SBA size criteria as a fee determinant will not impose any additional recordkeeping requirements on the registrants since existing personnel and payroll records can be used to substantiate the number of employees, and financial records subject to routine audits can be used to substantiate gross annual receipts.

The SBA size standards for small businesses are readily available and relatively simple to apply to a business. Each Standard Industrial Code is assigned a standard that is either the number of employees or the gross annual receipts of the business. If a registrant's number of employees or gross annual receipts is equal to or less than the standard assigned to the SIC category that best describes its commercial activities, it qualifies as a small business. In most instances a registrant will be able to immediately determine whether it meets the small business definition. For instance, the size standard for SIC Division D (Manufacturing) is the number of employees, and depending on the product manufactured can be 500, 750, 1000, or 1,500. Any registrant whose primary business is manufacturing that employs 500 persons or less, will qualify as a small business, and, again depending on the SIC code, may qualify as a small business with up to 750 or 1000 employees. Registrants whose primary business falls within the SIC Major Group "Motor Freight Transportation and Warehousing" are defined as small businesses if the gross annual receipts are equal to or less than $18.5 million, with two exceptions ("Garbage and Refuse Collection, without Disposal" has an upper limit of $6.0 million, and "Terminal and Joint Terminal Maintenance Facilities for Motor Freight Transportation" has a limit of $5.0 million). Here again, RSPA believes that most motor carriers will immediately recognize whether they meet the SBA criterion for a small business.

The SBA size criteria in 13 CFR part 121 are applied to a "business concern" or "business entity." For the purposes of determining the appropriate registration fee, the SBA criteria are to be applied to the registering "person" as defined in 49 CFR 107.3, even if that "person" is substantively different from the SBA "concern" or "entity." For example, the SBA, at 13 CFR 121.103(a), sometimes looks beyond the specific operations of a legally organized business to consider whether its affiliation with another business concern or business entity through identical or substantially identical business or economic interests, such as family members, persons with common investments, or firms that are economically dependent through contractual or other relationships, may be treated as one party with such interests aggregated. In its application of requirements for registration RSPA makes no such distinction and each business concern or business entity subject to the registration regulation would be required to file a separate registration statement and pay the appropriate fee.

Under this proposal, a foreign carrier that transports a specified type and quantity of hazardous material within the United States would have to determine its small-business status by applying the criteria in 13 CFR 121.201, using the U.S. Dollar equivalent of annual receipts or the number of employees, as appropriate.

RSPA is interested in public comments on the advisability of imposing a two-tier schedule of fees as proposed above, particularly in relation to the alternative of maintaining the greater simplicity of a flat fee collected from all registrants regardless of their business size or amount and type of hazardous materials activities.

Lower Administrative Fee for All Registrants.

In this notice, RSPA proposes to reduce the processing fee to $25 in order to bring the aggregate amount collected closer to the amounts needed to process the registration statement and to issue the Certificate of Registration. All amounts collected by RSPA (including the processing fee) are deposited into the U.S. Treasury, and Congress appropriates funds for RSPA to process registration statements, issue registration certificates, and perform the related parts of the registration program. In Fiscal Years 1996–99, the amounts needed by RSPA to administer the registration program, and appropriated by Congress, have been about one-half of the total processing fees collected. Although the current proposal would increase the number of persons required to register and pay a registration fee, RSPA estimates that a processing fee of $25 per registration statement will still be necessary and sufficient to administer the registration program at that level.

B. Registration Procedures

In connection with the proposed fee schedule, RSPA notes that additional information would be required on the Registration Statement submitted by persons subject to the registration requirements. The proposed new information includes the SIC Code and certification of whether the registrant meets the SBA standards for a small business. The SIC Code would replace the former indication of "Industrial Classification" on the Registration Statement.

At the request of various industry representatives, RSPA is also proposing to permit registration for one, two, or three years on a single registration

statement. Registration for more than a single year would be strictly optional. Registrants that register for years in advance would not receive RSPA's courtesy mailing of registration materials in the years for which they have pre-registered, but would receive a notice to register when their current registration is about to expire. A single administrative fee of $25 would be collected for each registration statement submitted under this proposal, whether for one, two, or three years, and a single registration statement and number would be issued for the entire period.

IV. Fiscal Year 2000 Budget Request and Hazardous Materials Transportation Reauthorization Proposal

The Administration's Fiscal Year 2000 Budget and the Hazardous Materials Transportation Reauthorization proposals to Congress include legislative authority to fund RSPA's entire Hazardous Materials Safety Program from the registration fee program, beginning with the fourth quarter of fiscal year 2000. If this authority is granted, RSPA will initiate additional rulemaking action to collect the approximately $32.5 million needed to adequately fund both the HMEP Grants program ($14.3 million) and the remainder of RSPA's Hazardous Materials Program ($18.2 million).

V. Rulemaking Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

This proposed rule is considered a significant regulatory action under section 3(f) of Executive Order 12866 and was reviewed by the Office of Management and Budget. The rule is considered significant under the Regulatory Policies and Procedures of the Department of Transportation [44 FR 11034]. A regulatory evaluation is available for review in the public docket. This proposal is intended to collect annual registration fees in the amount of $14.3 million to support activities of the HMEP Grants Program. Because Federal hazardous materials transportation law mandates the establishment and collection of fees, the discretionary aspects of this rulemaking are limited to setting the amount of the fee within the statutory range for each person subject to the registration program, and to extending the registration requirements to persons who transport or cause the transportation of hazardous materials but who are not specifically required to register by law. The proposed fees are not related to the cost of RSPA's hazardous materials safety programs. The fees to be paid by shippers and carriers of certain hazardous materials in transportation are related to the benefits received by these persons from the sale and transportation of hazardous materials and from emergency response services provided by public sector resources, should an accident or incident occur. The fees are also related to expenses incurred by State, Native American tribal, and local hazardous materials emergency preparedness and response activities.

B. Executive Order 12612

This action has been analyzed in accordance with Executive Order 12612 ("Federalism"). States and local governments are "persons" under 49 U.S.C. 5102, but are specifically exempted from the requirement to file a registration statement. The regulations herein have no substantial effects on the States, on the current Federal-State relationship, or on the current distribution of power and responsibilities among the various levels of government. This registration regulation has no preemptive effect. It does not impair the ability of States, local governments or Native American tribes to impose their own fees or registration or permit requirements on intrastate, interstate or foreign offerors or carriers of hazardous materials. Thus, RSPA lacks discretion in this area, and preparation of a federalism assessment is not warranted.

C. Executive Order 13084

RSPA believes that revised regulations evolving from this NPRM would have no significant or unique effect on the communities of Indian tribal governments when analyzed under the principles and criteria contained in Executive Order 13084 ("Consultation and Coordination with Indian Tribal Governments"). Therefore, the funding and consultation requirements of this Executive Order would not apply. Nevertheless, this NPRM specifically requests comments from affected persons, including Indian tribal governments, as to its potential impact.

D. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires each agency to review regulations and assess their impact on small entities unless the agency determines that a rule is not expected to have a significant impact on a substantial number of small entities. Based on its preliminary regulatory evaluation prepared in support of this proposal, RSPA certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities.

This proposal would expand the number of persons subject to RSPA's registration and fee program to include all persons who offer for transportation or transport a shipment of hazardous materials required to be placarded. RSPA is also proposing to maintain at the current level the combined registration and processing fee in the amount of $300 as authorized by the Federal hazardous materials transportation law for persons meeting the Small Business Administration (SBA) definition of small business. In addition, RSPA is proposing a limited exception for farmers that offer for transportation or transport certain shipments of hazardous materials in support of their farm operations.

Approximately 27,000 persons registered with RSPA for each of the last two registration years, and these persons are expected to engage in hazardous materials transportation activities that require registration in the coming years. Approximately 65% (17,550) of these persons are carriers or carriers-and-shippers, the remaining 35% (9,450) being shippers or other offerors who do not transport hazardous materials. RSPA estimates that the proposed expansion of the universe of persons required to register will result in an additional 15,000 to 18,000 registrations, for a total of 42,000 to 45,000 annual registrations. This represents the least number of registrations that can be reasonably expected under the proposed rule.

The 1992 Truck Inventory and Use Survey (TIUS–92) conducted by the Bureau of the Census as part of the Census of Transportation indicates that there were 17 million trucks (not including pickups, vans, utility vehicles, and station wagons) in the United States. Except for a few specialized vehicle types, essentially all of those 17 million trucks may be used in the transportation of hazardous materials. With deregulation of the trucking industry there are essentially no economic barriers to entry into this field of transportation; carriers that are ready, willing, and able to transport hazardous materials are generally free to do so. The data indicate that only 360,000 of the 17 million trucks are actually used to carry placarded shipments of hazardous materials. The number of companies maintaining these trucks was not included in the census, but fleet sizes were provided. The number of fleets that included a truck that carried hazardous materials is estimated to be 40,000. This number contains an undetermined number of

farmers who would be excepted under the proposed rule,

The number of persons who offer shipments of hazardous materials for transportation exclusively by rail, air, or water is thought to be quite small by comparison to multi-modal shippers, and probably does not exceed 500 to 1,000. An increase is expected in the number of motor carriers that would be required to register and in the number of persons that offer shipments of hazardous materials that require placarding for transportation. RSPA expects that the estimated 15,000 to 18,000 new registrants will be divided in approximately the same proportion as the current mix of registrants, i.e., 65% (9,750 to 11,700) would be carriers or carriers-and-shippers, and 35% (5,250 to 6,300) would be persons who never transport their own shipments of hazardous materials. Of the estimated 15,000 to 18,000 new registrants, RSPA estimates that all but 400 to 500 are small businesses.

RSPA believes the $300 in annual registration fees is so small as to not constitute a significant burden on any small business. For example, an independent owner-operator, i.e., a motor carrier not operating under lease to a registered motor carrier, probably represents the smallest of all small businesses potentially subject to requirements in this proposed rule. These owner-operators typically own one truck and average 2,000 revenue-miles per week at an estimated cost per mile of $0.80 cents. Assuming the typical independent owner-operator is in service 40 weeks per year, the additional cost per mile attributed to $300 in registration and processing fees is $0.00375 cents. Stated differently, the independent owner-operator's increased cost of doing business would be less that one-half of 1% of current costs. That does not represent a significant impact on an independent owner-operator's cost of doing business.

As indicated above, there are nearly 17 million vehicles in either private commercial operations or for-hire service. Assuming, on the basis of census data, that one-truck-only operators comprise 28% of the national fleet, it follows that there are at least 4.25 million concerns that could, at their discretion, engage in the transportation of hazardous materials. In this analysis, RSPA notes that the estimated total number of 9,750 to 11,700 persons described as carriers or carriers-and-shippers that the agency expects would be subject to the requirement to register is less than one-half of 1% of the 4.25 million very small carriers that comprise the for-hire and commercial business services sector of the national economy. That is neither a substantial number of all potentially affected transporters, nor is it a substantial number of the 97% of those operators that RSPA believes meet SBA criteria for a small business.

E. Unfunded Mandates Reform Act of 1995

This proposed rule would not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It would not result in costs of $100 million or more, in the aggregate, to any of the following: State, local, or Native American tribal governments, or the private sector. This proposed rule is the least burdensome alternative that achieves the objective of the rule.

F. Paperwork Reduction Act

Under 49 U.S.C. 5108(i), reporting and recordkeeping requirements pertaining to the registration rule are specifically excepted from information management requirements of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*)

G. Impact on Business Processes and Computer Systems (Year 2000)

Many computers that use two digits to keep track of dates may, on January 1, 2000, recognize "double zero" not as 2000 but as 1900. This glitch, the Year 2000 problem, could cause computers to stop running or to start generating erroneous data. The Year 2000 problem poses a threat to the global economy in which Americans live and work. With the help of the President's Council on Year 2000 Conversion, Federal agencies are reaching out to increase awareness of the problem and to offer support. We do not want to impose new requirements that would mandate business process changes when the resources necessary to implement those requirements would otherwise be applied to the Year 2000 problem.

This NPRM does not propose business process changes or require modification to computer systems. Because the NPRM apparently does not affect organizations' ability to respond to the Year 2000 problem, we do not intend to delay the effectiveness of the proposed requirements in the NPRM.

H. Regulation Identifier Number (RIN)

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

List of Subjects in 49 CFR Part 107

Administrative practice and procedure, Hazardous materials transportation, Packaging and containers, Penalties, Reporting and recordkeeping requirements.

Accordingly, RSPA proposes to amend 49 CFR part 107 as follows:

PART 107—HAZARDOUS MATERIALS PROGRAM PROCEDURES

1. The authority citation for part 107 would continue to read as follows:

Authority: 49 U.S.C. 5101–5127, 44701; Sec. 212–213, Pub. L. 104–121, 110 Stat. 857; 49 CFR 1.45, 1.53.

Subpart G—Registration of Persons Who Offer or Transport Hazardous Materials

2. Section 107.601 would be revised to read as follows:

§ 107.601 Applicability

(a) The registration and fee requirements of this subpart apply to any person who offers for transportation, or transports, in foreign, interstate or intrastate commerce—

(1) A highway route-controlled quantity of a Class 7 (radioactive) material, as defined in § 173.403 of this chapter;

(2) More than 25 kg (55 pounds) of a Division 1.1, 1.2, or 1.3 (explosive) material (see § 173.50 of this chapter) in a motor vehicle, rail car or freight container;

(3) More than one L (1.06 quarts) per package of a material extremely toxic by inhalation (i.e., "material poisonous by inhalation," as defined in § 171.8 of this chapter, that meets the criteria for "hazard zone A," as specified in §§ 173.116(a) or 173.133(a) of this chapter);

(4) A shipment of a quantity of hazardous materials in a bulk packaging (see § 171.8 of this chapter) having a capacity equal to or greater than 13,248 L (3,500 gallons) for liquids or gases or more than 13.24 cubic meters (468 cubic feet) for solids;

(5) A shipment in other than a bulk packaging of 2,268 kg (5,000 pounds) gross weight or more of one class of hazardous materials for which placarding of a vehicle, rail car, or freight container is required for that class, under the provisions of subpart F of part 172 of this chapter; or

(6) Except as provided in paragraph (b) of this section, a quantity of hazardous material that requires

placarding, under provisions of subpart F of part 172 of this chapter.

(b) Paragraph (a)(6) of this section does not apply to those activities of a farmer, as defined in § 171.8 of this chapter, that are in direct support of the farmers farming operations.

(c) In this subpart, the term "shipment" means the offering or loading of hazardous material at one loading facility using one transport vehicle, or the transport of that transport vehicle.

3. In § 107.608, paragraphs (a), (b), and (d) would be revised to read as follows:

§ 107.608 General registration requirements.

(a) Except as provided in § 107.616(d), each person subject to this subpart must submit a complete and accurate registration statement on DOT Form F 5800.2 not later than June 30 for each registration year, or in time to comply with paragraph (b) of this section, whichever is later. Each registration year begins on July 1 and ends on June 30 of the following year.

(b) No person required to file a registration statement may transport a hazardous material or cause a hazardous material to be transported or shipped, unless such person has on file, in accordance with § 107.620, a current Certificate of Registration in accordance with the requirements of this subpart.

* * * * *

(d) Copies of DOT Form F 5800.2 and instructions for its completion may be obtained from the Hazardous Materials Registration Program, DHM–60, U.S. Department of Transportation, Washington, DC 20590–0001, by calling 617–494–2545 or 202–366–4109, or via the Internet at http://hazmat.dot.gov.

* * * * *

4. Section 107.612 would be revised to read as follows:

§ 107.612 Amount of fee.

(a) *Registration year 1999–2000 and earlier.* For all registration years through 1999–2000, each person subject to the requirements of § 107.601(a)(1)–(5) must pay an annual fee of $300 (which includes a $50 processing fee).

(b) *Registration year 2000–2001 and following.* For each registration year beginning with 2000–2001, each person subject to the requirements of this subpart must pay an annual fee as follows:

(1) *Small business.* Each person that qualifies as a small business under criteria specified in 13 CFR part 121 applicable to the standard industrial classification (SIC) code that describes that person's primary commercial activity must pay an annual fee of $300 (which includes a $25 processing fee).

(2) *Other than a small business.* Each person that does not meet criteria specified in paragraph (b)(1) of this section must pay an annual fee of $2,000 (which includes a $25 processing fee).

(3) The processing fee is limited to $25 for each registration statement filed for more than one year, as provided in § 107.616(c).

5. In § 107.616, paragraphs (c) and (d)(2) would be revised to read as follows:

§ 107.616 Payment procedures.

* * * * *

(c) Payment must correspond to the total fees properly calculated in the "AMOUNT DUE" block of the DOT Form F 5800.2. A person may elect to register and pay the required fees for up to three registration years by filing one complete and accurate registration statement.

(d) * * *

(2) Pay a registration and processing fee of $350 (including a $50 expedited handling fee). For registration years 2000–2001 and following, persons who do not meet the criteria for a small business, as specified in § 107.612(b)(1), must enclose payment of $1,700 with the expedited follow-up material, for a total of $2,050 (including a $50 expedited handling fee); and

* * * * *

Issued in Washington, D.C. on April 12, 1999, under authority delegated in 49 CFR part 106.

Alan I. Roberts,

Associate Administrator for Hazardous Materials Safety.

[FR Doc. 99–9453 Filed 4–14–99; 8:45 am]

BILLING CODE 4910–60–P

UMI

VOL
64
ISS
72
AP
15
1999
UMI

Rea

CUSTO

Federal
General
aids

Laws

Preside
Executiv
The Uni

Other S
Electron
Privacy
Public L
TTY for

ELECTR

World W

Full tex
publicat

Federal
Inspecti

E-mail

PENS (F
service
Laws. T

with the

Use list
PENS. W

Referen
Federal

The Fed
regulati

FEDER

15633–1
15915–1
16333–1
16601–1
16797–1
17079–1
17271–1
17501–1
17941–1
18323–1
18551–1

Reader Aids

Federal Register

Vol. 64, No. 72

Thursday, April 15, 1999

CUSTOMER SERVICE AND INFORMATION

Federal Register/Code of Federal Regulations	
General Information, indexes and other finding aids	202–523–5227
Laws	523–5227
Presidential Documents	
Executive orders and proclamations	523–5227
The United States Government Manual	523–5227
Other Services	
Electronic and on-line services (voice)	523–4534
Privacy Act Compilation	523–3187
Public Laws Update Service (numbers, dates, etc.)	523–6641
TTY for the deaf-and-hard-of-hearing	523–5229

ELECTRONIC RESEARCH

World Wide Web

Full text of the daily Federal Register, CFR and other publications:

http://www.access.gpo.gov/nara

Federal Register information and research tools, including Public Inspection List, indexes, and links to GPO Access:

http://www.nara.gov/fedreg

E-mail

PENS (Public Law Electronic Notification Service) is an E-mail service that delivers information about recently enacted Public Laws. To subscribe, send E-mail to

listproc@lucky.fed.gov

with the text message:

subscribe publaws-l <firstname> <lastname>

Use listproc@lucky.fed.gov only to subscribe or unsubscribe to PENS. We cannot respond to specific inquiries at that address.

Reference questions. Send questions and comments about the Federal Register system to:

info@fedreg.nara.gov

The Federal Register staff cannot interpret specific documents or regulations.

FEDERAL REGISTER PAGES AND DATES, APRIL

15633–15914..... 1
15915–16332..... 2
16333–16600..... 5
16601–16796..... 6
16797–17078..... 7
17079–17270..... 8
17271–17500..... 9
17501–17940.....12
17941–18322.....13
18323–18550.....14
18551–18796.....15

CFR PARTS AFFECTED DURING APRIL

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
7177.....17075
7178.....17077
7179.....17499
7180.....17939
7181.....18317
7182.....18321

Executive Orders:
11223 (Amended by EO 13118).....16595
11269 (Amended by EO 13118).....16595
11958 (Amended by EO 13118).....16595
12163 (Amended by EO 13118).....16595
12188 (Amended by EO 13118).....16595
12260 (Amended by EO 13118).....16595
12293 (Amended by EO 13118).....16595
12301 (Amended by EO 13118).....16595
12599 (Amended by EO 13118).....16595
12703 (Amended by EO 13118).....16595
12884 (Amended by EO 13118).....16595
12981 (Amended by EO 13117).....16391
13116.....16333
13117.....16591
13118.....16595

Administrative Orders:
Presidential Determinations:
No. 99-18 of March 25, 1999.....16337
No. 99-19 of March 31, 1999.....17081
No. 99-20 of March 31, 1999.....17083
No. 99-21 of April 8, 1999.....18551

Memorandums:
March 23, 1999 (Amended by EO 13118).....16595
March 31, 1999.....17079

5 CFR

351.....16797
532.....15915, 17941
870.....16601
890.....15633
1200.....15916

7 CFR

6.....17501
760.....17942
254.....17085
301.....15916
1361.....18323
1437.....17271
1477.....18553
1728.....17219
1753.....16602

Proposed Rules:
28.....15937
340.....16364
905.....15634
944.....15634
1000.....16026
1001.....16026
1002.....16026
1004.....16026
1005.....16026
1006.....16026
1007.....16026
1012.....16026
1013.....16026
1030.....16026
1032.....16026
1033.....16026
1036.....16026
1040.....16026
1044.....16026
1046.....16026
1049.....16026
1050.....16026
1064.....16026
1065.....16026
1068.....16026
1076.....16026
1079.....16026
1106.....16026
1124.....16026
1126.....16026
1131.....16026
1134.....16026
1135.....16026
1137.....16026
1138.....16026
1139.....16026
3418.....18534

8 CFR

103.....17943

Proposed Rules:
2.....17128

9 CFR

1.....15918
3.....15918

Proposed Rules:
72.....17573
93.....16655
201.....15938

10 CFR

2.....15636, 15920
10.....15636
11.....15636

25.....15636
40.....17506
50.....17944, 17947
72.....17510
73.....17947
95.....15636

Proposed Rules:
170.....15876
171.....15876

12 CFR

213.....16612
226.....16614
330.....15653
611.....16617
620.....16617
790.....17085
935.....16618, 16788

Proposed Rules:
933.....16792
934.....16792
935.....16792
1750.....18084

13 CFR

115.....18324

Proposed Rules:
107.....18375
120.....15942
121.....15708

14 CFR

39.....15657, 15659, 15661, 15669, 15920, 16339, 16621, 16624, 16625, 16801, 16803, 16805, 16808, 16810, 17086, 17512, 17514, 17522, 17524, 17947, 17949, 17951, 17954, 17956, 17950, 17961, 17962, 17964, 17966, 18324
71.....15673, 15674, 15675, 15676, 15678, 15679, 16024, 16340, 16341, 16342, 16343, 16344, 17219, 17934, 18563
91.....15912
93.....17439
95.....18563
97.....17277, 17526, 17528

Proposed Rules:
39.....16364, 16366, 16656, 17130, 18382, 18384, 18386
65.....18302
71.....15708, 16024, 16368, 16369, 16370, 16371, 17133, 17717, 17983, 17984, 18392, 18481, 18584
91.....17293, 18302
105.....18302
119.....16298, 18302
121.....16298, 18766
125.....18766
129.....16298
135.....16298, 17293, 18766
145.....18766
183.....16298

15 CFR

738.....17968
740.....17968
742.....17968
748.....17968
762.....17968
774.....17968

16 CFR

Proposed Rules:
241.....18081
256.....18081

17 CFR

275.....15680
279.....15680

Proposed Rules:
1.....17439
230.....18481
240.....18393, 18481
270.....18481

18 CFR

1b.....17087
284.....17276
343.....17087
385.....17087

19 CFR

10.....16345
12.....17529
18.....16345
113.....16345
122.....18566
178.....16635, 16345
192.....16635

Proposed Rules:
19.....16865
146.....15873

20 CFR

404.....17100, 18566
416.....18566
652.....18662
660.....18662
661.....18662
662.....18662
663.....18662
664.....18662
665.....18662
666.....18662
667.....18662
668.....18662
669.....18662
670.....18662
671.....18662

21 CFR

26.....16347
201.....18571
330.....18571
331.....18571
341.....18571
346.....18571
355.....18571
358.....18571
369.....18571
510.....15683, 18571
520.....15683, 15684, 18571, 18572
522.....15683, 15685, 18573
556.....18573
558.....15683, 18574
701.....18571
874.....18327
882.....18327
890.....18329
900.....18331

Proposed Rules:
1.....15944
101.....15948, 17295
310.....17985
1308.....17298, 17299

22 CFR

Ch. II.....15685
Ch. VI.....15686
121.....17531
123.....17531
124.....17531
126.....17531
201.....17535
514.....17975, 17976

Proposed Rules:
514.....17988

23 CFR

Proposed Rules:
777.....16870

24 CFR

100.....16324
103.....18538

Proposed Rules:
990.....17301

25 CFR

291.....17535

Proposed Rules:
Ch. I.....18585
151.....17574

26 CFR

1.....15686, 15687
7.....15687
31.....15687
301.....16640, 17279
602.....15687, 15688, 15873, 17279

Proposed Rules:
1.....16372

27 CFR

178.....17291

Proposed Rules:
4.....17588
5.....17588
7.....17588

28 CFR

16.....17977
504.....17270

Proposed Rules:
65.....17128

29 CFR

4044.....18575

Proposed Rules:
1.....17442
5.....17442

30 CFR

920.....17978
935.....17980

Proposed Rules:
46.....18498, 18528
48.....18498
206.....15949, 17990
700.....18585
740.....18585
746.....18585
750.....18585
934.....18586

31 CFR

210.....17472

32 CFR

812.....17101
863.....17545

33 CFR

100.....16348, 16812, 16813
117.....16350, 16641, 17101, 18576
155.....18576
165.....16348, 16641, 16642, 17439, 18577
334.....18580

Proposed Rules:
100.....18587
117.....17134
154.....17222
175.....15709
177.....15709
179.....15709
181.....15709
183.....15709

36 CFR

Proposed Rules:
1.....17293
2.....17293
3.....17293
4.....17293
5.....17293
6.....17293
7.....17293

39 CFR

111.....16814, 17102

40 CFR

52.....15688, 15922, 17102, 17545, 17548, 17551, 17982
62.....17219
63.....17460, 17555
81.....17551
90.....16526
180.....16840, 16843, 16850, 16856, 17565, 18333, 18339, 18346, 18351, 18357, 18359, 18360, 18367, 18369
261.....16643
300.....15926, 16351

Proposed Rules:
52.....15711, 15949, 16659, 17136, 17589, 17592, 17593, 17990
63.....17465
70.....16659
81.....17593
82.....16373
112.....17227
180.....16874
185.....16874
186.....16874
300.....17593

41 CFR

Ch. 301.....16352, 18581
60-250.....15690
60-999.....15690
302-11.....17105, 18659

43 CFR

Proposed Rules:
3100.....17598
3106.....17598
3130.....17598
3160.....17598

44 CFR

65.....17567, 17569
67.....17571

Proposed Rules:
67.....17598

45 CFR

260.....
261.....
262.....
263.....
264.....
265.....
283.....
1611.....

Proposed
1635.....
2522.....
2525.....
2526.....
2527.....
2528.....
2529.....

46 CFR

32.....

Proposed
10.....
15.....
24.....

45 CFR

260.....17720
261.....17720
262.....17720
263.....17720
264.....17720
265.....17720
283.....18484
1611.....17108, 18372

Proposed Rules:

1635.....16383
2522.....17302
2525.....17302
2526.....17302
2527.....17302
2528.....17302
2529.....17302

46 CFR

32.....18576

Proposed Rules:

10.....15709
15.....15709
24.....15709
25.....15709
26.....15709
28.....15709
70.....15709
169.....15709
175.....15709

47 CFR

69.....16353
73.....17108

Proposed Rules:

0.....16388
1.....16661
2.....16687
25.....16880, 16687
69.....16389
73.....15712, 15713, 15714, 15715, 16388, 16396, 17137, 17138, 17139, 17140, 17141, 17142, 17143, 18596
76.....16388

48 CFR

701.....16647
703.....16647
715.....16647
722.....18481
731.....16647
732.....18481
752.....16647, 18481
909.....16649
970.....16649
1333.....16651
1533.....17109
1552.....17109
1832.....18372

Proposed Rules:

1833.....17603

49 CFR

195.....15926
533.....16860
571.....16358
581.....16359

Proposed Rules:

107.....18786
171.....16882
177.....16882
178.....16882
180.....16882
192.....16882, 16885
195.....16882, 16885
578.....16690
611.....17062

50 CFR

17.....15691, 17110
229.....17292
600.....16862
648.....15704, 16361, 16362, 18582
660.....16862, 17125
679.....16361, 16362, 16654, 17126, 18373

Proposed Rules:

17.....16397, 16890, 18596
20.....17308
32.....17992
223.....16396, 16397
224.....16397
226.....16397
600.....16414, 18394
622.....18395
648.....16417, 16891, 18394

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT APRIL 15, 1999

AGRICULTURE DEPARTMENT
Animal and Plant Health Inspection Service
Noxious weed lists:
Update; published 3-16-99

AGRICULTURE DEPARTMENT
Commodity Credit Corporation
Loan and purchase programs:
Single-year and multi-year crop loss disaster assistance program; published 4-15-99

FEDERAL HOUSING FINANCE BOARD
Federal home loan bank system:
Eligible collateral for FHL bank advances, clarification and verification; published 4-6-99

HEALTH AND HUMAN SERVICES DEPARTMENT
Food and Drug Administration
Animal drugs, feeds, and related products:
Dichlorvos tablets; published 4-15-99
Narasin and nicarbazin with methylene disalicylate and roxarsone; published 4-15-99
Omeprazole; published 4-15-99
Sulfadimrthoxine soluble powder; published 4-15-99
Trenbolone acetate and estradiol benzoate; published 4-15-99
Human drugs:
Labeling of drug products (OTC)—
Standardized format; correction; published 4-15-99

HOUSING AND URBAN DEVELOPMENT DEPARTMENT
Public and Indian housing:
Certificate and voucher programs (Section 8)—
Conforming rule; published 3-16-99

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT
Animal and Plant Health Inspection Service
Exportation and importation of animals and animal products:
Rinderpest and foot-and-mouth disease, etc.; disease status change—
South Africa; comments due by 4-19-99; published 2-17-99

AGRICULTURE DEPARTMENT
Cooperative State Research, Education, and Extension Service
Grants:
Special Research Program; comments due by 4-23-99; published 3-24-99

COMMERCE DEPARTMENT
National Oceanic and Atmospheric Administration
Endangered and threatened species:
Marine and anadromous species—
West coast chinook salmon; comments due by 4-23-99; published 3-24-99
Fishery conservation and management:
Alaska; fisheries of Exclusive Economic Zone—
Pacific cod; comments due by 4-20-99; published 4-5-99
Caribbean, Gulf, and South Atlantic fisheries—
Gulf of Mexico reef fish; comments due by 4-19-99; published 3-5-99
South Atlantic Region; Sustainable Fisheries Act provisions; compliance; comments due by 4-19-99; published 2-18-99
West Coast states and Western Pacific fisheries—
West Coast salmon; comments due by 4-22-99; published 4-8-99
West Coast States and Western Pacific fisheries—
Pacific Coast groundfish; comments due by 4-22-99; published 4-7-99

COMMODITY FUTURES TRADING COMMISSION
Foreign futures and options transactions:
Access to electronic boards of trade; automated trading systems use; comments due by 4-23-99; published 3-24-99
Access to electronic boards of trade; automated trading systems use; correction; comments due by 4-23-99; published 4-9-99

DEFENSE DEPARTMENT
Federal Acquisition Regulation (FAR):
Contractor liability for loss of and/or damages to household goods; comments due by 4-19-99; published 2-16-99

ENERGY DEPARTMENT
Acquisition regulations:
Costs associated with whistleblower actions; comments due by 4-23-99; published 3-24-99

ENERGY DEPARTMENT
Federal Energy Regulatory Commission
Natural Gas Policy Act:
Interstate natural gas pipelines—
Transportation services regulation; comments due by 4-22-99; published 12-30-98

ENVIRONMENTAL PROTECTION AGENCY
Air programs:
Stratospheric ozone protection—
Ozone-depleting substances; substitutes list; comments due by 4-19-99; published 2-18-99
Ozone-depleting substances; substitutes list; comments due by 4-19-99; published 2-18-99
Air programs; approval and promulgation; State plans for designated facilities and pollutants:
Oklahoma; comments due by 4-19-99; published 3-19-99
Air quality implementation plans; approval and promulgation; various States:
California; comments due by 4-19-99; published 3-18-99
California and Arizona; comments due by 4-19-99; published 3-18-99
Delaware; comments due by 4-21-99; published 3-22-99
Illinois; comments due by 4-19-99; published 3-18-99
Iowa; comments due by 4-19-99; published 3-18-99
Air quality planning purposes; designation of areas:
California; comments due by 4-19-99; published 3-18-99
Missouri and Illinois; comments due by 4-19-99; published 3-18-99
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
Cinnamaldehyde; comments due by 4-19-99; published 2-17-99
Fenbuconazole; comments due by 4-19-99; published 2-17-99
Formic acid; comments due by 4-23-99; published 2-22-99
Superfund program:
National oil and hazardous substances contingency plan—
National priorities list update; comments due by 4-19-99; published 2-16-99

FEDERAL COMMUNICATIONS COMMISSION
Practice and procedure:
Regulatory fees (1999 FY); assessment and collection; comments due by 4-19-99; published 4-6-99

FEDERAL EMERGENCY MANAGEMENT AGENCY
Regulatory streamlining and updating; 20 CFR parts, proposed removal; comments due by 4-19-99; published 2-18-99
Correction; comments due by 4-19-99; published 3-2-99

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD
Thrift savings plan:
Eligibility; expansion and continuation; comments due by 4-22-99; published 3-23-99

GENERAL SERVICES ADMINISTRATION
Federal Acquisition Regulation (FAR):
Contractor liability for loss of and/or damages to household goods; comments due by 4-19-99; published 2-16-99

HEALTH AND HUMAN SERVICES DEPARTMENT
Food and Drug Administration
Food additives:

Adjuvants, production aids, and sanitizers—
Phosphorous acid, cyclic neopentanetetrayl bis(2,6-di-tert-butyl-4-methylphenyl)ester; comments due by 4-19-99; published 3-19-99
Medical devices:
Menstrual tampons labeling; absorbency ranges; comments due by 4-21-99; published 1-21-99

HOUSING AND URBAN DEVELOPMENT DEPARTMENT
Public and Indian housing:
Capital Fund Negotiated Rulemaking Advisory Committee; intent to establish and meeting; comments due by 4-19-99; published 3-19-99
Public housing agency plans; comments due by 4-19-99; published 2-18-99
Public and Indian Housing:
Section 8 Housing Certificate Fund Rule Negotiated Rulemaking Committee; intent to establish and meeting; comments due by 4-19-99; published 3-19-99

INTERIOR DEPARTMENT
Fish and Wildlife Service
Endangered and threatened species:
Mountain plover; comments due by 4-19-99; published 2-16-99
Tinian monarch; withdrawn; comments due by 4-23-99; published 2-22-99

INTERIOR DEPARTMENT
Minerals Management Service
Outer Continental Shelf; oil, gas, and sulphur operations:
Coastal zone consistency review of exploration plans and development and production plans; comments due by 4-19-99; published 2-17-99
Royalty management:
Federal marginal properties; accounting and auditing relief; comments due by 4-21-99; published 3-22-99

INTERIOR DEPARTMENT
Surface Mining Reclamation and Enforcement Office
Federal and Indian lands programs:
Indian lands; definition clarification; comments due by 4-20-99; published 2-19-99

JUSTICE DEPARTMENT
Immigration and Naturalization Service
Nonimmigrant classes:
Visa exemption for British Virgin Islands nationals entering U.S. through St. Thomas, U.S. Virgin Islands; comments due by 4-19-99; published 2-18-99
United Nations Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment; implementation:
Protection from torture; claim procedures; comments due by 4-20-99; published 2-19-99

JUSTICE DEPARTMENT
Pam Lychner Sexual Offender Tracking and Identification Act of 1996; implementation:
National Sex Offender Registry; operation and notification requirements; comments due by 4-19-99; published 2-16-99

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION
Federal Acquisition Regulation (FAR):
Contractor liability for loss of and/or damages to household goods; comments due by 4-19-99; published 2-16-99

NORTHEAST DAIRY COMPACT COMMISSION
Over-order price regulations:
Compact over-order price regulations—
Fluid milk distributions in six New England States during 1998-1999 contract year; exemption; hearing; comments due by 4-21-99; published 3-15-99

TRANSPORTATION DEPARTMENT
Coast Guard
Ports and waterways safety:
Santa Barbara Channel, CA; safety zone; comments due by 4-19-99; published 2-18-99
Regulatory Flexibility Act:
Small entities; economic impact; comments due by 4-19-99; published 1-19-99

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airworthiness directives:
Agusta, S.p.A.; comments due by 4-19-99; published 2-16-99
Bell Helicopter Textron, Inc.; comments due by 4-19-99; published 2-17-99
Boeing; comments due by 4-19-99; published 2-17-99
Empresa Brasileira de Aeronautica S.A.; comments due by 4-22-99; published 3-23-99
Pilatus Aircraft Ltd.; comments due by 4-23-99; published 3-23-99
Pratt & Whitney; comments due by 4-22-99; published 3-23-99
Sikorsky; comments due by 4-19-99; published 2-16-99
Class D and Class E airspace; comments due by 4-20-99; published 3-3-99
Class D and Class E airspace; correction; comments due by 4-20-99; published 3-9-99
Class E airspace; comments due by 4-19-99; published 3-5-99
Class E airspace; correction; comments due by 4-20-99; published 3-9-99
VOR Federal airways; comments due by 4-22-99; published 3-8-99

TRANSPORTATION DEPARTMENT
Federal Highway Administration
Motor carrier safety standards:
Inspection, repair, and maintenance—
Intermodal container chassis and trailers; comments due by 4-19-99; published 2-17-99

TRANSPORTATION DEPARTMENT
Federal Transit Administration
Buy America requirements; certification procedures:
Corrections to inadvertent errors in certifications after bid opening; comments due by 4-19-99; published 2-18-99

TRANSPORTATION DEPARTMENT
National Highway Traffic Safety Administration
Anthropomorphic test devices:
Occupant crash protection—
12-month-old infant crash test dummy; comments due by 4-22-99; published 3-8-99
Motor Vehicle Safety Standards:
Child restraint systems—
Standardized child restraint anchorage systems independent of seat belts; comments due by 4-19-99; published 3-5-99

TRANSPORTATION DEPARTMENT
Research and Special Programs Administration
Hazardous materials:
Hazardous liquid transportation—
Liquefied compressed gases; transportation and unloading; comments due by 4-21-99; published 3-22-99

TRANSPORTATION DEPARTMENT
Transportation Statistics Bureau
ICC Termination Act; implementation:
Motor carriers of property and household goods; reporting requirements; comments due by 4-22-99; published 3-23-99

TREASURY DEPARTMENT
Internal Revenue Service
Income taxes:
Capital gains; installment sales of depreciable real property; unrecaptured section 1250 gain; comments due by 4-22-99; published 1-22-99
Qualified education loans, interest deduction; comments due by 4-21-99; published 1-21-99
Procedure and administration:
Filing of notice of lien; notice and opportunity for hearing; cross reference; comments due by 4-22-99; published 1-22-99
Levy; notice and opportunity for hearing; cross reference; comments due by 4-22-99; published 1-22-99

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–523–6641. This list is also available online at http://www.nara.gov/fedreg.

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the

Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at http://www.access.gpo.gov/nara/index.html. Some laws may not yet be available.

H.R. 193/P.L. 106–20

Sudbury, Assabet, and Concord Wild and Scenic River Act (Apr. 9, 1999; 113 Stat. 30)

Last List April 12, 1999.

Public Laws Electronic Notification Service (PENS)

PENS is a free electronic mail notification service of newly enacted public laws. To subscribe, send E-mail to **listproc@lucky.fed.gov** with the text message:

subscribe PUBLAWS-L Your Name.

Note: This service is strictly for E-mail notification of new public laws. The text of laws is not available through this service. **PENS** cannot respond to specific inquiries sent to this address.

INFORMATION ABOUT THE SUPERINTENDENT OF DOCUMENTS' SUBSCRIPTION SERVICE

Know when to expect your renewal notice and keep a good thing coming. To keep our subscription prices down, the Government Printing Office mails each subscriber *only one renewal notice*. You can learn when you will get your renewal notice by checking the number that follows month/year code on the top line of your label *as shown in this example:*

A renewal notice will be sent approximately 90 days **before the shown date.**

```
                                        /
AFR SMITH212J                    DEC97 R 1
JOHN SMITH
212 MAIN STREET
FORESTVILLE MD 20704
```

A renewal notice will be sent approximately 90 days **before the shown date.**

```
                                        /
AFRDO SMITH212J                  DEC97 R 1
JOHN SMITH
212 MAIN STREET
FORESTVILLE MD 20704
```

To be sure that your service continues without interruption, please return your renewal notice promptly. If your subscription service is discontinued, simply send your mailing label from any issue to the Superintendent of Documents, Washington, DC 20402–9372 with the proper remittance. Your service will be reinstated.

To change your address: Please SEND YOUR MAILING LABEL, along with your new address to the Superintendent of Documents, Attn: Chief, Mail List Branch, Mail Stop: SSOM, Washington, DC 20402–9373.

To inquire about your subscription service: Please SEND YOUR MAILING LABEL, along with your correspondence, to the Superintendent of Documents, Attn: Chief, Mail List Branch, Mail Stop: SSOM, Washington, DC 20402–9373.

To order a new subscription: Please use the order form provided below.

Superintendent of Documents **Subscription** Order Form

Order Processing Code:
*** 5468**

Charge your order. It's Easy! MasterCard VISA

To fax your orders (202) 512–2250
Phone your orders (202) 512–1800

☐ **YES**, enter my subscription(s) as follows:

_____ subscriptions to **Federal Register (FR);** *including* the daily Federal Register, monthly Index and List of CFR Sections Affected (LSA), at $607 each per year.

_____ subscriptions to **Federal Register**, *daily only* (FRDO), at $555 each per year.

The total cost of my order is $_____. **Price includes regular domestic postage and handling**, and is subject to change. International customers please add 25%.

Company or personal name (Please type or print)

Additional address/attention line

Street address

City, State, ZIP code

Daytime phone including area code

Purchase order number (optional)

May we make your name/address available to other mailers? YES ☐ NO ☐

Please Choose Method of Payment:

☐ Check Payable to the Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐☐ – ☐
☐ VISA ☐ MasterCard Account
☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐
☐☐☐☐ (Credit card expiration date)

Thank you for your order!

Authorizing signature 11/3

Mail To: Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250–7954

Microfiche Editions Available...

Federal Register

The Federal Register is published daily in 24x microfiche format and mailed to subscribers the following day via first class mail. As part of a microfiche Federal Register subscription, the LSA (List of CFR Sections Affected) and the Cumulative Federal Register Index are mailed monthly.

Code of Federal Regulations

The Code of Federal Regulations, comprising approximately 200 volumes and revised at least once a year on a quarterly basis, is published in 24x microfiche format and the current year's volumes are mailed to subscribers as issued.

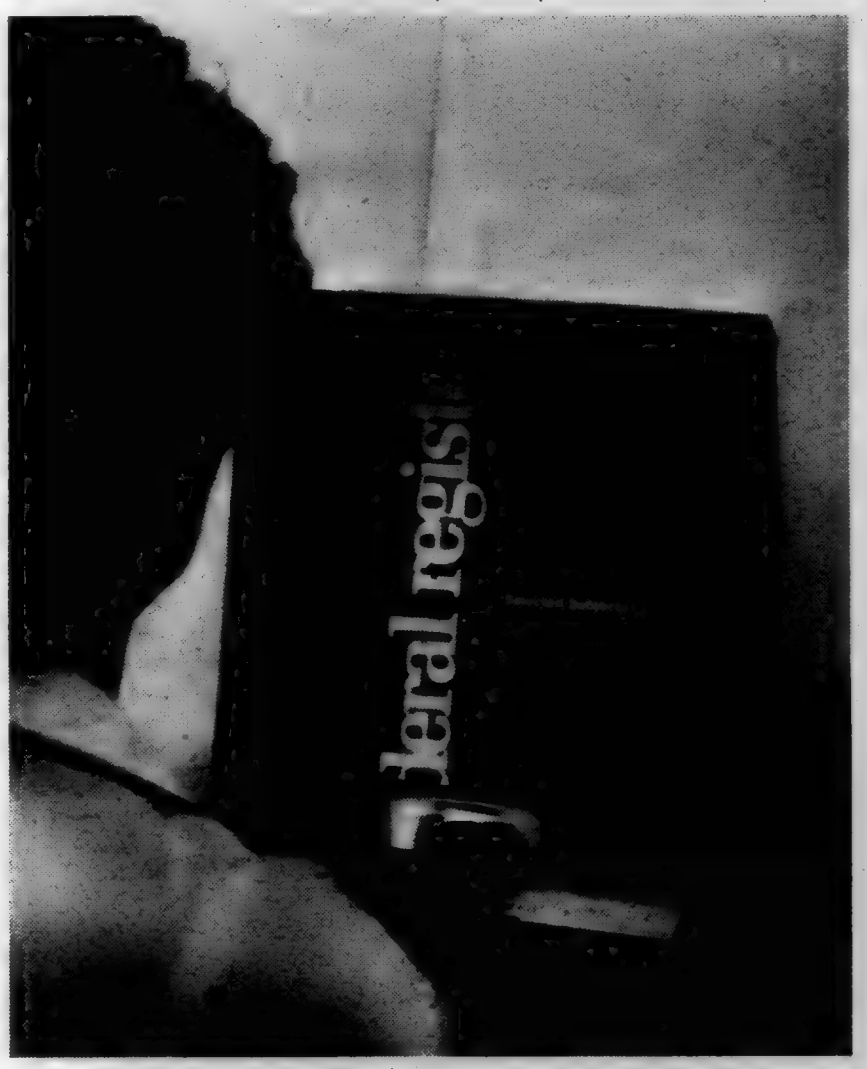

Microfiche Subscription Prices:

Federal Register:

One year: $220.00
Six months: $110.00

Code of Federal Regulations:

Current year (as issued): $247.00

Superintendent of Documents **Subscription** Order Form

Order Processing Code:
* 5419

Charge your order. It's Easy!

To fax your orders (202) 512–2250
Phone your orders (202) 512–1800

☐ **YES**, enter the following indicated subscription in 24x microfiche format:

_____ **Federal Register** (MFFR) ☐ One year at $220 each ☐ Six months at $110

_____ **Code of Federal Regulations** (CFRM7) ☐ One year at $247 each

The total cost of my order is $_____. **Price includes regular domestic postage and handling** and is subject to change. International customers please add 25%.

Company or personal name (Please type or print)

Additional address/attention line

Street address

City, State, ZIP code

Daytime phone including area code

Purchase order number (optional)

May we make your name/address available to other mailers? YES ☐ NO ☐

Please Choose Method of Payment:

☐ Check Payable to the Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐☐☐–☐
☐ VISA ☐ MasterCard Account
☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐
☐☐☐☐ (Credit card expiration date)

Thank you for your order!

Authorizing signature 11/3

Mail To: Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250–7954

Now Available Online

through

GPO Access

A Service of the U.S. Government Printing Office

Federal Register

Updated Daily by 6 a.m. ET

Easy, Convenient, FREE

Free public connections to the online Federal Register are available through the GPO Access service.

To connect over the World Wide Web, go to the Superintendent of Documents' homepage at http://www. access. gpo.gov/su_docs/

To connect using telnet, open swais.access.gpo.gov and login as guest (no password required).

To dial directly, use communications software and modem to call (202) 512–1661; type swais, then login as guest (no password required).

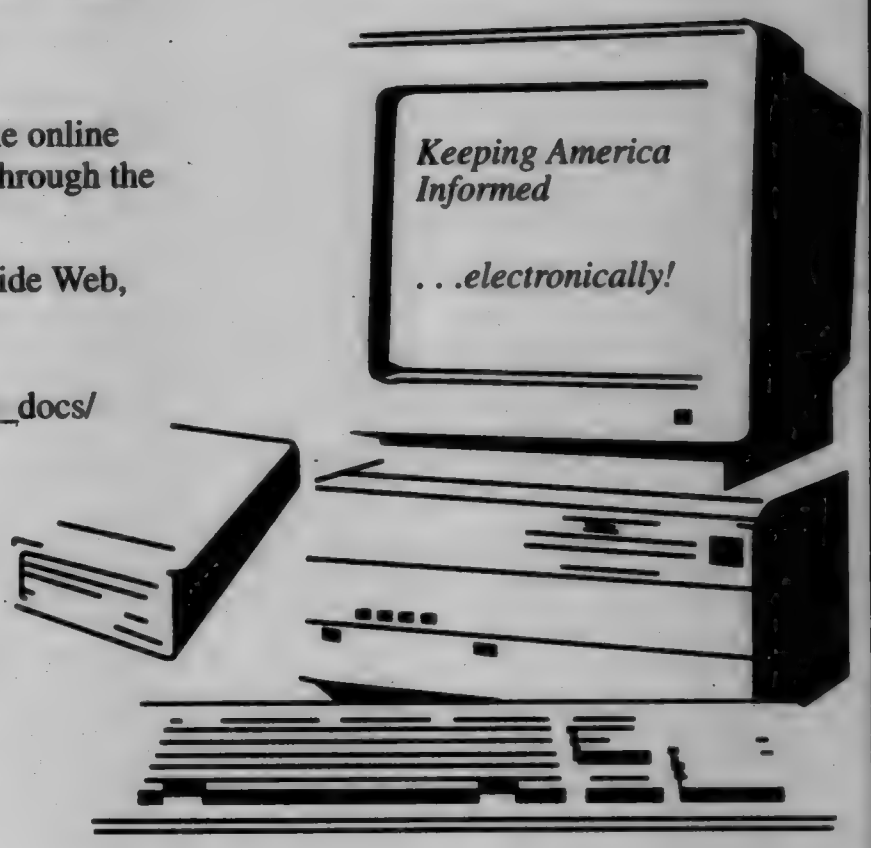

You may also connect using local WAIS client software. For further information, contact the GPO Access User Support Team:

Voice: (202) 512–1530 (7 a.m. to 5 p.m. Eastern time).
Fax: (202) 512–1262 (24 hours a day, 7 days a week).
Internet E-Mail: gpoaccess@gpo.gov

(Rev. 11/3)

The authentic text behind the news . . .

The Weekly Compilation of **Presidential Documents**

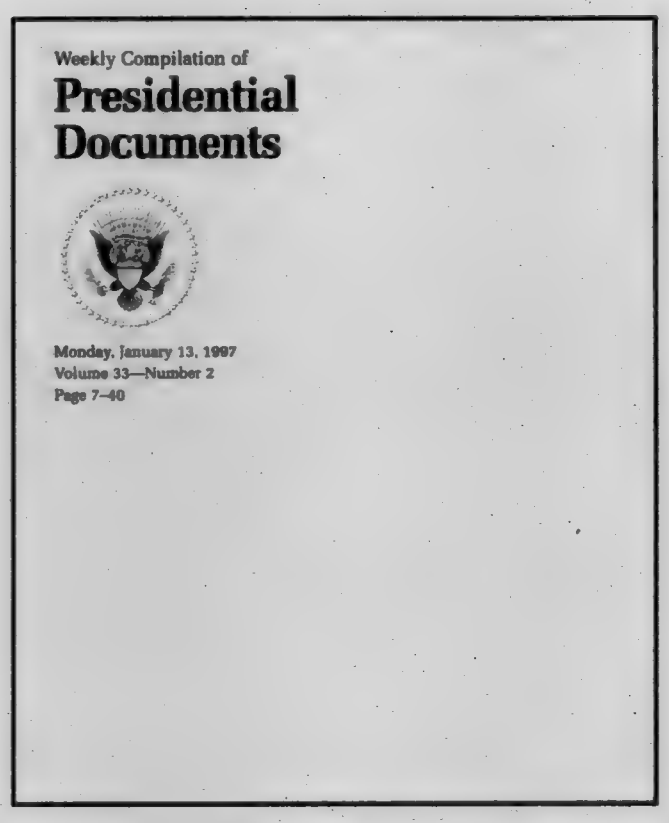

This unique service provides up-to-date information on Presidential policies and announcements. It contains the full text of the President's public speeches, statements, messages to Congress, news conferences, and other Presidential materials released by the White House.

The Weekly Compilation carries a Monday dateline and covers materials released during the preceding week. Each issue includes a Table of Contents, lists of acts approved by the President, nominations submitted to the Senate, a checklist of White House press releases, and a digest of other Presidential activities and White House announcements. Indexes are published quarterly.

Published by the Office of the Federal Register, National Archives and Records Administration.

Superintendent of Documents **Subscription** Order Form

Charge your order. It's Easy! MasterCard VISA

Order Processing Code:
*** 5420**

To fax your orders (202) 512–2250
Phone your orders (202) 512–1800

☐ **YES**, please enter _____ one year subscriptions for the **Weekly Compilation of Presidential Documents** (PD) so I can keep up to date on Presidential activities.

☐ $137.00 First Class Mail ☐ $80.00 Regular Mail

The total cost of my order is $ _____. **Price includes regular domestic postage and handling** and is subject to change. International customers please add 25%.

Company or personal name (Please type or print)

Additional address/attention line

Street address

City, State, ZIP code

Daytime phone including area code

Purchase order number (optional)

May we make your name/address available to other mailers? YES ☐ NO ☐

Please Choose Method of Payment:

☐ Check Payable to the Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐☐☐ – ☐
☐ VISA ☐ MasterCard Account
☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐
☐☐/☐☐ (Credit card expiration date)

Thank you for your order!

Authorizing signature 11/3

Mail To: Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250–7954

l
o
are

of the
al

VISA

12–2250
12–1800

) so I can

change.

ments
☐ – ☐

☐☐☐

t you for
ur order!

11/3

-7954

VOL
64
ISS
72
AP
15
1999
UMI

Printed on recycled paper

VOL
64
ISS
73
AP
16
1999
UMI

4–16–99
Vol. 64

UMI

THE PAPER AND INK USED IN THE ORIGINAL PUBLICATION MAY AFFECT THE QUALITY OF THE MICROFORM EDITION.

United S
Governm
Printing
SUPERINTEN
OF DOCUME
Washington, D

OFFICIAL BU
Penalty for priv

4–16–99
Vol. 64 No. 73

federal register

Friday
April 16, 1999

United States
Government
Printing Office
SUPERINTENDENT
OF DOCUMENTS
Washington, DC 20402

OFFICIAL BUSINESS
Penalty for private use, $300

PERIODICALS
Postage and Fees Paid
U.S. Government Printing Office
(ISSN 0097–6326)

**********3-DIGIT 481
A FR UMI 346U DEC 99 R
UMI
PERIODICALS CHECK IN
PO BOX 1346
ANN ARBOR MI 48106

UMI

VOL
64

ISS
73

AP
16

1999

UMI

4–16–99
Vol. 64
Pages 18

ANN ARBOR MI 48106

4–16–99
Vol. 64 No. 73
Pages 18797–19016

Federal Register

Friday
April 16, 1999

Briefings on how to use the Federal Register
For information on briefings in Washington, DC, see announcement on the inside cover of this issue.

The **FEDERAL REGISTER** is published daily, Monday through Friday, except official holidays, by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). The Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 is the exclusive distributor of the official edition.

The **Federal Register** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders, Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress, and other Federal agency documents of public interest.

Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless the issuing agency requests earlier filing. For a list of documents currently on file for public inspection, see http://www.nara.gov/fedreg.

The seal of the National Archives and Records Administration authenticates the Federal Register as the official serial publication established under the Federal Register Act. Under 44 U.S.C. 1507, the contents of the **Federal Register** shall be judicially noticed.

The **Federal Register** is published in paper and on 24x microfiche. It is also available online at no charge as one of the databases on GPO Access, a service of the U.S. Government Printing Office.

The online edition of the **Federal Register** is issued under the authority of the Administrative Committee of the Federal Register as the official legal equivalent of the paper and microfiche editions (44 U.S.C. 4101 and 1 CFR 5.10). It is updated by 6 a.m. each day the **Federal Register** is published and it includes both text and graphics from Volume 59, Number 1 (January 2, 1994) forward.

GPO Access users can choose to retrieve online **Federal Register** documents as TEXT (ASCII text, graphics omitted), PDF (Adobe Portable Document Format, including full text and all graphics), or SUMMARY (abbreviated text) files. Users should carefully check retrieved material to ensure that documents were properly downloaded.

On the World Wide Web, connect to the **Federal Register** at http://www.access.gpo.gov/nara. Those without World Wide Web access can also connect with a local WAIS client, by Telnet to swais.access.gpo.gov, or by dialing (202) 512-1661 with a computer and modem. When using Telnet or modem, type swais, then log in as guest with no password.

For more information about GPO Access, contact the GPO Access User Support Team by E-mail at gpoaccess@gpo.gov; by fax at (202) 512–1262; or call (202) 512–1530 or 1–888–293–6498 (toll free) between 7 a.m. and 5 p.m. Eastern time, Monday–Friday, except Federal holidays.

The annual subscription price for the **Federal Register** paper edition is $555, or $607 for a combined **Federal Register,** Federal Register Index and List of CFR Sections Affected (LSA) subscription; the microfiche edition of the **Federal Register** including the Federal Register Index and LSA is $220. Six month subscriptions are available for one-half the annual rate. The charge for individual copies in paper form is $8.00 for each issue, or $8.00 for each group of pages as actually bound; or $1.50 for each issue in microfiche form. All prices include regular domestic postage and handling. International customers please add 25% for foreign handling. Remit check or money order, made payable to the Superintendent of Documents, or charge to your GPO Deposit Account, VISA, MasterCard or Discover. Mail to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954.

There are no restrictions on the republication of material appearing in the **Federal Register.**

How To Cite This Publication: Use the volume number and the page number. Example: 64 FR 12345.

Printed on recycled paper.

SUBSCRIPTIONS AND COPIES

PUBLIC

Subscriptions:

Paper or fiche	202–512–1800
Assistance with public subscriptions	512–1806
General online information	202–512–1530; 1–888–293–6498

Single copies/back copies:

Paper or fiche	512–1800
Assistance with public single copies	512–1803

FEDERAL AGENCIES

Subscriptions:

Paper or fiche	523–5243
Assistance with Federal agency subscriptions	523–5243

FEDERAL REGISTER WORKSHOP

THE FEDERAL REGISTER: WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: Sponsored by the Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WASHINGTON, DC

WHEN: April 20, 1999 at 9:00 am.

WHERE: Office of the Federal Register
Conference Room
800 North Capitol Street, NW.
Washington, DC
(3 blocks north of Union Station Metro)

RESERVATIONS: 202–523–4538

Contents

Federal Register
Vol. 64, No. 73
Friday, April 16, 1999

Agricultural Marketing Service
RULES
Almonds grown in—
California, 18800–18802
PROPOSED RULES
Soybean promotion and research program; referendum, 18831–18833
NOTICES
Agency information collection activities:
Proposed collection; comment request, 18874–18875

Agriculture Department
See Agricultural Marketing Service
See Animal and Plant Health Inspection Service
See Commodity Credit Corporation
See Risk Management Agency

Animal and Plant Health Inspection Service
NOTICES
Environmental statements; availability, etc.:
Wildlife services program to alleviate damage by Canada geese and urban ducks to agriculture, property, natural resources, and human health and safety in VA, 18875

Army Department
NOTICES
Patent licenses; non-exclusive, exclusive, or partially exclusive:
Ceramic part to semiconductor substrate, 18886–18887
Incoherent LADAR, etc., 18887

Blind or Severely Disabled, Committee for Purchase From People Who Are
See Committee for Purchase From People Who Are Blind or Severely Disabled

Centers for Disease Control and Prevention
NOTICES
Committees; establishment, renewal, termination, etc.:
Tuberculosis Elimination Advisory Council, 18915
Meetings:
Public Health Service Activities and Research at DOE Sites Citizens Advisory Committee, 18915

Coast Guard
RULES
Ports and waterways safety:
Mississippi River, LA; regulated navigation area, 18810–18814
Santa Barbara Channel, CA; safety zone, 18814–18815
NOTICES
Committees; establishment, renewal, termination, etc.:
Great Lakes Pilotage Advisory Committee, 18958
Houston/Galveston Navigation Safety Advisory Committee, 18958–18959

Commerce Department
See Foreign-Trade Zones Board
See International Trade Administration
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 18877–18878

Committee for Purchase From People Who Are Blind or Severely Disabled
NOTICES
Procurement list; additions and deletions, 18876–18877
Procurement list; additions and deletions; correction, 18876

Commodity Credit Corporation
NOTICES
Agricultural commodities available for donation overseas; types and quantities, 18875

Defense Department
See Army Department
RULES
Federal Acquisition Regulation (FAR):
Electronic funds transfer, 18828–18829
Manufacturing Technology Program, 18829–18830
Restructuring savings repricing clause, 18827–18828
NOTICES
Agency information collection activities:
Proposed collection; comment request, 18885–18886
Federal Acquisition Regulation (FAR):
Agency information collection activities—
Submission for OMB review; comment request, 18913–18914

Education Department
RULES
Postsecondary education:
Federal family education loan programs; corrections and technical amendments, 18973–18982
NOTICES
Grants and cooperative agreements; availability, etc.:
National Institute on Disability and Rehabilitation Research—
Disability and Rehabilitation Research Projects and Centers Program, 18991–19016
Public Charter Schools Program, 18887–18890

Employment and Training Administration
NOTICES
Agency information collection activities:
Proposed collection; comment request, 18936–18937

Employment Standards Administration
NOTICES
Minimum wages for Federal and federally-assisted construction; general wage determination decisions, 18937–18938

Energy Department
See Federal Energy Regulatory Commission

Environmental Protection Agency
RULES
Air pollutants, hazardous; national emission standards:
Equivalent emission limitations by permit; implementation, 18824–18827

Air quality implementation plans; approval and promulgation; various States:
Delaware, 18815–18816
Illinois, 18816–18818
Pennsylvania, 18818–18824
PROPOSED RULES
Air pollutants, hazardous; national emission standards:
Equivalent emission limitations by permit; implementation, 18862–18864
Air quality implementation plans; approval and promulgation; various States:
California, 18858–18860
Illinois, 18860–18861
Pennsylvania, 18861–18862
Air quality planning purposes; designation of areas:
Texas, 18864–18870
Radiation protection programs:
Idaho National Engineering and Environmental Laboratory; waste characterization program; documents availability, 18870–18871
Rocky Flats Environmental Technology Site; transuranic waste characterization systems and processes; EPA inspection dates, 18870
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 18898–18899
Confidential business information and data transfer, 18899–18900
Environmental statements; availability, etc.:
Agency statements—
Comment availability, 18901–18902
Weekly receipts, 18900
Meetings:
Clean Air Act Advisory Committee, 18902
Drinking water issues—
Safe Drinking Water Act 25th Anniversary; futures forum, 18902–18903
National Drinking Water Advisory Committee, 18903
Scientific Counselors Board Executive Committee, 18903–18904
Toxic and hazardous substances control:
Lead-based paint activities in target housing and child-occupied facilities; State and Indian Tribe authorization applications—
Connecticut at al., 18904–18906
Texas, 18906–18908
Premanufacture notices receipts, 18908–18911

Executive Office of the President
See Management and Budget Office
See Presidential Documents
See Trade Representative, Office of United States

Federal Aviation Administration
RULES
Airworthiness directives:
McDonnell Douglas, 18802–18804
Puritan-Bennett Aero Systems Co., 18804–18806
Raytheon, 18806–18808
PROPOSED RULES
Airworthiness directives:
Bell Helicopter Textron, 18845–18857
Fokker, 18840–18842
Lockheed, 18842–18845
Sikorsky, 18835–18840
Class E airspace; correction[*Editorial Note:* The entry for this document published at 64 FR 18481 in the Federal Register of April 14, 1999, was inadvertently omitted from that issue's Table of Contents.]
NOTICES
Meetings:
RTCA, Inc., 18959–18960
Satellite Operational Implementation Team; Global Positioning System/Wide Area and Local Area Augmentation Systems; capabilities, 18960

Federal Communications Commission
PROPOSED RULES
Radio stations; table of assignments:
Nebraska, 18871–18872
Nevada, 18873
New Mexico, 18872–18873

Federal Deposit Insurance Corporation
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 18911–18912
Meetings; Sunshine Act, 18912

Federal Energy Regulatory Commission
NOTICES
Electric rate and corporate regulation filings:
Nevada Power Co. et al., 18892–18894
Sempra Energy & KN Energy, Inc., et al., 18894–18895
Environmental statements; availability, etc.:
Rough & Ready Hydro Inc., 18895–18896
Environmental statements; notice of intent:
Northwest Pipeline Corp., 18896–18897
Hydroelectric applications, 18897–18898
Applications, hearings, determinations, etc.:
Colorado Interstate Gas Co., 18890
El Paso Natural Gas Co., 18890–18891
Geysers Power Co., LLC, 18891
High Island Offshore System, L.L.C., 18891
Mid Louisiana Gas Co., 18892

Federal Labor Relations Authority
RULES
Freedom of Information Act; implementation, 18799–18800

Federal Maritime Commission
NOTICES
Agreements filed, etc., 18912–18913
Meetings; Sunshine Act, 18913

Federal Reserve System
NOTICES
Meetings; Sunshine Act, 18913

Fish and Wildlife Service
NOTICES
Endangered and threatened species:
Incidental take permits—
Travis County, TX; golden-cheeked warbler et al., 18927–18928
Endangered and threatened species permit applications, 18926–18927
Environmental statements; availability, etc.:
Incidental take permits—
Williamson County, TX; Tooth Cave ground beetle, 18928–18929
Marine mammals permit applications, 18929–18931

Foreign-Trade Zones Board
NOTICES
Applications, hearings, determinations, etc.:
Puerto Rico
Peerless Oil & Chemicals, Inc.; petroleum product storage and processing facility, 18878

General Services Administration
NOTICES
Federal Acquisition Regulation (FAR):
Agency information collection activities—
Submission for OMB review; comment request, 18913–18914

Health and Human Services Department
See Centers for Disease Control and Prevention
See Health Resources and Services Administration
See National Institutes of Health
See Public Health Service
See Substance Abuse and Mental Health Services Administration

Health Resources and Services Administration
NOTICES
Grants and cooperative agreements; availability, etc.:
HIV/AIDS Bureau, special projects of national significance, etc., 18915–18918

Housing and Urban Development Department
NOTICES
Agency information collection activities:
Proposed collection; comment request, 18923–18924
Grants and cooperative agreements; availability, etc.:
Facilities to assist homeless—
Excess and surplus Federal property, 18924–18926

Interior Department
See Fish and Wildlife Service
See Land Management Bureau
See Minerals Management Service
See Surface Mining Reclamation and Enforcement Office

International Trade Administration
NOTICES
Antidumping:
Fresh cut flowers from—
Ecuador, 18878–18885
Live cattle from—
Canada, 18885

International Trade Commission
NOTICES
Meetings; Sunshine Act, 18935

Justice Department
See Victims of Crime Office

Labor Department
See Employment and Training Administration
See Employment Standards Administration
See Occupational Safety and Health Administration
See Pension and Welfare Benefits Administration

Land Management Bureau
NOTICES
Agency information collection activities:
Proposed collection; comment request, 18931–18932
Meetings:
Resource Advisory Councils—
Lower Snake River District, 18932
Withdrawal and reservation of lands:
Montana, 18932
New Mexico, 18932–18933

Legal Services Corporation
NOTICES
Grants and cooperative agreements; availability, etc.:
Civil legal services to poor, 18941–18943

Management and Budget Office
NOTICES
North American Industry Classification System:
Comprehensive product classification system, 18983–18989

Merit Systems Protection Board
NOTICES
Agency information collection activities:
Proposed collection; comment request, 18943
Meetings; Sunshine Act, 18943

Minerals Management Service
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 18933–18934
Royalty management:
Phosphate production on western public lands; royalty computation; correction, 18934

National Aeronautics and Space Administration
NOTICES
Federal Acquisition Regulation (FAR):
Agency information collection activities—
Submission for OMB review; comment request, 18913–18914
Meetings:
Advisory Council
Aeronautics and Space Transportation Technology Advisory Committee, 18944
International Space Station Advisory Committee, 18943
Minority Business Resource Advisory Committee, 18944
Patent licenses; non-exclusive, exclusive, or partially exclusive:
Sprag-Tech L.L.C., 18944

National Highway Traffic Safety Administration
NOTICES
Motor vehicle safety standards:
Nonconforming vehicles—
Importation eligibility; determinations, 18960–18965

National Institutes of Health
NOTICES
Agency information collection activities:
Proposed collection; comment request, 18918–18919
Meetings:
National Institute of Mental Health, 18919–18920
National Institute of Nursing Research, 18919
Scientific Review Center, 18920–18921

Nuclear Regulatory Commission
PROPOSED RULES
Fee schedules revisions; 100% fee recovery (1999 FY)
Correction, 18835

Rulemaking petitions:
Nuclear Energy Institute; denied, 18833–18835
NOTICES
Certificates of compliance:
United States Enrichment Corp.—
Paducah Gaseous Diffusion Plant, KY, et al., 18944–18945

Occupational Safety and Health Administration
RULES
Construction safety and health standards:
Reporting and recordkeeping requirements, 18809–18810
NOTICES
Agency information collection activities:
Proposed collection; comment request, 18938–18939
Meetings:
Construction Safety and Health Advisory Committee, 18939
Nationally recognized testing laboratories, etc.:
Factory Mutual Research Corp., 18939–18940

Office of Management and Budget
See Management and Budget Office

Office of United States Trade Representative
See Trade Representative, Office of United States

Pension and Welfare Benefits Administration
NOTICES
Meetings:
Employee Welfare and Pension Benefit Plans Advisory Council, 18940–18941

Personnel Management Office
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 18945–18946

Postal Rate Commission
NOTICES
Domestic mail classifications and rates:
Nonprofit and classroom periodicals class mailers; mail classification case, 18946–18948

Presidential Documents
EXECUTIVE ORDERS
Yugoslavia (Serbia and Montenegro), Federal Republic of, and Albania; designation as combat zone (EO 13119), 18797

Public Health Service
See Centers for Disease Control and Prevention
See Health Resources and Services Administration
See National Institutes of Health
See Substance Abuse and Mental Health Services Administration
NOTICES
National Toxicology Program:
Center for Evaluation of Risks to Human Reproduction; phthalates review; comment request, 18921–18922

Risk Management Agency
NOTICES
Committees; establishment, renewal, termination, etc.:
Risk Management Advisory Committee, 18875–18876

Securities and Exchange Commission
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 18948–18949
Meetings; Sunshine Act, 18954–18955
Applications, hearings, determinations, etc.:
Public utility holding company filings, 18949–18954

Social Security Administration
NOTICES
Agency information collection activities:
Proposed collection; comment request, 18955–18956
Submission for OMB review; comment request; correction, 18956

State Department
RULES
Privacy Act; implementation, 18808–18809
NOTICES
Foreign Affairs Agencies Consolidation Act of 1998; implementation:
Privacy Act; transfer of systems of records from Arms Control and Disarmament Agency, 18956
Missile technology proliferation activities; sanctions:
Middle East entities, 18957

Substance Abuse and Mental Health Services Administration
NOTICES
Grant and cooperative agreement awards:
Alaska Health and Social Services Department, Mental Health and Developmental Disabilities Division, 18922–18923

Surface Mining Reclamation and Enforcement Office
PROPOSED RULES
Permanent program and abandoned mine land reclamation plan submissions:
Ohio, 18857–18858
NOTICES
Agency information collection activities:
Proposed collection; comment request, 18934–18935

Surface Transportation Board
NOTICES
Railroad operation, acquisition, construction, etc.:
Brandywine Valley Railroad Co., 18965
Mid Michigan Railroad, Inc., 18965–18966
New Hampshire & Vermont Railroad Co., 18966–18967
Railroad services abandonment:
CSX Transportation, Inc., 18967

Trade Representative, Office of United States
NOTICES
Generalized System of Preferences:
Mauritania; beneficiary developing country designation criteria, 18957
Tariff-rate quota amount determinations:
Beef from New Zealand, 18957–18958

Transportation Department
See Coast Guard
See Federal Aviation Administration
See National Highway Traffic Safety Administration
See Surface Transportation Board

Treasury Department
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 18967–18968–18969

United States Information Agency
NOTICES
Grants and cooperative agreements; availability, etc.:
Africa Regional Internship Program, 18969–18972

Veterans Affairs Department
NOTICES
Meetings:
Special Medical Advisory Group, 18972

Victims of Crime Office
NOTICES
Grants and cooperative agreements; availability, etc.:
Indian Country Post Rape Stress Video; cancellation, 18935–18936

Separate Parts In This Issue

Part II
Department of Education, 18973–18982

Part III
Office of Management and Budget, 18983–18989

Part IV
Department of Education, 18991–19016

Reader Aids
Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

3 CFR
Executive Orders:
13119.....18797

5 CFR
2411.....18799

7 CFR
981.....18800
Proposed Rules:
1220.....18831

10 CFR
Proposed Rules:
30.....18833
40.....18833
70.....18833
170.....18835
171.....18835

14 CFR
39 (3 documents) 18802, 18804, 18806
Proposed Rules:
39 (4 documents) 18835, 18840, 18842, 18845

22 CFR
171.....18808

29 CFR
1926.....18809

30 CFR
Proposed Rules:
935.....18857

33 CFR
165 (2 documents) 18810, 18814

34 CFR
682.....18974

40 CFR
52 (4 documents) 18815, 18816, 18818, 18821
63.....18824
Proposed Rules:
52 (4 documents) 18858, 18860, 18861, 18862
63.....18862
81.....18864
194 (2 documents) 18870

47 CFR
Proposed Rules:
73 (5 documents) 18871, 18872, 18873

48 CFR
231.....18827
232.....18828
235.....18829
252.....18828

Federal Register
Vol. 64, No. 73
Friday, April 16, 1999

Presidential Documents

Title 3—

The President

Executive Order 13119 of April 13, 1999

Designation of Federal Republic of Yugoslavia (Serbia/Montenegro), Albania, the Airspace Above, and Adjacent Waters as a Combat Zone

Pursuant to the authority vested in me as President by the Constitution and laws of the United States of America, including section 112 of the Internal Revenue Code of 1986 (26 U.S.C. 112), I designate, for the purposes of that section, the following locations, including the airspace above such locations, as an area in which Armed Forces of the United States are and have been engaged in combat:

— The Federal Republic of Yugoslavia (Serbia/Montenegro);

— Albania;

— the Adriatic Sea;

— the Ionian Sea north of the 39th parallel.

For the purposes of this order, I designate March 24, 1999, as the date of the commencement of combatant activities in such zone.

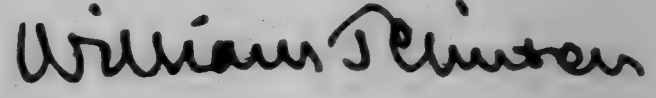

THE WHITE HOUSE,
April 13, 1999.

[FR Doc. 99–9738
Filed 4–15–99; 8:45 am]
Billing code 3195–01–P

UMI

VOL
64

ISS
73

AP
16

1999

UMI

Rule

This sectio
contains re
applicability
are keyed t
Federal Re
50 titles pu

The Code
the Superin
new books
REGISTER

**FEDERAL
AUTHOR**

5 CFR Pa

**Revision
Act Regu**

AGENCY: F
Authority
ACTION: F

SUMMARY:
Authority
Federal L
the Feder
(collectiv
FLRA's re
Freedom
order to i
mandated
Informati
(EFOIA).
rule will
processin
required
EFFECTIVE
become e

FOR FURT
Pamela Jo
Office of
Relations

SUPPLEME
Federal L
proposed
FOIA regu
which we
Register
61035). P
on the pr
written co
response
rulemaki

Throug
231, 110
the FOIA
address,
expedited
informati
required
regulatio

Rules and Regulations

Federal Register
Vol. 64, No. 73
Friday, April 16, 1999

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

FEDERAL LABOR RELATIONS AUTHORITY

5 CFR Part 2411

Revision of Freedom of Information Act Regulations

AGENCY: Federal Labor Relations Authority.

ACTION: Final rule.

SUMMARY: The Federal Labor Relations Authority, the General Counsel of the Federal Labor Relations Authority, and the Federal Service Impasses Panel (collectively "FLRA") amend the FLRA's regulations relating to the Freedom of Information Act (FOIA), in order to implement certain changes mandated by the Electronic Freedom of Information Act Amendments of 1996 (EFOIA). The regulatory changes in this rule will provide for expedited processing of information requests, as required by the EFOIA.

EFFECTIVE DATE: The regulation shall become effective May 17, 1999.

FOR FURTHER INFORMATION CONTACT: Pamela Johnson, Attorney-Advisor, Office of the Solicitor, Federal Labor Relations Authority, (202) 482–6620.

SUPPLEMENTARY INFORMATION: The Federal Labor Relations Authority proposed revisions to Parts 2411 of its FOIA regulations (5 CFR part 2411), which were published in the **Federal Register** on November 14, 1997 (62 FR 61035). Public comment was solicited on the proposed changes. However, no written comments were received in response to the notice of proposed rulemaking.

Through the EFOIA, Public Law 104–231, 110 Stat. 3048, Congress amended the FOIA, 5 U.S.C. 552 *et seq.*, to address, among other things, the expedited processing of requests for information. Specifically, Congress required agencies to promulgate regulations under which requests for expedited processing would be considered, and mandated that agencies grant such requests upon a showing of compelling need.

Pursuant to the EFOIA, the FLRA's amended regulations provide for expedited processing of initial requests that demonstrate a *compelling need*, and allow for expedited processing in other cases when the agency determines it is warranted. Additionally, the amended regulations instruct FOIA officers to notify the requester within ten (10) calendar days whether or not expedited processing has been granted. If denied, any appeals made must be processed expeditiously. The amended regulations will reflect these changes through modifications to § 2411.8, including a retitling of the section and the addition of a new paragraph (b).

Regulatory Flexibility Act Certification

Pursuant to section 605(b)of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the FLRA has determined that this regulation, as amended, will not have a significant economic impact on a substantial number of small entities. The amendments are procedural in nature and are required to implement EFOIA.

Unfunded Mandates Reform Act of 1995

This rule change will not result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This action is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Paperwork Reduction Act of 1995

The amended regulations contain no additional information collection or record keeping requirements under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501, *et seq.*

List of Subjects in 5 CFR Part 2411

Administrative practice and procedure, Freedom of information, Government employees.

For the reasons stated in the preamble, the FLRA amends 5 CFR part 2411, as follows:

PART 2411—AVAILABILITY OF OFFICIAL INFORMATION

1. The authority citation for part 2411 continues to read as follows:

Authority: 5 U.S.C. 552.

2. Section 2411.8 is revised to read as follows:

§ 2411.8 Modification of time limits.

(a) In unusual circumstances as specified in this section, the time limits prescribed with respect to initial determinations or determinations on appeal may be extended by written notice from the officer handling the request (either initial or on appeal) to the person making such request setting forth the reasons for such extension and the date on which a determination is expected to be dispatched. No such notice shall specify a date that would result in a total extension of more than ten (10) working days. As used in this section, "unusual circumstances" means, but only to the extent reasonably necessary to the proper processing of the particular request:

(1) The need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request;

(2) The need to search for, collect and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or

(3) The need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request or among two or more components of the agency having substantial subject matter interest therein.

(b) Expedited processing of a request for records, or an appeal of a denial of a request for expedited processing, shall be provided when the requester demonstrates a compelling need for the information and in other cases as determined by the officer processing the request. A requester seeking expedited processing can demonstrate a compelling need by submitting a statement certified by the requester to be true and correct to the best of such person's knowledge and belief and that satisfies the statutory and regulatory definitions of compelling need. Requesters shall be notified within ten (10) calendar days after receipt of such a request whether expedited processing, or an appeal of a denial of a request for expedited processing, was granted. As used in this section, "compelling need" means:

(1) That a failure to obtain requested records on an expedited basis could reasonably be expected to pose an imminent threat to the life or physical safety of an individual; or

(2) With respect to a request made by a person primarily engaged in disseminating information, urgency to inform the public concerning actual or alleged Federal Government activity.

Dated: April 13, 1999.

Solly Thomas,

Executive Director.

[FR Doc. 99–9622 Filed 4–15–99; 8:45 am]

BILLING CODE 6727–01–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 981

[Docket No. FV99–981–1 FR]

Almonds Grown in California; Revision of Reporting Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule revises the administrative rules and regulations of the California almond marketing order (order) pertaining to reporting requirements. The almond marketing order regulates the handling of almonds grown in California and is administered locally by the Almond Board of California (Board). Under the terms of the order, almond handlers are required to report to the Board, on ABC Form 1, the total adjusted kernel weight of almonds received by them for their own account within seven prescribed reporting periods per year. This rule changes the reporting procedures to require handlers to report this information to the Board monthly, or 12 times per year. Additional, more accurate and timely information will thus be available to the Board and industry, facilitating improved decision making and program administration.

EFFECTIVE DATE: April 19, 1999.

FOR FURTHER INFORMATION CONTACT: Martin Engeler, Assistant Regional Manager, California Marketing Field Office, Marketing Order Administration Branch, F&V, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721; telephone: (559) 487–5901, Fax: (559) 487–5906; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–5698. Small businesses may request information on complying with this regulation, or obtain a guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456; telephone (202) 720–2491, Fax: (202) 720–5698, or E-mail: Jay__N__Guerber@usda.gov. You may view the marketing agreement and order small business compliance guide at the following web site: http://www.ams.usda.gov/fv/moab.html.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Order No. 981, as amended (7 CFR part 981), regulating the handling of almonds grown in California, hereinafter referred to as the "order." The marketing order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after date of the entry of the ruling.

This final rule revises the administrative rules and regulations pertaining to reporting requirements under the California almond order. This rule changes the reporting procedures to require handlers to report their receipts of almonds from growers on a monthly basis rather than seven times per year as currently prescribed. This change was unanimously recommended by the Board at a meeting on September 16, 1998.

Section 981.72 of the order provides authority for the Board to require handlers to report to the Board their receipts of almonds from growers. Section 981.472 of the order's administrative rules and regulations currently requires that each handler report to the Board, on ABC Form 1, the total adjusted kernel weight of almonds, by variety, received by it for its own account within seven prescribed reporting periods per year. The report must be submitted to the Board by the 5th calendar day after the close of the following applicable periods—August 1 to August 31; September 1 to September 30; October 1 to October 31; November 1 to November 30; December 1 to December 31; January 1 to March 31; and April 1 to July 31.

The crop year under the almond order runs from August 1 through July 31 of the following year. Most almonds are harvested by growers and received by handlers during the fall months. Thus, handlers have been required to report their almond receipts to the Board on a monthly basis from August through December, and then just twice for the remainder of the crop year.

California almond production has increased significantly in recent years. Between 1983 and 1992, the average size of the almond crop was about 465 million pounds. Since 1992, the average size of the almond crop has grown to about 570 million pounds. With the increase in crop size, more almonds than anticipated are being received by handlers from January through July. Information collected from handlers on

the amount of almonds received reflects crop size which provides a basis for the industry's marketing decisions. Thus, the Board recommended that handlers be required to report the amount of almonds received on a monthly basis, or 12 times per year. This reporting change will provide the Board with additional, more accurate and timely information which will facilitate improved decision making and program administration. Appropriate changes will be made to § 981.472 of the order's administrative rules and regulations.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 115 handlers of California almonds who are subject to regulation under the order and approximately 7,000 almond producers in the regulated area. Small agricultural service firms have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $5,000,000, and small agricultural producers are defined as those having annual receipts of less than $500,000.

Currently, about 58 percent of the handlers ship under $5,000,000 worth of almonds and 42 percent ship over $5,000,000 worth on an annual basis. In addition, based on acreage, production, and grower prices reported by the National Agricultural Statistics Service, and the total number of almond growers, the average annual grower revenue is approximately $156,000. In view of the foregoing, it can be concluded that the majority of handlers and producers of California almonds may be classified as small entities.

This rule revises § 981.472 of the order's administrative rules and regulations to specify that handlers must submit reports concerning receipts of almonds, on ABC Form 1, on a monthly basis, as opposed to seven times per year. Additional, more accurate and timely information will thus be available to the Board and industry, facilitating improved decision making and program administration.

Requiring handlers to submit this information monthly imposes an additional reporting burden on both small and large handlers. It is estimated that it takes a handler 15 minutes to complete a receipt report, or ABC Form 1. Currently, handlers must submit seven such reports annually creating an estimated total burden per handler of 1.75 hours per year, or a total industry burden of approximately 201.25 hours per year. Requiring handlers to submit five additional reports per year will create an additional burden per handler of 1.25 hours per year, or an additional total industry burden of approximately 143.75 hours per year. Although this action creates an additional burden on California almond handlers, the benefits of collecting additional, more accurate and timely information far outweigh the estimated increased reporting burden. The Board will be able to utilize this information to make improved marketing decisions. This rule places no additional burden on almond growers. Finally, as with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection requirements that are contained in this rule have been approved by the Office of Management and Budget (OMB) and have been assigned OMB No. 0581–0071. In addition, the Department has not identified any relevant Federal rules that duplicate, overlap or conflict with this proposed rule.

Other alternatives to this action include not changing the reporting requirement concerning almond receipts. However, this alternative would leave the Board with less timely information. Another alternative would be to revert back to the reporting requirement prior to 1993 when handlers were required to report almond receipts twice a month during harvest (July through November), once during December, and then twice for the remainder of the crop year. However, the Board believes that requiring handlers to submit the receipt report monthly best meets the industry's informational needs at this time.

The Board's meeting was widely publicized throughout the almond industry and all interested persons were invited to attend the meeting and participate in Board deliberations. Like all Board meetings, the September 16, 1998, meeting was a public meeting and all entities, both large and small, were able to express their views on this issue. The Board itself is composed of ten members, of which five are producers and five are handlers.

Also, the Board has a number of appointed committees to review certain issues and make recommendations to the Board. The Board's Administrative and Finance Committee met on September 16, 1998, prior to the Board meeting, and discussed this issue. That committee meeting was also a public meeting, and both large and small entities were able to participate and express their views.

A proposed rule concerning this action was published in the **Federal Register** on January 5, 1999 (64 FR 430). The proposal also announced AMS's intent to request a revision to the currently approved information collection requirements issued under the order. Copies of the rule were mailed to all Board members and almond handlers. The proposal was also made available through the Internet by the Office of the Federal Register. A 60-day comment period was provided for interested persons to respond to the proposal, including the additional information collection requirements. The comment period ended March 8, 1999. No comments were received.

After consideration of all relevant matter presented, including the information and recommendation submitted by the Board and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

It is further found that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** (5 U.S.C. 553) because the Board would like to begin collecting ABC Form 1 from handlers on a monthly basis as soon as possible to facilitate program administration and decision making. Handlers are aware of this action which was unanimously recommended by the Board at a public meeting. Finally, a 60-day comment period was provided for in the proposed rule, and no comments were received.

List of Subjects in 7 CFR Part 981

Almonds, Marketing agreements, Nuts, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 981 is to be amended as follows:

PART 981—ALMONDS GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 981 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. In § 981.472, paragraph (a) is revised to read as follows:

§ 981.472 Report of almonds received.

(a) Each handler shall report to the Board, on or before the 5th calendar day of each month, on ABC Form 1, the total adjusted kernel weight of almonds, by variety, received by it for its own account for the preceding month.

* * * * *

Dated: April 9, 1999.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 99–9515 Filed 4–15–99; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–197–AD; Amendment 39–11131; AD 99–08–22]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–10 Series Airplanes and KC–10 (Military) Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain McDonnell Douglas Model DC–10 series airplanes and KC–10 (military) airplanes, that requires repetitive inspections to detect fatigue cracking of the rear spar cap of the horizontal stabilizer; and repair, if necessary. The amendment also would require a preventive modification of the rear spar cap of the horizontal stabilizer, which would constitute terminating action for the repetitive inspections. This amendment is prompted by reports of fatigue cracking of the rear spar cap of the horizontal stabilizer. The actions specified by this amendment are intended to prevent fatigue cracking of the rear spar cap of the horizontal stabilizer, which could result in reduced structural integrity of the horizontal stabilizer, and consequent reduced controllability of the airplane.

DATES: Effective May 21, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 21, 1999.

ADDRESSES: The service information referenced in this AD may be obtained from The Boeing Company, Douglas Products Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1–L51 (2–60). This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ron Atmur, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5224; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model DC–10 series airplanes and KC–10 (military) airplanes was published in the **Federal Register** on August 4, 1998 (63 FR 41479). That action proposed to require repetitive penetrant inspections or high frequency eddy current inspections to detect fatigue cracking of the rear spar cap of the horizontal stabilizer; and repair, if necessary. That action also proposed to require a preventive modification of the rear spar cap of the horizontal stabilizer, which would constitute terminating action for the repetitive inspections.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Support for the Proposal

One commenter supports the proposed rule.

Request To Revise the Compliance Time of the Terminating Action

One commenter requests that the proposed compliance time for accomplishment of the terminating modification be revised from "within 5 years" to "within 5 years or prior to the accumulation of 18,000 landings after the effective date of the AD, whichever occurs later." The commenter contends that such a revision of the compliance time would allow the preventive modification installation on low-time DC–10 series airplanes to be consistent with the initial inspection threshold of the proposal.

The FAA concurs partially. It is appropriate to specify an 18,000-landing compliance time for accomplishment of the terminating action. However, to be consistent with the compliance time specified in paragraph (a) of this AD, that threshold must include total landings accumulated on the airplane, not just those accumulated after the effective of this AD, as requested by the commenter.

Requests for Credit for Previous Accomplishment of the AD Requirements

One commenter requests that credit be given for previous accomplishment of the proposed initial inspection. That commenter specifically requests that credit for the initial inspection be given if it was accomplished in accordance with McDonnell Douglas Comtwx DC–10–COM–0047/SFY, dated December 11, 1997. Another commenter requests that credit be given for initial inspections and installation of the preventive modification that were accomplished prior to the effective date of the AD in accordance with the service bulletin specified in the proposal.

The FAA has reviewed the referenced comtwx and concurs that credit may be given for the accomplishment of the initial inspection required by this AD if it was done in accordance with the comtwx referenced by the commenter. The FAA also notes that the comtwx is referenced in McDonnell Douglas Alert Service Bulletin DC10–55A028, dated April 27, 1998, (which is the appropriate service information for this AD), as an additional source of service information. Therefore, the FAA has revised the final rule to add a new "Note 2" to give credit to operators that may have accomplished previously the initial inspection in accordance with McDonnell Douglas Comtwx DC–10–COM–0047/SFY, dated December 11, 1997.

The FAA also concurs with the request to allow credit for accomplishment of actions specified in McDonnell Douglas Alert Service Bulletin DC10–55A028, dated April 27, 1998, that were accomplished prior to the effective date of this AD. The FAA notes that operators are generally given credit for work accomplished previously if the work is performed in accordance with the final rule by means of the phrase in the compliance section of the

AD that states, "Required as indicated, unless accomplished previously." Therefore, no change in the final rule is necessary in this regard.

Request To Justify That Unsafe Condition Exists on Certain Airplanes

One commenter notes that the horizontal stabilizer center section of Model DC–10–30/40 series airplanes is different than that of Model DC–10–10 series airplanes, and that reports of cracking of the rear spar cap of the horizontal stabilizer have only occurred on Model DC–10–10 series airplanes. Therefore, the commenter questions the need to require installation of the proposed modification on DC–10–30/40 series airplanes, and requests that the FAA provide justification that an unsafe condition actually exists on the Model DC–10–30/40 series airplanes. The FAA infers that the commenter is requesting the FAA remove Model DC–10–30/40 series airplanes from the applicability of the proposal if the FAA cannot justify that an unsafe condition exists for that model.

The FAA does not concur that further justification of an unsafe condition on DC–10–30/40 series airplanes is necessary, or that Model DC–10–30/40 series models should be removed from the applicability of this AD. Although the structure of the horizontal stabilizer center section is thicker on Model DC–10–30/40 series airplanes than the same structure on Model DC–10–10 series airplanes, the FAA finds that the thicker structure is necessary because of the higher loads sustained by Model DC–10–30/40 series airplanes. The airplane manufacturer also concurs that fatigue cracking of the horizontal stabilizer is as likely to develop on a Model DC–10–30/40 series airplane as on a Model DC–10–10 series airplane. Therefore, no change to the final rule is necessary.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

There are approximately 420 airplanes of the affected design in the worldwide fleet. The FAA estimates that 242 airplanes of U.S. registry (124 Group 1 airplanes; 118 Group 2 airplanes) will be affected by this AD.

It will take approximately 2 work hours per airplane to accomplish the required inspections, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the inspections required by this AD on U.S. operators for Groups 1 and 2 airplanes is estimated to be $29,040, or $120 per airplane, per inspection cycle.

It will take approximately 34 work hours per airplane to accomplish the terminating modification, at an average labor rate of $60 per work hour. Required parts will cost approximately $6,236 per airplane for Group 1 airplanes, or $6,349 per airplane for Group 2 airplanes. Based on these figures, the cost impact of the modification required by this AD on U.S. operators of Group 1 airplanes is estimated to be $1,026,224, or $8,276 per airplane; and, for Group 2 airplanes, $989,902, or $8,389 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

99–08–22 McDonnell Douglas: Amendment 39–11131. Docket 98–NM–197–AD.

Applicability: Model DC–10 series airplanes and KC–10 (military) airplanes, as listed in McDonnell Douglas Alert Service Bulletin DC10–55A028, dated April 27, 1998; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent fatigue cracking of the rear spar cap of the horizontal stabilizer, which could result in reduced structural integrity of the horizontal stabilizer, and consequent reduced controllability of the airplane, accomplish the following:

(a) Prior to the accumulation of 18,000 total landings, or within 1,500 landings after the effective date of this AD, whichever occurs later: Perform a penetrant inspection or a high frequency eddy current inspection to detect fatigue cracking of the rear spar cap of the horizontal stabilizer, in accordance with McDonnell Douglas Alert Service Bulletin DC10–55A028, dated April 27, 1998.

Note 2: Accomplishment of a penetrant inspection or a high frequency eddy current inspection to detect fatigue cracking of the rear spar cap of the horizontal stabilizer, in accordance with McDonnell Douglas Comtwx DC–10–COM–0047/SFY, dated December 11, 1997, prior to the effective date of this AD, is acceptable for compliance with the initial inspection requirements required by paragraph (a) of this AD.

(1) If no cracking is detected, repeat the inspection thereafter at intervals not to exceed 2,200 landings until accomplishment

of the requirements of paragraph (b) of this AD.

(2) If any cracking is detected, prior to further flight, repair in accordance with the alert service bulletin. Repeat the inspection thereafter at intervals not to exceed 2,200 landings until accomplishment of the requirements of paragraph (b) of this AD.

(b) Within 5 years after the effective date of this AD or prior to the accumulation of 18,000 total landings, whichever occurs later: Perform a penetrant inspection or a high frequency eddy current inspection to detect fatigue cracking of the rear spar cap of the horizontal stabilizer, in accordance with McDonnell Douglas Alert Service Bulletin DC10–55A028, dated April 27, 1998.

(1) If no cracking is detected, prior to further flight, perform the preventive modification of the rear spar cap of the horizontal stabilizer, in accordance with the alert service bulletin. Accomplishment of this modification constitutes terminating action for the requirements of this AD.

(2) If any cracking is detected, prior to further flight, repair, and perform the preventive modification of the rear spar cap of the horizontal stabilizer, in accordance with the alert service bulletin. Accomplishment of the modification constitutes terminating action for the requirements of this AD.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

Special Flight Permits

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(e) The actions shall be done in accordance with McDonnell Douglas Alert Service Bulletin DC10–55A028, dated April 27, 1998. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from The Boeing Company, Douglas Products Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1–L51 (2–60) Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on May 21, 1999.

Issued in Renton, Washington, on April 7, 1999.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–9253 Filed 4–15–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–CE–29–AD; Amendment 39–11130; AD 99–08–21]

RIN 2120–AA64

Airworthiness Directives; Puritan-Bennett Aero Systems Company C351–2000 Series Passenger Oxygen Masks and Portable Oxygen Masks

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to any aircraft equipped with Puritan-Bennett Aero Systems Company (Puritan-Bennett) C351–2000 series passenger oxygen masks and portable oxygen masks. This AD requires inspecting the passenger and portable oxygen masks for tears around the face cushion adjacent to the inner mask housing, and replacing or repairing any torn passenger or portable oxygen mask. This AD is the result of reports received from three airplane manufacturers of defective oxygen masks. The actions specified by this AD are intended to prevent reduced oxygen consumption when passengers are required to use defective oxygen masks, which could result in passenger injury.

DATES: Effective June 2, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 2, 1999.

ADDRESSES: Service information that applies to this AD may be obtained from Puritan-Bennett Aero Systems Company, 10800 Pflumm Road, Lenexa, Kansas 66215; telephone: (913) 338–9800; facsimile: (913) 338–7353. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–CE–29–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Michael Imbler, Aerospace Engineer, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone: (316) 946–4147; facsimile: (316) 946–4407.

SUPPLEMENTARY INFORMATION:

Events Leading to the Issuance of This AD

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to all aircraft equipped with any Puritan-Bennett C351–2000 series passenger oxygen mask or portable oxygen mask having an elastomer cure date between September 1993 and March 1997 was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on September 22, 1998 (63 FR 50540). The NPRM proposed to require inspecting the oxygen mask face cushion adjacent to the inner mask housing for any tear, and, if a tear is found, repairing or replacing the passenger or portable oxygen mask with one that has an elastomer cure date later than March 1997.

Accomplishment of the proposed action as specified in the NPRM would be required in accordance with Nellcor Puritan-Bennett Service Bulletin No. C351–2000–35–1, Revision 2, date of original issue: July, 1996; date of first revision: February, 1997; date of current revision: February, 1998.

The NPRM was the result of three airplane manufacturers informing the FAA that the affected oxygen masks were defective.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Comment Issue No. 1: List in the AD All Passenger Service Units That Could Contain the Affected Oxygen Masks

Two commenters recommend that the FAA provide, in the proposed AD, a listing of the passenger service units (PSU) that could contain the affected oxygen masks. The commenters state that it would be difficult to detect whether one of the affected oxygen masks was in their fleet since passenger or portable oxygen masks are not tracked items. As written, the proposed AD would require inspecting all aircraft

and spares in the fleet to determine if the AD applied. The PSU's are equipment that is tracked and including a listing of those would allow the affected operators to check their logbook to determine AD applicability.

The FAA concurs that listing the PSU's in the proposed AD would allow the operators to check the logbook to determine AD applicability. However, the affected passenger and portable oxygen masks can be installed in any PSU. Therefore, if an operator does not track passenger and portable oxygen masks, the FAA knows of no other way to assure that the unsafe condition does not go undetected than to inspect each PSU to determine if the affected masks are installed.

No changes to the final rule are required as a result of these comments.

Comment Issue No. 2: Cost Impact of the Proposed AD

Two commenters feel that the FAA's determination of the cost impact on U.S. operators of the airplanes that have the affected passenger or portable oxygen masks installed is misleading. In particular, these comments are as follows:

- One commenter states that the cost to inspect each of his/her fleet's aircraft to determine if the affected oxygen masks are installed on each PSU is 6 workhours per aircraft; and
- The other commenter states that the FAA intended to use the cost calculation of 1 workhour per aircraft for labor time, but instead multiplied that by the number of masks affected.

The FAA concurs that the cost impact of the proposed AD is misleading. The FAA has no way of determining the exact number of affected portable and passenger oxygen masks that would need to be either inspected and, if necessary, repaired or replaced on each airplane. For this reason, the FAA is writing the Cost Impact section in the final rule to account for the cost per mask and not per airplane.

Comment Issue No. 3: Make the Inspection Repetitive

One commenter recommends that the FAA make the proposed inspections repetitive. This commenter makes this recommendation based on the belief that the unsafe condition is a result of aging and fatigue damage to the affected portable and passenger oxygen masks.

The FAA does not concur that the inspection should be made repetitive. The oxygen masks that are unsafe were torn at the factory due to a manufacturing defect. This FAA has determined the time range of when these torn oxygen masks were manufactured. The proposed AD would require repair or replacement of any oxygen mask manufactured during a certain time and revealing a tear, and would prohibit future installation of any oxygen mask that has a tear.

Therefore, no changes to the final rule are required as a result of these comments.

Comment Issue No. 4: Extend the Compliance Time

One commenter recommends that the FAA extend the compliance time of the proposed AD. This commenter states that the 90 calendar day compliance time would be difficult to meet and the economic impact due to unnecessary downtime would be significant. The commenter suggests a 6 calendar month compliance time to coincide with regularly scheduled maintenance.

The FAA concurs. The FAA initially chose 90 calendar days based upon a balance between safety and practicality of implementation. The commenter presents a strong case for extending the compliance time based upon practicality of implementation and the FAA has determined that extending to 6 calendar months will not adversely affect aviation safety.

The compliance time of the final rule has been changed accordingly.

The FAA's Determination

After careful review of all available information related to the subject presented above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for the change in the write-up in the Cost Impact section, the change in compliance time, and minor editorial corrections. The FAA has determined that these changes and the minor editorial corrections will not change the meaning of the AD and will not add any additional burden upon the public than was already proposed.

Cost Impact

The FAA estimates that 10,500 oxygen masks will be affected by this AD, that it will take approximately 1 workhour per oxygen mask to accomplish the inspection and replacement, and that the average labor rate is approximately $60 an hour. Puritan-Bennett will repair or replace oxygen mask assemblies found defective at no cost to the owner/operator of any affected aircraft. Based on these figures, the total cost impact of the inspection is estimated to be $630,000, or $60 per mask. The cost per aircraft will vary based on the number of oxygen masks each aircraft has installed and the number that would require replacement.

Compliance Time

The compliance time of this AD is presented in calendar time instead of hours time-in-service (TIS).

The FAA has determined that calendar time compliance is the most desirable method because the use of these oxygen masks is not related to hours time-in-service. The unsafe condition exists regardless of whether the aircraft is in operation. Therefore, to assure that the above-referenced condition is corrected within a reasonable period of time, a compliance schedule based upon calendar time instead of hours TIS is utilized.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

99–08–21 Puritan-Bennett Aero Systems Company: Amendment 39–11130; Docket No. 98–CE–29–AD.

Applicability: Puritan-Bennett C351–2000 series passenger oxygen masks and portable oxygen masks, part numbers as listed below, that (1) have elastomer cure dates between September 1993 and March 1997; and (2) are installed in aircraft that are certificated in any category:

Passenger Masks

C351–2000–00
C351–2000–02
C351–2000–21
C351–2000–38
C351–2000–52
C351–2000–59
C351–2000–63
114006–01
174006–16
174006–30
174006–31
174290–21
174290–22
174290–24
174290–26
174291–21
174291–23
174291–24
174501–00
174504–01 (C351–2000–205)
174505–01 (C351–2000–201)
174506–00 (C351–2000–223)
174509–00 (C351–2000–302)
174510–01 (C351–2000–224)
174510–08 (C351–2000–231)
174510–09 (C351–2000–232)
174510–10 (C351–2000–233)
174510–11 (C351–2000–234)

Drop-Out Box Assemblies

115055–04
115055–10
175011–01
175015–00
175016–00
175105–00
175109–00
175112–10
175112–11
175112–21
175112–90
175205–00
175210–00
175215–01
175222–11
175222–13
175222–20
175222–21
175222–90
175224–00
175242–00
175242–01
175242–02
175303–00
175308–00

Emergency Oxygen Portable Assemblies

176960–13
176960–14
176980–00
176965–SMB2
176965–SCOB2
176965–SMO2
176965–SCMB2

Note 1: This AD applies to each aircraft equipped with an oxygen mask identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For aircraft that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated in the body of this AD, unless already accomplished.

To prevent reduced oxygen consumption when passengers are required to use defective oxygen masks, which could result in passenger injury, accomplish the following:

(a) Within the next 6 calendar months after the effective date of this AD, inspect the passenger or portable oxygen masks for any tear in the face cushion in accordance with the ACCOMPLISHMENT INSTRUCTIONS section in Nellcor Puritan-Bennett Service Bulletin No. C351–2000–35–1, Revision 2, date of original issue: July, 1996; date of first revision: February, 1997; date of current revision: February, 1998. The face cushion is adjacent to the inner mask housing. If a tear is found, prior to further flight, replace or repair the mask in accordance with the service bulletin.

(b) As of the effective date of this AD, no person may install, in any aircraft, Puritan-Bennett C351–2000 series passenger oxygen masks and portable oxygen masks that are specified in the Applicability section of this AD, unless they have been inspected and found airworthy in accordance with paragraph (a) of this AD.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the aircraft to a location where the requirements of this AD can be accomplished.

(d) An alternative method of compliance or adjustment of the compliance times that provides an equivalent level of safety may be approved by the Manager, Wichita Aircraft Certification Office (ACO), 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Wichita ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Wichita ACO.

(e) The inspection and replacement or repair required by this AD shall be done in accordance with Nellcor Puritan-Bennett Service Bulletin No. C351–2000–35–1, Revision 2, date of original issue: July, 1996; date of first revision: February, 1997; date of current revision: February, 1998. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Puritan-Bennett Aero Systems Company, 10800 Pflumm Road, Lenexa, Kansas 66215. Copies may be inspected at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

(f) This amendment becomes effective on June 2, 1999.

Issued in Kansas City, Missouri, on April 7, 1999.

Carolanne L. Cabrini,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–9251 Filed 4–15–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96–CE–60–AD; Amendment 39–11129; AD 97–15–13 R2]

RIN 2120–AA64

Airworthiness Directives; Raytheon Aircraft Company Beech Models 1900, 1900C, and 1900D Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment revises Airworthiness Directive (AD) 97–15–13 R1, which currently requires installing lubrication fittings in the airstair door handle and latch housing mechanisms on certain Raytheon Aircraft Company (Raytheon) Beech Models 1900, 1900C, and 1900D airplanes. Since issuance of AD 97–15–13 R1, Raytheon has revised the applicable service information to correct the reference to the number of parts each owner/operator of the affected airplanes should order and to change an incorrect reference to a maintenance manual. This AD retains the actions of AD 97–15–13 R1, and incorporates the revised service bulletin into the AD. The actions specified by this AD are intended to continue to prevent moisture from accumulating and freezing in the airstair door handle and latch housing, which could result in the door freezing shut and passengers not being able to evacuate the airplane in an emergency situation.

DATES: Effective May 28, 1999.

The incorporation by reference of Raytheon Mandatory Service Bulletin SB.2572, Issued: July, 1996; Revision No. 1, May, 1998, as listed in the regulations is approved by the Director of the Federal Register as of May 28, 1999.

The incorporation by reference of Raytheon Mandatory Service Bulletin No. 2572, Issued: July, 1996, as listed in the regulations was previously approved by the Director of the Federal Register as of September 22, 1997 (62 FR 49426).

ADDRESSES: Service information that applies to this AD may be obtained from the Raytheon Aircraft Company, P.O. Box 85, Wichita, Kansas 67201–0085. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 96–CE–60–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Steven E. Potter, Aerospace Safety Engineer, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209; telephone: (316) 946-4124; facsimile: (316) 946–4407.

SUPPLEMENTARY INFORMATION:

Events Leading to the Issuance of This AD

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain Raytheon Beech Models 1900, 1900C, and 1900D airplanes was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on October 9, 1998 (63 FR 54393). The NPRM proposed to revise AD 97–15–13 R1, Amendment 39–10131 (62 FR 49426, September 22, 1997), by incorporating updated service information into the AD. AD 97–15–13 R1 currently requires installing lubrication fittings in the airstair door handle and latch housing mechanisms on certain Raytheon Beech Models 1900, 1900C, and 1900D airplanes.

Accomplishment of the actions of AD 97–15–13 R1 is required in accordance with Raytheon Mandatory Service Bulletin No. 2572, Issued: July, 1996.

Accomplishment of the proposed installations would be required in accordance with Raytheon Mandatory Service Bulletin No. 2572, Issued: July, 1996; or Raytheon Mandatory Service Bulletin SB.2572, Issued: July, 1996; Revision No. 1, May, 1998.

Interested persons have been afforded an opportunity to participate in the making of this amendment. One comment was received in favor of the NPRM and no comments were received on the FAA's determination of the cost to the public.

The FAA's Determination

After careful review of all available information related to the subject presented above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. The FAA has determined that these minor corrections will not change the meaning of the AD and will not add any additional burden upon the public than was already proposed.

Cost Impact

The FAA estimates that 408 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 14 workhours per airplane to accomplish the installation, and that the average labor rate is approximately $60 an hour. Parts cost approximately $50 per airplane. Based on these figures, the total cost impact of this AD on U.S. operators is estimated to be $363,120, or $890 per airplane. This figure is based on the presumption that no owner/operator of the affected airplanes has accomplished the required installation.

This AD requires the same actions as AD 97–15–13 R1. The only difference is reference to Raytheon Mandatory Service Bulletin SB.2572, Issued: July, 1996; Revision No. 1, May, 1998. Therefore, this AD imposes no additional cost impact upon U.S. owners/operators of the affected airplanes than is already required by AD 97–15–13 R1.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Airworthiness Directive (AD) 97–15–13 R1, Amendment 39–10131, and by adding a new AD to read as follows:

97–15–13 R2 Raytheon Aircraft Company (Type Certificate No. A24CE formerly held by the Beech Aircraft Corporation): Amendment 39–11129; Docket No. 96–CE–60–AD; Revises AD 97–15–13 R1, Amendment 39–10131.

Applicability: The following Beech airplane models and serial numbers, certificated in any category:

Model	Serial Nos.
1900	UA–1 through UA–3.
1900C	UB–1 through UB–74, and UC–1 through UC–174.
1900C (C–12J)	UD–1 through UD–6.
1900D	UE–1 through UE–157.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required within the next 200 hours time-in-service after September 27,

1997 (the effective date of AD 97–15–13 R1), unless already accomplished.

To prevent moisture from accumulating and freezing in the airstair door handle and latch housing, which could result in the door freezing shut and passengers not being able to evacuate the airplane in an emergency situation, accomplish the following:

(a) Install lubrication fittings in the airstair door handle and latch housing mechanisms in accordance with the ACCOMPLISHMENT INSTRUCTIONS section of either:

(1) Raytheon Mandatory Service Bulletin No. 2572, Issued: July, 1996; or

(2) Raytheon Mandatory Service Bulletin SB.2572, Issued: July, 1996; Revision No. 1, May, 1998.

Note 2: Only Part II of the Accomplishment Instructions section of the service information referenced above applies to the affected Beech Model 1900D airplanes.

(b) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(c) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Wichita Aircraft Certification Office (ACO), 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209.

(1) The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Wichita ACO.

(2) Alternative methods of compliance approved in accordance with AD 97–15–13 R1 are considered approved as alternative methods of compliance for this AD.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Wichita ACO.

(d) The installation required by this AD shall be done in accordance with Raytheon Mandatory Service Bulletin No. 2572, Issued: July, 1996; or Raytheon Mandatory Service Bulletin SB.2572, Issued: July, 1996; Revision No. 1, May, 1998.

(1) The incorporation by reference of Raytheon Mandatory Service Bulletin SB.2572, Issued: July, 1996; Revision No. 1, May, 1998, was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(2) The incorporation by reference of Raytheon Mandatory Service Bulletin No. 2572, Issued: July, 1996, was previously approved by the Director of the Federal Register as of September 22, 1997 (62 FR 49426).

(3) Copies of the service bulletins may be obtained from the Raytheon Aircraft Company, P.O. Box 85, Wichita, Kansas 67201–0085. Copies may be inspected at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

(e) This amendment revises AD 97–15–13 R1, Amendment 39–10131.

(f) This amendment becomes effective on May 28, 1999.

Issued in Kansas City, Missouri, on April 6, 1999.

Marvin R. Nuss,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–9250 Filed 4–15–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF STATE

Bureau of Administration

[Public Notice 3021]

22 CFR Part 171

Amendment of State Department Privacy Act Exemptions

AGENCY: Bureau of Administration, Department of State.

ACTION: Final rule.

SUMMARY: Pursuant to the consolidation of the Arms Control and Disarmament Agency ("ACDA") and the Department of State as mandated by the Foreign Affairs Agencies Consolidation Act of 1998, this rule amends the exemptions in the State Department's Privacy Act regulations to incorporate ACDA's exemptions.

DATES: Effective April 1, 1999.

FOR FURTHER INFORMATION CONTACT: Margaret P. Grafeld, Information and Privacy Coordinator and Director of the Office of Information Resources Management Programs and Services; Room 1239; Department of State; 2201 C Street, NW; Washington, DC 20520–1512, (202) 647–6620.

SUPPLEMENTARY INFORMATION: Under the Foreign Affairs Agencies Consolidation Act of 1998, Pub. L. 105–277, ACDA and the Department of State will be integrated on April 1, 1999. As part of the integration, the Department will assume custody and control of systems of records currently maintained by ACDA. For a document relating to the State Department's assumption of control over these systems of records, see a notice published elsewhere in this volume. In order to preserve the exemptions under the Privacy Act applicable to ACDA's system of records, this rule incorporates the exemptions previously found at 22 CFR 603.8 into the State Department's regulations at 22 CFR 171.32.

This rule involves agency management functions and, therefore, is not subject to the procedures required by 5 U.S.C. 553 and 801. It is also exempt from review under Executive Order 12866 but has been reviewed internally by the Department to ensure consistency with the purposes thereof. This amendment has been found to be a minor rule within the meaning of the Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. 104–121. It does not require analysis under the Regulatory Flexibility Act or the Unfunded Mandates Reform Act.

List of Subjects in 22 CFR Part 171

Privacy.

Accordingly, for the reasons set forth above, upon the abolition of ACDA under Pub. L. 105–277, part 171 of Title 22, Code of Federal Regulations is amended as follows:

PART 171—[AMENDED]

1. The authority citation for part 171 continues to read as follows:

Authority: The Freedom of Information Act, 5 U.S.C. 552; The Privacy Act, 5 U.S.C. 552a; The Administrative Procedure Act, 5 U.S.C. 551, *et seq.*; The Ethics in Government Act, 5 U.S.C. App. 201; Executive Order 12356, 47 FR 14874; and Executive Order 12600, 52 FR 23781.

2. Section 171.32 is amended by adding the following exemptions to paragraphs (j)(1), (j)(2), and (j)(5) to read as follows:

§ 171.32 Exemptions.

* * * * *

(j) * * *

(1) * * *

Statements by Principals during the Strategic Arms Limitation Talks, Mutual Balanced Force Reduction negotiations, and the Standing Consultative Committee. ACDA–4.

(2) * * *

Security Records. ACDA–3. Provided, however, that if any individual is denied any right, privilege, or benefit to which the individual would otherwise be entitled by Federal law, or for which the individual would otherwise be eligible, as a result of the maintenance of such material, such material will be provided to such individual, except to the extent that disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, if furnished to the Government prior to September 27, 1975, under an implied promise that the identity of the source would be held in confidence.

* * * * *

(5) * * *

Security Records. ACDA–3. This system contains investigatory materials compiled solely for the purpose of determining suitability, eligibility, or

qualifications for Federal civilian employment, military service, Federal contracts, or access to classified information which is exempt from disclosure by the Act (5 U.S.C. 552a(k)(5)), but only to the extent that disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or if furnished to the Government prior to September 27, 1975, under an implied promise that the identity of the source would be held in confidence.

* * * * *

Dated: March 30, 1999.

Patrick F. Kennedy,

Assistant Secretary for the Bureau of Administration, Department of State.

[FR Doc. 99–9575 Filed 4–15–99; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1926

Office of Management and Budget Control Numbers Under the Paperwork Reduction Act for Miscellaneous Construction Industry Rules

AGENCY: Occupational Safety and Health Administration, Labor.

ACTION: Final rule; Office of Management and Budget approval of information collection requirements.

SUMMARY: The Occupational Safety and Health Administration (OSHA) is announcing that the Office of Management and Budget (OMB) has extended the approval of a number of information collection requirements in OSHA construction rules. OSHA sought approval under the Paperwork Reduction Act of 1995 and is announcing the new expiration dates for these OMB control numbers. These approvals are for provisions that require posting; retention of records that verify certain tests or inspections have been performed; retention or availability of plans at construction sites; and other miscellaneous requirements.

EFFECTIVE DATE: These amendments are effective April 16, 1999.

FOR FURTHER INFORMATION CONTACT: Barbara Bielaski, Office of Regulatory Analysis, Directorate of Policy, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–3627, 200 Constitution Avenue, NW, Washington, DC 20210, telephone (202) 693–1954.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) 44 U.S.C. 3501–3520), collections of information must be periodically approved by the Office of Management and Budget (OMB). In 1998, the Occupational Safety and Health Administration (OSHA) requested that OMB approve a number of information collection requirements contained in OSHA's construction industry standards (29 CFR part 1926). These provisions require employers to:

—Post floor-load limits and crane-rating chart limitations;

—Retain records that verify certain tests or inspections required in part 1926 have been performed.

—Retain or ensure the availability of plans at construction sites; and other miscellaneous requirements.

The previous approvals of these information collection requirements expired at various times during 1998. Last year, OSHA sought public comment on the burden-hour and cost estimates of these requirements through a series of **Federal Register** notices.

At the conclusion of the public comment period, the Agency submitted requests for an extension of OMB's approval of these records. In accordance with the PRA, OMB has renewed its approval for these information collection requirements. Each requirement was renewed for 3 years, but OMB staggered the new expiration dates in 2001 over a period of several months. The following table lists the subjects, **Federal Register** notices, and the OMB control numbers for each of these requirements:

Title and citation	Federal Register date and page No.	OMB control No.	Approval expires
Annual Inspection Record of Cranes or Derricks Used in Construction—§ 1926.550(a)(6).	June 8, 1998, 63 FR 31232	1218–0113	June 30, 2001.
Design of Cave-in Protection Systems—§ 1926.652 (b) and (c)	July 10, 1998, 63 FR 37415	1218–0137	July 31, 2001.
Concrete and Masonry Construction—§ 1926.703(a)(2)	June 19, 1998, 63 FR 33712	1218–0095	July 31, 2001.
Construction Posting Rqmnts.: Emergency Phone No.'s and Floor Load Limits—§§ 1926.50(f) and 1926.250(a)(2).	July 14, 1998, 63 FR 37907	1218–0093	Aug. 31, 2001.
Constr'n. Crane Rating Chart Limitation Instructions & Hand Signal Illustrations—§ 1926.550(a)(1), (2), (4), and (16).	June 19, 1998, 63 FR 33713	1218–0115	Aug. 31, 2001.
Construction Cranes and Derricks: Oxygen and Toxic Gas Tests—§ 1926.550(a)(11).	June 19, 1998, 62 FR 33715	1218–0054	Aug. 31, 2001.
Crane- or Derrick-Suspended Personnel Platforms Used in Constr'n.—§ 1926.550(g)(4)(ii)(I).	June 19, 1998, 63 FR 33715	1218–0151	Aug. 31, 2001.
Underground Construction—§ 1926.800	June 19, 1998, 63 FR 33714	1218–0067	Oct. 31, 2001.

Under 5 CFR 1320.5(b), an Agency may not conduct or sponsor a collection of information unless: (1) The collection displays a valid control number, and (2) the Agency informs persons who potentially may respond to the collections of information that they are not required to respond to the collection of information unless it displays a currently valid OMB control number. Accordingly, now that OMB has extended the approval on these collections, OSHA is publishing this document to announce the new expiration dates for these OMB control numbers.

In addition, OSHA is amending § 1926.5, the section in which OSHA displays its approved collections under the PRA, to codify several interrelated collections that were determined to be paperwork burdens as a result of a more careful review and analysis of the information collection requirements in the crane and derrick standard. The Agency grouped these additional collections with a related collection that had been previously identified.

List of Subjects

29 CFR Part 1926

Construction; Occupational safety and health; Reporting and recordkeeping requirements.

Authority and Signature

This document was prepared under the direction of Charles N. Jeffress, Assistant Secretary of Labor for

Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210.

Signed at Washington, DC this 13th day of April, 1999.

Charles N. Jeffress,

Assistant Secretary of Labor.

Accordingly, 29 CFR part 1926 is amended as set forth below.

PART 1926—[AMENDED]

1. The authority citation for subpart A of part 1926 is revised to read as follows:

Authority: Section 107, Contract Work Hours and Safety Standards Act (Construction Safety Act) (40 U.S.C. 333); secs. 4, 6, 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order 12–71 (36 FR 8754), 8–76 (41 FR 25059), 1–90 (55 FR 9033),), or 6–96 (62 FR 111), as applicable; 29 CFR part 1911.

2. In § 1926.5, the table is amended by adding entries for 1926.550(a)(2), (4), and (16) in numerical order to read as follows:

§ 1926.5 OMB control numbers under the Paperwork Reduction Act.

* * * * *

§ 1926.550(a)(2)	1218–0115
§ 1926.550(a)(4)	1218–0115

* * * * *

§ 1926.550(a)(16)	1218–0115

* * * * *

[FR Doc. 99–9580 Filed 4–15–99; 8:45 am]

BILLING CODE 4510–26–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CCGD08–97–020]

RIN 2115–AE84

Mississippi River, LA: Regulated Navigation Area

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is revising the Regulated Navigation Area (RNA) for vessels operating in the Mississippi River below Baton Rouge, including South Pass and Southwest Pass, by adding requirements for vessels of 1,600 gross tons or greater operating in the RNA. These requirements entail enhanced safety procedures for vessels of 1,600 gross tons or greater operating on the Mississippi River. The Coast Guard is also requiring moored or anchored passenger vessels with embarked passengers to maintain manned pilothouse watches for the safety of the vessel, crew and passengers.

DATES: This final rule is effective April 16, 1999, with the exception of § 165.810(f)(1), which is effective June 1, 1999.

ADDRESSES: Documents as indicated in this preamble are available for inspection or copying at the office of the Eighth Coast Guard District, Marine Safety Division, 501 Magazine Street, Room 1341, New Orleans, LA, during normal office hours between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays. The telephone number is (504) 589–4686.

FOR FURTHER INFORMATION CONTACT: Mr. M.M. Ledet, Vessel Traffic Management Specialist, at the Eighth Coast Guard District, Marine Safety Division, New Orleans, LA, or by telephone at (504) 589–4686.

SUPPLEMENTARY INFORMATION:

Regulatory History

On October 30, 1997 (62 FR 58650), the Coast Guard published an interim rule with request for comments entitled "Regulated Navigation Area Regulations; Mississippi River, LA–Regulated Navigation Area" in the **Federal Register**. The Coast Guard received nine letters commenting on the interim rule. One comment requested a public hearing to discuss 33 CFR 165.810(e) "Watch requirements for anchored and moored passenger vessels." Because this section was not open for comment, since there had been several previous opportunities for the public to provide input on this watch requirement, the Coast Guard did not opt to hold a public hearing. However, the Coast Guard took into consideration the information contained in the comment pertaining to 33 CFR 165.810(e) and, after a thorough review of the existing regulations, has changed this section to eliminate any confusion as to the definition of a "small passenger-carrying vessel" by referring to the definition contained in 46 CFR 175.110.

On August 29, 1997 (62 FR 45775), the Coast Guard published a notice of proposed rulemaking entitled "Regulated Navigation Area Regulations; Mississippi River, LA–Regulated Navigation Area" in the **Federal Register**. The Coast Guard received two letters commenting on the proposed rulemaking. No public hearing was requested, and none was held. On December 14, 1996, the 36,000 gross ton M/V BRIGHT FIELD allided with the Riverwalk store complex causing extensive damage and numerous injuries. This marine casualty prompted the Captain of the Port New Orleans to issue Captain of the Port Orders to moored or anchored passenger vessels operating on the Mississippi River. These orders required those vessels to maintain manned pilothouse watches in order to monitor river activity and to be immediately available to activate emergency procedures to protect the vessel, crew, and passengers in the event of an emergency procedures to protect the vessel, crew, and passengers in the event of an emergency radio broadcast, danger signal, or other, visual indication of a problem. The initial intent of this order was to establish an interim measure to prevent future allisions and collisions. On March 18, 1997 (62 FR 14637, March 27, 1997), the Coast Guard established a temporary regulated navigation area (RNA) affecting the operation of downbound tows in the Lower Mississippi River from mile 437 at Vicksburg, MS, to mile 88 above Head of Passes. This RNA was subsequently amended on March 31, (62 FR 15398, April 1, 1997), March 29 (62 FR 16081, April 4, 1997), April 4 (62 FR 17704, April 11, 1997) and April 20 (62 FR 23358, April 30, 1997). The amendments added operating requirements for vessels of 1,600 gross tons or greater; increased the operating limitations on tank barges and ships carrying hazardous chemicals and gasses; and extended the RNA to the boundary of the territorial sea at the approaches to Southwest Pass.

This RNA and its subsequent amendments were also prompted by unprecedented high waters on the Mississippi River. Conditions on the Lower Mississippi River became so severe that they necessitated the opening of the Bonnet Carre Spillway by the Army Corps of Engineers in order to ease high water and partially combat very strong river currents. The high water contributed to numerous barge breakaways and a marked increase in vessel accidents. The additional operating requirements were designed to provide a greater margin of safety for vessels of 1,600 gross tons or greater operating on this waterway.

On April 20, 1997 (62 FR 23358, April 30, 1997), the towboat and barge limitations and the chemical and gas ship operating restrictions expired. The regulations affecting self-propelled vessels of 1,600 gross tons or greater were extended until July 1, 1997. On June 24, 1997 (62 FR 35097, June 30, 1997), the regulations affecting self-propelled vessels of 1,600 gross tons or greater were again extended, until

October 31, 1997. The purpose of this extension was to maintain the enhanced margin of safety that had been facilitated by these regulations. Although the Lower Mississippi River was receding, dangerous and unpredictable currents remained.

This final rule makes permanent the requirements of the temporary RNA, 33 CFR 165.T08–001, and adds those requirements to the permanent RNA established in 33 CFR 165.810. There was no adverse feedback from the public on the extensions or the concomitant operating requirements. Moreover, the additional operating requirements imposed increased the level of safety in the RNA.

Background and Purpose

In the interest of navigation safety in the narrow confines of the Lower Mississippi River, the Coast Guard is revising the regulations in 33 CFR 165.810 affecting self-propelled vessels of 1,600 gross tons or greater. The RNA described in this rule is required to protect vessels, bridges, shore-side facilities, commercial businesses, and the public from a safety hazard created by operations of deep-draft vessels along the Lower Mississippi River. During 1995 and 1996 over 300 self-propelled vessels of 1,600 gross tons or greater operating on the Mississippi River experienced casualties involving loss of power, loss of steering, or engine irregularities. The regulations will enhance the safety of navigation on the river and protect shoreside facilities, including commercial businesses, by causing masters and engineers to take measures that will minimize the risk of steering casualties, engine failures, and engine irregularities. They also place the ship in a manning status and operating condition that will allow the vessel to take prompt and appropriate emergency action should a casualty occur, thereby reducing the likelihood of a cascading series of allisions and collisions following a casualty.

To enhance safety for passenger vessels anchored or moored within the RNA, the Coast Guard is requiring certain passenger vessels to maintain manned pilothouse watches to monitor activity on the water and to be immediately available to activate emergency procedures to protect the vessel, crew, and passengers in the event of an emergency radio broadcast, danger signal, or other, visual indication of a problem. This measure will significantly enhance the safety of passenger vessels moored or anchored within the RNA. Each ferryboat, and each small passenger vessel to which 46 CFR 175.110 applies, will be required to monitor and respond, but may conduct monitoring from a vantage point other than the pilothouse using a portable radio. These vessels were given consideration because of their relatively small size and the distribution of safety and emergency system controls throughout the vessel.

Discussion of Rule

The existing regulation in 33 CFR 165.810 establishes an RNA for the waters of the Mississippi River below Baton Rouge, LA, including South Pass and Southwest Pass. By this rule the Coast Guard adds specific operational requirements to certain vessels when transiting, moored, or anchored in the RNA. These requirements are designed to assist in the prevention of collisions and groundings, ensure port safety, enhance the safety of moored or anchored passenger vessels, and protect the navigable waters of the Mississippi River from environmental harm.

Subsection (e) of this rule addresses additional operating requirements for passenger vessels with embarked passengers. Passenger vessels shall continuously man their pilothouse and remain apprised of river activities in their vicinity by monitoring VHF emergency and working frequencies. This allows an individual operating a passenger vessel to be immediately available to take necessary action to protect the vessel, crew, and passengers in the event that an emergency broadcast, danger signal or other visual indication of a problem is received or detected. An exception to this rule is made for ferryboats, and for small passenger vessels to which 46 CFR 175.110 applies. Continuously manned pilothouses are not required on these vessels since shipboard emergency systems are normally distributed throughout the vessel rather than being centralized on the bridge and in the engineroom. Vessel personnel can adequately monitor VHF frequencies by portable radio from a vantagepoint other than the pilothouse.

Subsection (f) of this rule pertains to all self-propelled vessels of 1,600 or more gross tons covered by 33 CFR Part 164. The rule requires that the master shall ensure that the vessel is in compliance with 33 CFR Part 164 and that the engineroom is manned at all times while the vessel is under way in the RNA. Additionally, this subsection requires the master to ensure the chief engineer has certified that the main propulsion plant is ready in all respects for operations including the main-propulsion air-start systems, fuel systems, lube-oil systems, cooling systems, and automation systems; that main propulsion machinery is available to immediately respond to the full range of maneuvering commands; that any load-limiting programs or automatic acceleration-limiting programs that would limit the speed of response to engine orders beyond that needed to prevent immediate damage to the propulsion machinery are capable of being overridden immediately; that cooling, lubricating, and fuel-oil systems are within proper temperature parameters; and that standby systems are ready to be placed immediately in service. These additional operating conditions are required so long as the vessel is under way in the RNA.

Discussion of Comments and Changes

The Coast Guard received nine comments regarding the interim rule.

Comment Relating to 33 CFR 165.810(e)

One comment received pertained to paragraph (e) of this rule. Although this subsection was not open for comment, the comment voiced the opinion that the term "small passenger vessel" needed to be defined and that passenger-carrying vessels without provisions for overnight passengers should not be included in the prescriptive provisions of this RNA rule. It was learned during the investigation into the M/V BRIGHT FIELD collision that the US-flagged vessels in the area were the QUEEN OF NEW ORLEANS and the CREOLE QUEEN. The QUEEN OF NEW ORLEANS was moored, and the CREOLE QUEEN had just got underway. Each had a manned bridge, which heard the VHF–FM broadcast and could ascertain the situation and take appropriate action. The two foreign-flagged vessels near the accident were the M/V ENCHANTED ISLE and the M/V NIEUW AMSTERDAM. Each was moored, and neither monitored the VHF–FM radio, but each had an officer on the bridge who quickly ascertained the emergency situation and began implementing emergency measures.

This regulation will require passenger vessels to man the pilothouse and will impose a high standard of care, which the four vessels discussed met without a regulation. This regulation imposes on transient vessels, including foreign-flag passenger vessels, the same standard of care already placed on local passenger vessels in their Certificate of Inspection issued by the OCMI. However, after careful review of the arrangement and configuration of these vessels and the comment's concern that the regulations did not specifically define "small passenger vessel" in the proposed rules, the Coast Guard has revised paragraph (e)(2) to allow all small passenger

vessels to which 46 CFR 175.110 applies to use portable radios to continuously monitor vessel-traffic and river conditions.

Comments Relating to 33 CFR 165.810(f)

The remaining eight comments addressed paragraph (f)(3)(iii) of the interim rule. Seven of the eight comments proposed that the "Manual Mode" provision should be removed. One comment in particular stressed that the proposed rule—as written—would detrimentally affect the safety of a particular company's operation. It stated that the proposed 33 CFR 165.810 (f)(3)(iii), which requires "[a]utomatic or load limiting main propulsion plant throttle systems [to be] operated in the manual mode with engines available to immediately answer maneuvering commands," will reduce the level of safety presently maintained by the company's vessels. It explained that the company's vessels now use engine control systems designed to be operated from the bridge. The comment also indicated that the control systems could override any of the automatic-stop or load-limiting functions from the bridge, the engine-control room, or the emergency-maneuvering platform on the engine side. Essentially, this comment contended that the company's vessels have the full range of engine speed from all stations. The comment further noted that requiring operation of the engine-control system in the manual mode from the engine-control room removed one engineer from emergency response and that maneuvering in the manual mode put one more human element into the engine-control system. The comment also stated that the company has safety-management practices in place that address the concerns expressed in proposed 33 CFR 165.810(f)(3)(iii). Lastly, this comment recommended that that rule be replaced with 33 CFR 164.13(b), which would apply to all vessels. This rule requires that "[e]ach tanker must have an engineering watch capable of monitoring the propulsion system, communicating with the bridge, and implementing manual control measures immediately when necessary. The watch must be physically present in the machinery spaces or in the main control space and must consist of at least a licensed engineer."

Discussion of Change to "Manual Mode" Provision

The Coast Guard agrees with that portion of the comment that pertains to the concerns that 33 CFR 165.810(f)(3)(iii) could impair the safety of vessels. It is possible that different engineroom configurations could cause confusion as to what precisely "manual mode" entails. For example, one master could interpret manual mode as requiring operation of the main engine from the engine-side throttle control, while another could interpret it as allowing engineroom-watch personnel to operate the main engine from the control booth. This confusion, and the possibility of automatic control systems being placed in jeopardy if main-propulsion throttle-system computer programs are deactivated or placed in a manual override mode in order to achieve a "manual mode" state, warrants further study by the Coast Guard in conjunction with industry. Therefore, the language contained in 33 CFR 165.810(f)(3)(iii) that required "[a]utomatic or load limiting main propulsion plant throttle systems [to be] operated in the manual mode with engines available to immediately answer maneuvering commands," is changed in this rule. Accordingly, 33 CFR 165.810(f)(3)(iii) will now require that main propulsion machinery be available to immediately respond to the full range of maneuvering commands, and that any load-limiting programs or automatic acceleration-limiting programs that would limit the speed of response to engine orders beyond that needed to prevent immediate damage to the propulsion machinery be capable of being overridden immediately.

Discussion of Change to Engineroom Manning

This final rule, like its predecessors, will require that the engineroom be manned at all times while the vessel is under way in the RNA. This manning requirement significantly increases safety by placing qualified eyes and ears in close proximity to the detailed alarms and indicators, the operating machinery, and the machinery controls. This rule does tie at least one engineering watchstander to the engineroom for watch responsibilities, limiting that engineer's availability for response to casualties elsewhere. However, the Coast Guard believes the presence of a licensed engineer in the engineroom, capable of immediate communications with the bridge, is essential to the safety of the vessel and the port. For clarity, 33 CFR 165.810(f)(1) is changed to read: "* * * each vessel must have an engineering watch capable of monitoring the propulsion system, communicating with the bridge, and implementing manual-control measures immediately when necessary. The watch must be physically present in the machinery spaces or in the machinery-control spaces and must consist of at least a licensed engineer."

The Coast Guard considers this change to § 165.810(f)(1) to be within the scope of the language contained in the interim rule for this same section. The requirement for the physical presence of a licensed engineer in the machinery spaces or machinery control spaces is a logical outgrowth of the interim rule's requirement that the "engineroom shall be manned at all times." Moreover, the existing practice in the RNA for self-propelled vessels of 1,600 gross tons or greater is to "man" the engineroom at all times with a licensed engineer. The use of a licensed engineer also adheres to the requirements established under Standard of Training and Certification of Watchstanding (STCW). However, since this change to § 165.810(f)(1) employs terms different from those contained in the interim rule, the Coast Guard will accept comments limited to this particular section of the final rule. If the Coast Guard receives comments that indicate there is a significant impact due to the difference between what was published in the interim rule and what is established in the final rule, it will open an additional comment period for § 165.810(f)(1) only.

Discussion Limiting Rule to Deep-Draft Vessels

The eighth comment noted that the proposed rule, as written, would force towboats and tugboats to comply with the same operational requirements that apply to deep-draft vessels even though the requirements are ill-suited for towing. It noted that the language in the proposed rule does not take into account a recent change to 33 CFR Part 164. In the past, Part 164 applied only to self-propelled vessels of 1,600 or more gross tons. However, the Final Rule on Navigation Safety Equipment for Towing Vessels, published in the July 3, 1996 (61 FR 35064), amended part 164 to include "towing vessels of 12 meters or more in length." As a result of this change, the proposed rule would have the unintended result of requiring towboats and tugboats to comply with requirements that do not apply to their mode of operation. The Coast Guard agrees with this comment. The intent of the proposed rule was that it applies only to vessels of 1,600 gross tons or greater, not to towboats or tugboats. The final rule has been amended to eliminate this unintended result.

Regulatory Evaluation

This final rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not

require an assessment of potential cost and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1997). The Coast Guard expects the economic impact of this rule to be so minimal that full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. The Coast Guard expects this because it did not receive any comments on the expense of implementing this rule. This rule does not require that additional personnel are required aboard each vessel; rather, it requires existing watchstanding personnel to be immediately available to respond to vessel emergencies. This rule establishes additional requirements in order to enhance vessel safety and better protect property within the RNA. This rule did impose additional costs, the Coast Guard believes they would be far outweighed by the safety benefits accrued from the rule. The prevention of another M/V BRIGHT FIELD-type allision would save shoreside businesses, maritime users, and the public in general tens of millions of dollars in potential property damage and personal injury.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard considers the economic impact on small entities of each rule for which a general notice of proposed rulemaking is required. "Small entities" include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. Because this final rule affects deep-draft vessels under way and passenger vessels when passengers are onboard, and because a ferryboat or small passenger vessel may monitor river activities using a portable radio from a vantage point other than the pilothouse, the Coast Guard's position is that this rule will not have a significant economic impact on a substantial number of small entities.

Therefore, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 602 *et seq.*) that this rule will not have a significant economic impact on a substantial number of small entities. If, however, you think that your business or organization qualifies as a small entity and that this rule will have a significant economic impact on your business or organization, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and in what way and to what degree this rule will economically affect it.

Assistance for Small Entities

In accordance with section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), the Coast Guard wants to assist small entities in understanding this final rule so that they can better evaluate its effects on them and participate in the rulemaking process. If your small business or organization is affected by this rule and you have questions concerning its provisions or options for compliance, please contact Mr. M.M. Ledet, Vessel Traffic Management Specialist, at the Eighth Coast Guard District, Marine Safety Division, new Orleans, LA, or by telephone at (504) 589–4686, for assistance.

Collection of Information

This final rule does not provide for a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this final rule under the principles and criteria contained in Executive Order 12612 and has determined that this rule does not have sufficient implications for federalism to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this final rule and concluded that under figure 2–1, paragraph (34)(g) of Commandant Instruction M16475.1B (as revised by 61 FR 13563; March 27, 1996), this rule is categorically excluded from further environmental documentation. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (waters), Reporting and recordkeeping requirements, Safety measures, and Waterways.

In consideration of the foregoing, the Coast Guard amends part 165 of Title 33, Code of Federal Regulations, to read as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191, 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 46 CFR 1.46.

2. In § 165.810, revise paragraphs (e) and (f) to read as follows:

§ 165.810 Mississippi River, LA—regulated navigation area.

* * * * *

(e) Watch requirements for anchored and moored passenger vessels.

(1) *Passenger vessels.* Except as provided in paragraph (e)(2) of this section, each passenger vessel with one or more passengers on board, must—

(i) Keep a continuously manned pilothouse; and

(ii) Monitor river activities and marine VHF, emergency and working frequencies of the port, so as to be immediately available to take necessary action to protect the vessel, crew, and passengers if an emergency radio broadcast, danger signal, or visual or other indication of a problem is received or detected.

(2) Each ferryboat, and each small passenger vessel to which 46 CFR 175.110 applies, may monitor river activities using a portable radio from a vantage point other than the pilothouse.

(f) Each self-propelled vessel of 1,600 or more gross tons subject to 33 CFR part 164 shall also comply with the following:

(1) While under way in the RNA, each vessel must have an engineering watch capable of monitoring the propulsion system, communicating with the bridge, and implementing manual-control measures immediately when necessary. The watch must be physically present in the machinery spaces or in the machinery-control spaces and must consist of at least a licensed engineer.

(2) Before embarking a pilot when entering or getting under way in the RNA, the master of each vessel shall ensure that the vessel is in compliance with 33 CFR part 164.

(3) The master shall ensure that the chief engineer has certified that the following additional operating conditions will be satisfied so long as the vessel is under way within the RNA:

(i) The main propulsion plant is in all respects ready for operations including the main-propulsion air-start systems, fuel systems, lubricating systems, cooling systems, and automation systems;

(ii) Cooling, lubricating, and fuel-oil systems are at proper operating temperatures;

(iii) Main propulsion machinery is available to immediately respond to the full range of maneuvering commands any load-limiting programs or automatic acceleration-limiting programs that

would limit the speed of response to engine orders beyond that needed to prevent immediate damage to the propulsion machinery are capable of being overridden immediately.

(iv) Main-propulsion standby systems are ready to be immediately placed in service.

Dated: March 22, 1999.

Paul J. Pluta,

Rear Admiral, U.S. Coast Guard, Commander, Eighth Coast Guard District.

[FR Doc. 99–9568 Filed 4–15–99; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP Los Angeles-Long Beach, CA, 99–001]

RIN 2115–AA97

Safety Zone; Santa Barbara Channel, CA

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule; request for comments.

SUMMARY: The Coast Guard is extending the effective period of an existing temporary Safety Zone in the navigable waters of the United States around the Stearns Wharf pier complex located in Santa Barbara, California. This safety zone is necessary to ensure the safety of the public during the demolition and reconstruction of the pier and will be in effect from 12 p.m. (PST) on March 31, 1999, to 12 p.m. (PDT) on August 31, 1999. Entry into, transit through, or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port.

EFFECTIVE DATES: This rule is effective from 12 p.m. (PST) on March 31, 1999, until 12 p.m. on August 31, 1999. If the need for this safety zone terminates before August 31, 1999, the Captain of the Port will cease enforcement of this safety zone and will announce that fact by Broadcast Notice to Mariners.

ADDRESSES: Comments should be mailed to Commanding Officer, Coast Guard Marine Safety Office Los Angeles-Long Beach, 165 N. Pico Avenue, Long Beach, CA 90802. Comments received will be available for inspection and copying in the Port Safety Division of Coast Guard Marine Safety Office Los Angeles-Long Beach from 9 a.m. to 4 p.m., Monday through Friday, except federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Rick Sorrell, Marine Safety Detachment Santa Barbara, 111 Harbor Way, Santa Barbara, CA 93109; (805) 962–7430.

SUPPLEMENTARY INFORMATION:

Regulatory Information

In accordance with 5 U.S.C. 553, there is good cause why a notice of proposed rule-making (NPRM0 was not published for this regulation, and good cause exists for making it effective less than 30 days after **Federal Register** publication. Publishing an NPRM and delaying the effective date would be contrary to the public interest since the details concerning the construction of the pier and the completion date were not known until fewer than 30 days before the continuation of the construction.

Although this rule is being published as a temporary final rule without prior notice, an opportunity for public comment is nevertheless desirable to ensure the rule is both reasonable and workable. Accordingly, persons wishing to comment may do so by submitting written comments to the office listed **ADDRESSES** in this preamble. Comments must be received on or before June 15, 1999. Those providing comments should identify the docket number for the regulation (COTP Los Angeles-Long Beach 99–001) and also include their names, addresses, and reason(s) for each comment presented. Based upon the comments received, the regulation may be changed.

The Coast Guard plans no public meeting. Persons may request a public meeting by writing the Marine Safety Office Los Angeles-Long Beach at the address listed in **ADDRESSES** in this preamble.

Discussion of Regulation

A previous temporary final rule was promulgated imposing an identical safety zone from December 9, 1998, through March 31, 1999 (64 FR 8001, February 18, 1999). The Coast Guard has recently been notified that pier demolition and reconstruction will not be completed as originally scheduled. It is thus necessary to extend the effective period of the safety zone through August 31, 1999. An opportunity for public comment was provided for the original temporary final rule; that comment period was due to close on April 19, 1999. Because of the significant extension of the effective period of the safety zone, a new public comment period has been established, extending 60 days from the date of publication.

This safety zone is necessary to safeguard all personnel and property during the extensive repairs and reconstruction of Stearns Wharf. The activities surround the demolition and reconstruction pose a direct threat to the safety of surrounding vessels, persons, and property, and create an imminent navigational hazard. This safety zone is necessary to prevent spectators and recreational and commercial craft from the hazards associated with the reconstruction. Persons and vessel are prohibited from entering into, transiting through, or anchoring within the safety zone unless authorized by the Captain of the Port Los Angeles-Long Beach or a designated representative thereof.

Regulatory Evaluation

This temporary regulation is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. It has been exempted from review by the Office of Management and Budget under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this regulation to be so minimal that a full Regulatory Evaluation under Paragraph 10(e) of the regulatory policies and procedures of the Department of Transportation is unnecessary.

Collection of Information

This regulation contains no collection-of-information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq).*

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq*), the Coast Guard must consider whether this rule will have a significant economic impact on a substantial number of small entities. "Small entities" may include small businesses and not-for-profit organizations that are not dominant in their respective fields, and governmental jurisdictions with populations less than 50,000. For the same reasons set forth in the above Regulatory Evaluation, the Coast Guard certifies under 5 U.S.C. 605(b) that this rule is not expected to have a significant economic impact on any substantial number of entities, regardless of their size.

Assistance for Small Entities

In accordance with § 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), the Coast Guard wants to assist small entities in understanding this rule so that they can better evaluate its effects

on them and participate in the rulemaking process. If your small business or organization is affected by this rule and you have questions concerning its provisions or options for compliance, please call Lieutenant Rick Sorrell, Coast Guard Marine Safety Detachment Santa Barbara, CA, at (805) 962–7430.

Federalism

The Coast Guard has analyzed this regulation under the principles and criteria contained in Executive Order 12612, and has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Assessment

The Coast Guard has considered the environmental impact of this temporary regulation and concluded that under Chapter 2.B.2. of Commandant Instruction M16475.1C, Figure 2–1, paragraph (34(g), it will have no significant environmental impact and it is categorically excluded from further environmental documentation. A Categorical Exclusion Determination and an Environmental Analysis checklist are available for inspection and copying, and the docket is to be maintained at the address listed in **ADDRESSES** in the preamble.

Unfunded Mandates

Under the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), the Coast Guard must consider whether this rule will result in an annual expenditure by State, local and tribal governments, in the aggregate of $100 million (adjusted annual for inflation). If so, the Act requires that a reasonable number of regulatory alternatives be considered, and that from those alternatives, the least costly, most cost-effective, or least burdensome alternative that achieves the objective of the rule be selected.

No State, local, or tribal government entities will be affected by this rule, so this rule will not result in annual or aggregate cost of $100 million or more. Therefore, the Coast Guard is exempt from any further regulatory requirements under the Unfunded Mandates Reform Act.

Other Executive Orders on the Regulatory Process

In addition to the statutes and Executive Orders already addressed in this preamble, the Coast Guard considered the following executive orders in developing this temporary fund rule and reached the following conclusions:

E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights. This rule will not effect a taking a private property or otherwise have taking implications under this Order.

E.O. 12875, Enhancing the Intergovernmental Partnership. This rule will not impose, on any State, local, or tribal government, a mandate that is not required by statute and that is not funded by the Federal government.

E.O. 12988, Civil Justice Reform. This rule meets applicable standards in section 3(a) and 3(b)(2) of this Order to minimize litigation, eliminate ambiguity, and reduce burden.

E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to safety disproportionately affecting children.

List of Subject in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

In consideration of the foregoing, amend Subpart F of Part 165 of Title 33, Code of Federal Regulations, as follows:

PART 165—[AMENDED]

1. The authority citation for 33 CFR Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191;33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46. Section 165.100 is also issued under authority of Sec. 311, Pub. L. 105–383.

2. From 12 p.m. (PST) on March 31, 1999, through 12 p.m. (PDT) on August 31, 1999, a new § 165.T11–062 is added to read as follows:

§ 165.T11–062 Safety Zone: Santa Barbara Channel, CA

(a) *Location.* The following area is established as safety zone: all navigable waters falling within a rectangular box extending 100 feet from the outer limits of all sides and the seaward end of Stearns Wharf, beginning at the seaward end of the wharf and extending back along the wharf 600 feet towards shore. For reference purposes, the seaward end of the wharf is located at 34°24′30″ N, longitude: 119°41′10″ W.

(b) *Regulations.* In accordance with the general regulations in § 165.23 of this part, entry into, transit through, or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port.

(c) *Effective dates.* This section is effective from 12 p.m. (PST) March 31, 1999, through 12 p.m. (PDT) on August 31, 1999. If the need for this safety zone terminates before August 31, 1999, the Captain of the Port will cease enforcement of this safety zone and will announce that fact by Broadcast Notice to Mariners.

Dated March 30, 1999.

G.F. Wright,

Captain, U.S. Coast Guard, Captain of the Port, Los Angeles-Long Beach.

[FR Doc. 99–9567 Filed 4–15–99; 8:45 am]

BILLING CODE 4910–15–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[DE036–1018a; FRL–6325–2]

Approval and Promulgation of Air Quality Implementation Plans; State of Delaware; Withdrawal of Final Rule for Transportation Conformity

AGENCY: Environmental Protection Agency (EPA).

ACTION: Withdrawal of notice of final rulemaking.

SUMMARY: EPA is hereby withdrawing a direct final rule approving Delaware's transportation conformity regulation as a revision to its State Implementation Plan (SIP). EPA published the direct final rule on February 23, 1999 (64 FR 8723). However, on March 2, 1999, the United States Court of Appeals for the District of Columbia Circuit issued its opinion in *Environmental Defense Fund v. Environmental Protection Agency*, No. 97–1637. In that opinion, the Court vacated portions of the federal transportation conformity rule which had been incorporated into Delaware's transportation conformity regulation and which had served as the basis for EPA's evaluation and approval of that regulation. A revised federal transportation conformity rule must be promulgated, and Delaware's regulation amended, to reflect that revised federal rule.

DATES: This withdrawal is made on April 16, 1999.

FOR FURTHER INFORMATION CONTACT: Larry Budney (215) 814–2184, or by e-mail at: budney.larry@.epa.gov.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Nitrogen oxides, Ozone.

Dated: April 2, 1999.
Thomas Voltaggio,
Acting Regional Administrator, Region III.
[FR Doc. 99–9473 Filed 4–15–99; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IL174–1a; FRL–6325–6]

Approval and Promulgation of Implementation Plans; Illinois

AGENCY: United States Environmental Protection Agency (USEPA).
ACTION: Direct final rule.

SUMMARY: On June 29, 1990, USEPA promulgated Federal stationary source volatile organic compound (VOC) control measures representing reasonably available control technology (RACT) for certain emission sources located in six northeastern Illinois (Chicago area) counties. Subject sources included the miscellaneous organic chemical manufacturing processes at the Stepan Company (Stepan) Millsdale Plant manufacturing facility in Elwood, Illinois. At Stepan's request, USEPA agreed to reconsider its rule as it applied to Stepan and on October 1, 1993, proposed a site-specific rule for Stepan. USEPA subsequently approved, as revisions to the Illinois State Implementation Plan, three VOC rules submitted by the Illinois Environmental Protection Agency that are applicable to Stepan's VOC sources. USEPA is today revoking the Federally promulgated rules, as they apply to Stepan, and replacing them with the Illinois rules that have been previously approved and apply to Stepan.

USEPA is taking this action as a "direct final" rulemaking; the rationale for this approach is set forth below. Elsewhere in this **Federal Register**, USEPA is proposing this action and soliciting comment. If adverse written comments or a request for a public hearing are received, USEPA will withdraw the direct final rule and it will not take effect. USEPA will address the comments received in a new final rule. If no adverse comments are received, no further rulemaking will occur on this SIP revision.

DATES: This final rule is effective June 15, 1999, unless written adverse comments or a request for a public hearing are received by May 17, 1999. If adverse comment or a request for a public hearing is received, USEPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public the rule will not take effect.

ADDRESSES: Written comments can be mailed to : J. Elmer Bortzer, Chief, Regulation Development Section, Air Programs Branch (AR–18J), Air and Radiation Division, U. S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois, 60604.

A public hearing may be requested, to be held in Chicago, Illinois. Requests for a hearing should be submitted to J. Elmer Bortzer. Interested persons may call Steven Rosenthal at (312) 886–6052 to see if a hearing will be held and the date and location of the hearing. Any hearing will be strictly limited to the subject matter of this action, the scope of which is discussed below.

FOR FURTHER INFORMATION CONTACT: Steven Rosenthal, Air Programs Branch (AR–18J) at (312) 886–6052.

SUPPLEMENTARY INFORMATION:

I. Background

On June 29, 1990 (55 FR 26814), USEPA promulgated a Federal Implementation Plan (FIP) which contained RACT regulations for stationary sources of VOC located in six northeastern Illinois (Chicago area) counties: Cook, DuPage, Kane, Lake, McHenry, and Will. This FIP included a rule (40 CFR 52.741(w)) requiring, among other things, 81 percent control of Stepan's "miscellaneous organic chemical manufacturing processes." Stepan's chemical manufacturing facility includes a number of batch and continuous process emission sources as well as associated storage tanks.

On August 28, 1990, Stepan filed a petition for review of USEPA's June 29, 1990, rulemaking in the United States Court of Appeals for the Seventh Circuit. By letter of October 22, 1990, Stepan requested that USEPA reconsider its rule as applicable to Stepan, on the basis that USEPA had not adequately responded to certain comments. USEPA agreed to do so.

On July 1, 1991, USEPA issued a three-month administrative stay pending reconsideration of the applicable FIP rules for Stepan. This stay was published on July 23, 1991, (56 FR 33712). On March 3, 1992, (57 FR 7549), USEPA published an extension of the stay, but only if and as long as necessary to complete reconsideration of the subject rules (including any appropriate regulatory action), pursuant to USEPA's authority to revise the Federal rules in Clean Air Act sections 110(c) and 301(a)(1), 42 U.S.C. 7410(c) and 7601(a)(1).

As a result of USEPA's decision to reconsider the federal rules as applied to Stepan, USEPA proposed site-specific RACT requirements for Stepan's Millsdale facility on October 1, 1993 (58 FR 51279). As discussed further below, this proposed rule was not finalized pending USEPA's review of three Illinois rules that would collectively cover those Stepan VOC sources.

On November 30, 1994, the Illinois Environmental Protection Agency (IEPA) submitted to USEPA an adopted rule (35 Ill. Admin. Code Part 218, Subpart B (and related definitions and appendix)) and supporting information for the control of VOC emissions from Volatile Organic Liquid (VOL) storage facilities as a requested SIP revision. This rule is the Illinois RACT rule for the category of emission sources which includes Stepan's VOL storage facilities. On August 8, 1996, USEPA published a direct final rulemaking approving the Illinois VOL storage facilities rule which applies to Stepan's VOL storage facilities.(61 FR 41338). USEPA's approval became effective on October 7, 1996.

On May 23, 1995, and June 7, 1995, IEPA submitted to USEPA an adopted Illinois rule (35 Ill. Admin. Code Parts 218 and 219, Subpart V and related definitions and appendix)) and supporting information for the control of VOC emissions from batch processes as a requested SIP revision. This rule is the Illinois RACT rule for the category of emission sources which includes Stepan's batch processes. On April 2, 1996, USEPA published a direct final rulemaking approving the Illinois batch rule as a revision to the SIP. (61 FR 14,484). USEPA's approval became effective on June 1, 1996.

On May 5, 1995 and May 26, 1995, IEPA submitted to USEPA an adopted rule (35 Ill. Admin. Code Part 218, Subpart Q (and related definitions and appendix)) and supporting information for the control of VOC emissions from continuous reactor and distillation processes as a requested SIP revision. This rule is the Illinois RACT rule for the category of emission sources which includes Stepan's continuous reactor and distillation processes. On June 17, 1997, (62 FR 32694), USEPA published a direct final rulemaking approving the Illinois continuous reactor and distillation processes rule for Stepan's continuous processes, while deferring action on the rule as it applies to other Illinois facilities. USEPA's approval became effective on August 18, 1997.

As stated above, USEPA has approved appropriate RACT rules for all the categories of Stepan's emission sources which would have been covered by 40 CFR 52.741(w) of the FIP (were it not for the appeal and resulting stays). Because

of these SIP approvals, the FIP, as it applies to Stepan, and the site-specific rule that was proposed on October 1, 1993, are no longer necessary.

II. Final Action

Stepan's VOL storage facilities, batch processes and continuous reactor and distillation processes are covered by 35 Ill. Admin. Code Part 218, Subpart B, Subpart V, and Subpart Q, respectively. These rules have been approved into the SIP and represent RACT for VOC. USEPA is therefore revoking the June 29, 1990, FIP as it applies to Stepan and replacing it with Illinois' VOL storage, batch process, and continuous reactor and distillation process rules.

The USEPA is publishing this action without prior proposal because USEPA views this as a noncontroversial revision and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, USEPA is proposing this action should adverse written comments be filed or a request for a hearing be received. This action will become effective without further notice unless the USEPA receives relevant adverse comments or a request for a hearing on this action by May 17, 1999. Should the USEPA request such comments or a request for a hearing, it will withdraw this final rule and publish a document informing the public that this action will not take effect. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective June 15, 1999.

Nothing in this action should be construed as permitting, allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

III. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order (E.O.) 12866, entitled "Regulatory Planning and Review."

B. Executive Order 12875

Under Executive Order 12875, USEPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or USEPA consults with those governments. If USEPA complies by consulting, Executive Order 12875 requires USEPA to provide to the Office of Management and Budget a description of the extent of USEPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires USEPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates." Today's rule does not create a mandate on State, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

C. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be "'economically significant'" as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that USEPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to E.O. 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

D. Executive Order 13084

Under Executive Order 13084, USEPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or USEPA consults with those governments. If USEPA complies by consulting, Executive Order 13084 requires USEPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of USEPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires USEPA to develop an effective process permitting elected officials and other representatives of tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities." Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids USEPA to base its actions concerning SIPs on such grounds. *Union Electric Co.*, versus *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, USEPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal

governments in the aggregate; or to private sector, of $100 million or more. Under Section 205, USEPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires USEPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

USEPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. Paperwork Reduction Act

Under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, OMB must approve all "collections of information" by EPA. The Act defines "collection of information" as a requirement for "answers to * * * identical reporting or recordkeeping requirements imposed on ten or more persons * * *" 44 U.S.C. 3502(3)(A). Because this rulemaking action only applies to one company, the Paperwork Reduction Act does not apply.

H. National Technology Transfer and Advancement Act of 1995 (NTTAA)

Section 12(d) of NTTAA, Pub. L. 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary standards. This rulemaking action does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

I. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 804, however, exempts from section 801 the following types of rules: rules of particular applicability; rules relating to agency management or personnel; and rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties. 5 U.S.C. 804(3). EPA is not required to submit a rule report regarding this rulemaking action under section 801 because this is a rule of particular applicability.

J. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 15, 1999. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Ozone, Reporting and record keeping requirements.

Dated: April 9, 1999.

Carol M. Browner,

Administrator.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart O—Illinois

3. Section 52.726 is amended by adding paragraph (t) to read as follows:

§ 52.726 Control strategy: Ozone.

* * * * *

(t) The Illinois volatile organic compound (VOC) rules that apply to the Stepan Company Millsdale Plant for volatile organic liquid storage (35 Ill. Admin. Code Part 218, Subpart B), batch processing (35 Ill. Admin. Code Parts 218 and 219, Subpart V) and continuous reactor and distillation processes (35 Ill. Admin. Code Part 218, Subpart Q) were approved by the United States Environmental Protection Agency (USEPA) on August 8, 1996, April 2, 1996, and June 17, 1997, respectively. Because these rules have been approved into the State Implementation Plan and represent reasonably available control technology for VOC, USEPA revokes the June 29, 1990 Federal Implementation Plan as it applies to Stepan and replaces it with Illinois' volatile organic liquid storage, batch process, and continuous reactor and distillation process rules.

[FR Doc. 99–9466 Filed 4–15–99; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[PA 114–4085; FRL–6325–5]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Approval of Revision to the 1990 Baseyear Inventory for Rockwell Heavy Vehicles, Inc.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve a revision to the Commonwealth of Pennsylvania State Implementation Plan (SIP) submitted by the Pennsylvania Department of Environmental Protection (PADEP) on April 8, 1998. This revision consists of including the carbon monoxide (CO), volatile organic compounds (VOC) and nitrogen oxides (NO_X) emissions from Rockwell Heavy Vehicles, Inc., New Castle Forge Plant, in Lawrence County (Rockwell) in the point source portion of Pennsylvania's 1990 baseyear emission inventory. The intended effect of this action is to grant approval of the revision to the 1990 baseyear inventory and in so doing to render Rockwell's emissions eligible for consideration as emission reduction credits (ERCs) in accordance with the Pennsylvania SIP.

DATES: This direct final rule is effective on June 15, 1999, without further notice, unless EPA receives adverse comments by May 17, 1999. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Written comments should be addressed to David L. Arnold, Chief, Ozone and Mobile Sources Branch, Mailcode 3AP21, U.S. Environmental

Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460; and Pennsylvania Department of Environmental Protection, Bureau of Air Quality, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Janice M. Lewis, (215) 814–2185, at the EPA Region III address above, or via e-mail at lewis.janice@epa.gov. While information may be requested via e-mail, any comments must be submitted in writing to the EPA Region III address above.

SUPPLEMENTARY INFORMATION:

I. Background

On April 8, 1998, PADEP formally submitted an amendment to its 1990 baseyear emission inventory as a SIP revision. The revision was made to include the CO, VOC and NO_X emitted by Rockwell as part of the point source portion of 1990 baseyear inventory. Previously this source's emissions were included are part of the area source portion of the 1990 baseyear inventory because it is a minor source.

II. Summary of the SIP Revision

Rockwell was a paint coater of motor vehicle parts and was considered an existing minor source for SIP planning purposes. The entire plant shut down on May 31, 1993. Because it was a minor source, Rockwell's 1990 emissions were included in the area source portion of the Pennsylvania 1990 baseyear emission inventory. On April 8, 1998, Pennsylvania requested a SIP revision to transfer Rockwell's 1990 emissions of CO, VOC and NO_X from the area source portion of the SIP-approved 1990 baseyear inventory to the point source portion of that inventory. In so doing PADEP listed Rockwell (by name) as a point source, specified its emissions of CO, VOC and NO_X, and rendered those emissions eligible for consideration as ERCs in accordance with the relevant requirements of the Pennsylvania SIP's new source review permitting program.

This SIP revision is the mechanism chosen by PADEP for EPA to recognize Rockwell's specifically quantified 1990 emissions so they meet the eligibility criteria to be used as ERCs. Under the SIP-approved new source review regulation, emission reductions to be used as ERCs for purposes of satisfying emission offset requirements must be surplus, permanent, quantifiable and both state and federally enforceable. To satisfy these requirements, EPA is approving Pennsylvania's request to include Rockwell and its emissions of CO, VOC and NO_X in the point source portion of the SIP-approved 1990 baseyear inventory. EPA is also recognizing these emissions of CO, VOC and NO_X as eligible for consideration as ERCs.

The CO, VOC and NO_X emissions reductions were generated by the shutdown of the natural gas units and the spray booth at the Rockwell Heavy Vehicles, Inc. The plant wide emissions for 1990 for Rockwell Heavy Vehicles, Inc. were 8.3 tons per year (TPY) of CO, 13.4 TPY of VOC and 64.2 TPY of NO_X. Pennsylvania is requesting that these emissions be included for Rockwell in the point source portion of the SIP-approved 1990 baseyear inventory. The Pennsylvania banking rules (Chapter 127.206 and 127.207) permit the banking of emission reductions as ERCs provided that these reductions meet certain criteria, including being quantifiable, permanent, surplus and enforceable. Approval of this SIP revision for Rockwell renders the emission reductions generated by the shutdown of the facility eligible as ERCs under the Pennsylvania SIP. Additional details of the determination may be found in PADEP's submittal and the technical support document (TSD) prepared to support this rulemaking. Copies of these materials are available, upon request, from the EPA Regional office listed in the **ADDRESSES** section of this document.

EPA is approving the revision to the SIP-approved 1990 baseyear emission inventory to include Rockwell Heavy Vehicle, Inc. as a point source and is recognizing its emissions of CO, VOC and NO_X generated by the 1993 shutdown of the facility as being eligible for consideration as ERCs under the Pennsylvania SIP.

EPA is publishing this SIP revision without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the "Proposed Rules" section of today's **Federal Register**, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should adverse comments be filed. This SIP revision will be effective June 15, 1999, without further notice unless the Agency receives adverse comments by May 17, 1999. If EPA receives such comments, then EPA will publish a timely withdrawal in the **Federal Register** informing the public that the action did not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Parties interested in commenting on this action should do so at this time.

III. Final Action

EPA is approving the revision to the SIP-approved 1990 baseyear emission inventory to include Rockwell Heavy Vehicle, Inc. as a point source, submitted by the Commonwealth of Pennsylvania on April 8, 1998. In so doing EPA is recognizing the emission reductions of CO, NO_X and VOCs generated by the 1993 shutdown of the facility as eligible ERCs under the Pennsylvania SIP.

IV. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from review under E.O. 12866, entitled "Regulatory Planning and Review."

B. Executive Order 12875

Under E.O. 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If EPA complies by consulting, E.O. requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected state, local, and tribal governments, the nature of their concerns, copies of written communications from the governments, and a statement supporting the need to issue the regulation. In addition, E.O. 12875 requires EPA to develop an effective process permitting elected officials and other representatives of state, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates." Today's rule does not create a mandate on state, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

C. Executive Order 13045

E.O. 13045, entitled "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), applies to any rule that the EPA determines (1) is "economically significant," as defined under E.O. 12866, and (2) the environmental health or safety risk addressed by the rule has a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This final rule is not subject to E.O. 13045 because it is not an economically significant regulatory action as defined by E.O. 12866, and it does not address an environmental health or safety risk that would have a disproportionate effect on children.

D. Executive Order 13084

Under E.O. 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities." Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because conditional approvals of SIP submittals under section 110 and subchapter I, part D of the CAA do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final regulation that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action proposed does not include a federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 804, however, exempts from section 801 the following types of rules: rules of particular applicability; rules relating to agency management or personnel; and rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties. 5 U.S.C. 804(3). EPA is not required to submit a rule report regarding today's action under section 801 because this is a rule of particular applicability that affects only the Rockwell Heavy Vehicles, Inc., New Castle Forge Plant located in Lawrence County, Pennsylvania.

H. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action to approve the 1990 baseyear emission inventory for Rockwell Heavy Vehicle, Inc. submitted by DEP must be filed in the United States Court of Appeals for the appropriate circuit by June 15, 1999. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action to approve the 1990 base year emission inventory for Rockwell Heavy Vehicle, Inc. may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Ozone.

Dated: April 5, 1999.

Thomas C. Voltaggio,

Acting Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart NN—Pennsylvania

2. Section 52.2036 is amended by adding paragraph (k) to read as follows:

§ 52.2036 1990 Baseyear emission inventory .

* * * * *

(k) Rockwell Heavy Vehicle, Inc., New Castle Forge Plant, Lawrence County—On April 8, 1998 the Pennsylvania Department of Environmental Protection requested that EPA include the CO, VOC and NO_X emissions from this facility in the 1990 base year emission inventory. The CO, VOC and NO_X emissions from the natural gas units and the spray booth of this facility are hereby approved as part of the 1990 point source inventory. The 1990 CO, VOC and NO_X emissions from the natural gas units are 8.3 TPY, 1.2 TPY and 64.2 TPY, respectively. The 1990 VOC emissions from the spray booth is 12.1 TPY.

[FR Doc. 99–9464 Filed 4–15–99; 8:45 am]
BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[PA129–4083a; FRL–6323–6]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Approval of VOC RACT Determinations for Individual Sources

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the Pennsylvania state implementation plan (SIP). The revisions impose reasonably available control technology (RACT) to reduce volatile organic compounds (VOC) emissions from six (6) major sources located in Pennsylvania. EPA is approving these revisions to establish RACT requirements in accordance with the Clean Air Act.

DATES: This rule is effective on June 15, 1999 without further notice, unless EPA receives adverse written comment by May 17, 1999. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Comments may be mailed to Kathleen Henry, Air Protection Division, Mailcode 3AP11, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460; Pennsylvania Department of Environmental Protection, Bureau of Air Quality Control, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Linda Miller, (215) 814–2068, at the EPA Region III office or via e-mail at miller.linda@.epa.gov. While information may be requested via e-mail, any comments must be submitted in writing to the above Region III address.

SUPPLEMENTARY INFORMATION:

I. Background

On December 8, 1995, October 18, 1996, July 24, 1998 and October 2, 1998, the Pennsylvania Department of Environmental Protection (PADEP) submitted formal revisions to its state implementation plan (SIP). Each submittal consisted of source-specific operating permits imposing RACT on individual sources. Each source covered by this rulemaking will be specifically identified and discussed below. Any additional operating permits for other individual sources submitted coincidentally with those being addressed in this document will addressed in a separate rulemaking action.

Pursuant to sections 182(b)(2) and 182(f) of the Clean Air Act (CAA), Pennsylvania is required to implement RACT for all major VOC and nitrogen oxides (NO_X) sources. The major source size is determined by its location, the classification of that area and whether it is located in the ozone transport region (OTR), which is established by the CAA. The entire State of Pennsylvania is located in the OTR. The Pennsylvania portion of the Philadelphia ozone nonattainment area consists of Bucks, Chester, Delaware, Montgomery, and Philadelphia Counties and is classified as severe. The remaining counties in Pennsylvania are classified as moderate or marginal nonattainment areas, were previously classified as marginal but are now areas where the one-hour ozone standard no longer applies, or are designated attainment for ozone. However, under section 184 of the CAA, at a minimum, moderate ozone nonattainment area requirements (including RACT as specified in sections 182(b)(2) and 182(f)) apply throughout the OTR. Therefore, RACT is applicable statewide in Pennsylvania. The Pennsylvania submittals that are the subject of this document are meant to satisfy the RACT requirements to reduce VOC emissions from six (6) sources in Pennsylvania.

II. Summary of SIP Revision

The details of the RACT requirements imposed in each of the source-specific operating permits can be found in the state submittals and in the accompanying technical support document (TSD) prepared by EPA to support of this rulemaking action. Copies of the TSD are available, upon request, from the EPA Regional Office listed in the **ADDRESSES** section of this document. Briefly, EPA is approving revisions to the Pennsylvania SIP pertaining to the determination of RACT for six (6) major sources of VOC. Several of the operating permits contain conditions irrelevant to the determination and imposition of RACT. Consequently, those provisions of the operating permits were not considered part of PADEP's SIP revision request to approve RACT for these six (6) sources.

The following table identifies the individual operating permits EPA is approving. The specific emission limitations and other RACT requirements for these sources are summarized in the accompanying TSD prepared by EPA to support this rulemaking. As previously stated copies of the TSD are available, upon request, from the EPA Regional Office listed in the **ADDRESSES** section of this document.

PENNSYLVANIA—VOC AND NO_X RACT DETERMINATIONS FOR INDIVIDUAL SOURCES

Source	County	Plan Approval (PA#), Operating Perment (OP#), Compliance Permit (CP #)	Source type	"Major source" pollutant
GKN Sinter Metals	Cameron	OP 12–0002	Powdered metal parts manufacturing.	VOC
Springs Window Fashions Div., Inc.	Lycoming	OP 41–0014	Surface coating	VOC
Cabinet Industries, Inc.	Montour	OP 47–0005	Surface coating	VOC
Centennial Printing Corporation	Montgomery	OP 46–0068	Graphic arts	VOC
Strick Corporation	Montour	OP 47–0002	Surface coating	VOC
Handy and Harmon Tube Company	Montgomery	OP 46–0016	Tube manufacturing	VOC

EPA is publishing this rule without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comment. However, in the "Proposed Rules" section of today's **Federal Register**, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This rule will be effective on June 15, 1999 without further notice unless we receive adverse comment by May 17, 1999. If EPA receives adverse comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

III. Final Action

EPA is approving six (6) source-specific operating permits imposing RACT to reduce VOC emissions from GKN Sinter Metals, Inc. (Cameron County), Springs Window Fashions Division, Inc. (Lycoming County), Cabinet Industries Inc. (Montour County), Centennial Printing Corp., Strick Corporation (Montour County), and Handy and Harmon Tubing Co. (Montgomery County).

IV. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from review under E.O. 12866, entitled "Regulatory Planning and Review."

B. Executive Order 12875

Under E.O. 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If EPA complies by consulting, E.O. 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected state, local, and tribal governments, the nature of their concerns, copies of written communications from the governments, and a statement supporting the need to issue the regulation. In addition, E.O. 12875 requires EPA to develop an effective process permitting elected officials and other representatives of state, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates." Today's rule does not create a mandate on state, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

C. Executive Order 13045

Executive Order 13045, entitled "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), applies to any rule that the EPA determines (1) is "economically significant," as defined under Executive Order 12866, and (2) the environmental health or safety risk addressed by the rule has a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This final rule is not subject to Executive Order 13045 because it is not an economically significant regulatory action as defined by Executive Order 12866, and it does not address an environmental health or safety risk that would have a disproportionate effect on children.

D. Executive Order 13084

Under E.O. 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If EPA complies by consulting, E.O. 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, E.O. 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities." Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and

small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 804, however, exempts from section 801 the following types of rules: rules of particular applicability; rules relating to agency management or personnel; and rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties. 5 U.S.C. 804(3). EPA is not required to submit a rule report regarding today's action under section 801 because this is a rule of particular applicability approving six source-specific operating permits which impose RACT to reduce VOC from GKN Sinter Metals, Inc. (Cameron County), Springs Window Fashions Division, Inc. (Lycoming County), Cabinet Industries Inc. (Montour County), Centennial Printing Corp., Strick Corporation (Montour County), and Handy and Harmon Tubing Co. (Montgomery County).

H. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action to approve the RACT determinations to reduce VOC from GKN Sinter Metals, Inc. (Cameron County), Springs Window Fashions Division, Inc. (Lycoming County), Cabinet Industries Inc. (Montour County), Centennial Printing Corp., Strick Corporation (Montour County), and Handy and Harmon Tubing Co. (Montgomery County) must be filed in the United States Court of Appeals for the appropriate circuit by June 15, 1999. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action to approve VOC RACT determinations for six individual sources in Pennsylvania as a revision to the Commonwealth's SIP may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Dated: April 5, 1999.

Thomas Voltaggio,

Acting Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart NN—Pennsylvania

2. Section 52.2020 is amended by adding paragraph (c)(138) to read as follows:

§ 52.2020 Identification of plan.

* * * * *

(c) * * *

(138) Revisions to the Pennsylvania Regulations, Chapter 129.91 pertaining to VOC RACT, submitted on December 8, 1995, September 13, 1996, October 18, 1996, July 24, 1998, and October 2, 1998 by the Pennsylvania Department of Environmental Protection.

(i) Incorporation by reference.

(A) Five (5) letters submitted by the Pennsylvania Department of Environmental Protection transmitting source-specific VOC determinations in the form of operating permits on the following dates: December 8, 1995, September 13, 1996, October 18, 1996, July 24, 1998, and October 2, 1998.

(B) Operating permits (OP):

(*1*) GKN Sinter Metals, Inc. (Cameron County), OP–12–0002, effective September 30, 1998, except for the expiration date and conditions Nos. 14–20 relating to non-RACT provisions.

(*2*) Springs Window Fashions Division, Inc. (Lycoming County), OP–41–0014, effective September 29, 1998, except for the expiration date and conditions Nos. 9–10 relating to non-RACT provisions.

(*3*) Cabinet Industries, Inc. (Montour County), OP–47–0005, effective September 21, 1998, except for the expiration date and conditions Nos. 5–8 relating to non-RACT provisions.

(*4*) Centennial Printing Corp. (Montgomery County), OP–46–0068, effective October 31, 1996, as revised on May 11, 1998 except for the expiration date and conditions Nos. 13–15 and 17–20 pertaining to non-RACT provisions.

(*5*) Strick Corporation (Montour County), OP–47–0002, effective August 28, 1996, except for the expiration date and conditions Nos. 10–11 and 21–22 relating to non-RACT provisions.

(*6*) Handy and Harmon Tube Co. (Montgomery County), OP–46–0016 effective September 25, 1995, except for the expiration dates and conditions No. 11 relating to non-RACT provisions.

(ii) Additional Materials—Remainder of the Commonwealth of Pennsylvania's September 13, 1996, December 18, 1996, October 18, 1996, July 24, 1998 and October 2, 1998 submittals pertaining to

the VOC RACT requirements for GKN Sinter Metals, Inc. (Cameron County), Springs Window Fashions Division, Inc. (Lycoming County), Cabinet Industries Inc. (Montour County), Centennial Printing Corp., Strick Corporation (Montour County), and Handy and Harmon Tubing Co. (Montgomery County).

[FR Doc. 99–9462 Filed 4–15–99; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[AD–FRL–6326–4]

RIN 2060–A128

Hazardous Air Pollutants: Amendment to Regulations Governing Equivalent Emission Limitations by Permit

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: On May 20, 1994, the Agency promulgated a rule in the **Federal Register** governing the establishment of equivalent emission limitations by permit, pursuant to section 112(j) of the Clean Air Act (Act). After the effective date of a Title V permit program in a State, each owner or operator of a major source in a source category for which the EPA was scheduled, but failed, to promulgate a section 112(d) emission standard will be required to obtain an equivalent emission limitation by permit. The permit application must be submitted to the Title V permitting authority 18 months after the EPA's missed promulgation date. This action amends the Regulations Governing Equivalent Emission Limitations by Permit rule. This amendment delays the section 112(j) permit application deadline for 7-year source categories listed in the regulatory schedule until December 15, 1999. This action is needed to alleviate unnecessary paperwork for both major source owners or operators and permitting agencies.

DATES: This final rule amendment will be effective on May 17, 1999 without further notice, unless EPA receives adverse comments on this rulemaking by April 26, 1999 or a request for a hearing concerning the accompanying proposed rule is received by EPA by April 23, 1999. If EPA receives timely adverse comment or a timely hearing request, EPA will publish a withdrawal in the **Federal Register** informing the public that this direct final rule will not take effect and will proceed to promulgate a final rule based on the proposed rule.

ADDRESSES: *Comments.* Interested parties may submit comments on this rulemaking in writing (original and two copies, if possible) to Docket No. A–93–32 to the following address: Air and Radiation Docket and Information Center (6102), US Environmental Protection Agency, 401 M Street, S.W., Room 1500, Washington, D.C. 20460. The EPA requests that a separate copy of each public comment be sent to the contact person listed below (see **FOR FURTHER INFORMATION CONTACT**). Comments may also be submitted electronically by following the instructions provided in **SUPPLEMENTARY INFORMATION.** Public comments on this rulemaking will be accepted until April 26, 1999.

Docket. All information used in the development of this final action is contained in the preamble below. However, Docket No. A–93–32, containing the supporting information for the original Regulations Governing Equivalent Emission Limitations by Permit rule is available for public inspection and copying between 8:00 a.m. and 5:30 p.m., Monday through Friday at the Air and Radiation Docket and Information Center (6102), Room M–1500, U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460; telephone (202) 260–7548, fax (202) 260–4000. A reasonable fee may be charged for copying.

Radiation Docket and Information Center (see **ADDRESSES**).

These documents can also be accessed through the EPA web site at: http://www.epa.gov/ttn/oarpg. For further information and general questions regarding the Technology Transfer Network (TTNWEB), call Mr. Hersch Rorex (919) 541–5637 or Mr. Phil Dickerson (919) 541–4814.

FOR FURTHER INFORMATION CONTACT: Mr. James Szykman or Mr. David Markwordt, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone (919) 541–2452 (Szykman) or (919) 541–0837 (Markwordt).

SUPPLEMENTARY INFORMATION: EPA is publishing this rule amendment without prior proposal because we consider this to be a noncontroversial amendment; and we do not expect to receive any adverse comment. However, in the "Proposed Rules" section of this **Federal Register** publication, we are publishing a separate document that will serve as the proposal for this amendment, in the event we receive adverse comment or a hearing request and this direct final rule is subsequently withdrawn. This final rule amendment will be effective on May 17, 1999 without further notice, unless we receive adverse comment on this rulemaking by April 26, 1999 or a request for a hearing concerning the accompanying proposed rule is received by EPA by April 23, 1999. If EPA receives timely adverse comment or a timely hearing request, we will publish a withdrawal in the **Federal Register** informing the public that this direct final rule will not take effect. In that event, we will address all public comments in a subsequent final rule, based on the proposed rule amendment published in the "Proposed Rules" section of this **Federal Register** document. The EPA will not provide further opportunity for public comment on this action. Any parties interested in commenting on this amendment must do so at this time.

Electronic comments and data may be submitted by sending electronic mail (e-mail) to: a-and-r-docket@epamail.epa.gov. Submit comments as an ASCII file, avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on diskette in Word Perfect 5.1 or 6.1 or ACSII file format. Identify all comments and data in electronic form by the docket numbers A–93–22. No Confidential Business Information (CBI) should be submitted through electronic mail. Electronic comments may be filed online at many Federal Depository Libraries.

Outline. The information presented in this preamble is organized as follows:

I. What are section 112(j) permit application deadlines?
II. Why does EPA want to delay the section 112(j) permit application deadline?
III. Under what legal authority can EPA delay the existing deadline dates?
IV. What are the requirements to review this action in Court?
V. Administrative Requirements
A. Docket
B. Paperwork Reduction Act
C. E.O. 12866: The Unfunded Mandates Reform Act of 1995, the Regulatory Flexibility Act, and the Small Business Regulatory Enforcement Fairness Act of 1996
D. National Technology Transfer and Advancement Act
E. E.O. 13045: Protection of Children from Environmental Health and Safety Risks
F. E.O. 13084: Consultation and Coordination with Indian Tribal Governments
G. E.O. 12875: Enhancing the Intergovernmental Partnership
H. Submission to Congress and the Comptroller General

I. What Are Section 112(j) Permit Application Deadlines?

Section 112(e) of the Clean Air Act (the Act) requires the Agency to publish a schedule for promulgating regulations establishing hazardous air pollutants (HAP) emission standards for all source categories listed pursuant to section 112 of the Act. The Act further directs that this regulatory schedule require the promulgation of emission standards for at least 40 source categories by 1992, for at least 25 percent of the listed categories by 1994, for at least 50 percent of the listed categories by 1997, and all remaining categories by the year 2000. These are commonly referred to as the 2-year, 4-year, 7-year, and the 10-year maximum achievable control technology (MACT) standards, respectively. This regulatory schedule was published by EPA on December 3, 1993 (58 FR 64931).

If EPA should fail to promulgate a MACT standard for a listed source category by the statutory deadline established pursuant to section 112(e)of the Act, section 112(j) of the Act requires owners or operators of major sources within that source category to apply for a case-by-case emission standard via a Title V permit. This permit will require compliance with an emission limitation equivalent to that which the major source would have been subject to had EPA promulgated a timely MACT standard for that source category.

On May 20, 1994, EPA issued a final rule for implementing section 112(j) (59 FR 26429). This rule requires major source owners or operators to submit a permit application by the date 18 months after a missed date on the regulatory schedule. In accordance with this regulation, the deadline for submittal of permit applications for 7-year rules not promulgated in accordance with the source category schedule is currently May 15, 1999.

II. Why Does EPA Want To Delay the Section 112(j) Permit Application Deadline?

To date, EPA has promulgated several 7-year MACT standards and intends to promulgate MACT standards for all of the remaining 7-year source categories according to the following schedule, which has been incorporated in a proposed consent decree filed with the U.S. District Court for the District of Columbia:

Promulgation required by May 15, 1999:

1. Hydrogen fluoride production;
2. Primary lead smelting;
3. Ferroalloys production;
4. Steel pickling—HCl process;
5. Oil and natural gas production;
6. Butadiene-furfural cotrimer (R–11) production;
7. 4-chloro-2-methyl phenoxyacetic acid production;
8. 2,4-D salts and esters production;
9. 4,6-dinitro-o-cresol production;
10. Captafol production;
11. Captan production;
12. Chloroneb production;
13. Chlorothalonil production;
14. Dacthal (tm) production;
15. Sodium pentachlorophenate production;
16. Tordon (tm) acid production;
17. Acrylic fibers/modacrylic fibers production;
18. Acetal resins production;
19. Mineral wool production;
20. Portland cement manufacturing;
21. Wool fiberglass manufacturing;
22. Polycarbonates production;
23. Polyether polyols production;
24. Phosphate fertilizer production; and
25. Phosphoric acid manufacturing.

Promulgation required by October 15, 1999: publicly owned treatment works

Promulgation required by December 15, 1999:

1. amino resins production;
2. phenolic resins production; and
3. secondary aluminum production.

Promulgation required by December 15, 2000: pulp and paper (combustion)

In the case of those 7-year emission standards where promulgation will be required by May 15, 1999, owners or operators of major sources subject to these standards would currently be compelled to submit a permit application on the same date, even though such an application could serve no purpose whatsoever in the event that EPA promulgates the standard according to the court-ordered schedule. Since potential applicants cannot know for certain that EPA will adhere to this schedule, they would have to run the risk of potential non-compliance or begin preparation of these applications immediately. This situation will clearly result in an unnecessary burden for both the owners or operators and the Title V permitting agencies.

There are a small number of 7-year emission standards where the proposed consent decree does not require promulgation of the standard until a date which is after May 15, 1999. Since the standards in question are not expected to be promulgated by the current application deadline of May 15, 1999, it could be argued that potential applicants are already on notice that a section 112(j) permit application will be required. However, EPA believes it is inappropriate to extend the application deadline for some potential applicants and not for others. Moreover, since every 7-year emission standard except for one is expected to be promulgated by December 15, 1999, it is doubtful whether any permit application for a major source subject to these standards submitted on May 15, 1999 would or could be acted upon by the permitting authority prior to the promulgation of the standard in question.

For all of the above reasons, EPA has concluded that it is both necessary and appropriate to extend the section 112(j) permit application deadline for major sources subject to 7-year emission standards until December 15, 1999.

III. Under What Legal Authority Can EPA Delay The Existing Deadline Dates?

The EPA believes that ample authority for this rule revision exists under the de minimis doctrine. That doctrine allows EPA to promulgate a rule that avoids a statutory requirement if (1) following that requirement would yield an environmental benefit of trivial or no value, and (2) the statutory scheme is not so rigid as to preclude this result. *Alabama Power Co.* v. *Costle*, 636 F.2d 323, 360–61 (D.C. Cir 1979). The EPA believes both tests are met here.

Regarding the first point, it should be intuitively apparent that requiring sources to complete applications for a case-by-case determination is pointless when it is very likely that EPA will promulgate the MACT standard within a timeframe that renders the entire case-by-case exercise moot. This is precisely the case with regard to almost all of the pending 7-year MACT standards, which will be subject to court-ordered deadlines requiring issuance on or shortly after the date applications are currently due. Regarding the second test, the language of section 112(j)(2), requiring that applications be submitted on a date "beginning" 18 months after a deadline has been missed, and the clear intent of the statute that case-by-case determinations should be made where they will serve as a substitute for the pending MACT standard, together suggest a level of flexibility in the statutory scheme sufficient to allow resort to the *de minimis* rationale.

The EPA is amending the definition of "section 112(j) deadline" in § 63.51 of the final rule to delay the section 112(j) permit application deadline for all 7-year source categories until December 15, 1999. The EPA believes that this new application deadline will allow sufficient time to promulgate all but one of the remaining 7-year emission standards before applications are due

and is consistent with the intent of section 112(j).

IV. What Are The Requirements To Review This Action In Court?

Under section 307(b)(1) of the Act, judicial review of this final rule is available only by the filing of a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit by June 15, 1999. Any such judicial review is limited to only those objections which are raised with reasonable specificity in timely comments. Under section 307(b)(2) of the Act, the requirements that are the subject of this final rule may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

V. Administrative Requirements

A. Docket

The docket for this regulatory action is A–93–32, the same docket as the original final rule, and a copy of today's amendment to the final rule will be included in the docket. The principle purposes of the docket are: (1) to allow interested parties a means to identify and locate documents so that they can effectively participate in the rulemaking process; and (2) to serve as the record in case of judicial review (except for interagency review materials) (section 307(d)(7)(A) of the Act). The docket is available for public inspection at the EPA's Air and Radiation Docket and Information Center, the location of which is given in the **ADDRESSES** section of this document.

B. Paperwork Reduction Act

The information collection requirements in this rule will be submitted for approval to the Office of Management and Budget (OMB) under the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.* An Information Collection Request (ICR) document will be prepared by EPA (ICR No. 1648.02) and a copy will be available from Sandy Farmer by mail at OP Regulatory Information Division; U.S. Environmental Protection Agency (2137); 401 M St., S.W.; Washington, DC 20460, by email at farmer.sandy@epamail.epa.gov, or by calling (202) 260–2740. A copy may also be downloaded off the internet at http://www.epa.gov/icr. The information requirements are not effective until OMB approves them.

Section 112(j) of the Clean Air Act as amended in 1990 (CAAA) requires a source to submit a permit application if EPA fails to promulgate a MACT standard for a category of subcategory of major sources on schedule. The permit application is used by the permitting to issue permits containing maximum achievable control technology (MACT) emission limitation on a case-by-case (source-by-source) basis, equivalent to what would have been promulgated by EPA. The requirement to submit the permit application is not voluntary. Section 112(j) of the CAAA contains the need and authority for this information collection. [42 U.S.C. 7401 (*et. seq.*) as amended by Pub. L. 101–549]. Any information submitted to a permitting authority with a claim of confidentiality is to be safeguarded according to policies in 40 CFR Chapter 1, Part 2, Subpart B—Confidentiality of Business Information.

The total estimated burden, which includes all activities associated with the respondents or government agencies, is $1,323,000 and 46,339 hours. This collection of information has an estimated reporting burden of 171 hours per respondent and 140 hours per permitting agency. The permit application is a one time occurrence along with the issuance of the permit by the permitting agency. This estimated cost per respondent is $4,600 and $4,300 per permitting agency.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15.

C. Under E.O. 12866: The Unfunded Mandates Reform Act of 1995, the Regulatory Flexibility Act, and the Small Business Regulatory Enforcement Fairness Act of 1996

Because the regulatory revisions that are the subject of today's document would delay an existing requirement, this action is not a "significant" regulatory action within the meaning of Executive Order 12866, and does not impose any Federal mandate on State, local and tribal governments or the private sector within the meaning of the Unfunded Mandates Reform Act of 1995. Further, the EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this action under the Regulatory Flexibility Act and the Small Business Regulatory Enforcement Fairness Act of 1996. The regulatory change proposed here is expected to reduce regulatory burdens on small businesses, and will not have a significant impact on a substantial number of small entities.

D. National Technology Transfer and Advancement Act

Under section 12 of the National Technology Transfer and Advancement Act of 1995, the EPA must consider the use of "voluntary consensus standards," if available and applicable, when implementing policies and programs, unless it would be "inconsistent with applicable law or otherwise impractical." The intent of the National Technology Transfer and Advancement Act is to reduce the costs to the private and public sectors by requiring federal agencies to draw upon any existing, suitable technical standards used in commerce or industry.

A "voluntary consensus standard" is a technical standard developed or adopted by a legitimate standards-developing organization. The Act defines "technical standards" as "performance-based or design-specific technical specifications and related management systems practices." A legitimate standards-developing organization must produce standards by consensus and observe principles of due process, openness, and balance of interests. Examples of organizations that are regarded as legitimate standards-developing organizations include the American Society for Testing and Materials (ASTM), International Organization for Standardization (ISO), International Electrotechnical Commission (IEC), American Petroleum Institute (API), National Fire Protection Association (NFPA) and Society of Automotive Engineers (SAE).

Since today's action does not involve the establishment or modification of technical standards, the requirements of the National Technology Transfer and Advancement Act do not apply.

E. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that (1) OMB determines is "economically significant" as defined under Executive Order 12866, and (2) EPA determines the environmental health or safety risk addressed by the rule has a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety aspects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

These regulatory revisions are not subject to the Executive Order because it is not economically significant as defined in E.O. 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children.

F. Executive Order 13084: Consultation and Coordination With Indian Tribal Governments

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. These rule revisions impose no enforceable duties on these entities. Rather, these rule revisions reduce burdens associated with certain regulatory requirements. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

G. Executive Order 12875: Enhancing the Intergovernmental Partnership

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's rule changes do not create a mandate on State, local or tribal governments. The rule changes do not impose any enforceable duties on these entities. Rather, the rule changes reduce burden for certain regulatory requirements. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

H. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 63

Environmental protection, Administrative practices and procedures, Air pollution control, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: April 12, 1999.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, 40 CFR Part 63 is amended as follows:

PART 63—[AMENDED]

1. The authority citation for part 63 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

2. In § 63.51, the definition of *"Section 112(j) deadline"* is revised to read as follows:

§ 63.51 Definitions.

* * * * *

Section 112(j) deadline means the date 18 months after the date by which a relevant standard is scheduled to be promulgated under this part, except that for all major sources listed in the source category schedule for which a relevant standard is scheduled to be promulgated by November 15, 1994, the Section 112(j) deadline is November 15, 1996, and for all major sources listed in the source category schedule for which a relevant standard is scheduled to be promulgated by November 15, 1997, the Section 112(j) deadline is December 15, 1999.

* * * * *

[FR Doc. 99–9571 Filed 4–15–99; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF DEFENSE

48 CFR Part 231

[DFARS Case 98–D019]

Defense Federal Acquisition Regulation Supplement; Restructuring Savings Repricing Clause

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: The Director of Defense Procurement has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to specify that contracting officers should consider using a repricing clause in noncompetitive fixed-price contracts that are negotiated during the period between the time a business combination is announced and

the time the contractor's forward pricing rates are adjusted to reflect the impact of restructuring.

EFFECTIVE DATE: April 16, 1999.

FOR FURTHER INFORMATION CONTACT: Ms. Sandra Haberlin, Defense Acquisition Regulations Council, PDUSD (A&T) DP (DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–0131; telefax (703) 602–0350. Please cite DFARS Case 98–D019.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule amends DFARS 231.205–70, External restructuring costs, to specify that contracting officers should consider including a downward-only repricing clause in noncompetitive fixed-price contracts that are negotiated during the period between the time a business combination is announced and the time the contractor's forward pricing rates are adjusted to reflect the impact of restructuring.

Since the late 1980's, defense contractors have been restructuring their business operations to increase efficiencies and become more competitive in the defense marketplace. Many of the restructuring activities result from business combinations (such as mergers or acquisitions) and often lead to reduced overall costs and future savings. The repricing clause should ensure that DoD receives its appropriate share of restructuring savings.

A proposed DFARS rule was published in the **Federal Register** on November 30, 1998 (63 FR 65727). Nine sources submitted comments in response to the proposed rule. All comments were considered in the development of the final rule.

B. Regulatory Flexibility Act

DoD certifies that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because most contracts awarded to small entities use simplified acquisition procedures or are awarded on a competitive fixed-price basis, and do not require application of the cost principle contained in this rule.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 231

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR Part 231 is amended as follows:

1. The authority citation for 48 CFR Part 231 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 231—CONTRACT COST PRINCIPLES AND PROCEDURES

2. Section 231.205–70 is amended by adding paragraph (f) to read as follows:

§ 231.205–70 External restructuring costs.

* * * * *

(f) *Contracting officer responsibilities.* (1) The contracting officer, in consultation with the cognizant ACO, should consider including a repricing clause in noncompetitive fixed-price contracts that are negotiated during the period between—

(i) The time a business combination is announced; and

(ii) The time the contractor's forward pricing rates are adjusted to reflect the impact of restructuring.

(2) The decision to use a repricing clause will depend upon the particular circumstances involved, including—

(i) When the restructuring will take place;

(ii) When restructuring savings will begin to be realized;

(iii) The contract performance period;

(iv) Whether the contracting parties are able to make a reasonable estimate of the impact of restructuring on the contract; and

(v) The size of the potential dollar impact of restructuring on the contract.

(3) If the contracting officer decides to use a repricing clause, the clause must provide for a downward-only price adjustment to ensure that DoD receives its appropriate share of restructuring net savings.

[FR Doc. 99–9559 Filed 4–15–99; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

48 CFR Parts 232 and 252

[DFARS Case 98–D012]

Defense Federal Acquisition Regulation Supplement; Electronic Funds Transfer

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: The Director of Defense Procurement has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to remove policy and procedures for use of the electronic funds transfer (EFT) method of contract payment when the payment office uses the Central Contractor Registration (CCR) database as its source of EFT information. The DFARS policy and procedures are no longer necessary, as a result of changes made to the Federal Acquisition Regulation (FAR) in Item IV of Federal Acquisition Circular 97–11.

EFFECTIVE DATE: May 3, 1999.

FOR FURTHER INFORMATION CONTACT: Ms. Sandra Haberlin, Defense Acquisition Regulations Council, PDUSD(A&T)DP(DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–0131; telefax (703) 602–0350. Please cite DFARS Case 98–D012.

SUPPLEMENTARY INFORMATION:

A. Background

An interim DFARS rule was published in the **Federal Register** on May 20, 1998 (63 FR 27682). The rule prescribed use of a new clause at DFARS 252.232–7009, Payment by Electronic Funds Transfer (CCR). This clause was especially tailored for DoD contractors that are paid by EFT and registered in the CCR database as required by DFARS Subpart 204.73. No public comments were received in response to the interim DFARS rule.

Subsequently, on March 4, 1999, a final FAR rule was published in the **Federal Register** (64 FR 10538). The rule amends the FAR, effective May 3, 1999, to provide policy and procedures for making contract financing and delivery payments to contractors by EFT. To accommodate the DoD requirement for contractors to register into a CCR database, the rule prescribes a new clause at FAR 52.232–33, Payment by Electronic Funds Transfer-Central Contractor Registration, for use when the payment office will make payment by EFT and will use the CCR database as its source of EFT information. The clause at FAR 52.232–33 is equivalent to the clause at DFARS 252.232–7009.

This final rule eliminates the DFARS changes made in the interim rule published on May 20, 1998, as a result of the FAR changes pertaining to payment by EFT published on March 4, 1999.

B. Regulatory Flexibility Act

DoD certifies that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory

Flexibility Act, 5 U.S.C. 601, *et seq.*, because this final rule eliminates the DFARS changes made in the interim rule, as a result of recent changes to the FAR pertaining to payment by EFT.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 232 and 252

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR Parts 232 and 252 are amended as follows:

1. The authority citation for 48 CFR Parts 232 and 252 continue to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 232—CONTRACT FINANCING

Subpart 232.11—[Removed]

2. Subpart 232.11 is removed.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

252.232–7009 [Removed]

3. Section 252.232–7009 is removed.

[FR Doc. 99–9560 Filed 4–15–99; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

48 CFR Part 235

[DFARS Case 98–D306]

Defense Federal Acquisition Regulation Supplement; Manufacturing Technology Program

AGENCY: Department of Defense (DoD).

ACTION: Interim rule with request for comments.

SUMMARY: The Director of Defense Procurement has issued an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement Section 213 of the Strom Thurmond National Defense Authorization Act of Fiscal Year 1999. Section 213 requires that, for each contract entered into on a cost-sharing basis under the Manufacturing Technology Program, the ratio of contract recipient cost to Government cost must be determined by competitive procedures.

DATES: *Effective date:* April 16, 1999.

Comment date: Comments on the interim rule should be submitted in writing to the address shown below on or before June 15, 1999, to be considered in the formulation of the final rule.

ADDRESSES: Interested parties should submit written comments to Defense Acquisition Regulations Council, Attn: Ms. Melissa Rider, PDUSD (A&T) DP (DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telefax (703) 602–0350.

E-mail comments submitted over the Internet should be addressed to: dfars@acq.osd.mil

Please cite DFARS Case 98–D306 in all correspondence related to this issue. E-mail comments should cite DFARS Case 98–D306 in the subject line.

FOR FURTHER INFORMATION CONTACT: Ms. Melissa Rider, (703) 602–0131.

SUPPLEMENTARY INFORMATION:

A. Background

This interim rule amends DFARS guidance concerning the Manufacturing Technology Program to implement Section 213 of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (Public Act 105–261). Section 213 amends 10 U.S.C. 2525(d) to require that, for each contract entered into on a cost-sharing basis under the Manufacturing Technology Program, the ratio of contract recipient cost to Government cost must be determined by competitive procedures; and that the Secretary of Defense may delegate the authority to approve use of other than a cost-sharing contract under the Program only to the Under Secretary of Defense (Acquisition and Technology) of a service acquisition executive. On January 9, 1999, the Secretary of Defense delegated this authority to the Under Secretary of Defense (Acquisition and Technology).

The rule also removes guidance from DFARS 235.006 pertaining to the Manufacturing Technology Program, as the guidance has been relocated to a new section at 235.006–70; and removes obsolete language from 235.006 pertaining to prior years' appropriations acts.

B. Regulatory Flexibility Act

This interim rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the only new requirement for offerors or contractors is a requirement for the inclusion of a cost-sharing ratio in proposals for contracts under the Manufacturing Technology Program. This change is not expected to significantly alter the procedures for award of contracts under the Manufacturing Technology Program, as the DFARS already requires the use of cost-sharing arrangements and competitive procedures for contracts under the Program. An initial regulatory flexibility analysis has, therefore, not been performed. Comments are invited from small businesses and other interested parties. Comments from small entities concerning the affected DFARS subparts also will be considered in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 98–D306 in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

D. Determination To Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense that urgent and compelling reasons exist to publish this interim rule prior to affording the public an opportunity to comment. This interim rule implements Section 213 of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (Public Law 105–261) pertaining to the Manufacturing Technology Program. Section 213 became effective on October 17, 1998. Comments received in response to the publication of this interim rule will be considered in the formation of the final rule.

List of Subjects in 48 CFR Part 235

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR Part 235 is amended as follows:

1. The authority citation for 48 CFR Part 235 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 235—RESEARCH AND DEVELOPMENT CONTRACTING

2. Section 235.006 is revised to read as follows:

235.006 Contracting methods and contract type.

(b)(i) Do not award a fixed-price type contract for a development program effort unless—

(A) The level of program risk permits realistic pricing;

(B) The use of a fixed-price type contract permits an equitable and sensible allocation of program risk between the Government and the contractor; and

(C) A written determination that the criteria of paragraphs (b)(i)(A) and (B) of this section have been met is executed—

(1) By the Under Secretary of Defense (Acquisition and Technology) (USD (A&T)) for—

(i) Research and development for non-major systems, if the contract is over $25 million;

(ii) The lead ship of a class; or

(iii) The development of a major system (as defined in FAR 2.101) or subsystem thereof, if the contract is over $25 million; or

(2) By the contracting officer for any development not covered by paragraph (b)(i)(C)*(1)* of this section.

(ii) Obtain USD (A&T) approval of the Government's prenegotiation position before negotiations begin, and obtain USD (A&T) approval of the negotiated agreement with the contractor before the agreement is executed, for any action that is—

(A) An increase of more than $250 million in the price or ceiling price of fixed-price type development contract, or a fixed-price type contract for the lead ship of a class;

(B) A reduction in the amount of work under a fixed-price type development contract or a fixed-price type contract for the lead ship of a class, when the value of the work deleted is $100 million or more; or

(C) A repricing of fixed-price type production options to a development contract, or a contract for the lead ship of a class that increases the price or ceiling price by more than $250 million for equivalent quantities.

(iii) Notify the USD (A&T) of an intent not to exercise a fixed-price production option on a development contract for a major weapon system reasonably in advance of the expiration of the option exercise period.

3. Section 235.006–70 is added to read as follows:

235.006–70 Manufacturing Technology Program

(a) This subsection implements 10 U.S.C. 2525(d).

(b) Award all contract under the Manufacturing Technology Program (see DoDI 4200.15, Manufacturing Technology Program) using competitive procedures.

(c)(1) Use a cost-sharing arrangement (see FAR 16.303) for contracts awarded under the Manufacturing Technology Program, unless the USD (A&T) makes a determination that the contract is for a program that—

(i) Is not likely to have any immediate and direct commercial application;

(ii) Is of sufficiently high risk to discourage cost sharing by non-Federal Government sources; or

(iii) Will be carried out by an institution of higher education.

(2) Document the contract file with the rationale for any determination made in accordance with paragraph (c)(1) of this subsection.

(d) For each contract entered into on a cost-sharing basis, determine the ratio of contractor cost to Government cost by competitive procedures, i.e., each offeror must propose the ratio as part of its proposal. If only one offer is received, negotiate the ratio that provides the best value to the Government.

[FR Doc. 99–9561 Filed 4–15–99; 8:45 am]
BILLING CODE 5000–04–M

Prop

This sectio
contains no
issuance of
purpose of
persons an
rule making
rules.

DEPARTI

Agricultu

7 CFR Pa

[No. LS–9

Soybean
Program:

AGENCY: A
USDA.

ACTION: P

SUMMARY:
number o
estimated
Referend
and Rese
published
Federal R
regulatio
number c
would ch
producer
based on
survey.

DATES: W
received

ADDRESSE
comment
Marketin
and Seed
Marketin
STOP–02
Avenue,
0251. Co
public in
business
Agricult
Indepen
Washing

FOR FURT
Ralph L.
Program

SUPPLEM

Regulato

Executiv
the Regu
Paperwo

The D
(Departm

Proposed Rules

Federal Register
Vol. 64, No. 73
Friday, April 16, 1999

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1220

[No. LS–98–001]

Soybean Promotion and Research Program: Request for Referendum

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This action would change the number of eligible soybean producers estimated in the proposed "Request for Referendum" on the Soybean Promotion and Research Order (Order) as published in the September 4, 1998, **Federal Register** and would amend the regulations accordingly. The estimated number of eligible soybean producers would change from 381,000 soybean producers to 600,813 soybean producers based on the results of a statistical survey.

DATES: Written comments must be received by May 17, 1999.

ADDRESSES: Send two copies of comments to Ralph L. Tapp, Chief; Marketing Programs Branch; Livestock and Seed Program, Agricultural Marketing Service (AMS), USDA; STOP–0251; 1400 Independence Avenue, SW.; Washington, D.C. 20250–0251. Comments will be available for public inspection during regular business hours in Room 2627 South Agriculture Building; 14th and Independence Avenue, SW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Ralph L. Tapp, Chief, Marketing Programs Branch, 202/720–1115.

SUPPLEMENTARY INFORMATION:

Regulatory Impact Analysis

Executive Order 12866 and 12988 and the Regulatory Flexibility Act and the Paperwork Reduction Act

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have a retroactive effect. This rule would not preempt State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Soybean Promotion, Research, and Consumer Information Act (Act) provides that administrative proceedings must be exhausted before parties may file suit in court. Under § 1971 of the Act, a person subject to the Order may file with the Secretary a petition stating that the Order, any provision of the Order, or any obligation imposed in connection with the Order is not in accordance with the law and request a modification of the Order or an exemption from the Order. The petitioner is afforded the opportunity for a hearing on the petition. After a hearing the Secretary will rule on the petition. The statute provides that the district court of the United States in any district in which the petitioner resides or carries on business has jurisdiction to review the Secretary's decision if a complaint for that purpose is filed not later than 20 days after the date of the entry of the Secretary's decision.

Further, § 1974 of the Act provides, with certain exceptions, that nothing in the Act may be construed to preempt or supersede any other program relating to soybean promotion, research, consumer information, or industry information organized and operated under the laws of the United States or any State. One exception in the Act concerns assessments collected by the Qualified State Soybean Boards (QSSBs). The exception provides that to ensure adequate funding of the operations of QSSBs under the Act, no State law or regulation may limit or have the effect of limiting the full amount of assessments that a QSSB in that State may collect, and which is authorized to be credited under the Act. Another exception concerns certain referendums conducted during specified periods by a State relating to the continuation or termination of a QSSB or State soybean assessment.

Pursuant to requirements set forth in the Regulatory Flexibility Act (5 United States Code (U.S.C.) 601 *et seq.*), the Administrator of AMS has considered the economic effect of this proposed action on small entities and has determined that its implementation will not have a significant economic impact on a substantial number of small business entities.

According to the statistical survey initiated by the Department, there are 600,813 soybean producers who would be eligible to participate in the "Request for Referendum." The majority of producers subject to the Order are small businesses under the criteria established by the Small Business Administration.

Further, the requirements set forth in the proposed rule are substantially similar to the rules that established the eligibility and participation requirements for a July 26, 1995, soybean producer poll published as a final rule on March 22, 1995 (60 FR 15027), in the **Federal Register**.

The procedures to request a referendum would not impose a substantial burden or have a significant impact on persons subject to the Order. Further, participation is not mandatory. Not all persons subject to the Order are expected to participate. The Department would determine producer eligibility.

In compliance with the Office of Management and Budget (OMB) regulations [5 CFR Part 1320] which implements the Paperwork Reduction Act [44 U.S.C. 3501 *et seq.*], the information collection requirements contained in this proposed rule have been previously approved by OMB and were assigned OMB control number 0581–0093. The information collection requirements in the proposed rule include the following:

(1) Any eligible person who requests a referendum must legibly print his/her name, or if applicable, the producer entity represented, address, telephone number, and county on the "Request for a Soybean Referendum" form (Form LS–51–1). Each person must read the certification statement on the form and sign it certifying that he/she or the producer entity represented meets the eligibility requirements. Form LS–51–1 shall be obtained in person, by mail, telephone, or facsimile from the county Farm Service Agency (FSA) office where FSA maintains and processes the producer's administrative farm records or at the county FSA office serving the county where the producer owns or rents land. Form LS–51–1 may be returned by mail, by facsimile, or in person to the same county FSA office

where the form was obtained. A producer or producer entity representative who obtains Form LS–51–1 in person during the "Request for Referendum" period from the appropriate county FSA office may complete Form LS–51–1 at that time. The estimated average time burden for completing the procedure is 5 minutes per person.

(2) Using information from each returned Form LS–51–1, county FSA personnel shall enter the producer's name, and if applicable, producer entity representative, the date received (and the postmarked date for mailed requests), and the method the form was received on the "List of Soybean Producers Requesting a Referendum" (Form LS–51–2). This information may be used for the purpose of challenging the eligibility of producers. Many county FSA offices will use more than one Form LS–51–2 depending on the number of producers requesting a referendum. Because only county FSA office personnel would be required to complete Form LS–51–2, the time required to complete this form is not included in the estimated average reporting burden for a producer.

Background

The Act (7 U.S.C. 6301–6311) provides for the establishment of a coordinated program of promotion and research designed to strengthen the soybean industry's position in the marketplace and to maintain and expand domestic and foreign markets and uses for soybeans and soybean products. The program is financed by an assessment of 0.5 of one percent of the net market price of soybeans sold by producers. Pursuant to the Act, an Order was made effective July 9, 1991, and the collection of assessments began September 1, 1991.

The Act required that an initial referendum be conducted no earlier than 18 months and no later than 36 months after the issuance of the Order to determine whether the Order should be continued.

The initial referendum was conducted on February 9, 1994. On April 1, 1994, the Secretary announced that of the 85,606 valid ballots cast, 46,060 (53.8 percent) were in favor of continuing the Order and the remaining 39,546 votes (46.2 percent) were against continuing the Order. The Act required approval by a simple majority for the Order to continue.

The Act also required that within 18 months after the Secretary announced the results of the initial referendum, the Secretary would conduct a poll among producers to determine if producers favored a referendum on the continuance of the payment of refunds under the Order.

A July 25, 1995, nationwide poll of soybean producers did not generate sufficient support for a refund referendum to be held based on the total number of producers in the United States established at that time. A refund referendum would have been held if at least 20 percent (not in excess of one-fifth of which may be producers in any one State) of the 381,000 producers (76,200) nationwide requested it. Only 48,782 soybean producers participated in the poll. Consequently, refunds were discontinued on October 1, 1995.

The Act also specifies that the Secretary shall, 5 years after the conduct of the initial referendum and every 5 years thereafter, provide soybean producers an opportunity to request a referendum on the Order.

For all such referendums, if the Secretary determines that at least 10 percent of U.S. producers engaged in growing soybeans (not in excess of one-fifth of which may be producers in any one State) support the conduct of a referendum, the Secretary must conduct a referendum within 1 year of that determination. If these requirements are not met, a referendum would not be conducted.

On September 4, 1998, AMS published a proposed "Request for Referendum" rule in the **Federal Register** (63 FR 47200). The proposed rule set forth procedures to be followed in conducting the "Request for Referendum." The proposed rule included provisions concerning definitions, supervision of the process for requesting a referendum, eligibility, certification and request procedures, counting and reporting results, and disposition of the forms and records. The proposed rule also provided that the "Request for Referendum," be conducted at the county FSA offices and that FSA assist AMS by determining eligibility, counting, and reporting results. Finally, the proposed rule provided that the Secretary would use the latest official number of U.S. soybean farms as reported by the Department's National Agricultural Statistics Service (NASS) as representing the total number of U.S. soybean producers. At the time the proposed rule was published, the latest official data available and reported by NASS was based on the 1992 Census of Agriculture (1992 Census) which showed that 381,000 farms produced soybeans.

Comments on the proposed rule were due in the Department by October 5, 1998. The Department received six comments from State and national soybean organizations concerning the Department's estimated number of soybean producers eligible to participate in the "Request for Referendum." Four comments were filed on time and two comments were filed after the comment period ended. The late comments generally expressed the same views as the timely comments. In addition, six other comments were received addressing other matters in the September 4, 1998, proposed rule will be discussed in a final rule.

The four comments timely received expressed the belief that the 381,000 soybean farms reported by the 1992 Census and proposed by the Department as the total number of soybean producers grossly understates the true number of soybean producers. Furthermore, the commenters believed that the 1992 Census data (1) was outdated, (2) did not provide a proper basis for determining the number of soybean producers, and (3) did not reflect the current number of producers which they believed had increased since the enactment of the 1996 Farm Bill. Two commenters recommended that AMS utilize the results of the United Soybean Board's (Board) recent survey of soybean producers, which was based on FSA's data, or use other relevant information to determine the number of soybean farmers eligible to request a referendum. The Board's survey suggested that there could be as many as 649,000 soybean producers in the United States which is significantly more soybean producers than reflected in the 1992 Census data. Further, the most recent Census data for 1997 as reported by NASS indicated that there are 354,692 soybean farms. Accordingly, in order to better address this issue, AMS contracted with an independent surveyor to conduct a survey of soybean producers.

AMS obtained a list from FSA of approximately 970,000 producers who produced soybeans, or who produced forage or hay which may have included soybeans during crop years 1995–97. AMS then developed a survey from this information designed to determine the number of producers which meet the definition of a soybean producer contained in the Act.

To achieve 95 percent confidence in the survey results with a 2 percent margin of error, the surveyor would obtain over 2,400 "yes" or "no" responses from those interviewed regarding their soybean producer status. Those interviewed were asked to respond only after listening to the definition of soybean producer provided under § 1967 of the Act as read by the

caller. The definition of producer is "any person engaged in the growing of soybeans in the United States who owns, or who shares the ownership and risk of loss of, such soybeans."

On March 5, 1999, AMS received the results of the soybean producer survey. AMS, also, reviewed the methods used for conducting the soybean producer survey to ensure that the procedures outlined by AMS were followed. The results indicated that approximately 62 percent of those surveyed were soybean producers as defined in the Act. Thus, based on the results, for the purposes of the "Request for Referendum," AMS proposes to use 600,813 as the total number of U.S. soybean producers. This number would serve as the basis for determining whether a soybean referendum would be conducted. A soybean referendum would be conducted if requested by 10 percent of the total number of U.S. soybean producers (not in excess of one-fifth of which may be producers in any one State) engaged in the growing of soybeans.

Since the basis for establishing the total number of producers would no longer be NASS data, § 1220.30(d) of the proposed rule would be amended by deleting the phrase "* * * the latest official numbers of U.S. soybean farms as reported by the Department's National Agricultural Statistics Service as the total number of producers." and inserting the phrase "* * * the number of soybean producers in the United States is determined to be 600,813."

A 30-day comment period is provided for interested persons to comment on this amended proposed rule. This comment period is deemed appropriate because the Act provides that the Secretary, 5 years after the conduct of the initial referendum held in 1994, will give soybean producers the opportunity to request an additional referendum on the Order. A 30-day comment period will assist in timely implementation of this rule consistent with the provisions of the Act.

List of Subjects in 7 CFR Part 1220

Administrative practice and procedure, Advertising, Agricultural research, Marketing agreements, Reporting and recordkeeping requirements, Soybeans and soybean products.

For the reasons set forth in the preamble, it is proposed that 7 CFR part 1220 be amended as follows:

PART 1220—SOYBEAN PROMOTION, RESEARCH, AND CONSUMER INFORMATION

1. The authority citation for part 1220 would continue to read as follows:

Authority: 7 U.S.C. 6301–6311.

Subpart F—Procedures to Request a Referendum Procedures

2. In § 1220.30, as proposed at 63 FR 47202, September 4, 1998, paragraph (d) is further proposed to be revised to read as follows:

§ 1220.30 General.

* * * * *

(d) For purposes of paragraphs (b) and (c) of this section, the number of soybean producers in the United States is determined to be 600,813.

Dated: April 13, 1999.

Barry L. Carpenter,

Deputy Administrator, Livestock and Seed Program.

[FR Doc. 99–9658 Filed 4–14–99; 11:18 am]

BILLING CODE 3410–02–P

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 30, 40, and 70

[Docket No. PRM–30–61]

Nuclear Energy Institute; Denial of Petition for Rulemaking

AGENCY: Nuclear Regulatory Commission.

ACTION: Denial of petition for rulemaking.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is denying a petition for rulemaking (PRM–30–61) submitted by the Nuclear Energy Institute (NEI). The petitioner requested that the NRC amend its regulations governing timeliness of decommissioning of sites and separate buildings or outdoor areas. Because the petitioner has provided no new significant information that would call into question the basis for the requirements in these regulations, the NRC denies the petition. To achieve the intent of the petition, NRC will develop guidance to clarify specific criteria to review licensee requests for alternate schedules for initiation of decommissioning of inactive contaminated sites.

ADDRESSES: Copies of the PRM, the public comments received, and the NRC's letter to the petitioner are available for public inspection or copying in the NRC Public Document Room, 2120 L Street NW, (lower level), Washington, DC 20555–0001.

FOR FURTHER INFORMATION CONTACT: Anthony DiPalo, telephone (301) 415–6191, e-mail, ajd@nrc.gov, of the Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION:

The Petition

On August 21, 1996 (61 FR 43193), the NRC published a notice of receipt of a PRM filed by the NEI. The petitioner requested that NRC amend its regulations in 10 CFR Parts 30, 40, and 70 to provide for an alternative which could result in the delay of decommissioning of a site, separate building, or outdoor area where principal activities have not been conducted for at least 24 months, and the site, separate building, or outdoor area is unsuitable for unrestricted release in accordance with NRC requirements. Specifically, the petitioner requested that inactive facilities be allowed to go on "standby" status until economic conditions in its industry improved. The petitioner believes the requested changes are necessary because the rule, as written, has the potential to . . . "eliminate important components from the nuclear industry infrastructure." The petitioner also asserted as a basis for its petition that NRC's regulations were not intended to give it jurisdiction over the commercial aspects of a licensee's activities and, therefore, NRC regulations should not impose restrictions on facilities or sites that have the potential to impact commercial decisions. Further, the petitioner believes that NRC's current regulation is not necessary given the cohesiveness and maturity of the industry today.

Public Comments on the Petition

The notice of receipt of the PRM invited interested persons to submit comments. The comment period closed on November 4, 1996. NRC received comment letters from the following five organizations: (1) Kennecott Energy; (2) Siemens Power Corporation; (3) Wyoming Mining Association; (4) National Mining Association; and (5) Babcock & Wilcox, Naval Nuclear Fuel Division. All five commenters supported the PRM. They supported amending the Timeliness Rule to permit facilities to postpone decommissioning and enter a "standby" mode in which facilities would be monitored and maintained for a predetermined time period, pending future operation.

The comments are summarized as follows:

1. All five commenters argued that the Timeliness Rule, as currently written, impacts on a licensee's ability to make commercial decisions that allow it to compete in the open market. The commenters believe that any company that has a valid NRC license and operates within the conditions of the license should have the right to decide when to start and stop operations, and when to place buildings or facilities in standby mode, rather than being forced to begin decommissioning.

2. Three commenters expressed the opinion that NRC's rationale requiring decommissioning after 24 months of inactivity is no longer practical, given the cohesiveness and maturity of today's nuclear industry. The commenters stated that NRC previously rejected a proposal for a standby mode because of the potential for site abandonment as a result of changes in a company's financial status, corporate takeover, or bankruptcy. The commenters believe that the nuclear industry has now matured and that poorly financed and poorly managed companies are no longer in business. The remaining companies are said to be stable and willing and able to assume the costs associated with keeping facilities in standby mode.

3. Two commenters argued that the Timeliness Rule is regulation by exception. These commenters believe that it would be better to include generic provisions in the regulations for maintaining a licensed facility in standby mode, rather than approving individual requests for postponement of the initiation of decommissioning.

4. One commenter argued the petitioner's case that the lack of a standby provision in the Timeliness Rule has the potential to eliminate important components from the nuclear industry. It is believed that these components and facilities may be needed in future years to support continuing operation and potential industry expansion. The commenter indicated that fuel cycle facilities operate in a constantly changing economic environment. Mines and mills that have been inactive for years are now beginning to start up because of improved economic conditions. The operating status of conversion facilities and enrichment plants has fluctuated in response to international policy and the influx of low-enriched products from countries of the former Soviet Union. Commercial facilities that support the armed forces must be prepared to respond if called on.

Reasons for Denial

NRC is denying the petition for the following reasons:

1. NRC believes the current language of the Timeliness Rule is sufficiently flexible to accommodate the petitioner's concerns because it currently contains provisions for granting licensees alternative time schedules for initiating decommissioning. NRC also believes that clarification of the specific acceptance criteria for granting alternative schedules could be achieved through the development of guidance.

2. NRC believes that the amendments requested by the petitioner would conflict with the primary purpose of the Timeliness Rule to effectively and efficiently clean up contaminated sites that pose a potential threat to public health and safety. The Timeliness Rule was promulgated in July 1994 to address those situations where decommissioning of contaminated sites was unreasonably delayed. The 24-month inactivity criterion related to decontamination of unused sites, separate buildings, or outdoor areas provides assurance that the licensee will undertake timely cleanup of inactive portions of its site while it is financially solvent.

3. Although the petitioner argues that the nuclear industry has matured and recognizes its responsibilities, that troubled licensees are no longer in business, and that NRC regulations provide adequate decommissioning funding assurance and transfer of ownership requirements, the NRC's experience with inactive materials licensees indicates the need for the timeliness provisions. In fact, since the Timeliness Rule became effective in 1994, approximately 25 material licensees have filed for bankruptcy. Past history with NRC materials facility decommissioning indicates that the approach taken through the Timeliness Rule is the appropriate one.

4. NRC believes that the petitioner is incorrect in asserting that the Timeliness Rule, as currently written, has the potential to eliminate important components from the nuclear industry infrastructure. For case-specific situations, delay of decommissioning is permitted by the current rule if the Commission determines that this relief would not be detrimental to the public health and safety and would otherwise be in the public interest. Licensees must describe why their request to delay decommissioning is in the public interest. Therefore, if the licensee can satisfactorily demonstrate that a proposed delay in decommissioning is not detrimental to public health and safety and is in the public interest, the delay would be granted and there should be no adverse impact on the nuclear industry infrastructure.

Since the effective date of the Timeliness Rule, August 15, 1994, fewer than 30 licensees out of several thousand have asked to delay decommissioning activities and only three of these requests were initially denied. Each denial resulted from a lack of adequate justification. After discussions with the licensees, two of these three requests were withdrawn and one request was approved. Based on the relatively few requests received to date, the NRC concludes that the Timeliness Rule, as written, is not overly restrictive. Further, since NRC has not denied any request to delay decommissioning that was supported with adequate justification, it appears that the rule is not having an adverse impact on licensees' commercial decisions, as suggested by the petitioner.

5. The Generic Environmental Impact Statement (GEIS), entitled "Final Generic Environmental Impact Statement on Decommissioning of Nuclear Facilities" (NUREG–0586), prepared in connection with the 1988 modifications to the decommissioning regulations recommended prompt dismantlement of material facilities once they had permanently ceased operation. The GEIS concluded that decommissioning can be accomplished safely and at a reasonable cost shortly after cessation of activities. Further, the GEIS concluded that immediate decommissioning following cessation of activities eliminates the potential problems that may result from an increasing number of contaminated sites, and the potential health, safety, regulatory, and economic problems associated with maintaining an inactive nuclear facility. The Timeliness Rule imposed certain "action-forcing" requirements to ensure that the recommendations in the GEIS were met.

In conclusion, no new significant information has been provided by the petitioner that calls into question the basis for the requirements of the Timeliness Rule. The intent of the petition will be achieved by developing guidance on the specific criteria for reviewing licensee request submittals for alternate schedules for the initiation of decommissioning of inactive contaminated sites. Obviously, if the petitioner believes that the final guidance documents and their implementation do not adequately address the intent of the petition, the petitioner has the option of resubmitting

the petition. For the reasons cited in this document, NRC denies the petition.

Dated at Rockville, Maryland, this 31st day of March, 1999.

For the Nuclear Regulatory Commission.

Frank J. Miraglia,

Acting Executive Director for Operations.

[FR Doc. 99–9536 Filed 4–15–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 170 and 171

RIN 3150–AG08

Revision of Fee Schedules; 100% Fee Recovery, FY 1999; Correction

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule; Correction.

SUMMARY: The NRC is making the following technical corrections to the proposed rule which appeared in the **Federal Register** on April 1, 1999 (64 FR 15876). This action is necessary to correct typographical and printing errors.

FOR FURTHER INFORMATION CONTACT: Glenda Jackson, Office of the Chief Financial Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Telephone 301–415–6057.

SUPPLEMENTARY INFORMATION:

1. On page 15883, under Table III, Class of licensees, Transportation: Users and Fabricators, Option B, "66,800" is revised to read "66,900".

2. On page 15885, in the first table under Effort factors for UF6 Conversion, "8 (2.9%)" and "3 (2.2%)" are revised to read "12 (4.4%)" and "0 (0%)" respectively, and Limited Operations Facility, "12 (4.4%)" and "0 (0%)" are revised to read "8 (2.9%)" and "3 (2.2%)" respectively.

3. On page 15885, in the third column, in the last complete paragraph, the words "and the proposed FY 1999 annual fee for each" are removed.

4. On page 15887, in the first column, under paragraph (2), in the fifth line, the words "amount or range of the" are removed, and in the last line of the same paragraph, the words "$351,000 under Option A or Option B" are removed and replaced with "$358,000 under Option A or $359,000 under Option B."

§ 170.12 [Corrected]

5. On page 15890, in the third column, under § 170.12(f), in the sixth and tenth lines, the word "ACT" is revised to read "ACH'.

§ 170.20 [Corrected]

6. On page 15891, in § 170.20, the first column, in the first line, insert "$" before 140.

§ 171.16 [Corrected]

7. On page 15896, in the table in § 171.16, the heading is corrected to read, "Maximum annual fee per licensed category."

8. On page 15897, in the table at the top of the page, the heading is corrected to read, "Maximum annual fee per licensed category."

9. On page 15899, under number 10. B. Quality assurance program approvals issued under 10 CFR part 71: Users and Fabricators, Option B, "66,800" is revised to read "66,900."

§ 171.19 [Corrected]

10. On page 15900, § 171.19(b), in the next to last line, insert "or more" after $100,000.

Dated at Rockville, Maryland, this 13th day of April, 1999.

For the Nuclear Regulatory Commission.

Jesse L. Funches,

Chief Financial Officer.

[FR Doc. 99–9537 Filed 4–15–99; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–SW–59–AD]

Airworthiness Directives; Sikorsky Aircraft-Manufactured Model CH–54B Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to Sikorsky Aircraft-manufactured Model CH–54B helicopters. This proposal would require initial and recurring inspections and rework or replacement, if necessary, of the second stage lower planetary plate (plate). This proposal is prompted by two reports of cracked plates that have been found during overhaul and inspections. The actions specified by the proposed AD are intended to prevent failure of the main gearbox plate due to fatigue cracking, which could lead to failure of the main gearbox and subsequent loss of control of the helicopter.

DATES: Comments must be received on or before June 15, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 97–SW–59–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Uday Garadi, Aerospace Engineer, FAA, Rotorcraft Directorate, Rotorcraft Certification Office, Fort Worth, Texas 76193–0170, telephone (817) 222–5157, fax (817) 222–5959.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 97–SW–59–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 97–SW–59–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

Discussion

This notice proposes the adoption of a new AD that is applicable to Sikorsky-

manufactured Model CH–54B helicopters. This proposal would require initial and recurring inspections, and rework or replacement, if necessary, of the plate. Cracks on the plate initiate at and radiate from the lightening holes in the plate web due to fatigue. This condition, if not corrected, could result in failure of the plate due to fatigue cracking, which could lead to failure of the main gearbox and subsequent loss of control of the helicopter.

Since an unsafe condition has been identified that is likely to exist or develop on other Sikorsky Aircraft-manufactured Model CH–54B helicopters of the same type design, the proposed AD would require a daily inspection of main gearboxes containing a plate with more than 1,600 hours time-in-service (TIS) for main gearbox oil filter magnesium contamination and, if magnesium contamination is discovered, replacement of the main gearbox assembly. For main gearbox assemblies containing a plate with more than 1,600 hours TIS, this AD also requires an inspection of the plate within the next 100 hours TIS after the effective date of this AD, and thereafter at intervals not to exceed 200 hours TIS, and replacement of the plate if necessary. This AD also requires, at the next overhaul of the main gearbox assembly, inspection and rework of plates that are not cracked.

The FAA estimates that 4 helicopters of U.S. registry would be affected by this proposed AD, that it would take approximately 8 work hours per helicopter to accomplish the borescope inspection, 1 work hour to inspect the main gearbox oil filter pack, 140 work hours to remove and replace the main gearbox assembly, if necessary, and 20 work hours to rework the plate, and that the average labor rate is $60 per work hour. Required parts will cost approximately $8,000 per helicopter. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $67,760; $2,160 to accomplish the initial inspections and $65,600 to replace the plate in the main gearbox assembly in all 4 helicopters, if necessary. Daily preflight inspections of the main gearbox oil filter pack will cost $60 per helicopter for each day flight is conducted.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

Blue Bird Helicopters: Docket No. 97–SW–59–AD.

Applicability: CH–54B helicopters with main gearbox second stage lower planetary plate (plate), part number (P/N) 6435–20516–101, installed, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the plate due to fatigue cracking, which could lead to failure of the main gearbox and subsequent loss of control of the helicopter, accomplish the following:

(a) For main gearbox assemblies containing plate, part number (P/N) 6435–20516–101 with 1,600 or more hours time-in-service (TIS):

Note 2: If the TIS hours of the plate is not known, use the main gearbox assembly's total operating time.

(1) Prior to the first flight of each day, inspect the main oil filter for magnesium contamination. If magnesium contamination is discovered, replace the main gearbox assembly.

(2) Within the next 100 hours TIS after the effective date of this AD, and thereafter at intervals not to exceed 200 hours TIS, conduct a borescope inspection of the plate for cracks in the area of the nine lightening holes (see Figure 1). If a crack is found, replace the plate with an airworthy plate. The plate, P/N 6435–20516–101, is part of the main gearbox second stage planetary set (P/N 6435–20514–041), which is a serialized matched set, and must be replaced as a set.

BILLING CODE 4910–13–P

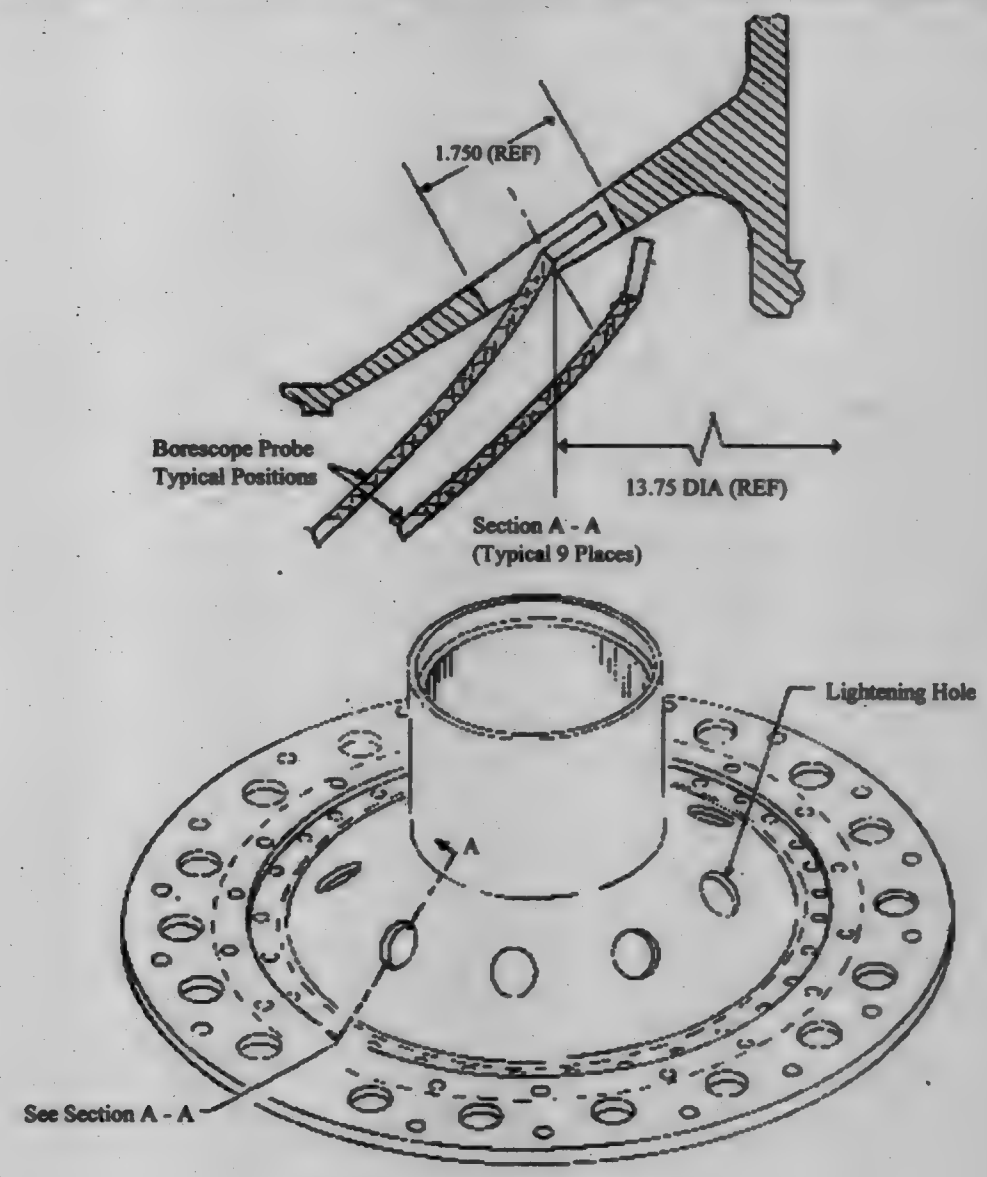

Borescope Inspection of Second Stage
Lower Planetary Plate Lightening Holes
Figure 1

(b) At the next overhaul of the main gearbox assembly, inspect and rework the plate, P/N 6435–20516–101, as follows:

(1) Fluorescent magnetic particle inspect the plate per ASTM E1444 in circumferential and longitudinal directions using a wet continuous method. Pay particular attention to the area around the nine 1.750-inch diameter lightening holes.

(2) If a crack is found, the plate is unairworthy. Replace it with an airworthy plate.

(3) If no crack is found, rework the plate as follows, ensuring that all plate surfaces are free of any crack, scratch, dent, or corrosion.

(i) Measuring from the center of each 1.750-inch diameter lightening hole, machine 0.015/0.020 inch from the radius of the hole (see Figure 2). Machined surface roughness shall not exceed 63 microinches AA rating.

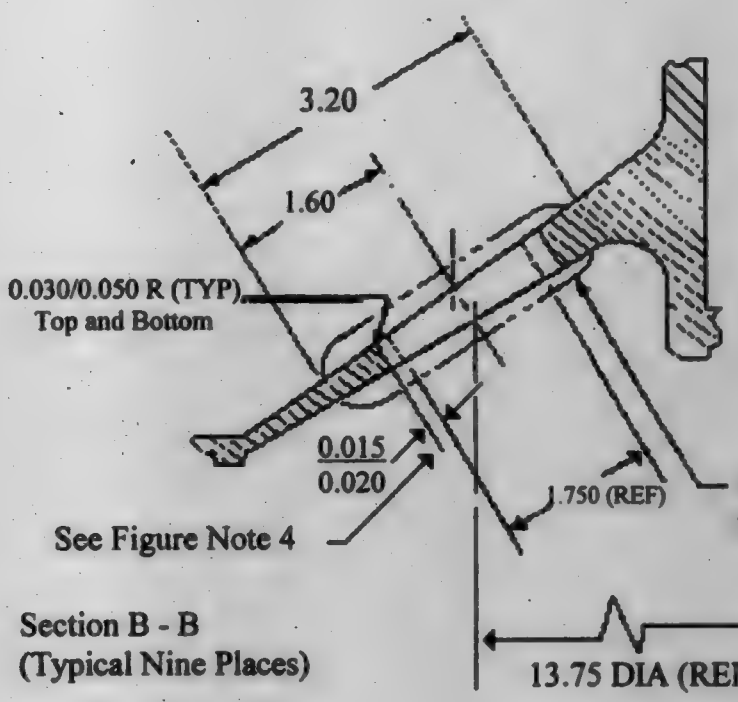

Figure Notes

1. Mask top and bottom areas to protect from liquid air-grit and shot peen.

2. Shaded area to be liquid air-grit blasted and shot peened includes plate top and bottom surfaces and I.D of all lightening holes. Feather shot peened surface edges.

3. Use low-stress depth controlled impression-stamp with full fillet depth of no more than 0.003 inch.

4. Reworked machined surface roughness shall not exceed 63 microinches AA rating.

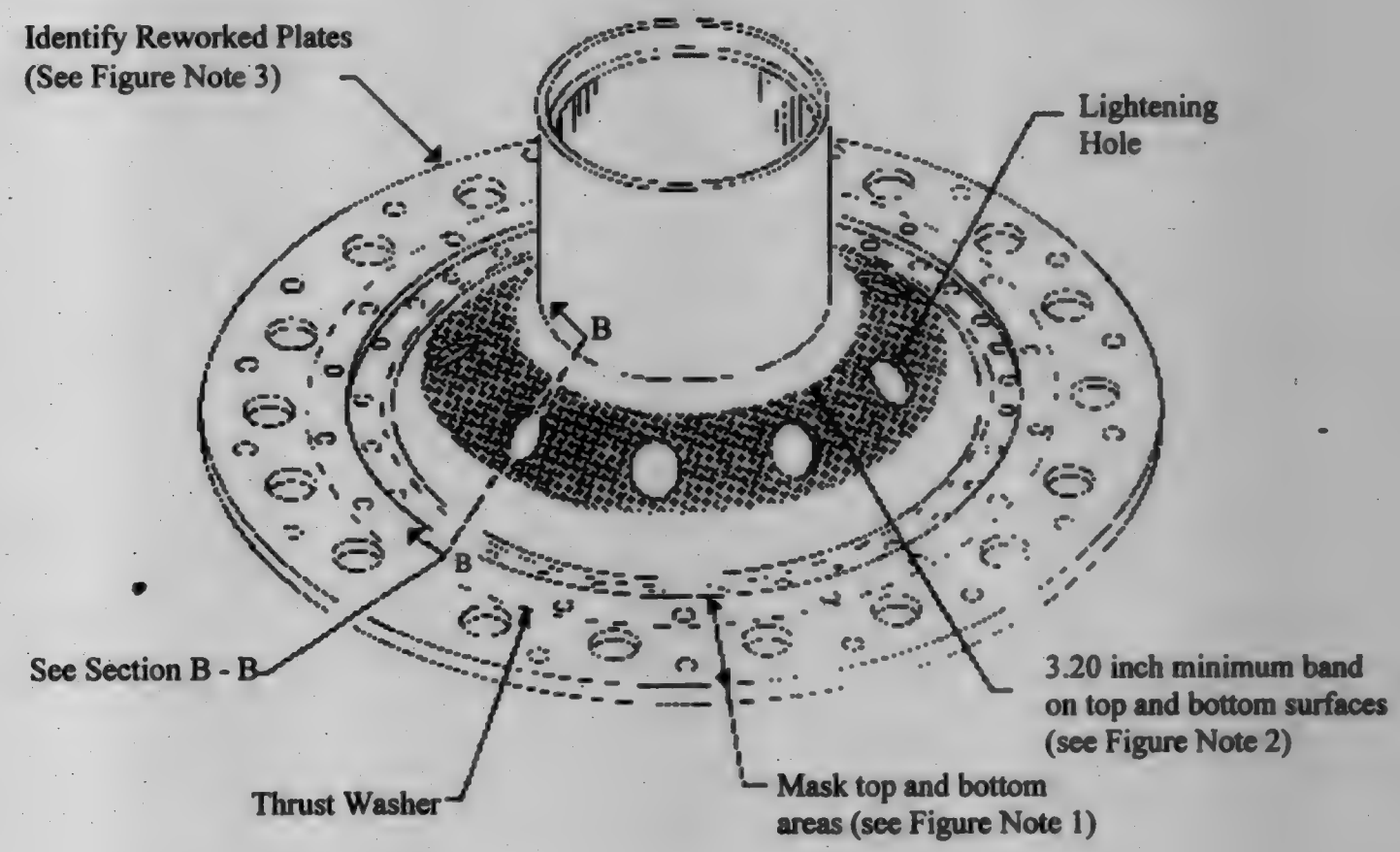

Rework of Second Stage Lower Planetary Plate
Figure 2

BILLING CODE 4910-13-C

(ii) Apply a 0.030/0.050-inch radius on the top and bottom edge of each hole.

(4) Fluorescent magnetic particle inspect the reworked areas per ASTM E1444 in circumferential and longitudinal directions using a wet continuous method.

(5) If a crack is found, the plate is unairworthy. Replace it with an airworthy plate.

(6) If no crack is found, rework the plate as follows:

(i) Remove the protective finish from the specified areas on the top and bottom of the plate as follows:

(A) Mask the top and bottom of the plate leaving exposed a 3.20-inch minimum circumferential band centered on 13.75-inch diameter of plate (see Figure 2). Mask the area to protect the thrust washer and the surrounding areas from vapor blast.

(B) Using a vapor blast machine, remove the protective finish from the exposed circumferential band on the top and bottom of the plate. Use No. 220 aluminum oxide grit at a pressure of 80–90 pounds per square inch.

(ii) Shot peen the specified areas on the plate by remasking the top and bottom of the plate leaving exposed the 3.20-inch minimum circumferential band centered on 13.75-inch diameter of the plate. Mask the area to protect the thrust washer and the surrounding areas from the shot peening process.

(iii) Shot peen the inside diameter of the lightening holes and the upper and lower surfaces of the plate in the 3.20-inch minimum circumferential band to 0.008 to 0.012A intensity, ensuring 200% coverage per MIL–S–13165C or latest revision. Use cast steel shot, size 170. Use a tracer dye inspection method.

Note 3: Overspray is permitted to allow a feathering application during the peening process from the peened surface to the non-peened surface.

(iv) Finish the reworked surfaces as follows:

(A) Clean the surfaces thoroughly with acetone (Fed. Spec O–A–51, or equivalent).

(B) Apply Presto black or blueing touchup solution to the reworked surfaces with cotton swabs. The solution temperature must be between 21° C and 49° C (70° F to 120° F). Keep the surfaces wet for about three minutes to get a uniform dark color.

(C) Rinse the surface in cold running water and dry with forced air.

Note 4: A hot water rinse may be used after the cold water rinse to speed up drying time.

(D) Using steel wool, Grade 00 or finer, rub the surfaces lightly. Polish with a soft cloth and then coat with a preservative oil (MIL–C–15074).

(v) Identify the reworked plate by stamping the number of this AD after the part number. Use a low-stress depth-controlled impression-stamp with full fillet depth of no more than 0.003 inch (see Figure 2). Marking must be such that it cannot be construed as part of the part number.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Rotorcraft Certification Office, FAA, Rotorcraft Directorate. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Rotorcraft Certification Office.

Note 5: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Rotorcraft Certification Office.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the helicopter to a location where the requirements of this AD can be accomplished.

Issued in Fort Worth, Texas, on April 2, 1999.

Larry M. Kelly,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 99–9513 Filed 4–15–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–346–AD]

RIN 2120–AA64

Airworthiness Directives; Fokker Model F.28 Mark 0070 and Mark 0100 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to all Fokker Model F.28 Mark 0070 and Mark 0100 series airplanes, that currently requires revising the Airplane Flight Manual to provide the flightcrew with instructions not to arm the liftdumper system prior to commanding the landing gear to extend. This action would require modification of the grounds of the shielding of the wheelspeed sensor wiring of the main landing gear (MLG) and installation of new electrical grounds for the wheelspeed sensor channel of the anti-skid control box of the MLG. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to prevent electromagnetic interference generated by electrical wiring that runs parallel to the wheelspeed sensor wiring, which could result in inadvertent deployment of the liftdumpers during approach for landing or reduced brake pressure during low speed taxiing, and consequent reduced controllability and performance of the airplane.

DATES: Comments must be received by May 17, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–346–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Fokker Services B.V., Technical Support Department, P.O. Box 75047, 1117 ZN Schiphol Airport, the Netherlands. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to

Docket Number 98–NM–346–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–346–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On May 11, 1998, the FAA issued AD 98–11–02, amendment 39–10529 (63 FR 27197, May 18, 1998), applicable to all Fokker Model F.28 Mark 0070 and Mark 0100 series airplanes, to require revising the Airplane Flight Manual (AFM) to provide the flightcrew with instructions not to arm the liftdumper system prior to commanding the landing gear to extend. That action was prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The requirements of that AD are intended to prevent inadvertent deployment of the liftdumpers during approach for landing, and consequent reduced controllability and performance of the airplane.

Actions Since Issuance of Previous Rule

Since the issuance of that AD, the Rijksluchtvaartdienst (RLD), which is the airworthiness authority for the Netherlands, has determined that the design safety features that provide adequate electromagnetic interference (EMI) protection of the wheelspeed signal wiring, and verify erroneous "high" wheelspeed signals through the liftdumper arming test, may not be fully effective. Further analysis has determined that airplanes on which Fokker Service Bulletins SBF100–32–067 and SBF100–32–037 have been accomplished are less susceptible to effects of EMI on the wheelspeed signals. Measurements have indicated that the EMI is being generated between the electrical wiring supply for the lights and the electrical wiring for the wheelspeed sensors of the main landing gear (MLG), which run parallel to each other. If the EMI reaches a certain level, an erroneous wheelspeed signal may occur, which could result in inadvertent deployment of the liftdumpers or reduced brake pressure during low speed taxiing. These conditions, if not corrected, could result in reduced controllability and performance of the airplane.

Explanation of Relevant Service Information

Fokker has issued Service Bulletin SBF100–32–067, Revision 1, dated July 6, 1998, which describes procedures for modification of the ground wiring to the shielding of the wheelspeed sensor wiring of the MLG. The modification involves modifying the applicable avionics rack and installing additional ground wiring to the shielding of the wheelspeed sensor wiring.

Fokker also has issued Service Bulletin SBF100–32–037, Revision 2, dated December 4, 1998, which describes procedures for installing new electrical grounds for the wheelspeed sensor channel of the anti-skid control box of the MLG. The installation involves re-routing existing electrical wiring and installing new terminal blocks and electrical wiring.

These modifications would provide additional grounds to the shielding of the wheelspeed sensor wiring and to the power supplies of the anti-skid control box. These additional grounds reduce the effects of EMI generated by electrical wiring that runs parallel to the wheelspeed sensor wiring. The RLD classified these service bulletins as mandatory and issued Dutch airworthiness directives BLA 1998–100, dated August 31, 1998, and 1998–100/2, dated November 30, 1998, in order to assure the continued airworthiness of these airplanes in the Netherlands.

FAA's Conclusions

These airplane models are manufactured in the Netherlands and are type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the RLD has kept the FAA informed of the situation described above. The FAA has examined the findings of the RLD, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would supersede AD 98–11–02 to continue to require revision of the Limitations and Normal Procedures sections of the FAA-approved AFM to provide the flightcrew with instructions not to arm the liftdumper system prior to commanding the landing gear to extend. In addition, this proposed AD would add requirements for modification of the grounds of the shielding of the wheelspeed sensor wiring of the MLG and installation of new electrical grounds for the wheelspeed sensor channel of the anti-skid control box of the MLG. The actions would be required to be accomplished in accordance with the service bulletins described previously.

Interim Action

This is considered to be interim action until final action is identified, at which time the FAA may consider further rulemaking.

Cost Impact

There are approximately 131 airplanes of U.S. registry that would be affected by this proposed AD.

For all airplanes, the actions that are currently required by AD 98–11–02 take approximately 1 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the currently required actions on U.S. operators is estimated to be $7,860, or $60 per airplane.

There are approximately 127 airplanes of U.S. Registry that would be required to accomplish the modification and installation. It would take approximately 33 work hours per airplane to accomplish the modification and installation, at an average labor rate of $60 per work hour. Required parts would cost between $755 and $1,236 per airplane. Based on these figures, the cost impact of the proposed requirements of this AD on U.S. operators is estimated to be between $347,345 and $408,432, or between $2,735 and $3,216 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient

federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–10529 (63 FR 27197, May 18, 1998), and by adding a new airworthiness directive (AD), to read as follows:

Fokker Services B.V.: Docket 98–NM–346–AD. Supersedes AD 98–11–02, Amendment 39–10529.

Applicability: All Model F.28 Mark 0070 and Mark 0100 series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent electromagnetic interference generated by electrical wiring that runs parallel to the wheelspeed sensor wiring, which could result in inadvertent deployment of the liftdumpers during approach for landing or reduced brake pressure during low speed taxiing, and consequent reduced controllability and performance of the airplane, accomplish the following:

Restatement of Requirements of AD 98–11–02, Amendment 39–10529

(a) Within 5 days after June 2, 1998 (the effective date of AD 98–11–02), revise the Limitations and Normal Procedures sections of the FAA-approved Airplane Flight Manual (AFM) in accordance with paragraphs (a)(1) and (a)(2) of this AD. This may be accomplished by inserting a copy of this AD in the AFM.

(1) Add the following information to section 5—NORMAL PROCEDURES, sub-Section APPROACH AND LANDING, after the subject APPROACH:

"Before Landing

WARNING: DO *NOT* ARM THE LIFTDUMPER SYSTEM BEFORE LANDING GEAR DOWN SELECTION.

Selecting Landing Gear DOWN after arming the liftdumper system may result in inadvertent deployment of the liftdumpers, because the liftdumper arming test may be partially ineffective."

(2) Add the following information to the LIMITATIONS section:

"Liftdumper System

DO *NOT* ARM THE LIFTDUMPER SYSTEM BEFORE LANDING GEAR DOWN SELECTION."

New Requirements of This AD

Corrective Actions

(b) For Model F.28 Mark 0100 series airplanes having serial numbers as listed in Fokker Service Bulletin SBF100–32–067, Revision 1, dated July 6, 1998: Within 6 months after the effective date of this AD, modify the grounds of the shielding of the wheelspeed sensor wiring of the main landing gear (MLG) in accordance with Part 1, 2, 3, or 4 of the Accomplishment Instructions of the service bulletin, as applicable.

Note 2: Modifications accomplished prior to the effective date of this AD in accordance with Fokker Service Bulletin SBF100–32–067, dated March 12, 1993, are considered acceptable for compliance with the requirements of paragraph (b) of this AD.

(c) For Model F.28 Mark 0100 series airplanes having serial numbers listed in Fokker Service Bulletin SBF100–32–037, Revision 2, dated December 4, 1998: Within 12 months after the effective date of this AD, install new electrical grounds for the wheelspeed sensor channel of the anti-skid control box of the MLG in accordance with Part 1, 2, or 3 of the Accomplishment Instructions of the service bulletin, as applicable.

Note 3: Installations accomplished prior to the effective date of this AD in accordance with Fokker Service Bulletin SBF100–32–037, dated November 12, 1990, or Revision 1, dated November 16, 1998, are considered acceptable for compliance with the requirements of paragraph (c) of this AD.

Alternative Methods of Compliance

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(e) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 5: The subject of this AD is addressed in Dutch airworthiness directives BLA 1998–100, dated August 31, 1998 and 1998 100/2, dated November 30, 1998.

Issued in Renton, Washington, on April 9, 1999.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–9512 Filed 4–15–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–315–AD]

RIN 2120–AA64

Airworthiness Directives; Lockheed Model L–1011–385 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Lockheed Model L–1011–385 series airplanes. This proposal would require repetitive inspections to detect discrepancies of the lower actuator pins and/or bushings of the horizontal stabilizer, and replacement of any discrepant component with a new component. Replacement of all four actuator pins and bushings would

terminate the repetitive inspections. This proposal is prompted by a report indicating that a fractured lower actuator pin of the horizontal stabilizer was detected. The actions specified by the proposed AD are intended to detect and correct discrepancies of the lower actuator pins and bushings of the horizontal stabilizer, which could result in reduced structural integrity of the horizontal stabilizer control system, and consequent reduced controllability of the airplane.

DATES: Comments must be received by June 1, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–315–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Lockheed Martin Aircraft & Logistics Center, 120 Orion Street, Greenville, South Carolina 29605. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia.

FOR FURTHER INFORMATION CONTACT: Thomas Peters, Program Manager, Systems and Flight Test Branch, ACE–116A, FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia 30337–2748; telephone (770) 703–6063; fax (770) 703–6097.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 98–NM–315–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98-NM–315-AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received a report indicating that a fractured lower actuator pin of the horizontal stabilizer was detected on a Lockheed Model L–1011–385 series airplane. Subsequently, cracking of another pin and galling of two adjacent pins were detected. Such cracking and galling have been attributed to extensive pitting corrosion damage to the bushings of the horizontal stabilizer actuator assembly. Further investigation revealed that certain actuator pins could have been replaced without the installation of new bushings; the old bushings do not have the required interference fit with the new pins. This lack of adequate interference fit can result in the pin surface rubbing against the bushing, which, when combined with corrosion damage on the bushing, can lead to galling damage on the pin surface. The galling damage may lead to crack initiation and early failure of the pin. Such discrepancies, if not corrected, could result in reduced structural integrity of the horizontal stabilizer control system, and consequent reduced controllability of the airplane.

Other Relevant Rulemaking

In 1992, the FAA issued AD 92–16–19, amendment 39–8329 (57 FR 36892, August 17, 1992), which requires a one-time inspection to detect missing, sheared, or deformed horizontal stabilizer lower actuator pins, and replacement of the pins, if necessary. That AD also requires either a one-time magnetic particle inspection to detect cracks on the horizontal stabilizer actuator pins and replacement of any cracked pins found, or replacement of each of the four actuator pins. That AD also specifies a life limit of 12,000 flight cycles on certain actuator pins.

Explanation of Relevant Service Information

The FAA has reviewed and approved Lockheed Service Bulletin 093–27–306, dated January 14, 1998, which describes procedures for repetitive inspections (borescope, eddy current, magnetic particle) of the lower actuator pins and/or bushings of the horizontal stabilizer to detect discrepancies, and replacement of certain actuator pins and bushings with new components. Replacement of all four actuator pins and bushings would terminate the repetitive inspections. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously.

Cost Impact

There are approximately 235 airplanes of the affected design in the worldwide fleet. The FAA estimates that 117 airplanes of U.S. registry would be affected by this proposed AD.

It would take approximately 4 work hours per airplane to accomplish the proposed inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the inspection proposed by this AD on U.S. operators is estimated to be $28,080, or $240 per airplane, per inspection cycle.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Should an operator elect to accomplish the optional terminating action that would be provided by this AD action, it would take approximately 2 work hours to accomplish it, at an average labor rate of $60 per work hour. Required parts would cost approximately $4,550 per set of four pins and bushings, per airplane. Based on these figures, the cost impact of the optional terminating action would be $4,670 per airplane.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Lockheed: Docket 98–NM–315–AD.

Applicability: Model L–1011–385–1, –1–14, –1–15, and –3 series airplanes, as listed in Lockheed Service Bulletin 093–27–306, dated January 14, 1998; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct discrepancies of the lower actuator pins and bushings of the horizontal stabilizer, which could result in reduced structural integrity of the horizontal stabilizer control system, and consequent reduced controllability of the airplane, accomplish the following:

Initial Inspection

(a) Except as provided by paragraph (a)(3) of this AD: Perform an inspection to detect discrepancies (e.g., damage, cracking), of the lower actuator pins and/or bushings of the horizontal stabilizer using one of the three inspection methods (borescope, eddy current, or magnetic particle) listed in Lockheed Service Bulletin 093–27–306, dated January 14, 1998, in accordance with that service bulletin, at the time specified in paragraph (a)(1), (a)(2), or (a)(3) of this AD, as applicable.

(1) For airplanes that have accumulated fewer than 3,500 flight cycles since replacement of the actuator pins or bushings as of the effective date of this AD: Inspect within 3,500 flight cycles since replacement, or within 6 months after the effective date of this AD, whichever occurs later.

(2) For airplanes that have accumulated 3,500 or more flight cycles, but fewer than 5,000 flight cycles, since replacement of the actuator pins or bushings as of the effective date of this AD: Inspect within 60 days after the accumulation of 5,000 flight cycles since replacement, or within 6 months after the effective date of this AD, whichever occurs first.

(3) For airplanes that have accumulated 5,000 or more flight cycles since replacement of the actuator pins or bushings as of the effective date of this AD: Perform a magnetic particle inspection within 60 days after the effective date of this AD.

Repetitive Inspections

(b) Thereafter, repeat the inspection required by paragraph (a) of this AD in accordance with Lockheed Service Bulletin 093–27–306, dated January 14, 1998, at the interval specified in paragraph (b)(1), (b)(2), (b)(3), or (b)(4) of this AD; as applicable; until the actions specified in paragraph (d) of this AD have been accomplished.

(1) If the immediately preceding inspection was performed using borescope or eddy current procedures, and fewer than 5,000 flight cycles have accumulated since the most recent replacement of the actuator pins or bushings: Within 350 flight cycles after accomplishment of the initial inspection, perform a borescope, eddy current, or magnetic particle inspection. Repeat the inspection using a borescope or eddy current technique, as applicable, thereafter at intervals not to exceed 350 flight cycles.

(2) If the immediately preceding inspection was performed using borescope or eddy current procedures, and 5,000 or more flight cycles have accumulated since the most recent replacement of the actuator pins or bushings: Within 350 flight cycles after accomplishment of the initial inspection, perform a magnetic particle inspection. Repeat the magnetic particle inspection thereafter at intervals not to exceed 1,000 flight cycles.

(3) If the immediately preceding inspection was performed using magnetic particle procedures, and fewer than 5,000 flight cycles have accumulated since the most recent replacement of the actuator pins or bushings: Perform a borescope, eddy current, or magnetic particle inspection within 1,000 flight cycles.

(4) If the immediately preceding inspection was performed using magnetic particle procedures, and 5,000 or more flight cycles have accumulated since the most recent replacement of the actuator pins or bushings: Perform a magnetic particle inspection with 1,000 flight cycles. Repeat the magnetic particle inspection thereafter at intervals not to exceed 1,000 flight cycles.

Corrective Action

(c) If any discrepancy (e.g., damage, cracking) is detected during any inspection required by this AD, prior to further flight, accomplish paragraph (c)(1) or (c)(2) of this AD, as applicable, in accordance with Lockheed Service Bulletin 093–27–306, dated January 14, 1998.

(1) If any discrepancy is detected after performing a borescope or eddy current inspection, perform a magnetic particle inspection.

(2) If any discrepancy is detected after performing a magnetic particle inspection, replace the discrepant component with a new component. Accomplishment of this replacement terminates the repetitive inspections for that component.

Terminating Action

(d) Replacement of all four actuator pins and bushings with new actuator pins and bushings, in accordance with Lockheed Service Bulletin 093–27–306, dated January 14, 1998, constitutes terminating action for the repetitive inspections required by this AD.

Alternative Methods of Compliance

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Atlanta Aircraft Certification Office (ACO), FAA, Small Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Atlanta ACO.

Special Flight Permits

(f) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the

Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on April 9, 1999.

John J. Hickey,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–9511 Filed 4–15–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–SW–02–AD]

Airworthiness Directives; Bell Helicopter Textron-manufactured Model HH–1K, TH–1F, TH–1L, UH–1A, UH–1B, UH–1E, UH–1F, UH–1H, UH–1L, and UH–1P Helicopters; and Southwest Florida Aviation SW204, SW204HP, SW205, and SW205A–1 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to Bell Helicopter Textron (Bell)-manufactured Model HH–1K, TH–1F, TH–1L, UH–1A, UH–1B, UH–1E, UH–1F, UH–1H, UH–1L, and UH–1P helicopters; and Southwest Florida Aviation SW204, SW204HP, SW205, and SW205A–1 helicopters that currently requires modification and inspections of the tailboom vertical fin spar (vertical fin spar). This action would require the same modification and inspections plus two additional inspections, and replacement of the vertical fin spar. This proposal is prompted by 2 accidents involving fatigue cracks in the vertical fin spar that have occurred since the issuance of AD 97–20–09. The actions specified by the proposed AD are intended to prevent in-flight failure of the vertical fin spar and subsequent loss of control of the helicopter.

DATES: Comments must be received on or before June 15, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 99–SW–02–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Charles Harrison, Aerospace Engineer, FAA, Rotorcraft Directorate, Rotorcraft Standards Staff, 2601 Meacham Blvd., Fort Worth, Texas 76137, telephone (817) 222–5447, fax (817) 222–5960.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 99–SW–02–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 99–SW–02–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

Discussion

On September 17, 1997, the FAA issued priority letter AD 97–20–09, applicable to Bell-manufactured Model HH–1K, TH–1F, TH–1L, UH–1A, UH–1B, UH–1E, UH–1F, UH–1H, UH–1L, and UH–1P helicopters; and Southwest Florida Aviation SW204, SW204HP and SW205 helicopters, which requires modification and inspections of the vertical fin spar. That priority letter AD was prompted by two accidents involving in-flight failures of the vertical fin spars on Model TH–1L and UH–1B helicopters. One other accident occurred on a Model 205A–1 helicopter which is of similar type design. One of the accidents resulted in a fatality. As a result of those accident investigations, the FAA determined that a large number of high-power events that result from repeated heavy lift operations can cause fatigue cracks which will cause the vertical fin spar to fail. After the issuance of that AD, the FAA determined that additional model helicopters are affected by the same unsafe condition. The FAA then issued AD 97–20–09, Amendment 39–10521, on May 4, 1998 (63 FR 26439, May 13, 1998), and added Model SW205A–1 helicopters and the Utah State University UH–1H helicopters to the applicability of that AD.

Since the issuance of that AD, two accidents, one of which included fatalities, have occurred. The FAA has determined that additional inspections are needed, and replacement of the vertical fin spar, part number (P/N) 205–030–846-all dash numbers, is required. This proposal would require another inspection and another modification at 50 hours TIS, and further inspections thereafter at intevals not to exceed 50 hours TIS. This proposal would also require that the vertical fin be replaced within 12 calendar months.

Since an unsafe condition has been identified that is likely to exist or develop on other Model HH–1K, TH–1F, TH–1L, UH–1A, UH–1B, UH–1E, UH–1F, UH–1H, UH–1L, and UH–1P helicopters; and Southwest Florida Aviation SW204, SW204HP, SW205, and SW205A–1 helicopters of the same type design, the proposed AD would supersede AD 97–20–09 to require inspections, modification, and replacement of the vertical fin spar.

The FAA estimates that 75 helicopters of U.S. registry would be affected by this proposed AD, that it would take approximately 4 work hours to accomplish the initial inspection, 8 work hours to accomplish the modification and the recurring inspections, and 180 hours to replace the vertical fin spar, and that the average labor rate is $60 per work hour. Required parts would cost approximately $200 for the modification and $15,000 for the replacement. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $2,004,000 to conduct an initial inspection, modify the vertical fin spars and conduct recurring inspections, and replace the vertical fin spars on all helicopters in the U.S. fleet.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39–10521 (63 FR 26439, May 13, 1998), and by adding a new airworthiness directive (AD), to read as follows:

California Department of Forestry; Firefly Aviation Helicopter Services (Previously Erickson Air Crane Co.); Garlick Helicopters, Inc.; Hawkins and Powers Aviation, Inc.; International Helicopters, Inc.; Tamarack Helicopters (Previously Ranger Helicopter Services, Inc.); Robinson Aircrane; Williams Helicopter Corporation (Previously Scott Paper Co.); Smith Helicopters; Southern Helicopter Inc.; Southwest Florida Aviation; Utah State University; Western International Aviation, Inc.; UNC Helicopters; And U.S. Helicopter, Inc.: Docket No. 99–SW–02–AD. Supersedes AD 97–20–09, Amendment 39–10521, Docket No. 97–SW–35–AD.

Applicability: Model HH–1K (Type Certificate Data Sheet (TCDS) H5NM), TH–lF (TCDS H12NM, and R00008AT), TH–1L (TCDS H5NM, H7SO, and H4NM), UH–1A (TCDS H3SO), UH–1B (TCDS H1RM, H3NM, H13WE, H3SO, H5SO, and R00012AT), UH–1E (TCDS H5NM, H7SO, H8NM, and H4NM), UH–1F (TCDS H2NM, H7NE, H11SW, H12NM, and R00008AT), UH–1H (TCDS H13WE, H3SO, H15NM, and R00007DE), UH–lL (TCDS H5NM, H7SO, and H4NM), UH–1P (TCDS H12NM, and R00008AT), and SW204 (TCDS H6SO), SW204HP (TCDS H6SO), SW205 (TCDS H6SO), and SW205A–1 (TCDS H6SO) helicopters, with tailboom vertical fin spar (vertical fin spar), part number (P/N) 205–032–899-all dash numbers, 205–030–846-all dash numbers, or 205–032–851-all dash numbers, installed, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (h) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the tailboom vertical fin (fin) spar and subsequent loss of control of the helicopter, accomplish the following:

(a) Within 8 hours time-in-service (TIS), modify the vertical fin spar as follows:

(1) Remove the 42° gearbox cover and open the drive shaft cover on the fin spar assembly (see Figure 1).

(2) Remove the first four rivets from the fin spar located at the bottom of the fin spar left-hand side at the tailboom and fin spar junction, and the first four rivets aft of the junction along the lower edge of the fin spar side-skin as shown (see Figure 2).

(3) Trim the fin spar left-hand skin using extreme care to not damage the fin spar assembly (see Figure 3).

(4) Deburr the rivet holes and trimmed skin edges. Remove all debris. In a ventilated work area, remove any surface contaminants with a cloth that has been dampened with aliphatic naphtha or an equivalent cleaning solvent.

(5) Reattach the side-skin to the fin spar using MS 20470AD rivets. DO NOT install the bottom two rivets into the fin spar where the skin was trimmed.

(6) Attach the fin spar side-skin lower edge using the rivets specified in Figure 3.

(7) Refinish all reworked areas.

(b) After modifying the fin spar assembly, inspect the fin spar for cracks before further flight and thereafter, at intervals not to exceed 8 hours TIS as follows:

(1) Remove the lower aft tailboom inspection door, located at tailboom station 180 (see Figure 1).

(2) Remove the 42° gearbox cover and open the drive shaft cover on the fin (see Figure 1).

(3) In a ventilated work area, clean all surfaces to be inspected with a cloth dampened with aliphatic naphtha or an equivalent cleaning solvent.

(4) Through the lower aft tailboom inspection door, using a bright light and an inspection mirror, inspect the fin spar assembly adjacent to the tailboom top skin on the forward side, paying special attention to the left-hand edge and the adjacent surfaces (see Figures 1 and 2).

(5) Using a bright light and a 10x or higher magnifying glass, inspect the fin spar assembly adjacent to the tailboom top-skin on the in-board and out-board sides, the vertical edge, and the two open rivet holes. Using a bright light and a mirror, inspect the aft side of the fin spar in the same area. Special attention must be given to the left-hand edge of the fin spar and any adjacent surfaces between fin stations 66.31 and 71.31 (see Figure 2).

(6) If any crack is discovered on the fin spar, replace the fin spar assembly with an airworthy fin spar assembly before further flight.

(c) Within 50 hours TIS, and thereafter at intervals not to exceed 50 hours TIS, inspect the fin spar assembly as follows:

(1) Remove the 42° gearbox cover and open the driveshaft cover on the fin spar assembly (see Figure 1). Remove the aft lower fin fairing and fin access panels that allow access to the aft side of the forward fin spar and the secondary spar (see Figure 1).

(2) In a ventilated work area, clean all surfaces to be inspected with a cloth dampened with aliphatic naphtha or an equivalent cleaning solvent. Using a bright light, 10x or higher magnifying glass, and a borescope as required, inspect all of the fin ribs, fittings, skins, and secondary aft spar of the fin assembly (see Figures 4 and 5). Pay particular attention to the upper and lower fittings at tailboom station 227 for cracked or corroded fittings or sheared or loose rivets.

(3) Gain access to the canted bulkhead aft of tailboom station 194.30 through the most aft lower access covers by removing the aft access covers or position light fairings as required. Visually inspect the canted bulkhead forward and aft sides through the lower tailboom inspection hole and position

light access holes for cracks, corrosion, or loose or sheared rivets in all skins, fittings and bulkheads using a bright light, an inspection mirror, and a borescope as required (see Figures 4 and 5). Pay particular attention to the area in the upper forward corners of the aft skin directly around the fin spar assembly and the overlap area of the top skin beneath the 42° gearbox for cracks, which are only visible from the underside.

(4) Any crack found in the fin spar assembly requires replacement with an airworthy part. Replacing the entire fin spar configuration with an airworthy fin spar configuration that has been demonstrated to the FAA to satisfy the structural fatigue requirements of repeated heavy lift operations, and is approved by the Manager, FAA, Rotorcraft Standards Staff, will constitute a terminating action for the requirements of this AD. Any corrosion, loose or sheared rivets, or cracked skins or ribs found within the inspection areas must be repaired prior to further flight.

(d) Within 50 hours TIS, modify the fin spar as follows:

(1) Remove the 42° gearbox cover and open the driveshaft cover on the fin spar assembly (see Figure 1).

(2) Remove the next 10 rivets from the fin spar located at the bottom of the fin spar left-hand side at the tailboom and fin spar junction (see Figures 6 and 7, whichever is applicable).

Caution: Extreme care must be taken when drilling and removing rivets from the side of the fin spar to ensure the fin spar assembly is not damaged.

(3) Trim the fin left-hand side skin using extreme care to not damage the fin spar assembly to expose the spar outboard edge (See Figure 6 or 7, whichever is applicable).

(4) Deburr the rivet holes and trimmed side skin edges. Remove all debris. In a ventilated work area, remove any surface contaminates with a cloth that has been dampened with aliphatic naphtha or an equivalent cleaning solvent.

(5) Fabricate cover plates in accordance with the notes and drawings of Figure 8 or 9, whichever is applicable. Ream prepare the holes in the fin spar and parts and install HI-LOK fasteners.

Note 2: Bell Helicopter Medium Structural Repair Manual, BHT-MED-SRM-1, pages 3-36 through 3-38, pertains to this installation and reaming procedure.

(6) Refinish all reworked areas, close driveshaft and replace 42° gearbox cover.

(e) After modification of the fin spar assembly, before further flight and thereafter at intervals not to exceed 100 hours TIS, inspect the fin spar for cracks as follows:

(1) Remove the 42° gearbox cover, open the driveshaft cover on the vertical fin spar assembly, and remove the spar cover plate and filler plate from the lower left-hand side of the fin assembly (see Figures 1 and 8 or 9, whichever is applicable).

Caution: Extreme care must be taken when removing the cover plate and filler from the side of the fin spar to ensure that the spar assembly is not damaged.

(2) In a ventilated work area, clean the surface to be inspected with a cloth dampened with aliphatic naphtha.

Caution: Do not use chemical paint strippers. Use Scotch-Brite Grade-A VFN and methyl-ethyl ketone (MEK) or a suitable solvent to remove the paint and primer in the inspection area.

(3) Perform a dye-penetrant inspection of the exposed area of the fin spar (See Figures 6 and 7).

Note 3: ASTM E1416 or MIL-STD-6866, or the Bell Helicopter Standard Practices Manual, BHT-ALL-SPM, Chapter 6.2, pertains to this inspection.

(4) If any crack is discovered on the fin spar, replace the fin spar assembly with an airworthy fin spar assembly before further flight.

(5) After inspection, apply zinc chromate primer to the bare surfaces. When dry, re-install the cover plate and the filler using fasteners specified in Figure 8 or 9, whichever is applicable.

(6) Install the 42° gearbox cover and the driveshaft cover.

(f) Within 12 calendar months, remove the fin spar, P/N 205-030-846-all dash numbers, P/N 205-032-899-all dash numbers, or P/N 205-032-851-all dash numbers, whichever is applicable, and replace it with an airworthy fin spar configuration that has been demonstrated to the FAA to satisfy the structural fatigue requirements of repeated heavy lift operations, and is approved by the Manager, FAA, Rotorcraft Standards Staff.

BILLING CODE 4910-13-U

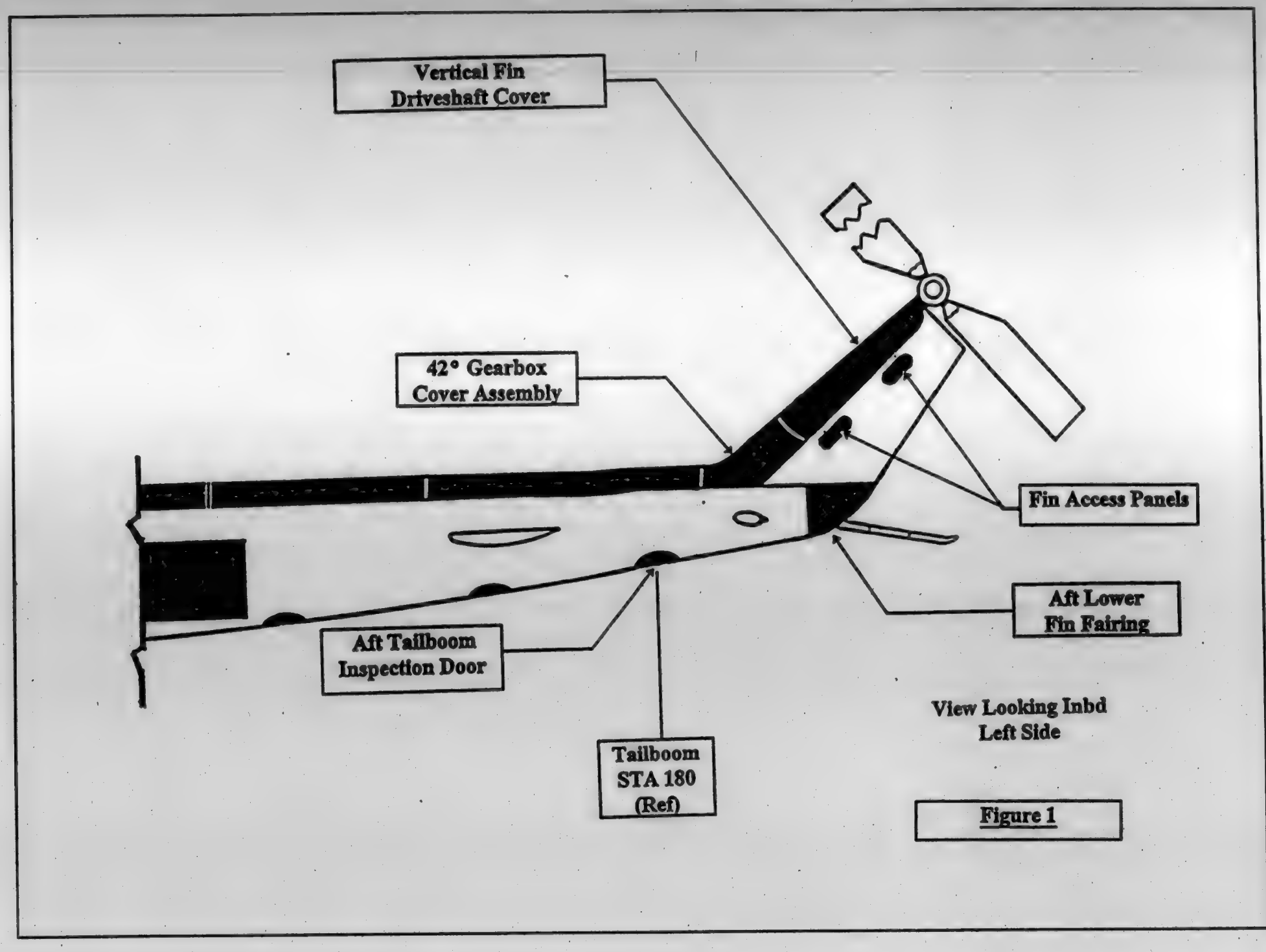

Figure 1

NOTES:

NOTES:

1. THIS FIGURE TO BE USED FOR EITHER SHEET METAL OR BONDED PANEL SIDE SKIN TAIL FIN.

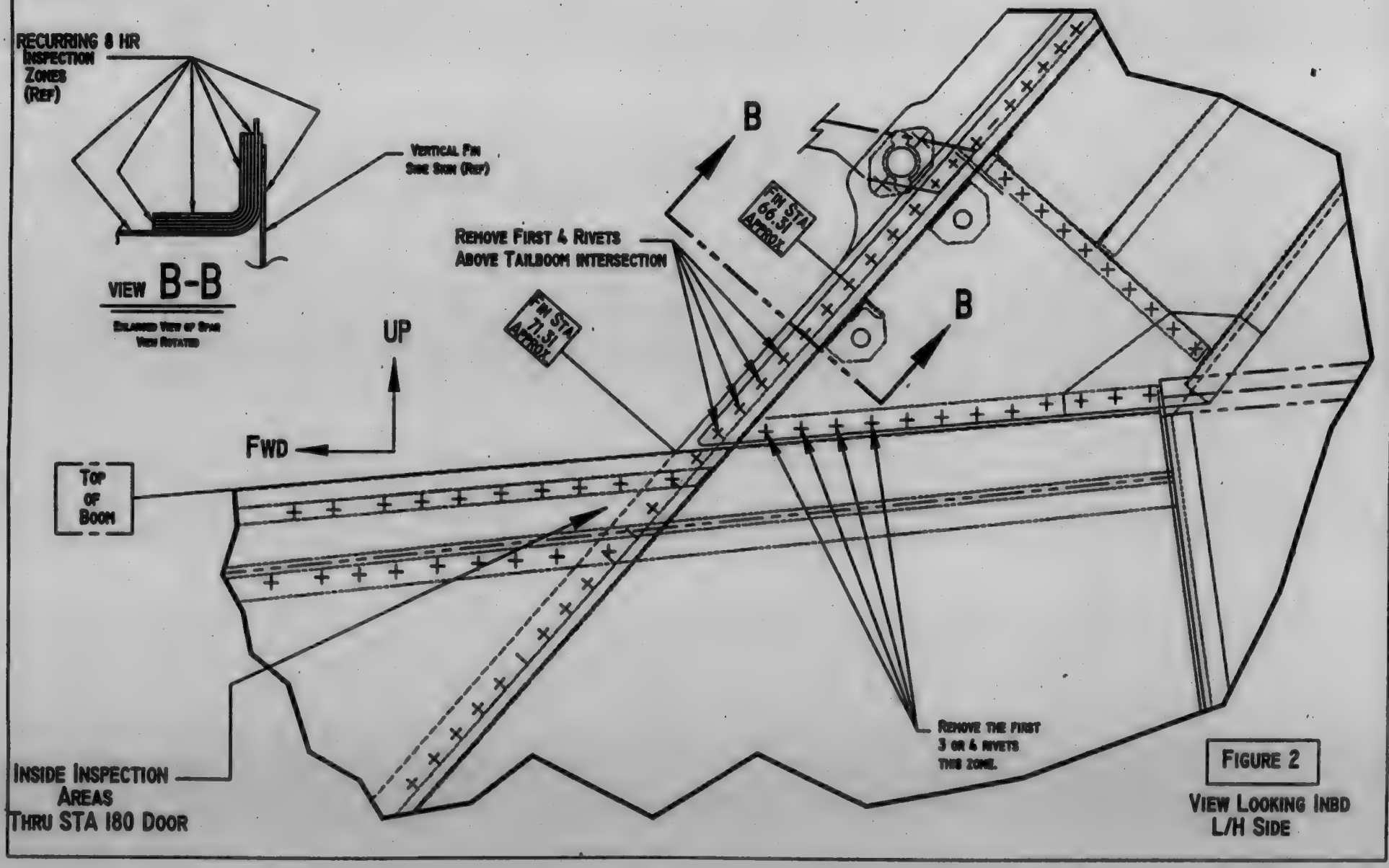

FIGURE 2

VIEW LOOKING INBD L/H SIDE

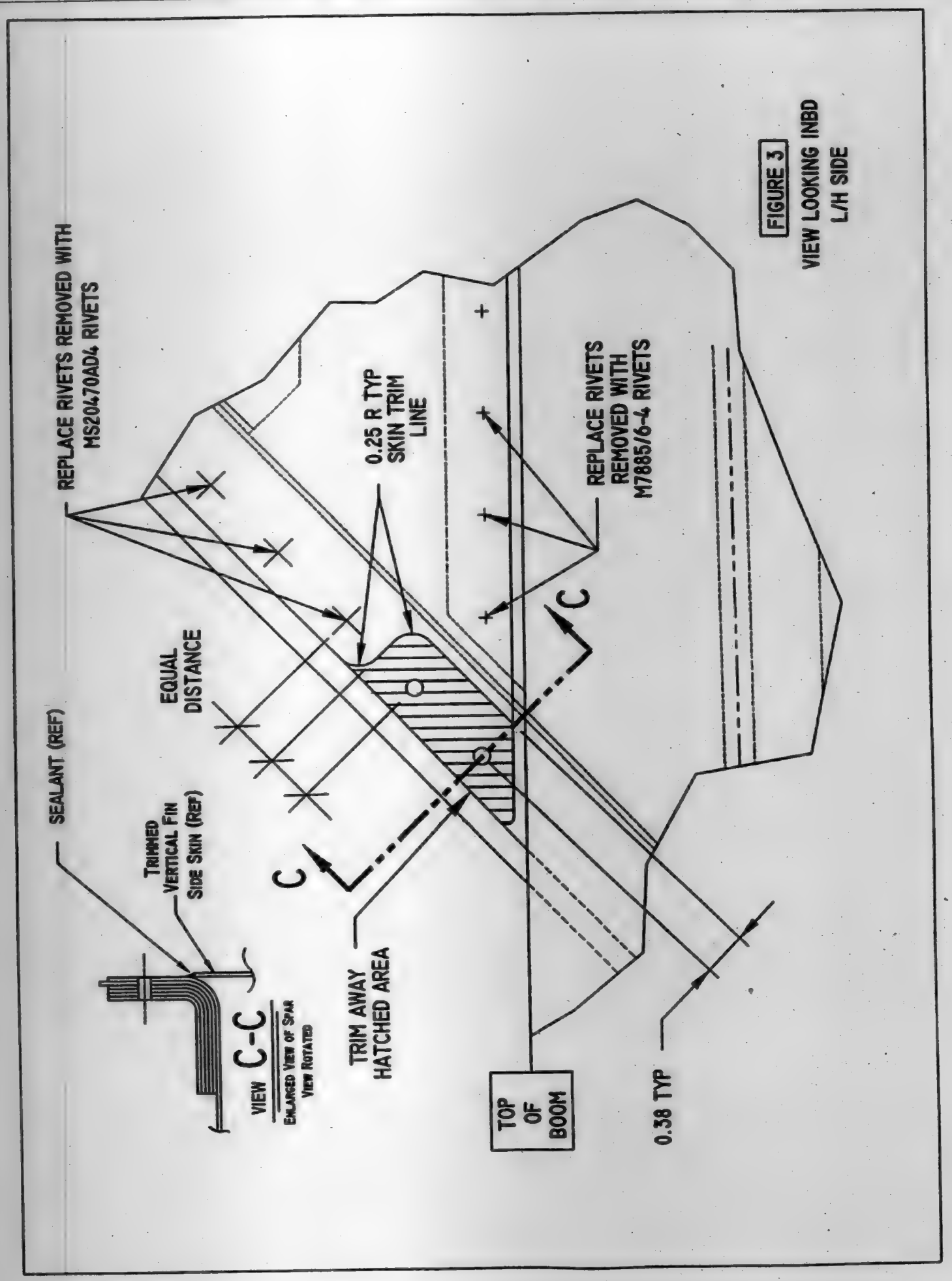

FIGURE 3
VIEW LOOKING INBD
L/H SIDE

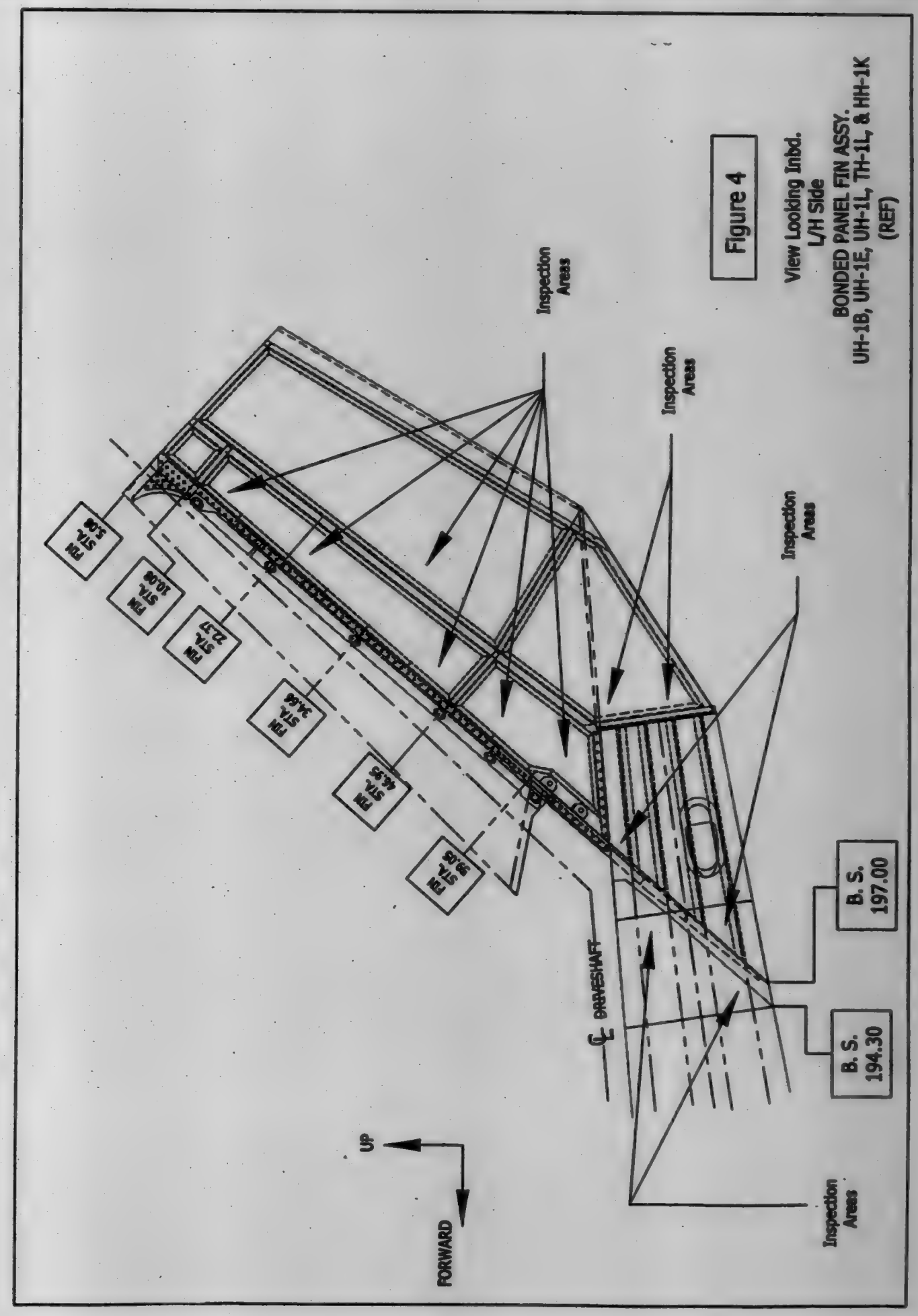
Figure 4
View Looking Inbd.
L/H Side
BONDED PANEL FIN ASSY.
UH-1B, UH-1E, UH-1L, TH-1L, & HH-1K
(REF)
Inspection Areas
Inspection Areas
Inspection Areas
Inspection Areas
Inspection Areas
FWD STA. 5.08
FWD STA. 10.08
FWD STA. 21.57
FWD STA. 34.68
FWD STA. 44.93
FWD STA. 59.68
B. S. 197.00
B. S. 194.30
DRIVESHAFT
UP
FORWARD

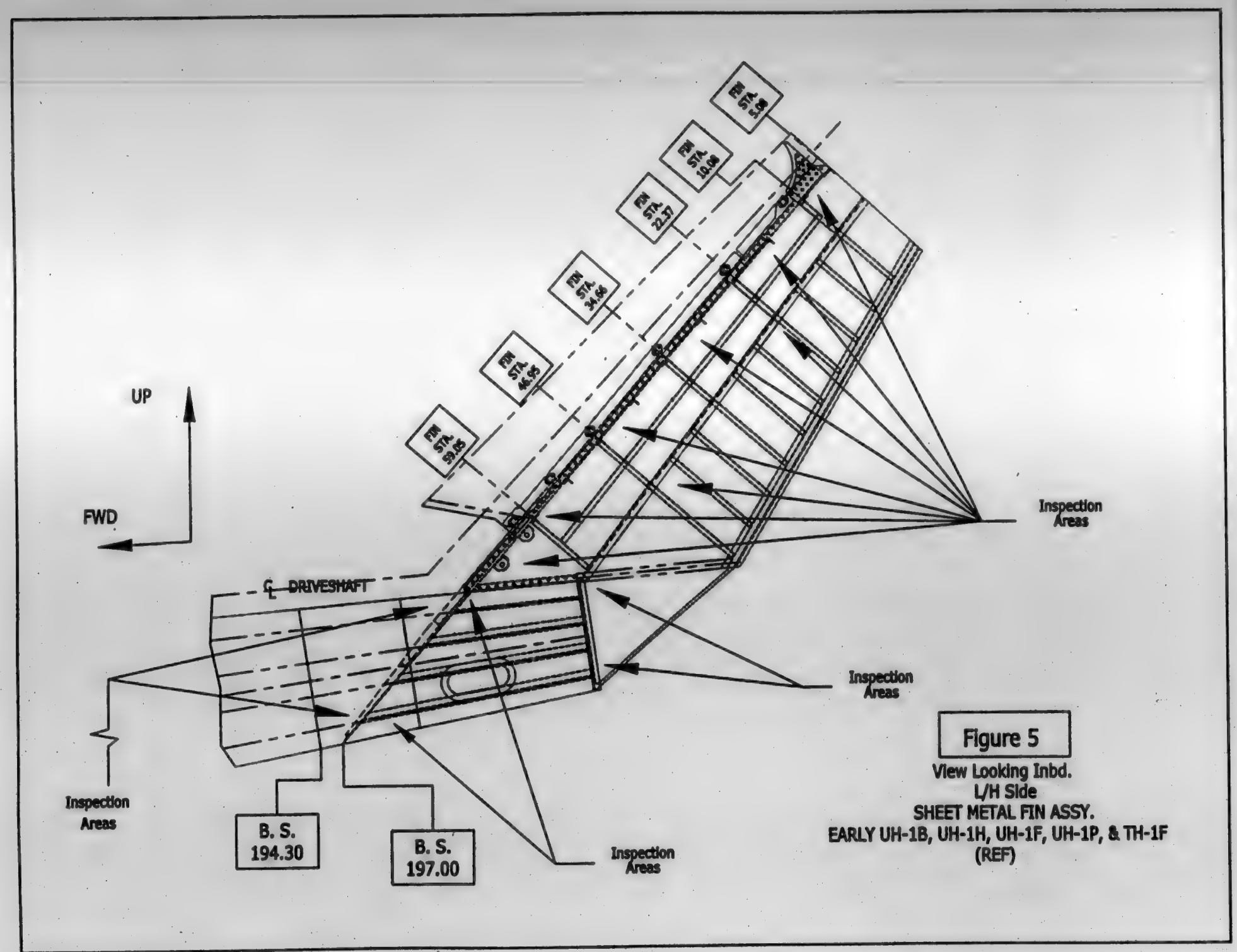

Figure 5
View Looking Inbd.
L/H Side
SHEET METAL FIN ASSY.
EARLY UH-1B, UH-1H, UH-1F, UH-1P, & TH-1F
(REF)

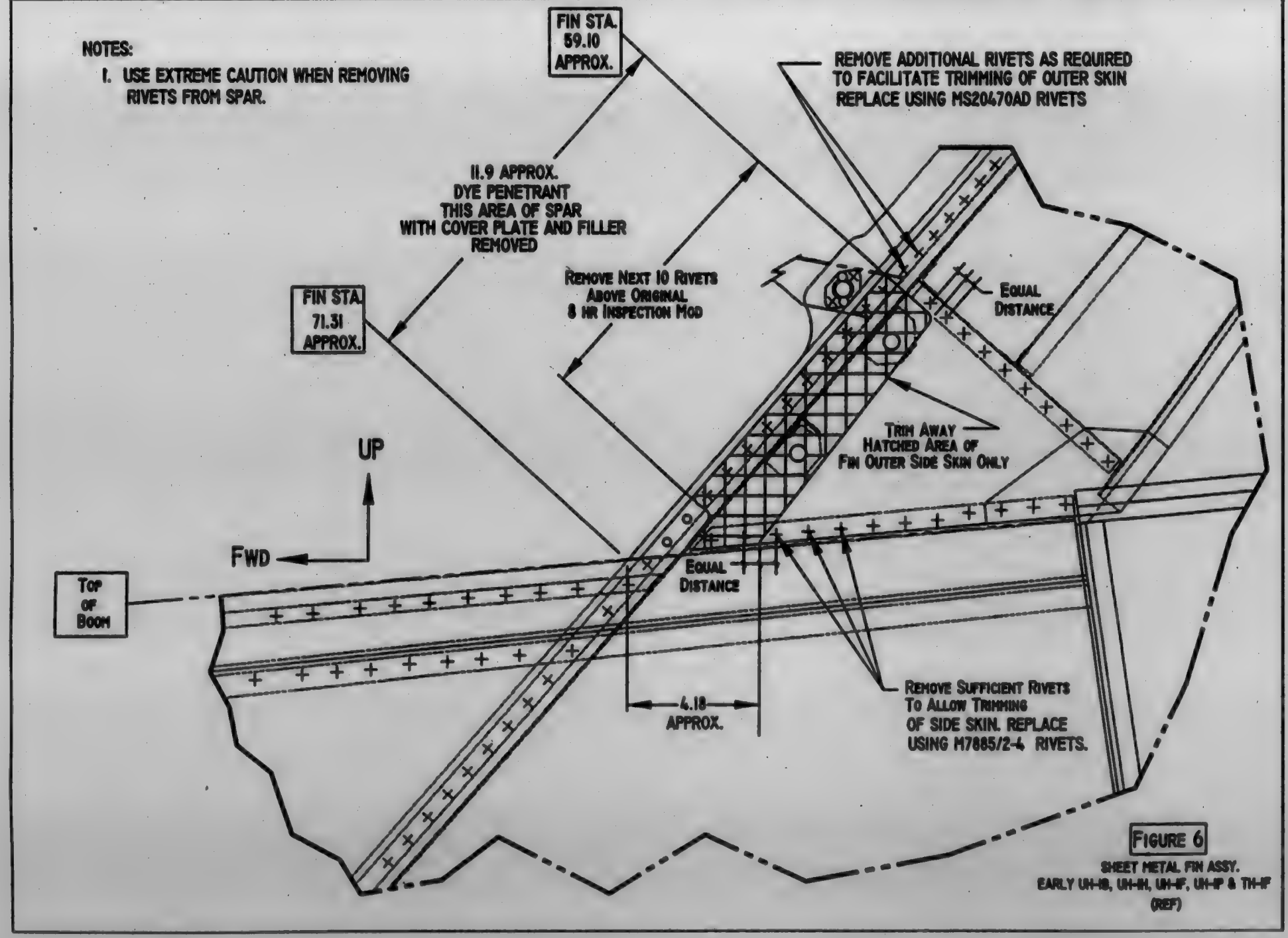

FIGURE 6

SHEET METAL FIN ASSY.
EARLY UH-1B, UH-1H, UH-1F, UH-1P & TH-1F
(REF)

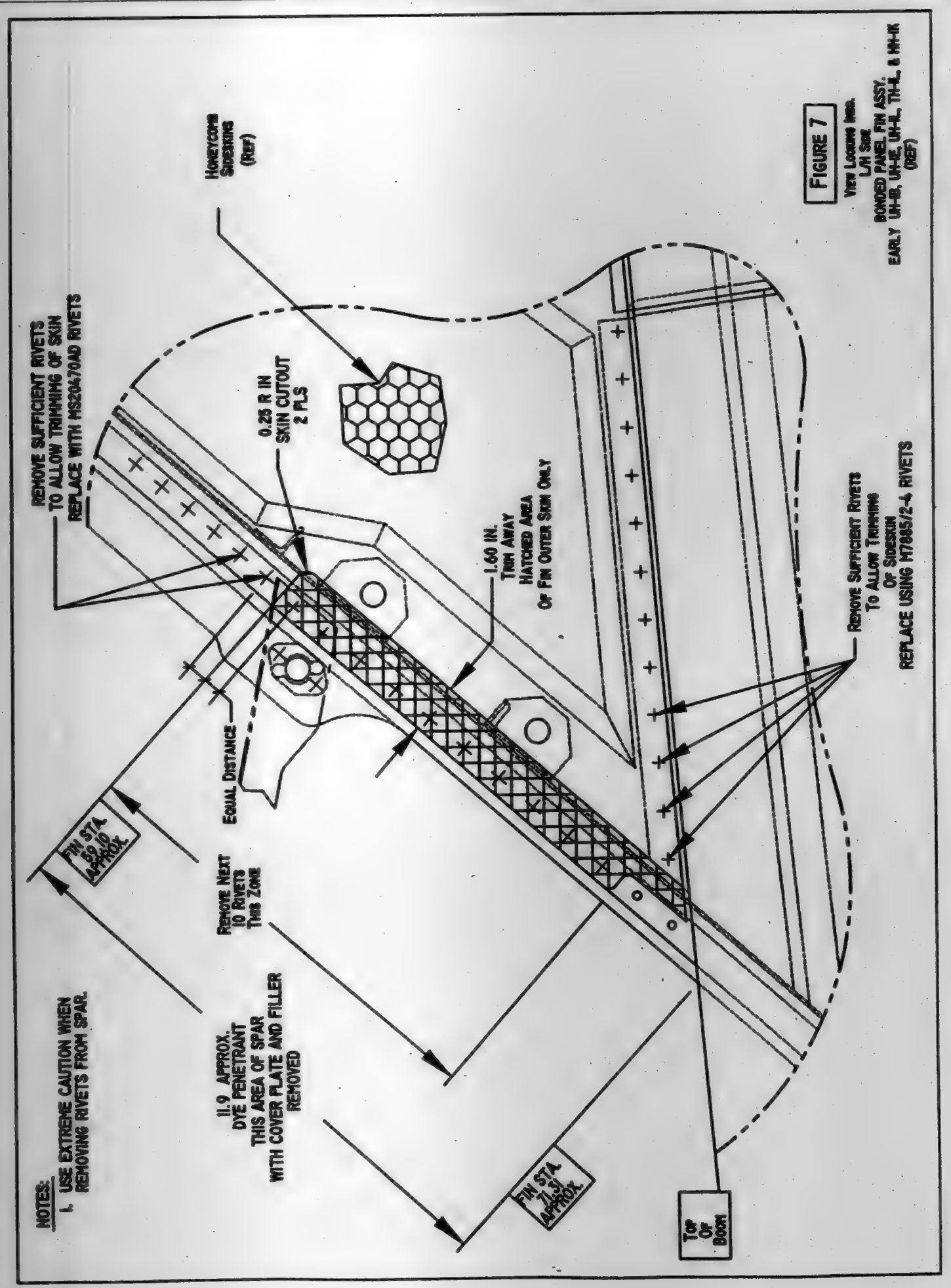
FIGURE 7
VIEW LOOKING INBD. L/H SIDE
BONDED PANEL FIN ASSY.
EARLY UH-1B, UH-1E, UH-1L, TH-1L, & HH-1K (REF)
HONEYCOMB SIDESKINS (REF)
REMOVE SUFFICIENT RIVETS TO ALLOW TRIMMING OF SKIN
REPLACE WITH MS20470AD RIVETS
0.25 R IN SKIN CUTOUT 2 PLS
1.60 IN. TRIM AWAY HATCHED AREA OF FIN OUTER SKIN ONLY
REMOVE SUFFICIENT RIVETS TO ALLOW TRIMMING OF SIDESKIN
REPLACE USING M7885/2-4 RIVETS
EQUAL DISTANCE
FIN STA 65.10 APPROX.
REMOVE NEXT 10 RIVETS THIS ZONE
11.9 APPROX. DYE PENETRANT THIS AREA OF SPAR WITH COVER PLATE AND FILLER REMOVED
FIN STA 71.31 APPROX.
TOP OF BOOM
NOTES:
1. USE EXTREME CAUTION WHEN REMOVING RIVETS FROM SPAR.

NOTES:

1. COVER MATERIAL: 2024-T3 AL. ALY. SHT. 0.050 THK.
2. FILLER MATERIAL: 2024-T3 AL. ALY. SHT. SAME THICKNESS AS ORIGINAL SKIN REMOVED.
3. RIVET E.D. TO BE 2 X RIV. DIA. MIN. UNLESS OTHERWISE NOTED.
4. DIMENSIONS ARE IN INCHES UNLESS OTHERWISE SPECIFIED
5. DEBURR AND BREAK ALL SHARP EDGES .03 R MAX.
6. ALODINE AND PRIME PARTS PRIOR TO INSTALLATION.

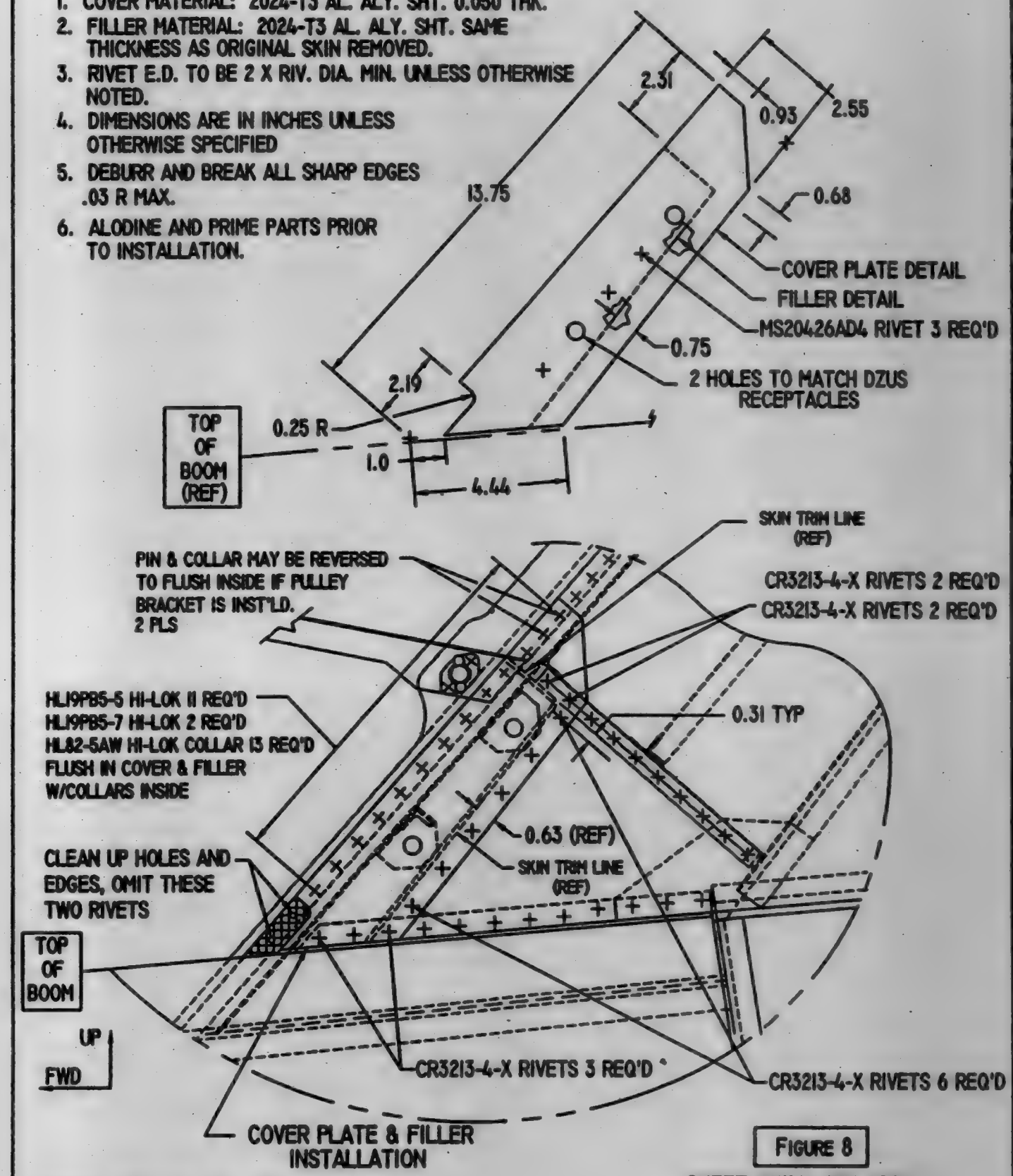

FIGURE 8

SHEET METAL FIN ASSY.
EARLY UH-1B, UH-1H, UH-1F, UH-1P & TH-1F
(REF)

REPLACE USING M7885/2-4 RIVETS

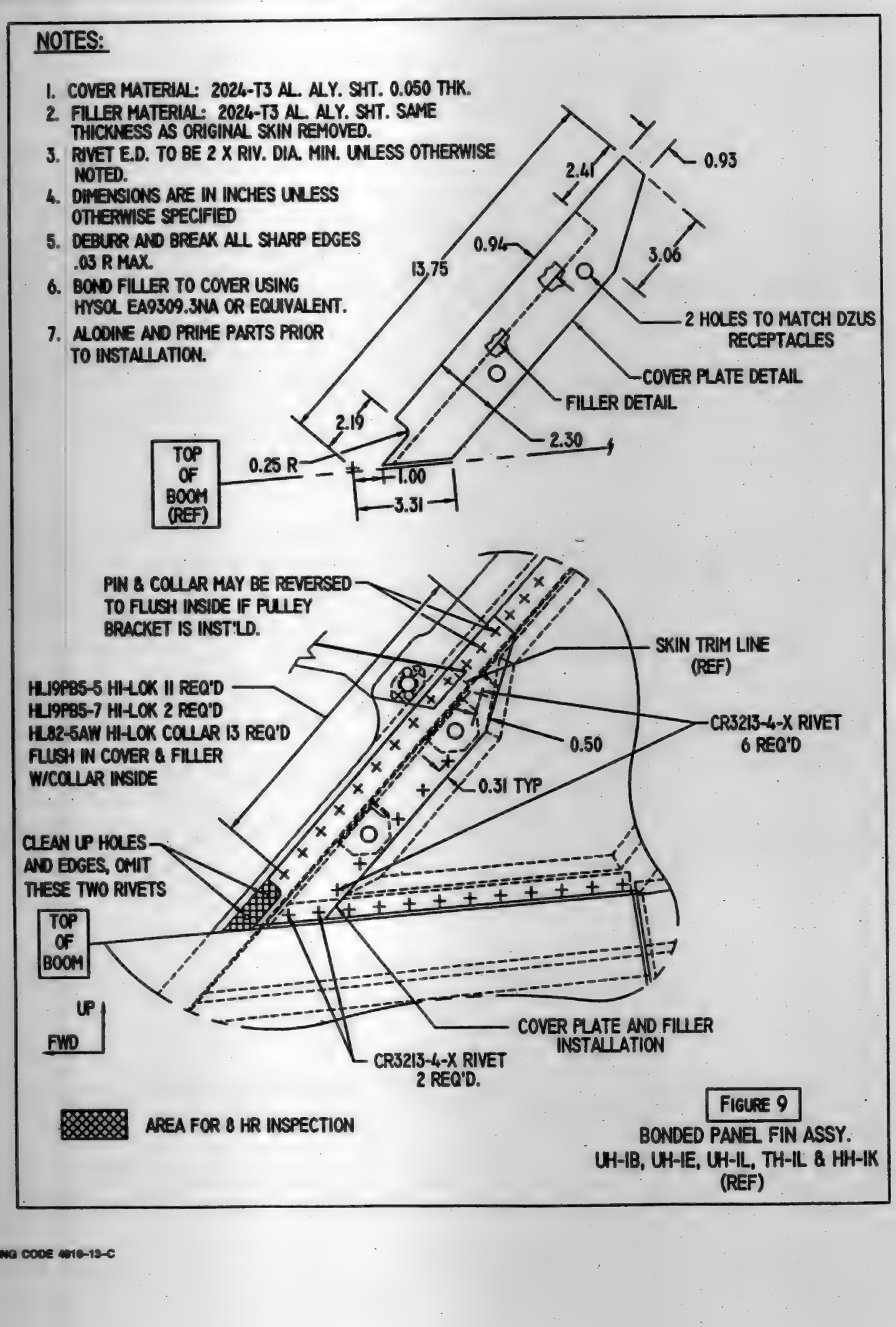

FIGURE 9
BONDED PANEL FIN ASSY.
UH-1B, UH-1E, UH-1L, TH-1L & HH-1K
(REF)

BILLING CODE 4910-13-C

(g) Replacing the fin spar, P/N's 205–032–899-all dash numbers, 205–030–846-all dash numbers, or 205–032–851-all dash numbers, with an airworthy fin spar that has been demonstrated to the FAA to satisfy the structural fatigue requirements of repeated heavy lift operations and approved by the Manager, FAA, Rotorcraft Standards Staff, constitutes a terminating action for the requirements of this AD.

(h) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, FAA, Rotorcraft Standards Staff. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, FAA, Rotorcraft Standards Staff.

Note 4: Information concerning the existence of approved fin spar configurations and alternative methods of compliance with this AD, if any, may be obtained from the Rotorcraft Standards Staff.

(i) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the helicopter to a location where the requirements of this AD can be accomplished.

Issued in Fort Worth, Texas, on April 9, 1999.

Eric Bries,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 99–9510 Filed 4–15–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 935

[OH–246–FOR]

Ohio Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing.

SUMMARY: OSM is announcing receipt of a proposed amendment to the Ohio regulatory program (Ohio program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Ohio is proposing revisions to section 1501:13–1–04 of the Ohio Administrative Code (OAC) as it relates to exemptions for coal extraction incidental to government-financed highway or other construction. The amendment is intended to revise the Ohio program to include counterparts to the recently promulgated "AML Enhancement Rule," which revised the Federal regulations at 30 CFR 707.5 and added a new provision, at 30 CFR 874.17.

DATES: If you submit written comments, they must be received by 4:00 p.m., [E.D.T.] May 17, 1999. If requested, a public hearing on the proposed amendment will be held on May 11, 1999. Requests to speak at the hearing must be received by 4:00 p.m., on May 3, 1999.

ADDRESSES: Mail or hand-deliver your written comments and requests to speak at the hearing to George Rieger, Manager, Oversight and Inspection Office, at the address listed below.

You may review copies of the Ohio program, the proposed amendment, a listing of any scheduled public hearings, and all written comments received in response to this document at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the proposed amendment by contacting OSM's Appalachian Regional Coordinating Center.

George Rieger, Manager, Oversight and Inspection Office, Appalachian Regional Coordinating Center
Office of Surface Mining Reclamation and Enforcement, 3 Parkway Center, Pittsburgh, PA 15220, Telephone: (412) 937–2153

Ohio Division of Mines and Reclamation, 1855 Fountain Square Court, Columbus, Ohio 43244, Telephone: (614) 265–1076.

FOR FURTHER INFORMATION CONTACT: George Rieger, Manager, Oversight and Inspection Office, Appalachian Regional Coordinating Center, Telephone: (412) 937–2153. Internet: grieger@osmre.gov.

SUPPLEMENTARY INFORMATION:

I. Background on the Ohio Program

On August 16, 1982, the Secretary of the Interior conditionally approved the Ohio program. You can find background information on the Ohio program, including the Secretary's findings, the disposition of comments, and the conditions of approval in the August 10, 1982, **Federal Register** (47 FR 34688). You can find later actions on conditions of approval and program amendments at 30 CFR 935.11, 935.15, and 935.16.

II. Description of the Proposed Amendment

By letter dated March 16, 1999 (Administrative Record No. OH–2178–00) Ohio submitted a proposed amendment to its program concerning exemptions for coal extraction incidental to government-financed highway or other construction. Ohio submitted the proposed amendment at its own initiative, in order to incorporate into its program the expanded exemption recently promulgated in the Federal regulations at 30 CFR 707.5, as part of the "AML Enhancement Rule." Under this rule, approved Title IV abandoned mine land (AML) projects under SMCRA which involve incidental coal extraction and are less than 50 percent government financed may qualify for exemption. Projects which qualify for this expanded exemption must also meet the newly promulgated requirements contained in 30 CFR 874.17. (64 FR 7470, February 12, 1999). The changes proposed by Ohio in the amendment are discussed briefly below:

In the existing Ohio regulations under OAC section 1501:13–1–04(B), the subject exemption is limited to coal extraction incidental to "government financed construction." "Government financed construction" is defined, in relevant part, as construction funded 50 percent or more by funds appropriated from a government financing agency's budget or obtained from general revenue bonds. In the amendment, the State proposes to include within the exemption coal extraction incidental to construction that is government-funded at less than 50 percent when the construction is undertaken as an approved reclamation project under Section 1513.30 (state financed projects) or 1513.37 (Federally funded AML projects) of the Revised Code. The proposed amendment also specifies requirements for approved reclamation projects with less than 50 percent government financing, such as procedures for determining whether a project qualifies for exemption, concurrence between the AML and regulatory program coordinators as to the limits and boundaries of incidental coal extraction, required documentation, and special requirements, including a requirement that projects be conducted in accordance with Ohio's approved AML program. Finally, the amendment requires a contractor to obtain a surface coal mining permit if it extracts coal beyond the limits which have been agreed upon by the AML and regulatory program coordinators.

III. Public Comment Procedures

According to the provisions of 30 CFR 732.17(h), we are seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If we determine the amendment to be adequate, it will become part of the Ohio program.

Written Comments

Your written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of your recommendations. Comments received after the time indicated under **DATES** or at locations other than the Appalachian Regional Coordinating Center will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

If you wish to speak at the public hearing, you should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4:00 p.m., [E.D.T.] on May 3, 1999. The location and time of the hearing will be arranged with those persons requesting the hearing. If no one requests an opportunity to speak at the public hearing, the hearing will not be held.

Filing a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will also allow us to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to speak have been heard. Persons in the audience who have not been scheduled to speak, and who wish to do so, will be heard following those who have been scheduled. The hearing will end after all persons scheduled to speak and persons present in the audience who wish to speak have been heard.

Any disabled individual who has need for a special accommodation to attend a public hearing should contact the individual listed under **FOR FURTHER INFORMATION CONTACT**.

Public Meeting

If only one person requests an opportunity to speak at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendment may request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under **ADDRESSES**. A written summary of each meeting will be made a part of the Administrative Record.

IV. Procedural Determinations

Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12988

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Unfunded Mandates

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), this rule will not produce a Federal mandate of $100 million or greater in any year, i.e., it is not a "significant regulatory action" under the Unfunded Mandates Reform Act.

List of Subjects in 30 CFR 935

Intergovernmental relations, Surface mining, Underground mining.

Dated: April 9, 1999.

Allen D. Klein,

Regional Director, Appalachian Regional Coordinating Center.

[FR Doc. 99–9619 Filed 4–15–99; 8:45 am]

BILLING CODE 4310–05–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA079–0141 FRL–6324–4]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision, Monterey Bay Unified Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the California State Implementation Plan (SIP) which concern stationary source permitting requirements.

The intended effect of proposing approval of these rules under Clean Air Act (CAA or the Act) sections 110 and 112(l) is to regulate permitting of stationary sources in accordance with the requirements of the Act, as amended in 1990. The proposed rules include revisions to the Monterey Bay Unified Air Pollution Control District's New Source Review (NSR) program, as well as Acid Rain program monitoring requirements, and a rule that creates federally enforceable limits on potential to emit for sources with actual emissions less than 50% of the major source thresholds. EPA's final action on this proposed rule will incorporate these rules into the federally approved

SIP. EPA has evaluated each of these rules and is proposing to approve them under provisions of the CAA regarding EPA action on SIP submittals.

DATES: Comments on this proposed action must be received in writing by May 17, 1999.

ADDRESSES: To submit comments or receive further information, please contact Roger Kohn, Environmental Protection Specialist, Permits Office, Air Division (AIR–3), EPA Region 9, 75 Hawthorne Street, San Francisco, CA 94105. Copies of the State's submittal and other information are available for inspection during normal business hours at the following locations: (1) EPA Region 9, 75 Hawthorne Street, San Francisco, CA 94105; (2) California Air Resources Board, 2020 L Street, Sacramento, CA 95814; (3) Monterey Bay Unified Air Pollution Control District, 24580 Silver Cloud Court, Monterey CA 93940. A courtesy copy of these rules may be available via the Internet at http://arbis.arb.ca.gov/drdb/mbu/cur.htm. However, these versions of the District rules may be different than the versions submitted to EPA for approval. Readers are cautioned to verify that the adoption date of the rule listed is the same as the rule submitted to EPA for approval. The official submittals are only available at the three addresses listed above.

FOR FURTHER INFORMATION CONTACT: Roger Kohn, Permits Office, (AIR–3), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901; Telephone: (415) 744–1238; E-mail: kohn.roger@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Applicability

The rules being proposed for approval into the California SIP are: Monterey Bay Unified Air Pollution Control District (MBUAPCD), Rule 200, Permits Required; Rule 204, Cancellation of Applications; Rule 207, Review of New or Modified Sources; Rule 213, Continuous Emissions Monitoring; Rule 215, Banking of Emissions Reductions; and Rule 436, Title V: General Prohibitory Rule.

II. Background

The air quality planning requirements for Prevention of Significant Deterioration (PSD) and nonattainment NSR are set out in parts C and D of title I of the Clean Air Act. EPA has issued a "General Preamble" describing EPA's preliminary views on how EPA intends to review SIPs and SIP revisions submitted under part D, including those State submittals containing nonattainment NSR SIP requirements (see 57 FR 13498 (April 16, 1992) and 57 FR 18070 (April 28, 1992)). Because EPA is describing its interpretations here only in broad terms, the reader should refer to the General Preamble for a more detailed discussion.

The Act requires States to observe certain procedural requirements in developing implementation plans and plan revisions for submission to EPA. Section 110(a)(2) and section 110(l) of the Act provide that each implementation plan or revision to an implementation plan submitted by a State must be adopted after reasonable notice and public hearing. Section 172(c)(7) of the Act provides that plan provisions for nonattainment areas shall meet the applicable provisions of section 110(a)(2).

The rules were adopted by the District Board of Directors on the following dates: December 17, 1986 (Rule 200); July 17, 1985 (Rule 204); December 18, 1996 (Rule 207); February 16, 1994 (Rule 213); March 26, 1997 (Rule 215); May 17, 1995 (Rule 436).

The rules were subsequently submitted to EPA by the California Air Resources Board to EPA as proposed revisions to the California SIP on the following dates: June 9, 1987 (Rule 200); February 10, 1986 (Rule 204); March 3, 1997 (Rule 207); March 29, 1994 (Rule 213); June 3, 1997 (Rule 215); and August 10, 1995 (Rule 436).

EPA deemed the submittals complete on the following dates: August 12, 1997 (Rule 207); June 3, 1984 (Rule 213); September 5, 1997 (Rule 215); and October 4, 1995 (Rule 436). The following is EPA's evaluation and proposed action for these rules.

III. EPA Evaluation and Proposed Action

MBUAPCD submitted the rules listed in the Applicability section of this action for adoption into the applicable SIP. With the exception of Rule 436, which has not been previously incorporated into the SIP, all of these rules are intended to replace the existing SIP rules of the same number and title. MBUAPCD's most recent submittals for Rules 200, 204, 207, 213, and 215 contain the following changes from the current SIP:

Rule 200

- Adding a provision to explicitly state that a violation of any permit term or condition will be considered a violation of District regulations;

Rule 204

- Allowing the District to extend the life of Authority to Construct permits for up to seven years if the source is pursuing the project;

Rule 207

- Deleting the definition of Halogenated Compounds;
- Deleting the definition of Reactive Organic Compounds;
- Replacing the term Reactive Organic Compounds with Volatile Organic Compounds;
- Adding a new reference to Rule 101 (approved into the SIP on February 6, 1998, 63 FR 6073) for definitions of Exempt Compounds and Volatile Organic Compounds;
- Revising two chemical formulae used to determine whether specific compounds are VOCs;

Rule 213

- Adding monitoring requirements for Acid Rain sources;

Rule 215

- Deleting the definition of Halogenated Compounds;
- Deleting the definition of Reactive Organic Compounds;
- Replacing the term Reactive Organic Compounds with Volatile Organic Compounds;
- Adding a new reference to Rule 101 (approved into the SIP on February 6, 1998, 63 FR 6073) for definitions of Exempt Compounds and Volatile Organic Compounds;
- Revising two chemical formulae used to determine whether specific compounds are VOCs;

There is currently no version of Rule 436 in the SIP. The submitted rule contains the following provisions:

- This rule provides a mechanism for sources to limit their potential to emit (PTE) to avoid being subject to MBUAPCD's title V Operating Permit Program.

The California Air Resources Board (CARB) also submitted Rule 436 for approval under section 112(l) of the Act. The separate request for approval under section 112(l) is necessary because the proposed SIP approval only provides a mechanism for controlling criteria pollutants.

EPA has evaluated the submitted rules and has determined that they are consistent with the CAA, EPA regulations, and EPA policy. Therefore, the MBUAPCD rules cited above are being proposed for approval under section 110(k)(3) of the CAA as meeting the requirements of section 110(a) and Parts C and D.

IV. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order (E.O.) 12866, Regulatory Planning and Review.

B. Executive Order 12875

Under Executive Order 12875, Enhancing the Intergovernmental Partnership, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates." Today's rule does not create a mandate on State, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

C. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This rule is not subject to E.O. 13045 because it is does not involve decisions intended to mitigate environmental health or safety risks.

D. Executive Order 13084

Under Executive Order 13084, Consultation and Coordination with Indian Tribal Governments, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal Government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities." Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.*, v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen dioxide, Particulate matter, Carbon monoxide, Reporting and recordkeeping requirements, Sulfur dioxide, Volatile organic compounds.

Dated: April 6, 1999.

Laura K. Yoshii,

Acting Regional Administrator, Region IX.

[FR Doc. 99–9469 Filed 4–15–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IL174–1b; FRL–6325–7]

Approval and Promulgation of Implementation Plans; Illinois

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Proposed rule.

SUMMARY: On June 29, 1990, USEPA promulgated Federal stationary source volatile organic compound (VOC) control measures representing reasonably available control technology (RACT) for emission sources (including the miscellaneous organic chemical manufacturing processes at the Stepan Company Millsdale Plant (Stepan) manufacturing facility in Elwood, Illinois) located in six northeastern Illinois (Chicago area) counties. At Stepan's request USEPA agreed to reconsider its rule as it applied to Stepan and on October 1, 1993, proposed a site-specific rule for Stepan. USEPA subsequently approved three VOC rules submitted by the Illinois Environmental Protection Agency that are collectively applicable to all of Stepan's VOC sources that would have been subject to the FIP. USEPA is proposing to revoke the Federally promulgated rules, as they apply to Stepan, and replace them with the Illinois rules that have been previously approved and apply to Stepan. In the final rules section of this **Federal Register**, USEPA is revoking the Federally promulgated rules, as they apply to Stepan, and replacing them with the Illinois rules that have been previously approved and apply to Stepan. This is being done as a direct final rule without prior proposal because USEPA views this action as noncontroversial and anticipates no adverse comments. A detailed rationale is set forth in the direct final rule. The direct final rule will become effective without further notice unless USEPA receives relevant adverse written comments or a request for a public hearing on this action. Should USEPA receive such comment, it will publish a timely withdrawal informing the public that the direct final rule will not take effect and such public comment received will be addressed in a subsequent final rule based on this proposed rule. If no adverse written comments or request for a public hearing are received, the direct final rule will take effect on the date stated in that document and no further activity will be taken on this proposed rule. USEPA does not plan to institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

DATES: Written comments or a request for a public hearing on this action must be received on or before May 17, 1999.

ADDRESSES: Written comments should be mailed to: J. Elmer Bortzer, Chief, Regulation Development Section, Air Programs Branch (AR–18J), Air and Radiation Division, U. S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois, 60604.

FOR FURTHER INFORMATION CONTACT: Steven Rosenthal, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604,(312) 886–6052.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule published in the final rules section of this **Federal Register**.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Ozone, Reporting and record keeping requirements.

Dated: April 9, 1999.

Carol M. Browner,

Administrator.

[FR Doc. 99–9467 Filed 4–15–99; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[PA 114–4085; FRL–6325–4]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Approval of Revision to the 1990 Baseyear Emission Inventory for One Source

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is taking direct final action to approve a revision to the Commonwealth of Pennsylvania State Implementation Plan (SIP) submitted by the Pennsylvania Department of Environmental Protection (PADEP) on April 8, 1998. This revision consists of including the carbon monoxide (CO), volatile organic compounds (VOCs) and nitrogen oxides (NO_X) emissions from Rockwell Heavy Vehicles, Inc., New Castle Forge Plant, in Lawrence County (Rockwell) in the point source portion of Pennsylvania's 1990 baseyear emission inventory. The intended effect of this action is to grant approval of the revision to the 1990 baseyear inventory and in so doing to render Rockwell's emissions eligible for consideration as emission reduction credits (ERCs) in accordance with the Pennsylvania SIP. EPA is approving the revision to the 1990 baseyear emissions inventory for Rockwell in accordance with the requirements of the Clean Air Act. In the "Rules and Regulations" section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. A more detailed description of the state submittal and EPA's evaluation are included in a Technical Support Document (TSD) prepared in support of this rulemaking action. A copy of the TSD is available, upon request, from the EPA Regional Office listed in the **ADDRESSES** section of this document. If EPA receives no adverse comments, EPA will not take further action on this proposed rule. If EPA receives adverse comments, EPA will withdraw the direct final rule and it will not take effect. EPA will address all public comments in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing by May 17, 1999.

ADDRESSES: Written comments should be addressed to David Arnold, Chief, Ozone and Mobile Sources Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460; and the Pennsylvania Department of Environmental Protection, Bureau of Air Quality, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Janice M. Lewis, (215) 814–2185, at the EPA Region III address above, or via e-mail at lewis.janice@epa.gov. While information may be requested via e-mail, any comments must be submitted in writing to the EPA Region III address above.

SUPPLEMENTARY INFORMATION: For further information, please see the information provided in the direct final action, with the same title, that is located in the "Rules and Regulations" section of this **Federal Register** publication.

Dated: April 5, 1999.

Thomas C. Voltaggio,

Acting Regional Administrator, Region III.

[FR Doc. 99–9465 Filed 4–16–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[PA129–4083b; FRL–6323–7]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Approval of VOC RACT Determinations for Individual Sources

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is taking direct final action to approve revisions to the Pennsylvania state implementation plan (SIP) submitted by the Pennsylvania Department of Environmental Protection (PADEP) . The revisions impose reasonably available control technology (RACT) to reduce volatile organic compounds (VOC) from six (6) major sources located in Pennsylvania. EPA is proposing these revisions to impose RACT requirements in accordance with the Clean Air Act.

In the "Rules and Regulations" section of this **Federal Register**, EPA is approving the State's SIP submittals as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A more detailed description of PADEP's submittals and EPA's evaluation are included in a Technical Support Document (TSD) prepared in support of this rulemaking action. A copy of the TSD is available, upon request, from the EPA Regional Office listed in the **ADDRESSES** section of this document. If EPA receives no adverse comments, EPA will not take further action on this proposed rule. If EPA receives adverse comments, EPA will withdraw the direct final rule and it will not take effect. EPA will address all public comments in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

DATES: Written comments must be received by May 17, 1999.

ADDRESSES: Written comments on this action should be addressed to Kathleen Henry, Air Protection Division, Mailcode 3AP11, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; and the Pennsylvania Department of Environmental Protection, Bureau of Air Quality Control, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Linda Miller, (215) 814–2068, at the EPA Region III office or via e-mail at miller.linda@epa.gov. While information may be requested via e-mail, comments must be submitted in writing to the above Region III address.

SUPPLEMENTARY INFORMATION: For further information, please see the information provided in the direct final action with the same title that is located in the "Rules and Regulations" section of this **Federal Register** publication.

Dated: April 5, 1999

Thomas Voltaggio,

Acting Regional Administrator, Region III.

[FR Doc. 99–9463 Filed 4–15–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[AD–FRL–6326–3]

RIN 2060–A128

Hazardous Air Pollutants: Amendment to Regulations Governing Equivalent Emission Limitations by Permit

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; amendments.

SUMMARY: On May 20, 1994, the Agency promulgated a rule in the **Federal Register** (59 FR 26429) governing the establishment of equivalent emission limitations by permit, pursuant to section 112(j) of the Clean Air Act (Act). After the effective date of a Title V permit program in a State, each owner or operator of a major source in a source category for which the EPA was scheduled, but failed, to promulgate a section 112(d) emission standard will be required to obtain an equivalent emission limitation by permit. The permit application must be submitted to the Title V permitting authority 18 months after the EPA's missed promulgation date. This action proposes to amend the original Regulations Governing Equivalent Emission Limitations by Permit rule to delay the section 112(j) permit application deadline for all 7-year source categories listed in the regulatory schedule until December 15, 1999. This action is needed to alleviate unnecessary paperwork for both major source owners or operators and permitting agencies. EPA does not consider this amendment to be controversial and does not anticipate receiving adverse comments. Because timely relief from the existing application deadline is essential, this amendment is being issued as a direct final rule in the final rules section of this **Federal Register**. EPA will consider any adverse comments concerning the direct final rule to also be adverse comments concerning this proposal. If EPA does not receive timely adverse comments concerning this proposal or the accompanying direct final rule, or a timely request for a public hearing on this proposal, we will take no further action with respect to this proposal, and the direct final rule will become final on May 17, 1999.

DATES: *Comments.* EPA will accept comments regarding this proposal on or before April 26, 1999. Additionally, a public hearing regarding this proposal will be held if anyone requesting to speak at a public hearing contacts the EPA by April 23, 1999. If a hearing is requested, the hearing will be held at the EPA Office of Administration Auditorium, Research Triangle Park, NC on May 3, 1999 beginning at 10:00 a.m.

ADDRESSES: *1 Comments.* Comments should be submitted (in duplicate, if possible) to: Air and Radiation Docket and Information Center (6102), Attention Docket No. A–93–32 (see docket section below), Room M–1500, U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460. EPA requests that a separate copy also be sent to the contact person listed below.

Public Hearing. If a public hearing is held, it will be held at the EPA's Office of Administration Auditorium, Research Triangle Park, North Carolina on May 3, 1999 beginning at 10 a.m. Persons requesting to speak at or interested in attending a public hearing concerning this proposal should contact Mr. James Szykman or Mr. David Markwordt, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone (919) 541–2452 (Szykman) or (919) 541–0837 (Markwordt).

Docket. Docket No. A–93–32, containing the supporting information for the original Regulations Governing Equivalent Emission Limitations by Permit rule is available for public inspection and copying between 8:00 a.m. and 5:30 p.m., Monday through Friday, at the EPA's Air and Radiation Docket and Information Center (6102), 401 M Street, S.W., Washington, D.C. 20460, or by calling (202) 260–7548. A reasonable fee may be charged for copying.

An electronic version of this rule is available for download through the EPA web site at: http://www.epa.gov/ttn/oarpg. For further information and general questions regarding the Technology Transfer Network (TTNWEB), call Mr. Hersch Rorex (919) 541–5637 or Mr. Phil Dickerson (919) 541–4814.

FOR FURTHER INFORMATION CONTACT: Mr. James Szykman or Mr. David Markwordt, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone (919) 541–2452 (Szykman) or (919) 541–0837 (Markwordt).

SUPPLEMENTARY INFORMATION: If EPA does not receive timely adverse comments or a timely hearing request concerning this proposed rule, no further action will be taken concerning this proposal, and the direct final rule in the final rules section of this **Federal Register** will automatically go into effect on the date specified in that rule. If EPA receives timely adverse comment or a timely hearing request, we will publish a withdrawal in the **Federal Register** informing the public that the direct final rule will not take effect. In that event, we will address all public comments in a subsequent final rule based on this proposal. The EPA will not provide further opportunity for public comment on this action. All parties interested in commenting on this amendment must do so at this time.

Electronic comments and data may be submitted by sending electronic mail (e-mail) to: a-and-r-docket@epamail.epa.gov. Submit comments as an ASCII file, avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on diskette in Word Perfect 5.1 or 6.1 or ACSII file format. Identify all comments and data in electronic form by the docket numbers A–93–22. No Confidential Business Information (CBI) should be submitted through electronic mail. Electronic comments may be filed online at many Federal Depository Libraries.

EPA is proposing to extend the section 112(j) permit application filing deadline for all emission standards in the 7-year category from May 15, 1999 until December 15, 1999. For an additional explanation of the nature of the proposed amendment, the detailed rationale supporting the amendment, and the rule provision, see the information provided in the direct final rule in the final rules section of this **Federal Register**.

Administrative

A. Docket

The docket for this regulatory action is A–93–32, the same docket as the original final rule, and a copy of the proposed amendment to the final rule will be included in the docket. The principle purposes of the docket are: (1) To allow interested parties a means to identify and locate documents so that they can effectively participate in the rulemaking process; and (2) to serve as the record in case of judicial review (except for interagency review materials) (section 307(d)(7)(A) of the Act). The docket is available for public inspection at the EPA's Air and Radiation Docket and Information Center, the location of which is given in the **ADDRESSES** section of this document.

B. Paperwork Reduction Act

The information collection requirements in this rule will be submitted for approval to the Office of Management and Budget (OMB) under the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.* An Information Collection Request (ICR) document will be prepared by EPA (ICR No. 1648.02) and a copy will be available from Sandy Farmer by mail at OP Regulatory Information Division; U.S. Environmental Protection Agency (2137); 401 M St., S.W.; Washington, DC 20460, by email at farmer.sandy@epamail.epa.gov, or by calling (202) 260–2740. A copy may also be downloaded off the internet at http://www.epa.gov/icr. The information requirements are not effective until OMB approves them.

Section 112(j) of the Clean Air Act as amended in 1990 (CAAA) requires a source to submit a permit application if EPA fails to promulgate a MACT standard for a category of subcategory of major sources on schedule. The permit application is used by the permitting to issue permits containing maximum achievable control technology (MACT) emission limitation on a case-by-case (source-by-source) basis, equivalent to what would have been promulgated by EPA. The requirement to submit the permit application is not voluntary. Section 112(j) of the CAAA contains the need and authority for this information collection. [42 U.S.C. 7401 (*et. seq.*) as amended by Pub. L. 101–549]. Any information submitted to a permitting authority with a claim of confidentiality is to be safeguarded according to policies in 40 CFR Chapter 1, Part 2, Subpart B—Confidentiality of Business Information.

The total estimated burden, which includes all activities associated with the respondents or government agencies, is $1,323,000 and 46,339 hours. This collection of information has an estimated reporting burden of 171 hours per respondent and 140 hours per permitting agency. The permit application is a one time occurrence along with the issuance of the permit by the permitting agency. This estimated cost per respondent is $4,600 and $4,300 per permitting agency.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15.

C. Under E.O. 12866: The Unfunded Mandates Reform Act of 1995, the Regulatory Flexibility Act, and the Small Business Regulatory Enforcement Fairness Act of 1996

Because the regulatory revisions that are the subject of today's notice would delay an existing requirement, this action is not a "significant" regulatory action within the meaning of Executive Order 12866, and does not impose any Federal mandate on State, local and tribal governments or the private sector within the meaning of the Unfunded Mandates Reform Act of 1995. Further, the EPA has determined that it is not

necessary to prepare a regulatory flexibility analysis in connection with this action under the Regulatory Flexibility Act and the Small Business Regulatory Enforcement Fairness Act of 1996. The regulatory change proposed here is expected to reduce regulatory burdens on small businesses, and will not have a significant impact on a substantial number of small entities. EPA certifies that the proposed amendment will not have a significant impact on a substantial number of small entities.

D. National Technology Transfer and Advancement Act

Under section 12 of the National Technology Transfer and Advancement Act of 1995, the EPA must consider the use of "voluntary consensus standards," if available and applicable, when implementing policies and programs, unless it would be "inconsistent with applicable law or otherwise impractical." The intent of the National Technology Transfer and Advancement Act is to reduce the costs to the private and public sectors by requiring federal agencies to draw upon any existing, suitable technical standards used in commerce or industry.

A "voluntary consensus standard" is a technical standard developed or adopted by a legitimate standards-developing organization. The Act defines "technical standards" as "performance-based or design-specific technical specifications and related management systems practices." A legitimate standards-developing organization must produce standards by consensus and observe principles of due process, openness, and balance of interests. Examples of organizations that are regarded as legitimate standards-developing organizations include the American Society for Testing and Materials (ASTM), International Organization for Standardization (ISO), International Electrotechnical Commission (IEC), American Petroleum Institute (API), National Fire Protection Association (NFPA) and Society of Automotive Engineers (SAE).

Since today's action does not involve the establishment or modification of technical standards, the requirements of the National Technology Transfer and Advancement Act do not apply.

E. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that (1) OMB determines is "economically significant" as defined under Executive Order 12866, and (2) EPA determines the environmental health or safety risk addressed by the rule has a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety aspects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

These regulatory revisions are not subject to the Executive Order because it is not economically significant as defined in E.O. 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children.

F. Executive Order 13084: Consultation and Coordination With Indian Tribal Governments

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. These rule revisions impose no enforceable duties on these entities. Rather, these rule revisions reduce burdens associated with certain regulatory requirements. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

G. Executive Order 12875: Enhancing the Intergovernmental Partnership

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's rule changes do not create a mandate on State, local or tribal governments. The rule changes do not impose any enforceable duties on these entities. Rather, the rule changes reduce burden for certain regulatory requirements. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

List of Subjects in 40 CFR Part 63

Environmental protection, Administrative practices and procedures, Air pollution control, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: April 12, 1999.

Carol M. Browner,

Administrator.

[FR Doc. 99–9572 Filed 4–15–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[TX–81–1–7350; FRL–6324–3]

Clean Air Act Reclassification or Eligibility for Extension of Attainment Date, Texas; Beaumont/Port Arthur Ozone Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: We propose to find that the Beaumont/Port Arthur moderate ozone nonattainment area has failed to attain the one-hour ozone National Ambient Air Quality Standard (NAAQS). This proposed finding is based on the requirements of the Federal Clean Air Act (the Act), and our review of monitored air quality data from the area. If we take final action on this proposed finding, the area would be reclassified as a serious ozone nonattainment area. Alternatively, we are proposing to extend the area's attainment date, if Texas, by November 15, 1999, submits a SIP that meets EPA's July 1998 transport policy. If Texas submits a SIP meeting these requirements, we will issue a supplemental proposal to extend the area's attainment date, as appropriate.

DATES: We must receive comments on or before May 17, 1999.

ADDRESSES: All comments should be addressed to: Lt. Mick Cote, EPA Region 6, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202.

Copies of the Beaumont/Port Arthur monitored air quality data analyses, guidance on extension of attainment dates in downwind transport areas, our technical support document, and other relevant documents used in support of this proposal, are available at the following addresses for inspection during normal business hours: Environmental Protection Agency, Air Planning Section, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202; Texas Natural Resource Conservation Commission, 12124 Park 35 Circle, Austin, Texas 78753. Please contact the appropriate office at least 24 hours in advance.

FOR FURTHER INFORMATION: Lt. Mick Cote at (214) 665–7219.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. What action are we taking today?
II. What are the National Ambient Air Quality Standards?
III. What is the NAAQS for ozone?
IV. What is the Beaumont/Port Arthur ozone nonattainment area?
V. Why is the Beaumont/Port Arthur area currently classified as moderate?
VI. Why is EPA proposing to reclassify the Beaumont/Port Arthur area?
VII. Has air quality improved in the Beaumont/Port Arthur area in recent years?
VIII. What would a reclassification mean for Beaumont/Port Arthur?
IX. Can an extension of the attainment date be granted based on 1996 air quality data?
X. What is EPA's new policy regarding extension of attainment dates for downwind transport areas?
XI. What does the July 1998 Transport policy require Texas to do?
XII. Can Beaumont/Port Arthur qualify for an attainment date extension under the transport policy?
XIII. When will EPA make a final decision on whether to bump-up or grant an extension for the Beaumont/Port Arthur area?
XIV. If the Beaumont/Port Arthur area is reclassified, what would its new schedule be?
XV. Administrative Requirements.

I. What Action Are We Taking Today?

We are proposing to find pursuant to section 181(b)(2) of the Clean Air Act that the Beaumont/Port Arthur area has failed to attain the ozone one-hour NAAQS by the date prescribed under the Act for moderate ozone nonattainment areas, or November 15, 1996. If we finalize this finding, the Beaumont/Port Arthur area will be reclassified from moderate nonattainment to serious nonattainment.

Alternatively, we are proposing to extend the attainment date, providing that Texas meets the criteria of our July 16, 1998 transport policy, *Guidance on Extension of Attainment Dates for Downwind Transport Areas.* If Texas submits a SIP by November 15, 1999, that meets the July 1998 transport policy, we will issue a supplemental proposal in a **Federal Register** notice to extend the Beaumont/Port Arthur area's attainment date as appropriate. If Texas does not submit by November 15, 1999, a SIP that meets the July 1998 transport policy, or fails to submit a SIP by this date, we would finalize this proposed finding of failure to attain, and the Beaumont/Port Arthur area would be reclassified as a serious ozone nonattainment area.

II. What Are the National Ambient Air Quality Standards?

We have set NAAQS for six air pollutants: Carbon Monoxide (CO), Lead (Pb), Nitrogen Dioxide (NO_2), Ozone (O_3), Particulate matter (PM), and Sulfur Dioxide (SO_2). The Act requires us to set these NAAQS at levels that protect public health and welfare with an adequate margin of safety. These NAAQS provide information to the American people about whether the air in their community is healthful. Also, the NAAQS present state and local governments with the minimum pollutant concentrations allowed to achieve clean air.

For several pollutants, there are two types of NAAQS—primary and secondary. Primary NAAQS protect against adverse health effects; secondary NAAQS protect against welfare effects, such as damage to farm crops and vegetation and damage to buildings. Because different pollutants have varying effects, the form of NAAQS also varies. Some pollutants have NAAQS for both long-term and short-term averaging times. The short-term NAAQS are designed to protect against acute, or short-term, health effects, while the long-term NAAQS were established to protect against chronic health effects.

III. What Is the NAAQS for Ozone?

The NAAQS for ozone is expressed in two forms, which are referred to as the one-hour and 8-hour standards. Table 1 summarizes the ozone NAAQS.

TABLE 1.—SUMMARY OF OZONE NAAQS

Standard	Value	Type	Method of compliance
One-hour	0.12 ppm	Primary and Secondary	Must not be exceeded on average more than one day per year over any three-year period.
8-hour	0.08 ppm	Primary and Secondary	The 3-year average of the annual fourth-highest daily maximum 8-hour average ozone concentration measured at each monitor within an area.

The one-hour ozone NAAQS of 0.12 parts per million has existed since 1979. The 8-hour ozone NAAQS was promulgated by EPA on July 18, 1997 (62 FR 38856). The one-hour ozone NAAQS continues to apply for existing nonattainment areas until these areas attain the one-hour ozone NAAQS (40 CFR 50.9(b)). It is the classification of the Beaumont/Port Arthur area relative to the one-hour ozone NAAQS that is addressed in this document.

IV. What Is the Beaumont/Port Arthur Ozone Nonattainment Area?

The Beaumont/Port Arthur moderate ozone nonattainment area is located in Southeast Texas, and consists of Hardin, Jefferson, and Orange Counties.

V. Why Is the Beaumont/Port Arthur Area Currently Classified as Moderate?

Each ozone area designated nonattainment for the one-hour ozone standard prior to enactment of the 1990 Act Amendments was designated nonattainment by operation of law upon enactment of the 1990 Amendments. Under section 181(a) of the Act, each ozone area designated nonattainment under section 107(d) was also classified by operation of law as "marginal," "moderate," "serious," "severe," or "extreme," depending on the severity of the area's air quality problem. The design value for an area is represented by the fourth highest one-hour daily monitored ozone level in a given three-year period. Table 2 provides the design value ranges for each nonattainment classification. Ozone nonattainment areas with design values between 0.138 and 0.160 parts per million (ppm), such as the Beaumont/Port Arthur area, were classified as moderate.[1] These nonattainment designations and classifications were codified in 40 CFR part 81 (see 56 FR 56694, November 6, 1991).

TABLE 2.—OZONE NONATTAINMENT CLASSIFICATIONS

Area class	Design value (ppm)	Attainment date
Marginal	0.121 up to 0.138	11/15/93
Moderate ...	0.138 up to 0.160	11/15/96
Serious	0.160 up to 0.180	11/15/99
Severe	0.180 up to 0.280	11/15/05
Extreme	0.280 and above	11/15/10

States containing areas that were classified as moderate nonattainment were required to submit SIPs which required control measures to reduce emissions, and to provide for attainment of the ozone standard no later than November 15, 1996. Moderate area SIP requirements are found primarily in section 182(b) of the Act.

VI. Why Is EPA Proposing To Reclassify the Beaumont/Port Arthur Area?

Section 181(b)(2) of the Act provides that we determine, within 6 months following the applicable attainment date, whether an ozone nonattainment area has attained the one-hour ozone standard. If we find that the nonattainment area has failed to attain the one-hour ozone standard by the applicable attainment date, then we are to publish a notice in the **Federal Register** identifying the area that we have determined has failed to attain, and the appropriate reclassification. In the case of Beaumont/Port Arthur, we have yet to make the determination as described above.

We make attainment determinations for ozone nonattainment areas using quality-assured air quality data. In the case of the Beaumont/Port Arthur area, the attainment determination is based on 1994–1996 air quality data. The data show that for 1994–1996 four monitoring sites averaged more than one exceedance day per year. We propose to determine that the Beaumont/Port Arthur area's air quality has not met the one-hour ozone NAAQS by November 15, 1996, based upon all quality-assured air quality data available to us for the years 1994–1996.

Our data includes all data available from the State and local/national air monitoring (SLAM/NAMS) network as submitted to our Aerometric Information Retrieval System, and all data available to us from special purpose monitoring (SPM) sites that meet our monitor siting criteria (40 CFR 58.13). Our policy on the use of ozone SPM data is described in the August 22, 1997, Memorandum from John Seitz, Director, Office of Air Quality Planning and Standards, to Regional Air Directors, entitled, *Agency Policy on the Use of Ozone Special Purpose Monitoring Data.*

Table 3 lists the number of recorded exceedances of the one-hour ozone standard at each SLAMS/SPM monitoring site in the Beaumont/Port Arthur area for the period 1994 through 1998, and each monitor's design value for that period. A complete listing of the ozone exceedances at each monitor as well as EPA's calculations of the design values can be found in the technical support document.

Table 3: Ozone Exceedances in the Beaumont/Port Arthur Area

Site	Type	1994	1995	1996	1997	1998	Site Design Value (ppm)		
							94–96	95–97	96–98
Beaumont	SLAMS	1	5	0	3	3	0.128	0.133	0.133
Port Arthur	SLAMS	0	5	0	0	0	0.139	0.139	0.118
West Orange	SLAMS	1	0	0	2	1	0.12	0.121	0.122
Sabine	SPM	2	1	7	2	.....	0.157	0.157	.....
Mauriceville	SPM	0	0	0	2	.....	0.109	0.104	.....
Jefferson Co. Airport	SPM	2	6	0	2	.....	0.139	0.139	.....

—We do not have any data for 1998 from the three SPMs. However, data from the SLAMS sites alone indicates continued violation of the one-hour ozone NAAQS. Although our decision to propose reclassification does not depend on the SPM data for 1998, we have requested it from the State.

If we finalize this proposed action, the new classification will be the higher of the next higher classification or the classification appropriate to the design value at the time the notice of reclassification is published. The next highest classification for the Beaumont/Port Arthur area is serious. The design value of the Beaumont/Port Arthur area at the time of the proposed finding of failure to attain is based on air quality monitoring data from 1996 through 1998. This design value is .133 ppm. This design value correlates with a marginal classification, as taken from Table 2. Since the next higher classification is greater than what the current design value indicates, the correct classification would be serious nonattainment under the statutory scheme.

[1] The Beaumont/Port Arthur area (the area) was classified as a serious ozone nonattainment area by EPA on November 6, 1991 (56 FR 56694). However, we corrected the ozone design value from 0.160 ppm to 0.158 ppm. Pursuant to section 110(k)(6) of the Act, which allows us to correct our actions, we corrected the classification of the area from serious to moderate (61 FR 14496, April 2, 1996).

VII. Has Air Quality Improved in the Beaumont/Port Arthur Area in Recent Years?

The air quality in the Beaumont/Port Arthur area has not improved in recent years. Two of the three SLAMS monitors listed in Table 3 have design values that have increased since 1994. Likewise, two of the three SPM monitors listed in Table 3 have design values that have increased between 1994 and 1997.

VIII. What Would a Reclassification Mean for Beaumont/Port Arthur?

The Beaumont/Port Arthur area would need to reach the ozone NAAQS as expeditiously as practicable, but no later than November 15, 1999. Texas would also need to submit SIP revisions addressing the serious area requirements for the one-hour ozone standard in section 182(c) of the Act. The requirements for serious ozone nonattainment areas include, but are not limited to, the following:[2]

1. Attainment and Reasonable Further Progress demonstrations.
2. Clean-fuel vehicle programs.
3. A 50 ton-per-year major source threshold.
4. More stringent new source review requirements.
5. An enhanced monitoring program.
6. Transportation Control Measures.
7. Contingency provisions.

IX. Can an Extension of the Attainment Date Be Granted Based on 1996 Air Quality Data?

Two mechanisms exist for the Beaumont/Port Arthur area to obtain an extension of its attainment date. First, a State may request, and at our discretion we may grant, up to two one-year attainment date extensions. We may grant an extension under section 181(a)(5) of the Act only if:

1. The State has complied with the requirements and commitments pertaining to the applicable implementation plan for the area.

2. The area has measured no more than one exceedance of the ozone NAAQS at any monitoring site in the nonattainment area in the year in which attainment is required.

On January 9, 1997, the Governor of the State of Texas submitted a request for a one-year extension of the attainment date for the Beaumont/Port Arthur area. The request was based on the absence of exceedances from SLAMS data in the area in 1996. However, the area had more than one exceedance at the Sabine SPM monitor in 1996, and numerous exceedances at SLAMS and SPM sites in 1997. Since the 1996 and 1997 data show that the area failed to attain, and Texas has not submitted a plan providing for attainment, we are exercising our discretion to not grant a section 181(a)(5) extension. However, Texas has another mechanism available for obtaining an extension. This mechanism is discussed below.

X. What Is EPA's New Policy Regarding Extension of Attainment Dates for Downwind Transport Areas?

A number of areas in the country that have been classified as moderate or serious are affected by pollutants that have traveled downwind from other areas. For these downwind areas, transport of pollutants from upwind areas has interfered with their ability to meet the ozone standard by the dates prescribed by the Act. As a result, many of these areas, such as Beaumont/Port Arthur, find themselves facing the prospect of being reclassified, or "bumped up," to a higher classification for failing to meet the ozone standard by the specified date.

On July 16, 1998, in consideration of these factors and the realization that many areas are unable to meet the mandated attainment dates due to transport[3], we issued a policy memorandum entitled *Guidance on Extension of Air Quality Attainment Dates for Downwind Transport Areas.* This policy outlines the criteria by which the attainment date for an area may be extended.

Our July 1998 transport policy offers another opportunity for Texas to request an extension of the attainment date for the Beaumont/Port Arthur area. This policy draws on other provisions of the Act to authorize attainment date extensions for downwind transport areas.

XI. What Does the July 1998 Transport Policy Require Texas To Do?

This transport policy outlines the steps Texas will need to take in order for us to consider extending the Beaumont/Port Arthur area's attainment date. The steps we believe Texas will need to take include:

1. Demonstrate that the Beaumont/Port Arthur Area's air quality is affected by transport from (a) an upwind area in Texas with a later attainment date, or (b) an upwind area in another State, which significantly contributes to Beaumont/Port Arthur's continued ozone nonattainment.

2. Submit to us an approvable attainment demonstration by November 15, 1999. This demonstration must show that the Beaumont/Port Arthur area will attain as expeditiously as practicable, but no later than the attainment date of the upwind area.

3. Submit any additional local control measures needed for expeditious attainment. Any additional measures must be adopted prior to November 15, 1999.

4. Submit proof that all applicable local control measures required under the moderate classification have been adopted and implemented. In addition, submit any necessary changes to the State's existing rules for control of emissions from industrial wastewater and Synthetic Organic Chemical Industry batch processing operations. Some changes may be needed to ensure that these rules meet our Reasonably Available Control Technology requirements. Any necessary changes must be adopted prior to November 15, 1999.

5. Provide that all newly adopted control measures will be implemented as expeditiously as practical. All measures must be implemented no later than the date that the upwind reductions needed for attainment will be achieved.

We contemplate that when we act to approve an area's attainment demonstration, we will, as necessary, extend that area's attainment date to a date appropriate for that area in light of the schedule for achieving the necessary upwind reductions. The area would no longer be subject to reclassification or "bump-up" for failure to attain by its original attainment date under section 181(b)(2).

---

[2] An enhanced vehicle Inspection and Maintenance (I/M) program would normally be listed as a requirement for a serious ozone nonattainment area. However, the Federal I/M Flexibility Amendments of 1995 determined that urbanized areas with populations less than 200,000 for 1990 (such as Beaumont/Port Arthur) are not mandated to participate in the I/M program (60 FR 48033, September 18, 1995).

[3] Through a two-year effort known as the Ozone Transport Assessment Group (OTAG), the EPA worked in partnership with the 37 easternmost states and the District of Columbia, industry representatives, academia, and environmental groups to develop recommended strategies to address transport of ozone-forming pollutants across state boundaries.

On November 7, 1997, the EPA acted on OTAG's recommendations and issued a proposal (the proposed NOx SIP call, 62 FR 60318) requiring 22 states and the District of Columbia to submit state plans addressing the regional transport of ozone. These state plans, or SIPS, will decrease the transport of ozone across state boundaries in the eastern half of the United States by reducing emissions of nitrogen oxides (a precursor to ozone formation known as NOx). The EPA took final action on the NOx SIP call on October 27, 1998 (63 FR 57356). The EPA expects the final NOx SIP call will assist many areas in attaining the 1-hour ozone standard.

XII. Can Beaumont/Port Arthur Qualify for an Attainment Date Extension Under the Transport Policy?

It is premature to say whether or not the Beaumont/Port Arthur area will qualify for an attainment date extension under the July 1998 transport policy. We believe that the area may be affected by upwind transport. However, before the Beaumont/Port Arthur area can qualify for an attainment date extension under the July 1998 transport policy, all the criteria specified in the transport policy must be met.

In October 1998, we notified the Governor of Texas of the availability of the July 1998 transport policy. We also requested that the Governor respond to us with a letter committing Texas to meet the requirements necessary to qualify for an attainment date extension under the July 1998 transport policy by November 15, 1999. We received the Governor's commitment letter on December 21, 1998.

We are aware that local representatives are working closely with the TNRCC to meet the requirements of the July 1998 transport policy, and to improve the area's air quality. Their efforts have already resulted in the implementation of rules for oxides of nitrogen in the Beaumont/Port Arthur area.

XIII. When Will EPA Make a Final Decision on Whether To Bump-Up or Grant an Extension for the Beaumont/Port Arthur area?

We will review Texas' proposed SIP submittal during the State's public comment period. If we receive it by November 15, 1999, we will publish a document in the **Federal Register** to address the approvability of the SIP submittal. If we propose approval, we would also propose to extend the attainment date for the Beaumont/Port Arthur area to an appropriate expeditious date. However, if Texas fails to meet the requirements of the extension policy by November 15, 1999, we will finalize the finding of failure to attain, and the Beaumont/Port Arthur area will be reclassified to Serious nonattainment.

XIV. If the Beaumont/Port Arthur Area Is Reclassified, What Would Its New Schedule Be?

If the Beaumont/Port Arthur area is reclassified, Texas would be required to submit a SIP that adopts the serious area requirements. Under section 181(a)(1) of the Act, the new attainment deadline for moderate ozone nonattainment areas reclassified to serious under section 181(b)(2) would be as expeditious as practicable but no later than the date applicable to the new classification, i.e., November 15, 1999. However, for the reasons given above, we do not expect to take final action on this proposed finding until after November 15, 1999. This will allow Texas adequate time to make a demonstration that an extension of the attainment date, instead of a reclassification, would be appropriate under the transport policy. As a practical matter, there would likely be insufficient time for Texas to submit a new attainment demonstration and actually demonstrate attainment of the one-hour ozone NAAQS by November 15, 1999.

If the Beaumont/Port Arthur area is reclassified, and if we do not act until after its November submittal, it will plainly be too late for the area to demonstrate attainment by a date that will have already passed. We believe that the impossibility of meeting the November 15, 1999, deadline for serious areas requires us to establish a new attainment date in the event that the area is reclassified to serious.

November 15, 1999, is a date that is impossible to set as a date for the area to attain and for Texas to have made a SIP submission. Since it is impossible, the principles underlying what we do for areas that must submit 15 percent plans after the deadline for submission has passed should apply here. Consistent with what we have done with respect to setting new applicable deadlines for those plans, we believe that a deadline that is expeditious as possible would be appropriate.

Section 182(i) states that the Administrator may adjust applicable deadlines (other than attainment dates) to the extent such adjustment is necessary or appropriate to assure consistency for submission of the new requirements applicable to an area which has been reclassified. Where an attainment date has already passed or is otherwise impossible to meet, we believe that the Administrator may also adjust an attainment date to assure fair and equitable treatment consistent with the provisions in section 182(i), notwithstanding the parenthetical clause.

We also note another provision of the Act in section 110(k)(5) pertaining to findings of SIP inadequacy that allows the Administrator to adjust attainment dates when such have passed. Although this latter provision is not directly applicable to a reclassification, we believe that the provision illustrates a recognition by Congress of limited instances in which it becomes necessary to adjust attainment dates, particularly where it is otherwise impossible to meet the statutory date. For the Beaumont/Port Arthur area, we are proposing to construct a schedule consistent with recent reclassifications of other areas.

We have recently reclassified other moderate ozone nonattainment areas, including Santa Barbara, California; Phoenix, Arizona; and Dallas-Fort Worth, Texas. In these cases, the new attainment date is November 15, 1999. The most recent reclassification was for the Dallas-Fort Worth area. We published the notice reclassifying this area on February 18, 1998, thereby providing approximately 21 months for the area to attain the standard. We concluded that 21 months was an adequate period for a moderate attainment area to attain the standard where the new attainment date had not yet lapsed, but where there was less time remaining than the Act had contemplated. If we finalize this proposed reclassification, we suggest an attainment date with a similar time frame, and which would allow Texas an opportunity to make submissions to meet the serious area requirements and implement measures to attain the standard.

Applying this approach to the Beaumont/Port Arthur area would result in a new attainment date 21 months from publication of the final reclassification notice. We welcome any comments on the appropriateness of this proposed time frame, and whether a shorter or later attainment date would be more appropriate.

If we reclassify the Beaumont/Port Arthur area, we must also address the schedule by which Texas will be required to submit a SIP revision meeting the serious area requirements. We propose to have Texas submit this SIP within one year after a final action on the reclassification is taken. If the submission shows that the area can attain the ozone NAAQS sooner than the attainment date established in the final reclassification notice, we would adjust the attainment date to reflect the earlier date, consistent with the requirement in section 181(a)(1) that the NAAQS be attained as expeditiously as practicable. We solicit comments on this proposed schedule.

XIV. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget has exempted this regulatory action from Executive Order (E.O.) 12866, entitled *Regulatory Planning and Review.*

B. Executive Order 12875

Under E.O. 12875, *Enhancing the Intergovernmental Partnership*, the EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, E.O. 12875 requires EPA to provide to the OMB a description of the extent of EPA's prior consultation with representatives of affected state, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, E.O. 12875 requires EPA to develop an effective process permitting elected officials and other representatives of state, local and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's proposals would not create a mandate on State, local, or tribal governments. These proposals do not impose any enforceable rules on any of these entities. The SIP submission requirements are not judicially enforceable. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to these proposals.

C. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997) applies to any rule that: (1) is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, EPA must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

The EPA interprets E.O. 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. These proposals are not subject to E.O. 13045 because they are not economically significant regulatory actions as defined by E.O. 12866. These proposals are not subject to E.O. 13045 because they implement a previously promulgated health or safety-based Federal standard.

D. Executive Order 13084

Under Executive Order 13084, *Consultation and Coordination with Indian Tribal Governments*, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's proposals would not significantly or uniquely affect the communities of Indian tribal governments. These proposed actions would not impose any requirement that affects Indian tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to these proposals.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. The proposal to reclassify will not have a significant impact on a substantial number of small entities because a finding of failure to attain under section 182(b)(2) of the Act, and the establishment of a SIP submittal schedule for the reclassified area, do not, in and of themselves, directly impose any new requirements on small entities. See *Mid-Tex Electric Cooperative, Inc.* v. FERC, 773 F.2d 327 (D.C. Cir. 1985)(agency's certification need only consider the rule's impact on entities subject to requirements of the rule). Instead, this proposal to reclassify proposes to make a determination and to establish a schedule for States to submit SIP revisions, and does not propose to directly regulate any entities.

The alternative proposal to extend the attainment date if Texas meets the specified criteria does not directly impose any new requirements on small entities. To the extent that the area must adopt new regulations, we will review the effect of those actions at the time the State submits those regulations. Therefore, I certify that these proposed actions will not have a significant economic impact on a substantial number of small entities.

F. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to state, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

Sections 202 and 205 do not apply to today's action because the proposed determination that the Beaumont/Port Arthur area failed to reach attainment does not, in-and-of-itself, constitute a Federal mandate because it does not impose an enforceable duty on any entity. In addition, the Act does not permit EPA to consider the types of analyses described in section 202, in determining whether an area has attained the ozone standard or qualifies for an extension. Finally, section 203 does not apply to today's proposal because the SIP submittal schedule and the extension of the attainment date would affect only the state of Texas, which is not a small government.

List of Subjects in 40 CFR Part 81

Environmental protection, Air pollution control, Area designations and

classifications, National parks, Wilderness areas.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: April 6, 1999.

Gregg A. Cooke,

Regional Administrator, Region 6.

[FR Doc. 99–9470 Filed 4–15–99; 8:45 am]

BILLING CODE 0560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 194

[FRL–6327–2]

RIN 2060–AG85

Change in Dates of EPA Inspection of Transuranic Waste Characterization Systems and Processes at the Rocky Flats Environmental Technology Site Related to the Waste Isolation Pilot Plant

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability.

SUMMARY: The Environmental Protection Agency (EPA) is announcing a change in the dates of a planned inspection of systems and processes for characterizing certain transuranic (TRU) radioactive waste at the Rocky Flats Environmental Technology Site (RFETS), as described in EPA's **Federal Register** document of March 25, 1999 (64 FR 14418). The original dates were April 12–16, as announced in the March 25 notice. The inspection will now be held the week of April 26, 1999. This will allow for the 30-day public comment period on Department of Energy (DOE) documents applicable to characterization of TRU waste at RFETS, which was announced in the March 25 notice, to occur in advance of the inspection. The documents available for comment are entitled: (1) "Transuranic Waste Management Manual, Rev. 2," (2) "RFETS TRU Waste Characterization Program Quality Assurance Project Plan," and (3) "Salt Residue Stabilization, Building 707 Process Control/Qualification Plan." They are available for review in the public dockets listed in **ADDRESSES.** In accordance with EPA's WIPP Compliance Criteria at 40 CFR 194.8, EPA will conduct an inspection of waste characterization systems and processes at RFETS to verify that the proposed systems and processes at RFETS can characterize transuranic waste at issue properly, consistent with the Compliance Criteria. This notice of the inspection and comment period accords with 40 CFR 194.8.

DATES: Comments must be received by EPA's official Air Docket on or before May 10, 1999.

ADDRESSES: Comments should be submitted to: Docket No. A–98–49, Air Docket, Room M–1500 (LE–131), U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, DC 20460. The DOE documents are available for review in the official EPA Air Docket in Washington DC, Docket No. A–98–49, Category II–A–2, and at the following three EPA WIPP informational docket locations in New Mexico: in Carlsbad at the Municipal Library, Hours: Monday–Thursday, 10 am–9 pm, Friday–Saturday, 10 am–6 pm, and Sunday 1 pm–5 pm; in Albuquerque at the Government Publications Department, Zimmerman Library, University of New Mexico, Hours: Monday–Thursday, 8 am–9 pm, Friday, 8 am–5 pm, Saturday–Sunday, 1 pm–5 pm; and in Santa Fe at the Fogelson Library, College of Santa Fe, Hours: Monday–Thursday, 8 am–12 am, Friday, 8 am–5 pm, Saturday, 9 am–5 pm, and Sunday, 1 pm–9 pm.

Copies of items in the docket may be requested by writing Docket A–98–49 at the address provided above, or by calling (202) 260–7548. As provided in EPA's regulations at 40 CFR part 2, and in accordance with normal EPA docket procedures, a reasonable fee may be charged for photocopying.

FOR FURTHER INFORMATION CONTACT: Scott Monroe, Office of Radiation and Indoor Air, (202) 564–9310, or call EPA's toll–free WIPP Information Line, 1–800–331–WIPP.

Dated: April 12, 1999.

Robert Perciasepe,

Assistant Administrator for Air and Radiation.

[FR Doc. 99–9602 Filed 4–15–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 194

[FRL–6327–3]

RIN 2060–AG85

Waste Characterization Program Documents Applicable to Transuranic Radioactive Waste at the Idaho National Engineering and Environmental Laboratory Proposed for Disposal at the Waste Isolation Pilot Plant

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability; opening of public comment period.

SUMMARY: The Environmental Protection Agency (EPA) is announcing the availability of, and soliciting public comments for 30 days on, Department of Energy (DOE) documents on waste characterization programs applicable to certain transuranic (TRU) radioactive waste at the Idaho National Engineering and Environmental Laboratory (INEEL) proposed for disposal at the Waste Isolation Pilot Plant (WIPP). The documents are: "Quality Assurance Project Plan for the Transuranic Waste Characterization Program (PLN–190), Revision 3 (April 1999)," "INEEL TRU Waste Characterization, Transportation, and Certification Quality Program Plan (PLN–182), Revision 3 (April 1999)," and "Program Plan for Certification of INEEL Contact-Handled Stored Transuranic Waste (INEL–96/0345), Revision 2 (April 1999)." These documents are available for review in the public dockets listed in **ADDRESSES.** The EPA will use these documents to evaluate waste characterization systems and processes at INEEL that DOE described as applicable to waste streams containing homogeneous solids, debris, and soils and gravels. In accordance with EPA's WIPP Compliance Criteria at 40 CFR 194.8, EPA will conduct an inspection of waste characterization systems and processes at INEEL to verify that the proposed systems and processes at INEEL can characterize transuranic waste at issue properly, consistent with the Compliance Criteria. This notice of the inspection and comment period accords with 40 CFR 194.8.

DATES: The EPA is requesting public comment on these documents. Comments must be received by EPA's official Air Docket on or before May 17, 1999.

ADDRESSES: Comments should be submitted to: Docket No. A–98–49, Air Docket, Room M–1500 (LE–131), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC, 20460.

The DOE documents "Quality Assurance Project Plan for the Transuranic Waste Characterization Program (PLN–190), Revision 3 (April 1999)," "INEEL TRU Waste Characterization, Transportation, and Certification Quality Program Plan (PLN–182), Revision 3 (April 1999)," and "Program Plan for Certification of INEEL Contact-Handled Stored Transuranic Waste (INEL–96/0345), Revision 2 (April 1999)," are available for review in the official EPA Air Docket in Washington, D.C., Docket No. A–98–49, Category II–A–2, and at the

following three EPA WIPP informational docket locations in New Mexico: in Carlsbad at the Municipal Library, Hours: Monday-Thursday, 10 am-9 pm, Friday-Saturday, 10 am-6 pm, and Sunday, 1 pm-5 pm; in Albuquerque at the Government Publications Department, Zimmerman Library, University of New Mexico, Hours: Monday-Thursday, 8 am-9pm, Friday, 8 am-5 pm, Saturday-Sunday, 1 pm-5 pm; and in Santa Fe at the Fogelson Library, College of Santa Fe, Hours: Monday-Thursday, 8 am-12 pm, Friday, 8 am-5 pm, Saturday, 9 am-5 pm, and Sunday, 1 pm-9 pm.

Copies of items in the docket may be requested by writing Docket A–98–49 at the address provided above, or by calling (202) 260–7548. As provided in EPA's regulations at 40 CFR part 2, and in accordance with normal EPA docket procedures, a reasonable fee may be charged for photocopying.

FOR FURTHER INFORMATION CONTACT: Jim Oliver, Office of Radiation and Indoor Air, (202) 564–9310, or call EPA's 24-hour, toll-free WIPP Information Line, 1–800–331–WIPP, or visit our website at http://www.epa.gov/radiation/wipp/announce.html.

SUPPLEMENTARY INFORMATION: The DOE is developing the WIPP near Carlsbad in southeastern New Mexico as a deep geologic repository for disposal of TRU radioactive waste. As defined by the WIPP Land Withdrawal Act (LWA) of 1992 (Public Law 102–579), as amended (Public Law 104–201), TRU waste consists of materials containing elements having atomic numbers greater than 92 (with half-lives greater than twenty years), in concentrations greater than 100 nanocuries of alpha-emitting TRU isotopes per gram of waste. Most TRU waste consists of items contaminated during the production of nuclear weapons, such as rags, equipment, tools, and organic and inorganic sludges.

On May 13, 1998, EPA announced its final compliance certification decision to the Secretary of Energy (published May 18, 1998, 63 FR 27354). This decision states that the WIPP will comply with the EPA's radioactive waste disposal regulations at 40 CFR part 191, subparts B and C.

The final WIPP certification decision includes a condition that prohibits shipment of TRU waste for disposal at WIPP from any site other than LANL until EPA has approved the procedures developed to comply with the waste characterization requirements of § 194.24(c)(4) (condition 3 of appendix A to 40 CFR part 194). The EPA's approval process for waste generator sites is described in § 194.8. As part of EPA's decision making process, DOE is required to submit to EPA appropriate documentation of waste characterization programs at each DOE waste generator site seeking approval for shipment of TRU radioactive waste to WIPP. In accordance with § 194.8, EPA will place such documentation in the official Air Docket in Washington, D.C., and in informational dockets in the State of New Mexico, for public review and comment.

EPA inspected certain waste characterization processes at INEEL on July 28–30, 1998. DOE is proposing to use processes that EPA did not previously inspect at INEEL that are applicable to waste streams in the categories of homogeneous solids, debris waste, and soils and gravels. EPA will conduct an inspection of INEEL to verify that these additional processes comply with 40 CFR 194.24.

The INEEL documents submitted to EPA are: "Quality Assurance Project Plan for the Transuranic Waste Characterization Program (PLN–190), Revision 3 (April 1999)," "INEEL TRU Waste Characterization, Transportation, and Certification Quality Program Plan (PLN–182), Revision 3 (April 1999)," and "Program Plan for Certification of INEEL Contact-Handled Stored Transuranic Waste (INEL–96/0345), Revision 2 (April 1999)." The "Quality Assurance Project Plan for the Transuranic Waste Characterization Program (PLN–190), Revision 3 (April 1999)" and the "INEEL TRU Waste Characterization, Transportation, and Certification Quality Program Plan (PLN–182), Revision 3 (April 1999)" set forth the quality assurance program applied to TRU waste characterization at INEEL. The "Program Plan for Certification of INEEL Contact-Handled Stored Transuranic Waste (INEL–96/0345), Revision 2 (April 1999)" sets forth the waste characterization procedures for TRU wastes at INEEL. After EPA reviews these documents, EPA will conduct an inspection of INEEL to determine whether the requirements set forth in these documents are being adequately implemented in accordance with Condition 3 of the EPA's WIPP certification decision (appendix A to 40 CFR part 194). In accordance with § 194.8 of the WIPP compliance criteria, EPA is providing the public 30 days to comment on the documents placed in EPA's docket relevant to the site approval process.

If EPA determines that the provisions in the documents are adequately implemented, EPA will notify the DOE by letter and place the letter in the official Air Docket in Washington, D.C., and in the informational docket locations in New Mexico. A positive approval letter will allow DOE to ship additional TRU waste from INEEL. The EPA will not make a determination of compliance prior to the inspection or before the 30-day comment period has closed.

Information on the EPA's radioactive waste disposal standards (40 CFR part 191), the compliance criteria (40 CFR part 194), and the EPA's certification decision is filed in the official EPA Air Docket, Dockets No. R–89–01, A–92–56, and A–93–02, respectively, and is available for review in Washington, D.C., and at the three EPA WIPP informational docket locations in New Mexico. The dockets in New Mexico contain only major items from the official Air Docket in Washington, D.C., plus those documents added to the official Air Docket after the October 1992 enactment of the WIPP LWA.

Dated: April 12, 1999.

Robert Perciasepe,

Assistant Administrator for Air and Radiation.

[FR Doc. 99–9601 Filed 4–15–99; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99–122, RM–9553]

Radio Broadcasting Services; Minatare, NE

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Mountain West Broadcasting to allot Channel 295A to Minatare, NE, as the community's first local aural service. Channel 295A can be allotted to Minatare in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction, at coordinates 41–48–34 NL; 103–30–12 WL.

DATES: Comments must be filed on or before June 1, 1999, and reply comments on or before June 16, 1999.

ADDRESSES: Federal Communications Commission, 445 12th Street, S.W., Room TW–A325, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Victor A.

Michael, Jr., President, Mountain West Broadcasting, 6807 Foxglove Drive, Cheyenne, WY 82009 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 99–122, adopted March 31, 1999, and released April 9, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–9542 Filed 4–15–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99–121, RM–9552]

Radio Broadcasting Services; Eagle Nest, NM

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Mountain West Broadcasting to allot Channel 284C2 to Eagle Nest, NM, as its first local aural service. Parties filing comments are requested to provide specific information to demonstrate that Eagle Nest is a community for allotment purposes. Channel 284C2 can be allotted to Eagle Nest in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction, at coordinates 36–33–17 NL; 105–15–47 WL.

DATES: Comments must be filed on or before June 1, 1999, and reply comments on or before June 16, 1999.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW, Room TW–A325, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Victor A. Michael, Jr., President, Mountain West Broadcasting, 6807 Foxglove Drive, Cheyenne, WY 82009 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 99–121, adopted March 31, 1999, and released April 9, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all ex parte contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible ex parte contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–9541 Filed 4–15–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99–120, RM–9551]

Radio Broadcasting Services; Magdalena, NM

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Mountain West Broadcasting seeking the allotment of Channel 240C2 to Magdalena, NM, as the community's first local aural service. Channel 240C2 can be allotted to Magdalena in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction, at coordinates 34–07–00 NL; 107–14–36 WL. Mexican concurrence in the allotment is required since Magdalena is located within 320 kilometers (199 miles) of the U.S.-Mexican border.

DATES: Comments must be filed on or before June 1, 1999, and reply comments on or before June 16, 1999.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW, Room TW–A325, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Victor A. Michael, Jr., President, Mountain West Broadcasting, 6807 Foxglove Drive, Cheyenne, WY 82009 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 99–120, adopted March 31, 1999, and released April 9, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission

consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–9540 Filed 4–15–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99–119, RM–9550]

Radio Broadcasting Services; Shiprock, NM

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Mountain West Broadcasting seeking the allotment of Channel 293C1 to Shiprock, NM, as the community's first local aural service. Channel 293C1 can be allotted to Shiprock in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction, at coordinates 36–47–08 NL; 108–41–11.

DATES: Comments must be filed on or before June 1, 1999, and reply comments on or before June 16, 1999.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW, Room TW–A325, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Victor A. Michael, Jr., President, Mountain West Broadcasting, 6807 Foxglove Drive, Cheyenne, WY 82009 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 99–119, adopted March 31, 1999, and released April 9, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–9539 Filed 4–15–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99–118, RM–9549]

Radio Broadcasting Services; Logandale, NV

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Mountain West Broadcasting to allot channel 291C1 to Logandale, NV, as its first local aural service. Petitioner is requested to provide further information to demonstrate that Logandale is a community for allotment purposes. Channel 291C1 can be allotted to Logandale in compliance with the Commission's minimum distance separation requirements with a site restriction of 25.9 kilometers (16.1 miles) northeast, at coordinates 36–47–25 NL; 114–19–21 WL, to avoid a short-spacing to Stations KSTJ, Channel 288C2, Boulder City, NV, KSNE–FM, Channel 293C, Las Vegas, NV, KRCY, Channel 290C1, Kingman, AZ, and the proposed allotment of Channel 291A at Tecopa, CA (MM Docket No. 99–46, RM–9470).

DATES: Comments must be filed on or before June 1, 1999, and reply comments on or before June 16, 1999.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW, Room TW–A325, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Victor A. Michael, Jr., President, Mountain West Broadcasting, 6807 Foxglove Drive, Cheyenne, WY 82009 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 99–118, adopted March 31, 1999, and released April 9, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–9538 Filed 4–15–99; 8:45 am]

BILLING CODE 6712–01–P

Notices

Federal Register
Vol. 64, No. 73
Friday, April 16, 1999

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Docket No. FV99–929–1NC]

Notice of Request for Extension and Revision of a Currently Approved Information Collection

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), this notice announces the Agricultural Marketing Service's (AMS) intention to request an extension for and revision to a currently approved information collection for Cranberries Grown in the States of Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and Long Island in the State of New York, Marketing Order No. 929.

DATES: Comments on this notice must be received by June 15, 1999.

ADDITIONAL INFORMATION OR COMMENTS: Contact Valerie L. Emmer-Scott, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S., P.O. Box 96456, Washington, DC 20090–6456; Tel: (202) 205–2829, Fax: (202) 720–5698, or E-mail: moabdocket_clerk@usda.gov.

SUPPLEMENTARY INFORMATION:

Title: Cranberries Grown in the States of Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and Long Island in the State of New York, Marketing Order No. 929.

OMB Number: 0581–0103.

Expiration Date of Approval: December 31, 1999.

Type of Request: Extension and revision of a currently approved information collection.

Abstract: Marketing order programs provide an opportunity for producers of fresh fruits, vegetables and specialty crops, in a specified production area, to work together to solve marketing problems that cannot be solved individually. Order regulations help ensure adequate supplies of high quality product and adequate returns to producers. Under the Agricultural Marketing Agreement Act of 1937 (AMAA), as amended (7 U.S.C. 601–674) industries enter into marketing order programs. The Secretary of Agriculture is authorized to oversee the order operations and issue regulations recommended by a committee of representatives from each commodity industry.

The information collection requirements in this request are essential to carry out the intent of the AMAA, to provide the respondents the type of service they request, and to administer the program, which has operated since 1962.

The cranberry marketing order regulates the handling of cranberries grown in the states of Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and Long Island in the State of New York, hereinafter referred to as the "order." The order authorizes the issuance of allotment provisions for producers and regulates the quantities of cranberries handled. The order also has research and development authority.

The order, and rules and regulations issued thereunder, authorize the Cranberry Marketing Committee (Committee), the agency responsible for local administration of the order, to require handlers and producers to submit certain information. Much of this information is compiled in aggregate and provided to the industry to assist in marketing decisions.

The Committee has developed forms as a means for persons to file required information with the Committee relating to cranberry supplies, shipments, dispositions, and other information needed to effectively carry out the purpose of the AMAA and order. As shipments of cranberries are normally year-round, these forms are utilized accordingly. A USDA form is used to allow growers to vote on amendments or continuance of the marketing order. In addition, cranberry growers who are nominated by their peers to serve as representatives on the Committee must file nomination forms with the Secretary.

Formal rulemaking amendments to the order must be approved in referenda conducted by the Secretary. Also, the Secretary may conduct a continuance referendum to determine industry support for continuation of the order. Handlers are asked to sign an agreement to indicate their willingness to abide by the provisions of the order whenever the order is amended. These forms are included in this request.

The forms covered under this information collection require the minimum information necessary to effectively carry out the requirements of the order, and their use is necessary to fulfill the intent of the AMAA as expressed in the order, and the rules and regulations issued under the order.

The information collected is used only by authorized representatives of the USDA, including AMS, Fruit and Vegetable Programs' regional and headquarter's staff, and authorized employees of the Committee. Authorized Committee employees and the industry are the primary users of the information, and AMS is the secondary user.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 0.4173 hours per response.

Respondents: Cranberry growers and handlers in the States of Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and Long Island in the State of New York.

Estimated Number of Respondents: 1,306

Estimated Number of Responses per Respondent: 2.398

Estimated Total Annual Burden on Respondents: 902 hours.

Comments: Comments are invited on: (1) Whether the proposed collection of the information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used;

(3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments should reference OMB No. 0581–0103 and the Cranberry Marketing Order No. 929, and be mailed to Docket Clerk, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, D.C. 20090–6456; Fax (202) 720–5698; or E-mail: moabdocket_clerk@usda.gov. Comments should reference the docket number and the date and page number of this issue of the **Federal Register**. All comments received will be available for public inspection in the Office of the Docket Clerk during regular USDA business hours at 14th and Independence Ave., S.W., Washington, D.C., room 2525–S.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: April 9, 1999.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 99–9516 Filed 4–15–99; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 99–031–1]

Wildlife Services; Availability of Environmental Assessment and Finding of No Significant Impact

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that the Animal and Plant Health Inspection Service has prepared an environmental assessment and a finding of no significant impact for a program to alleviate damage to agriculture, property, natural resources, and human health or safety caused by nonmigratory Canada geese, migratory Canada geese, and urban ducks in the Commonwealth of Virginia. The environmental assessment provides a basis for our conclusion that the methods to be employed to alleviate such damage will not have a significant impact on the quality of the human environment.

ADDRESSES: Copies of the environmental assessment and finding of no significant impact are available for public inspection at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect those documents are requested to call ahead on (202) 690–2817 to facilitate entry into the reading room.

FOR FURTHER INFORMATION CONTACT: Mr. Martin Lowney, State Director, Wildlife Services, APHIS, P.O. Box 130, Moseley, VA 23120. Copies of the environmental assessment and finding of no significant impact may be obtained by contacting Mr. Lowney at the above address or by calling (804) 739–7739.

SUPPLEMENTARY INFORMATION:

Background

Wildlife Services of the Animal and Plant Health Inspection Service cooperates with Federal agencies, State and local governments, and private individuals to research and implement the best methods of managing wildlife to protect human health and safety and prevent damage to agriculture, property, and natural resources.

In this document, APHIS is advising the public of the availability of an environmental assessment relative to the management by Wildlife Services of conflicts and damage caused by nonmigratory Canada geese, migratory Canada geese, and urban ducks in the Commonwealth of Virginia.

The habitat preference, breeding and feeding behavior, and adaptability of nonmigratory Canada geese, migratory Canada geese, and urban ducks can involve conflicts with humans and affect human health and safety in a number of ways, including the following: by contaminating surface water and ground cover with fecal matter, causing damage to aircraft and other means of transportation as a result of collisions, and causing injury to approaching humans, especially children, through aggressive action. The environmental assessment examines the environmental impacts of Wildlife Services activities to manage such conflicts and damage and provides a basis for our conclusion that the methods to be employed to alleviate such damage will not have a significant impact on the quality of the human environment.

The environmental assessment and finding of no significant impact have been prepared in accordance with: (1) The National Environmental Policy Act of 1969, as amended (NEPA) (42 U.S.C. 4321 *et seq.*), (2) Regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

Done in Washington, DC, this 13th day of April 1999.

Joan M. Arnoldi,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 99–9523 Filed 4–15–99; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

Types and Quantities of Agricultural Commodities Available for Donation Overseas Under Section 416(b) of the Agricultural Act of 1949, as Amended, in Fiscal Year 1999

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice.

SUMMARY: On March 19, 1999, the President, Commodity Credit Corporation (CCC), determined that 350,000 metric tons of corn be made available for donation overseas under section 416(b) of the Agricultural Act of 1949, as amended, during fiscal year 1999. This determination increases the amount of corn available for donation overseas under section 416(b) during fiscal year 1999 to 400,000 metric tons.

FOR FURTHER INFORMATION CONTACT: Ira Branson, Director, CCC Program Support Division, FAS, USDA, (202) 720–3573.

Dated: March 17, 1999.

Timothy J. Galvin,

Acting Vice President, Commodity Credit Corporation.

[FR Doc. 99–9517 Filed 4–15–99; 8:45 am]

BILLING CODE 3410–10–M

DEPARTMENT OF AGRICULTURE

Risk Management Agency

Risk Management Advisory Committee

AGENCY: Office of the Secretary, USDA.

ACTION: Notice of intent to establish; extension of date to submit nominations and comments.

SUMMARY: The U.S. Department of Agriculture (USDA) extends the date for accepting nominations of individuals to be considered for selection as

Committee members on the Risk Management Advisory Committee. Comments are also requested on categories of membership and duties of the Committee.

On March 11, 1999, the Risk Management Agency (RMA) published a notice in the **Federal Register** at 64 FR 12152 with a request for nominations on the Risk Management Advisory Committee. Written nominations were required to have been submitted no later than April 12, 1999, in order to be assured consideration. USDA/RMA is extending that nomination period to April 30, 1999, so that interested parties will have additional time to submit their nominations.

DATES: Written nominations must be received on or before April 30, 1999.

ADDRESSES: Nominations should be sent to Ms. Diana Moslak, Risk Management Agency, USDA, 1400 Independence Ave., SW, Room 3053–S, Ag. Box 0801, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Diana Moslak, (202) 720–2832.

Dated: April 9, 1999.

Sally Thompson,

Acting Assistant Secretary for Administration.

[FR Doc. 99–9527 Filed 4–15–99; 8:45 am]

BILLING CODE 3410–08–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Deletion to the Procurement List; Correction

In the document appearing on page 17313 FR Doc. 99–8899, in the issue of April 9, 1999, in the third column, a Janitorial/Custodial, BEQ Naval Station, Staten Island, New York, is listed as deleted from the Procurement List, effective May 10, 1999. The Committee voted to delete this service on the information that the base had closed and that this service would no longer be required. Since the April 9, 1999 deletion notice, the Navy has indicated that it still requires this service.

Accordingly, the notice of April 9, 1999 referenced above is corrected to remove the Janitorial/Custodial, BEQ Naval Station, Staten Island, New York from the list of services deleted from the Procurement List.

Beverly L. Milkman,

Executive Director.

[FR Doc. 99–9623 Filed 4–15–99; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to and deletion from the Procurement List.

SUMMARY: This action adds to the Procurement List services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes from the Procurement List commodities previously furnished by such agencies.

EFFECTIVE DATE: May 17, 1999.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Gateway 3, Suite 310, 1215 Jefferson Davis Highway, Arlington, Virginia 22202–4302.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: On March 5, 1999, the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (63 FR 10620 and 10621) of proposed additions to and deletions from the Procurement List:

Additions

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the services and impact of the additions on the current or most recent contractors, the Committee has determined that the services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the services to the Government.

2. The action will not have a severe economic impact on current contractors for the services.

3. The action will result in authorizing small entities to furnish the services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the services proposed for addition to the Procurement List.

Accordingly, the following services are hereby added to the Procurement List:

Janitorial/Custodial, Child Development Centers, Buildings 6058 and 6060, Fort Carson, Colorado

Janitorial/Custodial, Johnstown USARC #1, 295 Goucher Street, Johnstown, Pennsylvania

This action does not affect current contracts awarded prior to the effective date of this addition or options that may be exercised under those contracts.

Deletions

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action may not result in any additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action will not have a severe economic impact on future contractors for the commodities.

3. The action may result in authorizing small entities to furnish the commodities to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities deleted from the Procurement List.

After consideration of the relevant matter presented, the Committee has determined that the commodities listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Accordingly, the following commodities are hereby deleted from the Procurement List:

Cap, Utility, Camouflage
- 8405–01–246–4176
- 8405–01–246–4177
- 8405–01–246–4178
- 8405–01–246–4179
- 8405–01–246–4180
- 8405–01–246–6658

Cap, Hot Weather
- 8415–01–393–6291
- 8415–01–393–6292
- 8415–01–393–6293
- 8415–01–393–6294
- 8415–01–393–6295
- 8415–01–393–6296
- 8415–01–393–6297
- 8415–01–393–6298
- 8415–01–393–6299
- 8415–01–393–7813
- 8415–01–393–7820

8415–01–393–7952
Beverly L. Milkman,
Executive Director.
[FR Doc. 99–9624 Filed 4–15–99; 8:45 am]
BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to and deletions from Procurement List.

SUMMARY: The Committee has received proposals to add to the Procurement List commodities and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and to delete commodities previously furnished by such agencies.

COMMENTS MUST BE RECEIVED ON OR BEFORE: May 17, 1999.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Gateway 3, Suite 310, 1215 Jefferson Davis Highway, Arlington, Virginia 22202–4302.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

Additions

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodities and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and services to the Government.

2. The action will result in authorizing small entities to furnish the commodities and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46—48c) in connection with the commodities and services proposed for addition to the Procurement List. Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following commodities and services have been proposed for addition to Procurement List for production by the nonprofit agencies listed:

Commodities

Tray, Half Size MM, Fiberboard
PSIN 3916B
(16,000,000 each annually)

Sleeves, Half Size MM, Fiberboard
PSIN 3916C
(16,000,000 each annually)

NPA: South Texas Housing and Community Development Corporation, Inc., San Antonio, Texas

Services

Janitorial/Custodial, Basewide, Fort Carson, Colorado
NPA: Platte River Industries, Inc., Denver, Colorado

Janitorial/Custodial, Curlew Conservation Center, Colville National Forest, Curlew, Washington
NPA: Ferry County Community Services, Republic, Washington

Photocopying Service, GPO Program 1C294–S
(Requirements for the Government Printing Office, Washington, DC)
NPA: Alliance, Inc., Baltimore, Maryland

Deletion

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action will result in authorizing small entities to furnish the commodities to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46—48c) in connection with the commodities proposed for deletion from the Procurement List.

The following commodities have been proposed for deletion from the Procurement List:

Gloves, Cloth, Cotton
8415–00–964–4615
8415–00–964–4925
8415–00–964–4760

Beverly L. Milkman,
Executive Director.
[FR Doc. 99–9625 Filed 4–15–99; 8:45 am]
BILLING CODE 6353–01–U

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce (DOC) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of Export Administration (BXA).

Title: Competitive Enhancement Needs Assessment Survey Program.

Agency Form Number: N/A.

OMB Approval Number: 0694–0083.

Type of Request: Renewal of an existing collection of information.

Burden: 2,000 hours.

Average Time Per Response: 30 minutes per response.

Number of Respondents: 5,000 respondents.

Needs and Uses: The Defense Production Act of 1950, as amended, and Executive Order 12919, authorizes the Secretary of Commerce to assess the capabilities of the defense industrial base to support the national defense and to develop policy alternatives to improve the international competitiveness of specific domestic industries and their abilities to meet defense program needs. The information collected from voluntary surveys will be used to assist small and medium-sized firms in defense transition and in gaining access to advanced technologies and manufacturing processes available from Federal Laboratories. The goal is to improve regions of the country adversely by cutbacks in defense spending and military base closures.

Affected Public: Individuals, businesses or other for-profit institutions.

Respondent's Obligation: Voluntary.

OMB Desk Officer: David Rostker (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, Office of the Chief Information Officer, (202) 482–3272, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via Internet at LEngelme@doc.gov).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20230.

Dated: April 9, 1999.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 99–9490 Filed 04–15–99; 8:45 a.m.]

BILLING CODE 3510–JT–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce (DOC) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of Export Administration (BXA).

Title: Update of the National Security Assessment of the U.S. Cartridge Actuated Device Industry.

Agency Form Number: N/A.

OMB Approval Number: None.

Type of Request: New collection.

Burden: 200 hours.

Average Time Per Response: 5 hours per response.

Number of Respondents: 40 respondents.

Needs and Uses: Commerce/BXA, in consultation with Naval Surface Warfare Center/Indian Head Division (NSWC/IHD), is conducting a follow-on national security assessment of the domestic cartridge and propellant actuated device industry in order to re-evaluate the health and competitiveness of the U.S. industry and its ability to support current and future defense needs. The original assessment was conducted in 1994 (approved under OMB Control No. 0694–0080). NSWC/IHD is interested in conducting a follow-on assessment in light of recent Navy and industry actions to maintain and enhance this critical sector.

Affected Public: Individuals, businesses or other for-profit institutions.

Respondent's Obligation: Mandatory.

OMB Desk Officer: David Rostker (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, Office of the Chief Information Officer, (202) 482-3272, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20230 (or via the Internet LEngelme@doc.gov).

Dated: April 9, 1999.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 99–9491 Filed 4–15–99; 8:45 a.m.]

BILLING CODE 3510–JT–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 14–99]

Foreign-Trade Zone 163—Ponce, Puerto Rico; Application For Foreign-Trade Subzone Status: Peerless Oil & Chemicals, Inc.—Petroleum Product Storage and Processing Peñuelas, Puerto Rico

An application has been submitted to the Foreign-Trade Zones Board (the Board) by Codezol, C.D., grantee of FTZ 163, requesting special-purpose subzone status for the petroleum product storage and processing facility of Peerless Oil & Chemicals, Inc., located at sites in Peñuelas, Puerto Rico. The application was submitted pursuant to the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on March 29, 1999.

The Peerless facilities are located at three sites in the vicinity of Rt. 127, Km. 17.1 in Peñuelas, Puerto Rico. The facilities (27 employees) are used for receipt, storage, distribution, and minor processing of petroleum products (duty rates on these items range from 5.25 to 84 cents per barrel). The company also uses a number of foreign-sourced products that are duty free.

Zone procedures would exempt Peerless from Customs duties on petroleum products which are re-exported. On domestic sales, the company would be able to defer Customs duty payments until the products leave the facility. No authority is being sought which would result in a change in tariff classification, and the company would admit imported merchandise into the proposed subzone in privileged foreign status (19 CFR 146.41).

The application indicates that the main benefit to Peerless from FTZ procedures will be an improved ability to attract international customers. The company will also achieve some savings by deferral of Customs duties while foreign merchandise is stored within Peerless' facilities. FTZ status may also make a site eligible for benefits provided under commonwealth/local programs.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and three copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is June 15, 1999. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to June 30, 1999.

A copy of the application and the accompanying exhibits will be available for public inspection at each of the following locations:

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 3716, 14th and Pennsylvania Avenue, N.W., Washington, D.C. 20230

U.S. Department of Commerce Export Assistance Center, 525 F.D. Roosevelt Avenue, Suite 905, San Juan, PR 00918

Dated: April 7, 1999.

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 99–9611 Filed 4–15–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–331–602]

Certain Fresh Cut Flowers From Ecuador: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review

SUMMARY: In response to a request from a domestic interested party, the Department of Commerce is conducting an administrative review of the antidumping duty order on certain fresh cut flowers from Ecuador for the period March 1, 1997, through February 28, 1998.

We have preliminarily determined that sales have been made below normal

value by various companies subject to this review. If these preliminary results are adopted in the final results of this administrative review, we will instruct the Customs Service to assess antidumping duties equal to the difference between the export price or constructed export price and the normal value. We invite interested parties to comment on these preliminary results.

EFFECTIVE DATE: April 16, 1999.

FOR FURTHER INFORMATION CONTACT: Mark Ross or Edythe Artman, Office of Antidumping/Countervailing Duty Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, DC 20230; telephone (202) 482–4794 or (202) 482–3931, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department's) regulations are to the regulations codified at 19 CFR Part 351 (1998).

Background

On March 11, 1998, the Department published a notice of "Opportunity to Request Administrative Review" with respect to the antidumping duty order on certain fresh cut flowers from Ecuador (63 FR 11868). The Floral Trade Council (FTC) requested a review on March 31, 1998. An association of U.S. flower producers, the FTC was the petitioner in the original investigation of this proceeding. In response to the FTC's request, the Department published a notice of initiation of an administrative review on April 24, 1998, in accordance with 19 CFR 351.213(b) (63 FR 20378). On November 24, 1998, we extended the deadline for the preliminary results of the review until March 30, 1999 (see 63 FR 66528).

Scope of Review

Imports covered by this review are shipments of certain fresh cut flowers from Ecuador. Specifically, the products are standard carnations, standard chrysanthemums, and pompon chrysanthemums. These products are currently classifiable under item numbers 0603.10.70.10, 0603.10.70.20, and 0603.10.70.30, respectively, of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS item numbers are provided for convenience and for customs purposes, the Department's written description of the scope of this proceeding remains dispositive.

Period of Review

The period of review (POR) is from March 1, 1997, through February 28, 1998.

Partial Rescission of the Review

In light of past administrative practice and relevant provisions of the law, we are rescinding some companies from the review which were listed in the notice of initiation.

The respondent U.S. Floral Corporation submitted a letter stating that it was an importer of Ecuadorian fresh cut flowers. It stated that it had no ownership or affiliation with any farm or exporter in Ecuador and did not exist as a corporate entity in Ecuador. The company also stated that it had made no shipments of subject merchandise to the United States during the POR.

A review of Customs Service documentation regarding shipments of the subject merchandise during the POR confirms that U.S. Floral did not have any shipments of the merchandise. See Memorandum from Laurie Parkhill to Richard W. Moreland (May 26, 1998). Therefore, we have rescinded our review of U.S. Floral in accordance with 19 CFR 351.213(d).

Flores Equinocciales (listed in the notice of initiation as Florequisa) stated in a submission that it had received a *de minimis* weighted-average margin in the original investigation. It stated that, as a result, it had never been subject to suspension of liquidation and did not consider itself a candidate for an administrative review. We agree (see Letter from Laurie Parkhill to Flores Equinocciales (June 3, 1998)) and have rescinded the review of this company.

Noelia Flowers (listed in the notice of initiation as Noeliaflowers) reported that it had shipped flowers to the United States during the POR, but that all of the shipments had been supplied by a single, unaffiliated farm which knew that the destination of the merchandise was within the United States. It submitted a copy of a receipt from a farm which shows that the farm knew of the ultimate destination of the flowers. Because the supplier of the flowers that Noelia Flowers shipped to the United States during the POR had knowledge, at the time it sold the merchandise to Noelia Flowers, that those sales were destined for export to the United States, the Department considers the supplier to be the source of any dumping activity, not Noelia Flowers. As such, the supplier established the price of the subject merchandise we would use in our antidumping analysis. Therefore, we have rescinded the review of Noelia Flowers. This is consistent with our practice of rescinding a review of an exporter where the producer had knowledge that the subject merchandise would ultimately end up in the United States. See *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from France, Germany, Japan, Singapore, Sweden, Thailand, and the United Kingdom; Preliminary Results of Antidumping Duty Administrative Reviews, Partial Termination of Administrative Reviews, and Notice of Intent to Revoke Order*, 60 FR 62817, 62818 (December 7, 1995). *Request for Revocation of the Antidumping Duty Order.*

On May 29, 1998, Florisol Cia. Ltda. (also listed as Florisol in the notice of initiation) submitted a letter in which it requested revocation of the antidumping duty order with respect to its sales.

Section 351.222(e) of the Department's regulations states that a request for revocation of an order may be submitted "[d]uring the third and subsequent annual anniversary months of the publication of an antidumping order." The anniversary month of the order under review is March. Hence, the request for revocation was received two months following the prescribed time frame for its submission. For this reason, the Department found that the request was untimely and, therefore, rejected the request. See Memorandum from the Ecuadorian Flowers Team to Laurie Parkhill (March 3, 1999).

Selected Respondents

Section 777A(c)(2) of the Act provides the Department with the authority to determine margins either by limiting its examination to a statistically valid sample of exporters or by limiting its examination to exporters which account for the largest volume of the subject merchandise that can reasonably be examined. This subparagraph is formulated as an exception to the general requirement of the Act that we examine each company, for which a review is requested, individually and calculate a company-specific margin.

Because over 40 companies were named in the initiation notice for this review and because of the limited resources available to calculate individual margins, we determined that it was necessary to restrict the number of respondents selected for examination. This approach enabled the Department

to analyze the responses of the selected companies thoroughly and carefully to consider all issues raised in the proceeding within the statutory deadlines. This approach is consistent with that taken in reviews of the antidumping duty order on certain fresh cut flowers from Colombia (see, *e.g., Certain Fresh Cut Flowers from Colombia: Preliminary Results and Partial Termination of Antidumping Duty Administrative Review*, 63 FR 5354 (February 2, 1998)).

Consistent with section 777A(c)(2)(B) of the Act, we limited our examination to six respondents since the sales of these companies accounted for over ninety percent of the sales to the United States by companies for which the review was requested. See Memorandum from Laurie Parkhill to Richard W. Moreland (June 15, 1998). The six selected respondents for this review are Agritab Cia. Ltda. (Agritab), Claveles de la Montana, S.A. (Montana), Flores del Quinche S.A. (Floraquin), Floricultura Ecuaclavel S.A. (Ecuaclavel), Florisol Cia. Ltda. (Florisol), and Flores Mitad del Mundo, S.A. (Floremit).

Non-Selected Respondents

On May 1, 1998, the Department issued a questionnaire to each of the companies named in the initiation notice. Sixteen of the companies completed and returned the questionnaire and 22 sent letters in which they reported having no shipments of subject merchandise during the POR.

Of the sixteen who returned the questionnaire, we selected six as respondents, as discussed above, and we consider the remaining ten as non-selected respondents. Consistent with our practice in recent administrative reviews of the antidumping duty order on certain fresh cut flowers from Colombia, we are assigning the non-selected, cooperative respondents a weighted-average margin based on the calculated margins of the selected respondents, excluding any zero or *de minimis* margins and margins based entirely on facts available. See Memorandum from Laurie Parkhill to the File (July 17, 1998), and *Certain Fresh Cut Flowers from Colombia: Final Results of Antidumping Duty Administrative Review*, 63 FR 31724 (June 10, 1998) (*Colombian Flowers Tenth Review*).

For companies that reported having no shipments during the POR, we reviewed the Customs Service entry documentation for the subject merchandise from Ecuador during the POR, which confirmed that these companies had no shipments of the merchandise. Consequently, these respondents will either retain the company-specific rate most recently assigned to them (as a result of a prior review or the original less-than-fair-value investigation) or their entries will receive the "all others" rate for future cash-deposit purposes.

The non-selected companies are listed as the "Non-Selected Respondents" in the "Preliminary Results of Review" section below.

Facts Available

Two companies, Ecuaplanta and San Alfonso, did not respond to our original questionnaire or to a follow-up letter that was issued to them. Section 776(a)(2) of the Act provides that, if an interested party (1) withholds information that has been requested by the Department, (2) fails to provide such information in a timely manner or in the form or manner requested, subject to subsections 782(c)(1) and (e) of the Act, (3) significantly impedes a determination under the antidumping statute, or (4) provides such information but the information cannot be verified as provided in section 782(i) of the Act, then the Department shall, subject to section 782(d) of the Act, use facts otherwise available in reaching the applicable determination. Because Ecuaplanta and San Alfonso did not respond to the questionnaire or the follow-up letter, the provisions of sections 782(c)(1) and (e) of the Act do not apply and we must use facts otherwise available to determine their dumping margins.

Section 776(b) of the Act provides that, if the Department finds that an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information, the Department may use an inference that is adverse to the interests of that party in selecting from among the facts otherwise available. The section provides that an adverse inference may include reliance on information derived from (1) the petition, (2) the final determination in the investigation segment of the proceeding, (3) a previous review under section 751 of the Act or a determination under section 753 of the Act, or (4) any other information placed on the record. In addition, the Statement of Administrative Action accompanying the URAA, H.R. Doc. 316, Vol. 1, 103d Cong. (1994) (SAA), establishes that the Department may employ an adverse inference "to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully." SAA at 870. In employing adverse inferences, the Department is instructed to consider "the extent to which a party may benefit from its own lack of cooperation." *Id.* Because Ecuaplanta and San Alfonso did not cooperate by complying with our request for information and in order to ensure that they do not benefit from their lack of cooperation, we are employing an adverse inference in selecting from the facts available.

The Department's practice when selecting an adverse rate from among the possible sources of information has been to ensure that the margin is sufficiently adverse "as to effectuate the purpose of the facts available rule to induce respondents to provide the Department with complete and accurate information in a timely manner." See *Static Random Access Memory Semiconductors From Taiwan; Final Determination of Sales at Less Than Fair Value*, 63 FR 8909, 8932 (February 23, 1998). The Department will also consider the extent to which a party may benefit from its own lack of cooperation in selecting a rate. See *Roller Chain Other Than Bicycle, From Japan; Notice of Final Results and Partial Recission of Antidumping Duty Administrative Review*, 62 FR 69472, 69477 (November 10, 1997), and *Certain Welded Carbon Steel Pipes and Tubes from Thailand: Final Results of Antidumping Administrative Review*, 62 FR 53808, 53820–21 (October 16, 1997).

In order to ensure that the rate is sufficiently adverse so as to induce Ecuaplanta's and San Alfonso's cooperation, we have assigned these companies as adverse facts available a rate of 23.50 percent, the highest margin determined in any segment of this proceeding. This rate was calculated for Eden Flowers in the amended final determination. See *Amendment to Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order in Accordance with Decision Upon Remand: Certain Fresh Cut Flowers from Ecuador*, 54 FR 29595 (July 13, 1989). As such, the margin constitutes "secondary information" under section 776(c) of the Act.

Section 776(c) of the Act provides that the Department shall, to the extent practicable, corroborate secondary information used for facts available by reviewing independent sources reasonably at its disposal. The SAA provides that to "corroborate" means simply that the Department will satisfy itself that the secondary information to be used has probative value. SAA at 870. As noted in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan, and Tapered Roller Bearings, Four Inches or*

Less in Outside Diameter, and Components Thereof, from Japan; Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews, 61 FR 57391, 57392 (November 6, 1996), to corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information used. However, unlike other types of information, such as input costs or selling expenses, there are no independent sources from which the Department can derive calculated dumping margins; the only source for margins is administrative determinations. Thus, in an administrative review, if the Department chooses as total adverse facts available a calculated dumping margin from a prior segment of the proceeding, it is not necessary to question the reliability of the margin for that time period.

As to the relevance of the margin used for adverse facts available, the Department stated in *Tapered Roller Bearings* that it will "consider information reasonably at its disposal" as to whether there are circumstances that would render a margin irrelevant. Where circumstances indicate that the selected margin is not appropriate as adverse facts available, the Department will disregard the margin and determine an appropriate margin." *Id.*; see also *Fresh Cut Flowers from Mexico; Preliminary Results of Antidumping Duty Administrative Review*, 60 FR 49567 (September 26, 1995).

As stated above, the highest rate determined in any segment of this proceeding is 23.50 percent for Eden Flowers. We have determined that there is no evidence on the administrative record for the less-than-fair-value investigation which indicates that the 23.50 percent rate is irrelevant or inappropriate as total facts available for Ecuaplanta and San Alfonso for this review.

The FTC's Status as a Domestic Interested Party

Five of the respondents requested that the Department require the FTC to identify its members, citing 19 CFR 351.213(b)(1) as requiring that an administrative review be requested by a domestic interested party. They argued that section 771(9)(E) of the Act provides that a trade association may constitute a domestic interested party if the majority of its members are manufacturers, producers or wholesalers of a domestic like product in the United States but that, because the FTC had not identified its members in its request for a review or any subsequent submissions to the Department, it was impossible to know if the FTC met the definition of domestic interested party. In the event that the FTC was not found to meet the definition of interested party, the respondents argued that the Department should terminate the review.

Further submissions by the FTC clarified the position of the FTC in the industry. We determined that a November 1998 affidavit by the President of the FTC stating that the majority of the association's members were growers or wholesalers of the subject merchandise was sufficient evidence of the nature of the association's membership. Therefore, we concluded that the FTC meets the definition of "domestic interested party" within the meaning of section 771(9)(E) of the Act. See Memorandum from Laurie Parkhill to Richard W. Moreland (January 27, 1999).

Request for Separate Rates

Since the original investigation the Department has calculated company-specific weighted-average margins for all subject merchandise. Because the International Trade Commission (ITC) found that each of the three flower types subject to investigation was a separate like product, five of the respondents requested that the Department calculate a weighted-average rate for each flower type. Because the order is subject to a "sunset" review in 1999, the respondents contend that the ITC would most likely use the like-product analysis that it had developed at the investigation stage.

The purpose of an administrative review is to determine the amount of duties due on entries during the POR and to establish estimated antidumping duties for future entries. We calculate, where possible, customer-specific duty-assessment rates and it is our long-established practice to calculate a weighted-average margin for the subject merchandise to set the cash-deposit rate for future entries. Respondents' argument addresses the conduct of the sunset review, not the assessment of antidumping duties. Therefore, we find no basis upon which to assign separate weighted-average margins for the three flower types in this administrative review.

Duty Absorption

On March 31, 1998, the FTC requested that the Department determine whether antidumping duties had been absorbed by the respondents during the POR. Section 751(a)(4) of the Act provides for the Department, if requested, to determine, during an administrative review initiated two years or four years after publication of the order, whether antidumping duties have been absorbed by a foreign producer or exporter subject to the order if the subject merchandise is sold in the United States through an importer who is affiliated with such foreign producer or exporter. For transition orders as defined in section 751(c)(6)(C) of the Act (*i.e.*, orders in effect as of January 1, 1995), section 351.213(j)(2) of our regulations provides that we will make a duty-absorption determination, if requested, for any administrative review initiated in 1996 or 1998. This approach ensures that interested parties will have the opportunity to request a duty-absorption determination prior to the time of a sunset review of an antidumping order under section 751(c) of the Act, even though the second and fourth years following the issuance of that order have passed.

Since the order on certain fresh cut flowers from Ecuador has been in effect since 1987, it is a transition order. Furthermore, we received the request for a duty-absorption determination in connection with a review that we initiated in 1998. Consequently, in accordance with the policy described above, it is appropriate to examine duty absorption in this review.

Section 751(a)(4) of the Act provides that duty absorption may occur if the subject merchandise is sold in the United States through an affiliated importer. Of the selected respondents, Agritab, Floremit, and Ecuaclavel have affiliated importers. We have preliminarily determined that the following percentage of their U.S. affiliates' sales, by quantity, have dumping margins:

Name of firm	Percentage of U.S. affiliate's sales with dumping margins
Agritab	13.79
Floricultura Ecuaclavel S.A	38.04
Flores Mitad del Mundo, S.A	15.00

With respect to the above companies, we presume that the duties will be absorbed for those sales that we found to have been dumped. However, this presumption can be rebutted with evidence (*e.g.*, an agreement between the affiliated importer and the unaffiliated purchaser) that the unaffiliated purchasers in the United States will pay the full duty ultimately assessed on the subject merchandise. An interested party who wishes to submit such evidence may do so no later than 15 days after publication of these

preliminary results. In the absence of such evidence, we will find that the antidumping duties have been absorbed by the above-listed firms on the percentage of U.S. sales indicated.

Export Price and Constructed Export Price

As permitted by section 777A(d)(2) of the Act, we have preliminarily determined that it is appropriate to average U.S. prices on a monthly basis in order to use actual price information (often available only on a monthly basis) and account for practices associated with pricing perishable products. The Department has used this averaging technique in the most recently completed review of this order and other reviews of the order covering certain fresh cut flowers from Colombia. *Certain Fresh Cut Flowers from Ecuador; Final Results of Antidumping Duty Administrative Review*, 61 FR 37044 (July 16, 1996), and *Colombian Flowers Tenth Review*.

For the price to the United States, we used export price (EP) or constructed export price (CEP) as defined in sections 772(a) and 772(b) of the Act, as appropriate. CEP was used for consignment sales through unaffiliated U.S. consignees and sales (consignment or otherwise) made through affiliated importers.

We calculated EP based on the packed price, consisting of invoice price plus certain additional charges (*e.g.*, box charges), to the first unaffiliated purchaser in the United States. We made deductions, where appropriate, for foreign inland freight and return credits.

For sales made on consignment, we calculated CEP based on the packed price consisting of invoice price plus certain additional charges by the consignee (*e.g.*, box charges) to the unaffiliated purchaser. For sales made through affiliated parties, we based CEP on the packed price, consisting of invoice price plus certain additional charges (*e.g.*, box charges), to the first unaffiliated customer in the United States. We made adjustments to these prices, where appropriate, for discounts and rebates, foreign inland freight, international (air) freight, freight charges incurred in the United States, brokerage and handling, U.S. customs fees, direct selling expenses related to commercial activity in the United States, return credits and royalties. Finally, consistent with our approach in the previous review, we made adjustments for either commissions paid to unaffiliated U.S. consignees or for the U.S. selling expenses of affiliated consignees.

Pursuant to sections 772(d)(3) and 772(f) of the Act, we calculated and reduced the price further by an amount for profit on sales made through affiliated parties to arrive at CEP.

Normal Value

1. Basis for Calculating Normal Value

Section 773(a)(1)(B)(i) of the Act defines normal value (NV) as the price at which the foreign like product is first sold for consumption in the exporting country (home market). However, pursuant to section 773(a) of the Act, certain conditions must be satisfied in order for the Department to consider sales in the home market as the basis for calculating NV. One condition is that the home market must be viable. Generally, the Department will consider the home market to be viable if the aggregate quantity (or, if quantity is not appropriate, value) of sales of the foreign like product sold by an exporter or producer in that market is five percent or more of the aggregate quantity (or value) of its sales of the subject merchandise to the United States. Where the home market is not viable, NV may be calculated based on sales to a viable third-country market or on constructed value (CV). See sections 773(a)(1) and 773(a)(4) of the Act.

Agritab, Florisol, and Floraquin had sales in excess of five percent of their aggregate quantity of sales of the subject merchandise to the United States. Thus, we found the home market to be viable for them.

Ecuaclavel had sales in the home market, but they constituted less than five percent of its aggregate sales to the United States. Therefore, its home market is not viable. Floremit had no home market sales and Montana had only "cull" sales. We consider sales of culls, or flowers of lesser grade than those produced for export to the United States, to be sales of by-products of the flowers grown for export. See *Certain Fresh Cut Flowers from Colombia; Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 62 FR 53287, 53298 (October 14, 1997). Hence, we examined the viability of third-country-market sales for these three companies.

The test for viability of a third-country market is also whether the sales in that market equal five percent or more of the aggregate sales to the United States. See section 773(a)(1)(B)(ii)(II) of the Act. In the case of Floremit, there were no third-country sales equal to or greater than five percent of its U.S. aggregate sales, so we have based NV for this company on CV.

Montana and Ecuaclavel had sales to a third-country, Russia, that accounted for more than five percent of sales to the United States. We have concluded, however, that conditions existed in Russia that rendered a comparison between a NV based on sales in Russia and an EP or CEP inappropriate. Specifically, the Department found that the flower prices in the United States were more volatile than those in Russia where there is a more constant demand for the product. There were also different peak price periods, or holidays, in the two countries; since the United States had three of these peak periods and Russia had only one, these periods affected price volatility in the United States to a greater extent than prices in Russia. Thus, we have concluded that a particular market situation exists which prevents a proper comparison between a NV based on the third-country-market sales and the EP or CEP.

In such a circumstance, we may decline to calculate a NV based on the sales of the third-country market. See 19 CFR 351.404(c)(2). Rather, we may opt to calculate the NV based on CV, pursuant to section 773(a)(4) of the Act. Because we found the comparison of prices between the third-country market and the U.S. market to be inappropriate, we have used CV to establish NV for Montana and Ecuaclavel. For a more detailed explanation of this determination and the other NV determinations, see Memorandum from Laurie Parkhill to Susan Kuhbach (August 12, 1998).

2. Arm's-Length Test

During the POR, Agritab reported home market sales to employees. We tested Agritab's home market sales to employees to see if they were made at arm's-length prices. To test whether these sales were made at arm's-length prices, we compared, by flower type, the prices of sales to employees and unaffiliated customers net of appropriate home market price adjustments (for Agritab these adjustments consisted of credit expenses and packing expenses incurred on home market sales). Since we found that the prices to the employees were on average less than 99.5 percent of the price to unaffiliated parties, we determined that all sales made to the employees were not at arm's length and disregarded them in determining NV. See 19 CFR 351.403(c).

3. Sales Below the Cost of Production

On September 11, 1998, the FTC alleged that Agritab, Florisol, and Floraquin made home market sales of

certain fresh cut flowers at prices below the cost of production (COP) and requested that the Department initiate a below-cost investigation.

Upon review of the allegation with regard to Agritab, we determined that there were reasonable grounds to believe or suspect that Agritab made sales at prices below its COP, in accordance with section 773(b)(2)(A)(i) of the Act. Accordingly, we initiated a COP investigation of this company pursuant to section 773(b)(1) of the Act. With regard to Florisol and Floraquin, we determined that the FTC's allegations of below-cost sales did not provide reasonable grounds to believe or suspect that their home market sales were made at prices below COP. Therefore, we did not initiate COP investigations of Florisol and Floraquin. For a more detailed explanation of our analysis of the allegations of below-cost sales, see Memorandum from Laurie Parkhill to Richard W. Moreland (November 2, 1998).

In our COP analysis, we used the information that Agritab provided in its questionnaire responses. In accordance with section 773(b)(3) of the Act, we calculated the COP based on the sum of the costs of materials and fabrication employed in producing the foreign like product, plus general and administrative expenses and all costs and expenses incidental to packing the merchandise. Section 773(b)(3) of the Act provides for the inclusion of home market selling expenses in COP. However, Agritab reported that it had no selling expenses on sales of export-quality flowers in the home market. For Agritab's COP, therefore, we used zero as the actual amount of selling expenses incurred on home market sales.

After calculating the COP, in accordance with section 773(b)(1) of the Act we tested whether Agritab's home market sales of certain fresh cut flowers were made at prices below the COP. We compared the COP of each flower type to the reported home market prices less any applicable movement charges. As a result of our comparisons of prices to weighted-average COPs for the POR, we determined that all of Agritab's home market sales were below the COP and were not at prices which would permit recovery of all costs within a reasonable period of time, as defined by section 773(b)(2)(D) of the Act. Therefore, we disregarded all of Agritab's home market sales.

4. Calculation of NV

For Florisol and Floraquin, we based NV on the reported home market prices. We based home market prices for these two respondents on their packed, ex-farm or delivered prices to unaffiliated purchasers. When applicable, we made adjustments for differences in packing and for movement expenses in accordance with section 773(a)(6)(A) and (B) of the Act and for differences in circumstances of sale (COS) in accordance with section 773(a)(6)(C)(iii) of the Act. For comparisons to EP, we made COS adjustments by adding U.S. direct selling expenses to NV.

In accordance with section 773(a)(1)(B)(i) of the Act, we based NV on sales at the same level of trade as the EP or CEP. Since NV was always calculated at the same level of trade, we did not make any adjustments for differences in the level of trade. (See "Level of Trade" section below.) For Agritab, Floremit, Montana, and Ecuaclavel, in accordance with section 773(a)(4) of the Act, we used CV as the basis for NV when there were no usable sales of the foreign like product in the comparison market. We calculated CV in accordance with section 773(e) of the Act.

For CV, we used the cost of materials, direct labor, and overhead as reported by the respondents. Some respondents reported revenues from the sale of non-export-quality flowers. As noted above, we consider non-export-quality flowers, or culls, which are produced in conjunction with export-quality flowers, to be by-products. Therefore, we adjusted the cost of materials, direct labor, and overhead to reflect revenue from sales of the culls.

Section 773(e) of the Act also provides for the inclusion of selling, general, and administrative expenses in the calculation of CV. We used the general and administrative expenses reported by each respondent. With regard to selling expenses, all respondents reporting sales of export-quality flowers in the home market reported that they had no selling expenses. Therefore, we used zero as the actual amount of selling expenses incurred by the exporters and producers examined in this review.

With respect to profit, section 773(e)(2)(A) of the Act instructs us to calculate the amount realized in connection with the production and sale of the foreign like product in the ordinary course of trade for consumption in the home market. However, for all the respondents for which we based NV on CV, it was necessary to calculate profit for CV using an alternative methodology because the calculation of profit in accordance with section 773(e)(2)(A) of the Act was not attainable from the information on the record. Specifically, for Agritab there were no home market sales above COP. For Montana, Floremit, and Ecuaclavel, the respondents do not have home market sales of the foreign like product under consideration for NV on which to calculate profit for CV. Therefore, we selected an alternative CV-profit calculation methodology for these four firms pursuant to section 773(e)(2)(B)(iii) of the Act, which permits us to use "any other reasonable method" to compute an amount for profit, provided that the amount does "not exceed the amount normally realized by exporters or producers * * * in connection with the sale, for consumption in the foreign country, of merchandise that is in the same general category of products as the subject merchandise." In reviewing the record for information on profits earned in Ecuador by producers of merchandise that is in the same general category of products as flowers, we determined that the best available sources of information are the 1997 financial statements that producers of certain fresh cut flowers from Ecuador submitted in response to section A of our questionnaire. Where there was a positive profit amount on the 1997 financial statements, we used the data to calculate an average profit rate. In order to calculate a positive amount for profit consistent with *Silicomanganese from Brazil: Final Results of Antidumping Administrative Review*, 62 FR 37877 (July 15, 1997), we disregarded financial statements of producers that incurred losses. Disregarding these financial statements enabled us to derive an "element of profit" as contemplated by the SAA. See SAA at 839. Furthermore, we disregarded financial statements that were not contemporaneous with sales during the POR (e.g., 1996 financial statements).

We included U.S. packing expenses in the calculation of CV. In addition, for EP sales, we made COS adjustments for direct selling expenses, where appropriate, in accordance with section 773(a)(6)(C)(iii) of the Act.

Consistent with the methodology we used in recent reviews of the order on certain fresh cut flowers from Colombia, we first converted each month's CV from Ecuadorian sucres to dollars using that month's exchange rate. We then totaled the monthly cost, expressed in dollars over the POR, and divided by the quantity of export-quality flowers sold by the producer/exporter in order to arrive at the per-stem CV in dollars. The CV was then converted to Ecuadorian sucres using the period-end exchange rate; we deflated each monthly figure to ensure a constant cost over the POR. We converted the sucre per-stem CV to dollars based on the date

of the U.S. sale, in accordance with section 773A(a) of the Act.

Level of Trade

In accordance with section 773(a)(1)(B)(i) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade (LOT) as the EP or CEP transaction. The NV LOT is that of the starting-price sales in the comparison market or, when NV is based on CV, that of the sales from which we derive SG&A and profit.

For EP, the LOT is also the level of the starting-price sale, which is usually from the exporter to the importer. For CEP, it is the level of the constructed export sale from the exporter to the affiliated importer.

To determine whether NV sales are at a different LOT than EP or CEP sales, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison-market sales are at a different LOT and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison-market sales at the LOT of the export transaction, we make a LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales, if the NV level is more remote from the farm than the CEP level and there is no basis for determining whether the differences in the levels between NV and CEP sales affect price comparability, we adjust NV under section 773(A)(7)(B) of the Act (the CEP offset provision). See *Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa*, 62 FR 61731 (November 19, 1997).

In this review, no respondent requested a LOT adjustment or a CEP offset. To determine whether a LOT adjustment was necessary, in accordance with principles discussed above, we examined information regarding the distribution systems in both the U.S. and Ecuadorian markets, including the selling functions, classes of customer, and selling expenses for each respondent. We determined that no LOT adjustment or CEP offset was necessary for any of the respondents.

For a company-specific description of our LOT analysis for these preliminary results, see the Level of Trade Memorandum from the Ecuadorian Flowers Team to Laurie Parkhill (March 26, 1999).

Currency Conversion

We made currency conversions into U.S. dollars in accordance with section 773A(a) of the Act. The Department's preferred source for daily exchange rates is the Federal Reserve Bank.

Preliminary Results of Review

As a result of our comparison of EP and CEP with NV, we preliminarily determine that there are margins in the amounts listed below for the period March 1, 1997, through February 28, 1998. When a different spelling of a respondent's name appears in parentheses beside its listed name, it is because we used that alternative spelling of the name in the initiation notice.

Selected Respondents

The following six respondents received individual rates, as indicated below:

Respondent	Weighted-average margin (percent)
Agritab Cia. Ltda	1.16
Claveles de la Montana, S.A	6.18
Flores del Quinche S.A. (Flores del Qinche, S.A.)	0.00
Floricultura Ecuaclavel S.A. (Floricultural Ecuaclavel)	15.11
Florisol Cia. Ltda	0.00
Flores Mitad del Mundo, S.A	0.27

Non-Selected Respondents

The following respondents, which reported shipments of subject merchandise during the POR but were not selected for examination, will receive a weighted-average rate of 6.43 percent:

Agricola Landwork Cia. Ltda.
Agroindustrial Espialmor Ltda.
Colors from the World (Colorsfromtheworld)
Flores del Ecuador Armizo Cia. Ltda. (Armizo)
Flores La Antonia
Guala Export/Import (Guala Import)
Illinizia Flowers
Miliflowers Cia.
Nerita Flowers
Plantaciones Malima

The following respondents reported no shipments or sales of the subject merchandise during the POR. A previously-reviewed or -investigated company will retain the company-specific rate most recently assigned to it. A company not subject to the investigation or a prior review will be assigned a cash deposit rate of 5.89 percent, the adjusted "all others" rate from the LTFV investigation. This determination applies to the following companies:

Americflowers
Arco Valeno
Biocare Limited
Comedinsa
Comercializadora Agricola Caribe
Comprinz S.A.
Ecoflowers/Ecopacifico Cia. Ltda. (Ecoflowers)
Ecuaflor
Ecuaplanet Trading
Empagri Cia. Ltda.
Flores Barragan Rodriguez Cia. Ltda.
Florimex Verwaltung GMBH
Guanguilqui-Agro-Industrial S.A. (Guaiisa Farms)
Incaflor
Maximafarms
Navado Naranjo Ecuador
Panorama Roses S.A.
Quito Inor Flowers
Trevis S.A.
Velvet Flores Cia. Ltda. (Velvet)

Entries from the following companies will receive an adverse facts-available rate of 23.50 percent:

Ecuaplanta
San Alfonso

Interested parties may request a hearing not later than 30 days after publication of this notice. Interested parties may also submit written arguments in case briefs on these preliminary results within 30 days of the date of publication of this notice. Rebuttal briefs, limited to issues raised in case briefs, may be filed no later than five days after the time limit for filing case briefs. Parties who submit arguments are requested to submit with each argument a statement of the issue and a brief summary of the argument. All memoranda to which we refer in this notice can be found in the public reading room, located in the Central

Records Unit, room B–099 of the main Department of Commerce building. Any hearing, if requested, will be held two days after the scheduled date for submission of rebuttal briefs.

The Department will publish the final results of this administrative review, including a discussion of its analysis of issues raised in any case or rebuttal brief or at a hearing. The Department will issue final results of this review within 120 days of publication of these preliminary results.

Upon completion of the final results in this review, the Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. We have calculated an importer/customer-specific per-stem duty-assessment rate based on the ratio of the total amount of antidumping duties calculated for the examined sales to the quantity of subject merchandise shipped during the POR. This rate will be assessed uniformly on all entries of that particular importer/customer made during the POR. The Department will issue appraisement instructions on each exporter directly to the Customs Service.

Furthermore, the following deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided for by section 751(a)(1) of the Act: (1) The cash deposit rates for the reviewed companies will be those rates established in the final results of this review, except that no cash deposit will be required if the rate is *de minimis, i.e.,* less than 0.5 percent; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) for all other producers and/or exporters of this merchandise, the cash deposit rate shall be 5.89 percent, the adjusted "all others" rate from the less-than-fair-value investigation. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.401(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: March 30, 1999.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–9612 Filed 4–15–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–122–833]

Notice of Postponement of Preliminary Antidumping Duty Determination: Live Cattle From Canada

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: April 16, 1999.

FOR FURTHER INFORMATION CONTACT: Gabriel Adler or Kris Campbell, Office of AD/CVD Enforcement II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW, Washington, DC 20230; telephone (202) 482–1442 or (202) 482–3813, respectively.

Postponement of Preliminary Determination

The Department of Commerce (the Department) is postponing the preliminary determination in the antidumping duty investigation of live cattle from Canada. The deadline for issuing the preliminary determination in this investigation is now no later than June 30, 1999.

On December 30, 1998, the Department published its initiation of an antidumping investigation of live cattle from Canada. *See Initiation of Antidumping Duty Investigations: Live Cattle from Canada and Mexico,* 63 FR 71886, 71889. The notice stated we would issue our preliminary determination by May 11, 1999.

On April 7, 1999, pursuant to section 733(c)(1)(A) of the Tariff Act of 1930, as amended, the Ranchers-Cattlemen Action Legal Foundation (the petitioners) requested that the Department postpone the issuance of the preliminary determination in this investigation.

The petitioners' request for postponement was timely, and the Department finds no compelling reason to deny the request. Therefore, we are postponing the deadline for issuing this determination until no later than June 30, 1999.

This extension is in accordance with section 733(c) of the Act and 19 CFR 351.205(b)(2).

Dated: April 12, 1999.

Richard W. Moreland,

Deputy Assistant Secretary Import Administration.

Dated: April 12, 1999.

[FR Doc. 99–9610 Filed 4–15–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF DEFENSE

[OMB Control Number 0704–0187]

Information Collection Requirement; Defense Federal Acquisition Regulation Supplement; DoD Acquisition Process (Solicitation Phase)

AGENCY: Department of Defense (DoD).

ACTION: Notice and request for comments regarding a proposed extension of an approved information collection requirement.

SUMMARY: In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), DoD announces the proposed extension of a public information collection requirement and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including the use of automated collection techniques or other forms of information technology. This information collection requirement is currently approved by the Office of Management and Budget (OMB) for use through July 31, 2000. DoD proposes that OMB extend its approval for three years from approval date.

DATES: Consideration will be given to all comments received by June 15, 1999.

ADDRESSES: Written comments and recommendations on the proposed information collection requirement should be sent to: Defense Acquisition Regulations Council, Attn: Ms. Amy Williams, PDUSD (A&T) DP (DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telefax (703) 602–0350.

E-mail comments submitted over the Internet should be addressed to: dfars@acq.osd.mil.

Please cite OMB Control Number 0704–0187 in all correspondence related to this issue. E-mail comments should cite OMB Control Number 0704–0187 in the subject line.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, at (703) 602–0131. A copy of this information collection requirement is available electronically via the Internet at:
htt;://www.acq.osd.mil/dp.dars/dfars.html
Paper copies may be obtained from Ms. Amy Williams, PDUSD (A&T) DP (DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062.

SUPPLEMENTARY INFORMATION:

Title, Associated Form, and OMB Number: Information Collection in Support of the DoD Acquisition Process (Solicitation Phase), OMB Control Number 0704–0187.

Needs And Uses: This information collection requirement pertains to information that an offeror must submit to DoD in response to a request for proposals or an invitation for bids. DoD uses this information to (1) evaluate offers, (2) determine which offeror to select for contract award, and (3) determine whether the offered price is fair and reasonable. DoD also uses this information in determining whether to furnish precious metals as Government-furnished material; whether to accept alternate preservation, packaging, or packing; and whether to trade in existing personal property towards the purchase of new items.

Affected Public: Businesses or other for-profit and not-for-profit institutions.

Annual Burden Hours: 23,986,320.

Number of Respondents: 192,173.

Responses Per Respondent: Approximately 12.

Number of Responses: 2,333,667.

Average Burden Per Response: 10.28 hours.

Frequency: On occasion.

Summary of Information Collection

This information collection pertains to information, not separately covered by another OMB clearance, that an offeror must submit to DoD in response to a request for proposals or an invitation for bids. In particular, the information collection covers the following DFARS requirements:

- 217.70, Exchange of Personal Property. Section 217.7004, paragraph (a), of this subpart requires that solicitations which contemplate exchange (trade-in) of personal property, and application of the exchange allowance to the acquisition of similar property, shall include a request for offerors to state prices for the new items being acquired both with and without any exchange allowance.
- 217.72, Bakery and Dairy Products. Section 217.7201, paragraph (b)(2), of this subpart requires a contractor's list of cabinet equipment in the schedule of the contract, when the contractor is required to furnish its own cabinets for dispensing milk from bulk containers.
- 217.74, Undefinitized Contract Actions. Unless an exception in 217.7404–5 of this subpart applies, paragraph (b) of 217.7404–3 requires the contractor to submit a qualifying proposal in accordance with the definitization schedule of the undefinitized contract action. A "qualifying proposal" is defined in paragraph (c) of 217.7401 as a proposal containing sufficient information for DoD to do complete and meaningful analyses and audits of the information in the proposal and any other information that the contracting officer has determined that DoD needs to review in connection with the contract.
- 217.75, Acquisition of Replenishment Parts. Paragraph (d) of 217.7504 of this subpart permits contracting officers to include, in sole-source solicitations for replenishment parts, a provision requiring an offeror to supply, with its proposal, price and quantity data on any Government orders for the replenishment part issued within the most recent 12 months.
- 252.208–7000, Intent to Furnish Precious Metals as Government-Furnished Material. Paragraph (b) of this clause requires an offeror to cite the type and quantity of precious metals required in the performance of the contract. Paragraph (c) requires the offeror to submit two prices for each deliverable item that contains precious metals: one based on the Government furnishing the precious metals, and the other based on the contractor furnishing the precious metals.
- 252.209–7001, Disclosure of Ownership or Control by the Government of a Terrorist Country. Paragraph (c) of this provision requires an offeror to provide a disclosure with its offer if the government of a terrorist country has a significant interest in the offeror, in a subsidiary of the offeror, or in a parent company of which the offeror is a subsidiary.
- 252.211–7004, Alternate Preservation, Packaging, and Packing. Paragraph (b) of this provision requires an offeror to submit information sufficient to allow evaluation of any alternate preservation, packaging, or packing proposed by the offeror.
- 252.226–7000, Notice of Historically Black College or University and Minority Institution Set-Aside. Paragraph (c)(2) of this clause requires that, upon request of the contracting officer, the offeror will provide evidence prior to award that the Secretary of Education has determined the offeror to be a historically black college or university or minority institution.
- 252.226–7001, Historically Black College or University and Minority Institution Status. Paragraph (b) of this provision requires an offeror that is a historically black college or university or minority institution to check the appropriate block to indicate its status as such.
- 252.237–7000, Notice of Special Standards of Responsibility. Paragraph (c) of this provision requires the apparently successful offeror, under a solicitation for audit services, to give the contracting officer evidence that it is licensed by the cognizant licensing authority in the state or other political jurisdiction where the offeror operates its professional practice.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

[FR Doc. 99–9558 Filed 4–15–99; 8:45 am]
BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Department of the Army

Availability of U.S. Patents for Non-Exclusive, Exclusive, or Partially-Exclusive Licensing

AGENCY: U.S. Army Research Laboratory, Adelphi, Maryland.

ACTION: Notice.

SUMMARY: In accordance with 37 CFR 404.6, announcement is made of the availability of the following U.S. patents for non-exclusive, partially exclusive or exclusive licensing. All of the listed patents have been assigned to the United States of America as represented by the Secretary of the Army, Washington, D.C.

This patent covers a wide variety of technical arts including: A ceramic part to a semi-conductor substrate.

Under the authority of Section 11(a)(2) of the Federal Technology

Transfer Act of 1986 (Pub. L. 99–502) and Section 207 of Title 35, United States Code, the Department of the Army as represented by the U.S. Army Research Laboratory wish to license the U.S. patents listed below in a non-exclusive, exclusive or partially exclusive manner to any party interested in manufacturing, using, and/or selling devices or processes covered by these patents.

Title: Bonding for Silicon Carbide Directly to a Semiconductor Substrate by Using Silicon to Silicon Bonding.

Inventors: Timothy Mermagen, Judith McCullen, Robert Reams and Bohdam Dobriansky.

Patent Number: 5,877,516.

Issued Date: March 2, 1999.

FOR FURTHER INFORMATION CONTACT: Michael Rausa, Technology Transfer Office, AMSRL–CS–TT, U.S. Army Research Laboratory, Aberdeen Proving Ground, MD 21005–5055, tel: (410) 278–5028; fax: (410) 278–5820.

SUPPLEMENTARY INFORMATION: None.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 99–9613 Filed 4–15–99; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Availability of U.S. Patents for Non-Exclusive, Exclusive, or Partially-Exclusive licensing

AGENCY: U.S. Army Research Laboratory, Adelphi, Maryland.

ACTION: Notice.

SUMMARY: In accordance with 37 CFR 404.6, announcement is made of the availability of the following U.S. patents for non-exclusive, partially exclusive or exclusive licensing. All of the listed patents have been assigned to the United States of America as represented by the Secretary of the Army, Washington, D.C.

This patent covers a wide variety of technical arts including: An incoherent LADAR which achieves high range resolution employing focal plane detector arrays and a Method for detecting the presence and concentration of bacterial spores in a medium.

Under the authority of Section 11(a)(2) of the Federal Technology Transfer Act of 1986 (Pub. L. 99–502) and Section 207 of Title 35, United States Code, the Department of the Army as represented by the U.S. Army Research Laboratory wish to license the U.S. patents listed below in a non-exclusive, exclusive or partially exclusive manner to any party interested in manufacturing, using, and/or selling devices or processes covered by these patents.

Title: Scannerless Ladar Architecture Employing Focal Plane Detector Arrays and FM–CW Ranging Theory.

Inventors: Barry Stann, William C. Ruff and Zoltan G. Sztankay.

Patent Number: 5,877,851.

Issued Date: March 2, 1999.

Title: Bacterial Spore Detection and Quantification Methods

Inventor: David L. Rosen.

Patent Number: 5,876,960.

Issued Date: March 2, 1999.

FOR FURTHER INFORMATION CONTACT: Norma Cammaratta, Technology Transfer Office, AMSRL–CS–TT, U.S. Army Research Laboratory, 2800 Powder Mill Road, Adelphi, MD 20783–1197, tel: (301) 394–2952; fax: (301) 394–5818.

SUPPLEMENTARY INFORMATION: None.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 99–9614 Filed 4–15–99; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF EDUCATION

[CFDA No.: 84.282A]

Public Charter Schools Program (PCSP)

Notice inviting applications for new awards for fiscal year (FY) 1999.

Purpose of Program: The major purpose of the PCSP is to expand the number of high-quality charter schools available to students across the Nation by providing financial assistance for the planning, program design, and initial implementation of public charter schools; evaluation of the effects of charter schools; and the dissemination of information about charter schools and successful practices in charter schools.

Who May Apply: (a) State educational agencies (SEAs) in States with a specific State statute authorizing the establishment of charter schools. The Secretary awards grants to SEAs to enable them to conduct charter school programs in their States. SEAs use their PCSP funds to award subgrants to "eligible applicants," as defined in this notice, for planning, program design, and initial implementation of a charter school; and to support the dissemination of information about, and successful practices in, charter schools. A charter school may apply for funds to carry out dissemination activities, whether or not the charter school has applied for or received funds under the PCSP for planning or implementation, if the charter school has been in operation for at least 3 consecutive years and has demonstrated overall success , including—

(i) Substantial progress in improving student achievement;

(ii) High levels of parent satisfaction; and

(iii) The management and leadership necessary to overcome initial start-up problems and establish a thriving, financially viable charter school.

(b) Under certain circumstances, an authorized public chartering agency participating in a partnership with a charter school developer. Such a partnership is eligible to receive funding directly from the U.S. Department of Education if—

(i) The SEA in its State elects not to participate in this program; or

(ii) The SEA in its State does not have an application approved under this program.

If an SEA's application is approved in this competition, applications received from non-SEA eligible applicants in that State will be returned to the applicants. In such a case, the eligible applicant should contact the SEA for information related to its subgrant competition.

Note: The following States currently have approved applications under this program: California, Colorado, Georgia, Louisiana, Massachusetts, Michigan, Minnesota, Missouri, Ohio, Rhode Island, Pennsylvania, South Carolina, and Texas. In these States, only the SEA is eligible to receive an award under this competition. Eligible applicants in these States should contact their respective SEAs for information about participation in the State's charter school subgrant program.

Deadline for Transmittal of Applications: June 1, 1999.

Deadline for Intergovernmental Review: June 30, 1999.

Applications Available: April 16, 1999.

Available Funds: $50,000,000.

Estimated Range of Awards:

State educational agencies: $500,000–$5,000,000 per year

Other eligible applicants: $25,000–$150,000 per year

Estimated Average Size of Awards:

State educational agencies: $3,000,000 per year

Other eligible applicants: $100,000 per year

Estimated Number of Awards:

State educational agencies: 10–15

Other eligible applicants: 20–30

Note: These estimates are projections for the guidance of potential applicants. The Department is not bound by any estimates in this notice.

Project Period:
State educational agencies: Up to 36 months
Other eligible applicants: Up to 36 months

Note: Grants awarded by the Secretary directly to non-SEA eligible applicants or subgrants awarded by SEAs to eligible applicants will be awarded for a period of up to 36 months, of which the eligible applicant may use—

(a) Not more than 18 months for planning and program design;

(b) Not more than two years for the initial implementation of a charter school; and

(c) Not more than two years to carry out dissemination activities.

Applicable Regulations and Statute: The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 75 (except 75.210), 76, 77, 79, 80, 81, 82, 85, and 86. Title X, Part C, Elementary and Secondary Education Act of 1965 (ESEA), *as amended*, 20 U.S.C. 8061–8067.

SUPPLEMENTARY INFORMATION: As part of wider education reform efforts to strengthen teaching and learning, charter schools can be an innovative approach to improving public education and expanding public school choice. While there is no one model, public charter schools are exempted from most statutory and regulatory requirements in exchange for performance-based accountability. They are intended to stimulate the creativity and commitment of teachers, parents, students, and citizens and contribute to better student academic achievement.

Congress reauthorized the PCSP in October 1998, by enacting the Charter School Expansion Act of 1998. Under the new legislation, SEA applicants for funding are required to include in their applications descriptions of how the SEA (a) will inform each charter school in the State about Federal funds the charter school is eligible to receive and Federal programs in which the charter school may participate; (b) will ensure that each charter school in the State receives the charter school's commensurate share of Federal education funds that are allocated by formula each year, including during the charter school's first year of operation; and (c) will disseminate best or promising practices of charter schools to LEAs in the State. The new legislation also added a requirement that SEA applicants as well as charter school applicants include in their applications descriptions of how charter schools that are considered to be LEAs under State law and LEAs in which a charter school is located will comply with sections 613(a)(5) and 613(e)(1)(B) of the Individuals with Disabilities Education Act. Additional information regarding the required contents of applications, diversity of projects, and waivers are provided in the application package for this program.

The following definitions, selection criteria, priority criteria, amount criteria, authorized uses of funds for dissemination activities, and allowable activities are taken from the Public Charter Schools statute, in Title X, Part C, of the ESEA. They are being repeated in this application notice for the convenience of the applicant.

Definitions

The following definitions apply to this program:

(a) *Charter school* means a public school that—

(i) In accordance with a specific State statute authorizing the granting of charters to schools, is exempted from significant State or local rules that inhibit the flexible operation and management of public schools, but not from any rules relating to the other requirements of this definition;

(ii) Is created by a developer as a public school, or is adapted by a developer from an existing public school, and is operated under public supervision and direction;

(iii) Operates in pursuit of a specific set of educational objectives determined by the school's developer and agreed to by the authorized public chartering agency;

(iv) Provides a program of elementary or secondary education, or both;

(v) Is nonsectarian in its programs, admissions policies, employment practices, and all other operations, and is not affiliated with a sectarian school or religious institution;

(vi) Does not charge tuition;

(vii) Complies with the Age Discrimination Act of 1975, title VI of the Civil Rights Act of 1964, title IX of the Education Amendments of 1972, section 504 of the Rehabilitation Act of 1973, and part B of the Individuals With Disabilities Education Act;

(viii) Is a school to which parents choose to send their children, and that admits students on the basis of a lottery, if more students apply for admission than can be accommodated;

(ix) Agrees to comply with the same Federal and State audit requirements as do other elementary and secondary schools in the State, unless the requirements are specifically waived for the purposes of this program;

(x) Meets all applicable Federal, State, and local health and safety requirements;

(xi) Operates in accordance with State law; and

(xii) Has a written performance contract with the authorized public chartering agency in the State that includes a description of how student performance will be measured in charter schools pursuant to State assessments that are required of other schools and pursuant to any other assessments mutually agreeable to the authorized public chartering agency and the charter school.

(b) *Developer* means an individual or group of individuals (including a public or private nonprofit organization), which may include teachers, administrators and other school staff, parents, or other members of the local community in which a charter school project will be carried out.

(c) *Eligible applicant* means an authorized public chartering agency participating in a partnership with a developer to establish a charter school in accordance with this program.

(d) *Authorized public chartering agency* means a State educational agency, local educational agency, or other public entity that has the authority under State law and is approved by the Secretary to authorize or approve a charter school.

Selection Criteria for SEAs

The maximum possible score for all of the criteria in this section is 140 points. The maximum possible score for each criterion is indicated in parentheses following each criterion. In evaluating an application from an SEA, the Secretary considers the following criteria:

(a) The contribution that the charter schools grant program will make in assisting educationally disadvantaged and other students to achieve State content standards, State student performance standards, and, in general, a State's education improvement plan (20 points).

(b) The degree of flexibility afforded by the SEA to charter schools under the State's charter schools law (20 points).

(c) The ambitiousness of the objectives for the State charter school grant program (20 points).

(d) The quality of the strategy for assessing achievement of those objectives (20 points).

(e) The likelihood that the charter schools grant program will meet those objectives and improve educational results for students (20 points).

(f) The number of high quality charter schools created under this part in the State (20 points).

(g) In the case of State educational agencies that propose to use grant funds to support dissemination activities under section 10302(c)(2)(C)of the

ESEA, the quality of those activities and the likelihood that those activities will improve student achievement (20 points).

Selection Criteria for Non-SEA Eligible Applicants

The maximum possible score for all of the criteria in this section is 140 points. The maximum possible score for each criterion is indicated in parentheses following each criterion. In evaluating an application from an eligible applicant other than an SEA the Secretary considers the following criteria:

(a) The quality of the proposed curriculum and instructional practices (20 points).

(b) The degree of flexibility afforded by the SEA and, if applicable, the local educational agency to the charter school (20 points).

(c) The extent of community support for the application (20 points).

(d) The ambitiousness of the objectives for the charter school (20 points).

(e) The quality of the strategy for assessing achievement of those objectives (20 points).

(f) The likelihood that the charter school will meet those objectives and improve educational results for students (20 points).

(g) In the case of an eligible applicant that proposes to use grant funds to support dissemination activities under section 10302(c)(2)(C) of the ESEA, the quality of those activities and the likelihood that those activities will improve student achievement (20 points).

Priority Criteria

In awarding grants for FYs 1999, 2000, and 2001 from funds appropriated under section 10311 of the ESEA that are in excess of $51 million for the FY, the Secretary gives priority under this competition to States to the extent that the States meet the criteria described in paragraph (a) below, and one or more of the criteria described in paragraphs (b) through (d) below (20 points).

(a) The State provides for periodic review and evaluation by the authorized public chartering agency of each charter school, at least once every 5 years unless required more frequently by State law, to determine whether the charter school is meeting the terms of the school's charter, and is meeting or exceeding the academic performance requirements and goals for charter schools as set forth under State law or the school's charter.

(b) The State has demonstrated progress, in increasing the number of high quality charter schools that are held accountable in the terms of the schools' charters for meeting clear and measurable objectives for the educational progress of the students attending the schools, in the period prior to the period for which a State educational agency or eligible applicant applies for a grant under this competition.

(c) The State—

(i) Provides for one authorized public chartering agency that is not a local educational agency, such as a State chartering board, for each individual or entity seeking to operate a charter school pursuant to such State law; or

(ii) In the case of a State in which local educational agencies are the only authorized public chartering agencies, allows for an appeals process for the denial of an application for a charter school.

(d) The State ensures that each charter school has a high degree of autonomy over the charter school's budgets and expenditures.

Amount Criteria

In determining the amount of a grant to be awarded under this competition to a State educational agency, the Secretary shall take into consideration the number of charter schools that are operating or approved to open in the State.

Allowable Activities

An eligible applicant receiving a grant or subgrant under this program may use the grant or subgrant funds for only—

(a) Post-award planning and design of the educational program, which may include—

(i) Refinement of the desired educational results and of the methods for measuring progress toward achieving those results; and

(ii) Professional development of teachers and other staff who will work in the charter school; and

(b) Initial implementation of the charter school, which may include—

(i) Informing the community about the school;

(ii) Acquiring necessary equipment and educational materials and supplies;

(iii) Acquiring or developing curriculum materials; and

(iv) Other initial operating costs that cannot be met from State or local sources.

Use of Funds for Dissemination Activities

A State educational agency may reserve not more than 10 percent of the grant funds to support dissemination activities. A charter school may use such funds to assist other schools in adapting the charter school's program (or certain aspects of the charter school's program), or to disseminate information about the charter school, through such activities as—

(a) Assisting other individuals with the planning and startup of one or more new public schools, including charter schools, that are independent of the assisting charter school and the assisting charter school's developers, and that agree to be held to at least as high a level of accountability as the assisting charter school;

(b) Developing partnerships with other public schools, including charter schools, designed to improve student performance in each of the schools participating in the partnership;

(c) Developing curriculum materials, assessments, and other materials that promote increased student achievement and are based on successful practices within the assisting charter school; and

(d) Conducting evaluations and developing materials that document the successful practices of the assisting charter school and that are designed to improve student achievement.

FOR APPLICATIONS OR INFORMATION CONTACT: John Fiegel, U.S. Department of Education, 400 Maryland Avenue, S.W., Room 3E122, Washington, D.C. 20202–6140. Telephone (202) 260–2671. Internet address: *John—Fiegel@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Individuals with disabilities may obtain this document in an alternate format (*e.g.*, Braille, large print, audiotape, or computer diskette) upon request to the contact person listed in the preceding paragraph. Individuals with disabilities may obtain a copy of the application package in an alternate format, also, by contacting that person. However, the Department is not able to reproduce in an alternate format the standard forms included in the application package.

Electronic Access to this Document

Anyone may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or portable document format (pdf) on the World Wide Web at either of the following sites:

http://ocfo.ed.gov/fedreg.htm
http://www.ed.gov/news.html

To use the pdf, you must have the Adobe Acrobat Reader Program with

Search, which is available free at either of the previous sites. If you have questions about using the pdf, call the U.S. Government Printing Office toll free at 1–888–293–6498.

Anyone may also view these documents in text copy only on an electronic bulletin board of the Department. Telephone: (202) 219–1511 or, toll free, 1–800–222–4922. The documents are located under Option G—Files/Announcements, Bulletins, and Press Releases.

Note: The official version of a document is the document published in the **Federal Register**.

Program Authority: 20 U.S.C. 8061–8067.

Dated: April 12, 1999.

Judith Johnson,

Acting Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 99–9616 Filed 4–15–99; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–283–000]

Colorado Interstate Gas Company; Notice of Application

April 12, 1999.

Take notice that on April 1, 1999, Colorado Interstate Gas Company (CIG), P.O. Box 1087, Colorado Springs, Colorado 80944, filed in Docket No. CP99–283–000 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity to construct an operate a fuel line in its Panhandle Field in Potter county, Texas, all as more fully set forth in the application which is on file with the Commission and open to public inspection. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call (202) 208–2222 for assistance).

CIG states that the Texas Panhandle Field was the original producing area for CIG when the company began operations in 1928. CIG states that because of the long period of time in which the Panhandle Field has been producing, the wellhead pressure for many of the wells has decline significantly resulting in the need to install non-jurisdictional field and wellhead compression. CIG also states that as the field has depleted, the lower quality of unprocessed fuel gas from the field has caused operating and maintenance problems for various compressor stations. CIG states that in 1996, its non-jurisdictional Panhandle Field Compressor No. 1 (PFC–1) was retired from service. It is stated that this compressor compressed gas from 17 wells and CIG installed six wellhead compressors to maintain gas production from these wells. CIG states that the PFC–1 obtained its fuel gas from a raw gas line. However, CIG maintains that the lower quality of unprocessed fuel gas from the field using well production gas as fuel may cause the field compressor to be subject to pre-ignition or pre-detonation, resulting in loss of efficiency, and increased maintenance. Therefore, CIG maintains that it would be beneficial to change the operation to allow the compressor unit to consume processed fuel. In order to do so, CIG proposes to construct and operate 70 feet of 2-inch diameter fuel line that would extend from an existing fuel gas line located in Potter County, Texas, to CIG's PFC–1.

CIG estimates the cost of the facilities to be $1,000 which will be financed from funds on hand and internally generated cash from operations.

Any person desiring to participate in the hearing process or to make any protest with reference to said application should on or before May 3, 1999, file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. The Commission's rules require that protestors provide copies of their protests to the party or parties directly involve. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

A person obtaining intervenor status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by every one of the intervenors. An intervenor can file for rehearing of any Commission order and can petition for court review of any such order. However, an intervenor must submit copies of comments or any other filing it makes with the Commission to every other intervenor in the proceeding, as well as 14 copies with the Commission.

A person does not have to intervene, however, in order to have comments considered. A person, instead, may submit two copies of comments to the Secretary of the Commission. Commenters will be placed on the Commission's environmental mailing list, will receive copies of environmental documents and will be able to participate in meetings associated with the Commission's environmental review process. Commenters will not be required to serve copies of filed documents on all other documents filed by other parties or issued by the Commission and will not have the right to seek rehearing or appeal the Commission's final order to a federal court.

The Commission will consider all comments and concerns equally, whether filed by commenters or those requesting intervenor status.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for CIG to appear or be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–9494 Filed 4–15–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–287–030]

El Paso Natural Gas Company; Notice of Filing

April 12, 1999.

Take notice that on March 30, 1999, El Paso Natural Gas Company (El Paso) tendered for filing two firm Transportation Service Agreements (TSAs) between El Paso and Pemex Gas y Petroquimica Basica (Pemex) and Twelfth Revised Sheet No. 1 to its FERC

Gas Tariff, Second Revised Volume No. 1–A.

El Paso states the TSAs are being filed to implement two negotiated rate contracts pursuant to the Commission's Statement of Policy on Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines and Regulation of Negotiated Transportation Services of Natural Gas Pipelines issued January 31, 1996 at Docket Nos. RM95–6–000 and RM96–7–000.

El Paso states that it is submitting Twelfth Revised Sheet No. 1 for Commission approval since the referenced TSAs also contain payment provisions that differ from El Paso's Volume No. 1–A Tariff pursuant to Section 154.112(b) of the Commission's Regulations. The tariff sheet is proposed to become effective on May 1, 1999.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before April 19, 1999. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–9498 Filed 4–15–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG99–109–000]

Geysers Power Company, LLC Notice of Application For Commission Determination of Exempt Wholesale Generator Status

April 12, 1999.

Take notice that on April 7, 1999, Geysers Power Company, LLC (Geysers Power) filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Geysers Power is a Delaware limited liability company and an indirect wholly-owned subsidiary of Calpine Corporation. Geysers Power's eligible facilities will consist of fifteen geothermal generating units and other ancillary facilities with a combined generating capacity of 744 MW. Geysers Power states that prior to its purchase of fourteen of the generating units from Pacific Gas and Electric Company (PG&G), these facilities were part of PG&E's integrated system. Therefore, a rate or charge in connection with these facilities was in effect under the laws of California on October 24, 1992. On April 6, 1999, the Public Utilities Commission of the State of California (CPUC) mailed a final Opinion Granting Requested Authorization, D.99–04–026, which concluded that allowing these facilities to be an exempt wholesale generator within the meaning of PUHCA would benefit consumers, would be in the public interest, and would not violate California law. Geysers Power attached a copy of the CPUC D.99–04–026 to its application.

Geysers Power further states that copies of the application were served upon the California Independent System Operator Corporation, the California Power Exchange Corporation, the Securities Exchange Commission and the CPUC.

Any person desiring to be heard concerning the application for exempt wholesale generator status should file a motion to intervene or comments with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application. All such motions and comments should be filed on or before April 21, 1999, and must be served on the applicant. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection or on the Internet at http://www.ferc/fed.us/online/rims.htm (please call (202) 208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–9501 Filed 4–15–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT99–17–000]

High Island Offshore System, L.L.C.; Notice of Compliance Filing

April 12, 1999.

Take notice that on April 7, 1999 High Island Offshore System, L.L.C. (HIOS), (formerly High Island Offshore System) in conjunction with its request to redesignate the certificate of public convenience and necessity of High Island Offshore System to reflect the new name of the pipeline—High Island Offshore System, L.L.C.—filed a complete copy of its proposed FERC Gas Tariff, Third Revised Volume No. 1 (Original Sheet Nos. 1 to 221).

High Island Offshore System, L.L.C. states that the proposed tariff is the current High Island Offshore System tariff, revised only to reflect the new name of the pipeline on the tariff sheet headings, references to page numbers and company name in the text of the tariff and to incorporate changes pending in Docket No. RP99–227–000.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protesttants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–9495 Filed 4–15–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–280–000]

Mid Louisiana Gas Company; Notice of Proposed Changes in FERC Gas Tariff

April 12, 1999.

Take notice that on April 7, 1999, Mid Louisiana Gas Company (Mid Louisiana) tendered for filing, to be included in its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets, with an effective date of May 10, 1999:

Fourth Revised Sheet No. 78
Second Revised Sheet No. 142
Third Revised Sheet No. 143
Second Revised Sheet No. 144
Third Revised Sheet No. 145
Third Revised Sheet No. 146
Fifth Revised Sheet No. 155
First Revised Sheet No. 155A
Third Revised Sheet No. 157

Mid Louisiana states that the purpose of this filing is to comply with Commission Order No. 587–H, issued July 15, 1998 in Docket No. RM96–1–008 wherein the Commission adopted, by reference, certain standardized business procedures, Version 1.2 as submitted by the Gas Industry Standards Board (GISB), delete certain obsolete standards and modify previously existing standards.

Mid Louisiana requests that the Commission grant a waiver of the filing deadline as stipulated in the Order thereby allowing the indicated tariff sheet(s) be accepted to be effective May 10, 1999.

Pursuant to Section 154.7(a)(7) of the Commission's Regulations, Mid Louisiana respectfully requests waiver of any additional requirement of the Regulations in order to permit the tendered tariff sheet to become effective May 10, 1999, as submitted.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–9499 Filed 4–15–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Docket No. ER99–2394–000, et al.]

Nevada Power Company, et al.; Electric Rate and Corporate Regulation Filings

April 9, 1999.

Take notice that the following filings have been made with the Commission:

1. Nevada Power Company

[Docket No. ER99–2394–000]

Take notice that on April 6, 1999, Nevada Power Company tendered for filing in accordance with 18 CFR 35 of the Commission's Rules and Regulations, a Notice of Termination of Nevada Power Company's Agreement for Power Scheduling Service with Valley Electric Association.

Copies of this filing were supplied to Valley Electric Association, the Bureau of Consumer Protection and the Public Utility Commission of Nevada.

Comment date: April 26, 1999, in accordance with Standard Paragraph E at the end of this notice.

2. Con Edison Solutions, Inc., Con Edison Energy, Inc., J. Aron & Company, Salem Electric, Inc., and The Mack Services Group

[Docket Nos. ER97–705–008, ER98–2491–003, ER95–34–019, ER98–2175–004, ER99–1750–001]

Take notice that on April 8, 1999, the above-mentioned power marketers filed quarterly reports with the Commission in the above-mentioned proceedings for information only. These filings are available for public inspection and copying in the Public Reference Room or on the internet at www.ferc.fed.us/online/rims.htm for viewing and downloading (call 202–208–2222 for assistance).

3. New England Power Pool, ISO New England Inc. and New England Power Pool

[Docket Nos. ER99–1374–000, ER99–1609–000 and ER99–2175–000]

Take notice that on April 6, 1999, the New England Power Pool (NEPOOL) Executive Committee and ISO New England Inc. (ISO), tendered for filing a joint Notice of Market Test. NEPOOL and ISO state that the test will be conducted on April 7 through 9, 1999, prior to full activation of the NEPOOL markets.

The NEPOOL Executive Committee states that copies of these materials were sent to all participants in the New England Power Pool, the New England state governors and regulatory commissions, and to the entities identified on the service lists in the captioned proceedings.

Comment date: April 26, 1999, in accordance with Standard Paragraph E at the end of this notice.

4. Duke Energy Corporation

[Docket No. ER99–2395–000]

Take notice that on April 6, 1999, Duke Energy Corporation (Duke), tendered for filing a Service Agreement with Carolina Power & Light Company (CP&L), for Firm Transmission Service under Duke's Open Access Transmission Tariff.

Duke requests that the proposed Service Agreement be permitted to become effective on July 1, 1999.

Duke states that this filing is in accordance with Part 35 of the Commission's Regulations and a copy has been served on the North Carolina Utilities Commission.

Comment date: April 26, 1999, in accordance with Standard Paragraph E at the end of this notice.

5. PJM Interconnection, L.L.C.

[Docket No. ER99–2396–000]

Take notice that on April 6, 1999, PJM Interconnection, L.L.C. (PJM), tendered for filing five executed umbrella service agreements for firm point-to-point transmission service (1) Duke Energy Trading and Marketing, L.L.C., (2) Edison Mission Marketing and Trading, Inc., (3) EME Home City Generation L.P., (4) FirstEnergy Trading and Power Marketing, Inc., and (5) Pepco Services, Inc., and four executed service agreements for non-firm point-to-point transmission service with (1) Edison Mission Marketing and Trading, Inc., (2) EME Homer City Generation L.P.; (3) FirstEnegy Trading and Power Marketing, Inc., and (4) Pepco Service, Inc., under the PJM Open Access Transmission Tariff.

Copies of this filing were served upon the parties to the service agreements.

Comment date: April 26, 1999, in accordance with Standard Paragraph E at the end of this notice.

6. Florida Power Corporation

[Docket No. ER99–2397–000]

Take notice that on April 6, 1999, Florida Power Corporation (FPC), tendered for filing a Power Sale Agreement for sale of 11.4 MW of capacity and associated energy to the City of Tallahassee.

FPC requests waiver of the 60-day notice requirement in order to allow the Power Sale Agreement to become effective on May 5, 1999.

Comment date: April 26, 1999, in accordance with Standard Paragraph E at the end of this notice.

7. Niagara Mohawk Power Corporation

[Docket No. ER99–2398–000]

Take notice that on April 6, 1999, Niagara Mohawk Power Corporation (Niagara Mohawk), tendered for filing with the Federal Energy Regulatory Commission an executed Transmission Service Agreement between Niagara Mohawk and Florida Power & Light Company (FP&L). This Transmission Service Agreement specifies that FP&L has signed on to and has agreed to the terms and conditions of Niagara Mohawk's Open Access Transmission Tariff as filed in Docket No. OA96–194–000. This Tariff, filed with FERC on July 9, 1996, will allow Niagara Mohawk and FP&L to enter into separately scheduled transactions under which Niagara Mohawk will provide transmission service for FP&L as the parties may mutually agree.

Niagara Mohawk requests an effective date of March 31, 1999. Niagara Mohawk has requested waiver of the notice requirements for good cause shown.

Niagara Mohawk has served copies of the filing upon the New York State Public Service Commission and FP&L.

Comment date: April 26, 1999, in accordance with Standard Paragraph E at the end of this notice.

8. Niagara Mohawk Power Corporation

[Docket No. ER99–2399–000]

Take notice that on April 6, 1999, Niagara Mohawk (Niagara Mohawk), tendered for filing with the Federal Energy Regulatory Commission an executed Transmission Service Agreement between Niagara Mohawk and Florida Power & Light Company (FP&L). This Transmission Service Agreement specifies that FP&L has signed on to and has agreed to the terms and conditions of Niagara Mohawk's Open Access Transmission Tariff as filed in Docket No. OA96–194–000. This Tariff, filed with FERC on July 9, 1996, will allow Niagara Mohawk and FP&L to enter into separately scheduled transactions under which Niagara Mohawk will provide transmission service for FP&L as the parties may mutually agree.

Niagara Mohawk requests an effective date of March 31, 1999. Niagara Mohawk has requested waiver of the notice requirements for good cause shown.

Niagara Mohawk has served copies of the filing upon the New York State Public Service Commission and FP&L.

Comment date: April 26, 1999, in accordance with Standard Paragraph E at the end of this notice.

9. Niagara Mohawk Power Corporation

[Docket No. ER99–2400–000]

Take notice that on April 6, 1999, Niagara Mohawk Power Corporation (Niagara Mohawk), tendered for filing with the Federal Energy Regulatory Commission an executed Transmission Service Agreement between Niagara Mohawk and TransAlta Energy Marketing (U.S.), Inc. (TransAlta). This Transmission Service Agreement specifies that TransAlta has signed on to and has agreed to the terms and conditions of Niagara Mohawk's Open Access Transmission Tariff as filed in Docket No. OA96–194–000. This Tariff, filed with FERC on July 9, 1996, will allow Niagara Mohawk and TransAlta to enter into separately scheduled transactions under which Niagara Mohawk will provide transmission service for TransAlta as the parties may mutually agree.

Niagara Mohawk requests an effective date of March 31, 1999. Niagara Mohawk has requested waiver of the notice requirements for good cause shown.

Niagara Mohawk has served copies of the filing upon the New York State Public Service Commission and TransAlta.

Comment date: April 26, 1999, in accordance with Standard Paragraph E at the end of this notice.

10. Niagara Mohawk Power Corporation

[Docket No. ER99–2401–000]

Take notice that on April 6, 1999, Niagara Mohawk Power Corporation (Niagara Mohawk), tendered for filing with the Federal Energy Regulatory Commission an executed Transmission Service Agreement between Niagara Mohawk and TransAlta Energy Marketing (U.S.), Inc. (TransAlta). This Transmission Service Agreement specifies that TransAlta has signed on to and has agreed to the terms and conditions of Niagara Mohawk's Open Access Transmission Tariff as filed in Docket No. OA96–194–000. This Tariff, filed with FERC on July 9, 1996, will allow Niagara Mohawk and TransAlta to enter into separately scheduled transactions under which Niagara Mohawk will provide transmission service for TransAlta as the parties may mutually agree.

Niagara Mohawk requests an effective date of March 31, 1999. Niagara Mohawk has requested waiver of the notice requirements for good cause shown.

Niagara Mohawk has served copies of the filing upon the New York State Public Service Commission and TransAlta.

Comment date: April 26, 1999, in accordance with Standard Paragraph E at the end of this notice.

11. Niagara Mohawk Power Corporation

[Docket No. ER99–2402–000]

Take notice that on April 6, 1999, Niagara Mohawk Power Corporation (Niagara Mohawk) tendered for filing with the Federal Energy Regulatory Commission an executed, amended Transmission Service Agreement between Niagara Mohawk and Niagara Mohawk Energy Marketing, Inc., (NMEM). This amended Transmission Service Agreement specifies that NMEM has signed on to and has agreed to the terms and conditions of Niagara Mohawk's Open Access Transmission Tariff as filed in Docket No. OA96–194–000.

Niagara Mohawk requests an effective date of April 1, 1999. Niagara Mohawk has requested waiver of the notice requirements for good cause shown.

Niagara Mohawk has served copies of the filing upon New York Public Service Commission and NMEM.

Comment date: April 26, 1999, in accordance with Standard Paragraph E at the end of this notice.

12. Niagara Mohawk Power Corporation

[Docket No. ER99–2403–000]

Take notice that on April 6, 1999, Niagara Mohawk Power Corporation (Niagara Mohawk), tendered for filing with the Federal Energy Regulatory Commission an executed, amended Transmission Service Agreement between Niagara Mohawk and Niagara Mohawk Energy Marketing, Inc., (NMEM). This amended Transmission Service Agreement specifies that NMEM has signed on to and has agreed to the terms and conditions of Niagara Mohawk's Open Access Transmission Tariff as filed in Docket No. OA96–194–000.

Niagara Mohawk requests an effective date of April 1, 1999. Niagara Mohawk has requested waiver of the notice requirements for good cause shown.

Niagara Mohawk has served copies of the filing upon New York Public Service Commission and NMEM.

Comment date: April 26, 1999, in accordance with Standard Paragraph E at the end of this notice.

13. Sithe Maryland Holdings LLC, Sithe Keystone LLC, Sithe Conemaugh LLC, Sithe Hunterstown LLC, Sithe Orrtanna LLC, Sithe Titus LLC, Sithe Warren LLC, Sithe Blossburg LLC, Sithe Tolna LLC, Sithe Mountain LLC, Sithe Piney LLC, Sithe Wayne LLC, Sithe Hamilton LLC, Sithe Shawnee LLC, Sithe Shawville LLC, Sithe Portland LLC, Sithe Seward LLC, York Haven Power Company, Sithe Gilbert LLC, Sithe Sayreville LLC, Sithe Forked River LLC, Sithe Glen Gardner LLC, Sithe Werner LLC and Sithe Power Marketing, L.P.

[Docket No. ER99–2404–000]

Take notice that on April 6, 1999, Sithe Maryland Holdings LLC, Sithe Keystone LLC, Sithe Conemaugh LLC, Sithe Hunterstown LLC, Sithe Orrtanna LLC, Sithe Titus LLC, Sithe Warren LLC, Sithe Blossburg LLC, Sithe Tolna LLC, Sithe Mountain LLC, Sithe Piney LLC, Sithe Wayne LLC, Sithe Hamilton LLC, Sithe Shawnee LLC, Sithe Shawville LLC, Sithe Portland LLC, Sithe Seward LLC, York Haven Power Company, Sithe Gilbert LLC, Sithe Sayreville LLC, Sithe Forked River LLC, Sithe Glen Gardner LLC, Sithe Werner LLC, and Sithe Power Marketing, L.P. (together Applicants), petitioned the Commission for acceptance of proposed rate schedules. Applicants request authority to make wholesale power sales, including energy and capacity, at market-based rates, requests certain blanket authorizations, and waiver of certain of the Commission's Regulations.

The Applicants intend to engage in wholesale power sales. The Applicants do not own or control and are not affiliated with any entity that owns or controls electric transmission or distribution facilities in the United States. Applicants further state that it is not affiliated with any franchised electric utility in the Untied States. Applicants conclude that any interests that its affiliates have in domestic electric generation facilities do not raise any generation market power concerns.

Applicants, except for Sithe Power Marketing, L.P., request that the tendered rate schedules become effective as of closing of a divestiture transaction with Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company. The closing is anticipated for June of 1999. Sithe Power Marketing, L.P. requests that its tendered rate schedule become effective as soon as possible.

Comment date: April 26, 1999, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–9549 Filed 4–15–99; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC99–48–000, et al.]

Sempra Energy and KN Energy Inc., et al.; Electric Rate and Corporate Regulation Filings

April 8, 1999.

Take notice that the following filings have been made with the Commission:

1. Sempra Energy and KN Energy, Inc.

[Docket No. EC99–48–000]

Take notice that on April 6, 1999, Sempra Energy and KN Energy, Inc. submitted, in support of their request for approval in the above-captioned proceeding of their proposed merger, copies of the applications they filed with the Public Utilities Commission of Colorado and the Public Service Commission of Wyoming.

Comment date: May 10, 1999, in accordance with Standard Paragraph E at the end of this notice.

2. J.L. Walker & Associates, Eclipse Energy, Inc., American Power Exchange, Inc., Power Exchange Corporation, Enpower Inc., and Phibro Inc.

[Docket Nos. ER95–1261–015, ER94–1099–020, ER94–1578–018, ER95–72–018, ER95–1752–010 and ER95–430–019]

Take notice that on April 5, 1999, the above-mentioned power marketers filed quarterly reports with the Commission in the above-mentioned proceedings for information only. These filings are available for public inspection and copying in the Public Reference Room or on the internet at www.ferc.fed.us/online/rims.htm for viewing and downloading (call 202–208–2222 for assistance).

3. Western States Power Providers, Inc. and CC Energy Corporation

[Docket Nos. ER95–1459–014 and ER96–1819–010]

Take notice that on April 7, 1999, the above-mentioned power marketers filed quarterly reports with the Commission in the above-mentioned proceedings for information only. These filings are available for public inspection and copying in the Public Reference Room or on the internet at www.ferc.fed.us/online/rims.htm for viewing and downloading (call 202–208–2222 for assistance).

4. Vanpower, Inc., Prairie Winds Energy, The Furst Group, Inc., NAP Trading and Marketing, Inc., EMC Gas Transmission Company, EnerConnect, Inc., Kaztex Energy Ventures, Inc., and Tennessee Power Company

[Docket Nos. ER96–552–013, ER95–1234–012, ER98–2423–002, ER95–1278–010, ER96–2320–011, ER96–1424–010, ER96–1424–011, ER95–295–018 and ER95–581–016]

Take notice that on April 6, 1999, the above-mentioned power marketers filed quarterly reports with the Commission in the above-mentioned proceedings for information only. These filings are available for public inspection and copying in the Public Reference Room or on the internet at www.ferc.fed.us/online/rims.htm for viewing and downloading (call 202–208–2222 for assistance).

5. Energy PM, Inc. and Wilson Power & Gas Smart, Inc.

[Docket Nos. ER98–2918–003 and ER95–751–017]

Take notice that on April 1, 1999, the above-mentioned power marketers filed quarterly reports with the Commission in the above-mentioned proceedings for information only. These filings are available for public inspection and

copying in the Public Reference Room or on the internet at www.ferc.fed.us/online/rims.htm for viewing and downloading (call 202–208–2222 for assistance).

6. Energy Sales Network, Incorporated

[Docket No. ER99–2233–000]

Take notice that on March 22, 1999, Energy Sales Network, Incorporated (ENERGY) filed a quarterly report for the quarter ending on March 31, 1999. ENERGY also filed a notice of cancellation of rate schedule no. 1 in the same filing.

Comment date: April 28, 1999, in accordance with Standard Paragraph E at the end of this notice.

7. New England Power Pool

[Docket No. ER99–2335–000]

Take notice that on April 5, 1999, the New England Power Pool (NEPOOL) Executive Committee tendered for filing a Supplemental Filing to NEPOOL's proposals for a Congestion Management System and Multi-Settlement System that was filed with the Commission on March 31, 1999.

The NEPOOL Executive Committee states that copies of these materials were sent to all Participants in the New England Power Pool and to the New England state governors and regulatory commissions.

Comment date: April 23, 1999, in accordance with Standard Paragraph E at the end of this notice.

8. Avista Corporation

[Docket No. ER99–2389–000]

Take notice that on April 5, 1999, Avista Corporation, tendered for filing with the Federal Energy Regulatory Commission pursuant to 18 CFR Part 35 of the Commission Rules and Regulations, an executed Long Term Service Agreement under Avista Corporation's FERC Electric Tariff First Revised Volume No. 9 with Illinova Energy Partners.

Avista Corporation requests waiver of the prior notice requirements and that the executed Long Term Service Agreement be accepted for filing effective April 1, 1999.

Notice of the filing has been served upon Illinova Energy Partners.

Comment date: April 23, 1999, in accordance with Standard Paragraph E at the end of this notice.

9. Automated Power Exchange, Inc.

[Docket No. ER99–2390–000]

Take notice that on April 5, 1999, Automated Power Exchange, Inc. (APX), tendered for filing a revision to its Supplement No. 1, to APX Rate Schedule No. 2.

APX requests that its revised Supplement No. 1 to APX Rate Schedule No. 2, be accepted to become effective as of May 1, 1999.

Comment date: April 23, 1999, in accordance with Standard Paragraph E at the end of this notice.

10. Mid-Continent Area Power Pool

[Docket No. ER99–2391–000]

Take notice that on April 5, 1999, the Mid-Continent Area Power Pool (MAPP), on behalf of its Members that are subject to Commission jurisdiction as public utilities under Section 201(e) of the Federal Power Act, tendered for filing amendments to MAPP Schedule F to (I) add provisions to assess charges for unauthorized use of service at two times the normal rate, (ii) add confirmation times for firm and non-firm service, and (iii) provide the MAPP Contractor with the power to waive the reservation timing requirements for Firm Capacity Transmission Service and Reserved Non-Firm Service immediately following a declared emergency.

Comment date: April 23, 1999, in accordance with Standard Paragraph E at the end of this notice.

11. Peco Energy Company

[Docket No. ER99–2392–000]

Take notice that on April 5, 1999, PECO Energy Company (PECO), tendered for filing a Service Agreement dated March 31, 1999 with Strategic Energy Ltd. (SEL) under PECO's FERC Electric Tariff Original Volume No. 1 (Tariff). The Service Agreement adds SEL as a customer under the Tariff.

PECO requests an effective date of March 31, 1999, for the Service Agreement.

PECO states that copies of this filing have been supplied to SEL and to the Pennsylvania Public Utility Commission.

Comment date: April 23, 1999, in accordance with Standard Paragraph E at the end of this notice.

12. Southern Company Services, Inc.

[Docket No. ER99–2393–000]

Take notice that on April 5, 1999, Southern Company Services, Inc., acting on behalf of Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Savannah Electric Power Company (collectively referred to as Operating Companies), tendered for filing information concerning the accrual of post-retirement benefits other than pensions as set forth in Statement of Financial Accounting Standard No. 106 by the Financial Accounting Standards Board in agreements and tariffs of the Operating Companies (jointly and individually).

Comment date: April 23, 1999, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/ online/rims.htm (call 202–208–222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–9548 Filed 4–15–99; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 9974–040]

Rough and Ready Hydro Inc., Notice of Availability of Draft Environmental Assessment and Soliciting Comments

April 12, 1999.

A draft environmental assessment (DEA) is available for public review. The DEA is for the proposed revocation of exemption from licensing for the Upper Watertown Hydroelectric Project (FERC No. 9974). The DEA finds that the proposed revocation would not constitute a major federal action significantly affecting the quality of the human environment. The Upper Watertown Hydroelectric Project is located on the Rock River in the City of Watertown, Jefferson County, Wisconsin.

The DEA was written by staff in the Office of Hydropower Licensing, Federal Energy Regulatory Commission. Copies of the DEA can be viewed at the Commission's Public Reference Room, Room 2A, 888 First Street, N.E., Washington, D.C. 20426. Copies can also be obtained by calling the project

manager, Bob Fletcher at (202) 219–1206 or viewed on the web at http://www.ferc.fed.us/online/rims.htm. Please call (202) 208–2222 for assistance.

Please submit any comments on the DEA within 60 days from the date of this notice. A public meeting will be scheduled to allow public input into the preparation of the final EA. The date and place of the meeting has yet to be determined, but will occur in the vicinity of the project. Parties to the proceeding will be notified as to the date, time, and place of the meeting. Any comments, conclusions, or recommendations that draw upon studies, reports, or other working papers of substance should be supported by appropriate documentation. Comments should be addressed to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. Please affix Project No. 9974–040 to all comments.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–9496 Filed 4–15–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–277–000]

Northwest Pipeline Corporation; Notice of Intent To Prepare an Environmental Assessment for the Proposed North Bonneville Emergency Realignment Project and Request for Comments on Environmental Issues

April 12, 1999.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the North Bonneville Emergency Realignment Project involving construction, operation, and abandonment of facilities by Northwest Pipeline Corporation (Northwest) in Skamania County, Washington.[1] These facilities consist of replacing about 500 feet of 26-inch-diameter pipeline destroyed in a landslide incident on February 26, 1999, with about 2,200 feet of 26-inch-diameter pipeline on a route which circumbents the landslide area and a new mainline valve. About 1,390 feet of temporary 16-inch-diameter pipeline would also be abandoned.

This EA will be used by the Commission in its decision-making process to determine whether the project is in the public convenience and necessity. The application and other supplemental filings in this docket are available for viewing on the FERC Internet website (www.ferc.fed.us). Click on the "RIMS" link, select "Docket #" from the RIMS Menu, and follow the instructions.

Similarly, the "CIPS" link on the FERC Internet website provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings. From the FERC Internet website, click on the "CIPS" link, select "Docket #" from the CIPS menu, and follow the instructions.

If you are a landowner receiving this notice, you may be contacted by a pipeline company representative about the acquisition of an easement to construct, operate, and maintain the proposed facilities. The pipeline company would seek to negotiate a mutually acceptable agreement. However, if the project is approved by the Commission, that approval conveys with it the right to eminent domain. Therefore, if easement negotiations fail to produce an agreement, the pipeline company could initiate condemnation proceedings in accordance with state law. A fact sheet addressing a number of typically asked questions, including the use of eminent domain, is attached to this notice as appendix 1.[2]

Summary of the Proposed Project

Due to the landslide, Northwest must permanently replace a short unlooped section of its mainline system in Skamania County, Washington, Northwest seeks authority to:

- Abandon in place about 1,340 feet of existing 26-inch-diameter mainline;
- Replace this portion of pipeline with about 2,200 feet of 26-inch-diameter pipeline in a new right-of-way due south of the existing mainline;
- Abandon by removal about 1,390 feet of 16-inch-diameter pipeline temporarily installed on the ground surface atop the landslide; and
- Permanently operate a new mainline block valve installed on an emergency basis immediately west of the landslide.

The location of the project facilities is shown in appendix 2.

Land Requirements for Construction

Construction of the proposed facilities would require about 5.6 acres of land. Following construction, about 2.5 acres would be maintained as new right-of-way.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us to discover and address concerns the public may have about proposals. We call the "scoping". The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, the Commission requests public comments on the scope of the issues it will address in the EA. All comments received are considered during the preparation of the EA. State and local government representatives are encouraged to notify their constituents of this proposal and encourage them to comment on their areas of concern.

The EA will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- Geology and soils.
- Vegetation and wildlife.
- Endangered and threatened species.
- Water resources, fisheries, and wetlands.
- Land use.
- Public safety.
- Cultural resources.

We will also evaluate possible alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas. Because of the emergency nature of Northwest's proposal, we are limiting our scoping period to 20 days from the date this notice is issued, and plan to conduct our assessment on an expedited basis.

Our independent analysis of the issues will be presented in the EA. Depending on the comments received during the scoping process, the EA may be mailed to commenting individuals once the Commission acts on Northwest's filing.

To ensure your comments are considered, please carefully follow the instructions in the public participation section beginning on page 4.

---

[1] Northwest's application was filed with the Commission under Section 7 of the Natural Gas Act and Part 157 of the Commission's regulations.

[2] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies are available from the Commission's Public Reference and Files Maintenance Branch, 888 First Street, N.E., Washington, D.C. 20426, or call (202) 208–1371. Copies of the appendices were sent to all those receiving this notice in the mail.

Currently Identified Environmental Issues

We have already identified several issues that we think deserve attention based on a preliminary review of the proposed facilities and the environmental information provided by Northwest. This preliminary list of issues may be changed based on your comments and our analysis.

- Seven federally listed endangered or threatened species may occur in the proposed project area; and
- Three waterways would be crossed by the proposed project.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the project. By becoming a commentor, you concerns will be addressed in the EA and considered by the Commission. You should focus on the potential environmental effects of the proposal, alternatives to the proposal (including alternative locations), and measures to avoid or lessen environmental impact. The more specific you comments, the more useful they will be. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Send two copies of your letter to: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First St., N.E., Room 1A, Washington, DC 20426;
- Label one copy of the comments for the attention of the Environmental Review and Compliance Branch, PR–11.1;
- Reference Docket No. CP99–277–000; and
- Mail your comments so that they will be received in Washington, DC on or before May 3, 1999.

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding known as an "intervenor". Intervenors play a more formal role in the process. Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must provide 14 copies of its filings to the Secretary of the Commission and must send a copy of its filings to all other parties on the Commission's service list for this proceeding. If you want to become an intervenor you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) (see appendix 3). Only intervenors have the right to seek rehearing of the Commission's decision. You do not need intervenor status to have your environmental comments considered. Additional information about the proposed project is available from Mr. Paul McKee of the Commission's Office of External Affairs at (202) 208–1088 or on the FERC website (www.ferc.fed.us) using the "RIMS" link to information in this docket number. For assistance with access the RIMS, the RIMS helpline can be reached at (202) 208–2222. Access to the texts of formal documents issued by the Commission with regard to this docket, such as orders and notices, is also available on the FERC website using the "CIPS" link. For assistance with access to CIPS, the CIPS helpline can be reached at (202) 208–2474.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–9500 Filed 4–15–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Request for Extension of Time To Commence and Complete Project Construction and Soliciting Comments, Motions To Intervene, and Protests

April 12, 1999.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. Application Type: Request for Extension of Time to Commerce and Complete Project Construction

b. Project No.: 10648

c. Date Filed: February 10, 1999

d. Applicant: Adirondack Hydro Development Corporation and McGrath Industries, Inc.

e. Name of Project: Waterford Hydroelectric Project

f. Location: On the Hudson River, in Saratoga and Rensselear Counties, New York. The project does not utilize federal or tribal lands.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. § 791(a)–825(r).

h. Applicant Contact: Mr. Keith F. Corneau, Director, Adirondack Hydro Development Corporation, Environmental/Regulatory Affairs, 39 Hudson Falls Road, South Glens Falls, NY 12803 (518) 747–0930

i. FERC Contact: Any questions on this notice should be addressed to Mr. Lynn R. Miles, Sr. at (202) 219–2671, or e-mail address: lynn.miles@ferc.fed.us.

j. Deadline for filing comments and or motions: May 17, 1999

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426

Please include the project number (10648–005) on any comments or motions filed.

k. Description of Request: The licensee requests that the deadline for commencement of construction for FERC Project No. 10648–005 be extended to June 9, 2001. The deadline for completion of construction would be extended to June 9, 2003. The licensee also requests that a two-year extension of the deadline to enter into an agreement with the State of New York for access to lands administered by the State, as required by article 305.

l. Locations of the Application: A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, N.E., Room 2A, Washington, D.C. 20426, or by calling (202) 208–1371. This filing may be viewed on http://www.ferc.fed.us/online/rims.htm (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal

Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If any agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–9497 Filed 4–15–99; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6327–5]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; Approval of State Coastal Nonpoint Pollution Control Programs

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Approval of State Coastal Nonpoint Pollution Control Programs, EPA ICR Number 1569.04, OMB Control Number 2040–0153, expiring on July 31, 1999. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before May 17, 1999.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA by phone at (202) 260–2740, by email at farmer.sandy@epamail.epa.gov, or download a copy of the ICR off the Internet at http://www.epa.gov/icr and refer to EPA ICR No. 1569.04.

SUPPLEMENTARY INFORMATION:

Title: Approval of Coastal Nonpoint Pollution Control Programs (OMB Control No. 2040–0153; EPA ICR No. 1569.04) expiring July 31, 1999. This is a request for extension of a currently approved collection.

Abstract: Under the provisions of the national Program Development and Approval Guidance implementing section 6217 of the Coastal Zone Act Reauthorization Amendments of 1990 (CZARA) which was jointly developed and published by EPA and the National Oceanic and Atmospheric Administration (NOAA), 24 coastal states and 5 coastal territories with Federally approved Coastal Zone Management Programs have developed and submitted to EPA and NOAA Coastal Nonpoint Pollution Programs. All the submitted programs have been conditionally approved by EPA and NOAA. The conditional approvals will require states and territories to submit additional information in order to obtain final program approval. Recent administrative changes mutually agreed to by states, territories, EPA and NOAA are expected to expedite the final approval process. CZARA section 6217 requires states and territories to obtain final approval of their Coastal Nonpoint Pollution Programs in order to retain their full share of funding available to them under section 319 of the Clean Water Act and section 306 of the Coastal Zone Management Act. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. The **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on December 23, 1998 (63 FR 71114); no comments were received.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 125 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions, develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose information.

Respondents/Affected Entities: 24 States and 5 Territories.

Estimated Number of Respondents: 29.

Frequency of Response: Once.

Estimated Total Annual Hour Burden: 3,625.

Estimated Total Annualized Cost Burden: $0.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to EPA ICR No. 1569.04 and OMB Control No. 2040–0153 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, OP Regulatory Information Division (2137), 401 M Street, SW, Washington, DC 20460; and

Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW, Washington, DC 20503.

Dated: April 9, 1999.

Joseph Retzer,

Director, Regulatory Information Division .

[FR Doc. 99–9599 Filed 4–15–99; 8:45 am]

BILLING CODE 6560–60–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6327–4]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; Collection of Information for the Office of Mobile Sources' National Communications and Outreach Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: EPA ICR No. 1833.01: "Collection of Information for the Office of Mobile Sources" National Communications and Outreach Program." As this is a new ICR. The ICR describes the nature of the information collection and its expected burden and cost.

DATES: Comments must be submitted on or before May 17, 1999.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA by phone at (202) 260–2740, by email at farmer.sandy@epa.gov, or download a copy of the ICR off the Internet at http://www.epa.gov/icr and refer to EPA ICR No. 1833.01.

SUPPLEMENTARY INFORMATION:

Title: EPA ICR No. 1833.01: "Collection of Information for the Office of Mobile Sources" National Communications and Outreach Program." This is a new collection.

Abstract: EPA's Office of Mobile Sources (OMS) and its partners in Federal, State, and local air and transportation agencies are working to increase public awareness of air quality, the impact of mobile sources, and the choices individuals can make to help solve the problem of air pollution. As part of this effort, EPA will be sponsoring communications and outreach activities at the State and local and national levels. At the State and local level, EPA will be providing funds (through cooperative agreements) to State/local government agencies for a series of community-based communications and outreach projects. At the national level, EPA will be conducting a series of communications and outreach projects. Participation in these information collection activities will be strictly voluntary.

Before expending limited Federal resources on projects at either level, EPA intends to collect information (either directly, or through its State/local agency partners) that will help to determine the most effective and appropriate means of providing public education. Prior to conducting communications and outreach projects at the State and local level, State and local agencies will conduct focus groups or telephone surveys to aid in the development of appropriate and effective communications and outreach materials and strategies. Post-project focus groups or telephone surveys also will be conducted to evaluate the effectiveness of these projects.

Prior to conducting communications and outreach projects on the national level, EPA will evaluate the nature and extent of existing communications and outreach projects by sending questionnaires to State/local government agencies. This will minimize any duplication of effort between projects conducted at the national and State/local levels. EPA also will conduct pre-project focus groups or telephone surveys with the general public to gauge public awareness of mobile source issues, identify information needs, and aid in the development of appropriate and effective communications and outreach materials; and post-project focus groups or telephone surveys to evaluate the effectiveness of OMS" communications and outreach projects.

An agency may not conduct of sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. The **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on December 30, 1997 (62 FR 67861); Two comments were received.

Burden Statement: The annual reporting burden to the individuals (there is no recordkeeping burden) for this collection of information is estimated to average 2 hours for participants in focus groups, 10 minutes for participants in telephone surveys, and 30 minutes for respondents filling out questionnaires. Annual burden for state/local agencies is estimated to be 196 hours for each focus group project with operating and maintenance (O and M) costs of $1,300 per project. State/local agency burden for each telephone survey project is estimated to be 428 hours with O and M costs of $250 per project. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: General public, State and local government agencies.

Estimated Number of Respondents: 8,880 annually; 26,640 over three years.

Frequency of Response: One-time.

Estimated Total Annual Hour Burden: 16,770 hours.

Estimated Total Annualized operating and Maintenance Cost Burden: $55,000.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to EPA ICR No. 1833.01 in any correspondence. Ms. Sandy Farmer, U.S. Environmental Protection Agency, Office of Policy, Regulatory Information Division (2137), 401 M Street, SW, Washington, DC 20460; and Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW, Washington, DC 20503.

Dated: April 9, 1999.

Joseph Retzer,

Director, Regulatory Information Division.

[FR Doc. 99–9600 Filed 4–15–99; 8:45 am]

BILLING CODE 6560–60–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6325–1]

Transfer of Confidential Business Information to Contractors

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of transfer of data and request for comments.

SUMMARY: The Environmental Protection Agency (EPA) will transfer Confidential Business Information (CBI) to its contractor, Dyncorp Information and Engineering Technology (Dyncorp, Inc.), and its subcontractor: DPRA, Inc. These data pertain to the quantities of hazardous waste generated or received, and the disposition of those wastes. These data have been or will be submitted to EPA pursuant to the Biennial Reporting requirements of the Resource Conservation and Recovery Act of 1976 (RCRA), as amended. Some of the information may have a claim of business confidentiality. Dyncorp, Inc., and its subcontractor are assisting EPA in assessing the quality of the Biennial Report data, establishing a national data bases on hazardous waste generation and management, and in developing "The National Biennial RCRA Hazardous Waste Report."

DATES: Transfer of confidential data submitted to EPA will occur no sooner than April 26, 1999.

ADDRESSEES: Comments should be sent to Regina Magbie, Document Control Officer, Office of Solid Waste (5305W), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460. Comments should be identified as "Transfer of Confidential Data."

FOR FURTHER INFORMATION CONTACT: Regina Magbie, Document Control Officer, Office of Solid Waste (5305W),

U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460, 703–308–7909.

SUPPLEMENTARY INFORMATION:

1. Transfer of Confidential Business Information

The U.S. Environmental Protection Agency is using biennial report data to establish a national data base on hazardous waste generation and management. These data will be used to characterize the demographics of and trends in hazardous waste generation and management. Under EPA Contract No. GS–35F–4594G, Dyncorp, Inc., and its subcontractor will assist the Information Management Branch, Communications, Information, and Resources Management Division, Office of Solid Waste, in accessing the quality of the Bienial Report data, establishing the National Biennial Report data base, and preparing the national report based on those analyses. Some of the information being transferred may be claimed as Confidential Business Information (CBI).

In accordance with 40 CFR 2.305(h), EPA has determined that Dyncorp, Inc., and its subcontractor require access to CBI submitted to EPA under the authority of RCRA to perform work satisfactory under the above noted contract.

EPA is issuing this notice to inform all submitters of CBI on the 1989, 1991, 1993, 1995 and 1997 Hazardous Waste Report Forms (EPA Form 8700–13 A/B), or State developed biennial report forms, that EPA may transfer to these firms, on a need-to-know basis, CBI collected under the authority of RCRA. Upon completing their review of materials submitted, Dyncorp, Inc., and its subcontractor will return all material to EPA.

Dyncorp, Inc., and its subcontractor have been authorized to have access to RCRA CBI under the EPA "Contractor Requirements for the Control and Security of 2 of 3 RCRA Confidential Business Information Security Manual." EPA will approve the security plans of the contractors to ensure that their facilities comply with security procedures outlined in the security manual prior to RCRA CBI being transmitted to the contractors. Contractor personnel will be required to sign non-disclosure agreements and will be briefed on appropriate security procedures before they are permitted access to confidential information.

Dated: April 2, 1999.

Matthew Hale,

Acting Director, Office of Solid Waste.

[FR Doc. 99–9474 Filed 4–15–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6241–7]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 OR (202) 564–7153.

Weekly receipt of Environmental Impact Statements

Filed April 05, 1999 Through April 09, 1999

Pursuant to 40 CFR 1506.9.

EIS No. 990112, final EIS, SFW, MO, Big Muddy National Fish and Wildlife Refuge (Big Muddy Refuge) Expansion and Land Acquisition, Missouri River Basin, Several Counties, MO, Due: May 03, 1999, Contact: Judy McClendon (573) 222–6001. This Notice of Availability (NOA) should have appeared in the 03/19/1999 FR. The Wait Period is Calculated from 03/19/1999. Publication of the NOA was Delayed Pending Resolution of an Administrative Problem with the Draft Supplemental EIS.

EIS No. 990113, Draft EIS, FAA, CA, San Jose International Airport Master Plan Update, Improvements include Extension of Runway 12R/30L from 10,200 ft to 11,000 ft; Extension of Runway 12L/30R, Airport Layout Plan, City of San Jose, Santa Clara County, CA, Due: June 01, 1999, Contact: Elisha Novak (650) 876–2938.

EIS No. 990114, Draft EIS, FHW, CT, CT–2/2A/32 Transportation Improvement Study, Funding, Coast Guard Bridge Permit, NPDES Permit, COE Section 10 and 404 Permit, New London County, CT, Due: June 11, 1999, Contact: Donald J. West (860) 659–6703.

EIS No. 990115, Draft EIS, SFW, WI, Karner Blue Butterfly Habitat Conservation Plan State-wide, Application for an Incidental Take Permit, Several Counties, WI, Due: June 01, 1999, Contact: Lisa Mandell (612) 713–5343.

EIS No. 990116, FINAL EIS, NRC, UT, Uranium Mill Tailings Reclamation at Atlas Site, License Amendment Request for existing License No. SUA–917 along the Colorado River near Moab, UT, Due: May 17, 1999, Contact: Myron Fliegel (301) 415–6629.

EIS No. 990117, Draft EIS, USN, CA, Alameda Naval Air Station and Fleet and Industrial Supply Center, Disposal and Reuse, Alameda Annex and Facility, City of Alameda and Alameda County, CA, Due: June 01, 1999, Contact: Jerry Hemstock (650) 244–3023.

EIS No. 990118, Draft EIS, DOE, NM, Sandia National Laboratories/New Mexico (SNL), Continue Operation, Site-Wide (DOE/EIS–0281), Albuquerque, NM, Due: June 15, 1999, Contact: Julianne Levings (888) 635–7305.

EIS No. 990119, Final EIS, TVA, TN, Columbia Dam Component of the Duck River Project, Implementation, Use of Lands Acquired, Possible COE Section 404 Permit, Maury County, TN, Due: May 17, 1999, Contact: Daniel H. Ferry (423) 632–8876.

EIS No. 990120, Draft EIS, AFS, MT, Tobacco Root Vegetation Management Plan, Restore and Maintain a Mix Vegetation, Beaverhead-Deer Lodge National Forest, Madison Ranger District, Madison County, MT, Due: June 01, 1999, Contact: Jan M. Bowey (406) 842–5432.

Amended Notices

EIS No. 990029, Draft EIS, FAA, OH, Toledo Express Airport (TOL), Proposed Noise Compatibility Plan Air Traffic Actions and Proposed Aviation Related Industrial Development, Airport Layout Plan and Funding, Lucas County, OH, Due: April 30, 1999, Contact: Wally Welter (847) 294–8091.

Published FR 02–05–99 Review Period Extended.

EIS No. 990040, Draft EIS, FHW, MD, MD–32 Planning Study, Transportation Improvement from MD 108 to Interstate 70, Funding, NPDES Permit and COE Section 404 Permit, Howard County, MD, Due: May 19, 1999, Contact: Pamela S. Stephenson (410) 962–4342.

Published FR 02–19–99—Review Period extended.

Dated: April 13, 1999.

Ken Mittelholtz,

Environmental Protection Specialist, Office of Federal Activities.

[FR Doc. 99–9591 Filed 4–15–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6241–8]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared March 22, 1999 Through March 26, 1999 pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 564–7167.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 10, 1998 (63 FR 17856).

Draft EISs

ERP No. D–AFS–J65288-CO Rating EC2, Uncompahgre National Forest Travel Plans Revision, Implementation, Grand Mesa, Uncompahgre and Gunnison National Forests, Garrison, Hinsdale Mesa, Montrose, Ouray and San Juan Counties, CO.

Summary: EPA expressed environmental concerns about potential adverse impacts to wetlands and water quality. EPA requested that the final EIS include additional measures and information regarding Forest Plan implementation.

ERP No. D–AFS–J65295–MT Rating EC2, Clancy-Unionville Vegetation Manipulation and Travel Management Project, Implementation, Helene National Forest, Helena Ranger District, Lewis and Clark and Jefferson Counties, MT.

Summary: EPA expressed environmental concerns about adverse impacts to water and air quality and fisheries and wildlife habitat.

ERP No. D–AFS–J65296–MT Rating EC2, Swamp Timber Sales Project, Implementation, Kootenai National Forest, Fortine Ranger District, Lincoln County, MT.

Summary: EPA expressed environmental concerns about potential short-term risks to Swamp and Edna Creeks, listed as threatened or impaired by the State of Montana and from proposed timber harvest and road construction.

ERP No. D–BLM–K65213–NV Rating EC2, Sonoma-Gerlach and Paradise-Denio Management Framework Plans Amendment, Implementation of Management of the Black Rock Desert, Humboldt, Pershing and Washoe Counties, NV.

Summary: EPA expressed environmental concerns with the proposed "common pool" system for permitting large-scale events. Cumulative impacts to the playa surface, and other sensitive resources should be addressed in the final EIS.

ERP No. D–DOA–K36126–HI Rating EC2, Lower Hamakua Ditch Watershed Plan, To Provide a Stable and Affordable Supply of Agricultural Water to Farmer and Other, COE Section 404 Permit, Watershed Protection and Flood Prevention, Hawaii County, HI.

Summary: EPA expressed environmental concerns with minimal in-stream base flows and the dewatering of sources. EPA suggests that evaluations of water rights; equitable water allocations as well as environmental consequences of the other, non-selected alternatives.

ERP No. D–NPS–G61039–TX Rating LO, Lyndon B. Johnson National Historical Park, Package 227, General Management Plan, Implementation, Blanco and Gillespie Counties, TX.

Summary: EPA expressed lack of objections.

ERP No. D–NPS–G65068–LA Rating LO, New Orleans Jazz National Historical Park, General Management Plan, Implementation, City of New Orleans, Parish of Orleans, LA.

Summary: EPA expressed lack of objections.

ERP No. D–NPS–K65212–CA Rating LO, Mojave National Preserve General Management Plan, Implementation, San Bernardino County, CA.

Summary: EPA expressed lack of objections.

ERP No. DR–NPS–L61160–AK Rating LO, Legislative—Lower Sheejek River, Revised/Updated Information, Designation and Non-Designation for inclusion in the National Wild and Scencic River System, Tributary of the Porcupine River, Yukon Flats National Wildlife Refuge, AK.

Summary: EPA expressed lack of objections.

ERP No. DS–NPS–K61123–CA Rating LO, Backcounty and Wilderness Management Plan, Additional Information, General Management Plan Amendment, Joshua Tree National Park, Riverside and San Bernardino Counties, CA.

Summary: EPA expressed lack of objections.

Final EISs

ERP No. F–AFS–K65195–CA Desolation Wilderness Management Guidelines Revisions for the Eldorado National Forest and the Lake Tahoe Basin Management Unit (LTBMU), Limits of Acceptable Change (LAC), Eldorado County, CA.

Summary: Review of the Final EIS was not deemed necessary. No formal comment letter was sent to the preparing agency.

ERP No. F–AFS–L65202–AK Crystal Creek Timber Harvest, Implementation the 1997 Tongass Land Management Plan, Stikine Area, Tongass National Forest, AK.

Summary: Review of the Final EIS was not deemed necessary. No formal comment letter was sent to the preparing agency.

ERP No. F–BLM–K65204–AZ Hualapai Mountain Land Exchange/Plan Amendment, Implementation, Kingman and Dutch Flat, Mohave County, AZ.

Summary: Review of the Final EIS has been completed and the project found to be satisfactory.

ERP No. F–COE–K39051–CA Los Angeles County Drainage Area (LACDA) Water Conservation and Supply and Santa Fe—Whittier Narrows Dams Feasibility Study, Implementation, Los Angeles County, CA.

Summary: Review of the Final EIS was not deemed necessary. No formal comment letter was sent to the preparing agency.

ERP No. F–DOE–G06010–NM Los Alamos National Laboratory Continued Operation Site-Wide, Implementation, Los Alamos County, NM.

Summary: Review of the FEIS was not deemed necessary. No formal comment letter was sent to the preparing agency.

ERP No. F–NPS–J61099–UT Capitol Reef National Park, Implementation, General Management Plan, Development Concept Plan, Emery, Garfield, Sevier and Wayne Counties, UT.

Summary: EPA expressed environmental concerns due to potential adverse impacts of non-point source pollution from herbicides used to control noxious weeds.

ERP No. FS–AFS–K65193–NV Griffon Mining Project, Implementation, Updated Information, Revision for Expanding Gold Mining, Plan of Operations, Humboldt-Toiyabe National Forests, Ely Ranger District, White Pine County, NV.

Summary: EPA expressed continuing objections about potential adverse impacts to water quality and requested that modifications to the ROD or stipulations in Supplement Plan of Operations be implemented to ensure the proposed water quality mitigation measures, especially stream fencing contingency mitigation, occur prior to project initiation.

ERP No. FS–COE–L36011–00 Columbia and Lower Willamette River

Federal Navigation Channel, Integrated Dredge Material Management Study, OR and WA.

Summary: EPA expressed environmental concerns that the EIS lacks information regarding dredged disposal sites, EPA expressed environmental concerns that the EIS lacks information regarding dredged disposal sites, impacts of the new channel and sediment regimes, cumulative impacts, commitments to implement Ecosystem Restoration measures, and evaluation of relationship between proposed dredging activities and future decision on draw down on the Columbia and Snake Rivers.

Dated: April 13, 1999.

Ken Mittelholtz,

Environmental Protection Specialist, Office of Federal Activities.

[FR Doc. 99–9592 Filed 4–15–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6326–7]

Clean Air Act Advisory Committee: Accident Prevention Subcommittee Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: The Clean Air Act section 112(r) required EPA to publish regulations to prevent accidental releases of chemicals and to reduce the severity of those releases that do occur. These accidental release prevention requirements build on the chemical safety work begun by the Emergency Planning and Community Right-to-Know Act (EPCRA) which sets forth requirements for industry, State and local governments. On June 20, 1996, EPA published the final rule for risk management programs to address prevention of accidental releases.

An estimated 66,000 facilities are subject to this regulation based on the quantity of regulated substances they have on-site. Facilities that are subject will be required to implement a risk management program at their facility, and submit a summary of this information to a central location specified by EPA. This information will be helpful to State and local government entities responsible for chemical emergency preparedness and prevention. It will also be useful to environmental and community organizations, and the public in understanding the chemical risks in their communities. In addition, we hope the availability of this information will stimulate a dialogue between industry and the public to improve accident prevention and emergency response practices.

The Accident Prevention Subcommittee was created in September 1996 to advise EPA's Chemical Emergency Preparedness and Prevention Office (CEPPO) on these chemical accident prevention issues, specifically, section 112(r) of the Clean Air Act.

DATES: The Accident Prevention Subcommittee of the Clean Air Act Advisory Committee will hold a public meeting on May 5, 1999 from 8:30 a.m. to 4:30 p.m.

ADDRESSES: The meeting will be held at the Hall of States (Room 335), 444 North Capitol St., NW, Washington D.C., near Union Station. Members of the public are welcome to attend in person.

FOR FURTHER INFORMATION CONTACT: Members of the public desiring additional information about this meeting, should contact Karen Shanahan, Designated Federal Official, U.S. EPA (5104), 401 M. St., SW, Washington DC 20460, via the Internet at: shanahan.karen@epamail.epa.gov, by telephone at (202) 260–2711 or FAX at (202) 401–3448.

SUPPLEMENTARY INFORMATION:

Agenda

Opening Remarks—Jim Makris (8:30–9:00)
RMP Implementation Workgroup Update (9:00–10:30)
Availability of RMP Data (10:45–12:00)
Epidemiology Study by the Wharton School (1:30–2:30)
Looking Beyond June 21, 1999 * * * (2:30–4:00)
Comments from the Public (4:00–4:30)

Members of the public who wish to make a brief oral presentation in person in Washington DC to the Subcommittee at the meeting, must contact Karen Shanahan in writing (by letter, fax, or email—see previously stated information) no later than April 28, 1999, in order to be included on the agenda. Written comments may be submitted to the Accident Prevention Subcommittee up through the date of the meeting. Please address such material to Karen Shanahan at the above address.

The Accident Prevention Subcommittee expects that public statements presented at its meetings will not be repetitive or previously submitted oral or written statements. In general, opportunities for oral comment will be limited to no more than three minutes per speaker and no more than thirty minutes total. Written comments (twelve copies) received sufficiently prior to a meeting date (usually one week prior to a meeting or teleconference), may be mailed to the Subcommittee prior to its meeting.

Additional information on the Accident Prevention Subcommittee is available on the Internet at: http://www.epa.gov/swercepp/acc-pre.html

If you would like to automatically receive future information on the Accident Prevention Subcommittee and its Workgroups by email, you can subscribe to the EPA–RMP Listserve by sending the following message to listserver@unixmail.rtpnc.epa.gov: SUBSCRIBE EPA–RMP <Your firstname> <Your lastname>

Example: SUBSCRIBE EPA–RMP John Smith

Karen Shanahan,

Designated Federal Official.

[FR Doc. 99–9597 Filed 4–15–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6324–6]

Safe Drinking Water Act 25th Anniversary—Futures Forum "Research 2025" Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public meeting.

SUMMARY: Notice is hereby given that the Environmental Protection Agency (EPA) is holding a public meeting on May 4, 1999, beginning at 9:00 am. at Resolve, 23rd Street, NW, Suite 275, Washington, DC, for the purpose of information exchange with stakeholders and the general public to discuss the research needs of the national drinking water program. 1999 marks the 25th anniversary of the Safe Drinking Water Act (SDWA). Originally enacted as Title XIV of the Public Health Act, the SDWA remains a significant landmark in public health protection in the 20th century. EPA and many prominent stakeholder groups are marking this anniversary with a variety of events. The overall theme for the anniversary is "Protect Our Health from Source to Tap". The year long event will, celebrate achievements in reducing waterborne disease illnesses and deaths, educate the public about the quality of their drinking water and ways that they can assist in ensuring its' future safety; evaluate the status of program goals, progress, and needs; plan near and long

term goals and objectives; and initiate critical actions and projects.

In pursuit of these objectives, EPA and a number of partners launched a Drinking Water Futures Forum to evaluate the challenges facing the nation in ensuring a safe supply of drinking water for the next 25 years.

To answer the overriding question of "How can we ensure safe drinking water in 25 years?", the Futures Forum has selected seven critical areas to address. The areas chosen are: Treatment Technologies, Unserved Populations, Cost, Source Water, Vulnerable Subpopulations, Small Systems and Research. The goal is that by December 16, 1999, consensus will be reached on the most important issues and recommendations presented by the Futures Forum. The deliberations will be guided by four questions:

1. What science and research are necessary to achieve public health objectives, satisfy SDWA standards for sound science, and meet statutory requirements and deadlines in the areas of health effects, treatment and distribution systems, exposure, analytical methods and special issues (i.e., sensitive subpopulations, mixtures)?

2. What level of research investment is adequate to address near and long term needs?

3. What is the most efficient, effective and timely combination of public and private efforts to undertake, coordinate and manage the necessary drinking water research and data collections?

4. If there is a gap between programmatic research needs and available resources, what is the best way for EPA and interested stakeholders to decide on priorities?

EPA is inviting all interested members of the public to participate in the meeting. As with all previous meetings in this process, to the extent that is available, EPA is instituting an open door policy to allow any member of the public to attend any of the meetings for any length of time. Seats will be available on a first-come, first served basis.

DATES: The meeting will start at 9:00 AM on May 4 and will adjourn on May 4 at 5:00 PM.

ADDRESSES: For additional information about the meeting, please contact William R. Diamond, at 202–260–7575 of EPA's Office of Ground Water and Drinking Water at (202) 260–7575 or Joan Harrigan Farrelly at 202–260–6672 or by e-mail at *Farrelly. Joan@epamail.epa.gov.*, Questions may also be sent to William R. Diamond, U.S. EPA (4607), Office of Ground Water and Drinking Water, 401 M Street, SW, Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Joan Harrigan Farrelly, U.S. EPA, Office of Ground Water and Drinking Water, telephone 202–260–6672.

Dated: April 7, 1999.

William R. Diamond,

Director, Standards and Risk Management Division, Office of Ground Water and Drinking Water.

[FR Doc. 99–9475 Filed 4–15–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6327–1]

National Drinking Water Advisory Council Notice of Open Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Under section 10(a)(2) of Public Law 92–423, "The Federal Advisory Committee Act," notice is hereby given that a meeting of the National Drinking Water Advisory Council established under the Safe Drinking Water Act, as amended (42 U.S.C. S3300f *et seq.*), will be held on May 5, 1999, from 3:00 p.m. until approximately 9:00 p.m., and on May 6, 1999, from 8:30 a.m. until approximately 5:30 p.m. at the State Game Lodge, Custer State Park, Custer, South Dakota. The major focus of this meeting is on small and Tribal public water supply systems, action on the reports from the Underground Injection Control/Source Water and Right to Know Working Groups, and updates on the Environmental Protection Agency's (EPA) upcoming regulations.

The meeting is open to the public. The Council encourages the hearing of outside statements and will allocate one hour for this purpose. Oral statements will be limited to five minutes, and it is preferred that only one person present the statement. Any outside parties interested in presenting an oral statement should petition the Council by telephone at (202) 260–2285 before April 30, 1999.

Any person who wishes to file a written statement can do so before or after a Council meeting. Written statements received prior to the meeting will be distributed to all members of the Council before any final discussion or vote is completed. Any statements received after the meeting will become part of the permanent meeting file and will be forwarded to the Council members for their information.

Members of the public that would like to attend the meeting, present an oral statement, or submit a written statement, should contact Ms. Charlene Shaw, Designated Federal Officer, National Drinking Water Advisory Council, U.S. EPA, Office of Ground Water and Drinking Water (4601), 401 M Street SW., Washington, D.C. 20460. The telephone number is Area Code (202) 260–2285 or E-Mail *shaw.charlene@epa.gov.*

Dated: April 13, 1999.

Elizabeth J. Fellows,

Deputy Director, Office of Ground Water and Drinking Water.

[FR Doc. 99–9598 Filed 4–15–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6324–7]

Board of Scientific Counselors, Executive Committee Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, Public Law 92–463, as amended (5 U.S.C. App. 2) notification is hereby given that the Environmental Protection Agency, Office of Research and Development (ORD), Board of Scientific Counselors (BOSC), will hold its Executive Committee Meeting.

DATES: The meeting will be held on April 29–30, 1999.

ADDRESSES: The meeting will be held at the Double Tree Hotel Park Terrace, 1515 Rhode Island Avenue, NW., Washington, DC. On Thursday, April 29, the meeting will begin at 9:00 a.m., and recess at 4:30 p.m., and on Friday, April 30, the meeting will begin at 9:00 a.m. and will adjourn at 12:00 Noon. All times noted are Eastern Time.

SUPPLEMENTARY INFORMATION: Agenda items will include, but not limited to: State of ORD, STAR Review, a working session on Particulate Matter, and a presentation on Stakeholder Involvement in ORD's FY2000 Strategic Plan Development. Anyone desiring a draft BOSC agenda may fax their request to Shirley R. Hamilton, (202) 565–2444. The meeting is open to the public. Any member of the public wishing to make a presentation at the meeting should contact Shirley Hamilton, Designated Federal Officer, Office of Research and Development (8701R), 401 M Street, SW., Washington, DC 20460; or by telephone at (202) 564–6853. In general,

each individual making an oral presentation will be limited to a total of three minutes.

FOR FURTHER INFORMATION CONTACT: Shirley R. Hamilton, Designated Federal Officer, U.S. Environmental Protection Agency, Office of Research and Development, NCERQA (MC 8701R), 401 M Street, SW., Washington, DC 20460, (202) 564–6853.

Dated: April 6, 1999.

Peter W. Preuss, Ph.D.,

Director, National Center for Environmental Research and Quality Assurance.

[FR Doc 99–9471 Filed 4–15–99; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[PB–402404–RG1; FRL–6075–5]

Lead-Based Paint Activities in Target Housing and Child-Occupied Facilities; States of Connecticut, Maine, Massachusetts, and Vermont Authorization Applications

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; request for comments and opportunity for public hearing.

SUMMARY: On November 16, 1998, Maine and Massachusetts submitted applications for EPA approval to administer and enforce training and certification requirements, training program accreditation requirements, and work practice standards for lead-based paint activities in target housing and child-occupied facilities under section 402 of the Toxic Substances Control Act (TSCA). Connecticut submitted its application for EPA approval on November 30, 1998. Vermont submitted its application for EPA approval on February 10, 1999. This notice announces the receipt of the applications from Connecticut, Maine, Massachusetts, and Vermont and the opening of a public comment period that will last for 45 days. Connecticut, Maine, Massachusetts, and Vermont each have provided individual State self-certifications of lead programs meeting the requirements for approval under section 404 of TSCA. Therefore, pursuant to section 404, each of these State programs is deemed authorized as of the date of submission. If EPA subsequently finds that a program does not meet all the requirements for approval of a State program, EPA will work with the State to correct any deficiencies in order to approve the program. If the deficiencies are not corrected, a notice of disapproval will be issued in the **Federal Register** and a Federal program will be implemented in the State whose program has been disapproved.

DATES: Individuals should submit comments on the authorization applications on or before June 1, 1999. In addition, a public hearing request may be submitted by June 1, 1999. If a public hearing is requested and granted, the hearing date and time will be announced in the **Federal Register**.

ADDRESSES: Submit in duplicate all written comments and/or requests for a public hearing, identified by docket control number "PB–402404–RG1" to: Environmental Protection Agency, Region I, (CPT) Suite 1100, One Congress Street, Boston, MA 02114–2023. Comments and a request for a public hearing may be submitted electronically to BRYSON.JAMESM@epamail.epa.gov. Please follow the instructions in Unit IV. of this document. No confidential business information (CBI) should be submitted through e-mail.

FOR FURTHER INFORMATION CONTACT: James M. Bryson, Regional Abatement Coordinator, Environmental Protection Agency, Region I, (CPT) Suite 1100, One Congress Street, Boston, MA 02214–2023. Telephone: 617–918–1524, e-mail: BRYSON.JAMESM@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On October 28, 1992, the Housing and Community Development Act of 1992, Public Law 102–550, became law. Title X of that statute is the Residential Lead-Based Paint Hazard Reduction Act of 1992. That Act amended the Toxic Substances Control Act ("TSCA") (15 U.S.C. 2601 *et seq.*) by adding Title IV (15 U.S.C. 2681–92) which is entitled "Lead Exposure Reduction."

Section 402 of TSCA (15 U.S.C. 2682) authorizes and directs EPA to promulgate final regulations governing lead-based paint activities in target housing, public and commercial buildings, bridges and other structures. Those regulations are to ensure that individuals engaged in such activities are properly trained, that training programs are accredited, and that individuals engaged in those activities are certified and follow documented work practice standards. Under section 404, a State may seek authorization from EPA to administer and enforce its own lead-based paint activities program.

On August 29, 1996 (61 FR 45777) (FRL–5389–9), EPA promulgated final TSCA section 402/404 regulations governing lead-based paint activities in target housing and child-occupied facilities (a subset of public buildings). Those regulations are codified at 40 CFR part 745, and allow both States and Indian Tribes to apply for program authorization. On August 31, 1998, EPA was required to institute the Federal program in States or Indian Country not having an authorized program, as provided by section 404(h) of TSCA. States and Indian Tribes that choose to apply for program authorization must submit a complete application to the appropriate Regional EPA office for review. EPA is required to review those applications within 180 days of receipt of the complete application. To receive EPA approval, a State or Indian Tribe must demonstrate that its program is at least as protective of human health and the environment as the Federal program, and that its program provides adequate enforcement. EPA's regulations (40 CFR part 745, subpart Q) provide the detailed requirements a State or Tribal program must meet in order to obtain EPA approval.

A State may choose to certify that its lead-based paint activities program meets the requirements for EPA approval by submitting a letter signed by the Governor or Attorney General stating that the program meets the requirements of section 404(b) of TSCA and concluding, based on the required program analysis, that the State program is at least as protective as the Federal program and that the State program provides adequate enforcement.

Upon submission of such certification letter, the program is deemed authorized. This authorization is retracted, however, if upon review, EPA subsequently determines that the program is not at least as protective of human health and the environment as the Federal program, and/or does not provide for adequate enforcement, and the State does not correct the deficiencies necessary to make it so. Section 404(b) of TSCA provides that before authorizing a State program, EPA must provide notice and an opportunity for a public hearing on the application. Therefore, by this notice EPA is soliciting public comment on whether the applications submitted by the States of Connecticut, Maine, Massachusetts, and Vermont meet the requirements for EPA approval. This notice also provides an opportunity to request a public hearing on any of the applications. If a hearing is requested and granted, EPA will issue a **Federal Register** notice announcing the date, time, and place of the hearing. If EPA's final decision on the application is a disapproval, this will be discussed in another **Federal Register** Notice.

II. State Program Description Summary

The Connecticut, Maine, Massachusetts, and Vermont programs: (1) Require abatement permits prior to the commencement of abatement activity; (2) will investigate tips and complaints, and enforce certification, accreditation, and permitting requirements for all disciplines and for all abatement-related activities, including training; and (3) provide for the suspension and/or revocation of the accreditation of training providers, as well as of the certifications of individuals and firms engaged in lead abatement practices.

The following are summaries of the programs proposed by Connecticut, Maine, Massachusetts, and Vermont.

Connecticut

The State of Connecticut submitted a lead poisoning prevention program established by the Connecticut General Statutes Sections: 19a–110 through 19a–111e, 20–482, 19a–14(a)(6), 19a–17 and 19a–206, and the Connecticut Department of Public Health Lead Poisoning Prevention and Control Regulations 19a–111–1 through 19a–111–11, and Licensure and Certification Regulations 20–478–1 through 20–478–3. This program includes: (1) Statewide standards for lead-based paint hazard identification and remediation; (2) approval and monitoring of training programs for lead abatement and consultant personnel; (3) licensure of lead abatement and consultant contractors; (4) certification of lead abatement and consultant personnel; (5) surveillance of blood lead testing activities, oversight of lead poisoning cases and evaluation of trends in blood lead levels utilizing the DPH Lead Surveillance System and the DPH Adult Blood Lead Registry; (6) a full range of clinical and environmental lead-related testing services as provided by the DPH Division of Laboratories Services; and (7) health education for risk education by fostering lead safe behavior and conditions. This overall program has been implemented with the assistance of local health departments that function in key supportive roles.

Maine

The State of Maine has submitted a Lead Poisoning Prevention Program established by the Maine Revised Statutes Annotated (M.R.S.A). The specific authorities are contained in 38 M.R.S.A. Sections 341–A–349–A (1989 & Supp. 1997), 38 M.R.S.A. Section 1291–1297 (Supp. 1997) and 06–096 Chapter 424: Lead Management Rule. This regulation contains procedures and requirements for the certification of persons engaged in lead-based paint activities, work practice standards for performing such activities, and accreditation of training providers and training programs. The regulation requires that, except as specifically exempted, all lead inspections, risk assessments, lead abatement designs, lead abatement activities, and any other services related to lead-based paint such as screening, lead determinations, and deleading be performed only by individuals and firms licensed pursuant to this regulation. This also sets standards and procedures for establishing the lead-safe status of residential dwellings and child-occupied facilities. The overall program has been implemented by the Department of Environmental Protection with the assistance of the Department of Human Services.

Massachusetts

The State of Massachusetts has submitted a Lead Poisoning Prevention Program established by Massachusetts General Law, Chapter 111, Sections 189A through 199A and Department of Public Health Lead Poisoning Prevention and Control Regulations 105 CMR 460 and Department of Labor and Workforce Development Deleading Regulations 454 CMR 22.00. The Program addresses a wide range of activities. Program elements include: (1) State standards for lead-based paint hazards and remediation; (2) approval and monitoring of training programs for lead abatement; (3) licensure of lead abatement and consultant contractors; (4) certification of lead abatement and consultation personnel; (5) surveillance of blood lead testing activities, oversight of lead poisoning cases and evaluation of trends in blood lead levels; (6) a full range of clinical and environmental lead-related testing services and; (7) health education for risk reduction by fostering lead safe behavior and conditions. This overall program has been implemented with the full support of both departments.

Vermont

The State of Vermont has submitted a Lead Poisoning Prevention Program established by the Vermont Statutes Annotated Title 18, Chapter 38. The specific regulatory authority is contained in the Vermont Regulations for Lead Control, V.S.A. Title 18, Chapter 38. This regulation contains procedures and requirements for the certification of persons engaged in lead-based paint activities, work practice standards for performing such activities, and accreditation of training providers and training programs. The regulation requires that, except as specifically exempted, all lead inspections, risk assessments, lead abatement designs, lead abatement activities, and any other services related to lead-based paint such as screening, lead determinations, and deleading be performed only by individuals and firms licensed pursuant to this regulation. The overall program has been implemented by the Department of Health.

III. Federal Overfiling

TSCA section 404(b) makes it unlawful for any person to violate or fail or refuse to comply with any requirement of an approved State program. Therefore, EPA reserves the right to exercise its enforcement authority under TSCA against a violation of, or a failure or refusal to comply with, any requirement of an authorized State program.

IV. Public Record and Electronic Submissions

The official record for this action, as well as the public version, has been established under docket control number "PB–402404–RG1." Copies of this notice, and all comments received on the applications are available for inspection in the EPA Region I Office from 7:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket is located at the EPA Region I Library, Suite 1100, One Congress Street, Boston, MA 02114–2023. Commenters are encouraged not to include CBI in their comments. However, any information submitted and claimed as CBI must be clearly identified as such and marked "confidential," "CBI," or with some other appropriate designation. In addition, a commenter submitting such information must prepare a nonconfidential version (in duplicate) that can be placed in the public record. Any information so marked will be handled in accordance with the procedures contained in 40 CFR part 2. Comments and information not claimed as CBI at the time of submission will be placed in the public record.

Electronic comments can be sent directly to EPA at:

BRYSON.JAMESM@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect 5.1/6.1 or ASCII file format. All comments and data in electronic form must be identified by the docket control number "PB–402404–RG1." Electronic comments on

this document may be filed online at many Federal Depository Libraries. Information claimed as CBI should not be submitted electronically.

V. Regulatory Assessment Requirements

A. Certain Acts and Executive Orders

EPA's actions on State or Tribal lead-based paint activities program applications are informal adjudications, not rules. Therefore, the requirements of the Regulatory Flexibility Act (RFA, 5 U.S.C. 601 *et seq.*), the Congressional Review Act (5 U.S.C. 801 *et seq.*), Executive Order 12866 ("Regulatory Planning and Review," 58 FR 51735, October 4, 1993), and Executive Order 13045 ("Protection of Children from Environmental Health Risks and Safety Risks," 62 FR 1985, April 23, 1997), do not apply to this action. This action does not contain any Federal mandates, and therefore is not subject to the requirements of the Unfunded Mandates Reform Act (2 U.S.C. 1531-1538). In addition, this action does not contain any information collection requirements and therefore does not require review or approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

B. Executive Order 12875

Under Executive Order 12875, entitled "Enhancing Intergovernmental Partnerships" (58 FR 58093, October 28, 1993), EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local, or Tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to OMB a description of the extent of EPA's prior consultation with representatives of affected State, local, and Tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local, and Tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates." Today's action does not create an unfunded Federal mandate on State, local, or Tribal governments. This action does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this action.

C. Executive Order 13084

Under Executive Order 13084, entitled "Consultation and Coordination with Indian Tribal Governments" (63 FR 27655, May 19, 1998), EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the Tribal governments. If the mandate is unfunded, EPA must provide OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected Tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities." Today's action does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this action.

Authority: 15 U.S.C. 2682, 2684.

List of Subjects

Environmental protection, Hazardous substances, Lead, Reporting and recordkeeping requirements.

Dated: April 6, 1999.

John P. DeVillars,

Regional Administrator, Region I.

[FR Doc. 99–9476 Filed 4–15–99; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[PB–402404–TX; FRL–6073–6]

Lead; Requirements for Lead-Based Paint Activities in Target Housing and Child-Occupied Facilities; State of Texas's Authorization Application

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; request for comments and opportunity for a public hearing.

SUMMARY: On March 18, 1999, the State of Texas submitted an application for EPA approval to administer and enforce training and certification requirements, training program accreditation requirements, and work practice standards for lead-based paint activities in target housing and child-occupied facilities under section 402 of the Toxic Substances Control Act (TSCA). This notice announces the receipt of Texas's application, and provides a 45–day public comment period and an opportunity to request a public hearing on the application. Texas has provided a certification that their program meets the requirements for approval of a State program under section 404 of TSCA. Therefore, pursuant to section 404, the program is deemed authorized as of the date of submission. If EPA finds that the program does not meet the requirements for approval of a State program, EPA will disapprove the program, at which time a notice will be issued in the **Federal Register** and the Federal program will be established.

DATES: The State program became effective March 18, 1999. Submit comments on the authorization application on or before June 1, 1999.

Public hearing requests must be submitted on or before May 3, 1999. If a public hearing is requested and granted, the hearing will be held on May 14, 1999, 1 p.m., at the United States Environmental Protection Agency, 1445 Ross Avenue (Fountain Place), Dallas, TX. If a public hearing is not requested, this meeting time and place will be canceled. Therefore, individuals are advised to verify the status of the public hearing by contacting the Regional Lead Coordinator (name, telephone number, and address are provided in the "FOR FURTHER INFORMATION CONTACT" section of this notice) after May 3, 1999 and before the May 14, 1999 public hearing date.

ADDRESSES: Submit all written comments and/or requests for a public hearing identified by docket number "PB–402404–TX" (in duplicate) to: Environmental Protection Agency, Region VI, 6PD–T, 1445 Ross Avenue, Suite 1200, Dallas, TX 75202–2733.

Comments, data, and requests for a public hearing may also be submitted electronically to robinson.jeffrey@epamail.epa.gov. Follow the instructions under Unit IV. of this document. No Confidential Business Information (CBI) should be submitted through e-mail.

FOR FURTHER INFORMATION CONTACT: Jeffrey Robinson, Regional Lead Coordinator, Environmental Protection Agency, Region VI, 1445 Ross Avenue, Suite 1200, 6PD-T, Dallas, TX 75202–2733. Telephone: 214–665–7577, e-mail address: robinson.jeffrey@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On October 28, 1992, the Housing and Community Development Act of 1992, Public Law 102–550, became law. Title X of that statute was the Residential Lead-Based Paint Hazard Reduction Act of 1992. That Act amended TSCA (15 U.S.C. 2601 *et seq.*) by adding Title IV (15 U.S.C. 2681-92), entitled "Lead Exposure Reduction."

Section 402 of TSCA authorizes EPA to promulgate final regulations governing lead-based paint activities. Lead-based paint activities is defined in section 402(b) of TSCA and authorizes EPA to regulate lead-based paint activities in target housing, public buildings built prior to 1978, commercial buildings, bridges and other structures or superstructures. Those regulations are to ensure that individuals engaged in such activities are properly trained, that training programs are accredited, and that individuals engaged in these activities are certified and follow documented work practice standards. Under section 404, a State may seek authorization from EPA to administer and enforce its own lead-based paint activities program.

On August 29, 1996 (61 FR 45777) (FRL–5389–9), EPA promulgated final TSCA section 402/404 regulations governing lead-based paint activities in target housing and child-occupied facilities (a subset of public buildings). Those regulations are codified at 40 CFR part 745 and allow both States and Indian Tribes to apply for program authorization. On August 31, 1998, EPA instituted the Federal program in States or Indian Country without an authorized program, as provided by section 404(h) of TSCA.

States and Indian Tribes that choose to apply for program authorization must submit a complete application to the appropriate Regional EPA office for review. Those applications will be reviewed by EPA within 180 days of receipt of the complete application. To receive EPA approval, a State or Indian Tribe must demonstrate that its program is as least as protective of human health and the environment as the Federal program, and provides adequate enforcement (section 404(b) of TSCA, 15 U.S.C. 2684(b)). EPA's regulations (40 CFR part 745, subpart Q) provide the detailed requirements a State or Tribal program must meet in order to obtain EPA approval.

A State may choose to certify that its lead-based paint activities program meets the requirements for EPA approval by submitting a letter signed by the Governor or Attorney General stating that the program meets the requirements of section 404(b) of TSCA. Upon submission of such certification letter, the program is deemed authorized until such time as EPA disapproves the program application or withdraws the authorization.

Section 404(b) of TSCA provides that EPA may approve a program application only after providing notice and an opportunity for a public hearing on the application. Therefore, by this notice EPA is soliciting public comment on whether Texas's application meets the requirements for EPA approval. This notice also provides an opportunity to request a public hearing on the application. Texas has provided a self-certification letter from the Attorney General that its program meets the requirements for approval of a State program under section 404 of TSCA. Therefore, pursuant to section 404, the program is deemed authorized as of the date of submission. If EPA finds that the program does not meet the requirements for approval of a State program, EPA will disapprove the program, at which time a notice will be issued in the **Federal Register** and the Federal program will be established in Texas.

II. State Program Description Summary

The Texas lead-based paint program is administered by the Environmental Lead Branch (ELB) of the Texas Department of Health (TDH). The lead-based paint program duties include enforcement, compliance assistance, inspections, certification, accreditation, and public education.

The Texas Environmental Lead Reduction Rules are modeled after the Federal lead-based paint activities rules found at 40 CFR part 745, subpart L. The rules are applicable to lead-based paint activities performed in target housing and child-occupied facilities. Texas has developed a program that requires certification of all individuals and firms who perform lead-based paint activities, and for the accreditation of lead training providers. Texas has also developed work practice standards for the performance of lead-based paint activities.

All training program providers are required to receive accreditation prior to providing, offering, or claiming to provide training courses for certification purposes. Refresher courses can be accredited only if the training program has received accreditation for the initial discipline-specific training course. Programs that have been accredited by another State or agency must apply for and receive accreditation from TDH before conducting or advertising a training course in Texas. Training course program managers are required to notify the TDH of all scheduled training courses and changes in course offerings. The TDH has the authority to audit training programs at any reasonable time.

Certification is required for all individuals and firms who perform lead-based paint activities or services in target housing and child-occupied facilities. The appropriate certification exam must be taken every 3 years for certain disciplines. Persons holding a valid certification issued by another State or Agency must apply for certification, but may request a waiver of initial training requirements. Firms that perform lead-based paint services must be certified by the TDH and must employ properly certified employees.

The TDH had developed work practice standards modeled after the requirements at 40 CFR 745.227. The TDH must be notified in advance of the start of an abatement project and an abatement notification fee must be paid. The TDH has the authority to inspect or investigate the practices of any person involved in lead-based paint activities in target housing and child-occupied facilities. Only laboratories accredited by the National Lead Laboratory Accreditation Program (NLLAP) recognized by EPA may conduct required analyses, but X-ray fluorescence may be used for on-site lead detection.

Texas has submitted information in the application addressing the required program elements for State lead-based paint activities programs pursuant to 40 CFR 745.325. In addition, Texas has submitted information detailing their lead-based paint compliance and enforcement programs as required by 40 CFR 745.327. At this time, Texas is not seeking authorization of a pre-renovation notification program pursuant to 40 CFR 745.326.

III. Federal Overfiling

TSCA section 404(b) makes it unlawful for any person to violate, or fail or refuse to comply with, any requirement of an approved State or Tribal program. Therefore, EPA reserves the right to exercise its enforcement authority under TSCA against a violation of, or a failure or refusal to comply with, any requirement of an authorized State or Tribal program.

IV. Public Record and Electronic Submissions

The official record for this action, as well as the public version, has been established under docket control number "PB–402404–TX" Copies of this notice, the State of Texas's authorization application, and all comments received on the application are available for inspection in the Region VI office, from 7:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket is located at the EPA Region VI Library, Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, TX.

Commenters are encouraged to structure their comments so as not to contain information for which CBI claims would be made. However, any information claimed as CBI must be marked "confidential," "CBI," or with some other appropriate designation, and a commenter submitting such information must also prepare a nonconfidential version (in duplicate) that can be placed in the public record. Any information so marked will be handled in accordance with the procedures contained in 40 CFR part 2. Comments and information not claimed as CBI at the time of submission will be placed in the public record.

Electronic comments can be sent directly to EPA at:

robinson.jeffrey@epamail.epa.gov.

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect 5.1/6.1 or ASCII file format. All comments and data in electronic form must be identified by the docket control number "PB–402404–TX." Electronic comments on this document may be filed online at many Federal Depository Libraries. Information claimed as CBI should not be submitted electronically.

V. Regulatory Assessment Requirements

A. Certain Acts and Executive Orders

EPA's actions on State or Tribal lead-based paint activities program applications are informal adjudications, not rules. Therefore, the requirements of the Regulatory Flexibility Act (RFA, 5 U.S.C. 601 *et seq.*), the Congressional Review Act (5 U.S.C. 801 *et seq.*), Executive Order 12866 ("Regulatory Planning and Review," 58 FR 51735, October 4, 1993), and Executive Order 13045 ("Protection of Children from Environmental Health Risks and Safety Risks," 62 FR 1985, April 23, 1997), do not apply to this action. This action does not contain any Federal mandates, and therefore is not subject to the requirements of the Unfunded Mandates Reform Act (2 U.S.C. 1531-1538). In addition, this action does not contain any information collection requirements and therefore does not require review or approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

B. Executive Order 12875

Under Executive Order 12875, entitled "Enhancing Intergovernmental Partnerships" (58 FR 58093, October 28, 1993), EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local, or Tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to OMB a description of the extent of EPA's prior consultation with representatives of affected State, local, and Tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local, and Tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates." Today's action does not create an unfunded Federal mandate on State, local, or Tribal governments. This action does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this action.

C. Executive Order 13084

Under Executive Order 13084, entitled "Consultation and Coordination with Indian Tribal Governments" (63 FR 27655, May 19, 1998), EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the Tribal governments. If the mandate is unfunded, EPA must provide OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected Tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities." Today's action does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this action.

Authority: 15 U.S.C. 2682, 2684.

List of Subjects

Environmental protection, Hazardous substances, Lead, Reporting and recordkeeping requirements.

Dated: April 8, 1999.

Robert E. Hanneschlager,

Acting Division Director, Multimedia Planning and Permitting, Region VI.

[FR Doc. 99–9607 Filed 4–15–99; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–51925; FRL–6069–1]

Certain Chemicals; Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5 of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical to notify EPA and comply with the statutory provisions pertaining to the manufacture or import of substances not on the TSCA Inventory. Section 5 of TSCA also requires EPA to publish receipt and status information in the **Federal Register** each month reporting premanufacture notices (PMN) and test marketing exemption (TME) application requests received, both pending and expired. The information in this document contains notices received from February 14, to Feburary 28, 1999.

ADDRESSES: Written comments, identified by the document control number "[OPPTS–51925]" and the specific PMN number, if appropriate, should be sent to: Document Control Office (7407), Office of Pollution

Case No.
P–99–0475
P–99–0476
P–99–0477
P–99–0478

Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Rm. ETG–099 Washington, DC 20460.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: oppt.ncic@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1/6.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number [OPPTS–51925]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic comments on this notice may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found under "SUPPLEMENTARY INFORMATION" of this document.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–531, 401 M St., SW., Washington, DC, 20460, (202) 554–1404, TDD (202) 554–0551; e-mail: TSCA-Hotline@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Under the provisions of TSCA, EPA is required to publish notice of receipt and status reports of chemicals subject to section 5 reporting requirements. The notice requirements are provided in TSCA sections 5(d)(2) and 5(d)(3). Specifically, EPA is required to provide notice of receipt of PMNs and TME application requests received. EPA also is required to identify those chemical submissions for which data has been received, the uses or intended uses of such chemicals, and the nature of any test data which may have been developed. Lastly, EPA is required to provide periodic status reports of all chemical substances undergoing review and receipt of notices of commencement.

A record has been established for this notice under docket number "[OPPTS–51925]" (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 12 noon to 3 p.m., Monday through Friday, excluding legal holidays. The public record is located in the TSCA Nonconfidential Information Center (NCIC), Rm. NEM–B607, 401 M St., SW., Washington, DC 20460.

Electronic comments can be sent directly to EPA at:
oppt.ncic@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this notice, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the address in "ADDRESSES" at the beginning of this document.

In the past, EPA has published individual notices reflecting the status of section 5 filings received, pending or expired, as well as notices reflecting receipt of notices of commencement. In an effort to become more responsive to the regulated community, the users of this information and the general public, to comply with the requirements of TSCA, to conserve EPA resources, and to streamline the process and make it more timely, EPA is consolidating these separate notices into one comprehensive notice that will be issued at regular intervals.

In this notice, EPA shall provide a consolidated report in the **Federal Register** reflecting the dates PMN requests were received, the projected notice end date, the manufacturer or importer identity, to the extent that such information is not claimed as confidential and chemical identity, either specific or generic depending on whether chemical identity has been claimed confidential. Additionally, in this same report, EPA shall provide a listing of receipt of new notices of commencement.

EPA believes the new format of the notice will be easier to understand by the interested public, and provides the information that is of greatest interest to the public users. Certain information provided in the earlier notices will not be provided under the new format. The status reports of substances under review, potential production volume, and summaries of health and safety data will not be provided in the new notices.

EPA is not providing production volume information in the consolidated notice since such information is generally claimed as confidential. For this reason, there is no substantive loss to the public in not publishing the data. Health and safety data are not summarized in the notice since it is recognized as impossible, given the format of this notice, as well as the previous style of notices, to provide meaningful information on the subject. In those submissions where health and safety data were received by the Agency, a footnote is included by the Manufacturer/Importer identity to indicate its existence. As stated below, interested persons may contact EPA directly to secure information on such studies.

For persons who are interested in data not included in this notice, access can be secured at EPA Headquarters in the NCIC at the address provided above. Additionally, interested parties may telephone the Document Control Office at (202) 260–1532, TDD (202) 554–0551, for generic use information, health and safety data not claimed as confidential or status reports on section 5 filings.

Send all comments to the address listed above. All comments received will be reviewed and appropriate amendments will be made as deemed necessary.

This notice will identify: (I) PMNs received; and (II) Notices of Commencement to manufacture/import.

I. 43 Premanufacture Notices Received From: 02/14/99 to 02/28/99

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–99–0475	02/16/99		CBI	(G) Highly dispersive use	(G) Substituted alkenoic ester
P–99–0476	02/17/99	05/18/99	CBI	(G) Resin coating	(S) Amino Acrylate
P–99–0477	02/17/99	05/18/99	CBI	(S) Raw material used in the manufacture of photoresist	(G) Naphthaquinone diazide sulfonyl ester mixture of a polynuclear polyhydroxy phenol
P–99–0478	02/17/99	05/18/99	S. C. Johnson & Son, Inc.	(G) Open, non-dispersive use	(G) Acrylic emulsion polymer

I. 43 Premanufacture Notices Received From: 02/14/99 to 02/28/99—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–99–0483	02/16/99	05/17/99	CBI	(G) Contained, destructive use for specialty chemical production	(G) Alkyl borane
P–99–0488	02/17/99	05/18/99	The Dow Chemical Company	(S) Polymer binder for an industrial paper/paperboard coating formulation	(G) Modified styrene/butadiene/acrylate latex
P–99–0489	02/17/99	05/18/99	The Dow Chemical Company	(S) Polymer binder for an industrial paper/paperboard coating formulation	(G) Modified styrene/butadiene/acrylate latex
P–99–0490	02/17/99	05/18/99	The Dow Chemical Company	(S) Polymer binder for an industrial paper/paperboard coating formulation	(G) Modified styrene/butadiene/acrylate latex
P–99–0491	02/17/99	05/18/99	Intercontinental Polymers, Inc.	(S) Flame retardant polymeric fibers	(G) 1,4-benzenedicarboxylic acid, dimethyl ester, polymer with 1,2-ethanediol and hydroxyarylphosphinyl substituted alkanoic acid*
P–99–0492	02/17/99	05/18/99	CBI	(G) Coating component	(G) Alkyl diol diacetoacetate
P–99–0493	02/17/99	05/18/99	CBI	(G) Coating component	(G) Alkyl diol diacetoacetate
P–99–0494	02/17/99	05/18/99	CBI	(G) Coating component	(G) Alkyl diol diacetoacetate
P–99–0495	02/17/99	05/18/99	CBI	(G) Coating component	(G) Alkyl diol diacetoacetate
P–99–0496	02/17/99	05/18/99	CBI	(G) Coating component	(G) Alkyl triol triacetoacetate
P–99–0497	02/17/99	05/18/99	CBI	(G) Coating component	(G) Alkyl tetraol tetraacetoacetate
P–99–0498	02/18/99	05/19/99	CBI	(G) Component of coating with open use	(G) Cationic acrylic resin dispersion
P–99–0499	02/18/99	05/19/99	CBI	(G) Component of coating with open use	(G) Cationic acrylic resin dispersion
P–99–0500	02/17/99	05/18/99	S. C. Johnson & Son, Inc.	(G) Open, non-dispersive use	(G) Acrylic emulsion polymer
P–99–0501	02/18/99	05/19/99	CBI	(G) Component of coating with open use	(G) Blocked isocyanate
P–99–0502	02/18/99	05/19/99	CBI	(G) Component of coating with open use	(G) Blocked isocyanate
P–99–0503	02/18/99	05/19/99	CBI	(G) Component of coating with open use	(G) Blocked isocyanate
P–99–0504	02/18/99	05/19/99	CBI	(G) Component of coating with open use	(G) Blocked isocyanate
P–99–0505	02/18/99	05/19/99	CBI	(G) Component of coating with open use	(G) Blocked isocyanate
P–99–0506	02/18/99	05/19/99	CBI	(G) Component of coating with open use	(G) Blocked isocyanate
P–99–0507	02/18/99	05/19/99	Henkel Corporation	(G) Foam control agent	(G) Aliphatic polyoxyethylene ethers
P–99–0508	02/18/99	05/19/99	Henkel Corporation	(G) Foam control agent	(G) Aliphatic polyoxyethylene ethers
P–99–0509	02/19/99	05/20/99	CIBA Specialty Chemicals Div./Colors Div.	(S) Reactive dye for cellolose, scarlet; reactive dye for cellulose, black	(G) Naphthalenesulfonic acid, -amino-hydroxy-, coupled with diazotized 2-[(aminophenyl)sulfonyl]ethyl hydrogen sulfate and diazotized amino-[(2-(sulfoox-y)ethyl]sulfonyl]benzenesulfonic acid, potassium sodium salts
P–99–0510	02/22/99	05/23/99	CBI	(G) Polymerization inhibitor	(G) Steric hindered amine, n-oxide
P–99–0511	02/19/99	05/20/99	CBI	(G) Additive for coatings	(G) Mixed metal oxide
P–99–0512	02/22/99	05/23/99	Dainippon Ink and Chemicals, Inc.	(S) Anti-sagging agent	(G) Styrene-acrylic copolymer
P–99–0513	02/23/99	05/24/99	CBI	(G) Fiber Spinning	(G) Thermoplastics polyester polyurethane polymer
P–99–0514	02/23/99	05/24/99	CIBA Specialty Chemicals Corp. - Colors Div.	(G) Textile Dye	(G) 2-anthracenesulfonic acid, 4-[[4-(acetylamino)phenyl]amino]-1-amino-9,10-dihydro-9,10-dioxo-, compd. with 1,1′,1″-[nitrilotris(alkyloxy)tris[alkanol](1:1)*
P–99–0515	02/23/99	05/24/99	CBI	(G) Automotive interior parts	(G) Polyester polyurethane polymer
P–99–0516	02/22/99	05/23/99	CBI	(S) Laminating adhesive	(G) Polyether polyurethane
P–99–0517	02/24/99	05/25/99	CBI	(G) Waste water treatment aid	(G) Polyamines polymer with epichorohydrin
P–99–0518	02/24/99	05/25/99	CBI	(G) Coating component	(G) Esterified styrene/maleic anhydride polymer

Case No.

P–99–0519
P–99–0520
P–99–0521
P–99–0522
P–99–0531
P–99–0534
P–99–0535

Case No.

P–94–1098
P–95–2071
P–98–0174
P–98–0212
P–98–0452
P–98–0712
P–98–0761
P–98–0797
P–98–0908
P–98–0909
P–98–1018
P–98–1019
P–98–1173
P–98–1256
P–99–0035
P–99–0051
P–99–0054
P–99–0077
P–99–0080
P–99–0081
P–99–0082
P–99–0115

List of Sub

Environ
Premanufa

Dated: Ap

Oscar Mora

Acting Direc
Division, Of
Toxics.

[FR Doc. 99-

BILLING CODE

I. 43 Premanufacture Notices Received From: 02/14/99 to 02/28/99—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–99–0519	02/26/99	05/27/99	CBI	(S) Paraffin & asphaltene dissolving agent in tertiary oil recovery; gas compressor wash oil; carrier solvent for polyurethane foam synthesis	(G) 1,1-diphenylethane, reaction products, distillation residues
P–99–0520	02/25/99	05/26/99	Ashland Chemical Company	(G) Adhesive	(G) Copolymer of acrylic ester and acrylic acid
P–99–0521	02/25/99	05/26/99	Ashland Chemical Company	(G) Adhesive	(G) Copolymer of acrylic ester and acrylic acid
P–99–0522	02/26/99	05/27/99	CBI	(S) Paraffin & asphaltene dissolving agent in tertiary oil recovery; gas compressor wash oil; carrier solvent for polyurethane foam synthesis	(G) Diphenylalkane, distillation residues
P–99–0531	02/22/99	05/23/99	CBI	(S) Detergent fuel additive/destructive use	(G) Formaldehyde, reaction products with an alkylated phenol and an aliphatic amine
P–99–0534	02/26/99	05/27/99	CBI	(G) Lubricant additive	(G) Mixed thio acid amide molybdenum complexes
P–99–0535	02/26/99	05/27/99	3M Company	(G) Protective coating	(G) Acrylic uva polymer

II. 22 Notices of Commencement Received From: 02/14/99 to 02/28/99

Case No.	Received Date	Commencement/Import Date	Chemical
P–94–1098	02/22/99	02/10/99	(G) Rosin, maleated, polymer with an alkylphenol, carboxylic acids, formaldehyde and a polyol
P–95–2071	02/22/99	02/11/99	(S) Di-(4-methylbenzoyl)-peroxide
P–98–0174	02/19/99	02/08/99	(G) Phenyl azo acetate ester
P–98–0212	02/22/99	02/05/99	(G) Substituted phenyl bis (substituted aminophenyl) methylium salt
P–98–0452	02/22/99	02/11/99	(G) Mixed glycol polyester resin
P–98–0712	02/18/99	12/17/98	(G) Aromatic substituted, 1-[(2-methyl-1h-imidazol-1-yl)methyl]-
P–98–0761	02/22/99	01/22/99	(G) Polyurethane prepolymer
P–98–0797	02/17/99	02/08/99	(G) Dimethyl substituted heteromonocyclic amine
P–98–0908	02/24/99	01/22/99	(G) Blocked isocyanated (mdi)
P–98–0909	02/24/99	01/22/99	(G) Acrylic resin
P–98–1018	02/24/99	01/22/99	(G) Aminated epoxy resin
P–98–1019	02/24/99	01/22/99	(G) Aminated epoxy resin
P–98–1173	02/18/99	01/21/99	(G) Organic silicon compound
P–98–1256	02/16/99	01/22/99	(G) Perfluoroalkylethylacrylate copolymer
P–99–0035	02/22/99	01/19/99	(G) 22,7-naphthalenedisulfonic acid, ((substituted)imino)tris(5-hydrocy-6-((1-sulfo-2-naphthalenyl)azo)-, mixed salt*
P–99–0051	02/19/99	02/10/99	(G) Aromatic saturated copolyester
P–99–0054	02/24/99	02/20/99	(G) Aromatic saturated copolyester
P–99–0077	02/22/99	01/23/99	(G) Acrylic polymer
P–99–0080	02/19/99	02/10/99	(G) Aromatic saturated copolyester
P–99–0081	02/18/99	02/10/99	(G) Aromatic saturated copolyester
P–99–0082	02/19/99	02/10/99	(G) Aliphatic saturated copolyester
P–99–0115	02/22/99	02/10/99	(G) Aminoester of high-molecular weight carboxylic acid

List of Subjects

Environmental protection, Premanufacture notices.

Dated: April 9, 1999.

Oscar Morales,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 99–9608 Filed 4–15–99; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice of information collection to be submitted to OMB for review and approval under the Paperwork Reduction Act of 1995.

SUMMARY: In accordance with requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the FDIC hereby gives notice that it plans to submit to the Office of Management and Budget (OMB) a request for OMB review and approval of the information collection system described below.

Type of Review: Renewal of a currently approved collection.

Title: Certification of Compliance with Mandatory Bars to Employment.

Form Number: N/A.
OMB Number: 3064–0121.
Annual Burden:
Estimated annual number of respondents: 200
Estimated time per response: 20 minutes
Average annual burden hours: 67 hours.
Expiration Date of OMB Clearance: June 30, 1999.
OMB Reviewer: Alexander T. Hunt, (202) 395–7860, Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503.
FDIC Contact: Tamara R. Manly, (202) 898–7453, Office of the Executive Secretary, Room F–4058, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.
Comments: Comments on this collection of information are welcome and should be submitted on or before June 15, 1999 to both the OMB reviewer and the FDIC contact listed above.

ADDRESSES: Information about this submission, including copies of the proposed collection of information, may be obtained by calling or writing the FDIC contact listed above.

SUPPLEMENTARY INFORMATION: Prior to an offer of employment, job applicants to the FDIC must sign a certification that they have not been convicted of a felony or been in other circumstances that prohibit persons from becoming employed by or providing services to the FDIC.

Dated: April 12, 1999.
Federal Deposit Insurance Corporation.
Robert E. Feldman,
Executive Secretary.
[FR Doc. 99–9493 Filed 4–15–99; 8:45 am]
BILLING CODE 6714–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Sunshine Act Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 10:00 a.m. on Tuesday, April 20, 1999, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of minutes of previous Board of Directors' meetings.

Summary reports, status reports, and reports of actions taken pursuant to authority delegated by the Board of Directors.

Memorandum and resolution re: Final Rule—Part 347—International Banking.

Memorandum and resolution re: Amendment to Part 303—Filing Procedures and Delegations of Authority.

Memorandum re: Revision to Memorandum of Understanding between the FDIC and FICO Regarding the Collection of Assessments.

Discussion Agenda:

Memorandum re: BIF Assessment Rates for the Second Semiannual Assessment Period of 1999.

Memorandum re: SAIF Assessment Rates for the Second Semiannual Assessment Period of 1999.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550—17th Street, NW., Washington, DC.

The FDIC will provide attendees with auxiliary aids (e.g., sign language interpretation) required for this meeting. Those attendees needing such assistance should call (202) 416–2449 (Voice); (202) 416–2004 (TTY), to make necessary arrangements.

Requests for further information concerning the meeting may be directed to Mr. Robert E. Feldman, Executive Secretary of the Corporation, at (202) 898–6757.

Dated: April 13, 1999.
Federal Deposit Insurance Corporation.
Robert E. Feldman,
Executive Secretary.
[FR Doc. 99–9675 Filed 4–14–99; 11:31 am]
BILLING CODE 6714–01–M

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984.

Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, N.W., Room 962. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

Agreement No.: 202–008493–022
Title: Trans-Pacific American Flag Berth Operators Agreement
Parties:
American President Lines, Ltd.
Sea-Land Service, Inc.
Synopsis: The proposed Amendment modifies the Agreement's provisions in Articles 5, 13 and 14 relating to tariffs, independent action and service contracts with new requirements under the Ocean Shipping Reform Act of 1998. The Amendment further makes non-substantive clarifications and updates to the Agreement in Articles 3,6,8 15 and 16.

Agreement No.: 203–011465–007
Title: The South America Pacific Coast Rate Agreement
Parties:
P&O Nedlloyd B.V.
Mediterranean Shipping Company S.A.
Synopsis: The proposed amendment would conform the Agreement to the provisions of the Ocean Shipping Reform Act of 1988, and would alter the structure of the Agreement to reflect its status as a cooperative working agreement rather than a conference agreement. The parties have requested a shortened review period.

Agreement No.: 224–201043–001
Title: Oakland—FESCO Terminal Service Agreement
Parties:
Port of Oakland
FESCO Ocean Management, Ltd. d/b/a FESCO Australia
North America Line
Synopsis: The proposed amendment transfers the rights and obligations of the agreement to FESCO, a successor firm, and makes modifications to the agreement's compensation provisions. The agreement continues to run through December 31, 2003.

Agreement No.: 224–201073.
Title: New Orleans/Cosco—K-Line—Yang Ming Crane Rental Agreement.
Parties:
Board of Commissioners of the Port of New Orleans
Cosco North America, Inc.
"K" Line America, Inc.
Yang Ming Line
Synopsis: The proposed agreement provides for the rental of a crane and runs through December 31, 1999.

Agreement No.: 224–201074
Title: San Francisco—Maruba Marine Terminal Agreement
Parties:
San Francisco Port Commission
Maruba S.C.A.
Synopsis: The proposed Agreement provides for the non-exclusive right to use a municipal pier and runs through April 30, 2004.

Agreement No.: 224–201075
Title: Oakland—Maersk Pacific Marine Terminal Agreement

Parties:
City of Oakland, Board of Port Commissioners
Maersk Pacific, Ltd.
Synopsis: The proposed Agreement provides for the non-exclusive right to use a municipal pier and runs through March 31, 2003.

Dated: April 13, 1999.

By order of the Federal Maritime Commission.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 99–9573 Filed 4–15–99; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL MARITIME COMMISSION

Sunshine Act Meeting

TIME AND DATE: 10:00 a.m.–April 22, 1999.

PLACE: 800 North Capitol Street, N.W., First Floor Hearing Room, Washington, DC.

MATTER(S) TO BE CONSIDERED:

1. Docket No. 98–28—Licensing, Financial Responsibility Requirements and General Duties for Ocean Transportation Intermediaries—Consideration of Comments.
2. Docket No. 98–29—Carrier Automated Tariff Systems—Consideration of Comments.
3. Docket No. 98–30—Service Contracts Subject to the Shipping Act of 1984—Consideration of Comments.

CONTACT PERSON FOR MORE INFORMATION: Bryant L. VanBrakle, Secretary, (202) 523–5727.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 99–9676 Filed 4–14–99; 11:33 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 10:00 a.m., Wednesday, April 21, 1999.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any matters carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Lynn S. Fox, Assistant to the Board; 202–452–3204.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at http://www.federalreserve.gov for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: April 14, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–9660 Filed 4–14–99; 10:08 am]

BILLING CODE 6210–01–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0094]

Submission for OMB Review; Comment Request Entitled Debarment and Suspension

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Debarment and Suspension. A request for public comments was published at 64 FR 6635, February 10, 1999. No comments were received.

DATES: Comments may be submitted on or before May 17, 1999.

ADDRESSES: Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden should be submitted to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (MVRS), 1800 F Street, NW, Room 4035, Washington, DC 20405. Please cite OMB Control No. 9000–0094, Debarment and Suspension, in all correspondence.

FOR FURTHER INFORMATION CONTACT: Paul Linfield, Federal Acquisition Policy Division, GSA (202) 501–1757.

SUPPLEMENTARY INFORMATION:

A. Purpose

The FAR requires contracts to be awarded to only those contractors determined to be responsible. Instances where a firm or its principals have been indicted, convicted, suspended, proposed for debarment, debarred, or had a contract terminated for default are critical factors to be considered by the contracting officer in making a responsibility determination. This certification requires the disclosure of this information.

B. Annual Reporting Burden

Public reporting burden for this collection of information is estimated to average *30* minutes per subcontractor and 5 minutes per prime contractor per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The annual reporting burden is estimated as follows: Respondents, *1,100,000*; responses per respondent, *1*; total annual responses, *1,100,000*; preparation hours per response, *30* minutes/subcontractor, *5* minutes/prime contractor; and total response burden hours, *91,667*.

Obtaining Copies of Proposals

Requester may obtain a copy of the justification from the General Services Administration, FAR Secretariat (MVRS), Room 4035, Washington, DC 20405, telephone (202) 208–7312. Please cite OMB Control No. 9000–0094, Debarment and Suspension, in all correspondence.

Dated: April 13, 1999.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

[FR Doc. 99–9588 Filed 4–15–99; 8:45 am]

BILLING CODE 6820–34–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0074]

Submission for OMB Review; Comment Request Entitled Limitation of Costs/Funds

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Limitation of Costs/Funds. A request for public comments was published at 64 FR 6634, February 10, 1999. No comments were received.

DATES: Comments may be submitted on or before May 17, 1999.

ADDRESSES: Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, should be submitted to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (MVRS), 1800 F Street, NW, Room 4035, Washington, DC 20405. Please cite OMB Control No. 9000–0074, Limitation of Costs/Funds, in all correspondence.

FOR FURTHER INFORMATION CONTACT: Jeremy F. Olson, Federal Acquisition Policy Division, GSA (202) 501–3221.

SUPPLEMENTARY INFORMATION:

A. Purpose

Firms performing under Federal cost-reimbursement contracts are required to notify the contracting officer in writing whenever they have reason to believe—

(1) The costs the contractors expect to incur under the contracts in the next 60 days, when added to all costs previously incurred, will exceed 75 percent of the estimated cost of the contracts; or

(2) The total cost for the performance of the contracts will be greater or substantially less than estimated. As a part of the notification, the contractors must provide a revised estimate of total cost.

B. Annual Reporting Burden

Public reporting burden for this collection of information is estimated to average *30* minutes per completion, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The annual reporting burden is estimated as follows: Respondents, *50,000* responses per respondent, *1*; total annual responses, *50,000*; preparation hours per response, *.5*; and total response burden hours, *25,000*.

Obtaining Copies of Proposals

Requester may obtain a copy of the justification from the General Services Administration, FAR Secretariat (MVRS), Room 4035, 1800 F Street, NW, Washington, DC 20405, telephone (202) 208–7312. Please cite OMB Control No. 9000–0074, Limitation of Costs/Funds, in all correspondence.

Dated: April 13, 1999.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

[FR Doc. 99–9589 Filed 4–15–99; 8:45 am]

BILLING CODE 6820–34–P

DEPARTMENT OF DEFENSE

General Services Administration

National Aeronautics and Space Administration

[OMB Control No. 9000–0073]

Submission for OMB Review; Comment Request Entitled Advance Payments

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Advance Payments. A request for public comments was published at 64 FR 6634, February 10, 1999. No comments were received.

DATES: Comments may be submitted on or before May 17, 1999.

ADDRESSES: Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, should be submitted to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (MVRS), 1800 F Street, NW, Room 4035, Washington, DC 20405. Please cite OMB Control No. 9000–0073, Advance Payments, in all correspondence.

FOR FURTHER INFORMATION CONTACT: Jeremy F. Olson, Federal Acquisition Policy Division, GSA (202) 501–3221.

SUPPLEMENTARY INFORMATION:

A. Purpose

Advance payments may be authorized under Federal contracts and subcontracts. Advance payments are the least preferred method of contract financing and require special determinations by the agency head or designee. Specific financial information about the contractor is required before such payments can be authorized (see FAR 32.4 and 52.232–12). The information is used to determine if advance payments should be provided to the contractor.

B. Annual Reporting Burden

Public reporting burden for this collection of information is estimated to average *1* hour per completion, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The annual reporting burden is estimated as follows: Respondents, *500;* responses per respondent, *1;* total annual responses, *500;* preparation hours per response, *1;* and total response burden hours, *500.*

Obtaining Copies of Proposals

Requester may obtain a copy of the justification from the General Services Administration, FAR Secretariat (MVRS), Room 4035, 1800 F Street, NW, Washington, DC 20405, telephone (202) 208–7312. Please cite OMB Control No. 9000–0073, Advance Payments, in all correspondence.

Dated: April 13, 1999.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

[FR Doc. 99–9590 Filed 4–15–99; 8:45 am]

BILLING CODE 6820–34–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Council for the Elimination of Tuberculosis: Notice of Charter Renewal

This gives notice under the Federal Advisory Committee Act (Pub. L. 92–463) of October 6, 1972, that the charter for the Advisory Council for the Elimination of Tuberculosis (ACET) of the Centers for Disease Control and Prevention, Department of Health and Human Services, has been renewed for a 2-year period, through March 15, 2001.

For further information, contact Ronald O. Valdiserri, M.D., Deputy Director, National Center for HIV, STD, and TB Prevention, CDC, 1600 Clifton Road, NE, M/S E–07, Atlanta, Georgia 30333, telephone 404/639–8002.

The Director, Management Analysis and Services Office has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: April 12, 1999.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 99–9522 Filed 4–15–99; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Citizens Advisory Committee on Public Health Service Activities and Research at Department of Energy (DOE) Sites: Savannah River Site Health Effects Subcommittee (SRSHES)

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC), and the Agency for Toxic Substances and Disease Registry (ATSDR) announce the following meeting.

Name: Citizens Advisory Committee on Public Health Service Activities and Research at DOE Sites: Savannah River Site Health Effects Subcommittee (SRSHES).

Times and Dates: 8:30 a.m.—5 p.m., May 13, 1999., 8:30 a.m.—12 noon, May 14, 1999.

Place: The Conference Center at the University of South Carolina Aiken, 471 University Parkway, Aiken, SC 29801, telephone 803/641–3587, fax 803/641–3580.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 100 people.

Background: Under a Memorandum of Understanding (MOU) signed in December 1990 with DOE and replaced by an MOU signed in 1996, the Department of Health and Human Services (HHS) was given the responsibility and resources for conducting analytic epidemiologic investigations of residents of communities in the vicinity of DOE facilities, workers at DOE facilities, and other persons potentially exposed to radiation or to potential hazards from non-nuclear energy production use. HHS delegated program responsibility to CDC.

In addition, a memo was signed in October 1990 and renewed in November 1992 between ATSDR and DOE. The MOU delineates the responsibilities and procedures for ATSDR's public health activities at DOE sites required under sections 104, 105, 107, and 120 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or "Superfund"). These activities include health consultations and public health assessments at DOE sites listed on, or proposed for, the Superfund National Priorities List and at sites that are the subject of petitions from the public; and other health-related activities such as epidemiologic studies, health surveillance, exposure and disease registries, health education, substance-specific applied research, emergency response, and preparation of toxicological profiles.

Purpose: This subcommittee is charged with providing advice and recommendations to the Director, CDC, and the Administrator, ATSDR, regarding community, American Indian Tribes, and labor concerns pertaining to CDC's and ATSDR's public health activities and research at this DOE site. The purpose of this meeting is to provide a forum for community, American Indian Tribal, and labor interaction and serve as a vehicle for communities, American Indian Tribes, and labor to express concerns and provide advice to CDC and ATSDR.

Matters to be Discussed: Agenda items include presentations from the National Center for Environmental Health (NCEH), the National Institute for Occupational Safety and Health (NIOSH), and ATSDR on updates regarding the progress of current studies, and a discussion from the three (3) SRSHES Phase II Draft report review groups.

All agenda items are subject to change as priorities dictate.

CONTACT PERSONS FOR ADDITIONAL INFORMATION: Paul G. Renard, Radiation Studies Branch, Division of Environmental Hazards and Health Effects, NCEH, CDC, 4770 Buford Highway, NE, M/S (F–35), Atlanta, Georgia 30341–3724, telephone 770–488–7040, fax 770–488–7044.

The Director, Management Analysis and Services Office has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and ATSDR.

Dated: April 12, 1999.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 99–9525 Filed 4–15–99; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Availability of Additional HRSA Competitive Grants

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice of availability of funds.

SUMMARY: The Health Resources and Services Administration (HRSA) announces the availability of funds for several HRSA programs. This Notice lists several programs that are announcing competitions for fiscal year (FY) 1999 funds but were not published in the fall 1998 HRSA Preview.

This Notice includes funding for HRSA discretionary authorities and programs as follows: (1) Special Projects of National Significance, HIV/AIDS Bureau; (2) Extramural Support Program for Projects to Increase Organ and Tissue Donation, HIV/AIDS Bureau; (3) Cooperative Agreement for Emergency Medical Services for Children and Quality Improvement Center, Maternal and Child Health Bureau; and (4) Basic Nurse Education and Practice: Baccalaureate Nursing Education Using Distance Learning Methodologies for Rural RNs, Bureau of Health Professions. These programs were not

published in the fall 1998 HRSA Preview and will only appear in the **Federal Register** and on the HRSA Home Page at: http://www.hrsa.dhhs.gov/. The next edition of the HRSA Preview is scheduled to be published by early summer 1999. The purpose of the HRSA Preview is to provide the general public with a single source of program and application information related to the Agency's competitive grant reviews. The HRSA Preview is designed to replace multiple **Federal Register** notices which traditionally advertised the availability of HRSA's discretionary funds for its various programs.

Dated: April 9, 1999.

Claude Earl Fox,

Administrator.

How To Obtain Further Information

You can download this Notice in Adobe Acrobat format (.pdf) from HRSA's web site at: http://www.hrsa.dhhs.gov/.

To Obtain an Application Kit

It is recommended that you read the introductory materials, terminology section, and individual program category descriptions to fully assess your eligibility for grants before requesting kits. As a general rule, no more than one kit per category will be mailed to applicants. Upon review of the program descriptions, please determine which category or categories of application kit(s) you wish to receive and contact the 1–888–333–HRSA (4772) number to register on the specific mailing list. Application kits are generally available 60 days prior to application deadline. If kits are already available, they will be mailed immediately.

Also, you can register on-line to be sent specific grant application materials by following the instructions on the web page or accessing http://www.hrsa.gov/g__order3.htm directly. Your mailing information will be added to our database and material will be sent to you as it becomes available.

Grant Terminology

Application Deadlines

Applications will be considered "on time" if they are either received on or before the established deadline date or postmarked on or before the deadline date given in the program announcement or in the application kit materials.

Authorizations

The citations of provisions of the laws authorizing the various programs are provided immediately preceding groupings of program categories.

CFDA Number

The Catalog of Federal Domestic Assistance (CFDA) is a Government-wide compendium of Federal programs, projects, services, and activities which provide assistance. Programs listed therein are given a CFDA Number.

Cooperative Agreement

A financial assistance mechanism used when substantial Federal programmatic involvement, with the recipient during performance, is anticipated by the Agency.

Eligibility

Authorizing legislation and programmatic regulations specify eligibility for individual grant programs. In general, assistance is provided to nonprofit organizations and institutions, State and local governments and their agencies, and occasionally to individuals. For-profit organizations are eligible to receive awards under financial assistance programs unless specifically excluded by legislation.

Estimated Amount of Competition

The funding level listed is provided for planning purposes and is subject to the availability of funds.

Funding Priorities and/or Preferences

Special priorities or preferences are those which the individual programs have identified for the funding cycle. Some programs give preference to organizations which have specific capabilities such as telemedicine networking or established relationships with managed care organizations. Preference also may be given to achieve an equitable geographic distribution and other reasons to increase the effectiveness of the programs.

Key Offices

The Grants Management Office serves as the focal point for business matters. The appropriate program office contact is provided for questions specific to the programs or of a technical nature.

Matching Requirements

Several HRSA programs require a matching amount, or percentage of the total project support, to come from sources other than Federal funds. Matching requirements are generally mandated in the authorizing legislation for specific categories. Also, matching requirements may be administratively required by the awarding office. Such requirements are set forth in the application kit.

Project Period

The total time for which support of a discretionary project has been programmatically approved. Continuation of any project beyond the budget period is subject to satisfactory performance, availability of funds and program priorities.

Review Criteria

The following are generic review criteria applicable to HRSA programs:

- That the estimated cost to the Government of the project is reasonable considering the anticipated results.
- That project personnel or prospective fellows are well qualified by training and/or experience for the support sought, and the applicant organization or the organization to provide training to a fellow has adequate facilities and manpower.
- That, insofar as practical, the proposed activities (scientific or other), if well executed, are capable of attaining project objectives.
- That the project objectives are capable of achieving the specific program objectives defined in the program announcement and the proposed results are measurable.
- That the method for evaluating proposed results includes criteria for determining the extent to which the program has achieved its stated objectives and the extent to which the accomplishment of objectives can be attributed to the program.
- That, in so far as practical, the proposed activities, when accomplished, are replicable, national in scope and include plans for broad dissemination.

The specific review criteria used to review and rank applications are included in the individual guidance material provided with the application kits. Applicants should pay strict attention to addressing these criteria as they are the basis upon which their applications will be judged.

Technical Assistance

A contact person is listed for each program and his/her e-mail address and telephone number provided. Some programs have scheduled workshops and conference calls. If you have questions concerning individual programs or the availability of technical assistance, please contact the person listed. Also check your application materials and the HRSA web site http://www.hrsa.dhhs.gov/ for the latest technical assistance information.

Frequently Asked Questions

1. HRSA lists many telephone numbers and e-mail addresses. Who do I phone or e-mail and when?

Phone 1–888–333–HRSA (4772) to register for application kits. It will be helpful to the information specialist if you have the CFDA Number and title of the program handy for reference.

If, before you register, you want to know more about the program, an e-mail/phone contact is listed. This contact can provide information concerning the specific program's purpose, scope and goals, and eligibility criteria. Usually, you will be encouraged to request the application kit so that you will have clear, comprehensive and accurate information available to you. The application kit lists telephone numbers for a program expert and a grants management specialist who will provide technical assistance concerning your specific program, if you are unable to find the information within the materials provided.

2. The dates listed in the **Federal Register** Notice and the dates in the application kit do not agree. How do I know which is correct?

First, register at 1–888–333–HRSA (4772) for *each* program that you are interested in as shown in the Notice.

Notice dates for application kit availability and application receipt deadline are based upon the best known information at the time of publication. Occasionally, the grant cycle does not begin as projected and dates must be adjusted. The deadline date stated in your application kit is correct. If the application kit has been made available and subsequently the date changes, notification of the change will be mailed to known recipients of the application kit. Therefore, if you are registered at 1–888–333–HRSA (4772), you will receive the most current information.

3. Are programs announced in the **Federal Register** Notice ever canceled?

Infrequently, programs announced may be withdrawn from competition. If this occurs, a cancellation notice will be provided at the HRSA Homepage http://www.hrsa.dhhs.gov/.

If you still have unanswered questions, please contact Paulette Fagan of the Grants Policy Branch at 301–443–5082 (pfagan@hrsa.gov).

HIV/AIDS Bureau

Grants Management Office: 1–301–443–2280.

Special Projects of National Significance (SPNS).

Authorization

Section 2691 of the Public Health Service Act 42 U.S.C. 300ff–10

Purpose

The purpose of this program is to contribute to the advancement of knowledge and skills in the delivery of health and support services to underserved populations diagnosed with human immunodeficiency virus (HIV) infection. Specifically, there are three SPNS Program objectives: (1) to assess the effectiveness of particular models of care; (2) to support innovative program design; and (3) to promote replication of effective models. SPNS grants are limited to the demonstration and assessment of innovative and potentially replicable HIV service delivery models. For purposes of this announcement, models seeking SPNS support must address one of the following four categories: (1) assuring appropriate end-of-life care for individuals dying from HIV/AIDS who experience difficulty accessing health care; (2) assessment of the effectiveness of existing programs to promote adherence to anti-retroviral therapies; (3) evaluation and/or program support centers for: (a) services to people with HIV in correctional settings; (b) establishing or assessing HIV care networks; (c) assessing innovation in serving substance abusers; or (d) evaluating and supporting end-of-life care and adherence initiatives; or (4) demonstration projects to increase enrollment in, continuity and quality of HIV primary care for migrant and various border populations.

Eligibility

Public and nonprofit private entities are eligible to apply for these grants. Applicants are encouraged to submit a brief letter of intent, by May 1, 1999, to: Special Projects of National Significance, ATTN: 1999 New Competitive Initiative, Room 7A–08 Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

Funding Priorities and/or Preferences

Funds should be used to create and/or evaluate models of care that would likely not exist nor be evaluated without SPNS support, or that would extend the care model to previously underserved or unserved populations defined either geographically or demographically.

Review Criteria

Final criteria are included in the application kit.

Estimated Amount of This Competition
$9,000,000

Estimated Number of Awards

Category 1: 3–5
Category 2: Up to 10
Category 3: 6
3.1 Services to people with HIV in correctional settings—1
3.2 Establishing or assessing HIV care networks—2
—assist community-based providers—(1)
—conduct managed care research—(1)
3.3 Assessing innovation in serving substance abusers—1
3.4 Evaluating and supporting end-of-life care and adherence initiatives—2
—end of life care project—(1)
—adherence assessment—(1)
Category 4: 4

Estimated Project Period

Category 1: 3 years
Category 2: 3 years
Category 3: 2–3 years
Category 4: 3–5 years

Application Availability: 04/05/1999

To Obtain This Application Kit

CFDA Number 93.928
Contact: 1–888–333–HRSA (4772)
Application Deadline: 06/01/1999
Projected Award Date: 10/01/1999
Contact person: Steve Young, syoung@hrsa.gov, 1–301–443–6560

Extramural Support Program for Projects to Increase Organ and Tissue Donation

Authorization

Section 371(a)(3) of the Public Health Service Act, 42 U.S.C. 273.

Please note that a separate **Federal Register** Notice, dated April 5, 1999 provided a 30 day comment period regarding the project phases eligible for program support (pilot tests and replications), performance measures, funding priorities, and review criteria. Comments will be considered for the purpose of writing the detailed guidance to applicants. Therefore, the guidance may indicate changes in some of the following information.

Purpose

This is a proposed solicitation for cooperative agreements to increase organ and tissue donation. The goals of this peer reviewed, competitive extramural support program are to implement, evaluate, and disseminate model interventions with the greatest potential for yielding a verifiable and demonstrable impact on organ donation and which are replicable, transferable, and feasible in practice. Projects funded under this program are expected to have performance measures addressing one or more of the following outcomes: organ procurement rates; consent rates and organ donation; and number and prevalence of family organ donation

discussions. Applications may propose either a Phase 1 study which pilot tests the efficacy of promising interventions to increase organ donation, or Phase 2 study which focuses on implementing and testing in multiple sites interventions which already have proved effective in pilot studies. Phase 2 projects also can include dissemination. All projects must have rigorous evaluation components.

Eligibility

Organ procurement organizations and other private not-for-profit organizations. An applicant must be part of a consortium of at least two organizations relevant to the project. Applications from single entities will not be considered.

Funding Priorities and/or Preferences

Two funding priorities are proposed, one for applications that are most likely to have a demonstrable impact on consent rates, and another for projects that address variations in consent by race and ethnicity, which may include an examination of differences in donation/transplantation knowledge, attitudes, and experiences among one or more minority groups.

Review Criteria

Final criteria are included in the application kit.

Estimated Amount of This Competition: $5,000,000.

Estimated Number of Awards: 15–20.

Estimated Project Period: Up to 3 years.

Application Availability: 05/10/1999.

To Obtain This Application Kit: CFDA Number 93.134.

Contact: 1–888–333–HRSA (4772).

Application Deadline: 07/12/1999.

Projected Award Date: 09/30/1999.

Contact Person: Dr. D.W. Chen, dchen@hrsa.gov, 1–301–443–7577.

Maternal and Child Health Bureau

Grants Management Office: 301–443–1440.

Cooperative Agreement for Emergency Medical Services for Children (EMSC) Data and Quality Improvement Center

Authorization

Section 1910 of the Public Health Service Act, as amended, Public Law 102–410, 42 U.S.C. 300w–9.

Purpose

The purpose of the EMSC Data and Quality Improvement Center is to enhance management information and quality improvement (QI) capabilities of State EMS offices, with a special focus on pediatric issues. Proposals are sought which will assist in the application of data to QI and in collaborative efforts to collect and analyze State level data. Federal involvement will include planning, guidance, coordination and participation in workshops.

Eligibility

States and Accredited Schools of Medicine are eligible to apply for this program.

Funding Priorities and/or Preferences

None.

Review Criteria

Final criteria are included in the application kit.

Estimated Amount of This Competition: $400,000.

Estimated Number of Awards: 1.

Estimated Project Period: 3 years.

Application Availability: 04/01/1999.

To Obtain This Application Kit:

CFDA Number: 93.127E.

Contact: 1–888–333–HRSA (4772).

Application Deadline: 06/01/1999.

Projected Award Date: 08/01/1999.

Contact Person: Maria T. Baldi, mbaldi@hrsa.gov, 1–301–443–6192.

Bureau of Health Professions

Grants Management Officer: 1–301–443–6880.

Basic Nurse Education and Practice: Baccalaureate Nursing Education Using Distance Learning Methodologies for Rural RNs.

Authorization

Section 831 of the Public Health Service Act, 42 U.S.C. 297–1.

Purpose

The purpose of this special request for applications is to expedite and facilitate the baccalaureate education of registered nurses from rural areas using distance learning methodologies. The legislative priority for which funds may be awarded under a cooperative agreement is for "expanding the enrollment in baccalaureate nursing programs." The intent is to demonstrate that quality curricula developed for delivery by distance learning methodologies, which are primarily computer-based, will facilitate RN to BSN education for nurses living in rural areas with underserved populations.

Eligibility

Nursing schools with an accredited baccalaureate program.

Funding Priorities and/or Preferences

The purpose of this request for applications is to strengthen capacity for basic nurse education and practice in rural areas by expanding the enrollment of rural registered nurses in baccalaureate nursing programs using distance learning technologies. As such, it addresses the statutory funding preference for substantially benefiting rural populations.

Review Criteria

Final criteria are included in the application kit.

Estimated Amount of this Competition: $800,000.

Estimated Number of Awards: 4.

Estimated Project Period: 5 years.

Application Availability: 04/09/1999.

To Obtain This Application Kit:

CFDA Number: 93.359.

Contact: 1–888–333–HRSA (4772).

Application Deadline: 05/28/99.

Projected Award Date: 08/31/1999.

Contact Person: Carole A. Gassert, cgassert@hrsa.gov, 1–301–443–5786.

[FR Doc. 99–9531 Filed 4–15–99; 8:45 am]
BILLING CODE 4160–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Data Collection; Comment Request; Prostate, Lung, Colorectal and Ovarian Cancer Screening Trial

SUMMARY: In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, for opportunity for public comment on proposed data collection projects, the National Cancer Institute (NCI), the National Institutes of Health (NIH) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

Proposed Collection

Title: Prostate, Lung, Colorectal and Ovarian Cancer Screening Trial.

Type of Information Collection Request: EXTENSION, OMB control number 0925–0407, expiration date September 30, 1999.

Need and Use of Information Collection: This trial is designed to determine if screening for prostate, lung, colorectal and ovarian cancer can reduce mortality from these cancers which currently cause an estimated 251,000 deaths annually in the U.S. The design is a two-armed randomized trial of men and women 55 to 74 at entry. The anticipated total sample size, after 6½ years of recruitment, is projected to be 148,000. The primary endpoint of the trial is cancer-specific mortality for each of the four cancer sites (prostate, lung,

colorectal, and ovary). In addition, cancer incidence, stage shift, and case survival are to be monitored to help understand and explain results. Biologic prognostic characteristics of the cancers will be measured and correlated with mortality to determine the mortality predictive value of these intermediate endpoints. Basic demographic data, risk factor data for the four cancer sites and screening history data, as collected from all subjects at baseline, will be used to assure comparability between the screening and control groups and make appropriate adjustments in analysis. Further, demographic and risk factor information will be used to analyze the differential effectiveness of screening in high versus low risk individuals.

Frequency of Response: On occasion.

Affected Public: Individuals or households.

Type of Respondents: Adult men and women.

The annual reporting burden is as follows:

Estimated Number of Respondents: 141,250;

Estimated Number of Responses Per Respondent: 1.5;

Average Burden Hours Per Response: .42; and

Estimated Total Annual Burden Hours Requested: 91,288.

The annualized cost to respondents is estimated at: $912,884. There are no Capital Costs to report. There are no Operating or Maintenance Costs to report.

Request for Comments

Written comments and/or suggestions from the public and affected agencies should address one or more of the following points: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact Dr. John Gohagan, Chief, Early Detection Branch, EDCOP, National Cancer Institute, NIH, EPN Building, Room 330, 6130 Executive Boulevard, Bethesda, MD 20892–7346, or call non-toll-free number (301) 496–3982 or E-mail your request, including your address to: gohaganj@dcpcepn.nic.nih.gov

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received on or before June 15, 1999.

Dated: April 8, 1999.

Reesa Nichols,

OMB Clearance Liaison.

[FR Doc. 99–9487 Filed 4–15–99; 8:45 am]

BILLING CODE 4140–10–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Nursing Research; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Advisory Council for Nursing Research.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Council for Nursing Research.

Date: May 18–19, 1999.

Open: May 18, 1999, 1:30 PM to Recess.

Agenda: For discussion of program policies and issues.

Place: National Institutes of Health, 9000 Rockville Pike, Building 31, Conference Room 6, Bethesda, MD 20892.

Closed: May 19, 1999, 9:00 AM to Adjournment.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 9000 Rockville Pike, Building 31, Conference Room 6, Bethesda, MD 20892.

Contact Person: Mary Leveck, PHD, Associate Director for Scientific Programs, NINR, NIH, Building 31, Room 5B05, Bethesda, MD 20892, (301) 594–5963.

(Catalogue of Federal Domestic Assistance Program No. 93.361, Nursing Research, National Institutes of Health, HHS)

Dated: April 12, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–9483 Filed 4–15–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: April 14, 1999.

Time: 2:00 PM to 3:00 PM.

Agenda: To review and evaluate grant applications.

Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Sheila O'Malley, M.A., Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6138, MSC 9606, Bethesda, MD 20892–9606, Bethesda, MD 20892–9606, 301–443–6470.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientists Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: April 9, 1999.
LaVerne Y. Stringfield,
Committee Management Officer, NIH.
[FR Doc. 99–9486 Filed 4–15–99; 8:45 am]
BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: April 16, 1999.
Time: 11:00 AM to 1:00 PM.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Marcelina B. Powers, DVM, MS, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4152, MSC 7804, Bethesda, MD 20892, (301) 435–1720.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel ZRG1–MEP–02M.
Date: April 20, 1999.
Time: 2:00 PM to 4:00 PM.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Marcelina B. Powers, DVM, MS, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4152, MSC 7804, Bethesda, MD 20892, (301) 435–1720.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel ZRG1–BM–2(8).
Date: April 21, 1999.
Time: 10:00 AM to11:30 AM.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: William C. Branche, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4182, MSC 7808, Bethesda, MD 20892, (301) 435–1148.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: April 21, 1999.
Time: 10:30 AM to 12:30 PM.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Betty Hayden, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4206, MSC 7812, Bethesda, MD 20892, (301) 435–1223, haydenb@csr.nih.gov.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: April 21, 1999.
Time: 1:00 PM to 3:00 PM.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Martin Slater, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4184, MSC 7808, Bethesda, MD 20892, (301) 435–1149.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel ZRG1–MEP–03M.
Date: April 21, 1999.
Time: 2:00 PM to 4:00 PM.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Marcelina B. Powers, DVM, MS, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4152, MSC 7804, Bethesda, MD 20892, (301) 435–1720.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: April 21, 1999.
Time: 2:00 PM to 4:00 PM.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Anita Miller Sostek, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3176, MSC 7848, Bethesda MD 20892, (301) 435–0910.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: April 21, 1999.
Time: 2:00 PM to 5:00 PM.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Mary Sue Krause, MEDS, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3168, MSC 7848, Bethesda, MD 20892, (301) 435–0681.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: April 22, 1999.
Time: 8:30 AM to 4:00 PM.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn, 2 Montgomery Village Avenue, Gaithersburg, MD 20879.
Contact Person: Abubakar A. Shaikh, DVM, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6166, MSC 7892, Bethesda, MD 20892, (301) 435–1042.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: April 22, 1999.
Time: 1:00 PM to 3:30 PM.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Alec S. Liacouras, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5154, MSC 7842, Bethesda, MD 20892, (301) 435–1740.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel ZRG1–MEP–01M.
Date: April 22, 1999.
Time: 2:00 PM to 4:00 PM.
Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Marcelina B. Powers, DVM, MS, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4152, MSC 7804, Bethesda, MD 20892, (301) 435–1720.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: April 22, 1999.

Time: 2:00 PM to 4:00 PM.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact: Patricia H. Hand, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4140, MSC 7804, Bethesda, MD 20892, (301) 435–1767.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: April 23, 1999..

Time: 8:00AM to 5:00 PM.

Agenda: To review and evaluate grant applications.

Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20853.

Contact Person: Carole L. Jelsema, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5222, MSC 7850, Bethesda, MD 20892, (301) 435–1249, jelsemac@drg.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: April 23, 1999.

Time: 10:00 AM to 12:00 PM.

Agenda: To review and evaluate grant applications..

Place: NIH, Rockledge 2 Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: J Terrell Hoffeld, DDS, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4116, MSC 7816, Bethesda, MD 20892, (301) 435–1781.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: April 23, 1999.

Time: 2:00 PM to 4:00 PM.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact: Patricia H. Hand, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4140, MSC 7804, Bethesda, MD 20892, (301) 435–1767.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333. 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878. 93.892, 93.893, National Institutes of Health, HHS)

Dated: April 9, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–9484 Filed 4–15–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: April 13. 1999.

Time: 1:00 PM to 3:00 PM.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Timothy J. Henry, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4180, MSC 7808, Bethesda, MD 20892, (301) 435–1147.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: April 14, 1999.

Time: 10:00 AM to 12:00 PM.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: J. Scott Osborne, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4114, MSC 7816, Bethesda, MD 20892, (301) 435–1782.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: April 14, 1999.

Time: 2:00 PM to 4:00 PM.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: J. Scott Osborne, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4114, MSC 7816, Bethesda, MD 20892, (301) 435–1782.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: April 16, 1999.

Time: 4:30 PM to 5:30 PM.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Timothy J. Henry, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4180, MSC 7808, Bethesda, MD 20892 (301) 435–1147.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.893, National Institutes of Health, HHS)

Dated: April 9, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–9485 Filed 4–15–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

National Toxicology Program; National Institute of Environmental Health Sciences; Center for the Evaluation of Risks to Human Reproduction Review of Phthalates; Comment Request

NTP Center for the Evaluation of Risks to Human Reproduction announces an upcoming review of phthalates, and solicits public input on

phthalates as well as nominations for future evaluations.

Background

The National Toxicology Program (NTP) and the National Institute of Environmental Health Sciences have established the NTP Center for the Evaluation of Risks to Human Reproduction (63 FR 68782, No 239). The purpose of the Center is to provide timely and unbiased, scientifically sound evaluations of human and experimental evidence for adverse effects on reproduction, including development, caused by agents to which humans may be exposed. The goals of the individual assessments are to (1) Interpret for and provide to the general public information about the strength of scientific evidence that a given exposure or exposure circumstance poses a hazard to reproduction and the health and welfare of children: (2) provide regulatory agencies with objective and scientifically credible assessments of reproductive/development health effects associated with exposure to specific chemicals or classes of chemicals, including descriptions of any uncertainties associated with the assessment of risks, and (3) identify knowledge gaps to help establish research and testing priorities.

Review of Phthalates

Several phthalate esters were selected for the initial evaluation by the Center. These were selected based on their high production volume, extent of human exposures, use in children's products, or published evidence of reproductive or developmental toxicity. The seven phthalates to be evaluated are listed below with their chemical Abstract Service registry numbers.

butyl benzyl phthalate (85–68–7)
di(2-ethylhexyl) phthalate (117–81–7)
di-isodecyl phthalate (26761–40–0)
di-isononyl phthalate (28553–12–0)
di-n-butyl phthalate (84–74–2)
di-n-butyl phthalate (84–75–3)
di-n-octyl phthalate (117–84–0)

It is anticipated that the evaluation of these chemicals will be conducted during August 1999 in the Washington, DC area. An expert panel of 12–15 scientists selected for their expertise in various aspects of reproductive toxicology and other relevant areas will conduct the review. The review will be open to the public with an opportunity scheduled for oral public comment. For further information regarding the review, including the time and place, please contact: Dr. John Moore, CERHR, 1800 Diagonal Road, Suite 500, Alexandria, VA 22314–2808, Phone: (703) 838–9440.

Request for Public Comment on Phthalates

The Center invites public comment on the phthalates listed above, including toxicology information from completed or ongoing studies, and information on planned studies, as well as current production data, human exposure information, use patterns, and environmental occurrence. Written comments received by June 30 will be considered in the review. Comments should be forwarded to CERHR at the above address. an opportunity for oral public comments to the panel will be provided at the review meeting itself.

Request for Nominations for Future Reviews

Nominations of chemicals for future evaluations are also encouraged. Any individual or organization may nominate. Nominations should include the chemical name, Chemical Abstract Service registry number (if known), reason for the nomination, and references or articles on the chemical, when possible. The nominator's name, address, telephone number and e-mail address should be included with the nomination.

Nominations can be made through the Center's web site (*http://cerhr.niehs.nih.gov*) or by mail to Dr. John Moore at the address listed above.

Further information about the NTP Center for the Evaluation of Risks to Human Reproduction and nominated chemicals can be obtained through the Center's web site.

Dated: April 7, 1999.

Kenneth Olden,

Director, NIEHS.

[FR Doc. 99–9488 Filed 4–15–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Grant Award to the Division of Mental Health and Developmental Disabilities, Department of Health and Social Services, State of Alaska

AGENCIES: Center for Substance Abuse Treatment (CSAT), Center for Mental Health Services (CMHS), Substance Abuse and Mental Health Services Administration (SAMHSA), HHS.

ACTION: Availability of grant funds for the Division of Mental Health and Developmental Disabilities, Department of Health and Social Services, State of Alaska.

SUMMARY: This notice is to inform the public that CSAT and CMHS are making available approximately $5,000,000 for an award in FY 1999 to the Division of Mental Health and Developmental Disabilities, Department of Health and Social Services, State of Alaska to support development, implementation, and evaluation of a comprehensive, seamless system of care for persons with co-occurring substance abuse (including alcohol and other drugs) and mental health disorders in Anchorage, Alaska, and its environs. CSAT and CMHS will make this award if the application is recommended for approval by the Initial Review Group and the CSAT and CMHS National Advisory Councils. This is not a formal request for applications; assistance will be provided only to the Alaska Division of Mental Health and Developmental Disabilities.

Eligibility for this program is limited to the State of Alaska, as specified in Congressional report language, in recognition of the primacy of its responsibility for, and interest in, providing for the needs of its citizens, and because the success of the program will depend upon the authority and ability to broadly coordinate the variety of resources essential for full program success. The State has committed itself to moving certain mental health services from their extant institutional bases to community bases, and, simultaneously, changing from parallel systems of service delivery—for substance abuse and mental health problems—to an approach designed to deliver services seamlessly to persons with comorbidity. Alaska needs a high level of systemic competence in delivering these services due, in great part, to its climate (resulting in deaths of homeless comorbid persons), and to the requirements of its proposed systems changes. The proposed project presents a unique opportunity for SAMHSA and its Centers to learn, first hand, how the transition from parallel systems to a seamless system of care can be accomplished in a small city in a rural/frontier State, and at what costs. The project promises to yield learnings on the factors and circumstances that facilitate and/or retard systemic change in complex treatment systems. This "Anchorage Comorbidity Services" project is also part of SAMHSA's commitment to improving services, and relates directly to the resolution unanimously adopted by its National Advisory Council earlier this year.

Funding from CSAT and CMHS will support some services to persons with co-occurring disorders; continuing planning, review, management, and infrastructure development for the

effort; and a tripartite evaluation of the project, including process, outcome, and impact evaluations. This is a unique opportunity to evaluate significant change in a State system of care for persons with co-occurring disorders.

Authority: The award will be made under the authority of Section 501(d)(5) of the Public Health Service Act, as amended (42 U.S.C. 290aa). The Catalog of Federal Domestic Assistance (CFDA) number for this program is 93.230.

CONTACT: Edith Jungblut, Public Health Advisor, Division of Practice and Systems Development, Center for Substance Abuse Treatment, SAMHSA, Rockwall II, 7th floor, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–6669; or Dr. Lawrence Rickards, Public Health Advisor, Division of Knowledge Development and Systems Change, Center for Mental Health Services, SAMHSA, Parklawn Building 11C–05, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–3707.

Dated: April 12, 1999.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 99–9530 Filed 4–15–99; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4444–N–03]

Notice of Proposed Information Collection: Comment Request

AGENCY: Office of the Secretary, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments date: June 15, 1999.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposals by name and/or OMB Control Number and should be sent to: Gail N. Ward, Reports Liaison Officer, Department of Housing and Urban Development, 451 7th Street, SW, Room P3206, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: David Levitt, (202) 755–1785 ext. 156.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments for members of the public and affecting agencies concerning the proposed collection information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of the Proposal: Requirements for Notification, Evaluation and Reduction of Lead-Based Paint Hazards in Federally Owned Housing and Housing Receiving Federal Assistance.

OMB Control Number: 2539–0009.

Need for Information and Proposed Use: Sections 1012 and 1013 of the Residential Lead-Based Paint Hazard Reduction Act of 1992, which is Title X of the Housing and Community Development Act of 1992, require amendment of HUD regulations promulgated under the Lead-Based Paint Poisoning Prevention Act of 1971. HUD published proposed regulations implementing section 1012 and 1013 on June 7, 1996 and is now requesting OMB approval of final regulations.

The final rule retains the following proposed-rule requirements that pertain to paperwork burden: provision of a pamphlet on lead poisoning prevention to tenants and purchasers, provision of a notice to occupants on the results of hazard evaluation and hazard reduction actions, and special reporting requirements if there is a child with an environmental intervention blood lead level residing in a dwelling unit assisted by certain HUD programs. These requirements were approved by OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). Also approved by OMB was the proposed-rule requirement for owners of project-based assisted units to develop and submit a hazard reduction plan. That requirement has been eliminated in the final rule. The final rule contains one requirement that was not included in the proposed rule: the keeping of notices and reports pertaining to evaluation and hazard reduction for a minimum of three years.

HUD has prepared a revised estimate of respondent burden, based on the final-rule requirements and data developed for the Regulatory Impact Analysis for the final rule, and is requesting approval of this revision from OMB.

1. Lead Hazard Information Pamphlet

As in the proposed rule, the final rule requires that a designated party (i.e. residential property owner, housing agency (HA), Federal grantee, CILP recipient, tribally designated housing entity (TDHE) or participating jurisdiction) distribute the lead hazard information pamphlet entitled "Protect Your Family From Lead in Your Home." developed by the Environmental Protection Agency (EPA) in cooperation with the Consumer Product Safety Commission (CPSC) and the Department of Housing and Urban Development (HUD), to all purchasers and occupants of pre-1978 housing receiving Federal assistance. This is a statutory requirement (§ 302(a)(1)(A) of the Lead-Based Paint Poisoning Prevention Act). A pamphlet developed by a State government may be used if it is approved by EPA under § 406(a) of the Toxic Substances Control Act. The provider and recipient of the pamphlet are stipulated in the relevant subpart of the rule, based upon the type assistant provided. Existing HUD lead-based paint regulations have long required notification of tenants and purchasers regarding the possibility that housing built before 1978 may contain lead-based paint hazards. The main difference between the existing and new requirement is that the EPA pamphlet must now be used instead of a HUD brochure. The rule does not require that the pamphlet be provided if one has already been provided in compliance with the lead-based paint disclosure rule (at 24 CFR part 35), subpart H), issued jointly by HUD and EPA in 1996.

2. Notice of Evaluation, Hazard Reduction, and Clearance Activities

As in the proposed rule, the final rule requires the provision of notice to occupants of pre-1978 housing receiving Federal assistance describing the nature and scope of any evaluation or hazard reduction activities undertaken, including available information on the location of any remaining lead-based paint on a surface-by-surface basis. This is a statutory requirement (§ 302(a)(1)(F) of the Led-Based Paint Poisoning Prevention Act). As in the proposed rule, HUD is requiring that there be separate notices for evaluation and for

hazard reduction to assure that occupants are informed on a timely basis. HUD's existing lead-based paint regulations for public housing projects constructed before 1978 require written notice to current residents, applicants, and prospective purchasers when units are tested for the presence of lead-based paint and found to contain lead greater or equal to the HY/D standard. The final rule requirements will result in an incremental increase in the cost and hour burdens for the public housing programs. For all other HUD programs, the requirements create new cost and hour burdens. For multifamily properties, the rule provides owners an option of whether to distribute such notices to dwelling units or to post them in centrally located places within the property. For the estimation of paperwork burden, HUD is assuming that 25 percent of the multifamily units will receive notices through direct distribution but that central posting will be done as well in all multifamily properties covered by the rule.

3. Record Keeping

Designated parties are responsible for keeping a copy of each notice, evaluation, clearance, or abatement report for at least three years. In addition, designated parties are required to make such reports available to HUD, if requested. These new requirements are designed to provide a basis for ensuring that Federal funds are expended properly.

4. Reporting Child With an Environmental Intervention Blood Lead Level

For Four types of housing assistance programs, HUD has retained the proposed-rule requirement that additional evaluation and hazard reduction activities be conducted when a child residing in the property is identified as having an environmental intervention blood lead level. As part of these activities the designated party is required to report the name and address of a child with an environmental intervention blood lead level to the public health department (State or local health department or the Indian Health Service), if the case was originally reported to the owner by a source other than the public health department. For purposes of burden estimation, HUD assumes that owners will learn about one-half of the cases from sources other than a public health department. With regard to HUD's tenant-based rental assistance programs, this information collection requirement is not new. For the other three HUD programs with environmental intervention blood lead level requirements the reporting requirement would create new cost and hour burdens. Those programs are public housing, project-based rental assistance, and HUD-owned multifamily housing.

Agency Form Number: No HUD forms are required.

Members of the Affected Public: Households, businesses, not-for-profit organizations, the Federal government, and State, local and tribal governments.

Total Burden Estimate (first year of the rule):

Number of respondents: 78,215.
Number of responses: 772,271.
Number of response: 219,486.

Status of the proposed information collection: Revision of a currently approved collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: April 12, 1999.

Michael F. Hill,

Senior Advisor, Office of Lead Hazard Control.

[FR Doc. 99–9587 Filed 4–15–99; 8:45 am]

BILLING CODE 4210–32–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4432–N–15]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

FOR FURTHER INFORMATION CONTACT: Mark Johnston, room 7256, Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410; telephone (202) 708–1226; TTY number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 24 CFR part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories; Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Brian Rooney, Division of Property Management, Program Support Center, HHS, room 5B–41, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 24 CFR part 581.

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, by made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this

Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to Mark Johnston at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.*, acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: GSA: Mr. Brian K. Polly, Assistant Commissioner, General Services Administration, Office of Property Disposal, 18th and F Streets, NW, Washington, DC 20405; (202) 501–0052; INTERIOR: Ms. Lola Kane, Department of the Interior, 1849 C Street, NW, Mail Stop 5512–MIB, Washington, DC 20240; (202) 208–4080; NAVY: Mr. Charles C. Cocks, Department of the Navy, Director, Real Estate Policy Division, Naval Facilities Engineering Command, Washington Navy Yard, 1322 Patterson Ave., SE, Suite 1000, Washington, DC 20374–5065; (202) 685–9200; (These are not toll-free numbers).

Dated: April 8, 1999.

Fred Karnas, Jr.,

Deputy Assistant Secretary for Economic Development.

TITLE V, FEDERAL SURPLUS PROPERTY PROGRAM FEDERAL REGISTER REPORT FOR 4/16/99

Suitable/Available Properties

Land (by State)

California

Redding Reserve Site
Redding Co: Shasta CA 96049–
Landholding Agency: GSA
Property Number: 54199920001
Status: Unutilized
Comment: 5.13 acres
GSA Number: 9–D–CA–1524

Unsuitable Properties

Buildings (by State)

California

Bldg. 311
Naval Air Facility
El Centro Co: Imperial CA 92243–
Landholding Agency: Navy
Property Number: 77199920001
Status: Unutilized
Reason: Extensive deterioration

Guam

Bldg. 45
Marianas Communications
Annex
Radio Barrigada Co: GU 96537–1800
Landholding Agency: Navy
Property Number: 77199920002
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material

Bldg. 101
Marianas Communications
Dadedo Co: GU 96537–1800
Landholding Agency: Navy
Property Number: 77199920003
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Bldg. 153
Marianas Communications
Dededo Co: GU 96537–1800
Landholding Agency: Navy
Property Number: 77199920004
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area.

Bldg. 154
Marianas Communications
Dededo Co: GU 96537–1800
Landholding Agency: Navy
Property Number: 77199920005
Status: Unutilized
Reason: Secured Area.

Bldg. 289
Marianas Communications
Dededo Co: GU 96537–1800
Landholding Agency: Navy
Property Number: 77199920006
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area.

Bldg. 290
Marianas Communications
Dededo Co: GU 96537–1800
Landholding Agency: Navy
Property Number: 77199920007
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area.

Bldg. 291
Marianas Communications
Dededo Co: GU 96537–1800
Landholding Agency: Navy
Property Number: 77199920008
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area.

Bldg. 300
Marianas Communications
Dededo Co: GU 96537–1800
Landholding Agency: Navy
Property Number: 77199920009
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area.

Bldg. 315
Marianas Communications
Dededo Co: GU 96537–1800
Landholding Agency: Navy
Property Number: 77199920010
Status: Unutilized
Reasons: Within 200 ft. of flammable or explosive material; Secured Area

Bldg. 317
Marianas Communications
Dededo Co: GU 96537–1800
Landholding Agency: Navy
Property Number: 77199920011
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Bldg. 822
Marianas Communications
Dededo Co: GU 96537–1800
Landholding Agency: Navy
Property Number: 77199920012
Status: Unutilized
Reasons: Secured Area

Hawaii

Facility 63
Naval Computer & Telecomm. Station
Wahiawa Co: HI 96786–
Landholding Agency: Navy
Property Number: 77199920013
Status: Excess
Reason: Extensive deterioration

Bldg. 442
Naval Station, Pearl Harbor
Honolulu Co: HI 96860–
Landholding Agency: Navy
Property Number: 77199920014
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Bldg. 453K
Naval Station, Pearl Harbor
Honolulu Co: HI 96860–
Landholding Agency: Navy
Property Number: 77199920015
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Facility SX30
Navy Public Works Center
Pearl Harbor Co: Honolulu HI 96860–
Landholding Agency: Navy
Property Number : 77199920027
Status: Excess
Reasons: Secured Area; Extensive deterioration

Kentucky

Qtrs. 36
Mammoth Cave National Park
Mammoth Cave Co: Barren KY 42259–
Landholding Agency: Interior
Property Number : 61199920001
Status: Unutilized
Reason: Extensive deterioration

Mississippi

Bldg. 86
Naval Construction Battalion Center
Gulfport Co: Harrison MS 39501–
Landholding Agency: Navy
Property Number : 77199920016
Status: Unutilized
Reason: Extensive deterioration

New Jersey

Bldg. 473
Naval Air Engineering Station
Lakehurst Co: Ocean NJ 08733–5000
Landholding Agency: Navy
Property Number : 77199920024
Status: Unutilized
Reason: Extensive deterioration

Bldg. 474
Naval Air Engineering Station
Lakehurst Co: Ocean NJ 08733–5000
Landholding Agency: Navy
Property Number : 77199920025

Status: Unutilized
Reason: Extensive deterioration

North Carolina

Bldg. 418
Marine Corps Air Station
Cherry Point
Havelock Co: Craven NC 28532–
Landholding Agency: Navy
Property Number : 77199920017
Status: Excess
Reasons: Secured Area; Extensive deterioration

North Carolina

Bldg. 1689
Marine Corps Air Station
Cherry Point
Havelock Co: Craven NC 28532–
Landholding Agency: Navy
Property Number 77199920018
Status: Excess
Reasons: Secured Area; Extensive deterioration

Bldg. 3471
Marine Corps Air Station
Cherry Point
Havelock Co: Craven NC 28532–
Landholding Agency: Navy
Property Number 77199920019
Status: Excess
Reasons: Secured Area; Extensive deterioration

Bldg. 3501
Marine Corps Air Station
Cherry Point
Havelock Co: Craven NC 28532–
Landholding Agency: Navy
Property Number 77199920020
Status: Excess
Reasons: Secured Area; Extensive deterioration

Bldg. 3932
Marine Corps Air Station
Cherry Point
Havelock Co: Craven NC 28532–
Landholding Agency: Navy
Property Number 77199920021
Status: Excess
Reasons: Secured Area; Extensive deterioration

Bldg. 4261
Marine Corps Air Station
Cherry Point
Havelock Co: Craven NC 28532–
Landholding Agency: Navy
Property Number 77199920022
Status: Excess
Reasons: Secured Area; Extensive deterioration

Bldg. 4269
Marine Corps Air Station
Cherry Point
Havelock Co: Craven NC 28532–
Landholding Agency: Navy
Property Number 77199920023
Status: Excess
Reasons: Secured Area; Extensive deterioration

Oregon

Santo Hall U.S. Army Rsve Ctr
701 N. Columbus Ave.
Medford Co: Jackson OR 97501–
Landholding Agency: GSA
Property Number 21199720211
Status: Surplus
Reasons: Within 2000 ft. of flammable or explosive material
GSA Number: 9–D–OR–727

Virginia

Bldg. 3074
Marine Corps Base
Quantico Co: VA 22134–
Landholding Agency: Navy
Property Number 77199920026
Status: Unutilized
Reasons: Extensive deterioration

[FR Doc. 99–9228 Filed 4–15–99; 8:45 am]
BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

PRT–010169

Applicant: Kenneth Lee Barr, Kelseyville, CA,

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

PRT–010175

Applicant: Gary L. Ball, Fillmore, CA

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pyqarqus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Atlanta, GA, PRT–844093

Applicant: Yerkes Regional Primate Research Center

The applicant requests a permit to export tissues samples from gorilla (*Gorilla gorilla*) and orangutan (*Pongo pygmaeus*) that were both captive-bred and wild-collected for scientific purposes.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

The public is invited to comment on the following applications for a permit to conduct certain activities with marine mammals. The applications were submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) and the regulations governing marine mammals (50 CFR 18).

PRT–009689

Applicant: Joseph Jerry Wright, Atlanta, GA

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport-hunted from the Lancaster Sound polar bear population, Northwest Territories, Canada for personal use.

PRT–009834

Applicant: Glen W. Morgon, Beaumont, TX

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport-hunted from the Southern Beaufort Sea polar bear population, Northwest Territories, Canada for personal use.

PRT–009840

Applicant: John A. Madden, Minden, LA

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport-hunted from the Lancaster Sound polar bear population, Northwest Territories, Canada for personal use.

PRT–009835

Applicant: Walter J. Palmer, Eden Prairie, MN

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport-hunted from the Northern Beaufort Sea polar bear population, Northwest Territories, Canada for personal use.

Documents and other information submitted with the application are available for review, *subject to the requirements of the Privacy Act and Freedom of Information Act,* by any party who submits a written request for a copy of such documents to the above address within 30 days of the date of publication of this notice.

Dated: April 12, 1999.

Mary Ellen Amtower,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 99–9532 Filed 4–15–99; 8:45 am]
BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered Species Permit Application

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of permit application.

SUMMARY: The following applicant has applied for a scientific research permit to conduct certain activities with endangered species pursuant to section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Permit Number TE–009901

Applicant: Alaska Biological Science Center, Anchorage, Alaska

The applicant requests a permit to take (direct) one to three fronds from 10 Aleutian shield fern (Polystichum aleuticum) plants for the purpose of enhancing this species survival.

DATES: Written comments on this permit application must be received on or before May 17, 1999.

ADDRESSES: Written data or comments should be submitted to the Field Supervisor, Ecological Services Field Office, Anchorage, U. S. Fish and Wildlife Service, 605 W. 4th Ave. Rm G–62, Anchorage, AK 99501; Fax: 907/271–2786. Please refer to the respective permit number for each application when submitting comments. All comments received, including names and addresses, will become part of the official administrative record and may be made available to the public.

FOR FURTHER INFORMATION CONTACT: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 20 days of the date of publication of this notice to the address above; telephone: (907) 271–2888. Please refer to the respective permit number for each application when requesting copies of documents.

Dated: April 1, 1999.

David B. Allen,

Regional Director, Region 7, Anchorage, Alaska.

[FR Doc. 99–9554 Filed 4–15–99; 8:45 am]

BILLING CODE 4310–55–U

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered and Threatened Species; Golden-Cheeked Warbler, et al.

ACTION: Notice of receipt of seven applications.

SUMMARY: This notice advises the public that GDF Realty Investments, Ltd. (applicant), in conjunction with Mr. R. James George, Jr., Purcell Investments L.P., Parke Properties I, L.P. and Parke Properties II, L.P., each entity of Austin, Texas, has applied to the U.S. Fish and Wildlife Service (Service) for seven incidental take permits pursuant to Section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended (Act). The applications have been assigned application file numbers PRT–838754, PRT–841088, PRT–841090, PRT–841093, PRT–841117, PRT–841120 and PRT–841125. The requested, permits, if issued, would each be for a period of 30 years, and would authorize the incidental take of the endangered golden-cheeked warbler (*Dendroica chrysoparia*), black-capped vireo (*Vireo atriocapillus*), Tooth Cave pseudoscorpion (*Microcreagris texana*), Tooth Cave spider (*Leptoneta myopica*), Tooth Cave ground beetle (*Rhadine persephone*), Kretschmarr Cave mold beetle (*Texamaurops reddelli*), Bee Cave Creek harvestman (*Texella reddelli*), and Bone Cave harvestman (*Texella reyesi*). The Applicant plans to construct and operate commercial and/or residential developments on 216.4 acres of habitat in the area known as the Hart Triangle and used by the golden-cheeked warbler, black-capped vireo, Tooth Cave pseudoscorpion, Tooth Cave spider, Tooth Cave ground beetle, Kretschmarr Cave mold beetle, Bee Cave Creek harvestman, and/or Bone Cave harvestman. The proposed incidental take would occur as a result of the construction and operation of these developments on FM 620 at Bullick Hollow Road (FM 2222) in Travis County, Texas.

The Applicant has prepared Habitat Conservation Plans (HCPs) to accompany these incidental take permit applications.

DATES: Written comments on the applications and HCPs should be received on or before May 17, 1999.

ADDRESSES: Persons wishing to review the applications and HCPs may obtain copies by contacting the Regional Director, U.S. Fish and Wildlife Service, Division of Ecological Services, P.O. Box 1306, 500 Gold Avenue, S.W., Albuquerque, New Mexico 87102 (505/248–6920). Documents will be available for public inspection by written request, by appointment only, during normal business hours (8:00 to 4:30) at the Albuquerque Regional Office address above. Written data or comments concerning the applications and HCPs should be submitted to the Regional Director (Attention: Ecological Services) at the above address, in Albuquerque, New Mexico. Please refer to application file permit numbers PRT–838754, PRT–841088, PRT–841090, PRT–841093, PRT–841117, PRT–841120 and PRT–841125 when submitting comments.

FOR FURTHER INFORMATION CONTACT: Leslie Dierauf at the Regional Office address noted above (505/248–6651).

SUPPLEMENTARY INFORMATION: Section 9 of the Act prohibits the "taking" of endangered species such as the golden-cheeked warbler, black-capped vireo, Tooth Cave pseudoscorpion, Tooth Cave spider, Tooth Cave ground beetle, Kretschmarr Cave mold beetle, Bee Cave Creek harvestman, and/or Bone Cave harvestman. However, the Service, under limited circumstances, may issue permits to take endangered wildlife species when such taking is incidental to, and not the purpose of, otherwise lawful activities. Regulations governing permits for endangered species are at 50 CFR 17.22.

The seven tracts are within the Balcones Canyonlands Preserve (BCP) permit area (Incidental Take Permit PRT–788841) and within or adjacent to the Tooth Cave karst fauna area, known as the Four Points cave cluster. The Tooth Cave karst fauna area underlies a large portion of the total acreage of these seven tracts. The Tooth Cave area contains two of the four caves (50%) known to contain Tooth Cave spiders, three of the five caves (60%) known to contain Tooth Cave pseudoscorpions, and three of the four caves (75%) known to contain Kretschmarr Cave mold beetles. Therefore, this property contains a large proportion of the known range of three of the six listed cave invertebrates in Travis County. Although the full extent of the interconnectivity of the karst features in this area is not known, karst is by nature an interconnected network of voids, and preserving this interconnectivity and the relationship of the karst to activities on the surface is vital on these properties.

The applicant proposes to intensely develop 216.4 acres. The applicant has proposed the following for each of the incidental take permit applications:

PRT–838754 [19.6 acres; parcel 8; Tract F; GDF Realty] Shopping center on 60% of the property, with bermed stormwater detention facilities in areas on the remainder of the property. Minimization, mitigation and monitoring measures include the following: run-off routed to avoid impacts to the cave preserve, fire ant control measures, pesticide and herbicide use to EPA guidelines, all run-off directed away from Tooth Cave, all development will occur below the 1050 contour interval, a contractor who will

monitor all excavation during the construction phase of the development, human use will be restricted to passive recreation, such as hiking, and undeveloped areas to be monitored for three years to detect warbler, vireo, blue jay, scrub jay and brown-headed cowbird populations.

PRT–841088 [9.74 acres; parcel 3; Tract B; Purcell Investments] Shopping center, 60% impervious cover, with stormwater detention facilities in areas on remainder of tract. Minimization, mitigation and monitoring measures include the following: run-off routed to avoid impacts to the cave preserve, fire ant control measures, pesticide and herbicide use to EPA guidelines, all run-off directed away from Tooth Cave, a contractor who will monitor all excavation during the construction phase of the development, human use will be restricted to passive recreation, such as hiking, and undeveloped areas to be monitored for three years to detect warbler, vireo, blue jay, scrub jay and brown-headed cowbird populations.

PRT–841090 [7.6 acres; parcel 9; Tract G; GDF Realty] Shopping center on 60% of property, bermed stormwater detention facilities in areas on the remainder of the property. According to this HCP, none of the property has been found to be suitable habitat for the warbler or vireo. Nevertheless, this HCP states that clearing in occupied warbler or vireo habitat will occur only during times of the year when birds are not present, human use will be restricted to passive recreation, such as hiking, and undeveloped areas to be monitored for three years to detect warbler, vireo, blue jay, scrub jay and brown-headed cowbird populations. The tract contains karst habitat.

PRT–841093 [30.47 acres; parcel 7; Tract E; Purcell Investments] Residential development on flatter acreage (no acreage or site plan submitted), bermed stormwater detention facilities in undeveloped areas, road construction mentioned, but the access route not included on any map. According to this HCP, none of the property has been found to be suitable habitat for the warbler or vireo. Nevertheless, this HCP states that clearing in occupied warbler or vireo habitat will occur only during times of the year when birds are not present, human use will be restricted to passive recreation, such as hiking, and undeveloped areas to be monitored for three years to detect warbler, vireo, blue jay, scrub jay and brown-headed cowbird populations.

PRT–841117 [28 acres, parcels 1 & 2; Tract A; Purcell Investments] Shopping center, 60% impervious cover, bermed stormwater detention facilities to be located on the remaining 40%. Minimization, mitigation and monitoring measures include the following: run-off routed to avoid impacts to caves, fire ant control measures, pesticides and herbicides used according to EPA guidelines, a contractor to monitor all excavation during the construction phase, human recreation will be restricted to passive recreation, such as hiking, and undeveloped areas to be monitored for three years to detect warbler, vireo, blue jay, scrub jay and brown-headed cowbird populations.

PRT–841120 [47 acres; parcel 5 & 6; Tract D; Purcell Investments] Mixed-use development on 60% of the property, bermed stormwater detention facilities in the remaining areas (the site plan submitted suggests slightly less intense use). Minimization, mitigation and monitoring measures include the following: run-off from proposed commercial development routed to avoid impacts to cave preserves, fire ant control measures, pesticides and herbicides used according to EPA guidelines, all run-off directed from adjacent preserve, a contractor to monitor all excavation during the construction phase of development, human use will be restricted to passive recreation, such as hiking, and undeveloped areas to be monitored for three years to detect warbler, vireo, blue jay, scrub jay and brown-headed cowbird populations.

PRT–841125 [74 acres; parcel 4; Tract C; Purcell Investments] Office and multi-family development on 60% of site, stormwater detention facilities located in areas on the remainder of the site, not otherwise developed. Minimization, mitigation and monitoring measures include the following: run-off to be routed to avoid impacts to the cave preserve, fire ant control measures, pesticide and herbicide use according to EPA guidelines, a contractor to monitor all excavation during the construction phase, human use will be restricted to passive recreation, such as hiking, and undeveloped areas to be monitored for three years to detect warbler, vireo, blue jay, scrub jay and brown-headed cowbird populations.

The HCPs which the applicant has provided do not provide detailed descriptions of long-term funding. The summary of environmental effects that may occur due to the actions of these projects contain factual errors. The draft environmental assessments submitted by the applicant also do not contain details of alternative analyses conducted during development of the HCPs.

During the HCP development phase, the Service discussed with the applicant various options for minimizing or avoiding species impacts. Nevertheless, the applicant has requested that the Service proceed with processing the seven applications as submitted.

Applicant: GDF Realty Investments, Ltd., in conjunction with Mr. R. James George, Jr., Purcell Investments L.P., Parke Properties I, L.P. and Parke Properties II, L.P., each entity of Austin, Texas, plans to construct and operate seven commercial and/or residential developments in Travis County, Texas. These actions will take place on 216.4 acres of habitat in the area known as the Hart Triangle and used by the endangered golden-cheeked warbler, black-capped vireo, Tooth Cave pseudoscorpion, Tooth Cave spider, Tooth Cave ground beetle, Kretschmarr Cave mold beetle, Bee Cave Creek harvestman, and/or Bone Cave harvestman.

Nancy M. Kaufman,

Regional Director, Region 2, Albuquerque, New Mexico.

[FR Doc. 99–9659 Filed 4–14–99; 11:39 am]

BILLING CODE 4510–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Incidental Take Permits; Williamson Co., TX

Notice of Availability of a Environmental Assessment/Habitat Conservation Plan and Receipt of Application for Incidental Take Permit for Construction and Operation of the Buttercup Creek's Section 4 and Phase V and Extension of Lakeline Boulevard (275 acres of the 438 acres), Williamson County, Texas.

SUMMARY: Lumbermen's Investment Corporation (Applicant) has applied to the Fish and Wildlife Service (Service) for an incidental take permit pursuant to Section 10(a) of the Endangered Species Act (Act). The Applicant has been assigned permit number PRT–836384. The requested permit, which is for a period of 30 years, would authorize the potential incidental take of the endangered Tooth Cave ground beetle (*Rhadine persephone*). The proposed take would occur as a result of the construction of single-family and multi-family residences on 275 acres of the 438 acres at the intersection of Buttercup Blvd. and Lakeline Blvd. in Williamson County, Texas.

The Service has prepared the draft Environmental Assessment/Habitat Conservation Plan (EA/HCP) for the

incidental take application. A determination of jeopardy to the species or a Finding of No Significant Impact (FONSI) will not be made until at least 30 days from the date of publication of this notice. This notice is provided pursuant to Section 10(c) of the Act and National Environmental Policy Act regulations (40 CFR 1506.6).

DATES: Written comments on the application should be received by May 17, 1999.

ADDRESSES: Persons wishing to review the application may obtain a copy by writing to the Regional Director, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103. Persons wishing to review the draft EA/HCP may obtain a copy by contacting Christina Longacre, Ecological Services Field Office, 10711 Burnet Road, Suite 200, Austin, Texas 78758 (512/490–0057). Documents will be available for public inspection by written request, by appointment only, during normal business hours (8:00 to 4:30) at the U.S. Fish and Wildlife Service, Austin, Texas. Written data or comments concerning the application and EA/HCP should be submitted to the Field Supervisor, Ecological Field Office, Austin, Texas at the above address. Please refer to permit number PRT–836384 when submitting comments.

FOR FURTHER INFORMATION CONTACT: Christina Longacre at the above Austin Ecological Services Field Office.

SUPPLEMENTARY INFORMATION: Section 9 of the Act prohibits the "taking" of endangered species such as the Tooth Cave ground beetle. However, the Service, under limited circumstances, may issue permits to take endangered wildlife species incidental to, and not the purpose of, otherwise lawful activities. Regulations governing permits for endangered species are at 50 CFR 17.22.

Applicant: Lumbermen's Investment Corporation plans to construct single-family and multi-family residences on 275 acres of the 438 acres in Williamson County, Texas. This action is not expected to impact any Tooth Cave ground beetle habitat directly or indirectly, although the potential to discover an unknown feature does exist. The Applicant proposes to preserve in perpetuity all known features of both endangered and species of concern caves.

Alternatives to this action were rejected because alternative designs or not developing the subject property with federally listed species present was not economically feasible.

Charlie Sanchez, Jr.,

Acting Regional Director, Region 2, Albuquerque, New Mexico.

[FR Doc. 99–9509 Filed 4–15–99; 8:45 am]

BILLING CODE 4510–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Issuance of Permit for Marine Mammals

On February 3, 1999, a notice was published in the **Federal Register**, Vol. 64, No. 22, Page 5310, that an application had been filed with the Fish and Wildlife Service by Michael Carpinito for a permit (PRT–007280) to import a polar bear (*Ursus maritimus*) sport-hunted trophy taken from the Southern Beaufort Sea polar bear population, Canada, for personal use.

Notice is hereby given that on March 24,1999, as authorized by the provisions of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service authorized the requested permit subject to certain conditions set forth therein.

On February 19, 1999, a notice was published in the **Federal Register**, Vol. 64, No. 33, Page 8397, that an application had been filed with the Fish and Wildlife Service by Denis Danner for a permit (PRT–007279) to import a polar bear (*Ursus maritimus*) sport-hunted trophy taken from the Lancaster Sound polar bear population, Canada, for personal use.

Notice is hereby given that on April 2, 1999, as authorized by the provisions of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service authorized the requested permit subject to certain conditions set forth therein.

On February 19, 1999, a notice was published in the **Federal Register**, Vol. 64, No. 33, Page 8397, that an application had been filed with the Fish and Wildlife Service by Steve Kobrine for a permit (PRT–006302) to import a polar bear (*Ursus maritimus*) sport-hunted trophy taken from the Lancaster Sound polar bear population, Canada, for personal use.

Notice is hereby given that on April 2, 1999, as authorized by the provisions of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service authorized the requested permit subject to certain conditions set forth therein.

On January 22, 1999, a notice was published in the **Federal Register**, Vol. 64, No. 14, Page 3539, that an application had been filed with the Fish and Wildlife Service by Ina L. Johnson for Ernest L. Johnson for a permit (PRT-006116) to import a polar bear (*Ursus maritimus*) sport-hunted trophy taken from the Lancaster Sound polar bear population, Canada, prior to April 30, 1994, for personal use.

Notice is hereby given that on April 2, 1999, as authorized by the provisions of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service authorized the requested permit subject to certain conditions set forth therein.

On February 19, 1999, a notice was published in the **Federal Register**, Vol. 64, No. 33, Page 8397, that an application had been filed with the Fish and Wildlife Service by Patrick Short for a permit (PRT–007671) to import a polar bear (*Ursus maritimus*) sport-hunted trophy taken from the Lancaster Sound polar bear population, Canada, for personal use.

Notice is hereby given that on April 2, 1999, as authorized by the provisions of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service authorized the requested permit subject to certain conditions set forth therein.

On February 19, 1999, a notice was published in the **Federal Register**, Vol. 64, No. 33, Page 8397, that an application had been filed with the Fish and Wildlife Service by Carl Ulberg for a permit (PRT–003949) to import a polar bear (*Ursus maritimus*) sport-hunted trophy taken from the Lancaster Sound polar bear population, Canada, for personal use.

Notice is hereby given that on April 6, 1999, as authorized by the provisions of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service authorized the requested permit subject to certain conditions set forth therein.

On February 19, 1999, a notice was published in the **Federal Register**, Vol. 64, No. 33, Page 8397, that an application had been filed with the Fish and Wildlife Service by Johnny Bliznak for a permit (PRT–004455) to import a polar bear (*Ursus maritimus*) sport-hunted trophy taken from the Lancaster Sound polar bear population, Canada, for personal use.

Notice is hereby given that on April 1,1999, as authorized by the provisions of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service authorized the requested permit subject to certain conditions set forth therein.

On February 19, 1999, a notice was published in the **Federal Register**, Vol.

64, No. 33, Page 8397, that an application had been filed with the Fish and Wildlife Service by James Verbrugge for a permit (PRT–003975) to import a polar bear (*Ursus maritimus*) sport-hunted trophy taken from the Lancaster Sound polar bear population, Canada, for personal use.

Notice is hereby given that on April 6, 1999, as authorized by the provisions of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service authorized the requested permit subject to certain conditions set forth therein.

On February 19, 1999, a notice was published in the **Federal Register**, Vol. 64, No. 33, Page 8397, that an application had been filed with the Fish and Wildlife Service by Arthur I. Kobrine for a permit (PRT–004766) to import a polar bear (*Ursus maritimus*) sport-hunted trophy taken from the Lancaster Sound polar bear population, Canada, for personal use.

Notice is hereby given that on April 5, 1999, as authorized by the provisions of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service authorized the requested permit subject to certain conditions set forth therein.

On February 19, 1999, a notice was published in the **Federal Register**, Vol. 64, No. 33, Page 8397, that an application had been filed with the Fish and Wildlife Service by Tommy E. Smith for a permit (PRT–842044) to import a polar bear (*Ursus maritimus*) sport-hunted trophy taken from the Lancaster Sound polar bear population, Canada, for personal use.

Notice is hereby given that on April 5, 1999, as authorized by the provisions of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service authorized the requested permit subject to certain conditions set forth therein.

On February 19, 1999, a notice was published in the **Federal Register**, Vol. 64, No. 33, Page 8397, that an application had been filed with the Fish and Wildlife Service by Joe E. Owen for a permit (PRT–003075) to import a polar bear (*Ursus maritimus*) sport-hunted trophy taken from the Lancaster Sound polar bear population, Canada, for personal use.

Notice is hereby given that on April 5, 1999, as authorized by the provisions of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service authorized the requested permit subject to certain conditions set forth therein.

On February 19, 1999, a notice was published in the **Federal Register**, Vol. 64, No. 33, Page 8397, that an application had been filed with the Fish and Wildlife Service by Michael P. O'Neill for a permit (PRT–003414) to import a polar bear (*Ursus maritimus*) sport-hunted trophy taken from the Lancaster Sound polar bear population, Canada, for personal use.

Notice is hereby given that on April 5, 1999, as authorized by the provisions of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service authorized the requested permit subject to certain conditions set forth therein.

On February 19, 1999, a notice was published in the **Federal Register**, Vol. 64, No. 33, Page 8397, that an application had been filed with the Fish and Wildlife Service by Harold W. Armstrong for a permit (PRT–844554) to import a polar bear (*Ursus maritimus*) sport-hunted trophy taken from the Lancaster Sound polar bear population, Canada, for personal use.

Notice is hereby given that on April 5, 1999, as authorized by the provisions of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service authorized the requested permit subject to certain conditions set forth therein.

On February 19, 1999, a notice was published in the **Federal Register**, Vol. 64, No. 33, Page 8397, that an application had been filed with the Fish and Wildlife Service by Val Goldthwaite for a permit (PRT–842041) to import a polar bear (*Ursus maritimus*) sport-hunted trophy taken from the Lancaster Sound polar bear population, Canada, for personal use.

Notice is hereby given that on April 5, 1999, as authorized by the provisions of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service authorized the requested permit subject to certain conditions set forth therein.

On February 19, 1999, a notice was published in the **Federal Register**, Vol. 64, No. 33, Page 8397, that an application had been filed with the Fish and Wildlife Service by Ry R. Tipton for a permit (PRT–841984) to import a polar bear (*Ursus maritimus*) sport-hunted trophy taken from the Lancaster Sound polar bear population, Canada, for personal use.

Notice is hereby given that on April 5, 1999, as authorized by the provisions of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service authorized the requested permit subject to certain conditions set forth therein.

On February 19, 1999, a notice was published in the **Federal Register**, Vol. 64, No. 33, Page 8397, that an application had been filed with the Fish and Wildlife Service by Jeffrey C. Miller for a permit (PRT–004771) to import a polar bear (*Ursus maritimus*) sport-hunted trophy taken from the Lancaster Sound polar bear population, Canada, for personal use.

Notice is hereby given that on April 6, 1999, as authorized by the provisions of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service authorized the requested permit subject to certain conditions set forth therein.

On February 19, 1999, a notice was published in the **Federal Register**, Vol. 64, No. 33, Page 8397, that an application had been filed with the Fish and Wildlife Service by Don H. Brown for a permit (PRT–004875) to import a polar bear (*Ursus maritimus*) sport-hunted trophy taken from the Lancaster Sound polar bear population, Canada, for personal use.

Notice is hereby given that on April 6, 1999, as authorized by the provisions of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service authorized the requested permit subject to certain conditions set forth therein.

On February 19, 1999, a notice was published in the **Federal Register**, Vol. 64, No. 33, Page 8397, that an application had been filed with the Fish and Wildlife Service by Michael Langer for a permit (PRT–843641) to import a polar bear (*Ursus maritimus*) sport-hunted trophy taken from the Lancaster Sound polar bear population, Canada, for personal use.

Notice is hereby given that on April 5, 1999, as authorized by the provisions of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service authorized the requested permit subject to certain conditions set forth therein.

On February 19, 1999, a notice was published in the **Federal Register**, Vol. 64, No. 33, Page 8397, that an application had been filed with the Fish and Wildlife Service by Greg Medlin for a permit (PRT–843166) to import a polar bear (*Ursus maritimus*) sport-hunted trophy taken from the Lancaster Sound polar bear population, Canada, for personal use.

Notice is hereby given that on April 6, 1999, as authorized by the provisions of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service authorized the requested permit subject to certain conditions set forth therein.

On February 19, 1999, a notice was published in the **Federal Register**, Vol. 64, No. 33, Page 8397, that an application had been filed with the Fish and Wildlife Service by Kenneth Greg

for a permit (PRT–003421) to import a polar bear (*Ursus maritimus*) sport-hunted trophy taken from the Lancaster Sound polar bear population, Canada, for personal use.

Notice is hereby given that on April 6, 1999, as authorized by the provisions of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service authorized the requested permit subject to certain conditions set forth therein.

Documents and other information submitted for these applications are available for review by any party who submits a written request to the U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Rm 700, Arlington, Virginia 22203. Phone (703) 358–2104 or Fax (703) 358–2281.

Dated: April 12, 1999.

MaryEllen Amtower,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 99–9533 Filed 4–15–99; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–350–1430–01]

Extension of Approved Information Collection, OMB Number 1004–0153

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Bureau of Land Management (BLM) announces its intention to request renewal of existing approval to collection of information from those persons who seek to acquire the federally owned (reserved) mineral interests underlying their surface estate. BLM collects information to assure that the applicant is the owner of the surface that overlies the federally owned minerals and that statutory requirements for their conveyance have been met. The authorization for such collection is provided by the 43 CFR part 2720 regulations.

DATES: Comments on the proposed information collection must be received by June 15, 1999, to be assured of consideration.

ADDRESSES: Comments may be mailed to: Director (420), Bureau of Land Management, 1849 C Street NW, Room 401 LS, Washington, D.C. 20240.

Comments may be sent via Internet to: WoComment@wo.blm.gov. Please include "ATTN: 1004–0153" and your name and return address in your Internet message.

Comments may be hand-delivered to the Bureau of Land Management Administrative Record, Room 401, 1620 L Street, NW., Washington, DC.

Comments will be available for public review at the L Street address during regular business hours (7:45 a.m. to 4:15 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Carl C. Gammon, (202) 452–7777.

SUPPLEMENTARY INFORMATION: In accordance with 5 CFR 1320.8(d), BLM is required to provide 60-day notice in the **Federal Register** concerning a proposed collection of information to solicit comments on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Section 209 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. 1719, states that the Secretary of the Interior may convey mineral interests owned by the United States where the surface is or will be in non-federal ownership if he finds that there are no known mineral values in the land or that the reservation of the mineral rights in the United States is interfering with or precluding appropriate non-mineral development is a more beneficial use of the land than mineral development. BLM adopted implementing regulations at 43 CFR Part 2720 in 1979 (44 FR 1342, January 4, 1979) and amended them in 1986 (51 FR 9657, March 20, 1986). The regulations establish a procedure whereby any individual seeking to acquire the federally owned (reserved) mineral interest underlying their surface must make application and provide information essential to compliance with the law, regulations, and procedures. The regulations at 43 CFR 2720.1–2 specify what information must be included in the application in narrative form:

Name, address, and phone number. The name, mailing address, and telephone number of the existing or prospective record title owner of the land is necessary to identify and locate the individual for transacting business and communication. The phone number is necessary for direct communication with the applicant.

Proof of ownership. Proof of ownership of land included in the application is necessary to assure the applicant is the record title owner of the surface. In the case of a prospective owner, the application must include a copy of the contract or a statement describing the method by which ownership will be obtained.

Supporting survey evidence. The applicant must include a copy of any patent or other instrument conveying the land included in the application, with supporting survey information. This information is necessary to legally describe the land in the application.

Statement. The applicant must include a statement concerning: (1) The nature of the federally owned or reserved mineral values in the land, (2) the existing and proposed uses of the land, (3) why the mineral reservation is interfering with or precluding appropriate non-mineral development of the land, (4) how and why such development would be a more beneficial use than mineral development, and (5) a showing that the proposed use complies or will comply with state and local zoning or planning requirements. This information is necessary to assure that the application meets statutory requirements for receiving benefits.

BLM uses the information collected to analyze and approve applications for purchase of federally owned mineral interests. If the information required by 43 CFR 2720.1–2 was not collected, BLM would be unable to carry out the mandate of Section 209 of FLPMA, and beneficial development of the surface would be precluded.

Based on its experience administering the regulations at 43 CFR Part 2720, BLM estimates that the public reporting burden for the information collection is 8 hours per application. The respondents are non-federal owners of the surface of the land in which the mineral interests are reserved or otherwise owned by the United States who seek to acquire those mineral interests. The frequency of response is one per application. BLM estimates that 29 applications for conveyance of federally owned mineral interests will be filed annually. The estimated total annual burden on respondents is collectively 232 hours.

We will summarize all responses to this notice and include them in the

request for Office of Management and Budget approval. All comments will also become a matter of public record.

Dated: April 5, 1999.

Carole J. Smith,

Bureau of Land Management Information Clearance Officer.

[FR Doc. 99–9555 Filed 4–15–99; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Meeting Notice; Lower Snake River District

SUMMARY: The Lower Snake River District Resource Advisory Council will conduct a field tour and office meeting to discuss sage grouse habitat needs and management issues, and to review the status of the Interior Columbia Basin Ecosystem Management Project.

DATES: The field tour leave from the District Office at 7:30 a.m. on May 4. The office meeting will begin at 9:00 a.m. on May 5. Public comment periods will be held on May 5 at 9:30 a.m. and 4:00 p.m.

ADDRESSES: The office meeting will be held at the Lower Snake River District Office, located at 3948 Development Avenue, Boise, Idaho.

FOR FURTHER INFORMATION CONTACT: Barry Rose, Lower Snake River District Office (208–384–3393).

Katherine Kitchell,

District Manager.

[FR Doc. 99–9492 Filed 4–15–99; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–924–1430–01; MTM 89002]

Notice of Proposed Withdrawal and Opportunity for Public Meeting; Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management proposes to withdraw 86.85 acres of public land and 13.96 acres of non-federal land, when acquired, for protection and development of a public campground and day use recreation area. This notice closes the land for up to 2 years from surface entry and mining. The public land has been and will remain open to mineral leasing.

DATES: Comments and requests for a public meeting must be received by July 15, 1999.

ADDRESSES: Comments and meeting requests should be sent to the Montana State Director, BLM, P.O. Box 36800, Billings, Montana 59107.

FOR FURTHER INFORMATION CONTACT: Sandra Ward, BLM Montana State Office, 406–255–2949.

SUPPLEMENTARY INFORMATION: On March 22, 1999, a petition was approved allowing the Bureau of Land Management to file an application to withdraw the following described public land and non-federal land, when acquired, from settlement, sale, location, or entry under the general land laws, including the mining laws, subject to valid existing rights. The land is described as follows:

Public Land

Principal Meridian, Montana

T. 11 N., R. 2 W.,
- Sec. 23, that portion of the E½NE¼ lying east of the York Road (State Highway 280) as set out on the Certificate of Survey (COS) filed under Document No. 259800;
- Sec. 24, tracts 4 and 5 as set out on the COS filed under Document 452285/T, and tract 6–A as set out on the COS filed under Document No. 464941/B.

The area described contains 86.85 acres in Lewis and Clark County.

Non-Federal Land

Principal Meridian, Montana

T. 11 N., R. 2 W.,
- Sec. 23, Tracts 7 and 8 as described in COS 452285/T.

The area described contains 13.96 acres in Lewis and Clark County.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the Montana State Director of the Bureau of Land Management.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request to the Montana State Director within 90 days from the date of publication of this notice. Upon determination by the authorized officer that a public meeting will be held, a notice of the time and place will be published in the **Federal Register** at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR part 2300.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the land will be segregated as specified above unless the application is denied or canceled or the withdrawal is approved prior to that date. The use of the land for recreation purposes may be permitted during this segregative period until development of the area begins.

Dated: April 8, 1999.

Thomas P. Lonnie,

Deputy State Director, Division of Resources.

[FR Doc. 99–9557 Filed 4–15–99; 8:45 am]

BILLING CODE 4310–84–U

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–930–1430–01; NMNM–102308]

Notice of Proposed Withdrawal; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Secretary of the Interior proposes to withdraw approximately 8,470.59 acres of Federal surface and minerals and 480 acres of Federal minerals underlying private surface to protect possible cave system north and northeast of the existing "cave protection area" protected by the Lechuguilla Cave Protection Act (107 Stat. 1983 (1993)). An additional 8,198.72 acres of State land and mineral estate within the proposal withdrawal area, if acquired by the United States, would become subject to the withdrawal. This notice segregates the lands described below for up to 2 years from settlement, location, sale or entry under the general land laws, including the mining laws, and from mineral leasing.

FOR FURTHER INFORMATION CONTACT: Clarence Hougland, Bureau of Land Management, P.O. Box 27115, Santa Fe, New Mexico 87502–0115, 505–438–7593.

SUPPLEMENTARY INFORMATION: The purpose of the proposed withdrawal is to protect the identified area from activities that might threaten possible cave resources in the area. The proposal, if finalized, would expand the existing "cave protection area" to better conform to geological information about the northern and eastern extent of cave resources, as identified by the so-called Guadalupe Geology Panel. If finalized,

it would withdraw the following described Federal lands and minerals from settlement, location, sale, and entry under the general land laws, including the mining laws, and from mineral leasing, subject to valid existing rights:

New Mexico Principal Meridian, New Mexico

T. 24 S., R. 23 E.,
Sec. 24, all;
Sec. 33, NE¼, E½NW¼, and NE¼SE¼ (all Federal minerals only);
Sec. 34, E¼, NW¼, (Federal minerals only), NW¼SW¼ (Federal minerals only), E½,SW¼, and SW¼SW¼,
Sec. 35, N½.
T. 24 S., R. 24 E.,
Sec. 14, N½;
Sec. 15, N½;
Sec. 17, N½, N½,S½, S½SW¼, and SW¼SE¼;
Sec. 18, lots 3, 4, E½SW¼, and SE¼;
T. 24 S., R. 25 E.,
Sec. 11, S½;
Sec. 12, N½, N½S½, S½SW¼, and SW¼SE¼;
Sec. 13, S½;
Sec. 14, W½NE¼, SE¼,NE¼, W½, and SE¼;
Sec 22, all;
Sec. 23, N½, SW¼, NE¼NE¼SE¼, W½E½SE¼, and W½SE¼;
Sec. 24, N½, E½E½SW¼, SE¼SW¼SW¼, SW¼SE¼SW¼, and SE¼;
Sec 25, N½;
Sec. 26, N½, N½SW¼, SE¼SW¼, and SE¼.
T. 24 S., R. 26 E.,
Sec. 17, lot 1, E½NW¼, SW¼NW¼, and SW¼ (all West of Highway 180);
Sec. 18, lots 1, 2, 4, W½NE¼NE¼, NW¼NE¼, NE¼NW¼, S½SE¼SW¼, and S½SE¼;
Sec. 19, lots 1 to 4, inclusive, NE¼, and E½W½ (all West of Highway 180).

The areas described aggregate 8,950.59 acres in Eddy County. All lands are federally owned surface and subsurface (mineral) unless otherwise noted.

The following described State lands and mineral estates would, if acquired by the United States, become subject to the withdrawal:

New Mexico Principal Meridian, New Mexico

T. 24 S., R. 23 E.,
Sec. 22, S½;
Sec. 23, S½;
Sec. 26, all;
Sec. 27, all;
Sec. 28, E½, SE¼NW¼, and SW¼;
Sec. 33, W½NW¼, SW¼, W½SE¼, and SE¼SE¼.
T. 24 S., R. 24 E.,
Sec. 12, S½;
Sec. 13, all;
Sec. 16, all.
T. 24 S., R. 25 E.
Sec. 7, S½;
Sec. 8. S½;
Sec. 9, S½;
Sec. 10, S½;
Sec. 15, N½, N½S½, SE¼SW¼, and S½SE¼;
Sec. 16, all;
Sec. 17, all;
Sec. 18, lots 1 to 4, inclusive, E½, and E½W½.

The area described aggregates approximately 8,198.72 acres in Eddy County.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the lands will be segregated from settlement, location, sale and entry under the general lands laws, including the mining laws, and from mineral leasing, subject to valid existing rights, unless the proposal is cancelled or unless the withdrawal is finalized prior to the end of the segregation period. Existing uses of the segregated lands may be continued in accordance with their terms (except for the location or relocation of mining claims during the pendency of the 2-year segregative period), including but not limited to livestock grazing, lawful ingress and egress to any valid mining claims and patented claims and mineral leases that may exist on the segregated lands or nearby public lands inside the existing cave protection area, use of all rights-of-way, lawful access to non-Federal lands and interests in lands, all current recreational uses including hunting, camping and day use, and all commercial uses being conducted under special use permits. The Bureau of Land Management is authorized to grant rights-of-way, easements (including drilling easements), permits and other approvals for the exercise of valid existing rights on the segregated lands or nearby public lands inside the existing cave protection area. The Federal lands will remain under the jurisdiction of the Bureau of Land Management.

Dated: April 9, 1999.

M. J. Chávez,

State Director.

[FR Doc. 99–9556 Filed 4–15–99; 8:45 am]

BILLING CODE 4310–FB–M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Agency Information Collection Activities: Submitted for Office of Management and Budget Review; Comment Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), we are notifying you that an information collection request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. We are also soliciting your comments on this ICR which describes the information collection, its expected costs and burden, and how the data will be collected.

DATES: Written comments should be received on or before May 17, 1999.

ADDRESSES: You may submit comments directly to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for the Department of the Interior (OMB Control Number 1010–0033), 725 17th Street, N.W., Washington, D.C. 20503; telephone (202) 395–7340. Copies of these comments should also be sent to us. The U.S. Postal Service address is Minerals Management Service, Royalty Management Program, Rules and Publications Staff, P.O. Box 25165, MS 3021, Denver, Colorado 80225–0165; the courier address is Building 85, Room A–613, Denver Federal Center, Denver, Colorado 80225; and the e:Mail address is RMP.comments@mms.gov.

FOR FURTHER INFORMATION CONTACT: Dennis C. Jones, Rules and Publications Staff, telephone (303) 231–3046, FAX (303) 231–3385, e:Mail Dennis.C.Jones@mms.gov. You may also contact Dennis Jones to obtain a copy of the ICR at no cost.

SUPPLEMENTARY INFORMATION:

Title: Payor Information Form (Form MMS–4025).

OMB Control Number: 1010–0033.

Abstract: The Secretary of the Interior is responsible for the collection of royalties from lessees producing minerals from leased Federal and Indian lands. The Secretary is required by various laws to manage the production of mineral resources on Indian lands and Federal onshore and offshore leases, to collect the royalties due, and to distribute the funds in accordance with those laws.

We perform royalty management functions for the Secretary. We use a database, an automated fiscal accounting system (the Auditing and Financial System) to account for revenues collected from Federal and Indian leases. Part of the database consists of information collected using the Payor Information Form (Form MMS–4025). Form MMS–4025 is used to record and report data from new producing leases, for updating payor changes, and to notify MMS of the

products on which royalties will be paid.

Based upon well data provided by the Bureau of Land Management, MMS developed a well database and, consequently, payors no longer need to report certain well data when submitting Form MMS–4025. Also, the Royalty Policy Committee, established by the Secretary, and MMS personnel identified several data elements that are only needed on an exception basis and, therefore, do not need to be routinely reported on Form MMS–4025. This program change reduces the reporting burden for this information collection.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB Control Number. The Federal Register Notice with a 60-day comment period soliciting comments on this collection of information was published on August 11, 1998 (63 FR 42870).

Burden statement: The respondent burden for this collection is estimated to average 40 minutes to complete Form MMS–4025. Recordkeeping requires an additional 5 minutes. The total annual burden hour estimate is 17,250 hours which includes the time for reviewing instructions, gathering and maintaining data, and completing and reviewing the form.

Respondents/Affected Entities: Federal and Indian lessees and payors.

Frequency of Response: As necessary.

Estimated Number of Respondents: 2,200.

Estimated Total Annual Reporting and Recordkeeping Burden: 17,250 hours.

Comments: Section 3506(c)(2)(A) of the Paperwork Reduction Act requires each agency "* * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *." Agencies must specifically solicit comments to: (a) evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

Send your comments directly to the offices listed under the addresses section of this notice. OMB has up to 60 days to approve or disapprove the information collection but may respond after 30 days. Therefore, to ensure maximum consideration, OMB should receive public comments by May 17, 1999.

MMS Information Collection Clearance Officer: Jo Ann Lauterbach (202) 208–7744.

Dated: April 8, 1999.

Lucy Querques Denett,

Associate Director for Royalty Management.

[FR Doc. 99–9506 Filed 4–15–99; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Royalty Computation of Phosphate Production on Western Public Lands; Correction

AGENCY: Minerals Management Service, Interior.

ACTION: Notice; correction.

SUMMARY: The Minerals Management Service is making two corrections to a final notice published in the **Federal Register** on March 26, 1999. The final notice provides a new method of determining the value of production used to compute royalties on phosphate ore produced from Federal leases on western public lands. The corrections to this final notice are to add a table that was omitted and to clarify the implementation date of this notice.

FOR FURTHER INFORMATION CONTACT: Herbert B. Wincentsen, Chief, Solid Minerals Valuation and Reporting Branch, Minerals Management Service, PO Box 25165, MS 3153, Denver, Colorado 80225–0165, telephone (303) 275–7210.

SUPPLEMENTARY INFORMATION: MMS published a notice in the **Federal Register** on March 26, 1999 (64 FR 14751), in which Table 2 was inadvertently omitted. This document adds Table 2 to the notice.

For further clarity, this document also changes the implementation date to the first full month following the effective date of this final notice.

Correction

In FR Doc. 99–7394 published March 26, 1999, on page 14753, in third column, insert the following table after the words "Table 2 shows the new weighted composite index methodology and the computation of the index unit value:"

TABLE 2.—COMPOSITE INDEX METHODOLOGY FOR FEDERAL PHOSPHATE VALUATION

Year	Minerals mining index	Phosphatic fertilizer index	USGS rock price index	Composite index	Index unit value
Weight Factor (percent)	50	25	25		
Base Year 1987	96.40	110.90	75.96	94.92	0.5038
1997	107.60	140.60	92.94	112.39	
1998					0.5965

In FR Doc. 99–7394 published March 26, 1999, on page 14753, in second column, correct the title and paragraph beginning with "Phosphate Unit Value from April 26, 1999" to read:

Phosphate Unit Value From May 1, 1999

Use the new methodology Unit Value ($0.5965/Unit) for production occurring on or after May 1, 1999, until August 1, 1999. No production month will have more than one Unit Value under this implementation strategy.

Dated: April 9, 1999.

R. Dale Fazio,

Acting Associate Director for Royalty Management.

[FR Doc. 99–9507 Filed 4–15–99; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

Notice of Proposed Information Collection

AGENCY: Office of Surface Mining Reclamation and Enforcement.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Office of Surface Mining Reclamation and Enforcement (OSM) is announcing its intention to request approval for the collections of information under 30 CFR Part 780, Surface Mining Permit Applications—Minimum Requirements for Reclamation and Operation Plans; and 30 CFR Part 887, Subsidence Insurance Program Grants.

DATES: Comments on the proposed information collection must be received by June 15, 1999, to be assured of consideration.

ADDRESSES: Comments may be mailed to John A. Trelease, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave, NW, Room 210—SIB, Washington, DC 20240. Comments may also be submitted electronically to jtreleas@osmre.gov.

FOR FURTHER INFORMATION CONTACT: To request a copy of the information collection request, explanatory information and related forms, contact John A. Trelease, at (202) 208–2783.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget (OMB) regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities [see 5 CFR 1320.8(d)]. This notice identifies information collections that OSM will be submitting to OMB for approval. These collections are contained in (1) 30 CFR Part 780, Surface Mining Permit Applications—Minimum Requirements for Reclamation and Operation Plans; and (2) 30 CFR Part 887, Subsidence Insurance Program Grants. OSM will request a 3-year term of approval for each information collection activity.

Comments are invited on: (1) The need for the collection of information for the performance of the functions of the agency; (2) the accuracy of the agency's burden estimates; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the information collection burden on respondents, such as use of automated means of collection of the information. A summary of the public comments will accompany OSM's submission of the information collection request to OMB.

The following information is provided for the information collection: (1) Title of the information collection; (2) OMB control number; (3) summary of the information collection activity; and (4) frequency of collection, description of the respondents, estimated total annual responses, and the total annual reporting and recordkeeping burden for the collection of information.

Title: Surface Mining Permit Applications—Minimum Requirements for Reclamation and Operation Plan—30 CFR Part 780.

OMB Control Number: 1029–0036.

Summary: Permit application requirements in sections 507(b), 508(a), 510(b), 515(b) and (d), and 522 of Public Law 95–87 require the applicant to submit the operations and reclamation plan for coal mining activities. Information collection is needed to determine whether the mining and reclamation plan will achieve the reclamation and environmental protections pursuant to the Surface Mining Control and Reclamation Act. Without this information, Federal and State regulatory authorities cannot review and approve permit application requests.

Bureau Form Number: None.

Frequency of Collection: Once.

Description of Respondents: Applicants for surface coal mine permits.

Total Annual Responses: 420.

Total Annual Burden Hours: 186,081.

Title: Subsidence Insurance Program Grants—30 CFR part 887.

OMB Control Number: 1029–0107.

Summary: States and Indian tribes having an approved reclamation plan may establish, administer and operate self-sustaining State and Indian Tribe-administered programs to insure private property against damages caused by land subsidence resulting from underground mining. States and Indian tribes interested in requesting monies for their insurance programs would apply to the Director of OSM.

Bureau Form Number: None.

Frequency of Collection: Once.

Description of Respondents: States and Indian tribes with approved coal reclamation plans.

Total Annual Responses: 0.

Total Annual Burden Hours: 1.

Dated: April 13, 1999.

Richard G. Bryson,

Chief, Division of Regulatory Support.

[FR Doc. 99–9620 Filed 4–15–99; 8:45 am]

BILLING CODE 4310–05–M

INTERNATIONAL TRADE COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: April 21, 1999 at 11:00 a.m.

PLACE: Room 101, 500 E Street S.W., Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda for future meeting: none
2. Minutes
3. Ratification List
4. Inv. No. 731–TA–208 (Review) (Barbed Wire and Barbless Wire Strand from Argentina)—briefing and vote. (The Commission will transmit its determination to the Secretary of Commerce on May 3, 1999.)
5. Outstanding action jackets: none.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

Issued: April 13, 1999.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–9684 Filed 4–14–99; 12:39 pm]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Office for Victims of Crime

[OJP(OVC)–1223]

RIN 1121–ZB56

Notice of Cancellation of the Post Rape Stress Video for Indian Country Solicitation

AGENCY: Office of Justice Programs, Office for Victims of Crime, Justice.

ACTION: Notice of Cancellation.

SUPPLEMENTARY INFORMATION:

Authority

The previous action for solicitation now canceled was authorized under the Victims of Crime Act of 1984, as amended, 42 U.S.C. 10603(c). This notice of cancellation is authorized under the Victims of Crime Act of 1984, as amended, 42 U.S.C. 10604(a).

SUMMARY: The Office for Victims of Crime (OVC) is canceling the solicitation, Post Rape Stress Video for Indian Country. This solicitation, which appeared on page 31 of OVC's FY 1999

Discretionary Program Application Kit, was one of eleven (11) competitive solicitations. The Application Kit was published on March 5, 1999. Friday, May 14, 1999 was announced as the due date for applications for this solicitation. As this solicitation is being canceled, the due date for this solicitation is no longer in effect, and OVC will neither accept nor review applications submitted in response to this particular solicitation. OVC has decided to adapt an existing video to Indian Country instead of funding a new grant.

ADDRESSES: Office for Victims of Crime, Federal Crime Victims Division, 810 Seventh Street, N.W., Washington, D.C. 20531.

FOR FURTHER INFORMATION: Questions concerning this notice should be directed to Cathy Sanders, Federal Crime Victims Division, Office for Victims of Crime, at the above address, or by telephone at (202) 616–3578, or by e-mail at Cathy@ojp.usdoj.gov.

Dated: April 13, 1999.

Kathryn M. Turman,

Acting Director, Office for Victims of Crime.

[FR Doc. 99–9621 Filed 4–15–99; 8:45 am]

BILLING CODE 4410–18–U

DEPARTMENT OF LABOR

Employment and Training Administration

Proposed Information Collection Request Submitted for Public Comment and Recommendations; Application for Alien Employment Certification

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95), 44 U.S.C. 3506(c)(2)(A). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment and Training Administration is soliciting comments concerning the proposed extension to the collection of information on the Application for Alien Employment Certification. A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed below in the addressee section of this notice.

DATES: Written comments must be submitted to the office listed in the addressee section below on or before June 15, 1999.

The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collections techniques or other forms of information, *e.g.* permitting electronic submissions of responses.

ADDRESSES: Comments and questions regarding the collection of information on Form ETA 750, parts A and B, Application for Alien Employment Certification, should be directed to James Norris, Chief, Division of Foreign Labor Certifications, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N–4456, Washington, DC 20210 ((202) 219–5263 (this is not a toll-free number)).

SUPPLEMENTARY INFORMATION:

I. Background

Under section 212(a)(5)(A) of the Immigration and Nationality Act (INA)(8 U.S.C. 1182(a)(5)(A)) certain aliens may not obtain a visa for entrance into the United States in order to engage in permanent employment unless the Secretary of Labor has first certified to the Secretary of State and to the Attorney General that: (1) There are not sufficient U.S. workers who are able, willing, qualified and available at the time of application for a visa and admission into the U.S. and at the place where the alien is to perform the work; and (2) The employment of the alien will not adversely affect the wages and working conditions of U.S. workers similarly employed. The Form ETA 750, parts A and B, is the application form submitted by employers that forms the basis for a determination as to whether the Secretary shall provide such a certification. The Form ETA 750, part A, is also utilized to collect information that permits the Department to meet federal responsibilities for administering two nonimmigrant programs: the H–2A and H–2B temporary labor certification programs. The H–2A temporary agricultural program establishes a means for agricultural employers who anticipate a shortage of domestic workers to bring nonimmigrant aliens to the U.S. to perform agricultural labor or services of a temporary or seasonal nature. The H–2B program establishes a means for employers to bring nonimmigrant aliens to the U.S. to perform nonagricultural work of a temporary or seasonal nature.

II. Current Actions

In order for the Department to meet its statutory responsibilities under the INA there is a need for an extension of an existing collection of information pertaining to employers' seeking to hire foreign workers for permanent or temporary employment in the U.S. by filing an Application for Alien Employment Certification on their behalf. There is an increase in burden due to a sustained increase in the number of applications filed by employers each year.

Type of Review: Extension of a currently approved collection.

Agency: Employment and Training Administration, Labor.

Title: Application for Alien Employment Certification.

OMB Number: 1205–0015.

Affected Public: Individuals or households, Businesses or other for-profit or not-for-profit institutions, Federal, State, Local, or Tribal governments, Farms.

Form: Form ETA 750, Parts A and B.

Total Respondents: 70,000.

Frequency of Response: On occasion.

Total Responses: 70,000.

Average Burden Hours Per Response: 2.8.

Estimate Total Annual Burden Hours: 196,000.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Signed at Washington, DC this 8th day of April 1999.

John R. Beverly, III,

Director, U.S. Employment Service.

[FR Doc. 99–9578 Filed 4–15–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedes decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW, Room S–3014, Washington, DC 20210.

Modifications to General Wage Determination Decisions

The number of decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

New Jersey,
NJ990007 (Mar. 12, 1999)

Volume II

Pennsylvania
PA990001 (Mar. 12, 1999)
PA990002 (Mar. 12, 1999)
PA990003 (Mar. 12, 1999)
PA990004 (Mar. 12, 1999)
PA990013 (Mar. 12, 1999)
PA990016 (Mar. 12, 1999)
PA990017 (Mar. 12, 1999)
PA990018 (Mar. 12, 1999)
PA990020 (Mar. 12, 1999)
PA990027 (Mar. 12, 1999)
PA990032 (Mar. 12, 1999)
PA990038 (Mar. 12, 1999)
PA990041 (Mar. 12, 1999)
PA990051 (Mar. 12, 1999)
PA990053 (Mar. 12, 1999)
PA990062 (Mar. 12, 1999)
West Virginia
WV990002 (Mar. 12, 1999)
WV990003 (Mar. 12, 1999)
WV990005 (Mar. 12, 1999)
WV990006 (Mar. 12, 1999)

Volume III

Florida
FL990015 (Mar. 12, 1999)
Georgia
GA990050 (Mar. 12, 1999)
GA990065 (Mar. 12, 1999)
GA990073 (Mar. 12, 1999)
GA990093 (Mar. 12, 1999)
GA990094 (Mar. 12, 1999)
Kentucky
KY990029 (Mar. 12, 1999)
Tennessee
TN990001 (Mar. 12, 1999)
TN990002 (Mar. 12, 1999)
TN990005 (Mar. 12, 1999)
TN990018 (Mar. 12, 1999)
TN990038 (Mar. 12, 1999)
TN990039 (Mar. 12, 1999)
TN990041 (Mar. 12, 1999)
TN990042 (Mar. 12, 1999)
TN990043 (Mar. 12, 1999)
TN990062 (Mar. 12, 1999)

Volume IV

Illinois
IL990001 (Mar. 12, 1999)
IL990004 (Mar. 12, 1999)
IL990007 (Mar. 12, 1999)
IL990008 (Mar. 12, 1999)
IL990011 (Mar. 12, 1999)
IL990013 (Mar. 12, 1999)
IL990017 (Mar. 12, 1999)
IL990018 (Mar. 12, 1999)
IL990053 (Mar. 12, 1999)
Indiana
IN990002 (Mar. 12, 1999)
IN990003 (Mar. 12, 1999)
IN990004 (Mar. 12, 1999)
IN990005 (Mar. 12, 1999)
IN990006 (Mar. 12, 1999)
IN990016 (Mar. 12, 1999)
IN990017 (Mar. 12, 1999)
IN990018 (Mar. 12, 1999)
IN990020 (Mar. 12, 1999)
IN990021 (Mar. 12, 1999)
IN990059 (Mar. 12, 1999)
IN990060 (Mar. 12, 1999)
IN990061 (Mar. 12, 1999)

Volume V

Kansas
KS990009 (Mar. 12, 1999)
KS990012 (Mar. 12, 1999)
KS990013 (Mar. 12, 1999)
KS990016 (Mar. 12, 1999)
KS990020 (Mar. 12, 1999)
KS990025 (Mar. 12, 1999)
KS990029 (Mar. 12, 1999)
Oklahoma
OK990013 (Mar. 12, 1999)
OK990014 (Mar. 12, 1999)
Texas
TX990002 (Mar. 12, 1999)
TX990003 (Mar. 12, 1999)
TX990005 (Mar. 12, 1999)
TX990007 (Mar. 12, 1999)

TX990009 (Mar. 12, 1999)
TX990010 (Mar. 12, 1999)
TX990011 (Mar. 12, 1999)
TX990012 (Mar. 12, 1999)
TX990017 (Mar. 12, 1999)
TX990019 (Mar. 12, 1999)
TX990051 (Mar. 12, 1999)
TX990060 (Mar. 12, 1999)
TX990061 (Mar. 12, 1999)
TX990063 (Mar. 12, 1999)
TX990081 (Mar. 12, 1999)
TX990093 (Mar. 12, 1999)
TX990096 (Mar. 12, 1999)

Volume VI

Colorado
CO990001 (Mar. 12, 1999)
CO990002 (Mar. 12, 1999)
CO990003 (Mar. 12, 1999)
CO990004 (Mar. 12, 1999)
CO990005 (Mar. 12, 1999)
CO990006 (Mar. 12, 1999)
CO990007 (Mar. 12, 1999)
CO990008 (Mar. 12, 1999)
CO990009 (Mar. 12, 1999)
CO990010 (Mar. 12, 1999)
CO990011 (Mar. 12, 1999)
CO990014 (Mar. 12, 1999)
CO990016 (Mar. 12, 1999)
CO990018 (Mar. 12, 1999)
CO990021 (Mar. 12, 1999)
CO990022 (Mar. 12, 1999)
CO990024 (Mar. 12, 1999)
CO990025 (Mar. 12, 1999)
Montana
MT990001 (Mar. 12, 1999)

Volume VII

California
CA990001 (Mar. 12, 1999)
CA990002 (Mar. 12, 1999)
CA990004 (Mar. 12, 1999)
CA990009 (Mar. 12, 1999)
CA990028 (Mar. 12, 1999)
CA990029 (Mar. 12, 1999)
CA990030 (Mar. 12, 1999)
CA990031 (Mar. 12, 1999)
CA990032 (Mar. 12, 1999)
CA990033 (Mar. 12, 1999)
CA990034 (Mar. 12, 1999)
CA990035 (Mar. 12, 1999)
CA990036 (Mar. 12, 1999)
CA990037 (Mar. 12, 1999)
CA990038 (Mar. 12, 1999)
CA990039 (Mar. 12, 1999)
CA990040 (Mar. 12, 1999)
CA990041 (Mar. 12, 1999)
Nevada
NV990001 (Mar. 12, 1999)
NV990002 (Mar. 12, 1999)
NV990004 (Mar. 12, 1999)

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and Related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon and Related Acts." This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

The general wage determinations issued under the Davis-Bacon and related Acts are available electronically by subscription to the FedWorld Bulletin Board System of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at 1–800–363–2068.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the seven separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates are distributed to subscribers.

Signed at Washington, DC this 9th Day of April 1999.

Margaret J. Washington,

Acting Chief, Branch of Construction Wage Determinations.

[FR Doc. 99–9271 Filed 4–15–99; 8:45 am]
BILLING CODE 4510–27–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. ICR–99–1]

Permit-Required Confined Spaces (29 CFR 1910.146); Information Collection Requirements

ACTION: Notice; Opportunity for public comment.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA–95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and impact of collection requirements on respondents can be properly assessed. Currently, the Occupational Safety and Health Administration (OSHA) is soliciting comments concerning the proposed extension of the information collection requirements contained in the standard on Permit-Required Confined Spaces (29 CFR 1910.146). The Agency is particularly interested in comments that:

- Evalaute whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;
- Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; ad
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

DATES: Written comments must be submitted on or before June 15, 1999.

ADDRESSES: Comments are to be submitted to the Docket Office, Docket No. ICR–99–1, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–2625, 200 Constitution Avenue, NW, Washington, DC 20210. Telephone: (202) 693–2350. Written comments limited to 10 pages or less in length may also be transmitted by facsimile to (202) 693–1648.

FOR FURTHER INFORMATION CONTACT: Theda Kenney, Directorate of Safety Standards Programs, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–3605, 200 Constitution Avenue, NW, Washington, DC 20210, telephone: (202) 693–2222. A copy of the referenced information collection request is available for inspection and copying in the Docket Office and will be mailed to persons who request copies by telephoning Theda Kenney at (202) 693–2222, or Barbara Bielaski at (202) 693–2444. For electronic copies of the Information Collection Request on Permit-Required Confined Spaces, contact OSHA on the Internet at http://www.osha-slc.gov/OCIS and click on "Info.coll.html."

SUPPLEMENTARY INFORMATION:

I. Background

The Occupational Safety and Health Act of 1970 (the Act) authorizes the

promulgation of such health and safety standards as are necessary or appropriate to provide safe or healthful employment and places of employment. The statute specifically authorizes information collection by employers as necessary or appropriate for the enforcement of the Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents.

In 29 CFR 1910.146, Permit-Required Confined Spaces, employers are required to perform an assessment of the workplace to determine the presence of permit-required confined spaces (permit spaces). If permit spaces are present, the employer must develop and implement a written program that prevents inadvertent entry into these spaces, and details safe and effective means of entering and exiting these spaces.

Employees risk exposure to such hazards as toxic and explosive atmospheres, oxygen deficient atmospheres, electric and mechanical energy, inwardly sloping walls and immersion in flowing material. In order to protect entrants from these hazards, a pre-entry checklist or permit must be completed that certifies that all procedures necessary to protect entrants from hazards contained within the permit space, and to provide for the entrants' safe retrieval in the event of an emergency, have been taken.

Employees who must enter permit spaces, or act as attendants or rescuers, must be trained and the employer must certify that the training was completed.

II. Current Actions

This notice requests public comment on OSHA's burden hour estimates prior to OSHA seeking Office of Management and Budget (OMB) approval of the information collection requirements contained in the standard on Permit-Required Confined Spaces (29 CFR 1910.146).

Type of Review: Extension of a Currently Approved Collection.

Agency: Occupational Safety and Health Administration.

Title: Permit-Required Confined Spaces (29 CFR 1910.146).

OMB Number: 1218–0203.

Agency Number: Docket No. ICR 99–1.

Affected Public: Business or other for-profit; Federal Government; State, local or tribal Government.

Number of Respondents: 238,853.

Frequency: Varies (On occasion, daily, annually).

Average Time per Response: Varies, from 5 minutes (.08 hr.) to 16 hours.

Estimated Total Burden Hours: 1,634,663.

Total Annualized Capital/Startup Costs: $0.

Comments submitted in response to this notice will be summarized and included in the request for Office of Management and Budget (OMB) approval of the information collection request. The comments will become a matter of public record.

Signed at Washington, DC, this 12th day of April 1999.

Charles N. Jeffress,

Assistant Secretary of Labor.

[FR Doc. 99–9579 Filed 4–15–99; 8:45 am]

BILLING CODE 4510–26–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

Advisory Committee on Construction Safety and Health; Notice of Open Meeting

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

SUMMARY: Notice is hereby given that the Advisory Committee on Construction Safety and Health (ACCSH) will meet May 6 and 7, 1999, at the Frances Perkins Department of Labor Building, 200 Constitution Avenue NW, Washington, DC. This meeting is open to the public.

TIMES, DATES, ROOMS: ACCSH will meet from 9 a.m. to 4:30 p.m. on Thursday, May 6 and from 9 a.m. to 12:00 p.m. on Friday, May 7 in rooms N–4437 A, B, C and D.

SUPPLEMENTARY INFORMATION: For further information contact Theresa Berry, Office of Public Affairs, Room N–3647, telephone (202) 693–1999 at the Occupational Safety and Health Administration, 200 Constitution Avenue, NW, Washington, DC, 20210.

An official record of the meeting will be available for public inspection at the OSHA Docket Office, Room N–2625, telephone 202–693–2350. All ACCSH meetings and those of its work groups are open to the public. Individuals with disabilities needing accommodation should contact Theresa Berry no later than April 30, 1999, at the above address. ACCSH was established under section 107(e)(1) of the Contract Work Hours and Safety Standards Act (40 U.S.C. 333) and section 7(b) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 656).

The agenda items include:

- Remarks by the Assistant Secretary for the Occupational Safety and Health Administration, Charles N. Jeffress.
- ACCSH Work Group Updates, including:
- Data Collection,
- Musculoskeletal Disorders,
- Multi-Employer Citation Policy,
- OSHA Form 170,
- Fall Protection, and
- Subpart N, Cranes.
- Reports on construction standards development,
- Policy updates, and
- Special presentations including:
- Crane Operator Certification, and
- Voluntary Protection Programs (VPP)—Short Term Construction Demonstration Programs.

The following ACCSH Work Groups are scheduled to meet in the Francis Perkins Building:

Data Collection—1–5 p.m., Tuesday, May 4, in room N–3437 A.

OSHA Form 170—9 a.m. to 1 p.m., Wednesday, May 5, in room N–3437 B.

Musculoskeletal Disorders—9:30 a.m. to 12:30 p.m., Wednesday, May 5, in room N–4437 D.

Fall Protection—1 p.m.–5 p.m. Wednesday, May 5, in room N–3437 D.

Multi-Employer Citation Policy—9 a.m. to Noon, Wednesday, May 5, in room N–3437 D.

Cranes, Subpart N—1 p.m. to 5 p.m., Wednesday, May 5, in room N–5437 D. Other workgroups may meet after the adjournment of the ACCSH meeting on May 7, 1999.

Interested persons may submit written data, view or comments, preferably with 20 copies, to Theresa Berry, at the address above. Those submissions received prior to the meeting will be provided to ACCSH and will be included in the record of the meeting.

Interested persons may also request to make an oral presentation by notifying Theresa Berry before the meeting. The request must state the amount of time desired, the interest that the person represents, a brief outline of the presentation. ACCSH may grant requests, as time permits, at the discretion of the Chair of ACCSH.

Signed at Washington, DC this 12th day of April, 1999.

Charles N. Jeffress,

Assistant Secretary of Labor.

[FR Doc. 99–9581 Filed 4–15–99; 8:45 am]

BILLING CODE 4510–26–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. NRTL–3–83]

Factory Mutual Research Corporation, Application for Expansion of Recognition

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice.

SUMMARY: This notice announces the application of Factory Mutual Research Corporation (FMRC) for expansion of its recognition as a Nationally Recognized Testing Laboratory (NRTL) under 29 CFR 1910.7, and presents the Agency's preliminary finding. This preliminary finding does not constitute an interim or temporary approval of this application.

DATES: Comments submitted by interested parties must be received no later than June 15, 1999.

ADDRESS: Send comments concerning this notice to: Office of Technical Programs and Coordination Activities, NRTL Program, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, NW, Room N3653, Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Bernard Pasquet, Office of Technical Programs and Coordination Activities, NRTL Program at the above address, or phone (202) 693–2110.

SUPPLEMENTARY INFORMATION:

Notice of Application

The Occupational Safety and Health Administration (OSHA) hereby gives notice that Factory Mutual Research Corporation (FMRC) has applied for expansion of its current recognition as a Nationally Recognized Testing Laboratory (NRTL). FMRC's expansion request covers the use of additional test standards. OSHA recognizes an organization as an NRTL, and processes applications related to such recognitions, following requirements in section 1910.7 of Title 29, Code of Federal Regulations (29 CFR 1910.7). Appendix A to this section requires that OSHA publish this public notice of the preliminary finding on an application.

FMRC's previous application as an NRTL covered its renewal of recognition as an NRTL (60 FR 16167, 3/29/95), which OSHA granted on August 16, 1995 (60 FR 42590).

The current addresses of the testing facilities (sites) that OSHA recognizes for FMRC are:

Factory Mutual Research Corporation, 1151 Boston-Providence Turnpike, Norwood, Massachusetts 02062

Factory Mutual Research Corporation, 743 Reynolds Road, West Gloucester, Rhode Island 02814

General Background on the Application

FMRC submitted a request, dated October 8, 1998 (see Exhibit 7A), to expand its recognition as an NRTL to include four (4) additional test standards. Then it submitted a request, dated November 18, 1998 (see Exhibit 7B), to expand its recognition for one more test standard. FMRC seeks recognition for testing and certification of products to demonstrate compliance to the following 5 test standards, and OSHA has determined the standards are appropriate, as prescribed by 29 CFR 1910.7(c). OSHA recognition of any NRTL for a particular test standard is limited to products for which OSHA standards require third party testing and certification before use in the workplace.

ANSI/UL 1950 Information Technology Equipment Including Electrical Business Equipment

FMRC 2000 Automatic Sprinklers for Fire Protection

FMRC 2008 Early Suppression-Fast Response (ESFR) Automatic Sprinklers

FMRC 3260 Flame Radiation Detectors for Automatic Fire Alarm Signaling

FMRC 3900 Less or nonflammable Liquid-Insulated Transformers

The designations and titles of the above test standards were current at the time of the preparation of this notice.

Preliminary Finding on the Application

FMRC has submitted an acceptable request for expansion of its recognition as an NRTL. In connection with this request, OSHA did not perform an on-site review of FMRC's NRTL testing facilities. However, NRTL Program assessment staff reviewed information pertinent to the request and, in a memo dated February 10, 1999 (see Exhibit 8), recommended that FMRC's recognition be expanded to include the additional test standards listed above.

Following a review of the application file, the assessor's recommendation, and other pertinent documents, the NRTL Program staff has concluded that OSHA can grant, to the FMRC facilities listed above, the expansion of recognition to use the additional 5 test standards. The staff therefore recommended to the Assistant Secretary that the application be preliminarily approved.

Based upon the recommendation of the staff, the Assistant Secretary has made a preliminary finding that the Factory Mutual Research Corporation facilities listed above can meet the recognition requirements, as prescribed by 29 CFR 1910.7, for the expansion of recognition. This preliminary finding does not constitute an interim or temporary approval of the application.

OSHA welcomes public comments, in sufficient detail, as to whether FMRC has met the requirements of 29 CFR 1910.7 for expansion of its recognition as a Nationally Recognized Testing Laboratory. Your comment should consist of pertinent written documents and exhibits. To consider it, OSHA must receive the comment at the address provided above (see "ADDRESS"), no later than the last date for comments (see "DATES" above). You may obtain or review copies of FMRC's requests, the memo on the recommendation, and all submitted comments, as received, by contacting the Docket Office, Room N2625, Occupational Safety and Health Administration, U.S. Department of Labor, at the above address. You should refer to Docket No. NRTL–3–93, the permanent record of public information on FMRC's recognition.

The NRTL Program staff will review all timely comments, and after resolution of issues raised by these comments, will recommend whether to grant FMRC's expansion request. The Assistant Secretary will make the final decision on granting the expansion and, in making this decision, may undertake other proceedings that are prescribed in Appendix A to 29 CFR 1910.7. OSHA will publish a public notice of this final decision in the **Federal Register**.

Signed at Washington, D.C. this 26th day of March, 1999.

Charles N. Jeffress,

Assistant Secretary.

[FR Doc. 99–9577 Filed 4–15–99; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

Working Group Studying Issues Surrounding the Trend in the Defined Benefit Plan Market With a Focus on Employer-Sponsored Hybrid Plans Advisory Council on Employee Welfare and Pension Benefits Plans; Notice of Meeting

Pursuant to the authority contained in Section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, a public meeting will be held on Thursday, May 6, 1999, of the Advisory Council on Employee Welfare and Pension Benefit Plans Working Group assigned to study issues surrounding trends in the defined benefit market with a focus on employer-sponsored hybrid plans.

The purpose of the open meeting, which will run from 9:30 a.m. to approximately noon in Room N–3437 A–C, U.S. Department of Labor Building, Second and Constitution Avenue NW, Washington, D.C. 20210, is for working group members to take testimony on the subject.

Members of the public are encouraged to file a written statement pertaining to the topic by submitting 20 copies on or before April 30, 1999, to Sharon Morrissey, Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, Room N–5677, 200 Constitution Avenue, NW, Washington, DC 20210. Individuals or representatives of organizations wishing to address the Working Group should forward their request to the Executive Secretary or telephone (202) 219–8753. Oral presentations will be limited to 10 minutes, but an extended statement may be submitted for the record. Individuals with disabilities, who need special accommodations, should contact Sharon Morrissey by April 30, at the address indicated in this notice.

Organizations or individuals also may submit statements for the record without testifying. Twenty (20) copies of such statements should be sent to the Executive Secretary of the Advisory Council at the above address. Papers will be accepted and included in the record of the meeting if received on or before April 30.

Signed at Washington, DC this 12th day of April 1999.

Richard McGahey,

Assistant Secretary, Pension and Welfare Benefits Administration.

[FR Doc. 99–9582 Filed 4–15–99; 8:45 am]

BILLING CODE 4510–29–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

Working Group on the Benefit Implications Due to the Growth of a Contingent Workforce Advisory Council on Employee Welfare and Pension Benefits Plans; Notice of Meeting

Pursuant to the authority contained in Section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, the Working Group assigned by the Advisory Council on Employee Welfare and Pension Benefit Plans to study what the benefit implications are due to the growth of a contingent workforce will hold an open public meeting on Wednesday, May 5, 1999, in Room N–3437 A–C, U.S. Department of Labor Building, Second and Constitution Avenue, NW., Washington, DC 20210.

The purpose of the open meeting, which will run from 9:30 a.m. to approximately noon, is for Working Group members to continue taking testimony on the subject.

Members of the public are encouraged to file a written statement pertaining to the topic by submitting 20 copies on or before April 30, 1999, to Sharon Morrissey, Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, Room N–5677, 200 Constitution Avenue, NW, Washington, DC 20210. Individuals or representatives of organizations wishing to address the Working Group should forward their request to the Executive Secretary or telephone (202) 219–8753. Oral presentations will be limited to 10 minutes, but an extended statement may be submitted for the record. Individuals with disabilities, who need special accommodations, should contact Sharon Morrissey by April 30, at the address indicated in this notice.

Organizations or individuals may also submit statements for the record without testifying. Twenty (20) copies of such statements should be sent to the Executive Secretary of the Advisory Council at the above address. Papers will be accepted and included in the record of the meeting if received on or before April 30.

Signed at Washington, DC this 12th day of April, 1999.

Richard McGahey,

Assistant Secretary, Pension and Welfare Benefits Administration.

[FR Doc. 99–9583 Filed 4–15–99; 8:45 am]

BILLING CODE 4510–29–M

DEPARTMENT OF LABOR

Pénsion and Welfare Benefits Administration

Working Group Exploring the Possibility of Using Surplus Pension Assets To Secure Retiree Health Benefits Advisory Council on Employee Welfare and Pension Benefits Plans; Notice of Meeting

Pursuant to the authority contained in Section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, a public meeting will be held Wednesday, May 5, 1999, of the Advisory Council on Employee Welfare and Pension Benefit Plans Working Group assigned to explore the possibility of using surplus pension assets to secure retiree health benefits.

The session will take place in Room N–3437 A–C, U.S. Department of Labor Building, Second and Constitution Avenue, NW, Washington, DC 20210. The purpose of the open meeting, which will run from 1:00 p.m. to approximately 4:00 p.m., is for working group members to continue taking testimony on the subject.

Members of the public are encouraged to file a written statement pertaining to the topic by submitting 20 copies on or before April 30, 1999, to Sharon Morrissey, Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, Room N–5677, 200 Constitution Avenue, NW, Washington, DC 20210. Individuals or representatives of organizations wishing to address the Working Group should forward their request to the Executive Secretary or telephone (202) 219–8753. Oral presentations will be limited to 10 minutes, but an extended statement may be submitted for the record. Individuals with disabilities, who need special accommodations, should contact Sharon Morrissey by April 30, at the address indicated in this notice.

Organizations or individuals may also submit statements for the record without testifying. Twenty (20) copies of such statements should be sent to the Executive Secretary of the Advisory Council at the above address. Papers will be accepted and included in the record of the meeting if received on or before April 30.

Signed at Washington, DC on this 12th day of April 1999.

Richard McGahey,

Assistant Secretary, Pension and Welfare.

[FR Doc. 99–9584 Filed 4–99; 8:45 am]

BILLING CODE 4510–29–M

LEGAL SERVICES CORPORATION

Notice of Availability of Calendar Year 2000 Competitive Grant Funds

AGENCY: Legal Services Corporation.

ACTION: Solicitation for proposals for the provision of civil legal services.

SUMMARY: The Legal Services Corporation (LSC or Corporation) is the national organization charged with administering federal funds provided for civil legal services to the poor.

The Corporation hereby announces the availability of competitive grant funds and is soliciting grant proposals from interested parties who are qualified to provide effective, efficient and high quality civil legal services to eligible clients in the states and territories by service area(s) identified below. The exact amount of congressionally appropriated funds and the date, terms and conditions of their availability for calendar year 2000 have not been determined.

DATES: See Supplementary Information section for grants competition dates.

ADDRESS: Legal Services Corporation—Competitive Grants, 750 First Street NE.,

10th Floor, Washington, DC 20002–4250.

FOR FURTHER INFORMATION CONTACT: Office of Program Performance, Competitive Grants—Service Desk at (202) 336–8900, by FAX at(202) 336–7272, by e-mail at competition@smtp.lsc.gov, or visit the LSC website at www.lsc.gov.

SUPPLEMENTARY INFORMATION: Request for Proposals(RFP) will be available April 23, 1999. The due dates for the Notice of Intent to Compete and Grant Proposals follow.

Applicants competing for service areas in Alabama, Alaska, Arkansas, Connecticut, Delaware, District of Columbia, Florida, Georgia, Hawaii, Idaho, Illinois, Kansas, Louisiana, Maine, Maryland, Massachusetts, Michigan, Micronesia, Minnesota, Mississippi, Montana, Nevada, New Hampshire, North Carolina, North Dakota, Oklahoma, Rhode Island, South Carolina, Tennessee, Texas, Utah, Vermont, Washington, or Wisconsin must submit the notice of intent to compete by June 1, 1999, 5:00 p.m. EDT. Grant proposals for service areas in these states must be submitted by June 21, 1999, 5:00 p.m. EDT.

Applicants competing for service areas in Arizona, California, Indiana, Nebraska, New Jersey, New York, Ohio, Pennsylvania, and Virginia must submit the notice of intent to compete by July 1, 1999, 5:00 p.m. EDT. Grant proposals for service areas in these states must be submitted by July 19, 1999, 5:00 p.m. EDT.

LSC is seeking proposals from: (1) Non-profit organizations that have as a purpose the furnishing of legal assistance to eligible clients; (2) private attorneys; (3) groups of private attorneys or law firms; (4) state or local governments; and (5) substate regional planning and coordination agencies which are composed of substate areas and whose governing boards are controlled by locally elected officials.

The solicitation package, containing the grant application, guidelines, proposal content requirements and specific selection criteria, is available from the LSC website. A hard copy may be obtained by contacting the Corporation by letter, phone, FAX, or by e-mail. LSC will not FAX the solicitation package to interested parties; however, solicitation packages may be requested by FAX.

State	Service areas
Alaska	AK–1, NAK–1.
Alabama	AL–1, AL–2, AL–3, MAL.
Arkansas	AR–1, AR–2, AR–3, AR–4, AR–5, MAR.
Arizona	AZ–3, AZ–5, MAZ, NAZ–6.
California	CA–25, CA–28.
Connecticut	CT–1, MCT, NCT–1.
District of Columbia	DC–1.
Delaware	DE–1, MDE.
Florida	FL–1, FL–2, FL–3, FL–4, FL–5, FL–6, FL–7, FL–8, FL–9, FL–10, FL–11, FL–12, MFL.
Georgia	GA–1, GA–2, MGA.
Hawaii	HI–1, MHI, NHI–1.
Idaho	ID–1, MID, NID–1.
Illinois	IL–1, IL–2, IL–3, IL–4, IL–5, MIL.
Indiana	IN–1, IN–2, IN–3, IN–4, MIN.
Kansas	KS–1, MKS.
Louisiana	LA–1, LA–2, LA–3, LA–4, LA–5, LA–6, LA–7, LA–8, MLA.
Massachusetts	MA–4.
Maryland	MD–1, MMD.
Maine	ME–1, MME, NME–1.
Michigan	MI–7, MI–11.
Minnesota	MN–1, MN–2, MN–3, MN–4, MN–5, MMN, NMN–1.
Micronesia	MP–1.
Mississippi	MS–1, MS–2, MS–3, MS–4, MS–5, MS–6, MMS, NMS–1.
Montana	MT–1, MMT, NMT–1.
North Carolina	MNC.
North Dakota	MND.
Nebraska	NE–4, MNE, NNE–1.
New Hampshire	NH–1, MNH.
New Jersey	NJ–1, NJ–2, NJ–3, NJ–4, NJ–5, NJ–6, NJ–7, NJ–8, NJ–9, NJ–10, NJ–11, NJ–12, NJ–13, NJ–14, MNJ.
Nevada	NV–1, MNV, NNV–1.
New York	NY–1, NY–3, NY–4, NY–5, NY–6, NY–7, NY–8, NY–9, NY–10, NY–13, NY–14, NY–15, NY–16, NY–17, NY–18, MNY.
Ohio	OH–5, OH–17, OH–18, OH–19, OH–20, OH–21, OH–22, MOH.
Oklahoma	OK–1, OK–2, MOK, NOK–1.
Pennsylvania	PA–1, PA–2, PA–3, PA–4, PA–5, PA–8, PA–9, PA–11, PA–12, PA–13, PA–14, PA–17, PA–18, PA–20, PA–21, PA–22, MPA.
Rhode Island	RI–1, MRI.
South Carolina	SC–1, SC–2, SC–3, SC–4, SC–7, MSC.
Tennessee	TN–1, TN–2, TN–3, TN–4, TN–5, TN–6, TN–7, TN–8, MTN.
Texas	TX–1, TX–3, TX–4, TX–5, TX–6, TX–8, TX–9, TX–10, TX–11, TX–12, MTX, NTX–1.
Utah	UT–1, MUT, NUT–1.
Virginia	VA–1, VA–3, VA–4, VA–5, VA–6, VA–7, VA–9, VA–10, VA–11, VA–12, VA–13, VA–14, MVA.
Vermont	VT–1, MVT.
Washington	WA–1, MWA, NWA–1.
Wisconsin	WI–2, NWI–1.

Dated: April 13, 1999.

Michael A. Genz,

Director, Office of Program Performance.

[FR Doc. 99–9626 Filed 4–15–99; 8:45 am]

BILLING CODE 7050–01–P.

MERIT SYSTEMS PROTECTION BOARD

Agency Information Collection Activities; Proposed Collection

AGENCY: Merit Systems Protection Board.

ACTION: Notice.

SUMMARY: The U.S. Merit Systems Protection Board (MSPB) is requesting a three year extension of approved of its optional appeal form, Optional Form 283 (Rev. 10/94) from the Office of Management and Budget (OMB) under section 3506 of the Paperwork Reduction Act of 1995. The appeal form is currently displayed in 5 CFR part 1201, Appendix I, and on the MSPB Web Page at http://www.mspb.gov/merit009.html.

In this regard, we are soliciting comments on the public reporting burden. The reporting burden for the collection of information on this form is estimated to vary from 20 minutes to one hour per response, with an average of 30 minutes, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

ESTIMATED ANNUAL REPORTING BURDEN

5 CFR section	Annual number of respondents	Frequency per response	Total annual responses	Hours per response (average)	Total hours
1201 and 1209	9,000	1	9,000	.5	4,500

In addition, the MSPB invites comments on (1) Whether the proposed collection of information is necessary for the proper performance of MSPB's functions, including whether the information will have practical utility; (2) the accuracy of MSPB's estimate of burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate and other forms of information technology.

DATES: Comments must be received on or before June 15, 1999.

ADDRESSES: Copies of the appeal form may be obtained from Arlin Winefordner, Merit Systems Protection Board, 1120 Vermont Ave., NW., Washington, DC 20419 or by calling (202) 653–7200. Comments concerning the paperwork burden should also be addressed to Mr. Winefordner.

Robert E. Taylor,

Clerk of the Board.

[FR Doc. 99–9574 Filed 4–15–99; 8:45 am]

BILLING CODE 7400–01–M

MERIT SYSTEMS PROTECTION BOARD

Sunshine Act Meeting

TIME AND DATE: 2:00 p.m., Tuesday, April 20, 1999.

PLACE: Board Conference Room, Eighth Floor, 1120 Vermont Avenue, NW., Washington, DC 20419.

STATUS: The meeting will be closed.

MATTERS TO BE CONSIDERED: Proposal for the drafting of shorter decisions in straightforward cases to reduce the time devoted to writing and reviewing dispositive orders.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Shannon McCarthy or Matthew Shannon, Office of the Clerk of the Board, (202) 653–7200.

Dated: April 13, 1999.

Robert E. Taylor,

Clerk of the Board.

[FR Doc. 99–9677 Filed 4–14–99; 11:36 am]

BILLING CODE 7400–01–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 99–060]

NASA Advisory Council, Advisory Committee on the International Space Station (ACISS); Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a meeting of the NASA Advisory Council, Advisory Committee on the International Space Station.

DATES: Wednesday, May 5, 1999, from 8:30 a.m. until 12:30 p.m. and from 1:30 p.m. until 4:30 p.m.; and Thursday, May 6, 1999 from 8:00 a.m. until Noon and from 1:00 p.m. until 2:00 p.m.

ADDRESSES: Astronaut's Memorial Foundation, Building M6306, Kennedy Space Center, FL 32899.

FOR FURTHER INFORMATION CONTACT: Mr. W. Michael Hawes, Code M4, National Aeronautics and Space Administration, Washington, DC 20546, 202/358–0242.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to seating capacity of the room, from 8:30 a.m. until 12:30 p.m. and from 1:30 p.m. until 4:30 p.m. on Wednesday, May 5, 1999; and from 8:00 a.m. until Noon and from 1:00 p.m. until 2:00 p.m. on Thursday, May 6, 1999. The agenda for the meeting is as follows:

—ISS Development Program Update and Russian Status
—ISS Operations Update
—Probabilistic Risk Assessment
—On Orbit Verification
—Non-Prime Risk
—Budget Impact to ISS Users
—ISS Outreach Program
—Exploration
—User topics discussion
—Propulsion Module
—Interim Control Module
—CRV Independent Assessment, Acquisition Strategy Update

It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

Dated: April 9, 1999.

Matthew Crouch.

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 99–9478 Filed 4–15–99; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 99–061]

NASA Advisory Council, Aeronautics and Space Transportation Technology Advisory Committee, Aviation Safety Reporting System Subcommittee Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a NASA Advisory Council, Aeronautics and Space Transportation Technology Advisory Committee, Aviation Safety Reporting System Subcommittee meeting.

DATES: Wednesday, May 12, 1999, 9:00 a.m. to 3:00 p.m. and Thursday, May 13, 1999, 9:00 a.m. to 2:00 p.m.

ADDRESSES: National Business Aviation Association, 1200 18 Street, NW, Suite 400, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ms. Linda Connell, National Aeronautics and Space Administration, Ames Research Center, Moffett Field, CA 94035, 650/604–6654.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. Agenda topics for the meeting are as follows:

—Report on Aviation Safety Reporting System (ASRS)

—Report on Aviation Performance Measuring System Program (APMS)

—Report on NASA Aviation Safety Program Elements Related to ASRS/APMS

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitors register.

Dated: April 12, 1999.

Matthew M. Crouch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 99–9479 Filed 4–15–99; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 99–059]

NASA Advisory Council, Minority Business Resource Advisory Committee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Minority Business Resource Advisory Committee.

DATES: Wednesday, May 5, 1999, 9:00 a.m. to 4:00 p.m., and Thursday, May 6, 1999, 9:00 a.m. to 12:00 noon.

ADDRESSES: NASA Headquarters, 300 E Street, SW, Room 9H40, Washington, DC 20546–0001.

FOR FURTHER INFORMATION CONTACT: Mr. Ralph C. Thomas III, Code K, National Aeronautics and Space Administration, Room 9K70, 300 E Street, SW, Washington, DC 20546–0001, (202) 358–2088.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—MBRAC Subpanel Reports
—The Present State of Former NASA SDB Contractors
—Action Items
—Agency Small Disadvantaged Business (SDB) Program
—Report of Chair
—Public Comment
—Summary of MBRAC III Accomplishments
—Report on NASA FY 98 SDB Accomplishments

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

Matthew M. Crouch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 99–9550 Filed 4–15–99; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 99–058]

Notice of Prospective Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of prospective patent license.

SUMMARY: NASA hereby gives notice that Sprag-Tech L.L.C., of Denver, Colorado, has applied for a partially exclusive license to practice the inventions described in: U.S. Patent No. 5,482,144, entitled "Three Dimensional Roller Locking Sprags;" U.S. Patent No. 5,518,094, entitled "Clutch/Brake Having Rectangular-Area-Contact-3-D Locking Sprags," and NASA Case No. GSC–13802–1, entitled "3–D Sprag Ratcheting Tool." Each is assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. Written objections to the prospective grant of the license should be sent to Goddard Space Flight Center.

DATES: Responses to this notice must be received by July 15, 1999.

FOR FURTHER INFORMATION CONTACT: Guy M. Miller, Patent Counsel, Goddard Space Flight Center, Mail Code 750.2, Greenbelt, MD 20771, telephone (301) 286–7351.

Dated; April 8, 1999.

Edward A. Frankle,

General Counsel.

[FR Doc. 99–9477 Filed 4–15–99; 8:45 am]

BILLING CODE 7510–01–P

NUCLEAR REGULATORY COMMISSION

[Dockets 70–7001, 70–7002]

Notice of Amendment to Certificate of Compliance GDP–1 and GDP–2 for the U.S. Enrichment Corporation, Paducah Gaseous Diffusion Plant, Paducah, KY Portsmouth Gaseous Diffusion Plant, Piketon, OH

The Director, Office of Nuclear Material Safety and Safeguards, has made a determination that the following amendment request are not significant in accordance with 10 CFR 76.45. In making that determination, the staff concluded that: (1) There is no change in the types or significant increase in the amounts of any effluents that may be released offsite; (2) there is no significant increase in individual or cumulative occupational radiation exposure; (3) there is no significant construction impact; (4) there is no significant increase in the potential for, or radiological or chemical consequences from, previously analyzed accidents; (5) the proposed changes do not result in the possibility of a new or different kind of accident; (6) there is no significant reduction in any margin of

safety; and (7) the proposed changes will not result in an overall decrease in the effectiveness of the plant's safety, safeguards or security programs. The basis for this determination for the amendment requests are shown below.

The U.S. Nuclear Regulatory Commission (NRC) staff has reviewed the certificate amendment applications and concluded that they provide reasonable assurance of adequate safety, safeguards, and security, and compliance with NRC requirements. Therefore, the Director, Office of Nuclear Material Safety and Safeguards, is prepared to issue amendments to the Certificate of Compliance for the Paducah (PGDP) and Portsmouth (PORTS) Gaseous Diffusion Plants. The staff has prepared a Compliance Evaluation Report which provides details of the staff's evaluation.

The NRC staff has determined that these amendments satisfy the criteria for a categorical exclusion in accordance with 10 CFR 51.22(c)(19) Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments.

The United States Enrichment Corporation (USEC) or any person whose interest may be affected may file a petition, not exceeding 30 pages, requesting review of the Director's Decision. The petition must be filed with the Commission not later than 15 days after publication of this **Federal Register** Notice. A petition for review of the Director's Decision shall set forth with particularity the interest of the petitioner and how that interest may be affected by the results of the decision. The petition should specifically explain the reasons why review of the Decision should be permitted with particular reference to the following factors: (1) the interest of the petitioner; (2) how that interest maybe affected by the Decision, including the reasons why the petitioner should be permitted a review of the Decision; and (3) the petitioner's areas of concern about the activity that is the subject matter of the Decision. Any person described in this paragraph (USEC or any person who filed a petition) may file a response to any petition for review, not to exceed 30 pages, within 10 days after filing of the petition. If no petition is received within the designated 15-day period, the Director will issue the final amendments to the Certificates of Compliance without further delay. If a petition for review is received, the decision on the amendment applications will become final in 60 days, unless the Commission grants the petition for review or otherwise acts within 60 days after publication of this **Fedeal Register** Notice.

A petition for review must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW, Washington, DC, by the above date.

For further details with respect to the action see (1) the applications for amendment and (2) the Commission's Compliance Evaluation Report. These items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW, Washington, DC, and at the Local Public Document Room.

Date of amendment requests: March 16, 1999.

Brief description of amendments: USEC submitted two separate but similar amendments for PGDP and PORTS which involve a change in the title of the Executive Vice President, Operations to Executive Vice President to reflect a restructuring of USEC.

Basis for finding of no significance:

1. The proposed amendments will not result in a change in the types of significant increase in the amounts of any effluents that may be released offsite.

The proposed amendments, which involve a change in the title of the Executive Vice President, Operations, to Executive Vice President will not result in a change in the types or significant increase in the amounts of any effluents that may be released offsite.

2. The proposed amendments will not result in a significant increase in individual or cumulative occupational radiation exposure.

The proposed amendments, changing the title of the Executive Vice President, Operations to Executive Vice President will not significantly increase individual or cumulative occupational radiation exposure.

3. The proposed amendments will not result in a significant construction impact.

The proposed changes will not result in any construction, therefore, there will be no construction impact.

4. The proposed amendments will not result in a significant increase in the potential for, or radiological or chemical consequences from, previously analyzed accidents.

The proposed amendments will not result in a significant increase in the potential for, or radiological or chemical consequences from, previously analyzed accidents.

5. The proposed amendments will not result in the possibility of a new or different kind of accident.

The proposed amendments, which involve changing the title of the Executive Vice President, Operations to Executive Vice President, will not result in the possibility of a new or different kind of accident.

6. The proposed amendments will not result in a significant reduction in any margin of safety.

The proposed amendments only involve changing the title of the Executive Vice President, Operations to Executive Vice President. Therefore, the proposed changes do not represent a reduction in any margin of safety.

7. The proposed amendments will not result in an overall decrease in the effectiveness of the plant's safety, safeguards or security programs.

The proposed amendments only involves changing the title of the Executive Vice President, Operations to Executive Vice President. Therefore, the proposed amendments will not result in an overall decrease in the effectiveness of the plant's safety, safeguards or security programs.

Effective date: The amendment to GDP–1 and GDP–2 will become effective upon issuance by NRC.

Certificate of Compliance Nos. GDP–1 and GDP–2: The amendments will revise the PGDP and PORTS Technical Safety Requirement Sections 3.1.1 and 3.10.4.d.

Local Public Document Room locations: Paducah Public Library, 555 Washington Street, Paducah, Kentucky 42003; Portsmouth Public Library, 1220 Gallia Street, Portsmouth, Ohio 45662.

Dated at Rockville, Maryland, this 7th day of April 1999.

For the Nuclear Regulatory Commission.

Carl J. Paperiello,

Director, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 99–9535 Filed 4–15–99; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF PERSONNEL MANAGEMENT

[OPM Form 2809]

Submission for OMB Review; Comment Request for Review of a Revised and Expired Information Collection

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub.

L. 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) will submit to the Office of Management and Budget a request for review of a revised and expired information collection. OPM Form 2809, Health Benefits Registration Form, is used by annuitants and former spouses to elect, cancel, or change health benefits enrollment during periods other than open season.

There are approximately 30,000 changes to health benefits coverage per year. Of these, 20,000 are submitted on OPM Form 2809 and 10,000 verbally or in written correspondence. Each form takes approximately 45 minutes to complete; data collection by telephone or mail takes approximately 10 minutes. The annual burden for the form is 15,000 hours; the burden not using the form is 1,667 hours. The total burden is 16,667.

For copies of this proposal, contact Mary Beth Smith-Toomey on (202) 606–8358, or E-mail to mbtoomey@opm.gov.

DATES: Comments on this proposal should be received on or before May 17, 1999.

ADDRESSES: Send or deliver comments to—

Dennis A. Matteotti, Acting Chief, Operations Support Division, Retirement and Insurance Service, U.S. Office of Personnel Management, 1900 E Street, NW, Room 3349, Washington, DC 20415

and

Joseph Lackey, OPM Desk Officer, Office of Information & Regulatory Affairs, Office of Management & Budget, New Executive Office Building, NW, Room 10235, Washington, DC 20503

FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION CONTACT: Phyllis R. Pinkney, Budget & Administrative Services Division, (202) 606–0623.

Office of Personnel Management.

Janice R. Lachance,

Director.

[FR Doc. 99–9528 Filed 4–15–99; 8:45 am]

BILLING CODE 6325–01–U

POSTAL RATE COMMISSION

[Docket No. MC99–3; Order No. 1237]

Mail Classification Case

AGENCY: Postal Rate Commission.

ACTION: Notice of initiation of new classification docket.

SUMMARY: This case addresses a rate anomaly facing certain nonprofit and classroom Periodicals class mailers. The proposed changes allow eligible mailers the option of calculating and paying postage under an alternative rate schedule. The Service also proposes postage refunds under certain circumstances. These actions remedy unintended consequences of a recent rate case. They also eliminate the incentive to create artificial distinctions to qualify for lower rates.

DATES: See Supplementary Information section for dates.

ADDRESSES: Send communications regarding this notice to the attention of Margaret P. Crenshaw, Secretary of the Commission, 1333 H Street NW., Suite 300, Washington, DC 20268–0001.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, 1333 H Street NW., Washington, DC 20268–0001, 202–789–6820.

SUPPLEMENTARY INFORMATION: On April 9, 1999, the Postal Service filed a request with the Commission for a recommended decision on proposed changes in the domestic mail classification schedule (DMCS). The request was filed pursuant to section 3623 of the Postal Reorganization Act, 39 U.S.C. 101 *et seq.* The request includes attachments and is supported by the testimony of one witness. It is on file in the Commission docket room and is available for inspection during the Commission's regular business hours.

The purpose of the Postal Service request is to provide a remedy for a rate anomaly affecting certain nonprofit and classroom Periodicals class mailers which inadvertently resulted from the last omnibus rate case (docket no. R97–1). For certain publications, the rates available in the nonprofit and classroom rate schedules (423.3 and 423.4, respectively) generate higher postage amounts than the regular rate schedule rates.

The Service proposes that until the Periodicals rates may be generally adjusted in the next omnibus rate case, a classification change be instituted that would allow nonprofit and classroom subclass mailings to use the regular rate schedule when such use would lower the publication's postage. Request of the United States Postal Service for a Recommended Decision on Periodicals Classification Change, April 9, 1999 ("Postal Service Request") at 1. (Even without the proposed classification change, preferred mailers affected by the rate anomaly qualify for the lower regular rates if they relinquish their preferred authorization.) The Service also proposes a new footnote to the regular rate schedule exempting nonprofit and classroom publications with less than 10 percent advertising that use the regular rate schedule from paying the advertising pound rates. Id. at 1–2.

Potential Refunds

According to the Service, the requested classification changes are not intended to reopen for consideration those rates and fees established in docket no. R97–1, but to provide a means of access to the established regular rates for qualifying nonprofit and classroom publications using their current permits. To this end, subject to the Commission's recommendation and the Board of Governor's approval, the Service has initiated a refund procedure to address the rate anomaly as of April 9, 1999. Id. at 2. Under the refund procedure, nonprofit and classroom mailers can submit dual mailing statements and apply for a subsequent refund for the difference between the preferred postage paid and the otherwise applicable regular rate on mailings made from April 9, 1999 forward. The refund procedure is to be comparable to the established "application pending" procedure applicable to mailers applying for a preferred rate authorization, as described in domestic mail manual (DMM) §§ E270.8.0–9.0. Ibid.

Contents of the Filing

The Postal Service request is supported by the testimony of witness Taufique (USPS–T–1), who explains the rate anomaly and describes the Service's classification proposal. The testimony maintains that the request has minimal revenue and cost impact and conforms with the applicable standards of the Postal Reorganization Act (specifically, 39 U.S.C. 3623(c) classification criteria).

Proposed DMCS Provisions

The Postal Service's request proposes changes in section 441 (Periodicals) of the current DMCS to provide a remedy for the rate anomaly affecting certain nonprofit and classroom Periodicals class mailers. The proposed DMCS changes are provided as attachment A to the Service request, and likewise accompany this notice and order as attachment A. (Changes presented in italics.)

Proposed Rate Schedule

In attachment B to its request, the Service displays changes it proposes to DMCS rate schedule 421—Periodicals rate schedule 421—regular subclass). The Service's requested changes in rates accompany this notice and order as attachment B.

Procedural Proposal

The Service's request is accompanied by a motion for expedition and for waiver of certain provisions of rule 64(h) ("Postal Service Motion"). The Service requests waiver of the requirement to provide the information specified in Commission rules 64(d), 64(h), 54(f)(2), 54(f)(3), 54(h), 54(i) and 54(j), to the extent they apply. Postal Service Motion at 6. Rule 64(h)(3) provides that the requirements may be waived if the Commission determines that it has been demonstrated that proposed changes in the classification schedule do not significantly change rates and fees or cost-revenue relationships referred to in the rule. In support of the waiver, the Service cites the limited nature and applicability of the proposed DMCS changes. In particular, it notes that the proposal does not involve a fundamental change in any classification or fee, and is extremely restricted in its impact on the revenues and costs of the affected Periodicals subclasses and on the revenues and costs of the system as a whole. Id. at 6–8.

With regard to its motion for expedition, the Service maintains that its proposal to correct the unintended rate anomaly in the nonprofit and classroom Periodicals subclasses entails straightforward, minor changes to the DMCS and rate schedule for the Periodicals regular subclass, with an insignificant effect on the Service's overall volumes, revenues and costs. Id. at 2–3. In accordance with the simplicity and minor impact of the request, the Service suggests a number of procedures to facilitate a speedy resolution, including: (1) A relatively short intervention period; (2) a requirement that if parties desire a hearing, they request one in their notice for intervention, with those issues believed to be of sufficient import delineated; and (3) limited (if any) and expedited discovery, restricted to those matters bearing directly on the proposed changes. Id. at 3–4.

Commission Action on Docket No. MC99–3 Motion

The Commission is inclined to handle this request in an expedient manner, absent a request for a hearing on a genuine issue of material fact. To this end, the Commission directs that any interested party wishing to respond to the Postal Service motion file an answer by April 28, 1999.

Intervention

Anyone wishing to be heard in this case is directed to file a written notice of intervention with Margaret P. Crenshaw, secretary of the Commission, 1333 H Street, NW., Suite 300, Washington, DC 20268–0001 no later than April 28, 1999. Notices should indicate whether an intervenor is seeking full or limited participation status and whether a hearing is requested. *See* 39 CFR 3001.20 and 3001.20a. Participants should state with specificity the issues which they believe will merit evidentiary hearings. There will be a prehearing conference in this docket on May 3, 1999, and if no requests for hearing are received by April 28, the Commission will entertain a motion from the Postal Service to enter its testimony into evidence at that time and to discuss the need for additional procedural steps.

Representation of the General Public

In conformance with section 3624(a) of title 39, U.S. Code, the Commission designates Ted P. Gerarden, director of the Commission's office of the consumer advocate (OCA), to represent the interests of the general public in this proceeding. Pursuant to this designation, Mr. Gerarden will direct the activities of Commission personnel assigned to assist him and, upon request, supply their names for the record. Neither Mr. Gerarden nor any of the assigned personnel will participate in or provide advice on any Commission decision in this proceeding. The OCA shall be separately served with three copies of all filings, in addition to and contemporaneous with, service on the Commission of the 24 copies required by section 10(c) of the Commission's rules of practice (39 CFR 3001.10(c)).

It is ordered:

1. The Commission will sit en banc in docket no. MC99–3.

2. Notices of intervention in docket no. MC99–3 shall be filed no later than April 28, 1999.

3. Ted P. Gerarden, director of the Commission's office of the consumer advocate, is designated to represent the interests of the general public in docket no. MC99–3.

4. Answers to the Postal Service's April 9, 1999 motion referenced in the body of this order concerning waiver of certain filing requirements and expedition of its request shall be filed no later than April 28, 1999.

5. A prehearing conference for the consideration of procedural matters in docket no. MC99–3 shall be held in the hearing room of the Commission, 1333 H Street, NW., Washington, DC on May 3, 1999, at 9:30 a.m.

6. The secretary of the Commission shall arrange for publication of this order in the **Federal Register** in a manner consistent with applicable requirements.

Dated: April 12, 1999.

Margaret P. Crenshaw,

Secretary.

Attachment A—Periodicals, Classification Schedule

* * * * *

440 POSTAGE AND PREPARATION

441 Postage. Postage must be paid on Periodicals class mail as set forth in section 3000. *When the postage computed for a particular issue using the Nonprofit or Classroom rate schedule is higher than the postage computed using the Regular rate schedule, that issue is eligible to use the Regular rate schedule. For purposes of this section, the term issue is subject to certain exceptions related to separate mailings of a particular issue, as specified by the Postal Service.*

ATTACHMENT B—PERIODICALS RATE SCHEDULE 421

[Regular Subclass [1,2]]

	Postage rate unit	Rate[3] (cents)
Per Pound:		
Nonadvertising Portion	Pound	16.1
Advertising Portion:[11]		
Delivery Office[4]	Pound	15.5
SCF[5]	Pound	17.8
1&2	Pound	21.5
3	Pound	22.9
4	Pound	26.3

ATTACHMENT B—PERIODICALS RATE SCHEDULE 421—Continued

[Regular Subclass [1,2]]

	Postage rate unit	Rate[3] (cents)
5	Pound	31.6
6	Pound	37.1
7	Pound	43.8
8	Pound	49.5
Science of Agriculture:		
Delivery Office	Pound	11.6
SCF	Pound	13.3
Zones 1&2	Pound	16.1
Per Piece:		
Less Nonadvertising Factor[6]		5.9
Required Preparation[7]	Piece	29.4
Presorted to 3-digit	Piece	25.3
Presorted to 5-digit	Piece	19.7
Presorted to Carrier Route	Piece	12.2
Discounts:		
Prepared to Delivery Office[4]	Piece	1.3
Prepared to SCF[5]	Piece	0.7
High Density[8]	Piece	1.9
Saturation[9]	Piece	3.7
Automation Discounts for Automation-Compatible Mail:[10]		
From Required:		
Prebarcoded letter size	Piece	6.2
Prebarcoded flats	Piece	4.6
From 3-digit:		
Prebarcoded letter size	Piece	4.7
Prebarcoded flats	Piece	3.9
From 5-digit:		
Prebarcoded letter size	Piece	3.5
Prebarcoded flats	Piece	2.9

Schedule 421 Notes

[1] The rates in this schedule also apply to commingled nonsubscriber, non-requester, complimentary, and sample copies in excess of 10 percent allowance in regular-rate, non-profit, and classroom periodicals.

[2] Rates do not apply to otherwise regular rate mail that qualifies for the within county rates in Schedule 423.2.

[3] Chargee are computed by adding the appropriate per-piece charge to the sum of the nonadvertising portion and the advertising portion, as applicable.

[4] Applies to carrier route (including high density and saturation) mail delivered within the delivery area of the originating post office.

[5] Applies to mail delivered within the SCF area of the originating SCF office.

[6] For postage calculations, multiply the proportion of nonadvertising content by this factor and subtract from the applicable piece rate.

[7] Mail not eligible for carrier-route, 5-digit or 3-digit rates.

[8] Applicable to high density mail, deducted from carrier route presort rate.

[9] Applicable to saturation mail, deducted from carrier route presort rate.

[10] For automation compatible mail meeting applicable Postal Service regulations.

[11] *Not applicable to qualifying Nonprofit and Classroom publications containing 10 percent or less advertising content.*

(Authority: 39 U.S.C. 3622)

[FR Doc. 99–9508 Filed 4–15–99; 8:45 am]

BILLING CODE 7715–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review, Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension:		
Rule 101	SEC File No. 270–408	OMB Control No. 3235–0464.
Rule 102	SEC File No. 270–409	OMB Control No. 3235–0467.
Rule 103	SEC File No. 270–410	OMB Control No. 3235–0466.
Rule 104	SEC File No. 270–411	OMB Control No. 3235–0465.
Rule 17a–2	SEC File No. 270–189	OMB Control No. 3235–0201.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget requests for extension of the previously approved collections of information discussed below.

Rules 101 and 102 prohibit distribution participants, issuers, and selling security holders from purchasing activities at specified times during a distribution of securities. Persons otherwise covered by these rules may seek to use several applicable exceptions such as a calculation of the average daily trading volume of the securities in distribution, the maintenance of a written policy regarding general compliance with

Regulation M for de minimums transactions. The Commission estimates that 1,716 respondents collect information under Rule 101 and that approximately 40,641 hours in the aggregate are required annually for these collections. In addition, the Commission estimates that 791 respondents collect information under Rule 102 and that approximately 1,691 hours in the aggregate are required annually for these collections.

Rule 103 permits passive market-making in Nasdaq securities during a distribution. A distribution participant that seeks use of this exception would be required to disclose to third parties its intention to engage in passive market making. The Commission estimates that 227 respondents collect information under Rule 103 and that approximately 227 hours in the aggregate are required annually for these collections.

Rule 104 permits stabilizing by a distribution participant during a distribution so long as the distribution participant discloses information to the market and investors. This rule requires disclosure in offering materials of the potential stabilizing transactions and that the distribution participant inform the market when a stabilizing bid is made. It also requires the distribution participants (i.e., the syndicate manager) to maintain information regarding syndicate covering transactions and penalty bids. The Commission estimates that 641 respondents collect information under Rule 104 and that approximately 64.1 hours in the aggregate are required annually for these collections.

Rule 17a–2 requires underwriters to maintain information regarding stabilizing activities conducted in accordance with Rule 104. The Commission estimates that 641 respondents collect information under Rule 17a–2 and that approximately 3,205 hours in the aggregate are required annually for these collections.

The collections of information under Regulation M and Rule 17a–2 are necessary for covered persons to obtain certain benefits or to comply with certain requirements. The collections of information are necessary to provide the Commission with information regarding syndicate covering transactions and penalty bids. The Commission may review this information during periodic examinations or with respect to investigations. Except for the information required to be kept under Rule 104(i) and Rule 17a–2(c), none of the information required to be collected or disclosed for PRA purposes will be kept confidential.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the agency displays a valid OMB control number.

The recordkeeping requirement of Rule 17a–2 requires the information be maintained in a separate file, or in a separately retrievable format, for a period of three years, the first two years in an easily accessible place, consistent with the requirements of Exchange Act Rule 17a–4(f).

Written comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, D.C. 20503; and (ii) Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: April 8, 1999.

Jonathan G. Katz,

Secretary.

[FR Doc. 99–9489 Filed 4–15–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–27005]

Filings Under the Public Utility Holding Company Act of 1935, as Amended ("Act")

April 12, 1999.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by May 4, 1999, to the Secretary, Securities and Exchange Commission, Washington, DC 20549–0609, and serve a copy on the relevant applicant(s) and/or declarants(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After May 4, 1999, the applicant(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Interstate Energy Corporation (79–9455)

Interstate Energy Corporation ("Interstate"), a registered holding company, and its nonutility subsidiary, Alliant Energy Resources, Inc. ("Alliant" and, together with Interstate, "Applicants"), both of 222 West Washington Avenue, Madison, Wisconsin 53703, have filed an application-declaration under sections 6(a), 7, 9(a), 10, 12(b), 12(c), 13(b), 32 and 33 of the Act and rules 45, 46, 53, 54, 58, 87, 90 and 91 under the Act.

Background

Interstate's four public-utility subsidiaries are Wisconsin Power & Light Company, South Beloit Water, Gas and Electric Company, Interstate Power Company, and IES Utilities, Inc. (collectively, "Operating Companies"). Together, the Operating Companies provide public-utility service to approximately 895,000 electric and 378,000 retail gas customers in parts of Wisconsin, Iowa, Minnesota, and Illinois.

Alliant serves as the holding company for substantially all of Interstate's nonutility investments and subsidiaries, which include interests in companies engaged in: environmental consulting and engineering services; the development, ownership and management of affordable multi-unit housing properties; the sale of various financial services, including the origination and sale of mortgages for tax-advantaged affordable housing; energy-related businesses, including, among others, the brokering and marketing of electricity and natural gas, gas supply and fuel management services, oil and gas production, steam production and sale, and energy-management services; ownership and/or operation of foreign utility systems; transportation; and management of investments in telecommunications.

Proposed Transactions

Each of Interstate and Alliant, on behalf of itself and its respective current and future direct and indirect nonutility subsidiaries ("Nonutility Subsidiaries"), seek approval for a program of external financing, credit support arrangements,

and other related proposals for the period through December 31, 2001 ("Authorization Period"), as follows:

Common Stock

Interstate proposes to issue and sell from time to time during the Authorization Period up to 15 million shares of its common stock, $.01 par value per share ("Common Stock"). Interstate may issue and sell Common Stock or options exercisable for Common Stock and issue Common Stock upon the exercise of options. Interstate proposes to issue and sell Common Stock under underwriting agreements of a type generally standard in the industry or through private placements or other non-public offerings to one or more persons. All Common Stock sales would be at rates or prices and under conditions negotiated or based upon, or otherwise determined by, competitive capital markets.

Debentures

Interstate proposes to issue and sell from time to time during the Authorization Period up to $400 million principal amount of Debentures in one or more series, provided that the aggregate principal amount of short-term indebtedness issued by Interstate under the terms of prior Commission authorization [1] and the Debentures at any time outstanding would not exceed $1.1 billion ("Interstate Debt Limitation"). The Debentures (a) may be convertible into any other securities of Interstate, (b) would have maturities ranging from one to 40 years, (c) may be subject to optional and/or mandatory redemption, in whole or in part, at par or at various premiums above their principal amount, (d) may be entitled to mandatory or optional sinking fund provisions, (e) may provide for reset of the coupon under a remarketing arrangement, and (f) may be called from existing investors by a third party. Interstate proposes that the maturity dates, interest rates, redemption and sinking fund provisions and conversion features, if any, for the Debentures of a particular series, as well as any associated placement, underwriting or selling agent fees, commissions and discounts, if any, be established by negotiation or competitive bidding and reflected in the applicable transaction documents. Interstate undertakes that without further Commission authorization it would not issue any Debentures that are not at the time of original issuance rated at least investment grade by a nationally recognized statistical rating organization.

Other Securities

In addition to the specific securities for which authorization is sought in the application-declaration, Interstate proposes to issue and sell other types of securities from time to time during the Authorization Period, in order to minimize financing costs or to obtain new capital under then existing market conditions.

Nonutility Subsidiary Financings

Alliant states that it and its subsidiaries are engaged in and expect to continue to be active in the development and expansion of their existing energy-related, transportation, telecommunications and other nonutility businesses in the Interstate holding company system. In order to finance investments in these businesses, Applicants state that it will be necessary for the Nonutility Subsidiaries to engage in financing transactions, almost all of which are expected to be exempt under rule 52(b) of the Act. Alliant requests that the Commission reserve jurisdiction over the issuance by any Nonutility Subsidiary of any non-rule 52 exempt securities, pending completion of the record.

Applicants state that any promissory note, bond or other evidence of indebtedness issued by a Nonutility Subsidiary that is guaranteed as to principal or interest by Interstate (each, a "Guaranteed Note") would mature no more than 40 years after the date of issuance and bear interest at a fixed or floating rate which, in the case of a fixed rate, would be no greater than 300 basis points over the yield to maturity of a United States Treasury obligation having a remaining term approximately equal to the average life of the Guaranteed Note at the time issued, and, in the case of a floating rate, would be not greater than 300 basis points over the rate of interest announced publicly by a major money center bank as its base or prime rate. In addition, a Nonutility Subsidiary may agree to pay a commitment fee not to exceed 1.5% of the average daily unused balance under any committed line of credit and/or maintain compensating balances not to exceed 20% of the amount of any committed line.

Interstate Guarantees

Interstate requests authorization to enter into guarantees, obtain letters of credit, enter into expense agreements or otherwise provide credit support (collectively, "Interstate Guarantees") with respect to the obligations of Alliant, any Operating Company or any Nonutility Subsidiary (collectively, "Subsidiaries") as may be appropriate to enable the Subsidiary to carry on in the ordinary course of its business, in an aggregate principal amount not to exceed $600 million outstanding at any one time. Interstate proposes to charge each Subsidiary a fee for each guarantee provided on its behalf that is determined by multiplying the amount of the Interstate Guarantee provided by the cost of obtaining the liquidity necessary to perform the guarantee (for example, bank line commitment fees or letter of credit fees, plus other transactional expenses) for the period of time the guarantee remains outstanding.

Nonutility Subsidiary Guarantees

In addition, Alliant and other Nonutility Subsidiaries request authority to provide to other Nonutility Subsidiaries guarantees and other forms of credit support ("Nonutility Subsidiary Guarantees") in an aggregate principal amount not to exceed $300 million outstanding at any one time. The Nonutility Subsidiary providing the credit support may charge its associate company a fee for each guarantee provided on its behalf determined in the same manner as the Interstate Guarantees.

Hedging Transactions

Interstate and the Nonutility Subsidiaries request authorization to enter into interest rate hedging transactions with respect to existing indebtedness ("Interest Rate Hedges"), subject to certain limitations and restrictions, in order to reduce or manage interest rate cost. Interest Rate Hedges would only be entered into with counterparties ("Approved Counterparties") whose senior debt ratings, or the senior debt ratings of the parent companies of the counterparties, as published by Standard and Poor's Ratings Group, are equal to or greater than BBB, or an equivalent rating from Moody's Investors Service, Fitch Investors Service or Duff and Phelps. Applicants state that Interest Rate Hedges would involve the use of financial instruments commonly used in today's capital markets, such as interest rate swaps, caps, collars, floors, and structured note (*i.e.*, a debt instrument in which the principal and/or interest

[1] *See Interstate Energy Corporation*, HCAR No. 26956 (December 18, 1998). Under this order, Interstate and Alliant are authorized to, among other things, issue notes and/or commercial paper from time to time through December 31, 2000 and to establish and utilize separate money pools for intrasystem borrowings for Interstate's utility and non-utility subsidiaries. Sepcifically, Interstate is authorized to issue and sell notes and/or commercial paper in an aggregate principal amount at any time outstanding not to exceed $750 million.

payments are indirectly linked to the value of an underlying asset or index), or transactions involving the purchase or sale, including short sales, of U.S. Treasury Securities. The transactions would be for fixed periods and stated notional amounts. Fees, commissions and other amounts payable to the counterparty or exchange (excluding, however, the swap or option payments) in connection with an Interest Rate Hedge would not exceed those generally obtainable in competitive markets for parties of comparable credit quality.

Anticipatory Hedges

In addition, Interstate and the Nonutility Subsidiaries request authorization to enter into interest rate hedging transactions with respect to anticipated debt offerings ("Anticipatory Hedges"), subject to certain limitations and restrictions. Anticipatory Hedges would only be entered into with Approved Counterparties, and would be utilized to fix and/or limit the interest rate risk associated with any new issuance through (i) a forward sale of exchange-traded U.S. Treasury futures contracts, U.S. Treasury Securities and/or a forward swap (each, a "Forward Sale"), (ii) the purchase of put options on U.S. Treasury Securities ("Put Options Purchase"), (iii) a Put Options Purchase in combination with the sale of call options on U.S. Treasury Securities ("Zero Cost Collar"), (iv) transactions involving the purchase or sale, including short sales, of U.S. Treasury Securities, or (v) some combination of a Forward Sale, Put Options Purchase, Zero Cost Collar and/or other derivative or cash transactions, including structured notes, caps and collars, appropriate for the Anticipatory Hedges. Anticipatory Hedges may be executed on-exchange ("On-Exchange Trades") with brokers by opening futures and/or options positions traded on the Chicago Board of Trade, the opening of over-the-counter positions with one or more counterparties ("Off-Exchange Trades"), or a combination of On-Exchange Trades and Off-Exchange Trades. Interstate or a Nonutility Subsidiary would determine the optimal structure of each Anticipatory Hedge transaction at the time of execution. Interstate or a Nonutility Subsidiary would determine the optimal structure of each Anticipatory Hedge transaction at the time of execution. Interstate or a Nonutility Subsidiary may decide to lock in interest rates and/or limit its exposure to interest rate increases. All open positions under Anticipatory Hedges would be closed on or prior to the date of the new issuance and neither Interstate nor any Nonutility Subsidiary would, at any time, take possession or make delivery of the underlying U.S. Treasury Securities.

Financing Subsidiaries

Interstate and Alliant request authority to acquire, directly or indirectly, the equity securities of one or more corporations, trusts, partnerships or other entities created specifically for the purpose of facilitating the financing of the authorized and exempt activities (including exempt and authorized acquisitions) of Interstate and the Nonutility Subsidiaries by issuing long-term debt or equity securities, including monthly income preferred securities, to third parties and the transfer of the proceeds of these financings to Interstate or the Nonutility Subsidiaries. Applicants request that the Commission reserve jurisdiction over the transfer of proceeds of these financings to Interstate, pending completion of the record.

Interstate may, if required, guarantee or enter into expense agreements in respect of the obligations of any Financing Subsidiaries. If the direct parent company of a Financing Subsidiary is authorized in this proceeding or any future proceeding to issue long-term debt or similar types of equity securities, then the amount of the securities issued by that Financing Subsidiary would count against the limitation applicable to its parent for those securities. In these cases, however, the guaranty by the parent of that security issued by its Financing Subsidiary would not be counted against the limitations on Interstate Guarantees or Nonutility Subsidiary Guarantees, as the case may be. In other cases, in which the parent company is not authorized in this proceeding or in a future proceeding to issue similar types of securities, the amount of any guarantee not exempt under rules 45(b)(7) and 52 that is entered into by the parent company with respect to securities issued by its Financing Subsidiary would be counted against the limitation on Interstate Guarantees or Nonutility Subsidiary Guarantees, as the case may be.

Intermediate Subsidiaries

Interstate and Alliant propose to acquire, directly or indirectly, the securities of one or more Intermediate Subsidiaries, which would be organized exclusively for the purpose of acquiring, holding and/or financing the acquisition of the securities of or the interest in one or more (a) "exempt wholesale generators" (as defined in section 32 of the Act, "EWGs") or "foreign utility companies" (as defined in section 33 of the Act, "FUCOs"), (b) companies whose securities are acquired under rule 58 of the Act ("Rule 58 Subsidiaries"), (c) "exempt telecommunications companies" (as defined in section 34 of the Act, "ETCs"), or (d) other non-exempt Nonutility Subsidiaries (as authorized in this proceeding or in a separate proceeding), provided that Intermediate Subsidiaries may also engage in development activities and administrative activities relating to these subsidiaries. Intermediate Subsidiaries may also provide management, administrative, project development and operating services to these entities. An Intermediate Subsidiary may be organized, among other things, (1) in order to facilitate the making of bids or proposals to develop or acquire an interest in any EWG or FUCO, Rule 58 Subsidiary, ETC or other non-exempt Nonutility Subsidiary; (2) after the award of the bid proposal, in order to facilitate closing on the purchase or financing of the acquired company, (3) at any time after the consummation of an acquisition of an interest in any acquired company in order, among other things, to effect an adjustment in the respective ownership interests in the business held by Interstate or Alliant and non-affiliated investors; (4) to facilitate the sale of ownership interests in one or more acquired nonutility companies; (5) to comply with applicable laws of foreign jurisdictions limiting or otherwise relating to the ownership of domestic companies by foreign nationals; (6) as a part of tax planning in order to limit Interstate's exposure to U.S. and foreign taxes; (7) to further insulate Interstate and the Operating Companies from operational or other business risks that may be associated with investments in nonutility companies; or (8) for other lawful business purposes.

Investments in Energy Assets

Alliant and other Nonutility Subsidiaries request authority to acquire or construct in one or more transactions from time to time during the Authorization Period, nonutility energy assets in the United States, including natural gas production, gathering, processing, storage and transportation facilities and equipment, liquid oil reserves and storage facilities, and associated facilities (collectively, "Energy Assets"), that would be incidental to the oil and gas exploration and production and energy marketing, brokering and trading operations of Alliant's subsidiaries. Alliant requests authorization to invest up to $125 million ("Investment Limitation")

during the Authorization Period in Energy Assets or in the equity securities of existing or new companies substantially all of whose physical properties consist or would consist of the Energy Assets.[2] Energy Assets (or equity securities of companies owning Energy Assets) may be acquired for cash or in exchange for Common Stock or other securities of Interstate, Alliant, or other Nonutility Subsidiary of Alliant, or any combination of these forms of compensation. If Common Stock of Interstate is used as consideration in connection with an acquisition, the market value on the date of issuance would be counted against the proposed Investment Limitation. The stated amount or principal amount of any other securities issued as consideration in the transaction would also be counted against the Investment Limitation. Under no circumstances would Alliant or any oil or gas production or marketing subsidiary acquire, directly or indirectly, any assets or properties the ownership or operation of which would cause the companies to be considered an "electric utility company" or "gas utility company" as defined under the Act.

Sales of Services and Goods Among Alliant and Other Nonutility Subsidiaries

Alliant and other Nonutility Subsidiaries propose to provide services and sell goods to each other at fair market prices determined without regard to cost, and therefore request an exemption (to the extent that rule 92(b) of the Act does not apply) under section 13(b) from the cost standards of rules 90 and 91 as applicable to these transactions, in any case in which any of the following circumstances may apply:

(i) The client company is a FUCO or foreign EWG which derives no part of its income, directly or indirectly, from the generation, transmission, or distribution of electric energy for sale within the United States.

(ii) The client company is an EWG which sells electricity at market-based rates which have been approved by the Federal Energy Regulatory Commission ("FERC");

(iii) The client company is a "qualifying facility" ("QF") within the meaning of the Public Utility Regulatory Policies Act of 1978, as amended ("PURPA") that sells electricity exclusively (a) at rates negotiated at arm's length to one or more industrial or commercial customers purchasing the electricity for their own use and not for resale, and/or (b) to an electric utility company at the purchaser's "avoided cost" as determined under PURPA regulations;

(iv) The client company is a domestic EWG or QF that sells electricity at rates based upon its cost of service, as approved by FERC or any state public utility commission having jurisdiction, provided that the purchaser is not an Operating Company within the Interstate system; or

(v) The client is an ETC, a Rule 58 Subsidiary, or any other Nonutility Subsidiary that does not derive any part of its income from sales of goods, services or other property to an Operating Company within the Interstate system.

Activities of Rule 58 Subsidiaries Within and Outside the United States

Alliant, on behalf of any current or future Rule 58 Subsidiaries, requests authority to engage in certain business activities permitted by rule 58 both within and outside the United States. These activities include: (i) the brokering and marketing of electricity, natural gas and other energy commodities; (ii) energy management services; and (iii) engineering, consulting and other technical support services.

Payment of Dividends Out of Capital and Unearned Surplus

Alliant also proposes, on behalf of itself and each of its current and future non-exempt Nonutility Subsidiaries, that these non-exempt Nonutility Subsidiaries be permitted to pay dividends with respect to the securities of these companies, from time to time during the Authorization Period, out of capital and unearned surplus (including revaluation reserve), to the extent permitted under applicable corporate law and the terms of any credit agreements and indentures that restrict the amount and timing of distributions to shareholders.

Use of Proceeds

Applicants state that the proceeds from the financing authorizations sought in this proceeding would be used for general corporate purposes, including (i) financing, in part, investments by and capital expenditures of Interstate and its Nonutility Subsidiaries, including the funding of future investments in EWGs, FUCOs, and Rule 58 Subsidiaries, (ii) the repayment, redemption, refunding or purchase by Interstate or any Nonutility Subsidiary of any of its own securities under rule 42 of the Act, and (iii) financing working capital requirements of Interstate and its Nonutility Subsidiaries.

Applicants represent that no financing proceeds would be used to acquire the equity securities of any new subsidiary unless the acquisition has been approved by the Commission in this proceeding or in a separate proceeding or under an available exemption under the Act or rules under the Act, including sections 32 and 33 and rule 58. Interstate states that the aggregate amount of proceeds of financing and Interstate Guarantees approved by the Commission in this proceeding used to fund investments in EWGs and FUCOs would not, when added to Interstate's "aggregate investment" (as defined in rule 53 of the Act) in all these entities at any point in time, exceed 50% of Interstate's "consolidated retained earnings" (also as defined in rule 53). Currently, Interstate's "aggregate investment" in EWGs and FUCOs is $73 million, or approximately 14% of Interstate's "consolidated retained earnings" for the four quarters ended December 31, 1998 ($537 million). Further, Interstate represents that proceeds of financing and Interstate Guarantees and Nonutility Guarantees utilized to fund investments in Rule 58 Subsidiaries would be subject to the limitations of that rule. Lastly, Interstate represents that it would not seek to recover through higher rates any of the Operating Companies losses attributable to any operations of its Nonutility Subsidiaries.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 99–9585 Filed 4–15–99; 8:45 am]

BILLING CODE 8010–01–M

[2] Companies whose physical properties consist of Energy Assets may also be currently engaged in energy (gas or electric or both) marketing activities. To the extent necessary, Applicants request authorization to continue these activities in the event they acquire these types of companies.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–27004]

Filings Under the Public Utility Holding Company Act of 1935, as Amended ("Act")

April 9, 1999.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the

application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by May 4, 1999, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549–0609, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After May 4, 1999, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Northeast Utilities, et al. (70–8875)

Northeast Utilities ("Northeast"), 174 Brush Hill Avenue, West Springfield, Massachusetts 01090–0010, a registered holding company, Northeast's public utility subsidiaries, The Connecticut Light and Power Company, 107 Selden Street, Berlin, Connecticut 06037, Western Massachusetts Electric Company, 174 Brush Hill Avenue, West Springfield, Massachusetts 01090–0010, Holyoke Water Power Company, Canal Street, Holyoke, Massachusetts 01040, and Public Service Company of New Hampshire and North Atlantic Energy Corporation ("NAEC") (collectively, "Utility Subsidiaries"), each at 1000 Elm Street, Manchester, New Hampshire 03015, and Northeast's nonutility subsidiaries, NU Enterprises, Inc. ("NUEI"), Northeast Generation Service Company ("NGS"), Northeast Generation Company ("NGC"), Select Energy, Inc. ("Select"), and Mode 1 Communications, Inc. ("Mode 1") (collectively, "Nonutility Subsidiaries"), each at 107 Selden Street, Berlin, Connecticut 06037 (all companies being "Applicants"), have filed a post-effective amendment to their application-declaration filed under sections 6(a), 7, 9(a), 10, and 12(b) of the Act and rules 43, 45, and 54 under the Act.

By order dated November 12, 1998 (HCAR No. 26939) ("November 1998 Order"), the Commission authorized, among other things: (1) The formation and financing by Northeast of NUEI [1] to "through multiple subsidiaries, engage in a variety of energy-related and other activities and acquire and manage nonnuclear generating plants", and (2) the acquisition by NUEI of the securities of NGC,[2], NGS,[3] HEC, Inc., Select, and Mode 1. By order dated November 20, 1996 (HCAR No. 26612) and subsequent supplemental orders [4] (collectively, "Money Pool Orders"), the Commission authorized, among other things, the continued use, through December 31, 2000, of the Northeast Utilities System Money Pool ("Money Pool"). The Money Pool Orders also reserved jurisdiction over Money Pool borrowings by PSNH that are attributable to contributions by WMECO, pending the approval of the Massachusetts Department of Public Utilities.

The Applicants now request that the Nonutility Subsidiaries be authorized to participate in the Money Pool. The Money Pool currently consists principally of surplus funds that may be available from day to day to Northeast and certain of its subsidiaries. In addition to surplus funds, funds borrowed by Northeast (through the issuance of short-term notes, by selling commercial paper or by borrowing under a revolving credit facility—each transaction as authorized by prior Commission order) are a source of funds for making open account advances to certain of Northeast's subsidiaries through the Money Pool. In addition to the subsidiaries of Northeast which are currently authorized to be potential recipients of these open account advances, the Applicants propose that the Nonutility Subsidiaries be authorized to receive these open account advances from Northeast. It is stated that Money Pool transactions will be designed to match, on a daily basis, the available cash and short-term borrowing requirements of Northeast, the Utility Subsidiaries, and, it is proposed, the Nonutility Subsidiaries in order to minimize the need for short-term borrowings by the Utility Subsidiaries and Nonutility Subsidiaries from external sources. Only certain of Northeast's subsidiaries are now authorized to borrow through the Money Pool from the proceeds of external borrowings by Northeast. It is proposed that the Nonutility Subsidiaries be eligible to borrow through the Money Pool from the proceeds of external borrowings by Northeast. It is stated that, among other Northeast subsidiaries, the Nonutility Subsidiaries will not be parties to the revolving credit facility authorized by prior Commission order. Applicants further propose that the aggregate amount of short-term debt outstanding at any one time will not exceed the following: $75 million for NUEI; $50 million for Select; and $5 million each for NGC, NGS, and Mode 1.

[1] The name cited in the November 1998 Order is "NEWCO." The post-effective amendment states that the company is now known as NUEI.

[2] The name cited in the November 1998 Order is "GENCO." The post-effective amendment states that the company is now known as NGC.

[3] The name cited in the November 1998 Order is "Northeast Generation Services, Inc." The post-effective amendment states that the company is now known as NGS.

[4] *See* Holding Co. Act Release Nos. 26665 (Feb. 11, 1997), 26692 (Mar. 25, 1997), 26721 (May 29, 1997), and 26816 (Jan. 16, 1998).

Georgia Power Company (7–9437)

Georgia Power Company ("Georgia Power"), 241 Ralph McGill Boulevard, N.E., Atlanta, Georgia 30308–3374, a wholly owned subsidiary of the Southern Company, a registered holding company, has filed an application-declaration under sections 9(a), 10 and 12(d) of the Public Utility Holding Company Act of 1935, as amended ("Act"), and rules 44 and 54 under the Act.

Georgia Power proposes to convey all of its rights, title and interests in and to real and personal property, including engineering drawings, comprising 30 distribution and transmission substation facilities ("Georgia Power Substation Facilities") to Georgia Transmission Corporation ("GTC"), an electric membership corporation. In exchange, GTC will convey to Georgia Power all its rights, title and interests in and to real and personal property comprising up to four distribution and transmission substation facilities ("GTC's Substation Facilities"), an exchange equalization payment of $3,808,831, and an additional payment of $560,000 to ensure that Georgia Power suffers no after-tax loss on the exchange.

Georgia Power states that the exchange will realign its and GTC's interests so that GTC will be responsible for the operation and maintenance payments for facilities which principally save GTC's load and Georgia Power will be responsible for the operation and maintenance for facilities which principally serve its load. The 30 substations being exchange by Georgia Power represent less than 1% of Georgia Power's total substation facilities (based on original cost).

Georgia Power will obtain from its First Mortgage Bond Trustee a release of the Georgia Power Substation Facilities from the lien of Georgia Power's First Mortgage Bond Indenture. GTC will obtain a release executed by SunTrust

Bank, Atlanta, as Trustee under GTC' Indenture dated as March 1, 1997 releasing the GTC Substation Facilities from the lien of said Indenture.

Georgia Power requests authority to consummate the transaction at any time on or before December 31, 1999 subject to Georgia Power's and GTC's receiving the requisite approvals of all applicable regulatory agencies, including the Commission.

Pennsylvania Electric Company (70–9457)

Pennsylvania Electric Company ("Penelec"), 2800 Pottsville Pike, Reading, Pennsylvania 19605, an electric utility subsidiary of GPU, Inc. ("GPU"), a registered holding company, has filed a declaration under section 12(d) of the Act and rules 44 and 54 under the Act.

Penelec owns a twenty percent undivided ownership interest in the Seneca Pumped Storage Generating Station ("Seneca"), a 435 MW pumped storage station generating facility located near Warren, Pennsylvania. The other eighty percent is owned by Cleveland Electric Illuminating Company, a utility subsidiary of FirstEnergy Corp. ("FistEnergy"), and exempt holding company.

Penelec proposes to sell its interest in Seneca to FE Acquisition Corp. ("FEAC"), a wholly owned, special purpose subsidiary of FistEnergy. In a purchase and sales agreement dated as of October 30, 1998 with FEAC, Penelec agreed to sell its interest to FEAC for $43 million, subject to certain adjustments. Applicant states that the purchase price was determined through a competitive auction process.

Penelec intends to use the net proceeds from the sale, among other things, to reduce debt, pay dividends and/or to fund or offset stranded asset liabilities.[5]

Allegheny Energy, Inc. (70–9459)

Allegheny Energy, Inc. ("Allegheny"), 10435 Downsville Pike, Hagerstown, Maryland 21740, a registered holding company, has filed an application-declaration under sections 6(a), 7, 9(A), 10, and 12(c) of the Act and rules 42, 46, and 54 under the Act.

Allegheny requests authority to adopt and implement a shareholder rights plan ("Plan") and enter into a related agreement creating the shareholder rights ("Rights Agreement"). The Plan is intended to maximize shareholder value by reducing the risk of nonrealization of shareholder value due to opportunistic takeover proposals. Under the Plan, the board of directors of Allegheny ("Board") would declare a dividend of one right ("Right") for each outstanding share of Allegheny common stock, par value $1.25 per share ("Common Stock"), payable to all stockholders of record on a specified record date.

Each Right would, after the Rights become exercisable, entitle the holder to purchase from Allegheny one share of Common Stock at a price to be determined by the Board, subject to adjustment ("Exercise Price"). The Rights would not entitle the holders to make a discounted purchase of shares of Common Stock or the common stock of the person acquiring Allegheny until the occurrence of one of the events described below. The Rights will expire at the close of business ten years from the date of the Rights Agreement, unless earlier redeemed or exchanged by Allegheny, as described below.

Until the earlier of two dates described below ("Distribution Date"), Rights would not be exercisable and would trade with the outstanding shares of Common Stock. One date occurs when the Board fixes the date of a public announcement that a person or group ("Acquiring Person") has acquired beneficial ownership of 15% or more of the Common Stock. The second date occurs ten business days (unless extended by the Board) after any person or group has commenced a tender or exchange offer which would, upon its consummation, result in such person or group becoming an Acquiring Person.

After the Distribution Date, the holders of the Rights would immediately have the right to receive, for each Right exercised, either Common Stock having a market value equal to two times or one times the Exercise Price then in effect, depending upon the circumstances. Under certain circumstances where Allegheny is acquired in a business combination transaction with, or 50% or more of its assets or earning power is sold or transferred to, another person or entity ("Acquiror"), exercise of a Right will entitle its holder to receive common stock of the Acquiror having a market value to two times the Exercise Price then in effect. Rights beneficially owned by any Acquiring Person and certain transferees of the Acquiring Person will be null and void.

The Rights may be redeemed, as a whole, at the discretion of the Board, at a Redemption Price of $0.01 per Right, subject to adjustment, which will be paid, at Allegheny's option, in cash, shares of Common Stock or other equivalent Allegheny securities, at any time prior to the close of business on the date that any person has become an Acquiring Person.

At any time after the Distribution Date and prior to the time that any person (other than Allegheny and certain related entities), together with its affiliates and associates, becomes the beneficial owner of 50% or more of the outstanding shares of Common Stock, the Board may direct the exchange of shares of Common Stock for all of the Rights (other than Rights which have become void) at the exchange ratio of one share of Common Stock per Right, subject to adjustment.

The Exercise Price payable, and the number of shares of Common Stock (or other securities, as the case may be) issuable upon exercise of the Rights are subject to adjustment from time to time to prevent dilution (i) in the event of a stock dividend on, or a subdivision or combination of, the Common Stock, or (ii) upon the distribution to holders of the Common Stock of securities or assets (excluding regular periodic cash dividends) whether by dividend, reclassification, recapitalization or otherwise.

The terms of the Rights may be amended by the Board (i) prior to the Distribution Date in any manner and (ii) on or after the Distribution Date to cure any ambiguity, to correct or supplement any provision of the Rights Agreement which may be defective or inconsistent with any other provisions, or in any manner not adversely affecting the interests of the holders of the Rights generally.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 99–9586 Filed 4–15–99; 8:45 am]

BILLING CODE 8010–01–M

[5] This use of proceeds is mandated by an order of the Pennsylvania Public Utilities Commission, dated October 16, 1998, relating to the sale by Penelec of its generation assets.

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meetings during the week of April 19, 1999.

Closed meetings will be held on Monday, April 19, 1999, at 11:00 a.m. and on Wednesday, April 21, 1999, following the 11:00 a.m. open meeting. An open meeting will be held on Wednesday, April 21, 1999, at 11:00 a.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meetings. Certain staff members who have an interest in the matters will be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matters at the closed meetings.

Commissioner Hunt, as duty officer, voted to consider the items listed for the closed meetings in a closed session.

The subject matter of the closed meeting scheduled for Monday, April 19, 1999, at 11:00 a.m., will be:

Institution of injunctive actions.

Institution and settlement of administrative proceedings of an enforcement nature.

Settlement of injunctive actions.

The subject matter of the open meeting scheduled for Wednesday, April 21, 1999, at 11:00 a.m., will be:

The Commission will hear oral argument on an appeal by Warren Trepp, formerly the head high-yield bond trader at Drexel the head high-yield bond trader at Drexel Burnham Lambert, from an administrative law judge's initial decision. For further information, please contact John McCarthy or Andrew Smith at (202) 942–0950.

The subject matter of the closed meeting scheduled for Wednesday, April 21, 1999, following the open meeting at 11:00 a.m., will be:

Post oral argument discussion.

Commissioner Hunt, as duty officer, determined that no earlier notice thereof was possible.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 942–7070.

Dated: February 14, 1999.

Jonathan G. Katz,

Secretary.

[FR Doc. 99–9702 Filed 4–14–99; 1:21 p.m.]

BILLING CODE 8010–01–M

SOCIAL SECURITY ADMINISTRATION

Agency Information Collection Activities: Proposed Request and Comment Request

In compliance with Public Law 104–13, the Paperwork Reduction Act of 1995, SSA is providing notice of its information collections that require submission to the Office of Management and Budget (OMB). SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility and clarity; and on ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology.

I. The information collections listed below will be submitted to OMB within 60 days from the date of this notice. Therefore, comments and recommendations regarding the information collections would be most useful if received by the Agency within 60 days from the date of this publication. Comments should be directed to the SSA Reports Clearance Officer at the address listed at the end of this publication. You can obtain a copy of the collection instruments by calling the SSA Reports Clearance Officer on (410) 965–4145, or by writing to him at the address listed at the end of this publication.

1. *Application for Mother's or Father's Insurance Benefits-0960–0003.* The information collected on form SSA–5 is used by the Social Security Administration to determine an applicant's eligibility for mother's or father's insurance benefits. The respondents are individuals who wish to file an application for such benefits.

Number of Respondents: 50,000.

Frequency of Response: 1.

Average Burden Per Response: 15 minutes.

Estimated Average Burden: 12,500 hours.

2. *Missing and Discrepant Wage Reports Letter and Questionnaires—0960–0432.* SSA uses the information on Forms SSA–L93, SSA–95 and SSA–97 to secure the employer information now missing from its records (or discrepant with Internal Revenue Service (IRS) records) by contacting the involved employers. When secured, SSA will be able to properly post the employee's earnings records. Compliance by employers with SSA requests will facilitate proper posting of employee's wage records. SSA will make two efforts to obtain wage information from the employer, before the case is turned over to the IRS for penalty assessments. The respondents are employers with missing or discrepant wage reports.

Number of Respondents: 360,000.

Frequency of Response: 1.

Average Burden Per Response: 30 minutes.

Estimated Average Burden: 180,000 hours.

3. *Medical Report on Adult with Allegation of Human Immune Deficiency Virus (HIV) Infection and Medical Report on Child with Allegation of HIV Infection 0960–0500.* SSA uses Forms SSA–4814–F5 and SSA–4815–F6 to obtain information from a medical source concerning an individual who has filed for Supplemental Security Income (SSI) disability benefits with an allegation of HIV infection. The information is necessary for SSA field office personnel to determine whether the individual meets the requirements for a presumptive disability payment. The respondents are medical sources of individuals who apply for SSI disability benefits.

	SSA–4814–F5	SSA–4815–F6
Number of Respondents	46,200	12,900.
Frequency of Response	1	1.
Average Burden Per Response	10 minutes	10 minutes.
Estimated Average Burden	7,700 hours	2,150 hours.

4. *Self-Employment—Cooperative Officer Questionnaire—0960–0487.* Form SSA–4184 is used by SSA to develop earnings and to corroborate the claimant's allegations of retirement when the claimant is self-employed or a corporate officer. The respondents are self-employed individuals and corporate officers.

Number of Respondents: 50,000.

Frequency of Response: 1.

Average Burden Per Response: 20 minutes.

Estimated Average Burden: 16,667 hours.

5. *Annual Earnings Test—Direct Mail Follow-Up Program Notices ("Mid-Year Mailer")—0960–0369.* As part of the effort to reinvent government, in 1997, SSA began to use the information

reported on W–2's and self-employment tax returns to adjust benefits under the earnings test rather than have beneficiaries make a separate report, which often showed the same information. Since SSA eliminated the annual report forms, the Mid-Year Mailer (Forms SSA–L9778, SSA–9779, SSA–9781) has become an even more important tool in helping us to ensure the correct payment of Social Security benefits. The Mid-Year Mailer is used by beneficiaries to update their current year estimate of earnings and to give SSA an estimate of earnings for the following year.

Number of Respondents: 400,000.

Frequency of Response: 1.

Average Burden Per Response: 10 minutes.

Estimated Average Burden: 66,667 hours.

II. The information collection listed below has been submitted to OMB for clearance. Written comments and recommendations on the information collection would be most useful if received within 30 days from the date of this publication. Comments should be directed to the SSA Reports Clearance Officer and the OMB Desk Officer at the addresses listed at the end of this publication. You can obtain a copy of the OMB clearance package by calling the SSA Reports Clearance Officer on (410) 965–4145, or by writing to him.

Application for Benefits Under a U.S. International Social Security Agreement—0960–0448. The information collected on form SSA–2490 is used by SSA to determine a claimant's eligibility for U.S. Social Security benefits under the provisions of an international social security agreement. It is also used to take an application for benefits from a foreign country under an agreement. The respondents are individuals who are applying for benefits from either the United States and/or a foreign country with which the United States has an agreement. The United States currently has 17 such agreements.

Number of Respondents: 20,000.

Frequency of response: 1.

Average Burden per response: 30 minutes.

Estimated Annual Burden: 10,000 hours.

(SSA Address)

Social Security Administration, DCFAM, Attn: Frederick W. Brickenkamp, 6401 Security Blvd., 1–A–21 Operations Bldg., Baltimore, MD 21235

(OMB Address)

Office of Management and Budget, OIRA, Attn: Lori Schack, New Executive Office Building, Room 10230, 725 17th St., NW, Washington, D.C. 20503

Dated: April 12, 1999.

Frederick W. Brickenkamp,

Reports Clearance Officer, Social Security Administration.

[FR Doc. 99–9481 Filed 4–15–99; 8:45 am]

BILLING CODE 4190–29–U

SOCIAL SECURITY ADMINISTRATION

Government Pension Questionnaire—0960–0160—(SSA–3885); Correction

AGENCY: Social Security Administration.

ACTION: Notice; Correction.

SUMMARY: The Social Security Administration published a document in the **Federal Register** of March 26, 1999 concerning the submission of a request for comments of an information collection package for OMB approval. The document contained incorrect information in relation to the number of respondents and total burden hours.

FOR FURTHER INFORMATION CONTACT: SSA Reports Clearance Officer, Frederick W. Brickenkamp, (410) 965–4145.

Correction

In the **Federal Register** of March 26, 1999, in FR, Vol. 64, No. 58, on page 14782, top of the first column, correct the Number of Respondents and Estimated Average Burden hours to read:

Number of Respondents: 76,000.

Estimated Average Burden: 15,833 hours.

Dated: April 9, 1999.

Frederick W. Brickenkamp,

Reports Clearance Officer, Social Security Administration.

[FR Doc. 99–9482 Filed 4–15–99; 8:45 am]

BILLING CODE 4190–29–P

DEPARTMENT OF STATE

Bureau of Administration

[Public Notice 3018]

Transfer of Arms Control and Disarmament Agency's Systems of Records to the Department of State

AGENCY: Bureau of Administration, Department of State.

ACTION: Notice.

SUMMARY: In accordance with the Privacy Act, (5 U.S.C. 552a(e)(4)) this notice describes a revision to the character of the Arms Control and Disarmament Agency's ("ACDA") systems of records upon the consolidation of ACDA and the Department of State as mandated by the Foreign Affairs Agencies Consolidation Act of 1998.

DATES: Effective April 1, 1999.

FOR FURTHER INFORMATION CONTACT: Margaret P. Grafeld, Information and Privacy Coordinator and Director of the Office of Information Resources Management Programs and Services; Room 1239; Department of State; 2201 C Street, NW, Washington, DC 20520–1512, (202) 647–6620.

SUPPLEMENTARY INFORMATION: Under the Foreign Affairs Agencies Consolidation Act of 1998, Public Law 105–277, ACDA and the Department of State will be consolidated on April 1, 1999. As part of the consolidation, the Department will assume custody and control of systems of records currently maintained by ACDA. For a document relating to the State Department's assumption of control over these systems of records, see a final rule published elsewhere in this volume. The existence and distinct character of these systems will not change except for the following effective April 1, 1999:

1. The agency official who is responsible for access to the systems of records is Margaret P. Grafeld, Information and Privacy Coordinator and Director of the Office of Information Resources Management Programs and Services; Room 1239; Department of State; 2201 C Street, NW, Washington, DC 20520–1512, (202) 647–6620.

2. The procedures whereby an individual can be notified if the system of records contains a record pertaining to him or her may now be found at 22 CFR part 171, subpart C. These regulations are also available at the Department's website located at http://foia.state.gov.

3. The procedures whereby an individual can be notified at his or her request how he or she can gain access to any records pertaining to him or her contained in the system of records, and how he or she can contest its content may now be found at 22 CFR part 171, subpart C. These regulations are also available at the Department's website located at http://foia.state.gov.

Dated: March 30, 1999.

Patrick F. Kennedy,

Assistant Secretary for the Bureau of Administration, Department of State.

[FR Doc. 99–8292 Filed 4–15–99; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 3029]

Bureau of Political Military Affairs; Imposition of Missile Proliferation Sanctions Against Entities in the Middle East, Including a Ban on Certain U.S. Government Procurement

AGENCY: State.

ACTION: Notice.

SUMMARY: The United States Government has determined that certain entities in the Middle East have engaged in missile technology proliferation activities that require imposition of sanctions pursuant to the Arms Export Control Act, as amended, and the Export Administration Act of 1979, as amended (as carried out under Executive Order 12424 of August 19, 1994).

EFFECTIVE DATE: March 23, 1999.

FOR FURTHER INFORMATION CONTACT: For General Information: Vann H. Van Diepen, Office of Chemical, Biological and Missile Nonproliferation, Bureau of Nonproliferation, Department of State (202–647–1142). For information on U.S. procurement bans: Gladys Gines, Office of the Procurement Executive, Department of State (703–516–1691).

SUPPLEMENTARY INFORMATION: Pursuant to Section 73(a)(1) of the Arms Export Control Act (22 U.S.C. 2797b(a)(1)), Section 11B(b)(1) of the Export Administration Act of 1979, as amended, (50 U.S.C. app. 2401b(b)(1)), as carried out under Executive Order 12924 of August 19, 1994 (hereinafter cited as the "Export Administration Act of 1979"), and Executive Order 12851 of June 11, 1993, the United States Government has determined that the following foreign persons, currently operating in the Middle East region, have engaged in missile technology proliferation activities that require the imposition of the sanctions described in Sections 73(a)(2)(A) of the Arms Export Control Act (22 U.S.C. 2797b(a)(2)(A) and Sections 11B(b)(1)(B)(i) of the Export Administration Act of 1979 (50 U.S.C. app. 2410b(b)(1)(B)(i)) on these entities, their subunits and successors, effective March 23, 1999:

1. Arab British Dynamics (ABD);
2. Helwan Machinery and Equipment Company; and
3. Kader Factory for Developed Industries.

Accordingly, the following sanctions are being imposed on these entities:

(A) Licenses for export to the entities described above of Missile Technology Control Regime (MTCR) equipment or technology controlled pursuant to the Export Administration Act of 1979 will be denied for two years;

(B) Licenses for export to the entities described above of Missile Technology Control Regime (MTCR) equipment or technology controlled pursuant to the Arms Export Control Act will be denied for two years; and

(C) No United States Government contracts relating to MTCR-controlled equipment and technology, and involving the entities described above, will be entered into for two years.

With respect to items controlled pursuant to the Export Administration Act of 1979, the export sanction only applies to exports made pursuant to individual export licenses.

These measures shall be implemented by the responsible agencies as provided in Executive Order 12851 of June 11, 1993.

Dated: April 8, 1999.

Eric D. Newsom,

Assistant Secretary of State for Political Military Affairs.

[FR Doc. 99–9576 Filed 4–15–99; 8:45 am]

BILLING CODE 4710–25–U

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVES

Generalized System of Preferences (GSP); Solicitation of Public Comments Relating to the Reinstatement of Mauritania

AGENCY: Office of the United States Trade Representative.

ACTION: Notice and solicitation of public comment with respect to the eligibility of the Mauritania for the GSP program.

SUMMARY: This notice announces the solicitation of comments related to the reinstatement of Mauritania as a beneficiary developing country under the GSP program. Comments should be submitted by May 17, 1999.

FOR FURTHER INFORMATION CONTACT: GSP Subcommittee, Office of the United States Trade Representative, 600 17th Street, N.W., Room 518, Washington, D.C. 20508. The telephone number is (202) 395–6971.

SUPPLEMENTARY INFORMATION: Mauritania has requested that it be reinstated as an eligible country under the GSP program. Mauritania was suspended on August 1, 1993 after a review by the Trade Policy Staff Committee determined that it did not provide for the right of association nor prohibit forced or compulsory labor.

Interested parties are invited to submit comments regarding the eligibility of Mauritania for redesignation as a GSP beneficiary developing country. Submission of comments must be made in English in 14 copies to the Chairman of the GSP Subcommittee, Trade Policy Staff Committee, and be received in Room 518 at 600 17th Street, N.W., Washington, D.C. 20508, no later than 5 p.m. on Monday, May 17, 1999. Except for submissions granted "business confidential" status pursuant to 15 CFR 2003.6, information and comments submitted regarding Mauritania will be subject to public inspection by appointment with the staff of the USTR Public Reading Room. For an appointment, please call Ms. Brenda Webb at 202/395–6186. If the document contains business confidential information, 14 copies of a nonconfidential version of the submission along with 14 copies of the confidential version must be submitted. In addition, the submission should be clearly marked "confidential" at the top an bottom of each page of the document. The version which does not contain business confidential information (the public version) should also be clearly marked at the top and bottom of each page (either "public version" or "non-confidential").

Frederick L. Montgomery,

Chairman, Trade Policy Staff Committee.

[FR Doc 99–9552 Filed 4–15–99; 8:45 am]

BILLING CODE 3190–01–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Implementation of Tariff-Rate Quota for Imports of Beef

AGENCY: Office of the United States Trade Representative.

ACTION: Notice.

SUMMARY: The Office of the United States Trade Representative (USTR) is providing notice that USTR has determined that New Zealand, pursuant to its request, is no longer a participating country for purposes of the export certification program for imports of beef under the tariff-rate quota.

DATES: The action is effective May 1, 1999.

FOR FURTHER INFORMATION CONTACT: Suzanne Early, Senior Policy Advisor for Agricultural Affairs, Office of the United States Trade Representative, 600 17th Street NW, Washington, DC 20508; telephone: (202) 395–9615.

SUPPLEMENTARY INFORMATION: The United States maintains a tariff-rate quota on imports of beef as part of its implementation of the *Marrakesh Agreement Establishing the World Trade Organization*. The in-quota quantity of that tariff-rate quota is allocated in part among a number of countries. As part of

the administration of that tariff-rate quota, USTR provided, in 15 CFR part 2012, for the use of export certificates with respect to imports of beef from countries that have an allocation of the in-quota quantity. The export certificates apply only to those countries that USTR determines are participating countries for purposes of 15 CFR part 2012. USTR, pursuant to an earlier request by the government of New Zealand, previously determined that New Zealand was a participating country.

The government of New Zealand has now requested that, effective May 1, 1999, New Zealand no longer be considered as a participating country for purposes of the export certification program. Accordingly, USTR has determined that, effective May 1, 1999, New Zealand is not a participating country for purposes of 15 CFR part 2012. As a result, imports of beef from New Zealand will no longer need to be accompanied by an export certificate in order to qualify for the in-quota tariff rate.

Charlene Barshefsky,

United States Trade Representative.

[FR Doc. 99–9553 Filed 4–15–99; 8:45 am]

BILLING CODE 3190–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG–1999–5511]

Great Lakes Pilotage Advisory Committee; Vacancies

AGENCY: Coast Guard, DOT.

ACTION: Request for applications.

SUMMARY: The Coast Guard intends to establish the Great Lakes Pilotage Advisory Committee (GLPAC) and is seeking applications for appointment to membership. GLPAC will provide advice and make recommendations to the Coast Guard on regulations and policies on the pilotage of vessels on the Great Lakes.

DATES: Applications must reach the Coast Guard on or before June 15, 1999.

ADDRESSES: You may request an application form by writing to Commandant (G–MW), U.S. Coast Guard, 2100 Second Street SW, Washington, DC 20593–0001; by calling 202–267–6164; or by faxing 202–267–4700. Submit application forms to the same address. This notice and the application form are available on the Internet at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: Frank J. Flyntz, Executive Director of GLPAC, or Thomas Lawler, Assistant to the Executive Director, telephone 202–366–8981, fax 202–366–7147.

SUPPLEMENTARY INFORMATION: The Great Lakes Pilotage Advisory Committee (GLPAC) will be a Federal advisory committee constituted under 5 U.S.C. App. 2. It will terminate on September 30, 2003, unless extended by Congress.

GLPAC will provide advice and make recommendations on Great Lakes pilotage to the Assistant Commandant for Marine Safety and Environmental Protection. It may advise, consult with, report to, and make recommendations to the Secretary of the Department of Transportation on matters relating to Great Lakes pilotage and may make these recommendations available to the Congress.

GLPAC will meet at the call of the Secretary at least once a year. It may also meet at the call of a majority of its members. Its subcommittees and working groups may meet to consider specific problems as required.

The Secretary will consider applications for seven positions that will have a term of not more than 5 years, as specified by the Secretary. GLPAC must have—

(a) Three members who are practicing, Great Lakes pilots and who reflect a regional balance;

(b) One member who represents the interests of vessel operators that contract for Great Lakes pilotage services;

(c) One member who represents the interests of Great Lakes ports;

(d) One member who represents the interests of shippers whose cargoes are transported through Great Lakes ports; and

(e) One member who represents the interests of the general public and who is an independent expert on the Great Lakes maritime industry.

To be eligible, applicants must have at least 5 years of practical experience in maritime operations. All members serve at their own expense and receive no salary, reimbursement of travel expenses, or other compensation from the Federal Government.

In support of the policy of the Department of Transportation on gender and ethnic diversity, the Coast Guard encourages applications from qualified women and members of minority groups.

Applicants selected may be required to complete a Confidential Financial Disclosure Report (OGE Form 450). Neither the report nor the information it contains may be released to the public, except under an order issued by a Federal court or as otherwise provided under the Privacy Act (5 U.S.C. 552a).

Dated: April 8, 1999.

Joseph J. Angelo,

Acting Assistant Commandant for Marine Safety and Environmental Protection.

[FR Doc. 99–9565 Filed 4–15–99; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGDO 8–99–013]

Houston/Galveston Navigation Safety Advisory Committee; Vacancies

AGENCY: Coast Guard, DOT.

ACTION: Request for applications.

SUMMARY: The U.S. Coast Guard is seeking applications for appointment to membership on the Houston/Galveston Navigation Safety Advisory Committee (HOGANSAC). HOGANSAC provides advice and makes recommendations to the Coast Guard on matters relating to the transit of vessels and products to and from the Ports of Galveston, Houston, and Texas City, and through Galveston Bay, Texas.

DATES: Applications must reach the Coast Guard on or before July 31, 1999.

ADDRESSES: You may request an application form by writing to Commanding Officer, USCG VTS Houston/Galveston, P.O. Box 545, Galena Park, TX 77547; by calling 713–671–5164; or by faxing 713–671–5159. Submit application forms to the same address.

FOR FURTHER INFORMATION CONTACT: CDR Paula Carroll, USCG, Executive Secretary of HOGANSAC, telephone 713–671–5164.

SUPPLEMENTARY INFORMATION: HOGANSAC is a Federal advisory committee constituted under 5 U.S.C. App. 2. This committee provides local expertise on communications, surveillance, traffic control, anchorages, aids to navigation, and other, related topics dealing with navigation safety in the Houston/Galveston area as required by the Coast Guard. The committee normally meets three times a year at various locations in the Houston/Galveston area. Members serve voluntarily, without compensation from the Federal Government for salary, travel, or per diem. Term of membership will be for two years, not to exceed three years.

The Committee consists of eighteen members who have particular expertise, knowledge, and experience regarding the transportation, equipment, and

techniques that are used to ship cargo and to navigate vessels in the inshore and the offshore waters of the Gulf of Mexico. Vacancies to be filled are for: (1) Two members who are employed by the Port of Houston Authority or have been selected by that entity to represent them; (2) two members who are employed by the Port of Galveston or the Texas City Port Complex or have been selected by those entities to represent them; (3) two members from organizations that represent shipowners, stevedores, shipyards, or shipping organizations domiciled in the State of Texas; (4) two members representing organizations that operate tugs or barges that use the port facilities at Galveston, Houston, and Texas City Port Complex; (5) two members representing shipping companies that transport cargo from the Ports of Galveston and Houston on liners, break-bulk, or tramp-steamer vessels; (6) two members representing those who pilot or command vessels that use the Ports of Galveston and Houston; (7) two at-large members who may represent a particular interest group but who use the port facilities at Galveston, Houston, and Texas City; (8) one member representing labor organizations that load and unload cargo at the Ports of Galveston and Houston; (9) one member representing licensed merchant mariners other than pilots, who perform shipboard duties on vessels that use the port facilities of Galveston and Houston; (10) one member representing environmental interests; and (11) one member representing the general public.

In support of the policy of the Department of Transportation on gender and ethnic diversity, the Coast Guard encourages applications from qualified women and members of minority groups.

Applicants selected may be required to complete a Confidential Financial Disclosure Report (OGE Form 450). Neither the report nor the information it contains may be released to the public, except under an order issued by a Federal court or as otherwise provided under the Privacy Act (5 U.S.C. 552a).

Dated: March 29, 1999.

Paul J. Pluta,

Rear Admiral, U.S. Coast Guard Commander, Eighth Coast Guard District.

[FR Doc. 99–9566 Filed 4–15–99; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Joint Special Committee 182/ EUROCAE Working Group 48; Minimum Operational Performance Standards (MOPS) for an Avionics Computer Resource

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for Special Committee (SC)–182/EUROCAE Working Group (WG)–48 meeting to be held May 11–13, 1999, starting at 9:00 a.m. The meeting will be held at RTCA, 1140 Connecticut Avenue, NW, Suite 1020, Washington, DC 20036.

The agenda will include: (1) Chairman's Introductory Remarks; (2) Review and Approval of the Agenda; (3) Review of Meeting Report: Joint RTCA SC–182/EUROCAE WG–48 Meeting, March 9–11, 1999; (4) Disposition of Ballot Comments on MOPS Draft Version 2.0; (5) Discuss Policy for Proprietary References in RTCA Documents Regarding ARINC Specification 653, Standard Software Application Interface; (6) Finalize MOPS version 3.0 and recommend adoption by RTCA and EUROCAE; and (7) Chairman's Remarks on Completion of SC–182 and WG–48 Activities.

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, NW, Suite 1020, Washington, DC, 20036; (202) 833–9339 (phone); (202) 833–9434 (fax); or http://www.rtca.org (web site). Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on April 9, 1999.

Janice L. Peters,

Designated Official.

[FR Doc. 99–9563 Filed 4–15–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA; special committee 194; ATM Data Link Implementation

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for Special Committee 194 meeting to be held May 5–7, 1999, starting at 9:00 a.m. The committee has been formed to produce the guidance and performance requirements necessary to implement data link in the U.S. National Airspace System (NAS), further developing work resulting from the FAA Administrator's NAS Modernization Task Force. Attendance at the May 7 plenary session at MITRE requires prior coordination, which will be arranged for committed registrants. Others who wish to attend the May 7 meeting need to provide name and company affiliation to Ms. Kathy Grover, MITRE, at (703) 883–6638, by April 30. Locations of meetings are provided below.

The schedule and agenda for working group meetings will be as follows:

Wednesday, May 5 (9:00 a.m.–5:00 p.m.): Working Groups (WG)–1, 3, and 4 will meet to begin formulation of work programs and schedules: WG–1, Principles of Operation and Implementation Plan (AMTI, Inc., conference rooms A and B, 1284 Maryland Avenue, SW., Washington, DC 20024); WG–3, Human Factors (RTCA, 1140 Connecticut Avenue, NW., Washington DC 20036); WG–4, Service Provider Interface (Conwal, Inc., 600 Maryland Avenue, SW., Suite 400, Washington, DC 20024.)

Thursday, May 6 (9:00 a.m.–5:00 p.m.): WG's 1–4 formulation of work programs and schedules continues: WG–1, Principles of Operation and Implementation Plan (AMTI, Inc., conference rooms A and B, 1284 Maryland Avenue, SW., Washington, DC 20024); WG–2, Flight Operations and Air Traffic Management Integration (ALPA, 1625 Massachusetts Avenue, NW., 8th floor, Washington, DC); WG–3, Human Factors (RTCA, 1140 Connecticut Avenue, NW., Washington, DC 20036); WG–4, Service Provider Interface (Conwal, Inc., 600 Maryland Avenue, SW., Suite 400, Washignton, DC 20024.)

The agenda for the Plenary meeting will be as follows: Friday, May 7 (10:00 a.m.–3:00 p.m.) Plenary (MITRE CAASD, Wilson Building, Room 1B02, 7600 Old Springhouse Road, McLean, VA 22102): (1) Welcome and Introductory Remarks; (2) Working Group Reports; (3) Review Working Relationship between Special Committee 194 and Special Committee 189/WG–53; (4) Other Business; (5) Summarize Action Items: (6) Dates and Places of Future Meetings.

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain

information should contact the RTCA Secretariat, 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC 20036; (202) 833–9339 (phone); (202) 833–9434 (fax); or http://www.rtca.org (web site). Members (202) 833–9434 (fax); or http://www.rtca.org (web site). Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on April 9, 1999.

Janice L. Peters,

Designated Official.

[FR Doc. 99–9564 Filed 4–15–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

The Federal Aviation Administration (FAA) Satellite Operational Implementation Team (SOIT) hosted forum on the capabilities of the Global Positioning System (GPS)/Wide Area Augmentation System (WAAS) and Local Area Augmentation System (LAAS).

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of meeting.

Name: FAA SOIT Forum on GPS/WAAS/LAAS Capabilities.

Time and Date: 9:00 a.m.–5:00 p.m., May 17–18, 1999.

Place: The Holiday Inn Fair Oaks Hotel, 11787 Lee Jackson Memorial Highway, Fairfax, Virginia 22033.

Status: Open to the aviation industry with attendance limited to space available.

Purpose: The FAA SOIT will be hosting a public forum to discuss the FAA's GPS approvals and WAAS/LAAS operational implementation plans. This meeting will be held in conjunction with a regularly scheduled meeting of the FAA SOIT and in response to aviation industry requests to the FAA Administrator. Formal presentations by the FAA will be followed by a question and answer session. Those planning to attend are invited to submit proposed discussion topics.

Registration: Participants are requested to register their intent to attend this meeting by May 3, 1999. Names, affiliations, telephone and facsimile numbers should be sent to the point of contact listed below.

Point of Contact: Registration and submission of suggested discussion topics may be made to Mr. Steven Albers, phone (202) 267–7301, fax (202) 267–5086, or email at steven.CTR.albers@faa.gov.

Issued in Washington, DC on March 22, 1999.

Hank Cabler,

SOIT Co-Chairman.

[FR Doc. 99–9562 Filed 4–15–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–99–5500]

Notice of Receipt of Petition for Decision That Nonconforming 1990–1998 Yamaha Virago Motorcycles Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 1990–1998 Yamaha Virago motorcycles are eligible for importation.

SUMMARY: This document announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that 1990–1998 Yamaha Virago motorcycles that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because (1) they are substantially similar to vehicles that were originally manufactured for importation into and sale in the United States and that were certified by their manufacturer as complying with the safety standards, and (2) they are capable of being readily altered to conform to the standards.

DATE: The closing date for comments on the petition is May 17, 1999.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW, Washington, DC 20590. [Docket hours are from 9 am to 5 pm].

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

Champagne Imports of Lansdale, Pennsylvania ("Champagne") (Registered Importer 90–009) has petitioned NHTSA to decide whether non-U.S. certified 1990–1998 Yamaha Virago motorcycles are eligible for importation into the United States. The vehicles which Champagne believes are substantially similar are 1990–1998 Yamaha Virago motorcycles that were manufactured for importation into, and sale in, the United States and certified by their manufacturer as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared non-U.S. certified 1990–1998 Yamaha Virago motorcycles to their U.S. certified counterparts, and found the vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

Champagne submitted information with its petition intended to demonstrate that non-U.S. certified 1990–1998 Yamaha Virago motorcycles, as originally manufactured, conform to many Federal motor vehicle safety standards in the same manner as their U.S. certified counterparts, or are capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that non-U.S. certified 1990–1998 Yamaha Virago motorcycles are identical to their U.S. certified counterparts with respect to compliance with Standard Nos. 106 *Brake Hoses*, 111 *Rearview Mirrors*, 116 *Brake Fluid*, 119 *New Pneumatic Tires for Vehicles other than Passenger Cars*, and 122 *Motorcycle Brake Systems*.

Petitioner additionally contends that the vehicles are capable of being readily altered to meet the following standard, in the manner indicated:

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* (a) installation of U.S.-model head lamp assemblies; (b) installation of U.S.-model reflectors on vehicles that are not already so equipped.

Standard No. 120 *Tire Selection and Rims for Vehicles other than Passenger Cars:* installation of a tire information label.

Standard No. 123 *Motorcycle Controls and Displays:* installation of a U.S.-model speedometer calibrated in miles per hour.

The petitioner also states that a vehicle identification number plate will be affixed to the vehicle to meet the requirements of 49 CFR part 565.

Comments should refer to the docket number and be submitted to: Docket Management, Room PL–401, 400 Seventh Street, S.W., Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: April 12, 1999.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 99–9543 Filed 4–15–99; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–99–5499]

Notice of Receipt of Petition for Decision That Nonconforming 1992–1994 Mercedes-Benz 400SE Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 1992–1994 Mercedes-Benz 400SE passenger cars are eligible for importation.

SUMMARY: This notice announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that the 1992–1994 Mercedes-Benz 400SE that was not originally manufactured to comply with all applicable Federal motor vehicle safety standards is eligible for importation into the United States because (1) it is substantially similar to a vehicle that was originally manufactured for importation into and sale in the United States and that was certified by its manufacturer as complying with the safety standards, and (2) it is capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is May 17, 1999.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW, Washington, DC 20590. [Docket hours are from 9 am to 5 pm].

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

Champagne Imports of Lansdale, Pennsylvania ("Champagne") (Registered Importer 90–009) has petitioned NHTSA to decide whether 1992–1994 Mercedes-Benz 400SE passenger cars are eligible for importation into the United States. The vehicle which Champagne believes is substantially similar is the 1992–1994 Mercedes-Benz 500SEL that was manufactured for importation into, and sale in, the United States and certified by its manufacturer, Daimler Benz, A.G., as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared the 1992–1994 Mercedes-Benz 400SE to the 1992–1994 Mercedes-Benz 500SEL, and found the vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

Champagne submitted information with its petition intended to demonstrate that the non-U.S. certified 1992–1994 Mercedes-Benz 400SE, as originally manufactured, conforms to many Federal motor vehicle safety standards in the same manner as the 1992–1994 Mercedes-Benz 500SEL, or is capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that the non-U.S. certified 1992–1994 Mercedes-Benz 400SE is identical to the 1992–1994 Mercedes-Benz 500SEL with respect to compliance with Standard Nos. 102 *Transmission Shift Lever Sequence * * *, 103 Defrosting and Defogging Systems*, 104 *Windshield Wiping and Washing Systems*, 105 *Hydraulic Brake Systems*, 106 *Brake Hoses*, 109 *New Pneumatic Tires*, 113 *Hood Latch Systems*, 116 *Brake Fluid*, 124 *Accelerator Control Systems*, 201 *Occupant Protection in Interior Impact*, 202 *Head Restraints*, 204 *Steering Control Rearward Displacement*, 205 *Glazing Materials*, 207 *Seating Systems*, 209 *Seat Belt Assemblies*, 210 *Seat Belt Assembly Anchorages*, 212 *Windshield Retention*, 216 *Roof Crush Resistance*, 219 *Windshield Zone Intrusion*, and 302 *Flammability of Interior Materials.*

Additionally, the petitioner states that the non-U.S. certified 1992–1994 Mercedes-Benz 400SE complies with the Bumper Standard found in 49 CFR part 581.

Petitioner also contends that the vehicle is capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays:* (a) substitution of a lens marked "Brake" for a lens with a noncomplying symbol on the brake failure indicator lamp; (b) installation of a seat belt warning lamp that displays the appropriate symbol; (c) recalibration of the speedometer/odometer from kilometers to miles per hour.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* (a) installation of U.S.-model headlamp assemblies that incorporate headlamps with DOT markings; (b) installation of

U.S.-model front and rear sidemarker/reflector assemblies; (c) installation of U.S.-model taillamp assemblies; (d) installation of a center high mounted stop lamp if the vehicle is not already so equipped.

Standard No. 110 *Tire Selection and Rims:* installation of a tire information placard.

Standard No. 111 *Rearview Mirror:* replacement of the passenger side rearview mirror with a U.S.-model component.

Standard No. 114 *Theft Protection:* installation of a warning buzzer microswitch in the steering lock assembly and a warning buzzer.

Standard No. 118 *Power Window Systems:* rewiring of the power window system so that the window transport is inoperative when the ignition is switched off.

Standard No. 206 *Door Locks and Door Retention Components:* replacement of the rear door locks and rear door locking buttons with U.S.-model components.

Standard No. 208 *Occupant Crash Protection:* (a) installation of a U.S.-model seat belt in the driver's position, or a belt webbing-actuated microswitch inside the driver's seat belt retractor; (b) installation of an ignition switch-actuated seat belt warning lamp and buzzer; (c) replacement of the driver's side air bag and knee bolster in 1992 and 1993 models, and the driver's and passenger's side air bags and knee bolsters in 1994 models with U.S.-model components if the vehicle is not already so equipped. The petitioner states that the vehicles are equipped with combination lap and shoulder restraints that adjust by means of an automatic retractor and release by means of a single push button at both front designated seating positions, with combination lap and shoulder restraints that release by means of a single push button at both rear outboard designated seating positions, and with a lap belt at the rear center designated seating position.

Standard No. 214 *Side Impact Protection:* installation of reinforcing beams.

Standard No. 301 *Fuel System Integrity:* installation of a rollover valve in the fuel tank vent line between the fuel tank and the evaporative emissions collection canister.

Petitioner states that non-U.S. certified 1992–1994 Mercedes-Benz 400SE will be inspected prior to importation to ensure that requisite parts are marked in compliance with the Theft Prevention Standard found in 49 CFR Part 541.

The petitioner also states that a vehicle identification number plate must be affixed to the vehicle to meet the requirements of 49 CFR Part 565.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street, S.W., Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: April 12, 1999.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 99–9544 Filed 4–15–99; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–99–5498]

Notice of Receipt of Petition for Decision That Nonconforming 1997 Chevrolet Astro Vans Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 1997 Chevrolet Astro Vans are eligible for importation.

SUMMARY: This document announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that 1997 Chevrolet Astro Vans manufactured for sale in the Middle East that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because (1) they are substantially similar to vehicles that were originally manufactured for sale in the United States and that were certified by their manufacturer as complying with the safety standards, and (2) they are capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is May 17, 1999.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW, Washington, DC 20590. [Docket hours are from 9 am to 5 pm].

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. § 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

Wallace Environmental Testing Laboratories, Inc. of Houston, Texas ("Wallace") (Registered Importer 90–005) has petitioned NHTSA to decide whether a 1997 Chevrolet Astro Van manufactured for sale in the Middle East is eligible for importation into the United States. The vehicle which Wallace believes is substantially similar is the 1997 Chevrolet Astro Van that was manufactured for sale in the United States and certified by its manufacturer, General Motors Corporation, as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared the non-U.S. certified 1997

Chevrolet Astro Van to its U.S. certified counterpart, and found the two vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

Wallace submitted information with its petition intended to demonstrate that the non-U.S. certified 1997 Chevrolet Astro Van, as originally manufactured, conforms to many Federal motor vehicle safety standards in the same manner as its U.S. certified counterpart, or is capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that the non-U.S. certified 1997 Chevrolet Astro Van is identical to its U.S. certified counterpart with respect to compliance with Standards Nos. 101 *Controls and Displays,* 102 *Transmission Shift Lever Sequence * * *,* 103 *Defrosting and Defogging Systems,* 104 *Windshield Wiping and Washing Systems,* 105 *Hydraulic Brake Systems,* 106 *Brake Hoses,* 113 *Hood Latch Systems,* 116 *Brake Fluid,* 118 *Power Operated Window Systems,* 119 *New Pneumatic Tires for Vehicles other than Passenger Cars,* 124 *Accelerator Control Systems,* 201 *Occupant Protection in Interior Impact,* 202 *Head Restraints,* 203 *Impact Protection for the Driver from the Steering Control System,* 204 *Steering Control Rearward Displacement,* 205 *Glazing Materials,* 206 *Door Locks and Door Retention Components,* 207 *Seating Systems,* 208 *Occupant Crash Protection,* 209 *Seat Belt Assemblies,* 210 *Seat Belt Assembly Anchorages,* 212 *Windshield Retention,* 214 *Side Impact Protection,* 216 *Roof Crush Resistance,* 219 *Windshield Zone Intrusion,* 301 *Fuel System Integrity,* and 302 *Flammability of Interior Materials.*

Additionally, the petitioner states that the non-U.S. certified 1997 Chevrolet Astro Van complies with the Bumper Standard found in 49 CFR part 581.

Petitioner also contends that the vehicles are capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* replacement of the tail light assemblies with U.S.-model components that incorporate rear sidemarkers.

Standard No. 111 *Rearview Mirror:* inscription of the required warning statement in the passenger side rearview mirror.

Standard No. 114 *Theft Protection:* installation of a warning device that activates when the key is left in the ignition and the driver's door is opened.

Standard No. 120 *Tire Selection and Rims for Motor Vehicles other than Passenger Cars:* installation of a tire information placard.

The petitioner also states that a vehicle identification number plate must be affixed to the vehicles to meet the requirements of 49 CFR Part 565.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW, Washington, DC 20590. [Docket hours are from 9 am to 5 pm]. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: April 12, 1999.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 99–9545 Filed 4–15–99; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–99–5507]

Notice of Receipt of Petition for Decision that Nonconforming 1990–1999 Nissan GTS and GTR Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Request for comments on petition for decision that nonconforming 1990–1999 Nissan GTS and GTR passenger cars are eligible for importation.

SUMMARY: This notice requests comments on a petition submitted to the National Highway Traffic Safety Administration (NHTSA) for a decision that a 1990–1999 Nissan GTS and GTR passenger cars that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because they have safety features that comply with, or are capable of being altered to comply with, all such standards.

DATES: The closing date for comments on the petition is May 17, 1999.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW, Washington, DC 20590. (Docket hours are from 9 am to 5 pm).

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. § 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards. Where there is no substantially similar U.S.-certified motor vehicle, 49 U.S.C. 30141(a)(1)(B) permits a nonconforming motor vehicle to be admitted into the United States if its safety features comply with, or are capable of being altered to comply with, all applicable Federal motor vehicle safety standards based on destructive test data or such other evidence as NHTSA decides to be adequate.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

J.K. Motors of Baltimore, Maryland (Registered Importer No. R–90–006) has petitioned NHTSA to decide whether 1990–1999 Nissan GTS and GTR passenger cars are eligible for importation into the United States. J.K. contends that these vehicles are eligible for importation under 49 U.S.C. 30141(a)(1)(B) because they have safety features that comply with, or are

capable of being altered to comply with, all applicable Federal motor vehicle safety standards.

Specifically, the petitioner claims that 1990–1999 Nissan GTS and GTR passenger cars have safety features that comply with Standard Nos. 102 *Transmission Shift Lever Sequence * * *.* (based on comparison of components to those on similar U.S.-certified models, such as the Nissan 300ZX Turbo), 103 *Defrosting and Defogging Systems* (based on engineering analysis and comparison of components to those on similar U.S.-certified models, such as the Nissan 300ZX and 300ZX Turbo), 104 *Windshield Wiping and Washing Systems* (based on engineering analysis and comparison of components to those on similar U.S.-certified models, such as the Nissan 240SX, 300ZX, 300ZX Turbo, and Maxima), 105 *Hydraulic Brake Systems* (based on engineering analysis and comparison of components to those on similar U.S.-certified models, such as the Nissan 300ZX and Maxima), 106 *Brake Hoses* (based on comparison of components to those on similar U.S.-certified models and on visual inspection of certification markings), 109 *New Pneumatic Tires* (based on visual inspection of certification markings), 113 *Hood Latch Systems* (based on comparison of components to those on similar U.S.-certified models, such as the Nissan 300 ZX Turbo), 116 *Brake Fluids* (based on visual inspection of certification markings), 124 *Accelerator Control Systems* (based on engineering analysis and comparison of components to those on similar U.S.-certified models, such as the Nissan 300ZX Turbo, which also utilize dual return springs, either of which is capable of closing the throttle when the other is disconnected), 202 *Head Restraints* (based on test data), 203 *Impact Protection for the Driver from the Steering Control System* (based on test data), 204 *Steering Control Rearward Displacement* (based on test data), 205 *Glazing Materials* (based on comparison of components to those on similar U.S.-certified models and on visual inspection of certification markings), 206 *Door Locks and Door Retention Components* (based on test data), 209 *Seat Belt Assemblies* (based on comparison of components to those on similar U.S.-certified models and on visual inspection of certification markings), 216 *Roof Crush Resistance* (based on comparison of roof structure to that of similar U.S. certified models, such as the Nissan 300 ZX, and on engineering analysis), 219 *Windshield Zone Intrusion* (based on test data), and 302 *Flammability of Interior Materials* (based on comparison of components to those on similar U.S.-certified models).

Petitioner also states that based on engineering analysis the 1990–1999 Nissan GTS and GTR passenger cars comply with the Bumper Standard found at 49 CFR part 581. The petitioner observes that the bumpers are of a customary plastic/nylon design impregnated with body color and that they are mounted with high energy absorption components.

The petitioner also contends that 1990–1999 Nissan GTS and GTR passenger cars are capable of being altered to comply with the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays:* (a) substitution of a lens marked "Brake" for a lens with an ECE symbol on the brake failure indicator lamp; (b) installation of a speedometer/odometer calibrated in miles per hour. Petitioner states that it is also silk screening its own custom faces to meet the standard. Petitioner further states that the remaining controls and displays are identical to those found on similar U.S.-certified models, such as the Nissan 300ZX.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* (a) Installation of U.S.-model headlamps and front sidemarker lights; (b) installation of U.S.-model rear sidemarker lights and reflectors; (c) installation of a high mounted stop lamp, if the vehicle is not already so equipped. The petitioner asserts that the tail lamp assemblies meet the standard in all respects.

Standard No. 110 *Tire Selection and Rims:* installation of a tire information placard. Petitioner states that the rims that are equipped on the vehicle have DOT certification markings and are identical to those found on similar U.S.-certified models, such as the Nissan 300ZX Turbo.

Standard No. 111 *Rearview Mirrors:* replacement of the passenger side rearview mirror with a U.S.-model component.

Standard No. 114 *Theft Protection:* installation of a U.S.-model warning buzzer in the steering lock electrical circuit on all models and installation of a U.S.-model seatbelt warning system on 1990–1993 models. Petitioner states that the components installed on GTS models will be identical to those found on the Nissan Maxima, and the components installed on GTR models will be identical to those found on the Nissan 300ZX Turbo.

Standard No. 118 *Power-Operated Window Systems:* installation of a relay (identical to that found on the Nissan 300ZX) in the power window system of 1990–1993 models so that the window transport is inoperative when the ignition is switched off. Petitioner states that 1994–1999 models are already equipped with this component.

Standard No. 201 *Occupant Protection in Interior Impact:* The petitioner states that the vehicle will meet the standard with structural modifications to the dash area of the vehicles that are more fully described in a submission for which a pending request for confidentiality has been filed by petitioner with NHTSA's Office of Chief Counsel under 49 CFR part 512.

Standard No. 207 *Seating Systems:* The petitioner states that the vehicle will meet the standard with structural modifications to the seat frames that are more fully described in a submission for which a pending request for confidentiality has been filed by petitioner with NHTSA's Office of Chief Counsel under 49 CFR part 512.

Standard No. 208 *Occupant Crash Protection:* (a) replacement of the driver's side airbag on 1990–1993 models, and the driver's and passenger's side airbags on 1994–1999 models with components manufactured to petitioner's specifications based on static and dynamic test results, that are more fully described in a submission for which a pending request for confidentiality has been filed by petitioner with NHTSA's Office of Chief Counsel under 49 CFR part 512; (b) installation of an airbag warning label on each sun visor. Petitioner states that the vehicle is equipped with a seatbelt warning lamp and buzzer that are identical to components found on similar U.S.-certified models. The petitioner also states that the vehicles are equipped with combination lap and shoulder restraints that adjust by means of an automatic retractor and release by means of a single push button at all front and rear designated seating positions.

Standard No. 210 *Seat Belt Assembly Anchorages:* The petitioner states that the vehicle will meet the standard with structural modifications at seat belt assembly anchorage points that are more fully described in a submission for which a pending request for confidentiality has been filed by petitioner with NHTSA's Office of Chief Counsel under 49 CFR part 512.

Standard No. 212 *Windshield Retention:* application of adhesives to the windshield's edges.

Standard No. 214 *Side Impact Protection:* The petitioner states that the vehicle will meet the standard with structural modifications that are more fully described in a submission for

which a pending request for confidentiality has been filed by petitioner with NHTSA's Office of Chief Counsel under 49 CFR part 512.

Standard No. 301 *Fuel System Integrity:* The petitioner states that the vehicle will meet the standard with fuel system modifications made in conjunction with those necessary to meet Environmental Protection Agency (EPA) requirements that are more fully described in a submission for which a pending request for confidentiality has been filed by petitioner with NHTSA's Office of Chief Counsel under 49 CFR part 512. The petitioner further states that it conducted dynamic tests that demonstrate the vehicle's compliance with the standard.

The petitioner additionally states that a vehicle identification number (VIN) plate must be attached to the left windshield post and a reference and certification label must be added in the left front door post area to meet 49 CFR part 565.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW, Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. § 30141(a)(1)(B) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on April 12, 1999.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 99–9546 Filed 4–15–99; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33722]

Brandywine Valley Railroad Company—Modified Rail Certificate

On March 17, 1999, Brandywine Valley Railroad Company (Brandywine), filed a notice for a modified certificate of public convenience and necessity under 49 CFR 1150, Subpart C, *Modified Certificate of Public Convenience and Necessity,* to operate the following lines of railroad: (a) between milepost 12.7 at the Delaware/Pennsylvania state line and milepost 30.29 at Modena, PA, a distance of 17.59 miles; and (b) between milepost 18.0 at Wawa, PA, and milepost 54.50 at the Pennsylvania/Maryland state line near Sylmar, MD, a distance of 36.50 miles.[1]

The lines of railroad are owned by the Pennsylvania Department of Transportation (PennDOT) and by the Southeastern Pennsylvania Transportation Authority (SEPTA), respectively. The lines were not included in the final system plan at the time the Consolidated Rail Corporation was formed and, as such, were authorized to be abandoned without further approval of the Interstate Commerce Commission (ICC) pursuant to the Railroad Revitalization and Regulatory Reform Act of 1976, Pub. L. No. 94–210. PennDOT acquired its line segment from the trustees of the Reading Railroad, while SEPTA acquired its segment from the trustees of the Penn Central Transportation Company, after the respective lines were abandoned in 1976.

Brandywine states that, when the notice was filed, the lines were being operated by the Delaware Valley Railroad Company (DV) under an arrangement with PennDOT pursuant to a modified certificate. Brandywine further states that PennDOT gave DV a notice of termination (in December 1998, according to Brandywine) effective March 19, 1999, and DV stopped operating on that date. PennDOT contracted with Brandywine to assume operations, which began on March 22, 1999.[2] Under an interim operating agreement between Brandywine and PennDOT, service is to be provided by Brandywine until September 30, 1999.[3]

The rail segment qualifies for a modified certificate of public convenience and necessity. *See Common Carrier Status of States, State Agencies and Instrumentalities and Political Subdivisions,* Finance Docket No. 28990 (ICC served July 16, 1981).

Brandywine indicates that no subsidy is involved and that there are no preconditions for shippers to meet in order to receive rail service.

This notice will be served on the Association of American Railroads (Car Service Division) as agent for all railroads subscribing to the car-service and car-hire agreement: Association of American Railroads, 50 F Street, NW, Washington, DC 20001; and on the American Short Line Railroad Association: American Short Line Railroad Association, 1120 G St., NW, Suite 520, Washington, DC 20005.

Decided: April 13, 1999.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 99–9701 Filed 4–15–99; 8:45 am]

BILLING CODE 4915–00–P

---

[1] In a decision served March 26, 1999, the Board's Chairman denied a petition filed March 19, 1999, by the Delaware Valley Railroad Company (DV), the former operator of the line, to stay the effectiveness of this notice. Under our rules, carriers can begin operating immediately on the filing of the notice. 49 CFR 1150.23(a).

[2] On March 23, 1999, Brandywine filed a petition for prescription of alternative rail service under 49 CFR part 1146 over a line of track owned by the Wilmington and Northern Railroad Company and operated by DV as a designated operator between milepost 12.7 at the Delaware/Pennsylvania border and milepost 2.9 at Elsmere Jct., DE. *See Brandywine Valley Railroad Company—Petition for Prescription of Alternative Rail Service—Line Operated by Delaware Valley Railway Company,* STB Finance Docket No. 33732. That petition will be addressed in a separate Board decision.

[3] Brandywine is also negotiating to purchase the line.

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33652]

Union Pacific Railroad Company—Acquisition and Operation Exemption—Mid Michigan Railroad, Inc.

AGENCY: Surface Transportation Board.

ACTION: Notice of exemption.

SUMMARY: Under 49 U.S.C. 10502, the Board is granting a petition for exemption from the prior approval requirements of 49 U.S.C. 11323–25 filed by Union Pacific Railroad Company for its acquisition of the 107.3-mile line of railroad owned by Mid Michigan Railroad, Inc., between Saint Joseph, MO, and Upland, KS, subject to employee protective and environmental conditions.

DATES: This exemption was effective on April 13, 1999. Petitions to reopen must be filed by May 5, 1999.

ADDRESSES: An original and 10 copies of all pleadings referring to the exemption granted in STB Finance Docket No. 33652 must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW, Washington, DC 20423–0001. In addition, a copy of all pleadings must be served on applicant's representative, Joseph D. Anthofer, 1416 Dodge Street, #830, Omaha, NE 68179.

FOR FURTHER INFORMATION CONTACT: Beryl Gordon (202) 565–1600. [TDD for the hearing impaired (202) 565–1695.]

SUPPLEMENTARY INFORMATION: For further information, refer to the Board's decision served April 14, 1999.

To purchase a copy of the full decision, write to, call, or pick up in person from: DC NEWS & DATA, INC., 1925 K Street, NW, Suite 210, Washington, DC 20006. Telephone: (202) 289–4357. [Assistance for the hearing impaired is available through TDD services (202) 565–1695.]

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

Decided: April 13, 1999.

By the Board, Chairman Morgan, Vice Chairman Clyburn, and Commissioner Burkes.

Vernon A. Williams,

Secretary.

[FR Doc. 99–9569 Filed 4–15–99; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33727]

New Hampshire and Vermont Railroad Company—Operation Exemption—Certain Lines of the State of New Hampshire

New Hampshire and Vermont Railroad Company (NHVT), a Class III rail carrier has filed a notice of exemption under 49 CFR 1150.41 to operate approximately 36 miles of certain rail lines owned by the State of New Hampshire by and through the New Hampshire Department of Transportation (subject lines).[1] The subject lines consist of a parcel or strip of railroad land of varying width, lying in Grafton and Coos Counties, NH, comprising a portion of railroad right-of-way known as the "Berlin Branch" and a portion of railroad right-of-way known as the "Groveton Branch": (a) from milepost 113.0 in Littleton, NH (shown as railroad Valuation Station 995+66 on plans for Federal Valuation Section 22, Map 19), to milepost 125.0 in Whitefield, NH (shown as railroad Valuation Station 1629+30 on plans for Federal Valuation Section 22, Map 31); (b) from milepost 125.0 in Whitefield, NH (shown as railroad Valuation Station 1629+30 on plans for Federal Valuation Section 22, Map 31), to milepost 130.9 in Jefferson (Waumbec Junction), NH (shown as railroad Valuation Station 325+03.2 on plans for Federal Valuation Section 24.2, Map 6 at the point of switch for the Maine Central Railroad connecting track); and (c) from milepost 130.9 in Jefferson (Waumbec Junction), NH (Valuation Station 325+03.2), to a point in Groveton (Northumberland), NH (shown as the Valuation Section 2715+83 on plans for Federal Valuation Section 22, Map 52 at the Whistle Post located South of the West Street crossing, such point being the point of intersection with the tracks of the St. Lawrence & Atlantic Railroad Company).[2]

The earliest the transaction could be consummated was March 25, 1999, the effective date of the exemption (7 days after the notice of exemption was filed). However, this transaction is related to STB Finance Docket No. 33728, the *State of New Hampshire Department of Transportation—Acquisition Exemption—New Hampshire and Vermont Railroad Company,* in which the State of New Hampshire has filed a notice of exemption with respect to its purchase of these lines from NHVT. Because the exemption in STB Finance Docket No. 33728 was not scheduled to take effect until on or after March 30, 1999, the exemption in STB Finance Docket No. 33727 could not have been consummated prior to March 30, 1999.

If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33727, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001. In addition, one copy of each pleading must be served on David H. Anderson, Attorney at Law, 288 Littleton Road, Suite 21, Westford, MA 01886.

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

Decided: April 8, 1999.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 99–9438 Filed 4–15–99; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33728]

State of New Hampshire Department of Transportation—Acquisition Exemption—New Hampshire and Vermont Railroad Company

The State of New Hampshire Department of Transportation (NHDOT), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to acquire (by purchase) approximately 36.0 miles of rail line owned by the New Hampshire and Vermont Railroad Company (NHVT). The lines being acquired by NHDOT are known as the Berlin Branch and the Groveton Branch and extend: (a) from milepost 113.0 at Littleton, NH (Valuation Station 995+66), to milepost 125.0 at Whitefield, NH (Valuation Station 1629+30); (b) from milepost 125.0 at Whitefield, NH (Valuation Station 1629+30), to milepost 130.9 at Jefferson (Waumbec Junction), NH (Valuation Station 325+03.2); and (c) from milepost 130.9 at Jefferson (Waumbec Junction), NH (Valuation Station 325+03.2), to a point in Groveton (Northumberland), NH, where said line intersects with a line of railroad owned by the St. Lawrence & Atlantic Railroad Company (Valuation Station 2715+83). NHVT will operate the property.

The transaction was scheduled to be consummated on or after March 30, 1999.

This transaction is related to STB Finance Docket No. 33727, *New Hampshire and Vermont Railroad Company—Operation Exemption—Certain Lines of the State of New Hampshire,* wherein NHVT has filed a notice of exemption to operate over the lines once they are owned by NHDOT. Thus, NHVT will continue as the primary common carrier freight operator of the subject lines.

If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33728, must be filed with

[1] The parties state that NHVT and the State of New Hampshire, by its Department of Transportation, entered into an operating agreement on March 15, 1999, providing for NHVT's operation of the subject line.

[2] NHVT certifies that its annual revenue will not exceed those that would qualify it as a Class III rail carrier and that its annual revenues are not projected to exceed $5 million.

the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001. In addition, one copy of each pleading must be served on Robert A. Wimbish, REA, CROSS & AUCHINLOSS, Suite 570, 1707 L Street, N. W., Washington, DC 20036.

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

Decided: April 8, 1999.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 99–9439 Filed 4–15–99; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–55 (Sub–No. 566X)]

CSX Transportation, Inc.—Abandonment Exemption—In Duval County, FL

On March 29, 1999, CSX Transportation, Inc. (CSXT) filed with the Surface Transportation Board (Board) a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10903 to abandon a portion of its Jacksonville Service Lane, Kingsland Subdivision, extending from milepost S–634.85 at Acorn Street to milepost S–635.09 at the connection of the line to be abandoned with CSXT's former Jacksonville-Savannah main line, a distance of 0.24-miles, in Jacksonville, Duval County, FL. The line traverses U.S. Postal Service Zip Codes 32204 and 32205 and includes no stations.

The line does not contain federally granted rights-of-way. Any documentation in CSXT's possession will be made available promptly to those requesting it.

The interest of railroad employees will be protected by the conditions set forth in *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979).

By issuance of this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision will be issued by July 16, 1999.

Any offer of financial assistance (OFA) under 49 CFR 1152.27(b)(2) will be due no later than 10 days after service of a decision granting the petition for exemption. Each offer must be accompanied by a $1,000 filing fee. *See* 49 CFR 1002.2(f)(25).

All interested persons should be aware that, following abandonment of rail service and salvage of the line, the line may be suitable for other public use, including interim trail use. Any request for a public use condition under 49 CFR 1152.28 or for trail use/rail banking under 49 CFR 1152.29 will be due no later than May 6, 1999. Each trail use request must be accompanied by a $150 filing fee. *See* 49 CFR 1002.2(f)(27).

All filings in response to this notice must refer to STB Docket No. AB–55 (Sub-No. 566X) and must be sent to: (1) Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW, Washington, DC 20423–0001; and (2) Charles M. Rosenberger, 500 Water Street—J150, Jacksonville, FL 32202. Replies to the CSXT petition are due on or before May 6, 1999.

Persons seeking further information concerning abandonment procedures may contact the Board's Office of Public Service at (202) 565–1592 or refer to the full abandonment or discontinuance regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis (SEA) at (202) 565–1545. [TDD for the hearing impaired is available at (202) 565–1695.]

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by SEA will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Other interested persons may contact SEA to obtain a copy of the EA (or EIS). EAs in these abandonment proceedings normally will be made available within 60 days of the filing of the petition. The deadline for submission of comments on the EA will generally be within 30 days of its service.

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

Decided: April 12, 1999.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 99–9570 Filed 4–15–99; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

April 6, 1999.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Pub. L. 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before May 17, 1999 to be assured of consideration.

Departmental Offices/International Portfolio Investment Data Systems

OMB Number: 1505–0024.

Form Number: International Capitol Form CQ–1 (Parts 1 and 2) and International Capitol Form CQ–2 (Parts 1 and 2).

Type of Review: Extension.

Title: Financial Liabilities to Unaffiliated Foreigners (CQ–1, Part 1); Financial Claims on Unaffiliated Foreigners (CQ–1, Part 2); Commercial Liabilities to Unaffiliated Foreigners (CQ–2, Part 1); and Commercial Claims on Unaffiliated Foreigners (CQ–2, Part 2)

Description: Forms CQ–1 and CQ–2 are required by law and are designed to collect timely information on international portfolio capital movement, including data on financial and commercial liabilities to, and claims on, unaffiliated foreigners held by nonbanking enterprises in the United States. This information is necessary for compiling the U.S. balance of payments, for calculating the U.S. international investment position and for U.S. financial/monetary policies.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 500.

Estimated Burden Hours Per Respondent: 4 hours.

Frequency of Response: Quarterly.

Estimated Total Reporting/Recordkeeping Burden: 8,000 hours.

Clearance Officer: Lois K. Holland (202) 622–1563, Departmental Offices, Room 2110, 1425 New York Avenue, NW, Washington, DC 20220.

OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 99–9502 Filed 4–15–99; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

April 8, 1999.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Pub. L. 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before May 17, 1999 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–1581.

Regulation Project Number: REG–209485–86 Final.

Type of Review: Extension.

Title: Continuation Coverage Requirements Applicable to Group Health Plans.

Description: The statute and the regulations require group health plans to provide notices to individuals who are entitled to elect the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA) continuation coverage of their election rights. Individuals who wish to obtain the benefits provided under the statute are required to provide plans notices in the cases of divorce from the covered employee, a dependent child's ceasing to be dependent under the terms of the plan, and disability. Most plans will require that elections of COBRA continuation coverage be made in writing. In cases where qualified beneficiaries are short by an insignificant amount in a payment made to the plan, the regulations require the plan to notify the qualified beneficiary if the plan does not wish to treat the tendered payment as full payment. If a health care provider contacts a plan to confirm coverage of a qualified beneficiary, the regulations require that the plan disclose the qualified beneficiary's complete rights to coverage.

Respondents: Business or other for-profit, Individuals or households, Not-for-profit institutions.

Estimated Number of Respondents: 1,800,000.

Estimated Burden Hours Per Respondent: 14 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 404,640 hours.

Clearance Officer: Garrick Shear, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW, Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 99–9503 Filed 4–15–99; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

April 9, 1999.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before May 17, 1999 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–1483.

Form Number: IRS Form W–7.

Type of Review: Extension.

Title: Application for IRS Individual Taxpayer Identification Number.

Description: Regulations under Internal Revenue Code (IRC) section 6109 provide for a type of taxpayer identifying number called the "IRS Individual Taxpayer Identification Number" (ITIN). Individuals who currently do not have, and are not eligible to obtain, social security numbers can apply for this number on Form W–7. Taxpayers may use this number when required to furnish a taxpayer identifying number under regulations. An ITIN is intended for tax use only.

Respondents: Individuals or households.

Estimated Number of Respondents: 500,000.

Estimated Burden Hours Per Respondent:

Learning about the law or the form 13 minutes

Preparing the form—29 minutes

Copying, assembling and sending the form to the IRS—20 minutes

Frequency of Response: Other (Individuals file once to get an ITIN.)

Estimated Total Reporting Burden: 525,000 hours.

OMB Number: 1545–1645.

Revenue Procedure Number: Revenue Procedure 99–13.

Type of Review: Extension.

Title: Section 403(b) Plan Corrections and Closing Agreements.

Description: This revenue procedure modifies and amplifies Revenue Procedure 98–22, 1998-12 I.R.B. 11, and provides guidance to employers, custodians and individual taxpayers with respect to the administration of tax-sheltered annuity arrangements within the meaning of section 403(b) of the Code. In so doing, a mechanism to make certain corrections to section 403(b) plans.

Respondents: Not-for-profit institutions.

Estimated Number of Respondents/Recordkeeping: 500.

Estimated Burden Hours Per Respondent/Recordkeeper: 3 hours, 48 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting/Recordkeeping Burden: 1,899 hours.

Clearance Officer: Garrick Shear, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW, Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 99–9504 Filed 4–15–99; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

April 9, 1999.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department

Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before May 17, 1999 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–0152.

Form Number: IRS Form 3115.

Type of Review: Extension.

Title: Application for Change in Accounting Method.

Description: Form 3115 is used by taxpayers who wish to change their method of computing their taxable income. The form is used by the IRS to determine if electing taxpayers have met the requirements and are able to change to the method requested.

Respondents: Business or other for-profit, Individuals or households, Not-for-profit institutions, Farms.

Estimated Number of Respondents/Recordkeepers: 6,400

Estimated Burden Hours Per Respondent/Recordkeeper:

Form	Recordkeeping	Learning about the law or the form	Preparing and sending the form to the IRS
Form 3115	20 hr., 34 min	3 hr., 15 min	4 hr., 56 min.
Schedule A	4 hr., 18 min	1 hr., 41 min	1 hr., 50 min.
Schedule B	4 hr., 47 min	46 min	2 hr., 4 min.
Schedule C	27 hr., 1 min	1 hr., 40 min	3 hr., 22 min.
Schedule D	5 hr., 1 min	1 hr., 59 min	2 hr., 9 min.

Frequency of Response: Other (when needed).

Estimated Total Reporting/Recordkeeping Burden: 272,062 hours.

Clearance Officer: Garrick Shear, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW, Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 99–9505 Filed 4–15–99; 8:45 am]

BILLING CODE 4830–01–P

UNITED STATES INFORMATION AGENCY

Africa Regional Internship Program; Notice: Request for Proposals

SUMMARY: The Africa/Near East/South Asia Division of the Office of Citizen Exchanges of the United States Information Agency's Bureau of Educational and Cultural Affairs announces an open competition for an assistance award to manage the Africa Regional internship Program (ARIP). One award is anticipated. Public and private non-profit organizations meeting the provisions described in IRS regulation 26 CFR 1.501(c) may submit proposals to assume management of the citizen exchange program. Grants are subject to the availability of funds. The goal of the ARIP is to promote democratic leadership and citizen participation among key sectors of society. The ARIP will link mid-career professionals from Sub-Saharan Africa with U.S. counterpart institutions and groups for internships in the areas of education, non-governmental organization, public administration, and business and trade. The grantee organization should work closely with hosts in planning and implementing internships to ensure rich and meaningful educational experiences, professionally and culturally.

Institutions with less than four years of international exchange experience are not eligible to apply for a grant under this program.

Interested applicants should read the complete **Federal Register** announcement before sending inquiries or submitting proposals. Once the RFP deadline has passed, Agency staff may not discuss this competition with applicants until the proposal review process has been completed.

Announcement Name and Number

All correspondence with USIA concerning this RFP should reference the above title and number *E/P–99–51.*

Deadline for Proposals

All proposal copies must be received at the U.S. Information Agency by 5 p.m. Washington, DC time on Monday, May 17, 1999. Faxed documents will not be accepted at any time. Documents postmarked the due date but received on a later date will *not* be accepted. It is the responsibility of each grant applicant to ensure that proposals are received by the above deadline.

FOR FURTHER INFORMATION CONTACT: Interested organizations/institutions may contact the Office of Citizen Exchanges, (E/P), Room 220, United States Information Agency, 301 Fourth Street, SW, Washington, DC 20547, telephone (202) 260–2745, email: otamches@usia.gov to request a Solicitation Package. The Solicitation Package contains detailed award criteria, required certification forms, specific budget instructions and standard guidelines for proposal preparation. Please specify USIA Program Officer Orna Tamches on all inquiries and correspondence.

To Download a Solicitation Package via Internet

The entire Solicitation Package may be downloaded from USIA's website at http://e.usia.gov/education/rfps. Please read all information before downloading.

To Receive a Solicitation Package via Fax on Demand

The entire Solicitation Package may be requested from the Bureau's "Grants Information Fax on Demand System," which is accessed by calling 202/401–7616. The "Table of Contents" listing available documents and order numbers should be the first order when entering the system.

ADDRESSES: Applicants must follow all instructions given in the Solicitation Package. The original and 10 copies of the application should be sent to: U.S. Information Agency, Ref.: E/P–99–51, Office of Grants Management, E/XE, Room 326, 301 4th Street, SW, Washington, DC 20547.

Program Information

Overview

The Office of Citizen Exchanges works with U.S. private sector, non-profit organizations on cooperative projects that introduce American and foreign participants to each others' social, economic, and political structures, and international interests. The Office has launched a new Africa Regional Internship Program, a practical exchange program designed to promote democratic leadership and citizen participation among key sectors of society. the ARIP will link mid-career professionals from Sub-Saharan Africa

with U.S. counterpart institutions and groups for internships in four broad areas: education; non-governmental organization; public administration; and business and trade. In FY 1999, USIA plans to place a minimum of 20 African participants in practical internships in U.S. communities.

Guidelines

Project activity is conceived of as four- to six-week internships in the United States. Proposals should reflect the applicant's understanding of the political, economic, and social environment of potential African participants. Programs should be designed for English speakers, recognizing that some participants may have greater fluency in French, Portuguese or other languages. USIA is interested in proposal designs that take into account the need for on going sharing of information, training and concrete plans for self-sustainability. Examples include plans to create professional networks or professional associations to share information; establishing ongoing Internet communication; and/or train-the-trainers models.

Africa Regional Internship Program (ARIP)

The ARIP should build expertise and develop skills required for effective leadership in a democratic society, including management, planning, public relations and community outreach, through a comprehensive, in-depth, hands-on experience. A minimum of 20 mid-career African men and women, working in the fields of education, non-governmental organization (NGO), public administration, and business and trade, will participate. Interns will be emerging professionals who demonstrate an interest in working with U.S. counterparts and a capacity to apply new skills to their jobs. These skills would be developed through four- to six-week internship placements in the U.S., matched to the participants professional development needs and directly related to the interns' jobs at home. It will be the grantee's responsibility to arrange and to ensure appropriate and valuable internships, professionally and culturally. The intern and participating organizations in the United States and in the home country should develop priorities and strategies to meet the training and development needs.

Participants should experience the interaction among government agencies, the private sector, NGOs and the community at large in order to observe the process of policy development and implementation as well as examine funding, investment, administration and regulatory issues relevant to the specialized field. It is anticipated that relationships would be established that would lay the groundwork for continued collaboration between the interns and their professional counterparts in the United States, and that linkages would be established between institutions to promote continued professional development and training opportunities.

Implementation should begin in the summer of 1999.

Participant Selection

Close coordination and communication will be needed among the grantee organization, USIS posts in Africa, African nominees, and U.S. hosts. Nominations for participation in the program will be welcome from the grantee organization, but major responsibility for nominations and ultimate authority to approve or disapprove participation will be with USIS posts in Sub-Saharan African countries. Countries in Sub-Saharan Africa which do not have USIS posts will not be eligible to participate.

Visa Regulations

Foreign participants on programs sponsored by the Office of Citizen Exchanges are granted J–1 Exchange Visitor visas by the U.S. Embassy in the sending country. All programs must comply with J–1 visa regulations. Please refer to Solicitation Package for further information.

Budget Guidelines

Since USIA grant assistance constitutes only a portion of total project funding, proposals should list and provide evidence of other sources of financial and in-kind support. Proposals with substantial private sector support from foundations, corporations and other institutions will be considered more competitive than those with less such support. A program of this magnitude will require more funding than USIA can provide, and significant cost sharing is expected; a minimum of 33 percent cost sharing of total program expenses is required.

Applicants are requested to submit proposals not to exceed $250,000 in funding from USIA. Applicants are invited to provide both an all-inclusive budget as well as separate sub-budgets for each program component, phase, location or activity in order to facilitate USIA decisions on funding. While a comprehensive line item budget based on the model in the Solicitation Package must be submitted, separate component budgets are optional.

The following project costs are eligible for consideration for funding:

1. *International and domestic air fares; visas; transit costs; ground transportation costs.*

2. *Per diem.* For the U.S. program, organizations have the option of using a flat $160/day for program participants or the published U.S. Federal per diem rates for individual U.S. cities. For activities outside of the U.S., the published Federal per diem rates must be used.

Note: U.S. escorting staff must use the published Federal per diem rates, not the flat rate. Per diem rates may be accessed at http://www.policyworks.gov/.

3. *Book and cultural allowance.* Participants are entitled to and escorts are reimbursed a one-time cultural allowance of $150 per person, plus a participant book allowance of $50. U.S. staff do not receive these benefits.

4. *Consultants.* Consultants may be used to provide specialized expertise or to make presentations. Daily honoraria generally do not exceed $250 per day. Subcontracting organizations may also be used, in which case the written agreement between the prospective grantee and subcontractor should be included in the proposal.

5. *Room rental.* Room rental for group activities should not exceed $250 per day.

6. *Materials development.* Proposals may contain costs to purchase, develop and translate materials for participants.

7. *One working meal per project.* Per capita costs may not exceed $5–$8 for a lunch and $14–20 for a dinner, excluding room rental. The number of invited guests may not exceed participants by more than a factor of two-to-one.

8. *A return travel allowance* of $70 may be provided to each participant to be used for incidental expenditures during international travel.

9. All USIA-funded delegates will be covered under the terms of *USIA-sponsored health insurance policy.* The premium is paid by USIA directly to the insurance company.

10. *Administrative costs.* Other costs necessary for the effective administration of the program including salaries for grant organization employees, benefits and other direct and indirect costs are described in the detailed instructions in the application package. While this announcement does not prescribe a rigid ratio of administrative to program costs, in general priority will be given to proposals whose administrative costs

are less than twenty-five (25) percent of the total requested from USIA. Proposals should show costs-staring, including both contributions from the applicant and from other sources.

Please refer to the Application Package for complete budget guidelines.

Diversity, Freedom And Democracy Guidelines

Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. "Diversity" should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the Support for Diversity section for specific suggestions on incorporating diversity into the total proposal. Pub. L. 104–319 provides that "in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy," USIA "shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries." Proposals should reflect advancement of this goal in their program contents, to the full extent deemed feasible.

Year 2000 Compliance Requirement (Y2K Requirement)

The Year 2000 (Y2K) issue is a broad operational and accounting problem that could potentially prohibit organizations from processing information in accordance with Federal management and program specific requirements including data exchange with USIA. The inability to process information in accordance with Federal requirements could result in grantees' being required to return funds that have not been accounted for properly.

USIA therefore requires all organizations use Y2K complaint systems including hardware, software, and firmware. Systems must accurately process data and dates (calculating, comparing and sequencing) both before and after the beginning of the year 2000 and correctly adjust for leap years.

Additional information addressing the Y2K issue may be found at the General Services Administration's Office of Information Technology website at http://www.itpolicy.gsa.gov.

Review Process

USIA will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. All eligible proposals will be reviewed by the program office, as well as the USIA area office(s) and the USIA post(s) overseas, where appropriate. Eligible proposals will be forwarded to panels of USIA officers for advisory review. Proposals may also be reviewed by the Office of the General Counsel or by other Agency elements. Final funding decisions are at the discretion of USIA's Associate Director for Educational and Cultural Affairs. Final technical authority for assistance awards (grants or cooperative agreements) resides with the USIA Grants Officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered and all carry equal weight in the proposal evaluation:

1. *Quality of the Program Idea:* Proposals should exhibit originality, substance, precision, and relevance to the Agency's mission.

2. *Program Planning:* Detailed agenda and relevant work plan should demonstrate substantive undertakings and logistical capacity. Agenda and plan should adhere to the program overview and guidelines described above.

3. *Ability To Achieve Program Objectives:* Objectives should be reasonable, feasible, and flexible. Proposals should clearly demonstrate how the institution will meet the program's objectives and plan.

4. *Multiplier Effect/Impact:* Proposed programs should strengthen long-term mutual understanding, including maximum sharing of information and establishment of long-term institutional and individual linkages.

5. *Support for Diversity:* Proposals should demonstrate substantive support of the Bureau's policy on diversity. Achievable and relevant features should be cited in both program administration (selection of participants, program venue and program evaluation) and program content (orientation and wrap-up sessions, program meetings, resource materials and follow-up activities).

6. *Institutional Capacity:* Proposed personnel and institutional resources should be adequate and appropriate to achieve the program or project's goals.

7. *Institution's Record/Ability:* Proposals should demonstrate an institutional record of successful exchange programs, including responsible fiscal management and full compliance with all reporting requirements for past Agency grants as determined by USIA's Office of Contracts. The Agency will consider the past performance of prior recipients and the demonstrated potential of new applicants.

8. *Follow-on Activities:* Proposals should provide a plan for continued follow-on activity (without USIA support) ensuring that USIA supported programs are not isolated events.

9. *Project Evaluation:* Proposals should include a plan to evaluate the activity's success, both as the activities unfold and at the end of the program. A draft survey questionnaire or other technique plus description of a methodology to use to link outcomes to original project objectives is recommended. Successful applicants will be expected to submit intermediate reports after each project component is concluded or quarterly, whichever is less frequent.

10. *Cost-Effectiveness:* The overhead and administrative components of the proposal, including salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate.

11. *Cost-Sharing:* Proposals should maximize cost-sharing, in cash or in kind, through other private sector support as well as institutional direct funding contributions. The grant recipient must provide a minimum of 33 percent cost sharing of the total program expense.

12. *Ability for Institutions To Develop or Enhance Linkages With African Institutions:* Proposals should demonstrate how hosting institutions will develop follow-up plans with African participants, to further strengthen existing programs/activities that they develop through the ARIP.

Authority

Overhaul grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is "to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other

nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world." The funding authority for the program above is provided through legislation.

Notice

The terms and conditions published in this RFP are binding and may not be modified by any USIA representative. Explanatory information provided by the Agency that contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the Government. The Agency reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements.

Notification

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal USIA procedures.

Dated: April 12, 1999.

William B. Bader,

Associate Director for Educational and Cultural Affairs.

[FR Doc. 99–9534 Filed 4–15–99; 8:45 am]

BILLING CODE 8230–01–M

DEPARTMENT OF VETERANS AFFAIRS

Special Medical Advisory Group, Notice of Meeting

As required by the Federal Advisory Committee Act, Pub. L. 92–463, the VA hereby gives notice that the Special Medical Advisory Group has scheduled a meeting on April 27, 1999. The meeting will convene at 8:30 a.m. and end at 2:00 p.m. The meeting will be held in Room 830 at VA Central Office, 810 Vermont Avenue, N.W., Washington, D.C. The purpose of the meeting is to advise the Secretary and Under Secretary for Health relative to the care and treatment of disabled veterans, and other matters pertinent to the Department's Veterans Health Administration (VHA).

The agenda for the meeting will include discussion of annual ethics briefing; systematization of VHA's quality network; integration of academic affiliations; and national scopes of practices for non-physician providers.

All sessions will be open to the public. Those wishing to attend should contact Celestine Brockington, Office of the Under Secretary for Health, Department of Veterans Affairs. Her phone number is 202.273.5878.

Dated: April 9, 1999.

By Direction of the Secretary.

Heyward Bannister,

Committee Management Officer.

[FR Doc. 99–9526 Filed 4–15–99; 8:45 am]

BILLING CODE 8320–01–M

federal register

Friday
April 16, 1999

Part II

Department of Education

34 CFR Part 682
Federal Family Education Loan Program; Final Rule

DEPARTMENT OF EDUCATION

34 CFR Part 682

RIN 1840–AC55

Federal Family Education Loan Program

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: This document contains corrections and other technical changes to the final regulations for the Federal Family Education Loan Program in 34 CFR Part 682. The regulations govern the Federal Stafford Loan Program, the Federal Supplemental Loans for Students (Federal SLS) Program, the Federal PLUS Program and the Federal Consolidation Loan Program, collectively referred to as the Federal Family Education Loan Programs.

EFFECTIVE DATE: April 16, 1999.

FOR FURTHER INFORMATION CONTACT: Pamela Moran or Patricia Beavan, Policy Section, Loans Branch, Division of Policy Development, Policy, Training, and Analysis Service, Department of Education, 400 Maryland Avenue, SW (Room 3053, ROB–3) Washington, DC 20202. Telephone 202–708–8242. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

SUPPLEMENTARY INFORMATION: The regulations that are the subject of these corrections incorporate self-implementing statutory changes made to the Higher Education Act, as amended, by the Higher Education Amendments of 1992 (the 1992 Amendments), the Omnibus Budget Reconciliation Act of 1993 (OBRA), and the Higher Education Technical Amendments of 1993 (1993 Amendments). These regulations do not implement the Higher Education Amendments of 1998. Those amendments will be addressed by other regulations as needed. However, some technical changes have been modified to ensure that they do not conflict with those amendments.

Waiver of Proposed Rulemaking

It is the practice of the Secretary to offer interested parties the opportunity to comment on proposed regulations. However, the provisions in these final regulations reflect needed technical corrections and changes to the Federal Family Education Loan Program (FFEL) regulations. These corrections and changes do not affect the substantive rights or obligations of individuals or institutions. Therefore, the Secretary has concluded that these regulations are technical in nature and do not necessitate public comment. Therefore, the Secretary finds that such a solicitation would be unnecessary and contrary to the public interest under 5 U.S.C. 553(b)(B).

For the same reasons, the Secretary has determined, under section 492(b)(2) of the Higher Education Act of 1965, as amended, that these regulations should not be subject to negotiated rulemaking.

Regulatory Flexibility Act Certification

The Secretary certifies that these final regulations will not have significant economic impact on a substantial number of small entities. Small entities affected by these regulations are small institutions of higher education. These regulations contain technical corrections to current regulations. The changes will not have a significant economic impact on the institutions affected.

Paperwork Reduction Act of 1995

These regulations have been examined under the Paperwork Reduction Act of 1995 and have been found to contain no information collection requirements.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department?s specific plans and actions for this program.

Assessment of Educational Impact

Based on its own review, the Department has determined that the regulations in this document do not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

Electronic Access to This Document

Anyone may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text of portable document format (pdf) on the World Wide Web at either of the following sites:

http://ocfo.ed.gov/fedreg.htm
http://www.ed.gov/news.html

To use the pdf you must have the Adobe Acrobat Reader Program with Search, which is available free at either of the previous sites. If you have questions about using the pdf, call the U.S. Government Printing Office at (202) 512–1530 or, toll free at 1–888–293–6498.

Anyone may also view these documents in text copy only on an electronic bulletin board of the Department. Telephone: (202) 219–1511 or, toll free, 1–800–222–4922. The documents are located under Option G—Files/Announcements, Bulletins, and Press Releases.

Note: The official version of a document is the document published in the **Federal Register**.

List of Subjects in 34 CFR Part 682

Administrative practice and procedures, Colleges and universities, Education, Loan programs-education, Reporting and recordkeeping requirements, Student aid, Vocational education.

Dated: April 8, 1999.

Richard W. Riley,

Secretary of Education.

(Catalog of Federal Domestic Assistance Number: 84.032, Federal Family Education Loan Program)

The Secretary amends part 682 of Title 34 of the Code of Federal Regulations as follows:

PART 682—FEDERAL FAMILY EDUCATION LOAN (FFEL) PROGRAM

1. The authority citation for part 682 continues to read as follows:

Authority: 20 U.S.C. 1071 to 1087–2, unless otherwise noted.

§ 682.100 [Amended]

2. Section 682.100(a)(2) is amended by removing the word "beginning" and adding, in its place, "that began"; paragraph (a)(4) is amended by removing the phrase "their repayment obligations with respect to loans received while they were students,", and by adding in its place, "other loans including loans:"; by removing "and", after "PLUS"; and at the end of the paragraph, before the period, is amended by adding ", and existing loans obtained under the Consolidation Loan Program, and William D. Ford Direct Loan (Direct Loan) program

loans, if the application for the Consolidation loan was received on or after November 13, 1997".

3. Section 682.100(b)(2)(i)(C) is amended by adding, after the semi-colon, "as in effect for periods of enrollment that began prior to July 1, 1994,"; and paragraph (b)(2)(iii) is amended by adding, after "SLS", "(as in effect for periods of enrollment that began prior to July 1, 1994)".

§ 682.101 [Amended]

4. Section 682.101(b) is amended by removing "Eligible educational institutions", and by adding, in its place, "Institutions of higher education".

5. Section 682.101(c) is amended by adding, after "and," "for periods of enrollment that began".

§ 682.102 [Amended]

6. Section 682.102(e)(1) is amended by removing in the fourth sentence after the italicized heading, "borrower" and by adding, in its place, "student"; and after "borrower's", by adding, "or student's" both times it appears; and in the last sentence, by adding "Stafford loan" after "for".

7. Section 682.102(e)(2) is amended by removing "Generally" and by adding, in its place, "In the case of a subsidized Stafford loan,"; in the second sentence, by removing "In most cases, the" and by adding, in its place, "The"; by adding a new sentence after the third sentence to read, "In the case of an unsubsidized Stafford loan, the borrower is responsible for interest during these periods."; and in the last sentence, after "repayment period", by adding, "for the subsidized and unsubsidized Stafford loan,".

8. Section 682.102(e)(4), first sentence, is amended by adding "fully" after "is".

§ 682.103 [Amended]

9. Section 682.103(a) is amended by adding "and Federal GSL programs" after "FFEL"; in paragraph (c), after "FFEL", by adding, "and Federal GSL"; and in paragraph (d), after "FFEL", by adding, "and Federal GSL".

§ 682.200 [Amended]

10. Section 682.200(a)(1) is amended by removing "College Work-Study (CWS) Program"; by removing "Consolidation" and by adding, in alphabetical order, "Federal Consolidation"; by adding in alphabetical order, after the term "Enrolled", "Federal Pell Grant Program", "Federal Perkins Loan Program", "Federal PLUS Program", "Federal Work-Study (FWS) Program", and "Full-time student"; by removing "Guaranteed Student Loan (GSL) Program", "Pell Grant Program", "Perkins Loan Program", and "PLUS Program"; and by removing the term "State".

11. Section 682.200 is amended in paragraph (a)(2) by adding after "Educational program", a new term "Federal Family Education Loan Program (formerly known as the Guaranteed Student Loan (GSL) Program)"; by removing "or association" after "Nationally recognized accrediting agency"; by removing "Program of study by correspondence" and by adding, in alphabetical order "Correspondence course"; by adding "State" after "Secretary"; by removing "Vocational school", and by adding, in alphabetical order, "Postsecondary Vocational Institution"; by adding a new paragraph (a)(3); in paragraph (b), in the definition of "Borrower", after "FFEL", by adding "Program"; by revising the definitions of "Co-maker" and "Subsidized Stafford Loan"; in the definition of "Default", by adding after "promissory note,", "the Act, or regulations as applicable,"; in the definition of "Disbursement", after "to", by adding, "a holder, in the case of a Consolidation loan, or to"; after "master check", by adding "or by electronic funds transfer"; by removing "represents", and by adding, in its place, "may represent", by removing "more than one borrower,", and by adding, in its place, "borrowers", and by removing "or by electronic funds transfer"; in the definition of "Disposable income", in the first sentence, by removing "a borrower's", and by adding, in its place, "an individual's"; after "source", by adding, ", including spousal income,"; in the second sentence, after "Federal", by removing "and State", and by adding, in its place, ", State, and local"; in the definition of "Estimated financial assistance", in paragraph (2)(ii), by adding "Federal" before "Perkins"; by removing "College", and by adding, in its place, "Federal"; and by removing "for an acceptable reason"; removing the definition of "Full-time student"; in the definition of "Grace period", in the first sentence, by removing "eligible institution", and by adding, in its place, "institution of higher education"; in the third sentence, by removing "eligible institution", and by adding, in its place, "institution of higher education"; in the definition of "Half-time student", in the first sentence, by removing "eligible institution", and by adding, in its place, "institution of higher education,"; and by adding before the period "as defined in 34 CFR 668.2"; and in the second sentence, by removing "program of study by correspondence", and by adding, in its place, "correspondence course"; in the definition of "Satisfactory repayment arrangement", in paragraph (1), by removing the reference to "section 428F(b) of the HEA" and by adding, in its place, "§ 682.401(b)(4)"; after "consecutive" by adding ",on-time,"; in paragraph (2), after "consecutive" by adding, ", on-time,"; in the definition of "School", in paragraph (1), by removing "section 481 of the Act" and by adding, in its place, "34 CFR 600.4"; by removing paragraphs (2) through (4) and redesignating paragraph (5) as paragraph (2); in the redesignated paragraph (2), by removing "eligible institution", and by adding, in its place, "institution of higher education"; in the definition of "Unsubsidized Stafford loan", before the period, by adding "but do qualify for special allowance under § 682.302" to read as follows:

§ 682.200 Definitions.

* * * * *

(a) * * *

(3) The definition for cost of attendance is set forth in section 472 of the Act, as amended.

(b) * * *

(2) * * *

Co-Maker: One of two married individuals who jointly borrow a Consolidation loan, each of whom are eligible and who are jointly and severally liable for repayment of the loan. The term co-maker also includes one of two parents who are joint borrowers as previously authorized in the PLUS Program.

* * * * *

Subsidized Stafford Loan: A Stafford loan that qualifies for interest benefits under § 682.301(b) and special allowance under § 682.302.

* * * * *

§ 682.201 [Amended]

12. Section 682.201(a)(3) is amended by adding after "(e.g.,", "denial of a PLUS loan to a parent based on adverse credit,".

13. Section 682.201(a)(4)(i) is amended by removing "and interest that has", and by adding, in its place,", interest, collection costs, legal costs, and late charges that have".

14. Section 682.201(a)(4)(ii)(A) is amended by adding after "note", "that includes the same terms and conditions as the original note signed by the borrower".

15. Section 682.201(a)(5) is amended by removing the paragraph designation

"(i)"; by removing paragraph (a)(5)(ii); by redesignating paragraphs (i)(A) and (B) as paragraphs (a)(5)(i) and (ii), respectively; and by removing the semi-colon at the end of redesignated paragraph (a)(5)(ii), and by adding, in its place, a period.

16. Section 682.201(a)(6) is amended by removing the cross reference to "668.7(b)" and by adding, in its place, "668.32(e)".

17. Section 682.201(b)(1)(iii) is amended by removing the cross reference to "668.7" and by adding, in its place, "668.33".

18. Section 682.201(b)(1)(iv) is amended by removing the cross reference to "668.7" and by adding, in its place, "668.35 and meets the requirements of judgment liens that apply to the student under 34 CFR 668.32(g)(3)".

19. Section 682.201(c)(1)(i) is amended by removing "a Consolidation loan made", and by adding, in its place, "an application received by a consolidating lender", by removing "but", and by adding, in its place, ", and for which the loan was made"; by removing "are", and adding, in its place "is".

20. Section 682.201(c)(1)(ii) is amended by removing ", or, in the case of a PLUS borrower, the dependent student on whose behalf the parent is borrowing has ceased,".

21. Section 682.201(c)(1)(iii)(C) is amended by adding, after "status", "on a Title IV loan".

§ 682.202 [Amended]

22. Section 682.202 is amended by adding a new paragraph (h) to read as follows:

* * * * *

(h) *Special allowance.* Pursuant to § 682.412(c), a lender may charge a borrower the amount of special allowance paid by the Secretary on behalf of the borrower.

§ 682.204 [Amended]

23. Section 682.204 is amended, in paragraph (a)(1) by removing, "a dependent" and by adding, in its place, "an"; in paragraph (a)(2), after "Stafford Loan", by adding, "and Direct Stafford Loan"; in paragraph (a)(3), before "academic", by adding, "an"; in paragraph (a)(4), after "admission in the program", by adding, "and who is not a graduate or professional student"; in paragraph (b) by revising the introductory text; in paragraph (b)(2), by removing "$65,000", and by adding, in its place, "$65,500"; in paragraph (c) by adding "(1)" after the italicized paragraph heading; removing the word "graduate", and by adding, in its place, "undergraduate"; by removing, after "study", the word "for" and by adding, in its place, "under"; by adding a new paragraph (c)(2); in paragraph (d) by removing in the first sentence, "paragraph (b)", and by adding, in its place, "paragraphs (a) and (c)"; in the second sentence, by removing "in combination with Unsubsidized Stafford Loans", and by adding, in its place, "in addition to the amounts allowed under paragraphs (a) and (c) of this section"; in paragraph (d)(3), after "admission into the program", by adding, "and who is not a graduate or professional student"; in paragraph (e) in the italicized heading preceding the introductory text by removing, "Unsubsidized Stafford Loan Program" and by adding, in its place, "Combined Federal Stafford and SLS and Federal Direct Stafford"; in paragraph (f)(2)(i)(C) by adding, after "length is", the word, "at"; in paragraph (f)(4)(ii), by removing "study" and by adding, in its place, "student"; in paragraph (h) by removing "may borrow for enrollment in an eligible program of study"; and in paragraph (j) by removing "HPSL", and by adding, in its place, "or HEAL", to read as follows:

§ 682.204 Maximum loan amounts.

* * * * *

(b) *Stafford Loan Program aggregate limits.* The aggregate unpaid principal amount of all loans made under the Stafford Loan and Direct Stafford Loan Programs may not exceed—

* * * * *

(c) * * *

(2) In the case of an independent undergraduate student, a graduate or professional student, or certain dependent undergraduate students, the total amount the student may borrow for any period of enrollment under the Unsubsidized Stafford Loan and Direct Unsubsidized Stafford Loan Programs may not exceed the amounts determined under paragraph (a) of this section less any amount received under the Federal Stafford Loan Program, in combination with the amounts determined under paragraph (d) of this section.

* * * * *

§ 682.205 [Amended]

24. Section 682.205(a)(2)(xiii) is amended by removing after "wages", the word, "will", and by adding, in its place, "may".

§ 682.206 [Amended]

25. Section 682.206(e)(2) is amended by removing "Federal PLUS Program loan and"; and by adding, before the period, ",or may be made to an eligible borrower with an endorser who is secondarily liable for repayment of the loan".

§ 682.207 [Amended]

26. Section 682.207 is amended in paragraph (a)(1) by removing ", SLS," and ", Federal SLS,"; by removing "other than" after "loans"; and by adding, in its place, ". This section does not prescribe procedures for"; in paragraph (b)(1)(i)(B) by removing "SLS" and by adding, in its place, "PLUS"; in paragraph (b)(1)(ii)(A), by removing "if required by the guarantor or lender," and by adding, in its place, "that"; in paragraph (b)(1)(ii)(C), by removing "eligible institution", and by adding, in its place, "institution of higher education"; in paragraph (b)(1)(v)(B)(*1*), by removing "to the eligible institution", and by adding, in its place, "in accordance with the disbursement schedule provided by the school", in paragraph (b)(1)(v)(B)(*2*), by removing "eligible institution", and by adding, in its place, "institution of higher education"; by adding a new paragraph (b)(1)(v)(B)(*3*); in paragraph (c) introductory text, by removing "A", and by adding, in its place, "Except for a borrower attending an eligible foreign institution, a"; and in paragraph (d)(2)(i)(C) by adding, "and has not previously received a loan under this part" after "intended" to read as follows:

§ 682.207 Due diligence in disbursing a loan.

* * * * *

(b) * * *

(1) * * *

(v) * * *

(B) * * *

(*3*) In the case of a student enrolled in a foreign institution, a check from the lender that is made co-payable to the institution and sent directly to either the parent or the eligible institution.

* * * * *

§ 682.208 [Amended]

27. Section 682.208(b)(1)(iii) is amended by removing "within", and by adding, in its place, "no less frequently than every"; and by adding "or quarterly" after "days".

28. Section 682.208(c)(2) is amended by removing "eligible school" and by adding, in its place, "institution of higher education".

29. Section 682.208 is amended in paragraph (e)(1) by removing "or" before "SLS"; by adding ", or Consolidation" after "SLS"; and in paragraph (e)(3) by removing the cross reference to "(15)(ii)" and adding, in its place, "(17)(ii)".

§ 682.209 [Amended]

30. Section 682.209 is amended in paragraph (a)(1) by removing "fully"; in paragraph (a)(2)(i), in the third sentence, removing "last", and by adding, in its place, "first"; in paragraph (a)(2)(ii), after the reference to "(a)(2)(iii)", by adding ", (a)(2)(iv), and (a)(2)(v); by adding new paragraphs (a)(2)(iv) and (a)(2)(v); and adding "; and" at the end, and removing "and" at the end of paragraph (a)(3)(i)(A); in paragraph (a)(3)(i)(B), before "6", by adding "the day after"; by removing "eligible school" and by adding, in its place, "institution of higher education and"; by adding a new paragraph (a)(3)(i)(C); in paragraph (a)(3)(ii)(B), before the semi-colon, by adding, "unless the borrower during this period has submitted payments with instructions that those payments are intended for future installment payments"; in paragraph (a)(3)(ii)(C), after "the", by adding "post deferment"; in paragraph (a)(4)(ii) by removing ",according to the schedule required in § 682.602"; in paragraph (a)(4)(iii) by removing, "required under § 682.602"; in paragraph (a)(6)(iii), in the third sentence, after "includes", removing the remainder of the sentence, and by adding, in its place, "any borrower whose Consolidation loan application is received by the lender on or after January 1, 1993."; paragraph (a)(6)(vii)(A) is revised; paragraph (a)(6)(viii)(A) is revised; in paragraph (a)(6)(viii)(C), by removing "If", and by adding, in its place, "Except in the case of a Consolidation loan, if"; in paragraph (a)(6)(ix) by removing "may", and adding, in its place, "shall, to the extent practicable"; in paragraph (a)(7)(ii), before "12–", by adding "10–,"; removing the cross reference to "§ 682.208(h)" and adding, in its place, "§ 682.209(h)"; in paragraph (e)(2)(i) by removing the cross reference to "§ 682.202(a)(2)(iv)" and by adding, in its place, "§ 682.202(a)(2)(ii) and (3)(ii)"; in paragraph (f)(2)(i) by removing the cross reference to "§ 682.202(a)(2)(iv)" and by adding, in its place, "§ 682.202(a)(2)(ii) and (3)(ii), as appropriate"; in paragraph (g)(1) by adding "Federal" before "PLUS"; in paragraph (h)(2) by redesignating paragraphs (i) through (v) as paragraphs (ii) through (vi); by adding a new paragraph (h)(2)(i); in paragraph (h)(3) by removing "In" and by adding, in its place, "Except for a Consolidation loan disbursed on or after July 1, 1994, in"; in paragraph (h)(5)(ii) by removing "for" and adding, in its place, "the borrower the option of a" to read as follows:

§ 682.209 Repayment of a loan.

* * * * *

(a) * * *

(2) * * *

(iv) If the lender first learns after the fact that an SLS borrower has entered the repayment period, the repayment begins no later than 75 days after the date the lender learns that the borrower has entered the repayment period.

(v) The lender may establish a first payment due date that is no more than an additional 30 days beyond the period specified in paragraphs (a)(2)(i)—(a)(2)(iv) of this section in order for the lender to comply with the required deadline contained in § 682.205(c)(1).

* * * * *

(3) * * *

(i) * * *

(C) For a borrower with a loan with a variable interest rate, the day after 6 months following the date on which the borrower is no longer enrolled on at least a half-time basis at an institution of higher education.

* * * * *

(6) * * *

(vii) * * *

(A)(*1*) The amount of the borrower's installment payment is scheduled to change (usually by increasing) during the course of the repayment period; or

(*2*) If the loan has a variable interest rate that changes annually, the lender may establish a repayment schedule that may have adjustments in the payment amount as provided under paragraph (a)(6)(i) of this section; and

* * * * *

(viii) * * *

(A)(*1*) The amount of the borrower's installment payment is adjusted annually, based on the borrower's expected total monthly gross income received by the borrower from employment and from other sources during the course of the repayment period; or

(*2*) If the loan has a variable interest rate that changes annually, the lender may establish a repayment schedule that may have adjustments in the payment amount as provided under paragraph (a)(6)(i) of this section; and

* * * * *

(h) * * *

(2) * * *

(i) Is less than $7,500, the borrower shall repay the Consolidation loan in not more than 10 years;

* * * * *

§ 682.210 [Amended]

31. Section 682.210 is amended by adding "on that loan" after "deferment" in paragraph (a)(8); and by removing "(r)", and adding, in its place "(s)", in paragraph (a)(10).

32. Section 682.210 is amended by removing "eligible institution", and by adding, in its place, "institution of higher education" in paragraph (b)(3) introductory text,; by adding ", a Direct Stafford," after "received a Stafford" in paragraph (b)(4); and by adding "of paragraph (b)(5)" after "purposes" in paragraph (b)(7), introductory text.

33. Section 682.210 is amended by adding, "of paragraphs (s)(2) through (s)(6)" in the second sentence, after "purposes" in paragraph (s)(1); and by removing "for" the first time it appears, and adding, in its place, "based on the borrower's" in paragraph (s)(2).

§ 682.211 [Amended]

34. Section 682.211 is amended by removing "(h)", and adding, in its place, "(g)" in paragraph (a)(2); and by adding, "based on the same or differing condition", after "impaired" in paragraph (a)(3).

35. Section 682.211(d) is amended by adding, in the first sentence, "but prior to claim payment" after "default"; and by removing "repayment obligation" and adding, in its place, "agreement to repay the debt" in the second sentence.

36. Section 682.211(e) is amended by removing "or a forbearance granted under paragraph (g) of this section" in the first sentence.

37. Section 682.211 is amended by removing paragraph (f)(4); redesignating paragraphs (f)(5) through (f)(9) as paragraphs (f)(4) through paragraph (f)(8), respectively; removing "682.402(d)", and adding, in its place, "682.402(f)" in redesignated paragraph (f)(4); and by removing "is established in accordance with § 682.209(a)(3)(ii)(B)", and adding, in its place, ", which can be no later than 45 days after the period ends" in redesignated paragraph (f)(8).

38. Section 682.211 is further amended by removing paragraph (g); redesignating paragraphs (h) through (j) as paragraphs (g) through (i), respectively; removing "paragraph (j)(5)" and adding, in its place, "paragraph (i)(5) of this section", in redesignated paragraph (g); removing "paragraph (i)(1)" and adding, in its place, "paragraph (h)(1)" in redesignated paragraph (h)(2); removing "paragraph (i)(2)(i)" and adding, in its place, "paragraph (h)(2)(i)" in redesignated paragraph (h)(3)(i); removing "paragraph (i)(2)(ii)(B)" and adding, in its place, "paragraph (h)(2)(ii)(B)" in redesignated paragraph (h)(3)(ii); removing "paragraph (i)(2)(ii)(C)", and adding, in its place, "paragraph (h)(2)(ii)(C)" in redesignated paragraph (h)(3)(iii); removing "paragraph (j)(2)", "paragraph

"(j)(2)(ii)", and "paragraph (j)(4)", and adding, in their place, "paragraph (i)(2)", "paragraph (i)(2)(ii)", and "paragraph (i)(4)", respectively, in redesignated paragraph (i)(1); removing "paragraph (j)(2)(i)", and adding, in its place, "paragraph "paragraph (i)(2)(i)" in redesignated paragraph (i)(4).

§ 682.215 [Amended]

39. Section 682.215 is amended by adding "or other non-profit private" after "public" in paragraph (e)(2)(i).

§ 682.300 [Amended]

40. Section 682.300 is amended by adding "except as provided in paragraph (c)(4) of this section" before the word "if" in paragraph (b)(2)(ii); by removing "restricted" in paragraph (b)(2)(ii)(B); by removing "or" after the semicolon in paragraph (b)(2)(vi); by removing the period at the end of paragraph (b)(2)(vii), and by adding, in its place, "; or"; and by adding a new paragraph (b)(2)(viii) to read as follows:

§ 682.300 Payment of interest benefits on Stafford and Consolidation loans.

* * * * *

(b) * * *

(2) * * *

(viii) The date the lender determines that the borrower is eligible for loan discharge under § 682.402(d) or (e)."

* * * * *

§ 682.301 [Amended]

41. Section 682.301 is amended by removing, "academic period" and adding, in its place, "period of enrollment" in paragraph (b)(1); and by removing, "academic period" and adding, in its place, "period of enrollment" in paragraph (b)(2).

§ 682.302 [Amended]

42. Section 682.302 is amended by removing, "prior to" and adding, in its place, "on or before" in paragraph (d)(1)(v); by removing "guaranty agency returns a claim" and adding, in its place, "lender received a returned claim from the guaranty agency on a loan" in paragraph (d)(1)(vii); by redesignating paragraph (d)(2) as paragraph (d)(3); and by adding a new paragraph (d)(2) to read as follows:

§ 683.302 Payment of special allowance on FFEL loans.

* * * * *

(d) * * *

(2) In the case of a loan disbursed on or after October 1, 1992, the Secretary does not pay special allowance on a loan if—

(i) The disbursement check is returned uncashed to the lender or the lender is notified that the disbursement made by electronic funds transfer or master check will not be released from the restricted account maintained by the school; or

(ii) The check for the disbursement has not been negotiated before the 120th day after the date of disbursement or the disbursement made by electronic funds transfer or master check has not been released from the restricted account maintained by the school before that date.

* * * * *

43. Section 682.305 is amended by revising paragraph (a)(3)to read as follows:

§ 682.305 Procedures for payment of interest benefits and special allowance.

(a) * * *

(3)(i)(A) The Secretary reduces the amount of interest benefits and special allowance payable to the lender by—

(*1*) The amount of origination fees the lender was authorized to collect during the quarter under § 682.202(c), whether or not the lender actually collected that amount; and

(*2*) The amount of lender fees payable under paragraph (a)(3)(ii) of this section.

(B) The Secretary increases the amount of interest benefits and special allowance payable to the lender by the amount of origination fees refunded to borrowers during the quarter under § 682.202(c).

(ii) For any FFEL loan made on or after October 1, 1993, a lender shall pay the Secretary a loan fee equal to 0.50% of the principal amount of the loan.

* * * * *

§ 682.400 [Amended]

44. Section 682.400 is amended by removing "GSL" and adding, in its place "FFEL" in paragraph (a); and by removing "and" before "bankruptcy" and adding ", closed school and false certification discharge" after "bankruptcy" in paragraph (b)(1)(ii).

§ 682.401 [Amended]

45. Section 682.401 is amended by removing the comma after "Stafford", and by adding, in its place, "and", removing ", PLUS", and removing "(h)", and adding, in its place, "(g)" in paragraph (b)(1); removing "(g)", and adding, in its place, "(h)" in paragraph (b)(2); removing "or" at the end of paragraph (b)(2)(ii)(A); removing the period at the end of paragraph (b)(2)(ii)(B), and adding, in its place, "; or"; by adding a new paragraph (b)(2)(ii)(C); by removing "§ 682.204(i)" and adding, in its place, "§ 682.204(k)" in paragraph (b)(2)(iii); by adding a new paragraph (b)(4)(v); by removing ", SLS," in paragraph (b)(5)(ii); by removing "sections 428A(a)(2) or", and adding, in its place, "section" in paragraph (b)(6)(i)(C); revising paragraph (b)(10)(iv); removing "§ 682.401(b)(9)(vi)(A) and (B)" and adding, in its place, "§ 682.401(b)(10)(vi)(A) and (B)" in paragraph (b)(10)(v); and revising paragraphs (b)(15) through (b)(28) to read as follows:

§ 682.401 Basic program agreement.

* * * * *

(b) * * *

(2) * * *

(ii) * * *

(C) A period that does not exceed 12 months.

* * * * *

(4) * * *

(v) A guaranty agency must inform the borrower that he or she may only obtain reinstatement of borrower eligibility under this section once.

* * * * *

(10) * * *

(iv) The amount of the insurance premium may not exceed—

(A) For a loan disbursed on or before June 30, 1994, 3 percent of the principal balance of the loan; or

(B) For a loan disbursed on or after July 1, 1994, 1 percent of the principal balance of the loan.

* * * * *

(15) *Guarantee agency verification of default data.* A guaranty agency shall respond to an institution's written request for verification of its default rate data for purposes of an appeal pursuant to 34 CFR 668.17(c)(1)(i) within 15 working days of the date the agency receives the institution's written request pursuant to 34 CFR 668.17(c)(8), and simultaneously provide a copy of that response to the Secretary's designated Department official.

(16) *Guaranty agency administration.* In the case of a State loan guarantee program administered by a State government, the program must be administered by a single State agency, or by one or more private nonprofit institutions or organizations under the supervision of a single State agency. For this purpose, "supervision" includes, but is not limited to, setting policies and procedures, and having full responsibility for the operation of the program.

(17) *Loan assignment.* (i) Except as provided in paragraph (b)(17)(iii) of this section, the guaranty agency must allow a loan to be assigned only if the loan is fully disbursed and is assigned to—

(A) An eligible lender;

(B) A guaranty agency, in the case of a borrower's default, death, total and

permanent disability, or filing of a bankruptcy petition, or for other circumstances approved by the Secretary, such as a loan made for attendance at a school that closed or a false certification claim;

(C) An educational institution, whether or not it is an eligible lender, in connection with the institution's repayment to the agency or to the Secretary of a guarantee or a reinsurance claim payment made on a loan that was ineligible for the payment;

(D) A Federal or State agency or an organization or corporation acting on behalf of such an agency and acting as a conservator, liquidator, or receiver of an eligible lender; or

(E) The Secretary.

(ii) For the purpose of this paragraph, "assigned" means any kind of transfer of an interest in the loan, including a pledge of such an interest as security.

(iii) The guaranty agency must allow a loan to be assigned under paragraph (b)(17)(i) of this section, following the first disbursement of the loan if the assignment does not result in a change in the identity of the party to whom payments must be made.

(18) *Transfer of guarantees.* Except in the case of a transfer of guarantee requested by a borrower seeking a transfer to secure a single guarantor, the guaranty agency may transfer its guarantee obligation on a loan to another guaranty agency, only with the approval of the Secretary, the transferee agency, and the holder of the loan.

(19) *Standards and procedures.* (i) The guaranty agency shall establish, disseminate to concerned parties, and enforce standards and procedures for—

(A) Ensuring that all lenders in its program meet the definition of "eligible lender" in section 435(d) of the Act and have a written lender agreement with the agency;

(B) School and lender participation in its program;

(C) Limitation, suspension, termination of school and lender participation;

(D) Emergency action against a participating school or lender;

(E) The exercise of due diligence by lenders in making, servicing, and collecting loans; and

(F) The timely filing by lenders of default, death, disability, bankruptcy, closed school, false certification, and ineligible loan claims.

(ii) The guaranty agency shall ensure that its program and all participants in its program at all times meet the requirements of subparts B, C, D, and F of this part.

(20) *Monitoring student enrollment.* The guaranty agency shall monitor the enrollment status of a FFEL program borrower or student on whose behalf a parent has borrowed that includes, at a minimum, reporting to the current holder of the loan within 60 days any change in the student's enrollment status reported that triggers—

(i) The beginning of the borrower's grace period; or

(ii) The beginning or resumption of the borrower's immediate obligation to make scheduled payments.

(21) *Submission of interest and special allowance information.* Upon the Secretary's request, the guaranty agency shall submit, or require its lenders to submit, information that the Secretary deems necessary for determining the amount of interest benefits and special allowance payable on the agency's guaranteed loans.

(22) *Submission of information for reports.* The guaranty agency shall require lenders to submit to the agency the information necessary for the agency to complete the reports required by § 682.414(b).

(23) *Guaranty agency transfer of information.* (i) A guaranty agency from which another guaranty agency requests information regarding Stafford and SLS loans made after January 1, 1987, to students who are residents of the State for which the requesting agency is the principal guaranty agency as defined in § 682.800(d) shall provide—

(A) The name and social security number of the student; and

(B) The annual loan amount and the cumulative amount borrowed by the student in loans under the Stafford and SLS programs guaranteed by the responding agency.

(ii) The reasonable costs incurred by an agency in fulfilling a request for information made under paragraph (b)(23)(i) of this section must be paid by the guaranty agency making the request.

(24) *Information on defaults.* The guaranty agency shall upon the request of a school, furnish information with respect to students, including the names and addresses of such students, who were enrolled at that school and who are in default on the repayment of any loan guaranteed by that agency.

(25) *Information on loan sales or transfers.* The guaranty agency must, upon the request of a school, furnish to the school last attended by the student, information with respect to the sale or transfer of a borrower's loan prior to the beginning of the repayment period, including—

(i) Notice of assignment;

(ii) The identity of the assignee;

(iii) The name and address of the party by which contact may be made with the holder concerning repayment of the loan; and

(iv) The telephone number of the assignee or, if the assignee uses a lender servicer, another appropriate number for borrower inquiries.

(26) *Third-party servicers.* The guaranty agency may not enter into a contract with a third-party servicer that the Secretary has determined does not meet the financial and compliance standards under § 682.416. The guaranty agency shall provide the Secretary with the name and address of any third-party servicer with which the agency enters into a contract and, upon request by the Secretary, a copy of that contract.

(27) *Collection charges and late fees on defaulted FFEL loans being consolidated.* (i) A guaranty agency may add collection costs in an amount not to exceed 18.5 percent of the outstanding principal and interest to a defaulted FFEL Program loan that is included in a Federal Consolidation loan.

(ii) When returning the proceeds from the consolidation of a defaulted loan to the Secretary, a guaranty agency may only retain the amount added to the borrower's balance pursuant to paragraph (b)(27)(i) of this section.

(28) *Change in agency's records system.* The agency shall provide written notification to the Secretary at least 30 days prior to placing its new guarantees or converting the records relating to its existing guaranty portfolio to an information or computer system that is owned by, or otherwise under the control of, an entity that is different than the party that owns or controls the agency's existing information or computer system. If the agency is soliciting bids from third parties with respect to a proposed conversion, the agency shall provide written notice to the Secretary as soon as the solicitation begins. The notification described in this paragraph must include a concise description of the agency's conversion project and the actual or estimated cost of the project.

* * * * *

§ 682.402 [Amended]

46. Section 682.402 is amended by adding "unless that borrower would qualify for discharge of the loan under these regulations" before the period at the end of paragraph (a)(2); by removing ", on or after July 23, 1992" in paragraph (b)(1); by removing "the" before "light" in paragraph (d)(6)(ii)(G); by adding ", the Secretary" after "lender" in paragraph (e)(6)(v); by removing "(e)(10)(iii)(C)" and adding, in its place, "(e)(10)(ii)(C)" in paragraph (e)(10)(ii)(D)(*2*); by removing "(e)(10)(iii)(C)", and adding, in its place,

"(e)(10)(ii)(C)" in paragraph (e)(10)(ii)(E); by removing "(e)(10)(iv)(B)", and adding, in its place, "(e)(10)(iv)" in paragraph (e)(11); by removing the first paragraph designated as (e)(13); by removing "(d) through (i)", and adding, in its place, "(f) through (m)" in paragraph (f)(1); by adding, "debtor's attorney or the" after "issued by the" in paragraph (f)(3); by removing "(e)", and adding, in its place, "(g)" in paragraph (f)(5)(i); by removing "(d)(5)(i)", and adding, in its place, "(f)(5)(i)" in paragraph (f)(5)(ii); by removing "(d)(2)", and adding, in its place, "(f)(3)" in paragraph (g)(2)(iv)(A); by removing "(f)", and adding, in its place, "(g)" in paragraph (h)(1)(i); by removing "(g)", and adding, in its place, "(i)" in paragraph (h)(1)(ii); by revising paragraph (h)(2)(i); by adding "closed school or false certification" after "of a" in paragraph (h)(2)(iii); by removing "Federal" in paragraph (h)(2)(v); by revising paragraph (h)(3)(iii); by removing "(h)(2)", and adding, in its place, "(i)(2)" in paragraph (i)(3)(ii); by revising paragraph (m)(1); and by adding "as provided in § 682.210(a)(5)" after the word "deferment" in paragraph (m)(2) to read as follows:

§ 682.402 Death, disability, closed school, false certification, and bankruptcy payments.

* * * * *

(h) * * *

(2)(i) The amount of loss payable—

(A) On a death or disability claim is equal to the sum of the remaining principal balance and interest accrued on the loan, collection costs incurred by the lender and applied to the borrower's account within 30 days of the date those costs were actually incurred, and unpaid interest up to the date the lender should have filed the claim.

(B) On a bankruptcy claim is equal to the unpaid balance of principal and interest determined in accordance with paragraph (h)(3) of this section.

* * * * *

(3) * * *

(iii) During the period required by the guaranty agency to approve the claim and to authorize payment or to return the claim to the lender for additional documentation not to exceed—

(A) 45 days for death, disability or bankruptcy claims; or

(B) 90 days for closed school and false certifications.

* * * * *

(m) * * *

(1) Includes any period during which the lender does not require the borrower to make a payment on the loan.

* * * * *

§ 682.403 [Amended]

47. Section 682.403 is amended by removing "eligible educational institution" both times it appears, and by adding, in its place, "institution of higher education" in paragraph (a)(2)(iii)(D); by revising paragraph (d); by removing "sections 422(c) and (d)" and adding, in its place, "section 422" in paragraph (f) to read as follows:

§ 682.403 Federal advances for claims payments.

* * * * *

(d) The Secretary makes an advance to a guaranty agency—

(1) On terms and conditions specified in an agreement between the Secretary and the guaranty agency;

(2) To ensure that the agency will fulfill its lender-of-last resort obligation; and

(3) To meet the agency's immediate cash needs and to ensure the uninterrupted payment of claims when the Secretary has terminated the agency's agreement and assumed its functions.

* * * * *

§ 682.404 [Amended]

48. Section 682.404 is amended by removing "$50", and by adding, in its place, "an amount equal to one percent of the total unpaid principal and accrued interest on the loan as of the date the lender transmits its request to the guaranty agency" in paragraph (a)(3)(i); by adding "and all loans guaranteed on or after October 1, 1993," after "(h)," in paragraph (d)(1); and by removing "30" and adding, in its place, "27" in paragraph (g)(2)(ii).

§ 682.405 [Amended]

49. Section 682.405 is amended by adding "on-time" in the second sentence, after "one" in paragraph (b)(1) introductory text,; by removing "consequences", and by adding, in its place, "effects" in the second sentence in paragraph (b)(1)(iv); and by removing "10-year maximum", and by adding in its place, "applicable maximum repayment term, as defined under sections 682.209(a) or (h)" in the second sentence in paragraph (b)(3).

§ 682.406 [Amended]

50. Section 682.406 is amended by removing the first comma and by adding, in its place, a semi-colon, and by removing the remainder of the paragraph in paragraph (a)(9); and by revising paragraph (a)(12) to read as follows:

§ 682.406 Conditions of reinsurance coverage.

(a) * * *

(12) The agency and the lender, if applicable, complied with all other Federal requirements with respect to the loan including—

(i) Payment of origination fees;

(ii) For Consolidation loans disbursed on or after October 1, 1993, payment, on a monthly basis, of an interest payment rebate fee calculated on an annual basis and equal to 1.05 percent of the unpaid principal and accrued interest on the loan;

(iii) Compliance with all preclaims assistance requirements in § 682.404(a)(2)(ii).

* * * * *

§ 682.408 [Amended]

51. Section 682.408(a) is amended by removing ",SLS,".

§ 682.409 [Amended]

52. Section 682.409(a) is amended by removing "§§ 682.402(d), 682.402(i)" and by adding, in its place, "§§ 682.402(f), 682.402(k)".

§ 682.410 [Amended]

53. Section 682.410 is amended by removing "Administrative Cost Allowance payments received under § 682.407 and transitional", and by adding, in its place, "Transitional" in paragraph (a)(1)(vi); by removing the word "or" after "bankruptcy," and adding, before the period, ", or closed school or false certification" in paragraph (b)(5)(i)(E); by removing "promptly",, and adding, in its place, ", within the timeframe specified in paragraph (b)(6)(ii) of this section," after the word "shall" in paragraph (b)(5)(ii); by removing "during the period specified in paragraph (5)(iv)(B) of this section" in the second sentence in paragraph (b)(6)(ii)(A), and adding at the end of the sentence, before the period, "during the period specified for this review in paragraph (b)(5)(iv)(B)"; removing "or" at the end of paragraph (b)(6)(vi)(A)(*2*); by removing "and", and adding, in its place, "or" at the end of paragraph (b)(6)(vi)(A)(*3*); by adding a new paragraph (b)(6)(vi)(A)(*4*); by removing "(1) through (3)", and by adding, in its place, "(1), (2), (3), and (5)" in paragraph (b)(6)(vi)(B)(*2*); revising paragraph (b)(6)(vii)(B); by removing "(B)(6)(vii)(D)(*2*)", and adding, in its place, "(b)(6)(vii)(B)", removing "institute a civil suit", and adding, in its place, "initiate administrative wage garnishment", adding "and the loan has not been assigned to the Department for a civil suit to be filed" after "loan", removing "a judgment on", and adding, before the period, "through administrative wage garnishment" in paragraph

(b)(6)(viii)(A); by removing "that the cost of litigation would not exceed the amount likely to be obtained if litigation were begun", and removing "shall institute a civil suit", and adding, in its place, "initiate administrative wage garnishment" in paragraph (b)(6)(viii)(B); by removing "a" in the first sentence, after "enforce", and by adding, in its place, "an administrative wage garnishment order or a", by adding "administrative wage garnishment order or" after "ensure that the", removing "judgment" in the second sentence, and adding, in its place, "debt", adding "income or" after "sufficient" both times it appears, removing "or income" after "assets" both times it appears, adding "the administrative wage garnishment order or" after "satisfy", removing "the remainder of the" after "to satisfy", and by adding, in its place, "an administrative wage garnishment order or a" in paragraph (b)(6)(ix)(A); by adding "income or" after "sufficient", removing "or income", removing "judgment and that the cost of enforcing the judgment would not exceed the likely recovery", and by adding, in its place, "debt", adding "initiate administrative wage garnishment or" after "intention to", and removing "on the judgment" before "unless" in paragraph (b)(6)(ix)(B); by adding "administrative wage garnishment or" before "remainder of the judgment" in paragraph (b)(6)(ix)(C); removing and reserving paragraph (b)(6)(xi); by removing "sue", and adding, in its place "initiate administrative wage garnishment" in paragraph (b)(6)(xii); by removing, "(b)(7)(iii)–(vi)" in the first sentence, and adding, in its place, "(b)(7)(iii)–(v)", removing "(b)(7)(iii)–(vi)" in the second sentence, and by adding, in its place, "(b)(7)(iii)–(v)" in paragraph (b)(7)(ii); and by removing "refer", and adding, in its place, "make the initial referral of" in paragraph (b)(7)(iv)(B) to read as follows:

§ 682.410 Fiscal, administrative, and enforcement requirements.

* * * * *

(b) * * *

(6) * * *

(vi) * * *

(A) * * *

(*4*) The day on which the agency received a payment on a loan that remains in default notwithstanding the payment; and

* * * * *

(vii) * * *

(B) The agency need not initiate administrative wage garnishment if the agency determines and documents in the borrower's file that the borrower does not have sufficient income to satisfy the debt or a substantial portion thereof.

* * * * *

§ 682.411 [Amended]

54. Section 682.411 is amended by removing, "no later than 45 days following the end of the grace period", and by adding, in its place, "by the deadlines specified in § 682.209(a)" and adding "(a)(2)(v) and" after "provided in (682.209" in paragraph (b)(1); by removing, in the last sentence, "notice or collection letter" and adding, in its place, "collection letters" in paragraph (d)(1); by adding, "correct telephone number," after "correct address," in paragraph (d)(3)(i); by adding "correct telephone number," after "correct address," in paragraph (d)(3)(ii); by adding ",or correct telephone number" after "correct address" in paragraph (d)(4)(iv)(B); and by adding, in the third sentence, before the period, "and may be in writing or by phone calls" in paragraph (g).

§ 682.413 [Amended]

55. Section 682.413 is amended by removing "that violate (682.206(f)(1)" and by adding, in its place, "for which the certification required under (682.206(f)(1) is not available" in paragraph (c)(1)(vi); and by removing "that violate (682.206(f)(1)", and by adding, in its place, "as specified in (682.413(c)(1)(vi)" in paragraph (c)(2),.

§ 682.415 [Amended]

56. Section 682.415 is amended by removing "682.402(e)(2)" and by adding, in its place, "682.402(g)(2)" in paragraph (b)(1)(iv); by removing "(a)(2)(ii)", and adding, in its place, "(a)(2)(iii)" and removing "682.402(e)(2)", and adding, in its place, "682.402(g)(2)" in paragraph (b)(3); by removing "or" after "disability," and adding, ", or closed school and false certification discharges" after "bankruptcy" in paragraph (b)(5)(i); by removing "682.402(e)(2)", and adding, in its place, "682.402(g)(2)" in paragraph (b)(6)(i); by removing "(a)(3)(iii)(A)", and adding, in its place, "(a)(2)(iii)(A)" in paragraph (b)(9); by removing "(a)(2)(ii)", and adding, in its place, "(a)(2)(iii)" in paragraph (c)(4); and by removing "servicer", and adding, in its place, "service" in paragraph (c)(7)(ii).

§ 682.505 [Amended]

57. Section 682.505(d) is amended by adding "Federal" before "PLUS" and again before "SLS" in the italicized heading; and by adding "Federal" in the introductory text before "SLS".

§ 682.507 [Amended]

58. Section 682.507(a)(2) is amended by adding "Federal" before "Consolidation".

§ 682.511 [Amended]

59. Section 682.511 is amended by adding "Federal" before "Consolidation" in paragraph (a)(2); and by removing "682.402(e)(1)" and adding, in its place, "682.402(g)(1)" in paragraph (b)(2).

§ 682.512 [Amended]

60. Section 682.512 is amended by removing "(682.402(f)(2) and (f)(3)" and adding, in its place, "(682.402(h)(2) and (h)(3)" in paragraph (b)(1)(ii).

§ 682.603 [Amended]

61. Section 682.603 is amended by removing the comma and adding "or" after "Stafford" and by removing ", or SLS" in paragraph (d) introductory text,; by removing ", SLS," in paragraph (e) introductory text,; by redesignating paragraph (f)(1)(i) as paragraph (f)(1)(i)(A); by adding a new paragraph (f)(1)(i)(B); by removing the comma and the parenthetical phrase in paragraph (f)(1)(ii)(B), and adding, in its place, a period; by adding "time" after "instruction" in paragraph (f)(3)(ii)(A); to read as follows:

§ 682.603 Certification by a participating school in connection with a loan application.

* * * * *

(f)(1) * * *

(i) * * *

(B) For a defaulted borrower who has regained eligibility under § 682.401(b)(4), the academic year in which the borrower regained eligibility.

* * * * *

§ 682.604 [Amended]

62. Section 682.604 is amended by removing "If", and adding, in its place, "Except as provided in § 668.167, if" in paragraph (a)(3); by adding, before the first comma, "and (D)(*1*)" in paragraph (b)(1); by removing "from the beginning of", and adding, in its place, "for" in paragraph (b)(2)(i); by adding, before the first comma, "and (D)(*1*)" in paragraph (c)(2)(i); by removing "student", and adding, in its place, "borrower" in paragraph (c)(2)(ii); by removing "student" before "borrower's" in paragraph (c)(2)(ii)(B); by removing "not more than 30 days prior to the first day of classes of the period of enrollment for which the loan is intended," and "Federal" in paragraph (c)(3) introductory text; by removing "668.165(b)(2)", and adding, in its place, "668.164" in paragraph (d)(1)(ii)(A); by adding paragraph

(d)(1)(ii)(B); by removing "682.605(b)(1)(ii)", and adding, in its place, "682.605", and by removing "682.605(b)(1)(A) and (B)", and adding, in its place, "682.605" in paragraph (d)(4); by adding ", touch-tone telephone technology", in the first sentence, after "presentation", in paragraph (f)(1); by removing "correspondence school", and by adding, in its place, "student enrolled in a correspondence course" in paragraph (g)(1)(i); by adding "the borrower's expected permanent address, the address of the borrower's next of kin, and" after "as well as" in paragraph (g)(2)(vi); by adding "or unsubsidized" after "nonsubsidized" in paragraph (h)(1); and by removing "only the", and adding, in its place, "any" in paragraph (h)(3) to read as follows:

§ 682.604 Processing the borrower's loan proceeds and counseling borrowers.

* * * * *

(d) * * *

(1) * * *

(ii) * * *

(B) The school, as a fiduciary for the benefit of the guaranty agency, the Secretary, and the student, may hold any additional loan proceeds that the student requests in writing that the school retain in order to assist the student in managing his or her loan funds for the remainder of the academic year. The school shall maintain these funds, as provided in § 668.165(b)(5).

* * * * *

Appendix B to Part 682—[Removed]

63. Appendix B to part 682 is removed and reserved.

64. Appendix D to part 682 is amended, in the "Note" following the heading, by adding, at the end, "For the purpose of determining the three-year deadline, reinsurance is lost on the later of (a) three years from the last date the claim could have been filed for claim payment with the guaranty agency (270th day of delinquency) *for a claim that was not filed;* or (b) three years from the date the guaranty agency rejected the claim, *for a claim that was filed.*"; by adding "(a)(6)" after "(a)(5)," in the "Introduction" section, in the second paragraph, sixth sentence, and removing, in the seventh sentence, "682.300(b)(2)(vi)", and adding, in its place, "682.300(b)(2)(vii)"; by adding a new definition of "Earliest unexcused violation " in alphabetical order in paragraph D.I.A.; by removing "682.402(e)(2)(i)", and adding, in its place, "682.402(g)(2)(i)" in D.I.E.2., first paragraph; and adding, in the second paragraph, in the third sentence, before the period, "unless the status has changed due solely to passage of time. In the latter case, the lender must place the borrower in the status that would exist had no bankruptcy claim been filed. If the borrower is delinquent after the loan is determined nondischargeable, the lender should grant administrative forbearance to bring the borrower's account current as provided in (682.211(f)(5)" to read as follows:

Appendix D—Policy for Waiving the Secretary's Right to Recover or Refuse to Pay, Interest Benefits, Special Allowance, and Reinsurance on Stafford, PLUS, Supplemental Loans for Students, and Consolidation Program Loans Involving Lenders' Violations of Federal Regulations Pertaining to Due Diligence in Collection or Timely Filing of Claims [Bulletin 88–G–138]

* * * * *

D. * * *

I. * * *

A. * * *

Earliest unexcused violation means:

1(a) In cases when reinsurance is lost due to a failure to timely establish a first payment due date, the earliest unexcused violation would be the 46th day after the date the first payment due date should have been established.

1(b) In cases when reinsurance is lost due to a gap of 46 days, the earliest unexcused violation date would be the 46th day following the last collection activity.

(c) In cases when reinsurance is lost due to 3 or more due diligence violations of 6 days or more, the earliest unexcused violation would be the day after the date of default.

(d) In cases when reinsurance is lost due to a timely filing violation, the earliest unexcused violation would be the day after the filing deadline.

* * * * *

[FR Doc. 99–9260 Filed 4–15–99; 8:45 am]
BILLING CODE 4000–01–P

read as

ving the
or Refuse
cial
on
l Loans for
Program
lations of
ng to Due
nely Filing
]

eans:
is lost due
rst payment
violation
ate the first
een

is lost due
nexcused
day
ity.
s lost due
ons of 6
sed
he date of

s lost due
rliest
e day after

8:45 am]

Federal Register

Friday
April 16, 1999

Part III

Office of Management and Budget

Economic Classification Policy Committee; Initiative To Create a Product Classification System, Phase I: Exploratory Effort To Classify Service Products; Notice

OFFICE OF MANAGEMENT AND BUDGET

Economic Classification Policy Committee; Initiative To Create a Product Classification System, Phase I: Exploratory Effort To Classify Service Products

AGENCY: Office of Management and Budget, Executive Office of the President.

ACTION: Proposed development of a comprehensive and integrated North American product classification system.

SUMMARY: Under Title 44 U.S.C. 3504(e), the Office of Management and Budget (OMB), through its Economic Classification Policy Committee (ECPC), is seeking public comment on the proposed development of a comprehensive classification system for products produced by North American Industry Classification System (NAICS) industries. The ECPC proposes, over the long term, to develop a comprehensive and integrated North American Product Classification System for the products produced by industries classified under the North American Industry Classification System (NAICS) and, over the short term, to explore the feasibility of identifying and classifying products produced by selected NAICS service industries. The ECPC is particularly seeking proposals for an initial identification of the service products created by industries in selected service sectors as well as comments on related discussions of needs and uses for product data, guiding principles for the product classification development, and organization and tasks of the product classification committees. In addition, the ECPC is seeking information sources in the academic and business communities that can be used by the classification committees to identify the products created by the service industries included in Phase I (see Industry Appendix).

DATES: To ensure consideration, all comments on the development of a product classification system and proposals for products must be received electronically or in writing no later than June 15, 1999.

ADDRESSES: Please send comments and proposals for products electronically either by e-mail to prodclass@ccmail.census.gov or by using the response form found on www.census.gov/products. Proposals may also be mailed to Michael F. Mohr, Coordinator, ECPC Initiative to Classify Service Products, Bureau of the Census, U.S. Department of Commerce, Room 2633–3, Washington, DC 20233, telephone number (301) 457–2589, FAX (301) 457–1536. Proposals will become part of the library of background information to guide the work of the classification committees. All comments and proposals received in response to this notice will be available for public inspection at the Bureau of the Census, U.S. Department of Commerce, 4700 Silver Hill Road, Suitland, MD 20233. Please telephone the Bureau of the Census at (301) 457–2589 to make an appointment. Those making proposals will be notified directly of action taken by the ECPC.

Those wishing to identify information sources for the service industries included in Phase I should do so either through the web site at www.census.gov/products, or by e-mail to prodclass@ccmail.census.gov, or by contacting Michael F. Mohr, Coordinator, ECPC Initiative to Classify Service Products, Bureau of the Census, U.S. Department of Commerce, Room 2633–3, Washington, DC 20233, telephone number (301) 457–2589, FAX (301) 457–1536.

Web Page: A Web Page for the product classification initiative can be found at www.census.gov/products. This site provides extensive information on, and will report news about, the initiative; it also provides a structured medium through which interested parties can participate electronically in Phase I by identifying information sources and submitting proposals for the products produced by the covered service industries.

Electronic Availability: This document is available on the World Wide Web from the Census Bureau at the address <http://www.census.gov/products> under the listing **Federal Register** Notice. This document is also available via File Transfer Protocol (FTP) at the address <ftp.census.gov/pub/epcd/www/products/products99.txt>. A more comprehensive treatment of the subject matter contained in this notice is provided in a Discussion Paper that is also available electronically at the foregoing addresses. Copies of the NAICS manual referenced in this notice can be ordered from the National Technical Information Service at the address <http://www.ntis.gov/naics> or (800) 553–6847.

FOR FURTHER INFORMATION CONTACT: Parties wishing further information on the work described in this notice should contact Michael F. Mohr, Coordinator: ECPC Initiative to Classify Service Products, Bureau of the Census, U.S. Department of Commerce, Room 2633–3, Washington, DC 20233, e-mail michael.f.mohr@ccmail.census.gov, telephone number (301) 457–2589, FAX (301) 457–1536.

SUPPLEMENTARY INFORMATION:

Background

In a **Federal Register** notice of July 26, 1994 (59 FR 38092–38096), OMB announced that the ECPC had agreed to work in concert with Mexico's Instituto Nacional de Estadística, Geografía e Informática (INEGI) and Statistics Canada to develop a new and common industry classification system—the North American Industry Classification System (NAICS)—that would replace the existing system used in the United States, the Standard Industrial Classification System (SIC). Final agreement on NAICS was announced in a **Federal Register** notice of April 9, 1997 (62 FR 17287–17337). This agreement resulted in the publication in 1998 of the new North American Industry Classification System, United States, 1997 manual.

In addition to announcing the development of NAICS, the 1994 **Federal Register** notice also indicated that each country would provide product data compiled within the framework of its respective statistical system, to meet the need for such information. Recognizing the increasing international trade in goods and services, each country envisaged working cooperatively to help improve existing commodity classification systems, including the Harmonized System (HS) of the Customs Cooperation Council and the United Nations' Provisional Central Product Classification System (CPC) for services.[1] In particular, the three countries agreed that such cooperation would entail coordinating their product classification efforts and keeping each other informed of proposals for change in this area. Integral to the product classification accord was a common recognition by the statistical agencies of the three countries that "market-oriented, or demand-based, groupings of economic data are required for many purposes, including studies of market share, demand for goods and services, import competition in domestic markets and similar studies."[2]

In recognition of the product classification accord, the ECPC committed to expanding the list of commodities and services that would be available from the 1997 Economic Censuses. The ECPC also established two product code task forces to

[1] The provisional CPC has since been replaced by version 1.0; see United Nations [1998].

[2] See Economic Classification Policy Committee [1994], 59 FR 38094.

implement this commitment—the Investment Goods Product Code Task Force and the Service Product Code Task Force. Although preliminary work on service products classification began in 1993, that work was subsequently terminated because the total restructuring of the industry classification system consumed all available resources within the statistical agencies.[3]

Having now largely accomplished the industry classification objectives for NAICS, the ECPC is announcing a new initiative to develop a comprehensive classification system for the products produced by NAICS industries. This initiative will be conducted as a joint effort by Canada, Mexico, and the United States. The long-term objective of the joint initiative is to develop a market-oriented/demand-based classification system for products that: (a) Is not industry-of-origin based but can be linked to the NAICS industry structure, (b) is consistent across the three NAICS countries, and (c) promotes improvements in the identification and classification of service products across international classification systems, such as the Central Product Classification System of the United Nations.

Product Classification System Initiative

The ECPC anticipates that the initiative to classify service products will be a comprehensive effort that addresses both the conceptual issues and the data collection issues necessary to ensure that the system is conceptually sound, feasible to implement, and relevant to analytical and operational objectives. The initiative will be implemented in two phases. An interim, or exploratory, phase to be launched in early 1999 and completed during 2000 (Phase I), will develop preliminary product classifications for a subset of NAICS service industries. These results will be incorporated in the 2002 Economic Census and related programs. A second, or final, phase of this initiative will be launched after the 2002 Economic Census. Exploiting the lessons and insights gained from the deliberations of Phase I and the data collection activities of the 2002 Economic Census, this phase (Phase II) will develop a complete and fully integrated product classification system that extends to all NAICS industries. The results of Phase II will be incorporated in the 2007 Economic Census and related programs.

[3] Nonetheless, the ECPC's product classification objectives with respect to investment goods were largely achieved.

In undertaking this effort, the ECPC recognizes that the development of even a preliminary classification system for selected service products will be a complex endeavor that will tax the expertise of the statistical agencies which currently lack familiarity with how industry produces these service products. Accordingly, the ECPC is actively seeking information sources in the academic and business communities that can be used by the classification committees to identify the products created by the service industries included in Phase I (see Industry Appendix). Commentors who wish to provide such information should refer to the **ADDRESSES** section of this notice.

The ECPC is seeking proposals for the initial identification of service products as well as comments on the discussion of needs and uses and guiding principles for the product classification, and the organization and tasks of the classification committees. In accordance with the proposed classification development process outlined below, the ECPC requests that respondents to this notice support their proposals for the identification and definition of service products for service industries included in Phase I of this initiative with documentation that provides information to support the following tasks:

1. Developing a model/description of the production process for each industry;
2. Identifying/defining the final products sold by each industry;
3. Developing formal definitions for the identified products; and
4. Proposing suggestions for organizing the products identified for each sector into a market-oriented classification system that will allow users to:

a. identify the quantity and price(s) of each product produced by each industry,

b. aggregate common products across all industries, and

c. group and aggregate products in a manner that satisfies the demand-side classification framework adopted by the three NAICS countries.

Phase I: Classification of Service Products

The first or interim phase of the initiative proposes to identify and classify the products produced by the industries in four NAICS service sectors—Information (Sector 51); Finance and Insurance (Sector 52) except Insurance (Subsector 524); Professional, Scientific, and Technical Services (Sector 54); and Administrative and Support, Waste Management and Remediation Services (Sector 56).[4]

Needs and Uses

There are two reasons for the focus on services in Phase I. First, the value of final production produced by industries included in NAICS service sectors now accounts for about 45 percent of private sector Gross Domestic Product (GDP) in the U.S., and these sectors include some of the fastest growing segments of the economy, such as computer services, communications, management consulting, temporary help services, and health services. Second, despite its importance in the overall private economy, the U.S. currently has no product classification system for service industries. In contrast, the Census Bureau has been collecting product-level data for manufacturing industries since at least the 1899 Census of Manufactures; by 1939 it was collecting data for approximately 6,400 manufactured products. Moreover, the Census Bureau has had a published list of manufactured products and product codes since 1947—the Numerical List of Manufactured and Mineral Products, which has been revised and updated every five years (in conjunction with the economic censuses). By 1967 the list of manufactured products had grown to 10,500, but more than 12,000 products were included under the NAICS classification system for the 1997 Economic Census.

The collection of product data for these manufactured products by the Census Bureau and the collection of associated producer price data by the Bureau of Labor Statistics (BLS) have long provided national accountants and researchers with the information necessary to estimate, monitor, and analyze the growth in real output, prices, productivity, international trade, and competitiveness in the manufacturing sector. In turn, these manufacturing estimates and analyses have long served to influence and guide the formulation of government policies, including industrial, international trade, fiscal, and monetary policies. And, within the business community, Census Bureau tabulations of the detailed products made and used by manufacturers have been highly valued and much utilized, as a reliable and

[4] In addition to these four sectors, NAICS service sectors also include: Real Estate and Rental and Leasing (Sector 53); Management of Companies and Enterprises (Sector 55); Educational Services (Sector 61); Health Care and Social Assistance (Sector 62); Arts, Entertainment, and Recreation (Sector 71); Accommodation and Food Services (Sector 72); and Other Services (except Public Administration) (Sector 81).

comprehensive source of information on trends and new developments in the product markets in which businesses operate and compete.

Over the last several decades, however, the share of U.S. national output derived from service sector industries has grown to exceed the share derived from manufacturing and all other goods-producing sectors combined. Moreover, that share seems certain to grow over the long-term and, perhaps, accelerate its pace. In recognition of this profound structural change, the ECPC believes it is critical to provide the business and economics community " business analysts, policy makers, researchers, and statistical agencies " with the kind of comprehensive, well-organized data on the products produced by service industries that presently exist for the products produced by manufacturing and other goods-producing industries.

Thus, the overriding objective of Phase I of the initiative is to systematically explore the development of a formal classification system for service products that can be used throughout the public and private communities of users to coordinate the collection, tabulation, and analysis of data on the value of the detailed products sold or produced for final consumption by selected service industries and on the prices charged for those products. Although preliminary, the results from Phase I will be available to guide the collection of data for service products in the affected industries during the 2002 Economic Census. In contrast to Phase I, the ultimate objective of Phase II of the initiative will be to develop an agreed-upon, integrated, and comprehensive list of products, product definitions, and product codes that (1) encompasses the products of both goods-and service-producing industries alike and (2) accommodates a demand-side/market-oriented classification framework for grouping and aggregating these products.

Guiding Principles

The ECPC is proposing three general principles to guide the overall process of classifying the products produced by industries:

1. An understanding of the production process of the reporting units included in the respective industries is a required first principle for identifying and defining the product(s) actually produced for final consumption by those industries.[5]

2. The aim of the product classification process should be to identify, define, and classify the final products produced and transacted by the reporting units within each industry. The final products of reporting units in an industry are those that are created and transacted (sold or transferred) by the reporting units to economic entities outside of the individual reporting units.

3. The classification of products produced by industries should be based on a market-oriented, or demand-based, conceptual framework.[6]

With respect to the first principle, the ECPC believes it is necessary to approach the process of product classification for industries from the perspective of the production process because it provides the necessary conceptual framework for: (a) Identifying the activities performed by a given industry, (b) facilitating an ordered consideration of information and competing hypotheses about the role of any products derived from those activities in the production process, (c) developing informed judgements about the final products produced by the industry, and (d) providing insights into the transaction unit that is appropriate and feasible for measuring the respective products and the reporting unit that is appropriate for collecting the data. Put simply, in order to satisfy the second principle, it is necessary to distinguish the final products produced by a given industry's production process from the intermediate outputs produced and consumed by that process. While this approach has significance for industries generally, it is especially important in the case of service industries where, in contrast to goods-producing industries such as manufacturing, there exists much confusion about what many service industries do and how they do it.

Finally, once the products of the industries have been identified and defined, it is necessary to organize those products according to a consistent classification principle that is acceptable and useful to all segments of the data using community. The third principle reflects the ECPC's commitment to satisfy this requirement in a manner that reflects the consensus reached on this issue by the three NAICS countries. The guiding role of the third principle in classifying and grouping products was enunciated by Triplett [1994a, p. 6], who noted that a product grouping system "should incorporate, and facilitate the analysis of, the relationships among products—demand relations, substitution relations, marketing relationships, uses by consumers or by other ultimate purchasers."

Guidelines for Product Identification in Service Industries

Identifying the final products of each industry is the first step in developing a product classification system. Recognizing that this step can be difficult for many service industries, the ECPC intends that private sector respondents to this Initiative and the classification committees will formulate proposals for the products of a given service industry in the context of the following definitions and guidelines.

- *Conceptual Definition of a Service Product:* A service is a change in the condition of a person, or a good belonging to some economic entity, brought about as the result of the activity of some other economic entity, with the approval of the first person or economic entity.[7] To correctly define the product(s) of a service industry it is essential to specify exactly what the producer agrees to sell and what the customer agrees to buy. That is, a determination must be made of what is implicitly or explicitly "contracted for" when a transaction takes place. Further, it is important to distinguish between the output the industry produces and the activities carried out by the industry to produce the output.[8]
- *Final Service Product:* The final products of reporting units in an industry are the service products (simple, composite, or bundle) that are created and transacted (sold or transferred) by the reporting units to other reporting units, enterprises, institutions or persons; domestic or international.
- *Types of Service Products:* The final service products may include one or more of the following broad types:[9]

(a) *Simple service:* a standard service whose real output can often be measured in physical units or counts; e.g., a traditional haircut or basic phone service.

(b) *Composite service:* a product that embodies several distinct services that are produced together (by virtue of regulations, production process, safety or hygiene requirements, or industry

---

[5] The ECPC recognized the dual importance of this principle for classifying both service industries and the products produced by such industries early on; see Economic Classification Policy Committee [1993a], Section 6.5.

[6] This classification principle was first established in several papers by Triplett [1990, 1994a, and 1994b]; see also Economic Classification Policy Committee [1993b].

[7] See Hill [1977, p.318].

[8] See Sherwood [1997, p.3].

[9] These service product types were suggested by Chadeau [1997, p.2].

practice). The customer is not free to pick and choose among the several services in the composite—the consumer buys all or none; e.g., a conventional hotel room rental includes maid service, salon haircuts include shampooing, or the final product (diagnosis or course of treatment) created by a doctor's office visit may embody a variety of required diagnostic services (see related discussion in section C below).

(c) *Service bundle:* a product containing a collection of services negotiated between the service provider and the customer and whose composition may vary by customer; e.g., traditional phone service plus call waiting and/or caller ID, etc., a bundle of information services that can be transmitted through a common medium (cable, satellite) and that may include voice, data and/or visual services, etc., or different bundles of janitorial services, or legal services, or accounting services, etc.

• *Product Detail:* Identify and define products for your selected industry at a level of detail that accords with prevailing marketing practices and record keeping practices in the industry.

Classification Committees

Phase I of the initiative will be accomplished through the creation of four classification committees (one per sector) that will operate simultaneously and draw on the combined talent and resources of the Federal statistical agencies. The ECPC also will strive to provide each committee with consultancy support from private sector industry experts. The committees will implement a comprehensive product classification process for each NAICS service industry in the Industry Appendix below. The process will include:

1. Developing a model/description of the production process for each industry;

2. Identifying/defining the final products sold by each industry;

3. Developing formal definitions for the identified products; and

4. Proposing suggestions for organizing the products identified for each sector into a market-oriented classification system that will allow users to:

a. identify the quantity and price(s) of each product produced by each industry,

b. aggregate common products across all industries, and

c. group and aggregate products in a manner that satisfies the demand-side classification framework adopted by the three NAICS countries.

In addition, each classification committee will consider issues related to the unit of measurement and to the feasibility of measuring and reporting data on output and prices for the products identified for the respective service industries, including industry record-keeping practices and reporting units.

Donald R. Arbuckle,

Acting Administrator and Deputy Administrator, Office of Information and Regulatory Affairs.

References

Chadeau A. [1997], "Prices of Services to Enterprises," paper presented in Twelfth Meeting of Voorburg Group on Service Statistics, Copenhagen: Denmark, September 15–19, 1997.

Economic Classification Policy Committee [1994], "Standard Industrial Classification Replacement," **Federal Register**, July 26, p. 38092–96.

____ [1993a], "Issue Paper No. 6, Services Classifications," Bureau of Economic Analysis (BE–42), U.S. Department of Commerce, Washington, D.C., September.

____ [1993b], "Issue Paper No. 1, Conceptual Issues," **Federal Register**, March 31, pp.16991–17000.

Hill, T.P. [1977], "On Goods and Services," Review of Income and Wealth, vol. 123 (4), pp. 315–38.

Office of Management and Budget [1998], North American Industry Classification System, United States, 1997, Bernan Press: Lanham, Maryland.

____ [1997], "1997 North American Industry Classification System—1987 Standard Industrial Classification Replacement," **Federal Register**, April 9, pp. 17287–17337.

____ [1992], Economic Classification Policy Committee Charter, Washington: D.C., July, letter with two pages.

Sherwood, M.J. [1997], "Output of the Property and Casualty Insurance Industry," paper (revised February 1998), presented at the Centre for the Study of Living Standards Conference on Service Sector Productivity and the Productivity Paradox, Ottawa, April 11–12, 1997.

Triplett, J.E. [1994a], "Economic Concepts for Economic Classifications, Survey of Current Business, November, pp. 45–49.

____ [1994b], "Economic Classification in the New North American Industry Classification System (NAICS)," paper presented at Seminar on New Directions in Statistical Methodology, Washington, DC, May 25, 1994.

____ [1990], "The Theory of Industrial and Occupational Classifications and Related Phenomena," in 1990 Annual Research Conference, Proceedings in Arlington, Virginia, March 18–21, 1990, by the Bureau of the Census, Washington, DC: U.S. Government Printing Office, pp. 9–25.

United Nations [1998], Central Product Classification (CPC), Version 1.0, Statistical Papers, Series M, No. 77, Very 1.0, Department of Economics and Social Affairs, Statistics Division, New York.

Industry Appendix—U.S. Industries Arranged by NAICS Sectors, Subsectors, and Industry Groups

51 INFORMATION

511 Publishing Industries

5111 Newspaper, Periodical, Book, and Database Publishers
51111 Newspaper Publishers
51112 Periodical Publishers
51113 Book Publishers
51114 Database and Directory Publishers
51119 Other Publishers
511191 Greeting Card Publishers
511199 All Other Publishers

5112 Software Publishers
51121 Software Publishers

512 Motion Picture & Sound Recording Industries

5121 Motion Picture & Video Industries
51211 Motion Picture & Video Production
51212 Motion Picture & Video Distribution
51213 Motion Picture & Video Exhibition
512131 Motion Picture & Theaters (except Drive-Ins)
512132 Drive-In Motion Picture Theaters
51219 Postproduction Services and Other Motion Picture and Video Industries
512191 Teleproduction and Other Postproduction Services
512199 Other Motion Picture and Video Industries

513 Broadcasting & Telecommunications

5131 Radio & Television Broadcasting
51311 Radio Broadcasting
513111 Radio Networks
513112 Radio Stations
51312 Television Broadcasting

5132 Cable Networks & Program Distribution
51321 Cable Networks
51322 Cable & Other Program Distribution

5133 Telecommunications
51331 Wired Telecommunications Carriers
51332 Wireless Telecommunications Carriers (except Satellite)
513321 Paging
513322 Cellular & Other Wireless Telecommunications
51333 Telecommunications Resellers
51334 Satellite Telecommunications
51339 Other Telecommunications

514 Information Services & Data Processing Services

5141 Information Services
51411 News Syndicates
51412 Libraries & Archives
51419 Other Information Services
514191 On-Line Information Services
514199 All Other Information Services

5142 Data Processing Services
51421 Data Processing Services

52 FINANCE & INSURANCE

521 Monetary Authorities—Central Bank

5211 Monetary Authorities—Central Bank

52111 Monetary Authorities—Central Bank

522 Credit Intermediation & Related Activities

5221 Depository Credit Intermediation

52211 Commercial Banking
52212 Savings Institutions
52213 Credit Unions
52219 Other Depository Credit Intermediation

5222 Nondepository Credit Intermediation

52221 Credit Card Issuing
52222 Sales Financing
52229 Other Nondepository Credit Intermediation
522291 Consumer Lending
522292 Real Estate Credit
522293 International Trade Financing
522294 Secondary Market Financing
522298 All Other Nondepository Credit Intermediation

5223 Activities Related to Credit Intermediation

52231 Mortgage & Nonmortgage Brokers
52232 Financial Transactions Processing, Reserve, & Clearinghouse Activities
52239 Other Activities Related to Credit Intermediation

523 Securities, Commodity Contracts & Other Financial Investments & Related Activities

5231 Securities & Commodity Contracts Intermediation & Brokerage

52311 Investment Banking & Securities Dealing
52312 Securities Brokerage
52313 Commodity Contracts Dealing
52314 Commodity Contracts Brokerage

5232 Securities & Commodity Exchanges

52321 Securities & Commodity Exchanges

5239 Other Financial Investment Activities

52391 Miscellaneous Intermediation
52392 Portfolio Management
52393 Investment Advice
52399 All Other Financial Investment Activities
523991 Trust, Fiduciary & Custody Activities
523999 Miscellaneous Financial Investment Activities

525 Funds, Trusts & Other Financial Vehicles

5251 Insurance & Employee Benefit Funds

52511 Pension Funds
52512 Health & Welfare Funds
52519 Other Insurance Funds

5259 Other Investment Pools & Funds

52591 Open-End Investment Funds
52592 Trusts, Estates & Agency Accounts
52593 Real Estate Investment Trusts
52599 Other Financial Vehicles

54 PROFESSIONAL, SCIENTIFIC & TECHNICAL SERVICES

541 Professional, Scientific & Technical Services

5411 Legal Services

54111 Offices of Lawyers
54112 Offices of Notaries
54119 Other Legal Services
541191 Title Abstract & Settlement Offices
541199 All Other Legal Services

5412 Accounting, Tax Preparation, Bookkeeping & Payroll Services

54121 Accounting, Tax Preparation, Bookkeeping & Payroll Services
541211 Offices of Certified Public Accountants
541213 Tax Preparation Services
541214 Payroll Services
541219 Other Accounting Services

5413 Architectural, Engineering & Related Services

54131 Architectural Services
54132 Landscape Architectural Services
54133 Engineering Services
54134 Drafting Services
54135 Building Inspection Services
54136 Geophysical Surveying & Mapping Services
54137 Surveying & Mapping (except Geophysical) Services
54138 Testing Laboratories

5414 Specialized Design Services

54141 Interior Design Services
54142 Industrial Design Services
54143 Graphic Design Services
54149 Other Specialized Design Services

5415 Computer Systems Design &Related Services

54151 Computer Systems Design & Related Services
541511 Custom Computer Programming Services
541512 Computer Systems Design Services
541513 Computer Facilities Management Services
541519 Other Computer Related Services

5416 Management, Scientific, & Technical Consulting Services

54161 Management Consulting Services
541611 Administrative Management & General Management Consulting Services
541612 Human Resources & Executive Search Consulting Services
541613 Marketing Consulting Services
541614 Process, Physical Distribution & Logistics Consulting Services
541618 Other Management Consulting Services
54162 Environmental Consulting Services
54169 Other Scientific & Technical Consulting Services

5417 Scientific Research & Development Services

54171 Research & Development in the Physical, Engineering & Life Sciences
54172 Research & Development in the Social Sciences & Humanities

5418 Advertising & Related Services

54181 Advertising Agencies
54182 Public Relations Agencies
54183 Media Buying Agencies
54184 Media Representatives
54185 Display Advertising
54186 Direct Mail Advertising
54187 Advertising Material Distribution Services
54189 Other Services Related to Advertising

5419 Other Professional, Scientific, and Technical Services

54191 Marketing Research & Public Opinion Polling
54192 Photographic Services
541921 Photography Studios, Portrait
541922 Commercial Photography
54193 Translation & Interpretation Services
54194 Veterinary Services
54199 All Other Professional, Scientific & Technical Services

56 ADMINISTRATIVE AND SUPPORT AND WASTE MANAGEMENT AND REMEDIATION SERVICES

5611 Administrative & Support Services

5611 Office Administrative Services
56111 Office Administrative Services
5612 Facilities Support Services
56121 Facilities Support Services

5613 Employment Services

56131 Employment Placement Agencies
56132 Temporary Help Services
56133 Employee Leasing Services

5614 Business Support Services

56141 Document Preparation Services
56142 Telephone Call Centers
561421 Telephone Answering Services
561422 Telemarketing Bureaus
56143 Business Service Centers
561431 Private Mail Centers
561439 Other Business Service Centers (including Copy Shops)
56144 Collection Agencies
56145 Credit Bureaus
56149 Other Business Support Services
561491 Repossession Services
561492 Court Reporting & Stenotype Services
561499 All Other Business Support Services

5615 Travel Arrangement & Reservation Services

56151 Travel Agencies
56152 Tour Operators
56159 Other Travel Arrangement & Reservation Services
561591 Convention and Visitors Bureaus
561599 All Other Travel Arrange & Reservation Services

5616 Investigation & Security Services

56161 Investigation, Guard & Armored Car Services
561611 Investigation Services
561612 Security Guards & Patrol Services
561613 Armored Car Services
56162 Security Systems Services
561621 Security Systems Services (except Locksmiths)
561622 Locksmiths

5617 Services to Buildings & Dwellings

56171 Exterminating & Pest Control Services

56172 Janitorial Services
56173 Landscaping Services
56174 Carpet & Upholstery Cleaning Services
56179 Other Services to Buildings & Dwellings

5619 Other Support Services

56191 Packaging & Labeling Services
56192 Convention & Trade Show Organizers
56199 All Other Support Services

562 Waste Management & Remediation Services

5621 Waste Collection

56211 Waste Collection
562111 Solid Waste Collection
562112 Hazardous Waste Collection
562119 Other Waste Collection

5622 Waste Treatment & Disposal

56221 Waste Treatment & Disposal
562211 Hazardous Waste Treatment & Disposal
562212 Solid Waste Landfill
562213 Solid Waste Combustors & Incinerators
562219 Other Nonhazardous Waste Treatment & Disposal

5629 Remediation & Other Waste Management Services

56291 Remediation Services
56292 Materials Recovery Facilities
56299 All Other Waste Management Services
562991 Septic Tank & Related Services
562998 All Other Miscellaneous Waste Management Services

[FR Doc. 99–9529 Filed 4–15–99; 8:45 am]
BILLING CODE 3110–01–P

UMI

VOL
64

ISS
73

AP
16

1999

UMI

federal register

Friday
April 16, 1999

Part IV

Department of Education

National Institute on Disability and Rehabilitation Research; Notice of Final Funding Priorities and Notice Inviting Applications for New Awards; Notices

DEPARTMENT OF EDUCATION

National Institute on Disability and Rehabilitation Research; Notice of Final Funding Priorities for Fiscal Years 1999–2000 for a Center and Certain Projects

SUMMARY: The Secretary announces final funding priorities for one Rehabilitation Research and Training Center (RRTC) and two Disability and Rehabilitation Research Projects (DRRPs) under the National Institute on Disability and Rehabilitation Research (NIDRR) for fiscal years 1999–2000. The Secretary takes this action to focus research attention on areas of national need. These priorities are intended to improve rehabilitation services and outcomes for individuals with disabilities.

EFFECTIVE DATE: These priorities take effect on May 17, 1999.

FOR FURTHER INFORMATION CONTACT: Donna Nangle. Telephone: (202) 205–5880. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–2742. Internet: Donna__Nangle@ed.gov

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

SUPPLEMENTARY INFORMATION: This notice contains final priorities under the Disability and Rehabilitation Research Projects and Centers Program for one RRTC related to health and wellness for persons with long-term disabilities, and two DRRPs related to: health care services for persons with disabilities; and medical rehabilitation services for persons with disabilities. The final priorities refer to NIDRR's proposed Long-Range Plan (LRP). The LRP can be accessed on the World Wide Web at: http://www.ed.gov/legislation/FedRegister/announcements/1998–4/102698a.html

These final priorities support the National Education Goal that calls for every adult American to possess the skills necessary to compete in a global economy.

The authority for the Secretary to establish research priorities by reserving funds to support particular research activities is contained in sections 202(g) and 204 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 762(g) and 764).

Note: This notice of final priorities does *not* solicit applications. A notice inviting applications is published in this issue of the **Federal Register**.

Analysis of Comments and Changes

On February 1, 1999 the Secretary published a notice of proposed priorities in the **Federal Register** (64 FR 4936). The Department of Education received seven letters commenting on the notice of proposed priority by the deadline date. Technical and other minor changes—and suggested changes the Secretary is not legally authorized to make under statutory authority—are not addressed.

Rehabilitation Research and Training Centers

Priority 1: Health and Wellness for Persons With Long-Term Disabilities

Comment: Two commenters asked if the RRTC is required to address each of the disabilities identified in the priority equally.

Discussion: Applicants must address the disabilities identified in the introduction and may propose to address additional disabilities. Applicants have the discretion to determine the emphasis that they propose to place on the disabilities addressed by the RRTC.

Changes: The Introduction has been revised to clarify that the RRTC may address disabilities in addition to those identified in the Introduction.

Comment: Two commenters indicated that NIDRR should specify the alternative therapies that the RRTC should address.

Discussion: NIDRR prefers to provide applicants with the discretion to propose alternative therapies to investigate. The peer review process will evaluate the merits of the proposals.

Changes: None.

Comment: One commenter indicated that the RRTC should be required to carry out "population-based" research and utilize emerging dissemination methodologies that utilize technology. The same commenter and a second commenter indicated that the RRTC should be required to explore theories on health behaviors, readiness to change, and barriers to change.

Discussion: NIDRR prefers to provide applicants with the discretion to propose specific research approaches, theoretical perspectives, and dissemination techniques. The peer review process will evaluate the merits of the proposals.

Changes: None.

Comment: The RRTC should investigate the economics of promoting health and wellness.

Discussion: An applicant could propose to investigate the economics of health and wellness under the second or third required activity. The peer review process will evaluate the merits of the proposal. NIDRR has no basis to require all applicants to investigate the economics of health and wellness.

Changes: None.

Comment: Two commenters questioned the extent to which the RRTC was expected to address the needs of adults or children, or both?

Discussion: The RRTC is required to address the needs of persons with long-term disabilities, regardless of their age. Adults are more likely to experience long-term disabilities. However, the RRTC is expected to address the needs of children who meet the definition of long-term disabilities included in the priority. Applicants have the discretion to propose to emphasize certain age groups.

Changes: None.

Comment: The RRTC should be required to develop and test innovative health promoting techniques, strategies, or programs.

Discussion: The priority requires the RRTC to identify and evaluate best practices in health promotion activities. Having met the requirement to identify and evaluate best practices in health promotion, an applicant could propose to develop new health promoting techniques, strategies, or programs. The peer review process will evaluate the merits of the proposal. NIDRR believes that it is not feasible for the RRTC to also develop and test innovative health promoting techniques, strategies, or programs.

Changes: None.

Comment: The priority appears to limit the scope of the RRTC to certain disabilities that are identified in the priority. NIDRR should clarify why these disabilities were selected.

Discussion: The priority requires the RRTC to include selected disabilities, but does not limit the RRTC to addressing only those disabilities. Applicants have the discretion to propose to address other disabilities in addition to those identified in the priority. The disabilities identified in the priority were selected because of their prevalence and impact on the health and wellness of persons with long-term disabilities.

Changes: None.

Comment: The RRTC should include a special emphasis on women with disabilities.

Discussion: An applicant could propose to emphasize the health promotion and wellness needs of women with disabilities, and the peer review process will determine the

merits of the proposal. NIDRR has no basis to require all applicants to emphasize the health promotion and wellness needs of women with disabilities.

Changes: None.

Comment: What is included in the requirement for the project to coordinate with the RRTC on Managed Care for Persons With Disabilities?

Discussion: NIDRR requires coordination activities in order to avoid duplication of effort and improve the quality of the research that a project carries out. Applicants have the discretion to propose how they will coordinate with other entities carrying out related research.

Changes: None.

Priority 2: Health Care Services for Persons With Disabilities

Comment: The second required activity could be read to authorize a very wide range of initiatives. NIDRR should clarify the intent of the second required activity.

Discussion: The second required activity is based on the findings of the first required activity to analyze the access of persons with disabilities to the continuum of health care services and identify successful service delivery strategies and barriers to access to the continuum. NIDRR recognizes that the range of activities that an applicant could propose to do is very broad. This broad discretion is necessary in order to provide applicants with the necessary authority to follow-up the findings from the first required activity.

Changes: None.

Priority 3: Medical Rehabilitation Services for Persons With Disabilities

Comment: The priority should be revised to provide applicants with the discretion to propose to address underserved populations instead of referring specifically to certain emergent disabilities.

Discussion: NIDRR believes that the cost and complexity of treatment of the emergent disabilities identified in the priority merit requiring all applicants to address them. However, applicants are not limited to addressing only those disabilities included in the priority, and have the discretion to address other populations.

Changes: None.

Rehabilitation Research and Training Centers

Authority for the RRTC program of NIDRR is contained in section 204(b)(2) of the Rehabilitation Act of 1973, as amended (29 U.S.C. 764(b)(2)). Under this program the Secretary makes awards to public and private organizations, including institutions of higher education and Indian tribes or tribal organizations for coordinated research and training activities. These entities must be of sufficient size, scope, and quality to effectively carry out the activities of the Center in an efficient manner consistent with appropriate State and Federal laws. They must demonstrate the ability to carry out the training activities either directly or through another entity that can provide that training.

The Secretary may make awards for up to 60 months through grants or cooperative agreements. The purpose of the awards is for planning and conducting research, training, demonstrations, and related activities leading to the development of methods, procedures, and devices that will benefit individuals with disabilities, especially those with the most severe disabilities.

Description of Rehabilitation Research and Training Centers

RRTCs are operated in collaboration with institutions of higher education or providers of rehabilitation services or other appropriate services. RRTCs serve as centers of national excellence and national or regional resources for providers and individuals with disabilities and the parents, family members, guardians, advocates or authorized representatives of the individuals.

RRTCs conduct coordinated, integrated, and advanced programs of research in rehabilitation targeted toward the production of new knowledge to improve rehabilitation methodology and service delivery systems, to alleviate or stabilize disabling conditions, and to promote maximum social and economic independence of individuals with disabilities.

RRTCs provide training, including graduate, pre-service, and in-service training, to assist individuals to more effectively provide rehabilitation services. They also provide training including graduate, pre-service, and in-service training, for rehabilitation research personnel and other rehabilitation personnel.

RRTCs serve as informational and technical assistance resources to providers, individuals with disabilities, and the parents, family members, guardians, advocates, or authorized representatives of these individuals through conferences, workshops, public education programs, in-service training programs and similar activities.

RRTCs disseminate materials in alternate formats to ensure that they are accessible to individuals with a range of disabling conditions.

NIDRR encourages all Centers to involve individuals with disabilities and individuals from minority backgrounds as recipients of research training, as well as clinical training.

The Department is particularly interested in ensuring that the expenditure of public funds is justified by the execution of intended activities and the advancement of knowledge and, thus, has built this accountability into the selection criteria. Not later than three years after the establishment of any RRTC, NIDRR will conduct one or more reviews of the activities and achievements of the Center. In accordance with the provisions of 34 CFR 75.253(a), continued funding depends at all times on satisfactory performance and accomplishment.

Priorities

Under 34 CFR 75.105(c)(3) the Secretary gives an absolute preference to applications that meet the following priority. The Secretary will fund under this competition only applications that meet this priority.

Priority 1: Health and Wellness for Persons With Long-Term Disabilities

Introduction

Chapter Four of NIDRR's proposed LRP (63 FR 57190–57219) focuses on maximizing health and function for persons with disabilities. Health maintenance for persons with disabilities includes not only access to care for routine health problems and appropriate specialty care including medical rehabilitation, but also participation in health promotion and wellness activities.

The National Center for Health Statistics defined long-term disabilities as "long-term reduction in activity resulting from chronic disease or impairment." For the purpose of this priority, long-term disabilities include, but are not limited to, cerebral palsy, multiple sclerosis, post-polio, amputation, and spinal cord injury. This center will assess the health maintenance and promotion practices of persons with long-term disabilities. NIDRR expects this research to clarify whether specialized assessment and health promotion activities are required for persons with long-term disabilities, and how health promotion activities affect the incidence of secondary conditions.

For the purpose of this priority, health promotion strategies include alternative

therapies (e.g., therapeutic massage, acupuncture), stress management practices, physical exercise, nutrition, and other activities designed to promote healthy lifestyle and social well-being. These strategies are vitally important in maintaining health and wellness. NIDRR expects the RRTC, through its training and dissemination activities, to encourage self-directed health promotion activities.

Priority

The Secretary will establish an RRTC for the purpose of developing strategies for health maintenance and reducing secondary conditions for persons with long-term disabilities. The RRTC must:

(1) Evaluate health assessment definitions, policies and practices, and measurement methodologies and instruments, and describe their impact on health promotion activities for persons with long-term disabilities;

(2) Evaluate the impact of selected health maintenance strategies on the incidence and severity of secondary conditions and other outcomes such as function, independence, general health status, and quality of life;

(3) Identify and evaluate best practices in health promotion activities for persons with long-term disabilities;

(4) Provide training on: (i) research methodology and applied research experience; and (ii) knowledge gained from the Center's research activities to persons with disabilities and their families, service providers, and other parties, as appropriate;

(5) Develop informational materials based on knowledge gained from the Center's research activities, and disseminate the materials to persons with disabilities, their representatives, service providers, and other interested parties;

(6) Involve individuals with disabilities and, if appropriate, their representatives, in planning and implementing its research, training, and dissemination activities, and in evaluating the Center;

(7) Conduct a conference on the findings of the RRTC and publish a comprehensive report on the final outcomes of the conference. The report must be published in the fourth year of the grant; and

(8) Coordinate with other entities carrying out related research or training activities.

In carrying out these purposes, the RRTC must coordinate with health and wellness research and demonstration activities sponsored by the National Center on Medical Rehabilitation Research, the Department of Veterans Affairs, and the Centers for Disease Control and Prevention.

Disability and Rehabilitation Research Projects

Authority for Disability and Rehabilitation Research Projects (DRRPs) is contained in section 204(a) of the Rehabilitation Act of 1973, as amended (29 U.S.C. 764(a)). DRRPs carry out one or more of the following types of activities, as specified in 34 CFR 350.13–350.19: research, development, demonstration, training, dissemination, utilization, and technical assistance. Disability and Rehabilitation Research Projects develop methods, procedures, and rehabilitation technology that maximize the full inclusion and integration into society, employment, independent living, family support, and economic and social self-sufficiency of individuals with disabilities, especially individuals with the most severe disabilities. In addition, DRRPs improve the effectiveness of services authorized under the Rehabilitation Act of 1973, as amended.

Priorities

Under 34 CFR 75.105(c)(3) the Secretary gives an absolute preference to applications that meet the following priorities. The Secretary will fund under this competition only applications that meet these priorities.

Research Priorities in Health Care and Medical Rehabilitation Services for Persons With Disabilities

Introduction

Chapter 4 of NIDRR's proposed LRP (63 FR 57202) discusses the health care service and medical rehabilitation service needs of persons with disabilities. The demand for these services is expected to continue to grow in the coming decades because of increased potential for survival after trauma and disease, prevalence of disability related to the general aging of the population, and the incidence of persons with disabilities acquiring secondary disabilities or chronic conditions. NIDRR proposes to establish a research agenda that examines access to the continuum of health care services, and changes in medical rehabilitation service systems, including demands that new populations of persons with disabilities are placing on medical rehabilitation service systems.

There has been insufficient research on the access of persons with disabilities to the continuum of health care services. Access to this continuum, including primary, acute, and long-term health care services over the course of a lifetime, bears directly on quality of life issues. By developing new knowledge about access to the continuum of health care services for persons with disability, NIDRR expects the DRRP on health care services to contribute to persons with disabilities maintaining their health and decreasing the occurrence of secondary conditions.

Medical rehabilitation service systems are changing in response to a number of factors. One major factor is the rise of managed care as the dominant form of organization and payment for health care services, including medical rehabilitation services. In addition, as discussed in the proposed LRP, new populations of persons with disabilities are emerging and placing new demands on medical rehabilitation service systems. NIDRR expects the DRRP on medical rehabilitation services to generate new knowledge about these changes in order to assist service providers and consumers to achieve desired rehabilitation outcomes. For the purpose of the proposed priority, emergent disabilities include, but are not limited to, AIDS, Attention Deficit Hyperactivity Disorder, violence-induced neurological damage, repetitive motion syndromes, childhood asthma, drug addiction, and environmental illnesses.

Priority 2: Health Care Services for Persons With Disabilities

The Secretary proposes to fund a DRRP to improve the continuum of health care services for persons with disabilities over their lifetime. The DRRP must:

(1) Analyze the access of persons with disabilities to the continuum of health care services and identify successful service delivery strategies and barriers to access to the continuum; and

(2) Based on paragraph (1), develop strategies to improve access to the continuum of health care services.

In carrying out the purposes of the priority, the project must:

- Address the health care needs of persons with disabilities of all ages; and
- Coordinate with the RRTC on Managed Care for Persons with Disabilities.

Priority 3: Medical Rehabilitation Services for Persons With Disabilities

The Secretary proposes to establish a DRRP to improve medical rehabilitation services for persons with disabilities, especially those with emergent disabilities. The DRRP must:

(1) Describe the changes taking place in the delivery of medical rehabilitation services including, but not limited to, those related to the setting where

services are provided, length of stay, qualifications of personnel, and payment systems; and

(2) Develop a methodology to analyze the impact of these changes on outcomes;

(3) Identify the nature and extent of the need for medical rehabilitation services by persons with emergent disabilities;

(4) Analyze persons with emergent disabilities' access to medical rehabilitation services; and

(5) Identify strategies to improve access by persons with emergent disabilities to medical rehabilitation services.

Electronic Access to This Document

Anyone may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or portable document format (pdf) on the World Wide Web at either of the following sites:

http://ocfo.ed.gov/fedred.htm
http://www.ed.gov/news.html

To use the pdf you must have the Adobe Acrobat Reader Program with Search, which is available free at either of the preceding sites. If you have questions about using the pdf, call the U.S. Government Printing Office at (202) 512–1530 or, toll free at 1–888–293–6498.

Anyone may also view these documents in text copy on an electronic bulletin board of the Department. Telephone: (202) 219–1511 or, toll free, 1–800–222–4922. The documents are located under Option G—Files/Announcements, Bulletins and Press Releases.

Note: The official version of this document is the document published in the **Federal Register**.

APPLICABLE PROGRAM REGULATIONS: 34 CFR Part 350.

Program Authority: 29 U.S.C. 760–762.

(Catalog of Federal Domestic Assistance Number 84.133A, Disability and Rehabilitation Research Projects, and 84.133B, Rehabilitation Research and Training Centers)

Dated: March 13, 1999.

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 99–9617 Filed 4–15–99; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[CFDA Nos.: 84.133A and 84.133B]

National Institute on Disability and Rehabilitation Research; Notice Inviting Applications for New Awards Under the Disability and Rehabilitation Research Project and Centers Program for Fiscal Year (FY) 1999

NOTE TO APPLICANTS: This notice is a complete application package. Together with the statute authorizing the programs and applicable regulations governing the programs, including the Education Department General Administrative Regulations (EDGAR), this notice contains information, application forms, and instructions needed to apply for a grant under these competitions.

This program supports the National Education Goal that calls for all Americans to possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship.

The estimated funding levels in this notice do not bind the Department of Education to make awards in any of these categories, or to any specific number of awards or funding levels, unless otherwise specified in statute.

APPLICABLE REGULATIONS: The Education Department General Administrative Regulations (EDGAR), 34 CFR Parts 74, 75, 77, 80, 81, 82, 85, 86, and 350.

Program Title: Disability and Rehabilitation Research Project and Centers Program.

CFDA Numbers: 84.133A and 84.133B.

Purpose of Program: The purpose of the Disability and Rehabilitation Research Project and Centers Program is to plan and conduct research, demonstration projects, training, and related activities, including international activities, develop methods, procedures, and rehabilitation technology, that maximize the full inclusion and integration into society, employment, independent living, family support, and economic and social self-sufficiency of individuals with disabilities, especially individuals with the most severe disabilities. In addition, the purpose of the Disability and Rehabilitation Research Project and Centers Program is to improve the effectiveness of services authorized under the Act.

Eligible Applicants: Parties eligible to apply for grants under this program are States, public or private agencies, including for-profit agencies, public or private organizations, including for-profit organizations, institutions of higher education, and Indian tribes and tribal organizations.

Program Authority: 29 U.S.C. 762.

APPLICATION NOTICE FOR FISCAL YEAR 1999 DISABILITY AND REHABILITATION RESEARCH PROJECTS, CFDA NO. 84–133A

Funding priority	Deadline for transmittal of applications	Estimated number of awards	Maximum award amount (per year)*	Project period (months)
84.133A–7—Health Care Services for Persons with Disabilities	June 3, 1999	1	$250,000	36
84.133A–11—Medical Rehabilitation Services for Persons with Disabilities.	June 3, 1999	1	200,000	36

*Note: The Secretary will reject without consideration or evaluation any application that proposes a project funding level that exceeds the stated maximum award amount per year (See 34 CFR 75.104(b)).

Applications Available: April 19, 1999.

Health Care and Medical Rehabilitation Services Projects Selection Criteria: The Secretary uses the following selection criteria to evaluate applications for a project on health care services for persons with disabilities and a project on medical rehabilitation services for persons with disabilities under the Disability and Rehabilitation Research Project and Centers Program.

(a) *Importance of the problem* (9 points total).

(1) The Secretary considers the importance of the problem.

(2) In determining the importance of the problem, the Secretary considers the following factors:

(i) The extent to which the applicant clearly describes the need and target population (3 points).

(ii) The extent to which the proposed activities address a significant need of those who provide services to individuals with disabilities (3 points).

(iii) The extent to which the proposed project will have beneficial impact on the target population (3 points).

(b) *Responsiveness to an absolute or competitive priority* (4 points total).

(1) The Secretary considers the responsiveness of the application to the absolute or competitive priority published in the **Federal Register**.

(2) In determining the responsiveness of the application to the absolute or competitive priority, the Secretary considers the following factors:

(i) The extent to which the applicant addresses all requirements of the absolute or competitive priority (2 points).

(ii) The extent to which the applicant's proposed activities are likely to achieve the purposes of the absolute or competitive priority (2 points).

(c) *Design of research activities* (40 points total).

(1) The Secretary considers the extent to which the design of research activities is likely to be effective in accomplishing the objectives of the project.

(2) In determining the extent to which the design is likely to be effective in accomplishing the objectives of the project, the Secretary considers the following factors:

(i) The extent to which the research activities constitute a coherent, sustained approach to research in the field, including a substantial addition to the state-of-the-art (10 points).

(ii) The extent to which the methodology of each proposed research activity is meritorious, including consideration of the extent to which—

(A) The proposed design includes a comprehensive and informed review of the current literature, demonstrating knowledge of the state-of-the-art (5 points);

(B) Each research hypothesis is theoretically sound and based on current knowledge (5 points);

(C) Each sample population is appropriate and of sufficient size (5 points);

(D) The data collection and measurement techniques are appropriate and likely to be effective (4 points); and

(E) The data analysis methods are appropriate (4 points).

(iii) The extent to which anticipated research results are likely to satisfy the original hypotheses and could be used for planning additional research, including generation of new hypotheses where applicable (7 points).

(d) *Design of dissemination activities* (5 points total).

(1) The Secretary considers the extent to which the design of dissemination activities is likely to be effective in accomplishing the objectives of the project.

(2) In determining the extent to which the design is likely to be effective in accomplishing the objectives of the project, the Secretary considers the following factors:

(i) The extent to which the materials to be disseminated are likely to be effective and usable, including consideration of their quality, clarity, variety, and format (2 points).

(ii) The extent to which the materials and information to be disseminated and the methods for dissemination are appropriate to the target population, including consideration of the familiarity of the target population with the subject matter, format of the information, and subject matter (2 points).

(iii) The extent to which the information to be disseminated will be accessible to individuals with disabilities (1 point).

(e) *Plan of operation* (6 points total).

(1) The Secretary considers the quality of the plan of operation.

(2) In determining the quality of the plan of operation, the Secretary considers the adequacy of the plan of operation to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, and timelines for accomplishing project tasks (6 points).

(f) *Collaboration* (2 points total).

(1) The Secretary considers the quality of collaboration.

(2) In determining the quality of collaboration, the Secretary considers the following factors:

(i) The extent to which the applicant's proposed collaboration with one or more agencies, organizations, or institutions is likely to be effective in achieving the relevant proposed activities of the project (1 point).

(ii) The extent to which agencies, organizations, or institutions demonstrate a commitment to collaborate with the applicant (1 point).

(g) *Adequacy and reasonableness of the budget* (4 points total).

(1) The Secretary considers the adequacy and the reasonableness of the proposed budget.

(2) In determining the adequacy and the reasonableness of the proposed budget, the Secretary considers the following factors:

(i) The extent to which the costs are reasonable in relation to the proposed project activities (2 points).

(ii) The extent to which the budget for the project, including any subcontracts, is adequately justified to support the proposed project activities (2 points).

(h) *Plan of evaluation* (10 points total).

(1) The Secretary considers the quality of the plan of evaluation.

(2) In determining the quality of the plan of evaluation, the Secretary considers the following factors:

(i) The extent to which the plan of evaluation provides for periodic assessment of progress toward—

(A) Implementing the plan of operation (3 points); and

(B) Achieving the project's intended outcomes and expected impacts (2 points).

(ii) The extent to which the plan of evaluation provides for periodic assessment of a project's progress that is based on identified performance measures that—

(A) Are clearly related to the intended outcomes of the project and expected impacts on the target population (3 points); and

(B) Are objective, and quantifiable or qualitative, as appropriate (2 points).

(i) *Project staff* (15 total points).

(1) The Secretary considers the quality of the project staff.

(2) In determining the quality of the project staff, the Secretary considers the extent to which the applicant encourages applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability (2 points).

(3) In addition, the Secretary considers the following:

(i) The extent to which the key personnel and other key staff have appropriate training and experience in disciplines required to conduct all proposed activities (5 points).

(ii) The extent to which the commitment of staff time is adequate to accomplish all the proposed activities of the project (3 points).

(iii) The extent to which the key personnel are knowledgeable about the methodology and literature of pertinent subject areas (5 points).

(j) *Adequacy and accessibility of resources* (5 points total).

(1) The Secretary considers the adequacy and accessibility of the applicant's resources to implement the proposed project.

(2) In determining the adequacy and accessibility of resources, the Secretary considers the following factors:

(i) The extent to which the applicant is committed to provide adequate facilities, equipment, other resources, including administrative support, and laboratories, if appropriate (3 points).

(ii) The extent to which the facilities, equipment, and other resources are appropriately accessible to individuals with disabilities who may use the facilities, equipment, and other resources of the project (2 points).

APPLICATION NOTICE FOR FISCAL YEAR 1999 REHABILITATION RESEARCH AND TRAINING CENTER, CFDA NO. 84.133B–9

Funding priority	Deadline for transmittal of applications	Estimated number of awards	Maximum award amount (per year) *	Project period (months)
84.133B–9—Health and Wellness for Persons with Long-term Disabilities.	June 3, 1999	1 $700,000		60.

* **Note:** The Secretary will reject without consideration or evaluation any application that proposes a project funding level that exceeds the stated maximum award amount per year (See 34 CFR 75.104(b)).

Applications Available: April 19, 1999.

RRTC Selection Criteria: The Secretary uses the following selection criteria to evaluate applications for an RRTC on health and wellness for persons with long-term disabilities under the Disability and Rehabilitation Research Project and Centers Program.

(a) *Importance of the problem* (9 points total).

(1) The Secretary considers the importance of the problem.

(2) In determining the importance of the problem, the Secretary considers the following factors:

(i) The extent to which the applicant clearly describes the need and target population (3 points).

(ii) The extent to which the proposed activities address a significant need of those who provide services to individuals with disabilities (3 points).

(iii) The extent to which the proposed project will have beneficial impact on the target population (3 points).

(b) *Responsiveness to an absolute or competitive priority* (4 points total).

(1) The Secretary considers the responsiveness of the application to the absolute or competitive priority published in the **Federal Register**.

(2) In determining the responsiveness of the application to the absolute or competitive priority, the Secretary considers the following factors:

(i) The extent to which the applicant addresses all requirements of the absolute or competitive priority (2 points).

(ii) The extent to which the applicant's proposed activities are likely to achieve the purposes of the absolute or competitive priority (2 points).

(c) *Design of research activities* (35 points total).

(1) The Secretary considers the extent to which the design of research activities is likely to be effective in accomplishing the objectives of the project.

(2) In determining the extent to which the design is likely to be effective in accomplishing the objectives of the project, the Secretary considers the following factors:

(i) The extent to which the research activities constitute a coherent, sustained approach to research in the field, including a substantial addition to the state-of-the-art (5 points).

(ii) The extent to which the methodology of each proposed research activity is meritorious, including consideration of the extent to which—

(A) The proposed design includes a comprehensive and informed review of the current literature, demonstrating knowledge of the state-of-the-art (5 points);

(B) Each research hypothesis is theoretically sound and based on current knowledge (5 points);

(C) Each sample population is appropriate and of sufficient size (5 points);

(D) The data collection and measurement techniques are appropriate and likely to be effective (5 points); and

(E) The data analysis methods are appropriate (5 points).

(iii) The extent to which anticipated research results are likely to satisfy the original hypotheses and could be used for planning additional research, including generation of new hypotheses where applicable (5 points).

(d) *Design of training activities* (11 points total).

(1) The Secretary considers the extent to which the design of training activities is likely to be effective in accomplishing the objectives of the project.

(2) In determining the extent to which the design is likely to be effective in accomplishing the objectives of the project, the Secretary considers the following factors:

(i) The extent to which the proposed training materials are likely to be effective, including consideration of their quality, clarity, and variety (2 points).

(ii) The extent to which the proposed training methods are of sufficient quality, intensity, and duration (2 points).

(iii) The extent to which the proposed training content—

(A) Covers all of the relevant aspects of the subject matter (1 point); and

(B) If relevant, is based on new knowledge derived from research activities of the proposed project (1 point).

(iv) The extent to which the proposed training materials, methods, and content are appropriate to the trainees, including consideration of the skill level of the trainees and the subject matter of the materials (2 points).

(v) The extent to which the proposed training materials and methods are accessible to individuals with disabilities (1 point).

(vi) The extent to which the applicant is able to carry out the training activities, either directly or through another entity (2 points).

(e) *Design of dissemination activities* (8 points total).

(1) The Secretary considers the extent to which the design of dissemination activities is likely to be effective in accomplishing the objectives of the project.

(2) In determining the extent to which the design is likely to be effective in accomplishing the objectives of the project, the Secretary considers the following factors:

(i) The extent to which the content of the information to be disseminated—

(A) Covers all of the relevant aspects of the subject matter (1 point); and

(B) If appropriate, is based on new knowledge derived from research activities of the project (1 point).

(ii) The extent to which the materials to be disseminated are likely to be effective and usable, including consideration of their quality, clarity, variety, and format (2 points).

(iii) The extent to which the methods for dissemination are of sufficient

quality, intensity, and duration (2 points).

(iv) The extent to which the materials and information to be disseminated and the methods for dissemination are appropriate to the target population, including consideration of the familiarity of the target population with the subject matter, format of the information, and subject matter (1 point).

(v) The extent to which the information to be disseminated will be accessible to individuals with disabilities (1 point).

(f) *Design of technical assistance activities* (4 points total).

(1) The Secretary considers the extent to which the design of technical assistance activities is likely to be effective in accomplishing the objectives of the project.

(2) In determining the extent to which the design is likely to be effective in accomplishing the objectives of the project, the Secretary considers the following factors:

(i) The extent to which the methods for providing technical assistance are of sufficient quality, intensity, and duration (1 point).

(ii) The extent to which the information to be provided through technical assistance covers all of the relevant aspects of the subject matter (1 point).

(iii) The extent to which the technical assistance is appropriate to the target population, including consideration of the knowledge level of the target population, needs of the target population, and format for providing information (1 point).

(iv) The extent to which the technical assistance is accessible to individuals with disabilities (1 point).

(g) *Plan of operation* (4 points total).

(1) The Secretary considers the quality of the plan of operation.

(2) In determining the quality of the plan of operation, the Secretary considers the following factors:

(i) The adequacy of the plan of operation to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, and timelines for accomplishing project tasks (2 points).

(ii) The adequacy of the plan of operation to provide for using resources, equipment, and personnel to achieve each objective (2 points).

(h) *Collaboration* (2 points total).

(1) The Secretary considers the quality of collaboration.

(2) In determining the quality of collaboration, the Secretary considers the following factors:

(i) The extent to which the applicant's proposed collaboration with one or more agencies, organizations, or institutions is likely to be effective in achieving the relevant proposed activities of the project (1 point).

(ii) The extent to which agencies, organizations, or institutions demonstrate a commitment to collaborate with the applicant (1 point).

(i) *Adequacy and reasonableness of the budget* (3 points total).

(1) The Secretary considers the adequacy and the reasonableness of the proposed budget.

(2) In determining the adequacy and the reasonableness of the proposed budget, the Secretary considers the following factors:

(i) The extent to which the costs are reasonable in relation to the proposed project activities (1 point).

(ii) The extent to which the budget for the project, including any subcontracts, is adequately justified to support the proposed project activities (2 points).

(j) *Plan of evaluation* (7 points total).

(1) The Secretary considers the quality of the plan of evaluation.

(2) In determining the quality of the plan of evaluation, the Secretary considers the following factors:

(i) The extent to which the plan of evaluation provides for periodic assessment of progress toward—

(A) Implementing the plan of operation (1 point); and

(B) Achieving the project's intended outcomes and expected impacts (1 point).

(ii) The extent to which the plan of evaluation will be used to improve the performance of the project through the feedback generated by its periodic assessments (1 point).

(iii) The extent to which the plan of evaluation provides for periodic assessment of a project's progress that is based on identified performance measures that—

(A) Are clearly related to the intended outcomes of the project and expected impacts on the target population (2 points); and

(B) Are objective, and quantifiable or qualitative, as appropriate (2 points).

(k) *Project staff* (9 points total).

(1) The Secretary considers the quality of the project staff.

(2) In determining the quality of the project staff, the Secretary considers the extent to which the applicant encourages applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability (1 point).

(3) In addition, the Secretary considers the following factors:

(1) The extent to which the key personnel and other key staff have appropriate training and experience in disciplines required to conduct all proposed activities (2 points).

(ii) The extent to which the commitment of staff time is adequate to accomplish all the proposed activities of the project (2 points).

(iii) The extent to which the key personnel are knowledgeable about the methodology and literature of pertinent subject areas (2 points).

(iv) The extent to which the project staff includes outstanding scientists in the field (2 points).

(l) *Adequacy and accessibility of resources* (4 points).

(1) The Secretary considers the adequacy and accessibility of the applicant's resources to implement the proposed project.

(2) In determining the adequacy and accessibility of resources, the Secretary the following factors:

(i) The extent to which the applicant is committed to provide adequate facilities, equipment, other resources, including administrative support, and laboratories, if appropriate (1 point).

(ii) The extent to which the applicant has appropriate access to clinical populations and organizations representing individuals with disabilities to support advanced clinical rehabilitation research (2 points).

(iii) The extent to which the facilities, equipment, and other resources are appropriately accessible to individuals with disabilities who may use the facilities, equipment, and other resources of the project (1 point).

Instructions for Application Narrative

The Secretary will reject without consideration or evaluation any application that proposes a project funding level that exceeds the stated maximum award amount per year (See 34 CFR 75.104(b)).

The Secretary strongly recommends the following:

(1) a one-page abstract;

(2) an Application Narrative (i.e., Part III that addresses the selection criteria that will be used by reviewers in evaluating individual proposals) of no more than *125 pages for RRTC applications* and *75 pages for Project applications*, double-spaced (no more than 3 lines per vertical inch) 8½" x 11" pages (on one side only) with one-inch margins (top, bottom, and sides). The application narrative page limit recommendation does not apply to: Part I—the electronically scannable form; Part II—the budget section (including the narrative budget justification); and Part IV—the assurances and certifications; and

(3) a font no smaller than a 12-point font and an average character density no greater than 14 characters per inch.

Instructions for Transmittal of Applications

(a) If an applicant wants to apply for a grant, the applicant must—

(1) Mail the original and two copies of the application on or before the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA/[Applicant must insert number and letter]), Washington, D.C. 20202–4725, or

(2) Hand deliver the original and two copies of the application by 4:30 p.m. [Washington, D.C. time] on or before the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA # [Applicant must insert number and letter]), Room #3633, Regional Office Building #3, 7th and D Streets, S.W., Washington, D.C.

(b) An applicant must show one of the following as proof of mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary.

(c) If an application is mailed through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

Notes: (1) The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

(2) An applicant wishing to know that its application has been received by the Department must include with the application a stamped self-addressed postcard containing the CFDA number and title of this program.

(3) The applicant must indicate on the envelope and—if not provided by the Department—in Item 10 of the Application for Federal Assistance (Standard Form 424) the CFDA number—and letter, if any—of the competition under which the application is being submitted.

Application Forms and Instructions

The appendix to this application is divided into four parts. These parts are organized in the same manner that the submitted application should be organized. These parts are as follows:

Part I: Application for Federal Assistance (Standard Form 424 (Rev. 4–88)) and instructions.

Part II: Budget Form—Non-Construction Programs (Standard Form 524A) and instructions.

Part III: Application Narrative.

Additional Materials

Estimated Public Reporting Burden.

Assurances—Non-Construction Programs (Standard Form 424B).

Certification Regarding Lobbying, Debarment, Suspension, and Other Responsibility Matters: and Drug-Free Work-Place Requirements (ED Form 80–0013).

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion: Lower Tier Covered Transactions (ED Form 80–0014) and instructions. (Note: ED Form GCS–014 is intended for the use of primary participants and should not be transmitted to the Department.)

Certification of Eligibility for Federal Assistance in Certain Programs (ED Form 80–0016).

Disclosure of Lobbying Activities (Standard Form LLL (if applicable) and instructions; and Disclosure Lobbying Activities Continuation Sheet (Standard Form LLL–A).

An applicant may submit information on a photostatic copy of the application and budget forms, the assurances, and the certifications. However, the application form, the assurances, and the certifications must each have an *original signature.* No grant may be awarded unless a completed application form has been received.

For Applications Contact: The Grants and Contracts Service Team (GCST), Department of Education, 400 Independence Avenue S.W., Switzer Building, 3317, Washington, D.C. 20202, or call (202) 205–8207. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–9860. The preferred method for requesting information is to FAX your request to (202) 205–8717.

Individuals with disabilities may obtain a copy of the application package in an alternate format by contacting the GCST. However, the Department is not able to reproduce in an alternate format the standard forms included in the application package.

FOR FURTHER INFORMATION CONTACT: Donna Nangle, U.S. Department of Education, 400 Maryland Avenue, S.W., room 3418, Switzer Building, Washington, D.C. 20202–2645. Telephone: (202) 205–5880. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–2742. Internet: Donna—Nangle@ed.gov

Individuals with disabilities may obtain this document in an alternate format(e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

Electronic Access to This Document

Anyone may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or portable document format (pdf) on the World Wide Web at either of the following sites:

http://ocfo.ed.gov/fedreg.htm
http://www.ed.gov/news.html

To use the pdf you must have the Adobe Acrobat Reader Program with Search, which is available free at either of the preceding sites. If you have questions about using the pdf, call the U.S. Government Printing Office toll free at 1–888–293–6498. Anyone may also view these documents in text copy only on an electronic bulletin board of the Department. Telephone: (202) 219–1511 or, toll free, 1–800–222–4922. The documents are located under Option G—Files/Announcements, Bulletins and Press Releases.

Note: The official version of this document is the document published in the **Federal Register**.

Program Authority: 29 U.S.C. 760–762.

Dated: April 13, 1999.

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

Appendix

Application Forms and Instructions

Applicants are advised to reproduce and complete the application forms in this Section. Applicants are required to submit an original and two copies of each application as provided in this Section. However, applicants are encouraged to submit an original and seven copies of each application in order to facilitate the peer review process and minimize copying errors.

Frequent Questions

1. Can I Get an Extension of the Due Date?

No! On rare occasions the Department of Education may extend a closing date for all applicants. If that occurs, a notice of the revised due date is published in the **Federal Register**. However, there are no extensions or exceptions to the due date made for individual applicants.

2. What Should Be Included in the Application?

The application should include a project narrative, vitae of key personnel, and a budget, as well as the Assurances forms included in this package. Vitae of staff or consultants should include the individual's title and role in the proposed project, and other information that is specifically pertinent to this proposed project. The budgets for both the first year and all subsequent project years should be included.

If collaboration with another organization is involved in the proposed activity, the application should include assurances of

participation by the other parties, including written agreements or assurances of cooperation. It is not useful to include general letters of support or endorsement in the application.

If the applicant proposes to use unique tests or other measurement instruments that are not widely known in the field, it would be helpful to include the instrument in the application.

Many applications contain voluminous appendices that are not helpful and in many cases cannot even be mailed to the reviewers. It is generally not helpful to include such things as brochures, general capability statements of collaborating organizations, maps, copies of publications, or descriptions of other projects completed by the applicant.

3. What Format Should Be Used for the Application?

NIDRR generally advises applicants that they may organize the application to follow the selection criteria that will be used. The specific review criteria vary according to the specific program, and are contained in this Consolidated Application Package.

4. May I Submit Applications to More Than One NIDRR Program Competition or More Than One Application to a Program?

Yes, you may submit applications to any program for which they are responsive to the program requirements. You may submit the same application to as many competitions as you believe appropriate. You may also submit more than one application in any given competition.

5. What Is the Allowable Indirect Cost Rate?

The limits on indirect costs vary according to the program and the type of application.

An applicant for an RRTC is limited to an indirect rate of 15%.

An applicant for a Disability and Rehabilitation Research Project should limit indirect charges to the organization's approved indirect cost rate. If the organization does not have an approved indirect cost rate, the application should include an estimated actual rate.

6. Can Profitmaking Businesses Apply for Grants?

Yes. However, for-profit organizations will not be able to collect a fee or profit on the grant, and in some programs will be required to share in the costs of the project.

7. Can Individuals Apply for Grants?

No. Only organizations are eligible to apply for *grants* under NIDRR programs. However, individuals are the only entities eligible to apply for fellowships.

8. Can NIDRR Staff Advise Me Whether My Project Is of Interest to NIDRR or Likely To Be Funded?

No. NIDRR staff can advise you of the requirements of the program in which you propose to submit your application. However, staff cannot advise you of whether your subject area or proposed approach is likely to receive approval.

9. How Do I Assure That My Application Will Be Referred to the Most Appropriate Panel for Review?

Applicants should be sure that their applications are referred to the correct competition by clearly including the competition title and CFDA number, including alphabetical code, on the Standard Form 424, and including a project title that describes the project.

10. How Soon After Submitting My Application Can I Find Out If It Will Be Funded?

The time from closing date to grant award date varies from program to program. Generally speaking, NIDRR endeavors to have awards made within five to six months of the closing date. Unsuccessful applicants generally will be notified within that time frame as well. For the purpose of estimating a project start date, the applicant should estimate approximately six months from the closing date, but no later than the following September 30.

11. Can I Call NIDRR To Find Out If My Application Is Being Funded?

No. When NIDRR is able to release information on the status of grant applications, it will notify applicants by letter. The results of the peer review cannot be released except through this formal notification.

12. If My Application Is Successful, Can I Assume I Will Get the Requested Budget Amount in Subsequent Years?

No. Funding in subsequent years is subject to availability of funds and project performance.

13. Will All Approved Applications Be Funded?

No. It often happens that the peer review panels approve for funding more applications than NIDRR can fund within available resources. Applicants who are approved but not funded are encouraged to consider submitting similar applications in future competitions.

BILLING CODE 4000–01–P

Application for Federal Education Assistance

Note: If available, please provide application package on diskette and specify the file format.

U.S. Department of Education

Form Approved OMB No. 1875-0106 Exp. 06/30/2001

Applicant Information

1. Name and Address

Legal Name: _____

Address: _____

Organizational Unit

_____

City _____ State _____ County _____ ZIP Code + 4 _____

2. Applicant's D-U-N-S Number

3. Catalog of Federal Domestic Assistance #: 8 4 ____ → Title: _____

4. Project Director: _____

Address: _____

City _____ State _____ ZIP Code + 4 _____

Tel. #: ( ) _____ Fax #: ( ) _____

E-Mail Address: _____

5. Is the applicant delinquent on any Federal debt? ☐ Yes ☐ No

(If "Yes," attach an explanation.)

6. Type of Applicant *(Enter appropriate letter in the box.)*

A State	H Independent School District
B County	I Public College or University
C Municipal	J Private, Non-Profit College or University
D Township	K Indian Tribe
E Interstate	L Individual
F Intermunicipal	M Private, Profit-Making Organization
G Special District	N Other *(Specify)*: _____

7. Novice Applicant ☐ Yes ☐ No

Application Information

8. Type of Submission:

—PreApplication	*—Application*
☐ Construction	☐ Construction
☐ Non-Construction	☐ Non-Construction

9. Is application subject to review by Executive Order 12372 process?

☐ Yes *(Date made available to the Executive Order 12372 process for review):* ___/___/_____

☐ No *(If "No," check appropriate box below.)*

☐ Program is not covered by E.O. 12372.

☐ Program has not been selected by State for review.

10. Proposed Project Dates:

Start Date:	End Date:
___/___/_____	___/___/_____

11. Are any research activities involving human subjects planned at any time during the proposed project period? ☐ Yes ☐ No

a. If "Yes," Exemption(s) #: _____ *OR* b. Assurance of Compliance #: _____

c. IRB approval date: _____ ☐ Full IRB or ☐ Expedited Review

12. Descriptive Title of Applicant's Project:

Estimated Funding

13a. Federal	$	.00
b. Applicant	$	.00
c. State	$	.00
d. Local	$	.00
e. Other	$	.00
f. Program Income	$	.00
g. TOTAL	$	.00

Authorized Representative Information

14. To the best of my knowledge and belief, all data in this preapplication/application are true and correct. The document has been duly authorized by the governing body of the applicant and the applicant will comply with the attached assurances if the assistance is awarded.

a. Typed Name of Authorized Representative

b. Title

c. Tel. #: ( ) _____ Fax #: ( ) _____

d. E-Mail Address:

e. Signature of Authorized Representative — Date: ___/___/_____

REV. 1/12/99

ED 424

Instructions for ED 424

1. **Legal Name and Address.** Enter the legal name of applicant and the name of the primary organizational unit which will undertake the assistance activity.

2. **D-U-N-S Number.** Enter the applicant's D-U-N-S Number. If your organization does not have a D-U-N-S Number, you can obtain the number by calling 1-800-333-0505 or by completing a D-U-N-S Number Request Form. The form can be obtained via the Internet at the following URL: **http://www.dnb.com/dbis/aboutdb/intldunn.htm.**

3. **Catalog of Federal Domestic Assistance (CFDA) Number.** Enter the CFDA number and title of the program under which assistance is requested.

4. **Project Director.** Name, address, telephone and fax numbers, and e-mail address of the person to be contacted on matters involving this application.

5. **Federal Debt Delinquency.** Check **"Yes"** if the applicant's organization is delinquent on any Federal debt. (This question refers to the applicant's organization and not to the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.) Otherwise, check "No."

6. **Type of Applicant.** Enter the appropriate letter in the box provided.

7. **Novice Applicant.** Check **"Yes"** only if assistance is being requested under a program that gives special consideration to novice applicants and you meet the program requirements for novice applicants. By checking "Yes" the applicant certifies that it meets the novice applicant requirements specified by ED. Otherwise, check "No."

8. **Type of Submission.** Self-explanatory.

9. **Executive Order 12372.** Check **"Yes"** if the application is subject to review by Executive Order 12372. Also, please enter the month, date, and four (4) digit year (e.g., 12/12/2000). Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process. Otherwise, check "No."

10. **Proposed Project Dates.** Please enter the month, date, and four (4) digit year (e.g., 12/12/2000).

11. **Human Subjects.** Check "Yes" or "No". If research activities involving human subjects are **not** planned **at any time** during the proposed project period, check "No." **The remaining parts of item 11 are then not applicable.**

    If research activities involving human subjects, whether or not exempt from Federal regulations for the protection of human subjects, **are** planned **at any time** during the proposed project period, either at the applicant organization or at any other performance site or collaborating institution, check **"Yes."** If **all** the research activities are designated to be exempt under the regulations, enter, in item 11a, the exemption number(s) corresponding to one or more of the six exemption categories listed in **"Protection of Human Subjects in Research"** attached to this form. Provide sufficient information in the application to allow a determination that the designated exemptions in item 11a, are appropriate. **Provide this narrative information in an "Item 11/Protection of Human Subjects Attachment" and insert this attachment immediately following the ED 424 face page. Skip the remaining parts of item 11.**

    If **some or all** of the planned research activities involving human subjects are covered (nonexempt), skip item 11a and continue with the remaining parts of item 11, as noted below. In addition, follow the instructions in **"Protection of Human Subjects in Research"** attached to this form to prepare the six-point narrative about the nonexempt activities. **Provide this six-point narrative in an "Item 11/Protection of Human Subjects Attachment" and insert this attachment immediately following the ED 424 face page.**

    If the applicant organization has an approved Multiple Project Assurance of Compliance on file with the Grants Policy and Oversight Staff (GPOS), U.S. Department of Education, or with the Office for Protection from Research Risks (OPRR), National Institutes of Health, U.S. Department of Health and Human Services, that covers the specific activity, enter the Assurance number in item 11b and the date of approval by the Institutional Review Board (IRB) of the proposed activities in item 11c. This date must be no earlier than one year before the receipt date for which the application is submitted and must include the four (4) digit year (e.g., 2000). Check the type of IRB review in the appropriate box. An IRB may use the expedited review procedure if it complies with the requirements of 34 CFR 97.110. If the IRB review is delayed beyond the submission of the application, enter **"Pending"** in item 11c. If your application is recommended/selected for funding, a follow-up certification of IRB approval from an official signing for the applicant organization must be sent to and received by the designated ED official within 30 days after a specific formal request from the designated ED official. **If the applicant organization does not have** on file with GPOS or OPRR **an approved Assurance of Compliance** that covers the proposed research activity, enter **"None"** in item 11b and skip 11c. In this case, the applicant organization, by the signature on the application, is declaring that it will comply with 34 CFR 97 within 30 days after a specific formal request from the designated ED official for the Assurance(s) and IRB certifications.

12. **Project Title.** Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

13. **Estimated Funding.** Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate **only** the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 13.

14. **Certification.** To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office.

    Be sure to enter the telephone and fax number and e-mail address of the authorized representative. Also, in item 14e, please enter the month, date, and four (4) digit year (e.g., 12/12/2000) in the date signed field.

Paperwork Burden Statement

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless such collection displays a valid OMB control number. The valid OMB control number for this information collection is **1875-0106**. The time required to complete this information collection is estimated to average between 15 and 45 minutes per response, including the time to review instructions, search existing data resources, gather the data needed, and complete and review the information collection. **If you have any comments concerning the accuracy of the estimate(s) or suggestions for improving this form, please write to:** U.S. Department of Education, Washington, D.C. 20202-4651. **If you have comments or concerns regarding the status of your individual submission of this form write directly to:** Joyce I. Mays, Application Control Center, U.S. Department of Education, 7th and D Streets, S.W. ROB-3, Room 3633, Washington, D.C. 20202-4725.

PROTECTION OF HUMAN SUBJECTS IN RESEARCH
(Attachment to ED 424)

I. Instructions to Applicants about the Narrative Information that Must be Provided if Research Activities Involving Human Subjects are Planned

If you marked item 11 on the application "Yes" and designated exemptions in 11a, **(all research activities are exempt)**, provide sufficient information in the application to allow a determination that the designated exemptions are appropriate. Research involving human subjects that is exempt from the regulations is discussed under **II.B. "Exemptions,"** below. The Narrative must be succinct. **Provide this information in an "Item 11/Protection of Human Subjects Attachment" and insert this attachment immediately following the ED 424 face page.**

If you marked "Yes" to item 11 on the face page, and designated no exemptions from the regulations **(some or all of the research activities are nonexempt)**, address the following six points for each nonexempt activity. In addition, if research involving human subjects will take place at collaborating site(s) or other performance site(s), provide this information before discussing the six points. Although no specific page limitation applies to this section of the application, be succinct. Provide the six-point narrative and discussion of other performance sites in an **"Item 11/Protection of Human Subjects Attachment" and insert this attachment immediately following the ED 424 face page.**

(1) Provide a detailed description of the proposed involvement of human subjects. Describe the characteristics of the subject population, including their anticipated number, age range, and health status. Identify the criteria for inclusion or exclusion of any subpopulation. Explain the rationale for the involvement of special classes of subjects, such as children, children with disabilities, adults with disabilities, persons with mental disabilities, pregnant women, prisoners, institutionalized individuals, or others who are likely to be vulnerable.

(2) Identify the sources of research material obtained from individually identifiable living human subjects in the form of specimens, records, or data. Indicate whether the material or data will be obtained specifically for research purposes or whether use will be made of existing specimens, records, or data.

(3) Describe plans for the recruitment of subjects and the consent procedures to be followed. Include the circumstances under which consent will be sought and obtained, who will seek it, the nature of the information to be provided to prospective subjects, and the method of documenting consent. State if the Institutional Review Board (IRB) has authorized a modification or waiver of the elements of consent or the requirement for documentation of consent.

(4) Describe potential risks (physical, psychological, social, legal, or other) and assess their likelihood and seriousness. Where appropriate, describe alternative treatments and procedures that might be advantageous to the subjects.

(5) Describe the procedures for protecting against or minimizing potential risks, including risks to confidentiality, and assess their likely effectiveness. Where appropriate, discuss provisions for ensuring necessary medical or professional intervention in the event of adverse effects to the subjects. Also, where appropriate, describe the provisions for monitoring the data collected to ensure the safety of the subjects.

(6) Discuss why the risks to subjects are reasonable in relation to the anticipated benefits to subjects and in relation to the importance of the knowledge that may reasonably be expected to result.

II. Information on Research Activities Involving Human Subjects

A. Definitions.

A research activity involves human subjects if the activity is research, as defined in the Department's regulations, and the research activity will involve use of human subjects, as defined in the regulations.

—Is it a research activity?

The ED Regulations for the Protection of Human Subjects, Title 34, Code of Federal Regulations, Part 97, define research as "a systematic investigation, including research development, testing and evaluation, designed to develop or contribute to generalizable knowledge." *If an activity follows a deliberate plan whose purpose is to develop or contribute to generalizable knowledge, such as an exploratory study or the collection of data to test a hypothesis, it is research.* Activities which meet this definition constitute research whether or not they are conducted or supported under a program which is considered research for other purposes. For example, some demonstration and service programs may include research activities.

—Is it a human subject?

The regulations define human subject as "a living individual about whom an investigator (whether professional or student) conducting research obtains (1) data through intervention or interaction with the individual, or (2) identifiable private information." *(1) If an activity involves obtaining information about a living person by manipulating that person or that person's environment, as might occur when a new instructional technique is tested, or by communicating or interacting with the individual, as occurs with surveys and interviews, the definition of human subject is met. (2) If an activity involves obtaining private information about a living person in such a way that the information can be linked to that individual (the identity of the subject is or may be readily determined by the investigator or associated with the information), the definition of human subject is met.* [Private information includes information about behavior that occurs in a context in which an individual can reasonably expect that no observation or recording is taking place, and information which has been provided for specific purposes by an individual and which the individual can reasonably expect will not be made public (for example, a school health record).]

B. Exemptions.

Research activities in which the only involvement of human subjects will be in one or more of the following six categories of *exemptions* are not covered by the regulations:

(1) Research conducted in established or commonly accepted educational settings, involving normal educational practices, such as (a) research on regular and special education instructional strategies, or (b) research on the effectiveness of or the comparison among instructional techniques, curricula, or classroom management methods.

(2) Research involving the use of educational tests (cognitive, diagnostic, aptitude, achievement), survey procedures, interview procedures or observation of public behavior, unless: (a) information obtained is recorded in such a manner that human subjects can be identified, directly or through identifiers linked to the subjects; and (b) any disclosure of the human subjects' responses outside the research could reasonably place the subjects at risk of criminal or civil liability or be damaging to the subjects' financial standing, employability, or reputation. *If the subjects are children, this exemption applies only to research involving educational tests or observations of public behavior when the investigator(s) do not participate in the activities being observed.* [Children are defined as persons who have not attained the legal age for consent to treatments or procedures involved in the research, under the applicable law or jurisdiction in which the research will be conducted.]

(3) Research involving the use of educational tests (cognitive, diagnostic, aptitude, achievement), survey procedures, interview procedures or observation of public behavior that is not exempt under section (2) above, if the human subjects are elected or appointed public officials or candidates for public office; or federal statute(s) require(s) without exception that the confidentiality of the personally identifiable information will be maintained throughout the research and thereafter.

(4) Research involving the collection or study of existing data, documents, records, pathological specimens, or diagnostic specimens, if these sources are publicly available or if the information is recorded by the investigator in a manner that subjects cannot be identified, directly or through identifiers linked to the subjects.

(5) Research and demonstration projects which are conducted by or subject to the approval of department or agency heads, and which are designed to study, evaluate, or otherwise examine: (a) public benefit or service programs; (b) procedures for obtaining benefits or services under those programs; (c) possible changes in or alternatives to those programs or procedures; or (d) possible changes in methods or levels of payment for benefits or services under those programs.

(6) Taste and food quality evaluation and consumer acceptance studies, (a) if wholesome foods without additives are consumed or (b) if a food is consumed that contains a food ingredient at or below the level and for a use found to be safe, or agricultural chemical or environmental contaminant at or below the level found to be safe, by the Food and Drug Administration or approved by the Environmental Protection Agency or the Food Safety and Inspection Service of the U.S Department of Agriculture.

Copies of the Department of Education's Regulations for the Protection of Human Subjects, 34 CFR Part 97 and other pertinent materials on the protection of human subjects in research are available from the Grants Policy and Oversight Staff (GPOS) Office of the Chief Financial and Chief Information Officer, U.S. Department of Education, Washington, D.C., telephone: (202) 708-8263, and on the U.S. Department of Education's Protection of Human Subjects in Research Web Site at http://ocfo.ed.gov/humansub.htm.

OMB Approval No. 0348-0040

ASSURANCES - NON-CONSTRUCTION PROGRAMS

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0040), Washington, DC 20503

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project cost) to ensure proper planning, management, and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§4728-4763) relating to prescribed standards for merit systems for programs funded under one of the 19 statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. §794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§ 290 dd-3 and 290 ee 3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply, as applicable, with the provisions of the Hatch Act (5 U.S.C. §§1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

Previous Edition Usable

Authorized for Local Reproduction

Standard Form 424B (Rev. 7-97)
Prescribed by OMB Circular A-102

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§276a to 276a-7), the Copeland Act (40 U.S.C. §276c and 18 U.S.C. §§874) and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally assisted construction subagreements.

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. §§7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§1721 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. §470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. §§469a-1 et seq.).

14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. §§2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§4801 et seq.) which prohibits the use of lead-based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act Amendments of 1996 and OMB Circular No. A-133, "Audits of States, Local Governments, and Non-Profit Organizations."

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE
APPLICANT ORGANIZATION	DATE SUBMITTED

Standard Form 424B (Rev. 7-97) Back

U.S. DEPARTMENT OF EDUCATION BUDGET INFORMATION NON-CONSTRUCTION PROGRAMS	OMB Control No. 1880--0538 Expiration Date: 10/31/99
Name of Institution/Organization	Applicants requesting funding for only one year should complete the column under "Project Year 1." Applicants requesting funding for multi-year grants should complete all applicable columns. Please read all instructions before completing form.

SECTION A - BUDGET SUMMARY
U.S. DEPARTMENT OF EDUCATION FUNDS

Budget Categories	Project Year 1 (a)	Project Year 2 (b)	Project Year 3 (c)	Project Year 4 (d)	Project Year 5 (e)	Total (f)
1. Personnel						
2. Fringe Benefits						
3. Travel						
4. Equipment						
5. Supplies						
6. Contractual						
7. Construction						
8. Other						
9. Total Direct Costs (lines 1-8)						
10. Indirect Costs						
11. Training Stipends						
12. Total Costs (lines 9-11)						

ED FORM NO. 524

Name of Institution/Organization	Applicants requesting funding for only one year should complete the column under "Project Year 1." Applicants requesting funding for multi-year grants should complete all applicable columns. Please read all instructions before completing form.

SECTION B - BUDGET SUMMARY
NON-FEDERAL FUNDS

Budget Categories	Project Year 1 (a)	Project Year 2 (b)	Project Year 3 (c)	Project Year 4 (d)	Project Year 5 (e)	Total (f)
1. Personnel						
2. Fringe Benefits						
3. Travel						
4. Equipment						
5. Supplies						
6. Contractual						
7. Construction						
8. Other						
9. Total Direct Costs (lines 1-8)						
10. Indirect Costs						
11. Training Stipends						
12. Total Costs (lines 9-11)						

SECTION C - OTHER BUDGET INFORMATION (see instructions)

ED FORM NO. 524

Public reporting burden for this collection of information is estimated to vary from 13 to 22 hours per response, with an average of 17.5 hours per response, including the time reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the U.S. Department of Education, Information Management and Compliance Division, Washington, D.C. 20202-4651; and the Office of Management and Budget, Paperwork Reduction Project 1875-0102, Washington DC 20503.

INSTRUCTIONS FOR ED FORM 524

General Instructions

This form is used to apply to individual U.S. Department of Education discretionary grant programs. Unless directed otherwise, provide the same budget information for each year of the multi-year funding request. Pay attention to applicable program specific instructions, if attached.

Section A - Budget Summary U.S. Department of Education Funds

All applicants must complete Section A and provide a breakdown by the applicable budget categories shown in lines 1-11.

Lines 1-11, columns (a)-(e): For each project year for which funding is requested, show the total amount requested for each applicable budget category.

Lines 1-11, column (f): Show the multi-year total for each budget category. If funding is requested for only one project year, leave this column blank.

Line 12, columns (a)-(e): Show the total budget request for each project year for which funding is requested.

Line 12, column (f): Show the total amount requested for all project years. If funding is requested for only one year, leave this space blank.

Section B - Budget Summary Non-Federal Funds

If you are required to provide or volunteer to provide matching funds or other non-Federal resources to the project, these should be shown for each applicable budget category on lines 1-11 of Section B.

Lines 1-11, columns (a)-(e): For each project year for which matching funds or other contributions are provided, show the total contribution for each applicable budget category.

Lines 1-11, column (f): Show the multi-year total for each budget category. If non-Federal contributions are provided for only one year, leave this column blank.

Line 12, columns (a)-(e): Show the total matching or other contribution for each project year.

Line 12, column (f): Show the total amount to be contributed for all years of the multi-year project. If non-Federal contributions are provided for only one year, leave this space blank.

Section C - Other Budget Information Pay attention to applicable program specific instructions, if attached.

1. Provide an itemized budget breakdown, by project year, for each budget category listed in Sections A and B.
2. If applicable to this program, enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period. In addition, enter the estimated amount of the base to which the rate is applied, and the total indirect expense.
3. If applicable to this program, provide the rate and base on which fringe benefits are calculated.
4. Provide other explanations or comments you deem necessary.

CERTIFICATIONS REGARDING LOBBYING; DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS; AND DRUG-FREE WORKPLACE REQUIREMENTS

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of this form provides for compliance with certification requirements under 34 CFR Part 82, "New Restrictions on Lobbying," and 34 CFR Part 85, "Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)." The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Education determines to award the covered transaction, grant, or cooperative agreement.

1. LOBBYING

As required by Section 1352, Title 31 of the U.S. Code, and implemented at 34 CFR Part 82, for persons entering into a grant or cooperative agreement over $100,000, as defined at 34 CFR Part 82, Sections 82.105 and 82.110, the applicant certifies that:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement;

(b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;

(c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, contracts under grants and cooperative agreements, and subcontracts) and that all subrecipients shall certify and disclose accordingly.

2. DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

As required by Executive Order 12549, Debarment and Suspension, and implemented at 34 CFR Part 85, for prospective participants in primary covered transactions, as defined at 34 CFR Part 85, Sections 85.105 and 85.110--

A. The applicant certifies that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this application been convicted of or had a civil judgement rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application had one or more public transaction (Federal, State, or local) terminated for cause or default; and

B. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

3. DRUG-FREE WORKPLACE (GRANTEES OTHER THAN INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 -

A. The applicant certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an on-going drug-free awareness program to inform employees about-

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will-

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency, in writing, within 10 calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such

conviction. Employers of convicted employees must provide notice, including position title, to: Director, Grants Policy and Oversight Staff, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3652, GSA Regional Office Building No. 3), Washington, DC 20202-4248. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted-

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

B. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address. city, county, state, zip code)

_____

_____

_____

Check [ ] if there are workplaces on file that are not identified here.

DRUG-FREE WORKPLACE
(GRANTEES WHO ARE INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610-

A. As a condition of the grant, I certify that I will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant; and

B. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, I will report the conviction, in writing, within 10 calendar days of the conviction, to: Director, Grants Policy and Oversight Staff, Department of Education, 400 Maryland Avenue, S.W. (Room 3652, GSA Regional Office Building No. 3), Washington, DC 20202-4248. Notice shall include the identification number(s) of each affected grant.

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above certifications.

NAME OF APPLICANT	PR/AWARD NUMBER AND / OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0013

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered Transactions

This certification is required by the Department of Education regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, for all lower tier transactions meeting the threshold and tier requirements stated at Section 85.110.

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," " person," "primary covered transaction," " principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion-Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may but is not required to, check the Nonprocurement List.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0014, 9/90 (Replaces GCS-009 (REV.12/88), which is obsolete)

Certification of Eligibility for Federal Assistance in Certain Programs

I understand that 34 CFR 75.60, 75.61, and 75.62 require that I make specific certifications of eligibility to the U.S. Department of Education as a condition of applying for Federal funds in certain programs and that these requirements are in addition to any other eligibility requirements that the U.S. Department of Education imposes under program regulations. Under 34 CFR 75.60 – 75.62:

I. I certify that

A. I do not owe a debt, or I am current in repaying a debt, or I am not in default (as that term is used at 34 CFR Part 668) on a debt:

1. To the Federal Government under a nonprocurement transaction (e.g., a previous loan, scholarship, grant, or cooperative agreement); or

2. For a fellowship, scholarship, stipend, discretionary grant, or loan in any program of the U.S. Department of Education that is subject to 34 CFR 75.60, 75.61, and 75.62, including:

- Federal Pell Grant Program (20 U.S.C. 1070a, et seq.);
- Federal Supplemental Educational Opportunity Grant (SEOG) Program (20 U.S.C. 1070(b), et seq.):
- State Student Incentive Grant Program (SSIG) 20 U.S.C. 1070c, et seq.);
- Federal Perkins Loan Program (20 U.S.C. 1087aa, et seq.);
- Income Contingent Direct Loan Demonstration Project (20 U.S.C. 1087a, note);
- Federal Stafford Loan Program, Federal Supplemental Loans for Students [SLS], Federal PLUS, or Federal Consolidation Loan Program (20 U.S.C. 1071, et seq.);
- Cuban Student Loan Program (20 U.S.C. 2601, et seq.);
- Robert C. Byrd Honors Scholarship Program (20 U.S.C. 1070d-31, et seq.);
- Jacob K. Javits Fellows Program (20 U.S.C. 1134h-1134l);
- Patricia Roberts Harris Fellowship Program (20 U.S.C. 1134d-1134g);
- Christa McAuliffe Fellowship Program (20 U.S.C. 1105-1105i);
- Bilingual Education Fellowship Program (20 U.S.C. 3221-3262);
- Rehabilitation Long-Term Training Program (29 U.S.C. 774(b));
- Paul Douglas Teacher Scholarship Program (20 U.S.C. 1104, et seq.);
- Law Enforcement Education Program (42 U.S.C. 3775);
- Indian Fellowship Program (29 U.S.C. 774(b));

OR

B. I have made arrangements satisfactory to the U.S. Department of Education to repay a debt as described in A.1. or A.2. (above) on which I had not been current in repaying or on which I was in default (as that term is used in 34 CFR Part 668).

II. I certify also that I have not been declared by a judge, as a condition of sentencing under section 5301 of the Anti-Drug Abuse Act of 1988 (21 U.S.C. 862), ineligible to receive Federal assistance for the period of this requested funding.

I understand that providing a false certification to any of the statements above makes me liable for repayment to the U.S. Department of Education for funds received on the basis of this certification, for civil penalties, and for criminal prosecution under 18 U.S.C. 1001.

_____ _____

(Signature) (Date)

_____

(Typed or Printed Name)

Name or number of the USDE program under which this certification is being made: _____

ED 80-0016 (9/92)

OMB Control No. 1801-0004 (Exp. 8/31/2001)

NOTICE TO ALL APPLICANTS

The purpose of this enclosure is to inform you about a new provision in the Department of Education's General Education Provisions Act (GEPA) that applies to applicants for new grant awards under Department programs. This provision is Section 427 of GEPA, enacted as part of the Improving America's Schools Act of 1994 (Pub. L. 103-382).

To Whom Does This Provision Apply?

Section 427 of GEPA affects applicants for new grant awards under this program. **ALL APPLICANTS FOR NEW AWARDS MUST INCLUDE INFORMATION IN THEIR APPLICATIONS TO ADDRESS THIS NEW PROVISION IN ORDER TO RECEIVE FUNDING UNDER THIS PROGRAM.**

(If this program is a State-formula grant program, a State needs to provide this description only for projects or activities that it carries out with funds reserved for State-level uses. In addition, local school districts or other eligible applicants that apply to the State for funding need to provide this description in their applications to the State for funding. The State would be responsible for ensuring that the school district or other local entity has submitted a sufficient section 427 statement as described below.)

What Does This Provision Require?

Section 427 requires each applicant for funds (other than an individual person) to include in its application a description of the steps the applicant proposes to take to ensure equitable access to, and participation in, its Federally-assisted program for students, teachers, and other program beneficiaries with special needs. This provision allows applicants discretion in developing the required description. The statute highlights six types of barriers that can impede equitable access or participation: gender, race, national origin, color, disability, or age. Based on local circumstances, you should determine whether these or other barriers may prevent your students, teachers, etc. from such access or participation in, the Federally-funded project or activity. The description in your application of steps to be taken to overcome these barriers need not be lengthy; you may provide a clear and succinct description of how you plan to address those barriers that are applicable to your circumstances. In addition, the information may be provided in a single narrative, or, if appropriate, may be discussed in connection with related topics in the application.

Section 427 is not intended to duplicate the requirements of civil rights statutes, but rather to ensure that, in designing their projects, applicants for Federal funds address equity concerns that may affect the ability of certain potential beneficiaries to fully participate in the project and to achieve to high standards. Consistent with program requirements and its approved application, an applicant may use the Federal funds awarded to it to eliminate barriers it identifies.

What are Examples of How an Applicant Might Satisfy the Requirement of This Provision?

The following examples may help illustrate how an applicant may comply with Section 427.

(1) An applicant that proposes to carry out an adult literacy project serving, among others, adults with limited English proficiency, might describe in its application how it intends to distribute a brochure about the proposed project to such potential participants in their native language.

(2) An applicant that proposes to develop instructional materials for classroom use might describe how it will make the materials available on audio tape or in braille for students who are blind.

(3) An applicant that proposes to carry out a model science program for secondary students and is concerned that girls may be less likely than boys to enroll in the course, might indicate how it intends to conduct "outreach" efforts to girls, to encourage their enrollment.

We recognize that many applicants may already be implementing effective steps to ensure equity of access and participation in their grant programs, and we appreciate your cooperation in responding to the requirements of this provision.

Estimated Burden Statement for GEPA Requirements

The time required to complete this information collection is estimated to vary from 1 to 3 hours per response, with an average of 1.5 hours, including the time to review instructions, search existing data resources, gather and maintain the data needed, and complete and review the information collection. **If you have any comments concerning the accuracy of the time estimate(s) or suggestions for improving this form, please write to:** U.S. Department of Education, Washington, DC 20202-4651.

Approved by OMB
0348-0046

Disclosure of Lobbying Activities

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure)

1. Type of Federal Action: a. contract ____ b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	**2. Status of Federal Action:** a. bid/offer/application ____ b. initial award c. post-award	**3. Report Type:** a. initial filing ____ b. material change **For material change only:** Year _____ quarter _____ Date of last report_____
4. Name and Address of Reporting Entity: ____ Prime ____ Subawardee Tier_____, if Known: **Congressional District, if known:**	**5. If Reporting Entity in No. 4 is Subawardee,** Enter Name and Address of Prime: **Congressional District, if known:**	
6. Federal Department/Agency:	**7. Federal Program Name/Description:** CFDA Number, *if applicable*: _____	
8. Federal Action Number, *if known:*	**9. Award Amount,** *if known:* **$**	
10. a. Name and Address of Lobbying Registrant *(if individual, last name, first name, MI):*	**b. Individuals Performing Services** *(including address if different from No. 10a)* *(last name, first name, MI):*	
11. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.	**Signature:** _____ **Print Name:**_____ **Title:**_____ **Telephone No.:** _____ **Date:** _____	
Federal Use Only	**Authorized for Local Reproduction** **Standard Form - LLL (Rev. 7-97)**	

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.

2. Identify the status of the covered Federal action.

3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.

4. Enter the full name, address, city, State and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.

5. If the organization filing the report in item 4 checks "Subawardee," then enter the full name, address, city, State and zip code of the prime Federal recipient. Include Congressional District, if known.

6. Enter the name of the federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.

7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.

8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitations for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Included prefixes, e.g., "RFP-DE-90-001."

9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.

10. (a) Enter the full name, address, city, State and zip code of the lobbying registrant under the Lobbying Disclosure Act of 1995 engaged by the reporting entity identified in item 4 to influence the covered Federal action.

    (b) Enter the full names of the individual(s) performing services, and include full address if different from 10(a). Enter Last Name, First Name, and Middle Initial (MI).

11. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

According to the Paperwork Reduction Act, as amended, no persons are required to respond to a collection of information unless it displays a valid OMB control Number. The valid OMB control number for this information collection is OMB No. 0348-0046. Public reporting burden for this collection of information is estimated to average 10 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, DC 20503

[FR Doc. 99–9618 Filed 4–15–99; 8:45 am]
BILLING CODE 4000–01–C

Reader Aids

Federal Register

Vol. 64, No. 73

Friday, April 16, 1999

CUSTOMER SERVICE AND INFORMATION

Federal Register/Code of Federal Regulations	
General Information, indexes and other finding aids	**202–523–5227**
Laws	**523–5227**
Presidential Documents	
Executive orders and proclamations	**523–5227**
The United States Government Manual	**523–5227**
Other Services	
Electronic and on-line services (voice)	**523–4534**
Privacy Act Compilation	**523–3187**
Public Laws Update Service (numbers, dates, etc.)	**523–6641**
TTY for the deaf-and-hard-of-hearing	**523–5229**

ELECTRONIC RESEARCH

World Wide Web

Full text of the daily Federal Register, CFR and other publications:

http://www.access.gpo.gov/nara

Federal Register information and research tools, including Public Inspection List, indexes, and links to GPO Access:

http://www.nara.gov/fedreg

E-mail

PENS (Public Law Electronic Notification Service) is an E-mail service that delivers information about recently enacted Public Laws. To subscribe, send E-mail to

listproc@lucky.fed.gov

with the text message:

subscribe publaws-l <firstname> <lastname>

Use listproc@lucky.fed.gov only to subscribe or unsubscribe to PENS. We cannot respond to specific inquiries at that address.

Reference questions. Send questions and comments about the Federal Register system to:

info@fedreg.nara.gov

The Federal Register staff cannot interpret specific documents or regulations.

FEDERAL REGISTER PAGES AND DATES, APRIL

15633–15914 1
15915–16332 2
16333–16600 5
16601–16796 6
16797–17078 7
17079–17270 8
17271–17500 9
17501–17940 12
17941–18322 13
18323–18550 14
18551–18796 15
18797–19016 16

CFR PARTS AFFECTED DURING APRIL

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
7177 17075
7178 17077
7179 17499
7180 17939
7181 18317
7182 18321

Executive Orders:
11223 (Amended by EO 13118) 16595
11269 (Amended by EO 13118) 16595
11958 (Amended by EO 13118) 16595
12163 (Amended by EO 13118) 16595
12188 (Amended by EO 13118) 16595
12260 (Amended by EO 13118) 16595
12293 (Amended by EO 13118) 16595
12301 (Amended by EO 13118) 16595
12599 (Amended by EO 13118) 16595
12703 (Amended by EO 13118) 16595
12884 (Amended by EO 13118) 16595
12981 (Amended by EO 13117) 16391
13116 16333
13117 16591
13118 16595
13119 18797

Administrative Orders:

Presidential Determinations:
No. 99-18 of March 25, 1999 16337
No. 99-19 of March 31, 1999 17081
No. 99-20 of March 31, 1999 17083
No. 99-21 of April 8, 1999 18551

Memorandums:
March 23, 1999 (Amended by EO 13118) 16595
March 31, 1999 17079

5 CFR

351 16797
532 ..... 15915, 17941
870 16601
890 15633
1200 15916
2411 18799

7 CFR

6 17501
254 17085
301 15916
760 17942
981 18800
1361 18323
1437 17271
1477 18553
1728 17219
1753 16602

Proposed Rules:
28 15937
340 16364
905 15634
944 15634
1000 16026
1001 16026
1002 16026
1004 16026
1005 16026
1006 16026
1007 16026
1012 16026
1013 16026
1030 16026
1032 16026
1033 16026
1036 16026
1040 16026
1044 16026
1046 16026
1049 16026
1050 16026
1064 16026
1065 16026
1068 16026
1076 16026
1079 16026
1106 16026
1124 16026
1126 16026
1131 16026
1134 16026
1135 16026
1137 16026
1138 16026
1139 16026
1220 18831
3418 18534

8 CFR

103 17943

Proposed Rules:
2 17128

9 CFR

1 15918
3 15918

Proposed Rules:
72 17573
93 16655
201 15938

10 CFR

2 ..... 15636, 15920

10.....15636
11.....15636
25.....15636
40.....17506
50.....17944, 17947
72.....17510
73.....17947
95.....15636

Proposed Rules:
30.....18833
40.....18833
70.....18833
170.....15876, 18835
171.....15876, 18835

12 CFR
213.....16612
226.....16614
330.....15653
611.....16617
620.....16617
790.....17085
935.....16618, 16788

Proposed Rules:
933.....16792
934.....16792
935.....16792
1750.....18084

13 CFR
115.....18324

Proposed Rules:
107.....18375
120.....15942
121.....15708

14 CFR
39 .....15657, 15659, 15661, 15669, 15920, 16339, 16621, 16624, 16625, 16801, 16803, 16805, 16808, 16810, 17086, 17512, 17514, 17522, 17524, 17947, 17949, 17951, 17954, 17956, 17950, 17961, 17962, 17964, 17966, 18324, 18802, 18804, 18806
71 .....15673, 15674, 15675, 15676, 15678, 15679, 16024, 16340, 16341, 16342, 16343, 16344, 17219, 17934, 18563
91.....15912
93.....17439
95.....18563
97 .....17277, 17526, 17528

Proposed Rules:
39 .....16364, 16366, 16656, 17130, 18382, 18384, 18386, 18835, 18840, 18842, 18845
65.....18302
71 .....15708, 16024, 16368, 16369, 16370, 16371, 17133, 17717, 17983, 17984, 18392, 18481, 18584
91.....17293, 18302
105.....18302
119.....16298, 18302
121.....16298, 18766
125.....18766
129.....16298
135 .....16298, 17293, 18766
145.....18766
183.....16298

15 CFR
738.....17968
740.....17968
742.....17968
748.....17968
762.....17968
774.....17968

16 CFR

Proposed Rules:
241.....18081
256.....18081

17 CFR
275.....15680
279.....15680

Proposed Rules:
1.....17439
230.....18481
240.....18393, 18481
270.....18481

18 CFR
1b.....17087
284.....17276
343.....17087
385.....17087

19 CFR
10.....16345
12.....17529
18.....16345
113.....16345
122.....18566
178.....16635, 16345
192.....16635

Proposed Rules:
19.....16865
146.....15873

20 CFR
404.....17100, 18566
416.....18566
652.....18662
660.....18662
661.....18662
662.....18662
663.....18662
664.....18662
665.....18662
666.....18662
667.....18662
668.....18662
669.....18662
670.....18662
671.....18662

21 CFR
26.....16347
201.....18571
330.....18571
331.....18571
341.....18571
346.....18571
355.....18571
358.....18571
369.....18571
510.....15683, 18571
520 .....15683, 15684, 18571, 18572
522 .....15683, 15685, 18573
556.....18573
558.....15683, 18574
701.....18571
874.....18327
882.....18327
890.....18329
900.....18331

Proposed Rules:
1.....15944
101.....15948, 17295
310.....17985
1308.....17298, 17299

22 CFR
Ch. II.....15685
Ch. VI.....15686
121.....17531
123.....17531
124.....17531
126.....17531
171.....18808
201.....17535
514.....17975, 17976

Proposed Rules:
514.....17988

23 CFR

Proposed Rules:
777.....16870

24 CFR
100.....16324
103.....18538

Proposed Rules:
990.....17301

25 CFR
291.....17535

Proposed Rules:
Ch. I.....18585
151.....17574

26 CFR
1.....15686, 15687
7.....15687
31.....15687
301.....16640, 17279
602 .....15687, 15688, 15873, 17279

Proposed Rules:
1.....16372

27 CFR
178.....17291

Proposed Rules:
4.....17588
5.....17588
7.....17588

28 CFR
16.....17977
504.....17270

Proposed Rules:
65.....17128

29 CFR
1926.....18809
4044.....18575

Proposed Rules:
1.....17442
5.....17442

30 CFR
920.....17978
935.....17980

Proposed Rules:
46.....18498, 18528
48.....18498
206.....15949, 17990
700.....18585
740.....18585
746.....18585
750.....18585
934.....18586
935.....18857

31 CFR
210.....17472

32 CFR
812.....17101
863.....17545

33 CFR
100 .....16348, 16812, 16813
117 .....16350, 16641, 17101, 18576
155.....18576
165 .....16348, 16641, 16642, 17439, 18577, 18810, 18814
334.....18580

Proposed Rules:
100.....18587
117.....17134
154.....17222
175.....15709
177.....15709
179.....15709
181.....15709
183.....15709

34 CFR
682.....18974

36 CFR

Proposed Rules:
1.....17293
2.....17293
3.....17293
4.....17293
5.....17293
6.....17293
7.....17293

39 CFR
111.....16814, 17102

40 CFR
52 .....15688, 15922, 17102, 17545, 17548, 17551, 17982, 18815, 18816, 18818, 18821
62.....17219
63 .....17460, 17555, 18824
81.....17551
90.....16526
180 .....16840, 16843, 16850, 16856, 17565, 18333, 18339, 18346, 18351, 18357, 18359, 18360, 18367, 18369
261.....16643
300.....15926, 16351

Proposed Rules:
52 .....15711, 15949, 16659, 17136, 17589, 17592, 17593, 17990, 18858, 18860, 18861, 18862
63.....17465, 18862
70.....16659
81.....17593, 18864
82.....16373
112.....17227
180.....16874
185.....16874
186.....16874

194.....18870
300.....17593

41 CFR

Ch. 301.....16352, 18581
60-250.....15690
60-999.....15690
302-11.....17105, 18659

43 CFR

Proposed Rules:
3100.....17598
3106.....17598
3130.....17598
3160.....17598

44 CFR

65.....17567, 17569
67.....17571

Proposed Rules:
67.....17598

45 CFR

260.....17720
261.....17720
262.....17720
263.....17720
264.....17720
265.....17720
283.....18484
1611.....17108, 18372

Proposed Rules:
1635.....16383
2522.....17302
2525.....17302
2526.....17302
2527.....17302
2528.....17302
2529.....17302

46 CFR

32.....18576

Proposed Rules:
10.....15709
15.....15709
24.....15709
25.....15709
26.....15709
28.....15709
70.....15709
169.....15709
175.....15709

47 CFR

69.....16353
73.....17108

Proposed Rules:
0.....16388
1.....16661
2.....16687
25.....16880, 16687
69.....16389
73.....15712, 15713, 15714, 15715, 16388, 16396, 17137, 17138, 17139, 17140, 17141, 17142, 17143, 18596, 18871, 18872, 18873
76.....16388

48 CFR

231.....18827
232.....18828
235.....18829
252.....18828
701.....16647
703.....16647
715.....16647
722.....18481
731.....16647
732.....18481
752.....16647, 18481
909.....16649
970.....16649
1333.....16651
1533.....17109
1552.....17109
1832.....18372

Proposed Rules:
1833.....17603

49 CFR

195.....15926
533.....16860
571.....16358
581.....16359

Proposed Rules:
107.....18786
171.....16882
177.....16882
178.....16882
180.....16882
192.....16882, 16885
195.....16882, 16885
578.....16690
611.....17062

50 CFR

17.....15691, 17110
229.....17292
600.....16862
648.....15704, 16361, 16362, 18582
660.....16862, 17125
679.....16361, 16362, 16654, 17126, 18373

Proposed Rules:
17.....16397, 16890, 18596
20.....17308
32.....17992
223.....16396, 16397
224.....16397
226.....16397
600.....16414, 18394
622.....18395
648.....16417, 16891, 18394

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT APRIL 16, 1999

DEFENSE DEPARTMENT
Federal Acquisition Regulation (FAR):
- Manufacturing Technology Program; published 4-16-99
- Restructuring savings -repricing clause; published 4-16-99

EDUCATION DEPARTMENT
Postsecondary education:
- Federal family education loan programs; corrections and technical amendments; published 4-16-99

ENVIRONMENTAL PROTECTION AGENCY
Air programs; approval and promulgation; State plans for designated facilities and pollutants:
- Pennsylvania; published 3-17-99

Air quality implementation plans; approval and promulgation; various States:
- California; published 3-17-99

GOVERNMENT ETHICS OFFICE
Ethical conduct standards for executive branch employees; published 3-17-99

HEALTH AND HUMAN SERVICES DEPARTMENT
Food and Drug Administration
Human drugs:
- Labeling of drug products (OTC)—
  - Standardized format; published 3-17-99

INTERIOR DEPARTMENT
Fish and Wildlife Service
Endangered and threatened species:
- Catesbaea melanocarpa; published 3-17-99

LABOR DEPARTMENT
Occupational Safety and Health Administration
Construction safety and health standards:
- Reporting and recordkeeping requirements; published 4-16-99

TRANSPORTATION DEPARTMENT
Coast Guard
Ports and waterways safety:
- Mississippi River, LA; regulated navigation area; published 4-16-99

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airworthiness directives:
- Airbus; published 3-12-99
- Fairchild; published 3-10-99
- McDonnell Douglas; published 3-12-99
- Pilatus Aircraft Ltd.; published 3-12-99
- SOCATA-Groupe Aerospatiale; published 3-29-99

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT
Animal and Plant Health Inspection Service
Exportation and importation of animals and animal products:
- Rinderpest and foot-and-mouth disease, etc.; disease status change—
  - South Africa; comments due by 4-19-99; published 2-17-99

AGRICULTURE DEPARTMENT
Cooperative State Research, Education, and Extension Service
Grants:
- Special Research Program; comments due by 4-23-99; published 3-24-99

COMMERCE DEPARTMENT
National Oceanic and Atmospheric Administration
Endangered and threatened species:
- Marine and anadromous species—
  - West coast chinook salmon; comments due by 4-23-99; published 3-24-99

Fishery conservation and management:
- Alaska; fisheries of Exclusive Economic Zone—
  - Pacific cod; comments due by 4-20-99; published 4-5-99
- Caribbean, Gulf, and South Atlantic fisheries—
  - Gulf of Mexico reef fish; comments due by 4-19-99; published 3-5-99
  - South Atlantic Region; Sustainable Fisheries Act provisions; compliance; comments due by 4-19-99; published 2-18-99
- West Coast states and Western Pacific fisheries—
  - West Coast salmon; comments due by 4-22-99; published 4-8-99
- West Coast States and Western Pacific fisheries—
  - Pacific Coast groundfish; comments due by 4-22-99; published 4-7-99

COMMODITY FUTURES TRADING COMMISSION
Foreign futures and options transactions:
- Access to electronic boards of trade; automated trading systems use; comments due by 4-23-99; published 3-24-99
- Access to electronic boards of trade; automated trading systems use; correction; comments due by 4-23-99; published 4-9-99

DEFENSE DEPARTMENT
Federal Acquisition Regulation (FAR):
- Contractor liability for loss of and/or damages to household goods; comments due by 4-19-99; published 2-16-99

ENERGY DEPARTMENT
Acquisition regulations:
- Costs associated with whistleblower actions; comments due by 4-23-99; published 3-24-99

ENERGY DEPARTMENT
Federal Energy Regulatory Commission
Natural Gas Policy Act:
- Interstate natural gas pipelines—
  - Transportation services regulation; comments due by 4-22-99; published 12-30-98

ENVIRONMENTAL PROTECTION AGENCY
Air programs:
- Stratospheric ozone protection—
  - Ozone-depleting substances; substitutes list; comments due by 4-19-99; published 2-18-99
  - Ozone-depleting substances; substitutes list; comments due by 4-19-99; published 2-18-99

Air programs; approval and promulgation; State plans for designated facilities and pollutants:
- Oklahoma; comments due by 4-19-99; published 3-19-99

Air quality implementation plans; approval and promulgation; various States:
- California; comments due by 4-19-99; published 3-18-99
- California and Arizona; comments due by 4-19-99; published 3-18-99
- Delaware; comments due by 4-21-99; published 3-22-99
- Illinois; comments due by 4-19-99; published 3-18-99
- Iowa; comments due by 4-19-99; published 3-18-99

Air quality planning purposes; designation of areas:
- California; comments due by 4-19-99; published 3-18-99
- Missouri and Illinois; comments due by 4-19-99; published 3-18-99

Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
- Cinnamaldehyde; comments due by 4-19-99; published 2-17-99
- Fenbuconazole; comments due by 4-19-99; published 2-17-99
- Formic acid; comments due by 4-23-99; published 2-22-99

Superfund program:
- National oil and hazardous substances contingency plan—
  - National priorities list update; comments due by 4-19-99; published 2-16-99

FEDERAL COMMUNICATIONS COMMISSION
Practice and procedure:
- Regulatory fees (1999 FY); assessment and collection; comments due by 4-19-99; published 4-6-99

FEDERAL EMERGENCY MANAGEMENT AGENCY
Regulatory streamlining and updating; 20 CFR parts, proposed removal; comments due by 4-19-99; published 2-18-99
- Correction; comments due by 4-19-99; published 3-2-99

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD
Thrift savings plan:
Eligibility; expansion and continuation; comments due by 4-22-99; published 3-23-99

GENERAL SERVICES ADMINISTRATION
Federal Acquisition Regulation (FAR):
Contractor liability for loss of and/or damages to household goods; comments due by 4-19-99; published 2-16-99

HEALTH AND HUMAN SERVICES DEPARTMENT
Food and Drug Administration
Food additives:
Adjuvants, production aids, and sanitizers—
Phosphorous acid, cyclic neopentanetetrayl bis(2,6-di-tert-butyl-4-methylphenyl)ester; comments due by 4-19-99; published 3-19-99
Medical devices:
Menstrual tampons labeling; absorbency ranges; comments due by 4-21-99; published 1-21-99

HOUSING AND URBAN DEVELOPMENT DEPARTMENT
Public and Indian housing:
Capital Fund Negotiated Rulemaking Advisory Committee; intent to establish and meeting; comments due by 4-19-99; published 3-19-99
Public housing agency plans; comments due by 4-19-99; published 2-18-99
Public and Indian Housing:
Section 8 Housing Certificate Fund Rule Negotiated Rulemaking Committee; intent to establish and meeting; comments due by 4-19-99; published 3-19-99

INTERIOR DEPARTMENT
Fish and Wildlife Service
Endangered and threatened species:
Mountain plover; comments due by 4-19-99; published 2-16-99
Tinian monarch; withdrawn; comments due by 4-23-99; published 2-22-99

INTERIOR DEPARTMENT
Minerals Management Service
Outer Continental Shelf; oil, gas, and sulphur operations:
Coastal zone consistency review of exploration plans and development and production plans; comments due by 4-19-99; published 2-17-99
Royalty management:
Federal marginal properties; accounting and auditing relief; comments due by 4-21-99; published 3-22-99

INTERIOR DEPARTMENT
Surface Mining Reclamation and Enforcement Office
Federal and Indian lands programs:
Indian lands; definition clarification; comments due by 4-20-99; published 2-19-99

JUSTICE DEPARTMENT
Immigration and Naturalization Service
Nonimmigrant classes:
Visa exemption for British Virgin Islands nationals entering U.S. through St. Thomas, U.S. Virgin Islands; comments due by 4-19-99; published 2-18-99
United Nations Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment; implementation:
Protection from torture; claim procedures; comments due by 4-20-99; published 2-19-99

JUSTICE DEPARTMENT
Pam Lychner Sexual Offender Tracking and Identification Act of 1996; implementation:
National Sex Offender Registry; operation and notification requirements; comments due by 4-19-99; published 2-16-99

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION
Federal Acquisition Regulation (FAR):
Contractor liability for loss of and/or damages to household goods; comments due by 4-19-99; published 2-16-99

NORTHEAST DAIRY COMPACT COMMISSION
Over-order price regulations:
Compact over-order price regulations—
Fluid milk distributions in six New England States during 1998-1999 contract year; exemption; hearing; comments due by 4-21-99; published 3-15-99

TRANSPORTATION DEPARTMENT
Coast Guard
Ports and waterways safety:
Santa Barbara Channel, CA; safety zone; comments due by 4-19-99; published 2-18-99
Regulatory Flexibility Act:
Small entities; economic impact; comments due by 4-19-99; published 1-19-99

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airworthiness directives:
Agusta, S.p.A.; comments due by 4-19-99; published 2-16-99
Bell Helicopter Textron, Inc.; comments due by 4-19-99; published 2-17-99
Boeing; comments due by 4-19-99; published 2-17-99
Empresa Brasileira de Aeronautica S.A.; comments due by 4-22-99; published 3-23-99
Pilatus Aircraft Ltd.; comments due by 4-23-99; published 3-23-99
Pratt & Whitney; comments due by 4-22-99; published 3-23-99
Sikorsky; comments due by 4-19-99; published 2-16-99
Class D and Class E airspace; comments due by 4-20-99; published 3-3-99
Class D and Class E airspace; correction; comments due by 4-20-99; published 3-9-99
Class E airspace; comments due by 4-19-99; published 3-5-99
Class E airspace; correction; comments due by 4-20-99; published 3-9-99
VOR Federal airways; comments due by 4-22-99; published 3-8-99

TRANSPORTATION DEPARTMENT
Federal Highway Administration
Motor carrier safety standards:
Inspection, repair, and maintenance—
Intermodal container chassis and trailers; comments due by 4-19-99; published 2-17-99

TRANSPORTATION DEPARTMENT
Federal Transit Administration
Buy America requirements; certification procedures:
Corrections to inadvertent errors in certifications after bid opening; comments due by 4-19-99; published 2-18-99

TRANSPORTATION DEPARTMENT
National Highway Traffic Safety Administration
Anthropomorphic test devices:
Occupant crash protection—
12-month-old infant crash test dummy; comments due by 4-22-99; published 3-8-99
Motor Vehicle Safety Standards:
Child restraint systems—
Standardized child restraint anchorage systems independent of seat belts; comments due by 4-19-99; published 3-5-99

TRANSPORTATION DEPARTMENT
Research and Special Programs Administration
Hazardous materials:
Hazardous liquid transportation—
Liquefied compressed gases; transportation and unloading; comments due by 4-21-99; published 3-22-99

TRANSPORTATION DEPARTMENT
Transportation Statistics Bureau
ICC Termination Act; implementation:
Motor carriers of property and household goods; reporting requirements; comments due by 4-22-99; published 3-23-99

TREASURY DEPARTMENT
Internal Revenue Service
Income taxes:
Capital gains; installment sales of depreciable real property; unrecaptured section 1250 gain; comments due by 4-22-99; published 1-22-99
Qualified education loans, interest deduction; comments due by 4-21-99; published 1-21-99
Procedure and administration:
Filing of notice of lien; notice and opportunity for hearing; cross reference; comments due by 4-22-99; published 1-22-99
Levy; notice and opportunity for hearing; cross reference; comments due by 4-22-99; published 1-22-99

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–523–6641. This list is also available online at http://www.nara.gov/fedreg.

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at http://www.access.gpo.gov/nara/index.html. Some laws may not yet be available.

H.R. 193/P.L. 106–20
Sudbury, Assabet, and Concord Wild and Scenic River Act (Apr. 9, 1999; 113 Stat. 30)
Last List April 12, 1999.

Public Laws Electronic Notification Service (PENS)

PENS is a free electronic mail notification service of newly enacted public laws. To subscribe, send E-mail to **listproc@lucky.fed.gov** with the text message:

subscribe PUBLAWS-L Your Name.

Note: This service is strictly for E-mail notification of new public laws. The text of laws is not available through this service. **PENS** cannot respond to specific inquiries sent to this address.

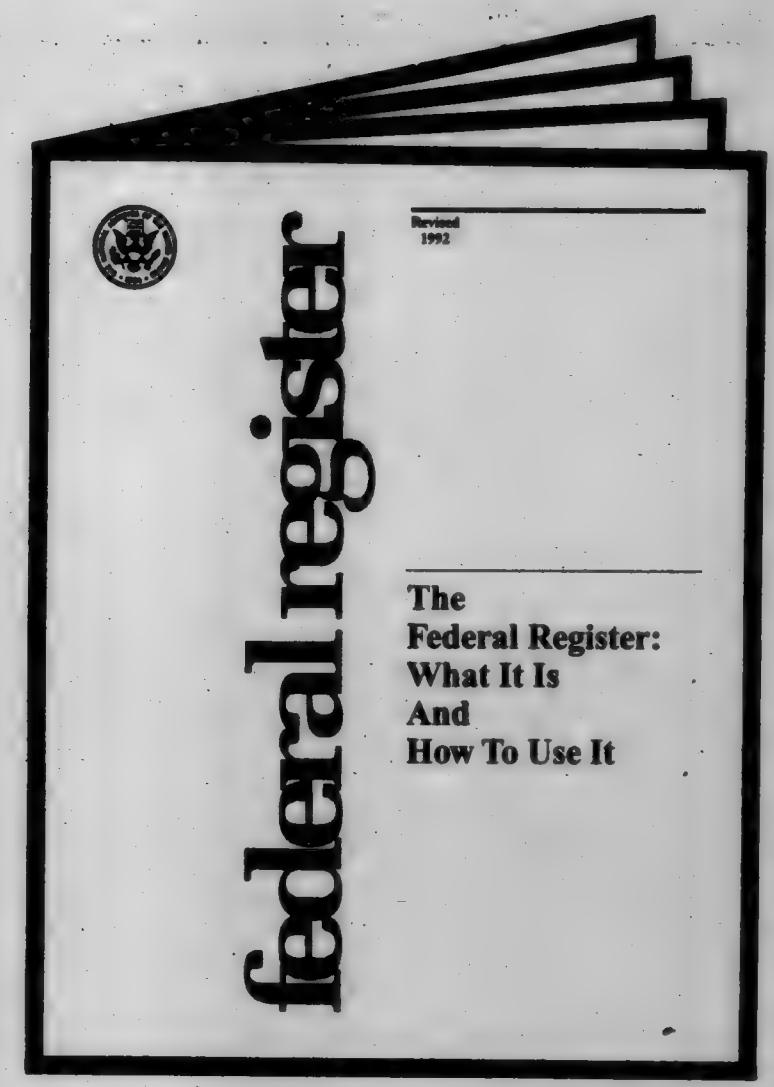

Announcing the Latest Edition

The Federal Register: What It Is and How to Use It

A Guide for the User of the Federal Register—Code of Federal Regulations System

This handbook is used for the educational workshops conducted by the Office of the Federal Register. For those persons unable to attend a workshop, this handbook will provide guidelines for using the *Federal Register* and related publications, as well as an explanation of how to solve a simple research problem.

Price $7.00

Superintendent of Documents **Publications** Order Form

Order Processing Code:
*** 6173**

☐ **YES**, enter my subscription(s) as follows:

Charge your order. It's Easy! MasterCard VISA

To fax your orders (202) 512–2250
Phone your orders (202) 512–1800

_____ copies of **The Federal Register – What it is and Hot To Use It,** at $7.00 per copy. Stock No. 069–000–00044–4.

The total cost of my order is $ _____. **Price includes regular domestic postage and handling** and is subject to change. International customers please add 25%

Company or personal name (Please type or print)

Additional address/attention line

Street address

City, State, ZIP code

Daytime phone including area code

Purchase order number (optional)

May we make your name/address available to other mailers? YES ☐ NO ☐

Please Choose Method of Payment:

☐ Check Payable to the Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐☐☐ – ☐☐☐☐
☐ VISA ☐ MasterCard Account
☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐
☐☐☐☐ (Credit card expiration date)

Thank you for your order!

Authorizing signature (Rev.11/3)

Mail To: Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250–7954

Would you like to know...

if any changes have been made to the Code of Federal Regulations or what documents have been published in the Federal Register without reading the Federal Register every day? If so, you may wish to subscribe to the *LSA (List of CFR Sections Affected)*, the *Federal Register Index*, or both.

LSA • List of CFR Sections Affected

The LSA (List of CFR Sections Affected) is designed to lead users of the Code of Federal Regulations to amendatory actions published in the Federal Register. The LSA is issued monthly in cumulative form. Entries indicate the nature of the changes—such as revised, removed, or corrected.
$27 per year.

Federal Register Index

The index, covering the contents of the daily Federal Register, is issued monthly in cumulative form. Entries are carried primarily under the names of the issuing agencies. Significant subjects are carried as cross-references.
$25 per year.

A finding aid is included in each publication which lists Federal Register page numbers with the date of publication in the Federal Register.

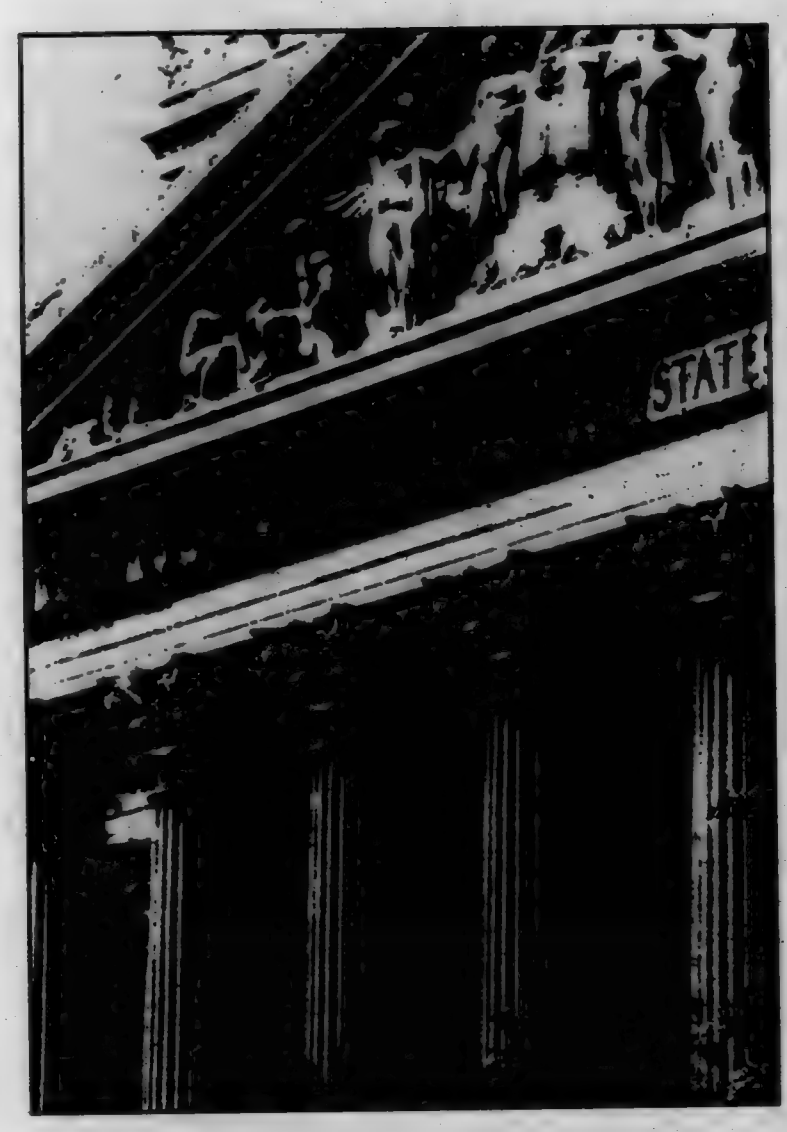

Superintendent of Documents **Subscription** Order Form

Order Processing Code:
*** 5421**

☐ **YES**, enter the following indicated subscriptions for one year:

_____ **LSA (List of CFR Sections Affected)**, (LCS) for $27 per year.
_____ **Federal Register Index** (FRUS) $25 per year.

Charge your order. It's Easy! MasterCard VISA

To fax your orders (202) 512–2250
Phone your orders (202) 512–1800

The total cost of my order is $ _____. **Price includes regular domestic postage and handling** and is subject to change. International customers please add 25%.

Company or personal name (Please type or print)

Additional address/attention line

Street address

City, State, ZIP code

Daytime phone including area code

Purchase order number (optional)

May we make your name/address available to other mailers? YES ☐ NO ☐

Please Choose Method of Payment:

☐ Check Payable to the Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐☐☐ – ☐
☐ VISA ☐ MasterCard Account
☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐
☐☐☐☐ (Credit card expiration date)

Thank you for your order!

Authorizing Signature 1/97

Mail To: Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250–7954

INFORMATION ABOUT THE SUPERINTENDENT OF DOCUMENTS' SUBSCRIPTION SERVICE

Know when to expect your renewal notice and keep a good thing coming. To keep our subscription prices down, the Government Printing Office mails each subscriber *only one renewal notice*. You can learn when you will get your renewal notice by checking the number that follows month/year code on the top line of your label *as shown in this example:*

A renewal notice will be sent approximately 90 days **before the shown date.**

```
                                        /
AFR SMITH212J                    DEC97 R 1
JOHN SMITH
212 MAIN STREET
FORESTVILLE MD 20704
```

A renewal notice will be sent approximately 90 days **before the shown date.**

```
                                        /
AFRDO SMITH212J                  DEC97 R 1
JOHN SMITH
212 MAIN STREET
FORESTVILLE MD 20704
```

To be sure that your service continues without interruption, please return your renewal notice promptly. If your subscription service is discontinued, simply send your mailing label from any issue to the Superintendent of Documents, Washington, DC 20402–9372 with the proper remittance. Your service will be reinstated.

To change your address: Please SEND YOUR MAILING LABEL, along with your new address to the Superintendent of Documents, Attn: Chief, Mail List Branch, Mail Stop: SSOM, Washington, DC 20402–9373.

To inquire about your subscription service: Please SEND YOUR MAILING LABEL, along with your correspondence, to the Superintendent of Documents, Attn: Chief, Mail List Branch, Mail Stop: SSOM, Washington, DC 20402–9373.

To order a new subscription: Please use the order form provided below.

Superintendent of Documents **Subscription** Order Form

Order Processing Code:
*** 5468**

Charge your order. It's Easy! MasterCard VISA

To fax your orders (202) 512–2250
Phone your orders (202) 512–1800

☐ **YES**, enter my subscription(s) as follows:

____ subscriptions to **Federal Register (FR);** *including* the daily Federal Register, monthly Index and List of CFR Sections Affected (LSA), at $607 each per year.

____ subscriptions to **Federal Register**, *daily only* (FRDO), at $555 each per year.

The total cost of my order is $_____. **Price includes regular domestic postage and handling**, and is subject to change. International customers please add 25%.

Company or personal name (Please type or print)

Additional address/attention line

Street address

City, State, ZIP code

Daytime phone including area code

Purchase order number (optional)

May we make your name/address available to other mailers? YES ☐ NO ☐

Please Choose Method of Payment:

☐ Check Payable to the Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐☐ – ☐
☐ VISA ☐ MasterCard Account
☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

☐☐☐☐ (Credit card expiration date)

Thank you for your order!

Authorizing signature

11/3

Mail To: Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250–7954

Microfiche Editions Available...

Federal Register

The Federal Register is published daily in 24x microfiche format and mailed to subscribers the following day via first class mail. As part of a microfiche Federal Register subscription, the LSA (List of CFR Sections Affected) and the Cumulative Federal Register Index are mailed monthly.

Code of Federal Regulations

The Code of Federal Regulations, comprising approximately 200 volumes and revised at least once a year on a quarterly basis, is published in 24x microfiche format and the current year's volumes are mailed to subscribers as issued.

Microfiche Subscription Prices:

Federal Register:

One year: $220.00
Six months: $110.00

Code of Federal Regulations:

Current year (as issued): $247.00

Superintendent of Documents **Subscription** Order Form

Order Processing Code:
*** 5419**

Charge your order. It's Easy!

To fax your orders (202) 512–2250
Phone your orders (202) 512–1800

☐ **YES**, enter the following indicated subscription in 24x microfiche format:

_____ **Federal Register** (MFFR) ☐ One year at $220 each ☐ Six months at $110

_____ **Code of Federal Regulations** (CFRM7) ☐ One year at $247 each

The total cost of my order is $_____. **Price includes regular domestic postage and handling** and is subject to change. International customers please add 25%.

Company or personal name (Please type or print)

Additional address/attention line

Street address

City, State, ZIP code

Daytime phone including area code

Purchase order number (optional)

May we make your name/address available to other mailers? YES ☐ NO ☐

Please Choose Method of Payment:

☐ Check Payable to the Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐☐☐ – ☐
☐ VISA ☐ MasterCard Account
☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐
☐☐☐☐ (Credit card expiration date)

Thank you for your order!

Authorizing signature 11/3

Mail To: Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250–7954

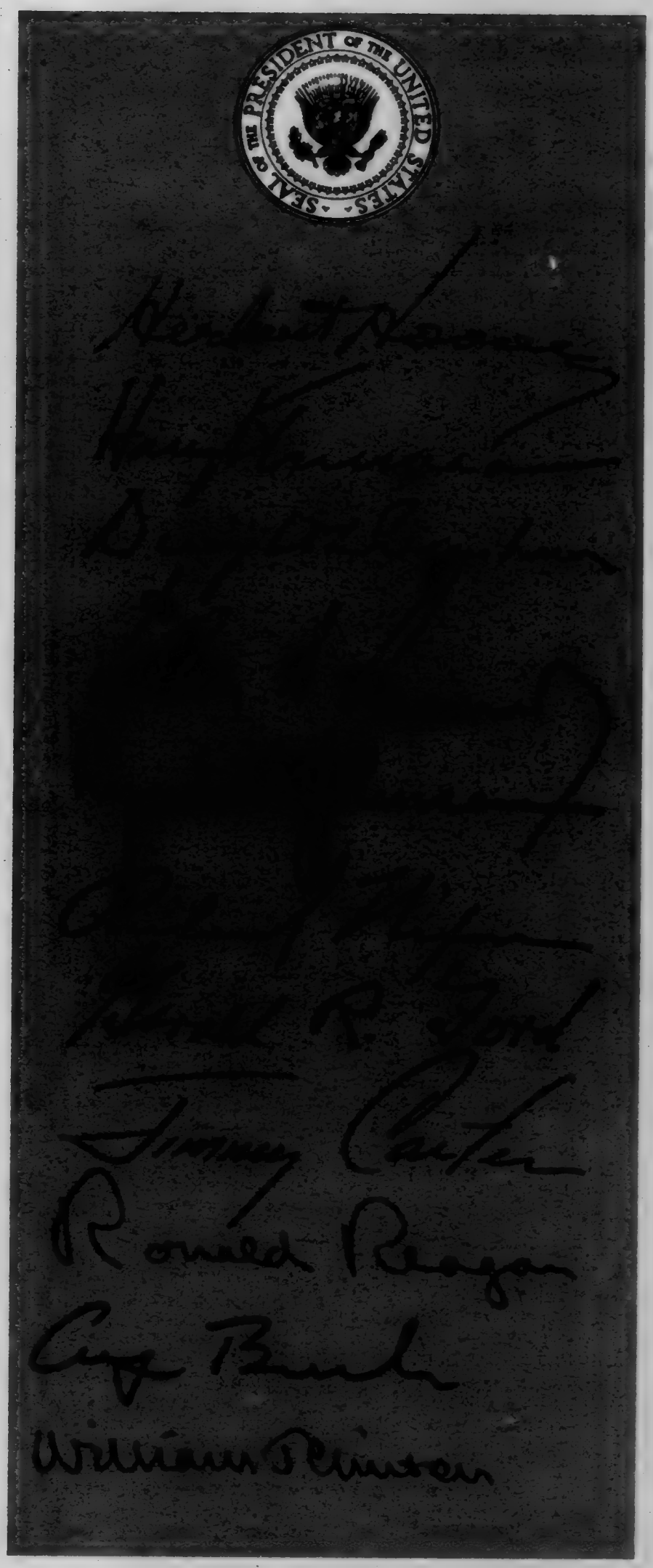

Public Papers of the Presidents of the United States

William J. Clinton

1993
(Book I) $51.00

1993
(Book II) $51.00

1994
(Book I) $56.00

1994
(Book II) $52.00

1995
(Book I) $60.00

1995
(Book II) $65.00

1996
(Book I) $66.00

1996
(Book II) $72.00

1997
(Book I) $69.00

Published by the Office of the Federal Register,
National Archives and Records Administration

Mail order to:
Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250–7954

(Rev. 3/3/99)

Now Available Online

through

GPO Access

A Service of the U.S. Government Printing Office

Federal Register

Updated Daily by 6 a.m. ET

Easy, Convenient, FREE

Free public connections to the online Federal Register are available through the GPO Access service.

To connect over the World Wide Web, go to the Superintendent of Documents' homepage at http://www. access. gpo.gov/su_docs/

To connect using telnet, open swais.access.gpo.gov and login as guest (no password required).

To dial directly, use communications software and modem to call (202) 512–1661; type swais, then login as guest (no password required).

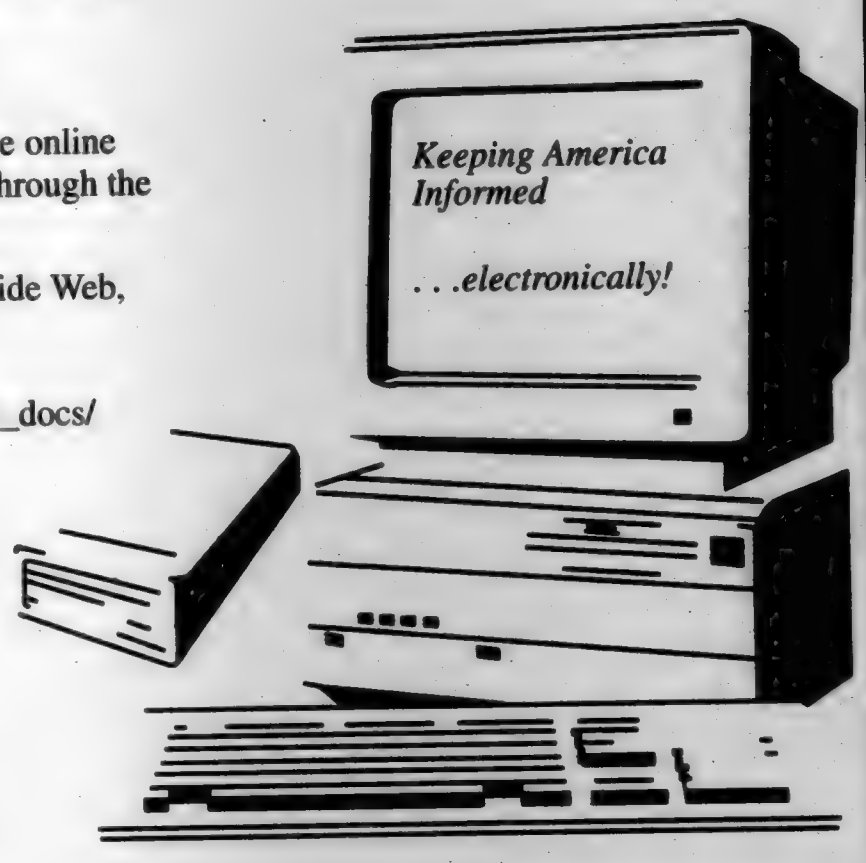

You may also connect using local WAIS client software. For further information, contact the GPO Access User Support Team:

Voice: (202) 512–1530 (7 a.m. to 5 p.m. Eastern time).
Fax: (202) 512–1262 (24 hours a day, 7 days a week).
Internet E-Mail: gpoaccess@gpo.gov

(Rev. 11/3)

UMI

VOL
64

ISS
73

AP
16

1999

UMI

Printed on recycled paper

VOL
64
ISS
74
AP
19
1999
UMI

4–19–99
Vol. 64

UMI

THE PAPER AND INK USED IN THE ORIGINAL PUBLICATION MAY AFFECT THE QUALITY OF THE MICROFORM EDITION.

United S
Governm
Printing
SUPERINTEN
OF DOCUME
Washington,

OFFICIAL BU
Penalty for pr

4–19–99
Vol. 64 No. 74

federal register

Monday
April 19, 1999

United States
Government
Printing Office
SUPERINTENDENT
OF DOCUMENTS
Washington, DC 20402

OFFICIAL BUSINESS
Penalty for private use, $300

PERIODICALS
Postage and Fees Paid
U.S. Government Printing Office
(ISSN 0097–6326)

**********3-DIGIT 481
A FR UMI 346U DEC 99 R
UMI
PERIODICALS CHECK IN
PO BOX 1346
ANN ARBOR MI 48106

UMI

VOL
64

ISS
74

AP
19

1999

4-19-99
Vol. 64
Pages 190

4–19–99
Vol. 64 No. 74
Pages 19017–19250

federal register

Monday
April 19, 1999

The **FEDERAL REGISTER** is published daily, Monday through Friday, except official holidays, by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). The Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 is the exclusive distributor of the official edition.

The **Federal Register** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders, Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress, and other Federal agency documents of public interest.

Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless the issuing agency requests earlier filing. For a list of documents currently on file for public inspection, see http://www.nara.gov/fedreg.

The seal of the National Archives and Records Administration authenticates the Federal Register as the official serial publication established under the Federal Register Act. Under 44 U.S.C. 1507, the contents of the **Federal Register** shall be judicially noticed.

The **Federal Register** is published in paper and on 24x microfiche. It is also available online at no charge as one of the databases on GPO Access, a service of the U.S. Government Printing Office.

The online edition of the **Federal Register** is issued under the authority of the Administrative Committee of the Federal Register as the official legal equivalent of the paper and microfiche editions (44 U.S.C. 4101 and 1 CFR 5.10). It is updated by 6 a.m. each day the **Federal Register** is published and it includes both text and graphics from Volume 59, Number 1 (January 2, 1994) forward.

GPO Access users can choose to retrieve online **Federal Register** documents as TEXT (ASCII text, graphics omitted), PDF (Adobe Portable Document Format, including full text and all graphics), or SUMMARY (abbreviated text) files. Users should carefully check retrieved material to ensure that documents were properly downloaded.

On the World Wide Web, connect to the **Federal Register** at http://www.access.gpo.gov/nara. Those without World Wide Web access can also connect with a local WAIS client, by Telnet to swais.access.gpo.gov, or by dialing (202) 512-1661 with a computer and modem. When using Telnet or modem, type swais, then log in as guest with no password.

For more information about GPO Access, contact the GPO Access User Support Team by E-mail at gpoaccess@gpo.gov; by fax at (202) 512–1262; or call (202) 512–1530 or 1–888–293–6498 (toll free) between 7 a.m. and 5 p.m. Eastern time, Monday–Friday, except Federal holidays.

The annual subscription price for the **Federal Register** paper edition is $555, or $607 for a combined **Federal Register**, Federal Register Index and List of CFR Sections Affected (LSA) subscription; the microfiche edition of the **Federal Register** including the Federal Register Index and LSA is $220. Six month subscriptions are available for one-half the annual rate. The charge for individual copies in paper form is $8.00 for each issue, or $8.00 for each group of pages as actually bound; or $1.50 for each issue in microfiche form. All prices include regular domestic postage and handling. International customers please add 25% for foreign handling. Remit check or money order, made payable to the Superintendent of Documents, or charge to your GPO Deposit Account, VISA, MasterCard or Discover. Mail to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954.

There are no restrictions on the republication of material appearing in the **Federal Register.**

How To Cite This Publication: Use the volume number and the page number. Example: 64 FR 12345.

Printed on recycled paper.

SUBSCRIPTIONS AND COPIES

PUBLIC

Subscriptions:

Paper or fiche	202–512–1800
Assistance with public subscriptions	512–1806
General online information	202–512–1530; 1–888–293–6498

Single copies/back copies:

Paper or fiche	512–1800
Assistance with public single copies	512–1803

FEDERAL AGENCIES

Subscriptions:

Paper or fiche	523–5243
Assistance with Federal agency subscriptions	523–5243

Contents

Federal Register
Vol. 64, No. 74
Monday, April 19, 1999

Agency for International Development
RULES
Acquisition regulations:
Miscellaneous amendments
Correction, 19217

Agricultural Marketing Service
RULES
Milk marketing orders:
Iowa; CFR correction, 19034
Nectarines and peaches grown in—
California, 19022–19034
PROPOSED RULES
Cotton research and promotion order:
Imported cotton and cotton content of imported products; supplemental assessment calculation, 19072–19084
Milk marketing orders:
Iowa, 19071–19072

Agriculture Department
See Agricultural Marketing Service
See Cooperative State Research, Education, and Extension Service
See Farm Service Agency
See Forest Service
See Grain Inspection, Packers and Stockyards Administration
See Natural Resources Conservation Service

Army Department
See Engineers Corps

Centers for Disease Control and Prevention
NOTICES
Grants and cooperative agreements; availability, etc.:
Young worker safety and health risks in construction; research; correction, 19180

Coast Guard
RULES
Vessel identification system; effective date change, 19039

Commerce Department
See Economic Development Administration
See International Trade Administration
See National Oceanic and Atmospheric Administration
See Patent and Trademark Office

Comptroller of the Currency
RULES
Risk-based capital:
Market risk, 19034–19039

Cooperative State Research, Education, and Extension Service
NOTICES
Grants and cooperative agreements; availability, etc.:
Agricultural research and extension formula funds; State plans of work; guidelines; comment request, 19241–19248

Defense Department
See Engineers Corps

Economic Development Administration
NOTICES
Grants and cooperative agreements; availability, etc.:
Economic development assistance programs; unemployment and underemployment in economically depressed areas, etc.; correction, 19249–19250

Education Department
NOTICES
Meetings:
National Assessment Governing Board, 19140–19141

Employment and Training Administration
NOTICES
Workforce Investment Act; implementation:
Job Corps Program; notice to employers, 19201–19202

Energy Department
See Federal Energy Regulatory Commission

Engineers Corps
NOTICES
Harbor Maintenance Trust Fund status; annual report to Congress, 19139–19140

Environmental Protection Agency
RULES
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
Clofentezine, 19042–19050
Diflubenzuron, 19050–19057
PROPOSED RULES
Air quality implementation plans; approval and promulgation; various States:
Minnesota, 19097–19106
NOTICES
Agency information collection activities:
Proposed collection; comment request, 19149–19151
Air pollution control; new motor vehicles and engines:
Urban buses (1993 and earlier model years); retrofit/rebuild requirements; equipment certification—
Turbodyne Systems, Inc., 19151–19153
Air programs:
Ambient air monitoring reference and equivalent methods—
Rupprecht & Patashnick Co., Inc. Partisol Model 2000 PM-2.5 Audit Sampler, 19153–19155
Meetings:
Gulf of Mexico Program Habitat Focus Team, 19155
Oxygenate Use in Gasoline Panel, 19155
U.S. Government Representative to Commission for Environmental Cooperation—
Governmental Advisory Committee, 19156
National Advisory Committee, 19155–19156
Reports and guidance documents; availability, etc.:
Printed wiring board cleaner technologies substitute assessment; making holes conductive; correction, 19156
Water pollution; discharge of pollutants (NPDES):
Gulf of Mexico OCS operations—
Western portion; oil and gas extraction category; general permit, 19156–19177

Executive Office of the President
See Presidential Documents
See Trade Representative, Office of United States

Farm Service Agency
NOTICES
Warehouses, licensed; cancellations and/or terminations; list availability, 19118

Federal Aviation Administration
PROPOSED RULES
Air traffic operating and flight rules, etc.:
Checked baggage; security on domestic flights, 19219–19240
Airworthiness directives:
AlliedSignal Inc., 19096–19097

Federal Communications Commission
RULES
Common carrier services:
International common carriers; biennial regulatory review, 19057–19067
Radio stations; table of assignments:
Kentucky, 19067
NOTICES
Agency information collection activities:
Proposed collection; comment request, 19177–19178
Submission for OMB review; comment request, 19178–19179

Federal Deposit Insurance Corporation
RULES
Risk-based capital:
Market risk, 19034–19039

Federal Energy Regulatory Commission
NOTICES
Electric rate and corporate regulation filings:
EGENOR S.A. et al., 19143–19145
Hydroelectric applications, 19145–19149
Applications, hearings, determinations, etc.:
Atlantic Richfield Corp., 19141
High Island Offshore System, 19141–19142
Texas Gas Transmission Corp., 19142
Transcontinental Gas Pipe Line Corp., 19142–19143

Federal Reserve System
RULES
Risk-based capital:
Market risk, 19034–19039
NOTICES
Banks and bank holding companies:
Formations, acquisitions, and mergers, 19179

Fish and Wildlife Service
PROPOSED RULES
Endangered and threatened species:
Findings on petitions, etc.—
San Diego ambrosia, 19108–19111
Mountain plover, 19108
NOTICES
Meetings:
Aquatic Nuisance Species Task Force, 19190–19191
Migratory bird hunting:
Standard Resources Corp.; HEVI-METAL shot approval as nontoxic for waterfowl hunting; application review, 19191

Food and Drug Administration
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 19180–19182
Food additive petitions:
Rohm & Haas Co., 19182–19183

Forest Service
NOTICES
Agency information collection activities:
Proposed collection; comment request, 19118–19120
Environmental statements; notice of intent:
White Mountain National Forest, NH, 19120–19122

Grain Inspection, Packers and Stockyards Administration
RULES
Grain inspection:
Corn oil, protein, and starch; official testing service, 19019–19022
NOTICES
Agency designation actions:
Illinois, 19122

Health and Human Services Department
See Centers for Disease Control and Prevention
See Food and Drug Administration
See National Institutes of Health
See Public Health Service

Housing and Urban Development Department
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 19189–19190

Interior Department
See Fish and Wildlife Service
See Land Management Bureau
See Minerals Management Service
See National Park Service

Internal Revenue Service
PROPOSED RULES
Procedure and administration:
Unified partnership audit procedures; modifications and additions
Correction, 19217

International Trade Administration
NOTICES
Antidumping:
Elastic rubber tape from—
India, 19123–19125
Countervailing duties:
Elastic rubber tape from—
India, 19125–19134

International Trade Commission
NOTICES
Import investigations:
Cotton shop towels from—
Various countries, 19195
Greige polyester/cotton printcloth from—
China, 19195
Lens-fitted film packages, 19195–19196
Malleable cast iron pipe fittings from—
Various countries, 19196

Natural bristle paint brushes from—
China, 19197
Petroleum wax candles from—
China, 19197–19198
Steel wire rope from—
Various countries, 19198–19199
U.S. tariffs; probable economic effects of reduction or elimination, 19199–19200

Justice Department
See Justice Programs Office
See National Institute of Justice

Justice Programs Office
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 19200

Labor Department
See Employment and Training Administration

Land Management Bureau
NOTICES
Realty actions; sales, leases, etc.:
Nevada, 19191–19192
Resource management plans, etc.:
Las Vegas, NV, 19192
Survey plat filings:
Oregon and Washington, 19192–19193

Minerals Management Service
NOTICES
Outer Continental Shelf operations:
Oil and gas lease sales—
Restricted joint bidders list, 19193

National Capital Planning Commission
NOTICES
Environmental statements; availability, etc.:
Prince George County, MD; mixed-use waterfront destination resort, 19202

National Credit Union Administration
NOTICES
Meetings; Sunshine Act, 19202

National Highway Traffic Safety Administration
PROPOSED RULES
Motor vehicle safety standards:
Windshield defrosting and defogging and windshield wiping and washing; petition denied, 19106–19108
NOTICES
Motor vehicle safety standards:
Nonconforming vehicles—
Importation eligibility; determinations, 19212–19214
Motor vehicle safety standards; exemption petitions, etc.:
Johnston Sweeper Co., 19214–19215

National Institute of Justice
NOTICES
Grants and cooperative agreements; availability, etc.:
Violence against women; evaluation of policies, procedures, and programs, 19200–19201

National Institutes of Health
NOTICES
Grants and cooperative agreements; availability, etc.:
National Cancer Institute—
Improved cytologic sampler for early detection of esophageal cancer; scientific and commercial development, 19184–19185
Software applications for enterprise and individuals; research and development, 19183–19184
Meetings:
National Institute of Allergy and Infectious Diseases, 19186
National Institute of Child Health and Human Development, 19185–19188
National Institute of Mental Health, 19187
National Institute of Neurological Disorders and Stroke, 19188
National Institute on Aging, 19187

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
Alaska; fisheries of Exclusive Economic Zone—
Pacific cod, 19069
Atlantic coastal fisheries cooperative management—
Atlantic sturgeon, 19069–19070
West Coast States and Western Pacific fisheries—
Pelagic, crustacean, bottomfish and seamount groundfish, and precious corals, 19067–19069
PROPOSED RULES
Fishery conservation and management:
Alaska; fisheries of Exclusive Economic Zone—
License limitation program, 19113–19117
Northeastern United States fisheries—
Atlantic sea scallops; experimental fishing permits, 19111
Northeast multispecies, 19111–19113
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 19134–19135
Permits:
Marine mammals, 19135

National Park Service
NOTICES
Environmental statements; availability, etc.:
Big Thicket National Preserve, TX; Cobra Exploration Co. 3-D seismic survey, 19193
Death Valley National Park, CA and NV; Timbisha Shoshone Tribal Homeland, 19193–19194
National Register of Historic Places:
Pending nominations, 19194

Natural Resources Conservation Service
NOTICES
Federal Agriculture Improvement and Reform Act of 1996:
Nutrient management technical assistance activities policy, 19122–19123

Northeast Dairy Compact Commission
PROPOSED RULES
Over-order price regulations:
Supply management program; hearing, 19084–19089

Nuclear Regulatory Commission
PROPOSED RULES
Well logging operations; licenses and radiation safety requirements:
Energy compensation sources and other regulatory clarifications, 19089–19095
NOTICES
Environmental statements; availability, etc.:
Duquesne Light Co. et al., 19204–19205
GPU Nuclear, Inc., et al., 19205–19206
Meetings:
Reactor Safeguards Advisory Committee, 19206–19207
Operating licenses, amendments; no significant hazards considerations; biweekly notices; correction, 19207
Reports and guidance documents; availability, etc.:
Nuclear power reactors; oversight processes; recommended improvements; comment request, 19207–19208
Applications, hearings, determinations, etc.:
GPU Nuclear, Inc., et al., 19202–19204

Office of United States Trade Representative
See Trade Representative, Office of United States

Patent and Trademark Office
NOTICES
New Act of Hague Agreement; international registration of industrial designs; public hearing and comment request, 19135–19139

Postal Service
RULES
International Mail Manual:
Priority Mail Global Guaranteed; enhanced expedited service from selected U.S. locations to selected European countries, 19039–19042
NOTICES
Meetings; Sunshine Act, 19208

Presidential Documents
PROCLAMATIONS
Special observances:
Jewish Heritage Week (Proc. 7183), 19017

Public Health Service
See Centers for Disease Control and Prevention
See Food and Drug Administration
See National Institutes of Health
NOTICES
National Toxicology Program:
Carcinogens Report, Tenth Edition—
Substances, mixtures, and exposure circumstances for listing or delisting, 19188–19189

Small Business Administration
NOTICES
Disaster loan areas:
Louisiana et al., 19208
Meetings; district and regional advisory councils:
Pennsylvania, 19208–19209

Surface Transportation Board
NOTICES
Railroad operation, acquisition, construction, etc.:
Consolidated Rail Corp., 19215

Trade Representative, Office of United States
NOTICES
World Trade Organization:
Dispute settlement panel establishment requests—
European Communities; banana importation, sale, and distribution, 19209–19211

Transportation Department
See Coast Guard
See Federal Aviation Administration
See National Highway Traffic Safety Administration
See Surface Transportation Board

Treasury Department
See Comptroller of the Currency
See Internal Revenue Service

United States Information Agency
NOTICES
Art objects; importation for exhibition:
Cezanne to Van Gogh: The Collection of Doctor Gachet, 19215
Ringing Thunder: Tomb Treasures from Ancient China, 19215–19216

Separate Parts In This Issue

Part II
Department of Transportation, Federal Aviation Administration, 19219–19240

Part III
Department of Agriculture, Cooperative State Research, Education, and Extension Service, 19241–19248

Part IV
Department of Commerce, Economic Development Administration, 19249–19250

Reader Aids
Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

CFR PAR
A cumulativ
Reader Aid
3 CFR
Proclamatio
7183
7 CFR
801
916
917
1079
Proposed R
1079
1205
1306
1309
10 CFR
Proposed R
39
12 CFR
3
208
225
325
14 CFR
Proposed R
39
108
26 CFR
Proposed R
301
33 CFR
187
39 CFR
20
40 CFR
180 (2 doc
Proposed R
52
47 CFR
1
43
63
73
48 CFR
715
49 CFR
Proposed R
571
50 CFR
660
679
697
Proposed R
17 (2 docu
600
648 (2 doc
679

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

3 CFR
Proclamations:
7183.....19017

7 CFR
801.....19019
916.....19022
917.....19022
1079.....19034
Proposed Rules:
1079.....19071
1205.....19072
1306.....19084
1309.....19084

10 CFR
Proposed Rules:
39.....19089

12 CFR
3.....19034
208.....19034
225.....19034
325.....19034

14 CFR
Proposed Rules:
39.....19096
108.....19220

26 CFR
Proposed Rules:
301.....19217

33 CFR
187.....19039

39 CFR
20.....19039

40 CFR
180 (2 documents).....19042, 19050
Proposed Rules:
52.....19097

47 CFR
1.....19057
43.....19057
63.....19057
73.....19067

48 CFR
715.....19217

49 CFR
Proposed Rules:
571.....19106

50 CFR
660.....19067
679.....19069
697.....19069
Proposed Rules:
17 (2 documents).....19108
600.....19111
648 (2 documents).....19111
679.....19113

UMI
VOL
64
ISS
74
AP
19
1999
UMI

Federal Re
Vol. 64, No
Monday, A

Title 3—

The Pre

[FR Doc. 99–
Filed 4–16–9
Billing code

Federal Register
Vol. 64, No. 74
Monday, April 19, 1999

Presidential Documents

Title 3—

The President

Proclamation 7183 of April 14, 1999

Jewish Heritage Week, 1999

By the President of the United States of America

A Proclamation

Nearly 350 years have passed since the first Jewish settlers arrived in America. The sons and daughters of a proud and ancient heritage, they brought to this new land gifts that have enriched our national life tremendously: a deep faith in God, a strong sense of morality, a devotion to family and community, a thirst for freedom, a reverence for justice, and a long tradition of philanthropy.

Millions of Jews have shared the American immigrant experience. Many came here fleeing poverty and persecution, yearning for religious or political freedom, seeking a better life for themselves and their families. Investing their dreams, ambitions, labor, and love in our country, Jewish immigrants overcame great obstacles to rise as far as their talents and effort could take them. Today their descendants continue to make extraordinary contributions to the cultural, economic, religious, and intellectual life of our Nation. In education, the arts, politics, the law, science, entertainment, technology, philanthropy, industry, and every other field of endeavor, Jewish men and women have excelled in their pursuits and strengthened America with their character and accomplishments.

As we look forward to a new century and a new millennium, let us give thanks for all that the Jewish community in America has done to keep our Nation free, strong, and prosperous. Let us celebrate the freedom of religion guaranteed by our founders in the Bill of Rights, which has done so much to attract men and women of conscience to this land. Let us recognize that our country's great diversity of races, religions, ethnicities, and cultures will prove to be among our greatest strengths in the global community of tomorrow. And let us reaffirm our sacred obligation to build a future based upon a spirit of tolerance, respect, and understanding.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim April 18 through April 25, 1999, as Jewish Heritage Week. I urge all Americans to observe this week with appropriate programs, ceremonies, and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this fourteenth day of April, in the year of our Lord nineteen hundred and ninety-nine, and of the Independence of the United States of America the two hundred and twenty-third.

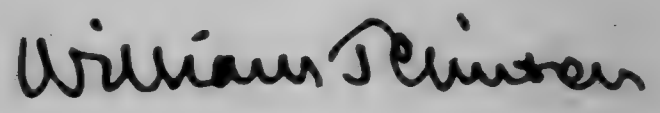

[FR Doc. 99–9897
Filed 4–16–99; 8:45 am]
Billing code 3195–01–P

VOL
64
ISS
74
AP
19
1999
UMI

Rules

This section
contains reg
applicability
are keyed to
Federal Reg
50 titles pur

The Code o
the Superint
new books a
REGISTER

DEPARTM

**Grain Insp
Stockyard**

7 CFR Par

RIN 0580–A

**Official Te
Protein, a**

AGENCY: G
Stockyard

ACTION: Fi

SUMMARY:
and Stock
is adoptin
provisions
the use of
infrared sp
in its offic
include te
and starch
and incorp
Refiners A
Starch me
GIPSA is
market de
testing pro
anticipate
productio

DATES: Eff

The inc
Analysis f
20, Secon
Standard
Member C
Associatio
rule, is ap
Federal Re

FOR FURTH
Sharon Va
STOP 364
3649; FAX
svassili@f
GIPSA, US
D.C., 2025
0252; or E

SUPPLEME

Rules and Regulations

Federal Register
Vol. 64, No. 74
Monday, April 19, 1999

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

7 CFR Part 801

RIN 0580–AA62

Official Testing Service for Corn Oil, Protein, and Starch

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA.

ACTION: Final rule.

SUMMARY: The Grain Inspection, Packers and Stockyards Administration (GIPSA) is adopting, without change, the provisions of an interim rule extending the use of the currently approved near-infrared spectroscopy (NIRS) analyzers in its official inspection program to include testing of corn for oil, protein, and starch content as official criteria, and incorporating by reference the Corn Refiners Association Method A–20, Starch method, into the regulations. GIPSA is offering this service to meet a market demand for reliable official testing procedures created by anticipated increases in high-oil corn production.

DATES: Effective May 19, 1999.

The incorporation by reference of Analysis for Starch in Corn, Method A–20, Second Revision, April 15, 1986, Standard Analytical Methods of the Member Companies of the Corn Refiners Association, Inc., listed in this final rule, is approved by the Director of the Federal Register as of July 1, 1998.

FOR FURTHER INFORMATION CONTACT: Sharon Vassiliades, GIPSA, USDA, STOP 3649, Washington, D.C. 20250–3649; FAX to (202) 720–4628; or e-mail svassili@fgisdc.usda.gov; or John Giler, GIPSA, USDA, STOP 3632, Washington, D.C., 20250–3632; telephone (202) 720–0252; or E-mail jgiler@fgisdc.usda.gov.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This final rule has been determined to be not significant for purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This action is not intended to have a retroactive effect. The United States Grain Standards Act (USGSA), as amended, provides in section 87g that no State or subdivision may require or impose any requirements or restrictions concerning the inspection, weighing, or description of grain under the USGSA. Otherwise, this final rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this final rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this final rule.

Effect on Small Entities

The Administrator of GIPSA has determined that this final rule will not have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Currently, NIRS analyzers are being used to determine protein in wheat and protein and oil in soybeans in both domestic and export markets. This final rule expands the use of currently approved NIRS analyzers to test corn for oil, protein, and starch content; establishes tolerances for corn oil, protein, and starch analyzers. The fees for these services are identical to the fees already established for wheat protein and soybean oil and protein testing services.

There are 53 official agencies (46 private entities, 7 States) designated by GIPSA to perform official grain inspection services. In addition, there are 8 delegated States. Most of the agencies could be considered small entities under Small Business Administration criteria. The extent to which these agencies will choose to provide this service is difficult to quantify because GIPSA is offering this service as official criteria, on a request basis, and locations where service is requested infrequently may make arrangements with a neighboring agency to provide the service (7 CFR 800.196(g)(1)). GIPSA believes that offering this service would have a beneficial effect on those agencies electing to provide the service.

For the 1998 crop year, high-oil corn production is estimated at 1.5 million acres. Currently, producers, grain handlers, exporters, and feedlot operators rely primarily on private laboratories to determine percent oil, protein, and starch in corn. Further, grain handlers and exporters are using this information to determine value and premiums. While exact numbers are not known, it can be assumed that many of the value-enhanced corn producers, grain handlers, exporters, and feedlot operators could be considered small entities under Small Business criteria. The extent to which these entities will request the official testing of corn for oil, protein, and starch, or the impact of offering this service through the official system, is difficult to quantify. However, GIPSA believes users of the inspection system will rely on the official system to provide reliable testing procedures and accurate results that the market can rely on to negotiate price, value, and premium. GIPSA performed 2 million inspections for all grains in fiscal year 1998.

To recover the cost of providing this service, GIPSA will charge fees as follows: $1.50 per test when the test is performed at the applicant's facility; $8.10 per test if the test is performed elsewhere; and $15.85 for an appeal. These fees are the same as fees charged for similar tests. The impact on applicants for services will vary depending upon usage since these tests are provided on a request basis.

Information Collection and Recordkeeping Requirements

In accordance with the Paperwork Reduction Act of 1995, the recordkeeping and reporting burden imposed by Part 801 was previously approved by OMB under control number 0580–0013 and will not be affected by this final rule.

Background

In its 1997–98 report, Value-Enhanced Corn Quality Report, dated April 1998, the U.S. Feed Grains Council defined value-enhanced corn as corn with particular quality characteristics that add end-user value. Value-enhanced

corn, also referred to as speciality corn, includes waxy corn, high-lysine and other essential amino acid corn, hard endosperm corn, popcorn, sweet corn, white corn, and high-oil corn. Additionally, work is under way to develop nutritionally dense hybrid corn, which usually includes some combination of higher-oil, higher protein, and/or altered amino or fatty acid profiles.

The report estimated that value-enhanced corn is produced on 3.3 to 3.7 million acres (representing 4.5 to 5.1 percent of the U.S. harvested corn acreage). It projected the U.S. acreage of value-enhanced corn to remain essentially unchanged, with the exception of high-oil corn, which is considered the fastest growing value-enhanced corn produced in the marketplace. Approximately 1.5 million acres of high-oil corn is projected for the 1998 crop year (up from virtually none in 1993), and the acreage is expected to more than double in 1999. The report suggested that high-oil corn will continue to be a significant part of the value-enhanced corn produced and traded in the marketplace and the market potential for both high-oil and nutritionally dense corn is very high, representing the most significant growth potential for the value-enhanced corn market.

High-oil corn is used by livestock feeders to replace animal fat previously added to livestock rations and to help the animals gain weight more quickly. U.S. No. 2 corn typically averages less than 4.5 percent oil content, while high-oil corn can contain up to 8.0 percent. At this time, depending on the oil content, high-oil corn premiums range from 5 to 24 cents per bushel. High-oil corn is almost exclusively grown through contracts with livestock feeders or companies that will export the grain.

For several years, corn processors and producers have expressed an interest in having corn officially analyzed for oil, protein, and starch content. GIPSA received a calibration database from Optimum Quality Grains, Inc. Optimum Quality Grains, Inc. (a joint venture between DuPont and Pioneer Hi-Bred), is a source of high-oil corn germplasm. The calibration database consists of several hundred samples which represent germplasm from a broad range of sources.

GIPSA used the database to derive calibrations in cooperation with Optimum Quality Grains, Inc. GIPSA then tested the calibrations' performance using an additional set of 92 corn samples not used in the calibration database. The 92 corn samples represent oil, protein, and starch ranges of 4.0 to 8.5 percent, 8.0 to 12.0 percent, and 64 to 72 percent (dry basis), respectively. Data collected on the 92 corn samples were statistically analyzed.

The standard deviation of differences (SDD) between NIRS oil values and official solvent oil extraction reference results was 0.44 percent. A comparison of near-infrared transmittance (NIRT) analyzer protein values and official Combustion Nitrogen Analyzer reference results yielded an SDD of 0.40 percent. The SDD between NIRS analyzer starch predictions and reference values obtained using the Corn Refiners Association Method A–20 was 2.20 percent. GIPSA has determined that this level of accuracy is commensurate with prospective official customer needs.

To further assure the performance of the NIRT analyzer for corn measurements, GIPSA established the maintenance tolerances for corn oil content at ±0.20 percent mean deviation from the national standard NIRT analyzers, which are referenced and calibrated to the GIPSA solvent oil extraction method; for protein content at ±0.30 percent mean deviation from the national standard NIRT analyzers, which are referenced and calibrated to the Combustion method, AOAC International Method 992.23; and for starch content at ±0.35 percent mean deviation from the national standard NIRT analyzers, which are referenced and calibrated to the Starch method, Corn Refiners Association Method A–20.

On June 30, 1998, GIPSA published in the **Federal Register** (63 FR 35502) an interim rule announcing the immediate availability of official oil, protein, and starch testing service for corn as official criteria under the authority of the USGSA. The interim rule also announced the establishment of performance tolerances between NIRS and reference methods for oil, protein, and starch determinations and established fees for the service. Additionally, a 30-day comment period that ended July 30, 1998, was provided. The fees for the service established by the interim rule were revised and finalized in a rule published in the **Federal Register** December 23, 1998 (63 FR 70990), and became effective February 1, 1999.

Comment Summary

During the 30-day comment period, GIPSA received comments from Dow AgroSciences, Iowa State University (ISU), Zeltex Inc., and MBS Inc. A summary of the four comments received is as follows:

(1) Dow AgroSciences, a business unit of the Dow Chemical Co., is a supplier and developer of biotechnology seeds (e.g., nutritionally enhanced corn and high oleic/low linolenic canola). Dow AgroSciences has cooperated with ISU in the development of NIRT corn calibrations. Their concern is that the GIPSA calibration was developed from Optimum Quality Grains, Inc., data that did not include their corn. Consequently, they believe the GIPSA calibration will not accurately measure their commodity, which could put them at a competitive disadvantage.

(2) Iowa State University is a public land-grant institution that provides technical support for NIRS calibration development and operates a grain quality lab that monitors the quality of Iowa's corn production. ISU raised questions regarding the acquisition of GIPSA's calibration data, the representativeness of the calibration data set, and the performance tolerances for the instrumentation.

(3) Zeltex Inc. is an NIRS company that is developing a whole grain analyzer which they plan to submit for approval as a moisture meter under the National Conference of Weights and Measures' National Type Evaluation Program (NTEP). Zeltex Inc. has been cooperating with ISU on the development of corn and soybean calibrations for their instrument. They questioned the calibration development and the approval of a single instrument for analysis. Zeltex Inc. is concerned that the GIPSA calibration sample data set was insufficient in size and was not representative of other corn varieties traded in the marketplace. Additionally, they are concerned that the GIPSA-approved Foss instrument will prevent Zeltex Inc. from marketing their NIRS instrument in the United States.

(4) MBS Inc. is a foundation seed company that develops and markets new soybean varieties and value-enhanced corn hybrids, with characteristics targeted for specific end-users and provides NIRS calibrations and support to the grain and seed industry. They use the calibrations developed at ISU. MBS Inc.'s comments questioned the representativeness and source of the calibration data, and questioned the performance of the calibration. They also questioned how future calibrations would be developed.

Commenters suggested that GIPSA: (1) withdraw the current proposal; (2) promote dialogue among all interested parties regarding calibration development; and (3) develop an open procurement process to obtain calibration data.

Comment Review

GIPSA believes that the commenters' suggestion to withdraw the current proposal is unwarranted. For several years, high-oil corn processors and producers have expressed an interest in having corn officially analyzed for oil, protein, and starch content. Future crop production estimates identified high-oil corn as the fastest growing value-enhanced corn in the marketplace. For the 1998 crop year, high-oil corn production is estimated at 1.5 million acres and is expected to more than double in 1999. Also, the possible introduction of nutritionally dense hybrid corn makes it necessary to provide the grain industry with a reliable official testing procedure it can use to negotiate price, value, and premium. Additionally, GIPSA is offering this service upon request as official criteria which has no effect on the grade designation. Consequently, GIPSA believes that offering this service will enhance the marketability of speciality corn domestically and for export.

Commenters misinterpreted the information in the interim rule to suggest the calibrations were developed based on only 92 samples. In fact, the calibration was based on several hundred samples and validated with an additional 92 corn samples. Based on its assessment of samples in the database, GIPSA determined that the calibration database obtained from Optimum Quality Grains, Inc., was representative of current samples in the marketing system. When GIPSA explored the possibility of providing official testing of corn for oil, protein, and starch content, other NIRS calibration sources (including ISU and MBS Inc.) were contacted to enlist their cooperation. After reviewing the available sources of NIRS calibration data, GIPSA decided to use the Optimum Quality Grains, Inc., database for the following reasons: (1) Optimum Quality Grains, Inc., is the dominant source of high-oil corn in the current market; (2) their analytical procedures were reviewed and were compatible with GIPSA's procedures for calibration development; (3) their calibration data contained several hundred samples; and (4) they provided their calibration data to GIPSA at no cost and without restrictions on its use.

One commenter suggested that, because GIPSA proposes to charge fees for corn analysis, its choice of the Optimum Quality Grains, Inc. database for purposes of calibration of near-infrared transmittal (NIRT) analyzers represents procurement of an outside service by GIPSA. The commenter suggests that procurement bidding protocol for government procurements required GIPSA to evaluate other databases or request derived dry basis calibrations from other databases in an organized manner following government procurement procedures.

The Office of Federal Procurement Policy Act provides the following definition of "procurement," in relevant part: "all stages of the process of acquiring property or services." 41 USCA 403(2). The Federal Acquisition Regulation (FAR), 48 CFR parts 1–52, which applies to all "acquisitions" (except where expressly excluded) (48 CFR 1.104) defines an "acquisition," in relevant part, as "the acquiring by contract with appropriated funds of supplies or services * * * by and for the use of the Federal Government through purchase or lease, * * *" (48 CFR 2.101).

GIPSA's choice of the Optimum Quality Grains, Inc., sample information as a data standard constitutes neither a "procurement" nor an "acquisition" under these definitions, and the applicability of government procurement laws is not predicated on the fact that the government may charge a fee for a service it may perform. Instead, GIPSA's choice is part of the policy-making process in the development of a rule which includes fees for providing official testing services. The policy basis for the fee charged is based on an already established fee for a specific method of testing. Therefore, GIPSA chose to use the Optimum Quality Grains, Inc., database for calibration purposes because their analytical methods were compatible with the methods employed by GIPSA. GIPSA's choice of an outside data source for incorporation into the regulatory action, which is a practice permitted for rulemakings by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 1, is part of the rulemaking process outlined under 5 U.S.C. 553 of the Administrative Procedure Act (APA). The adoption of an outside reference point, standard, scientific study, or other data as part of the factual basis of a rulemaking cannot be converted from a question of the sufficiency of the rulemaking under the APA into a procurement or acquisition of goods and services subject to Federal statutes applicable to government procurement.

Commenters also indicated that GIPSA's choice of the Optimum Quality Grains, Inc., database creates a monopoly for the company that created the method from which GIPSA derived the calibration. GIPSA disagrees with this comment.

The initial GIPSA calibration is intended to represent the majority of high oil corn that will be traded in the 1998 crop year. GIPSA's plan for future calibration development will expand the population of the database to other sources of value-enhanced corn. GIPSA intends to provide opportunities for interested parties to supply samples of material from other germplasm sources for inclusion in its calibration updates. Consequently, as additional hybrids reach the feed and food marketing channels, GIPSA will solicit new samples for inclusion in the calibration data set. GIPSA will then maintain and control the NIRS corn oil, protein, and starch calibrations in a similar manner as it maintains and controls other official calibrations (e.g., wheat protein and soybean oil and protein).

After receiving the already established database, GIPSA derived and tested the calibrations using its calibration development software and methodology. Commenters suggested that other calibrations are more accurate than the GIPSA calibrations. This conclusion appears to have been based on results from different sample sets. Also, some assumptions and conclusions reached by ISU regarding the GIPSA calibration performance were based on limited information. GIPSA's assessments of the relative accuracies of the available calibrations support the choice of the calibration based on the Optimum Quality Grains, Inc., database. To further assure the performance of the NIRT analyzer for corn measurements, GIPSA is establishing the maintenance tolerances of ±0.20, ±0.3, and ±0.35 percent mean deviation for oil, protein, and starch, respectively, from the national standard NIRS instruments, which are referenced and calibrated to standardized analytical methods.

GIPSA decided to use current instrument technology because it was already approved and available within the official inspection system. A single instrument model with a single calibration will provide significantly better consistency across inspection laboratories than multiple instrument types or multiple calibrations. This fact has been demonstrated by GIPSA in the past and was actually supported by one of the commenters. Further, GIPSA decided to utilize currently approved equipment because it provided an opportunity to implement a new service with minimal additional cost to the official inspection program. Cross-utilizing instruments already available in the official laboratories is reasonable and cost effective. Allowing multiple

instrument models and/or calibrations for corn measurements would greatly increase the cost of the GIPSA standardization program, would increase the cost of the overall inspection service, and would reduce the reliability of official inspection results. In addition, GIPSA does not regulate or control the use of analytical instruments outside of the official inspection system. Consequently, unofficial inspection service providers may use other instruments and/or calibrations.

This final rule also incorporates by reference the Corn Refiners Association Method A–20, Starch method, into the regulations. GIPSA will use this method as the chemical reference method for determining the starch content in corn.

GIPSA is required to collect fees for providing official testing service to cover, as nearly as practicable, GIPSA's costs for performing the service, including related administrative and supervisory costs. Testing procedures and time necessary to determine oil, protein, and starch in corn using the approved NIRT analyzers are the same as those required for NIRT wheat protein or NIRT soybean oil and protein determinations. Therefore, GIPSA has decided to collect fees identical to the fees established for NIRT wheat protein or NIRT soybean oil and protein testing services. These fees will be $1.50 per test when the service is performed at an applicant's facility in an onsite Federal Grain Inspection Service (FGIS) laboratory; $8.10 per test when an original inspection service is performed at a location other than an applicant's facility in an FGIS laboratory; and $15.85 per test when an appeal inspection service is performed at a location other than an applicant's facility in an FGIS laboratory.

GIPSA has carefully considered the comments received regarding this action and has determined that it is in the best interest of American agriculture to offer this service. This decision is based on the fact that (1) the calibration data set represents a significant part of the 1998 corn market, (2) GIPSA plans to expand the calibration data set to incorporate new germplasm sources as they are released to the commercial market, (3) future calibration enhancements will remain under the direct control of GIPSA, and (4) the performance of the NIRT instruments will continue to satisfy market needs.

Final Action

Value-enhanced corn is produced on 3.3 to 3.7 million acres. It is projected that the U.S. acreage of value-enhanced corn is to remain essentially unchanged, with the exception of high-oil corn. Approximately 1.5 million acres of high-oil corn is projected for the 1998 crop year and is expected to more than double in 1999. High-oil corn will continue to be a significant part of the value-enhanced corn produced and traded in the marketplace (the market potential for high-oil corn is very high, representing the most significant growth potential for the value-enhanced corn market). Also, the possible introduction of nutritionally dense hybrid corn makes it necessary to provide the grain industry with a reliable official testing procedure it can use to negotiate price, value, and premium. Additionally, GIPSA is offering this service upon request as an official criteria, which will have no effect on the grade designation.

For several years, corn processors and producers have expressed an interest in having corn officially analyzed for oil, protein, and starch content. When GIPSA explored the possibility of providing official testing of corn for oil, protein, and starch content, several NIRS calibration sources (including ISU and MBS Inc.) were contacted to enlist their cooperation. After reviewing the available sources of NIRS calibration data, GIPSA decided to use the Optimum Quality Grains, Inc., database for the following reasons: (1) Optimum Quality Grains, Inc., is a significant source of high-oil corn in the current market; (2) their analytical procedures were reviewed and were compatible with GIPSA's procedures for calibration development; (3) their calibration data contained several hundred samples; and (4) they provided their calibration data to GIPSA at no cost and without restrictions on its use.

The initial GIPSA calibration is intended to represent the majority of high oil corn that will be traded in 1998. GIPSA's plan for future calibration development will expand the population of the database to other sources of value-enhanced corn. GIPSA intends to provide opportunities for interested parties to supply samples of material from other germplasm sources for inclusion in its calibration updates. Consequently, as additional hybrids reach the feed and food marketing channels, GIPSA will solicit new samples for inclusion in the calibration data set.

GIPSA has carefully considered the comments received regarding this action and has determined that it is in the best interest of the corn industry to offer this service. This decision is based on the fact that (1) the calibration data set represents a significant part of the 1998 corn market, (2) GIPSA plans to expand the calibration data set to incorporate new germplasm sources as they are released to the commercial market, (3) future calibration enhancements will remain under the direct control of GIPSA, and (4) the performance of the NIRT instruments will continue to satisfy market needs. GIPSA believes that offering this service will enhance both the export and domestic marketability of speciality corn.

Therefore, GIPSA will offer corn oil, protein, and starch testing services as official criteria under the authority of the USGSA. Upon a request for service, official inspection personnel will determine corn oil, protein, and starch content. Percent corn oil, protein, and starch will be reported to the nearest tenth percent on a dry matter basis (zero moisture basis) unless another moisture basis is requested.

Based on this and other available information, GIPSA has determined that the interim rule amending Part 801 as published at 63 FR 35502 will be adopted as the final rule.

List of Subjects in 7 CFR Part 801

Grains, Incorporation by reference.

PART 801—OFFICIAL PERFORMANCE REQUIREMENTS FOR GRAIN INSPECTION EQUIPMENT

Accordingly, the interim rule amending 7 CFR Part 801 which was published at 63 FR 35502 on June 30, 1998, is adopted as a final rule without change.

James R. Baker,

Administrator, Grain Inspection, Packers and Stockyards Administration.

[FR Doc. 99–9518 Filed 4–16–99; 8:45 am]

BILLING CODE 3410–EN–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 916 and 917

[Docket No. FV99–916–2 FR]

Nectarines and Peaches Grown in California; Revision of Handling Requirements for Fresh Nectarines and Peaches

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule revises the handling requirements for California nectarines and peaches by modifying the grade, size, maturity, and container marking requirements for fresh shipments of these fruits, beginning with 1999 season shipments. This rule also authorizes continued shipments of "CA Utility"

quality nectarines and peaches during the 1999 season with an increased percentage of U.S. No. 1 nectarines and peaches in each container. This rule will enable handlers to continue shipping fresh nectarines and peaches meeting consumer needs in the interest of producers, handlers, and consumers of these fruits.

EFFECTIVE DATE: This final rule becomes effective April 20, 1999.

FOR FURTHER INFORMATION CONTACT: Terry Vawter, Marketing Specialist, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721; telephone: (559) 487–5901, Fax: (559) 487–5906; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–5698. Small businesses may request information on compliance with this regulation, or obtain a guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456; telephone: (202) 720–2491; Fax: (202) 720–5698; or E-mail: Jay__N__Guerber@usda.gov. You may view the marketing agreement and order small business compliance guide at the following web site: http://www.ams.usda.gov/fv/moab.html.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Agreements Nos. 124 and 85, and Marketing Order Nos. 916 and 917 (7 CFR parts 916 and 917) regulating the handling of nectarines and peaches grown in California, respectively, hereinafter referred to as the "orders." The marketing agreements and orders are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This final rule revises the handling requirements currently prescribed for shipments of fresh nectarines and peaches under the orders.

Under the orders, grade, size, maturity, and container and pack requirements are established for fresh shipments of California nectarines and peaches. Such requirements are in effect on a continuing basis. The Nectarine Administrative Committee (NAC) and the Peach Commodity Committee (PCC) (committees), which are responsible for local administration of the orders, met on December 2, 1998, and unanimously recommended that these handling requirements be revised for the 1999 season, which begins April 1, with one exception. The Nectarine Administrative Committee voted 4 in favor and 3 opposed to continuing shipments of "CA Utility" quality nectarines with an increased percentage of U.S. No. 1 nectarines in boxes of "CA Utility" quality nectarines; and the Peach Commodity Committee voted 7 in favor and 4 opposed to continuing shipments of "CA Utility" quality peaches with an increased percentage of U.S. No. 1 peaches in boxes of "CA Utility" quality peaches. The nectarine order requires six concurring votes on recommendations for regulations and the peach order requires nine concurring votes on recommendations for regulations. As a result, these two votes did not meet the minimums prescribed to constitute official recommendations to the Secretary. Nectarine and peach handlers have been authorized to ship "CA Utility" quality fruit since the 1996 season, and such shipments have comprised about two percent of total shipments. Such fruit is mature but of a lower quality than U.S. No. 1 fruit and is acceptable in some markets. If shipments of "CA Utility" quality fruit are not permitted, only higher-quality fruit could be shipped.

Because prior season experience shows that the authority to ship "CA Utility" quality fruit provided additional marketing opportunities for handlers, the Department proposed continuing to allow such shipments during 1999, and invited written comments from all interested persons. One comment supporting the continued shipment of "CA Utility" quality fruit was received.

The changes implemented by this final rule: (1) Require that maturity and "CA Utility" quality marking of containers be a minimum of 3/8 inch in height; (2) require that experimental containers and 22G containers be marked with both the size and the count of fruit contained in the package; (3) require that master containers of consumer packages be marked with the minimum size fruit contained in the consumer packages; (4) add weight counts for early-season, mid-season, and late-season varieties; (5) continue shipments of "CA Utility" quality nectarines and peaches, and increase the percentage of U.S. No. 1 nectarines and peaches permitted in containers of "CA Utility" quality fruit from the current 30 percent to 40 percent, provided that the additional 10 percent of U.S. No. 1 fruit in the container has non-scoreable blemishes; and (6) revise varietal maturity and size requirements to reflect recent changes in growing conditions.

The committees meet prior to and during each season to review the rules and regulations effective on a continuing basis for California nectarines and peaches under the orders. Committee meetings are open to the public, and interested persons may express their views at these meetings. The Department reviews committee recommendations and information, as well as information from other sources, and determines whether modification, suspension, or termination of the rules and regulations would tend to effectuate the declared policy of the Act.

No official crop estimate was available at the time of the committees' meetings because the nectarine and peach trees were dormant. The committees will recommend a crop estimate at their meetings in early spring. However, the committees continue to believe that the 1999 crop will be somewhat larger in size but similar in characteristics to the 1998 crop which totaled 16,916,900 boxes of nectarines and 18,202,300 boxes of peaches.

Container Marking Requirements

Sections 916.52 and 917.41 of the orders for nectarines and peaches, respectively, authorize container marking requirements. Requirements for container markings are specified in §§ 916.350 and 917.442 of the orders' rules and regulations. Container marking requirements include marking of the commodity and variety (e.g., July Red Nectarines), the size of the fruit in the box (e.g., 80 size), the net weight, the maturity (either U.S. Mature (US MAT), or California Well-Matured (CA WELL MAT)), or the quality (i.e., "CA Utility"), on each container of nectarines and peaches.

This final rule revises paragraphs (a)(3) of §§ 916.350 and 917.442 in the orders' rules and regulations to require that maturity markings on containers be in letters at least ⅜ inch in height. This rule also revises the current quality marking requirement in paragraphs (d) of §§ 916.350 and 917.442 for "CA Utility" from a minimum of ¾ inch in height to a minimum of ⅜ inch in height. These changes standardize marking requirements on containers by specifying a minimum lettering height of ⅜ inch for both maturity and quality markings. This is intended to assure that all containers shipped by nectarine and peach handlers are similarly marked.

The committees unanimously recommended that the lettering indicating fruit maturity and quality on containers be standardized at a minimum height of ⅜ inch. The ⅜ inch minimum is appropriate, given the number of other markings, required or voluntary, on each container. Such lettering is also readily legible to the Federal or Federal-State Inspection Service (Inspection Service) and compliance officers representing the committees. The ⅜ inch minimum letter height standard will also eliminate any confusion among handlers about which size is required for markings by reducing the currently-required ¾ inch minimum marking for "CA Utility" to a minimum ⅜ inch in height and by specifying similar requirements for maturity markings.

Sections 916.350 and 917.442 of the orders' rules and regulations also require containers to be marked with the size and/or number of pieces of fruit in the container (count).

In commonly-used containers such as the No. 22D and the No. 32 boxes, the configurations of fruit results in the fruit size and count being the same. The No. 22G standard lug box, however, has a different shape which results in a different tray-pack configuration than those of the No. 22D and the No. 32 boxes. The shape of the No. 22G container also imposes tighter limits on the number of fruit that can be tray packed in it than the No. 22D and No. 32 boxes, and the fruit size and count are not the same. Thus, handlers using it should be required to indicate the number of fruit in the container as well as the fruit size, since the fruit size and count are not always the same in this container. This is also true for some experimental packages, as well, since there are no standardized pack configurations for experimental packages, and, thus, no standardized basis for comparison against the No. 22D and No. 32 boxes is possible. Experimental containers, in addition to the No. 22G standard lug box, are required to be marked with both the size and the count of fruit contained in the package.

To lessen the chances of confusion in the marketplace with such containers, the committees unanimously recommended requiring that the No. 22G standard lug box and experimental containers be marked with both the size and count of the fruit contained in the package.

To implement this change, paragraphs (a)(4)(i) and (a)(4)(ii) of § 916.350 are revised to add the requirement that experimental containers be marked with both the size and count of nectarines contained within the containers. Paragraph (a)(4)(ii) of § 917.442 is also revised to add the requirement that the No. 22G standard lug box be marked with both the size and count of peaches contained within the container.

Sections 916.350 and 917.442 also specify markings that are required on master containers of consumer packages, consumer packages within master containers, and consumer packages not within master containers. Master containers must be marked with the net weight of each consumer package, the number of individual consumer packages, the size description of the fruit in each consumer package, and the name and address of the shipper. Consumer packages within the master containers must be marked with the name and address of the shipper and the net weight of the container. When the consumer package is not in a master container, the consumer package must also be marked with the number of fruit in the package, the name of the variety, if known, and the maturity of the fruit in the package.

Authority for consumer packages permits handlers to pack and ship nectarines and peaches in other types of containers demanded by their customers. The fruit packages are tailored to the requirements of the buyer, and the buyer may require the handler to pack consumer packages of several different sizes of fruit within the master container. For example, a master container may contain five consumer packages. One consumer package may contain size 64 nectarines, while two other consumer packages may contain size 70 nectarines. The remaining two consumer packages may contain size 60 nectarines. In this example, each consumer package contains the same size nectarines within that package, but the master container contains consumer packages with different nectarine sizes.

The committees unanimously recommended that such size variations from consumer package to consumer package within a master container should be indicated on the master container. The committees determined that the marking on the master container should accurately and clearly reflect the minimum size contained within the package containing the smallest size fruit and that the master container contains consumer packages with larger sized fruit. For example, a master container will be marked "Minimum size 60 and larger" or "Minimum size 96 and larger," as appropriate, when the consumer packages in the master container contain different fruit sizes. This is intended to provide more accurate information to the buyers of the fruit.

According to a comment received regarding this aspect of the proposed rule issued on these regulatory changes, the intent of the committees was to ensure that when multiple sizes of consumer packages of nectarines or peaches are contained within the master container, the master container must be marked "Minimum size 60 and larger," or "Minimum size 96 and larger," etc., as appropriate. However, the commenter noted, the proposed rule did not specify that when the master container does not contain multiple sizes of nectarines or peaches in the consumer packages, only the size of the nectarines or peaches in the consumer packages should be marked on the master container, such as "Size 60," or "Size 96," etc., as appropriate. Accordingly, the clarification to the proposed rule is made.

Thus, paragraph (a)(8)(i) of § 916.350 and paragraph (a)(9)(i) of § 917.442 of the orders' rules and regulations are revised to require that the markings on master containers containing consumer packages of different sizes of nectarines and peaches specify the smallest size and the words "and larger" in the packages. When consumer packages contain nectarines or peaches of the same sizes, the master container shall

continue to be marked with the appropriate individual size marking.

Pack Regulations

Container markings based on weight-count standards are also specified in Tables 1 and 2 of paragraphs (a)(4)(iv) in §§ 916.350 and 917.442 of the orders' rules and regulations. The purpose of the weight-count standards is to establish the maximum number of nectarines or peaches in a 16-pound sample for each individual size designation. To facilitate the repacking of nectarines and peaches from tray-packs into volume-filled containers, the committees routinely conduct tests to determine the optimum weight-count standards for early-season, mid-season, and late-season nectarines and peaches, respectively, based on the sizes of nectarines and peaches in tray-packs. Tray-packs fit into standard nectarine and peach boxes and have molded cavities for the fruit to sit in. Trays with different cavity sizes are used, depending upon the size of the fruit being packed. Handlers have traditionally used tray-packs to securely package nectarines and peaches. However, some handlers have moved away from tray-packed configurations toward volume-filled configurations in recent years.

Handlers of nectarines and peaches have informed the committees that some larger sizes of nectarines and peaches are increasingly being converted from tray-packs to volume-filled packs. Since volume-filled containers are less costly to pack and market demands change, handlers have opted to pack a greater proportion of the larger-sized, high-quality fruit in volume-filled containers.

Size studies were performed by the NAC and PCC in 1994 and 1995, and were used as a basis for changing some of the weight counts. Because nectarines and peaches of size 44 were not packed in volume-filled containers, no weight counts were published for size 44 nectarines and peaches at that time. As the practice of converting tray-packed containers of size 44 nectarines and peaches to volume-filled containers has increased, the need to publish a weight-count standard also increased.

The committees have used the previously-conducted size studies to determine the weight-count standards for size 44 nectarine and peach sizes for inclusion in the weight-count standards. The NAC has determined that the weight-count standard for size 44 should be a maximum of 33 pieces for early-season nectarines and a maximum of 30 pieces of mid-season and late-season nectarines in a 16-pound sample. The PCC has determined that the weight count standard for size 44 should be a maximum of 33 pieces of fruit in a 16-pound sample for all peach varieties.

Therefore, the NAC and PCC unanimously recommended modifications to the weight-count standards for nectarines and peaches by the addition of weight-count standards for size 44 nectarines and peaches. To implement such a change, Tables 1 and 2 of paragraphs (a)(4)(iv) in §§ 916.350 and 917.442 of the regulations are revised by adding size 44 and the applicable weight-count standard of a maximum of 33 pieces of early-season nectarines and all peaches, and a maximum of 30 pieces of mid-season and late-season nectarines in a 16-pound sample. These changes will permit handlers to more easily convert tray-packed nectarines and peaches to volume-filled containers, decrease the handling costs associated with that conversion, and meet marketing demands.

Quality Requirements

Sections 916.52 and 917.41 of the orders authorize the establishment of grade and quality requirements for nectarines and peaches, respectively. Prior to the 1996 season, § 916.356 of the order's rules and regulations required nectarines to meet a modified U.S. No. 1 grade. Specifically, nectarines were required to meet U.S. No. 1 grade requirements, except there was a slightly tighter requirement for scarring and a more liberal allowance for misshapen fruit. Under § 917.459 of the order's rules and regulations prior to the 1996 season, peaches were also required to meet the requirements of a U.S. No. 1 grade, except there was a more liberal allowance for open sutures that were not "serious damage."

Under §§ 916.356 and 917.459, shipments of "CA Utility" quality nectarines and peaches have been permitted since the 1996 season, contingent upon the fruit in such containers meeting certain relaxed quality requirements. "CA Utility" quality is a lower-quality fruit than U.S. No. 1. Previously, the requirement for containers of "CA Utility" nectarines and peaches provided that not more than 30 percent of the fruit in any container meet or exceed the requirements of U.S. No. 1. This final rule permits handlers to continue shipping "CA Utility" fruit during the 1999 season, and increases the 30 percent limitation to not more than 40 percent except that the additional 10 percent of the U.S. No. 1 fruit must have non-scoreable blemishes.

Containers marked "CA Utility" must be inspected by the Inspection Service and certified as meeting the "CA Utility" quality requirements. Part of the inspection process is to evaluate the fruit in accordance with the requirements of the U.S. Standards for Grades of Nectarines, the U.S. Standards for Grade of Peaches, (Standards) and the orders. In conducting inspections, inspectors are required to evaluate various blemishes. Some blemishes are serious or severe enough to be "scored" against the fruit as defects which are damaging to the grade of the fruit, while some other blemishes are not serious or severe enough to affect the grade of the fruit. In the first instance, the blemishes are termed "scoreable" defects; and, in the second instance, the blemishes are termed "non-scoreable" defects. Some members of the committees supported a requirement that such non-scoreable blemishes must be present on the additional 10 percent of the fruit grading U.S. No. 1 in boxes marked "CA Utility" during the 1999 season.

A similar requirement was in place during the latter part of the 1998 season. At that time, unseasonal summer rains had caused increased "non-scoreable" defects which detracted from the overall appearance of U.S. No. 1 nectarines and peaches for some handlers. An interim final rule was published on September 22, 1998 (63 FR 50461), and a final rule was published on November 9, 1998 (63 FR 60209).

While containers marked "CA Utility" fruit are subject to relaxed quality requirements, all other grade and marking requirements of the orders must be met.

At the committee meetings on December 2, 1998, at least one handler complained that fruit with non-scoreable blemishes was unsightly in the type of U.S. No. 1 box he offered to the marketplace and to his customers. His preference was to place such fruit in boxes marked "CA Utility." The current limitation of not more than 30 percent U.S. No. 1 fruit in containers marked "CA Utility" caused the Inspection Service to determine that his "CA Utility" containers were "out of grade," because they contained more U.S. No. 1 fruit than permitted. For that reason, the handler was forced to remove the fruit from the "CA Utility" boxes, and either repack his U.S. No. 1 to include this fruit or discard the fruit. Therefore, the limitation of not more than 30 percent U.S. No. 1 in "CA Utility" quality containers became a hindrance and was eliminated by the September 22, 1998, rulemaking action.

A niche market exists for "CA Utility" quality fruit and an opportunity should be made available to market somewhat better quality. It was estimated by a

handler of "CA Utility" quality fruit that the relaxation from not more than 30 percent U.S. No. 1 in the containers to not more than 40 percent provided that the additional 10 percent U.S. No. 1 in the containers has non-scoreable blemishes will increase shipments of "CA Utility" quality nectarines and peaches by approximately one-half of one percent. A majority of the members of both committees supported the change, because the change had been in effect at the end of the 1998 season. However, one committee member commented that there was little merit to adding one-half of one percent to the marketplace. Another indicated that perhaps a review of the entire grade structure would address the problem and did not advocate relaxing the percentage of U.S. No. 1 in "CA Utility" containers. A majority of the committee members present voted to relax the percentage from 30 percent U.S. No. 1 in containers marked "CA Utility" to 40 percent U.S. No. 1 provided that the additional 10 percent of the U.S. No. 1 had non-scoreable blemishes. The vote by the NAC was 4 in favor and 3 opposed, and the vote by the PCC was 7 in favor and 4 opposed. The nectarine order requires six concurring votes on regulatory recommendations, and the peach order requires nine concurring votes on regulatory recommendations. As a result, these two votes did not meet the minimums prescribed to constitute official recommendations to the Secretary.

Because prior seasons' experience shows that the authority to ship "CA Utility" quality fruit provided additional marketing opportunities for handlers, the Department proposed continuing to allow such shipments during 1999 and invited written comments from all interested persons in the proposed rule. One comment supporting the proposal was received.

Historically, shipments of "CA Utility" nectarines represented 1.1 percent of all nectarine shipments, or approximately 210,000 boxes in 1996. In 1997, shipments of "CA Utility" nectarines represented 1.1 percent of all nectarine shipments, or approximately 230,000 boxes. In 1998, shipments of "CA Utility" nectarines represented 4.5 percent of all nectarine shipments, or approximately 760,000 boxes. Shipments of "CA Utility" peaches represented 1.9 percent of all peach shipments, or 366,000 boxes in 1996. In 1997, shipments of "CA Utility" peaches represented 1.0 percent of all peach shipments, or approximately 217,000 boxes. In 1998, shipments of "CA Utility" peaches represented 3.3 percent of all peach shipments, or approximately 602,000 boxes.

For these reasons, the Department has determined that continuing to allow shipments of "CA Utility" quality nectarines and peaches for the 1999 season with an increase in the percentage of U.S. No. 1 fruit permitted in each container effectuates the declared policy of the Act. Therefore, paragraphs (d) of §§ 916.350 and 917.442, and paragraphs (a)(1) of §§ 916.356 and 917.459 are revised to permit shipments of nectarines and peaches meeting revised "CA Utility" quality requirements during the 1999 season.

Maturity Requirements

Both orders provide (in §§ 916.52 and 917.41) authority to establish maturity requirements for nectarines and peaches, respectively. The minimum maturity level currently specified for nectarines and peaches is "mature" as defined in the standards. Additionally, both orders' rules and regulations provide for a higher, "well matured" classification. For most varieties, "well-matured" fruit determinations are made using maturity guides (e.g., color chips). These maturity guides are reviewed each year by the Shipping Point Inspection Service (SPI) to determine whether they need to be changed based on the most-recent information available on the individual characteristics of each variety. These maturity guides established under the handling regulations of the nectarine and peach marketing orders have been codified in the Code of Federal Regulations as Table 1 to paragraphs (a)(1)(iv) of §§ 916.356 and 917.459, for nectarines and peaches, respectively. Currently, §§ 916.356 and 917.459 include both "Table 1" and "Table 1 to Paragraphs (a)(1)(iv)". "Table 1" is a duplicate of "Table 1 to Paragraphs (a)(1)(iv)" and was proposed to be removed from both sections. In this final rule, "Table 1" is, therefore, removed. The latter table is referred to as "Table 1" in the remainder of this document.

The maturity requirements in the 1999 handling regulation are the same as those which appeared in the 1998 handling regulation with a few exceptions. Those exceptions are explained below in this final rule.

Nectarines: Requirements for "well-matured" nectarines are specified in § 916.356 of the order's rules and regulations. Table 1 to paragraph (a)(1)(iv) of § 916.356 is revised to add a maturity guide for one nectarine variety. Specifically, SPI recommended adding a maturity guide for the Diamond Jewel nectarine variety at a maturity guide of L.

The NAC recommended these maturity requirements based on SPI's continuing review of individual maturity characteristics and identification of the appropriate maturity guide corresponding to the "well-matured" level of maturity for nectarine varieties in production.

Peaches: Section 917.459 of the order's rules and regulations specifies maturity requirements for fresh peaches being inspected and certified as being "well matured." Table 1 to paragraph (a)(1)(iv) of § 917.459 is revised to add maturity guides for three peach varieties. Specifically, SPI recommended adding the maturity guides for the Sweet Scarlet peach variety to be regulated at the J maturity guide, and the Lady Sue and Prima Gattie 8 peach varieties to be regulated at the L maturity guide.

The PCC unanimously recommended these maturity requirements based on SPI's continuing review of individual maturity characteristics and identification of the appropriate maturity guide corresponding to the "well-matured" level of maturity for peach varieties in production.

Size Requirements

Both orders provide authority to establish size requirements in §§ 916.52 and 917.41. Size regulations provide greater consumer satisfaction and encourage more repeat purchases by helping to ensure consumers are provided high-quality fruit. Size regulations, therefore, increase returns to producers and handlers by encouraging producers to leave fruit on the tree longer. The increased growing time not only improves the size of the fruit, but also increases its maturity. Increased size also results in an increased number of packed boxes of nectarines or peaches per acre. Varieties recommended for specific size regulation have been reviewed and such recommendations are based on the specific characteristics of each variety. The NAC and PCC conduct studies each season on the range of sizes reached by the regulated varieties and determine whether revisions in the size requirements are appropriate.

Nectarines: Section 916.356 of the order's rules and regulations specifies minimum size requirements for fresh nectarines in paragraphs (a)(2) through (a)(9). Section 916.356 is revised to establish variety-specific size requirements for five nectarine varieties that were produced in commercially-significant quantities of more than

10,000 packages for the first time during the 1998 season.

For example, one of the varieties recommended for addition to the variety-specific size requirements is the Sunny Red variety. Studies of the size ranges attained by the Sunny Red variety revealed that all of the nectarines of that variety met sizes in the ranges of sizes 30, 40, 50, 60, 70, and 80. While the size distribution peaked on the size 40, 100 percent of the fruit sized at a minimum of size 80.

A review of other varieties with the same harvesting period indicated that Sunny Red was also comparable to those varieties in its size ranges. Further, handlers known to ship the variety have provided additional supporting information for making this determination. Thus, the recommendation to place the Sunny Red nectarine variety in the variety-specific size regulation at a size 80 is appropriate. Historical variety data such as this provides the NAC with the information necessary to recommend the appropriate sizes at which to regulate various nectarine varieties. In addition, producers of the varieties affected are invited to comment when such size recommendations are deliberated.

Thus, to implement such size requirements, the introductory text of paragraph (a)(6) in § 916.356 is revised to include the Grand Pearl, Ruby Pearl, Sunny Red, Terra White, and 491–48 nectarine varieties.

This final rule also revises the introductory text of paragraph (a)(4) of § 916.356 to remove two nectarine varieties; and the introductory text of paragraph (a)(6) of § 916.356 is also revised to remove ten nectarine varieties from the variety-specific size requirements specified in this section because less than 5,000 packages of each of these varieties were produced during the 1998 season. The introductory text of paragraph (a)(4) is revised to remove the June Brite and Pacific Star nectarine varieties; and the introductory text of paragraph (a)(6) is revised to remove the Flamekist, Flavor Grand, Late How Red, Moon Grand, Prima Diamond XVIII, Red Free, Red Fred, Ruby Grand, September Grand, and Summer Star nectarine varieties. Nectarine varieties removed from the nectarine variety-specific list become subject to the non-listed variety size requirements specified in paragraphs (a)(7), (a)(8), and (a)(9) of § 916.356.

The NAC recommended these changes in the minimum size requirements based on a continuing review of the sizing and maturity relationships for these nectarine varieties, and consumer acceptance levels for various sizes of fruit. This final rule establishes minimum size requirements for fresh nectarines consistent with expected crop and market conditions.

Peaches: Section 917.459 of the order's rules and regulations specifies minimum size requirements for fresh peaches in paragraphs (a)(2) through (a)(5), and paragraphs (b) and (c). Section 917.459 is revised to establish variety-specific size requirements for six peach varieties that were produced in commercially-significant quantities of more than 10,000 packages for the first time during the 1998 season.

For example, one of the peach varieties recommended for addition to the variety-specific size requirements is the Morning Lord variety. Studies of the size ranges attained by the Morning Lord variety revealed that while it peaked on size 40, 100 percent of the fruit sized at a minimum of size 72.

A review of other varieties harvested during the same period indicated that Morning Lord was also comparable to those varieties in its size ranges. Further, discussions with handlers known to ship the variety provided additional information for making such determinations. Thus, the recommendation to place the Morning Lord peach variety in the variety-specific size regulation at a size 72 is appropriate. Historical variety data such as this provides the PCC with the information necessary to recommend the appropriate sizes at which to regulate various peach varieties. In addition, producers of the affected varieties are invited to comment when such size recommendations are deliberated.

Accordingly, the introductory text of paragraph (a)(3) of § 917.459 of the order's rules and regulations is revised to include the Super Rich peach variety; the introductory text of paragraph (a)(4) is revised to include the Snow Dance peach variety; and the introductory text of paragraph (a)(6) is also revised to include the Morning Lord, Prima Peach 23, Yukon King, and 1–01–505 peach varieties.

Additionally, paragraphs (a)(5) and (a)(6) of § 917.459 are revised to remove 12 peach varieties from the variety-specific size requirements specified in that section, because less than 5,000 packages of these varieties were produced during the 1998 season. Specifically, the introductory text of paragraph (a)(5) is revised to remove the Honey Red and Sweet Gem peach varieties; and the introductory text of paragraph (a)(6) of § 917.459 is revised to remove the August Sun, Autumn Crest, Autumn Gem, Belmont, Berenda Sun, Blum's Beauty, Fire Red, July Sun, Mary Anne, and Red Sun peach varieties.

Peach varieties removed from the variety-specific list become subject to the non-listed variety size requirements specified in paragraphs (b) and (c) of § 917.459.

The PCC recommended these changes in the minimum size requirements based on a continuing review of the sizing and maturity relationships for these peach varieties, and the consumer acceptance levels for various fruit sizes. This final rule establishes minimum size requirements for fresh peaches consistent with expected crop and market conditions.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 325 California nectarine and peach handlers subject to regulation under the orders covering nectarines and peaches grown in California, and about 1,800 producers of these fruits in California. Small agricultural service firms, which includes handlers, have been defined by the Small Business Administration [13 CFR 121.601] as those whose annual receipts are less than $5,000,000. Small agricultural producers are defined as those having annual receipts of less than $500,000.

The NAC and PCC staff have estimated that there are less than 20 handlers in the industry who could be defined as other than small entities. If the average handler price received were $9.00 per box or box equivalent of nectarines or peaches, a handler would have to ship at least 555,000 boxes to have annual receipts of $5,000,000. Small handlers represent approximately 94 percent of the handlers within the industry. In addition, the NAC and PCC staff estimates that there are approximately 400 producers who could be defined as other than small entities. If the average producer price received were $6.00 per box or box equivalent for

nectarines and $5.65 per box or box equivalent for peaches, producers would have to produce approximately 84,000 boxes or box equivalents of nectarines and approximately 89,000 boxes or box equivalents of peaches to have annual receipts of $500,000. Therefore, small producer entities represent approximately 78 percent of the producers within the industry. For those reasons, a majority of the handlers and producers may be classified as small entities.

Under §§ 916.52 and 917.41 of the orders, grade, size, maturity, and container and pack requirements are established for fresh shipments of California nectarines and peaches, respectively. Such requirements are in effect on a continuing basis. This final rule revises the current requirements to: (1) Require that maturity and "CA Utility" quality marking of containers be a minimum of ⅜ inch in height; (2) require that experimental containers and 22G containers be marked with both the size and the count of fruit contained in the package; (3) require that master containers of consumer packages be marked with the minimum size fruit contained in the consumer packages; (4) add weight counts for early-season, mid-season, and late-season varieties; (5) continue shipments of "CA Utility" quality nectarines and peaches, and increase the percentage of U.S. No. 1 nectarines and peaches permitted in containers of "CA Utility quality" fruit from the current 30 percent to 40 percent, provided that the additional 10 percent of U.S. No. 1 fruit in the container has non-scoreable blemishes; and (6) revise varietal maturity and size requirements to reflect recent changes in growing and marketing conditions.

In §§ 916.350 and 917.442 of the rules regulating nectarines and peaches, several container marking requirements are specified. This final rule specifies that the maturity markings U.S. Mature (US MAT) and California Well-Matured (CA WELL MAT), and the markings for "CA Utility" quality must be in lettering a minimum of ⅜ inch in height. This standardizes the container markings for nectarines and peaches and is consistent with those used on plum containers. Plum shipments are regulated under a State marketing order. Because nectarine and peach handlers frequently handle plums, as well, this would ensure consistency in marking requirements for all three commodities, which is expected to benefit handlers.

Sections 916.350 and 917.442 also specify markings that are required on master containers of consumer packages, consumer packages within master containers, and consumer packages not within master containers. Master containers must be marked with the net weight of each consumer package, the number of individual consumer packages, the size description of the fruit in each consumer package, and the name and address of the shipper. Consumer packages within the master containers must be marked with the name and address of the shipper and the net weight of the container. When the consumer package is not in a master container, the consumer package must also be marked with the number of fruit in the package, the name of the variety, if known, and the maturity of the fruit in the package.

In commonly-used containers, such as the No. 22D and the No. 32 boxes, the configurations of fruit result in the fruit size and count being the same. The No. 22G standard lug box, however, has a different shape which results in a different tray-pack configuration than those of the No. 22D and the No. 32 boxes. The shape of the No. 22G container also imposes tighter limits on the number of fruit that can be tray packed in it than the No. 22D and No. 32 boxes; this causes fruit size and count to be different. Thus, handlers using that container should be required to indicate the number of fruit in the container as well as the fruit size, because the fruit size and count are not always the same in this container. Differences in count and size also occur with some experimental packages, as well, because there are no standardized pack configurations for experimental packages, and, thus, no standardized basis for comparison against the No. 22D and No. 32 boxes. Experimental containers, like the No. 22G standard lug box, will be required to be marked with both the size and the count of fruit contained in the package. This requirement is expected to benefit consumers by ensuring that accurate size and count information is marked on packages of nectarines and peaches. This requirement is not expected to have a negative impact on handlers, since the No. 22G standard lug box represents less than one percent of packages of nectarines and peaches shipped annually, and no experimental containers have been used for several years. This requirement may also eliminate any confusion over fruit count and size experienced by buyers of nectarines and peaches.

Consumer packages permit handlers to pack and ship nectarines and peaches in other types of containers demanded by their customers. In this case, packaging of fruit in small boxes or bags is tailored to the requirements of the buyer, whether by weight, size, or other factor. Because the buyer's requirements may be specific for the buyer's market, the handler may pack consumer packages of several different sizes of fruit within the master container. For example, a master container may contain five consumer packages. One consumer package may contain size 64 nectarines, while two other consumer packages may contain size 70 nectarines. The remaining two boxes may contain size 60 nectarines. The sizes of the fruit within the individual consumer packages are the same, but the master container may contain packages of different fruit sizes.

Several alternatives to this action were discussed at the Grade and Size Subcommittee meeting held on November 5, 1998. Some subcommittee members suggested that the master containers be marked with the largest size fruit in the consumer packages, such as "Minimum size 80 and smaller." Others felt that option might be misleading to retailers and consumers, and the alternative was rejected. Some subcommittee members suggested that the mixing of sizes in a master container should be discouraged. Others responded that such flexibility in packaging was responsive to the needs of some handlers, and those needs should be accommodated when possible, within the requirements of the orders.

This change requiring master containers containing consumer packages of different fruit sizes to be marked identifying the existence of size variations, permits handlers to continue to meet the demands of their buyers, but ensure that the fruit size within individual consumer packages contained within master containers is accurately and clearly marked on the master containers.

In §§ 916.350 and 917.442 of the orders' rules and regulations concerning nectarines and peaches, respectively, the use of pack regulations is specified. The NAC and PCC routinely conduct tests to determine the optimum weight-count standards for such early-season, mid-season, and late-season nectarines and peaches, respectively. Handlers of nectarines and peaches have informed the NAC and PCC that some larger sizes of nectarines and peaches are increasingly being converted from tray-packs to volume-filled packs. Since volume-filled containers are less costly to pack and market demands change, handlers have opted to pack a greater proportion of large, high-quality fruit in volume-filled containers. In 1998, lower market prices caused handlers to convert size 44 nectarines and peaches from tray-packed containers to volume-

filled containers. However, there are currently no weight counts published for size 44 nectarines and peaches.

In 1994 and 1995, when the NAC and PCC last conducted tests to determine the number of fruit of various sizes that weighed 16 pounds, which is the standard inspection sample weight, size 44 nectarines and peaches were not usually packed in volume-filled containers. More commonly, size 44 nectarines and peaches were packed in tray-packs. As a result, weight count requirements were not needed by the industries for this size. As the practice of converting tray-packed containers of size 44 nectarines and peaches to volume-filled containers has increased, the NAC and PCC have referred to previously-conducted size studies and determined that weight-count standards for size 44 nectarines and peaches need to be included in the weight-count standards with those for the other sizes of fruit. The NAC and PCC have also determined that the correct weight-count standard for size 44 is a maximum of 33 pieces of early-season nectarines and all peaches, and a maximum of 30 pieces of mid-season and late-season nectarines in a 16-pound sample. The addition of weight-count standards for size 44 nectarines and peaches converted from tray-packed containers to volume-filled containers is expected to benefit producers and handlers by giving handlers increased flexibility in meeting marketing demands.

Therefore, the NAC and PCC unanimously recommended modifications to the weight-count standards for nectarines and peaches by the addition of weight-count standards for size 44 nectarines and peaches. Such a change modifies Tables 1 and 2 of paragraphs (a)(4)(iv) in §§ 916.350 and 917.442 of the regulations by adding size 44 and the applicable weight-count standard of a maximum of 33 pieces of early-season nectarines and all peaches, and a maximum of 30 pieces of mid-season and late-season nectarines in a 16-pound sample. The change will permit handlers to more easily convert tray-packed nectarines and peaches to volume-filled containers. This change is expected to decrease the handling costs associated with such conversions, and permit handlers to better meet marketing demands.

In §§ 916.356 and 917.459 of the orders' rules and regulations concerning nectarines and peaches, respectively, shipments of "CA Utility" quality nectarines and peaches have been permitted since the 1996 season, contingent upon the fruit in such containers meeting certain relaxed quality requirements. "CA Utility" quality is a lower-quality fruit than U.S. No. 1. Previously, the requirement for containers of "CA Utility" nectarines and peaches provided that not more than 30 percent of the fruit in any container meet or exceed the requirements of U.S. No. 1. This relaxation increases that limitation from 30 percent to not more than 40 percent provided that the additional 10 percent of the U.S. No. 1 has non-scoreable blemishes. This relaxation is anticipated to benefit growers, handlers, and consumers.

Containers marked "CA Utility" must be inspected by the Inspection Service and certified as meeting the "CA Utility" quality requirements. Part of the inspection process is to evaluate the fruit in accordance with the requirements of Standards and the orders. In conducting inspections, inspectors are required to evaluate various blemishes. Some blemishes are serious or severe enough to be "scored" against the fruit as defects which are damaging to the grade of the fruit, while some other blemishes are either not serious or severe enough to affect the grade of the fruit. In the first instance, the blemishes are termed "scoreable" defects; and, in the second instance, the blemishes are termed "non-scoreable" defects. Some committee members supported increased percentages of U.S. No. 1 fruit in boxes of "CA Utility" quality nectarines and peaches provided that such non-scoreable blemishes are present on the additional 10 percent of the fruit grading U.S. No. 1 in boxes marked "CA Utility."

A niche market exists for "CA Utility" quality fruit and an opportunity should be made available to market somewhat better quality. It was estimated that the relaxation from not more than 30 percent U.S. No. 1 to not more than 40 percent provided that the additional 10 percent U.S. No. 1 fruit in the containers has non-scoreable blemishes would increase shipments of "CA Utility" quality nectarines and peaches by one-half of one percent.

According to comments made at the committee meetings on December 2, 1998, a majority of the members of the committees supported allowing the use of "CA Utility" fruit during the 1999 season, and the change in quality requirements, because those requirements solved handler problems at the end of the 1998 season. One committee member, however, commented that there was little merit to adding one-half of one percent to the marketplace. Another indicated that perhaps a review of the entire grade structure would address the problem and did not advocate relaxing the percentage of U.S. No. 1 in "CA Utility" containers.

The committees considered several alternatives at the meetings. One alternative was to leave the percentage of U.S. No. 1 nectarines and peaches permitted in "CA Utility" unchanged. It was determined that alternative would not address the problem facing the industry. The NAC and PCC also considered reviewing the entire grade structure, but that alternative was considered a long-term project which could not be accomplished in enough time to address the problem for the 1999 season. Another alternative discussed was to limit the change to handlers operating under the Partners-In-Quality (PIQ) Program and allow those handlers to pack not more than 40 percent of U.S. No. 1 provided that the additional 10 percent of U.S. No. 1 has non-scoreable blemishes. Under the PIQ Program, handlers self-inspect their nectarines and peaches against the minimum grade, size, quality, maturity, pack, and container marking requirements of the orders and the Standards, according to the procedures and requirements specified in their Inspection-Service-approved operation manuals.

Under the requirements of the program, PIQ handlers are required to meet the minimum grade, maturity, size, quality, container, and pack requirements on every container. A handler under conventional in-line inspection is required to meet the minimum grade, maturity, size, quality, container, and pack requirements on an entire lot of fruit, which is not as restrictive as meeting the requirements on every container. For example, under in-line inspection, a handler may present a lot of 1,000 containers of nectarines or peaches for inspection. The tolerance for misshapen nectarines is currently limited to 25 percent per lot. The variance in misshapen nectarines in containers within the lot could change from one container to another, provided that the average within the entire lot does not exceed 25 percent. For PIQ handlers, there is no opportunity to "average within" grade on lots of fruit; each container is graded on its own as though it were a lot. PIQ handlers, thus, face more rigorous requirements than handlers under conventional in-line inspection. This alternative would address PIQ handler concerns by providing them greater flexibility with regard to both U.S. No. 1 and "CA Utility" quality containers. However, this alternative was determined to favor a small percentage of the industry and was rejected.

Some members of the committees supported continued shipments of "CA

Utility" quality nectarines and peaches during the 1999 season with a relaxation of the percentage from 30 percent U.S. No. 1 in containers marked "CA Utility" to 40 percent U.S. No. 1, provided that the additional 10 percent of the U.S. No. 1 has non-scoreable blemishes. They believed that the additional marketing opportunities provided by allowing handlers to ship such fruit were important to the industries.

Sections 916.356 and 917.442 of the orders' rules and regulations for nectarines and peaches, respectively, currently establish minimum maturity levels. This rule makes adjustments to the "well matured" requirements for several varieties of nectarines and peaches. "Well matured" determinations are made using maturity guides (e.g., color chips). Such maturity guides provide producers, handlers, and SPI with objective tools for measuring the maturity of different varieties of nectarines and peaches. Such maturity guides are reviewed annually by SPI to determine the appropriate guide for each nectarine and peach variety. These adjustments reflect changes in the maturity patterns of nectarines and peaches as experienced over the previous seasons' inspections. Adjustments in the guides ensure that fruit has met an acceptable level of maturity, thus ensuring consumer satisfaction while benefitting nectarine and peach producers and handlers.

Currently, in § 916.356 of the order's rules and regulations for nectarines and § 917.459 of the order's rules and regulations for peaches, minimum sizes for various varieties of nectarines and peaches are established. This final rule makes adjustments to the minimum sizes authorized for various varieties of nectarines and peaches for the 1999 season. Size regulations provide greater consumer satisfaction and encourage more repeat purchases. Repeat purchases and consumer satisfaction benefit producers and handlers alike. Such adjustments to minimum sizes of nectarines and peaches are recommended each year by the NAC and PCC based upon historical data, and producer and handler information regarding sizes which the different varieties attain.

This action will not impose any additional reporting or recordkeeping requirements on either small or large nectarine and peach handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

As noted in the initial regulatory flexibility analysis, the Department has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule. However, as previously stated, nectarines and peaches under the orders have to meet certain requirements set forth in the standards issued under the Agricultural Marketing Act of 1946 (7 U.S.C. 1621 through 1627). Standards issued under the Agricultural Marketing Act of 1946 are otherwise voluntary. Further, the public comments received concerning this proposal did not specifically address the initial regulatory flexibility analysis. One comment was received from a person who identified herself as a small grower. This comment is discussed later in this document.

In addition, the committees' meetings were widely publicized throughout the nectarine and peach industries and all interested parties were invited to attend the meetings and participate in committee deliberations on all issues. These meetings are held annually in late Fall. Like all committee meetings, the December 2, 1998, meetings were public meetings and all entities, both large and small, were able to express views on these issues. The committees are composed of producers.

A proposed rule concerning this action was published in the **Federal Register** on March 8, 1999 (64 FR 11346). Copies of the rule were mailed to all committee members and handlers by the NAC and PCC staff on March 9, 1999. Finally, the rule was made available through the Internet by the Office of the Federal Register. A 20-day comment period ending March 29, 1999, was provided to allow interested persons to respond to the proposal. Three comments were received during the comment period in response to the proposal.

One commenter supported the continued shipment of "CA Utility" quality fruit, and the proposed changes to the "CA Utility" quality requirements indicating that the changes will enable shippers to better meet buyer needs; i.e., provide blemished fruit to buyers requesting such fruit, and unblemished fruit to buyers requesting unblemished fruit.

Another commenter requested a clarifying change in the size markings for master containers when multiple sizes of consumer packages are contained within the master containers. The commenter contended that the proposed rule failed to make a distinction between container marking requirements for master containers of consumer packages with only one size of fruit and container marking requirements for master containers of consumer packages with different sizes of fruit. The commenter noted that it was the intent of the committees that container marking requirements for master containers of consumer packages with only one size fruit remain unchanged. The committees' intent was to specify that when master containers contain consumer packages with different sizes of fruit, the container should be marked with the smallest size and the words "and larger." Changes to clarify the intent of the committees have been made as requested by the commenter in §§ 916.350 (a)(8)(i) and 917.442 (a)(9)(i).

The third commenter, who identified herself as a small grower, indicated that fruit grown in Northern California was harvested and marketed at least 10 days later than fruit from the other parts of the State, and that the orders do not take this into account.

The regulations do reflect seasonal variations and growing conditions, as appropriate. For example, under the orders, both variety-specific and non-listed variety size requirements are established. The requirements are carefully developed based on the sizing and maturity characteristics of the various nectarine and peach varieties, and the consumer acceptance levels of the various sizes of fruit. The major commercial varieties grown in California are subject to the variety-specific requirements and account for about 99 percent of all fruit shipments. The other minor varieties are subject to the non-listed variety requirements and account for about one percent of all shipments. The variety-specific size requirements apply to all shipments of the named varieties, but for non-listed varieties, the size requirements are applied based upon when the fruit is shipped. A smaller minimum size is applied for non-listed varieties shipped earlier in the season, and a larger one for later shipments, because varieties that are harvested later in the season typically are larger when mature, and consumers generally prefer larger fruit. In addition, growing time not only improves the size of the fruit, but also increases its maturity. Maturity requirements also reflect growing conditions. Accordingly, no changes to the regulations are made based on the comment.

Changes to the regulations also have been made to reflect the effective date and change the reference to "Prima Peach VIII" to "Prima Peach 13."

After consideration of all relevant matters presented, including the comments received, the information and recommendations submitted by the committees, and other available information, it is hereby found that this

rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

It is further found that good cause exists for not postponing the effective date on this rule until 30 days after publication in the **Federal Register** (5 U.S.C. 553) because: (1) Handlers have made adjustments in their handling practices to comply with the changes recommended for the 1999 shipping season; (2) the 1999 shipping season for California nectarines and peaches is expected to begin in mid-April, and these changes should apply to as many of those shipments as possible.

List of Subjects

7 CFR Part 916

Marketing agreements, Nectarines, Reporting and recordkeeping requirements.

7 CFR Part 917

Marketing agreements, Peaches, Pears, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR parts 916 and 917 are amended as follows:

1. The authority citation for 7 CFR parts 916 and 917 continues to read as follows:

Authority: 7 U.S.C. 601–674.

PART 916—NECTARINES GROWN IN CALIFORNIA

2. Section 916.350 is amended by:

(A) Revising paragraph (a)(3);

(B) Revising paragraphs (a)(4)(i) and (a)(4)(ii);

(C) Revising TABLES 1 and 2 in paragraph (a)(4)(iv);

(D) Revising paragraph (a)(8)(i); and

(E) Revising paragraph (d) to read as follows:

§ 916.350 California nectarine container and pack regulation.

(a) * * *

(3) Each package or container of nectarines, except for consumer packages in master containers and consumer packages mailed directly to consumers, shall bear on one outside end in plain sight and in plain letters at least 3/8 inch in height the words "U.S. Mature" or "US MAT" if such nectarines are mature as defined in the United States Standards for Grades of Nectarines (7 CFR 51.3145 through 51.3160); or may instead bear on one outside end in plain sight and in plain letters at least 3/8 inch in height the words "California Well Matured" or "CA WELL MAT" if such nectarines are well matured as defined in § 916.356.

(4) * * *

(i) The size of nectarines packed in molded forms (tray-packs) in the No. 22D and the No. 32 standard boxes, or consumer packages; No. 22G standard lug boxes, experimental containers; or the No. 12B fruit (peach) boxes or flats; and the size of wrapped nectarines packed in rows in No. 12B fruit (peach) boxes shall be indicated in accordance with the number of nectarines in each container, such as "80 count," "88 count," etc.

(ii) The size of nectarines in molded forms (tray-packs) in experimental containers, and in No. 22G standard lug boxes, shall be indicated according to the number of such nectarines when packed in molded forms in the No. 22D standard lug box or the No. 32 standard box, in accordance with the requirements of standard pack, such as "80 size," "88 size," etc., along with count requirements in paragraph (a)(4)(i) of this section.

* * * * *

(iv) * * *

TABLE 1.—WEIGHT-COUNT STANDARDS FOR ALL VARIETIES OF NECTARINES PACKED IN LOOSE-FILLED OR TIGHT-FILLED CONTAINERS

Column A—Tray pack size designation	Column B—Maximum number of nectarines in 16-pound sample applicable to varieties specified in paragraphs (a)(2)(ii), (a)(3)(ii), (a)(4)(ii), (a)(5)(ii), (a)(7)(ii), and (a)(8)(ii) of § 916.356
108	100
96	90
88	83
84	78
80	75
72	68
70	61
64	56
60	50
56	47
54	40
50	39
48	35
44	33
42	31
40	30
36	25
34	23
32	22
30	19

TABLE 2.—WEIGHT-COUNT STANDARDS FOR ALL VARIETIES OF NECTARINES PACKED IN LOOSE-FILLED OR TIGHT-FILLED CONTAINERS

Column A—Tray pack size designation	Column B—Maximum number of nectarines in 16-pound sample applicable to varieties specified in paragraphs (a)(6)(ii) and (a)(9)(ii) of § 916.356
108	92
96	87
88	78
84	75
80	67
72	61
70	56
64	51
60	46
56	43
54	39
50	37
48	33
44	30
42	28
40	26
36	25
34	23
32	22
30	19

* * * * *

(8) * * *

(i) The number of individual consumer packages, the net weight of each consumer package, and the size description of the contents: *Provided*, That when consumer packages of different sizes of nectarines are contained in a master container, the size description of the contents shall indicate the minimum size contained therein, using the terms "Minimum size 60 and larger," or "Minimum size 70 and larger," etc., as applicable.

* * * * *

(d) During the period April 20, 1999 through October 31, 1999, each container or package when packed with nectarines meeting the "CA Utility" quality requirements, shall bear the words "CA Utility," along with all other required container markings, in letters at least 3/8 inch in height on the visible display panel. Consumer bags or packages must also be clearly marked on the consumer bags or packages as "CA Utility," along with other required markings, in letters at least 3/8 inch in height.

3. Section 916.356 is amended by:

(A) Revising the introductory text of paragraph (a)(1);

(B) Removing TABLE 1 in paragraph (a)(1)(i);

(C) Revising TABLE 1 TO PARAGRAPH (a)(1)(iv); and

(D) Revising the introductory text of paragraphs (a)(4) and (a)(6) to read as follows:

§ 916.356 California nectarine grade and size regulation.

(a) * * *

(1) Any lot or package or container of any variety of nectarines unless such nectarines meet the requirements of U.S. No. 1 grade: *Provided*, That nectarines 2 inches in diameter or smaller, shall not have fairly light-colored, fairly smooth scars which exceed an aggregate area of a circle 3/8 inch in diameter, and nectarines larger than 2 inches in diameter shall not have fairly light-colored, fairly smooth scars which exceed an aggregate area of a circle 1/2 inch in diameter: *Provided further*, That an additional tolerance of 25 percent shall be permitted for fruit that is not well formed but not badly misshapen: *Provided further*, That all varieties of nectarines which fail to meet the U.S. No. 1 grade only on account of lack of blush or red color due to varietal characteristics shall be considered as meeting the requirements of this subpart: *Provided further*, That during the period April 20, 1999 through October 31, 1999, any handler may handle nectarines if such nectarines meet "CA Utility" quality requirements. The term "CA Utility" means that not more than 40 percent of the nectarines in any container meet or exceed the requirements of the U.S. No. 1 grade, except that when more than 30 percent of the nectarines in any container meet or exceed the requirements of U.S. No. 1 grade, the additional 10 percent shall have non-scoreable blemishes as determined when applying the U.S. Standards for Grades of Nectarines; and that such nectarines are mature and are:

* * * * *

TABLE 1 TO PARAGRAPH (A)(1)(IV)

Column A variety	Column B maturity guide
Alshir Red	J
Apache	G
April Glo	H
Arm King	B
August Glo	L
August Lion	J
August Red	J
Aurelio Grand	F
Autumn Delight	L
Autumn Grand	L
Big Jim	J
Bob Grand	L
Diamond Jewel	L
Diamond Ray	L
Earliglo	I

TABLE 1 TO PARAGRAPH (A)(1)(IV)—Continued

Column A variety	Column B maturity guide
Early Diamond	J
Early May	F
Early May Grand	H
Early Red Jim	J
Early Sungrand	H
Fairlane	L
Fantasia	J
Firebrite	H
Flamekist	L
Flaming Red	K
Flavor Grand	G
Flavortop	J
Flavortop I	K
Grand Diamond	L
Independence	H
July Red	L
June Brite	I
Juneglo	H
Kay Diamond	L
King Jim	L
Kism Grand	J
Late Le Grand	L
Late Red Jim	J
Maybelle	F
May Diamond	I
May Fire	H
Mayglo	H
May Grand	H
May Jim	I
May Kist	H
May Lion	J
Mid Glo	L
Mike Grand	H
Moon Grand	L
Niagara Grand	H
Pacific Star	G
P-R Red	L
Red Diamond	L
Red Delight	I
Red Fred	J
Red Free	L
Red Glen	J
Red Glo	I
Red Grand	H
Red Jim	L
Red May	J
Rio Red	L
Rose Diamond	J
Royal Delight	F
Royal Giant	I
Royal Glo	I
Ruby Diamond	L
Ruby Grand	J
Ruby Sun	J
Scarlet Red	K
September Grand	L
September Red	L
Sheri Red	J
Son Red	L
Sparkling June	L
Sparkling May	J
Sparkling Red	L
Spring Bright	L
Spring Diamond	L
Spring Red	H
Star Brite	J
Summer Beaut	H
Summer Blush	J
Summer Bright	J

TABLE 1 TO PARAGRAPH (A)(1)(IV)—Continued

Column A variety	Column B maturity guide
Summer Diamond	L
Summer Fire	L
Summer Grand	L
Summer Lion	L
Summer Red	L
Summer Star	G
Sunburst	J
Sun Diamond	I
Sunfre	F
Sun Grand	G
Super Star	G
Tasty Gold	H
Tom Grand	L
Zee Glo	J
Zee Grand	I

NOTE: Consult with the Federal or Federal-State Inspection Service Supervisor for the maturity guides applicable to the varieties not listed in Table 1 of this paragraph.

* * * * *

(4) Any package or container of Arctic Glo, Arctic Rose, Arctic Star, Diamond Bright, Early May, Juneglo, June Pearl, Kay Glo, May Diamond, May Grand, May Lion, Prima Diamond IV, Prima Diamond VI, Prima Diamond 13, Prince Jim, Red Delight, Red Glo, Rose Diamond, Royal Glo, Sparkling May, Star Brite, or Zee Grand variety nectarines unless:

* * * * *

(6) Any package or container of Alshir Red, Alta Red, Arctic Pride, Arctic Queen, Arctic Snow (White Jewel), Arctic Sweet, August Glo, August Lion, August Red, August Snow, Autumn Delight, Big Jim, Brite Pearl, Crystal Rose, Diamond Ray, Early Red Jim, Fairlane, Fantasia, Firebrite, Fire Pearl, Flame Glo, Flaming Red, Flavortop, Flavortop I, Grand Diamond, Grand Pearl, Honey Kist, How Red, July Red, Kay Diamond, King Jim, Late Red Jim, Mid Glo, Niagara Grand, P–R Red, Prima Diamond IX, Prima Diamond XVI, Prima Diamond XIX, Prima Diamond XXIV, Red Diamond, Red Glen, Red Jim, Rio Red, Royal Giant, Ruby Diamond, Ruby Pearl, Scarlet Red, September Red, Sparkling June, Sparkling Red, Spring Bright, Spring Diamond, Spring Red, Summer Beaut, Summer Blush, Summer Bright, Summer Diamond, Summer Fire, Summer Grand, Summer Lion, Summer Red, Sunburst, Sun Diamond, Sunny Red, Super Star, Terra White, Zee Glo, or 491–48 variety nectarines unless:

* * * * *

PART 917—FRESH PEARS AND PEACHES GROWN IN CALIFORNIA

4. Section 917.442 is amended by:

(A) Revising paragraph (a)(3);

(B) Revising paragraph (a)(4)(ii);
(C) Revising TABLES 1 and 2 in paragraph (a)(4)(iv);
(D) Revising paragraph (a)(9)(i); and
(E) Revising paragraph (d) to read as follows:

§ 917.442 California peach container and pack regulation.

(a) * * *

(3) Each package or container of peaches, except for consumer packages in master containers and consumer packages mailed directly to consumers, shall bear on one outside end in plain sight and in plain letters at least ⅜ inch in height the words "U.S. Mature" or "US MAT" if such peaches are mature as defined in the United States Standards for Grades of Peaches (7 CFR 51.1210 through 51.1223); or may instead bear on one outside end in plain sight and in plain letters at least 3/8 inch in height the words "California Well Matured" or "CA WELL MAT" if such peaches are well matured as defined in § 917.459 of this part.

(4) * * *

(ii) The size of peaches in molded forms in experimental containers and in the No. 22G standard lug box shall be indicated according to the number of such peaches when packed in molded forms in the No. 22D standard lug box or the No. 32 standard box in accordance with the requirements of standard pack, such as "80 size," "88 size," etc., along with the count requirements in paragraph (a)(4)(i) of this section.

* * * * *

(iv) * * *

TABLE 1.—WEIGHT-COUNT STANDARDS FOR ALL VARIETIES OF PEACHES PACKED IN LOOSE-FILLED OR TIGHT-FILLED CONTAINERS

Column A—Tray pack size designation	Column B—Maximum number of peaches in 16-pound sample applicable to varieties specified in paragraphs (a)(2)(ii), (a)(3)(ii), (a)(4)(ii), (a)(5)(ii), and (b)(3) of § 917.459
96	96
88	92
84	83
80	76
72	69
70	65
64	57
60	51
56	47
54	44
50	39
48	35

TABLE 1.—WEIGHT-COUNT STANDARDS FOR ALL VARIETIES OF PEACHES PACKED IN LOOSE-FILLED OR TIGHT-FILLED CONTAINERS—Continued

Column A—Tray pack size designation	Column B—Maximum number of peaches in 16-pound sample applicable to varieties specified in paragraphs (a)(2)(ii), (a)(3)(ii), (a)(4)(ii), (a)(5)(ii), and (b)(3) of § 917.459
44	33
42	31
40	30
36	27
34	25
32	23
30	21

TABLE 2.—WEIGHT-COUNT STANDARDS FOR ALL VARIETIES OF PEACHES PACKED IN LOOSE-FILLED OR TIGHT-FILLED CONTAINERS

Column A—Tray pack size designation	Column B—[1]
96	96
88	83
84	79
80	73
72	64
70	59
64	53
60	46
56	45
54	43
50	39
48	35
44	33
42	31
40	30
36	27
34	25
32	23
30	21

[1] Maximum number of peaches in 16-pound sample applicable to varieties specified in paragraphs (a)(6)(ii) and (c)(3) of § 917.459

* * * * *

(9) * * *

(i) The number of individual consumer packages, the net weight of each consumer package, and the size description of the contents: *Provided,* That when consumer packages of different sizes of peaches are contained in a master container, the size description of the contents shall indicate the minimum size contained therein, using the terms "Minimum size 60 and larger," or "Minimum size 70 and larger," etc., as applicable.

* * * * *

(d) During the period April 20, 1999 through November 23, 1999, each container or package when packed with peaches meeting "CA Utility" quality requirements, shall bear the words "CA Utility," along with all other required container markings, in letters at least ⅜ inch in height on the visible display panel. Consumer bags or packages must also be clearly marked on the consumer bags or packages as "CA Utility," along with other required markings, in letters at least ⅜ inch in height.

5. Section 917.459 is amended by:

(A) Revising the introductory text of paragraph (a)(1);

(B) Removing TABLE 1 in paragraph (a)(1)(i);

(C) Revising TABLE 1 TO PARAGRAPH (a)(1)(iv); and

(D) Revising the introductory text of paragraphs (a)(3), (a)(5), and (a)(6) and adding paragraph (a)(4) introductory text to read as follows:

§ 917.459 California peach grade and size regulation.

(a) * * *

(1) Any lot or package or container of any variety of peaches unless such peaches meet the requirements of U.S. No. 1 grade: *Provided,* That an additional 25 percent tolerance shall be permitted for fruit with open sutures which are damaged, but not seriously damaged: *Provided further,* That during the period April 20, 1999 through November 23, 1999, any handler may handle peaches if such peaches meet "CA Utility" quality requirements. The term "CA Utility" means that not more than 40 percent of the peaches in any container meet or exceed the requirements of the U.S. No. 1 grade, except that when more than 30 percent of the peaches in any container meet or exceed the requirements of U.S. No. 1 grade, the additional 10 percent shall have non-scoreable blemishes as determined when applying the U.S. Standards for Grades of Peaches; and that such peaches are mature and are:

* * * * *

(iv) * * *

TABLE 1 TO PARAGRAPH (A)(1)(IV)

Column A—variety	Column B—maturity guide
Ambercrest	G
Angelus	I
August Lady	L
August Sun	I
Autumn Crest	I
Autumn Gem	I
Autumn Lady	H
Autumn Rose	I
Belmont (Fairmont)	I

TABLE 1 TO PARAGRAPH (A)(1)(IV)—Continued

Column A—variety	Column B—maturity guide
Berenda Sun	I
Blum's Beauty	G
Cal Red	I
Carnival	I
Cassie	H
Coronet	E
Crimson Lady	J
Crown Princess	J
David Sun	I
Diamond Princess	J
Early Delight	H
Early Elegant Lady	L
Early May Crest	H
Early O'Henry	I
Early Top	G
Elberta	B
Elegant Lady	L
Fairtime	G
Fancy Lady	J
Fay Elberta	C
Fayette	I
Fire Red	I
First Lady	D
Flamecrest	I
Flavorcrest	G
Flavor Queen	H
Flavor Red	G
Franciscan	G
Goldcrest	H
Golden Crest	H
Golden Lady	F
Honey Red	G
John Henry	J
July Elberta	C
June Lady	G
June Pride	J
June Sun	H
Kern Sun	H
Kingscrest	H
Kings Lady	I
Kings Red	I
Lacey	I
Lady Sue	L
Mary Anne	G
May Crest	G
May Sun	I
Merrill Gem	G
Merrill Gemfree	G
O'Henry	I
Pacifica	G
Parade	I
Pat's Pride	D
Prima Gattie 8	L
Prima Lady	J
Queencrest	G
Ray Crest	G
Red Cal	I
Red Dancer (Red Boy)	I
Redhaven	G
Red Lady	G
Redtop	G
Regina	G
Rich Lady	J
Rich May	H
Rich Mike	H
Rio Oso Gem	I
Royal Lady	J
Royal May	G
Ruby May	H

TABLE 1 TO PARAGRAPH (A)(1)(IV)—Continued

Column A—variety	Column B—maturity guide
Ryan Sun	I
Scarlet Lady	F
September Sun	I
Sierra Crest	H
Sierra Lady	I
Sparkle	I
Springcrest	G
Spring Lady	H
Springold	D
Sugar Lady	J
Summer Lady	L
Summerset	I
Suncrest	G
Sweet Scarlet	J
Topcrest	H
Tra Zee	J
Willie Red	G
Zee Lady	L

Note: Consult with the Federal or Federal-State Inspection Service Supervisor for the maturity guides applicable to the varieties not listed in table 1 of this paragraph.

* * * * *

(3) Any package or container of Goldcrest, Super Rich, or Topcrest variety peaches unless:

* * * * *

(4) Any package or container of Snow Dance variety peaches unless:

* * * * *

(5) Any package or container of Babcock, Crimson Lady, Crown Princess, David Sun, Early May Crest, Flavorcrest, Golden Crest, June Lady, Kern Sun, May Crest, May Sun, Merrill Gemfree, Pink Rose, Prima Peach IV, Queencrest, Ray Crest, Redtop, Rich May, Rich Mike, Snow Brite, Springcrest, Spring Lady, Spring Snow, Sugar May, Sweet Scarlet, or White Dream variety of peaches unless:

* * * * *

(6) Any package or container of Amber Crest, August Lady, Autumn Flame, Autumn Lady, Autumn Rose, Cal Red, Carnival, Cassie, Champagne, Diamond Princess, Early Elegant Lady, Early O'Henry, Elegant Lady, Fairtime, Fancy Lady, Fay Elberta, Flamecrest, John Henry, June Pride, Kaweah, Kings Lady, Lacey, Late Ito Red, Madonna Sun, Morning Lord, O'Henry, Prima Gattie, Prima Peach 13, Prima Peach 20, Prima Peach 23, Red Dancer, Rich Lady, Royal Lady, Ryan Sun, Saturn (Donut), Scarlet Snow, September Snow, September Sun, Sierra Lady, Snow Diamond, Snow Giant, Snow King, Sparkle, Sprague Last Chance, Sugar Giant, Sugar Lady, Summer Lady, Summer Sweet, Summer Zee, Suncrest, Tra Zee, Vista, White Lady, Yukon King, Zee Lady, or 1–01–505 variety of peaches unless:

* * * * *

Dated: April 14, 1999.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 99–9678 Filed 4–14–99; 1:28 pm]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1079

Milk in the Iowa Marketing Area

CFR Correction

In Title 7 of the Code of Federal Regulations, parts 1000 to 1199, revised as of Jan. 1, 1998, page 611, § 1079.7(b) is corrected by revising "30 percent" to read "20 percent".

[FR Doc. 99–55514 Filed 4–16–99; 8:45 am]

BILLING CODE 1505–01–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 3

[Docket No. 99–04]

RIN 1557–AB14

FEDERAL RESERVE SYSTEM

12 CFR Parts 208 and 225

[Regulations H and Y; Docket No. R–0996]

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 325

RIN 3064–AC14

Risk-Based Capital Standards: Market Risk

AGENCIES: Office of the Comptroller of the Currency, Treasury; Board of Governors of the Federal Reserve System; and Federal Deposit Insurance Corporation.

ACTION: Joint final rule.

SUMMARY: The Office of the Comptroller of the Currency (OCC), the Board of Governors of the Federal Reserve System (Board), and the Federal Deposit Insurance Corporation (FDIC) (collectively, the agencies) are adopting as a final rule an interim rule amending their respective risk-based capital standards for market risk applicable to

certain banks and bank holding companies with significant trading activities. The interim rule implemented a revision to the Basle Accord adopted in 1997. Prior to the revision, an institution that measured specific risk with an internal model that adequately measured such risk was subject to a minimum capital charge. An institution's capital charge for specific risk had to be at least as large as 50 percent of a specific risk charge calculated using the standardized approach. The rule will finalize the interim rule, which reduced regulatory burden for institutions with qualifying internal models because they no longer must calculate a standardized specific risk capital charge.

EFFECTIVE DATE: This final rule is effective on July 1, 1999.

FOR FURTHER INFORMATION CONTACT:
OCC: Margot Schwadron, Risk Expert (202/874–5070), Amrit Sekhon, Risk Specialist (202/874–5070), Capital Policy Division; or Ronald Shimabukuro, Senior Attorney (202/874–5090), Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 250 E Street, S.W., Washington, DC 20219.

Board: James Houpt, Deputy Associate Director (202/452–3358), Barbara Bouchard, Manager (202/452–3072), T. Kirk Odegard, Financial Analyst (202/530–6225), Division of Banking Supervision; or Stephanie Martin, Senior Counsel (202/452–3198), Mark E. Van Der Weide, Attorney (202/452–2263), Legal Division. For the hearing impaired only, Telecommunication Device for the Deaf (TDD), Diane Jenkins (202/452–3544), Board of Governors of the Federal Reserve System, 20th and C Streets, N.W., Washington, DC 20551.

FDIC: William A. Stark, Assistant Director (202/898–6972), Miguel Browne, Manager (202/898–6789), John J. Feid, Chief (202/898–8649), Division of Supervision; for legal issues, Jamey Basham, Counsel (202/898–7265), Legal Division, Federal Deposit Insurance Corporation, 550 17th Street, N.W., Washington, DC 20429.

SUPPLEMENTARY INFORMATION:

I. Background

The agencies' risk-based capital standards are based upon principles contained in the July 1988 agreement entitled "International Convergence of Capital Measurement and Capital Standards" (Accord). The Accord, developed by the Basle Committee on Banking Supervision (Basle Committee) and endorsed by the central bank governors of the Group of Ten (G–10) countries (G–10 Governors), provides a framework for assessing an institution's capital adequacy by weighting its assets and off-balance sheet exposures on the basis of general counterparty credit risk.[1] In December 1995, the G–10 Governors endorsed the Basle Committee's amendment to the Accord (effective by year-end 1997) to incorporate a measure for exposure to market risk (market risk amendment) into the capital adequacy assessment. On September 6, 1996, the agencies issued revisions to their risk-based capital standards implementing the Basle Committee's market risk amendment (market risk rules) (61 FR 47358). In September 1997, the Basle Committee modified the market risk amendment and on December 30, 1997, the agencies issued an interim rule implementing that modification (62 FR 68064).

Under the agencies' market risk rules, banks and bank holding companies (institutions) with significant trading activities must measure and hold capital for exposure to both general market risk and specific risk. *General market risk* refers to changes in the market value of on-and off-balance-sheet items resulting from broad market movements in interest rates, equity prices, foreign exchange rates, and commodity prices. An institution must measure its general market risk using its internal risk measurement model, subject to certain qualitative and quantitative criteria, to calculate a capital charge based on the model-determined value-at-risk (VAR).[2]

Specific risk refers to changes in the market value of individual debt and equity positions in a trading portfolio due to factors other than broad market movements. Under the agencies' market risk rules, an institution may measure its specific risk by using either the standardized approach [3] or its own internal model, if the institution can demonstrate to the appropriate banking agency that the model adequately measures specific risk. When the agencies initially adopted the market risk rules, an institution using its internal model to measure specific risk was required to hold capital for specific risk equal to at least 50 percent of the specific risk charge calculated using the standardized approach (the minimum specific risk charge). If the portion of the institution's VAR attributable to specific risk did not equal the minimum specific risk charge, the institution's VAR-based capital charge was subject to an add-on charge of the difference between the two. In practice, this required an institution employing an internal model to measure specific risk to also calculate the specific risk charge using the standardized approach.

When the agencies included the minimum specific risk charge as part of the market risk rules, they recognized that dual calculations of specific risk—that is, calculating specific risk with internal models as well as using the standardized approach to establish the minimum specific risk charge—would be burdensome. However, the agencies' decision to include the minimum specific risk charge was consistent with the Basle Committee's belief that a minimum charge was necessary to ensure that modeling techniques for specific risk adequately measured that risk. After the Basle Committee adopted the market risk amendment, many institutions improved their modeling techniques and, in particular, their modeling of specific risk. Recognizing these improvements, in September 1997 the Basle Committee decided to eliminate the use of the minimum specific risk charge and the burden of a separate calculation. The Basle Committee revised the market risk amendment so that an institution using a valid internal model to measure specific risk could use the VAR measures generated by the model without comparing the model-generated results to the minimum specific risk charge calculated under the standardized approach.[4] The revisions specified that the specific risk elements of internal models would be assessed consistently with the assessment of the general market risk elements of such models through backtesting and review by the relevant agency.

To implement this revision to the market risk amendment, the agencies

[1] The G–10 countries are Belgium, Canada, France, Germany, Italy, Japan, Netherlands, Sweden, Switzerland, the United Kingdom, and the United States. The Basle Committee is comprised of representatives of the central banks and supervisory authorities from the G–10 countries and Luxembourg.

[2] The VAR-based capital charge is the higher of (i) the previous day's VAR measure, or (ii) the average of the daily VAR measures for each of the preceding 60 business days multiplied by a factor of three. Beginning no later than one year after becoming subject to the market risk rules, an institution is required to backtest its internal model. An institution may be required to apply a higher multiplication factor, up to a factor of four, based on backtesting results.

[3] The standardized approach applies a risk-weighting process developed by the Basle Committee to individual financial instruments. Under this approach, debt and equity instruments in the institution's trading account are assessed a category-based fixed capital charge.

[4] The revisions are described in the Committee's document entitled "Explanatory Note: Modification of the Basle Capital Accord of July 1988, as Amended January 1996" and is available through the Board's and the OCC's Freedom of Information Office and the FDIC's Public Information Center.

issued an interim rule with a request for comment (62 FR 68064) in December 1997. As discussed in the interim rule, the agencies found sufficient good cause to make the amendments effective immediately, without prior opportunity for public comment or a delayed effective date. The interim rule applied only to the calculation of specific risk under the market risk rules, and all other aspects of the market risk rules remained unchanged.

II. Comments Received

The agencies received a total of three public comments on the interim rule (two from industry trade associations and one from a financial institution). All three commenters supported the interim rule, primarily because of its reduction of regulatory burden. None of the commenters suggested any changes to the interim rule.

III. Final Rule

The agencies are adopting in final form, without substantive change, the interim rule eliminating the requirement that when an institution measures specific risk using its internal model, the total capital charge for specific risk must equal at least 50 percent of the standard specific risk capital charge. This final rule does not apply to institutions that use the standardized method to calculate specific risk.

For those institutions using internal models to calculate their specific risk charges, the agencies will continue to review the internal models to determine whether or not they adequately measure specific risk. In reviewing these internal models, the agencies will evaluate the extent to which the internal models adequately capture idiosyncratic price variations of debt and equity instruments due to circumstances unique to the issuer, as well as the instruments' exposure to event and default risk. In order to capture specific risk adequately, an institution's internal model must explain the historical price variation in the portfolio. Internal models must also be sensitive to changes in portfolio concentrations (both magnitude and changes in composition), and require additional capital for greater concentrations. The agencies likewise will take into account whether an internal model is sensitive to an adverse environment. If an institution's internal model adequately captures specific risk, the institution may base its specific risk capital charge on the internal model's estimates.

If an institution's internal model does not adequately measure specific risk, the institution must continue to calculate the standard specific risk capital charge and add that charge to its VAR-based capital charge for general market risk to produce its total regulatory capital requirement for market risk. If an institution's internal model adequately addresses idiosyncratic risk but does not adequately capture all other aspects of specific risk, including event and default risk, the institution may use its internal model to calculate specific risk, but it will have a "specific risk add-on." The specific risk add-on may be calculated using either one of two approaches, both of which have the effect of subjecting the modeled specific risk to a minimum multiplier of four.[5]

Under the first approach, an institution whose internal model is able to separate its VAR measure into general market risk and specific risk components must use as its measure for market risk the total VAR-based capital charge (typically three times the internal model's general and specific risk measure), plus an add-on consisting of the isolated specific risk component of the VAR measure. Under the second approach, an institution whose internal model does not separately identify the specific and general market risk components of its VAR measure must use as its measure for market risk the total VAR-based capital charge, plus an add-on consisting of the VAR measures of the subportfolios of debt and equity positions that contain specific risk. An institution using the second approach may not alter its subportfolio structures for the sole purpose of decreasing its VAR measure.

An institution using its internal model for specific risk capital purposes must backtest the model to assess whether the model accurately explains observed price variations arising from both general market risk and specific risk. To assist in internal model validation, the institution should perform backtests on its traded debt and equity subportfolios that contain specific risk. The institution should conduct these backtests with the understanding that subportfolio backtesting is a productive mechanism for assuring that instruments with higher levels of specific risk, especially event or default risk, are modeled accurately. If subportfolio backtests indicate an unacceptable internal model, especially for unexplained price variation that may be arising from specific risk, the institution should take immediate action to improve the internal model and ensure that it has sufficient capital to protect against associated risks.

The agencies expect institutions to continue improving their internal models, particularly with respect to measuring event and default risk for traded debt and equity instruments. The agencies intend to work with the industry in these efforts and believe that, over time, market standards for measuring event and default risk will emerge. As individual modeling methods are improved and become accepted within the industry as effective measurement techniques for event and default risk, the agencies will consider permitting such models to be applied without any add-on charge. The Basle Committee may issue general guidance for capturing event and default risk for trading book instruments. Until such time as standards for measuring event and default risk are established within the industry, the agencies intend to cooperate with each other and communicate extensively with other international supervisors to ensure that the market risk capital requirements are implemented in an appropriate and consistent manner.

IV. Changes From the Interim Rule

In adopting the final rule, the Board and FDIC made certain wording changes. These changes do not alter the effect or substance of the final rule, and only conform or clarify the language.

First, both the Board and the FDIC changed their language which states that a bank that incorporates specific risk into its internal model but fails to demonstrate that its internal model adequately measures all aspects of specific risk may use its internal model to calculate specific risk subject to a "specific risk add-on." This change was made to make the agencies' language more consistent. Second, the Board and the FDIC conformed their definition of "specific risk" to be more consistent with the OCC's language. Third, the FDIC has changed paragraph (c) of Appendix C of Part 325 Section 5 to clarify that, when an institution models the specific risk of either its covered debt positions or its covered equity positions, but not both components, the capital treatment specified for modeled specific risk will apply as to the modeled component, and the standardized approach will apply as to the non-modeled component. The add-on charge will consist of the specific risk charge determined under the

[5] The multiplier applicable to the modeled general market risk elements will not be affected. Thus, the multiplier for general market risk will continue to be three, unless a higher multiplier is indicated by virtue of the institution's backtesting results for general market risk, or unless no multiplier is applied because the previous day's VAR for general market risk is higher than the 60-day average times the multiplier.

standardized approach for the non-modeled component, plus the specific risk add-on, if any, for the modeled component (because the model does not adequately measure event and default risk). The FDIC's change in this regard is technical. The language of the interim rule also effectuated this approach, but the changes make it clearer to the reader.

V. Regulatory Flexibility Act Analysis

Pursuant to section 603 of the Regulatory Flexibility Act (RFA), RFA does not apply if any agency is not required to issue a Notice of Proposed Rulemaking. Nevertheless, the agencies have considered the impact of this final rule and determined that it will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The final rule will rarely, if ever, apply to small entities. Moreover, this final rule reduces regulatory burden, by eliminating the need for institutions that model specific risk to make dual calculations under the standardized approach in order to determine their minimum specific risk charge.

VI. Paperwork Reduction Act

The agencies have determined that the final rule does not involve a collection of information pursuant to the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

VII. Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) (Title II, Pub. L. 1004–121) provides generally for agencies to report rules to Congress for review. The reporting requirement is triggered when a federal agency issues a final rule. Accordingly, the agencies filed the appropriate reports with Congress as required by SBREFA.

The Office of Management and Budget has determined that these final rules do not constitute "major rules" as defined by SBREFA.

VIII. OCC Executive Order 12866 Determination

The OCC has determined that the final rule does not constitute a "significant regulatory action" for the purpose of Executive Order 12866.

IX. OCC Unfunded Mandates Reform Act of 1995 Determination

Section 202 of the Unfunded Mandates Reform Act of 1995, Pub. L. 104–4 (Unfunded Mandates Act) requires that an agency prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. As discussed in the preamble, this final rule eliminates the minimum specific risk charge for institutions that use internal models that adequately capture specific risk. The effect of this final rule is to reduce regulatory burden by no longer requiring institutions to make dual calculations under both the institution's internal model and the standardized specific risk model. The OCC therefore has determined that the effect of the final rule on national banks as a whole will not result in expenditures by State, local, or tribal governments or by the private sector of $100 million or more. Accordingly, the OCC has not prepared a budgetary impact statement or specifically addressed the regulatory alternatives considered.

X. FDIC Assessment of Impact of Federal Regulation on Families

The FDIC has determined that this final rule will not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act of 1999 (Pub. Law 105–277).

List of Subjects

12 CFR Part 3

Administrative practice and procedure, Capital, National banks, Reporting and recordkeeping requirements, Risk.

12 CFR Part 208

Accounting, Agriculture, Banks, banking, Confidential business information, Crime, Currency, Federal Reserve System, Mortgages, Reporting and recordkeeping requirements, Securities.

12 CFR Part 225

Administrative practice and procedure, Banks, banking, Federal Reserve System, Holding companies, Reporting and recordkeeping requirements, Securities.

12 CFR Part 325

Bank deposit insurance, Banks, banking, Capital adequacy, Reporting and recordkeeping requirements, Savings associations, State non-member banks.

Authority and Issuance

Office of the Comptroller of the Currency

12 CFR Chapter I

For the reasons set out in the joint preamble, the OCC's portion of the joint interim rule with request for comment amending 12 CFR part 3 titled Risk-Based Capital Standards: Market Risk, published on December 30, 1997, at 62 FR 68067 is adopted as final without change.

Dated: March 24, 1999.

John D. Hawke, Jr.,

Comptroller of the Currency.

Federal Reserve System

12 CFR Chapter II

For the reasons set forth in the joint preamble, the Board's portion of the joint interim rule with request for comment, amending 12 CFR parts 208 and 225, published on December 30, 1997, at 62 FR 68067 is adopted as final with the following changes:

PART 208—MEMBERSHIP OF STATE BANKING INSTITUTIONS IN THE FEDERAL RESERVE SYSTEM (REGULATION H)

1. The authority citation for part 208 continues to read as follows:

Authority: 12 U.S.C. 24, 36, 92a, 93a, 248(a), 248(c), 321–338a, 371d, 461, 481–486, 601, 611, 1814, 1816, 1818, 1823(j), 1828(o), 1831o, 1831p–1, 1831r–1, 1835a, 1882, 2901–2907, 3105, 3310, 3331–3351, and 3906–3909; 15 U.S.C. 78b, 78l(b), 781(g), 781(i), 78o–4(c)(5), 78q, 78q–1, and 78w; 31 U.S.C. 5318; 42 U.S.C. 4012a, 4104a, 4104b, 4106, and 4128.

2. In appendix E to part 208, the appendix heading is revised to read as follows:

Appendix E to Part 208—Capital Adequacy Guidelines for State Member Banks; Market Risk Measure

3. In appendix E to part 208, section 2., paragraph (b)(2) is revised to read as follows:

* * * * *

Section 2. Definitions

* * * * *

(b) * * *

(2) *Specific risk* means changes in the market value of specific positions due to factors other than broad market movements and includes event and default risk as well as idiosyncratic variations.

* * * * *

4. In Appendix E to part 208, section 5., paragraphs (a), (b), and the

introductory text of paragraph (c) are revised to read as follows:

* * * * *

Section 5. Specific Risk

(a) *Modeled specific risk.* A bank may use its internal model to measure specific risk. If the bank has demonstrated to the Federal Reserve that its internal model measures the specific risk, including event and default risk as well as idiosyncratic variation, of covered debt and equity positions and includes the specific risk measures in the VAR-based capital charge in section 3(a)(2)(i) of this appendix, then the bank has no specific risk add-on for purposes of section 3(a)(2)(ii) of this appendix. The model should explain the historical price variation in the trading portfolio and capture concentration, both magnitude and changes in composition. The model should also be robust to an adverse environment and have been validated through backtesting which assesses whether specific risk is being accurately captured.

(b) *Partially modeled specific risk.* (1) A bank that incorporates specific risk in its internal model but fails to demonstrate to the Federal Reserve that its internal model adequately measures all aspects of specific risk for covered debt and equity positions, including event and default risk, as provided by section 5(a), of this appendix must calculate its specific risk add-on in accordance with one of the following methods:

(i) If the model is susceptible to valid separation of the VAR measure into a specific risk portion and a general market risk portion, then the specific risk add-on is equal to the previous day's specific risk portion.

(ii) If the model does not separate the VAR measure into a specific risk portion and a general market risk portion, then the specific risk add-on is the sum of the previous day's VAR measures for subportfolios of covered debt and equity positions that contain specific risk.

(2) If a bank models the specific risk of covered debt positions but not covered equity positions (or vice versa), then the bank may determine its specific risk charge for the included positions under section 5(a) or 5(b)(1) of this appendix, as appropriate. The specific risk charge for the positions not included equals the standard specific risk capital charge under paragraph (c) of this section.

(c) *Specific risk not modeled.* If a bank does not model specific risk in accordance with section 5(a) or 5(b) of this appendix, then the bank's specific risk capital charge shall equal the standard specific risk capital charge, calculated as follows:

* * * * *

PART 225—BANK HOLDING COMPANIES AND CHANGE IN BANK CONTROL (REGULATION Y)

1. The authority citation for part 225 continues to read as follows:

Authority: 12 U.S.C. 1817(j)(13), 1818, 1828(o), 1831i, 1831p–1, 1843(c)(8), 1844(b), 1972(1), 3106, 3108, 3310, 3331–3351, 3907, and 3909.

2. In appendix E to part 225, the appendix heading is revised to read as follows:

Appendix E to Part 225—Capital Adequacy Guidelines for Bank Holding Companies: Market Risk Measure

3. In appendix E to part 225, section 2., paragraph (b)(2) is revised to read as follows:

* * * * *

Section 2. Definitions

* * * * *

(b) * * *

(2) *Specific risk* means changes in the market value of specific positions due to factors other than broad market movements and includes event and default risk as well as idiosyncratic variations.

* * * * *

4. In appendix E to part 225, section 5., paragraphs (a), (b), and the introductory text of paragraph (c) are revised to read as follows:

* * * * *

Section 5. Specific Risk

(a) *Modeled specific risk.* A bank holding company may use its internal model to measure specific risk. If the organization has demonstrated to the Federal Reserve that its internal model measures the specific risk, including event and default risk as well as idiosyncratic variation, of covered debt and equity positions and includes the specific risk measures in the VAR-based capital charge in section 3(a)(2)(i) of this appendix, then the organization has no specific risk add-on for purposes of section 3(a)(2)(ii) of this appendix. The model should explain the historical price variation in the trading portfolio and capture concentration, both magnitude and changes in composition. The model should also be robust to an adverse environment and have been validated through backtesting which assesses whether specific risk is being accurately captured.

(b) *Partially modeled specific risk.* (1) A bank holding company that incorporates specific risk in its internal model but fails to demonstrate to the Federal Reserve that its internal model adequately measures all aspects of specific risk for covered debt and equity positions, including event and default risk, as provided by section 5(a) of this appendix, must calculate its specific risk add-on in accordance with one of the following methods:

(i) If the model is susceptible to valid separation of the VAR measure into a specific risk portion and a general market risk portion, then the specific risk add-on is equal to the previous day's specific risk portion.

(ii) If the model does not separate the VAR measure into a specific risk portion and a general market risk portion, then the specific risk add-on is the sum of the previous day's VAR measures for subportfolios of covered debt and equity positions that contain specific risk.

(2) If a bank holding company models the specific risk of covered debt positions but not covered equity positions (or vice versa), then the bank holding company may determine its specific risk charge for the included positions under section 5(a) or 5(b)(1) of this appendix, as appropriate. The specific risk charge for the positions not included equals the standard specific risk capital charge under paragraph (c) of this section.

(c) *Specific risk not modeled.* If a bank holding company does not model specific risk in accordance with section 5(a) or 5(b) of this appendix, then the organization's specific risk capital charge shall equal the standard specific risk capital charge, calculated as follows:

* * * * *

By order of the Board of Governors of the Federal Reserve System, April 7, 1999.

Jennifer J. Johnson,

Secretary of the Board.

Federal Deposit Insurance Corporation

12 CFR Chapter III

For the reasons set forth in the joint preamble, FDIC's portion of the joint interim final rule with request for comment amending 12 CFR part 325, published December 30, 1997, at 62 FR 66068 is adopted as final with the following changes:

PART 325—CAPITAL MAINTENANCE

1. The authority citation for part 325 continues to read as follows:

Authority: 12 U.S.C. 1815(a), 1815(b), 1816, 1818(a), 1818(b), 1818(c), 1818(t), 1819(Tenth), 1828(c), 1828(d), 1828(i), 1828(n), 1828(o), 1831o, 1835, 3907, 3909, 4808; Pub. L. 102–233, 105 Stat. 1761, 1789, 1790 (12 U.S.C. 1831n note); Pub. L. 102–242, 105 Stat. 2236, 2355, 2386 (12 U.S.C. 1828 note).

2. In appendix C to part 325, the appendix heading is revised to read as follows:

Appendix C to Part 325—Risk-Based Capital for State Non-Member Banks: Market Risk

3. In appendix C to part 325, section 2., paragraph (b)(2) is revised to read as follows:

* * * * *

Section 2. Definitions

* * * * *

(b) * * *

(2) *Specific risk* means changes in the market value of specific positions due to factors other than broad market movements and includes event and default risk as well as idiosyncratic variations.

* * * * *

4. In appendix C to part 325, section 5., paragraphs (a), (b), and (c) introductory text are revised to read as follows:

* * * * *

Section 5. Specific Risk

(a) *Modeled specific risk.* A bank may use its internal model to measure specific risk. If the bank has demonstrated to the FDIC that its internal model measures the specific risk, including event and default risk as well as idiosyncratic variation, of covered debt and equity positions and includes the specific risk measure in the VAR-based capital charge in section 3(a)(2)(i) of this appendix, then the bank has no specific risk add-on for purposes of section 3(a)(2)(ii) of this appendix. The model should explain the historical price variation in the trading portfolio and capture concentration, both magnitude and changes in composition. The model should also be robust to an adverse environment and have been validated through backtesting which assesses whether specific risk is being accurately captured.

(b) *Add-on charge for modeled specific risk.* A bank that incorporates specific risk in its internal model but fails to demonstrate to the FDIC that its internal model adequately measures all aspects of specific risk for covered debt and equity positions, including event and default risk, as provided by section 5(a) of this appendix, must calculate the bank's specific risk add-on for purposes of section 3(a)(2)(ii) of this appendix as follows:

(1) If the model is capable of valid separation of the VAR measure into a specific risk portion and a general market risk portion, then the specific risk add-on is equal to the previous day's specific risk portion.

(2) If the model does not separate the VAR measure into a specific risk portion and a general market risk portion, then the specific risk add-on is the sum of the previous day's VAR measures for subportfolios of covered debt and equity positions.

(c) *Add-on charge if specific risk is not modeled.* If a bank does not model specific risk in accordance with paragraph (a) or (b) of this section, the bank's specific risk add-on charge for purposes of section 3(a)(2)(ii) of this appendix equals the sum of the components for covered debt and equity positions. If a bank models, in accordance with paragraph (a) or (b) of this section, the specific risk of covered debt positions but not covered equity positions (or vice versa), then the bank's specific risk add-on charge for the positions not modeled is the component for covered debt or equity positions as appropriate:

* * * * *

Dated at Washington, D.C. this 23rd day of March, 1999.

By order of the Board of Directors.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 99–9185 Filed 4–16–99; 8:45 am]

BILLING CODES 4810–33–P; 6210–01–P; 6714–01–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR part 187

[CGD 96–050]

RIN 2115–AD35

Vessel Identification System; Effective Date Change

AGENCY: Coast Guard, DOT.

ACTION: Interim final rule; change in effective date.

SUMMARY: The Coast Guard extends the delay of the effective date of part of its regulations establishing the vessel identification system. Subpart D of these regulations addressing guidelines for State vessel titling systems was to become effective on April 24, 1999. The Coast Guard needs more time to study the costs and benefits of other possible regulatory alternatives. By extending the delay in the effective date until October 24, 1999, the Coast Guard will have more time to develop a supplemental notice of proposed rulemaking. The remainder of the regulation is unaffected by this notice.

EFFECTIVE DATES: Effective April 23, 1999, the effective date of subpart D of 33 CFR part 187 is delayed until October 24, 1999. All other provisions of the interim final rule that became effective on April 24, 1996, will remain in effect.

FOR FURTHER INFORMATION CONTACT: For questions regarding this change of effective date, call Ensign Brian Ly, Office of Information Resources, telephone 202–267–6989. This telephone is equipped to record messages on a 24-hour basis.

SUPPLEMENTARY INFORMATION:

Background

46 U.S.C. 12501 requires the Secretary of Transportation to establish a Vessel Identification System (VIS). On April 25, 1995 the Coast Guard published an interim final rule (60 FR 20310) which prescribed the manner and form for participating states to make information available for VIS, to establish vessel titling system guidelines, and to establish procedures for certifying compliance. The interim final rule was to go into full effect on April 24, 1996.

Reason for Delay

One subpart of the interim final rule prescribes the procedures for obtaining certification of compliance with guidelines for State vessel titling systems (33 CFR part 187, subpart D). The effective date of that subpart was delayed through April 23, 1999 (63 FR 19657) to allow the States and the Coast Guard more time to review the complexities of State titling systems. Since publishing the interim final rule, the Coast Guard has determined that changes resulting from the comments received over the course of this project would be so substantive that moving to a final rule without allowing another opportunity to comment would not be in the best interest of the public. The Coast Guard is currently drafting a supplemental notice of proposed rulemaking (SNPRM) which will allow for further comment. However, this process will take time to adequately research the costs and benefits of the proposed regulatory changes. Therefore, the Coast Guard is delaying the effective date of subpart D until October 24, 1999, before which time we expect to publish a SNPRM. All other provisions of the interim final rule will remain in effect.

Accordingly, under the authority of 46 U.S.C. 2103 and 49 CFR 1.46, the effective date of 33 CFR part 187, subpart D, is changed to October 24, 1999.

Dated: April 13, 1999.

R. C. North,

Assistant Commander for Marine Safety and Environmental Protection.

[FR Doc. 99–9759 Filed 4–16–99; 8:45 am]

BILLING CODE 4810–15–M

POSTAL SERVICE

39 CFR Part 20

Priority Mail Global Guaranteed

AGENCY: Postal Service.

ACTION: Interim rule with request for comment.

SUMMARY: The Postal Service, through an alliance with DHL Worldwide Express Inc., is offering an enhanced expedited service from selected locations in the United States to selected countries in Europe. This service will offer day-certain delivery with a postage refund guarantee for allowable contents.

DATES: Effective Date: April 19, 1999. Comments on the interim rule must be received on or before May 19, 1999.

ADDRESSES: Written comments should be mailed or delivered to the Manager, Pricing, Costing, and Classification, International Business Unit, U.S. Postal Service, 475 L'Enfant Plaza, SW, Room 370–IBU, Washington, DC 20260–6500. Copies of all written comments will be available for public inspection between 9 a.m. and 4 p.m., Monday through

Friday, in the International Business Unit, 10th Floor, 901 D Street SW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Walter J. Grandjean, (202) 314–7256.

SUPPLEMENTARY INFORMATION: The U.S. Postal Service, through an alliance with DHL Worldwide Express Inc., is offering an enhanced expedited service, Priority Mail Global Guaranteed, from selected locations in the United States to selected countries in Europe. This service offers day-certain delivery with a postage refund guarantee and document reconstruction coverage of $100 for allowable contents.

Service will be available from selected metropolitan areas to selected European countries. Mail is accepted at U.S. post offices and transported by the Postal Service to a designated location where it is tendered to its agent DHL Worldwide Express Inc., for transportation overseas, clearance through foreign commercial customs, and final delivery to the addressee.

Priority Mail Global Guaranteed offers day-certain delivery with 2-business day delivery to most destinations and day-specific guarantee to all other locations. If items are not delivered or available for delivery by the specified time, the mailer is entitled to a refund of the postage paid. Document reconstruction up to $100 is provided in the case of loss of, or damage to the shipment. Track and trace service and confirmation of delivery are available for shipments by calling 1–800–222–1811 or on the Internet at http://www.usps.com.

Although the Postal Service is exempted by 39 U.S.C. 410(a) from the advance notice requirements of the Administrative Procedure Act regarding proposed rulemaking (5 U.S.C. 553), the Postal Service invites public comment at the above address.

The Postal Service is amending Chapter 2, Conditions for Mailing, International Mail Manual, which is incorporated by reference in the Code of Federal Regulations. See 39 CFR 20.1.

The Postal Service adopts the following amendments to the International Mail Manual, which is incorporated by reference in the Code of Federal Regulations. See 39 CFR 20.1.

List of Subjects in 39 CFR Part 20

Foreign relations, International postal service.

PART 20—[AMENDED]

1. The authority citation for 39 CFR Part 20 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 401, 404, 407, 408.

2. Chapter 2 of the International Mail Manual is amended as follows:

2 CONDITIONS FOR MAILING

* * * * *

210 Express Mail International Service

* * * * *

215 Priority Mail Global Guaranteed

215.1 Description

215.11 General

Priority Mail Global Guaranteed is an international expedited delivery service provided through an alliance with DHL Worldwide Express Inc. It provides reliable, high-speed, guaranteed, and time-definite service from certain post offices in the United States to a select number of international destinations. Service is guaranteed to meet service standards or postage is refunded. If a mail shipment is lost or damaged, liability is limited to a maximum of $100 for document reconstruction.

215.12 Allowable Contents

Only non-dutiable, general correspondence is mailable in Priority Mail Global Guaranteed service. Items may not contain merchandise, any dutiable item, or any item prohibited by the destination country. Refer to the Priority Mail Global Guaranteed Service Guide for the definition of allowable contents for each destination country. Mailers are responsible for determining if their item is allowable despite any statement made in the Priority Mail Global Guaranteed Service Guide or by a postal employee.

215.2 Service Standards

215.21 Two-Day Service

Service is available from the offices listed in 215.31 to destinations listed as 2-day destinations in the Priority Mail Global Guaranteed Service Guide within 2 business days (Monday through Friday, except holidays in the United States and the destination) as follows:

Acceptance day	Delivery day
Monday	Wednesday.
Tuesday	Thursday.
Wednesday	Friday.
Thursday	Monday.
Friday	Monday.
Saturday	Tuesday.
Sunday	Wednesday.

215.22 Other Locations

There is a day-specific guarantee to all other locations within the destination countries and territories. See the Priority Mail Global Guaranteed Service Guide for location specific guarantee.

215.3 Service Areas

215.31 Origins

Priority Mail Global Guaranteed service is available only from the following post offices:

Metropolitan Area	ZIP Code
Arizona, Phoenix	850, 852–853.
California, San Francisco/San Jose	937, 939–941, 943–944, 949–951, 954.
District of Columbia, Washington	200–203, 206–209, 220–223.
Florida, Miami	330–333.
Illinois, Chicago	600–608, 610–611.
Massachusetts, Boston	014–031, 033, 038–039, 041, 068–069.
Minnesota, Minneapolis	550–551, 553–554, 558–559.
New York, New York	100–101, 103–119, 124–127.
North Carolina, Charlotte	280–282, 286, 297.
Pennsylvania, Philadelphia	190–191, 194, 197–199.
Texas, Houston	770, 772–773, 776–778.

215.32 Destinations

Service is available only to the following countries and territories:

Austria
Belgium
Denmark
Finland
France
Germany
Gibraltar
Great Britain and Northern Ireland

Ireland
Italy
Liechtenstein
Luxembourg
Monaco
Netherlands
Norway
Portugal
Spain
Sweden
Switzerland

215.4 Service Guarantee

The Postal Services guarantees delivery within the service standards specified in the Priority Mail Global Guaranteed Service Guide or the sender is entitled to a full refund of the postage paid. For the purpose of the service guarantee, the date and time of delivery, attempted delivery, or availability for delivery constitutes delivery.

215.5 Inquiries, Postage Refunds, and Indemnity Claims

215.51 Extent of Postal Service Liability for Lost or Damaged Contents

Liability for a lost or damaged shipment is limited to the lowest of the following:

a. $100.

b. The actual amount of the loss or damage.

c. The actual value of the contents.

215.52 Inquiries

Inquiries concerning the delivery of Priority Mail Global Guaranteed items are made by calling 1–800–222–1811 or through the Internet at http://www.usps.com.

215.53 Postage Refunds

Postage is refunded if a shipment mailed at a designated post office before the specified deposit time is not delivered or delivery is not attempted in accordance with the guarantee standards in the Priority Mail Global Guaranteed Service Guide before 5 p.m. local time in the delivery location. Requests for postage refunds are made by contacting a customer service representative at 1–800–222–1811 for more details on how to file a claim. The original receipt of the Priority Mail Global Guaranteed label may be required with a claim for a postage refund or document reconstruction. Requests for postage refunds or document reconstruction must be made no later than 30 days from the date of mailing.

215.6 Postage

215.61 Rates

Weight not over lbs.	Rate
0.5	$23.00
1	31.00
2	31.00
3	50.00
4	57.00
5	63.00
6	68.00
7	73.00
8	78.00
9	82.00
10	87.00
11	90.00
12	94.00
13	97.00
14	99.00
15	104.00
16	107.00
17	110.00
18	114.00
19	117.00
20	121.00
22	128.00
23	131.00
24	134.00
25	138.00
26	141.00
27	145.00
28	148.00
29	151.00
30	155.00
31	158.00
32	162.00
33	166.00
34	169.00
35	173.00
36	176.00
37	180.00
38	183.00
39	186.00
40	190.00
41	193.00
42	197.00
43	199.00
44	203.00
45	207.00
46	210.00
47	214.00
48	217.00
49	220.00
50	224.00
51	228.00
52	230.00
53	235.00
54	237.00
55	241.00
56	244.00
57	248.00
58	251.00
59	255.00
60	257.00
61	262.00
62	264
63	268.00
64	271.00
65	275.00
66	277.00
67	282.00
68	284.00
69	290.00
70	291.00

215.62 Payment of Postage

215.621 Methods of Payment

Priority Mail Global Guaranteed items may be paid by postage stamps, postage validation imprinter (PVI) labels, or postage meter stamps.

215.623 Mailings Made by Federal Government Agencies

Postage and Fees Paid indicia may be used by federal agencies entitled to use the indicia. Penalty indicia may be used for official mail of the U.S. Postal Service.

215.7 Weight and Size Limits

215.71 Weight Limits

The maximum weight is 70 pounds.

215.72 Size Limits

215.721 Minimum Size

Items must be large enough to affix the Priority Mail Global Guaranteed label to the face of the item, approximately 5½ inches in height and 8½ inches in length.

215.722 Maximum Size

Length and girth combined may not exceed 108 inches. Individual dimensions may not exceed:

Length: 46 inches
Width: 35 inches
Height: 47 inches

215.8 Preparation Requirements

215.81 Preparation by the Sender

a. Prepare the item as a flat or package using either the Priority Mail Global Guaranteed envelope provided by the Postal Service or mailer-supplied packaging. Mailers using their own envelope or wrapping must also affix a Priority Mail Global Guaranteed sticker (Item 107RGG3X) to the front and back of the item.

b. Complete the Priority Mail Global Guaranteed mailing label (item 11FGG1X) to show the complete address of the sender and addressee. Items cannot be addressed to a post office box or an APO or FPO address. Complete the "Shipment Details" to show the contents in detail. A separate customs declaration is not used. Sign and date the mailer agreement. Affix the mailing label to the item and present it to a postal employee for mailing.

215.82 Preparation by Acceptance Employee

a. Check that the sender has properly completed the mailing label.

b. Complete the postage transaction if the item is not prepaid.

c. Complete the "Origin" information.

d. Remove the customer's copy of the mailing label and give it to the

customer. Affix the label to the item. Affix a Priority Mail Global Guaranteed sticker (Item 107RGG3X) to the front and back of a mailer-supplied package.

215.83 Customs Forms Required

The mailing label contains space for the sender to declare the contents. A separate postal customs declaration is not used.

* * * * *

A transmittal letter changing the relevant pages in the International Mail Manual will be published and automatically transmitted to all subscribers. Notice of issuance of the transmittal will be published in the **Federal Register** as provided by 39 CFR 20.3.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 99–9764 Filed 4–16–99; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300843; FRL–6075–6]

RIN 2070–AB78

Clofentezine; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a tolerance for residues of clofentezine in or on apples and apple pomace. AgrEvo USA Company requested this tolerance under the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996.

DATES: This regulation is effective April 19, 1999. Objections and requests for hearings must be received by EPA on or before June 18, 1999.

ADDRESSES: Written objections and hearing requests, identified by the docket control number, [OPP–300843], must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk identified by the docket control number, [OPP–300843], must also be submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect 5.1/6.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket control number [OPP–300843]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: By mail: Peg Perreault, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 209, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 305–5417, e-mail: perreault.peg@epa.gov.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of January 28, 1999 (64 FR 4414) (FRL–6056–3), EPA issued a notice pursuant to section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a as amended by the Food Quality Protection Act of 1996 (FQPA) (Pub. L. 104–170) announcing the filing of a pesticide petition (PP) for tolerance by AgrEvo USA Company, Little Falls Centre One, 2711 Centerville Road, Wilmington, DE 19808. This notice included a summary of the petition prepared by AgrEvo USA Company, the registrant. There were no comments received in response to the notice of filing.

The petition requested that 40 CFR 180.446(b) be amended by establishing a tolerance for residues of the insecticide clofentezine, in or on apples at 0.5 parts per million (ppm) and apple pomace at 3.0 ppm.

I. Background and Statutory Findings

Section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue...."

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 and a complete description of the risk assessment process, see the final rule on Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997) (FRL–5754–7).

II. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of clofentezine (3,6-bis(chlorophenyl)-1,2,4,5-tetrazine) and to make a determination on aggregate exposure, consistent with section 408(b)(2), for a tolerance for residues of clofentezine on apples at 0.5 ppm and apple pomace at 3.0 ppm. EPA's assessment of the dietary exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by clofentezine are discussed in this unit.

1. *Acute toxicity.* Technical clofentezine has a relatively low degree of acute toxicity by the oral, dermal, and inhalation routes of exposure (Toxicity Category III for oral, dermal and inhalation toxicity). The acute oral LD_{50}

of clofentezine was determined to be > 5,200 milligrams per kilogram (mg/kg) in rats and mice, > 3,200 mg/kg in hamsters, and > 2,000 mg/kg in beagle dogs. The acute rat dermal LD_{50} was > 2,100 mg/kg. Clofentezine is considered to be a mild eye irritant (Toxicity Category IV) and practically non-irritating to the skin (Toxicity Category IV), but is considered to be a weak skin sensitizer based on a guinea pig maximization assay.

The end-use product APOLLO SC Ovicide/Miticide (42% a.i.) is classified as Toxicity Category IV for oral toxicity and skin irritation, and as Toxicity Category III for dermal toxicity and eye irritation. APOLLO SC is considered slightly irritating to eyes and skin.

2. *Subchronic toxicity.* In a 90–day feeding study, clofentezine was administered to rats at dietary concentrations of 0, 40, 400 and 4,000 ppm. Elevated cholesterol levels, increased liver weights, increased liver-to-body-weight ratios, and centrilobular hepatocyte enlargement were noted at 400 and/or 4,000 ppm. In addition, there was a depletion of thyroid colloid in all dose groups and follicular cell hypertrophy in mid- and high dose male rats. Although present in females, the thyroid effects were less marked. All thyroid effects were reversible after the recovery period. The NOAEL for this study was considered to be 40 ppm (2.8 milligrams per kilograms per day (mg/kg/day)).

Clofentezine was administered to beagle dogs for 90 days at dietary concentrations of 0, 3,200, 8,000 and 20,000 ppm. Increased liver weights were noted at all dose levels but no histopathological changes or any other treatment-related effects were observed.

3. *Chronic toxicity.* In a 12–month feeding study, clofentezine was administered to beagle dogs at dietary concentrations of 0, 50, 1,000 and 20,000 ppm. Treatment related effects were noted in dogs in the mid- (1,000 ppm) and high dose (20,000 ppm) groups. These effects included liver changes with hepatocyte enlargement concurrent with eosinophilic cytoplasm, increased liver weight (both sexes), increased thyroid weight (high dose males only), and increased adrenal weight (high dose females only). Also in the mid- and high dose groups elevated serum cholesterol and triglycerides were noted. There was a statistically significant increase in alkaline phosphatase in both sexes at the high dose primarily during the early part of the study and again at term in high dose males and mid- and high dose females. The NOAEL for this study was considered to be 50 ppm (~1.25 mg/kg/day[1]).

4. *Chronic toxicity/Carcinogenicity.* In a 27–month feeding study, clofentezine was administered to rats at dietary concentrations of 0, 10, 40 and 400 ppm. Treatment related effects were noted in the liver and thyroid at 400 ppm (primarily in males). These effects are discussed below. The NOAEL for this study was considered to be 40 ppm (~2 mg/kg/day).

In both the chronic (27–month) and the subchronic (1 and 3 month) feeding studies in rats, conducted with doses of clofentezine ranging from 0.43 to 1,500 mg/kg/day, non-neoplastic compound related effects were noted. Liver was the primary target organ with secondary effects to the thyroid and perturbations of the general metabolism. The induction of the liver enzyme, uridine-diphosphate-glucuronyl-transferase (UDPGT) and the subsequent increase in the metabolism and the excretion of the thyroid hormone thyroxine (T_4) reduced the availability of T_4 required for the general metabolism and the maintenance of homeostasis. The decreased levels of plasma T_4 resulted in the stimulation of the thyroid by the pituitary gland to raise the plasma T_4 levels. Thyroid changes in the form of colloid depletion, thyroid follicular cell hypertrophy and hyperplasia were observed as a means to regain the homeostasis. Body weights and body weight gains were decreased whereas liver weights were increased and hepatocellular enlargement was reported along with other observations on the liver. Increases in plasma cholesterol and triglyceride levels were also recorded with these effects supported by the liver and thyroid pathology. Cessation of dosing accompanied by a recovery period allowed for the attainment of normal physiological levels of T_4 and a reversal of the above noted changes.

Tumors of the thyroid were only recorded in male rats during chronic treatment indicating a sensitivity for this species and sex. The mode of action appears to be one of endocrine disruption and follows the generally recognized adaptive physiology of decreased plasma thyroxine levels followed by a positive feedback to the pituitary which then signals the thyroid to produce more thyroxine to raise the plasma thyroxine levels and regain the homeostasis. Structural changes in the thyroid in the manner of hypertrophy and hyperplasia of the thyroid cells then results. However, a chronic over stimulation of the thyroid from an inability to regain the normal levels of plasma thyroxine results in the transformation of cells at some unknown time point from a controlled state of hypertrophy and hyperplasia to an uncontrolled state of hyperplasia with the result of thyroid follicular cell tumor formation.

EPA has classified clofentezine as a likely human carcinogen [classification of C]. The doses in the rat study were, however, considered to be below the maximum tolerated dose (MTD) based on the results in the subchronic studies as well as little evidence of toxicity even at the high dose tested. It was concluded that a new study was not required but may be required at some future date to support the appropriate characterization and quantification of potential risks associated with the use of clofentezine. Biologically or statistically significant tumors were not observed in female rats and clofentezine was not carcinogenic to mice when administered for 2 years at dietary concentrations of 0, 50, 500 and 5,000 ppm. The NOAEL for the mouse study was 500 ppm (50.7 mg/kg/day). Mice were also much less sensitive to the effects of clofentezine as seen in the comparative values of the NOAELS. However the liver was also the target organ in the mouse as seen by histological changes. Decreases in body weight and body weight gain were also reported in mice. Non-neoplastic changes in the mouse thyroid were not remarkable. Increased mortality was observed in female mice at the highest dose tested with amyloidosis considered to be a contributing factor.

5. *Reproductive toxicity.* A 2–generation reproduction study in rats was conducted at dietary concentrations of 0, 4, 40 and 400 ppm (0, 0.2, 2, and 20 mg/kg/day). Systemic effects observed at 400 ppm were limited to minimal centrilobular hepatocyte hypertrophy in adult male rats. The parental NOAEL was considered to be at or above 400 ppm (20 mg/kg/day). There were no reproductive effects and no effects on offspring observed at any dose level. The reproductive NOAEL was considered to be at or above 400 ppm (20 mg/kg/day).

6. *Developmental toxicity.* In a rat developmental toxicity study, clofentezine was administered by gavage to female rats at dose levels of 0, 320, 1,280 and 3,200 mg/kg/day for days 7 through 20 of gestation. In dams, there was differential staining and slight enlargement of the centrilobular hepatocytes at 3,200 mg/kg/day. The maternal NOAEL was considered to be 1,280 mg/kg/day (above the limit test of 1,000 mg/kg/day). There were no developmental effects on offspring at any dose level. The developmental

NOAEL was considered to be at or above 3,200 mg/kg/day.

In a rabbit developmental toxicity study, clofentezine was administered by gavage to female rabbits at dose levels of 0, 250, 1,000 and 3,000 mg/kg/day for days 7 through 29 of gestation Evidence of maternal toxicity included body weight reduction throughout treatment and decreased maternal food consumption at the 3,000 mg/kg/day dose level. The maternal NOAEL was considered to be 1,000 mg/kg/day. Evidence of developmental toxicity included a reduced mean fetal weight reduction of 13% which occurred at 3,000 mg/kg/day. The developmental NOAEL was considered to be 1,000 mg/kg/day.

7. *Mutagenicity.* No evidence of mutagenicity was noted in a battery of *in vitro* and *in vivo* studies. Studies submitted included Ames Salmonella and mouse lymphoma gene mutation assays, a mouse micronucleus assay, a rat dominant lethal assay, and a gene conversion and mitotic recombination assay in yeast.

8. *Metabolism.* Male and female rats given clofentezine technical at 1,000 mg/kg manifested peak plasma levels of between 14 and 16 ppm at 6–8 hours post dosing which then declined to 3 ppm at 24 hours post dosing. Plasma half life was approximately 3.5 hours. Whole body autoradiography of rats given a 10 mg/kg dose indicated poor gastrointestinal absorption with 60–70% of the given dose excreted in the feces during the first 24 hours and about 20% excreted in the urine. Major metabolites were 3-(2′-methyl-thio-3′ hydroxy phenyl)-6-(2′-chloro-phenyl)-1,2,4,5-tetrazine and 3-,4-, and 5-hydroxyclofentezine. Both liver and kidney had the highest tissue concentration after 72 hours.

B. Toxicological Endpoints

1. *Acute toxicity.* An acute RfD was not established. No appropriate toxicological endpoint attributable to a single exposure was identified in the available toxicology studies, including the rat and the rabbit developmental studies. The study data indicate that clofentezine does not directly affect the thyroid. It induces uridine diphosphate glucuronyl transferase (UDPGT) activity in the liver, the enzyme associated with conjugation of thyroxine (T_4 with glucuronic acid prior to the excretion of the hormone. This allows the hormone to be excreted and indicates an increased excretion rate of the hormone. There is also weak evidence that clofentezine increases biliary flow and biliary excretion of T_4. Increased excretion of T_4 reduces circulating T_4 in the blood. The reduction in circulating thyroid hormone is detected by the pituitary, which in turn stimulates the thyroid to generate more thyroid hormone through cell enlargement (hypertrophy) and an increase in the cell numbers (hyperplasia). This is a well recognized and normal adaptive mechanism reacting to decreased thyroid hormone levels resulting in the reestablishment of the homeostasis process and is not considered to be an adverse effect after a single exposure.

2. *Short- and intermediate-term toxicity.* Short- and intermediate- term dermal endpoints were selected from a 90–day rat feeding study. The NOAEL of 2 mg/kg/day and the LOAEL of 20 mg/kg/day were based on increased cholesterol, increased liver weights, thyroid colloid depletion and thyroid follicular cell hypertrophy. An inhalation endpoint was not identified. Short and intermediate term risk assessments would be required for the dermal route of exposure; however, since there are no proposed residential uses of clofentezine that will result in post-application residential exposure, a risk assessment for residential non-dietary (dermal) exposure is not required. An inhalation risk assessment is not required based on the label specified maximum of one application per year per crop, the low toxicity of the chemical, and the low maximum application rate of 8 ounces per acre.

3. *Chronic toxicity.* EPA has established the Chronic RfD for clofentezine (3,6-bis(chlorophenyl)-1,2,4,5-tetrazine) at 0.013 mg/kg/day. This Reference Dose (RfD) for dietary exposure is based on a chronic dog feeding study in which liver changes and elevated serum cholesterol, triglycerides, and alkaline phosphatase were seen at 25.0 mg/kg/day (LOAEL). The NOAEL in this study was 1.25 mg/kg/day. An uncertainty factor (UF) of 100 was applied to the NOAEL to account for both inter-species extrapolation (10) and intra-species variability (10). The chronic RfD applies to all populations.

4. *Carcinogenicity.* EPA has classified clofentezine as a likely human carcinogen (classification of C). Clofentezine causes thyroid tumors only in male rats as a result of chronic over stimulation of the thyroid. This leads to failure to elevate T_4 to physiologically normal levels and regain homeostasis as noted above in the toxicological profile section. The cancer risk was quantified using a linear low dose extrapolation method resulting in a Q* of 0.0376 $(mg/kg/day)^{-1}$ (based upon male rat thyroid follicular cell adenoma and/or carcinoma combined tumor rates).

C. Exposures and Risks

1. *From food and feed uses.* Tolerances have been established (40 CFR 180.446(b)) for the residues of clofentezine, in or on a variety of raw agricultural commodities and in meat at 0.05 ppm and milk at 0.01 ppm. Risk assessments were conducted by EPA to assess food exposures from clofentezine (3,6-bis(chlorophenyl)-1,2,4,5-tetrazine) as follows:

Section 408(b)(2)(E) authorizes EPA to use available data and information on the anticipated residue levels of pesticide residues in food and the actual levels of pesticide chemicals that have been measured in food. If EPA relies on such information, EPA must require that data be provided 5 years after the tolerance is established, modified, or left in effect, demonstrating that the levels in food are not above the levels anticipated. Following the initial data submission, EPA is authorized to require similar data on a time frame it deems appropriate. As required by section 408(b)(2)(E), EPA will issue a data call-in for information relating to anticipated residues to be submitted no later than 5 years from the date of issuance of this tolerance.

Section 408(b)(2)(F) states that the Agency may use data on the actual percent of food treated (PCT) for assessing chronic dietary risk only if the Agency can make the following findings: That the data used are reliable and provide a valid basis to show what percentage of the food derived from such crop is likely to contain such pesticide residue; that the exposure estimate does not underestimate exposure for any significant subpopulation group; and if data are available on pesticide use and food consumption in a particular area, the exposure estimate does not understate exposure for the population in such area. In addition, the Agency must provide for periodic evaluation of any estimates used. To provide for the periodic evaluation of the estimate of percent of crop treated as required by the section 408(b)(2)(F), EPA may require registrants to submit data on PCT.

The Agency used PCT information to conduct a routine chronic dietary exposure analysis for clofentezine based on likely maximum percent of crop treated as follows: 24% apples, 0% apricots, 6% cherries, 30% nectarines, 12.2% peaches, 16% pears, 1.4% plums and prunes, 9.2% almonds, 7.4% walnuts (walnuts were not included in the dietary exposure analysis).

The Agency believes that the three conditions, discussed in section 408

(b)(2)(F) in this unit concerning the Agency's responsibilities in assessing chronic dietary risk findings, have been met. The PCT estimates are derived from Federal and private market survey data, which are reliable and have a valid basis. Typically, a range of estimates are supplied and the upper end of this range is assumed for the exposure assessment. By using this upper end estimate of the PCT, the Agency is reasonably certain that the percentage of the food treated is not likely to be underestimated. The regional consumption information and consumption information for significant subpopulations is taken into account through EPA's computer-based model for evaluating the exposure of significant subpopulations including several regional groups. Use of this consumption information in EPA's risk assessment process ensures that EPA's exposure estimate does not understate exposure for any significant subpopulation group and allows the Agency to be reasonably certain that no regional population is exposed to residue levels higher than those estimated by the Agency. Other than the data available through national food consumption surveys, EPA does not have available information on the regional consumption of food to which clofentezine may be applied in a particular area.

i. *Acute exposure and risk.* Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1–day or single exposure. As previously stated, an Acute RfD was not established for clofentezine as no appropriate toxicological endpoint attributable to a single exposure was identified in the available toxicology studies, including the rat and the rabbit developmental studies. Therefore, an acute risk assessment was not conducted.

ii. *Chronic exposure and risk.* The chronic dietary risk assessment for clofentezine from food sources was conducted using the Chronic RfD of 0.013 mg/kg bwt/day. EPA determined that the Uncertainty Factor (UF) of 100 used to calculate the Chronic RfD is adequate for the protection of the general U.S. population including infants and children from exposure to clofentezine and that FQPA Safety Factor should be removed (refer to unit II.E. of this preamble for a detailed discussion concerning the FQPA Safety Factor with respect to clofentezine). As indicated below, the results of the chronic dietary exposure analysis indicate an acceptable chronic dietary exposure of 100% or less of the Chronic RfD for all population subgroups.

A Dietary Exposure Evaluation Model (DEEM™) analysis for clofentezine was performed in order to provide an estimate of the food exposure and associated risk for clofentezine resulting from existing tolerances and the proposed tolerance level for apples. The DEEM™ analysis evaluated the individual food consumption as reported by respondents in the USDA 1989–91 Nationwide Continuing Surveys for Food Intake by Individuals (CSFII) and accumulated exposure to the chemical for each commodity. The chronic and cancer DEEM analysis for clofentezine estimated the food exposure using ARs and PCT data for all commodities except walnuts. The chronic DEEM™ analysis used mean consumption (3 day average). EPA's level of concern for the analysis is 100% RfD. A summary of the food exposures for the U.S. general population and other subgroups is presented in the following Table 1. The other subgroups included in Table 1 represent the highest food exposures for their respective subgroups (i.e., children, females, and the other general population subgroup higher than U.S. population).

TABLE 1.—SUMMARY OF FOOD EXPOSURE AND RISK FOR CLOFENTEZINE

Subgroups	Exposure (mg/kg/day)	% RfD
U.S. Population (48 states)	0.000022	0.2
Non-Hispanic Other Than Black or White	0.000025	0.2
Non-Nursing Infants (< 1 year old)	0.00018	1.4
Females (13+ years, nursing)	0.000029	0.2

The chronic food risk does not exceed the Agency's level of concern.

iii. *Cancer risk.* The upper bound cancer risk for the U.S. population subgroup was calculated to be 8.4×10^{-7} (based on a Q_1^* value of 0.0376 $(mg/kg/day)^{-1}$). EPA's level of concern for the cancer risk are risks in the range of 1×10^{-6}. The cancer risk is below the Agency's current level of concern.

2. *From drinking water.* EPA does not have sufficient ground or surface water monitoring data available to perform a quantitative risk assessment for clofentezine at this time. However, EPA determined estimated drinking water environmental concentrations (DWECs) in ground and surface water using available environmental fate data and the screening model for ground water (SCI-GROW) and the generic expected environmental concentration (GENEEC) model for surface water. The DWEC of clofentezine in ground water was estimated to be 0.04 ppb using SCI-GROW, and the DWECs for surface water were estimated to be 6.5 ppb (acute DWEC) and 0.3 ppb (chronic DWEC) using GENEEC. EPA policy allows the 90/56–day GENECC value to be divided by 3 to obtain a value for chronic risk assessment calculations. Therefore, a surface water estimate of 0.1 ppb was used in the chronic risk assessment.

i. *Acute exposure and risk.* Acute exposure and risk assessments are performed for a pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1–day or single exposure. As previously stated, an Acute RfD was not established for clofentezine as no appropriate toxicological endpoint attributable to a single exposure was identified in the available toxicology studies, including the rat and the rabbit developmental studies. Therefore, an acute risk assessment was not conducted.

ii. *Chronic exposure and chronic and cancer risk.* EPA uses the Drinking Water Level of Comparison (DWLOC) as a theoretical upper limit on a pesticide's concentration in drinking water when considering total aggregate exposure to a pesticide in food, drinking water, and through residential uses. DWLOCs are not regulatory standards for drinking water; however, EPA uses DWLOCs in the risk assessment process as a surrogate measure of potential exposure from drinking water. In the absence of monitoring data for pesticides, it is used as a point of comparison against conservative model estimates of a pesticide's concentration in water.

EPA has calculated DWLOCs for both chronic and cancer risks. The results are listed in the following Tables 2 and 3.

TABLE 2.— SUMMARY OF DWLOC CALCULATIONS - CHRONIC (NON-CANCER SCENARIO)

Population Subgroup[1]	Chronic (Non-Cancer) Scenario					
	RfD mg/kg/day	Food Exposure mg/kg/day	Maximum Water Exposure mg/kg/day[2]	SCI-GROW (ppb)[3]	GENEEC (ppb)	DWLOC (ppb)
U.S. Population	0.013	0.000022	0.01298	0.04	0.1	454
Non-Hispanic other than black or white	0.013	0.000025	0.01298	0.04	0.1	454
Non-Nursing Infants (< 1 yr old)	0.013	0.00018	0.01282	0.04	0.1	128
Females (13+/nursing)	0.013	0.000029	0.01297	0.04	0.1	389

[1] Population subgroups chosen were U.S. population (70 kg. body weight assumed), the Non-Hispanic subgroup (70 kg body weight assumed) which has higher dietary exposure than the U.S. population, the infant/child subgroup with the highest food exposure (10 kg. body weight assumed), and the female subgroup with the highest food exposure (60 kg. body weight assumed).
[2] Maximum Water Exposure (mg/kg/day) = RfD (mg/kg/day) - TMRC from DRES (mg/kg/day).
[3] The crop producing the highest level was used.

TABLE 3.— SUMMARY OF DWLOC CALCULATIONS - CHRONIC (CANCER SCENARIO)

Population Subgroup[1]	Chronic (Cancer) Scenario					
	Q_1^*	Food Exposure mg/kg/day	Maximum Water Exposure mg/kg/day[2]	SCI-GROW (ppb)[3]	GENEEC (ppb)	DWLOC (ppb)
U.S. Population	0.0376	0.000022	0.000004	0.04	0.1	0.16

[1] Because there is a Q*, the U.S. population is the population of concern.
[2] Maximum Water Exposure (mg/kg/day) = RfD (mg/kg/day) - TMRC from DRES (mg/kg/day).
[3] The crop producing the highest level was used.

To calculate the DWLOC for chronic (non-cancer) exposure relative to a chronic toxicity endpoint, the chronic dietary food exposure (from DEEM) was subtracted from the RfD to obtain the acceptable chronic (non-cancer) exposure to clofentezine in drinking water. To calculate the DWLOC for chronic exposures relative to a carcinogenic toxicity endpoint, the chronic (cancer) dietary food exposure was subtracted from the ratio of the negligible cancer risk to the Q^* to obtain the acceptable chronic (cancer) exposure to clofentezine in drinking water. DWLOCs were then calculated using default body weights and drinking water consumption figures.

The estimated average concentration of clofentezine in surface water is 0.1 ppb. This value is less than EPA's DWLOCs for clofentezine as a contribution to both chronic and cancer aggregate exposures (454 ppb and 0.16 ppb, respectively). Therefore, taking into account the present uses and the proposed new use, EPA concludes with reasonable certainty that residues of clofentezine in drinking water (when considered along with other sources of exposure for which EPA has reliable data) will not result in unacceptable levels of aggregate human health risk. Because EPA considers the aggregate risk resulting from multiple exposure pathways associated with a pesticide's uses, DWLOCs may vary as those uses change. If additional new uses are proposed in the future, EPA will reassess the potential impacts of clofentezine on drinking water as a part of the aggregate risk assessment process.

3. *From non-dietary exposure.* Clofentezine is not registered for residential non-food use sites. Because there are no proposed residential uses of clofentezine that will result in post-application residential exposure, risk assessments for residential non-dietary exposure are not required.

4. *Cumulative exposure to substances with common mechanism of toxicity.* Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity."

EPA does not have, at this time, available data to determine whether clofentezine has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, clofentezine does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that clofentezine has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the final rule for Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997).

D. Aggregate Risks and Determination of Safety for U.S. Population

Because there are no proposed residential uses of clofentezine that will result in post-application residential exposure, aggregate exposure risk assessment will be limited to food and water only. The aggregate chronic and acute risk estimate will be based on the exposure from food and water only for the most highly exposed population subgroups and the general population as appropriate. The aggregate cancer risk estimate will be based on the exposure from food and water exposure for the U.S. general population.

1. *Acute risk.* As explained previously, no toxicological endpoint attributable to a single exposure was identified, and therefore, EPA concludes

that clofentazine does not pose any significant acute risk.

2. *Chronic risk.* Using the Theoretical Maximum Residue Contribution (TMRC) exposure assumptions described in this unit, EPA has concluded that aggregate exposure to clofentezine from food will utilize 0.2 percent of the RfD for the U.S. population. The major identifiable subgroup with the highest aggregate exposure is non-nursing infants, < 1 year old (1.4% of the RfD), discussed below. EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Despite the potential for exposure to clofentezine in drinking water, EPA does not expect the aggregate exposure to exceed 100% of the RfD. EPA concludes that there is a reasonable certainty that no harm will result from aggregate exposure to clofentezine residues.

3. *Short- and intermediate-term risk.* Short- and intermediate-term aggregate exposure takes into account chronic dietary food and water (considered to be a background exposure level) plus indoor and outdoor residential exposure. Since there are currently no residential uses or exposure scenarios for clofentezine, no short- and intermediate-term aggregate risk is expected.

4. *Aggregate cancer risk for U.S. population.* Clofentezine has been classified as a category C carcinogen as a result of three Cancer Peer Reviews. The upper bound cancer risk for the U.S. population subgroup was calculated to be 8.4×10^{-7} (based on a Q_1^* value of 0.0376 $(mg/kg/day)^{-1}$). The cancer risk is below the Agency's current level of concern. The estimated average concentrations of clofentezine in surface and ground water are less than EPA's DWLOC for clofentezine as a contribution to cancer aggregate exposure. Therefore, EPA concludes with reasonable certainty that residues of clofentezine in drinking water do not contribute significantly to the aggregate cancer human health risk at the present time considering the present uses and uses proposed in this action.

EPA bases this determination on a comparison of estimated concentrations of clofentezine in surface waters and ground waters to DWLOCs for clofentezine. The estimates of clofentezine in surface and ground waters are derived from water quality models that use conservative assumptions regarding the pesticide transport from the point of application to surface and ground water. Because EPA considers the aggregate risk resulting from multiple exposure pathways associated with a pesticide's uses, DWLOCs may vary as those uses change. If new uses are added in the future, EPA will reassess the potential impact of clofentezine on drinking water as a part of the aggregate cancer risk assessment process.

5. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result from aggregate exposure to clofentezine residues.

E. Aggregate Risks and Determination of Safety for Infants and Children

1. *Safety factor for infants and children—i. In general.* In assessing the potential for additional sensitivity of infants and children to residues of clofentezine, EPA considered data from developmental toxicity studies in the rat and rabbit and a 2–generation reproduction study in the rat. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from maternal pesticide exposure gestation. Reproduction studies provide information relating to effects from exposure to the pesticide on the reproductive capability of mating animals and data on systemic toxicity.

FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for pre- and post-natal toxicity and the completeness of the database unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a margin of exposure (MOE) analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans. EPA believes that reliable data support using the standard uncertainty factor (usually 100 for combined inter- and intra-species variability) and not the additional tenfold MOE/uncertainty factor when EPA has a complete data base under existing guidelines and when the severity of the effect in infants or children or the potency or unusual toxic properties of a compound do not raise concerns regarding the adequacy of the standard MOE/safety factor.

There are no data gaps in the consideration of FQPA safety factor. The available studies showed no evidence of an increased susceptibility of fetus/pups in the developmental toxicity or reproductive studies. There was no evidence of neurotoxicity in any of the available toxicology studies. There were no exposure or toxicity data gaps critical to the assessment of the potential hazard to infants and children. The 10x factor for infants and children was removed as there were no developmental effects on offspring in developmental rat and rabbit studies at or above the limit dose of 1.0 gram/kg/day and there were no reproductive or pre- or post-developmental effects in a two-generation study. Clofentezine is not related to any known neurotoxic agent and there is no evidence in the subchronic or chronic studies that this chemical causes neurotoxic effects. Based on the current data set no developmental neurotoxicity study was required.

In conclusion, the FQPA safety factor was removed since: (1) The toxicology database is complete; (2) there is no indication of increased susceptibility of rats or rabbit fetuses to in utero and/or postnatal exposure in the developmental and reproductive toxicity studies; (3) a developmental neurotoxicity study is not required; (4) EPA screening models are used for ground and surface source drinking water exposure assessments resulting in estimates that are upper-bound concentrations; and (5) there are currently no registered residential uses of clofentezine.

2. *Acute risk.* As explained previously, no toxicological endpoint attributable to a single exposure was identified, and therefore, EPA concludes that clofentazine does not pose any significant acute risk.

3. *Chronic risk.* Using the exposure assumptions described in this unit, EPA has concluded that aggregate exposure to clofentezine from food will utilize 1.4 percent of the RfD for infants and children. EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Despite the potential for exposure to clofentezine in drinking water, EPA does not expect the aggregate exposure to exceed 100% of the RfD.

4. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to clofentezine residues.

III. Other Considerations

A. Metabolism In Plants and Animals

The nature of the residue in both plants and animals is adequately understood. In plants, the only residue

of concern is the parent, clofentezine. In animals, the residues of concern are the combined residues of the parent, clofentezine, and the 4-hydroxyclofentezine metabolite.

1. *Plants.* Apple metabolism studies with radiolabeled clofentezine were conducted. C^{14}-Clofentezine was applied to apples at doses equivalent to 1.5X and 12X the maximum proposed rate. The fruit were harvested at maturity (25 and 64 days after treatments). The apples were separated into peel and flesh, and each was analyzed for clofentezine residues. Sixty-five to 84% of the extractable activity was the parent compound, 4% was 2-chlorobenzonitrile, and 8.5% was a combination of several minor polar components (no single component was greater than 4% of the activity). Approximately 90 to 96% of the TRR remained in the peel. About 4 to 11% was fiber bound, and the remainder was solvent-extractable activity. In plants, the only residue of concern is the parent, clofentezine.

2. *Animals.* A bovine metabolism study was conducted. ^{14}C-clofentezine was orally administered to a lactating cow at a rate of 2.21 mg/kg/day over a 3–day period. In milk samples radioactivity showed up within 8 hours and by 26 hours reached approximately 0.20 ppm ^{14}C-clofentezine. The residues ranged from 0.144 to 0.175 ppm over the following 3 days. The dominant metabolite was 4-hydroxyclofentezine 75% of the TRR, the remaining 25% of the TRR was not identified. Analysis of the liver, kidneys, renal fat, subcutaneous fat, and muscle showed ^{14}C-clofentezine equivalents of 0.76, 0.36, 0.26, and 0.02 ppm, respectively. Free or unbound 4-hydroxyclofentezine comprised of 67, 83, and 90% of the liver, kidney, and fat residue. The residues of concern are the combined residues of the parent and the 4-hydroxyclofentezine metabolite.

B. Analytical Enforcement Methodology

A HPLC analytical method for the determination of clofentezine residues in/on apples was submitted with PP 3F3392. A PMV was successfully completed by ACL, and the method was found acceptable. The Limit of Quantitation (LOQ) and Minimum Detection Limit (MDL) were determined to be 0.01 ppm and 0.003 ppm, respectively. EPA concluded that the method was suitable for enforcement purposes. The method was forwarded to FDA for inclusion in PAM-II.

C. Magnitude of Residues

EPA previously determined that existing meat/milk tolerances would be adequate to support a proposed 10 ppm tolerance for apple pomace (PP 9F3705). No increases in the established meat/milk tolerances are required to support the recommended tolerance of 3.0 ppm for apple pomace.

Apple pomace does not constitute a significant portion of the poultry diet; therefore, poultry feeding studies and tolerances have not been required.

Data from a crop field trial study indicated that residues ranged from < 0.01 to 0.44 ppm. Therefore, the proposed tolerance level for apples, 0.5 ppm, is appropriate.

Processed residue data showed that clofentazine can concentrate by a factor of 5.8 in wet pomace. The appropriate tolerance level for pomace is thus 3.0 ppm (5.8 x 0.44 ppm = 2.5 ppm, rounded up to 3.0).

D. International Residue Limits

There is a Codex MRL of 0.5 ppm for the parent compound clofentezine on pome fruit at 0.5 ppm. A Canadian tolerance of 0.5 ppm has been established for clofentezine and the 2-chlorobenzoyl metabolite on apples. Tolerance compatibility problems do not exist with respect to the Codex MRL, but do exist with respect to the Canadian MRL. As EPA has concluded the submitted residue chemistry data support tolerances based on the parent only, it is not appropriate to harmonize the proposed tolerance for residues of clofentezine in/on apples with the Canadian MRL.

IV. Conclusion

Therefore, the tolerance is established for residues of clofentezine in or on apples at 0.5 ppm and apple pomace at 3.0 ppm.

V. Objections and Hearing Requests

The new FFDCA section 408(g) provides essentially the same process for persons to "object" to a tolerance regulation as was provided in the old section 408 and in section 409. However, the period for filing objections is 60 days, rather than 30 days. EPA currently has procedural regulations which govern the submission of objections and hearing requests. These regulations will require some modification to reflect the new law. However, until those modifications can be made, EPA will continue to use those procedural regulations with appropriate adjustments to reflect the new law.

Any person may, by June 18, 1999, file written objections to any aspect of this regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given under the "ADDRESSES" section (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this regulation. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). EPA is authorized to waive any fee requirement "when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection." For additional information regarding tolerance objection fee waivers, contact James Tompkins, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 239, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 305–5697, tompkins.jim@epa.gov. Requests for waiver of tolerance objection fees should be sent to James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

If a hearing is requested, the objections must include a statement of the factual issues on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the requestor (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

VI. Public Record and Electronic Submissions

EPA has established a record for this regulation under docket control number [OPP–300843] (including any comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 119 of the Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA.

Objections and hearing requests may be sent by e-mail directly to EPA at:

opp-docket@epa.gov.

E-mailed objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this regulation, as well as the public version, as described in this unit will be kept in paper form. Accordingly, EPA will transfer any copies of objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the Virginia address in "ADDRESSES" at the beginning of this document.

VII. Regulatory Assessment Requirements

A. Certain Acts and Executive Orders

This final rule establishes a tolerance under section 408(d) of the FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). Nor does it require any prior consultation as specficed by Executive Order 12875, entitled *Enhancing the Intergovernmental Partnership* (58 FR 58093, October 28, 1993), or special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994), or require OMB review in accordance with Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997).

In addition, since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. Nevertheless, the Agency previously assessed whether establishing tolerances, exemptions from tolerances, raising tolerance levels or expanding exemptions might adversely impact small entities and concluded, as a generic matter, that there is no adverse economic impact. The factual basis for the Agency's generic certification for tolerance actions published on May 4, 1981 (46 FR 24950), and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

B. Executive Order 12875

Under Executive Order 12875, entitled *Enhancing the Intergovernmental Partnership* (58 FR 58093, October 28, 1993), EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to OMB a description of the extent of EPA's prior consultation with representatives of affected State, local, and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's rule does not create an unfunded Federal mandate on State, local, or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

C. Executive Order 13084

Under Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998), EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

VIII. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the Agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: April 8, 1999.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), (346a), and 371.

2. Section 180.446 is amended as follows:

a. By adding a paragraph heading to paragraph (a).

b. By redesignating paragraphs (b) and (c) as paragraphs (a)(1) and (a)(2), respectively.

c. By amending newly designated paragraph (a)(1) by adding alphabetically to the table the commodity "apple pomace" and revising the tolerance for "apples".

d. By adding and reserving with paragraph headings new paragraphs (b), (c) and (d).

The added and revised portions read as follows:

§ 180.446 Clofentezine; tolerances for residues.

(a) *General.* * * *

Commodity	Parts per million
* * *	* *
Apple pomace	3.0
Apples	0.5
* * *	* *

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

[FR Doc. 99–9710 Filed 4–16–99; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300844; FRL–6075–4]

RIN 2070–AB78

Diflubenzuron; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of the insecticide diflubenzuron (N-[[4-chlorophenyl)amino]-carbonyl]-2,6-difluorobenzamide) and its metabolites, 4-chlorophenylurea (CPU) and 4-chloroaniline (PCA) in/on rice grain at 0.02 ppm and rice straw at 0.8 ppm. Uniroyal Chemical Company, Inc. submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 requesting these tolerances.

DATES: This regulation is effective April 19, 1999. Objections and requests for hearings must be received by EPA on or before June 18, 1999.

ADDRESSES: Written objections and hearing requests, identified by the docket control number, [OPP–300844], must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk identified by the docket control number, [OPP–300844], must also be submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 119, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect 5.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket control number [OPP–300844]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: By mail: Rita Kumar, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 308–8291, e-mail: kumar.rita@epa.gov.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of February 25, 1998 (63 FR 9528) (FRL–5775–3), EPA issued a notice pursuant to section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(e) announcing the filing of a pesticide petition (PP 6G4771) from Uniroyal Chemical Company, Inc., Bethany, CT proposing to amend 40 CFR part 180 by establishing a tolerance for residues of the insect growth regulator, diflubenzuron and metabolites convertible to p-chloroaniline, expressed as diflubenzuron in or on rice at 0.02 parts per million (ppm) and rice straw at 0.8 ppm. The notice included a summary of the petition prepared by Uniroyal Chemical Company, Inc., the registrant. In the **Federal Register** of March 9, 1998 (63 FR 11445) (FRL–5777–8), a clarification of the notice of filing was published explaining that Uniroyal had submitted two petitions, 6G4771, for the establishment of a temporary tolerance in or on rice at 0.01 ppm in association with a 3,000 acre Experimental Use Permit, and 8F4925, to amend 40 CFR 180.377 to include a permanent tolerance for residues of the insect growth regulator, diflubenzuron and metabolites convertible to p-chloroaniline, expressed as diflubenzuron in or on rice at 0.02 parts per million (ppm) and rice straw at 0.8 ppm. There were no comments received in response to the notice of filing or the clarification.

I. Background and Statutory Findings

Section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate

exposure to the pesticide chemical residue. . . ."

EPA performs a number of analyses to determine the risk from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 and a complete description of the risk assessment process, see the Final Rule on Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997) (FRL–5754–7).

II. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of residues of the insecticide diflubenzuron (N-[[4-chlorophenyl)amino]-carbonyl]-2,6-difluorobenzamide) and its metabolites, 4-chlorophenylurea (CPU) and 4-chloroaniline (PCA) on rice grain at 0.02 parts per million (ppm) and rice straw at 0.8 ppm, and to make a determination on aggregate exposure, consistent with section 408(b)(2), for a tolerance for residues of the insecticide diflubenzuron (N-[[4-chlorophenyl)amino]-carbonyl]-2,6-difluorobenzamide) and its metabolites, 4-chlorophenylurea (CPU) and 4-chloroaniline (PCA) on rice grain at 0.02 ppm and rice straw at 0.8 ppm. EPA's assessment of the dietary exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by diflubenzuron (N-[[4-chlorophenyl)amino]-carbonyl]-2,6-difluorobenzamide) and its metabolites, 4-chlorophenylurea (CPU) and 4-chloroaniline (PCA) on rice grain at 0.02 ppm and rice straw at 0.8 ppm have been fully described in the Reregistration Eligibility Decision (RED) document (EPA 738–R–97–008, August 1997), a copy of which is in the public docket.

B. Toxicological Endpoints

1. *Acute toxicity.* A risk assessment for acute dietary exposure (1 day) is not necessary. One day single dose oral studies in rats and mice indicated only marginal effects on methemoglobin levels at a dose level of 10,000 milligrams/kilograms (mg/kg) of diflubenzuron.

2. *Short- and intermediate-term toxicity.* The toxicology endpoint for short-term occupational or residential exposure (1 to 7 days) is sulfhemoglobinemia observed in the 14–day subchronic oral study in mice dosed with technical grade diflubenzuron. The no observed effect level (NOEL) in this study was 40 mg/kg/day and the lowest effect level (LEL) was 200 mg/kg/day.

The toxicology endpoint for intermediate-term occupational or residential exposure (1 week to several months) is methemoglobinemia observed in the 13–week subchronic feeding study in dogs. For the purpose of risk assessments, the NOEL of 1.64 mg/kg/day in this study should be considered to be 2 mg/kg/day so as to be consistent with the NOEL of 2 mg/kg/day in the chronic study used to calculate the RfD. The LEL in this study was 6.24 mg/kg/day. Since an oral NOAEL was selected for a dermal endpoint, a dermal absorption factor of 0.5% should be used for this risk assessment when converting dermal exposure to oral equivalents. Therefore, the dermal equivalent dose producing a NOAEL by the oral route is 400.0 mg/kg/day (i.e., 2.0 mg/kg/day divided by 0.005 = 400.0 mg/kg/day).

3. *Chronic toxicity.* The RfD was determined to be 0.02 mg/kg/day and is based on the NOEL of 2.0 mg/kg/day in the 52–week chronic oral study in dogs. Increases in methemoglobin and sulfhemoglobin were observed at the next higher dose level of 10.0 mg/kg/day. An uncertainty factor of 100 was applied to account for the interspecies extrapolation and intraspecies variability. Diflubenzuron has been reviewed by the FAO/WHO joint committee on pesticide residues and an Acceptable Daily Intake (ADI) of 0.02 mg/kg/day was established in 1985. The ADI was based upon the 1 year oral toxicity study in dogs with a NOEL of 2.0 mg/kg/day. A safety factor of 100 was applied to account for the interspecies extrapolation and intraspecies variability.

4. *Carcinogenicity.* Based on the available evidence, which included adequate carcinogenicity studies in rats and mice and a battery of negative mutagenicity studies, diflubenzuron *per se* has been classified as Group E (evidence of non-carcinogenicity for humans). However, p-chloroaniline (PCA), a metabolite of diflubenzuron, was classified as a Group B2 carcinogen (probable human carcinogen). The classification for PCA was based on the results of a National Toxicology Program (NTP) study reported in July 1989, in which p-chloroaniline hydrochloride was administered by gavage to rats and mice for 2 years. In rats, clearly increased incidences of uncommon sarcomas (fibrosarcomas, hemangiosarcomas and/or osteosarcomas) of the spleen were observed in males. In females, two additional sarcomas of the spleen were also found. Pheochromocytomas of the adrenal gland may also have been associated with the test material in male and female rats. In mice, increased incidences of hepatocellular neoplasms in the liver and of hemangiosarcomas in the spleen and/or liver were observed in males. In females, no evidence of carcinogenic activity was observed. The results of several mutagenicity studies on PCA were also included in the same NTP report. PCA was mutagenic in Salmonella strains TA98 and TA100 with metabolic activation. Gene mutations were induced by PCA in cultured mouse lymphoma cells with and without metabolic activation. In cultured Chinese hamster ovary (CHO) cells, treatment with PCA produced significant increases in sister chromatid exchanges (SCEs) with and without metabolic activation. Chromosomal aberrations were also significantly increased in CHO cells in the presence of metabolic activation.

For the purpose of calculating dietary risk assessments, the following procedure was used:

a. P-chlorophenylurea (CPU) and p-chloroacetanilide (PCAA), additional metabolites of diflubenzuron that are closely related to PCA and for which there are no adequate carcinogenicity data available, should be considered to be potentially carcinogenic and to have the same carcinogenic potency (Q1*) as PCA.

b. The sum of PCA, CPU, and PCAA residues in ingested food should be used to estimate the dietary exposure of humans to the carcinogenic metabolites of diflubenzuron.

c. In addition to ingested residues of these three metabolites, amounts of PCA, CPU, and/or PCAA formed *in vivo* following ingestion of diflubenzuron should also be included when estimating the total exposure of humans to the carcinogenic metabolites of diflubenzuron. The *in vivo* conversion of ingested diflubenzuron to PCA and/or CPU was estimated to be 2.0%, based on data in the rat metabolism study.

The Q1* (estimated unit risk) for PCA, based upon spleen sarcoma rates in male rats, was calculated to be 6.38×10^{-2} $(mg/kg/day)^{-1}$ in human equivalents.

It has been determined that PCAA does not occur in animal or plant tissues in significant amounts.

5. *Special sensitivity to infants and children.* In assessing the potential for additional sensitivity of infants and children to residues of diflubenzuron, EPA considered data from developmental toxicity studies in the rat and rabbit and a 2-generation reproductive toxicity study in the rat. Developmental toxicity studies are designed to evaluate adverse effects on the developing fetus resulting from maternal pesticide exposure during gestation. Reproductive toxicity studies provide information relating to pre- and post-natal effects from exposure to the pesticide, information on the reproductive capability of mating animals, and data on systemic toxicity.

FFDCA section 408 provides that EPA shall apply an additional 10–fold margin of safety for infants and children in the case of threshold effects to account for pre- and post-natal toxicity and the completeness of the data base unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a margin of exposure analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans. In either case, EPA generally defines the level of appreciable risk as exposure that is greater than 1/100 of the NOEL in the animal study appropriate to the particular risk assessment. This 100–fold uncertainty (safety) factor/margin of exposure (safety) is designed to account for inter-species extrapolation and intra-species variability. EPA believes that reliable data support using the 100–fold margin/factor, rather than the 1,000–fold margin/factor, when EPA has a complete data base under existing guidelines, and when the severity of the effect in infants or children, the potency or unusual toxic properties of a compound, or the quality of the exposure data do not raise concerns regarding the adequacy of the standard margin/factor.

a. *Developmental toxicity studies*—i. *Rats.* In the developmental study in rats, the maternal (systemic) NOEL was 1,000.0 mg/kg/day [HDT]. The developmental (fetal) NOEL was 1,000.0 mg/kg/day, [HDT].

ii. *Rabbits.* In the developmental toxicity study in rabbits, the maternal (systemic) NOEL was 1,000.0 mg/kg/day, [HDT]. The developmental (pup) NOEL was 1,000.0 mg/kg/day, [HDT].

b. *Reproductive toxicity studies.* In the 2-generation reproductive toxicity study in rats, the maternal (systemic) NOEL was <36 males/<42 females [LDT] based on hematological effects at all dose levels tested. The reproductive (pup) NOEL was 427.0 mg/kg/day, based on decreases in the F-1 pup weight at the LEL of 2,454.0 mg/kg/day [HDT].

c. *Pre- and post-natal sensitivity.* The toxicological data base for evaluating pre- and post-natal toxicity for diflubenzuron is complete with respect to current data requirements. Based on the developmental and reproductive toxicity studies discussed above, for diflubenzuron there does not appear to be an extra sensitivity for pre- or post-natal effects. Based on the above, EPA concludes that reliable data support use of a 100–fold margin of exposure/uncertainty factor, rather than the 1,000–fold margin/factor, to protect infants and children.

C. Exposures and Risks

1. *From food and feed uses.* Tolerances have been established (40 CFR 180.377) for residues of diflubenzuron *per se*, in or on citrus, artichokes, walnuts, mushrooms, cottonseed, soybean, and associated livestock commodities. Existing tolerances range from 0.05 ppm in/on soybeans to 6.0 ppm in/on artichokes. Tolerances of 0.05 ppm have also been established for residues of diflubenzuron in animal commodities.

For the dietary risk assessment, anticipated residues levels were calculated in livestock, citrus and mushroom commodities. Anticipated residue estimates for diflubenzuron were not calculated for other raw agricultural commodities. Percent crop treated data were utilized where available.

Section 408(b)(2)(F) states that the Agency may use data on the actual percent of food treated for assessing chronic dietary risk only if the Agency can make the following findings: (1) That the data used are reliable and provide a valid basis for showing the percentage of food derived from a crop that is likely to contain residues; (2) that the exposure estimate does not underestimate the exposure for any significant subpopulation and; (3) where data on regional pesticide use and food consumption are available, that the exposure estimate does not understate exposure for any regional population. In addition, the Agency must provide for periodic evaluation of any estimates used. To provide for the periodic evaluation of these estimates of percent crop treated as required by section 408(b)(2)(F), EPA may require registrants to submit data on percent crop treated.

Dietary exposure estimates were based on the following percent crop treated estimates: grass/rangeland, 1%; cottonseed, 3%; grapefruit, 8%; mushrooms, 3.1%; oranges, 2%; tangerines, 4%; soybean, 1%; cattle bolus, 5%. Other commodities were assumed to be 100% treated. The Agency believes that the three conditions listed above have been met. With respect to (1), EPA finds that the percent crop treated information described above for diflubenzuron is reliable and has a valid basis. The Agency has utilized statistical data from public and proprietary sources, including DOANE, and checked these against data provided by the registrant. These are the best available sources for such information. Concerning (2) and (3), regional consumption information and consumption information for significant subpopulations is taken into account through EPA's computer-based model for evaluating the exposure of significant subpopulations including several regional groups. Use of this consumption information in EPA's risk assessment process ensures that EPA's exposure estimate does not understate exposure for any significant subpopulation group and allows the Agency to be reasonably certain that no regional population is exposed to residue levels higher than those estimated by the Agency. Other than data available through national food consumption surveys, EPA does not have available information on the consumption of food bearing diflubenzuron in a particular area.

Risk assessments were conducted as follows:

a. *Acute exposure and risk.* A risk assessment for acute dietary exposure (1 day) is not necessary. One day single dose oral studies in rats and mice indicated only marginal effects on methemoglobin levels at a dose level of 10,000 mg/kg of diflubenzuron.

b. *Chronic exposure and risk.* A chronic dietary risk assessment is required for diflubenzuron. The RfD used for the chronic dietary analysis for diflubenzuron is 0.02 mg/kg bwt/day. The chronic DEEM analysis used mean consumption (3–day average). Anticipated residues and percent crop treated information for select commodities were used. Since EPA determined to reduce the 10x factor to 1x, the Population Adjusted Dose (PAD) and the RfD are the same. Therefore, EPA's level of concern are values >100% RfD. Dietary exposures for the U.S. general population and other subgroups at percentage of RfD are presented below. The other subgroups included represent the highest dietary

exposures for their respective subgroups (i.e., children, females, and the other general population subgroup higher than U.S. population).

Subgroups	%RfD	Exposure (mg/kg/day)
U.S. population (48 states)	<1%	0.000027
Non-hispanic others	<1%	0.000102
Non-nursing infants (<1 year old)	<1%	0.000031
Females (20+ years, not pregnant, not nursing)	<1%	0.000032

The U.S. population and all the DEEM subgroups have ARCs for chronic dietary (non-cancer) risk from diflubenzuron well below the RfD when all uses are considered.

c. *Cancer risk from consumption of PCA and related metabolites.* The Agency has determined that there are three possible sources for dietary exposure to PCA and related compounds (CPU and PCAA): residues in plants/fungi (mushrooms), residues in animal commodities (milk and liver) and *in vivo* conversion of diflubenzuron.

i. *Mushrooms/milk/liver.* The Agency used results from metabolism studies to determine the percent of the total radioactive residue (TRR) present as PCA and related compounds in mushrooms, milk and liver. For milk and liver, anticipated residues were calculated from the results of the ruminant feeding study using tolerance level residues in animal feed items and adjusting for percent crop treated. The total levels of PCA and related compounds were estimated by multiplying the ratio of PCA/DFB by the diflubenzuron consumption (from DEEM). The PCA consumption values were calculated as follows:

Mushrooms = 0.0000062 mg/kg/day
Milk = 0.0000004 mg/kg/day
Liver = 0.00000002 mg/kg/day
Total = 0.00000066 mg/kg/day
Overall U.S.: 0.0000066 mg/kg/day (4.2×10^{-7} Carcinogenic Risk)

ii. *In vivo.* Based on the results of a rat metabolism study, an assumption of a 2.0% conversion of diflubenzuron to PCA in humans is assumed for PCA risk assessment. Using the above exposure estimate for rice and published uses (0.000027 mg/kg/day) the carcinogenic risk estimate (overall U.S. population) is 3.4×10^{-8} (0.000027 mg/kg/day x 0.02 x 0.0638 $(mg/kg/day)^{-1}$).

Total cancer risk estimate for PCA and related metabolites:

Overall U.S.: 4.5×10^{-7}

This cancer risk does not exceed the level of concern.

2. *From drinking water.* EPA has calculated drinking water levels of concern (DWLOCs) for chronic (non-cancer) exposure to diflubenzuron in surface and ground water for the U.S. population and children (1-6 yrs). They are 700 and 200 ppb, respectively. For chronic (cancer) exposure to CPU in surface and ground water, the DWLOC is 0.30 ppb for the U.S. population. To calculate the DWLOC for chronic (non-cancer) exposure relative to a chronic toxicity endpoint, the chronic dietary food exposure (from DEEM) was subtracted from the RfD to obtain the acceptable chronic (non-cancer) exposure to diflubenzuron in drinking water. To calculate the DWLOC for chronic exposures relative to a carcinogenic toxicity endpoint, the chronic (cancer) dietary food exposure was subtracted from the ratio of the negligible cancer risk to the Q* to obtain the acceptable chronic (cancer) exposure to diflubenzuron in drinking water. DWLOCs were then calculated using default body weights and drinking water consumption figures.

a. *Chronic risk.* Chronic RfD = 0.02 mg/kg/day. Maximum H_2O = 0.02 - Food Exposure.

Subgroup	Food Exposure to Diflubenzuron (from DEEM mg/kg/day)	Maximum H_2O Exposure (mg/kg/day)
U.S. population	0.000027	0.01997
Children (1-6 years)	0.00031	0.01997

U.S. Population: DWLOC = 700 ppb
Children (1-6 years): DWLOC = 200 ppb

b. *Cancer risk.* $Q^* = 6.38 \times 10^{-2}$ (mg/kg/day) -- Maximum $H_2O = 1.6 \times 10^{-5}$ - Food Exposure

Subgroup	Food Exposure to PCA and Related Compounds (mg/kg/day)	Maximum H_2O Exposure (mg/kg/day)
U.S. population	0.0000071	0.0000089

U.S. population: DWLOC = 0.30 ppb

The PCA and related compounds value is a total of residues in food (0.0000066 mg/kg/day) + residues formed *in vivo* (0.000027 mg/kg/day DFB x 2% conversion).

The estimated average concentration of diflubenzuron in surface water sources is not expected to exceed 0.05 ppb. Estimated average concentrations of CPU in surface water sources is not expected to exceed 0.73 ppb. The estimated average concentrations of diflubenzuron in surface water are less than EPA's levels of concern for diflubenzuron in drinking water as a contribution to chronic (non-cancer) aggregate exposure. However, the estimated average concentration (0.73 ppb) of CPU in surface water exceeds EPA's levels of concern for CPU in drinking water (0.30 ppb) as a contribution to chronic (cancer) aggregate exposure.

EPA believes the estimates of CPU exposure in water derived from the PRZM-EXAMS model, particularly the estimates pertaining to chronic exposure, are significantly overstated for several reasons. The PRZM-EXAMS model was designed to estimate exposure from ecological risk assessments and thus uses a scenario of a body of water approximating the size of a 1 hectare (2.5 acres) pond. This tends to overstate chronic drinking water exposure levels for the following reasons. First, surface water source drinking water generally comes from bodies of water that are substantially larger than a 1 hectare (2.5 acres) pond. Second, the modeled scenario also assumes that essentially the whole basin receives an application of the pesticide. Yet in virtually all cases, basins large enough to support a drinking water facility will contain a substantial fraction of the area which does not receive pesticide. Third, there is often at least some flow (in a river) or turnover (in a reservoir or lake) of the water so the persistence of the pesticide near the drinking water facility is usually overestimated. Fourth, even assuming a reservoir is directly adjacent to an agricultural field, the agricultural field may not be used to grow a crop on which the pesticide in question is registered for use. Fifth, the PRZM-EXAMS modeled scenario does not take into account reductions in residue-loading due to applications of less than the maximum application rate or no treatment of the crop at all (percent crop treated data). Although there is a high degree of uncertainty to this analysis, these are the best available estimates of concentrations of CPU in drinking water. EPA believes that these numbers justify asking for field runoff monitoring for CPU in conjunction with the registered use on cotton.

EPA bases this determination on a comparison of estimated concentrations of diflubenzuron and CPU in surface waters and ground waters to back-calculated "levels of concern" for diflubenzuron and CPU in drinking water. These levels of concern in drinking water were determined after EPA has considered all other non-occupational human exposures for which it has reliable data, including all current uses, and uses considered in this action. The estimates of diflubenzuron and CPU in surface and ground waters are derived from water quality models that use conservative assumptions (health-protective) regarding the pesticide transport from the point of application to surface and ground water. Because EPA considers the aggregate risk resulting from multiple exposure pathways associated with a pesticide's uses, levels of concern in drinking water may vary as those uses change. If new uses are added in the future, EPA will reassess the potential impacts of diflubenzuron and CPU on drinking water as a part of the aggregate risk assessment process.

3. *From non-occupational non-dietary exposure.* Diflubenzuron is a restricted use pesticide and therefore not available for use by homeowners. However, non-agricultural uses of diflubenzuron may expose people in residential locations. Based on the low dermal absorption rate (0.5%), and the extremely low dermal and inhalation toxicity, these uses are expected to result in insignificant risks.

4. *Cumulative exposure to substances with common mechanism of toxicity.* Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity." An explanation of the current Agency approach to assessment of pesticides with a common mechanism of toxicity may be found in the Final Rule on Bifenthrin Pesticide Tolerances (62 FR 62961).

Diflubenzuron is structurally similar to other substituted benzoylurea insecticides including triflumuron and flucycloxuron. EPA does not have, at this time, available data to determine whether diflubenzuron has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, diflubenzuron does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that diflubenzuron has a common mechanism of toxicity with other substances.

D. Aggregate Risks and Determination of Safety for U.S. Population, Infants, and Children

1. *Acute risk.* There is no risk from acute dietary exposure (1 day) to diflubenzuron as there is no toxic endpoint identified.

2. *Chronic.* For the U.S. population, <1% of the RfD is occupied by food exposure. The estimated average concentrations of diflubenzuron in surface and ground water are less than EPA's levels of concern for diflubenzuron in drinking water. Therefore, EPA concludes that there is a reasonable certainty that no harm will result to infants, children, or adults from chronic aggregate (food plus water) exposure to diflubenzuron residues.

3. *Carcinogenic aggregate exposure and risk.* For the U.S. population, cancer risk resulting from food exposure is 4.5×10^{-7}. The estimated average concentration (0.73 ppb) of CPU in surface water exceeds EPA's levels of concern for CPU in drinking water (0.30 ppb) as a contribution to chronic (cancer) aggregate exposure. However, EPA believes that these PRZM-EXAMS model overestimates exposures for the reasons given above. EPA does not generally use surface water modeling values for quantitative risk assessment. However, due to the statistical uncertainties regarding the significance of cancer risks which are near 1×10^{-6}, EPA has calculated that the cancer risk resulting from 0.73 ppb of CPU in drinking water is 1.30×10^{-6}. The aggregate cancer risk is thus 1.8×10^{-6} (4.5×10^{-7} for food + 1.3×10^{-6} for water).

4. *Determination of safety.* EPA believes that the total risk estimate for CPU in food and drinking water of 1.8×10^{-6} generally represents a negligible risk, as EPA has traditionally applied that concept. EPA has commonly referred to a negligible risk as one that is at or below 1 in 1 million (1×10^{-6}). Quantitative cancer risk assessment is not a precise science. There are a significant number of uncertainties in both the toxicology used to derive the cancer potency of a substance and in the data used to measure and calculate exposure. The Agency does not attach great significance to numerical estimates for carcinogenic risk that differ by approximately a factor of 2.

III. Other Considerations

A. Metabolism in Plants and Animals

The qualitative nature of the residue in plants is adequately understood based on data from citrus, mushroom, and soybean metabolism studies. The Agency has concluded that tolerances should be expressed in terms of the combined residues of diflubenzuron and metabolites convertible to PCA (CPU and PCAA) expressed as diflubenzuron.

The nature of the residue in animals is adequately understood based on acceptable poultry and ruminant metabolism studies reflecting oral dosing. Terminal residues identified in animal tissues, milk, and eggs include diflubenzuron, 2-hydroxy-diflubenzuron (2HDFB), 2,6-difluorobenzamide (DFBAM), 2,6-difluorobenzoic acid (DFBA), N-(4-chlorophenyl)urea (CPU), and PCA. The Agency has concluded that tolerances should be expressed in terms of the combined residues of diflubenzuron and metabolites convertible to PCA (CPU and PCAA) expressed as diflubenzuron.

B. Analytical Enforcement Methodology

Adequate methods are available for the analysis of diflubenzuron in rice grain (0.01 ppm), rice straw (0.01 ppm) and water (0.001 ppm). Three enforcement methods for diflubenzuron are published in PAM, Vol. II as Methods I, II, and III. Method II is a GC/ECD method that can separately determine residues of diflubenzuron, CPU, and PCA in eggs, milk, and animal tissues. All three methods have undergone successful Agency validations and are acceptable for enforcement purposes. Individual analytical methods for rice commodities have been submitted for CPU (LOQ of 0.001 ppm in grain, 0.01 ppm in straw) and PCA (LOQ of 0.005 ppm in grain and straw). The methods and ILVs have been sent to Beltsville for Petition Method Validation. EPA will withhold a final conclusion on the adequacy of these method as analytical enforcement methods pending receipt of the PMV reports. However, these methods are based on Method II. EPA thus has no objections to a conditional registration while the PMV of the methods for PCA and CPU in rice commodities is performed.

C. Multiresidue Methods

The FDA PESTDATA data base dated January 1, 1994 (PAM Vol. I, Appendix II) contains no information on diflubenzuron recovery using Multiresidue Methods PAM, Vol. I Sections 302, 303, and 304. However, the registrant has submitted Multiresidue testing data that the Agency has forwarded to the Food and Drug Administration (FDA). Also, the results of Multiresidue Method testing of PCA and CPU have been submitted and will be forwarded to FDA.

D. Storage Stability Data

Data from a 12–month storage stability study were submitted depicting the magnitude of residue of diflubenzuron (DFB) and its metabolites CPU and PCA in/on rice grain, straw, bran and hulls (MRID # 44699202). Diflubenzuron was determined to be stable over a 12–month period with average recoveries of 78% (grain), 99% (bran), 89% (straw), and 78% (hulls). CPU exhibited the following average recoveries of a 12–month period: 76% (grain), 99% (bran), 89% (straw), and 78% (hulls). Significant declines in the PCA concentration were observed, decreasing rapidly to 56% (average) after 1 month and to 30% (average) after 12 months. The storage stability of diflubenzuron and CPU in/on rice commodities have been adequately demonstrated. PCA is unstable, degrading significantly after 1 month. Therefore, for magnitude of residue samples with storage periods greater than 1 month, correction factors must be used in order to determine the residue levels that were present at the time of sample collection.

E. Magnitude of Residues

A total of 14 acceptable field trials have been conducted: Region IV (9 trials), Region VI (2 trials), and Region X (3 trials). EPA requires that a minimum of 16 field trials be performed. The Agency suggests the following distribution for the field trials: Region IV (11 trials), Region V (1 trial), Region VI (2 trials), and Region X (2 trials) (Residue Chemistry Test Guidelines, OPPTS 860.1500 Crop Field Trials Tables 1 and 6). Additional field trials are thus required in Regions IV (1 trial) and V (1 trial). EPA has decided to issue a conditional registration for the use of diflubenzuron on rice until the necessary field trials are performed.

Residues of diflubenzuron, CPU and PCA in/on treated rice grain were <0.01 ppm, <0.001 - 0.002 ppm and <0.005 ppm, respectively, and the combined residues were <0.016 - <0.017 ppm. Residues of diflubenzuron, CPU and PCA in treated straw samples were <0.01 - 0.57 ppm, <0.01 - 0.02 ppm and <0.005 - 0.021 ppm, respectively, and the combined residues were <0.025 - <0.607 ppm. The residue data support the proposed tolerance of 0.02 ppm for diflubenzuron in/on rice grain and 0.8 ppm in/on rice straw.

F. Magnitude of the Residue in Processed Commodities

Uniroyal Chemical Company submitted data depicting the potential for concentration of diflubenzuron residues in the processed commodities of rice. Two tests were conducted in Mississippi (1) and Texas (1). At each site, rice grain was harvested at maturity, 82-85 days following a post-permanent flood application of the 2 lb/gal FlC formulation at 2 lb. ai/A (8x the proposed maximum application rate). Samples were processed according to simulated commercial procedures into hulls, bran, and polished rice. Residues of diflubenzuron were non-detectable (LOQ <0.01 ppm) and 0.26 and 0.87 ppm in four treated samples of the RAC, and did not concentrate in processed commodities of rice. As the residues of diflubenzuron did not concentrate in the hull, bran or whole rice fractions of processed rice grain, a tolerance for residues in rice processed commodities is not required.

G. Magnitude of Secondary Residues in Meat/Milk/Poultry/Eggs

Rice grain, straw, hulls and bran may be fed to livestock and/or poultry. However, the incremental exposure of diflubenzuron residues to livestock and poultry is minimal when compared to the existing exposure. EPA concludes that the current tolerances on meat, milk, poultry and eggs are adequate to cover the added residues resulting from the use on rice.

H. Magnitude of Residues in Water, Fish, and Irrigated Crops

As an adjunct to the magnitude of the residue study on rice, the petitioner also conducted residue studies to determine the magnitude of the residue of diflubenzuron in treated rice flood waters. Residue levels were determined from samples taken from the treated and untreated plots of the diflubenzuron crop field trials. Five trials were conducted in California (2), Louisiana (1), and Texas (2). Following one broadcast application of diflubenzuron as a 25% WP formulation or 2 lb./gal FlC formulation at ≈ 0.25 lb. ai/A (1x the maximum proposed application rate), one control and duplicate treated samples of water were collected from each plot at each test site at intervals of 0, 1, 3, 7, 14, 21, and 28 days following insecticide application. For the sampling intervals 0, 1, 3, and 7 days after application of diflubenzuron at 1x the maximum proposed application rate (0.25 lb. ai/A), residues of diflubenzuron in treated rice flood waters were 0.011 - 0.04 ppm, 0.0007-

0.027 ppm, <0.0003 - 0.020 ppm, and <0.0003 - 0.0014 ppm; residues were <LOQ for all samples collected 14 or more days after treatment.

The proposed label recommends the retention of flood waters for 14 days to allow for the dissipation of diflubenzuron residues. Residue data indicate that diflubenzuron residues >LOQ may be present in rice flood waters <14 days after application of diflubenzuron.

I. International Residue Limits

There are no Codex proposals, Canadian, or Mexican limits for residues of diflubenzuron on rice. A compatibility issue is not relevant to the tolerance.

J. Rotational Crop Restrictions

The nature of the residue in rotational crops is adequately understood for purposes of reregistration (residue chemistry chapters for the Reregistration Eligibility Decision (RED) document, March 16, 1995). Although EPA concluded that the available confined rotational crop study was inadequate to fully satisfy GLN 165-1 reregistration requirements, another confined rotational crop study will not be required because the study allowed EPA to make regulatory conclusions regarding the need for limited rotational crop studies (GLN 165-2) and to comment on the appropriateness of the currently established plantback interval on diflubenzuron end-use product labels.

Uniroyal has submitted data depicting diflubenzuron residues in representative rotational crops from two limited field trials. Provided the petitioner explains the discrepancy in the 0.10 ppm residue value reported for diflubenzuron in one of the wheat forage samples from CA, the limited field rotational crop study is adequate. The available data indicate that tolerances for diflubenzuron residues in rotational crops will not be required provided the diflubenzuron labels specify a restriction for the planting of rotation crops of at least 30 days.

IV. Conclusion

Therefore, tolerances are established for residues of the insecticide diflubenzuron (N-[[4-chlorophenyl)amino]-carbonyl]-2,6-difluorobenzamide) and its metabolites, 4-chlorophenylurea (CPU) and 4-chloroaniline (PCA) on rice grain at 0.02 ppm and rice straw at 0.8 ppm.

V. Objections and Hearing Requests

The new FFDCA section 408(g) provides essentially the same process for persons to "object" to a tolerance regulation issued by EPA under new section 408(e) and (l)(6) as was provided in the old section 408 and in section 409. However, the period for filing objections is 60 days, rather than 30 days. EPA currently has procedural regulations which govern the submission of objections and hearing requests. These regulations will require some modification to reflect the new law. However, until those modifications can be made, EPA will continue to use those procedural regulations with appropriate adjustments to reflect the new law.

Any person may, by June 18, 1999, file written objections to any aspect of this regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given under the "ADDRESSES" section (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issues on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the requestor (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

VI. Public Docket

EPA has established a record for this rulemaking under docket control number [OPP–300844] (including any comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Rm. 119 of the Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments may be sent directly to EPA at:

opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer any copies of objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the Virginia address in "ADDRESSES" at the beginning of this document.

VII. Regulatory Assessment Requirements

This final rule establishes a tolerance for the residues of diflubenzuron (N-[[4-chlorophenyl)amino]-carbonyl]-2,6-difluorobenzamide) and metabolites convertible to p-chloroaniline expressed as diflubenzuron on rice grain at 0.02 ppm and rice straw at 0.8 under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled Regulatory Planning and Review (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104-4). Nor does it require any

prior consultation as specified by Executive Order 12875, entitled *Enhancing the Intergovernmental Partnership* (58 FR 58093, October 28, 1993), or special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994), or require OMB review in accordance with Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997).

In addition, since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerances for the residues of diflubenzuron (N-[[4-chlorophenyl)amino]-carbonyl]-2,6-difluorobenzamide) and metabolites convertible to p-chloroaniline expressed as diflubenzuron on rice grain at 0.02 ppm and rice straw at 0.8 in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. Nevertheless, the Agency has previously assessed whether establishing tolerances, exemptions from tolerances, raising tolerance levels or expanding exemptions might adversely impact small entities and concluded, as a generic matter, that there is no adverse economic impact. The factual basis for the Agency's generic certification for tolerance actions published on May 4, 1981 (46 FR 24950) and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

B. Executive Order 12875

Under Executive Order 12875, entitled *Enhancing the Intergovernmental Partnership* (58 FR 58093, October 28, 1993), EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to OMB a description of the extent of EPA's prior consultation with representatives of affected State, local, and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's rule does not create an unfunded Federal mandate on State, local, or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

C. Executive Order 13084

Under Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998), EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

VIII. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the Agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: April 7, 1999.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

2. In § 180.377, by revising paragraph (a)(2) to read as follows:

§ 180.377 Diflubenzuron; tolerances for residues.

(a) * * *

(2) Tolerances are established for residues of the insecticide diflubenzuron (N-[[4-chlorophenyl)amino]-carbonyl]-2,6-difluorobenzamide) and its metabolites 4-chlorophenylurea and 4-chloroaniline on rice grain at 0.02 ppm and rice straw at 0.8 ppm.

* * * * *

[FR Doc. 99–9711 Filed 4–16–99; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1, 43 and 63

[IB Docket No. 98–118, FCC 99–51]

Biennial Review of International Common Carrier Regulations

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: On March 18, 1999, the Federal Communications Commission adopted a Report and Order (Order) to further streamline the rules governing international common carriers. The new rules will benefit U.S. consumers because they will eliminate unnecessary regulatory delay and will facilitate entrance into the international telecommunications market. The Commission believes that the new rules will lessen the regulatory burdens on applicants, authorized carriers, and the

Commission by allowing carriers to operate more efficiently.

The Commission initiated this proceeding pursuant to section 11 of the Telecommunications Act of 1996, which directs the Commission to undertake a review every even-numbered year of all regulations that apply to providers of telecommunications services to determine whether any such regulation is no longer necessary.

DATES: Effective May 19, 1999.

FOR FURTHER INFORMATION CONTACT: Douglas Klein or Peggy Reitzel, Policy and Facilities Branch, Telecommunications Division, International Bureau, (202) 418–1470.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, FCC 99–51, adopted on March 18, 1999, and released on March 23, 1999. The full text of this Order is available for inspection and copying during normal business hours in the FCC Reference Center (Room CY-A257) of the Federal Communications Commission, 445 12th Street, SW, Washington, DC 20554.1919 M Street, N.W., Washington, D.C. 20554. The complete text of this Order also may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, N.W., Washington, D.C. 20036, (202) 857–3800.

This Order contains information collections subject to the Paperwork Reduction Act of 1995 (PRA). It has been submitted to the Office of Management and Budget (OMB) for review under the PRA. OMB, the general public, and other Federal agencies are invited to comment on the modified information collections contained in this proceeding.

Summary of Report and Order

1. In July 1998, the Commission adopted a Notice of Proposed Rulemaking (63 FR 41538, August 4, 1998) to consider whether to further streamline the international Section 214 authorization process and tariff requirements. This proceeding was initiated pursuant to the Telecommunications Act of 1996, which directs the Commission to undertake, on every even-numbered year, a review of all regulations that apply to operations or activities of any provider of telecommunications service and to repeal or modify any regulation it determines to be no longer necessary in the public interest. Accordingly, the Commission has begun a comprehensive 1998 biennial review of telecommunications and other regulations to determine whether any are overly burdensome or no longer serve the public interest. The Commission sought comment on the proposals contained in the Notice.

2. In this proceeding, the Commission adopts a number of the proposals contained in the Notice and implements procedures that will grant regulatory relief to carriers while increasing the efficiencies of the Commission. In the Notice, the Commission proposed a blanket Section 214 authorization for international service to unaffiliated points. The Commission declines to adopt that proposal based on the comments filed in this proceeding by the Federal Bureau of Investigation (FBI) and the Department of Defense (DoD). Both the FBI and DoD argued that it is important to review some applications and transactions due to national security, law enforcement, and other considerations. The Commission agrees with the FBI and DoD that it remains important to continue to review applications prior to authorization. Thus, the Commission adopts a streamlined authorization procedure that is narrowly tailored to allow it to review applications in advance without causing needless delay or uncertainty. Under the new procedure, once an application is deemed complete and eligible for streamlined processing, the Commission will issue a public notice noting that the application has been accepted for filing and will be subject to streamlined processing. The public notice will state that the application will be deemed granted 14 days after the date of the public notice unless the applicant is notified to the contrary. The International Bureau will issue a weekly public notice of carriers newly authorized pursuant to this procedure. The new rules will eliminate the current requirement that streamlined applications be removed from streamlining in the event that an opposition is filed.

3. The new procedures apply to all international Section 214 applications that currently qualify for streamlining pursuant to § 63.12 of the Commission's rules, as well as to applicants seeking to serve affiliated routes where the affiliate has no facilities, or only mobile wireless facilities, at the foreign end of the route. Included within this class of streamlined applications are some assignments and transfers of control of international Section 214 authorizations. It is highly likely that any application that raises competitive issues would also involve assignments or transfers of control of submarine cable landing licenses or Title III radio licenses. Any application that includes an assignment or transfer of a cable landing license or a Title III license will continue to be subject to notice-and-comment procedures.

4. Although the Commission concludes that these categories of applications generally should be subject to our revised streamlined procedure, the Commission delegates to the International Bureau the authority to identify those particular applications that do warrant public comment and additional Commission scrutiny under current stated Commission policies. For example, additional scrutiny may be required where an application may present a significant potential adverse impact on competition, or where an assignment or transfer of control could eliminate a significant current or future competitor. Absent such concerns, the Commission finds that grant of Section 214 authority under these circumstances will serve the public interest, convenience, and necessity.

5. The Commission will accept petitions seeking a declaratory ruling that a foreign carrier lacks sufficient market power to affect competition adversely in the U.S. market, and such ruling may be cited in an applicant's Section 214 application for the purpose of establishing its eligibility for streamlined authorization on the affiliated route.

6. Bell Operating Companies (BOCs) are not be permitted to take advantage of the streamlined procedure to obtain authorization to provide international services from any of its in-region states until the Commission approves its section 271 application to provide interLATA services from that state. The new streamlined authorization procedure applies equally to commercial mobile radio service (CMRS) licensees as to other classes of carriers.

7. The Commission amends its rules to define *pro forma* and to allow carriers to undertake *pro forma* assignments and transfers of control of international Section 214 authorizations without Commission approval. The Commission concludes that given the mechanisms in place, many *pro forma* transfers and assignments meet the forbearance standard in § 10 of the Communications Act. So that the Commission can maintain accurate records of the entities holding Section 214 authorization, it requires that authorized carriers that undertake a *pro forma* assignment notify the Commission by letter within 30 days after consummation of the transaction. The new rule applies to all authorized international carriers.

8. The Commission adopts its proposal to allow carriers to provide their authorized services through their

wholly owned subsidiaries. Any subsidiary operating pursuant to its parent's authorization must notify the Commission by letter within 30 days after beginning to provide service. If, at any time, such a subsidiary is no longer 100-percent owned by the authorized carrier, it may not operate without first obtaining its own authorization pursuant to § 63.18.

9. Commonly owned companies ("sister" or "parent" companies) may use the streamlined authorization procedure of § 63.12 to obtain authority to provide the same services, subject to the same conditions, that have already been authorized for a company with exactly the same ownership.

10. The Commission amends its rules and the exclusion list to allow any carrier with a global facilities-based authorization to use any non-U.S.-licensed submarine cable system without prior Commission approval of each cable system. The exclusion list now provides that carriers with global Section 214 authorizations to provide facilities-based service will be authorized to serve any unaffiliated market except Cuba and are permitted to use any facilities except non-U.S.-licensed satellite systems that are not specifically identified. The Commission's rules require it to publish the exclusion list in the **Federal Register**, and it is attached as Attachment A. The rule change does not affect the rules for use of non-U.S.-licensed satellite systems, which continue to be governed by the policies adopted in the Commission's *DISCO II Order* (62 FR 64167, December 4, 1997).

11. The Notice sought comment on whether to eliminate the need to apply for separate Section 214 authority to build a new common carrier cable system by including the authorization to construct new lines in the global facilities-based Section 214 authorization. The Commission declines to adopt this proposal because it would create a fee disparity. Until such time as Congress adjusts the fee schedule so that there is only one application fee for cable landing licenses and the separate application fee for overseas cable construction is eliminated, the Commission encourages applicants for common carrier cable landing licenses to file a single application seeking authority under both the Cable Landing License Act and Section 214 of the Communications Act. Information required in each application need not be repeated, and the applicant should submit both of the applicable fees with its consolidated application.

12. The Order amends the rules to reflect that the construction of new submarine cable systems will not have a significant effect on the human environment and therefore should be categorically excluded from our environmental processing requirements. The rules will have a Note to reflect this change, and applicants for a cable landing license may cite this note for the proposition that action on its application is categorically excluded from environmental processing.

13. The Order creates a new rule section 63.16, on the provision of switched basic telecommunications services using international private lines interconnected to the public switched network (sometimes called "international simple resale" or "ISR"). The new rule will simplify the procedure for adding to the list of foreign destinations to which any authorized carrier may carry switched services over its authorized facilities-based or resold private lines. Currently, the Commission adds a country to this list only in response to a showing made in a Section 214 application in which an applicant seeks to provide ISR to a particular foreign country. The new rule will allow carriers to request these determinations by petition for declaratory ruling rather than by a Section 214 application. Applicants would thus be relieved of the burden of providing the detailed carrier-specific information that is required when a carrier receives authorization to provide service as well as to shorten and simplify the rules. The International Bureau staff will have the discretion to set an appropriate period for public comment and to issue a ruling by public notice on any petition for a declaratory ruling to allow ISR to a particular destination.

14. The Commission declines to raise the level of investment by foreign carriers that must be reported to the Commission. The Commission retains the requirement that applicants list every entity that directly or indirectly owns at least 10 percent of the applicant, rather than increase the threshold to 25 percent.

15. The Order adopts the majority of proposals to reorganize and simplify the rules. In order to eliminate confusion the Order clarifies the definition of affiliation and codifies it in § 63.09(e), and removes the reference to affiliation in § 63.18. The term affiliation will be used only in its broader sense, that is, when there is an interest greater than 25 percent, or a controlling interest at any level, by the U.S. carrier in a foreign carrier or by a foreign carrier in the U.S. carrier. This is the standard used to determine whether there exists an affiliation for purposes of classifying a carrier as dominant under § 63.10. The entry standard is no longer tied to a definition of affiliation. The Order adds a provision to § 63.10(a)(4) to require a carrier that is regulated as non-dominant on an affiliated route under this provision to notify the Commission if at any time it begins to provide service by reselling an affiliated facilities-based carrier's services on the affiliated route. The carrier will be deemed a dominant carrier on the route unless and until the Commission finds that the carrier qualifies for non-dominant regulation under § 63.10.

16. The Order adopts the proposal to codify a requirement that carriers notify the Commission by letter within 30 days of a name change, an assignment, or a decision not to consummate an authorized assignment. This requirement ensures that the Commission's records accurately reflect the party or parties that control the carrier's operations, particularly for purposes of enforcing Commission rules and policies.

17. The Commission defers action on the proposal to include in the rules a provision codifying the benchmark settlement rate condition that was adopted in the *Benchmarks Order* (62 FR 45758, August 29, 1997). The Order transfers the record on this issue to the *Benchmarks* reconsideration proceeding that will be addressed by the Commission in the future.

18. The Order directs the International Bureau to release the updated text of §§ 63.09 through 63.24 by June 1, 1999, and to make that document available on the Bureau's Web site at http://www.fcc.gov/ib.

19. In the proceeding, commenters raised a number of miscellaneous issues which the Commission declines to adopt. WorldCom proposed that any new rules with respect to *pro forma* assignments and transfers of control and service by wholly-owned subsidiaries apply to Title III earth station licenses and cable landing licenses. The Commission declines to adopt WorldCom's proposal because Executive Order No. 10,530 requires the Commission to obtain the approval of the State Department and advice from other Executive Branch agencies before granting any cable landing license. With respect to earth station licenses, the Commission may not have authority to forbear from reviewing any assignments or transfers of control when they involve non-common carrier licenses. Tyco requested the Commission to examine its practice of imposing separate regulatory requirements on common carrier and non-common carrier submarine cable systems. The

Commission states that it will consider initiating a proceeding to address those issues in the near future.

20. SBC raised the issue of eliminating the requirement of tariffs for international services. SBC and AT&T requested that the Commission revise the procedures of requiring advance notification of affiliations with foreign carriers. Cable & Wireless proposed that the Commission change its policies permitting the provision of switched services over private lines to recognize when foreign markets offer equivalent resale opportunities in subsets of services. Deutsche Telekom argued that the Commission should not impose dominant carrier safeguards on any carrier whose affiliated foreign carrier's settlement rates are at or below the Commission's benchmark settlement rates. Cable & Wireless also requested that the 25 percent affiliation standard should not apply to the benchmark settlement rate condition. In the Order, the Commission concludes that these arguments and proposals are outside the scope of this proceeding.

21. Cable & Wireless suggested that the Commission include in its rules applicable to international Section 214 authorizations a provision that specifically addresses frivolous filings. Under the new procedures adopted in the Order, public comment on the great majority of international Section 214 applications reduces the ability of parties to file frivolous petitions to deny. The Commission concludes that its new procedures, coupled with the Commission's existing rules, are sufficient to address this concern.

Final Regulatory Flexibility Certification

22. The Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612, as amended by the Contract with America Advancement Act of 1996, requires that an agency prepare a regulatory flexibility analysis for notice-and-comment rulemaking proceedings, unless the agency certifies that "the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities." In the *Notice*, we certified that the proposed rules would not have a significant economic impact on a substantial number of small entities because they would not impose any additional compliance burden on small entities dealing with the Commission. No comments were received concerning this certification. We now reaffirm this certification with respect to the rules adopted in this order. We anticipate that the rule changes we adopt here will reduce regulatory and procedural burdens on small entities. The purposes of this proceeding are to eliminate some regulatory requirements and to simplify and clarify other existing rules. The modifications do not impose any additional compliance burden on persons dealing with the Commission, including small entities. Any prospective carrier will continue to submit an application for Section 214 authorization. In most cases, the authorization will be granted expeditiously. We anticipate that the revisions we adopt here will make it easier for small entities as well as others to provide international telecommunications service without unnecessary delay. Accordingly, we certify, pursuant to § 605(b) of the RFA, that the rules adopted herein will not have a significant economic impact on a substantial number of small business entities, as defined by the RFA. The Office of Public Affairs, Reference Operations Division, shall send a copy of this Report and Order, including this certification, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of this certification will also be published in the **Federal Register**.

Paperwork Reduction Act of 1995 Analysis

23. This Order contains information collections which have been submitted to the Office of Management and Budget (OMB) for approval. As part of our continuing effort to reduce paperwork burdens, the Commission invites the general public and the Office of Management and Budget (OMB) to comment on the information collections contained in this Order, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Public and agency comments are due [May 19, 1999.] A 60 day comment period was established when the Notice was published in the **Federal Register** [63 FR 41538, August 4, 1998]. As described above, the Commission did not adopt the blanket Section 214 authorization as proposed in the Notice. As a result, the information collections contained in the Order negate the majority of collections proposed in the Notice, and retain the collections currently approved by OMB. Comments should address the following: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

OMB Approval Number: 3060–0686.

Title: Streamlining the International 214 Process and Tariff Requirements.

Form No.: N/A.

Type of Review: Revision of existing collection.

Respondents: Business or other For-Profit.

Number of Respondents: 1650.

Estimated Time Per Response: 1 to 6,056 hours (20.46 hours average).

Total Annual Burden: 73,885.

Estimated costs per respondent: $12,456,000 (Filing Fees and Attorney Services).

Frequency of Response: Annually; Semi-Annually; Quarterly: and On occasion reporting requirements.

Needs and Uses: The information collections are necessary largely to determine the qualifications of applicants to provide common carrier international telecommunications services, or to construct and operate submarine cables, including applicants that are affiliated with foreign carriers, and to determine whether and under what conditions the authorizations are in the public interest, convenience, and necessity. The information collections are necessary for the Commission to maintain effective oversight of U.S. carriers that are affiliated with, or involved in certain co-marketing or similar arrangements with, foreign carriers that have sufficient market power to affect competition adversely in the U.S. market. The information collected is necessary for the Commission to ensure that rates, terms and conditions for international service are just and reasonable, as required by the Communications Act of 1934. In addition, the Commission must maintain records that accurately reflect a party or parties that control a carrier's operations, particularly for purposes of enforcing the Commission's rules and policies.

Written comments by the public on the proposed information collections are due on or before May 19, 1999. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Judy Boley, Federal Communications Commission, Room 1–C804, 445 12th Street, S.W., Washington, DC 20554, or via the Internet to jboley@fcc.gov.

Ordering Clauses

24. Accordingly, *it is ordered* that, pursuant to §§ 1, 4(i), 4(k), 10, 11, 201(b), 214, 303(r), 307, 309(a), and 310

of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(k), 160, 161, 201(b), 214, 303(r), 307, 309(a), 310, and the Submarine Cable Landing License Act, 47 U.S.C. 34–39, this REPORT AND ORDER is hereby ADOPTED and Parts 1, 43, 63, and 64 of the Commission's rules, 47 CFR Parts 1, 43, 63, 64, ARE AMENDED as set forth in Rule Changes.

25. *It is further ordered* that the rule changes and information collections contained herein WILL BECOME EFFECTIVE May 19, 1999 following OMB approval, unless a notice is published in the **Federal Register** stating otherwise.

26. *It is further ordered* that the record on codification of the benchmarks condition for facilities-based carriers developed in this proceeding be transferred to IB Docket 96–261 for future consideration.

27. *It is further ordered* that authority is delegated to the Chief, International Bureau, and the Chief, Common Carrier Bureau, as specified herein, to effect the decisions as set forth above.

28. *It is further ordered* that the Commission's Office of Legislative and Intergovernmental Affairs is directed to submit a legislative request to Congress as described in paragraph 63 of this order.

29. *It is further ordered* that the Commission's Office of Public Affairs, Reference Operations Division, shall send a copy of this Report and Order, including the regulatory flexibility certification, to the Chief Counsel for Advocacy of the Small Business Administration, in accordance with paragraph 603(a) of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*

30. *It is further ordered* that the Commission's Office of Public Affairs, Reference Operations Division, shall send a copy of this Report and Order to the Council on Environmental Quality.

List of Subjects in 47 CFR Parts 1, 43, and 63

Communications common carriers, Reporting and recordkeeping requirements.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

Rule Changes

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR parts 1, 43, 63, and 64 as follows:

PART 1—PRACTICE AND PROCEDURE

1. The authority citation for part 1 continues to read as follows:

Authority: 15 U.S.C. 79 *et seq.*; 47 U.S.C. 151, 154(i), 154(j), 155, 225, and 303(r).

2. Section 1.767 is amended by revising paragraphs (a)(5), (a)(6), (a)(7) and (e), adding new paragraphs (a)(8) and (a)(9) to read as follows:

§ 1.767 Cable landing licenses.

(a) * * *

(5) A specific description of the cable landing stations on the shore of the United States and in foreign countries where the cable will land. The description shall include a map showing specific coordinates or street addresses of each landing station as well as the identity, citizenship, and specific ownership share of each owner of each U.S. landing station. The applicant initially may file a general geographic description of the landing points; however, grant of the application will be conditioned on the Commission's final approval of a more specific description of the landing points, including all information required by this paragraph, to be filed by the applicant no later than 90 days prior to construction. The Commission will give public notice of the filing of this description, and grant of the license will be considered final if the Commission does not notify the applicant otherwise in writing no later than 60 days after receipt of the specific description of the landing points, unless the Commission designates a different time period;

(6) A statement as to whether the cable will be operated on a common carrier or non-common carrier basis;

(7) A list of the proposed owners of the cable system, their voting interests, and their ownership interests by segment in the cable;

(8) For each proposed owner of the cable system, a certification as to whether the proposed owner is, or is affiliated with, a foreign carrier (as defined in § 63.09 of this chapter). Include the information and certifications required in § 63.18(h) through (k) of this chapter; and

(9) Any other information that may be necessary to enable the Commission to act on the application.

* * * * *

(e) The application fee for a non-common carrier cable landing license is payment type code BJT. Applicants for common carrier cable landing licenses shall pay the fees for both a common carrier cable landing license (payment type code CXT) and overseas cable construction (payment type code BIT). There is no application fee for modification of a cable landing license, except that the fee for assignment or transfer of control of a cable landing license is payment type code CUT. See § 1.1107(2) of this chapter.

3. Section 1.1306 is amended by adding the following sentence to the end of Note 1:

§ 1.1306 Actions which are categorically excluded from environmental processing.

* * * * *

Note 1: * * * The provisions of § 1.1307(a) and (b) of this part do not encompass the construction of new submarine cable systems.

* * * * *

PART 43—REPORTS OF COMMUNICATION COMMON CARRIERS AND CERTAIN AFFILIATES

4. The authority citation for part 43 continues to read as follows:

Authority: 47 U.S.C. 154; Telecommunications Act of 1996, Pub. L. 104–104, secs. 402(b)(2)(B), (c), 110 Stat. 56 (1996) as amended unless otherwise noted. 47 U.S.C. 211, 219, 220 as amended.

5. Section 43.61 is amended by revising paragraph (c) to read as follows:

§ 43.61 Reports of international telecommunications traffic.

* * * * *

(c) Each common carrier engaged in the resale of international switched services that is affiliated with a foreign carrier that has sufficient market power on the foreign end of an international route to affect competition adversely in the U.S. market and that collects settlement payments from U.S. carriers shall file a quarterly version of the report required in paragraph (a) of this section for its switched resale services on the dominant route within 90 days from the end of each calendar quarter. For purposes of this paragraph, *affiliated* and *foreign carrier* are defined in § 63.09 of this chapter.

PART 63—EXTENSION OF LINES AND DISCONTINUANCE, REDUCTION, OUTAGE AND IMPAIRMENT OF SERVICE BY COMMON CARRIERS; AND GRANTS OF RECOGNIZED PRIVATE OPERATING AGENCY STATUS

6. The authority citation for Part 63 is revised to read as follows:

Authority: 47 U.S.C. 151, 154(i), 154(j), 160, 161, 201–205, 218, 403, 533 unless otherwise noted.

7. Section 63.09 is added to read as follows:

§ 63.09 Definitions applicable to international Section 214 authorizations.

The following definitions shall apply to §§ 63.09–63.24 of this part, unless the context indicates otherwise:

(a) *Facilities-based carrier* means a carrier that holds an ownership, indefeasible-right-of-user, or leasehold interest in bare capacity in the U.S. end of an international facility, regardless of whether the underlying facility is a common carrier or non-common carrier submarine cable or a satellite system.

(b) *Control* includes actual working control in whatever manner exercised and is not limited to majority stock ownership. *Control* also includes direct or indirect control, such as through intervening subsidiaries.

(c) *Special concession* is defined as in § 63.14(b) of this part.

(d) *Foreign carrier* is defined as any entity that is authorized within a foreign country to engage in the provision of international telecommunications services offered to the public in that country within the meaning of the International Telecommunication Regulations, see Final Acts of the World Administrative Telegraph and Telephone Conference, Melbourne, 1988 (WATTC–88), Art. 1, which includes entities authorized to engage in the provision of domestic telecommunications services if such carriers have the ability to originate or terminate telecommunications services to or from points outside their country.

(e) Two entities are *affiliated* with each other if one of them, or an entity that controls one of them, directly or indirectly owns more than 25 percent of the capital stock of, or controls, the other one.

Also, a U.S. carrier is *affiliated* with two or more foreign carriers if the foreign carriers, or entities that control them, together directly or indirectly own more than 25 percent of the capital stock of, or control, the U.S. carrier and those foreign carriers are parties to, or the beneficiaries of, a contractual relation (e.g., a joint venture or market alliance) affecting the provision or marketing of international basic telecommunications services in the United States.

(f) *Market power* means sufficient market power to affect competition adversely in the U.S. market.

Note 1: The assessment of "capital stock" ownership will be made under the standards developed in Commission case law for determining such ownership. See, e.g., Fox Television Stations, Inc., 10 FCC Rcd 8452 (1995). "Capital stock" includes all forms of equity ownership, including partnership interests.

Note 2: Ownership and other interests in U.S. and foreign carriers will be attributed to their holders and deemed cognizable pursuant to the following criteria: Attribution of ownership interests in a carrier that are held indirectly by any party through one or more intervening corporations will be determined by successive multiplication of the ownership percentages for each link in the vertical ownership chain and application of the relevant attribution benchmark to the resulting product, except that wherever the ownership percentage for any link in the chain exceeds 50 percent, it shall not be included for purposes of this multiplication. For example, if A owns 30 percent of company X, which owns 60 percent of company Y, which owns 26 percent of "carrier," then X's interest in "carrier" would be 26 percent (the same as Y's interest because X's interest in Y exceeds 50 percent), and A's interest in "carrier" would be 7.8 percent (0.30×0.26). Under the 25 percent attribution benchmark, X's interest in "carrier" would be cognizable, while A's interest would not be cognizable.

8. Section 63.10 is amended by removing the third sentence of paragraph (a) introductory text and the last sentence of paragraph (c)(5) and revising paragraph (a)(4) to read as follows:

§ 63.10 Regulatory classification of U.S. international carriers.

(a) * * *

* * * * *

(4) A carrier that is authorized under this part to provide to a particular destination an international switched service, and that provides such service solely through the resale of an unaffiliated U.S. facilities-based carrier's international switched services (either directly or indirectly through the resale of another U.S. resale carrier's international switched services), shall presumptively be classified as non-dominant for the provision of the authorized service. A carrier regulated as non-dominant pursuant to this subparagraph shall notify the Commission at any time that it begins to provide such service through the resale of an affiliated U.S. facilities-based carrier's international switched services. The carrier will be deemed a dominant carrier on the route absent a Commission finding that the carrier otherwise qualifies for non-dominant regulation pursuant to this section.

* * * * *

9. Section 63.11, paragraph (b) is amended by removing the words "within the meaning of § 63.18(h)(1)", in paragraph (f) revising all references to "§ 63.18(i)" to read "§ 63.18(n)", removing the Note to § 63.11 and revising the section heading, paragraph (a), (c)(1), (c)(2), (e)(1) and (e)(2) to read as follows:

§ 63.11 Notification by and prior approval for U.S. international carriers that are or propose to become affiliated with a foreign carrier.

(a) Any carrier authorized to provide international communications service under this part shall notify the Commission sixty days prior to the consummation of either of the following acquisitions of direct or indirect interests in or by foreign carriers:

(1) Acquisition of a controlling interest in a foreign carrier by the authorized carrier, or by any entity that controls the authorized carrier, or that directly or indirectly owns more than 25 percent of the capital stock of the authorized carrier; or

(2) Acquisition of a direct or indirect interest greater than 25 percent, or a controlling interest, in the capital stock of the authorized carrier by a foreign carrier or by an entity that controls a foreign carrier.

* * * * *

(c) * * *

(1) The carrier also should specify, where applicable, those countries named in response to paragraph (c) of this section for which it provides international switched services solely through the resale of the international switched services of unaffiliated U.S. facilities-based carriers.

(2) The carrier shall also submit with its notification:

(i) The name, address, citizenship and principal businesses of any person or entity that directly or indirectly owns at least ten percent of the equity of the applicant, and the percentage of equity owned by each of those entities (to the nearest one percent). The applicant shall also identify any interlocking directorates with a foreign carrier.

(ii) A certification that the applicant has not agreed to accept special concessions directly or indirectly from any foreign carrier with respect to any U.S. international route where the foreign carrier possesses market power on the foreign end of the route and will not enter into such agreements in the future.

* * * * *

(e) * * *

(1) In the case of a notification filed under this section, the Commission, if it deems it necessary, will by written order at any time before or after the deadline for submission of public comments impose dominant carrier regulation on the carrier for the affiliated routes based on the provisions of § 63.10 of this part.

(2) The Commission will presume the investment to be in the public interest unless the Commission notifies the

carrier that the investment raises a substantial and material question of fact as to whether the investment serves the public interest, convenience and necessity. Such notification shall be in writing within 30 days of the issuance of the public notice. If notified that the investment raises a substantial and material question, then the carrier shall not consummate the planned investment until it has filed a complete application under § 63.18, including § 63.18(k) of this part, and the Commission has approved the application by formal written order.

* * * * *

10. Section 63.12, paragraph (c)(2) is amended by removing the words "within the meaning of § 63.18(h)(1)", redesignating paragraph (c)(5) as paragraph (c)(4) and revising paragraphs (a), (b), (c)(1) and (c)(4) to read as follows:

§ 63.12 Processing of international Section 214 applications.

(a) Except as provided by paragraph (c) of this section, a complete application seeking authorization under § 63.18 of this part shall be granted by the Commission 14 days after the date of public notice listing the application as accepted for filing.

(b) The applicant may commence operation on the 15th day after the date of public notice listing the application as accepted for filing, but only in accordance with the operations proposed in its application and the rules, regulations, and policies of the Commission. The public notice of the grant of the authorization shall represent the applicant's Section 214 certificate.

(c) * * *

(1) The applicant is affiliated with a foreign carrier in a destination market, unless the applicant clearly demonstrates in its application at least one of the following:

(i) The Commission has previously determined that the affiliated foreign carrier lacks market power in that destination market;

(ii) The applicant qualifies for a presumption of non-dominance under § 63.10(a)(3);

(iii) The affiliated foreign carrier owns no facilities, or only mobile wireless facilities, in that destination market. For this purpose, a carrier is said to own facilities if it holds an ownership, indefeasible-right-of-user, or leasehold interest in bare capacity in international or domestic telecommunications facilities (excluding switches);

(iv) The affiliated destination market is a WTO Member country and the applicant qualifies for a presumption of non-dominance under § 63.10(a)(4)of this part;

(v) The affiliated destination market is a WTO Member country and the applicant agrees to be classified as a dominant carrier to the affiliated destination country under § 63.10, without prejudice to its right to petition for reclassification at a later date; or

(vi) An entity with exactly the same ultimate ownership as the applicant has been authorized to provide the applied-for services on the affiliated destination route, and the applicant agrees to be subject to all of the conditions to which the authorized carrier is subject for its provision of service on that route; or

* * * * *

(4) The Commission has informed the applicant in writing, within 14 days after the date of public notice listing the application as accepted for filing, that the application is not eligible for streamlined processing.

(d) If an application is deemed complete but, pursuant to paragraph (c) of this section, is deemed ineligible for the streamlined processing procedures provided by paragraphs (a) and (b) of this section, the Commission will issue public notice indicating that the application is ineligible for streamlined processing. Within 90 days of the public notice, the Commission will take action upon the application or provide public notice that, because the application raises questions of extraordinary complexity, an additional 90-day period for review is needed. Each successive 90-day period may be so extended. The application shall not be deemed granted until the Commission affirmatively acts upon the application. Operation for which such authorization is sought may not commence except in accordance with any terms or conditions imposed by the Commission.

11. Section 63.14 is amended by removing the last sentence of paragraph (a) and revising paragraph (b) introductory text to read as follows:

§ 63.14 Prohibition on agreeing to accept special concessions.

* * * * *

(b) A special concession is defined as an exclusive arrangement involving services, facilities, or functions on the foreign end of a U.S. international route that are necessary for the provision of basic telecommunications services where the arrangement is not offered to similarly situated U.S.-licensed carriers and involves:

* * * * *

§ 63.15 [Removed]

12. Section 63.15 is removed.

13. Section 63.16 is added to read as follows:

§ 63.16 Switched services over private lines.

(a) Except as provided in § 63.22(f)(2) of this part, a carrier may provide switched basic services over its authorized private lines if and only if the country at the foreign end of the private line appears on a Commission list of destinations to which the Commission has authorized the provision of switched services over private lines. The list of authorized destinations is available from the International Bureau's World Wide Web site at http://www.fcc.gov/ib.

(b) An authorized carrier seeking to add a foreign market to the list of markets for which carriers may provide switched services over private lines must make the following showing:

(1) If seeking a Commission ruling to permit the provision of international switched basic services over private lines between the United States and a WTO Member country, the applicant shall demonstrate either that settlement rates for at least 50 percent of the settled U.S.-billed traffic between the United States and the country at the foreign end of the private line are at or below the benchmark settlement rate adopted for that country in IB Docket No. 96–261 *or* that the country affords resale opportunities equivalent to those available under U.S. law (see paragraph (c) of this section).

(2) If seeking a Commission ruling to permit the provision of international switched basic services over private lines between the United States and a non-WTO Member country, the applicant shall demonstrate that settlement rates for at least 50 percent of the settled U.S.-billed traffic between the United States and the country at the foreign end of the private line are at or below the benchmark settlement rate adopted for that country in IB Docket No. 96–261 that the country affords resale opportunities equivalent to those available under U.S. law (see paragraph (c) of this section).

(c) With regard to showing under paragraph (b) of this section that a destination country affords resale opportunities equivalent to those available under U.S. law, an applicant shall include evidence demonstrating that equivalent resale opportunities exist between the United States and the subject country, including any relevant bilateral or multilateral agreements between the administrations involved. The applicant must demonstrate that the foreign country at the other end of the

private line provides U.S.-based carriers with:

(1) The legal right to resell international private lines, interconnected at both ends, for the provision of switched services;

(2) Reasonable and nondiscriminatory charges, terms and conditions for interconnection to foreign domestic carrier facilities for termination and origination of international services, with adequate means of enforcement;

(3) Competitive safeguards to protect against anticompetitive and discriminatory practices affecting private line resale; and

(4) Fair and transparent regulatory procedures, including separation between the regulator and operator of international facilities-based services.

(d) The showing required by paragraph (b) of this section may be made in a Section 214 application filed pursuant to § 63.18 of this part or in a petition for declaratory ruling addressed to the attention of the International Bureau and indicating clearly the name of the party seeking the declaration and the destination points for which the declaration is sought. The Commission will issue public notice of the filing of the request and may, in each case, determine an appropriate deadline for filing comments. Unopposed requests may be granted by public notice.

Note 1 to § 63.16: The Commission's benchmark settlement rates are available in International Settlement Rates, IB Docket No. 96–261, *Report and Order*, FCC 97–280, 12 FCC Rcd 19,806, 62 FR 45758 (August 29, 1997).

14. Section 63.17 is amended by revising paragraph (b)(4) to read as follows:

§ 63.17 Special provisions for U.S. international carriers.

* * * * *

(b) * * *

(4) No U.S. common carrier may engage in switched hubbing to or from a third country where it has an affiliation with a foreign carrier unless and until it has received authority to serve that country under § 63.18(e)(1), (e)(2), or (e)(4) of this part.

15. Section 63.18 is amended by redesignating paragraphs (j) and (k), as paragraphs (o) and (p), revising paragraphs (e), (g), (h), and (i), and adding new paragraphs (j) through (n) to read as follows:

§ 63.18 Contents of applications for international common carriers.

* * * * *

(e) One or more of the following statements, as pertinent:

(1) *Global facilities-based authority.* If applying for authority to become a facilities-based international common carrier subject to § 63.22 of this part, the applicant shall:

(i) State that it is requesting Section 214 authority to operate as a facilities-based carrier pursuant to § 63.18(e)(1) of this part of the Commission's rules;

(ii) List any countries for which the applicant does not request authorization under this paragraph (see § 63.22(a) of this part); and

(iii) Certify that it will comply with the terms and conditions contained in §§ 63.21 and 63.22 of this part.

(2) *Global resale authority.* If applying for authority to resell the international services of authorized U.S. common carriers subject to § 63.23 of this part, the applicant shall:

(i) State that it is requesting Section 214 authority to operate as a resale carrier pursuant to § 63.18(e)(2) of this section of the Commission's rules;

(ii) List any countries for which the applicant does not request authorization under this paragraph (see § 63.23(a) of this part); and

(iii) Certify that it will comply with the terms and conditions contained in §§ 63.21 and 63.23 of this part.

(3) *Transfer of control or assignment.* If applying for authority to transfer control of a common carrier holding international Section 214 authorization or to acquire, by assignment, another carrier's existing international Section 214 authorization, the applicant shall complete paragraphs (a) through (d) of this section for both the transferor/assignor and the transferee/assignee. Only the transferee/assignee needs to complete paragraphs (h) through (p) of this section. At the beginning of the application, the applicant should also include a narrative of the means by which the transfer or assignment will take place. The Commission reserves the right to request additional information as to the particulars of the transaction to aid it in making its public interest determination. An assignee or transferee shall notify the Commission no later than 30 days after either consummation of the assignment or transfer or a decision not to consummate the assignment or transfer. The notification may be by letter and shall identify the file numbers under which the initial authorization and the authorization of the assignment or transfer were granted. See also § 63.24 of this part (*pro forma* assignments and transfers of control).

(4) *Other authorizations.* If applying for authority to acquire facilities or to provide services not covered by paragraphs (e)(1) through (e)(3), the applicant shall provide a description of the facilities and services for which it seeks authorization. The applicant shall certify that it will comply with the terms and conditions contained in § 63.21 and § 63.22 and/or § 63.23 of this part, as appropriate. Such description also shall include any additional information the Commission shall have specified previously in an order, public notice or other official action as necessary for authorization.

* * * * *

(g) Where the applicant is seeking facilities-based authority under paragraph (e)(4) of this section, a statement whether an authorization of the facilities is categorically excluded as defined by § 1.1306 of this chapter. If answered affirmatively, an environmental assessment as described in § 1.1311 of this chapter need not be filed with the application.

(h) The name, address, citizenship and principal businesses of any person or entity that directly or indirectly owns at least ten percent of the equity of the applicant, and the percentage of equity owned by each of those entities (to the nearest one percent). The applicant shall also identify any interlocking directorates with a foreign carrier.

(i) A certification as to whether or not the applicant is, or is affiliated with, a foreign carrier. The certification shall state with specificity each foreign country in which the applicant is, or is affiliated with, a foreign carrier.

(j) A certification as to whether or not the applicant seeks to provide international telecommunications services to any destination country for which any of the following is true. The certification shall state with specificity the foreign carriers and destination countries:

(1) The applicant is a foreign carrier in that country; or

(2) The applicant controls a foreign carrier in that country; or

(3) Any entity that owns more than 25 percent of the applicant, or that controls the applicant, controls a foreign carrier in that country.

(4) Two or more foreign carriers (or parties that control foreign carriers) own, in the aggregate, more than 25 percent of the applicant and are parties to, or the beneficiaries of, a contractual relation (e.g., a joint venture or market alliance) affecting the provision or marketing of international basic telecommunications services in the United States.

(k) For any destination country listed by the applicant in response to paragraph (j) of this section, the applicant shall make one of the following showings:

(1) The named foreign country (i.e., the destination foreign country) is a

Member of the World Trade Organization; or

(2) The applicant's affiliated foreign carrier lacks market power in the named foreign country; or

(3) The named foreign country provides effective competitive opportunities to U.S. carriers to compete in that country's market for the service that the applicant seeks to provide (facilities-based, resold switched, or resold non-interconnected private line services). An effective competitive opportunities demonstration should address the following factors:

(i) If the applicant seeks to provide facilities-based international services, the legal ability of U.S. carriers to enter the foreign market and provide facilities-based international services, in particular international message telephone service (IMTS);

(ii) If the applicant seeks to provide resold services, the legal ability of U.S. carriers to enter the foreign market and provide resold international switched services (for switched resale applications) or non-interconnected private line services (for non-interconnected private line resale applications);

(iii) Whether there exist reasonable and nondiscriminatory charges, terms and conditions for interconnection to a foreign carrier's domestic facilities for termination and origination of international services or the provision of the relevant resale service;

(iv) Whether competitive safeguards exist in the foreign country to protect against anticompetitive practices, including safeguards such as:

(A) Existence of cost-allocation rules in the foreign country to prevent cross-subsidization;

(B) Timely and nondiscriminatory disclosure of technical information needed to use, or interconnect with, carriers' facilities; and

(C) Protection of carrier and customer proprietary information;

(v) Whether there is an effective regulatory framework in the foreign country to develop, implement and enforce legal requirements, interconnection arrangements and other safeguards; and

(vi) Any other factors the applicant deems relevant to its demonstration.

(l) Any applicant that proposes to resell the international switched services of an unaffiliated U.S. carrier for the purpose of providing international telecommunications services to a country where it is a foreign carrier or is affiliated with a foreign carrier shall either provide a showing that would satisfy § 63.10(a)(3) of this part or state that it will file the quarterly traffic reports required by § 43.61(c) of this chapter.

(m) With respect to regulatory classification under § 63.10 of this part, any applicant that is or is affiliated with a foreign carrier in a country listed in response to paragraph (i) of this section and that desires to be regulated as non-dominant for the provision of particular international telecommunications services to that country should provide information in its application to demonstrate that it qualifies for non-dominant classification pursuant to § 63.10 of this part.

(n) A certification that the applicant has not agreed to accept special concessions directly or indirectly from any foreign carrier with respect to any U.S. international route where the foreign carrier possesses market power on the foreign end of the route and will not enter into such agreements in the future.

* * * * *

16. Section 63.20 is amended by revising paragraphs (b), (c) and the first sentence of paragraph (d) to read as follows:

§ 63.20 Copies required; fees; and filing periods for international service providers.

* * * * *

(b) No application accepted for filing and subject to the provisions of §§ 63.18, 63.62 or 63.505 of this part shall be granted by the Commission earlier than 28 days following issuance of public notice by the Commission of the acceptance for filing of such application or any major amendment unless said public notice specifies another time period, or the application qualifies for streamlined processing pursuant to § 63.12 of this part.

(c) No application accepted for filing and subject to the streamlined processing provisions of § 63.12 of this part shall be granted by the Commission earlier than 14 days following issuance of public notice by the Commission of the acceptance for filing of such application or any major amendment unless said public notice specifies another time period.

(d) Any interested party may file a petition to deny an application within the time period specified in the public notice listing an application as accepted for filing and ineligible for streamlined processing. * * *

17. Section 63.21 is amended by revising the section heading, paragraph (a), and adding new paragraphs (i) and (j) to read as follows:

§ 63.21 Conditions applicable to all international Section 214 authorizations.

* * * * *

(a) Each carrier is responsible for the continuing accuracy of the certifications made in its application. Whenever the substance of any such certification is no longer accurate, the carrier shall as promptly as possible and in any event within thirty days file with the Secretary in duplicate a corrected certification referencing the FCC file number under which the original certification was provided. The information may be used by the Commission to determine whether a change in regulatory status may be warranted under § 63.10 of this part. See also § 63.11 of this part.

* * * * *

(i) Subject to the requirement of § 63.10 of this part that a carrier regulated as dominant along a route must provide service as an entity that is separate from its foreign carrier affiliate, and subject to any other structural-separation requirement in Commission regulations, an authorized carrier may provide service through any wholly owned direct or indirect subsidiaries. The carrier shall, within 30 days after the subsidiary begins providing service, file a letter with the Secretary in duplicate referencing the authorized carrier's name and the FCC file numbers under which the carrier's authorizations were granted and identifying the subsidiary's name and place of legal organization. This provision shall not be construed to authorize the provision of service by any entity barred by statute or regulation from itself holding an authorization or providing service.

(j) An authorized carrier, or a subsidiary operating pursuant to paragraph (i) of this section, that changes its name (including the name under which it is doing business) shall notify the Commission by letter filed with the Secretary in duplicate within 30 days of the name change. Such letter shall reference the FCC file numbers under which the carrier's authorizations were granted.

18. Section 63.22 is added to read as follows:

§ 63.22 Facilities-based international common carriers.

The following conditions apply to authorized facilities-based international carriers:

(a) A carrier authorized under § 63.18(e)(1) of this part may provide international facilities-based services to international points for which it qualifies for non-dominant regulation as set forth in § 63.10 of this part, except in the following circumstance: If the carrier is, or is affiliated with, a foreign carrier in a destination market and the Commission has not determined that the

foreign carrier lacks market power in the destination market (see § 63.10(a) of this part), the carrier shall not provide service on that route unless it has received specific authority to do so under § 63.18(e)(4) of this part.

(b) The carrier may provide service using half-circuits on any appropriately licensed U.S. common carrier and non-common carrier facilities (under either Title III of the Communications Act of 1934, as amended, or the Submarine Cable Landing License Act, 47 U.S.C. 34–39) that do not appear on an exclusion list published by the Commission. Carriers may also use any necessary non-U.S.-licensed facilities, including any submarine cable systems, that do not appear on the exclusion list. Carriers may not use U.S. earth stations to access non-U.S.-licensed satellite systems unless the Commission has specifically approved the use of those satellites and so indicates on the exclusion list, and then only for service to the countries indicated thereon. The exclusion list is available from the International Bureau's World Wide Web site at http://www.fcc.gov/ib.

(c) Specific authority under § 63.18(e)(4) of this part is required for the carrier to provide service using any facilities listed on the exclusion list, to provide service between the United States and any country on the exclusion list, or to construct, acquire, or operate lines in any new major common carrier facility project.

(d) The carrier may provide international basic switched, private line, data, television and business services.

(e)(1) Except as provided in paragraph (e)(2) of this section, the carrier may provide switched basic services over its authorized facilities-based private lines if and only if the country at the foreign end of the private line appears on a Commission list of countries to which the Commission has authorized the provision of switched services over private lines. See § 63.16 of this part. If at any time the Commission removes the country from that list or finds that market distortion has occurred in the routing of traffic between the United States and that country, the carrier shall comply with enforcement actions taken by the Commission.

(2) The carrier may use its authorized private line facilities to provide switched basic services in circumstances where the private line facility is interconnected to the public switched network on only one end—either the U.S. end or the foreign end—and where the carrier is not operating the facility in correspondence with a carrier that directly or indirectly owns the private line facility in the foreign country at the other end of the private line.

(f) The carrier shall file annual international circuit status reports as required by § 43.82 of this chapter.

(g) The authority granted under this part is subject to all Commission rules and regulations and any conditions or limitations stated in the Commission's public notice or order that serves as the carrier's Section 214 certificate. See §§ 63.12, 63.21 of this part.

19. Section 63.23 is added to read as follows:

§ 63.23 Resale-based international common carriers.

The following conditions apply to carriers authorized to resell the international services of other authorized carriers:

(a) A carrier authorized under § 63.18(e)(2) of this part may provide resold international services to international points for which the applicant qualifies for non-dominant regulation as set forth in § 63.10, except that the carrier may not provide either of the following services unless it has received specific authority to do so under § 63.18(e)(4) of this part:

(1) Resold switched services to a non-WTO Member country where the applicant is, or is affiliated with, a foreign carrier; and

(2) Switched or private line services over resold private lines to a destination market where the applicant is, or is affiliated with, a foreign carrier and the Commission has not determined that the foreign carrier lacks market power in the destination market (see § 63.10(a) of this part).

(b) The carrier may not resell the international services of an affiliated carrier regulated as dominant on the route to be served unless it has received specific authority to do so under § 63.18(e)(4) of this part.

(c) Except as provided in paragraph (b) of this section, the carrier may resell the international services of any authorized common carrier, pursuant to that carrier's tariff or contract duly filed with the Commission, for the provision of international basic switched, private line, data, television and business services to all international points.

(d) The carrier may provide switched basic services over its authorized resold private lines if and only if the country at the foreign end of the private line appears on a Commission list of countries to which the Commission has authorized the provision of switched services over private lines. See § 63.16 of this part. If at any time the Commission removes the country from that list or finds that market distortion has occurred in the routing of traffic between the United States and that country, the carrier shall comply with enforcement actions taken by the Commission.

(e) Any party certified to provide international resold private lines to a particular geographic market shall report its circuit additions on an annual basis. Circuit additions should indicate the specific services provided (e.g., IMTS or private line) and the country served. This report shall be filed on a consolidated basis not later than March 31 for the preceding calendar year.

(f) The authority granted under this part is subject to all Commission rules and regulations and any conditions or limitations stated in the Commission's public notice or order that serves as the carrier's Section 214 certificate. See §§ 63.12, 63.21 of this part.

Section 63.24 is added to read as follows:

§ 63.24 Pro forma assignments and transfers of control.

(a) *Definition.* An assignment of an authorization granted under this part or a transfer of control of a carrier authorized under this part to provide an international telecommunications service is a *pro forma* assignment or transfer of control if it falls into one of the following categories and, together with all previous *pro forma* transactions, does not result in a change in the carrier's ultimate control:

(1) Assignment from an individual or individuals (including partnerships) to a corporation owned and controlled by such individuals or partnerships without any substantial change in their relative interests;

(2) Assignment from a corporation to its individual stockholders without effecting any substantial change in the disposition of their interests;

(3) Assignment or transfer by which certain stockholders retire and the interest transferred is not a controlling one;

(4) Corporate reorganization that involves no substantial change in the beneficial ownership of the corporation (including reincorporation in a different jurisdiction or change in form of the business entity);

(5) Assignment or transfer from a corporation to a wholly owned direct or indirect subsidiary thereof or vice versa, or where there is an assignment from a corporation to a corporation owned or controlled by the assignor stockholders without substantial change in their interests; or

(6) Assignment of less than a controlling interest in a partnership.

(b) Except as provided in paragraph (c) of this section, a *pro forma* assignment or transfer of control of an authorization to provide international telecommunications service is not subject to the requirements of § 63.18 of this part. A *pro forma* assignee or a carrier that is the subject of a *pro forma* transfer of control is not required to seek prior Commission approval for the transaction. A *pro forma* assignee must notify the Commission no later than 30 days after the assignment is consummated. The notification may be in the form of a letter (in duplicate to the Secretary), and it must contain a certification that the assignment was *pro forma* as defined in paragraph (a) of this section and, together with all previous *pro forma* transactions, does not result in a change of the carrier's ultimate control. A single letter may be filed for an assignment of more than one authorization if each authorization is identified by the file number under which it was granted.

PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

21. The authority citation for part 64 continues to read as follows:

Authority: 47 U.S.C. 160, 201, 218, 226, 228, 332 unless otherwise noted.

§ 64.1002 [Amended]

22. Section 64.1002, revise all references to "63.18(h)(1)(i)" to read "63.09(e)" and "63.18(h)(5)(iii)" to read "63.18(k)(3)".

Note: This attachment will not appear in the Code of Federal Regulations.

Attachment A—Exclusion List for International Section 214 Authorizations

Last Adopted on March 18, 1999

The following is a list of countries and facilities not covered by grant of global Section 214 authority under § 63.18(e)(1) of the Commission's Rules, 47 CFR 63.18(e)(1). In addition, the facilities listed shall not be used by U.S. carriers authorized under § 63.18 of the Commission's Rules unless the carrier's Section 214 authorization specifically lists the facility. Carriers desiring to serve countries or use facilities listed as excluded hereon shall file a separate Section 214 application pursuant to § 63.18(e)(4) of the Commission's Rules. *See generally* 47 CFR 63.22.

Countries

Cuba (Applications for service to Cuba shall comply with the separate filing requirements of the Commission's Public Notice Report No. I–6831, dated July 27, 1993, "FCC to Accept Applications for Service to Cuba.")

Facilities:

All non-U.S.-licensed satellite systems

This list is subject to change by the Commission when the public interest requires. Before amending the list, the Commission will first issue a public notice giving affected parties the opportunity for comment and hearing on the proposed changes. The Commission may then release an order amending the exclusion list. This list also is subject to change upon issuance of an Executive Order. See Streamlining the Section 214 Authorization Process and Tariff Requirements, IB Docket No. 95–118, FCC 96–79, 11 FCC Rcd 12884, released March 13, 1996 (61 FR 15724, April 9, 1996). A current version of this list is maintained at http://www.fcc.gov/ib/td/pf/exclusionlist.html.

For additional information, contact the International Bureau's Telecommunications Division, Policy & Facilities Branch, (202) 418–1460.

[FR Doc. 99–9480 Filed 4–16–99; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 98–2, RM–9217]

FM Broadcasting Services; Hawesville and Whitesville, Kentucky

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In MM Docket No. 98–2, the Chief, Allocations Branch, granted the rulemaking proposal (RM–9712) filed by WLME, Inc. and set forth in *Notice of Proposed Rulemaking*, 63 FR 4206, published January 28, 1998, to change the community of license of Station WCXM(FM), Hawesville, Kentucky, by reallotting Channel 246A from Hawesville to Whitesville, Kentucky as that community's first local aural transmission service, and to modify that station's license by specifying Whitesville as the new community of license. The Branch Chief granted RM–9712. With this action, the proceeding is terminated.

DATES: Effective May 17, 1999.

FOR FURTHER INFORMATION CONTACT: J. Bertron Withers, Jr., Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the *Report and Order*, MM Docket 98–2, adopted March 24, 1999, and released April 2, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (room 239), 1919 M Street, NW, Washington, DC 20554. The complete text of this decision may be also purchased from the Commission's copy contractor, International Transcription Service, 1231 20th Street, NW, Washington, DC 20036, (202) 857–3800.

Channel 246A can be allotted to Whitesville, Kentucky in compliance with the Commission's minimum distance separation requirements without a site restriction at reference coordinates North Latitude 37° 48′39″ and West Longitude 86°53′18″.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 reads continues to read as follows:

Authority: Sections 47 U.S.C. 154, 303, 334, and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments, under Kentucky , is amended by adding an entry "Whitesville, 246A" and by removing the entry for Hawesville.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–8847 Filed 4–16–99; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR part 660

[I.D. 103098A]

RIN 0648–AL49

Fisheries Off West Coast States and in the Western Pacific; Pelagic Fisheries, Amendment 8; Crustacean Fisheries, Amendment 10; Bottomfish and Seamount Groundfish Fisheries, Amendment 6; Precious Corals Fisheries, Amendment 4

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notification of agency decision.

SUMMARY: NMFS announces the partial approval of a "comprehensive amendment" that addresses essential fish habitat (EFH), overfishing definitions, bycatch, fishing sectors, and fishing communities in the Western Pacific Fishery Management Council's

(Council) four fishery management plans.

DATES: This agency decision is effective February 3, 1999.

ADDRESSES: Copies of the Amendments and Environmental Assessment may be obtained from the Western Pacific Regional Fishery Management Council, 1164 Bishop St., Suite 1400, Honolulu, HI 96813.

FOR FURTHER INFORMATION CONTACT: Alvin Z. Katekaru, Fishery Management Specialist, Pacific Islands Area Office, NMFS, at 808– 973–2985.

SUPPLEMENTARY INFORMATION:

Background

The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) requires each regional fishery management council to submit any fishery management plan or amendment to NMFS for review and approval, disapproval, or partial approval. The Magnuson-Stevens Act also requires that NMFS, upon receiving an amendment, immediately publish a document in the **Federal Register** stating that the amendment is available for public review and comment. On November 5, 1998, NMFS published a notice of availability (NOA) of the Western Pacific amendments in the **Federal Register** and requested public comments through January 4, 1999 (63 FR 59758).

On February 3, 1999, after considering comments received, NMFS partially approved the Western Pacific comprehensive amendment. NMFS approved the definitions of EFH for each of the four FMPs. All of the amendments identify and describe EFH for the species managed under these FMPs. EFH-related research and information needs are consistent with NMFS goals. The non-fishing impacts on EFH are described, and mitigation measures to address adverse impacts of fishing on EFH already implemented are appropriate. No new measures would be practicable at this time. NMFS will work with the Council to better understand and minimize impacts of gear not originating in local fisheries, such as high seas driftnets, trawl gear, and lost fishing line that float into the Council's area from outside the Western Pacific exclusive economic zone. Disapproved sections of the comprehensive amendment include the bycatch provisions of Amendment 6 to the FMP for Bottomfish and Seamount Groundfish, as well as those for Amendment 8 to the Pelagics FMP. Although both amendments adequately describe reporting procedures in place and provide a general description of bycatch, quantification of bycatch by all sectors of the fisheries managed by the Council is needed, as is a description of the adequacy and identification of any shortfalls in the data. Both amendments should include a more detailed discussion of specific measures taken to minimize bycatch and minimize the mortality of bycatch once taken.

Amendment 8 to the Pelagics FMP also fails to address the fact that the catch of sea turtles has remained relatively consistent for the last several years. The Magnuson-Stevens Act requires FMPs to address measures to reduce this take, through modification of gear or fishing effort. There should also be a discussion of data and estimates of seabird incidental catch in the fishery.

Also disapproved were the criteria for identifying when overfishing would occur in the bottomfish, pelagics, and crustaceans fisheries. The Council's use of spawning potential ratio (SPR) percentages or ranges as a proxy for maximum sustainable yield (MSY) in determining minimum stock size threshold as described in the amendment is not acceptable. SPR is not an appropriate proxy for MSY, because it does not provide a measure of stock biomass as required by the Magnuson-Stevens Act to determine the status of each stock. Further, the discussion of these fisheries uses the term "control rule" incorrectly. A control rule should contain two elements: A precautionary target (meaning a reference point that is precautionary with respect to the limit reference point and stocks status), which triggers action before the limit reference point is reached, and the action to be taken to expediently control (reduce) fishing mortality if such a point is reached. The identification of fishing communities is acceptable, with the exception of the categorization of the State of Hawaii as a fishing community. This categorization is overly broad. The Council needs to revisit its determination, specifically focusing on the definition of "fishing community" in the Magnuson-Stevens Act, including the requirement to identify communities that are " * * *substantially dependent on or substantially engaged in the harvest or processing of fishery resources to meet social and economic needs * * *" [Sec. 3(16)]. The NMFS National Standard Guidelines (63 FR 24212, May 1, 1998), further stipulate a fishing community as an economic or social group that resides in a specific location and shares a common dependency on fishing or related fisheries dependent industries and services. Although NMFS recognizes that there are cases in which an island may be appropriately designated as a community, the Council should have provided additional background and analysis to justify the designations. In the case of Hawaii, a more narrow categorization needs to be developed.

Comments and Responses

NMFS received two comments from the Marine Fish Conservation Network (MFCN) during the comment period on the NOA.

Comment 1: The MFCN commented that the comprehensive amendment fails to evaluate the effects of all 35 gear types listed (63 FR 4030, January 27, 1999) as used in the Western Pacific, fails to evaluate the effect of the take of prey species as an effect on EFH, fails to minimize any identified adverse effects of fishing activities on EFH, and fails to establish research closure areas to evaluate further the impacts of fishing activities on EFH.

Response: The amendment focuses on gear types predominantly used in the Western Pacific waters under Federal jurisdiction, the majority of which were defined as EFH. The amendment identifies these gears as longline, handline, troll, all variations of hook-and-line gear, and lobster traps. Examination of catch data from Hawaii, Guam, American Samoa, and the Northern Mariana Islands indicates that more than 88 percent (by weight) of the 1997 catch from Federal waters (seaward of state waters) were landed by hook-and-line, longline, and trolling gear. Other gear types such as manned submersibles used to harvest precious corals, or harvest by hand (e.g., spear or small throw net) are unlikely to adversely affect habitat. The actual and potential effects of the predominant fishing gears on habitat within Federal waters were evaluated and found by the Council not to warrant additional measures at this time.

The Council, however, previously took action to minimize the adverse impacts of fishing activities on EFH. For example, the Council evaluated several potentially destructive gear types and banned their use in Federal waters. These include bottomfish trawls, bottom-set gillnets, explosives, poisons, and tangle net dredges. Current Federal regulations also prohibit unattended lobster traps in order to prevent ghost fishing and to minimize the potential for lost gear that could have an adverse effect on EFH.

Regarding the take of prey species resulting from fishing activities, no managed fisheries target such species. Although some prey species are taken as bycatch by tuna purse seiners operating around certain remote U.S. Pacific

island areas such as Palmyra Atoll, and the islands of Howland, Baker, and Jarvis, the quantity harvested annually is less than 10 mts. NMFS believes that this level of catch of prey species will not have an adverse effect on EFH.

According to NMFS' EFH Guidelines (62 FR 66531, December 19, 1997), the establishment of research closure areas is not a mandatory element of fishery management plans. Even though the Council did not create specific research closure areas, currently established refugia, protected species study zones, and longline closed areas could be used as research closure areas for that purpose under experimental fishing permits.

Comment 2: The MFCN also commented that the comprehensive amendment fails to comply with statutory mandates to create a standardized reporting methodology for bycatch and to minimize to the extent practicable bycatch and bycatch mortality in its fisheries.

Response: NMFS recognized the shortcomings of the sections of the comprehensive amendment regarding bycatch in the bottomfishing and pelagics fisheries and disapproved them. Although the bycatch sections of the crustaceans and precious corals amendments could be strengthened by more specific discussion and analysis of all fishing gears used in the Western Pacific, NMFS has determined that they are adequate, but will work with the Council to improve them. No new management measures to address bycatch appear to be practicable at this time.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: April 13, 1999.

Gary C. Matlock,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–9728 Filed 4–16–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 990304062–9062–01; I.D. 041299B]

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod in the Western Regulatory Area in the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Modification of a closure.

SUMMARY: NMFS is opening directed fishing for Pacific cod by vessels catching Pacific cod for processing by the offshore component in the Western Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to fully utilize the total allowable catch (TAC) of Pacific cod in that area.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), April 18, 1999.

FOR FURTHER INFORMATION CONTACT: Thomas Pearson, 907–481–1780 or tom.pearson@noaa.gov.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

In accordance with § 679.20(a)(6)(iii), the Final 1999 Harvest Specifications for Groundfish (64 FR 12094, March 11, 1999), and subsequent reserve apportionment (64 FR 16362, April 5, 1999) established the allowance of the 1999 Pacific cod TAC apportioned for vessels catching Pacific cod for processing by the offshore component in the Western Regulatory Area of the GOA as 2,363 metric tons (mt).

The offshore component fishery for Pacific cod in the GOA was closed to directed fishing under § 679.20(d)(1)(iii) on January 20, 1999 (64 FR 3658, January 25, 1999).

NMFS has determined that as of April 3, 1999, approximately 2,000 mt remain in the offshore component directed fishing allowance. Therefore, NMFS is terminating the previous closure and is opening directed fishing for Pacific cod by vessels catching Pacific cod for processing by the offshore component in the Western Regulatory Area of the GOA.

Classification

All other closures remain in full force and effect. This action responds to the best available information recently obtained from the fishery. It must be implemented immediately in order to allow full utilization of the Pacific cod TAC. Providing prior notice and opportunity for public comment for this action is impracticable and contrary to the public interest. Further delay would only disrupt the FMP objective of providing the Pacific cod TAC for harvest. NMFS finds for good cause that implementation of this action cannot be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

This action is required by § 679.20 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: April 13, 1999.

Bruce Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–9699 Filed 4–14–99; 4:07 pm]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 697

[Docket No. 990119023–9023–01; I.D. 111898B]

RIN 0648–AL38

Atlantic Sturgeon Fishery; Moratorium in Exclusive Economic Zone

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Direct final rule; notification of effective date.

SUMMARY: NMFS issues this notification of the effective date for a direct final rule prohibiting the possession in, or harvest from, the exclusive economic zone (EEZ) of Atlantic sturgeon from Maine through Florida.

DATES: This rule is effective May 27, 1999.

FOR FURTHER INFORMATION CONTACT: Paul Perra, 301–427–2014.

SUPPLEMENTARY INFORMATION:

Background

On February 26, 1999, a direct final rule for Atlantic sturgeon was published (64 FR 9449), which had a comment period ending on March 29, 1999. The rule was to become effective on May 27, 1999, if no adverse comments or a notice of intent to submit adverse comments were received by March 29, 1999. Since no adverse comments or a notice of intent to submit adverse comments were received during the comment period, this rule becomes effective May 27, 1999, without further action. This direct final rule does not exclude the submission of a request, under 50 CFR 600.745, to conduct experimental, scientific, or educational fishing on Atlantic sturgeon.

Dated: April 9, 1999.

Rolland A. Schmitten,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 99–9609 Filed 4–16–99; 8:45 am]

BILLING CODE 3510–22–F

Prope

This section contains noti issuance of purpose of t persons an rule making rules.

DEPARTM

Agricultura

7 CFR Part

[DA–99–02]

Milk in the Proposed Shipping P

AGENCY: Ag USDA.

ACTION: Pro

SUMMARY: comments percentage that must b plants to q pooling un order. The be decrease from 20 pe months of The action Cheese, Inc of dairy pr Iowa. The action wou dairymen v supplied th pooled und needed to movements

DATES: Con or before A

ADDRESSES should be Programs, Room 2971 96456, Wa Advance, u comments 0552 or e-m OFB_FMN Reference action and

FOR FURTHE Constance Specialist, Order Form South Build Washingto

Proposed Rules

Federal Register
Vol. 64, No. 74
Monday, April 19, 1999

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1079

[DA–99–02]

Milk in the Iowa Marketing Area; Proposed Revision of Supply Plant Shipping Percentage

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This document invites written comments on a proposal to reduce the percentage of a supply plant's receipts that must be delivered to fluid milk plants to qualify a supply plant for pooling under the Iowa Federal milk order. The applicable percentage would be decreased by 10 percentage points from 20 percent to 10 percent for the months of April through August 1999. The action was requested by Beatrice Cheese, Inc., a proprietary manufacturer of dairy products in Fredericksburg, Iowa. The proponent contends that the action would allow the milk of dairymen who historically have supplied the market to continue to be pooled under the Federal order and is needed to prevent uneconomic milk movements.

DATES: Comments must be submitted on or before April 26, 1999.

ADDRESSES: Comments (two copies) should be sent to USDA/AMS/Dairy Programs, Order Formulation Branch, Room 2971, South Building, P.O. Box 96456, Washington, DC 20090–6456. Advance, unofficial copies of such comments may be faxed to (202) 690–0552 or e-mailed to OFB__FMMO__Comments@usda.gov. Reference should be made to the title of action and docket number.

FOR FURTHER INFORMATION CONTACT: Constance M. Brenner, Marketing Specialist, USDA/AMS/Dairy Programs, Order Formulation Branch, Room 2971, South Building, P.O. Box 96456, Washington, DC 20090-6456, (202) 720–2357, e-mail address connie__m__brenner@usda.gov.

SUPPLEMENTARY INFORMATION: The Department is issuing this proposed rule in conformance with Executive Order 12866.

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have a retroactive effect. If adopted, this proposed rule will not preempt any state or local laws, regulations, or policies unless they present an irreconcilable conflict with the rule.

The Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may request modification or exemption from such order by filing with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with the law. A handler is afforded the opportunity for a hearing on the petition. After a hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has its principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Small Business Consideration

In accordance with the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Agricultural Marketing Service has considered the economic impact of this action on small entities and has certified that this proposed rule will not have a significant economic impact on a substantial number of small entities. For the purpose of the Regulatory Flexibility Act, a dairy farm is considered a "small business" if it has an annual gross revenue of less than $500,000, and a dairy products manufacturer is a "small business" if it has fewer than 500 employees. For the purposes of determining which dairy farms are "small businesses," the $500,000 per year criterion was used to establish a production guideline of 326,000 pounds per month. Although this guideline does not factor in additional monies that may be received by dairy producers, it should be an inclusive standard for most "small" dairy farmers. For purposes of determining a handler's size, if the plant is part of a larger company operating multiple plants that collectively exceed the 500-employee limit, the plant will be considered a large business even if the local plant has fewer than 500 employees.

For the month of February 1999, 3,788 dairy farmers were producers under the Iowa order. Of these, 3,714 producers (i.e., 98 percent) were considered small businesses, having monthly milk production under 326,000 pounds. A further breakdown of the monthly milk production of the producers on the order during February 1999 was as follows: 2,804 produced less than 100,000 pounds of milk; 776 produced between 100,000 and 200,000; 134 produced between 200,000 and 326,000; and 74 produced over 326,000 pounds. During the same month, 11 handlers were pooled under the order. Five were considered small businesses.

Interested parties are invited to submit comments on the probable regulatory and informational impact of this proposed rule on small entities. Also, parties may suggest modifications of this proposal for the purpose of tailoring their applicability to small businesses.

The reduction of the required supply plant shipping percentage for the months of April through August 1999 would allow the milk of producers traditionally associated with the Iowa market to continue to be pooled and priced under the order. The revision would lessen the likelihood that more milk shipments to pool plants might be required under the order than are actually needed to supply the fluid milk needs of the market and would result in savings in hauling costs for handlers and producers.

Notice is hereby given that, pursuant to the provisions of the Agricultural Marketing Agreement Act and the provisions of § 1079.7(b)(1) of the Iowa Federal milk order, the temporary revision of certain provisions of the order regulating the handling of milk in the Iowa marketing area is being considered for the months of April through August 1999.

All persons who desire to submit written data, views or arguments about the proposed revision should send two

copies of their views to USDA/AMS/Dairy Programs, Order Formulation Branch, Room 2971, South Building, P.O. Box 96456, Washington, DC 20090–6456 by April 26, 1999. The period for filing comments is limited to 7 days because a longer period would not provide the time needed to complete the required procedures and include April in the temporary revision period.

All written submissions made pursuant to this notice will be made available for public inspection in the Dairy Programs offices during regular business hours (7 CFR 1.27(b)).

Statement of Consideration

The provision proposed to be revised is the percentage of a supply plant's receipts required to be shipped to pool distributing plants pursuant to § 1079.7(b) of the Iowa Federal milk marketing order (Order 79). As proposed, the percentage of a supply plant's receipts that must be shipped to pool distributing plants (fluid milk plants) if the supply plant is to be considered a pool plant would be decreased by the maximum allowable 10 percentage points, from 20 percent to 10 percent, for the period April 1, 1999, through August 31, 1999.

Section 1079.7(b)(1) of the Iowa milk marketing order allows the Deputy Administrator, Dairy Programs, to reduce or increase a pool supply plant's minimum shipping requirement by up to 10 percentage points to prevent uneconomic milk shipments or to assure an adequate supply of milk for fluid use.

Beatrice Cheese, Inc. (Beatrice), a proprietary manufacturer of dairy products in Fredericksburg, Iowa, is regulated under Order 79 as a pool supply plant. Beatrice requested that the shipping percentage be reduced by 10 percentage points for the months of April through August 1999. The handler's request states that this decrease is warranted due to the fact that current raw milk supplies available for fluid use from outside of Iowa's traditional procurement area exceed the needs of the fluid milk plants in Federal Order 79 and that these available supplies have replaced milk shipped to distributing plants by Beatrice. Beatrice states that if the pool supply shipping percentages remain unchanged, the milk of dairymen who historically have supplied the Iowa market will not be able to continue to be pooled under the Federal Order, and Beatrice will be forced to move milk uneconomically.

In view of the current supply and demand relationship, it may be necessary to decrease the shipping percentage requirements for pool supply plants as proposed to provide for the efficient and economic marketing of milk during the months of April through August 1999.

List of Subjects in 7 CFR Part 1079

Milk marketing orders.

The authority citation for 7 CFR Part 1079 continues to read as follows:

Authority: 7 U.S.C. 601–674.

Dated: April 14, 1999.

Richard M. McKee,

Deputy Administrator, Dairy Programs.

[FR Doc. 99–9850 Filed 4–16–99; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1205

[CN–99–002]

1999 Proposed Amendment to Cotton Board Rules and Regulations Adjusting Supplemental Assessment on Imports

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Agricultural Marketing Service (AMS) is proposing to amend the Cotton Board Rules and Regulations by lowering the value assigned to imported cotton for the purpose of calculating supplemental assessments collected for use by the Cotton Research and Promotion Program. This adjustment is required by this regulation on an annual basis to ensure that the assessments collected on imported cotton and the cotton content of imported products remain similar to those paid on domestically produced cotton.

DATES: Comments must be received on or before May 19, 1999.

ADDRESSES: Comments may be mailed to USDA, AMS Cotton Program, STOP 0224, 1400 Independence Avenue, SW, Washington, DC 20250–0224. All comments received will be available for public inspection at this address during the hours 8:00 a.m. to 4:00 p.m. Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Whitney Rick, (202) 720–2259.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This proposed rule has been determined to be "not significant" for purposes of Executive Order 12866, and, therefore, has not been reviewed by the Office of Management and Budget.

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. This proposed rule would not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Cotton Research and Promotion Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under Section 12 of the Act, any person subject to an order may file with the Secretary a petition stating that the order, any provision of the plan, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. Such person is afforded the opportunity for a hearing on the petition. After the hearing, the Secretary would rule on the petition. The Act provides that the District Court of the United States in any district in which the person is an inhabitant, or has his principal place of business, has jurisdiction to review the Secretary's ruling, provided a complaint is filed within 20 days from the date of the entry of ruling.

Regulatory Flexibility Act

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) AMS has considered the economic impact of this action on small entities and has determined that its implementation will not have a significant economic impact on a substantial number of small businesses.

There are an estimated 16,000 importers who are presently subject to rules and regulations issued pursuant to the Cotton Research and Promotion Order. This proposed rule would affect importers of cotton and cotton-containing products. The majority of these importers are small businesses under the criteria established by the Small Business Administration. This proposed rule would lower the assessments paid by the importers under the Cotton Research and Promotion Order. Even though the assessment would be lowered, the decrease is small and will not significantly affect small businesses.

The current assessment on imported cotton is $0.011850 per kilogram of imported cotton. The proposed assessment is $0.011397, a decrease of $0.000453 or a 3.8 percent decrease from the current assessment. From January through December 1998 approximately $20.9 million was collected at the $0.011850 per kilogram

rate. Should the volume of cotton products imported into the U.S. remain at the same level in 1999, one could expect the decreased assessment to generate $20.1 million or a 3.8 percent decrease from 1998.

Paperwork Reduction

In compliance with Office of Management and Budget (OMB) regulations (5 CFR part 1320) which implement the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*) the information collection requirements contained in the regulation to be amended have been previously approved by OMB and were assigned control number 0581–0093.

Background

The Cotton Research and Promotion Act Amendments of 1990 enacted by Congress under Subtitle G of Title XIX of the Food, Agriculture, Conservation and Trade Act of 1990 on November 28, 1990, contained two provisions that authorized changes in the funding procedures for the Cotton Research and Promotion Program.

These provisions are: (1) the assessment of imported cotton and cotton products; and (2) termination of the right of cotton producers to demand a refund of assessments.

An amended Cotton Research and Promotion Order was approved by producers and importers voting in a referendum held July 17–26, 1991 and the amended Order was published in the **Federal Register** on December 10, 1991, (56 FR 64470). Proposed rules implementing the amended Order were published in the **Federal Register** on December 17, 1991, (56 FR 65450). Implementing rules were published on July 1 and 2, 1992, (57 FR 29181) and (57 FR 29431), respectively.

This proposed rule would decrease the value assigned to imported cotton in the Cotton Board Rules and Regulations (7 CFR 1205.510(b)(2)). This value is used to calculate supplemental assessments on imported cotton and the cotton content of imported products. Supplemental assessments are the second part of a two-part assessment. The first part of the assessment is levied on the weight of cotton produced or imported at a rate of $1 per bale of cotton which is equivalent to 500 pounds or $1 per 226.8 kilograms of cotton.

Supplemental assessments are levied at a rate of five-tenths of one percent of the value of domestically produced cotton, imported cotton, and the cotton content of imported products. The agency has adopted the practice of assigning the calendar year weighted average price received by U.S. farmers for Upland cotton to represent the value of imported cotton. This is done so that the assessment on domestically produced cotton and the assessment on imported cotton and the cotton contend of imported products remain similar. The source for the average price statistic is "Agricultural Prices", a publication of the National Agricultural Statistics Service (NASS) of the Department of Agriculture. Use of the weighted average price figure in the calculation of supplemental assessments on imported cotton and the cotton content of imported products yields an assessment that approximates assessments paid on domestically produced cotton in the prior calendar year.

The current value of imported cotton as published in the **Federal Register** (63 FR 27818) on May 21, 1998, for the purpose of calculating supplemental assessments on imported cotton is $1.4881 per kilogram. This number was calculated using the annual weighted average price received by farmers for Upland cotton during the calendar year 1997 which was $0.675 per pound and multiplying by the conversation factor 2.2046. Using the Average Weighted Price Received by U.S. farmers for Upland cotton for the calendar year 1998, which is $0.634 per pound, the new value of imported cotton is $1.3977 per kilogram. The amended value is $0.0904 per kilogram less than the previous value.

An example of the complete assessment formula and how the various figures are obtained is as follows:

One bale is equal to 500 pounds.

One kilogram equals 2.2046 pounds.

One pound equals 0.453597 kilograms.

One Dollar Per Bale Assessment Converted to Kilograms

A 500 pound bale equals 226.8 kg. (500×.453597).

$1 per bale assessment equals $0.002000 per pound (1÷500) or $0.004409 per kg. (1÷226.8)

Supplemental Assessment of 5/10 of One Percent of the Value of the Cotton Converted to Kilograms

The 1998 calendar year weigthed average price received by producers for Upland cotton is $0.634 per pound or $1.3977 per kg. (0.634×2.2046)=1.3977.

Five tenths of one percent of the average price in kg. equals $0.006988 per kg. (1.3977×.005).

Total Assessment

The total assessment per kilogram of raw cotton in obtained by adding the $1 per bale equivalent assessment of $0.004409 per kg. and the supplemental assessment $0.006988 per kg. which equals $0.011397 per kg.

The current assessment on imported cotton is $0.011850 per kilogram of imported cotton. The proposed assessment is $0.011397, a decrease of $0.000453 per kilogram. This decrease reflects the decrease in the Average Weighted Price of Upland Cotton Received by U.S. Farmers during the period January through December 1998.

Since the value of cotton is the basis of the supplemental assessment calculation and the figures shown in the right hand column of the Import Assessment Table 1205.510(b)(3) are a result of such a calculation, the figures in this table have been revised. These figures indicate the total assessment per kilogram due for each Harmonized Tariff Schedule (HTS) number subject to assessment.

One HTS number subject to assessment pursuant to this regulation and found in the assessment table has been changed. In order to maintain consistency between the HTS and the assessment table, the changes to this one number have been incorporated into the assessment table. The last two digits of this number were changed to provide for statistical reporting purposes and involve no physical change to the products they represent. Therefore, the assessment rate is not affected by the change. The assessment rate for the one number has been applied to each of the new replacement numbers in the assessment table. The following table represents the changes:

Old number	New number	Conversion factor	Assessment cents/kg.
6302100010	6302100005	1.1689	1.3322
	6302100008	1.1689	1.3322
	6302100015	1.1689	1.3322

A thirty day period is provided to comment on the changes to the Cotton Board Rules and Regulations proposed herein. This period is deemed appropriate because this proposal would lower the assessments paid by importers under the Cotton Research and Promotion Order. Accordingly, the change proposed in this rule, if adopted, should be implemented as soon as possible.

List of Subjects in 7 CFR Part 1205

Advertising, Agricultural research, Cotton, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 1205 is proposed to be amended as follows:

PART 1205—COTTON RESEARCH AND PROMOTION

1. The authority citation for part 1205 continues to read as follows:

Authority: 7 U.S.C. 2101–2118.

2. In § 1205.510, paragraph (b)(2) and the table in paragraph (b)(3)(ii) are revised to read as follows:

§ 1205.510 Levy of assessments.

* * * * *

(b) * * *

(2) The 12-month average of monthly weighted average prices received by U.S. farmers will be calculated annually. Such weighted average will be used as the value of imported cotton for the purpose of levying the supplemental assessment on imported cotton and will be expressed in kilograms. The value of imported cotton for the purpose of levying this supplemental assessment is $1.3977 per kilogram.

(3) * * *

(ii) * * *

IMPORT ASSESSMENT TABLE

[Raw Cotton Fiber]

HTS No.	Conventional factors	Cents/kg.
5201000500	0	1.1397
5201001200	0	1.1397
5201001400	0	1.1397
5201001800	0	1.1397
5201002200	0	1.1397
5201002400	0	1.1397
5201002800	0	1.1397
5201003400	0	1.1397
5201003800	0	1.1397
5204110000	1.1111	1.2663
5204200000	1.1111	1.2663
5205111000	1.1111	1.2663
5205112000	1.1111	1.2663
5205121000	1.1111	1.2663
5205122000	1.1111	1.2663
5205131000	1.1111	1.2663
5205132000	1.1111	1.2663
5205141000	1.1111	1.2663
5205210020	1.1111	1.2663
5205210090	1.1111	1.2663
5205220020	1.1111	1.2663
5205220090	1.1111	1.2663
5205230020	1.1111	1.2663
5205230090	1.1111	1.2663
5205240020	1.1111	1.2663
5205240090	1.1111	1.2663
5205310000	1.1111	1.2663
5205320000	1.1111	1.2663
5205330000	1.1111	1.2663
5205340000	1.1111	1.2663
5205410020	1.1111	1.2663
5205410090	1.1111	1.2663
5205420020	1.1111	1.2663
5205420090	1.1111	1.2663
5205440020	1.1111	1.2663
5205440090	1.1111	1.2663
5206120000	0.5556	0.6332
5206130000	0.5556	0.6332
5206140000	0.5556	0.6332
5206220000	0.5556	0.6332
5206230000	0.5556	0.6332
5206240000	0.5556	0.6332
5206310000	0.5556	0.6332
5207100000	1.1111	1.2663
5207900000	0.5556	0.6332
5208112020	1.1455	1.3055
5208112040	1.1455	1.3055
5208112090	1.1455	1.3055
5208114020	1.1455	1.3055
5208114060	1.1455	1.3055
5208114090	1.1455	1.3055
5208118090	1.1455	1.3055
5208124020	1.1455	1.3055
5208124040	1.1455	1.3055
5208124090	1.1455	1.3055
5208126020	1.1455	1.3055
5208126040	1.1455	1.3055
5208126060	1.1455	1.3055
5208126090	1.1455	1.3055
5208128020	1.1455	1.3055
5208128090	1.1455	1.3055
5208130000	1.1455	1.3055
5208192020	1.1455	1.3055
5208192090	1.1455	1.3055
5208194020	1.1455	1.3055
5208194090	1.1455	1.3055
5208196020	1.1455	1.3055
5208196090	1.1455	1.3055
5208224040	1.1455	1.3055
5208224090	1.1455	1.3055
5208226020	1.1455	1.3055
5208226060	1.1455	1.3055
5208228020	1.1455	1.3055
5208230000	1.1455	1.3055
5208292020	1.1455	1.3055
5208292090	1.1455	1.3055
5208294090	1.1455	1.3055
5208296090	1.1455	1.3055
5208298020	1.1455	1.3055
5208312000	1.1455	1.3055
5208321000	1.1455	1.3055
5208323020	1.1455	1.3055
5208323040	1.1455	1.3055
5208323090	1.1455	1.3055
5208324020	1.1455	1.3055
5208324040	1.1455	1.3055
5208325020	1.1455	1.3055
5208330000	1.1455	1.3055
5208392020	1.1455	1.3055
5208392090	1.1455	1.3055
5208394090	1.1455	1.3055
5208396090	1.1455	1.3055
5208398020	1.1455	1.3055
5208412000	1.1455	1.3055
5208416000	1.1455	1.3055
5208418000	1.1455	1.3055
5208421000	1.1455	1.3055
5208423000	1.1455	1.3055
5208424000	1.1455	1.3055
5208425000	1.1455	1.3055
5208430000	1.1455	1.3055
5208492000	1.1455	1.3055
5208494020	1.1455	1.3055
5208494090	1.1455	1.3055
5208496010	1.1455	1.3055
5208496090	1.1455	1.3055
5208498090	1.1455	1.3055
5208512000	1.1455	1.3055
5208516060	1.1455	1.3055
5208518090	1.1455	1.3055
5208523020	1.1455	1.3055
5208523045	1.1455	1.3055
5208523090	1.1455	1.3055
5208524020	1.1455	1.3055
5208524045	1.1455	1.3055
5208524065	1.1455	1.3055
5208525020	1.1455	1.3055
5208530000	1.1455	1.3055
5208592025	1.1455	1.3055
5208592095	1.1455	1.3055
5208594090	1.1455	1.3055

IMPORT ASSESSMENT TABLE—Continued

[Raw Cotton Fiber]

HTS No.	Conventional factors	Cents/kg.
5208118090	1.1455	1.3055
5208124020	1.1455	1.3055
5208124040	1.1455	1.3055
5208124090	1.1455	1.3055
5208126020	1.1455	1.3055
5208126040	1.1455	1.3055
5208126060	1.1455	1.3055
5208126090	1.1455	1.3055
5208128020	1.1455	1.3055
5208128090	1.1455	1.3055
5208130000	1.1455	1.3055
5208192020	1.1455	1.3055
5208192090	1.1455	1.3055
5208194020	1.1455	1.3055
5208194090	1.1455	1.3055
5208196020	1.1455	1.3055
5208196090	1.1455	1.3055
5208224040	1.1455	1.3055
5208224090	1.1455	1.3055
5208226020	1.1455	1.3055
5208226060	1.1455	1.3055
5208228020	1.1455	1.3055
5208230000	1.1455	1.3055
5208292020	1.1455	1.3055
5208292090	1.1455	1.3055
5208294090	1.1455	1.3055
5208296090	1.1455	1.3055
5208298020	1.1455	1.3055
5208312000	1.1455	1.3055
5208321000	1.1455	1.3055
5208323020	1.1455	1.3055
5208323040	1.1455	1.3055
5208323090	1.1455	1.3055
5208324020	1.1455	1.3055
5208324040	1.1455	1.3055
5208325020	1.1455	1.3055
5208330000	1.1455	1.3055
5208392020	1.1455	1.3055
5208392090	1.1455	1.3055
5208394090	1.1455	1.3055
5208396090	1.1455	1.3055
5208398020	1.1455	1.3055
5208412000	1.1455	1.3055
5208416000	1.1455	1.3055
5208418000	1.1455	1.3055
5208421000	1.1455	1.3055
5208423000	1.1455	1.3055
5208424000	1.1455	1.3055
5208425000	1.1455	1.3055
5208430000	1.1455	1.3055
5208492000	1.1455	1.3055
5208494020	1.1455	1.3055
5208494090	1.1455	1.3055
5208496010	1.1455	1.3055
5208496090	1.1455	1.3055
5208498090	1.1455	1.3055
5208512000	1.1455	1.3055
5208516060	1.1455	1.3055
5208518090	1.1455	1.3055
5208523020	1.1455	1.3055
5208523045	1.1455	1.3055
5208523090	1.1455	1.3055
5208524020	1.1455	1.3055
5208524045	1.1455	1.3055
5208524065	1.1455	1.3055
5208525020	1.1455	1.3055
5208530000	1.1455	1.3055
5208592025	1.1455	1.3055
5208592095	1.1455	1.3055
5208594090	1.1455	1.3055

IMPORT ASSESSMENT TABLE—Continued
[Raw Cotton Fiber]

HTS No.	Conventional factors	Cents/kg.
5208596090	1.1455	1.3055
5209110020	1.1455	1.3055
5209110035	1.1455	1.3055
5209110090	1.1455	1.3055
5209120020	1.1455	1.3055
5209120040	1.1455	1.3055
5209190020	1.1455	1.3055
5209190040	1.1455	1.3055
5209190060	1.1455	1.3055
5209190090	1.1455	1.3055
5209210090	1.1455	1.3055
5209220020	1.1455	1.3055
5209220040	1.1455	1.3055
5209290040	1.1455	1.3055
5209290090	1.1455	1.3055
5209313000	1.1455	1.3055
5209316020	1.1455	1.3055
5209316035	1.1455	1.3055
5209316050	1.1455	1.3055
5209316090	1.1455	1.3055
5209320020	1.1455	1.3055
5209320040	1.1455	1.3055
5209390020	1.1455	1.3055
5209390040	1.1455	1.3055
5209390060	1.1455	1.3055
5209390080	1.1455	1.3055
5209390090	1.1455	1.3055
5209413000	1.1455	1.3055
5209416020	1.1455	1.3055
5209416040	1.0309	1.1749
5209420020	1.0309	1.1749
5209420040	1.1455	1.3055
5209430030	1.1455	1.3055
5209430050	1.1455	1.3055
5209490020	1.1455	1.3055
5209490090	1.1455	1.3055
5209516035	1.1455	1.3055
5209516050	1.1455	1.3055
5209520020	1.1455	1.3055
5209590025	1.1455	1.3055
5209590040	1.1455	1.3055
5209590090	1.1455	1.3055
5210114020	0.6873	0.7833
5210114040	0.6873	0.7833
5210116020	0.6873	0.7833
5210116040	0.6873	0.7833
5210116060	0.6873	0.7833
5210118020	0.6873	0.7833
5210120000	0.6873	0.7833
5210192090	0.6873	0.7833
5210214040	0.6873	0.7833
5210216020	0.6873	0.7833
5210216060	0.6873	0.7833
5210218020	0.6873	0.7833
5210314020	0.6873	0.7833
5210314040	0.6873	0.7833
5210316020	0.6873	0.7833
5210318020	0.6873	0.7833
5210414000	0.6873	0.7833
5210416000	0.6873	0.7833
5210418000	0.6873	0.7833
5210498090	0.6873	0.7833
5210514040	0.6873	0.7833
5210516020	0.6873	0.7833
5210516040	0.6873	0.7833
5210516060	0.6873	0.7833
5211110090	0.6873	0.7833
5211120020	0.6873	0.7833
5211190020	0.6873	0.7833
5211190060	0.6873	0.7833

IMPORT ASSESSMENT TABLE—Continued

[Raw Cotton Fiber]

HTS No.	Conventional factors	Cents/kg.
5211210025	0.6873	0.7833
5211210035	0.4165	0.4747
5211210050	0.6873	0.7833
5211290090	0.6873	0.7833
5211320020	0.6873	0.7833
5211390040	0.6873	0.7833
5211390060	0.6873	0.7833
5211490020	0.6873	0.7833
5211490090	0.6873	0.7833
5211590025	0.6873	0.7833
5212146090	0.9164	1.0444
5212156020	0.9164	1.0444
5212216090	0.9164	1.0444
5509530030	0.5556	0.6332
5509530060	0.5556	0.6332
5513110020	0.4009	0.4569
5513110040	0.4009	0.4569
5513110060	0.4009	0.4569
5513110090	0.4009	0.4569
5513120000	0.4009	0.4569
5513130020	0.4009	0.4569
5513210020	0.4009	0.4569
5513310000	0.4009	0.4569
5514120020	0.4009	0.4569
5516420060	0.4009	0.4569
5516910060	0.4009	0.4569
5516930090	0.4009	0.4569
5601210010	1.1455	1.3055
5601210090	1.1455	1.3055
5601300000	1.1455	1.3055
5602109090	0.5727	0.6527
5602290000	1.1455	1.3055
5602906000	0.526	0.5995
5604900000	0.5556	0.6332
5607902000	0.8889	1.0131
5608901000	1.1111	1.2663
5608902300	1.1111	1.2663
5609001000	1.1111	1.2663
5609004000	0.5556	0.6332
5701104000	0.0556	0.0634
5701109000	0.1111	0.1266
5701901010	1.0444	1.1903
5702109020	1.1	1.2537
5702312000	0.0778	0.0887
5702411000	0.0722	0.0823
5702412000	0.0778	0.0887
5702421000	0.0778	0.0887
5702913000	0.0889	0.1013
5702991010	1.1111	1.2663
5702991090	1.1111	1.2663
5703900000	0.4489	0.5116
5801210000	1.1455	1.3055
5801230000	1.1455	1.3055
5801250010	1.1455	1.3055
5801250020	1.1455	1.3055
5801260020	1.1455	1.3055
5802190000	1.1455	1.3055
5802300030	0.5727	0.6527
5804291000	1.1455	1.3055
5806200010	0.3534	0.4028
5806200090	0.3534	0.4028
5806310000	1.1455	1.3055
5806400000	0.4296	0.4896
5808107000	0.5727	0.6527
5808900010	0.5727	0.6527
5811002000	1.1455	1.3055
6001106000	1.1455	1.3055
6001210000	0.8591	0.9791
6001220000	0.2864	0.3264
6001910010	0.8591	0.9791

IMPORT ASSESSMENT TABLE—Continued

[Raw Cotton Fiber]

HTS No.	Conventional factors	Cents/kg.
6001910020	0.8591	0.9791
6001920020	0.2864	0.3264
6001920030	0.2864	0.3264
6001920040	0.2864	0.3264
6002203000	0.8681	0.9894
6002206000	0.2894	0.3298
6002420000	0.8681	0.9894
6002430010	0.2894	0.3298
6002430080	0.2894	0.3298
6002921000	1.1574	1.3191
6002930040	0.1157	0.1319
6002930080	0.1157	0.1319
6101200010	1.0094	1.1504
6101200020	1.0094	1.1504
6102200010	1.0094	1.1504
6102200020	1.0094	1.1504
6103421020	0.8806	1.0036
6103421040	0.8806	1.0036
6103421050	0.8806	1.0036
6103421070	0.8806	1.0036
6103431520	0.2516	0.2867
6103431540	0.2516	0.2867
6103431550	0.2516	0.2867
6103431570	0.2516	0.2867
6104220040	0.9002	1.026
6104220060	0.9002	1.026
6104320000	0.9207	1.0493
6104420010	0.9002	1.026
6104420020	0.9002	1.026
6104520010	0.9312	1.0613
6104520020	0.9312	1.0613
6104622006	0.8806	1.0036
6104622011	0.8806	1.0036
6104622016	0.8806	1.0036
6104622021	0.8806	1.0036
6104622026	0.8806	1.0036
6104622028	0.8806	1.0036
6104622030	0.8806	1.0036
6104622060	0.8806	1.0036
6104632006	0.3774	0.4301
6104632011	0.3774	0.4301
6104632026	0.3774	0.4301
6104632028	0.3774	0.4301
6104632030	0.3774	0.4301
6104632060	0.3774	0.4301
6104692030	0.3858	0.4397
6105100010	0.985	1.1226
6105100020	0.985	1.1226
6105100030	0.985	1.1226
6105202010	0.3078	0.3508
6105202030	0.3078	0.3508
6106100010	0.985	1.1226
6106100020	0.985	1.1226
6106100030	0.985	1.1226
6106202010	0.3078	0.3508
6106202030	0.3078	0.3508
6107110010	1.1322	1.2904
6107110020	1.1322	1.2904
6107120010	0.5032	0.5735
6107210010	0.8806	1.0036
6107220015	0.3774	0.4301
6107220025	0.3774	0.4301
6107910040	1.2581	1.4339
6108210010	1.2445	1.4184
6108210020	1.2445	1.4184
6108310010	1.1201	1.2766
6108310020	1.1201	1.2766
6108320010	0.2489	0.2837
6108320015	0.2489	0.2837
6108320025	0.2489	0.2837

IMPORT ASSESSMENT TABLE—Continued

[Raw Cotton Fiber]

HTS No.	Conventional factors	Cents/kg.
6108910005	1.2445	1.4184
6108910015	1.2445	1.4184
6108910025	1.2445	1.4184
6108910030	1.2445	1.4184
6108920030	0.2489	0.2837
6109100005	0.9956	1.1347
6109100007	0.9956	1.1347
6109100009	0.9956	1.1347
6109100012	0.9956	1.1347
6109100014	0.9956	1.1347
6109100018	0.9956	1.1347
6109100023	0.9956	1.1347
6109100027	0.9956	1.1347
6109100037	0.9956	1.1347
6109100040	0.9956	1.1347
6109100045	0.9956	1.1347
6109100060	0.9956	1.1347
6109100065	0.9956	1.1347
6109100070	0.9956	1.1347
6109901007	0.3111	0.3546
6109901009	0.3111	0.3546
6109901049	0.3111	0.3546
6109901050	0.3111	0.3546
6109901060	0.3111	0.3546
6109901065	0.3111	0.3546
6109901090	0.3111	0.3546
6110202005	1.1837	1.3491
6110202010	1.1837	1.3491
6110202015	1.1837	1.3491
6110202020	1.1837	1.3491
6110202025	1.1837	1.3491
6110202030	1.1837	1.3491
6110202035	1.1837	1.3491
6110202040	1.1574	1.3191
6110202045	1.1574	1.3191
6110202065	1.1574	1.3191
6110202075	1.1574	1.3191
6110909022	0.263	0.2997
6110909024	0.263	0.2997
6110909030	0.3946	0.4497
6110909040	0.263	0.2997
6110909042	0.263	0.2997
6111201000	1.2581	1.4339
6111202000	1.2581	1.4339
6111203000	1.0064	1.147
6111205000	1.0064	1.147
6111206010	1.0064	1.147
6111206020	1.0064	1.147
6111206030	1.0064	1.147
6111206040	1.0064	1.147
6111305020	0.2516	0.2867
6111305040	0.2516	0.2867
6112110050	0.7548	0.8602
6112120010	0.2516	0.2867
6112120030	0.2516	0.2867
6112120040	0.2516	0.2867
6112120050	0.2516	0.2867
6112120060	0.2516	0.2867
6112390010	1.1322	1.2904
6112490010	0.9435	1.0753
6114200005	0.9002	1.026
6114200010	0.9002	1.026
6114200015	0.9002	1.026
6114200020	1.286	1.4657
6114200040	0.9002	1.026
6114200046	0.9002	1.026
6114200052	0.9002	1.026
6114200060	0.9002	1.026
6114301010	0.2572	0.2931
6114301020	0.2572	0.2931

IMPORT ASSESSMENT TABLE—Continued

[Raw Cotton Fiber]

HTS No.	Conventional factors	Cents/kg.
6114303030	0.2572	0.2931
6115198010	1.0417	1.1872
6115929000	1.0417	1.1872
6115936020	0.2315	0.2638
6116101300	0.3655	0.4166
6116101720	0.8528	0.9719
6116926420	1.0965	1.2497
6116926430	1.2183	1.3885
6116926440	1.0965	1.2497
6116928800	1.0965	1.2497
6117809510	0.9747	1.1109
6117809540	0.3655	0.4166
6201121000	0.948	1.0804
6201122010	0.8953	1.0204
6201122050	0.6847	0.7804
6201122060	0.6847	0.7804
6201134030	0.2633	0.3001
6201921000	0.9267	1.0562
6201921500	1.1583	1.3201
6201922010	1.0296	1.1734
6201922021	1.2871	1.4669
6201922031	1.2871	1.4669
6201922041	1.2871	1.4669
6201922051	1.0296	1.1734
6201922061	1.0296	1.1734
6201931000	0.3089	0.3521
6201933511	0.2574	0.2934
6201933521	0.2574	0.2934
6201999060	0.2574	0.2934
6202121000	0.9372	1.0681
6202122010	1.1064	1.261
6202122025	1.3017	1.4835
6202122050	0.8461	0.9643
6202122060	0.8461	0.9643
6202134005	0.2664	0.3036
6202134020	0.333	0.3795
6202921000	1.0413	1.1868
6202921500	1.0413	1.1868
6202922026	1.3017	1.4835
6202922061	1.0413	1.1868
6202922071	1.0413	1.1868
6202931000	0.3124	0.356
6202935011	0.2603	0.2967
6202935021	0.2603	0.2967
6203122010	0.1302	0.1484
6203221000	1.3017	1.4835
6203322010	1.2366	1.4094
6203322040	1.2366	1.4094
6203332010	0.1302	0.1484
6203392010	1.1715	1.3352
6203399060	0.2603	0.2967
6203422010	0.9961	1.1353
6203422025	0.9961	1.1353
6203422050	0.9961	1.1353
6203422090	0.9961	1.1353
6203424005	1.2451	1.419
6203424010	1.2451	1.419
6203424015	0.9961	1.1353
6203424020	1.2451	1.419
6203424025	1.2451	1.419
6203424030	1.2451	1.419
6203424035	1.2451	1.419
6203424040	0.9961	1.1353
6203424045	0.9961	1.1353
6203424050	0.9238	1.0529
6203424055	0.9238	1.0529
6203424060	0.9238	1.0529
6203431500	0.1245	0.1419
6203434010	0.1232	0.1404
6203434020	0.1232	0.1404

IMPORT ASSESSMENT TABLE—Continued

[Raw Cotton Fiber]

HTS No.	Conventional factors	Cents/kg.
6203434030	0.1232	0.1404
6203434040	0.1232	0.1404
6203498045	0.249	0.2838
6204132010	0.1302	0.1484
6204192000	0.1302	0.1484
6204198090	0.2603	0.2967
6204221000	1.3017	1.4835
6204223030	1.0413	1.1868
6204223040	1.0413	1.1868
6204223050	1.0413	1.1868
6204223060	1.0413	1.1868
6204223065	1.0413	1.1868
6204292040	0.3254	0.3709
6204322010	1.2366	1.4094
6204322030	1.0413	1.1868
6204322040	1.0413	1.1868
6204423010	1.2728	1.4506
6204423030	0.9546	1.088
6204423040	0.9546	1.088
6204423050	0.9546	1.088
6204423060	0.9546	1.088
6204522010	1.2654	1.4422
6204522030	1.2654	1.4422
6204522040	1.2654	1.4422
6204522070	1.0656	1.2145
6204522080	1.0656	1.2145
6204533010	0.2664	0.3036
6204594060	0.2664	0.3036
6204622010	0.9961	1.1353
6204622025	0.9961	1.1353
6204622050	0.9961	1.1353
6204624005	1.2451	1.419
6204624010	1.2451	1.419
6204624020	0.9961	1.1353
6204624025	1.2451	1.419
6204624030	1.2451	1.419
6204624035	1.2451	1.419
6204624040	1.2451	1.419
6204624045	0.9961	1.1353
6204624050	0.9961	1.1353
6204624055	0.9854	1.1231
6204624060	0.9854	1.1231
6204624065	0.9854	1.1231
6204633510	0.2546	0.2902
6204633530	0.2546	0.2902
6204633532	0.2437	0.2777
6204633540	0.2437	0.2777
6204692510	0.249	0.2838
6204692540	0.2437	0.2777
6204699044	0.249	0.2838
6204699046	0.249	0.2838
6204699050	0.249	0.2838
6205202015	0.9961	1.1353
6205202020	0.9961	1.1353
6205202025	0.9961	1.1353
6205202030	0.9961	1.1353
6205202035	1.1206	1.2771
6205202046	0.9961	1.1353
6205202050	0.9961	1.1353
6205202060	0.9961	1.1353
6205202065	0.9961	1.1353
6205202070	0.9961	1.1353
6205202075	0.9961	1.1353
6205302010	0.3113	0.3548
6205302030	0.3113	0.3548
6205302040	0.3113	0.3548
6205302050	0.3113	0.3548
6205302070	0.3113	0.3548
6205302080	0.3113	0.3548
6206100040	0.1245	0.1419

IMPORT ASSESSMENT TABLE—Continued

[Raw Cotton Fiber]

HTS No.	Conventional factors	Cents/kg.
6206303010	0.9961	1.1353
6206303020	0.9961	1.1353
6206303030	0.9961	1.1353
6206303040	0.9961	1.1353
6206303050	0.9961	1.1353
6206303060	0.9961	1.1353
6206403010	0.3113	0.3548
6206403030	0.3113	0.3548
6206900040	0.249	0.2838
6207110000	1.0852	1.2368
6207199010	0.3617	0.4122
6207210010	1.1085	1.2634
6207210030	1.1085	1.2634
6207220000	0.3695	0.4211
6207911000	1.1455	1.3055
6207913010	1.1455	1.3055
6207913020	1.1455	1.3055
6208210010	1.0583	1.2061
6208210020	1.0583	1.2061
6208220000	0.1245	0.1419
6208911010	1.1455	1.3055
6208911020	1.1455	1.3055
6208913010	1.1455	1.3055
6209201000	1.1577	1.3194
6209203000	0.9749	1.1111
6209205030	0.9749	1.1111
6209205035	0.9749	1.1111
6209205040	1.2186	1.3888
6209205045	0.9749	1.1111
6209205050	0.9749	1.1111
6209303020	0.2463	0.2807
6209303040	0.2463	0.2807
6210109010	0.2291	0.2611
6210403000	0.0391	0.0446
6210405020	0.4556	0.5192
6211111010	0.1273	0.1451
6211111020	0.1273	0.1451
6211118010	1.1455	1.3055
6211118020	1.1455	1.3055
6211320007	0.8461	0.9643
6211320010	1.0413	1.1868
6211320015	1.0413	1.1868
6211320030	0.9763	1.1127
6211320060	0.9763	1.1127
6211320070	0.9763	1.1127
6211330010	0.3254	0.3709
6211330030	0.3905	0.4451
6211330035	0.3905	0.4451
6211330040	0.3905	0.4451
6211420010	1.0413	1.1868
6211420020	1.0413	1.1868
6211420025	1.1715	1.3352
6211420060	1.0413	1.1868
6211420070	1.1715	1.3352
6211430010	0.2603	0.2967
6211430030	0.2603	0.2967
6211430040	0.2603	0.2967
6211430050	0.2603	0.2967
6211430060	0.2603	0.2967
6211430066	0.2603	0.2967
6212105020	0.2412	0.2749
6212109010	0.9646	1.0994
6212109020	0.2412	0.2749
6212200020	0.3014	0.3435
6212900030	0.1929	0.2198
6213201000	1.1809	1.3459
6213202000	1.0628	1.2113
6213901000	0.4724	0.5384
6214900010	0.9043	1.0306
6216000800	0.2351	0.2679

IMPORT ASSESSMENT TABLE—Continued
[Raw Cotton Fiber]

HTS No.	Conventional factors	Cents/kg.
6216001720	0.6752	0.7695
6216003800	1.2058	1.3743
6216004100	1.2058	1.3743
6217109510	1.0182	1.1604
6217109530	0.2546	0.2902
6301300010	0.8766	0.9991
6301300020	0.8766	0.9991
6302100005	1.1689	1.3322
6302100008	1.1689	1.3322
6302100015	1.1689	1.3322
6302215010	0.8182	0.9325
6302215020	0.8182	0.9325
6302217010	1.1689	1.3322
6302217020	1.1689	1.3322
6302217050	1.1689	1.3322
6302219010	0.8182	0.9325
6302219020	0.8182	0.9325
6302219050	0.8182	0.9325
6302222010	0.4091	0.4663
6302222020	0.4091	0.4663
6302313010	0.8182	0.9325
6302313050	1.1689	1.3322
6302315050	0.8182	0.9325
6302317010	1.1689	1.3322
6302317020	1.1689	1.3322
6302317040	1.1689	1.3322
6302317050	1.1689	1.3322
6302319010	0.8182	0.9325
6302319040	0.8182	0.9325
6302319050	0.8182	0.9325
6302322020	0.4091	0.4663
6302322040	0.4091	0.4663
6302402010	0.9935	1.1323
6302511000	0.5844	0.666
6302512000	0.8766	0.9991
6302513000	0.5844	0.666
6302514000	0.8182	0.9325
6302600010	1.1689	1.3322
6302600020	1.052	1.199
6302600030	1.052	1.199
6302910005	1.052	1.199
6302910015	1.1689	1.3322
6302910025	1.052	1.199
6302910035	1.052	1.199
6302910045	1.052	1.199
6302910050	1.052	1.199
6302910060	1.052	1.199
6303110000	0.9448	1.0768
6303910000	0.6429	0.7327
6304111000	1.0629	1.2114
6304190500	1.052	1.199
6304191000	1.1689	1.3322
6304191500	0.4091	0.4663
6304192000	0.4091	0.4663
6304910020	0.9351	1.0657
6304920000	0.9351	1.0657
6505901540	1.181	1.346
6505902060	0.9935	1.1323
6505902545	0.5844	0.666

* * * * *

Dated: April 13, 1999.

Enrique E. Figueroa,

Administrator, Agricultural Marketing Service.

[FR Doc. 99–9634 Filed 4–16–99; 8:45 am]

BILLING CODE 3410–02–P

NORTHEAST DAIRY COMPACT COMMISSION

7 CFR Parts 1306 and 1309

Over-Order Price Regulation

AGENCY: Northeast Dairy Compact Commission.

ACTION: Proposed rule; notice of hearing.

SUMMARY: The Northeast Dairy Compact Commission proposes to amend the over-order price regulation to establish a supply management program. The proposed program is an assessment/refund plan under which the Commission would withhold up to the sum of three million dollars per calendar year, at the rate of $250,000 from each Compact monthly pool. At the end of the Commission's fiscal (calendar) year, the Commission would refund the withheld funds to compact eligible producers who had either reduced their production or only increased production at a rate of one percent or less, as compared to the prior calendar year's production. All eligible producers would receive a flat rate refund amount. In addition to the flat rate refund amount, eligible producers who decreased production would receive a refund based on the hundredweight of milk that the current year's production was less than the prior year's production.

DATES: A public hearing will be held on May 5, 1999 to commence at 9:00 a.m. and to conclude no later than 12:00 p.m. Sworn and notarized written testimony, comments and exhibits may be submitted until 5:00 p.m. on May 19, 1999.

ADDRESSES: The public hearing will be held at Wayfarer Inn, 121 S. River Road, U.S. Route 3, Bedford, New Hampshire. Mail, or deliver, sworn and notarized testimony, comments and exhibits to: Northeast Dairy Compact Commission, 34 Barre Street, Suite 2, Montpelier, Vermont 05602.

FOR FURTHER INFORMATION CONTACT: Kenneth M. Becker, Executive Director, Northeast Dairy Compact Commission at the above address or by telephone at (802) 229–1941, or by facsimile at (802) 229–2028.

SUPPLEMENTARY INFORMATION:

I. Background

The Northeast Dairy Compact Commission ("Commission") was established under authority of the Northeast Interstate Dairy Compact ("Compact"). The Compact was enacted into law by each of the six participating New England states as follows: Connecticut—Pub. L. 93–320; Maine—Pub. L. 89–437, as amended, Pub. L. 93–274; Massachusetts—Pub. L. 93–370; New Hampshire—Pub. L. 93–336; Rhode Island—Pub. L. 93–106; Vermont—Pub. L. 93–57. In accordance with Article I, Section 10 of the United States Constitution, Congress consented to the Compact in Pub. L. 104–127 (FAIR Act), Section 147, codified at 7 U.S.C. 7256. Subsequently, the United States Secretary of Agriculture, pursuant to 7 U.S.C. 7256(1), authorized implementation of the Compact.

Pursuant to its rulemaking authority under Article V, Section 11 of the Compact, the Commission concluded an informal rulemaking process and voted to adopt a compact over-order price regulation on May 30, 1997.[1] The Commission subsequently amended and extended the compact over-order price regulation.[2] In 1998, the Commission further amended specific provisions of the over-order price regulation.[3] The current compact over-order price regulation is codified at 7 CFR Chapter XIII.

On November 27, 1998, the Commission issued a notice of proposed rulemaking proceedings on several subjects and issues, including whether additional supply management policies and provisions should be incorporated into the over-order price regulation.[4] The Commission held a public hearing to receive testimony on December 11, 1998 in Boxborough, Massachusetts and comments were received until 5:00 p.m. on December 31, 1998.

On January 13, 1999, the Commission held its deliberative meeting, pursuant to 7 CFR 1361.8, to consider all oral and written comments received at the public hearing and the additional comments received by the Commission's published comment deadline of December 31, 1998, and to deliberate and act on the proposed subjects and issues rulemaking regarding whether additional supply management policies and provisions should be incorporated into the over-order price regulation.[5] At that meeting, the Commission referred the supply management issue to its Committee on Regulations and Rulemaking for further study. The Committee was asked to report back to the full Commission no later than the May 1999 meeting with recommendations for addressing supply management and the requirement in Article IV, Section 9(f) of the Compact. That provision requires the Commission, when establishing a compact over-order price, to "take such action as necessary and feasible to ensure that the over-order price does not create an incentive for producers to generate additional supplies of milk."

Since promulgation of the Compact Over-order Price Regulation in 1997, the Commission has closely monitored milk production levels in New England. One of the main goals in initially promulgating the Over-order Price Regulation was to at least stabilize the dairy industry supplying the New England consumer milk markets and to increase the local supply of milk.[6]

In the spring of 1998, the Commission recognized that production levels in New England had increased. The Commission's Committee on Regulations and Rulemaking held five public meetings around New England, to receive informal public comment on various supply management proposals and the Commission's responsibilities under Section 9(f) of the Compact. The Commission also conducted a comprehensive rulemaking proceeding beginning in June 1998, held public hearings in July and September 1998 and promulgated a rule in November to be effective January 1, 1999 which limits the payment of the Compact Over-order producer price to milk disposed of within the Compact regulated area, with a seasonally adjusted allowance for diverted and transferred milk.[7]

Also in 1998, the Commission paid 1.762 million dollars to the Commodity Credit Corporation (CCC), as required by condition 5 of the authorization of the Compact, 7 U.S.C. 7256(5). That provision requires the Commission to compensate the CCC for the cost of any purchases of milk and milk products that result from the projected rate of increase in milk production in the Compact regulated area in excess of the national average rate of the increase in milk production.[8] The Commission

[1] 62 FR 29626 (May 30, 1997)

[2] 62 FR 62810 (Nov. 25, 1997)

[3] 63 FR 10104 (Feb. 27, 1998); 63 FR 46385 (Sept. 1, 1998); and 63 FR 65517 (Nov. 27, 1998).

[4] 63 FR 65563 (Nov. 27, 1998).

[5] 64 FR 533 (Jan. 5, 1999).

[6] 62 FR 23039–40 (April 28, 1997); 62 FR 29635 (May 30, 1997); 62 FR 62814 (Nov. 25, 1997).

[7] 63 FR 65517 (Nov. 27, 1998).

[8] During federal fiscal year 1998, the Compact region enjoyed some of the best milk production conditions in many years, weather was warm and feed prices were low. Many other milk producing areas of the country experienced some of the worst

began setting aside funds in an escrow account from the monthly producer pool in March 1998, for February milk, to meet this potential obligation. After the payment to the CCC was made, the CCC escrow account had a balance of approximately $400,000, which the Commission returned to those producers whose production in federal fiscal year 1998 was less than or equal to their production during federal fiscal year 1997. The CCC refund payments were based on the eligible producer's total production for the year.

Based on the oral testimony and written comments and exhibits received in the December 1998 subjects and issues rulemaking proceeding, the informal public comment provided to the Committee on Regulations in the public meetings in the spring of 1998 and the Commission's experience with the CCC refund program, the Commission proposes to implement a supply management program through an assessment and refund payment to producers who either reduce production or maintain their milk production within one percent of the prior year's production level. The proposed program is described in detail below.

II. Proposed Supply Management Program

The proposed supply management program is designed to meet the Commission's responsibilities under Article IV, Section 9(f) of the Compact. That provision provides that "[w]hen establishing a compact over-order price, the commission shall take such action as necessary and feasible to ensure that the over-order price does not create an incentive for producers to generate additional supplies of milk." The proposed supply management program is relatively straightforward to administer and implement and therefore would be a feasible method of addressing supply management. The proposed supply management program is necessary to ensure that the compact over-order price does not create an incentive for producers to increase milk production, as required by section 9(f) of the Compact.

The proposed program would require the Commission to reduce the producer pool by the sum of $250,000 per month, in order to accumulate a total of three million dollars per calendar year in the supply management-settlement fund.[9] By taking an equal sum from each producer pool, the impact on the monthly producer pay price would be minimized, thereby continuing to ensure a sufficient pay price to producers to cover their costs of production. These funds would be accumulated in an escrow account throughout the calendar year in a supply management-settlement fund.

At the conclusion of the calendar year, producers would have 45 days to submit an application to the Commission for a refund from the supply management-settlement fund. There would be two categories of producers eligible for the refund: (1) producers who reduced their production as compared to their prior year's production level; and (2) producers who maintained their production milk level at a rate of increase not more than 1% compared to the prior year's production. All eligible producers would receive a refund based on a flat rate per producer. One-half of the supply management-settlement fund would be distributed to eligible producers on a per producer basis. The amount of the flat rate refund would be determined by dividing the total number of eligible producers into one-half the value of the supply management-settlement fund.

In addition, producers who reduced their milk production, compared to the prior year's production, would receive a refund amount based on a price per hundredweight of reduced production of milk. The assessment/refund program would provide a reward to those producers who reduce their milk production and create an incentive for all producers to maintain a stable, local supply of milk for the New England milk market.

All producers would share equally in the burden of funding this program through a reduction in the producer pay price. Only those producers who reduce or maintain their production level would be eligible for a refund. However, the program would not otherwise restrict the milk production of those producers who, for business reasons unrelated to the compact payments, chose to increase their milk production at a rate greater than 1% per year.

The Commission would also change the regulation regarding any balance left in an account established to meet a potential liability to the Commodity Credit Corporation. The supply management program would be designed to meet the Commission's responsibilities under section 9(f) of the Compact, and therefore, any balance in a CCC escrow account would be returned to the producer-settlement fund for distribution to all producers in the next producer pool.

It is the intention and judgment of the Commission that the combination of the proposed supply management assessment/refund program and the recently promulgated rules limiting compact payments on diverted and transferred milk will operate in coordination to regulate the supply of milk in New England relative to the consumer demand and to ensure that the compact payments do not create an incentive to generate supplies of milk in excess of the tolerance levels prescribed for diverted and transferred milk.

Tables 1 and 2 show how the proposed supply management program would be implemented using the actual figures for the May 1998 and July 1998 compact producer pools. As Tables 1 and 2 demonstrate, setting aside $250,000 from each pool to fund the supply management-settlement fund, would have reduced the producer price by four cents.

TABLE 1.—MAY 1998 COMPACT OVER-ORDER PRODUCER PRICE WITH PROPOSED SUPPLY MANAGEMENT ASSESSMENT

Compact Over-order Obligation		$0.89	
Compact Class I	43.49%	252,572,087	$2,247,891.58
Less: WIC 3%			67,436.75
Less: Supply Management Assessment			250,000.00
Total Producer Milk	100%	580,786,219	1,930,454.83
Add: ½ Unobligated Balance			257,942.40
Adjusted Pool Value		0.376799097	2,188,397.23
Less: Reserve		.046799097	271,802.14
Total Pool Value			1,916,595.09

weather and, as a result, the rate of production in New England exceeded that of the national average. The Commission notes, too, however, that in promulgating the Over-order Price Regulation it intended to stabilize or increase milk production in the region. See discussions at 62 FR 23039–40 (April 28, 1997); 62 FR 29635 (May 30, 1997); and 62 FR 62814 (Nov. 25, 1997)

[9] If there is no producer pool in a particular month, the sum owed to the refund pool would be carried forward and paid from the next available producer pool.

TABLE 1.—MAY 1998 COMPACT OVER-ORDER PRODUCER PRICE WITH PROPOSED SUPPLY MANAGEMENT ASSESSMENT—Continued

Over-order Producer Price	.....	.....	$0.33	.....
Announced Over-order Producer Price	.....	.....	$0.37	.....
Reduction due to SM Assessment	.....	.....	$0.04	.....

TABLE 2.—JULY 1998 COMPACT OVER-ORDER PRODUCER PRICE WITH PROPOSED SUPPLY MANAGEMENT ASSESSMENT

Compact Over-order Obligation	.....	.....	$2.82	.....
Compact Class I	.....	43.70%	248,178,437	$6,998,631.91
Less: WIC 3%	.....	.....	.....	209,958.96
Less: Supply Management Assessment	.....	.....	.....	250,000.00
Total Producer Milk	.....	100%	567,929,595	6,538,672.95
Add: ½ Unobligated Balance	.....	.....	.....	229,215.01
Adjusted Pool Value	.....	.....	1.191677281	6,767,887.96
Less: Reserve	.....	.....	.041677281	236,697.15
Total Pool Value	.....	.....	.....	6,531,190.81
Over-order Producer Price	.....	.....	$1.15	.....
Announced Over-order Producer Price	.....	.....	$1.19	.....
Reduction due to SM Assessment	.....	.....	$0.04	.....

The Commission offers the following examples to assist interested persons in evaluating the proposed supply management program. Table 3 shows the cost per producer of a reduction in the producer pay price of $.04 per hundredweight on a monthly and annual basis. As discussed above, the $.04 reduction is the cost of setting aside $250,000 per month from the producer pool to fund the supply management-settlement fund.

TABLE 3.—COST OF SUPPLY MANAGEMENT ASSESSMENT TO SELECTED SIZE FARMS

No. cows	Pounds	Reduced rate/cwt	Cost per month	Cost per year
40	700,000	.$04	$23	$280
57	1,000,000	.04	33	400
86	1,500,000	.04	50	600
286	5,000,000	.04	167	2,000

The examples in Tables 4 and 5 assume that each size farm reduces production by five percent compared to the prior year's production. The proposed supply management program would pay one-half of the supply management-settlement fund on a per producer, flat rate basis, and the other half on a rate per hundredweight of the producer's reduced milk production. The values used in the examples are determined by assuming that 1,000 producers are eligible for the supply management refund, and eligible producers reduced milk production by 91 million pounds. These assumptions result in a per producer refund payment of $1,500 and a per hundredweight rate of $1.64.

Table 4 shows the yearly refund different size farms would receive under the proposed supply management program.

TABLE 4.—YEARLY REFUND FROM SUPPLY MANAGEMENT PROGRAM, SELECTED SIZE FARMS

No. Cows	Pounds	Reduced pounds	Reduced rate/cwt	Rate/cwt refund	Per farm refund	Total refund
40	700,000	35,000	$1.64	$574	$1,500	$2,074
57	1,000,000	50,000	1.64	820	1,500	2,320
86	1,500,000	75,000	1.64	1,230	1,500	2,730
286	5,000,000	250,000	1.64	4,100	1,500	5,600

Table 5 shows the yearly financial benefit to different size farms of the proposed supply management program.

TABLE 5.—YEARLY BENEFITS FROM SUPPLY MANAGEMENT PROGRAM, SELECTED SIZE FARMS

No. Cows	Total refund	Less cost	Net refund
40	$2,074	$280	$1,794
57	2,320	400	1,920
86	2,730	600	2,130

TABLE 5.—YEARLY BENEFITS FROM SUPPLY MANAGEMENT PROGRAM, SELECTED SIZE FARMS—Continued

No. Cows	Total refund	Less cost	Net refund
286	5,600	2,000	3,600

Table 6 shows the increased income a producer would have received in 1998, on only the volume of milk produced in excess of the prior year's production, due to the compact producer price. The table uses the assumption that the rate of increased production was 1.8%. This is the rate of increased production in the compact region the Commodity Credit Corporation used to set the amount due from the Compact Commission in 1998. The table also applies the average compact over-order producer price for 1998 of $.286. The last column shows the compact payment to the producer for the increased milk production.

TABLE 6.—YEARLY INCREASED INCOME ON AVERAGE PERCENTAGE INCREASED PRODUCTION

No. Cows	Pounds	% Increase	Increase lbs.	Av. Price	Increase $
40	700,000	1.8	12,600	$.286	$36
57	1,000,000	1.8	18,000	.286	51
86	1,500,000	1.8	27,000	.286	77
285	5,000,000	1.8	90,000	.286	257

Table 7 shows the comparison between the income (reduced income) a producer would not receive due to decreasing production by five (5) percent, and the financial benefit for that production decrease under the proposed supply management program. The table applies the average compact producer price of $.286 for 1998 to compute the value of reduced income and applies the same assumptions as used in Table 5 to show the effect of the proposed supply management program (SMP).

TABLE 7.—COMPARISON OF REDUCED COMPACT INCOME TO SUPPLY MANAGEMENT BENEFITS FOR 5% PRODUCTION DECREASE

No. Cows	Reduced pounds	Average price	Reduced income	Net SMP refund	Net income increase
40	35,000	$.286	$100	$1794	$1694
57	50,000	.286	143	1920	1777
86	75,000	.286	214	2130	1916
285	250,000	.286	715	3600	2885

The Commission is especially interested in comments regarding the level of refund payment that would best meet the purposes of the supply management program.

III. Proposed Technical Amendments to the Over-Order Price Regulation

The Commission proposes to amend §§ 1306.3 (c) and (e) and to add a new Part 1309 to provide the necessary regulations to implement the proposed supply management assessment/refund program. The Commission also proposes to make corresponding technical changes required by the specific amendments and additions to the current regulations.

The Commission proposes to amend § 1306.3(c) to delete subsections (1) and (2) and to specify that any surplus remaining in an escrow account established to meet a potential obligation to the Commodity Credit Corporation (CCC) would be returned to the producer-settlement fund for distribution to all producers. These changes eliminate the current provisions for returning the surplus funds to only those producers who did not increase production in the federal fiscal year. The Commission proposes this change because, with the implementation of the supply management assessment/refund program and the corresponding reduction of the producer pool, the limitation on the CCC refund of a surplus to only those producers who did not increase production would no longer be appropriate.

The Commission proposes to amend § 1306.3, by first redesignating existing paragraphs (e) through (g) as paragraphs (f) through (h) and adding a new paragraph (e). The new paragraph will allow the Commission to withhold $250,000 from the producer pool to fund the supply management-settlement fund. In months when there either is no producer pool or the amount of the pool is insufficient, then the obligation will accrue to the next available pool. This provision will allow the Commission to fund the supply management-settlement fund at an amount up to three million dollars per calendar year.

A new Part 1309 is proposed to provide the regulations to implement the supply management program. Section 1309.1 defines producer qualifications for the refund program. Section 1309.2 defines the procedure for computing the refund prices to be paid to qualified producers. Section 1309.3 would provide the authority for the establishment of a supply management-settlement fund. Finally, § 1309.4 would describe the procedure for issuing payments to producers eligible for a refund under the supply management program.

Official Notice of Technical, Scientific or Other Matters

Pursuant to the Commission regulations, 7 CFR 1361.5(g)(5), the Commission hereby gives public notice that it may take official notice, at the public hearing May 5, 1999, or afterward, of relevant facts, statistics,

data, conclusions, and other information provided by or through the United States Department of Agriculture, including, but not limited to, matters reported by the National Agricultural Statistics Service, the Market Administrators, the Economic Research Service, the Agricultural Marketing Service and information, data and statistics developed and maintained by the Departments of Agriculture of the States or Commonwealth within the Compact regulated area.

The Commission will also receive into the record of this rulemaking proceeding the entire record, including the public hearing transcript and written comments and submissions, of the subjects and issues rulemaking proceeding regarding whether additional supply management policies and provisions should be incorporated into the Over-order Price Regulation.

Public Participation in Rulemaking Proceedings

The Commission seeks and encourages oral and written testimony and comments from all interested persons regarding these proposed rules. The Commission continues to benefit from the valuable insights and active participation of all segments of the affected community including consumers, processors and producers in the development and administration of the Over-order Price Regulation.

Date, Time and Location of the Public Hearing

The Northeast Dairy Compact Commission will hold a public hearing to commence at 9:00 a.m., and to conclude no later than 12:00 p.m., on May 5, 1999 at the Wayfarer Inn, 121 S. River Road, U.S. Route 3, Bedford, New Hampshire.

Request for Pre-filed Testimony and Written Comments

Pursuant to the Commission rules, 7 CFR 1361.4, any person may participate in the rulemaking proceeding independent of the hearing process by submitting written comments or exhibits to the Commission. Comments and exhibits may be submitted at any time before 5:00 p.m. on May 19, 1999.

Please note: Comments and exhibits will be made part of the record of the rulemaking proceeding only if they identify the author's name, address and occupation, and if they include a sworn and notarized statement indicating that the comment and/or exhibit is presented based upon the author's personal knowledge and belief. Facsimile copies will be accepted up until the 5:00 p.m. deadline, but the original must then be sent by ordinary mail.

The Commission is requesting pre-filed testimony from any interested person. Pre-filed testimony must include the name, address and occupation of the witness and a sworn notarized statement indicating that the testimony is presented based upon the author's personal knowledge and belief. Pre-filed testimony must be received in the Commission office no later than 5:00 p.m. April 26, 1999 to insure distribution to Commission members prior to the public hearing.

Pre-filed testimony, comments and exhibits should be sent to: Northeast Dairy Compact Commission, 34 Barre Street, Suite 2, Montpelier, Vermont 05602 or by facsimile to (802) 229–2028.

List of Subjects in 7 CFR Parts 1306 and 1309

Milk.

Codification in Code of Federal Regulations

For reasons set forth in the preamble, the Northeast Dairy Compact Commission proposes to amend 7 CFR part 1306 and to add a new part 1309 as follows:

PART 1306—COMPACT OVER-ORDER PRODUCER PRICE

1. The authority citation for part 1306 continues to read as follows:

Authority: 7 U.S.C. 7256.

2. In section 1306.3 revise paragraph (c), redesignate paragraphs (e) through (g) as paragraphs (f) through (h), and add new paragraph (e) to read as follows:

§ 1306.3 Computation of basic over-order producer price.

* * * * *

(c) In any month when the average percentage increase in production in the regulated area comes within 0.25 of the average percentage increase in production for the nation, subtract from the total value computed pursuant to paragraph (a) of this section, for the purpose of retaining a reserve, an amount estimated by the commission in consultation with the USDA for anticipated cost to reimburse the Commodity Credit Corporation (CCC) at the end of its fiscal year for any surplus milk purchases. Should those funds not be needed because no surplus purchases were made by the CCC at the end of its fiscal year or there is a surplus in the fund, it is to be returned to the producer-settlement fund.

* * * * *

(e) Subtract $250,000 from the total value computed pursuant to paragraph (a) of this section and deposit that amount in the supply management-settlement fund, in the event there is no monthly pool because there is no over-order obligation or there is insufficient funds available, the obligation under this section will accrue to the next available pool;

* * * * *

3. A new part 1309 is added to read as follows:

PART 1309—SUPPLY MANAGEMENT REFUND PROGRAM

Sec.

1309.1 Producer qualification for supply management refund program.
1309.2 Computation of supply management refund prices.
1309.3 Supply management-settlement fund.
1309.4 Payment to producers of supply management refund.

Authority: 7 U.S.C. 7256.

§ 1309.1 Producer qualification for supply management refund program.

A dairy farmer who is a qualified producer pursuant to § 1301.11 of this chapter for the entire refund year and the dairy farmer's milk production during the refund year is less than or the increase is not more than 1% of the milk production of the preceding calendar year.

§ 1309.2 Computation of supply management refund prices.

The compact commission shall compute the supply management refund prices applicable to all qualified milk as follows:

(a) Combine into one total the values, including all interest earned, deducted pursuant to § 1306.3(e) of this chapter for the refund year;

(b) Subtract 50% from the total value computed pursuant to paragraph (a) of this section to be used for the per farm payments to producers who submitted documentation pursuant to § 1309.4(a);

(c) Add the unobligated balance of the supply management-settlement fund;

(d) Divide the resulting amount by the sum of all milk production reduction reported by producers qualified pursuant to § 1309.1 and who submitted documentation pursuant to § 1309.4(a); and

(e) Subtract not less than one (1) cent nor more than two (2) cents for the purpose of retaining a cash balance in the supply management-settlement fund. The result shall be the supply management refund price for the year.

§ 1309.3 Supply management-settlement fund.

(a) The compact commission shall establish and maintain a separate fund

known as the supply management-settlement fund. It shall deposit into the fund all amounts deducted pursuant to § 1306.3(e) of this chapter and the amount subtracted under § 1309.2(e). It shall pay from the fund all amounts due producers pursuant to § 1309.4 and the amount added pursuant to § 1309.2(c);

(b) All amounts subtracted under § 1309.2(e), including interest earned thereon, shall remain in the supply management-settlement fund as an obligated balance until it is withdrawn for the purpose of effectuating § 1309.2(c);

(c) The compact commission shall place all monies subtracted under § 1306.3(e) of this chapter and § 1309.2(e) in an interest-bearing bank account or accounts in a bank or banks duly approved as a Federal depository for such monies, or invest them in short-term U.S. Government securities.

§ 1309.4 Payment to producers of supply management refund.

(a) All producers who are qualified pursuant to § 1309.1 shall become eligible to receive payment of the supply management refund computed pursuant to § 1309.2 by submitting to the compact commission documentation that the producer milk production during the refund year is less than or the increase is not more than 1% of the milk production of the preceding calendar year. Such documentation shall be filed with the commission not later than 45 days after the end of the calendar year.

(b) The commission will make payment to all producers qualified pursuant to § 1309.1 and eligible pursuant to paragraph (a) of this section in the following manner:

(1) A per farm payment computed by dividing the amount subtracted pursuant to § 1309.2(b) by the total eligible producers; and

(2) The value determined by multiplying the supply management refund price computed pursuant to § 1309.2(e) by the producer's reduced milk pounds.

Date: April 12, 1999.

Kenneth M. Becker,

Executive Director.

[FR Doc. 99–9521 Filed 4–16–99; 8:45 am]

BILLING CODE 1650–01–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 39

RIN 3150–AG14

Energy Compensation Sources for Well Logging and Other Regulatory Clarifications

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing to amend its regulations governing licenses and radiation safety requirements for well logging. The proposed rule would modify NRC regulations dealing with: low activity energy compensation sources; tritium neutron generator target sources; specific abandonment procedures in the event of an immediate threat; changes to requirements for inadvertent intrusion on an abandoned source; the codification of an existing generic exemption; the removal of an obsolete date; and updating regulations to be consistent with the Commission's metrication policy. The proposed amendments are necessary to reflect developments that have occurred in well logging technology since the existing regulations were adopted.

DATES: The comment period expires July 5, 1999. Comments received after this date will be considered if it is practical to do so, but the Commission is able to assure consideration only for comments received on or before this date.

ADDRESSES: Send comments by mail or addressed to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Attention: Rulemakings and Adjudications Staff.

Hand-deliver comments to: 11555 Rockville Pike, Rockville, Maryland, between 7:30 am and 4:15 pm on Federal workdays.

You may also provide comments via the NRC's interactive rulemaking web site through the NRC home page (http://www.nrc.gov). From the NRC home page, select "Rulemaking" from the tool bar. The interactive rulemaking website can then be accessed by selecting "Rulemaking Forum." This site provides the availability to upload comments as files (any format), if your web browser supports that function. For information about the interactive rulemaking site, contact Ms. Carol Gallagher, (301) 415–5905; e-mail CAG@nrc.gov.

Certain documents related to this rulemaking, including comments received and the environmental assessment and finding of no significant impact, may be examined at the NRC Public Document Room, 2120 L Street NW., (Lower Level), Washington, DC. These same documents also may be viewed and downloaded electronically via the interactive rulemaking website established by NRC for this rulemaking.

FOR FURTHER INFORMATION CONTACT: Mark Haisfield, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–6196, e-mail MFH@nrc.gov.

SUPPLEMENTARY INFORMATION: The Nuclear Regulatory Commission is proposing to amend its regulations to acknowledge and accommodate the use of well logging technology that has been developed since the NRC issued the current well logging regulations (March 17, 1987; 52 FR 8234). This new technology allows licensees to lower a logging tool down a well at the same time that the hole for the well is being drilled instead of requiring drilling to stop, removing drilling pieces, and lowering a logging tool down the well. This technology is commonly referred to as "logging while drilling." This process uses a relatively small radioactive source within the logging tool in addition to the larger radioactive sources currently used in logging a well. The existing regulations were based on the use of larger radioactive sources. These regulations include provisions which are unnecessary and potentially burdensome for the additional small sources. The proposed changes would have no significant impact on public health and safety and the environment while reducing potential burdens to licensees. Licensees would no longer need to comply with unnecessary regulatory requirements for these small sources or to request licensing exemptions from the NRC for actions dealing with these small sources. Other changes are also being proposed to improve, clarify, and update well logging regulations to reduce confusion. These changes may also reduce the need for licensees to request exemptions from unnecessary requirements.

Introduction

Oil and gas come from accumulations in the pore spaces of reservoir rocks (usually sandstone, limestone, or dolomites) and are removed via a well. Because the amount of oil and gas in these pore spaces is dependent upon the rock's characteristics, the oil and gas industry often needs to determine the characteristics of underground formations to predict the commercial viability of a new or existing well.

Licensed radioactive materials are used to obtain information on certain properties of an underground formation, such as type of rock, porosity, hydrocarbon content, and density. These properties are important in the evaluation of oil and gas reservoirs.

One method to obtain information about oil and gas reservoirs is by using well logging tools. Licensed radioactive materials (sealed radioactive sources with associated radiation detectors) are contained in well logging tools. Americium-241 and cesium-137 are the radioactive materials most frequently used for this purpose. Traditionally, these tools are lowered into a well on a wireline. The depth of the well could range from several hundred feet to greater than 30,000 feet. Information collected by the detectors is sent to the surface through the wireline and plotted on a chart as the logging tool is slowly raised from the bottom of the well. Licensed radioactive materials are also used for similar purposes in coal and mineral exploration.

The licensing and radiation safety requirements for well logging are provided in 10 CFR part 39. When the regulations for well logging were promulgated in 1987 (52 FR 8225, March 17, 1987), the well logging process required drilling to stop while parts of the drilling pieces were removed before lowering a logging tool down a well. More recent technology, referred to as logging while drilling (LWD), allows well logging to be accomplished during drilling. This technology employs an additional low activity radioactive source within the well logging tool known as an energy compensation source, or ECS. The ECS is used to calibrate the well logging tool while the well is being drilled.

LWD provides real time data during drilling operations. It has also provided the ability for improved evaluation of geologic formations and can reduce drilling costs. The real-time information can aid in decision making because formation evaluation can be planned as soon as the drill bit reaches a formation.

Background

Based on the changing technology in the well logging industry, the NRC developed a Rulemaking Plan to consider the need to update 10 CFR part 39. On May 28, 1997, the NRC provided a draft Rulemaking Plan entitled, "Energy Compensation Sources for Well Logging and Clarifications—Changes to 10 CFR part 39" to the Agreement States for their comment. The draft Rulemaking Plan was contained in SECY–97–111, also dated May 28, 1997. Comments were received from the States of Utah, Illinois, and Washington. These States generally supported the proposal and provided specific information and comments. Where appropriate, these comments were incorporated into the final Rulemaking Plan which was contained in SECY–98–105, dated May 12, 1998.

In the final Rulemaking Plan, the NRC proposed to modify the existing regulations in 10 CFR part 39 to account for the newer technology. The changes would reduce regulatory burden on NRC and Agreement State licensees with no significant impact to public health and safety. In addition, there are other sections within 10 CFR part 39 that should be changed to improve, clarify, and update the regulations. The final Rulemaking Plan provides the rationale used in the development of this proposed rule.

Proposed Regulatory Action

The NRC is proposing seven specific changes to improve, clarify, and update the requirements in 10 CFR part 39.

1. The principal objective of the proposed rulemaking is to amend 10 CFR part 39 to accommodate the radioactive ECSs that are now used in some well logging applications. The ECS is a low activity source, typically less than 1.85 MBq (50 microcuries), compared to the normal 110 GBq to 740 GBq (3 to 20 curies) sources used in well logging. Because this is an emerging technology, 10 CFR part 39, originally promulgated in 1987, does not provide any specific provisions for these low activity sources. Many of the requirements in 10 CFR part 39, when applied to an ECS, are not appropriate or necessary to protect public health and safety and the environment. Therefore, the NRC believes the regulations should be changed.

Because the existing regulations do not allow for variations based on the activity of the source, licensees who use an ECS must meet all the requirements for larger sources found in 10 CFR part 39. Examples of requirements which are overly burdensome for licensees using ECSs include those addressing well abandonment (§§ 39.15 and 39.77), leak testing (§ 39.35), design and performance criteria for sealed sources (§ 39.41), and monitoring of sources lodged in a well (§ 39.69). The NRC is proposing that only those sections dealing with leak testing (a proposed revised § 39.35 specifically addresses ECSs), physical inventory (§ 39.37), and records of material use (§ 39.39) should apply to the use of an ECS.

Oil and gas wells use a surface casing to protect fresh water aquifers. However, if a surface casing is not used, the NRC would retain the well abandonment requirements. Requirements established in other parts of NRC regulations (e.g., 10 CFR parts 20, 30, 40, and 70) would still apply to the possession and use of licensed material and are adequate to protect public health and safety and the environment.

Therefore, the NRC is proposing to amend 10 CFR part 39 to accommodate the use of an ECS in well logging and to provide requirements governing its use. These provisions would include radioactivity limits on the ECS and leak testing requirements. The most significant change would exclude an ECS from the costly procedures for well abandonment in the event an ECS is lost within the well. Current requirements for well abandonment, in addition to specific reporting and approval requirements, require the source to be immobilized and sealed in place with a cement plug which must be protected from inadvertent intrusion, and the mounting of a permanent plaque at the surface of the well. In the draft Regulatory Analysis (RA) conducted for this proposed rule, a survey of ECS users indicated that about eight ECSs are abandoned per year. Although estimated abandonment costs varied significantly by survey respondent, the estimated savings to the industry to avoid eight abandonments per year is $5 million.

The NRC is proposing to establish 3.7 MBq (100 microcuries) as the limit for an ECS. Current ECSs typically use up to 1.85 MBq (50 microcuries) of americium-241 (cesium-137 sources are smaller). The 3.7 MBq (100 microcuries) limit would allow licensees flexibility in designing new sources of this kind while maintaining their radioactivity within an environmentally safe level. In addition, the sources would be required to be registered pursuant to 10 CFR 32.210 as ECSs for use in well logging applications. These sources would not be required to meet the requirements in § 39.41. However, they would be expected to meet the general requirements for calibration sources as established in American National Standard Institute (ANSI) standards.

Because ECSs are used for logging oil and gas wells, they use surface casings to protect fresh water aquifers. Hence, the only potential exposure hazard these sources would present is to workers, and worker exposure could only occur if an ECS were ruptured. If ruptured, workers could be exposed to the radionuclide through ingestion or by absorption through the skin. However, if the source were ruptured, it would be contained within hundreds to thousands of cubic feet of drilling mud

which also contains hazardous chemicals and is controlled and monitored to protect workers as part of drilling operations.

The draft Environmental Assessment (EA) conducted for this proposed rulemaking demonstrates that there would be no significant impact to public health and safety or the environment resulting from this amendment. The EA evaluated a worst case scenario of a 3.7 MBq (100 microcuries) source ruptured by a drill bit and brought to the surface in the drilling mud. The most significant exposure from this scenario would be from ingestion of the drilling mud. The most dangerous radionuclide considered for this worst case scenario was curium-250. This radionuclide was used because the rule, as proposed, does not restrict the radionuclide used for ECS sources. Also, the scenario involved a source twice as large as any in current use. For this worst case scenario, the estimated dose would be about 56 millirem, which is below the Federal annual dose limit to an individual member of the public of 0.1 rem (100 millirem) or 1 millisievert (see 10 CFR 20.1301). For a 3.7 MBq (100 microcuries) source of americium or cesium (the actual radionuclides used, but with larger activity) the estimated dose would be less than 3 millirem and 1 millirem respectively. Therefore, the NRC believes that eliminating potential costly requirements for these sources, in the event that such sources become unretrievable, would not impact public health and safety or the environment.

Section 39.35 specifies leak testing requirements for sealed sources. Because of the small amount of radioactive material in an ECS (by definition less than 3.7 MBq (100 microcuries)) less specific leak testing requirements are being proposed for ECSs. Also, the ECS is contained within a logging tool that is designed to withstand significant stress and pressure. The ECS is mounted inside a steel pressure housing in the interior of the logging tool, thereby providing additional encapsulation to protect the ECS from operational impacts. The NRC believes that it is unnecessary and overly burdensome to require that drilling operations stop because an ECS has exceeded the current 6-month time interval requirement to be leak tested. The draft Regulatory Analysis conducted for this proposed rulemaking surveyed a sample of the drilling industry to determine a normal maintenance period at which time a licensee would take a logging tool out of service for routine maintenance or other servicing. The NRC believes this maintenance period would be an appropriate time to conduct any necessary leak testing on an ECS. Although the survey results varied, these tools generally receive some type of out-of-field servicing every 18 months.

Based on this information and the NRC's belief that ECSs should normally only be leak tested during normal maintenance or when a logging tool is out of service for other repairs, the NRC is requiring that a leak test be performed at a minimum of every three years. This requirement should not be a burden for licensees if the logging tool is being properly maintained and, in fact, should provide licensees some flexibility. This is also consistent with an extended leak test frequency that has been established by license conditions for certain other sealed sources and devices.

Many ECSs are already exempt from all leak testing requirements. Section 39.35 exempts all beta or gamma emitting radioactive material with an activity of 3.7 MBq (100 microcuries) or less. Because cesium-137 is a beta/gamma emitter, all of these types of ECSs are already exempt from the existing leak testing requirements in § 39.35.

2. The NRC is proposing to revise 10 CFR part 39 requirements for tritium neutron generator target sources. Tritium neutron generators help determine the porosity of the reservoir rock formation, which indicates the amount of liquid in the reservoir and the reservoir's permeability. Tritium neutron generator target sources are not used in logging while drilling tools. These sources are used in the more traditional well logging procedure where drilling is stopped and the tool is lowered downhole. Because tritium neutron generator target sources produce a significant neutron stream only when a voltage is applied, tritium neutron generator target sources are less hazardous than the typical americium or cesium sources currently being used in well logging applications.

For well logging applications, the NRC is proposing that tritium neutron generator target sources be subject to the requirements of 10 CFR part 39 except for the sealed source design and performance criteria (§ 39.41), and the well abandonment procedures (§§ 39.15 and 39.77) when a surface casing is used to protect fresh water aquifers, a practice that is standard for oil and gas wells. The potential hazard of these sources when a surface casing is used does not warrant the existing requirements for well abandonment in the event that the source becomes lost. The design and performance criteria associated with sealed sources for well logging were not intended for tritium neutron generator target sources. However, 10 CFR part 39 does not make this intent or distinction clear.

The NRC is proposing to establish 1,110 GBq (30 curies) of tritium as the limit for a tritium neutron generator target source. Current tritium neutron generator target sources typically contain less than 740 GBq (20 curies) of tritium. The 1,110 GBq (30 curies) limit would allow licensees flexibility in designing new sources of this type while maintaining their radioactivity within an environmentally safe level.

When these sources are used for logging oil and gas wells, a surface casing is used to protect fresh water aquifers. The only exposure hazard these sources present are to workers and worker exposure could only occur if such sources were ruptured and the tritium was ingested. If a tritium source were ruptured, it would be contained within hundreds to thousands of cubic feet of drilling mud. As mentioned, this drilling mud contains hazardous chemicals and is controlled and monitored as part of drilling operations.

The draft EA conducted for this proposed rulemaking demonstrates that there would be no significant impact to public health and safety or the environment resulting from this change. The draft EA evaluated the worst case scenario of a 1,110 GBq (30 curies) tritium source ruptured by a drill bit and brought to the surface in the drilling mud. The most significant exposure would be through ingestion of this drilling mud. For this worst case scenario, the estimated dose would be 14 millirem, which is well below the Federal annual dose limit to an individual member of the public of 100 millirem or 1 millisievert (see 10 CFR 20.1301). Therefore, the NRC believes that eliminating potential costly requirements for these sources, in the event that such sources become unretrievable, would not impact public health and safety or the environment.

3. Section 39.77 provides the requirements for notification and procedures for abandoning irretrievable well logging sources. This section specifies that the NRC must approve implementation of abandonment procedures before abandonment. In some circumstances, such as high well pressures that could lead to fires or explosions, the delay required to notify NRC could cause an immediate threat to public health and safety. The NRC believes that this section should be modified to allow licensees to use their judgement to abandon a well immediately, without prior NRC approval, if the licensee believes a delay

could cause such a non-radiological threat. This modification would allow licensees greater procedural latitude. In the proposed rule, the language has been modified to allow licensees to notify the NRC and justify the need for an immediate abandonment after the fact.

4. Section 39.15 provides requirements for abandoning irretrievable sealed sources. The NRC believes that this section should be modified to provide performance-based criteria for inadvertent intrusion on the source. This modification would allow licensees greater procedural latitude while continuing to ensure source integrity. The current requirements may be more restrictive than is necessary to protect an abandoned source, depending upon the individual well abandonment. For example, if a significant amount of drilling equipment is abandoned with the well, the equipment itself may be effective in preventing inadvertent intrusion on the source. However, the abandoned equipment would not meet the current requirements of § 39.15. Paragraph (a)(5)(ii) of § 39.15 has prescriptive requirements for irretrievable well logging sources, specifying the use of a mechanical device to prevent inadvertent intrusion on the source, at a specific location within the abandoned well.

The NRC is proposing that licensees "prevent inadvertent intrusion on the source." This would require that the source be protected but allow licensees the flexibility to determine the best method. The proposed change would not affect the requirement in § 39.15(a)(5)(i) that a well logging source be immobilized with a cement plug or the requirement in § 39.15(a)(5)(iii) that a permanent identification plaque be mounted at the surface of the well.

5. Two changes are being proposed for § 39.41, "Design and performance criteria for sealed sources." The first would incorporate within NRC regulations an existing generic exemption for sealed sources that were manufactured before 1989 and met older standards. The second would add an optional acceptable standard by referencing oil-well logging requirements in ANSI/HPS N43.6–1997. The existing requirements would also remain as an option within this section.

The NRC issued a generic exemption from the current design and performance criteria for sealed sources in 1989. This exemption allows the use of older sealed sources which were not tested against the current criteria, but which were tested in accordance with an earlier standard used for well logging sources. This exemption is currently in practice, but is not included in 10 CFR part 39. The NRC is proposing to modify the regulations to include this existing generic exemption within 10 CFR part 39.

Sealed sources that were manufactured before July 14, 1989, may use design and performance criteria from the United States of America Standards Institute (USASI) N5.10–1968, "Classification of Sealed Radioactive Sources" or the criteria in § 39.41. The use of the USASI standard is based on an NRC Notice of Generic Exemption published on July 25, 1989 (54 FR 30883). NRC regulations have not incorporated the USASI N5.10–1968 requirements for older sealed sources. The primary difference between the USASI standard and the existing requirements is that the existing requirements includes a vibration test that is consistent with current national standards. The USASI standard considered a vibration test and concluded that, to pass the other requirements, the source would be so rugged there was no reason to include a vibration test.

The exemption allowing the use of the USASI standard was intended to avoid a situation in which well logging licensees might be unnecessarily forced out of business and have to dispose of their sources. This situation could arise because the original source manufacturers tested against the USASI standard, but did not retest these sources against the standards that became effective in 1989. The NRC determined that those sealed source models meeting the USASI standard would not adversely affect public health and safety. These sources had been used for years in operational situations and had demonstrated through actual use that vibration from drilling operations had not caused failure. The survey of licensees conducted for the RA and EA for this proposed rulemaking confirmed that these older sources have not presented a problem during actual use. Therefore, the NRC is proposing to codify within this section the existing practice to use, as an option, the USASI standards for sealed sources that were manufactured before July 14, 1989. Because many of these older sealed sources contain radioactive material with half-lives that allow their continued use (i.e., americium-241 and cesium-137 have half-lives of 458 and 30 years respectively), this modification to the regulations is appropriate.

However, a vibration test has been included in ANSI standards since 1977, and by existing NRC regulations which were promulgated in 1987. Based on survey information done for this rulemaking, it is estimated that the cost to test a source to see if it meets the vibration requirement in § 39.41 is $2,400. Only the prototype for each design requires testing. The number of prototype designs each year is small. The only survey respondent on this topic indicated that they produce, at most, one new prototype per year and they did not indicate that vibration testing is burdensome. The NRC believes that the cost for vibration testing is not overly burdensome and is consistent with (1) ANSI N542–1977, "Sealed Radioactive Sources, Classification," published by the National Bureau of Standards [(NBS) currently the National Institute of Standards and Technology] in the 1978 NBS Handbook 126 and (2) ANSI/HPS N43.6–1997, "Sealed Radioactive Sources—Classification" approved in November 1997. ANSI/HPS N43.6–1997 is the revised update to ANSI N542–1977. However, the oil-well logging requirements have not changed between the two ANSI standards and the NRC has decided to retain the current requirements for vibration testing.

The second proposed change to this section is to meet Public Law 104–113, "National Technology and Transfer Act of 1995" and Office of Management and Budget Circular A–119, "Federal Participation in the Development and Use of Voluntary Consensus Standards and in Conformity Assessment Activities." This law encourages agencies to use "voluntary consensus standards" (i.e., standards developed by a voluntary consensus body and made available to all interested parties). The existing NRC requirements are based on the older ANSI N542–1977 standard, and allow licensees flexibility in determining how to conduct testing and ensuring integrity of the source. The NRC is proposing to add an optional method of meeting the design requirements by referencing the newer, current ANSI standard (ANSI/HPS N43.6–1997) within 10 CFR part 39. Although the current NRC requirements and ANSI/HPS N43.6–1997 are quite similar, the NRC does not want to eliminate the ability to meet the existing NRC regulatory requirements; that could result in a problem similar to that experienced in 1989. That is, existing approved sealed sources might not have been tested or evaluated exactly as specified in ANSI/HPS N43.6–1997, which could result in well logging licensees having to dispose of acceptable sealed sources.

The NRC is inviting public comment on whether adding this voluntary consensus standard (ANSI/HPS N43.6–1997) to 10 CFR part 39 is appropriate

for use by manufacturers of sealed sources for use in well logging.

6. For clarity and to avoid confusion, the NRC is proposing to update § 39.49 because it contains a date that has passed and is no longer appropriate. This section would be amended to remove the obsolete date.

7. The NRC is proposing to update §§ 39.15, 39.35, and 39.41 to conform with the agency's metrification policy published on June 19, 1996 (61 FR 31169) by stating parameter values in dual units with International System of Units (SI) first and with English units in brackets.

Specific Changes in Regulatory Text

The following section is provided to assist the reader regarding the specific changes made to each section or paragraph in 10 CFR part 39. For clarity and content, a substantial portion of a particular section or paragraph may be repeated, while only a minor change is being made. This approach will allow the reader to effectively review the specific changes without cross-reference to existing material that has been included for content, but has not been significantly changed.

Section 39.2: Two new definitions are being added for ECS and tritium neutron generator target source.

Section 39.15(a)(5)(ii): This is being revised to allow a more performance-based approach to prevent inadvertent intrusion on an abandoned source.

Section 39.15(a)(5)(iii): This is being revised to meet the NRC's metrification policy.

Section 39.35(b): This is being revised to meet the NRC's metrification policy.

Section 39.35(c)(1): This essentially repeats the existing paragraph on leak testing frequency, but notes that ECSs are not included in this paragraph.

Section 39.35(c)(2): This is a new paragraph allowing a 3 year leak testing interval for ECSs.

Section 39.35(d): This is being revised to meet the NRC's metrification policy.

Section 39.35(e)(1): This is an editorial change to indicate that hydrogen-3 and tritium are the same.

Sections 39.35(e)(4) and (5): This is being revised to meet the NRC's metrification policy.

Section 39.41 has been significantly revised as described below:

Section 39.41(a): This is a new paragraph describing the applicable requirements for a sealed source which includes requirements from the existing § 39.41(a)(1) and (2).

Section 39.41(b): This is a new paragraph to allow pre-1989 sources to meet USASI standards.

Section 39.41(c): This is a new paragraph providing for the use of current ANSI standards.

Section 39.41(d): This is the existing § 39.41(a)(3).

Section 39.41(d)(1)(v): This is being revised to meet the NRC's metrification policy (the old § 39.41(a)(3)(v)).

Section 39.41(e): This is the old § 39.41(b) and is edited to be consistent with the above changes.

Section 39.41(f): This is a new paragraph clarifying that this section does not apply to ECSs.

Section 39.49: This is being revised to eliminate an obsolete date.

Section 39.53: This is a new section providing requirements for ECSs.

Section 39.55: This is a new section providing requirements for tritium neutron generator target sources.

Sections 39.77(c)(1)(i) and (ii): This is being revised to allow an option to immediately abandoning a well without receiving prior NRC approval when the licensee believes there is an immediate threat to public health and safety.

Section 39.77(d)(9): This is a new paragraph requiring the licensee to justify in writing why it was necessary to immediately abandon a well without prior NRC approval.

Compatibility of Agreement State Regulations

The compatibility of the provisions in 10 CFR part 39 have been determined in accordance with the NRC's "Statement of Principle and Policy for the Agreement State Program; Policy Statement on Adequacy and Compatibility of Agreement State Programs" that was published on September 3, 1997 (62 FR 46517). The NRC is adding definitions for an "Energy compensation source" and a "Tritium neutron generator target source" to § 39.2 and adding two new sections to 10 CFR part 39. The definitions for an ECS and a tritium neutron generator target source are assigned Compatibility Category B. The new § 39.53, *Energy compensation source,* and § 39.55, *Tritium neutron generator target source,* are assigned Compatibility Category C. The NRC is not proposing compatibility changes for those sections of 10 CFR Part 39 that are being modified. The present Compatibility Categories for the modified sections are: Section 39.41, Compatibility Category B; §§ 39.15, 39.35, 39.49, 39.77(c) and (d), Compatibility Category C.

Specific information about the NRC's Compatibility Policy and the levels of compatibility assigned to the present rule may be found at the Special Documents area of the Office of State Program's Web site, *http://www.hsrd.ornl.gov/nrc/home.html.*

Plain Language

The Presidential Memorandum dated June 1, 1998, entitled, "Plain Language in Government Writing," directed that the Federal government's writing be in plain language. The NRC requests comments on the proposed rule specifically with respect to the clarity and effectiveness of the language used. Comments should be sent to the address listed above.

Finding of No Significant Environmental Impact: Availability

The Commission has determined under the National Environmental Policy Act of 1969, as amended, and the Commission's regulations in subpart A of 10 CFR part 51, that this rule, if adopted, would not be a major Federal action significantly affecting the quality of the human environment, and therefore, an environmental impact statement is not required. The proposed rule would modify NRC regulations dealing with: (1) Low activity energy compensation sources; (2) tritium neutron generator target sources; (3) specific abandonment procedures in the event of an immediate threat; (4) changes to requirements for inadvertent intrusion on an abandoned source; (5) the codification of an existing generic exemption; (6) the removal of an obsolete date; and (7) updating 10 CFR Part 39 to be consistent with the Commission's metrification policy. The draft environmental assessment evaluated the maximum annual public health risk to members of the public as a result of these proposed changes and determined that there is no significant environmental impact as a result of the proposed changes.

The NRC has sent a copy of the environmental assessment and this proposed rule to every State Liaison Officer and requested their comments. The environmental assessment and finding of no significant impact on which this determination is based are available for inspection at the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC. Single copies of the environmental assessment and the finding of no significant impact are available from Mark Haisfield, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–6196.

Paperwork Reduction Act Statement

This proposed rule increases the burden on licensees to justify in writing

the immediate threat to public health and safety that resulted in the implementation of abandonment procedures prior to NRC approval. The burden to include the justification in the existing report required in 10 CFR 39.77(d) will increase from 4 hours to 4.25 hours per impacted report. Because the burden for this information collection requirement is insignificant, Office of Management and Budget (OMB) clearance is not required. Existing requirements were approved by the OMB, approval number 3150–0130.

Public Protection Notification

If a means used to impose an information collection does not display a currently valid OMB control number, the NRC may not conduct or sponsor, and a person is not required to respond to, the information collection.

Regulatory Analysis

The Commission has prepared a draft regulatory analysis on this proposed regulation. The analysis examines the costs and benefits of the alternatives considered by the Commission. The draft analysis is available for inspection in the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC. Single copies of the draft analysis may be obtained from Mark Haisfield, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–6196.

The Commission requests public comment on the draft regulatory analysis. Comments on the draft analysis may be submitted to the NRC as indicated under the **ADDRESSES** heading.

Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the Commission certifies that this rule, if adopted, will not have a significant economic impact upon a substantial number of small entities. All of the proposed amendments are to 10 CFR part 39 and are intended to either reduce regulatory burdens from unnecessary requirements or to clarify and update regulations to reduce confusion. Therefore, any economic impact to a small entity using 10 CFR part 39 should be either neutral or positive.

Any small entity subject to this regulation which determines that, because of its size, it is likely to bear a disproportionate adverse economic impact should notify the Commission of this in a comment that indicates the following:

(a) The licensee's size and how the proposed regulation would result in a significant economic burden upon the licensee as compared to the economic burden on a larger licensee.

(b) How the proposed regulations could be modified to take into account the licensee's differing needs or capabilities.

(c) The benefits that would accrue, or the detriments that would be avoided, if the proposed regulations were modified as suggested by the licensee.

(d) How the proposed regulation, as modified, would more closely equalize the impact of regulations or create more equal access to the benefits of Federal programs as opposed to providing special advantages to any individual or group.

(e) How the proposed regulation, as modified, would still adequately protect public health and safety.

Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR 50.109, does not apply to this proposed rule, and therefore, a backfit analysis is not required because these amendments do not involve any provisions that would impose backfits as defined in 10 CFR 50.109(a)(1).

List of Subjects in 10 CFR Part 39

Byproduct material, Criminal penalties, Nuclear material, Oil and gas exploration—well logging, Reporting and recordkeeping requirements, Scientific equipment, Security measures, Source material, Special nuclear material.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 553, the NRC is proposing to adopt the following amendments to 10 CFR part 39.

PART 39—LICENSES AND RADIATION SAFETY REQUIREMENTS FOR WELL LOGGING

1. The authority citation for part 39 continues to read as follows:

Authority: Secs. 53, 57, 62, 63, 65, 69, 81, 82, 161, 182, 183, 186, 68 Stat. 929, 930, 932, 933, 934, 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2112, 2201, 2232, 2233, 2236, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

2. Section 39.2 is amended by adding definitions, in their proper alphabetic order, of the terms *energy compensation source* and *tritium neutron generator target source* to read as follows:

§ 39.2 Definitions.

Energy compensation source (ECS) means a small sealed source, with an activity not exceeding 3.7 MBq [100 microcuries], used within a logging tool, or other tool components, to provide a reference standard to maintain the tool's calibration when in use.

* * * * *

Tritium neutron generator target source means a tritium source used within a neutron generator tube to produce neutrons for use in well logging applications.

* * * * *

3. Section 39.15 is amended by revising paragraph (a)(5)(ii) and the introductory text of paragraph (a)(5)(iii) to read as follows:

§ 39.15 Agreement with well owner or operator.

(a) * * *

(5) * * *

(ii) A means to prevent inadvertent intrusion on the source, unless the source is not accessible to any subsequent drilling operations; and

(iii) A permanent identification plaque, constructed of long lasting material such as stainless steel, brass, bronze, or monel, must be mounted at the surface of the well, unless the mounting of the plaque is not practical. The size of the plaque must be at least 17 cm [7 inches] square and 3 mm [⅛-inch] thick. The plaque must contain—

* * * * *

4. Section 39.35 is amended by revising paragraphs (b), (c), (d)(1), (e)(1), (e)(4) and (e)(5) to read as follows:

§ 39.35 Leak testing of sealed sources.

* * * * *

(b) *Method of testing.* The wipe of a sealed source must be performed using a leak test kit or method approved by the Commission or an Agreement State. The wipe sample must be taken from the nearest accessible point to the sealed source where contamination might accumulate. The wipe sample must be analyzed for radioactive contamination. The analysis must be capable of detecting the presence of 185 Bq [0.005 microcuries] of radioactive material on the test sample and must be performed by a person approved by the Commission or an Agreement State to perform the analysis.

(c) *Test frequency.* (1) Each sealed source (except an energy compensation source (ECS)) must be tested at intervals not to exceed 6 months. In the absence of a certificate from a transferor that a test has been made within the 6 months before the transfer, the sealed source may not be used until tested.

(2) Each ECS that is not exempt from testing in accordance with paragraph (e) of this section must be tested at intervals not to exceed 3 years. In the absence of a certificate from a transferor that a test has been made within the 3 years before the transfer, the ECS may not be used until tested.

(d) *Removal of leaking source from service.* (1) If the test conducted pursuant to paragraphs (a) and (b) of this section reveals the presence of 185 Bq [0.005 microcuries] or more of removable radioactive material, the licensee shall remove the sealed source from service immediately and have it decontaminated, repaired, or disposed of by an NRC or Agreement State licensee that is authorized to perform these functions. The licensee shall check the equipment associated with the leaking source for radioactive contamination and, if contaminated, have it decontaminated or disposed of by an NRC or Agreement State licensee that is authorized to perform these functions.

* * * * *

(e) * * *

(1) Hydrogen-3 (tritium) sources;

* * * * *

(4) Sources of beta- or gamma-emitting radioactive material with an activity of 3.7 MBq [100 microcuries] or less; and

(5) Sources of alpha- or neutron-emitting radioactive material with an activity of 0.37 MBq [10 microcuries] or less.

5. Section 39.41 is revised to read as follows:

§ 39.41 Design and performance criteria for sources.

(a) A licensee may use a sealed source for use in well logging applications if—

(1) The sealed source is doubly encapsulated;

(2) The sealed source contains licensed material whose chemical and physical forms are as insoluble and nondispersible as practical; and

(3) Meets the requirements of paragraph (b), (c), or (d) of this section.

(b) For a sealed source manufactured on or before July 14, 1989, a licensee may use the sealed source, for use in well logging applications if it meets the requirements of USASI N5.10–1968, "Classification of Sealed Radioactive Sources," or the requirements in paragraph (c) or (d) of this section.

(c) For a sealed source manufactured after July 14, 1989, a licensee may use the sealed source, for use in well logging applications if it meets the oil-well logging requirements of ANSI/HPS N43.6–1997, "Sealed Radioactive Sources—Classification."

(d) For a sealed source manufactured after July 14, 1989, a licensee may use the sealed source, for use in well logging applications, if—

(1) The sealed source's prototype has been tested and found to maintain its integrity after each of the following tests:

(i) *Temperature.* The test source must be held at −40° C for 20 minutes, 600° C for 1 hour, and then be subject to a thermal shock test with a temperature drop from 600° C to 20° C within 15 seconds.

(ii) *Impact test.* A 5 kg steel hammer, 2.5 cm in diameter, must be dropped from a height of 1 m onto the test source.

(iii) *Vibration test.* The test source must be subject to a vibration from 25 Hz to 500 Hz at 5 g amplitude for 30 minutes.

(iv) *Puncture test.* A 1 gram hammer and pin, 0.3 cm pin diameter, must be dropped from a height of 1 m onto the test source.

(v) *Pressure test.* The test source must be subject to an external pressure of 1.695×10^7 pascals [24,600 pounds per square inch absolute].

(e) The requirements in paragraphs (a), (b), (c), and (d) of this section do not apply to sealed sources that contain licensed material in gaseous form.

(f) The requirements in paragraphs (a), (b), (c), and (d) of this section do not apply to energy compensation sources (ECS). ECSs must be registered with the Commission under § 32.210 of this chapter or with an Agreement State.

6. Section 39.49 is revised to read as follows:

§ 39.49 Uranium sinker bars.

The licensee may use a uranium sinker bar in well logging applications only if it is legibly impressed with the words "CAUTION—RADIOACTIVE-DEPLETED URANIUM" and "NOTIFY CIVIL AUTHORITIES (or COMPANY NAME) IF FOUND."

7. Section 39.53 is added to read as follows:

§ 39.53 Energy compensation source.

The licensee may use an energy compensation source (ECS) which is contained within a logging tool, or other tool components, only if the ECS contains quantities of licensed material not exceeding 3.7 MBq (100 microcuries).

(a) For well logging applications with a surface casing for protecting fresh water aquifers, use of the ECS is only subject to the requirements of §§ 39.35, 39.37 and 39.39.

(b) For well logging applications without a surface casing for protecting fresh water aquifers, use of the ECS is only subject to the requirements of §§ 39.15, 39.35, 39.37, 39.39, 39.51, and 39.77.

8. Section 39.55 is added to read as follows:

§ 39.55 Tritium neutron generator target source.

(a) Use of a tritium neutron generator target source, containing quantities not exceeding 1,110 MBq [30 curies] and in a well with a surface casing to protect fresh water aquifers, is subject to the requirements of this part except §§ 39.15, 39.41, and 39.77.

(b) Use of a tritium neutron generator target source, containing quantities exceeding 1,110 MBq [30 curies] or in a well without a surface casing to protect fresh water aquifers, is subject to the requirements of this Part except § 39.41.

9. Section 39.77 is amended by revising paragraph (c)(1), redesignating paragraphs (d)(9) and (d)(10) as paragraphs (d)(10) and (d)(11), and adding a new paragraph (d)(9) to read as follows:

§ 39.77 Notification of incidents and lost sources; abandonment procedures for irretrievable sources.

* * * * *

(c) * * *

(1) Notify the appropriate NRC Regional Office by telephone of the circumstances that resulted in the inability to retrieve the source and—

(i) Obtain NRC approval to implement abandonment procedures; or

(ii) That the licensee implemented abandonment before receiving NRC approval because the licensee believed there was an immediate threat to public health and safety; and

* * * * *

(d) * * *

(9) The immediate threat to public health and safety justification for implementing abandonment if prior NRC approval was not obtained in accordance with paragraph (c)(1)(ii) of this section;

* * * * *

Dated at Rockville, MD., this 31st day of March, 1999.

For the Nuclear Regulatory Commission.

Frank J. Miraglia, Jr.,

Acting Executive Director for Operations.

[FR Doc. 99–9746 Filed 4–16–99; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–ANE–51–AD]

Airworthiness Directives; AlliedSignal Inc. TFE731 Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to revise an existing airworthiness directive (AD), applicable to AlliedSignal Inc. TFE731 series turbofan engines, that currently requires the installation of an improved flexible (flex) fuel tube. This action would clarify that installation of the improved flex fuel tube and that the use of a clamp on the original rigid fuel tube are optional for engines installed on Learjet 35, 36, and 55 series airplanes. This proposal is prompted by confusion from operators regarding the applicability of these Learjet engine installations. The actions specified by the proposed AD are intended to prevent cracking of the fuel tube and the subsequent leakage of fuel on or around electrical components, which can cause an engine fire.

DATES: Comments must be received by May 19, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 97–ANE–51–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may also be sent via the Internet using the following address: "9-ad-engineprop@faa.gov." Comments sent via the Internet must contain the docket number in the subject line. Comments may be inspected at this location between 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from AlliedSignal Aerospace, Attn: Data Distribution, M/S 64–3/2101–201, P.O. Box 29003, Phoenix, AZ 85038–9003; telephone (602) 365–2493, fax (602) 365–5577. This information may be examined at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Joseph Costa, Aerospace Engineer, Los Angeles Aircraft Certification Office, FAA, Transport Airplane Directorate, 3960 Paramount Blvd., Lakewood, CA 90712; telephone (562) 627–5246, fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 97–ANE–51–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRM's

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 97–ANE–51–AD, 12 New England Executive Park, Burlington, MA 01803–5299.

Discussion

On August 3, 1998, the Federal Aviation Administration (FAA) issued AD 98–17–01, Amendment 39–10703 (63 FR 42691, August 11, 1998), to require installation of an improved flexible (flex) fuel tube. That action was prompted by reports of fuel leaks from a cracked fuel tube in engines that have already installed a clamp assembly in accordance with a superseded AD. That condition, if not corrected, could result in cracking of the fuel tube and the subsequent leakage of fuel on or around electrical components, which can cause an engine fire.

Since the issuance of that AD, the FAA has received reports from operators expressing confusion as to the applicability of engines installed on Learjet 35, 36, and 55 series airplanes. That AD did not affect the AlliedSignal engine Model TFE731–2–2B and engine series TFE731–3A and –3AR installed on Learjet Models 35, 36, and 55 because starter generators are not used on these airplanes. In addition, for this application, there have been no reported fuel line failures.

The FAA has reviewed and approved the technical contents of AlliedSignal Inc. Alert Service Bulletin (ASB) No. TFE731–A73–3128, dated February 26, 1997, and AlliedSignal Inc. ASB No. TFE731–A73–3132, dated April 9, 1997, that describe procedures for installing an improved flex fuel tube, and AlliedSignal Inc. SB No. TFE731–73–3107, Revision 4, dated April 20, 1994, that describes procedures for installing a clamp assembly on the rigid fuel tube.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would revise AD 98–17–01 to clarify that the installation of the improved flex fuel tube and the use of a clamp on the original rigid fuel tube are optional for engines installed on Learjet 35, 36, and 55 series airplanes.

As this revision is merely a clarification, there would be no additional economic impact on operators. In addition, this revision corrects the docket number for this AD, which appears as "98–ANE–36–AD" in the current AD. The correct docket number for this AD is "97–ANE–51–AD."

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this

action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39–10703 (63 FR 42691, August 11, 1998), and by adding a new airworthiness directive, to read as follows:

AlliedSignal Inc.: Docket 97–ANE–51–AD. Revises AD 98–17–01, Amendment 39–10703.

Applicability: AlliedSignal Inc. (formerly Allied-Signal Aerospace Company, Garrett Engine Division and Garrett Turbine Engine Co.) TFE731–2, –3, and –4 series turbofan engines with fuel tubes, part numbers (P/Ns) 3071051–1, 3073729–1, or 3072886–1, installed. These engines are installed on but not limited to the following airplanes: Avions Marcel Dassault Falcon 10, 50, and 100 series; Cessna Model 650, Citation III, VI, and VII; Learjet 31 (M31) 35, 36 and 55 series, Raytheon British Aerospace HS–125 series; and Sabreliner NA–265–65.

Note 1: This airworthiness directive (AD) applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent cracked fuel tubes and the subsequent leakage of fuel on and around electrical components, which can cause an engine fire, accomplish the following:

(a) Except for engines installed on Learjet 35, 36, and 55 airplanes, within 160 hours time in service (TIS) after the effective date of this AD, or prior to December 20, 1999, whichever occurs first, install an improved flexible fuel tube, as follows:

(1) For engines installed on Cessna airplanes, install in accordance with the Accomplishment Instructions of AlliedSignal Inc. Alert Service Bulletin (ASB) No. TFE731–A73–3132, dated April 9, 1997.

(2) For engines installed on all other airplanes except for the Learjet 35, 36 and 55 series, install in accordance with the Accomplishment Instructions of AlliedSignal Inc. ASB No. TFE731–A73–3128, dated February 26, 1997.

(b) For engines installed on Learjet 35, 36, and 55, the improved flex tube and the clamp assembly installed on the original rigid fuel tube are optional. If the clamp assembly is used, install the clamp assembly in accordance with the Accomplishment Instructions of AlliedSignal Inc. SB No. TFE731–73–3107, Revision 4, dated April 20, 1994.

(c) An alternative method of compliance or adjustment of the initial compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles Aircraft Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles Aircraft Certification Office.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Burlington, Massachusetts, on April 12, 1999.

Ronald L. Vavruska,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 99–9657 Filed 4–16–99; 8:45 am]

BILLING CODE 4910–13–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL–6324–5]

Project XL Site-Specific Rulemaking for Andersen Corporation's Facility in Bayport, Minnesota

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule; request for comments on draft final project agreement.

SUMMARY: The Environmental Protection Agency ("EPA") is proposing to implement a project under the Project XL program for the Andersen Corporation ("Andersen") facility located in Bayport, Minnesota. The terms of the project are defined in a draft Final Project Agreement ("FPA") which is being made available for public review and comment by this document. In addition, EPA is proposing a site-specific rule, applicable only to the Andersen Bayport facility, to facilitate implementation of the project. By this document, EPA solicits comment on the proposed rule, the draft FPA, and the project generally.

This proposed site-specific rule is intended to provide regulatory changes under the Clean Air Act ("CAA" or the "Act") to implement Andersen's XL project, which will result in superior environmental performance and, at the same time, provide Andersen with greater operational flexibility. The proposed site-specific rule would change some of the CAA requirements which apply to the Andersen Bayport facility for the Prevention of Significant Deterioration ("PSD") program, in particular existing synthetic minor limits that apply to some VOC sources in the Bayport facility. "Synthetic minor" limits are operational and control limitations which serve to limit the net emissions increase associated with proposed new or modified units or systems to less than the applicable significance level and thereby keep them out of PSD review.

DATES: *Comments.* All public comments must be received on or before May 19, 1999. If a public hearing is held, the public comment period would remain open until June 3, 1999

Public Hearing. A public hearing will be held, if requested, to provide interested persons an opportunity for oral presentation of data, views, or arguments concerning this proposed rule to implement Andersen's XL project. If anyone contacts the EPA requesting to speak at a public hearing by April 29, 1999, a public hearing will be held on May 3, 1999. Additional information is provided in the section entitled **ADDRESSES**.

Request to Speak at Hearing. Persons wishing to present oral testimony must contact Ms. Rachel Rineheart at the EPA by April 29, 1999. Additional information is provided in the section entitled **ADDRESSES**.

ADDRESSES: *Comments.* Written comments should be submitted in duplicate to: Ms. Rachel Rineheart, U.S. Environmental Protection Agency, Region 5, Air and Radiation Division, 77

West Jackson Boulevard (AR–18J), Chicago, IL, 60604–3590.

Docket. A docket containing supporting information used in developing this proposed rulemaking is available for public inspection and copying at U.S. EPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604–3590, (312) 886–7017, 8:30 am–4:30 pm business days, and U.S. EPA, 401 M Street, SW, Room 3802, Washington, D.C. 20460, (202) 260–2601, during normal business hours, and at the Bayport Public Library, 582 North Fourth Street, Bayport, Minnesota 55003, (651) 439–7454. A reasonable fee may by charged for copying.

Public Hearing. If a public hearing is held, it will be held in Bayport, Minnesota. Persons interested in attending the hearing should contact Ms. Rachel Rineheart at (312) 886–7017 to verify that a hearing will be held.

FOR FURTHER INFORMATION CONTACT: Ms. Rachel Rineheart, U.S. Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard (AR–18J), Chicago, IL 60604–3590, (312) 886–7017.

SUPPLEMENTARY INFORMATION:

Outline of This Document

I. Authority
II. Background
A. Overview of Project XL
B. Overview of the Andersen XL Project
1. Introduction
2. Andersen XL Project Description
a. Background
b. Project Details
3. Environmental Benefits
4. Stakeholder Involvement
III. Clean Air Act Requirements
A. Summary of Regulatory Requirements for the Andersen XL Project
B. Prevention of Significant Deterioration
C. Proposed Regulatory Changes
1. Synthetic Minor Limits
2. Duration
3. Duration of Flexibility
4. Summary
IV. Additional Information
A. Public Hearing
B. Executive Order 12866
C. Regulatory Flexibility
D. Paperwork Reduction Act
E. Unfunded Mandates Reform Act
F. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks
G. Executive Order 12875: Enhancing Intergovernmental Partnerships
H. Executive Order 13084: Consultation and Coordination with Indian Tribal Governments
I. National Technology Transfer and Advancement Act

I. Authority

This regulation is being proposed under the authority of sections 101(b)(1), 110, 111, 161–169, and 301(a)(1) of the CAA. EPA has determined that this rulemaking is subject to the provisions of section 307(d) of the CAA.

II. Background

A. Overview of Project XL

This proposed site-specific regulation will implement a project developed under Project XL, an EPA initiative to allow regulated entities to achieve better environmental results at less cost. Project XL—"eXcellence and Leadership"—was announced on March 16, 1995, as a central part of the National Performance Review and the EPA's effort to reinvent environmental protection. See 60 FR 27282 (May 23, 1995). Project XL provides a limited number of private and public regulated entities an opportunity to develop their own pilot projects to provide regulatory flexibility that will result in environmental protection that is superior to what would be achieved through compliance with current and reasonably anticipated future regulations. These efforts are crucial to the Agency's ability to test new regulatory strategies that reduce regulatory burden and promote economic growth while achieving better environmental and public health protection. The Agency intends to evaluate the results of this and other Project XL projects to determine which specific elements of the project(s), if any, should be more broadly applied to other regulated entities for the benefit of both the economy and the environment.

Under Project XL, participants in four categories—facilities, industry sectors, governmental agencies and communities—are offered the flexibility to develop common sense, cost-effective strategies that will replace or modify specific regulatory requirements, on the condition that they produce and demonstrate superior environmental performance. To participate in Project XL, applicants must develop alternative pollution reduction strategies pursuant to eight criteria: superior environmental performance; cost savings and paperwork reduction; local stakeholder involvement and support; test of an innovative strategy; transferability; feasibility; identification of monitoring, reporting and evaluation methods; and avoidance of shifting risk burden. They must have full support of affected Federal, state and tribal agencies to be selected. For more information about the XL criteria, readers should refer to the two descriptive documents published in the **Federal Register** (60 FR 27282, May 23, 1995 and 62 FR 19872, April 23, 1997), and the December 1, 1995 "Principles for Development of Project XL Final Project Agreements" document.

The XL program is intended to allow the EPA to experiment with untried, potentially promising regulatory approaches, both to assess whether they provide benefits at the specific facility affected, and whether they should be considered for wider application. Such pilot projects allow the EPA to proceed more quickly than would be possible when undertaking changes on a nationwide basis. As part of this experimentation, the EPA may try out approaches or legal interpretations that depart from or are even inconsistent with longstanding Agency practice, so long as those interpretations are within the broad range of discretion enjoyed by the Agency in interpreting statutes that it implements. The EPA may also modify rules, on a site-specific basis, that represent one of several possible policy approaches within a more general statutory directive, so long as the alternative being used is permissible under the statute.

Adoption of such alternative approaches or interpretations in the context of a given XL project does not, however, signal the EPA's willingness to adopt that interpretation as a general matter, or even in the context of other XL projects. It would be inconsistent with the forward-looking nature of these pilot projects to adopt such innovative approaches prematurely on a widespread basis without first determining whether or not they are viable in practice and successful in the particular projects that embody them. Furthermore, as EPA indicated in announcing the XL program, the Agency expects to adopt only a limited number of carefully selected projects. These pilot projects are not intended to be a means for piecemeal revision of entire programs. Depending on the results in these projects, EPA may or may not be willing to consider adopting the alternative interpretation again, either generally or for other specific facilities.

The EPA believes that adopting alternative policy approaches and interpretations, on a limited, site-specific basis and in connection with a carefully selected pilot project, is consistent with the expectations of Congress about EPA's role in implementing the environmental statutes (so long as the Agency acts within the discretion allowed by the statute). Congress' recognition that there is a need for experimentation and research, as well as ongoing re-evaluation of environmental programs, is reflected in a variety of statutory

provisions, such as sections 101(b) and 103 of the CAA.

B. Overview of the Andersen XL Project

1. Introduction

This proposed site-specific rule will facilitate issuance of a consolidated permit which will contain Federal and State permits as outlined in the Andersen Windows Project XL draft FPA. The draft FPA was developed by the Andersen Community Advisory Committee ("CAC"), Andersen, the Minnesota Pollution Control Agency ("MPCA"), Washington County, and the EPA. The draft FPA is available for review in the docket for today's action and also is available on the world wide web at http://www.epa.gov/projectxl. The draft FPA outlines how the project addresses the eight Project XL criteria, in particular how the project will produce, measure, monitor, report, and demonstrate superior environmental benefits. In today's action, the Agency is soliciting comment on proposed site-specific regulatory changes to implement the project.

The draft FPA contemplates issuance of a consolidated permit which will contain Federal and State permits for Andersen's Bayport facility, which MPCA would issue subsequent to the promulgation of a final rule. The Andersen XL consolidated permit would be composed of a minor new source review permit under the Minnesota State Implementation Plan ("SIP"), a Title V permit under the Minnesota Title V program approved under 40 CFR part 70, and a PSD permit under 40 CFR 52.21, as proposed to be modified and made applicable to Andersen at 40 CFR 52.1246. Any such consolidated permit would be issued in accordance with applicable public notice and comment, and administrative appeal and petition provisions. In issuing a PSD permit, MPCA will be acting as EPA's delegatee in accordance with 40 CFR 52.21(u) and 40 CFR part 124. EPA will send direct and timely notification of the public comment period for the Andersen XL permit to any person who either comments on this proposed rule, the draft FPA, or otherwise requests such notice.

EPA also seeks comment on the draft FPA (which is available on the world wide web, in the docket file for today's action, and upon request) in light of the criteria outlined in the Agency's May 23, 1995, **Federal Register** document (60 FR 27282) regarding Regulatory Reinvention (XL) Pilot Projects. Those criteria are: (1) environmental performance superior to what would be achieved through compliance with current and reasonably anticipated future regulations; (2) cost savings or economic opportunity, and/or decreased paperwork burden; (3) stakeholder support; (4) test of innovative strategies for achieving environmental results; (5) approaches that could be evaluated for future broader application; (6) technical and administrative feasibility; (7) mechanisms for monitoring, reporting, and evaluation; and (8) consistency with Executive Order 12898 on Environmental Justice (avoidance of shifting of risk burden).

2. Andersen XL Project Description

a. Background. The Andersen Corporation is a leading manufacturer of durable, energy efficient, high performance clad wood windows and patio doors. Andersen's main manufacturing plant is at 100 Fourth Avenue North in Bayport, Minnesota (Fourth Avenue Site), along the St. Croix River, a federally designated "Wild and Scenic River," which forms the border between Minnesota and Wisconsin.

Operating in the St. Croix Valley since 1903, Andersen has demonstrated a long-term ethic of stewardship. This ethic is reinforced by the high level of environmental performance of the current Andersen operations. Andersen employs approximately 3,000 people at its Fourth Avenue Site. Existing Fourth Avenue Site manufacturing facilities are located on 110 acres, consisting of 78 buildings, most of which are interconnected. Manufacturing and related processes at Andersen include wood cutting and milling, wood preservative application, painting, vinyl processing, adhesive operations, by-product transfer, wood-fired boilers, assembly operations, technology development, production support and maintenance functions.

The Andersen West Site is located at 4001 Stagecoach Road North, on the western boundary of Bayport. The Andersen West Site is located approximately one mile West of the Fourth Avenue Site and is intended, in part, to be a support operation for the Fourth Avenue Site. The property was purchased by Andersen in 1994 to provide expansion space for its various operations. The site is 245 acres in total size. Of that acreage, approximately 150 acres are suitable for development. The remaining acreage not able to be developed includes a wetland, a bluffland tract that the Company has placed in a conservation easement, and 3 probable Native American Burial sites. A site suitability study is currently underway to identify the best possible use(s) for the site.

Except as specifically described in this proposed rule and the draft FPA, nothing in this proposed rule, draft FPA, or the Andersen XL permits will waive, modify, or otherwise affect any obligations Andersen may have under local, State, and Federal law with respect to development of the Andersen West property.

b. Project Details. Andersen plans to expand its production capacity for window components made using its special Fibrex™ technology, which is a combination of reclaimed sawdust and vinyl that can be extruded into a variety of shapes without the need for extensive milling or preservation treatment. In addition, Andersen plans to expand the use of its waterborne treatment processes. Both of these processes result in substantially fewer VOC emissions per unit than traditional solvent-based wood treatment. To expedite this expansion, Minnesota and EPA plan to allow Andersen to modify and add VOC and milling and non-milling PM/PM_{10} sources without additional PSD approvals and eliminate certain existing VOC synthetic minor limits. Today's proposed rule would authorize, only within the context of the Andersen XL project, the elimination of certain VOC synthetic minor limits and establish a ten year contemporaneous period for VOC and non-milling PM/PM_{10} emissions for the purpose of determining net emission increases under the PSD program. All other elements of the project will be incorporated in Andersen's XL permit without the need for any change in applicable requirements.

The cornerstone of this project is the creation of a novel performance ratio approach to the regulation of VOCs which limits VOC emissions per unit of production. This approach, which could not be imposed under existing law, is intended to "lock-in" existing efficient manufacturing methods and processes while encouraging continued improvement.

On a per period basis (13 periods per year) Andersen will calculate the ratio of pounds VOC emitted per cubic foot of product shipped (performance ratio) for the preceding 13 periods. That calculation will be compared to the following series of tiered limits established as part of this project:

CAC Limit—The CAC limit shall serve as the main limit for evaluating Andersen's ongoing environmental performance. The CAC limit is the average of the prior five years' performance ratios. The CAC limit will be recalculated once every three years, will decline if appropriate, but will increase only if the CAC approves the

change, with the concurrence of EPA and MPCA. If Andersen's annual performance ratio exceeds the CAC limit, Andersen will be required to provide a specific explanation of the exceedance to the CAC as well as establish a CAC—approved corrective action plan to bring the performance ratio back below the limit.

Enforcement Limit—A static enforcement limit for the ten-year duration of the project will be established utilizing the initial CAC limit plus two standard deviations. If the facility's annual performance ratio exceeds the enforcement limit the company would potentially be subject to the enforcement actions that are available under current law.

Project Limit—The adjusting project limit will be set at two standard deviations above the CAC limit. It will be the same as the enforcement limit for the initial three-year period, but will be adjusted at the same time as the CAC limit. The project limit will never exceed the enforcement limit. If Andersen's performance ratio exceeds the project limit (but is below the enforcement limit) the project will end unless Andersen demonstrates to the satisfaction of the CAC, EPA, and MPCA, each acting in its independent capacity, why the project should continue.

Reward Limit—The reward limit will be set at two standard deviations below the CAC limit. The reward limit will not increase and will only decline if Andersen remains below it for three consecutive years. The CAC limit could never go below the reward limit. If the facility operates below the reward limit, it will potentially receive rewards, depending upon the duration of reward performance, such as formal recognition by U.S. EPA and MPCA, addition of Mini-Projects (to be accomplished in accordance with the Section VI amendment provision of the FPA, including any applicable public notice and comment requirements), and extension of the Project duration which would be treated as a modification of Andersen's XL Permit and be subject to applicable rulemaking and permitting requirements.

Beyond the performance ratio, Andersen will accept enforceable caps on VOC emissions at its Bayport facility and an enforceable cap on non-milling PM/PM10 emissions. In exchange for accepting these caps, as well as making the other project commitments discussed in this section, Andersen will gain greater flexibility to make facility modifications . This is especially important to a company such as Andersen that is subject to fast-changing market conditions. Through greater flexibility, Andersen will be able to quickly change its processes based on changes in demand for its products.

Andersen's Title V permit, which will be included in the Minnesota XL permit, will contain provisions approving in advance some changes anticipated at the facility. An example of possible permit provision for a pre-approved change is included in Attachment D to the FPA. Any such provision will include sufficiently detailed descriptions of the preauthorized changes for compliance purposes and to give the public sufficient notice of the types of changes that will be authorized. The descriptions will also identify all applicable requirements that would apply to the proposed change, including requirements for periodic monitoring and recordkeeping. Pre-approving changes will provide Andersen with the advantage of being able to make modifications without delay and respond to the fast-paced market conditions in the construction industry. This privilege is subject to conditions that will ensure that Andersen's facility modifications are documented for purposes of Agency oversight and public accountability, and will result in superior environmental performance.

In addition, Andersen will control all wood milling operations with BACT baghouse units and monitor HAPs to ensure that they remain below risk-based levels. Andersen will commit that new paint and preservative processes will be at least as clean as their best performing existing processes. If sufficient Fibrex and waterborne capacity exists, Andersen will remove one of its two dip tanks within five years of the project start.

Andersen is making a voluntary commitment to reduce its generation of solid and hazardous waste. Minnesota plans to provide Andersen with flexibility from State requirements relating to decommissioning and disposal of certain process units. Andersen is committing to enhance its existing groundwater remediation system.

3. Environmental Benefits

One of the primary purposes of this project is to allow Andersen to continue to convert production of window and door components to more environmentally efficient processes, such as extrusion of Fibrex composite window components (versus milled and preservative treated wood components), waterborne preservative treatment (versus solvent based preservative treatment), and higher solids paint coatings. These types of processes result in fewer VOC emissions per unit of production than traditional solvent-based processes.

The Fibrex process, as compared to conventional wood milling and preservation treatment processes, is environmentally beneficial for several reasons. First, it reduces dependence on virgin wood materials because it allows for the use of wood byproduct materials, rather than the use of virgin wood. Second, the Fibrex process requires no wood preservation treatment. Wood preservation treatment accounts for a substantial amount of VOC air emissions from the Andersen facility. Thus, expansion of the Fibrex process within Andersen's Bayport facility will result in substantial reductions in the emissions of Volatile Organic Compounds ("VOCs") per unit of production. Refer to Table 1 for a comparison of air emissions for the traditional vinyl clad wood parts versus Fibrex composite produced parts.

TABLE 1.—AIR EMISSIONS COMPARISON: VINYL CLAD WOOD TO FIBREX COMPOSITE

[Based on 1,000,000 standard size window pieces]

Type of emission	Vinyl-clad profile air emissions (tons)	Fibrex profile air emissions (tons)
VOC	96.2	5.6
PM/PM_{10}	0.69	1.88
HAP	0.19	0.03

In an effort to move away from solvent based wood preservation treatment processes, Andersen worked with suppliers to develop water-borne wood preservative formulations that provide the same product performance as their solvent-based predecessors. The VOC content of water-borne formulations is typically 10–30% that of the traditional solvent based formulations. Since 1990, Andersen has converted or installed 12 waterborne preservative wood treatment systems to replace older solvent-based preservative processes. Greater than 50% of the wood window and door frame components are now preserved with a waterborne wood preservative formulation, which has reduced VOC emissions by over 350 tons annually. This agreement will facilitate increased use of existing waterborne wood treatment systems by removing certain synthetic minor limits which restrict use of those systems and the installation of additional waterborne wood treatment systems, as well as the

possible phase-out of one of two of the company's remaining solvent based wood preservation diptanks. Refer to Table 2 for a comparison of air emissions per unit of production from traditional solvent based wood preservation processes versus waterborne processes.

TABLE 2.—AIR EMISSIONS COMPARISON: SOLVENT-BASED TO WATERBORNE WOOD TREATMENT

[(Based on 1,000,000 standard size window pieces]

Type of emission	Solvent-based wood treatment air emissions (tons)	Waterborne wood treatment air emissions (tons)
VOC	87.0	13.3
HAP	0.16	0

Andersen window components manufactured from Fibrex composite offer performance characteristics similar to the existing vinyl-clad wood components. Currently, Andersen is using Fibrex composite technology in their Renewal™ replacement window product line and has introduced Fibrex composite components into some core product lines. This Project XL agreement facilitates further expansion of Fibrex composite production.

Fibrex composite creates a high value usage of certain Andersen byproduct materials, and is itself completely recyclable into new Fibrex composite components, thus completing a product stewardship circle of Fibrex composite to Fibrex composite.

Andersen's conversion from VOC based processes to Fibrex and waterborne preservation processes is, in part, limited by market acceptance of Fibrex. The flexibility provided in this Project XL pilot will allow Andersen to quickly react to increases in market demand or to install additional waterborne preservation processes, whichever may be most appropriate. In addition, removing the VOC synthetic minor limits on the existing waterborne preservation processes will allow Andersen to maximize use of those environmentally superior processes while limiting the use of existing VOC-based preservation processes.

4. Stakeholder Involvement

Stakeholder involvement and participation is vital to the success of the Andersen Project XL program. Andersen will continue to work with the CAC which was established in December 1997. The CAC serves as the primary contact with the community and other stakeholder groups, conveying concerns to the community and forging an accountability link between the community and the company.

In addition, the CAC will serve in an oversight role. For example, if Andersen's annual performance ratio exceeds the CAC limit, Andersen will be required to provide a specific explanation of the exceedance to the CAC as well as establish a CAC—approved corrective action plan to bring the performance ratio back below the limit.

The work of the CAC is based on the Stakeholder Involvement Plan, which is included as an attachment to the draft FPA. Andersen will continue outreach work with all Stakeholders using the strategies and tactics contained in the plan. Andersen will also continue to be responsive to community inquiries on operational matters including traffic, noise and odor.

III. Clean Air Act Requirements

A. Summary of Regulatory Requirements for the Andersen XL Project

Implementation of the Andersen Project XL pilot requires only limited regulatory changes. Specifically, Andersen's use of its waterborne inline wood treatment systems is currently restricted by certain VOC "synthetic minor" limits. The PSD program for the State of Minnesota would prohibit relaxation of permit operating restrictions which were established for the purpose of limiting potential to emit without first meeting the requirements of the PSD program, which includes the installation of Best Available Control Technology (BACT) and an air quality impacts analysis. For the reasons discussed in this preamble, EPA proposes to allow relaxation of certain VOC "synthetic minor" limits as a part of the Andersen Project XL pilot.

In addition, the PSD program for the State of Minnesota would limit the effectiveness of a plantwide applicability limit (PAL), referred to as an emissions cap in the FPA, to 5 years. As described in the FPA, the expected duration of the Andersen XL project, including the VOC and non-milling PM/PM_{10} PALs, is 10 years. As explained below (Section III.B.), EPA proposes to allow establishment of VOC and non-milling PM/PM_{10} PALs for Andersen, which would be effective in avoiding PSD for a 10 year period.

All other elements of the Andersen Project XL pilot, including the ability to add or modify sources so long as emissions remain below the VOC and non-milling PM/PM_{10} PALs which will be set at levels to assure that no significant net emission increase will occur, would not require regulatory amendments. The regulatory changes under this proposed site-specific rule address only VOC and PM/PM_{10} emissions including the length of the contemporaneous period used to determine the VOC and PM/PM_{10} PALs. Andersen will fully comply with normally applicable regulations for all other pollutants. In addition, Andersen will fully comply with provisions of any New Source Performance Standards, the State Implementation Plan, including minor New Source Review ("NSR"), and the Title V operating permit program, that apply to its operations, and with all requirements for the control of hazardous air pollutants (HAPs), including any Maximum Achievable Control Technology standards that would apply to the facility. Andersen will also comply with all existing and future environmental requirements not specifically amended pursuant to EPA's site-specific rulemaking for this project or pursuant to the permits expected to be issued by the MPCA.

While the draft FPA outlines the requirements that will be included in the State of Minnesota XL permit (which will include the PSD permit), a draft of that permit and the accompanying modeling and analysis required by section 165 of the CAA have not been completed. Therefore, a determination of whether the draft permit satisfies the statutory PSD permitting criteria in section 165(a) of the Act will be deferred until such time as the draft permit is made available for public notice and comment. Because many of the details of the Andersen Project XL pilot will necessarily be deferred until issuance of the draft permit and in order to enhance participation in the Project XL process, EPA will compile a list of persons wishing to receive direct notice of the availability of the draft permit for review. Persons desiring such notice may now submit a written request to EPA at the address in the section entitled **ADDRESSES.**

Once the public comment period on this proposed rule has closed, EPA will review any comments received and determine in consultation with Andersen, MPCA, and stakeholders whether to proceed to development of the draft permit and whether any changes are necessary to the draft FPA. In any event, EPA does not intend to take final action on this proposed rule until such time as the draft permit has been public noticed and any comments are available for consideration in this rulemaking.

B. Prevention of Significant Deterioration

As explained above, a determination of whether the draft Andersen PSD permit meets the PSD requirements of the Act will be deferred to such time as the draft permit is available for public review and comment. However, for the purposes of this proposed rule which would modify certain requirements of the PSD program, a brief description of the PSD requirements may be useful to reviewers.

The PSD program is a preconstruction review and permitting program applicable to new or modified major stationary sources of air pollutants regulated under the Act. In attainment areas (i.e., areas meeting the National Ambient Air Quality Standards ("NAAQS")) and unclassifable areas, the requirements for the PSD program found in part C of title I of the Act apply. The PSD provisions are a combination of air quality planning and air pollution control technology program requirements. Each SIP is required to contain a preconstruction review program for the construction and modification of any major stationary source of air pollution to assure that the NAAQS are achieved and maintained; to protect areas of clean air; to protect Air Quality Related Values ("AQRVs") (including visibility) in national parks and other natural areas of concern; to assure appropriate emission controls are applied; to maximize opportunities for economic development consistent with the preservation of clean air resource; and to ensure that any decision to increase air pollution is made only after full public consideration of all the consequences of such a decision. See sections 101(b)(1), 110(a)(2)(C) and 160 of the Act. The Andersen Bayport facility is located in an area that meets the NAAQS for all criteria air pollutants except carbon monoxide (CO). The PSD program under part C of title I of the Act applies to those criteria air pollutants other than carbon monoxide (attainment area) while the major non-attainment NSR program under part D of title I of the Act applies to carbon monoxide.

Because the SIP for the State of Minnesota did not meet the PSD requirements of section 160–165 of the Act, EPA promulgated a PSD program for the State by incorporating by reference the provisions of 40 CFR 52.21(b) through (w) into the applicable state plan for the State of Minnesota (*see* 40 CFR 52.1234). In addition, EPA delegated authority to the MPCA as the PSD permitting agency in Minnesota. Therefore, MPCA will, with EPA oversight, draft, accept public comment on, and issue any Andersen PSD permit, subject to procedural requirements in 40 CFR 52.21 and 40 CFR part 124.

C. Proposed Regulatory Changes

1. Synthetic Minor Limits

During the period from 1990 to 1995, Andersen developed and installed 12 waterborne inline wood treatment systems and, within the door subplant, three solventborne paint systems. In order to avoid PSD review, Andersen obtained two minor new source review permits from MPCA containing operational and control limitations on each of these systems. These limitations are sometimes called "synthetic minor" limits because they serve to limit the net emissions increase associated with the proposed new units or systems to less than the applicable significance level and thereby keep them out of PSD review. As part of the Andersen Project XL pilot, Andersen seeks to replace certain synthetic minor VOC limits with the tiered per unit of production limits and the VOC PAL, as well as all the other aspects of the project described in the draft FPA.

In order to meet the goals embodied in the tiered per unit of production limits, Andersen needs to utilize its waterborne inline wood treatment systems at a capacity level higher than presently allowed under the synthetic minor limits. Accordingly, Andersen seeks relief from the synthetic VOC operational limits on its waterborne inline wood treatment systems. Andersen's existing waterborne systems are superior in terms of VOC emissions per unit of production as compared to the solvent-based systems (see Table 2).

Andersen also needs to fully utilize the three solventborne paint systems within the door subplant, which are subject to both operational and control limits (a catalytic oxidizer). According to information provided by Andersen, assuming the catalytic oxidizer is in use, the door plant paint lines emit approximately 1.6 pounds of VOCs for each gallon of combined coatings applied. Other paint lines, which are not subject to synthetic minor limits, emit approximately 4.5 pounds of VOCs for each gallon of combined coatings applied. So, with respect to use limits, the door subplant paint lines are lower emitting than Andersen's other paint lines.

Under its existing permits, Andersen is required to control VOC emissions from the door subplant paint lines by operating a catalytic oxidizer. Andersen requests that it be allowed to shut the catalytic oxidizer off so long as it is able to maintain compliance with the VOC PAL and per unit of production limits. Andersen believes that beyond any cost savings, this would give them the flexibility to use the catalytic oxidizer to more effectively control VOCs elsewhere in the facility or to address community concerns about odors, which may or may not be associated with use of the catalytic oxidizer.

Andersen has explained that in order to maintain compliance with the per unit of production limit it will need to reduce VOC emissions on a per unit basis prior to shutting down the catalytic oxidizer. For example, Andersen intends to convert the solvent based preservative application systems, which account for approximately sixty percent of VOC emissions from the door plant paint lines, to in-line waterborne treatment systems. Still, Andersen believes that it will have to further reduce VOC emissions from other sources within the facility prior to shutting down the catalytic oxidizer.

EPA believes that under the following permit and FPA conditions, Andersen may be allowed to shut down the catalytic oxidizer:

(1) Andersen must obtain MPCA's approval prior to shutting down the catalytic oxidizer by demonstrating that:

(a) in accordance with the MPCA Health Risk Assessment described in section II.D.1.e. of the FPA, shut down of the catalytic oxydizer will not present an unacceptable risk to public health;

(b) Andersen's overall reduction of VOC emissions on a per unit basis is sufficient to ensure continued compliance with the per unit of production limit and the VOC cap; and

(c) the CAC has agreed to the shut down of the oxidizer.

(2) Once the oxidizer is shut down, Andersen may use it to control VOC emissions elsewhere at the facility, leave it in place and available for use on door plant paint line emissions, or, with MPCA approval, dismantle it. If Andersen elects to dismantle the oxidizer, it does so with the express understanding that it may be required to reinstall the oxidizer or other appropriate control equipment if necessary to comply with project emission limits during the project term or applicable emission limits at the end of the project term. In addition, costs associated with retrofitting or installing an oxidizer, if necessary, will not be factors in determining whether an oxidizer is appropriate or required.

(3) Cost savings associated with shutting down the oxidizer must be shown to be reinvested in VOC emission reduction projects.

The applicable PSD regulations would not allow Andersen to relax the

synthetic minor limits, unless Andersen subjected the systems to PSD review. (*See* 40 CFR 52.21(r)(4), which has been incorporated into the Minnesota SIP at 40 CFR 52.1234(b)). When a source or modification that is minor because of enforceable operating limits later applies for a relaxation of those limits, 52.21(r)(4) requires that PSD apply to the source or modification as if the source or modification had not yet been constructed.

The primary purpose of 52.21(r)(4) is to prevent a source from circumventing PSD and NSR permitting requirements by obtaining a synthetic minor limit for a new or modified emission unit and thereafter seeking to relax the limit, without undergoing PSD review. *See* 45 FR 52676, 52689 (Aug. 7, 1980). The provision is a broadly designed safeguard to prevent sources from improperly disaggregating a major modification into two separate parts—an initial synthetic minor modification and a subsequent relaxation of the synthetic minor limit—neither of which would be subject to PSD.

EPA believes it has broad discretion to tailor the safeguard embodied in section 52.21(r)(4) based on relevant factors. Specifically, the Andersen XL project will contain several distinctive features which assure EPA that Andersen is not circumventing the PSD requirements. In this context, EPA believes it may eliminate the section 52.21(r)(4) safeguard, as it applies to certain synthetic minor VOC limits at the Andersen facility. First, Andersen is voluntarily adopting a plantwide cap of 2397 tpy of VOC emissions, which is based on lower than actual emissions levels from a period representative of normal source operation. The plantwide cap eliminates the historic problem in the PSD program that sources sometimes are able to increase emissions above representative actual emissions levels without undergoing PSD review by adding small projects which by themselves do not trigger PSD and are not subject to any cumulative plantwide limit on emissions. The fact that Andersen's VOC cap is based on actual emissions places it on an even footing with respect to sources which do not take a PAL and ensures that Andersen does not gain emissions credits merely for reducing allowable emissions. Second, Andersen's annual VOC emissions have declined steadily and significantly over time since 1990, so EPA believes it is important to recognize that Andersen likely could have adopted a plantwide, actual emissions-based VOC PAL immediately prior to the 1990 synthetic minor permits (when its actual VOC emissions level was 3,753 tpy) and thereby avoided the need to obtain and accept synthetic minor limits for each new waterborne system and the door plant paint lines in 1990 and 1995. Although determining what could have happened or would have happened if different choices were made is always difficult, EPA believes with reasonable certainty that the 2397 tpy VOC PAL is at least equivalent to what Andersen could have done outside of Project XL and is overall better for the environment. Third, the tiered performance ratio approach will serve to provide incentives for Andersen to reduce emissions further. Finally, EPA reserves the right to terminate the project if there is no environmental improvement.

This limited replacement of the section 52.21(r)(4) safeguard is an approach to preventing circumvention of the PSD program that, while not the one generally adopted by the Agency, merits consideration on a pilot project basis. If the project demonstrates that such an approach leads to superior environmental and economic results and if EPA determines that such an approach is transferable to other situations, it could be considered for broader application. EPA emphasizes that this innovative approach is not being adopted at this time for any source other than the Andersen Bayport facility and indeed is being adopted for Andersen only as to certain identified synthetic VOC limits.

2. Duration of PALs

The expected duration of the Andersen Project XL pilot is 10 years. Therefore, Andersen's XL project contemplates an effective period of 10 years for the PALs under the project. However, as discussed in further detail below, applicable PSD requirements would limit the effectiveness of Andersen's PAL to 5 years. Therefore, in order to implement the Andersen Project XL pilot the PSD requirements must be modified to allow the PAL to remain effective for 10 years.

In addition, the Minnesota XL permit will include Andersen's Title V permit. The Title V permit term may not exceed 5 years. As a result, EPA anticipates that the Title V permit will be renewed after the initial five-year term. EPA also anticipates that the VOC and PM/PM_{10} PALs will continue unchanged in the new permit.

Under present regulations, a source that adds or modifies a unit that would result in a significant emissions increase may "net" that particular change out of review if the new emission increase plus the sum of all other contemporaneous credible increases and decreases at the source is less than significant. Under current requirements, PALs are considered a form of netting whereby a range of future changes at a source is determined beforehand not to result in a net emissions increase, such that these changes may occur without triggering PSD requirements. The Federal PSD requirements at 40 CFR 52.21(b)(3)(ii)(a) limit the period within which changes may be considered contemporaneous to 5 years and, therefore, limit the effectiveness of a PAL to 5 years. States implementing a PSD or nonattainment NSR program under an EPA-approved SIP may define a different reasonable contemporaneous period.

The current regulatory requirement regarding contemporaneity derives from the interpretation of the Act's provisions governing modifications set forth in *Alabama Power Co.* v. *Costle*, 636 F.2d 323 (D.C. Cir. 1979). Among other things, the court interpreted the statute as providing for plantwide netting limited, however, to substantially contemporaneous changes. The court explained that EPA retains discretion to define "substantially contemporaneous." Id. at 402. Thereafter, EPA codified contemporaneity as a regulatory requirement. See 45 FR 52676, 52700–52702 (August 7, 1980).

In the specific context of the Andersen Project XL pilot, EPA is proposing a 10 year contemporaneous period to facilitate the 10 year duration of the Andersen Project XL pilot. When issuing permits to implement the VOC and non-milling PM/PM_{10} caps, MPCA will set the cap limits so that any changes during the project term do not result in a significant net emissions increase. Consequently, complying with the cap would demonstrate that no significant net emissions increase is occurring at the facility. In addition, EPA recognizes that Andersen is voluntarily making several important commitments which will result in superior environmental performance: (1) the VOC and non-milling PM/PM_{10} caps, (2) the VOC performance ratio, (3) control of all existing and future milling operations with baghouse filters, (4) emission limits for new or reconstructed paintline or preservative application equipment based on the current best performing processes at Andersen, and (5) the health risk analysis for toxic air emissions. Under these circumstances, EPA believes that a 10 year contemporaneous period for the VOC and non-milling PM/PM_{10} PALs is appropriate.

3. Duration of Flexibility

This site specific rule will expire 10 years from the date it is promulgated. The parties have described in the FPA a process for winding down the Andersen Project XL pilot. At least two years prior to the project's expected conclusion, Andersen, MPCA, and EPA will initiate a process to evaluate the project. The goal of the evaluation will be to establish a process to evaluate the project and to determine the terms of the final permit for the facility at the end of the 10-year project term. This evaluation shall conclude by no later than 18 months prior to the project's expected conclusion. The evaluation will review the project's environmental results and impact, Andersen's performance, and other relevant factors, as determined by all parties. If the evaluation proves the project a success, Andersen may propose to MPCA, EPA and the CAC to extend the project term and the XL permit conditions described in this FPA through issuance of a final permit. The final permit may incorporate limits similar to the limits applicable during the project. If the parties do not agree to extend the project, Andersen will submit an implementation schedule (as discussed below) to achieve compliance with all requirements applicable at the end of the 10-year project term.

If, based on the evaluation, the project should not be extended, Andersen will submit to EPA and MPCA an implementation schedule specifying how Andersen will transition into compliance with all then applicable requirements at the end of the 10-year project term. No later than 12-months prior to the expiration of the project term, the parties will agree to a 12-month implementation schedule. The implementation schedule is intended to reflect Andersen's best efforts to transition into compliance with all then applicable requirements as quickly as practicable within the 12-month transitional period. In no event will the implementation schedule extend beyond the end of the 10-year project term. The implementation schedule submitted by Andersen must contain interim calendar, or milestone, dates for the purchase and installation of any necessary equipment, performance testing, and other necessary measures.

The enforceable limits established as part of the project (i.e., the VOC and PM/PM_{10} emissions caps, as well as the per unit of production limit) will continue to be enforceable during the project evaluation process and any transitional period as described above. In any event, a final permit will be issued to either (1) extend the project through the issuance of a final permit, or (2) transition Andersen to compliance with all requirements applicable at the end of the 10-year project term. The final permit will be based on the permitting requirements, which are applicable at the conclusion of the project. The applicable requirements that will govern the facility at the end of the project's 10-year term will be included in the final permit.

In addition, the Parties have agreed to include rewards as incentives for Andersen to achieve superior environmental performance. For performance below the reward limit for 13 tracking periods or more, Andersen may request an extension of the duration of the current project. If Andersen chooses this reward, Andersen would have to demonstrate to U.S. EPA and MPCA that extension is not only consistent with the goals of the current project, but also that the extension is consistent with EPA rules and policy concerning the duration of plant-wide applicability limit permits. Any such extension would be treated as a modification of Andersen's Minnesota XL Permit which would be accompanied by any necessary rulemaking by EPA. Both the modification and rulemaking would be subject to applicable public notice and comment requirements.

4. Summary

Therefore, under the specific circumstances at Andersen, within the limited context of Project XL, and in advancement of the overall purpose of the PSD program of the CAA, EPA proposes to modify the applicable federally promulgated state plan for Minnesota so that MPCA may issue Andersen a PSD (as EPA's delegatee), minor NSR, and Title V permit: (1) relaxing certain existing synthetic minor VOC limits without requiring PSD review, within the context of the Andersen XL project, and (2) imposing VOC and PM/PM_{10} PALs based on 10 year contemporaneous periods.

IV. Additional Information

A. Public Hearing

A public hearing will be held, if requested, to provide opportunity for interested persons to make oral presentations regarding the proposed regulation in accordance with section 307(d)(5) of the Clean Air Act. Persons wishing to make oral presentation on the draft FPA or proposed rule to implement the Andersen XL project should contact the EPA at the address given in the **ADDRESSES** section of this document. Any member of the public may file a written statement before, during, or within 30 days after the hearing. Written statements should be sent to EPA at the addresses given in the **ADDRESSES** section of this document. If a public hearing is held, a verbatim transcript of the hearing and written statements will be available for inspection and copying during normal business hours at the EPA addresses given in the **ADDRESSES** section of this document.

B. Executive Order 12866

Because this rule affects only one facility, it is not a rule of general applicability and therefore not subject to OMB review and Executive Order 12866. In addition, OMB has agreed that review of site specific rules under Project XL is not necessary.

C. Regulatory Flexibility

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This proposed rule would not have a significant impact on a substantial number of small entities because it only affects one source, the Andersen Bayport facility, which is not a small entity. Therefore, I certify that this action will not have a significant economic impact on a substantial number of small entities.

D. Paperwork Reduction Act

This action applies only to one company, and therefore requires no information collection activities subject to the Paperwork Reduction Act, and therefore no information collection request (ICR) will be submitted to OMB for review in compliance with the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

E. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local,

and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why the alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

As noted above, this rule is limited to Andersen's facility in Bayport, Minnesota. EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA. Nevertheless, in developing this rule, EPA worked closely with MPCA and received meaningful and timely input in the development of this rule. EPA also has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments.

F. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be "economically significant," as defined under Executive Order 12866; and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

The EPA interprets E.O. 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This proposed action is not subject to E.O. 13045 because it is not economically significant as defined in E.O. 12866, and it is based on technology performance and implements previously promulgated health or safety-based ozone and particulate matter Federal National Ambient Air Quality Standards (NAAQS). The effects of ozone and particulate matter on children's health was addressed in detail in EPA's rulemaking to establish these NAAQS, and EPA is not revisiting those issues here.

G. Executive Order 12875: Enhancing Intergovernmental Partnerships

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's rule does not create a mandate on State, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule. Nevertheless, in developing this rule, EPA worked closely with MPCA and received meaningful and timely input in the development of this rule.

H. Executive Order 13084: Consultation and Coordination With Indian Tribal Governments

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities. Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. There are no communities of Indian tribal governments located in the vicinity of the Andersen facility. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

I. National Technology Transfer and Advancement Act of 1995 ("NTTAA")

Section 12(d) of NTTAA, Pub. L. 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary standards.

This proposed rulemaking does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental Relations, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds

Dated: April 8, 1999.

Carol M. Browner,

Administrator.

For the reasons set forth in the preamble, part 52 of chapter I of title 40 of the Code of Federal Regulations is proposed to be amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401, et seq.

Subpart Y—Minnesota

2. Subpart Y is amended by adding a new § 52.1246 to read as follows:

§ 52.1246 Prevention of significant deterioration of air quality for Andersen Corporation's facility in Bayport, Minnesota.

(a) *Applicability.* (1) This section applies only to the window and patio door manufacturing facility, commonly referred to as Andersen Windows, located at 4001 Stagecoach Trail and 100 Fourth Avenue, North, Bayport, Minnesota.

(2) This section sets forth the prevention of significant deterioration of air quality preconstruction review requirements for volatile organic compound ("VOC") and non-milling PM/PM_{10} emissions.

(3) For all other units and pollutants not specifically identified in this section which are subject to regulation under the Act, the preconstruction review requirements of § 52.1234 still apply.

(b) *Regulations for Preventing Significant Deterioration of Air Quality.*

(1) The provisions of 40 CFR 52.21(b) through (w) are applicable and made a part of the state plan for the State of Minnesota, with the exceptions and additions set forth in paragraphs (b)(2), (b)(3), and (b)(4) of this section.

(2) For the purposes of this Section, and in addition to paragraph (b)(1) of this section:

(i) "Existing waterborne inline treatment units" shall mean the following specific units at the Andersen facility:

(A) Five waterborne inline wood treatment systems in the main facility, permit number 549–90–I/O–2.

(B) Five waterborne inline wood treatment systems in the door subplant, permit number 549–90–I/O–2.

(C) Two waterborne inline wood treatment systems, permit number 16300001–017.

(ii) "Existing door subplant paint lines" shall mean the three solventborne paint and pretreatment systems located in the Andersen facility door subplant, permit number 549–90–I/O–2.

(iii) "Milling operations" shall be all those activities which involve the cutting and shaping of wood or Fibrex except that shaping by extrusion shall not be considered milling.

(iv) "Non-milling operations" shall be all those activities that generate PM/PM_{10} emissions and which are not milling operations.

(3) With respect to existing inline waterborne treatment units and existing door subplant paint lines only:

(i) "An increase in the hours of operation or in the production rate." applies instead of 40 CFR 52.21(b)(2)(iii)(*f*).

(ii) The requirements of 40 CFR 52.21(r)(4) shall not apply.

(4) With respect to VOC and non-milling PM/PM_{10} emissions, "The date 10 years before construction on the particular change commences; and" applies instead of 40 CFR 52.21(b)(3)(ii)(*a*).

(c) This rule expires [date 10 years from effective date of the final rule].

[FR Doc. 99–9723 Filed 4–16–99; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA 99–5403]

RIN 2127–AH22 and RIN 2127–AH20

Denial of Petition for Rulemaking; Federal Motor Vehicle Safety Standards

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Denial of petitions for rulemaking.

SUMMARY: This document denies petitions, submitted jointly by the American Automobile Manufacturers Association (AAMA) and the Association of International Automobile Manufacturers (AIAM) to amend two Federal motor vehicle safety standards (FMVSSs), one on windshield defrosting and defogging and one on windshield wiping and washing, by accepting a European Union (EU) Directive as an optional "functionally equivalent" alternative to each safety standard. NHTSA has determined that both EU Directives require windshield minimum cleared areas which are smaller by up to 20 percent than those required by the counterpart Federal motor vehicle safety standards. The agency has concluded that the requirements of the European regulations provide less driving visibility and cannot assure equivalent safety performance. However, the agency believes that harmonization of windshield wiping, washing, defrosting and defogging regulations is possible using worldwide best practices in the context of a Global Technical Regulation developed under the UN/ECE Working Party 29, and it is pursuing such an approach.

FOR FURTHER INFORMATION CONTACT: Mr. Patrick Boyd, Office of Safety Performance Standards, NHTSA, 400 Seventh Street, SW, Washington, DC 20590. Mr. Boyd's telephone number is: (202) 366–6346. His facsimile number is (202) 366–4329.

SUPPLEMENTARY INFORMATION: The harmonization of product standards has become a matter of increasing importance in the last several decades. The manufacturing and marketing of products have become increasingly globalized. In response to that trend, countries and regions have moved to adjust and coordinate their regulatory practices to the extent consistent with consumer protection policies. Efforts to coordinate regulatory practices on a global scale have resulted in several international agreements that seek to promote and guide the process of harmonization, while taking care to preserve the right of countries and regions to adopt and maintain standards they believe necessary to address safety, environmental and other needs within their respective jurisdictions.

The United States is a party to several international agreements, including the General Agreement on Tariffs and Trade. That agreement was most recently amended by the Uruguay Round Agreements. One of those agreements is the Agreement on Technical Barriers to Trade (TBT). The TBT Agreement seeks to avoid creating unnecessary obstacles to trade, while recognizing the right of signatory countries to establish and maintain technical regulations for the protection of human, animal and plant life and health and the environment. Among other things, the TBT Agreement also provides that a party to the Agreement will consider accepting as equivalent the technical regulations of other party nations, provided they adequately fulfill

the objectives of the party's existing domestic standards.

On May 13, 1998, the National Highway Traffic Safety Administration (NHTSA) amended 49 CFR Part 553, *Rulemaking Procedures*, by adding a new Appendix B setting forth a statement of policy about the process that it intends to follow in considering whether to commence a rulemaking proceeding based on a claim that a foreign motor vehicle safety standard is better than or at least functionally equivalent to its counterpart among the FMVSSs and in making determinations about relative benefits and functional equivalence (63 FR 26508). The amendment reaffirmed the agency's policy of focusing its international harmonization activities on identifying and adopting those foreign vehicle safety standards that clearly reflect best practices, i.e., that require significantly higher levels of safety performance than the counterpart U.S. standards. It also announced the agency's policy regarding those instances in which the agency's comparison of standards indicates that the safety performance required by a foreign standard is not significantly higher, but is still better than or at least as good as that required by the counterpart U.S. standard.

The amendment also emphasized that the agency's policy is to deny any rulemaking petition seeking to have a foreign standard added to its counterpart U.S. standard as a compliance alternative or to harmonize the U.S. standard with the foreign standard if the petition does not contain an analysis of the relative benefits of the two standards. This policy is necessary to minimize the impact that NHTSA's consideration of such rulemaking petitions might otherwise have on the agency's use of its resources to upgrade its safety standards.

In a submission dated August 13, 1997, the American Automobile Manufacturers Association (AAMA) and the Association of International Automobile Manufacturers, Inc. (AIAM), petitioned the agency to amend several FMVSSs to permit vehicle manufacturers to choose to comply with either the existing requirements of those FMVSSs or the counterpart requirements of vehicle safety standards recognized in most European countries. These European standards are in the form of European Union Directives and often are taken from a body of standards developed by the United Nations Economic Commission for Europe (UN/ECE). In this case, the petitions asked that the requirements of EU Directives EEC 78/317 and EEC 78/318 be accepted as optional alternatives to the requirements of FMVSS No. 103, *Windshield Defrosting and Defogging Systems*, and FMVSS No. 104, *Windshield Wiping and Washing Systems*, respectively. At present, there are no Economic Commission for Europe (ECE) model regulations for windshield defrosting/defogging and wiping/washing. The common safety objective of both the EU Directives and the FMVSSs is to maintain driving visibility under conditions which would otherwise obscure vision through the windshield.

During the development of NHTSA's policies on "functional equivalence" rulemakings, the European windshield defrosting/defogging and wiping/washing regulations were considered model candidates. In a public meeting on functional equivalence, the agency mentioned them as examples of foreign standards which differed in the coordinate system and points of reference for geometric measurements of vehicles but which appeared to require essentially identical performance. Both the U.S. and European windshield wiping regulations define a large area of the windshield which must be swept at least 80% and a much smaller area directly in front of the driver which must be swept at least 99% (98% in the European regulation). The U.S. wiping regulation also measures performance in another intermediate sized area of the windshield, but the third swept area requirement is not carried over to the defrosting requirements. Both the U.S. and European defrosting regulations have identical requirements for the clearing time and cleared percentages of the small area in front of the driver defined in the wiping regulation, of a symmetric area on the passenger side, and of the large area defined in the wiping regulation. The principal requirements of the corresponding U.S. and European regulations would be the same if the windshield test areas were identical.

The U.S. and European regulations both define the various areas on the windshield by means of fields of view originating from driver vision reference points. The U.S. regulation defines ellipsoids containing the probable eye locations of drivers in a range of statures referenced to the seating position. The fields of view are defined by lines drawn tangent to the eye position ellipsoids at specified angles. The European regulation defines two distinct points, which represent average eye positions for tall and short drivers referenced to a vehicle coordinate system and a seat back angle. The fields of view are defined by lines drawn at specified angles directly intersecting the two vision reference points. The European method of defining critical windshield areas is a simplification of the method of the U.S. regulations.

The petitioners described the test zone differences as follows:

> The test zones used by each standard are generated using different methods. The European test zones use the ISO (International Organization for Standardization) "V" points while the US zones are based on the SAE (Society of Automotive Engineers) eye-ellipse. However, the ISO "V" points are a derivative of the SAE eye-ellipse, and generate substantially similar zones. While the zones are not identical, the differences are insignificant and do not affect real world safety.

NHTSA asked the petitioners to develop detailed comparisons overlaying the U.S. and European test zones on actual example vehicles to quantify the differences. The petitioners supplied comparisons using the 1997 Cadillac Seville, 1997 Ford Contour and 1998 Chrysler Sebring as examples. In every case, the European test zone was smaller than the corresponding U.S. test zone. On average, the test zone representing the critical area in front of the driver generated by the European method was only 81.3 percent as large as the corresponding area generated by the U.S. method. The larger European test zone representing the bulk of the windshield averaged 88.3 percent of the area of the corresponding U.S. test zone. The petitioners did not supply information addressing the effects on vision or safety of the reductions in minimum area represented by the European regulations.

NHTSA does not agree with the petitioners that the differences in minimum cleared areas for windshield wiping and defrosting between the U.S. and European regulations are insignificant. The petitioners have provided no evidence to rebut the obvious presumption that sizable reductions in cleared area will reduce visibility and provide less safety. The agency does not find European directives EEC 78/317 and EEC 78/318 functionally equivalent to Federal Motor Vehicle Safety Standards Nos. 103 and 104, respectively.

In accordance with 49 CFR part 552, this completes the agency's review of the petitions. The agency has concluded that there is no reasonable possibility that the amendments requested by the petitioners would be issued at the conclusion of a rulemaking proceeding. Accordingly, it denies the AAMA/AIAM petitions dealing with FMVSS Nos. 103 and 104.

However, the agency believes that harmonization of windshield wiping,

washing, defrosting and defogging regulations is possible using worldwide best practices. AAMA has informed the agency that a European organization is preparing a proposal for a Global Technical Regulation on the subject for consideration by the UN/ECE Working Party 29. The agency participates in Working Party 29 and will support a Global Technical Regulation that incorporates best practices to resolve the issue of minimum cleared areas.

Authority: 49 U.S.C. 30103, 30162; delegation of authority at 49 CFR 1.50 and 501.8.

Issued on: April 14, 1999.

Stephen R. Kratzke.

Acting, Associate Administrator for Safety Performance Standards.

[FR Doc. 99–9705 Filed 4–16–99; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AF35

Endangered and Threatened Wildlife and Plants; Extension of Comment Period and Announcement of Public Hearings on Proposal To List the Mountain Plover as a Threatened Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; public hearings and extension of comment period.

SUMMARY: On February 16, 1999, the Fish and Wildlife Service proposed listing the mountain plover as a threatened species, without critical habitat, under authority of the Endangered Species Act (64 FR 7587). The Fish and Wildlife Service (Service) gives notice that five public hearings will be held on the proposal, and that the comment period will be extended 60 days. During the breeding season, the mountain plover is widely distributed in shortgrass prairie, shrub steppe, and cultivated landscapes from Montana south to Texas. Most breeding birds occur in Colorado, Montana, and Wyoming; fewer breeding birds occur in Arizona, Kansas, New Mexico, Oklahoma, Texas, and Utah. Wintering plovers are most numerous in California; some winter in Arizona, Texas, and Mexico.

DATES: The comment period on the proposal is extended to June 21, 1999. The public hearings will be held at the following cities, dates, and times.

Malta, Montana: Tuesday, May 25, 1999; 4:00 p.m.–8:00 p.m.

Billings, Montana: Wednesday, May 26, 1999; 2:00 p.m.–4:00 p.m. and 6:00 p.m.–8:00 p.m.

Casper, Wyoming: Wednesday, June 2, 1999; 2:00 p.m.–4:00 p.m. and 6:00 p.m.–8:00 p.m.

Greeley, Colorado: Tuesday, May 25, 1999; 6:00 p.m.–9:00 p.m.

Lamar, Colorado: Wednesday, May 26, 1999: 6:00 p.m.–9:00 p.m.

ADDRESSES: The following lists the locations of the meetings cited above:

Malta, Montana: Malta High School, #1 High School Lane.

Billings, Montana: MSU-Billings, 1500 N. 30th Street, Ballroom.

Casper, Wyoming: Holiday Inn, I–25 and Center Street.

Greeley, Colorado: Weld County Centennial Center, 915 10th Street.

Lamar, Colorado: Lamar Community College, 2401 South Main Street, Bowman 138 Lecture Hall.

Written comments and materials should be sent to the Assistant Field Supervisor, U.S. Fish and Wildlife Service, 764 Horizon Drive, South Annex A, Grand Junction, Colorado 81506–3946. We will make comments and materials we receive available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Robert Leachman at the above address, telephone 970–243–2778; facsimile 970–245–6933.

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(5)(E) of the Endangered Species Act requires that public hearings regarding proposals for listing be held promptly when requested by the public within 45 days of the proposal's publication in the **Federal Register**. Public hearing requests were received during the allotted time period from Ken Blunt, Phillips County Prairie Ecosystem Action Council (Montana); Francis V. Jacobs, Board of County Commissioners, Phillips County, Montana; John Sidle, USDA Forest Service, Nebraska; and Park County Wyoming County Commissioners. While we received no formal requests for hearings in Colorado, we have had numerous discussions with interested parties in Colorado who have asked that meetings occur. Therefore we have scheduled the five hearings listed above in Montana, Wyoming, and Colorado.

Anyone expecting to make an oral presentation at these hearings is encouraged to provide a written copy of their statement to the hearing officer prior to the start of the hearing. In the event there is a large attendance, the time allotted for oral statements may have to be limited. Oral and written statements receive equal consideration. There are no limits to the length of written comments presented at these hearings or mailed to us.

Author: The primary author of this notice is Robert Leachman (see **ADDRESSES** section).

Authority: The authority for this action is the Endangered Species Act (16 U.S.C. 1531–1544).

Dated: April 13, 1999.

Ralph O. Morgenweck,

Regional Director.

[FR Doc. 99–9664 Filed 4–16–99; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants: 90-Day Finding for a Petition to List the Ambrosia pumila (San Diego Ambrosia) as Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 90-day petition finding and initiation of status review.

SUMMARY: We have made a 90-day finding on a petition to list the *Ambrosia pumila* (San Diego ambrosia) pursuant to the Endangered Species Act of 1973, as amended (Act). We find that the petition presents substantial scientific or commercial information indicating that listing *Ambrosia pumila* as endangered may be warranted. We are initiating a status review to determine if listing is warranted.

DATES: The finding announced in this document was made on April 13, 1999. To be considered in the 12-month finding, comments and information must be submitted to us by May 19, 1999.

ADDRESSES: Submit data, information, comments, or questions concerning the petition and this 90-day finding to the Field Supervisor, U.S. Fish and Wildlife Service, Carlsbad Fish and Wildlife Office, 2730 Loker Avenue West, Carlsbad, California 92008. You may inspect the petition, 90-day finding, supporting data, comments and related documents, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Douglas Krofta, biologist, U.S. Fish and

Wildlife Service at the above address or telephone 760–431–9440.

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(A) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) (Act), requires that we make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information to demonstrate that the petitioned action may be warranted. To the maximum extent practicable, we are to make this finding within 90 days of receipt of the petition, and we are to publish the finding promptly in the **Federal Register**. If the finding is that substantial information was presented, we must promptly commence a review of the status of the species.

We have made a 90-day finding on a petition to list *Ambrosia pumila* (San Diego ambrosia). Mr. David Hogan, of the Southwest Center for Biological Diversity, and Ms. Cindy Burrascano, of the San Diego Chapter of the California Native Plant Society, submitted the petition, dated November 12, 1996, which we received on January 9, 1997. The petition requested the listing of *A. pumila* as endangered pursuant to section 4 of the Act. Additionally, the petitioners appealed for the emergency listing of *A. pumila* pursuant to section 4(b)(7) of the Act, and further requested the designation of critical habitat for this plant taxon. The letter clearly identified itself as a petition and contained the names, signatures, and addresses of the petitioners. Accompanying the petition was supporting information relating to taxonomy, ecology, threats, and distribution of *A. pumila*. On November 21, 1997, we received a 60-day notice of intent to sue from the petitioners over the failure to issue the administrative 90-day finding for *A. pumila*. The petitioners filed a lawsuit in the United States District Court on October 1, 1998, citing that we had failed to produce the administrative 90-day and 12-month findings for *A. pumila*.

We have reviewed the petition, supporting documentation, and other information available in our files to determine if substantial information is available to indicate that the requested action may be warranted. On the basis of the best scientific and commercial information available, we find that the petitioned action may be warranted for *Ambrosia pumila* because of the magnitude of ongoing and threatened impacts to existing populations. We will commence a status review in accordance with the final listing priority guidance for fiscal years 1998 and 1999 (63 FR 25502) published on May 8, 1998.

At the time the petition was received on January 9, 1997, we were operating under our final listing priority guidance for fiscal year 1997, which was published December 5, 1996 (61 FR 64475) in the **Federal Register**. The guidance clarified the order in which we would continue to process the backlog of rulemakings following two related events—(1) the lifting, on April 26, 1996, of the moratorium on final listings imposed on April 10, 1995 (Pub. L. 104–6); and (2) the restoration of significant funding for listing through passage of the omnibus budget reconciliation law on April 26, 1996, following severe funding constraints imposed by a number of continuing resolutions between November 1995 and April 1996. Based on biological considerations, the guidance established a "multi-tiered approach that assigned relative priorities, on a descending basis, to actions to be carried out under section 4 of the Act" (61 FR 64479). The guidance called for giving highest priority (Tier 1) to handling emergency situations, second highest priority (Tier 2) to resolving the listing status of the outstanding proposed listings, third priority (Tier 3) to resolving the conservation status of candidate species and processing administrative findings on petitions, and lowest priority (Tier 4) to preparation of proposed or final critical habitat designations, and processing delistings and reclassifications from endangered to threatened status.

On January 23, 1997, we notified the petitioners that based on the listing priority guidance for fiscal year 1997, we would conduct a preliminary review of the petition to determine whether *Ambrosia pumila* faced a significant risk to its well-being under the emergency listing provisions of section 4(b)(7) of the Act (61 FR 64479). We indicated that if such an emergency existed and the species fell within Tier 1, we would immediately process an emergency listing and proposed rule; if an emergency did not exist, the petitioned action would fall within Tier 3 of the guidance. On July 15, 1997, we made a determination that an emergency did not exist (i.e., the immediacy of threats to *A. pumila* were not so great to a significant proportion of the population that the routine listing process was insufficient to prevent large losses that might result in extinction). Therefore, the processing of the petition fell under Tier 3. Our Carlsbad Office (which was assigned the responsibility for processing the petition) continued to direct personnel and budget toward accomplishment of ongoing Tier 2 and Tier 3 activities for species judged to be in greater need of the Act's protection than *A. pumila*. As these higher priority activities were accomplished, and personnel and funds became available, we proceeded with a 90-day finding on the petition for *A. pumila*.

On May 8, 1998, final listing priority guidance for fiscal years 1998 and 1999 (63 FR 25502) was published. This new guidance changed the four tier priority system to a three tier system. The three tier system described our first priority (Tier 1) as completion of emergency listings for species facing the greatest risk to their well-being. Our second priority (Tier 2) was processing final decisions on pending proposed listings; processing new proposals to add species to the lists; processing 90-day and 12-month administrative findings on petitions to add species to the lists and petitions to delist or reclassify species; and delisting or downlisting actions on species that have achieved or are moving towards recovery. Our third priority (Tier 3) described in the guidance was processing petitions for critical habitat designations and preparing proposed and final critical habitat designations. Under this current guidance, the processing of this petition fell under Tier 2.

Ambrosia pumila is a clonal perennial herb restricted to upper terraces of rivers and drainages, but has been identified growing in open, flat grasslands; dry lake beds; open patches in coastal sage scrub habitat; and disturbed sites such as fuel breaks and roadway rights-of-way. Populations of San Diego ambrosia occur on federal, state, and private lands located in southwestern Riverside and San Diego counties, California, and Baja California, Mexico. The range of *A. pumila* is known from an estimated 53 documented historical and current populations from Riverside and San Diego counties, California, and central Baja California, Mexico from Colonet south to Lake Chapala. The distribution of *A. pumila* is centralized in San Diego County, where approximately 48 distinct populations have been reported. Recently, two populations of *A. pumila* were discovered in southwestern Riverside County. Although limited information is available concerning current populations of *A. pumila* in Baja California, three disjunct populations are presumed extant.

San Diego County

Of the 48 reported populations of *Ambrosia pumila* in San Diego County, 23 have been extirpated, and an

additional 11 populations were misidentified and are actually a similar species *A. confertiflora*. This leaves 14 populations extant in San Diego County. Two populations consist of plants that were transplanted from sites where the taxon was extirpated due to roadway construction or development. Although these populations are extant, their long-term viability is in question due to unsuccessful attempts at transplanting the taxon in the past. Eleven of the remaining 12 populations have been recently field verified and are known to be extant. Insufficient information exists to make a determination on the status and viability of the twelfth population due to the inadequacy of data on the original collection and difficulty in site access. The long-term viability of at least 5 of the remaining 11 populations is in question due to population size, fragmentation, past and potential impacts, extent of suitable habitat in the immediate area, current land use practices and land-ownership. These apparently nonviable populations range in extent from a single plant growing up through a crack in a sidewalk in National City to a population consisting of several hundred or more stems at Gillespie Field. The six remaining populations in San Diego County are considered to have a greater degree of long-term persistence or viability primarily due to larger population sizes and current land use practices or ownership. These six populations include one population in Mission Trails Regional Park, two populations on the San Diego National Wildlife Refuge, one population on a dirt road off of Del Dios Highway, one population within a San Diego Gas and Electric (SDGE) gas line easement along State Route (SR) 76, and one population within a SDGE electrical transmission line easement adjacent to Jamul Drive.

The Mission Trails population is considered to be the largest and most viable population of *Ambrosia pumila* in the United States. It is located in Mission Trails Regional Park and on adjacent private property. Although road construction and adjacent urban development have historically fragmented the population, the core population consists of several thousand stems and several small colonies scattered throughout the general area. The petitioners asserted that the persistence of this core population is apparently essential to the survival of this taxon in the United States (Hogan and Burrascano 1996). A minimum 90 percent of the core population in Mission Trails Regional Park is protected under the provisions of the Multiple Species Conservation Plan (MSCP) for southwestern San Diego County. Other populations within MSCP boundaries, such as the Del Dios Highway population, will receive protection under specific sub-area/sub-regional plans addressing conservation measures on an individual project/population basis. The two populations located within the San Diego National Wildlife Refuge are conserved and managed as part of the National Wildlife Refuge System, and are not likely to be threatened. The two San Diego populations found within SDGE easements have the potential for long-term persistence but are currently outside the San Diego County MSCP boundaries. These two populations are protected by a habitat conservation plan with SDGE. Under this plan, the species is covered by special mitigation measures that involve avoidance of impacts as a first priority, and mitigation of impacts as a second priority.

Riverside County

The two populations of *Ambrosia pumila* recently recorded in southwestern Riverside County are in the vicinity of Skunk Hollow and Lake Elsinore. The Skunk Hollow population consists of approximately 500 stems and is located on private lands within a wetland mitigation bank. The Lake Elsinore population has an estimated 250–500 stems and is also located on private lands. The long-term persistence or viability of the Lake Elsinore population is in question due to current development threats.

Mexico

The current documented range of *Ambrosia pumila* in Baja California, Mexico extends from Colonet south to Lake Chapala. Three disjunct populations are recorded. Although additional sites may occur in Baja, the taxon is not considered to be widespread due to the lack of appropriate habitat and impacts resulting from agriculture and urban development, especially in coastal areas. Recent field reconnaissance (Hogan and Burrascano 1996) of two of the three documented sites has confirmed that the recorded populations are extant, but estimates on population size and long-term viability are inconsistent. All three of the known and presumed extant Baja California populations are threatened by agricultural practices and urban development. Further evaluation of these populations is necessary to determine their status and the immediacy of threats.

Summary

All populations of *Ambrosia pumila* appear vulnerable to random, environmental or demographic events. Fire, natural or human-induced, could destroy one or more populations. Competition from other plant taxa is also a serious threat. While *Ambrosia pumila* is considered tenacious in appropriate habitat, it is thought to be a weak competitor with invasive herbaceous and non-native grass species.

Of the 16 populations of *Ambrosia pumila* presumed extant in the United States, only six populations in San Diego County and one population in Riverside County are considered secure and protected. These seven populations are expected to persist, provided that adequate protection and management measures are established, implemented, and maintained. The permanent protection and management of *A. pumila* populations under multiple species conservation plans will contribute to long-term habitat viability for *A. pumila*.

We have reviewed the petition, as well as other available information in our files. On the basis of the best scientific and commercial information available, we find that there is sufficient information to indicate that the petitioned action, listing *Ambrosia pumila* as endangered, may be warranted. The petitioners also requested that critical habitat be designated for this species. Designation of critical habitat is not petitionable under the Act. However, if we determine in the 12-month finding that the petitioned action is warranted, we will address the designation of critical habitat in the subsequent proposed rule.

Additional Information Solicited

When we make a finding that substantial information exists to indicate that listing a species may be warranted, we are also required to promptly commence a review of the status of the species. To ensure that the status review is complete and based on the best available scientific and commercial data, we are soliciting information concerning the following:

(1) information on historic and current distribution;
(2) habitat conditions;
(3) basic biology of the species;
(4) ongoing efforts to protect the species and its habitat; and
(5) threats to the species and its habitat.

References Cited

You may request a complete list of all references cited in this document from

the Carlsbad Fish and Wildlife Office (see **ADDRESSES** section).

Author. The primary author of this document is Douglas Krofta, biologist, Carlsbad Fish and Wildlife Office, U.S. Fish and Wildlife Service (see **ADDRESSES** section).

Authority

The authority for this action is the Endangered Species Act (16 U.S.C. 1531 *et seq.*).

Dated: April 13, 1999.

Jamie Rappaport Clark,

Director, Fish and Wildlife Service.

[FR Doc. 99–9783 Filed 4–15–99; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 600 and 648

[I.D. 040999B]

Magnuson-Stevens Act Provisions; General Provisions for Domestic Fisheries; Applications for Experimental Fishing Permits

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notification of experimental fishery proposal; request for comments.

SUMMARY: NMFS announces that the Regional Administrator, Northeast Region, NMFS, is considering approval of an experimental fishing proposal that would permit vessels to conduct operations otherwise restricted by regulations governing the Fisheries of the Northeastern United States, 50 CFR part 648. The experimental fishery would involve fishing for, retention, and landing of Atlantic sea scallops with modified dredge gear in the Georges Bank and Nantucket Lightship Closed Areas. Regulations implementing the Magnuson-Stevens Fishery Conservation and Management Act provisions require publication of this notification to provide interested parties the opportunity to comment on the proposed experimental fishery.

DATES: Comments on this document must be received by May 4, 1999.

ADDRESSES: Comments should be sent to Jon Rittgers, Acting Regional Administrator, NMFS, Northeast Regional Office, 1 Blackburn Drive, Gloucester, MA 01930. Mark on the outside of the envelope: "Comments on Proposed Scallop Experimental Fishery."

FOR FURTHER INFORMATION CONTACT: David Gouveia, Fishery Management Specialist, 978–281–9280.

SUPPLEMENTARY INFORMATION: The NMFS Northeast Fisheries Science Center (NEFSC) submitted an application on April 12, 1999, to map the distribution and estimate the abundance of Atlantic sea scallops, and to determine the rate and distribution of finfish and invertebrate bycatches to sea scallop dredges in portions of the Georges Bank and Nantucket Lightship Closed Areas. The proposed experimental fishery would also provide information on the potential habitat effects of the use of scallop fishing gear in these areas and test new gear designs to reduce finfish bycatch rates.

The NEFSC would conduct experimental fishing activities with three commercial vessels federally permitted with a limited access Atlantic sea scallop permit. Vessels interested in participating in this experiment would be chosen by a lottery system administered by the NMFS Northeast Regional Office. Exempted fishing permits would be issued to the participating vessels to exempt them from closed areas and gear restrictions contained in the regulations implementing the Northeast Multispecies and Atlantic Sea Scallop Fishery Management Plans.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: April 13, 1999.

Gary C. Matlock,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–9726 Filed 4–16–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 990226056–9056–01; I.D. 122498C]

RIN 0648–AL31

Northeast Multispecies Fishery; Amendment 9 to the Northeast Multispecies Fishery Management Plan; Supplement to the Proposed Rule

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Supplement to the proposed rule.

SUMMARY: NMFS issues this supplement to the proposed rule for Amendment 9 to the Fishery Management Plan for the Northeast Multispecies Fishery. The supplement is intended to provide information inadvertently omitted from the summary of the initial regulatory flexibility analysis (IRFA) prepared for Amendment 9 published with the proposed rule. Specifically, this supplement summarizes information about alternatives that the New England Fishery Management Council (Council) considered, but rejected, for the Amendment.

DATES: Public comments will be accepted from April 14, 1999 through May 3, 1999.

ADDRESSES: Comments should be sent to Jon C. Rittgers, Acting Regional Administrator, NMFS, Northeast Regional Office, One Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope, "Comments on the initial regulatory flexibility analysis of Amendment 9."

FOR FURTHER INFORMATION CONTACT: Susan A. Murphy, Fishery Policy Analyst, 978–281–9252.

SUPPLEMENTARY INFORMATION: Analytical documents in Amendment 9 pertaining to requirements of the Regulatory Flexibility Act include "Volume I," October 9, 1998; "Supplement," November 14, 1998; and "Supplement," January 27, 1999. This supplement to the proposed rule for Amendment 9 republishes, for the convenience of the public, the portion of the classification section of that proposed rule (64 FR 13952; March 23, 1999) that addressed the Regulatory Flexibility Act and adds information inadvertently omitted from that classification section relevant to alternatives considered, but rejected, by the Council for Amendment 9.

Classification

NMFS prepared an IRFA for this proposed rule, pursuant to 5 U.S.C. 603, without regard to whether the proposal would have a significant impact on a substantial number of small entities. Measures analyzed in the IRFA include the brush-sweep trawl gear prohibition, the one-fish halibut possession limit, and the winter flounder fish size increase. The following is a brief discussion of the measures analyzed in the IRFA.

Amendment 9 proposes the prohibition of brush-sweep trawl gear on vessels fishing for multispecies. The cost of the brush-sweep trawl gear is estimated to be between $8,000 and $15,000, depending on the individual vessel. Excessive wear and tear on the gear requires that the gear be replaced

often. The overall cost to vessels impacted by this action would be based on the loss of the use of the gear which, when utilized, wears out in a few months to a year. The potential universe of vessels that could be impacted by the brush-sweep trawl gear prohibition is approximately 900 vessels, i.e., based on NMFS Regional Office database, the number of permit holders who fish for multispecies with otter trawl gear. Therefore, the one-time cost to the industry would likely be between $7.2 million (900 x $8,000) and $13.5 million (900 x $15,000) since there are approximately 900 vessels that fish for multispecies with otter trawl gear. This assumes that all 900 vessels are currently using brush sweep gear. NMFS is seeking information on the number of vessel fishing with brush sweep trawl gear.

A one-fish halibut possession limit with a minimum fish size of 36 inches (91.4 cm) is also proposed. Commercial vessels wishing to retain the one-fish possession limit would be required to obtain a multispecies permit. The economic costs associated with the proposed halibut restrictions include lost revenues from restricted or prohibited landings, as well as the added costs of enforcing new regulations and administering the new open-access permits. For the years 1996 and 1997, Vessel Trip Reports indicate that 134 and 139 vessels, respectively, reported landing halibut. Based on recent landings data reported to NMFS, halibut landings have averaged less than 50,000 lb (22,680 kg), and more recently have declined from 31,542 lb (14,307 kg) in 1996 to 17,078 lb (7,746.5 kg) in 1997. Annual landings per vessel averaged 235 lb (106.5 kg) in 1996 and 123 pounds in 1997. Annual revenues per vessel during this time averaged $1,059 and $553,000, respectively. The total exvessel revenue from halibut was $141,906 (134 x $1,059) in 1996 and $76,867 (139 x $553) in 1997. The number of vessels affected by the proposed one-fish halibut restriction may amount to 1,050 vessels based on the number of permitted vessels in the multispecies fishery. This number includes active limited access multispecies permit holders (1,000) combined with a subset of the estimated 100 active participants in the directed halibut fishery who do not possess a Federal fisheries permit, approximately 50. In 1996 or 1997, 134 to 139 active vessels (those that reported landings of halibut in recent years) are estimated to be only those vessels that caught at least one halibut.

An increase in the minimum fish size for winter flounder to 13 inches (33.0 cm) from the current minimum size of 12 inches (30.5 cm) for both commercial and recreational fishing vessels is proposed in Amendment 9. For the commercial fishery, economic impacts of increasing the winter flounder fish size involve revenue loss from prohibiting landings of fish that are between 12 and 13 inches (30.5 and 33.0 cm) and revenue gains from the increased yield per recruit and price per pound for higher market category once 12–inch (30.5 cm) size fish grow to 13–inch (33.0 cm) size and above.

The data for NMFS 1997 winter flounder landings data, including all sizes of fish, were approximately 11.7 million pounds, or 14 percent of the total regulated species landings. Exvessel revenues of winter flounder during this period amounted to $15.6 million (8.5 percent) of the total exvessel revenues ($183.5 million) from all species for vessels that landed winter flounder. Although some fishers have commented that fish in the 12– to 13–inch (30.5–33 cm) size range accounted for up to 30 - 40 percent of their winter flounder catch, many other fishers have reported that very few fish in the 12– to 13–inch (30.5–33 cm) range are retained by nets unless the vessel is fishing with nets that are less than the minimum regulated mesh size. Landing reports from the New Bedford, MA, auction indicate that 12–inch (30.5 cm) fish make up less than 10 percent of winter flounder sold in this port. Assuming that 30 - 40 percent of winter flounder landed were in the 12– to 13–inch (30.5–33 cm) size range, the decrease in exvessel revenue would likely be between 2.6 percent ($4.68 million of $183.5 million) and 3.4 percent ($6.24 million of $183.5 million) in the first year for all vessels that reported landings of winter flounder.

Compliance costs associated with increasing the minimum winter flounder fish size would result from the cost of modifying trawl codends to reduce the bycatch of 12–inch (30.5 cm) size fish. However, because codends are expandable and replaced often due to constant wear and tear, annual costs associated with this measure would be part of normal gear replacement cost.

Approximately 1,650 vessels have limited access permits and could land winter flounder regardless of whether it was the target species. Based on the NMFS 1997 landings data, 971 of the active multispecies vessels landed winter flounder. On average, reduction in gross revenue per vessel would likely be between $4,820 and $6,430 in the first year, assuming uniform landings across vessels. Otter trawl vessels accounted for the majority of the landings (64 percent), followed by gillnet vessels (18 percent). Thus, otter trawl vessels could lose between $3.0 million and $4.0 million in the first year. Gillnet vessels could lose between $0.8 million and $1.1 million in the first year.

Alternatives Considered, But Rejected by the Council

1. The Council considered taking "no action" in terms of the use of brush sweep trawl gear but was concerned about the lack of information about its overall use or about how it may impact specific species and other related impacts. The Council was concerned that the efficiency of the gear may be so greatly improved so as to undermine the effectiveness of the days at sea (DAS) reduction program. The basis for this concern is that, if vessels with limited DAS could increase their catch per day significantly, the number of DAS allocated would have to be reduced to achieve the set fishing mortality goal. Because the impacts of the gear are not known at this time, the Council has chosen a precautionary approach by prohibiting use of the gear but recommends comparative studies of roller, rockhopper, chain, brush sweep and other bottom tending trawl gear (not including scallop dredges) be conducted to assess bycatch, gear efficiency and such other impacts as effects on bottom habitat.

2. The Council chose as its preferred alternative for Atlantic halibut to add that species to the management unit for the FMP, and establish a 1–fish possession limit and a minimum fish size of 36 inches (91.4 cm) to begin rebuilding this overfished fish stock. Additionally, the Council considered, but rejected, four other alternatives for halibut management: (1) No action alternative, (2) add Atlantic halibut to the management unit and prohibit possession on halibut, (3) add Atlantic halibut to the management unit and implement a 1–fish possession limit with a maximum fish size of 48 inches (121 cm), and (4) add Atlantic halibut to the management unit and implement a 1–fish possession limit with a maximum fish size limit of 48 inches (121 cm) and a minimum fish size of 36 inches (91.4 cm). The two alternatives that included a maximum fish size limit were rejected based on public comment that capture of a large fish only to determine if it was of illegal size would result in excessive discard mortality. NMFS declared Atlantic halibut to be overfished in its September 1997 and 1998 Reports to Congress. The Council rejected the no action alternative given the overfished condition of halibut and the

requirement under the Sustainable Fisheries Act to prepare a plan to rebuild overfished stocks. The Council also decided the species needs specific management measures to begin rebuilding. It adopted a one-fish possession limit rather than total prohibition in part to minimize the economic effects on the few vessels (believed to be about 50) that are considered to be part of a directed fishery, even though their catch of halibut is only occasional and mostly in state waters.

3. In addition to the preferred alternative of an increase in minimum fish size for winter flounder, the Council considered, but rejected, a possession limit of between 5,000 and 12,000 lb (2268 and 5443.2 kg) of winter flounder for Southern New England and a mesh change for the Gulf of Maine/Georges Bank area. There were a strong opposition by industry to the mesh-size change alternative and a concern over a trip limit being confined to one area. The Council rejected the no action alternative because most stocks of winter flounder are considered overfished and in need of further protection of spawning size fish for rebuilding stock abundance.

NMFS seeks comments regarding the IRFA. In particular, NMFS is seeking information on the number of vessels using brush sweep trawl gear, the number of vessels currently fishing for halibut, and the number of vessels impacted by the proposed increase in the winter flounder fish size. Copies of the IRFA are available (see **ADDRESSES**).

Dated: April 14, 1999.

Andrew A. Rosenberg,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 99–9700 Filed 4–14–99; 4:07 pm]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 990407088–9088–01; I.D. 030999A]

RIN 0648–AK69

Fisheries of the Exclusive Economic Zone Off Alaska; License Limitation Program

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS issues a proposed rule that would amend the regulations implementing the License Limitation Program (LLP) for the groundfish fisheries and the king and tanner crab fisheries of the exclusive economic zone (EEZ) off Alaska by adding an application process and a transfer process for licenses. This proposed rule would establish an application process for an LLP license by providing for an application period, specifying the type of information necessary for license eligibility, and providing the procedure for appealing agency determinations that are made based on information and evidence provided in support of applications. The proposed rule also would establish a transfer process for LLP licenses. This action is necessary to complete implementation of the LLP, a fishery management program recommended by the North Pacific Fishery Management Council (Council), and intended to further the objectives of the Fishery Management Plan (FMP) for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (BSAI), the Fishery Management Plan for Groundfish of Gulf of Alaska (GOA), and the Fishery Management Plan for the Commercial King and Tanner Crab Fisheries in the Bering Sea and Aleutian Islands.

DATES: Comments must be received by May 19, 1999.

ADDRESSES: Comments should be addressed to Susan J. Salveson, Assistant Regional Administrator for Sustainable Fisheries, Sustainable Fisheries Division, Alaska Region, NMFS, 709 West 9th Street, Room 453, Juneau, AK 99801, or P.O. Box 21668, Juneau, AK 99802, Attention: Lori J. Gravel. Send comments regarding burden estimates or any other aspect of the data requirements, including suggestions for reducing the burdens, to NMFS and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503, Attn: NOAA Desk Officer.

FOR FURTHER INFORMATION CONTACT: John Lepore, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the U.S. groundfish fisheries of the GOA and the BSAI in the exclusive economic zone (EEZ) pursuant to the FMPs for groundfish in the respective management areas. The state of Alaska manages the commercial king crab and Tanner crab fisheries in the Bering Sea and the Aleutian Islands with Federal oversight, pursuant to the FMP for those fisheries. The Council prepared the FMPs pursuant to the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), 16 U.S.C. 1801, *et seq.* Regulations at 50 CFR part 679 implemented the FMPs. General regulations at 50 CFR 600 also apply.

Fishing under the LLP for the commercial groundfish fisheries in the EEZ of the GOA and the BSAI and the commercial king crab and Tanner crab fisheries in the Bering Sea and Aleutian Islands fishing is scheduled to begin January 1, 2000. The LLP will replace the Vessel Moratorium Program (VMP), which is scheduled to expire December 31, 1999 (64 FR 3651, January 25, 1999). The VMP which was implemented to curtail increases in fishing capacity and to provide industry stability while the Council developed and NMFS implemented a comprehensive solution for the affected fisheries. The LLP is an integral part of that solution.

The Council took final action to recommend the LLP in June 1995. The design and implementation of the LLP required more time than originally anticipated. When the final rule implementing the LLP was published on October 1, 1998 (63 FR 52642), the application process and the transfer process were postponed for further development. Paragraphs at § 679.4(k)(6) [Application Process] and § 679.4(k)(7) [Transfer Process] were reserved to allow for the inclusion of these processes.

Application Process for LLP Licenses

This proposed rule would provide for a one-time application period of no less than 90 days to be specified by a notice in the **Federal Register**. NMFS anticipates that the application period for LLP licenses will be in the second half of 1999. All applications for LLP licenses would have to be submitted during the time period specified for applying for a license. Applications postmarked after the ending date for the application period would be denied.

In anticipation of the information that will be necessary to evaluate and verify the claims of an applicant, NMFS is compiling a database containing information on vessels that were used to participate in the groundfish and crab fisheries during the qualifying periods for licenses. This database will constitute the official LLP record that will contain only complete and verifiable information and that, under this proposed rule, would be used for the purpose of determining eligibility for a license. An applicant who includes information in an application that is inconsistent with information in the

official LLP record would have the burden of proving that the information submitted in the application is correct.

NMFS would compare the official LLP record for each applicant with the qualification criteria specified in the LLP final rule (63 FR 52642, October 1, 1998). Based on that comparison, NMFS would prepare a summary of qualifications for those applicants appearing to be eligible. NMFS would send these applicants an application form and a copy of the summary of qualifications. Application forms also would be available on request. Applicants who agree with the summary of qualifications would merely need to complete the application with the provided data and include any other information requested on the form. Using the information from the summary of qualifications (by either NMFS or the applicant) is intended to expedite application processing because this information would be consistent with information in the official LLP record.

If an applicant agrees with the information in the summary of qualifications, and the information is sufficient to qualify the applicant for a license, NMFS would issue a license to the applicant at the conclusion of the application period. However, if an applicant disagrees with the information provided in the summary of qualifications, the applicant would have 60 days to submit information in the application other than that contained in the summary of qualifications. For example, an applicant could provide state fish tickets or Weekly Production Reports to verify documented harvests not found in the official LLP record. Or, an applicant could provide a sales contract verifying vessel ownership. Unsubstantiated or incompletely verified information would not be accepted. If an applicant is able to meet the burden of proving that the information submitted in the application is correct and sufficient to qualify the applicant for a license, NMFS would issue a license to the applicant at the conclusion of the application period.

If the applicant submits information in the application that is inconsistent with the information in the official LLP record but cannot be verified with evidence provided with the application, NMFS would not accept that information. NMFS would notify the applicant that the information provided in the application is inconsistent with information in the official LLP record or that necessary information is missing. The applicant would have 60 days in which to submit evidence to prove that the information provided in the application is correct or to submit missing information. An applicant would be limited to one 60-day period to submit evidence or to correct or submit missing information.

If information in the application could not be substantiated or verified at the conclusion of the 60-day evidentiary period, NMFS would issue an initial administrative determination (IAD) indicating which information in the application is not accepted, and why. Applicants would then have an opportunity to appeal that IAD to the Regional Administrator. Section 679.43(d) currently provides that an appeal must be filed no later than 60 days after the date an IAD is issued.

Upon the filing of an appeal an appellate officer would perform an initial review. Two possible outcomes could result from that review. The appellate officer could (1) issue a decision on the merits of the appeal or (2) accept the appeal for further proceedings. An initial review of an applicant's appeal would result in an issuance of a decision on the merits if it is apparent that, although all claims are decided in favor of the applicant, he or she still would not qualify for the relief requested, or that the grounds of the appeal involve claims outside the appellate officer's jurisdiction (i.e., that the regulations are illegal).

An applicant who was issued a license the previous year would be eligible for a non-transferable license pending the final resolution of his or her claim pursuant to the license renewal provisions of 5 U.S.C. 558. The non-transferable license would authorize the applicant to deploy a vessel to conduct directed fishing for license limitation groundfish or crab species as specified on the license and would have specific endorsements and designations based on verified and unverified claims of the applicant. A non-transferable license could be granted to an applicant at one of two points in the resolution of his or her claim. First, a non-transferable license could be granted to an applicant in the IAD if the applicant failed to support a credible claim with sufficient evidence, but NMFS determines that the applicant could prove his or her claim on appeal. The non-transferable license would be effective until final agency action. Second, issuance of a non-transferable license could be ordered by an appellate officer, even if a non-transferable license was not issued in the IAD. Again, this non-transferable license would be effective until final agency action. If any portion of an applicant's claim is in dispute, the entire license the applicant would receive would be non-transferable, including portions of the license that could have been verified and issued, until final resolution of the disputed claim. This provision would give effect to the LLP's prohibition on severing a license. Otherwise, if an applicant was granted a fully transferable portion of a license while a disputed claim was being resolved, the applicant could transfer the granted portion to another person. This transfer would result in two participants in the affected fisheries, instead of only one, if the applicant prevailed in the appeal and another license was issued. To prevent this occurrence, an applicant's entire license would be non-transferable pending a final agency action. A non-transferable license would expire on final agency action. At that time, the person who appealed would either receive a transferable license, or no license at all, depending on the final agency action.

Transfer Process for LLP Licenses

The transfer process for LLP licenses would enable a license holder to request a transfer of an LLP license to any person who meets the eligibility requirements. Eligibility requirements would include (1) the designated transferee being eligible to document a fishing vessel under Chapter 121, Title 46, U.S.C., (2) the parties to the transfer having no fines, civil penalties, other payments due and outstanding, or outstanding permit sanctions resulting from Federal fishing violations, and (3) the transfer not causing the designated transferee to exceed the license cap in § 679.7.

A license holder also would need to request a transfer if the license holder plans to use the license on a vessel other than the one designated on the license. A license would be valid for use only on the vessel designated on the license; therefore the transfer procedure must be used to change the vessel designated on the license.

A complete application would have to be submitted to the Administrator, Alaska Region, for approval before a transfer could occur. Application forms would be available on request. NMFS would return incomplete applications to the applicant and would identify specific information that is necessary to make the application complete. Information that would be required in the application includes (1) identification information for all parties to the transfer, (2) identification information for the vessel on which the license will be used, (3) documentation of the eligibility of the designated transferee to document a fishing vessel,

(4) a copy of the contract or sales agreement for the transfer, and (5) the signatures of the parties to the transfer.

The proposed rule also would provide for transfer requests by court order, operation of law, or as part of a security agreement. This provision contemplates that some transfers might not be voluntarily requested by the permit holder. Under those circumstances, the Administrator, Alaska Region, would review the information in the transfer application or other document and determine whether the requested transfer would conflict with other provisions of the LLP regulations (e.g., transfer to a person who could not document a fishing vessel under Chapter 121, Title 46, U.S.C.).

Finally, a license could not be transferred more than once per calendar year. This limitation should restrict the incidence of intraseason movement of licenses among vessels and operators. The Council identified intraseason movement of licenses and vessels as behavior that could contribute to overcapacity and excess effort in the affected fisheries.

Classification

At this time, NMFS has not determined that this rule is consistent with the national standards of the Magnuson-Stevens Act and other applicable laws. NMFS, in making that determination, will take into account the data, views, and comments received during the comment period.

This proposed rule has been determined to be not significant for purposes of E.O. 12866.

An EA/RIR was prepared for the LLP, of which this rule is a part. The EA/RIR describes the management background, the purpose and need for action, the management action alternatives, and the socio-economic impacts of the alternatives. It estimates the total number of small entities affected by this action and analyzes the economic impact on those small entities. Based on the economic analysis in the EA/RIR, the Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities for the following reason:

Although most fishing operations that would be affected by this rule are considered small entities, these entities would not experience "significant economic impact" as a result of this rule. NMFS estimates that 3,450 persons will apply for a license under the LLP. Estimated completion time per application is 2.5 hours. Given the small time burden associated with application completion, any economic costs would not cause a "significant economic impact." NMFS estimates that 10 percent of all applicants (345 of 3,450) will transfer a license annually. Estimated completion time per transfer is 1 hour. This completion time is less than the completion time contemplated for the application process. Given the small time burden associated with an application for a transfer, and the small percentage of affected entities, any economic costs would not cause a "significant economic impact to a substantial number of small entities."

As a result, an initial regulatory flexibility analysis was not prepared.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

This proposed rule contains a revised collection-of-information requirement subject to review and approval by OMB under the Paperwork Reduction Act (PRA). This revision has been submitted to OMB for approval. OMB approved the original collection of information requirement for the LLP under OMB control number 0648–0334. Please refer to this number in any correspondence regarding this request. The public reporting burden for this collection of information is estimated to average 2.5 hours per response for an application for initial issuance, 1 hour per response for an application for transfer, and 4 hours per response for an appeal. These response times include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Public comment is sought regarding: whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Send comments on these or any other aspects of the collection of information to NMFS (see **ADDRESSES** above), and to OMB at the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC. 20503 (Attention: NOAA Desk Officer).

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: April 14, 1999.

Penelope D. Dalton,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For reasons set out in the preamble, 50 CFR part 679 is proposed to be amended as follows:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

1. The authority citation for part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.*, 1801 *et seq.*, and 3631 *et seq.*

2. In § 679.2, the definition for "Official LLP record" is added in alphabetical order to read as follows:

§ 679.2 Definitions.

* * * * *

Official LLP record means the information assembled by the Regional Administrator about vessels that were used to participate in the groundfish and crab fisheries during the qualifying periods for the License Limitation Program. Information in the official LLP record includes vessel ownership information, documented harvests made from vessels during the qualification periods, and vessel characteristics. The official LLP record is presumed to be correct for the purpose of determining eligibility for licenses. An applicant for a license under the License Limitation Program has the burden of proving that information submitted in an application that is at variance with the official LLP record is correct.

* * * * *

3. In § 679.4, text is added to paragraphs (k)(6) and (7) to read as follows:

§ 679.4 Permits.

* * * * *

(k) * * *

(6) *Application for a groundfish license or a crab species license*—(i) *General.* The Regional Administrator will issue a groundfish license or a crab species license to an eligible applicant if that applicant meets all the criteria for eligibility in paragraph (k) of this section, a complete and timely application is filed by or on behalf of the applicant, and the complete application is approved by the Regional Administrator. An application form will be sent to the last known address of a

person identified as an eligible applicant by the Official LLP Record. The Regional Administrator will provide an application form to any person who requests one.

(ii) *Application period.* An application period of no less than 90 days will be specified by notice in the **Federal Register** and other information sources deemed appropriate by the Regional Administrator.

(iii) *Contents of application.* To be complete, an application for a groundfish license or a crab species license must contain the following information:

(A) Name(s), business address(es), telephone number(s), and FAX number(s) of the applicant(s);

(B) Name, state registration number (e.g., ADF&G number), and, if applicable, the USCG documentation number of the vessel being used as the basis for eligibility for a license; and name, state registration number (e.g., ADF&G number), and, if applicable, the USCG documentation number of the vessel to be deployed with the license if different than the vessel used as the basis of eligibility for a license;

(C) Name of the managing company, if any;

(D) Valid documentation of the documented harvests that are the basis of eligibility for a license, including harvest area, gear used, date of landing, and, if applying for a crab species license, species;

(E) Valid documentation of LOA on June 24, 1992, of the vessel used as the basis of eligibility for a license. If that vessel was under reconstruction on that date, valid documentation of LOA on the date reconstruction was completed and valid documentation of when reconstruction began and ended;

(F) Valid documentation of LOA on June 17, 1995, of the vessel used as the basis of eligibility for a license. If that vessel was under reconstruction on that date, valid documentation of LOA on the date reconstruction was completed and valid documentation of when reconstruction began and ended;

(G) Valid documentation to support the applicant's claim for a vessel designation of catcher vessel or catcher/processor vessel;

(H) Valid documentation of ownership of the vessel being used as the basis for eligibility for a license (for USCG documented vessels, valid documentation must be the USCG Abstract of Title), or, if eligibility is based on a fishing history that has been separated from a vessel, valid documentation of ownership of the fishing history being used as the basis of eligibility for a license;

(I) Valid documentation of the LOA of the vessel to be deployed by the license if different than the vessel used as the basis for eligibility for a license; and

(J) Signature of the applicant(s), or the individual responsible for representing the applicant(s).

(iv) *Other information required for special circumstances.* To be complete, an application also must contain the following information for these special circumstances.

(A) *Successor-in-interest.* An applicant applying as the successor-in-interest to an eligible applicant must provide valid documentation proving the applicant's status as a successor-in-interest to that eligible applicant and:

(*1*) valid documentation of death or disability of that eligible applicant at the time of application, if the eligible applicant was or is an individual; or

(*2*) valid documentation that that eligible applicant is no longer in existence at the time of application, if the eligible applicant is not an individual.

(B) *Norton Sound crab species license endorsement.* In addition to other information that must be provided pursuant to paragraph (k)(6)(iii) of this section, an applicant for a crab species license endorsement for Norton Sound must indicate whether he or she was a State of Alaska permit holder for the Norton Sound king crab summer fishery in 1993 or 1994 or for a corporation that owned or had a lease for a vessel on June 17, 1995, that participated in the Norton Sound king crab summer fishery in 1993 or 1994.

(C) *Extended general qualification period.* An applicant for a license based on meeting the general qualification period documented harvest requirement of making a documented harvest with jig or pot gear between June 28, 1992, and December 31, 1994, pursuant to paragraph (k)(4)(i)(A)(2) or (B)(2) of this section, must select one endorsement area for license issuance, notwithstanding the fact that the applicant may have the documented harvests necessary to qualify for more than one endorsement area.

(D) *Unavoidable circumstances.* An applicant for a license based on an unavoidable circumstance pursuant to paragraph (k)(8)(iv) of this section must provide the information required by that paragraph, the date the vessel on which the application is based was lost, damaged, or otherwise unable to participate in the fishery, and the date a documented harvest was made from the replacement vessel.

(v) *Application evaluation.* The Regional Administrator, will evaluate all timely filed applications. A timely filed application is an application that is postmarked before the ending date for the application period for the License Limitation Program specified in the **Federal Register**. All claims and data in the application will be compared with information and data from the Official LLP Record. Any claims or data in the application that are consistent with the information and data from the Official LLP Record are uncontested data. Uncontested data in the application will be accepted by the Regional Administrator. Uncontested data will be used by the Regional Administrator, in determining whether the applicant is eligible for a license as claimed in the application. Any claims or data in the application that are inconsistent with the information and data from the Official LLP Record are contested data. Contested data in applications will not be accepted. Pursuant to paragraph (k)(6)(vii) of this section, an applicant who submits contested data, or an applicant who fails to submit data as specified in paragraphs (k)(6)(iii) and (iv), will have 60 days to submit additional information, submit evidence to support his or her contested data, or submit a revised application with claims consistent with data in the Official LLP Record.

(vi) *Additional information or evidence.* Additional information or evidence to support an applicant's contested data will be evaluated by the Regional Administrator if submitted within the 60-day evidentiary period pursuant to paragraph (k)(6)(vii) of this section. If the Regional Administrator determines that the additional information or evidence meets the applicant's burden of proving that the contested data in his or her application are correct, the Official LLP Record will be amended and the data will be used in determining whether the applicant is eligible for a license. However, if the Regional Administrator determines that the additional information or evidence does not meet the applicant's burden of proving that the contested data in his or her application are correct, the applicant will be notified by an initial administrative determination, pursuant to paragraph (k)(6)(viii) of this section, that the information or evidence submitted is insufficient to change the Official LLP Record.

(vii) *Sixty-day evidentiary period.* An applicant who submits data in the application that is inconsistent with the Official LLP Record has the burden of proving that the submitted data are correct. If the Regional Administrator determines that the applicant submitting the data did not meet the burden of proving that the submitted

data are correct through information or evidence provided with the application, that applicant will be notified and will have 60 days to submit additional information or evidence to support the claims and data in his or her application, or to submit a revised application with claims and data consistent with the data in the Official LLP Record. Also, an applicant who fails to submit data as specified in paragraphs (k)(6)(iii) and (iv) of this section will have 60 days to submit that data. An applicant will be limited to one 60-day evidentiary period. Additional information or evidence, or a revised application, received after the 60-day evidentiary period has expired will not be considered for purposes of the initial administrative determination.

(viii) *Initial administrative determinations (IAD).* If, following the receipt of additional information or a revised application, the Regional Administrator determines that there is still insufficient information or evidence to rebut the presumption that the Official LLP Record is accurate, or, if the submitted information, evidence, or revised application is not submitted within the time period indicated in the 60-day evidentiary period notification letter, an IAD will be prepared and sent to the applicant who had submitted the application with contested or missing data. The IAD will explain the deficiency in the contested or missing data, the deficiency in the additional information or evidence submitted in support of the contested or missing data, or the deficiency in the revised application. The IAD will also indicate which claims cannot be approved based on the available information or evidence. An applicant who receives an IAD will have an opportunity to appeal pursuant to § 679.43. An applicant who avails himself or herself of the opportunity to appeal an IAD will not receive a transferable license until after the final resolution of that appeal, notwithstanding the eligibility of that applicant for some claims based on uncontested data in the application.

(ix) *Issuance of a non-transferable license.* When required by the license renewal provisions of 5 U.S.C. 558, NMFS will issue a non-transferable license to an applicant on issuance of an IAD, or alternatively, by order of an appellate officer. NMFS may issue a non-transferable license when NMFS issues an IAD if an applicant failed to support his or her claim with sufficient evidence, but NMFS determines that the applicant's claim is credible and may be proven on appeal. NMFS may issue a non-transferable license to an applicant pursuant to an order of an appellate officer pending final agency action if a non-transferable license was not issued with the IAD. A non-transferable license authorizes a person to deploy a vessel to conduct directed fishing for license limitation groundfish or crab species as specified on the non-transferable license, and will have the specific endorsements and designations based on the claims in his or her application. A non-transferable license will expire upon final agency action.

(7) *Transfer of a groundfish license or a crab species license*—(i) *General.* NMFS will transfer a groundfish license or a crab species license if a license holder and designated transferee meet all the eligibility criteria for transfers in paragraph (k)(7)(ii) of this section and the license holder submits a complete application that is subsequently approved by the Regional Administrator. NMFS will provide an application form to any person who requests one.

(ii) *Eligibility criteria for transfers.* NMFS will not approve a groundfish license or crab species license transfer if:

(A) The designated transferee is not eligible to document a fishing vessel under Chapter 121, Title 46, U.S.C.;

(B) There are fines, civil penalties, other payments due and outstanding, or outstanding permit sanctions resulting from Federal fishing violations involving any party to the transfer;

(C) The transfer will cause the designated transferee to exceed the license caps in § 679.7(j); or

(D) The transfer violates other provisions specified in this part.

(iii) *Contents of application.* To be complete an application for a groundfish license transfer or a crab species license transfer must contain the following information, as applicable:

(A) Name(s), business address(es), telephone number(s), FAX number(s), of the license holder and the designated transferee;

(B) Name, state registration number (e.g., ADF&G number), and, if applicable, the USCG documentation number of the vessel on which the license will be used after the transfer is approved:

(C) Valid documentation that the designated transferee is a person eligible to document a fishing vessel under Chapter 121, Title 46, U.S.C.;

(D) A legible copy of a contract or sales agreement that specifies the license to be transferred, the license holder, the designated transferee, the monetary value or the terms of the license transfer, and the signature of the license holder and the designated transferee;

(E) Information regarding whether a broker was used for the transaction, whether the license was collateralized, and other information the Regional Administrator deems necessary for measuring program performance; and

(F) Signature of the license holder and the designated transferee, or of the individuals responsible for representing those persons.

(iv) *Incomplete applications.* NMFS will return to the applicant a transfer application that is determined to be incomplete by the Regional Administrator. The returned application will identify the specific kinds of information necessary to make the application complete.

(v) *Transfer by court order, operation of law, or as part of a security agreement.* The Regional Administrator will approve a complete transfer application based on a court order, operation of law, or a security agreement, if the transfer does not conflict with any of the provisions of this section.

(vi) *Transfer Limitation.* A groundfish license or a crab species license may be transferred only once in any calendar year. NMFS will not approve an application for transfer that violates this provision.

[FR Doc. 99–9731 Filed 4–16–99; 8:45 am]
BILLING CODE 3510–22–P

Notices

Federal Register
Vol. 64, No. 74
Monday, April 19, 1999

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Farm Service Agency

List of Warehouses and Availability of List of Cancellations and/or Terminations

AGENCY: Farm Service Agency, USDA.
ACTION: Notice of publication.

SUMMARY: Notice is hereby given that the Farm Service Agency has published a list of warehouses licensed under the United States Warehouse Act (7 U.S.C. 241 *et. seq.*) as of December 31, 1998, as required by section 26 of that Act (7 U.S.C. 266). A list of cancellations or terminations that occurred during calendar year 1998 is also available. Interested persons may obtain a copy of either list from the person listed below.

FOR FURTHER INFORMATION CONTACT: Judy Fry, Farm Service Agency, Warehouse and Inventory Division, U.S. Department of Agriculture, STOP 0553, 1400 Independence Avenue, SW., Washington, DC 20250–0553: telephone 202–720–3822; e-mail requests may be sent: Judy__Fry@wdc.fsa.usda.gov.

Signed at Washington, DC, on April 7, 1999.

Parks Shackelford,

Acting Administrator, Farm Service Agency.

[FR Doc. 99–9628 Filed 4–16–99; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Forest Service

Information Collection; Request for Comments; Grazing Permit Administration Forms

AGENCY: Forest Service, USDA.
ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Forest Service announces its intent to request extension of a previously approved information collection. The Forest Service uses the collected information to administer grazing use on National Forest System lands. Information will be collected from individuals applying for a grazing permit or permittees holding a grazing permit.

DATES: Comments must be received in writing on or before June 18, 1999.

ADDRESSES: All comments should be addressed to: Director, Range Management, Forest Service, USDA, P.O. Box 96090, Washington, DC 20090–6090 or email to rge/wo@fs.fed.us.

FOR FURTHER INFORMATION CONTACT: Ralph Giffen, Range Management Staff, (202) 205–1460.

SUPPLEMENTARY INFORMATION:

Background

The Federal Land Policy and Management Act of 1976 (FLPMA), as amended, requires the Forest Service to collect certain information from individuals, partnerships, corporations, associations, or other private entities applying for permits to graze livestock on National Forest System lands. The data collected is used by Forest Service officers in administering the range management grazing use program on National Forest System lands. There are different kinds of forms to address different kinds of circumstances. Fees are associated with some permits. Each form is described in this request for extension of Office of Management and Budget approval.

National Forms

Information collected on national forms is applicable in all Forest Service regions and includes, along with other information, such basic information as names and addresses of those who apply for a grazing permit or of those who already hold a grazing permit.

Description of Information Collection

The following describes the information collection to be extended:

Title: FS–2200–1; Refund, Credit, or Transfer Application.

OMB Number: 0596–0003.

Expiration Date of Approval: April 30, 1999.

Type of Request: Extension of a previously approved information collection.

Abstract: The permittee uses this form when applying for a refund, credit, or transfer of the unused portion of the preceding season's grazing permit fees, which were collected by the Federal Government for use of National Forest System lands .

Estimate of Burden: 20 minutes.

Type of Respondents: Individuals applying for or holding a grazing permit.

Estimated Number of Respondents: 600.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 200 hours.

Description of Information Collection

The following information describes the information collection to be extended:

Title: FS–2200–2; Application for Temporary Grazing Permit.

OMB Number: 0596–0003.

Expiration Date of Approval: April 30, 1999.

Type of Request: Extension of a previously approved information collection.

Abstract: This form is used to evaluate applicants applying for temporary grazing permits, which are issued for a specific grazing allotment, a specific number of head of livestock, a specific class of livestock, and a specific grazing period of time. The information collected on this form enables the agency to validate the ability of the applicant to meet the Federal Government's requirements to graze on National Forest System lands.

Estimate of Burden: 20 minutes.

Type of Respondents: Individuals applying for or holding a grazing permit.

Estimated Number of Respondents: 1000.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 350 hours.

Description of Information Collection

The following information describes the information collection to be extended:

Title: FS–2200–12; Waiver of Term grazing Permit.

OMB Number: 0596–0003.

Expiration Date of Approval: April 30, 1999.

Type of Request: Extension of a previously approved information collection.

Abstract: Information collected on this form enables the agency to cancel

a grazing permit on a specified allotment, to issue a subsequent grazing permit for that allotment, and to identify a purchaser of base property or permitted livestock as the preferred applicant for the subsequent grazing permit.

Estimate of Burden: 20 minutes.

Type of Respondents: Individuals applying for or holding a grazing permit.

Estimated Number of Respondents: 750.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 250 hours.

Description of Information Collection

The following information describes the information collection to be extended:

Title: FS–2200–13; Escrow Waiver of Term Grazing Permit Privileges.

OMB Number: 0596–0003.

Expiration Date of Approval: April 30, 1999.

Type of Request: Extension of a previously approved information collection.

Abstract: The agency uses data collected on this form to identify a lien holder for permitted livestock or to identify base property of a current permittee, so if the current permittee defaults on a loan, the permit can be transferred to the lien holder.

Estimate of Burden: 20 minutes.

Type of Respondents: Individuals applying for or holding a grazing permit.

Estimated Number of Respondents: 150.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 50 hours.

Description of Information Collection

The following information describes the information collection to be extended:

Title: FS–2200–15; Application and Permit for Livestock Use.

OMB Number: 0596–0003.

Expiration Date of Approval: April 30, 1999.

Type of Request: Extension of a previously approved information collection.

Abstract: Information collected on this form describes the specific grazing area for which the applicant requests a permit, the period of time the applicant plans to use the specific grazing area, and the number, king, and class of livestock the applicant plans to graze on the area. This form also provides the basis for the fees the applicant must pay the Federal Government for the use of the land and enables the agency to validate the ability of the applicant to meet the requirements to graze on National Forest System lands.

Estimate of Burden: 20 minutes.

Type of Respondents: Individuals applying for or holding a grazing permit.

Estimated Number of Respondents: 750.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 250 hours.

Description of Information Collection

The following information describes the information collection to be extended:

Title: FS–2200–16; Application for Term Grazing Permit.

OMB Number: 0596–0003.

Expiration Date of Approval: April 30, 1999.

Type of Request: Extension of a previously approved information collection.

Abstract: The information collected on this form enables the agency to evaluate the applicant's ability to hold and properly adhere to term grazing permit for National Forest System lands, to issue a term grazing permit to a an applicant, and to bill the applicant for fees due the Federal Government for a specific grazing allotment for specified dates of use, and for a specified number, kind, and class of livestock.

Estimate of Burden: 30 minutes.

Type of Respondents: Individuals applying for or holding a grazing permit.

Estimated Number of Respondents: 1800.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 900 hours.

Description of Information Collection

The following information describes the information collection to be extended:

Title: FS–2200–17; Application for Private Land Grazing Permit.

OMB Number: 0596–0003.

Expiration Date of Approval: April 30, 1999.

Type of Request: Extension of a previously approved information collection.

Abstract: The information collected on this form enables the agency to evaluate whether private lands can be appropriately administered by the agency for grazing use in conjunction with administration of grazing use on National Forest System lands. The data is necessary for the issuance of a term private land grazing permit and the proper coordination of grazing on adjacent National Forest System lands.

Estimate of Burden: 20 minutes.

Type of Respondents: Individuals applying for or holding a grazing permit.

Estimated Number of Respondents: 150.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 50 hours.

Regional Forms

Regional forms are applicable only to the specific Forest Service region identified on the form. The information on the regional forms supplements data on the national forms, such as assigning grazing privileges to permittees having a corporate or partnership interest in the grazing permit and identifying the portion of interest an entity has in the corporation or partnership.

Description of Information Collection

The following information describes the information collection to be extended:

Title: R1–FS–2200–5; Statement of Corporation or Partnership Interest in Grazing Permit.

OMB Number: 0596–0003.

Expiration Date of Approval: April 30, 1999.

Type of Request: Extension of a previously approved information collection.

Abstract: The data collected on this form enables the agency to issue grazing permits and assign grazing privileges to permittees having a corporate or partnership interest in the grazing permit. The information identifies the portion of interest an entity has in the corporation or partnership holding the grazing permit.

Estimate of Burden: 20 minutes.

Type of Respondents: Individuals applying for or holding a grazing permit.

Estimated Number of Respondents: 300.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 100 hours.

Description of Information Collection

The following information describes the information collection to be extended:

Title: R2–2200–6; Ownership Statement by Corporation or Partnership.

OMB Number: 0596–0003.

Expiration Date of Approval: April 30, 1999.

Type of Request: Extension of a previously approved information collection.

Abstract: The data collected on this form enables the agency to issue term

grazing permits and assign grazing privileges to permittees having a corporate or partnership interest in the grazing permit. The information identifies the portion of the interest an entity has in the corporation or partnership holding the grazing permit.

Estimate of Burden: 20 minutes.

Type of Respondents: Individuals applying for or holding a grazing permit.

Estimated Number of Respondents: 300.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 100 hours.

Description of Information Collection

The following information describes the information collection to be extended:

Title: R3–FS–2200–1; Annual Validation of Term Grazing Permit.

OMB Number: 0596–0003.

Expiration Date of Approval: April 30, 1999.

Type of Request: Extension of a previously approved information collection.

Abstract: The data is necessary for annual confirmation that the permittee intends to use the grazing permit and the extent to which they plan to use it. It also can be used as a request for changes to a grazing permit. Information collected on this form enables the agency to bill for fees due the Federal Government and to recommend and approve changes from the current year's permitted use.

Estimate of Burden: 30 minutes.

Type of Respondents: Permittees holding a grazing permit.

Estimated Number of Respondents: 1000.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 500 hours.

Description of Information Collection

The following information describes the information collection to be extended:

Title: R8–2200–23; Application for Validation of Term Grazing Permit.

OMB Number: 0596–0003.

Expiration Date of Approval: April 30, 1999.

Type of Request: Extension of a previously approved information collection.

Abstract: The data is necessary for the annual confirmation the permittee intends to use the grazing permit and the extent to which they plan to use it. It also can be used as a request for changes to a grazing permit. Information collected on this form enables the agency to bill for fees due the Federal Government and to recommend and approve changes from the current year's permitted use.

Estimate of Burden: 30 minutes.

Type of Respondents: Permittees holding a grazing permit.

Estimated Number of Respondents: 400.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 200 hours.

Comments Are Invited

The agency invites comments on the following: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Use of Comments

All comments received in response to this notice, including name and address when provided, will be summarized and included in the request for Office of Management and Budget approval. All comments will also become a matter of public record.

Dated: April 14, 1999.

Robert Lewis, Jr.,

Deputy Chief, Research.

[FR Doc. 99–9686 Filed 4–16–99; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Cannon/Mittersill Land Exchange; White Mountain National Forest, Grafton County, NH

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The USDA—Forest Service will prepare an environmental impact statement (EIS) for a proposed land exchange between the State of New Hampshire and the Forest Service. The State would acquire approximately 190 acres of National Forest System land near the top of the former Mittersill Ski Area. In exchange, the State would give to the Forest Service a portion of the Second Presidential Tract, located about 5 miles south of Cannon Mountain in the town of Lincoln. In addition, the State desires a Special Use Permit for the operation and maintenance of the Tucker Brook Trail, within its existing footprint. No additional access or ski lifts are proposed for this trail.

The Mittersill parcel proposed for exchange is composed largely of land designated by the Forest Service as Management Areas (MAs) 7.1 and 9.2 (approximately 52 and 132 acres, respectively). MA 7.1 is managed for the development of alpine ski terrain and associated year-round recreation while MA 9.2 is land that is reserved for future ski area expansion. Both management areas have been used for skiing since the early 1930's. Approximately 6 acres of the proposed Mittersill exchange parcel is designated as MA 6.2, which is managed for semi-primitive, non-motorized recreation. This small piece of MA 6.2 is included in the proposed exchange to fulfill a Forest Plan land adjustment objective of achieving "more efficient land ownership patterns".

The Second Presidential Tract was acquired by the State of New Hampshire Department of Transportation to facilitate the extension of I–93 through Franconia Notch. The original acquisition contained about 1,665 acres and was part of a much larger tract, the rest of which (4,565 acres) was previously transferred to the United States of America for addition to the WMNF. Approximately 346 acres of the northern portion of the Second Presidential Tract was transferred to the Department of Resources and Economic Development and incorporated into Franconia Notch State Park to compensate for land taken from the park for construction of the Franconia Notch Parkway. An additional 159 acres was utilized by the Department of Transportation for the I–93 right-of-way. The remaining 1,160 acres are available for consideration in the land exchange.

Portions of the state-owned Second Presidential Tract were recommended for possible Forest Service acquisition in the 1986 WMNF Plan. This tract contains significant natural resources including Georgiana Falls, several significant wetlands and relatively mature hard- and softwood forests. The parcel also serves as the visual foreground for the Blue Ridge-Mount Kinsman Area of the Forest which includes a significant portion of the Appalachian Trial. Although owned by the State of New Hampshire, the Second

Presidential Tract remains under the administrative jurisdiction of the New Hampshire Department of Transportation.

The State of New Hampshire proposes to exchange a portion of the Second Presidential Tract with the Forest Service for 190 acres at the top of the Mittersill Ski Area. It is further proposed that the exchange parcel be taken from the northern end of the Tract (bounded by Franconia State Park to the north and the WMNF to the west) in an amount that may equal up to 125% of the value of the Mittersill parcel. The exchange parcel would likely contain Georgiana Falls. Values of the exchange parcels would be determined by appraisers acceptable to both the State of New Hampshire and the Forest Service.

DATES: The agency must receive comments on or before May 19, 1999.

ADDRESSES: Submit written comments and suggestions concerning the scope of the analysis to Anne Archie, District Ranger; White Mountain National Forest; Ammonoosuc/Pemigewasset Ranger District; RFD 3, Box 15, Route 175; Plymouth, New Hampshire 03264.

FOR FURTHER INFORMATION CONTACT: Questions regarding the proposed action, the National Environmental Policy Act (NEPA) process and/or the forthcoming EIS should be directed to Anne Davy, NEPA Coordinator; White Mountain National Forest; Ammonoosuc/Pemigewasset Ranger District; FRD 3, Box 15, Route 175; Plymouth, New Hampshire 03264. Phone: 603–536–1315; fax: 603–536–3281; e-mail: adavy/r9__whitemtn@fs.fed.us.

SUPPLEMENTARY INFORMATION:

Purpose and Need for the Proposal

The New Hampshire State Legislature recently mandated that a new Master Development Plan (MDP) be prepared for Cannon. The new MDP has been completed and accepted by the Cannon Mountain Advisory Commission, the Department of Parks and Recreation (which operates Cannon), the Capitol Budget Overview Committee, and the Governor and Executive Council. This MDP recommended three phases of development, all of which involve upgrading lifts, expanding and improving existing terrain and upgrading service facilities, consistent with the development philosophy for Cannon.

Phase III involves the restoration and reopening of the Mittersill Ski Area. Because expansion opportunities are limited on the Cannon portion of the resort, redevelopment of Mittersill is part of the plan to offer new and exciting terrain to the skiing public. Optimal development of Mittersill would require use of National Forest System lands. Although it would be possible to redevelop the Mittersill area entirely on State lands, it is not desirable for the following reasons:

1. The historic ski trails on National Forest System lands are not maintained for public use. For example, the Taft Trail, which was one of the first ski racing trails in North America and provides an upper mountain connection between Cannon and Mittersill, is highly desirable to reestablish and maintain.

2. Redevelopment of Mittersill entirely on State lands would reduce the amount of new terrain that could be created to about 60% of what is presented in the new MDP.

3. Cannon is deficient in intermediate terrain at present and development of more of this terrain is needed to meet the skiing and riding needs of the public. The Mittersill area offers the greatest potential for intermediate terrain development, but only by utilizing National Forest System land. If National Forest System lands can not be used, the redeveloped Mittersill area on State land would be for advanced and expert skiers only. Cannon Mountain would remain deficient in intermediate terrain.

With respect to the Tucker Brook Trail, the Forest Service does not currently operate or maintain this trail and has no plans to do so in the future. The State believes this trail has historic significance, and for this reason, proposes to assume control of the trail. Since this trail is within the National Forest and is not part of the proposed land exchange, a Special Use Permit is needed.

Consistency With National Forest Policy/White Mountain National Forest Plan

Land exchanges have played an important role in facilitating land acquisitions in National Forests since passage of the General Exchange Act of 1922. Other pieces of important enabling Federal legislation include the Federal Land Policy and Management Act of 1976, the National Forest Management Act of 1976 and the Federal Land Exchange Facilitation Act of 1988. The purpose of the 1988 legislation was to "facilitate and expedite land exchanges pursuant to the Federal Land Policy and Management Act of 1976 and other laws applicable to exchanges involving lands managed by the Departments of Interior and Agriculture". Among other things, this act's findings include a declaration from Congress that "land exchanges are a very important tool for Federal and State land managers and private landowners to consolidate Federal, State and private holdings of land or interests in land for purposes of more efficient management and to secure important objectives including the protection of fish and wildlife habitat and aesthetic values; the enhancement of recreation opportunities; the consolidation of mineral and timber holdings for more logical and efficient development; the expansion of communities; the promotion of multiple-use values; and fulfillment of public needs". This act further recognized that the "needs for land ownership adjustments and consolidation consistently outplace available funding for land purchases by the Federal Government and thereby make land exchanges an increasingly important method of land acquisition and consolidation for both Federal and State land managers and private landowners".

The Forest Plan for the WMNF also recognizes land adjustments, either by purchase or exchange, as important tools for achieving management goals for the National Forest. The plan states that "Land adjustments (purchase or exchange) will satisfy one or more of the following purposes:

- To accomplish objectives of public law or regulation;
- To meet demand for National Forest System resources;
- To achieve more efficient land ownership patterns;
- To achieve lower resource management costs; and
- To obtain needed access to National Forest System lands."

In short, Federal legislation gives the Forest Service broad discretionary power to pursue land exchanges while the Forest Plan specifies the criteria to be satisfied when considering land acquisition. The Forest Service believes that the proposed land exchange between the State of New Hampshire and the Forest Service meets all five criteria cited above. Therefore, the Forest Service has concluded that it is in the public interest to pursue the proposed project.

NEPA Process

The Forest Service has adopted a rigorous process of environmental review and analysis, pursuant to NEPA regulations, for all activities on National Forest System lands that have potential environmental impact. This process includes extensive public involvement, beginning with scoping early in the process and concluding with public review of final environmental documents and Forest Service decisions. Public participation is an important part of the analysis, commencing with the initial scoping process (40 CFR 1501.7), which will

occur upon publication of this notification. The Forest Service will be seeking information, comments and assistance from Federal, State and local agencies and other individuals or organizations that may be interested in or affected by the proposed action. The proposed project will be presented at an Open House in the local area, where representatives from the WMNF and the State of New Hampshire will be available to discuss the project and provide additional information. In addition, interested parties are encouraged to visit with Forest Service officials at any time during the analysis and prior to the decision.

Comments from the public and other agencies will be used in preparation of the Draft Environmental Impact Statement (DEIS). Please note that comments will be regarded as public information. The scoping process will be used to:

1. Identify potential issues.
2. Identify major issues to be analyzed in depth.
3. Eliminate minor issues or those which have been covered by a relevant previous environmental analysis, such as the Forest Plan EIS for the WMNF.
4. Identify alternatives to the proposed action.
5. Identify potential environmental effects of the proposed action and it's alternatives, including direct, indirect and cumulative effects.
6. Determine potential cooperating agencies and task assignments.

No significant issues associated with the proposed land exchange or the Special Use Permit for the Tucker Brook Trail have been identified to date. Issues commonly associated with land exchanges of public lands are usually specific to the lands involved but often include methods of determining appropriate values of the parcels involved and potential impacts to threatened, endangered or sensitive species.

In preparing the DEIS, the Forest Service will consider a range of alternatives to meet the objectives of this proposal. One of these will be the "no action" alternative, in which none of the proposed activities would be implemented. Additional alternatives may involve issuance of a Special Use Permit instead of a land exchange and/or evaluation of parcels of land other than that already identified that might better meet the management objectives for the WMNF.

The DEIS will analyze the direct, indirect and cumulative environmental effects of the alternatives. Past present and foreseeable future activities on private, State and National Forest System lands will be considered. The DEIS will also discuss site-specific mitigation measures, if necessary, that may be required to implement the project and their anticipated effectiveness.

It is expected at this time that the DEIS will be filed with the Environmental Protection Agency (EPA) and made available for public review in December 1999. At that time, the EPA will publish a Notice of Availability of the DEIS in the **Federal Register.** The comment period on the DEIS will be 45 days from the date the EPA's notice of availability appears in the **Federal Register**. It is very important that those interested in management of the WMNF and Cannon Mountain participate during this review and comment period. To be most helpful, comments on the DEIS should be as specific as possible. The Final EIS (FEIS) is expected to be released in March of 2000.

The Forest Service believes, at this early stage, that it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *Natural Resources Defense Council, 435 US 519, 558 (1978).* Also, environmental objections that could be raised at the draft environmental impact stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel, 803 F.2d 1016, 1022 (9th Cir. 1986)* and *Wisconsin Heritages, Inc.* v. *Harris, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980).* Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the scoping and 45-day DEIS comment periods so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in developing issues and alternatives.

To assist the Forest Service in identifying and considering issues on the proposed action, comments should be as specific as possible. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Dated: April 13, 1999.

Donna Hepp,

Forest Supervisor.

[FR Doc. 99–9665 Filed 4–16–99; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

Designation for the Central Illinois (IL) Area

AGENCY: Grain Inspection, Packers and Stockyards Administration (GIPSA).

ACTION: Notice; correction.

SUMMARY: The Grain Inspection, Packers and Stockyards Administration published a document in the **Federal Register** of April 1, 1999, announcing designation of Central Illinois Grain Inspection, Inc. (Central Illinois), to provide official services under the United States Grain Standards Act. The document contained an incorrect date.

FOR FURTHER INFORMATION CONTACT: Janet M. Hart, 202–720–8525.

Correction

In the **Federal Register** of April 1, 1999, in FR Doc. 99–7995, on page 15723, in the third column, correct the fifth paragraph to read:

Effective June 1, 1999, and ending March 31, 2002, Central Illinois is designated to provide official services in the Central Illinois geographic area specified in the October 1, 1998, **Federal Register.**

Authority: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*).

Dated: April 13, 1999.

Neil E. Porter,

Director, Compliance Division.

[FR Doc. 99–9637 Filed 4–16–99; 8:45 am]

BILLING CODE 3410–EN–P

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Nutrient Management Technical Assistance Activities Policy; Revision

AGENCY: Natural Resources Conservation Service (NRCS), USDA

ACTION: Revision of the NRCS policy for nutrient management technical assistance activities. This revised policy impacts the NRCS national conservation practice standards for Nutrient Management (Code 590) and Waste Utilization (Code 633), which have been revised and reissued to reflect the new policy.

SUMMARY: Notice is hereby given of the decision of NRCS to adopt a revised policy for providing nutrient management technical assistance. This revised policy will be disseminated within the agency through updates of the agency's General Manual. This includes revision of existing policy in Title 450, Part 401, Subpart A Technical Guides, Policy and Responsibilities; and new policy in Title 190, Part 402, Ecological Sciences, Nutrient Management Policy. This policy will be implemented through revision of the agency's conservation practice standards for Nutrient Management (Code 590) and Waste Utilization (Code 633). These national conservation practice standards have been revised and reissued to reflect the new policy.

EFFECTIVE DATES: The new policy and revised conservation practice standards are effective upon the date of adoption by the agency. They will be implemented by NRCS State Conservationists as quickly as possible, but not more than 2 years after their date of adoption by NRCS.

FOR FURTHER INFORMATION CONTACT: Questions about this policy should be directed to Ecological Sciences Division, NRCS, Washington, D.C. Submit questions in writing to Charles H. Lander, Nutrient Management Specialist, Natural Resources Conservation Service, Post Office Box 2890, Room 6155–S, Washington, D.C. 20013–2890.

SUPPLEMENTARY INFORMATION: Section 343 of the Federal Agriculture Improvement and Reform Act of 1996 requires NRCS to make available for public review and comment proposed revisions to conservation practice standards used to carry out the highly erodible land and wetland provisions of the law. The policy supporting the revised conservation practice standard for Nutrient Management (Code 590) was published for comment in the **Federal Register** on Wednesday, April 22, 1998 (Vol. 163, No. 77, pgs. 19889–19893). Comments were received for 90 days. The revised standard for Waste Utilization (Code 633) was published for comment in the **Federal Register** on Wednesday, October 28, 1998 (Vol. 63, No. 208, pgs. 19889–19893). Comments were received for 60 days.

Signed in Washington, D.C., on March 30, 1999.

Pearlie S. Reed,

Chief, Natural Resources Conservation Service, Washington, D.C.

[FR Doc. 99–9704 Filed 4–16–99; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–815]

Notice of Final Determination of Sales at Less Than Fair Value and Final Affirmative Finding of Critical Circumstances: Elastic Rubber Tape From India

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: April 19, 1999.

FOR FURTHER INFORMATION CONTACT: Alysia Wilson or Cynthia Thirumalai, Office of AD/CVD Enforcement 1, Group I, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–0108 or (202) 482–4087, respectively.

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended ("the Act"), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act ("URAA"). In addition, unless otherwise indicated, all citations to the Department of Commerce ("Department") regulations are to the regulations at 19 CFR Part 351 (April 1998).

Final Determination

We determine that elastic rubber tape ("ERT") from India is being sold in the United States at less than fair value ("LTFV"), as provided in section 735 of the Act. The estimated margins are shown in the "Suspension of Liquidation" section of this notice.

Case History

On February 5, 1999, after the publication of our preliminary determination in this investigation (*see Notice of Preliminary Determination of Sales at Less Than Fair Value and Preliminary Negative Critical Circumstances Determination: Elastic Rubber Tape from India*, 64 FR 5025 (February 2, 1999) (*Preliminary Determination*)), Garware Elastomerics Limited ("GEL") withdrew from the remainder of the proceeding. No interested parties provided comments on the *Preliminary Determination* and no request for a hearing was received by the Department.

Scope of the Investigation

For purposes of this investigation, the product covered is elastic rubber tape. Elastic rubber tape is defined as vulcanized, non-cellular rubber strips, of either natural or synthetic rubber, 0.006 inches to 0.100 inches (0.15 mm to 2.54 mm) in thickness and ⅛ inches to 1⅝ inches (3 mm to 42 mm) in width. Such product is generally used in swim wear and underwear.

The merchandise subject to this investigation is classified in the *Harmonized Tariff Schedule of the United States* ("HTSUS") at subheading 4008.21.00. Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the merchandise under investigation is dispositive.

Period of Investigation

The period of investigation ("POI") is July 1, 1997, through June 30, 1998.

Adverse Facts Available

Section 776(a)(2) of the Act provides that if an interested party or any other person (A) withholds information that has been requested by the administering authority; (B) fails to provide such information by the deadlines for the submission of the information or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782 of the Act; (C) significantly impedes a proceeding under the antidumping statute; or (D) provides such information but the information cannot be verified as provided in section 782(i) of the Act, the administering authority shall, subject to section 782(d) of the Act, use the facts otherwise available in reaching the applicable determination.

GEL failed to respond to the Department's requests for information; namely, GEL withdrew from the investigation. Accordingly, since GEL has withheld necessary information and withdrawn from the proceeding, which prevented the Department from verifying any of GEL's responses and impeded the Department from further investigation, we have determined, under sections 776(a)(2)(A), (C) & (D) of the Act, that we must base our determination for that company on the facts available.

Section 776(b) of the Act further provides that adverse inferences may be used for a party that has failed to cooperate by not acting to the best of its ability to comply with a request for information (*see* also the Statement of Administrative Action ("SAA"), accompanying the URAA, H. Doc. No. 316, 103rd Cong., 2d Sess. 870). Given GEL's refusal to comply with the

Department's request for information and its withdrawal from participation in the investigation, the Department has determined that GEL has failed to cooperate to the best of its ability in this investigation. Therefore, the Department has determined that an adverse inference is warranted with respect to GEL.

As adverse facts available, the Department is assigning GEL a margin based on the highest margin in the petition. The Department finds that the highest petition margin is appropriate and indicative of GEL's selling practices because if GEL could have submitted information demonstrating the appropriateness of a lower margin, it would have done so. *See,* Notice of Final Determination of Sales at Less Than Fair Value: Steel Wire Rod from Venezuela, 63 FR 8946 (February 23, 1998). The court has upheld the Department's assumption that the petition information is probative of a respondent's experience when a respondent failed to submit information in a proceeding. *See, Koenig and Bauer-Albert AG* v. *United States,* 15 F. Supp 2d 834, 858 (Court of International Trade (CIT) 1998) (stating that "Commerce had a right to assume that the petition information was more probative of [respondent's] experience because if [respondent] could have submitted information demonstrating that it ought to receive a lower margin, it would have done so.").

Therefore, the final rate for GEL is 66.51 percent, which is based on the highest margin alleged in the petition. We used this same petition margin as partial adverse facts available in the *Preliminary Determination,* and as discussed there, the Department has, to the extent practicable, corroborated that margin as required by Section 776(c) of the Act. *See* also, Memorandum to Susan Kuhbach regarding "Corroboration of Secondary Information, Use of Adverse Facts Available" dated January 26, 1999. Furthermore, no record evidence or argument has been submitted that would cause the Department to call into question the accuracy of the data in the petition. Therefore, we determine that the use of this margin as facts available for GEL is appropriate.

Critical Circumstances

Section 733(e)(1) of the Act provides that, if a petitioner alleges critical circumstances, the Department will determine whether there is a reasonable basis to believe or suspect that (A)(i) there is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise, or (ii) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the subject merchandise at less than its fair value and that there was likely to be material injury by reason of such sales, and (B) there have been massive imports of the subject merchandise over a relatively short period.

As discussed above in the "Facts Available" section, GEL has not cooperated to the best of its ability in this investigation and application of adverse facts available is appropriate. Since there is no verified information on the record with respect to GEL's volume of imports, and U.S. import statistics are unavailable because ERT is entered under an HTSUS basket category which includes a variety of other products, we have no choice but to apply the adverse inference that GEL has made massive imports of the subject merchandise over a relatively short period of time. Therefore, we find that the second criterion for determining whether critical circumstances exist with respect to GEL's exports of subject merchandise has been met. *See,* Notice of Final Determination of Sales at Less Than Fair Value: Certain Carbon Steel Butt-Weld Pipe Fittings From Malaysia, 60 FR 10550, 10551 (February 27, 1995) where the Department determined critical circumstances existed since it was unable to verify the accuracy of this data.

In determining whether an importer knew or should have known that the exporter was selling the subject merchandise at less than its fair value and thereby causing material injury, the Department normally considers margins over 15 percent for CEP sales and 25 percent for EP sales to impute knowledge of dumping and of resultant material injury. *See,* Notice of Preliminary Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from the Russian Federation, 62 FR 61787, 61793 (November 19, 1997). In this investigation, we have determined, pursuant to an application of adverse facts available, the margin to be 66.51 percent. As this margin indicates dumping over the 15 and 25 percent thresholds for all of GEL's sales, we determine that the first criterion for ascertaining whether critical circumstances exist has also been satisfied. Therefore, since both criteria for finding critical circumstances under section 733(e)(1) of the Act have been met, we determine that critical circumstances exist with respect to exports of ERT from India by GEL.

The All Others Rate

The foreign manufacturer/exporter in this investigation is being assigned a dumping margin entirely on the basis of facts otherwise available. Section 735(c)(5)(B) of the Act provides that, where the dumping margins established for all exporters and producers individually investigated are determined entirely under section 776 of the Act, the Department may use any reasonable method to establish the estimated "All Others" rate for exporters and producers not individually investigated, including averaging the estimated weighted-average dumping margins determined for the exporters and producers individually investigated. Further, the SAA at 873 provides that where the data do not permit weight-averaging, the Department may use other reasonable methods. In this case, the margin assigned to the only company investigated is based on adverse facts available. Therefore, consistent with the SAA at 873, we are using an alternative method. As our alternative, we are basing the "All Others" rate on a simple average of the margins in the petition, based both on price-to-price comparisons and constructed value. As a result, the "All Others" rate is 45.55 percent.

Continuation of Suspension of Liquidation

In accordance with section 733(d)(1) and 735(c)(4)(A) of the Act, we are directing the U.S. Customs Service ("Customs") to continue to suspend liquidation of all entries of ERT from India, that are entered, or withdrawn from warehouse, for consumption on or after February 2, 1999 the date of publication of our preliminary determination in the **Federal Register**. In addition, as a result of our critical circumstances determination in our final determination, we will instruct Customs to suspend liquidation of GEL's entries of ERT from India between November 4, 1999, and February 1, 1999 (i.e., 90 days prior to the date of publication of our preliminary determination in the **Federal Register**). We will instruct Customs to require a cash deposit or the posting of a bond equal to the percentage margins, as indicated in the chart below. These suspension-of-liquidation instructions will remain in effect until further notice. The dumping margins are as follows:

Exporter/Manufacturer	Margin percentage
Garware Elastomerics Limited (GEL)	66.51

Exporter/Manufacturer	Margin percentage
All Others	45.55

The "All Others" rate, which we derived from the average of the margins calculated in the petition, applies to all entries of subject merchandise other than those manufactured or exported by the named respondent.

ITC Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission (ITC) of our determination. As our final determination is affirmative, the ITC will, within 45 days, determine whether these imports are materially injuring, or threaten material injury to, the U.S. industry. If the ITC determines that material injury, or threat of material injury, does not exist the proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing Customs officials to assess antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

In accordance with section 735(c)(3) of the Act, if the ITC makes a final negative finding of critical circumstances, the Department will instruct Customs to terminate the retroactive suspension of liquidation of GEL's entries from the period beginning November 4, 1998, through February 1, 1999 (i.e., the 90 day period prior to publication of the preliminary determination). The Department will also instruct Customs to release any bond or other security and refund any cash deposit collected on subject merchandise retroactively suspended during this 90-day period.

This determination is issued and published in accordance with sections 735(d) and 777(i)(1) of the Act.

Dated: April 12, 1999.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–9760 Filed 4–16–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–533–816]

Final Negative Countervailing Duty Determination: Elastic Rubber Tape From India

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: April 19, 1999.

FOR FURTHER INFORMATION CONTACT: Vincent Kane or Suresh Maniam, Office I, AD/CVD Enforcement, Import Administration, U.S. Department of Commerce, Room 3099, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–2815 or 482–0176, respectively.

Final Determination

The Department of Commerce ("the Department") determines that countervailable subsidies are being provided to Garware Elastomerics Ltd. and that these subsidies are *de minimis*.

Petitioners

The petition in this investigation was filed by Fulflex, Inc., Elastomer Technologies Group, Inc., and RM Engineered Products, Inc. ("petitioners").

Respondents

The respondents in this investigation are Garware Elastomerics Ltd. ("GEL"), its affiliate, and the Government of India ("GOI").

Case History

Since our preliminary determination on December 7, 1998 (63 FR 67457), the following events have occurred: On January 11, 1999, January 13, 1999, February 8, 1999, and February 12, 1999, we issued supplemental questionnaires to respondents. We received responses to these questionnaires prior to verification. On January 8, 1999, we aligned the date of our final determination with the date of the final determination in the companion antidumping duty investigation of elastic rubber tape from India (63 FR 4973). We conducted a verification in India of the questionnaire responses received from the Government of India, Garware Elastomeric Ltd., (GEL) and one of GEL's affiliates from February 21 through March 6, 1999. Petitioners filed a case brief on March 24, 1999. Respondents filed a rebuttal brief on March 26, 1999.

Period of Investigation

The period for which we are measuring subsidies ("the POI") is GEL's 1997 fiscal year from April 1, 1997 through March 31, 1998.

Scope of Investigation

For purposes of this investigation, the product covered is elastic rubber tape. Elastic rubber tape is defined as vulcanized, non-cellular rubber strips, of either natural or synthetic rubber, 0.006 inches to 0.100 inches (0.15 mm to 2.54 mm) in thickness, and ⅛ inches to 1⅝ inches (3 mm to 42 mm) in width. Such product is generally used in swim wear and underwear.

The merchandise subject to this investigation is classified in the Harmonized Tariff Schedule of the United States ("HTSUS") at subheading 4008.21.00. Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the merchandise under investigation is dispositive.

The Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act ("URAA"), effective January 1, 1995 ("the Act"). The Department is conducting this investigation in accordance with section 701 of the Act.

Injury Test

Because India is a "Subsidies Agreement Country" within the meaning of section 701(b) of the Act, the International Trade Commission ("ITC") is required to determine whether imports of the subject merchandise from India materially injure, or threaten material injury to, a U.S. industry. On October 15, 1998, the ITC published its preliminary determination finding that there is a reasonable indication that an industry in the United States is being materially injured, or threatened with material injury, by reason of imports of the subject merchandise from India (*see* 63 FR 55407 (October 15, 1998)).

De Minimis Threshold for Least Developed Countries

Section 705(3) of the Act requires the Department to disregard *de minimis* subsidies in making countervailing duty determinations. The Agreement on Subsidies and Countervailing Measures extends special and differential treatment to developing and least-developed members of the World Trade Organization, inter alia, by raising the *de minimis* level for these members. Normally, *de minimis* is defined as a

subsidy of one percent or less *ad valorem*. In the case of least developed countries the *de minimis* standard is three percent or less. (*See* section 703(b)(4)(C) of the Act.)

Because India is considered a least developed country, it is entitled to the three percent *de minimis* test. (*See* Developing and Least-Developed Country Designations under the Countervailing Duty Law (63 FR 29945, 29946 (June 2, 1998)).

Subsidies Valuation Information

Benchmarks for Short-term Loans: GEL received an exemption from customs duties on certain capital goods under the Export Promotion Capital Goods Scheme contingent on its export performance over a five-year period. We are treating the contingent liability arising from the exemption as a series of short-term, zero rate loans that were taken out in the year prior to the POI. Our benchmark for these loans is an average of the short-term loan rates reported by the State Bank of India for the year prior to the POI. *See* the Reserve Bank of India's Report on Currency and Finance (1997–98, Statement 70). We find this rate to be representative of short-term commercial interest rates in effect prior to the POI.

As explained below in the Affiliated Parties section, we found GEL to be related to an affiliated company. In addition, as explained below in the *Financial Transaction Between GEL and Its Related Company* section, we found that GEL received short-term loans from its affiliate. To determine whether loans received from its affiliate prior to the POI were on commercial terms, we used the State Bank of India's short-term advance rate (described above) as our benchmark rate. For the loans received from its affiliate during the POI, most did not have interest payments due during the POI. Therefore, GEL would not receive any benefit from these loans during the POI. For those loans received from its affiliate during the POI which also had payments due during the POI, we have used as our benchmark the average interest rate on several short-term lines of credit received by GEL from commercial banks.

Affiliated Parties

In accordance with section 771(33) of the Act, the Department considers the following persons to be affiliated or affiliated persons: (1) members of a family; (2) any officer or director of an organization and such organization; (3) partners; (4) employer and employee; (5) any person directly or indirectly owning, controlling, or holding with power to vote, five percent or more of the outstanding voting stock or shares of any organization and such organization; (6) two or more persons directly or indirectly controlling, controlled by, or under common control with, any person; and (7) any person who controls any other person and such other person.

In cases where a company under investigation is affiliated with another company, the Department's questionnaire directs the affiliated company to respond to our countervailing duty questionnaire, if: (1) that company produces the subject merchandise or (2) that company is "related" to the company under investigation, and there are financial transactions between the two companies. Normally, we consider companies to be "related," if they prepare consolidated financial statements or if one of the companies has at least 20 percent ownership in the other. *See* Final Affirmative Countervailing Duty Determination: Certain Pasta ("Pasta") from Italy, 61 FR 30288, 30290 (June 14, 1996). If the related company has financial transactions with the company under investigation that are not on commercial terms and the related company is found to have benefitted from subsidies during the POI, the Department may determine that there has been a transfer of subsidies from the related company to the company originally under investigation.

In this case, based on proprietary information in GEL's November 9, 1998 questionnaire response and its November 16, 1998 supplementary questionnaire response (SQR), we determine that GEL is related to its affiliate. In addition, GEL reported, and we verified, that financial transactions have taken place between the two companies. (*See* March 31, 1999 Memorandum to the File on our reasons for determining the related company to be related.) As described below, our review of these various transactions leads us to conclude that certain of the financial transactions resulted in a transfer of subsidies from the related company to GEL.

Financial Transactions Between GEL and Its Related Company

During GEL's start-up in 1995, the related company supplied certain machinery and equipment and technical advice to GEL. In addition, the related company provided loans and loan guarantees to GEL and, on limited occasions, certain inputs to production. As explained below, we determine that the transactions between GEL and its related company involving loan guarantees and the provision of supplies were on commercial terms. However, the short-term loans provided to GEL by its related company are not on commercial terms. Nor are the financing arrangements for the machinery and technical advice provided to GEL by its related company.

Respondents argue that the financial transactions (short-term loans, loan guarantees, provision of machinery and supplies, and provision of technical advice) between GEL and its related company were consistent with commercial considerations. In support of this argument, they claim that the stock structure of GEL's related company requires that the transactions be made on commercial terms. The transfer of subsidies to GEL through non-commercial transactions would deplete the related company's assets and would be contrary to its shareholders' interests. They conclude that because these transactions were made on commercial terms, the Department has no basis on which to transfer any of the subsidies received by GEL's related company to GEL.

While we recognize that a company generally acts in the best interests of its stockholders, we cannot disregard evidence to the contrary in specific instances. As explained below, we found the short-term loans and the financing arrangements for the machinery and technical advice which GEL received from its related company were not on commercial terms. Hence, it is appropriate to allocate a portion of these subsidies received by GEL's affiliate to GEL.

Short-Term Loans to GEL From Its Related Company

GEL received short-term loans from its related company both prior to and during the POI. To determine whether GEL's loans received prior to the POI were on commercial terms, we first compared the interest rate on these loans to the benchmark rate. This comparison revealed that the interest rate on the loans from the related party was higher than the benchmark rate. We used the Bank of India rates as our benchmark for loans received prior to the POI because we did not have information on any short-term commercial loans which GEL may have received prior to the POI. Respondents assert that the loans GEL obtained from its related company during the POI were provided at above-market rates to take into account possible delays in payment of interest during the start-up period.

In fact, the Department verified that the rate charged by the related company to GEL was greater than the 13.3 percent rate for commercial loans in 1997–98 as

reported by the Reserve Bank of India. However, even though GEL's rate for pre-POI loans was higher than the benchmark rate, the terms of payment on the loans provided prior to the POI were more favorable than commercial terms. Specifically, GEL was required to (and has) repaid the principal on these loans. However, it has not paid interest on these loans and is not required to do so until after its start-up period concludes. Although deferral of interest is not inconsistent with commercial terms in itself, it is inconsistent when the borrower is not required to pay interest on the deferred interest. In such a situation, the borrower is essentially receiving a zero-interest loan in the amount of the interest that is being deferred. Consequently, we determine that GEL has received loans from its related company on terms inconsistent with commercial considerations. An examination of the loan contract does not support respondents' assertion that the interest rate accounts for delayed interest payments.

For the loans received during the POI, we have used a different benchmark interest rate. In selecting a benchmark for short-term government loan, our preference is to use the interest rate on short-term loans received by the company from a commercial bank as our benchmark. GEL received short-term lines of credit from commercial banks during the POI. Therefore, we have used the average of the interest rate on these lines of credit as our benchmark for loans received by GEL from its related company during the POI.

Therefore, for loans received from the related company during the POI which had payments due during the POI, we compared the interest rate charged by the related company to the benchmark rate. Based on this comparison, we determine the interest rate paid by GEL was less than the benchmark and, hence, that these loans were not on commercial terms.

Provision of Machinery

GEL's related company manufactured and sold certain machinery to GEL during its start-up period. The related company calculated the sales price based on the cost of design, materials, fabrication, assembly and profit in an amount equal to the related company's profit ratio from the prior fiscal year. The costs of producing the machinery and the profit amount were audited by an outside accountant and the sales prices were certified by the accountant to be the assessable value of the machinery. The GOI requires an outside audit of financial transactions between related companies because such sales are subject to the excise tax and a sales tax. At verification, we found that the related company actually charged GEL the prices certified by the outside accountant.

We consider the related company's method for setting the sales prices to be a reasonable method of determining a commercial price. However, GEL has not paid its related company for the machinery and will not be required to do so until after its start-up period has concluded. In fact, it appears that GEL will not be required to pay for the machinery until it has sufficient cash flow to do so. Moreover, although GEL is required to pay interest on this debt, which has already been outstanding for a considerable period, it has not done so, nor does it appear that GEL is required to pay interest on the outstanding interest.

Because of the length of time that this debt has been outstanding, the open-ended terms of the debt, and the fact that GEL is not currently paying interest on it, we determine that the financing for GEL's purchases of machinery from its related company is not on commercial terms.

Provision of Technical Advice

GEL also received technical advice from its related company's engineers during its start-up period. The related company invoiced GEL for this technical advice based on the related company's appraisal of the cost of providing the technical advice required for each particular project plus an amount for profit and taxes. As with the purchases of machinery from the related company, an outside engineer certified these costs for excise tax and sales tax purposes. At verification, we found that GEL's related company actually charged GEL the prices certified by the outside engineer.

Petitioners assert that the technical advice from GEL's related company was provided at below market rates. They cite a 1996 Price Waterhouse report which states that the GOI requires accountants and engineers to certify transfer prices between related companies to prevent companies from overstating their costs on sales to related companies as a means of reducing the net profit to be reported for income tax purposes. (*See* Petitioners' February 2, 1999 submission, Exhibit 1.)

At verification, we found that the prices charged to GEL by its related company for technical advice were certified by an outside engineer as the correct assessable value for excise tax purposes. Our review of the engineer's certification of the related company's price for technical advice and our review of the related company's costs of providing the advice and profit confirmed that the related company's method of establishing a price was a reasonable one.

We consider the related company's method for setting the sales prices to be a reasonable method of determining a commercial price. However, GEL has not paid its related company for the technical advice and will not be required to do so until after its start-up period has concluded. In fact, it appears then that GEL will not be required to pay for the technical advice until it has sufficient cash flow to do so. Moreover, although GEL is required to pay interest on this debt, which has already been outstanding for a considerable period, it has not done so, nor does it appear that GEL is required to pay interest on the outstanding interest.

Because of the length of time that this debt has been outstanding, the open-ended terms of the debt, and the fact that GEL is not currently paying interest on it, we determine that the financing for GEL's purchases of technical advice from its related company is not on commercial terms.

Loan Guarantees

GEL's related company guaranteed several of GEL's medium-term loans and charged no fee for the guarantees. During verification, we discussed loan guarantee practices with an official from the UTI Bank Ltd., a commercial bank in New Delhi. The official indicated that it is not uncommon for a parent company to guarantee a loan received by a subsidiary or for a company to guarantee a loan to a related company. The official also said that it was also not uncommon for the guarantor in these cases not to charge a fee for the loan guarantee. Based on these discussions, we determine that the loan guarantees received by GEL from its related company are consistent with commercial considerations.

Petitioners claim that the related company's guarantee of GEL's loans without charging a guarantee fee is inconsistent with commercial considerations.

We disagree. As explained above, we confirmed at verification that such a practice is not uncommon in India. Therefore, we find the related company's provision of guarantees to GEL free of any fees consistent with commercial considerations. (See section 351.506(a)(2) of Countervailing Duties; Final Rule (63 FR 65348, November 25, 1998) (Countervailing Duty Regulations) (although not in effect for this investigation).

Provision of Supplies

GEL purchased diesel fuel and other supplies from its related company during the POI and paid an amount for these supplies equivalent to the related company's cost of acquiring them. GEL purchased these supplies through its related company as a convenience. At verification, we found that the prices paid by GEL's related company for the supplies, as reflected on its purchase invoices, were the prices which the related company charged GEL for the supplies.

Based on our review of the purchase invoices, we determine that the sales were at arm's length and that the prices were market prices for the supplies in question. We found no evidence at verification indicating that GEL could not have purchased the supplies at the same price as its related company. Therefore, we determine that GEL's purchases of supplies from its related company were made on commercial terms.

Petitioners claim that the price for supplies was not a market price because it did not include a mark-up for general, selling and administrative expenses incurred by GEL's affiliate in purchasing supplies. For this reason, GEL's purchases of supplies were not made on commercial terms.

GEL paid market prices for the supplies provided by its affiliate and could have purchased these supplies at the same market prices on its own. Therefore, we find that the fact that GEL was not required to pay a price which included a share of the affiliate's general, selling and administrative expenses does not make the price which it did pay to be on terms inconsistent with commercial considerations. It is not uncommon for affiliates to provide services such as this without charging an additional fee.

Subsidies Received by GEL's Related Company

On January 11, 1999, we issued a countervailing duty questionnaire to the affiliated company. On January 16, 1999, we received a response from the affiliated company indicating that all of the programs that it used during the POI were tied to its production and not to the subject merchandise.

At verification, we examined documentation regarding each of the programs that GEL's related company had used during the POI. With the exception of the Income Tax Exemption Scheme, we determine that benefits under the programs used by GEL's related company, which does not produce subject merchandise, were tied to the products produced and sold by the related company. (Our bases for finding these benefits tied to non-subject merchandise are discussed more fully below.) Because we find the programs used by GEL's related company, with the exception of the Income Tax Exemption Scheme, to be tied to the production and sale of non-subject merchandise, we determine that they confer a benefit only on those products and do not benefit the production or sale of the subject merchandise.

1. Export Promotion Capital Goods Scheme

The Export Promotion Capital Goods Scheme provides for duty reductions or exemptions and an exemption from the excise tax on imports of capital equipment. At verification, the applications, approvals and licenses for this scheme clearly showed that the machinery imported under the scheme was for the production of merchandise produced by GEL's related company. On each of these documents, the products to be produced with the imported machinery were specifically named. The products that had to be exported to satisfy the related company's export obligation under the license were also specifically named on the license. These products were the related company's products, not subject merchandise. In addition, from our observation at verification of GEL's machinery for producing ERT and from our review of machinery imports by GEL's related company, it was clear that the machinery imported by GEL's related company was not the machinery we observed in GEL's plant.

2. Export Oriented Unit (Duty-Free Import of Inputs)

The application, approvals and licenses to obtain this benefit clearly showed that the inputs imported duty-free were inputs to be used in the production of the related company's products. On these documents, the inputs that may be entered duty free are specifically stated. These inputs are inputs used to produce the related company's products and could not be used to produce subject merchandise. Further, the finished products to be produced from these inputs are also clearly stated on these documents. Our review of importations made under the scheme confirmed that the imported inputs were inputs to the related company's products and could not have been used to produce the subject merchandise. Therefore, we find that benefits from this scheme are tied to non-subject merchandise.

3. Pre-Shipment Export Financing

The loan applications and accompanying list of purchase orders from the related company's customers in foreign markets which served as the basis for the loans plainly showed that the products being ordered were the related company's own products.

4. Post-Shipment Export Financing

The loan applications and attached invoices clearly showed that the financing was to enable GEL's related company to extend credit on sales of its products to customers in foreign markets.

5. Duty Drawback of Excise Taxes

The applications, approvals and licenses of GEL's related company clearly showed that the inputs for which duty drawback was claimed were inputs to be used in the production of the related company's products. Our review of importations made under the scheme confirmed that the imported inputs were inputs to the related company's products and could not have been used to produce the subject merchandise.

6. Exemption From the Tax on Interest on Export Credits

During the POI, GEL's related company was not required to pay the interest tax on export credits. GEL's related company received export credits under the Pre-Shipment and Post-Shipment Export Financing programs discussed above. As explained above, these loan programs were tied to the production and sale of GEL's related company's products. Because the interest tax exemption was granted with respect to interest on loans found to be tied to GEL's related company's products, the benefit from the interest tax exemption is also tied to those products.

7. Special Benefits for Trading Houses and Super Star Trading Houses

Although GEL's related company had trading house status during the POI, it did not use its special import license to import restricted merchandise nor did it sell this license during the POI. Because GEL's related company did not benefit from this license during the POI, it was not necessary to determine whether benefits to companies with Trading Houses and Superstar Trading House status are tied to the products produced and sold by these companies.

8. Income Tax Exemption Scheme

During the POI, GEL's related company received benefits under section 80HHC of the Income Tax Exemption Scheme, which provides an

income tax exemption for the profits earned on export sales. Respondents argue that the Department verified that section 80HHC benefits are tied to the production and export of non-subject merchandise. Because section 80HHC provides income tax exemptions to companies based on their total export profits, without regard to the products which earned the profits, we determine that 80HHC benefits are untied export subsidies. See Certain Hot-Rolled Lead and Bismuth Carbon Steel Products from the United Kingdom: Final Results of Countervailing Duty Administrative Review, 62 FR 53306, 13–16 (October 14, 1998); Final Affirmative Countervailing Duty Determination: Certain Pasta from Turkey, 61 FR 30366, 70 (June 14, 1996); Final Negative Countervailing Duty Determination: Silicon Metal from Brazil, 56 FR 26988 (June 21, 1991).

We normally attribute a subsidy received by a company to the products produced by that company. However, as discussed above, untied subsidies received by one company may be allocated to a related company, if the company receiving the subsidies transfers them to the company producing the subject merchandise. In GEL's case, as discussed above, its related company provided loans and financing for machinery and technical advice on non-commercial terms. These non-commercial transactions indicate that a portion of the untied subsidies received by GEL's related company should be allocated to GEL.

To determine the portion attributable to GEL, we first calculated the benefit received by GEL's related party under the Income Tax Exemption Scheme. We then calculated GEL's share by multiplying the total benefit by GEL's share of the total sales of both companies. We used this method to determine GEL's share because, although this is an export subsidy to GEL's related company, it should not be considered an export subsidy to GEL for allocation purposes. This is because it was not GEL's exports that gave rise to the portion of the benefit which GEL received but, rather, the short-term loans it received from its affiliate on terms inconsistent with commercial considerations. Since the portion of the subsidy transferred to GEL is untied, and the benefit to GEL is calculated using GEL's total sales, we have used total sales of the two companies as the basis for calculating the share to be allocated to each company. For the countervailable subsidy to GEL, *see* section below on the Transfer of Income Tax Exemption Scheme Benefits to GEL.

Programs Determined To Be Countervailable

With regard to GEL, based on the information provided in the responses and the results of verification, we find the following programs to be countervailable:

A. Export Promotion Capital Goods Scheme

The Export Promotion Capital Goods Scheme (EPCGS) provides for a reduction or exemption of customs duties and an exemption from excise taxes on imports of capital goods. A reduction of customs duties and an exemption from excise taxes are provided under the Concessional EPCGS. Under this scheme, producers may import capital goods at reduced rates of duty and must undertake to earn convertible foreign exchange equal to four times the value of the capital goods within a period of five years. For failure to meet the export obligation, a company is subject to payment of all or part of the duty reduction, depending on the extent of the export shortfall, plus interest on the amount of the payment. (*See* the section below on the *Excise Tax Exemption under the EPCGS* for our treatment of this tax exemption.)

In 1995, GEL received a license under the Concessional EPCGS to import certain machinery to be used in the production of ERT. GEL met the portion of its export undertaking applicable to the POI and has not had to pay duty or interest on the duty reduction which it received under the EPCGS.

The customs duty reduction under the EPCGS represents revenue foregone by the GOI and confers a benefit on GEL. In addition, the duty reduction benefit is specific because its receipt was contingent upon anticipated export performance. Therefore, we determine that duty reduction under the EPCGS is a countervailable subsidy within the meaning of section 771(5) of the Act.

Petitioners claim that GEL did not receive a benefit from the duty exemption under the EPCGS until GEL satisfied its export obligation as required by the scheme. Petitioners state that because GEL's exports during the POI served to satisfy this export obligation, GEL realized the entire duty exemption during the POI. Petitioners also claim that the benefit cannot be allocated to the period before GEL began commercial production because allocating a benefit to a pre-production period would create a loophole in the countervailing duty law because the subsidy could not be countervailed during a period when nothing was exported.

Respondents claim that it is the Department's established practice to expense customs duty exemptions in the year of receipt. Respondents cite Porcelain-on-Steel Cookingware from Mexico: Final Results of Countervailing Duty Administrative Review (57 FR 562, 564; January 7, 1992) (Cookingware from Mexico), as a case in which the Department rejected the Government of Mexico's claim that the benefit of an import duty exemption on machinery should be allocated over the useful life of the machinery. Respondents assert that in this case, the Department should follow its usual practice and expense the benefit in the year of receipt.

GEL may be obligated to pay the duties on its imported capital equipment in each year or in any given year during the five-year period following importation. Thus, we find that the waived duties are properly viewed as a contingent liability loan because GEL has the use of funds from the waived duties interest free for a five-year period, assuming it meets its export obligation. Where a government provides a long-term, interest free loan and the obligation for its repayment is contingent upon subsequent events, our practice is to treat any balance on the loan outstanding during a year as an interest-free short-term loan (in the amount of the duty waived) that is rolled over each year. (*See* Final Negative Countervailing Duty Determination: Fresh Atlantic Salmon from Chile, 63 FR 31437, 42–43 (June 1998); *see* also section 351.505(d)(1) of the Countervailing Duty Regulations. Although GEL met the portion of its export obligation applicable to the POI, we cannot be certain at this point that it will continue to do so in the future. Therefore, we have considered the full amount of the customs duty reduction to be an interest free loan that was outstanding during the POI.

In Cookingware from Mexico, although exporters were subject to forfeiting a portion of benefits if they sold production domestically, receipt of the benefits was not dependent upon exporting a specified amount, the duty exemption received by the company was not contingent on the company's meeting an export obligation for a number of years, nor did it require that duty be paid if the company failed to meet the export obligation. Therefore, the Department did not treat the duty exemption as a contingent liability but countervailed the full amount of the exemption in the POR. As described above, however, the duty exemption under the EPCGS, is contingent on a company's meeting a specific export obligation for a period of five years.

Therefore, we properly countervailed it as a short-term interest-free loan, which is rolled over for a period of five years.

Because we consider the loans to be rolled over from year to year, we used a short-term interest rate as our benchmark for measuring the subsidy. We calculated the benefit as the difference in the interest that GEL paid on the zero-rate loan received as a result of the duty reduction under the EPCGS and the interest GEL would have paid at the benchmark rate. We divided this benefit by GEL's total exports of all products because the capital equipment imported under the Concessional EPCGS was used in the production of all of GEL's products. On this basis, we calculated a subsidy of 1.53 percent ad valorem.

B. Transfer of Income Tax Exemption Scheme Benefits to GEL

As discussed above, GEL's related company received an income tax exemption under section 80HHC of the Income Tax Exemption Scheme on profits from exports during the POI. The 80HHC exemption received by GEL's related company represents revenue foregone by the GOI. In addition, the exemption is specific within the meaning of section 771(5A)(B) of the Act because it is contingent on export performance. Therefore, we determine that the 80HHC exemption received by GEL's related company during the POI is a countervailable subsidy within the meaning of section 771(5) of the Act.

As explained above in the Income Tax Exemption Scheme section, the benefit of the 80HHC exemption is attributable to both GEL and its related company. Accordingly, we have calculated the subsidy for ERT by dividing the amount of the income tax savings from the 80HHC attributable to GEL by GEL's total sales of all products. On this basis, we calculated a subsidy of 0.18 percent ad valorem for GEL during the POI.

Programs Determined To Be Not Countervailable

A. Exemption From Excise Tax on Imports of Capital Goods

In addition to providing for a reduction or exemption of customs duties, the EPCGS also provides for an exemption from excise duties on imports of capital goods. In its February 16, 1999 response, GEL reported that its benefit under the EPCGS was the sum of the customs duty reduction and the excise duty exemption. However, at verification, GEL officials claimed that the excise duty exemption was not a benefit because had GEL not received the exemption but instead paid the excise duty, it would then have received excise credits in the amount of the excise duty payment. Specifically, when GEL purchases inputs or capital goods in the domestic market or in foreign markets (other than under the EPCGS), GEL pays the excise duty or tax. When GEL sells finished products in the domestic market, it collects the excise tax from its customers and remits it to the GOI. In computing the amount of excise tax it must remit to the GOI, GEL gets a credit for the amount of excise taxes it paid on its purchases of inputs and capital goods. In this way, manufacturers are ultimately not burdened by the excise tax. It is essentially a tax on the consumer.

Petitioners claim the Department should not offset the benefit of the excise tax exemption on imports of capital equipment under the EPCGS because respondents did not claim this offset until verification. In addition, petitioners state that the Department's practice precludes consideration of the secondary tax effect on the subsidy provided by the EPCGS.

Respondents claim that at verification, GEL provided information that demonstrates that the excise duty exemption should not be considered a subsidy because payment of the tax results in a credit that can be used against excise taxes owed. In Ball Bearings and Parts Thereof from Thailand: Final Results of Countervailing Administrative Review (60 FR 52371, 52373; October 6, 1995) (Bearings from Thailand—Final), the Department stated that under the VAT system, companies receive credit for the VAT paid on the purchase of inputs and, as a result, no VAT is effectively paid by companies on these purchases. Therefore, the exemption from the VAT was found not to be a countervailable subsidy.

We do not view the excise tax as a prior stage cumulative tax (*see* item (h) of the Illustrative List of Export Subsidies, Annex I of the Agreement on Subsidies and Countervailing Measures (Illustrative List). The excise tax, like a value added tax, is treated as being passed on to the consumer. (See Ball Bearings and Parts Thereof from Thailand: Preliminary Results of a Countervailing Duty Administrative Review, 60 FR 42532 (August 16, 1995)) (Bearings from Thailand—Preliminary). Indian Companies pay the excise tax on purchases of inputs and capital goods and collect it on sales of finished goods. When a company pays the tax it enters a tax credit in its excise tax book. When a company sells finished goods it enters a debit in its excise tax book. Periodically, the company remits in cash any excess excise tax debits over credits to the GOI and receives a rebate for any excess of tax credits over debits. Therefore, because GEL does not ultimately bear the excise tax, we determine that the exemption from the excise tax under EPCGS is not a countervailable benefit.

B. Drawback of Customs Duties

In the preliminary determination of the companion antidumping duty investigation, the Department found that respondents had not provided sufficient information to demonstrate that drawback was tied to import duties paid and should, therefore, be added to U.S price. (Preliminary Affirmative Determination of Sales at Less Than Fair Value and Preliminary Determination of Critical Circumstances: Elastic Rubber Tape from India (64 FR 5025, 5028; February 2, 1999) (Preliminary Anti-Dumping Determination). On the basis of this finding, petitioners allege that GEL received impermissible drawback and claim that the Department should include this program in its countervailing duty investigation.

Under this program, exporters may file a drawback claim after the exportation of finished goods to recover import duties paid on imported inputs used to produce the export goods. Exporters may claim drawback at the all-industry rate or the brand rate. The all-industry rate is an average rate calculated for a product or group of products. The brand-rates are applicable to products of specified description and technical characteristics, which are exported by specific exporters, and permit reimbursement of actual duties paid. Companies may use the all-industry rate or apply for the brand rate and supply the documentation necessary to establish the brand rate.

In 1997, GEL filed an application for a brand-rate to be used in calculating the drawback on export shipments of ERT for inputs imported prior to the POI. At verification, we examined GEL's drawback application. The application included copies of the import entries on which the drawback was based, which showed payment of customs duties on the imported inputs, a bill of materials showing the quantity of each input used by GEL to produce one metric ton of ERT, the duty per kilogram of each input, and the duty borne by each input per metric ton of ERT. The quantities were certified by company officials and by an outside accountant.

An officer from a regional office of the Central Board of Excise and Customs (CBEC) audited GEL's application. As a result of the audit, the quantity of ERT on which GEL could claim drawback

was reduced because the quantity of inputs imported by GEL was sufficient for the production of only this reduced quantity. In addition, the drawback rate was adjusted downward slightly to take into account waste.

At verification, we were unable to review the audit of GEL's application because GOI officials indicated that it had been archived. Instead, we reviewed two recent audits of brand rate drawback applications from other companies producing products other than ERT to determine how the GOI audited these applications. Each of the audits appeared thorough, took several days to complete, and were described in detail in a lengthy audit report. The quantities of inputs necessary to produce a given quantity of each of these companies' outputs was checked by the CBEC officer against each company's actual stock issuance records and batch production cards.

The drawback of customs duties paid on inputs, which are consumed in the production of goods for export, is a permissible rebate and not countervailable provided it is not excessive. (*See* Item (i) of the Illustrative List: *See* Ball Bearing from Thailand—Final). Based on our review of GEL's application for brand rate drawback and the GOI's procedures for auditing such claims, we determine that GEL's adjusted brand rate of drawback provides a non-excessive rebate of customs duties paid on imported inputs, *i.e.*, the duty rebates which GEL received on exports of its finished products did not exceed the duty paid on the imported inputs. Therefore, we determine that the drawback received by GEL under the brand rate of drawback is not countervailable.

Because GEL submitted a published input/output norm with its drawback application, petitioners claim that GEL's drawback claim was based on standard input/output norms rather than on the quantities of inputs GEL actually used to produce a unit of ERT. Therefore, they assert, drawback paid on these inputs is based on an estimate of the duties paid rather than on actual duties. Petitioners also claim that based on this standard norm, GEL's exports qualify for drawback whether the ERT is produced from imported or domestic inputs.

GEL is the only producer of ERT in India. The bill of materials listing the quantities of each input needed to produce a unit of ERT was based on GEL's own production experience. (*See* the March 19, 1999, verification report on GEL, Exhibit 35 at page 3). At verification, we found that auditors from the regional offices of CBEC audit the applications of companies applying for brand-rate drawback. We also found that they audited the input/output ratios based on companies' actual usage as reflected on inventory and production records. The reason that the GOI publishes norms is so they can be disseminated to customs offices throughout the country.

We disagree with petitioners' claim that GEL may receive drawback even if it uses domestic inputs. At verification we found that GEL had applied to receive drawback on a certain quantity of ERT exports. The GOI reduced this quantity to correspond to the quantity GEL was able to produce based on the quantities of inputs it had imported. In addition, GEL was required to include with its application copies of the import entries of each of the imported inputs indicating that duties had been paid on these inputs. Thus, it is clear that GEL's inputs were imported inputs and not domestic ones.

C. Advance Licenses

The Advance Licenses Program allows for the duty-free importation of inputs to be incorporated into finished products for export. Companies importing under advance licenses are obligated to export the products produced using the duty-free imports. GEL received an advance license late in 1997. With this license, GEL was authorized to import duty free a given quantity of the raw materials needed to produce ERT and was obligated to export the ERT produced with these inputs. The quantity to be exported was also specified on the license.

In Certain Iron-Metal Castings from India: Final Results of Countervailing Duty Administrative Review (62 FR 32297, 32306; June 13, 1997) (1995 Castings Final), the Department found the advance license system to accomplish what a drawback system is intended to accomplish, *i.e.*, to allow finished products produced with imported inputs to be exported free of the import duties assessed on the imported inputs. In the 1995 Castings Final, the Department concluded that because the imported inputs were used to produce castings which were subsequently exported, the duty-free importation of these inputs under the advance license was not a countervailable subsidy.

GEL's advance license allows for the duty-free importation of the inputs needed to produce ERT. We verified that GEL did not transfer this license but used it to import inputs that were subsequently used in the production of ERT. At verification, we reviewed customs entries of imported inputs, entries in GEL's inward shipping register, entries in GEL's stock receipt and issuance register and in GEL's batch production card to confirm that imported inputs were used by GEL to produce ERT. From our examination of the import entries and these inventory control records, it was clear that GEL used the imported inputs to produce ERT. It was also clear from our review of export entries that GEL was exporting the ERT produced from the imported inputs thereby satisfying its export obligation under the license. Because GEL used the duty-free imported inputs to produce ERT which was subsequently exported, we do not consider the Advance License program to be countervailable.

Petitioners argue that the advance license is based on standard input/output norms rather than on a producer's actual input/output experience and, therefore, under the Department's practice, countervailable. Further, petitioners indicate that under the Advance License Scheme, inputs are merely assumed to be imported.

Citing Iron Metal Castings from India, respondents argue that Advance Licenses were found not to be countervailable because the Advance License Scheme is a drawback scheme which provides duty rebates commensurate with the duties paid on imported inputs used to produce the exported product.

We agree with respondents that the Advance License Program has been found not countervailable in the past because under this program the drawback of import duties was not excessive. *See* 1995 Castings Final. Despite petitioners' assertions, the Advance License is not based on standard input/output norms. GEL's Advance License specified the quantity of inputs permitted to be imported under the license and the quantity of finished goods to be exported. As explained above, in the section of this notice on Duty Drawback on Exports, we found at verification that the bill of materials (input/output formula) which GEL used was based on its actual experience not a standard norm. This input output/formula was also used to determine GEL's obligation under the Advance License. Therefore, we find that GEL used actual production experience rather than a standard norm for purposes of the Advance License Scheme. Also, under the Advance License Scheme, inputs are not merely assumed to be imported, but must be demonstrated to be imported on the basis of evidence of importations of the inputs required to produce the export product.

Programs Determined Not To Be Used

Based upon the information provided in the responses and our verification, we determine that GEL did not apply for or receive benefits under the following programs during the POI:

A. Passbook Scheme/Duty Entitlement Passbook Scheme.
B. Export Processing Zones/Export Oriented Units Programs.
C. Income Tax Exemption Scheme.
D. Pre-Shipment Export Financing.
E. Post-Shipment Export Financing.
F. Import Mechanism (Sale of Import Licenses).
G. Exemption of the Interest Tax on Export Credits.
H. Re-discounting of Export Bills Abroad.
I. Programs Operated by the Small Industries Development Bank of India.
J. Special Imprest Licenses.
K. Market Development Assistance.
L. Special Benefits to Export Houses, Trading Houses and Super Star Trading Houses.
M. Duty Drawback on Excise Taxes.
N. Pre-Shipment Export Financing in Foreign Currency.

Programs Determined Not To Exist

Based on information provided by the GOI and the results of verification, we determine that the following program does not exist: Preferential Freight Rates.

Interested Party Comments

Comment 1: Use of Facts Available

Petitioners argue that GEL's related company did not properly respond to the Department's questionnaire. Therefore, if the Department determines that any of the financial transactions between the two parties were made on terms inconsistent with commercial considerations, the Department should apply adverse facts available. Petitioners claim that in its January 11, 1999 questionnaire to GEL's related company, the Department informed GEL's related company that it must either respond to the questionnaire by February 11, 1999, or risk facts available being used if it determined that the transactions between the two companies were not on commercial terms. GEL, on behalf of its related company, responded late to the Department on February 16, 1999. In this late submission, petitioners argue that GEL listed the programs used by its related company rather than providing a full description, and merely stated that all of the benefits received were directly tied to non-subject merchandise. In addition, petitioners argue that GEL's related company failed to certify the submission.

Petitioners assert that GEL has falsely certified its responses by simply asserting that the financial transactions with its related company were made on commercial terms and subsequently not responding to the Department's questionnaire. If GEL and its related company had been more forthright in their initial responses, petitioners claim they would have been able to comment fully on the issues and the Department would have been able to issue supplemental questionnaires more readily. Because of these failures, facts available is warranted.

Petitioners assert that at a minimum, the Department should apply facts available to the related company's use of the EPCGS program because GEL never completely answered the Department's questions regarding this program. As such, it is unclear whether the related company benefitted from this program. Petitioners argue that the Department should make adverse inferences regarding certain transactions between GEL and its related company and find that benefits transferred to GEL from the affiliate's use of the EPCGS.

Respondents assert that petitioners' request that the Department apply facts available to GEL is unfounded. They state that they have cooperated fully in this investigation by responding to all of the Department's requests for information and cooperating fully during verification.

Regarding petitioners' claim that GEL failed to accurately respond to the Department's September 18, 1998 questions regarding the EPCGS program, respondents assert that their responses were accurate and complete. Respondents argue that GEL responded that it did not use or benefit from the EPCGS program during the POI based on the Department's previous treatment of such programs as benefitting companies at the time the duty on imports was actually paid. Because GEL received benefits from this program outside of the POI, it did not report the benefits. However, respondents point out that they did provide the information once the Department informed the company of its possible change in methodology.

Respondents also argue that GEL should not be penalized for petitioners' failure to include the Drawback of Customs Duties program and Advance License Scheme in their petition. Because these programs have been previously found not countervailable by the Department, respondents claim that petitioners are required to provide new evidence to suggest that the Department's prior decisions were incorrect or that the programs are otherwise countervailable. Petitioners provided no such evidence.

Furthermore, according to respondents, GEL's related company should not be penalized for not providing a separate response to the Department's questionnaire. Because the related company believed its financial transactions with GEL were made on commercial terms and all of the programs it used were tied to the production and export of non-subject merchandise, it was unnecessary for it to respond on its own.

Respondents point out that they filed a certificate of accuracy on March 4, 1999, regarding its February 16, 1999 response.

DOC Position

We disagree with petitioners' claim that GEL's related company did not respond adequately to our countervailing duty questionnaire and that its response was not filed on time. Based on the evidence, pursuant to section 776(a) of the Act, we find that facts available are unwarranted because respondents did not (1) withhold information, (2) did not fail to provide information by the due dates required in the form and manner requested or (3) did not significantly impede the investigation. The February 16, 1999 questionnaire response of GEL's related company was filed timely. The original due date for this response was extended from February 11, 1999 to February 16, 1999, by the case analyst in a telephone conversation with respondents. Thus, although petitioners were not notified of the extension as they should have been, respondents were timely in their submission.

Although respondents did not initially file a certification of accuracy with the related company's questionnaire response, they did file one on March 6, 1999. We do not find this delayed certification, in and of itself, grounds for applying fact available under section 776(a) of the Act. Moreover, the related company's response, which was filed as an exhibit to GEL's February 16, 1999 SQR, did contain a certificate (in proper form) of accuracy from GEL. Moreover, both GEL and the related company responded to our questionnaires and were fully cooperative at verification. Furthermore, at verification, we were able to confirm the accuracy of their responses. Therefore, we find no basis for using facts available in this case.

We also disagree with petitioners' assertion that GEL falsely certified its responses by simply asserting that the financial transactions with its related company were on terms consistent with

commercial considerations. Although GEL maintained that it had no commercially inconsistent transactions, as defined in the questionnaire, with related companies in its questionnaire response, GEL did inform the Department of financial transactions it had with its related company by briefly listing them in its response and thereafter supplied the Department with additional information as requested, which we later verified. Because GEL was forthright in its response regarding these transactions, we see no grounds for applying facts available in this circumstance.

Petitioners are mistaken in stating that capital goods which GEL's related company transferred to GEL were imported under the EPCGS. At verification, we confirmed that all of the capital goods imported under the EPCGS by the related company were tied to the production of the related company's products. The capital goods in question were identified in Attachment 3 of GEL's December 23, 1998 questionnaire response. As we confirmed at verification, these capital goods could not be used in producing the related company's merchandise but were produced by GEL's related company for GEL and sold to GEL at market prices. These capital goods were not imported under the EPCGS. (*See* the March 16, 1999 verification report on GEL's related company at page 9.)

We agree with respondents' claim that they should not be penalized for failure to include the Drawback of Customs Duties and the Advance License schemes in their response. Because the petition did not allege that respondent benefitted from Drawback of Customs Duties and the Advance License schemes, the original questionnaire did not include questions about the Advance License or the Drawback of Customs Duties. The subject of drawback arose only after the preliminary determination in the antidumping investigation where the Department disallowed respondents' claim that drawback be added to the U.S. price. (*See* Preliminary Anti-dumping Determination). It was not until after the preliminary determination in this investigation that petitioners alleged these programs. Because their allegation was timely, however, we then sent a supplementary questionnaire to respondent with regard to this scheme. In an SQR dated February 16, 1999, GEL reported that it had imported natural rubber under the Advance License Scheme to be used in the production of elastic rubber tape for export. At verification, as described above, we reviewed this scheme fully. Therefore, we conclude that the information provided by respondents on these programs was adequate and that use of facts available is not warranted.

We also agree with respondents' claim that GEL's related company should not be penalized for not providing a separate questionnaire response. As required under section 782(e) of the Act, the Department cannot decline to consider information necessary to the determination even though it may not meet all of the requirements established provided that the information is submitted by the deadline, can be verified, is not so incomplete that it cannot be used, and the interested party has demonstrated that it has acted to the best of its ability. As described above, because GEL and its affiliate answered our questionnaire and supplemental responses in a timely fashion, and the information was verified and usable, we find that GEL and its affiliate acted to the best of their ability. Therefore, facts available are unwarranted. Pursuant to section 776(a) of the Act, even though GEL did not provide a full description of the programs its related company benefitted from during the POI, GEL did provide sufficient timely information. This permitted us to verify fully whether any of the benefits received by GEL's related company were tied to its products and not transferred to GEL. Therefore, we find that GEL's related company responded sufficiently and we find no basis for using facts available in this determination.

Comment 2: Excise Rebates

Petitioners argue that the Department should countervail the excise rebates reported in GEL's 1997/98 financial statements. They assert that because GEL failed to provide a copy of its financial statements for the POI in a timely manner, the Department was unable to fully investigate whether the line item entitled "Other Income" from "Excise Rebate Received Export" constitutes a countervailable subsidy. Therefore, the Department should apply facts available and countervail these rebates.

DOC Position

We disagree with petitioners since we received GEL's financial statements in sufficient time to review them prior to verification. At verification, we confirmed that the excise rebates referred to in the financial statements were, in fact, permissible rebates of the excise tax, as discussed above in the *Exemption from Excise Tax under the EPCGS* section of this notice.

Comment 3: Income Tax Exemption Scheme

Respondents argue that the Income Tax Exemption Scheme ("ITES") is tied to the production of the related company's products such that the benefits earned under a tax deduction from ITES could be attributed to a related company. Respondents cite to section 351.525(b)(5) of the countervailing duty regulations saying that "subsidies tied to the production, sale, or export of a particular product will be attributed only to that product." Respondents also state that in cross-ownership situations, only untied subsidies may be allocated to a subsidiary. Final Affirmative Countervailing Duty Determination: Steel Wire Rod from Canada, 62 FR 54972, 54981 (Oct. 22, 1997). Respondents further point to Final Negative Countervailing Duty Determination and Final Negative Critical Circumstances Determination: Certain Laminated Hardwood Trailer Flooring (LHF) from Canada, 62 FR 5201, 5202 (February 4, 1997) to state the fact that even when the Department treats several companies as one, it will not countervail a subsidy that was received for non-subject merchandise. Finally, respondents argue that because of the Department's position on fungibility of money, the Department would refuse "to trace the use of specific funds to determine whether the funds were used for their stated purpose."

DOC Position

It is the Department's consistent and long-standing practice to attribute the benefit from an export subsidy that is not tied to a particular product or market to all export sales. See *e.g.*, Certain Iron-Metal Castings From India; Final Results and Partial Rescission of Countervailing Duty Administrative Review; 63 FR 64050, 055 (Nov. 18, 1998); Final Affirmative Countervailing Duty Determination: Certain Pasta from Turkey, 61 FR 30366, 30370 (June 1996). Where, as here, the tax exemption applies to all export profits, we find that it is not tied to a particular product or market and therefore is an untied export subsidy. *See* Silicon Metal From Brazil (tax exemption from profits of export sales a subsidy to all exports).

We disagree with respondents that all subsidies received by GEL's affiliate were tied to the production and sale of products produced by GEL's affiliate. As described above, although six of the seven programs investigated were tied to the particular products produced by GEL's affiliate, we find the ITES, which

exempts all of a firm's export profits from the income tax, is not tied to a particular product.

In determining whether a benefit is or is not tied, we examine whether the company's application, the government's approval notice, and the benefits disbursal documents specify the product or products that qualify to receive the benefit. If the production and sale of a particular product is specified on these documents, we generally regard the benefit as tied to that product. In the case of this scheme, we saw no evidence at verification of the application or approval forms for receipt of the benefit because the benefit was claimed directly on the income tax return.

As discussed elsewhere in this notice, because there were transactions between GEL and its affiliate, which we find were not on market terms, we find both companies have benefitted from this subsidy. Respondents do not dispute that it is the Department's practice to allocate subsidies in between related parties where the subsidies are untied nor the Department's authority in this regard. *See* e.g., Certain Hot-Rolled Lead and Bismuth Carbon Steel Products From the United Kingdom; Final Results of Countervailing Duty Administrative Review, 62 FR 53306, 3313–16 (Oct. 1998); Final Negative Countervailing Duty Determination: Certain Laminated Hardwood Trailer Flooring From Canada, 62 FR 5201, 02 (Feb. 1997); Final Affirmative Countervailing Duty Determination: Steel Wire Rod From Canada, 62 FR 54972 (Oct. 1997). Rather, respondents agree that our practice of allocating only untied subsidies between two companies is consistent with the Department's basic principle of tying.

Respondents rely upon the Department's new regulations for the proposition that export subsidies are tied subsidies which may be attributed only to products exported by the company directly receiving the subsidy. While we note that these regulations are not in effect for this investigation, there is nothing in our view, as discussed above, of how to treat export subsidies that is contradicted by our new regulations. *See* 19 CFR 351.525(b)(2). In addition, respondents themselves acknowledge that under our new regulations we have codified our practice of allocating untied subsidies between related companies (*i.e.*, companies with cross-ownership) in a circumstance where one company is not producing subject merchandise. *See* 19 CFR 351.525(b)(6)(v).

Verification

In accordance with section 782(i) of the Act, we verified the information used in making our final determination. We followed our standard verification procedures, including meeting with government officials and examination of relevant government records and original source documents. Our verification results are outlined in detail in the public versions of the verification reports, which are on file in the Central Records Unit (Room B–099 of the Main Commerce Building).

Summary

In accordance with section 705(a)(3) of the Act, we determine that the total estimated net countervailable subsidy rate is 1.71 percent ad valorem which is *de minimis*. Therefore, we determine that no countervailable subsidies are being provided to the production or exportation of elastic rubber tape from India. Pursuant to section 705(c)(2) of the Act, this investigation will be terminated upon publication of the final negative determination in the **Federal Register**.

ITC Notification

In accordance with section 705(d) of the Act, we will notify the ITC of our determination.

Return or Destruction of Proprietary Information

This notice serves as the only reminder to parties subject to Administrative Protective Order ("APO") of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 355.34(d). Failure to comply is a violation of the APO.

This determination is issued and published pursuant to section 705(d) and 777(i) of the Act.

Dated: April 12, 1999.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–9761 Filed 4–16–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 041499A]

Submission for OMB Review; Comment Request

The Department of Commerce (DOC) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This request is being submitted under the emergency processing procedures of the Paperwork Reduction Act.

Agency: National Oceanic and Atmospheric Administration.

Title: Large Pelagic Fishing Survey.

Agency Form Number(s): None.

OMB Approval Number: None.

Type of Request: New collection—emergency clearance requested.

Burden: 4,752 hours.

Number of Respondents: 21,500 (multiple responses).

Avg. Hours Per Response: Ranges between 2 and 15 minutes depending on the requirement.

Needs and Uses: The Large Fishing Survey consists of dockside and telephone surveys of recreational anglers and headboats fishing for large pelagic species (tunas, sharks, and billfish) in the Atlantic Ocean. The summer fisheries for bluefin tuna and marlin begin in June. Catch monitoring in these two fisheries and collection of catch and effort statistics for all large pelagic fish is required under the Atlantic Tunas Convention Act and the Magnuson-Stevens Fishery Conservation and Management Act. Information collected through the survey is essential for the U.S. to meet its reporting obligation to the International Commission for the Conservation of Atlantic Tunas.

Affected Public: Individuals, businesses or other for-profit organizations.

Frequency: On occasion.

Respondent's Obligation: Mandatory.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, Room 5033, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via Internet at LEngelme@doc.gov).

Written comments and recommendations for the proposed information collection should be sent no later than April 30, 1999 to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, 725 17th Street, NW, Washington, DC 20503.

Dated: April 12, 1999.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 99–9727 Filed 4–16–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 041499B]

Submission for OMB Review; Comment Request

The Department of Commerce (DOC) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Effectiveness of the Coastal Services Center's Coastal Change Analysis Program.

Agency Form Number(s): None.

OMB Approval Number: None.

Type of Request: New collection.

Burden: 67 hours.

Number of Respondents: 200.

Avg. Hours Per Response: 20 minutes.

Needs and Uses: The Coastal Change Analysis Program (C-CAP) of the Coastal Services Center has been using remote sensing technology to quantify habitat change in coastal areas of the United States. It offers to coastal managers the ability to monitor habitat loss due to natural events such as hurricanes or human induced events. The questionnaire, which will be used for programmatic evaluation, will provide information on the performance of C-CAP and the utility of their products. The information will be used to make appropriate improvements, investigate potential links with the private sector, and plan future program implementation.

Affected Public: State, local or tribal government, federal government, business or other for-profit organizations, not-for-profit institutions.

Frequency: One time.

Respondent's Obligation: Voluntary.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via Internet at LEngelme@doc.gov).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, 725 17th Street, NW, Washington, DC 20503.

Dated: April 9, 1999.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 99–9729 Filed 4–16–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 030199B]

Marine Mammals; File No. 369–1440

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Issuance of permit amendment.

SUMMARY: Notice is hereby given that Dr. Bruce R. Mate, Oregon State University, Newport, Oregon 97365–5296, has been issued an amendment to Permit No. 369–1440 to take various species of large whales and opportunistically take by Level B harassment other species of marine mammals, for purposes of scientific research.

ADDRESSES: The amendment and related documents are available for review upon written request or by appointment (See **SUPPLEMENTARY INFORMATION**).

FOR FURTHER INFORMATION CONTACT: Ruth Johnson or Sara Shapiro, 301/713–2289.

SUPPLEMENTARY INFORMATION: On December 29, 1998, notice was published in the **Federal Register** (63 FR 71618) that an amendment of Permit No. 369–1440, issued September 18, 1998 (63 FR 52686), had been requested by the above-named individual. The requested amendment has been granted under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the provisions of § 216.39 of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), and the provisions of § 222.25 of the regulations governing the taking, importing, and exporting of endangered fish and wildlife (50 CFR 222.23).

The amendment authorizes the applicant to import/export samples from large whales on a worldwide basis, and to conduct tagging activities in international waters.

Issuance of this amendment, as required by the ESA was based on a finding that such permit (1) was applied for in good faith, (2) will not operate to the disadvantage of the endangered species which is the subject of this permit, and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Documents are available for review in the following locations:

Permits and Documentation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910 (301/713–2289);

Regional Administrator, Alaska Region, NMFS, P.O. Box 21668 Juneau, AK 99802 (907/586–7221);

Regional Administrator, Northwest Region, NMFS, 7600 Sand Point Way, NE, BIN C15700, Seattle, WA 98115 (206/526–6150);

Regional Administrator, Southwest Region, NMFS, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802–4213 (562/980–4015);

Coordinator, Pacific Area Office, NMFS, 2570 Dole Street, Room 106, Honolulu, HI 96822–2396 (808/955–8831);

Regional Administrator, Southeast Region, NMFS, 9721 Executive Center Drive North, St. Petersburg, FL 33702–2432 (813/570–5312); and

Regional Administrator, Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930, (978/281–9250).

Dated: April 14, 1999.

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 99–9730 Filed 4–16–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

Patent and Trademark Office

[Docket No. 990408092–0992–01]

RIN 0651–ZA01

Notice of Public Hearing and Request for Comments on the Proposed New Act of the Hague Agreement Concerning the International Registration of Industrial Designs

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Notice of hearing and request for public comments.

SUMMARY: The United States Patent and Trademark Office is seeking comments to obtain views of the public on the international effort to form a new Act of the Hague Agreement Concerning the International Deposit of Industrial Designs. The proposed Act will make it easier for United States applicants to obtain protection of their industrial

designs abroad by providing a mechanism in which a single international application on industrial designs will have the effect of filing an application in each of the Parties designated by the applicant. Interested members of the public are invited to testify at the hearing and to present written comments on any of the topics outlined in the **SUPPLEMENTARY INFORMATION** section of this notice.

DATES: A public hearing will be held on May 13, 1999, starting at 9:00 a.m. and ending no later than 5:00 p.m. If sufficient interest warrants, an additional public hearing will be held in an alternate location or by televideo conference.

Those wishing to present oral testimony at the hearing must request an opportunity to do so no later than May 11, 1999.

To ensure consideration, written comments must be received by May 20, 1999. Written comments and transcripts of the hearing will be available for public inspection on or about May 24, 1999.

ADDRESSES: The May 13, 1999 hearing will be held in the Commissioner's Conference Room located in Crystal Park Two, Room 912, 2121 Crystal Drive, Arlington, Virginia. Those interested in testifying or in submitting written comments on the topics presented in the **SUPPLEMENTARY INFORMATION**, or any other related topics, should send their request or written comments to the attention of Mary Critharis addressed to Commissioner of Patents and Trademarks, Box 4, Patent and Trademark Office, Washington, DC 20231. Written comments may be submitted by facsimile transmission to Mary Critharis at (703) 305–8885. Comments may also be submitted by electronic mail through the Internet to mary.critharis@uspto.gov. Written comments will be maintained for public inspection in Crystal Park Two, Room 902, 2121 Crystal Drive, Arlington, Virginia. Written comments in electronic form may be made available via the PTO's World Wide Web site at http://www.uspto.gov. No requests for presenting oral testimony will be accepted through electronic mail.

FOR FURTHER INFORMATION CONTACT: Mary Critharis by telephone at (703) 305–9300, by facsimile at (703) 305–8885, by electronic mail at mary.critharis@uspto.gov, or by mail addressed to Commissioner of Patents and Trademarks, Box 4, Washington, DC 20231.

SUPPLEMENTARY INFORMATION:

I. Background

The Hague Agreement Concerning the International Deposit of Industrial Designs (hereinafter "Hague Agreement"), concluded in 1925 under the auspices of the World Intellectual Property Organization (WIPO), establishes a mechanism for obtaining industrial design protection on an international level. Since its inception, the Hague Agreement was revised in London in 1934 (hereinafter "1934 Act") and subsequently in The Hague in 1960 (hereinafter "1960 Act"). The Hague Agreement was supplemented in respect of certain provisions on fees by an Additional Act signed in Monaco in 1961 and in respect of the administrative clauses by a Complementary Act signed in Stockholm in 1967.

The Hague Agreement is currently governed by procedures established in the 1934 Act and the 1960 Act. The 1960 Act, which entered into force in 1984, enacted uniform fees and procedures for depositing a design with the International Bureau of WIPO. The Hague Agreement gives any applicant who is a national of one of the member States the possibility of obtaining, by means of a single application filed with WIPO, protection for industrial designs in all member States designated by the applicant. Accordingly, this procedure eliminates the difficulties of filing in each of the individual States. Presently, twenty-nine States are party to the Hague Agreement. The Member States are Belgium, Benin, Bulgaria, Côte d'Ivoire, Democratic People's Republic of Korea, Egypt, France, Greece, Germany, Holy See, Hungary, Indonesia, Italy, Liechtenstein, Luxembourg, Monaco, Mongolia, Morocco, Netherlands, Republic of Moldova, Romania, Senegal, Spain, Slovenia, Suriname, Switzerland, The Former Yugoslav Republic of Macedonia, Tunisia, and Yugoslavia. In 1997, approximately 4,000 international applications were deposited with WIPO, which contained over 20,000 industrial designs.

To date, the United States has not acceded to the Hague Agreement because of numerous provisions that are inconsistent with United States law and practice. A process of revising the Hague Agreement to improve the existing text was initiated in 1991. The aim of the revision is twofold: to permit more States to adhere to the Hague Agreement by removing obstacles that have excluded States whose legislation provides for examination of industrial designs; and to make the system simpler, less expensive, and more responsive to the creators of industrial designs. A Committee of Experts has developed a new Act of the Hague Agreement Concerning the International Registration of Industrial Designs (hereinafter "new Act of the Hague Agreement"). It attempts to simplify the formal obligations and reduce the associated costs for industrial design applicants and owners in obtaining and preserving their rights for industrial designs in many countries of the world. A Diplomatic Conference to conclude these negotiations is scheduled to convene from June 16 to July 6, 1999, in Geneva, Switzerland.

The proposed new Act of the Hague Agreement contains several advantages for United States industrial design applicants. As global trading increases and multinational businesses grow, worldwide protection for industrial designs is becoming extremely important and desirable. Despite this increased importance, obtaining protection for industrial designs on an international scale is both expensive and complex. Overall, the proposed new Act of the Hague Agreement will provide a more convenient method of seeking industrial design protection worldwide. In particular, using a single application, in the English language, filed with the United States Patent and Trademark Office (USPTO), United States applicants will be able to obtain protection for industrial designs in all member States of the Hague Agreement. Most important, however, is that the single application may be filed with the knowledge that all Contracting Parties to the Agreement have agreed upon a uniform list of elements to be included in the application. (Article 1 of the proposed new Act of the Hague Agreement defines Contracting Party as any State or intergovernmental organization party to the new Act.)

Given the benefits to the users of the Hague system, the United States has been actively involved in the negotiations with the goal of obtaining a suitable agreement that could engender interest and support by United States industry and designers. Although protection for industrial designs is available in the United States under various laws, including patent, trademark, copyright, and unfair competition laws, the United States has taken the position that, if adopted, implementation of the new Act of the Hague Agreement would be through United States design patent law.

The USPTO, leading the negotiations for the United States, is interested in obtaining comprehensive comments to assess continued support for the effort. In light of the impending conclusion of

this effort, the USPTO desires to ensure that the text of the treaty and accompanying regulations is disseminated as widely as possible and the opportunity to provide comments is correspondingly comprehensive.

Written comments may be offered on any aspect of the treaty articles, rules, notes, or expected implementation in the United States. Comments are also welcome on any of the topics outlined below.

II. Brief Summary of the Proposed Treaty

The current text of the proposed new Act of the Hague Agreement includes thirty-four articles, thirty-two rules, and associated notes. A brief summary of most of the articles, followed by an overall summary of the treaty, appears below. This discussion is intended only to highlight various portions of the articles of the treaty; it is not intended as a comprehensive treatment of the draft texts. The draft texts, identified in Part III below, should be consulted for a complete understanding of the effort that is underway.

Article 1—Abbreviated Expressions: This Article provides definitions for terms used throughout the text of the proposed articles and rules. For the most part, this article is self-explanatory.

Article 2—Applicability of Other Protection Accorded by Laws of Contracting Parties and of Certain International Treaties: This Article provides that the new Act of the Hague Agreement will not affect other protection of industrial designs afforded by Contracting Parties unless such protection diminishes or interferes with the rights under this Act. In addition, the provisions of this Act will not affect certain existing international treaties including the Agreement on Trade-Related Aspects of Intellectual Property, the Paris Convention for the Protection of Industrial Property (hereinafter "Paris Convention"), and copyright treaties.

Article 3—Entitlement to File an International Application: This Article provides that any person who is a national of a Contracting Party or who has a domicile in the territory of a Contracting Party is entitled to file an international application.

Article 4—Procedure for Filing the International Application: This Article allows an international application to be filed, at the applicant's option, at either WIPO or through the national Office of a Contracting Party, such as the USPTO. The filing date is the date on which either WIPO or the national Office receives the application. However, if filed with the national Office of a Contracting Party, the filing date is conditioned upon timely transmittal to WIPO.

Article 5—Contents of the International Application: This Article recites the mandatory content of an international application.

Article 6—Priority: This Article allows an applicant to claim priority under Article 4 of the Paris Convention in an international application by filing a declaration. The priority can be established by one or more earlier applications filed in a country that is party to the Paris Convention or a Member of the World Trade Organization.

Article 7—Designation Fees: This Article provides that the prescribed application fees will include a designation fee for each designated Contracting Party. A Contracting Party may replace the prescribed designation fee with an individual designation fee covering its application processing and examining costs.

Article 8—Correction of Irregularities: This Article requires WIPO to allow applicants to make corrections if WIPO determines that an international application does not meet the requirements of the Hague Agreement at the time of filing. However, if the applicant fails to make the corrections in a timely manner, the international application may be abandoned.

Article 9—International Registration, Date of the International Registration, and Publication: This Article mandates WIPO to register each international application immediately upon receipt of a complete international application. In addition, WIPO will publish the international registration and send a copy of the publication to each designated Contracting Party. The date of international registration will be the filing date of the international application.

Article 10—Deferment of Publication: This Article allows Contracting Parties to defer publication for up to thirty months from the filing date or priority date, if claimed.

Article 11—Refusal of Effects and Remedies Against Refusals: This Article permits the national Office of any designated Contracting Party to refuse registration when the conditions for the grant of protection under the Contracting Party's laws are not met. In doing so, the national office must communicate the refusal, stating all the grounds, to WIPO within the prescribed time period. WIPO will, in turn, forward the notification to the applicant. In addition, the applicant who filed an international application must have the same remedies as an applicant who filed an application under the domestic laws of the Contracting Party.

Article 12—Effects of the International Registration: This Article states that the effect of the international registration will be the same as that for a regularly filed national application for the grant of protection of the industrial design under the law of the Contracting Party.

Article 13—Invalidation: This Article requires a Contracting Party to notify WIPO of any invalid registration or grant of protection. Invalidation may not be pronounced until the holder has been given the opportunity to defend the registration or grant of protection.

Article 14—Recording of Changes and Other Matters Concerning International Registrations: This Article requires WIPO to record the following changes in the International Register: any change of ownership of the international registration; any change in name or address of the holder; any appointment of a representative; and any limitation or invalidation of the international registration. Any recording will have the same effect as if it had been made in the Office of the Contracting Party concerned.

Article 15—Term and Renewal of the International Registration: This Article provides that the minimum period of protection is fifteen years from the date of the international registration. Contracting Parties may provide for an initial term of protection of five years from the date of international registration, subject to renewals for additional five-year periods.

Article 16—Information Concerning Published International Registrations: This Article permits WIPO to supply a person paying the prescribed fees information or copies of an international registration.

Article 17—Additional Mandatory Contents of the International Application: This Article contains additional requirements for international applications that designate a Contracting Party with an Examining Office. For example, the international application may have to include an indication of the creator of the industrial design, a brief description of the reproduction or of the characteristic features of the industrial design, and/or claim(s).

Article 18—Special Requirements Concerning Unity of Designs: This Article allows a Contracting Party to maintain its unity of design requirements.

Article 19—Confidential Copies of International Registrations Whose Publication is Deferred: This Article protects confidential copies of an

international registration by requiring Examining Offices to keep the application in confidence. Examining Offices may only use a copy of the international registration sent by WIPO for examination purposes.

Article 20—Republication of the Industrial Design: This Article provides that if an industrial design has been amended to satisfy the condition of novelty before an Examining Office, that Office can charge a fee for the publication of the amended reproduction.

Articles 21 through 34 of the proposed new Act of the Hague Agreement comprise the Administrative Provisions. Accordingly, these articles, and accompanying regulations, relate to the administration and implementation of the Hague Agreement, and include matters such as membership, voting rights, effective dates of accession, and applicability of previous Acts.

Overall Summary: After filing an international application, WIPO determines whether the minimum requirements are met, assigns a filing date, registers the application, and forwards the application to the designated Contracting Parties. The international registration is then published by WIPO and Contracting Parties are given a limited time to decide whether to register or grant protection to the industrial design(s) contained in the international application. The term for the protection of each industrial design runs at least fifteen years from the date of international registration for each industrial design.

I. Text of the Proposed Treaty, Rules, and Notes

The text of the proposed new Act of the Hague Agreement, with associated rules and notes, is available at WIPO's World Wide Web site at http://www.wipo.int/eng/main.htm. The documents are H/DC/3, H/DC/4, H/DC/5, and H/DC/6.

Requests for paper copies of the text may be made in writing to Mary Critharis at the above address or by telephone at (703) 305–9300.

II. Issues of Potential Concern

Insofar as this effort to revise the Hague Agreement is focused upon, and limited to, formal matters associated with industrial design applications and protection, the USPTO expects that, if adopted, changes to our design patent law would be minimal. Although many provisions in the proposed new Act of the Hague Agreement were incorporated to accommodate United States law and interests, several issues have yet to be fully resolved. Below is a brief summary of the more important issues of potential concern to the USPTO and United States applicants. This summary, however, is by no means an exhaustive recitation of the impact of the proposed new Act of the Hague Agreement on United States practice and interests.

1. Filing Procedures

Article 4 and Rule 13 of the proposed treaty provide that if an Office of a Contracting Party does not transmit an international application to WIPO within the prescribed time period, the filing date is the date on which WIPO receives the application. Accordingly, an applicant may lose the benefit of the earlier filing date with the national Office if for some reason it did not transmit the application to WIPO in a timely fashion.

2. Fee Structure

Although Article 7 and Rule 12 of the proposed treaty permit Contracting Parties to set an individual designation fee in connection with any international application, it appears that the individual designation fee must include all fees that would be charged under the national procedure for the grant of protection. Therefore, while Contracting Parties may require the payment of national fees not covered by the individual designation fee (such as fees charged for appeals, fees for extensions of time, and inspection fees), it appears that certain fees, namely the filing fee and issue fee, would have to be included in the individual designation fee.

3. Effect of International Application

Article 12 of the proposed treaty requires Contracting Parties to give the same effect to international applications as regularly filed applications. This conflicts with the so-called Hilmer practice in the United States where a disclosure contained in a patent of foreign origin is effective as prior art only as of its United States filing date, rather than the foreign or international filing date.

4. Failure to Communicate Notification of Refusal

Article 12 of the proposed treaty provides that if a Contracting Party did not send a notification of refusal within the prescribed time period, the grant of protection will ensue automatically. As a result, examining countries like the United States would be obliged to give effect to a design that may have not been examined, either because the application was misplaced or due to administrative delay on the part of the Office of the Contracting Party. This conflicts with United States law which obliges the Commissioner of the USPTO to undertake an examination of an application and make a positive act of issuing a patent, if it is determined to be patentable.

5. Changes in Ownership

Article 14 of the proposed treaty establishes a central ownership registry whereby Contracting Parties must give effect to changes in ownership of industrial designs recorded with WIPO, but not necessarily recorded in the USPTO. According to United States practice, unless recorded in the USPTO, a transfer of ownership of a patent or patent application is void against subsequent bona fide purchasers or mortgagees. Moreover, to record an assignment or any other type of conveyance of ownership in the United States, a statement indicating that an interest has been conveyed must be submitted to the USPTO. Therefore, in the United States, subsequent purchasers are able to view the contents of any agreement that purports to transfer ownership. In contrast, the proposed treaty does not require the submission of any type of documentation indicating a transfer of ownership to effectuate changes of ownership in the International Register. Nevertheless, according to the proposed treaty, any changes in ownership recorded with WIPO must be sufficient notice to subsequent purchasers in the United States. This may represent a significant departure from current law and practice regarding changes of ownership in patents in the United States.

V. Issues for Public Comment

Interested members of the public are invited to testify and present written comments on any issues they believe to be relevant to the foregoing discussion or any aspect of the proposed new Act of the Hague Agreement. The questions posed below identify specific issues that would benefit from public comment:

1. Do you have any overall interest in United States accession to the new Act of the Hague Agreement? Please discuss any potential advantages and drawbacks in your response.

2. Do you feel that you would use an international system for the protection of industrial designs as proposed by the new Act of the Hague Agreement? Please identify your reasons in your reply.

3. Do you currently file applications under the existing Hague Agreement through entities located in current member States? If yes, please describe

your experiences and explain any problems encountered.

4. Please discuss issues of potential concern identified in Part IV of this notice. In your response, please include the following:

(a) Clearly identify the matter being addressed;

(b) Indicate whether the particular matter would create significant problems for United States applicants and, in particular, whether it would discourage use of an international system for the protection of industrial designs as proposed by the new Act of the Hague Agreement;

(c) Identify potential drawbacks and/or advantages of the particular matter addressed;

(d) Provide examples, where appropriate, that illustrate the matter addressed;

(e) Identify any relevant legal authorities applicable to the matter being addressed; and

(f) Provide suggestions regarding how the matter should be addressed by the United States.

5. Please discuss any related matters not specifically identified in the above questions. If this is done, parties are requested to:

(a) Label that portion of their response as "Other Issues";

(b) Clearly identify the matter being addressed;

(c) Provide examples, where appropriate, that illustrate the matter addressed;

(d) Identify any relevant legal authorities applicable to the matter being addressed; and

(e) Provide suggestions regarding how the matter should be addressed by the United States.

VI. Guidelines for Oral Testimony

Individuals wishing to testify must adhere to the following guidelines:

1. Anyone wishing to testify at the hearing(s) must request an opportunity to do so no later than May 11, 1999. Requests to testify may be accepted on the date of the hearing if sufficient time is available on the schedule. No one will be permitted to testify without prior approval.

2. Requests to testify must include the speaker's name, affiliation and title, mailing address, and telephone number. Facsimile number and Internet mail address, if available, should also be provided. Parties may include in their request an indication as to whether they wish to testify during the morning or afternoon session of the hearing.

3. Speakers will be given between five and fifteen minutes to present their remarks. The exact amount of time allocated per speaker will be determined after the final number of parties testifying has been determined. All efforts will be made to accommodate requests for additional time for testimony presented before the day of the hearing.

4. Speakers may provide a written copy of their testimony for inclusion in the record of the proceedings. These remarks should be provided no later than May 20, 1999.

5. A schedule providing the approximate starting time for each speaker will be distributed the morning of the day of the hearing. Speakers are advised that the schedule for testimony will be subject to change during the course of the hearings.

VII. Guidelines for Written Comments

Written comments should include the following information:

1. Name and affiliation of the individual responding; and

2. If applicable, an indication of whether comments offered represent views of the respondent's organization or are the respondent's personal views.

If possible, parties offering testimony or written comments should provide their comments in machine-readable format. Such submissions may be provided by electronic mail messages sent over the Internet, or on a 3.5″ floppy disk formatted for use in either a Macintosh or MS–DOS based computer.

Machine-readable submissions should be provided as unformatted text (e.g., ASCII or plain text), or as formatted text in one of the following file formats: Microsoft Word (Macintosh, DOS, or Windows versions) or WordPerfect (Macintosh, DOS, or Windows versions).

Information that is provided pursuant to this notice will be made part of a public record and may be available via the Internet. In view of this, parties should not submit information that they do not wish to be publicly disclosed or made electronically accessible. Parties who would like to rely on confidential information to illustrate a point are requested to summarize or otherwise submit the information in a way that will permit its public disclosure.

Dated: April 12, 1999.

Q. Todd Dickinson,

Acting Assistant Secretary of Commerce and Acting Commissioner of Patents and Trademarks.

[FR Doc. 99–9733 Filed 4–16–99; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Notice of Availability of the "Annual Report to Congress on the Status of the Harbor Maintenance Trust Fund for Fiscal Year 1997"

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice of availability.

SUMMARY: This notice is to inform the general public of the availability of the "Annual Report to Congress for Fiscal Year 1997." Single copies of the report may be obtained free of charge.

FOR FURTHER INFORMATION CONTACT: Mr. James D. Hilton, Operations Division, Office of the Chief of Engineers at (202) 761–8830 or fax (202) 761–1685.

SUPPLEMENTARY INFORMATION: The Harbor Maintenance Fee was authorized under Sections 1401 and 1402 of the Water Resources Development Act of 1986, Pub. L. 99–662. This law imposed a 0.04 percent fee on the value of commercial cargo loaded (exports and domestic cargo) or unloaded (imports) at ports which have had Federal expenditures made on their behalf by the U.S. Army Corps of Engineers since 1977. Section 11214 of the Omnibus Budget Reconciliation Act of 1990, Pub. L. 101–580, increased the Harbor Maintenance Fee to 0.125 percent, which went into effect on January 1, 1991. Harbor maintenance Trust Fund monies are used to pay up to 100 percent of the Corps eligible Operations and Maintenance expenditures for the maintenance of commercial harbors and channels. Section 201 of the Water Resources Development Act of 1996, Pub. L. 104–303, expanded the use of Harbor Maintenance Trust Fund monies to pay Federal expenditures for construction of dredged material disposal facilities necessay for the operation and maintenance of any harbor or inland harbor; dredging and disposing of contaminated sediments that are in or that affect the maintenance of Federal navigation channels; mitigating for impacts resulting from Federal navigation operation and maintenance activities; and operating and maintaining dredged material disposal facilities.

Section 330 of the Omnibus Budget Reconciliation Act of 1992, Pub. L. 102–580, requires that the President provide an Annual Report to Congress on the Status of the Trust Fund. The release of this report is in compliance with this legislation.

Dated: April 8, 1999.

Eric R. Potts,

Colonel, Corps of Engineers, Executive Director of Civil Works.

[FR Doc. 99–9732 Filed 4–16–99; 8:45 am]

BILLING CODE 3710–08–P

DEPARTMENT OF EDUCATION

National Assessment Governing Board; Meeting

AGENCY: National Assessment Governing Board; Education.

ACTION: Notice of partially closed meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the National Assessment Governing Board. This notice also describes the functions of the Board. Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend.

DATES: May 13–16, 1999.

TIME: May 13—Subject Area Committee #1, 1:30–2:20 p.m., (open); Joint Meeting of the Design and Methodology Committee and the Subject Area Committee, #1 and #2, 2:30–3:30 p.m., (closed); Design and Methodology Committee, 3:30–4:30 p.m., (open); Subject Area Committee #2, 3:30–4:30 p.m., (open); and Reporting and Dissemination Committee, 3:00–4:30 p.m., (open). May 14—Full Board, 8:30–9:00 a.m., (open), 9:00–10:30 a.m. (closed), 10:30 a.m.–5:00 p.m., (open); May 15—Nominations Committee, 8:00–9:00 a.m., (closed); Full Board, 9:00–11:30 a.m., (open); adjournment, 11:30 a.m.

LOCATION: Lowe's New York, 569 Lexington Avenue, New York, N.Y.

FOR FURTHER INFORMATION CONTACT: May Ann Wilmer, Operations Officer, National Assessment Governing Board, Suite 825, 800 North Capitol Street, NW, Washington, DC, 20002–4233, Telephone: (202) 357–6938.

SUPPLEMENTARY INFORMATION: The National Assessment Governing Board is established under section 412 of the National Education Statistics Act of 1994 (title IV of the Improving America's Schools Act of 1994) (Pub. L. 103–382).

The Board is established to formulate policy guidelines for the National Assessment of Educational Progress. The Board is responsible for selecting subject areas to be assessed, developing assessment objectives, identifying appropriate achievement goals for each grade and subject tested, and establishing standards and procedures for interstate and national comparisons. Under Public Law 105–78, the National Assessment Governing Board is also granted exclusive authority over developing the Voluntary National Tests pursuant to contract number RJ97153001.

On May 13, the Subject Area Committee #1 will meet in open session from 1:30–2:30 p.m. The Committee will discuss the new NAEP Foreign Language Consensus contract.

From 2:30–3:30 p.m., there will be a closed joint meeting of the Design and Methodology Committee and the Subject Area Committee #1 and #2. The Committee will discuss the results of a report about the feasibility of linking assessment instruments. This meeting must be closed because references will be made to specific items from the assessment and premature disclosure of the information presented for review would be likely to significantly frustrate implementation of a proposed agency action. Such matters are protected by exemption (9)(B) of Section 552b(c) of Title 5 U.S.C.

The Design and Methodology Committee will meet in open session from 3:30–4:30 p.m., to consider technical issues related to the Voluntary National Tests, and hear a report from the National Academy of Sciences' studies on "market basket assessment", conduct of assessments below the state level.

Subject Area Committee #2 will meet in open session from 3:30–4:30 p.m. to discuss the NAEP mathematics assessment item development activities for 2000.

Also on May 13, the Reporting and Dissemination Committee will meet in open session from 3:00–4:30 p.m. Agenda items for this meeting include action on the revisions to NAGB Policy on Reporting and Dissemination of National Assessment Results; an update on the implementation of the Board decision on reporting private school results; sampling and reporting of students with disabilities and limited-English proficiency; and reporting Voluntary National Tests results to parents and schools.

On May 14, the full Board will convene in open session from 8:30–9:00 a.m. The Board will hear a report from the Executive Director of the National Assessment Governing Board, and an update on NAEP activities. From 9:00–10:30 a.m., the Board will meet in closed session to receive a report on the Achievement Level Setting for Civics and Writing Assessments and to discuss the results. This portion of the meeting must be closed because references will be made to specific items from the assessment and premature disclosure of the information presented for review would be likely to significantly frustrate implementation of a proposed agency action if conducted in open session. Such matters are protected by exemption 9(B) of Section 552b(c) of Title 5 U.S.C.

The Board will convene in open session from 10:30 a.m. to 4:00 p.m. The agenda for this portion of the meeting includes a report and discussion on the Voluntary National Tests: Purpose, Definitions and Reporting Plans; NAEP Report on Accommodations; a discussion on the National Assessment Design 2000–2010; and a discussion on the NAGB plan and report to Congress on achievement levels. Final action of the day will be remarks from the New York State Commissioner of Education.

On May 15, there will be a closed meeting of the Nominations Committee from 8:00–9:00 a.m. The Committee will discuss nominees qualifications for Board membership. These discussions will relate solely to the internal personnel rules and practices of an agency and would disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy if conducted in open session. Such matters are protected by exemption (2) and (6) of Section 552b(c) of Title 5 U.S.C.

Beginning at 9:00 a.m., until adjournment, approximately 11:30 a.m., the full Board will reconvene to hear an update on the Voluntary National Tests and to receive reports from its various standing committees.

Also on May 15, the full Board will receive and consider the Nominations Committee recommendations for membership, in a partially closed session, beginning at 11:30 a.m. through adjournment, approximately 12:00 noon. The review and subsequent discussion of this information relate sole to the internal personnel rules and practices of an agency and will disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy if conducted in open session.

Such matters are protected by exemptions (2) and (6) of Section 552b(c) of Title 5 U.S.C.

Summaries of the activities of the closed sessions and related matters, which are informative to the public and consistent with the policy of 5 U.S.C. 552b(c), will be available to the public within 14 days of the meeting. Records are kept of all Board proceedings and

are available for public inspection at the U.S. Department of Education, National Assessment Governing Board, Suite #825, 800 North Capitol Street, NW, Washington, DC, from 8:30 a.m. to 5:00 p.m.

Roy Truby,

Executive Director, National Assessment Governing Board.

[FR Doc. 99–9663 Filed 4–16–99; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. SA99–22–000, SA99–23–000, and SA99–24–000 (Not Consolidated)]

Atlantic Richfield Corporation; Notice of Petitions for Dispute Resolution or, Alternatively, for Adjustment

April 13, 1999.

Take notice that on March 9, 1999, Atlantic Richfield Corporation (Arco) filed the above-referenced petitions, requesting the Commission to resolve disputes concerning its Kansas ad valorem tax refund obligation to the pipelines listed below.

Pipeline and docket No.	Refund claim
Colorado Interstate Gas Company, SA99–22–000[1]	$415,240.17
Northern Natural Gas Company, SA99–23–000[2]	166,103.28
Williams Gas Pipelines Central, Inc., SA99–24–000[3]	172,916.89

[1] Changed from Docket No. GP99–7–000.
[2] Changed from Docket No. GP99–8–000.
[3] Changed from Docket No. GP99–9–000.

Arco requests that the Commission resolve its dispute with Northern and Williams by holding that termination agreements and/or settlements with these two pipelines resolved all issues associated with Kansas ad valorem tax refund liability and extinguishes the pipeline's refund claim in its entirety. Arco contends that by agreeing in the settlement to forego claims it for nonperformance it otherwise could have continued to pursue, Arco agreed to accept total payments under the contracts that did not exceed the MLP ceilings multiplied by the total volumes represented by each pipeline's nonperformance. In such circumstances, no refund should be required. To order otherwise would prevent Arco from receiving the very benefits it bargained for in the settlements-settlements that the Commission itself strongly encouraged as a means to resolve the massive take-or-pay and underpayments liabilities of interstate pipelines and make the transition to a more market-responsive and competitive environment.

Arco maintains that Northern and consumers benefited from agreements and settlements because the settlements allowed the pipelines to avoid the much higher costs that full-performance of the contract would have entailed. By resolving "all claims" relating to, inter alia, "contractual price", the settlements resolved the Kansas ad valorem tax reimbursement issue. The Commission has found that these settlements served the public interest.

Arco also requests the Commission to establish procedure to verify the refund calculations in all three dockets to ensure fairness and equity.

Alternatively, Arco requests that the Commission waive Arco's refund liability pursuant to Section 502(c) of the NGPA. Arco asserts that the Commission has equitable discretion to grant adjustment relief from this refund requirement. Since the tax reimbursement payments made by the pipelines were for taxes that Arco in fact paid the State of Kansas, Arco maintains it did not retain any revenues in excess of the MPLs. Arco maintains that the equities in the case require the Commission to waive Arco's refund obligation. At a minimum, Arco continues, the Commission should waive the royalty portion of the refund. Arco notes that it sold its Kansas properties in 1993, and thus no longer has ongoing contractual relationships with its former Kansas royalty owners. The response from Arco's former royalty owners to Arco's mailing has been negligible. To engage in extensive searches or to pursue legal action against these interests would be a cost-prohibitive exercise in futility. Since Arco has transferred or otherwise ended the leases in question here, and thus has no ongoing relationship with the royalty owners, let alone relationships that would permit Arco to impose a unilateral reduction in future royalty payments as contemplated in Wylee. Arco asserts that the royalty portion of the refund claim is uncollectible, as a practical matter, due to the passage of time and the Kansas statute of limitations. Arco's petitions are on file with the Commission, and they are open to public inspection. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Any person desiring to be heard or to make any protest with reference to any of these petitions should on or before 15 days after the date of publication in the Federal Register of this notice, file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211, 385.1105, and 385.1106). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–9680 Filed 4–16–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–227–000]

High Island Offshore System; Notice of Technical Conference

April 13, 1999.

In the Commission's order issued on March 31, 1999, 86 FERC ¶ 61,321 (1999), the Commission directed that a technical conference be held to address issues raised by the filing.

Take notice that the technical conference will be held on Wednesday, May 12, 1999, at 10:00 a.m., in a room to be designated at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

All interested parties and staff are permitted to attend.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–9652 Filed 4–16–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–287–000]

Texas Gas Transmission Corporation; Notice of Application

April 13, 1999.

Take notice that on April 5, 1999, pursuant to Sections 7(b) and 7(c) of the Natural Gas Act (NGA), Texas Gas Transmission Corporation (Texas Gas), P.O. Box 20008, Owensboro, Kentucky 42304, filed in Docket No. CP99–287–000 on Abbreviated Application for a Certificate of Public Convenience and Necessity and Request for Abandonment Authorization (Application). Texas Gas seeks authority to construct, own, and operate a 13 mile pipeline loop of its existing Slaughters-Montezuma Line and to abandon by retirement its White River Storage Field. Texas Gas' proposals are more fully set forth in the application on file with the Commission and open to public inspection. This application may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Texas Gas proposes to abandon by retirement its White River Storage Field due to problems with the field's reliability, due in large part to the recent failures of gas treatment equipment at the field. Texas Gas says that the significance and need for the storage facility has lessened over the past few winters due to the increase in operational efficiencies of its other storage fields. Texas Gas says that the delivery capabilities associated with the White River Storage Field can be more efficiently performed by the addition of 13 mile pipeline loop of its existing Slaughters-Montezuma Line as described below. The abandonment of the White River Storage Field would include the plugging of wells, the abandonment in place of underground pipeline and the removal of above-ground facilities at an estimated cost of $500,000, an amount which is significantly lower than the capital cost that would be necessary to upgrade the facility's gas treatment equipment to optimal conditions.

Texas Gas proposes to install, own, and operate about 13 miles of 12-inch pipeline loop of a portion of its existing Slaughters-Montezuma system. The loop will assist in replacing the peaking capability formerly supplied by the White River Storage Field and provide both system security and elimination of a current bottleneck on this segment of the pipeline. The estimated cost associated with the installation of the pipeline loop is $4,730,000 and will be paid for from funds on hand.

Texas Gas says that the net effect of the two proposals will allow an incremental increase of 1.1 MMCF/D delivery to the northern end of the Slaughters-Montezuma system and will be of no adverse effect to Texas Gas's firm service commitments (seasonal or peak requirements) or system operations.

Any person desiring to be heard or making any protest with reference to said application should on or before May 3, 1999, file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make protestants parties to the proceedings. The Commission's rules require that protestors provide copies of their protests to the party or person to whom the protests are directed.

Any person wishing to become a part to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules. A person obtaining intervenor status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents issued by the Commission, filed by the applicant, or filed by all other intervenors. An intervenor can file for rehearing of any Commission order and can petition for court review of any such order. However, an intervenor must serve copies of comments or any other filing it makes with the Commission to every other intervenor in the proceeding, as well as filing an original and 14 copies with the Commission.

A person does not have to intervene, however, in order to have comments considered. A person, instead, may submit two copies of such comments to the Secretary of the Commission. Commenters will be placed on the Commission's environmental mailing list, will receive copies of environmental documents, and will be able to participate in meetings associated with the Commission's environmental review process. Commenters will not be required to serve copies of filed documents on all other parties. However, commenters will not receive copies of all documents filed by other parties or issued by the Commission, and will not have the right to seek rehearing or appeal the Commission's final order to a Federal court.

The Commission will consider all comments and concerns equally, whether filed by commenters or those requesting intervenor status.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the NGA and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on these applications if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Texas Gas to appear or be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–9645 Filed 4–16–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–291–000]

Transcontinental Gas Pipe Line Corporation; Notice of Application

April 13, 1999.

Take notice that on April 7, 1999, Transcontinental Gas Pipe Line Corporation (Transco), P.O. Box 1396, Houston, Texas 77251, filed in Docket

No. CP99–291–000 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon certain facilities located Offshore Louisiana by sale to Union Oil Company of California (Unocal), all as more fully set forth in the application on file with the Commission and open to public inspection. This filing may be viewed on the web at http://www.ferc.fed.us/online.rims.htm (call 202–208–2222 for assistance).

Specifically, Transco states that it seeks authorization to abandon by sale to Unocal the following facilities: (1) 1.012 miles 6-inch Purchase Lateral, Pan-American and Unocal's platform in Vermilion Block 35, Offshore Louisiana; (2) 0.451 mile 4-inch lateral, Union Platform #3 to Platform #1 in Vermilion Block 35, Offshore Louisiana; and (3) a 600 HP skid mounted compressor unit, Unocal Platform B in Vermilion Block 67, Offshore Louisiana. The facilities are collectively referred to as the Vermilion 35 and 67 Facilities. Transco states that these faculties are currently included in its spindown proceeding on file with the Commission in Docket No. CP96–206–000 and upon approval of this abandonment by sale, Transco will remove these facilities from the spindown proceeding.

Transco states that the abandonment of the Vermilion 35 and 67 Facilities will be by sale to Unocal, and no removal of any of the facilities will be required. Transco states that the purchase price for the Vermilion 35 and 67 Facilities at the closing will be $1.00 and other good and valuable consideration, and that the estimated net book value of the Vermilion 35 and 67 Facilities as of March 31, 1999 was $28,978. In addition, Transco states that the requested abandonment will have no impact on the daily design capacity of or operating conditions on its system, and no service to any of Transco's customers will be impacted by the abandonment of these facilities.

Any person desiring to be heard or to make any protest with reference to said application should on or before May 4, 1999, file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Transco to appear or be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–9646 Filed 4–16–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG99–91–000, et al.]

EGENOR S.A., et al.; Electric Rate and Corporate Regulation Filings

April 12, 1999.

Take notice that the following filings have been made with the Commission:

1. EGENOR S.A.

[Docket No. EG99–91–000]

Take notice that on April 7, 1999, EGENOR S.A. filed with the Federal Energy Regulatory Commission a request pursuant to Section 365.5 of the Commission's regulations to amend its March 10, 1999 application for determination of exempt wholesale generator status .

The requested amendments set out certain modifications to the planned business activities described in EGENOR S.A.'s March 10, 1999 application.

Comment date: May 3, 1999, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

2. Western Massachusetts Electric Company

[Docket Nos. ER92–67–008 and ER93–219–005]

Take notice that on April 7, 1999, Northeast Utilities Service Company (NUSCO), tendered for filing refund reports and revised CIAC charges in compliance with the Commission's orders in *Western Massachusetts Electric Company*, Opinion No. 409, 77 FERC ¶ 61,268, (1996), rehearing denied 81 FERC ¶ 61,152 (1997) and *Western Massachusetts Electric Company* 63 FERC ¶ 61,222, (1993), rehearing denied 66 FERC ¶ 61,167 (1994).

Comment date: April 27, 1999, in accordance with Standard Paragraph E at the end of this notice.

3. Minnesota Power, Inc.

[Docket No. ER99–2405–000]

Take notice that on April 7, 1999 the above-referenced public utility filed their quarterly transaction report for the for the first quarter of 1999.

Comment date: April 27, 1999, in accordance with Standard Paragraph E at the end of this notice.

4. Wisconsin Electric Power Company

[Docket No. ER99–2406–000]

Take notice that on April 7, 1999, Wisconsin Electric Power Company (Wisconsin Electric), tendered for filing electric service agreements under its Market Rate Sales Tariff (FERC Electric Tariff, Original Volume No. 8) and its Coordination Sales Tariff (FERC Electric Tariff, Original Volume No. 2) with TransAlta Energy Marketing (U.S.) Inc. Wisconsin Electric respectfully requests an effective date of April 6, 1999 to allow for economic transactions.

Copies of the filing have been served on TransAlta Energy Marketing (U.S.) Inc., the Michigan Public Service Commission, and the Public Service Commission of Wisconsin.

Comment date: April 27, 1999, in accordance with Standard Paragraph E at the end of this notice.

5. California Independent System Operator Corporation

[Docket No. ER99–2407–000]

Take notice that on April 7, 1999, the California Independent System Operator Corporation (ISO) tendered for filing a proposed amendment (Amendment No. 15) to the ISO Tariff. Amendment No. 15 implements portions of a Settlement filed on April 2, 1999, in Docket Nos. ER98–441–000, ER98–495–000, ER98–496–000, et. al.

The ISO states that this filing has been served upon the Public Utilities Commission of California, the California

Energy Commission, the California Electricity Oversight Board, and all parties with effective Scheduling Coordinator Service Agreements under the ISO Tariff.

Comment date: April 27, 1999, in accordance with Standard Paragraph E at the end of this notice.

6. New England Power Pool

[Docket No. ER99–2408–000]

Take notice that on April 7, 1999, the New England Power Pool Executive Committee filed for acceptance a signature page to the New England Power Pool (NEPOOL) Agreement dated September 1, 1971, as amended and signed by PP&L EnergyPlus Co. (PP&L). The NEPOOL Agreement has been designated NEPOOL FPC No. 2.

The Executive Committee states that the Commission's acceptance of PP&L's signature page would permit NEPOOL to expand its membership to include PP&L. NEPOOL further states that the filed signature page does not change the NEPOOL Agreement in any manner, other than to make PP&L a member in NEPOOL.

NEPOOL requests an effective date of May 1, 1999, for commencement of participation in NEPOOL by PP&L.

Comment date: April 27, 1999, in accordance with Standard Paragraph E at the end of this notice.

7. Western Resources, Inc.

[Docket No. ER99–2409–000]

Take notice that on April 7, 1999, Western Resources, Inc. (Western Resources) tendered for filing two Long-Term Firm Point-To-Point Transmission Service Agreements between Western Resources and Western Resources Generation Services. Western Resources states that the purpose of the agreements is to permit non-discriminatory access to the transmission facilities owned or controlled by Western Resources in accordance with Western Resources' open access transmission tariff on file with the Commission.

The agreements are proposed to become effective April 1, 1999.

Copies of the filing were served upon the Kansas Corporation Commission.

Comment date: April 27, 1999, in accordance with Standard Paragraph E at the end of this notice.

8. Northern States Power Company (Minnesota Company); Northern States Power Company (Wisconsin Company)

[Docket No. ER99–2410–000]

Take notice that on April 7, 1999, Northern States Power Company (Minnesota) and Northern States Power Company (Wisconsin) (collectively known as NSP) tendered for filing a Short-Term Market-Based Electric Service Agreement between NSP and Associated Electric Cooperative, Inc. (Customer).

NSP requests that this Short-Term Market-Based Electric Service Agreement be made effective on March 15, 1999.

Comment date: April 27, 1999, in accordance with Standard Paragraph E at the end of this notice.

9. Northern States Power Company (Minnesota Company); Northern States Power Company (Wisconsin Company)

[Docket No. ER99–2411–000]

Take notice that on April 7, 1999, Northern States Power Company (Minnesota) and Northern States Power Company (Wisconsin) (collectively known as NSP) tendered for filing an Electric Service Agreement between NSP and Associated Electric Cooperative (Customer). This Electric Service Agreement is an enabling agreement under which NSP may provide to Customer the electric services identified in NSP Operating Companies Electric Services Tariff original Volume No. 4.

NSP requests that this Electric Service Agreement be made effective on March 15, 1999.

Comment date: April 27, 1999, in accordance with Standard Paragraph E at the end of this notice.

10. Northeast Utilities Service Company

[Docket No. ER99–2412–000]

Take notice that on April 7, 1999, Northeast Utilities Service Company (NUSCO), tendered for filing, a Service Agreement to provide Non-Firm Point-To-Point Transmission Service to FPL Energy Power Marketing, Inc. under the NU System Companies' Open Access Transmission Service Tariff No. 9.

NUSCO states that a copy of this filing has been mailed to FPL Energy Power Marketing, Inc.

NUSCO requests that the Service Agreement become effective May 1, 1999.

Comment date: April 17, 1999, in accordance with Standard Paragraph E at the end of this notice.

11. Northeast Utilities Service Company

[Docket No. ER99–2413–000]

Take notice that on April 7, 1999, Northeast Utilities Service Company (NUSCO) tendered for filing, a Service Agreement to provide Firm Point-To-Point Transmission Service to FPL Energy Power Marketing, Inc. under the NU System Companies' Open Access Transmission Service Tariff No. 9.

NUSCO states that a copy of this filing has been mailed to FPL Energy Power Marketing, Inc.

NUSCO requests that the Service Agreement become effective May 1, 1999.

Comment date: April 27, 1999, in accordance with Standard Paragraph E at the end of this notice.

12. Virginia Electric and Power Company

[Docket No. ER99–2414–000]

Take notice that on April 7, 1999, Virginia Electric and Power Company (Virginia Power) tendered for filing a Service Agreement for Firm Point-to-Point Transmission Service with DukeSolutions, Inc. under the Open Access Transmission Tariff to Eligible Purchasers dated July 14, 1997. Under the tendered Service Agreement, Virginia Power will provide firm point-to-point service to the Transmission Customer under the rates, terms and conditions of the Open Access Transmission Tariff.

Virginia Power requests an effective date of April 7, 1999, the date of filing of the Service Agreement.

Copies of the filing were served upon DukeSolutions, Inc., the Virginia State Corporation Commission and the North Carolina Utilities Commission.

Comment date: April 27, 1999, in accordance with Standard Paragraph E at the end of this notice.

13. Virginia Electric and Power Company

[Docket No. ER99–2415–000]

Take notice that on April 7, 1999, Virginia Electric and Power Company (Virginia Power) tendered for filing a Service Agreement for Non-Firm Point-to-Point Transmission Service with DukeSolutions, Inc. under the Open Access Transmission Tariff to Eligible Purchasers dated July 14, 1997. Under the tendered Service Agreement, Virginia Power will provide non-firm point-to-point service to the Transmission Customer under the rates, terms and conditions of the Open Access Transmission Tariff.

Virginia Power requests an effective date of April 7, 1999, the date of filing the Service Agreement.

Copies of the filing were served upon DukeSolutions, Inc., the Virginia State Corporation Commission and the North Carolina Utilities Commission.

Comment date: April 27, 1999, in accordance with Standard Paragraph E at the end of this notice.

14. El Paso Electric Company

[Docket No. ER99–2416–000]

Take notice that on April 7, 1999, El Paso Electric Company (EPE) submitted for filing a market-based Market Rate Tariff No. 1 to permit EPE to engage in wholesale power sales of energy and capacity at market-determined prices in the Four Corners, Palo Verde and Southwestern Public Service Company markets and all markets interconnected directly or indirectly with those markets outside of the Southern New Mexico market.

Comment date: April 27, 1999, in accordance with Standard Paragraph E at the end of this notice.

15. Cleco Corporation

[Docket No. ER99–2417–000]

Take notice that on April 7, 1999, Cleco Corporation, (Cleco) tendered for filing a service agreement under which Cleco will make market based power sales under its MR–1 tariff with ONEOK Power Marketing.

Cleco states that a copy of the filing has been served on ONEOK Power Marketing.

Comment date: April 27, 1999, in accordance with Standard Paragraph E at the end of this notice.

16. Public Service Electric and Gas Company, PECO Energy Company, Atlantic City Electric Company, Delmarva Power & Light Company, PP&L, Inc., Baltimore Gas and Electric Company, Jersey Central Power & Light, Company, Metropolitan Edison Company, Pennsylvania Electric Company, Potomac Electric Power Company, and UGI Utilities, Inc.

[Docket No. ER99–2419–000]

Take notice that on April 7, 1999, PECO Energy Company, Metropolitan Edison Company and Public Service Electric and Gas Company filed amendments to the Extra High Voltage Transmission System Agreement, the Transmission Enhancement Facilities Agreement, the Susquehanna-Eastern 500 kV Transmission System Agreement and the Lower Delaware Valley Transmission System Agreement on behalf of the parties to those Agreements.

Comment date: April 27, 1999, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/ online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers

Secretary

[FR Doc. 99–9682 Filed 4–16–99; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Tendered for Filing With the Commission and Soliciting Additional Study Requests

April 13, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. Type of Application: New Major License.

b. Project No.: 2566–010.

c. Date Filed: March 30, 1999.

d. Applicant: Consumers Energy Company.

e. Name of Project: Webber Hydroelectric Project.

f. Location: On the Guard River, in Lyons and Portland Townships, near the City of Portland, Ionia County, Michigan. The project would not utilize federal lands.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)—825(r).

h. Applicant Contact: David Battige, Consumers Energy Company, Hydro Operations, 330 Chestnut Street, Cadillac, MI 49601, (616) 779–5506.

i. FERC Contact: Any questions on this notice should be addressed to Tom Dean, E-mail address, thomas.dean@ferc.fed.us, or telephone (202) 219–2778.

j. Deadline for filing additional study requests: May 31, 1999.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. Status of environmental analysis: This application is not ready for environmental analysis at this time.

l. Description of the Project: The project consists of the following existing facilities: (1) a 32-foot-high, 1,200-foot long dam comprising: (a) a 157-foot-long concrete powerhouse section, (b) a 313-foot-long concrete spillway with 10 taintor gates and one hydraulic flap gate, and (c) two earth embankment sections having a combined total length of 730 feet; (2) a 7-mile-long reservoir having a 660-acre surface area at a normal pool elevation of 684.4. feet USGS; (3) a powerhouse containing two generating units with a total installed capacity of 3,250 kW; and (4) other appurtenances.

m. Locations of the application: A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20246, or by calling (202) 208–1371. The application may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h. above.

n. With this notice, we are initiating consultation with the State Historic Preservation Officer as required by section 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 CFR 800.4.

o. Under § 4.32(b)(7) of the Commission's regulations (18 CFR 4.32(b)(7)), if any resource agency, Indian Tribe, or person believes that the applicant should conduct an additional scientific study to form an adequate factual basis for a complete analysis of the application on its merits, they must file a request for the study with the Commission, not later than 60 days after the date the application is filed, and must serve a copy of the request on the applicant.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–9647 Filed 4–16–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Intent To File an Application for a New License

April 13, 1999.

a. Type of filing: Notice Of Intent To File An Application For A New License.

b. Project No.: 2720.

c. Date Filed: March 19, 1999.

d. Submitted By: City of Norway—current licensee.

e. Name of Project: Sturgeon Falls Project.

f. Location: On the Menominee River, in Dickinson County, Michigan, and Marinette County, Wisconsin.

g. Filed Pursuant To: Section 15 of the Federal Power Act.

h. Licensee Contact: City of Norway, Mark Isackson, City Manager, City Hall, 915 Main Street, Norway, MI 49870, (906) 563–9961.

i. FERC Contact: Any questions on this notice should be addressed to Patti Leppert-Slack, E-mail patricia.leppertslack@ferc.fed.us, or telephone (202) 219–2767.

j. Effective Date Of current License: August 1, 1953.

k. Expiration Date Of current License: July 31, 2004.

l. The existing project consists of: (1) A 300-foot-long overflow spillway with 44-inch-high flashboards; (2) a reservoir with an estimated surface area of 400 acres and a normal pool elevation of 830.1 feet; (3) a concrete headworks structure, located 200 feet upstream of the dam, which controls inflow to the powerhouse with seven 10-foot-wide by 11-foot-high gates; (4) a 300-foot-long by 60-foot-wide and 12-foot deep canal section; (5) a powerhouse containing four generating units for a total installed capacity of 5,136 kilowatts; (6) a tailrace; (7) a 300-foot-long transmission line; and (8) appurtenant facilities.

m. Each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by July 31, 2002.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–9648 Filed 4–16–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Intent To File An Application for a New License

April 13, 1999.

a. *Type of Filing:* Notice of Intent to File An Application for a New License.

b. *Project No.:* 2984.

c. *Date Filed:* March 30, 1999.

d. *Submitted By:* S.D. Warren Company-current licensee.

e. *Name of Project:* Eel Weir Project.

f. *Location:* On the Presumpscot River and Sebago Lake, in Cumberland County, Maine.

g. *Filed Pursuant to:* Section 15 of the Federal Power Act.

h. *Licensee Contact:* S.D. Warren Company, 89 Cumberland Street, P.O. Box 5000, Westbrook, ME 04098–1597, Thomas P. Howard, (207) 856–4000.

i. *FERC Contact:* Any questions on this notice should be addressed to Tom Dean, E-mail address, thomas.dean@ferc.fed.us, or telephone (202) 219–2778.

j. *Effective date of current license:* April 1, 1962.

k. *Expiration date of current license:* March 31, 2004.

l. *Description of the Project:* The project consists of the following existing facilities: (1) a 115-foot-long, 23-foot-high stone masonry spillway dam; (2) a 150-foot-long, 10-foot-high east abutment; (3) a 90-foot-long, 5-foot-high west abutment; (4) five 6.5-foot-high by 4.75-foot-wide discharge gates; (5) four 8.8-foot-high by 7-foot-wide canal intake gates; (6) the 12-mile-long Sebago Lake at elevation 266.65 msl; (7) a 4,826-foot-long, 15-foot-deep earthen power canal; (8) a powerhouse containing three generating units with a total installed capacity of 1,800 kW; (9) a 3.5-mile-long, 11-kV transmission line; and (10) other appurtenances.

m. Each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by March 31, 2002.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–9649 Filed 4–16–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene and Protests

April 13, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. Type of Application: Preliminary Permit.

b. Project No.: P–11691–000.

c. Date Filed: March 5, 1999.

d. Applicant: Universal Electric Power Corporation.

e. Name of Project: Gainesville L & D.

f. Location: On the Tombigbee River in Greene County, Alabama, utilizing federal lands administered by the U.S. Army Corps of Engineers.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)—825(r).

h. Applicant Contact: Mr. Ronald S. Feltenberger, Universal Electric Power Corp., 1145 Highbrook Street, Akron, OH 44301, (330) 535–7115.

i. FERC Contact: Any questions on this notice should be addressed to Charles T. Raabe, E-mail address, Charles.Raabe@ferc.fed.us, or telephone (202) 219–2811.

j. Deadline Date: 60 days from the issuance date of this notice.

k. Description of Project: The proposed project would utilize the existing U.S. Army Corps of Engineers' Gainesville Lock and Dam and would consist of: (1) Seven new 50-foot-long, 96-inch-diameter steel penstocks; (2) a new 300-foot-long, 50-foot-wide, 40-foot-high powerhouse containing seven generating units with a total installed capacity of 23,200-kW; (3) a new exhaust apron; (4) a new 600-foot-long, 14.7-kV transmission line; and (5) appurtenant facilities.

Applicant estimates that the average annual generation would be 102 GWh and that the cost of the studies to be performed under the terms of the permit would be $2,800,000. Project energy would be sold to utility companies, corporations, municipalities, aggregators, or similar entities.

l. Locations of the application: A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE Washington, DC 20426, or by calling (202) 208–1371. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call (202) 208–2222 for assistance). A copy

is also available for inspection and reproduction at the address in item h above.

m. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

A5. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

A7. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

A9. Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

A10. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION" "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–9650 Filed 4–16–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene and Protests

April 13, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* P–11693–000

c. *Date Filed:* March 5, 1999.

d. *Name of Project:* Universal Electric Power Corporation.

e. *Name of Project:* Barren River Lake Dam.

f. *Location:* On the Barren River near the towns of Austin, Scottsville, and Glasgow, Barren County, Kentucky, utilizing federal land administered by the U.S. Army Corps of Engineers.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Ronald S. Feltenberger, Universal Electric Power Corp., 1145 Highbrook Street, Akron, OH 44301 (330) 535–7115.

i. *FERC Contact:* Any questions on this notice should be addressed to Charles T. Raabe, E-mail address, Charles.Raabe@ferc.fed.us, or telephone (202) 219–2811.

j. *Deadline Date:* 60 days from the issuance date of this notice.

k. *Description of Project:* The proposed project would utilize the existing U.S. Army Corps of Engineers' Barren River Lake Dam and would consist of: (1) two new 50-foot-long, 48-inch-diameter steel penstocks; (2) a new 60-foot-long, 40-foot-wide, 30-foot-high powerhouse containing two generating units with a total installed capacity of 3,900-kW; (3) a new exhaust apron; (4) a new 500-foot-long, 14.7-kV transmission line; and (5) appurtenant facilities.

Applicant estimates that the average annual generation would be 24 GWh and that the cost of the studies to be performed under the terms of the permit would be $1,000,000. Project energy would be sold to utility companies, corporations, municipalities, aggregators, or similar entities.

l. Locations of the application: A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Washington, DC 20426, or by calling (202) 208–1371. This filing may be viewed on the web at http://

www.ferc.fed.us/online/rims.htm (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

m. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

A5. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

A7. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

A9. Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

A10. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protests, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc 99–9651 Filed 4–16–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene, and Protests

April 13, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Filing:* Preliminary Permit.

b. *Project No.:* P–11700–000.

c. *Date Filed:* March 15, 1999.

d. *Applicant:* Universal Electric Power Corporation.

e. *Name of Project:* New Savannah Bluff L&D.

f. *Location:* On the Savannah River near the town of Augusta, Richmond County, Georgia, utilizing federal lands administered by the U.S. Army Corps of Engineers.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Ronald S. Feltenberger, Universal Electric Power Corp., 1145 Highbrook Street, Akron, OH 44301 (330) 535–7115.

i. *FERC Contact:* Any questions on this notice should be addressed to Charles T. Raabe, E-Mail address, Charles.Raabe@ferc.fed.us, or telephone (202) 219–2811.

j. *Deadline Date:* 60 days from the issuance date of this notice.

k. *Competing Application:* Project No. 11655–000; Date filed: January 4, 1999; Due Date: April 12, 1999.

l. *Description of Project:* The proposed project would utilize the existing U.S. Army Corps of Engineers' New Savannah bluff Lock and Dam and would consist of: (1) three new 50-foot-long, 36-inch-diameter steel penstocks; (2) a new 60-foot-long, 40-foot-wide, 25-foot-high powerhouse containing three generating units with a total installed capacity of 3,600-kW; (3) a new exhaust apron; (4) a new 500-foot-long, 14.7-kV transmission line; and (5) appurtenant facilities.

Applicant estimates that the average annual generation would be 22 GWh and that the cost of the studies to be performed under the terms of the permit would be $1,000,000. Project energy would be sold to utility companies, corporations, municipalities, aggregators, or similar entities.

m. *Locations of the application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Washington, D.C. 20426, or by calling

(202) 208–1371. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

n. This notice also consists of the following standard paragraphs: A8, A10, B, C, and D2.

A8. Preliminary Permit—Public notice of the filing of the initial preliminary permit application, which has already been given, established the due date for filing competing preliminary permit applications or notices of intent. Any competing preliminary permit or development application or notice of intent to file a competing preliminary permit or development application must be filed in response to and in compliance with the public notice of the initial preliminary permit application. No competing applications or notices of intent to file competing applications may be filed in response to this notice. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

A10. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTESTS", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-name documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Commission, 888 First Street, N.E., Washington, D.C. 20426. An additional copy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–9681 Filed 4–11–99; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6327–8]

Agency Information Collection Activities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit the following two continuing Information Collection Requests (ICR) to the Office of Management and Budget (OMB). Before submitting the ICRs to OMB for review and approval, EPA is soliciting comments on specific aspects of the information collections as described at the beginning of **SUPPLEMENTARY INFORMATION.**

DATES: Comments must be submitted on or before June 18, 1999.

ADDRESSES: Office of Air and Radiation, Atmospheric Pollution Prevention Division, Mail Code: 6202–J, 401 M St., SW, Washington, DC 20460. A hard copy of an ICR may be obtained without charge by calling the identified information contact individual for each ICR in Section B of the **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: For specific information on the individual ICRs see Section B of the **SUPPLEMENTARY INFORMATION.**

SUPPLEMENTARY INFORMATION:

For All ICRs

An Agency may not conduct or sponsor, and a person is not required to respond to, a collection information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are displayed in 40 CFR part 9.

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

A. List of ICRs Planned To Be Submitted

In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that EPA is planning to submit the following two continuing Information Collection Requests (ICR) to the Office of Management and Budget (OMB):

(1) *Title:* Reporting and Record Keeping Requirements under EPA's

Green Light Program, ICR #1614.01, OMB #2060–0255, expires April 30, 1999.

(2) *Title:* Information Collection Activities Associated with EPA's Energy Star Buildings Program, ICR #1772.01, OMB #2060–0347, expires April 30, 1999.

B. Contact Individuals for ICRs

(1) *Title:* Reporting and Record Keeping Requirements under EPA's Green Light Program; Contact: Denessa Moses at EPA, (202) 564–9789, FAX number (202) 565–2083; Internet address: *moses.denessa@epa.gov.* (OMB #2060–0255, ICR #1614.01, expires April 30, 1999.)

(2) *Title:* Information Collection Activities Associated with EPA's Energy Star Buildings Program; Contact: Denessa Moses at EPA, (202) 564–9789, FAX number (202) 565–2083; Internet address: *moses.denessa@epa.gov.* (OMB #2060–0347, ICR #1772.01, expires April 30, 1999.)

C. Individual ICRs

(1) *Title:* Reporting and Record Keeping Requirements under EPA's Green Light Program, ICR #1614.01, OMB #2060–0255, expires April 30, 1999.

Affected Entities: Entities potentially affected by this action are the participants in the EPA Green Lights Program.

Abstract: Green Lights is a voluntary EPA program that encourages corporations, state and local governments, colleges and universities, and other organizations to adopt energy efficient lighting as a profitable mean of preventing pollution and improving lighting quality. The program consists of three types of participants: partners, allies, and endorsers. Green Lights partners agree survey and upgrade lighting fixtures, if profitable. Allies work with EPA to increase awareness of energy-efficient lighting and provide information on products and services. Allies also agree to survey and upgrade their lighting. Endorsers agree to encourage their members to promote the Green Lights goal of using lighting in the most energy-efficient manner possible.

Partners and allies in the Green Lights program sign a Memorandum of Understanding (MOU) that outlines the responsibilities of both the Green Lights participant and EPA. The MOU commits a Green Lights participant to survey all of its U.S. facilities and consider a full set of lighting options that maximize energy savings while being profitable and not compromising lighting quality. The participants agrees to complete lighting upgrades within five years of signing the MOU in 90% of the square footage of its facilities that meet these criteria. Upon completion of a lighting upgrade, partners and allies must complete and submit to EPA an implementation report that documents energy-efficient improvements and cost savings.

EPA needs to collect information to evaluate a participant's progress and performance, and overall program results including energy savings and pollution prevented. The information provided also allows EPA to identify the fixture types, lighting controls, maintenance methods, and implementation methods most commonly utilized, and to provide technical and other assistance to participants in completing their planned upgrades. By agreeing to participate in the Green Lights program, the participant agrees to complete and submit this information upon completion of a project. However, because Green Lights is a voluntary program, responses to the collection of this information are voluntary.

Burden Statement: The estimated annual burden to the respondent for this collection of information will vary, depending upon the type of participant and the length of time the respondent has participated in the program. With this in mind, it is estimated that the annual burden for respondents is approximately 107,997 hours with an annual cost of approximately $5,977,935. The average annual respondent burden is estimated at approximately 40 hours and the average number of participants is approximately 2,700. The frequency of response is estimated to be once per year.

(2) *Title:* Information Collection Activities Associated with EPA's Energy Star Buildings Program, ICR #1772.01, OMB #2060–0347, expires April 30, 1999.

Affected Entities: Entities affected by this action will be those that agree to participate in EPA's Energy Star Buildings Program, which is a voluntary program for increasing the energy efficiency of existing commercial and industrial buildings.

Abstract: EPA's Energy Star Buildings Program is a voluntary, non-regulatory program for increasing the energy efficiency of existing commercial and industrial buildings. The program encourages corporations, state and local governments, and other organizations to participate in a partnership with EPA to make cost-effective energy-efficiency improvements in their buildings. In return, EPA provides technical support to help program participants apply proven technologies to achieve maximum efficiency at the lowest cost. EPA also publicly recognizes participants for their efforts and publicizes participant achievements. The overall goal of the program is to reduce utility-generated emissions by reducing the energy consumed in commercial and industrial buildings.

Participation in the program is initiated by completing and signing an Energy Star Buildings Memorandum of Understanding (MOU). The MOU outlines the responsibilities of the participant and EPA, and is used to establish participation in the program and agreement to the terms of participation. Through the MOU, EPA obtains general information on the new participant such as contact information for the energy director and communications director and building information including the size and type of building.

As a condition of program participation, partners agree to complete and submit to EPA an annual facility report on each building undergoing energy efficiency improvements. On the annual reports, partners provide information such as stage of project completion, project cost, historical and current energy use and cost data, and ancillary information such as building name, location, and size. EPA reviews the annual facility reports to track project implementation efforts and to obtain data on the costs and benefits of the energy efficiency improvements being made. This information is used to calculate the amount of utility-generated emissions prevented, evaluate program effectiveness, and publicize partner achievements and program results. By agreeing to participate in the Energy Star Buildings Program, the participant agrees to complete and submit this information annually. However, because Energy Star Buildings is a voluntary program, responses to the collection of this information are voluntary.

EPA will also collect additional, project-specific technical information from some partners concerning the energy-efficiency improvements made. This collection will include information such as building age and construction, utility and fuel rates, financial and economic criteria used to evaluate and select investment opportunities, types and sources of project financing, project and equipment costs and rates of return, and technical details concerning the building's lighting, heating, ventilating, and air conditioning equipment and systems. EPA will use this information to evaluate and refine its technical strategies and implementation support tools.

Burden Statement: EPA estimates an average annual respondent burden of 4,362 hours for the information collection activities associated with the Energy Star Buildings program. The total burden is comprised of the following information collections:

(i) MOU: EPA estimates that, on average, 191 new partners will join the Energy Star Buildings program each year by completing and submitting an MOU. The total annual respondent burden for the MOU is 1,385 hours, or 7.25 hours per MOU. The frequency of collection will be one time per respondent.

(ii) Annual Facility Report: EPA estimates that, on average, a total of 565 annual facility reports will be submitted by 353 partners (respondents) each year, for a total annual respondent burden of 2,697 hours. This equates to 1.6 annual facility reports per partner, or 4.8 hours per report.

(iii) Additional Technical Information: EPA estimates that, on average, 35 partners (respondents) each year will submit additional technical information on their actual upgrade projects. The burden for this information collection is 280 hours, or 8 hours per response. The frequency of collection is annually.

These estimates include the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Dated: April 13, 1999.

Jean Lupinacci,

Chief, Energy Star Commercial and Industrial Buildings Customer Support Branch.

[FR Doc. 99–9717 Filed 4–16–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6328–2]

Retrofit/Rebuild Requirements for 1993 and Earlier Model Year Urban Buses; Public Review of a Notification of Intent To Certify Equipment

AGENCY: Environmental Protection Agency.

ACTION: Notice of Agency receipt of a notification of intent to certify equipment and initiation of 45-day public review and comment period.

SUMMARY: Turbodyne Systems, Inc. (Turbodyne) has submitted to the Agency a notification of intent to certify urban bus retrofit/rebuild equipment to a 0.10 gram per brake-horsepower-hr(g/bhp-hr) particulate matter(PM) standard pursuant to 40 CFR part 85, subpart O. The equipment, referred to by Turbodyne consists of the base engine components used on the 25% reduction retrofit/rebuild kit certified by DDC (October 2, 1995), components from the 25% retrofit catalyst kit previously certified under the program by Engine Control Systems, Ltd. (January 6, 1997), and a TurboPac supercharger system supplied by Turbodyne which supplies additional charge air during engine acceleration. The candidate kit is applicable to all 6V–92TA MUI engine models made by DDC for model years 1979 to 1989 and equipped with mechanical unit injectors (MUI). In a letter dated September 28, 1998 Turbodyne has stated that there are no differences between the Turbodyne kit and the kit which was certified for the Detroit Diesel Corporation to meet the 0.10 g/bhp-hr PM standard under the Urban Bus Retrofit/Rebuild program on April 6, 1998 and notification published in the **Federal Register** on May 14, 1998 (63 FR 26798). Turbodyne intends this equipment to be certified to the PM level of 0.10 g/bhp-hr. If the Agency certifies that this equipment complies with the 0.10 g/bhp-hr level, then operators with affected engines will have the choice of using this equipment or other equipment that is already required for use and certified to the 0.10 g/bhp-hr standard.

Pursuant to section 85.1407(a)(7), today's **Federal Register** document summarizes the notification, announces that the notification is available for public review and comment, and initiates a 45-day period during which comments can be submitted. The Agency will review this notification of intent to certify, as well as any comments it receives, to determine whether the equipment described in the notification of intent to certify should be certified. If certified, the equipment can be used by urban bus operators to reduce the particulate matter of urban bus engines.

The notification of intent to certify, as well as other materials specifically relevant to it, are contained in Category XXIII–A of Public Docket A–93–42, entitled "Certification of Urban Bus Retrofit/Rebuild Equipment." This docket is located at the address listed below.

Today's document initiates a 45-day period during which the Agency will accept written comments relevant to whether or not the equipment included in this notification of intent to certify should be certified. Comments should be provided in writing to the addresses below.

DATES: Comments must be submitted on or before June 3, 1999.

ADDRESSES: Submit separate copies of comments to each of the two following addresses:

1. U.S. Environmental Protection Agency, Public Air Docket A–93–42 (Category XXIII–A), Room M–1500, 401 M Street S.W., Washington, DC 20460.

2. Anthony Erb, Engine Compliance Programs Group, Engine Programs and Compliance Division (6403J), U.S. Environmental Protection Agency, 401 "M" Street S.W., Washington, DC 20460.

The DDC notification of intent to certify, as well as other materials specifically relevant to it, are contained in the public docket indicated above. Docket items may be inspected from 8:00 a.m. until 5:30 p.m., Monday through Friday. As provided in 40 CFR part 2, a reasonable fee may be charged by the Agency for copying docket materials.

FOR FURTHER INFORMATION CONTACT: Anthony Erb, Engine Programs and Compliance Division (6403J), U.S. Environmental Protection Agency, 401 M St. SW, Washington, D.C. 20460. Telephone: (202) 564–9259.

SUPPLEMENTARY INFORMATION:

I. Background

On April 21, 1993, the Agency published final Retrofit/Rebuild Requirements for 1993 and Earlier Model Year Urban Buses (58 FR 21359). The retrofit/rebuild program is intended to reduce the ambient levels of particulate matter in urban areas and is limited to 1993 and earlier model year (MY) urban buses operating in metropolitan areas with 1980 populations of 750,000 or more, whose engines are rebuilt or replaced after January 1, 1995. Operators of the affected buses are required to choose between two compliance options: Option 1 establishes particulate matter emissions requirements for each urban bus engine in an operator's fleet which is rebuilt or replaced; Option 2 is a fleet averaging program that establishes a specific annual target level for average PM emissions from urban buses in an operator's fleet.

A key aspect of the program is certification of retrofit/rebuild equipment, which begins when an equipment manufacturer submits an application for certification (referred to in the rule as a notification of intent to certify). To meet either of the two compliance options, operators of the affected buses must use equipment that has been certified by EPA. Emissions requirements under either of the two options depend on the availability of retrofit/rebuild equipment certified for each engine model. To be used for Option 1, equipment must be certified as meeting a 0.10 g/bhp-hr PM standard or as achieving a 25 percent reduction in PM. Equipment used for Option 2 must be certified as providing some level of PM reduction that would in turn be claimed by urban bus operators when calculating their average fleet PM levels attained under the program.

Under Option 1, additional information regarding cost must be submitted in the notification, in order for certification of that equipment to initiate (or trigger) program requirements for a particular engine model. In order for the equipment to serve as a trigger, the certifier must guarantee that the equipment will be offered to affected operators for $7,940 or less at the 0.10 g/bhp-hr PM level, or for $2,000 or less for the 25 percent or greater reduction in PM. Both of the above amounts are based on 1992 dollars and include life cycle costs incremental to the cost of a standard rebuild.

II. Notification of Intent To Certify

In a notification of intent to certify equipment signed November 14, 1997, Turbodyne applied for certification of equipment under the Environmental Protection Agency's (the Agency) Urban Bus Retrofit/Rebuild Program. In a letter dated September 28, 1998 Turbodyne provided additional information indicating that the Turbodyne kit was identical to the Detroit Diesel 0.10 g/bhp-hr PM kit which was certified by letter on April 6, 1998 and applicable to the same engine models. The candidate kit is applicable to all 6V–92TA, urban bus engine models made by Detroit Diesel Corporation from model year 1979 to 1989 and equipped with mechanical unit injectors (MUI). The equipment, consists of the base engine components used on the 25% reduction retrofit/rebuild kit certified by DDC, components from the 25% retrofit catalyst kit certified by Engine Control Systems, Ltd. (ECS) and a TurboPac supercharger system supplied by Turbodyne Systems, Inc. that supplies additional charge air during engine acceleration. The kit would be available in three horsepower levels (253, 277, and 294) for 6V–92TA engines.

The equipment to be certified includes three distinct hardware sets. The three sets included are as follows:

Base engine components include the equipment certified by DDC to provide a 25% reduction in PM (60FR 51472; October 2, 1995. These components are provided in two separate sets of parts. The first set of components is comprised of newly manufactured parts, including a gasket kit, air inlet hose, cylinder kits (piston assemblies and cylinder liners) a by-pass valve and a truck type throttle delay. The second set of components includes Reliabilt™ remanufactured parts, including the fuel injectors, camshafts, blower assembly, turbocharger, and head assemblies. Kit usage is based on engine rotation (righthand (RH) or lefthand (LH)), engine orientation, right bank cam gear mounting (bolt or nut), and engine power output based on injector size. The only differences from the previously certified equipment is the inclusion of a truck style throttle delay, adjustment to the throttle delay and injector timing settings to improve driveability.

The converter/muffler supplied by ECS was certified by EPA (see 62 FR 746; January 6, 1997) to provide a 25% reduction in PM emissions. The kit consists of an oxidation converter/muffler (CM) which was developed specifically for diesel applications, and is packaged as a direct replacement for the vehicle's muffler. Several kits will be provided to accommodate the installation requirements of the various engine and vehicle configurations.

The third component set consists of an electrically powered supercharger system which is supplied by Turbodyne Systems, Inc. This component set, referred to as the TurboPac™ supplies additional intake air during engine acceleration from low engine speeds. Based on the Turbodyne information presented, in addition to decreasing PM emissions and visible smoke during engine acceleration, the supercharger also improves engine response and vehicle driveability by reducing the fuel modulation during acceleration. The basic kit consists of a blower, a diverter valve, a boost pressure sensor, an electrical control box and power cables, and a throttle switch for detecting the start of the engine acceleration mode. The equipment will be supplied in two kits, one includes those components common to all installations and a second kit to accommodate the installation requirements of the various engine and vehicle configurations.

To complete an engine rebuild two (2) base engine component kits, one (1) converter muffler kit, and two (2) supercharger kits would be required. The specific kits used will depend on the engine/vehicle combination.

There are no differences in the service intervals or maintenance practices for the base engine associated with the installation of the upgrade kit. The converter/muffler requires no regularly scheduled maintenance, only an occasional cleaning if the maximum backpressure of the exhaust system is exceeded according to DDC. The supercharger does not require scheduled maintenance: however, a visual inspection for air leaks is recommended whenever the engine is serviced.

Standard procedures as described in the service manual for 92 Series engines are to be used when rebuilding the base engines using the candidate equipment. No unique rebuild procedures are required.

Use of the candidate kit is restricted to 6V–92TA Detroit Diesel engines manufactured from January 1979 through December 1989, equipped with mechanical unit fuel injectors (MUI), and originally certified to meet Federal emission standards. The required fuel is low sulfur (0.05% max by weight) diesel fuel, either number 1 or number 2.

The notification states that the candidate equipment achieves a particulate matter (PM) level of 0.10 g/bhp-hr. Turbodyne has not supplied life cycle cost information and is not requesting certification based on cost to operators. The use of the equipment by transit operators to meet program requirements is discussed below.

Turbodyne presents exhaust emissions data from testing a Detroit Diesel Corporation (DDC) engine in accordance with procedures set forth at 40 CFR part 86, subparts N and I. This is the same test engine and test data that was presented in the Detroit Diesel notification that was approved for certification on April 6, 1998 and referenced earlier in this document. A 1984 model year DDC 6V92TA MUI model engine (277 HP) was rebuilt to the 1989 urban bus configuration as per the previously certified DDC kit and was retrofit with the specified components of the 0.1 g/bhp-hr kit prior to testing. In the rebuild process, all parts not included in the rebuild kit were inspected. Prior to testing the engine was tuned with the injector timing set at 1.460 in. The throttle delay was set for optimum vehicle driveability. The data is summarized in Table A below.

TABLE A.—EXHAUST EMISSIONS SUMMARY

Gaseous and particulate test	g/bhp-hr	
	1989 HDDE standards	6V92TA MUI with kit
HC	1.3	0.1
CO	15.5	0.4
NO_x	10.7	9.8
PM	0.60	0.091
BSFC[1] ...	.....	0.464
Smoke Test	Standards	
ACCEL ..	20%	3.3%
LUG	15%	2.5%
PEAK	50%	4.2%

[1] Brake Specific Fuel Consumption (BSFC) is measured in units of lb/bhp-hr.

The data of Table A indicate that, when rebuilt with the kit, PM emissions of the test engine are less than 0.10 g/bhp-hr, and emissions of hydrocarbon (HC), carbon monoxide (CO), and smoke opacity are within applicable Federal standards. The Agency requests comments on whether the emissions test data presented by Turbodyne demonstrate that all engines for which certification is requested will meet applicable Federal standards with the candidate kit installed.

Applicability of the candidate is restricted to 6V92TA, urban bus engine models made by Detroit Diesel Corporation (DDC) from model years 1979 to 1989 and equipped with mechanical unit injectors (MUI). The Agency requests comments on whether the emissions data presented demonstrate that all engines for which certification is intended will meet the 0.10 g/bhp-hr PM standard. The part numbers of the specified rebuild components are provided in the notification.

Turbodyne's notification does not provide life cycle cost information for the candidate kit. Therefore, this kit will not be certified to comply with the life-cycle cost requirements of the program. The 0.10 g/bhp-hr PM level has already been triggered for all the engines covered by this notification. If certified as proposed in the notification, this equipment may be used by operators who are required to use equipment that meets the 0.10 g/bhp-hr PM level based on earlier trigger certification.

The engine is to be rebuilt according to the engine manufacturer's standard written rebuild procedures and specifications except where amended by written instructions. The incremental maintenance cost and fuel economy impact are not provided in the notification and are not necessary for certification as the cost limitation is not being certified to by Turbodyne.

The Turbodyne notification provides a product warranty that references the emissions performance and emissions defect warranties required in accordance with section 85.1409 of the program regulations.

Even if ultimately certified by the Agency, the equipment described in Turbodyne's notification may require additional review by the California Air Resources Board (CARB) before use in California. The Agency recognizes that special situations may exist in California that are reflected in the unique emissions standards, engine calibrations, and fuel specifications of the State. While requirements of the Federal urban bus program apply to several metropolitan areas in California, the Agency understands the view of CARB that equipment certified under the urban bus program, to be used in California, must be provided with an executive order exempting it from the anti-tampering prohibitions of that State. Those interested in additional information should contact the Aftermarket Part Section of CARB, at (626) 575–6848.

If the Agency certifies the candidate equipment, then urban bus operators who choose to comply with compliance Option 1 of this regulation will have the option to use this equipment or other equipment which has previously been certified to the 0.10 g/bhp-hr standard when applicable engines are rebuilt or replaced. If certified, then operators using Option 2 will use the 0.10 g/bhp-hr certification level in calculations for fleet level attained (FLA).

The date of this document initiates a 45-day period during which the Agency will accept written comments relevant to whether the equipment described in the Turbodyne notification of intent to certify should be certified pursuant to the urban bus retrofit/rebuild regulations. Interested parties are encouraged to review this notification, and provide written comments during the 45-day review period. Separate comments should be provided in writing to each of the addresses listed under the Addresses section of this document.

At a minimum, the Agency expects to evaluate this notification of intent to certify, and other materials submitted as applicable, to determine whether there is adequate demonstration of compliance with: (1) the certification requirements of section 85.1406, including whether the testing accurately substantiates the claimed emission reduction or emission levels; and, (2) the requirements of section 85.1407 for a notification of intent to certify.

The Agency requests that those commenting also consider these regulatory requirements, plus provide comments on any experience or knowledge concerning: (a) problems with installing, maintaining, and/or using the equipment on applicable engines; and, (b) whether the equipment is compatible with affected vehicles.

The Agency will review this notification of intent to certify, along with comments received from the interested parties, and attempt to resolve or clarify issues as necessary. During the review process, the Agency may add additional documents to the docket as a result of the review process. These documents will also be available for public review and comment within the 45-day period.

Dated: April 8, 1999.

Robert Perciasepe,

Assistant Administrator for Air and Radiation.

[FR Doc. 99–9719 Filed 4–16–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6328–3]

Ambient Air Monitoring Reference and Equivalent Methods: Designation of a New Reference Method

AGENCY: Environmental Protection Agency.

ACTION: Notice of designation and receipt of application.

SUMMARY: Notice is hereby given that the Environmental Protection Agency (EPA) has designated, in accordance with 40 CFR part 53, a new reference method for measuring concentrations of $PM_{2.5}$ in ambient air. Notice is also given that EPA has received a new application for an equivalent method determination from Environnement S.A., Poissy, France for a long path monitoring system for ozone.

FOR FURTHER INFORMATION CONTACT: Frank F. McElroy, Human Exposure and Atmospheric Sciences Division (MD–46), National Exposure Research Laboratory, U.S. EPA, Research Triangle Park, North Carolina 27711. Phone: (919) 541–2622, email: mcelroy.frank@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: In accordance with regulations at 40 CFR part 53, the EPA examines various methods for monitoring the concentrations of certain pollutants in the ambient air. Methods that are

determined to meet specific requirements for adequacy are designated as either reference or equivalent methods, thereby permitting their use under 40 CFR part 58 by States and other agencies for determining attainment of the National Ambient Air Quality Standards. EPA hereby announces the designation of a new reference method for measuring $PM_{2.5}$ in ambient air. This designation is made under the provisions of 40 CFR part 53, as amended on July 18, 1997 (62 FR 38764).

The new reference method for $PM_{2.5}$ is a manual monitoring method based on a particular commercially available $PM_{2.5}$ sampler. The newly designated method is identified as follows.

RFPS–0499–129, "Rupprecht & Patashnick Company, Inc. Partisol® Model 2000 PM–2.5 Audit Sampler," configured as a $PM_{2.5}$ reference method and operated with software (firmware) version 1.2, for 24-hour continuous sample periods at a flow rate of 16.67 liters/minute, in accordance with the Partisol® Model 2000 Operating Manual and with the requirements and sample collection filters specified in 40 CFR part 50, appendix L.

An application for a reference method determination for this method based on the Rupprecht & Patashnick Company, Inc. Partisol® Model 2000 $PM_{2.5}$ Audit Sampler was received by the EPA on August 10, 1998, and a notice of the receipt of this application was published in the **Federal Register** on October 29, 1998. The method is available commercially from the applicant, Rupprecht & Patashnick Company, Inc., 25 Corporate Circle, Albany, New York 12203.

Test samplers representative of this method have been tested by the applicant in accordance with the test procedures specified in 40 CFR part 53 (as amended on July 18, 1997). After reviewing the results of those tests and other information submitted by the applicant, EPA has determined, in accordance with part 53, that this method should be designated as a reference method. The information submitted by the applicant will be kept on file at EPA's National Exposure Research Laboratory, Research Triangle Park, North Carolina 27711 and will be available for inspection to the extent consistent with 40 CFR part 2, (EPA's regulations implementing the Freedom of Information Act).

As a designated reference method, this method is acceptable for use by states and other air monitoring agencies under the requirements of 40 CFR part 58, Ambient Air Quality Surveillance. For such purposes, the method must be used in strict accordance with the operation or instruction manual associated with the method, the specifications and limitations (*e.g.*, sample period or flow rate) specified in the applicable designation method description (see identification of the method above), and the specifications and requirements set forth in appendix L to 40 CFR part 50. Use of the method should also be in general accordance with the guidance and recommendations of applicable sections of the "Quality Assurance Guidance Document 2.12." Vendor modifications of a designated reference or equivalent method used for purposes of part 58 are permitted only with prior approval of the EPA, as provided in part 53. Provisions concerning modification of such methods by users are specified under section 2.8 of appendix C to 40 CFR part 58 (Modifications of Methods by Users).

In general, a method designation applies to any sampler or analyzer which is identical to the sampler or analyzer described in the application for designation. In some cases, similar samplers or analyzers manufactured prior to the designation may be upgraded (*e.g.*, by minor modification or by substitution of the approved operation or instruction manual) so as to be identical to the designated method and thus achieve designated status at a modest cost. The manufacturer should be consulted to determine the feasibility of such upgrading.

Part 53 requires that sellers of designated reference or equivalent method analyzers or samplers comply with certain conditions. These conditions are given in 40 CFR 53.9 and are summarized below:

(a) A copy of the approved operation or instruction manual must accompany the sampler or analyzer when it is delivered to the ultimate purchaser.

(b) The sampler or analyzer must not generate any unreasonable hazard to operators or to the environment.

(c) The sampler or analyzer must function within the limits of the applicable performance specifications given in parts 50 and 53 for at least one year after delivery when maintained and operated in accordance with the operation or instruction manual.

(d) Any sampler or analyzer offered for sale as part of a reference or equivalent method must bear a label or sticker indicating that it has been designated as part of a reference or equivalent method in accordance with part 53 and showing its designated method identification number.

(e) If such an analyzer has two or more selectable ranges, the label or sticker must be placed in close proximity to the range selector and indicate which range or ranges have been included in the reference or equivalent method designation.

(f) An applicant who offers samplers or analyzers for sale as part of a reference or equivalent method is required to maintain a list of ultimate purchasers of such samplers or analyzers and to notify them within 30 days if a reference or equivalent method designation applicable to the method has been canceled or if adjustment of the sampler or analyzer is necessary under 40 CFR 53.11(b) to avoid a cancellation.

(g) An applicant who modifies a sampler or analyzer previously designated as part of a reference or equivalent method is not permitted to sell the sampler or analyzer (as modified) as part of a reference or equivalent method (although it may be sold without such representation), nor to attach a label or sticker to the sampler or analyzer (as modified) under the provisions described above, until the applicant has received notice under 40 CFR 53.14(c) that the original designation or a new designation applies to the method as modified, or until the applicant has applied for and received notice under 40 CFR 53.8(b) of a new reference or equivalent method determination for the sampler or analyzer as modified.

(h) An applicant who offers $PM_{2.5}$ samplers for sale as part of a reference or equivalent method is required to maintain the manufacturing facility in which the sampler is manufactured as an ISO 9001-certified facility.

(i) An applicant who offers $PM_{2.5}$ samplers for sale as part of a reference or equivalent method is required to submit annually a properly completed Product Manufacturing Checklist, as specified in part 53.

Aside from occasional breakdowns or malfunctions, consistent or repeated noncompliance with any of these conditions should be reported to: Director, Human Exposure and Atmospheric Sciences Division (MD–77), National Exposure Research Laboratory, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

Designation of this reference method is intended to assist the States in establishing and operating their air quality surveillance systems under 40 CFR part 58. Questions concerning the commercial availability or technical aspects of this method should be directed to the applicant.

Receipt of New Application

EPA is also hereby announcing that it has received a new application for an equivalent method determination under 40 CFR part 53. Publication of a notice of receipt of such applications is required by section 53.5.

On February 17, 1999, EPA received an application for an equivalent method determination from Environnement S.A, 111 bd Robespierre, BP 4513, 78304 Poissy Cedex, France for that Company's SANOA Multigas Longpath Air Quality Monitoring System for monitoring ozone in the atmosphere. If, after appropriate technical study, the Administrator determines that this method should be designated as an equivalent method under 40 CFR part 53, notice thereof will be published in a subsequent issue of the **Federal Register**.

Norine E. Noonan,

Assistant Administrator for Research and Development.

[FR Doc. 99–9720 Filed 4–16–99; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL 6328–4]

Meeting; Notice of Cancellation of the Gulf of Mexico Program's Habitat Focus Team

AGENCY: U.S. Environmental Protection Agency (US EPA).

ACTION: Notice.

SUMMARY: The Gulf of Mexico Program has cancelled its Habitat Focus Team Meeting announced in the **Federal Register** on March 23, 1999 at (64 FR 13994).

DATES: The Habitat Focus Team Meeting was scheduled for Thursday, April 15, 1999 from 10:00 a.m. to 5:00 p.m. and on Friday, April 16, from 8:00 a.m. to 12:00 p.m.

ADDRESSES: The meeting site was the River House Conference Facility, Stennis Space Center, MS (228) 688–7618.

FOR FURTHER INFORMATION CONTACT: Gloria D. Car, Designated Federal Officer, Gulf of Mexico Program Office, Building 1103, Room 202, Stennis Space Center, MS 39529–6000 at (228) 688–2421.

Dated: April 12, 1999.

Gloria D. Car,

Designated Federal Officer.

[FR Doc. 99–9718 Filed 4–16–99; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6328–1]

Oxygenate Use in Gasoline Panel Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting,

SUMMARY: On November 30, 1998, U.S. Environmental Protection Agency Administrator Carol M. Browner announced the creation of a blue-ribbon panel of leading experts from the public health and scientific communities, automotive fuels industry, water utilities, and local and State government to review the important issues posed by the use of MTBE and other oxygenates in gasoline. EPA created the panel to gain a better understanding of the public health concerns raised by the discovery of MTBE in some water supplies. The panel will be chaired by Mr. Daniel Greenbaum, President of the Health Effects Institute (HEI) of Cambridge, Massachusetts.

This document announces the time and place for the fourth meeting of the panel.

DATES: The blue-ribbon panel reviewing the use of oxygenates in gasoline will conduct its fourth meeting on Thursday and Friday, April 29 and 30, 1999, in Arlington, VA beginning at 8:30 a.m.

ADDRESSES: The meeting will be held from 8:30 a.m. to 5:00 p.m. on Thursday, April 29th and from 8:30 a.m. until approximately 12:00 p.m. on Friday, April 30th at the Sheraton Crystal City, 1800 Jefferson Davis Hwy, Arlington, VA.

FOR FURTHER INFORMATION CONTACT: Karen Smith at U.S. Environmental Protection Agency Office of Air and Radiation, 401 M Street, SW (6406J), Washington, D.C. 20460, (202) 564–9674, or John Brophy at (202) 564–9068. Information can also be found at www.epa.gov/oms/consumer/fuels/oxypanel/blueribb.htm

SUPPLEMENTARY INFORMATION: This is the fourth in a series of meetings at locations around the country to hear from regional and national experts on the facts concerning oxygenate use in fuel. There will be no open public comment period during this meeting. Written comments to the panel can be mailed to US EPA, 401 M Street, SW, Mail Code 6406J (Attn: Blue-Ribbon Panel), Washington, DC 20460. Panel members will be provided with copies of all written submissions.

Dated: April 12, 1999.

Margo T. Oge,

Director, Office of Mobile Sources.

[FR Doc. 99–9716 Filed 4–16–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6327–6]

National Advisory Committee to the U.S. Representative to the Commission for Environmental Cooperation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Pursuant to the Federal Advisory Committee Act (Public Law 92–463), the U.S. Environmental Protection Agency (EPA) gives notice of a meeting of the National Advisory Committee (NAC) to the U.S. Government Representative to the Commission for Environmental Cooperation (CEC).

The Committee is established within the U.S. Environmental Protection Agency (EPA) to advise the Administrator of the EPA in her capacity as the U.S. Representative to the CEC. The Committee is authorized under Article 17 of the North American Agreement on Environmental Cooperation, and the North American Free Trade Agreement Implementation Act (NAFTA), Public Law 103–182. Federal government responsibilities relating to the committee are set forth in Executive Order 12915, entitled "Federal Implementation of the North American Agreement on Environmental Cooperation. The Committee is responsible for providing advice to the U.S. Representative on implementation and further elaboration of the agreement.

The Committee consists of 12 independent representatives drawn from among environmental groups, business and industry, public policy organizations and educational institutions.

DATES: The Committee will meet on May 20 and 21, 1999. On May 20, the Committee will meet from 8:30 a.m. until 5:30 p.m. On May 21, the Committee will meet from 8:30 a.m. until 3:30 p.m.

ADDRESSES: The Hyatt Regency Hotel, Two Fountain Plaza, Buffalo, NY 14202. The meeting is open to the public, with limited seating on a first-come, first-served basis.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Hardaker, Designated Federal

Officer, U.S. EPA, Office of Cooperative Environmental Management, telephone 202–260–2477.

Dated: April 5, 1999.

Robert Hardaker,

Designated Federal Officer, National Advisory Committee.

[FR Doc. 99–9721 Filed 4–16–99; 8:45 am]

BILLING CODE: 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6327–7]

Governmental Advisory Committee to the U.S. Representative to the Commission for Environmental Cooperation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Pursuant to the Federal Advisory Committee Act (Pub. L. 92–463), the U.S. Environmental Protection Agency (EPA) gives notice of a meeting of the Governmental Advisory Committee (NAC) to the U.S. Government Representative to the Commission for Environmental Cooperation (CEC).

The Committee is established within the U.S. Environmental Protection Agency (EPA) to advise the Administrator of the EPA in her capacity as the U.S. Representative to the CEC. The Committee is authorized under Article 18 of the North American Agreement on Environmental Cooperation, and the North American Free Trade Agreement Implementation Act (NAFTA), Public Law 103–182. Federal government responsibilities relating to the committee are set forth in Executive Order 12915, entitled "Federal Implementation of the North American Agreement on Environmental Cooperation. The Committee is responsible for providing advice to the U.S. Representative on implementation and further elaboration of the agreement.

The Committee consists of 12 independent representatives drawn from state, local and tribal governments.

DATES: The Committee will meet on May 20 and 21, 1999. On May 20, the Committee will meet from 8:30 a.m. until 5:30 p.m. On May 21, the Committee will meet from 8:30 a.m. until 3:30 p.m.

ADDRESSES: The Hyatt Regency Hotel, Two Fountain Plaza, Buffalo, NY 14202. The meeting is open to the public, with limited seating on a first-come, first-served basis.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Joyce, Designated Federal Officer, U.S. EPA, Office of Cooperative Environmental Management, telephone 202–260–6889.

Dated: April 5, 1999.

Mark Joyce,

Designated Federal Officer, Governmental Advisory Committee.

[FR Doc. 99–9722 Filed 4–16–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–00235A; FRL–6074–6]

Printed Wiring Board Cleaner Technologies Substitute Assessment, Making Holes Conductive; Notice of Availability; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability; correction.

SUMMARY: The Environmental Protection Agency's (EPA) Design for The Environment (DfE) Program published a document in the **Federal Register** of January 29, 1999 announcing the availability of a document providing pollution prevention and human health and environmental risk reduction information for the Printed Wiring Board industry. This document will correct two errors made in the earlier **Federal Register** Notice of Availability.

FOR FURTHER INFORMATION CONTACT: Dipti Singh, Design for the Environment Program, Office of Pollution Prevention and Toxics (7406), Environmental Protection Agency, 401 M St., SW., Washington, DC, 20460; Telephone: 202-260-1678, fax: 202-260-0981, e-mail: oppt.dfe@epa.gov.

SUPPLEMENTARY INFORMATION:

Background and Correction

EPA published a document in the **Federal Register** of January 29, 1999 (64 FR 4653) (FRL–5772–5) announcing the availability of the document entitled "Printed Wiring Board Cleaner Technologies Substitutes Assessment: Making Holes Conductive". As published, there were two errors relating to the EPA reference number and the release date of the draft report. This notice corrects those errors.

On page 4653, in the second column, in the **SUPPLEMENTARY INFORMATION**, in the first paragraph under "**I. Project Background**", in the fourth and fifth lines, the EPA reference number should read "(EPA 744–R–98–004a and b);" and in the fifth line from the bottom, "August 1996" should read "August 1997."

Dated: April 9, 1999.

Larry E. Longanecker,

Acting Director, Economics Exposure and Technology Division, Office of Pollution Prevention and Toxics.

[FR Doc. 99–9724 Filed 4–16–99; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6325–8]

Final NPDES General Permit for New and Existing Sources and New Dischargers in the Offshore Subcategory of the Oil and Gas Extraction Category for the Western Portion of the Outer Continental Shelf of the Gulf of Mexico (GMG290000) and Notice of a Proposed Modification to That Permit

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Final NPDES General Permit and proposed modification.

SUMMARY: EPA Region 6 today issues, in part, the National Pollutant Discharge Elimination System (NPDES) general permit for the Western Portion of the Outer Continental Shelf of the Gulf of Mexico (No. GMG290000) for discharges from new sources, existing sources, and new dischargers in the Offshore Subcategory of the Oil and Gas Extraction Point Source Category (40 CFR part 435, subpart A). The existing permit published in the **Federal Register**, at 63 FR 58722 on November 2, 1998, authorizes discharges from exploration, development, and production facilities located in and discharging to Federal waters of the Gulf of Mexico seaward of the outer boundary of the territorial seas offshore off Louisiana and Texas. Today's action adds the authorization to discharge produced water to that permit.

A modification to the permit is also proposed in this **Federal Register** Notice which will authorize the discharge of drill cuttings generated using non-aqueous based drilling fluids. EPA is also considering authorizing the new discharge of chemically treated seawater or freshwater which has been used to hydrostatically test existing pipelines and would like to solicit information on authorizing that new discharge under the permit. The public comment period for the drill cuttings modification and consideration of the new discharges of hydrostatic test water from existing

pipelines will close June 18, 1999. Unchanged terms of the existing permit will not be reopened and shall remain effective.

FOR FURTHER INFORMATION CONTACT: Ms. Wilma Turner, EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202, Telephone: (214) 665–7516, or via EMAIL to the following address: turner.wilma@epa.gov

SUPPLEMENTARY INFORMATION:

Regulated Entities

Entities potentially regulated by this action are those which operate offshore oil and gas extraction facilities located in the Outer Continental Shelf Offshore of Louisiana and Texas.

Category	Examples of regulated entities
Industry	Offshore Oil and Gas Extraction Platforms.

This table lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your [facility, company, business, organization, etc.] is regulated by this action, you should carefully examine the applicability criteria in Part I. Section A.1. of the general permit. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Pursuant to section 402 of the Clean Water Act (CWA), 33 U.S.C. 1342, EPA proposed and solicited comments on NPDES general permit GMG290000 at 63 FR 2238 (January 14, 1998). Notice of this proposed permit was also published in the New Orleans Times Picayune on January 24, 1998. The comment period closed on March 16, 1998.

Region 6 received comments from the Offshore Operators Committee, American Petroleum Institute, Willie R. Taylor—United States Department of Interior, Shell Offshore, Inc., BP Exploration, Inc., and Exxon Company, U.S.A.

EPA Region 6 has considered all comments received. In response to those comments, the final decision to authorize the discharge of produced water was postponed. The remainder of the permit was reissued on November 2, 1998 and authorized all other discharges which were proposed. The Region has since responded to all issues raised regarding the proposed permit's limitations and monitoring requirements for produced water and today issues that remaining portion of the permit.

The comments which delayed issuance of the produced water portion of the permit related to the dilution model EPA used to calculate the produced water toxicity limitations. EPA conducted a thorough review of the CORMIX model in response to those comments. As a result of that review it was found that CORMIX, version 3.20 calculates critical dilutions which are reasonably representative of produced water discharges. EPA also determined that several changes in the ambient conditions used as model input were appropriate and would result in more accurate results. The proposed permit's critical dilution tables were recalculated for this final permit and incorporated those changes in ambient conditions.

CORMIX, version 3.20 was also used to calculate the toxicity limitations for the newly authorized discharges of freshwater and seawater which have been chemically treated. Those discharges were authorized by the recently issued permit at the request of the Offshore Operators Committee, even though unanswered questions remained concerning the accuracy of the CORMIX model. In response to that request by the Offshore Operators Committee, EPA agreed to revise the toxicity limitations if changes were deemed appropriate after reexamination of the CORMIX model. See 63 FR 58722, published on November 2, 1998. Based on that review, EPA has determined that changes in the input parameters for CORMIX are appropriate and has revised the associated limits accordingly.

Proposed Permit Modification

At this time, EPA is also proposing to modify the permit to authorize the discharges of drill cuttings generated using non-aqueous based drilling fluids. This proposal corresponds to a recent effluent limitations guidelines proposal for this new discharge (see 64 FR 5487, February 3, 1999). In response to its performance needs and regulatory requirements, the oil and gas extraction industry has developed new synthetic and other non-aqueous based drilling fluids, hereafter referred to as non-aqueous based drilling fluids. The new drilling fluids are used in cases such as deep water or directional drilling, where use of water based fluids is not practical and traditionally oil based drilling fluids would have been used.

Several of the existing permit's limitations and prohibitions are proposed to apply to these new drill cuttings discharges. Cadmium and mercury in stock barite are proposed to be limited to 3mg/kg and 1 mg/kg respectively. The discharge of free oil as measured with the static sheen test is proposed to be prohibited. Also, the proposed permit's discharge prohibitions of cuttings generating using: oil-based drilling fluids, oil contaminated drilling fluids, drilling fluids which contain diesel oil, and mineral oil as a base are proposed to apply to the new category of cuttings generated using non-aqueous based drilling fluids.

Based on the proposed effluent limitations guidelines sediment toxicity, polynuclear aromatic hydrocarbons, biodegradation, formation oil, and percent of drilling fluids retained on cuttings are proposed to be limited for cuttings generated using non-aqueous based drilling fluids. In addition, seafloor monitoring is proposed to be required to address Ocean Discharge Criteria requirements of section 403(c) of the Clean Water Act. The seafloor sampling will be conducted at leases where cuttings generated using non-aqueous based drilling fluids are discharged. The intent of the monitoring is to learn the extent of the effects of these drill cuttings and the rate of recovery of the affected biological communities.

Additionally, the Agency is considering authorizing the discharge of seawater and freshwater which has been used to hydrostatically test existing pipelines. The permit presently authorizes the discharges of seawater and freshwater which has been used to hydrostatically test new pipelines. Those discharges are included in the list of miscellaneous discharges of freshwater and seawater which have been chemically treated and are limited for: the concentration of treatment chemicals, free oil, and toxicity. EPA solicits information on the appropriateness of those limits and monitoring requirements for the discharge being considered.

A copy of the proposed permit language or a detailed fact sheet for the modification (neither of which are included in this **Federal Register** notice) may be obtained from Ms. Turner at the address or telephone number listed above. That information may also be obtained on the Internet at the following address: http://www.epa.gov/earth1r6/6wq/6wq.htm. Additional information regarding the proposed limitations and monitoring requirements for the proposed drill cuttings discharges can also be found in the **Federal Register** notice for the proposed effluent limitations guidelines published at 64 FR 5487.

Other Legal Requirements

Ocean Discharge Criteria Evaluation

At 63 FR 2238 EPA Region 6 determined that discharges in compliance with the proposed general permit for the Western Gulf of Mexico Outer Continental Shelf general permit (GMG290000) would not cause unreasonable degradation of the marine environment. No comments have been received which disagree with that determination.

Coastal Zone Management Act

The Region found the proposed general permit consistent with approved Coastal Zone Management Plans for Louisiana and Texas and submitted those determinations to the appropriate State agencies for certification. Such certification was received from the Coastal Management Division of the Louisiana Department of Natural Resources. However, the Texas General Land Office informed EPA that this action is not subject to their consistency review, since the area covered under the permit is outside the Texas Coastal Management Program's boundary.

Marine Protection, Research, and Sanctuaries Act

The Marine Protection, Research and Sanctuaries Act (MPRSA) of 1972 regulates the dumping of all types of materials into ocean waters and establishes a permit program for ocean dumping. In addition the MPRSA establishes Marine Sanctuaries Program, implemented by the National Oceanographic and Atmospheric Administration (NOAA), which requires NOAA to designate ocean waters as marine sanctuaries for the purpose of preserving or restoring their conservation, recreational, ecological or aesthetic values. Pursuant to the Marine Protection and Sanctuaries Act, the National Oceanographic and Atmospheric Administration has designated the Flower Garden Banks, an area within the coverage of the OCS general permit, a marine sanctuary. The OCS general permit prohibits discharges in areas of biological concern, including marine sanctuaries. No change adopted today affects that prohibition.

Endangered Species Act

As explained at 63 FR 2238, EPA has found that issuance of the General Permit for the Outer Continental Shelf for the Western Gulf of Mexico will not adversely affect any listed threatened or endangered species or designated critical habitat and requested written concurrence on that determination from the National Marine Fisheries Service. The National Marine Fisheries Service provided such concurrence on the proposed NPDES General Permit for the Western Portion of the Outer Continental Shelf of the Gulf of Mexico.

State Water Quality Standards and State Certification

Because state waters are not included in the area covered by this NPDES general permit, no state waters are affected by the discharges it authorizes. Thus, the state water quality certification provisions of CWA section 401 do not apply to this permit.

Executive Order 12866

The Office of Management and Budget (OMB) has exempted this action from the review requirements of Executive Order 12291 pursuant to Section 8(b) of that order. Guidance on Executive Order 12866 contain the same exemptions on OMB review as existed under Executive Order 12291. In fact, however, EPA prepared a regulatory impact analysis in connection with its promulgation of guidelines on which a number of the permit's provisions are based and submitted it to OMB for review. See 58 FR 12494.

Paperwork Reduction Act

The information collection required by this permit has been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, in submission made for the NPDES permit program and assigned OMB control numbers 2040–0086 (NPDES permit application) and 2040–0004 (discharge monitoring reports).

Since this permit is very similar in reporting and application requirements and in discharges which are required to be monitored as the previous Western Gulf of Mexico Outer Continental Shelf (OCS) general permit (GMG290000) the paperwork burdens are expected to be nearly identical. When it issued the previous OCS general permit, EPA estimated it would take an affected facility three hours to prepare the request for coverage and 38 hours per year to prepare discharge monitoring reports. It is estimated that the time required to prepare the request for coverage and discharge monitoring reports for the reissued permit will be approximately the same.

Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq*, requires that EPA prepare a regulatory flexibility analysis for regulations that have a significant impact on a substantial number of small entities. As indicated below, the permit issued today is not a "rule" subject to the Regulatory Flexibility Act . EPA prepared a regulatory flexibility analysis, however, on the promulgation of the Offshore Subcategory guidelines on which many of the permit's effluent limitations are based. That analysis shows that issuance of this permit will not have a significant impact on a substantial number of small entities.

Unfunded Mandates Reform Act

Section 201 of the Unfunded Mandates Reform Act (UMRA), Public Law 104–4, generally requires Federal agencies to assess the effects of their "regulatory actions" on State, local, and tribal governments and the private sector. As stated in the **Federal Register** notice for the proposed permit, this permit is not a rule which is subject to the requirements of the UMRA. The permit also would not uniquely affect small governments because compliance with the proposed permit conditions affects small governments in the same manner as any other entities seeking coverage under the permit. Additionally, EPA does not expect small governments to operate facilities authorized to discharge by this permit. No comments were received which challenge EPA's interpretation of the Unfunded Mandates Reform Act, as it applies to this permit.

National Environmental Policy Act (NEPA)

As stated in the **Federal Register** notice for the proposed permit (see 63 FR 2238, January 14, 1998) EPA determined that reissuance of this NPDES general permit will not result in any new impacts which were not subjected to NEPA analysis in either Mineral Management Service's EIS or the SEIS produced by EPA Region 6. All discharges authorized by this reissued permit were addressed in that NEPA Review. Thus EPA did not prepare a supplemental environmental impact statement for this action. No comments, on the proposed permit, were received which would suggest additional actions are required to meet the requirements of NEPA.

Authorization To Discharge Under the National Pollutant Discharge Elimination System

In compliance with the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251 et. seq. the "Act"), operators of lease blocks in the Oil and Gas Extraction Point Source Category which are located in Federal waters of the Western Portion of the Gulf of Mexico (defined as seaward of the outer boundary of the territorial seas off

Louisiana and Texas) are authorized to discharge to the Western Portion of the Federal Waters of the Gulf of Mexico in accordance with effluent limitations, monitoring requirements, and other conditions set forth in Parts I, II, and III hereof. Also, operators of lease blocks located in the territorial seas of Louisiana and Texas are authorized to discharge produced water from wells located in those lease blocks to the Western Portion of the Federal Waters of the Gulf of Mexico in accordance with effluent limitations, monitoring requirements, and other conditions set forth in Parts I, II, and III hereof.

Operators of lease blocks located within the general permit area must submit written notification to the Regional Administrator that they intend to be covered (See Part I.A.2). Unless otherwise notified in writing by the Regional Administrator after submission of the notification, owners or operators requesting coverage are authorized to discharge under this general permit. Operators of lease blocks within the general permit area who fail to notify the Regional Administrator of intent to be covered by this general permit are not authorized under this general permit to discharge pollutants from those facilities. Operators who have previously submitted a written notification of intent to be covered by a subsequent permit, as required by the previous permit, need not submit an additional notification of intent to be covered.

Facilities which adversely affect properties listed or eligible for listing in the National Register of Historic Places are not authorized to discharge under this permit.

This permit shall become effective at Midnight Central Standard Time on July 19, 1999.

This permit and the authorization to discharge shall expire at midnight, Central Standard Time, November 3, 2003.

Signed this 9th day of April, 1999.

Jack V. Ferguson,

Acting Director, Water Quality Protection Division, EPA Region 6.

Part I. Requirements for NPDES Permits

Section A. Permit Applicability and Coverage Conditions

1. Operations Covered

This permit establishes effluent limitations, prohibitions, reporting requirements, and other conditions on discharges from oil and gas facilities engaged in production, field exploration, developmental drilling, well completion, well treatment operations, and well workover and abandonment operations.

The permit coverage area consists of lease blocks located in and discharging to Federal waters in the Gulf of Mexico seaward of the outer boundary of the territorial seas offshore of Louisiana and Texas and shall include lease blocks west of the western boundary of the outer continental shelf lease areas defined as: Mobile, Viosca Knoll (north part), Destin Dome, Desoto Canyon, Lloyd, and Henderson. In Texas, where the state has mineral rights to 3 leagues, some operators with state lease tracts are required to request coverage under this Federal NPDES general permit. In addition, permit coverage consists of produced water discharges to those Federal waters from lease blocks located in the territorial seas of Texas and Louisiana. This includes produced water from wells located in the area of coverage, which is sent on-shore for treatment and subsequently sent back to the Outer Continental Shelf to be discharged. This permit does not authorize discharges from facilities located in or discharging to the territorial seas of Louisiana or Texas or from facilities defined as "coastal", "onshore", or "stripper" (see 40 CFR part 435, subparts C, D, and E).

2. Notification Requirements

Written notification of intent to be covered including the legal name and address of the operator, the lease block number assigned by the Department of Interior or the state or, if none, the name commonly assigned to the lease area shall be submitted at least fourteen days prior to the commencement of discharge. If the lease block was previously covered by this or another permit, the operator shall also include the previous permit number in the notification. The notice of intent must also identify any facility which is a New Source and state the date on which the facility's protection from more stringent new source performance standards or technology based limitations ends. That date is the soonest of: ten years from the date that construction is completed, ten years from the date the source begins to discharge process or non-construction related waste water, or the end of the period of depreciation or amortization of the facility for the purposes of section 167 or 169 (or both) of the Internal Revenue code of 1954.

Additionally, if an application for an individual permit for the activity was previously submitted to EPA Region 6, the notice of intent shall include the application/permit number of that application or the permit number of any individual NPDES permit issued by EPA Region 6 for this activity.

Permittees located in lease blocks that (a) are neither in nor adjacent to MMS-defined "no activity" areas, or (b) do not require live-bottom surveys are required only to submit a notice of intent to be covered by this general permit. Permittees who are located in lease blocks that are either in or adjacent to "no activity" areas or require live bottom surveys are required to submit both a notice of intent to be covered that specifies they are located in such a lease block, and in addition are required to submit a notice of commencement of operations.

Permittees located in lease blocks either in or immediately adjacent to MMS-defined "no activity" areas, shall be responsible for determining whether a controlled discharge rate is required. The maximum discharge rate for drilling fluids is determined by the distance from the facility to the "no activity" area boundary and the discharge rate equation provided in Part I.B.1.b. of this permit. The permittee shall report the distance from the permitted facility to the "no activity" area boundary and the calculated maximum discharge rate to EPA with its notice of commencement of operations.

For permittees located in lease blocks that require live-bottom surveys, the final determination of the presence or absence of live-bottom communities, the distance of the facility from identified live-bottom areas, and the calculated maximum discharge rate shall be reported with the notice of commencement of operations.

All notifications of intent to be covered and any subsequent reports under this permit shall be sent to the following address: Water Enforcement Branch (6EN–WC), Region 6, U.S. Environmental Protection Agency, P.O. Box 50625, Dallas, TX 75250. Operators who have previously submitted a written notification of intent to be covered by a subsequent permit, as required by the previous permit, need not submit an additional notification of intent to be covered.

3. Termination of Operations

Lease block operators shall notify the Regional Administrator within 60 days after the permanent termination of discharges from their facilities within the lease block.

Section B. Effluent Limitations and Monitoring Requirements

1. Drilling Fluids

The discharge of drilling fluids shall be limited and monitored by the

permittee as specified in Table 3 of Appendix A and as below.

Special Note: The permit prohibitions and limitations that apply to drilling fluids, also apply to fluids that adhere to drill cuttings. Any permit condition that may apply to the drilling fluid discharges, therefore, also applies to cuttings discharges.

(Exception) The discharge rate limit for drilling fluids does not apply to drill cuttings.

(a) Prohibitions

Oil-Based Drilling Fluids. The discharge of oil-based drilling fluids and inverse emulsion drilling fluids is prohibited.

Oil Contaminated Drilling Fluids. The discharge of drilling fluids which contain waste engine oil, cooling oil, gear oil or any lubricants which have been previously used for purposes other than borehole lubrication, is prohibited.

Diesel Oil. Drilling fluids to which any diesel oil has been added as a lubricant may not be discharged.

(b) Limitations

Mineral Oil. Mineral oil may be used only as a carrier fluid (transporter fluid), lubricity additive, or pill.

Cadmium and Mercury in Barite. There shall be no discharge of drilling fluids to which barite has been added, if such barite contains mercury in excess of 1.0 mg/kg (dry weight) or cadmium in excess of 3.0 mg/kg (dry weight). The permittee shall analyze a representative sample of all stock barite used once, prior to drilling each well, and submit the results for total mercury and cadmium in the Discharge Monitoring Report (DMR).

If more than one well is being drilled at a site, new analyses are not required for subsequent wells, provided that no new supplies of barite have been received since the previous analysis. In this case, the results of the previous analysis should be used on the DMR.

Alternatively, the permittee may provide certification, as documented by the supplier(s), that the barite being used on the well will meet the above limits. The concentration of the mercury and cadmium in the barite shall be reported on the DMR as documented by the supplier.

Analyses shall be conducted by absorption spectrophotometry (see 40 CFR part 136, flame and flameless AAS) and the results expressed in mg/kg (dry weight).

Toxicity. Discharged drilling fluids shall meet both a daily minimum and a monthly average minimum 96-hour LC50 of at least 30,000 ppm in a 9:1 seawater to drilling fluid suspended particulate phase (SPP) volumetric ratio using Mysidopsis bahia. Monitoring shall be performed at least once per month for both a daily minimum and the monthly average. In addition, an end-of-well sample is required for a daily minimum. The type of sample required is a grab sample, taken from beneath the shale shaker, or if there are no returns accross the shale shaker, the sample must be taken from a location that is characteristic of the overall mud system to be discharged. Permittees shall report pass or fail on the DMR using either the full toxicity test or the partial toxicity test as specified at 58 FR 12512; however, if the partial toxicity test shows a failure, all testing of future samples from that well shall be conducted using the full toxicity test method to determine the 96-hour LC50.

Free Oil. No free oil shall be discharged. Monitoring shall be performed using the static sheen method once per week when discharging. The number of days a sheen is observed must be recorded.

Discharge Rate. All facilities are subject to a maximum discharge rate of 1,000 barrels per hour.

For those facilities subject to the discharge rate limitation requirement because of their proximity to areas of biological concern, the discharge rate of drilling fluids shall be determined by the following equation:

$$R=10^{[3\ \mathrm{Log}\ (d/15)\ +\ T_t]}$$

Where:

R=discharge rate (bbl/hr)

d=distance (meters) from the boundary of a controlled discharge rate area

T_t=toxicity-based discharge rate term=[log ($LC50 \times 8 \times 10^{-6}$)] / 0.3657

Drilling fluids discharges (based on a mud toxicity of 30,000 ppm) equal to or less than 544 meters from areas of biological concern shall comply with the discharge rate obtained from the equation above. Drilling fluids discharges which are shunted to the bottom as required by MMS are not subject to this discharge rate control requirement.

All discharged drilling fluids, including those fluids adhering to cuttings must meet the limitations of this section except that discharge rate limitations do not apply before installation of the marine riser.

(c) Monitoring Requirements

Drilling Fluids Inventory. The permittee shall maintain a precise chemical inventory of all constituents and their total volume or mass added downhole for each well.

2. Drill Cuttings

The discharge of drill cuttings shall be limited and monitored by the permittee as specified in Appendix A, Table 2 and as below.

(a) Prohibitions

Cuttings from Oil Based Drilling Fluids. The discharge of cuttings that are generated while using an oil-based or invert emulsion mud is prohibited.

Cuttings from Oil Contaminated Drilling Fluids. The discharge of cuttings that are generated using drilling fluids which contain waste engine oil, cooling oil, gear oil or any lubricants which have been previously used for purposes other than borehole lubrication, is prohibited.

Cuttings Generated Using Drilling Fluids which Contain Diesel Oil. Drill cuttings generated using drilling fluids to which any diesel oil has been added as a lubricant may not be discharged.

Cuttings Generated Using Mineral Oil. The discharge of cuttings generated using drilling fluids which contain mineral oil is prohibited except when the mineral oil is used as a carrier fluid (transporter fluid), lubricity additive, or pill.

Cadmium and Mercury in Barite. Drill cuttings generated using drilling fluids to which barite has been added shall not be discharged if such barite contains mercury in excess of 1.0 mg/kg (dry weight) or cadmium in excess of 3.0 mg/kg (dry weight).

Toxicity. Drill cuttings generated using drilling fluids with a daily minimum or a monthly average minimum 96-hour LC50 of less than 30,000 ppm in a 9:1 seawater to drilling fluid suspended particulate phase (SPP) volumetric ratio using *Mysidopsis bahia* shall not be discharged.

(b) Limitations

Free Oil. No free oil shall be discharged. Monitoring shall be performed using the static sheen test method once per week when discharging. The number of days a sheen is observed must be recorded.

3. Deck Drainage

Limitations

Free Oil. No free oil shall be discharged, as determined by the visual sheen method on the surface of the receiving water. Monitoring shall be performed once per day when discharging, during conditions when an observation of a visual sheen on the surface of the receiving water is possible in the vicinity of the discharge, and the facility is manned. The number of days a sheen is observed must be recorded.

4. Produced Water

(a) Limitations

Oil and Grease. Produced water discharges must meet both a daily maximum of 42 mg/l and a monthly average of 29 mg/l for oil and grease. The sample type shall be either grab, or a 24-hour composite which consists of the arithmetic average of the results of 4 grab samples taken over a 24-hour period. If only one sample is taken for any one month, it must meet both the daily and monthly limits. Samples shall be collected prior to the addition of any seawater to the produced water waste stream. The analytical method is that specified at 40 CFR part 136 or the alternate method described in Part I.D.5 of this permit.

Toxicity. The 7-day average minimum and monthly average minimum No Observable Effect Concentration (NOEC) must be equal to or greater than the critical dilution concentration specified in Table 1 of this permit. Critical dilution shall be determined using Table 1 of this permit and is based on the discharge rate most recently reported on the discharge monitoring report, discharge pipe diameter, and water depth between the discharge pipe and the bottom. Facilities which have not previously reported produced water flow on the discharge monitoring report shall use the highest monthly average flow measured during the previous twelve months for determining the critical dilution from Table 1 of this permit. The monthly average minimum NOEC value is defined as the arithmetic average of all 7-day average NOEC values determined during the month.

(Exception) Permittees wishing to increase mixing may use a horizontal diffuser, add seawater, or may install multiple discharge ports.

Permittees using a horizontal diffuser shall install the diffuser designed so that the 7-day average minimum and monthly average minimum No Observable Effect Concentration (NOEC) is equal to or greater than the critical dilution concentration as calculated using CORMIX2 version 3.20 or newer, with the following input conditions:

Density Gradient = 0.15 σ_t/m
Ambient seawater density at diffuser depth = 1017 kg/m^3
Produced water density = 1070 kg/m^3
Current speed = 10 cm/sec.

Permittees shall submit a certification that the diffuser has been installed and state the critical dilution corresponding to the diffuser in the certification. The CORMIX2 model runs shall be retained by the permittee as part of its NPDES records.

Permittees discharging produced water at a rate greater than 75,000 bbl/day shall determine the critical dilution using CORMIX (version 3.20 or newer) with the input parameters shown above. Permittees shall retain the model run as a part of the NPDES records.

Permittees using vertically aligned multiple discharge ports shall provide vertical separation between ports which is consistent with Table 1–G of this permit. When multiple discharge ports are installed, the depth difference between the discharge port closest to the sea floor and the sea floor shall be the depth difference used to determine the critical dilution from Table 1 of this permit. The critical dilution value shall be based on the port flow rate (total flow rate divided by the number of discharge ports) and based on the diameter of the discharge port (or smallest discharge port if they are of different styles).

When seawater is added to produced water prior to discharge, the total produced water flow, including the added seawater, shall be used in determining the critical dilution from Table 1.

(b) Monitoring Requirements

Flow. Once per month, an estimate of the flow (MGD) must be recorded.

Toxicity. The flow used to determine the frequency of toxicity testing shall be the flow most recently reported on the discharge monitoring report for the facility. Facilities which have not previously reported produced water flow on the discharge monitoring report shall use the highest monthly average flow measured during the past twelve months. The required frequency of testing shall be determined as follows:

Discharge rate	Toxicity testing frequency
0–4,599 bbl/day	Once per year.
4,600 bbl/day and above.	Once per calendar quarter.

The calendar quarters are defined as the following periods: January 1 to March 31, April 1 to June 30, July 1 to September 30, and October 1 to December 31.

Toxicity testing requirements for new discharges shall become effective at the start of the first calendar quarter after discharge begins. Toxicity testing requirements shall become effective [Insert the first calendar quarter start date following the date of permit issuance].

Samples for monitoring produced water toxicity shall be collected after addition of any added substances, including seawater that is added prior to discharge, and before the flow is split for multiple discharge ports. Samples also shall be representative of produced water discharges when scale inhibitors, corrosion inhibitors, biocides, paraffin inhibitors, well completion fluids, workover fluids, and/or well treatment fluids are used in operations.

If the permittee has been subject to quarterly testing and has been compliant with these toxicity limits for one full year (four consecutive quarters), the required testing frequency shall be reduced to once per year. If the permittee has been subject to annual testing and has been compliant for the first year, the required toxicity testing frequency shall remain at once per year even if the discharge rate subsequently exceeds 4,599 bbl/day. Also, if the permittee monitored produced water toxicity at the reduced frequency of once per year under the previous Outer Continental Shelf general permit, the required monitoring frequency shall remain at once per year as long as the discharge is compliant with the toxicity limits. See also Part I.D.3.d of this permit.

Visual Sheen. The permittee shall monitor free oil using the visual sheen test method on the surface of the receiving water. Monitoring shall be performed once per day when discharging, during conditions when observation of a sheen on the surface of the receiving water is possible in the vicinity of the discharge, and when the facility is manned.

Oil and Grease. A produced water sample shall be collected and analyzed for oil and grease when a sheen is observed in the vicinity of the produced water discharge. At a minimum a sample shall be collected and analyzed once per month.

5. Produced Sand

There shall be no discharge of produced sand.

6. Well Treatment Fluids, Completion Fluids, and Workover Fluids

(a) Limitations

Free Oil. No free oil shall be discharged. Monitoring shall be performed using the static sheen test method once per day when discharging and the facility is manned. The number of days a sheen is observed must be recorded.

Oil and Grease. Well treatment, completion, and workover fluids must meet both a daily maximum of 42 mg /l and a monthly average of 29 mg/l limitation for oil and grease. The sample type may be either grab, or a 24-hour composite consisting of the arithmetic average of the results of 4 grab samples

taken within the 24-hour period. If only one sample is taken for any one month, it must meet both the daily and monthly limits. The analytical method is that specified at 40 CFR part 136 or the alternate method described in part I.D.5 of this permit.

Priority Pollutants. For well treatment fluids, completion fluids, and workover fluids, the discharge of priority pollutants is prohibited except in trace amounts. Information on the specific chemical composition of any additives containing priority pollutants shall be recorded.

Note: If materials added downhole as well treatment, completion, or workover fluids contain no priority pollutants, the discharge is assumed not to contain priority pollutants except possibly in trace amounts.

(b) Monitoring Requirements

This discharge shall be considered produced water for monitoring purposes when commingled with produced water.

7. Sanitary Waste (Facilities Continuously Manned by 10 or More Persons)

(a) Prohibitions

Solids. No floating solids may be discharged to the receiving waters. An observation must be made once per day for floating solids. Observation must be made during daylight in the vicinity of sanitary waste outfalls following either the morning or midday meal and at a time during maximum estimated discharge. The number of days solids are observed must be recorded.

(b) Limitations

Residual Chlorine. Total residual chlorine is a surrogate parameter for fecal coliform. Discharge of residual chlorine must meet a minimum of 1 mg/l and shall be maintained as close to this concentration as possible. A grab sample must be taken once per month and the concentration recorded (approved method, Hach CN–66–DPD).

(Exception) Any facility which properly operates and maintains a marine sanitation device (MSD) that complies with pollution control standards and regulations under section 312 of the Act shall be deemed in compliance with permit limitations for sanitary waste. The MSD shall be tested yearly for proper operation and the test results maintained at the facility.

8. Sanitary Waste (Facilities Continuously Manned by 9 or Fewer Persons or Intermittently by Any Number)

(a) Prohibitions

Solids. No floating solids may be discharged to the receiving waters. An observation must be made once per day for floating solids. Observation must be made during daylight in the vicinity of sanitary waste outfalls following either the morning or midday meal and at a time during maximum estimated discharge. The number of days solids are observed must be recorded.

(Exception) Any facility which properly operates and maintains a marine sanitation device (MSD) that complies with pollution control standards and regulations under section 312 of the Act shall be deemed to be in compliance with permit limitations for sanitary waste. The MSD shall be tested yearly for proper operation and the test results maintained at the facility.

9. Domestic Waste

(a) Prohibitions

Solids. No floating solids or foam shall be discharged.

(b) Monitoring Requirements

An observation shall be made once per day during daylight in the vicinity of domestic waste outfalls following the morning or midday meal and at a time during maximum estimated discharge. The number of days solids are observed must be recorded.

10. Miscellaneous Discharges

Desalination Unit Discharge
Diatomaceous Earth Filter Media
Blowout Preventer Fluid
Uncontaminated Ballast Water
Uncontaminated Bilge Water
Mud, Cuttings, and Cement at the Seafloor
Uncontaminated Freshwater
Uncontaminated Seawater
Boiler Blowdown
Source Water and Sand
Excess Cement Slurry

Limitations

Free Oil. No free oil shall be discharged. Discharge is limited to those times that a visual sheen observation is possible unless the operator uses the static sheen method. Monitoring shall be performed using the visual sheen method on the surface of the receiving water once per week when discharging, or by use of the static sheen method at the operator's option. The number of days a sheen is observed must be recorded.

(Exceptions) Uncontaminated seawater, uncontaminated freshwater, source water and source sand, uncontaminated bilge water, and uncontaminated ballast water may be discharged from platforms that are on automatic purge systems without monitoring for free oil when the facilities are not manned. Additionally, discharges at the seafloor of: muds and cuttings prior to installation of the marine riser, cement, and blowout preventer fluid may be discharged without monitoring with the static sheen test when conditions make observation of a visual sheen on the surface of the receiving water impossible.

11. Miscellaneous Discharges of Seawater and Freshwater Which Have Been Chemically Treated

Excess seawater which permits the continuous operation of fire control and utility lift pumps
Excess seawater from pressure maintenance and secondary recovery projects
Water released during training of personnel in fire protection
Seawater used to pressure test new piping and new pipelines
Ballast water
Once Through Non-contact cooling water
Desalinization unit discharge

(a) Limitations

Treatment Chemicals. The concentration of treatment chemicals in discharged seawater or freshwater shall not exceed the most stringent of the following three constraints:

(1) The maximum concentrations and any other conditions specified in the EPA product registration labeling if the chemical is an EPA registered product
(2) the maximum manufacturer's recommended concentration
(3) 500 mg/l

Free Oil. No free oil shall be discharged. Discharge is limited to those times that a visible sheen observation is possible unless the operator uses the static sheen method. Monitoring shall be performed using the visual sheen method on the surface of the receiving water once per week when discharging, or by use of the static sheen method at the operator's option. The number of days a sheen is observed must be recorded.

Toxicity. The 48-hour minimum and monthly average minimum No Observable Effect Concentration (NOEC), or if specified the 7-day average minimum and monthly average minimum NOEC, must be equal to or greater than the critical dilution

concentration specified in this permit in Table 2–A for seawater discharges and 2–B for freshwater discharges. Critical dilution shall be determined using Table 2 of this permit and is based on the discharge rate, discharge pipe diameter, and water depth between the discharge pipe and the bottom. The monthly average minimum NOEC value is defined as the arithmetic average of all 48-hour average NOEC (or 7-day average minimum NOEC) values determined during the month.

(b) Monitoring Requirements

Flow. Once per month, an estimate of the flow (MGD) must be recorded.

Toxicity. The required frequency of testing for continuous discharges shall be determined as follows:

Discharge rate	Toxicity testing frequency
0–499 bbl/day	Once per year.
500–4,599 bbl/day	Once per quarter.
4,600 bbl/day and above	Once per month

Intermittent or batch discharges shall be monitored once per discharge but are required to be monitored no more frequently than the corresponding frequencies shown above for continuous discharges.

Samples shall be collected after addition of any added substances, including seawater that is added prior to discharge, and before the flow is split for multiple discharge ports. Samples also shall be representative of the discharge. Methods to increase dilution previously described for produced water in Part I.B.4.a also apply to seawater and freshwater discharges which have been chemically treated.

If the permittee has been compliant with this toxicity limit for one full year (12 consecutive months) for a continuous discharge of chemically treated seawater or freshwater, the required testing frequency shall be reduced to once per year for that discharge.

Section C. Other Discharge Limitations

1. Floating Solids or Visible Foam

There shall be no discharge of floating solids or visible foam from any source in other than trace amounts.

(Exception) For new sources, this limitation only applies to miscellaneous discharges and domestic waste discharges.

2. Halogenated Phenol Compounds

There shall be no discharge of halogenated phenol compounds as a part of any waste stream authorized in this permit.

3. Dispersants, Surfactants, and Detergents

The facility operator shall minimize the discharge of dispersants, surfactants and detergents except as necessary to comply with the safety requirements of the Occupational Safety and Health Administration and the Minerals Management Service. This restriction applies to tank cleaning and other operations which do not directly involve the safety of workers. The restriction is imposed because detergents disperse and emulsify oil, thereby increasing toxicity and making the detection of a discharge of oil more difficult.

4. Garbage

The discharge of garbage (See Part II.G.32) is prohibited.

(Exception) Comminuted food waste (able to pass through a screen with a mesh no larger than 25 mm, approx. 1 inch) may be discharged when 12 nautical miles or more from land.

5. Area of Biological Concern

There shall be no discharge in Areas of Biological Concern, including marine sanctuaries. The Flower Garden Banks has been determined to be a Marine Sanctuary and is within the geographical area covered under this permit.

Section D. Other Conditions

1. Samples of Wastes

If requested, the permittee shall provide EPA with a sample of any waste in a manner specified by the Agency.

2. Drilling Fluids Toxicity Test

The approved test method for permit compliance is identified as: Drilling Fluids Toxicity Test at 40 *CFR* part 435, subpart A, appendix 2.

3. Produced Water Toxicity Testing Requirements (7-Day Chronic NOEC Marine Limits)

The approved test methods for permit compliance are identified in 40 CFR part 136.

(a) The permittee shall utilize the *Mysidopsis bahia* (Mysid shrimp) chronic static renewal 7-day survival and growth test using Method 1007.0.

(b) The permittee shall utilize the *Mendia beryllina* (Inland Silverside minnow) chronic static renewal 7-day survival and growth test (Method 1006.0.

(c) The NOEC (No Observed Effect Concentration) is defined as the greatest effluent dilution which does not result in lethality that is statistically different from the control (0% effluent) at the 95% confidence level.

(d) If the effluent fails the survival endpoint at the critical dilution, the permittee shall be considered in violation of this permit limit. Also, when the testing frequency stated above is less than monthly and the effluent fails the survival endpoint at the critical dilution, the monitoring frequency for the affected species will increase to monthly until such time as compliance with the Lethal No Observed Effect Concentration (NOEC) effluent limitation is demonstrated for a period of three consecutive months, at that time the premittee may return to the testing frequency stated in Part I.B.4.b of this permit. During the period the permittee is out of compliance, test results shall be reported on the DMR for the reporting period.

(e) This permit may be reopened to require chemical specific effluent limits, additional testing, and/or other appropriate actions to address toxicity.

(f) The permittee shall prepare a full report of the results of all tests conducted pursuant to this section in accordance with the Report Preparation Section of "Short-Term Methods for Estimating the Chronic Toxicity of Effluents and Receiving Waters to Marine and Estuarine Organisms," EPA/600/4–91/003, or the most current publication, for every valid or invalid toxicity test initiated whether carried to completion or not. The permittee shall retain each full report pursuant to the provisions of Part II.C.3 of this permit. The permittee shall submit full reports only upon the specific request of the Agency.

(g) In accordance with Part II.D.4 of this permit, the permittee shall report on the DMR for the reporting period the lowest Whole Effluent Lethality values determined for either species for the 30-Day Average Minimum and 7-Day Minimum under Parameter No. 22414, and the permittee shall report only the results of the valid toxicity test as follows:

1. *Menidia Beryllina* (Inland Silverside Minnow)
   (A) If the Inland Silverside minnow No Observed Effect Concentration (NOEC) for survival is less than the critical effluent dilution, enter a "1"; otherwise, enter a "0". Parameter No. TLP6B on the Discharge Monitoring Report.
   (B) Report the Inland Silverside minnow NOEC value for survival, Parameter No. TOP6B on the Discharge Monitoring Report.
   (C) Report the Inland Silverside minnow NOEC value for growth, Parameter No. TPP6B on the Discharge Monitoring Report.

2. *Mysidopsis Bahia (Mysid Shrimp)*

(A) If the Mysid Shrimp NOEC for survival is less than the critical effluent dilution, enter a "1"; otherwise, enter a "0". Parameter No. TLP3E on the Discharge Monitoring Report.

(B) Report the Mysid shrimp NOEC value for survival, Parameter No. TOP3E on the Discharge Monitoring Report.

(C) Report the Mysid shrimp NOEC value for growth, Parameter No. TPP3E on the Discharge Monitoring Report.

4. Chemically Treated Seawater and Freshwater Toxicity Testing Requirements (48-Hour Acute NOEC Marine Limits)

The approved test methods for permit compliance are identified in 40 CFR part 136.

(a) The permittee shall utilize the *Mysidopsis bahia* (Mysid shrimp) acute static renewal 48-hour definitive toxicity test using EPA/600/4–90/027F.

(b) *Menidia beryllina* (Inland Silverside minnow) acute static renewal 48-hour definitive toxicity test using EPA/600/4–90/027F.

(c) The NOEC (No observable Effect Concentration) is defined as the greatest effluent dilution which does not result in lethality that is statistically different from the control (0% effluent) at the 95% confidence level.

(d) If the effluent fails the survival endpoint at the critical dilution, the permittee shall be considered in violation of this permit limit. Also, when the testing frequency stated above is less than monthly and the effluent fails the survival endpoint at the critical dilution, the monitoring frequency for the affected species will increase to monthly until such time as compliance with the Lethal No Observed Effect Concentration (NOEC) effluent limitation is demonstrated for a period of three consecutive months, at which time the permittee may return to the testing frequency stated in Part I.B.11.b of this permit. During the period the permittee is out of compliance, test results shall be reported on the DMR for that reporting period.

(e) This permit may be reopened to require chemical specific effluent limits, additional testing, and/or other appropriate actions to address toxicity.

(f) Test Acceptance. The permittee shall repeat a test, including the control and all effluent dilutions, if the procedures and quality assurance requirements defined in the test methods or in this permit are not satisfied, including the following additional criteria:

i. Each toxicity test control (0% effluent) must have a survival equal to or greater than 90%.

ii. The percent coefficient of variation between replicates shall be 40% or less in the control (0% effluent) for the Mysid shrimp survival test and the Inland Silverside minnow survival test.

iii. The percent coefficient of variation between replicates shall be 40% or less in the critical dilution, unless significant lethal effects are exhibited for the Mysid shrimp survival test and the Inland Silverside minnow survival test.

Test failure may not be construed or reported as invalid due to a coefficient of variation value of greater than 40%. A repeat test shall be conducted within the required reporting period of any test determined to be invalid.

(g) Statistical Interpretation. For the Mysid shrimp survival test and the Inland Silverside minnow survival test, the statistical analyses used to determine if there is a statistically significant difference between the control and the critical dilution shall be in accordance with the methods for determining the No Observed Effect Concentration (NOEC) as described in EPA/600/4–90/027F or the most recent update thereof.

If the conditions of Test Acceptability are met in Item 4.f above and the percent survival of the test organism is equal to or greater than 80% in the critical dilution concentration and all lower dilution concentrations, the test shall be considered to be a passing test, and the permittee shall report an NOEC of not less than the critical dilution for the DMR reporting requirements found in Item i below.

(h) The permittee shall prepare a full report of the results of all tests conducted pursuant to this section in accordance with the Report Preparation Section of "Methods for Measuring the Acute Toxicity of Effluents and Receiving Waters to Freshwater and Marine Organisms," EPA/600/4–90/027F, or the latest update thereof, for every valid or invalid toxicity test initiated whether carried to completion or not. The permittee shall retain each full report pursuant to the provisions of Part II.C.3 of this permit. The permittee shall submit full reports only upon the specific request of the Agency.

(i) In accordance with Part II.D.4 of this permit, the permittee shall report on the DMR for the reporting period whether the lowest Whole Effluent Lethality values determined for either species passed the 30-Day Average Minimum and 48-Hour Minimum NOEC. In addition, the permittee shall report on the DMR the lowest NOEC survival value of the two species.

5. Oil and Grease Alternative Test Procedure: Interim Limited Use Approval

Proposed Method 1664 (61 FR 1730, January 23, 1996), may be used as an alternative test procedure for NPDES permit compliance monitoring purposes. This approval shall expire at the time of the publication in the **Federal Register** of the final rule governing the use of Method 1664. This approval includes all of the analytical options within Method 1664 provided the equivalency demonstration is performed and all performance specifications are met.

6. Visual Sheen Test

The visual sheen test is used to detect free oil by observing the surface of the receiving water for the presence of a sheen while discharging. The operator must conduct a visual sheen test only at times when a sheen could be observed. This restriction eliminates observations when atmospheric or surface conditions prohibit the observer from detecting a sheen (e.g., overcast skies, rough seas, etc.).

The observer must be positioned on the rig or platform, relative to both the discharge point and current flow at the time of discharge, such that the observer can detect a sheen should it surface down current from the discharge. For discharges that have been occurring for a least 15 minutes previously, observations may be made any time thereafter. For discharges of less than 15 minutes duration, observations must be made during both discharge and at 5 minutes after discharge has ceased.

7. Static Sheen Test

The approved test method for permit compliance is identified as: Static Sheen Test at 40 CFR part 435, subpart A, appendix 1.

Part II. Standard Conditions for NPDES Permits

Section A. General Conditions

1. Introduction

In accordance with the provisions of 40 CFR part 122.41, et. seq., this permit incorporates by reference ALL conditions and requirements applicable to NPDES permits set forth in the Clean Water Act, as amended, (herein-after known as the "Act") as well as ALL applicable regulations.

2. Duty To Comply

The permittee must comply with all conditions of this permit. Any permit

noncompliance constitutes a violation of the Act and is grounds for enforcement action or for requiring a permittee to apply and obtain an individual NPDES permit.

3. Toxic Pollutants

a. Notwithstanding Part II.A.4, if any toxic effluent standard or prohibition (including any schedule of compliance specified in such effluent standard or prohibition) is promulgated under section 307(a) of the Act for a toxic pollutant which is present in the discharge and that standard or prohibition is more stringent than any limitation on the pollutant in this permit, this permit shall be modified or revoked and reissued to conform to the toxic effluent standard or prohibition.

b. The permittee shall comply with effluent standards or prohibitions established under section 307(a) of the Act for toxic pollutants within the time provided in the regulations that established those standards or prohibitions, even if the permit has not yet been modified to incorporate the requirement.

4. Permit Flexibility

This permit may be modified, revoked and reissued, or terminated for cause in accordance with 40 CFR 122.62–64. The filing of a request for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance, does not stay any permit condition.

5. Property Rights

This permit does not convey any property rights of any sort, or any exclusive privilege.

6. Duty To Provide Information

The permittee shall furnish to the Director, within a reasonable time, any information which the Director may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit, or to determine compliance with this permit. The permittee shall also furnish to the Director, upon request, copies of records required to be kept by this permit.

7. Criminal and Civil Liability

Except as provided in permit conditions on "Bypassing" and "Upsets," nothing in this permit shall be construed to relieve the permittee from civil or criminal penalties for noncompliance. Any false or materially misleading representation or concealment of information required to be reported by the provisions of the permit, the Act, or applicable regulations, which avoids or effectively defeats the regulatory purpose of the permit may subject the permittee to criminal enforcement pursuant to 18 U.S.C. 1001.

8. Oil and Hazardous Substance Liability

Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee is or may be subject under section 311 of the Act.

9. State Laws

Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties established pursuant to any applicable State Law or regulation under authority preserved by section 510 of the Act.

10. Severability

The provisions of this permit are severable, and if any provision of this permit or the application of any provision of this permit to any circumstance is held invalid, the application of such provision to other circumstances, and the remainder of this permit, shall not be affected thereby.

Section B. Proper Operation and Maintenance

1. Need To Halt or Reduce Not a Defense

It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit. The permittee is responsible for maintaining adequate safeguards to prevent the discharge of untreated or inadequately treated wastes during electrical power failure either by means of alternate power sources, standby generators or retention of inadequately treated effluent.

2. Duty To Mitigate

The permittee shall take all reasonable steps to minimize or prevent any discharge in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment.

3. Proper Operation and Maintenance

a. The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by permittee as efficiently as possible and in a manner which will minimize upsets and discharges of excessive pollutants and will achieve compliance with the conditions of this permit. Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures. This provision requires the operation of backup or auxiliary facilities or similar systems which are installed by a permittee only when the operation is necessary to achieve compliance with the conditions of this permit.

b. The permittee shall provide an adequate operating staff which is duly qualified to carry out operation, maintenance and testing functions required to insure compliance with the conditions of this permit.

4. Bypass of Treatment Facilities

a. Bypass not exceeding limitations. The permittee may allow any bypass to occur which does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provisions of Parts II.B.4.b and 4.c.

b. Notice:

(1) Anticipated bypass. If the permittee knows in advance of the need for a bypass, it shall submit prior notice, if possible at least ten days before the date of the bypass.

(2) Unanticipated bypass. The permittee shall, within 24 hours, submit notice of an unanticipated bypass as required in Part II.D.7.

c. Prohibition of Bypass:

(1) Bypass is prohibited, and the Director may take enforcement action against a permittee for bypass, unless:

(a) Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;

(b) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgement to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and,

(c) The permittee submitted notices as required by Part II.B.4.b.

(2) The Director may allow an anticipated bypass after considering its adverse effects, if the Director determines that it will meet the three conditions listed at Part II.B.4.c(1).

5. Upset Conditions

a. Effect of an upset. An upset constitutes an affirmative defense to an action brought for noncompliance with such technology-based permit effluent limitations if the requirements of Part II.B.5.b. are met. No determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is final administrative action subject to judicial review.

b. Conditions necessary for a demonstration of upset. A permittee who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:

(1) An upset occurred and that the permittee can identify the cause(s) of the upset;

(2) The permitted facility was at the time being properly operated;

(3) The permittee submitted notice of the upset as required by Part II.D.7; and

(4) The permittee complied with any remedial measures required by Part II.B.2.

c. Burden of proof. In any enforcement proceeding, the permittee seeking to establish the occurrence of an upset has the burden of proof.

6. Removed Substances

Solids, sewage sludges, filter backwash, or other pollutants removed in the course of treatment or wastewater control shall be disposed of in a manner such as to prevent any pollutant from such materials from entering navigable waters. Any substance specifically listed within this permit may be discharged in accordance with specified conditions, terms, or limitations.

Section C. Monitoring and Records

1. Inspection and Entry

The permittee shall allow the Director, or an authorized representative, upon the presentation of credentials and other documents as may be required by the law to:

a. Enter upon the permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this permit;

b. Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;

c. Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices or operations regulated or required under this permit; and

d. Sample or monitor at reasonable times, for the purpose of assuring permit compliance or as otherwise authorized by the Act, any substances or parameters at any location.

2. Representative Sampling

Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.

3. Retention of Records

The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the application for this permit, for a period of at least 3 years from the date of the sample, measurement, report, or application. This period may be extended by request of the Director at any time.

The operator shall maintain records at development and production facilities for 3 years, wherever practicable and at a specific shore-based site whenever not practicable. The operator is responsible for maintaining records at exploratory facilities while they are discharging under the operators control and at a specific shore-based site for the remainder of the 3-year retention period.

4. Record Contents

Records of monitoring information shall include:

a. The date, exact place, and time of sampling or measurements;

b. The individual(s) who performed the sampling or measurements;

c. The date(s) and time(s) analyses were performed;

d. The individual(s) who performed the analyses;

e. The analytical techniques or methods used; and

f. The results of such analyses.

5. Monitoring Procedures

a. Monitoring must be conducted according to test procedures approved under 40 CFR part 136, unless other test procedures have been specified in this permit or approved by the Regional Administrator.

b. The permittee shall calibrate and perform maintenance procedures on all monitoring and analytical instruments at intervals frequent enough to insure accuracy of measurements and shall maintain appropriate records of such activities.

c. An adequate analytical quality control program, including the analyses of sufficient standards, spikes, and duplicate samples to insure the accuracy of all required analytical results shall be maintained by the permittee or designated commercial laboratory.

6. Flow Measurements

Appropriate flow measurement devices and methods consistent with accepted scientific practices shall be selected and used to ensure the accuracy and reliability of measurements of the volume of monitored discharges. The devices shall be installed, calibrated, and maintained to insure that the accuracy of the measurements is consistent with the accepted capability of that type of device. Devices selected shall be capable of measuring flows with a maximum deviation of less than 10% from true discharge rates throughout the range of expected discharge volumes.

Section D. Reporting Requirements

1. Planned Changes

The permittee shall give notice to the Director as soon as possible of any planned physical alterations or additions to the permitted facility. Notice is required only when:

(1) The alteration or addition to a permitted facility may meet one of the criteria for determining whether a facility is a new source in 40 CFR 122.29(b); or,

(2) The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants which are subject neither to effluent limitations in the permit, nor to notification requirements listed at Part II.D.10.a.

2. Anticipated Noncompliance

The permittee shall give advance notice to the Director of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements.

3. Transfers

This permit is not transferable to any person except after notice to the Regional Administrator. The Regional Administrator may require modification or revocation and reissuance of the permit to change the name of the permittee and to incorporate such requirements as may be necessary under the Act.

4. Discharge Monitoring Reports and Other Reports

The operator of each lease block shall be responsible for submitting monitoring results for all facilities within each lease block. The monitoring results for the facilities (platform,

drilling ship, or semisubmersible) within the particular lease block shall be summarized on the annual Discharge Monitoring Report for that lease block.

Monitoring results obtained during the previous 12 months shall be summarized and reported on a Discharge Monitoring Report (DMR) form (EPA No. 3320–1).

If any category of waste (discharge) is not applicable for all facilities within the lease block, due to the type of operations (e.g., drilling, production) no reporting is required; however, "no discharge" must be recorded for those categories on the DMR. Operators may list a summary of all lease blocks where there is no activity in lieu of DMRs for those lease blocks. The summary must state each lease block name and outfall number and must include the monitoring period. All pages of the DMR, or summary of no activity lease blocks, must be signed and certified as required by Part II.D.11 of this permit and returned when due.

Additionally, the lease block number assigned by the Department of the Interior shall be listed on all Discharge Monitoring Reports.

5. Additional Monitoring by the Permittee

If the permittee monitors any pollutant more frequently than required by this permit, using test procedures approved under 40 CFR part 136 or as specified in this permit, the results of this monitoring shall be included in the calculation and reporting of the data submitted in the Discharge Monitoring Report (DMR). Such increased monitoring frequency shall also be indicated on the DMR.

6. Averaging of Measurements

Calculations for all limitations which require averaging of measurements shall utilize an arithmetic mean unless otherwise specified.

7. Twenty-Four Hour Reporting

a. The permittee shall report any noncompliance which may endanger health or the environment. Any information shall be provided orally within 24 hours from the time the permittee becomes aware of the circumstances. Alternatively to oral reporting, the permittee may report by EMAIL at the following address: R6GENPERMIT@epa.gov. A written submission shall be provided within 5 days of the time the permittee becomes aware of the circumstances. The report shall contain the following information:

(1) A description of the noncompliance and its cause;

(2) The period of noncompliance including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and,

(3) Steps being taken to reduce, eliminate, and prevent recurrence of the noncomplying discharge.

b. The following shall be included as information which must be reported within 24 hours:

(1) Any unanticipated bypass which exceeds any effluent limitation in the permit;

(2) Any upset which exceeds any effluent limitation in the permit; and,

(3) Violation of a maximum daily discharge limitation for any of the pollutants listed by the Director in Part II of the permit to be reported within 24 hours.

c. The Director may waive the written report on a case-by-case basis if the oral report has been received within 24 hours.

8. Other Noncompliance

The permittee shall report all instances of noncompliance not reported under Parts II.D.4 and D.7 at the time monitoring reports are submitted. The reports shall contain the information listed at Part II.D.7.

9. Other Information

Where the permittee becomes aware that he failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application or in any report to the Director, he shall promptly submit such facts or information.

10. Signatory Requirements

All applications, reports, or information submitted to the Director shall be signed and certified.

a. All permit applications shall be signed as follows:

(1) For a corporation—by a responsible corporate officer. For the purpose of this section, a responsible corporate officer means:

(a) A president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision making functions for the corporation; or,

(b) The manager of one or more manufacturing, production, or operating facilities employing more than 250 persons or having gross annual sales or expenditures exceeding $25 million (in second-quarter 1980 dollars), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.

(2) For a partnership or sole proprietorship—by a general partner or the proprietor, respectively.

(3) For a municipality, State, Federal, or other public agency—by either a principal executive officer or ranking elected official. For purposes of this election, a principal executive officer of a Federal agency includes:

(a) The chief executive officer of the agency, or

(b) A senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency.

b. All reports required by the permit and other information requested by the Director shall be signed by a person described above or by a duly authorized representative of that person. A person is a duly authorized representative only if:

(1) The authorization is made in writing by a person described above;

(2) The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity, such as the position of plant manager, operator of a well or a well field, superintendent, or position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters for the company. A duly authorized representative may thus be either a named individual or an individual occupying a named position; and,

(3) The written authorization is submitted to the Director.

c. Certification. Any person signing a document under this section shall make the following certification:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

11. Availability of Reports

Except for applications, effluent data, permits, and other data specified in 40 CFR 122.7, any information submitted pursuant to this permit may be claimed as confidential by the submitter. If no claim is made at the time of submission, information may be made available to the public without further notice.

Section E. Penalties for Violations of Permit Conditions

1. Criminal

a. Negligent Violations. The Act provides that any person who negligently violates permit conditions implementing section 301, 302, 306, 307, 308, 318, or 405 of the Act is subject to a fine of not less $2,500 nor more then $25,000 per day of violation, or by imprisonment for not more than 1 year, or both.

b. Knowing Violations. The Act provides that any person who knowingly violates permit conditions implementing sections 301, 302, 306, 307, 308, 318 or 405 of the Act is subject to a fine of not less than $5,000 nor more than $50,000 per day of violation, or by imprisonment for not more than 3 years, or both.

c. Knowing Endangerment. The Act provides that any person who knowingly violates permit conditions implementing sections 301, 302, 303, 306, 307, 308, 318, or 405 of the Act and who knows at that time that he is placing another person in imminent danger of death or serious bodily injury is subject to a fine of not more than $250,000, or by imprisonment for not more than 15 years, or both.

d. False Statements. The Act provides that any person who knowingly makes any false material statement, representation, or certification in any application, record report, plan, or other document filed or required to be maintained under the Act or who knowingly falsifies, tampers with, or renders inaccurate, any monitoring device or method required to be maintained under the Act, shall upon conviction, be punished by a fine of not more than $10,000, or by imprisonment for not more than 2 years, or by both. If a conviction of a person is for a violation committed after a first conviction of such person under this paragraph, punishment shall be by a fine of not more than $20,000 per day of violation, or by imprisonment of not more than 4 years, or by both. (See section 309.c.4 of the Clean Water Act)

2. Civil Penalties

The Act provides that any person who violates a permit condition implementing sections 301, 302, 306, 307, 308, 318, or 405 of the Act is subject to a civil penalty not to exceed $27,500 per day for each violation.

3. Administrative Penalties

The Act provides that any person who violates a permit conditions implementing sections 301, 302, 306, 307, 308, 318, or 405 of the Act is subject to an administrative penalty, as follows:

a. Class I Penalty. Not to exceed $11,000 per violation nor shall the maximum amount exceed $27,500.

b. Class II Penalty. Not to exceed $11,000 per day for each day during which the violation continues nor shall the maximum amount exceed $137,500.

Section F. Additional General Permit Conditions

1. When the Regional Administrator May Require Application for an Individual NPDES Permit

The Regional Administrator may require any person authorized by this permit to apply for and obtain an individual NPDES permit when:

(a) The discharge(s) is a significant contributor of pollution;

(b) The discharger is not in compliance with the conditions of this permit;

(c) A change has occurred in the availability of the demonstrated technology or practices for the control or abatement of pollutants applicable to the point sources;

(d) Effluent limitations guidelines are promulgated for point sources covered by this permit;

(e) A Water Quality Management Plan containing requirements applicable to such point source is approved;

(f) The point source(s) covered by this permit no longer:

(1) Involve the same or substantially similar types of operations;

(2) Discharge the same types of wastes;

(3) Require the same effluent limitations or operating conditions;

(4) Require the same or similar monitoring; and

(5) In the opinion of the Regional Administrator, are more appropriately controlled under an individual permit than under a general permit.

(g) The bioaccumulation monitoring results show concentrations of the listed pollutants in excess of levels safe for human consumption.

The Regional Administrator may require any operator authorized by this permit to apply for an individual NPDES permit only if the operator has been notified in writing that a permit application is required.

2. When an Individual NPDES Permit May Be Requested

(a) Any operator authorized by this permit may request to be excluded from the coverage of this general permit by applying for an individual permit.

(b) When an individual NPDES permit is issued to an operator otherwise subject to this general permit, the applicability of this permit to the owner or operator is automatically terminated on the effective date of that individual permit.

(c) A source excluded from coverage under this general permit solely because it already has an individual permit may request that its individual permit be revoked, and that it be covered by this general permit. Upon revocation of the individual permit, this general permit shall apply to the source.

3. Permit Reopener Clause

If applicable new or revised effluent limitations guidelines or New Source Performance Standards covering the Offshore Subcategory of the Oil and Gas Extraction Point Source Category (40 CFR part 435) are promulgated in accordance with sections 301(b), 304(b)(2), and 307(a)(2), and the new or revised effluent limitations guidelines or New Source Performance Standards are more stringent than any effluent limitations in this permit or control a pollutant not limited in this permit, the permit may, at the Director's discretion, be modified to conform to the new or revised effluent limitations guidelines.

Notwithstanding the above, if an offshore oil and gas extraction point source discharge facility is subject to the ten year protection period for new source performance standards under the Clean Water Act section 306(d), this reopener clause may not be used to modify the permit to conform to more stringent new source performance standards or technology based standards developed under section 301(b)(2) during the ten year period specified in 40 CFR 122.29(d).

The Director may modify this permit upon meeting the conditions set forth in this reopener clause.

Section G. Definitions

All definitions contained in section 502 of the Act shall apply to this permit and are incorporated herein by references. Unless otherwise specified in this permit, additional definitions of words or phrases used in this permit are as follows:

1. "Act" means the Clean Water Act (33 U.S.C. 1251 et. seq.), as amended.

2. "Administrator" means the Administrator of the U.S. Environmental Protection Agency.

3. "Annual Average" means the average of all discharges sampled and/or measured during a calendar year in which daily discharges are sampled and/or measured, divided by the number of discharges sampled and/or measured during such year.

4. "Applicable effluent standards and limitations" means all state and Federal effluent standards and limitations to which a discharge is subject under the Act, including, but not limited to, effluent limitations, standards or performance, toxic effluent standards and prohibitions, and pretreatment standards.

5. "Applicable water quality standards" means all water quality standards to which a discharge is subject under the Act.

6. "Areas of Biological Concern" means a portion of the OCS identified by EPA, in consultation with the Department of Interior as containing potentially productive or unique biological communities or as being potentially sensitive to discharges associated with oil and gas activities.

7. "Blow-Out Preventer Control Fluid" means fluid used to actuate the hydraulic equipment on the blow-out preventer or subsea production wellhead assembly.

8. "Boiler Blowdown" means discharges from boilers necessary to minimize solids build-up in the boilers, including vents from boilers and other heating systems.

9. "Bulk Discharge" any discharge of a discrete volume or mass of effluent from a pit tank or similar container that occurs on a one-time, infrequent or irregular basis.

10. "Bypass" means the intentional diversion of waste streams from any portion of a treatment facility.

11. "Completion Fluids" means salt solutions, weighted brines, polymers and various additives used to prevent damage to the well bore during operations which prepare the drilled well for hydrocarbon production. These fluids move into the formation and return to the surface as a slug with the produced water. Drilling muds remaining in the wellbore during logging, casing, and cementing operations or during temporary abandonment of the well are not considered completion fluids and are regulated by drilling fluids requirements.

12. "Controlled Discharge Rates Areas" means zones adjacent to areas of biological concern.

13. "Daily Discharge" means the discharge of a pollutant measured during a calendar day or any 24-hour period that reasonably represents the calendar day for purposes of sampling. For pollutants with limitations expressed in terms of mass, the daily discharge is calculated as the total mass of the pollutant discharged over the sampling day. For pollutants with limitations expressed in other units of measurement, the daily discharge is calculated as the average measurement of the pollutant over the sampling day. Daily discharge determination of concentration made using a composite sample shall be the concentration of the composite sample. When grab samples are used, the daily discharge determination of concentration shall be arithmetic average (weighted by flow value) of all samples collected during that sampling day.

14. "Daily Average" (also known as monthly average) discharge limitations means the highest allowable average of daily discharge(s) over a calendar month, calculated as the sum of all daily discharge(s) measured during a calendar month divided by the number of daily discharge(s) measured during that month. When the permit establishes daily average concentration effluent limitations or conditions, the daily average concentration means the arithmetic average (weighted by flow) of all daily discharge(s) of concentration determined during the calendar month where C = daily concentration, F = daily flow, and n = number of daily samples; daily average discharge =

$$\frac{C_1F_1 + C_2F_2 + \cdots + C_nF_n}{F_1 + F_2 + \cdots + F_n}.$$

15. "Daily Maximum" discharge limitations means the highest allowable "daily discharge" during the calendar month.

16. "Desalinization Unit Discharge" means wastewater associated with the process of creating freshwater from seawater.

17. "Deck Drainage" means any waste resulting from deck washings, spillage, rainwater, and runoff from gutters and drains including drip pans and work areas within facilities covered under this permit.

18. "Development Drilling" means the drilling of wells required to efficiently produce a hydrocarbon formation or formations.

19. "Development Facility" means any fixed or mobile structure that is engaged in the drilling of productive wells.

20. "Diatomaceous Earth Filter Media" means filter media used to filter seawater or other authorized completion fluids and subsequently washed from the filter.

21. "Diesel Oil" means the grade of distillate fuel oil, as specified in the American Society for Testing and Materials Standard Specification D975–81, that is typically used as the continuous phase in conventional oil-based drilling fluids.

22. "Director" means the U.S. Environmental Protection Agency Regional Administrator or an authorized representative.

23. "Domestic Waste" means material discharged from galleys, sinks, showers, safety showers, eye wash stations, hand washing stations, fish cleaning stations, and laundries.

24. "Drill Cuttings" means particles generated by drilling into the subsurface geological formations including cured cement carried to the surface with the drilling fluid.

25. "Drilling Fluids" means the circulating fluid (mud) used in the rotary drilling of wells to clean and condition the hole and to counterbalance formation pressure. A water-based drilling fluid is the conventional drilling mud in which water is the continuous phase and the suspending medium for solids, whether or not oil is present. An oil based drilling fluids has diesel oil, mineral oil, or some other oil as its continuous phase with water as the dispersed phase.

26. "End of well Sample" means the sample taken after the final log run is completed and prior to bulk discharge.

27. "Environmental Protection Agency" (EPA) means the U.S. Environmental Protection Agency.

28. "Excess Cement Slurry" means the excess mixed cement, including additives and wastes from equipment washdown, after a cementing operation.

29. "Exploratory Facility" means any fixed or mobile structure that is engaged in the drilling of wells to determine the nature of potentis[1] hydrocarbon reservoirs.

30. "Fecal Coliform Bacteria Sample" consists of one effluent grab portion collected during a 24-hour period at peak loads.

31. "Grab sample" means an individual sample collected in less than 15 minutes.

32. "Garbage" means all kinds of food waste, wastes generated in living areas on the facility, and operational waste, excluding fresh fish and parts thereof, generated during the normal operation of the facility and liable to be disposed of continuously or periodically, except dishwater, graywater, and those substances that are defined or listed in other Annexes to MARPOL 73/78

33. "Graywater" means drainage from dishwater, shower, laundry, bath, and washbasin drains and does not include drainage from toilets, urinals, hospitals, and cargo spaces.

34. "Inverse Emulsion Drilling Fluids" means an oil-based drilling fluid which also contains a large amount of water.

35. "Live bottom areas" means those areas which contain biological assemblages consisting of such sessile invertebrates as seas fans, sea whips, hydroids, anemones, ascidians sponges, bryozoans, seagrasses, or corals living upon and attached to naturally occurring hard or rocky formations with fishes and other fauna.

36. "Maintenance waste" means materials collected while maintaining and operating the facility, including, but not limited to, soot, machinery deposits, scraped paint, deck sweepings, wiping wastes, and rags.

37. "Maximum Hourly Rate" means the greatest number of barrels of drilling fluids discharged within one hour, expressed as barrels per hour.

38. "Muds, Cuttings, and Cement at the Seafloor" means discharges that occur at the seafloor prior to installation of the marine riser and during marine riser disconnect, well abandonment and plugging operations.

39. "National Pollutant Discharge Elimination System" (NPDES) means the national program for issuing, modifying, revoking, and reissuing, terminating, monitoring, and enforcing permits, and imposing and enforcing pretreatment requirements, under section 307, 318, 402, and 405 of the Act.

40. "New Source" means any facility or activity that meets the definition of "new source" under 40 CFR 122.2 and meets the criteria for determination of new sources under 40 CFR 122.29(b) applied consistently with all of the following definitions:

(a) The term "water area" as used in the term "site" in 40 CFR 122.29 and 122.2 shall mean the water area and ocean floor beneath any exploratory, development, or production facility where such facility is conducting its exploratory, development, or production activities.

(b) The term "significant site preparation work" as used in 40 CFR 122.29 shall mean the process of surveying, clearing, or preparing an area of the ocean floor for the purpose of constructing or placing a development or production facility on or over the site.

41. "No Activity Zones" means those areas identified by the Minerals Management Service (MMS) where no structures, drilling rigs, or pipelines will be allowed. Those zones are identified in lease stipulations that are applied to MMS oil and gas lease sales. Additional no activity areas may be identified by MMS during the life of this permit.

42. "Operational waste" means all cargo associated waste, maintenance waste, cargo residues, and ashes and clinkers from incinerators and coal burning boilers.

43. "Packer Fluid" means low solids fluids between the packer, production string and well casing. They are considered to be workover fluids.

44. "Priority Pollutants" means those chemicals or elements identified by EPA, pursuant to section 307 of the Clean Water Act and 40 CFR 401.15.

45. "Produced Sand" means slurried particles used in hydraulic fracturing, the accumulated formation sands, and scale particles generated during production. Produced sand also includes desander discharge from produced water waste stream and blowdown of water phase from the produced water treating system.

46. "Produced Water" means the water (brine) brought up from the hydrocarbon-bearing strata during the extraction of oil and gas, and can include formation water, injection water, and any chemicals added downhole or during the oil/water separation process.

47. "Production Facility" means any fixed or mobile structure that is either engaged in well completion or used for active recovery of hydrocarbons from producing formations.

48. "Sanitary Waste" means human body waste discharged from toilets and urinals.

49. "Severe property damage" means substantial physical damage to property, damage to the treatment facilities which cause them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

50. "Sheen" means a silvery or metallic sheen, gloss, or increased reflectivity, visual color or iridescence on the water surface.

51. "Source Water and Sand" means water from non-hydrocarbon bearing formations for the purpose of pressure maintenance or secondary recovery including the entrained solids.

52. "Spotting" means the process of adding a lubricant (spot) downhole to free stuck pipe.

53. Synthetic Drilling Fluid" means a drilling fluids which has synthetic material as its continuous phase with water as the dispersed phase.

54. "Territorial Seas" means the belt of the seas measured from the line of ordinary low water along that portion of the coast which is in direct contact with the open sea and the line marking the seaward limit of inland waters, and extending seaward a distance of three miles.

55. "Trace Amounts" means that if materials added downhole as well treatment, completion, or workover fluids do not contain priority pollutants then the discharge is assumed not to contain priority pollutants, except possibly in trace amounts.

56. "Treatment Chemicals" means biocides, corrosion inhibitors, or other chemicals which are used to treat seawater or freshwater to prevent corrosion or fouling of piping or equipement.

57. "Uncontaminated Ballast/Bilge Water" means seawater added or removed to maintain proper draft.

58. "Uncontaminated Freshwater" means freshwater which is discharged without the addition of chemicals; included are (1) discharges of excess freshwater that permit the continuous operation of fire control and utility lift pumps, (2) excess freshwater from pressure maintenance and secondary recovery projects, (3) water red during training and testing of personnel in fire protection, and (4) water used to pressure test new piping.

59. "Uncontaminated Seawater" means seawater which is returned to the sea without the addition of chemicals. Included are (1) discharges of excess seawater which permit the continuous operation of fire control and utility lift pumps (2) excess seawater from pressure maintenance and secondary recovery projects (3) water red during the training and testing of personnel in fire protection (4) seawater used to pressure test piping, and (5) once through noncontact cooling water which has not been treated with biocides.

60. "Upset" means an exceptional incident in which there is unintentional and temporary noncompliance with technology-based permit effluent limitations because of factors beyond the reasonable control of the permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

61. "Well Treatment Fluids" mean any fluid used to restore or improve productivity by chemically or physically altering hydrocarbon-bearing strata after a well has been drilled. These fluids move into the formation and return to the surface as a slug with the produced water. Stimulation fluids include substances such as acids, solvents, and propping agents.

62. "Workover Fluids" mean salt solutions, weighted brines, polymers, and other specialty additives used in a producing well to allow safe repair and

maintenance or abandonment procedures. High solids drilling fluids used during workover operations are not considered workover fluids by definition and therefore must meet drilling fluid effluent limitations before discharge may occur. Packer fluids, low solids fluids between the packer, production string and well casing, are considered to be workover fluids and must meet only the effluent requirements imposed on workover fluids.

63. The term "MGD" shall mean million gallons per day.

64. The term "mg/l" shall mean milligrams per liter or parts per million (ppm).

65. The term "ug/l" shall mean micrograms per liter or parts per billion (ppb).

Appendix A: Table 1.—Produced Water Critical Dilutions

TABLE 1–A.—CRITICAL DILUTION (PERCENT EFFLUENT) FOR DISCHARGES WITH A DEPTH DIFFERENCE BETWEEN THE DISCHARGE PIPE AND THE SEA FLOOR OF GREATER THAN 0 METERS TO 4 METERS

Discharge rate (bbl/day)	Pipe diameter (inches)					
	>0" to 5"	>5" to 7"	>7" to 9"	>9" to 11"	>11" to 15"	>15"
0 to 500	0.05	0.05	0.05	0.05	0.05	0.05
501 to 1000	0.12	0.12	0.12	0.12	0.12	0.12
1001 to 2000	0.29	0.29	0.29	0.29	0.29	0.29
2001 to 3000	0.49	0.48	0.48	0.48	0.48	0.49
3001 to 4000	0.66	0.64	0.64	0.64	0.64	0.64
4001 to 5000	0.9	0.87	0.85	0.85	0.86	0.87
5001 to 6000	1.13	1.11	1.07	1.07	1.08	1.09
6001 to 7000	1.36	1.33	1.30	1.28	1.28	1.30
7001 to 8000	1.57	1.55	1.51	1.47	1.48	1.50
8001 to 9000	1.80	1.78	1.74	1.68	1.68	1.70
9001 to 10,000	2.02	2.00	1.95	1.89	1.88	1.90
10,001 to 15,000	3.09	3.17	3.08	3.02	2.92	2.88
15,001 to 20,000	3.90	4.26	4.15	4.07	3.95	3.77
20,001 to 25,000	4.60	5.26	5.25	5.10	5.00	4.60
25,001 to 35,000	5.68	6.92	7.28	7.00	6.86	6.30
35,001 to 50,000	6.83	8.80	9.67	9.80	9.35	8.74
50,001 to 75,000	8.23	11.1	12.8	13.9	14.2	13.1

TABLE 1–B.—CRITICAL DILUTION (PERCENT EFFLUENT) FOR DISCHARGES WITH A DEPTH DIFFERENCE BETWEEN THE DISCHARGE PIPE AND THE SEA FLOOR OF GREATER THAN 4 METERS TO 6 METERS

Discharge rate (bbl/day)	Pipe diameter (inches)					
	>0" to 5"	>5" to 7"	>7" to 9"	>9" to 11"	>11" to 15"	>15"
0 to 500	0.05	0.05	0.05	0.05	0.05	0.05
501 to 1000	0.104	0.105	0.105	0.105	0.105	0.106
1001 to 2000	0.20	0.20	0.20	0.20	0.20	0.20
2001 to 3000	0.30	0.30	0.30	0.30	0.30	0.30
3001 to 4000	0.40	0.38	0.38	0.38	0.39	0.39
4001 to 5000	0.59	0.58	0.56	0.56	0.57	0.58
5001 to 6000	0.74	0.73	0.71	0.71	0.71	0.72
6001 to 7000	0.88	0.87	0.85	0.84	0.84	0.85
7001 to 8000	1.02	1.00	0.98	0.96	0.96	0.97
8001 to 9000	1.15	1.14	1.12	1.09	1.09	1.10
9001 to 10,000	1.28	1.28	1.25	1.22	1.21	1.22
10,001 to 15,000	1.92	1.97	1.93	1.90	1.84	1.82
15,001 to 20,000	2.46	2.57	2.54	2.51	2.45	2.36
20,001 to 25,000	2.92	3.14	3.14	3.08	3.03	2.85
25,001 to 35,000	3.60	4.15	4.26	4.18	4.13	3.85
35,001 to 50,000	4.32	5.38	5.85	5.83	5.68	5.43
50,001 to 75,000	5.17	6.94	7.88	8.36	8.41	7.94

TABLE 1–C.—CRITICAL DILUTION (PERCENT EFFLUENT) FOR DISCHARGES WITH A DEPTH DIFFERENCE BETWEEN THE DISCHARGE PIPE AND THE SEA FLOOR OF GREATER THAN 6 METERS TO 9 METERS

Discharge rate (bbl/day)	Pipe diameter (inches)					
	>0" to 5"	>5" to 7"	>7" to 9"	>9" to 11"	>11" to 15"	>15"
0 to 500	0.05	0.05	0.05	0.05	0.05	0.05
501 to 1000	0.104	0.105	0.105	0.105	0.105	0.105
1001 to 2000	0.20	0.20	0.20	0.20	0.20	0.20
2001 to 3000	0.27	0.27	0.27	0.27	0.27	0.27
3001 to 4000	0.32	0.31	0.31	0.31	0.32	0.32

TABLE 1–C.—CRITICAL DILUTION (PERCENT EFFLUENT) FOR DISCHARGES WITH A DEPTH DIFFERENCE BETWEEN THE DISCHARGE PIPE AND THE SEA FLOOR OF GREATER THAN 6 METERS TO 9 METERS—Continued

Discharge rate (bbl/day)	Pipe diameter (inches)					
	>0" to 5"	>5" to 7"	>7" to 9"	>9" to 11"	>11" to 15"	>15"
4001 to 5000	0.38	0.37	0.36	0.36	0.37	0.37
5001 to 6000	0.50	0.49	0.48	0.48	0.48	0.49
6001 to 7000	0.60	0.59	0.57	0.57	0.57	0.58
7001 to 8000	0.69	0.68	0.66	0.65	0.65	0.66
8001 to 9000	0.78	0.77	0.76	0.74	0.74	0.75
9001 to 10,000	0.86	0.86	0.85	0.83	0.82	0.83
10,001 to 15,000	1.29	1.32	1.30	1.28	1.25	1.24
15,001 to 20,000	1.64	1.72	1.71	1.69	1.65	1.60
20,001 to 25,000	1.97	2.08	2.09	2.06	2.04	1.93
25,001 to 35,000	2.50	2.74	2.81	2.78	2.75	2.6
35,001 to 50,000	3.05	3.60	3.80	3.82	3.76	3.62
50,001 to 75,000	3.70	4.83	5.40	5.62	5.60	5.40

TABLE 1–D.—CRITICAL DILUTION (PERCENT EFFLUENT) FOR DISCHARGES WITH A DEPTH DIFFERENCE BETWEEN THE DISCHARGE PIPE AND THE SEA FLOOR OF GREATER THAN 9 METERS TO 12 METERS

Discharge rate (bbl/day)	Pipe diameter (inches)					
	>0" to 5"	>5" to 7"	>7" to 9"	>9" to 11"	>11" to 15"	>15"
0 to 500	0.05	0.05	0.05	0.05	0.05	0.05
501 to 1000	0.104	0.105	0.105	0.105	0.105	0.106
1001 to 2000	0.20	0.20	0.20	0.20	0.20	0.20
2001 to 3000	0.27	0.27	0.27	0.27	0.27	0.27
3001 to 4000	0.32	0.31	0.31	0.31	0.32	0.32
4001 to 5000	0.38	0.37	0.36	0.36	0.37	0.37
5001 to 6000	0.50	0.49	0.36	0.36	0.37	0.37
6001 to 7000	0.55	0.54	0.53	0.52	0.52	0.53
7001 to 8000	0.59	0.59	0.58	0.56	0.57	0.57
8001 to 9000	0.64	0.63	0.62	0.60	0.61	0.61
9001 to 10,000	0.67	0.67	0.66	0.64	0.64	0.65
10,001 to 15,000	0.82	0.84	0.83	0.82	0.80	0.80
15,001 to 20,000	1.00	1.05	1.04	1.03	1.02	1.00
20,001 to 25,000	1.20	1.27	1.28	1.26	1.25	1.20
25,001 to 35,000	1.57	1.67	1.72	1.70	1.69	1.62
35,001 to 50,000	2.00	2.22	2.31	2.33	2.31	2.24
50,001 to 75,000	2.50	3.10	3.37	3.47	3.50	3.43

TABLE 1–E.—CRITICAL DILUTION (PERCENT EFFLUENT) FOR LOWER VOLUME DISCHARGES WITH A DEPTH DIFFERENCE BETWEEN THE DISCHARGE PIPE AND THE SEA FLOOR OF GREATER THAN 12 METERS

Discharge rate (bbl/day)	Pipe diameter (inches)					
	>0" to 5"	>5" to 7"	>7" to 9"	>9" to 11"	>11" to 15"	>15"
>0 to 500	0.05	0.05	0.05	0.05	0.05	0.05
501 to 1000	0.104	0.105	0.105	0.105	0.105	0.106
1001 to 2000	0.20	0.20	0.20	0.20	0.20	0.20
2001 to 3000	0.27	0.27	0.27	0.27	0.27	0.27
3001 to 4000	0.32	0.31	0.31	0.31	0.32	0.32
4001 to 5000	0.38	0.37	0.36	0.36	0.37	0.37
5001 to 6000	0.50	0.49	0.48	0.48	0.48	0.49
6001 to 7000	0.55	0.54	0.53	0.52	0.52	0.53
7001 to 8000	0.59	0.59	0.58	0.56	0.57	0.57

TABLE 1–F.—CRITICAL DILUTION (PERCENT EFFLUENT) FOR LARGER VOLUME DISCHARGES WITH A DEPTH DIFFERENCE BETWEEN THE DISCHARGE PIPE AND THE SEA FLOOR OF GREATER THAN 12 METERS

Discharge rate (bbl/day)	Pipe diameter (inches)					
	>0" to 5"	>5" to 7"	>7" to 9"	>9" to 11"	>11" to 15"	>15"
Depth Difference Greater than 12 Meters to 14 Meters						
8001 to 9,000	0.64	0.63	0.62	0.60	0.61	0.61

TABLE 1–F.—CRITICAL DILUTION (PERCENT EFFLUENT) FOR LARGER VOLUME DISCHARGES WITH A DEPTH DIFFERENCE BETWEEN THE DISCHARGE PIPE AND THE SEA FLOOR OF GREATER THAN 12 METERS—Continued

Discharge rate (bbl/day)	Pipe diameter (inches)					
	>0" to 5"	>5" to 7"	>7" to 9"	>9" to 11"	>11" to 15"	>15"
9001 to 10,000	0.67	0.67	0.66	0.64	0.64	0.65
10,001 to 15,000	0.82	0.84	0.83	0.82	0.80	0.80
15,001 to 20,000	0.92	0.96	0.96	0.95	0.93	0.91
20,001 to 25,000	1.00	1.06	1.06	1.05	1.04	1.00
25,001 to 35,000	1.13	1.20	1.23	1.22	1.22	1.17
35,001 to 50,000	1.40	1.51	1.57	1.58	1.57	1.53
50,001 to 75,000	1.83	2.15	2.27	2.34	2.37	2.33
Depth Difference Greater than 14 Meters to 16 Meters						
8001 to 9,000	0.64	0.63	0.62	0.60	0.61	0.61
9001 to 10,000	0.67	0.67	0.66	0.64	0.64	0.65
10,001 to 15,000	0.82	0.84	0.83	0.82	0.80	0.80
15,001 to 20,000	0.92	0.96	0.96	0.95	0.93	0.91
20,001 to 25,000	1.00	1.06	1.06	1.05	1.04	1.00
25,001 to 35,000	1.13	1.20	1.23	1.22	1.22	1.17
35,001 to 50,000	1.28	1.37	1.43	1.44	1.43	1.39
50,001 to 75,000	1.54	1.74	1.82	1.88	1.90	1.88
Depth Difference Greater than 16 Meters to 19 meters						
8001 to 9000	0.64	0.63	0.62	0.60	0.61	0.61
9001 to 10,000	0.67	0.67	0.66	0.64	0.64	0.65
10,001 to 15,000	0.82	0.84	0.83	0.82	0.80	0.80
15,001 to 20,000	0.92	0.96	0.96	0.95	0.93	0.9
120,001 to 25,000	1.00	1.06	1.06	1.05	1.04	1.00
25,001 to 35,000	1.13	1.20	1.23	1.22	1.22	1.17
35,001 to 50,000	1.28	1.37	1.43	1.44	1.43	1.39
50,001 to 75,000	1.30	1.44	1.51	1.56	1.57	1.55
Depth Difference Greater than 19 Meters						
8001 to 9000	0.64	0.63	0.62	0.60	0.61	0.61
9001 to 10,000	0.67	0.67	0.66	0.64	0.64	0.65
10,001 to 15,000	0.82	0.84	0.83	0.82	0.80	0.80
15,001 to 20,000	0.92	0.96	0.96	0.95	0.93	0.91
20,001 to 25,000	1.00	1.06	1.06	1.05	1.04	1.00
25,001 to 35,000	1.13	1.20	1.23	1.22	1.22	1.17
35,001 to 50,000	1.28	1.37	1.43	1.44	1.43	1.39
50,001 to 75,000	1.28	1.42	1.49	1.53	1.54	1.53

TABLE 1–G.—MINIMUM VERTICAL PORT SEPARATION DISTANCE TO AVOID INTERFERENCE

Port flow rate (bbl/day)	Minimum separation distance (m)
0–500	3.7
501–1000	4.5
1001–2000	5.4
2001–5000	6.4
5001–7000	6.6
7001–10000	6.6

TABLE 2–A.—CRITICAL DILUTIONS (PERCENT EFFLUENT) FOR TOXICITY LIMITATIONS FOR SEAWATER TO WHICH TREATMENT CHEMICALS HAVE BEEN ADDED

Depth difference (meters)	Discharge rate (bbl/day)	Pipe Diameter			
		>0" to 2"	>2" to 4"	>4" to 6"	>6"
All	0 to 1,000	12	24.7	24.5	24.6
	>1,000 to 10,000	11.2	12.4	12.2	14
	> 10,000	9.6	24	23	20

TABLE 2–B.—CRITICAL DILUTIONS (PERCENT EFFLUENT) FOR TOXICITY LIMITATIONS FOR FRESHWATER TO WHICH TREATMENT CHEMICALS HAVE BEEN ADDED

Depth difference (meters)	Discharge rate (bbl/day)	Pipe diameter			
		>0″ to 2″	>2″ to 4″	>4″ to 6″	>6″
All	0 to 1,000	1.1	1.2	2.9	2.9
	>1,000 to 10,000	19	39	28	24
	>10,000	13	63	41	74

TABLE 3.—EFFLUENT LIMITATIONS, PROHIBITIONS AND MONITORING REQUIREMENTS

Discharge	Regulated monitored discharged parameter	Discharge limitation/prohibition	Monitoring requirement		
			Measurement frequency	Sample type/method	Recorded value(s)
Drilling Fluid	Free oil	No free oil	Once week [1]	Static sheen	Num. of days sheen observed.
	Toxicity [2] 96-hr LC50.	30,000 ppm daily min, 30,000 ppm monthly avg min.	Once/month	Grab	96-hr LC50.
			Once/end of well [3]	Grab	96-hr LC50.
			once/month	Grab	96-hr LC50.
	Discharge Rate.	1,000 barrels/hour.	Once/hour [1]	Estimate	Max. hourly rate.
	Discharge Rate for cntrld rate areas.	([4])	Once/hour [1]	Measure	Max. hourly rate.
	Mercury and cadmium.	No disch. of drilling fluids to which barite has been added, if such barite contains mercury in excess of 1.0 mg/kg or cadmium in excess of 3.0 mg/kg (dry weight).	Once prior to drilling each well. [6]	Absorption Spectro-photometry	mg mercury/kg barite. mg cadmium/kg barite.
	Oil Based or Inverse Emulsion Drilling Fluids.	No discharge.			
	Oil Contaminated Drilling Fluids.	No discharge.			
	Diesel Oil	No discharge of drilling fluids to which diesel oil has been added.			
	Mineral Oil	Mineral oil may be used only as a carrier fluid, lubricity additive, or pill.			
Drilling Cuttings	Free oil	No free oil	Once/week [1]	Static sheen	Number of days sheen observed.

TABLE 3.—EFFLUENT LIMITATIONS, PROHIBITIONS AND MONITORING REQUIREMENTS—Continued

Discharge	Regulated monitored discharged parameter	Discharge limitation/prohibition	Monitoring requirement		
			Measurement frequency	Sample type/method	Recorded value(s)
	Toxicity[2] 96-hr LC50.	No discharge of cuttings generated using drilling fluids which exhibit a toxicity of less than 30,000 ppm daily min. or 30,000 ppm monthly avg. min.			
	Mercury and cadmium.	No discharge if generated using drilling fluids to which barite has been added which contains mercury in excess of 1.0 mg/kg or cadmium in excess of 3.0 mg/kg (dry weight).			
	Cuttings generated using Oil Based or Inverse Emulsion Drilling Fluids.	No discharge.			
	Cuttings generated using Oil Contaminated Drilling Fluids.	No discharge.			
	Cuttings generated using drilling fluids to which Diesel Oil has been added.	No discharge.			
	Cuttings generated using drilling fluids to which Mineral Oil has been added.	Mineral oil may be used only as a carrier fluid, lubricity additive, or pill.			
Deck Drainage	Free oil	No free oil	Once/day[7]	Visual sheen	Number of days sheen observed.
Produced Water	Oil and grease	42 mg/l daily max., 29 mg/l monthly avg.	Once/month (19)	Grab[8]	Daily max., monthly average.
	Toxicity	7-day min NOEC[9] and mthly avg min NOEC[9].	Rate Dependent[16]	Grab	Lowest NOEC for either species.
	Free oil	Monitor	Once/day[7,17]	Visual sheen	Number of days sheen observed.
	Flow (MGD)	Monitor	Once/month	Estimate	Monthly Average.
Produced Sand	No Discharge.				

TABLE 3.—EFFLUENT LIMITATIONS, PROHIBITIONS AND MONITORING REQUIREMENTS—Continued

Discharge	Regulated monitored discharged parameter	Discharge limitation/prohibition	Monitoring requirement		
			Measurement frequency	Sample type/method	Recorded value(s)
Well treatment fluids, completion fluids, and workover fluids (includes packer fluids) [10].	Free oil	No free oil	Once/day [1]	Static sheen	Number of days sheen observed.
	Oil & Grease	42 mg/l dly max., 29 mg/l mthly avg.	Once/month	Grab [8]	Daily max., monthly average.
Sanitary waste [12] continuously manned by 10 or more persons.	Residual chlorine [13].	1 mg/l (minimum).	Once/month	Grab	Concentration.
	Solids	No Floating Solids.	Once/day	Observation [15]	Number of days solids observed.
Sanitary waste [12] continuously manned by 9 or fewer persons or intermittently by any number.	Solids	No floating solids.	Once/day	Observation [15]	Number of days solids observed.
Domestic waste [14]	Solids	No floating solids or foam.	Once/day	Observation [15]	Number of days observed.
Miscellaneous discharges: Desalinization unit discharge; blowout pre-venter fluid; uncontaminated ballast water; uncontaminated bilge water; uncontaminated freshwater; mud, cuttings and cement at seafloor; un-contaminated seawater; boiler blow-down; source water and sand; diatomaceous earth filter media; excess cement slurry.	Free oil	No free oil	Once/week [11]	Visual sheen	Number of days sheen observed.
Miscellaneous discharges of seawater and freshwater to which treatment chemicals have been added: excess seawater which permits the continuous operation of fire control and utility lift pumps, excess seawater from pressure maint. and secondary recovery prjcts, water released during training of personnel in fire protection, seawater used to pressure test new piping and new pipelines, ballast water, once-through non-contact cooling water, desalinization unit.	Treatment chemicals.	Most stringent of: EPA label registration, maximum manufacturers recommended dose, or 500 mg/l.	.....	.....	
	Free oil	No free oil	1/week	Visual Sheen	Number of days sheen observed.

TABLE 3.—EFFLUENT LIMITATIONS, PROHIBITIONS AND MONITORING REQUIREMENTS—Continued

Discharge	Regulated monitored discharged parameter	Discharge limitation/prohibition	Monitoring requirement		
			Measurement frequency	Sample type/method	Recorded value(s)
	Toxicity	48-hour average min. NOEC and monthly avg minimum NOEC[5].	Rate Dependent[18]	Grab	Lowest NOEC observed for either of the two species.

Footnotes

[1] When discharging.

[2] Suspended particulate phase (SPP) with *Mysidopsis bahia* following approved test method The sample shall be taken beneath the shale shaker; or if there are no returns across the shaker then the sample must be taken from a location that is characteristic of the overall mud system to be discharged.

[3] Sample shall be taken after the final log run is completed and prior to bulk discharge.

[4] See Part I.B.1.b of this permit.

[5] See Appendix A, Table 2 of this permit.

[6] Analyses shall be conducted on each new stock of barite used.

[7] When discharging and facility is manned. Monitoring shall be accomplished during times when observation of a visual sheen on the surface of the receiving water is possible in the vicinity of the discharge.

[8] May be based on the arithmetic average of four grab sample results in a 24 hr. period.

[9] See Appendix A, Table 1 of this permit.

[10] No discharge of priority pollutants except in trace amounts. Information on the specific chemical composition shall be recorded but not reported unless requested by EPA.

[11] When discharging for muds, cuttings, and cement at the seafloor and blowout preventer fluid. All other miscellaneous discharges: when discharging, discharge is authorized only during times when visual sheen observation is possible, unless the static sheen method is used. Uncontaminated seawater uncontaminated freshwater, source water and source sand, uncontaminated bilge water, and uncontaminated ballast water from platforms on automatic purge systems may be discharged without monitoring from platforms which are not manned.

[12] Any facility which properly operates and maintains a marine sanitation device (MSD) that complies with pollution control standards and regulations under section 312 of the Act shall be deemed to be in compliance with permit limitations for sanitary waste The MSD shall be tested yearly for proper operation, and test results maintained at the facility.

[13] Hach method CN–66 DPD approved. Minimum of 1 mg/l and maintained as close to this concentration as possible.

[14] The discharge of food waste is prohibited within 12 nautical miles from nearest land. Comminuted food waste able to pass through a 25 mm mesh screen (approximately 1 inch) may be discharged more than 12 nautical miles from nearest land.

[15] Monitoring shall be accomplished during daylight by visual observation of the surface of the receiving water in the vicinity of sanitary and domestic waste outfalls Observations shall be made following either the morning or midday meals at a time of maximum estimated discharge.

[16] Once/year for discharges from 0 bbl/day to 4599 bbl/day, once/calender quarter for discharges of 4,600 bbl/day and greater.

[17] See Part I.B.4.b of this permit.

[18] See Part I.B.11.b of this permit.

[FR Doc. 99–9605 Filed 4–16–99; 8:45 am]
BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection being Reviewed by the Federal Communications Commission

April 7, 1999.

SUMMARY: The Federal Communications Commissions, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before June 18, 1999. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commission, 445 12th Street, SW, Room 1–A804, Washington, DC 20554 or via the Internet to lesmith@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Approval Number: 3060–0795

Title: ULS TIN Registration and FCC Form 606

Form Number: FCC 606

Type of Review: Revision to a currently approved collection.

Respondents: Individuals or households; business or other for-profit; not-for-profit institutions; State, Local or Tribal Government

Number of Respondents: 429,000

Estimated Time Per Response: 1 hour

Total Annual Burden: 429,000 hours

Total Annual Cost: None.

Needs and Uses: FCC Form 606 is used (1) To register a licensee's Taxpayer Identification Number (TIN) and its associated Wireless Telecommunications call signs with the FCC; (2) to register the Taxpayer Identification Number (TIN) of a first time application for a Wireless Telecommunications license with the FCC; or (3) to register the Taxpayer Identification Number (TIN) of the owner of an antenna structure and its associated antenna structure registration

numbers with the FCC. This form is also used by an antenna structure tenant licensee who is required to register the antenna structure because the owner is subject to the Anti-Drug Abuse Act of 1988. It must be submitted before filing any subsequent applications associated with the existing license or antenna structure registration and prior to applying for a Wireless Telecommunications license or antenna structure registration for the first time.

The form and its instructions are being revised to add information about the antenna structure owner TIN registration requirements due to the implementation of Antenna Structure Registration in the Universal Licensing System (ULS).

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–9630 Filed 4–16–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection being Reviewed by the Federal Communications Commission

April 7, 1999.

SUMMARY: The Federal Communications Commissions, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before June 18, 1999. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commission, 445 12th Street, SW, Room 1–A804, Washington, DC 20554 or via the Internet to lesmith@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0697.

Title: Revision of Part 22 and Part 90 of the Commission's Rules to Facilitate Future Development of Paging Systems (Proposed Rule).

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Individuals and Households, Business or other for-profit.

Number of Respondents: 1,275.

Estimated Time per Response: 3.22 hours (avg.).

Frequency of Responses: On occasion reporting requirements.

Total Annual Burden: 4,100 hours.

Total Annual Costs: $1,007.

Needs and Uses: The information will be used to update the Commission's licensing database and thereby facilitate the successful coexistence of wide-area and incumbent (site-based) paging licensees; to ensure that incumbents are timely notified of possible relocation, thus allowing relocation to occur in an orderly, efficient, and expedient manner; and to determine whether an applicant is eligible for special provisions for small businesses.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–9632 Filed 4–16–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collections Submitted to OMB for Review and Approval.

March 26, 1999.

SUMMARY: The Federal Communications Commissions, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before May 19, 1999. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commissions, Room 1-A804, 445 Twelfth Street., S.W., Washington, DC 20554 or via the Internet to lesmith@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at 202–418–0217 or via the Internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0687.

Title: Access to Telecommunications Equipment and Services by Persons with Disabilities, CC Docket No. 87–124.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Businesses or other for profit entities.

Number of Respondents: 806,100.

Estimated Time Per Response: 1.2 to 11.4 hours

Frequency of Response: On occasion reporting requirements; Third party disclosure.

Total Annual Burden: 991,000 hours.

Total Annual Costs: $638,500.

Needs and Uses: The Commission requires that telephones with electro-magnetic coil hearing aid compatibility be stamped with the letters HAC. Section 68.112(b)(3)(E) requires that employees with fifteen or more

employees provide emergency telephones for use by employees with hearing disabilities and that the employers "designate" such telephones for emergency use. Section 68.224(a) requires a notice to be contained on the surface of the packaging of a non-hearing aid compatible telephone that the telephone is not hearing aid compatible. The requirements were implemented to assist the Commission in carrying out its responsibilities.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–9631 Filed 4–16–99; 8:45 am]

BILLING CODE 5712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collections Submitted to OMB for Review and Approval

April 7, 1999.

SUMMARY: The Federal Communications Commissions, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before May 19, 1999. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, SW, Washington, DC 20554 or via the Internet to lesmith@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0754.

Title: Children's Television Programming Report.

Form Number: FCC 398.

Type of Review: Extension of a currently approved collection.

Respondents: Businesses or other for-profit entities.

Number of Respondents: 1,215.

Estimated Time Per Response: 4.5 hours (4 times/year).

Frequency of Response: Quarterly recordkeeping; Annual reporting requirements.

Total Annual Burden: 21,870 hours.

Total Annual Costs: $480,800.

Needs and Uses: The FCC Form 398 is required to be filed by commercial television broadcast stations. This form is used to provide information on the efforts of commercial television stations to provide children's educational and informational programs aired to meet its obligation under the Children's Television Act of 1990 (CTA). The form also requests information on educational and informational programs that the station plans to air in the next quarter. Each licensee is required to place in its public inspection file quarterly, a Children's Televsion Programming Report and to file the quarterly forms annually with the FCC. Commercial television broadcast station licensees will be required to file the FCC 398 electronically with the January 10, 1999 annual filing. The FCC 398 will assist in efforts by the public and the Commission to monitor station compliance with the CTA.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–9633 Filed 4–16–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 13, 1999.

A. Federal Reserve Bank of Philadelphia (Michael E. Collins, Senior Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105-1521:

1. Penn Laurel Financial Corporation, Curwensville, Pennsylvania; to acquire 100 percent of the voting shares of Clearfield Bank and Trust Company, Clearfield, Pennsylvania.

B. Federal Reserve Bank of Chicago (Philip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1413:

1. Independent Bank Corporation, Ionia, Michigan; to acquire 100 percent of the voting shares of Mutual Savings Bank, f.s.b., Bay City, Michigan. Mutual Savings Bank will be merged immediately into a state chartered commercial bank.

Board of Governors of the Federal Reserve System, April 13, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–9551 Filed 4–16–99; 8:45 am]

BILLING CODE 6210–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 99065]

National Institute for Occupational Safety and Health; Research on Young Worker Safety and Health Risks in Construction; Notice of Availability of Funds; Amendment

A notice announcing the availability of Fiscal Year 1999 funds for the Research on Young Worker Safety and Health Risks in Construction was published in the **Federal Register** on April 9, 1999, [Vol. 64 FR No. 68]. The notice is amended as follows:

On page 17392, first column, agency docket number should be changed to read [Program Announcement 99065].

On page 17392, third column, paragraph F, first paragraph, line 7, fourth word should read "99065".

On page 17392, third column, paragraph F, second paragraph, line 8, fourth word should read "99065".

On page 17393, third column, paragraph J, second paragraph, line 7, second word should read "99065".

Dated: April 13, 1999.

Diane D. Porter,

Acting Director, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention (CDC).

[FR Doc. 99–9740 Filed 4–16–99; 8:45 am]

BILLING CODE 4163–19–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98N–1110]

Agency Information Collection Activities; Submission for OMB Review; Comment Request; CGMP Regulations for Finished Pharmaceuticals

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the proposed collection of information listed below has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (the PRA).

DATES: Submit written comments on the collection of information by May 19, 1999.

ADDRESSES: Submit written comments on the collection of information to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, Attn: Desk Officer for FDA.

FOR FURTHER INFORMATION CONTACT: Karen L. Nelson, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1482.

SUPPLEMENTARY INFORMATION: In compliance with section 3507 of the PRA (44 U.S.C. 3507), FDA has submitted the following proposed collection of information to OMB for review and clearance.

CGMP Regulations for Finished Pharmaceuticals—21 CFR Parts 210 and 211 (OMB Control Number 0910–0139)—Reinstatement

Under section 501(a)(2)(B) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 351(a)(2)(B)), a drug is adulterated if the methods used in, or the facilities or controls used for, its manufacture, processing, packing, or holding do not conform to or are not operated or administered in conformity with current good manufacturing practices (CGMP's) to ensure that such drug meets the requirements of the act as to safety and has the identity and strength, and meets the quality and purity characteristics, which it purports or is represented to possess.

FDA has the authority under section 701(a) of the act (21 U.S.C. 371(a)) to issue regulations for the efficient enforcement of the act regarding CGMP procedures for manufacturing, processing, and holding drugs and drug products. The CGMP regulations help ensure that drug products meet the statutory requirements for safety and have their purported or represented their purported or represented identity, strength, quality, and purity characteristics. The information collection requirements in the CGMP regulations provide FDA with the necessary information to perform its duty to protect public health and safety.

Although CGMP must be current in the industry, a practice need not be widely prevalent providing such practice is both feasible and valuable in ensuring drug quality. CGMP requirements establish accountability in the manufacturing and processing of drug products, provide for meaningful FDA inspections, and enable manufacturers to improve the quality of drug products over time. The recordkeeping requirements also serve preventive and remedial purposes and provide crucial information if it is necessary to recall a drug product.

The general requirements for recordkeeping under part 211 (21 part 211) are set forth in § 211.180. Any production, control, or distribution record associated with a batch and required to be maintained in compliance with part 211 must be retained for at least 1 year after the expiration date of the batch and, for certain OTC drugs, 3 years after distribution of the batch (§ 211.180(a)). Records for all components, drug product containers, closures, and labeling are required to be maintained for at least 1 year after the expiration date and 3 years for certain OTC products (§ 211.180(b)).

All part 211 records must be readily available for authorized inspections during the retention period (§ 211.180(c)), and such records may be retained either as original records or as true copies (§ 211.180(d)). In addition, 21 CFR 11.2(a) provides that "For records required to be maintained but not submitted to the agency, persons may use electronic records in lieu of paper records or electronic signatures in lieu of traditional signatures, in whole or in part, provided that the requirements of this part are met." To the extent this electronic option is used, the burden of maintaining paper records should be substantially reduced as should any review of such records.

In order to facilitate improvements and corrective actions, records must be maintained so that data can be used for evaluating, at least annually, the quality standards of each drug product to determine the need for changes in drug product specifications or manufacturing or control procedures (§ 211.180(e)). Written procedures for these evaluations are to be established and include provisions for a review of a representative number of batches and, where applicable, records associated with the batch, and provisions for a review of complaints, recalls, returned or salvaged drug products, and investigations conducted under § 211.192 for each drug product.

Written procedures, referred to here as standard operating procedures (SOP's), are required for many part 211 records. The current SOP requirements were initially provided in a final rule published in the **Federal Register** of September 29, 1978 (43 FR 45014), and are now an integral and familiar part of the drug manufacturing process. The major paperwork impact of SOP's results from their creation. Thereafter, SOP's need to be periodically updated. A combined estimate is provided in

Table 1 of this document for routine maintenance of SOP's. Estimates for specific recordkeeping requirements are listed individually.

The 25 SOP's provisions under part 211 in the combined maintenance estimate include: (1) § 211.22(d) (responsibilities and procedures of the quality control unit); (2) § 211.56(b) (sanitation procedures); (3) § 211.56(c) (use of suitable rodenticides, insecticides, fungicides, fumigating agents, and cleaning and sanitizing agents; (4) § 211.67(b) (cleaning and maintenance of equipment); (5) § 211.68(a) (proper performance of automatic, mechanical, and electronic equipment); (6) § 211.80(a) (receipt, identification, storage, handling, sampling, testing, approval or rejection of components and drug product containers or closures); (7) § 211.94(d) (standards or specifications, methods of testing, and methods of remove pyrogenic properties for drug product container and closures); (8) § 211.100(a) (production and process control; (9) § 211.110(a) (sampling and testing of in-process materials and drug products); (10) § 211.113(a)(prevention of objectionable microorganisms in drug products not required to be sterile); (11) § 211.113(b) (prevention of microbiological contamination of drug products purporting to be sterile, including validation of any sterilization process); (12) § 211.115(a) (system for reprocessing batches that do not conform to standards or specifications, to insure that reprocessed batches conform with all established standards, specifications, and characteristics); (13) § 211.122(a) (receipt, identification, storage, handling, sampling, examination and/or testing of labeling and packaging materials); (14) § 211.125(f) (control procedures for the issuance of labeling); (15) § 211.130 (packaging and label operations, prevention of mixup and cross contamination, identification and handling of filed drug product containers that are set aside and held in unlabeled condition, identification of the drug product with a lot or control number that permits determination of the history of the manufacture and control of the batch); (16) § 211.142 (warehousing); (17) § 211.150 (distribution of drug products); (18) § 211.160 (laboratory controls); (19) § 211.165(c) (testing and release for distribution); (20) § 211.166(a) (stability testing); (21) § 211.167 (special testing requirements); (22) § 211.180(f) (notification of responsible officials of investigations, recalls, reports of inspectional observations, and any regulatory actions relating to good manufacturing practice); (23) § 211.198(a) (written and oral complaint procedures, including quality control unit review of any complaint involving specifications failures, and serious and unexpected adverse drug experiences); (24) § 211.204 (holding, testing, and reprocessing of returned drug products); and (25) § 211.208 (drug product salvaging).

The following burden estimates for routine maintenance and for specific recordkeeping requirements are based on FDA's institutional experience regarding creation and review of such procedures and similar recordkeeping requirements, and data provided by the Eastern Research Group (ERG), which is a consulting group hired by FDA's economics staff to prepare an economic analysis of the potential economic impact of the May 3, 1996 (61 FR 20104), proposed rule. ERG prepared a report for FDA that estimated the recordkeeping burden for the proposed rule entitled "Current Good Manufacturing Practice; Proposed Amendment of Certain Requirements for Finished Pharmaceuticals" (61 FR 20104). This report provided information on the current number of establishments affected by FDA's recordkeeping requirements and the agency has relied on these figures to estimate the number of establishments affected by part 211 recordkeeping provisions. ERG estimated that there are 1,077 establishments involved in pharmaceutical preparations, diagnostic substances, and biological products; 948 repackers or relabelers; and 2,159 medical gas establishments for a total estimate of 4,184 recordkeepers subject to CGMP recordkeeping requirements. ERG used a variety of sources to obtain its estimates including reports from the Department of Commerce and FDA's registration files. The ERG report is available at the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, under Docket No. 95N–0362.

ERG also provided estimates on the burden involved in creating SOP's. While most of the CGMP provisions covered in this document were created many years ago, there will be some existing firms expanding into new manufacturing areas and start-up firms that will need to create SOP's. FDA is assuming that approximately 100 firms will have to create up to 25 SOP's for a total of 2,500 records, and the agency estimates that it will take 20 hours per recordkeeper to create 25 new SOP's for a total of 50,000 hours as a one-time burden. Annual SOP's maintenance is estimated to involve 1 hour annually per SOP, totaling 25 hours annually per recordkeeper.

The proposed rule revising part 211 CGMP requirements of May 3, 1996, would require additional SOP's. Cost estimates for those additional SOP's were included in the proposed rule, but are not included here. Any comments on those estimates will be evaluated in any final rule based on that proposal.

In the **Federal Register** of December 24, 1998 (63 FR 71291), the agency requested comments on the proposed collections of information. One comment was received from a pharmaceutical trade association. The comment said that the agency's estimates of paperwork needed to comply with the CGMP regulations were far too low. The comment based its conclusion on : (1) An informal poll of seven pharmaceutical firms; (2) the assertion that the agency had not considered the records that are required by several specific sections of the regulations; (3) the added recordkeeping attendant to agency guidances; and (4) the premise that part 11 (21 CFR part 11) (electronic records; electronic signatures) imposed costs that do not offset savings of electronic recordkeeping.

The agency has carefully considered the comment and concludes that the agency's estimates of the CGMP paperwork are reasonable and correct. The agency's estimates are based upon not only the ERG report, but its extensive experience with a broad spectrum of industry, including small and large firms, makers of generic and innovator drug products, and repackers. FDA believes these estimates reflect a more accurate characterization of the industry than the comment suggests. FDA's estimates are based on information received from large and small pharmaceutical firms. The numbers in the burden chart reflect an average of all firms involved in the review process.

With respect to the comment that FDA had not considered several sections of the regulations, the agency believes there may have been some misunderstanding on the part of comments. In fact, all sections of the regulations were considered, including those which the comments stated "were ignored." Part of the misunderstanding is likely due to the fact that sections the comments considered to be "ignored" were those that contained no paperwork and therefore were not factored into the final analysis.

With respect to recordkeeping that is referenced in agency guidance documents, where a guidance document

addresses recordkeeping requirements that are already codified, the guidance documents themselves create no new paperwork burdens. However, the agency acknowledges that, on occasion, the information collection contained in guidance documents is beyond the scope of the regulation. FDA recognizes the need to ensure all potentially new paperwork burdens are identified, and that public comment is sought accordingly.

Regarding electronic recordkeeping, the agency fully met its obligations under the paperwork reduction act in developing and issuing part 11 and received no objections to the rule with respect to paperwork reduction. In fact, extensive discussions were held with industry throughout the development of the rule. FDA believes that the benefits of electronic recordkeeping, especially with regard to paperwork reduction, far outweigh the costs of compliance with part 11 to ensure that the electronic records are trustworthy, reliable, and compatible with FDA's mandate to protect and promote public health.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

21 CFR Section	No. of Recordkeepers	Annual Frequency per Recordkeeping	Total Annual Records	Hours per Recordkeeper	Total Hours
SOP Maintenance (See previous list of 25 SOP's)	4,184	1	4,184	25	104,600
One-time Burden (New Start-up SOP's)[2]	100	25	2,500	20	50,000
211.34	4,184	.25	1,046	.5	523
211.67(c)	4,184	50	209,200	.25	52,300
211.68	4,184	2	8,368	1	8,368
211.68(a)	4,184	10	41,840	.5	20,920
211.68(b)	4,184	5	20,920	.25	5,230
211.72	4,184	.25	1,046	1	1,046
211.80(d)	4,184	.25	1,046	.1	105
211.100(b)	4,184	3	12,552	2	25,104
211.105(b)	4,184	.25	1,046	.25	262
211.122(c)	4,184	50	209,200	.25	52,300
211.130(e)	4,184	50	209,200	.25	52,300
211.132(c)	1,698	20	33,960	.5	16,980
211.132(d)	1,698	.2	340	.5	170
211.137	4,184	5	20,920	.5	10,460
2111.160(a)	4,184	2	8,368	1	8,368
211.165(e)	4,184	1	4,184	1	4,184
211.166(c)	4,184	2	8,368	.5	4,184
211.173	1,077	1	1,077	.25	269
211.180(e)	4,184	.2	837	.25	209
211.180(f)	4,184	.2	837	1	837
211.182	4,184	2	8,368	.25	2,092
211.184	4,184	3	12,552	.5	6,276
211.186	4,184	10	41,840	2	83,680
211.188	4,184	25	104,600	2	209,200
211.192	4,184	2	8,368	1	8,368
211.194	4,184	25	104,600	.5	52,300
211.196	4,184	25	104,600	.25	26,150
211.198	4,184	5	20,920	1	20,920
211.204	4,184	10	41,840	.5	20,920
Total					848,625

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.
[2] This is a one-time burden.

Dated: April 12, 1999.

William K. Hubbard,

Acting Deputy Commissioner for Policy.

[FR Doc. 99–9636 Filed 4–16–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99F–0804]

Rohm and Haas Co.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Rohm and Haas Co. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of 4,5-dichloro-2-n-octyl-3(2H)-isothiazolone as a preservative and slimicide in the manufacture of paper and paperboard in contact with food.

FOR FURTHER INFORMATION CONTACT: Hortense S. Macon, Center for Food Safety and Applied Nutrition (HFS–206), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3086.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5)(21 U.S.C. 348(b)(5), notice is given that a food additive petition (FAP 9B4645) has been filed by Rohm and Haas Co., 100 Independence

Mall West, Philadelphia, PA 19106. The petition proposes to amend the food additive regulations in § 176.170 Components of paper and paperboard in contact with aqueous and fatty foods and § 176.300 Slimicides to provide for the safe use of 4,5-dichloro-2-n-octyl-3(2H)-isothiazolone as a preservative and slimicide in the manufacture of paper and paperboard for use in contact with food.

The agency has determined under 21 CFR 25.32(q) that this action is of the type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Dated: March 30, 1999.

Laura M. Tarantino,

Acting Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 99–9674 Filed 4–16–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute: Opportunity for a Cooperative Research and Development Agreement (CRADA) for the Research and Development of Software for Managing Distributed Knowledgebases Consisting of Large Numbers of Objects of Diverse Categories Spanning Administrative, Scientific and Other Knowledge Domains

AGENCY: National Institutes of Health, PHS, DHHS.

ACTION: Notice.

SUMMARY: The National Cancer Institute seeks a Cooperative Research and Development Agreement (CRADA) with a software company with demonstrated excellence in the development and deployment of software applications for the enterprise and individuals. NCI has recently developed a powerful but user-friendly computer-based system which enables its users to create, use and share a knowledge base of information consisting of diverse objects related to each other by semantically meaningful links. This system, provisionally called "KBTool", can be considered a new class of software application since it is sufficiently different from existing applications. The system provides a knowledge base that is seamless, allowing individuals to store information on a virtually unlimited range of objects and concepts. In addition, dense and informative links between many types of concepts are constructed. The system is extensible so that it is suited for use in distributed systems in which information is shared between users and stored at different physical locations. Because of the power of the system and its relevance to many domains of knowledge and types of applications, the NCI is seeking a commercial partner for its continued development and deployment. The software was originally created to organize and link vast quantities of scientific data; however, NCI predicts that KBTool's functionality will be applicable to a wide variety of fields. The Collaborator must have a demonstrated record of success in privately producing and marketing information resources.

DATES: Interested parties should notify this office in writing of their interest in filing a formal proposal no later than June 18, 1999. They will then have an additional thirty (30) days to submit a formal proposal.

ADDRESSES: Inquiries and proposals regarding this opportunity should be addressed to Holly S. Symonds, Ph.D. (Tel. #301–496–0477, FAX #301–402–2117), Technology Development and Commercialization Branch, National Cancer Institute, 6120 Executive Blvd., Suite 450, Rockville, MD 20852. Inquiries directed to obtaining patent license(s) needed for participation in the CRADA opportunity may be addressed to John Fahner-Vihtelic, Office of Technology Transfer, National Institutes of Health, 6011 Executive Blvd., Suite 325, Rockville, MD 20852, (Tel. 301–496–7735, ext. 270; FAX 301–402–0220).

SUPPLEMENTARY INFORMATION: A Cooperative Research and Development Agreement (CRADA) is the anticipated joint agreement to be entered into by the NCI pursuant to the Federal Technology Transfer Act of 1986 and Executive Order 12591 of April 10, 1987 as amended by the National Technology Transfer Advancement Act of 1995. The NCI is looking for a CRADA partner to collaborate in the development of the properties of the KBTool data management system. The expected duration of the CRADA would be from one (1) to five (5) years.

KBTool is a data management system and process for efficiently storing and retrieving data. The Experimental Immunology Branch of the NCI has designed KBTool to combine maximum data management flexibility and stability into unified knowledgebase applications. As a result, it has a diverse functionality which can replace users' fragmented world of specialized applications such as contact manager, administrative database, bookmark keeper, and fact finder. Some unique features of this software-based invention are: (1) ability to handle any number of conceptually distinct categories of items (such as people, events, institutions, tasks, concepts, processes, document types); (2) tools for creating relationships between any two or more objects, with the ability to categorize types of relationships and decide which categories they apply to; (3) use of parent-child relationship as a singularly important relationship to organize, view and navigate information; (4) flexibility in adding diverse categories of objects and relationships, while maintaining a simple underlying data structure and programming environment; (5) ability to view complex relationships in flexible and informative ways; (6) tools for managing names which are indispensable for finding the relevant objects; and (7) efficient ways to search information and filter retrievals to limit to relevant information.

The prototype implementation of KBTool is already a highly functional system. For example, it manages information on more than 50,000 "concepts". These concepts are classified into more than 200 distinct categories. The 10 most highly represented categories are biased towards biological and software knowledge domains: genes, transcripts, proteins, protein spots; humans, institutions, journals, scientific publications, visuals, software applications, and scientific methods. However, its diversity is reflected in categories such as tasks, events, equipment, accounts. documents, areas of expertise and geographical locations. It has more than 50,000 links between these items; each of which conveys not simply the existence of a relationship, but the character of that relationship. This data is distributed into multiple linked databases. The most remarkable feature of the design of the data engine and knowledge representation is its simplicity and generality.

KBTool was designed to allow the maintenance of a "fabric" of information regarding biological systems. It's current implementation can be viewed as the first in a sequence of many steps towards a "virtual cell", which allows modeling of the enormous complexity of a human cell. Having taken this first step, NCI would like to solidify the prototype and subsequent steps in the process. Because of the myriad of components in a biological cell, KBTool had to be designed with

great flexibility. As a result, it has matured into an approach which is unusually broad in its cope, and its ability to create a fabric of information out of very disparate data types.

The described methods are the subject of a patent application, USPA SN 09/203,037 filed November 30, 1998 by the Government.

Under the present proposal, the goal of the CRADA will be to enhance the development in one or more of the following areas:

1. Client Software Development

The prototype client software, KBTool is written in Microsoft Visual Basic 6.0 running under Windows operating systems. Planned evolution includes steps such as the following:

(a) flexible interfaces for information viewing and update via the WWW;

(b) rewriting parts of the application in C++ and Java;

(c) porting to other operating systems (or re-writing in portable code);

(d) enhanced graphical interfaces to view and manipulate the thought objects in a graphical way; and

(e) development of specific enhancement for use for specific tasks such as workflow management, document and library management, simulation of biological processes, expert systems.

2. Database Engine/Server Development

The prototype knowledge base is stored in a standard relational database manipulated primarily via SQL. In the long run, the application will likely benefit from using a database engine optimized for it. This would likely include speed improvements, and ability to handle validation and integrity issues at the level of the engine rather than the client software.

3. Content Development

The design of this system is well adapted to many different kinds of content. Such content can be added by a range of strategies: human input, automated transfer from existing information resources, and combinations thereof. NCI seeks collaborative partner for optimizing input in areas related to cancer which encompasses many aspects of biology. For example, NCI seeks sophisticated textual analysis tools to facilitate harvest information from existing sources such as MEDLINE.

Party Contributions

The role of the NCI includes the following:

(1) Provide staff, expertise and materials for the further development of the KBTool system;

(2) Evaluate the work product of the Collaborator to ensure progress toward meeting the CRADA goals;

(3) Provide work space and equipment for production and testing of any components or improvements of the KBTool system.

The role of the successful Collaborator will include the following:

(1) Provide funding, if and as necessary, in support of the development of the KBTool system;

(2) Provide expertise and assistance in the extension of KBTool in areas outlined above and in the production and market of any products resulting from CRADA;

(3) Provide expertise and materials to aid in the development of the KBTool system during this CRADA collaboration; and

(4) Provide, assist, or advise the NCI in quality assurance testing, operator training, and user support for any products resulting from this CRADA.

Selection Criteria

Proposals submitted for consideration should fully address each of the qualifications shown below. The importance of individual criteria will differ between the three areas for a proposed CRADA: client software development, database engine/server development, and content development. Please address the criteria that relate to the area(s) in which your proposal will contribute.

(1) Expertise:

A. Demonstrated expertise in the creation of important new approaches in software design, database design, data visualization, and data mining, or expert systems.

B. Demonstrated expertise in software engineering, data warehousing, data visualization, textual analysis;

C. Demonstrated ability to secure national and international marketing and distribution of software;

D. Demonstrated expertise in overseeing all aspects of product development;

E. Demonstrated expertise in serving and supporting a significant client base;

F. Familiarity with application of knowledgebase techniques to biomedical fields.

(2) Demonstrated experience in the software industry with regards to:

A. Producing, marketing and supporting knowledgebase and related applications;

B. Indications of high levels of satisfaction by software experts and users of knowledgebase products; and

C. The range of products and services it produces.

(3) Physical Resources:

A. An established headquarters with offices, space and equipment;

B. Access to the organization during business hours by telephone, mail, email, the Internet, and other evolving technologies; and

C. Sufficient financial and technological resources to support, at a minimum, the then current activities of the CRADA to meet the needs of the NCI.

(4) Other:

A. The willingness to accept the legal provisions and language of the CRADA with only minor modifications, if any. These provisions govern the distribution of patent rights to CRADA inventions. Generally, the rights of ownership are retained by the organization that is the employer of the inventor, with (1) the grant of a license for research and other Government purposes to the Government when the CRADA Collaborator's employee is the sole inventor, or

(2) the grant of an option to elect an exclusive or nonexclusive license to the CRADA Collaborator when the Government employee is the sole inventor.

B. The willingness to cooperate with National Cancer Institute in the timely publication of research results.

C. The level of financial support the CRADA Collaborator will provide for CRADA-related Government activities.

D. The willingness to commit best effort and demonstrated resources to the research and development of this technology, as outlined in the CRADA Collaborator's proposal.

Dated: April 8, 1999.

Kathleen Sybert,

Chief, Technology Development and Commercialization Branch, National Cancer Institute, National Institutes of Health.

[FR Doc. 99–9757 Filed 4–16–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute (NCI); Opportunity for a Cooperative Research Agreement (CRADA) for the Scientific and Commercial Development of an Improved Cytologic Sampler for the Early Detection of Esophageal Cancer

AGENCY: National Institutes of Health, PHS, DHHS.

ACTION: Notice of a Cooperative Research and Development Agreement (CRADA) opportunity.

SUMMARY: The National Cancer Institute seeks a company to collaboratively pursue the preclinical and clinical development of an orally administered cytologic sampler for the early detection of esophageal cancer. The National Cancer Institute has preclinical data and evidence that currently available sampling devices need to be and can be improved. Thus, the overall goal of this research project is to develop an improved cytologic sampler for the early detection of esophageal cancer.

ADDRESSES: Inquiries and statements of interest regarding this opportunity should be addressed to Rita Khanna, Technology Development and Commercialization Branch, National Cancer Institute, Executive Plaza South, Suite 450, 6120 Executive Blvd., Rockville, MD 20852 (Tel. # 301–496–0477 Fax # 301–402–2117).

DATE TO RESPOND: In view of the important priority of developing an orally administered cytologic sampler for the early detection of esophageal cancer, interested parties should notify this office in writing no later than thirty (30) days from date of publication of this announcement.

SUPPLEMENTARY INFORMATION: Cooperative Research and Development Agreement or "CRADA" means the anticipated joint agreement to be entered into by NCI pursuant to the Federal Technology Transfer Act of 1986 and Executive Order 12591 of October 10, 1987 as amended by the National Technology Transfer Advancement Act of 1995. The goal of this CRADA will be to collaborate on the specific research project described below. Under the present proposal, the Government is seeking a collaborator, who can develop an improved cytologic sampler to a marketable status to meet the public need for the early detection of esophageal cancer. The expected duration of the CRADA will be four years.

Currently, the most widely used esophageal screening method is to obtain a cytologic sample of the esophageal mucosa using an inflatable balloon or an encapsulated sponge. Although cytologic screening of asymptomatic high-risk individuals remains a promising method for the early detection of curable squamous esophageal dysplasia and cancer, a recent study by the NCI Division of Cancer Prevention and Control showed that current cytologic samplers had a low sensitivity for identifying these lesions.

Under a CRADA, the NCI can offer the selected collaborator access to facilities, staff, materials, and expertise. The collaborator may contribute facilities, staff, materials, expertise and funding to the collaboration. the NCI CANNOT CONTRIBUTE FUNDING. The CRADA collaborator may elect an option to an exclusive or non-exclusive license to Government intellectual property rights arising under the CRADA and may qualify as a co-inventor of new technology developed under the CRADA.

The role of the National Cancer Institute, the Division of Clinical Sciences under the CRADA will include the following;

1. Providing intellectual expertise in the form of cytologic and histologic evaluation of biological samples for preneoplastic and neoplastic lesions;
2. Making suggestions regarding sampler design based on its clinical experience with existing cytologic samplers;
3. Arranging field studies to test the efficacy of new samplers;
4. Evaluating each of the active studies as they progress to ensure that the appropriate questions are being addressed and to ensure that the studies are modified as required based on the developing data; and
5. Providing technological considerations for patient safety, position and comfort.

The role of the successful corporate partner under the CRADA will include the following:

1. Understanding the biological and physiological obstacles that need to be overcome and contributing its expertise in innovative engineering toward overcoming these obstacles;
2. Providing proven competence to carry out the work of developing an improved cytologic sampler;
3. Providing technical support including design concepts, engineering analysis, detailed design, fabrication management and contribution to experimental design;
4. Performing studies to assess the physical properties of new designs in an effort to improve patient tolerance and design efficacy; and
5. Commercializing the resulting device including providing the necessary resources.

Criteria for choosing the collaborating company will include the following:

1. Experience in aspects of innovative engineering necessary for the development of cytologic samplers;
2. Scientific expertise and demonstrated commitment to the development of cytologic samplers;
3. Willingness to cooperate with the NCI in the collection and evaluation of data;
4. Experience and track record of taking such products to market;
5. Nature of resources to be contributed to the collaboration;
6. Willingness to accept the legal provisions and language of the CRADA with only minor modifications, if any. These provisions govern the distribution of patent rights to CRADA inventions. Generally, the right of ownership are retained by the organization that is the employer of the inventor, with (1) the grant of a license for research and other Government purposes to the Government when the CRADA Collaborator's employee is the sole inventor, or (2) the grant of an option to elect an exclusive or nonexclusive license to the CRADA Collaborator when the Government employee is the sole of inventor;
7. Willingness to cooperate with the National Cancer Institute in the timely publication of research results;
8. Level of financial support the CRADA Collaborator will provide for CRADA-related Government activities; and
9. Willingness to commit best effort and demonstrated resources to the research and development of this technology, as outlined in the CRADA Collaborator's proposal.

Dated: April 9, 1999.

Kathleen Sybert,

Director, Technology Development & Commercialization Branch, National Cancer Institute, National Institutes of Health.

[FR Doc. 99–9758 Filed 4–16–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C., Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed the public in accordance with the provisions set forth in section 552b(c)(4) and 552b(c)(6), Title 5, U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the discloser of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Initial

Review Group Population Research Subcommittee.

Date: May 5, 1999.

Time: 10:00 AM to 5:00 PM.

Agenda: To be reviewed evaluate grant applications.

Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Jon M. Ranhand, Health Scientist Administrator, Division of Scientific Review, National Institute of Child Health, and Human Development, 6100 Executive Blvd., Room 5E01, MSC 7510, Bethesda, MD 20892, (301) 435–6884.

(Catalogue of Federal Domestic Assistance Program Nos. 93.209, Contraception and Infertility Loan Repayment Program; 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research, National Institutes of Health, HHS)

Dated: April 13, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–9667 Filed 4–16–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel Use of Nimodipine in the Management of Service Preeclampsia.

Date: April 26, 1999.

Time: 1:00 p.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: 6100 Executive Blvd., DSR Conf. Rm., Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Hameed Khan, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, National Institutes of Health, 6100 Executive Blvd., Room 5E01, Bethesda, MD 20892, (301) 496–1485.

The notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.209, Contraception and Infertility Loan Repayment Program; 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research, National Institutes of Health, HHS)

Dated: April 13, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–9668 Filed 4–16–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel HIV Vaccine Production: Part C FDA Submissions.

Date: April 26, 1999.

Time: 12:00 PM to 3:00 PM.

Agenda: To review and evaluate contract proposals.

Place: Solar Building, Room 4C07, 6003 Executive Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Dianne E. Tingley, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID, NIH, Solar Building, Room 4C07, 6003 Executive Boulevard MSC 7610, Bethesda, MD 20892–7610, 301/496–0818.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: April 13, 1999.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy, NIH.

[FR Doc. 99–9669 Filed 4–16–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in section 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel HIV Vaccine Production: Part A in response to DAIDS–99–21.

Date: April 29, 1999.

Time: 8:30 AM to 5:00 PM.

Agenda: To review and evaluate contract proposals.

Place: Hyatt Arlington, The Gallery Room, 1325 Wilson Boulevard, Arlington, VA 22209.

Contact Person: Dianne E. Tingley, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID, NIH, Solar Building, Room 4C07, 6003 Executive Boulevard MSC 7610, Bethesda, MD 20892–7610, 301/496–0818.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856; Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: April 13, 1999.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy, NIH.

[FR Doc. 99–9670 Filed 4–16–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in section 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special emphasis Panel.

Date: April 18–19, 1999.

Time: April 18, 1999, 7:00 PM to Adjournment.

Agenda: To review and evaluate grant applications.

Place: Omni Colonnade Hotel, 180 Aragon Avenue, Coral Gables, FL 33134.

Contact Person: Mary Ann Guadagno, The Bethesda Gateway Building, 7201 Wisconsin Avenue/Suite 2C212, Bethesda, MD 20892, (301) 496–9666.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: April 13, 1999.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy, NIH.

[FR Doc. 99–9671 Filed 4–16–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institutes of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institutes of Child Health and Human Development Special Emphasis Panel, Extremity Constraint Induced Therapy Eval (Excite) Trial.

Date: May 5, 1999.

Time: 1:00 pm to 2:30 pm.

Agenda: To review and evaluate grant applications.

Place: 6100 Executive Blvd., Room 5E01, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Hameed Khan, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, National Institutes of Health, 6100 Executive Blvd., Room 5E01, Bethesda, MD 20892, (301) 496–1485.

(Catalog of Federal Domestic Assistance Program Nos. 93.209, Contraception and Infertility Loan Repayment Program; 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research, National Institutes of Health, HHS)

Dated: April 13, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–9752 Filed 4–16–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: April 22, 1999.

Time: 1 PM to 3 PM.

Agenda: To review and evaluate grant applications.

Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: David Chananie, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH Neuroscience Center, 6001 Executive Blvd., Rm. 6150, MSC 9608, Bethesda, MD 20892–9608, 301–443–1340.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: April 28, 1999.

Time: 4 PM to 6 PM.

Agenda: To review and evaluate grant applications.

Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Phyllis D. Artis, Lead Grants Technical Assistant, Division of Extramural Activities, National Institute of Mental Health, NIH Neuroscience Center, 6001 Executive Blvd., Rm. 6138, MSC 9606, Bethesda, MD 20892–9606, 301–443–6470.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: April 13, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, National Institutes of Health.

[FR Doc. 99–9753 Filed 4–16–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose

confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel Efficacy, Safety & Incomplete Spontaneous Abortion: A Clinical Trial.

Date: June 9, 1999.

Time: 1 PM to 2:30 PM.

Agenda: To review and evaluate grant applications.

Place: 6100 Executive Blvd., DSR Conf. Room. Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Hameed Khan, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, National Institutes of Health, 6100 Executive Blvd., Room 5E01, Bethesda, MD 20892, (301) 496–1485.

(Catalogue of Federal Domestic Assistance Program Nos. 93.209, Contraception and Infertility Loan Repayment Program; 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research, National Institutes of Health, HHS)

Dated: April 13, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, National Institutes of Health.

[FR Doc. 99–9754 Filed 4–16–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of meetings of the National Institutes of Neurological Disorders and Stroke Council.

The meetings will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meetings will be closed to the public in accordance with the provisions set forth in section 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of person privacy.

Name of Committee: National Advisory Neurological Disorders and Stroke Council.

Date: May 19–21, 1999.

Open: May 20, 1999, 8:30 AM to 5 PM.

Agenda: Report by the Director, NINDS; Reported by the Associate Director for Extramural Research; and other administrative and program developments.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, MD 20814.

Closed: May 21, 1999, 8:30 AM to 12 PM.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, MD 20814.

Contact Person: Constance W. Atwell, Associate Director for Extramural Research, National Institute of Neurological Disorders and Stroke, National Institutes of Health, Neuroscience Center, 6001 Executive Blvd., Suite 3309, MSC 9531, Bethesda, MD 20892–9531, (301) 496–9248.

Name of Committee: National Advisory Neurological Disorders and Stroke Council, Council Review Committee.

Closed: May 19, 1999.

Time: 6 PM to 9 PM.

Agenda: to review and evaluate grant applications.

Place: National Institutes of Health, 31 Center Drive, Building 31, Room 8A28, Bethesda, MD 20892.

Contact Person: Constance W. Atwell, Associate Director for Extramural Research, National Institute of Neurological Disorders and Stroke, National Institutes of Health, Neuroscience Center, 6001 Executive Blvd., Suite 3309, MSC 9531, Bethesda, MD 20892–9531, (301) 496–9248.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: April 13, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, National Institutes of Health.

[FR Doc. 99–9755 Filed 4–16–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel.

Date: April 29, 1999.

Time: 1 p.m. to 2 p.m.

Agenda: To review and evaluate contract proposals.

Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Phillip F. Wiethorn, Scientific Review Administrator, Scientific Review Branch, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd., Suite 3208, MSC 9529, Bethesda, MD 20892–9529, 301–496–9223.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: April 13, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, National Institutes of Health.

[FR Doc. 99–9756 Filed 4–16–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

National Toxicology Program: Call for Public Comment on 11 Substances, Mixtures and Exposure Circumstances To Be Reviewed in 1999 for Listing in or Delisting (Removing) From the Report on Carcinogens, Tenth Edition; Amendments

ACTION: Notice; Amendments.

SUMMARY: The NTP published in the **Federal Register** of April 2, 1999, a list of substances to be reviewed for possible listing in or delisting from the Report on Carcinogens, Tenth Edition. The notice is being amended to (1) extend the deadline for public comment period to June 3, 1999 and (2) to expand the section on "Clarification of the

Criteria" to address some misunderstandings regarding the application of the final paragraph of the criteria for listing agents, substances of mixtures in the Report on Carcinogens.

AMENDMENTS: In the **Federal Register** of April 2, 1999, in FR Doc. 99–8098, on page 15984, in the fist column under the section "Public Comment Requested" the 8th line with the sentence starting "Comments received by April 30, 1999 * * *" and the rest of the section is being deleted and the following added: "Comments received by June 3, 1999 will be considered by the review groups in the preparation of the background documents for each substance. Comments or questions should be directed to Dr. C.W. Jameson at the address listed below."

In the section "Clarification of the Criteria" on page 15983, in the third column, a second paragraph is added as follows: There have also been some misunderstandings regarding the application of the final paragraph of the criteria which begins, "Conclusions regarding carcinogenicity in humans or experimental animals * * *" Since these criteria were first published on September 26, 1998 (61 FR 50499), the paragraph has applied to both the "known to be human carcinogen" and the "reasonably anticipated to be human carcinogen" categories and will continue to apply.

FOR FURTHER INFORMATION CONTACT: Dr. C.W. Jameson, National Toxicology Program, Report on Carcinogens, 79 Alexander Drive, Building 4401, Room 3127 MD: EC–14, P.O. 12233, Research Triangle Park, NC 27709; phone: (919) 541–4096, fax: (919) 541–0947, email: jameson@niehs.nih.gov. The Criteria, the Original **Federal Register** Notice and Background on the Report on Carcinogens can also be found on the NTP Web Site at; http://ntp-server.niehs.nih.gov.

Dated: April 9, 1999.

Kenneth Olden,

Director, National Toxicology Program.

[FR Doc. 99–9666 Filed 4–16–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4441–N–20]

Submission for OMB Review: Comment Request

AGENCY: Office of the Assistant Secretary for Administration HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments due date: May 19, 1999.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within thirty (30) days from the date of this Notice. Comments should refer to the proposal by name and/or OMB approval number and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–1305. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) the title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable, (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, revision of an information collection requirement; and (10) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: April 9, 1999.

David S. Cristy,

Director, ISP and Management.

Title of Proposal: Section 202 Supportive Housing for the Elderly, Application Submission Requirements.

Office: Housing.

OMB Approval Number: 2502–0267.

Description Of The Need For The Information And Its proposed Use: This information collection is necessary to assist HUD in determining applicant eligibility and capacity to develop housing for the elderly within statutory and program criteria. This information collection is also necessary to protect the Government's financial interest in protecting public funds.

Form Number: HUD–92015–CA.

Respondents: Not-For-Profit Institutions.

Frequency of Submission: On Occasion.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per reponse	=	Burden hours
Application Package	400		1		39.90		15,960

Total Estimated Burden Hours: 15,960.

Status: Reinstatement with change.

Contact: Aretha Williams, HUD, (202) 708–2866 x 2480; Joseph F. Lackey, Jr., OMB, (202) 395–7316.

Dated: April 9, 1999.

[FR Doc. 99–9661 Filed 4–16–99; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Aquatic Nuisance Species Task Force Meetings

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of meetings.

SUMMARY: This notice announces the winter meeting, field trip, and awards presentation of the Aquatic Nuisance Species Task Force and meetings of its Ballast Water Program Effectiveness and Adequacy Criteria Committee, Western Regional Panel, Recreational Activities Committee, and Great Lakes Panel to be held in conjunction with the Ninth International Zebra Mussel and Aquatic Nuisance Species Conference. The focus of the field trip and other events and meeting topics are identified in the **SUPPLEMENTARY INFORMATION.**

DATES: The ANS Task Force events will occur as follows:

ANS Task Force Awards Presentation, Monday, April 26, 1999, 12:25 to 12:45 p.m.

Criteria Committee Meeting, Monday, April 26, 1999, 7:00 to 10:00 p.m.

Western Regional Panel Breakfast Roundtable, Tuesday, April 27, 1999, 7:15 to 8:30 a.m.

Recreational Activities Committee Meeting, Tuesday, April 27, 1999, 10:00 a.m. to 12:00 noon

ANS Task Force Harbor Tour, Tuesday, April 27, 1999, 12:45 to 3:00 p.m.

Great Lakes Panel Ballast Water Research Agenda Symposium, Thursday, April 29, 1999, 8:30 a.m. to 3:30 p.m.

ANS Task Force Meeting, Thursday, April 29, 1999, 1:30 to 5:00 p.m.; Friday, April 30, 1999, 8:30 to 4:00 p.m.

ADDRESSES: All events will occur at or depart from the Duluth Entertainment Convention Center, 350 Harbor Drive, Duluth, Minnesota 55802.

FOR FURTHER INFORMATION CONTACT: Robert A. Peoples, Executive Secretary, Aquatic Nuisance Species Task Force, at 703–358–2025 or robert__peoples@fws.gov.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. I), this notice announces a meeting, field trip, and awards presentation of the Aquatic Nuisance Species Task Force and meetings of its Ballast Water Program Effectiveness and Adequacy Criteria Committee, Western Regional Panel, Recreational Activities Committee, and Great Lakes Panel to be held in conjunction with the Ninth International Zebra Mussel and Aquatic Nuisance Species Conference. The Task Force was established by the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 (16 U.S.C. 4701–4741). The activities or topics for each event are summarized below.

ANS Task Force Awards Presentation

The First Annual ANS Task Awards for an individual and an organization recognizing significant long-term contributions to identifying and responding to ANS issues and problems will be presented during the Conference luncheon.

Ballast Water Program Effectiveness and Adequacy Criteria Committee

This brief inaugural meeting of the Criteria Committee will identify the requirements to be addressed and begin exploring how to address them.

Western Regional Panel

During this Breakfast Roundtable, the Panel will receive updates from its members, discuss the status of its annual report, work plan, and October 1999 meeting agenda, discuss the Western Informational Strategy, and honor the Panel Chair upon his retirement.

Recreational Activities Committee

The Committee will discuss ideas for a plan to disseminate the recommended national voluntary recreational activities guidelines recently submitted to the ANS Task Force. This will involve the implementation of Task B of the Committee's February 1998 draft Action Plan, i.e, develop an education/outreach strategy.

Duluth/Superior Harbor Tour

Weather permitting, a brief boat tour of this major international port in the middle of North America will explore introduced fish ecology, monitoring and impacts, highlight industry generated voluntary Great Lakes ballast water management guidelines, and visit the Great Lakes Ballast Demonstration Project facility.

Great Lakes Panel Ballast Water Research Agenda Symposium

This Symposium will identify current initiatives in ballast water research, allow the research community and users to provide their perspectives on gaps and unmet needs in ballast water research, and begin identifying points of consensus on priorities for additional research and next steps.

ANS Task Force Meeting

Topics to be covered Thursday afternoon will include briefings about the Chicago Waterways Nonindigenous Species Dispersal Barrier, the voluntary national ballast water management guidelines and regulatory changes, and the U.S. position on the IMO Marine Environmental Protection Committee's proposal for a new international instrument requiring ballast water management such as a new annex to MARPOL. In addition, updates on mitten crab and *Caulerpa taxifolia* efforts, an overview of Executive Order 13112 and its implementation (including agency efforts), a legislative update, regional panel updates, and the report of the National Nonindigenous Aquatic Species Survey Program Work Group will be presented. Topics to be covered on Friday include the Gulf of Mexico Regional Panel, recommended voluntary national recreational activity guidelines, the 100th Meridian Initiative to Prevent Westward Spread of Zebra Mussels, adoption of the Ballast Exchange Study, ballast water management initiatives under the Clean Water Act, establishment of a Legislative Committee, and the Executive Secretary's report.

Minutes of all meetings will be maintained by the Executive Secretary, Aquatic Nuisance Species Task Force, Suite 840, 4401 North Fairfax Drive, Arlington, Virginia 22203–1622. Minutes of the committee and panel meetings will also be maintained by the committee chairs and panel administrators as follows:

Criteria Committee: Professor Jim Carlton, Williams College-Mystic Seaport Maritime Studies Program, 75 Greenmanville, Avenue, Mystic, CT 06355–0990. 860–572–5359, Ext. 3, jcarlton@williams.edu

Western Regional Panel: Linda Drees, U.S. Fish and Wildlife Service, 315 Houston Street, Suite E, Manhattan, KS 66502. 785–539–3474, Ext. 20, linda__drees@fws.gov

Recreational Activities Committee: Patricia Carter, U.S. Fish and Wildlife Service, 1875 Century Boulevard, Room 240, Atlanta, GA 30345. 404–679–7108, pat__carter@fws.gov

Great Lakes Panel: Michael Donahue, Executive Director, Great Lakes Commission, The Argus II Building, 400 Fourth Street, Ann Arbor, MI 48103–4816. 734–665–9135, mdonahue@glc.org

Minutes for the meeting will be available at these locations for public inspection during regular business hours, Monday through Friday.

Dated: April 13, 1999.

Gary Edwards,

Co-Chair, Aquatic Nuisance Species Task Force, Assistant Director—Fisheries.

[FR Doc. 99–9763 Filed 4–16–99; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Migratory Bird Hunting; Application for Approval of HEVI–METAL™ as a Nontoxic Shot Material for Waterfowl Hunting

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of review.

SUMMARY: We have reviewed Standard Resources Corporation's (Standard) application for approval of HEVI–METAL™ shot as nontoxic for waterfowl hunting in the United States. We have found that the information provided in the application is inconclusive and we are requiring additional information from the manufacturer before further consideration is given.

ADDRESSES: Standard's application may be reviewed in Room 634 at the Fish and Wildlife Service, Office of Migratory Bird Management, 4401 N. Fairfax Drive, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Jon Andrew, Chief, Office of Migratory Bird Management, (703) 358–1714, or James R. Kelley, Jr., Wildlife Biologist, Office of Migratory Bird Management, (703) 358–1964.

SUPPLEMENTARY INFORMATION: We continue to provide opportunity for submission for approval of alternative types of shot for waterfowling that, when spent, does not pose a significant toxic hazard to migratory birds and other wildlife when ingested. Currently, only bismuth-tin and steel shot are unconditionally approved by the Service for use in waterfowling. Tungsten-iron (published October 7, 1998; 63 FR 54016), tungsten-polymer (published October 7, 1998; 63 FR 54022), and tungsten-matrix (published October 19, 1998; 63 FR 55840) shot types received temporary conditional approval for the 1998–99 waterfowl hunting season. We are currently reviewing applications for approval for shot types other than those previously referenced in this notice. We anticipate that approval of additional suitable candidate shot materials as nontoxic is feasible in the near future.

On April 9, 1999 (64 FR 17308), we announced our intention to review Standard's Tier 1 application for approval of HEVI–METAL™ under the revised test procedures for shot and shot coatings that we published in 50 CFR 20.134 (December 1, 1997; 62 FR 63608). A toxicologist from the U.S. Geological Survey, Patuxent Wildlife Research Center, assisted in review of the application. Part A of the application contained a statement of proposed use, a chemical and physical description of the shot material, information on expected variability of shot during production, an estimate of yearly production, and a 5-pound sample of the fabricated shot. Part B of the application contained a discussion of the acute toxicities of HEVI–METAL™ components to mammals and to birds, information on the fate of ingested shot on a small sample of captive-reared mallard ducks, and a summary of the known toxicities of HEVI–METAL™ components for vertebrates. Part C of the application considered the effects of firing on the shot, the half-life of components of breakdown products, the estimated environmental concentration in soil and water, and other environmental impacts of components of the shot.

We have determined that the Tier 1 information provided for HEVI–METAL™ does not provide sufficient information to allow us to conclude that it does not impose a significant danger to migratory birds, other wildlife, and their habitats. Specific toxicological concerns have been provided to the applicant. In light of our concerns, the applicant is advised to proceed with the additional testing described for Tier 2 before further consideration is given to the candidate shot. Tier 2 test requirements are outlined in 50 CFR 20.134.

Authorship: The primary author of this document is James R. Kelley, Jr., Wildlife Biologist, Office of Migratory Bird Management.

Dated: April 2, 1999.

Jamie Rappaport Clark,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 99–9514 Filed 4–16–99; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–930–4210–05; N–62433]

Notice of Realty Action: Segregation Terminated, Lease/Conveyance for Recreation and Public Purposes

AGENCY: Bureau of Land Management, DOI.

ACTION: Segregation terminated, Recreation and public purpose lease/conveyance.

SUMMARY: The following described public land in Las Vegas, Clark County, Nevada was segregated on July 23, 1997 for exchange purposes under serial number N–61855. The exchange segregation on the subject lands will be terminated upon publication of this notice in the **Federal Register**. The land has been examined and found suitable for lease/conveyance for recreational or public purposes under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et seq.*). Clark County proposes to use the lands for a public park.

Mount Diablo Meridian, Nevada

T. 19 S., R. 59 E., sec. 25,
W½SE¼NW¼NW¼, W½SW¼NW¼,
W½NE¼SW¼NW¼, SE¼SW¼NW¼,
N½NW¼SW¼, SW¼NW¼SW¼,
W½SE¼NW¼SW¼,

Containing 75.0 acres, more

or less, located at Ann Road and Puli Avenue. The land is not required for any federal purpose. The lease/conveyance is consistent with current Bureau planning for this area and would be in the public interest. The lease/patents, when issued, will be subject to the provisions of the Recreation and Public Purposes Act and applicable regulations of the Secretary of the Interior, and will contain the following reservations to the United States:

1. A right-of-way thereon for ditches or canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945).

2. All minerals shall be reserved to the United States, together with the right to prospect for, mine and remove such deposits from the same under applicable law and such regulations as the Secretary of the Interior may prescribe and will be subject to:

1. Easements in accordance with the Clark County Transportation Plan.

2. Those rights for distribution line purposes which have been granted to Nevada Power Company by Permit No. Nev-043546 under the Act of October 21, 1976 (43 U.S.C. 1761).

3. Those rights for distribution line purposes which have been granted to Nevada Power Company by Permit No. N–57071 under the Act of October 21, 1976 (43 U.S.C. 1761).

4. Those rights for roadway purposes which have been granted to Clark County by Permit No. N–60903 under the Act of October 21, 1976 (43 U.S.C. 1761). Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Las Vegas Field Office, 4765 W. Vegas Drive, Las Vegas, Nevada.

Upon publication of this notice in the **Federal Register**, the above described land will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for lease/conveyance under the Recreation and Public Purposes Act, leasing under the mineral leasing laws and disposals under the mineral material disposal laws.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments regarding the proposed lease/conveyance for classification of the lands to the Las Vegas Field Office Manager, Las Vegas Field Office, 4765 Vegas Drive, Las Vegas, Nevada 89108.

Classification Comments

Interested parties may submit comments involving the suitability of the land for park sites. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

Application Comments

Interested parties may submit comments regarding the specific use proposed in the application and plan of development, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for a park site.

Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification of the land described in this Notice will become effective 60 days from the date of publication in the **Federal Register**. The lands will not be offered for lease/conveyance until after the classification becomes effective.

Dated: April 6, 1999.

Rex Wells,

Assistant Field Office Manager, Las Vegas, NV.

[FR Doc. 99–9742 Filed 4–16–99; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–050–1610–00]

Public Notification of a 30-Day Period for Submission of Proposed Plan Amendments to the Approved Las Vegas Resource Management Plan

AGENCY: Bureau of Land Management, DOI.

ACTION: Notice of plan amendment process. The Bureau of Land Management. (BLM) is designating a 30 day period for public submittal of proposed amendments to the Las Vegas Resource Management Plan.

SUMMARY: An integral step in ensuring a Resource Management Plan remains current is by amendment. The following criteria must be met before a plan amendment will be considered: (1) The proposed amendment is based on new data not considered when the plan was developed. (2) The information represents a change in legal or regulatory mandate. (3) The supporting detail is sufficient and the problem is clearly stated to allow consideration of the request. (4) The information represents a formal change in State or local government or agency plans.

If the proposed amendment cannot be considered due to legal or regulatory constraints or to improper submission, or if the situation can be resolved without a plan amendment, the amendment process will end at this point.

If a determination is made by the Las Vegas BLM Field Office Manager to proceed with the amendment process, the proposed plan amendments will be presented to the Resource Advisory Council for discussion and recommendations. The Council will serve only in an advisory capacity and their recommendations will not be binding on the District Manager.

The recommendations of the District Manager and the Resource Advisory Council will be forwarded to the State Director, who will decide to either: (1) Reject the proposed plan amendment, in which case the requestor will be notified of the decision and its rationale. (2) Further consider the proposed plan amendment, in which case the Director will determine the category of the amendment with regard to the level of environmental analysis.

DATES: A 30 day period starting September 1, 1999, and ending September 30, 1999, is identified as the designated time period for plan amendment submission to the BLM Las Vegas Field Office Manager.

ADDRESSES: All recommendations you may have are to be submitted to: Bureau of Land Management, Attention: Las Vegas District Manager, 4765 Vegas Drive, Las Vegas, Nevada, 89108. Recommendations can also be hand delivered to the same address.

FOR FURTHER INFORMATION CONTACT: Michael F. Dwyer, Las Vegas Field Office Manager, or Jeffrey G. Steinmetz, Environmental Protection Specialist, at (702)–647–5000.

SUPPLEMENTARY INFORMATION: Plan amendments would fall into either Category 1 of Category 2. Category 1 amendments would not involve a significant change to the goals, objectives, terms, conditions or decisions of the Resource Management Plan, whereas Category 2 amendments would involve a significant change.

Dated: April 8, 1999.

Michael F. Dwyer,

Field Office Manager, Las Vegas.

[FR Doc. 99–9643 Filed 4–16–99; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–957–00–1420–00: GP9–0162]

Filing of Plats of Survey: Oregon/Washington

AGENCY: Bureau of Land Management, DOT.

ACTION: Notice.

SUMMARY: The plats of survey of the following described lands are scheduled to be officially filed in the Oregon State Office, Portland, Oregon, thirty (30) calendar days from the date of this publication.

Willamette Meridian

Oregon

T. 39 S., R. 13 W., accepted February 3, 1999
T. 18 S., R. 2 W., accepted February 8, 1999
T. 20 S., R. 5 W., accepted February 26, 1999
T. 38 S., R. 4 E., accepted March 29, 1999
T. 27 S., R. 12 W., accepted March 29, 1999

Washington

T. 20 N., R. 12 W., accepted April 1, 1999

If protests against a survey, as shown on any of the above plat(s), are received prior to the date of official filing, the

filing will be stayed pending consideration of the protest(s). A plat will not be officially filed until the day after all protests have been dismissed and become final or appeals from the dismissal affirmed.

The plat(s) will be placed in the open files of the Oregon State Office, Bureau of Land Management, 1515 S.W. 5th Avenue, Portland, Oregon 97201, and will be available to the public as a matter of information only. Copies of the plat(s) may be obtained from the above office upon required payment. A person or party who wishes to protest against a survey must file with the State Director, Bureau of Land Management, Portland, Oregon, a notice that they wish to protest prior to the proposed official filing date given above. A statement of reasons for a protest may be filed with the notice of protest to the State Director, or the statement of reasons must be filed with the State Director within thirty (30) days after the proposed official filing date.

The above-listed plats represent dependent resurveys, survey, and subdivision.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, (1515 S.W. 5th Avenue) P.O. Box 2965, Portland, Oregon 97208.

Dated: April 6, 1999.

Sherrie L. Reid,

Acting Chief, Branch of Realty and Records Services.

[FR Doc. 99–9642 Filed 4–16–99; 8:45 am]

BILLING CODE 4310–33–M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Notice on Outer Continental Shelf Oil and Gas Lease Sales

AGENCY: Minerals Management Service, Interior.

ACTION: Revision to List of Restricted Joint Bidders.

In accordance with the joint bidding provisions of 30 CFR 256.41, the Minerals Management Service published in the **Federal Register** on March 26, 1999, at 64 FR 14751, the List of Restricted Joint Bidders covering Outer Continental Shelf oil and gas lease sales to be held during the period from May 1, 1999, through October 31, 1999.

That List of Restricted Joint Bidders inadvertently omitted from Group IV two new entities resulting from the merger of the BP group of companies and the Amoco group of companies.

The list of companies published under Group IV of the List of Restricted Joint Bidders is, by this Notice, revised to include these two additional companies:

BP Amoco Corporation; and
Amoco Production Company.

Dated: April 13, 1999.

Ralph V. Ainger,

Chief, Leasing Division.

[FR Doc. 99–9656 Filed 4–16–99; 8:45 am]

BILLING CODE 4310–MR–M

DEPARTMENT OF THE INTERIOR

National Park Service

Availability of Plan of Operations and Environmental Assessment for Proposed 3–D Seismic Survey; Cobra Exploration Company, Big Thicket National Preserve, Hardin County, TX

Notice is hereby given in accordance with Section 9.52(b) of Title 46 of the Code of Federal Regulations, Part 9, Subpart B, that the National Park Service has accepted a Plan of Operations from Cobra Exploration Company for Three Dimensional Seismic Survey within Big Thicket National Preserve, Hardin County, Texas.

The Plan of Operations and corresponding Environmental Assessment are available for public review and comment for a period of 30 days from the publication date of this notice. Both documents can be viewed during normal business hours at the Office of the Superintendent, Big Thicket National Preserve, 3785 Milam Street, Beaumont, Texas. Copies can be requested from the Superintendent, Big Thicket National Preserve, 3785 Milam Street, Beaumont, TX 77701.

Dated: April 7, 1999.

Richard R. Peterson,

Superintendent, Big Thicket National Preserve.

[FR Doc. 99–9446 Filed 4–16–99; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Scoping for Environmental Analysis of a Study Recommending a Timbisha Shoshone Tribal Homeland in and Around Death Valley National Park Inyo County, California and Esmeralda and Nye Counties, NV

SUMMARY: Notice is hereby given, in accordance with the provisions of the National Environmental Policy Act (42 U.S.C. 4321 *et. seq.*) that public scoping is being initiated for an environmental impact analysis process for a Draft Secretarial Report to Congress regarding a proposal to establish a permanent Timbisha Shoshone Tribal land base in and around Death Valley National Park. The purpose of this scoping effort is to identify public issues and concerns, and to assess the nature and extent of potential environmental impacts which should be addressed.

Background

During 1994 Congress enacted the California Desert Protection Act (Pub. L. 103–433), which in part addressed the need of the Timbisha Shoshone Tribe for a recognized land base. The Secretary of the Interior was directed (in Section 705(b) of the act) to conduct a study to identify lands suitable for a reservation for the Timbisha Shoshone Tribe.

As a direct result, a joint Federal-Tribal negotiating team was convened for the purposes of drafting a suitability study. In drafting their proposal, the factors scrutinized to date include: basic tribal needs for a land base (for housing, tribal administration, economic development, and cultural restoration); mandates prescribing federal land stewardship; complementary interests of the Timbisha Shoshone Tribe and the Federal government; geographical constraints; climate and availability of water; mining claims; special resource limitations such as Congressionally designated Wilderness and also Areas of Critical Environmental Concern; and availability of infrastructure such as roads, power, and other services. With due diligence the efforts of this government-to-government team have culminated in a comprehensive integrated draft proposal to establish a permanent Homeland for the Timbisha Shoshone Tribe.

Comment and Approval

As noted, the Department of the Interior including the National Park Service, Bureau of Land Management, Bureau of Indian Affairs, and Bureau of Reclamation have undertaken government-to-government negotiations with the Timbisha Shoshone Tribe to address suitable strategies and actions for establishing a permanent Timbisha Shoshone Tribal land base in and around Death Valley National Park. At this time, it has not been determined whether an Environmental Assessment or Environmental Impact Statement will be prepared; however, this scoping process will aid in the preparation of either document.

As part of this effort, a series of public scoping meetings will be held during May, 1999. California and Nevada cities

where this scoping activity will be conducted are listed below—all meetings are scheduled for 7:00–9:00pm. For confirmed details about meeting locations please contact: Superintendent, Death Valley National Park, P.O. Box 579, Death Valley, California, 92328 (telephone (760) 786–3243).

- May 24 in Pasadena, California;
- May 25 in Ridegecrest, California;
- May 26 in Lone Pine, California;
- May 27 in Goldfield, Nevada;
- May 28 in Pahrump, Nevada.

During the scoping period a study document—The Timbisha Shoshone Tribal Homeland: A Draft Secretarial Report to Congress to Establish a Permanent Tribal Land Base and Related Cooperative Activities—is available through Death Valley National Park. Topics addressed in the study document and anticipated to be discussed during these meetings include: background information on the government-to-government negotiation process; an historical perspective on the need for a permanent Timbisha Shoshone Tribal land base; identification of criteria used in the study process; the identification of legislative and administrative actions which would be necessary in order to implement the strategies identified to date; and the types and significance of the potential environmental effects, including potential cumulative impacts to wild burros and horses, wildlife, cultural and other natural resource use issues.

Interested individuals, organizations, and agencies are encouraged to provide comments or suggestions. Written comments regarding the Timbisha Shoshone Tribal Homeland proposal must be postmarked no later than June 15, 1999, and should be addressed to the Superintendent, Death Valley National Park (address as noted above). To obtain a copy of the study document or request other background information please contact the Superintendent, Death Valley National Park; the document and current information also are available via the park website (*www.nps.gov/deva*).

The U.S. Department of the Interior officials responsible for approval are: the Assistant Secretary for Fish, Wildlife, and Parks; the Assistant Secretary for Land and Minerals Management; and the Assistant Secretary for Indian Affairs. If approved, the plan would subsequently be submitted by the Secretary of the Interior to Congress for consideration. If enacted, the National Park Service officials responsible for implementation would be the Superintendent, Death Valley National Park and the Regional Director, Pacific West Region; as well as the State Directors, Bureau of Land Management, California and Nevada; the Assistant Secretary for Indian Affairs; and the Bureau of Indian Affairs, Central California Agency. The draft environmental document is expected to be available for public review in late summer or fall, 1999. At this time it is anticipated that the final plan and environmental document are to be completed in spring, 2000.

Dated: April 9, 1999.

John J. Reynolds,

Regional Director, Pacific West.

[FR Doc. 99–9672 Filed 4–16–99; 8:45 am].

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before April 10, 1999. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, 1849 C St. NW, NC400, Washington, DC 20240. Written comments should be submitted by May 4, 1999.

Beth Savage,

Acting Keeper of the National Register.

ARKANSAS

Boone County

Harrison Courthouse Square Historic District, Roughly bounded by N. Walnut, W. Ridge, N. Willow, and W. Stephenson Sts., Harrison vicinity, 99000523

Pulaski County

East Markham Street Historic District, 301–303, 305–307, 313 and 323 East Markham St., Little Rock vicinity, 99000522

FLORIDA

Broward County

Deerfield School, 323 North East Second St., Deerfield Beach, 99000525

Lee County

Edison Park Elementary School (Lee County, Florida MPS) 2401 Euclid Ave., Fort Myers, 99000524

IOWA

Carroll County

Leet, William A., and Frederick Hassler Farmstead District, 12196 311th St., Manning vicinity, 99000526

LOUISIANA

St. Martin Parish

Fourgeaud House, 130 South Main St., Breaux Bridge, 99000527

MASSACHUSETTS

Barnstable County

Collins Cottages Historic District, 150 MA 6, Eastham, 99000528

MISSOURI

Franklin County

New Haven Commercial Historic District, 111–139 Front St., New Haven, 99000531

Jackson County

National Bank of Commerce Building, 922–924 Walnut St., Kansas City, 99000530

Pulaski County

Onyx Cave, 14705 Private Drive 8541, Newburg vicinity, 99000529

NORTH CAROLINA

Guilford County

Whitsett Historic District, Jct. NC 61 and NC 3064, Whitsett, 99000532

OREGON

Hood River County

Hood River High School, 1602 May St., Hood River, 99000534

Jackson County

Ashland Railroad Additon Historic District, roughly bounded by Lithia Way, East Main, Oak St., A St. and 8th Sts., Ashland, 99000533

TENNESSEE

Madison County

Cedars, The, 260 Cotton Grove Rd., Jackson vicinity, 99000536

Obion County

Railroad Park (Union City, Tennessee MPS) 100 Park St., Union City, 99000535

VERMONT

Windham County

Hall, William A., House, 1 Hapgood St., Rockingham, 99000537

A Request for a MOVE has been made for the following resource:

NORTH CAROLINA

Iredell County

Houston, George, House, NC 115, Mount Mourne vicinity, 80002865

[FR Doc. 99–9673 Filed 4–16–99; 8:45 am]

BILLING CODE 4310–70–P

INTERNATIONAL TRADE COMMISSION

Cotton Shop Towels From Bangladesh, China, Pakistan, and Peru[1]

AGENCY: United States International Trade Commission.

ACTION: Notice of Commission determination to conduct full five-year reviews concerning the countervailing duty orders on cotton shop towels from Pakistan and Peru and the antidumping duty orders on cotton shop towels from Bangladesh and China.

SUMMARY: The Commission hereby gives notice that it will proceed with full reviews pursuant to section 751(c)(5) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(5)) to determine whether revocation of the countervailing duty orders on cotton shop towels from Pakistan and Peru and the antidumping duty orders on cotton shop towels from Bangladesh and China would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. A schedule for the reviews will be established and announced at a later date.

For further information concerning the conduct of this review and rules of general application, consult the Commission's rules of practice and procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207). Recent amendments to the Rules of Practice and Procedure pertinent to five-year reviews, including the text of subpart F of part 207, are published at 63 FR 30599, June 5, 1998, and may be downloaded from the Commission's World Wide Web site at http://www.usitc.gov/rules.htm.

EFFECTIVE DATE: April 8, 1999.

FOR FURTHER INFORMATION CONTACT: Robert Eninger (202–205–3194), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

[1] The investigation numbers are as follows: Bangladesh is 731-TA–514 (Review), China is 731-TA–103 (Review), Pakistan is 701-TA–202 (Review), and Peru is 701-TA-E (Review).

SUPPLEMENTARY INFORMATION: On April 8, 1999, the Commission determined that it should proceed to full reviews in the subject five-year reviews pursuant to section 751(c)(5) of the Act. The Commission, in consultation with the Department of Commerce, grouped these reviews because they involve similar domestic like products. See 19 U.S.C. 1675(c)(5)(D); 63 F.R. 29372, 29374 (May 29, 1998). The Commission found that the domestic interested party group response to its notice of institution (64 FR 371, Jan. 4, 1999) of the subject five-year reviews was adequate and the respondent interested party group responses were inadequate.[2] The Commission also found[3] that other circumstances warranted conducting full reviews. A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements will be available from the Office of the Secretary and at the Commission's web site.

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

Issued: April 14, 1999

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–9693 Filed 4–16–99; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–101 (Review)]

Greige Polyester/Cotton Printcloth From China

Determination

On the basis of the record[1] developed in the subject five-year review, the United States International Trade Commission determines,[2] pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act), that revocation of the antidumping duty order on greige polyester/cotton printcloth from China would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

[2] Commissioner Askey dissenting with respect to the adequacy of the respondent interested party group response for Peru.

[3] Chairman Bragg, Vice Chairman Miller, and Commissioner Crawford dissenting.

[1] The record is defined in § 207.2(f) of the Commission's rules of practice and procedure (19 CFR 207.2(f)).

[2] Vice Chairman Miller not participating; Commissioners Crawford and Askey dissenting.

Background

The Commission instituted this review on November 2, 1998 (63 FR 58763), and determined on February 4, 1999, that it would conduct an expedited review (64 FR 9175, February 24, 1999).

The Commission is scheduled to transmit its determination in this investigation to the Secretary of Commerce on April 15, 1999. The views of the Commission will be contained in USITC Publication 3184 (April 1999), entitled Greige Polyester/Cotton Printcloth from China: Investigation No. 731–TA–101 (Review).

Issued: April 12, 1999.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–9690 Filed 4–16–99; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–406]

Certain Lens-Fitted Film Packages; Notice of Determinations To Extend the Deadline for Determining Whether To Review an Initial Determination Terminating the Investigation and To Extend the Target Date For Completing the Investigation

AGENCY: International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined: (1) To extend the deadline for determining whether to review the final initial determination (ID) on violation by one week, or until April 19, 1999, and (2) to extend the target date for completing the investigation by eight days, or until June 2, 1999.

FOR FURTHER INFORMATION CONTACT: Jean Jackson, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC. 20436, telephone (202) 205–3104. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. General information concerning the Commission may also be obtained by accessing its Internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION: This investigation was instituted on March

25, 1998, based on a complaint by Fuji Photo Film Co., Ltd. (Fuji) of Tokyo, Japan. 63 FR 14474. Fuji's complaint alleged unfair acts in violation of section 337 in the importation and sale of certain lens-2 fitted film packages (*i.e.*, disposable cameras). The complaint alleged that 27 respondents had infringed one or more claims of 15 patents held by complainant Fuji. On October 23, 1998, the Commission determined not to review two IDs finding a total of eight respondents, viz., Boshi Technology Ltd., Fast Shot, Haichi International, Innovative Trading Company, Labelle Time, Inc., Linfa Photographic Ind. Co. Ltd., Forcecam, Inc. and Rino Trading Co. Ltd., in default for failure to respond to the complaint and notice of investigation. An evidentiary hearing was held November 2–13, 1998. Eight respondents participated in the hearing, Achiever Industries Limited, Argus Industries, China Film Equipment, Dynatec International Inc., Jazz Photo Corp., Opticolor Camera, P.S.I. Industries, and Sakar International, Inc. (participating respondents). Ten respondents that had filed responses to the complaint and notice of investigation failed to appear at the hearing, viz., Ad-Tek Specialties Inc., AmerImage, Inc. d/b/a/ Rainbow Products, Boecks Camera LLC, BPS Marketing, E.T. Trading d/b/a Klikit, Penmax, Inc., PhilmEx Photographic Film, T.D.A. Trading Corp., Vantage Sales, Inc., and Vivitar Corp.

On February 24, 1999, the ALJ issued his final ID, finding a violation of section 337 by 26 of 27 named respondents. (Complainant Fuji admitted at closing argument that one named respondent, Opticam Inc, was not violating section 337). He found that Fuji had not carried its burden of proof in showing infringement of three design patents. The ALJ also issued his recommendations on remedy and bonding. Fuji, the Commission investigative attorney, and all participating respondents filed petitions for review of the ID.

This action is taken under the authority of section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, and §§ 210.42(h)(2) and 210.51(a) of the Commission Rules of Practice and Procedure, 19 CFR §§ 210.42(h)(2), 210.51(a).

Copies of the nonconfidential version of the ID and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours 3 (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202–205–2000.

Issued: April 12, 1999

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–9691 Filed 4–16–99; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

Malleable Cast Iron Pipe Fittings From Brazil, Japan, Korea, Taiwan, and Thailand [1]

AGENCY: United States International Trade Commission.

ACTION: Notice of Commission determination to conduct full five-year reviews concerning the antidumping duty orders on malleable cast iron pipe fittings from Brazil, Japan, Korea, Taiwan, and Thailand.

SUMMARY: The Commission hereby gives notice that it will proceed with full reviews pursuant to section 751(c)(5) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(5)) to determine whether revocation of the antidumping duty orders on malleable cast iron pipe fittings from Brazil, Japan, Korea, Taiwan, and Thailand would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. A schedule for the reviews will be established and announced at a later date.

For further information concerning the conduct of this review and rules of general application, consult the Commission's rules of practice and procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207). Recent amendments to the Rules of Practice and Procedure pertinent to five-year reviews, including the text of subpart F of part 207, are published at 63 F.R. 30599, June 5, 1998, and may be downloaded from the Commission's World Wide Web site at http://www.usitc.gov/rules.htm.

EFFECTIVE DATE: April 8, 1999.

FOR FURTHER INFORMATION CONTACT: Robert Carpenter (202–205–3172), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION: On April 8, 1999, the Commission determined that it should proceed to full reviews in the subject five-year reviews pursuant to section 751(c)(5) of the Act. The Commission, in consultation with the Department of Commerce, grouped these reviews because they involve similar domestic like products. See 19 U.S.C. 1675(c)(5)(D); 63 FR 29372, 29374 (May 29, 1998).

With regard to malleable cast iron pipe fittings from Brazil and Thailand, the Commission found that both the domestic interested party group response and the respondent interested party group responses to its notice of institution [2] were adequate and voted to conduct full reviews.

With regard to malleable cast iron pipe fittings from Japan, Korea, Taiwan, the Commission found that the domestic interested party group response was adequate and the respondent interested party group responses were inadequate. The Commission also found [3] that other circumstances warranted conducting full reviews.

A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements will be available from the Office of the Secretary and at the Commission's web site.

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.62 of the Commission's rules.

Issued: April 14, 1999.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–9695 Filed 4–16–99; 8:45 am]

BILLING CODE 7020–02–P

[1] The investigation numbers are as follows: Brazil is 731–TA–278 (Review), Japan is 731–TA–347 (Review), Korea is 731–TA–279 (Review), Taiwan is 731–TA–280 (Review), and Thailand is 731–TA–348 (Review).

[2] The notice of institution for all of the subject reviews was published in the **Federal Register** on Jan. 4, 1999 (64 FR 369).

[3] Commissioner Crawford dissenting.

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–244 (Review)]

Natural Bristle Paint Brushes From China

AGENCY: United States International Trade Commission.

ACTION: Scheduling of an expedited five-year review concerning the antidumping duty order on natural bristle paint brushes from China.

SUMMARY: The Commission hereby gives notice of the scheduling of an expedited review pursuant to section 751(c)(3) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(3)) (the Act) to determine whether revocation of the antidumping duty order on natural bristle paint brushes from China would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207). Recent amendments to the Rules of Practice and Procedure pertinent to five-year reviews, including the text of subpart F of part 207, are published at 63 FR 30599, June 5, 1998, and may be downloaded from the Commission's World Wide Web site at http://www.usitc.gov/rules.htm.

EFFECTIVE DATE: April 8, 1999.

FOR FURTHER INFORMATION CONTACT: Bonnie Noreen (202–205–3167), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION:

Background

On April 8, 1999, the Commission determined that the domestic interested party group response to its notice of institution (64 FR 374, Jan. 4, 1999) of the subject five-year review was adequate and that the respondent interested party group response was inadequate. The Commission did not find any other circumstances that would warrant conducting a full review.[1] Accordingly, the Commission determined that it would conduct an expedited review pursuant to section 751(c)(3) of the Act.

Staff Report

A staff report containing information concerning the subject matter of the review will be placed in the nonpublic record on May 6, 1999, and made available to persons on the Administrative Protective Order service list for this review. A public version will be issued thereafter, pursuant to § 207.62(d)(4) of the Commission's rules.

Written Submissions

As provided in § 207.62(d) of the Commission's rules, interested parties that are parties to the review and that have provided individually adequate responses to the notice of institution,[2] and any party other than an interested party to the review may file written comments with the Secretary on what determination the Commission should reach in tho review. Comments are due on or before May 11, 1999, and may not contain new factual information. Any person that is neither a party to the five-year review nor an interested party may submit a brief written statement (which shall not contain any new factual information) pertinent to the review by May 11, 1999. If comments contain business proprietary information (BPI), they must conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means.

In accordance with §§ 201.16(c) and 207.3 of the rules, each document filed by a party to the review must be served on all other parties to the review (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Determination

The Commission has determined to exercise its authority to extend the review period by up to 90 days pursuant to 19 U.S.C. 1675(c)(5)(B).

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.62 of the Commission's rules.

Issued: April 14, 1999.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–9692 Filed 4–16–99; 8:45 am]

BILLING CODE 7020–02–P

[1] A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements will be available from the Office of the Secretary and at the Commission's web site.

[2] The Commission has found the response submitted by the Paint Applicator Division of the American Brush Manufacturers Association to be individually adequate. Comments from other interested parties will not be accepted (see 19 CFR 207.62(d)(2)).

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–282 (Review)]

Petroleum Wax Candles From China

AGENCY: United States International Trade Commission.

ACTION: Scheduling of an expedited five-year review concerning the antidumping duty order on petroleum wax candles from China.

SUMMARY: The Commission hereby gives notice of the scheduling of an expedited review pursuant to section 751(c)(3) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(3)) (the Act) to determine whether revocation of the antidumping duty order on petroleum wax candles from China would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. For further information concerning the conduct of this review and rules of general application, consult the Commission's rules of practice and procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207). Recent amendments to the rules of practice and procedure pertinent to five-year reviews, including the text of subpart F of part 207, are published at 63 FR 30599, June 5, 1998, and may be downloaded from the Commission's World Wide Web site at http://www.usitc.gov/rules.htm.

EFFECTIVE DATE: April 8, 1999.

FOR FURTHER INFORMATION CONTACT: Bonnie Noreen (202–205–3167), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by

accessing its internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION:

Background

On April 8, 1999, the Commission determined that the domestic interested party group response to its notice of institution (64 FR 365, Jan. 4, 1999) of the subject five-year review was adequate [1] and that the respondent interested party group response was inadequate. The Commission did not find any other circumstances that would warrant conducting a full review.[2] Accordingly, the Commission determined [3] that it would conduct an expedited review pursuant to section 751(c)(3) of the Act.

Staff Report

A staff report containing information concerning the subject matter of the review will be placed in the nonpublic record on May 20, 1999, and made available to persons on the Administrative Protective Order service list for this review. A public version will be issued thereafter, pursuant to § 207.62(d)(4) of the Commission's rules.

Written submissions.

As provided in § 207.62(d) of the Commission's rules, interested parties that are parties to the review and that have provided individually adequate responses to the notice of institution,[4] and any party other than an interested party to the review may file written comments with the Secretary on what determination the Commission should reach in the review. Comments are due on or before May 25, 1999, and may not contain new factual information. Any person that is neither a party to the five-year review nor an interested party may submit a brief written statement (which shall not contain any new factual information) pertinent to the review by May 25, 1999. If comments contain business proprietary information (BPI), they must conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means.

In accordance with §§ 201.16(c) and 207.3 of the rules, each document filed by a party to the review must be served on all other parties to the review (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Determination

The Commission has determined to exercise its authority to extend the review period by up to 90 days pursuant to 19 U.S.C. 1675(c)(5)(B).

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.62 of the Commission's rules.

Issued: April 14, 1999.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–9697 Filed 4–16–99; 8:45 am]

BILLING CODE 7020–02–P

[1] Commissioner Crawford dissenting.

[2] Commissioners Hillman and Koplan dissenting. A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements will be available from the Office of the Secretary and at the Commission's web site.

[3] Commissioners Hillman and Koplan dissenting.

[4] The Commission has found responses submitted by Woodbridge Candles, Inc. and the National Candle Association to be individually adequate. Comments from other interested parties will not be accepted (*see* 19 CFR 207.62(d)(2)).

INTERNATIONAL TRADE COMMISSION

Certain Steel Wire Rope From Japan, Korea, and Mexico [1]

AGENCY: United States International Trade Commission.

ACTION: Notice of Commission determination to conduct full five-year reviews concerning the antidumping duty orders on steel wire rope from Japan and carbon steel wire rope from Korea and Mexico.

SUMMARY: The Commission hereby gives notice that it will proceed with full reviews pursuant to section 751(c)(5) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(5)) to determine whether revocation of the antidumping duty orders on steel wire rope from Japan and carbon steel wire rope from Korea and Mexico would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. A schedule for the reviews will be established and announced at a later date.

For further information concerning the conduct of this review and rules of general application, consult the Commission's rules of practice and procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207). Recent amendments to the Rules of Practice and Procedure pertinent to five-year reviews, including the text of subpart F of part 207, are published at 63 F.R. 30599, June 5, 1998, and may be downloaded from the Commission's World Wide Web site at http://www.usitc.gov/rules.htm.

EFFECTIVE DATE: April 8, 1999.

FOR FURTHER INFORMATION CONTACT: George Deyman (202–205–3197), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION: On April 8, 1999, the Commission determined that it should proceed to full reviews in the subject five-year reviews pursuant to section 751(c)(5) of the Act. The Commission, in consultation with the Department of Commerce, grouped these reviews because they involve similar domestic like products. See 19 U.S.C. 1675(c)(5)(D); 63 FR 29372, 29374 (May 29, 1998).

With regard to carbon steel wire rope from Korea, the Commission found that both the domestic interested party group response and the respondent interested party group response to its notice of institution [2] were adequate and voted to conduct a full review.[3]

With regard to steel wire rope from Japan and carbon steel wire rope from Mexico, the Commission found that the domestic interested party group response was adequate and the respondent interested party group responses were inadequate. The Commission also found that other circumstances warranted conducting full reviews.[4]

A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements will be

[1] The investigation numbers are as follows: Japan is AA1921–124 (Review), Korea is 731–TA–546 (Review), and Mexico is 731–TA–547 (Review).

[2] The notice of institution for all of the subject reviews was published in the **Federal Register** on Jan. 4, 1999 (64 FR 367).

[3] Commissioner Crawford dissenting with respect to the adequacy of the domestic interested party group response and with respect to conducting a full review.

[4] Commissioner Crawford dissenting with respect to the adequacy of the domestic interested party group response and with respect to finding other circumstances that warranted conducting a full review.

available from the Office of the Secretary and at the Commission's web site.

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.62 of the Commission's rules.

Issued: April 14, 1999.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–9696 Filed 4–16–99; 8:45 am]

BILLING CODE 7020–01–P

INTERNATIONAL TRADE COMMISSION

[Investigation 332–405]

Probable Economic Effects of the Reduction or Elimination of U.S. Tariffs

AGENCY: United States International Trade Commission.

ACTION: Institution of investigation and scheduling of public hearing.

EFFECTIVE DATE: April 13, 1999.

SUMMARY: Following receipt of a request on March 15, 1999, from the United States Trade Representative (USTR), the Commission instituted investigation No. 332–405, Probable Economic Effects of the Reduction or Elimination of U.S. Tariffs, under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)).

As requested by USTR, the Commission will provide advice as to the probable economic effects on U.S. industries producing like or directly competitive articles, and on consumers, of modifying tariffs under three scenarios, as follows:

1. The effects resulting from changes in the levels of dutiable imports from all U.S. trading partners if all tariffs were reduced by at least 50 percent, with tariffs of 5 percent ad valorem or less reduced to free;

2. The effects resulting from changes in the levels of dutiable imports from all U.S. trading partners if tariffs were eliminated; and

3. The effects resulting from tariff elimination on dutiable imports from Free Trade Area of the Americas (FTAA) trading partners alone.

The request covers each article for which tariffs will remain after full implementation of the staged duty reductions resulting from the Uruguay Round or subsequent World Trade Organization (WTO) agreements (e.g., the Information Technology Agreement). The USTR requested the Commission to provide the advice in a confidential report by November 17, 1999.

In her letter, the USTR noted that "[T]his request by no means implies that we intend to take action on these tariff measures. It merely indicates our interest in obtaining factual advice from the Commission on the probable economic effects of their reduction or elimination."

FOR FURTHER INFORMATION CONTACT: Industry-specific information may be obtained from Robert Wallace, Project Leader (202–205–3458) or James Lukes, Deputy Project Leader (202–205–3426), Office of Industries, U.S. International Trade Commission, Washington, DC 20436. For information on the legal aspects of this investigation, contact William Gearhart of the Office of the General Counsel (202–205–3091). Hearing impaired individuals are advised that information on this matter can be obtained by contacting the TDD terminal on (202) 205–1810.

Background

In her letter to the Commission, the USTR stated that a new round of multilateral negotiations will be launched at the WTO's Third Ministerial Conference. The letter noted that the WTO Agreements mandate further negotiations on agriculture and that many WTO members are advocating new negotiations on industrial tariffs. The letter also noted that, within our hemisphere, President Clinton and other leaders at the Miami and Santiago Summits of the Americas have called for the completion of an FTAA no later than the year 2005, and that agricultural and industrial tariffs will be one area addressed in the FTAA negotiations.

The Commission will provide the probable economic effects advice at an 8-digit subheading level of the Harmonized Tariff Schedule of the United States (HTS). There are a total of 6,424 current HTS subheadings for which tariffs will remain after full implementation of the staged duty reductions resulting from the Uruguay Round or subsequent WTO agreements. A list of these HTS subheadings is available on the Commission's Internet site at http://www.usitc.gov/invfrn.htm#332. A printed copy of the list is also available for inspection in the docket section of the Secretary's office.

Public Hearing

A public hearing in connection with the investigation will be held at the U.S. International Trade Commission Building, 500 E Street SW, Washington, DC, beginning at 9:30 a.m. on June 15, 1999, and continuing on June 16 if necessary. All persons shall have the right to appear, by counsel or in person, to present information and to be heard. Requests to appear at the public hearing should be filed with the Secretary, United States International Trade Commission, 500 E Street SW, Washington, DC 20436, no later than 5:15 p.m., June 1, 1999. Any prehearing briefs (original and 14 copies) should be filed not later than 5:15 p.m., June 3, 1999; the deadline for filing post-hearing briefs or statements is 5:15 p.m., August 10, 1999. To allow sufficient time for full consideration, the Commission encourages all persons who appear at the public hearing to submit any prepared statements and accompanying material to the Secretary by 5:15 p.m., June 10, 1999. In the event that, as of the close of business on June 1, 1999, no witnesses are scheduled to appear at the hearing, the hearing will be canceled. Any person interested in attending the hearing as an observer or non-participant may call the Secretary of the Commission (202–205–1806) after June 1, 1999, to determine whether the hearing will be held.

Written Submissions

In lieu of or in addition to participating in the hearing, interested parties are invited to submit written statements concerning the matters to be addressed by the Commission in its report on this investigation. Commercial or financial information that a submitter desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirements of § 201.6 of the Commission's rules of practice and procedure (19 CFR 201.6). All written submissions, except for confidential business information, will be made available in the Office of the Secretary of the Commission for inspection by interested parties. To be assured of consideration by the Commission, written statements relating to the Commission's report should be submitted to the Commission at the earliest practical date and should be received no later than the close of business on August 10, 1999. All submissions should be addressed to the Secretary, United States International Trade Commission, 500 E Street SW, Washington, DC 20436. The Commission's rules do not authorize filing submissions with the Secretary by facsimile or electronic means.

Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General

information concerning the Commission may also be obtained by accessing its Internet server (http://www.usitc.gov).

List of Subjects

WTO, FTAA, Tariffs, and Imports.

Issued: April 14, 1999.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–9694 Filed 4–16–99; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Office of Justice Programs

Bureau of Justice Assistance; Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of Information Collection Under Review; New Collection; Bulletproof Vest Partnership Grant Act of 1998 (Act)—Pub. L. 105–181 June 16, 1998 Funding Program.

The Department of Justice, Office of Justice Programs, Bureau of Justice Assistance, has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with emergency review procedures of the Paperwork Reduction Act of 1995. OMB approval has been requested by April 15, 1999. The proposed information collection is published to obtain comments from the public and affected agencies. If granted, the emergency approval is only valid for 180 days. Comments should be directed to OMB, Office of Information Regulation Affairs, Attention: Mr. Alex Hunt, (202) 395–7860, Department of Justice Desk Officer, Washington, DC 20530.

During the first 60 days of this same review period, a regular review of this information collection is also being undertaken. All comments and suggestions, or questions regarding additional information, to include obtaining a copy of the proposed information collection instrument with instructions, should be directed to the Department of Justice (DOJ), Justice Management Division, Information Management and Security Staff, Attention: Department Clearance Officer, Suite 850, 1001 G Street, NW, Washington, DC 20530. Additionally, comments may be submitted to DOJ via facsimile to (202) 514–1590.

Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information

(1) *Type of information collection:* New Collection.

(2) *The title of the three form/collections:* Registration, Application for Funding, and Request for Payment.

(3) *The agency for number, if any, and the applicable component of the Department sponsoring the collection:* None. Bureau of Justice Assistance, Office of Justice Programs, United States Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Federal Government, State, Local or Tribal, and any law enforcement agencies who may elect to assist their units of general government with completion of the Application for Funding or Request for Payment forms.

Other: Armor vest manufacturers or distributors, individual law enforcement officers, or other interested parties.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that between 25,000 and 30,000 eligible units of general government may complete the Registration and Application for Funding forms that may take one hour during one Fiscal Year, and may complete any number of Requests for Payment forms that may take as much as one hour total per Fiscal Year to complete as armor vests are received/accepted and Requests for Payment are made to the BVP.

(6) *An estimate of the total public burden (in hours) associated with the collection:* Estimated to be between 50,000 and 90,000 total hours for the 25,000 to 30,000 estimated applicants.

If additional information is required contact: Ms. Brenda E. Dyer, Deputy, Clearance Office, United States Department of Justice, Information Management and Security Staff Justice Management Division, Suite 850, Washington Center, 1001 G Street NW, Washington, DC 20530.

Dated: April 13, 1999.

Brenda E. Dyer,

Department Deputy Clearnace Officer, Department of Justice.

[FR Doc 99–9698 Filed 4–16–99; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF JUSTICE

National Institute of Justice

[OJP (NIJ)–1221]

RIN 1121–ZB54

Announcement of the Availability of the National Institute of Justice Solicitation for Evaluation of Policies, Procedures, and Programs Addressing Violence Against Women

AGENCY: Office of Justice Programs, National Institute of Justice, Justice.

ACTION: Notice of solicitation.

SUMMARY: Announcement of the availability of the National Institute of Justice "Evaluation of Policies, Procedures, and Programs Addressing Violence Against Women."

DATES: Due date for receipt of proposals is close of business June 2, 1999.

ADDRESSES: National Institute of Justice, 810 Seventh Street, NW, Washington, DC 20531.

FOR FURTHER INFORMATION CONTACT: For a copy of the solicitation, please call NCJRS 1–800–851–3420. For general information about application procedures for solicitations, please call the U.S. Department of Justice Response Center 1–800–421–6770.

SUPPLEMENTARY INFORMATION:

Authority

This action is authorized under the Omnibus Crime Control and Safe Streets Act of 1968, secs. 201–03, as amended, 42 U.S.C. 3721–23 (1994).

Background

The National Institute of Justice (NIJ) is soliciting proposals for the evaluation of policies, procedures, and programs that address violence against women. Violence against women includes family and intimate partner violence, sexual assault, stalking, and violence

committed by acquaintances and strangers.

Evaluation studies aimed at addressing gaps in the current understanding of policies, programs, and practices are encouraged. The following are among some of the areas of interest, but applicants are not restricted to them:

- Assessing the extent of judges' knowledge regarding domestic violence and/or sexual assault.
- Assessing the impact of judges' training on decisionmaking in both civil and criminal cases involving violence against women, on improving judges' knowledge and awareness, and on the attitudes and practices of law enforcement and other court personnel in their approach to domestic violence or sexual assault victims.
- Documenting the long-term outcomes of domestic violence cases decided by judges who had training versus those who did not.
- Determining prosecution strategies that are most effective in reducing recidivism of domestic violence offenders, afford the most protection for the victim of sexual assault or domestic violence, and are most effective in sexual assault cases.
- Evaluating "readiness to change" or "stages of change" models with reference to the Transtheoretical model of change for offenders in the criminal justice response to domestic violence.
- Evaluating the impact of mandatory reporting by physicians and other health care providers of victims of domestic violence to law enforcement agencies.
- Evaluating the process and effects of mandatory divorce/custody mediation in cases involving domestic abuse.
- Assessing whether voluntary mediation can produce satisfactory outcomes for victims of domestic violence.

NIJ anticipates awarding up to 6 grants with a funding total of $1,250,000 for projects with award periods of up to 24 months. The duration and the budget for proposed evaluations should be justified by factors such as the complexity of the design, the number of sites, and the size of the sample.

Interested organizations should call the National Criminal Justice Reference Service (NCJRS) at 1–800–851–3420 to obtain a copy of "Evaluation of Policies, Procedures, and Programs Addressing Violence Against Women" (refer to document no. SL000337). For World Wide Web access, connect either to either NIJ at http://www.ojp.usdoj.gov/nij/funding.htm, or the NCJRS Justice Information Center at http://www.ncjrs.org/fedgrant.htm#nij.

Jeremy Travis,

Director, National Institute of Justice.

[FR Doc. 99–9687 Filed 4–16–99; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Employment and Training Administration

Workforce Investment Act: Job Corps Program; Notice to Employers

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: This Notice describes the Job Corps Program and encourages employers to become involved with the Program.

ADDRESSES: Employers (both public and private) who are interested in learning more about the Job Corps Program as a meaningful source for skilled, entry-level workers are invited to request information. Please send requests to the Director, Division of Program Planning and Development, Office of Job Corps, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW, Room N4507, Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Alan I. Lafferman, Office of Job Corps. Telephone: (202) 219–5556, ext. 140 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Job Corps Program offers qualified youth ages 16–24 the opportunity to become capable and reliable young adults with skills to succeed in business and at life. Students receive vocational training, social and employability skills development and academic education leading to a GED. At the core of the curriculum is a trade that each student selects from approximately 100 vocational offerings (e.g., construction, health services, business and administrative, computer services, culinary arts, automotive and truck repair, retail sales, welding, security, machinist, electronic assembler, lithographic printer and heavy equipment operator). Students receive competency-based, individualized instruction from instructors who have many years of experience in their trade.

In addition to academic and vocational development, Job Corps focuses on social and employability skills that help students adapt to different working and living environments. Each student goes through an extensive curriculum that stresses dependability in attendance, adaptability in tasks, working in a team environment, and interpersonal skills including conflict resolution. Job Corps also demands discipline and instills a strong work ethic, responsibility and good behavior. As part of their comprehensive program, students also volunteer to participate in Community Service Projects.

Under Job Corp's strict Zero Tolerance Program, a formal commitment is required from all students that they will be free of drugs and avoid any violence. Failure to meet this commitment results in dismissal from the program. Students are tested for drugs upon entry to the Program and upon suspicion during their enrollment.

Currently, there are 118 Job Corps centers located throughout the United States. Job Corps students are economically disadvantaged, unemployed youth, male and female, who have volunteered for the program. The average stay for a student is 7 months, and approximately 68,000 students participate in the program each year.

The primary purpose of this Notice is to inform employers that the Job Corps Program has great interest in developing meaningful partnerships with a wide variety of businesses that seek qualified, entry-level workers. Job Corps endeavors to make all of its program components (academic, social and employability skills, and vocational) responsive to the needs of the business community, and employer involvement can contribute significantly to this objective. Involvement activities can include a full range of tasks including, but not limited to: Updating curricula; mentoring students and staff; providing equipment, supplies and services; offering workplace tours; internships and work-based learning opportunities; recruiting other business participants; co-hosting Job Fairs at a Job Corps center and serving on a center's Industry Council.

Job Corps fully supports the economic goals of America's businesses—to expand market share and increase profits. A trained workforce is, perhaps, the most critical resource in achieving these goals and Job Corps is in the business of developing a trained workforce. You are encouraged to partner with the Job Corps Program in meeting this mutual objective.

Dated: April 13, 1999.

Raymond L. Bramucci,

Assistant Secretary for Employment and Training.

[FR Doc. 99–9685 Filed 4–16–99; 8:45 am]

BILLING CODE 4510–30–P

NATIONAL CAPITAL PLANNING COMMISSION

Review of a Mixed-Use Waterfront Destination Resort in Prince George County, MD; Final Environmental Impact Statement

AGENCY: National Capital Planning Commission.

ACTION: Notice.

SUMMARY: The National Capital Planning Commission (NCPC) has prepared a Final Environmental Impact Statement (FEIS) on the construction and operation of the proposed National Harbor project in accordance with section 102(2)(c) of the National Environmental Policy Act of 1969 (NEPA), the National Historic Preservation Act of 1966 (NHPA), and the Environmental Policies and Procedures implemented by NCPC. As the lead federal agency for the preparation and completion of the draft and final EIS, NCPC announces the availability of the FEIS on April 20, 1999.

DATES: Written comments on the FEIS may be submitted until close of business on May 24, 1999.

ADDRESSES: All such comments should be addressed to: National Capital Planning Commission, Attention: Eugene Keller, 801 Pennsylvania Avenue, NW, Suite 301, Washington, D.C. 20576.

Comments may also be sent by e-mail to *eugene@ncpc.gov*. Faxes may be sent to (202) 482–7272. All comments will be fully considered when the Commission reviews the project at a later date.

FOR FURTHER INFORMATION CONTACT: Eugene Keller, Environmental Officer, National Capital Planning Commission, (202) 482–7251 or Sandra Shapiro, General Counsel, National Capital Planning Commission, (202) 482–7223.

SUPPLEMENTARY INFORMATION: The National Harbor resort development is proposed to be built on two parcels totaling 533.9 acres in Prince George County just south of the Capital Beltway interchange at Indian Head Highway (Maryland Route 210). Approximately 241 acres of the site consists of land under Smoot Bay in the Potomac River. The development would include hotels, restaurants, retail and entertainment facilities, office space, and a visitor's center, as well as associated vehicular transportation and parking facilities, pedestrian walkways, and other infrastructure improvements. on April 20, 1999 the FEIS will be available at the offices of the National Capital Planning Commission and at the Prince George's Country Branch Library at 6200 Oxon Hill Road, Oxon Hill, Maryland.

Sandra H. Shapiro,

General Counsel, National Capital Planning Commission.

[FR Doc. 99–9688 Filed 4–16–99; 8:45 am]

BILLING CODE 7520–01–M

NATIONAL CREDIT UNION ADMINISTRATION

Sunshine Act Meeting; Notice of Changes in Subject of Meeting

The National Credit Union Administration Board determined that its business requires the addition of the following two items to the previously announced closed meeting (Federal Register, Vol. 64. No. 69, page 17688, Monday, April 12, 1999) scheduled for Thursday, April 15, 1999.

4. Administrative Action under Section 206 of the Federal Credit Union Act. Closed pursuant to exemptions (8), (9)(A)(ii) and (9)(B).

5. Y2K 1999 Examination Program. Closed pursuant to exemption (8).

The Board voted unanimously that agency business requires that these items be considered with less than the usual seven days notice, that they be closed to the public, and that no earlier announcement of these changes was possible.

The previously announced items were:

1. Administrative Action under Section 107 of the Federal Credit Union Act and Part 701 of NCUA's Rules and Regulations. Closed pursuant to exemption (8).

2. Administrative Action under Section 206 of the Federal Credit Union Act. Closed pursuant to exemptions (4), (7) and (8).

3. Two (2) Personnel Actions. Closed pursuant to exemptions (2) and (6).

FOR FURTHER INFORMATION CONTACT: Becky Baker, Secretary of the Board, Telephone (703) 518–6304.

Becky Baker,

Secretary of the Board.

[FR Doc. 99–9831 Filed 4–15–99; 11:47 am]

BILLING CODE 7535–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–289]

GPU Nuclear, Inc., et al.; Three Mile Island, Unit No. 1; Order Approving Transfer of License and Conforming Amendment

I

GPU Nuclear, Inc., (GPUN or the licensee), Metropolitan Edison Company (Met-Ed), Jersey Central Power and Light Company (JCP&L), and Pennsylvania Electric Company (Penelec) are the holders of Facility Operating License No. DPR–50, which authorizes operation of Three Mile Island Nuclear Station, Unit No. 1 (TMI–1 or the facility) at steady-state power levels not in excess of 2568 megawatts thermal. The facility is located at the licensee's site in Dauphin County, Pennsylvania. The license authorizes GPUN to maintain and operate the facility and Met-Ed, JCP&L, and Penelec to possess but not operate TMI–1. GPUN is authorized to act as agent for Met-Ed, JCP&L, and Penelec in connection with the license. Met-Ed, JCP&L, and Penelec do business as GPU Energy and are wholly owned subsidiaries of GPU, Inc., which is also the parent of GPUN.

II

Under cover of a letter dated December 3, 1998, GPUN and AmerGen Energy Company, LLC, jointly submitted an application requesting approval of the proposed transfer of the TMI–1 facility operating license to AmerGen Energy Company, LLC. The licensee and AmerGen also jointly submitted an application for a conforming amendment to reflect the transfer. Supplemental information was provided under cover of letters dated January 11, February 4, March 4, March 10, and March 15, 1999. Hereinafter, the December 3, 1998, license transfer application and supplemental information will be referred to collectively as the "application." GPUN stated that it was acting on behalf of itself and Met-Ed, JCP&L, and Penelec, co-owners of TMI–1, in submitting the application. AmerGen is a limited liability company that was formed to acquire and operate nuclear power plants in the United States. PECO Energy Company (PECO) and British Energy, Inc., each owns a 50 percent interest in AmerGen. The conforming amendment would remove the current licensees from the facility operating license and would add AmerGen in their place. After completion of the

[1] GPU Nucl
No. 1), CLI–9
11, 1999).

proposed transfer, AmerGen will be the sole owner and operator of TMI–1.

Approval of the transfer of the facility operating license and conforming license amendment was requested by GPUN and AmerGen pursuant to 10 CFR 50.80 and 50.90. Notice of the applications for approval and an opportunity for a hearing was published in the **Federal Register** on December 21, 1998 (63 FR 70436). Pursuant to such notice, the Commission received a request for hearing dated January 11, 1999, from Camille "Bud" George, a Pennsylvania State representative. Mr. George also submitted a February 11, 1999, supplemental letter. The Commission issued a Memorandum and Order [1] on February 11, 1999, denying Mr. George's request for a hearing. The Commission received one comment postmarked January 15, 1999, from H. E. Williams, Jr. and forwarded that comment and Mr. George's two letters to the staff for its consideration. The comments contained in these letters are addressed in the staff's safety evaluation dated April 12, 1999.

Under 10 CFR 50.80, no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission shall give its consent in writing. Upon review of the information in the application by GPUN and AmerGen, and other information before the Commission, and relying upon the representations and agreements contained in the application, the NRC staff has determined that AmerGen is qualified to hold the license, and that the transfer of the license to AmerGen is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission, subject to the conditions set forth below. The NRC staff has further found that the application for the proposed license amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended, and the Commission's rules and regulations set forth in 10 CFR chapter 1; the facility will operate in conformity with the application, the provisions of the Act and the rules and regulations of the Commission; there is reasonable assurance that the activities authorized by the proposed license amendment can be conducted without endangering the health and safety of the public and that such activities will be conducted in compliance with the Commission's regulations; the issuance of the proposed license amendment will not be inimical to the common defense and security or to the health and safety of the public; and the issuance of the proposed amendment will be in accordance with 10 CFR part 51 of the Commission's regulations and all applicable requirements have been satisfied.

[1] GPU Nuclear, Inc., *et al.* (Three Mile Island, Unit No. 1), CLI–99–02, 49 NRC ____ slip. op. (February 11, 1999).

III

Accordingly, pursuant to sections 161b, 161i, and 184 of the Atomic Energy Act of 1954, as amended; 42 U.S.C. 2201(b), 2201(i), and 2234; and 10 CFR 50.80, it is hereby ordered that the transfer of the license as described herein to AmerGen is approved, subject to the following conditions:

(1) The AmerGen Limited Liability Company Agreement dated August 18, 1997, may not be modified in any material respect concerning decision-making authority over "safety issues" as defined therein without the prior written consent of the Director, Office of Nuclear Reactor Regulation.

(2) At least half of the members of AmerGen's Management Committee shall be appointed by a non-foreign member group, all of which appointees shall be U.S. citizens.

(3) The Chief Executive Officer (CEO), Chief Nuclear Officer (CNO) (if someone other than the CEO), and Chairman of the Management Committee of AmerGen shall be U.S. citizens. These individuals shall have the responsibility and exclusive authority to ensure, and shall ensure, that the business and activities of AmerGen with respect to the TMI–1 license are at all times conducted in a manner consistent with the protection of the public health and safety and common defense and security of the United States, as set forth in Title 10 of the Code of Federal Regulations and Operating License No. DPR–50, including the Technical Specifications attached thereto.

(4) AmerGen shall cause to be transmitted to the Director, Office of Nuclear Reactor Regulation within 30 days of filing with the Securities and Exchange Commission, any Schedules 13D or 13G filed pursuant to the Securities and Exchange Act of 1934 that disclose beneficial ownership of a registered class of PECO stock.

(5) For purposes of ensuring public health and safety, AmerGen shall provide decommissioning funding assurance of no less than $303 million, after payment of any taxes, to be held in the decommissioning trust(s) for TMI–1 following the transfer of the TMI–1 license to AmerGen, including any amounts held in any decommissioning trust(s) that may continue to be maintained by GPU Energy for TMI–1 after such license transfer.

(6) AmerGen shall take all necessary steps to ensure that the decommissioning trust is maintained in accordance with the application for the transfer of the TMI–1 license and the requirements of this order and the safety evaluation.

(7) If the assets of any decommissioning trust maintained by GPU Energy for TMI–1 are retained in such trust following the transfer of the TMI–1 license to AmerGen instead of being transferred to any trust established by AmerGen, GPU Energy shall maintain the assets as retained in such trust in accordance with the application for the transfer of the TMI–1 license. In addition, the trust agreement shall contain the following provisions or be consistent with the following:

(a) In Article II of the trust agreement, section 2.01 shall include provisions to limit the use of assets in both the qualified and non-qualified funds, in the first instance, to the expenses related to decommissioning of TMI–1 as defined by the NRC in its regulations and issuances, and as provided in the TMI–1 license and any amendments thereto.

(b) In Article II, section 2.01(c) shall be deleted or the term "property" therein shall be limited to liquid assets.

(c) In Articles II and V, investments in the securities or other obligations of GPU Nuclear, Inc., PECO Energy, British Energy, plc, AmerGen, or affiliates thereof, or their successors or assigns shall be prohibited. Except for investments tied to market indexes or other non-nuclear sector mutual funds, investments in any entity owning one or more nuclear power plants is prohibited.

(d) In Article II, section 2.02 shall be amended to contain a provision that no disbursements or payments from the trust shall be made by the trustee until the trustee has first given the NRC 30 days notice of the payment. The section shall be further amended to contain a provision that no disbursements or payments from the trust shall be made if the trustee receives prior written notice of objection from the Director, Office of Nuclear Reactor Regulation.

(e) Article IV shall provide that the trust agreement cannot be modified in any material respect without the prior written consent of the Director, Office of Nuclear Reactor Regulation.

(f) Section 4 of the Special Terms shall specify that assets cannot be withdrawn from the decommissioning trust funds, but may be transferred

between the qualified and non-qualified funds for the purposes specified in this section.

(g) The appropriate section of the trust agreement shall reflect that the trustee, investment advisor, or anyone else directing the investments made in the trust must adhere to a "prudent investor" standard as specified in 18 CFR 35.32(a)(3) of the Federal Energy Regulatory Commission regulations.

(8) AmerGen, shall take no action to cause PECO or British Energy, plc to void, cancel, or diminish the $65 million contingency fund commitment from PECO and British Energy for TMI–1, the existence of which is represented in the application, or cause them to fail to perform or impair their performance under the commitment, or remove or interfere with AmerGen's ability to draw upon the commitment. Further, AmerGen shall inform the Director, Office of Nuclear Reactor Regulation, in writing, at such time that it draws upon the $65 million contingency fund. This provision does not affect the NRC's authority to assure that adequate funds will remain available to fund the transition to safe shutdown, should any question arise regarding availability of funds for such a purpose.

(9) AmerGen shall, prior to completion of the sale and transfer of TMI–1 to it, provide the Director, Office of Nuclear Reactor Regulation, satisfactory documentary evidence that AmerGen has obtained the appropriate amount of insurance required of licensees under 10 CFR part 140 of the Commission's regulations.

(10) After receipt of all required regulatory approvals of the transfer of TMI–1, GPU Nuclear, Inc., and AmerGen shall inform the Director, Office of Nuclear Reactor Regulation, in writing of such receipt within five business days, and of the date of the closing of the sale and transfer of TMI–1 no later than seven business days prior to the date of closing. Should the transfer of the license not be completed by December 31, 1999, this Order shall become null and void, provided, however, on written application and for good cause shown, such date may in writing be extended.

It is further ordered that, consistent with 10 CFR 2.1315(b), a license amendment that makes changes, as indicated in enclosure 2 to the cover letter forwarding this Order, to conform the license to reflect the subject license transfer is approved. The amendment shall be issued and made effective at the time the proposed license transfer is completed.

This Order is effective upon issuance.

For further details with respect to this Order, see the application dated December 3, 1998, and supplemental submittals dated January 11, February 4, March 4, March 10, and March 15, 1999, which are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW, Washington, DC, and at the local public document room located at the Law/Government Publications Section, State Library of Pennsylvania (REGIONAL DEPOSITORY), Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, PA 17105.

Dated at Rockville, Maryland, this 12th day of April 1999.

For the Nuclear Regualtory Commission.

Roy P. Zimmerman,

Acting Director, Office of Nuclear Reactor Regulation.

[FR Doc. 99–9748 Filed 4–16–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–334]

Duquesne Light Company; Ohio Edison Company; Pennsylvania Power Company; Beaver Valley Power Station, Unit No. 1; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–66, issued to Duquesne Light Company, (the licensee), for operation of the Beaver Valley Power Station, Unit 1 (BVPS–1), located in Beaver County, Pennsylvania.

Environmental Assessment

Identification of the Proposed Action

The proposed action would authorize changes to the Updated Final Safety Analysis Report (UFSAR) for the facility. Specifically, the proposed action would authorize changes to the UFSAR to reflect revisions to the Control Room radiological dose calculations for the waste gas system line break accident analysis. The BVPS–1 UFSAR would be revised as follows: in Table 11.3–7, the reported Gamma (whole body) dose value would be revised from 0.0031 REM to less than 0.01 REM; the reported Beta dose value would be revised from 0.013 REM to less than 1.0 REM; and Table 14.2–8 would be revised to reflect the assumptions that (1) the fraction of fuel with defects is one percent, and (2) the control room radiation monitors will not initiate control room isolation, which were used in the reanalysis.

The proposed action is in accordance with the licensee's application for amendment dated January 17, 1998, as supplemented by letters dated February 10, 1998, November 9, 1998, February 8, 1999, and February 26, 1999.

The Need for the Proposed Action

As a result of issues involving control room habitability, the licensee re-evaluated Beaver Valley Power Station, Units 1 and 2, (BVPS–1 and BVPS–2) control room dose calculations for Design Basis Accidents (DBA) which credited isolation of the control room during the DBA. When analyses associated with the waste gas system rupture were reviewed, an arithmetic error was discovered in the control room dose calculation for BVPS–1 which resulted in the associated values listed in the BVPS–1 UFSAR being incorrect. Therefore, it is necessary to correct the analysis and revise the BVPS–1 UFSAR.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed action and concludes that the assumptions and methodology used by the licensee in the reanalysis are acceptable and that there is reasonable assurance, in the event of a postulated Waste Gas System Line Break, that the postulated control room operator doses would continue to be less than the criteria of 10 CFR part 50, Appendix A, General Design Criterion 19; and well within the occupational dose limits of 10 CFR part 20.

The proposed action will not increase the probability or consequences of accidents (although the corrections result in a higher calculated control room operator dose), no changes are being made in the types of any effluents that may be released off site, and there is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action does not involve any historic sites. It does not affect nonradiological plant effluents and has no other environmental impact. Therefore, there are no significant nonradiological environmental impacts associated with the proposed action.

Accordingly, the Commission concludes that there are no significant

environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action (i.e., the "no-action" alternative). Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for BVPS–1.

Agencies and Persons Consulted

In accordance with its stated policy, on March 25, 1999, the staff consulted with the Pennsylvania State official, Mr. M. Murphy of the Pennsylvania Department of Environmental Protection Bureau, Division of Nuclear Safety, regarding the environmental impact of the proposed action. The State official had no comments.

Findings of No Significant Impact

On the basis of the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated January 17, 1998, as supplemented by letters dated February 10, 1998, November 9, 1998, February 8, 1999, and February 26, 1999, which are available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, PA 15001.

Dated at Rockville, Maryland, this 12th day of April 1999.

For the Nuclear Regulatory Commission.

Daniel S. Collins,

Project Manager, Section 1, Project Directorate I, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 99–9749 Filed 4–16–99; 8:45 am]

BILLING CODE 7590–01–P

UNITED STATES NUCLEAR REGULATORY COMMISSION

[Docket No. 50–289]

GPU Nuclear, Inc., Et Al.; Three Mile Island Nuclear Generating Station, Unit 1 Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from certain requirements of 10 CFR part 50, Appendix R for Facility Operating License No. DPR–50 issued to GPU Nuclear, Inc., *et al.*, (GPU or the licensee), for operation of the Three Mile Island Nuclear Generating Station, Unit 1 (TMI–1), located in Dauphin County, Pennsylvania.

Environmental Assessment

Identification of the Proposed Action

Section III.G.2.c of Appendix R to 10 CFR part 50 requires the enclosure of cable and equipment and associated non-safety circuits of one redundant train of systems necessary to achieve and maintain safe shutdown in a fire barrier having a 1-hour rating. In addition, fire detectors and an automatic fire suppression system shall be installed in the fire area. The licensee is seeking an exemption from these requirements for 10 fire areas/zones: AB–FZ–3, AB–FZ–4, AB–FZ–5, AB–FZ–7, CB–FA–1, FH–FZ–1, FH–FZ–2, FH–FZ–6, ISPH–FZ–1 and ISPH–FZ–2.

The proposed action is in accordance with the licensee's application for exemption dated December 31, 1996, as supplemented September 8 and December 30, 1997; May 21, October 14, November 25, and December 23, 1998.

The Need for the Proposed Action

The licensee is requesting an exemption from Appendix R, Section III.G.2.c because modifications to achieve full compliance would cost approximately $1.0 million. The proposed action is needed to reduce the financial hardship of modifying existing barriers to achieve a 1-hour fire rating, which modification would provide minimal safety benefit according to the licensee.

Environment Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed action and concludes that reasonable assurance has been provided in fire zones/areas AB–FZ–4, CB–FA–1, FH–FZ–1, FH–FZ–6, IPSH–FZ–1, and ISPH–FZ–2, that one division of components necessary to achieve safe shutdown will remain free of fire damage. Although the installed Thermo-Lag barriers in these fire zones/areas have less than a 1-hour fire endurance rating, they do have some significant resistance to fire. Additionally, the areas where most of the subject barriers are located have a low combustible loading, have manual suppression capability and are equipped with automatic detection and suppression. The licensee has committed to install automatic suppression in fire zone FH–FZ–6. Additionally, the licensee has committed to install combustible gas detectors in fire area CB–FA–1, which would provide prompt identification of an acetylene gas leak and allow isolation of the gas at its source prior to reaching the explosive limit. The staff has determined that the combination of these features and circumstances provides a level of protection adequate to meet the underlying purpose of the rule. The Commission has determined that the exemption for fire zones AB–FZ–3, AB–FZ–5, AB–FZ–7, and FH–FZ–2 should be denied because an adequate level of fire safety would not be achieved.

The proposed action (hereinafter to mean the granting of an exemption for fire zones/areas AB–FZ–4, CB–FA–1, FH–FZ–1, FH–FZ–6, ISPH–FZ–1, and ISPH–FZ–2) will not increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released off site, and there is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential non-radiological impacts, the proposed action does not involve any historic sites. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, there are no significant non-radiological environmental impacts associated with the proposed action.

Accordingly, the Commission concludes there are no significant environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action (i.e., the "no-action" alternative). Denial of the application would result in no change in current environmental impacts.

The environmental impacts of the proposed action and alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for the Three Mile Island Nuclear Station.

Agencies and Persons Consulted

In accordance with its stated policy, on January 13, 1999, the staff consulted with the Pennsylvania State official, Mr. Stan J. Maingi, of the Bureau of Radiation Protection, Pennsylvania Department of Environmental Resources, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

On the basis of the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated December 31, 1996, as supplemented September 8 and December 30, 1997; May 21, October 14, November 25, and December 23, 1998, which are available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW, Washington, DC, and at the local public document room located at the LAW/Government Publications Section, State Library of Pennsylvania, (Regional Depository) Walnut Street and Commonwealth Avenue, P.O. Box 1601, Harrisburg, PA 17105.

Dated at Rockville, Maryland, this 12th day of April 1999.

For the Nuclear Regulatory Commission.

James W. Clifford,

Chief, Section 2, Project Directorate I, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 99–9747 Filed 4–16–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards Subcommittee Meeting on Planning and Procedures; Notice of Meeting

The ACRS Subcommittee on Planning and Procedures will hold a meeting on May 5, 1999, Room T–2B1, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance, with the exception of a portion that may be closed pursuant to 5 U.S.C. 552b(c) (2) and (6) to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of ACRS, and information the release of which would constitute a clearly unwarranted invasion of personal privacy.

The agenda for the subject meeting shall be as follows:

Wednesday, May 5, 1999—10:00 a.m. until the conclusion of business.

The Subcommittee will discuss proposed ACRS activities and related matters. It may also discuss the status of appointment of a new member to the ACRS. The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the cognizant ACRS staff person named below five days prior to the meeting, if possible, so that appropriate arrangements can be made.

Further information regarding topics to be discussed, the scheduling of sessions open to the public, whether the meeting has been canceled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements, and the time allotted therefor can be obtained by contacting the cognizant ACRS staff person, Dr. John T. Larkins (telephone: 301/415–7360) between 7:30 a.m. and 4:15 p.m. (EDT). Persons planning to attend this meeting are urged to contact the above named individual one or two working days prior to the meeting to be advised of any changes in schedule, etc., that may have occurred.

Dated: April 12, 1999.

Richard P. Savio,

Associate Director for Technical Support, ACRS/ACNW.

[FR Doc. 99–9750 Filed 4–16–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards Subcommittee Meeting on Safety Research Program; Notice of Meeting

The ACRS Subcommittee on Safety Research Program will hold a meeting on May 4, 1999, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Tuesday, May 4, 1999—8:30 a.m. until the conclusion of business

The Subcommittee will review various elements of the NRC Safety Research Program and gather information for use in preparing report to the Commission on the NRC Safety Research Program. The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the cognizant ACRS staff engineer named below five days prior to the meeting, if possible, so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by contacting the cognizant ACRS staff engineer, Dr. Medhat El-Zeftawy (telephone 301/415–6889) between 7:30 a.m. and 4:15 p.m. (EDT). Persons planning to attend this meeting are urged to contact the above named individual one or two working days prior to the meeting to be advised of any potential changes in the proposed agenda, etc., that may have occurred.

Dated: April 12, 1999.

Richard P. Savio,

Associate Director for Technical Support, ACRS/ACNW.

[FR Doc. 99–9751 Filed 4–16–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Correction to Biweekly Notice; Applications and Amendments to Operating Licenses Involving No Significant Hazards Consideration

On April 7, 1999 (64 FR 17021), the **Federal Register** published the Biweekly Notice of Applications and Amendments to Operating Licenses Involving No Significant Hazards Consideration. On page 17022, the paragraph starting "By April 23, 1999, the licensee may file", should read "By May 7, 1999, the licensee may file".

Dated at Rockville, Maryland, this 13th day of April 1999.

For the Nuclear Regulatory Commission.

John A. Zwolinski,

Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 99–9745 Filed 4–16–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Public Comment on Recommended Improvements to the Oversight Processes for Nuclear Power Reactors

AGENCY: Nuclear Regulatory Commission.

ACTION: Request for public comment.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing significant revisions to its processes for overseeing the safety performance of commercial nuclear power plants that include integrating the inspection, assessment, and enforcement processes. As part of its proposal, the NRC staff established a new regulatory oversight framework with a set of performance indicators and associated thresholds, developed a new baseline inspection program that supplements and verifies the performance indicators, and created a continuous assessment process that includes a method for consistently determining the appropriate regulatory actions in response to varying levels of safety performance. The changes are the result of continuing work on a concept as described in SECY–99–007A," Recommendations for Reactor Oversight Improvements (Follow-Up to SECY–99–007)" dated March 22, 1999. The NRC is soliciting comments from interested public interest groups, the regulated industry, States, and concerned citizens. The NRC staff will consider comments it receives in developing the procedures for implementing the new processes.

DATES: The comment period expires May 14, 1999. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

ADDRESSES: Submit written comments to: Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, Mail Stop: T–6 D59, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Hand deliver comments to: 11545 Rockville Pike, Rockville, Maryland, between 7:45 a.m. and 4:15 p.m. on Federal workdays. Copies of comments received may be examined at the NRC's Public Document Room, 2120 L Street, NW (Lower Level), Washington, DC.

Copies of SECY–99–007A, "Recommendations for Reactor Oversight Process Improvements (Follow-Up to SECY–99–007)" and its attachments may be obtained from the NRC's Public Document Room at 2120 L St., NW, Washington, DC 20003–1527, telephone 202–634–3273. Copies also may be obtained from the NRC's Internet web site at: http://www.nrc.gov/NRC/COMMISSION/SECYS/index.html#1999.

FOR FURTHER INFORMATION CONTACT: Alan Madison, Mail Stop: O–5 H4, Inspection Program Branch, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone 301–415–1490.

SUPPLEMENTARY INFORMATION:

Background

In September 1997, the NRC began an integrated review of the processes used for assessing safety performance by commercial nuclear power plant licensees. The NRC staff presented to the Commission a conceptual design for a new integrated assessment process in Commission paper SECY–98–045, dated March 9, 1998.

In parallel with the staff's work on the IRAP and the development of other assessment tools, the nuclear power industry independently developed a proposal for a new assessment and regulatory oversight process. This proposal, developed by the Nuclear Energy Institute (NEI), took a risk-informed and performance-based approach to the inspection, assessment, and enforcement of licensee activities on the basis of the results of a set of performance indicators.

The staff set out to develop a single set of recommendations for making improvements to the regulatory oversight processes in response to NEI's proposal, the Commission's comments on the IRAP proposal, and comments made at a Commission meeting on July 17, 1998, with public and industry stakeholders and the hearing before the Senate on July 31, 1998. The IRAP public comment period, a four day public workshop, and a series of public meetings were used to facilitate internal and external input into the development of these recommendations.

Following the public workshop, the NRC staff formed three task groups to complete the work begun at the workshop and to develop the recommendations for the integrated oversight processes: a technical framework task group, an inspection task group, and an assessment process task group. The technical framework task group was responsible for completing the assessment framework and for identifying the performance indicators (PIs) and appropriate thresholds that could be used to measure safety performance. The inspection task group was responsible for developing the scope, the depth, and the frequency of a risk-informed baseline inspection program that would be used to supplement and verify the PIs. The assessment process task group developed methods for integrating PI data and inspection data, determining NRC action on the basis of assessment results, and communicating results to licensees and the public. Other staff activities to improve the enforcement process were coordinated with these three task groups to ensure that changes to the enforcement process were properly evaluated in the framework structure and that changes to the inspection and assessment programs were integrated with the changes to the enforcement program.

The task groups completed their work between October and December 1998, and developed recommendations to be presented to the Commission. On January 20, 1999, the staff briefed the Commission on the staff's proposal as described in SECY–99–007, "Recommendations for Reactor Oversight Improvements." Following the January Commission briefing, the staff analyzed the results of public comments on SECY–99–007, completed remaining concept development, and began development of detailed implementing procedures. Additional information and noteworthy changes as

a result of these activities was forwarded to the Commission in SECY–99–007A, "Recommendations for Reactor Oversight Process Improvements (Follow-Up to SECY–99–007)," to support final Commission approval of the proposed reactor oversight process. The staff briefed the Commission on SECY–99–007A and its attachments on March 26, 1999.

Scope of the Public Comment Period

The follow-up recommendations for an integrated oversight process are presented in SECY–99–007A," Recommendations for Reactor Oversight Process Improvements (Follow-Up to SECY–99-007)," dated March 22, 1999, and its attachments. This paper includes further development of the Significance Determination Process (SDP) and the revised Enforcement policy.

A separate **Federal Register** notice will be issued to solicit public comment on the proposed enforcement policy. However, respondents are welcome to address any portion of the enforcement policy in this notice. This public comment period will focus on obtaining industry and public views on how the NRC should implement the processes for overseeing and assessing licensee safety performance as refined in SECY–99–007A and discussed in the Commission meeting on March 26, 1999.

The NRC seeks public comment and feedback on the topics discussed in the SECY and its attachments. Respondents are not limited to and are not obligated to provide comments on each attachment. In providing comments, please key your response to the applicable attachment and be as specific as possible. The use of examples is encouraged.

Dated at Rockville, Maryland, this 13th day of April 1999.

For the Nuclear Regulatory Commission.

Michael R. Johnson,

Acting Chief, Inspection Program Branch Division of Inspection Program Management, Office of Nuclear Reactor Regulation.

[FR Doc. 99–9744 Filed 4–16–99; 8:45 am]

BILLING CODE 7590–01–P

POSTAL SERVICE BOARD OF GOVERNORS

Sunshine Act Meeting

TIMES AND DATES: 10:00 a.m.; Monday, May 3, 1999; 8:30 a.m., Tuesday; May 4, 1999.

PLACE: Garden City, Long Island, New York, at the Garden City Hotel, 45 Seventh Street, in the Society A–C Rooms.

STATUS: May 3 (Closed); May 4 (Open).

MATTERS TO BE CONSIDERED:

Monday, May 3—10:00 a.m. (Closed).

1. Postal Rate Commission Opinion and Recommended Decision in Docket No. MC99–1, Nonletter-Size Business Reply Mail Experiment.
2. Filing with the Postal Rate Commission for Bulk Parcel Return Service (BPRS).
3. Financial Performance Indicators.
4. Midyear Budget Review.
5. Office of the Inspector General Budget Review.
6. Personnel Matters.

Tuesday, May 4—8:30 a.m. (Open).

1. Minutes of the Previous Meeting, March 29–30, 1999.
2. Remarks of the Postmaster General/Chief Executive Officer.
3. Consideration of Semiannual Report to Congress on Summary of Investigative Activities [Actions Under 39 U.S.C. 3005 and 3007].
4. Capital Investments.
   a. Remote Computer Reader 2000.
   b. Philadelphia, Pennsylvania, P&DC—Advance Site Acquisition.
5. Quarterly Report on Service Performance.
6. Quarterly Report on Financial Results.
7. Report on the New York Metro Area and Long Island Performance Cluster.
8. Tentative Agenda for the June 7–8, 1999, meeting in Washington, D.C.

CONTACT PERSON FOR MORE INFORMATION: Thomas J. Koerber, Secretary of the Board, U.S. Postal Service, 475 L'Enfant Plaza, S.W., Washington, D.C. 20260–1000. Telephone (202) 268–4800.

Thomas J. Koerber,

Secretary.

[FR Doc. 99–9849 Filed 4–15–99; 12:23 pm]

BILLING CODE 7710–12–M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3165]

Louisiana; and Contiguous Counties In Arkansas

Bossier Parish and the contiguous Parishes of Bienville, Caddo, Red River, and Webster in the State of Louisiana, and Lafayette and Miller Counties in the State of Arkansas constitute a disaster area as a result of damages caused by severe storms, tornadoes, and flooding which occurred on April 3, 1999. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on June 7, 1999 and for economic injury until the close of business on Jan. 7, 2000 at the address listed below or other locally announced locations: Small Business Administration, Disaster Area 3 Office, 4400 Amon Carter Blvd., Suite 102, Ft. Worth, TX 76155

The interest rates are:

	Percent
For Physical Damage:	
HOMEOWNERS WITH CREDIT AVAILABLE ELSEWHERE	6.375
HOMEOWNERS WITHOUT CREDIT AVAILABLE ELSEWHERE	3.188
BUSINESSES WITH CREDIT AVAILABLE ELSEWHERE	8.000
BUSINESSES AND NON-PROFIT ORGANIZATIONS WITHOUT CREDIT AVAILABLE ELSEWHERE	4.000
OTHERS (INCLUDING NON-PROFIT ORGANIZATIONS) WITH CREDIT AVAILABLE ELSEWHERE	7.000
For Economic Injury:	
BUSINESSES AND SMALL AGRICULTURAL COOPERATIVES WITHOUT CREDIT AVAILABLE ELSEWHERE	4.000

The numbers assigned to this disaster for physical damage are 316511 for Louisiana and 316611 for Arkansas. For economic injury the numbers are 9C1600 for Louisiana and 9C1700 for Arkansas.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: April 7, 1999.

Aida Alvarez,

Administrator.

[FR Doc. 99–9654 Filed 4–16–99; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Region I, Pittsburgh District Office, Pittsburgh, PA; Advisory Council Meeting; Public Meeting

The U.S. Small Business Administration, Pittsburgh District Office, Advisory Council will hold a public meeting from 10:00 a.m., Thursday, April 22, 1999, at the U.S. Small Business Administration District Office, Federal Building—Room 1128, 1000 Liberty Avenue, Pittsburgh, PA 15222–4004. The meeting will be held in the conference room, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present. One of the key items on the agenda is: Seeking a tax credit in the state of PA for the loan guaranty fees that borrowers must pay.

FOR FURTHER INFORMATION CONTACT: Write or call, Carrie A. Herron, (412) 395–6560, U.S. Small Business

Administration, 1000 Liberty Avenue, Pittsburgh, PA 15222–4004.

Shirl Thomas,

Director, External Affairs.

[FR Doc. 99–9655 Filed 4–16–99:45 am]

BILLING CODE 6025–01–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. 301–100a]

Implementation of WTO Recommendations Concerning the European Communities' Regime for the Importation, Sale and Distribution of Bananas

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of United States suspension of tariff concessions.

SUMMARY: The United States Trade Representative (USTR) has decided to suspend the application of tariff concessions and to impose a 100% *ad valorem* rate of duty on the articles described in the Annex to this notice that are the products of certain member States of the European Communities (EC) as a result of the EC's failure to implement the recommendations and rulings of the World Trade Organization (WTO) Dispute Settlement Body (DSB) concerning the EC's regime for the importation, sale and distribution of bananas (banana regime). This action constitutes the exercise of U.S. rights under Article 22.6 of the WTO Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU) and is taken pursuant to the authority granted to the USTR under section 301 of the Trade Act of 1974, as amended.

EFFECTIVE DATE: The USTR has determined that, effective April 19, 1999, a 100% *ad valorem* rate of duty shall be applied to the articles described in the Annex to this notice that are the products of Austria, Belgium, Finland, France, the Federal Republic of Germany, Greece, Ireland, Italy, Luxembourg, Portugal, Spain, Sweden, or the United Kingdom and that are entered, or withdrawn from warehouse, for consumption on or after March 3, 1999. Any merchandise subject to this determination that is admitted to U.S. foreign-trade zones on or after April 19, 1999 must be admitted as "privileged foreign status" as defined in 19 CFR 146.41.

ADDRESSES: 600 17th Street, NW, Washington, DC 20508.

FOR FURTHER INFORMATION CONTACT: Sybia Harrison, Staff Assistant to the Section 301 Committee, (202) 395–3419, for questions concerning documents and USTR procedures; William Busis, Associate General Counsel, (202) 395–3150 or Ralph Ives, Deputy Assistant U.S. Trade Representative, (202) 395–3320, for questions concerning WTO developments regarding the banana regime; John Valentine, Acting Director, International Agreements Staff, U.S. Customs Service, (202) 927–1219, for questions concerning classification; and Yvonne Tomenga, Program Officer, Office of Trade Compliance, U.S. Customs Service, (202) 927–0133, for questions concerning entries.

SUPPLEMENTARY INFORMATION: On September 27, 1995, the Office of the U.S. Trade Representative initiated an investigation pursuant to section 302(b)(1) of the Trade Act with respect to the EC banana regime and, in accordance with section 303(a) of the Trade Act, promptly requested consultations with the EC pursuant to the DSU and relevant provisions of several WTO agreements. [60 FR 52026]. The EC regime was designed, among other things, to take away a major part of the banana distribution business of U.S. companies. Subsequently the United States, Ecuador, Guatemala, Honduras, and Mexico jointly requested the establishment of a WTO dispute settlement panel to examine the regime. Both the panel and the WTO Appellate Body found the EC banana regime in violation of the General Agreement on Tariffs and Trade 1994 (GATT) and the General Agreement on Trade in Services (GATS). On September 25, 1997, the DSB adopted the report of the panel, as modified by the Appellate Body. The resulting DSB recommendations and rulings include, *inter alia*, the recommendation that the EC bring the measures found to be inconsistent with the GATT and the GATS into conformity with its obligations under those agreements. A WTO-appointed arbitrator subsequently determined that the "reasonable period of time" for the EC to implement the DSB recommendations and rulings would expire by January 1, 1999.

Based on the results of the WTO dispute settlement proceedings, the USTR on February 10, 1998, determined pursuant to section 304 of the Trade Act that the EC banana regime violates trade agreements. [63 FR 8248]. The USTR further determined that the EC's undertaking to implement all of the recommendations and rulings of the WTO reports by January 1, 1999 constituted for the purposes of section 301(a)(2)(B)(i) the taking of satisfactory measures to grant the rights of the United States under the those trade agreements. Therefore, pursuant to section 301(a)(2), the USTR terminated the investigation without taking action under section 301 of the Trade Act. The USTR stated in the termination notice that it would monitor the EC's implementation of the DSB recommendations and rulings under section 306 of the Trade Act.

On January 1, 1999, modifications to the EC banana regime became effective (EC Regulations 1637/98 and 2362/98), and the EC claimed that these modifications brought its banana regime into conformity with its WTO obligations. However, these regulations perpetuate discriminatory aspects of the EC banana regime that were identified in the DSB's recommendations and rulings as inconsistent with WTO agreements. Therefore, on January 14, 1999, in accordance with U.S. rights under Article 22 of the DSU, the United States requested authorization from the DSB to suspend the application to the EC, and member States thereof, of tariff concessions and related obligations under the GATT covering trade in an amount of US $520 million. [*www.ustr.org*, Press Release 99–01]. On January 29, the EC objected to the level of suspension proposed by the United States and the matter was referred to arbitration pursuant to Article 22.6 of the DSU. Under DSU procedures, the arbitration should have been completed by March 2, 1999. However, on March 2 the arbitrators issued only an initial decision and requested further information from the parties. On March 3, USTR announced that the U.S. Customs Service would begin withholding liquidation and reviewing the sufficiency of bonds on imports of selected European products. The purpose of this announcement was to ensure that, upon issuance of the arbitrators' final decision, the United States would be in the same position to take action as it would have been had the arbitrators issued their decision by the March 2 deadline.

On April 6, the arbitrators issued their final decision determining that the level of nullification or impairment suffered by the United States as a result of the EC's WTO-inconsistent banana regime is $191.4 million per year and that the United States is entitled to suspend the application to the European Communities and its member States of tariff concessions and related obligations under the GATT covering trade up to that amount. A meeting of the DSB was then scheduled for April 19, 1999, at which the DSB, pursuant to Article 22.7 of the DSU, shall grant

authorization for such suspension of concessions.

Prior Notice and Comment

On October 22, 1998, the USTR announced preparations for exercising its right to request authorization to suspend tariff concessions on European products if the EC failed to implement the DSB's recommendations and rulings concerning the banana regime by January 1, 1999. [63 FR 56687]. On November 10, the USTR sought public comment on a preliminary list of European products on which the United States was considering suspending tariff concessions. [63 FR 63099]. On December 9, USTR conducted a public hearing to receive testimony on the preliminary list. On December 21, the USTR announced a revised list of European products for which the United States intended to request authorization from the DSB to suspend tariff concessions. [*www.ustr.org*, Press Release 98–113]. On December 29, the USTR sought public comment on the possible addition of two products to the list. [63 FR 71665; *www.ustr.org*, Press Release 99–01].

Both the November 10 and December 21 **Federal Register** notices explained that the proposed imposition of a 100% *ad valorem* rate of duty would take effect on February 1, 1999, unless the EC requested arbitration on the proposed suspension of tariff concessions, in which case the proposed rate of duty would take effect on March 3. [63 FR at 63099; 63 FR at 7166].

Determination and Action

As a result of the EC's failure to implement the recommendations and rulings of the DSB concerning the EC's banana regime and following the WTO arbitrators' decisions of March 2 and April 6, the USTR has decided to suspend tariff concessions and related obligations under the General Agreement on Tariffs and Trade 1994 and to impose a 100% *ad valorem* rate of duty on the articles described in the Annex to this notice that are the products of certain EC member States. This action exercises the rights of the United States under Article 22 of the DSU and is taken pursuant to the authority granted to the USTR under section 301 of the Trade Act. The articles affected by this determination were selected in light of the comments submitted to the Section 301 Committee in response to the October 22, November 10, and December 23 notices, and the testimony presented at the public hearing held on December 9, 1998.

Accordingly, effective April 19, 1999, with respect to articles that are the products of Austria, Belgium, Finland, France, the Federal Republic of Germany, Greece, Ireland, Italy, Luxembourg, Portugal, Spain, Sweden, or the United Kingdom and that are entered, or withdrawn from warehouse, for consumption on or after March 3, 1999, the Harmonized Tariff Schedule of the United States (HTS) is hereby modified by inserting the provisions listed in the Annex to this notice in numerical sequence in subchapter III of chapter 99, with the content of the new subheadings and superior text set forth in the HTS columns designated "Heading/Subheading," "Article Description," and "Rate of Duty General," respectively. Any merchandise subject to this determination that is admitted to U.S. foreign-trade zones on or after April 19, 1999 must be admitted as "privileged foreign status" as defined in 19 CFR 146.41. The amount of trade affected by this action, as measured by 1998 import values, is equivalent to the level of nullification or impairment determined by the WTO arbitrators in their decision of April 6, 1999.

Joanna K. McIntosh,

Chairman, Section 301 Committee.

BILLING CODE 3190–01–P

Annex

The Harmonized Tariff Schedule of the United States (HTS) is modified by adding in numerical sequence the following superior text and subheadings to subchapter III of chapter 99 to the HTS. The subheadings and superior text are set forth in columnar format, and material in such columns is inserted in the columns of the HTS designated "Heading/Subheading", "Article Description", "Rates of Duty 1-General", respectively.

	"Articles the product of Austria, Belgium, Finland, France, the Federal Republic of Germany, Greece, Ireland, Italy, Luxembourg, Portugal, Spain, Sweden, or the United Kingdom:	
9903.08.04	Bath preparations, other than bath salts (provided for in subheading 3307.30.50)	100%
9903.08.07	Handbags, whether or not with shoulder strap, including those without handle, with outer surface of sheeting of plastic (provided for in subheading 4202.22.15)	100%
9903.08.08	Articles of a kind normally carried in the pocket or in the handbag, with outer surface of sheeting of plastic, of reinforced or laminated plastics (provided for in subheading 4202.32.10)	100%
9903.08.09	Uncoated felt paper and paperboard in rolls or sheets (provided for in subheading 4805.50)	100%
9903.08.10	Folding cartons, boxes and cases, of noncorrugated paper or paperboard (provided for in subheading 4819.20)	100%
9903.08.11	Lithographs on paper or paperboard, not over 0.51 mm in thickness, printed not over 20 years at time of importation (provided for in subheading 4911.91.20)	100%
9903.08.13	Bed linen, other than knit or crocheted, printed, of cotton, other than containing any embroidery, lace, braid, edging, trimming, piping or applique work, not napped (provided for in subheading 6302.21.90)	100%
9903.08.14	Lead-acid storage batteries, other than of a kind used for starting piston engines or as the primary source of electrical power for electrically powered vehicles of subheading 8703.90 (provided for in subheading 8507.20.80)	100%
	Articles the product of Austria, Belgium, Finland, France, the Federal Republic of Germany, Greece, Ireland, Luxembourg, Portugal, Spain, Sweden, or the United Kingdom:	
9903.08.15	Electrothermic coffee or tea makers, of a kind used for domestic purposes (provided for in subheading 8516.71)	100%"

[FR Doc. 99-9703 Filed 4-16-99; 8:45 am]
BILLING CODE 3190-01-C

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–99–5402]

Notice of Receipt of Petition for Decision that Nonconforming 1993–1998 BMW K1100 and K1200 Motorcycles Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 1993–1998 BMW K1100 and K1200 motorcycles are eligible for importation.

SUMMARY: This document announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that 1993–1998 BMW K1100 and K1200 motorcycles that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because (1) they are substantially similar to vehicles that were originally manufactured for importation into and sale in the United States and that were certified by their manufacturer as complying with the safety standards, and (2) they are capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is May 19, 1999.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW, Washington, DC 20590. [Docket hours are from 9 am to 5 pm]

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

Champagne Imports of Lansdale, Pennsylvania ("Champagne") (Registered Importer 90–009) has petitioned NHTSA to decide whether non-U.S. certified 1993–1998 BMW K1100 and K1200 motorcycles are eligible for importation into the United States. The vehicles which Champagne believes are substantially similar are 1993–1998 BMW K1100 and K1200 motorcycles that were manufactured for importation into, and sale in, the United States and certified by their manufacturer, Bayerische Motoren Werke, A.G., as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared non-U.S. certified 1993–1998 BMW K1100 and K1200 motorcycles to their U.S. certified counterparts, and found the vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

Champagne submitted information with its petition intended to demonstrate that non-U.S. certified 1993–1998 BMW K1100 and K1200 motorcycles, as originally manufactured, conform to many Federal motor vehicle safety standards in the same manner as their U.S. certified counterparts, or are capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that non-U.S. certified 1993–1998 BMW K1100 and K1200 motorcycles are identical to their U.S. certified counterparts with respect to compliance with Standard Nos. 106 *Brake Hoses*, 111 *Rearview Mirrors*, 116 *Brake Fluid*, 119 *New Pneumatic Tires for Vehicles other than Passenger Cars*, and 122 *Motorcycle Brake Systems*.

Petitioner additionally contends that the vehicles are capable of being readily altered to meet the following standard, in the manner indicated:

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment*: (a) Installation of U.S.-model head lamp assemblies; (b) installation of U.S.-model reflectors on vehicles that are not already so equipped.

Standard No. 120 *Tire Selection and Rims for Vehicles other than Passenger Cars*: Installation of a tire information label.

Standard No. 123 *Motorcycle Controls and Displays*: Installation of a U.S.-model speedometer calibrated in miles per hour.

The petitioner also states that a vehicle identification number plate will be affixed to the vehicle to meet the requirements of 49 CFR part 565.

Comments should refer to the docket number and be submitted to: Docket Management, Room PL–401, 400 Seventh Street, SW, Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: April 13, 1999.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 99–9707 Filed 4–16–99; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–99–5403]

Notice of Receipt of Petition for Decision that Nonconforming 1998 and 1999 Lexus RX300 Multi-Purpose Passenger Vehicles Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 1998 and 1999 Lexus RX300 multi-purpose passenger vehicles (MPVs) are eligible for importation.

SUMMARY: This notice announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that 1998 and 1999 Lexus RX300 MPVs that were not originally

manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because (1) they are substantially similar to vehicles that were originally manufactured for sale in the United States and that were certified by their manufacturer as complying with the safety standards, and (2) they are capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is May 19, 1999.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW, Washington, DC 20590. [Docket hours are from 9 am to 5 pm].

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

Champagne Imports, Inc. of Lansdale, Pennsylvania ("Champagne") (Registered Importer 90–009) has petitioned NHTSA to decide whether 1998 and 1999 Lexus RX300 MPVs that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States. The vehicles which Champagne believes are substantially similar are 1998 and 1999 Lexus RX300 MPVs that were manufactured for sale in the United States and certified by their manufacturer, Toyota Motor Corporation, as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared the non-U.S. certified 1998 and 1999 Lexus RX300 MPVs to their U.S. certified counterparts, and found the vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

Champagne submitted information with its petition intended to demonstrate that the non-U.S. certified 1998 and 1999 Lexus RX300 MPVs, as originally manufactured, conform to many Federal motor vehicle safety standards in the same manner as their U.S. certified counterparts, or are capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that the non-U.S. certified 1998 and 1999 Lexus RX300 MPVs are identical to their U.S. certified counterparts with respect to compliance with Standards Nos. 102 *Transmission Shift Lever Sequence * * *,* 103 *Defrosting and Defogging Systems,* 104 *Windshield Wiping and Washing Systems,* 105 *Hydraulic Brake Systems,* 106 *Brake Hoses,* 113 *Hood Latch Systems,* 116 *Brake Fluid,* 119 *New Pneumatic Tires for Vehicles other than Passenger Cars,* 124 *Accelerator Control Systems,* 201 *Occupant Protection in Interior Impact,* 204 *Steering Control Rearward Displacement,* 205 *Glazing Materials,* 207 *Seating Systems,* 209 *Seat Belt Assemblies,* 210 *Seat Belt Assembly Anchorages,* 212 *Windshield Retention,* 219 *Windshield Zone Intrusion,* and 302 *Flammability of Interior Materials.*

Petitioner also contends that the vehicles are capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays:* (a) Substitution of a lens marked "Brake" for a lens with a noncomplying symbol on the brake failure indicator lamp; (b) installation of a seat belt warning lamp that displays the appropriate symbol; (c) recalibration of the speedometer/odometer from kilometers to miles per hour.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* (a) Installation of U.S.-model headlamp assemblies that incorporate headlamps with DOT markings; (b) installation of U.S.-model front and rear sidemarker/reflector assemblies; (c) installation of U.S.-model taillamp assemblies; (d) installation of a center high mounted stop lamp on vehicles that are not already so equipped.

Standard No. 111 *Rearview Mirror:* Replacement of the passenger side rearview mirror with a U.S.-model component.

Standard No. 114 *Theft Protection:* Installation of a warning buzzer microswitch in the steering lock assembly and a warning buzzer.

Standard No. 118 *Power Window Systems:* Rewiring of the power window system so that the window transport is inoperative when the ignition is switched off.

Standard No. 120 *Tire Selection and Rims for Motor Vehicles other than Passenger Cars:* Installation of a tire information placard.

Standard No. 206 *Door Locks and Door Retention Components:* Replacement of the rear door locks and rear door locking buttons.

Standard No. 208 *Occupant Crash Protection:* (a) Installation of a U.S.-model seat belt in the driver's position, or a belt webbing-actuated microswitch inside the driver's seat belt retractor; (b) installation of an ignition switch-actuated seat belt warning lamp and buzzer; (c) replacement of the driver's and passenger's side air bags and knee bolsters with U.S.-model components on vehicles that are not already so equipped. The petitioner states that the vehicles are equipped with combination lap and shoulder restraints that adjust by means of an automatic retractor and release by means of a single push button at both front designated seating positions, with combination lap and shoulder restraints that release by means of a single push button at both rear outboard designated seating positions, and with a lap belt in the rear center designated seating position.

Standard No. 301 *Fuel System Integrity:* Installation of a rollover valve in the fuel tank vent line between the fuel tank and the evaporative emissions collection canister.

The petitioner also states that a vehicle identification number plate must be affixed to the vehicles to meet the requirements of 49 CFR part 565.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW, Washington, DC 20590. [Docket hours are from 9 am to 5 pm]. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the

docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: April 13, 1999.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 99–9708 Filed 4–16–99; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–99–5116; Notice 2]

Johnston Sweeper Co.; Grant of Application for Temporary Exemption From Federal Motor Vehicle Safety Standard No. 105

For the reasons explained in this notice, we are granting the application by Johnston Sweeper Company of Chino, California ("JSC"), for an exemption until March 1, 2002, from requirements of Motor Vehicle Safety Standard No. 105, *Hydraulic and Electric Brake Systems,* that became effective March 1, 1999. JSC applied for an exemption on the basis that "compliance would cause substantial economic hardship to a manufacturer that has tried in good faith to comply with the standard." 49 CFR 555.6(a).

We published notice of receipt of the application on February 24, 1999 (64 FR 9215).

The discussion that follows is based on information contained in JSC's application.

Why JSC Needs a Temporary Exemption

On and after March 1, 1999, S5.5 of Standard No. 105 requires any motor vehicle with a GVWR greater than 10,000 pounds, except for a vehicle that has a speed attainable in 2 miles of 30 mph or less, to be equipped with an antilock brake system ("ABS"), as specified in S5.5.1 of the standard. JSC manufactures street sweepers. One of these, the Model M4000, is a "truck" as defined by our regulations. The M4000 is hydrostatically driven, and has two braking systems: Hydrostatic braking and hydraulically-braked front and rear axles. Both axles are specifically manufactured for JSC by proprietary axle manufacturers who produce customized versions of existing conventional vehicle axles, in order to make them economically viable. As far as JCS can ascertain, it is unique in producing a hydrostatically-driven vehicle that can achieve highway speeds of up to 60 mph. A supplier had promised axles by August 1998 that would be compatible with ABS control systems leading JSC to expect that it could conform with the new requirements of Standard No. 105 effective March 1, 1999. However, for the reasons discussed below, the supplier is unable to fulfill its commitment to JCS in a timely manner.

Why Compliance Would Cause JSC Substantial Economic Hardship

JSC produced 303 sweepers in 1998. Its net losses over the past three fiscal years have averaged $1,690,815 annually. It estimates that "the loss of sales by not being granted an exemption would result in 20% less turnover." JSC stated that it employs 170 persons and contributes more than $30,000,000 to the American economy, and, if its application is denied, this would have a measurable effect on its employment force and the company's economic contributions.

JCS stated that it believes it will need 18 to 24 months to complete compliance work after receipt of prototype axles, in order to assure the reliability and endurance of its vehicles when the system is put into production,

How JSC Has Tried To Comply With the Standard in Good Faith

During 1997, JSC concluded a long search to find a manufacturer prepared to design and manufacture economically-viable front and rear axle and brake assemblies compatible with ABS control systems. Its supplier promised to provide axles by August 1998. According to JSC, "the supplier subsequently acquired another axle manufacturer and instigated a rationalization review of the resulting combined product ranges." As a result, the supplier has decided not to produce the original axle design. JCS does not expect suitable prototypes to be available until mid to late 1999. The company has approached other axle manufacturers but has not yet located a better alternative. After it receives prototype axles, significant testing will be required to integrate the ABS with hydrostatic braking and to ensure the reliability and durability of the axles and braking system.

Why Exempting JSC Would Be Consistent With the Public Interest and Objectives of Motor Vehicle Safety

JCS said that it is a leading provider of road sweepers to municipalities, airports, and the like, which benefits the public by helping to reduce health hazards ("air borne, on the ground and in run-off water"). The company believes that the fact that its sweepers are reliable, durable, and cost effective is also in the public interest.

The sweepers operate at average speeds of from 2 to 8 mph for approximately 80 to 90 percent of the time, "well below the limit requiring ABS brakes." JSC stated that its sweepers "have inherently safe braking (hydrostatic) since the retardation force applied is proportional to the tractive effort being applied, at the time."

Our Findings and Agreement With Johnston's Arguments

Well in advance of the effective date of the new requirements, Johnston found a supplier who would provide front and rear axle and brake assemblies compatible with ABS control systems. However, the supplier has decided not to produce the axle design agreed upon, and will not be able to provide an alternative axle until mid-1999. This last-minute change has prevented Johnston from complying with Standard No. 105 on March 1, 1999. The company has registered net losses in each of its past three fiscal years, and if it does not receive a temporary exemption, these losses can be expected to deepen.

Denial of its application would "have a measurable effect on its employment force" which numbers 170 persons, as well as reducing the number of sweepers available for the sanitary needs of municipalities. Although the sweepers are capable of highway speeds of up to 60 miles per hour, they are intended for use on city streets which are zoned for much lower speeds. The operating speeds average 2 to 8 miles per hour while the streets are being swept, below the level of effectiveness of ABS systems.

On the basis of the foregoing, we hereby find that a temporary exemption would be in the public interest and consistent with the objectives of traffic safety. We further find that compliance at this time would cause substantial economic hardship to a manufacturer that has tried in good faith to comply with the standard.

The Temporary Exemption

Accordingly, Johnston Sweeper Company is hereby granted NHTSA Temporary Exemption No. 99–4 from

S5.5 of 49 CFR 571.105 Standard No. 105, Hydraulic and Electric Brake Systems, expiring March 1, 2002, for its Model M4000.

Authority: 49 U.S.C. 30113; delegation of authority at 49 CFR 1.50.

Issued on: April 12, 1999.

Ricardo Martinez,

Administrator.

[FR Doc. 99–9706 Filed 4–16–99; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33721]

Norfolk Southern Railway Company and The Cincinnati, New Orleans & Texas Pacific Railway Company—Trackage Rights Exemption—Consolidated Rail Corporation, at Columbus, OH

Consolidated Rail Corporation (CRC) has agreed to grant overhead trackage rights [1] to Norfolk Southern Railway Company, on behalf of itself and its wholly owned subsidiary The Cincinnati, New Orleans & Texas Pacific Railway Company (collectively referred to as NS), over a total distance of approximately 5.4 miles of CRC's lines at Columbus, Franklin County, OH, as follows: (1) between approximately milepost CP–134.3, at Clintonville Connection, and the connection between the parties at approximately milepost 138.0, at CP 138 near Scioto, a distance of approximately 3.7 miles on CRC's Columbus Line; and (2) between approximately milepost 138.0, at CP 138, and approximately milepost 139.7, in the vicinity of Auburn Switch, a distance of approximately 1.7 miles on CRC's Cincinnati Line. [2]

The transaction is scheduled to be consummated on or after April 14, 1999.

The trackage rights will permit NS to move overhead traffic more safely, efficiently, and quickly through the Columbus area.

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

This notice is filed under 49 CFR 1180.2(d)(7). If it contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33721, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on James R. Paschall, Esq., Norfolk Southern Railway Company, Three Commercial Place, Norfolk, VA 23510–2191.

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

Decided: April 13, 1999.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 99–9741 Filed 4–16–99; 8:45 am]

BILLING CODE 4915–00–P

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition; Determination

AGENCY: United States Information Agency.

SUBJECT: Culturally Significant Objects Imported For Exhibition Determinations.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85–5 of June 27, 1985 (50 FR 27393, July 2, 1985). I hereby determine that the objects to be included in the exhibit "Cezanne to Van Gogh: The Collection of Doctor Gachet" imported from abroad for temporary exhibition without profit within the United States, is of cultural significance. These objects are imported pursuant to a loan agreement with the foreign lender. I also determine that the exhibition or display of the listed exhibit objects at the Metropolitan Museum of Art, New York, New York, from on or about May 17, 1999, to on or about August 15, 1999, is in the national interest. Public Notice of these determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Neila Sheaban, Assistant General Counsel, 202/619–5030, and the address is Room 700, U.S. Information Agency, 301 4th Street, SW., Washington, D.C. 20547–0001.

Dated: April 12, 1999.

Les Jin,

General Counsel.

[FR Doc. 99–9689 Filed 4–16–99; 8:45 am]

BILLING CODE 8230–01–M

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition Determinations: "Ringing Thunder: Tomb Treasures From Ancient China"

AGENCY: United States Information Agency.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, march 29, 1978), and Delegation Order No. 85–5 of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects to be included in the exhibit, "Ringing Thunder: Tomb Treasures from Ancient China," imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to a loan agreement with a foreign lender. I also determine that the exhibition or display of the list objects at the San Diego Museum of Art, San Diego, CA, from on or about June 12, 1999, to on or about August 29, 1999, is in the national interest. Public Notice of these determinations is ordered to be published in the **Federal Register**.

[1] These trackage rights extend a trackage rights arrangement previously exempted by the Board on a line between Columbus and Cincinnati, OH. *See Norfolk and Western Railway Company and The Cincinnati, New Orleans and Texas Pacific Railway Company—Trackage Rights Exemption—Consolidated Rail Corporation*, Finance Docket No. 32843 (STB served Jan. 24, 1996). The trackage rights will permit NS to utilize its newly constructed and more efficient Clintonville Connection.

[2] As part of the transaction approved by the Board in *CSX Corporation and CSX Transportation, Inc., Norfolk Southern Corporation and Norfolk Southern Railway Company—Control and Operating Leases/Agreements*, STB Finance Docket No. 33388 (STB served July 23, 1998) (Decision No. 89), NS was authorized to obtain trackage rights over the portion of the line between milepost CP–134.3 and milepost CP–138.0 and was authorized to operate over the portion of the line between milepost CP–138.0 and milepost CP–139.7. Thus, once NS acts on those authorizations, which the applicants in STB Finance Docket No. 33388 have projected to be on approximately June 1, 1999, the trackage rights included in this notice will no longer be required, but NS will continue to provide service over these lines after that date pursuant to the other authorizations in Decision No. 89.

FOR FURTHER INFORMATION CONTACT: For a copy of the list of exhibit objects and for further information, contact Ms. Lorie Nierenberg, Assistant General Counsel, Office of the General Counsel, 202/619–6084. The address is Room 700, U.S. Information Agency, 301 4th Street, SW, Washington, DC 20547–0001.

Dated: April 9, 1999.

Les Jin,

General Counsel.

[FR Doc. 99–9629 Filed 4–16–99; 8:45 am]

BILLING CODE 8230–01–M

Corrections

Federal Register
Vol. 64, No. 74
Monday, April 19, 1999

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

AGENCY FOR INTERNATIONAL DEVELOPMENT

48 CFR Part 715

[AIDAR Notice 98-1]

Miscellaneous Amendments to Acquisition Regulations

Correction

In rule document 99–6609, beginning on page 16647, in the issue of Tuesday, April 6, 1999, make the following correction:

PART 715 [CORRECTED]

On page 16648, in the third column, in amendatory instruction 5., in the 10th line, "715.370–" should read "715.370–1".

[FR Doc. C9–6609 Filed 4–16–99; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR 301

[REG-105564-98]

RIN 1545-AW86

Modifications and Additions to the United Partnership Audit Procedure Hearing Cancellation

Correction

Proposed rule document 99-8372 was inadvertently published in the Rules section of the issue of Tuesday, April 6, 1999, on page 16640. It should have appeared in the Proposed Rules section.

[FR Doc. C9–8372 Filed 4–16–99; 8:45 am]

BILLING CODE 1505–01–D

VOL
64
ISS
74
AP
19
1999
UMI

federal register

Monday
April 19, 1999

Part II

Department of Transportation

Federal Aviation Administration

14 CFR Part 108

Security of Checked Baggage on Flights Within the United States; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 108

[Docket No. FAA–1999–5536; Notice No. 99–05]

RIN 2120–AG51

Security of Checked Baggage on Flights Within the United States

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA is proposing that each certificate holder required under § 108.5 to adopt and implement an FAA-approved security program screen checked baggage or conduct passenger-to-bag matching for scheduled passenger operations within the United States when using an airplane having a passenger seating configuration of more than 60 seats. The security of checked baggage on domestic flights may be accomplished by screening the checked baggage of every passenger with FAA-certified explosives detection system (EDS) equipment, by 100% positive passenger bag matching (PPBM), or by utilizing the FAA-approved computer-assisted passenger screening (CAPS) system to select passengers whose checked baggage must be subjected to additional security measures. The checked baggage of CAPS selectees would be screened by EDS equipment, where available, or bag matching would be applied. These requirements for checked baggage on domestic flights are intended to prevent or deter the introduction of explosives or incendiary devices into the cargo holds of airplanes on flights within the United States. This proposal is necessary to provide a high level of security for domestic civil aviation.

DATES: Comments must be received on or before June 18, 1999.

ADDRESSES: Comments on this proposed rulemaking should be mailed or delivered, in duplicate, to: U.S. Department of Transportation Dockets, Docket No. FAA–1999–5336; 400 Seventh St., SW, Rm. Plaza 401, Washington, DC 20590. Comments may also be sent electronically to the following internet address: 9–NPRM–CMTS@faa.gov. Comments may be filed and/or examined in Room Plaza 401 between 10 a.m. and 5 p.m. weekdays, except federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Lon M. Siro, Aviation Security Specialist, Civil Aviation Security Office of Policy and Planning, ACP–100, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3414.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments, as they may desire. Comments relating to the environmental, energy, federalism, or economic impact that might result from adopting the proposals in this notice are also invited. Substantive comments should be accompanied by cost estimates. Comments must identify the regulatory docket or notice number and be submitted in duplicate to the Rules Docket address specified above.

All comments received, as well as a report summarizing each substantive public contact with FAA personnel on this rulemaking, will be filed in the docket. The docket is available for public inspection before and after the comment closing date.

All comments received on or before the closing date will be considered by the Administrator before taking action on this proposed rulemaking. Late-filed comments will be considered to the extent practicable. The proposals contained in this notice may be changed in light of the comments received.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must include a pre-addressed, stamped postcard with those comments on which the following statement is made "Comments to Docket No. FAA–1999–5336." The postcard will be dated, stamped, and mailed to the commenter.

Availability of NPRM's

An electronic copy of this document may be downloaded using a modem and suitable communications software from the FAA regulations section of the Fedworld electronic bulletin board service (telephone: 703–321–3339), the Federal Register's electronic bulletin board service (telephone: (202) 512–1661), or the FAA's Aviation Rulemaking Advisory Committee Bulletin Board service (telephone: (800) FAA–ARAC or (202) 267–5948).

Internet users may reach the FAA's web page at http://www.faa.gov/avr/arm/nprm/nprm.htm or the Federal Register's webpage at http://www.access.gpo.gov/su_docs/aces/aces140.html for access to recently published rulemaking documents.

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–9680. Communications must identify the notice number or docket number of this NPRM.

Persons interested in being placed on the mailing list for future NPRM's should request from the above office a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, that describes the application procedure.

Background

Over the past several years, the Federal Aviation Administration (FAA) has recognized that the threat against civil aviation has changed and grown. In particular, recent terrorist activities within the United States have forced the FAA and other federal agencies to reevaluate their assessment of the threat against civil aviation. For example, investigations into the February 1993 attack on the World Trade Center uncovered a foreign terrorist threat in the United States more serious than previously known. In addition, in 1995 a conspiracy was discovered involving Ramzi Ahmed Yousef and co-conspirators who intended to bomb twelve American airliners over the Pacific Ocean. This conspiracy showed that: (1) foreign terrorists conducting future attacks in the United States may choose civil aviation as a target, despite the many more easily accessible targets equally symbolic of America; (2) foreign terrorists have the ability to operate in the United States; and (3) foreign terrorists are capable of building and artfully concealing improvised explosive devices that pose a serious challenge to aviation security. In addition to threats posed by foreign terrorists, criminals operating within the United States also pose a threat. For example, the partial detonation of a bomb aboard American Airlines flight 444 while en route from Chicago to Washington, DC, in 1979, has been attributed to Theodore Kaczynski (known as "the Unabomber").

The serious consequences of an in-flight explosion were dramatically demonstrated on July 17, 1996, when Trans World Airlines (TWA) flight 800 crashed off the coast of Long Island, New York. While the Federal Bureau of Investigation (FBI) and the National Transportation Safety Board (NTSB) determined that this accident was not the result of a terrorist act, it did elevate concerns regarding the safety and security of civil aviation. This concern led to the formation of the White House

Commission on Aviation Safety and Security (the Commission).

The Commission made several recommendations that were published on February 12, 1997, in its "Final Report to President Clinton." In reviewing civil aviation security, the Commission stated that "the threat of terrorism is changing * * * it is no longer just an overseas threat from foreign terrorists. People and places in the United States have joined the list of targets, and Americans have joined the ranks of terrorists." The Commission indicated that aviation security would be enhanced by the use of sophisticated technology for determining the presence of explosives in checked baggage, such as use of explosives detection system (EDS) equipment. The Commission recommended that, until those machines are widely available, the FAA should implement bag matching, initially based on passenger profiling, by December 31, 1997, and that the FAA should develop an automated system for passenger profiling. (For the purposes of the discussion of the CAPS system in this NPRM, the terms "passenger profiling" and "passenger screening" are used interchangeably.) Because of the FAA's high degree of confidence in CAPS' ability to evaluate information from passenger name records and other passenger records already maintained by air carriers, as well as its confidence in CAPS' ability to identify the large majority of passengers who are not associated with a threat to a flight, the FAA concurs with the Commission's recommendations. In addition, due to the limited availability of EDS equipment and the significant operational and economic impacts that immediate compliance with the Commission's recommendations would have on the air carriers, the FAA has determined that a phase-in period is necessary. Security requirements for implementation of the Commission's recommendations are discussed below.

White House Commission Recommendations

Explosives Detection System (EDS) Equipment-The FAA defines an EDS machine as an automated device, or combination of devices, which has the ability to detect, in passengers' checked baggage, the amounts, types, and configurations of explosive materials likely to be used by terrorists to cause catastrophic damage to large aircraft. The term "automated" means that the system is able to detect explosive materials and does not depend exclusively on human skill, vigilance, or judgment. Because EDS equipment is capable of detecting the explosive materials used in bombs with minimal human intervention, the FAA has determined that it is highly effective and agrees with the Commission's contention that use of EDS equipment is preferable to other security measures for clearing checked baggage, including PPBM. The FAA and the Commission also agree that full deployment of EDS is not something that is operationally feasible in the near future, due to the limited availability of certified EDS equipment. Accordingly, the FAA believes use of EDS equipment should be phased in to eventually replace PPBM and other checked baggage security measures. For a further discussion of this alternative and others, see discussion under "Alternatives Considered by the FAA" below.

Bag Matching, Initially Based on Passenger Profiling—The Commission recommended that, until sophisticated technology for determining the presence of explosives in checked baggage is widely available, the FAA begin implementation of baggage matching, initially based on passenger profiling (discussed below), for domestic flights. The Commission stated, "this approach is the most effective methodology available now." Positive passenger baggage matching involves matching the passengers who have boarded the airplane to the baggage that was checked for carriage in the airplane's baggage compartment so that a passenger's checked baggage is flown only if he or she is aboard that airplane. Although 100% PPBM is currently performed on all international flights, pursuant to the International Civil Aviation Organization (ICAO) requirements, the FAA has not required PPBM on domestic flights except in periodic emergency situations. While civil U.S. flag aircraft have long been an attractive target of terrorists overseas, bombings of airliners within the United States have been extremely rare, even though the U.S. civil aviation system is the largest and most complex in the world. Over 500 million passengers (40 percent of all passengers in the world) enplane at U.S. airports and check approximately 750 million bags. In addition, 14 of the world's 20 busiest airports are in the United States.

As stated above, the FAA recognizes the changing threat to civil domestic aviation and believes that, in lieu of screening by EDS equipment, checked baggage must be properly matched to passengers on domestic flights. The FAA, however, also recognizes that, while ICAO standards may be appropriate for international flights, there are significant differences between domestic and international flights due to the varying levels of threat to them and the economic impact of additional security measures. These differences include: (1) the much greater number of domestic flights; (2) the use of an extensive and highly concentrated "hub and spoke" system, in which flights converge on a central connection point, and scheduled connection times may be 25 minutes or less; (3) the significantly earlier check-in time for international flights, which allows PPBM reconciliation delays to be kept to a minimum; and (4) the higher rate of last-minute passenger no-shows and cancellations on domestic flights, which could result in a greater number of passenger reconciliation and baggage-pull delays.

Automated Passenger Profiling—The Commission's recommendation that bag matching be implemented was linked to another recommendation that it be initially based on profiling of passengers flying out of airports located in the United States. As with manual profiling, the purpose of automated profiling is to exclude from the additional security measures the great majority of passengers who are very unlikely to present any threat and, conversely, to identify passengers to whom heightened security measures should be applied. Unlike manual profiling, however, automated profiling offers numerous advantages, including elimination of the potential perception of personal biases, greater sophistication, speed, accuracy, flexibility, and protection against compromise of sensitive security information. The Commission discussed a computer-assisted passenger screening (CAPS) system developed by the FAA and Northwest Airlines and recommended that the FAA implement an automated profiling system by December 31, 1997. On January 1, 1998, several air carriers voluntarily implemented CAPS, and most other carriers have since opted to implement it as well. The few carriers that have yet to complete the phase-in of CAPS are in the process of systemwide implementation.

In April 1997, in accordance with provisions of an FAA grant, the FAA and Northwest Airlines completed final programming changes to a prototype CAPS system, which, as noted above, Northwest Airlines and most other carriers have since implemented. The CAPS system was developed as a more feasible alternative to 100% checked baggage matching and EDS screening of all passenger baggage by narrowing the pool of passengers on whom additional security measures should be focused, thus effectively utilizing the currently limited supply of highly technical

screening equipment (e.g. EDS), and minimizing the operational impact of applying other passenger and checked baggage security measures, such as PPBM.

The CAPS system is based on the same concept as the manual screening system, which is designed to exclude from additional security measures the great majority of passengers who are unlikely to present any threat. There are many advantages to CAPS, however. One important advantage is that it does not rely on the judgment of individual airline employees to reduce the population of persons to whom heightened security measures should be applied. The automated system "scores" passengers according to a set of weighted criteria to determine which should be subjected to additional security measures. Automated screening excludes from heightened security measures the great majority of passengers about whom enough is known to determine confidently that they present no threat.

The use of a profile for the screening of passengers dates back to the mid-1970's when the FAA began using manual passenger screening to combat hijackings and to prevent explosives or incendiary devices from being placed aboard airplanes on international flights departing from the United States. Manual screening has also been used on domestic flights during periodic emergency situations. This screening relies on an employee of an air carrier to determine whether a passenger meets the profile that the employee has been trained to use. Because manual screening allows for more extensive human interaction between passengers and air carrier employees, it carries the potential that, even though the factors used in conducting manual screening are not biased, an employee's personal bias can be evident, regardless of whether a given passenger is a selectee or not. While manual screening has been a successful tool in combating hijackings and preventing the introduction of explosives or incendiary devices onto aircraft, it has been criticized by persons who perceived it as discriminating against citizens on the basis of race, color, national or ethnic origin, religion, and gender. It has also been criticized for causing embarrassment to selectees when fellow passengers became aware of his or her selectee status. Because a technological substitute for individual employee judgment has not been available until now, the FAA has continued to require, in emergency situations, manual passenger screening for determining the need to implement heightened security measures for checked baggage in order to combat the placing of explosives aboard aircraft.

The CAPS system would, in addition to selecting persons pursuant to the profiling standards, randomly select a limited number of passengers, as specified in air carriers' FAA-approved security programs, for heightened security measures. The FAA has determined, and the Commission has recommended, that random selection, which ensures that each passenger has a chance of being a selectee, has a deterrent value that would increase airline passenger security. It means that, even if an individual with criminal intentions believed he or she had figured out how to circumvent the CAPS system, the individual still would have a chance of being designated as a selectee. In addition, random selection helps to ensure passengers' civil liberties by guaranteeing that no individual or group of individuals is excluded from the selection process.

The CAPS system represents a significant improvement over the existing manual system. It uses a greater number of factors and permits combinations of sets of factors to determine passengers' status with greater confidence. In contrast, there are inherent limitations on the number and complexity of factors that an air carrier employee can apply. In addition, air carrier employees performing the manual process have a limited amount of time available to assess the factors and determine whether a passenger is a selectee. For these reasons, the number of factors in a manual process must be small and the rules for applying them must be simple. The CAPS system virtually eliminates the possibility of subjective selection and inadvertent or deliberate discrimination by airline employees, as they would not be asked to implement any selection process themselves. Finally, the CAPS system provides a more secure system, as only a few key airline employees (i.e., those who program the computers and implement computer program changes) are provided with selection criteria and their relative weights. Other air carrier employees need only be aware of the output generated by the computer programs, without being aware of the criteria. Manual screening, though controlled, may be more easily compromised, as details are contained in FAA Security Directives, which are available to many airline employees.

The CAPS system is also intended to minimize the overt identification of passengers selected for additional security procedures. The CAPS system operates off the computer reservation systems utilized by the major U.S. air carriers as well as some smaller carriers. The CAPS system relies solely on information that passengers presently provide to air carriers for reasons unrelated to security. It does not depend on the gathering of any additional information from air travelers, nor is it connected to any law enforcement or intelligence database. Pursuant to a recommendation by the Department of Justice, as part of the proposed rule, the FAA would periodically review the CAPS system and its profiling factors to assure that they continue to be reasonable predictors of threat. For operations covered under this proposed rule, CAPS would replace the manual screening system as a baseline security measure.

Funding for Implementation of White House Commission Recommendations—The FAA subsidized a substantial portion of the air carriers' cost for development of the core CAPS system. In addition to grants of approximately $3.1 million to Northwest Airlines for the development of the prototype CAPS system, consultation to the FAA, and technical support to other air carriers, the FAA spent an additional $7.4 million for the development of core CAPS for other air carriers. In total, the $10.5 million subsidy has benefited eight lead carriers (provided to six separate Computer Reservation Systems (CRS)), all carriers associated with the lead carriers (e.g., feeder carriers), plus 19 other regional and national carriers. In total, approximately 95% of domestic airline passengers are served by the carriers receiving FAA subsidies. Also, by the end of fiscal year 1998, the FAA will have spent $129 million for the purchase, installation, initial training, and first-year maintenance of advanced security screening equipment designed to detect explosives in checked baggage. This equipment, which will be deployed at airports in the United States, includes EDS machines (54 new and 3 upgrades), advanced technology (AT) equipment (22 of which are assessed by the FAA as effective), and other high-technology equipment such as explosives trace detection technologies used to assist in alarm resolution for EDS and AT equipment. The FAA intends, subject to Congressional approval, to purchase an additional 20 EDS machines during fiscal year 1998 for $25.1 million, and has requested additional funding of $100 million in fiscal year 1999 to continue purchases of advanced security equipment to be installed at U.S. airports. The FAA intends to

request appropriations at similar levels in fiscal years 2000 and later.

Alternatives Considered by the FAA

In developing this proposed rule, the FAA considered the relative merits and disadvantages of the following alternatives:

(1) Maintaining the current policy for security of checked baggage on domestic flights. To date, the FAA has required domestic checked baggage screening and PPBM only when a heightened threat exists. Domestic baseline security measures under normal conditions, though not requiring checked baggage screening and PPBM, have thus far been adequate to counter the domestic threat. However, as evidenced by events such as the World Trade Center bombing, the FAA believes that the threat to civil aviation within the United States has increased and further rulemaking is vital. Though maintaining current baseline security measures would be the least costly course of action, the FAA does not believe this option is prudent given the current domestic threat.

(2) Phasing in mandatory use of EDS (without requirement for CAPS). The FAA considered requiring carriers to use EDS as it becomes available to them for screening 100% of checked baggage, and not requiring CAPS for those that would be using EDS. EDS offers the highest level of security because it is an automated system. To be certified, the system must have the ability to detect in passengers' checked baggage, the amounts, types, and configurations of explosive materials likely to cause catastrophic damage to an aircraft. The term "automated" means that the ability of an EDS to detect explosive materials does not depend on human skill, vigilance, or judgment. Baggage that clears through EDS screening does not require additional security measures on subsequent flight segments. In keeping with the White House Commission's recommendations, it is the FAA's goal to phase in EDS for all flights that would be subject to this proposed rule, which would make continued use of the CAPS system unnecessary in the future; however, because of the limited availability of EDS equipment, this goal of all carriers using EDS for 100% of its flights cannot be implemented in the near future. Under the alternative scenario of requiring carriers that have EDS to use it and not use CAPS, carriers that do not have EDS would not be required to do anything beyond what they are currently required to do (manual profiling or PPBM during heightened threats) until they are provided with EDS equipment. While the FAA recognizes that this would be a less costly approach for the carriers waiting to acquire EDS equipment, it could provide an unfair competitive advantage to those carriers that have not been provided EDS because of the additional costs associated with maintaining and staffing the equipment. Also, there would be little improvement in the level of security during the early phase-in period when few terminal gates have any EDS equipment. Moreover, overall aviation security may be reduced during the early phase-in period because a terrorist could more easily figure out which carriers were using EDS and which were not.

(3) Requiring 100% PPBM of each carrier while phasing in mandatory use of EDS. Although 100% PPBM is required for international flights, the FAA has determined that this approach is not feasible for domestic flights, even though it may be an effective alternative while EDS is being phased in, because it would be too costly. Domestic flights differ from international flights from the United States in the following respects: (1) There are a greater number of domestic flights; (2) they are coordinated around a hub and spoke system; (3) passengers can check in as late as 10 minutes prior to a flight; and (4) there is a significant rate of last-minute passenger cancellations and no-shows. The FAA believes that the passenger would ultimately feel the negative impact of 100% PPBM because the availability and affordability of air transportation would be affected. The FAA's studies show that air carriers would lose on average one rotation per aircraft in service per day. The loss of flights would be due to longer time needed to load the baggage for each flight and cumulative delays when problems loading one flight impact on connecting flights. These operational burdens on air carriers would result in passengers paying more for tickets and getting fewer discount offers. While the FAA recognizes that this approach would also provide a high level of security, it does not believe that the significant operational and economic costs associated with 100% PPBM are justified. The FAA also does not consider performing 100% PPBM a good allocation of air carrier resources, as the vast majority of passengers who would be subjected to it would not pose a threat. In addition, since it is the FAA's goal to require the use of EDS equipment for all flights in the next 10 years, conducting 100% PPBM, which is not as effective as screening by EDS, would ultimately be phased out.

(4) Bag matching on randomly selected passengers while phasing in EDS. While this alternative could be more effective than continuing to rely on manual profiling, which still has value as a security measure even though its effectiveness has eroded, the FAA does not believe it would be practical. Deciding how small or large a percentage to require would be difficult. Screening too small a percentage of passengers would not provide an adequate level of security, and screening too large a percentage would result in the same kinds of inconveniences and delays described above under "Requiring 100% PPBM of each carrier while phasing in mandatory use of EDS." Even though the proposed rule would require that air carriers use an approved CAPS system that would be programmed to select some passengers at random, both as a deterrent and to ensure the nondiscriminatory application of CAPS, the use of an exclusively random selection process, even if it were done by computer and not manually, would not be a satisfactory security measure. The FAA therefore does not believe that it would be a good allocation of an air carrier's resources to conduct bag matching or EDS screening on the checked baggage of selectees chosen purely at random, as the vast majority of those selectees would not have posed any risk.

(5) Bag matching on passengers selected by CAPS with use of EDS, where available (the proposed rule). Until it is possible for air carriers to acquire and use EDS equipment for screening checked baggage on all scheduled operations subject to this rule, at which time the use of CAPS and PPBM would be replaced, the FAA believes that using CAPS to identify those passengers who possibly are a threat to the security of a flight and requiring bag matching or screening by EDS, when available, is the most practical and cost-efficient alternative currently available to increase the level of security on domestic flights. Using CAPS would enable air carriers to use already-existing data from reservations systems, eliminate the civil liberties concerns associated with manual passenger screening methods, and eliminate from consideration the majority of passengers who do not pose a threat to civil aviation. By limiting the pool of selectees to those who meet certain risk criteria, as opposed to those who are chosen randomly and most likely would not pose a threat, and subjecting only the checked baggage belonging to those selectees to bag matching, the air carriers would realize greater cost benefits than using the random method to identify selectees. While identifying selectees randomly or

by using CAPS would result in approximately the same cost to an air carrier, using the CAPS criteria would allow the carrier to concentrate its resources on clearing the baggage of passengers about whom there is insufficient information to confidently conclude that they pose no threat. For these reasons, the FAA has chosen this alternative as the basis for today's proposed rule.

(6) Performing bag matching on a limited number of CAPS selectees. This would be a modification of the proposed rule in that air carriers would use the CAPS system to determine a pool of selectees, but perform bag matching on only a portion of them. This would reduce the cost of implementing the regulations by keeping the pool of selectees as small as possible. However, this approach would offer a lower level of security and would essentially amount to reducing the value of the CAPS criteria.

For more detailed cost analyses of these alternatives, see the "Regulatory Evaluation Summary" below.

Discussion of the Proposed Rule

This proposal, if adopted, would amend part 108 (14 CFR part 108) to require each certificate holder required under § 108.5 to adopt and implement an FAA-approved security program to employ one of the following options—(1) use an FAA-approved CAPS system for each originating passenger checking baggage, then either use FAA-certified EDS equipment, where available, to screen the checked baggage of the CAPS selectee or conduct bag matching to ensure that the checked baggage of the CAPS selectee is not transported aboard an airplane unless that selectee is aboard the same airplane and flight; or (2) where CAPS is not used, conduct 100% EDS screening on checked baggage or 100% PPBM. This requirement would only be imposed on certificate holders that engage in operations with airplanes having a passenger seating configuration of more than 60 seats. Certificate holders that are engaged in operations with an airplane having a passenger seating configuration of 60 or fewer seats may choose to comply with this requirement, but they must adopt and implement an FAA-approved security program to do so.

Under the FAA-approved CAPS system, the checked baggage of the small percentage of passengers whom the CAPS system has identified as selectees would be subjected to screening by EDS or bag matching procedures would be applied. To further enhance the deterrence value of the system, the CAPS system would be required to also randomly select a small percentage of other passengers (the percentages to be specified in each air carrier's standard security program) whose checked baggage would be subjected to the same types of additional security measures as that of the other CAPS selectees. These additional security measures would include EDS, where available, or bag matching. The Department of Justice has reviewed the FAA's proposed CAPS system and found there to be no infringements on civil liberties (see discussion of "Civil Liberties Issues" below). For a more in-depth analysis of proposed rule, see discussion under "Section-by-Section Analysis" below.

Civil Liberties Issues

The Commission, while endorsing CAPS, recognized that care must be taken in implementing automated passenger profiling to ensure that there would be no infringements on the civil liberties of American citizens. Accordingly, the Commission convened a panel of civil liberties experts from outside the government to provide guidance. Based on the proposals made by this panel, the Commission made several recommendations, including that the Department of Justice (in consultation with other experts) review the FAA's proposed CAPS system prior to implementation "to ensure that selection is not impermissibly based on national origin, racial, ethnic, religious, or gender characteristics."

On October 1, 1997, following its review, the Department of Justice issued the "Report by the Department of Justice to the Department of Transportation on the Department's Civil Rights Review Conducted of the Federal Aviation Administration's Proposed Automated Passenger Screening System." In its report, the Department of Justice stated that its principal finding is that the FAA's proposed CAPS system will not discriminate on the basis of race, color, national or ethnic origin, religion, or gender. The Department of Justice went on to state the following:

- CAPS fully complies with the equal protection guarantee incorporated in the Fifth Amendment to the Constitution. CAPS will not impermissibly select passengers for heightened security measures on the basis of race, color, national or ethnic origin, religion, or gender.
- CAPS does not violate the Fourth Amendment prohibition on unreasonable searches and seizures. CAPS itself involves no "search" or "seizure;" nor does bag matching, pursuant to CAPS, occasion any "search" or "seizure." A search of a selectee's luggage pursuant to CAPS, such as by an EDS screening, is a permissible extension of the constitutional administrative search procedures that operate at U.S. airports today.
- CAPS does not involve any invasion of passengers' personal privacy. CAPS does not create any new database on passengers and is not linked to any database other than the existing airline computer reservation systems. CAPS selectee results will not be retained on a personally identifiable basis and the information used to calculate each CAPS result will not be retained on computer by the airline reservation systems.

In its report, the Department of Justice recommended that the Department of Transportation, with the Department of Justice, take five steps to further assure that airline passenger screening is implemented in a non-discriminatory and appropriate manner. The five recommendations are as follows:

1. The FAA should undertake regular, periodic reviews of CAPS (and any residual manual screening system) to ensure that the screening factors continue to be reasonable predictors of risk or the absence of risk;
2. The Department of Justice, with the assistance of the Office of the Secretary of Transportation and the FAA, should undertake a post-implementation review of CAPS (and any residual manual system), approximately one year after implementation begins, to ensure that selection in fact is not impermissibly being based on race, color, national or ethnic origin, religion, or gender, and should undertake additional reviews thereafter as appropriate;
3. The Office of the Secretary of Transportation and the FAA should expand their public education and outreach efforts to inform the American public about the purpose of airline passenger screening, as well as the right of passengers to file a complaint * * * if they believe they were the victim of discriminatory airline security procedures;
4. The FAA should require that domestic air carriers that implement CAPS (or any residual manual system) obtain pre-approval from the FAA before implementing any passenger screening system in addition to the screening procedures prescribed by the FAA, and the FAA should consult with the Department of Justice before approving any supplemental screening procedure; and
5. The FAA should require that air carriers implementing CAPS (or any residual manual system) establish procedures to ensure appropriate interactions between air carrier employees responsible for implementing passenger screening and airline passengers, and should provide appropriate training to these employees.

In conclusion, the Department of Justice report stated that the FAA's

proposed automated airline passenger screening system, as designed, would not infringe the civil rights or civil liberties of American citizens. In addition, the Department of Justice stated that the FAA has taken great care in designing CAPS so as to respect Americans' civil rights and civil liberties.

Finally, the Department of Justice stated that it would closely monitor the FAA's passenger screening procedures to ensure that they remain non-discriminatory.

Section-by-Section Analysis

Section 108.5 Security Program: Adoption and Implementation

This proposal would amend § 108.5 by requiring all holders of air carrier operating certificates, or holders of operating certificates for scheduled passenger operations, that engage in operations with an airplane having a passenger seating configuration of more than 60 seats, to comply with the provisions of proposed paragraph (a) of § 108.12 Security of checked baggage for operations within the United States. The proposal also allows other operators, where they operate under an FAA-approved security program, to comply with the provisions of § 108.12. Section 108.12, as more fully discussed below, would require the implementation of security measures for checked baggage on domestic flights by screening the checked baggage of every passenger with an FAA-certified EDS machine, by conducting 100% PPBM, or by utilizing an FAA-approved CAPS system for screening airline passengers and subjecting the selectees' checked baggage to screening by EDS equipment, where available, or bag matching.

While FAA-approved air carrier security programs, which implement § 108.9, require checkpoint security measures for the screening of passengers and their carry-on baggage to prevent or deter the introduction of deadly or dangerous weapons or incendiary devices carried aboard an aircraft by a passenger, the security programs prescribe limited measures to prevent the introduction of improvised explosive devices in checked baggage on flights within the United States, except in emergency situations. The FAA recognizes the potential danger associated with an increase in terrorism in the United States and the limited baseline domestic checked baggage security requirements to prevent or deter the introduction of explosives in checked baggage. This proposal addresses security measures for checked baggage.

Under this proposal, the FAA would require compliance with § 108.12 for all air carrier operations using aircraft with more than 60 passenger seats because the FAA has concluded that larger aircraft are at a significantly higher risk to terrorist attacks. Since air carriers with operations using aircraft with passenger seating configurations of 60 or fewer seats may also wish to comply with the provisions of § 108.12, the FAA has provided that as an option under this proposal. These operators would be required to adopt and implement a security program that includes provisions effecting compliance with § 108.12. Compliance with an FAA-approved security program would be required because the FAA believes that any carrier, regardless of the size of operation, that accepts the responsibility for conducting the important security measures for checked baggage on operations within the United States should also be accountable for other aspects of a security program related to the acceptance and control of checked baggage. For example, smaller operators with large interline partners, which use the same passenger reservation services, may decide to comply with § 108.12. This would include, but would not be limited to, ensuring that no unauthorized person has access to checked baggage once it has been subjected to security measures.

Section 108.7 Security Program: Form, Content, and Availability

This proposal would amend § 108.7 (b) to require that each air carrier's FAA-approved security program include a description of the procedures used to perform the checked baggage security functions specified in § 108.12 for scheduled passenger operations. This amendment is needed to ensure that each air carrier that adopts and implements an FAA-approved security program in accordance with § 108.5 would include the provisions for the security of checked baggage on flights within the United States.

Section 108.12 Security of Checked Baggage for Operations Within the United States

The FAA is proposing to amend part 108 by introducing a new section to address the security of checked baggage on flights within the United States. Under proposed § 108.12 (a), each air carrier required to adopt and implement a security program under § 108.5, would be required to apply the checked baggage security requirements of this section for scheduled passenger operations, in accordance with its security program, for flights within the United States. For each flight the air carrier would be required—(1) to apply a CAPS system approved by the Administrator for each originating passenger checking baggage; (2) to determine that the passenger associated with each originating checked bag is aboard the flight; or (3) that each originating bag not matched to a passenger aboard the flight has been screened by an FAA-certified EDS machine. To receive approval from the FAA, an air carrier's CAPS system would have to be capable of selecting passengers according to specific criteria (which had been assigned relative weights by the FAA) and at random, as provided in the air carrier's FAA-approved security program.

When compared to the screening of all checked baggage on flights within the United States by FAA-certified EDS equipment, or conducting 100% PPBM, the proposed rule would result in a much smaller percentage of passengers being subjected to additional security measures; however, the FAA believes at this time that performing 100% PPBM for operations within the United States is not an efficient use of air carrier resources because the majority of passengers who would be subjected to it would not pose a threat. In addition, implementation of 100% domestic PPBM would be impractical given the operational impact it would have. The FAA recognizes that 100% screening of all checked baggage on domestic flights by an FAA-certified EDS machine is not feasible in the near term, due to the limited availability of EDS equipment. The FAA views 100% screening or matching of checked bags on domestic flights as a reasonable long-term goal, but has determined that screening or matching based on CAPS will greatly strengthen the security of checked bags on domestic flights in the near term. Further, CAPS-based measures can be implemented without the time air carriers would need to attempt the 100% EDS screening or bag matching measures. Accordingly, this proposed rule would permit options for an air carrier to either subject all passengers to the FAA-approved CAPS system (with EDS screening of selectees' checked baggage or matching of selectees and their checked baggage), employ 100% checked baggage screening by EDS, or conduct 100% PPBM of passengers and their checked baggage for operations within the United States. The FAA has concluded, as did the Commission, that this proposal would provide the most effective methodology currently available for ensuring the security of checked baggage on domestic flights.

Proposed § 108.12 (b) would require that for each operation subject to proposed § 108.12 (a), the air carrier may not transport the checked baggage of a non-originating passenger, on-line or inter-line, unless: (1) the passenger is transported on the same airplane and flight; (2) the passenger associated with the checked baggage was screened by an FAA-approved CAPS system prior to an earlier flight or leg and information is available to the air carrier that the passenger was not selected for additional security measures; (3) information is available to the air carrier that the baggage was screened by an FAA-certified EDS machine prior to an earlier flight or leg; (4) the baggage is screened by an EDS machine prior to the current flight; or (5) the passenger is screened by an FAA-approved CAPS system for the current flight and, if selected, subjected to additional security measures (checked baggage screening by EDS or bag matching). The intended purpose of this proposed paragraph is to ensure that checked baggage on domestic flights would be adequately screened or matched regardless of where the baggage originated. For example, an air carrier may receive a non-originating inter-line transfer passenger whose checked baggage may not have been subjected to any screening requirements. This proposal would ensure that the non-originating inter-line transfer passenger's checked baggage would undergo checked baggage security requirements before being placed in the cargo compartment of the airplane. The FAA has determined that this proposed requirement is necessary to prevent explosive devices concealed in checked baggage transferred from earlier flights from being introduced into the holds of airplanes.

Proposed § 108.12 (c) would require that the checked baggage of a passenger selected by the CAPS system not be transported aboard the flight unless it had been screened by an FAA-certified EDS machine, where available, or had been matched to the selectee. The FAA is proposing under this paragraph to require the use of available EDS equipment for the screening of selectee checked baggage because EDS is highly effective in detecting explosives. To ensure that there is a consistent and realistic interpretation of when EDS is "available," proposed § 108.12 (d) provides a description of what constitutes EDS availability. The FAA recognizes that, because of the various factors that play a role in baggage make-up operations (e.g., the physical lay-out of an airport's facilities), a definition of "available" might be difficult to apply uniformly in this context. For this reason, the FAA seeks specific comments on whether the proposed definition of the term is a reasonable one. The proposed section provides that EDS is considered to be available to an air carrier for screening checked baggage when the equipment is—

(1) Under the operational control of the air carrier. The carrier that has operational control of EDS equipment is generally the air carrier to which the FAA has provided the equipment. This carrier is usually responsible for the testing, maintenance, and staffing of the machine; however, it may be possible for one carrier to share or accept operational control under a contractual agreement with another air carrier.

(2) Functioning properly. Carriers with operational control of EDS equipment are required by their FAA-approved security programs to conduct daily testing to ensure that the equipment is functioning properly. Once it is determined, either by carrier testing or by periodic FAA testing, that the EDS equipment is not performing in accordance with minimum EDS certification standards, it cannot be used for the screening of checked baggage until it is repaired or replaced.

(3) Located proximate to where the baggage is tendered by the passenger or along the route the baggage normally travels during the process of being loaded onto the aircraft. This is intended to avoid a situation where an air carrier would be required to use EDS equipment that is not easily and readily accessible to it, and where using it would result in significant operational delays. For example, for its current flight, an air carrier may be authorized to use EDS equipment which has been installed at a location at the airport that is not at or near the point of checked baggage acceptance, or in the baggage make-up area.

(4) Staffed by appropriately trained personnel. Staffing and training requirements for EDS screeners are described in the air carrier's FAA-approved security program.

(5) Not in use to screen other identified baggage such that a significant delay in a flight might result from having to wait to use the EDS to screen the bag. This description is intended to avoid a situation where EDS equipment meets all other descriptions for availability and is performing in accordance with minimum throughput requirements, but baggage cannot be processed quickly enough to avoid a significant flight delay. This might occur, for example, when several flights serviced by the same EDS are leaving at the same time, resulting in a severe backup of bags waiting to be processed through the same EDS.

In proposed § 108.12(e), the FAA would require that each air carrier establish procedures for implementing the screening of checked baggage under proposed § 108.12. The proposal would also require the air carrier to ensure nondiscriminatory application, and to reduce to the extent practicable the overt identification of passengers selected for additional security procedures.

In proposed § 108.12(f), the FAA would require that each person used by an air carrier to implement its CAPS system whose job function will be likely to involve interactions with passengers shall be trained on the CAPS system. The proposed training would include—(1) an overview of the purpose of screening, including an explanation that selection does not imply that a passenger is suspected of any illegal activity; (2) a general description of the CAPS system and how it is designed to select passengers on a non-discriminatory basis; (3) an advisory that the CAPS system selects some passengers at random; (4) an explanation that the CAPS system is not connected to any law enforcement or intelligence data base; and (5) instruction on treating passengers selected by the CAPS system in a respectful and non-stigmatizing manner. These proposed paragraphs are based on recommendations from the Department of Justice, as discussed previously in the "Civil Liberties Issues" section. The FAA has determined that these proposed measures are necessary to implement the Justice Department's recommendations and to assure that CAPS is implemented in a non-discriminatory and appropriate manner.

In proposed § 108.12(g), the FAA would require that an air carrier may not modify the criteria of the CAPS system, or their weighting, without the written approval of the Administrator. This proposed paragraph would also provide that an air carrier may not apply any supplemental system of passenger screening to select passengers for additional security measures without the approval of the Administrator. The FAA has determined that this proposal is necessary to ensure that no impermissible factors are used to select passengers for additional security measures. This proposal also ensures that there is standardization among air carriers utilizing an FAA-approved CAPS system for screening checked baggage (i.e., the same factors are used in profiling passengers).

In proposed § 108.12(h), the FAA would require that each air carrier make available to the Administrator the information specified in its security program on the operation of its CAPS system; however, the FAA anticipates that this information would not be routinely requested. In overseeing compliance with proposed § 108.12, the FAA would need to know which individuals were actually being selected by the CAPS system in order to ensure that members of specific ethnic groups were not being unfairly targeted and that selectee rates did not vary, for example, between carriers or regions. The FAA believes that this requirement would be necessary to protect the civil rights and liberties of individuals selected by the CAPS system. The proposal would further require that an air carrier dispose of any information linking a passenger's name or other personal identifying data to whether that passenger was selected by the CAPS system no sooner than 24 hours, but no later than 72 hours, after a flight's departure. By specifying data retention for a minimum of 24 hours after a flight departure, the FAA intends to ensure that it can, when necessary, obtain information in the course of investigating accidents or security incidents, overseeing air carrier security programs (i.e., that the CAPS system has been properly applied and implemented throughout each step of processing checked baggage), or monitoring the nondiscriminatory application of the CAPS system. The data retention limit of 72 hours after a flight departure is intended to ensure that no long-term database of personally identifiable information is kept.

While the FAA has set forth an all-selectee data retention limit of 72 hours after flight departure as its proposed rule under § 108.12(h), the Department of Transportation's Office of the Assistant General Counsel for Aviation Enforcement and Proceedings has requested that the FAA seek comments on whether information relating to random selectees should be retained for a more extended period (eg., 18 months) than information on non-random CAPS selectees. The Office of Aviation Enforcement and Proceedings is the office that investigates airline security-related discrimination complaints filed with the Department of Transportation. That office has advised the FAA that, while it could effectively investigate the application of the non-random CAPS selection process, it is concerned that there would be no basis upon which to make determinations regarding the appropriate application of the random CAPS selection process. The Office of Aviation Enforcement and Proceedings notes that typically a complaint is received, and the investigation takes place, three to nine months after a passenger's flight, and it is not reasonable to expect that the air carrier employee involved in a particular selection (even if that employee's identity could be established) would have recollection of the specific incident being investigated. To determine whether or not an air carrier employee or the CAPS system made a particular selection, a record of any random selection would be needed. The Office of Aviation Enforcement and Proceedings believes that, as long as the only CAPS selection data retained for an extended period of time concerned the purely random selections, there would be no infringement on passengers' privacy rights, while their civil rights would be better protected. The FAA therefore requests comments (including implementation and maintenance cost estimates) on the recommendations of Office of Aviation Enforcement and Proceedings.

Finally, in proposed § 108.12(i), the FAA would require that an air carrier receive approval from the Associate Administrator for Civil Aviation Security before it may apply alternate procedures from its security program for the security of checked baggage in special situations. As provided under this proposal, these special situations would include: (1) baggage acceptance at off-airport locations; (2) the transportation of bags separated from a passenger for reasons outside the control of the passenger (e.g., lost bags); (3) CAPS system failures; (4) extraordinary operational circumstances (e.g., natural disasters or extreme weather conditions); (5) the use of technologies or equipment other than EDS to screen checked baggage; and (6) any other situation specified by the Associate Administrator for Civil Aviation Security in the air carrier's security program. The FAA has determined that this proposed paragraph is needed to provide relief to an air carrier for special circumstances and during those extraordinary and emergency situations where the passenger and air carrier do not have control over the circumstances.

Paperwork Reduction Act

This NPRM, Security of Checked Baggage on Flights Within the United States, contains information collection requirements. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the FAA has submitted a copy of these proposed sections to the Office of Management and Budget (OMB) for its review.

The FAA expects that this proposed rule would affect 32 air carriers, and that the proposed rules under § 108.12 would impose additional reporting and recordkeeping requirements on those operators. This reporting and recordkeeping would be needed, when requested by the Administrator, as part of monitoring for the nondiscriminatory implementation of CAPS, accident and security incident investigations, oversight of air carrier SSP compliance, or evaluating personnel training records. Accordingly, it is estimated that all 32 affected air carriers would spend a total of 64 hours, in the first year, to provide compliance information, and 4,981 hours in all years to generate training information. Hence, there would be a total burden of 5,045 hours in the first year and 4,981 hours in all subsequent years. Over a ten-year period (2000–2009), the average estimated annual cost would be $827,678 per affected air carrier (a total of $26,485,695 for all 32 affected carriers). These cost figures are based on estimates provided in the FAA's "Regulatory Impact Analysis."

The FAA does not expect that there would be any additional record keeping burden on part 108 aircraft operators which either conduct 100% PPBM or use FAA-certified EDS equipment to screen checked baggage.

Organizations and individuals desiring to submit comments on the information collection requirements should do so by June 18, 1999. Comments should be directed to the Department of Transportation's rules docket (see **ADDRESSES** above). These comments should reflect whether the proposed collection is necessary; whether the agency's estimate of the burden is accurate; how the quality, utility, and clarity of the information to be collected can be enhanced; and, how the burden of the collection can be minimized.

International Compatibility

The FAA has determined that a review of the Convention on International Civil Aviation Standards and Recommended Practices is not warranted because the proposed rule would apply to domestic operations only.

Economic Evaluation Summary

This proposed rule is considered a significant regulatory action under section 3(f) of Executive Order 12866 and, therefore, is subject to review by the Office of Management and Budget. This proposed rule is considered significant under the regulatory policies

and procedures of the Department of Transportation (44 FR 11034; February 26, 1979).

Proposed and final rule changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980, as amended May 1996, requires agencies to analyze the economic effect of regulatory changes on small entities. Third, the Office of Management and Budget directs agencies to assess the effect of regulatory changes on international trade. In conducting these analyses, the FAA has determined that the proposed rule would generate benefits that justify its costs and is "a significant regulatory action" as defined in the Executive Order and the Department of Transportation Regulatory Policies and Procedures. The proposed rule will have a significant impact on a substantial number of small entities and will not constitute a barrier to international trade. In addition, this proposed rule does contain Federal intergovernmental or private sector mandates. Therefore, the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do apply. These analyses, available in the docket, are summarized below.

A. Costs

Although the proposed rule requires the use of EDS, where available, for screening the checked baggage of CAPS selectees, the FAA was unable to develop a cost of compliance due to the lack of information on how many EDS machines each air carrier would need at each airport. Since interpretation of "where available" may differ among air carrier operators, it becomes very difficult to estimate the potential cost of using EDS. As a result of this situation, the FAA estimated the cost of this proposed rule on the premise that all air carriers adopting CAPS would use baggage matching as the security measure. Baggage matching represents a worst case scenario in terms of costs.

This analysis has estimated the costs of the proposed rule by examining the incremental changes from the existing air carrier security regulations rather than from procedures required by emergency, temporary regulations. On occasion the FAA establishes security measures on an emergency basis, typically through limited duration Security Directives, to respond to specific or assessed threats. For the past several years, air carriers have been applying a manual passenger screening system, in most cases conducting bag matching on the checked baggage of passengers who were selected. At the time it was instituted, immediate implementation was deemed necessary to counter the then-prevailing security threat. These contingency measures are not permanent rules; accordingly, the FAA's analysis reflects the costs of instituting security measures beyond those required by permanent rules.

Costs for the bag matching implementation, operating, and delay portions of the proposed rule were based on estimates by SABRE Decision Technologies Group, South Lake, Texas (SABRE). SABRE based their costs on interpolation of data from a live study of the operational feasibility and cost impact of requiring 100% PPBM for part 108 aircraft operators. The proposed rule anticipates that only 5% of checked baggage would be subject to bag matching. In addition to SABRE, the National Center of Excellence in Aviation Operations Research (COE) assisted in the assessment of costs for this proposed rule. The FAA used cost data developed by SABRE as the potential maximum as the costs of the proposed rule. Cost estimates used in this analysis were based on SABRE's analysis of the aforementioned bag matching study. The data from the bag matching study included a wide diversion of cost experience by individual air carriers using procedures to accommodate all checked baggage. Substantially different and less expensive procedures with fewer delays and system-wide impacts may be applicable where bag matching is done for a pre-selected group of travelers. Descriptions of the potentially less costly implementation of the proposed rule are discussed in the FAA's forthcoming "Report to Congress: Domestic Bag Match Pilot Program."

1. Baggage Matching Costs

The proposed rule would impose an estimated cost of $2.8 billion ($2.0 billion, discounted) over the next 10 years in 1998 dollars, for baggage matching. This cost estimate is composed of two primary cost components: (1) Baggage Matching Startup and Operating Costs and (2) Baggage Matching Delay Costs. The manner by which costs for each of these two components were derived will be discussed in the following sections.

a. Baggage Matching Startup Costs. Based on cost information received from the SABRE Technologies Group (henceforth, referred to as "SABRE"), baggage matching startup costs for all impacted air carriers would amount to an estimated $217 million ($203 million, discounted) over the next 10 years. Startup costs consist of several components. First, there is initial training for gate agents, ramp personnel, and skycap personnel. Air carriers would be expected to train their airport personnel in order to ensure compliance with the proposed rule. This training would familiarize airport terminal personnel with the new requirements of baggage matching procedures for 5% passenger screening. At some airports, skycap personnel currently load passenger baggage on a conveyer belt in the curbside area. Under the proposed rule, air carriers would have to either train skycap personnel or use trained ticket agents to handle the checked baggage of those passengers selected by CAPS, in order to prevent this and other potential problems. Second, additional hardware would be needed. Hardware would primarily consist of additional boarding pass readers, communications equipment, barcode scanners, and magnetic strip readers. Third, equipment such as radios and carts would be needed. Fourth, some airport facilities would be changed. The ticket counter, curbside, and gate areas may be expanded as a means of accommodating the implementation of baggage matching requirements. Additional staffing would be needed, as would additional gate agents and ramp personnel to minimize the number of lost or mishandled baggage.

SABRE obtained aggregated startup costs of $141 million (in 1997 dollars; this estimate was subsequently updated to 1998 dollars using the GDP Implicit Price Deflator) from seven major air carriers. To estimate startup costs for the two major air carriers that did not report cost data, SABRE projected cost based on annual departures. SABRE believed this procedure would take into account the size of the air carriers' operations on startup cost. A simple average of the seven air carriers' costs would have significantly overstated or understated the startup costs for the two air carriers that did not report cost data. The startup cost rate for "majors" was $36.24 per departure. This estimate and all other cost estimates were updated to 1998 dollars. Moreover, this estimate was derived by dividing the startup costs of $141 million by the number of 1997 domestic departures for those seven major air carriers that participated in SABRE's survey.

For national and regional jet air carriers, the same startup rate of $36.24 per departure was used to estimate their startup costs. National and regional operators operate on a much smaller scale than the majors do. While the

assumed startup rate for national and regional jet operators may be higher than what they may actually incur, it is believed to provide a reasonable first approximation of startup costs for this group of operators.

For national and regional turboprop air carriers, a startup cost estimate of $2.82 per departure is used, as estimated by SABRE, based on an earlier report (March 1996) for 100 % PPBM for national and regional turboprop air carriers. This estimate of $2.82 was extrapolated by SABRE in a manner similar to that of the aforementioned startup cost estimate of $36.24, to reflect an estimate of baggage matching with a 5% selectee rate. Turboprop airplane operators conduct significantly smaller scale operations than the jet air carriers. In addition, turboprop airplane operators have fewer employees, lower wage rates, smaller airplanes, etc.

b. Baggage Matching Operating Costs (Excluding Delays). Baggage matching operating costs would impose an estimated $2.0 billion ($1.4 billion, discounted) over the next 10 years. This estimate is comprised of equipment and hardware costs ($360 million), staffing costs ($1.6 billion) and training costs ($9 million). It is based on cost information received from SABRE. Annual costs were derived by multiplying the cost for each component times the number of projected domestic departures for part 108 air carriers over the next 10 years and summing to an annual total.

The cost per departure for the major air carriers has been estimated to be $30.30. The national and regional jet air carriers would incur an estimated cost of $21.19 per departure. The turboprop air carriers within the "nationals and regionals" category would incur an estimated operating cost of $5.88 per departure for baggage matching. All per-departure rates are based on cost information received from SABRE. These estimates represent costs for recurring maintenance, staffing, and staff training for baggage matching requirements of the proposed rule for CAPS.

c. Baggage Matching Delay Costs. Baggage matching delay costs would impose an estimated $467 million ($323 million, discounted) over the next 10 years (this cost is equal to 0.1% of the delay costs incurred by the entire air carrier system on an annual basis). These costs consist of local air carrier delays ($298 million), downstream delays ($135 million), passenger missed connections ($19 million), and extended operating days ($16 million). These costs, which are based on information received from SABRE, were derived by multiplying the cost per departure for each delay component times the number of projected annual domestic departures over the next 10 years and summed. The total delay cost per departure for the major, national and regional jet air carriers would be an estimated $6.85. For the national and regional turboprop air carriers, it would be an estimated cost of $1.18 per departure.

The baggage matching delay cost estimates are from the SABRE Decision Technologies Group's Dependability Predictor Model (DPM). The DPM is a proprietary simulation model that was developed for use by a major airline. The DPM analyzes schedule performance for a typical day by focusing on delays that could affect the scheduled operations. The model uses historical data distributions for gate delays (ramp service, passenger service, mechanical delays, air traffic control (ATC) gate holds, etc.) and block time delays to simulate the movement of each flight within the schedule.

While cost information has been received from SABRE, which was extrapolated from a sample of air carriers, the FAA believes there is still uncertainty associated with the estimates for startup, operations, and delay costs for major, national and regional air carriers. As the result of this uncertainty, the FAA solicits comments from the aviation industry on startup, operating, and delay costs for compliance with the baggage matching procedures portion of this proposed rule.

2. CAPS Program Costs

Part 108 air carriers expected to install CAPS on their computer reservation systems (CRS's) as the result of this proposed rule, would incur an estimated compliance cost of $70 million ($51 million, discounted) over the next 10 years, in 1998 dollars, $8 million from the federal government. This cost estimate can be further subdivided between those costs that air carriers would incur in their first year (2000), at approximately $18 million ($16 million, discounted). The cost of compliance for subsequent years (2001–2009) would amount to an estimated $52 million ($35 million, discounted).

The individual cost components for the first year include software design and construction, system testing, system implementation, additional capacity for Department of Justice inquiries into how the air carriers are complying with Department of Justice recommendations, and check-in personnel training costs. Subsequent year cost components include hardware and software maintenance, additional capacity for responding to Department of Justice inquiries, and recurrent check-in personnel training. The FAA has estimated these component costs for each impacted air carrier for 1997. In the discussion below, these components are expressed in terms of per-departure costs to be consistent for all the other costs discussed in this analysis are expressed in terms of per-departure costs. The agency has also determined that the best way to project future costs would be to calculate the per-departure costs. These per-departure costs are then multiplied by total departures to calculate costs for the years covered by this analysis.

The entire CAPS program is made up of three components. These three components include the computer program, the individualized screens that would be unique to each air carrier, and the data gatherer. All air carriers could obtain the necessary licenses from the FAA to use the computer program free of charge; however, all air carriers would incur costs modifying both the interface between CAPS and the rest of the system and the individualized screens for their specific needs.

To establish CAPS on their CRS's, air carriers have three viable options. These options include joining other air carriers' CRS's, building their own CAPS systems, and using part of the existing CAPS and revising other portions. The first option would be the least costly, while the middle option would be the most costly. Air carriers that would adopt this costly option would be those whose computers would not accept the original source code developed for CAPS or would want more privacy due to proprietary data.

The U.S. Congress has appropriated $8.0 million to the FAA to pay for the necessary software, hardware, and other costs needed to get the CAPS program up and running (this does not include the $2.5 million that the FAA had awarded to Northwest Airlines to develop CAPS). The FAA has established an Integrated Product Team (IPT) to work with the air carriers to determine their individual needs. The cost estimates gathered by the IPT were used by the FAA in this analysis to help determine first-year implementation costs for the following components: software design, system testing, and system implementation. For this analysis, the FAA divided the total costs among these components for all air carriers by the total number of departures to obtain the per-departure costs at $1.81, $0.13, and $0.10, respectively. Due to the need to keep records for Department of Justice inquiries, each air carrier would need to add additional computer capacity; the

per-departure cost for this added capacity is estimated to be $0.34. In addition, all check-in personnel would need training; the per departure cost for this training is estimated to be $0.33.

Each air carrier would have hardware and software maintenance costs in the subsequent years, and the software costs would depend on which of the aforementioned CAPS options the air carrier had chosen. The cost per departure for hardware and software maintenance is estimated to be $0.39. Meanwhile, the per-departure costs for the Department of Justice inquiries and training are $0.05 and $0.33, respectively. Hence, first year costs sum to $2.71 per departure, while subsequent year costs sum to $0.77 per departure.

For both the CAPS and baggage matching, the proposed rule would impose total compliance costs of $2.8 billion ($2.0 billion, discounted), over 10 years. This estimate is composed of the following components:

- Baggage Matching Startup Costs:
  $217 million ($203 million, discounted)
- Baggage Matching Implementation and Operating Costs:
  $2.0 billion ($1.4 billion, discounted)
- Baggage Matching Delay Costs:
  $467 million ($323 million, discounted)
- CAPS Program Implementation and Operating Costs:
  $70 million ($51 million, discounted)

The FAA expects that the total cost of compliance of $2.8 billion may represent a potential maximum cost estimate. Estimating the economic cost that this proposed rule would impose on airlines and passengers was a difficult undertaking, as suggested by the wide range of estimates that different airlines provided. As mentioned above, in addition to SABRE, COE assisted in the assessment of costs for this proposed rule. Because implementation of domestic baggage matching based on a passenger screening process such as CAPS was not the subject of any live tests, COE believes that substantial economies may be achieved by airlines beyond the experience of a live bag matching test that was conducted in the spring of 1997 and "a priori" estimates supplied by individual airlines. COE projected that the proposed rule would cost between $500 million (based on 7 cents per passenger enplanement) and $2.5 billion (based on 36 cents per passenger enplanement) over the next decade. In addition, according to COE, as part of a follow-up to the live test conducted for passenger baggage matching, air carriers stated that the costs they provided were overstated by at least 33%. This assessment is based on the fact that air carriers now have a much better idea how they would implement 100% PPBM if they were required to do so by regulation. Based on this information, coupled with the fact that there is some uncertainty as the result of the interpolation technique used by SABRE and COE to estimate costs, the FAA solicits comments from the aviation community as to the accuracy of this assessment of costs.

B. Benefits

The primary benefits of the proposed rule would be in significantly increased protection from terrorism for U.S. citizens and others traveling on U.S. domestic air carrier flights. Specifically, the proposed rule is aimed at deterring terrorism by preventing explosives from being placed on board commercial flights in checked baggage.

Terrorism can occur within the United States. Members of foreign state-sponsored terrorist groups and radical fundamentalist elements from many nations are present in the United States. In addition, Americans are joining terrorist groups. The activities of some of these individuals and groups go beyond fund-raising to recruiting other persons (both foreign and American) for activities that include training with weapons and making bombs. These extremists operate in small groups and can act without guidance or support from state sponsors. This makes it difficult to identify them or to anticipate and counter their activities. The following discussion outlines some of the concrete evidence of the increasing terrorist threat within the United States and to domestic aviation.

Investigation into the February 1993 attack on the World Trade Center uncovered a foreign terrorist threat in the United States that is more serious than previously known. The World Trade Center investigation disclosed that Ramzi Yousef arrived in the United States in September 1992 and presented himself to immigration officials as an Iraqi dissident seeking asylum. Yousef and a group of Islamic radicals in the United States then spent the next five months planning the bombing of the World Trade Center building and other acts of terrorism in the United States. Yousef returned to Pakistan on the evening of February 26, 1993, the same day that the World Trade Center bombing took place. Yousef traveled to the Philippines in early 1994, and by August of the same year had conceived a plan to bomb as many as twelve U.S. air carriers flying between East Asian cities and the United States.

Yousef and co-conspirators Abdul Murad and Wali Khan tested the type of explosive devices to be used in the aircraft bombings, and in December 1994 they demonstrated the group's ability to assemble such a device in a public place by bombing a Manila theater. Later in the same month, the capability to get an explosive device past airport screening procedures and detonate it aboard an aircraft also was successfully tested when a bomb was placed by Yousef aboard the first leg of Philippine Airlines Flight 424 from Manila to Tokyo. The device detonated during the second leg of the flight, after Yousef had deplaned at an intermediate stop in the Philippine City of Cebu.

Preparations for executing the plan were progressing rapidly; however, the airliner bombing plot was discovered in January 1995 only by chance after a fire led Philippine police to the Manila apartment where the explosive devices were being assembled. Homemade explosives, batteries, timers, electronic components, and a notebook full of instructions for building bombs were discovered. Subsequent investigation of computer files taken from the apartment revealed the plan in which five terrorists were to have placed explosive devices aboard United, Northwest, and Delta airline flights. In each case, a similar technique was to be used. A terrorist would fly the first leg of a flight out of a city in East Asia, plant the device aboard the aircraft and then get off at an intermediate stop. The explosive device would then destroy the aircraft as it continued on the subsequent leg of the flight to the United States. It is likely that thousands of passengers would have been killed if the plot had been successfully carried out.

Yousef, Murad and Khan were arrested and convicted in the bombing of Philippine Airlines Flight 424 and in the conspiracy to bomb U.S. airliners. Yousef was sentenced to life imprisonment for his role in the Manila plot, while the two other co-conspirators have been convicted. Yousef also was convicted and sentenced to 240 years for the World Trade Center bombing. However, there are continuing concerns about the possibility that other conspirators remain at large. The airliner bombing plot, as described in the files of Yousef's laptop computer, would have had five participants. This suggests that, while Yousef, Murad and Khan are in custody, there may be others at large with the knowledge and skills necessary to carry out a similar plot against civil aviation.

The fact that Ramzi Yousef was responsible for both the World Trade Center bombing and the plot to bomb as many as twelve U.S. air carrier aircraft

shows that: (1) foreign terrorists are able to operate in the United States, and (2) foreign terrorists are capable of building and artfully concealing improvised explosive devices that pose a serious challenge to aviation security. This, in turn, suggests that foreign terrorists conducting future attacks in the United States may choose civil aviation as a target. Civil aviation's prominence as a prospective target is clearly illustrated by the circumstances of the 1995 Yousef conspiracy. The bombing of a federal office building in Oklahoma City shows the potential for terrorism from domestic groups. While the specific motivation that led to the Oklahoma City bombing would not translate into a threat to civil aviation, the fact that domestic elements have shown a willingness to carry out attacks resulting in indiscriminate destruction is worrisome. At a minimum, the possibility that a future plot hatched by domestic elements could include civil aircraft among possible targets must be taken into consideration. Thus, an increased threat to civil aviation exists and needs to be prevented and/or countered from both foreign sources and potential domestic ones.

That both the international and domestic threats have increased is undeniable. While it is extremely difficult to quantify this increase in threat, the overall threat can be roughly estimated by recognizing the following:

- U.S. aircraft and American passengers are good representatives of the United States, and therefore are appealing targets;
- Up to 12 airplanes could have been destroyed in the actual plot described above, and thousands of passengers killed (while the proposed rule would not have prevented the plot described above, this plot is representative of the type and seriousness of the threat that this proposed rule is trying to prevent);
- These plots came close to being carried out; it was only through a fortunate discovery and tighter security after the discovery of the plot that these incidents were thwarted;
- It is just as easy for international terrorists to operate within the United States as domestic terrorists, as evidenced by the World Trade Center bombing; therefore
- Based on these facts, the increased threat to domestic aviation could be seen as equivalent to some portion of 12 Class I Explosions on U.S. airplanes. (The FAA defines a Class I Explosion as an incident that involves the loss of an entire aircraft and incurs a large number of fatalities.)

In 1996, both Congress and the White House Commission on Aviation Safety and Security recommended further specific actions to increase aviation security. The White House Commission stated that it believes that the threat against civil aviation is changing and growing, and recommended that the federal government commit greater resources to improving civil aviation security. President Clinton, in July 1996, declared that the threat to aviation of both foreign and domestic terrorism is a national threat. The U.S. Congress recognized this growing threat in the Federal Aviation Reauthorization Act of 1996 by: (1) authorizing money for the purchase of specific anti-terrorist equipment and the hiring of extra civil aviation security personnel; and (2) requiring the FAA to promulgate additional security-related regulations.

The cost of a catastrophic terrorist act can be estimated in terms of lives lost, property damage, decreased public utilization of air transportation, etc. Terrorists acts can result in the complete destruction of an aircraft with the loss of all on board.

In the absence of increased protection for the U.S. domestic passenger air transportation system, it is conceivable that the system would be targeted for future acts of terrorism. If even one such act were successful, the traveling public would demand immediate increased security. Providing immediate protection on an ad hoc emergency basis would result in major inconveniences, costs, and delays to air travelers that may substantially exceed those imposed by the planned and measured steps contained in this proposal.

Based on the above statement, and after evaluating feasible alternative measures, the FAA concludes that this proposed rule sets forth the best method to provide increased security at the present time. Notwithstanding the above, it is helpful to consider, to the limited extent possible, the benefits of this proposal in reducing the costs associated with terrorist acts to the threat level and other factors. The following analysis describes alternative assumptions regarding the number of terrorist acts prevented and potential market disruptions averted that result in the proposed rule benefits at least equal to the proposed rule costs. This is intended to allow the reader to judge the likelihood of benefits of the proposed rule equaling or exceeding its cost.

The FAA considers a Boeing 737 as representative of a typical airplane flown domestically. It flies with an average load factor of 64.7%, which translates into 73 passengers per flight; the airplane would also have two pilots and three flight attendants.

A terrorist catastrophic incident could also result in fatalities on the ground. There were 11 such fatalities in the Pan Am 103 explosion and 15 fatalities in a collision of an AeroMexico airplane with a Piper PA–28 airplane over Cerritos, California in 1986. However, looking at the number of accidents including aircraft covered by this proposed rule and the number of fatalities on the ground over the last ten years, the average fatality was less than 0.5 persons per accident. Therefore, the FAA will not assume any ground fatalities in this analysis.

In order to provide a benchmark comparison of the expected safety benefits of rulemaking actions with estimated costs in dollars, the FAA currently uses a value of $2.7 million to statistically represent a human fatality avoided. Applying this value, the total fatality loss of a single Boeing 737 is represented by a cost of $210.6 million (78 x $2.7 million).

Quantified undiscounted estimated costs of a single domestic Class I Explosion on civil aviation are summarized on Table 1.

TABLE 1.—COSTS OF A DOMESTIC CLASS I EXPLOSION

[1998 Dollars]

	Number	Value	Total cost
Fatalities	78	$2,700,000	$210,600,000
Aircraft	1	16,500,000	16,500,000
Property	1	12,508,028	12,508,028
Investigation	1	28,640,637	28,640,637
Legal Fees	.....	3,569,383	3,569,383
Total	.....	.....	271,818,048

TABLE 1.—COSTS OF A DOMESTIC CLASS I EXPLOSION—Continued

[1998 Dollars]

	Number	Value	Total cost
Total, discounted	.....	.....	190,908,689

Source: U.S. DOT, FAA, APO–310, March 1999.

Certainly the primary concern of the FAA is preventing loss of life, but there are other considerations as well. Another large economic impact is related to decreased airline travel following a terrorist event. A study performed for the FAA by Pailen-Johnson Associates, Inc., *An Econometric Model of the Impact of Terrorism on U.S. Air Carrier North Atlantic Operations*, indicated that it takes about 9 to 10 months for passenger traffic to return to the pre-incident level after a single event. Such a reduction occurred immediately following the destruction of Pan Am Flight 103 over Lockerbie, Scotland in December 1988. In general, 1988 enplanements were above 1987's. There was a dramatic fall-off in enplanement in the first 3 months of 1989 immediately following the Pan Am 103 tragedy, and it took until November 1989 for enplanements to approximate their 1987 and 1988 levels.

Trans-Atlantic enplanements increased, from 1985 to 1988, at an annual rate of 10.7 percent. Projecting this rate to 1989 would have yielded 1989 enplanements of 8.1 million, or 1.6 million more than Pan Am actually experienced. This represents almost a 20 percent reduction in expected enplanements caused by the destruction of Pan Am. 103 by terrorists.

The estimated effect of a successful terrorist act on the domestic market has not been studied. Although there are important differences between international and domestic travel (such as the availability of alternative destinations and means of travel), the FAA believes that the traffic loss associated with international terrorist acts is representative of the potential domestic disruption.

There is a social cost associated with travel disruptions and cancellations caused by terrorist events. The cost is composed of several elements. First is the loss associated with passengers opting not to fly—the value of the flight to the passenger (consumer surplus) in the absence of increased security risk and the profit that would be earned by the airline (producer surplus). Even if a passenger opts to travel by air, the additional risk may reduce the associated consumer surplus. Second, passengers who cancel plane trips would not purchase other goods and services normally associated with the trip, such as meals, lodging, and car rental, which would also result in losses of related consumer and producer surplus. Finally, although spending on air travel would decrease, pleasure and business travelers may substitute spending on other goods and services (which produces some value) for the foregone air trips. Economic theory suggests that the sum of the several societal value impacts associated with canceled flights would be a net loss. As a corollary, prevention of market disruption (preservation of consumer and producer welfare) through increased security created by the proposed rule is a benefit.

The FAA is not able to estimate the actual net societal cost of travel disruptions and the corollary benefit gained by preventing the disruptions. However, there is a basis for judging the likelihood of attaining benefits by averting market disruption sufficient, in combination with safety benefits, to justify the proposed rule. The discounted cost of this proposed rule is $2.0 billion, while the discounted benefits for each Class I Explosion averted (from Table 7) comes to $190 million. Hence, if only 1 Class I Explosion is averted, the present value of losses due to market disruption must at least equal $1.8 billion ($2.0 billion less $190 million—one Class I Explosion). If two Class I Explosions are averted, the value of the market losses must at least equal $1.6 billion ($2.0 billion less 2 times $190 million).

The value of market loss averted is the product of the number of foregone trips and the average market loss per trip (combination of all impacts on consumer and producer surplus). If one uses an average ticket price of $160 as a surrogate of the combined loss, preservation of 11.2 million lost trips would be suffered, in combination with the safety benefits of 1 averted Class I Explosion, for the benefits of proposed rule to equal costs. This represents 3 percent of annual domestic trips (the traffic loss caused by Pan Am 103 on trans-Atlantic routes was 20 percent). Calculations can be made on the number of averted lost trips needed if the net value loss was only 75 percent of the ticket price or exceeded the ticket price by 25 percent. If total market disruption cost was $130 or $200 per trip, retention of 13.8 and 9.0 million lost trips, respectively, would need to occur for the proposed rule benefits to equal the proposed rule costs, assuming 1 Class I Explosion would be prevented. The FAA requests comments on the potential size of market loss per trip and number of lost trips averted.

Table 2 presents combinations of the total number of trips not taken as a result of one to four Class I Explosions at alternative values per lost trip that would be sufficient to generate monetized benefits in excess of the estimated proposed rule costs.

TABLE 2.—NUMBER OF TRIPS NOT TAKEN AS A RESULT OF ONE TO FOUR CLASS I EXPLOSIONS AVOIDED

[For Benefits to Equal Costs]

Number of class I explosions avoided	Assumed net market loss per trip (in 1998 dollars)		
	$130 (million)	$160 (million)	$200 (million)
1	13.8	11.2	9.0
2	12.2	10.0	8.0
3	10.9	8.8	7.1
4	9.4	7.6	6.1

Source: FAA, APO–310, March 1999.

The FAA stresses that the range of trips not taken in Table 2 is shown for illustrative purposes and does not represent an explicit endorsement that these would be the exact number of trips that would actually be lost. As noted above, it is important to compare, to the limited extent possible, the cost of this proposal to some estimate of the benefit of increased security it would provide as that level of security relates to the threat level.

Based on the White House Commission recommendation, recent Congressional mandates and the known reaction of Americans to any air carrier disaster, the FAA determines that pro-active regulation is warranted to prevent terrorist acts (such as Class I Explosions) before they occur.

C. Analysis of Alternatives to the NPRM

The proposed rule is a "significant regulatory action" as defined by Executive Order 12866 (Regulatory Planning and Review) because it would impose costs exceeding $100 million annually. The Executive Order requires that agencies proposing significant rules

provide an assessment of feasible alternatives to their respective rulemaking actions. In addition, the Executive Order requires that an explanation of why the proposed rule, which is significant, is preferable to the identified potential alternatives. In the following discussion, FAA provides an assessment of six alternatives, with Alternative Number Five being chosen as the proposed rule:

1. The Status Quo

This alternative would maintain the status quo. Currently, the FAA mandates manual passenger screening or baggage matching based on this screening only in situations where the FAA has determined that a heightened security threat exists. Manual passenger screening is performed on a contingency basis when the FAA issues Security Directives (SD's). Security Directives are temporary conditions, which are considered part of the status quo. While costs are incurred to implement manual passenger screening whenever a threat exists, they are not considered permanent costs because they are associated with procedures required by emergency, temporary rules. The FAA believes that the threat to civil aviation within the United States has increased and further rulemaking is necessary.

2. Phasing In the Mandatory Use of Explosives Detection System (EDS) (Without Requirement for CAPS)

Alternative Two would phase in the mandatory use of EDS over a 10-year period of time, at a rate of 10% per year. By the end of the first year, approximately 10% of all passengers and baggage would be covered, by the end of the second year, 20% of all passengers and baggage would be covered, etc. Under Alternative Two, air carriers without EDS would be required to continue performing their status quo security procedures until they are provided with EDS equipment. Over 10 years, total EDS costs sum to $2.1 billion ($1.4 billion, discounted).

In terms of benefits, EDS equipment offers the highest level of security against explosives being stored in the cargo compartments of airplanes. Explosives detection system equipment is able to examine all baggage as it passes through on a conveyor belt. Baggage that clears on the first leg of travel does not require re-examination with subsequent transfers to other flights or other air carriers.

Alternative Two would, over the initial 10-year period, probably provide, on average, less benefits than the proposal. In the first year, only 10% of the passengers and baggage would be covered, so only 10% of the potential increase in overall security (and hence, benefits) associated with EDS would be attained. Only during the tenth year would there be full augmentation of EDS, and attainment of the full increase in security (and hence, benefits) associated with EDS. Averaging these increases over 10 years yields only 55% of the full EDS benefit. This contrasts with the proposed rule where each year there would be the full attainment of benefits.

The FAA believes that where it is applied, EDS would be more effective than the proposal; however, the benefits of complete EDS implementation would need to be roughly twice that of the proposal for Alternative Two to be superior.

A goal of all carriers using EDS for 100% of its flights cannot be realized immediately due, among other reasons, to the lack of production capability. This lack of full EDS coverage would lead to a window of vulnerability as only some flights would be covered. Under Alternative Two, the step-by-step annual improvements in the level of security would lead to a bifurcated security program. The public would realize that some flights would be safer than others. Terrorists may be able to determine which flights were cleared by EDS and act accordingly, potentially resulting in an airplane explosion. The FAA rejects Alternative Two on the basis that it would provide an unacceptable level of risk higher than the proposed rule.

3. Requiring 100% PPBM of Each Carrier While Phasing In Mandatory Use of EDS

Alternative Three would supplement the EDS required in Alternative Two by requiring 100% PPBM for those flights until EDS becomes available. Hence, the first year would have 10% of the passengers and baggage covered by EDS and 90% by baggage matching, etc., until the tenth year which would have 100% of the passengers and baggage covered by EDS.

This alternative would combine the costs of EDS with the costs of those flights on which full baggage matching is used. Over 10 years, total EDS costs sum to $2.1 billion ($1.4 billion, discounted). The costs of baggage matching portion of this alternative would be $4.6 billion ($3.7 billion, discounted), with total 10-year costs for Alternative Three at $6.7 billion ($5.0 billion, discounted).

Alternative Three would yield the highest level of security of any of the alternatives considered; however, this alternative could produce major operational obstacles. Large numbers of domestic flights are scheduled around a hub and spoke system. Under this alternative, a 100% PPBM alternative would probably result in substantial flight delays due to the unloading of unmatched baggage. These initial delays would impact and delay some connecting flights. This action would result in a daily ripple effect, which would get worse as the day wore on. These operational burdens on air carriers would result both in fewer flights and passengers paying more for tickets. Facility requirements for each passenger on each flight of a combined passenger bag match/EDS system could overload the existing system; the space and time required for screening all checked baggage by EDS could cause severe congestion at existing airport facilities.

The FAA has very high confidence in the effectiveness of the proposed rule in terms of countering the current threat. It believes that most of the current threat could be successfully countered through the implementation of CAPS. Alternative Three would be more effective in countering the threat, but the FAA does not believe that the incremental increase in security provided by Alternative Three is worth the additional cost of this alternative, which is about $4 billion more than the proposed rule.

4. Baggage Matching on Randomly Selected Passengers While Phasing In EDS

Like Alternatives Two and Three, Alternative Four would move towards a security system based on EDS screening. Random selection, rather than CAPS, would determine which passengers would be subjected to baggage matching.

The FAA believes, for analyzing this alternative, that a 10% screening rate would be a believable and effective random rate to provide deterrence to terrorists. Explosives detection systems would be phased in, such that, for the first year, 10% of the passengers and baggage would be subject to the full use of EDS and 90% to this reduced (10%) screening rate of baggage matching, etc. Ten-year costs for the partial baggage matching portion of this scenario would be $1.4 billion (net present value, $1.1 billion). With total EDS costs at $2.1 billion ($1.4 billion, discounted), total 10-year costs for this alternative sum to $3.5 billion ($2.5 billion, discounted).

As above, the FAA believes that where it is applied, EDS would be more effective than the proposal, so total benefits from 100% EDS screening would be higher than the proposal;

however, even with the greater effectiveness of EDS, the major problem with Alternative Four is the window of vulnerability that would still exist. In the first year, 90% of flights would depend on a randomly selected baggage matching alternative that would be much less effective than CAPS. As discussed above, the FAA assumes that CAPS would be very effective in countering the threat. Selecting 10% of the passengers at random would, on these flights, yield benefits only 10% of those that would be derived from the proposal. Until the tenth year, where full EDS implementation would be expected, there would be a major shortfall in benefits.

A goal of using EDS for 100% of flights cannot be implemented immediately due, among other reasons, to the lack of production capability. Even when partial EDS screening is combined with random baggage matching, only some flights would be covered, so many flights would remain vulnerable. Given that this alternative is more expensive than the proposal, yet does not close the window of vulnerability, the FAA rejects this alternative.

5. Baggage Matching on Passengers Selected by CAPS With Use of EDS, Where Available

This is the proposed rule, which was costed out in the discussion above.

6. Performing Baggage Matching on a Limited Number of CAPS Selectees

Alternative Six would modify the proposed rule in that the air carriers would use CAPS to form the pool of selectees, but only subject a random number of these selectees to baggage matching. For analysis purposes, the FAA is assuming that 50% of the pool of selectees would be subjected to baggage matching. This yields ten-year costs of $1.6 billion ($1.1 billion, discounted).

The proposed rule provides benefits by performing baggage matching on 100% of selectees. Reducing this pool would reduce the protection afforded by CAPS and baggage matching and would increase the likelihood that someone who would have been a CAPS selectee but who was excluded from heightened security measures under this alternative would be able to cause an explosion on an airplane. The FAA is calculating benefits by assuming that a 50% reduction in the pool of CAPS selectees would bring about a nearly 50% reduction in benefits from current levels.

The major problem with this alternative is that it would offer a lower level of security and would amount to reducing the effectiveness of the CAPS criteria. As discussed above, the FAA assumes that CAPS would be very effective in countering the threat. Reducing the selectee pool by 50% at random would yield benefits equal to roughly half of those that would be derived from the proposal. This creates a window of vulnerability on every flight, as only some passengers' baggage would be screened, and would not mitigate the threat as effectively as the proposed rule. It is not prudent to establish a computerized automated profiling system to select passengers and then ignore some of these selectees, hoping that the deterrence value of the possibility of being selected would equal or outweigh the benefits of performing baggage matching. This alternative could allow a selectee whose checked baggage was not subject to baggage matching to cause an explosion on an airplane.

Initial Regulatory Flexibility Determination and Analysis

A. Initial Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to ensure that small entities (small business and small not-for-profit government jurisdictions) are not unnecessarily and disproportionately burdened by Federal regulations. The RFA, which was amended May 1996, requires regulatory agencies to review rules that may have "a significant economic impact on a substantial number of small entities." The Small Business Administration suggests that "small" represents the impacted entities with 1,500 or fewer employees. For this proposed rule, the small entity group is considered to be part 108 scheduled operators with airplanes having 61 or more passenger seats (Standard Industrial Classification Code 4512) and 1,500 or fewer employees. The FAA has identified a total of 12 operators that meet this definition.

To determine the impact of the proposed rule on small part 108 operators, the FAA has estimated the annualized cost impact on each of those small entities potentially impacted by the proposed rule. The proposed rule is expected to impose an estimated $122 million on the 12 small entities over the next 10 years. For purposes of this rulemaking, one percent of the annual median revenue ($823,000, in 1998 dollars) is considered economically significant in that it may entail either an increase in airline ticket fares or a requirement to create operating cost efficiencies to preserve the economic stability of impacted airlines. Ten of the 12 part 108 small entities would incur a substantial economic impact in the form of higher costs in excess of $823,000, as the result of the proposed rule. Furthermore, the cost burden is not strictly proportionate to the size of the airline as inferred by the number of employees. For these reasons, a regulatory flexibility analysis is presented below.

B. Initial Regulatory Flexibility Analysis

Under Section 603(b) of the RFA (amended May 1996), each initial regulatory flexibility analysis is required to address these points: (1) reasons why the FAA is considering the proposed rule, (2) the objectives and legal basis for the proposed rule, (3) the kind and number of small entities to which the proposed rule would apply, (4) the projected reporting, recordkeeping, and other compliance requirements of the proposed rule, and (5) all Federal rules that may duplicate, overlap, or conflict with the proposed rule.

Reasons why the FAA is considering the proposed rule: Over the past several years, the FAA has recognized that the threat against civil aviation is changing and growing. See either the discussion under "Background" above, or the background section of the Regulatory Impact Analysis (RIA) for a more detailed discussion of this threat. Terrorist and criminal activities within the United States have forced the FAA and other federal agencies to reevaluate the domestic threat against civil aviation. The proposed rule is intended to counter this increased threat to U.S. civil aviation security.

The objectives and legal basis for the proposed rule: The objective of the proposed rule is to significantly increase protection to Americans and others traveling on U.S. domestic air carrier flights from acts of terrorism. Specifically, the proposed rule is aimed at preventing explosives from being placed on board commercial flights in checked baggage.

The legal basis for the proposed rule is found in 49 U.S.C. 44901 et seq. As a matter of policy, the FAA must consider, among other concerns, maintaining and enhancing safety and security in air commerce as its highest priorities (49 U.S.C. 40101(d)).

The kind and number of small entities to which the proposed rule would apply: The proposed rule applies to 32 operators of part 108 aircraft, of which 12 are small scheduled operators (with 1,500 or fewer employees) that use aircraft with more than 60 passenger seats (SIC Code 4512). A brief financial

profile of these small entities is provided in the full Regulatory Impact Analysis (which includes net income, assets, liabilities, and financial strength ratios) by category: Nationals, Large Regionals, and Medium Regionals.

Category	Annual revenues by category	Total No. of entities impacted	No. of small carriers impacted
Majors	More than $ 1.0b	9	0
Nationals	$100.0m–$ 1.0b	14	3
Large Regionals	$ 20.0m–$99.9m	6	6
Medium Regionals	$ 0.0m–$19.9m	3	3
Total		32	12

The projected reporting, recordkeeping, and other compliance requirements of the proposed rule: As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the FAA has submitted a copy of these proposed sections to the Office of Management and Budget (OMB) for its review.

All air carriers using either CAPS, 100% PPBM screening or checked baggage screening via FAA-certified EDS system, would need to provide compliance with the approved security program. The FAA estimates this compliance effort would take place on a one-time basis and impose an additional 24 hours of clerical labor for each of the small entities during the first year of compliance (2000 only). However, the employment of CAPS as a security procedure for screening passengers, requires air carriers to make available, where appropriate, certain information that the CAPS system has been programmed to generate to facilitate DOJ and OST reviews to ensure that selection is not impermissibly being based on race, color, gender, national or ethnic origin or religion. To comply with the recordkeeping requirements for DOJ inquiries, each small part 108 aircraft operator employing CAPS will have an estimated annual recordkeeping burden of 100 hours of clerical labor per year for a period of 10 years (based on having compliance information available for the DOJ inquiries, and records for personnel requiring CAPS training). Therefore, the additional recordkeeping burden, which would apply to each of the small entities, imposed by the proposed rule would be 124 hours in 2000 and 100 hours for each year during 2001—2009. The cost for this time would be $2,600 or an average of $218 per respondent for 2000. For the subsequent years (2001–2009), the additional cost for this time for small entities would be $2,100 or $176 per air carrier per year.

There are additional annual costs resulting from the collection of information. The first year (2000 only) estimated cost for the small entity respondents is estimated to be $523,200 or an average of $43,600 per respondent. For years 2000—2009, the additional recordkeeping costs for all of the small entities would be $96,500 or $8,000 per air carrier per year.

All federal rules that may duplicate, overlap, or conflict with the proposed rule: The FAA is unaware of any federal rules that either duplicate, overlap, or conflict with the proposed rule.

Other Considerations

Description of lower impact alternatives: A discussion of those alternatives that would impose less costs on the small entities subject to this proposed rule is provided below. In addition to the proposed rule and status quo, the analysis of alternatives reviewed three alternatives that had a range of compliance costs between $10 million and $122 million in a 10-year period.

Affordability analysis: For the purpose of this RIA, the degree to which small entities can "afford" the cost of compliance is predicated on the availability of financial resources. Initial implementation costs may be obtained from either existing company assets such as cash, by borrowing, or through the provision of additional equity capital. Continuing annual costs of compliance may be accommodated either by accepting reduced profits, by raising ticket prices, or by finding other offsetting costs.

In this analysis, the assessment of the availability of financial resources is based on the ability of each of the small entities to meet their short-term obligations. According to financial literature, a company's short-term financial strength is substantially influenced, among other things, by its working capital position and ability to pay short-term liabilities. Net working capital is the amount by which current assets exceed current liabilities. It represents the margin of short-term debt paying ability over existing short-term debt.

In addition to the amount of net working capital, two analytical indexes of current position are often computed: (1) current ratio and (2) quick ratio. The current ratio (current assets divided current liabilities) helps put the amount of net working capital into perspective by showing the relationship between current resources and short term debt. And the quick ratio (sometimes called the acid test ratio) focuses on immediate liquidity (cash, marketable securities, accounts receivable, etc., divided by current liabilities). A decline in net working capital, the current and quick ratios over a period of years (say, 3 years, 4 years, etc.) may indicate that a company is losing financial solvency. Negative net working capital is a clear indication of financial difficulty. If a company is experiencing such financial difficulty, it is less likely to be able to afford additional costs.

The following conclusions are based on the subject financial information:

- Based on current liquidity, at least three small entities would probably be able to afford the cost of compliance associated with this proposed rule. These entities have experienced increases in their net working capital as well as their current and quick ratios over the past three or four years, as shown in Table 11B. They are also generally profitable and may, therefore, have financial resources available to meet the requirements of this proposed rule.
- For one currently profitable small entity, its ability to afford the cost of compliance is less certain. This uncertainty stems from the fact that there is no financial performance history for the small entity from 1994 to 1996 because it has only been operating as a large passenger air carrier since second quarter of 1997. In 1997, this small entity had a net working capital in excess of $40 million and its current and quick ratios are at least 1.8, respectively. While this information is very positive, it does not necessarily serve as an indicator of future performance, especially in light of the proposed rule.

• For another air carrier, there is greater uncertainty than that for the aforementioned air carrier. Uncertainty for this entity is due to the fact that it has no financial performance history from 1994 to 1997. This lack of financial information is due to the fact that this air carrier did not receive its effective operating authority until mid 1997. Its ability to comply with the proposed rule and remain in business is unknown due to the lack of financial information on its performance history.

• The current liquidity of the remaining seven small entities will require action to finance the expected cost of compliance imposed by this NPRM. Over the past two or three years, each of these small entities has had negative net working capital. In addition, their respective current and quick ratios have generally been on a decline. They have frequently experienced financial losses.

Relative Cost Impact

• The other alternative of assessing affordability, annualized cost of compliance relative to the total operating revenues, for each of the 12 small entities impacted by this NPRM shows relatively small impacts for most of the small entities. The annualized cost of compliance relative to total operating revenues would be between 0.2 percent and 7.2 percent; in most cases, the impact would be less than 1.0 percent.

• For seven of the air carriers the ratio of annualized proposed rule costs to revenues would be less than 1.0 percent, on average, for the three-year period 1995 through 1997. For these air carriers, there appears to be a prospect of absorbing the cost of the proposed rule through some combination of fare increases and cost efficiencies. Even though the ratio of costs to revenues exceed 1.0 percent, on average, for the seven other air carriers, there is a prospect that two of these air carriers may have sufficient working capital to incur initial cost increases.

Disproportionality analysis: The FAA does not believe any of the 12 small entities would be disadvantaged relative to large air carriers, due solely to disproportionate cost impacts. All of the air carriers operating airplanes with 61 or more seats have to comply with the proposed rule for CAPS.

Many small air carriers are expecting to incur relatively smaller costs proportionate to the size of their operations because most of them have code-share arrangements with large air carriers within the majors category. These airlines would probably be able to employ the CAPS systems of their code-sharing partners and thereby avoid system development costs. Thus, because of code-share arrangements with larger air carriers, at least 8 of these 12 small air carriers may incur costs lower than they otherwise would. In the operating cost of compliance section of this RIA for passenger baggage matching, major jet air carriers are expected to incur an estimated departure cost of $30, national and regional jet air carriers estimated departure cost of $20.98. Some of the smallest air carriers that fall within the national and regional turboprop category would incur a departure cost of $5.82. Hence, on a per operation basis, lower operating costs are anticipated for carriers which operate smaller aircraft. In general, small entities are more likely to operate small aircraft than large aircraft.

Competitiveness analysis: The proposed rule, while it may impose financial burdens on small entities (see affordability and business closure analyses), is not anticipated to significantly change the competitiveness of small entity airlines relative to larger carriers on their domestic routes.

As discussed in the disproportionality analysis, the proposed rule is not expected to impose a greater relative financial burden on small compared to large airlines. Furthermore, small entities impacted by this proposed rule are more likely to either face no competition on individual route segments or compete among themselves rather than with large airlines. Medium and large regional airlines (annual revenues less than $100 million) do not compete directly with major carriers (annual revenues exceeding $1 billion). Instead, at least two of the impacted small entities are regional carriers code-share with major airlines—UFS Inc. with United and Alaska Airlines with US Airways and Northwest. Code-sharing is a device whereby regional carriers feed traffic to majors rather than compete for traffic. Thus, for nine of the small entities, which are classified as medium or large regionals, to the extent there is competition on routes, competition is generally limited to carriers within the same revenue categories. Three of the impacted small entities are classified as nationals (annual revenues between $100 million and $1 billion). Air Wisconsin, one of the small entities classified as a national is also affiliated with United Airlines—a major. Because of this affiliation, it seems unlikely that the cost impact of the proposed rule per se would significantly change the relative competitiveness of Air Wisconsin. The remaining two small entity carriers classified as nationals do compete both with major airlines, with other nationals, and some smaller revenue carriers (namely, large regionals). While the financial impact on these small entities may not be proportionally greater than that imposed on the majors, the nationals may have greater difficulty in recovering the costs of compliance with the proposed rule through ticket price increases. This is because they are engaged in competition with the majors for price sensitive travelers. Lower ticket prices are vital to maintaining a competitive edge. There is also another competition factor important for nationals—the cost of compliance would probably be less for carriers if they link to an existing computer reservation system (CRS) which has been modified for CAPS rather than building a new stand alone CAPS system. Thus, the proposed rule may tend to increase national carrier reliance on CRS systems controlled by major airlines. Again, this may exacerbate the competitive advantage of majors vis a vis national carriers because the terms and cost of CRS use are determined by the majors.

Business closure analysis: The FAA is unable to determine with certainty the extent to which those small entities that would be significantly impacted by the proposed rule for CAPS would have to close their operations. However, the profitability information (net income gains and losses) and the affordability analysis can be a factor in business closures.

In determining whether or not any of the 12 small entities would close business as the result of compliance with this proposed rule, one question must be answered: "Would the cost of compliance be so great as to impair an entity's ability to remain in business?" A number of these small entities are already in serious financial difficulty. For example, one small entity has already filed for bankruptcy under chapter 11. To what extent the proposed rule makes the difference in an entity remaining in business is difficult to answer. The FAA believes that if the potential cost of compliance materializes as expected, several small operators could go out business due at least in part to the proposed rule.

Alternatives Considered

As part of section 603(c) of the RFA, the following is an analysis of pros and cons of the alternatives to the proposed rule:

1. Status Quo

Under this alternative, the practice of maintaining the current policy for security of checked baggage on domestic flights would continue. Currently, the FAA mandates manual passenger screening or baggage matching only in situations where the FAA has determined that a heightened threat exists. Continuing with this policy would be the least costly course of action but less safe. The FAA believes that the threat to civil aviation within the United States has increased and further rulemaking is necessary. Thus,

this alternative is not considered to be acceptable because it permits continuation of an unacceptable level of risk to U.S. airline passengers. *Conclusion:* Under this alternative, there is a likelihood of one or more terrorist acts resulting in Class I Explosions involving large commercial airplanes that operate within the United States, (discussed previously in the benefits portion of this Regulatory Evaluation Summary).

2. Current Proposal Would Apply to Small Entities Only When a Specific Threat Exists (Standby CAPS Program)

Under this alternative, all small entities (part 108 aircraft operators) would be required to implement requirements identical to those of the proposed rule only when the Assistant Administrator for Civil Aviation Security notified the certificate holder in writing that a security threat existed with respect to a particular operation. Under the proposed rule, all small entity operations with 61 or more seats would be required to implement CAPS for selectees for 5% of all passengers (originating only) and either 100% PPBM or EDS (where available). Under this alternative, however, small entity operators with airplanes having 61 or more passenger seats and 1,500 or fewer employees would only be required to have a "standby security provision" to implement CAPS and baggage matching for selectees.

This alternative may reduce the potential cost impact to the small entities. For example, such airlines might incur the initial implementation cost estimated for the proposed rule but avoid annual operating costs; however, the proposed rule is based upon the premise that a terrorist or criminal is not likely to ignore a larger aircraft (determined by FAA to be those with seating configurations of 61 or greater seats) merely because it is operated by a small entity.

Accordingly, this alternative is not considered feasible because it is unlikely to counter the existing terrorist threat. The potential cost of compliance associated with this alternative is estimated to be $10 million ($9 million, discounted) over 10 years, 1998 dollars, for all 12 small entities potentially impacted by this proposed rule. This cost estimate assumes that potentially impacted small entities would only incur startup costs for 1998, to be prepared in the event the Assistant Administrator for Civil Aviation Security requests that they implement and operate a CAPS program identical to that of the proposed rule. Further, this analysis assumes that air carriers could respond immediately to a CAPS program request, using existing personnel in the short run. *Conclusion:* This alternative would impose the smallest cost of compliance on part 108 small entities, and it would not impose a significant economic impact (less than one percent of the median annual revenues of the small entities or $823,000) on a substantial number of such small entities. This alternative would provide minimal improvement in protection against terrorism because it would be implemented only after an airline was known to be a target. This alternative is rejected on the basis that it would permit an unacceptable level of risk to continue and would jeopardize FAA's intent to address current security concerns related to U.S. civil aviation.

3. Small Entities Do Nothing When Receiving Passengers From a Large Entity Air Carrier That Has Applied Proposed Rule

The proposed rule could be revised to require small entities (having operations using aircraft of 61 or greater seats) to apply the proposed rule only for originating passengers. For this alternative, when a passenger transfers from a large entity to a small entity (on which the flight is to the passenger's final destination), that small entity would not be required to perform additional security measures. The small entity would still be required to implement the proposed rule for originating passengers (including those transferring to a large entity). The checked baggage of some passengers previously identified as posing a threat, would be allowed to continue on the small entity if they had been subjected to heightened security measures by a major air carrier. The potential cost of compliance associated with this alternative is estimated to be $61 million ($43 million, discounted) over 10 years, 1998 dollars, for all 12 small entities potentially impacted by this proposed rule. This cost estimate was derived on the premise that the proposed rule would only apply to those passengers that start their trips on flights provided by the small entities. Since at least half of the passengers carried by small entities are received from larger air carriers, the cost of this alternative would be half of that cost imposed by the proposed rule. *Conclusion:* This alternative would impose the third highest cost of compliance impact on part 108 small entities. It would impose a significant economic impact on 6 of 12 small entities. This alternative would achieve only 50% of the potential safety of the proposed rule. This alternative is rejected on the basis that it would offer an unacceptably high level of threat to U.S. civil aviation security. While the potential safety level of this alternative is higher than that of Alternative Two, it is significantly lower than that of the proposed rule.

4. Small Entities Apply Proposed Rule on a Smaller Scale

The proposed rule could be revised to allow small entities to apply baggage matching for a smaller number of selectees. Under this alternative, the rate for selectees would be 1% (as opposed to 5% for the proposed rule). The cost savings to small entities would depend on the magnitude of the reduction in the number of selectees; however, this would involve reducing the number of selectees arbitrarily and not based on a prudent rationale. Under this alternative, 80% of the checked baggage of passengers who would have been identified as CAPS selectees under the proposed rule would be allowed to go through the system without undergoing additional security measures. Thus, under this alternative a high level of risk would still remain that would be mitigated by the proposed rule. The potential cost of compliance associated with this alternative is estimated to be $99 million ($71 million, discounted) over 10 years, 1998 dollars, for all 12 small entities potentially impacted by this proposed rule. This cost estimate is based on the premise that small entities would primarily experience a reduction in delay costs of about 80% of that to be incurred under the proposed rule. The 1% selectee rate of this alternative represents a reduction of 80% when compared to the proposed rule's selectee rate of 5%. With 80% fewer passengers as potential selectees, problems with reconciliation of checked baggage would be significantly reduced. This impact is assumed to be linear, for lack of more accurate information. According to technical personnel with SABRE, small changes in the selectee rate (between 1% and 20%, for example) would only have a linear affect on delay costs. That is, a 10% selectee rate would have twice the delay costs than a 5% selectee rate, etc. There may also be reductions in startup and operating costs, though to what extent is unknown. This alternative would only generate potential security benefits of about 20% (⅕ = 20%) of that of the proposed rule. *Conclusion:* This alternative would impose a lower cost of compliance on part 108 small entities than the proposed rule; however, this alternative (when compared to the proposed rule) would provide a less secure flight environment to small part

108 operators and passengers. It would also impose a significant economic impact on a substantial number of such small entities (more than 1% of the median annual revenues of the small entities, or $823,000). This alternative is rejected on the basis that it would not sufficiently reduce the risk of explosions due to terrorism.

5. The CAPS NPRM (Preferred)

This alternative represents the proposed rule for CAPS. Under this alternative, small entities (in addition to any other part 108 aircraft operators with airplanes having 61 or more seats) would be required to implement CAPS (estimated at selectee rate of 5% of all passengers (originating only) whose checked baggage would be subjected to additional security measures), or either conduct 100% PPBM or screen checked baggage by EDS (where available). The cost of compliance expected to be incurred by the 12 small entities subject to the requirements of the proposed rule is estimated to be $122 million ($85 million, discounted) over the next 10 years.

This alternative is preferred to the aforementioned alternatives because it would impose costs and generate benefits in a manner that would create the best balance between the cost of doing business for all affected part 108 operators and enhanced aviation security (in the form of threat reduction) for the traveling public (including operators).

International Trade Impact Statement

This proposed rule would not present a significant impediment to either U.S. firms doing business aboard, or foreign firms doing business in the United States. The proposed rule would only apply to and impact those part 108 scheduled air carriers (with 61 or more passenger seats) that conduct operations in the United States. Foreign air carriers do not compete with U.S. domestic air carriers in providing air transportation within the United States. Air carriers that conduct operations outside of the United States are required to conduct 100% PPBM, which is a more stringent requirement than contained in this proposal.

Initial Unfunded Mandates Assessment and Analysis

A. Applicability of the Unfunded Mandates Act

Title II of the Unfunded Mandates Reform Act of 1995 (the Act), enacted as Pub. L. 104–4 on March 22, 1995, requires each Federal agency, to the extent permitted by law, to prepare a written assessment of the effects of any Federal mandate in a proposed or final agency rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year. Section 204(a) of the Act, 2 U.S.C. 1534(a), requires the Federal agency to develop an effective process to permit timely input by elected officers (or their designees) of State, local, and tribal governments on a proposed significant intergovernmental mandate. A "significant intergovernmental mandate" under the Act is any provision in a Federal agency regulation that would impose an enforceable duty upon state, local, and tribal governments, in the aggregate, of $100 million (adjusted annually for inflation) in any one year. Section 203 of the Act, 2 U.S.C. 1533, which supplements section 204(a), provides that before establishing any regulatory requirements that might significantly or uniquely affect small governments, the agency shall have developed a plan that, among other things, provides for notice to potentially affected small governments, if any, and for a meaningful and timely opportunity to provide input in the development of regulatory proposals or rules.

Since this proposed rule contains a private sector mandate with a potential cost impact of more than $100 million annually, the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do apply. For this reason, an assessment of the Unfunded Mandates Act on the impacted private sector is discussed below.

B. Unfunded Mandates Act Impact Assessment

To assess the potential impact of the Unfunded Mandates Reform Act (Act) of 1995 from this proposed rule, the Act identifies six components that must be addressed in the assessment of this proposed rule. Each of those components is discussed below.

1. Provision of Federal Law Under Which the Proposed Rule is Being Promulgated

The legal basis for the proposed rule is found in 49 U.S.C. 44901 *et seq.* As a matter of policy, the FAA must consider, among other concerns, maintaining and enhancing safety and security in air commerce as its highest priorities (49 U.S.C. 40101(d)).

2. Assessment of the Anticipated Costs and Benefits of the Federal Mandate

a. *Estimate of Costs*—The proposed rule would impose an estimated cost of $2.8 billion ($2.0 billion, discounted) over 10 years. This cost estimate is composed of three components: (1) checked baggage matching costs ($2.2 billion; $1.6 billion, discounted), (2) checked baggage matching flight delay costs ($473 million; $326 million, discounted), and (3) CAPS program costs ($70 million; $51 million, discounted). During the first year of the proposed rule (2000), which is also the most costly, part 108 air carriers are expected to incur costs of approximately $456 million ($426, discounted). This estimate includes fixed and recurring cost components.

b. *Estimate of Benefits*—The primary benefit of the proposed rule would be significantly increased protection to Americans and others traveling on U.S. domestic air carrier flights from the increasing threat of acts of terrorism. Specifically, the proposed rule is aimed at preventing explosives from being placed on board commercial flights in checked baggage. In order for security benefits to offset compliance costs, a terrorist act (such as a Class I Explosion) resulting in 380 aviation fatalities (including other types of casualty losses such as aircraft replacement, market loss, etc.) would have to be avoided over the 10 years.

c. *Estimates of Future Costs of Compliance of the Federal Mandate*—For the 32 aircraft operators that would potentially be impacted by the proposed rule, the total annual costs in each of the next 10 years would be greater than $100 million. The total cost of the proposed rule for the 10-year period (in 1998 dollars) would be approximately $2.8 billion ($2.0 billion, discounted) and the annualized present value of the costs of compliance would be approximately $234 million per year. A more detailed discussion of costs is shown in the analysis of costs section of this regulatory impact analysis summary.

d. *Estimates of Disproportionate Budgetary Effects of the Federal Mandate*—The 32 aircraft operators that would be impacted by the proposed rule are widely dispersed across the United States, as evident by their respective hub locations. For example, Delta Airlines has its main hub in Atlanta, GA; United Airlines has its main hub in Chicago, IL; American and Southwest Airlines have their main hubs in Dallas, TX. Smaller air carriers (namely regionals) also have their main hubs dispersed similarly to the majors and nationals since they primarily carry their passengers into small hub airports. It is for these reasons that the proposed rule would not impose any disproportionate budgetary effects on

any particular region of the country. The proposed rule would, however, impose costs on a particular segment of the private sector as noted previously in the estimate of costs section of this Unfunded Mandate Act Analysis.

e. *Estimates of the Effect of the Federal Mandate on the National Economy*—As the result of the proposed rule, the impacted part 108 air carriers are expected to increase staffing and training of airport terminal personnel. There is insufficient information to be able to estimate the multiplier effect the additional jobs spurred by this proposed rule would have on the local economy in the form of a lower unemployment rate, added tax revenues, and increased sales for consumer goods on local communities and the national economy. The FAA is reasonably certain that the creation of additional jobs by the proposed rule would have a positive impact.

f. *Discussion of the Least Burdensome Regulatory Alternative*—The FAA has identified four alternatives to the proposed rule in addition to maintaining the status quo: (1) require mandatory EDS (phased in) without CAPS; (2) require 100% PPBM during phase-in of EDS; (3) require random bag matching during EDS phase-in; or (4) require bag matching on only some CAPS selectees. Section V of the full Regulatory Impact Analysis (RIA) (contained in the docket) describes the four alternatives to the proposed rule as well as the costs to implement them. The FAA contends that using CAPS to identify those passengers who possibly are a threat to the security of a flight and requiring passenger baggage matching or screening by EDS, where EDS is available, is the most practical and cost-beneficial alternative currently available to increase the level of security on domestic flights. A more detailed discussion of alternatives is shown in the analysis of alternative section of the RIA.

C. Conclusion

The FAA has determined that the cost of compliance of the proposed rule would be greater than $100 million in each of the 10 years, but the economic impact on State, local and tribal governments would not exceed the $100 million threshold. The proposed rule would impose a Federal mandate of greater than $100 million per year on the private sector. Of all of the alternatives examined in this assessment of the Act and the analysis of alternatives section of the RIA, the proposed rule provides the largest net benefit.

Federalism Implications

The regulation proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 14 CFR Part 108

Air carriers, Aircraft, Airmen, Airports, Arms and munitions, Explosives, Law enforcement officers, Reporting and recordkeeping requirements, Security measures, X-rays.

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend part 108 of Title 14, Code of Federal Regulations (14 CFR part 108) as follows:

PART 108—AIRCRAFT OPERATOR SECURITY

1. The authority citation for part 108 continues to read as follows:

Authority: 49 U.S.C. 106(g), 5103, 40113, 40119, 44701–44702, 44705, 44901–44905, 44907, 44913–44914, 44932, 44935–44936, 46105.

2. Amend § 108.5 by revising paragraph (a) to read as follows:

§ 108.5 Security program: Adoption and implementation.

(a) Each certificate holder shall adopt and carry out a security program that meets the requirements of § 108.7 of this part for each of the following scheduled or public charter passenger operations:

(1) Each operation with an airplane having a passenger seating configuration of more than 60 seats.

(2) Each operation with an airplane having a passenger seating configuration of 60 or fewer seats that provides deplaned passengers access, that is not otherwise controlled by a certificate holder using an approved security program or a foreign air carrier using a security program required by § 129.25 of this chapter, to a sterile area, except that where the certificate holder elects to not carry out the provisions of § 108.12 of this part, that part of the program effecting compliance with the requirements listed in § 108.7(b)(9) of this part need only be implemented when the Associate Administrator for Civil Aviation Security, or a designee, notifies the certificate holder in writing that a security threat exists with respect to the operation.

(3) Each operation with an airplane having a passenger seating configuration of 60 or fewer seats where the certificate holder elects to carry out the provisions of § 108.12 of this part, except that where the operation does not provide deplaned passengers access to a sterile area, the requirements of § 108.7(b) (1) and (4) of this part need only be implemented when the Associate Administrator for Civil Aviation Security, or a designee, notifies the certificate holder in writing that a security threat exists with respect to the operation.

(4) Each operation with an airplane having a passenger seating configuration of more than 30 but less than 61 seats, that is not subject to paragraph (a)(2) of this section, except that those parts of the program effecting compliance with the requirements of § 108.7(b) (1), (2), (4) and (9) of this part need only be implemented when the Assistant Administrator for Civil Aviation Security notifies the certificate holder in writing that a security threat exists with respect to the operation.

* * * * *

3. Amend § 108.7 by adding paragraph (b)(9) to read as follows:

§ 108.7 Security program: Form, content, and availability.

* * * * *

(b) * * *

(9) The procedures used to perform the checked baggage security functions specified in § 108.12 of this part for scheduled passenger operations.

* * * * *

4. Add § 108.12 to read as follows:

§ 108.12 Security of checked baggage for operations within the United States.

(a) Each air carrier required to adopt and carry out a security program in accordance with § 108.5 of this part shall apply the checked baggage security requirements of this section in accordance with its security program for scheduled passenger operations within the United States. For each operation the air carrier shall—

(1) For each originating passenger checking baggage, use a computer-assisted passenger screening (CAPS) system, approved by the Administrator, capable of selecting passengers based on specific criteria and at random; or

(2) Determine that the passenger associated with each originating checked bag is aboard the flight or that each originating bag not matched to a passenger aboard the flight has been screened by an explosives detection system (EDS).

(b) For each operation subject to paragraph (a) of this section, the air carrier may not transport the baggage of a non-originating passenger unless—

(1) The passenger is aboard the flight;

(2) The passenger associated with the baggage was screened by a CAPS system approved by the Administrator prior to an earlier flight leg and information is available to the air carrier that the passenger was not selected;

(3) Information is available to the air carrier that the baggage was screened by an EDS prior to an earlier flight leg;

(4) The baggage is screened by an EDS prior to the current flight; or

(5) The passenger is screened for the current flight as an originating passenger in accordance with paragraph (a) (1) of this section.

(c) The checked baggage of a passenger selected by the CAPS system shall not be transported aboard the flight unless—

(1) The baggage is screened by an EDS where an EDS is available; or

(2) Where an EDS is not available, the passenger associated with the baggage is aboard the flight.

(d) An EDS is considered to be available to an air carrier for screening a checked bag when it is—

(1) Under the operational control of the air carrier;

(2) Functioning properly;

(3) Located proximate to where the baggage is tendered by the passenger or along the route the baggage normally travels during the process of being loaded onto the aircraft;

(4) Staffed by appropriately trained personnel; and

(5) Not in use to screen other identified baggage such that a significant delay in a flight might result from having to wait to use the EDS to screen the bag.

(e) Each air carrier shall establish procedures for implementing security measures for checked baggage under this section that—

(1) Ensures nondiscriminatory application; and

(2) Minimizes the overt identification of passengers selected for additional security procedures.

(f) Each person used by an air carrier to implement its CAPS system whose job function will be likely to involve interactions with passengers shall be trained on the CAPS system. The training shall include—

(1) An overview of the purpose of screening, including an explanation that selection does not imply that a passenger is suspected of any illegal activity;

(2) A general description of the CAPS system and how it is designed to select passengers on a nondiscriminatory basis;

(3) An advisory that the CAPS system selects some passengers at random;

(4) An advisory that the CAPS system is not connected to any law enforcement or intelligence data base; and

(5) Instruction on treating passengers selected by the CAPS system in a respectful and non-stigmatizing manner.

(g) An air carrier may not modify the selection criteria of the CAPS system without the written approval of the Administrator. Nor may an air carrier apply any supplemental system of passenger screening to select passengers for additional security measures without the approval of the Administrator.

(h) (1) Each air carrier shall make available to the Administrator the information specified in its security program on the general operation of its CAPS system.

(2) Each air carrier shall maintain, for at least 24 hours, but not longer than 72 hours, after flight departure, information linking a passenger's name or other identifying data to whether the passenger was selected by the CAPS system.

(3) Each air carrier shall provide the Administrator with CAPS system data for any specific flight, including selectee status of individuals on the flight, when requested as part of—

(i) An evaluation of the CAPS system to determine possible discriminatory impacts;

(ii) An accident investigation;

(iii) A security incident investigation; or

(iv) Security compliance oversight.

(i) An air carrier may apply alternate procedures that are established in its security program for screening checked bags to address special situations. These situations could include—

(1) Baggage acceptance at off-airport locations;

(2) The transportation of bags separated from a passenger for reasons outside the control of the passenger, e.g., lost bags;

(3) CAPS system failure;

(4) Extraordinary operational circumstances;

(5) The use of technologies or equipment other than an EDS to screen checked baggage; and

(6) Any other situation specified by the Associate Administrator for Civil Aviation Security in the air carrier's security program.

Issued in Washington, DC, on April 13, 1999.

Anthony Fainberg,

Director, Office of Civil Aviation Security Policy and Planning.

[FR Doc. 99–9635 Filed 4–14–99; 10:07 am]

BILLING CODE 4910–13–U

federal register

Monday
April 19, 1999

Part III

Department of Agriculture

Cooperative State Research, Education, and Extension Service

Proposed Guidelines for State Plans of Work for the Agricultural Research and Extension Formula Funds; Notice

DEPARTMENT OF AGRICULTURE

Cooperative State Research, Education, and Extension Service

Proposed Guidelines for State Plans of Work for the Agricultural Research and Extension Formula Funds

AGENCY: Cooperative State Research, Education, and Extension Service, USDA.

ACTION: Notice and Request for Comment.

SUMMARY: The Cooperative State Research, Education, and Extension Service (CSREES) is requesting public comment on the proposed Guidelines for State Plans of Work for the Agricultural Research and Extension Formula Funds. These guidelines prescribe the procedures to be followed by the eligible institutions receiving Federal agricultural research and extension formula funds under the Hatch Act of 1887, as amended (7 U.S.C. 361a *et seq.*); sections 3(b)(1) and (c) of the Smith-Lever Act of 1914, as amended (7 U.S.C. 343 (b)(1) and (c)); and sections 1444 and 1445 of the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended (7 U.S.C. 3221 and 3222). The recipients of these funds are commonly referred to as the 1862 land-grant institutions and 1890 land-grant institutions, including Tuskegee University. CSREES is also requesting public comment on the development of research and extension protocols used to evaluate the success of multistate, multi-institutional, and multidisciplinary research and extension activities, and joint research and extension activities, in addressing critical agricultural issues identified in the submitted plans of work.

DATES: Written comments are invited from interested individuals and organizations. To be considered in the formulation of the guidelines, comments must be received on or before May 19, 1999.

ADDRESSES: Address all comments to CSREES–USDA; Office of Extramural Programs; Policy and Program Liaison Staff; Mail Stop 2299; 1400 Independence Avenue, S.W.; Washington, D.C. 20250–2299. Comments may be hand-delivered to CSREES–USDA; Office of Extramural Programs; Room 302 Aerospace Center; 901 D Street, S.W.; Washington, D.C. 20024. Comments may also be mailed electronically to oep@reeusda.gov.

FOR FURTHER INFORMATION CONTACT: Dr. George Cooper; Deputy Administrator, Partnerships; Cooperative State Research, Education, and Extension Service; U.S. Department of Agriculture; Washington, D.C. 20250; at 202–720–5285 or 202–720–5369, 202–720–4924 (fax) or via electronic mail at bhewitt@reeusda.gov.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

In accordance with the Office of Management and Budget (OMB) regulations (5 CFR Part 1320) that implement the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection and recordkeeping requirements imposed by the implementation of these guidelines have been submitted to OMB for approval. Those requirements will not become effective prior to OMB approval. The eligible institutions will be notified upon this approval.

Title: Reporting Requirements for State Plans of Work for Agricultural Research and Extension Formula Funds.

Summary: The purpose of this collection of information is to implement the requirements of section 7 of the Hatch Act of 1887, as amended (7 U.S.C. 361g); section 4 of the Smith-Lever Act, as amended (7 U.S.C. 343); and section 1444(d) and section 1445(c) of the National Agricultural Research, Extension, and Teaching Policy Act of 1977 (NARETPA), as amended (7 U.S.C. 3221(d) and 3222 (c)), which require that before funds may be provided to a State or eligible institution under these Acts a plan of work must be submitted by the proper officials of the State or eligible institution, as appropriate, and approved by the Secretary of Agriculture.

Need for the Information: The Agricultural Research, Extension, and Education Reform Act of 1998 (AREERA), Pub. L. 105–185, amended the Hatch Act of 1887, Smith-Lever Act, and sections 1444 and 1445 of NARETPA to require plans of work to be received and approved by CSREES prior to the distribution of funding authorized under these Acts. This collection of information will satisfy the plan of work reporting requirements as imposed by these Acts. This collection of information includes three parts: the submission of a 5-year plan of work every five years; the submission of an annual update of the 5-year plan of work, if applicable; and the submission of an annual report of accomplishments and results.

The first two collections of information are required in order to satisfy the above amendments to the Acts that authorize the distribution of agricultural research and extension formula funds to States and eligible institutions. In addition to a description of planned programs, the 5-Year Plan of Work must include information on how critical short-term, intermediate, and long-term agricultural issues in the State will be addressed in research and extension programs; how the State or eligible institution has developed a process to consult users of agricultural extension and research in the identification of critical agricultural issues in the State and the development of programs and projects targeting these issues (also referred to as stakeholder input); how the State or eligible institution has made efforts to identify and collaborate with other universities and colleges that have a unique capacity to address the identified agricultural issues in the State and the extent of current and emerging efforts (including the regional and/or multistate efforts) to work with these institutions; the manner in which research and extension, including research and extension activities funded other than through formula funds, will cooperate to address the critical issues in the State, including activities to be carried out separately, sequentially, or jointly; and for extension, the education and outreach programs already underway to convey available research results that are pertinent to a critical agricultural issue, including efforts to encourage multicounty cooperation in the dissemination of research information.

Section 103(e) of AREERA (7 U.S.C. 7613(e)) also required, effective October 1, 1999, that a merit review process be established at the 1862 land-grant institutions and 1890 land-grant institutions in order to obtain agricultural research and extension formula funds. The 5-Year Plan of Work includes a section for the description of the merit review process to ensure that such a process is in place prior to the distribution of agricultural research and extension formula funds.

Sections 104 and 105 of AREERA also amended the Hatch Act and Smith-Lever Act to require that a specified amount of the agricultural research and extension formula funds be expended for multistate activities and that a description of these activities be reported in the plan of work. Section 204 of AREERA further amended the Hatch Act and Smith-Lever Act to require that a specified amount of the agricultural research and extension formula funds be expended for activities that integrate cooperative research and extension and that a description of these activities be included in the plan of work. Two components of the 5-Year Plan of Work submission on Multistate Activities and on Integrated Research

and Extension Activities have been included to meet these additional requirements.

The second collection of information will be an annual update to the 5-Year Plan of Work. This will be required only if there is a substantive change to planned programs or a significant change in funding as outlined in the proposed guidelines.

The third collection of information will be the Annual Report of Accomplishments and Results. This will be based on the 5-Year Plan of Work and will assist CSREES in ensuring that federally supported and conducted research and extension activities are accomplished in accordance with the management principles set forth under section 102(d) of AREERA (7 U.S.C. 7612(d)). These principles require that to the maximum extent possible, CSREES shall ensure that federally supported research and extension activities are accomplished in a manner that integrates agricultural research, extension, and education functions to better link research to technology transfer and information dissemination activities; encourages regional and multistate programs to address relevant issues of common concern and to better leverage scarce resources; and achieves agricultural research, extension, education objectives through multi-institutional and multifunctional approaches and by conducting research at facilities and institutions best equipped to achieve these objectives.

Respondents: Respondents will be the 57 1862 land-grant institutions and the 17 1890 land-grant institutions, including Tuskegee University, who will provide a 5-year plan of work once every five years; will update annually this 5-year plan of work, if necessary; and will report on the accomplishments and results of this 5-year plan of work annually to CSREES.

Estimate of Burden: The amendments to AREERA require a plan of work for funds that are distributed on an annual basis. To reduce the burden on respondents, CSREES proposes a 5-Year Plan of Work to be modified by an annual update only where there are substantive program changes and/or significant funding changes.

The total reporting and recordkeeping requirements for the submission of the "5-Year Plan of Work" is estimated to average 1,349.44 hours per response. There are five required components of this "5-Year Plan of Work': "Planned Programs," "Stakeholder Input Process," "Program Review Process," "Multistate Activities," and "Integrated Research and Extension Activities." The total reporting and recordkeeping requirement for "Planned Programs" is estimated at 690.00 hours; for "Stakeholder Input Process" is estimated at 9.19 hours; for "Program Review Process" is estimated at 276.00 hours; for "Multistate Activities" is estimated at 216.75 hours; and for "Integrated Research and Extension Activities" is estimated at 157.50 hours.

Estimated Number of Respondents: 57.

Estimated Number of Responses: 148.

Estimated Total Annual Burden on Respondents: 199,717.12 hours.

Frequency of Responses: Once every five years.

If the "5-Year Plan of Work" needs to be updated as an "Annual Update to the 5-Year Plan of Work," the total reporting and recordkeeping requirement is estimated to average 134.94 hours per response.

Estimated Number of Respondents: 7.

Estimated Number of Responses: 15.

Estimated Total Annual Burden on Respondents: 2,024.16 hours.

Frequency of Responses: Annually.

The total annual reporting and recordkeeping requirements for the "Annual Report of Accomplishments and Results" is estimated to average 1,366.67 hours per response.

Estimated Number of Respondents: 57.

Estimated Number of Responses: 148.

Estimated Total Annual Burden on Respondents: 202,267.16 hours.

Frequency of Responses: Annually.

Comments: Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to: CSREES–USDA; Office of Extramural Programs; Policy and Program Liaison Staff; Mail Stop 2299; 1400 Independence Avenue, S.W.; Washington, D.C. 20250–2299 by June 23, 1999 or to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20502. Reference should be made to the volume, page, and date of this **Federal Register** publication.

Background and Purpose

The Cooperative State Research, Education, and Extension Service (CSREES) proposes to implement the following Guidelines for State Plans of Work for the Agricultural Research and Extension Formula Funds in order to meet the plan of work reporting requirements enacted in the Agricultural Research, Extension, and Education Reform Act of 1998 (AREERA), Pub. L. 105–185. The AREERA amendments added new and consistent plan of work requirements for agricultural research and extension formula funds provided under the Hatch Act of 1887 (7 U.S.C. 361a *et seq.*), the Smith-lever Act (7 U.S.C. 341 *et seq.*), and sections 1444 and 1445 of the National Agricultural Research, Extension, and Teaching Policy Act of 1977 (U.S.C. 3221 and 3222). The specific plan of work reporting requirements are outlined in the "Preface and Authority" section of the Guidelines.

These guidelines were developed by CSREES in consultation with the State partners at the 1862 land-grant institutions and the 1890 land-grant institutions, including Tuskegee University. Since the enactment of AREERA on June 23, 1998, the Agency has engaged in these consultations, under an exemption to the Federal Advisory Committee Act (7 U.S.C. 3124a(e)), with members of both the Federal and State partnership focusing on different aspects of the plan of work and requirements for the agricultural research and extension formula funds (i.e., stakeholder input, multistate and integrated activities), and has received input and comments from the 1862 and 1890 land-grant community to ensure that the Guidelines, while meeting the legal requirements of the legislation, address the issues and concerns of the recipients.

CSREES is committed to a set of basic principles regarding the plan of work emphasizing the content in the plan of work rather than the format. CSREES has developed guidance about what goes into a plan of work, not how it is to be reported. Thus, CSREES does not intend to develop a prototype, template, or a model plan of work. CSREES is committed to allowing all institutions maximum flexibility in responding to the content required by legislation.

The amendments to the Hatch and Smith-Lever Acts plan of work requirements made by section 202 of AREERA require the Secretary of Agriculture to develop protocols to

evaluate the success of multistate, multi-institutional, and multidisciplinary research and extension activities, and joint research and extension activities, in addressing the critical agricultural issues identified in the plans of work. Although not included in the Guidelines at present, CSREES also seeks comments on evaluation protocols and criteria for the plans of work that will eventually become part of the Guidelines. This section also stipulates that these protocols be developed by CSREES in shared consultation with the National Agricultural Research, Extension, Education, and Economics Advisory Board. CSREES is in the process of developing these protocols in consultation with this Advisory Board.

CSREES is proposing to use the Annual Reports of Accomplishments and Results to evaluate the success of multistate, multi-institutional, and multidisciplinary activities, and joint research and extension activities, in addressing critical agricultural issues identified in the 5-Year Plans of Work. At this time, CSREES proposes to use the following evaluation criteria: (1) Did the planned program address the critical issues of strategic importance, including those identified by the stakeholders? (2) Did the planned program address the needs of under-served populations of the State(s)? (3) Did the planned program describe the expected outcomes and impacts? and (4) Did the planned program result in improved program effectiveness and/or efficiency?

Pursuant to the plan of work requirements enacted in the Agricultural Research, Extension, and Education Reform Act of 1998, the Cooperative State Research, Education, and Extension Service hereby proposes to implement the Guidelines for State Plans of Work for Agricultural Research and Extension Formula Funds as follows:

Guidelines for State Plans of Work for Agricultural Research and Extension Formula Funds

Table of Contents

I. Preface and Authority
II. Submission of the 5-Year Plan of Work
A. General
1. Planning Option
2. Period Covered
3. Projected Resources
4. Submission and Due Date
5. Certification
6. Definitions
B. Components of the 5-Year Plan of Work
1. Planned Programs
a. National Goals
b. Format
c. Program Descriptions
2. Stakeholder Input Process
3. Program Review Process
a. Merit Review
b. Scientific Peer Review
c. Reporting Requirement
4. Multistate Research and Extension Activities
a. Hatch Multistate Research
b. Smith-Lever Multistate Extension
c. Reporting Requirement
5. Integrated Research and Extension Activities
C. Five Year Plan of Work Evaluation by CSREES
1. Schedule
2. Review Criteria
3. Evaluation of Multistate and Integrated Research and Extension Activities
III. Annual Update of the 5-Year Plan of Work
A. Applicability
B. Reporting Requirement
IV. Annual Report of Accomplishments and Results
A. Reporting Requirement
B. Format

I. Preface and Authority

Sections 202 and 225 of the Agricultural Research, Extension, and Education Reform Act of 1998 (AREERA), Pub. L. 105–185, enacted amendments requiring all States and 1890 institutions receiving formula funds authorized under the Hatch Act of 1887, as amended (7 U.S.C. 361a *et seq.*), the Smith-Lever Act, as amended (7 U.S.C. 341 *et seq.*), and sections 1444 and 1445 of the National Agricultural Research, Extension, and Teaching Policy Act of 1977 (NARETPA), as amended (7 U.S.C. 3221 and 3222), to prepare and submit to the Cooperative State Research, Education, and Extension Service (CSREES) a plan of work for the use of those funds.

While the requirement for the Hatch Act and Smith-Lever Act funds applies to the States, CSREES assumes that in most cases the function will be performed by the 1862 land-grant institution in the States. The only "eligible institutions" to receive formula funding under sections 1444 and 1445 of NARETPA are the 1890 land-grant institutions and Tuskegee University. Therefore, these guidelines refer throughout to "institutions" to include both the 1862 and 1890 land-grant institutions, including Tuskegee University.

Further, these guidelines require a plan of work that covers both research and extension. Although the District of Columbia receives extension funds under the District of Columbia Postsecondary Education Reorganization Act, Pub. L. 93–471, as opposed to the Smith-Lever Act, CSREES has determined that it should be subject to the plan of work requirements imposed under these guidelines except where expressly excluded.

All the requirements of AREERA with regard to agricultural research and extension formula funds were considered and were incorporated in these plan of work guidelines including descriptions of the following: (1) The critical short-term, intermediate, and long-term agricultural issues in the State and the current and planned research and extension programs and projects targeted to address the issues; (2) The process established to consult with stakeholders regarding the identification of critical agricultural issues in the State and the development of research and extension projects and programs targeted to address the issues; (3) The efforts made to identify and collaborate with other colleges and universities that have a unique capacity to address the identified agricultural issues in the State and the extent of current and emerging efforts (including regional and multistate efforts) to work with those other institutions; (4) The manner in which research and extension, including research and extension activities funded other than through formula funds, will cooperate to address the critical issues in the State, including the activities to be carried out separately, sequentially, or jointly; and (5) For extension, the education and outreach programs already underway to convey available research results that are pertinent to a critical agricultural issue, including efforts to encourage multicounty cooperation in the dissemination of research information.

These guidelines also take into consideration the requirement in section 102(c) of AREERA for the 1862, 1890, and 1994 land-grant institutions receiving agricultural research, extension, and education formula funds to establish a process for receiving stakeholder input on the uses of such funds. This stakeholder input requirement, as it applies to research and extension at 1862 and 1890 land-grant institutions, has been incorporated as part of the plan of work process.

The requirement of section 103(e) of AREERA also is addressed in these plan of work guidelines. This section requires that the 1862, 1890, and 1994 land-grant institutions establish a merit review process, prior to October 1, 1999, in order to obtain agricultural research, extension, and education funds. For purposes of these guidelines applicable to formula funds, a merit review process must be established for extension programs funded under sections 3(b)(1) and (c) of the Smith-Lever Act and under section 1444 of NARETPA, and for research programs funded under

sections 3(c)(1) and (2) of the Hatch Act (commonly referred to as Hatch Regular Formula Funds) and under section 1445 of NARETPA. Section 104 of AREERA amended the Hatch Act of 1887 also to stipulate that a scientific peer review process (that also would satisfy the requirements of a merit review process under section 103(e)) be established for research programs funded under section 3(c)(3) of the Hatch Act (commonly referred to as Hatch Multistate Research Funds). As previously stated, these program review processes must be established prior to October 1, 1999, in order for the institutions to obtain agricultural research and extension formula funds. Consequently, a description of the merit review and scientific peer review process has been included as a requirement in the submission of the 5-Year Plan of Work.

These plan of work guidelines also require reporting on the multistate and integrated research and extension programs. Section 104 of AREERA amended the Hatch Act of 1887 to redesignate the Hatch regional research funds as the Hatch Multistate Research Fund, specifying that these funds be used for cooperative research employing multidisciplinary approaches in which a State agricultural experiment station, working with another state agricultural experiment station, the Agricultural Research Service, or a college or university, cooperates to solve the problems that concern more than one State. Section 105 of AREERA amended the Smith-Lever Act to require that each institution receiving extension formula funds under sections 3(b) and (c) of the Smith-Lever Act expend for multistate activities in FY 2000 and thereafter a percentage that is at least equal to the lesser of 25 percent or twice the percentage of funds expended by the institution for multistate activities in FY 1997. Section 204 of AREERA amended both the Hatch and Smith-Lever Acts to require that each institution receiving agricultural research and extension formula funds under the Hatch Act and sections 3(b) and (c) of the Smith-Lever Act expend for integrated research and extension activities in FY 2000 and thereafter a percentage that is at least equal to the lesser of 25 percent or twice the percentage of funds expended by the institution for integrated research and extension activities in FY 1997. These sections also require that the institutions include in the plan of work a description of the manner in which they will meet these multistate and integrated requirements.

These applicable percentages apply to the Federal agricultural research and extension formula funds only. Federal formula funds that are used by the institution for a fiscal year for integrated activities may also be counted to satisfy the multistate activities requirement.

The multistate and integrated research and extension requirements do not apply to formula funds received by American Samoa, Guam, Micronesia, Northern Marianas, Puerto Rico, and the Virgin Islands. Since the Smith-Lever Act is not directly applicable, the multistate and integrated extension requirements do not apply to extension funds received by the District of Columbia, except to the extent it voluntarily complies.

The amendments made by sections 105 and 204 of AREERA also provide that the Secretary of Agriculture may reduce the minimum percentage required to be expended by the institution for multistate and integrated activities in the case of hardship, infeasibility, or other similar circumstance beyond the control of the institution. CSREES will issue separate guidance on the establishment of the FY 1997 baseline percentages for multistate activities and integrated activities and on requests for reduction in the required minimum percentage.

Also included in these guidelines are instructions on how to report on the annual accomplishments and results of the planned programs contained in the 5-Year Plan of Work, information on the evaluation of accomplishments and results, and information on when and how to update the 5-Year Plan of Work if necessary.

II. Submission of the 5-Year Plan of Work

A. General

1. Planning Option

This document provides guidance for preparing the plan of work with preservation of institutional autonomy and programmatic flexibility within the Federal-State Partnership. The plan of work is a 5-year prospective plan that covers the period of fiscal year 2000 through 2004, with the option to submit annual updates to the 5-Year Plan of Work. The 5-Year Plans of Work may be prepared for an institution's individual functions (i.e., research or extension activities), for an individual institution (including the planning of research and extension activities), or for state-wide activities (a 5-year research and/or extension plan of work for all the eligible institutions in a State). Each 5-Year Plan of Work must reflect the content of the program(s) funded by Federal agricultural research and extension formula funds and the required matching funds. This 5-Year Plan of Work must describe not only how the program(s) address critical short-term, intermediate, and long-term agricultural issues in a State, but how it relates to and is part of the broad national goals.

2. Period Covered

The 5-Year Plan of Work should cover the period from October 1, 1999, through September 30, 2004.

3. Projected Resources

The resources that are allocated for various planned programs in the 5-Year Plan of Work, in terms of human and fiscal measures, should be included and projected over the next five years. The baseline for the institution's or State's initial plan (for five years) should be the Federal agricultural research and extension formula funds for FY 1999 and the required matching funds. During the course of the 5-Year Plan of Work, if the baseline for the formula funds at the FY 1999 level changes by more than 10 percent in one year or by 20 percent or more cumulatively during the 5-year period, a revised 5-Year Plan of Work should be submitted as an annual update the following fiscal year.

4. Submission and Due Date

The 5-Year Plan of Work must be submitted by July 1, 1999, to the Partnerships Unit of the Cooperative State Research, Education, and Extension Service; U.S. Department of Agriculture. It is preferred that these 5-Year Plans of Work be submitted electronically to bhewitt@reeusda.gov in either WordPerfect file format, Microsoft Word file format, or ASCII file format. If this submission method is not available, an original and two copies of the 5-Year Plan of Work should be submitted to: Partnerships/POW; Cooperative State Research, Education, and Extension Service; U.S. Department of Agriculture; Stop 2214; 1400 Independence Avenue, S.W.; Washington. D.C. 20250–2214.

5. Certification

The 5-Year Plan of Work must be signed by the 1862 Extension Director, 1862 Research Director, 1890 Extension Administrator, and/or 1890 Research Director, depending on the planning option chosen.

6. Definitions

For the purpose of implementing the Guidelines for State Plans of Work for Agricultural Research and Extension Formula Funds, the following definitions are applicable:

Formula funds for the purposes of the plan of work guidelines means funding

provided by formula to 1862 land-grant institutions under section 3 of the Hatch Act of 1887, as amended (7 U.S.C. 361a) and sections 3(b)(1) and (c) of the Smith-Lever Act, as amended (7 U.S.C. 343(b)(1) and (c)) and to the 1890 land-grant institutions under sections 1444 and 1445 of the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended (7 U.S.C. 3221 and 3222).

Formula funds for the purposes of stakeholder input means the funding by formula to the 1862 land-grant institutions and 1890 land-grant institutions covered by these plan of work guidelines as well as the formula funds provided under the McIntire-Stennis Cooperative Eorestry Research Program (16 U.S.C. 582, *et seq.*), the Animal Health and Disease Research Program (7 U.S.C. 3195), and the education payments made to the 1994 land-grant institutions under section 534(a) of Pub. L. 103–382 (7 U.S.C. 301 note).

Integrated or joint activities means jointly planned, funded, and interwoven activities between research and extension to solve problems. This includes the generation of knowledge and the transfer of information and technology.

Merit review means an evaluation whereby the quality and relevance to program goals are assessed.

Multi-institutional means two or more institutions within the same or different States or territories that will collaborate in the planning and implementation of programs.

Multistate means collaborative efforts that reflect the programs of institutions located in at least two or more States or territories.

Multi-disciplinary means efforts that represent research, education, and/or extension programs in which principal investigators or other collaborators from two or more disciplines or fields of specialization work together to accomplish specified objectives.

Outcome indicator means an assessment of the results of a program activity compared to its intended purpose.

Output indicator means a tabulation, calculation, or recording of activity of effort expressed in quantitative or qualitative manner which measures the products or services produced by the planned program.

Program review means either a merit review or a scientific peer review.

Scientific peer review means an evaluation performed by experts with scientific knowledge and technical skills to conduct the proposed work whereby the technical quality and relevance to program goals are assessed.

Seek stakeholder input means an open and fair process which allows opportunities for individuals, groups, and organizations a voice in a process that treats all with dignity and respect.

Stakeholder is any person who has the opportunity to use or conduct agricultural research, extension, and education activities in the State.

Under-served means individuals, groups, and/or organizations whose needs have not been addressed in past programs.

Under-represented means individuals, groups, and/or organizations especially those who may not have participated fully including, but not limited to, women, racial and ethnic minorities, persons with disabilities, and limited resource clients.

B. Components of the 5-Year Plan of Work

1. Planned Programs

a. National Goals. The 5-Year Plan of Work should be based on the five national goals established in the Cooperative State Research, Education, and Extension Service (CSREES) Agency Strategic Plans and linked to the five national goals within the Research, Education, and Economics (REE) Mission Area of the U.S. Department of Agriculture. These national goals were adopted by the National Agricultural Research, Extension, Education, and Economics Advisory Board. These goals were developed from stakeholder input in conjunction with existing Federal-State Partnerships. The body of the 5-Year Plan of Work narrative should focus on these goals and outcomes.

Currently the national goals are:

Goal 1: An agricultural system that is highly competitive in the global economy. Through research and education, empower the agricultural system with knowledge that will improve competitiveness in domestic production, processing, and marketing.

Goal 2: A safe and secure food and fiber system. To ensure an adequate food and fiber supply and food safety through improved science based detection, surveillance, prevention, and education.

Goal 3: A healthy, well-nourished population. Through research and education on nutrition and development of more nutritious foods, enable people to make health promoting choices.

Goal 4: Greater harmony between agriculture and the environment. Enhance the quality of the environment through better understanding of and building on agriculture's and forestry's complex links with soil, water, air, and biotic resources.

Goal 5: Enhanced economic opportunity and quality of life for Americans. Empower people and communities, through research-based information and education, to address economic and social challenges facing our youth, families, and communities.

b. Format. As mentioned under the Planning Options section, an institution or State may opt to submit independent plans for the various units (e.g. 1862 research) or an integrated plan which includes all units in the institution or State. Regardless of the option chosen, the 5-Year Plan of Work should be reported in the appropriate matrix format, each cell of which identifies planned programs that fall under one of the national program goals. If an integrated 5-Year Plan of Work is submitted, the various units within the entity for which the 5-Year Plan of Work has been developed (i.e., 1862 research, 1890 research, 1862 extension, 1890 extension) would appear on the vertical axis. Individual cells within the matrix would be used to summarize the State programs.

The following example illustrates the desired matrix.

	Goal 1	Goal 2	Goal 3	Goal 4	Goal 5
1862 Research					
1862 Extension					
1890 Research					
1890 Extension					

c. Program Descriptions. Program descriptions presented in a narrative form or in each cell of the matrix for a planned program will be related to one of the five national goals and should reflect the following planning components:

1. The *statement of issue* to be addressed. This component should discuss the critical agricultural issue within the State that was identified and being targeted by this planned program. This component may also reference the stakeholder input which identified the critical agricultural issue in the State and the need for the targeted research and/or extension program.

2. The *performance goal(s)* is a target level of performance. The *output indicators* should reflect the tabulation, calculation, or recording of activity or effort expressed in quantitative or qualitative manner which measures the products or services produced by the program. The *outcome indicators* should assess the results of a program activity compared to its intended goal.

3. The *key program component(s)* identify the major efforts included in the work to be conducted.

4. The *internal and external linkages* include activities identified as integrated, multidisciplinary, multi-institutional, and/or multistate. This component may also address any efforts made to identify and collaborate with other colleges and universities that have a unique capacity to address the identified agricultural issues within the State and the extent of current and emerging efforts (including regional efforts) to work with those institutions.

5. The *target audiences* identifies the set of stakeholders, customers, and/or consumers for which the program is intended. The 5-Year Plans of Work should address the institution's commitment to facilitating equality of service and ease of access to all research and extension programs and services.

6. The *program duration* should be expressed as short-term, intermediate (one to five years), or long-term (over five years).

7. The *allocated resources* (human and fiscal measures) must be described for each planned program. This component may not only include the amount of Federal agricultural research and/or extension formula funds and matching funds allocated to this planned program, but also the manner in which funds, other than formula funds, will be expended to address the critical issues being targeted by this planned program.

8. *Education and outreach programs* must be described that are already underway to convey the research results that are pertinent to the critical agricultural issue identified in the "Statement of Issue." Efforts to encourage multicounty cooperation in dissemination of research results should also be identified. This planning component applies only to those 5-Year Plans of Work incorporating extension activities of the 1862 and/or 1890 land-grant institutions.

2. Stakeholder Input Process

Section 102(c) of AREERA requires the 1862 land-grant institutions, 1890 land-grant institutions, and 1994 land-grant institutions receiving agricultural research, extension, and education formula funds from CSREES to establish a process for stakeholder input on the uses of such funds. CSREES will promulgate separately in the **Federal Register** regulations to implement this stakeholder input requirement.

As a component of the 5-Year Plan of Work, each institution must report on the actions taken to seek stakeholder input that encourages their participation and a brief statement of the process used by the institution to identify stakeholders and to collect input from them. This report will be required annually and may be submitted with the Annual Report of Accomplishments and Results. This component will satisfy the reporting requirements imposed by the separately promulgated regulations on stakeholder input.

3. Program Review Process

a. Merit Review. Effective October 1, 1999, each 1862 land-grant institution and 1890 land-grant institution must establish a process for merit review in order to obtain agricultural research or extension formula funds.

b. Scientific Peer Review. A scientific peer review is required for all research funded under the Hatch Act of 1887 Multistate Research Fund. For such research, this scientific peer review will satisfy the merit review requirement specified above.

c. Reporting Requirement. As a component of the 5-year Plan of Work, each institution depending on the type of program review required will provide a description of the merit review process or scientific peer review process established at their institution. This description should include the process used in the selection of reviewers with expertise relevant to the effort and appropriate scientific and technical standards.

4. Multistate Research and Extension Activities

a. Hatch Multistate Research. Effective October 1, 1998, the Hatch Multistate Research Fund replaced the Hatch Regional Research Program. The Hatch Multistate Research Fund must be used for research employing multidisciplinary approaches to solve research problems that concern more than one State. For such research, State agricultural experiment stations must partner with another experiment station, the Agricultural Research Service, or another college or university.

b. Smith-Lever Multistate Extension. Effective October 1, 1999, the cooperative extension programs at the 1862 land-grant institutions must expend up to 25 percent of their formula funds provided under sections 3(b)(1) and (c) of the Smith-Lever Act for activities in which two or more State extension services cooperate to solve problems that concern more than one State. As required by law, CSREES will work with each 1862 land-grant institution to identify the amount each institution expended for multistate extension activities for fiscal year (FY) 1997. For FY 2000 and thereafter, cooperative extension programs must commit two times their FY 1997 baseline percentage or 25 percent, whichever is less, for multistate activities. Institutions should describe the contributions of extension staff and programs toward impacts rather than to describe the programs. Each participating State or territory must be a collaborator towards objectives and involved in the outcomes. Evidence of the proposed collaboration must be provided in the 5-Year Plan of Work submitted by each State. This planning is documented through formal agreements, letters of memorandums, contracts, or other instruments that provide primary evidence that a multistate relationship exists.

c. Reporting Requirements. The 5-Year Plan of Work should include a description of the Multistate Research, where applicable, and Multistate Extension programs as specified above and these programs must be reported consistently across the units of an institution as well as with the 5-Year Plan of Work of the cooperating State(s) or State institutions.

5. Integrated Research and Extension Activities

Effective October 1, 1999, up to 25 percent of all funds provided under section 3 of the Hatch Act and under section 3(b)(1) and (c) of the Smith-Lever Act must be spent on activities that integrate cooperative research and extension. As required by law, CSREES will work with each 1862 land-grant institution to establish the institution's baseline for integrated research and extension activities for FY 1997. For FY 2000 and thereafter, 1862 land-grant institutions must commit twice the FY 1997 baseline percentage or 25 percent, whichever is less, for integrated activities. Integration may occur within the State or between units within two or

more States. Integrated programming must be reported in the 5-Year Plan of Work and be reported consistently across the units of the institutions as well as with the 5-Year Plan of Work submitted by cooperating State(s). Federal formula funds used by a State for integrated activities may also be counted to satisfy the multistate research and the multistate extension activity requirements.

C. 5-Year Plan of Work Evaluation by CSREES

1. Schedule

All 5-Year Plans of Work will be evaluated by CSREES. The 5-Year Plans of Work will either be accepted by CSREES without change or returned to the institution, with clear and detailed recommendations for its modification. The submitting institution(s) will be notified by CSREES of its determination within 90 days (review to be completed in 60 days, communications to the institutions allowing a 30-day response) of receipt of the document. Adherence to the Plan of Work schedule by the recipient institution is critical to assuring the timely allocation of funds by CSREES. Five Year Plans of Work accepted by CSREES will remain in effect for five years and will be publicly available in a CSREES database. CSREES will notify all institutions of a need for a new 5-year plan of work two years prior to the plan's expiration on September 30.

2. Review Criteria

CSREES will evaluate the 5-Year Plans of Work to determine if they address agricultural issues of critical importance to the State; identify the alignment and realignment of programs to address those critical issues; identify the involvement of stakeholders in the planning process; give attention to under-served populations; indicate the level of Federal formula funds in proportion to all other funds at the director or administrator level; provide evidence of multistate, multi-institutional, and multidisciplinary and integrated activities; and identify the expected outcomes and impacts from the proposed 5-Year Plan of Work.

3. Evaluation of Multistate and Integrated Research and Extension Activities

CSREES is proposing to use the Annual Reports of Accomplishments and Results to evaluate the success of multistate, multi-institutional, and multidisciplinary activities and joint research and extension activities, in addressing critical agricultural issues identified in the 5-Year Plans of Work. Once evaluation protocols are developed, these guidelines will be modified to specify the protocols that will be used to evaluate the Annual Reports of Accomplishments and Results.

III. Annual Update of the 5-Year Plan of Work

A. Applicability

An annual update to the 5-Year Plan of Work is optional and is only required if: (1) there is a substantive change in planned programs; (2) if the change in Federal agricultural research and extension formula funding is 10 percent or greater in one year from the FY 1999 base year; or (3) if the cumulative change during the five year period is 20 percent or greater than the FY 1999 base year.

B. Reporting Requirement

If a revised 5-Year Plan of Work is required, or if the institution(s) chooses to submit an optional update to the 5-Year Plan of Work, it should be submitted at the beginning of the next plan of work cycle (July 1) to either the same electronic mail address or regular mail address as listed for the submission of the 5-Year Plan of Work.

IV. Annual Report of Accomplishments and Results

1. Reporting Requirement

The 5-Year Plan of Work for a reporting unit, institution, or State should form the basis for annually reporting its accomplishments and results. This report will be due on or before December 31 each year with the first report being due on December 31, 2000, for FY 2000. This report should be submitted to either the same electronic mail address or regular mail address as listed for the submission of the 5-Year Plan of Work.

2. Format

This annual report should include the relevant information related to each component of the program in the matrix cells of the 5-Year Plan of Work. Accomplishments and results reporting should involve two parts. First, institutions should submit an annual set of impact statements linked to sources of funding. Strict attention to just the preceding year is not expected in all situations. Some impact statements may need to cover ten or more years of activity. Focus should be given to the benefits received by targeted end-users. Second, institutions should submit annual results statements based on the indicators of the outputs and outcomes for the activities undertaken the preceding year. These should be identified as short-term, intermediate, or long-term critical issues in the 5-Year Plan of Work. Attention should be given to highlighting multistate, multi-institutional, and multidisciplinary and integrated activities, as appropriate to the 5-Year Plan of Work.

Done at Washington, D.C., this 13th day of April 1999.

I. Miley Gonzalez,

Under Secretary, Research, Education, and Economics.

[FR Doc. 99–9638 Filed 4–16–99; 8:45 am]

BILLING CODE 3410–22–P

federal register

Monday
April 19, 1999

Part IV

Department of Commerce

Economic Development Administration

Economic Development Assistance Program—Availability of Funds Under Public Law 105–393; Correction; Notice

DEPARTMENT OF COMMERCE

Economic Development Administration

[Docket No. 981228325–9085–02]

RIN 0610–ZA07

Economic Development Assistance Programs—Availability of Funds Under Public Law 105–393; Correction

AGENCY: Economic Development Administration (EDA), Department of Commerce (DOC).

ACTION: Notice; correction.

SUMMARY: The Department of Commerce published a notice in the **Federal Register** of February 24, 1999 announcing EDA policies and application procedures for Economic Development Assistance Programs. The notice contained incorrect language.

FOR FURTHER INFORMATION CONTACT: Edward M. Levin, 202–482–4687.

Correction

1. In the **Federal Register** of February 24, 1999, in FR Doc. 99–4493 (64 FR 9221) on page 9224, in the second column, correct paragraph H. Other special need by adding a new heading after the second sentence and revise text thereafter to read:

* * * * *

H. Other special need—the area is experiencing other special and/or extraordinary economic adjustment need as determined by the Assistant Secretary. The applicant will be asked to present appropriate economic or demographic statistics to demonstrate a special need.

Eligibility Determination

Eligibility is determined at the time that EDA invites an application and is based on the most recent Federal data available for the area where the project will be located or where the substantial direct benefits will be received. If no Federal data are available to determine eligibility, an applicant must submit to EDA the most recent data available through the government of the State in which the area is located. Projects must be eligible on the date of submission of the application. In the case of any application received by EDA more than six months prior to the time of award, EDA will redetermine that the project is eligible before making the award.

EDA will reject any documentation of eligibility that it determines is inaccurate.

* * * * *

2. In the **Federal Register** of February 24, 1999, in FR Doc. 99–4493 (64 FR 9221) on page 9226, in the second column bottom of page, correct the room number and Internet Address and add Republic of Palau under the name FUJITA, Gail S. to read:

FUJITA, Gail S., P.O. Box 50264, 300 Ala Moana Blvd., Federal Building, Room 5180, Honolulu, HI 96850, Telephone: (808) 541–3391, Internet Address: gfujita@doc.gov. Hawaii, Guam, American Samoa, Marshall Islands, Republic of Palau, Micronesia, and Northern Marianas.

Dated: April 9, 1999.

Phillip A. Singerman,

Assistant Secretary for Economic Development.

[FR Doc. 99–9679 Filed 4–16–99; 8:45 am]

BILLING CODE 3510–24–P

Reader Aids

Federal Register

Vol. 64, No. 74

Monday, April 19, 1999

CUSTOMER SERVICE AND INFORMATION

Federal Register/Code of Federal Regulations	
General Information, indexes and other finding aids	202–523–5227
Laws	523–5227
Presidential Documents	
Executive orders and proclamations	523–5227
The United States Government Manual	523–5227
Other Services	
Electronic and on-line services (voice)	523–4534
Privacy Act Compilation	523–3187
Public Laws Update Service (numbers, dates, etc.)	523–6641
TTY for the deaf-and-hard-of-hearing	523–5229

ELECTRONIC RESEARCH

World Wide Web

Full text of the daily Federal Register, CFR and other publications:

http://www.access.gpo.gov/nara

Federal Register information and research tools, including Public Inspection List, indexes, and links to GPO Access:

http://www.nara.gov/fedreg

E-mail

PENS (Public Law Electronic Notification Service) is an E-mail service that delivers information about recently enacted Public Laws. To subscribe, send E-mail to

listproc@lucky.fed.gov

with the text message:

subscribe publaws-l <firstname> <lastname>

Use listproc@lucky.fed.gov only to subscribe or unsubscribe to PENS. We cannot respond to specific inquiries at that address.

Reference questions. Send questions and comments about the Federal Register system to:

info@fedreg.nara.gov

The Federal Register staff cannot interpret specific documents or regulations.

FEDERAL REGISTER PAGES AND DATES, APRIL

15633–15914 1
15915–16332 2
16333–16600 5
16601–16796 6
16797–17078 7
17079–17270 8
17271–17500 9
17501–17940 12
17941–18322 13
18323–18550 14
18551–18796 15
18797–19016 16
19017–19250 19

CFR PARTS AFFECTED DURING APRIL

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
7177 17075
7178 17077
7179 17499
7180 17939
7181 18317
7182 18321
7183 19017

Executive Orders:
11223 (Amended by EO 13118) 16595
11269 (Amended by EO 13118) 16595
11958 (Amended by EO 13118) 16595
12163 (Amended by EO 13118) 16595
12188 (Amended by EO 13118) 16595
12260 (Amended by EO 13118) 16595
12293 (Amended by EO 13118) 16595
12301 (Amended by EO 13118) 16595
12599 (Amended by EO 13118) 16595
12703 (Amended by EO 13118) 16595
12884 (Amended by EO 13118) 16595
12981 (Amended by EO 13117) 16391
13116 16333
13117 16591
13118 16595
13119 18797

Administrative Orders:
Presidential Determinations:
No. 99-18 of March 25, 1999 16337
No. 99-19 of March 31, 1999 17081
No. 99-20 of March 31, 1999 17083
No. 99-21 of April 8, 1999 18551

Memorandums:
March 23, 1999 (Amended by EO 13118) 16595
March 31, 1999 17079

5 CFR

351 16797
532 ..... 15915, 17941
870 16601
890 15633
1200 15916
2411 18799

7 CFR

6 17501
254 17085
301 15916
760 17942
801 19019
916 19022
917 19022
981 18800
1079 19034
1361 18323
1437 17271
1477 18553
1728 17219
1753 16602

Proposed Rules:
28 15937
340 16364
905 15634
944 15634
1000 16026
1001 16026
1002 16026
1004 16026
1005 16026
1006 16026
1007 16026
1012 16026
1013 16026
1030 16026
1032 16026
1033 16026
1036 16026
1040 16026
1044 16026
1046 16026
1049 16026
1050 16026
1064 16026
1065 16026
1068 16026
1076 16026
1079 ..... 16026, 19071
1106 16026
1124 16026
1126 16026
1131 16026
1134 16026
1135 16026
1137 16026
1138 16026
1139 16026
1205 19072
1220 18831
1306 19084
1309 19084
3418 18534

8 CFR

103 17943

Proposed Rules:
2 17128

9 CFR

1.....15918
3.....15918

Proposed Rules:

72.....17573
93.....16655
201.....15938

10 CFR

2.....15636, 15920
10.....15636
11.....15636
25.....15636
40.....17506
50.....17944, 17947
72.....17510
73.....17947
95.....15636

Proposed Rules:

30.....18833
39.....19089
40.....18833
70.....18833
170.....15876, 18835
171.....15876, 18835

12 CFR

3.....19034
208.....19034
213.....16612
225.....19034
226.....16614
325.....19034
330.....15653
611.....16617
620.....16617
790.....17085
935.....16618, 16788

Proposed Rules:

933.....16792
934.....16792
935.....16792
1750.....18084

13 CFR

115.....18324

Proposed Rules:

107.....18375
120.....15942
121.....15708

14 CFR

39.....15657, 15659, 15661, 15669, 15920, 16339, 16621, 16624, 16625, 16801, 16803, 16805, 16808, 16810, 17086, 17512, 17514, 17522, 17524, 17947, 17949, 17951, 17954, 17956, 17950, 17961, 17962, 17964, 17966, 18324, 18802, 18804, 18806
71.....15673, 15674, 15675, 15676, 15678, 15679, 16024, 16340, 16341, 16342, 16343, 16344, 17219, 17934, 18563
91.....15912
93.....17439
95.....18563
97.....17277, 17526, 17528

Proposed Rules:

39.....16364, 16366, 16656, 17130, 18382, 18384, 18386, 18835, 18840, 18842, 18845, 19096
65.....18302
71.....15708, 16024, 16368, 16369, 16370, 16371, 17133, 17717, 17983, 17984, 18392, 18481, 18584
91.....17293, 18302
105.....18302
108.....19220
119.....16298, 18302
121.....16298, 18766
125.....18766
129.....16298
135.....16298, 17293, 18766
145.....18766
183.....16298

15 CFR

738.....17968
740.....17968
742.....17968
748.....17968
762.....17968
774.....17968

16 CFR

Proposed Rules:

241.....18081
256.....18081

17 CFR

275.....15680
279.....15680

Proposed Rules:

1.....17439
230.....18481
240.....18393, 18481
270.....18481

18 CFR

1b.....17087
284.....17276
343.....17087
385.....17087

19 CFR

10.....16345
12.....17529
18.....16345
113.....16345
122.....18566
178.....16635, 16345
192.....16635

Proposed Rules:

19.....16865
146.....15873

20 CFR

404.....17100, 18566
416.....18566
652.....18662
660.....18662
661.....18662
662.....18662
663.....18662
664.....18662
665.....18662
666.....18662
667.....18662
668.....18662
669.....18662
670.....18662
671.....18662

21 CFR

26.....16347
201.....18571
330.....18571
331.....18571
341.....18571
346.....18571
355.....18571
358.....18571
369.....18571
510.....15683, 18571
520.....15683, 15684, 18571, 18572
522.....15683, 15685, 18573
556.....18573
558.....15683, 18574
701.....18571
874.....18327
882.....18327
890.....18329
900.....18331

Proposed Rules:

1.....15944
101.....15948, 17295
310.....17985
1308.....17298, 17299

22 CFR

Ch. II.....15685
Ch. VI.....15686
121.....17531
123.....17531
124.....17531
126.....17531
171.....18808
201.....17535
514.....17975, 17976

Proposed Rules:

514.....17988

23 CFR

Proposed Rules:

777.....16870

24 CFR

100.....16324
103.....18538

Proposed Rules:

990.....17301

25 CFR

291.....17535

Proposed Rules:

Ch. I.....18585
151.....17574

26 CFR

1.....15686, 15687
7.....15687
31.....15687
301.....16640, 17279
602.....15687, 15688, 15873, 17279

Proposed Rules:

1.....16372
301.....19217

27 CFR

178.....17291

Proposed Rules:

4.....17588
5.....17588
7.....17588

28 CFR

16.....17977
504.....17270

Proposed Rules:

65.....17128

29 CFR

1926.....18809
4044.....18575

Proposed Rules:

1.....17442
5.....17442

30 CFR

920.....17978
935.....17980

Proposed Rules:

46.....18498, 18528
48.....18498
206.....15949, 17990
700.....18585
740.....18585
746.....18585
750.....18585
934.....18586
935.....18857

31 CFR

210.....17472

32 CFR

812.....17101
863.....17545

33 CFR

100.....16348, 16812, 16813
117.....16350, 16641, 17101, 18576
155.....18576
165.....16348, 16641, 16642, 17439, 18577, 18810, 18814
187.....19039
334.....18580

Proposed Rules:

100.....18587
117.....17134
154.....17222
175.....15709
177.....15709
179.....15709
181.....15709
183.....15709

34 CFR

682.....18974

36 CFR

Proposed Rules:

1.....17293
2.....17293
3.....17293
4.....17293
5.....17293
6.....17293
7.....17293

39 CFR

20.....19039
111.....16814, 17102

40 CFR

52.....15688, 15922, 17102, 17545, 17548, 17551, 17982, 18815, 18816, 18818, 18821
62.....17219
63.....17460, 17555, 18824
81.....17551
90.....16526

180 .....16840, 16843, 16850, 16856, 17565, 18333, 18339, 18346, 18351, 18357, 18359, 18360, 18367, 18369, 19042, 19050
261 16643
300 .....15926, 16351

Proposed Rules:
52 .....15711, 15949, 16659, 17136, 17589, 17592, 17593, 17990, 18858, 18860, 18861, 18862, 19097
63 .....17465, 18862
70 16659
81 .....17593, 18864
82 16373
112 17227
180 16874
185 16874
186 16874
194 18870
300 17593

41 CFR

Ch. 301 .....16352, 18581
60-250 15690
60-999 15690
302-11 .....17105, 18659

43 CFR

Proposed Rules:
3100 17598
3106 17598
3130 17598
3160 17598

44 CFR

65 .....17567; 17569
67 17571

Proposed Rules:
67 17598

45 CFR

260 17720
261 17720
262 17720
263 17720
264 17720
265 17720
283 18484
1611 .....17108, 18372

Proposed Rules:
1635 16383
2522 17302
2525 17302
2526 17302
2527 17302
2528 17302
2529 17302

46 CFR

32 18576

Proposed Rules:
10 15709
15 15709
24 15709
25 15709
26 15709
28 15709
70 15709
169 15709
175 15709

47 CFR

1 19057
43 19057
63 19057
69 16353
73 .....17108, 19067

Proposed Rules:
0 16388
1 16661
2 16687
25 .....16880, 16687
69 16389
73 .....15712, 15713, 15714, 15715, 16388, 16396, 17137, 17138, 17139, 17140, 17141, 17142, 17143, 18596, 18871, 18872, 18873
76 16388

48 CFR

231 18827
232 18828
235 18829
252 18828
701 16647
703 16647
715 .....16647, 19217
722 18481
731 16647
732 18481
752 .....16647, 18481
909 16649
970 16649
1333 16651
1533 17109
1552 17109
1832 18372

Proposed Rules:
1833 17603

49 CFR

195 15926
533 16860
571 16358
581 16359

Proposed Rules:
107 18786
171 16882
177 16882
178 16882
180 16882
192 .....16882, 16885
195 .....16882, 16885
571 19106
578 16690
611 17062

50 CFR

17 .....15691, 17110
229 17292
600 16862
648 .....15704, 16361, 16362, 18582
660 .....16862, 17125, 19067
679 .....16361, 16362, 16654, 17126, 18373, 19069
697 19069

Proposed Rules:
17 .....16397, 16890, 18596, 19108
20 17308
32 17992
223 .....16396, 16397
224 16397
226 16397
600 .....16414, 18394, 19111
622 18395
648 .....16417, 16891, 18394, 19111
679 19113

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT APRIL 19, 1999

AGRICULTURE DEPARTMENT
Agricultural Marketing Service
Almonds grown in—
California; published 4-16-99
EDUCATION DEPARTMENT
Postsecondary education:
Graduate assistance in areas of national need; published 3-18-99
ENVIRONMENTAL PROTECTION AGENCY
Air quality implementation plans:
Transportation conformity pilot program; published 3-18-99
Air quality implementation plans; approval and promulgation; various States:
Georgia; published 3-18-99
Illinois; published 2-17-99
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
Clofentezine; published 4-19-99
Diflubenzuron; published 4-19-99
FEDERAL COMMUNICATIONS COMMISSION
Radio stations; table of assignments:
Arkansas; published 3-16-99
Oklahoma; published 3-22-99
Texas; published 3-16-99
Television stations; table of assignments:
Missouri; published 3-15-99
HOUSING AND URBAN DEVELOPMENT DEPARTMENT
Public and Indian housing:
Public housing development rule; reporting and recordkeeping requirements; published 3-19-99
POSTAL SERVICE
International Mail Manual:
Priority Mail Global Guaranteed; enhanced expedited service from selected U.S. locations to selected European countries; published 4-19-99
TRANSPORTATION DEPARTMENT
Coast Guard
Ports and waterways safety:
Kill Van Kull Channel et al., NY and NJ; published 4-15-99
TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airworthiness directives:
Airbus; published 3-12-99
Boeing; published 4-2-99
Raytheon; published 3-5-99
Short Brothers; published 3-12-99
TREASURY DEPARTMENT
Alcohol, Tobacco and Firearms Bureau
Alcohol; viticultural area designations:
Chiles Valley, CA; published 2-17-99

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT
Agricultural Marketing Service
Cherries (tart) grown in—
Michigan et al.; comments due by 4-26-99; published 2-25-99
Milk marketing orders:
Iowa; comments due by 4-26-99; published 4-19-99
Raisins produced from grapes grown in—
California; comments due by 4-26-99; published 2-24-99
AGRICULTURE DEPARTMENT
Animal and Plant Health Inspection Service
Animal welfare:
Marine mammals; humane handling, care, treatment, and transportation; comments due by 4-26-99; published 2-23-99
Exportation and importation of animals and animal products:
Pork and pork products from Sonora and Yucatan, Mexico; importation; comments due by 4-26-99; published 2-23-99
AGRICULTURE DEPARTMENT
Food Safety and Inspection Service
Meat and poultry inspection:
Irradiation of refrigerated or frozen uncooked meat, meat byproducts, etc.; comments due by 4-26-99; published 2-24-99
AGRICULTURE DEPARTMENT
Rural Utilities Service
Rural development:
Distance learning and telemedicine loan and grant program; comments due by 4-26-99; published 3-25-99
COMMERCE DEPARTMENT
National Oceanic and Atmospheric Administration
Fishery conservation and management:
Magnuson-Stevens Act provisions—
Gulf of Maine separator trawl whiting fishery and proposed supplemental gear; comments due by 4-29-99; published 4-14-99
DEFENSE DEPARTMENT
Acquisition regulations:
People's Republic of China; comments due by 4-26-99; published 2-23-99
DEFENSE DEPARTMENT
Navy Department
National Environmental Policy Act; implementation:
Policies and responsibilities; comments due by 4-26-99; published 2-25-99
ENVIRONMENTAL PROTECTION AGENCY
Air pollutants, hazardous; national emission standards:
Equivalent emission limitations by permit; implementation; comments due by 4-26-99; published 4-16-99
Air quality implementation plans; approval and promulgation; various States:
Arizona; comments due by 4-26-99; published 3-26-99
California; comments due by 4-26-99; published 3-25-99
Utah; comments due by 4-26-99; published 3-26-99
Radiation protection programs:
Rocky Flats Environmental Technology Site; transuranic radioactive waste disposal; applicable waste characterization documents; availability; comments due by 4-26-99; published 3-25-99
Superfund program:
Toxic chemical release reporting; community right-to-know—
Chromite ore from Transvaal Region, South Africa; comments due by 4-26-99; published 2-23-99
FEDERAL COMMUNICATIONS COMMISSION
Radio stations; table of assignments:
Florida; comments due by 4-26-99; published 3-16-99
Missouri; comments due by 4-26-99; published 3-16-99
Montana; comments due by 4-26-99; published 3-16-99
Texas; comments due by 4-26-99; published 3-16-99
FEDERAL EMERGENCY MANAGEMENT AGENCY
Disaster assistance:
Major disaster and emergency declarations, Governors' requests; evaluation; comments due by 4-26-99; published 1-26-99
FEDERAL RESERVE SYSTEM
Availability of funds and collection of checks (Regulation CC):
Sending notices in lieu of returning original checks; comments due by 4-30-99; published 2-24-99
INTERIOR DEPARTMENT
Fish and Wildlife Service
Endangered and threatened species:
Preble's meadow jumping mouse; comments due by 4-30-99; published 3-16-99
Rhadine exilis, etc. (nine invertebrate species from Bexar County, TX); comments due by 4-29-99; published 12-30-98
INTERIOR DEPARTMENT
Minerals Management Service
Outer Continental Shelf; oil, gas, and sulphur operations:
Bonus payments with bids; comments due by 4-30-99; published 3-31-99
Royalty management:
Oil value for royalty due on Federal leases; comment extension; comments due by 4-27-99; published 4-13-99
INTERIOR DEPARTMENT
Surface Mining Reclamation and Enforcement Office
Permanent program and abandoned mine land

reclamation plan submissions:
Indiana; comments due by 4-26-99; published 3-25-99

JUSTICE DEPARTMENT
Prisons Bureau
Inmate control, custody, care, etc.:
Inmate discipline respecting violations of telephone and smoking policies; comments due by 4-26-99; published 2-25-99
Over-the-counter (OTC) medications; inmate access; comments due by 4-30-99; published 3-1-99
Searches of housing units, inmates, and inmate work areas, and persons other than inmates; use of electronic devices; comments due by 4-26-99; published 2-25-99

LABOR DEPARTMENT
Labor-Management Standards Office
Transportation Equity Act for 21st Century; implementation:
Employee protections; certification requirements; comments due by 4-29-99; published 3-30-99

LABOR DEPARTMENT
Mine Safety and Health Administration
Coal mine and metal and nonmetal mine safety and health:
Underground mines—
Diesel particulate matter exposure of miners; comments due by 4-30-99; published 2-12-99

NUCLEAR REGULATORY COMMISSION
Domestic licensing and related regulatory functions; environmental protection regulations:
Nuclear power plant operating licenses; renewal requirements; comments due by 4-27-99; published 2-26-99

PERSONNEL MANAGEMENT OFFICE
Employment:
Selective Service Law—
Statutory bar to appointment of persons who fail to register; comments due by 4-28-99; published 3-29-99

TRANSPORTATION DEPARTMENT
Coast Guard
Drawbridge operations:
Louisiana; comments due by 4-29-99; published 3-15-99
Michigan; comments due by 4-26-99; published 2-25-99
Ports and waterways safety:
Eagle Harbor, Bainbridge Island, WA; regulated navigation area; comments due by 4-26-99; published 2-23-99
Port of New York and New Jersey; safety zone; comments due by 4-26-99; published 2-24-99

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airworthiness directives:
BMW Rolls-Royce GmbH; comments due by 4-26-99; published 2-24-99
Eurocopter France; comments due by 4-26-99; published 3-26-99
New Piper Aircraft, Inc.; comments due by 4-28-99; published 3-3-99
Pratt & Whitney; comments due by 4-29-99; published 3-30-99
Raytheon; comments due by 4-28-99; published 3-1-99
Airworthiness standards:
Special conditions—
Boeing model 717-200 airplane; operation without normal electrical power; comments due by 4-26-99; published 3-25-99
Learjet model 35, 35A, 36, and 36A airplanes; comments due by 4-28-99; published 3-29-99
Soloy Corp. model Pathfinder 21 airplane; comments due by 4-26-99; published 3-25-99
Class B airspace; comments due by 4-30-99; published 3-1-99
Class E airspace; comments due by 4-26-99; published 3-11-99

TRANSPORTATION DEPARTMENT
Maritime Administration
Cargo preference—U.S.-flag commmercial vessels:
Carriage of agricultural exports; comments due by 4-28-99; published 3-26-99

TRANSPORTATION DEPARTMENT
National Highway Traffic Safety Administration
Motor vehicle safety standards:
Hydraulic and electric brake systems—
School buses; parking brake warning system; comments due by 4-30-99; published 3-1-99
Hydraulic brake systems—
Light vehicle brake systems; antilock brake system malfunction indicator lamp activation protocol; compliance date delay; comments due by 4-30-99; published 2-26-99
Side impact protection; inflatable restraint systems; benefits and risks; meeting; comments due by 4-30-99; published 3-24-99

TRANSPORTATION DEPARTMENT
Research and Special Programs Administration
Pipeline safety:
Gas gathering lines, definition; electronic discussion forum; comments due by 4-28-99; published 3-11-99

TREASURY DEPARTMENT
Internal Revenue Service
Procedure and administration:
Unified partnership audit; modifications and additions; comments due by 4-26-99; published 1-26-99

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–523–6641. This list is also available online at http://www.nara.gov/fedreg.

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at http://www.access.gpo.gov/nara/index.html. Some laws may not yet be available.

H.R. 193/P.L. 106–20
Sudbury, Assabet, and Concord Wild and Scenic River Act (Apr. 9, 1999; 113 Stat. 30)

Last List April 12, 1999.

Public Laws Electronic Notification Service (PENS)

PENS is a free electronic mail notification service of newly enacted public laws. To subscribe, send E-mail to **listproc@lucky.fed.gov** with the text message:

subscribe PUBLAWS-L Your Name.

Note: This service is strictly for E-mail notification of new public laws. The text of laws is not available through this service. **PENS** cannot respond to specific inquiries sent to this address.

CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, stock numbers, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

A checklist of current CFR volumes comprising a complete CFR set, also appears in the latest issue of the LSA (List of CFR Sections Affected), which is revised monthly.

The CFR is available free on-line through the Government Printing Office's GPO Access Service at http://www.access.gpo.gov/nara/cfr/index.html. For information about GPO Access call the GPO User Support Team at 1-888-293-6498 (toll free) or 202-512-1530.

The annual rate for subscription to all revised paper volumes is $951.00 domestic, $237.75 additional for foreign mailing.

Mail orders to the Superintendent of Documents, Attn: New Orders, P.O. Box 371954, Pittsburgh, PA 15250–7954. All orders must be accompanied by remittance (check, money order, GPO Deposit Account, VISA, Master Card, or Discover). Charge orders may be telephoned to the GPO Order Desk, Monday through Friday, at **(202) 512–1800** from 8:00 a.m. to 4:00 p.m. eastern time, or FAX your charge orders to **(202) 512-2250**.

Title	Stock Number	Price	Revision Date
1, 2 (2 Reserved)	(869-034-00001-1)	5.00	[5] Jan. 1, 1998
*3 (1997 Compilation and Parts 100 and 101)	(869-038-00002-4)	20.00	[1] Jan. 1, 1999
4	(869-034-00003-7)	7.00	[5] Jan. 1, 1998
5 Parts:			
1-699	(869-038-00004-1)	37.00	Jan. 1, 1999
700-1199	(869-034-00005-3)	26.00	Jan. 1, 1998
1200-End, 6 (6 Reserved)	(869-034-00006-1)	39.00	Jan. 1, 1998
7 Parts:			
1-26	(869-038-00007-5)	25.00	Jan. 1, 1999
27-52	(869-038-00008-3)	32.00	Jan. 1, 1999
53-209	(869-038-00009-1)	20.00	Jan. 1, 1999
*210-299	(869-038-00010-5)	47.00	Jan. 1, 1999
300-399	(869-038-00011-3)	25.00	Jan. 1, 1999
400-699	(869-038-00012-1)	37.00	Jan. 1, 1999
700-899	(869-038-00013-0)	32.00	Jan. 1, 1999
900-999	(869-038-00014-8)	41.00	Jan. 1, 1999
1000-1199	(869-034-00015-1)	44.00	Jan. 1, 1998
1200-1599	(869-038-00016-4)	34.00	Jan. 1, 1999
1600-1899	(869-034-00017-7)	58.00	Jan. 1, 1998
1900-1939	(869-038-00018-1)	19.00	Jan. 1, 1999
1940-1949	(869-038-00019-9)	34.00	Jan. 1, 1999
1950-1999	(869-038-00020-2)	41.00	Jan. 1, 1999
*2000-End	(869-038-00021-1)	27.00	Jan. 1, 1999
8	(869-034-00022-3)	33.00	Jan. 1, 1998
9 Parts:			
1-199	(869-038-00023-7)	42.00	Jan. 1, 1999
200-End	(869-034-00024-0)	33.00	Jan. 1, 1998
10 Parts:			
0-50	(869-034-00025-8)	39.00	Jan. 1, 1998
*51-199	(869-038-00026-1)	34.00	Jan. 1, 1999
200-499	(869-038-00027-0)	33.00	Jan. 1, 1999
500-End	(869-038-00028-8)	43.00	Jan. 1, 1999
11	(869-038-0002-6)	20.00	Jan. 1, 1999
12 Parts:			
1-199	(869-038-00030-0)	17.00	Jan. 1, 1999
200-219	(869-038-00031-8)	20.00	Jan. 1, 1999
220-299	(869-038-00032-6)	40.00	Jan. 1, 1999
300-499	(869-038-00033-4)	25.00	Jan. 1, 1999
500-599	(869-038-00034-2)	24.00	Jan. 1, 1999
600-End	(869-034-00035-5)	44.00	Jan. 1, 1998
13	(869-038-00036-9)	25.00	Jan. 1, 1999
14 Parts:			
1-59	(869-038-00037-7)	50.00	Jan. 1, 1999
60-139	(869-034-00038-0)	40.00	Jan. 1, 1998
140-199	(869-038-00039-3)	17.00	Jan. 1, 1999
200-1199	(869-034-00040-1)	29.00	Jan. 1, 1998
1200-End	(869-038-00041-5)	24.00	Jan. 1, 1999
15 Parts:			
0-299	(869-034-00042-8)	22.00	Jan. 1, 1998
300-799	(869-034-00043-6)	33.00	Jan. 1, 1998
800-End	(869-038-00044-0)	24.00	Jan. 1, 1999
16 Parts:			
0-999	(869-038-00045-8)	32.00	Jan. 1, 1999
1000-End	(869-034-00046-1)	33.00	Jan. 1, 1998
17 Parts:			
1-199	(869-034-00048-7)	27.00	Apr. 1, 1998
200-239	(869-034-00049-5)	32.00	Apr. 1, 1998
240-End	(869-034-00050-9)	40.00	Apr. 1, 1998
18 Parts:			
1-399	(869-034-00051-7)	45.00	Apr. 1, 1998
400-End	(869-034-00052-5)	13.00	Apr. 1, 1998
19 Parts:			
1-140	(869-034-00053-3)	34.00	Apr. 1, 1998
141-199	(869-034-00054-1)	33.00	Apr. 1, 1998
200-End	(869-034-00055-0)	15.00	Apr. 1, 1998
20 Parts:			
1-399	(869-034-00056-8)	29.00	Apr. 1, 1998
400-499	(869-034-00057-6)	28.00	Apr. 1, 1998
500-End	(869-034-00058-4)	44.00	Apr. 1, 1998
21 Parts:			
1-99	(869-034-00059-2)	21.00	Apr. 1, 1998
100-169	(869-034-00060-6)	27.00	Apr. 1, 1998
170-199	(869-034-00061-4)	28.00	Apr. 1, 1998
200-299	(869-034-00062-2)	9.00	Apr. 1, 1998
300-499	(869-034-00063-1)	50.00	Apr. 1, 1998
500-599	(869-034-00064-9)	28.00	Apr. 1, 1998
600-799	(869-034-00065-7)	9.00	Apr. 1, 1998
800-1299	(869-034-00066-5)	32.00	Apr. 1, 1998
1300-End	(869-034-00067-3)	12.00	Apr. 1, 1998
22 Parts:			
1-299	(869-034-00068-1)	41.00	Apr. 1, 1998
300-End	(869-034-00069-0)	31.00	Apr. 1, 1998
23	(869-034-00070-3)	25.00	Apr. 1, 1998
24 Parts:			
0-199	(869-034-00071-1)	32.00	Apr. 1, 1998
200-499	(869-034-00072-0)	28.00	Apr. 1, 1998
500-699	(869-034-00073-8)	17.00	Apr. 1, 1998
700-1699	(869-034-00074-6)	45.00	Apr. 1, 1998
1700-End	(869-034-00075-4)	17.00	Apr. 1, 1998
25	(869-034-00076-2)	42.00	Apr. 1, 1998
26 Parts:			
§§ 1.0-1-1.60	(869-034-00077-1)	26.00	Apr. 1, 1998
§§ 1.61-1.169	(869-034-00078-9)	48.00	Apr. 1, 1998
§§ 1.170-1.300	(869-034-00079-7)	31.00	Apr. 1, 1998
§§ 1.301-1.400	(869-034-00080-1)	23.00	Apr. 1, 1998
§§ 1.401-1.440	(869-034-00081-9)	39.00	Apr. 1, 1998
§§ 1.441-1.500	(869-034-00082-7)	29.00	Apr. 1, 1998
§§ 1.501-1.640	(869-034-00083-5)	27.00	Apr. 1, 1998
§§ 1.641-1.850	(869-034-00084-3)	32.00	Apr. 1, 1998
§§ 1.851-1.907	(869-034-00085-1)	36.00	Apr. 1, 1998
§§ 1.908-1.1000	(869-034-00086-0)	35.00	Apr. 1, 1998
§§ 1.1001-1.1400	(869-034-00087-8)	38.00	Apr. 1, 1998
§§ 1.1401-End	(869-034-00088-6)	51.00	Apr. 1, 1998
2-29	(869-034-00089-4)	36.00	Apr. 1, 1998
30-39	(869-034-00090-8)	25.00	Apr. 1, 1998
40-49	(869-034-00091-6)	16.00	Apr. 1, 1998
50-299	(869-034-00092-4)	19.00	Apr. 1, 1998
300-499	(869-034-00093-2)	34.00	Apr. 1, 1998
500-599	(869-034-00094-1)	10.00	Apr. 1, 1998
600-End	(869-034-00095-9)	9.00	Apr. 1, 1998
27 Parts:			
1-199	(869-034-00096-7)	49.00	Apr. 1, 1998

Title	Stock Number	Price	Revision Date
200-End	(869-034-00097-5)	17.00	[6] Apr. 1, 1998
28 Parts:			
0-42	(869-034-00098-3)	36.00	July 1, 1998
43-end	(869-034-00099-1)	30.00	July 1, 1998
29 Parts:			
0-99	(869-034-00100-9)	26.00	July 1, 1998
100-499	(869-034-00101-7)	12.00	July 1, 1998
500-899	(869-034-00102-5)	40.00	July 1, 1998
900-1899	(869-034-00103-3)	20.00	July 1, 1998
1900-1910 (§§ 1900 to 1910.999)	(869-034-00104-1)	44.00	July 1, 1998
1910 (§§ 1910.1000 to end)	(869-034-00105-0)	27.00	July 1, 1998
1911-1925	(869-034-00106-8)	17.00	July 1, 1998
1926	(869-034-00107-6)	30.00	July 1, 1998
1927-End	(869-034-00108-4)	41.00	July 1, 1998
30 Parts:			
1-199	(869-034-00109-2)	33.00	July 1, 1998
200-699	(869-034-00110-6)	29.00	July 1, 1998
700-End	(869-034-00111-4)	33.00	July 1, 1998
31 Parts:			
0-199	(869-034-00112-2)	20.00	July 1, 1998
200-End	(869-034-00113-1)	46.00	July 1, 1998
32 Parts:			
1-39, Vol. I		15.00	[2] July 1, 1984
1-39, Vol. II		19.00	[2] July 1, 1984
1-39, Vol. III		18.00	[2] July 1, 1984
1-190	(869-034-00114-9)	47.00	July 1, 1998
191-399	(869-034-00115-7)	51.00	July 1, 1998
400-629	(869-034-00116-5)	33.00	July 1, 1998
630-699	(869-034-00117-3)	22.00	[4] July 1, 1998
700-799	(869-034-00118-1)	26.00	July 1, 1998
800-End	(869-034-00119-0)	27.00	July 1, 1998
33 Parts:			
1-124	(869-034-00120-3)	29.00	July 1, 1998
125-199	(869-034-00121-1)	38.00	July 1, 1998
200-End	(869-034-00122-0)	30.00	July 1, 1998
34 Parts:			
1-299	(869-034-00123-8)	27.00	July 1, 1998
300-399	(869-034-00124-6)	25.00	July 1, 1998
400-End	(869-034-00125-4)	44.00	July 1, 1998
35	(869-034-00126-2)	14.00	July 1, 1998
36 Parts			
1-199	(869-034-00127-1)	20.00	July 1, 1998
200-299	(869-034-00128-9)	21.00	July 1, 1998
300-End	(869-034-00129-7)	35.00	July 1, 1998
37	(869-034-00130-1)	27.00	July 1, 1998
38 Parts:			
0-17	(869-034-00131-9)	34.00	July 1, 1998
18-End	(869-034-00132-7)	39.00	July 1, 1998
39	(869-034-00133-5)	23.00	July 1, 1998
40 Parts:			
1-49	(869-034-00134-3)	31.00	July 1, 1998
50-51	(869-034-00135-1)	24.00	July 1, 1998
52 (52.01-52.1018)	(869-034-00136-0)	28.00	July 1, 1998
52 (52.1019-End)	(869-034-00137-8)	33.00	July 1, 1998
53-59	(869-034-00138-6)	17.00	July 1, 1998
60	(869-034-00139-4)	53.00	July 1, 1998
61-62	(869-034-00140-8)	18.00	July 1, 1998
63	(869-034-00141-6)	57.00	July 1, 1998
64-71	(869-034-00142-4)	11.00	July 1, 1998
72-80	(869-034-00143-2)	36.00	July 1, 1998
81-85	(869-034-00144-1)	31.00	July 1, 1998
86	(869-034-00144-9)	53.00	July 1, 1998
87-135	(869-034-00146-7)	47.00	July 1, 1998
136-149	(869-034-00147-5)	37.00	July 1, 1998
150-189	(869-034-00148-3)	34.00	July 1, 1998
190-259	(869-034-00149-1)	23.00	July 1, 1998
260-265	(869-034-00150-9)	29.00	July 1, 1998
266-299	(869-034-00151-3)	33.00	July 1, 1998
300-399	(869-034-00152-1)	26.00	July 1, 1998
400-424	(869-034-00153-0)	33.00	July 1, 1998
425-699	(869-034-00154-8)	42.00	July 1, 1998
700-789	(869-034-00155-6)	41.00	July 1, 1998
790-End	(869-034-00156-4)	22.00	July 1, 1998
41 Chapters:			
1, 1-1 to 1-10		13.00	[3] July 1, 1984
1, 1-11 to Appendix, 2 (2 Reserved)		13.00	[3] July 1, 1984
3-6		14.00	[3] July 1, 1984
7		6.00	[3] July 1, 1984
8		4.50	[3] July 1, 1984
9		13.00	[3] July 1, 1984
10-17		9.50	[3] July 1, 1984
18, Vol. I, Parts 1-5		13.00	[3] July 1, 1984
18, Vol. II, Parts 6-19		13.00	[3] July 1, 1984
18, Vol. III, Parts 20-52		13.00	[3] July 1, 1984
19-100		13.00	[3] July 1, 1984
1-100	(869-034-00157-2)	13.00	July 1, 1998
101	(869-034-00158-1)	37.00	July 1, 1998
102-200	(869-034-00158-9)	15.00	July 1, 1998
201-End	(869-034-00160-2)	13.00	July 1, 1998
42 Parts:			
1-399	(869-034-00161-1)	34.00	Oct. 1, 1998
400-429	(869-034-00162-9)	41.00	Oct. 1, 1998
430-End	(869-034-00163-7)	51.00	Oct. 1, 1998
43 Parts:			
1-999	(869-034-00164-5)	30.00	Oct. 1, 1998
1000-end	(869-034-00165-3)	48.00	Oct. 1, 1998
44	(869-034-00166-1)	48.00	Oct. 1, 1998
45 Parts:			
1-199	(869-034-00167-0)	30.00	Oct. 1, 1998
200-499	(869-034-00168-8)	18.00	Oct. 1, 1998
500-1199	(869-034-00169-6)	29.00	Oct. 1, 1998
1200-End	(869-034-00170-0)	39.00	Oct. 1, 1998
46 Parts:			
1-40	(869-034-00171-8)	26.00	Oct. 1, 1998
41-69	(869-034-00172-6)	21.00	Oct. 1, 1998
70-89	(869-034-00173-4)	8.00	Oct. 1, 1998
90-139	(869-034-00174-2)	26.00	Oct. 1, 1998
140-155	(869-034-00175-1)	14.00	Oct. 1, 1998
156-165	(869-034-00176-9)	19.00	Oct. 1, 1998
166-199	(869-034-00177-7)	25.00	Oct. 1, 1998
200-499	(869-034-00178-5)	22.00	Oct. 1, 1998
500-End	(869-034-00179-3)	16.00	Oct. 1, 1998
47 Parts:			
0-19	(869-034-00180-7)	36.00	Oct. 1, 1998
20-39	(869-034-00181-5)	27.00	Oct. 1, 1998
40-69	(869-034-00182-3)	24.00	Oct. 1, 1998
70-79	(869-034-00183-1)	37.00	Oct. 1, 1998
80-End	(869-034-00184-0)	40.00	Oct. 1, 1998
48 Chapters:			
1 (Parts 1-51)	(869-034-00185-8)	51.00	Oct. 1, 1998
1 (Parts 52-99)	(869-034-00186-6)	29.00	Oct. 1, 1998
2 (Parts 201-299)	(869-034-00187-4)	34.00	Oct. 1, 1998
3-6	(869-034-00188-2)	29.00	Oct. 1, 1998
7-14	(869-034-00189-1)	32.00	Oct. 1, 1998
15-28	(869-034-00190-4)	33.00	Oct. 1, 1998
29-End	(869-034-00191-2)	24.00	Oct. 1, 1998
49 Parts:			
1-99	(869-034-00192-1)	31.00	Oct. 1, 1998
100-185	(869-034-00193-9)	50.00	Oct. 1, 1998
186-199	(869-034-00194-7)	11.00	Oct. 1, 1998
200-399	(869-034-00195-5)	46.00	Oct. 1, 1998
400-999	(869-034-00196-3)	54.00	Oct. 1, 1998
1000-1199	(869-034-00197-1)	17.00	Oct. 1, 1998
1200-End	(869-034-00198-0)	13.00	Oct. 1, 1998
50 Parts:			
1-199	(869-034-00199-8)	42.00	Oct. 1, 1998
200-599	(869-034-00200-5)	22.00	Oct. 1, 1998
600-End	(869-034-00201-3)	33.00	Oct. 1, 1998

Title	Stock Number	Price	Revision Date
CFR Index and Findings Aids	(869–034–00049–6)	46.00	Jan. 1, 1998
Complete 1998 CFR set		951.00	1998
Microfiche CFR Edition:			
Subscription (mailed as issued)		247.00	1998
Individual copies		1.00	1998
Complete set (one-time mailing)		247.00	1997
Complete set (one-time mailing)		264.00	1996

[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period July 1, 1997 to June 30, 1998. The volume issued July 1, 1997, should be retained.

[5] No amendments to this volume were promulgated during the period January 1, 1997 through December 31, 1997. The CFR volume issued as of January 1, 1997 should be retained.

[6] No amendments to this volume were promulgated during the period April 1, 1997, through April 1, 1998. The CFR volume issued as of April 1, 1997, should be retained.

The authentic text behind the news . . .

The Weekly Compilation of **Presidential Documents**

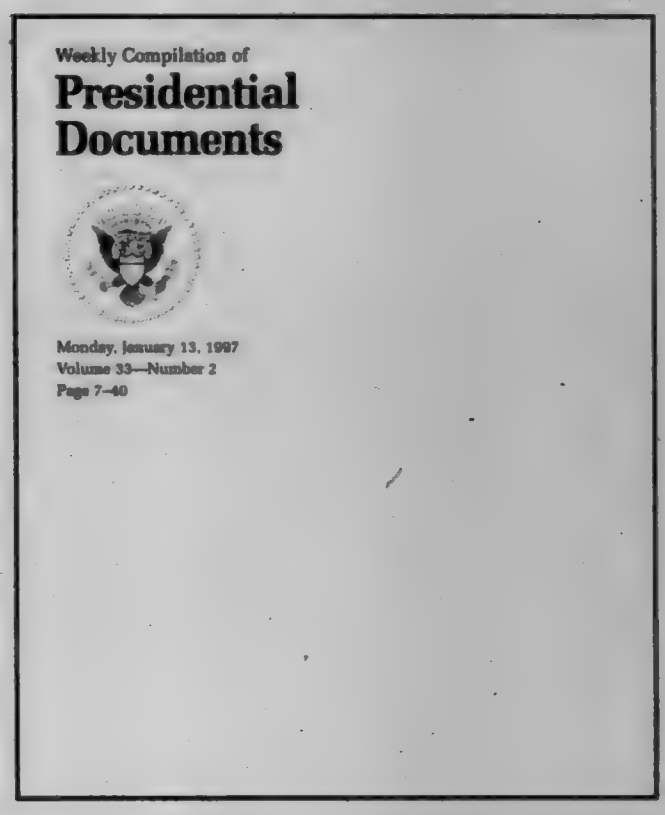

This unique service provides up-to-date information on Presidential policies and announcements. It contains the full text of the President's public speeches, statements, messages to Congress, news conferences, and other Presidential materials released by the White House.

The Weekly Compilation carries a Monday dateline and covers materials released during the preceding week. Each issue includes a Table of Contents, lists of acts approved by the President, nominations submitted to the Senate, a checklist of White House press releases, and a digest of other Presidential activities and White House announcements. Indexes are published quarterly.

Published by the Office of the Federal Register, National Archives and Records Administration.

Superintendent of Documents **Subscription** Order Form

Charge your order. It's Easy! MasterCard VISA

Order Processing Code:
*** 5420**

To fax your orders (202) 512–2250
Phone your orders (202) 512–1800

☐ **YES**, please enter _____ one year subscriptions for the **Weekly Compilation of Presidential Documents** (PD) so I can keep up to date on Presidential activities.

☐ $137.00 First Class Mail ☐ $80.00 Regular Mail

The total cost of my order is $ _____. **Price includes regular domestic postage and handling** and is subject to change. International customers please add 25%.

Company or personal name (Please type or print)

Additional address/attention line

Street address

City, State, ZIP code

Daytime phone including area code

Purchase order number (optional)

May we make your name/address available to other mailers? YES ☐ NO ☐

Please Choose Method of Payment:

☐ Check Payable to the Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐☐☐ – ☐
☐ VISA ☐ MasterCard Account
☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐
☐☐☐☐ (Credit card expiration date)

Thank you for your order!

Authorizing signature 11/3

Mail To: Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250–7954

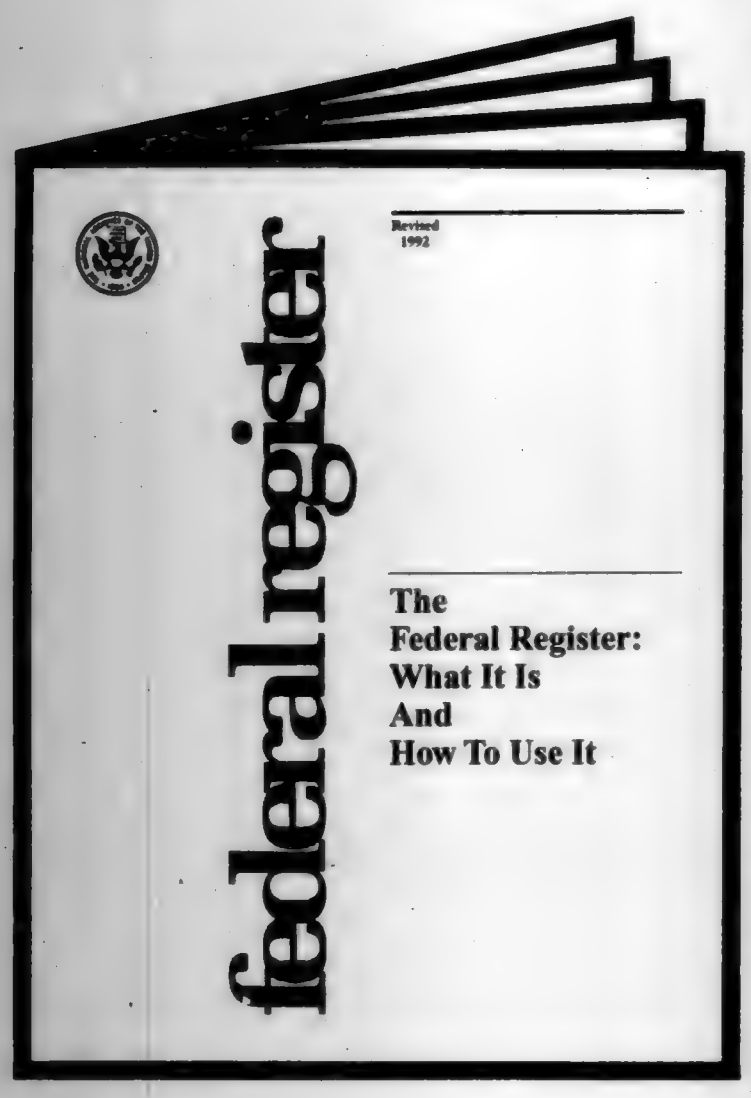

Announcing the Latest Edition

The Federal Register: What It Is and How to Use It

A Guide for the User of the Federal Register—Code of Federal Regulations System

This handbook is used for the educational workshops conducted by the Office of the Federal Register. For those persons unable to attend a workshop, this handbook will provide guidelines for using the *Federal Register* and related publications, as well as an explanation of how to solve a simple research problem.

Price $7.00

Superintendent of Documents **Publications** Order Form

Order Processing Code:
*** 6173**

☐ **YES**, enter my subscription(s) as follows:

Charge your order. It's Easy! MasterCard VISA

To fax your orders (202) 512–2250
Phone your orders (202) 512–1800

_____ copies of **The Federal Register – What it is and Hot To Use It,** at $7.00 per copy. Stock No. 069–000–00044–4.

The total cost of my order is $ _____. **Price includes regular domestic postage and handling** and is subject to change. International customers please add 25%

Company or personal name (Please type or print)

Additional address/attention line

Street address

City, State, ZIP code

Daytime phone including area code

Purchase order number (optional)

May we make your name/address available to other mailers? YES ☐ NO ☐

Please Choose Method of Payment:

☐ Check Payable to the Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐☐☐ – ☐
☐ VISA ☐ MasterCard Account
☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

☐☐☐☐ (Credit card expiration date)

Thank you for your order!

Authorizing signature (Rev.11/3)

Mail To: Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250–7954

Would you like to know...

if any changes have been made to the Code of Federal Regulations or what documents have been published in the Federal Register without reading the Federal Register every day? If so, you may wish to subscribe to the *LSA (List of CFR Sections Affected)*, the *Federal Register Index*, or both.

LSA • List of CFR Sections Affected

The LSA (List of CFR Sections Affected) is designed to lead users of the Code of Federal Regulations to amendatory actions published in the Federal Register. The LSA is issued monthly in cumulative form. Entries indicate the nature of the changes—such as revised, removed, or corrected.
$27 per year.

Federal Register Index

The index, covering the contents of the daily Federal Register, is issued monthly in cumulative form. Entries are carried primarily under the names of the issuing agencies. Significant subjects are carried as cross-references.
$25 per year.

A finding aid is included in each publication which lists Federal Register page numbers with the date of publication in the Federal Register.

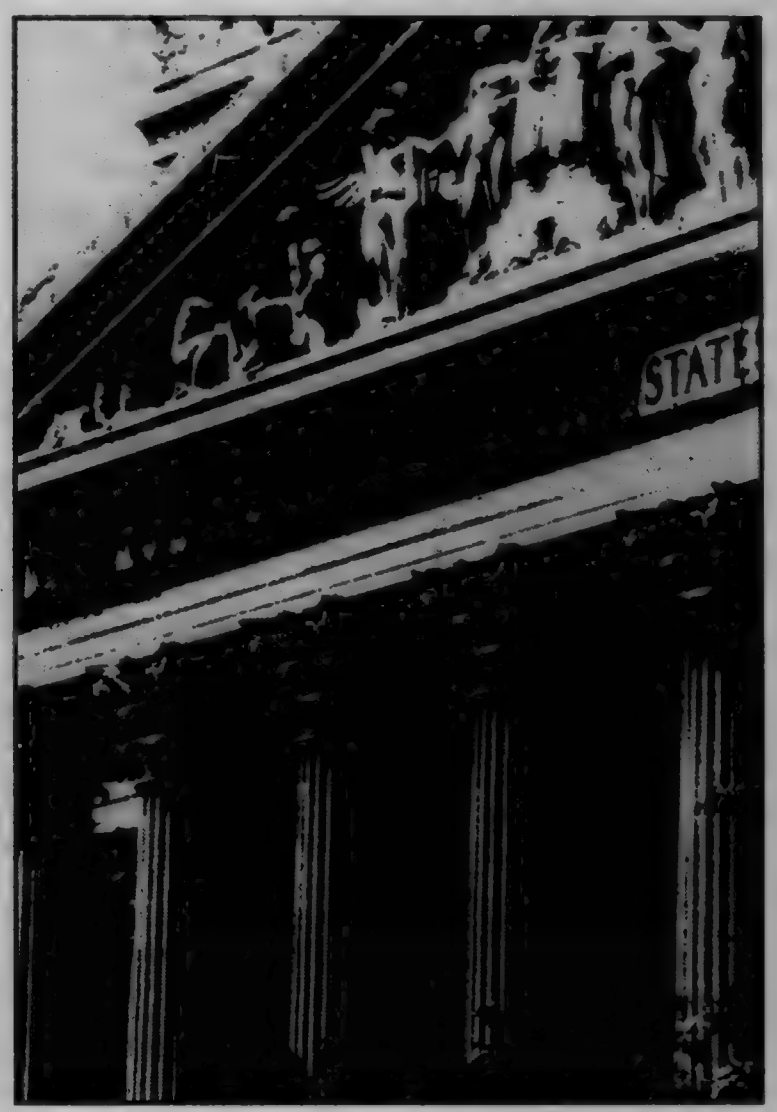

Superintendent of Documents **Subscription** Order Form

Order Processing Code:
*** 5421**

☐ **YES**, enter the following indicated subscriptions for one year:

_____ **LSA (List of CFR Sections Affected)**, (LCS) for $27 per year.
_____ **Federal Register Index** (FRUS) $25 per year.

Charge your order. It's Easy! MasterCard VISA
To fax your orders (202) 512–2250
Phone your orders (202) 512–1800

The total cost of my order is $ _____. **Price includes regular domestic postage and handling** and is subject to change. International customers please add 25%.

Company or personal name (Please type or print)

Additional address/attention line

Street address

City, State, ZIP code

Daytime phone including area code

Purchase order number (optional)

May we make your name/address available to other mailers? YES ☐ NO ☐

Please Choose Method of Payment:

☐ Check Payable to the Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐☐☐ – ☐☐☐☐
☐ VISA ☐ MasterCard Account

☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

☐☐☐☐ (Credit card expiration date)

Thank you for your order!

Authorizing Signature

1/97

Mail To: Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250–7954

INFORMATION ABOUT THE SUPERINTENDENT OF DOCUMENTS' SUBSCRIPTION SERVICE

Know when to expect your renewal notice and keep a good thing coming. To keep our subscription prices down, the Government Printing Office mails each subscriber *only one renewal notice*. You can learn when you will get your renewal notice by checking the number that follows month/year code on the top line of your label *as shown in this example:*

A renewal notice will be sent approximately 90 days **before the shown date.**

```
                                    /
AFR SMITH212J                  DEC97 R 1
JOHN SMITH
212 MAIN STREET
FORESTVILLE MD 20704
```

A renewal notice will be sent approximately 90 days **before the shown date.**

```
                                    /
AFRDO SMITH212J                DEC97 R 1
JOHN SMITH
212 MAIN STREET
FORESTVILLE MD 20704
```

To be sure that your service continues without interruption, please return your renewal notice promptly. If your subscription service is discontinued, simply send your mailing label from any issue to the Superintendent of Documents, Washington, DC 20402–9372 with the proper remittance. Your service will be reinstated.

To change your address: Please SEND YOUR MAILING LABEL, along with your new address to the Superintendent of Documents, Attn: Chief, Mail List Branch, Mail Stop: SSOM, Washington, DC 20402–9373.

To inquire about your subscription service: Please SEND YOUR MAILING LABEL, along with your correspondence, to the Superintendent of Documents, Attn: Chief, Mail List Branch, Mail Stop: SSOM, Washington, DC 20402–9373.

To order a new subscription: Please use the order form provided below.

Superintendent of Documents **Subscription** Order Form

Order Processing Code:
*** 5468**

Charge your order. It's Easy! MasterCard VISA

To fax your orders (202) 512–2250
Phone your orders (202) 512–1800

☐ **YES**, enter my subscription(s) as follows:

_____ subscriptions to **Federal Register (FR);** *including* the daily Federal Register, monthly Index and List of CFR Sections Affected (LSA), at $607 each per year.

_____ subscriptions to **Federal Register,** *daily only* (FRDO), at $555 each per year.

The total cost of my order is $_____. **Price includes regular domestic postage and handling,** and is subject to change. International customers please add 25%.

Company or personal name (Please type or print)

Additional address/attention line

Street address

City, State, ZIP code

Daytime phone including area code

Purchase order number (optional)

May we make your name/address available to other mailers? YES ☐ NO ☐

Please Choose Method of Payment:

☐ Check Payable to the Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐☐☐ – ☐☐☐☐
☐ VISA ☐ MasterCard Account
☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

☐☐☐☐ (Credit card expiration date)

Thank you for your order!

Authorizing signature

11/3

Mail To: Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250–7954

Microfiche Editions Available...

Federal Register

The Federal Register is published daily in 24x microfiche format and mailed to subscribers the following day via first class mail. As part of a microfiche Federal Register subscription, the LSA (List of CFR Sections Affected) and the Cumulative Federal Register Index are mailed monthly.

Code of Federal Regulations

The Code of Federal Regulations, comprising approximately 200 volumes and revised at least once a year on a quarterly basis, is published in 24x microfiche format and the current year's volumes are mailed to subscribers as issued.

Microfiche Subscription Prices:

Federal Register:

One year: $220.00
Six months: $110.00

Code of Federal Regulations:

Current year (as issued): $247.00

Superintendent of Documents **Subscription** Order Form

Order Processing Code:
*** 5419**

Charge your order. It's Easy!
To fax your orders (202) 512–2250
Phone your orders (202) 512–1800

☐ **YES**, enter the following indicated subscription in 24x microfiche format:

_____ **Federal Register** (MFFR) ☐ One year at $220 each ☐ Six months at $110

_____ **Code of Federal Regulations** (CFRM7) ☐ One year at $247 each

The total cost of my order is $_____. **Price includes regular domestic postage and handling** and is subject to change. International customers please add 25%.

Company or personal name (Please type or print)

Additional address/attention line

Street address

City, State, ZIP code

Daytime phone including area code

Purchase order number (optional)

May we make your name/address available to other mailers? YES ☐ NO ☐

Please Choose Method of Payment:

☐ Check Payable to the Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐☐☐–☐
☐ VISA ☐ MasterCard Account
☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

☐☐☐☐ (Credit card expiration date)

Thank you for your order!

Authorizing signature 11/3

Mail To: Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250–7954

Now Available Online

through

GPO Access

A Service of the U.S. Government Printing Office

Federal Register

Updated Daily by 6 a.m. ET

Easy, Convenient, FREE

Free public connections to the online Federal Register are available through the GPO Access service.

To connect over the World Wide Web, go to the Superintendent of Documents' homepage at http://www. access. gpo.gov/su_docs/

To connect using telnet, open swais.access.gpo.gov and login as guest (no password required).

To dial directly, use communications software and modem to call (202) 512–1661; type swais, then login as guest (no password required).

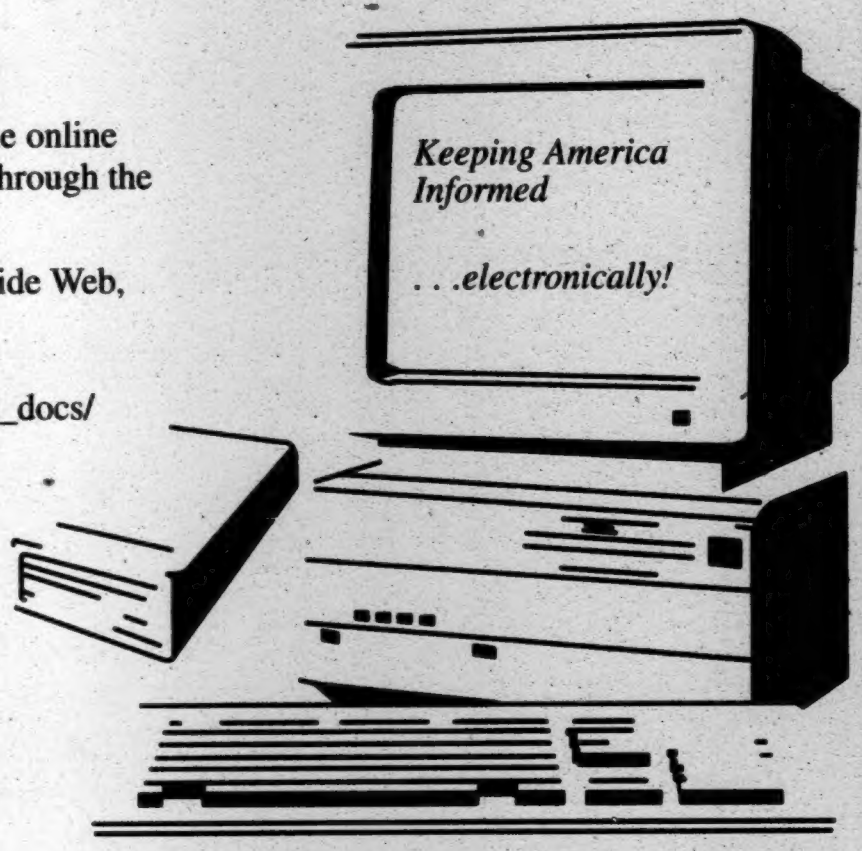

You may also connect using local WAIS client software. For further information, contact the GPO Access User Support Team:

Voice: (202) 512–1530 (7 a.m. to 5 p.m. Eastern time).
Fax: (202) 512–1262 (24 hours a day, 7 days a week).
Internet E-Mail: gpoaccess@gpo.gov

(Rev. 11/3)

Printed on recycled paper

END